

SUPPLEMENTARY AGENDA

ATTACHMENTS UNDER SEPARATE COVER

Ordinary Meeting of Council 13 December 2023



We're With **YOU**

Ordinary Meeting of Council - Supplementary - 13
December 2023 Attachments

**SA3.2 LICENCE TO DISCHARGE WATER INTO RAIL CORRIDOR AND LICENCE
FOR EXISTING INFRASTRUCTURE WITH ARTC - 21 FERGUSON CRESCENT**

MITTAGONG.....2

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**AGENDA OF THE ORDINARY MEETING OF COUNCIL
WEDNESDAY 13 DECEMBER 2023**

Our Ref: 19/0922.05
Contact: Ross Jauncey



25 February 2021

SETT HOMES PTY LTD
PO Box 8534
MOUNT PRITCHARD NSW 2170

Civic Centre, 68 Elizabeth St,
Moss Vale NSW 2577
PO Box 141, Moss Vale
02 4868 0888
mail@wsc.nsw.gov.au
ABN 49 546 344 354

NOTICE OF DETERMINATION OF A MODIFICATION APPLICATION
Pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*

DEVELOPMENT APPLICATION NO:	19/0922
APPLICATION NO:	19/0922.05
PROPOSED MODIFICATION:	Subdivision - 31 Lots
APPLICANT:	Urbanesque Planning Pty Ltd
OWNER:	SETT HOMES PTY LTD
PROPERTY DESCRIPTION:	Lot A DP 430831 Part Lot 10 Sec 1 DP 651 Lot 14 Sec 1 DP 651 Lot 1 DP 1089997 Lot 2 DP 1089997 Lot 3 DP 1089997 Lot 1 DP 1099047 Lot 2 DP 1099047 Lot 3 DP 1099047 Lot 4 DP 1099047
PROPERTY ADDRESS:	21 FERGUSON CRESCENT MITTAGONG NSW 2575
APPROVED DEVELOPMENT:	Subdivision (31 Lots)
DA APPROVAL DATE:	10 March 2020
CONSENT TO OPERATE FROM:	10 March 2020
CONSENT TO LAPSE ON:	10 March 2027
OPERATIONAL CONSENT	Operational Consent issued by letter dated 13 March 2020
DETERMINATION:	Approved subject to conditions attached in schedule 2 of this consent
DATE OF DETERMINATION:	25 February 2021

Working with you

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WINGECARRIBEE - A COAL MINING FREE SHIRE

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Inconsistencies

In the event of any inconsistency between the conditions of this modified consent and the plans / supporting documents referred to in this notice, the conditions of this development consent shall prevail.

Rights of Appeal

Pursuant to Section 8.9 of the *Environmental Planning and Assessment Act 1979*, an applicant for the modification of a development consent who is dissatisfied with the determination of the application by the consent authority may appeal to the Court against the determination. Pursuant to Section 8.10, an appeal may be made only within 6 months after the date the decision appealed against is notified.

Review of determination

You have the right to request a review of determination under section 8.2 of the *Environmental Planning and Assessment Act 1979*, subject to the provisions of Division 8.2 Reviews.


Ross Jauncey
Development Assessment Planner


25 February 2021
Date of Issue.

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SUMMARY SCHEDULE OF MODIFIED CONDITIONS

104. Concurrency - Water NSW
Modified Application 19/0922.05 dated 25 February 2021 to read:

Concurrency has been granted by Water NSW for the development pursuant to *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*. The conditions provided by Water NSW are provided below and forms part of this Notice of Determination.

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PO Box 336, Parramatta NSW 2150
Level 14, 193 Macquarie Street
Parramatta NSW 2150
www.water.nsw.gov.au
APA 21/14/104/001

Water NSW's Concurrence Conditions

DA No 19/0922.05; Lot A DP 430831, Lots 10, 14, 17 Section 1 DP 651, Lots 1-4 DP 1099047, Lots 1-3 DP 1089997; 21 Ferguson Crescent, Mittagong

General

1. The lot layout and works of the subdivision shall be as specified in the Statement of Environmental Effects prepared by Urbansque Planning Town Planning Consultants (dated 8 November 2018) and shown on the Proposed Plan of Subdivision (Dwg No. 170509, Sheet No. A3, Issue D, dated 10/10/19) prepared by Australian Survey Solutions. No revisions to lot layout or works or staging of the subdivision that will have any impacts on water quality, shall be permitted without the agreement of Water NSW.

Reason for Condition 1 - Water NSW has based its assessment under State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 on this version of the subdivision.

On-Site Wastewater Management

2. The existing on-site wastewater management system on the property shall be decommissioned in accordance with the NSW Health Advisory Note No 3 (Revised dated January 2017) for Destruction, Removal or Reuse of Septic Tanks, Collection Wells, Aerated Wastewater Treatment Systems and Other Sewage Management Facility Vessels.

Reason for Condition 2 - To ensure the removal of the existing on-site wastewater management system is undertaken in a manner that does not result in a detrimental impact on water quality.

Subdivision Roads and Right-of-Access

3. The subdivision roads and right-of-access shall be located and constructed as shown on the Proposed Plan of Subdivision (Dwg No. 170509, Sheet No. A3, Issue D, dated 10/10/19) prepared by Australian Survey Solutions and the Civil Engineering Plans (Project No. 17042, Dwg Nos. DA.07 - 12, Issue 02, dated 18/10/19) prepared by Novati Consulting Engineers Pty Ltd. The roads and right-of-access shall:
 - be sealed and otherwise constructed in accordance with Council's engineering standards
 - include runoff collection via a series of pits and pipes and directed to various water quality treatment measures, and
 - incorporate inlet filters (Ocean Guard or Water NSW endorsed equivalent) on all inlet pits.
4. All stormwater management measures and drainage works associated with the proposed subdivision roads and right-of-access shall be wholly included in the roads or drainage reserve or within suitably defined easements.

Reason for Conditions 3 & 4 - To ensure that the proposed subdivision roads and right-of-access and associated infrastructure will have a sustainable neutral or beneficial impact (NoRBE) on water quality during the operational phase of the development.

Stormwater Management

5. All stormwater management measures as specified in Section 3 the amended Water Cycle Management Study (Ref:17042_WCMS02, dated 18 October 2019) and the revised MUSIC stormwater quality model and Concept Stormwater Drainage Plan

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(Project No. 17042, Dwg No. DA06 and DA13, Issue 02, dated 18/10/19) all prepared by Nowati Consulting Engineers Pty Ltd shall implemented. The management measures shall include:

- pipes, pits, gross pollutant traps, and inter-allotment drainage
 - cartridge filters, and
 - on-site detention basin.
6. The stormwater management measures, to capture and treat all runoff from the subdivision roads and right-of-access, shall be constructed after all hardstand areas have been completed and all ground surfaces have been stabilised and shall be:
- permanently protected from vehicular damage by bollards, fences, castellated kerbs or similar structures, with a sign to be erected to advise of its nature and purpose in water quality management, and
 - protected by sediment and erosion control measures during any construction and post-construction phase until the ground surface is revegetated or stabilised.
7. No changes to stormwater treatment and management that will have any impact on water quality, shall be permitted without the agreement of Water NSW.
8. A suitably qualified stormwater consultant or engineer shall certify in writing to Water NSW and Council prior to the issuance of a Subdivision Certificate that all stormwater management structures have been installed as per these conditions of consent and are in a functional state.
9. An Operational Environmental Management Plan shall be prepared in consultation with Water NSW and Council by a person with knowledge and experience in the preparation of such plans. The Plan shall be prepared prior to the issuance of a Subdivision Certificate. The Plan shall be provided to Council when the management and maintenance of the stormwater management measures are handed over to Council. The Plan shall:
- include details about the location and nature of stormwater management structures such as pits, pipes, inlet filters, gross pollutant trap and cartridge filters and OSD basin
 - outline the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all stormwater management structures, before and after handing over to Council, including the frequency of such activities
 - identify the persons responsible for inspection and maintenance activities, before and after handing over to Council, before and after handing over to Council, including a reporting protocol and hierarchy, and
 - include checklists for recording inspections and maintenance activities.
10. All stormwater treatment measures shall be inspected, monitored, maintained and managed in accordance with the Operational Environmental Management Plan.

Reason for Conditions 5 to 10 – To ensure that the stormwater quality management measures and structures for the proposed subdivision have a sustainable neutral or beneficial impact (NorBE) on water quality over the longer term.

Revegetation of the Drainage Reserve

11. Revegetation of the drainage reserve on proposed Lot 31 shall be undertaken prior to an issuance of a Subdivision Certificate as specified in the Landscape Plan (Dwg No.

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L1, Revision E, dated 16.10.19) prepared by Nicholas Bray Landscapes. The drainage reserve shall:

- be required for a further round of planting if 6 months after planting less than 50% of plantings have become established, and
- be protected from vehicles by fences, posts, bollards or equivalent structures, with appropriate signage identifying that these fenced-off revegetation areas are for water quality management.

Reason for Condition 11 – To have a sustainable neutral or beneficial impact (NorBE) on water quality over the longer term.

Construction Activities

12. The Concept Soil and Water Management and Tree Removal Plan (Project No. 17042, Dwg No. DA02, Issue 02, dated 18/10/19) and the Concept Bulk Earthworks Plan (Project No. 17042, Dwg No. DA03, Issue 02, dated 18/10/19) both prepared by Novati Consulting Engineers Pty Ltd shall be updated for all works required as part of the subdivision including the subdivision roads by a person with knowledge and experience in the preparation of such plans. The Plan shall:

- meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004)
- be prepared prior to issuance of a Construction Certificate and be to the satisfaction of Council, and
- include controls to prevent sediment or polluted water leaving the construction site or entering any natural drainage lines or stormwater drain.

13. The Soil and Water Management Plan shall be implemented, and effective erosion and sediment controls shall be installed prior to any construction activity. The controls shall be regularly inspected, monitored and maintained until works have been completed and groundcover established.

Reason for Conditions 12 & 13 – To manage adverse environmental and water quality impacts during the construction phase of the development so as to minimise the risk of erosion, sedimentation and pollution within or from the site during this phase.

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SCHEDULE 1

CONDITIONS OF DEVELOPMENT CONSENT THAT MUST BE SATISFIED BEFORE THE CONSENT CAN OPERATE

1. Licence to Discharge Water

A licence to discharge water into the ARTC land is to be entered into prior to the consent becoming active:

- a) The developer shall enter into an 'Infrastructure Licence Agreement' with benefitting Council for the stormwater discharge into the rail corridor. All cost associated with the formalisation of the agreement will be borne by the developer at no cost to Council;
- b) The developer entering an access licence for any access to the rail corridor required during construction;

Deferred Commencement condition 1 is required to be addressed to the satisfaction of Council within 24 months of 26 February 2020 prior to General Development Consent Conditions 1 – 104 being acted upon.

Note: The consent shall operate from the date in which Council acknowledges compliance with the condition within Schedule 1 of this Deferred Commencement Consent and shall lapse 26 February 2025.

Note: Operational Consent issued by letter dated 13 March 2020.

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SCHEDULE 2

CONDITIONS OF MODIFIED DEVELOPMENT CONSENT

ADMINISTRATION CONDITIONS

1. Development Description

Development consent has been granted in accordance with this notice of determination for the purposes of Subdivision (31 Lots – 30 residential lots and 1 drainage easement allotment).

Reason: To confirm the use of the approved development.

2. Development in Accordance with Plans and Documents

The development shall be implemented in accordance with the approved plans and supporting documents set out in the following table except where modified by any conditions of development consent.

Plan Title / Supporting Document	Reference / Version	Prepared By	Dated
Proposed Plan of Subdivision	170509 Issue D	Australian Survey Solutions	10/10/19
Landscape Plan	L1-E	Nicholas Bray Landscapes	16/10/19
Acoustic Report	Ref:2892/Doc1	Sebastian Giglio	7 May 2018
Bushfire Hazard Risk Assessment and Compliance Report	Ref: S - 16008	Bushfire & Evacuation Solutions	30 June 2017
Statement of Environmental Effects		Urbanesque Planning	8 November 2018
Traffic and Parking Assessment Report	PT17033r01_Final	Positive Traffic	June 2017
Flora and Fauna Assessment Report	Ref: 18012	Hayes Environmental	8 November 208
Preliminary Contamination Assessment	15000147-CA-01	Strategic Environmental and Engineering Consulting	18 June 2015

Reason: To ensure the development is carried out in accordance with the approved plans and documentation.

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3. Inconsistency between documents

In the event of any inconsistency between the conditions of this consent and the drawings/documents referred to above, the conditions of this consent shall prevail to the extent of the inconsistency.

Reason: *To ensure that the development is undertaken in accordance with the submitted plans and documents (as amended).*

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE SUBDIVISION WORKS CERTIFICATE

4. Licence to Discharge

The developer (or nominated party) enter an Infrastructure Licence with ARTC and pay the applicable fees prior to the release of a Subdivision Works Certificate.

5. Asbestos Removal - Demolition of Buildings

Advice: *These conditions of development consent are to be applied to work that may involve asbestos, in particular demolition and renovation or recladding or brick veneering works of buildings erected prior to 1987. Evidence acceptable to Council may be required to establish the construction date of a building or part of a building:*

- a) Demolition is to be carried out in accordance with the applicable provisions of Australian Standard AS2601-2001 - The demolition of structures.

Note: *Developers are reminded that WorkCover requires that all plant and equipment used in demolition work must comply with the relevant Australian Standards and manufacturer specifications.*

- b) The developer is to notify owners and occupiers of premises on either side, opposite and at the rear of the development site five (5) working days prior to demolition. Such notification shall state the date demolition will commence and is to be placed in the letterbox of every premises (including every residential flat or unit, if any) either side, immediately at the rear of, and directly opposite the demolition site. Demolition must not commence prior to the date stated in the notification.

- c) Five (5) working days (i.e., Monday to Friday with the exclusion of Public Holidays) notice in writing is to be given to Wingecarribee Shire Council for inspection of the site prior to the commencement of works. Such written notice is to include the date when demolition will commence and details of the name, address, business hours contact telephone number and licence number of the demolisher. Works are not to commence prior to Council's inspection and works must not commence prior to the commencement date nominated in the written notice.

- d) On the first day of demolition, work is not to commence until the Principal Certifying

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Authority (PCA) has inspected the site. Should the building to be demolished be deemed likely to contain asbestos, approval to commence demolition will not be granted until the PCA is satisfied that all measures are in place so as to comply with WorkCover's document 'Your Guide to Working with Asbestos'.

- e) On demolition sites where buildings to be demolished are likely to contain asbestos, a standard commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring not less than 400mm x 300mm is to be erected in a prominent visible position on the site to the satisfaction of Council's officers. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos has been removed from the site to an approved waste facility.
 - f) Demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence".
 - g) Demolition is to be completed within five (5) days of commencement at which time the applicant shall notify the Certifying Authority.
 - h) Demolition works are restricted to Monday to Friday between the hours of 7.00am to 6.00pm. No demolition works are to be undertaken on Saturdays, Sundays or Public Holidays.
 - i) Protective fencing is to be installed to prevent public access to the site.
 - j) All asbestos laden waste, including asbestos cement flat and corrugated sheets must be disposed of at a facility licensed by the NSW Environmental Protection Authority (EPA) to accept such waste provided to Council.
- Note:** *The person responsible for disposing of the above asbestos waste is to telephone the EPA on 131 555 or Council's Customer Service Department on (02) 4868 0888 to determine the location of a waste facility licensed to receive asbestos. Within 14 days of the completion of demolition works, the applicant must lodge with Council, all original weighbridge receipts issued by the receiving licensed waste facility as evidence of proper disposal.*
- k) After completion, the applicant shall notify the Principal Certifying Authority within seven (7) days to assess the site and ensure compliance with Australian Standard AS2601 2001 - The Demolition of Structures.
 - l) Within 14 days of completion of demolition, the applicant shall submit to Council:
 - (i) an asbestos clearance certificate prepared by a WorkCover licensed asbestos assessor; and
 - (ii) a signed statement verifying that demolition work and the recycling of materials was undertaken in accordance with the Waste Management Plan approved with this consent. In reviewing such documentation Council will require the provision of actual weighbridge receipts for the recycling/disposal

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of all materials.

Reason: *To ensure that asbestos is disposed of to a licensed waste facility and is removed in accordance with safe work practices.*

6. Amendments to Approved Plans

The applicant shall make the following amendments to the approved plans prior to the issue of a Subdivision Works Certificate:

- a) A building envelope shall be incorporated in each lot.
- b) Two (2) ever green trees to be included for planting within each lot and shown on landscape plan.
- c) Street trees to be amended in landscape plan and are as to conditions below.
- d) Greater detailed landscape plan to be provided.

Note: *This involves a change to the Development Application plans as submitted to and approved by Council.*

Any changes in this regard shall be reflected as amended plans to be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate for the proposed development.

Reason: *To confirm and clarify the terms of Council's approval.*

7. Contaminated Land Investigation Requirements (Stage 1)

As per the recommendation in the Preliminary Contamination Assessment for Former Fergusons Nursery, Ferguson Crescent, Mittagong, prepared by Strategic Environmental & Engineering Consulting (SEEC) (Reference No. 15000147-CA-01; dated 18 June 2015) (p. 16), a supplementary Stage 1 Preliminary Investigation of the footprint of the existing house in the western part of the site after the removal of this house shall be undertaken by a suitably qualified environmental consultant in accordance with the Managing Contaminated Land Planning Guidelines under the State Environmental Planning Policy No. 55 - Remediation of Land and the Contaminated Land Management Act 1997 and relevant NSW EPA guidelines. A report on this Preliminary Investigation shall be submitted to Council prior to the issue of the Subdivision Certificate.

Reason: *Compliance with Statutory Requirements*

8. Contaminated Land Investigation Requirements (Stage 2)

If the abovementioned supplementary Stage 1 Preliminary Investigation of the footprint of the existing house recommends that Stage 2 Detailed Investigation has to be carried out, such investigation shall be undertaken by a suitably qualified environmental consultant in accordance with the Managing Contaminated Land Planning Guidelines under State Environmental Planning Policy No. 55 - Remediation of Land and the Contaminated Land Management Act 1997 and relevant NSW EPA guidelines. A report on this Detailed

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Investigation shall be submitted to Council prior to the issue of the Subdivision Certificate.

Reason: *Compliance with Statutory Requirements.*

9. Remediation Action Plan (RAP)

In the event that a Stage 1 or Stage 2 Contaminated Land Investigation Report recommends that a Remedial Action Plan (RAP) is required to be prepared, the RAP shall be prepared by a suitably qualified environmental consultant in accordance with the Managing Contaminated Land Planning Guidelines under State Environmental Planning Policy No. 55 - Remediation of Land and the Contaminated Land Management Act 1997. The RAP shall be submitted to Council prior to the commencement of the remedial works and prior to the issue of the Subdivision Certificate.

At Councils discretion, the RAP may be reviewed by a NSW EPA Accredited Auditor and written confirmation provided by the Auditor to Council that the RAP, if followed, is adequate when implemented to render the site suitable for its proposed use.

The following matters must be included as part of the Remediation Action Plan (RAP):

- Hours of Remediation Work
- Soil and Water Management Measures including stockpiles, site access, excavation pump-outs, landscaping/rehabilitation and bunding.
- Noise and Vibration
- Air quality and dust and odour control.
- Groundwater
- Transport (management plan)
- Hazardous materials - removal and disposal
- Disposal of Contaminated Soil
- Containment/Capping of Contaminated Soil
- Importation of Fill
- Site Signage and Contact Numbers
- Site Security
- Workplace Health and Safety
- Removal of Underground Storage Tanks (where relevant)

Reason: *Compliance and Site Works Management*

10. Remediation

Prior to the issue of a Subdivision Certificate, the site shall be remediated in accordance with:

- (a) The relevant approved Remediation Action Plan, and
- (b) *State Environmental Planning Policy No. 55 Remediation of Land* and
- (c) The guidelines in force under the *Contaminated Land Management Act 1997*.

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Within thirty (30) days after the completion of the remedial works, a notice of completion, including validation and/or monitoring report by a suitably qualified environmental consultant is to be provided to Council. This notice must be consistent with the State Environmental Planning Policy No. 55 - Remediation of Land and applicable NSW EPA guidelines.

At Councils discretion, the validation and/or monitoring report may be requested to be independently audited and a Site Audit Statement issued. The audit is to be carried out by an EPA Accredited Auditor. Any conditions recorded on the Site Audit Statement are to be complied with.

Reason: *Compliance with Statutory Requirements*

11. Landscape Plan

A Landscape Plan prepared by a suitably qualified professional to a scale of 1:100 or 1:200, conforming to all relevant conditions of consent shall be submitted to Council for approval prior to the issue of the Subdivision Works Certificate.

The plan shall include the following information:

- Location of all existing and proposed landscape features including materials to be used;
- Delineate and identify all trees to be retained, removed or transplanted;
- Detailed plant schedule which includes proposed species listed by botanical (genus and species) and common names, quantities of each species, pot sizes and the estimated size at maturity.
- Pot size at planting out stage
- Soil treatment prior to planting out, fertilizing and water maintenance schedule.

Consideration within the design should be given to the scale of planting in proportion to the proposed development, consistency with the existing landscape character of the area, potential views, solar access and privacy for neighbouring development.

Reason: *To ensure appropriate landscaping treatments are applied to facilitate amenity.*

12. Tree Retention

Road design and construction shall ensure preservation of existing roadside vegetation. All trees proposed to be removed within the road reservation (Ferguson Crescent) shall be clearly identified by survey and submitted to Council for approval prior to issue of Subdivision Works Certificate.

All trees shown on the development consent as being retained shall be appropriately marked and protected during construction works with fencing that shall be maintained throughout construction activities.

