
Wyong Shire Council

Fabcot Pty Ltd

Planning Agreement

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Parties

Wyong Shire Council ABN 47 054 613 735 of 16 Hely Street, Wyong NSW 2259 (Council)

Fabcot Pty Ltd ABN 55 002 960 983 of Level 5, 540 George Street, Sydney NSW 2000 (Developer)

Background

- In 2004,
A On ~~or, INSERT DATE,~~ the Developer requested the Council to make the Instrument Change to enable the Developer to seek approval to carry out the Development on the Land.
- B That request was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if Planning Approval for the Development was granted.
- C The Council wishes to accept the Developer's offer to enter into this Agreement, subject to the terms in this Agreement.
-

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

2 Application of this Agreement

The Agreement applies to:

- (a) the Instrument Change; and
- (b) the Development.

3 Operation of this Agreement

- (a) The Agreement operates only if:
- (i) the Instrument Change occurs;
 - (ii) Planning Approval for development of the Land for any use permissible under the 3(a) (Business Centre Zone) is granted by the consent authority; and
 - (iii) the Agreement is entered into as required by clause 25C(1) of the Regulation.

4 Definitions and interpretation

4.1 Definitions

In this Agreement the following definitions apply:

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

Business Day means a day other than a Saturday, Sunday or a public holiday in Sydney, New South Wales.

Chartered Quantity Surveyor means a suitably qualified Chartered Quantity Surveyor engaged by the Developer and subject to the agreement of the Council.

Commencement Date means the date on which this Agreement becomes operable in accordance with **clause 3**.

Construction Certificate has the same meaning as in section 109C of the Act.

Contract Value means the value of the contract to design and construct the Works for either Stage 1 of the Development or Stage 2 of the Development.

Cost of the Works means the value of Stages 1 and 2 of the Works respectively specified in **paragraph 3 of Schedule 3**, as indexed in accordance with **paragraph 4 of Schedule 3**.

Council means Wyong Shire Council.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging or charging the Land.

Development means a retail and commercial development on the Land including:

- (a) a supermarket and retail shops up to a maximum Gross Retail Floor Space of 10,000sqm;
- (b) petrol station and medical centre (in addition to the 10,000sqm of retail floor space identified in (a) above);and
- (c) associated car parking and auxiliary infrastructure,

as specified in draft *Development Control Plan 2005: Chapter 114 – Lake Munmorah Village Centre*.

Development Contribution means a monetary contribution to be used for or applied towards a public purpose.

Explanatory Note means the explanatory note relating to this Agreement, as required by clause 25E of the Regulation.

Gross Retail Floor Space means the floor space for the lettable retail component of the shopping centre, including both general retail floor space and bulky goods retail floor space.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term 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.

Instrument Change means draft *Wyong Local Environmental Plan 1991 (Amendment No. 179)*.

Land means Lot 2 in DP 520220 known as Lake Munmorah Village Centre, 275 Pacific Highway, Lake Munmorah.

LPMA means the Land and Property Management Authority of NSW, and its heirs and successors.

Occupation Certificate has the same meaning as in section 109C of the Act.

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

Planning Application means in respect of the Development, a Planning Application made under Parts 4 or 5A of the Act or a concept plan or project application made under Part 3A of the Act, including all modification applications.

Planning Approval means the determination by approval of the Planning Application.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act matter or thing that meets a Public Purpose.

Public Purpose means any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Shared Pathway means a pathway providing shared pedestrian and cyclist connections from surrounding areas to the Development, and that is to be constructed in accordance with **Schedule 3 and Annexure A**.

Stage 1 of the Development includes:

- (a) Maximum 5000sqm of Gross Retail Floor Space for the supermarket and retail shops component of the Development;
- (b) petrol station;

- (c) medical centre; and
- (d) any associated car parking and auxiliary infrastructure.

Stage 2 of the Development includes up to an additional 5000sqm of Gross Retail Floor Space for the supermarket and retail component of the Development.

Stage 1 Works means the Works carried out as part of Stage 1 of the Development.

Stage 2 Works means the Works carried out as part of Stage 2 of the Development.

Works has the meaning given to it in **paragraph 1 of Schedule 3**.

