



MINUTES OF THE SPECIAL COUNCIL MEETING

15 DECEMBER 2023

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**AGENDA FOR THE SPECIAL MEETING OF COUNCIL TO BE HELD IN COUNCIL CHAMBERS ON
15 DECEMBER 2023 COMMENCING AT 2.00PM**

1.0 DECLARATION OF OPENING/ANNOUNCEMENT OF VISITORS

The Shire President opened the meeting at 2:00pm.

2.0 RECORD OF ATTENDANCE/APOLOGIES/APPROVED LEAVE OF ABSENCE

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 2.0 – RESOLUTION# 01151223

MOVED: Cr HR McTaggart **SECONDED:** Cr JR Holmes

Council authorises Cr AT Pearse and Cr JD Baley to attend the meeting by electronic means, being satisfied that the requirements under the *Local Government (Administration) Regulations 1996* have been met with regard to suitable location and equipment to effectively engage in deliberations and communications during the meeting.

VOTING REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 6/0

(FOR: Cr GJ Cosgrove, Cr HR McTaggart, Cr JD Bagley, Cr JR Holmes, Cr AT Pearse, and Cr RA Starick AGAINST: Nil)

Councillors

Cr GJ Cosgrove	Shire President
Cr HR McTaggart	Deputy President
Cr JD Bagley	Councillor*
Cr JR Holmes	Councillor
Cr AT Pearse	Councillor*
Cr RA Starick	Councillor

**attending by electronic means*

Apologies

Cr AR Smyth	Councillor
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Staff

Ms Erin Greaves	Acting Chief Executive Officer
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Guests

Nil

3.0 PUBLIC QUESTION TIME/PUBLIC STATEMENT TIME

Nil.

4.0 APPLICATIONS FOR LEAVE OF ABSENCE

Nil.

5.0 DECLARATIONS OF INTEREST

Nil.

9.0 CHIEF EXECUTIVE OFFICER

9.1 ROAD USER, CONTRIBUTION AND UPGRADE AGREEMENT – TERRA MINING

Location/Address: Shire of Mingenew
Name of Applicant: Terra Mining
File Reference: RD.PER.1
Disclosure of Interest: Nil
Date: 14 December 2023
Author: Erin Greaves, Acting Chief Executive Officer
Voting Requirements: Simple Majority

Summary

For Council to consider an application from Terra Mining to utilise Eleanor Street and Boolinda Road, Mingenew for haulage of iron ore from mining operations at Extension Hill to the Geraldton Port and establishing an appropriate road use agreement.

Key Points

- Terra Mining Pty Ltd seek permission to utilise Eleanor Street and Boolinda Road as part of their haulage route to transport iron ore from Extension Hill to the Geraldton Port
- A similar application was considered by Council at its 6 December Ordinary Council meeting however the key difference being the proposed vehicles being used for haulage in this case are already approved under the Restricted Access Vehicle Network (RAV7.3) for the proposed route.
- The RAV Network 7.3 approval does have a condition that permission is to be sought from the road manager and written approval must be carried by the operator at all times
- The proponent has advised they intend to commence haulage operations 1 January 2024

OFFICER RECOMMENDATION – ITEM 9.1

Council

1. Grants support for Terra Mining Pty Ltd to undertake haulage operations approved under the Restricted Access Vehicle (RAV) Network 7.3 on the following Shire-managed roads:
 - Eleanor Street
 - Boolinda RoadNoting that the RAV7.3 approval is conditional on all operators carrying written support from the road manager acknowledging the operator's use of the road.
2. Authorises the Chief Executive Officer to negotiate and enter into a road use agreement between the Shire of Mingenew and Terra Mining Pty Ltd for a period of 12 months to facilitate mining operations at Extension Hill, based on the terms and conditions as outlined in the Draft Road User, Contribution and Upgrade Agreement (Attachment 9.1.1);
3. Authorises the Chief Executive Officer and Shire President to execute the final agreement and affix the Common Seal.

The meeting was adjourned at 2:05pm to seek advice from Shire of Perenjori CEO, Paul Anderson on the outcome of Council's meeting held yesterday.

The meeting reconvened at 2:09pm.

AMENDED MOTION AND COUNCIL DECISION – ITEM 9.1 – RESOLUTION# 02151223

MOVED: Cr JR Holmes

SECONDED: Cr RA Starick

Council

4. Grants support for Terra Mining Pty Ltd to undertake haulage operations approved under the Restricted Access Vehicle (RAV) Network 7.3 on the following Shire-managed roads:
 - Eleanor Street
 - Boolinda RoadNoting that the RAV7.3 approval is conditional on all operators carrying written support from the road manager acknowledging the operator's use of the road.
5. Authorises the Chief Executive Officer to negotiate and enter into a road use agreement between the Shire of Mingenew and Terra Mining Pty Ltd for the period ending 31 December 2024 to facilitate mining operations at Extension Hill, based on the terms and conditions as outlined in the Draft Road User, Contribution and Upgrade Agreement (Attachment 9.1.1) and as follows;
 - Negotiate minimum \$0.12 per tonne of product (including any byproduct) carted through the Shire of Mingenew from the mining operations at Extension Hill per annum which amount shall comprise the Community Infrastructure Fund Contribution.
6. Authorises the Chief Executive Officer and Shire President to execute the final agreement and affix the Common Seal.

VOTING REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 4/2

(FOR: Cr GJ Cosgrove, Cr JD Bagley, Cr JR Holmes, and Cr AT Pearse, AGAINST: Cr HR McTaggart and Cr RA Starick)

Attachments

9.1.1 Draft Road User, Contribution and Upgrade Agreement

Background

The Shire received a request this week from Terra Mining Pty Ltd (Terra) to utilise Eleanor Street and Boolinda Road for haulage of iron ore from their Extension Hill mine site to the Geraldton Port commencing in January 2024. Due restrictions in being able to access the rail network (their preferred option), Terra are required to consider road haulage for at least the first 12 months of operation.

