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Argyle Street & Regreeme Road Roundabout Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Wollondilly Shire Council

Leslie Robert Baxter

Dated: 24 July 2012

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Argyle Street and Regreme Road Roundabout Planning Agreement

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Argyle Street and Regreme Road Roundabout Planning Agreement

Summary Sheet

Council:

Name: Wollondilly Shire Council

Address: 62-64 Menangle Street, Picton NSW 2571; PO Box 21, Picton NSW 2571

Telephone: (02) 4677 1100

Facsimile: (02) 4677 1831

Email: council@wollondilly.nsw.gov.au

Representative: General Manager

Landowner:

Name: Leslie Robert Baxter

Address: 108 Menangle Street, Picton NSW 2571

Telephone: (02) 4677 2225 / 0418 639 793

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Parts 2 and 3.



Application of s94, s94A and s94EF of the Act:

See clause 7.

Registration:

This Agreement is to be registered on the title to the Land. See clause 24.

Restriction on dealings:

See clause 25.

Dispute Resolution:

Expert determination and mediation. See clauses 22 and 23.



Argyle Street and Regreme Road Roundabout Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Wollondilly Shire Council ABN 93 723 245 808 of 62-64 Menangle Street, Picton NSW 2571 (**Council**)

and

Leslie Robert Baxter of 108 Menangle Street, Picton NSW 2571 (**Landowner**)

Background

- A The Landowner is the owner of the Land.
- B A Development Application for the Development has been lodged on behalf of the Landowner relating to the Development.
- C The Landowner is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.
- D The Development Contributions to be made by the Landowner include the dedication of land or the payment of monetary contributions towards the construction by the Council of a roundabout and associated work at the intersection of Argyle Street and Regreme Road Picton that will, amongst other things, facilitate access to the Development and manage traffic generated by the Development.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

- 1.1 In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreement means this Agreement and includes any schedules, annexures and appendices to this Agreement.



Appeal period means the length of time between the date on which the Landowner commences an appeal under s97 of the Act in respect of any Development Consent for the Development, or a failure by the Council to grant a Development Consent for the Development, and the date on which such appeal is disposed of including by way of settlement, or the making of orders by the LEC.

Approval means a consent, licence, approval, permission or any other form of authorisation under any Act or law.

Contributions Plan has the same meaning as in the Act.

Development means the development the subject of Development Application DA10.2008.791.1 for the subdivision of the Land lodged with the Council on 19 December 2008 by Rein Warry & Co on behalf of the Landowner.

Development Access Road means an access road to the Development that joins the Roundabout generally in the location shown on the Plan and having a length of approximately 25 metres measured from the existing eastern kerb line of Argyle Street.

Development Access Road Land means land for the Development Access Road.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution; the dedication of land free of cost, the carrying out of work or the provision of any other material public benefit under this Agreement, or any combination of them, to be used for, or applied towards, the provision of public infrastructure or another public purpose.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Land means the land shown edged with both heavy black and broken black lines on the diagram contained in Schedule 1, comprising:

- (a) the whole of the land in DP 1124131 (subject to s28T of the *Real Property Act 1900*), and
- (b) the whole of the land contained in DP 612922, and
- (c) the land marked 'Lane 9.145 WD' shown on DP 1124131..

LEC means the Land and Environment Court of New South Wales.

Option 1 Development Contributions means the Development Contributions required to be made by the Landowner to the Council under Part 2 of this Agreement.

Option 2 Development Contributions means the Development Contributions required to be made by the Landowner to the Council under Part 3 of this Agreement.

Party means a party to this agreement, including their successors and assigns.



Plan means the plan contained in Schedule 2.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Residential Lot means a lot created or proposed to be created by a subdivision of the Land for separate occupation and disposition, not being a lot:

- (a) that is to be dedicated or otherwise transferred to the Council,
- (b) that the Council considers, based on information provided by the Landowner, will be further subdivided.

RMS means the Roads and Maritime Services of New South Wales.

Roadworks Estimate means the table titled 'Roadworks Estimate' in Schedule 3.

Roundabout means a roundabout situated at the intersection of Argyle Street and Regreme Road, Picton.

Roundabout Dedication Land means the part of the Land required for the construction of the Roundabout as shown on the Plan.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Subdivision Certificate has the same meaning as in the Act.

WSC Contributions Plan means the document titled *Wollondilly Section 94 Contributions Plan 2000* adopted in March 2000 as in force immediately before it was superseded by a subsequent Contributions Plan.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.



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- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
 - 1.2.14 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
 - 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
 - 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Application of this Agreement

- 2.1 This Agreement applies to the Land and the Development.

3 Commencement of this Agreement

- 3.1 This Agreement commences when it has been executed by all of the Parties.
- 3.2 The Party who executes this Agreement last is to notify the other Party once it has done so and promptly provide it with a copy of the fully executed version of this Agreement.

4 Commencement of Development Contributions obligations

- 4.1 The Landowner is under no obligation to make Development Contributions to the Council in accordance with this Agreement unless Development Consent is granted to the Development or any part of it subject to a condition requiring the Development Contributions to be made in accordance with this Agreement.



5 Further Agreements Relating to this Agreement

- 5.1 The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 5.2 An agreement or arrangement referred to in clause 5.1 is not to be inconsistent with this Agreement.

