

Premises Licence (Kioloa Campus)

between

**The Australian National University
(ABN: 52 234 063 906)**

and

**Murramarang Community Garden Inc.
(ABN 78 483 124 422)**

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PARTIES

THE AUSTRALIAN NATIONAL UNIVERSITY (ABN 52 234 063 906) an educational and research institute and body corporate pursuant to the *Australian National University Act 1991* (Cth) of Acton in the Australian Capital Territory, 2601 (**Licensor**)

AND

Murramarang Community Garden Inc. (ABN 78 483 124 422) (Licensee)

THE LICENCE

The **Licensor** grants to the **Licensee** described in item 1 of the Particulars (Licensee) the right to use the premises under licence, and for the purpose/use described in item 2 of the Particulars (Premises and Permitted Use), for the term specified in item 3 of the Particulars (Term) commencing on the date specified in item 5 of the Particulars (Commencement Date) and expiring on the date specified in item 6 of the Particulars (Expiry Date) and as otherwise on the terms and conditions contained in the Agreed Terms below.

AGREED TERMS

THE PARTICULARS

1.	Licensee:	Name: Murramarang Community Garden Inc. ABN: 78 483 124 422 Address: C/- Vice President Harley Delves 45 Glasford Crescent Kioloa 2639
2.	Premises: Permitted Use:	The area delineated on the site plan at Schedule 1. The operation of a community garden in the manner described in the Site Guidelines and Deed of Gift.
3.	Hours of Access	Monday to Sunday - 0800 – 1930 or Sunset (whichever occurs earlier). Access to KCC outside of the above times, unless prior written approval is provided by the ANU, will be prohibited.
4.	Term: Further Term: (Clause 1.1)	5 years 5 years
5.	Commencement Date:	1 March 2021
6.	Expiry Date:	28 February 2026

7.	<p>Licence Fee: (Clause 2)</p> <p>Method of Payment:</p> <p>Date of First Payment:</p>	<p>\$12 per annum (exclusive of GST and subject to clause 14).</p> <p>Payable on demand</p> <p>Commencement Date</p>
8.	<p>Amount of Public Risk Insurance Cover: (Clause 11)</p> <p>Workers' Compensation and Common Law Liability Insurance Cover: (Clause 11)</p> <p>Volunteer Workers insurance: (Clause 11)</p>	<p>\$20,000,000 per occurrence</p> <p>As per applicable State and Territory legislation</p> <p>\$1,000,000 in the aggregate</p>

1 Definitions and Interpretations

- 1.1 The following words have these meanings unless the contrary intention appears. Other words have the meanings indicated on the cover sheet and the Particulars.

Item numbers refer to those numbers in the Particulars.

Essential Terms mean clauses 2, 5, 8, 13.1, 14, 17 and 22.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (referred to as the 'GST Act') and associated imposition statutes.

Land means Part Lot 1 DP 782318

Licence includes this agreement including schedules, attachments, any inventory or special condition annexed to this agreement.

Licensee includes the executors, administrators, successors and assigns of the licensee.

Licensee's Property means the fixtures and fittings and other property of the Licensee in, on or used in the Premises.

Minister means the Commonwealth government minister or authority responsible for oversight of the Australian National University under its enabling legislation.

Permitted Use means the permitted use specified in Item 2 of the Particulars.

Services means such services (such as water, sewerage, drainage, gas, electricity, communications, fire-fighting) as may be provided by authorities, the Licensor or any person authorised by the Licensor (other than the Licensee), and includes all plant and equipment in connection with those services.

Site Guidelines means the guidelines for use of the Premises set out in Schedule 2, as amended from time to time by the Licensor.

Term means the period from and including the Commencement Date to and including the Expiry Date in item 5, unless terminated earlier.

1.2 Certain Terms

Unless the **contrary** intention appears:

- 1.2.1 a reference to a statute, ordinance or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- 1.2.2 the word "person" includes a corporation, a partnership, an incorporated or unincorporated association or an authority;
- 1.2.3 where a party consists of more than one person, this Licence binds those persons jointly and individually;
- 1.2.4 a reference to a month means a calendar month;
- 1.2.5 if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- 1.2.6 a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later; and
- 1.2.7 the singular includes the plural and vice versa.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this Licence.