Terra have advised the following with regard to proposed transport movements:

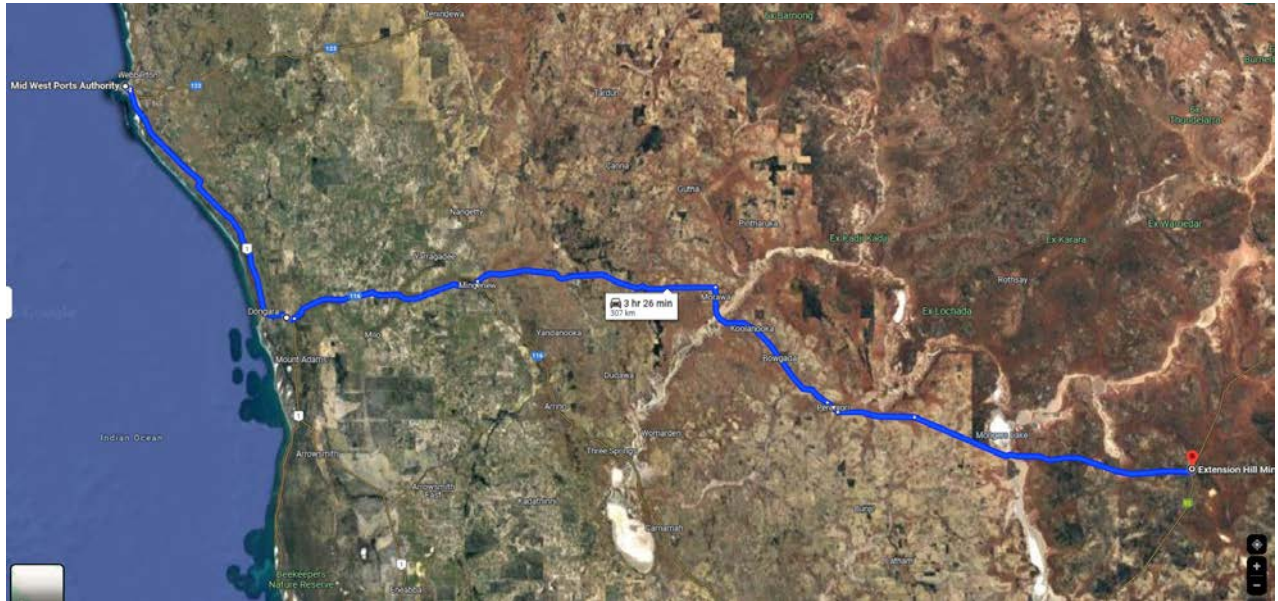
"During the 3 month ramp up period between January to April 2024, we expect to be carting 55k tonnes per month. In this time it will work up to 110k tonnes per month, therefore the truck movements per day would look like below:

- *First 3 months*
- *55k tonnes per month*
- *23 truck movements per day in/out of Mingenew*
- *This would be in a 24 hr period, so ~12 truck movements per 12hr shift*

- *Following 9 months*
- *110k tonnes per month*
- *46 truck movements per day in/out of Mingenew*
- *This would be in a 24 hr period, so ~ 23 truck movements per 12hr shift"*

MINGENEW SHIRE COUNCIL SPECIAL MEETING MINUTES – 15 December 2023

The proposal from Terra outlines the intended route through the Shire of Mingenew will be from the Mingenew-Morawa Road to Mingenew-Mullewa Road, along Eleanor Street and Boolinda Road, onto Midlands Road, travelling west to the Brand Hwy.



Terra's longer term plan is to utilise the rail network via the siding at Perenjori or to construct a new siding during 2024 for use.

Council considered a similar proposal from Fenix Newhaul at its 6 December 2023 Ordinary Council meeting, the difference being that the truck combinations were not approved under the existing RAV Network and permission needed to be sought from the local government to amend the RAV network to allow Level 4 PBS Level 3B, AMMS Level 3 which allows 42m A Triple – Super Triple vehicles.

The application was refused, and a copy of the lost motion and Council resolution is provided below:

OFFICER RECOMMENDATION AND COUNCIL DECISION – ITEM 11.3 – RESOLUTION#08061223

MOVED: Cr AR Smyth

SECONDED: Cr JD Bagley

That with respect to the application to amend the Restricted Access Vehicle Network on the Boolinda Rd and Eleanor Street, Mingenew:

- i. Council supports the application to add this section to the Level 4 PBS Level 3B, AMMS Level 3 Restricted Access Vehicle network,
- ii. This support is subject to the roads being thoroughly assessed by HVS and deemed to be suitable for the RAV access level in accordance with the Standard Restricted Access Vehicle Route Assessment Guidelines and
- iii. That the proponent, prior to haulage commencement, enters into a Road Use Agreement for the use of the road.
- iv. That the proponent, prior to commencement, obtain the necessary Commercial Goods Vehicle License (CGVL)
- v. That the approval be subject to a CA07 condition that stipulates the following:
 - Visibility: Lights must be turned on at all times
 - All operators, as required by the Shire, must carry current written approval from the road asset owner permitting use of the road.

VOTING REQUIREMENTS:

LOST BY SIMPLE MAJORITY 0/7

(FOR: Nil. AGAINST: Cr GJ Cosgrove, Cr HR McTaggart, Cr JD Bagley, Cr JR Holmes, Cr AT Pearse, Cr AR Smyth and Cr RA Starick)

ALTERNATIVE MOTION AND COUNCIL DECISION – ITEM 11.3 – RESOLUTION#09061223

MOVED: Cr RA Starick

SECONDED: Cr AT Pearse

Council refuses the application to amend the Restricted Access Vehicle Network on the Boolinda Rd and Eleanor Street, Mingenew for the following reasons:

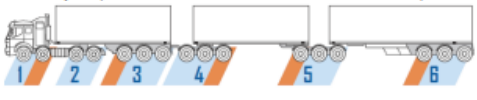

1. Increased safety, noise and liveability concerns relating to vehicles travelling down Midlands Road (main street);
2. The condition, geometry and strength of Eleanor St and Boolinda Road including intersections;
3. The significant increase in heavy vehicle volumes compared to existing vehicle movements;
4. The Mingenew-Mullewa / Midlands Road intersection, if reconfigured, would remove these issues and enable the Council to further consider this matter;
5. Boolinda Road rail crossing closures would affect this operation in addition to congestion during harvest periods;
6. Lack of detail within the application;
7. Lack of stakeholder engagement regarding impacts of this activity on the community, local business and industry.

