

Infrastructure and Ancillary Hospital Works



Project Application and
Environmental Assessment

Appendix L Agreements

- VPA (Railcorp/NSW Health Infrastructure et al)
- Lease and Construction agreement – Lachlan St (Liverpool City Council)
- Rail Corridor Access Agreement
- Department of Education Agreement

Prepared by:

LFA (Pacific) Pty Ltd
and
Capital Insight Pty Ltd



For:

Department of Planning

October 2008

On behalf of :

NSW Health



**VOLUNTARY PLANNING AGREEMENT BETWEEN
HEALTH INFRASTRUCTURE, RAILCORP, ARTC AND TIDC**

FOR THE LIVERPOOL HOSPITAL AND RAIL PROJECTS

JULY 2008



Transport Infrastructure
Development Corporation

1.0 INTRODUCTION AND GENERAL AGREEMENTS

This is the Voluntary Planning Agreement (VPA) between RailCorp, Transport Infrastructure Development Corporation (TIDC), Australian Rail Track Corporation (ARTC) and Health Infrastructure (on behalf of NSW Health) to facilitate the implementation of the ARTC SSFL, RailCorp/TIDC Turn Back, RailCorp Traction Supply Upgrade and NSW Health Liverpool Hospital Stage 2 projects.

This agreement constitutes the Voluntary Planning Agreements required by the Planning Approvals for the Health and Rail projects at Liverpool.

It is agreed by each of the parties, Health Infrastructure, RailCorp, ARTC and TIDC:

- that the mutual objective is for the parties to co-operate in achieving completion of their respective projects, namely:
 - Liverpool Hospital Stage 2;
 - Southern Sydney Freight Line (SSFL);
 - Traction Supply Upgrade; and
 - Liverpool Turn Back;coordinated with the commissioning of bi-directional freight train operations in late 2009 on the SSFL;
- that the vehicle and pedestrian bridges across the rail corridor must be complete and open prior to any change of use or closure of the Elizabeth Street level crossing;
- to give effect to the principles agreed herein;
- to establish an Executive Co-ordination Working Group to manage and facilitate implementation of the interface between the respective projects; and
- to establish a co-ordinated community communication process.

1.1 Program

It is agreed by each of the parties that the following are the shared key program dates in respect to the completion and signing of the VPA, implementation of the vehicle and pedestrian bridges over the rail lines and the level crossing closure for other than emergency and planned maintenance use ready for the SSFL:

The following dates are subject to final confirmation.

Activity	Responsible Party	Target Finish
Health Infrastructure and RailCorp finalise agreement on land occupancy to allow construction of the new north road and the SSFL	Health and RailCorp	30 June 2008
Health Infrastructure and ARTC enter implementation agreement for the bridges	Health and ARTC	31 July 2008
VPA finalised and signed	All	30 June 2008
Detailed designs, DA, approvals, procurement	ARTC	TBC
Complete construction of substation (subject to confirmation)	RailCorp	2010
Construct vehicle bridge over rail lines	ARTC	30 June 2009
Construct pedestrian bridge over rail lines	ARTC	30 June 2009
Completion of new hospital road links to bridge	Health	31 July 2009
Completion, commissioning of SSFL	ARTC	31 August 2009
Contingency for pre-SSFL operational/change use of level crossing	ARTC	30 September 2009
Turn Back project complete and operational (subject to confirmation)	TIDC	2010

1.2 Noise and Vibration

The parties agree to work together to optimise rail noise and vibration mitigation measures within the Liverpool Hospital precinct. At a minimum, Health Infrastructure will design its facility to deal with present levels of noise and vibration. The rail agencies will provide noise and vibration control measures for their respective rail projects in accordance with statutory approvals and Government policy.

1.3 Elizabeth Street Level Crossing

The parties agree to establish protocols for both emergency and planned access across the rail lines for critical hospital needs in the context of the following:

Emergency Access

It is generally agreed between the parties that “emergency access purposes” is to be defined as large scale impact emergencies.

In general, Emergency and Disaster Management plans and structures will be in operation under these circumstances and these will govern the protocols for providing access across the level crossing.

The level crossing would not be used for general ambulance movement between the east and west campuses of the hospital (except for such large scale emergencies).

Planned Access

The concept of planned access is that, based on a notice protocol between NSW Health/Sydney South West Area Health Service (SSWAHS) and RailCorp/ARTC, access will be provided across the level crossing at a time which does not adversely impact on critical rail operations.

This is to be considered in two sub-categories:

- a. ‘after-hours’ access – the suburban network stops after the last train at approximately 1am until approximately 5am. This is controlled from Sydenham. The SSFL on the other hand will be controlled from Junee. It is understood that generally access is arranged with 1 month’s notice, however under some of the more urgent scenarios below the Hospital may only be able to provide urgent same day notification; and
- b. ‘planned track-possession’ – there are shutdowns of lengths of track (including power) by RailCorp and/or ARTC for maintenance. External parties may apply to also use the possession period to work in or cross the corridor. The notice here is generally 3 months and is likely to involve both RailCorp and ARTC and the date is firmed-up as the actual time approaches.

Access to the rail corridor generally attracts fees and costs from RailCorp. Under the circumstances proposed above, NSW Health would not incur fees and costs from RailCorp in respect to access to the corridor. RailCorp will establish a single point of contact for the Hospital in respect to the notice and access protocol.

The level crossing will be maintained by RailCorp with a locked gate either side of the corridor and signals retained to facilitate potential occasional access across it.

1.4 Additional Costs

Each party is to be liable for its survey, registration, legal and other related incidental costs incurred as a result of this Agreement. Should costs, additional to those agreed in this VPA, be incurred then a fair basis for apportionment of these costs is to be agreed by the parties.

