
Rail Corporation New South Wales

Transport for NSW

Brookfield Office Properties One Carrington
Developer Pty Ltd

Sovereign Wynyard Centre Pty Limited as trustee
for the Sovereign Wynyard Centre Unit Trust

Planning Agreement

Section 93F of the Environmental Planning
and Assessment Act 1979 (NSW)

Contents

1	Definitions	2
2	Planning agreement under the Act	11
3	Application of this Agreement	12
4	Operation of this Agreement	12
5	Development Contributions to be made under this Agreement	12
6	Application of sections 94, 94A and 94EF of the Act to the Development	13
7	Registration of this Agreement	13
	7.1 Registration on Title of Land Owner's Land	13
	7.2 Right to lodge caveat	14
	7.3 Removal of Agreement from Title	14
8	Release and discharge of Agreement	15
	8.1 Developer's release and discharge	15
	8.2 Land Owner's release and discharge	15
9	Modification of this Agreement	16
10	Termination	16
11	Dispute Resolution	16
	11.1 Notice of Dispute	16
	11.2 Response to Notice	16
	11.3 Negotiation	16
	11.4 Further Notice if not Settled	17
	11.5 Reference to Expert	17
	11.6 Assistance and Costs	17
	11.7 Expert not an Arbitrator	17
	11.8 Mediation	18
	11.9 Litigation	18
	11.10 Continue to Perform obligations	18
12	Enforcement	19
	12.1 Enforcement by any Party	19
13	Delivery Security	19
	13.1 Security	19

14	Notices	19
15	Approvals and consent	20
16	Restrictions of alienation	20
	16.1 Developer and Land Owner must not alienate	20
	16.2 Encumbering the Developer's and Land Owner's interest	20
	16.3 Intra-group transactions permitted	20
17	Costs	21
18	Entire agreement	21
19	Delivery of the Works	21
20	Further acts	22
21	Governing law and jurisdiction	22
22	Joint and individual liability and benefits	22
23	No fetter	22
24	Representations and warranties	23
	24.1 All Parties	23
	24.2 Developer and Land Owner	23
	24.3 Developer	23
25	Land Owner's Limitation of Liability and Trustee Warranty Provisions	23
	25.1 Limitation of Liability	23
	25.2 Warranties	24
26	Severability	25
27	Waiver	25
28	GST	26
	28.1 Construction	26
	28.2 Consideration GST exclusive	26
	28.3 Application of Divisions 81 and 82	26
	28.4 Payment of GST	26
	28.5 Timing of GST payment	27
	28.6 Tax invoice	27
	28.7 Adjustment event	27
	28.8 Reimbursements	27
	28.9 Exchange of non-monetary consideration	27
	28.10 No merger	28

29	Effect of Schedules	28
30	Relationship of Parties	28
31	Further steps	28
32	Counterparts	28
33	Rights cumulative	29
34	RailCorp Restructure	29
35	General	29
	35.1 Construction	29
	35.2 Headings	30
	Schedule 1 - Section 93F Requirements	31
	Schedule 2 - Development Contributions	33
	Schedule 3 - Explanatory Note	34
	Schedule 4 - Address for Service	35
	Execution	36
	Annexure A - Transit Hall Works - Plans	38
	Annexure B - Transit Hall - Plans	39

Date 7 September 2015

Parties

Rail Corporation New South Wales ABN 59 325 778 353 a NSW Government agency and corporation incorporated under section 4 of the *Transport Administration Act 1988* (NSW) of 477 Pitt Street, Sydney, New South Wales (**RailCorp**)

and

Transport for NSW ABN 18 804 239 602 a NSW Government agency and corporation incorporated under section 3C of the *Transport Administration Act 1988* (NSW) of Level 6, 18 Lee Street, Chippendale, New South Wales (**TfNSW**)

and

Brookfield Office Properties One Carrington Developer Pty Ltd ACN 169 154 830 of Level 22, 135 King Street, Sydney, New South Wales (**Developer**)

and

Sovereign Wynyard Centre Pty Limited as trustee for the Sovereign Wynyard Centre Unit Trust ACN 062 235 009 of Level 22, 135 King Street, Sydney, New South Wales (**Land Owner**)

