



Government Gazette

of the State of

New South Wales

Number 292—Compulsory Acquisitions

Friday, 2 July 2021

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TRANSPORT ADMINISTRATION ACT 1988

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

Notice of Compulsory Acquisition of Land

Transport Asset Holding Entity of New South Wales by its delegate declares, with the approval of Her Excellency the Governor, that all of the freehold interests described in Schedule 1 and all the interests in land described in Schedules 2 to 13 of this notice hereto is acquired by compulsory process under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* as authorised by section 12 of the *Transport Administration Act 1988* for the purposes of the Cabramatta Loop Project.

David Jurd
Chief Executive Officer
Transport Asset Holding Entity of New South Wales

SCHEDULE 1 (LAND)

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool and State of New South Wales, being Lot 1 in Deposited Plan 1265554, having an area of 150 square metres and said to be in the possession of the Council of the City of Liverpool (now known as Liverpool City Council) (registered proprietor);

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool, Parish of St Luke, County of Cumberland and State of New South Wales, being Lot 31 in Deposited Plan 1269570, having an area of 56.9 square metres and said to be in the possession of PWA Properties Pty Ltd (registered proprietor) and Peter Warren Automotive Pty Ltd (registered lessee) but excluding from the acquisition J182313 Easement for sewerage purposes 3.66 wide;

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool, Parish of St Luke, County of Cumberland and State of New South Wales, being Lot 2 in Deposited Plan 1262377, having an area of 59.4 square metres and said to be in the possession of PWA Properties Pty Ltd (registered proprietor) and Peter Warren Automotive Pty Ltd (registered lessee) but excluding from the acquisition J182313 Easement for sewerage purposes 3.66 wide;

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool, Parish of St Luke, County of Cumberland and State of New South Wales, being Lot 3 in Deposited Plan 1262377, having an area of 391.1 square metres and said to be in the possession of the Council of the City of Liverpool (now known as Liverpool City Council) but excluding from the acquisition J182313 Easement for sewerage purposes 3.66 wide;

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool, Parish of St Luke, County of Cumberland and State of New South Wales, being Lot 4 in Deposited Plan 1262377, having an area of 748.8 square metres and said to be in the possession of Minister administering the Environmental Planning and Assessment Act, 1979 (registered proprietor) and Liverpool City Council (care control manager under the *Environmental Planning and Assessment Act 1979*) but excluding from the acquisition J182313 Easement for sewerage purposes 3.66 wide; and

All that piece or parcel of land situated in the Local Government Area of Liverpool and State of New South Wales, being Lot 5 in Deposited Plan 1262377, having an area of 14.5 square metres and said to be in the possession of the Council of the City of Liverpool (now known as Liverpool City Council) (registered proprietor).

All that piece or parcel of land situated in the Local Government Area of Fairfield and State of New South Wales, being Lot 6 in Deposited Plan 1262377 having an area of 1,867.1 square metres or thereabouts and said to be in the possession of Fairfield City Council (registered proprietor).

SCHEDULE 2

(INTEREST IN LAND FOR TEMPORARY EASEMENT FOR ACCESS)

Easement rights on terms set out in Schedule 3 described hereunder as:

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool, Parish of St Luke, County of Cumberland and State of New South Wales, shown in Deposited Plan 1262377 as “(OO) proposed easement for temporary construction works variable width” over part of Lot 10 in DP788368 and said to be in the possession of SB Investments Pty Ltd (registered proprietor), Hungry Jack’s Pty Ltd (registered lessee), Kentucky Fried Chicken Pty Limited (caveator), Southern Restaurants Pty Limited (unregistered lessee), Westpac Banking Corporation (registered mortgagee), Lincraft Australia Pty Ltd (registered lessee), Supreme Furniture BT Pty Ltd (registered lessee), Binh Dinh Nho & Hoang Mai Dinh (registered lessee), Mr Gym Pty Ltd (registered lessee), Fantastic Holdings Limited (registered lessee), New South Wales (NSW) Cashies Pty Ltd (registered lessee), Shannon Michelle Magoulias & Layla Sbbet (registered lessee), Dollar World Australia Pty Ltd (registered lessee), Celfred Lagrio Aguala (registered lessee), Super Cheap Auto Pty Ltd (registered lessee), Bedrooms & More Pty Ltd (registered lessee), HKLC Pty Ltd (registered lessee), Independent Living Specialists Pty Ltd (registered lessee), Powerland Electronic Pty Ltd (registered lessee), The Savoury Dining Warwick Farm Pty Ltd (registered lessee), Madera Kafe Pty Ltd (registered lessee) and AJJN Pty Ltd (registered lessee).

SCHEDULE 3

(EASEMENT RIGHTS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

“**ARTC**” means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

“**Authorised Users**” means every person or entity authorised by the Burdened Owner or the Benefitted Owner and includes employees, agents, contractors and invitees and in relation to the Benefitted Owner includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

“**Benefitted Owner**” means every person or entity who is at the time entitled to the freehold interest in the Lot Benefitted.

“**Burdened Owner**” means every person or entity who is at any time entitled to the freehold interest in the Lot Burdened.

“**Cabramatta Line**” means a dedicated freight rail line (operated by ARTC) extending from Sefton to Macarthur known as the Southern Sydney Freight Line.

“**Consequential Loss**” means loss of profit, loss of financial opportunity, loss of business opportunity, loss of goodwill, whether present or future, fixed or unascertained, actual or contingent, incurred or sustained by the Burdened Owner as a result of any act or omission of the Benefitted Owner or its Authorised Users (whether negligent or otherwise).

“**Easement Site**” means the area marked “(OO) proposed easement for temporary construction works variable width” on the Plan.

“Government Authorities” means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

“Law” means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“Legislative Requirements” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“Lot Benefitted” means the dominant tenement specified in clause 11.

“Lot Burdened” means the servient tenement specified in Schedule 2.

“Occupier” means any person that has a legal right to access, use or occupy the Easement Site.

“Plan” means Deposited Plan 1262377.

“Planning Approval” means the state significant infrastructure development application no. SSI 9186 approved by the Minister for Planning and Public Spaces on 28 July 2020 as amended from time to time.

