



## **Contract summary:** Operations Trains and Systems Public Private Partnership Contract

**19 December, 2014**

**northwestrailink**

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*Above: North West Rail Link Project Director Mr Rodd Staples; The Premier of NSW the Hon Mike Baird; Minister for Transport the Hon Gladys Berejiklian pictured at a media conference to announce the OTS PPP award.*

**Note: This report is a summary document and should not be relied upon for legal advice. It is not intended for use as a substitute for the actual contracts.**

# Introduction

## 1. Introduction

This document summarises the main contracts, from a public sector perspective, for the North West Rail Link - Operations, Trains and Systems Public Private Partnership (the **OTS PPP**).

The OTS PPP is a key component of the North West Rail Link project.

This document has been prepared by Transport for NSW in accordance with the public disclosure requirements of the New South Wales Government's August 2012 *NSW Public Private Partnerships Guidelines*, [and its compliance with these requirements was assessed by the NSW Auditor-General prior to its tabling in Parliament.]

**This report should not be relied upon for legal advice and is not intended for use as a substitute for the contracts.** It is based on the contracts as at 18 September 2014. Subsequent amendments of or additions to these contracts, if any, are not reflected in this document.

The defined terms as used throughout this contract summary are provided in a Glossary in Appendix A.

## 2. History and scope of the North West Rail Link project

On 20 June 2012, the NSW Government announced Sydney's Rail Future, its long term plan to increase capacity on Sydney's heavy rail network so that it could support a growing population and improve the customer experience.

The NSW Government committed to deliver the North West Rail Link as the first of the new rapid transit rail services to connect Sydney's global economic corridor with high growth employment and residential centres.

The project will help the NSW Government to meet the priorities and objectives of NSW 2021–the Government's 10 year plan.

### Development of the North West Rail Link

The topic of a north west rail line had been discussed in the public forum since the 1990's, and a variety of proposals and suggestions were advanced across a period of 20 years.

In 2005, the NSW Government established the North West and South West Growth Centres to sustainably plan Sydney's growth on its urban edge.

The Metropolitan Plan for Sydney, released in 2010, identified the need for 770,000 additional homes in Sydney between 2006 and 2036 to accommodate an extra 1.7 million people.

The Metropolitan Plan stated that Sydney's Growth Centres would be supported by major rail projects announced in the Long Term Metropolitan Transport Plan, including the North West and South West Rail Links.

In 2008 the then NSW Government had approved a concept plan for a north west rail project which included six new stations, following an environmental assessment into the project.

However, it was not until April 2011 that the newly-elected NSW Government established a North West Rail Link project team to fast track the planning, procurement and delivery of the project.

The identification of the North West Rail Link project team established the project as a priority rail infrastructure project.



Establishment of the project team was described by the then Premier of NSW Mr Barry O'Farrell as achieving one of the NSW Government's priority election commitments.

At the same time, the NSW Government committed itself to have a tunnel boring machine in the ground by the end of 2014, a commitment that has now been met.

The decision to construct the North West Rail Link followed a need to develop better public transport for a region of Sydney that has traditionally had a low standard of public transport.

At the same time, reform across the transport portfolio was underway and a new integrated transport authority was being established to coordinate the State's transport services and to ensure transport projects were built on time and budget.

Formation of the new agency, Transport for NSW, signalled a new approach to transport in the State with a renewed focus on the customer.

As part of Transport for NSW's new organisational structure, the North West Rail Link became a dedicated project office.

Subsequently, the NSW Government established a North West Rail Link Project Advisory Board to oversee management of the project.



Above: The North West Rail Link route.

## Project Objectives

The North West Rail Link is a priority project for the NSW Government and the biggest single public transport infrastructure project in Sydney since the Harbour Bridge opened in 1932. It aims to:

- (a) Ensure customer needs are met through the provision of a safe, high quality, integrated and affordable transport service;
- (b) Link existing communities and new growth areas in North West Sydney with jobs and services in the Global Economic Corridor (Macquarie Park –Chatswood – North Sydney – CBD – Sydney Airport);
- (c) Deliver Stage 3 (Rapid Transit System) of Sydney's Rail Future to improve transport network reliability by facilitating a shift from road to rail for trips to and from the North West and to reduce bus/road congestion and improve amenity in the Sydney CBD;
- (d) Deliver a transport service that has been informed by engagement with communities and stakeholders and represents evidence based decision making;
- (e) Contribute to environmental and social sustainability by improving liveability and minimising impacts on the environment, stakeholders and the community; and

- (f) Support the Government's challenge to accommodate population growth in the North West by increasing the potential for a range of housing and employment opportunities.

### **The trains**

As an integral part of Sydney's Rail Future, the project will feature a new generation of reliable, safe, automated, state-of-the-art rapid transit trains to Sydney – an Australian first.

Customers will benefit from a train every four minutes in peak times, or 15 trains an hour in each direction. There will be no need for a timetable – just turn up and go.

All trains on the North West Rail Link will be new, modern, "next generation" single deck rapid transit trains.

The rapid transit trains will feature:

- (a) Three doors per side per carriage – fast to get on and off;
- (b) Air conditioning;
- (c) A mixture of seating arrangements;
- (d) Plenty of grab handles for standing passengers;
- (e) Wheelchair spaces;
- (f) Priority seating areas for mobility impaired, the elderly and parents with prams;
- (g) Level access between platform and train;
- (h) Modern passenger information systems; and
- (i) Advanced train control and safety systems.



*Above: Artist's impression of a North West Rail Link automated, rapid transit train on the skytrain bridge at Rouse Hill.*

Sydney's new rapid transit trains will allow people to get on and off more quickly than double deck trains, helping to greatly increase the capacity of rapid transit when compared with Sydney's current suburban trains.

### **The stations and station precincts**

Each new station will be designed to comply with easy access guidelines and will feature CCTV monitoring, passenger drop off points, taxi and bus stops and secure storage for bicycles.

Station precincts, which include publicly accessible areas around the stations, will be designed to reflect the character of the local areas they serve and, where possible, environmentally friendly features such as natural lighting and ventilation will be used.

### Three major contracts

The North West Rail Link project is being delivered in three major contract packages:

- (a) The Tunnels and Stations Civil Works package, which is being delivered by Thiess Pty Ltd, John Holland Pty Ltd and Dragados Australia Pty Ltd (the **TSC Contractor**) under a "design and construct" (**D&C**) contract between Transport for NSW and the TSC Contractor, known as the "**TSC Project Deed**", dated 24 June 2013, valued at \$1.15 billion. The permanent physical works to be delivered under this contract are known as the Tunnels and Stations Civil Works (**TSC Works**);
- (b) The Surface and Viaduct Civil Works package, which is being delivered by Salini Impregilo S.p.A and Salini Australia Pty Ltd (the **SVC Contractor**) under a "design and construct" (**D&C**) contract between Transport for NSW and SVC Contractor, known as the "**SVC Project Deed**", dated 17 December 2013, valued at \$340 million. The permanent physical works to be delivered under this contract are known as the Surface and Viaduct Civil Works (**SVC Works**); and
- (c) The Operations, Trains and Systems package, which is delivered under a "public private partnership" (**PPP**) contract between Transport for NSW and NRT Pty Ltd in its own capacity and as trustee of the NRT Unit Trust (**OpCo**), known as the **OTS Project Deed**, dated 15 September 2014, valued at \$3.7 billion. The permanent physical works to be delivered under this contract are known as the Operations, Trains and Systems Works (**OTS Works**). The OTS Works include the physical works required to make the existing Epping to Chatswood railway suitable for rapid transit trains (**Epping to Chatswood railway Works**).

Together, these three packages of work will deliver the North West Rail Link between Cudgegong Road, Rouse Hill and Chatswood.

The OTS PPP is the term used to describe that part of the project that will be performed under the OTS Project Deed. It includes the design and construction of the OTS Works, the commissioning of the North West Rail Link, and the operation and maintenance of the North West Rail Link for an expected period of 15 years.



*Photo above: NSW Premier The Hon Mike Baird and Transport Minister the Hon Gladys Berejiklian at the start of tunnelling works, 8 September 2014.*

### **The Operations, Trains and Systems PPP procurement process**

On 15 February 2013, the NSW Government announced that the following three consortia lodged expressions of interest for the OTS PPP:

The consortia were:

- (a) Northwest Rapid Transit – MTR Corporation (Australia), John Holland, Leighton Contractors, UGL Rail Services, and Plenary Group;
- (b) TransForm – Serco Australia, Bombardier Transportation Australia, SNC-Lavalin Capital, McConnell Dowell Constructors (Aust), John Laing Investments, and Macquarie Capital Group; and
- (c) The Pulse Consortium – Keolis Australia, Downer EDI, Obrascon Huarte Lain, Ansaldo STS Australia, Mitsubishi Corporation, Bank of Tokyo-Mitsubishi UFJ and InfraRed Capital Partners.

On 30 April 2013, following an extensive expression of interest evaluation process, Transport for NSW announced that it had shortlisted two consortia to move forward and issued requests for proposals to be submitted by Northwest Rapid Transit and TransForm.



### 3. Evaluation criteria and weightings used in tender process

The evaluation criteria which were used to evaluate the proposals are set out in the table below.

**Table 1 Evaluation criteria**

Evaluation Criteria	
Number	Description
1	<p><b>Strategic vision and approach</b></p> <p>The extent to which the proponent's vision and innovative approach, including its participants' ability to work together internally, for the OTS PPP and its commitment to developing and maintaining a cooperative and responsive relationship with Transport for NSW achieves the project objectives.</p>
2	<p><b>Customer focussed outcomes during operations</b></p> <p>The extent to which the proponent's approach and operations solutions:</p> <ul style="list-style-type: none"> <li>• will deliver safe and sustainable high quality customer experience outcomes;</li> <li>• will deliver effective stakeholder and community engagement; and</li> <li>• are compatible with the wider Transport for NSW network.</li> </ul>
3	<p><b>Integrated design and optimised technical solutions</b></p> <p>The extent to which the proponent's approach and design/technical solutions support the provision of a safe, integrated, proven, innovative, sustainable and high quality rapid transit system that:</p> <ul style="list-style-type: none"> <li>• promotes customer experience;</li> <li>• enhances the urban environment; and</li> <li>• facilitates connectivity with the wider Transport for NSW network.</li> </ul>
4	<p><b>Delivery solutions</b></p> <p>The extent to which the proponent's approach, including program and strategy:</p> <ul style="list-style-type: none"> <li>• provides delivery certainty of the integrated design and optimised technical solutions, including the conversion of the Epping to Chatswood railway;</li> <li>• demonstrates: <ul style="list-style-type: none"> <li>○ a commitment to safety;</li> <li>○ how the environmental and sustainability requirements will be delivered; and</li> <li>○ an understanding of effective stakeholder and community engagement;</li> </ul> </li> <li>• demonstrates an efficient and effective means of achieving service commencement; and</li> <li>• effectively manages impacts on the wider Transport for NSW network and customers.</li> </ul>

Evaluation Criteria	
Number	Description
5	<p><b>Whole of life asset management</b></p> <p>The extent to which the proponent's approach and asset management solutions:</p> <ul style="list-style-type: none"> <li>• will ensure assets are managed and maintained on a whole of life basis consistent with the design, technical and operations solutions;</li> <li>• support the delivery of consistently high levels of performance; and</li> <li>• provide for assets to be handed back in an appropriate condition at the end of contract term.</li> </ul>
6	<p><b>Commercial acceptability to Transport for NSW</b></p> <p>The extent to which the proponent's governance, legal and commercial structures are robust, sustainable and appropriate.</p> <p>The extent to which the proposal complied with the draft Transport for NSW Project Agreements and the acceptability and value for money impact of proposed departures.</p> <p>The proponent's ability to achieve contract close in accordance with Transport for NSW's timeframe.</p>
7	<p><b>Financial sustainability of the proponent</b></p> <p>The extent to which the proponent's funding solution is robust and provides the necessary security and flexibility to respond to OTS PPP risks.</p> <p>The commitment of finance and certainty of achieving financial close in accordance with Transport for NSW's timeframe.</p> <p>The financial strength of the proponent and its key risk-bearing entities.</p>
8	<p><b>Risk-adjusted cost</b></p> <p>The extent to which the proponent's whole of life, risk-adjusted cost, taking into account the financial risks and impacts to Transport for NSW, demonstrates value for money.</p>

In evaluating proposals:

- (a) Evaluation criteria 1 to 7 were equally weighted;
- (b) Evaluation criterion 8 was evaluated on the risk-adjusted net present cost (NPC) for each eligible proposal; and
- (c) Evaluation sub-criteria were not used.

In June 2014, following the evaluation of the proposals, Transport for NSW selected Northwest Rapid Transit as the successful proponent for the OTS PPP. Following final negotiations, the OTS Project Deed was executed on 15 September 2014.



*Image above: NSW Premier The Hon. Mike Baird and Minister for Transport The Hon. Gladys Berejiklian pictured at the announcement of the awarding of Operations, Trains and Systems PPP.*

## 4. Cost benefit analysis

A business case for the project was prepared and provided a sound rationale for the North West Rail Link by concluding that the project addresses the following four critical strategic challenges facing Sydney and NSW:

- (a) Maintaining Sydney's economic growth;
- (b) Accommodating Sydney's growing population in a manner that protects Sydney's status as a world-class city;
- (c) Improving transport access to, from and within the city's North West corridor; and thereby
- (d) Making Sydney a more sustainable city.

The cost benefit analysis reported in the business case provided the following estimated economic return:

- (a) A Benefit Cost Ratio (BCR) within the range 0.9 to 1.0 using standard economic parameters that are required to be used for comparative purposes (and including wider economic impacts), and a value of 1.6 using parameters more suited to long-term rail infrastructure; and
- (b) Estimated undiscounted benefits of approximately \$39 billion, including the residual value beyond the assumed 30 year economic life but excluding wider economic impacts.

The substantial net benefits of the project included significant improvements in travel time and reduced congestion for large numbers of people, including North West Rail Link customers and other transport users.

## 5. Results of the public sector comparator

The 'Public Sector Comparator' (**PSC**) provides a hypothetical estimate of the risk adjusted cost of the project if it were to be designed, built and operated by the State. To develop the estimate, the PSC was based on a reference project developed by the State, consistent with the Specified Performance Requirements.

The PSC performs the following central roles:

- (a) provides a benchmark for assessing the net present cost of the private sector bids;
- (b) determines whether the State is receiving financial value for money derived from the procurement of the project; and
- (c) acts as a key management tool during the procurement process.

The Raw PSC is the base cost of delivering the project before any valuation of delivery and operating risks.

The Risk Adjusted PSC includes an adjustment for delivery and operating risks to be transferred under private sector delivery. The value of itemised delivery and operating risks was determined via statistical simulation using @Risk software.

The PSC used a discount rate of 5.63%, determined consistent with Infrastructure Australia's National PPP Guidelines which specify the discount rate to be the relevant jurisdiction's long-term borrowing rate, taken as the 10 year average of the 10 year NSW Treasury Corporation bond rate as advised by NSW Treasury at the commencement of procurement.

The present value of the OTS PPP was evaluated using a discount rate that included a systematic risk premium of 1.40%, in accordance with NSW Treasury policies on the assessment of complying proposals.

Table 2 provides a summary of the financial value for money analysis.

**Table 2 – Financial value for money comparison between public sector and private sector project delivery**

<b>Cost Category</b>	<b>PSC – (NPC \$m)</b>	<b>PPP (NPC \$m)</b>	<b>Difference (NPC \$m)</b>	<b>Difference (%)</b>
D&C Cost <sup>1</sup>	2,911.9	2,893.7	(-18.2)	<b>(0.5%)</b>
O&M / Lifecycle Cost	1,178.1	872.7	(-305.4)	<b>(8.1%)</b>
<b>Total costs</b>	<b>4,090.0</b>	3,766.4	(-323.6)	<b>(8.6%)</b>
Transferred Risk	488.8	Included above	-	-
<b>Total NPC</b>	<b>4,578.8</b>	<b>3,766.4</b>	(-812.4)	<b>(21.6%)</b>

The comparison of the net present cost of the PSC versus the OTS PPP show a benefit of \$812.4 million or 21.6%.

## 6. Public interest evaluation

The public interest evaluation was initially prepared as the OTS PPP contract documentation was being finalised. It has been updated as part of the contract finalisation process in September 2014. The evaluation considers each of the eight public interest criteria as set out in the *NSW Public Private Partnerships Guidelines 2012*. These include:

- (a) Effectiveness in meeting government objectives;
- (b) Achieving better value for money;
- (c) Community consultation;
- (d) Consumer rights;
- (e) Accountability and transparency;
- (f) Public access;
- (g) Health and safety; and
- (h) Privacy.

The public interest evaluation concluded that there were no significant issues identified that would preclude the public private partnership procurement for the OTS PPP component of the North West Rail Link.