2 Licence Fee

- 2.1 The Licensee agrees to pay the Licence Fee specified in item 6 of the Particulars to the Licensor on demand, annually in advance on and from the date of first payment specified in item 6 of the Particulars. GST is payable by the Licensee additional to this fee.
- 2.2 If a Licence Fee payment is for a period of less than one year, then that payment is that proportion the Licence Fee which the number of days in the period bears to the number of days in the year in which that period begins.

3 General Cleaning and Security

- 3.1 The Licensee must keep the Premises clean and in a tidy condition.
- 3.2 The Licensee must keep the Licensee's Property in good repair excluding fair wear and tear.
- 3.3 The Licensee is responsible for security of the Premises.

4 Maintenance and Repairs

- 4.1 The Licensee must report all damage and defects through the facilities maintenance system notified to the Licensee by the Licensor from time to time.
- 4.2 The Licensee acknowledges and agrees that all repairs and maintenance will be carried out by the Licensor's staff and/or contractors at the Licensor's cost, provided however that the Licensee will be responsible for any costs or expenses related to repairs and maintenance where those costs or expenses arose as a result of a deliberate or negligent act or omission of the Licensee or its employees, sub-contractors or agents.
- 4.3 The Licensor or any properly authorised person of the Licensor is allowed to enter the Premises at any reasonable time to carry out cleaning or repairs.

5 Alterations

- 5.1 The Licensee must not make or allow to be made any alteration or addition to the Premises (whether structural or otherwise) without the written consent of the Licensor.

6 Outgoings and Services

- 6.1 The Parties acknowledge that this is a gross Licence and the Licensee is not required to pay an additional sum for outgoings or for Services supplied to the Premises.

7 Assignment, Sublicense and Mortgages

- 7.1 The Licensee must not assign, sublicense or grant a mortgage over the Premises without the written consent of the Licensor.

8 Use of the Premises

- 8.1 The Licensee must only use the Premises for the Permitted Use.
- 8.2 The Licensor gives no warranty as to the suitability of the Premises for the Permitted Use. The Licensee must satisfy itself and is taken to have accepted this Licence with full knowledge of, and subject to, any prohibitions or restrictions on the use of the Premises under any laws or requirements of authorities.
- 8.3 The Licensee acknowledges and agrees that the Licensee has not been granted an exclusive right to the Permitted Use.
- 8.4 The Licensee must not:

- 8.4.1 carry on or permit to be carried on any noxious, noisy, dangerous or offensive business in the Premises; or
 - 8.4.2 allow anything to be done on the Premises which may annoy or cause damage to other persons in the immediate area or neighbourhood or on the campus of the Australian National University; or
 - 8.4.3 do anything to overload the facilities or Services of the Premises nor use them for anything other than their intended purpose.
- 8.5 The Licensee acknowledges and agrees the Licensor retains the right to restrict or suspend water supply or usage from dams located on the Land during time of drought, imposed water shortages or as part of any bush fire management plan.
- 8.6 The Licensee must:
 - 8.6.1 take all reasonable precautions against the outbreak of fire; and
 - 8.6.2 immediately notify the Licensor of the occurrence of any fire or other event which damages the Premises.
- 8.7 The Licensee must do all things reasonably possible in an endeavour to control usage without waste including for Services supplied and in respect of recycling and environmental issues.
- 8.8 Without limiting clause 8.9 or 8.10, the Licensee must observe the Site Guidelines set out in Schedule 2, as amended from time to time and notified to the Licensee. The Licensee must ensure its employees or volunteers observe the Site Guidelines. The Licensee's failure to observe the Site Guidelines constitutes a breach of this Licence.
- 8.9 The Licensee must comply with all applicable laws, any requirements of authorities (including obtaining and maintaining all necessary licences and permits), and those reasonable orders issued by the Australian National University's authorised delegate, in connection with the Premises or the Licensee's use or occupation of the Premises.
- 8.10 The Licensee must observe and perform the terms of any head lease of the Land insofar as those terms affect the Premises.
- 8.11 The Licensee acknowledges and agrees that this Licence does not confer upon the Licensee any estate or interest in land in respect of any part of the Premises, possession and control of which remains vested in the Licensor at all times.