1.5 Agreement between Health Infrastructure and ARTC for implementation of the bridges

The agreement between Health Infrastructure and ARTC for the design and construction of the bridges is to be based on the following principles:

- contributions from the parties as specified in the Specific Commitments below;
- an agreed cost control methodology;
- Health Infrastructure is to accept the bridges on completion and accept responsibility for the long term maintenance of the bridges;
- Health Infrastructure and RailCorp are to confirm acceptance of the design of the bridges prior to ARTC proceeding with construction;
- ARTC is to provide all the relevant warranties from the contractors and subcontractors involved in construction of the bridges;
- ARTC and NSW Health are to jointly complete the Preliminary Detailed Design with Connell Wagner [funded by NSW Health]; and
- the design and construction of the bridges should aim to minimise maintenance requirements.

2.0 SPECIFIC COMMITMENTS

2.1 Health Infrastructure (on behalf of NSW Health)

- a. Agrees to General Commitments as shown in Section 1.0 above and as specified for Health Infrastructure;
- b. Agrees to the acquisition (or other agreed mechanism) by RailCorp of SSWAHS land on the eastern side of the rail line as indicated by the plan attached for the purpose of implementing the SSFL project subject to confirmation of actual survey and design, at nominal monetary consideration;
- c. Agrees to fund the design and construction of a pedestrian bridge and a vehicular bridge across the rail line for hospital use purposes as set out below. It is intended that these bridges are in place prior to the closure of the Elizabeth Drive level crossing and hence operation of the SSFL. It is noted that by agreement in writing, ARTC is to finalise the design and construct the bridge/s on behalf of Health Infrastructure;
- d. Agrees to work with RailCorp and ARTC to establish a complementary agreement to facilitate the management of the design and construction of the bridges by ARTC as set out in this Agreement;
- e. Health Infrastructure and ARTC are to reach agreement on the process for determining the cost to Health Infrastructure for the bridges (including the approaches) under the agreement in Item 1.d above. This is to include such matters as tendering, selection of contractors and claims management;
- f. Agrees to work with RailCorp and ARTC to establish protocols for both emergency and planned access across the rail lines for critical hospital needs as set out in this Agreement;
- g. Agrees to [fund and construct] the new northern access road on RailCorp land;
- h. Agrees that the northern access road can be used by RailCorp for reasonable access to its proposed substation, and that any appropriate easements or rights of way will be entered into;
- i. Health Infrastructure will contribute \$6.85million towards the cost of the bridges.

Signed by:

Robert Rust
Chief Executive

2.2 RailCorp

- a. Agrees to General Commitments as shown in Section 1.0 above and as specified for RailCorp;

- b. Agrees to the acquisition (or other agreed mechanism) by Health Infrastructure of RailCorp land on the western side of the rail line as indicated by the plan attached for the creation of the new northern access road subject to confirmation of actual survey and design, at nominal monetary consideration;
- c. Agrees to work with Health Infrastructure and ARTC to establish a complementary agreement to facilitate the management of the design and construction of the bridges by ARTC as set out in this Agreement;
- d. Agrees to facilitate:
 - timely approvals including the design of the bridges and any necessary licences for use and construction of the bridges over the rail lines; and
 - construction and maintenance of the bridges across the rail line;
- e. Agrees to work with NSW Health and ARTC to establish protocols for both emergency and planned access across the rail lines for critical hospital needs as set out in this Agreement;
- f. RailCorp will contribute \$1.5million towards the cost of the bridges.

Signed by:

Aidan Hughes
A/Group General Manager, Corporate Services

Robert Mason
Chief Executive

2.3 ARTC

- a. Agrees to General Commitments as shown in Section 1.0 above and as specified for ARTC;
- b. Agrees to work with Health Infrastructure and RailCorp to establish a complementary agreement to facilitate the management of the design and construction of the bridges by ARTC as set out in this Agreement;
- c. Agrees to facilitate timely maintenance of the bridges across the rail line;
- d. Agrees that the ARTC works or funding for noise mitigation in the area of Liverpool Hospital, namely a noise barrier on the eastern side of the rail corridor, can, by agreement between the parties, be used to fund alternative noise and vibration mitigation works that would better suit the proposed hospital development;
- e. Agrees to work with Health Infrastructure and RailCorp to establish protocols for both emergency and planned access across the rail lines for critical hospital needs as set out in this Agreement;
- f. ARTC will contribute \$0.75million in cash and/or services towards the cost of the bridges on or before [date]. The services could be the project management, detail design and site supervision for construction of the hospital's bridges and approaches over the rail line. The scope of the work is to be agreed and included in the agreement noted in Item 2.3.b above; and
- g. Health Infrastructure and ARTC are to reach agreement on the process for determining the cost to Health Infrastructure for the bridges (including the approaches) under the agreement in Item 2.3.b above. This is to include such matters as tendering, selection of contractors and claims management.

Signed by:

Greg Mullens

Senior Project Manager

David Marchant
Chief Executive Officer and Managing Director

2.4 TIDC

- a. Agrees to the General Commitments as shown in Section 1.0 above and as specified for TIDC.

Signed by:

Chris Lock
Chief Executive

3.0 ATTACHMENTS

A plan of the rail corridor showing the land acquisitions on each side of the corridor by Health Infrastructure and RailCorp.

Appendix L

Lease and Construction Agreement - Lachlan Street

The Project Director Implementation
Capital Insight P/L
C/- SSWAHS
Locked Bag 7017
LIVERPOOL BC NSW 1871

Capital Insight RECEIVED			
- 8 JUL 2008			
124			
PD		Other	JP
PM		File	

54605-02-01

Attention Mr Gary Tower

Dear Gary,

RE: Liverpool Hospital Redevelopment – Lease for Access and Construction Road – Part Lachlan St Liverpool.

We attach an executed copy of the lease for your records. Please note that it commences 1/7/2008. Please note that Public Liability insurance cover is required. Can you please provide a copy of the certificate of currency.