6 Surrender of right of appeal, etc.

- 6.1 The Landowner is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the LEC involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under s96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

7 Application of s94, s94A and s94EF of the Act to the Development

- 7.1 This Agreement excludes the application of s94 to the Development.
- 7.2 This Agreement excludes the application of s94A to the Development.
- 7.3 This Agreement does not exclude the application of s94EF to the Development.

8 Notification whether Option 1 Development Contributions or Option 2 Development Contributions apply

- 8.1 Not later than one calendar month after Development Consent is granted to the Development, the Landowner is to give written notice to the Council as to whether the Landowner will make Option 1 Development Contributions or Option 2 Development Contributions.
- 8.2 If the Landowner fails to give notice to the Council under clause 8.1, the Council is to give notice to the Landowner as to whether the Council requires the Landowner to make Option 1 Development Contributions or Option 2 Development Contributions.



Part 2 - Option 1 Development Contributions

9 Application of this Part

- 9.1 This Part applies to the exclusion of Part 3 if the Landowner notifies the Council under clause 8.1 or the Council notifies the Landowner under clause 8.2 that Option 1 Development Contributions are to be made under this Agreement.

10 Monetary Development Contributions

- 10.1 The Landowner is to pay monetary Development Contributions to the Council in respect of each Residential Lot in excess of 22 Residential Lots in the Development, in accordance with the WSC Contributions Plan.
- 10.2 A monetary Development Contribution required by clause 10.1 is to be paid prior to the issuing of the Subdivision Certificate that creates the Residential Lot in respect of which the payment is made.
- 10.3 The Council is to apply money paid under clause 10.1 in accordance with the contributions plan referred to in that clause or for such other purposes as the Council considers is in the public interest having regard to town planning considerations applying at the time the money is to be spent.

11 Dedication of Roundabout Dedication Land

- 11.1 The Council is to give notice to the Landowner that the RMS has approved the design of a three (3) legged Roundabout by not later than 7 days after the RMS informs the Council of such approval.
- 11.2 Subject to clause 11.3, the Landowner is to dedicate the Roundabout Dedication Land as a public road not later than 6 calendar months after the Council gives notice to the Landowner under clause 11.1.
- 11.3 If the Landowner commences an appeal under s97 of the Act in relation to a Development Consent for the Development, or a refusal to grant Development Consent to the Development, before the Roundabout Dedication Land is dedicated under this clause, the time for dedication of the Roundabout Dedication Land in clause 11.2 is to be extended by a period of time equal to the Appeal Period.

12 Construction of Roundabout

- 12.1 The Council is to construct a three-legged Roundabout by not later than the later of the following:
- 12.1.1 31 December 2012 or



- 12.1.2 15 months after the Landowner dedicates the Roundabout Dedication Land as a public road, or
- 12.1.3 15 months after any compulsory acquisition of land under this Agreement.

Part 3 – Option 2 Development Contributions

13 Application of this Part

- 13.1 This Part applies to the exclusion of Part 2 if the Landowner notifies the Council under clause 8.1 or the Council notifies the Landowner under clause 8.2 that Option 2 Development Contributions are to be made under this Agreement.

14 Monetary Development Contributions

- 14.1 The Landowner is to pay monetary Development Contributions to the Council in respect of each Residential Lot in excess of 22 Residential Lots in the Development in accordance with the WSC Contributions Plan.
- 14.2 A monetary Development Contribution required by clause 14.1 is to be paid prior to the issuing of the Subdivision Certificate that creates the Residential Lot in respect of which the payment is made.
- 14.3 The Council is to apply money paid under clause 14.1 in accordance with the contributions plan referred to in that clause or for such other purposes as the Council considers is in the public interest having regard to town planning considerations applying at the time the money is to be spent.

15 Dedication of Roundabout Dedication Land and Development Access Road Land

- 15.1 The Council is to give notice to the Landowner that the RMS has approved the design of a four (4) legged Roundabout and the Development Access Road by not later than 7 days after the RMS informs the Council of such approval.
- 15.2 Subject to clause 15.3, the Landowner is to dedicate the Roundabout Dedication Land and the Development Access Road Land as a public road not later than 6 calendar months after the Council gives notice to the Landowner under clause 15.1.
- 15.3 If the Landowner commences an appeal under s97 of the Act in relation to a Development Consent for the Development, or a refusal to grant Development Consent to the Development, before the Roundabout Dedication Land and Development Access Road Land is dedicated under this clause, the time for dedication of the Roundabout Dedication Land and Development Access Road Land in clause 15.2 is to be extended by a period of time equal to the Appeal Period.



16 Payment towards construction of Development Access Road

- 16.1 The Parties acknowledge that the payment provided by the Developer under this clause is in fulfillment of an obligation imposed in the Development Consent to the Development and is not a Development Contribution obligation imposed by this Agreement.
- 16.2 Council is to give the Landowner two (2) calendar months prior written notice of the date on which Council estimates that it will commence construction of the four (4) legged Roundabout and the Development Access Road.
- 16.3 The Landowner is to make a payment of \$120,160.00 to the Council not later than one (1) calendar month prior to the estimated date for commencement of the construction of the Roundabout and Development Access Road notified to the Landowner under clause 16.1.
- 16.4 The Council is to apply money paid under clause 16.2 towards the cost of constructing the Development Access Road.

