

- (a) at all times, the legal interest in the Land Owner, the Developer, Shell House or 285 George Street is held by:
 - (i) one or more entities, each of which is a Related Corporation of BHCA Pty Ltd ABN 99 126 164 163; or
 - (ii) a custodian, trustee, responsible entity or fund manager directed to hold the interest on behalf of any entity referred to in **clause 16.3(a)(i)**; and
- (b) the assignment, transfer or grant of rights is the subject of a deed between TfNSW, RailCorp, the Developer, the Land Owner and the relevant entity or entities referred to in **clause 16.3(a)**.

No change in Control of the Developer or the Land Owner will be deemed to have occurred provided that the legal interest in those entities continues to be held by one or more entities, each of which is a Related Corporation of BHCA Pty Ltd.

17 Costs

The Parties agree that each Party will pay its own costs in respect of the drafting, negotiation and execution of this Agreement.

18 Entire agreement

- (a) This Agreement executed and agreed by the Parties contains everything to which the Parties have agreed in relation to the matters this Agreement deals with as at the date of execution. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by Law.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

19 Delivery of the Works

The Developer agrees that the terms on which RailCorp will permit the Developer to access RailCorp's land and RailCorp and TfNSW will permit the delivery of the Agreed Development Contributions will include the following, without limitation:

- (a) the delivery obligations of the Developer under this Agreement, including, but not limited to the Transit Hall Brief and delivery of the Transit Hall Works;
- (b) design documentation for a Work;

- (c) variations to a Work;
- (d) requirements in relation to protection of people and property;
- (e) insurance;
- (f) risk allocation and liabilities in relation to a Work;
- (g) requirements in relation to damage and repairs to a Work;
- (h) the procedures for completion of a Work;
- (i) the procedures for any step-in rights in relation to the delivery of a Work;
- (j) the rectification of any defects in a Work; and
- (k) any other matter referred to in this Agreement.

20 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

21 Governing law and jurisdiction

This Agreement and the transactions contemplated by it are governed by and are to be construed in accordance with the laws applicable in New South Wales. The Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

22 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

23 No fetter

Nothing in this Agreement will be construed as requiring RailCorp or TfNSW to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

24 Representations and warranties

24.1 All Parties

The Parties represent and warrant that they have power to enter into this Agreement and, to the extent applicable, have taken all corporate and other action required to enter into this Agreement.

24.2 Developer and Land Owner

The Developer and Land Owner each warrants, as at the date of this Agreement, that:

- (a) it is duly registered and remains in existence;
- (b) the execution, delivery and performance of this Agreement does not violate its constitution or any law applying to it;
- (c) this Agreement constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) the execution, delivery and performance of this Agreement does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (e) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on its business assets or financial condition, which has not been advised in writing to TfNSW and RailCorp.

24.3 Developer

The Developer represents and warrants that it has or will:

- (a) enter into arrangements with the affected stakeholders regarding access and construction disturbance; and
- (b) secure the creation of all necessary rights required to be granted to TfNSW, RailCorp, City of Sydney Council or any other party under any approval, this Agreement or the Delivery Agreement, at its cost.

25 Land Owner's Limitation of Liability and Trustee Warranty Provisions

25.1 Limitation of Liability

- (a) The Land Owner enters into this Agreement only in its capacity as trustee of the Trust.
- (b) Subject to **clause 25.1(d)**:

- (i) a liability arising under or in connection with this Agreement (or the transactions contemplated by it) is limited and can be enforced against the Land Owner only to the extent to which it can be satisfied out of property of the Trust out of which the Land Owner is actually indemnified for the liability; and
 - (ii) the limitation in **clause 25.1(b)(i)** applies despite any other provisions of this Agreement.
- (c) Subject to **clause 25.1(d)**, no Party shall:
 - (i) sue the Land Owner in any capacity other than as trustee of the Trust;
 - (ii) seek to appoint or take any steps to procure or support the appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or similar person to the Land Owner or prove in any liquidation, administration or arrangement of or affecting the Land Owner (except in relation to property of the Trust); or
 - (iii) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this Agreement (or the transactions contemplated by it) against any property of the Land Owner other than property held by the Land Owner as trustee of the Trust.
- (d) The limitations in **clauses 25.1(a), (b) and (c)** do not apply to any liability or obligation of the Land Owner to the extent that the liability or obligation is not satisfied because under the constitution of the Trust, or the trust deed constituting the Trust or by operation of Law, there is a reduction in the extent of the Land Owner's indemnification out of the assets of the Trust, as a result of the Land Owner's fraud, negligence or breach of trust (involving its wilful default or lack of good faith).