“Project” means the duplication of a section of the Cabramatta Line between Cabramatta Station and Warwick Farm Station and other ancillary works to be carried out in accordance with the Planning Approval

“Project Works” means all works and activities required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of new bridges, embankments and retaining structures;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;
- (vi) erection of temporary and permanent fencing and/or hoardings;
- (vii) works to reinstate the Easement Site to the condition outlined in the Site Condition Report;
- (viii) temporary compound erection and operation;
- (ix) temporary site parking facilities;
- (x) low impact construction works;
- (xi) temporary works;
- (xii) utility adjustment; and
- (xiii) landscaping works and remediation works.

“Site Condition Report” means a report detailing the condition of the Easement Site at the commencement of this easement. The report shall consist of a detailed plan including, but not limited to, documenting the condition of all existing improvements, roads, fences, gates, paths, hardstand areas, playing fields, landscaping including gardens, shrubs and trees (as applicable).

“Term” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 5.

1.2 In this instrument:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of easement

2.1 The Benefitted Owner and all of its Authorised Users have the full and free right to:

- (i) by any reasonable means pass across each Lot Burdened, but only within the Easement Site, to get to or from the Lot Benefitted, and
- (ii) do anything reasonably necessary for the purpose referred to in clause 2.1(i), including:
 - (A) entering the Lot Burdened, and
 - (B) taking anything on to the Lot Burdened, and
 - (C) carrying out work within the Easement Site, such as constructing, placing, repairing or maintaining trafficable surfaces, driveways or structures.

2.2 In exercising powers under clause 2.1, the Benefitted Owner must, and must ensure that its Authorised Users must:

- (i) ensure all work is done diligently, professionally, in a proper and workmanlike manner and in accordance with the Law;
- (ii) cause as little inconvenience as is practicable to the Burdened Owner and any Occupier;
- (iii) cause as little damage as is practicable to the Lot Burdened and any improvement on it; and
- (iv) make good any collateral damage.

3 Commencement of easement

3.1 This easement is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the easement is acquired pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

3.2 This easement commences operation on the earlier of:

- (i) the date to be nominated by ARTC by at least one month’s written notice to the Burdened Owner; and
- (ii) 18 December 2021,
(the **“Operative Date”**).

3.3 The Benefitted Owner will prepare, or will procure that its Authorised User prepare, the Site Condition Report.

4 Expiry of easement

4.1 This easement expires on the earlier of:

- (i) 3 years from the Operative Date; and
- (ii) the date specified in a notice issued by the Benefitted Owner advising that the easement is terminated, being a date not less than one month from the date of that notice,

(the “**Expiry Date**”).

4.2 On and from the Expiry Date, the Burdened Owner and the Benefitted Owner each releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

5 Partial release

5.1 The Benefitted Owner may release this easement over any part of the Easement Site upon completion of the obligations outlined in clause 8 with respect to that part of the Easement Site (**Release Notice**).

5.2 A Release Notice must:

- (i) specify the release date, being a date not less than one month after the date on which the Benefitted Owner gives the Release Notice (**Release Date**);
- (ii) specify that part of the Easement Site over which this easement is to be released and include a plan of the area; and
- (iii) be accompanied by a registrable transfer releasing easement executed by the Benefitted Owner to enable the partial release of this easement to be recorded with NSW Land Registry Services, if required, to effect the partial release.

5.3 On and from the Release Date, the Burdened Owner and the Benefitted Owner each releases the other from any liability relating to events or circumstances occurring or arising after the Release Date in respect of the part of the easement which is being released.

6 Risk, release and indemnities

6.1 The Benefitted Owner acknowledges and agrees that during the Term:

- (i) the Benefitted Owner and its Authorised Users will access, occupy, use and keep in good repair the Easement Site and will carry out any works permitted under this easement at the Benefitted Owner’s risk;
- (ii) the Benefitted Owner releases the Burdened Owner to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Easement Site and carrying out of any works permitted under this easement by the Benefitted Owner or its Authorised Users under this easement; and
- (iii) the Benefitted Owner indemnifies and will keep indemnified the Burdened Owner against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Easement Site or the carrying out of any works permitted under this easement by the Benefitted Owner or its Authorised Users.

6.2 The Benefitted Owner has no liability, nor will the Burdened Owner be entitled to make any claim against the Benefitted Owner or its Authorised Users in respect of any Consequential Loss.

7 Limitation on liability

The assumption of risk, releases and indemnities of the Benefitted Owner referred to in clause 6 will not apply to the extent that any claim was caused or contributed to by the Burdened Owner, the Occupier or their Authorised Users.

8 Restoration of Areas

8.1 Prior to completion of the Project Works the Benefitted Owner will, and will ensure that its Authorised Users restore the Easement Site to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Benefitted Owner or its Authorised Users with the consent of the Burdened Owner or Occupier (as applicable). This obligation does not require the Benefitted Owner or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.

8.2 Prior to the Expiry Date or the Release Date (as applicable), the Benefitted Owner will, and will ensure its Authorised Users vacate the Easement Site (or, in respect of a partial release, the relevant part of the Easement Site) and, subject to clause 8.1 remove from the Easement Site (or, in respect of a partial release, the relevant part of the Easement Site), all of its property, loose materials, waste and rubbish.

9 Governing law

This easement is governed by and must be construed according to the law applying in New South Wales.

10 No fetter

The Benefitted Owner and the Burdened Owner acknowledge and agree that nothing in this easement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Benefitted Owner to exercise any of its functions and powers pursuant to any Law.

11 Lot Benefitted

For the purposes of section 88 of the *Conveyancing Act 1919*, it is hereby declared that the land having the benefit of this easement is Lot 4 DP1262377.

SCHEDULE 4

(INTEREST IN LAND FOR LEASE)

A lease on terms set out in Schedule 5, described hereunder as:

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool, Parish of St Luke, County of Cumberland and State of New South Wales, shown in Memorandum AQ426557 over part of Lot 9 in DP1262377 and said to be in the possession of Liverpool City Council (registered proprietor).

SCHEDULE 5

(LEASE TERMS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

“**ARTC**” means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

“Authorised Users” means every person or entity authorised by a party and includes employees, agents, contractors and invitees and in relation to the Authority includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

“Authority” means the Transport Asset Holding Entity of New South Wales.

“Cabramatta Line” means a dedicated freight rail line (operated by ARTC) extending from Sefton to Macarthur known as the Southern Sydney Freight Line.

“Consequential Loss” means loss of profit, loss of financial opportunity, loss of business opportunity, loss of goodwill, whether present or future, fixed or unascertained, actual or contingent, incurred or sustained by the Proprietor as a result of any act or omission of the Authority or its Authorised Users (whether negligent or otherwise).