17 Construction of Roundabout & Development Access Road

- 17.1 The Council is to construct a four-legged Roundabout and the Development Access Road, in accordance with the Roadworks Estimate, by not later than the later of the following:
 - 17.1.1 31 December 2012, or
 - 17.1.2 15 months after the Landowner dedicates both of the Roundabout Dedication Land and the Development Access Road Land as a public road, or
 - 17.1.3 15 months after any compulsory acquisition of land under this Agreement.

Part 4 - Other provisions

18 Procedure for paying monetary Development Contributions

- 18.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.



19 Procedure for dedicating land

- 19.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when a deposited plan is registered in the register of plans maintained by the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993*.
- 19.2 Except as otherwise agreed between the Parties, the Landowner is to ensure that the land to be dedicated under this Agreement is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land on the date on which it is dedicated to the Council.

20 Compulsory Acquisition of land to be dedicated

- 20.1 If the Landowner does not dedicate land required to be dedicated under this Agreement at the time at which it is required to do so, the Landowner consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the *Land Acquisition (Just Terms Compensation) Act 1991 (Just Terms Act)*.
- 20.2 Council may only acquire land pursuant to clause 20.1 if to do so is reasonable having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Agreement.
- 20.3 Clause 20.1 constitutes an agreement between the Parties for the purposes of section 30 of the Just Terms Act.
- 20.4 If, as a result of the acquisition referred to in clause 20.1, the Council is required to pay compensation to any person other than the Landowner, the Landowner is to reimburse the Council for that amount upon a written request being made by the Council to the Landowner, or the Council can call on any Security.
- 20.5 Except as otherwise agreed between the Parties, the Landowner is to ensure that the land to be dedicated under this Agreement is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land on the date on which it is acquired by the Council.
- 20.6 The Landowner indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land.
- 20.7 The Landowner will promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 20, including without limit:
- 20.7.1 signing any documents or forms;
 - 20.7.2 giving consent for lodgement of any Development Application;
 - 20.7.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*; and
 - 20.7.4 paying the Council's costs arising from this clause 20.



21 Enforcement in a court of competent jurisdiction

- 21.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 21.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 21.2.1 a Party from bringing proceedings in the LEC to enforce any aspect of this Agreement or any matter to which this Agreement relates,
 - 21.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.
- 21.3 The Landowner is to pay to the Council the Council's costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.
- 21.4 The Council is to pay the Landowner's costs of enforcing the Council's obligation under clause 12 or clause 17 of this Agreement in the LEC not later than 7 days after having received a written demand by the Landowner for such payment.
- 21.5 The Landowner is not to make a demand for payment under clause 21.4 unless the LEC has made a final order enforcing the Council's obligation under clause 12 or clause 17 of this Agreement.

22 Dispute Resolution – expert determination

- 22.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 22.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 22.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 22.4 If a notice is given under clause 22.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 22.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 22.6 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 22.7 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.



23 Dispute Resolution - mediation

- 23.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 22 applies.
- 23.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 23.3 If a notice is given under clause 23.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 23.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 23.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

24 Registration of this Agreement

- 24.1 The Parties agree to register this Agreement on the title to the Land subject to obtaining the agreement of the persons specified in s93H(1) of the Act to registration.
- 24.2 The Landowner is to use its best endeavours to obtain the consent of the persons specified in s93H(1) of the Act to registration of this Agreement on the Land and to cause this Agreement to be registered on the title to the Land or so much of the Land as is possible having regard to its obligation under this clause.
- 24.3 If the agreement of the persons specified in s93H(1) of the Act to registration of this Agreement is obtained, the Council is to do such things as are reasonably necessary to enable registration to occur.
- 24.4 Subject to this clause, within 60 days of commencement of this Agreement, the Landowner is to provide the Council with the following documents to enable registration of this Agreement:
 - 24.4.1 an instrument requesting registration of this Agreement on the title to the Land in registrable form duly executed by the Landowner, and
 - 24.4.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 24.5 Subject to this clause, the Council is to do such things as are reasonably necessary as requested by the Landowner to facilitate the lodging of a request for the registration of this Agreement to be removed from the title to a Residential Lot.
- 24.6 If the Landowner makes a request referred to in clause 24.5 but the Landowner's obligations under this Agreement are not complete, the Council



- is to notify the Landowner of the Security (if any) that it requires in respect of the removal of the registration of the agreement over the Residential Lot.
- 24.7 The amount of the Security that the Council may require under clause 24.6 is not to exceed the Council's reasonable estimate of:
- 24.7.1 the value of Land of the Landowner required to be dedicated to the Council; and
- 24.7.2 any monetary Development Contributions required to be made by the Landowner.
- 24.8 If the Security required by the Council is provided by the Landowner the Council is to do all things necessary as requested by the Landowner to enable the lodging of a request for the registration of this Agreement to be removed from the title of the Residential Lot.
- 24.9 The Council is to promptly agree to a request by the Landowner for the lodging of a request for the registration of this Agreement to be removed from the title of any part of the Land once the Landowner has made all of the Development Contributions required of it under this Agreement.
- 24.10 The Parties are to agree to the lodging of a request for the registration of this Agreement to be removed from the titles to any part of the Land if this Agreement is terminated.