Reason: *To ensure retention and preservation of local vegetation.*

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13. Privacy or Visual Screening

- (a) Existing native trees / landscaping shall be maintained and supplemented with additional plantings using local indigenous species.
- (c) A landscaping screen consisting of evergreen species shall be established and maintained to the satisfaction of Council on the eastern boundary adjoining Highlander Street.
- (d) Landscaping is required for **Highlander Street** to reduce the visual impact. Prior to release of the Subdivision Works Certificate a landscape plan shall be submitted to Council for consideration, outlining the following details:
 - (i) Proposed species to be used;
 - (ii) Height at time of planting;
 - (iii) Height and spread of maturity; and
 - (iv) Notes which detail soil preparation, drainage, weed control, watering, fertilising and general maintenance during establishment.

A temporary screening structure shall be constructed using approved materials until the landscaping reaches an effective screening level.

Reason: *To ensure streetscape and local amenity.*

14. Protection of Existing Trees and Native Vegetation

Prior to the issue of any Subdivision Works Certificate, trees and native vegetation proposed for retention and those approved for removal must be clearly identified on all the final engineering and landscaping plans. All fenced tree protection areas must be clearly marked as "No Go Area" on all plans. The location of any threatened species, endangered populations or ecological communities must also be marked on all plans.

Reason: *To clearly articulate trees and vegetation to be removed and retained.*

15. Application for a Subdivision Works Certificate

Subdivision work in accordance with the consent shall not be commenced until a Subdivision Works Certificate has been applied for and issued by Council, pursuant to Section 6.13 of the *Environmental Planning and Assessment Act 1979*. The application for a Subdivision Works Certificate needs to be accompanied by detailed engineering plans and specifications and completed design checklists found in Council's Engineering Policies.

Reason: *A requirement under the provisions of the Environmental Planning and Assessment Act 1979.*

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16. Appointment of Principal Certifying Authority

No work shall commence in connection with this Development Consent until:

- (a) A Subdivision Works Certificate for the subdivision work has been issued by:
 - (i) the consent authority; or
 - (ii) an accredited certifier; and
- (b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifying authority for the subdivision work, and
 - (ii) notified the principal certifying authority that the person will carry out the subdivision work as an owner-builder, if that is the case, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences:
 - (i) notified the Council of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- (b2) the person having the benefit of the development consent, if not carrying out the work as an owner builder, has:
 - (i) appointed a principal contractor for the subdivision work who must be the holder of a contractor licence if any residential building work is involved, and
 - (ii) notified the principal certifying authority of such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the subdivision work, and
- (c) the person having the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the subdivision work.

Reason: *To ensure that there is certainty as to the consent applying to the land.*

17. Developer to provide photos of damage to Council property

The developer must provide Council and the PCA with photos of any damage of Council property adjoining the development prior to the issue of the Subdivision Works Certificate.

Photos should include any damage to footpaths, road furniture, landscaping/trees, drainage, water, sewer, kerb and gutter and road pavement and the like.

Failure to identify existing damage will result in all damage detected after completion of the building work being repaired at the developer/owners/proponents expense.

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The construction supervisor is responsible to ensure that all contractors, sub-contractors, and delivery trucks use a designated access point to prevent damage to Council's property. Repairs to damaged Council property are to be carried out by the contractor/builder to Council's specification and supervision prior to issue of the Subdivision Certificate.

Reason: *To ensure that Council's assets are protected.*

18. Section 68 Local Government Act 1993 Approvals

Prior to the issue of a Subdivision Works Certificate, an application under section 68 of the *Local Government Act 1993* shall be made to, and issued by, Wingecarribee Shire Council, for the following approvals:

- Stormwater
- Water and sewer

Reason: *A requirement under the provisions of the Local Government Act 1993.*

19. Section 138 Roads Act 1993 Approval

Where works are proposed within the road reserve, the developer must obtain approval from Council (as the Roads Authority and/or as required under Section 138 of the *Roads Act 1993*) before any works are undertaken. Works within the road reserve may include activities such as erect a structure, dig up or disturb the surface of a public road, remove or interfere with a structure, or any other activities as defined within the *Roads Act 1993*.

The following details must be submitted to Council in order to obtain the Section 138 approval:

- A copy of approved design plans related to the development and proposed works to be undertaken.
- Traffic Control Plan (TCP) to provide protection for those within and adjacent to the work site, including the travelling and pedestrian public. The TCP must comply with the Roads and Traffic Authority's manual "Traffic Control at Work Sites". Warning and protective devices shall comply with the provisions of AS1742.3 - 2002 Traffic Control Devices for Works on Roads. The plan must be prepared and certified by a person holding the appropriate Roads and Traffic Authority accreditation, a copy of which is to be submitted with the plan.
- Insurance details - Public Liability Insurance to an amount of \$20 million, to be held by applicant / contractor undertaking the works.

Advice: *Where works are required within a Classified Road, the Developer must obtain the concurrence and / or the approval of the Roads and Maritime Services for engineering design plans, Traffic Control Plans and approvals under Section 138 of the Roads Act 1993.*

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Reason: *Statutory requirement.*

20. Fencing - Public Reserves/Drainage Reserves/Council Lands

The developer at their expense shall erect fencing to all public reserves, drainage reserves or Council owned land to ensure public safety. Details of fencing shall be submitted to Council for approval prior to issue of the Subdivision Works Certificate.

Reason: *Public safety.*

21. Structural Engineer's Details

Structural engineering plans are to be prepared by an experienced professional chartered practicing Structural Engineer for the following work shall be lodged with the Principal Certifying Authority and approved prior to commencing the works in accordance with a Subdivision Works Certificate:

- (a) retaining walls.

Advice: *The name, address and qualifications of the practising Structural Engineer certifying the design shall be clearly indicated on the plans and any accompanying documentation. Such engineer is to hold qualifications appropriate to the project as defined in the Building Code of Australia. The design shall relate to the particular site.*

Advice: *Any such Certificate is to set forth the extent to which the Engineer has relied on relevant Specifications, Rules, Codes of Practice or Publications in respect of the construction.*

Reason: *To ensure the structural integrity of the structure is achieved.*

22. Construction Management Plan

To undertake development works including demolition, earthworks and construction a Construction Management Plan (CMP) is required to be submitted and approved by Council prior to issue of the Subdivision Works Certificate. The CMP shall indicate measures to be implemented to protect the environment as well as public health, safety and convenience. The CMP must include the following:

- a) Details of site security;
- b) Off-street parking for employees, contractors and sub-contractors.
- c) Site access for construction vehicles and equipment purposes.
- d) Public safety in the use of roads and footpaths where development activities adjoin such facilities.

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- e) The storage and removal, on a regular frequency, of builder's rubble and waste by trade waste contractors.
 - f) Provision for loading and unloading materials;
 - g) Location of all building materials, structures, plant and equipment to be stored or placed within the construction site;
 - h) How materials are to be loaded/unloaded and potential impact on Council infrastructure (including but not limited to footpaths and street trees)
 - i) Public risk policies and management for all contractors' employees using or gaining access over public footpaths and roads.
 - j) External lighting and security alarms proposed for the construction site.
 - k) Firefighting measures to be available on site during development and construction.
 - l) Sanitary amenities proposed on site during development and construction.
 - m) Ensuring the safety of members of the public and Council staff who may have occasion to enter and be in attendance on the site;
 - n) Details of management of storm water run-off and the propose sediment and erosion control measures including the location of any rubble grids;
 - o) Details of any air and dust management;
 - p) Details of noise and vibration controls;
 - q) Anticipated staging and duration of works
 - r) Provision of Traffic Management Plan (TMP) and Traffic Control Plans (TMP)

Reason: *To ensure the safety, amenity and protection of public infrastructure and the environment.*

23. Provision of Works and Services

Prior to the issue of the Subdivision Works Certificate, the developer shall obtain approval for the works to be undertaken by submitting documentation including plans, standard notes and completed design checklists, calculations and specifications, to Council which demonstrates that the proposed works are compliant with Council's Engineering Plans and Specifications and other relevant standards.

Reason: *To ensure that the works are constructed in accordance with Council's Engineering Plans and Specifications and other relevant standards.*

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24. Stormwater - Control of Peak Discharge

Adequate and suitable infrastructure shall be provided to ensure the peak discharge from the site is no greater than the pre-developed peak discharge. This infrastructure shall be designed in accordance with Council's Engineering Policies. Calculations to demonstrate that the post-development peak discharge will not exceed the pre-development peak discharge shall be provided with the application for a Subdivision Works Certificate.

Any stormwater temporarily stored onsite shall be done in a manner that does not jeopardise public safety. In this regard the development shall provide a risk assessment with the Subdivision Works Certificate documentation.

Reason: *To ensure the peak discharge from the site is no greater than the pre-developed peak discharge.*

25. Detailed Stormwater Drainage System Design

Prior to the issue of the Subdivision Works Certificate, a detailed storm water hydraulic drainage plan for the disposal of storm water from the site, prepared in accordance with Council's Design Standards shall be submitted to Council and approved by Council's Development Engineer.

Should any changes be required to the approved storm water drainage plan, the amended design shall achieve equivalent performance standards in accordance with Design Specifications.

Note: *Subdivision Works Certificate Approval does not include approval for works external to the property or civil works.*

Where the proposed design extends beyond the property boundary, separate approval under Section 138 of the *Roads Act 1993*, must be obtained from Council prior to the commencement of works.

The applicant is advised to contact Council for clarification of proposed works for which approval under Section 138 of the *Roads Act 1993* applies.

Reason: *To ensure adequate storm water management.*

26. Street & Traffic Signs and Line Markings plan

The developer shall obtain approval for proposed street and traffic signs and line markings within the road reserve, by submitting plans detailing their type, location and orientation prior to the issue of the Subdivision Works Certificate.

The signs and line markings are to be installed in accordance with the Wingecarribee Shire Council Engineering Plans and Specifications, relevant Standards and approved Engineering Plans.

Reason: *To ensure compliance with Council Engineering Plans and Specifications,*

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and relevant Standards.

27. Tree Retention - Road Design and Construction

The proposed road design and construction shall preserve and retain existing vegetation within the road reserve. Any trees proposed to be removed within the road reserve must be approved by Council and are to be clearly identified by survey and shown on submitted Subdivision Works Certificate plans.

All trees shown on approved engineering plans as being retained are to be appropriately marked and protected during construction works.

Reason: *To ensure preservation of as many existing trees as possible.*

28. Water and Sewer Assets Identification and Location

The site plan as per the water or sewer engineering design shall include the detailed locations, materials, sizes and depths of any water mains or water services, rising mains private or Council owned, or sewer mains, manholes, sewer sidelines, sewer junctions and or boundary traps. The site plans that include these water and sewer assets are to be approved by the Council's Group Manager Planning, Development and Regulatory Services prior to the issue of the Subdivision Works Certificate.

Reason: *Ensure appropriate servicing of sewer and water reticulation.*

29. Energy Service Provider Requirements

The provision of underground electricity to service the development in accordance with the requirements of the Energy Service Provider. The Developer shall submit to Council documentary evidence from the Energy Service Provider qualifying that the requirements of that provider have been obtained. The requirements of the supply authority will need to be met prior to the issue of the Subdivision Certificate.

Reason: *To ensure appropriate infrastructure is provided to the development.*

30. Waste Management Plan

A Waste Management Plan shall be completed and submitted to Council for approval, prior to the issue of the Subdivision Works Certificate for the development.

Requirements of the approved Waste Management Plan shall be complied with during site preparation and throughout demolition and construction. Waste management and its storage must not pose a threat to public health or the environment.

Reason: *To minimise the amount of waste going to landfill.*

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31. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan shall be prepared in accordance with "Landcom's Blue Book" for sedimentation and erosion control plan by a suitably qualified person, and approved by Council prior to issue of the Subdivision Works Certificate.

The Erosion and Sediment Control Plan shall include scaled drawings and detailed specifications which can be referred to onsite by project management staff or project construction supervisor. Items to be shown on the Plan shall include:

- (a) Locality of the site, a north point and scale.
- (b) Existing contours of the site including catchment area boundaries and indications of direction of fall.
- (c) Location of and basic description of existing vegetation.
- (d) Diversion of uncontaminated up-slope run-off around the disturbed sites.
- (e) Location of significant natural areas requiring special planning or management including waters, floodplains, seasonally wet areas, areas prone to ponding/water logging, unstable slopes etc.
- (f) Nature and extent of earthworks, including cut and fill roadworks.
- (g) Location of all soil and material stockpiles.
- (h) Location of site access, proposed roads and other impervious areas.
- (i) Existing and proposed drainage patterns.
- (j) Location and type of proposed erosion and sediment control measures.
- (k) Site rehabilitation proposals, including final contours.
- (l) Time of placement of sediment controls.
- (m) Staging of works and how the plan is to be implemented for each stage or activity on site.
- (n) Maintenance schedule.

Reason: *To minimise soil erosion and sediment movement during construction.*

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32. Erosion and Sediment Control Plan

To minimise soil erosion and sediment movement during construction, the following measures shall be implemented:-

- (a) Erosion and sediment controls are to be in place before the disturbance of any soils on the site, and are to be maintained during the works and for as long as necessary after the completion to prevent sediment and dirty water leaving the site and/or entering the surface water system outside the worksite boundaries.
- (b) Topsoil stripped from the construction site shall be stockpiled and protected from erosion until re-use during landscaping. Soil is to be retained within the property.
- (c) Stockpiles of construction and landscaping materials, and of site debris shall be located clear of drainage lines and in such a position that they are protected from erosion and do not encroach upon any footpath, nature strip or roadway.
- (d) Final site spoil shall be disposed of to conform to the specifications and standards quoted and to any conditions of approval of those measures and must comply with any relevant NSW Department of Planning and Environment requirements.
- (e) Trenches shall be backfilled, capped with topsoil and compacted to a level at least 75mm above adjoining ground level.
- (f) Vehicular access shall be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where sediment is deposited on adjoining roadways the same shall be removed by means other than washing. All material is to be removed as soon as possible and the collected material is to be disposed of in a manner which will prevent its mobilisation.
- (g) All disturbed areas shall be progressively stabilised and/or revegetated so that no areas remain exposed to potential erosion damage for more than 14 days or such other period as may be approved after earthworks cease. All driveways and parking areas shall be stabilised with compacted sub-grade as soon as possible after their formation.

Reason: To minimise soil erosion and sediment movement during construction.

CONDITIONS TO BE SATISFIED PRIOR TO THE COMMENCEMENT OF WORK

33. Notice of Commencement

No work shall commence until a notice of commencement form has been submitted (form will be attached with issue of a Construction Certificate or Subdivision Works Certificate or available from Council's website), giving the PCA:

- (a) Not less than two (2) days' notice of the date on which it is proposed to commence work associated with this Development Consent;

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- (b) Details of the appointment of a Principal Certifying Authority (either Wingecarribee Council or another Accredited Certifier)
- (c) Details of the Principal Contractor or Owner Builder.
- Name
 - Builders Licence Number or Owner Builder Permit Number
 - Principal Contractor Company Name
 - Principal Contractor ABN
 - Address of Principal Contractor or Owner Builder
 - Email Address
- (d) Copy of the HBCF Insurance Certificate (if residential building works exceed \$20,000) or Owner Builder Permit;
- (e) Details demonstrating compliance with development consent conditions relevant prior to commencement of the development been satisfied.

Reason: *Statutory requirement.*

Advice: *Attached Notice of Commencement form to be completed.*

34. Subdivision Works Certificate & Appointment of Principal Certifying Authority

Subdivision work in accordance with a consent must not commence until:

- (a) A Subdivision Works Certificate has been issued.
- (b) The person having the benefit of the development consent has appointed the Principal Certifying Authority (PCA).
- (c) The PCA (if not Council) has, no later than two (2) days before the subdivision work commences, notified the Council (or other consent authority where applicable) of the PCA's appointment.
- (d) The person having the benefit of the consent has given at least two (2) days' notice to the Council of the person's intention to commence the subdivision work.

Advice: *Crown work certified in accordance with Part 6 of the Environmental Planning and Assessment Act 1979 is exempted from the above requirements.*

Reason: *Statutory requirement.*

35. Developers Representative during Construction of Works

A minimum of 48 hours prior to commencement of any construction works on site the Developer shall nominate to Council in writing their representative (Construction Supervisor)

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who will be responsible for all aspects of construction and site control, including Traffic Control, Sediment and Erosion Control and liaison with Council Officers and all other Authorities.

Details to be submitted include:-

- 1 Name of Representative:
- 2 Company:
- 3 Position:
- 4 Contact phone:
- 5 Contact fax:
- 6 After Hours Contact:
- 7 Signature of Representative:
- 8 Signature & Acceptance of representative by the Developer:
- 9 Council requires that the nominated " Construction Supervisor" either hold qualifications acceptable for Corporate Membership of the Institute of Engineers, Australia, or be Approved by the Director and/or has proven experience and suitable relevant qualifications for the control, supervision and management of civil engineering works as required for carrying land development.

Prior to commencing any works on site the representative shall:

- 10 Inform Council in writing of their intention 7 days before entering the site.
- 11 Submit to Council a proposed Schedule of Works.

The Developer may be required to arrange for Council to peruse all other contract documentation prior to the contractor arriving on site to commence work (Schedule of Works, Specifications Bill of Quantity, traffic control plan and Soil and water management plan).

Failure to comply with the requirements as set out above will result in an immediate stop work order.

Reason: *Statutory requirement.*

36. Inspection of Demolition Works

Council will require the following inspections of the site with the owner and demolition contractor present:

- (a) Prior to demolition works commencing (fencing must be erected and approved Waste Management Plan to be on site).
- (b) At the completion of demolition works (documents relating to disposal of hazardous waste are to be provided on site).

A minimum of twenty four (24) hours notice is required to be given to Council prior to these inspections.

Reason: *To ensure compliance with the consent.*

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37. Approval Required for Work within Road Reserve - Section 138 Roads Act 1993

Prior to any works being undertaken within the road reserve, the Developer must obtain approval from Council (as the Roads Authority and / or as required under Section 138 of the *Roads Act 1993*). Works within the road reserve may include activities such as erect a structure, dig up or disturb the surface of a public road, remove or interfere with a structure, or any other activities as defined within the *Roads Act 1993*.

The following details must be submitted to Council in order to obtain the Section 138 approval:

- A copy of the approved development plans and proposed works to be undertaken.
- Plans and adequate documentation which validate that the required works are in accordance with Councils Engineering Plans and Specifications and relevant standards.
- Traffic Control Plan (TCP) to provide protection for those within and adjacent to the work site, including the travelling and pedestrian public. The TCP must comply with the Roads and Traffic Authority's manual "Traffic Control at Work Sites". Warning and protective devices shall comply with the provisions of AS1742.3 - 2002 Traffic Control Devices for Works on Roads. The plan must be prepared and certified by a person holding the appropriate Roads and Traffic Authority accreditation, a copy of which is to be submitted with the plan.
- Insurance details - Public Liability Insurance to an amount of \$20 million, to be held by applicant / contractor undertaking the works.

Advice: *Where works are required within a Classified Road, the Developer must obtain the concurrence and / or the approval of the Roads and Traffic Authority for engineering design plans, Traffic Control Plans and approvals under Section 138 of the Roads Act 1993.*

Reason: *Statutory requirement.*

38. Relocation of Existing Services

Where existing services including drainage, sewerage and water may be required to be relocated as a result of the development, a plumber's permit is required from Council prior to commencing work. Inspection of these works by Council as the Water Supply Authority is required.

Reason: *Statutory requirement.*

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39. Fencing of the Construction Site

A temporary hoarding or temporary construction site fence must be erected between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works if the works:

- (a) could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
- (b) could cause damage to adjoining lands by falling objects, or
- (c) involve the enclosure of a public place or part of a public place.

Reason: To ensure that the safety of the public is not compromised.

40. Erosion and Sediment Control

Erosion and sediment control measures (as per the approved Erosion and Sediment Control Plan) shall be installed prior to the commencement of works.

Reason: To ensure that sediment does not leave the site as a result of the construction of the development.

41. Tree Clearing - Notice of Commencement

Where trees have been approved for removal in the development consent, Council shall be advised of the intended commencement date and time for these clearing works. Council staff will then inspect the site and will require the applicant and contractor/site supervisor to be present. No clearing works can commence until an approval is given. All trees specified as being retained on site on the approved plans are to be protected throughout construction activities in consultation with Council.

Reason: To appropriately manage the removal of approved trees.

CONDITIONS TO BE SATISFIED DURING THE CONSTRUCTION PHASE

42. Approved Plans to be available on site

Endorsed Council approved plans, specifications, documentation and the consent shall be made available on site at all times during construction.

Reason: To ensure compliance with approved plans.

43. Imported 'Waste-derived' Fill Material

The only waste derived fill material that may be received at the development site is:

- Virgin excavated natural material (VENM) within the meaning of the *Protection of the*

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- *Environment Operations Act 1997 (POEO); or*
Any other waste-derived material the subject of a resource recovery exemption under clauses 91 & 92 of the *Protection of the Environment Operations (Waste) Regulation 2014* that is permitted to be used as fill material

Note: *Any waste-derived fill material the subject of a resource recovery exemption received at the development site must be accompanied by documentation as to the material's compliance with the exemption conditions and must be provided to the Principal Certifying Authority.*

The application of waste-derived material to land is an activity that may require a licence under the *Protection of the Environment Operations Act 1997*. However, a licence is not required if the only material applied to land is virgin excavated natural material or waste-derived material that is the subject of a resource recovery exemption under clauses 91 & 92 of the *Protection of the Environment Operations (Waste) Regulation 2014*.

Resource recovery exemptions are available on the NSW EPA website at <http://www.epa.nsw.gov.au/waste/>.

Reason: *To ensure that imported fill is of an acceptable standard for environmental protection purposes.*

44. Demolition Requirements

The existing structures shall be demolished in accordance with the requirements of AS2601-2001 "The Demolition of Structures".