Background

- A On 19 January 2011, the Concept Plan Application was lodged with the Planning Minister seeking approval for the Development on the Land.
 - B The Concept Plan Application was accompanied by an offer to make Development Contributions towards the Public Facilities if the Concept Plan Application was approved.
 - C On 3 April 2012, the PAC, as delegate of the Planning Minister, granted the Concept Plan Approval.
 - D Condition A6 (Schedule 2) of the Concept Plan Approval requires the Developer to enter into this Agreement prior to the determination of the Stage 1 Development Application.
 - E The Parties have agreed that the Developer will make the Agreed Development Contributions in accordance with the terms of this Agreement.
-

Operative provisions

1 Definitions

In this Agreement these terms have the following meanings:

285 George Street	Lot 22 in Deposited Plan 56723 and Lot 23 in Deposited Plan 59753 being 285 George Street, Sydney.
Act	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Address for Service	The address of each Party appearing in Schedule 4 of this Agreement or any new address notified in writing by any Party to all other Parties as its new address for service.
Agreed Development Contributions	<p>(a) The construction and commissioning of the Transit Hall Works and any associated works by the Developer; and</p> <p>(b) provision by the Developer of all ongoing operational, maintenance and capital replacement costs associated with the operation and use of the Transit Hall in perpetuity in accordance with the Building Management Statement.</p>
Agreement	This planning agreement, executed as a deed, including any Schedules and Annexures.
Authority	Any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (including RailCorp and TfNSW), Planning Authority and any electricity, telecommunications, gas or other utility company having statutory rights in relation to the carrying out of, use and occupation of the Development (in whole or in part).
Building Management Statement	The building management statement to be registered with the Subdivision Plan on the titles of the Office Lot, Retail Lot and Transit Hall Lot pursuant to section 196D of the <i>Conveyancing Act 1919</i> (NSW), to ensure the maintenance of the upgraded Transit Hall in perpetuity.
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Concept Plan Application	Major project application No. MP 09_0076 made to the Planning Authority seeking approval under Part 3A of the Act for the concept plan for the Development. The Concept Plan Application became a transitional Part 3A project pursuant to the savings and transitional provisions in Schedule 6A of the Act on the repeal of Part 3A.
Concept Plan Approval	The approval of the Concept Plan Application granted by the PAC on 3 April 2012, as modified by the PAC and including, but not limited to, any modification resulting from approval of the Concept Plan Modification Application, the Further Concept Plan Modification Application and any Modification Application.
Concept Plan Modification Application	Modification application number 09_0076 MOD2 made on 16 May 2014 seeking approval under section 75W of the Act to modify the Concept Plan Approval.
Construction Certificate	Has the same meaning as in the Act.
Contract for Sale	The contract for the sale of the Office Lot and the Retail Lot to be entered into between RailCorp and the Land Owner.
Control	<p>In relation to a corporation includes the direct or indirect power to directly or indirectly:</p> <ul style="list-style-type: none">(a) direct the management or policies of the corporation; or(b) control the membership of the board of directors, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.
Date of Completion	The date when the Transit Hall Works are certified as complete by an independent certifier except for minor omissions and minor defects.
Dealing	Means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land Owner's Land.
Defects Rectification Period	12 months after the Date of Completion, as extended by agreement of the Parties in writing.