VOTING REQUIREMENTS:

CARRIED BY SIMPLE MAJORITY 7/0

(FOR: Cr GJ Cosgrove, Cr HR McTaggart, Cr JD Bagley, Cr JR Holmes, Cr AT Pearse, Cr AR Smyth and Cr RA Starick AGAINST: Nil)

The full route proposed through the Shire of Mingenew is currently RAV7.3 approved by Main Roads WA for the category of vehicles proposed by Terra for their haulage operations (up to 36m long trucks with additional mass permitted on each axle to a Level 3). The vehicle configurations proposed to be utilised are shown in the image below:

Category 7 RAVs						
Cat.	Vehicle Description	Length	AMMS Level	Max. Gross Mass	Max. Modified Mass	Approved Network
7A	 AB-Triple (Prime Mover, Semi Trailer & B-double)	>27.5 m ≤36.5 m	Level 1	115 t	7 t	N7.1
			Level 2	119 t	11 t	N7.2
			Level 3	123.5 t	15 t	N7.3
7B	 BA-Triple (B-double & Dog Trailer)	>27.5 m ≤36.5 m	Level 1	115 t	7 t	N7.1
			Level 2	119 t	11 t	N7.2
			Level 3	123.5 t	15 t	N7.3

The configurations above are typically used for grain freight operations locally.

However, a CA07 condition exists requiring approval from the road manager for use of the road. Therefore, Council has authority to approve or reject the use of its roads (Shire-managed).

Comment

Terra have advised they intend to engage local cartage contractors and associated service providers/trades to support local communities impacted by their road use.

A Draft Road User, Contribution and Upgrade Agreement has been prepared in consultation with McLeods, based on a similar agreement already prepared in consultation with the Shire of Perenjori and Terra Mining. The Agreement considers imposing conditions to ensure the road integrity is maintained and/or repaired, all necessary permits are obtained (including the requirement for a Commercial Goods Vehicle Licence (CGVL) and includes provision for a bank guarantee as security.

The increased heavy vehicle traffic along this road will accelerate wear on the road pavement and surfacing and therefore reducing the life of the Shire’s assets. Prior to the commencement of road haulage activities by

Terra Mining, it would be prudent of the Shire to ensure a road condition assessment is undertaken of Eleanor Street and Boolinda Road to facilitate monitoring of the impacts on the affected roads. This is provided for within the Agreement.

The proposal does not provide Council with any assurance that the concerns raised during the Council meeting last week will be addressed. However, the Draft Agreement does provide for a Community Infrastructure Fund Contribution by the proponent based on 0.12 cents per tonne of product mined per annum, in addition to liability for road upgrade and maintenance works.

Should Council not wish to grant support for Terra Mining to use Eleanor Street and Boolinda Road, there is no alternative route through the Shire of Mingenew. Main Roads WA has been contacted by the proponent to consider allowing access across the Mingenew-Mullewa Road / Midlands Road rail crossing so trucks will not need to travel through the main street (along Midlands Road via Eleanor Street and Boolinda Road) but as it stands this is not permitted.

Statutory Environment

Main Roads Act 1930

Road Traffic (Administration) Act 2008, section 132

Public Works Act 1902

Land Administration Act 1997, section 55(2)

Local Government Act 1995, section 3.57

Policy Implications

Council may wish to consider adopting a policy to guide assessing applications to operate RAVs on local government roads and cost recovery activities.

Financial Implications

The proposed road agreement places the costs associated with maintaining the road to an acceptable standard with the proponent while they are operating and utilising the affected roads.

The agreement also includes a bank guarantee that is required to be provided so that the shire can draw upon these funds if the conditions to maintain the road contained within the agreement are not met.

The agreement also includes the provision for a community infrastructure fund contribution per tonne of product from the mining operations. Council is only requested to authorise use for a 12 month period and can include a provision in future agreements for an increase in the community contribution.

Strategic Implications

Strategic Community Plan:

Strategy 1.1.1 Provide and support cost effective transport network

Strategy 1.3.2 Provide services and processes to enhance public safety

MINGENEW SHIRE COUNCIL SPECIAL MEETING MINUTES – 15 December 2023

10.0 TIME AND DATE OF NEXT MEETING

Next Ordinary Council Meeting to be held on Wednesday 21 February 2024 commencing at 5:00pm.

11.0 CLOSURE

The meeting was closed at 2:42pm.

These minutes were confirmed at an Ordinary Council meeting on 21 February 2024.

Signed _____
Presiding Officer

Date: _____

Road User, Contribution and Upgrade Agreement – Terra Mining Pty Ltd

Shire of Mingenew

Terra Mining Pty Ltd



McLEODS

Lawyers

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Ref: FG:MING

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Draft

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Details

Parties

Shire of Mingenew

of PO Box 120, Mingenew, Western Australia 6522
(Shire)

Terra Mining Pty Ltd (ACN 605 732 518)

of Unit 1, Level 2, 7 Rheola Street, West Perth, Western Australia 6005
(Terra Mining)

Background

- A Subject to the *Main Roads Act 1930* and the *Public Works Act 1902*, the Shire is vested with care, control and management of roads within its district pursuant to section 55(2) of the *Land Administration Act 1997*.
- B Pursuant to section 132 of the *Road Traffic (Administration) Act 2008* the Shire is entitled to recover extraordinary expenses incurred in repairing road infrastructure because of damage caused by heavy traffic and may enter into an agreement with a person against whom such expenses may be recoverable in respect of heavy traffic.
- C Terra Mining wishes to recommence its mining operations at [insert details], which is located adjacent to the district of the Shire and proposes to undertake the Road Use, which comprises high volume heavy vehicle usage on the Affected Roads (**Affected Roads**).
- D In consideration for the Shire's agreement to the use of the Affected Roads for the Road Use, Terra Mining has also agreed to pay the Community Infrastructure Fund Contribution in addition to Terra Mining's agreement to carry out any upgrade works to the Affected Roads as and when required by the Shire.
- E The parties enter into this Agreement to record the terms of their agreement with respect to the Shire's agreement to permit Terra Mining to use the Affect Roads for the Road Use.