25.2 Warranties

- (a) The Land Owner warrants that:
 - (i) it has formed the view that it is prudent for it to enter this Agreement;
 - (ii) it is the only trustee of the Trust and will remain the only trustee of the Trust until the Date of Completion;
 - (iii) no action has been taken to remove it as trustee of the Trust;
 - (iv) a certified copy of the trust deed and all variations to the deed have been (or on demand will be) provided to TfNSW and RailCorp;
 - (v) it has power under the trust deed and under the terms of any other relevant documents (including its constitution) to enter into this Agreement and perform its obligations under it;

- (vi) it is authorised to enter this Agreement, perform its obligations under this Agreement and allow this Agreement to be enforced against it;
 - (vii) except as expressly disclosed in writing by the Land Owner to TfNSW and RailCorp, there are no claims (whether legal or equitable) against the assets of the Trust which materially adversely affect the Land Owner's obligations or ability to perform under this Agreement;
 - (viii) it will not amend the terms of the right of indemnity as provided for in clause 25 of the trust deed;
 - (ix) it has or will have access to sufficient trust funds to meet its liabilities under this Agreement;
 - (x) it is not in default under the trust deed;
 - (xi) no action has been taken or proposed to terminate the Trust; and
 - (xii) it will exercise all rights of indemnity which, as trustee, it possesses in relation to the assets of the Trust at the request of TfNSW and/or RailCorp provided that any such request is lawful and would not cause the Land Owner to be in default under the trust deed.
- (b) The Land Owner gives the warranties contained in this clause in its capacity as trustee for the Trust.
- (c) The warranties given under this clause do not merge on completion or on any earlier termination of this Agreement.

26 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

27 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

28 GST

28.1 Construction

In this **clause 28**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, government corporation, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

28.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this Agreement is exclusive of GST (**GST-exclusive consideration**).

28.3 Application of Divisions 81 and 82

Without limiting the application of **clauses 28.4 to 28.10** the Parties intend to apply Division 81 and Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) to supplies made under or in connection with this Agreement to the extent permitted by Law.

28.4 Payment of GST

If GST is payable on any supply made by:

- (a) a Party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a Party acts,

(**Supplier**) under or in connection with this Agreement, the recipient of the supply, or the Party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply. However, an amount payable by RailCorp or TfNSW under this **clause 28.4** is limited to the amount of any input tax credit to which RailCorp or TfNSW (as applicable) is entitled in respect of its acquisition of the supply.

28.5 Timing of GST payment

The amount referred to in **clause 28.4** must be paid in addition to the GST-exclusive consideration:

- (a) if the amount is payable by RailCorp or TfNSW, within 5 Business Days after RailCorp or TfNSW (as applicable) has received the benefit of any input tax credit to which it is entitled in respect of its acquisition of the relevant supply; and
- (b) in any other case, at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

28.6 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 28.4**.

28.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this Agreement, any amount that is payable under **clause 28.4** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

However, neither RailCorp nor TfNSW is required to make any payment under this **clause 28.7** if, at the time the payment would otherwise be required, it is not entitled to claim a corresponding credit or refund in respect of that payment (or would not be so entitled following a payment to the recipient).

28.8 Reimbursements

- (a) Where a Party is required under or in connection with this Agreement to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another Party or indemnify another Party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first Party will be reduced by the amount of any input tax credits to which the other Party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 28.8** does not limit the application of **clause 28.4**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 28.8(a)**.