9 Inspection of the Premises

- 9.1 The Licensee must permit the Licensor or any person authorised by the Licensor to enter and inspect the Premises at all reasonable times.

10 Advertisement and Signs

- 10.1 The Licensee must not display, or allow to be displayed, any sign on the Premises without the written consent of the Licensor which must not be unreasonably withheld.
- 10.2 The Licensee will remove its signage when the Term has expired or this Licence has been terminated and will pay to the Licensor on demand the costs of the repair of any damage caused by the removal.

11 Insurance and Indemnity

- 11.1 The Licensee must, at its own expense, effect and maintain with a reputable insurance company from the date of Commencement of this Agreement until the expiration or termination of this Agreement the insurances listed in item 7.

- 11.2 The Licensee must provide evidence without delay of its insurance under clause 11.1 on request by the Licenser.
- 11.3 The Licensee must not do anything or allow anything to be done, or fail to do anything that would allow an insurer to refuse or reduce a claim.
- 11.4 The Licensee will indemnify the Licenser against all liabilities or losses arising out of any:
- 11.4.1 injury to; or
 - 11.4.2 death of; or
 - 11.4.3 damage to the property of,
- the Licensee or its employees, agents, invitees, contractors or licensees while upon or entering any part of the Premises, including any shared space or access paths, except if, and to the extent, caused by negligent or unlawful acts of the Licenser or the Licenser's employees, agents or contractors.
- 11.5 The Licensee will not hold the Licenser liable for, and indemnifies the Licenser against, any loss, liability or expense incurred by the Licensee as a result of a loss, interruption or a variation in the quality or frequency of a Service (i.e. electricity, water or similar utility service supplied to the Premises) or a claim by a third party on the Premises arising out of or in connection with any interruption, loss or variation of the supplied Service.

12 Water Damage

- 12.1 The Licenser is not liable for damage to property of the Licensee arising from water supply or rain water which leaks or flows into the Premises, except if caused by the Licenser or the Licenser's employees, agents or contractors.

13 Removal of Fixtures and Fittings

- 13.1 On expiry of the Term or termination of this Licence, whichever is earlier, the Licensee must promptly remove all of the Licensee's property from the Premises.
- 13.2 If the Licensee does any damage to the Premises in removing any Licensee's property the Licensee must repair any damage promptly.
- 13.3 If the Licensee does not comply with clause 13.1 the Licensee is deemed to have (at the option of the Licenser):
- 13.3.1 abandoned the Licensee's property remaining on the Premises; and
 - 13.3.2 appointed the Licenser the Licensee's agent for the purpose of removing the Licensee's property from the Premises and either storing it at the risk and cost of the Licensee or selling it in any manner the Licenser decides, without in each case having any liability to the Licensee.
- 13.4 If pursuant to clause 13.3 the Licenser sells the Licensee's property (as agent for the Licensee):
- 13.4.1 the Licenser may apply the net proceeds firstly in satisfaction of any amount owing to the Licenser by the Licensee pursuant to this Licence and secondly in payment of the cost of removing and selling the Licensee's property;
 - 13.4.2 the Licenser is to account to the Licensee for any balance of the net proceeds; and
 - 13.4.3 the provision of clause 13.3 and this clause 13.4 do not limit any other rights or remedies of the Licenser under this Licence or at law.

14 Taxes, Duties, Costs and Expenses

- 14.1 The Licensee must pay to the Licensor on demand any taxes, duties, cost and expenses which the Licensor incurs in relation to this Licence other than costs associated with the preparation of this Licence.
- 14.2 The Goods and Services Tax (GST) under *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) applies to the License. The Licence Fee and any other payments under this licence do not include GST.
- 14.3 If GST is imposed on any supply by the Licensor under this Licence, the Licensee must pay the amount imposed to the Licensor at the same time as and in addition without setoff to the amount the Licensee is required to pay to the Licensor for the supply in question.
- 14.4 In relation to taxable supplies made under this Licence, the Licensor agrees to issue the Licensee with either:
- 14.4.1 a tax invoice in accordance with the GST Act and Regulations; or
 - 14.4.2 a document satisfying the minimum information requirements set out in *A New Tax System (Goods and Services Tax) Regulations 1999* to entitle a recipient of a taxable supply to claim an input tax credit without holding a tax invoice.

