

Schedule 14 – Easements, Land Arrangements and Commercial Opportunities

(clause 12.4 and 26)

1. Definitions

In this Schedule 14 (*Easements, Land Arrangements and Commercial Opportunities*):

Adjacent Land has the meaning given in clause 3.1.

Land Arrangements means, in relation to the Licensed Maintenance Area or any land on which any Additional Maintained Assets are located, the:

- (a) contracts, deeds, covenants, agreements and other arrangements entered into by the Principal, or which the Principal is otherwise obliged to comply with and that are identified in Exhibit 7 (*Land dealings*); and
- (b) proposed easements, licences, restrictions on use, covenants, leases, agreements or other similar arrangements that are identified in, or contemplated by, the Third Party Agreements,

other than:

- (c) the Existing Land Arrangements referred to in clause 2.1; and
- (d) the Easements.

Retail Licence means any licence of retail premises of part of a building or land in the Licensed Maintenance Area.

Safeguarded Areas means those areas identified by the Principal from time to time in the Licensed Maintenance Area where retail premises or advertising could be constructed and operated in the future for the purposes of the Principal carrying out the Commercial Opportunities.

Subdivision Documents has the same meaning as in the Penrith City Council Interface Agreement.

2. Existing Land Arrangements, Land Arrangements and Easements

2.1 Existing Land Arrangements

OpCo must, during the term of the licence provided for in clause 12.2 of the Operative Provisions, comply with the terms of any easements, restrictions on use, covenants, leases, agreements or other similar arrangements burdening or benefiting the land contained in the Licensed Maintenance Area, as recorded in the register maintained by NSW Land Registry Services under the *Real Property Act 1900* (NSW) as at the date of this deed.

2.2 Land Arrangements and Easements

- (a) OpCo acknowledges and agrees that Land Arrangements and Easements will apply to the Licensed Maintenance Area and any Additional Maintained Assets.
- (b) OpCo must, during the term of the licence provided for in clause 12.2 of the Operative Provisions, comply with:
 - (i) the terms of any Land Arrangements and Easements (other than to the extent that OpCo is not responsible for the relevant obligation in accordance with Schedule 18 (*Requirements of Third Party Agreements*), provided that OpCo does not, by its action, place the Principal in breach of any such terms); and
 - (ii) without limiting clause 2.2(b)(i), in the case of the part of the Licensed Maintenance Area subject to the Rail Easement (RID), the Easement Obligations (as that term is defined in the Rail Easement (RID)) as if OpCo were the Grantee under the Rail Easement (RID), to the extent such Easement Obligations relate to OpCo's Activities.

3. New Easements and Subdivision Documents

3.1 Principal reservation of rights

The Principal reserves the right at all times for the purposes of:

- (a) providing public or private access to or egress from the Licensed Maintenance Area, the site of Additional Maintained Assets or other land adjacent to or in the vicinity of that land (**Adjacent Land**);
- (b) providing support or shelter of structures erected or to be erected on the Licensed Maintenance Area, the site of Additional Maintained Assets or the Adjacent Land;
- (c) providing support for the structures of Sydney Metro – Western Sydney Airport or any infrastructure or Utility Services associated with Sydney Metro – Western Sydney Airport;
- (d) providing access to any infrastructure for the purpose of use, inspection, maintenance, repair or renewal of that infrastructure;
- (e) providing road, rail or other infrastructure or other services including water, drainage, sewerage, gas and other fuels, electricity, telephonic and electronic communications to, or to pass through, the Licensed Maintenance Area, the site of Additional Maintained Assets or the Adjacent Land;
- (f) providing any statutory easements;
- (g) providing, in relation to the site of Additional Maintained Assets or Adjacent Land, for regulation of the relationship between the Licensed Maintenance Area, the site of Additional Maintained Assets and the Adjacent Land and the sharing of costs;
- (h) providing for noise, vibration and electrolysis resulting from the conduct of rail activities;
- (i) the sharing of the use, management and maintenance of, and payment of related costs for, facilities shared between the Licensed Maintenance Area or the site of Additional Maintained Assets and any Adjacent Land; and
- (j) satisfying any other requirements of this deed,

to:

- (k) create, or consent to the creation by a third party of, any Easements benefiting or burdening the Licensed Maintenance Area, the site of Additional Maintained Assets or any Adjacent Land with:
 - (i) any of the owners, lessees, tenants or occupiers of the Licensed Maintenance Area or the site of Additional Maintained Assets or Adjacent Land; or
 - (ii) any Authority,
 and to release, vary, modify or give waivers of such Easements; or
- (l) dedicate land of which it is the owner of the fee simple estate for road, rail or other purposes,

upon such terms and conditions as the Principal thinks fit.