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

5.1 Provision of Development Contributions

- (a) Subject to this Agreement, in respect of each stage of the Works specified in **Schedule 3**, the Developer is to make a Development Contribution in respect of the Development in accordance with **Schedule 3** by payment to the Council of the Cost of the Works, for the relevant stage of the Works in accordance with **paragraphs 3 and 4 of Schedule 3**.
- (b) Development Contributions made in accordance with this Agreement are made in full and final satisfaction of all costs and expenses required to be borne by the Developer of and incidental to the provision of the Public Facility to which it relates.
- (c) Pursuant to **clause 5.1(a)**:
 - (i) for the Stage 1 Works, the Developer must pay Council the Development Contribution prior to issue of any Construction Certificate for Stage 1 of the Development; and
 - (ii) for the Stage 2 Works, the Developer must pay Council the Development Contribution prior to issue of any Construction Certificate for Stage 2 of the Development.
- (d) The Council must in accordance with this Agreement:
 - (i) apply those Development Contributions only towards the construction of the Shared Pathway Network; and
 - (ii) expend those monies for the purpose identified in **clause 5.1(d)(i)** within 4 years of the date of payment.
- (e) If the construction of the Shared Pathway is not completed within the period of 4 years from the date of payment by the Developer of the Development Contributions, the Council will refund to the Developer any part of the Developer Contributions not applied towards the cost of construction of the Shared Pathway by that date.

6 Application of sections 94, 94A and 94EF of the Act to the Development and Instrument Change

This Agreement wholly excludes the application of sections 94 and 94A of the Act to:

- (a) the Development;
- (b) the Planning Approval for Stage 1 of the Development; and
- (c) the Planning Approval for Stage 2 of the Development.

7 Registration of this Agreement

- (a) The Developer must, at its expense, procure the registration of the Planning Agreement on the relevant folios of the Torrens Title register held by the LPMA pertaining to the Land as soon as reasonably practicable after the 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 Planning Agreement with respect to the Land or any lot, including a strata lot, created on subdivision of the Land, on Council's satisfaction of the Developer's obligations under this Agreement; and
 - (ii) to do all things reasonably necessary, including the execution of any necessary documents, to enable the Developer to remove the notation of this Planning Agreement on the relevant folios of the Torrens Title register held by the LPMA pertaining to the Land.

8 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.

9 Dispute Resolution

9.1 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 9**.

9.2 Notice of Dispute

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

- (a) the intent to invoke this **clause 9**;
- (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 9**;
- (c) the outcomes which the notifying Party wishes to achieve (if practicable); and
- (d) any material impact which the dispute has upon the completion of the Works and/or Occupation Certificate.

9.3 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 9.2**) 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);
 - (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.

9.4 Neither Party may Constrain

If:

- (a) at least one meeting has been held in accordance with **clause 9.3**; and
- (b) the Parties have been unable to reach an outcome identified in **clause 9.3(b)(i) to (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 9.3**,

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.

10 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.

11 Lapsing or invalidation

- (a) If the Instrument change is declared invalid, then the Developer's obligations under this document will cease.
- (b) If **clause 11(a)** applies, the Council must within 20 Business Days of the occurrence of the event, repay to the Developer any money which the Developer has paid to the Council under this Agreement, with the exception of any money paid in accordance with the requirements of **clause 14.1**.

12 Notices

12.1 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.

Wyong Shire Council

Attention: The General Manager - Michael Whittaker
Address: 16 Hely Street, Wyong NSW 2259
Fax Number: (02) 4351 2098
Email: michael.whittaker@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

12.2 Change of Details

If a Party gives the other Party three 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.

12.3 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 post, two business days after it is posted.
- (c) 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.

12.4 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.

13 Assignment and Dealings

13.1 Dealings with Land

- (a) The Developer must not settle or complete any Dealing unless the Developer:
 - (i) first informs the proposed assignee, purchaser or other party (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 13.1(a)(iii)** and do all things reasonably required to give effect to that deed.

13.2 Release

If the Developer, in engaging in any Dealing, satisfies the requirements of **clause 13.1(a)**, the Developer will be released from its obligations under this Agreement.

14 Costs

14.1 Costs of Agreement

The Developer agrees to pay or reimburse the costs of the Council in connection with the:

- (a) Negotiation, preparation and execution of this planning agreement, for the agreed amount of \$15,000; and
- (b) Advertising and exhibiting this planning agreement in accordance with the Act, to a maximum of \$215,

within 28 Business Days after receipt of a tax invoice from Council.