Amongst others, precautions to be taken shall include compliance with the requirements of the SafeWork NSW and Council's Water and Sewer Asset Protection, including:-

- (a) Protection of site workers and the general public.
- (b) Erection of hoardings where appropriate.
- (c) Asbestos removal handling and disposal where applicable by licensed contractors.
- (d) Ensuring only licensed demolition contractors are used as required pursuant to Occupational Health and Safety Legislation.
- (e) Appropriate precautions are taken in regard to lead based paints.
- (f) Water and Sewer Asset Protection

All water and sewer assets on the site or on adjacent road reserve or lands that may be affected by the demolition works are to be clearly identified on site and protected from damage. Those water and sewer protection measures are to be shown on the site plan and are to be approved by Council's Water and Sewer Planning and Development Engineer before any demolition works can commence.

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(g) Sewer Assets Temporary Disconnection or Closure

The site sanitary drainage is to be temporarily disconnected or closed off by a suitably qualified Plumber from any of Council's sewer sidelines, sewer junctions and or boundary traps that are to be retained and reused to prevent ingress contaminants into Council's sewer mains. This work shall be sited and approved by Council's Water and Sewer Development Engineer before demolition works can commence.

(h) Removal of Redundant Council Sewer Assets and Water Services

The site sanitary drainage is to be temporarily disconnected or closed off by a suitably qualified Plumber from any of Council's sewer sidelines, sewer junctions and or boundary traps that are to be disconnected by Council to prevent ingress of contaminants into Council's sewer mains. This work shall be sited and approved by Council's Water and Sewer Development Engineer before demolition works can commence.

Make application and pay fees for the removal of redundant sewer assets and or water services. These fees shall be paid before any demolition works can commence.

Redundant water meter shall not be removed to allow for final readings and removal by Council staff.

(i) Temporary Use of Council Sewer Junctions and Water Services

During demolition or building works Council may permit temporary use of sewer junctions and water services. Details of the proposed use shall be shown on the site plan and are to be approved by the Water and Sewer Planning and Development Engineer before any demolition works can commence.

Water services that are to be temporarily retained shall not have the water meter disconnected or removed. An approved backflow prevention device shall be installed. Details shall be shown on the site plan and are to be approved by the Water and Sewer Planning and Development Engineer before any demolition works can commence.

The disposal of refuse is to occur at an approved location. Council will require documentary proof of destination for hazardous materials such as asbestos and contaminated soils and may request evidence on disposal of other demolition materials - refer approved Waste Management Plan.

Reason: *To comply with statutory requirements.*

45. Engineering Inspections by Council

24 hours prior to the covering of the following works, Council shall be notified by the licensed builder, owner builder or licensed plumber/drainier that the following works are ready for inspection:

- (a) Stormwater drains. (Note Council only inspects stormwater drains for residential outbuildings, detached single dwellings and additions thereto. Internal stormwater

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drainage for medium density residential, commercial and industrial developments will need to be inspected and certified by the developer's Hydraulic Consultant. Any drainage works on Council property must be inspected by Council).

- (b) Sewer / water main extensions (Technical Services).
- (c) Final inspection of water plumbing, sanitary drainage and stormwater drainage.
- (d) Works in relation to road reserves, footpath, kerb and gutter, road shoulder and drainage within public lands or road reserves.
- (e) Final inspection of footpath, driveway, stormwater and utility construction works within the road reserve.

Note: *The subject building is not to be occupied until an Interim or Final Occupation Certificate is issued.*

Note: *An accredited certifier may not be substituted for Council in respect of these inspections, as Council remains the sole responsible authority for these matters.*

Reason: *Statutory requirement.*

46. Stormwater - Construction

The applicant shall provide adequate storm water drainage infrastructure (pits/pipes/open channels/detention storage) for the conveyance of storm water passing through the site from upstream, and sourced from the development to a discharge outlet to be approved by Council. The point of discharge shall be clearly depicted and the legal right to discharge at that point to be justified. Status of the point of discharge is to be made clear (i.e. provision of drainage easements).

Reason: *To assist in the prevention of erosion of the site from storm water.*

47. Stormwater - Discharge

All stormwater runoff from the development shall be collected within the property and discharged to an approved stormwater management system.

Reason: *To ensure that stormwater is appropriately disposed of.*

48. Earthworks, retaining walls and structural support

Any earthworks (including any structural support or other related structure for the purposes of the development):

- (a) must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot, and

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- (b) must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property, and
- (c) that is fill brought to the site-must contain only virgin excavated natural material (VENM) as defined in Part 3 of Schedule 1 to the *Protection of the Environment Operations Act 1997*, and
- (d) that is excavated soil to be removed from the site-must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) Regulation 2005*.

Any excavation must be carried out in accordance with Excavation Work: Code of Practice (ISBN 978-0-642-785442), published in October 2013 by Safe Work Australia.

Reason: *Structural safety.*

49. Erosion and Sediment Control Plan Compliance

All site works shall be carried out in accordance with the approved Erosion and Sediment Control Plan. Implementation of the Erosion and Sediment Control Plan shall be supervised by personnel with appropriate qualification and experience in erosion and sediment control.

Note: *In the event of non-compliance with the approved plan, Council Officers have the ability to issue Penalty Notices, being an on the spot fine and/ or orders.*

Reason: *To ensure that the environment is protected.*

50. Soil and Water Management - Site Maintenance

Roads servicing the construction site shall be maintained in a condition free of mud, soil and other construction/demolition materials at all times.

Reason: *To minimise construction / demolition materials being trucked off site.*

51. Burning and Burying of Waste

No materials or rubbish resulting from the land clearing, demolition and building works shall be burnt or buried on the site. All waste materials shall be disposed of to a facility authorised and licensed to accept such waste.

Reason: *Health and amenity.*

52. Prevention of Nuisance

All possible and practical steps shall be taken to prevent nuisance to the inhabitants of the surrounding neighbourhood from windblown dust, debris and noise during the demolition, excavation and building works.

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Reason: *Health and amenity.*

53. Noise & Vibration

The construction of the development and preparation of the site, including operation of vehicles, shall be conducted so as to avoid unreasonable noise or vibration and cause no interference to adjoining or nearby occupations. Special precautions shall be taken to avoid nuisance in neighbouring residential areas, particularly from machinery, vehicles, warning sirens, public address systems and the like.

In the event of a noise or vibration problem arising, the person in charge of the premises shall, when instructed by an authorised officer of Council or the Accredited Certifier, cease work and carry out an acoustical survey and/or investigation by an appropriately qualified acoustical engineer or qualified and experienced professional consultant and submit the results to Council. The person in charge of the site shall implement any or all of the recommendations of the consultant and any additional requirements of Council. Any requirements of Council in this regard must be complied with immediately.

Reason: *Safety and amenity.*

54. Noise and Vibration Adjacent to Rail Corridors

All acoustic treatments for the proposed subdivision nominated in section 4.1 of the Acoustic Report for a Sub-Division Development Application – 21 Ferguson Crescent Mittagong prepared by Sebastian Giglio Acoustic Consultant (Ref: 2892/D01; dated 7/5/18) shall be implemented. After the completion of the subdivision works and prior to the issue of the Subdivision Certificate, the developer shall submit to Council a report from a suitably qualified professional verifying that the acoustic treatments as completed meet the Acoustic Report recommendations.

Reason: *To prevent loss of amenity to the area.*

55. Dust Control

Major Works

The following measures must be taken to control the emission of dust on site:

- (a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work.
- (b) All dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the stormwater system.
- (c) All stockpiles of materials that are likely to generate dust must be kept damp or covered.

Reason: *Environmental amenity*

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56. Vegetation Management

A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation without the prior consent of Council (unless considered exempt development).

Any vegetation removed with Council consent and any other vegetation cleared in association of the approved development shall be disposed of in accordance with the approved Waste Management Plan.

For minor development, vegetation shall be either mulched for reuse on site or transported to an approved waste/recycling facility.

Reason: *To ensure compliance with State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 by preserving the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.*

Note: *Failure to comply with this condition may result in prosecution by Council.*

Note: *No vegetation shall be burnt except with an approval issued by Council pursuant to the Protection of the Environment Operations (Clean Air) Regulation 2010. Failure to comply may result in a penalty of up to \$500 for an individual or up to \$1,000 for a corporation.*

Advice: *Tree removal should be carried out by a competent person to avoid any risk to life or damage to property. This person should have adequate public liability insurance cover.*

57. Council Reserve / Street Tree Retention

All trees in Council's road reserve are to be preserved except where removal is separately approved by Council via a tree preservation order permit or development application, to ensure the continued amenity of the streetscape and to retain the ecological integrity of the roadside area.

Advice: *Reference should be made to Council's Urban Street Tree Master Plan.*

Reason: *To ensure the continued amenity of the streetscape and to retain the ecological integrity of the roadside area.*

58. Tree Removal/Tree Preservation

No trees shall be pruned, removed, damaged or destroyed without the prior written consent of Council. Failure to comply with this requirement will result in prosecution by Council in accordance with the provisions of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

Advice: *Tree removal should be carried out by a level 3 and above professional*

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arborist to avoid any risk to life or damage to property. This person should have adequate public liability insurance cover.

Reason: *To comply with the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.*

59. Protection of Fauna

Prior to the removal of any Hollow Bearing Tree (HBT), the following matters MUST be addressed:

- a) Ensure that a suitably qualified and licensed Ecologist (who is vaccinated for Australian Bat Lyssavirus) is engaged to supervise the removal of the HBTs in order to rescue or relocate any fauna displaced during the clearing process.
- b) Check for fauna in the zone of disturbance before clearing and scare off or remove them before commencing clearing works.
- c) Remove any non-HBTs prior to the removal of the HBTs.
- d) Leave HBTs standing for at least one night after other non-HBT clearing to allow any fauna the opportunity to remove themselves after site disturbance.
- e) After clearing, re-check the site to ensure no fauna have become trapped or injured during clearing operations. Any fauna found should be moved to adjacent habitat.
- f) Before felling the HBTs, tap trunk using heavy machinery to scare fauna from the hollows. Repeat several times. The aim is to 'substantially' shake the tree and encourage fauna to exit.
- g) Carefully fell the HBT by gently lowering the tree to the ground using an excavator arm fitted with grapples. Alternatively, arrange for qualified tree surgeons to fell the HBT using chainsaws and pulleys.
- h) After felling the tree, thoroughly check the tree for fauna in the case that any have become trapped or injured during clearing operations. Any fauna should be safely moved into adjacent habitat.
- i) If taking the tree down in stages, the non-hollow bearing branches should be removed before the hollow bearing branches are removed.
- j) Fell trees into the already disturbed areas to avoid damaging adjacent vegetation.
- k) Take care when moving equipment near vegetation to be retained.
- l) Logs from felled trees should be distributed into areas of vegetation so that they can continue to provide habitat for fauna such as terrestrial reptiles and mammals.
- m) Relocate woody debris to areas where they will not contribute a fire hazard.

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- n) Provide written evidence to Council in order to document that a suitably qualified person was engaged for the specific tasks listed above.

Reason: *To ensure that the removal is undertaken in an environmentally responsible manner.*

60. Approved hours of Construction/Demolition

Construction/demolition activities shall be limited to the following hours:

DAY	HOURS
Monday to Saturday	7:00am to 5:00pm
Sunday	Nil
Public Holidays	Nil

Reason: *To ensure that the amenity of the surrounding area is not compromised as a result of the construction of the proposal.*

Note: *Any variation to these hours shall require Council consent via the lodgment of an application under section 4.55 of the Environmental Planning and Assessment Act 1979.*

61. Construction Management Plan

All development activities and traffic movements shall be carried out in accordance with the approved Construction Management Plan.

All controls in the Plan shall be maintained at all times. A copy of the Plan must be kept on site at all times and made available to the Accredited Certifier and Council on request.

Reason: *Compliance with condition of consent.*

62. Maintenance of the site

All materials and equipment shall be stored wholly within the work site.

Waste materials (including excavation, demolition and construction waste materials) shall be managed on the site and then disposed of at a waste management facility.

Any run-off and erosion control measures required shall be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.

During construction:

- (a) all vehicles entering or leaving the site shall have their loads covered, and

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- (b) all vehicles, before leaving the site, shall be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.

At the completion of the works, the work site shall be left clear of waste and debris.

Reason: Environmental amenity.

63. Protection of Public Places

The adjoining or adjacent public area shall not be obstructed by any materials, vehicles, refuse skips and the like, under any circumstances.

If the work involved in the demolition or construction of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or building involves the closure of a public place, a barrier, fence or hoarding shall be erected prior to the commencement of any work subject to approval of a Section 138 Roads Act 1993 approval (including submission of a Traffic Management Plan).

Where a hoarding is required, an application for hoarding shall also be submitted to and approved by Council prior to commencement of any work. Hoardings shall be erected to comply with the requirements of WorkCover, the Principal Certifying Authority and with relevant Australian Standards.

Reason: Public safety.

64. Protection of Highlander Street

The Highlander Street shall not be obstructed by any materials, vehicles, refuse skips and the like, under any circumstances. No access is permitted from Highlander Street to construction site.

Reason: Public safety.

65. Temporary Onsite Toilet

Toilet facilities shall be available or provided at the work site prior to the commencement of works and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Each toilet shall:

- (a) be a standard flushing toilet connected to a public sewer, or
- (b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- (c) be a temporary chemical closet approved under the *Local Government Act 1993*.

Reason: To ensure that there are appropriate facilities on-site for construction

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workers.

66. Waste Management

The provision of a metal waste skip with self-closing lid or secure covering on-site for the duration of the construction to ensure that all wastes are contained on the site. The receptacle shall be emptied periodically to reduce the potential for rubbish to leave the site.

Sorting of waste materials shall occur on site in accordance with the approved Waste Management Plan.

Reason: *To ensure that all wastes generated from the construction of the development are contained on the site.*

67. Street Trees

Prior to the issue of the Subdivision Certificate, street trees shall be planted at a rate of two (2) per lot.

Additional twenty (20) trees to be planted along Highlander Street with the pot size of 45 litres.

Tree species to be considered from Council's Urban Street Tree Masterplan.

Reason: *To ensure that the landscaping is completed prior to occupation.*

68. Final Arborist Report

The arborist engaged to ensure the proper protection and management of the tree required to be retained is to provide a final report to Council prior to the issue an Subdivision Certificate, concerning the health and condition of the tree and if necessary any remedial works required. Any remedial works required shall be carried out and completed prior to the issuing of the Subdivision Certificate, and included in the final report. The report shall also provide documentary evidence in the form of site notes and photographs that the tree protection conditions were complied with throughout all construction phases and any approved pruning works, root pruning, and remedial works were carried out as per AS4973 and AS4970. If Council **is not** the PCA, a copy of the certification is to be provided to Council with the lodgement of the Subdivision Certificate.

Reason: *To ensure the proper protection and management of any trees required to be retained.*

69. Landscape Certification

Certification is to be provided to the Principal Certifying Authority (PCA) from the designer of the landscape plan that all tree planting/landscape works have been carried out in accordance with the Council endorsed landscape plan. If Council **is** the PCA, the certification is to be submitted to Council prior to or at the final landscape inspection. If Council **is not** the PCA, a copy of the certification is to be provided to Council with the lodgement of the

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Subdivision Certificate.

Reason: *To ensure that the landscaping has been carried out in accordance with the Council endorsed landscape plan.*

70. Noxious Weeds

Prior to the issue of the Subdivision Certificate, the applicant shall submit a noxious weeds application for approval to Council. The applicant shall demonstrate to Council that:

- There are no noxious weeds (as defined by the *Noxious Weeds Act 1993*) on the land; or that
- Action has been taken to control any such noxious weeds.

Reason: *To ensure that the land is free of noxious weeds.*

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

71. Section 7.11 Contributions (formerly Section 94)

Under Section 7.11 of the *Environmental Planning and Assessment Act 1979* (as amended), Council has satisfactorily determined that Development Contributions are applicable to this development consent, as the development is likely to require the provision of, or increase the demand for, public amenities and public services within the Wingecarribee Local Government Area.

The following Wingecarribee Shire Council Section 7.11 Developer Contributions Plans are applicable to the development:

- Roads & Traffic Management Facilities
- Resource Recovery Centre 2009
- Central Library Facility
- Section 7.11 Administration 2011 to 2031
- Open Space & Recreation Facilities

A "Developer Charges - Notice of Payment" is attached to the back of this consent, and outlines monetary contributions and unit rates applicable at the time of issue of this consent. The contributions listed in the Notice of Payment must be paid prior to the issue of the Construction Certificate.

All contributions are indexed quarterly in accordance with upward movements in the Consumer Price Index (All Groups, Sydney) as published by the Australian Bureau of Statistics (www.abs.gov.au <<http://www.abs.gov.au>>); Section 25I of the *Environmental Planning and Assessment Regulation 2000*; and Council's Developer Contributions Plans.

Note: *Copies of the Contributions Plans are available at Wingecarribee Shire Council's Administration building Moss Vale or are available for download*

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from Council's website www.wsc.nsw.gov.au <<http://www.wsc.nsw.gov.au>>

Note: *Payment of the attached contributions is to be by BANK CHEQUE OR CASH and is to be accompanied by the attached sheet entitled "Notice of Payment - Developer Charges & Section 7.11". Should the Applicant pay by personal or company cheque the plans subject to this approval will not be available for collection until such time as the cheque has been honoured (i.e. a minimum of 10 days).*

Reason: *To retain a level of service for the existing population and to provide the same level of service to the population resulting from new developments.*

72. Water Management Act - Certificate of Compliance

A Certificate of Compliance under Division 5 of Part 2 of Chapter 6 of the *Water Management Act 2000* shall be obtained **prior to the issue of Subdivision Certificate**.

Note: *Section 64 of the Local Government Act 1993 authorises Council to issue Certificates of Compliance under Section 306 of the Water Management Act 2000. Section 64 of the Local Government Act 1993 also authorises Council to impose pre-conditions to the issuing of Certificates of Compliance.*

As a precondition to the issuing of a Certificate of Compliance Council requires the payment of Developer Charges **prior to the issue of Subdivision Certificate** as prescribed by Wingecarribee Shire Council's Development Servicing Plans:

- Water Supply Development Servicing Plan;
- Sewerage Development Servicing Plan; and
- Stormwater Development Servicing Plan.

A developer Charges - Notice of Payment is attached to the back of this consent and outlines monetary contributions and unit rates applicable at the time of issue of this consent.

The water, sewer and stormwater headworks levies are indexed quarterly in accordance with upward movements in the Consumer Price Index (All Groups, Sydney) as published by the Australian Bureau of Statistics (www.abs.gov.au <<http://www.abs.gov.au>>); and Council's Development Servicing Plans.

Copies of Development Servicing Plans are available at Wingecarribee Shire Council's Administration building Moss Vale or are available for download from Council's website www.wsc.nsw.gov.au <<http://www.wsc.nsw.gov.au>>.

The Water and Sewerage Development Servicing Plans (DSP's) were adopted by Council and came into effect on 15 September 2017. The Stormwater DSP was adopted on 9 November 2010 and came into effect on 8 December 2010. The current charges under these Plans are listed as follows:

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CPI Period	Water DSP	Sewer DSP	Stormwater DSP
01/02/2020 – 30/04/2020	\$223,842.36	\$217007.16	\$5277.18
<p>Note: The charges shown above are amounts applicable during the stated time period. These amounts will be subject to adjustment quarterly in accordance with upward movements in the Consumer Price Index (CPI) once they become operational. The CPI is published quarterly by the Australian Bureau of Statistics, www.abs.gov.au <http://www.abs.gov.au>.</p>			

Should new DSP's be prepared, it is possible that the charges may increase significantly. Draft DSP's must be advertised by Council for a period of 30 days prior to adoption.

Note: *Payment of the above charges is to be by BANK CHEQUE OR CASH and is to be accompanied by the attached sheet entitled "Notice of Payment - Developer Charges & Section 7.11". Should the Applicant pay by personal or company cheque the plans subject to this approval will not be available for collection until such time as the cheque has been honoured (i.e., a minimum of 10 days).*

Compliance Certificate

Compliance Certificate fees, in accordance with Council's Revenue Policy are as follows and shall be paid prior to the issue of **Subdivision** Certificate:-

Water \$250.00 + Sewer \$250.00 + Stormwater \$250.00 = \$750.00

Prior to final release, you will need to contact Council's Infrastructure Services Division for an inspection to ensure that Council will accept the infrastructure constructed. In response the Manager of Water and Sewer will specify requirements which will have to be met.

In the case of subdivision, the title plan of subdivision will not be certified and released by Council until the *Water Management Act 2000* charges have been paid and/or secured and the approval of Council has been obtained for all works related to this infrastructure. In the case of other forms of development, the Construction Certificate will not be issued until the *Water Management Act 2000* charges have been paid and/or secured and the approval of Council has been obtained.

Reason: *To retain a level of service for the existing population and to provide the same level of service to the population resulting from new developments.*

73. Subdivision Certificate

An application for a Subdivision Certificate shall be lodged with Council or an Accredited Certifier (in accordance with Section 6.15 of the *Environmental Planning and Assessment Act 1979*) for approval to enable the subdivision plans to be submitted to and registered with NSW Land Registry Services. Should the Subdivision Certificate application be lodged with Council, a final plan of subdivision and 3 copies shall be included with the application.

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All works specified in Council's development consent and approved Subdivision Works Certificate plans shall be completed and all development consent conditions complied with prior to issue of the Subdivision Certificate.

The application for a Subdivision Certificate is to be accompanied by supporting documentation outlining how each condition of consent has been complied with.

Reason: *To comply with the provisions of the Environmental Planning and Assessment Act 1979.*

Note: *The applicant is to ensure that works associated with the Section 138 (Roads Act) approval and Section 68 (Local Government Act) approval are completed and inspected by Council.*

74. Section 138 Roads Act Final

The applicant is to ensure that the works associated with the Section 138 approval for this development be completed and inspected by Council prior to the issue of the Subdivision Certificate.

Reason: *To ensure that the development is completed as per this consent and the approved plans.*

75. Section 68 Local Government Act Final

The applicant is to ensure that the works associated with the Section 68 approval for this development be completed and inspected by Council prior to the issue of the Subdivision Certificate.