Agreed terms

1. Defined Terms and Interpretation

1.1 Definitions

Unless otherwise required by the context or subject matter the following words have these meanings in this Agreement:

Affected Roads means the roads affected by the Road Use as specified in **Item 3** of the Schedule;

Agreement means this document as supplemented, amended or varied from time to time;

Amounts Payable means any money payable by Terra Mining under this Agreement;

Authorised Person includes:

- (a) the employees, agents, contractors and invitees of Terra Mining; and
- (b) any person on or using the Affected Road for the Road Use with the express authority of a person specified in paragraph (a);

Bank Guarantee is defined in **clause 5.1** of this Agreement;

Baseline Condition means the baseline condition at the commencement of this Agreement, as assessed in accordance with **clause 2.5(1)(a)** of this Agreement;

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in Western Australia;

CEO means the Chief Executive Officer for the time being of the Shire or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Agreement;

Contamination has the same meaning it has under the *Contaminated Sites Act 2003*;

Commencement Date means the date of execution of this Agreement;

Community Infrastructure Fund Contribution means the cost contribution specified in **Item 5** of the Schedule;

CPI means the Consumer Price Index (All Groups) for Perth, Western Australia as first published each quarter by the Australian Bureau of Statistics (disregarding any subsequent adjustments to the index figure set or published);

Environmental Harm has the same meaning it has under the *Environmental Protection Act 1986*;

Invoice means a tax invoice which has the meaning which it bears in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Notice means each notice, demand, consent or authority given or made to any person under this Agreement;

Party means the Shire or Terra Mining according to the context;

Pollution has the same meaning it has under the *Environmental Protection Act 1986*;

Product means iron ore and/or iron ore derivatives;

Road Upgrade and Maintenance Works means the maintenance works to the Affected Roads as specified in **Item 4** of the Schedule;

Road Use means the road use specified in **Item 2** of the Schedule;

Term means the Term of this Agreement specified in **Item 1** of the Schedule, and where applicable includes any extension of the Term;

Terra Mining's Obligations means the agreements and obligations set out or implied in this Agreement or imposed by law to be performed by Terra Mining or any person on behalf of Terra Mining;

Shire's Obligations means the agreements and obligations set out or implied in this Agreement, or imposed by law to be performed by the Shire; and

Schedule means the Schedule to this Agreement.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings, underlining and numbering do not affect the interpretation or construction of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (e) references to parts, clauses, parties, annexures, exhibits and schedules are references to parts and clauses of, and parties, annexures, exhibits and schedules to, this Agreement;
- (f) a reference to any statute, regulation, proclamation, ordinance or local law includes all statutes, regulations, proclamations, ordinances or local law varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and local laws issued under that statute;
- (g) no rule of construction will apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Agreement or any part of it;
- (h) a reference to anything (including any real property) or any amount is a reference to the whole and each part of it;
- (i) reference to the parties includes their personal representatives, successors and lawful assigns;
- (j) where a reference to a party includes more than one person the rights and obligations of those persons will be joint and several; and
- (k) the Schedule and Annexures (if any) form part of this Agreement.

2. Use of Affected Roads

2.1 Use of Affected Roads

- (1) Subject to the satisfaction of Terra Mining's Obligations and all applicable consents and approvals being obtained, the Shire permits Terra Mining and its authorised haulage contractors to use the Affected Roads on the haulage route shown on the map annexed hereto as **Annexure 1** during the Term for the Road Use (**Haulage Route**) and more particularly detailed in **Item 3** of the Schedule for the purpose of hauling iron ore using RAV Category 7 Vehicles (including concessionally loaded RAV Category 7 Vehicles).

2.2 Acknowledgements

- (1) Terra Mining agrees and acknowledges:
 - (a) this Agreement does not create or confer on Terra Mining any tenancy or any other estate or interest in the Affected Roads;
 - (b) this Agreement does not confer any exclusive rights of Terra Mining to the Affected Roads;
 - (c) Terra Mining may not, at any time, exclude any person from using the Affected Roads; and
 - (d) the Shire retains possession and control of the Affected Roads.

2.3 Suspension of use

- (1) If at any time Terra Mining breaches any of Terra Mining's Obligations or if the Shire (acting reasonably) deems necessary, the Shire may on written notice to Terra Mining restrict and/or suspend its use of the Affected Roads under **clause 2.1**, for any period that the Shire deems reasonable (**Suspension Notice**).
- (2) A restriction or suspension under **clause 2.3(1)** will:
 - (a) be at the cost of Terra Mining and without recourse or penalty against the Shire; and
 - (b) continue until the breach is remedied by Terra Mining.

2.4 Road Closure

- (1) Terra Mining acknowledges that the right to use the Affected Roads under **clause 2.1**, is subject to the Shire's right to close or restrict traffic on the Affected Roads in accordance with applicable law.
- (2) In the event of rapid deterioration of the condition of the Affected Roads, adverse weather conditions, an emergency, or if the Shire (acting reasonably) deems the Affected Roads to be unsafe for use, the Shire reserves its right to close (or restrict access to) the Affected Roads or take any other action as the Shire deems appropriate to protect the health and safety of road users.
- (3) The Shire will use all reasonable endeavours to consult with Terra Mining and except in the event of an emergency, will provide Terra Mining with advance notice in writing prior to exercising its rights to close or restrict use of the Affected Roads under **clause 2**.
- (4) Terra Mining must comply with the requirements of any notice issued under **clause 2.3(1)** and in the case of an emergency must immediately suspend its use of the Affected Roads as directed by the Shire.
- (5) During any period of temporary closure of the Affected Roads, the Shire will undertake regular inspections of the Affected Roads and will use all reasonable endeavours to keep the period of closure to a minimum.
- (6) The Shire will not be liable to pay any compensation to Terra Mining for exercising its rights pursuant to this **clause 2.3** or any written law.

2.5 Inspection of Affected Roads

- (1) The Parties agree that the Shire or a contractor engaged by the Shire (and in the case of a contractor, a contractor nominated and agreed by both the Shire and Terra Mining) will carry out:
 - (a) a baseline inspection at the commencement of the Term;
 - (b) monthly visual inspections during the Term; and
 - (c) an end of agreement inspection at the End of the Term,
 - (d) of the Affected Roads, to obtain comprehensive visual data to monitor deterioration of the Affected Roads.
- (2) Terra Mining will be liable for the costs of the inspections made under **clause 2.5(1)**. Terra Mining agrees and acknowledges that payment is required to be made by Terra Mining to the Shire within 14 days of receipt of an invoice for such inspections from the Shire.
- (3) The Shire will share the inspection data obtained under **clause 2.5(1)** with Terra Mining.