Delivery Agreement	<p>The Delivery Agreement to be entered into between TfNSW, RailCorp, the Developer and the Land Owner which will set out the terms on which:</p> <ul style="list-style-type: none"> (a) RailCorp will permit the Developer to access RailCorp's land, including the Transit Hall; and (b) the Agreed Development Contributions will be delivered by the Developer.
Delivery Security	An Unconditional Undertaking in the amount of \$52,000,000 to secure delivery of the Transit Hall Works.
Development	The transport interchange, commercial and retail development the subject of the Concept Plan Approval comprising the Stage 1 Development and Stage 2 Development.
Development Contribution	To dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit, or any combination of them, to be used for or applied towards a Public Purpose.
Dispute	Includes any difference, dispute, matter, question, controversy or claim.
Explanatory Note	The Explanatory Note attached at Schedule 3 .
Further Concept Plan Modification Application	<p>The modification application(s) to be lodged by the Developer or the Land Owner with the Planning Authority, as part of, or in addition to, the Concept Plan Modification Application, seeking approval under section 75W of the Act to further modify the Concept Plan Approval to:</p> <ul style="list-style-type: none"> (a) amend the proponent of the Development to be the Developer or the Land Owner (unless this amendment is sought and obtained by letter from the Department of Planning & Environment or the Planning Authority); (b) amend condition A6 (Schedule 2) of the Concept Plan Approval to reflect the Agreed Development Contributions; and (c) incorporate any other modifications to the Concept Plan Approval agreed by the Parties that relate to, effect or have any implications for the Transit Hall or Transit Hall Works (noting that other Modification Applications may be lodged by the Developer or Land Owner relating to the Concept Plan Approval that do not relate to, effect or have any implications for the Transit Hall or the Transit Hall Works).

Independent Certifier	The party engaged by TfNSW and the Developer to provide independent certification of the Transit Hall Works.
Institution	An Australian Prudential Regulation Authority regulated authorised deposit taking institution.
Land	The: (a) Stage 1 Development Land; and (b) Stage 2 Development Land.
Land Owner's Land	Shell House and 285 George Street.
Law	(a) Legislation; and (b) common law and principles of equity applicable to New South Wales.
Legislation	In relation to New South Wales or the Commonwealth of Australia: (a) any act of Parliament or statute; (b) any subordinate legislation, rules, regulations or by-laws; and (c) any document, code, standard or policy issued under such legislation or delegated legislation.
Modification Application	Any application to a Planning Authority to modify either the Concept Plan Approval or any approval of the Stage 1 Development Application, as approved by RailCorp and TfNSW prior to lodgement, and includes the Further Concept Plan Modification Application.
Occupation Certificate	Has the same meaning as in the Act.
Office Lot	The lot proposed to be created to contain the office building component of the Stage 1 Development approved by the Stage 1 Development Consent, subject to approval of a Subdivision Application and final survey and registration of a Subdivision Plan.
PAC	The Planning Assessment Commission of New South Wales constituted under section 23B of the Act.
Parent	Of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including: (a) if the first mentioned person is a corporation, a person who: (i) controls the composition of the board of

- directors of the first mentioned person; or
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or
 - (iii) holds or has a beneficial interest in more than one half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) if the first mentioned person is a trustee of a unit trust and, in the case of the Developer or the Land Owner, its interest in this Agreement is property subject to that trust, a person who:
- (i) controls the right to appoint the trustee;
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units; or
 - (iii) holds or has a beneficial interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) if the first mentioned person is a trustee of a trust and, in the case of the Developer or the Land Owner, its interest in this Agreement is property subject to that trust, a person who:
- (i) is a beneficiary of that trust entitled directly or indirectly to more than one half of the corpus or profits of the trust; or
 - (ii) is entitled to or whose consent is required to:
 - (A) appoint or change the trustee; or
 - (B) give directions to the trustee; or
 - (C) vary the constituent document of the trust; or
 - (D) appoint or remove beneficiaries; or
 - (E) decide to whom any distribution is made or the amount of any distribution.

	<p>A person is also a Parent of another person if a part of this definition is satisfied in respect of each trust and company in any chain of trusts or companies connecting that person and the other person.</p>
Party	<p>A party to this Agreement, including their successors and assigns.</p>
Pending Planning Applications	<p>The:</p> <ul style="list-style-type: none"> (a) Stage 1 Development Application; (b) Concept Plan Modification Application; and (c) Further Concept Plan Modification Application.
Planning Authority	<p>Any person or body granted power under the Act to assess and determine:</p> <ul style="list-style-type: none"> (a) planning applications made under Parts 3A, 4 and 5 of the Act; or (b) modifications of development consents or other planning approvals granted under Parts 3A, 4 and 5 of the Act, <p>including the Planning Minister and the PAC as delegate of the Planning Minister.</p>
Planning Minister	<p>The New South Wales Minister for Planning and his or her predecessors, successors and assigns.</p>
Public Facility	<p>A public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act matter or thing that meets a Public Purpose.</p>
Public Purpose	<p>Any purpose that benefits the public or a section of the public, specified in section 93F(2) of the Act.</p>
Real Property Act	<p>The <i>Real Property Act 1900</i> (NSW).</p>
Registration on Title	<p>The registration of this Agreement under section 93H of the Act in the folio of the register kept under the Real Property Act in relation to the Land Owner's Land, and Registered on Title refers to the state of the Agreement being so registered.</p>
Regulation	<p>The <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).</p>
Related Corporation	<p>is a body corporate which is a related body corporate under section 50 of the <i>Corporations Act 2001</i> (Cth) but also includes:</p> <ul style="list-style-type: none"> (a) any body corporate or unit trust, the shares or units in any unit trust of which that body corporate is