28.9 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which **clause 28.4** applies is a taxable supply made by the recipient of that supply (**Recipient Supply**), the amount that would otherwise be payable by the recipient (or Party providing consideration for the taxable supply) to the Supplier under **clause 28.4** must:

- (i) if the Supplier is RailCorp or TfNSW, be reduced by the amount of any input tax credit to which RailCorp or TfNSW (as applicable) is entitled in relation to its acquisition of the Recipient Supply, but the Party making the Recipient Supply must fund the amount of the input tax credit to the extent to which there is any delay between the time RailCorp or TfNSW (as applicable) is required to account for GST on its taxable supply and the time it is able to claim the input tax credit in whole or in part; and
 - (ii) in any other case be reduced by the amount of GST payable by the recipient on the Recipient Supply.
- (b) The recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the recipient (or Party providing consideration for the taxable supply) must pay an amount under **clause 28.4** in accordance with **clause 28.5** (or the time at which such an amount would have been payable in accordance with **clause 28.4** but for the operation of **clause 28.9(a)**).

28.10 No merger

This **clause 28** does not merge on the completion, rescission or other termination of this Agreement or on the transfer of any property supplied under this Agreement.

29 Effect of Schedules

The Parties agree to comply with any terms contained in Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

30 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

31 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

32 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

33 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

34 RailCorp Restructure

- (a) The Developer and Land Owner acknowledge and agree that the NSW Government has indicated that it may restructure RailCorp. The restructure of RailCorp may result in RailCorp's assets, rights and liabilities being transferred to other entities.
- (b) The Developer and Land Owner agree:
 - (i) that this Agreement and any assets, rights or liabilities RailCorp holds in connection with this Agreement may be novated, assigned or otherwise transferred from RailCorp to any other government entity;
 - (ii) to undertake all actions reasonably requested by RailCorp to effect such a novation, assignment or other transfer; and
 - (iii) that they are not entitled to make RailCorp or any novatee, assignee or transferee liable for any claim arising from or in connection with any novation, assignment or transfer contemplated by this **clause 34**.

35 General

35.1 Construction

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) if the day on or by which any act, must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency all amounts payable under this Agreement are payable in Australian dollars;
- (g) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

- (h) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (i) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (j) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (k) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, and the Party's successors and assigns; and
- (l) any Schedules and Annexures form part of this Agreement.

35.2 Headings

Headings do not affect the interpretation of this Agreement.

Schedule 1

Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) No
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) Yes
Description of the land to which this Agreement applies - (Section 93F(3)(a))	The Land
Description of the development to which this Agreement applies - (Section 93F(3)(b)(ii))	The Development
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See clause 5 and Schedule 2
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not excluded by this Agreement.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not excluded by this Agreement.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded by this Agreement.
Applicability of Section 93F(3)(e) of the Act	The benefits under this Agreement are not be taken into consideration when determining a development contribution under section 94 of the Act.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 11
Enforcement of this Agreement - (Section 93F(3)(g))	See clauses 7 and 12
Registration of this Agreement (Section 93H)	See clause 7

Provision of the Act	This Agreement
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 23

Schedule 2

Development Contributions

Agreed Development Contributions Table

Item	Nature of Development Contribution	Timing
1	The construction and commissioning of the Transit Hall Works	<p>To be commenced by the Transit Hall Works Commencement Date.</p> <p>To be completed by the Transit Hall Works Completion Date.</p>
2	Registration of the Building Management Statement	<p>To be registered on the relevant titles:</p> <p>(a) at the same time as registration of the Subdivision Plan; and</p> <p>(b) as a pre-condition to completion of the Contract for Sale.</p>
3	Compliance with the Building Management Statement in perpetuity	In perpetuity in accordance with the Building Management Statement.

Schedule 3

Explanatory Note

Planning Agreement

**Brookfield Office Properties One Carrington Developer Pty Ltd,
Sovereign Wynyard Centre Pty Limited as trustee for the Sovereign
Wynyard Centre Unit Trust, Rail Corporation New South Wales and
Transport for NSW**

Explanatory Note

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed planning agreement ("**Planning Agreement**") prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* ("**Act**").

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

Parties to the Planning Agreement

The parties to the Planning Agreement are Brookfield Office Properties One Carrington Developer Pty Ltd ("**Developer**"), Sovereign Wynyard Centre Pty Limited as trustee for the Sovereign Wynyard Centre Unit Trust ("**Land Owner**"), Rail Corporation New South Wales ("**RailCorp**") and Transport for NSW ("**TfNSW**").