2.6 Obligations in respect of Affected Roads

- (1) Terra Mining covenants and agrees with the Shire that it must:
 - (a) take all reasonable measures necessary to prevent refuse, rubbish, debris and all other materials from falling from its vehicles or being deposited on the Affected Roads and must at its cost, remove any material left or deposited by it on the Affected Roads;
 - (b) comply with all reasonable conditions that may be imposed by the Shire and/or any Service Authority from time to time in relation to the Terra Mining's use of the Affected Roads;
 - (c) comply promptly with all laws, rules and procedures in relation to its use of the Affected Roads;
 - (d) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Affected Roads for the Road Use; and
 - (e) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Terra Mining's use of the Affected Roads.

3. Road Upgrade/Maintenance Works

Terra Mining covenants and agrees with the Shire that:

- (a) in the event the Shire issues Terra Mining with a written notice requiring the upgrade and/or repair of any portion of the Affected Roads (**Notice**) Terra Mining shall carry out any works required to either upgrade and/or repair the Affected Roads as specified in the Notice in accordance with the specifications of and to the satisfaction of the Shire and in accordance with the applicable standards for road construction to enable the Affected Roads to be used for the purpose of hauling iron ore using RAV category 7 vehicles (including concessionally loaded RAV Category 7 vehicles);
- (b) prior to the commencement of any works as specified in **clause 3(a)**, Terra Mining shall ensure that it has obtained all relevant permits, approvals or other authorisations as are necessary to carry out those works;
- (c) it shall use its best endeavours to ensure that any works carried out pursuant to **clause 3(a)** of this Agreement are completed within any timeframes specified in the Notice or within a reasonable time as determined by the Shire acting reasonably;
- (d) the scope of any Road Upgrade/Maintenance Works shall include but not be limited to the list of items referred to in **Item 4** of the Schedule;
- (e) it shall carry out the works as specified under the Item titled "Road Upgrade and Maintenance Tasks Response Times" and shall complete any of the items listed under that heading and more specifically in accordance with the timeframes specified next to the specified tasks; and
- (f) if Terra Mining fails to carry out the works specified in any Notice within the time specified in the Notice or within any other timeframe nominated by the Shire, the Shire may provide Terra Mining with a notice requiring Terra Mining to complete such works and if Terra Mining fails to comply with the requirements of the Shire's notice within 10 days after receipt of the notice, the Shire may, in its discretion, undertake the necessary works and the costs of such works may be deducted from the Bank Guarantee in accordance with **clause 5** of this Agreement and such cost shall in any event be a liquidated debt recoverable from Terra Mining in a court of competent jurisdiction.

4. Maintenance obligations

Until the expiration of the Term or such longer period of time in the event of the Shire agrees to the extension of the Term, Terra Mining is fully responsible, at its cost, to maintain the Affected Roads in good repair and to an appropriate trafficable standard, to the satisfaction of the Shire and to the extent set out in this Agreement.

5. Security for Performance

5.1 Bank Guarantee

On the execution of this Agreement, and prior to Terra Mining commencing use of the Affected Roads for the Road Use, Terra Mining covenants and agrees to provide to the Shire a bank guarantee in the sum of **\$500,000.00** (excluding GST) (**Bank Guarantee**) to be held by the Shire in accordance with this **clause 5**.

5.2 Requirements of Bank Guarantees

Any bank guarantee provided under this **clause 5** must:

- (a) be an unconditional and irrevocable undertaking from a bank or financial institution authorised to carry on banking in Australia under the *Banking Act 1959*;
- (b) authorise the Shire to draw on the guarantee, whether or not a demand or notice has been given to Terra Mining;
- (c) be in favour of the Shire and in a form satisfactory to the Shire (acting reasonably) and otherwise be in a form acceptable to the Shire; and
- (d) not specify an expiry date, unless otherwise agreed by the Shire in writing.

5.3 Shire may retain and draw down on security

Terra Mining acknowledges and agrees with the Shire that:

- (a) the Shire may retain any security provided under this **clause 5** to ensure that any works required to be completed by Terra Mining are completed in accordance with the terms of this Agreement;
- (b) the Shire may without further notice deduct from the Bank Guarantee (as the case may be) the following amounts:
 - (a) in the event Terra Mining fails to complete any part of the Road Upgrade/Maintenance Works as required by **clause 3** of this Agreement or to rectify any defects in accordance with the terms of this Agreement and has failed to comply with a notice issued by the Shire under **clause 3**, the reasonable costs and expenses incurred by the Shire to complete such works; and
 - (b) in the event Terra Mining fails to comply with any of its covenants or obligations under this Agreement and has failed to comply with a notice issued by the Shire under **clause 3**, the reasonable costs and expenses incurred by the Shire arising as a result of non-compliance with any of Terra Mining's covenants or obligations under this Agreement.

5.4 Return of security

The Shire and Terra Mining covenant and agree that, subject always to there being no unremedied default or breach under this Agreement and, in the event a bank guarantee is provided under this **clause 5**, any financial institution which provided a guarantee under this Agreement having made payable to the Shire pursuant to all requests by the Shire to draw down on a guarantee, Terra Mining will be entitled to the return of any unused portion of the security held by the Shire pursuant to this Agreement on the expiration of the Term as extended by the Shire:

5.5 Acknowledgement

- (1) Terra Mining covenants and agrees with the Shire, that any security provided under this Agreement will be without prejudice to the right of the Shire to recover from Terra Mining any further amount owing pursuant to this Agreement which exceeds the security, and to any other remedy the Shire may have against Terra Mining.
- (2) Without limiting **clause 5.5(1)**, Terra Mining covenants and agrees with the Shire that if any amount for which it is liable to the Shire exceeds the amount of any security held by the Shire under this Agreement that amount will be a liquidated debt recoverable by the Shire from Terra Mining in a Court of competent jurisdiction.