	trustee which are required by the relevant constitutions to be held and transferred together with the shares or units of the body corporate or trust of which that body corporate is trustee (commonly referred to as "stapled" entities); and
	(b) a body corporate which is a related body corporate of a body corporate described in paragraph (a) under section 50 of the <i>Corporations Act 2001</i> (Cth).
Required Rating	A credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc.
Retail Lot	Means the lot proposed to be created to contain the retail component of the Stage 1 Development approved by the Stage 1 Development Consent, subject to approval of a Subdivision Application and final survey and registration of the Subdivision Plan.
Shell House	Lot 10 in Deposited Plan 595978 formerly known as Shell House, being 2 – 12 Carrington Street, Sydney.
Stage 1 Development	<p>The component of the Development the subject of the Stage 1 Development Application and located on the Stage 1 Development Land including the following works:</p> <ul style="list-style-type: none"> (a) demolition of the Menzies Hotel (14 Carrington Street, Sydney), 301 George Street and the eastern accessways to Wynyard Station; (b) construction and use of a 27 storey office tower on the land between Carrington Street and George Street (which will become the Office Lot); (c) partial demolition of Shell House and 285 George Street and refurbishment of those properties for commercial and retail use (part of which may be included in the Retail Lot); and (d) the Transit Hall Works (which will become the Transit Hall Lot).
Stage 1 Development Application	The State significant development application No. SSD 13_5824 made under Part 4 of the Act seeking approval for the proposed Stage 1 Development consistent with the Concept Plan Approval.
Stage 1 Development Consent	<p>The development consent granted by the Planning Authority for the Stage 1 Development Application, including:</p> <ul style="list-style-type: none"> (a) any modifications of the Stage 1 Development

	Application imposed by that consent; and
	(b) any future modifications of that consent effected by the determination of any Modification Application.
Stage 1 Development Land	<p>The land to the east of the eastern boundary of Carrington Street, Sydney, comprising:</p> <ul style="list-style-type: none"> (a) Lot 1 in Deposited Plan 853331 (14 Carrington Street, Menzies Hotel); (b) Lot 2 in Deposited Plan 853331; (c) Lot 4 in Deposited Plan 853331 (Wynyard Lane); (d) Shell House; and (e) 285 George Street.
Stage 2 Development	The component of the Development located on the Stage 2 Development Land as described in the Concept Plan Application and Stage 1 Development Application.
Stage 2 Development Land	<p>The Land to the west of, and under Carrington Street, Sydney, comprising:</p> <ul style="list-style-type: none"> (a) Lot 5 in Deposited Plan 853331 (Carrington Street, Sydney); (b) Lot 6 in Deposited Plan 853331 (Wynyard Park, Sydney); and (c) Rail Plan 1024-41-781 (Wynyard Station under York Street, Sydney).
Subdivision Application	An application submitted by the Developer or the Land Owner to a Planning Authority seeking approval for the subdivision of the Stage 1 Development Land to create the Office Lot, Retail Lot and Transit Hall Lot.
Subdivision Plan	The plan of stratum subdivision to create the Retail Lot, Office Lot and Transit Hall Lot prepared in accordance with the approved Subdivision Application.
Transit Hall	The transit hall at Wynyard Station, Sydney, to be the subject of the Transit Hall Brief as shown on the indicative plans at Annexure B .
Transit Hall Brief	The document to be agreed between the Parties which will set out the Parties' agreed requirements for the final detailed design, construction and commissioning of the Transit Hall Works and will include design and infrastructure operational/interface requirements.
Transit Hall Lot	The lot proposed to be created to contain the Transit Hall component of the Stage 1 Development approved by the Stage 1 Development Consent, subject to approval of a Subdivision Application and final survey and registration

**Transit Hall
Works**

of the Subdivision Plan.