Reason: *To ensure that the development is completed as per this consent and the approved plans.*

76. Council Property

The applicant shall rectify any damage to Council property (including footpaths, road furniture, landscaping/trees, drainage, water, sewer, kerb and gutter, road pavement and the like) as a result of the development, prior to the issue of the Subdivision Certificate at no cost to Council.

Reason: *To ensure that Councils assets are protected.*

77. Dedication of Right of Carriageway / Easements

The creation or obtaining by the Applicant of the following **right of carriageway** at the Applicant's expense prior to the issue of the Subdivision Certificate.

- (a) Right of carriageway a minimum of 3 metres wide over Lot 23 in favour of Wingecarribee Shire Council.

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Reason: *To protect infrastructure.*

78. Section 88B Instrument - Various

The original plans of subdivision shall be accompanied by a Section 88B Instrument under the *Conveyancing Act 1919*, which requires:

- (a) Fencing shall be restricted to post and wire / post and rail fencing with hedging so as to respect the character of the locality.
- (b) Dwellings/buildings to be sited so as to minimise tree removal.
- (c) New dwelling houses to include on site stormwater detention tank to the satisfaction of and in consultation with Council.
- (d) In perpetuity the entire development area shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- (e) Lots 1, 2, 3, 18, 19, 20, 21, 27, 28, 29, 30, 31, 32, and 33 should have external building envelope construction equal to the following:
 - Habitable rooms on south, east and western facades to be fitted with minimum 6.38mm laminated glass, or other glazing with sound insulation Rw 32 and Rw+Ctr 30.
 - Habitable rooms on south, east and western facades to be fitted with alternative ventilation.
 - Habitable rooms on south, east and western facades to be fitted with two layers of minimum 13mm plasterboard to the ceiling. In addition, these rooms should have minimum R3.5 insulation batts in the roof space.
 - Habitable rooms on south, east and western facades to be constructed with external walls from insulated brick veneer construction (minimum R2.0 insulation batts).

Full details, including draft Section 88B Instrument, shall be submitted for the approval of Council with the application for a Subdivision Certificate.

Reason: *To ensure compliance with Council policy positions.*

79. Access by Right of Carriageway

The applicant shall submit to Council for approval the draft Section 88B Instrument under the *Conveyancing Act 1919* for the approved subdivision prior to issue of the Subdivision Certificate.

The Instrument shall include:

- Provision for on-going management/maintenance of the carriageway including clear

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- details of obligations/responsibilities of the affected parties.
Effective (legal) provision for access by all emergency and other essential service organisations over the private carriageway.

Reason: *To comply with Councils engineering requirements.*

80. Provision of Public Lighting

The applicant shall provide public lighting in accordance with the requirements of Council Development Engineering Standards and relevant Australian Standards for street lighting to:

- a) subdivision roads
- b) along Ferguson Crescent on the frontage to the subdivision

prior to the issue of the Subdivision Certificate.

Reason: *To ensure appropriate street lighting is provided.*

81. Energy Service Provider Requirements

The provision of underground electricity to service the development in accordance with the requirements of the Energy Service Provider. The Developer shall submit to Council documentary evidence from the Energy Service Provider qualifying that the requirements of that provider have been obtained in the form of a Notification of Arrangement (NOA). The requirements of the supply authority will need to be met prior to the issue of the Subdivision Certificate.

Reason: *To ensure appropriate infrastructure is provided to the development.*

82. Engineering Details in DXF Format

The Developer shall provide a copy of the Work As Executed information on disk in DXF format prior to the issue of the Subdivision Certificate. The developer may contact Council's GIS Officer for further details and technical specifications.

Reason *To ensure appropriate records are held and asset management.*

Note: *The successful handover of constructed assets to Council resulting from new developments must be accompanied by the work as executed (WAE) documents specified on the Council Website: <http://www.wsc.nsw.gov.au/engineering-standards>.*

Failure to provide completed documents in this format will result in a delay in the issue of the Subdivision Certificate and retention of bonds held until such time as Council have deemed the WAE information to be complete in the required format. The standards are updated as required; please ensure you are using the correct version. Please note the work as executed information requirements include providing surveyed levels for all underground assets. WAE

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Information submitted must be checked and signed off by a Registered Surveyor or suitably qualified Engineer.

83. Stormwater CCTV

The contractor is to provide CCTV footage as a single video file with accompanying inspection report of all stormwater pipes/culverts that is free of any defect, with the application for the Subdivision Certificate.

Reason *To ensure Council receives all new assets without any defect.*

84. Asset Management

The developer shall provide a detailed summary of the Assets that will be handed to Council at the end of the maintenance period prior to the issue of the Subdivision Certificate. The details shall be provided in a tabular form so as to allow Council to update its Assets register.

The assets to be identified include:

- Roadways
- Stormwater
- Sewer
- Water

Reason: *To ensure appropriate asset management.*

85. Maintenance and Bond for Public Assets - Civil Works

The developer shall at their own expense maintain all civil works constructed by them and which will fall into Councils care with respect to the development for a period of 12 months after the date of issue of the Subdivision Certificate. Prior to the issue of the Subdivision Certificate the Developer shall lodge a cash bond with regard to maintenance of the public assets constructed in an amount equal to 5% of the total engineering works with a minimum bond value of \$1,000. The bond shall be assessed by Council for release after the 12 month period on request by the developer.

Reason: *To ensure appropriate warranty periods apply for defect liability.*

86. Provision of Services

A separate access, sewer connection, storm water drainage connection, water service and electricity supply shall be provided to each allotment within the subdivision at the applicants expense prior to the issue of the Subdivision Certificate.

All property services shall be located within the lots that they serve in accordance with Councils Engineering Standards. The applicant shall provide to Council written confirmation of compliance.

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Reason: *To ensure that all available services are provided to each lot within the subdivision.*

87. Certification of Internal Civil Works

On completion of works and prior to issue of the Subdivision Certificate, certification from a practicing appropriately qualified engineer shall be submitted to Council detailing that all internal civil works (i.e. internal driveways, paths and stormwater drainage system including any onsite detention) are in accordance with approved plans and specifications.

Reason: *To comply with Councils requirements.*

88. Construction of Kerb & Gutter and Drainage

Concrete kerb and gutter and associated drainage system in Ferguson Crescent and subdivision roads on the frontage to the development for the adequate discharge of storm water shall be constructed prior to the issue of the Subdivision Certificate.

Reason: *To ensure that storm water is appropriately managed.*

89. Inter-allotment Drainage for Upstream/Adjoining Property

Inter-allotment drainage shall be provided for all lots that do not drain natural to a public system (road, watercourse etc.) prior to the issue of the Subdivision Certificate. All inter-allotment drainage system (pipes, pits, etc.) shall be contained within a suitable easement to drain water a minimum of 2 metres wide.

Reason: *To control stormwater flows.*

90. Detention Systems

Any open drainage system which is designed to reduce peak flows shall be designed in accordance with the requirements of the current edition of the Australian Rainfall & Runoff. All batters shall be in accordance with Council's Engineering Standards to facilitate maintenance and provide a safe environment.

Reason: *To control storm water flows.*

91. Stormwater Facilities Alterations

A "Restriction as to User" shall be included on the plan of subdivision and title of the proposed development to prevent any change in shape or alteration in structure of the proposed storm water facilities after the final approval of the structure has been given by Council. Details shall be provided for the approval of Council prior to the issue of the Subdivision Certificate.

Reason: *To provide appropriate storm water management.*

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Lot 3 DP 1099047
Lot 4 DP 1099047

92. Storm water Facilities Maintenance

A "Positive Covenant" shall be included on the plan of subdivision and title of the proposed development and requiring that the proposed storm water facilities be maintained in a safe and functional manner. In addition, the Section 88B Instrument (*Conveyancing Act 1919*) shall make provision for Council to conduct maintenance on the subject storm water facilities at the owner's expense if the storm water facilities are not maintained to the agreed standard. Details shall be provided for the approval of Council prior to issue of the Subdivision Certificate.

Reason: To provide appropriate storm water management.

93. Permanent Road Survey Marks

Permanent road survey marks shall be provided to the satisfaction of the Group Manager Planning, Development and Regulatory Services prior to the issue of the Subdivision Certificate.

Reason: Engineering Requirements.

94. Street Name Signs and Posts

Street signage shall be provided prior to the issue of the Subdivision Certificate:

- a) 150mm Street signage and post shall be provided prior to the issue of the Subdivision Certificate in accordance with Council's Engineering Standard Drawings and Specifications.

Reason: To comply with Councils requirements.

95. Driveways and Parking

The driveway to the drainage reserve shall be constructed a minimum 3.0m wide with an all-weather surface of asphaltic concrete prior to the issue of the Subdivision Certificate

Reason: To provide appropriate access to the site.

96. Construction of Footpath in Footway on Frontage

Concrete Footpath a minimum of 1.2 metres wide in footway on the frontage to the Subdivision in Ferguson Crescent shall be provided prior to the issue of the Subdivision Certificate. The remainder of the footway is to be regraded and grassed.

Reason: To provide pedestrian access to the development.

97. Construction of Footpath in Subdivision

Concrete paving a minimum of 1.2 metres wide on one side of road reserve within the footway of the subdivision roads shall be provided prior to the issue of the Subdivision

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Certificate. Footpath shall be constructed in accordance with Standard Drawing No SD118. Kerb ramps where required are to be constructed in accordance with Standard Drawing No SD111.

Reason: *To provide pedestrian access to the development.*

98. Construction of Footway Crossing

Residential vehicular footway crossings in accordance with Standard Drawing Nos SD107 and SD123, for access to each lot shall be constructed prior to the issue of the Subdivision Certificate.

Reason: *To ensure appropriate access to the site.*

99. Construction of Road

All road pavement construction shall be in accordance with Council's Engineering Standard and to the satisfaction of the Group Manager Planning, Development and Regulatory Services, prior to the issue of the Subdivision Certificate.

Note: *Where the subdivision is staged and required roadworks are incomplete, Council may require the construction of temporary cul-de-sacs or turning facilities for large vehicles such as garbage trucks. These works are to be constructed to the requirements of Council.*

Reason: *To ensure that adequate access is provided.*

100. Provision of Reticulated Sewer to Each Lot

Reticulated sewer service shall be constructed to each allotment in accordance with the approved civil engineering plans prior to the issue of the Subdivision Certificate.

Sewerage mains shall be constructed to serve the development.

Reason: *To ensure that the development is serviced.*

101. Construction of Water Mains to Lots

A reticulated water service shall be constructed to each allotment in accordance with the approved civil engineering plans prior to the issue of the Subdivision Certificate.

Reason: *To ensure that the development is serviced.*

102. Construction of Water Service

A water service shall be installed to each lot in the subdivision prior to the issue of the Subdivision Certificate.

Council's application form shall be completed by the Developer and the appropriate fee paid.

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Reason: *To ensure that the development is serviced.*

INTEGRATED DEVELOPMENT CONDITIONS

103. General Terms of Approval - NSW Rural Fire Service

General Terms of Approval have been granted by the NSW Rural Fire Service for the development pursuant to section 100B of the *Rural Fires Act 1997*. The conditions provided by the NSW Rural Fire Service are provided below and forms part of this Notice of Determination.

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. At the issue of subdivision certificate and in perpetuity the entire development area shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. Water, electricity and gas are to comply with reticulated provisions within section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

3. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

The intent of measures for property access is to provide safe access to/from the public road system for fire fighters providing property protection during a bush fire and for occupants faced with evacuation. To achieve this, the following conditions shall apply:

4. Property access roads shall comply with section 4.1.3 (2) of 'Planning for Bush Fire Protection 2006'.

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Lot 4 DP 1099047

General Advice - consent authority to note

This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' must be subject to separate application under section 4.14 of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006' or 'Planning for Bush Fire Protection 2018' (whichever is applicable at that time).

CONCURRENCE CONDITIONS

104. **Concurrence - Water NSW**
Modified Application 19/0922.05 dated 25 February 2021 to read:

Concurrence has been granted by Water NSW for the development pursuant to *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*. The conditions provided by Water NSW are provided below and forms part of this Notice of Determination.

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Lot 2 DP 1099047
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Lot 4 DP 1099047



PO Box 398, Parramatta NSW 2124
Level 14, 183 Macquarie Street
Parramatta NSW 2150
WWW.WATERNSW.COM.AU
APR 21 14:23:04 2017

Water NSW's Concurrence Conditions

DA No 19/0922.05; Lot A DP 430831, Lots 10, 14, 17 Section 1 DP 651, Lots 1-4 DP 1099047, Lots 1-3 DP 1089997; 21 Ferguson Crescent, Mittagong

General

1. The lot layout and works of the subdivision shall be as specified in the Statement of Environmental Effects prepared by Urbanesque Planning Town Planning Consultants (dated 8 November 2018) and shown on the Proposed Plan of Subdivision (Dwg No. 170509, Sheet No. A3, Issue D, dated 10/10/19) prepared by Australian Survey Solutions. No revisions to lot layout or works or staging of the subdivision that will have any impacts on water quality, shall be permitted without the agreement of Water NSW.

Reason for Condition 1 - Water NSW has based its assessment under State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 on this version of the subdivision.

On-Site Wastewater Management

2. The existing on-site wastewater management system on the property shall be decommissioned in accordance with the NSW Health Advisory Note No 3 (Revised dated January 2017) for Destruction, Removal or Reuse of Septic Tanks, Collection Wells, Aerated Wastewater Treatment Systems and Other Sewage Management Facility Vessels.

Reason for Condition 2 - To ensure the removal of the existing on-site wastewater management system is undertaken in a manner that does not result in a detrimental impact on water quality.

Subdivision Roads and Right-of-Access

3. The subdivision roads and right-of-access shall be located and constructed as shown on the Proposed Plan of Subdivision (Dwg No. 170509, Sheet No. A3, Issue D, dated 10/10/19) prepared by Australian Survey Solutions and the Civil Engineering Plans (Project No. 17042, Dwg Nos. DA.07 - 12, Issue 02, dated 18/10/19) prepared by Novati Consulting Engineers Pty Ltd. The roads and right-of-access shall:
 - be sealed and otherwise constructed in accordance with Council's engineering standards
 - include runoff collection via a series of pits and pipes and directed to various water quality treatment measures, and
 - incorporate inlet filters (Ocean Guard or Water NSW endorsed equivalent) on all inlet pits.
4. All stormwater management measures and drainage works associated with the proposed subdivision roads and right-of-access shall be wholly included in the roads or drainage reserve or within suitably defined easements.

Reason for Conditions 3 & 4 - To ensure that the proposed subdivision roads and right-of-access and associated infrastructure will have a sustainable neutral or beneficial impact (NorBE) on water quality during the operational phase of the development.

Stormwater Management

5. All stormwater management measures as specified in Section 3 the amended Water Cycle Management Study (Ref:17042_WCMS02, dated 18 October 2019) and the revised MUSIC stormwater quality model and Concept Stormwater Drainage Plan

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(Project No. 17042, Dwg No. DA06 and DA13, Issue 02, dated 18/10/19) all prepared by Novati Consulting Engineers Pty Ltd shall implemented. The management measures shall include:

- pipes, pits, gross pollutant traps, and inter-siltment drainage
 - cartridge filters, and
 - on-site detention basin.
6. The stormwater management measures, to capture and treat all runoff from the subdivision roads and right-of-access, shall be constructed after all hardstand areas have been completed and all ground surfaces have been stabilised and shall be:
- permanently protected from vehicular damage by bollards, fences, castellated kerbs or similar structures, with a sign to be erected to advise of its nature and purpose in water quality management, and
 - protected by sediment and erosion control measures during any construction and post-construction phase until the ground surface is revegetated or stabilised.
7. No changes to stormwater treatment and management that will have any impact on water quality, shall be permitted without the agreement of Water NSW.
8. A suitably qualified stormwater consultant or engineer shall certify in writing to Water NSW and Council prior to the issuance of a Subdivision Certificate that all stormwater management structures have been installed as per these conditions of consent and are in a functional state.
9. An Operational Environmental Management Plan shall be prepared in consultation with Water NSW and Council by a person with knowledge and experience in the preparation of such plans. The Plan shall be prepared prior to the issuance of a Subdivision Certificate. The Plan shall be provided to Council when the management and maintenance of the stormwater management measures are handed over to Council. The Plan shall:
- include details about the location and nature of stormwater management structures such as pits, pipes, inlet filters, gross pollutant trap and cartridge filters and OSD basin
 - outline the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all stormwater management structures, before and after handing over to Council, including the frequency of such activities
 - identify the persons responsible for inspection and maintenance activities, before and after handing over to Council, before and after handing over to Council, including a reporting protocol and hierarchy, and
 - include checklists for recording inspections and maintenance activities.
10. All stormwater treatment measures shall be inspected, monitored, maintained and managed in accordance with the Operational Environmental Management Plan.

Reason for Conditions 5 to 10 – To ensure that the stormwater quality management measures and structures for the proposed subdivision have a sustainable neutral or beneficial impact (NorBE) on water quality over the longer term.

Revegetation of the Drainage Reserve

11. Revegetation of the drainage reserve on proposed Lot 31 shall be undertaken prior to an issuance of a Subdivision Certificate as specified in the Landscape Plan (Dwg No.

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L1, Revision E, dated 16.10.19) prepared by Nicholas Bray Landscapes. The drainage reserve shall:

- be required for a further round of planting if 6 months after planting less than 50% of plantings have become established, and
- be protected from vehicles by fences, posts, bollards or equivalent structures, with appropriate signage identifying that these fenced-off revegetation areas are for water quality management.

Reason for Condition 11 – To have a sustainable neutral or beneficial impact (NorBE) on water quality over the longer term.

Construction Activities

12. The Concept Soil and Water Management and Tree Removal Plan (Project No. 17042, Dwg No. D402, Issue 02, dated 18/10/19) and the Concept Bulk Earthworks Plan (Project No. 17042, Dwg No. D403, Issue 02, dated 18/10/19) both prepared by Novati Consulting Engineers Pty Ltd shall be updated for all works required as part of the subdivision including the subdivision roads by a person with knowledge and experience in the preparation of such plans. The Plan shall:

- meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004)
- be prepared prior to issuance of a Construction Certificate and be to the satisfaction of Council, and
- include controls to prevent sediment or polluted water leaving the construction site or entering any natural drainage lines or stormwater drain.

13. The Soil and Water Management Plan shall be implemented, and effective erosion and sediment controls shall be installed prior to any construction activity. The controls shall be regularly inspected, monitored and maintained until works have been completed and groundcover established.

Reason for Conditions 12 & 13 – To manage adverse environmental and water quality impacts during the construction phase of the development so as to minimise the risk of erosion, sedimentation and pollution within or from the site during this phase.

ADVISORY MATTERS

Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must

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be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's mobile network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995 (Commonwealth)* and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision or essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800 810 443.

END OF CONDITIONS

**AGENDA OF THE ORDINARY MEETING OF COUNCIL
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20 Station Place
Wagga Wagga NSW 2650
PO Box 2150
Wagga Wagga NSW 2650

P. 02 6939 5444
F. 02 6939 5741
E. info@artc.com.au
W. artc.com.au

General Manager
Wingecarribee Shire Council
PO Box 141
Moss Vale NSW 2577

6 March 2020

Dear Ms Prendergast,

Mittagong – stormwater discharge into the ARTC rail corridor from land in Ferguson Crescent

I refer to the Development Application 19/0922 Schedule 1 Condition 1 which seeks consent to formalise the legal right to discharge into the ARTC rail corridor in the form of a License to Discharge Water.

The proposed legal point of discharge for the subject site will be to ARTC rail corridor at approximately 129.520km.

ARTC provides consent to the proposed drainage into the rail corridor subject to the relevant party entering a licence for the discharge of stormwater prior to the completion of works.

We note that this consent is based on the plans issued to ARTC for approval at the time of assessment. Any amendments to these plans with regards to stormwater discharge location will require further written approval from ARTC.

We highlight that this consent of the license does not give permission for access to the railway corridor at any stage of the development. If any access to the rail corridor is needed during construction, that application is made to ARTC for access.

Should you have any questions, please do not hesitate to contact me on (02) 6939 5467.

Yours sincerely

A large black rectangular box redacting the signature of Michael Irons.

Michael Irons
Property Manager Wagga Wagga

**AGENDA OF THE ORDINARY MEETING OF COUNCIL
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Our Ref: 19/0922



13 March 2020

Urbanesque Planning Pty Ltd
PO BOX 6141
PYMBLE NSW 2073

Dear Sir / Madam,

RE: DA 19/0922 - Operational Consent

Reference is made to the letter dated 6th March, 2020 seeking Council Operational Consent for the above Development Application.

With reference to the Schedule 1 of Consent, Council is satisfied with the additional information been provided as to the Deferred Commencement Condition of:

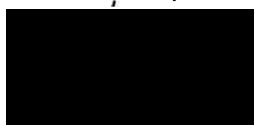
Licence to Discharge Water

A licence to discharge water into the ARTC land is to be entered into prior to the consent becoming active:

- a) The developer shall enter into an 'Infrastructure Licence Agreement' with benefitting Council for the stormwater discharge into the rail corridor. All cost associated with the formalisation of the agreement will be borne by the developer at no cost to Council;
- b) The developer entering an access licence for any access to the rail corridor required during construction;

As provision of this information satisfies Condition A and B of Schedule 1, DA 19/0922, the Notice of Determination is now an Operational Consent pursuant to section 4.16 of the Environmental Planning and Assessment Act 1979.