14.2 Costs of Registration

The Developer agrees to pay for the costs of the registration of the Agreement.

15 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.

16 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.

17 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.

18 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.

19 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.

20 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.

21 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.

22 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.

23 GST

23.1 Construction

In this **clause 23**:

- (a) 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) (GST Act)*; and
- (c) any reference to GST payable or an entitlement to an input tax credit includes a reference, as appropriate, to GST payable by, or an input tax credit entitlement of, the representative member of a GST group.

23.2 Intention of the Parties

Without limiting the operation of this **clause 23**, as at the date of this Agreement, the Parties intend that:

- (a) Divisions 81 and 82 of the GST Act 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 23.4** below) on account of GST.

23.3 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

23.4 Payment of GST – additional payment required

- (a) If an entity (**Supplier**) makes a taxable supply under or in connection with this Agreement (**Relevant Supply**), then, subject to **clause 23.4(d)**, the Party required under the other provisions of this Agreement to provide the consideration for that Relevant Supply (**Recipient**) must pay an additional amount to the Supplier (**GST Amount**), as calculated under **clause 23.4(b)**, **23.4(c)** and **23.4(e)** (as appropriate).
- (b) To the extent that the consideration to be provided by the Recipient for the Relevant Supply under the other provisions of this Agreement is a payment of money (including, for the avoidance of doubt, any payment under **clauses 23.4(c)** and **23.4(e)**), the Recipient must pay to the Supplier an additional amount equal to the amount of the payment multiplied by the rate or rates of GST applicable to that Relevant Supply.
- (c) To the extent that the consideration to be provided by the Recipient for that Relevant Supply is neither:
 - (i) a payment of money; nor
 - (ii) a taxable supply,**(Non-taxable non monetary consideration)**,
the Recipient must pay to the Supplier an additional amount equal to 1/11th of the GST-inclusive market value of the Non-taxable non-monetary consideration.
- (d) To the extent that the consideration payable by the Recipient is a taxable supply made to the Supplier by the Recipient, then, notwithstanding **clause 23.4(a)** and subject to **clause 23.4(e)**, no additional amount is payable by the Recipient to the Supplier on account of the GST payable on that taxable supply.
- (e) Notwithstanding **clause 23.4(d)**, if the GST-inclusive market value of the non-monetary consideration of the Relevant Supply (**Supplier's taxable supply**) is less than the GST-inclusive market value of the non-monetary consideration comprising the taxable supply made by the Recipient to

the Supplier for the Supplier's taxable supply (**Recipient's taxable supply**) then, the Recipient must pay to the Supplier an additional amount equal to 1/11th of the difference between the GST-inclusive market value of the Recipient's taxable supply and the GST-inclusive market value of the Supplier's taxable supply.

- (f) The recipient will pay the GST Amount referred to in this **clause 23.4** in addition to and at the same time as the first part of the consideration is provided for the Relevant Supply.

23.5 Valuation of non-monetary consideration

The Parties will seek to agree upon the market value of any non-monetary consideration which the Recipient is required to provide under **clause 23.4**. If agreement cannot be reached prior to the time that a Party becomes liable for GST, the matter in dispute is to be determined by an independent expert nominated by the President for the time being of the Institute of Chartered Accountants in Australia. The Parties will each pay one half of the costs of referral and determination by the independent expert.

23.6 Tax invoice

The Supplier must deliver a tax invoice to the Recipient before the Supplier is entitled to payment of the GST Amount under **clause 23.4**. The Recipient can withhold payment of the GST Amount until the Supplier provides a tax invoice.

23.7 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the GST Amount payable by the Recipient under **clause 23.4** will be recalculated taking into account any previous adjustment under this clause 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.

23.8 Reimbursements

Where a party is required under this Agreement to pay, indemnify or reimburse an expense, loss or outgoing of another party, the amount to be paid, indemnified or reimbursed by the first party will be the sum of:

- (a) the amount of the expense, loss or outgoing less any input tax credits in respect of the expense, loss or outgoing to which the other party is entitled; and
- (b) any additional amount payable under **clause 23.4** in respect of that reimbursement.

23.9 No Merger

This **clause 23** does not merge in the completion, discharge, rescission or termination of this Agreement or on the transfer of any property supplied or to be supplied under this Agreement.

