

Dated

23<sup>RD</sup> NOVEMBER

2009

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CEDEL PTY LIMITED AS TRUSTEE FOR  
THE CEDEL TRUST (ABN 19 979 977 504)

And

WOLLONDILLY SHIRE COUNCIL

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## **DEED OF AGREEMENT**

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Wollondilly Shire Council

62-64 Menangle Street

Picton NSW 2571

DEED OF AGREEMENT (hereinafter called "this Deed") is made the 23<sup>rd</sup> day of November Two-thousand and nine.

**PARTIES:**

**WOLLONDILLY SHIRE COUNCIL of Frank McKay building ("Council")**

**62-64 Menangle Street,  
Picton, New South Wales**

**And:**

**CEDEL PTY LIMITED AS TRUSTEE FOR THE CEDEL TRUST ("CEDEL")**

**PO Box 966  
Picton, New South Wales**

**RECITALS:**

- A. Cedel Pty Limited as trustee for The Cedel Trust (ABN 19 979 977 504) is the registered owner of Lot 25 DP 586191 at 113-123 Menangle Street, Picton. New South Wales.
- B. Council is seeking to acquire the portion of the property proposed to be zoned RE1 Public Recreation.
- C. The property owner is desirous to dedicate the portion of its property proposed to be zoned RE1 Public Recreation in the draft Local Environmental Plan (LEP) and also shown on the draft Land Reservation Acquisition Map marked "Local Open Space" (the RE1 land portion) to Council in lieu of an appropriate reduction in development contributions specified in condition 16.1 of Development Consent I969-02.
- D. The parties have agreed to enter into this Deed for the purpose of setting out the terms and conditions upon which Cedel will dedicate the RE1 land portion to the public and Council will reduce the amount of the contributions stated in Condition 16.1 of the development consent I969-02.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

**DEFINITIONS AND INTERPRETATION**

- 1. In this Deed unless the contrary intention appears:
  - 1.1. "Dedication" means the dedication of the proposed RE1 land portion of Lot 25 DP 586191 by Cedel, by way of registration of an appropriate deposited plan at Land and Property Information (LPI).
  - 1.2. "Council" means Wollondilly Shire Council;
  - 1.3. "Dedicate" has a corresponding meaning to Dedication;
  - 1.4. "Deed" means this Deed of Agreement;
  - 1.6. "Cedel" means Cedel Pty Limited as trustee for The Cedel Trust (ABN 19 979 977 504);

- 1.7. "RE1 land portion " means the portion of Cedel's property proposed to be zoned RE1 Public Recreation in the draft LEP being nominally 1,588m<sup>2</sup> as shown in the Plan of Identification in Annexure "B".
- 1.8. "Plan of Identification" means the Plan of Identification annexed hereto and marked with the letter "B"
- 1.9. "Registrar General" means the Registrar General of the Department of Lands, NSW
- 1.10. Words importing the singular number shall include the plural number and the neuter gender shall include the masculine or feminine gender and vice versa and words importing persons shall include corporations and vice versa.
- 1.11. Any covenant agreement or obligation on the part of two or more persons shall be deemed to bind them or any two or greater number of them jointly and each of them severally and shall also be deemed to bind their executors, administrators, successors and permitted assigns jointly and each of them severally.
- 1.12. In the interpretation of this Deed, no rules of construction shall apply to the disadvantage of one party on the basis that, that party put forward the Deed or any part thereof.

## **AGREEMENT**

### **Land Dedication**

2. The parties agree that Cedel will dedicate the RE1 land portion to Council in consideration for an appropriate reduction in development contributions specified in Conditions 16.1 of Development Consent I969-02.
3. This dedication of land is conditional upon:
  - 3.1 Cedel is to have a plan of dedication prepared and register the plan with the Registrar General to enable transfer of Cedel's RE1 land portion to Council.
  - 3.2 Cedel is to have the plan of dedication registered with LPI prior to the release of the Construction Certificate relating to development consent I969-02, by Council or Private Certifier.
  - 3.3 Council reducing the Development Contributions required by \$31,680 for the purchase of the proposed RE1 land portion.

## **Registration of the Plan**

4. The Parties agree that:

The existing owner (Cedel) of Lot 25 DP 586191 is responsible for creating and registering the linen Plan showing the dedication of the RE1 land portion with the Registrar General.