The upgrade of the Transit Hall and associated accesses by the Developer and the commissioning of those Works, including:

- (a) provision of a through site link from George Street to Carrington Street;
- (b) provision of a new entrance and access ways to the Transit Hall from George Street and Carrington Street;
- (c) the upgraded George Street entrance, when combined with the Hunter Connection, to provide a minimum aggregate unobstructed width of 20 metres with a minimum height of 13 metres;
- (d) the upgraded Carrington Street entrance to provide a minimum height of 8 metres;
- (e) provision of:
 - (i) a minimum clear width at the Wynyard Station concourse level of 16 metres;
 - (ii) a fully accessible route from George Street to all public levels, including two passenger lifts connecting George Street to the Wynyard Station concourse level, the Hunter Connection level and Carrington Street level;
 - (iii) six escalators and a fixed stair well to connect George Street to the Wynyard Station concourse level;
 - (iv) intuitive way-finding utilising clear sight-lines from George Street to the Wynyard Station concourse level;
 - (v) a naturally ventilated Transit Hall space benefiting from conditioned spill air from adjacent retail units; and
 - (vi) pedestrian capacities to meet current and future demands during normal and emergency operation of the Transit Hall;
- (f) accommodation of the existing pedestrian connections to the Hunter Connection and the Met Centre (subject to necessary temporary or partial closure of the connections required to facilitate the construction of the Stage 1 Development);
- (g) ensuring that the unimpeded exit width to the east (George Street) will be accessed via the most

	convenient route from the Wynyard Station Concourse level to street level;
	(h) implementing a signage strategy consistent with TfNSW's <i>Guidelines for the Development of Public Transport Interchange Facilities</i> issued September 2008; and
	(i) addressing, to TfNSW's and RailCorp's satisfaction, all interfaces, and issues arising from such interfaces, with the Transit Hall Lot, including interfaces with the Retail Lot, the Office Lot and the surrounding road network and adjoining properties,
	in accordance with the Stage 1 Development Consent, the Delivery Agreement and the Transit Hall Brief and as depicted in the indicative plans at Annexure A and as otherwise agreed with TfNSW and RailCorp in writing.
Transit Hall Works Commencement Date	Prior to the date on which the Stage 1 Development Consent lapses or would have lapsed if the Stage 1 Development Consent had not been physically commenced.
Transit Hall Works Completion Date	Prior to the first Occupation Certificate being issued for any part of the Development.
Trust	The Sovereign Wynyard Centre Unit Trust.
Unconditional Undertaking	An irrevocable unconditional undertaking without any expiry or end date: <ul style="list-style-type: none"> (a) in favour of TfNSW and RailCorp; (b) issued by an Institution approved by TfNSW and RailCorp that maintains the Required Rating; and (c) where required by Law, duly stamped.
Unsolicited Proposal Process	The unsolicited proposal process set out in the <i>Unsolicited Proposals – Guide for Submission and Assessment</i> , dated February 2014, as may be updated from time to time.
Work	Means the physical result of any building, engineering or construction work in, on, over or under land to be carried out by the Developer under this Agreement or the Delivery Agreement.

2 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.

3 Application of this Agreement

This Agreement applies to the Land and the Development.

4 Operation of this Agreement

- (a) This Agreement operates only if:
 - (i) approvals acceptable to:
 - (A) the Developer and Land Owner in respect of the Stage 1 Development; and
 - (B) TfNSW and RailCorp in respect of the Transit Hall Works and any other aspect of the Stage 1 Development as may be relevant to the delivery of the Developer's obligations under this Agreement,

are granted by the relevant Planning Authority to the Pending Planning Applications; and
 - (ii) the Delivery Agreement and Contract for Sale have been entered into.
- (b) This Agreement must have commenced operation prior to the issue of the first Construction Certificate for any part of the Development.