23.10 Inconsistency

To the extent that there is any inconsistency between this **clause 23** and any provision in a document executed under or pursuant to this Agreement, this **clause 23** will prevail.

Executed as an Agreement.

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



.....
Company Secretary/Director

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



.....
Director

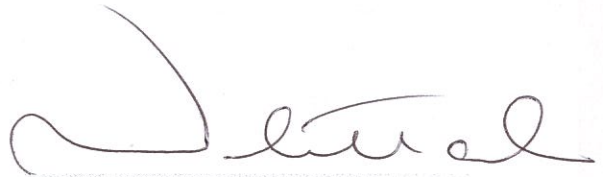
MICHAEL LUSCOMBE
.....
Name of Director (print)

Executed by Wyong Shire Council by its duly appointed officer in the presence of:)
)
)



.....
Witness

D. Aitchison
.....
Name of Witness (print)



.....
Officer

M. Whittaker
.....
Name of Officer (print)

Schedule 1

*Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
<ul style="list-style-type: none"> sought a change to an environmental planning instrument. 	(a) Yes
<ul style="list-style-type: none"> made, or proposes to make, a development application. 	(b) Yes
<ul style="list-style-type: none"> entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	(c) No
Description of the land to which this Agreement applies- (Section 93F(3)(a))	(a) Lot 2 DP 520220 being 275 Pacific Highway, Lake Munmorah, NSW;
Description of the development to which this Agreement applies- (Section 93F(3)(b)(ii))	A retail and commercial development on the Land including a supermarket, retail shops, petrol station, medical centre and associated car parking to be completed in two stages, as modified from time to time.
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	Clause 5 and Schedule 3 paragraphs 1, 2, 3 and 4 .
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is excluded in respect of all 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 all of the Development.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of all of the Development.
Applicability of Section 93F(3)(e) of the Act	Not applicable
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 9 to this Agreement.

Provision of the Act	This Agreement
Enforcement of this Agreement - (Section 93F(3)(g))	See clauses 7 and 10 to this Agreement.
Registration of this Agreement (Section 93H)	See clause 7 to this Agreement.
No obligation to grant consent or exercise functions - (Section 93F(9))	See clauses 10(b)(ii) and 19 to this Agreement.

Schedule 2

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under section 93F of the *Environmental Planning and Assessment Act 1979* (NSW)

1 Parties

Wyong Shire Council (**Council**)

Fabcot Pty Ltd (**Developer**)

2 Description of Subject Land

Lot 2 in DP 520220, known as 275 Pacific Highway, Lake Munmorah, NSW
(**Subject Land**).

3 Description of Proposed Change to Environmental Planning Instrument

Draft *Wyong Local Environmental Plan 1991 (Amendment No. 179)* proposes to amend *Wyong Local Environmental Plan 1991*, to rezone part of the Subject Land from 10(a) (Investigation Precinct Zone) to 3(a) (Business Centre Zone).

4 Description of Proposed Development

The proposed development is for a retail and commercial development on the Land including:

- (a) a supermarket and retail shops up to a maximum Gross Retail Floor Space of 10,000sqm;
- (b) petrol station and medical centre (in addition to the 10,000sqm of retail and commercial floor space identified in (a) above); and
- (c) associated car parking and auxiliary infrastructure.

as specified in draft *Development Control Plan 2005: Chapter 114 – Lake Munmorah Village Centre*.

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

The objective of the Planning Agreement is to facilitate the construction by the Council of the Shared Pathway (as defined in the Planning Agreement) for the benefit of the public.

6 Assessment of the Merits of the Draft Planning Agreement

Due to the relative isolation of the subject site from the existing residential areas of Lake Munmorah and Chain Valley Bay, the requirement for a Shared Pathway has been identified to address pedestrian and cyclist concerns. The Shared Pathway will connect the local community to the future shopping centre.

The development of the Shared Pathway is consistent with Council's draft On-Road Bicycle and Shared Pathway Strategy, which aims to provide linkages from residential areas to key destinations such as schools and shopping centres.

Also, in order to progress the rezoning of part of the Land to 3(a) Business Centre zone, Council needs to be satisfied that the Land is suitable to be used for retail/commercial purposes. The suitability of the Land for retail/commercial uses is based on it being land which is easily accessible to the surrounding population.

This Shared Pathway will ultimately provide convenient pedestrian and cycle connections to the Development from the existing residential areas of Lake Munmorah. It will also service the existing schools which are located on Carters Road, Lake Munmorah.