An offer to enter into the Planning Agreement was made as part of the Concept Plan application for the 'CityOne development' lodged with the Minister for Planning on 19 January 2011. Concept Plan approval for the CityOne development (MP 09_0076) was granted by the Planning Assessment Commission, as delegate of the Minister for Planning, on 3 April 2012 ("**Concept Plan Approval**"). The Concept Plan Approval provides for a two staged development including:

- (a) the upgrade of the eastern access ways to Wynyard Station including retail areas and concourse layout;
- (b) an indicative building envelope on the land between Carrington Street and George Street;
- (c) use of the site for a mixed use development including commercial offices, business premises, shops, general retail food and drink premises, health/medical centre, public amenities, transport facilities; and tenant car parking; and
- (d) development of former Shell House including refurbishments for the purpose of commercial and retail use ("**Development**").

An initial modification of the Concept Plan Approval was sought in September 2013. This modification was approved in 24 March 2014 and modified the specified timing of some of the components of the Concept Plan Approval in order to allow for the timely delivery of the Development.

In late 2013, the Land Owner purchased the adjoining property at 285 George Street. The purchase of this additional property permitted the reconfiguration of the eastern access ways to Wynyard Station. As a consequence a further modification proposal in respect of the Concept Plan Approval has been lodged to incorporate 285 George Street into the Development, amongst other amendments (MP09_0076 MOD 2).

In 2013, a State Significant Development application (SSD 5824) was also lodged seeking approval for Stage 1 of the Development which comprises the detailed design and delivery of the site located to the east of the eastern boundary of Carrington Street consistent with the Concept Plan Approval ("**Stage 1 Development Application**").

An Environmental Impact Statement for the Stage 1 Development Application was publicly exhibited from 28 May to 27 June 2014. A copy can be found at <http://majorprojects.planning.nsw.gov.au>.

Separate to the planning assessment and approval process, the Planning Agreement, the works comprising the Stage 1 Development Application and a range of related issues are also the subject of an Unsolicited Proposal by the Developer which is currently being considered by the NSW Government as part of the Unsolicited Proposal framework. The Developer's proposal is at Stage 3 of the Unsolicited Proposal process. The implementation of the Planning Agreement will be subject to the Government's acceptance of the Developer's Unsolicited Proposal as part of the Stage 3 process.

On 25 May 2015, the Developer and Land Owner made a revised offer to RailCorp and Transport for NSW to enter into the Planning Agreement. The revised offer supersedes the original offer made in 2011.

Description of the Subject Land

The Planning Agreement applies to the Stage 1 Land to the east of the eastern boundary of Carrington Street, Sydney, comprising:

- (a) Lot 1 DP 853331 (14 Carrington Street, Menzies Hotel);
- (b) Lot 2 DP 853331 (301 George Street);
- (c) Lot 4 DP 853331 (Wynyard Lane);
- (d) Lot 10 DP 595978 (2 – 12 Carrington Street, Former Shell House); and
- (e) Lot 22 DP 56723 and Lot 23 DP 59753 (285 George Street).

The Developer and Land Owner are required to register the Planning Agreement on the titles of the Land Owner's Land which forms part of the Stage 1 Development Application comprising:

- (a) Lot 10 DP 595978 (2 – 12 Carrington Street, Former Shell House); and
- (b) Lot 22 DP 56723 and Lot 23 DP 59753 (285 George Street).

Description of the Stage 1 Development Application / Proposed Development

The Developer is seeking approval for the following works as part of the Stage 1 Development Application:

- (a) demolition of the Menzies Hotel (14 Carrington Street), 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;
-

- (c) partial demolition of Shell House and 285 George Street and refurbishment of those properties for commercial and retail use; and
- (d) the Transit Hall Works,
(collectively, the “**Stage 1 Development**”).

Summary of Objectives, Nature and Effect of the Planning Agreement

The Planning Agreement requires the Developer to construct and commission the Transit Hall Works and to maintain the Transit Hall in perpetuity by registering a Building Management Statement and complying with that Building Management Statement in perpetuity (“**Agreed Development Contributions**”).