15 Damage to Premises

- 15.1 If during the Term the Premises are damaged in a material way or destroyed, then:
- 15.1.1 within 2 months of the date (or the last date) of the damage or destruction occurring the Licensor must notify the Licensee that either:
 - (a) the Licensor reasonably considers that repair of the Premises is impracticable and the Licensor does not intend to repair the Premises, or
 - (b) the Licensor intends to repair or reinstate the Premises between the approximate starting and finishing dates stated in the notice given; and
 - 15.1.2 the Licensor may by giving not less than 30 days' notice to the Licensee terminate this Licence, if the Licensor has given a notice to the Licensee under clause 15.1.1(a); and/or
 - 15.1.3 the Licensee may by giving not less than 30 days' notice in writing to the Licensor terminate this Licence if either:
 - (a) the Licensor notifies the Licensee under clause 15.1.1(a) that the Licensor does not intend to repair the damage; or
 - (b) the Premises will not be able to be used for their normal purpose within a reasonable period, or for more than one year, after the date (or last date) the damage happened.
- 15.2 Compensation for termination is not payable by either party if this Licence is terminated in accordance with clause 15.1.
- 15.3 If, due to damage, the Premises are unfit for the licensee's occupation and use or inaccessible (having regard to the nature and location of the Premises and the normal means of access), then and so often as that happens, a proportionate part of the Licence Fee and other amounts payable under this Licence, according to the nature and extent of damage or inaccessibility, abates until the Premises have been reinstated.
- 15.4 Clause 15.3 will not apply and this clause 15 does not affect any rights the Licensor may have against the Licensee where:

- 15.4.1 the damage or destruction has been caused by or contributed to, or arises from; or
- 15.4.2 rights under an insurance policy in connection with the Premises are prejudiced or a policy is cancelled or payment of a premium or a claim is refused by the insurer because of,

any act or omission of the Licensee or the Licensee's employees, agents, contractors, invitees or licensees.

15.5 This clause 15 does not oblige the Licensor to restore or reinstate the Premises.

16 Option for Further Term

16.1 This clause 16 does not apply if the words "not applicable" appear in item 3 (**Further Term**).

16.2 The Licensor will grant to the Licensee a new licence for the Further Term commencing on the day after the Expiry Date if:

- 16.2.1 the Licensee gives the Licensor a notice stating that it wants a further licence of the Premises for the term specified in Item 3 (Further Term); and
- 16.2.2 the Licensor receives that notice within the period from and including the day that is six months before the expiry of the current Term to but including the day that is three months before the expiry of the current Term; and
- 16.2.3 when the Licensee gives that notice, and on the expiry of the Term, the Licensee is not in breach of this Licence.

16.3 The new licence must contain the same conditions as this Licence except that:

- 16.3.1 this clause 16 and item 3 (Further Term) are to be deleted;
- 16.3.2 the new licence may be altered in its form or layout to comply with any present or future requirements under law or for the Licensor; and
- 16.3.3 the new licence may be altered because of any change in legislation applicable to the new licence or Licensor and having effect after the date of this Licence.

17 Termination

Termination for Default

17.1 The Licensor may terminate this Licence by giving the Licensee notice (**Termination Notice**) if:

17.1.1 the Licensee:

- (a) does not comply with an Essential Term;
- (b) does not comply with a term which is not an Essential Term and, if the failure to comply with the non-Essential Term can be remedied, it is not remedied within 14 days after the Licensor asks the Licensee to remedy it;
- (c) repudiates this Licence; or
- (d) being a corporation or business entity, an insolvent event (such as, but not limited to, bankruptcy, liquidation, any arrangement with creditors, or insolvency) occurs in respect of the Licensee.

17.2 Any claim that the Licensor has against the Licensee under clause 17.1 in respect of any breach of this Licence will continue and is not a waiver, even if notice is given and not acted on by the Licensor.