The North West Rail Link will result in positive benefits to the NSW economy, the community and stakeholders. The North West Rail Link will deliver major and much-needed travel improvements to communities in North West Sydney, as well as substantial transport, economic, environmental and community benefits for the city's North West, Sydney as a whole, and the State of New South Wales.

<sup>1</sup> For PSC, D&C and O&M/Lifecycle costs are shown on a raw basis.



## 7. Risk sharing

The risk sharing arrangement is in accordance with Infrastructure Australia's National PPP Guidelines. The State seeks to achieve best value for money by allocating risks to the party best able to manage them. The risk allocation process results in various risks being:

- (a) retained by the State;
- (b) transferred to the private sector; and/or
- (c) shared between the parties.

A structured approach to the identification and analysis of potential risk and opportunities on the project was undertaken, consistent with the Australian/New Zealand Standard for Risk Management AS/NZS ISO31000.

Comprehensive risk analysis was undertaken on the project which consisted of risk identification, assessment, allocation and mitigation strategies. The Quantitative Risk Assessment (QRA) procedure undertaken was in accordance with the Australian Government Department of Infrastructure and Transport "Best Practice Cost Estimation Standard for Publicly Funded Road and Rail Construction" updated May 2011. The QRA simulation of itemised delivery and operating risks was determined via statistical simulation using @Risk software. As discussed in section 5, the results of the QRA model provides a numerical estimate of the overall effect of inherent uncertainty and contingent risk of the project, when considering risks, cost and schedule simultaneously.

The OTS Project Deed and associated documents establish the obligations of each party in managing these risks. The risk sharing arrangements for the OTS PPP are summarised in Table 3.

**Table 3 - Risk sharing**

No.	Risk category	Description	State	OpCo
Planning risk				
1.	Land acquisition	Risk associated with acquiring interests in land that Transport for NSW determines is required for the OTS PPP	□	
		Risk associated with acquiring interests in additional land that OpCo determines is required for the OTS PPP		□
2.	Planning approvals	Risk of delay to the OTS Works in reaching completion from legal challenges to the Planning Approvals obtained by Transport for NSW	□	
		Risk of obtaining planning approvals in addition to those obtained by Transport for NSW that are required for the OTS PPP		□
		Risk of delays or additional costs to OpCo arising from any modification to Planning Approvals required by OpCo		□

No.	Risk category	Description	State	OpCo
		Responsibility for complying with relevant Planning Approval conditions	<input type="checkbox"/> (as allocated in the deed)	<input type="checkbox"/> (as allocated in the deed)
3.	Licenses	Responsibility for obtaining licenses under the <i>Protection of the Environment Operations Act</i>		<input type="checkbox"/>
<b>Site risks</b>				
4.	Site conditions	Risks of geotechnical and other site conditions		<input type="checkbox"/>
5.	Contamination not caused by OpCo	Cost relating to the management and removal of existing contamination in the site and that not caused or disturbed by OpCo	<input type="checkbox"/>	
6.	Contamination for which OpCo is responsible	Cost relating to management and removal of contamination caused or disturbed by the OpCo		<input type="checkbox"/>
7.	Artefacts	Costs arising from the discovery of artefacts (above or below ground)	<input type="checkbox"/> (Costs exceeding a specified threshold)	<input type="checkbox"/> (Costs up to a specified threshold)
8.	Native Title	Risk that the site is the subject of a Native Title claim	<input type="checkbox"/>	
<b>TSC and SVC risks</b>				
9.	TSC and SVC Works technical suitability	Technical and performance requirements set out in the TSC and SVC Project Deeds are not suitable for the purpose of the OTS Project Deed		<input type="checkbox"/>
10.	Delays in handover of TSC and SVC Works	Risk of time overruns on TSC and SVC Works delaying completion of the OTS Works	<input type="checkbox"/>	
11.	TSC and SVC Works defects	Risk that a defect in the TSC or SVC Works which is not caused by OpCo delays completion or causes OpCo to incur additional costs or loss of revenue	<input type="checkbox"/>	
<b>Design, construction and commissioning risks</b>				
12.	Design risk	Risk that the design development activities cannot be completed on time and/or to budget and the design does not allow OpCo to comply with the performance requirements of the OTS		<input type="checkbox"/>

No.	Risk category	Description	State	OpCo
		Project Deed		
13.	Construction risk	Risk that construction activities cannot be completed on time and/or to budget		<input type="checkbox"/>
14.	Design and construction interfaces	Overall management of interfaces to deliver the OTS PPP		<input type="checkbox"/>
15.	Defects risk	Risk that defects are identified following completion of construction (other than defects in the Civil Works that are not caused by OpCo)		<input type="checkbox"/>
16.	Equipment	Responsibility for the selection, procurement and maintenance of equipment		<input type="checkbox"/>
17.	Fit for purpose (commissioning)	Risk that the OTS PPP is not constructed so as to be fit for purpose or does not comply with contractual obligations		<input type="checkbox"/>
18.	Commissioning	Risk that the OTS PPP cannot be commissioned in accordance with the agreed commissioning criteria		<input type="checkbox"/>
19.	Electricity supply costs prior to completion of construction	Risk of change in the cost and volume of consumption prior to completion of construction		<input type="checkbox"/>
Epping to Chatswood railway				
20.	Epping to Chatswood railway infrastructure	Risk that the Epping to Chatswood railway infrastructure, other than specified risk for which Transport for NSW has taken responsibility, is not suitable for the purposes of the OTS PPP		<input type="checkbox"/>
		Risk that any site conditions of the Epping to Chatswood railway that differ materially from what is disclosed in the information documents cause delay or increased costs	<input type="checkbox"/> (except to the extent such difference should have been anticipated by a competent contractor)	<input type="checkbox"/> (to the extent such difference should have been anticipated by a competent contractor)
		Risk that OpCo is required to carry out rectification work on concrete in the Lane Cove cut and cover tunnel for reasons of structural integrity and/or impacts to passenger services	<input type="checkbox"/>	

No.	Risk category	Description	State	OpCo
		Risk that water ingress exceeds the design capacity of a localised water sump within the Epping to Chatswood railway	□	
		Risk that a cavern panel or other attachment falls from the ceiling or walls of the Epping to Chatswood railway tunnel or an Epping to Chatswood railway station due to failure of one or more fixings (and where such a failure occurs during the operations phase, it could not have been predicted or avoided through the normal inspection and replacement regime)	□	
		Risk that, during the delivery phase, more than 200 metres or 10 separate sections of rail within the Epping to Chatswood railway requires replacement	□	
		Risk that, during the delivery phase, more than 250 rail fixation fasteners within the Epping to Chatswood railway require replacement	□	
		Risk that, during the delivery phase, more than 50 dampers within the Epping to Chatswood railway require replacement	□	
		Risk that Sydney Trains fails to maintain the Epping to Chatswood railway in accordance with the Epping to Chatswood railway asset maintenance plan up to the date of handover	□	
21.	Epping to Chatswood railway works	Risk that weekend Epping to Chatswood railway possessions and the Epping to Chatswood railway shutdown period is insufficient to carry out OpCo's Epping to Chatswood railway Works		□
Operational risks				
22.	Fit for purpose/ability to meet performance requirements and service levels	Risk that the design and technology of the OTS PPP is not able to deliver the services and/or is not fit for purpose at the required service levels		□
23.	Adequacy of performance requirements and service levels	Specified performance requirements and service levels are not appropriate or sufficient to meet demand requirements	□	

No.	Risk category	Description	State	OpCo
24.	Operational interfaces	Risks associated with managing interfaces with third parties (e.g. other transport providers, utilities, adjoining property owners, etc.)		<input type="checkbox"/>
25.	Ticketing	Provision and performance of the electronic ticketing system	<input type="checkbox"/> (Ticket sales and equipment)	<input type="checkbox"/> (Provision of power and communications)
26.	Revenue protection (fare enforcement)	Risks associated with the provision of fare enforcement functions (e.g. inspection of tickets, issuing and prosecution of infringements, etc.)	<input type="checkbox"/>	
27.	Operational costs	Risk that operational costs exceed budgeted cost over the operating phase of the OTS PPP		<input type="checkbox"/>
28.	Lifecycle costs	Risks associated with the replacement and refurbishment of the assets over the operating phase of the OTS PPP		<input type="checkbox"/>
29.	Customer and station KPIs	Meeting required standards with respect to customer and station Key Performance Indicators (KPIs)		<input type="checkbox"/>
30.	Electricity supply costs after completion of construction	Risk of change in the cost and volume of consumption after completion of construction	<input type="checkbox"/>	
<b>Asset management risks</b>				
31.	Asset Information System	Responsibility for the North West Rail Link asset information system		<input type="checkbox"/>
32.	Asset performance and cost	Costs of maintenance and performance of assets		<input type="checkbox"/>
33.	Residual life and handover risk	Risks associated with satisfying the State's requirements regarding asset condition and residual design life at the end of the term		<input type="checkbox"/>
<b>Change in law or policy risks</b>				
34.	Changes in law or policy	Risk that a change in legislation/ regulations, State policy or quality standards will impact the design or construction of the OTS PPP or provision of the services	<input type="checkbox"/> (Costs exceeding a specified threshold)	<input type="checkbox"/> (Costs up to a specified threshold)



No.	Risk category	Description	State	OpCo
35.	Tax risk	Risk of changes in income tax, GST or the introduction of a tax		<input type="checkbox"/>
Force majeure				
36.	Force majeure	Risk that a force majeure event will prevent OpCo from performing its obligations under the OTS Project Deed	<input type="checkbox"/>	<input type="checkbox"/>
Finance risk				
37.	Funding risk	Risk of providing funds to meet design and construction costs of the OTS PPP		<input type="checkbox"/>
38.	Base interest rate risk	Risk of movements in base interest rates	<input type="checkbox"/> (After two years post completion of construction)	<input type="checkbox"/> (financial close to two years post completion of construction)
39.	Foreign exchange risk	Risk of movements in foreign exchange rates	<input type="checkbox"/> (If certain pre-agreed options are exercised or an Augmentation proposal is accepted by Transport for NSW)	<input type="checkbox"/> (All other risk of movements in foreign exchange rates)
40.	Insurance availability risk	Risk of inability to obtain insurance required to design, deliver, operate and maintain NWRL	<input type="checkbox"/> (to extent risk becomes uninsurable)	<input type="checkbox"/> (to extent risk remains insurable)
41.	Insurance premium risk	Risk of material increases in insurance premiums required to design, deliver, operate and maintain the NWRL	<input type="checkbox"/> (Industrial special risks, public and products liability and professional indemnity insurances during operations phase)	<input type="checkbox"/> (all other insurances)

# Overview of the Operations Trains and Systems PPP

## 8. Participants in the OTS PPP

### Public sector parties to the contracts

The public sector parties to the Operations Trains and Systems PPP are:

- (a) **Transport for New South Wales** (ABN 18 804 239 602), a NSW Government Agency established by section 3C of the *Transport Administration Act 1988* (NSW); and
- (b) The **NSW Treasurer**, for and on behalf of the **State of New South Wales**, who has executed a guarantee by the State of Transport for NSW's performance of its obligations under several of the project's contracts, see section 30 of this report.

### Private sector parties to the contracts

The main private sector parties are:

- (a) **OpCo group**

**NRT Pty Ltd** (ACN 166 610 313) in its own capacity and as trustee of the **NRT Unit Trust** (ABN 47 312 495 249) (**OpCo**). OpCo is the private sector counterparty to the OTS Project Deed and various other project agreements. The **NRT Unit Trust** was established on 4 September 2014, under the **NRT Unit Trust Deed**.

All of the shares in NRT Pty Ltd, and all of the units in NRT Unit Trust, are held by **NRT Holdings Pty Ltd** (ACN 166 608 091) as the trustee of **NRT Holdings Unit Trust (OpCo HoldCo)**. **NRT Holdings Unit Trust** was established on 4 September 2014, under the **NRT Holdings Unit Trust Deed**.

All of the shares in NRT Holdings Pty Ltd, and all of the units in NRT Holding Unit Trust, are held by **NRT Holdings 2 Pty Ltd** (ACN 600 974 258) in its own capacity and as trustee of **NRT Holdings 2 Unit Trust (OpCo HoldCo 2)**. **NRT Holdings 2 Unit Trust** was established on 4 September 2014, under the **NRT Holdings 2 Unit Trust Deed**.

- (b) **OpCo group equity investors**

On the date of financial close, 18 September 2014, the units in **NRT Holdings 2 Unit Trust**, and the shares in **NRT Holdings 2 Pty Ltd** were held by the following:

**MTR Corporation (UK) NRT Ltd** a company incorporated in the United Kingdom, a wholly owned subsidiary of MTR Corporation (UK) Ltd, and ultimately a wholly owned subsidiary of MTR Corporation Ltd, a company incorporated in Hong Kong (20% holding);

**Leighton Infrastructure Investments Pty Ltd** (ACN 079 054 505), a wholly owned subsidiary of Leighton Contractors Pty Ltd, and ultimately a wholly owned subsidiary of Leighton Holdings Ltd, a public company listed on the Australian Stock Exchange (10% holding);

**Plenary Group Pty Ltd** (ACN 108 934 612) as trustee for the Plenary Group Unit Trust (10% holding);

**Marubeni NRT Investments Pty Ltd** (ACN 601 672 244), a wholly owned subsidiary of Marubeni Infrastructure Investments Pty Ltd, and ultimately owned by Marubeni Corporation (90% holding) and Marubeni Australia Pty Ltd (10% holding), (20% holding);

**Commonwealth Superannuation Corporation** as trustee for the **Aria Investments Trust** managed by Palisade Investment Partners Pty Ltd (10% holding);

**PASIF NRT Holdings Pty Ltd** (ACN 601 763 795), a wholly owned company of Palisade's Australian Social Infrastructure Fund 2, managed by Palisades Investment Partners Pty Ltd (10% holding); and

**Partners Group NRT Access, L.P.**, a limited partnership with 100% of the economic interest ultimately held by the Partners Group pooled partnership, (constituted as follows, 19% BVK Investment III, L.P. Inc., 9% Partners Group Infrastructure Universal, L.P. Inc., 33.5% Partners Group Global Infrastructure 2012, L.P. Inc., 38.5% Partners Group Direct Infrastructure 2011, L.P.) which in turn is managed by the Partners Group (20% holding).

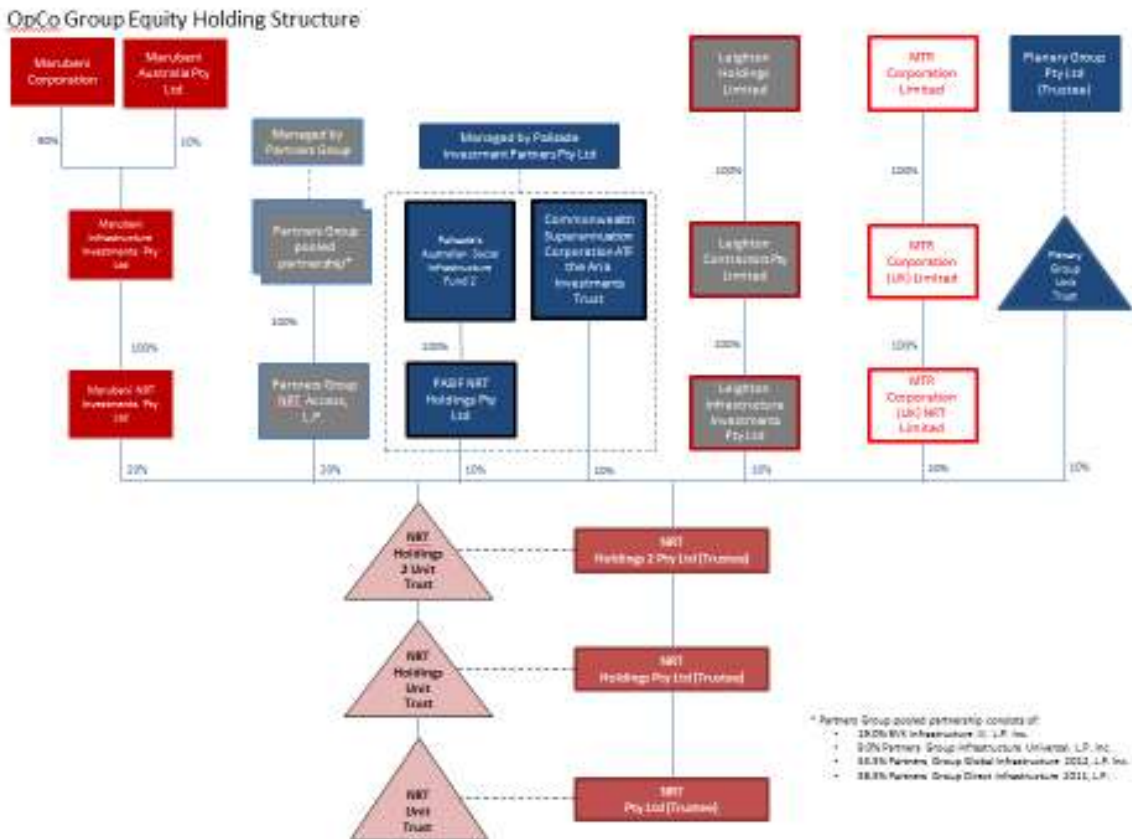
The equity investors will be responsible for contributing equity into OpCo at various stages throughout the project.

