



HENRY DAVIS YORK
LAWYERS

Traffic Light Construction Agreement

Fabcot Pty Limited
ACN 002 960 983

Bega Valley Shire Council
ABN 22 987 935 332

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KEY DETAILS

1 **Date** See Execution on page 7

2 **Parties**

Fabcot

Name

Fabcot Pty Limited

ACN 002 960 983

Address

1 Woolworths Way, Bella Vista NSW 2153

Attention

Stephen Garmston

Fax

(02) 8885 1156

Email

sgarmston@woolworths.com.au

Council

Name

Bega Valley Shire Council

ABN 22 987 935 332

Address

Administration Centre, Zingel Place, Bega NSW 2550

Attention

Peter Tegart

Fax

(02) 6499 2200

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PTegart@begavalley.nsw.gov.au

BACKGROUND

- A Fabcot is constructing the Development at Auckland Street, Upper Street, Zingel Place and Gowing Lane, Bega, pursuant to the Development Consent No.2009.0190.
- B Council has agreed to install the Traffic Lights at the intersection of Upper Street and Auckland Street, Bega.
- C Fabcot has agreed to contribute certain funds to Council towards the cost of installing the Traffic Lights.

TERMS

1 Interpretation

1.1 Definitions

The following words have the following meanings in this Agreement, unless the context requires otherwise.

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

Authority includes any government, semi or local government, statutory or other authority or body having jurisdiction over the design, construction and maintenance of traffic lights.

Development means the development permitted by the Development Consent being the demolition of existing buildings (excluding Bega Centre) and construction of a shopping centre complex comprising supermarket, discount department store, mini-major store, specialty retail shops, office additions and refurbishment, car parking, landscaping, advertising signage, associated infrastructure and subdivision of land into three lots at Auckland Street, Upper Street, Zingel Place and Gowing Lane, Bega.

Development Consent means the grant of Development Consent No. 2009.0190 issued by Council on 2 February 2010 as modified.

RTA means the Roads and Traffic Authority of New South Wales.

Traffic Lights means traffic lights to be installed at the intersection of Upper Street and Auckland Street, Bega, in accordance with the requirements of the Development Consent.

1.2 Interpretation

The following apply in the interpretation of this Agreement, unless the context requires otherwise.

- (a) A reference to this Agreement, this deed, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires.
- (b) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (c) A reference to the singular includes the plural number and vice versa.
- (d) A reference to a gender includes a reference to each gender.
- (e) A reference to a party means a person who is named as a party to this Agreement.
- (f) **Person** includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (g) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Agreement, their substitutes and assigns.
- (h) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally.
- (i) **Includes** means includes but without limitation.
- (j) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (k) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (l) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Agreement.
- (m) A reference to time is to the time in the place where a thing is to be done, unless specified otherwise.
- (n) A reference to dollars or \$ is to Australian currency.
- (o) A heading is for reference only. It does not affect the meaning or interpretation of this Agreement.

1.3 Schedules

Any schedule attached to this Agreement forms part of it. If there is any inconsistency between any clause of this Agreement and any provision in any schedule, the clause of this Agreement prevails.