## **Dedication**

5. Cedel will ensure that:

- 5.1 The plan of dedication is registered at LPI prior to Council or Private Certifier releasing the Construction Certificate for Stage 1 of Construction relating to development application I969-02.
- 5.2 Upon registration of the plan of dedication at LPI, Council will confirm in writing to Cedel that the required development contribution stated in condition 16.1 of development consent I969-02 will be reduced by \$31,680. This is payment in full for the RE1 land portion.

## **GST**

6. All consideration in this Deed is expressed exclusive of goods and services tax ("GST"). If any supply by one party to the other is a taxable supply on which the supplier is liable to pay GST, then the supplier may issue a tax invoice to the recipient of the supply, and on receipt of such tax invoice, the recipient of the supply must pay to the supplier an amount equal to the GST the supplier is liable to pay. This clause applies to each taxable supply. Where consideration is not expressed as money, the supplier must at its cost assess the value of the consideration.

## **Condition of the RE1 Land Portion**

7. Council:

- 7.1 Accepts the RE1 land portion in its current state and condition as at the time of registration of the plan of dedication;
- 7.2 May not make any objection, requisition or claim for compensation with respect to the state and condition of the RE1 land portion.
- 7.3 Acknowledges the existence of a sewer main through this RE1 land portion.

## **Costs**

8. Each party must bear its own legal costs as regards the drafting and negotiation of this Deed.

## Miscellaneous

9. Any rights and obligations expressed in this Deed as being effective or continuing after the dedication of the land by Cedel to Council, shall not merge on the happening of this event but shall continue to have full force and effect.
10. None of the provisions of this Deed shall be taken either at law or in equity to have been varied, waived, discharged or released by either party unless by its express consent in writing.
11. Any notice given by a party under this Deed shall be in writing and delivered by hand or forwarded by prepaid post or sent by facsimile machine or e-mail to Council at the address specified in **Item 1** of Annexure "A" to this Deed and to the Cedel's address specified in **Item 2** of Addresses for Service of Notices, and when such notice is posted by either party service shall be deemed to be made at the time when the prepaid post would in the ordinary course be delivered.
12. If an association, body or authority, statutory or not, ceases to exist or is reconstituted, renamed, replaced or its' powers or functions are transferred to any other body, a reference to that body means the body established or constituted in its place or that undertakes the powers or functions of that body.
13. If used, Business Day means a day on which trading banks generally are open for business in Sydney, New South Wales and that day is not a Saturday, Sunday or public holiday in Sydney, New South Wales.
14. Unless stated otherwise, in any case where pursuant to this Deed the doing or execution of any act matter or thing by a party is dependent upon the consent or approval of the other party such consent or approval will not be unreasonably withheld.
15. A reference to any document including this Deed includes any amendment, supplement, replacement or novation of that document.
16. Where the day on or by which any thing is to be done is not a Business Day that thing must be done on or by the next following Business Day.
17. Headings have been inserted for guidance only and do not form any part of the content of this Deed.
18. Any written communication or notice required to be given under this Deed must be legible and in English.
19. All references to money in this Deed shall be deemed to be reference to Australian currency and all money to be paid hereunder to a party shall be paid to the other party in Picton, New South Wales or as it may otherwise direct.
20. Unless application is mandatory by law, no statute, ordinance, proclamation, order, regulation or moratorium present or future shall apply to this Deed so as to abrogate extinguish impair diminish fetter delay or otherwise prejudicially affect any rights, powers remedies or discretions given or accruing to either the Council or Cedel.
21. Save as herein contained no other consideration has been or is to be paid to a party hereunder by the other party or any other person.
22. None of the terms or conditions of this Deed nor any act matter or thing done under or by virtue of or in connection with this Deed or any other agreement between the parties shall operate as a merger of any of the rights and remedies of the parties in or under this

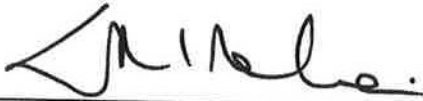
Deed or in or under any such other agreement all of which shall continue in full force and effect.