25 Assignment, Sale of Land, etc

- 25.1 Unless the matters specified in clause 25.2 are satisfied, the Landowner is not to do any of the following:
- 25.1.1 transfer the Land or any part of the Land (other than a Residential Lot) to any person, or
- 25.1.2 assign the Landowner's rights or obligations under this Agreement, or novate this Agreement, to any person.
- 25.2 The matters required to be satisfied for the purposes of clause 25.1 are as follows:
- 25.2.1 the Landowner has, at no cost to the Council, first procured the execution by the person to whom the Landowner's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council, and
- 25.2.2 the Landowner is not in breach of this Agreement.
- 25.3 Clauses 25.1 and 25.2 do not apply in relation to any sale or transfer of any land if this Agreement is registered on the title of that land at the time of the sale.

26 Review of this Agreement

- 26.1 The Parties are to review this Agreement if either Party notifies the other that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.



- 26.2 For the purposes of clause 26.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 26.3 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 26.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 26.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 26.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 26.1 is not a dispute for the purposes of the dispute resolution provisions of this Agreement.

27 Notices

- 27.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - 27.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 27.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 27.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 27.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 27.3.1 delivered, when it is left at the relevant address,
 - 27.3.2 sent by post, 2 business days after it is posted, or
 - 27.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 27.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

28 Approvals and Consent

- 28.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given



under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.

- 28.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

29 Costs

- 29.1 The Council is to pay to the Landowner upon written demand the Landowner's costs of and incidental to the dedication of the Roundabout Dedication Land, including the cost of preparation of a plan of survey, being \$3,500 (exclusive of GST) at the date of this Agreement, and registration fees for the plan of survey or plan of subdivision and registration of this Agreement on the title to the Land, being approximately \$1,500 (exclusive of GST) calculated at the date of this Agreement
- 29.2 The costs referred to in clause 29.1 relate only to the component of any plan of survey or plan of subdivision that deals directly with the Landowner's obligation to dedicate the Roundabout Dedication Land to the Council under this Agreement.
- 29.3 The Council is not required to make a payment under clause 29.1 that exceeds \$1,000.00 unless the Council agreed in writing to make the payment before the Landowner incurred the relevant costs.
- 29.4 The Council is to bear the costs of preparing this Agreement.
- 29.5 The Parties are to pay their own costs in relation to negotiating the terms of this Agreement, independent legal advice and executing this Agreement.

30 Entire Agreement

- 30.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 30.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

31 Further Acts

- 31.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

32 Notations on section 149(2) Planning Certificates

- 32.1 The Parties agree that the Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Agreement on any certificate issued under section 149(2) of the Act relating to the Land.



33 Governing Law and Jurisdiction

- 33.1 This Agreement is governed by the law of New South Wales.
- 33.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 33.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

34 No Fetter

- 34.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

35 Representations and Warranties

- 35.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

36 Severability

- 36.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 36.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

37 Modification

- 37.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

38 Waiver

- 38.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 38.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.



- 38.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

39 GST

- 39.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 39.2 Subject to clause 39.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 39.3 Clause 39.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 39.4 No additional amount shall be payable by the Council under clause 39.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 39.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 39.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 39.5.2 that any amounts payable by the Parties in accordance with clause 39.2 (as limited by clause 39.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 39.6 No payment of any amount pursuant to this clause 39, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.



-
- 39.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 39.8 This clause continues to apply after expiration or termination of this Agreement.

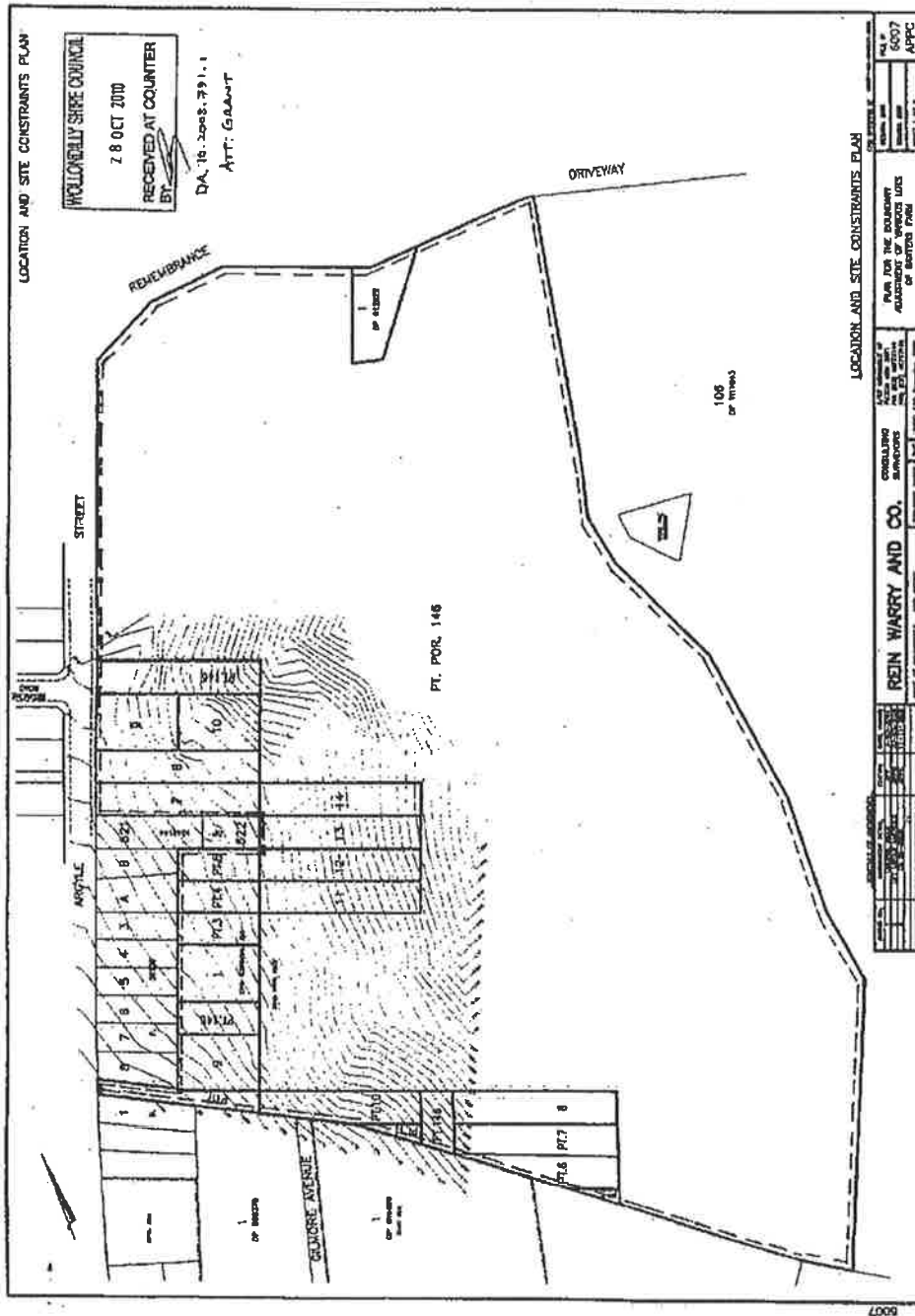
40 Explanatory Note Relating to this Agreement