(c) **Financing entities**

**NRT Finance Pty Ltd** (ACN 600 662 342) (**Finance Co**) is a special purpose company which was established to raise debt finance for the OTS PPP and to securitise OpCo's licence payment obligations. The debt raised by Finance Co is contributed to the OTS PPP by way of a securitised licence payment structure governed by the "Securitisation Agreement", see section 9

Finance Co is a wholly owned subsidiary of **NRT Finance Holding Pty Ltd** (ACN 601 035 358) (**Finance HoldCo**). All of the shares in Finance HoldCo are held by **Perpetual Corporate Trust Ltd** (ABN 99 000 341 533) in its capacity as trustee of the NRT Charitable Trust. The NRT Charitable Trust was established on 14 August 2014, under the **NRT Charitable Trust Deed**.

**OpCo group structure diagram**



(d) **Core Contractors and Core Contractor Guarantors**

**MTR Corporation (Sydney) NRT Pty Ltd** (ABN 57 166 934 121), **John Holland Pty Ltd** (ABN 11 004 282 268), **Lighton Contractors Pty Ltd** (ABN 98 000 893 667) and **UGL Rail Services Pty Ltd** (ABN 58 000 003 136) (together, the **D&C**

**Contractor**). OpCo has subcontracted its obligations to design and construct the OTS Works to the D&C Contractor under the D&C Contract on a joint and several basis. The D&C Contractor has also entered into an associated side contract with Transport for NSW.

**Metro Trains Sydney Pty Ltd** (ACN 600 820 737) (**O&M Contractor**). OpCo has subcontracted its obligations to operate and maintain the North West Rail Link to the O&M Contractor under the O&M Contract. The O&M Contractor is owned by MTR Corporation (UK) NRT Ltd (60% holding), John Holland Sydney NRT Pty Ltd (20% holding) and UGL Rail Services Pty Ltd (20% holding). The O&M Contractor has also entered into an associated side contract with Transport for NSW.

The D&C Contractor and the O&M Contractor are collectively referred to as the **Core Contractors**.

**MTR Corporation Ltd** (a company incorporated in Hong Kong), **Leighton Holdings Ltd** (ABN 57 004 482 982) and **UGL Ltd** (ABN 85 009 180 287) (each a **D&C Guarantor** and **O&M Guarantor**). These guarantors have entered into parent company guarantees with OpCo to guarantee certain liabilities and obligations of each Core Contractor and have also entered into associated side contracts with Transport for NSW.

(e) **Alstom Significant Contractors and Guarantors**

**Alstom Transport Australia Pty Ltd** (ABN 68 165 157 451) (the **Alstom Significant Contractor**). The Alstom Significant Contractor has been engaged by MTR Corporation (Sydney) NRT Pty Ltd and UGL Rail Services Pty Ltd (**SJV**) to design and manufacture the trains and communications based train control systems and the O&M Contractor to provide certain through life support for the trains and communications based train control systems. It has also entered into an associated side contract with Transport for NSW.

**Alstom Holdings** (Registration number: 347951238 RSC Nanterre) (a company registered in France) (the **Alstom D&C Guarantor**) has provided a parent company guarantee to SJV in respect of the Alstom Significant Contractor's performance of its obligations to SJV in relation to the design and manufacture of the trains and communications based train control systems.

**Alstom Transport Holdings BV** (Registration number: 34308168) (a company registered in the Netherlands) (the **Alstom TLS Guarantor**) has guaranteed to the O&M Contractor in respect of the Alstom Significant Contractor's performance of its obligations to the O&M Contractor in relation to the through life support of the trains and communications based train control systems.

(f) **Civil Works Contractors**

**Impregilo S.p.A** (ABN 83 159 573 896) and **Salini Australia Pty Ltd** (ABN 86 158 955 885) (together, the **SVC Contractor**) have entered into contracts to deliver the SVC Works.

**Thiess Pty Ltd** (ABN 87 010 221 486), **John Holland Pty Ltd** (ABN 11 004 282 268) and **Dragados Australia Pty Ltd** (ABN 20 151 632 665) (together, the **TSC Contractor**) have entered into contracts to deliver the TSC Works.

The SVC Works and TSC Works are collectively referred to as the **Civil Works**, while the contractors are collectively referred to as the **Civil Works Contractors**.

(g) **Independent certifiers**

**SYSTRA SA** (ABN 68 557 615 546) and **GHD Pty Ltd** (ABN 39 008 488 373) (together, the **OTS Independent Certifier**) has been jointly engaged by Transport

for NSW and OpCo to carry out independent certification services in relation to the OTS Works.

**Hyder Consulting Pty Ltd** (ABN 76 104 485 289) (**SVC Independent Certifier**) has been engaged by Transport for NSW and the SVC Contractor to carry out independent certifications services in relation to the SVC Works.

**APP Corporation Pty Ltd** (ABN 29 003 764 770) (**TSC Independent Certifier**) has been engaged by Transport for NSW and the TSC Contractor to carry out independent certification services in relation to the TSC Works.

(h) **Debt financing parties**

**National Australia Bank Ltd** (ACN 004 044 937) has been engaged by as Security Trustee (**Security Trustee**) and as Agent (**Agent**) for the project's debt financiers and has entered into, amongst others the Syndicated Facility Agreement, the Financiers Tripartite Deed and the Security Trust Deed.

## 9. Contractual structure

Introductory summaries of the contractual structure of the OTS PPP as at 18 September 2014, in so far as the contracts affect or will potentially affect public sector rights and obligations, are summarised in an extremely simplified form below.

The principal contract is the "**Operations, Trains and Systems Project Deed**", (the **OTS Project Deed**), dated 15 September 2014, between Transport for NSW and OpCo.

This contract comprises a "Deed of Agreement", and attached to this Deed of Agreement are 46 "Schedules" and 19 "Exhibits", and the complete contract is described in this report simply as the OTS Project Deed.

The OTS Project Deed sets out the terms under which:

- (a) OpCo must finance, or procure finance for, the OTS PPP;
- (b) OpCo must design and construct the OTS Works and operate and maintain the North West Rail Link; and
- (c) OpCo must hand the North West Rail Link back to Transport for NSW at the end of the contract term.

OpCo will satisfy its obligation to finance, or procure finance for, the OTS PPP through:

- (a) Equity investments by the project's equity investors.

In line with the *NSW Public Private Partnerships Guidelines 2012* and the express confidentiality provisions of the projects contracts, see section 10, the details of the project's equity investments are generally beyond the scope of this summary.

- (b) Loans to Finance Co and the securitisation of OpCo's licence payment obligations.

Finance Co, OpCo and Transport for NSW have entered into the "**Securitisation Agreement**" dated 15 September 2014 under which Finance Co will purchase Transport for NSW's right to receive licence payments payable by OpCo under the OTS Project Deed in respect of the licensed maintenance area and additional maintained assets. In consideration for the assignment of the right to receive the licence payments, Finance Co pays Transport for NSW monthly 'receivables purchase payments'. Transport for NSW uses the 'receivables purchase payments' to fund its obligation under the OTS Project Deed to pay OpCo the 'construction payments B' - see section 17.



Finance Co will borrow the funds which it needs to pay each 'receivables purchase payment' from a syndicate of lenders under the "**North West Rail Link Operations, Trains and Systems (OTS) PPP Project - Syndicated Facility Agreement**" dated 17 September 2014 (**Syndicated Facility Agreement**). Finance Co uses the licence payments it receives from OpCo as a result of the assignment described above to service the debt it borrows under the Syndicated Facility Agreement.

The "**NRT Payment Directions Deed**" entered into by Transport for NSW, OpCo, Finance Co and National Australia Bank Ltd (as **Agent** and **Security Trustee**) on 17 September 2014, is an ancillary document to the Securitisation Agreement which allows the various securitisation related payments to be made directly from the original party making the payment to the end recipient, without the need for separate intervening transfers between the parties.

In addition, there are intercompany loans in place between OpCo and Finance Co pursuant to which debt raised by Finance Co can be on-lent to OpCo outside of the securitised licence payment structure as required.

In line with the *NSW Public Private Partnerships Guidelines 2012* and the express confidentiality provisions of the projects contracts, see section 10, the details of the project's debt financing arrangements, are generally beyond the scope of this summary.

OpCo will satisfy its obligations to design and construct the OTS Works and operate and maintain the North West Rail Link through:

- (a) The performance by the D&C Contractor of their joint and several obligations to OpCo to design and construct the OTS Works, including the trains and stations under the "**North West Rail Link - Operations, Trains and Systems D&C Contract**" (**D&C Contract**) between OpCo and the D&C Contractor, dated 16 September 2014.
- (b) The performance by the O&M Contractor of its obligations to OpCo to operate and maintain the North West Rail Link and electronic ticketing system equipment under the "**North West Rail Link Operations, Trains and Systems O&M Contract**" (**O&M Contract**) between OpCo and the O&M Contractor, dated 16 September 2014.

The D&C Contract and O&M Contract are collectively referred to as the **Core Contracts**.

- (c) The performance by each Core Contractor of their obligations to OpCo to cooperate and liaise with each other as set out under the "**Interface Deed**" between OpCo and each Core Contractor, dated 16 September 2014. This deed resolves key subcontract interface issues such as input into design documentation and project plans, consultation, maintenance, and responsibility for approvals.
- (d) The performance by the Alstom Significant Contractor of its obligations to the SJV and the O&M Contractor to design, manufacture and provide through life support for the trains and communications based train control systems under the "**North West Rail Link - Significant Contract (Trains and CBTC)**" (**Alstom D&C Significant Contract**), dated 15 September 2014 and the "**North West Rail Link - Through Life Support Deed (Trains and CBTC)**" (**Alstom TLS Significant Contract**), dated 16 September 2014.

The Alstom D&C Significant Contract and Alstom TLS Significant Contract are collectively referred to as the **Alstom Significant Contracts**.

Each Core Contractor's performance of its obligations to OpCo under the respective Core Contracts has been guaranteed to OpCo through parent company guarantees, made by each D&C Guarantor/O&M Guarantor. The "**D&C Guarantee**", is made up of three separate guarantees, each dated 16 September 2014. The "**O&M**

**Guarantee**" is similarly made up of three separate guarantees, each dated 16 September 2014.

Similarly, the Alstom Significant Contractor's performance of its obligations to the SJV under the Alstom D&C Significant Contract has been guaranteed to the SJV by the Alstom D&C Guarantor in the "**Significant Contractor (Trains and CBTC) Guarantee**" (**Alstom D&C Guarantee**), dated 16 September 2014. While the Alstom Significant Contractor's performance of its obligations to the O&M Contractor under the Alstom TLS Significant Contract has been guaranteed to O&M Contractor by the Alstom TLS Guarantor, in the "**TLS Significant Contractor Guarantee**" (**Alstom TLS Guarantee**), dated 16 September 2014.

In the event of any default by OpCo under a Core Contract or where the OTS Project Deed is terminated, Transport for NSW will be entitled, under the "**OTS D&C Contract Side Deed**", dated 16 September 2014 and the "**OTS O&M Contract Side Deed**" dated 16 September 2014 (**Core Contractor Side Deeds**) to 'step-in' and effectively assume OpCo's rights and obligations under each Core Contract.

Similarly, in the event of any default by SJV or the O&M Contractor under the Alstom Significant Contracts or where the OTS Project Deed and Core Contracts are terminated, Transport for NSW will be entitled under the "**OTS TLS Significant Contract Side Deed**", dated 16 September 2014, and the "**OTS D&C Significant Contract Side Deed**" (**Alstom Significant Contract Side Deeds**), dated 16 September 2014 to 'step-in' and effectively assume the SJV's or O&M Contractor's rights and obligations under the Alstom Significant Contracts.

- (e) The performance by the OTS Independent Certifier of its obligation to provide independent certification of the OTS Works under the "**OTS Independent Certifier Deed**" dated 16 September 2014 between Transport for NSW, OpCo and the OTS Independent Certifier.
- (f) The performance by the SVC Independent Certifier and TSC Independent Certifier of their obligations to provide independent certification of the Civil Works under the "**Surface and Viaduct Civil Works Independent Certifier Deed**" dated 17 December 2013 between Transport for NSW, the SVC Contractor and the SVC Independent Certifier and the "**Tunnels and Stations Civil Works Independent Certifier Deed**" dated 24 June 2013 between Transport for NSW, the TSC Contractor and the TSC Independent Certifier.

Throughout the term, the SVC Independent Certifier and TSC Independent Certifier will perform certification functions with respect to the Civil Works, including for example issuing notices of construction completion. OpCo is bound by these certifications for the purpose of taking possession of parts of the construction site. OpCo acceded to these deeds on 16 September 2014 through the execution of the "**Surface and Viaduct Civil Works Independent Certifier Deed of Accession**" and the "**Tunnels and Stations Civil Works Independent Certifier Deed of Accession**" and is bound by the terms of each respective deed.

To facilitate the various interfaces associated with the project, as well as cooperation between the parties a number of additional agreements have been entered into including:

- (a) The "**Tunnels and Stations Civil Works-OTS Cooperation and Integration Deed**" between Transport for NSW and the TSC Contractor dated 24 June 2013 and the "**Surface and Viaduct Civil Works-OTS Cooperation and Integration Deed**" between Transport for NSW and the SVC Contractor dated 17 December 2013, which both facilitate the progressive handover and integration of the Civil Works. OpCo acceded to both these deeds on 16 September 2014 through the execution of the "**Tunnels and Stations Civil Works-OTS Cooperation and Integration Accession Deed**" and the "**Surface and Viaduct Civil Works-OTS Cooperation and Integration Deed Accession**".

- (b) The "**Dispute Avoidance Board Agreement**" between Transport for NSW, OpCo and Mr Ron Finlay, Ms Louise Hart and Mr John Tyrill (each a **DAB Member**), dated 15 September 2014. This agreement establishes the Dispute Avoidance Board (**DAB**) and will assist in the avoidance and effective management of disputes throughout the term of the project. It sets out the rights, obligations and duties of the each DAB Member, Transport for NSW and OpCo.
- (c) The "**Works Authorisation Deed North West Rail Link - Operations, Trains and Systems**" (**OTS WAD**), dated 11 September 2014, between Transport for NSW and Roads and Maritime Services (ABN 76 236 371 008). This agreement governs the relationship between Transport for NSW and Roads and Maritime Services and for the purposes of the *Roads Act* 1993 (NSW) authorises Transport for NSW to carry out certain of the OTS Works on roads for which Roads and Maritime Services is the road authority.
- (d) "**Blacktown Council - OTS Interface Agreement**", dated 10 September 2014, "**Hornsby Shire Council - OTS Interface Agreement**", dated 2 September 2014 and "**The Hills Shire Council -OTS Interface Agreement**", dated 3 September 2014, are all interface agreements between Transport for NSW and Blacktown City Council, Hornsby Shire Council and The Hills Shire Council respectively. These agreements create a co-operation protocol between OpCo and each council and set out procedures relating to the design, review, and certification process, as well as covering areas that focus on the rectification of damage and access to land and assets.

In order to set up arrangements ensuring Transport for NSW will be able to exercise its rights under the OTS Project Deed to obtain the source code of various computer programs used and developed by OpCo and its contractors, Transport for NSW has entered into an "**Escrow Agreement**" with OpCo, the Alstom Significant Contractor and Perpetual Corporate Trust Ltd (ABN 99 000 341 533) (**Escrow Agent**) dated 17 September 2014.

In addition, separate "**Deeds of Assurance**", each dated 16 September 2014, have been entered into between Transport for NSW, OpCo and Alstom Transport Australia Pty Ltd (the **Licensed IP Owner**) and between Transport for NSW, OpCo and Alstom Transport Technologies SAS (the **Licensed IP Owner**). These deeds assure Transport for NSW and any entity authorised or licensed by Transport for NSW that Transport for NSW may continue exercising its rights under the OTS Project Deed licence, notwithstanding any change affecting the Licensed IP Owner's direct or indirect relationship with OpCo.

In light of Transport for NSW considering a possible Augmentation to the North West Rail Link involving a new rapid transit line under Sydney Harbour, through the CBD and to Bankstown, see section 20. Transport for NSW and OpCo have established a cooperative and consultative process by which they can work together on the project definition, development and delivery. The Alstom Significant Contractor has agreed under the "**Augmentation Supply Direct Deed**", dated 16 September 2014, to grant Transport for NSW and OpCo certain rights in relation to an Augmentation.