2 Installation of Traffic Lights

- 2.1 Council is responsible for:
- (a) using its reasonable endeavours to obtain the RTA's written agreement for the RTA to design, construct, commission, maintain and operate the Traffic Lights;
 - (b) facilitating the design, construction, commissioning, maintenance and operation of the Traffic Lights and any associated works by the RTA;
 - (c) carrying out associated road works which are, in the Council's opinion, necessary as a result of the construction of the Traffic Lights ; and
 - (d) all costs and expenses associated with the matters referred to in this clause 2.1.
- 2.2 Council must use its reasonable endeavours to ensure that the Traffic Lights are designed, constructed, commissioned and fully operational in accordance with Fabcot's reasonable timetable for the opening of the Development.
- 2.3 Council's obligations under clause 2.1(b) relating to the completion of construction, commissioning, maintenance and operation of the Traffic Lights, clause 2.1 (c) and clause 2.2 are conditional upon Fabcot making the payment referred to in clause 3.1.
- 2.4 Council is to provide evidence of the RTA's written agreement under clause 2.1(a) to Fabcot within 7 days of receiving the same from the RTA.
- 2.5 Within 7 days of this Agreement, Fabcot is to notify the Council of the proposed date for the commencement of use of the Development.
- 2.6 If, at any time, Fabcot forms the view that the use of the Development is unlikely to commence for any reason before the date referred to in clause 2.5:
- (a) then Fabcot must, as soon as practicable notify the Council in writing and propose a revised date for clause 2.5 which cannot be earlier than the date in clause 2.5 as at the date of this Agreement, and
 - (b) the date referred to in clause 2.5 will be replaced with the revised date notified to the Council.

3 Financial contribution

- 3.1 Fabcot agrees to pay to Council the sum of \$100,000.00 (exclusive of GST) within 14 days after the later of:
- (a) receipt from Council of a tax invoice; and
 - (b) the date on which Council provides evidence satisfactory to Fabcot (acting reasonably) that construction of the Traffic Lights has been commenced.

- 3.2 The Parties agree to pay their own legal costs incurred in relation to this Agreement.

4 Development consent

- 4.1 Once Fabcot has made the payment referred to in clause 3.1, Council agrees that:
- (a) Fabcot has no further obligation to construct the Traffic Lights under condition 65(c)VII of the Development Consent; and
 - (b) Council will not take any enforcement action against Fabcot to require Fabcot to construct the Traffic Lights.

5 Counterparts and commencement

If this Agreement is signed in counterparts then:

- (a) each counterpart is an original; and
- (b) together they constitute one Agreement.

6 Entire agreement

This Agreement:

- (a) records the entire agreement between the parties; and
- (b) supersedes all previous negotiations, understandings, representations and agreements,

in relation to the subject matter of this Agreement.

7 Governing law

This Agreement is governed by the law in force in New South Wales.

8 Jurisdiction

The parties submit to the jurisdiction of the courts of New South Wales.

9 Goods and Services Tax

9.1 Definitions

In this clause 9:

- (a) words and expressions which have a defined meaning in the GST law have the same meaning as in the GST law; and
- (b) "GST law" has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 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.

9.2 Consideration GST - Exclusive

Despite the definition of consideration in the GST law, and unless otherwise expressly stated in this Agreement, prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

9.3 Payment of GST

If a party makes a taxable supply under or in connection with this Agreement, the recipient must pay to the supplier at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply.

9.4 Tax Invoice

The supplier must, as a precondition to the payment of an amount under clause 9.3, give the other party a tax invoice.

9.5 Adjustments

If an adjustment event arises in connection with a taxable supply made under this Agreement, the supplier must give the recipient an adjustment note in accordance with the GST law and the amount payable by the recipient under clause 9.3 will be 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.

9.6 Reimbursements

If this Agreement requires one party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.

EXECUTION

Executed as an agreement on

18 May

2011

Signed by ~~Fabcot Pty Limited~~ by:

Signature of director/company secretary

Signature of director

Print name

Print name

Signed on behalf of **Bega Valley Shire Council** by the General Manager, pursuant to the Council's resolution on 8 February 2011:

Signature of witness

J. Curtis

Signature

[Signature]

Print name

Janelle Curtis

Print name and title

PETER TEGART GENERAL MANAGER

Address

13 Koorngal Place Bega

Signed by Fabcot Pty Limited
by its Attorney PETER JOHN HORTON
pursuant to Power of Attorney registered SL 4506 No 749
who has no notice of revocation of the said Power of
Attorney in the presence of:

P. NK
Attorney

Witness *[Signature]*

STEVEN CHESHER
Solicitor
1 Woolworths Way
Bella Vista NSW 2153