Yours faithfully,



Runesh Gounder
Development Assessment Planner
Planning Development and Regulatory Services

Civic Centre, Elizabeth St, Moss Vale, NSW 2577. PO Box 141, Moss Vale. t. (02) 4868 0888 f. (02) 4869 1203
e. mail@wsc.nsw.gov.au ABN 49 546 344 354

www.wsc.nsw.gov.au

Working with you

**LANDER
& ROGERS**

Licence to discharge water into a rail corridor

Date:

WINGECARRIBEE SHIRE COUNCIL

AUSTRALIAN RAIL TRACK CORPORATION LIMITED

Property: 21 Ferguson Crescent, Mittagong NSW 2575

Level 19 Angel Place
123 Pitt Street
Sydney NSW 2000

PO Box R1853
Royal Exchange
Sydney NSW 1225

T +61 2 8020 7700
F +61 2 8020 7701
landers.com.au

ABN 58 207 240 529

LR:2086411

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REFERENCE SCHEDULE

Item	Subject	Reference	Details and meaning of term
1	Parties		
	Licensee	1.1, 1.3	
	Name		Wingecarribee Shire Council ABN 49 546 344 354
	Address		Civic Centre, Elizabeth Street, Moss Vale NSW 2577
	Fax		N/A
	Email		N/A
	Attention		General Manager
	ARTC	1.1, 1.3	
	Name		Australian Rail Track Corporation Limited ABN 78 081 455 754
	Address		11 Sir Donald Bradman Drive, Keswick Terminal SA 5035
	Fax		N/A
	Email		PropertyManagers@artc.com.au
	Attention		Property Manager
2	Licensed Area	1.1	The Discharge Point and that part of the Rail Corridor Land across which water flows in its natural course from the Discharge Point and into the land immediately adjoining the Rail Corridor Land [L&R: ARTC is preparing a Licensed Area Plan which will be provided shortly.]
3	Discharge Point	1.1, SCHEDULE 1	That part of the Rail Corridor Land on Lot 3908 in Deposited Plan 1215321 identified on the Licensed Area Plan where water is discharged from the Pipeline into the Licensed Area
4	Rail Corridor	1.1	The Railway known as the "Main Southern Railway", which is owned by TfNSW and leased to ARTC by an agreement under Part 8A of the Transport Administration Act
5	Rail Corridor Land	1.1	The whole of the land comprised in certificate of title folio identifiers 3908/1215321, and any titles into which that land is delineated
6	Permitted Use	1.1, 5	The discharge of water into the Licensed Area via the Pipeline
7	Term	1.1, 2	5 years, commencing on the Commencement Date and ending on the Expiry Date (including any period of holding over under clause 2.3)
8	Commencement Date	1.1, 2	The date on which the Pipeline has been constructed to a stage at which water may be discharged from the Pipeline into the Discharge Point
9	Expiry Date	1.1, 2	The date being 5 years after the Commencement Date
10	Licence Fee	1.1, 3	\$2,500.00 (excluding GST) per annum as varied under this Licence

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Item	Subject	Reference	Details and meaning of term	
11	Public liability insurance amount	11.4	\$20,000,000.00	
12	Baseline Capacity	1.1, 5.4(b)	[insert] [L&R: ARTC to provide report shortly.]	
13	Licence Fee Review and dates during Term	1.1, 1.2, 4	Review Date	Review Method
			On each anniversary of the Commencement Date	CPI

AGENDA OF THE ORDINARY MEETING OF COUNCIL WEDNESDAY 13 DECEMBER 2023

BACKGROUND

- A. The Developer intends to carry out the Development.
- B. The Licensee is a local government authority constituted under the *Local Government Act 1993* (NSW) and is also the consent authority for the Development under the EP&A Act.
- C. The Licensee, in its capacity as consent authority under the EP&A Act, issued the Development Consent, being a deferred commencement consent, in respect of the Development.
- D. It is a condition of the Development Consent that the Licensee must enter into this Licence with ARTC, so that stormwater may lawfully drain from the Development Land through the Pipeline and into the Licensed Area.
- E. The Licensee will at all times own the Pipeline.
- F. TfNSW is the registered owner of the Rail Corridor Land.
- G. TfNSW has leased the Rail Corridor Land and the Railway to ARTC by the Deed of Lease.
- H. ARTC has the power to grant this Licence under the Deed of Lease.

TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions in Reference Schedule apply

A term which is capitalised in column 2 ("Subject") of the Reference Schedule has the meaning set out adjacent to that term in column 4 ("Details and meaning of term") of the Reference Schedule, unless the context requires otherwise.

1.2 Other definitions

In addition to those words which are defined in the Reference Schedule, the following words have the following meanings in this Licence, unless the context requires otherwise.

ARTC Authorised User means ARTC's Associates, TfNSW and TfNSW's Associates, train operators and any other person authorised by ARTC for the purposes of this Licence.

Associate means an officer, employee, agent, contractor (or any sub-contractor of a contractor), consultant, adviser, licensee, invitee or other authorised person of the party or person so named in this Licence.

Authority means:

- (a) the Crown in any capacity;
- (b) any government in any jurisdiction, whether federal, state, territorial or local;
- (c) any provider of public utility services, whether statutory or not; and

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- (d) any other person having jurisdiction, rights, powers, duties or responsibilities over the Rail Corridor Land or in relation to the Rail Corridor Land.

However, the Licensee is not to be regarded as an Authority for the purposes of the Licensee's rights and obligations under or in connection with the terms of this Licence.

Business Day means a day, not being a Saturday, Sunday or public or bank holiday in New South Wales, and not being a day during the period commencing on 23 December and ending on the Friday in the second week of January.

Claim means any claim, action, demand, suit or proceeding for damages, debt, restitution, equitable compensation, account, set-off or withholding, injunctive relief, specific performance or any other remedy whether:

- (a) under, arising out of, or in any way in connection with, this Licence or at Law;
- (b) by original claim, cross claim or otherwise;
- (c) known or unknown at the date of this Licence;
- (d) whether presently in contemplation of the parties or not; or
- (e) relating to Loss which is actual or contingent.

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

Contamination has the same meaning given to that term in the CLM Act.

CPI means the Sydney Consumer Price Index (All Groups) published by the Australian Statistician, or any similar index which replaces it (or, if there is no replacement index, then the index which the Landlord decides in its reasonable opinion most closely resembles the former index).

CPI Review Date means each Review Date on which "CPI" is the designated method for the review of the Licence Fee, as set out in or calculated in accordance with item 13

Current CPI means the CPI number for the Quarter ending immediately before the relevant CPI Review Date.

Costs include fees (including consultancy and agency fees), costs, charges, expenses, disbursements, duties, levies and legal costs and expenses (on a solicitor and own client basis unless specified otherwise).

Deed of Lease means the arrangement in respect of the Railway entered into between TfNSW (as landowner) and ARTC (as tenant, licensee and occupier) under Part 8A of the Transport Administration Act.

Developer means Sett Homes Pty Ltd ACN 103 972 363 or such other person as may be carrying out the Development.

Development means the subdivision of the Development Land into 30 residential lots and 1 drainage easement allotment, as is provided for in the Development Consent and includes any development which is additional or ancillary to the subdivision of the Development Land.

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Development Consent means the deferred commencement consent to development application number 19/0922 issued on or about 26 February 2020 in respect of the Development, and includes any lawfully approved modification, amendment or variation of the Development Consent.

Development Land means:

- (a) Lot A in Deposited Plan 430831;
- (b) Part of Lot 10 in section 1 of Deposited Plan 651;
- (c) Lot 14 in section 1 of Deposited Plan 651;
- (d) Lots 1 to 3 in Deposited Plan 1089997; and
- (e) Lots 1 to 4 in Deposited Plan 1099047,

being the land generally identified as 21 Ferguson Crescent, Mittagong NSW 2575, and includes any titles into which any of that land is delineated during or following the Development.

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

Force Majeure Event means any cause beyond the reasonable control of a party, including fire, flood, lightning, storm, tempest, earthquake, eruption, acts of God, aircraft, explosion, strikes, terrorism, riots and acts of war.

GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and terms used which are not defined in this Licence, but which are defined in the GST Law, have the meanings given in the GST Law.

Infrastructure Licences means the additional licence entered into between ARTC and the Licensee with respect to the Pipeline referred to as Licence - Existing Infrastructure Within the Railway Corridor in respect of part Lot 17 in Section 1 in Deposited Plan 651.

Law means common law, equity and statute law, including any delegated or subordinate legislation, regulations, by-laws, ordinances, official requirements of an Authority and, where the context permits, includes Australian Standards and official codes of practice (including the National Construction Code).

Licence means this document and includes any schedule, annexure, attachment or exhibit to this document.

Licensed Area Plan means the plan delineating the Discharge Point and the Pipeline site which is attached to this Licence in SCHEDULE 1.

Loss includes, in each case whether of a direct, indirect or inconsequential nature:

- (a) any liability, damage, Cost and other outgoing, and any diminution in value of, or deficiency of any kind in, anything; and
- (b) to the extent not covered in paragraph (a), any loss of profits, sales, turnover, reputation (or damage to it), production, anticipated savings, goodwill, business opportunities, customers, software or data, or loss of use of any software or data, and loss in connection with any other contract.

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Payment Date means the first date of each month during the Term.

Pipeline means the stormwater drainage pipeline constructed (or to be constructed) under part of the Development Land to drain water from the Development Land into the Licensed Area, in the location generally identified on the Licensed Area Plan.

POEO Act means the *Protection of the Environment Operations Act 1997* (NSW).

Pollution has the same meaning given to that term in the POEO Act.

Previous CPI means for a Review Date, the CPI number for the Quarter ending immediately before the last Review Date (or if there has not been one, the Commencement Date).

Quarter means each consecutive period of 3 months, beginning on 1 January, 1 April, 1 July and 1 October, and ending (respectively) on 31 March, 30 June, 30 September and 31 December.

Rail Safety Law means the Rail Safety National Law (NSW) No 82A as applied with modification by the *Rail Safety (Adoption of National Law) Act 2012* (NSW).

Railway means the guided system designed for the movement of rolling stock having the capability of transporting passengers or freight (or both) and known as the "Main Southern Railway" and includes any private siding and any spur lines.

Reference Schedule means the part of this Licence titled "Reference Schedule" and the table contained within that part.

Remediation has the same meaning given to that term in the CLM Act and **Remediate** has a corresponding meaning.

Review Date means each date specified in or determined in accordance with the method specified in Item 13.

Safety Legislation includes:

- (a) the Rail Safety Law;
- (b) the WHS Law; and
- (c) any other Law relating to the safety of persons and property on or about operational rail corridors.

TfNSW means Transport for NSW ABN 18 804 239 602, an Authority being a statutory corporation constituted under the Transport Administration Act.

Transport Administration Act means the *Transport Administration Act 1988* (NSW).

WHS Law means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017*.

1.3 Interpretation

The following applies in the interpretation of this Licence, unless the context requires otherwise.

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- (a) 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.
- (b) A reference to clause, paragraph, subclause, attachment, annexure or schedule means a clause, paragraph, subclause, attachment, annexure or schedule to this Licence.
- (c) A reference to this Licence or any other document or instrument is to this Licence, or that other document or instrument, as varied, amended, novated, supplemented, replaced or restated.
- (d) Any schedule, annexure, attachment or exhibit to this Licence forms part of this Licence, as does the "Background" section of this Licence.
- (e) The singular includes the plural and vice versa.
- (f) **Person** includes a natural person, firm, corporation, body corporate, unincorporated association, an Authority, a trust, a partnership and other entities or groups recognised by Law.
- (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 Licence, their substitutes, assigns and persons taking by novation.
- (h) An agreement or covenant on the part of, or in favour of, two or more persons binds them together and separately (jointly and severally).
- (i) If a body or Authority referred to in this Licence ceases to exist or changes its name, the reference to that body or Authority is a reference to the replacement body or Authority or the new name of the body or Authority, or if there is no replacement body or Authority then the body or Authority that has substantially the same functions and objects as the first body or Authority.
- (j) **Includes** means includes but without limitation.
- (k) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning (for example **maintain** and **maintenance** have a corresponding meaning).
- (l) A heading is for reference only. It does not affect the meaning or interpretation of this Licence.
- (m) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Licence or any part of it.
- (n) Terms which are capitalised or otherwise defined in any schedule to this Licence have the same meanings in any other schedule to this Licence where the same term is capitalised.
- (o) Any reference to time is to the time in Sydney, New South Wales, Australia.
- (p) A reference to an Item is to a numbered item in the Reference Schedule.

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2. GRANT OF LICENCE AND TERM OF LICENCE

2.1 Grant of Licence

ARTC grants and the Licensee takes a non-exclusive licence to use the Licensed Area for the Term for the Permitted Use, in consideration of the Licensee paying the Licence Fee to ARTC.

2.2 Term

This Licence commences on the Commencement Date and ends on the earlier to occur of:

- (a) the Expiry Date;
- (b) the date that this Licence is validly terminated by a party in accordance with the provisions of this Licence; and
- (c) the date on which this Licence is otherwise terminated or determined.

2.3 Holding over

If the Licensee continues to use the Licensed Area after the Expiry Date for the Permitted Use with ARTC's consent, then the Licensee does so on the basis of a yearly licence on the following terms:

- (a) the Licence Fee payable by the Licensee is the licence fee as is payable by the Licensee immediately prior to the Expiry Date increased in accordance with clause 4 as if the commencing date of the holding over period (and each subsequent anniversary of that date) was a Review Date;
- (b) the Licence Fee will thereafter be reviewed annually and increased by CPI for the duration of the holding over licence;
- (c) either ARTC or the Licensee may terminate the holding over licence by giving at least 9 months' notice of termination; and
- (d) the holding over licence is otherwise on the same terms as this Licence but amended as appropriate for a yearly licence.

2.4 Non-exclusive licence

This Licence is granted on the basis that:

- (a) the Licensee has no right to possession of or exclusive use of the Licensed Area;
- (b) ARTC retains possession of the Licensed Area at all times;
- (c) the Licensee must share the use of the Licensed Area with ARTC, TfNSW and ARTC's Authorised Users;
- (d) the parties' rights subsist in contract law only;
- (e) the Licensee obtains no legal, equitable or other interest in the Licensed Area (or any part of the Rail Corridor Land);

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- (f) no relationship of landlord and tenant arises as between ARTC and the Licensee; and
- (g) the existence of this Licence or the use of the Licensed Area for the Permitted Use is in no way intended to create (by user, by implied grant or otherwise) any easement for drainage of water or other fluid.

3. LICENCE FEE

The Licensee must pay the Licence Fee to ARTC by equal monthly instalments in advance on the Payment Date.

4. LICENCE FEE REVIEWS

4.1 CPI increase in Licence Fee

Where the Review Method for any Review Date is **CPI**, the Licence Fee on and from that Review Date is calculated as follows:

$$L_2 = (L_1 \times \frac{\text{Current CPI}}{\text{Previous CPI}})$$

Where:

- L₂** is the Licence Fee after the Review Date; and
- L₁** is the Licence Fee immediately before the Review Date (disregarding any abatement or reduction).

4.2 Licence Fee reviews generally

(a) Licence Fee pending determination

If the Licence Fee to apply on and from a Review Date has not been agreed on or determined by that Review Date, the Licensee must continue paying instalments of the Licence Fee at the rate applicable before the relevant Review Date until the Licence Fee is determined.

(b) Adjustment once Licence Fee determined

Once the Licence Fee to apply on and from a Review Date is determined, the Licensee will pay any shortfall at the next Payment Date.

(c) No decrease in Licence Fee

Despite any other provision of this Licence, the Licence Fee after any Review Date cannot be less than the Licence Fee payable immediately before the last Review Date (or if there has not been a Review Date, then the Commencement Date).

4.3 Broken periods

If a Licence Fee instalment period is less than a month, the instalment for that period is calculated at a daily rate based on the number of days in the month in which that instalment period begins.

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5. USE OF LICENSED AREA

5.1 Permitted Use

The Licensee must use the Licensed Area for the Permitted Use and not for any other use unless ARTC approves otherwise (which approval may be given or withheld in ARTC's absolute discretion).

5.2 Suitability of Licensed Area

ARTC gives no warranty to the Licensee or any other person (including the Developer) that the Licensed Area is or will be suitable or adequate for the Permitted Use.

5.3 Positive obligations

The Licensee must:

- (a) secure the Discharge Point and the Development Land at all times and to ARTC's satisfaction so as to prevent access to the Rail Corridor Land by unauthorised persons;
- (b) comply with all Laws and with the requirements of all Authorities relating to the use of the Licensed Area and the Pipeline for the Permitted Use;
- (c) comply with all terms and conditions of all approvals issued by any Authority regarding the use of the Licensed Area and the Pipeline for the Permitted Use;
- (d) at all times hold current all licences, permits, consents, approvals and authorisations from all relevant Authorities relating to the use of the Licensed Area and the Pipeline;
- (e) pay all Costs which are connected in any way to the Permitted Use or the Licensee's use of the Pipeline or the Licensed Area; and
- (f) if the Licensee is permitted to access the Rail Corridor Land, use all reasonable endeavours to minimise disturbance to ARTC and ARTC's Authorised Users.

5.4 Negative obligations

The Licensee must not:

- (a) alter the location of the Pipeline or the Discharge Point;
- (b) increase the capacity of the Pipeline to discharge water beyond the Baseline Capacity;
- (c) allow the Pipeline to overflow;
- (d) allow any water to be discharged into the Rail Corridor Land other than from the Discharge Point;
- (e) damage the Rail Corridor Land or any property of ARTC or any ARTC Authorised User which is within or attached to any part of the Rail Corridor Land; or

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- (f) do anything which may limit ARTC's ability to exercise its rights and discharge its duties under the Transport Administration Act.

6. RAIL SAFETY MATTERS

6.1 Licensee not to breach Rail Safety Law

The Licensee must:

- (a) not do anything which interferes with or impacts on the ability of ARTC or ARTC's Authorised Users to carry out any railway operations on the Rail Corridor;
- (b) not inhibit, prevent or interfere in any way with ARTC or ARTC's Authorised Users access to the Licensed Area, Rail Corridor Land or Railway for any reason and at any time;
- (c) not do anything which does or might result in ARTC being in breach of the Rail Safety Law; and
- (d) comply with the Rail Safety Law to the extent the Rail Safety Law applies to the Pipeline, the Licensee's use of the Licensed Area or the performance of the Licensee's obligations under this Licence.

6.2 Access to Licensed Area

- (a) The Licensee must not access the Licensed Area or the Rail Corridor Land at any time unless the Licensee:
 - (i) gives at least 14 days' prior notice to ARTC;
 - (ii) receives ARTC's written confirmation that access to the Licensed Area and the Rail Corridor Land will be permitted at the time access is sought by the Licensee; and
 - (iii) complies with all of ARTC's conditions of access.
- (b) Without limiting the generality of clause 6.2(a)(iii), ARTC may require as a condition of the Licensee's or any of the Licensee's Associates' access to the Licensed Area and the Rail Corridor Land that:
 - (i) any person requiring access must be accompanied by a protection officer appointed for the purposes of the Rail Safety Law;
 - (ii) any reasonable direction issued by an ARTC Authorised User must be complied with;
 - (iii) access will be permitted only on certain days or at certain times;
 - (iv) any person requiring access must comply with all of ARTC's policies in relation to work, health, safety and the protection of the environment;
 - (v) where works are to be carried out to the Pipeline or the Licensed Area, the Licensee must comply with all requirements of the Safety Legislation, including submitting to ARTC for approval any access request forms and safe work method statements as required under the WHS Law; and

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- (vi) the Licensee must pay ARTC's reasonable costs and expenses for considering the request for access, whether or not consent is given.

6.3 Exclusion of persons from Rail Corridor Land

ARTC may at any time and for any reason exclude the Licensee and any of the Licensee's Associates from the Rail Corridor Land.

6.4 ARTC's rail safety rights

ARTC may at any time do anything to the Licensed Area or the Rail Corridor Land which is or may be required in order to properly discharge ARTC's duties under the Safety Legislation with respect to the Rail Corridor Land and the operation of the Railway.

6.5 Transport Administration Act

ARTC may at any time without notice to the Licensee enter onto the Licensed Area and the Rail Corridor Land to exercise any of ARTC's rights:

- (a) under the Transport Administration Act; or
- (b) under the Deed of Lease,

including the performance of any works and the erection or relocation of fencing.

6.6 Track possessions

- (a) ARTC may implement a track possession at any time and for any reason.
- (b) The Licensee and its Associates will not be permitted to access the Licensed Area or any part of the Rail Corridor Land during a track possession.

6.7 Release by Licensee

The Licensee releases ARTC from any Claim which the Licensee has, or could, would or might but for this release have against ARTC, which arises from or is connected in any way to the exercise by ARTC of any of its rights under:

- (a) this Licence;
- (b) the Safety Legislation; or
- (c) the Transport Administration Act.

7. REPAIRS AND MAINTENANCE

7.1 Maintenance of Pipeline

The Licensee must:

- (a) keep the Pipeline and the Discharge Point clear of obstructions to facilitate the free flow of water throughout the length of the Pipeline;
- (b) keep the Pipeline and the Discharge Point in good repair and condition, fair wear and tear excepted;

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- (c) promptly repair any part of the Pipeline or the Discharge Point which is damaged beyond fair wear and tear, however that damage is caused;
- (d) carry out all repairs, maintenance and works (whether structural or capital in nature) to ensure that the Pipeline and the Discharge Point is at all times in the conditions required by this clause 7.1; and
- (e) at ARTC's election, either immediately rectify any damage to the Rail Corridor Land which is caused or contributed to by the Licensee or pay on demand ARTC's Costs which are incurred by ARTC in connection with the rectification of that damage.

7.2 Force Majeure Events

- (a) Either ARTC or the Licensee may terminate this Licence on 3 months' notice where a Force Majeure Event occurs and as a result of the Force Majeure Event the Pipeline or the Licensed Area is substantially unsuitable for the Permitted Use.
- (b) Neither party has any liability to the other party (other than in respect of an antecedent breach of this Licence) where this Licence is validly terminated under clause 7.2(a).
- (c) If this Licence is not terminated by either ARTC or the Licensee within 3 months of the occurrence of the Force Majeure Event, then the Licensee must promptly reinstate the Discharge Point and the Pipeline to their former condition.