5 Development Contributions to be made under this Agreement

- (a) The Developer undertakes to provide to RailCorp, the Agreed Development Contributions in accordance with **Schedule 2** to this Agreement.
- (b) The Developer's obligation to provide the Transit Hall Works in accordance with **clause 5(a)** will be satisfied on the later of:
 - (i) the date of expiry of the Defects Rectification Period for the Transit Hall Works; and
 - (ii) if any defect identified during the Defects Rectification Period for the Transit Hall Works has not been rectified by the Developer or any other person prior to the expiry of the Defects Rectification Period, the date the defect is rectified and certified by an Independent Certifier.

6 Application of sections 94, 94A and 94EF of the Act to the Development

- (a) This Agreement does not exclude the application of:
 - (i) sections 94, 94A and 94EF of the Act; or
 - (ii) any other monetary contributions required under the Act;
 - (iii) in connection with any approval granted for or in respect of the Development including the Stage 1 Development and the Stage 2 Development.
- (b) The benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 94 for or in respect of the Development including the Stage 1 Development and the Stage 2 Development.

7 Registration of this Agreement

7.1 Registration on Title of Land Owner's Land

- (a) After this Agreement becomes operational, the Developer and Land Owner must, at their expense, take all practical steps to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land Owner's Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land Owner's Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title, to enable the Registration on Title of this Agreement.
- (b) The Developer and Land Owner will take all practical steps to procure the Registration on Title of this Agreement:
 - (i) in respect of Shell House, as soon as reasonably practicable after the Agreement becomes operative under **clause 4** but, in any event, no later than 30 Business Days after that date; and
 - (ii) in respect of 285 George Street, prior to the first Construction Certificate being issued for any part of the Stage 1 Development.
- (c) Following Registration on Title of this Agreement on the Land Owner's Land, RailCorp and TfNSW will do all things reasonably necessary to ensure that the Registration on Title does not prohibit, prevent or delay registration of the following Dealings:
 - (i) any mortgage to a financier of the Developer or the Land Owner;

- (ii) any lease of individual tenancies within Shell House or 285 George Street;
- (iii) the Subdivision Plan; or
- (iv) the Building Management Statement.

7.2 Right to lodge caveat

- (a) Subject to **clause 7.2(b)**, after this Agreement becomes operational and until such time as this Agreement is Registered on Title, the Developer and Land Owner acknowledge that this Agreement confers on RailCorp and TfNSW an interest in the Land Owner's Land and entitles RailCorp and TfNSW to lodge and maintain a caveat on the title to the Land Owner's Land to prevent any Dealing in respect of the Land Owner's Land other than the Dealings referred to in **clause 7.1(c)**.
- (b) If RailCorp or TfNSW lodges a caveat in accordance with **clause 7.2(a)**, then RailCorp or TfNSW will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the Registration on Title of this Agreement;
 - (ii) remove the caveat from the title to the Land Owner's Land promptly, following registration of this Agreement in accordance with **clause 7.1**; and
 - (iii) not prohibit, prevent or delay registration of the Dealings referred to in **clause 7.1(c)**.
- (c) If after 30 Business Days, the Developer and Land Owner have failed or have been unable to achieve the Registration on Title of this Agreement in accordance with **clause 7.1(b)(i)**, the Developer must pay RailCorp's and TfNSW's reasonable costs and expenses, including legal costs, of exercising their respective rights under **clause 7.2(a)**.

7.3 Removal of Agreement from Title

- (a) Following the satisfaction of the Developer's obligations to provide the Agreed Development Contributions in accordance with Items 1 and 2 in the Table in **Schedule 2**, RailCorp and TfNSW will promptly execute any form and supply such other information as is reasonably required by the Developer or the Land Owner to enable either:
 - (i) removal of the Agreement from the titles of the Land Owner's Land; or
 - (ii) if the Agreement has not been Registered on Title, the removal of the caveat(s) lodged pursuant to **clause 7.2**.
- (b) Notwithstanding **clause 7.3(a)**, the Developer and Land Owner may, from time to time, following the Registration on Title of this Agreement, make a written request to RailCorp and TfNSW seeking their consent to remove the Agreement or the caveat(s) as the case may be from all or part of the titles of the Land Owner's Land.