- 40.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 40.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.



Schedule 1
 (Clause 1.1)

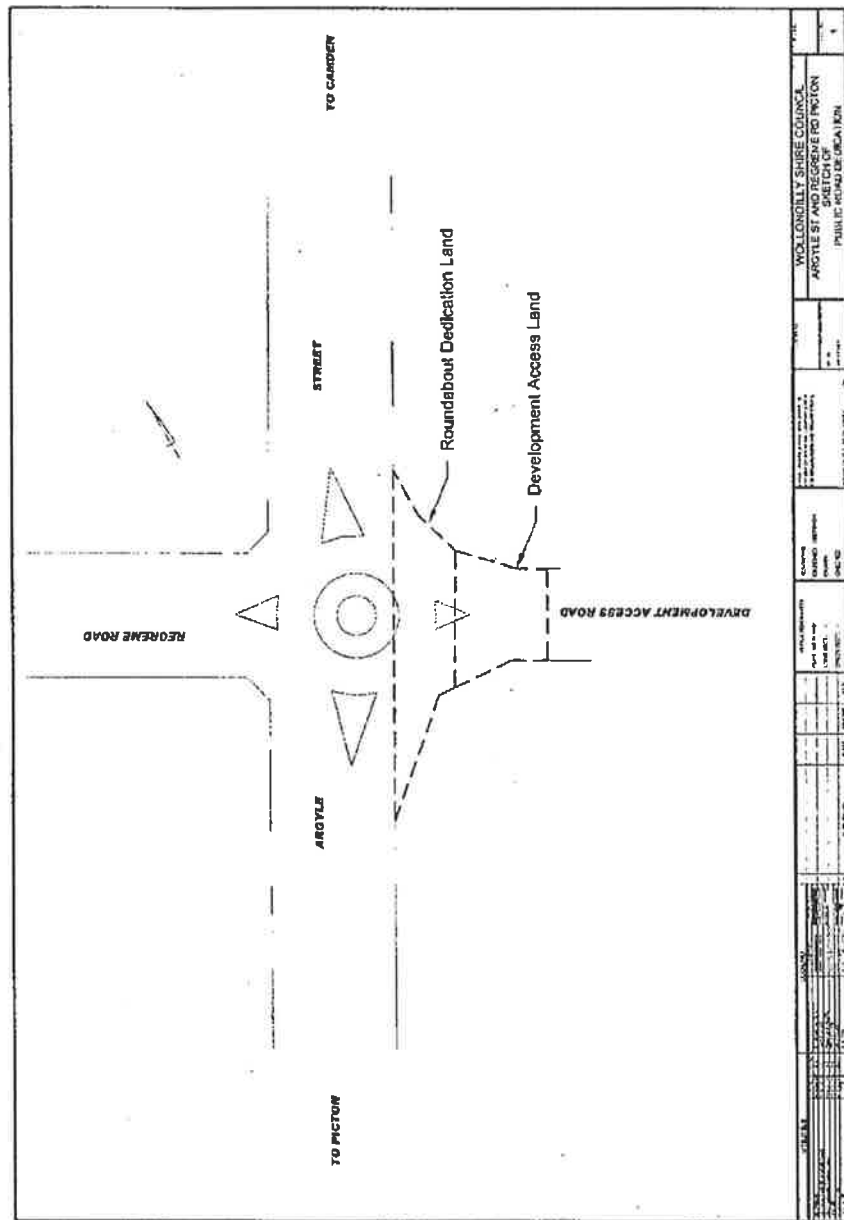
Land





Schedule 2
 (Clause 1.1)

Plan



WOLLONDILLY SHIRE COUNCIL ARGYLE STREET ROUNDABOUT PUBLIC ROAD DEDICATION		DATE: 10/10/2011	SCALE: 1:1000	PROJECT NO: 11/00000000	PROJECT NAME: ARGYLE STREET ROUNDABOUT PUBLIC ROAD DEDICATION
DESIGNED BY: [Name]	CHECKED BY: [Name]	DATE: 10/10/2011	SCALE: 1:1000	PROJECT NO: 11/00000000	PROJECT NAME: ARGYLE STREET ROUNDABOUT PUBLIC ROAD DEDICATION
This plan is a technical drawing and should be read in conjunction with the relevant planning agreement and council policies.					



