

Olympic Village

Summary of contracts





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1. Introduction

This report summarises the main contracts, from a public sector perspective, for the Olympic Village project at Newington in Sydney, adjacent to Homebush Bay.

It has been prepared by the Olympic Co-ordination Authority (OCA) in accordance with the public disclosure provisions of the New South Wales Government's *Guidelines for Private Sector Participation in the Provision of Public Infrastructure*, and has been submitted to the Auditor-General for review and certification prior to tabling in Parliament.

In line with the *Guidelines*, this report focuses on those contracts to which a public sector organisation is a party or which otherwise have a potentially substantive impact on public sector risks and/or benefits. Other contracts between private sector organisations, as shown in *Figure 2* of this report, are referred to only to the extent necessary to explain the public sector's exposure.

The project

Following the announcement on 24 September 1993 that Sydney had won the right to host the Games of the XXVII Olympiad, work began on planning and developing the Sydney 2000 Olympic Games facilities. The OCA, established in June 1995, is overseeing this process.

The Olympic Village will be an integral part of these facilities. It will be located on part of the site of the former Royal Australian Navy armaments depot at Newington, on land acquired by the OCA from the Commonwealth of Australia on 7 March 1996.

The 90 ha Olympic Village site is generally bounded by the M4 motorway to the southwest, Haslams Creek to the east, an extension of Holker Street to the north and the existing residential and industrial areas of Silverwater to the west (*Figure 1*). The former landfill area between the eastern side of the village site and Haslams Creek, remediated by the OCA, will form part of Millennium Park.

During the Olympics in 2000 the Olympic Village will provide accommodation for approximately 15,300 athletes and team officials in a mixture of permanent, temporary and relocatable housing. During the Paralympics it will accommodate up to 7,500 athletes, team officials and media and technical officials, with about 1,500 of these athletes and officials living in wheelchair-accessible dwellings.

After the Paralympics the village's permanent dwellings will be reconfigured for normal residential use, its temporary dwellings will be removed and other Olympic and Paralympic facilities within the village will be reconfigured for community use. A mixture of single and multiple unit dwellings will be available for sale to the public, along with properties in an associated high-technology business park in the northwest corner of the site, adjacent to the village's main retail and community centre.

The Olympic Village project aims to deliver the world's most environmentally advanced mainstream residential development, providing a model for similarly environmentally friendly residential development in the future. Under the village's specifications, design code and ecologically sustainable development strategy, all of which reflect the Sydney Olympics 2000 Bid's *Environmental Guidelines for the Summer Olympic Games*, the post-2000 Olympic Village will:

- Be one of the world's largest solar-powered residential suburbs, with a peak power generation from rooftop photovoltaic cells of more than 0.5 MW
- Have less than half the household energy demand (gas, electricity) of standard project homes
- Have less than half the greenhouse gas emissions of similar developments
- Use about 40% less PVC (for electrical cables, plumbing, floor coverings, etc) than similar developments
- Reduce demand for potable (drinking quality) water by more than 50%, mainly by making recycled water available for garden and other uses.
- Reduce the amount of waste having to be disposed of in landfills by about 50%, through recycling.

The land on which the Olympic Village will be erected is owned by the OCA.

The Olympic and post-Olympic development of the village will be jointly financed by:

- A private sector consortium, the Mirvac Lend Lease Village Consortium (MLLVC), with at least \$104.5 million (and potentially up to \$153.6 million) in private sector equity investments and up to \$225 million in private sector debt funding.
- The OCA, with two capital contributions totalling \$117.9 million to be made in 2000. These OCA contributions, which must be used by the private sector to



Figure 1. The Olympic Village site.

repay part of the project's debt funding, will be supported by a \$59.55 million payment to the OCA by the Sydney Organising Committee for the Olympic Games (SOCOG), in return for SOCOG's right to use the village for the Olympic and Paralympic Games. The OCA will also spend up to \$75 million on purchasing the Newington site and remediating part of the land before the construction of the village, and an estimated further \$8.9 million on project procurement and project management costs.

- SOCOG, which will spend an estimated \$74 million on the fitting out of the village for the Olympics and Paralympics, the repair and maintenance of these fittings and their post-Games removal. As indicated above, SOCOG will pay the OCA \$59.55 million for the right to use the village for the Games. It will also pay the OCA, as necessary, to cover a number of other potential OCA contractual liabilities during the Games period.

The village will be designed, built, reconfigured and marketed by MLLVC, in accordance with development consent conditions imposed by the Minister for Urban Affairs and Planning, building approval conditions imposed by the OCA and numerous other specifications and requirements imposed by the OCA and SOCOG.

The proceeds of land sales will be shared by the private sector and, once specified thresholds have been passed, the OCA. The OCA is forecast to receive about \$17 million (1996 \$) from post-Games sales of Olympic Village residences, with a potential for higher returns if market conditions are favourable.

Details on all these arrangements are set out in this report.

Project history

Sydney's successful bid for the 2000 Olympic and Paralympic Games necessitates the construction of the Olympic Village as a core component of the facilities to be provided.

In August 1995 the NSW Government issued a *Call for Expressions of Interest for Private Sector Participation in the Olympic Village, Homebush Bay*, inviting private sector expressions of interest in designing, financing, building and marketing the village.

In February 1996, all the respondents to this *Call for Expressions of Interest* were advised they satisfied its requirements and a *Request for Further Information for Private Sector Participation in the Olympic Village, Homebush Bay* was issued, seeking more detailed proposals on project financing, risk allocations, management structures, marketing, project design and construction and environmental measures.

On 6 May 1996, responses to this *Request* were received from three consortia:

- The *Mirvac Village Industry Consortium*, as the finally successful consortium was then known
- Fletchers Newington Forest
- The *Aurora Village* consortium.

The OCA's methodology for evaluating responses to the *Call for Expressions of Interest* and the *Request for Further Information* involved a two-level process. At the first level, an Assessment Committee, assisted by a team of expert advisers, carried out detailed analyses of the proposals. At the second level, this committee progressively reported to an Executive Review and Evaluation Committee, which was responsible for:

- Expediting the resolution of whole-of-Government issues and SOCOG policy matters
- Evaluating the proposals, having regard to the detailed assessments of the proposals by the Assessment Committee, on the basis of formal evaluation criteria and the objectives of the *Call for Expressions of Interest* and the *Request for Further Information*
- Making recommendations to the Minister for the Olympics.

The members of the Executive Review and Evaluation Committee were:

- Mr D Richmond, Director-General of the OCA (chairperson)
- Dr M Hemmerling, CEO, Sydney Organising Committee for the Olympic Games (SOCOG)
- Mr Ian Neale, Executive Director, Special Projects, NSW Treasury
- Mr M Eyers, of Sharwood Eyers Wilkie, as an external independent member
- Mr R Leece, the OCA's Executive Director, Construction
- Mr M O'Brien, the OCA's Project Director, Olympic Village and chairperson of the Assessment Committee.

Meetings of the Executive Review and Evaluation Committee were also attended by a probity auditor, Mr K Robson, and a real estate and property consultant to the OCA on the Olympic Village project, Mr R McCuaig of Colliers Jardine.

A *Request for Final Submissions for Private Sector Participation in the Olympic Village, Homebush Bay* was issued to two proponents, Mirvac Village Industry Consortium and the Aurora Village Consortium, in July 1996.

For this final phase, the OCA established a three-tiered evaluation and negotiation structure, comprising:

- An Assessment and Negotiating Team, whose members were Mr M O'Brien, Mr R Johnstone (SOCOG's

Manager for Villages), a legal adviser (Mr P Ellis of Mallesons Stephen Jaques) and a commercial adviser (Mr D Corsie of Bain & Co, now Deutsche Morgan Grenfell).

- An Executive Advisory Committee, with the same membership as the earlier Executive Review and Evaluation Committee, plus Mr R McCuaig of Colliers Jardine.
- A Principal Negotiating Team, whose members were Mr D Richmond, Mr R Leece and Mr M O'Brien.

The Assessment and Negotiating Team carried out detailed assessments of the final proposals, identified and resolved issues with the shortlisted consortia and SOCOG, negotiated the project's documentation, reviewed initiatives proposed by the consortia and identified issues to be referred to the Principal Negotiating Team. It reported to the Executive Advisory Committee, which was responsible for evaluating the responses to the *Request for Final Submissions*, providing advice to the Principal Negotiating Team and assisting in the resolution of whole-of-Government issues and SOCOG policy matters. The Principal Negotiating Team's responsibilities were to provide direction to the Assessment and Negotiating Team, expedite the resolution of whole-of-Government issues, brief and make recommendations to the Minister for the Olympics, finalise the negotiations in accordance with Government decisions, and liaise directly with the representative of NSW Treasury on critical financial issues.

On 12 December 1996 the Olympic Subcommittee of Cabinet, on the recommendation of the Minister for the Olympics, approved the OCA's recommendation to execute the negotiated Project Delivery Agreement with the Mirvac Village Industry Consortium.

All the OCA's evaluation, selection and negotiation processes were overseen by independent probity auditors: Mr K Robson until 2 September 1996, Deloitte Touche Tohmatsu (as temporary auditors for the *Request for Final Submissions* phase) from 3 September 1996 to 4 October 1996, and Mr J Holmes from 8 October 1996 to 3 December 1996. (Mr Robson was unable, for personal reasons, to complete his assignment as probity auditor.)

On 2 September 1996 Mr Robson reported that during the period he had acted as probity auditor proper processes and due considerations had been observed, the proponents had been treated on their merits, based on agreed criteria,

and no allegations of bias or unfair treatment could justifiably be made by any of the proponents or any other party.

On 3 December 1996 Deloitte Touche Tohmatsu reported that apart from a number of issues which had been raised in its weekly reports and subsequently resolved, it was not aware of any probity matters that had arisen during or after its period of appointment. Deloitte Touche Tohmatsu also reported that the proponents had been invited to raise any probity matters that might have impacted on the integrity of the *Request for Final Submissions* process, and that no matters had been raised.

On 3 December 1996 Mr Holmes similarly reported that the issues that had arisen during his appointment had all been resolved, that he was not aware of any other probity matters and that the proponents had not raised any such matters. His report concluded that the proponents had been treated fairly during the *Request for Final Submissions* process and that no allegation of bias or unfair treatment could justifiably be made.

Expert advisers to the OCA during the evaluation, selection and/or negotiation processes included Bain & Co/Deutsche Morgan Grenfell (commercial issues), Mallesons Stephen Jaques (legal issues and drafting), Auburn Council (planning and design issues), Chesterton International (retail and industrial development issues), NSW Treasury (financial issues), Colliers Jardine (real estate and property issues), SOCOG (Olympics issues) and the three probity auditors listed above.

Development consents for the village and associated non-residential developments under the Environmental Planning and Assessment Act were granted by the Minister for Urban Affairs and Planning on 12 May 1997.

Unless otherwise indicated later in this report, the Olympic Village contracts to which the OCA is a party were signed by the OCA on 17 April 1997.

The structure of this report

Section 2 of this report summarises the structuring and management of the Olympic Village project and explains the inter-relationships of the various agreements between the public and private sector parties.

Sections 3 to 6 summarise the main features of the key agreements, with particular emphasis on public sector risks and benefits.

Section 7 summarises the project's economic and public sector financial benefits and costs.

2 Overview of the project contracts

2.1 The participants in the project

The principal public sector party to the Olympic Village project contracts is the **Olympic Co-ordination Authority (OCA)**, a statutory body representing the crown in the right of New South Wales. The OCA is constituted under the Olympic Co-ordination Authority Act 1995. It is responsible for delivering the major Olympic facilities, including the village, and also has functions with respect to the orderly and economic development of the Homebush Bay area of Sydney.

The **Minister for the Olympics**, under delegation from the Treasurer, has signed a Deed of Guarantee under section 22B of the Public Authorities (Financial Arrangements) Act, providing a Crown guarantee of the OCA's performance of its obligations under certain project documents as described in section 6 below.

The **Sydney Organising Committee for the Olympic Games (SOCOG)** has entered into an agreement with the OCA concerning SOCOG's rights to oversee the design, construction and fitting out of the Olympic Village and use it for the Olympic and Paralympic Games, in return for SOCOG payments to the OCA. SOCOG is a statutory corporation constituted under the Sydney Organising Committee for the Olympic Games Act 1993, and is responsible for organising and staging the Sydney 2000 Olympic Games and assisting Sydney Paralympic Organising Committee Limited (SPOC) in the organisation of the Paralympic Games.

The private sector *sponsors of the project* are:

- **Mirvac Projects Pty Limited**, a wholly owned subsidiary of Mirvac Limited.
- **Lend Lease Development Pty Limited**, a wholly owned subsidiary of Lend Lease Corporation Limited.

The main private sector *parties to the contracts* are:

- The sponsors' parent companies, **Mirvac Limited** and **Lend Lease Corporation Limited**, which have undertaken to provide equity for the project. Lend Lease Corporation Limited has also guaranteed the completion of the village works required for the Olympics.
- The sponsors, **Mirvac Projects Pty Limited** and **Lend Lease Development Pty Limited**, which will provide development management, project and construction

management, marketing management and design management services.

- **Mirvac Precinct 2 Pty Limited**, which is wholly owned by Mirvac Projects Pty Limited, **LLD Precinct 2 Pty Limited**, which is wholly owned by Lend Lease Development Pty Limited, and **MVIC Finance 2 Pty Limited**, which is equally owned by Mirvac Projects Pty Limited and Lend Lease Development Pty Limited. These three companies have formed a partnership, originally known as the Mirvac Village Industry Consortium and now known as the **Mirvac Lend Lease Village Consortium (MLLVC)**, to undertake the project. The individual members of this consortium have varying liabilities for different aspects of the project.
- **Civil & Civic Pty Limited**, the project manager for the design and construction of the village for the consortium.
- **Australia and New Zealand Banking Group Limited** and **Westpac Banking Corporation**, which will provide debt finance to the consortium through MVIC Finance 2 Pty Limited, subject to certain securities, with **Westpac Custodian Nominees Limited** acting as their security trustee.

2.2 Contractual structure

The contractual structure of the project is summarised in **Figure 2**.

The core contract is the **Project Delivery Agreement** between the OCA, the three members of the consortium (LLD Precinct 2 Pty Limited, Mirvac Precinct 2 Pty Limited and MVIC Finance 2 Pty Limited), Lend Lease Corporation Limited and Mirvac Projects Pty Limited, under which:

- The consortium members are obliged to plan, design, construct, fit out, finance, market and sell the village, in accordance with detailed requirements in the agreement, and make specified parts of the village available to the OCA — and thus, through the OCA, SOCOG, and then, through SOCOG, SPOC — for the Olympics and Paralympics in 2000.
- The OCA is obliged to give the consortium members access to the site for these purposes and contribute to the funding of the project as specified in the agreement.