The "**Equity Purchase Deed**" was also entered into by Transport for NSW, OpCo and OpCo HoldCo, dated 15 September 2014. OpCo HoldCo is the registered holder and beneficial owner of all of the shares in the capital of NRT Pty Ltd and all of the units in the NRT Unit Trust (**Option Securities**). This deed, confers on Transport for NSW the right to purchase from OpCo HoldCo the Option Securities, and sets out the related terms and conditions on when this right may be exercised by Transport for NSW.

Some of Transport for NSW's rights and obligations under the OTS Project Deed, each Core Contractor Side Deed and each Alstom Significant Contract Side Deed are subject to restrictions or additional process requirements under the "**Financier's Tripartite Deed**" between Transport for NSW, OpCo, Finance Co, the Security Trustee, the Agent, and National Australia Bank Ltd (Account Bank), dated 17 September 2014. As an example, this agreement requires Transport for NSW to notify the Security Trustee/Agent before it terminates the OTS Project Deed for a default by OpCo, giving the Security Trustee an opportunity to cure the default. Priorities between Transport for NSW's charges and securities held by the projects private sector debt financiers are also governed by the Financier's Tripartite Deed.

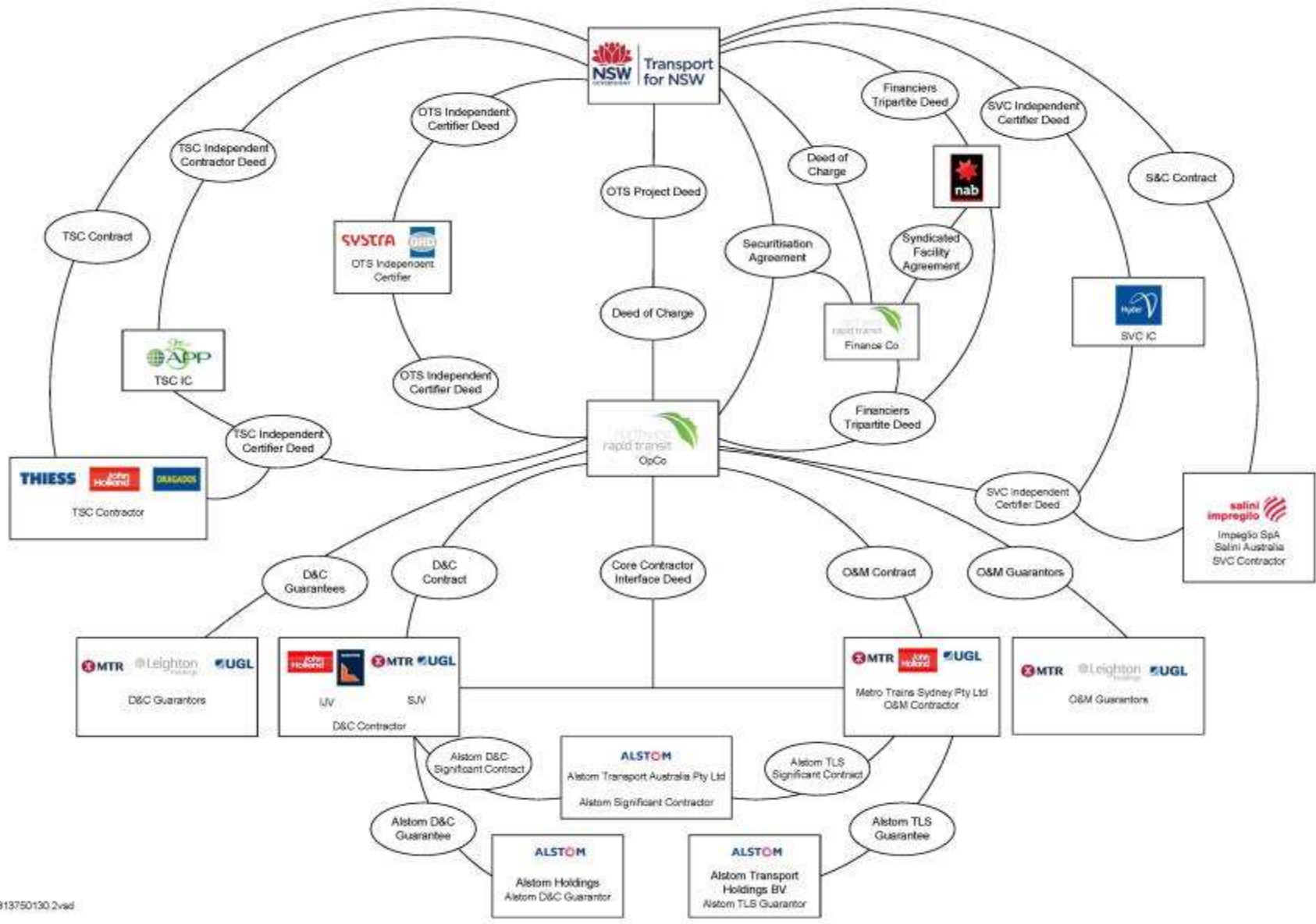
Several charges have been entered into to secure Transport for NSW's rights relating to the OTS PPP. These include:

- (a) The "**Deed of Charge - NRT**" (**OpCo Deed of Charge**) between Transport for NSW and OpCo, dated 15 September 2014, which secures all of the obligations of OpCo to Transport for NSW under the project contracts by charges over the assets, undertakings and rights of OpCo;
- (b) The "**Deed of Charge - NRT Finance**" (**FinCo Deed of Charge**) between Transport for NSW and Finance Co, dated 15 September 2014, which secures all of the obligations of Finance Co to Transport for NSW under the Securitisation Agreement, NRT Payments Direction Deed and Financiers Tripartite Deed by charges over any of the assets, undertakings and rights of Finance Co; and
- (c) The "**Deed of Charge - O&M Contractor**" (**O&M Deed of Charge**) between Transport for NSW and the O&M Contractor, dated 16 September 2014, which secures the O&M Contractor's return to OpCo of the North West Rail Link and any electronic ticketing system equipment and requires the O&M Contractor to transfer all of its rights, title and interests (if any) in the assets to OpCo free from any security interests. This charge is a specific security interest over Transport for NSW's assets and a featherweight security interest over all present and after acquired property, interests, rights and proceeds in respect of which the O&M Contractor has right to grant a charge over.

Under the "**PAFA Act Deed Poll of Guarantee**" (**PAFA Act Guarantee**) executed by the NSW Treasurer (on behalf of the State of NSW), in favour of OpCo, OpCo HoldCo, Finance Co and the Security Trustee, dated 15 September 2014, the State of NSW provides a guarantee of Transport for NSW's obligations. See section 30 for further information.

The contracts (listed above) to which Transport for NSW is a party (amongst others) are referred to as the Transport for NSW Project Agreements throughout this report.

A diagrammatic representation of the contract structure appears below. It shows the main contracts only.



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## 10. Confidentiality and excluded material

Under their own terms all of the North West Rail Link major contracts and associated documents to which Transport for NSW is a party - including the OTS Project Deed may be publicly disclosed by Transport for NSW, provided in all cases Transport for NSW redacts any commercially sensitive information.

Each category of commercially sensitive information is summarised below.

The OTS Project Deed prohibits the release, except in specified circumstances, of information revealing:

- (a) The private sector debt financier's fees and margins;
- (b) OpCo's financing arrangements;
- (c) The cost structures, profit margins and intellectual property of OpCo and its subcontractors;
- (d) The private sector participants' "base case" financial model for the OTS PPP;
- (e) Specified monetary thresholds relating to site condition risks, the provision of security bonds, civil penalties and interference payments;
- (f) The terms of the equity investments in the OTS PPP;
- (g) The terms of the project contracts to which Transport for NSW is not a party;
- (h) The terms of the projects' insurance policies;
- (i) Any terms that could prejudice the legitimate business, commercial, professional or financial interests of a party to the project contracts; or
- (j) Any terms where disclosure would place a party to a project contract at a substantial commercial disadvantage in projects of a similar nature.

These confidentiality restrictions do not apply, however, to any disclosures of information by Transport for NSW, the State or any public authority as required under *the Government Information (Public Access) Act 2009* (NSW) or as required to satisfy the requirements of the NSW Auditor General or parliamentary accountability.

## 11. Auditor General's function

The Auditor General's ability to carry out the audit functions under the *Public Finance and Audit Act 1983* (NSW) have not been diminished by any of the North West Rail Link OTS PPP contracts.



## Elements of the OTS Project Deed and related agreements

### 12. Contract term and asset transfers

#### Term

Upon execution of the OTS Project Deed on 15<sup>th</sup> September 2014, certain provisions of the contract took effect immediately; these are referred to as "day 1 clauses". The remaining provisions came into effect on the 18<sup>th</sup> September 2014, when all conditions precedent had been satisfied (or waived). Except for the day 1 clauses, the term of the OTS Project Deed commenced on 18 September 2014 and will expire on 7 April 2034.

Transport for NSW is entitled under the OTS Project Deed to extend the term of the OTS PPP for a period of up to two years.

#### Asset transfers

All works and assets which are affixed to the North West Rail Link site will become and remain the property of the owner of the relevant land from the time they are affixed. For example, this will include the stations, station precincts and railway track.

OpCo must ensure that ownership of the moveable assets, including the trains, spares, special tools and equipment and other chattels forming part of the works (but excluding any hired assets), transfers to Transport for NSW, at no cost, on the date on which OpCo acquires the relevant moveable asset, free from any security interests (other than permitted security interests).

At the end of the term OpCo must transfer, at no cost, all of OpCo's rights and interests in the assets to Transport for NSW (or its nominee) free from any security interest and in a state which complies with the requirements of the OTS Project Deed.

See section 26 below for further details regarding the transfer and use of assets by OpCo and its contractors.

### 13. Primary obligations

OpCo's primary obligations under the OTS Project Deed are to:

- (a) Finance, or procure finance for, the OTS PPP;
- (b) Design and construct the OTS Works;
- (c) Operate and maintain the North West Rail Link during the contract term; and
- (d) Hand the North West Rail Link back to Transport for NSW at the end of the contract term.

Transport for NSW's primary obligations under the OTS Project Deed are to:

- (a) Grant OpCo licences to use and occupy:
  - (i) The construction site;
  - (ii) The licensed maintenance areas; and
  - (iii) Specified assets which OpCo must maintain;
- (b) Procure the design and construction of the TSC Works and the SVC Works;
- (c) Undertake the Transport for NSW Epping to Chatswood railway Works; and

- (d) Make various payments to OpCo, which are explained in more detail in section 17 below.

## 14. Activities of Transport for NSW and OpCo during the construction period

### OpCo construction works

OpCo is responsible for the design and construction of the OTS Works, which comprise:

- (a) The trains;
- (b) New stations at Cherrybrook, Castle Hill, Showground, Norwest, Bella Vista, Kellyville, Rouse Hill and Cudgegong Road;
- (c) Station precincts, which includes publicly accessible areas around the stations;
- (d) Stabling and maintenance facility at Tallawong Road, Rouse Hill (the **Rapid Transit Rail Facility**);
- (e) Works on the Epping to Chatswood railway, including works to rail systems, stations and rail infrastructure from near Epping Station to Chatswood Station for the conversion and integration of the Epping to Chatswood railway into the North West Rail Link;
- (f) Works on the electronic ticketing system, including all works associated with the integration of civil and cabling works, such as power supply and data communication that relates to the electronic ticketing equipment, as well as the testing and commissioning of this equipment;
- (g) Modification, reinstatement and improvement of local areas, including all public spaces, parks, pedestrian ways, pedal cycle paths, and roads which are in any way affected by the works undertaken by OpCo (**Local Area Works**);
- (h) Works required for existing buildings and infrastructure or to property identified in the OTS Project Deed (**Property Works**); and
- (i) Any modification or relocation of any service, facility or item of infrastructure for the provision and measurement of water, electricity, gas, ethane, fuel, telephone, drainage, sewerage, industrial waste disposal and electronic communication service (**Utility Service Works**).

During the construction phase OpCo must:

- (a) Construct the OTS Works and the Temporary Works in accordance with the OTS Project Deed (including the Scope and Performance Requirements (**SPR**)), the final design documentation and any modifications directed or approved by Transport for NSW;
- (b) Use good workmanship and materials, which comply with the standards set out in the SPR, and which are free from defects; and
- (c) Meet all sustainability requirements specified in the SPR.

OpCo warrants that the OTS Works will, upon completion and during the term, be fit for their intended purpose.

### Transport for NSW construction works

Transport for NSW is responsible for the design and construction of the following works:

- (a) The SVC Works, see section 2;
- (b) The TSC Works, see section 2; and
- (c) The Transport for NSW Epping to Chatswood railway Works, which are works within the Epping to Chatswood railway to segregate the existing systems from the current Sydney Trains network.

As mentioned above, Transport for NSW has engaged the TSC Contractor to design and construct the TSC Works, and has engaged the SVC Contractor to design and construct the SVC Works.

Transport for NSW will engage Sydney Trains and third party contractors (via a tender process) to design and construct various aspects of the Transport for NSW Epping to Chatswood railway Works.

### **Laws and approvals**

In performing its activities, OpCo must comply with all applicable laws including those relating to environmental heritage. Transport for NSW has obtained the planning approvals required for the OTS PPP. Transport for NSW bears risk of any legal challenge to these planning approvals.

OpCo is responsible for:

- (a) Obtaining all other approvals;
- (b) Obtaining licences under the *Protection of the Environment Operations Act 1997* (NSW); and
- (c) Complying with all conditions of all approvals (other than those conditions of the planning approvals which Transport for NSW has specifically agreed to comply with).

### **North West Rail Link site**

Transport for NSW has acquired what is known as the North West Rail Link site, which includes the areas earlier referred to as the construction site and the licensed maintenance area.

Transport for NSW has granted to OpCo a non-exclusive licence to use and occupy the construction site during the delivery phase and the licensed maintenance area and additional maintained assets during the operations phase. If a 'relief event', see section 18, causes OpCo to require access to part of the construction site after the scheduled site access expiry date and an extension will not delay OpCo in achieving completion, Transport for NSW may extend the site access period.

Any archaeological or heritage artefacts discovered on or under the North West Rail Link site will, (as between Transport for NSW and OpCo) be the absolute property of Transport for NSW. OpCo must immediately notify Transport for NSW if any artefacts are discovered, protect them and comply with any Transport for NSW instructions, including any directions to suspend work.

### **Progressive handover of construction site**

Transport for NSW will hand over the construction site in stages, corresponding with the program for completion of the Civil Works (the Epping to Chatswood railway will be handed over in accordance with a separate regime). Upon completion of each stage of Civil Works, Transport for NSW will receive the relevant site from the Civil Works Contractor and hand it over to OpCo. The relevant Civil Works Independent Certifier will be responsible for certifying when a portion of Civil Works has achieved completion.

If Transport for NSW fails to give OpCo access to the construction site by the agreed date (with the relevant portions of Civil Works completed), this will be what is referred to as a 'compensation event', see section 19 of this report.

Transport for NSW may at any stage initiate discussions with OpCo that relate to bringing forward the site access dates for various parts of the construction site.

### **Time**

OpCo is obliged to use its best endeavours to achieve completion of the OTS Works by the 'date for completion', being 7 April 2019. A failure by OpCo to use its best endeavours to

achieve timely completion will entitle Transport for NSW to claim general damages for breach of contract.

If OpCo is delayed in achieving completion by a 'relief event', see section 18, OpCo may make a claim for an extension of time. If granted and the relevant 'relief event' was also a 'compensation event', OpCo may claim for compensation in respect of the net financial impact of the period of time for which the extension of time was granted.

Transport for NSW may, in lieu of granting an extension of time, elect to compensate OpCo for the additional negative net financial impact incurred by OpCo arising from not granting OpCo an extension of time.

If OpCo fails to achieve completion within 2 years after the 'date for completion', Transport for NSW will be entitled to terminate the OTS Project Deed.

Ultimately, OpCo retains the risk of design and construction of the OTS Works not being completed on time or to budget for reasons other than a risk borne by Transport for NSW.

If OpCo becomes aware of a matter which will, or is likely to delay completion, it must notify Transport for NSW and prepare a corrective action plan in respect of the delay. OpCo must take reasonable steps to avoid or minimise the effects of any delay.

OpCo must update the delivery program regularly to reflect changes to the program, delays, corrective action plans and any other details required by Transport for NSW.

## **15. Service delivery and quality requirements**

OpCo is required to operate the North West Rail Link for the term, including the operation and maintenance of trains, stations, station precincts, station car parks and the Rapid Transit Rail Facility so that they are safe, clean, remain fit for their intended purpose and comply with the set minimum operating standards developed in accordance with the SPR.

OpCo must operate the North West Rail Link to provide train services in accordance with an indicative timetable that must comply with contract service level requirements and provide the agreed minimum required train services including additional services for specified special events. At any time during the term either OpCo or Transport for NSW may request that the parties participate in a review of the activities that OpCo must perform in connection with the operation or asset management of the North West Rail Link, including to consider factors such as improvements to reliability and modal coordination, measures to reflect patronage demand and seasonality issues, changes in demographics, land use and infrastructure, measures to overcome identified inefficiencies, customer feedback and changes to identified special events, planned service disruptions, indicative timetables, minimum operating standards and staffing levels, as well as any other factors that Transport for NSW or OpCo consider relevant.

Transport for NSW may request changes to the contract service level requirements (within specified levels and at specified incremental prices) and either party may otherwise request a modification to the service levels.

OpCo's operational responsibilities include providing real-time customer and service information, collection and protection of fare revenue, customer security, managing incidents and customer feedback.

OpCo must operate and maintain the North West Rail Link to minimise the occurrence of and to remove and rectify graffiti and vandalism to the trains, stations, electronic ticketing system equipment, station precincts and all other areas within the licensed maintenance areas excluding certain nominated areas for which they must monitor and report any graffiti and vandalism to Transport for NSW.

OpCo's monthly Service Payment will be reduced to the extent that OpCo fails to meet the service level requirements. See section 17 for further information regarding the calculation of the Service Payment.



Above: Artist's impression of a North West Rail Link rapid transit train interior.

## 16. Maintenance

OpCo must maintain the specified assets for the term so that the North West Rail Link remains fit for its purpose during the term and each asset (provided it is operated and maintained after the end of the term in accordance with the asset management system) is capable of remaining fit for its intended purpose throughout the design life of that asset, or in the case of a replacement or refurbished asset, the extended design life of that asset. OpCo must also rectify all defects (fair wear and tear excepted) within a reasonable time, subject to specified exceptions.

OpCo must maintain the minimum specified stock of spares for the assets and prepare and update the asset management plan. The asset management plan must cover all specified assets and include a maintenance works program and a replacement and refurbishment program.

OpCo must provide and maintain an asset information system. The asset information system must:

- (a) cover all assets;
- (b) record OpCo's compliance with the asset management plan, including the condition of and changes to condition of assets and the remaining life of the assets;
- (c) be capable of producing period reports that allow OpCo and Transport for NSW to monitor asset conditions and compliance; and
- (d) at all times accurately represent the true status and condition of all assets and asset management activities.

Transport for NSW is the owner of all information held within the asset information system and may access it at any time, in accordance with the SPR.

The parties will meet annually within 3 months of the end of each operating year until the end of the term to review OpCo's compliance with the maintenance work program, a program designed to identify over a 2 year period required asset management activities. If OpCo fails to comply with the program and this failure constitutes a material non-compliance with the asset management plan, this will be considered an asset management failure. If OpCo fails to remedy this failure within the required period, Transport for NSW may withhold a specified amount from the Service Payment each month until OpCo remedies the failure.

OpCo must provide to Transport for NSW's representative monthly, quarterly and annual reports on the asset management activities during the operation of the North West Rail Link. Prior to the original expiry date of the OTS Project Deed (no earlier than 18 months and no

later than 6 months), Transport for NSW's representative may procure an audit of the North West Rail Link. The auditor will inspect and assess the assets specified for handback and identify any rectification, maintenance or remediation works needed. OpCo must carry out such works to the satisfaction of the auditor.

As soon as practicable following the end of the term, an independent expert will inspect and assess the North West Rail Link and notify Transport for NSW and OpCo of the estimated cost of making good or rectifying any failure by OpCo. The amount notified by the expert will be a debt due from OpCo to Transport for NSW and Transport for NSW may deduct or set off this amount against any other amount otherwise payable to OpCo.

If the term is extended beyond the original expiry date of 7 April 2034, OpCo must ensure at this date that the specified assets are in the required state and condition and an interim inspection of the assets will be carried out.

## 17. Price

### Payment obligations

Transport for NSW must make the following payments to OpCo:

- (a) Monthly Service Payments over the operations phase, this is the primary source of payment and is set out in further detail below;
- (b) A capital contribution which equates to 50% of the total project funding requirements.<sup>2</sup> The capital contribution will be paid over the delivery phase in the form of:
  - (i) Monthly 'construction payments A' based on a fixed drawdown schedule and subject to certain conditions being met; and
  - (ii) A final completion payment;
- (c) Monthly 'construction payments B' during the delivery phase, provided Transport for NSW first receives the corresponding 'receivables purchase payment' payable by Finance Co under the Securitisation Agreement;
- (d) If certain conditions have been met between year 2 and year 4 of the operations phase, a lump sum Conditional Debt Pay Down Amount equal to the lesser of 50% of debt forecast to be outstanding, and 50% of debt actually outstanding, on the payment date; and
- (e) Any pre agreed option construction payments.

It is estimated that the net present value of the financial costs of the OTS PPP over 19.6 years to Transport for NSW is \$3,766.4 million.

### Service Payment mechanism

Monthly Service Payments will be made to OpCo once train services have commenced and they will cover OpCo's cost of financing, design, construction, asset management and performance of all operations.

The Service Payment will be determined in accordance with the payment mechanism that is designed to incentivise OpCo to deliver the project's Service Performance Requirements and includes:

- (a) A service-based payment with no demand risk, with Transport for NSW retaining revenue and the responsibility for setting fares;
- (b) A deduction regime which will reduce OpCo's Service Payment if it fails to meet Key Performance Indicators (**KPIs**) based on the project's output specification;
- (c) An asset management monitoring and retention mechanism to encourage effective stewardship of all assets; and

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<sup>2</sup> The final completion payment is included in the overall value of the capital contribution.

- (d) An appropriate “bedding in” period for the abatement regime to enable OpCo to establish its operational performance.

### **Service Payment calculation**

More specifically, the Service Payment each month is comprised of:

- (a) An indexed availability fee; plus
- (b) An indexed lifecycle component; minus
- (c) An availability deduction (measured against missed train services and closed station platforms); minus
- (d) A timeliness deduction (measured against frequency of train services and total train journey time); minus
- (e) A service quality deduction (measured against the service quality KPIs described below); minus
- (f) An asset functionality deduction (measured against the asset functionality KPIs described below); minus
- (g) An energy deduction (measured against a demand usage strategy designed to minimise network demand charges); plus
- (h) A customer satisfaction payment (measured against customer satisfaction surveys); plus
- (i) An asset management adjustment (measured against compliance with the maintenance works program); plus
- (j) The floating rate amount (measured against quarterly interest rate movements); plus
- (k) Energy consumption incentive payment (measured against an annual target electricity consumption rate).

The OTS Project Deed also sets out a regime that allows Transport for NSW to request 'service level adjustments', i.e. short and long-term adjustments to the service timetable, which will subsequently impact the calculation of the Service Payment.





Above: Artist's impression of the Macquarie Park rapid transit railway station.

### Key Performance Indicators

OpCo's performance will be assessed and measured each quarter during the operations phase) against the service quality and asset functionality KPIs set out below.

If OpCo fails to meet the required quality and asset functionality standards OpCo's Service Payment will be reduced and calculated based on the respective KPI scores and weighting up to a maximum deduction amount.

If OpCo's quality and asset functionality is scored below a specified service failure level for certain KPIs a further deduction percentage will be applied for that quarter.

Service Quality KPIs	KPI Weighting	Asset Functionality KPIs	KPI Weighting
Train cleanliness, condition and graffiti	22.5%	On-train environment (temperature and lighting)	13%
Station cleanliness, condition and graffiti	6%	Station environment (temperature and lighting)	6%
Public areas and rail corridor cleanliness, condition and graffiti	8%	Lift and escalator access	5%
Customer information during service disruptions	2%	Other assets availability (CCTV, help points, passenger information display systems, announcement units and induction loops (a communication system used to assist hearing-aid users))	7.5%
Gate management	6%		

Service Quality KPIs	KPI Weighting	Asset Functionality KPIs	KPI Weighting
Customer satisfaction survey	20%		
Complaints management	4%		
<b>Total</b>	<b>68.5%</b>		<b>31.5%</b>



Above: Artist's impression of the Macquarie Park rapid transit railway station.

## 18. Relief events

Transport for NSW recognises that there may be events out of OpCo's control, which prevent OpCo from performing its obligations.

Accordingly, the OTS Project Deed categorises each of the following as a 'relief event':

- (a) The occurrence of a 'compensation event' - see section 19 below;
- (b) Fire or explosion, flood, storm, tempest, lightning, cyclone, hurricane, mudslide, landslide, earthquake and drought (where declared as a state of emergency);
- (c) Terrorist act, war, armed conflict, riot, civil commotion;
- (d) Chemical or biological contamination, ionising radiations or contamination by radioactivity;
- (e) Failure by any authority or a provider of gas, water, sewerage, electricity or telecommunications utilities to carry out works or provide services to the North West Rail Link site that it is obliged to carry out or provide;
- (f) Any event which causes loss or damage to the OTS Works, Temporary Works, or the North West Rail Link;
- (g) Any blockage or embargo (excluding any blockade or embargo specific to OpCo or its contractors);

- (h) Any industrial action, other than industrial action that only affects OpCo or its contractors;
- (i) Any event or occurrence which deprives OpCo of access to the North West Rail Link site;
- (j) An act or omission by Transport for NSW or Sydney Trains not being an act or omission:
  - (i) Expressly permitted by the project agreements;
  - (ii) Which is within a timeframe expressly permitted by the project agreements;
  - (iii) Which is caused or contributed to by a breach of OpCo of the project agreements or any negligent or wrongful act or omission of OpCo or its associates; or
  - (iv) Which is a breach by Transport for NSW of its obligations under any project agreement.
- (k) Transport for NSW directs an amendment to the electronic ticketing system program (a program which sets out all activities and timing associated with the electronic ticketing system), because Transport for NSW is delayed in achieving completion of the Transport for NSW electronic ticketing system activities (which include all activities Transport for NSW or the electronic ticketing system contractor are required to perform that relate to the installation, testing, commissioning, operation and maintenance of the electronic ticketing system) due to an act or omission of OpCo or its contractors, or an event outside the control of Transport for NSW;
- (l) A direction by the Minister under Part 2 of the *Public Health Act 1991* (NSW) to the extent that OpCo cannot, in compliance with law, comply with a material part of its obligations,

except where the event is within the reasonable control of OpCo or its contractors or it arises as a result of an act or omission of OpCo.

If a 'relief event' occurs, OpCo must notify Transport for NSW within 20 business days that a relief event has occurred. Within 10 business days of giving this notice, OpCo must give Transport for NSW full particulars of the relief event including (to the extent practicable) details of the obligations which have been affected, steps taken to mitigate, and whether OpCo considers the event may also give rise to a 'force majeure event', see section 18.

If OpCo satisfies various notice requirements, OpCo will not be in breach of any of its obligations which are affected by the 'relief event' (other than payment obligations), but only to the extent the 'relief event' prevents OpCo from performing those obligations. OpCo must use all reasonable endeavours to mitigate the effects and, in contrast to 'compensation events', and despite the occurrence of a 'relief event', the calculation of the Service Payment during the affected period will occur as if OpCo's obligations are continuing and the Service Payment may be deducted accordingly.

Relief events do not require the parties to renegotiate the contract.

### **Force majeure events**

If a 'relief event' (other than a 'compensation event') prevents, or can reasonably be expected to prevent, OpCo from complying with a material part of its obligations under the OTS Project Deed for a continuous period exceeding 180 days then it becomes a 'force majeure event'.

If a force majeure event occurs, the parties must consult with each other in good faith to agree on appropriate measures to mitigate the effects and facilitate the continued performance of the OTS Project Deed. If the parties are unable to reach agreement on such measures, either party may terminate the OTS Project Deed, and Transport for NSW may pay a termination payment to OpCo.

Transport for NSW can suspend OpCo's right to terminate, within 20 business days of receipt of OpCo's termination notice. If Transport for NSW chooses to do this, Transport for NSW will be liable to pay OpCo certain payments during the period of suspension.

## 19. Compensation events

The OTS Project Deed also requires Transport for NSW to compensate OpCo for the net financial impact of certain events. The events that trigger this right to compensation are called 'compensation events', and include each of the following:

- (a) A breach by Transport for NSW of its obligations under the OTS Project Deed or any other project agreement;
- (b) A legal challenge to or a modification, withdrawal, revocation, replacement, invalidation or suspension of the planning approvals obtained by Transport for NSW, except to the extent that it relates to or arises out of:
  - (i) A modification requested by OpCo; or
- (c) A failure by OpCo to comply with its obligations under the OTS Project Deed; If the conditions of the planning approval obtained for the conversion of the Epping to Chatswood railway are not substantially the same as the draft Epping to Chatswood railway planning approval conditions previously provided to OpCo;
- (d) A failure by Transport for NSW to ensure other contractor activities are carried out to minimise disruption or interference to OpCo's activities or if Transport for NSW fails to ensure other contractors cooperate and comply with OpCo's accreditation obligations;
- (e) If the OTS Works, the Temporary Works or any parts of the Civil Works during the period that OpCo is responsible for them, the North West Rail Link or the North West Rail Link site are damaged by other contractors, with compensation reduced to the extent that OpCo has not complied with the interface and integration management plan and its cooperation obligations;
- (f) If the OTS Works, the Temporary Works or any parts of the Civil Works during the period that OpCo is responsible for them, the North West Rail Link or the North West Rail Link site, are damaged by the electronic ticketing system contractor, and it is necessary to reinstate that damage to ensure OpCo can comply with its obligations;
- (g) Any requirement on OpCo to provide utility services to any site located outside the North West Rail Link site or carry out works to utility services within the North West Rail Link site for the purposes of any site located outside the licensed maintenance area (that are not otherwise set out in the OTS Project Deed) for the purposes of an approval (meaning any licence, permit, consent etc. from an authority which must be obtained in order for OpCo to perform OpCo's activities, or in connection with the North West Rail Link site, or for the use and occupation of the OTS Works or North West Rail Link);
- (h) Any requirement on OpCo to comply with an environmental notice (unless the notice is in respect of contamination for which OpCo is responsible or which occurs as a result of a breach by OpCo);
- (i) A failure by Transport for NSW to give OpCo access to any construction site by the scheduled date;
- (j) Any change to the current licensed maintenance area;
- (k) The existence, creation or variation of any easement, restriction on use, covenant, agreement, lease, licence or similar arrangement burdening or benefiting the land contained in the construction site not identified OTS Project Deed and that has an adverse effect on OpCo's Activities;
- (l) If OpCo is directed to cease to perform any of OpCo's activities (or to change the way it does so) as a result of a native title claim, or to provide reasonable assistance in connection with dealing with a native title claim;
- (m) If OpCo is directed by Transport for NSW, ordered by a court or required by law to cease to perform its activities (or to change the way it does so) as a result of discovery of an artefact causing OpCo to incur additional costs exceeding a specified threshold (in aggregate);
- (n) In respect of the Civil Works:

- (i) If Transport for NSW fails to ensure each Civil Works Contractor carries out activities so as to minimise disruption, interference or adverse impact on OpCo's activities;
- (ii) A defect in the Civil Works;
- (iii) A variation of the Civil Works; and
- (iv) Damage to the OTS Works, the Temporary Works, the North West Rail Link or the North West Rail Link site by a Civil Works Contractor,

With compensation reduced to the extent that OpCo has not complied with its obligations under the interface management plan, the Surface and Viaduct Civil Works/Tunnels and Stations Civil Works OTS Cooperation and Integration Deeds or certain obligations in the OTS Project Deed;

- (o) If Transport for NSW carries out or requires OpCo to carry out additional testing;
- (p) If the OTS Works, the Temporary Works or any parts of the Civil Works during the period that OpCo is responsible for them, the North West Rail Link, the North West Rail Link site or OpCo's activities are damaged or adversely affected by any activities that Transport for NSW wishes to carry out within, adjacent to, over or under the North West Rail Link site (**Proximate Work Activity**);
- (q) Any change in the Clean Energy Law (meaning any law that introduces any tax or other binding scheme or arrangement for the purposes of reducing carbon dioxide emissions and pollutants) but only to the extent that change is not substantially the same as the legislation repealed by the Clean Energy Legislation Repeal Package (a package of 8 acts, introduced in 2014, that remove the carbon pricing mechanism);
- (r) In respect of the ECRL works and Sydney Trains interface;
  - (i) A failure by Transport for NSW to carry out the Transport for NSW Epping to Chatswood railway Works in accordance with the relevant contract requirements;
  - (ii) A failure by Transport for NSW to complete each portion of the Transport for NSW Epping to Chatswood railway Works within the set time periods;
  - (iii) A failure by Transport for NSW to promptly issue notices to OpCo and the OTS Independent Certifier when Transport for NSW considers that it has completed certain identified portions of the Transport for NSW Epping to Chatswood railway Works;
  - (iv) If the Transport for NSW Epping to Chatswood railway Works or any Sydney Trains' facilities, including railway track, stations, rolling stock, control systems, electrical power supply, signalling, or communication systems are modified by Transport for NSW after the 15 September 2014, other than as contemplated by the OTS Project Deed;
  - (v) If the OTS Works, the Temporary Works, any parts of the Civil Works during the period that OpCo is responsible for them, the North West Rail Link or the North West Rail Link site are damaged by Sydney Trains and it is necessary to reinstate that damage to ensure OpCo can comply with its obligations;
  - (vi) If Transport for NSW fails to carry out the shared asset activities as set out in OTS Project Deed;
  - (vii) If Transport for NSW fails to ensure that Sydney Trains does not relocate, modify or change the configuration of any shared assets without OpCo's prior written consent or if Transport for NSW fails to provide OpCo with all information reasonably required by OpCo to enable it to grant consent;
  - (viii) If Transport for NSW fails to ensure that Sydney Trains has ceased to operate passenger rail services on the Epping to Chatswood railway by the specified date;
  - (ix) If Sydney Trains cancels agreed track possessions or reduces the duration of an agreed track possession;

- (x) If the OTS Independent Certifier certifies during a handover inspection that Sydney Trains has not complied with the Sydney Trains Epping to Chatswood railway asset maintenance plan or has not rectified any non-conformances by the date on which control of the Epping to Chatswood railway is given to OpCo (**Handover**);
- (xi) If Transport for NSW issues to OpCo a direction to enable Transport for NSW or Sydney Trains to comply with its obligations under specified existing maintenance contracts or new third party contracts;
- (xii) If Transport for NSW or Sydney Trains or another rail entity enters into, varies or extends a lease, licence or related agreement;
- (xiii) If Transport for NSW fails to ensure that Sydney Trains comply with the delivery interface protocols;
- (xiv) If Transport for NSW fails to ensure that Sydney Trains comply with the operations interface protocols;
- (s) Creation of certain easements;
- (t) Contamination caused or disturbed by a Civil Works Contractor or certain other contractors;
- (u) A compensable change in law or NSW Government policies;
- (v) The discovery of any physical conditions and characteristics in the Epping to Chatswood railway which differ materially from what has been disclosed by Transport for NSW prior to OpCo entering into the OTS Project Deed, except to the extent it should have been anticipated by a prudent, competent and experienced contractor;
- (w) If a step-in party exercises its step-in rights (unless the step-in event was caused by a wrongful act of OpCo or any breach of the OTS Project Deed by OpCo);
- (x) If any rectification work on concrete in the Lane Cove cut and cover tunnel is required for reasons of structural integrity and/or impacts to passenger services;
- (y) If water ingress exceeds the design capacity of a localised water sump within the Epping to Chatswood railway;
- (z) A cavern panel or other attachment falls from the ceiling or walls of the Epping to Chatswood railway tunnel or an Epping to Chatswood railway station due to failure of one or more fixings;
- (aa) During the delivery phase only:
  - (i) If 200 metres (in aggregate) or more than 10 separate sections (in aggregate) of rail track within the Epping to Chatswood railway requires replacement under Sydney Trains' standards;
  - (ii) More than 250 rail fixation fasteners (in aggregate) (being the assembly connecting the track to the concrete or any part including fixings) within the Epping to Chatswood railway require replacement;
  - (iii) More than 50 dampers (in aggregate) within the Epping to Chatswood railway require replacement.

To the extent that OpCo incurs additional costs or loss of revenue and provided it complies with certain condition precedents, OpCo will receive compensation from Transport for NSW for the net financial impact of the 'compensation event'. OpCo will also receive relief from being in breach of its obligations to the extent that OpCo's non-performance is caused by the 'compensation event' and may receive an extension of time to the 'date for completion', see section 14.

However, OpCo's entitlement to compensation will be reduced to exclude any incremental costs or loss of revenue which would not have been suffered and include any cost savings which would have been derived, to the extent that the 'compensation event' arises as a result of an act or omission of OpCo or its contractors.

OpCo must take all reasonable steps to mitigate the effects of any 'compensation event' and use its best endeavours to continue to perform its obligations despite the 'compensation event'.

Compensation events do not require the parties to renegotiate the contract.

## **20. Modifications and augmentations**

### **Transport for NSW initiated modifications**

Transport for NSW may modify the OTS Project Deed requirements relating to the North West Rail Link or OpCo's activities. Transport for NSW will compensate OpCo for the net financial impact of the modification and grant any relief necessary.

### **OpCo initiated modifications**

OpCo may propose a modification to the OTS Project Deed. Transport for NSW has absolute discretion to approve or reject the proposed modification, unless it is required as a result of a change in law or NSW Government policy. OpCo bears all risk and costs associated with a modification proposed by OpCo (unless otherwise agreed by Transport for NSW).

### **Pre-agreed options**

Transport for NSW and OpCo have negotiated a number of pre-agreed options that have the potential to expand or reduce the scope of works for the North West Rail Link. These include:

- (a) the design of a subsurface pedestrian link at Norwest Station;
- (b) the construction, operation and maintenance of a subsurface pedestrian link at Norwest Station;
- (c) the design of a subsurface pedestrian link at Castle Hill Station;
- (d) the construction, operation and maintenance of a subsurface pedestrian link at Castle Hill Station;
- (e) the deletion of the multi-deck and on grade car parks at Bella Vista Station;
- (f) the deletion of the multi-deck car parks at Showground Station;
- (g) increases to the service change limitations; future proofing trains for 25kV AC traction power supply; and
- (h) early opening of the Rouse Hill precinct.

Transport for NSW may, in its absolute discretion, at any time prior to each option's set election date, direct OpCo (by giving notice) to implement any pre-agreed option. The pre-agreed options do not in any way limit Transport for NSW's right to engage other contractors, or to initiate a modification or Augmentation to complete the work identified in the pre-agreed options.

### **Augmentations**

The OTS Project Deed establishes a framework by which an Augmentation can be discussed and potentially agreed upon by the parties. An Augmentation is a continuous extension to the rail infrastructure and/or systems of the North West Rail Link to form a single, integrated operational extended rapid transit rail line. It is distinct from a modification, which are generally variations within the scope of works contemplated by the parties.

Transport for NSW may at any time propose an Augmentation to OpCo. If Transport for NSW proposes but does not proceed with an Augmentation, Transport for NSW must reimburse OpCo for reasonable third party costs incurred in the preparation of related proposals.



## Major augmentation

The OTS Project Deed also acknowledges that Transport for NSW is currently considering the possible extension of the North West Rail Link involving a new rapid transit line under Sydney Harbour, through the CBD (including three new underground CBD railway stations) and to Bankstown.

Due to the size and nature of this Augmentation, an alternative discussion and review process is established that sets out how the parties can work together on the project definition, planning, development and delivery of this particular Augmentation.

## 21. Defaults under the OTS Project Deed

### OpCo event of default

Each of the following will be an 'OpCo event of default':

- (a) Any failure by OpCo to regularly and diligently progress all the activities OpCo is required to perform in connection with the design and construction of the OTS Works (**the Delivery Activities**);
- (b) Any failure by any of the projects debt financiers and equity investors to provide all of the funding contemplated under the set debt financing documents or the equity documents;
- (c) Availability of train services falls below a specified level;
- (d) Timeliness of train services falls below a specified level;
- (e) Service quality or asset functionality falls below specified levels;
- (f) Any failure by OpCo to make a due payment, if this failure is not remedied within 20 business days of a written demand from Transport for NSW;
- (g) Any material failure by OpCo to comply with the asset management plan and subsequent failure to rectify it within 6 months of expiry of the set remediation period;
- (h) Any breach by OpCo's reporting obligations, including breach of routine reporting obligations or a material inaccuracy in an OpCo report which in either case has a material impact on Transport for NSW or government rail agencies or customers;
- (i) Any breach by OpCo of the restrictions on refinancing;
- (j) Any breach by OpCo of its subcontracting obligations to Transport for NSW;
- (k) Any failure by OpCo or an associate to hold the required rail safety accreditations or to comply with their terms;
- (l) Any act or omission by OpCo, while performing OpCo's obligations which leads ONRSR to notify OpCo that it proposes to suspend or cancel OpCo's accreditation, or any failure by OpCo to undertake actions specified by ONRSR that could result in ONRSR suspending or revoking OpCo's accreditation;
- (m) Any fraudulent or false, misleading or deceptive conduct by OpCo, or a Core Contractor in the performance of any of OpCo's obligations, or if the Independent Commission Against Corruption determines that OpCo or a Core Contractor has engaged in any corrupt conduct, collusive pricing or other similar activity;
- (n) Any false or misleading representation or warranty by OpCo in the OTS Project Deed or any other Transport for NSW Project Agreement, if this misrepresentation or warranty has a material adverse effect on OpCo's ability to comply with its obligations under the OTS Project Deed; and
- (o) Any other material breach by OpCo of the OTS Project Deed or any of the Transport for NSW Project Agreements (other than a breach which results in an abatement of the Service Payment).

If any of these OpCo events of default occur, Transport for NSW may issue a formal default notice. At the same time, Transport for NSW must also provide a copy of this notice to National

Australia Bank (as the Security Trustee/Agent) under the Financier's Tripartite Deed. If the 'OpCo event of default' can be remedied, OpCo must either remedy the event within ten business days of Transport for NSW's notice or prepare and submit a draft cure plan to Transport for NSW by the same deadline, describing what OpCo will do to remedy the event and proposing a cure period.

If Transport for NSW accepts an OpCo cure plan, OpCo must implement the cure plan within the cure period or diligently pursue the remediation of the 'OpCo event of default' in other ways. Provided OpCo is diligently pursuing a remedy, the cure period may be extended by Transport for NSW if necessary. Transport for NSW may not unreasonably refuse OpCo's first application for such an extension, but may refuse to consider any subsequent applications in its absolute discretion.

If an 'OpCo event of default' cannot be remedied, OpCo must submit a draft prevention plan to Transport for NSW describing what OpCo will do to prevent any recurrence of the event. If an OpCo prevention plan has been approved by Transport for NSW, OpCo must implement it.

If OpCo fails to comply with any of its obligations following a Transport for NSW notification of an 'OpCo event of default', as summarised above, this will constitute an 'OpCo termination event', see section 0.

### **Persistent breaches**

If OpCo breaches the same obligation more than once in any 12 month period, Transport for NSW may issue a persistent breach notice. If the relevant breach continues more than 30 business days after the notice is issued, or recurs within the 12 month period commencing 30 business days after the notice is issued, Transport for NSW may issue a final persistent breach notice.

If the relevant breach continues more than 30 business days after this final notice, or recurs three or more times within the 6 month period after the final notice, this will constitute an 'OpCo termination event', see section 0.

### **Frequent breaches**

Alternatively, if OpCo commits frequent breaches (which may be of different obligations) which, in aggregate, substantially frustrate the objects of the OTS Project Deed, or significantly impair Transport for NSW's ability to fulfil its statutory objectives under the *Transport Administration Act 1988* (NSW), or have a material adverse effect on the North West Rail Link, the electronic ticketing system or customers, or in Transport for NSW's reasonable opinion indicate that OpCo does not intend to be bound by the OTS Project Deed, then Transport for NSW may issue a frequent breaches notice.

If frequent breaches continue to occur during the 12-month period commencing 30 business days after the notice, Transport for NSW may issue a final frequent breaches notice. If frequent breaches occurs in the 6 month period commencing 30 business days after the issue of a final frequent breaches notice, this will constitute an 'OpCo termination event', see section 0.

Notwithstanding Transport for NSW exercising its rights in respect of a call-in, (where Transport for NSW may notify OpCo during the operations phase that it is not satisfied), an event of default, a persistent breach or frequent breaches, Transport for NSW may still enforce any other rights or remedies it has in respect of such events, including its step-in rights, security rights, termination rights and its right to sue for damages.

## 22. Termination rights

### Transport for NSW termination rights

The OTS Project Deed entitles Transport for NSW to terminate the OTS Project Deed for a number of reasons. The following is a summary of Transport for NSW's rights to terminate.

### OpCo termination events

Each of the following is an 'OpCo termination event':

- (a) Availability of train services falls below a specified level;
- (b) Timeliness of train services falls below a specified level;
- (c) Service quality or asset functionality falls below specified levels;
- (d) If a persistent breach continues more than 30 business days after a final persistent breach notice is issued, or recurs 3 or more times within the 6 month period after a final persistent breach notice is issued;
- (e) If frequent breaches continue in the 6 month period commencing 30 business days after a final frequent breaches notice is issued;
- (f) Any failure by OpCo to remedy an 'OpCo event of default' that can be remedied within its cure period, as specified in OpCo's cure plan;
- (g) Any failure by OpCo to prevent the recurrence of an 'OpCo event of default' addressed by an OpCo prevention plan;
- (h) Any failure by OpCo to submit, amend or implement a cure or prevention plan;
- (i) Any failure by OpCo to achieve completion by the longstop date;
- (j) Any complete or substantial abandonment of the project by OpCo;
- (k) An insolvency (of specified types) of OpCo;
- (l) Any act or omission of OpCo or a Core Contractor, while performing OpCo's obligations under the OTS Project Deed, which leads ONRSR to suspend or cancel any accreditation required by OpCo or a Core Contractor for more than 6 weeks;
- (m) An insolvency (of specified types) of a Core Contractor or its guarantors, if:
  - (i) The insolvent person is not replaced by an organisation which satisfies the requirements under the OTS Project Deed within 120 business days; or
  - (ii) OpCo is not diligently pursuing the replacement of that insolvent person by an organisation who is reputable and has sufficient experience, expertise and ability to perform the obligations under the relevant subcontract or guarantee, or a person who is otherwise acceptable to Transport for NSW (acting reasonably);
- (n) Any failure by OpCo to take out and maintain any required insurance within 10 business days of a notice from Transport for NSW directing it to do so;
- (o) Any breach by OpCo of the OTS Project Deed's restrictions on transfers of its contractual rights, obligations and security interests;
- (p) Any breach by OpCo of the OTS Project Deed's restrictions on changes in ownership;
- (q) Any breach by OpCo of the OTS Project Deed's restrictions on changes in control of core contracts;
- (r) If any of the following occur:
  - (i) OpCo or a Core Contractor ceases to hold an approval or breaches a law which, in Transport for NSW's opinion, is material to the performance of OpCo's obligations under the OTS Project Deed and this is not remedied within 30 days of the earlier of the date on which Transport for NSW notifies OpCo or OpCo becomes aware;

- (ii) Any project agreements being revoked, repudiated or terminated, or becoming invalid, void or voidable in a material respect, other than if caused by Transport for NSW, the State, Sydney Trains or a Civil Works Contractor, and this is not remedied within 30 days of OpCo becoming aware of the event occurring; and
- (iii) If it becomes unlawful for OpCo or a Core Contractor to perform any of its obligations under the project agreements and the event is not remedied within 30 days of OpCo becoming aware of the event occurring.

If OpCo becomes aware of an 'OpCo termination event', it must immediately notify Transport for NSW. Transport for NSW can then terminate the OTS Project Deed for an 'OpCo termination event', by giving a written notice that will have immediate effect. Before Transport for NSW can issue this notice, Transport for NSW must notify National Australia Bank (as the Security Trustee/Agent), who can exercise their rights under the Financiers Tripartite Deed to remedy the breach and discharge OpCo's or Finance Co's obligations to the same extent as if it had been done by OpCo or Finance Co.

### **Termination payments - OpCo termination events**

If the OTS Project Deed is terminated by Transport for NSW as a result of an OpCo termination event (other than OpCo's abandonment, in which case, OpCo will receive no termination payment), Transport for NSW shall pay OpCo the highest capital sum offered by a compliant tenderer (if the project has been retendered) or the estimated fair value of the project (if an independent expert has determined that value) and amounts due and payable by Transport for NSW to OpCo, **less** (if an independent expert has determined the estimated fair value) the adjusted post termination service payments paid by Transport for NSW, tender costs, amounts that Transport for NSW is entitled to set off or deduct, amounts owed by OpCo to Transport for NSW, net gains accruing to OpCo in connection with the termination, insurance proceeds, amounts held in certain bank accounts, amounts paid to OpCo by Transport for NSW for maintenance or refurbishment which has not been carried out and the securitisation refund payment.

If such termination payment, or any other termination payment, is zero or a negative number, the negative number will be deemed to be zero, Transport for NSW shall have no obligation to make any payment to OpCo and Transport for NSW shall be released from all liability to OpCo for breaches and/or termination.

### **Transport for NSW termination events**

Each of the following is a 'Transport for NSW termination event':

- (a) Any failure by Transport for NSW to comply with its payment obligations under the OTS Project Deed that is not remedied by Transport for NSW within 20 business days of a written demand from OpCo;
- (b) Any expropriation by the State of a material part of the North West Rail Link or any equity interest; and
- (c) Any breach by Transport for NSW of the OTS Project Deed which substantially frustrates OpCo's performance of its obligations under the OTS Project Deed for a continuous period of two months.

If a 'Transport for NSW termination event' occurs, OpCo may give Transport for NSW 30 business days' notice that it intends to terminate the OTS Project Deed. Transport for NSW may, in response, suspend OpCo's right to terminate by giving OpCo a notice to this effect within 30 business days of receiving OpCo's notice. If Transport for NSW takes this action:

- (a) OpCo must continue to perform its obligations under the OTS Project Deed during the suspension period, to the extent it is lawful and practicable to do so; and
- (b) Transport for NSW must, throughout the suspension make monthly payments to OpCo that will place OpCo in the same net after tax position it would have been in if the 'Transport for NSW termination event' had not occurred.

The suspension of OpCo's right to terminate the OTS Project Deed will continue until:

- (a) Transport for NSW notifies OpCo that it is ending the suspension period;
- (b) In the case of a failure to pay, 30 business days after OpCo's termination notice;
- (c) When the relevant 'Transport for NSW termination event' has been remedied or its effects overcome; or
- (d) If this has not happened in the meantime, 24 months after OpCo's termination notice.

If a suspension ends for any reason other than the remedying of it, or if Transport for NSW never imposes a suspension period, OpCo may immediately terminate by giving Transport for NSW a written notice to this effect.

### **Voluntary termination**

Transport for NSW may terminate the OTS Project Deed at any time - for its sole convenience, simply by giving OpCo a written notice to this effect, nominating the date on which the OTS Project Deed will terminate. This enables Transport for NSW to manage any possible circumstance that warrants such a termination and does not require Transport for NSW to provide any rationale or justification to OpCo in taking such action.

### **Termination for augmentations**

Transport for NSW may terminate the OTS Project Deed consistent with Transport for NSW's right to voluntarily terminate, if the parties are unable to agree on any matters that relate to a proposed Augmentation.

### **Termination payments - Transport for NSW termination events, voluntary termination and termination for augmentations**

Subject to the below paragraphs, if the OTS Project Deed is terminated by Transport for NSW for its sole convenience (other than on the 4th anniversary of the date of completion) or terminated as a result of a Transport for NSW termination event or in connection with an augmentation, Transport for NSW shall pay OpCo an amount equal to the senior debt as at termination, an amount giving a rate of return to equity equal to the base case equity return, subcontractor breakage costs, amounts due and payable by Transport for NSW to OpCo and employee redundancy payments, **less** amounts owed by OpCo to Transport for NSW, net gains accruing to OpCo in connection with the termination, insurance proceeds, amounts held in certain bank accounts and the securitisation refund payment.

If Transport for NSW voluntarily terminates the OTS Project Deed on the 4th anniversary of the date of completion the termination payment is as set out in the preceding paragraph other than in respect of the payment to equity and the subcontractor break costs components. For these components Transport for NSW shall instead pay a fixed amount for these items as set out in the base case financial model.

If either termination payment calculated above is less than the senior debt at termination, then the termination payment will be deemed to be equal to the senior debt at termination.

### **Termination for an uninsurable risk or force majeure**

Transport for NSW may terminate the OTS Project Deed following the occurrence of an uninsurable risk, if:

- (a) OpCo and Transport for NSW are unable to reach agreement on appropriate measures to mitigate the risk; and
- (b) the uninsurable risk causes material damage, loss or destruction to a substantial portion of the North West Rail Link or the OTS Works.

Alternatively, Transport for NSW or OpCo may terminate the OTS Project Deed following the occurrence of a force majeure event, if:

- (c) The parties are unable to agree on appropriate measures to mitigate the effects of the force majeure event; and
- (d) The force majeure event has endured for 20 business days.

#### **Termination payments - Termination for an uninsurable risk or force majeure**

If the OTS Project Deed is terminated for an uninsurable risk or force majeure, Transport for NSW shall pay OpCo an amount equal to the senior debt at termination, an amount giving equity rate of return equal to 50% of its base case equity return amounts due and payable by Transport for NSW to OpCo and certain subcontractor breakage costs, **less** net gains accruing to OpCo in connection with the termination, amounts owed by OpCo to Transport for NSW, insurance proceeds, amounts held in bank accounts and the securitisation refund payment.

## **23. Contractual remedies available to the Crown**

Should OpCo default on its obligations related to the OTS PPP, or should Transport for NSW terminate the OTS Project Deed, Transport for NSW will have a number of different contractual remedies available to it. These include:

#### **State step-in rights**

Transport for NSW is entitled under the OTS Project Deed, OTS D&C Contract Side Deed and OTS O&M Contract Side Deed, to step-in and effectively assume OpCo's rights and obligations under the relevant agreement, see section 0.

#### **Sue for breach**

If OpCo breaches any of Transport for NSW Project Agreements, Transport for NSW may, in addition to, or as an alternative to any of the rights or remedies available to Transport for NSW under the Transport for NSW Project Agreements, sue OpCo or exercise any other contractual or other legal or equitable rights it holds against OpCo, including (if relevant and available), its rights under any bank securities and/or its rights under the OpCo Deed of Charge or FinCo Deed of Charge. No delay or omission by Transport for NSW in the exercise of any right, power or remedy shall impair such right, power or remedy or constitute a waiver of the relevant breach.

#### **Enforce civil penalty provisions**

Transport for NSW may enforce civil penalty provisions under the OTS Project Deed where OpCo has failed to meet certain performance standards. OpCo has promised that if it fails to comply with certain standards, this will result in either an adjustment to the Service Payment sum, see section 17 for more on Service Payments, or an obligation to pay Transport for NSW certain lump sums calculated on the severity of the breach. OpCo has promised to meet the following performance standards, including:

- (a) Compliance with the demand usage strategy, a strategy Transport for NSW and OpCo will develop as to how OpCo can draw electricity from connection points each month during the operations phase. If OpCo fails to comply, this will result in a deduction to the Service Payment.
- (b) Compliance with the maintenance works program, a works program required under the asset management plan. If OpCo fails to comply this will result in Transport for NSW being able to withhold a specified amount from the Service Payment each month for a set period.
- (c) Acceptable:
  - (i) availability and timeliness of train services;
  - (ii) quality of customer service;
  - (iii) cleanliness of trains, stations and public areas;
  - (iv) temperature and lighting on trains and stations, lift and escalator access; and

- (v) availability of CCTV, announcement equipment, and help points, failure to comply with these quality requirements by OpCo will result in an adjustment to the Service Payment.
- (d) Timely handback of track the subject of a track possession. If OpCo is late in handing back the track (subject to a few limited exceptions), OpCo must pay specified liquidated damages to Transport for NSW; and
- (e) Minimal disruption, interference or adverse impact on Sydney Trains and Sydney Train's facilities. If OpCo fails to comply, OpCo will incur a liability for a specified amount to Transport for NSW, known as an interference payment.

### **Set-off rights**

In certain situations, Transport for NSW is entitled to set-off from any amount due from Transport for NSW to OpCo under a Transport for NSW Project Agreement:

- (a) Any debt or moneys owed from OpCo to Transport for NSW; and
- (b) Any claim to money Transport for NSW makes in good faith against OpCo whether for damages or otherwise and whether or not the amount is disputed.

OpCo does not have these same set-off rights.

### **Bonds**

In addition to the securities granted to Transport for NSW under the Deed of Charges given by OpCo, FinCo and the O&M Contractor, OpCo must give Transport for NSW an unconditional bank bond (**Handback Security Bond**), to secure the performance of OpCo's handback obligations under the OTS Project Deed. This Handback Security Bond, must be provided at least 18 months before the original expiry date of 7 April 2034. If OpCo fails to comply with this requirement, OpCo will not be in breach of the OTS Project Deed but Transport for NSW may withhold a specified amount from each monthly Service Payment for up to ten months.

If the term of the project is extended, see section 12, OpCo must provide an additional unconditional bank bond (**Extension Security Bond**). Failure to provide the Extension Security Bond will not be a breach of the OTS Deed but will result in the term of the OTS Project Deed expiring on the original expiry date of 7 April 2034.

Transport for NSW has the right to call on any bond at any time under the OTS Project Deed, however, Transport for NSW's right to apply the proceeds of either bonds is limited. Subject to these rights, if either of these bonds are not drawn upon, these bonds must be released by Transport for NSW as soon as practicable after receiving set final inspection notices.

### **Interference payments**

OpCo will be liable to Transport for NSW for a specified amount whenever, as a result of an act or omission of OpCo:

- (a) One or more passenger train services stop at Chatswood Station or Epping Station (or both) more than 15 minutes after the scheduled time;
- (b) One or more passenger train services scheduled to stop at Chatswood Station or Epping Station (or both) are cancelled; or
- (c) One or more passenger train services scheduled to stop at Chatswood Station or Epping Station (or both) fail to stop at either station.

Transport for NSW must notify OpCo in writing within ten business days, identifying the relevant train service which was disrupted and the act or omission of OpCo which caused the disruption. Within ten business days of receiving this notice, OpCo must either accept or dispute the notice. If OpCo fails to respond, this will be treated as if OpCo accepted the liability and OpCo will be absolutely barred from disputing this claim in the future.



## 24. State step-in rights

### OTS Project Deed

Transport for NSW will have a right to step-in to the role of OpCo and assume OpCo's service delivery obligations under the OTS Project Deed if:

- (a) An 'OpCo termination event' occurs; or
- (b) Circumstances arise which pose a serious threat or cause material damage or disruption to:
  - (i) The health or safety of persons;
  - (ii) The environment;
  - (iii) Any real or personal property; or
  - (iv) The safe and secure performance of OpCo's obligations.

On the occurrence of an event which triggers step-in rights and provided adequate notice is given in accordance with the OTS Project Deed requirements, Transport for NSW may do anything that OpCo could do in respect of OpCo's obligations including:

- (a) Enter into and remain in possession of all or any of the assets;
- (b) Operate and manage all or any of the assets;
- (c) Exercise all or any of OpCo's rights, and perform all or any of OpCo's obligations in connection with OpCo's activities, the project agreements or under any accreditation or approval held by OpCo, as if it were OpCo, to the exclusion of OpCo;
- (d) Do anything Transport for NSW (or its nominee) considers necessary or desirable to remedy the step-in event or overcome the risk or mitigate any consequences of the step-in event; and
- (e) Do anything incidental to the matters listed above.

During the step-in period, OpCo and Transport for NSW must comply with certain cooperation obligations as outlined under the OTS Project Deed.

Where Transport for NSW has exercised its step-in rights and OpCo continues to perform obligations under the OTS Project Deed, which affect the calculation of the Service Payment, Transport for NSW will pay OpCo the parts of the Service Payment affected by the step-in based on the average performance of OpCo for the 6 months immediately prior to step-in, less:

- (a) if the step-in event was an 'OpCo termination event':
  - (i) Costs avoided by OpCo as a result of Transport for NSW exercising its step-in rights; and
  - (ii) Reasonable costs incurred by Transport for NSW in exercising its step-in rights; or
- (b) If the step-in event was not an 'OpCo termination event', the costs avoided by OpCo as a result of Transport for NSW exercising its step-in powers.

Transport for NSW must cease to exercise its step-in powers as soon as reasonably practicable and, in any event, upon the earlier of the step-in event being remedied or Transport for NSW notifying OpCo that it will no longer exercise its step-in powers.

### OTS D&C Contract Side Deed/OTS O&M Contract Side Deed

Under the OTS D&C Contract Side Deed and OTS O&M Contract Side Deed, Transport for NSW may step-in where OpCo is in breach and take steps to remedy the default if the respective contractors have given Transport for NSW notice of the default and confirmed:

- (a) The debt financiers have not taken steps to remedy the default within the period available to them under the relevant finance side deeds; or

- (b) The contractor's right to terminate or suspend the performance of any of its obligations is not subject to any rights of the debt financiers to cure the default.

If Transport for NSW does step-in:

- (c) Any OpCo obligations under contracts which cannot be performed because of the stepping in will be suspended;
- (d) The stepping in will end once Transport for NSW has remedied the relevant OpCo breach, or earlier, after giving OpCo reasonable notice; and
- (e) OpCo must compensate Transport for NSW for any reasonable costs or losses it incurs as a result of stepping in.

#### **Alstom TLS Significant Contract Side Deed**

Under the Alstom TLS Significant Contract Side Deed, if the O&M Contractor breaches the Alstom TLS Significant Contract, Transport for NSW may step-in and take steps to remedy the default if, and only if, the Alstom Significant Contractor has given Transport for NSW a notice of the default and complied with certain disclosure requirements.

If Transport for NSW does step-in:

- (a) Any O&M Contractor obligations under the Alstom TLS Significant Contract which cannot be performed because of the stepping in will be suspended;
- (b) The stepping in will end once Transport for NSW has remedied the relevant O&M Contractor breach, or earlier, after giving the O&M Contractor reasonable notice; and
- (c) The O&M Contractor must compensate Transport for NSW for any reasonable costs or losses it incurs as a result of stepping in.

#### **Alstom D&C Significant Contract Side Deed**

Under the Alstom D&C Significant Contract Side, if SJV breaches the D&C Significant Contract, Transport for NSW may step-in and take steps to remedy the default if, and only if, the Alstom Significant Contractor has given Transport for NSW a notice of the default and complied with certain disclosure requirements.

If Transport for NSW does step-in:

- (a) Any SJV obligations under the D&C Significant Contract which cannot be performed because of the stepping in will be suspended;
- (b) The stepping in will end once Transport for NSW has remedied the relevant SJV breach, or earlier, after giving the SJV reasonable notice; and
- (c) SJV must compensate Transport for NSW for any reasonable costs or losses it incurs as a result of stepping in.

## **25. Transition out provisions**

Transport for NSW has the right at any time prior to the end of the term or on termination, to invite any person to perform all or part of OpCo's obligations under the OTS Project Deed. As such, OpCo must manage OpCo's activities in a way that a successor OpCo or nominee of Transport for NSW is able at any time to immediately take over the performance of OpCo's activities without interruption.

OpCo must, at its own cost, do everything (both before and after expiry or termination of the term) that is reasonably required by Transport for NSW to assist a successor OpCo or nominee of Transport for NSW in performing OpCo's activities, and must not do anything that materially prejudices or frustrates the transfer of the performance of OpCo's activities.

#### **North West Rail Link employees**

During the term, OpCo's ability to vary the employment contracts of certain employees involved in the operation and maintenance of the North West Rail Link is limited, and Transport for NSW's prior approval is generally required. At the expiry of the term, Transport for NSW must procure that a successor OpCo makes offers of employment to these employees.

## **Preparation for contracting at end of term**

OpCo must provide Transport for NSW with reasonable access to staff and to information kept by OpCo in connection with the project, for the purpose of Transport for NSW preparing reports in connection with any invitation to a person for the performance of OpCo's obligations. OpCo must use reasonable endeavours to assist Transport for NSW in the preparation for a competitive expression of interest or tendering process.

## **Access**

OpCo must, without unduly interfering with OpCo's obligations, ensure that a successor OpCo or nominee of Transport for NSW has access to OpCo's staff, assets, spares and the operations centre for the purposes of the successor OpCo or nominee of Transport for NSW receiving information about OpCo's obligations and preparing to take over the performance of those obligations.

## **Novation and handback of documents**

OpCo must procure the novation to Transport for NSW (or its nominee) of any agreement, sublease or licence relating to OpCo's obligations that Transport for NSW may nominate.

OpCo must deliver to Transport for NSW (or its nominee) all documents and information concerning OpCo's obligations that are required for the efficient transfer of responsibility of the performance of OpCo's obligations, this includes project plans, design documentation, data recorded during the term, valid warranties and guarantees, operational manuals documentation relating to intellectual property, and any other documentation specified.

## **26. Transfer of assets by the public sector to the contractor**

### **Land and fixed assets**

All fixtures affixed to the North West Rail Link site will be owned by the owner of the relevant part of the site from the time they are affixed.

Transport for NSW grants OpCo a non-exclusive licence to use and occupy the construction site, and to permit OpCo's contractors to use and occupy the construction site, for the purpose of performing OpCo's activities. This licence commences on the later of the specified site access date for the relevant part of the construction site, the date on which the Civil Works portion located on the relevant part of the construction site achieves completion, or such other date agreed between the parties, and terminates on the date of completion.

From the date of completion, Transport for NSW grants OpCo a non-exclusive licence to use and occupy the licenced maintenance area, and to permit OpCo's contractors to use and occupy the licenced maintenance area, for the purpose of performing the Operations Activities. This licence terminates at the end of the term.

### **Moveable assets**

Unless they are hired assets, OpCo must acquire title to all moveable assets (including trains, spares, special tools and equipment and other chattels forming part of the works or used by OpCo in carrying out the Operations Activities (**Moveable Assets**)) either by completion (if the Moveable Asset forms part of the OTS Works) or the original expiry date (in all other cases). OpCo must transfer ownership of the Moveable Assets to Transport for NSW on the date on which OpCo acquires title to the asset.

