

Wyong Shire Council

CENTRAL COAST

LEGAL DOCUMENT LODGEMENT FORM

Lodgement Date	22 August 2016
Date of Legal Documents	27 July 2016.
Type of Documents	Planning Agreement
ie: Agreements, Contracts, Easements, General, Lease, Loans (see separate forms of Bank Guarantees and Certificates of Title)	
Expiry Date of Document (if applicable)	
Parties	Fabcoat PL Central Coast Council
Address	1 Woodwards Way, Bella Vista
Details of Document	Planning Agreement
Property Description	Lot 195 DP 1006789
Review Date	-
Responsible Officer	Mike Dowling / Marg Collins
Folder Number	DA/111/2015
Note: This form and the original documents are to be delivered to Corporate Information	
Legal Document supersedes LDOC	(if applicable)
After legal document is recorded on the computer a TRIM link is emailed to the responsible officer advising of registration	
Send Link to Meg Newington for the Agreement Register to be updated.	
Please tick if you need the Original Document to be returned to you for mailing out <input checked="" type="checkbox"/>	

File Name: Legal Document Lodgement Form

Responsible Officer: Team Leader, Corporate Information

Approval Date: December 2013

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Revision No: 1

Approved by: Chief Information Officer, Information Technology

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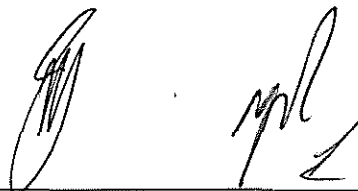
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Central Coast Council

Fabcot Pty Ltd

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act, 1979 (NSW)



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Date

Parties

Central Coast Council ABN 73 149 644 003 of 16 Hely Street, Wyong NSW 2259
(Council)

Fabcot Pty Ltd ABN 55 002 960 983 of 1 Woolworths Way, Bella Vista NSW 2153
(Developer)

Background

- A The Developer has procured the lodgement by its related entity of the Development Application with Council for Development Consent to carry out the Development on the Land.
 - B On 9 December 2015 the Council granted the Development Consent.
 - C The Developer has made an offer to enter into this Agreement in connection with the Development Consent to provide a Development Contribution including the following at the Developer's cost:
 - a. the preparation of the Concept Design Works;
 - b. the preparation of the Construction Drawing Works; and
 - c. the construction of the Road Infrastructure Construction Works.
 - D The Council Land is a public road for the purposes of the Roads Act.
-

Operative provisions

1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

This document applies to the Land and the Development.

3 Operation of this Agreement

- (a) This Agreement operates from the date it is entered into as required by Clause 25C(1) of the Regulation.

4 Definitions and interpretation

4.1 Definitions

In this document these terms have the following meanings:

Act	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Agreement	This voluntary planning agreement including any schedules or annexures.
Approval	Any consent, approval, authorisation, licence, registration, order, permission or concurrence required by law, including those under this Agreement.
Bank Guarantee	An undertaking by an Australian bank to pay the face value of that undertaking on demand.
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Concept Design Works	<p>The preparation of a concept design (excluding detailed drawings) for a constructed road (including decking and drainage structures including culverts) on the whole of the Council Land and its integration with both the bridge that forms part of Figtree Boulevard and the existing constructed part of Orchid Way, such construction to be in the following two stages:</p> <p>a. the Road Infrastructure Construction Works; and then</p> <p>b. the Council Road Works.</p>
Construction Certificate	Has the same meaning as in the Act.
Council Land	Means the land that was previously identified as Lot 198 in Deposited Plan 1006789
Council Road Works	The works on Council's Land as identified as Stage 2 in Annexure A to this Agreement which includes any other works necessary to complete the constructed road (including decking and drainage structures including culverts) and its integration with both the bridge that forms part of Figtree Boulevard and the existing constructed part of Orchid Way.
Construction Drawing Works	The preparation of detailed design construction drawings for a constructed road (including decking and drainage

structures including culverts) on the whole of the Council Land and its integration with both the bridge that forms part of Figtree Boulevard and the existing constructed part of Orchid Way, such construction to be in the following two stages:

- a. the Road Infrastructure Construction Works; and then
- b. any other works necessary to complete the constructed road (including decking and drainage structures including culverts) on the whole of the Council Land and its integration with both the bridge that forms part of Figtree Boulevard and the existing constructed part of Orchid Way..