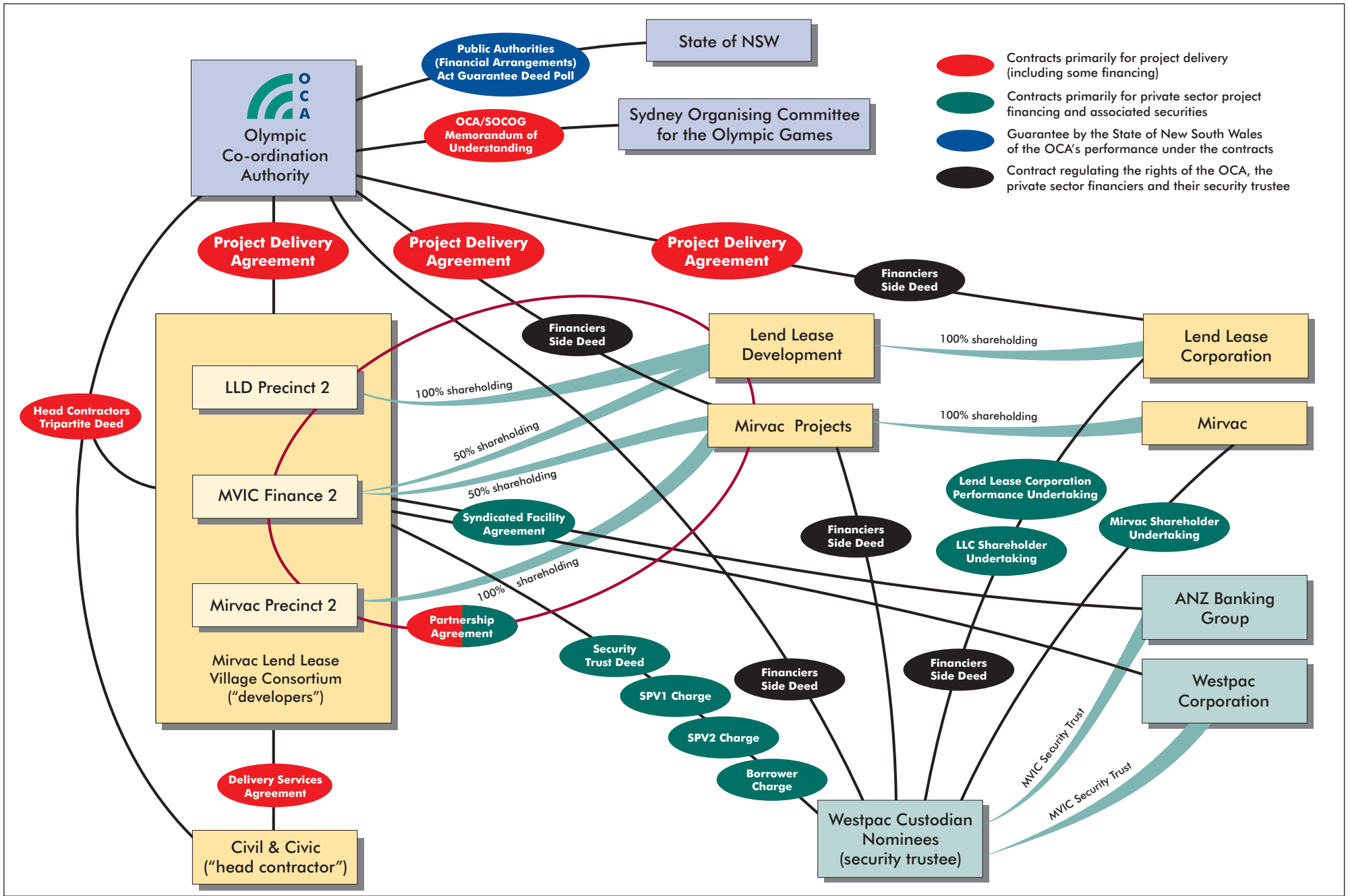


Figure 2. Contractual structure of the Olympic Village project.

- Money from the sale of village properties will be shared between the consortium and the OCA, once specified thresholds have been reached, in accordance with formulae in the agreement.
- Lend Lease Corporation is guaranteeing the completion of the village works required for the Olympics and indemnifying the OCA on a range of other matters.
- Lend Lease Corporation and Mirvac Projects indemnify the OCA against any failures by LLD Precinct 2 or Mirvac Precinct 2, respectively, to make their agreed equity contributions to the project, and undertake to provide additional interest-free debt funding of up to \$25 million for the project should it become necessary.

The **Partnership Agreement**, between Lend Lease Development Pty Limited, Mirvac Projects Pty Limited, LLD Precinct 2 Pty Limited, Mirvac Precinct 2 Pty Limited and MVIC Finance 2 Pty Limited, establishes and sets out the general terms of the Mirvac Lend Lease Village Consortium (MLLVC) partnership between LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2, and also sets out the general obligations of all five parties to contribute to the project, including their project funding obligations.

The **OCA/SOCOG Olympic Village Memorandum of Understanding** sets out arrangements between the OCA and SOCOG concerning the design, construction and fitting out of the Olympic Village and SOCOG's use of the village for the Olympic and Paralympic Games, in return for SOCOG payments to the OCA.

The **Olympic Village Syndicated Facility Agreement**, between Australia and New Zealand Banking Group Limited (as a debt financier), Westpac Banking Corporation (as a debt financier and as the agent for both debt financiers) and the three members of the MLLVC consortium (LLD Precinct 2 Pty Limited, Mirvac Precinct 2 Pty Limited and MVIC Finance 2 Pty Limited), sets out the terms under which ANZ and Westpac will provide the consortium, through MVIC Finance 2, with up to \$200 million in debt finance for the project. These arrangements are supported by:

- A **Security Trust Deed – MVIC Security Trust** between Westpac Custodian Nominees Limited and MVIC Finance 2 Pty Limited, setting out the arrangements under which Westpac Custodian Nominees will act as security trustee for ANZ and Westpac.
- Fixed and floating charges, in favour of Westpac Custodian Nominees Limited (as security trustee), over the property of LLD Precinct 2 Pty Limited (under an **SPV1 Charge** deed between LLD Precinct 2 and Westpac Custodian Nominees), Mirvac Precinct 2 Pty Limited (under an **SPV2 Charge** deed between Mirvac Precinct 2 and Westpac Custodian Nominees) and

MVIC Finance 2 Pty Limited (under a **Borrower Charge** deed between MVIC Finance 2 and Westpac Custodian Nominees).

- An **LLC Shareholder Undertaking** and a **Mirvac Shareholder Undertaking** under which Lend Lease Corporation Limited and Mirvac Limited, respectively, undertake to Westpac Custodian Nominees Limited (as security trustee) that they will provide LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2 with specified "equity contributions" (either in the form of equity or debt funding) by specified dates. The sums payable to LLD Precinct 2 and Mirvac Precinct 2 correspond to the funding contributions these companies are required to make to the project under the Partnership Agreement, while the sums payable to MVIC Finance 2 correspond to repayments it has to make to ANZ and Westpac under the Syndicated Facility Agreement.
- Three irrevocable directions by MVIC Finance 2, issued in accordance with undertakings by MVIC Finance 2 in the Syndicated Facility Agreement, directing Lend Lease Corporation Limited and Mirvac Limited to directly pay Westpac, as agent for ANZ and Westpac, the sums they would otherwise pay to MVIC Finance 2 under the LLC and Mirvac Shareholder Undertakings.
- A **Lend Lease Corporation Performance Undertaking**, under which Lend Lease Corporation Limited guarantees to Westpac Custodian Nominees Limited (as security trustee) that LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2 will perform all their obligations to the OCA under the Project Delivery Agreement.

The **Financiers Side Deed – Olympic Village**, between the OCA, the consortium (LLD Precinct 2 Pty Limited, Mirvac Precinct 2 Pty Limited and MVIC Finance 2 Pty Limited), Lend Lease Corporation Limited, Mirvac Projects Pty Limited, Australia and New Zealand Banking Group Limited (as a financier), Westpac Banking Corporation (as a financier and as the agent for both ANZ and Westpac) and Westpac Custodian Nominees Limited (as security trustee), records the OCA's consent to the SPV1, SPV2 and Borrower Charges and regulates the manner in which the OCA's rights under the Project Delivery Agreement, Westpac Custodian Nominees' rights under these charges and the rights of ANZ and Westpac under all the financing agreements may be exercised.

The **Delivery Services Agreement (Head Contract No 1)**, between the consortium (LLD Precinct 2 Pty Limited, Mirvac Precinct 2 Pty Limited and MVIC Finance 2 Pty Limited) and Civil & Civic Pty Limited, sets out arrangements for Civil & Civic to manage the design and construction of specified components of the village project,

consistent with the consortium's obligations to the OCA under the Project Delivery Agreement.

The **Head Contractors Tripartite Deed**, between the OCA, the consortium (LLD Precinct 2 Pty Limited, Mirvac Precinct 2 Pty Limited and MVIC Finance 2 Pty Limited) and Civil & Civic Pty Limited, has not been signed. If it were to be signed, it would take the form of a draft attached to the Project Delivery Agreement, and would, among other things, set out arrangements that would apply in the event of certain defaults by the developers under the Project Delivery Agreement and the Delivery Services Agreement. The Head Contractors Tripartite Deed would also regulate the manner in which the parties to the Delivery Services Agreement could exercise some of their rights under that

contract, and would include a series of undertakings by Civil & Civic to the OCA, including an undertaking to perform its work directly for the OCA in specified circumstances, consistent with novation arrangements already set out in the Project Delivery Agreement and Delivery Services Agreement.

The **PAFA Act Guarantee Deed Poll**, made by the Minister for the Olympics on 24 April 1997 under delegation from the Treasurer and on behalf of the State of NSW under section 22B of the Public Authorities (Financial Arrangements) Act 1987, guarantees OCA's performance under the Project Delivery Agreement, the Financiers Side Deed and the Head Contractors Tripartite Deed to all the other parties to these contracts.

3 The Project Delivery Agreement

Key features of the obligations of the OCA, LLD Precinct 2 Pty Limited, Mirvac Precinct 2 Pty Limited, MVIC Finance 2 Pty Limited, Lend Lease Corporation Limited and Mirvac Projects Pty Limited under the Project Delivery Agreement of 17 April 1997 — as supplemented and limited by the **Partnership Agreement** of 3 December 1996, the **Financiers Side Deed** and the **OCA/SOCOG Olympic Village Memorandum of Understanding** of 17 April 1997 and the proposed **Head Contractors Tripartite Deed** — are summarised below.

3.1 General obligations on and acceptance of risks by ‘the developers’

The main obligations on LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2 under the Project Delivery Agreement are to:

- Plan, design, obtain approvals for, finance and construct the Olympic village, and make it available to the OCA to provide accommodation for 15,000 (and potentially up to 15,300) competitors and team officials during the Olympic Games and accommodation for competitors and officials during the Paralympic Games
- Fit out the village before the Olympics, or manage fitout works by others, if the OCA so requests.
- Carry out reinstatement and retrofit works on the Olympic village after the Paralympics
- Market and sell the reconfigured Olympic village properties, sharing the net proceeds with the OCA in accordance with the agreement
- Plan, design, obtain approvals for, finance, construct, market and sell non-Olympic developments in the village.

Subject to specific terms in the Project Delivery Agreement discussed below, LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2 accept all the risks associated with the planning, design, construction, delivery, finance, maintenance, marketing, lease and sale of all improvements on the site, including the Olympic village. They are not, however, liable to ensure that the Olympic works are fit and appropriate for use during the Olympics and Paralympics.

The risks accepted by LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2 expressly include the risks that the

actual costs of the project might be higher than estimated and that revenue and profit from the project might be lower than estimated.

The liabilities of LLD Precinct 2 and MVIC Finance 2 under the agreement are joint and several, as are the liabilities of Mirvac Precinct 2 and MVIC Finance 2, but the liabilities of LLD Precinct 2 and Mirvac Precinct 2 are several, with their shares of the liabilities varying for different “**development stages**” defined in the agreement. These definitions are based, in part, on the division of the site into four defined geographic “**precincts**”, as shown in *Figure 3*.

For “**development stage 1**” — comprising the village’s “Olympic works” (as defined in the agreement) in precincts 1, 2 and 4, *plus* its “reinstatement and retrofit works”, but *excluding* the “village fit out works”, building shell structures to be built in precinct 4 and any infrastructure and landscaping in precinct 4 required anyway for normal commercial development purposes — the liabilities are shared two-thirds by LLD Precinct 2 and one-third by Mirvac Precinct 2. (The names of the companies do *not* correspond to the “precincts” shown in Figure 3. All the “works” listed above are defined in the agreement and described in sections 3.2 and 3.3 below.)

For “**development stage 2**” — all the works undertaken *after* the Olympic Games in precincts 1 and 2, except for any works covered by the definition of “development stage 1” — the liabilities are shared 50% by LLD Precinct 2 and 50% by Mirvac Precinct 2.

For “**development stage 3**” — all the works undertaken *before and after* the Olympic Games in precinct 3 — the liabilities are again shared 50% by LLD Precinct 2 and 50% by Mirvac Precinct 2.

For “**development stage 4**” — all the works undertaken before and after the Olympic Games in precinct 4, except for any works covered by the definition of “development stage 1” — all the liabilities, as between LLD Precinct 2 and Mirvac Precinct 2, are accepted by LLD Precinct 2.

This sharing of liabilities between LLD Precinct 2 and Mirvac Precinct 2 under the Project Delivery Agreement mirrors their sharing of rights, duties, obligations and liabilities arising out of the partnership between LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2 that was formed by



Figure 3. Site precincts.

the Partnership Agreement. Under the Partnership Agreement, all rights, duties, obligations and liabilities of the first two partners arising out of this partnership are several in the proportions described above, and not joint or collective.*

Although MVIC Finance 2’s rights, duties, obligations and liabilities under the Partnership Agreement are also several rather than joint or collective, with MVIC Finance 2 having a “0% share” of the rights, duties, obligations and liabilities under that agreement for all four development stages, under the Project Delivery Agreement — as already

indicated — MVIC Finance 2 is jointly and severally liable, with LLD Precinct 2 and/or Mirvac Precinct 2, for all four development stages.

For convenience, and consistently with the terminology adopted in the Project Delivery Agreement, in the rest of section 3 of this report LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2 are simply termed “the developers”.

In using this term, it needs to be understood, however, that their individual liabilities are shared, and vary, in the manners described above.

* The Partnership Agreement terms the “development stages” “precincts”. These “precincts” therefore do not correspond — except in the case of the Partnership Agreement’s “precinct no 3” — with the Project Delivery Agreement’s geographically defined “precincts” shown in Figure 3. The Syndicated Facility Agreement uses the term “precinct” in the same way as the Project Delivery Agreement.

3.2 Scope of works prior to the Olympics

The works to be undertaken by the developers for use during the Olympics, termed the “**Olympic works**”, are described in an exhibit to the Project Delivery Agreement. As discussed later, they include “**village fit out works**”, broadly as described in another exhibit to the agreement, to fit out the village for the Olympics.

The “Olympic works” are to be constructed in precincts 1, 2 and 4, both within the site boundaries and in land adjacent to the site (*Figure 4*).

Other infrastructure and residential dwelling works that will not form part of the Olympic village, and will not be part of the “Olympic works”, will be constructed prior to the Olympics in precinct 3.

The “**Olympic works**” other than the “**village fit out works**” are to comprise:

- About 633 permanent dwellings that will be partly constructed for conventional dwelling occupancies and then temporarily converted to forms suitable for much higher occupancies during the Olympics (these conversions, such as temporary partitions, rooms in garages and extra bathrooms in laundries, will be removed after the Paralympics as part of the “reinstatement and retrofit works” described in section 3.3 below). These permanent dwellings, in precincts 1 and 2, will provide about 4,890 beds for athletes and team officials.
- About 500 relocatable dwellings in precinct 1, providing about 5,950 beds.
- About 924 temporary “house addition” modular units, behind the permanent and relocatable dwellings, providing a further 3,696 beds, taking the total to about 15,756 beds — sufficient for 15,000 athletes and officials, allowing for bed “wastage”. (The Project Delivery Agreement is premised on the need to provide for this number of competitors and officials, but the developers and Lend Lease Corporation, as completion guarantor, have expressly acknowledged that the OCA may require accommodation for an additional 300 competitors and officials. The developers have prepared two options to deal with this possibility, and have undertaken to consult with the OCA to satisfy the OCA’s requirements.)
- Administration space, meeting rooms, conference rooms, an information centre, medical space and storage space for national Olympic committees, in both permanent and transportable buildings throughout the residential areas.
- The shells for 30 “resident centres” in transportable buildings throughout the residential areas, providing

laundry facilities, recreational and refreshment facilities and information services for athletes and officials.