The Transit Hall Works comprise the upgrade of the Transit Hall and associated accesses, 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 *Guidelines for the Development of Public Transport Interchange Facilities* 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.

Schedule 2 of the Planning Agreement sets out the timing for delivery of the Developer's Contributions which requires the Transit Hall Works to be completed prior to the first occupation certificate being issued for any part of the Development. The objective of the Planning Agreement is to require and facilitate the delivery of the Agreed Development Contributions.

The Transit Hall Works will be undertaken on land owned by RailCorp. RailCorp will allow the Developer to access RailCorp's land for the purpose of providing the Agreed Development Contributions and TfNSW and RailCorp will permit the delivery of the Agreed Development Contributions on terms which will be set out in a further agreement known as a Delivery Agreement.

Assessment of Merits of Planning Agreement

The Planning Purpose of the Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purposes:

- (a) The provision of public amenities or public services; and
- (b) The provision of transport or other infrastructure relating to land.

The parties have assessed the Planning Agreement and hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purposes set out above.

This is because the Agreed Development Contributions will assist the State Government to achieve upgrades to critical transport related infrastructure to enhance capacity for the current and long term transport needs of workers, residents and visitors in the Sydney CBD.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by committing the Developer to make contributions to State infrastructure through the re-development of the Transit Hall of one of Sydney CBD's major transport hubs and to deliver public benefits through the upgrade of Wynyard Station's eastern entry off George Street and pedestrian access ways.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the following objects of the Act:

- (a) To encourage the proper management, development and conservation of natural and artificial resources, including cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment (section 5(a)(i));
 - (b) To encourage the promotion and co-ordination of the orderly and economic use and development of land (section 5(a)(ii)); and
-

- (c) To encourage the provision and co-ordination of community services and facilities (section 5(a)(v)).

The Planning Agreement promotes these objects by requiring the Developer to provide the items set out in this Explanatory Note under the heading "*Description of the Stage 1 Development Application / Proposed Development*" for the purposes of providing State transport related infrastructure and facilities and by requiring the Developer to ensure ongoing maintenance of that infrastructure and facilities in perpetuity by way of the Building Management Statement.

This purpose represents an important public benefit, and the Developer's offer to contribute towards this purpose will have a positive impact on the public who use the infrastructure, facilities and services to which these purposes relate.

Whether the agreement specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Planning Agreement must be executed and commence prior to the release of the first construction certificate for any part of the approved Development.

The Planning Agreement also specifies timeframes for the completion of the Agreed Development Contributions and requires the Developer to achieve final completion of the Transit Hall Works prior to the issue of the first occupation certificate for any part of the Development.

How the Planning Agreement promotes one or more of the objects of the Act under which TfNSW and RailCorp are constituted

TfNSW's objectives pursuant to section 3D of the *Transport Administration Act 1988* are:

- (a) to plan for a transport system that meets the needs and expectations of the public;
- (b) to promote economic development and investment;
- (c) to provide integration at the decision-making level across all public transport modes;
- (d) to promote greater efficiency in the delivery of transport infrastructure projects;
and
- (e) to promote the safe and reliable delivery of public transport and freight services.

RailCorp's principal objectives pursuant to section 5(1) of the *Transport Administration Act 1988* are:

- (a) to deliver safe and reliable railway passenger services in New South Wales in an efficient, effective and financially responsible manner; and
- (b) to ensure that the part of the NSW rail network vested in or owned by RailCorp enables safe and reliable railway passenger and freight services to be provided in an efficient, effective and financially responsible manner.

The Planning Agreement promotes these objectives of TfNSW and RailCorp by:

- (a) assisting to provide upgraded critical transport infrastructure at one of Sydney CBD's major transport hubs;
-