Defects Liability Period	The period of 12 months which commences on the date of achieving Practical Completion of the Road Infrastructure Construction Works.
Design Works	The Concept Design Works and the Construction Drawing Works.
Development	The proposed development of the Land subject of Development Consent DA 111/2015.
Development Application	Development Application DA111/2015 seeking consent for the Development.
Development Consent	The Development Consent granted by the Council on 9 December 2015 for the Development Application.
Development Contribution	To dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a Public Purpose.
Figtree Boulevard	Means that public local road which is marked as such on Annexure A .
Infrastructure SEPP	The <i>State Environmental Planning Policy (Infrastructure) 2008</i>
Land	Lot 195 in Deposited Plan 1006789.
Occupation Certificate	Has the same meaning as in the Act.
Orchid Way	Means that public local road which is marked as such on Annexure A .
Party	A party to this Agreement.
Practical Completion	Means the stage in the execution of the Road Infrastructure Construction Works when those works are complete except for minor defects that: <ol style="list-style-type: none"> (a) do not prevent the Road Infrastructure Construction

	Works from being reasonably capable of being used for their intended purpose; and
	(b) rectification of which will not prejudice the convenient use of the Road Infrastructure Construction Works.
Public Purpose	Any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.
Regulation	The <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Road Infrastructure Construction Works	The construction of an elevated road surface on part of the Council Land as identified as Stage 1 in Annexure A to this Agreement, but not including the Council Road Works, in accordance with the Design Works as those Design Works relate to that part of the Council Land, which will provide road connectivity between the Land and the existing constructed Orchid Way.
Roads Act	<i>Roads Act 1993</i> (NSW).
Security	A Bank Guarantee in favour of the Council.
Security Amount	The value of the Road Infrastructure Construction Works as identified in item 4, column 3 of Schedule 1.
Sunset Date	Means the date that is 3 weeks after the date on which this Agreement commences operation

4.2 Interpretation

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) 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.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) 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.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) 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.
- (i) 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.
- (j) References to the word 'include' or 'including' are to be construed *without limitation*.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) 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.
- (m) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

The Developer agrees to provide a Development Contribution to Council by:

- (i) carrying out the Concept Design Works;
- (ii) carrying out the Construction Drawing Works; and
- (iii) constructing the Road Infrastructure Construction Works on Council's behalf

at the Developer's cost, to the satisfaction of Council, and in accordance with the timing set out in **Schedule 2** of this Agreement and any other provisions of this Agreement.

6 Approval of Design Works

- (a) The Developer is to submit all of the Design Works along with all necessary studies to support those Design Works to the Council for approval.
- (b) Within thirty (30) days of the date of submission of the relevant Design Works referred to in clause **6(a)**, Council must notify the Developer in writing:
 - (i) of its approval of the relevant Design Works; or

- (ii) that, acting reasonably, it requires modifications to the relevant Design Works, in which case the Developer may:
 - (A) submit to Council an amended Design Work, which incorporates all of the modifications requested in Council's notice under **clause 6(b)(ii)**, in which case Council must provide written notice to the Developer within 21 days stating whether:
 - (1) it is of the opinion, acting reasonably, that the amended Design Works incorporate all of the modifications requested in Council's notice under **clause 6(b)(ii)**, in which case the amended Design Works are taken to have been approved; or
 - (2) it is of the opinion, acting reasonably, that the amended Design Works do not incorporate all of the modifications requested in Council's notice under **clause 6(b)(ii)**, in which case either Party may refer the matter for dispute resolution under **clause 12**; or
 - (B) if the Developer does not agree with the modifications requested by Council, refer the matter for dispute resolution under **clause 12**.
- (c) Each of the Design Works are completed for the purposes of this Agreement when the Council gives approval, or is deemed to have given an approval, to the relevant Design Work under **clause 6**.

7 Carrying out the Road Infrastructure Construction Works

- (a) The Developer must carry out the Road Infrastructure Construction Works:
 - (i) in a proper and workmanlike manner;
 - (ii) in a manner that does not adversely affect the drainage of water across the Council Land during those works;
 - (iii) in accordance with any relevant law or Approvals; and
 - (iv) at no cost to Council.
- (b) The Road Infrastructure Construction Works are delivered for the purposes of this Agreement when they reach Practical Completion, subject to the Developer rectifying minor defects; and
- (c) Council accepts responsibility for the Road Infrastructure Construction Works on the date when the Road Infrastructure Construction Works reach Practical Completion, subject to the Developer rectifying minor defects.