7.3 Notification of damage

The Licensee must immediately notify ARTC if the Licensee becomes aware of any damage to the Licensed Area, however that damage is caused.

7.4 ARTC has no obligations

ARTC is not required to repair, maintain, upgrade or carry out any works of any nature to or in respect of the Pipeline or the Licensed Area.

7.5 When Licence ends

On or before the Expiry Date or the earlier date on which this Licence ends, the Licensee must:

- (a) remove or close the Pipeline or alter the relevant part of the Development Land so that no water will be discharged or flow into the Rail Corridor;
- (b) make good any damage to the Licensed Area or the Rail Corridor Land which is caused by that removal, closure or alteration; and
- (c) leave the land containing or previously containing the Pipeline safe and in a clean and tidy condition (having regard to the use of the Rail Corridor Land).

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8. CONTAMINATION AND POLLUTION

8.1 No Contamination or Pollution

- (a) The Licensee must not allow any Contamination or Pollution to be discharged into or to migrate into the Rail Corridor Land from the Pipeline or the land enclosing it.
- (b) The Licensee must immediately notify ARTC if the Licensee becomes aware of or suspects that Contamination or Pollution to the Rail Corridor Land may have been caused or contributed to by the operation of the Pipeline or the Licensee's use of the Licensed Area.

8.2 Licensee to Remediate

The Licensee must promptly to ARTC's satisfaction Remediate and clean up any Contamination or Pollution which is discharged into or migrates into any part of the Rail Corridor Land from the Pipeline or the land enclosing it.

8.3 Indemnity

The Licensee indemnifies ARTC from any Loss which ARTC suffers or incurs and which arises from or is connected in any way to:

- (a) the Licensee's breach of clause 8.1 or 8.2;
- (b) any notice (including a clean-up notice) or order given by any Authority (including the Authority administering the CLM Act or the POEO Act) to ARTC directly or indirectly as a result of Contamination or Pollution of the Rail Corridor Land which is caused or contributed to by:
 - (i) the Licensee;
 - (ii) any owner or occupier of any part of any Development Land; or
 - (iii) the existence of or use of the Pipeline for any purpose; and
- (c) any breach by the Licensee of any Law relating to the environment, Contamination, Pollution or Remediation (including the EP&A Act, the CLM Act and the POEO Act).

8.4 Approvals

The Licensee must obtain and maintain any approvals which are required under any Law relating to the environment (including the EP&A Act, the CLM Act and the POEO Act), having regard to the Permitted Use and the Licensee's obligations under this Licence.

9. ASSIGNMENT AND OTHER DEALINGS IN LAND

9.1 Assignment by ARTC

ARTC may without the Licensee's consent assign the whole or part of ARTC's interest in this Licence to the entity in occupation of the Rail Corridor under the Deed of Lease or to TfNSW.

9.2 Assignment by Licensee

- (a) The Licensee must not assign, transfer, novate, dispose of or otherwise deal with the whole or part of the Licensee's interest in this Licence unless the Licensee first obtains ARTC's consent (which may be given or withheld by ARTC in ARTC's absolute discretion).
- (b) An assignment, transfer, novation, disposal or other dealing by the Licensee without ARTC's consent is a breach of this Licence and is of no effect.

9.3 No dealing with Pipeline

- (a) The Licensee must not sell, transfer or otherwise deal with its interest in the Pipeline without ARTC's prior consent.
- (b) ARTC may require as a condition of its consent to any sale, transfer or other dealing with the Pipeline that the Licensee any the purchaser, transferee or other person must execute a deed (in the form required by ARTC) pursuant to which this Licence is novated to the purchaser, transferee or other person.

9.4 Sale of Rail Corridor Land by ARTC

If ARTC sells or transfers the Rail Corridor Land, ARTC must use reasonable endeavours to obtain from the purchaser or transferee a covenant (in the form required by ARTC) to the effect that the purchaser or transferee agrees to perform ARTC's obligations in this Licence as if the purchaser or transferee was named as ARTC.

10. NOISE, VIBRATION AND ELECTROLYSIS

10.1 Acknowledgement by Licensee

The Licensed Area and the Pipeline may be affected by noise, vibration, dust and electrolysis arising from the operation of the Railway.

10.2 Release

The Licensee releases ARTC and ARTC's Authorised Users from any Claim which the Licensee has, or could would or might but for this release have, against an ARTC Authorised User, which arises from or is connected in any way to noise, vibration, dust or electrolysis affecting the Licensed Area, the Pipeline or any of the Licensee's Associates who may be on or about the Rail Corridor Land or the Development Land at any time.

11. INDEMNITIES AND INSURANCE

11.1 Risk

The Licensee and the Licensee's Associates use the Licensed Area and the Pipeline at their own risk at all times.

11.2 Release

The Licensee releases ARTC and ARTC's Authorised Users from any Claim which the Licensee or a Licensee's Associate has, or could would or might but for this release have, against ARTC or an ARTC Authorised User in connection with:

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- (a) anything (including damage, Loss, injury or death), except to the extent to which it is caused or contributed to by ARTC's or an ARTC's Authorised Users' negligent act or default;
- (b) anything occurring on the Licensed Area or the Development Land or in the Pipeline, originating in the Licensed Area, the Pipeline or the Development Land or coming from the Licensed Area, the Pipeline or the Development Land, except to the extent to which it is caused or contributed to by ARTC's or an ARTC's Authorised Users' negligent act or default;
- (c) the Pipeline malfunctioning, being damaged, not being available, or being interrupted or broken down; or
- (d) ARTC doing anything ARTC is permitted or obliged to do under this Licence to the extent to which ARTC is permitted or obliged to do something because of the Licensee's default or a Law or a requirement of an Authority.

11.3 Indemnity

The Licensee indemnifies ARTC against any Loss suffered or incurred by the ARTC or an ARTC Authorised User in connection with:

- (a) anything (including damage, Loss, injury or death) caused or contributed to by the act, negligence, omission, default of or breach of Law by the Licensee;
- (b) anything occurring on the Licensed Area or the Development Land or in the Pipeline, originating in the Licensed Area, the Pipeline or the Development Land, or coming from the Licensed Area, the Pipeline or the Development Land;
- (c) damage to property or Claims which are caused or contributed to by the overflow of water from the Pipeline onto any other land (including the Rail Corridor Land);
- (d) any Claim by a third party which owns or occupies land adjoining the Licensed Area or the Rail Corridor Land, as a result of the flow of water from the Pipeline across the Licensed Area and into any adjoining land;
- (e) ARTC doing anything which the Licensee must do under this Lease but has not done, or which ARTC considers the Licensee has not done properly; or
- (f) any breach of this Licence by the Licensee.

11.4 Insurance

- (a) The Licensee must effect on or before the Commencement Date and keep current during the Term a public liability insurance policy, which must:
 - (i) be taken out with a reputable insurer approved by ARTC;
 - (ii) be for a minimum cover of the amount set out in Item 11 for each accident, claim or event;

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- (iii) cover loss, damage, injury or death from any cause whatsoever to any property or any person who is at any time in, on, under or about the Licensed Area;
 - (iv) include ARTC as an insured party under the policy arising under this Licence;
 - (v) contain a cross-liability clause, pursuant to which the insurer agrees to treat each insured (including a named or additional insured) under the policy as if a separate contract of insurance had been issued to each of them; and
 - (vi) not include any exclusions or limitations arising from the proximity of land to a railway or railway operations which are carried out upon land.
- (b) The Licensee must at least once in every 12-month period, produce to ARTC a certificate of currency for the insurance required to be maintained under this clause 11.4.
 - (c) The Licensee must not do anything within the Licensed Area which would cause any insurance policy held by ARTC to be cancelled or have its coverage reduced.
 - (d) The Licensee must pay any deductible or premium payable for the insurance required to be maintained under this clause 11.4 and any claim which is made on that insurance.

12. NOT USED

13. DEFAULT AND TERMINATION

13.1 Events of default

The Licensee is in breach of an essential condition of this Licence if:

- (a) the Licensee is late in paying any money owed to ARTC by more than 14 days after ARTC demands payment;
- (b) the Licensee is in breach of this Licence and fails to remedy the breach within a reasonable time (but in any event, within not more than 14 days) of being notified of the breach by ARTC;
- (c) the Licensee breaches any provision of clause 9 at any time;
- (d) ARTC determines that the Licensee has ceased to use the Pipeline for the Permitted Use for at least 6 consecutive months; or
- (e) ARTC determines that the Licensee has abandoned the Licensed Area or the Pipeline.

13.2 Right of ARTC to self-help

- (a) If:
 - (i) the Licensee is in breach of an essential condition of the Licence in accordance with clause 13.1;

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- (ii) Contamination or Pollution is at any time discharged into or migrates into the Rail Corridor Land from the Pipeline or the land enclosing it; or
- (iii) the Pipeline overflows; or
- (iv) the capacity of the Pipeline increases so that it discharges water beyond the Baseline Capacity,

then ARTC may elect to do all things necessary (as determined by ARTC in its absolute discretion) to stop, minimise or redirect the flow of water through the Pipeline, including closing or altering the Discharge Point, removing the Pipeline or entering the Development Land at any time to carry out works on the Development Land at any time.

- (b) To the extent permitted by Law, the Licensee grants ARTC a licence to exercises all of ARTC's rights under clause 13.2(a).
- (c) The Licensee must not make any Claim against ARTC (and releases ARTC from any Claim which the Licensee may have) where ARTC exercises any right under clause 13.2(a).
- (d) The Licensee indemnifies ARTC against any Loss suffered or incurred by the ARTC or an ARTC Authorised User where ARTC exercises any right that it may have under 13.2(a), including in respect of Claims made by any owner or occupier of any part of the Development Land.

13.3 Termination following default

If the Licensee is in breach of an essential condition of this Licence according to clause 13.1, ARTC may without prejudice to any of its rights under this Licence or at Law, terminate this Licence by notice to the Licensee.

13.4 Termination by ARTC where Rail Corridor Land required

- (a) ARTC may terminate this Licence with not less than 3 months' prior notice to the Licensee where ARTC requires vacant possession of the Licensed Area in connection with:
 - (i) the performance of railway operations (on the Railway (including any upgrade of the Railway)); or
 - (ii) the discharge of ARTC's duties under the Safety Legislation.
- (b) The Licensee must not make any Claim against ARTC (and releases ARTC from any Claim which the Licensee may have) where ARTC exercises any right under clause 13.4(a) to terminate this Licence.

13.5 Termination by ARTC for convenience

- (a) ARTC may terminate this Licence for any reason required by ARTC in its absolute discretion by giving not less than 6 months' prior notice of termination to the Licensee.
- (b) The Licensee must not make any Claim against ARTC (and releases ARTC from any Claim which the Licensee may have) where ARTC exercises its right under clause 13.5(a) to terminate this Licence.

13.6 Termination where ARTC ceases to operate Railway

- (a) ARTC may terminate this Licence immediately by notice to the Licensee where:
 - (i) the Deed of Lease is terminated;
 - (ii) the Deed of Lease is assigned or transferred to a person who is not ARTC;
 - (iii) ARTC surrenders its interest under the Deed of Lease over the Licensed Area; or
 - (iv) ARTC ceases to be the occupier or operator of the Railway.
- (b) The Licensee must not make any Claim against ARTC (and releases ARTC from any Claim which the Licensee may have) where ARTC terminates this Licence under clause 13.6(a)

13.7 Resumption

This Licence terminates immediately if any part of the Licensed Area or the Development Land which includes the Pipeline is resumed or compulsorily acquired by an Authority.

13.8 Interdependency with Infrastructure Licences

This Licence is interdependent with each Infrastructure Licence to the effect that:

- (a) if an Infrastructure Licence ends for any reason, this Licence automatically ends at the same time;
- (b) if this Licence ends for any reason, each Infrastructure Licence also ends at the same time;
- (c) a breach of this Licence is deemed to be a breach of each Infrastructure Licence;
- (d) a breach of any Infrastructure Licence is deemed to be a breach of this Licence;
- (e) if a party is entitled to terminate or rescind this Licence, that party is also entitled to terminate or rescind (respectively) each Infrastructure Licence or any of them; and
- (f) if a party is entitled to terminate or rescind any Infrastructure Licence, that party is also entitled to terminate or rescind (respectively) this Licence.

13.9 Indemnity

The Licensee indemnifies ARTC against any Loss incurred by ARTC as a result of a Claim made against ARTC by the Licensee, any Licensee's Associate, the Developer or any owner of any part of the Development Land which arises from or is connected in any way to a termination of this Licence by ARTC.

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14. COSTS AND STAMP DUTY

14.1 Licensee to pay ARTC's costs

The Licensee must pay:

- (a) ARTC's Costs arising from the preparation, negotiation and execution of this Licence;
- (b) any Costs incurred by ARTC which arise from or are connected in any way to:
 - (i) the Licensee's breach of this Licence; or
 - (ii) ARTC's exercise (or attempted exercise) of any rights under this Licence following a breach of this Licence by the Licensee;
- (c) ARTC's reasonable Costs which are incurred in consenting to any dealing with this Licence by the Licensee as referred to in or contemplated by clause 9 (whether or not the transaction proceeds to completion); and
- (d) ARTC's reasonable Costs arising from any variation, surrender, termination, extension, novation or assignment of this Licence which is requested by the Licensee (whether or not the transaction or request proceeds to completion).

14.2 Stamp duty

The Licensee must pay all stamp duty (if any) payable on this Licence.

14.3 Other Costs

Each party must pay its own Costs for everything it must do under this Licence or any document required to be entered into by any party pursuant to the terms of this Licence, except to the extent to which this Licence (or that other document) provides otherwise.

15. GOODS AND SERVICES TAX (GST)

15.1 Consideration GST exclusive

Unless otherwise stated, all consideration provided under this Licence is exclusive of GST.

15.2 Liability to pay additional amount

If a party (**Supplying Party**) makes a taxable supply to another party (**Recipient**) under or in connection with this Licence (not being a taxable supply the consideration for which is expressly described as GST inclusive), then the Recipient must also pay to the Supplying Party, at the same time as the consideration for the taxable supply is paid or otherwise given to the Supplying Party and without set off, deduction or requirement for demand, an additional amount equal to any GST payable in connection with that taxable supply.

15.3 Registration for GST

If not already registered, the Supplying Party undertakes to register for GST under the GST Law before any taxable supply is made under this Licence.

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15.4 Tax invoice

The Supplying Party's right to payment under clause 15.1 is subject to a tax invoice being delivered to the Recipient to enable the Recipient to claim input tax credits for the taxable supply.

15.5 Adjustment event

If an adjustment event arises in connection with a taxable supply made in connection with this Licence:

- (a) the Supplying Party must re-calculate the GST payable to reflect the adjustment event;
- (b) the Supplying Party must give the Recipient an adjustment note as soon as reasonably practicable after the Supplying Party becomes aware of the adjustment event; and
- (c) the adjustment amount must be paid without delay either by the Recipient to the Supplying Party or by the Supplying Party to the Recipient as the case requires.

However, the payment of any adjustment amount by the Recipient to the Supplying Party in respect of an increase to the GST payable on a taxable supply is subject to the Supplying Party providing an adjustment note to the Recipient that complies with the GST Law.

15.6 GST and reimbursements

If a payment to a party is a reimbursement or indemnification, calculated by reference to a Loss or Cost suffered by that party in relation to the acquisition by that party of a taxable supply under this Licence, then the payment to that party will be reduced by the amount of any input tax credit to which that party (or the representative member of any GST group of which that party is a member) is entitled arising out of the acquisition of the taxable supply to which that Loss or Cost relates.

15.7 Exclusion of GST from calculations

If a payment is calculated by reference to, or as a specified percentage of, another amount that payment must be calculated by reference to, or as a specified percentage of, the amount exclusive of GST.

16. NOTICES

16.1 How given

Any notice which must be given under this Licence must be:

- (a) in legible writing in the English language;
- (b) addressed to the recipient of the notice; and
- (c) hand delivered to, sent by pre-paid post to, or emailed to the relevant email address for the recipient as set out in Item 1 (or such other notice particulars as that party gives to the other party, following the procedures in this clause 16).

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16.2 When given

A notice is taken to have been given:

- (a) if hand delivered, on the date on which it is delivered;
- (b) if sent by pre-paid post, on the third Business Day (seventh if sent internationally) day after the date of posting; or
- (c) if sent by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent (which, to avoid doubt, excludes "out of office" messages),

provided that, if a notice is taken to be given on a day which is not a Business Day or after 5.00pm on a Business Day, the notice is instead taken to be given at 9.00am on the next Business Day.

17. GENERAL

17.1 Payment conditions

All payments required to be made by the Licensee to ARTC under this Licence must be paid:

- (a) without demand unless this Licence says demand must be made;
- (b) to ARTC or as directed by ARTC;
- (c) without set-off, counterclaim, withholding or deduction; and
- (d) by electronic funds transfer, unless ARTC otherwise directs.

17.2 ARTC's Authorised Users

Any ARTC Authorised User may exercise any right or perform any obligation of ARTC on ARTC's behalf.

17.3 Licensee's Associates

- (a) The Licensee must ensure that the Licensee's Associates comply with the terms of this Licence and do not cause the Licensee to breach this Licence.
- (b) Anything done or not done by a Licensee's Associate is, for the purposes of this Licence and for the purposes of establishing whether the Licensee is in breach of this Licence, deemed to have been done or not done by the Licensee.

17.4 Consents, approvals and agreements

Unless this Licence expressly provides otherwise, where a party's consent, approval or agreement is required under this Licence:

- (a) the consent, approval or agreement must be given in writing to be effective; and
- (b) that party must not:

**AGENDA OF THE ORDINARY MEETING OF COUNCIL
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- (i) unreasonably withhold or delay in giving its consent, approval or agreement; or
- (ii) attach any unreasonable conditions to its consent, approval or agreement.

17.5 No fetter - ARTC

Nothing in this Licence in any way fetters, limits or affects ARTC's rights:

- (a) under legislation as the operator of the Railway; or
- (b) as tenant, licensee or occupier under the Deed of Lease.

17.6 No fetter - Council

Nothing in this Licence in any way fetters, limits or affects the Licensee's rights, powers and duties as a local government authority constituted under the *Local Government Act 1993* (NSW).

17.7 Invalidity and severance

If a provision of this Licence is void, voidable or unenforceable, it must be read down. If the provision cannot be read down then it must be severed and the remainder of this Licence will continue to have full effect.

17.8 No merger

- (a) Rights and obligations of a continuing nature (including releases and indemnities) which are not fully satisfied or discharged on completion of any transaction contemplated by this Licence do not merge on completion of the transaction and continue in full force and effect.
- (b) ARTC does not have to incur any Cost, or make any payment, before enforcing an indemnity in this Licence.

17.9 No variation

This Licence can only be amended, varied, supplemented or replaced by another document signed by the parties.

17.10 No waiver

A party may only waive a right or remedy under this Licence by notice to the other party. No other act, omission or delay constitutes a waiver.

17.11 Counterparts, date of Licence and electronic signing

- (a) This Licence may be signed in any number of counterparts and all such counterparts taken together constitute one and the same licence.
- (b) If this Licence is undated and there is no contrary intention stated, the date of this Licence is the date of last execution by a party.
- (c) The parties agree to the electronic execution, exchange and delivery of counterparts of this Licence, including by email, and to be bound by the terms of this Licence on and from the date of electronic exchange or

**AGENDA OF THE ORDINARY MEETING OF COUNCIL
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delivery. Failure to deliver original counterparts does not affect the validity of this Licence.

- (d) If a party's signature is electronic, the party warrants and agrees that the electronic signature has been used to identify the person signing and that it intends that signature to bind the party.

17.12 Superior interests

The Licensee must permit anyone having an interest in the Rail Corridor Land which is superior to or concurrent with ARTC to exercise or perform that person's or ARTC's rights and obligations under this Licence.

17.13 Further assurance

Each party must do anything (including executing a document) reasonably necessary, or reasonably required by the other party, to give effect to this Licence and the transactions contemplated by it.

17.14 Governing law and jurisdiction

This Licence is governed by the Laws of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the courts and tribunals of New South Wales.

17.15 Entire agreement

This Licence and the Infrastructure Licences contain the entire agreement between the parties and supersede any other communications, negotiations, arrangements and agreements between the parties, whether oral or in writing, in connection with the subject matter of this Licence.

**AGENDA OF THE ORDINARY MEETING OF COUNCIL
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SCHEDULE 1

Licensed Area Plan

[L&R: To be inserted here once received from ARTC]

**AGENDA OF THE ORDINARY MEETING OF COUNCIL
WEDNESDAY 13 DECEMBER 2023**

EXECUTION

Executed as an agreement on

2023

AUSTRALIAN RAIL TRACK CORPORATION LIMITED

SIGNED for and on behalf of **Australian**)
Rail Track Corporation Limited ABN)
75 081 455 754 by its **duly authorised**
agent under section 126 of the
Corporations Act 2001 (Cth):

Signature of authorised agent

Name of agent (please print)

Agent's title (please print)

LICENSEE

Executed by **Wingecarribee Shire**)
Council by its authorised delegate)
pursuant to section 377 of the *Local*
Government Act 1993 (NSW) in the
presence of:

Signature of witness

Signature of authorised delegate

Name of witness

Delegate's name

Address of witness

Delegate's title



**Licence - Existing Infrastructure
Within the Railway Corridor**

Licence – Existing Infrastructure Within the Railway Corridor

Between:

Australian Rail Track Corporation Ltd

(ABN: 75 081 455 754)

and

Wingecarribee Shire Council

(ABN: 49 546 344 354)

**Mittagong at 129.650km –
Part Lot 17 Section 1 DP 651**



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Within the Railway Corridor**

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Details

Parties		
ARTC	Name	Australian Rail Track Corporation Limited
	ABN	75 081 455 754
Licensee	Name	Wingecarribee Shire Council
	ABN	49 546 344 354
Recitals		
A		ARTC controls and has the power to enter into agreements over the Land, either as owner or lessee of the Land.
B		The Licensee has installed a facility, structure or other installation on the Land as described in Item 2 (Infrastructure) and seeks to access the Land in order to keep and maintain the Infrastructure on the Land.
C		ARTC has agreed to grant a non-exclusive licence to access, use and occupy the Land subject to the terms and conditions contained in this Licence.
D		The Licensee agrees to be bound by the terms and conditions set out in this Licence.
E		IN CONSIDERATION of the payment of the licence fees set out in this Licence it is HEREBY AGREED as follows:



General Terms

1. Definitions

In this Licence, these terms have the following meanings:

Accreditation means an accreditation under Division 4 of Part 3 of the Rail Safety National Law.