- (b) securing delivery of the Agreed Development Contributions as part of a large scale commercial and retail development;
- (c) ensuring the co-ordinated delivery of the Agreed Development Contribution with RailCorp as the agency responsible for the delivery of railway passenger services in New South Wales;
- (d) ensuring the safe and reliable delivery of the Agreed Development Contributions through:
 - (i) detailed planning for delivery of the Transit Hall Works having regard to matters including the interfaces between:
 - (A) the separate components of the Stage 1 Development comprising the Transit Hall, commercial and retail works; and
 - (B) the Stage 1 Development and the surrounding road network and adjoining properties;
 - (ii) ensuring the efficient functioning and use of the Transit Hall and surrounding retail/commercial uses, to the extent practicable, during construction of the Stage 1 Development;
 - (iii) co-ordinating delivery of the Transit Hall Works with the planned delivery of other major transport infrastructure projects in and surrounding Wynyard Station including the Wynyard Walk and Sydney CBD and South East Light Rail projects; and
 - (iv) requiring the Developer to provide suitable means for TfNSW and RailCorp to secure delivery of the Agreed Development Contributions through the provision of security in the form of an Unconditional Undertaking and registration of the Planning Agreement on the title of the Land Owner's Land.

Whether the Planning Agreement conforms with TfNSW's and RailCorp's capital works program (if any)

Not applicable.

Developer and Land Owner's Offer

The Developer and Land Owner have made an offer to enter into the Planning Agreement which will operate to require provision of the Agreed Development Contributions subject:

- (a) to the Developer obtaining acceptable approval of the Stage 1 Development Application and associated modifications to the Concept Plan Approval; and
- (b) the parties to the Planning Agreement entering into the Delivery Agreement and a Contract for Sale of land between RailCorp and the Land Owner as part of the Stage 3 Unsolicited Proposal process.

As the Stage 1 Development Application forms part of the Developer's Unsolicited Proposal for the Development, once the Planning Agreement commences, it will be terminated if:

- (a) TfNSW does not accept the Developer's final offer for Stage 3 of the Unsolicited Proposal process;
-

- (b) the Developer does not commence the Transit Hall Works prior to the date on which the Stage 1 Development Consent lapses; or
- (c) the Delivery Agreement or the Contract for Sale is terminated.

Interpretation of Planning Agreement

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Schedule 4

Address for Service

RailCorp

Contact: Mr Howard Collins OBE
Address: Level 20, 477 Pitt Street, Sydney, New South Wales 2000
Telephone No: 02 9219 1201

TfNSW

Contact: Mr Tim Reardon
Address: Level 6, 18 Lee Street, Chippendale, New South Wales 2008
Telephone No: 02 8202 2707

Brookfield Office Properties One Carrington Developer Pty Ltd

Contact: Company Secretary
Address: Level 22, 135 King Street, Sydney, New South Wales 2000
Telephone No: 02 9322 2000

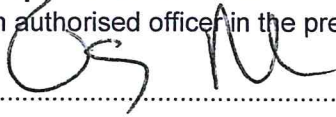
Sovereign Wynyard Centre Pty Limited as trustee for the Sovereign Wynyard Centre Unit Trust

Contact: Company Secretary
Address: Level 22, 135 King Street, Sydney, New South Wales 2000
Telephone No: 02 9322 2000

Execution

Executed as a deed.

SIGNED for and on behalf of **Rail**)
Corporation of New South Wales by)
an authorised officer in the presence of:)



Witness

GARY PEDERSEN

Name of witness (print)



Authorised signatory

H P COLLINS

Name and title (print)

A/CE RAIL CORP

SIGNED for and on behalf of **Transport**)
for NSW by an authorised officer in the)
presence of:)



Witness

Louise Wilson

Name of witness (print)



Authorised signatory

Tim Beardon

Name and title (print) Secretary, TfNSW

SIGNED by **Brookfield Office**)
Properties One Carrington Developer)
Pty Limited ACN 169 154 830 in)
accordance with section 127 of the)
Corporations Act 2001:)


Signature of Director
Danny Poljak
Director

Name of Director (print)



Signature of Director/Secretary
Kurt Andrew Wilkinson

Director
Name Director/Secretary (print)

SIGNED by **Sovereign Wynyard**)
Centre Pty Limited as trustee for the)
Sovereign Wynyard Centre Unit Trust)
ACN 062 235 009 in accordance with)
section 127 of the Corporations Act)
2001:)

Signature of Director
.....
Danny Poljak

Director
.....
Name of Director (print)

Signature of Director/Secretary
.....
Kurt Andrew Wilkinson

Director
.....
Name Director/Secretary (print)