

Occupation Licence

The Council of the City of Shoalhaven &
Fabcot Pty Limited

The Council of the City of Shoalhaven
Council Administrative Centre
Bridge Road
NOWRA, NSW 2541

Reference: LS13

Date 17 of NOVEMBER, 2010

Parties

1. **The Council of the City of Shoalhaven** of Council Administrative Centre, Bridge Road, Nowra, NSW 2541 (**Council**).
2. **Fabcot Pty Limited** (ACN 002 960 983) of 1 Woolworths Way, Bella Vista, NSW 2153 (**Fabcot**).

Recitals

- A. Council owns the Land.
- B. Fabcot has obtained Development Consent to develop the Land and adjacent land in its ownership for the purposes of a supermarket and associated car parking.
- C. As part of the Development Consent, Council has entered into a VPA with Fabcot pursuant to section 93F of the *Environmental Planning and Assessment Act 1979*.
- D. Fabcot now needs access to the Land to implement the Development Consent.
- E. Clause 4.1(b) of the VPA provides that Council will allow access to the Land subject to Fabcot entering into a licence with Council.
- F. This licence satisfies clause 4.1(b) of the VPA.

Agreed Terms

1. **Land**
 - 1.1 Council grants a licence to Fabcot to occupy the Land.
2. **Permitted Use**
 - 2.1 The Land can only be occupied for the Permitted Use.
3. **Licence Fee**
 - 3.1 The parties agree that no licence fee is payable by Fabcot in accordance with clause 4.1(a) of the VPA.
4. **Term**
 - 4.1 This Licence will start on the Start Date and will end on the Expiry Date.
 - 4.2 If Fabcot continues to use or occupy the Land after the Expiry Date with the Council's prior consent in writing, then Fabcot will be holding over as a monthly licensee of the Council on the same terms as this document to the extent to which they can be applied to a monthly licence. A party may

terminate the monthly licence by giving at least one month's notice to the other party. The notice may expire at any time.

5. Council's Obligations

- 5.1 Council allows Fabcot to occupy the Land for the Term in accordance with this Licence.

6. Fabcot's Obligations

- 6.1 Not used.

6.2 Insurance

Fabcot must:

- (a) maintain public liability insurance, with an insurer approved by Council, with Council nominated as an interested party, for an amount not less than the amount stated in **Item 5 of Schedule 1** covering all aspects of the Permitted Use on the Land;
- (b) submit a copy of the certificate of insurance to Council before the commencement of the Permitted Use and when otherwise required by Council;
- (c) maintain all other necessary insurance policies in respect of the Permitted Use including, but not limited to, insurance of the Permitted Use and insurance against death or injury to persons employed in relation to the undertaking of the Permitted Use, and any other insurances required at law; and
- (d) maintain the insurances in clauses 6.2(a) and 6.2(c) until the expiration of the Term.

The insurance required under this clause may be included in an insurance policy which also covers other premises in which Fabcot has an interest.

6.3 Indemnity

Except to the extent that Council has, by act or omission contributed to its loss, Fabcot indemnifies and releases Council against all damage, expense, loss or liability of any nature suffered or incurred by the Council arising from any act or omission by Fabcot (or any person engaged by it) in connection with carrying out the Permitted Use and the use and occupation of the Land.

6.4 Occupational Health and Safety

- (a) For the Term of this Licence, Fabcot acknowledges and agrees for the purposes of the *Occupational Health & Safety Act 2000* (NSW) (**OHS Act**) that Fabcot has the control of the Land and all plant and substances within the Land.
- (b) Without limiting clause 6.4(a) Fabcot acknowledges that it has an obligation to ensure employees and contractors entering the Land carry

out the Permitted Use safely. Fabcot must (or ensure that its appointed contractors) adopt a risk management approach to ensure that hazards and associated risks are identified and ranked. Control measures must be documented and implemented to eliminate or control the identified hazards to an acceptable level that will not cause injury including:

- (i) the design and the implementation of systems of work that are safe;
 - (ii) undertaking hazard identification and risk control activities;
 - (iii) providing proper induction to all contractors attending the Land.
- (c) Fabcot will, on Council's request, provide copies of its safety system and records as relate and are relevant to contractors engaged by Fabcot that attend the Land.
- (d) Fabcot releases and indemnifies Council from and against any obligation or liability of Fabcot under any occupational health and safety legislation as defined in the OHS Act except to the extent of any negligence of the Council.