6. Insurance

- (1) Terra Mining must:
 - (a) effect and maintain with reputable insurers (noting the Shire as an additional insured) an adequate public liability insurance (**Policy**);
 - (b) ensure such public liability insurance Policy is written on an occurrence basis with a limit of indemnity of not less than TWENTY MILLION DOLLARS (\$20,000,000.00) (**Insured Sum**);
 - (c) ensure the Policy shall cover the Shire for the Insured Sum for any one event in respect of bodily injury or loss of property in connection with the Terra Mining's performance under this Agreement;
 - (d) ensure the Policy shall cover the Shire for all claims (but without limiting the generality of the foregoing) for loss or damage to property not owned by Terra Mining and also for any loss or damage to property not under the physical or legal control of Terra Mining but only to the extent that such loss or damage is caused by Terra Mining;
 - (e) advise the Shire of any changes to the Policy or any cancellation of the Policy; and
 - (f) ensure the Policy contains a cross liability clause as if there was a separate policy of insurance covering all parties included as additional insureds (subject to always to the overall sum insured not being increased thereby).
- (2) Terra Mining agrees that the Shire shall not be liable for any payments whatsoever (including any excess on claims) in respect of such insurance under this **clause 6**.

6.2 Insurance of employees

Terra Mining must ensure that it and any of its contractors and sub-contractors effect and maintain employers' indemnity insurance, the Shire's, any relevant Authority and Terra Mining's respective rights and interests in the Roads) including workers' compensation insurance in respect of all Authorised Persons. Such cover must:

- (a) be in respect of liability for death of or injury to persons employed including liability by statute and at common law; and
- (b) be maintained while any work under this Agreement remains to be done; and
- (c) include a principal's indemnity extension for *Workers' Compensation and Injury Management Act 1981* (WA) benefits and common law liability of at least \$20,000,000 (or such other agreed amount).

6.3 Insurance of vehicles

Terra Mining must ensure that any vehicle used by Terra Mining and/or Terra Mining's Authorised Persons accessing the Affected Roads is licensed and has third party motor insurance cover for at least \$20,000,000 in respect of any one occurrence.

6.4 Interest

Without affecting the rights, power and remedies of the Shire under this Agreement, Terra Mining covenants and agrees to pay to the Shire interest on demand on any Amounts Payable which are unpaid for 30 days computed from the due date for payment until payment is made.

6.5 Excess

Terra Mining agrees that the Shire shall not be liable for any excess payments with respect to any of the insurance policies under this **clause 6**.

7. Community Infrastructure Fund Contribution

- (1) For the duration of the Term, Terra Mining covenants and agrees with the Shire to pay to the Shire the Community Infrastructure Fund Contribution to support the acquisition, restoration, extension and improvement of community infrastructure within the Shire as specified in **Item 5** of the Schedule (**Community Infrastructure Fund Contribution**), and the Community Infrastructure Fund Contribution shall be indexed at CPI annually.
- (2) Terra Mining agrees and acknowledges that payment of the Community Infrastructure Fund Contribution is required to be made by Terra Mining within 14 days of receipt of an invoice for such cost contribution from the Shire and more specifically in accordance with **clause 7(4)** of this Agreement.
- (3) Terra Mining agrees to provide to the Shire on a monthly basis the tonnage of product (including any by-product) transported from the operations at Extension Hill to facilitate the calculation of the Community Infrastructure Fund Contribution.
- (4) Terra Mining will pay to the Shire the amount in accordance with **Item 5** of the Schedule invoiced monthly, by direct debit into an account nominated in writing by the Shire within fourteen (14) days of receipt of a valid tax invoice from the Shire. For the avoidance of doubt unless agreed otherwise or as set out in this Agreement, failure to pay a correctly rendered tax invoice will be in a breach of this Agreement by Terra Mining.

8. Use of Fund Contributions

- (1) The Community Infrastructure Fund Contribution must be held in a reserve account by the Shire in accordance with section 6.9 of the *Local Government Act 1995*.
- (2) The Community Infrastructure Fund Contribution must be applied by the Shire for the purposes of acquisition, restoration, extension and improvement of community infrastructure owned by, or

located within, the Shire (which shall include but not limited to housing for employees of the Shire) as deemed necessary by the Shire from time to time.

- (3) The Shire will record details of all expenditure of funds from the account into which the Community Infrastructure Fund Contribution are deposited. Terra Mining may inspect the expenditure records held by the Shire by notice of 14 days being given to the Shire.

9. Report

Terra Mining must promptly report to the Shire -

- (a) any material damage to the Affected Roads of which it is aware;
- (b) any circumstance (of which it is aware) which is likely to be a danger or cause any damage or any danger to the Affected Roads or to any person in or on the Affected Roads;
- (c) any occurrence or circumstances in or near the Affected Roads (of which it is aware) which might reasonably be expected to cause Pollution or Contamination of the environment in or on the Affected Roads; and
- (d) all notices, orders and summonses received by it, which affect the Affected Roads and immediately give them to the Shire.

10. Indemnity

10.1 Terra Mining's responsibilities

Terra Mining is responsible and liable for all acts or omissions of any Authorised Person on the Affected Road for the purpose of the Road Use and for any breach by them of any covenants or terms in this Agreement required to be performed or complied with by Terra Mining.

10.2 Indemnity

- (1) Terra Mining indemnifies, and must keep indemnified, the Shire and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Shire or the Minister for Lands, or brought, maintained or made against the Shire or the Minister for Lands, in respect of:
 - (a) any loss whatsoever (including loss of use);
 - (b) injury or damage of, or to, any kind of property or thing; and
 - (c) the death of, or injury suffered by, any person,

to the extent caused by or contributed to, whether directly or indirectly:

- (i) the closure of the Affected Roads caused by an act or omission of the Terra Mining;
- (ii) the use of the Affected Roads by Terra Mining or any Authorised Person for the purpose of the Road Use;
- (iii) any work carried out by or on behalf of Terra Mining on the Affected Roads;
- (iv) Terra Mining's activities, operations or business on, or other use of any kind on the Affected Roads;

- (v) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Affected Roads or adjoining land caused or contributed to by the act, neglect or omission of Terra Mining or any Authorised Person;
 - (vi) any default by Terra Mining in the due and punctual performance, observance and compliance with any of Terra Mining's covenants or obligations under this Agreement; or
 - (vi) an act or omission of Terra Mining,
- except to the extent caused or contributed to by the Shire's negligent act or omission.

