

Deed of Variation

Rail Freight Corridor Land Use Agreement (NarrowGauge) and
Railway Infrastructure Lease

Public Transport Authority of Western Australia

exercising powers including powers under sections 42 and 43 of the Rail Freight System Act 2000 and section 13 of the Public Transport Authority Act 2003

The Honourable Eric Ripper MLA

exercising powers including powers under section 20 of the Rail Freight System Act 2000

WestNet NarrowGauge Pty Ltd

ACN 094 736 900

Australia Western Railroad Pty Ltd

ACN 094 792 275

Australian Railroad Group Pty Ltd

ACN 080 579 308

Table of Contents

1.	Definitions	1
2.	Variation to Principal Agreement	2
3.	Re-sleeping program	3
4.	Clause 15.2 of the Principal Agreement	3
5.	Clause 16 of the Principal Agreement	3
6.	Confirmation and ratification	4

This Deed made at 10 on MAY 2004

Parties **Public Transport Authority of Western Australia**, exercising powers including powers under sections 42 and 43 of the *Rail Freight System Act 2000* (WA) and section 13 of the *Public Transport Authority Act 2003* (WA)

The Honourable Eric Ripper MLA, Treasurer of the State of Western Australia, exercising powers including powers under section 20 of the *Rail Freight System Act 2000* (WA)

WestNet NarrowGauge Pty Ltd ACN 094 736 900 of 11th Floor, Wesfarmers House, 40 The Esplanade, Perth, Western Australia

Australia Western Railroad Pty Ltd ACN 094 792 275 of 11th Floor, Wesfarmers House, 40 The Esplanade, Perth, Western Australia

Australian Railroad Group Pty Ltd ACN 080 579 208 of 11th Floor, Wesfarmers House, 40 The Esplanade, Perth, Western Australia

Background

- A. The Parties or their respective predecessors are parties to the Principal Agreement.
- B. The Parties have agreed to vary the Principal Agreement on the terms and conditions set out in this deed.
- C. This deed should be read in conjunction with the Principal Agreement on the basis that the operative parts of this deed are, for the purposes of section 16 of the *Property Law Act 1969* (WA), supplemental to the Principal Agreement.

The Parties agree

1. Definitions

In this deed:

"Change in Use" means, during a Financial Year in respect of the Bruce Rock to Bullaring, Bullaring to Yilliminning or Katanning to Nyabing lines, traffic over that line (measured in Net Tonnes) of less than 50% of the average of the traffic during each of the previous three Financial Years, other than as a result of Force Majeure or the Network Lessee's breach of the Principal Agreement or this deed.

"Expert" means the independent expert engaged by the Network Lessee to prepare the Expert's Report, namely Mr Clive Plunkett of Queensland Railways.

"Expert's Report" means the report dated November 2003 prepared by the Expert in relation to the audit of the Yilliminning to Bruce Rock and the Katanning to Nyabing lines.

"Financial Year" has the meaning given in the Principal Agreement.

"Force Majeure" the meaning given in the Principal Agreement.

"Material Change in Circumstances" has the meaning given in the Principal Agreement.

"Net Tonnes" has the meaning given in the Principal Agreement.

"Network Lessee" means WestNet NarrowGauge Pty Ltd ACN 094 736 900.

"Parties" means the parties to this deed.

"Principal Agreement" means the agreement headed "Rail Freight Corridor Land Use Agreement (NarrowGauge) and Railway Infrastructure Lease" dated 17 December 2000 between The Hon. Murray Criddle MLC exercising powers under sections 42 and 43 of the *Rail Freight System Act 2000* (WA), The Western Australian Government Railways Commission exercising powers under section 8(7) and 44 of the *Rail Freight System Act 1999* (WA) and section 62 of the *Government Railways Act 1904* (WA), The Hon. Richard Fairfax Court MLA, Treasurer of the State of Western Australia exercising powers under section 20 of the *Rail Freight System Act 2000* (WA), WestNet NarrowGauge Pty Ltd ACN 094 736 900, Australia Western Railroad Pty Ltd ACN 094 792 275 and Australian Railroad Group Pty Ltd ACN 080 579 308.

"Rail Safety Act" means the *Rail Safety Act 1998* (WA).

"Uneconomic" has the meaning given in the Principal Agreement.

"Verifying Auditor" means the independent auditor engaged by the Public Transport Authority of Western Australia to prepare the Verification Report, namely Mr Martin Baggott of Bovis Lend Lease

"Verification Report" means the report dated April 2004 prepared by the Verifying Auditor to verify the audit of the Yiliminning to Bruce Rock and the Katanning to Nyabing lines as reported in the Expert's Report.

2. Variation to Principal Agreement

The Parties agree that the Principal Agreement is hereby amended by:

(a) deleting the word "The" at the beginning of clause 15.17 and inserting the words "Subject to clause 15.17A, the"; and

(b) inserting the following two clauses immediately after clause 15.17:

"15.17A Notwithstanding anything to the contrary in clause 15.17 or elsewhere in this agreement, the Network Lessee will complete, at its cost, the work shown in the Grain Line Strengthening Plan as the remaining commitment and that remains to be completed as at the date of this agreement unless there is a Material Change in Circumstances:

(a) in relation to the Toodyay West to Miling re-sleeper program by no later than 31 December 2004; and

(b) in relation to the Bruce Rock to Bullaring, Bullaring to Yilliminning and Katanning to Nyabing lines re-sleeper program by no later than 30 June 2008."