6.5 General Legal Obligations

Fabcot must comply with all relevant legislation to its use and occupation of the Land including (without limitation) any environmental laws.

7. Improvements

Fabcot acknowledges that, upon termination of this Licence, all improvements on the Land will become the absolute property of Council.

8. Termination

This Licence will end on the earlier of:

- (i) the Expiry Date; or
- (ii) the issue of the occupation certificate pursuant to the Development Consent.

9. Notices

9.1 A notice under this Licence must be in writing and faxed, posted or delivered to the address of the recipient shown in **Item 6 of Schedule 1** (as the case may be).

9.2 A notice is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, three business days after it is posted;

- (c) if 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.

10. General

- 10.1 This Licence will be governed by and construed in accordance with the law for the time being in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 10.2 This Licence constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties about the subject matter of this licence.
- 10.3 Waiver by either party of a particular breach is not a waiver of any other breach.
- 10.4 This Licence may only be amended or supplemented in writing, being a document signed by the parties.
- 10.5 The invalidity, illegality or unenforceability of any provisions of this Licence will not affect the validity or enforceability of any other provisions.
- 10.6 Fabcot must not assign its rights and obligations under this Licence without the prior written approval of the Council.
- 10.7 Nothing in this Licence in any way restricts or otherwise affects the unfettered discretion of the Council as to the exercise of its statutory powers as a public authority and in the event of any conflict between the unfettered discretion of the Council in the exercise of such powers and the performance of obligations under this licence, the former prevails.

11. Definitions

- 11.1 In this Licence, unless the context otherwise requires:

Development Consent means the development consent specified in **Item 4 of Schedule 1**.

Expiry Date means the date specified in **Item 2 of Schedule 1**.

Land means the land specified in **Item 1 of Schedule 1**.

Licence means this licence including all schedules, attachments and documents incorporated by reference.

Permitted Use means the use specified in **Item 3 of Schedule 1**.

Start Date means the date specified in **Item 2 of Schedule 1**.

Term means the period specified in **Item 2 of Schedule 1**.

VPA means the Voluntary Planning Agreement (as amended) entered into between the Council and Fabcot under section 93F of the EP&A Act in respect to the Development Consent.

11.2 Clause headings in this Licence are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.

11.3 Words importing a gender include any other gender.

11.4 Words in the singular number include the plural and words in the plural number include the singular.

11.5 A reference to:

- (a) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate
- (b) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- (d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
- (e) a professional standard is determined by reference to the world's best practice in the relevant field or area of expertise; and
- (f) any thing (including a right, obligation or concept) includes each part of it.

Executed by the parties as a Licence:

Signed for and on behalf of the COUNCIL)

OF THE CITY OF SHOALHAVEN by its)

duly authorised officer in the presence of:)

Clarinda Campbell

Witness:

CLARINDA CAMPBELL

Name (printed):

Russ Pigg

Signature:

Russ Pigg

General Manager:

SIGNED by FABCOT PTY LTD, ACN

002 960 983 pursuant to Power of Attorney

Book 4506 No 744

Maria Liu

Witness: MARIA LIU
1 Woolworths Way
Bella Vista NSW 2153

Name (printed):

NS *X*

MARK HADRIAN SMOD

Name (printed):

Schedule 1

Reference Schedule

Item	Name	Description
1	Land	Lot 1 DP 1094219, Lot 1482 DP 12278, Lot 1484 DP 12278
2	Term	2 years
	Start Date	24 September 2010
	Expiry Date	23 September 2012
3	Permitted Use	Works carried out in accordance with the conditions of Development Consent.
4	Development Consent	DA09/1144 (as modified and amended)
5	Public Liability Insurance	\$10 million
6	Notices	
	Council	Shoalhaven City Council
	Attention	General Manager
	Address	Bridge Road, Nowra NSW 2541
		PO Box 42, Nowra NSW 2541
	Fax Number	(02) 4429 3168
	Fabcot	Fabcot Pty Ltd
	Attention	Company Secretary1 Woolworths Way, Bella Vista, NSW 2153
	Address	
	Fax Number	(02) 8888 0558
		<i>With a copy to:</i>
	Attention	Development Manager
	Fax Number	(02) 8888 9172