3.2 OpCo consent to Subdivision Documents

- (a) The Principal and OpCo acknowledge that the Penrith City Council Interface Agreement provides for the creation and registration of the Subdivision Documents.
- (b) Notwithstanding anything to the contrary in this Schedule 14 (*Easements, Land Arrangements and Commercial Opportunities*), OpCo:
 - (i) consents to the creation and registration of the Subdivision Documents in accordance with the Penrith City Council Interface Agreement; and
 - (ii) subject to clause 3.2(c), will not make any Claim or requisition against the Principal, or rescind or terminate this deed if the Subdivision Documents are created and registered as contemplated by the Penrith City Council Interface Agreement.

- (c) If the Principal proposes to:
- (i) create and/or register a Subdivision Document other than in accordance with the process permitted in the Penrith City Council Interface Agreement; or
 - (ii) vary a Draft Plan of Subdivision (as defined in the Penrith City Council Interface Agreement),

and that departure from the Penrith City Council Interface Agreement process or variation of the relevant Draft Plan of Subdivision could reasonably be expected to have an adverse effect on OpCo's Activities, then the Principal must obtain the prior written consent of OpCo to the proposed:

- (iii) departure from the process permitted under the Penrith City Council Interface Agreement for the creation of a Subdivision Document; or
 - (iv) variation of the relevant Draft Plan of Subdivision,
- (as applicable) which consent must not be unreasonably withheld.

3.3 Easements for OpCo's benefit

- (a) After the Date of Completion, the Principal undertakes to OpCo that, upon written request from OpCo, it will procure to be created Easements that comply with clause 3.3(b), provided that:
- (i) the Principal is the owner of the estate in fee simple of, and there are no inconsistent interests in, the land which is to be benefited or burdened by such Easements; and
 - (ii) the relevant provider of Utility Services, Authority, infrastructure owner, or third party, as the case may be, consents to the creation of each such Easement.
- (b) Easements will comply with this clause 3.3(b) if they are easements benefiting or burdening the Licensed Maintenance Area, the site of Additional Maintained Assets or Adjacent Land in favour of any relevant provider of Utility Services, an Authority or any relevant infrastructure owner, or any relevant third party as agreed by the Principal, where such Easements are proposed on reasonable terms and are reasonably required by any of those parties at no cost to the Principal for the purposes of:
- (i) access and structural support for rock anchors, columns, footings, beams, structural support and other structures protecting and/or supporting Sydney Metro – Western Sydney Airport;
 - (ii) connecting Utility Services to Sydney Metro – Western Sydney Airport;
 - (iii) access to Additional Maintained Assets or Adjacent Land reasonably necessary for the purposes of maintenance of Sydney Metro – Western Sydney Airport;
 - (iv) satisfying any requirements to be satisfied by OpCo pursuant to this deed; or
 - (v) the location, access to, and use and maintenance of, any Additional Maintained Assets.

3.4 Notice of location, dimensions and terms

- (a) Each of the Principal and OpCo must notify the other party of the exact location and dimension of any Easement it requires under clauses 3.1 and 3.3 (as the case may be) as soon as practicable.
- (b) A notice from OpCo under clause 3.4(a) must be accompanied by:
- (i) a plan showing:
 - (A) the location and dimensions of the three dimensional envelope which accommodates the site of the Easement; and
 - (B) the location of the Easement relative to existing structures and public services,
- in a form registrable with NSW Land Registry Services; and

- (ii) the proposed terms of the Easement.
- (c) Where the Principal receives a notice under clause 3.4(a), it will:
 - (i) approve of the location and dimensions of the Easement and the proposed terms of the Easement; or
 - (ii) reject the location and dimensions of the Easement and/or the proposed terms of the Easement,
 and in each case must act reasonably and must communicate its approval or rejection to OpCo as soon as practicable but in any event within 40 Business Days of the date of receipt of that notice.
- (d) In the event that the Principal rejects the location and dimensions, or the proposed terms, of any Easement under clause 3.4(c)(c)(ii):
 - (i) the Principal may, at the time of such rejection, notify OpCo of an alternate or amended location and dimensions of or proposed terms for, the Easement;
 - (ii) OpCo may notify the Principal of an alternative or amended location and dimensions of, or proposed terms for, the Easement, in which case such notice will be treated as a notice under clause 3.4(a); and
 - (iii) if no alternate or amended location and dimensions, or the proposed terms, can be agreed either of the Principal or OpCo may refer the matter to be resolved in accordance with clause 63 of the Operative Provisions.

3.5 Registration

- (a) OpCo must prepare such documents as are necessary to create the Easements to be granted by the Principal or a third party pursuant to clause 3.3 and, subject to clause 3.3(a)(ii), obtain the consent of, and execution of, such documents prior to their registration by:
 - (i) the Principal; and
 - (ii) any other party,
 as required to effect registration of the Easement.
- (b) The parties will use reasonable endeavours to execute and obtain the registration of any Easements which are required for Sydney Metro – Western Sydney Airport pursuant to clause 3.3 as soon as practicable.