17.3 The Licensee acknowledges:

17.3.1 the 14 days referred to in the Termination Notice is a reasonable opportunity to remedy a breach of this Licence; and

17.3.2 an event in clause 17.1.1 justifies termination of this Licence.

Termination where no default

17.4 The Licensor may terminate this Licence without cause by giving the Licensee 6 months' notice in writing.

17.1 If the Licensor requires the Premises due to an amendment or variation to any head lease or the *Australian National University Act 1991* (as amended from time to time) then the Licensor may terminate this Licence by giving the Licensee no less than 90 days' written notice.

Requirements on termination or expiry

17.2 The Licensee must vacate the Premises on the earlier of the Expiry Date or sooner determination of this Licence.

17.3 Prior to vacating the Premises, the Licensor may by written notice require the Licensee at the Licensee's expense to:

17.3.1 make good the Premises (with "make good" having the meaning given in clause 17.4 within sixty (60) days of receipt of such notice; or

17.3.2 ensure the Premises is in good repair, order and condition and otherwise in accordance with the provisions of this Licence (fair wear and tear excepted) within fourteen (14) days of receipt of such a notice.

17.4 For the purposes of clause 17.3.1, "make good" means:

17.4.1 Preservation of any item, surface, structure, feature or thing identified by the Licensor to be of heritage significance by notice to the Licensee during the Term;

17.4.2 Subject to clause 17.4.1:

- (a) removal of all of the Licensee's fixtures, fittings, stock-in-trade and all property of the Licensee from the Premises and the Land;
- (b) properly repairing any damage whatsoever caused to the Premises or the Land by the removal as described in clause 17.4.2;
- (c) reinstating any part of the structure or the Land which has been penetrated or otherwise altered by the Licensee during the Term;
- (d) thoroughly cleaning the Premises and removing all rubbish, waste and other materials from the Premises and the Land; and
- (e) if required by the Licensor, re-altering any alterations made by the Licensee so that the Premises must be converted back to its original condition having regard to the Premises before the Licence.

17.5 Upon termination of the Licence the Licensor will not be liable to the Licensee for or to pay any compensation for loss of profit or prospective profit or costs associated with any removal or movement of the Licensee from the Premises including storage and/or removal of the Licensee's property.

17.6 This clause survives the expiration or early termination of this Agreement.

18 Notices

18.1 Any notice or other communication to be given by either party to the other must be signed by or on behalf of the party giving the notice and be:

18.1.1 sent in a prepaid letter addressed to the other party at the address of that party shown in this Licence or the last address of that party advised in writing to the party giving the notice; or

18.1.2 (in the case of the Licensee only) left at the Premises.

18.2 A notice or other communication sent in a prepaid letter is deemed to have been received on the third day after posting.

19 Owner Items

19.1 The Licensor owns and has supplied the Premises with Licensor's property (**Owner Items**) referred to in Site Guidelines.

19.2 The Licensee may use the Owner Items for the purposes of conducting its business from the Premises. The Owner Items must not be removed from the Premises by the Licensee.

19.3 The Licensee must pay to the Licensor the cost of replacing or repairing the Owner Items on demand, if the damage, breakdown or problem is caused by the Licensee's deliberate or negligent act or omission.

20 Dispute Resolution

20.1 Before having recourse to arbitration or litigation, the parties will:

20.1.1 attempt in the first instance to settle by negotiation any dispute that arises in relation to this Licence; and

20.1.2 if, after 30 days of first notification in writing of the dispute to the other party, any unresolved dispute remains between the Licensor and the Licensee arising under or in connection with this Licence or the use or occupation of the Premises, attempt to resolve the dispute by mediation administered by the Australian Disputes Centre (ADC). The mediation shall be conducted in accordance with the ADC Guidelines operating at the time the matter is referred to ADC.

21 Holding Over

21.1 If the Licensee continues to occupy the Premises after the expiry of the Term (or Further Term, if applicable) then the Licensee does so as a monthly tenant at the Licence Fee then applying and on the conditions of this Licence.