Yours faithfully,



Michael Williams
Property Manager

LEASE
LIVERPOOL CITY COUNCIL & HEALTH ADMINISTRATION CORPORATION

MARSDENS LAW GROUP
Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560
Tel: 02 4626 5077
Fax: 02 4626 4826
DX: 5107 Campbelltown
Ref: 65 34 1653 AJS JRT

TABLE OF CONTENTS

PARTIES	1
BACKGROUND	1
OPERATIVE PROVISIONS	1
1 DEFINITIONS	1
2 LEASE	1
2.1 GRANT OF THE LEASE	1
2.2 TERM	1
2.3 PERSONAL RIGHTS	2
3 ACTIVITIES	2
3.1 PERMISSION TO CONDUCT ACTIVITIES	2
3.2 DELEGATION	2
4 FEES AND TAXES	2
4.1 LEGAL COSTS	2
4.2 TAXES	2
5 MAINTENANCE OBLIGATIONS	2
5.1 MAINTENANCE AND MAKE GOOD OF LAND	2
5.2 ERECTION OF STRUCTURES ON LAND	3
6 COMPLIANCE WITH AUTHORITIES	3
6.1 CONSENT AUTHORITY	3
6.2 CONSTRUCTION OF DEED TO FETTER POWERS	3
6.3 INCONSISTENCY	3
6.4 NO COMPENSATION	3
6.5 NO WARRANTY AS TO SUITABILITY FOR USE	3
6.6 COMPLIANCE WITH THE TERMS OF THE CONSENTS	3
6.7 COMPLIANCE WITH DIRECTIONS FROM AUTHORITIES	3
6.8 OBTAINING FURTHER CONSENTS	3
7 LIMITATION OF COUNCIL'S LIABILITY	4
7.1 INSURANCES	4
7.2 INSPECTION OF INSURANCE	4
7.3 CANCELLATION OF INSURANCE	4
7.4 RISK	4
7.5 INDEMNITY	4
8 DEFAULT IN PERFORMANCE	4
8.1 EVENTS OF DEFAULT	4
8.2 CONSEQUENCE OF EVENTS OF DEFAULT	4
8.3 NO RESTRICTION ON RIGHTS	5
9 TERMINATION	5
9.1 TERMINATION	5
9.2 TERMINATION DUE TO INVALIDITY	5
9.3 CONSEQUENCE OF TERMINATION	5
10 ADMINISTRATIVE PROVISIONS	5
10.1 NOTICES	5
10.2 ENTIRE AGREEMENT	6
10.3 WAIVER	6
10.4 COOPERATION	6
10.5 COUNTERPARTS	6
10.6 AMENDMENT	6
10.7 UNENFORCEABILITY	6
10.8 POWER OF ATTORNEY	6
10.9 GOVERNING LAW	6

EXECUTION PAGE	7
SCHEDULE 1: DEFINED TERMS AND INTERPRETATION	8
DEFINITIONS	8
INTERPRETATIONAL RULES	10
ANNEXURE 1: PLAN OF LAND	12
ANNEXURE 2:	13
PLAN OF NEW NORTHERN ACCESS ROAD	13

Lease

Parties

Council	Name	Liverpool City Council
	Address	1 Hoxton Park Road HOXTON PARK NSW 2171
	ABN	84 181 182 471
Corporation	Name	Health Administration Corporation
	Address	73 Miller Street NORTH SYDNEY NSW 2060
	ABN	45 100 538 161

Background

- A** Council is the roads authority with respect to an unformed road adjoining Lachlan Street, Liverpool as shown on the plan attached as **Annexure 1 (Land)**.
- B** The Corporation proposes to redevelop Liverpool Hospital which will include the construction of a temporary access road (**Access Road**) as shown on the plan attached as **Annexure 2**.
- C** The Corporation has requested and Council has agreed to grant a lease of the Land to the Corporation for the purpose of access for the redevelopment of Liverpool Hospital and construction of the Access Road.
- D** This deed records the terms upon which the lease is granted.

Operative Provisions

1 Definitions

Unless the context otherwise requires the definitions and interpretational rules contained in **Schedule 1** apply in the interpretation of terms used in this deed.

2 Lease

2.1 Grant of the Lease

- (1) Council grants a Lease of the Land to the Corporation subject to the terms of this deed (**Lease**).
- (2) The parties acknowledge that the Lease is a lease made by Council under section 153 of the *Roads Act 1993* (NSW).

2.2 Term

Unless terminated earlier the Lease is to continue for a period ending on the earlier of:

- (1) the completion of the Activities; and
- (2) five (5) years from the date of this deed,
- (**Term**).

2.3 Personal rights

- (1) The Lease is personal to the Corporation .
- (2) The Corporation must not encumber, assign or transfer (either directly or indirectly) the Lease without the prior written consent of Council.
- (3) Council may refuse the granting of consent under paragraph (2) without reason and at its absolute discretion.

3 Activities

3.1 Permission to conduct Activities

- (1) The Council grants its consent to the conduct of the Activities on the Land by the Corporation , subject to the terms of this deed.
- (2) The parties acknowledge that the consent granted under paragraph (1) is a consent under section 138 of the *Roads Act 1993* (NSW).

3.2 Delegation

Notwithstanding clause 2.3, Council acknowledges that the Activities may be carried out by agents, employees, contractors or joint venturers of the Corporation .

4 Fees and Taxes

4.1 Legal costs

The Corporation must pay the reasonable legal costs incurred by Council in relation to the negotiation, preparation and execution of this deed up to a maximum of \$2,000.00 (inclusive of GST).

4.2 Taxes

- (1) If any Tax is payable in respect of this deed then such Tax is to be paid by the Corporation.
- (2) In the event that the Tax is claimed directly from Council, the Corporation agrees that it will reimburse Council any amount paid to satisfy that Tax.
- (3) The Corporation must reimburse Council the amount of any such Tax within seven (7) days of Council notifying the Corporation that it has paid that Tax.
- (4) Council must provide the Corporation with a tax invoice upon payment or reimbursement of any Tax by the Corporation under paragraph (2).