“Government Authorities” means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

“Law” means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“Legislative Requirements” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“Occupier” means any person that has a legal right to access, use or occupy the Premises.

“Permitted Use” means the conduct of the Project Works.

“Plan” means Memorandum AQ426557.

“Planning Approval” means state significant infrastructure development application no. SSI 9186 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Premises” means the land marked “Lease Area 1” on the Plan.

“Project” means the duplication of a section of the Cabramatta Line between Cabramatta Station and Warwick Farm Station and other ancillary works to be carried out in accordance with the Project Approval

“Project Works” means all works and activities carried out on the Premises and required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of new bridges, embankments and retaining structures;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;

- (vi) erection of temporary and permanent fencing and/or hoardings;
- (vii) works to reinstate the Premises to the condition outlined in the Site Condition Report;
- (viii) temporary compound erection and operation;
- (ix) temporary site parking facilities;
- (x) low impact construction works;
- (xi) temporary works;
- (xii) utility adjustment; and
- (xiii) landscaping works and remediation works.

“**Proprietor**” means every person who is at any time entitled to the freehold interest in the Premises.

“**Site Condition Report**” means a report detailing the condition of the Premises at the commencement of this lease. The report shall consist of a detailed plan including, but not limited to documenting the condition of all existing improvements, roads, fences, gates, paths, hardstand areas, playing fields, landscaping including gardens, shrubs and trees (as applicable).

“**Term**” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 6.

1.2 In this lease:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of lease

The Proprietor leases the Premises to the Authority for the Term on the terms of this lease.

3 Permitted Use

3.1 The Authority must use the Premises, and ensure that its Authorised Users use the Premises, for the Permitted Use and must not allow the Premises to be used for any other purpose without the prior written consent of the Proprietor.

3.2 The Authority must pay all costs for the supply of any services consumed by it on the Premises during the Term.

4 Commencement of lease

4.1 This lease is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the lease is acquired by the Authority pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

4.2 This lease commences operation on the earlier of:

- (i) the date to be nominated by ARTC by at least one month’s written notice to the Proprietor; and
- (ii) 18 December 2021.

(the “**Operative Date**”).

4.3 The Authority will prepare or will procure that its Authorised User prepare the Site Condition Report.

5 Expiry of lease

5.1 This lease expires on the earlier of:

- (i) 3 years from the Operative Date; and
- (ii) the date specified in a notice issued by the Authority to the Proprietor advising that the lease is terminated, being a date not less than one month from the date of that notice,

(the “**Expiry Date**”).

5.2 On and from the Expiry Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

6 Partial surrender

6.1 The Authority may surrender this lease over any part of the Premises upon completion of the obligations outlined in clause 12 with respect to that part of the Premises (**Surrender Notice**).

6.2 A Surrender Notice must:

- (i) specify the surrender date, being a date not less than one month after the date on which the Authority gives the Surrender Notice (**Surrender Date**);
- (ii) specify that part of the Premises over which this lease is to be surrendered and include a plan of the area; and
- (iii) be accompanied by a registrable surrender of lease duly executed by the Authority to enable the partial surrender of this lease to be recorded with NSW Land Registry Services, if required, to effect the partial surrender.

6.3 On and from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date in respect of the part of the lease which is being surrendered.

7 Conduct of the Project Works

The Authority will conduct, and will ensure that its Authorised Users conduct, the Project Works diligently, professionally, in a proper and workmanlike manner and in accordance with the Law.

8 Quiet Enjoyment and Rights of Inspection

8.1 Subject to the Authority complying with, and ensuring compliance by its Authorised Users with the Authority’s obligations under this lease, the Authority and its Authorised Users may occupy the Premises during the Term without interference from the Proprietor.

8.2 The covenants and powers implied by sections 84, 84A, 85, 86, 132, 133, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

9 Risk, release and indemnities

9.1 The Authority acknowledges and agrees that during the Term:

- (i) the Authority and its Authorised Users will access, occupy, use and keep in good repair the Premises and will carry out the Project Works at the Authority’s risk;
- (ii) the Authority releases the Proprietor to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Premises and carrying out of the Project Works by the Authority or its Authorised Users; and
- (iii) the Authority indemnifies and will keep indemnified the Proprietor against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Premises or the carrying out of the Project Works by the Authority or its Authorised Users.

9.2 The Authority has no liability, nor will the Proprietor be entitled to make any claim against the Authority or its Authorised Users in respect of any Consequential Loss.

10 Limitation on liability

The assumption of risk, releases and indemnities of the Authority referred to in clause 9 will not apply to the extent that any claim was caused or contributed to by the Proprietor, the Occupier or their Authorised Users.

11 Exclusive possession

During the Term, the Authority and its Authorised Users are granted exclusive possession of the Premises.

12 Restoration of Areas

12.1 Prior to completion of the Project Works, the Authority will, and will ensure that its Authorised Users restore the Premises, to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Authority or its Authorised Users with the consent of the Proprietor or the Occupier (as applicable). This obligation does not require the Authority or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.

12.2 Prior to the Expiry Date or the Surrender Date (as applicable), the Authority will, and will ensure its Authorised Users vacate the Premises (or, in respect of a partial surrender, the relevant part of the Premises) and, subject to clause 12.1 remove from the Premises (or, in respect of a partial surrender, the relevant part of the Premises) all of its property, loose materials, waste and rubbish.

13 Governing law

This lease is governed by and must be construed according to the law applying in New South Wales.

14 No fetter

The Authority and the Proprietor acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of either of the Authority and the Proprietor to exercise any of its functions and powers pursuant to any Law.

SCHEDULE 6

(INTEREST IN LAND FOR TEMPORARY EASEMENT FOR ACCESS)

Easement rights on terms set out in Schedule 7 described hereunder as:

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool, shown in Deposited Plan 1265553 as "(A) proposed easement for temporary construction works 12.5 wide & 33.5 wide" over part Lot 1008 in DP591195 and said to be in the possession of Liverpool City Council (registered proprietor).

SCHEDULE 7

(EASEMENT RIGHTS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

"**ARTC**" means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

“Authorised Users” means every person or entity authorised by the Burdened Owner or the Benefitted Owner and includes employees, agents, contractors and invitees and in relation to the Benefitted Owner includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

“Benefitted Owner” means every person or entity who is at the time entitled to the freehold interest in the Lot Benefitted.

“Burdened Owner” means every person or entity who is at any time entitled to the freehold interest in the Lot Burdened.