"15.17B If between 30 May 2004 and 30 June 2007 in respect of any of the Bruce Rock to Bullaring, Bullaring to Yilliminning and Katanning to Nyabing lines there has been a Material Change in Circumstances or a Change in Use the Parties agree to meet to negotiate and determine whether or not the Parties are able to agree terms on which any remaining obligations of the Network Lessee under clause 15.17 or 15.17A of the Principal Agreement in relation to the relevant line or lines

may be varied or released. For the avoidance of doubt, in respect of a line referred to in this clause 15.17B, unless and until the Parties agree terms under this clause 15.17B for that line, the Network Lessee will remain liable to fully and properly comply with its obligations under clause 15.17 and 15.17A of the Principal Agreement in relation to that line”.

“15.17C Clause 15.17A and 15.17B do not derogate from the Network Lessee’s obligation in clause 15.2.”

3. Re-sleeping program

In consideration for the Parties agreeing to enter into this deed, the Network Lessee will:

- (a) completely re-sleeper the line between the Pinjarra Yard and the Kwinana Yard with concrete sleepers; and
- (b) complete the re-sleeping program referred to in clause 3(a) as soon as practicable but, in any event, by not later than 31 December 2005.

4. Clause 15.2 of the Principal Agreement

The Parties acknowledge and agree that for the purpose of determining whether the Network Lessee has complied or is complying with its obligation under clause 15.2 of the Principal Agreement (to the extent that that obligation applies to a particular line):

- (a) in respect of those lines the subject of the Expert's Report and the Verification Report, the standards applied by the Expert and the Verifying Auditor in preparing the Expert's Report and the Verification Report and relied on by the Expert and the Verifying Auditor to conclude that the Network Lessee was in compliance with its obligation under clause 15.2 of the Principal Agreement shall be applied from the date of this deed until the time at which the Network Lessee is obliged to commission an independent and appropriately qualified expert under clause 15.21 of the Principal Agreement. For the avoidance of doubt, this clause 4(a) shall not affect the standards to be applied by the expert referred to in clause 15.21 of the Principal Agreement in the conduct of the review contemplated by clause 15.21 of the Principal Agreement; and
- (b) subject to completion of the re-sleeping program referred to in clause 3(a), in respect of the line between the Pinjarra Yard and the Kwinana Yard the maximum speed and axle load standard of 160 km/hr @ 16 t.a.l for rail cars shall be applied provided that this maximum standard is at all times subject to the applicable permanent speed restrictions, the capability of the signalling system and the terms of the accreditation of the Network Lessee or Public Transport Authority, as appropriate, under the Rail Safety Act.

5. Clause 16 of the Principal Agreement

- (a) Subject to clause 5(b), the Network Lessee agrees not to give notice under clause 16.2 of the Principal Agreement:
 - (i) in respect of any of the Bruce Rock to Bullaring, Bullaring to Yilliminning and Katanning to Nyabing lines, prior to 1 July 2008; and

- (ii) in respect of the Manjimup line between Greenbushes and Bunbury, prior to 1 December 2008.
- (b) If at any time between 17 December 2006 and 1 December 2008, in respect of the Manjimup line between Greenbushes and Bunbury:
 - (i) a Material Change in Circumstances occurs; or
 - (ii) the continued maintenance of the line in accordance with clause 15 of the Principal Agreement would, for the following three years or more, be Uneconomic,

the Parties agree to meet to negotiate and determine whether or not the Network Lessee will be permitted to give notice under clause 16.2 of the Principal Agreement in relation to the Manjimup line between Greenbushes and Bunbury in the event circumstances occur where the Network Lessee would, but for clause 5(a), be entitled to give notice under clause 16.2 of the Principal Agreement. For the avoidance of doubt, unless and until the Parties agree pursuant to this clause 5(b), the Network Lessee may not give notice in relation to the Manjimup line between Greenbushes and Bunbury under clause 16.2 of the Principal Agreement until after 1 December 2008.

6. Confirmation and ratification

In all other respects, the Parties hereby confirm and ratify the Principal Agreement.

Executed as a deed

The **COMMON SEAL** of the
**PUBLIC TRANSPORT AUTHORITY OF
WESTERN AUSTRALIA** is affixed in the
presence of




Signature of Chief Executive Officer

REECE WALDOOCK

Name of Chief Executive Officer in full

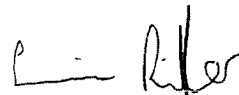
Signed by the said
Honourable Eric Ripper MLA
in the presence of:



Signature of Witness

Katherine Hazel Kural

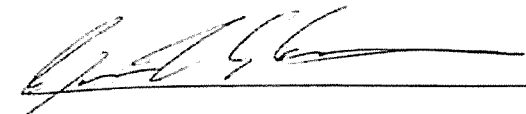
Name of Witness in full



Signature

7/5/2004

Executed by
WestNet NarrowGauge Pty Ltd
ACN 094 736 900
by or in the presence of:



Signature of Director

GENE T TILBROOK


Name of Director in full

Executed by
Australia Western Railroad Pty Ltd
ACN 094 792 275
by or in the presence of:

Signature of Director

Name of Director in full



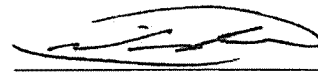


Signature of Secretary/~~other~~ Director

PAUL STEVEN GARDINER

Name of Secretary/~~other~~ Director in full





Signature of Secretary/~~other~~ Director

ANTHONY MICHAEL WARDONE

Name of Secretary/~~other~~ Director in full

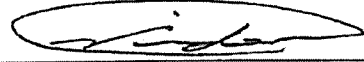
Executed by
Australian Railroad Group Pty Ltd
ACN 080 579 308
by or in the presence of:



Signature of Director

GENE T TILBROOK

Name of Director in full



Signature of Secretary/~~other Director~~

ANTHONY MICHAEL MARDONE

Name of Secretary/~~other Director~~ in full