Approval means any permit, consent, authorisation, registration, order, determination, licence, grant, certificate, sealing or other approval obtained or required to be obtained pursuant to applicable Law or from an Authority or any other person in relation to the use and/or occupation of the Land (including ARTC), and any requisition, condition or requirement from an Authority or any other person.

ARTC Standards and Procedures:

- (a) consists of the ARTC Engineering Standards, policies, procedures and Network Rules and regulations which are available from www.artc.com.au; and
- (b) include the following standards and procedures categorised into engineering disciplines:
 - (i) All disciplines: http://extranet.artc.com.au/eng_all.html
 - (ii) Track & Civil (including Structures): http://extranet.artc.com.au/eng_track-civil.html
 - (iii) Signals: http://extranet.artc.com.au/eng_signal.html
 - (iv) Plant & Equipment: http://extranet.artc.com.au/eng_plant-equip-ex.html
 - (v) Rolling Stock: http://extranet.artc.com.au/eng_rolling-stock.html
 - (vi) Electrical: http://extranet.artc.com.au/eng_electrical.html
 - (vii) Communications: http://extranet.artc.com.au/eng_comms.html

ARTC Third Party Works Application Form means the third party works application form for completion by external parties seeking potential access to, or works adjacent to, the Railway Corridor available at <http://www.artc.com.au/work/external-parties/>, as amended or replaced from time to time.

Associate means:

- (a) in relation to ARTC, each of the following persons when acting in accordance with the Licence:
 - (i) any officer, agent, representative, adviser, invitee, consultant, contractor, subcontractor or employee of ARTC acting in that capacity;
 - (ii) ARTC's representative named at Item 7 or any replacement appointed as notified in writing by ARTC; and
 - (iii) any other person to whom ARTC delegates a right, power, function or duty under this Licence; and



- (b) in relation to the Licensee, each of the following persons when acting in accordance with the Licence:
- (i) any officer, agent, representative, adviser, invitee, consultant, contractor, subcontractor or employee of the Licensee acting in that capacity;
 - (ii) the Licensee's representative named at Item 8 or any replacement appointed as notified in writing by the Licensee; and
 - (iii) any other person to whom the Licensee delegates a right, power, function or duty under this Licence.

Authority means any governmental, or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality, planning authority and any electricity, telecommunications, gas or other utility company having statutory rights in relation to the Land.

Business Day means any day other than a Saturday, Sunday or gazetted public holiday in the Jurisdiction.

Claims means any claim, action, demand, suit or proceeding (including by way of counterclaim, contribution or indemnity) made under this Licence or otherwise at Law arising out of or in connection with this Licence, including for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief or remedy.

Commencement Date means the date upon which the Licence commences as set out in Item 4.

Contamination means the presence in, on, over, under or from the Land of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation):

- (a) at a concentration above the concentration at which the substance is normally present in, on, over, under or from land or infrastructure in the same locality that is used for an equivalent purpose, being a presence that presents a significant risk of harm to human health or any other aspect of the environment; or
- (b) which would entitle an Authority to serve a notice requiring either party to Remediate the relevant substance.

Electronic Signature means a visual representation of a person's handwritten signature which is placed on this Licence using DocuSign or other electronic signing platform agreed by the parties and **Electronically Signed** has a corresponding meaning.

Environment:

- (a) includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings; and
- (b) without limiting paragraph (a), has the same meaning given to that term in the EP Act.

Environmental Laws means any Legislative Requirements, codes of practice and mandatory policies relating to any aspect of the Environment including land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use, transport, storage and handling of dangerous goods, the health or safety of any person or having as its objective the protection or enhancement of the Environment.

EP Act means:



- (a) if the Jurisdiction is NSW: the *Protection of the Environment Operations Act 1997* (NSW);
- (b) if the Jurisdiction is QLD: the *Environmental Protection Act 1994* (Qld);
- (c) if the Jurisdiction is SA: the *Environment Protection Act 1993* (SA);
- (d) if the Jurisdiction is VIC: the *Environment Protection Act 2017* (VIC); or
- (e) if the Jurisdiction is WA: the *Environmental Protection Act 1986* (WA).

Head Lease means, where Item 9 of the Licence indicates that ARTC is the lessee of the Land, the lease between the Head Lessor as lessor and ARTC as lessee in respect to the Land, as varied from time to time.

Head Lessor means the party identified in Item 9.

Infrastructure means the facility, structure or other installation on the Land as described in Item 2.

Initial Term means the term of this Licence which commences on the Commencement Date and is for the period set out in Item 3.

Jurisdiction means the jurisdiction in which the Land is situated.

Land means that parcel of land described in Item 1.

Laws means:

- (a) Legislative Requirements; and
- (b) common law and principles of equity.

Legislative Requirements includes:

- (a) the provisions of any statute, rule, regulation, proclamation, ordinance, by-law, order, award, present or future, whether local, state, federal or otherwise;
- (b) any relevant industry code or Australian standard;
- (c) the Approval of relevant Authorities; and
- (d) any requirements to pay fees and charges in connection with paragraphs (a) to (c).

Liability means any debt, obligation, claim, action, cost (including legal costs, deductibles or increased premiums) expense, loss (whether direct or indirect), damage, compensation, charge or liability of any kind (including fines or penalties), whether it is:

- (a) actual, prospective or contingent; or
- (b) currently ascertainable or not,

and whether:

- (c) under this Licence; or
- (d) arising at Law.



Licence means this document.

Network Rules means the network rules and procedures which apply to ARTC's rail network in the Jurisdiction.

Rail Infrastructure Facilities includes:

- (a) railway track, associated track structures, over track structures, cuttings, drainage works, track support earthworks and fences, tunnels, bridges, level crossings, service roads, signalling systems, train control systems, communication systems, overhead power supply systems, power and communication cables, and associated works, buildings, plant, machinery and equipment; and
- (b) "rail infrastructure" as that term is defined in the Rail Safety National Law,

but does not include any stations, platforms, rolling stock, rolling stock maintenance facilities, office buildings or housing, freight centres or depots, private sidings or spur lines connected to premises not vested in or owned by or managed or controlled by ARTC.

Rail Laws means all Legislative Requirements governing the design, construction, operation and maintenance of rail infrastructure, including the Rail Safety National Law, the Rail Safety Regulations and, if the Jurisdiction is NSW, the *Transport Administration Act 1988* (NSW).

Rail Safety National Law means:

- (a) if the Jurisdiction is NSW: the *Rail Safety National Law* (NSW);
- (b) if the Jurisdiction is QLD: the *Rail Safety National Law* (QLD);
- (c) if the Jurisdiction is SA: the *Rail Safety National Law* (SA);
- (d) if the Jurisdiction is Victoria: the *Rail Safety National Law* (VIC); or
- (e) if the Jurisdiction is Western Australia: the *Rail Safety National Law* (WA).

Rail Safety Regulation means:

- (a) if the Jurisdiction is NSW: the *Rail Safety National Law National Regulations 2012* (NSW);
- (b) if the Jurisdiction is QLD: the *Rail Safety National Law National Regulations 2012* (QLD);
- (c) if the Jurisdiction is SA: the *Rail Safety National Law National Regulations 2012* (SA);
- (d) if the Jurisdiction is VIC: the *Rail Safety National Law National Regulations 2012* (VIC); or
- (e) if the Jurisdiction is WA: the *Rail Safety National Law (WA) Regulations 2015* (WA).

Railway Corridor means any and all land owned, leased or controlled by ARTC.

Railway Operations has the meaning given to that term in the Rail Safety National Law.

Reference Schedule means the part of this Licence titled "Reference Schedule."

Remediation means the investigation, clean-up, removal, abatement, disposal, control, containment, encapsulation and other treatment of any Contamination, and includes the



monitoring and risk management of any Contamination and **Remediate** has a corresponding meaning.

Term means the term of this Licence as set out in clause 2.1(b).

WHS Act means all applicable Legislative Requirements relating to occupational health and safety which include but are not limited to:

- (a) if the Jurisdiction is NSW: the *Work Health and Safety Act 2011* (NSW);
- (b) if the Jurisdiction is QLD: the *Work Health and Safety Act 2011* (QLD);
- (c) if the Jurisdiction is SA: the *Work Health and Safety Act 2012* (SA);
- (d) if the Jurisdiction is VIC: the *Occupational Health and Safety Act 2004* (VIC);
- (e) if the Jurisdiction is WA: the *Work Health and Safety Act 2020* (WA);
- (f) any regulations made under the relevant legislation referred to in paragraphs (a) to (e) above; and
- (g) any applicable standards or codes of practice in respect of workplace health and safety.

WHS Laws means the WHS Act, WHS Regulation and any other relevant work or occupational health and safety law applicable in the Jurisdiction, including any regulations and other instruments under it including any codes of practice and any consolidations, amendments, re-enactments or replacements.

WHS Regulation means

- (a) if the Jurisdiction is NSW: the *Work Health and Safety Regulation 2017* (NSW);
- (b) if the Jurisdiction is QLD: the *Work Health and Safety Regulation 2011* (QLD);
- (c) if the Jurisdiction is SA: the *Work Health and Safety Regulations 2012* (SA);
- (d) if the Jurisdiction is VIC: the *Occupational Health and Safety Regulations 2017* (VIC);
or
- (e) if the Jurisdiction is WA: the *Work Health and Safety (General) Regulations 2022* (WA).

2. Grant of Licence

2.1 Grant of Licence

- (a) ARTC grants to the Licensee a non-exclusive licence for the Term to keep and maintain the Infrastructure on the Land.
- (b) The term of the licence granted by this Licence is for the Initial Term commencing on the Commencement Date, and thereafter until terminated by either party by giving the other party three (3) months' notice in writing (together the **Term**) provided that nothing in this clause 2.1(b) derogates from the termination provisions contained in clauses 2.1(c), 7.1, 7.2, 7.4(a)(iii) and 7.5.



- (c) If during the first 5 years of the Term ARTC believes, having regard to operational or safety considerations, that the Infrastructure should be removed from the Land, ARTC may by written notice to the Licensee terminate this Licence with effect from a date to be specified in the notice, being not earlier than 3 months after the date of giving the notice. Prior to giving such notice ARTC must first use its best endeavours acting in good faith to renegotiate the terms of this Licence to allow the Licensee to relocate the Infrastructure at its own costs to adjacent ARTC land on terms substantially similar to those contained in this Licence.
- (d) ARTC:
 - (i) has full and unfettered access to the Land and the Rail Infrastructure Facilities at all times and may not be excluded from entering the Land by any action of the Licensee;
 - (ii) may at any time inspect the Land or the Infrastructure for the purpose of determining whether the Infrastructure:
 - (A) will impact on the maintenance requirements of ARTC's facilities and infrastructure;
 - (B) will impact on Railway Operations; or
 - (C) are being carried out and maintained in accordance with the terms of this Licence;
 - (iii) in exercising its rights of access for the purposes of inspection, must:
 - (A) not cause unnecessary inconvenience to the Licensee's Associates; and
 - (B) liaise with the Licensee prior to any inspection, except in the case of an emergency (as determined by ARTC in its absolute discretion);
 - (iv) may grant rights to any third party in respect of the Land or the Rail Infrastructure Facilities as it sees fit; and
 - (v) has the legal right to possession and control of the Land and facilities management rights for all of the Rail Infrastructure Facilities which will at all times remain vested in ARTC (as applicable).
- (e) If at any time during the Term ARTC inspects the Land pursuant to clause (d)(i), then ARTC may require the Licensee to pay a fee to cover ARTC's costs of inspection (**Inspection Fee**) as reasonably determined by ARTC, including ARTC's internal costs. An Inspection Fee may be charged more than once during the Term subject to ARTC's reasonable need to re-inspect the Land or the Infrastructure during the Term.

2.2 General obligations

- (a) The Licensee bears all risk associated with the state or condition of the Land.
- (b) The Licensee must comply with the reasonable requirements of ARTC imposed for the purposes of safety, efficient operation or security.
- (c) The Licensee must comply with all Laws which affect or relate to the use or occupation of the Infrastructure or the Land.



- (d) The Licensee must promptly provide ARTC with copies of any notice (including any notice relating to Contamination, order or direction the Licensee receives from an Authority) which affects or relates to the use, occupation or ownership of the Infrastructure or the Land and must comply with such notices.
- (e) The Licensee must obtain, maintain and comply with all Approvals which from time to time may be necessary or appropriate for the use or occupation of the Infrastructure or Land.
- (f) The Licensee must promptly notify ARTC where any part of the Land is wholly or partly damaged or destroyed and must make good any damage to the Land or to any thing erected or standing on the Land howsoever caused by the Licensee or any person entering upon the Land with the authority of the Licensee. The Licensee must make good such damage at its own cost, to the satisfaction of ARTC and within any time specified in writing by ARTC.
- (g) If required by ARTC, the Licensee must permit prompt, full and open access to the Land by an independent auditor appointed by the Head Lessor for the purposes of conducting an audit of ARTC's compliance with the terms of the Head Lease.
- (h) The Licensee must not enter and must not authorise any other person to enter the Land for any purpose other than the purposes specified in this Licence.
- (i) The Licensee must ensure that the Licensee and all persons entering the Land with the authority of the Licensee do not disrupt or interfere with any Railway Operations or any activities of ARTC or any other person lawfully using the Land (including the safe operation of ARTC's rail network) and will cause as little damage as reasonably possible to the Land.
- (j) The Licensee acknowledges that this Licence comprises only a non-exclusive licence and does not create rights in the nature of a lease or easement.
- (k) The Licensee acknowledges and agrees that:
 - (i) ARTC and the Head Lessor (and any of their nominees) may access the Land at any time and for any reason; and
 - (ii) the Licensee is not entitled to claim or recover any payment or other benefit from or make any requisition to ARTC or the Head Lessor because of the exercise by ARTC, the Head Lessor (or any of their nominees) of any rights under clause 2.2(k)(i).

3. Licence Fees

3.1 Payment of Fees

- (a) ARTC must issue a tax invoice for any amount payable by the Licensee to ARTC under this Licence. Any amount owing by the Licensee must be paid to ARTC within 30 days after ARTC issues a tax invoice for that respective amount. Any amount which remains unpaid by the Licensee within 30 days of the date the relevant tax invoice was issued by ARTC to the Licensee will incur interest for each day the amount is overdue, calculated at the end of each month and compounded on a daily basis at a rate equal to 2% above the corporate reference rate of the Commonwealth Bank of Australia on the last Business Day of the relevant month from the due date to the date of payment.
- (b) Unless otherwise stated, all amounts payable under or in connection with this Licence are expressed exclusive of GST and will be increased by the relevant rate of GST from time to time.



3.2 Annual Licence Fee

- (a) The Licensee must pay to ARTC an annual licence fee in accordance with this clause 3.2 or such capitalised amount as is otherwise agreed by the parties.
- (b) The annual licence fee for the first year of the Term is the amount set out in Item 6. For each subsequent year of the Term, the annual licence fee will be increased by 3% (above the annual licence fee of the year immediately preceding).

3.3 Right to set-off

ARTC may withhold, deduct or set-off from moneys to which the Licensee is otherwise entitled, the amount of:

- (a) any debt or other moneys due and payable from the Licensee to ARTC; and
- (b) any claim to money which ARTC may have against the Licensee whether for damages or otherwise,

whether under this Licence or otherwise at Law relating to the Land.

4. Insurance and indemnities

4.1 Licensee's required insurance

The Licensee must effect and maintain, or procure that the Licensee's Associates effect and maintain public liability insurance, on the terms, for the risks identified and for the periods of time set out in Item 10.

4.2 Evidence of insurances

The Licensee must, whenever reasonably requested by ARTC, deliver to ARTC certificates of currency for each insurance required in accordance with clause 4.1.

4.3 Terms of insurance

The parties acknowledge and agree that the insurance required by clause 4.1 may be effected and maintained through a principal arranged insurance scheme or a self-insurance scheme, provided that the interests of ARTC are protected as they would have been had the Licensee complied with this clause 4.

4.4 ARTC may effect insurances

If the Licensee does not comply with clause 4.2, ARTC may, but is not obliged to, effect the relevant insurances and the cost of doing so will be a debt due and payable from the Licensee which ARTC will be entitled to recover, including under clause 3.3.

4.5 Indemnity

The Licensee must indemnify and keep ARTC fully indemnified against:

- (a) all Claims brought or made against ARTC, and
- (b) all loss, cost, expense (of any kind), liability and damage incurred or suffered by ARTC, including indirect losses,



arising in any way out of or in connection with the exercise of any rights pursuant to this Licence or the presence or activities of the Licensee or any person claiming through the Licensee on the Land except to the extent caused or contributed to by ARTC's negligence.

4.6 Release

To the maximum extent permitted by Law, the Licensee releases ARTC from all Claims and Liabilities for any damage, loss, injury or death occurring on the Land or arising out of or in connection to this Licence, except to the extent that they are caused by ARTC's negligence.

5. Infrastructure

5.1 Infrastructure

- (a) The Licensee must maintain, repair and keep the Infrastructure in:
 - (i) good and substantial repair, order and condition; and
 - (ii) a condition that:
 - (A) enables it to be safely used for its intended purpose;
 - (B) has no impact on the safety of ARTC's Railway Operations or the Railway Corridor; and
 - (C) is in accordance with, and meets the requirements of, this Licence and all relevant Laws.
- (b) On and from the Commencement Date, if the Licensee requires access to the Land to undertake maintenance, repairs or to carry out any other activity with respect to the Infrastructure, the Licensee must obtain ARTC's prior consent on each such occasion by submitting an ARTC Third Party Works Application Form to ARTC and paying any costs which may reasonably be required by ARTC. ARTC's consent may upon reasonable grounds be withheld or granted conditionally. Any permitted access to the Land will be on the terms of this Licence.
- (c) ARTC has no obligation to, but may, inform the Licensee that maintenance or repairs to the Infrastructure are required. If ARTC notifies the Licensee at any time that maintenance or repairs are required to the Infrastructure in order to protect ARTC's interests or property or if there is a safety or operational impact on ARTC's network (**Required Repairs**), the Licensee must carry out the Required Repairs within the time and on the conditions required by ARTC (including the completion of an ARTC Third Party Works Application Form). If the Licensee is unable or unwilling to carry out the Required Repairs in accordance with ARTC's requirements and timeframe (or if ARTC considers the maintenance or repair to be urgently required), ARTC may carry out the Required Repairs itself at the Licensee's cost.

5.2 Safety

- (a) The Licensee must ensure that the Licensee and all the Licensee's Associates entering upon the Land with the authority of the Licensee:
 - (i) undertake all activities with professional skill and care consistent with best industry practice;
 - (ii) comply with all applicable Laws, including the Rail Laws, Environmental Laws, workers' compensation legislation and WHS Laws;



- (iii) comply with the ARTC Standards and Procedures, Network Rules and any requirements of other Authorities;
- (iv) obtain and comply with all relevant Approvals;
- (v) comply with the conditions of any applicable environmental licence; and
- (vi) comply with the reasonable directions of ARTC and any of ARTC's authorised employees whilst on the Land which are required to:
 - (A) ensure the safety of any person or property;
 - (B) ensure that the terms of ARTC's Accreditation are not breached; and
 - (C) enable ARTC to comply with Rail Laws.
- (b) Clause 5.2(a) is an essential term of this Licence. ARTC may immediately terminate this Licence if the Licensee fails to comply with any of the obligations set out in clause 5.2(a).

5.3 Liability

- (a) ARTC is not liable for any costs incurred by the Licensee as a consequence of the discovery of a condition at the Land that was not anticipated by the Licensee.
- (b) The Licensee acknowledges that the Land is used as part of an operating rail network and that the Land may not be available at all times for the carrying out of maintenance, repairs or to carry out any other activity with respect to the Infrastructure. It is the Licensee's responsibility to liaise with ARTC to make alternative arrangements if work is unable to proceed as planned on a particular occasion. ARTC is not liable for any costs incurred by the Licensee as a consequence of changes in the timing of access to the Land.

5.4 Contamination

The Licensee:

- (a) upon the discovery of any Contamination in, on, over or under the Land, must notify ARTC as soon as practicable and in any event within 2 days after the discovery of the Contamination;
- (b) is responsible for all Contamination in, on or under the Land;
 - (i) arising out of or in relation to the Licensee's occupation of the Land; or
 - (ii) caused, contributed to, or exacerbated by, the Licensee,

(Relevant Contamination) and must comply with any directions from ARTC in relation to any Relevant Contamination;
- (c) must urgently carry out Remediation in relation to any Relevant Contamination which is required to be carried out to prevent or ameliorate any serious risk of harm to persons or the environment or to prevent or ameliorate any serious loss which will or may be incurred if the Remediation is not carried out urgently. The Licensee must promptly notify ARTC of the commencement of any Remediation pursuant to this clause 5.4(c); and
- (d) must, at the Licensee's cost:



- (i) ensure that Remediation directed or undertaken in accordance with this clause 5.4 is undertaken in accordance with all applicable Laws and any relevant requirements of Authorities and directions of ARTC; and
- (ii) otherwise comply with the Licensee's obligations under this clause 5.4.