5 Maintenance obligations

5.1 Maintenance and make good of Land

- (1) The Corporation must subject to the conduct of the Activities:
 - (a) at all times endeavour to ensure that the Land is kept clean and tidy;
 - (b) maintain the Land, at a minimum, in a good state of repair;
 - (c) not do, omit to do, permit or suffer to be done or omitted anything that might in any way endanger the Land or any person, equipment, chattels or goods whether the property of the Council or not which may be upon the Land.
- (2) At any time during the Term the Council may issue a direction to the Corporation in relation to the maintenance or repair of the Land if, in the opinion of the Council, the Corporation has failed to comply with the obligations imposed on it under this clause 5.

- (3) The Corporation must comply with any reasonable direction of the Council issued under paragraph (2) and must complete the maintenance or repair of the Land in a proper and workmanlike manner complying with current industry practice and standards.
- (4) If the Corporation fails to comply with paragraph (3), Council may carry out any such rectification work and claim any costs incurred by it in doing so from the Corporation as a liquidated debt.

5.2 Erection of Structures on Land

- (1) The Corporation must not erect or cause to be erected any structure on the Land except with the written consent of Council which may be withheld at Council's absolute discretion.
- (2) A consent pursuant to paragraph (1) cannot be given by Council unless it is satisfied that the proposed structure comprises a fence or temporary structure of a kind that can be easily demolished or removed.

6 Compliance with authorities

6.1 Consent Authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the *Local Government Act 1993 (NSW)*, *Roads Act 1993 (NSW)* and the *Environmental Planning and Assessment Act 1979 (NSW)*.

6.2 Construction of deed to fetter powers

No term of this deed is to be construed, or to operate, so as to fetter, restrict or otherwise interfere with the exercise of Council's powers as a consent authority.

6.3 Inconsistency

If there is an inconsistency or conflict between the exercise of a statutory or consent functions by the Council on the one hand and its obligations under this deed on the other then the exercise of the statutory or consent functions by the Council will prevail to the extent of any inconsistency or conflict.

6.4 No Compensation

No compensation will be payable by the Council to the Corporation for any loss or damages suffered by the Corporation arising from the valid exercise by the Council of any statutory or consent function as referred to in this clause.

6.5 No warranty as to suitability for use

The Corporation acknowledges and agrees that Council has not made any representation or warranty to the Corporation regarding the suitability of the Land for the purpose of the Activities.

6.6 Compliance with the terms of the Consents

In the performance of the Activities and compliance with its obligations under this deed the Corporation must comply with all terms of the Consents.

6.7 Compliance with directions from Authorities

The Corporation must comply with all notices, directions, orders or other requests served upon itself or Council and which arise from the performance of the Activities on the Land by the Corporation.

6.8 Obtaining further consents

- (1) If the Corporation requires further consents to conduct the Activities on the Land the Corporation must:
 - (a) make such applications itself; and
 - (b) bear all costs incurred by it in relation to obtaining the relevant consent.

- (2) Council agrees that it will, where required, sign all authorities reasonably required by the Corporation to make any application for consent to any Authority.

7 Limitation of Council's liability

7.1 Insurances

- (1) The Corporation must effect and keep current and in force, or must ensure that the Contractor effects and keeps current and in force, the following policies of insurance:
- (a) a Broadform Public Liability Insurance policy with a reputable insurance company approved by Principal in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
 - (i) personal injury or death of any person; and
 - (ii) loss of or damage to property; and
 - (b) workers compensation insurance under the *Workers Compensation Act 1987* (NSW) covering all persons employed or deemed to be employed by the Corporation and the Contractor in connection with the performance of the Activities; and
 - (c) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the Activities; and
 - (d) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the performance of the Activities.

7.2 Inspection of insurance

- (1) Upon request from Council, the Corporation must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.
- (2) Council may carry out random audits to verify insurances held by the Corporation and the Contractor. The Corporation will assist in any audit and provide evidence of the terms and currency of the insurance policies whenever requested by Council.

7.3 Cancellation of insurance

If any policy is cancelled either by the Corporation or the insurer the Corporation must notify Council immediately.

7.4 Risk

The Corporation uses and occupies the Land at its own risk.

7.5 Indemnity

The Corporation indemnifies Council against any Claim (of whatever nature) made in respect of the Corporation's use and occupation of the Land and the conduct of the Activities.

8 Default in performance

8.1 Events of default

The Corporation commits an "event of default" if it breaches a term of this deed and fails to rectify that breach within twenty eight (28) days of being served with a notice by the Council requiring that rectification.

8.2 Consequence of events of default

Where the Corporation commits an event of default Council may:

- (1) immediately terminate the Lease;

- (2) claim damages for breach of contract from the Corporation.

8.3 No restriction on rights

The rights vested in Council pursuant to 8.2 do not prevent Council from exercising any other rights that it may possess at law.

9 Termination

9.1 Termination

This deed may be terminated prior to the expiry of the Term in the following circumstances:

- (1) in accordance with clause 8.2(1); or
- (2) pursuant to a direction from Council under the *Roads Act 1993* (NSW); or
- (3) if agreed between the parties; or
- (4) if an Insolvency Event affects a party; or
- (5) the Lease is found invalid pursuant to any Law.

9.2 Termination due to Invalidity

If this deed is found to be invalid pursuant to any Law, Council will not be liable to pay compensation of any kind or indemnify the Corporation in respect of any loss or damage it suffers as a result of that invalidity.

9.3 Consequence of termination

Upon termination of this deed:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

10 Administrative provisions

10.1 Notices

- (1) Any notice, consent or other communication under this deed shall be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address; or
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and
 - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this deed or another address of which that person may from time to time give notice to each other person.

10.2 Entire Agreement

This deed is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this deed.

10.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

10.4 Cooperation

Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this deed and the rights and obligations of the parties under it.

10.5 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

10.6 Amendment

This deed may only be amended or supplemented in writing signed by the parties.

10.7 Unenforceability

Any provision of this deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

10.8 Power of Attorney

Each attorney who executes this deed on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

10.9 Governing law

The law in force in the State of New South Wales governs this deed. The parties:

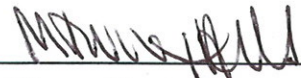
- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this deed; and
 - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of forum non conveniens.
-

Execution page

Executed as a deed

Dated: 1st July 2008.