- (c) If the Developer and the Land Owner are compliant with all obligations under this Agreement and RailCorp and TfNSW are willing, in their absolute discretion, to provide their written consent to a request made by the Developer and Land Owner under **clause 7.3(b)**, RailCorp and TfNSW:
 - (i) will execute any form and supply such other information as is reasonably required by the Developer and the Land Owner to enable the removal of the Agreement or the caveat(s) from the relevant title(s) of the Land Owner's Land; and
 - (ii) may, in their absolute discretion, require the Developer or Land Owner to provide an alternative means of security, the type and quantum of such security to be determined by RailCorp and TfNSW, acting reasonably, to secure the Developer's outstanding obligations (if any) to provide the Agreed Development Contributions in accordance with **clause 5**.

8 Release and discharge of Agreement

8.1 Developer's release and discharge

The Developer will be released from its obligations under this Agreement if:

- (a) the Concept Plan Approval is surrendered prior to commencement of the operation of this Agreement under **clause 4**;
- (b) the Developer's obligations to provide the Agreed Development Contributions have been satisfied in accordance with **clause 5**;
- (c) the Parties agree in writing that the performance of the Agreement has been frustrated by an event outside of the control of the Parties;
- (d) the Agreement is terminated for any of the reasons set out in **clause 10**;
- (e) the Developer assigns its rights, interests and obligations in accordance with **clause 16**; or
- (f) the Parties otherwise agree to modify or discharge the Agreement in accordance with **clause 9**.

8.2 Land Owner's release and discharge

- (a) The Land Owner will be released from its obligations under this Agreement if:
 - (i) the Land Owner assigns its rights, interests and obligations in accordance with **clause 16**; or
 - (ii) any of the matters outlined in **clauses 8.1(a) to 8.1(d)** or a discharge of the Agreement under **clause 8.1(f)** occurs.
- (b) If the Land Owner is released from its obligations in accordance with **clause 8.2(a)(ii)**, any caveat on title to Shell House and 285 George Street lodged under **clause 7.2** must be promptly removed and, if

Registration on Title of this Agreement has taken place, TfNSW and RailCorp must promptly execute any form and supply such other information as is reasonably required by the Developer or the Land Owner to enable removal of the Agreement from the title of Shell House and 285 George Street (as applicable).

9 Modification of this Agreement

- (a) The Parties agree that this Agreement may be reviewed or modified and that any review or modification of this Agreement will be conducted in accordance with the Act and in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement, will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

10 Termination

This Agreement will terminate with immediate effect if:

- (a) TfNSW does not accept the Developer's binding offer made for the purpose of the final stage of the Unsolicited Proposal Process;
- (b) the Developer does not commence the Transit Hall Works by the Transit Hall Works Commencement Date; or
- (c) the Delivery Agreement or the Contract for Sale is terminated.

11 Dispute Resolution

11.1 Notice of Dispute

If a Party claims that a Dispute has arisen under this Agreement (**Claimant**), it must give written notice to the other Parties (**Respondents**) stating the matters in Dispute and designating as its representative a person to negotiate the Dispute (**Claim Notice**). Nothing in this clause prevents a Party seeking urgent injunctive or similar interim relief from a court.

11.2 Response to Notice

Within 10 Business Days of receiving the Claim Notice, the Respondents must notify the Claimant of their respective representatives to negotiate the Dispute.

11.3 Negotiation

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 Business Days after service by the Respondents of notice of their respective representatives; and

- (b) use reasonable endeavours to settle or resolve the Dispute within 15 Business Days after they have met.

11.4 Further Notice if not Settled

If the Dispute is not resolved within 15 Business Days after the nominated representatives have met, any Party may give to the other Parties a written notice calling for determination of the Dispute (**Dispute Notice**). If the Dispute relates to a technical claim or question in relation to the Transit Hall Works (**Technical Dispute**), the Dispute Notice must adequately identify the nature of the Technical Dispute and the date on which the Technical Dispute is alleged to have arisen.