Schedule 3

(Clause 16.2)

Roadworks Estimate

The Roadworks Estimate is on the following 2 pages.

Argyle Street & Regreme Road Roundabout Planning Agreement
Wollondilly Shire Council
Leslie Robert Baxter



TRIM 4490#81

1/02/2011

ROADWORKS ESTIMATE							
Contribution to Roundabout Construction - BAXTER SUBDIVISION							
ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT	COMMENTS	
2010							
Schedule 1 - GENERAL AND PRELIMINARY							
1.1.1	Site establishment	Item	1	650	\$ 650.00	Nominal Cost (2-10% shared in larger project)	
1.1.2	Temporary stock fencing	Item	1	2,600	\$ 2,600.00	Major Cost (65-80% shared in larger project)	
1.2.1	Survey and setout	Item	1	200	\$ 200.00	Nominal Cost (2-10% shared in larger project)	
1.2.2	Work as executed survey and drawings	Item	1	200	\$ 200.00	Nominal Cost (2-10% shared in larger project)	
1.3	Preparation and implementation of site specific quality/environmental/safety management plans	Item	1	130	\$ 130.00	Nominal Cost (2-10% shared in larger project)	
1.4.1	Preparation and submission of traffic management plans	Item	1	1,300	\$ 1,300.00	Major Cost (65-80% shared in larger project)	
1.4.2	Provision & maintenance of all traffic control devices etc.	Item	1	5,000	\$ 5,000.00	Major Cost (65-80% shared in larger project)	
1.5.1	Survey and locate existing services	Item	1	500	\$ 500.00	Minor Cost (15-25% shared in larger project)	
1.5.2	Protect existing services	Item	0	650	\$ -		
1.5.3	Maintain existing services	Item	0	550	\$ -		
1.6	Liaison & co-ordination with service authorities and Council	Item	0	130	\$ -		
1.7	Site decommissioning	Item	1	130	\$ 130.00	Nominal Cost (2-10% shared in larger project)	
General and Preliminary					Sub Total	\$ 10,710.00	
Schedule 2 - CLEARING AND DEMOLITION							
2.1	Clearing of the site	Item	1	300	\$ 300.00	Nominal Cost (2-10% shared in larger project)	
2.2	Demolition of redundant structures, pavement and kerb	Item	0	1,950	\$ -		
Clearing and Demolition					Sub Total	\$ 300.00	
Schedule 3 - TESTING AND INVESTIGATION							
3.1	Pavement design verification report	Item	1	650	\$ 650.00	Minor Cost (15-25% shared in larger project)	
3.2	Testing of compacted pavement layers, trench backfill and pipe bedding	Item	1	650	\$ 650.00	Nominal Cost (2-10% shared in larger project)	
3.3	Testing of concrete	Item	1	650	\$ 650.00	Significant Cost (25-40% shared in larger project)	
Testing and Investigation					Sub Total	\$ 1,950.00	
Schedule 4 - EROSION AND SEDIMENT CONTROL							
4.1	Preparation & submission of erosion & sediment control plans	Item	1	650	\$ 650.00	Nominal Cost (2-10% shared in larger project)	
4.2	Supply, install & maintain erosion & sediment control devices	Item	1	1,200	\$ 1,200.00	Minor Cost (15-25% shared in larger project)	
Erosion and Sediment Control					Sub Total	\$ 1,850.00	
Schedule 5 - LANDSCAPING AND FINISHING							
5.1	Supply, place, spread and trim topsoil to verge	Sq.m.	168	19.5	\$ 3,237.00	Full Cost (100%)	
5.2	Supply and place turf strip to back of kerb	m	48	6.5	\$ 312.00	Full Cost (100%)	
Landscaping and Finishing					Sub Total	\$ 3,549.00	
Schedule 6 - EARTHWORKS							
6.1	Excavate in OTR by cut to fill in roads, regrade areas, berms and batters including placement and compaction	Cu.m.	160	91	\$ 14,560.00	Full Cost (100%)	
Earthworks					Sub Total	\$ 14,560.00	
Schedule 7 - ROADWORKS							
7.1.1	Prepare, trim and compact footpaths, berms and batters	Sq.m.	168	11.7	\$ 1,942.20	Full Cost (100%)	
7.1.2	Prepare, trim and compact pavement sub-grade for Pavement	Sq.m.	210	11.7	\$ 2,457.00	Full Cost (100%)	
7.1.3	Prepare, trim and compact sub-base for Pavement	Sq.m.	210	10.4	\$ 2,184.00	Full Cost (100%)	
7.1.4	Prepare, trim and compact base for Pavement Types	Sq.m.	210	10.4	\$ 2,184.00	Full Cost (100%)	
7.3.1	Pavement - Supply, place, and compact 200mm sub-base pavement layer	Sq.m.	210	39	\$ 8,190.00	Full Cost (100%)	
7.3.2	Pavement - Supply, place and compact 100mm base course	Sq.m.	175	26	\$ 4,550.00	Full Cost (100%)	
7.3.3	Type 1 Pavement - Supply and placement of 50mm AC14 road surface	Sq.m.	175	32.5	\$ 5,687.50	Full Cost (100%)	
Roadworks					Sub Total	\$ 27,194.70	
Schedule 8 - STORMWATER DRAINAGE							
8.1	Excavate drainage trenches in OTR	Cu.m.	70	84.5	\$ 5,915.00	Full Cost (100%)	

Based on extra construction to 25m from FOK

Page 1 of 2

Argyle Street & Regreme Road Roundabout Planning Agreement
Wollondilly Shire Council
Leslie Robert Baxter



TRIM 4490#81

1/02/2011

ROADWORKS ESTIMATE						
Contribution to Roundabout Construction - BAXTER SUBDIVISION						
ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT	COMMENTS
2010						
8.2.1	Supply, bed, lay, joint and backfill 375mm dia. Class 2 RCP RRI	m	14	240.5	\$ 3,367.00	Full Cost (100%) NEW ITEM TO COVER DRAINAGE CONNECTION INTO ROAD
8.2.2	Supply, bed, lay, joint and backfill 750mm dia. Class 2 RCP RRI	m	30	565.5	\$ 16,965.00	Full Cost (100%)
8.4.6	Pit - 1.2m inlet grated kerb inlet	Each	0	3540	\$ -	
8.4.7	Pit - 3.0m inlet grated kerb inlet	Each	2	3770	\$ 7,540.00	Full Cost (100%)
8.5	Headwall / Rip Rap	Item	0	4550	\$ -	
Stormwater Drainage				Sub Total	\$ 33,787.00	
Schedule 9 - CONCRETE WORKS						
9.1.1	150mm vertical or roll kerb & gutter including drainage outlets and laybacks	m	47	130	\$ 6,110.00	Full Cost (100%)
9.1.3	Supply and construct splitter island	Each	1	2000	\$ 2,000.00	Full Cost (100%)
9.4	Extra over cost to be into existing concrete works	Item	1	1040	\$ 1,040.00	Full Cost (100%)
Concrete Works				Sub Total	\$ 9,150.00	
Schedule 10- PROVISIONAL ITEMS						
10.2.1	Excavate, supply, bed and lay 100mm dia class 400 subsoil drain with fabric sock including granular trench backfill & trench wrapped in geofabric	m	20	78	\$ 1,560.00	Estimated Quantity
10.2.2	Supply and install subsoil flushing point including cap with concrete surround.	Each	1	325	\$ 325.00	Estimated Quantity
10.1.4	Relocate existing signs	Item	1	195	\$ 195.00	Full Cost (100%)
10.5.1	Supply and install regulatory sign	Each	2	195	\$ 390.00	Full Cost (100%)
10.8.3	Supply and place thermoplastic hold line	m	16	13	\$ 208.00	Full Cost (100%)
10.6.6	Supply and place raised pavement markers	Each	10	26	\$ 260.00	Estimated Quantity
10.7	Relocate existing services that conflict with the current work	Item	0	1950	\$ -	
10.8.2	Excavate unsuitable material and load, haul and remove from site including all tipping costs	Cu.m.	50	104	\$ 5,200.00	Estimated Quantity
10.9.1	Replace unsuitable material including compaction with material won on site	Cu.m.	50	65	\$ 3,250.00	Estimated Quantity
Provisional				Sub Total	\$ 11,388.00	
Schedule 11- ADDITIONAL ITEMS						
11.1	Relocate/Upgrade Light	Item	0	26000	\$ -	
Additional Items				Sub Total	\$ -	
CONSTRUCTION GRAND TOTAL					\$ 114,438.70	
Schedule 12 - DESIGN						
12.1	Design and RTA Approval	Item	1	5721.94	\$ 5,721.94	5% of Construction Cost
Design				Sub Total	\$ 5,721.94	
GRAND TOTAL (ROUNDED)					\$ 120,160.00	



Appendix

(Clause 40)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement under Section 93F of the *Environmental Planning and Assessment Act 1979* (the Act), for the subdivision of certain land by way of a twenty five (25) lot rural/residential and residential subdivision with a new road in three stages (known as the Proposed Development).

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

Leslie Robert Baxter (the **Landowner**) has made an offer to Wollondilly Shire Council (the **Council**) to enter into a Voluntary Planning Agreement (**Agreement**) for the dedication of land as his contribution towards the roundabout construction. This dedication is free of charge except for the cost of preparation of the Agreement and the cost of survey for the portion of land required for the roundabout.

Parties

Wollondilly Shire Council ABN 93 723 245 808 of 62-64 Menangle Street, Picton NSW 2571 (**Council**)

Leslie Robert Baxter of 108 Menangle Street, Picton NSW 2571 (**Landowner**)

Description of the Land to which the Draft Planning Agreement Applies

Land means the land shown edged with both heavy black and broken black lines on the diagram contained in Schedule 1, comprising:

- (a) the whole of the land in DP 1124131 (subject to s28T of the *Real Property Act 1900*), and
- (b) the whole of the land contained in DP 612922, and
- (c) the land marked 'Lane 9.145 WD' shown on DP 1124131..