“Cabramatta Line” means a dedicated freight rail line (operated by ARTC) extending from Sefton to Macarthur known as the Southern Sydney Freight Line.

“Consequential Loss” means loss of profit, loss of financial opportunity, loss of business opportunity, loss of goodwill, whether present or future, fixed or unascertained, actual or contingent, incurred or sustained by the Burdened Owner as a result of any act or omission of the Benefitted Owner or its Authorised Users (whether negligent or otherwise).

“Easement Site” means the area marked “(A) proposed easement for temporary construction works 12.5 wide & 33.5 wide” on the Plan.

“Government Authorities” means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

“Law” means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“Legislative Requirements” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“Lot Benefitted” means the dominant tenement specified in clause 11.

“Lot Burdened” means the servient tenement specified in Schedule 6.

“Occupier” means any person that has a legal right to access, use or occupy the Easement Site.

“Plan” means Deposited Plan 1265553.

“Planning Approval” means the state significant infrastructure development application no. SSI 9186 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Project” means the duplication of a section of the Cabramatta Line between Cabramatta Station and Warwick Farm Station and other ancillary works to be carried out in accordance with the Planning Approval.

“Project Works” means all works and activities required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);

- (ii) construction of new bridges, embankments and retaining structures;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;
- (vi) erection of temporary and permanent fencing and/or hoardings;
- (vii) works to reinstate the Easement Site to the condition outlined in the Site Condition Report;
- (viii) temporary compound erection and operation;
- (ix) temporary site parking facilities;
- (x) low impact construction works;
- (xi) temporary works;
- (xii) utility adjustment; and
- (xiii) landscaping works and remediation works.

“Site Condition Report” means a report detailing the condition of the Easement Site at the commencement of this easement. The report shall consist of a detailed plan including but not limited to documenting the condition of all existing improvements, roads, fences, gates, paths, hardstand areas, playing fields, landscaping including gardens, shrubs and trees (as applicable).

“Term” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 5.

1.2 In this instrument:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of easement

2.1 The Benefitted Owner and all of its Authorised Users have the full and free right to:

- (i) by any reasonable means pass across each Lot Burdened, but only within the Easement Site, to get to or from the Lot Benefitted, and
- (ii) do anything reasonably necessary for the purpose referred to in clause 2.1(i), including:
 - (A) entering the Lot Burdened; and
 - (B) taking anything on to the Lot Burdened; and
 - (C) carrying out work within the Easement Site, such as constructing, placing, repairing or maintaining trafficable surfaces, driveways or structures.

2.2 In exercising powers under clause 2.1, the Benefitted Owner must, and must ensure that its Authorised Users must:

- (i) ensure all work is done diligently, professionally, in a proper and workmanlike manner and in accordance with the Law;
- (ii) cause as little inconvenience as is practicable to the Burdened Owner and any Occupier;

- (iii) cause as little damage as is practicable to the Lot Burdened and any improvement on it; and
- (iv) make good any collateral damage.

3 Commencement of easement

- 3.1 This easement is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the easement is acquired pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- 3.2 This easement commences operation on the earlier of:
- (i) the date to be nominated by ARTC by at least one month's written notice to the Burdened Owner; and
 - (ii) 18 December 2021,
(the "**Operative Date**").
- 3.3 The Benefitted Owner will prepare, or will procure that its Authorised User prepare the Site Condition Report.

4 Expiry of easement

- 4.1 This easement expires on the earlier of:
- (i) 3 years from the Operative Date; and
 - (ii) the date specified in a notice issued by the Benefitted Owner advising that the easement is terminated, being a date not less than one month from the date of that notice,
(the "**Expiry Date**").
- 4.2 On and from the Expiry Date, the Burdened Owner and the Benefitted Owner each releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

5 Partial release

- 5.1 The Benefitted Owner may release this easement over any part of the Easement Site upon completion of the obligations outlined in clause 8 with respect to that part of the Easement Site (**Release Notice**).
- 5.2 A Release Notice must:
- (i) specify the release date, being a date not less than one month after the date on which the Benefitted Owner gives the Release Notice (**Release Date**);
 - (ii) specify that part of the Easement Site over which this easement is to be released and include a plan of the area; and
 - (iii) be accompanied by a registrable transfer releasing easement executed by the Benefitted Owner to enable the partial release of this easement to be recorded with NSW Land Registry Services, if required, to effect the partial release.
- 5.3 On and from the Release Date, the Burdened Owner and the Benefitted Owner each releases the other from any liability relating to events or circumstances occurring or arising after the Release Date in respect of the part of the easement which is being released.

6 Risk, release and indemnities

- 6.1 The Benefitted Owner acknowledges and agrees that during the Term:
- (i) the Benefitted Owner and its Authorised Users will access, occupy, use and keep in good repair the Easement Site and will carry out any works permitted under this easement at the Benefitted Owner's risk;

- (ii) the Benefitted Owner releases the Burdened Owner to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Easement Site and carrying out of any works permitted under this easement by the Benefitted Owner or its Authorised Users under this easement; and
- (iii) the Benefitted Owner indemnifies and will keep indemnified the Burdened Owner against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Easement Site or the carrying out of any works permitted under this easement by the Benefitted Owner or its Authorised Users.

6.2 The Benefitted Owner has no liability, nor will the Burdened Owner be entitled to make any claim against the Benefitted Owner or its Authorised Users in respect of any Consequential Loss.

7 Limitation on liability

The assumption of risk, releases and indemnities of the Benefitted Owner referred to in clause 6 will not apply to the extent that any claim was caused or contributed to by the Burdened Owner, the Occupier or their Authorised Users.

8 Restoration of Areas

8.1 Prior to completion of the Project Works the Benefitted Owner will, and will ensure that its Authorised Users restore the Easement Site to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Benefitted Owner or its Authorised Users with the consent of the Burdened Owner or Occupier (as applicable). This obligation does not require the Benefitted Owner or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.

8.2 Prior to the Expiry Date or the Release Date (as applicable), the Benefitted Owner will, and will ensure its Authorised Users vacate the Easement Site (or, in respect of a partial release, the relevant part of the Easement Site) and, subject to clause 8.1 remove from the Easement Site (or, in respect of a partial release, the relevant part of the Easement Site) all of its property, loose materials, waste and rubbish.

9 Governing law

This easement is governed by and must be construed according to the law applying in New South Wales.