8 Council's responsibilities and obligations

- (a) Once all of the Design Works has been approved by Council under **clause 6** or it is agreed in accordance with **clause 12**, Council must do all things reasonably necessary to obtain all Approvals and give all consents required prior to the Sunset Date to enable the Developer to *carry out the Road Infrastructure Construction Works including by Council authorising the Developer to carry out those works on its behalf under the Infrastructure SEPP and the Roads Act.*
- (b) Council grants the Developer and its employees, agents and contractors a non-exclusive licence to access those parts of the Council Land reasonably required from time to time to:
 - (i) undertake tests, surveys, and prepare reports; and
 - (ii) undertake and complete the Design Works and the Road Infrastructure Construction Works.
- (c) The Developer accesses and uses the Council Land at the Developer's own risk.
- (d) The Developer has no obligation under this Agreement to undertake any construction works within the Council Land other than the Road Infrastructure Construction Works that the Developer is required to undertake on the Council Land.

9 Application of sections 94, 94A and 94EF of the Act to the Development

- (a) The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in **Schedule 1**.
- (b) Benefits under this Agreement are to be taken into consideration by Council in determining the section 94 development contributions to the extent stated in **Schedule 1**.

10 Registration of this Agreement

- (a) The Developer must, at its expense, procure the registration of the Agreement on the relevant folios of the register held by the LPI pertaining to the Land as soon as reasonably practicable after execution of this Agreement but in any event, no later than 40 Business Days after that date.
- (b) The Council agrees:
 - (i) to provide a release and discharge of this Agreement with respect to the Land or any lot, including a strata lot, created on subdivision of the Land, on the earlier to occur of:

- (A) Agreement of the Parties as to its release and discharge;
 - (B) Council's satisfaction of the Developer's obligations under this Agreement;
 - (C) The determination by refusal of the Developer's Development Application and the expiration of any applicable review or appeal period available to the Developer;
 - (D) Lapsing of the Development Consent;
 - (E) Surrender of the Development Consent by the Developer; and
 - (F) The declaration by a court of invalidity of the Development Consent.
- (ii) to do all things reasonably necessary, including the execution of any documents, to enable the Developer to remove the notation of this Agreement on the relevant folios of the register, held by the LPI pertaining to the Land.

11 Review or Modification of this Agreement

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement, will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

12 Dispute Resolution

12.1 Reference to dispute

If a dispute arises between the Parties in relation to this Agreement, then either Party must resolve that dispute in accordance with this **clause 12**.

12.2 Notice of dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this **clause 12**;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this **clause 12**; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

12.3 Representatives of parties to meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of the written notice provided in accordance with **clause 12.2**) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); and
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

12.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with **clause 12.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clause 12.3(b)(i) to 12.3(b)(iii)**; and
- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 12.3**,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

13 Security and Enforcement

13.1 Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) A Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) 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.
- (c) The Council agree that:

- (i) the registration of this Agreement on the title of the Land under **clause 10**; and
- (ii) the provision of the Security by the Developer pursuant to **clause 13.2**,

is sufficient security for the purposes of section 93F(3) of the Act.

13.2 Security

- (a) The Developer is to provide to the Council the Security for the Security Amount prior to the commencement of the Road Infrastructure Construction Works.
- (b) The Council:
 - (i) subject to **clause 13.2(b)(ii)**, must release the Security to the Developer:
 - (A) upon the date that Practical Completion of the Road Infrastructure Construction Works is achieved pursuant to **clause 7(b)**; or
 - (B) where Council has not satisfied its obligations under **clause 8(a)** by the Sunset Date.
 - (ii) may retain 5% of the Security Amount for the rectification of defects for the Defects Liability Period and if so, the Council must release the retained Security Amount promptly after the end of the Defects Liability Period.
- (c) The Security is given to secure compliance by the Developer with its obligations to perform the Road Infrastructure Construction Works.
- (d) The Council must only exercise its rights under the Security in accordance with this **clause 13.2**.
- (e) The Council must not request a payment (**Security Payment**) under the Security from the provider of it, unless:
 - (i) the Council has first given ten Business Days written notice (**Claim Notice**) to the Developer of its intention to do so;
 - (ii) the Claim Notice specifies the Road Infrastructure Construction Works to which that Security Payment relates and the amount of the Security Payment;
 - (iii) the amount of the requested Security Payment does not exceed the amount of the relevant Road Infrastructure Construction Works, as the case requires;
 - (iv) the reason for the request is that the Developer has, in breach of this Agreement, failed to perform the Road Infrastructure Construction Works or rectify a defect within the Defects Liability Period, within 10 Business Days of the Council demanding the carrying out of that work:

- (v) there is no dispute between the Developer and the Council under this Agreement:
 - (A) as to whether the Developer obliged to perform the Road Infrastructure Construction Works or rectify a defect: and
 - (B) about the Road Infrastructure Construction Works or the rectification of a defect,for which the Security Payment is requested.
- (f) The Council must not request a Security Payment unconscionably or in bad faith.
- (g) The Council must upon demand account to the Developer for any Security Payment to the extent that it exceeds or is otherwise not required to perform the Road Infrastructure Construction Works or rectify a defect within the Defects Liability Period and for which the Security Payment is requested.
- (h) The Council must use its reasonable endeavours to mitigate any loss.

14 Notices

14.1 Delivery

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:

- (a) Delivered or posted to that Party at its address set out below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Central Coast Council

Attention: The Director, Property & Economic Development - Michael Dowling
Address: 16 Hely Street, Wyong NSW 2259
Fax Number: (02) 4351 2098
Email: michael.dowling@wyong.nsw.gov.au

Fabcot Pty Ltd

Attention: Group Legal Manager - Property
Address: 1 Woolworths Way, Bella Vista, NSW 2153
Fax Number: (02) 8888 0558

14.2 Change of details

If a Party gives the other Party three Business Days notice of a change of its address, email address or fax number, any notice, consent, information,

application or request is only given or made by that other Party if it is delivered, emailed, posted or faxed to the latest address, email address or fax number.

14.3 Giving of notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by email, when it is sent but only if a notification has been received by email that there has been an unsuccessful transmission.
- (c) If it is sent by post, two Business Days after it is posted.
- (d) If it is sent by fax, as soon as the sender receives from the senders fax machine a report of an error free transmission to the correct fax number.

14.4 Delivery outside of business hours

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 5.00 pm 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.

15 Approvals and consent

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

16 Assignment and dealings

16.1 Assignment

- (a) A Party must not assign or deal with any right under this Agreement without the prior written consent of the other Party.
- (b) Any purported dealing in breach of this clause is of no effect.

16.2 Transfer

- (a) The Developer must not transfer the Land unless the Developer:
 - (i) first informs the proposed purchaser (the **Incoming Party**) of this Agreement;
 - (ii) provides the Incoming Party with a copy of this Agreement;
 - (iii) enters into a novation deed with the Incoming Party and the Council, whereby the Incoming Party agrees to perform the obligations of the Developer under this Agreement; and

- (iv) pays the Council's reasonable costs in relation to the assignment and novation.
- (b) The Council will promptly execute the novation deed referred to in **clause 16.2(a)(iii)** and do all things reasonably required to give effect to that deed.
- (c) The provisions of this **clause 16.2** do not apply where the Agreement has been registered on the folios of the Land under **clause 10**.

17 Entire agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. 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.

18 Further acts

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

19 Governing law and jurisdiction

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

20 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

21 No fetter

Nothing in this Agreement shall be construed as requiring the 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.

22 Representations and warranties

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

23 Severability

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. 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.

24 Waiver

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. 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. 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.

25 GST

25.1 Construction

In this clause 25:

- (a) unless there is a contrary indication, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and

- (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

25.2 Intention of the Parties

Without limiting the operation of this **clause 25**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and/or 82 of the GST Law apply to the supplies made under and in connection with this Agreement;
- (b) no tax invoices will be exchanged between the Parties; and
- (c) no additional amount will be payable to a Supplier (as defined in **clause 25.4** below) on account of GST.

25.3 Consideration GST exclusive

All consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this Agreement is exclusive of GST (**GST-exclusive consideration**).

25.4 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this Agreement, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

25.5 Timing of GST payment

The amount referred to in **clause 25.4** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

25.6 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 25.4**.

25.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this Agreement, any amount that is payable under **clause 25.4** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

25.8 Reimbursements

- (a) Where a party is required under or in connection with this Agreement to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 25.8** does not limit the application of **clause 25.4**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 25.8(a)**.

25.9 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which **clause 25.4** applies is a taxable supply made by the recipient of that supply (**Recipient Supply**), the amount that would otherwise be payable by the recipient (or party providing consideration for the taxable supply) to the Supplier under **clause 25.4** must be reduced by the amount of GST payable by the recipient on the Recipient Supply.
- (b) The recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the recipient (or party providing consideration for the taxable supply) must pay an amount under **clause 25.4** in accordance with **clause 25.5** (or the time at which such an amount would have been payable in accordance with **clause 25.4** but for the operation of **clause 25.9(a)**).