4. Commercial Opportunities

4.1 Commercial Opportunities

- (a) The Principal may carry out the Commercial Opportunities, including the granting of Retail Licences, for Sydney Metro - Western Sydney Airport.
- (b) If the Principal proposes to undertake a Commercial Opportunity:
 - (i) the Principal must give OpCo reasonable written notice of its intention to do so; and
 - (ii) OpCo must co-operate with the Principal (and its nominees) to enable the Principal to plan the undertaking of the Commercial Opportunities.
- (c) If the Principal (or its nominees) carries out any Commercial Opportunity, OpCo must:
 - (i) comply with its obligations under clause 10.15 of the Operative Provisions;
 - (ii) assist the Principal in ensuring that any activities carried out as part of the Commercial Opportunities are compatible with Sydney Metro – Western Sydney Airport and the ETS;

- (iii) co-operate with the Principal and its nominees to facilitate the undertaking of the Commercial Opportunities, including permitting access to Sydney Metro – Western Sydney Airport and the Sydney Metro Site; and
- (iv) do anything which the Principal reasonably requires in order to give full effect to this clause 4.

4.2 Safeguarded Areas

- (a) OpCo must safeguard the Safeguarded Areas.
- (b) If the Principal wishes to activate a Safeguarded Area, the Principal must provide OpCo with a notice setting out the following details:
 - (i) proposed retail or advertising use of the Safeguarded Area;
 - (ii) proposed commencement date of use of the Safeguarded Area;
 - (iii) the Principal's requirements for power, water, sewage and telecommunications to the Safeguarded Area; and
 - (iv) the Principal's access requirements to the Safeguarded Area to implement the Commercial Opportunities.
- (c) Upon receipt of a notice from the Principal pursuant to clause 4.2(b), OpCo must work with the Principal to activate the Safeguarded Area in accordance with the Principal's requirements.
- (d) The Safeguarded Areas that have been activated by the Principal under clause 4.2(b) may be modified from time to time by the Principal on agreement by OpCo, such agreement not to be unreasonably withheld or delayed.
- (e) If the Principal constructs, operates and subsequently removes retail premises or advertising at a Safeguarded Area, OpCo must ensure that the area is safeguarded for any future Commercial Opportunity.
- (f) If, in complying with its obligations under clauses 4.2(c), 4.2(d) or 4.2(e) and subject to clause 4.2(g), OpCo incurs, or is likely to incur, incremental costs, the Principal must issue a Modification Order pursuant to clause 33 of the Operative Provisions with respect to OpCo's obligations under clauses 4.2(c), 4.2(d) or 4.2(e) to ensure that OpCo is entitled to be compensated for its incremental costs.
- (g) OpCo will not be entitled to make any Claim against the Principal for incremental costs which arise as a result of OpCo:
 - (i) safeguarding the Safeguarded Areas in accordance with clause 4.2(a); or
 - (ii) complying with its general obligations to cooperate, facilitate activities and permit access to Sydney Metro – Western Sydney Airport and the Sydney Metro Site under this deed, including under clauses 4.1(c).

4.3 Principal obligations

If the Principal (or its nominee) carries out any Commercial Opportunities:

- (a) the Principal must, and must procure that its nominee:
 - (i) cooperate with OpCo to facilitate the carrying out of the Commercial Opportunities;
 - (ii) liaise with OpCo and use reasonable efforts so that the Commercial Opportunities are conducted in a way that minimises the impact on OpCo's Activities; and
 - (iii) observe all reasonable safety and security requirements notified by OpCo; and
- (b) the Principal must ensure that the Principal and its nominee to the extent applicable:
 - (i) cooperate with OpCo and the Accredited Contractors in relation to OpCo's (or any Accredited Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;

- (ii) do not put OpCo (or any Accredited Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;
- (iii) comply with all reasonable requirements of OpCo (or any Accredited Contractor) in relation to compliance with the Accreditation of OpCo (or any Accredited Contractor); and
- (iv) do not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Accredited Contractor) or an application for Accreditation by OpCo (or any Accredited Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Accredited Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo (or any Accredited Contractor).

4.4 No claim

The Principal will not be liable upon any Claim by OpCo arising out of or in any way in connection with any Commercial Opportunities.

5. No Claim

OpCo may not make any Claim or requisition, rescind or terminate this deed because:

- (a) of the existence of an easement, covenant or other affectation identified in clause 2.1;
- (b) it receives notice from the Principal pursuant to clause 3.4;
- (c) subject to clauses 29 and 30 of the Operative Provisions, any Easement is created; or
- (d) of any Retail Licence.