- Space for facilities for the staff who will run the village during the Olympics and Paralympics.
- The building shell for a restaurant for non-residents in permanent and temporary building structures.
- A site in precinct 1 for a restaurant for residents. (A temporary tent structure for this restaurant will be separately supplied as part of the “village fit out works” described below.)
- Sites for a swimming pool and tennis, basketball and volleyball courts that will again be provided as part of the “village fit out works”.
- Subsoil drainage for a running track.
- “Allowance” for pedestrian and cycle tracks within the village.
- The building shell for a gym, strength training and sauna facility.
- A large, landscaped plaza and amphitheatre in precinct 4, which will be used for welcoming and flag-raising ceremonies, concerts and cultural events and as a meeting place.
- A site for a visitor entry facility to be provided by SOCOG.
- Permanent and temporary car parking facilities for national Olympic committees in precinct 4.
- Space in permanent building shells for retail and commercial services (in what will become the retail centre of the village after the Paralympic Games), and for village administration staff.
- A sealed surface for a temporary bus transport mall for up to 60 buses adjacent to precinct 1, beside the southern entry road.

The Project Delivery Agreement, as signed by the OCA in April 1997, sets out **three options under which the OCA might procure delivery of the “village fit out works”**, the first of which was subsequently selected by the OCA in May 1998:

- Delivery of these works by the developers, with the “village fit out works” becoming part of the “Olympic works” and being added to the works listed above.

Under this option, practical completion of all the “Olympic works”, including the fit out works, will need to be achieved by the developers by no later than 30 April 2000 (this date for practical completion may be extended in certain circumstances described later in this report, but not beyond 30 June 2000).

- Delivery of the “village fit out works” by other contractors and suppliers, with the developers providing contract management services only, acting as the OCA’s

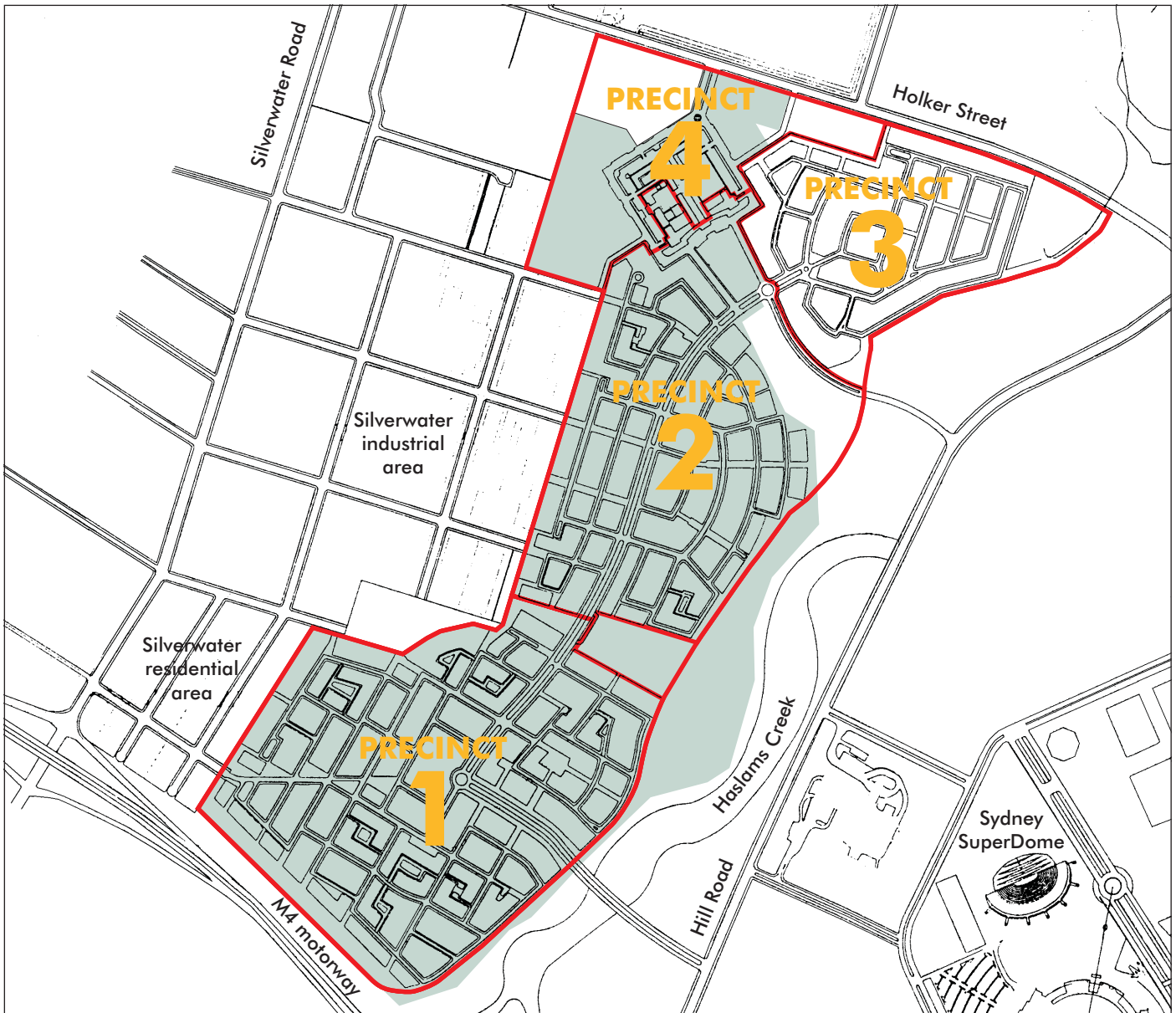


Figure 4. Site for the “Olympic works” (green shaded area) in precincts 1, 2 and 4 and adjacent areas.

agent in managing the tendering, letting, administration and supervision of contracts with these other contractors and suppliers.

Under this now-discarded option, practical completion of the “Olympic works”, as described above, would have had to be achieved by the developers by no later than 1 January 2000 (again as extended, but not beyond 30 April 2000), and the developers would have been obliged to use reasonable endeavours to ensure the separate “village fit out works” would be fully completed and installed by 30 June 2000.

- Delivery of the “village fit out works” by other contractors and suppliers, with no involvement by the developers.

Under this now-discarded option the developers would have had to grant the OCA access to the site upon practical completion of the “Olympic works” described above, which would have had to reach practical completion by no later than 1 January 2000 (again as

extended, but not beyond 30 April 2000), and the developers would have borne none of the risks associated with delivery of the separate “village fit out works”.

The procedures that had to be used by the OCA to determine which of these three options would be selected are set out in the Project Delivery Agreement and are summarised in section 3.5 below.

The “village fit out works” are broadly described in an exhibit to the Project Delivery Agreement, and will encompass:

- The fitting out of all residential accommodation, in permanent houses and units, relocatable houses and house “additions”, for the Olympics and Paralympics, including the provision of furniture, fittings and equipment.
- The fitting out of the non-residential building shells to be provided by the developers, including the supply and installation of furniture, fittings and equipment, floor

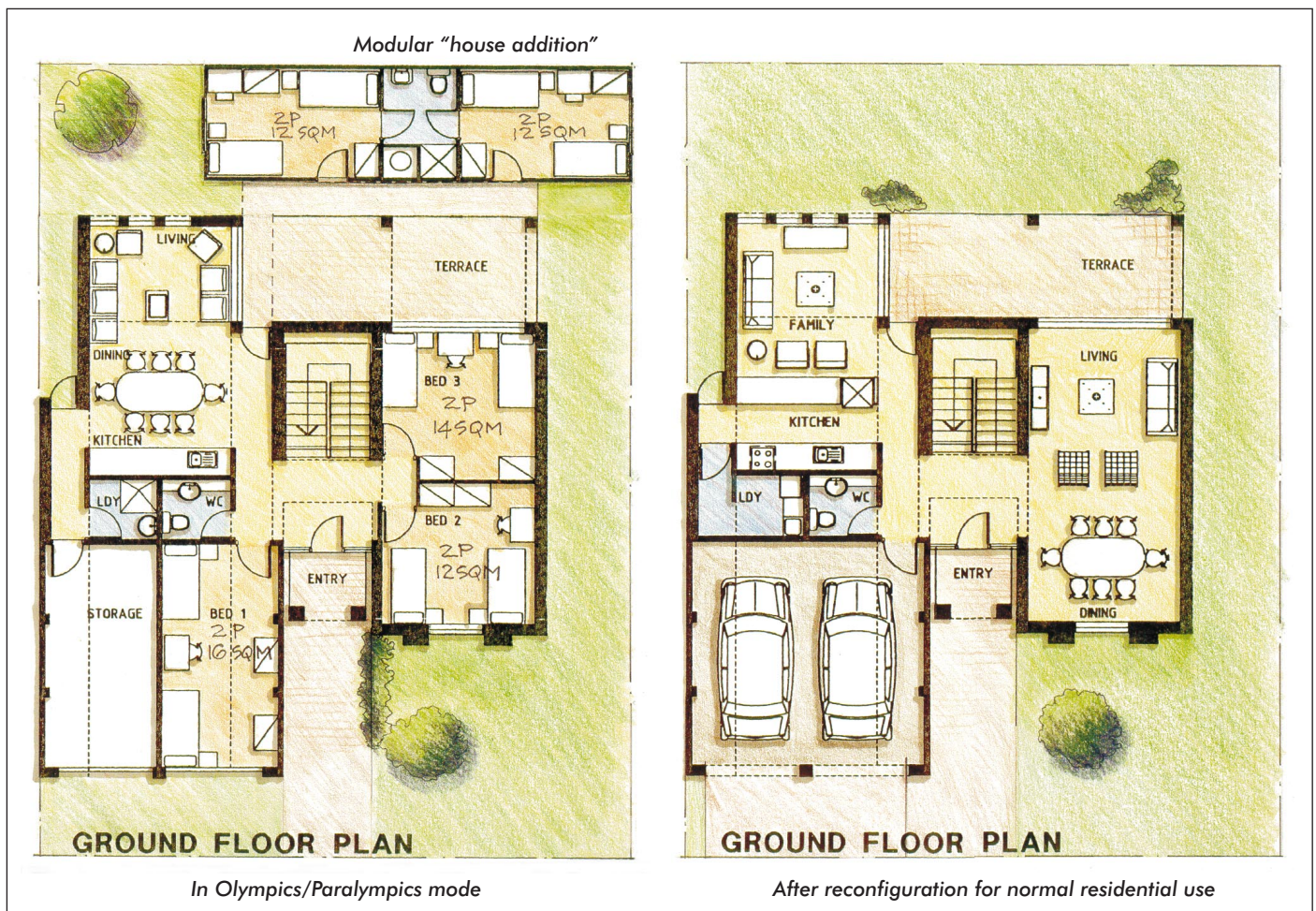


Figure 5. An illustrative example of the ground floor plan of a permanent dwelling and a modular “house addition” in their Olympic/Paralympic mode, after completion of the “village fit out works”, and the ground floor plan of the same permanent dwelling after the removal of the “house addition”, removal of the “village fit out works” and completion of the “reinstatement and retrofit works”.

coverings, services within the shells, amenities within or adjacent to the shells, any requirements by authorities associated with differences between the temporary and permanent uses of the facilities, any additional works required to ensure compliance with building codes for the Olympics and Paralympics period, and embellishments to the building shells. The exhibit to the agreement lists the works to be carried out for each of the types of facilities described above.

- The fitting out of temporary buildings to be provided by SOCOG, such as the main restaurant and the visitor entry, including connections to services, the supply and installation of furniture, fittings and equipment, services within the facilities, and landscaping and pathways to the facilities from surrounding streets.
- The fitting out of a leisure centre and a multi-denominational religious centre in a permanent school building to be provided by the Department of School Education.
- Temporary structures, facilities, landscaping, lighting, paving, etc for the bus transport mall and along the route of a resident shuttle bus service within the village.

- Other landscaping, lighting, services, seating, decorations, signage, screens, security facilities, a waste transfer area, etc as listed in the exhibit.
- If the village fit out works are being delivered or managed by the developers, the removal of specified parts of these works, as agreed at the time contracts are entered into for the village fit out works.

3.3 Scope of works after the Paralympics

After the Paralympics, and by no later than midnight on 1 December 2000, the OCA is to give the developers access to the site again, so that “reinstatement and retrofit works”, as described in another exhibit to the Project Delivery Agreement, may be carried out by the developers to the stage of practical completion within six months.

These “reinstatement and retrofit works” will encompass:

- Retrofitting of permanent dwellings in the village to make them suitable for normal residential use and sale. This will include the rectification of damage caused after the practical completion of the village and the

removal of the “village fit out works” in these dwellings, with the costs being borne by the OCA.

- The rectification of damage after practical completion to the relocatable dwellings placed in precinct 1 for the Olympics and Paralympics (with the costs being borne by the OCA, which will be reimbursed by SOCOG), the removal of the “village fit out works” in these dwellings (again with the costs being borne by the OCA, which will be reimbursed by SOCOG), the disconnection and removal of temporary services to these dwellings and the clearing, landscaping and preparation of their allotments for sale after the relocatable dwellings have been removed. (The actual removal of the relocatable houses will not form part of the “reinstatement and retrofit works”, but will need to be carried out by the developers within nine months, or a longer period if the OCA agrees, under other provisions of the Project Delivery Agreement.)
- The removal of house “additions” and landscaping of the affected areas.
- Retrofitting of the permanent non-residential buildings constructed by the developers so as to satisfy their “end uses”, such as the village’s shopping centre, car parks and high-technology industrial uses.
- The removal of all temporary non-residential structures, including any associated “village fit out works”, and reinstatement of the affected areas to satisfy their “end uses”.
- The completion of other works in the developers’ plans, such as parks and serviced lots.

3.4 Development consents and building approvals

Under the Project Delivery Agreement the developers were and are obliged to submit applications for development consent under the Environmental Planning and Assessment Act and applications for building approvals under the Olympic Co-ordination Authority Act for the village and for non-residential improvements, by dates set out in a construction program exhibited to the Project Delivery Agreement.

The applications for development consent for the village and for non-residential improvements, which were prepared by the developers and submitted by the OCA (as the applicant) to the Minister for Urban Affairs and Planning on 7 March 1997, had to:

- Generally conform with draft development applications, also exhibited to the Project Delivery Agreement, and undertakings by the developers in letters to the OCA in December 1996.

- Comply with the OCA’s *Environmental Management Plan* for the site (under the agreement under which the OCA purchased the land from the Commonwealth, the OCA is bound to ensure this *Environmental Management Plan* will form the basis for its future environmental management of the land).
- Comply with a consistent *Environmental Management Plan* to be prepared by the developers, and also with all environmental laws applying to the site and the proposed works.
- Be accompanied by a *Statement of Environmental Effects* in accordance with the requirements of the Environmental Planning and Assessment Regulation 1994 and Sydney Regional Environmental Plan 24, a *Social and Economic Impact Study* addressing the requirements of the Environmental Planning and Assessment Act, and all other documents required by environmental laws.
- Take account of views submitted to the OCA by local councils and government authorities under the consultation provisions of the Olympic Co-ordination Authority Act.
- Be approved for lodgment by the OCA, which was obliged to grant this approval if the applications were consistent with:
 - The developers’ *Newington Village Design Control Code*, as exhibited to the Project Delivery Agreement (this design code may be amended in the future with the OCA’s consent, which may not be unreasonably withheld),
 - SOCOG’s requirements for the Olympic village, as set out in a *SOCOG Brief* also exhibited to the agreement, and
 - The developers’ *Ecologically Sustainable Development Strategy and Environmental Performance Review*, also exhibited to the agreement.

Drafts of the design documentation provided with these development applications had to be submitted first to the OCA, and amended if necessary, so that the OCA could notify the developers that in the OCA’s opinion the design documents were consistent with the requirements of the Project Delivery Agreement, the *SOCOG Brief* and the developers’ *Newington Village Design Control Code*.

In addition, the developers had to submit a separate development application for temporary structures in the Olympic village, if these structures required development consent and were not otherwise the subject of such a consent (as it turned out, the development consent for the village covered “temporary facilities for the Olympic and Paralympic Games”, so a separate application was not required). The developers must also submit building applications for temporary structures to the OCA.

The OCA undertook to convene a Development Applications Unit, with representatives from the OCA, the Department of Urban Affairs and Planning and Auburn Council, to facilitate the development application processes. This unit convened on 11 December 1996, just prior to the announcement of the successful consortium, and met for the last time on 17 February 1997, prior to the finalisation of documentation for the development applications. A Building Applications Unit was also to be convened by the OCA if it considered this necessary for the execution of the works, and the first meeting of this unit, with representatives from the developers, Auburn Council and the OCA, took place on 25 June 1997.