10.3 Obligations Continuing

The obligations of Terra Mining under this **clause 10**, continue after the expiration or earlier determination of this Agreement in respect of any act, agreement, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Agreement.

11. Costs

Terra Mining will pay the Shire's legal costs of and incidental to the preparation, negotiation, execution and stamping of this Agreement and all duty payable hereon.

12. No Fetter

Despite any other provision of this Agreement, the Parties acknowledge that the Shire is a local government established by the *Local Government Act 1995*, and in that capacity, the Shire may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any Written Law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Shire will not be taken to be in default under this Agreement by performing its statutory obligations or exercising its statutory discretions, and a provision of this Agreement will not fetter the Shire in performing its statutory obligations or exercising any discretion.

13. Notices

Any communication under or in connection with this Agreement:

- (a) must be in writing;
- (b) must be addressed in the manner specified in **Item 6** of the Schedule;
- (c) must be signed by the party making the communication or on its behalf by the solicitor for, or by any attorney, director, secretary, or authorised agent or officer of, any party;
- (d) must be delivered or posted by prepaid post to the address, or sent by email to the email address of the addressee, in accordance with **clause 13(b)** of this Agreement;
- (e) will be deemed to be given or made:
 - (i) if by personal delivery, when delivered;
 - (ii) if by leaving the Notice at an address specified in **clause 13(b)** of this Agreement, when left at that address unless the time of leaving the Notice is not on a Business Day or after 5pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day;

- (iii) if by post to an address specified in **clause 13(b)** of this Agreement, on the seventh Business Day following the date of posting of the Notice if posted in Australia and on the fourteenth Business Day following the date of posting of the Notice if posted outside of Australia; and
- (iv) if sent by email, when despatched by email to an email address specified in **clause 13(b)** unless the time of dispatch is not on a Business Day or after 5 pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day.

14. Dispute

14.1 Referral of Dispute: Phase 1

Except as otherwise provided, any dispute arising out of this Agreement is to be referred in the first instance in writing to the Shire's Representative as nominated in writing by the Shire from time to time (**Shire's Representative**) who will convene a meeting within 7 days of receipt of such notice from Terra Mining or such other period of time as is agreed to by the parties between the Shire's Representative and an employee of Terra Mining for the purpose of resolving the dispute (**Original Meeting**).

14.2 Referral of Dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 14.1** of this Agreement, then the dispute will be referred in writing to the CEO of the Shire who will convene a meeting within 7 days of the Original Meeting or such other date as is agreed to by the parties between the CEO of the Shire and CEO or other authorised senior employee of Terra Mining for the purpose of resolving the dispute.

14.3 Appointment of Independent Mediator: Phase 3

In the event the dispute is not resolved in accordance with **clause 14.2** of this Agreement, then the dispute will be referred to mediation conducted by a mediator appointed by the President of the Law Society of Western Australia, the Shire and Terra Mining may each be represented by a legal practitioner and the mediator will determine the guidelines for mediation.

14.4 Appointment of Arbitrator: Phase 4

In the event the dispute is not resolved in accordance with **clause 14.3** of this Agreement then the dispute will be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 2012* (as amended from time to time) and the Parties may each be represented by a legal practitioner.

14.5 Payment of Amounts by Terra Mining

Terra Mining must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by Terra Mining is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Parties then the Shire will refund to Terra Mining the monies paid.

15. Force Majeure

- (1) Should a Party be delayed in the performance of this Agreement by an event which that Party concerned considers is a Force Majeure occurrence, then the Party delayed must –
 - (a) give written notice to the other Party immediately giving the full particulars of the event and why it is considered a Force Majeure occurrence; and

- (b) use its best efforts to remedy the situation.
- (2) On giving a notification under **clause 15(1)**, the performance or compliance by a Party of or with any of the responsibilities or obligations under this Agreement affected by the Force Majeure occurrence are to be suspended. The suspension is to continue for as long as the performance or compliance with that responsibility or obligation under this Agreement is so prevented or hindered. During the suspension, the Parties must consult with each other without delay as to the measures to be taken regarding the continuation of the use, repair, rectification and payment and the implementation of this Agreement. The Parties must agree on a solution equitable to all Parties.
- (3) On cessation of any Force Majeure occurrence, the Parties must take all reasonable measures necessary to minimise the effects of the delay.
- (4) Should the Force Majeure continue for more than 60 consecutive days either Party may terminate this Agreement with immediate effect by giving the other Party written notice of termination.
- (5) A Party is not liable for any delay or failure of performance of the terms and conditions of this Agreement to the extent such delay or failure is attributable to events of Force Majeure which has been notified in accordance with this clause.
- (6) Force Majeure may not be invoked by a Party if, and to the extent that, any prior default under this Agreement of the Party concerned caused or contributed to the prevention or impediment of the due performance of the obligations under this Agreement.

16. Goods and Services Tax

16.1 Definitions

The following definitions apply for the purpose of this clause:

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means any money payable to the Shire under this Agreement, but does not include the amount of the GST which may apply to such money payable under the Act;
- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Shire for goods or services or property or any other thing under this Agreement; and
- (d) **Supply** means a good or service or any other thing supplied by the Shire under this Agreement, if any.

16.2 Terra Mining to Pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Shire is required under the Act to pay on any Supply made under this Agreement.
- (2) Terra Mining must pay any increase referred to in **clause 16.2(1)** whether it is Terra Mining or any other person who takes the benefit of any Supply.
- (2) Terra Mining must pay the amount of the GST to the Shire at the same time and in the same manner as Terra Mining is required to pay the Consideration under this Agreement.

16.3 Statement of GST paid is Conclusive

A written statement given to Terra Mining by the Shire of the amount of the GST that the Shire pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

16.4 Tax Invoices

For each payment by Terra Mining under this clause the Shire agrees to promptly deliver to Terra Mining, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, to enable Terra Mining to claim input tax credits or decreasing adjustments for Supplies.

