

PE5 - Request for Release from Deed of Agreement – Picton Mall

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TRIM I966-02

EXECUTIVE SUMMARY

- The purpose of this report is to assess and make recommendation on a request by the proponent of Picton Mall to be released from a Deed of Agreement.
- The Deed of Agreement, which was executed in 2003, provides for a monetary contribution towards the provision of traffic control facilities at the intersection of Margaret, Cliff and Argyle Street Picton.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extends to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this application.
- It is recommended that the original contribution plus indexation be sought from the proponent by Council through the dispute resolution and if necessary the arbitration provisions contained in the Deed.

REPORT

In 2002, Council received a Development Application (I966-02) for the construction of a shopping centre on the corner of Margaret and Colden Street, Picton.

At its meeting on 10 February 2003, Council approved this application which included at that time a supermarket, 20 specialty shops, 1 and 2 storey commercial space and the provision of 246 off street car parking spaces. The report included the following extract:

Traffic signals at the intersection of Argyle Street and Margaret Street, whilst not solely attributable to the development, were considered as warranted commensurate with its opening for trading purposes. After taking into account the findings of the Picton Town Centre Traffic Study by Gabites Porter NZ Ltd commissioned by Council and likely traffic generation and movement patterns associated with the development it is the view of Council officers that the intersection was required to be upgraded to allow the safe and efficient movement of traffic associated with the development proposal.

These works are not identified under Council's Section 94 Developer Contributions Plan 2000. Further, the plan does not make provision for commercial developments to contribute under the plan to the cost of infrastructure.

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Prior to the approval of this development application Council considered a separate report relating to a 'developer agreement' with the proponents of the shopping centre. This agreement related to the provision of a monetary contribution of \$46,800 towards the construction of traffic management facilities and associated works at the intersection of Argyle and Margaret Street, Picton.

The draft Monetary Contributions Deed referred to the installation of traffic lights. However this was changed to "traffic control works" by Council resolution at its meeting held 28 January 2003. When the Deed was executed it referred to "construction of traffic management facilities and associated works". The Deed further held that:

"The works are to be completed by Council not later than within 12 months of the issue of an Occupation Certificate for Corbett's development".

An Interim Occupation Certificate for Picton Mall was issued on 17 July 2004. The monetary contribution was not received within the required timeframe (e.g. within 14 days of the issue of an Occupation Certificate). The works were not completed by Council within the 12 month period (i.e. by 17 July 2005).

The matter was further reported to Council's meeting held 16 May 2005. A 'Deed of Variation' was prepared to amend the Monetary Contributions Deed. The report stated:

The proposal variation is to amend the Monetary Contributions Deed through a Deed of Variation so that:

- 1. Payment of the contribution is required by 31 July 2005 instead of within 14 days of the release of the Occupation Certificate.*
- 2. The completion date for the traffic management facilities is 28 February 2005 instead of 12 months from the date of the release of the Occupation Certificate.*
- 3. The amount of the contribution does not increase with CPI.*

The reason for the proposed variation to the payment time is due to Corbett Court believing that payment was required after completion of the final Occupation Certificate. The definition of an Occupation Certificate in the Monetary Contributions Deed includes an Interim Occupation Certificate. Council has not yet received any payment.

The reason for the variation to the timing of the completion of the traffic management facilities is that Council will be unable to complete the required works, and associated community consultation by 17 July 2005.

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It is assumed that the reference above to completion of traffic management works by 28 February 2005 is a typographical error given it precedes the Council report date (e.g. 16 May 2005).

Council resolved to sign the Deed of Variation under the common seal of Council subject to its execution by the proponent. There is no evidence in Council's records of the Deed of Variation having been executed by the proponent.

Completion of the traffic management facilities at the intersection of Argyle and Margaret Street, Picton is expected early in the 2016/2017 financial year. It is recommended that Council commence the dispute resolution procedure outlined in the original Monetary Contribution Deed and seek collection of the contribution plus indexation.

Council staff have met with the proponent who contends that the a release from the obligations under the Deed should be issued given:

- There is no nexus between the traffic generated by Picton Mall and the upgrade of the Argyle and Margaret Street intersection. The traffic report submitted in the Development Application for the shopping centre suggested the Argyle and Menangle Street intersection was performing at a lower service level.
- The Deed of Agreement was signed under duress. It was required by Council prior to consideration of the Development Application.
- Council failed to invoice the proponent for the contribution when due.
- The rates paid to Council as a result of the Picton Mall development is significant. Council should use these funds for the proposed works.
- Picton Mall has made a significant contribution to the wider community in terms of job creation etc.
- Under the Development Consent for the shopping centre the proponent was required to pay \$13,500 for installation of gross pollutant traps. This work has not been completed.
- Council has previously rejected offers from RMS (formerly RTA) to pay for the cost of installing traffic lights in Picton.
- The proposed works will not benefit Picton Mall.

The following options are available to Council:

1. Grant a release to the proponent from any obligation under the Deed of Agreement, or
2. Pursue payment of the contribution required under the Deed of Agreement, initially through the dispute resolution procedure and if necessary through arbitration. If Council selects this option some consideration should be given to the amount to be pursued (e.g. the contribution figure with or without indexation).

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CONSULTATION

The draft report was circulated to the Executive, Manager Governance and Manager Infrastructure Planning prior to finalisation.

FINANCIAL IMPLICATIONS

The traffic lights at the intersection of Margaret, Cliffe and Argyle Streets, Picton are estimated to cost \$770,000. Of this, \$75,000 has been funded by McDonalds Restaurant through a Voluntary Planning Agreement.

The original Monetary Contribution Deed agreed to a payment of \$46,800. This has never been paid. The original Deed also detailed that the amount of the contribution was to increase with the CPI from 12 months from the date of the Deed.

The CPI in February 2004 was 80.9. The most recent CPI at 27 April 2016 is 108.7. If the contribution is indexed the current contribution is \$62,881.

In the draft Deed of Variation, Council agreed to forego the indexation of the contribution. However this Deed of Variation appears to have not been executed.

It is estimated that the potential cost of pursuing dispute resolution and arbitration (if necessary) is approximately \$10,000.

ATTACHMENTS

Nil.

RECOMMENDATION

That in relation to the Monetary Contribution Deed executed between Council and the proponent of the Picton Mall development:

1. Council commence the dispute resolution procedure outlined in the Monetary Contribution Deed and proceed to arbitration if necessary.
2. The original contribution under the Deed plus indexation be sought by Council.