Under the agreement, the OCA is not obliged to review or comment on any design documentation associated with a development application or building application, and if it does so the developers are not relieved of their responsibility for any errors or omissions in this documentation.

The OCA and Lend Lease Corporation (as completion guarantor) have expressly recognised the developers' right to seek a review of any OCA decision on a building application, and to appeal to the Land and Environment Court.

Development consents for the village and the non-residential improvements were granted by the Minister for Urban Affairs and Planning on 12 May 1997. Had either of these consents not been issued by 31 May 1997, the OCA would have been entitled to terminate the Project Delivery Agreement by giving notice to the developers before 30 June 1997, in which case it would have had to reimburse the developers for their costs and expenses under the agreement between 3 December 1996 and the date of termination, including the costs of performing their design obligations, up to a limit of \$4 million, and the developers would have had to transfer all their intellectual property rights in the designs to the OCA. The developers would also have been entitled to terminate the Project Delivery Agreement by giving notice to the OCA before 30 June 1997, unless the OCA had elected to reimburse them for any losses or costs incurred.

The developers will have to meet all the costs of complying with conditions attached to the village and non-residential development consents, including conditions imposing obligations on the OCA, except for any conditions relating only to the "Olympic works" that substantively reflect obligations that the OCA has already agreed to accept under the project contracts summarised in this report.

Additional development applications and/or applications for modification of any development consent may be lodged by the developers only with the OCA's agreement, which

must be granted if the OCA is reasonably satisfied that what is being sought by the developers:

- Is capable of being approved,
- Is materially consistent with the village and non-residential development applications, the developers' *Newington Village Design Control Code*, the *SOCOG Brief* and the developers' *ESD Strategy and Environmental Performance Review*,
- Is also consistent with the *spirit and intent* of the *SOCOG Brief*, as exhibited to the Project Delivery Agreement, and
- Will not delay practical completion of the "Olympic works" or the meeting of construction "milestone" deadlines set out in the construction program exhibited to the agreement.

Under the OCA/SOCOG Olympic Village Memorandum of Understanding, the OCA must consult with SOCOG and obtain its approval before notifying the developers of OCA's satisfaction on the last two of these criteria.

In the case of any application for modification to be lodged by the OCA, the developer must prepare all the necessary documentation and will bear all the associated costs, apart from internal or administrative costs to the OCA.

If the development consents for the village and/or the non-residential improvements had included "**unacceptable**" conditions — *meaning* conditions that were not part of, or expressly or impliedly contemplated by, the draft development applications exhibited to the Project Delivery Agreement, and that

- In the reasonable opinion of the developers, reduced the net present value of forecast net revenues from the project by more than \$500,000, or were likely to do so, *or*
- Imposed contributions under section 94 of the Environmental Planning and Assessment Act, *or*
- Were included by the Minister for Urban Affairs and Planning because of a *Conservation Plan* for the works prepared for the OCA under Sydney Regional Environmental Plan 24 —

the developers would have had 21 days, from the date of the consents, to notify the OCA of their opinion that "unacceptable" conditions have been imposed, and the reasons for this opinion. No such notification was given.

Had the developers notified the OCA of "unacceptable conditions", the OCA or the developers would then have been entitled to terminate the Project Delivery Agreement by giving notice to the other parties within 61 days of this notice. The developers would not have been entitled to do so, however, if the OCA had elected to reimburse the

developers for any losses or costs incurred and to compensate the developers for any reduction in forecast net revenue.

If the OCA had not disputed such a now-hypothetical “unacceptable conditions” notice issued by the developers within 21 days — or if it had notified the developers (and also Westpac, as agent for the developers’ debt financiers ANZ and Westpac, in accordance with the Financiers Side Deed) that it did not agree with the developers’ opinion on the financial impacts of the conditions, and an independent expert to whom the dispute was referred in accordance with the Project Delivery Agreement’s dispute resolution procedures determined that the conditions *were* “unacceptable” — the OCA, the developers and Lend Lease Corporation (as the guarantor of many of the developers’ obligations under the Project Delivery Agreement) would have had to meet to discuss these conditions and negotiate changes to the project’s legal, financial and commercial arrangements, with the aims of restoring the developers’ abilities to perform their obligations under the project’s contracts, repay their financiers and attain the previously forecast net revenue from the project.

Among other things, the parties to these discussions would have had to consider possible variations to revenue-sharing arrangements between the OCA and the developers, possible contributions of benefits, services or amenities to the Olympic village by the OCA and/or other government agencies, and possible payments of financial compensation by the OCA. Any changes negotiated in these discussions would have become legally enforceable only when written agreements setting out these changes had been signed by the parties. Under the Financiers Side Deed, any such agreements would have been able to be made only with the prior written consent of Westpac, as agent for the developers’ debt financiers, ANZ and Westpac.

Had the OCA terminated the Project Delivery Agreement because of any notified “unacceptable” development consent conditions, it would have had to reimburse the developers for their costs and expenses under the agreement between 3 December 1996 and the date of termination, including the costs of performing their design obligations, up to a limit of \$4 million. In return, the developers would have had to transfer all their intellectual property in the designs to the OCA.

If the agreement had not been terminated in these now-hypothetical circumstances, the developers might have been able to claim an extension of time, as discussed later in this report.

3.5 General design and construction obligations

Under the Project Delivery Agreement the developers are expressly obliged to:

- Commence the design and construction of various aspects of the “Olympic works” by dates set out in the construction program exhibited to the agreement.
- Execute and complete all the works in accordance with:
 - Plans, drawings, specifications and schedules of finishes approved by the OCA and other relevant Government authorities
 - The construction program exhibited to the agreement
 - The project’s development consents and building approvals, all other approvals, licences, permits, etc required from other Government authorities, and more generally the requirements of all Government authorities
 - The developers’ *ESD Strategy and Environmental Performance Review*, exhibited to the agreement, and
 - The developers’ other obligations under the agreement.
- Ensure the works do not encroach from the site onto adjoining land.
- Execute and complete the “Olympic works”, now including the “village fit out works”, to practical completion by 30 April 2000 (this date for practical completion may be extended in certain circumstances described below, but not beyond 30 June 2000).
- Execute and complete the “reinstatement and retrofit works” to practical completion within six months of being granted access to the site by the OCA after the Paralympic Games.

Site access and interfaces with other works

The OCA was obliged to grant the developers access to the site — which must continue to be owned by the OCA until the completed residential units and non-residential improvements are sold — from no later than 1 June 1997, provided the developers had complied, and continued to comply, with their insurance obligations under the agreement (earlier access was granted to permit certain works for the relocation of a pilot cable).

The developers have expressly acknowledged the OCA’s ownership of the site, the historical uses of the site and the

existence of registered and unregistered encumbrances affecting the land.

Upon practical completion of the “Olympic works”, now including the “village fit out works”, the developers will cease to have access to precincts 1 and 2 and much of precinct 4 (*Figure 6*) until after the Paralympic Games, except with the prior written consent of the OCA. This consent might be granted to enable the developers, among other things, to rectify any defects or omissions in the “Olympic works” prior to the Olympic Games, to rectify any other damage to the “Olympic works” and, if requested by the OCA, to maintain and repair the “Olympic works” and all services on the Olympic village site (see section 3.6 below).

If parts of the “Olympic works” reach practical completion before others, the OCA may require the developers to deliver possession of the completed parts while the other parts are being completed.

The OCA must grant the developers access to all the site again, to carry out the “reinstatement and retrofit works”, rectify damage caused after the practical completion of the “Olympic works”, remove some or all of the “village fit out works” and market and sell the reconfigured residential units and non-residential improvements, on a date after the Paralympics chosen by the OCA but by no later than midnight on 1 December 2000.

The developers and Lend Lease Corporation have acknowledged that during the construction period other substantial works will be carried out within and around the Olympic site at Homebush Bay, including works adjacent to the village site, and that these other works may disrupt the village construction program. Provided the OCA does everything reasonably within its control to minimise the risks associated with this situation, the developer and Lend Lease Corporation have accepted all these risks, including the risks of delays, except where the other works are being carried out by, or are the responsibility of, the OCA itself. The developers will be responsible for managing the interfaces between the village “Olympic works” and the other works, and must ensure that Civil & Civic, as their “head contractor” under the Delivery Services Agreement (Head Contract No 1), participates with the contractors for these other works in an Olympic Construction Co-ordination Committee established by the OCA.

The developers have also acknowledged that contractors carrying out works adjacent to the village site, and contractors carrying out works for easements that may be granted by the OCA over the village site, may need access to the village site. They have undertaken to allow this access at reasonable times, with reasonable notice and on reasonable terms, but not so as to delay the village construction program.

The OCA may grant easements over the site with the developers’ consent, which may not be unreasonably withheld or delayed, provided the easements do not substantially harm the developers’ rights under the Project Delivery Agreement. The OCA must compensate the developers for any resultant reduction in the market value of the land or their works, as valued by the OCA and the developers or, failing an agreement, through the dispute resolution procedures summarised in section 3.9 of this report.

In order for the OCA to carry out some works on land adjacent to the village site, the developers have agreed to move their site boundary fences if reasonably requested to do so by the OCA, and the OCA has agreed to indemnify the developers for any injuries or damage occurring on the village site area made accessible in this way. Conversely, to permit the developers to undertake village “Olympic works” at or near the boundary, the OCA has agreed to permit the site boundary fences to be moved the other way if reasonably requested to do so by the developers, and the developers have agreed to indemnify the OCA for any injuries or damage occurring on the adjacent land area made accessible in this way.

Intellectual property

The developers and Lend Lease Corporation (as completion guarantor) have warranted to the OCA that the developers are entitled to non-exclusive use of the design documentation provided with their development and building applications, and the developers have granted the OCA an irrevocable licence to use this documentation in connection with the works they are designing and constructing, including any additions, alterations or repairs to these works and rectification and maintenance of the works.

Services

The developers are responsible for the procurement and provision of all electricity, water, sewerage, telecommunications and similar services required for the project, with the exception of a series of specific services or infrastructure listed in the agreement. These exceptions, which are to be provided or procured by the OCA, include:

- A series of works in the adjacent Homebush Bay Olympic Park area, such as the rail loop and road system and the removal of the overhead transmission lines and towers.
- Specified services and infrastructure next to the site, such as security fencing; the Holker Street extension (if possible, after an earlier provision of space for the developers to construct a sewer and stormwater pipeline along the road reserve); electricity, telecommunications, water mains, grey water piping and sewerage

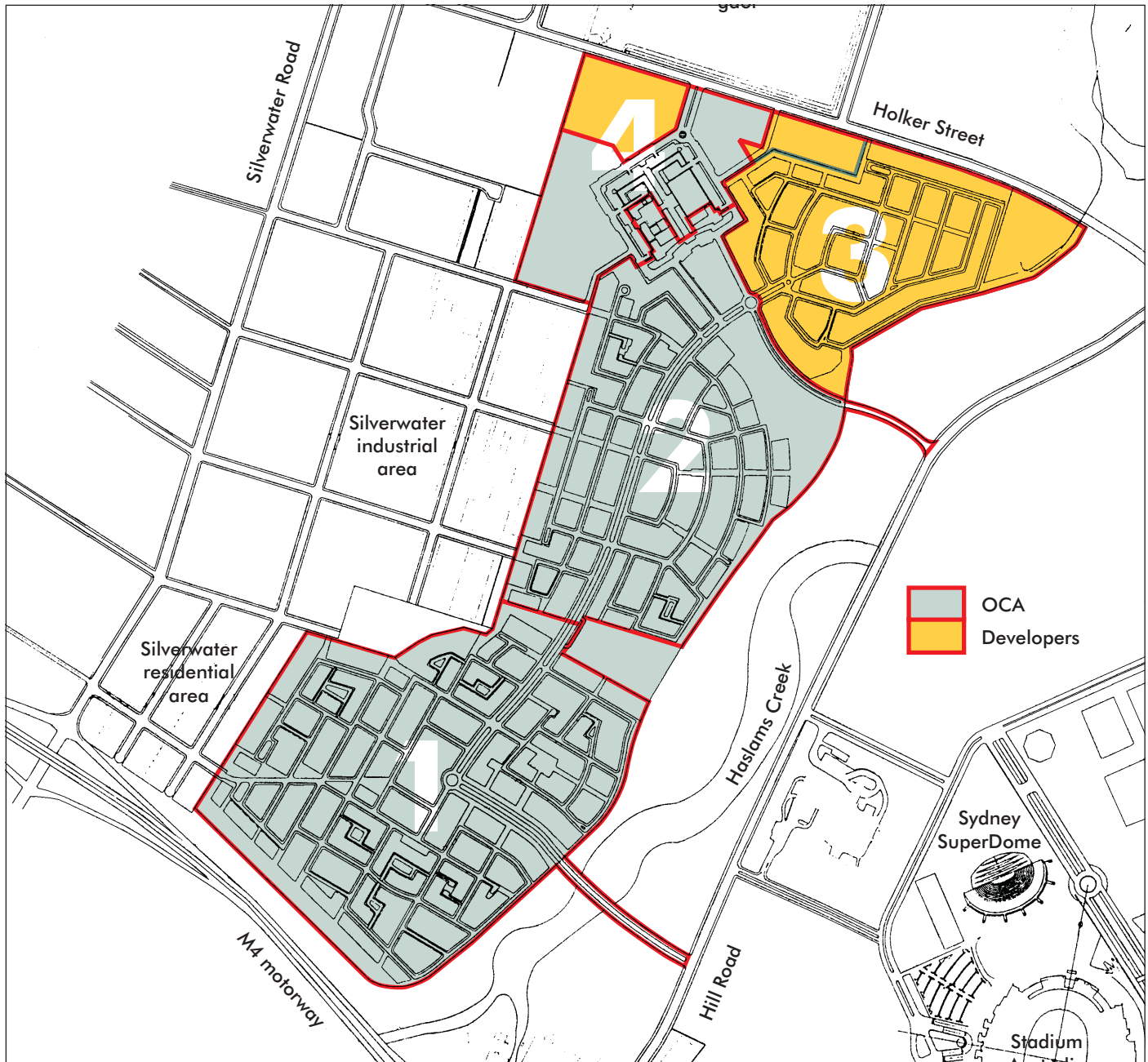


Figure 6. Site areas to which the developers will retain access during the Olympics and Paralympics (yellow) and to which they will have access during the Games only with the OCA's consent (green).

to the site boundaries; sewerage pumping stations; the structural shell for a primary school between the site and Haslams Creek; and an off-site pilot cable to permit the developer to remove an existing pilot cable from the site.

- Access to permit the developers to construct specified access roads to the site.
- Landscaping works and noise and odour control works at the Homebush Bay waste treatment plant.

The developers must provide electricity-generating solar panels, with a peak capacity of 1 kW per dwelling, for all the houses and townhouses they build in precinct 3 and for all the single-lot (i.e. non-unit) permanent dwellings they build in precincts 1 and 2.

The OCA and the developers have expressly acknowledged that Telstra cabling through the site might need to be relocated or otherwise made safe, potentially increasing the developer's costs and necessitating delays to and redesign of the works. The OCA and the developers have agreed to work together to solve this problem and minimise any additional costs, which are to be shared equally between the OCA and the developers, up to a maximum contribution of \$1 million by the developers.

The OCA also undertook to attempt to obtain title to an electricity easement along the southwestern side of the site, immediately adjacent to the existing Silverwater residential area at no cost to the developers. If the OCA obtains this land, it is to be made available to the developers and developed as part of the project.

If the OCA grants an easement over the site it must compensate the developers for any resultant reduction in the market value of the land or their works, as valued by the OCA and the developers or, failing an agreement, through the dispute resolution procedures summarised in section 3.9 of this report.

Bank guarantees

The developers have given the OCA two unconditional bank guarantees, one for \$14 million that is returnable within seven days of practical completion of the “Olympic works” and one for \$8 million that is returnable within seven days of practical completion of the “reinstatement and retrofit works”.