23. A reference to a party includes permitted assigns and in the case of a corporation includes its successors, and in the case of a natural person that party's personal representative.
24. This Deed shall be a Deed deemed to be made and construed in and in accordance with the laws of New South Wales, Australia, and each of the parties expressly submits to the jurisdiction of the Courts of New South Wales.
25. A reference to a part, clause, paragraph, condition, provision, party, annexure, exhibit or schedule is a reference to a part, clause, paragraph, condition, provision, party, annexure, exhibit or schedule to this Deed.
26. Any provision of this Deed which is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective only to the extent of that prohibition or unenforceability and does not invalidate the remaining provisions of this Deed or affect the validity or enforceability of the provision in any other jurisdiction. This clause will not apply if its application would materially affect the legal or commercial arrangements intended to operate.
27. Reference to a statute or ordinance includes all regulations under and amendments to that statute or ordinance whether by subsequent statute or otherwise and a statute or ordinance passed in substitution for the statute or ordinance referred to or incorporating any of its provisions. A reference to any statute, regulation, proclamation, ordinance or By-Law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.
28. No waiver by a party of one breach by the other party of any obligation on its part contained in this Deed shall operate as a waiver of another breach of the same or of any other obligation contained in this Deed.
29. Reference to the whole, whether express or implied, is also a reference to any part of the whole.

EXECUTED as a Deed of Agreement:

THE COMMON SEAL OF WOLLONDILLY  
SHIRE COUNCIL was hereunto affixed.

on 23<sup>rd</sup> day of November, 2009  
pursuant to resolution no. \_\_\_\_\_ of  
Council's Ordinary Meeting Minutes  
made on 16<sup>th</sup> September 2009.



General Manager

LES MCMAHON

Print Name



Mayor

Gavin A.C. MITCHELL

Print Name

**Executed by**

Cedel Pty Limited as trustee for The Cedel  
Trust (ABN 19 979 977 504)

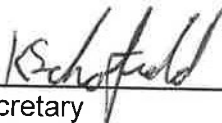
on 23 day of November, 2009



Sole Director

Kyle Schofield

Print Name



Secretary

Kyle Schofield

Print Name

## **ANNEXURE 'A'**

### **Address for Service of Notices**

#### **Item 1:**

Wollondilly Shire Council  
PO Box 21  
Picton NSW 2571  
Facsimile:  
(02) 4677-2339