SIGNED, SEALED AND DELIVERED by **LIVERPOOL CITY COUNCIL** by its duly constituted attorney pursuant to the registered Power of Attorney Book 4418 No 998 in the presence of:



Witness (Signature)

MICHAEL WILLIAMS

Name of Witness (Print Name)

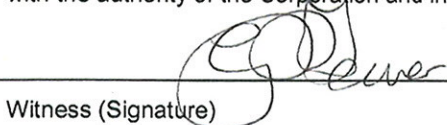


Attorney (Signature)

IAN LACY

Name of Attorney

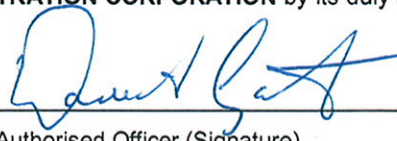
SIGNED, SEALED AND DELIVERED by **HEALTH ADMINISTRATION CORPORATION** by its duly authorised officer with the authority of the Corporation and in the presence of:



Witness (Signature)

GARY TOWER

Name of Witness (Print Name)



Authorised Officer (Signature)

David Gates

Name of Authorised Officer (Print Name)

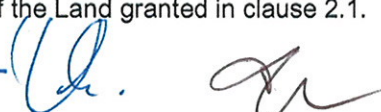
Schedule 1: Defined terms and interpretation

Definitions

Access Road	means a new northern access road to Liverpool Hospital as shown on the plan attached as Annexure 2 .
Activities	means: <ol style="list-style-type: none">(1) the construction of the Access Road;(2) the use of the Access Road as access to and from Liverpool Hospital but limited to access for the purpose of the redevelopment of Liverpool Hospital.
Authorities or Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government; or(2) department of any federal, state or local government; or(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Consents	means all consents obtained, or required to be obtained, in relation to the conduct of the Activities on the Land.
Contractor	means Bovis Lend Lease Pty Limited (ACN 000 098 162) or such other contractor engaged by the Corporation to carry out the Activities from time to time.
Insolvency Event	means the happening of any of these events: <ol style="list-style-type: none">(1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up; or(2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order; or(3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or(4) A body corporate resolves to wind itself up, or otherwise

dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or

- (5) A body corporate is or states that it is insolvent; or
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001 (Cth)*, a body corporate is taken to have failed to comply with a statutory demand; or
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001 (Cth)*; or
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (9) A person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001 (Cth)* or action is taken which could result in that event; or
- (10) A receiver, manager or receiver and manager is appointed to the Company; or
- (11) A body corporate becomes an externally administered body corporate within the meaning of the *Corporations Act 2001 (Cth)*; or
- (12) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court; or
- (13) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Land	means the unformed road adjoining Lachlan Street, Liverpool and shown on the plan attached as Annexure 1 .
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Lease	means the lease of the Land granted in clause 2.1.
Security	means INSERT. 
Taxes	means any tax, duty, impost, fee, levy or other charge imposed by any Authority.
Term	means the earlier of: <ul style="list-style-type: none">(1) the completion date of the redevelopment of Liverpool Hospital and the Access Road by the Corporation; and(2) five (5) years from the date of this deed.

Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the <i>Corporations Act 2001 (Cth)</i> or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this Deed to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.
agreement	a reference to any agreement, deed or instrument includes the

same as varied, supplemented, novated or replaced from time to time.