The OCA may make a demand under these guarantees if the developers have failed to pay an amount due under the Project Delivery Agreement within 28 days of a demand by the OCA, or if the OCA terminates the agreement for a developer default (see section 3.10).

Native title and threatened species claims

The OCA has indemnified the developers for all their costs and direct and consequential losses arising from any application by any Aboriginal person for a right or interest in the site under the Native Title Act 1993 (Cth), the Native Title (NSW) Act 1994, the common law or any other legislation relating to Aboriginal matters, including any applications arising from any Aboriginal archaeological relics found on the site.

A similar indemnity has been provided by the OCA for all the developers’ costs and direct and consequential losses arising from any claim or proceedings concerning a threatened species, population or ecological community, as regulated under the Threatened Species Conservation Act 1995 or the National Parks and Wildlife Act 1974, on the site.

The developers must take reasonable steps to mitigate these costs and losses and must comply with the OCA’s directions concerning native title and threatened species claims, but they must otherwise continue to perform their obligations under the project’s contracts unless directed not to by the OCA, a court or tribunal or the law. If they have to suspend or cease work, they may seek an extension of time as described later in this report.

If a native title or threatened species claim results in the developers’ being prevented from developing *all* of that part of the site required for the “Olympic works”, the OCA will also be liable to pay an additional amount to the developers, such that they will receive a rate of return on a deemed \$50 million capital investment in these works, calculated on the basis of discounted cashflows, of 12% per annum.

The developers must notify the OCA of any mineral, fossil or archaeological relics found on the site, protect the

relics from being disturbed, damaged, removed or lost and comply with the OCA’s directions on the handling of the relics.

Contamination

The developers have accepted the site “as is”, and subject to all defects, both patent and latent, except for any contamination on the site or on adjacent land along Haslams Creek to the east (between the site and Hill Road). “Contaminants” are defined as including explosive materials and any other materials that might make the site or adjacent land unfit for residential purposes or make it a “risk site” under environmental laws.

The OCA promised that by the time it was due to grant the developers access to the site (on or before 1 June 1997) there would be no contamination on the site. In practice, this objective was achieved with the exception of some isolated locations related to service corridors and adjacent to buildings then still to be demolished by the developers.

Remediation works by the OCA on part of the site and on adjacent land to the east are set out in a schedule and annexure to the agreement, with these works being certified by an independent auditor agreed to by the OCA and the developers or otherwise as appointed by the Victorian Environmental Protection Authority. The OCA expected that these remediation works would remove all contamination from the site and a specified portion of the adjacent land, extending east to Hill Road and north to just north of the Holker Street extension, by 1 June 1997, and that the removal of contaminants from all other adjacent areas would be completed by 31 December 1997.

The OCA has also promised that:

- There will be no contamination of the site, and no escape of contaminants onto or from the site, because of the acts or omissions of the OCA or its agents or contractors
- Once the developers have access to the site, there will be no escape of contaminants onto the site from within the site or from any land owned by the OCA on 17 April 1997
- The OCA’s remediation works on the site and the adjacent land to the east will remove all contaminated material, rather than cap it, and any fill imported to the site by the OCA as part of these works will be clean and suitable for a residential site, will meet specified placement and compaction standards and will be of a quality to enable the site to be validated to residential standards.

The OCA has indemnified the developers for any costs, expenses and losses they incur as a result of a lawful order issued by a Government authority relating to land contami-

nation or its effects. The OCA has also indemnified the developers for all their costs and losses, except for any consequential losses or lost profits, arising from:

- Any industrial relations issues caused by a failure by the OCA to meet the expected dates for the removal of contaminants from land adjacent to the site.
- Any contamination on the site when the developers gain access to the site.
- Any contamination that occurs on or escapes to or from the site after the developers are granted access, other than contamination caused by the developers. (Under the agreement, the OCA is entitled to undertake remediation works on the site should any such contamination arise.)
- Any contamination of the site or adjacent land associated with remediation works by the OCA.

In addition, under the Financiers Side Deed the OCA has indemnified the developers' debt financiers, ANZ and Westpac, and their security trustee, Westpac Custodian Nominees, for any costs or losses they incur as a result of the last three of these factors.

If contamination had prevented the developers from developing *all* of that part of the site required for the "Olympic works", the OCA would have been liable, under the Project Delivery Agreement, to pay an additional amount to the developers, such that they would have received a rate of return on a deemed \$50 million capital investment in these works, calculated on the basis of discounted cashflows, of 12% per annum.

The OCA has accepted the risks associated with any contamination resulting from the developers' disposal of surplus excavated material from the site at locations in the Homebush Bay area specified by the OCA, except for any contamination which the OCA can establish was caused by the developers.

Finally, the OCA has warranted that any blast arcs imposed by the Commonwealth Department of Defence will not adversely affect the project's works or any occupation of the site.

Legal proceedings

If legal proceedings are taken against the OCA and/or the developer to restrain or remedy any alleged breach of the Environmental Planning and Assessment Act 1979, the Threatened Species Conservation Act 1995 (NSW), the Local Government Act 1993, the National Parks and Wildlife Act 1974 or other legislation governing the works, each party is to bear its own costs in connection with the proceedings themselves, but the OCA has indemnified the developers for any direct costs (but not any consequential

losses or lost profit) arising from delays in the project as a result of the proceedings.

If the legal proceedings result in the developers' being prevented from developing *all* of that part of the site required for the "Olympic works", the OCA will also be liable to pay an additional amount to the developers, such that they will receive a rate of return on a deemed \$50 million capital investment in these works, calculated on the basis of discounted cashflows, of 12% per annum.

If practical completion of the "Olympic works" is delayed because of the proceedings, the developers will also be entitled to an equivalent extension of time.

However, if the OCA and the developers believe the proceedings will prevent practical completion of the "Olympic works", now including the "village fit out works", by 30 April 2000 — as extended, but not beyond 30 June 2000 — the OCA and the developers must immediately commence good-faith discussions to renegotiate the project's legal, financial and commercial arrangements. Under the Financiers Side Deed, any agreements to change these arrangements may be made only with the prior written consent of Westpac, as agent for the developers' debt financiers, ANZ and Westpac.

If a satisfactory arrangement for carrying out and completing the project cannot be agreed, either party may then terminate the Project Delivery Agreement immediately by written notice, in which case each party is released from its obligations under the project contracts (other than those arising from any earlier breaches of these contracts) and the OCA must return the bank guarantees to the developers.

Developers' plans

The developers are obliged to compile and comply with a series of OCA-approved plans: an ISO 9000 series *Quality Assurance Plan*, an *Environmental Management Plan* consistent with the OCA's *Environmental Management Plan* for the site, a *Local Participation Plan*, a *Human Services Strategy Plan*, an *Industrial Relations Plan*, a *Workplace Reform Plan*, a *Project Safety Plan*, a *Habitat Management Plan* and a *Waste Management Program*.

Design and construction contractors and consultants

Under the Project Delivery Agreement the developers required the approval of the OCA to enter into their Delivery Services Agreement (Head Contract No 1) with Civil & Civic Pty Limited, under which Civil & Civic, as "head contractor", will manage the design and construction of specified components of the "Olympic works" for the developers to enable them to fulfil their obligations to the OCA under the Project Delivery Agreement.

The Delivery Services Agreement, as signed on 30 June 1997 and presented by the developers to the OCA, is currently being considered by the OCA, and no formal approval of it has yet been given.

The OCA is empowered under the Project Delivery Agreement to make its approval conditional on the inclusion in the Delivery Services Agreement of provisions —

- Prohibiting assignment of the Delivery Services Agreement without the OCA's consent.
- Enabling the developers to fulfil their obligations to the OCA.
- Requiring the head contractor, Civil & Civic, to maintain professional indemnity insurance on the same terms as that required of the developers under the Project Delivery Agreement (see below).
- Requiring the developers and the head contractor to novate the Delivery Services Agreement in favour of the OCA if the Project Delivery Agreement is terminated, in accordance with a draft deed of novation annexed to the Project Delivery Agreement, with the OCA effectively stepping into the shoes of the developers. (It was originally intended that these arrangements would be supported by the Head Contractors Tripartite Deed, discussed in section 4 of this report.)
- Requiring the head contractor to ensure all its contracts with other contractors or consultants for works valued at more than \$5 million:
 - Are consistent with the Project Delivery Agreement and the Delivery Services Agreement
 - Contain provisions novating these contracts in favour of the OCA if the Project Delivery Agreement and the Delivery Services Agreement are terminated, with the OCA effectively stepping into the shoes of the head contractor, and
 - Require the contractor or consultant to maintain professional indemnity insurance, should it have design obligations under the contract.

Under the Project Delivery Agreement the developers are similarly required to ensure and procure that all their own contracts and all the head contractor's contracts with others for works valued at more than \$5 million:

- Are consistent with the Project Delivery Agreement and, if relevant, the Delivery Services Agreement
- Contain provisions novating these contracts in favour of the OCA if the Project Delivery Agreement (and, if relevant, the Head Contract) are terminated, with the

OCA effectively stepping into the shoes of the developers or the head contractor, and

- Require the contractor or consultant to maintain professional indemnity insurance, should it have design obligations under the contract.

Supply of goods, services and materials by Olympic sponsors

In general the developers are responsible for the supply of all the goods, services and materials required for the project.

However, the OCA or SOCOG may, in writing, request the developers to consider whether goods and materials manufactured or distributed by any SOCOG Olympic sponsor might be incorporated in the construction of the "Olympic works". If such a request is made, it must be considered by the developers in good faith.

The OCA explicitly acknowledges that the developers might not be able to come to satisfactory arrangements with the suggested Olympic sponsor supplier for a range of reasons, including adverse effects on the project's construction time, costs, availability, marketability or prior or proposed supply arrangements with others.

However, if an Olympic sponsor makes any goods, services or materials available for the "village fit out works", and the OCA requests the developers to incorporate them into these works, the developers *must* do so.

If an Olympic sponsor makes any goods, services or materials available for the "Olympic works" on a "value in kind" basis, and the developers agree to use them for the "Olympic works" or are required to use them for the "village fit out works", the developers must reimburse the OCA to the value of the goods, services or materials supplied by the nominated sponsor, with this value being determined by the sponsor.

In return for the developers' agreement to use these goods, services or materials, the OCA will pay the developers a "handling fee" of 10% of their value, again as determined by the sponsor, except in the case of goods, services or materials supplied for the "village fit out works", for which no "handling fee" or other compensation will be payable to the developers by the OCA.

Under the OCA/SOCOG Olympic Village Memorandum of Understanding, the OCA must pay SOCOG the money the OCA has received from the developers, and SOCOG must reimburse the OCA for any "handling fee" the OCA has paid to the developers.

Delivery mechanisms for fitting out the Olympic village

As already indicated, the Project Delivery Agreement originally set out three options under which the OCA might procure delivery of the “village fit out works”:

- Delivery of these works by the developers, in which case the “village fit out works” would become part of the “Olympic works”.
- Delivery of the “village fit out works” by other contractors and suppliers, with the developers providing contract management services only, acting as the OCA’s agent in managing the tendering, letting, administration and supervision of contracts with these other contractors and suppliers but not being responsible for the performance of these contractors and suppliers.
- Delivery of the “village fit out works” by other contractors and suppliers with no involvement by the developers.

The OCA was empowered to determine which of these options was to be adopted, subject to SOCOG’s directions in accordance with the OCA/SOCOG Olympic Village Memorandum of Understanding. The Project Delivery Agreement processes leading up to this decision by the OCA were as follows:

- Within six months of the issuing of the development consents for the village and the non-residential improvements (i.e. by 12 November 1997), the OCA had to provide the developers with a detailed description of the scope of the “village fit out works”, consistent with the indicative description exhibited to the Project Delivery Agreement and summarised earlier in this report, plus a detailed design brief for the works, preliminary descriptions of “trade packages” to be required by the OCA, a preliminary list of OCA-nominated suppliers and contractors and details of any supply agreements or other contracts already made by the OCA or SOCOG.
- The developers then had three months to provide the OCA with a draft fit out works program for delivery of the “village fit out works” by the developers, including fee proposals for the first two of the delivery options listed above.
- The OCA and the developers then had to enter into negotiations in good faith with the aim of agreeing on a final fit out works program within 40 days, after which the developers had seven days to submit a final fee proposal for the first two delivery options.
- The OCA then had to choose which option would be adopted and advise the developers within 14 days.

In accordance with these arrangements, the first option was selected by the OCA and SOCOG in May 1998.

Under the Project Delivery Agreement, this meant the developers were automatically appointed to carry out the “village fit out works” as part of the “Olympic works”, and the OCA became obliged to provide the developers with all the documentation they required to apply for approvals for the fit out works, plus detailed fit out design documentation, in accordance with the timetable of the agreed fit out work program.

Under the OCA/SOCOG Olympic Village Memorandum of Understanding, SOCOG will meet all of the OCA’s costs and liabilities in relation to the “village fit out works”, unless the OCA has breached the relevant provisions of the Project Delivery Agreement or acted contrary to SOCOG’s directions.

The developers bear the risks associated with the “village fit out works” on the same basis as for all the other “Olympic works” to be carried out by the developers under the Project Delivery Agreement, with the exception of:

- Risks associated with any approvals by Government authorities required for the “village fit out works”.
- Risks associated with any errors or omissions in the detailed fitout design documentation supplied to them, as the developers, by the OCA, or any inconsistency between this documentation and SOCOG’s requirements as set out in the SOCOG *Brief* exhibited to the Project Delivery Agreement.
- Risks associated with a failure to perform by an “OCA risk contractor”, under provisions described below.

In contrast, if the OCA had decided the “village fit out works” would be delivered by other contractors and suppliers, with the developers providing only contract management services as the OCA’s agent under the second delivery option, the developers’ liabilities to the OCA, SOCOG or SPOC for the fit out works would have extended only to any default by the developers on their construction management obligations.

Under the original Project Delivery Agreement,

- The OCA’s approval is required for all tender documents and lists of proposed tenderers for each “trade package” forming part of the “village fit out works”. The OCA may add to any list of tenderers suggested by the developers and, if it chooses, may require the list to include (or even be confined to) contractors or suppliers that have “value in kind” arrangements with SOCOG, such as Olympic sponsors.
- The OCA selects the successful tenderer for each “trade package”, after receiving a report and recommendation from the developers.
- Should an OCA-selected tenderer or an OCA-nominated supplier or contractor not be the tenderer recommended by the developers, and the developers have

reasonable grounds for not accepting the risk of its due performance, the developers may notify the OCA that the tenderer or nominated supplier or contractor is to be an “OCA risk contractor”. If the OCA persists with its selection or nomination, and the “OCA risk contractor” subsequently fails to perform, the developers will not be in default of the Project Delivery Agreement because of this failure, and the OCA must compensate the developers for any costs they have incurred as a result.

The developers may also notify the OCA that an OCA-selected tenderer or OCA-nominated supplier or contractor is to be an “OCA risk contractor” if the developers are not satisfied with any trade package’s final list of proposed tenderers as required by the OCA and have reasonable grounds for not accepting the risk of due performance by the selected tenderer, or if the developers reasonably believed there were no contractors suitable for inclusion in such a list.

- Each contract between the developers and a successful tenderer must include a provision requiring the novation of the contract in favour of the OCA should the Project Delivery Agreement be terminated, with the OCA effectively stepping into the shoes of the developers.

In selecting the developers to carry out the “village fit out works”, however, the OCA agreed in May 1998 that:

- With the OCA’s consent, which may not be unreasonably withheld, the developers will not need to follow these Project Delivery Agreement subcontracting procedures if a subcontractor has already been engaged to perform the relevant kind of work or services. In particular, the OCA may not withhold its consent if the developers can demonstrate it would be more timely and economic, for both the developers and the OCA, to use a subcontractor already engaged by the developers rather than follow the subcontracting procedures.
- All subcontractors, suppliers and consultants involved in the supply and installation of kitchens at the Olympic village’s main and casual dining sites and the secondary dining area in its “international zone” will also be “OCA risk contractors”.