25.10 No merger

This **clause 25** does not merge on the completion, rescission or other termination of this Agreement or on the transfer of any property supplied under this Agreement.

26 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

27 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one Agreement.

28 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

Schedule 1

Section 93F Requirements

Provision of the Act	This document
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	No.
(b) made, or proposes to make, a development application.	Yes.
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	No.
Description of the land to which this document applies- (Section 93F(3)(a))	The whole of the Land described in clause 4 of this Agreement.
Description of the development to which this document applies- (Section 93F(3)(b)(ii))	The Development described in clause 4 of this Agreement.
The scope, timing and manner of delivery of Development Contributions required by this document - (Section 93F(3)(c))	See schedule 2 of this Agreement.
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is excluded in respect of the Development.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is excluded in respect of the Development.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of all of the Development.
Applicability of Section 93F (3)(e) of the Act	Benefits under this agreement are to taken into consideration in determining a development contribution under section 94 of the Act
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 12 of this Agreement.
Enforcement of this document - (Section 93F(3)(g))	See clause 13 of this Agreement.

Provision of the Act	This document
Registration of this document (Section 93H)	Yes. See clause 10 of this Agreement.
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 21 .

Schedule 2 Development Contributions

No	Development Contribution	Public Purpose	Value (ex GST)	Timing of Contribution
1	Preparation of the Concept Design Works	<p>The preparation of a concept design (excluding detailed drawings) for a constructed road (including decking and drainage structures including culverts) on the whole of the Council Land and its integration with both the bridge that forms part of Figtree Boulevard and the existing constructed part of Orchid Way, such construction to be in the following two stages:</p> <ol style="list-style-type: none"> a. the Road Infrastructure Construction Works; and then b. any other works necessary to complete the constructed road (including decking and drainage structures including culverts) on the whole of the Council Land and its integration with both the bridge that forms part of Figtree Boulevard and the existing constructed part of Orchid Way.. 	\$23,250 (ex GST)	Prior to the grant of a Construction Certificate for the Development.
2	Preparation of the Construction Drawing Works	The preparation of detailed design construction drawings for a constructed road (including decking and drainage structures including	\$69,250 (ex GST)	Prior to the grant of a Construction Certificate for the Development.

		<p>culverts) on the whole of the Council Land and its integration with both the bridge that forms part of Figtree Boulevard and the existing constructed part of Orchid Way, such construction to be in the following two stages:</p> <p>a. the Road Infrastructure Construction Works; and then</p> <p>b. any other works necessary to complete the constructed road (including decking and drainage structures including culverts) on the whole of the Council Land and its integration with both the bridge that forms part of Figtree Boulevard and the existing constructed part of Orchid Way.</p>		
3	Construction of the Road Infrastructure Construction Works	The construction of an elevated road surface on part of the Council Land, providing public access from Orchid Way to the Land and improved road infrastructure adjoining the existing formed Orchid Way.	\$1,411,938 (ex GST)	Prior to the grant of an Occupation Certificate for the Development.
4	Indirect costs associated with the construction of the Road Infrastructure Construction Works	Indirect costs associated with the construction of the Road Infrastructure Construction Works	\$374,524 (ex GST)	
TOTAL			\$1,878,962 (ex GST)	

Execution

Executed as an agreement.

Executed by Fabcot Pty Ltd (ABN 55)
002 960 983))

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by Fabcot Pty Ltd (ABN 55)
002 960 983) by the party's attorney
pursuant to power of attorney
dated 27/7/16 who states that no
notice of revocation of the power of
attorney has been received in the
presence of:)
)
)


.....
Witness

x
Attorney

.....
SARAH CLIFFORD
.....
Name of Witness (print)

.....
RICHARD JOHN EDWARD DAMMERY
.....
Name of Attorney (print)

Executed by Central Coast Council)
ABN 73 149 644 003 pursuant to ss.)
377 and 378 of the Local Government)
Act 1993 in the presence of:)


.....

Witness


.....

Officer

Margaret Collins
.....

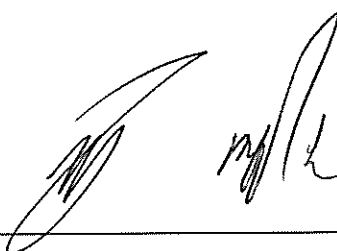
Name of Witness (print)

MURIEL ANTHONY DOWLING
.....

Name of Officer (print)

Annexure A

Plan of Council Land

Two handwritten signatures in black ink, one on the left and one on the right, positioned above a horizontal line.

