

Report of Planning and Economy to the Ordinary Meeting of Council held on Tuesday  
18 April 2017

**PE3 – Planning Agreement for Land at 83 Menangle Street, Picton**

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**Planning Agreement for Land at 83 Menangle Street, Picton**

263081

TRIM 8335

**EXECUTIVE SUMMARY**

- This report seeks a resolution from Council to adopt a Planning Agreement ('Agreement') for land at 83 Menangle Street, Picton. The Agreement provides for the dedication to Council of a strip of land along Stonequarry Creek for use as a Public Reserve.
- It is intended that this land be incorporated into a continuous walkway/public reserve along Stonequarry Creek between Argyle Street and Victoria Park. Council placed this land on the acquisition layer when it adopted Wollondilly Local Environment Plan, 2011.
- It is recommended that Council:
  - Adopt the Planning Agreement;
  - Agree to accept the dedication of the land for the purpose of a public reserve;
  - Agree for the land to be classified as Community Land under the Local Government Act 1993;
  - Authorise the execution of the Agreement by the General Manager.

**REPORT**

**BACKGROUND**

An Agreement has been prepared to provide for the dedication to Council of land at the rear of 83 Menangle Street, Picton. A location plan, zoning map and acquisition map showing the land proposed to be dedicated is attached to this report (see Attachments 1, 2 and 3). The land is presently zoned RE1 - Public Recreation and has an area of approximately 1,074 square metres. A copy of the Agreement is included at Attachment 4.

The land will form part of a continuous walkway/recreation corridor along Stonequarry Creek which when complete will provide a linkage along the creek from Argyle Street to Victoria Park. Opportunities to obtain the land forming this corridor do not occur frequently. It is recommended that it be accepted by Council.

The Agreement has been prepared in association with a development proposal for 36 medium density dwelling units by Deemkies Pty Ltd who is the other party to the Planning Agreement. Development consent was granted to this proposal in December 2012. The consent included a requirement to pay a monetary contribution under Council's Section 94 Plan. However should the Agreement be executed the applicant will lodge a Section 96 application to modify the consent condition and offset the contribution through the dedication of the land.

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**1.1 MAIN FEATURES OF THE PLANNING AGREEMENT**

The Agreement includes the following key provisions:

Land Dedication

It proposes to dedicate the recreationally zoned land shown in Attachment 2 to Council as a Public Reserve. The area to be dedicated is approximately 1,074sq metres and is consistent with the land zoned RE1 on the Zoning Map, and with the land shown on the Acquisition layer of the Wollondilly LEP 2011. Consistent with its intended use as a public reserve the land should be classified as Community Land under the Local Government Act once it has come into Council ownership.

Subdivision and Creation of a Drainage Easement

The land to be dedicated does not yet exist as a separate lot. The Agreement includes a provision that as a first step, the land be subdivided to create the lot proposed to be dedicated. The subdivision will also include an easement through the RE1 zoned land to allow the development on the parent lot to dispose of stormwater.

Maintenance of the Land and Public Access

Council will need access to the land for maintenance purposes, and the Agreement includes a clause allowing Council access for up to 20 times per year to carry out maintenance and in the event of any emergency. The land will only be available for access by the general public once Council has obtained sufficient connecting land to provide this access.

Section 94 Offset and Land Valuation

The Section 94 contribution required for this development is \$251,533 (indexed to December 2016). This is a relatively small Section 94 contribution considered against the size of the development of 36 medium density units and arises because the contribution is based on the rates included in the 2000 Plan. These rates are \$7,335 per medium density lot in Picton compared to the current rate of \$13,689 per lot (both rates indexed to December 2016).

The Agreement provides for the entire contribution to be offset against the value of the land. Whilst there might be grounds under Council's Planning Agreements Policy for requesting a lower offset amount, this has not been done in view of the fact that negotiations commenced on this VPA before the commencement of the Planning Agreements Policy and because as explained below, Council is receiving an asset that exceeds the value of the Section 94 contribution by a significant amount.

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The value of the land to be dedicated has been agreed at \$321,500, which was the midpoint between two valuations obtained. The applicant's valuation (obtained in August 2015) was \$255,000, whilst Council's valuation (obtained in June 2016) was \$388,000. A midpoint between the two valuations was agreed on, and this amount (\$321,500) exceeds the value of the Section 94 contribution, as do both the valuations received. As a result, Council is receiving an asset of greater value than the Section 94 contribution that it would otherwise receive, and which secures an important part of the open space link along Stonequarry Creek.

**Condition of the Land**

The draft Agreement includes a clause in which the owner warrants that the land is in a condition suitable for use as a public reserve.

**Exhibition of the Draft Planning Agreement**

The Draft Planning Agreement and Explanatory Note was exhibited at Council offices, the Wollondilly library and on Council's web site between 23 November 2016 until 23 December 2016. Also exhibited was the associated development consent and the approved plans for the development. No submissions were received.

**Planning Agreements Policy**

A comparison of the Planning Agreement against the main clauses of the Planning Agreements Policy is included in the attached Table. In summary the Planning Agreement is consistent with the Policy.

**FINANCIAL IMPLICATIONS**

The main financial implication associated with this Draft Agreement is that the proposed land dedication will offset the developer contributions payable and as a result Council will forego approximately \$250,000 that it would otherwise receive in Section 94 contributions from this development. However if Council wants to obtain the land along Stonequarry Creek for use as a public walkway/cycleway then the opportunity to obtain this parcel of land should be taken. Unless Council took steps to compulsorily acquire the land the opportunity to obtain the land is unlikely to arise again.

Furthermore, Council is obtaining the land for less than its market value, given the two valuations that were obtained and noting also that the land value has probably continued to increase since the valuations were undertaken. There will also be a need for Council to maintain the site so these costs will need to be included into Councils' maintenance budget. However it is not intended to make the land reserve publicly accessible at this stage limiting short term maintenance costs.

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**CONCLUSION**

The land to be dedicated through this Planning Agreement forms part of a continuous riparian linkage that Council has identified for acquisition. It will provide important recreational and environmental amenity for the area, particularly as it develops in the future.

**ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET**

1. Site Location Plan.
2. Zoning Map.
3. Acquisition Map.
4. Planning Agreement.
5. Review against Planning Agreements Policy.

**RECOMMENDATION**

1. That Council adopt the Planning Agreement.
2. That Council agree to accept the dedication of the land for the purpose of a public reserve.
3. That Council agree for the land to be classified as Community Land under the Local Government Act 1993.
4. That Council authorise the execution of the Agreement by the General Manager.