In addition, under proposed arrangements between the OCA and the developers:

- The developers will not have to accept a tender or enter into a subcontract under the arrangements described above if this would require them to make payments to the subcontractor before they are paid for the same work or materials by the OCA, or if the terms of the subcontract would be materially less onerous than the developers’ obligations to the OCA or might adversely

affect the developers’ abilities to satisfy these obligations.

- The OCA must advise the developers of its acceptance or rejection of tender documents and lists of tenderers submitted by the developers within ten days, may not unreasonably withhold its approval and must give detailed reasons for any rejection.

Variations

The developers may make a variation to the “Olympic works” at any time during their execution, without the consent of the OCA, if the variation:

- Does not necessitate any modification of the village development consent or any building approvals, or
- Is consistent with the OCA’s December 1996 *Developer’s Olympic Village Design Brief* for the “Olympic works” and the SOCOG *Brief* setting out SOCOG’s requirements for the Olympic village, both of which are exhibited to the Project Delivery Agreement.

The developers must bear the cost of any such variation.

If the cost of the “Olympic works” or the “reinstatement and retrofit works” (including interest and other finance charges) is reduced by a variation to *non-residential* “Olympic works” that is requested by the developers after 31 December 1997 and that necessitates a new or modified development consent or building approval, the developers must pay this cost saving to the OCA by the earlier of:

- 30 days after the costs would otherwise have been paid out by the developers, and
- Practical completion of the “Olympic works” (if the saving arises for these works) or the “reinstatement and retrofit works” (if the saving arises for these works).

The OCA may also request a variation to the “Olympic works”, now including the “village fit out works”, at any time during their execution. Within 14 days of such a request, the developers must provide the OCA with an estimate of the proposed variation’s cost (as certified by the project’s certifier) and advise the OCA on the proposed variation’s likely impact on the construction program, the date for practical completion, their ability to meet “milestone” dates set out in the construction program, and the long-term viability of the village as a residential complex after the Olympic and Paralympic Games.

The OCA may *require* a variation to the “Olympic works”, but not if, in the developers’ reasonable opinion, the variation would adversely affect:

- Their ability to achieve practical completion of the “Olympic works”, now including the “village fit out works”, by 30 June 2000 or a later date agreed to by the OCA, or

- Their revenue from the sale of the “Olympic works” (unless the OCA agrees to reimburse them for this loss), *or*
- Their costs in carrying out the “reinstatement and retrofit works” (unless the OCA agrees to reimburse them for these costs, including any lost profits payable by the developers to the head contractor).

If a variation is required by the OCA, the OCA must pay the developers the costs they incur as a result, as certified by the project’s certifier.

Under the OCA/SOCOG Olympic Village Memorandum of Understanding, SOCOG may direct the OCA to issue a variation, after the OCA and SOCOG have agreed about its valuation and whether it is to be funded by SOCOG, and the OCA may not initiate any variation that might adversely affect SOCOG’s requirements without SOCOG’s prior consent.

Again, if a variation requested by the OCA reduces the cost of the “Olympic works” or the “reinstatement and retrofit works” (including interest and other finance charges), the developers must pay this cost saving to the OCA by the earlier of:

- 30 days after the costs would otherwise have been paid out by the developers, and
- Practical completion of the “Olympic works” (if the saving arises for these works) or the “reinstatement and retrofit works” (if the saving arises for these works).

Under the OCA/SOCOG Olympic Village Memorandum of Understanding, if any work under the Project Delivery Agreement is undertaken by a SOCOG “value in kind” supplier or service provider, it is to be valued as such a negative variation and the cost saving paid by the developers to the OCA is to be passed on by the OCA to SOCOG.

The OCA may audit the books of the developers, and any relevant records of the Delivery Services Agreement head contractor and any other party to a contract for works valued at more than \$5 million, to determine the cost of any variation.

If there is any inconsistency between the OCA’s December 1996 *Developer’s Olympic Village Design Brief* for the “Olympic works” and the SOCOG *Brief* setting out SOCOG’s requirements for the Olympic village — both of which are exhibited to the Project Delivery Agreement — and the developers are required to comply with the SOCOG *Brief* under any of the project’s contracts, the OCA is liable to pay the developers for any costs incurred as a result of the inconsistency, including delay and financing costs and lost profits. If the OCA requires the developers to comply with the inconsistent part of the SOCOG *Brief*, this is to be treated as an OCA-requested variation.

Under the Financiers Side Deed, the OCA and the developers may not agree to any variation under the Project Delivery Agreement without the prior written consent of Westpac, as agent for the developers’ debt financiers, ANZ and Westpac, if this variation would:

- Increase the costs of the project, unless the OCA is required to compensate the developers for their actual costs incurred under the provisions outlined above, or
- Adversely affect the developers’ ability to meet the absolute deadline for practical completion of the “Olympic works”, or their expected revenue from the sale of any of these works.

Progress and completion of the works

As already indicated, the developers must carry out the “Olympic works”, which now include the “village fit out works”, in accordance with the construction program exhibited to the Project Delivery Agreement and the agreed fit out works program.

The developers may suspend the progress of the “Olympic works” only with the OCA’s consent or in the case of:

- Industrial action affecting other sites but aimed substantially at disrupting the project or targeting the developers or the head contractor as a result of their involvement in the project. Any such suspension of work may extend for no more than one month.
- Industrial action directed at the project as a result of acts or omissions by the Government or a Government authority, or as a result of an organised campaign of disruption primarily targeting the Olympic Games.
- Statewide or nationwide industrial disputes, stoppages or strikes.
- Other specified *force majeure* events, such as wars, demonstrations, fires not caused by the developers or their contractors or agents, floods, explosions, earthquakes and “acts of God”.
- A suspension required by law or a court order.
- A suspension required in order to comply with the Occupational Health and Safety Act.

The Project Delivery Agreement sets out a series of regular and “exception” reporting requirements under which the developers must advise the OCA on progress with the “Olympic works”, including the “village fit out works”.

Among other things, these reports must compare progress against the construction program exhibited to the Project Delivery Agreement and the agreed fit out works program for the “village fit out works”, including a series of “major milestone” dates listed in these programs, and must notify the OCA of any events which have disrupted or might disrupt the works.

If the construction program is not being complied with, the developers must submit proposals for an updated construction program, which the OCA is free to accept or reject in whole or in part, and must detail the actions they are taking to ensure the construction program's completion dates and "milestone" dates will be met.

Under the Financiers Side Deed, the OCA is required to notify Westpac, as agent for the developers' debt financiers ANZ and Westpac, as soon as practicable after it has become aware of any failure to achieve a "major milestone" under the construction program or the village fit out works program.

As already indicated, the date for practical completion of the "Olympic works", now including the "village fit out works", is 30 April 2000.

The developers may claim an extension of time, but not under any circumstances beyond 30 June 2000, if:

- The OCA requests or requires a variation, as discussed above.
- Any development consent required for temporary structures is not issued within 40 days of its application's being lodged with the Minister for Urban Affairs and Planning by the OCA.
- The village development consent or any development consent required for temporary structures contains "unacceptable conditions", as discussed in section 3.4 of this report.
- Any building approval is not determined by the OCA within 40 days of its application or all necessary supporting information being submitted by the developers.
- Any building approval issued by the OCA for the "Olympic works", in response to an application complying with the developers' *Newington Village Design Control Code* and the *SOCOG Brief* setting out SOCOG's requirements for the Olympic village, contains conditions that could not reasonably have been anticipated by the developers, and the developers reasonably believe these conditions have, or are likely to have, a material adverse effect on their ability, or the ability of Lend Lease Corporation as completion guarantor, to satisfy all their obligations under the project's contracts.
- Legal proceedings are taken against the OCA and/or the developer to restrain or remedy any alleged breach of the Environmental Planning and Assessment Act 1979, the Threatened Species Conservation Act 1995 (NSW), the Local Government Act 1993, the National Parks and Wildlife Act 1974 or other legislation governing the works.
- A "discriminatory" law is introduced. This term encompasses any State law which:
 - Specifically and only affects the village or the execution of the works and adversely affects the village or the facilities to be used for the Olympics, *or*
 - Specifically and only affects the project and any "competitive development" — meaning a development involving 50 or more residences or a supermarket of more than 1,000 m² of net lettable area on land owned by the OCA or another Government-controlled agency in the Homebush Bay area — and the "competitive development" is granted direct financial relief by the State or any Government authority, *or*
 - Empowers the OCA or Auburn Council to impose rates or taxes on land owned by the OCA.
- A *force majeure* event, as specified in the Project Delivery Agreement, occurs. These events include:
 - Wars, demonstrations, fires not caused by the developers or their contractors or agents, floods, explosions, earthquakes and "acts of God"
 - Industrial action directed at the project as a result of acts or omissions by the Government or a Government authority, or as a result of an organised campaign of disruption primarily targeting the Olympic Games.
 - Statewide or nationwide industrial disputes, stoppages or strikes.
 - The imposition of a "discriminatory" law, as described above, that was not otherwise contemplated by the Project Delivery Agreement.
- The OCA acts contrary to a written direction by a person who is authorised by the OCA to exercise any of its functions under the Project Delivery Agreement (in these circumstances the OCA must also reimburse the developers for all the costs they have incurred in following the direction).
- A delay is caused by industrial action that affects other sites but is aimed substantially at disrupting the project or targeting the developers or the head contractor as a result of their involvement in the project.
- A delay is caused by an act or omission of the OCA.
- The developer suspends or ceases work because of a native title claim, the discovery of Aboriginal relics or a threatened species claim.
- The OCA had failed to give the developers access to the site by 1 June 1997.
- The site or adjacent land is contaminated, and the OCA is responsible under the contamination provisions of the Project Delivery Agreement discussed above.

- Practical completion of the “Olympic works” is delayed by a failure to perform by an “OCA risk contractor” on the “village fit out works”, or by any other matter concerning the fit out works for which the developers are not responsible.

However, the developers are entitled to an extension of time under these provisions only if:

- They have notified the OCA of the event within seven days and claimed the extension within 14 days,
- They have actually been delayed in carrying out the “Olympic works” because of the event, and have made reasonable endeavours to remedy the event and reduce the delay, and
- The delay was not caused or contributed to, either wholly *or in part*, by the developers or their contractors, subcontractors, consultants, employees or agents.

The OCA must determine any application from the developers for an extension of time within 14 days.

The developers are expressly obliged to commit the extra resources required to make up for time lost so as to achieve practical completion by the last permissible date, even with extensions, of 30 June 2000.

The developers are entitled to compensation from the OCA for their “acceleration” costs in doing so — provided their works are accelerated *only* because of the need to meet this absolute deadline — if they would otherwise be entitled to an extension of time because of:

- A variation requested by the OCA.
- A failure to issue a development consent for temporary structures within 40 days of an application being lodged with the Minister for Urban Affairs and Planning by the OCA, if the resultant delays occurred after 31 May 1997.
- Legal proceedings against the developers and/or the OCA.
- A “discriminatory” law.
- *Force majeure* industrial actions causing delays totally more than 30 days and, as a result, delaying the achievement of a “major milestone”, as set out in the agreed construction program, by more than 30 days.
- A delay caused by the OCA.
- A native title claim, the discovery of Aboriginal relics or a threatened species claim.
- A failure by the OCA to give the developers access to the site by 1 June 1997.
- Contamination of the site or adjacent land.

The developers must minimise their acceleration costs by all reasonably practicable means.

The developers’ obligation to complete the “Olympic works” by the last permissible date (even with extensions) of 30 June 2000 is expressly not affected by any delay caused by the OCA, any failure by the OCA to grant any extension of time or any failure by the OCA to determine an application for an extension within 14 days.

If practical completion of the “Olympic works” is not achieved by the agreed date for completion — 30 April 2000, or a later date as extended under the provisions just described — the developers must pay the OCA liquidated damages of \$50,000 per day until these works are completed or the Project Delivery Agreement is terminated by the OCA (as it may be entitled to do in these circumstances).

The developers are also liable to pay the OCA liquidated damages of \$50,000 per day for any failures to achieve “major milestones” by the dates set out in the agreed construction program, until the “milestone” is achieved or the agreement is terminated by the OCA. If the developers subsequently make up for lost time, achieving subsequent “milestones” either with a reduced delay or in accordance with the construction program, the OCA must repay the developers accordingly, without interest.

If liquidated damages are payable under these provisions, no other damages arising from late practical completion or late achievement of the “major milestones” are payable by the developers, except when the Project Delivery Agreement has been terminated (see section 3.10 below).

The liquidated damages described above are not payable if the lateness was materially caused by an OCA breach of the Project Delivery Agreement.

“Casualty events”

If:

- A “casualty event” — meaning a war, insurrection, sabotage, an act of “the public enemy”, a riot, a demonstration, a fire not caused by the developers or their contractors or agents, a flood, an explosion, an earthquake or an “act of God” — occurs before practical completion of the “Olympic works”, and it damages these works but does not give rise to a breach of the Project Delivery Agreement by the developers such as would entitle the OCA to terminate the agreement (see section 3.10 below), *and*
- The project’s certifier considers the “Olympic works” will not reach practical completion by the last permissible date (even with extensions) of 30 June 2000, notwithstanding all the efforts that could be made by the developers to accelerate the works,

the whole of the site must be made available to the OCA, with the developers ceasing to have access, for so long as is necessary for the OCA to:

- Carry out works and other activities to ensure sufficient satisfactory accommodation will be available for competitors and officials during the Olympic and Paralympic Games
- Remove debris, and
- Carry out landscaping and other beautification works on the site, as considered necessary and desirable by the OCA.

Insurance proceeds arising from the “casualty event” must be paid to the OCA for these works. The developers and Lend Lease Corporation, as completion guarantor, have indemnified the OCA for all its costs, liabilities and losses in connection with these works.

Under the Financiers Side Deed, the OCA is required to notify Westpac, as agent for the developers’ debt financiers ANZ and Westpac, as soon as practicable after it has become aware of any “casualty event” giving rise to the situation described above.

Defects liability

The developers will be responsible for rectifying any defects or omissions in the “Olympic works” during a 12-month period following practical completion of each part of these works. However, if the OCA determines that any rectification works would extend into the period of the Olympic and/or Paralympic Games, the developers may carry out these works only if the OCA agrees, and the OCA may choose to have the works carried out by others at the developers’ expense.

3.6 Arrangements before, during and immediately after the Olympics and Paralympics

As already indicated, upon practical completion of the “Olympic works”, now including the “village fit out works”, the developers must deliver possession of precincts 1 and 2 and much of precinct 4 (*Figure 6*) to the OCA and will cease to have access to these areas, unless the OCA grants prior written approval, until after the Paralympic Games. They will regain full access to all the site, to carry out the “reinstatement and retrofit works”, rectify damage caused after the practical completion of the “Olympic works”, remove some or all of the “village fit out works” and market and sell the reconfigured residential units and non-residential improvements, on a date after the Paralympics chosen by the OCA but by no later than midnight on 1 December 2000.

Under the OCA/SOCOG Olympic Village Memorandum of Understanding, the OCA has granted SOCOG a right of exclusive possession of the Olympic village areas in precincts 1, 2 and 4 (*Figure 6*) during this “OCA responsibility period”.

Under the Project Delivery Agreement, during this period the OCA may grant the developers access to the Olympic village areas — subject to SOCOG’s ultimate control of access and security under the Project Delivery Agreement and the OCA/SOCOG Olympic Village Memorandum of Understanding — if:

- The developers need to rectify any defects or omissions in the “Olympic works” prior to the Olympic and Paralympic Games (or, with the OCA’s permission, during the Games), as discussed above.
- The developers are requested by the OCA to maintain and repair the “Olympic works” and all services on the Olympic village site. If the OCA makes such a request, the developers will be paid for these activities by the OCA in accordance with a schedule of rates and payment times to be agreed before the “OCA responsibility period” or, in the absence of such an agreement, as determined by an independent expert under the dispute resolution procedures summarised in section 3.9 below.

(Under the OCA/SOCOG Olympic Village Memorandum of Understanding, SOCOG may direct the OCA to request the developers to maintain and repair the “Olympic works” and all services on the site, and will pay the OCA for all of the OCA’s payments to the developers for this work if it makes such a direction.)