10 No fetter

The Benefitted Owner and the Burdened Owner acknowledge and agree that nothing in this easement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of either of the Benefitted Owner and the Burdened Owner to exercise any of its functions and powers pursuant to any Law.

11 Lot Benefitted

For the purposes of section 88 of the *Conveyancing Act 1919*, it is hereby declared that the land having the benefit of this easement is Lot 4 DP1262377.

SCHEDULE 8

(INTEREST IN LAND FOR LEASE)

A lease on terms set out in Schedule 9, described hereunder as:

All that piece or parcel of land situated in the Local Government Area of Liverpool, and State of New South Wales, shown as Lot 1 in Deposited Plan 1265553 and said to be in the possession of Liverpool City Council (registered proprietor).

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool, Parish of St Luke, County of Cumberland and State of New South Wales, shown as Lot 2 in Deposited Plan 1265553 and said to be in the possession of Liverpool City Council (registered proprietor).

SCHEDULE 9

(LEASE TERMS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

“**ARTC**” means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

“**Authorised Users**” means every person or entity authorised by a party and includes employees, agents, contractors and invitees and in relation to the Authority includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

“**Authority**” means the Transport Asset Holding Entity of New South Wales.

“**Cabramatta Line**” means a dedicated freight rail line (operated by ARTC) extending from Sefton to Macarthur known as the Southern Sydney Freight Line.

“**Consequential Loss**” means loss of profit, loss of financial opportunity, loss of business opportunity, loss of goodwill, whether present or future, fixed or unascertained, actual or contingent, incurred or sustained by the Proprietor as a result of any act or omission of the Authority or its Authorised Users (whether negligent or otherwise).

“**Government Authorities**” means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

“**Law**” means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“**Legislative Requirements**” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“**Occupier**” means any person that has a legal right to access, use or occupy the Premises.

“**Permitted Use**” means the conduct of the Project Works.

“**Plan**” means Deposited Plan 1265553.

“**Planning Approval**” means state significant infrastructure development application no. SSI 9186 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“**Premises**” means Lots 1 and 2 on the Plan.

“Project” means the duplication of a section of the Cabramatta Line between Cabramatta Station and Warwick Farm Station and other ancillary works to be carried out in accordance with the Project Approval

“Project Works” means all works and activities carried out on the Premises and required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of new bridges, embankments and retaining structures;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;
- (vi) erection of temporary and permanent fencing and/or hoardings;
- (vii) works to reinstate the Premises to the condition outlined in the Site Condition Report;
- (viii) temporary compound erection and operation;
- (ix) temporary site parking facilities;
- (x) low impact construction works;
- (xi) temporary works;
- (xii) utility adjustment; and
- (xiii) landscaping works and remediation works.

“Proprietor” means every person who is at any time entitled to the freehold interest in the Premises.

“Site Condition Report” means a report detailing the condition of the Premises at the commencement of this lease. The report shall consist of a detailed plan including, but not limited to documenting the condition of all existing improvements, roads, fences, gates, paths, hardstand areas, playing fields, landscaping including gardens, shrubs and trees (as applicable).

“Term” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 6.

1.2 In this lease:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of lease

The Proprietor leases the Premises to the Authority for the Term on the terms of this lease.

3 Permitted Use

3.1 The Authority must use the Premises, and ensure that its Authorised Users use the Premises, for the Permitted Use and must not allow the Premises to be used for any other purpose without the prior written consent of the Proprietor.

3.2 The Authority must pay all costs for the supply of any services consumed by it on the Premises during the Term.

4 Commencement of lease

4.1 This lease is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the lease is acquired by the Authority pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

4.2 This lease commences operation on the earlier of:

(i) the date to be nominated by ARTC by at least one month's written notice to the Proprietor; and

(ii) 18 December 2021.

(the "**Operative Date**").

4.3 The Authority will prepare or will procure that its Authorised User prepare the Site Condition Report.

5 Expiry of lease

5.1 This lease expires on the earlier of:

(i) 3 years from the Operative Date; and

(ii) the date specified in a notice issued by the Authority to the Proprietor advising that the lease is terminated, being a date not less than one month from the date of that notice,

(the "**Expiry Date**").

5.2 On and from the Expiry Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

6 Partial surrender

6.1 The Authority may surrender this lease over any part of the Premises upon completion of the obligations outlined in clause 12 with respect to that part of the Premises (**Surrender Notice**).

6.2 A Surrender Notice must:

(i) specify the surrender date, being a date not less than one month after the date on which the Authority gives the Surrender Notice (**Surrender Date**);

(ii) specify that part of the Premises over which this lease is to be surrendered and include a plan of the area; and

(iii) be accompanied by a registrable surrender of lease duly executed by the Authority to enable the partial surrender of this lease to be recorded with NSW Land Registry Services, if required, to effect the partial surrender.

6.3 On and from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date in respect of the part of the lease which is being surrendered.

7 Conduct of the Project Works

The Authority will conduct, and will ensure that its Authorised Users conduct, the Project Works diligently, professionally, in a proper and workmanlike manner and in accordance with the Law.

8 Quiet Enjoyment and Rights of Inspection

8.1 Subject to the Authority complying with, and ensuring compliance by its Authorised Users with the Authority's obligations under this lease, the Authority and its Authorised Users may occupy the Premises during the Term without interference from the Proprietor.

8.2 The covenants and powers implied by sections 84, 84A, 85, 86, 132, 133, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

9 Risk, release and indemnities

9.1 The Authority acknowledges and agrees that during the Term:

- (i) the Authority and its Authorised Users will access, occupy, use and keep in good repair the Premises and will carry out the Project Works at the Authority's risk;
- (ii) the Authority releases the Proprietor to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Premises and carrying out of the Project Works by the Authority or its Authorised Users; and
- (iii) the Authority indemnifies and will keep indemnified the Proprietor against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Premises or the carrying out of the Project Works by the Authority or its Authorised Users.

9.2 The Authority has no liability, nor will the Proprietor be entitled to make any claim against the Authority or its Authorised Users in respect of any Consequential Loss.

10 Limitation on liability

The assumption of risk, releases and indemnities of the Authority referred to in clause 9 will not apply to the extent that any claim was caused or contributed to by the Proprietor, the Occupier or their Authorised Users.

11 Exclusive possession

During the Term, the Authority and its Authorised Users are granted exclusive possession of the Premises.

12 Restoration of Areas

12.1 Prior to completion of the Project Works, the Authority will, and will ensure that its Authorised Users restore the Premises, to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Authority or its Authorised Users with the consent of the Proprietor or the Occupier (as applicable). This obligation does not require the Authority or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.