Annexure 1:
Plan of land

LIVERPOOL CITY COUNCIL MAP REPORT

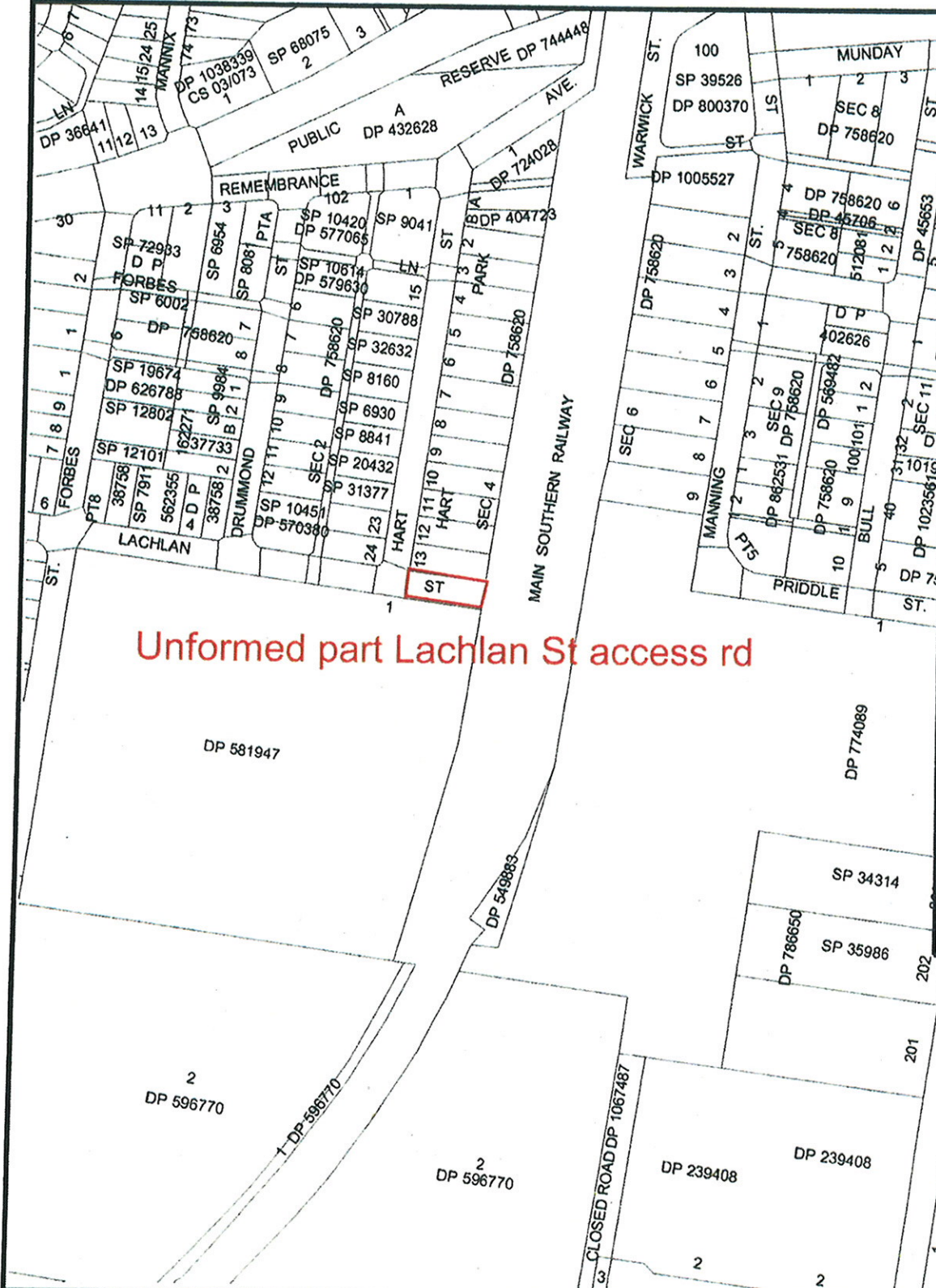
Unformed Part Lachlan St

ANNEXURE 1

DISCLAIMER 1. MAP DATA SUPPLIED BY LAND INFORMATION CENTRE, N.S.W. MAY, 1994 AND SUBSEQUENTLY MODIFIED AND UPDATED BY LIVERPOOL CITY COUNCIL. INFORMATION IS CURRENT FOR THE MAP AT DATE SHOWN. 2. EASEMENTS- SUITABLE EASEMENT DATA IS NOT CURRENTLY AVAILABLE AND EASEMENTS ARE NOT SHOWN. PLEASE REFER TO MICROFICHE COPIES OF THE APPROPRIATE DEPOSITED PLAN FOR LOCATION OF EASEMENTS. 3. ANY INFORMATION SHOWN ON THIS MAP IS CURRENT AT THE DATE OF ISSUE BELOW. HOWEVER THIS INFORMATION MAY BE SUBJECT TO AMENDMENT BY STATE ENVIRONMENTAL PLANNING POLICIES, REGIONAL ENVIRONMENTAL PLANS AND SUBSEQUENT LOCAL ENVIRONMENTAL PLAN 1997 AMENDMENTS. ANY PERSON USING THIS PLAN SHOULD CONTACT COUNCIL TO CHECK THAT INFORMATION SHOWN IS UP-TO-DATE.

LEGEND

- Lot Text
- Lot Boundary Lines
- lease
- LGA
- RDW
- stratum
- USL
- Lot Boundaries



Unformed part Lachlan St access rd



Scale 1:5078

MAP PRODUCED BY:
LIVERPOOL CC GIS
DATE OF ISSUE: 10/03/2008

132178.2008.

Annexure 2:

Plan of new northern access road

Appendix L

Department of Education Agreement

From: Sutton, Trevor [mailto:trev.sutton@det.nsw.edu.au]
Sent: Monday, 8 September 2008 3:13 PM
To: Jeremy Wilson
Subject: Liverpool Hospital Stage 2.1- new Northern Road - Education land

Hi Jeremy,

Thank you for the above information.

I can see the advantages in proceeding as you propose. The formalities required to agree on a payment-in-kind arrangement, especially considering the amount of money involved, could become complicated.

Further to your email, the matter of the removal of contaminated fill and rubbish from the site requires clarification. Please advise further on this as I see no record of this issue on our file and I fail to see how this would incur a cost to our Department.

Subject to the contaminated fill issue being sorted, we agree in principle to proceeding with this matter by means of a property transfer between our Departments for the amount of [REDACTED]

Accordingly please advise further on the contamination issue so we can progress to consider the appropriate method of arranging the transfer.

Regards

Trevor Sutton
Sites Officer
Asset Management Directorate
Dept of Education & Training
Tel: (02)9561 8599

This message is intended for the addressee named and may contain
privileged information or confidential information or both. If you
are not the intended recipient please delete it and notify the sender.

Appendix L

Rail Corridor Access Agreement

2200

(1) DoH to review

(2) Copy to BCL

NOTE

(A) For fence (this one)

(B) For road (second document to come)

CORRIDOR ACCESS AGREEMENT

Release & Indemnity for Works

		Background
ACCESS APPLICATION		The Applicant has made an application for access to the Railway Corridor ('Access Application').
		1 Applicant's Promise
COMPLIANCE		The Applicant agrees to be bound by and comply with its obligations under this document. The Applicant must ensure that any person acting on its behalf also complies with the obligations under this document.
		2 Provisions Relating to the Access Application
NO OBLIGATION	2.1	RailCorp has no obligation to grant the Applicant access to the Railway Corridor, but will permit Applicant to have access under clause 2.5 of this document if Applicant strictly complies with the terms of this document.
FURTHER INFORMATION	2.2	The Applicant must promptly answer questions asked by RailCorp about the Access Application. This includes providing additional documentation, if requested.
NO APPROVAL UNTIL SIGNED	2.3	The Access Application is not approved until RailCorp has signed the confirmation of approval set out at the end of this document (<i>Approval Document</i>).
CONDITIONS OF APPROVAL	2.4	RailCorp may impose conditions on its approval, in addition to the conditions set out in this document. The Applicant must comply with those additional conditions.
LIMITED ACCESS ONLY	2.5	<p>Access granted under this document is limited to the specific place, period of time and purpose set out in the schedule to the Approval Document (once completed).</p> <p>The Applicant must make a fresh application each time the Applicant seeks access to the Railway Corridor.</p>
WITHDRAWAL OF APPROVAL	2.6	RailCorp may withdraw its approval of the Applicant's Access Application at any time and for any reason. If RailCorp withdraws its approval, Applicant must immediately vacate the Railway Corridor. RailCorp has no obligation to compensate the Applicant for withdrawal of approval under this clause.