Description of Proposed Development

Development Application DA10.2008.791.1 was submitted to Council on 19 December 2008. The Landowner wishes to develop the Land into a twenty five lot subdivision with new access road in three stages.

- (a) **Stage 1.** Three lot subdivision to create Lots 100, 101 & 102, and dedication of land to the public as a road for the construction of the roundabout at the Regreme Road and Argyle Street intersection.
- (b) **Stage 2.** A four lot subdivision of Lot 102 into Lots 501, 502, 503 & 504.
- (c) **Stage 3.** A twenty lot subdivision of Lot 501.

The Roads and Maritime Services (RMS) is requiring the subdivision road to access Argyle Street via the proposed roundabout with Regreme Road, and the construction of the roundabout prior to the completion of the subdivision (Stage 2 and /or 3).

As his contribution towards the roundabout, the landowner has offered Council the portion of his land which is required for the roundabout construction free of charge, except for cost of preparation of the VPA and the survey for the portion of land required for the roundabout. This land is to be dedicated within six months of notification of the RMS approval for the roundabout design to enable the construction of the roundabout by Council.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Agreement is for the landowner to contribute to the provision of the Roundabout at the corner of Argyle Street and Regreme Road which will be used as access to Argyle Street for the Landowner's proposed 25 lot subdivision, and to put in place a timeframe for Council to construct the Roundabout.

Nature of Draft Planning Agreement

The nature of the Agreement is to provide land for public road which is required for the provision of the Roundabout. The Agreement also allows for Council to construct the initial section of the subdivision access roadway at the price estimated by Council to undertake this access roadway construction. Council's construction of this section of subdivision roadway will avoid the cost of provision and removal of newly laid kerb and gutter, and the cost of major traffic management provision at the subdivision construction stage.

Effect of the Draft Planning Agreement

The dedication of the land as a public road for the Roundabout by the Landowner will require Council to construct the Roundabout by no later than 31 December 2012, 15 months after the Landowner dedicates both of the Roundabout Dedication Land to the public as road, or 15 months after compulsory acquisition of any land under the Agreement, whichever is later.



The monetary Development Contribution is required prior to the issuing of the Subdivision Certificate that creates the residential lots in respect of which the payment is made.

Whether the Draft Planning Agreement specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate

Yes, monetary Development Contribution is required prior to the issuing of the Subdivision Certificate that creates the residential lots in respect of which the payment is made.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

In accordance with Section 93F(2) of the Act, this Agreement promotes the following public purpose;

- The provision of transport or other infrastructure relating to land.

The parties have assessed the Agreement and state that the provisions of the Agreement provide a reasonable means of achieving the public purpose set out above by reason that the land to be dedicated as a public road in Council's control will supply the land to enable the construction of the Roundabout. This Roundabout will service traffic from Argyle Street, Regreme Road and the proposed subdivision.

The Impact of the Agreement on the Public or any Relevant Section of the Public

The provision of the Roundabout will;

- Provide appropriate controlled traffic access at the intersection,
- Assist in the lowering of the speed of traffic entering the main street of Picton from the north,
- Provide a safe location for north bound traffic in Argyle Street to make a 'U' turn, and
- Funds that would have been used to purchase the land for the roundabout may be put towards another public infrastructure project by Council, thus providing public benefit.

How the Draft Planning Agreement Promotes the Public Interest

This Agreement results in the promotion of Public Interest by the dedication of private land for a public road at no cost to Council except for establishment costs. This then promotes further Public Interest by allowing valuable Council funds to be allocated to other areas of need within the community.



This Agreement also results in the provision of the Roundabout which will aid the safe flow of traffic in Picton.

How the Agreement Promotes the Objects of the Act

In accordance with the Act, this Agreement promotes its intent to encourage;

- i. The promotion and co-ordination of the orderly and economic use and development of land,
- ii. The provision of land for public purposes, and
- iii. The provision and co-ordination of community services and facilities.

The agreement achieves these objects by requiring the Landowner to dedicate the land required for the Roundabout, and requiring Council to undertake the construction of the Roundabout.

These requirements of the Agreement will result in:

- The Landowner contributing to the installation of this public infrastructure,
- The provision of land for the Roundabout, and
- The construction of the Roundabout which will contribute to the public infrastructure required for the efficient functioning of traffic in the Picton township.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Agreement promotes the following elements of the Council's Charter:

- To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.

This Agreement promotes the above element of Council's Charter by providing land on which to build the Roundabout at a small cost to Council, and provide a timeframe for the construction of the Roundabout.



***All Planning Authorities – Whether the Draft Planning Agreement
Conforms with the Authority's Capital Works Program***

Council has been planning for the construction of this Roundabout since 2004 where it was included in the Management Plan for construction in 2007/08.

Council entered into a voluntary planning agreement with W.G.& R.Mallam (developer of a 141 lot subdivision off Regreme Road, Picton) in August 2007 for a contribution of \$510,000 towards the cost of providing the Roundabout. This subdivision has not commenced to date.

Development contribution funds are available for the construction of the Roundabout in the timeframe included within the Agreement. The majority of these funds would be recouped when the contribution from Mallam's subdivision is received. Construction of the Roundabout is to be included in Council's 2011/12 Management Plan.