12.2 Prior to the Expiry Date or the Surrender Date (as applicable), the Authority will, and will ensure its Authorised Users vacate the Premises (or, in respect of a partial surrender, the relevant part of the Premises) and, subject to clause 12.1 remove from the Premises (or, in respect of a partial surrender, the relevant part of the Premises) all of its property, loose materials, waste and rubbish.

13 Governing law

This lease is governed by and must be construed according to the law applying in New South Wales.

14 No fetter

The Authority and the Proprietor acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of either of the Authority and the Proprietor to exercise any of its functions and powers pursuant to any Law.

SCHEDULE 10

(INTEREST IN LAND FOR LEASE)

A lease on terms set out in Schedule 11, described hereunder as:

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool, Parish of St Luke, County of Cumberland and State of New South Wales, shown in Memorandum AQ426554 as "Lease Area 1" and "Lease Area 2" over part of Lot 10 in DP1262377 and said to be in the possession of the Minister administering the Environmental Planning and Assessment Act, 1979 (registered proprietor) and Liverpool City Council (care control manager under the *Environmental Planning and Assessment Act 1979*).

SCHEDULE 11

(LEASE TERMS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

"ARTC" means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

"Authorised Users" means every person or entity authorised by a party and includes employees, agents, contractors and invitees and in relation to the Authority, includes without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

"Authority" means the Transport Asset Holding Entity of New South Wales.

"Cabramatta Line" means a dedicated freight rail line (operated by ARTC) extending from Sefton to Macarthur known as the Southern Sydney Freight Line.

"Consequential Loss" means loss of profit, loss of financial opportunity, loss of business opportunity, loss of goodwill, whether present or future, fixed or unascertained, actual or contingent, incurred or sustained by the Proprietor as a result of any act or omission of the Authority or its Authorised Users (whether negligent or otherwise).

"Government Authorities" means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

"Law" means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

"Legislative Requirements" means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

"Occupier" means any person that has a legal right to access, use or occupy the Premises.

"Permitted Use" means the conduct of the Project Works.

"Plan" means Memorandum AQ426554.

"Planning Approval" means the state significant infrastructure development application no. SSI 9186 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Premises” means the areas marked “Lease Area 1” and “Lease Area 2” on the Plan.

“Project” means the duplication of a section of the Cabramatta Line between Cabramatta Station and Warwick Farm Station and other ancillary works to be carried out in accordance with the Project Approval.

“Project Works” means all works and activities carried out on the Premises and required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of new bridges, embankments and retaining structures;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;
- (vi) erection of temporary and permanent fencing and/or hoardings;
- (vii) works to reinstate the Premises to the condition outlined in the Site Condition Report;
- (viii) temporary compound erection and operation;
- (ix) temporary site parking facilities;
- (x) low impact construction works;
- (xi) temporary works;
- (xii) utility adjustment; and
- (xiii) landscaping works and remediation works.

“Proprietor” means every person who is at any time entitled to the freehold interest in the Premises.

“Site Condition Report” means a report detailing the condition of the Premises at the commencement of this lease. The report shall consist of a detailed plan including but not limited to documenting the condition of all existing improvements, roads, fences, gates, paths, hardstand areas, playing fields, landscaping including gardens, shrubs and trees (as applicable).

“Term” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 6.

1.2 In this lease:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of lease

The Proprietor leases the Premises to the Authority for the Term on the terms of this lease.

3 Permitted Use

3.1 The Authority must use the Premises, and ensure that its Authorised Users use the Premises, for the Permitted Use and must not allow the Premises to be used for any other purpose without the prior written consent of the Proprietor.

3.2 The Authority must pay all costs for the supply of any services consumed by it on the Premises during the Term.

- 3.3 The Authority:
- (i) acknowledges that the Proprietor does not represent that the Premises are suitable for the Permitted Use; and
 - (ii) must make its own enquiries as to the suitability of the Premises for the Permitted Use.

4 Commencement of lease

4.1 This lease is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the lease is acquired by the Authority pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

4.2 This lease commences operation on the earlier of:

- (i) the date to be nominated by ARTC by at least one month's written notice to the Proprietor; and
- (ii) 18 December 2021,
(the "**Operative Date**").

4.3 The Authority will prepare or will procure that its Authorised User prepare the Site Condition Report.

5 Expiry of lease

5.1 This lease expires on the earlier of:

- (i) 3 years from the Operative Date; and
- (ii) the date specified in a notice issued by the Authority to the Proprietor advising that the lease is terminated, being a date not less than one month from the date of that notice,
(the "**Expiry Date**").

5.2 Subject to clause 9.1(ii), on and from the Expiry Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

6 Partial surrender

6.1 The Authority may surrender this lease over any part of the Premises upon completion of the obligations outlined in clause 12 with respect to that part of the Premises (**Surrender Notice**).

6.2 A Surrender Notice must:

- (i) specify the surrender date, being a date not less than one month after the date on which the Authority gives the Surrender Notice (**Surrender Date**);
- (ii) specify that part of the Premises over which this lease is to be surrendered and include a plan of the area; and
- (iii) be accompanied by a registrable surrender of lease duly executed by the Authority to enable the partial surrender of this lease to be recorded with NSW Land Registry Services, if required, to effect the partial surrender.

6.3 On and from the Surrender Date, each party releases the other from any liability relating to events or circumstances occurring or arising after the Surrender Date in respect of the part of the lease which is being surrendered.

7 Conduct of the Project Works

The Authority will conduct, and will ensure that its Authorised Users conduct, the Project Works diligently, professionally, in a proper and workmanlike manner and in accordance with the Law.

8 Quiet Enjoyment and Rights of Inspection

- 8.1 Subject to the Authority complying with, and ensuring compliance by its Authorised Users with the Authority's obligations under this lease, the Authority and its Authorised Users may occupy the Premises during the Term without interference from the Proprietor.
- 8.2 The covenants and powers implied by sections 84, 84A, 85, 86, 132, 133, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply to this lease.

9 Risk, release and indemnities

9.1 The Authority acknowledges and agrees that during the Term:

- (i) the Authority and its Authorised Users will access, occupy, use and keep in good repair the Premises and will carry out the Project Works at the Authority's risk;
- (ii) the Authority releases the Proprietor to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Premises and carrying out of the Project Works by the Authority or its Authorised Users, including where such claims arise after the Expiry Date or the Surrender Date (as applicable); and
- (iii) the Authority indemnifies and will keep indemnified the Proprietor against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Premises or the carrying out of the Project Works by the Authority or its Authorised Users, including where such claims arise after the Expiry Date or the Surrender Date (as applicable).