3 What the Applicant must do if access is granted

GENERAL

- 3.1 The Applicant agrees to comply with any RailCorp conditions in the Approval Documentation and with the following provisions if its application for access is successful.

SPECIFIC OBLIGATIONS

- 3.2 When carrying out any activity in the Railway Corridor, the Applicant must comply with all of the following:
- this document,
 - special conditions of approval and other material set out in the final Approval Document,
 - the Safety Guideline or Safety Protocol attached to this document,
 - applicable laws including laws relating to protection of the environment and safety,
 - council and other governmental consents and approvals given in relation to the Applicant's activities,
 - directions given by RailCorp from time to time.

WORKS & INSURANCE OBLIGATIONS

- 3.3 Applicant must not start any work in the Railway Corridor until:
- it has provided RailCorp a work method statement,
 - it has modified the work method statement to comply with any requests to do so by RailCorp,
 - RailCorp has notified Applicant in writing that the work method statement is satisfactory,
 - it or its contractors have obtained not less than **\$[insert amount]** million public liability insurance, not less than **\$[insert amount]** million professional indemnity insurance and not less than **\$[insert amount]** million contract works insurance (through licensed insurers) in respect of the works,
 - it has provided RailCorp with cover notes in respect of those insurances,
 - RailCorp has approved the insurances; and

Applicant must conduct all works:

- with reasonable skill and care,
- in accordance with the final Approval Document, and
- in accordance with all directions given by RailCorp or RailCorp Personnel.

WORKSITE PROTECTION PLAN AND PRE-WORK BRIEFING	3.5	<p>Before starting work in the Railway Corridor, the Applicant must:</p> <ul style="list-style-type: none"> • prepare a worksite protection plan, • undertake a pre-work briefing, and • submit the worksite protection plan and written confirmation of the pre-work briefing to the RailCorp representative. <p>The worksite protection plan will become an Annexure to this document.</p>
MAKE GOOD DAMAGE	3.6	The Applicant must make good any damage caused to the Railway Corridor by the Applicant or its agents, representatives, invitees, consultants or contractors within a timeframe agreed with RailCorp.
WORKPLACE HEALTH AND SAFETY	3.7	The Applicant must meet the obligations imposed on it under the Occupational Health and Safety Act 2000 (NSW) and any regulations made under that Act.
MAINTAIN CONSENTS	3.8	The Applicant must not cause or permit any consent or approval required for the carrying out of its activities in the Rail Corridor to lapse or be revoked.
NOT CAUSE CONTAMINATION	3.9	<p>Applicant acknowledges that the Railway Corridor may be affected by contamination. The Applicant must not cause contamination or further contamination to the Railway Corridor or land adjacent to the Railway Corridor.</p> <p>In this clause, 'contamination' means the presence in, on or under land of a substance (or of a substance at a concentration above the concentration at which the substance is normally present in, on or under land in the same locality) that presents a risk of harm to human health or the environment.</p>
4 Costs		
BEAR OWN COSTS	4.1	The Applicant must do everything it is required to do under this document at its own cost.
PAY RAILCORP COSTS	4.2	<p>The Applicant must promptly pay all costs and expenses incurred by RailCorp and RailCorp Personnel in relation to the Access Application and the provision of access to the Applicant as those costs are invoiced. If RailCorp so requires, Applicant must pay RailCorp costs in advance by deposit.</p> <p>Costs payable by the Applicant under this clause include, but are not limited to, the costs of any investigations deemed necessary in considering the Access Application, costs of supervising the Applicant on the Railway Corridor, internal administrative costs, legal costs and GST.</p>

		5 Indemnity and Release
RESPONSIBILITY & INDEMNITY	5.1	<p>The Applicant is responsible for any loss, damage or injury caused by the Applicant or any person on its behalf, including without limitation any of its agents, representatives, invitees, consultants or contractors.</p> <p>The Applicant indemnifies RailCorp and RailCorp Personnel against all Claims arising under or in relation to this document including without limitation any breach, act, omission or neglect of it or of any person on its behalf including without limitation any of its agents, representatives, invitees, consultants or contractors.</p>
	5.2	<p>The Applicant's responsibility and indemnity under clause 5.1 extend, without limitation, to the following:</p> <ul style="list-style-type: none"> • death or injury of any person • loss of, loss of use of, or damage to property • delay or interruption to or cancellation of train services
EXCEPTION	5.3	<p>The Applicant is not responsible under clause 5.1 for loss, damage or injury to the extent that such loss, damage or injury arises from a negligent act or omission on the part of RailCorp or RailCorp Personnel acting within the scope of their authority.</p>
RELEASE	5.4	<p>To the extent permitted by law, the Applicant agrees to release RailCorp and RailCorp Personnel from all Claims arising under or in relation to this document.</p>
	5.5	<p>Without limiting clause 5.4, RailCorp shall never be liable for consequential or indirect loss including without limitation, claims for loss of profit or loss of business.</p>
		6 General
NO EXCLUSIVITY	6.1	<p>The Applicant acknowledges that approval of its Access Application grants personal rights of access to the Railway Corridor only. The Applicant may not exclude RailCorp or RailCorp personnel from any part of the Railway Corridor.</p>
GOVERNING LAW	6.2	<p>New South Wales law governs this document. The Applicant submits to the exclusive jurisdiction of the courts of New South Wales.</p>
SURVIVAL OF INDEMNITIES	6.3	<p>The indemnities set out in this document continue to apply regardless of any termination and remain fully effective until all money owing, contingently or otherwise, under an indemnity has been paid in full.</p>
DEFINITIONS	6.4	<p>In this document:</p> <p>Access Application means Applicant's written request to access the Railway Corridor attached to this document.</p>

Applicant means [*insert name and ACN / ABN*].

Approval Document means confirmation of approval document (for final completion before access may be had) found at the end of this document.