21.2 The monthly tenancy may be terminated by either party by one month's notice in writing to the other.

22 Representation

22.1 Except as permitted by the Licensor, the Licensee shall not represent itself, nor shall it hold itself out as, and shall ensure that its officers, employees, and agents do not represent themselves, when representing the Licensee, as being a part of the Licensor's organisation or as an officer, employee, partner or agent of the Licensor, or as otherwise able to bind or represent the Licensor.

22.2 The Licensee is not by virtue of this Licence an officer, employee, partner or agent of the Licensor, nor does the Licensee have any power or authority to bind or represent the Licensor.

22.3 The Licensee shall not use the Licensor's name, address, logo, trademark or identifying marks in or on any communication or correspondence whatsoever without the prior written consent of the Licensor. Any consent given under this clause 22 is at the sole discretion of the authorised delegate of the Licensor.

- 22.4 The Licensee must not do, or fail or omit to do, any act or thing that is likely to bring the Licensors into disrepute or damage the Licensors' reputation.

23 Access and Parking

- 23.1 Subject to clause 23.3, the Licensee will be permitted to use the vehicular access to the Premises subject all users closing the access gate.
- 23.2 The Licensors may restrict or suspend use of the vehicular access paths during periods of extended wet weather.
- 23.3 Parking spaces are subject to availability and the Licensors makes no guarantee about the availability of parking spaces.

24 Waiver

- 24.1 The waiver by the Licensors of any default or obligation of the Licensee is not in any circumstance to be construed or operate as a licence to the Licensee to repeat or continue such default or not undertake the obligation nor is any such waiver to be construed or operate as a waiver of any subsequent default or obligation whether of a like nature or not.

25 No Warranty

- 25.1 The Licensors gives no warranty (either present or future) as to the fitness or suitability of the Premises or the use to which the Premises may be put. The Licensee:
- 25.1.1 has fully informed itself of, and accepts this Licence subject to, any prohibitions or restrictions on the use of the Land or Premises from time to time under any law or requirement;
- 25.1.2 must, at its own cost, obtain, maintain, and comply with any consent or approval from any authority necessary or appropriate for the Licensee's business or activities in the Premises or Land under any requirement or law and;
- 25.1.3 must not by any act or omission cause or permit any consent or approval referred to in 25.1.2 to lapse or be revoked.

EXECUTED AS AN AGREEMENT

SIGNED

for and on behalf of the **Australian National University** ABN (52 234 063 906) by an authorised officer in the presence of:

)

)

)

)

(Signature of authorised officer)

)

)

(Signature of witness)

)

)

(Printed name of authorised officer)

)

)

)

(Printed name of witness)

)

Date

SIGNED

for and on behalf of the **Murrumarang Community Garden Inc** (ABN 78 483 124 422) by an authorised officer in the presence of:

)

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)

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(Signature of authorised officer)

)

)

(Signature of witness)

)

)

(Printed name of authorised officer)

)

)

)

(Printed name of witness)

)

Date

Schedule 1 Site/Premises Plan

Fire hydrants – how are they connected? Is there a hydrant at the new carpark?

How is sewer pump south of avenue connected to rest of system? Is it the zigzag route shown on DA docs?

How does effluent water get from worm farm to absorption trench?

Where is rainwater and dam water filtered? Centrally?

Assume non potable rainwater supply lines don't go up to header tank but are only local??

DA drawings for shed hydraulics don't seem to match reality... Assume concept is true but lines run differently?

WATER

There is no main water supply or sewer connection to the campus.