9.2 The Authority has no liability, nor will the Proprietor be entitled to make any claim against the Authority or its Authorised Users in respect of any Consequential Loss.

10 Limitation on liability

The assumption of risk, releases and indemnities of the Authority referred to in clause 9 will not apply to the extent that any claim was caused or contributed to by the Proprietor, the Occupier or their Authorised Users.

11 Exclusive possession

During the Term, the Authority and its Authorised Users are:

- (i) granted exclusive possession of the part of the Premises marked "Lease Area 2" on the Plan; and
- (ii) granted exclusive possession of the part of the Premises marked "Lease Area 1" on the Plan on the condition that the Authority and its Authorised Users comply with the access requirements for vehicles, pedestrians and cyclists detailed in the Planning Approval.

12 Restoration of Areas

- 12.1 Prior to completion of the Project Works, the Authority will, and will ensure that its Authorised Users restore the Premises to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Authority or its Authorised Users with the consent of the Proprietor or Occupier (as applicable). This obligation does not require the Authority or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.
- 12.2 Prior to the Expiry Date or the Surrender Date (as applicable), the Authority will, and will ensure its Authorised Users vacate the Premises (or, in respect of a partial surrender, the relevant part of the Premises) and, subject to clause 12.1 remove from the Premises (or, in respect of a partial surrender, the relevant part of the Premises) all of its property, loose materials, waste and rubbish.

13 Governing law

This lease is governed by and must be construed according to the law applying in New South Wales.

14 No fetter

The Authority and the Proprietor acknowledge and agree that nothing in this lease will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of either of the Authority and the Proprietor to exercise any of its functions and powers pursuant to any Law.

SCHEDULE 12

(INTEREST IN LAND FOR TEMPORARY EASEMENT FOR ACCESS)

Easement rights on the terms set out in Schedule 13 described hereunder as:

All that piece or parcel of land situated at Warwick Farm in the Local Government Area of Liverpool, Parish of St Luke, County of Cumberland and State of New South Wales, shown in Memorandum AQ426554 as "Easement Area" over part of Lot 10 in DP1262377 and said to be in the possession of the Minister administering the Environmental Planning and Assessment Act, 1979 (registered proprietor) and Liverpool City Council (care control manager under the *Environmental Planning and Assessment Act 1979*).

SCHEDULE 13

(EASEMENT RIGHTS)

1 Definitions and interpretation

1.1 The following terms have the following meanings:

"**ARTC**" means the Australian Rail Track Corporation Ltd (ACN 081 455 754), an unlisted public company limited by shares and wholly owned by the Australian Government.

"**Authorised Users**" means every person or entity authorised by the Burdened Owner or the Benefitted Owner and includes employees, agents, contractors and invitees and in relation to the Benefitted Owner includes, without limitation, ARTC and every person or entity authorised by ARTC including employees, agents, contractors and invitees.

"**Benefitted Owner**" means every person or entity who is at the time entitled to the freehold interest in the Lot Benefitted.

"**Burdened Owner**" means every person or entity who is at any time entitled to the freehold interest in the Lot Burdened.

"**Cabramatta Line**" means a dedicated freight rail line (operated by ARTC) extending from Sefton to Macarthur known as the Southern Sydney Freight Line.

"**Consequential Loss**" means loss of profit, loss of financial opportunity, loss of business opportunity, loss of goodwill, whether present or future, fixed or unascertained, actual or contingent, incurred or sustained by the Burdened Owner as a result of any act or omission of the Benefitted Owner or its Authorised Users (whether negligent or otherwise).

"**Easement Site**" means the area marked "Easement Area" on the Plan.

"**Government Authorities**" means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

"**Law**" means:

- (i) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;

- (ii) principles of law or equity established by decisions of courts;
- (iii) any approvals (including any condition or requirement under them); and
- (iv) any Legislative Requirements.

“Legislative Requirements” means any:

- (i) Acts, ordinances, regulations, by-laws and orders of the jurisdiction where the works are being carried out; and
- (ii) certificates, licences, consents, permits, approvals and requirements of Government Authorities having jurisdiction in connection with the carrying out of the Project Works.

“Lot Benefitted” means the dominant tenement specified in clause 11.

“Lot Burdened” means the servient tenement specified in Schedule 12.

“Occupier” means any person that has a legal right to access, use or occupy the Easement Site.

“Plan” means Memorandum AQ426554.

“Planning Approval” means the state significant infrastructure development application no. SSI 9186 approved by the Minister for Planning and Public Spaces on 28 July 2020, as amended from time to time.

“Project” means the duplication of a section of the Cabramatta Line between Cabramatta Station and Warwick Farm Station and other ancillary works to be carried out in accordance with the Planning Approval.

“Project Works” means all works and activities required in connection with the carrying out of the Project including:

- (i) excavations and vegetation removal (as required);
- (ii) construction of new bridges, embankments and retaining structures;
- (iii) stockpiling of construction materials, plant and equipment;
- (iv) general construction access;
- (v) property adjustment works;
- (vi) erection of temporary and permanent fencing and/or hoardings;
- (vii) works to reinstate the Easement Site to the condition outlined in the Site Condition Report;
- (viii) temporary compound erection and operation;
- (ix) temporary site parking facilities;
- (x) low impact construction works;
- (xi) temporary works;
- (xii) utility adjustment; and
- (xiii) landscaping works and remediation works.

“Site Condition Report” means a report detailing the condition of the Easement Site at the commencement of this easement. The report shall consist of a detailed plan including but not limited to documenting the condition of all existing improvements, roads, fences, gates, paths, hardstand areas, playing fields, landscaping including gardens, shrubs and trees (as applicable).

“**Term**” means the period commencing on the Operative Date and ending on the Expiry Date, subject to clause 5.

1.2 In this instrument:

- (i) a reference to a clause is a reference to a clause in this instrument;
- (ii) a word that is derived from a defined word has a corresponding meaning;
- (iii) the singular includes the plural and vice-versa; and
- (iv) ‘includes’ means includes without limitation.

2 Terms of easement

2.1 The Benefitted Owner and all of its Authorised Users have the full and free right to:

- (i) by any reasonable means pass across each Lot Burdened, but only within the Easement Site, to get to or from the Lot Benefitted, and
- (ii) do anything reasonably necessary for the purpose referred to in clause 2.1(i), including:
 - (A) entering the Lot Burdened, and
 - (B) taking anything on to the Lot Burdened, and
 - (C) carrying out work within the Easement Site, such as constructing, placing, repairing or maintaining trafficable surfaces (including ramps), driveways or structures.

2.2 In exercising powers under clause 2.1, the Benefitted Owner must, and must ensure that its Authorised Users must:

- (i) ensure all work is done diligently, professionally, in a proper and workmanlike manner and in accordance with the Law;
- (ii) cause as little inconvenience as is practicable to the Burdened Owner and any Occupier;
- (iii) cause as little damage as is practicable to the Lot Burdened and any improvement on it; and
- (iv) make good any collateral damage.

3 Commencement of easement

3.1 This easement is created on the date on which a Notice of Compulsory Acquisition is published in the NSW Government Gazette declaring that the easement is acquired pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

3.2 This easement commences operation on the earlier of:

- (i) the date to be nominated by ARTC by at least one month’s written notice to the Burdened Owner; and
- (ii) 18 December 2021,
(the “**Operative Date**”).

3.3 The Benefitted Owner will prepare, or will procure that its Authorised User prepare the Site Condition Report.

4 Expiry of easement

4.1 This easement expires on the earlier of:

- (i) 3 years from the Operative Date; and

- (ii) the date specified in a notice issued by the Benefitted Owner advising that the easement is terminated, being a date not less than one month from the date of that notice,.

(the “**Expiry Date**”).

- 4.2 On and from the Expiry Date, the Burdened Owner and the Benefitted Owner each releases the other from any liability relating to events or circumstances occurring or arising after the Expiry Date.

5 Partial release

- 5.1 The Benefitted Owner may release this easement over any part of the Easement Site upon completion of the obligations outlined in clause 8 with respect to that part of the Easement Site (**Release Notice**).

- 5.2 A Release Notice must:

- (i) specify the release date, being a date not less than one month after the date on which the Benefitted Owner gives the Release Notice (**Release Date**);
- (ii) specify that part of the Easement Site over which this easement is to be released and include a plan of the area; and
- (iii) be accompanied by a registrable transfer releasing easement executed by the Benefitted Owner to enable the partial release of this easement to be recorded with NSW Land Registry Services, if required, to effect the partial release.

- 5.3 Subject to clause 6.1(ii), on and from the Release Date, the Burdened Owner and the Benefitted Owner each releases the other from any liability relating to events or circumstances occurring or arising after the Release Date in respect of the part of the easement which is being released.

6 Risk, release and indemnities

- 6.1 The Benefitted Owner acknowledges and agrees that during the Term:

- (i) the Benefitted Owner and its Authorised Users will access, occupy, use and keep in good repair the Easement Site and will carry out any works permitted under this easement at the Benefitted Owner’s risk;
- (ii) the Benefitted Owner releases the Burdened Owner to the extent permissible by law from all claims arising as a consequence of or with respect to the occupation of the Easement Site and carrying out of any works permitted under this easement by the Benefitted Owner or its Authorised Users under this easement, including where such claims arise after the Expiry Date or the Release Date (as applicable); and
- (iii) the Benefitted Owner indemnifies and will keep indemnified the Burdened Owner against all claims for loss of or damage to property and injury to or death of persons arising as a consequence of or with respect to the occupation of the Easement Site or the carrying out of any works permitted under this easement by the Benefitted Owner or its Authorised Users, including where such claims arise after the Expiry Date or the Release Date (as applicable).

- 6.2 The Benefitted Owner has no liability, nor will the Burdened Owner be entitled to make any claim against the Benefitted Owner or its Authorised Users in respect of any Consequential Loss.

7 Limitation on liability

The assumption of risk, releases and indemnities of the Benefitted Owner referred to in clause 6 will not apply to the extent that any claim was caused or contributed to by the Burdened Owner, the Occupier or their Authorised Users.

8 Restoration of Areas

- 8.1 Prior to completion of the Project Works the Benefitted Owner will, and will ensure that its Authorised Users restore the Easement Site to the condition as detailed in the Site Condition Report, but not including the removal of improvements carried out by the Benefitted Owner or its Authorised Users with the consent of the Burdened Owner or Occupier (as applicable). This obligation does not require the Benefitted Owner or its Authorised Users to take any step which is not consistent with the conditions of consent imposed in the Planning Approval.
- 8.2 Prior to the Expiry Date or the Release Date (as applicable), the Benefitted Owner will, and will ensure its Authorised Users vacate the Easement Site (or, in respect of a partial release, the relevant part of the Easement Site) and, subject to clause 8.1 remove from the Easement Site (or, in respect of a partial release, the relevant part of the Easement Site) all of its property, loose materials, waste and rubbish.

9 Governing law

This easement is governed by and must be construed according to the law applying in New South Wales.

10 No fetter

The Benefitted Owner and the Burdened Owner acknowledge and agree that nothing in this easement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of either of the Benefitted Owner and the Burdened Owner to exercise any of its functions and powers pursuant to any Law.

11 Lot Benefitted

For the purposes of section 88 of the *Conveyancing Act 1919*, it is hereby declared that the land having the benefit of this easement is Lot 4 DP1262377.

Transport Asset Holding Entity of New South Wales Document Number: 311676-7

ROADS ACT 1993

LAND ACQUISITION (JUST TERMS COMPENSATION) ACT 1991

Notice of Compulsory Acquisition of Land at Haberfield in the Inner West Council Area

Transport for NSW by its delegate declares, with the approval of Her Excellency the Governor, that the land described in the schedule below is acquired by compulsory process under the provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* for the purposes of the *Roads Act 1993*.

K DURIE
Statutory Land Transactions Manager
Transport for NSW

Schedule

A lease for a specified period commencing on the date of acquisition and ending on 31 December 2023, as described in Memorandum AQ120616 recorded at NSW Land Registry Services, of all those pieces or parcels of land situated in the Inner West Council area, Parish of Concord and County of Cumberland, shown as Lots A and B in TfNSW Sketch SR 5511-CA, being parts of the land in Certificates of Title 20/1219692 and 21/1219692 respectively.

The land is said to be in the possession of the Crown, Inner West Council (Crown land manager) and Transport for NSW (lessee).

(TfNSW Papers: SF2021/011185; RO SF2020/083902)