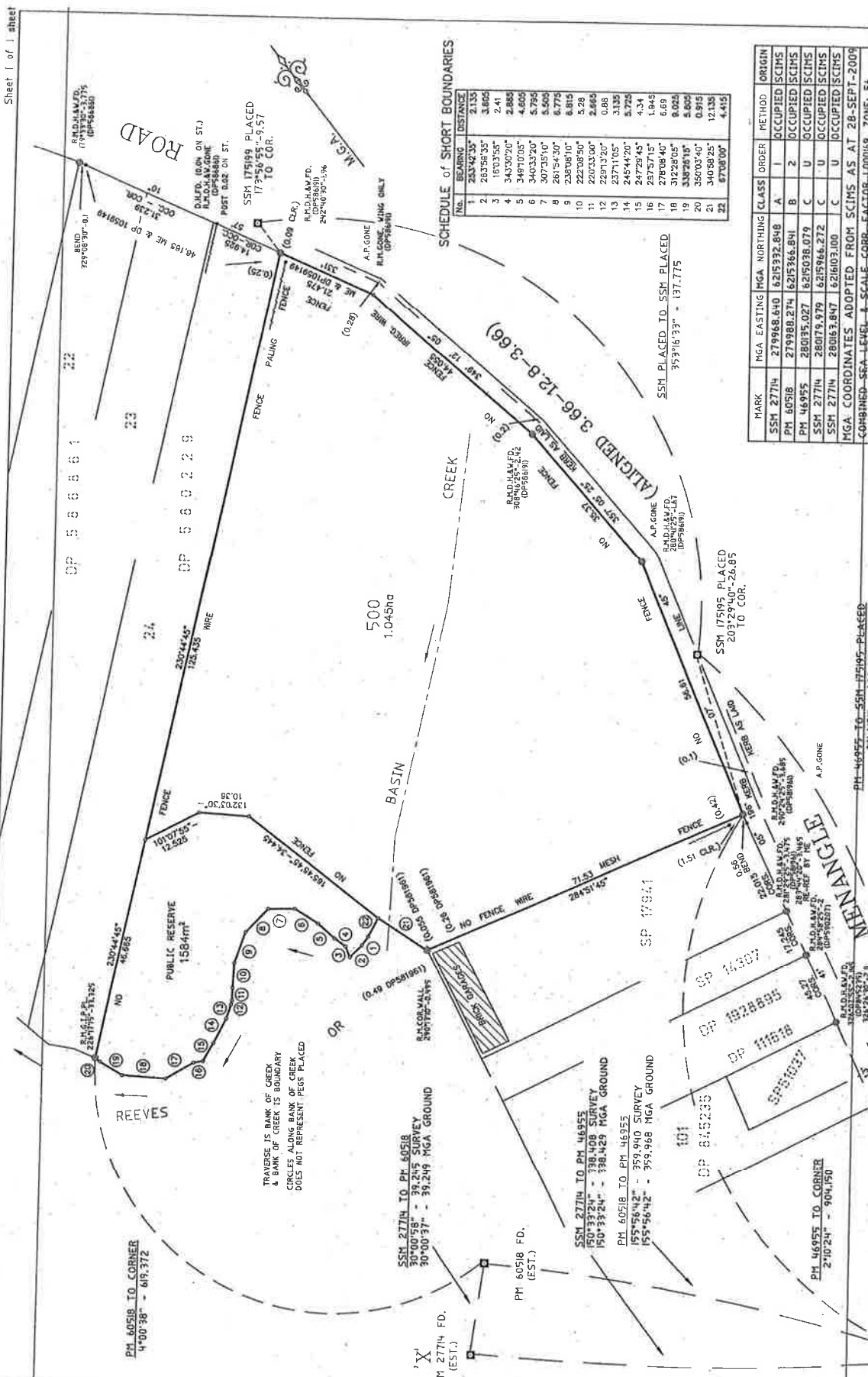
#### **Item 2:**

The Cedel Trust  
  
PO Box 966  
  
PICTON NSW 2571  
  
Facsimile:  
  
(02) 4683 2466



## **ANNEXURE "B" Plan of Identification**

**WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION**



No.	TRAINING	DISTANCE
1	284W2335	2.1135
2	28355635	3.8005
3	1603335	2.41
4	3433020	2.8805
5	34470305	4.6005
6	34403305	5.7595
7	30733530	5.5005
8	24634530	6.7775
9	23830830	6.8115
10	22230830	5.2815
11	22033300	2.665
12	22933500	0.68
13	3371105	3.135
14	24454400	5.725
15	24725945	4.34
16	2837515	1.945
17	27038400	6.69
18	3122805	9.025
19	3382615	5.605
20	35050340	0.915
21	3405825	12.135
22	6708000	1.15

MARK	MGA	EASTING	MGA	NORTHING	CLASS	ORDER	METHOD	ORIGIN
SSM 27714	2799668.840	6215532.848	A	1	OCCUPIED	SCIMS		
PM 60518	2799880.274	6215566.841	B	2	OCCUPIED	SCIMS		
PM 44955	280135.027	6215038.079	C	U	OCCUPIED	SCIMS		
SSM 27714	280175.979	6215686.272	C	U	OCCUPIED	SCIMS		
SSM 27714	280163.847	6216103.100	C	U	OCCUPIED	SCIMS		

MGA COORDINATES ADOPTED FROM SCIMS AS AT 28-SEPT-2009  
 COORDINATE SEA-LEVEL = SCALE CORP. FACTOR 1.001016,  $\epsilon_{\text{MGA}} = 4$

~~COMBINED SEA LEVEL & SCALE CORR. FACTOR 1.000169. ZONE: 56~~

LGA: WOLLONDILLY	Registered	DP
Locality: PICTON		
Subdivision No:		

PLAN OF REDEFINITION OF LOT 25  
IN DP 586191

Surveyor: RICHARD WILKINSON  
Date of Survey: 29-09-09  
Surveyors Ref: 416MENANGLE

46955 FD.  
(EST.)

**ANNEXURE"C"**

**Valuation letter from Real Estate valuer John Graveur dated 16<sup>th</sup> June 2009.**

113-123 Menangle St Picton

John Graveur AAPI  
Real Estate Valuer  
Land Economist  
131 Dairy Rd  
The Oaks 2570

Tel: Office 02 46771958  
Mobile: 0412 617923  
Fax: 02 46771901

16<sup>th</sup> June 2009

Wollondilly Shire Council  
Administration Centre  
Menangle St  
Picton 2571

Attention Peter Fist

Dear Peter,

**Re: Purchase of part 113 -123 Menangle Street Picton**

I refer to your request for a budget estimate price for the 1588 square metre parcel of land shown on the attached plan and advise the following:

- I have inspected the land and found it to be irregular in shape following the position of the creek bank and being partly cleared and partly vegetated.
- The land falls within the high hazard floodway and is in itself not able to be built on.
- Present zoning is 9(d) Open pace Reservation with a change to RE1 Public Recreation proposed under the Draft LEP. The prior zoning is Residential 2 (a) and acquisition of the land is to be on the basis of a residential zoning.
- The residential zoning in place for the subject site allows a full range of residential usage including medium density and residential flat buildings.
- The subject site is being considered on the basis that it has in place an approval for 18 large medium density units.