16.5 Reciprocity

If Terra Mining furnishes any Supplies to the Shire under this Agreement, then the requirements set out in this clause with respect to Terra Mining will apply to the Shire with the necessary changes.

17. Assignment

Terra Mining covenants and agrees with the Shire that in the event that it transfers or otherwise disposes of its interest in the development/mining rights associated with the Road Use, it will remain liable to carry out those obligations unless the assignee or transferee of such rights enters into an Agreement of covenant with the Shire at the cost of Terra Mining whereby the transferee or assignee covenants to observe and perform such of the covenants conditions and stipulations herein contained (including this covenant) as the Shire will require, as if that person had been a party to this Agreement.

18. Severability

If any provision of this Agreement is void or unenforceable, that provision is void and unenforceable only to the extent of that voidness or unenforceability, without invalidating the remaining provisions which will remain in full force and effect.

19. Amendments

This Agreement can be modified, amended or varied only by a document in writing signed by each of the parties.

20. Waiver

The parties mutually covenant and agree that:

- (a) no right under this Agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right;
- (b) a waiver by one party under paragraph (a) of this clause does not prejudice its rights in respect of any subsequent breach of this Agreement by the other party; and
- (c) a party does not waive its rights under this Agreement because it grants an extension or forbearance to the other party.

21. Further Assurance

Each party must do everything reasonably necessary to give effect to this Agreement and the transactions provided for by it and use all reasonable endeavours to cause relevant third parties to do likewise.

22. Laws of Western Australia apply

This Agreement is to be construed and interpreted in accordance with the laws of the State of Western Australia and the parties agree to submit to the jurisdiction of the courts of that State and of courts competent to hear appeals from those courts.

Draft

Schedule

Item 1 Term

Term

[insert term (month/years)] commencing on [insert date] and expiring on [insert date].

Item 2 Road Use

Heavy haulage associated with mining operations/extractive industry situated at [insert name of Mine Site], located on [insert details].

The Road Use permits Daily Equivalent Standard Axle (ESA) up to [insert amount] tonnes and monthly tonnage of up to [insert amount] tonnes.

In the event, the Daily Equivalent Standard Axle (ESA) is \geq [] tonnes or the proposed monthly tonnage is proposed to be over [110,000] tonnes, the terms and conditions of Road Use must be renegotiated by the Parties with any required terms and conditions formally agreed by variation to this Agreement or a new agreement entered into between the Parties.

Item 3 Affected Roads

Road	Local government	Length	Start	End	RAV Classification
*Defines that conditions apply for the use of these vehicles on the road					

Item 4 Road Upgrade and Maintenance Works

Road Upgrade and Maintenance Works mean any works deemed necessary by the Shire (acting reasonably) for maintenance of the Affected Roads, considering the nature and extent of the Road Use and condition of the Affected Roads, including but not limited to the following -

- (a) maintenance resealing;
- (b) verge vegetation maintenance works including vegetation pruning and vegetation clearing;

- (c) verge slashing and spraying to maintain weeds on road verge;
- (d) drainage maintenance works including repair and replacement of drainage infrastructure and cleaning of debris and silt from culverts;
- (e) removal of road kill, debris, litter and any other material or thing;
- (f) repair of roadside furniture;
- (g) pothole repair;
- (h) pavement repairs;
- (i) edge break repairs;
- (j) any works undertaken within the road reserve or deemed reasonably necessary by the Shire to maintain and improve the road surface and road verge; and
- (k) upgrades required to facilitate RAV Main Road standards.

Road and Maintenance Tasks and Response Times

1. Terra Mining shall institute documented inspection processes for routine patrol and inspection of the Affected Roads, to ensure that they are maintained in a safe condition at all times.
2. Routine tasks to be undertaken during road maintenance patrol and the response times required under this Agreement are set out below:

Task	Max. Response Time
Remove any road kill hazardous to light vehicle traffic within 5.5m of the road centreline	12 hours
Clear blocked culverts	12 hours
Replace damaged signs and guide posts	1 week
Cordon off hazards, place/replace hazard signs	4 hours
Replace damaged line marking (sealed Sections only)	4 weeks
Remove litter hazardous to light vehicle traffic within 5.5m of the road centreline, including abandoned vehicles (subject to prior authorisation of Shire)	1 week

3. Structural defects in the sealed portion of the Affected Roads shall be rectified by Terra Mining within the response times set out below:

Defect	Intervention Level	Max. Response Time
Potholes	Potholes > 50mm deep, or > 1.0 m ² in area	1 week

Stripping seal	Areas > 5 m ²	2 weeks
Bleeding seal	Pick-up on tyres	1 week
Rutting and shoving	Depressions > 40mm, and > 5 m ² in area	1 month
Any pavement failure	If hazardous to traffic	12 hours
	Otherwise	1 month
Cracking	> 100 linear metres over 100m long section of road	1 month
Edge break	> 100mm wide and/or > 50mm deep	1 month
Edge drop-off	> 50mm deep	1 month
Shoulder erosion	Width of shoulder reduced to < 1.0m	1 month
Off road drainage	Ponding extends into pavement layer	1 week
Silted Culverts	Depth of silt > 20% of culvert	1 month

Item 5 Community Infrastructure Fund Contribution

The Shire and Terra Mining agree that Terra Mining shall pay [] cents per tonne of product (including any by-product) mined from the mining operations at [] per annum which amount shall comprise the Community Infrastructure Fund Contribution.

Item 6 Notices

Terra Mining:

Address: [Insert]

Email: [Insert]

Attention: [Insert]

Shire:

Address: Shire of Mingenew
PO Box 120
MINGENEW WA 6522

Email: CEO@mingenew.wa.gov.au

Attention: Chief Executive Officer

Signing page

Executed on the

day of

2023

The COMMON SEAL of the SHIRE OF MINGENEW was hereunto affixed by authority of Council in the presence of:

SHIRE PRESIDENT

(Print Full Name)

CHIEF EXECUTIVE OFFICER

(Print Full Name)

EXECUTED by TERRA MINING PTY LTD (ACN 605 732 518) pursuant to section 127 of the *Corporations Act*.

Signature of Sole Director & Sole Secretary

Full name of Sole Director & Sole Secretary

Annexure 1 - Haulage Route

[Shire to provide map]

Draft