Transport for NSW grants OpCo an exclusive licence to use and to permit OpCo's contractors to use all Moveable Assets for the purpose of fulfilling OpCo's obligations under the OTS Project Deed. This licence commences on the date that ownership of each Moveable Asset transfers to Transport for NSW and terminates at the end of the term.

Transport for NSW also grants OpCo an exclusive licence to use and to permit OpCo's contractors to use the existing Epping to Chatswood railway moveable assets, including emergency trolleys, scissor lifts, building maintenance units and jet fan lifting appliances for

the purpose of fulfilling OpCo's obligations under the OTS Project Deed. This licence commences on the date of financial close and terminates at the end of the term. **Handback**

At the end of the term, OpCo must transfer all of OpCo's rights, title and interest (if any) in the assets to Transport for NSW. OpCo must ensure that the assets are in the required state and condition (fair wear and tear excepted).



*Above: Artists impression of the interior of a North West Rail Link rapid transit train.*

## **27. Change of ownership or control under the OTS Project Deed**

The OTS Project Deed places certain restrictions on Transport for NSW and OpCo in the event of a change in control.

OpCo has undertaken that throughout the OTS PPP it will not permit any direct or indirect changes to the legal or beneficial ownership of its shares or units or any related body corporate identified as a member of the OpCo group, without Transport for NSW prior written consent, which will not be unreasonably withheld. If OpCo does not obtain Transport for NSW consent, this will be an 'OpCo termination event', see section 0.

OpCo must also obtain Transport for NSW's consent for changes in control that relate to each Core Contractor. Different consent requirements apply depending on whether it is the O&M Contractor or D&C Contractor.

OpCo is required to gain Transport for NSW's written consent prior to a change in control of the O&M Contractor. Failure to comply with this requirement will result in a termination event, see section 0. Alternatively, if a change in control of an entity that is a joint venture participant in the D&C Contractor has occurred prior to completion, OpCo must promptly notify Transport for NSW and obtain Transport for NSW's approval. If Transport for NSW subsequently notifies OpCo that Transport for NSW does not approve the change in control, OpCo must within 90 days of receiving such notice either, terminate and re-tender the works or services, procure that the relevant entity is replaced or removed, or take such other action as agreed by Transport for NSW. Should OpCo fail to comply with these additional requirements, then this will result in a termination event.

## **28. Dispute resolution**

All disputes between Transport for NSW and OpCo arising out of the project must be resolved in accordance with the detailed procedures set out in the OTS Project Deed.

The dispute resolution procedure essentially involve four sequential phases: regular DAB meetings, negotiation, expert determination (for many but not all disputes which are not able to be resolved through negotiation) and arbitration. Throughout these processes both parties must continue to perform all of their obligations under the OTS Project Deed.

### **Dispute Avoidance Board**

A DAB was established at the time of award of the OTS Project Deed. It is made up of three members, who hold regular meetings to help Transport for NSW and OpCo to consensually resolve issues and has a pro-active mediation/general advisory function. Either party may refer an unresolved matter which is not yet a formal dispute to the DAB for its opinion. Referrals must be in writing to the chair of the DAB copied to the other party.

The members will be required to act fairly, impartially and independently. Both Transport for NSW and OpCo agree not to solicit advice or consult with the DAB or a member of the DAB on matters relating to disputes which could compromise the DAB's integrity. The parties will jointly pay for the cost of the DAB. The DAB Agreement will terminate on completion unless otherwise agreed by both parties.

### **Dispute process**

At the outset, if a dispute arises either party may give formal notice of the dispute, at which point executive negotiations will commence for a period of 20 business days. If the dispute cannot be resolved by executive negotiation, either party may refer it to an expert for a written decision, the expert has an obligation to provide this decision to the parties within 30 business days of referral. Expert decisions will be immediately binding, and will remain binding until overturned or otherwise changed in an amicable settlement or court judgement or arbitral award. If either party is dissatisfied with the expert's determination, it may give a notice of dissatisfaction within 10 business days after receiving the determination. If a notice of dissatisfaction is given and there is no amicable settlement within 15 business days of this notice, the dispute will be referred to arbitration, or at Transport for NSW's election, litigation can commence.

If the dispute is referred to arbitration, the Australian Centre for International Commercial Arbitration (**ACICA**) Arbitration Rules will apply and any arbitrator will have the power to grant any legal, equitable or statutory remedy but not punitive damages. This process aims to achieve a just, quick and cost-effective resolution of any dispute.

Transport for NSW may withhold payment of that part of any amount which is the subject of a dispute and OpCo must continue performing obligations despite any dispute.

### **Role of core contractors in DAB process**

OpCo must immediately inform Transport for NSW if a dispute arises under the D&C Contract or O&M Contract.

### **SVC Works-OTS and TSC Works-OTS Cooperation and Integration Deed**

Each cooperation and integration deed provides that disputes between Transport for NSW and the Civil Works Contractors, as to whether a defect is classified as a civil works defect will be first determined by the relevant Civil Works Independent Certifier, and if a party is not satisfied with the decision, or if the Civil Works Independent Certifier is no longer engaged, the matter will be referred to executive negotiation and then arbitration.

### **Disputes under related contracts**

If a dispute between OpCo and Transport for NSW concerns matters that also arise in respect of rights and obligations of Transport for NSW and a third party under a third party agreement (a **Common Dispute**), then Transport for NSW may, at its discretion, require that the Common Dispute be resolved in accordance with the dispute resolution mechanism for Common Disputes. Transport for NSW must notify OpCo of its decision in writing to adopt this procedure within 20 business days of the Common Dispute arising.

Disputes arising between one or both of the parties and the OTS Independent Certifier will be resolved under the OTS Independent Certifier Deed and the parties shall be bound by the outcome of this dispute.

#### **Core contract side deeds**

Disputes between Transport for NSW and the relevant Core Contractor as to how the terms of the relevant Core Contract are deemed to have been amended are to be determined as if the dispute resolution process in the OTS Project Deed was incorporated into the relevant OTS D&C Contract Side Deed or OTS O&M Contract Side Deed but as if references to "OpCo" were to the relevant Core Contractor.

#### **Financiers Tripartite Deed**

Disputes between Transport for NSW and the Security Trustee in relation to the contents of the step-in report, (which is a report produced and agreed between Transport for NSW and the Security Trustee upon receipt of a step-in event notice) are to be resolved as if the dispute resolution process in the OTS Project Deed was incorporated into the Financiers Tripartite Deed but as if reference to "OpCo" were to the Security Trustee.

There are no other dispute resolution provisions in the Financiers Tripartite Deed. Accordingly, subject to the OTS Project Deed, any other disputes under the Financiers Tripartite Deed are to be resolved by the Courts of NSW.

## **29. Insurance proceeds**

#### **Insurance proceeds**

Subject to the terms of the Financiers Tripartite Deed, OpCo must deposit all insurance proceeds received in respect of the costs of replacement, reinstatement or indemnity value of the OTS Works or the North West Rail Link into an insurance proceeds account.

This money, with certain exceptions where the OTS Project Deed is terminated early, must only be applied by OpCo to promptly reinstate or repair the damage. If Transport for NSW requires OpCo to reinstate or repair the OTS Works or the North West Rail Link on the basis of different specifications by directing a modification, available insurance proceeds will be taken into account in calculating the net financial impact of the modification.

If insurance proceeds are applied by the Security Trustee under the Financiers Tripartite Deed towards the repayment of debt, rather than the reinstatement or repair of the damage, Transport for NSW will no longer be required to make any further 'construction payments A' under the OTS Project Deed.

## **30. Liabilities, indemnities and/or guarantees given by the Crown**

#### **Indemnities given by Transport for NSW**

Transport for NSW has promised various indemnities under the Transport for NSW Project Agreements, see section 9. These indemnities are briefly summarised below.

**Liability in the event of a terrorist act:** Transport for NSW must indemnify OpCo against any loss of revenue, other than any amount that is recovered under the insurance policies specified in the OTS Project Deed, that occurs as a result of a loss, damage or destruction to a train from certain terrorist acts during the delivery phase or operations phase of the project. Transport for NSW must also pay OpCo the reasonable cost of carrying out the reinstatement or repair work (to the extent insurance proceeds are insufficient).

**Liabilities for taxes, rates, and stamp duty:** OpCo must pay all taxes incurred in the performance of the OTS PPP, other than rates, land tax and stamp duty, Transport for NSW must indemnify and reimburse OpCo and any transaction party (i.e. OpCo HoldCo, OpCo HoldCo 2, Finance Co and Finance HoldCo) for:

- (a) Stamp duty in respect of the Transport for NSW Project Agreements, the debt financing documents or any transaction contemplated by any of them. This includes any interest payable to the NSW Office of State Revenue, to the extent this is payable as a result of a breach by Transport for NSW but excluding any penalty, fine, charge or interest payable in respect of stamp duty which results from any failure or delay by OpCo to timely lodge for stamping the Transport for NSW Project Agreements and debt financing documents; and
- (b) All rates and land taxes in respect of the North West Rail Link site and certain land parcels until the expiry of the term of the project, other than as a result of additional commercial opportunities, (in which case OpCo must pay for such rates and/or land tax).

**Liability for third party software licences:** Transport for NSW must indemnify OpCo against all claims in respect of third party software licences, that occur where Transport for NSW has required OpCo to assign, sub-licence or novate to Transport for NSW, any rights and obligations of OpCo in respect of third party software licences. Transport for NSW will indemnify OpCo from the date of assignment or novation of such third party software licences.

**Liability for stamp duties and related fines under other contracts:** under the SVC Independent Certifier Deed and SVC Independent Certifier Accession Deed, as well as, the TSC Independent Certifier Deed and TSC Independent Certifier Accession Deed, Transport for NSW is required to pay all stamp duties and any related fines and penalties related to each deed or its performance or transactions effected by it. Transport for NSW indemnifies each party against any liability arising from a failure to comply with this obligation.

**Liability under the Dispute Avoidance Board Agreement (DAB Agreement):** Transport for NSW and OpCo have agreed to each indemnify each DAB Member under the DAB Agreement against all claims from a person not a party to the DAB Agreement for any act or omission done in good faith and with due care and diligence.

**Liability under the Works Authorisation Deed North West Rail Link - Operations, Trains and Systems (OTS WAD):** under the OTS WAD, Transport for NSW must indemnify Roads and Maritime Services from:

- (a) Any loss, costs, expenses, demands or liability, arising out of a claim by a third party against Roads and Maritime Services alleging any intellectual property rights infringement;
- (b) Any loss, damage, expense, liability or claim incurred by or against Roads and Maritime Services which arises out of or in connection with a failure by Transport for NSW, or any person engaged by Transport for NSW, as the principal contractor, to perform the obligations imposed on the principal contractor by the *Work Health and Safety Regulations 2011* (NSW);
- (c) All claims and costs (whether those of Roads and Maritime Services or any other person) in respect of, resulting from, incurred in connection with, or caused or contributed to by, the design, construction or commissioning of the works, whether or not in breach of the OTS WAD, including:
  - (i) any damage to any road or loss or damage to anything on, in or near any road; and
  - (ii) injury to or the death of any person; and
- (d) From all claims and costs resulting from or in connection with any breach by Transport for NSW of the OTS WAD.

**Liability under the Council Interface Agreements - The Hills Shire Council; Hornsby Shire Council; and Blacktown City Council:** Transport for NSW has agreed to indemnify each council against:

- (a) The loss, destruction or damage of any of the council's real or personal property; or

- (b) Any claim against the council or liability the council may have to third parties in respect of illness, personal injury or death of any person or the loss, destruction or damage of any real or personal property,

caused by or in any way in connection with the construction of the works or any failure by Transport for NSW to comply with its obligations under the relevant council interface agreement.

#### **Guarantees given by the Crown**

The PAFA Act Deed Poll of Guarantee (the **PAFA Act Guarantee**) executed by the NSW Treasurer (on behalf of the State of NSW) in favour of OpCo, OpCo HoldCo, Finance Co and the Security Trustee (the **Beneficiaries**), dated 15 September 2014 provides a guarantee by the State of NSW to the Beneficiaries in accordance with section 22B of the *Public Authorities (Financial Arrangements) Act 1987* (NSW), of Transport for NSW's performance of its payment obligations under the OTS Project Deed, the Financiers Tripartite Deed, the Securitisation Agreement, the NRT Payment Directions Deed, the Equity Purchase Deed and any other documents approved, in writing by the NSW Treasurer in the future.

### **31. Significant guarantees and undertakings**

The OTS PPP contains a number of guarantees and undertakings. Below is a brief summary of the significant guarantees between the parties.

#### **PAFA Act Guarantee**

As mentioned at section 30, the State guarantees the performance of Transport for NSW's payment obligations under the OTS Project Deed and other documents.

#### **O&M Guarantee**

Each O&M Guarantee is an irrevocable guarantee given by each O&M Guarantor to OpCo to guarantee all liabilities and obligations of the O&M Contractor that arise out of or in connection with the O&M Contract, and to indemnify OpCo against any loss arising from any failure by the O&M Contractor to perform any of its obligations.

#### **D&C Guarantee**

Each D&C Guarantee, is an irrevocable guarantee given by each D&C Guarantor to OpCo to guarantee all liabilities and obligations of the D&C Guarantor's subsidiary that arises out of or in connection with the D&C Contract, and to indemnify OpCo against any loss arising from any failure by its subsidiary to perform any of its obligations.

#### **Alstom D&C Guarantee**

The Alstom D&C Guarantee is given by the Alstom D&C Guarantor to SJV to guarantee the obligations of the Alstom Significant Contractor under the Alstom D&C Significant Contract.

#### **Alstom TLS Guarantee**

The Alstom TLS Guarantee is given by the Alstom TLS Guarantor to the O&M Contractor to guarantee the obligations of the Alstom Significant Contractor under the Alstom TLS Significant Contract.



## Appendix A – Glossary of Terms

**Alstom Significant Contractor** means the contractor to which the D&C Contractor and O&M Contractor subcontracts its design, construct and through life support obligations.

**Civil Works** means the SVC Works and TSC Works.

**Civils Works Contractor** means the SVC Contractor and the TSC Contractor.

**Core Contractor** means the D&C Contractor and the O&M Contractor.

**D&C Contractor** means the contractor to which OpCo subcontracts its design and construction obligations under the OTS Project Deed.

**Epping to Chatswood railway** means the existing railway between Epping and Chatswood.

**Epping to Chatswood railway Works** means the physical works required to upgrade the existing Epping to Chatswood railway for rapid transit trains.

**Exhibit** means an Exhibit to the OTS Project Deed.

**North West Rail Link** means the railway line from Cudgegong Road Rouse Hill to Chatswood, including the Rapid Transit Rail Facility at Tallawong Road, the stations, tunnels, viaduct, bridges, landscaping, equipment, systems, track work and support structures, rolling stock and ancillary infrastructure.

**NWRL Site** means during the delivery phase, the construction site, and during the operations phase, the licensed maintenance area.

**O&M Contractor** means the contractor to which OpCo subcontracts its operation and maintenance obligations under the OTS Project Deed.

**OpCo** means NRT Pty Ltd in its own capacity and as trustee of the NRT Unit Trust, the party selected by Transport for NSW to undertake the OTS PPP.

**OTS PPP** means:

- (a) The financing, design, construction, manufacture, installation, testing and commissioning of the OTS Works and other ancillary works;
- (b) The operation and maintenance of the North West Rail Link and the performance of the other operations activities; and
- (c) The handback to Transport for NSW of the North West Rail Link.

**OTS Project Deed** means the deed to be entered into between Transport for NSW and OpCo for the performance of the OTS PPP.

**OTS Works** means the physical works, assets, systems and deliverables that OpCo must design and construct under the OTS Project Deed.

**Project** means the North West Rail Link project and which will be delivered through the OTS PPP, the TSC Works, the SVC Works and any preceding, subsequent or consequent works.

**PPP** means public private partnership.

**Schedule** means a Schedule to the OTS Project Deed.

**SVC Contractor** means the party selected to undertake the design and construction of the SVC Works.

**SVC Works** means the Surface and Viaduct Civil Works component of the North West Rail Link.

**Sydney's Rail Future** means the publication titled "Sydney's Rail Future - Modernising Sydney's Trains" June 2012, NSW Government.

**Sydney Trains** means the entity that operates and maintains suburban rail services in Sydney under Tier 2 of Sydney's Rail Future.

**Transport for NSW** means the NSW Government agency with primary responsibility for Transport coordination, policy, planning, services and infrastructure.

**TSC Contractor** means the party selected to undertake the design and construction of the TSC Works.

**TSC Works** means the Tunnels and Station Civil Works component of the North West Rail Link.



Station	
Cherrybrook	
North Ryde	
Cherrybrook	
Station	Now
Cherrybrook	4 mins
Cherrybrook	8 mins

Macquarie Park

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**northwest**trailandk