There are two important points to note that are the basis upon which my advice is given.

1. The acquisition of this land will not in any way affect the proposal for 18 large medium density units on the balance of the site.
2. The site is not capable of accommodating more than 18 units with or without the subject land on account of other constraints that exist on the balance of the site.

113-123 Menangle St Picton

SCANNED

WOLLONDILLY SHIRE COUNCIL	
DATE RECEIVED	
17 JUN 2009	
TRIM NO.	I 969 02 p4
ASSIGNED TO: Peter	

There have been no sales of residentially zoned land that is flood affected, in particular residential land which is capable of density development. There have been a number of sales of land of various zonings that have considerable restriction on their usage caused by flooding and/or zoning restriction including the site directly across the creek from the subject site. These sales are attached to this letter.

There are no sales in recent years that are in all respects comparable to the subject land and have not been any in my memory. A valuer can only take into account the most similar sales available and make adjustments for the relative differences between each parcel.

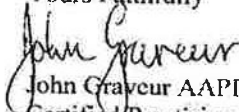
I understand that the purpose of this advice is to establish the amount to be paid to the dispossessed owner or exchanged with the owner in lieu of Section 94 contributions.

The rate I have determined in this matter is specifically for application to the subject parcel at 113-123 Menangle Street Picton.

**The rate that I have determined is appropriate for this budget estimate is \$20 per square metre or \$31,760 for the 1588 square metres. This figure includes any GST payable.**

Please contact the undersigned for further information in this matter.

Yours Faithfully



John Graveur AAPI

Certified Practising Valuer

Registered Real Estate Valuer No.3779

Member of the Australian Property Institute

## MARKET INFORMATION

### *Land Sales with restrictive land use controls.*

Property : Lots 2, 55-58 Coull St Picton  
Sale Date : Feb 2009  
Sale Price : \$143,000 including GST  
Land Size : 14235 sq.m.  
Comments : Special uses 5(a) zoning and located in floodplain which limits uses to recreation type usage. Land varies from level to gently undulating and dropping into creek. Split into 6 titles averaging 2372 sq.m. in size. Equates to approximately \$10 per square metre for land located on the opposite side of the creek to the subject land. This land has a special uses zoning and is nearly all located in the high hazard flood way. Whilst there is a high percentage of cleared reasonably level land it has lower usage zoning as compared to the subject land.

Property : Various lots off Elizabeth St Picton  
Sale Date : 31/05/04  
Sale Price : \$1,500,000  
Land Size : 4.567 ha  
Comments: 14 allotments most of which are in the high hazard floodway and cannot be built on. Equates to \$32 per square metre. Zoned rural which is lower use zoning than subject land. The multiple titles would provide cheaper development opportunities if the flood restriction was ever lifted. Much larger parcel than subject land. Premium price in my view. Purchaser intended to achieve rezoning or reclassification of the land. Other valuers suggesting that this land owner is now in financial difficulty. One section of land may in flood fringe may support dwellings.

Property : Lot 98 Farnsworth Ave Warragamba  
Sale Date : 09/10/06  
Sale Price : \$68,000  
Land Size : 5414 sq.m.  
Comments : Long narrow parcel of land zoned 6(a). Level mostly cleared with long road frontage. Adjoins other land with recreational zonings. Equates to \$12 per square metre for land with a lower use zoning . Not flood affected.

Property : Lot 100 Farnsworth Ave Warragamba  
Sale Date : 16/06/03  
Sale Price : \$85,000  
Land Size : 1.031ha  
Comments : Long narrow parcel of land zoned 6(a). Level mostly cleared with long road frontage. Adjoins other land with recreational zonings. Equates to \$8 per square metre for land with a lower use zoning. Not flood affected.

Property : Crown Lane behind Peel St Wilton  
Sale Date : 14/02/03  
Sale Price : \$2,900  
Land Size : 303sq.m.  
Comments : Narrow crown lane adjoining residential land. No building permit. Equates to \$9.57 per square metre. Residential zoning.

113-123 Menangle St Picton

Property : Westbourne Ave Thirlmere

Sale Date : 04/05/07

Sale Price : \$10,326

Land Size : 1213 sq.m.

Comments : 9 (a) car parking reservation zoned land adjoining commercial land.  
Equates to \$8.51/square metre. Not flood affected. Restricted to use as a car park.

113-123 Menangle St Picton