6.1 The impact of the Draft Planning Agreement on the public or any section of the public

No privately owned land will be affected by the Development or the construction and use of the Shared Pathway.

The pathway will service the existing schools located on Carters Road, Lake Munmorah and the Lake Munmorah Residential Resort directly opposite the Development. It will provide a convenient pedestrian and cyclist connection to the Development for surrounding residents.

6.2 Other matters

The Explanatory Note for this Planning Agreement is not to be used to assist in construing this Agreement.

Schedule 3

Development Contributions

1. Works

Development Contributions towards the construction of the Public Facility in accordance with the works specification in this **paragraph 1** of **Schedule 3** of a Shared Pathway in two stages, as identified in **Annexure A**:

- (a) **Stage 1 of the Works** – Pathway 1 and Pathway 2 located from Saliena Avenue to Tall Timbers Road (510m) and the southern side of the Pacific Highway from Tall Timbers Road to Colongra Road (770m).
- (b) **Stage 2 of the Works** – Pathway 5 from the northern side of the Pacific Highway, from Tall Timbers Road to Carters Road (1880m).

The Works will comprise the construction of a Shared Pathway by the Council, including a footpath and cycleway and the associated earthworks, clearing, pipes and headwalls, landscaping, sign-posting and line-marking.

2. Timing of Development Contributions

Stage 1 of the Works – Prior to issue of a Construction Certificate for Stage 1 of the Development.

Stage 2 of the Works – Prior to issue of a Construction Certificate for Stage 2 of the Development.

3. Contribution value of the Works (excluding GST)

(a) **Stage 1 of the Works**

Pathway 1 (Saliena Avenue to Tall Timbers Rd)	\$194,545
Pathway 2 (Pacific Highway South – Tall Timbers Rd to Colongra Bay Rd)	\$290,290

(b) **Stage 2 of the Works**

Pathway 5 (Pacific Highway North – Tall Timbers Road to Carters Road)	\$764,790
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Subject to **paragraph 4 below**, the Developer's obligation to make Development Contributions under this document are strictly limited to the above amounts.

4. Indexation of the Contribution value of the Works

The Development Contributions specified above are to be indexed from the date of the execution of this Agreement in accordance with the following formula:

$$C \quad \times \quad \frac{\text{CPI 2}}{\text{CPI 1}}$$

Where:

C is the original monetary contribution as listed in **paragraph 3 of Schedule 3**.

CPI 2 is the Consumer Price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the time of payment.

CPI 1 is the Consumer price Index Number (Sydney – All Groups) last published by the Australian Bureau of Statistics at the date of execution of this Voluntary Planning Agreement.

Schedule 4

Public Benefit Offer verses Section 94 Contributions

Table 1 identifies the Section 94 Contributions payable in respect of the proposed Lake Munmorah Village Centre development, calculated in accordance with Wyong Shire – Section 94 Development Contributions Plan 10 - Northern Districts and Section 94 Development Contributions Plan 11 - Shire-wide Contributions Plan for infrastructure, services and facilities.

Facility	s.94 Contributions Applicable
Northern Districts Sub-Plan	
Roads and Traffic Management	Nil
Open Space and Recreation Facilities	Nil
Community Facilities	Nil
Administration	Nil
Shire-wide Contributions Plan	
Library Stock	Nil
Performing Arts Centre	Nil
Public Art Communities	Nil
Regional Open Space	Nil
Shire Cycleway Network	Nil
Administration	Nil
TOTAL s.94 CONTRIBUTIONS	Nil

Table 2 identifies the public benefit offered under the Voluntary Planning Agreement between Wyong Shire Council and Fabcot Pty Ltd in lieu of monetary contributions otherwise payable under Wyong Shire Council's s.94 Development Contributions Plans.

Voluntary Planning Agreement Offer – Public Benefits	Offer Value
Pathway 1 - Saliens Avenue to Tall Timbers Rd	\$194,545
Pathway 2 - Tall Timbers Rd to Colongra Bay Rd	\$290,290
Pathway 5 - Tall Timbers Road to Carters Road	\$764,790
TOTAL VPA OFFER	\$1,249,625
VPA OFFER IN EXCESS OF DEVELOPER OBLIGATIONS	\$1,249,625

ANNEXURE A