11.5 Reference to Expert

- (a) Within 10 Business Days of receiving a Dispute Notice submitted by a Party pursuant to **clause 11.4** in relation to a Technical Dispute, the Parties shall seek to agree upon and, if agreed upon, appoint an expert. In the event that the Parties cannot agree on an expert to be appointed, the appointment of the expert is to be referred to the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter).
- (b) For all Technical Disputes, the expert must:
 - (i) have reasonable qualifications and practical experience in works similar to the Transit Hall Works; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as an expert, he or she being required to fully disclose any such interest or duty before his or her appointment.
- (c) The Parties must refer the Technical Dispute to the expert for determination within 5 Business Days of the expert's appointment.

11.6 Assistance and Costs

- (a) Each Party must do all things necessary on its part or required by the expert for the proper conduct of the expert determination for the purpose of **clause 11.5(c)**.
- (b) In relation to costs and expenses of the expert determination:
 - (i) each Party will bear its own costs incurred in connection with the expert determination; and
 - (ii) the costs of the expert will be shared equally by the Parties unless the expert determines a Party has engaged in vexatious or unconscionable behaviour in which case the expert may require the full costs of the expert determination to be borne by that Party.

11.7 Expert not an Arbitrator

In determining the Technical Dispute the expert will be acting as an expert and not as an arbitrator.

11.8 Mediation

The parties agree that a Dispute which is not a Technical Dispute should be mediated, in which case:

- (a) the Parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the mediator will be agreed between the Parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, any Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) the mediator appointed pursuant to this **clause 11.8 (Mediator)** must:
 - (i) have reasonable qualifications and practical experience in the area of the Dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) the Parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a Dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) in relation to costs and expenses:
 - (i) each Party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) the costs of the Mediator will be shared equally by the Parties unless the Mediator determines a Party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that Party.

11.9 Litigation

If the Dispute is not finally resolved in accordance with **clauses 11.3 to 11.8**, any Party is at liberty to litigate the Dispute.

11.10 Continue to Perform obligations

Each Party must continue to perform its obligations under this Agreement, notwithstanding the existence of a Dispute.

12 Enforcement

12.1 Enforcement by any Party

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) TfNSW or RailCorp from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

13 Delivery Security

13.1 Security

- (a) The Developer must procure for the benefit of TfNSW and RailCorp the Delivery Security prior to the Developer being granted access to RailCorp's land for the purpose of delivering the Stage 1 Development and, in any event, no later than the issue of the first Construction Certificate for any part of the Stage 1 Development.
- (b) TfNSW and RailCorp have the right to have recourse to the Delivery Security if the Transit Hall Works are not completed by the Transit Hall Works Completion Date or are not provided in accordance with the Transit Hall Brief.
- (c) At the request of the Developer, TfNSW and RailCorp may return, in their absolute discretion, portions of the Delivery Security as the Transit Hall Works progress, such portion to be commensurate with the progress of works from time to time.

14 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Agreement must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery; or
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

- (c) If any Notice is delivered on a day that is not a Business Day or, if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

15 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

16 Restrictions of alienation

16.1 Developer and Land Owner must not alienate

Subject to **clauses 16.2 and 16.3**:

- (a) the Land Owner and the Developer must not assign, transfer, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest under this Agreement or the Land Owner's Land in any way;
- (b) a person must not become or cease to become the Parent of the Developer or the Land Owner; and
- (c) a change in Control of the Developer or the Land Owner must not take place,

without the consent of TfNSW and RailCorp (which must not be unreasonably withheld or delayed) and which may require entry into a deed between TfNSW, RailCorp and the relevant third party.

16.2 Encumbering the Developer's and Land Owner's interest

The Developer or the Land Owner must not mortgage, charge or otherwise encumber respectively the Developer's interest in this Agreement or the Land Owner's Land without the prior consent of TfNSW and RailCorp (such consent not to be unreasonably withheld and which will be included in a deed between TfNSW, RailCorp, the Developer, the Land Owner and the financier or security trustee).

16.3 Intra-group transactions permitted

Despite any other provision of this Agreement, the Land Owner and/or the Developer may assign, transfer and grant rights in connection with their interest in this Agreement, Shell House or 285 George Street and will not be in breach of **clause 16.1** and consent is not required from TfNSW or RailCorp provided that: