

Amending agreement

relating to

Wiri EMU depot services

Auckland Transport

AT

and

Transdev Auckland Limited

Operator

and

Transdev Australasia Pty Limited

Parent

BELL GULLY

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET
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TEL 64 9 916 8800 FAX 64 9 916 8801

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This **Agreement** is made on

2013

- between** (1) **Auckland Transport (AT)**
- and** (2) **Transdev Auckland Limited (Operator)**
- and** (3) **Transdev Australasia Pty Limited (Parent)**

Background

- A. The Operator provides certain passenger rail services in the Auckland region in accordance with the PSA.
- B. The Operator is a wholly owned subsidiary of the Parent. The Parent has provided certain undertakings regarding the Operator in favour of AT under the PSA.
- C. The Operator and Auckland Transport wish to amend the PSA in accordance with the provisions of this Agreement to allow for the provision of services by the Operator in relation to the new electric multiple unit maintenance and storage depot at Wiri.

It is agreed

1. Definitions and Interpretation

- 1.1 In this Agreement, words and expressions defined in the PSA but not defined in this Agreement have the same meaning in this Agreement and, unless the context requires otherwise:

PSA means the revised passenger services agreement relating to passenger rail services in Auckland between AT, the Operator and the Parent adopted by Variation Agreement dated 2 February 2012.

- 1.2 In this Agreement, any references to:

- (a) a gender include each other gender;
- (b) the singular includes the plural and vice versa;
- (c) an agreement or instrument includes that agreement or instrument as modified, supplemented, novated or substituted from time to time;
- (d) a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this Agreement);
- (e) a person includes:
 - (i) an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality; and

- (ii) a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (f) \$ or dollars is a reference to the lawful currency of New Zealand;
- (g) clauses, schedules and paragraphs are references to clauses of, and schedules to, this Agreement and paragraphs of the relevant schedule;
- (h) a reference to include means include without limitation and including is to be construed accordingly.

Headings are to be ignored in construing this Agreement.

2. Effect of this Agreement

2.1 With effect on and from the date of this Agreement:

- (a) the PSA is supplemented and amended in accordance with the provisions of this Agreement; and
- (b) all references in the PSA to "this Agreement" (and like terms) will be construed as a reference to the PSA as supplemented and amended by this Agreement.

2.2 For the avoidance of doubt, nothing in this Agreement prejudices any right or remedy of AT under or in relation to, or otherwise affects, the Guarantee.

3. Amendments to PSA

The PSA is amended by:

- (a) adding the following new definitions to paragraph 1 of schedule 1 of the PSA (in alphabetical order):

""**Wiri Common Areas**" means the Wiri Depot, excluding the Wiri Licensed Area and the area within the Depot Protection Boundary (which is identified by area dotted line marked "Depot Protection Boundary" on the Operational Plan which is part of the annexure to Schedule 4);"

""**Wiri Depot Services**" means the services and other activities and obligations specified in paragraph 5 of Schedule 4;"

""**Wiri Depot Manager**" has the meaning given to that term in paragraph 1.2 of Schedule 18;"

""**Wiri Licence Date**" means 5pm on the date that is 3 Business Days after the date on which the Operator (acting reasonably) certifies to AT that the critical outstanding requirements for its acceptance of the Wiri Depot (as specified in the schedule of Operator outstanding completion items for the Wiri Depot agreed between the Operator and AT) have been completed;"

""**Wiri Licensed Area**" means the areas identified as the "Operator Amenities" and "Operator Office" (shown for identification purposes coloured pink) on the annexure to Schedule 4;"

""**Wiri Depot**" means the new electric multiple unit maintenance and storage facility at

Wiri Station Road, Auckland identified on the Full Site Plan which is part of the annexure to Schedule 4;"

- (b) inserting a new paragraph 5 in, and an annexure to, schedule 4 to the PSA in the form set out in schedule 1 to this Agreement; and
- (c) inserting a new schedule 18 to the PSA in the form set out in schedule 2 to this Agreement.

4. General provisions

- 4.1 Each party will promptly do everything reasonably required to give effect to this Agreement.
- 4.2 The illegality, invalidity or unenforceability of a provision of this Agreement under any law will not affect the legality, validity or enforceability of that provision under another law or the legality, validity or enforceability of any other provision of this Agreement.
- 4.3 This Agreement may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument.
- 4.4 This Agreement is governed by and to be construed in accordance with New Zealand law and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand.

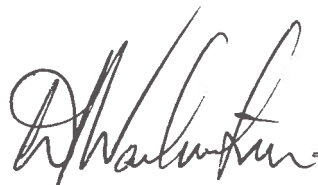
Execution

Executed as an agreement.

SIGNED by Auckland Transport
by:

DAVID WARBURTON

)



SIGNED by Transdev Auckland
Limited by:

Terry Scott

)



SIGNED by Transdev Australasia
Pty Limited by:

PETER LODGE

)



Schedule 1: New Paragraph 5 of Schedule 4 of the PSA

A new paragraph 5 of Schedule 4 to the PSA is inserted as follows:

5 Wiri Depot Services

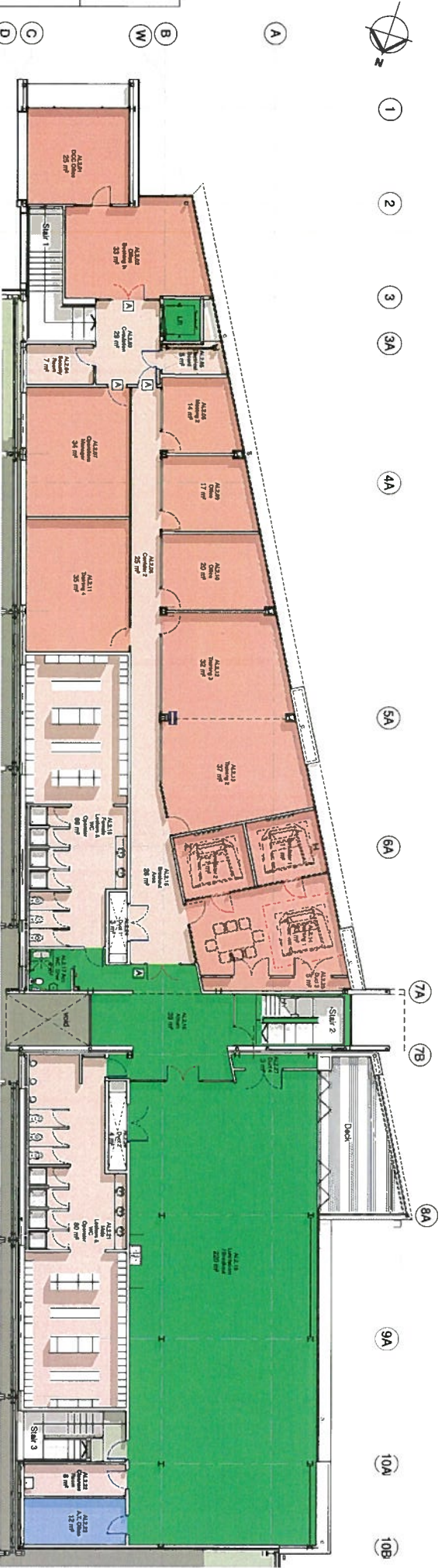
1. On and from the Wiri Licence Date, the Operator will:
 - a comply with clause 8 on the basis that any person providing services or supplying resources or facilities relating to the maintenance of the overhead line, track and the local area points system (LOPS) in the Wiri Depot is a Third Party Service Provider and the agreement relating to such services, resources or facilities will become a Relevant Agreement;
 - b maintain the perimeter fence, site entrance pedestrian and road access gates, and rail security gates at rail entry and exit points;
 - c maintain the stabling yard lighting;
 - d operate, maintain and manage the CCTV system;
 - e dispose of waste from train cleaning;
 - f maintain the Operator's soft fit out;
 - g operate the train cleaners' building;
 - h operate the driver training simulators;
 - i provide and maintain signage in the Wiri Licensed Area and stabling yard as required (excluding signage relating to fire protection and building management ,car park and access road which are the responsibility of the Wiri Depot Manager);
 - j maintain the landscaped areas of the Wiri Common Areas;
 - k maintain the Wiri Depot car park, access road and footpath; and
 - l maintain the drivers' footbridge and platform,

at, in each case, the Wiri Depot. The Operator will also perform any other services that are reasonably incidental to the operation and maintenance of the Depot, except for services required to be undertaken by the Wiri Depot Manager or contracted to a Third Party Service Provider.

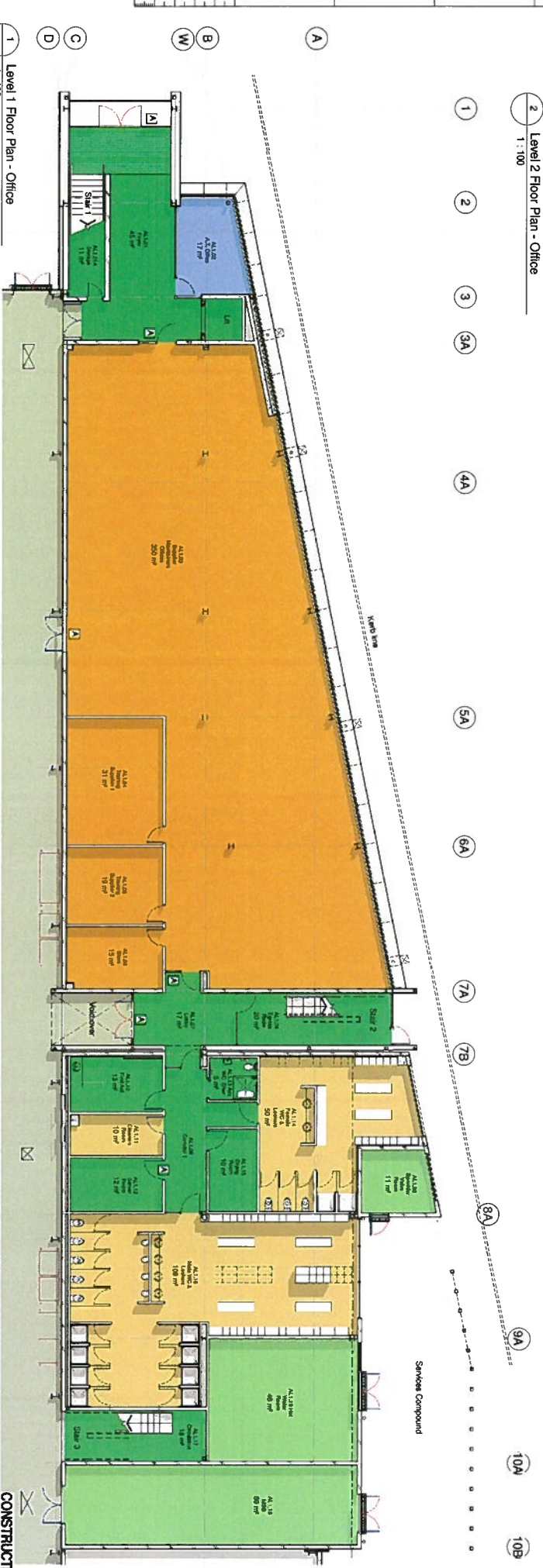
ANNEXURE TO SCHEDULE 4

WIRI FACILITY PLAN

[insert]



2 Level 2 Floor Plan - Office
1:100



1 Level 1 Floor Plan - Office
1:100

- Department Legend**
- Operator Amenities (Transdev)
 - Operator Office (Transdev)
 - Shared Plant
 - Shared Space & Circulation
 - Supplier Amenities (CAF)
 - Supplier Office (CAF)
 - Supplier Depot Floor (CAF)
 - Supplier Workshop (CAF)
 - Auckland Transport Office

Room	Approved	Approved Date
A	Approved for Approval	BVZ 22.02.13
B	Approved Colour Scheme	BVZ 01.02.13
C	A.1.7 Office Added	BVZ 02.07.13
D	Revised	BVZ 02.07.13



OPUS architecture
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PO Box 9946
Auckland 1010, New Zealand

**AUCKLAND TRANSPORT
MAINTENANCE
EMU MAINTENANCE DEPOT**

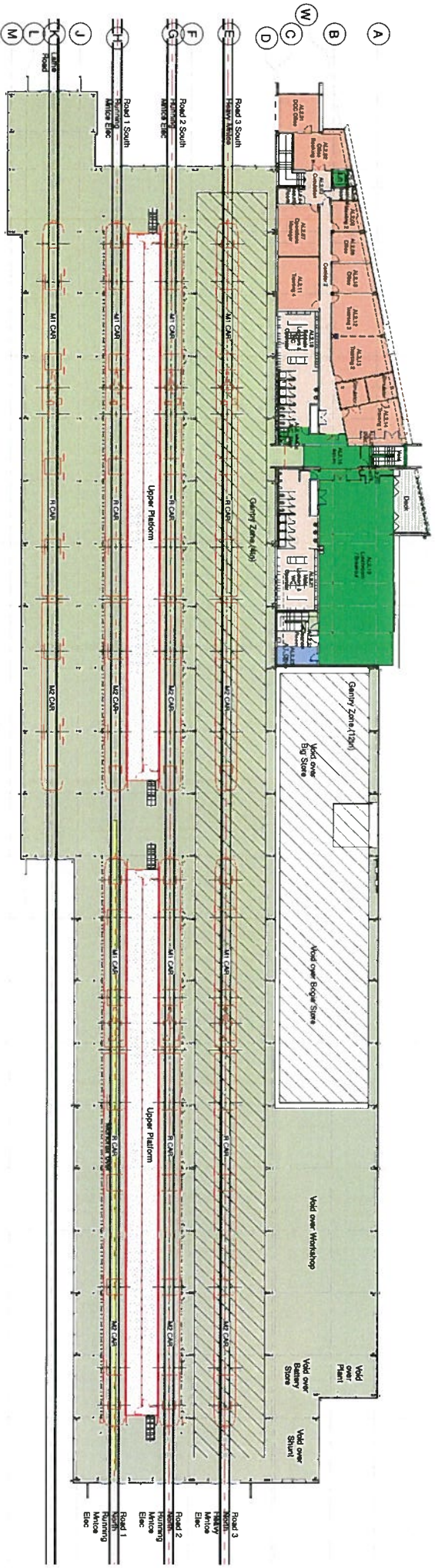
Main Depot Amenity General Arrangement Plans

1-C0600.02 1:100 1/1026/127/101 7/01 A102 RD



Original sheet size A1 (841x594) Plot date: 20/07/2013 3:42:08 PM W:\1-C0600-00-EMU_STAGE_2\Technical_Architectural\200 Des\Draw\100% Design\Final\Emu Depot 100% Design_Central\2012_Building (Occupation Plans) RB.rvt

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2 Level 2 Floor Plan
1:250

Level 2 Amenity Gross Floor Area: 965 sq m.

- ### Department Legend
- Operator Amenities (Transdev)
 - Operator Office (Transdev)
 - Shared Plant
 - Shared Space & Circulation
 - Supplier Amenities (CAF)
 - Supplier Office (CAF)
 - Operator Depot Floor (CAF)
 - Supplier Workshop (CAF)
 - Auckland Transport Office

Issue	Revised	Revised By	Revised Date
A	Issued for Approval	BWZ	22.02.13
B	Revised Colour Scheme	BWZ	01.03.13
C	A.T. Office Added	BWZ	02.07.13
D	Revised	BWZ	02.07.13

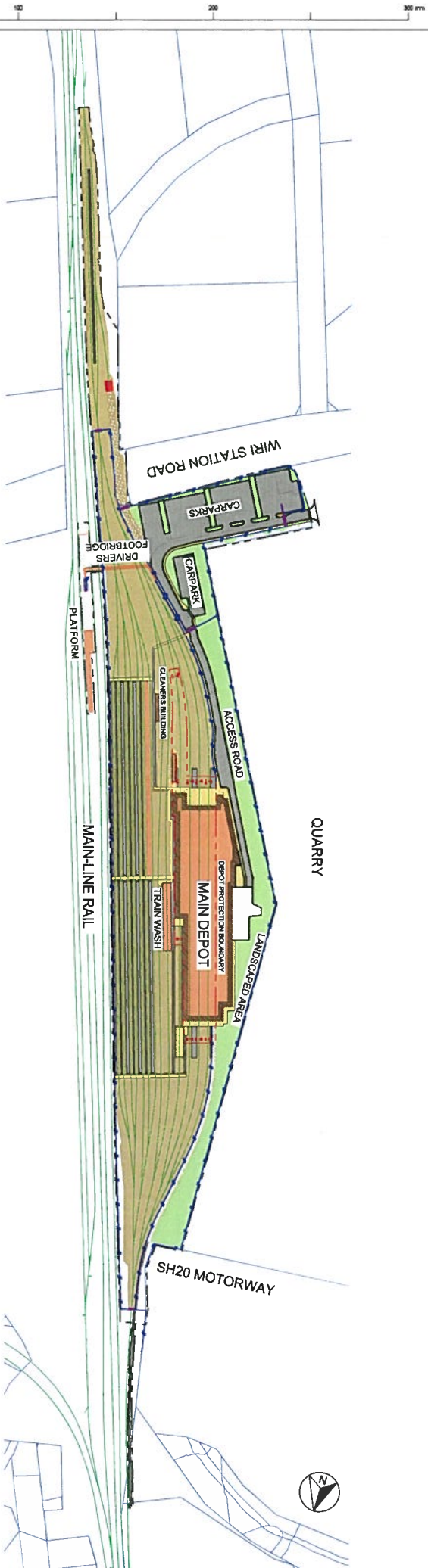


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CONSTRUCTION

1-080600_02 1:250
Main Depot Building General Arrangement Level 2 Plan
AUCKLAND TRANSPORT
WIRI STATION ROAD
EMU MAINTENANCE DEPOT
1/1028/12/7101 7101
A101 RD

- LEGEND:**
- BOUNDARIES
 - EXTENT OF SITE
 - TRACK
 - FENCES
 - GATES
 - BUILDINGS
 - DEPOT PROTECTION BOUNDARY
 - BOUNDARY
 - STRUCTURES
 - UNSEALED AREA
 - SEALED AREA - ASPHALT
 - SEALED AREA - CONCRETE
 - LANDSCAPING



0:11
 0 10 20 30 40 50 60 70 80 90 100 m

Original Scale Size A1 (841x594) Plot Date: 01/08/12 @ 12:20 W:\1-0800-05-00-New_Zamangali\1204_127_1104_117.dwg - 12/08

Item	Description	Approved	Revision
04	ISSUED TO A1 FOR INFORMATION	AS	24/07/12
05	AMEND DEPOT PROTECTION BOUNDARY	SK	01/08/12

Auckland Transport
 An Auckland Council Organisation



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Project: AUCKLAND TRANSPORT
 WIRI STATION ROAD
 EMU MAINTENANCE DEPOT
 OPERATIONAL PLAN

1/1028 / 1/27 / 1104 /

FOR INFORMATION ONLY

Schedule 2: New Schedule 18 of the PSA

A new schedule 18 of the PSA is inserted as follows:

Schedule 18 Wiri Depot Licence

Wiri Depot

1. AT grants to the Operator a non-exclusive licence to occupy and use the Wiri Licensed Area and the Wiri Common Areas on and from the Wiri Licence Date, in accordance with the provisions of this Agreement, for the purposes of performing the Wiri Depot Services and the Operator's other obligations under this Agreement (**Wiri Licence**).
2. The Operator will at all times comply with any lawful rule, direction or procedure of AT or any person authorised by AT to manage or operate all or part of the Wiri Depot (the **Wiri Depot Manager**), relating to the Wiri Licensed Area or the Wiri Common Areas or any other matter that AT or the Wiri Depot Manager considers to be reasonably required in respect of the use of the Wiri Depot. The Operator will immediately inform AT and the Wiri Depot Manager if it considers that any such rule, direction or procedure is unlawful or unreasonable.
3. The Operator will not store or use any hazardous substance (as defined in the Hazardous Substances and New Organisms Act 1996) at the Wiri Depot without AT's prior approval.
4. The Wiri Licence will terminate on the date on which this Agreement is terminated or cancelled unless an alternative date is specified in an Exit Plan prepared in accordance with paragraph 2 of Schedule 14.
5. Unless otherwise provided for in an Exit Plan prepared in accordance with paragraph 2 of Schedule 14, immediately following termination of the Wiri Licence, the Operator will remove all of its equipment and materials from the Wiri Depot and restore the Wiri Licensed Area to the same state and condition it was in on the Wiri Licence Date.
6. The Operator will occupy and use the Licensed Area and the Common Areas at the Operator's sole risk, provided that this paragraph 6 does not relieve AT of its obligations under this Agreement or at law. The Operator releases, to the fullest extent permitted by law, AT and the Wiri Depot Manager, and their respective agents from any claim, demand or liability which may arise in relation to any event, loss of or damage to property or death or injury to any person occurring in or about the Wiri Depot resulting from an act or omission of the Operator.
7. The Operator indemnifies AT and the Wiri Depot Manager from and against any Recoverable Loss in respect of the Wiri Depot resulting from the default or negligence of the Operator or its invitees. Without limiting such indemnity, the Operator will pay to AT or the Wiri Depot Manager (as the case may be) on demand the cost of repairing any damage to the Wiri Depot to the extent such damage was caused or contributed to by such use by the Operator or its invitees.
8. AT releases, to the fullest extent permitted by law, the Operator, and its respective agents from any claim, demand or liability which may arise in relation to any event, loss of or damage to property or death or injury to any person occurring in or about the Wiri Depot resulting directly from an act or omission of AT or its invitees.
9. Nothing in this Schedule creates or is to be construed as creating any tenancy, or confers or is to be construed as conferring upon the Operator any interest other than a licence to occupy the Wiri Licensed Area and the Wiri Common Areas.