Claim(s) means any claim, liability, loss, damage, cost, charge or expense, including consequential or indirect loss.

RailCorp means Rail Corporation New South Wales a statutory corporation constituted by the *Transport Administration Act 1988* (as amended) of Level 6, 18 Lee Street, Chippendale NSW 2008.

RailCorp Facilities means all railway track, railway stations, civil works, tunnels, associated track structures, over track structures, signalling systems, train control systems, communication systems, equipment, nodes, conduits, ducting, cable, cable support structures and other plant, equipment, buildings or facilities owned, leased or used by RailCorp on, or in relation to, or in any way comprising, the Rail Corridor, and for the avoidance of doubt, includes all Rail Infrastructure Facilities.

Rail Infrastructure Facilities has the same meaning as the *Transport Administration Act 1988* and includes "infrastructure of a railway" as that term is defined in the *Rail Safety Act 2002*.

RailCorp Personnel means any officer, employee, agent, contractor and subcontractor of RailCorp and for the avoidance of doubt includes personnel of the State Rail Authority of New South Wales and Rail Infrastructure Corporation acting as agents for RailCorp.

Railway means the guided system for transportation of passengers or freight or both (whether or not passengers, freight or both are being transported) on a railway track within the Railway Corridor.

Railway Corridor means all land owned, occupied or leased by RailCorp and includes any easements or licences or any other legal or beneficial interest in land used in relation to the operation of Railway or where RailCorp Facilities are located.

For Office Use only

Date:

Corridor Access Agreement

Signed by Applicant

☐ _____

Accepted / Rejected

☐ _____

Signed by RailCorp

☐ _____

Work Method Statement

Provided by Applicant

☐ _____

Accepted by RailCorp

☐ _____

Insurance

Cover notes provided by Applicant

☐ _____

Insurances approved by RailCorp

☐ _____

Work Site Protection Plan

Prepared

☐ _____

Checked and accepted

☐ _____

Pre-Work Briefing

Undertaken

☐ _____

Received

☐ _____

Schedule

*[Describe the location and address of worksite, and place of access to the corridor.
Insert a plan, and the period of time for which access is required.
Describe purpose for which access is given]*

[Include Corridor Access Application form if available]

Safety Guideline

1. Application of this SAFETY GUIDELINE

- 1.1 This Safety Guideline applies to all Work carried out by the Applicant.
- 1.2 The Applicant must comply with all laws and rules relating to the Railway and any directions of a Safety Representative.
- 1.3 Nothing in this Safety Guideline detracts from the Applicant's obligations under OH&S Laws.
- 1.4 The purpose of this Safety Guideline is to ensure at all times:
 - (a) safety within the Railway Corridor; and
 - (b) that Work is performed in such a manner so as to not endanger, impede, obstruct or interfere in any manner whatsoever with the safe operation of the Railway.
- 1.5 The Safety Guideline is intended to be a guide only and is not an exhaustive document on rail safety issues.

2. Supervision of Work by RailCorp

- 2.1 RailCorp will appoint a Safety Representative/Protection Officer to supervise the Work and to manage risks and hazards arising out of or relating to the operation of the Railway and maintaining safety within the Railway Corridor.
- 2.2 The Applicant must comply with any directions or restrictions notified to the Applicant.
- 2.3 The Applicant must comply with any directions or restrictions given to the Applicant by the Safety Representative/Protection Officer.
- 2.4 The Applicant must not perform any Work at the Work Site unless the Safety Representative/Protection Officer has given authorisation.

3. Access to Work Site and the Railway Corridor

- 3.1 No person or persons, other than the Applicant, may access the Railway Corridor or be present at the Work Site.
- 3.2 No children or pets are permitted to enter the Railway Corridor or be present at the Work Site.
- 3.3 The Applicant acknowledges that the Safety Representative/Protection Officer can exclude from a Work Site and the Railway Corridor any person who cannot produce a copy of an executed Access Deed.
- 3.4 Under no circumstances is the Applicant to access the Railway Corridor or the Work Site between sundown and sunrise.

4. Safety Equipment

- 4.1 The Safety Representative/Protection Officer must ensure that at all times the Applicant wears highly visible safety clothing that complies with the current requirements of RailCorp.
- 4.2 The Safety Representative/Protection Officer must ensure that no red or green clothing, including hats and safety helmets, are worn by the Applicant as it could be mistaken by a driver for a stop signal or a clear signal.

- 4.3 The Applicant must wear all personal protective equipment such as safety footwear, eye and head protection, as specified by the Safety Representative/Protection officer. In some areas of the Rail Corridor, the wearing of eye safety glasses is mandatory unless a Risk Assessment deems otherwise.

5. Alcohol and Prohibited Drugs

- 5.1 The Applicant must not, under any circumstances, be under the influence of alcohol or any drug prohibited by law whilst carrying out Work or at a Work Site or on the Railway Corridor.

6. General Rail Safety

- 6.1 The Applicant must not, at any time:
- (a) dig or excavate at the Work Site or anywhere on the Railway Corridor unless otherwise approved by RailCorp because gas, water, electricity or communication facilities are located on the Railway Corridor and may be damaged or affected;
 - (b) light fires at the Work Site or anywhere on the Railway Corridor, or
 - (c) bring any equipment onto the Railway Corridor or Work Site including a tractor, backhoe or similar implement, unless otherwise approved by RailCorp.

7. Definitions

Authority means any governmental, regulatory or public authority, agency or body.

OH&S Laws means all laws and regulations relating to occupational health and safety from time to time, including without limitation:

- (a) the Occupational Health and Safety Act 2000; and
- (b) the Occupational Health and Safety Regulation 2001.

RailCorp has the same meaning as in given in the Access Agreement.

Railway has the same meaning as it is given in the Access Agreement.

Railway Corridor has the same meaning as it is given in the Access Agreement.

Safety Representative/Protection Officer means an appropriately qualified and certified rail safety officer.

Work means any work carried out on the Railway Corridor.

Work Site means a site on the Railway Corridor where Work is carried out by the Applicant.