- After the Paralympic Games, the developers need to rectify any damage to the “Olympic works” not caused by a defect or omission in the “Olympic works” or by their maintenance and repair activities just discussed.

The OCA is to arrange for an audit of the condition of the “Olympic works” to be completed by the end of the Paralympic Games, listing the rectification works required — taking account of the separate “reinstatement and retrofit works” to be carried out and paid for by the developers, and the separate works to remove the Olympic/Paralympic “village fit out works”, to be carried out by the developers and paid for by the OCA as discussed below — and estimating their costs.

The OCA and the developers are then to agree on a lump sum cost for the developers to undertake the damage rectification works and be paid for these works by the OCA. Under the OCA/SOCOG Olympic Village Memorandum of Understanding, SOCOG must also agree to the lump sum. If an agreement cannot be reached, the lump sum cost is to be determined by an

independent expert under the dispute resolution procedures summarised in section 3.9 below, and the decision of this expert will bind SOCOG as well as the OCA and the developers.

Under the OCA/SOCOG Olympic Village Memorandum of Understanding, SOCOG will pay the OCA an amount equal to the lump sum cost the OCA is to pay to the developers.

In addition to the restrictions on access to precincts 1, 2 and 4, the developers have agreed that during the Olympic and Paralympic Games:

- They will not carry out any works, other than those described above and approved by the OCA, on any part of the site, including precinct 3 and the part of precinct 4 not included in the “Olympic works”.
- The “non-Olympic” developments will not be presented in a “visually offensive” state. The OCA has acknowledged, however, that the developers’ presentation costs for these developments are not to be unreasonably high.
- They will not permit the occupancy of specified dwellings in precinct 3 immediately adjacent to the Olympic village without the express approval of the OCA. The OCA has acknowledged, however, that the developers may want to grant NBC the right to occupy and broadcast from these dwellings, and has undertaken not to unreasonably withhold its consent, which could be subject to restrictions required by SOCOG.

During the “OCA responsibility period” the developers are to ensure the building services and utilities normally provided to the Olympic village will continue to be provided, unless the OCA, the developers and the relevant service or utility provider agree otherwise. The OCA is to reimburse the developers for their direct costs in providing these services and utilities during this period. The OCA may use substitute utilities at its own cost, restoring the previous utilities at the end of the OCA responsibility period. Under the OCA/SOCOG Olympic Village Memorandum of Understanding, SOCOG will direct the OCA in relation to the building services and utilities required for the “OCA responsibility period” and will meet all of the OCA’s costs for these services.

After the Paralympic Games the “village fit out works” are to be removed by the developers.

Some of these fit out removal works form part of the “village fit out works” as described in section 3.5 above. The balance will be carried out by the developers and paid for by the OCA on an agreed lump sum basis, taking account of an audit of the cost of these works to be prepared for the OCA after the Paralympics. Under the OCA/SOCOG Olympic Village Memorandum of Understanding, SOCOG must

also agree to the lump sum. If an agreement cannot be reached, the lump sum cost is to be determined by an independent expert under the dispute resolution procedures summarised in section 3.9 below, and the decision of this expert will bind SOCOG as well as the OCA and the developers. Under the OCA/SOCOG Olympic Village Memorandum of Understanding, SOCOG will pay the OCA for all of the OCA’s payments to the developers for these works.

3.7 Financial contributions by the OCA and the developers

The OCA must contribute to the cost of “development stages” 1 to 4 of the project — the definitions of these stages are set out in section 3.1 of this report — by paying the developers:

- \$100 million on 30 June 2000, and
- \$17.9 million on 31 December 2000,

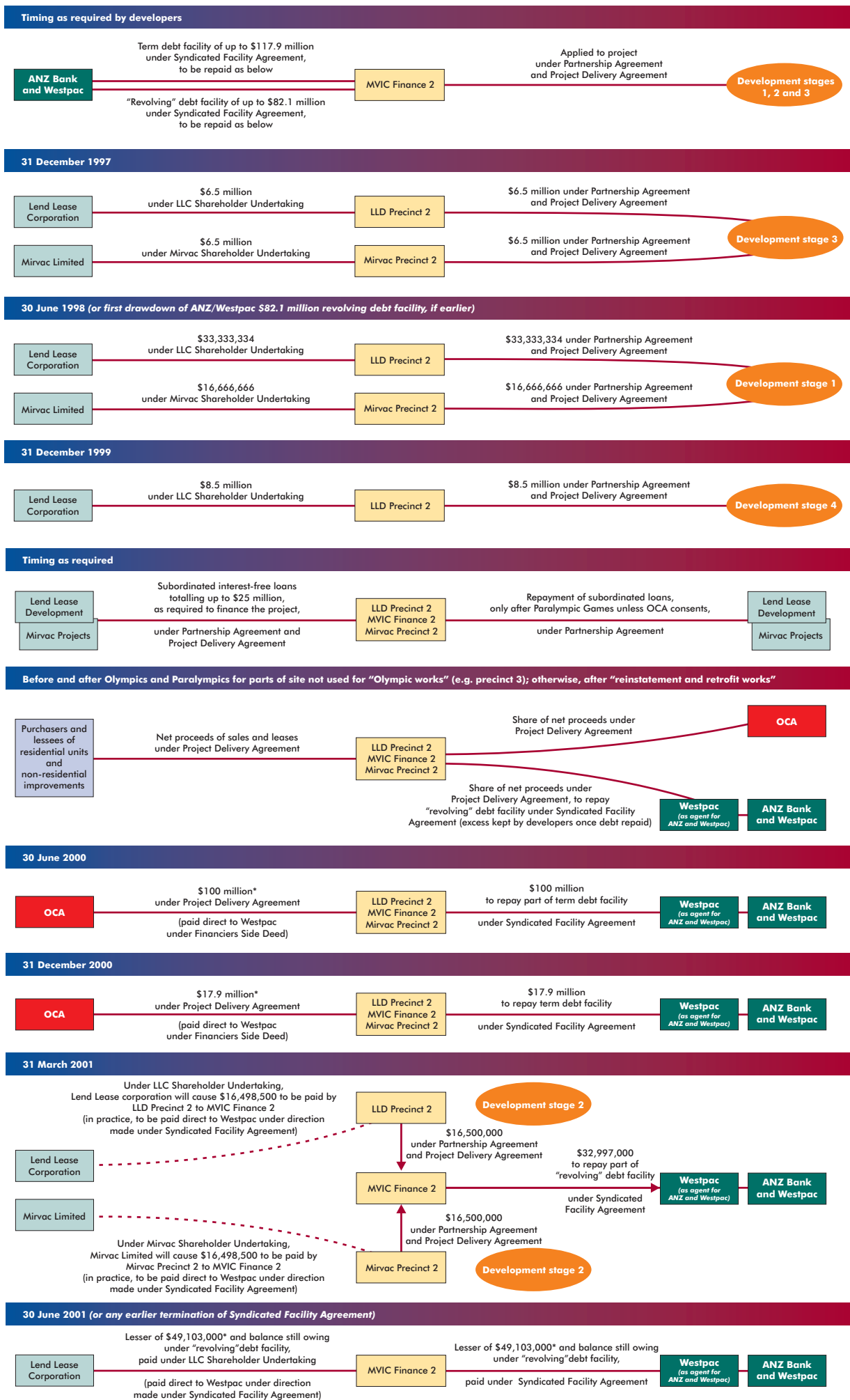
or discounted amounts on earlier dates as agreed between the OCA and the developers (*Figure 7*).

(In practice, part of these OCA contributions will be funded by SOCOG. Under the OCA/SOCOG Olympic Village Memorandum of Understanding, SOCOG is to pay the OCA \$59,547,054 on 30 June 2000, in return for its right to exclusive possession of most of the village for the Olympics and Paralympics. This payment is on top of the other SOCOG payment liabilities already discussed.)

The timing of any earlier contributions by the OCA is to best suit the OCA’s requirements, as disclosed to the developers by the OCA, and any resultant financial savings are to be passed on to the OCA. Under the Financiers Side Deed, the OCA and the developers may not agree on any earlier contributions by the OCA without the prior written consent of Westpac, as agent for the developers’ debt financiers, ANZ and Westpac.

Under the Syndicated Facility Agreement, the OCA’s contributions to the developers are to be used by the developers to repay a term debt facility of up to \$117.9 million provided by ANZ and Westpac, which are also providing the developers with a “revolving” debt facility of up to \$82.1 million. Under the Financiers Side Deed, the OCA has agreed to pay its contributions to the developers — and all other payments it must make to the developers under the Project Delivery Agreement — directly to Westpac, as agent for ANZ and Westpac, and the developers have irrevocably directed the OCA to do so.

If the Income Tax Assessment Act or its interpretation or administration are changed, or if there is a tax announcement or ruling for concessional tax treatment of these OCA contributions, and as a result the developers, their parent companies or any associated companies gain an overall financial benefit, the OCA and the developers must



* The OCA's contributions of \$100 million and \$17.9 million may be reduced if they are paid on agreed earlier dates or if Commonwealth taxation arrangements for the project are changed. In this event Lend Lease Corporation's maximum liability for MVIC Finance 2's last prepayment of the revolving debt facility, currently \$49,103,000, would be increased by an equivalent amount.

Figure 7. Public and private sector financial contributions to and revenue from the project. SOCOG payments (e.g. "fit out") are not shown.

renegotiate the amount and timing of the OCA contributions, with a view to reducing these contributions to what they would have been had the new tax regime applied when the Project Delivery Agreement was signed, while also ensuring the developers and their parent and associated companies do not incur any pre-tax or post-tax liability or cost. The total reduction in the OCA's contributions, as renegotiated, may not, however, exceed \$22 million.

In addition to making these contributions, the OCA must share the net revenues of sales and leases of the dwellings and non-residential improvements on the site with the developers, as discussed in section 3.8 below.

All other financing of the project is the responsibility of the developers, which have undertaken to provide equity and debt financing for the project under the Partnership Agreement — supported by commitments by their parent companies, Lend Lease Corporation Limited and Mirvac Limited, under the LLC Shareholder Undertaking and Mirvac Shareholder Undertaking — and which will also obtain debt financing from ANZ and Westpac under the Syndicated Facility Agreement, with repayments again being supported by commitments by Lend Lease Corporation Limited and Mirvac Limited under the LLC Shareholder Undertaking and Mirvac Shareholder Undertaking.

The commitments of the private sector parties in these agreements (*Figure 7*) are mirrored and reinforced by commitments to the OCA in the Project Delivery Agreement by each of the developers, and by Lend Lease Corporation and Mirvac Projects, under which:

- (a) LLD Precinct 2 must make capital contributions to the developers' partnership of —
 - \$33,333,334 for "development stage 1", which includes the "Olympic works" but not the "village fit out works", plus two-thirds of any additional equity funding for this development stage approved by the developers' partnership. (Under the LLC Shareholder Undertaking, LLD Precinct 2's ultimate holding company, Lend Lease Corporation, has promised Westpac Custodian Nominees Limited, ANZ and Westpac's security trustee, that it will make or arrange an equivalent equity contribution and/or subordinated loan to LLD Precinct 2 by 30 June 1998, or by the first drawing by MVIC Finance 2 under the developers' "revolving" debt facility if this is earlier.)
 - \$16.5 million for "development stage 2", plus half of any additional equity funding for this development stage approved by the developers' partnership. (Under the LLC Shareholder Undertaking, Lend Lease Corporation has promised Westpac Custodian Nominees, as ANZ and Westpac's security trustee, that it will make or arrange an equity

contribution and/or subordinated loan of \$16,498,500 to MVIC Finance 2 by 31 March 2001. In practice, Lend Lease Corporation will satisfy this obligation by causing LLD Precinct 2 to pay MVIC Finance 2 the \$16.5 million LLD Precinct 2 is obliged to contribute under the Partnership Agreement and the Project Delivery Agreement. In turn, under the Syndicated Facility Agreement MVIC Finance 2 must make a repayment under the developers' "revolving" debt facility of \$32,997,000 — or twice \$16,498,500 — by the same date. Under an irrevocable direction issued by MVIC Finance 2, and in accordance with Lend Lease Corporation's undertakings in the Syndicated Facility Agreement, the \$16,498,500 otherwise payable to MVIC Finance 2 under the LLC Shareholder Undertaking is to be paid directly to Westpac, as agent for ANZ and Westpac.)

- \$6.5 million for "development stage 3", plus half of any additional equity funding for this development stage approved by the developers' partnership. (Under the LLC Shareholder Undertaking, Lend Lease Corporation has promised Westpac Custodian Nominees, ANZ and Westpac's security trustee, that it will make or arrange an equity contribution and/or subordinated loan of \$6.5 million to LLD Precinct 2 by 31 December 1997.)
- \$8.5 million for "development stage 4", plus all additional equity funding for this development. (Under the LLC Shareholder Undertaking, Lend Lease Corporation has promised Westpac Custodian Nominees, ANZ and Westpac's security trustee, that it will make or arrange an equity contribution and/or subordinated loan of \$8.5 million to LLD Precinct 2 by 31 December 1999.)

LLD Precinct 2 has indemnified the OCA if these contributions are not made.

- (b) Mirvac Precinct 2 has similarly promised it will make capital contributions to the developers' partnership of —
 - \$16,666,666 for "development stage 1", plus one-third of any additional equity funding for this development stage approved by the developers' partnership. (Under the Mirvac Shareholder Undertaking, Mirvac Precinct 2's ultimate holding company, Mirvac Limited, has promised Westpac Custodian Nominees, ANZ and Westpac's security trustee, that it will make or arrange an equivalent equity contribution and/or subordinated loan to Mirvac Precinct 2 by 30 June 1998, or by the first drawing by MVIC Finance 2 under the developers' "revolving" debt facility if this is earlier.)

- \$16.5 million for “development stage 2”, plus half of any additional equity funding for this development stage approved by the developers’ partnership. (Under the Mirvac Shareholder Undertaking, Mirvac Limited has promised Westpac Custodian Nominees, ANZ and Westpac’s security trustee, that it will make or arrange an equity contribution and/or subordinated loan of \$16,498,500 to MVIC Finance 2 by 31 March 2001. In practice, Mirvac Limited will satisfy this obligation by causing Mirvac Precinct 2 to pay MVIC Finance 2 the \$16.5 million. Mirvac Precinct 2 is obliged to contribute under the Partnership Agreement and the Project Delivery Agreement. In turn, under the Syndicated Facility Agreement MVIC Finance 2 must make a repayment under the developers’ “revolving” debt facility of \$32,997,000 — or twice \$16,498,500 — by the same date. Under an irrevocable direction issued by MVIC Finance 2, and in accordance with Mirvac Limited’s undertakings in the Syndicated Facility Agreement, the \$16,498,500 otherwise payable to MVIC Finance 2 under the Mirvac Shareholder Undertaking is to be paid directly to Westpac, as agent for ANZ and Westpac.)
- \$6.5 million for “development stage 3”, plus half of any additional equity funding for this development stage approved by the developers’ partnership. (Under the Mirvac Shareholder Undertaking, Mirvac Limited has promised Westpac Custodian Nominees, ANZ and Westpac’s security trustee, that it will make or arrange an equivalent equity contribution and/or subordinated loan to Mirvac Precinct 2 by 31 December 1997.)

Mirvac Precinct 2 has indemnified the OCA if these contributions are not made.

- (c) MVIC Finance 2 has similarly promised it will contribute amounts equal to the debt funding provided to it for each of development stages 1, 2 and 3, and has indemnified the OCA if these contributions to the developers’ partnership are not made.
- (d) Lend Lease Corporation and Mirvac Projects have promised to procure:
 - The capital contributions by LLD Precinct 2 and Mirvac Precinct 2, respectively, as listed above.
 - An interest-free, on-demand loan of up to \$25 million by Lend Lease Development Pty Limited and Mirvac Projects to the developers, in accordance with the Partnership Agreement, if the debt finance for “development stage 1” provided by

ANZ and Westpac under the Syndicated Facility Agreement proves inadequate to fund this development stage. If such a loan is required, it will take the form of a deferral of fees and costs otherwise payable by the developers for services rendered by Lend Lease Development and Mirvac Projects under the Partnership Agreement. It will be subordinated to all amounts outstanding to the OCA, and no demand for repayment may be made without the OCA’s agreement before the end of the Paralympic Games.