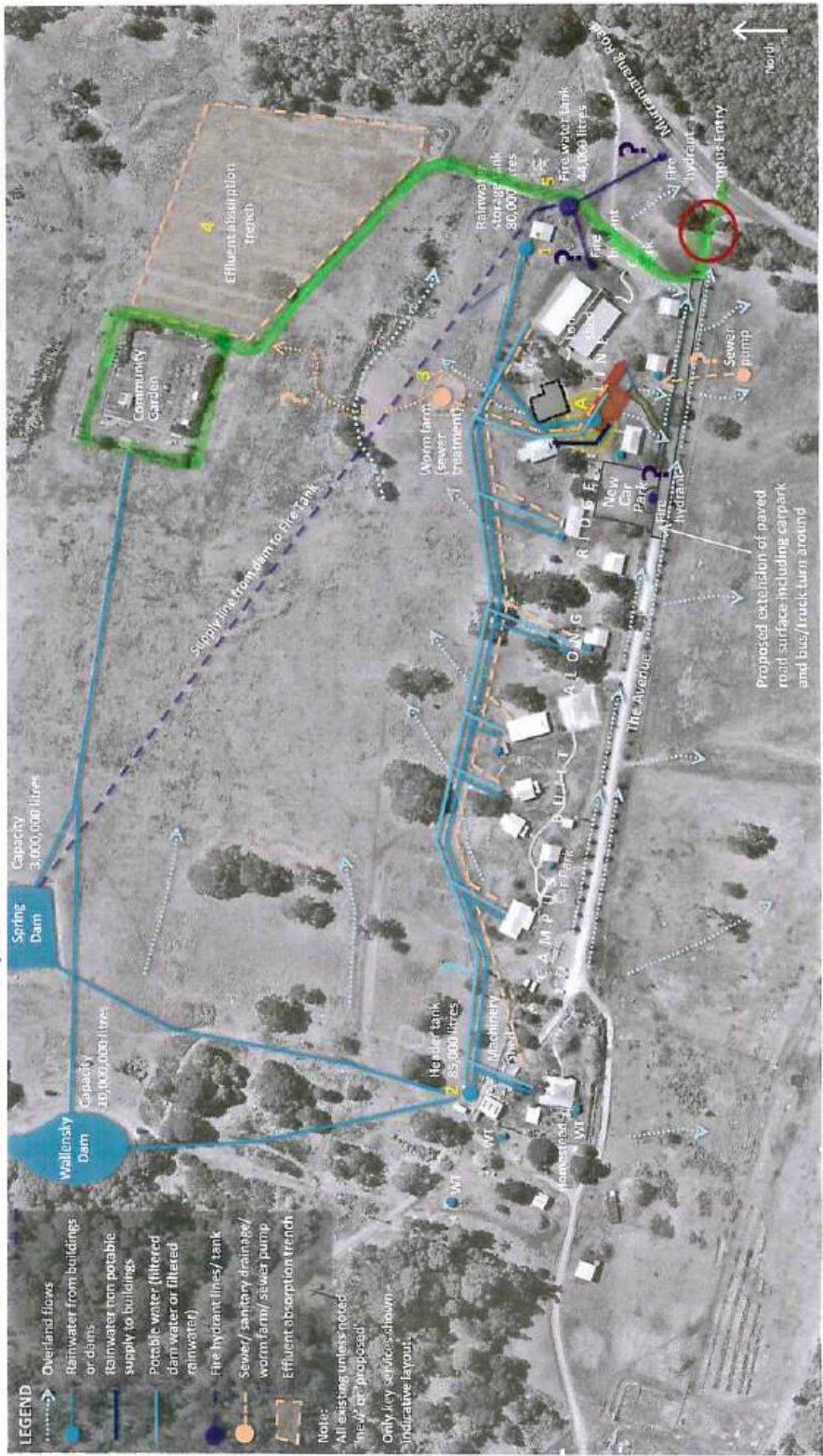
Rainwater is collected from all building roofs, giving a total collection capacity of 400,000 litres. From the individual buildings, the rainwater is gravity fed to the rainwater storage tank (number 1 on image below). From this point it is pumped to the header tank near the homestead (2). From the header tank the water is filtered and gravity fed to the various buildings.

Which one is Spring Dam and which one is Wallensky Dam?

Sewer wastewater from all buildings runs to the Worm Farm (3) where the sewer is treated. The effluent water then goes to the absorption trench (4).

Spring Dam is connected to the fire water tank (5). The tank is connected to adjacent hydrants, brigade booster valves and auxiliary suction lines.

The New Mess Hall is connected to the existing sewer, rainwater, potable water and non potable water supply (see approximate location of new services in yellow area 'A' below).



Schematic layout of water network on site.

Schedule 2 Site Guidelines