6. Assignment

- (a) The Licensee must not assign or otherwise dispose of this Licence without ARTC's prior written consent.
- (b) If ARTC transfers its interest in the Land, ARTC may assign its rights under this Licence to the transferee and upon the transferee assuming ARTC's obligations under this Licence on its part to be performed or observed on or after the effective date of assignment, ARTC will automatically be released from them.
- (c) ARTC may assign its interest under this Licence to the Head Lessor (or the Head Lessor's nominee) without the consent of the Licensee.
- (d) The Head Lessor (if it so elects by notice in writing to the Licensee and ARTC) may take an assignment or novation of ARTC's rights and obligations under this Licence at the expiration or earlier termination of the Head Lease (if this Licence is still current at that date) without the need for the consent of any party to this Licence.
- (e) If the circumstances in clauses 6(c) or 6(d) arise, the Licensee must do all things and sign all documents reasonably required by the Head Lessor to effect the said assignment or novation.

7. Termination

7.1 Events of default

- (a) ARTC may terminate this Licence immediately and re-enter and take possession of the Land or convert this Licence to a monthly licence if any of the following events occur:
 - (i) the Licensee fails to observe or perform any of the Licensee's obligations under this Licence and the failure continues after the period specified by ARTC acting reasonably in a notice given by ARTC to the Licensee requiring the obligation to be performed; or
 - (ii) the Licensee becomes insolvent within the meaning of the *Corporations Act 2001* (Cth).
- (b) If ARTC converts this Licence to a monthly licence under clause 7.1(a) such monthly licence will be on the same terms as this Licence, subject to any amendments necessary to make the terms applicable to a month to month licence, and either party may terminate the monthly licence by giving one month's written notice to the other.
- (c) The Licensee acknowledges that failure to comply with Approvals or the requirements of any Law in any way affecting or applicable to the Land or the Infrastructure (including the WHS Laws) as required by this Licence is an event of default.



7.2 Termination of, or pursuant to, the Head Lease

ARTC may, by notice and with no compensation payable to the Licensee, terminate this Licence if the Head Lease is terminated.

7.3 Dealing with Infrastructure upon Termination

- (a) Upon termination of this Licence, ARTC may:
- (i) purchase the Infrastructure for consideration of \$1.00. Upon ARTC giving notice in writing of ARTC's intention to purchase the Infrastructure and paying the \$1.00, title to the Infrastructure will automatically pass to ARTC without any further act or instrument being necessary and the Licensee must at its own expense cause any charge, encumbrance or other interest in the Infrastructure to be wholly discharged within two (2) months of the date of ARTC's notice; or
 - (ii) by notice in writing to the Licensee, require the Licensee (at the Licensee's expense) to remove the Infrastructure from the Land or disconnect the Infrastructure from any services, systems or other infrastructure as specified by ARTC and repair all damage to the Land. In these circumstances, the Licensee must carry out such works during the three (3) month period following ARTC's request on terms of access agreed with ARTC. If the Licensee does not comply with ARTC's request to remove the Infrastructure within the three (3) month period, ARTC may undertake such removal itself at the cost of the Licensee.
- (b) The Licensee releases ARTC and ARTC's Associates from all Liability and must not make any Claim against ARTC or ARTC's Associates (including for any damage, loss, injury or death) occurring as a result of the exercise by ARTC of its rights under this clause 7.3.

7.4 Resumption

- (a) If ARTC receives a notice of resumption or compulsory acquisition of the Land (or any proposal for the same) from or by any Authority, then ARTC:
- (i) must provide the Licensee with written notice regarding the proposal as soon as practicable;
 - (ii) may either:
 - (A) reasonably endeavour to provide the Licensee with an alternative site for the purposes of the Infrastructure on the same terms and conditions of this Licence and the parties must co-operate in relation to any such relocation; or
 - (B) reasonably endeavour to procure that the resuming Authority or the person benefitting from the resumption (as appropriate) grants a licence in respect of the Land to the Licensee on the same terms as this Licence; and
 - (iii) notwithstanding clause **Error! Reference source not found.**, may terminate this Licence by giving not less than twelve (12) months prior written notice to the Licensee (or if this is not possible, then the maximum amount of prior written notice as is practicable).
- (b) When any termination takes effect pursuant to clause 7.4(a)(iii), the obligations of ARTC (except for the obligations under clause 7.4(a)(ii)) under this Licence will come



to an end and ARTC has no Liability, nor may the Licensee may any Claim against ARTC in connection with such termination.

7.5 Termination by ARTC for safety reasons or rail development

- (a) Notwithstanding clause **Error! Reference source not found.**, ARTC may, acting in good faith, terminate this Licence on giving 12 months' prior written notice to the Licensee at any time (**Termination Notice**) if:
 - (i) in ARTC's reasonable opinion, there is or is likely to be a safety risk to rail operators or members of the public if the Infrastructure is in operation or remains on the Land; or
 - (ii) as part of any genuine redevelopment, asset rationalisation or project conducted by ARTC that includes the Land, ARTC requires vacant possession of the Land or any part of it.
- (b) Upon expiry of the Termination Notice, this Licence will automatically terminate without further notice required, provided that ARTC has complied with clause 7.5(c)(i).
- (c) If ARTC proposes to terminate this Licence under clause 7.5(a), then:
 - (i) ARTC must use its reasonable endeavours to offer a licence of alternative land (**New Site**) to the Licensee for the purposes of relocating or installing similar works to the Infrastructure within reasonable proximity to the Land (**Relocation**) as soon as practicable after a Termination Notice has been given;
 - (ii) the Licensee may accept ARTC's offer in relation to the New Site by providing ARTC with written notice;
 - (iii) if the Licensee accepts the New Site pursuant to clause 7.5(c)(ii), then:
 - (A) the parties must co-operate in relation to any such Relocation; and
 - (B) ARTC must offer to enter into a new agreement with the Licensee on substantially the same terms as this Licence in respect of the New Site (provided that the land details will be varied, the term of the new agreement will be for the balance of the Initial Term then remaining, and the Licensee will carry out the Relocation at its own cost); and
 - (iv) the Licensee will not be entitled to any compensation from ARTC and must not make any Claim against ARTC for the termination of this Licence under clause 7.5(b).
- (d) For the avoidance of doubt, if this Licence is terminated by ARTC under this clause **Error! Reference source not found.** and on termination, the Infrastructure remains on the Land, ARTC may exercise its rights under clause 7.3.
- (e) The parties acknowledge that this clause 7.5 has been inserted to enable ARTC to maintain a high level of safety for rail operators and members of the public and to operate ARTC's business efficiently and in accordance with any relevant public policy decisions.

8. GST

8.1 Interpretation

- (a) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 8.
- (b) Unless stated otherwise, all consideration to be provided under this Licence is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 8.
- (c) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- (d) References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.
- (e) Any contract entered into by a party to this Licence with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with this Licence, must include a clause including equivalent terms to this clause 8.

8.2 GST payable

- (a) If GST is or will be payable in relation to a supply made by a party (the **Supplier**) under or in connection with this Licence, then the party who is the recipient of the supply (the **Recipient**) must pay an additional amount to the Supplier equal to the amount of GST payable on the supply (**GST Amount**) at the same time as any other consideration is to be first provided for that supply.
- (b) The Supplier must provide a tax invoice to the Recipient for the supply no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 8.2(a).

8.3 Adjustments

- (a) If the GST Amount payable in relation to a supply made under or in connection with this Licence varies from the GST Amount paid by the Recipient under clause 8.2(a), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient subject to the issue of an adjustment note.
- (b) If an adjustment event occurs in relation to a supply made under or in connection with this Licence, the Supplier must give the Recipient an adjustment note as soon as reasonably practicable after the Supplier becomes aware of the adjustment event, but no later than 20 Business Days after the adjustment event.

8.4 Non-monetary consideration

- (a) To the extent that the consideration provided for a taxable supply to which clause 8.2(a) applies is a taxable supply made by the Recipient to the Supplier in the same tax period (**Supply**), the GST Amount that would otherwise be payable by the



Recipient to the Supplier in accordance with clause 8.2(a) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

- (b) The Recipient must issue to the Supplier a tax invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 8.2(a).

8.5 Reimbursements

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this Licence must exclude the amount of GST referable to the cost to the extent to which an entitlement arises to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

8.6 No merger

This clause 8 will not merge on termination of this Licence.

9. General

9.1 Interpretation

In this Licence, unless the context otherwise requires:

- (a) headings are for convenience of reference only and do not affect the interpretation or construction of this Licence.
- (b) the singular includes the plural and vice versa;
- (c) a reference to **this Licence** includes all schedules, annexures, attachments and exhibits to this Licence;
- (d) a reference to **dollars** or **\$** is to Australian currency;
- (e) any reference to time is to the time in the capital city of the Jurisdiction;
- (f) any reference to **Item** is to a numbered item in the Reference Schedule;
- (g) a reference to a **clause, schedule, annexure, attachment** or **exhibit** is to a clause, schedule, annexure, attachment or exhibit to this Licence;
- (h) a reference to **including, includes** or **include** must be construed without limitation;
- (i) a reference to any thing (including any right or any period of time) includes a part of that thing;
- (j) a reference to a person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (k) a reference to any gender includes all genders;
- (l) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;



- (m) a reference to any Act or statutory instrument or particular provision of an Act or such statutory instrument is taken to include all regulations, orders or instruments issued under the legislation or provision, any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision and any substituted legislation or substituted provision;
- (n) a reference to any party to this Licence includes, in the case of ARTC, ARTC's assignees and successive assignees, the owner for the time being of the Land and, in the case of the Licensee, the Licensee's permitted assigns;
- (o) where two or more persons are named as a party to this Licence, the representations, warranties, covenants, obligations and rights given, entered into or conferred (as the case may be), bind them jointly and each of them severally;
- (p) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (q) no rule of construction applies to the disadvantage of a party because that party put forward this Licence or any portion of it.

9.2 Notices

- (a) For the purpose of this clause notice means a notice, consent, approval or other communication under this Licence.
- (b) A notice must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (i) delivered to that person's address;
 - (ii) sent by pre-paid mail to that person's address; or
 - (iii) sent by email to that person's email address.
- (c) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (i) if delivered, on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
 - (ii) if sent by pre-paid mail, on the third Business Day after posting; or
 - (iii) if transmitted by email:
 - (A) if delivered by 5.00 pm on a Business Day - at the time (local time in the place of receipt) specified in the delivery confirmation or receipt generated by the sender's email (which include a confirmation that the email was successfully relayed to the recipient's server); or
 - (B) if delivered after 5.00 pm on a Business Day or on a day that is not a Business Day - on the next Business Day after the time (local time in the place of receipt) specified in the delivery confirmation or receipt generated by the sender's email (which include a confirmation that the email was successfully relayed to the recipient's server).
- (d) For the purposes of this clause 9.2, the address, email address and contact person of:



- (i) ARTC is the address, email address and contact person set out in Item 7; and
- (ii) the Licensee is the address, email address and contact person set out in Item 8,

or such other address, email address or contact person as ARTC or the Licensee may, from time to time, notify to each other in accordance with this clause 9.2.

9.3 Confidentiality

- (a) No party may disclose the content of this Licence or use, copy, adapt, alter, disclose or part with possession of any information or data of the other which is disclosed or otherwise comes into its possession directly or indirectly as result of this Licence and which is of a confidential nature (**Information**) except as strictly necessary to perform its obligations or exercise its rights under this Licence provided that Information does not include information:
 - (i) which the receiving party can establish was already in its possession at the date it was received or obtained from the other party;
 - (ii) which the receiving party obtains from some other person with good legal title to it; or
 - (iii) which comes into the public domain otherwise than through the default or negligence of the receiving party or which is independently developed by or for the receiving party.
- (b) The obligation of confidentiality in this clause 9.3 continues in force notwithstanding termination of this Licence for any reason.
- (c) Notwithstanding clause 9.3(a), a party may make any disclosure in relation to this Licence, as in its absolute discretion, it thinks necessary to:
 - (i) the Head Lessor;
 - (ii) its professional advisers, bankers, financial advisers and financiers, if those persons undertake to keep information confidential on substantially the same terms as the parties in clause 9.3(a) undertake;
 - (iii) comply with any applicable Law; or
 - (iv) any of its employees, contractors, consultants or other persons to whom it is necessary to disclose the information, on receipt of an undertaking from that employee, contractor, consultant or other person to keep the information confidential.
- (d) Except as required by applicable Law, all press releases and other public announcements relating to the matters dealt with by this Licence must be in terms agreed by ARTC and the Licensee.

9.4 Further assurance

The Licensee and ARTC must do, sign, execute and deliver all agreements, documents, instruments and acts reasonably required of it by notice from ARTC to carry out and give full effect to this Licence and the rights and obligations of the parties under it.



9.5 Costs

- (a) The Licensee must, on request, pay or reimburse to ARTC:
- (i) all stamp duty (if any) payable on this Licence;
 - (ii) all of the reasonable legal costs (determined on a solicitor and client basis) incurred by ARTC in connection with the preparation of this Licence, negotiating, revising and engrossing of this Licence (including all attendances on the Licensee by ARTC's legal and other advisers and all advices provided to ARTC) and attending to the execution of this Licence;
 - (iii) any reasonable costs incurred by ARTC for the provision of appropriate safety training to the Licensee; and
 - (iv) any reasonable costs incurred by ARTC in administering, supervising or otherwise dealing with the Licensee and the associated overheads under or in connection with this Licence.
- (b) Except where this Licence provides otherwise, the Licensee must pay its own costs for everything it must do under or in connection with this Licence and any document which is ancillary to or collateral to this Licence.

9.6 Amendment

This Licence may only be amended or supplemented in writing, signed by the parties.

9.7 Relationship of the parties

Nothing in this Licence constitutes the relationship of landlord and tenant or an agency, partnership, association, joint venture or other fiduciary relationship between the parties under the laws of any applicable jurisdiction and, except as may be provided in this Licence, no party may act or has any authority to act as agent of, or in any way bind or commit, another party to any obligation.

9.8 Remedies cumulative

The rights and remedies provided in this Licence are cumulative with, and do not exclude, any rights or remedies provided by Law.

9.9 Governing Law

- (a) This Licence is governed by the law in force in the Jurisdiction.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Licence.

9.10 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.



9.11 Severance

Any provision in this Licence which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Licence or affecting the validity or enforceability of that provision in any other jurisdiction.

9.12 Entire agreement

This Licence is the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this Licence. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Licence.

9.13 No merger

- (a) The provisions of this Licence do not merge on termination.
- (b) Clauses 5.4, 8 and 9.3 survive the expiration or earlier termination of this Licence, together with any other term which by its nature is intended to do so.

9.14 No prejudice to accrued rights

The expiration or termination of this Licence will be without prejudice to the accrued rights of either party at the time of expiration or termination.

9.15 No fetters

Nothing in this Licence fetters the statutory rights and powers of ARTC.

9.16 Counterparts, exchange and print out

- (a) This Licence may be executed (including by being Electronically Signed) in any number of counterparts which together will constitute one and the same Licence.
- (b) Each party consents to the exchange of counterparts of this Licence by delivery by email or such other electronic means as may be agreed in writing.
- (c) Where this Licence is required by Law to be in physical form, a printout of an Electronically Signed copy of this Licence satisfies that requirement.
- (d) If this Licence or any counterpart is Electronically Signed by a party then that party must, upon reasonable request by the other party, as soon as reasonably practicable, deliver a physical counterpart of this Licence with the handwritten signature or signatures of the party and all written evidence of the authority of a person signing on their behalf, provided that a failure to comply with the request does not affect the validity or enforceability of this Licence.

9.17 Consents, approvals and authorisations

Unless this Licence specifies otherwise, where ARTC's consent, approval, agreement or authorisation is required by this Licence, then ARTC:

- (a) must give that consent, approval, agreement or authorisation in writing for it to be effective;



- (b) may give or withhold its consent, approval, agreement or authorisation in ARTC's absolute discretion; and
- (c) if it gives consent, approval, agreement or authorisation, may do so by attaching any conditions required by ARTC in its absolute discretion to ARTC's consent, approval, agreement or authorisation.

9.18 Acts and omissions of Licensee's Associates

- (a) The Licensee must ensure that its Associates do not cause the Licensee to breach this Licence and observe the terms of this Licence when exercising rights of, or performing obligations of, the Licensee under this Licence.
- (b) Anything done or not done by a Licensee's Associate is deemed to have been done or not done by the Licensee for the purposes of establishing whether the Licensee is in default under this Licence.

9.19 ARTC's Associates

Any of ARTC's Associates acting in accordance with the scope of their authority may exercise any of ARTC's rights under this Licence or discharge ARTC's obligations under this Licence for and on behalf of ARTC.

9.20 Termination of earlier licences

In consideration of the grant of this Licence, the Licensee and ARTC hereby terminate by mutual agreement, with effect as at midnight on the day before the Commencement Date, any earlier licences, leases or other agreements or rights between the Licensee and ARTC for the use or occupation of the Land (**Prior Agreement**). Neither party will have any further liability to the other party under such Prior Agreement, once terminated, except for any prior breaches.

10. Electronic Signature and exchange

10.1 Consent and execution

- (a) If permitted by Law, this Licence may be signed by or on behalf of a party by Electronic Signature.
- (b) Each party may sign this Licence by Electronic Signature of a person who has delegated authority to sign this Licence and bind the party to this Licence.

10.2 Intention to be bound

Where an Electronic Signature has been used to sign this Licence, the parties warrant that their Electronic Signature was used to:

- (a) identify and authenticate the person signing;
- (b) where the party is an individual, indicate that the person intended to be bound by the terms of this Licence; and
- (c) where the party is a company, the person intended to bind the company to the terms of this Licence.



Signing page

EXECUTED by the parties as an **agreement**.

DATED: _____

EXECUTED by **AUSTRALIAN RAIL TRACK CORPORATION LIMITED (ABN 75 081 455 754)** by its duly authorised delegate in the presence of:

.....
Signature of witness

.....
Signature of Authorised Officer

.....
Name of witness

.....
Name of Authorised Officer

EXECUTED by **WINGECARRIBEE SHIRE COUNCIL (ABN 49 546 344 354)** by a duly authorised delegate in the presence of:

.....
Signature of witness

.....
Signature of Authorised Delegate

.....
Name of witness

.....
Name of Authorised Delegate



Reference Schedule

ITEM 1 Land	Land at Mittagong at 129.650km on the Up side of the Main South Railway Line being part of Lot 17 Section 1 DP 651	
ITEM 2 Infrastructure	Retaining wall, sewer pipeline and stormwater pipeline	
ITEM 3 Initial Term	Five (5) years being the period after which either party may terminate this Licence with 3 months' notice, in accordance with clause 2.1(b).	
ITEM 4 Commencement Date	1 August 2023	
ITEM 5 Not Used		
ITEM 6 Annual Licence Fee	\$792.00 (exclusive of GST)	
ITEM 7 ARTC's Representative	Name:	Michael Irons
	Title:	Property Manager
	Mobile number:	0427 491 111
	Email address:	mirons@artc.com.au
	Address for notices:	PO Box 2150 Wagga Wagga NSW 2650
ITEM 8 Licensee's Representative	Name:	
	Title:	General Manager
	Mobile number:	N/A
	Email address:	mail@wsc.nsw.gov.au
	Address for notices:	PO Box 141 Moss Vale NSW 2577
Item 9 Head Lease	Is ARTC a lessee of the Land: Yes Head Lessor: Transport for NSW Date of Head Lease: 4 June 2004	
Item 10 Public Liability Insurance	Insured: Each of: <ul style="list-style-type: none"> • Licensee; • Licensee's Associates; • ARTC; • ARTC's Associates; and • all contractors and subcontractors of any tier carrying out obligations under this Licence. Sum insured: A limit of indemnity not less than \$20,000,000 for any single occurrence and	



**Licence - Existing Infrastructure
Within the Railway Corridor**

	<p>unlimited in the aggregate as to the number of occurrences for any one period of insurance.</p> <p>Scope of cover: Legal liability for personal injury (including injury to, or disease or death of, persons) or real or personal property damage (including loss of use) caused by an occurrence during the period of insurance, where such occurrence arises out of or in connection with the obligations under this Licence.</p> <p>Period of cover: At all times during the carrying out of the obligations under this Licence.</p>
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**AGENDA OF THE ORDINARY MEETING OF COUNCIL
WEDNESDAY 13 DECEMBER 2023**

20 Station Place,
Wagga Wagga NSW 2650
PO Box 2150,
Wagga Wagga, 2650

P 02 6939 5467
E info@artc.com.au
W artc.com.au



1 December 2023

Mandy McCullagh
Coordinator Property Services
Wingecarribee Shire Council
PO Box 141
Moss Vale NSW 2577

Dear Mandy,

DA 19/0922 – licences for stormwater & services for development of 21 Ferguson Crescent, Mittagong NSW

I refer to recent discussions between Wingecarribee Shire Council (**Council**), ARTC and the developer Sett Homes in relation to licences for stormwater and services for Sett Homes' development project at 21 Ferguson Crescent, Mittagong NSW.

The proposal is for two licences to be entered into between ARTC and Council as follows:

1. Licence to discharge water into a rail corridor; and
2. Licence for Existing Infrastructure within the rail corridor (specifically in relation to a retaining wall, sewer pipeline and stormwater pipeline).

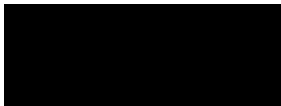
Further to Council's request that the term of the licences be greater than the currently proposed five year term, ARTC has escalated this matter and, subject to internal approvals, ARTC proposes an expiry date of 3 September 2064. For your background, this proposed date is one day prior to the expiry of the Deed of Lease between Transport for NSW (as landlord) and ARTC (as tenant); ARTC cannot offer a term or option to renew extending beyond that date.

ARTC will arrange for the draft licences to be amended to reflect the term noted above, and subject to internal approvals being obtained, will provide the updated licences to Council for signing.

ARTC and Sett Homes will separately discuss the licence fees payable for these licences.

Should you have any further questions in relation to this matter, please do not hesitate to contact me on 0427 491 111 or email mirons@artc.com.au.

Yours sincerely



Michael Irons
Property Manager Wagga Wagga