Lend Lease Corporation and Mirvac Projects have indemnified the OCA if these contributions and/or the loan are not made.

3.8 Sale and leasing of land and sharing of the net proceeds

The developers may market and sell or lease the dwelling units and non-residential improvements they build on the OCA’s land in precincts 1 to 4 — in the case of the Olympic village developments in precincts 1, 2 and 4, after the completion of the relevant “reinstatement and retrofit works”.

Marketing restrictions are set out in a schedule to the agreement. Among other things, this schedule prohibits “ambush marketing” and restricts the developers’ promotion, marketing and advertising of the village to the form of draft advertisements and brochures exhibited to the agreement.

Under the Project Delivery Agreement, the OCA will:

- Cooperate with the developers for any subdivision of the OCA’s land that is consistent with the village development consent and the non-residential development consent. The developers have indemnified the OCA for all its costs and liabilities in doing so.
- Sell or lease any part of the land as directed by the developers, on terms negotiated by the developers and advised to the OCA, provided (among other things) that:
 - The sale contract or lease is in a form reasonably approved by the OCA.
 - An authorised representative of the developers has certified that the sale or lease will be an “arms length” transaction, as defined in the agreement, or the OCA has expressly consented to any transaction that is not “at arms length”.
 - The sale contract or lease contains a series of specific acknowledgments by the purchaser or lessee, including an acknowledgment that the OCA has

made no representation or promises except concerning its ownership of the land and contamination of the land.

The OCA has undertaken that any land sale contract or lease will include warranties by the OCA that the land is free of contamination (except for any contamination introduced by parties other than the OCA after the date on which the developers were granted access to the land) and that the land will not be contaminated by contaminants from other land owned by the OCA.

The developers have indemnified the OCA for all liabilities and costs concerning the land sales or leases, except for matters relating to the OCA's ownership, contamination and any native title applications, Aboriginal relics or threatened species claims.

The OCA may, either before or after transferring its land, register positive covenants to confirm that land in precincts 1, 2 and 3 may be used only for residential purposes and/or any other purpose approved by the OCA, and that it is subject to access, security, noise and related restrictions during the Olympic and Paralympic Games as set out in a schedule to the Project Delivery Agreement. The latter covenant is to be withdrawn after the Paralympic Games.

The net proceeds of any sales and leases of OCA land — after taking into account all “direct selling costs” such as commissions, legal expenses and sales or leasing incentives and after deducting any amounts owed and payable to the OCA by the developers or the completion guarantor under the project's contracts — must be shared between the OCA and the developers in accordance with formulae set out in the Project Delivery Agreement. Any OCA payments under these arrangements are in addition to the OCA contributions described in section 3.7 above.

In the case of the net proceeds of land sales and leases associated with “development stage 1”, which includes the “Olympic works” and the “reinstatement and retrofit works”, the OCA will be liable to pay the developers:

- All of the net proceeds until the net present value of these net proceeds reaches the sum of:
 - The net present value of net proceeds as projected in a spreadsheet for this development stage that is presented as a schedule to the Project Delivery Agreement.
 - A “cost variation”, determined on a quarterly basis, equal to the difference between the net present value of the agreed costs for this development stage following any variation made by the developers and the net present value of the costs originally projected in the spreadsheet referred to above. (If the developers make such a variation, they must advise the OCA of its impacts on the

costs of development stage 1, and the OCA then has 28 days to accept the developers' assessment or reject it. In the latter case the change in the costs of development stage 1 will be determined by an independent quantity surveyor, whose decision will be final and binding.)

- An “escalation variation”, again determined on a quarterly basis, equal to any increase in the net present value of escalated development stage 1 costs, as calculated using the Building Price Index (Enterprise Agreement) published by the NSW Department of Public Works and Services, over the net present value of escalated development stage 1 costs as originally projected in the spreadsheet referred to above (these original projections assumed an escalation of 4% per year). If cost escalation using the BPI is less than or equal to cost escalation under this original 4% p.a. assumption, the “escalation variation” will be zero.
- 50% of all of the net proceeds associated with development stage 1 from then on.

In the case of the net proceeds of land sales and leases associated with “development stages 2, 3 and 4”, the OCA will be liable to pay the developers:

- All of the net proceeds for each of these development stages until the net present value of these net proceeds reaches 115% of the net present value of the costs incurred by the developers on the relevant development stage. The costs to be counted for this purpose:
 - Include all sales and marketing costs, other than the “direct selling costs” taken into account in calculating the net proceeds of the sales and/or leases.
 - Include any payments made by the developers to their parent companies or other related entities, but only as contemplated by the Partnership Agreement (e.g. for any development, project, construction, marketing or design management services they have provided to the developers).
 - Exclude any payments to the developers' debt financiers, ANZ and Westpac.
 - Exclude any costs associated with the “village fit out works”.
 - Include additional sums of \$33 million for development stage 2 (this amount is *deemed* to be expended on 31 March 2001), \$13 million for development stage 3 (31 December 1997) and \$8.5 million for development stage 4 (31 December 1999). (These sums coincide with the capital contributions to the developers' partnership to be

made by LLD Precinct 2 and Mirvac Precinct 2, as described in section 3.7 above.)

- 50% of all of the net proceeds associated with the relevant development stage from then on.

The developers may retain all the net proceeds received, to the extent necessary to satisfy the OCA's obligations to make the payments described above *less* any amounts owed and payable by them to the OCA under the project's contracts, and must pay the remainder to the OCA on a quarterly basis, within 30 days of the end of each quarter, taking account of the payments already made to the OCA in earlier quarters. If the total amount paid to or retained by the OCA under these arrangements exceeds its entitlement at the end of any quarter, the OCA must refund the excess to the developers within seven days of a request by the developers to do so.

If either the developers or the OCA are late in making the payments required under these arrangements, they will be liable to pay interest on the unpaid amounts at the Reuters BBSY mid rate for 30-day bills of exchange (or if this cannot be determined, at the average mid rates quoted by the National Australia Bank, ANZ and Westpac), plus 2% per annum.

Reporting and auditing arrangements for land sales and leases and the determination of the developers' costs are set out in the Project Delivery Agreement. If an OCA audit reveals net proceeds higher than those certified by the developers, or costs lower than those certified, the developers must pay the costs of the audit.

The OCA will have no obligation to commence legal proceedings if a purchaser breaches a sale contract or if a tenant breaches a lease. If it does so at the developers' request, the developers will be liable for any OCA costs or liabilities that may result.

If any part of the land remains unsold on 31 December 2006, the OCA and the developers are to discuss whether to continue the arrangements described above or negotiate new arrangements. If they cannot agree on ongoing arrangements, they must negotiate for the developers to buy both the OCA's land and its interests under the Project Delivery Agreement, with the OCA to be paid an amount equal to the then-current value, as agreed between the developers and the OCA, of its right to share the net revenue from land sales and leases under the original arrangements.

3.9 Miscellaneous general provisions of the Project Delivery Agreement

Postponement or cancellation of the Olympic or Paralympic Games

If the Olympic or Paralympic Games are postponed for six months or less, the OCA may require the developers to

continue to perform their obligations under the Project Delivery Agreement, including practical completion of the "Olympic works" by the original deadlines.

Any such postponement could delay the developers' regaining access to the Olympic village area to carry out the "reinstatement and retrofit works". The OCA would have to reimburse the developers for any direct costs caused by the postponement, including interest and other holding costs but excluding consequential losses and lost profits.

If the International Olympic Committee were to withdraw the Olympic Games from Sydney, or the International Paralympic Committee were to withdraw the Paralympic Games, the developers would not be entitled to claim any form of compensation from the OCA or any Olympic or Paralympic organisation. The developers would, however, be relieved of all their obligations concerning the "village fit out works".

Insurance

The developers must effect and maintain specified types of insurance policies before and after practical completion of the works.

Before practical completion, they must effect and maintain:

- Contract works insurance for at least the full value of the works on a full reinstatement and replacement basis, with the amount being approved by the OCA. This policy must also cover all the project's consultants, contractors and subcontractors.
- Public liability insurance for at least \$100 million per event, or any other amount reasonably nominated by the OCA, again with coverage extending to all the project's consultants, contractors and subcontractors.
- Workers' Compensation insurance for their employees (the developers must also ensure Workers' Compensation insurance is taken out by Civil & Civic, the head contractor, and that Civil & Civic imposes similar requirements on its own contractors and subcontractors)
- Professional indemnity insurance for at least \$10 million per year per claim.
- Motor vehicle third party insurance for at least \$20 million per event.
- Directors' and officers' liability insurance for at least \$10 million per claim.
- Advance business interruption insurance for at least \$50 million, covering any additional expenditures (e.g. acceleration costs) necessitated by any damage to the works prior to the handover of the "Olympic works" to the OCA.

- Any other insurance which it would be prudent for the developers to take out.

After practical completion, and for as long as the OCA reasonably requires prior to the completion of the last land sale, the developers must effect:

- Industrial special risks insurance, against physical loss or damage and other risks as reasonably required by the OCA, for the full replacement and reinstatement value of the works, as determined by a mutually agreed independent valuer.
- Public liability insurance for \$100 million per event.
- Workers' Compensation insurance.
- Professional indemnity insurance for at least \$10 million per year per claim.
- Any other insurance reasonably required by the OCA.

All these policies must be with insurers and on terms reasonably approved by the OCA. In addition, all the policies except those for Workers' Compensation, professional indemnity, motor vehicles and directors' and officers' liability must:

- Be in the joint names of the OCA, the developers and all their employees
- Include indemnity coverage for SOCOG, the International Olympics Committee, SPOC and the International Paralympics Committee, identifying their rights and interests
- Provide for the OCA to be the loss payee for any benefits payable to the developers, with all the proceeds being paid into a joint OCA/developers account and used for reinstatement, and
- Include specified cross-liability clauses.

In addition to these requirements under the Project Delivery Agreement, under proposed arrangements between the OCA and the developers for the developers to carry out the "village fit out works" the developers and the OCA will have to discuss specific insurance arrangements for these works. It is proposed that if they cannot agree within a reasonable period, the OCA will be able to request the developers to enter into such insurance policies as the OCA considers necessary, at the OCA's expense, so as to provide a similar level and extent of protection as the insurance policies listed above.

The OCA will reimburse the developers — and, in turn, will be reimbursed by SOCOG under the OCA/SOCOG Olympic Village Memorandum of Understanding — for any premiums charged for the developers' post-completion insurance policies, other than Workers' Compensation, for the "OCA responsibility period" commencing on practical completion of the "Olympic works" and finishing when the developers regain access to the Olympic village site for the

"reinstatement and retrofit works". It will also indemnify the developers for any excesses or deductibles arising because of claims for events during this period, unless the developers have been appointed by the OCA to maintain and repair the Olympic village during this period.

Except for this "OCA responsibility period", the developers must notify the OCA of any events that might give rise to a claim under the contract works and industrial special risks policies, and keep the OCA informed of subsequent developments.

If the works or the village are damaged or destroyed, the developers must immediately start to clear any debris and begin initial repairs, and must consult with the OCA on steps to promptly repair or replace the damaged works. All insurance proceeds arising from the damage must be applied to these repair and reinstatement works. If these proceeds are less than the cost of repairing or replacing the works or village, or if the insurance policies are void or unenforceable and there are no insurance proceeds, the developers must complete the repairs and replacements using their own funds. If the insurance proceeds exceed the cost of repairing or replacing the works or the village, the developers will keep the excess, unless the Project Delivery Agreement has been terminated, in which case different arrangements will apply (see section 3.10 below).

Rates and taxes

The developers are liable for all taxes, rates and water and sewerage charges on the land, except for land tax, and must pay all other outgoings imposed on the land, or on the OCA in its capacity as owner of the land, from the date of the Project Delivery Agreement.

The OCA has indemnified the developers for any land tax liabilities and costs arising because of anything the developers are permitted to do under the agreement, unless this liability arises because any of the developers has become the owner or lessee of any part of the land.

Competitive developments

The OCA and any other Government-controlled entity may not permit OCA-owned land in the Homebush Bay area — including about 9 ha of land immediately north of Holker Street — to be sold or leased before 1 January 2003 for the purposes of a "competitive development" (a development involving 50 or more residences or a supermarket of more than 1,000 m² of net lettable area). In the case of the land north of Holker Street, this prohibition extends until at least 95% of the land developed by the developers (i.e. precincts 1 to 4) has been sold.

If the OCA proposes to develop its land north of Holker Street, it must notify the developers and give them the first right to make a proposal for development of that land by a

joint venture between the developers and the OCA. If the OCA and the developers cannot agree on the terms of such a joint venture within 60 days of the OCA's notification, the OCA may deal with the land as it sees fit.

Changes of law

If a “discriminatory” law is introduced — meaning any State law which:

- Specifically and only affects the village or the execution of the works and adversely affects the village or the facilities to be used for the Olympics, *or*
- Specifically and only affects the project and any “competitive development” in the Homebush Bay area, and the “competitive development” is granted direct financial relief by the State or any Government authority, *or*
- Empowers the OCA or Auburn Council to impose rates or taxes on land owned by the OCA —

and this means that the works, construction program or method of carrying out the works must be changed, *or* that work not contemplated in the development consents, building approvals and other Government approvals and licences needs to be carried out, *or* that the costs of the works is increased, *or* that the net present value of net revenue from land sales and leases and Government and other contributions is more than \$500,000 less than forecasts set out in schedules to the Project Delivery Agreement, the OCA must:

- Allow an extension of time for practical completion, as already discussed, and/*or*
- Meet all the increased costs reasonably incurred by the developers as a result of the “discriminatory law”, including lost profits.

Dispute resolution

If a dispute arises between the developers and the OCA, either party must give the other a written notice of dispute, setting out its details. Both parties will then have to continue to perform all their obligations under the Project Delivery Agreement except for those relating to the dispute, which they will be bound to perform only if they are indemnified by the other party. Under the Financiers Side Deed, a copy of the notice of dispute must also be sent to Westpac, as agent for the developers' debt financiers, ANZ and Westpac.

The parties must refer the notified dispute to mediation by a mutually agreed mediator — *or*, if they cannot agree within 14 days, a mediator appointed by Lawyers Engaged in Alternative Dispute Resolution (LEADR) — before becoming entitled to commence litigation.

If this mediation fails to settle the dispute and has been terminated, the parties may refer the matter to a mutually

agreed independent expert (*or*, if they cannot agree within seven days, an expert appointed by the president or another senior officer of the body administering the relevant field of expertise) for a final and binding determination.

If the parties do not refer the dispute to expert determination, either party may take any course of action it deems appropriate to resolve the dispute.

In reaching his or her determination, the expert must hold a meeting with all the parties to discuss the dispute — with representatives of ANZ, Westpac and Westpac Custodian Nominees being entitled to attend and participate — and must observe the rules of natural justice, giving the parties 14 days' opportunity to make submissions in response to a draft of his or her determination. He or she must also have particular regard for the achievement of the construction program's “major milestones” and dates for practical completion of the “Olympic works”, the international significance of the Olympic and Paralympic Games and the potential for damages to be suffered by SOCOG, SPOC, the Government and/*or* the State of NSW as well as the OCA itself.

Completion guarantee

Lend Lease Corporation has unconditionally and irrevocably guaranteed to the OCA the “due and punctual” performance by the developers of their obligations to design and construct the “Olympic works”, apart from the design of the “village fit out works” (if these are delivered by the developers and are thus part of the “Olympic works”) and apart from a specified series of indemnities granted by the developers to the OCA, SOCOG and SPOC.

If the developers do not perform these “guaranteed” obligations on time and in accordance with the Project Delivery Agreement, Lend Lease corporation must perform them on demand from the OCA. Such a demand may be made at any time more than two business days after a similar demand has been made of the developers. Under the Financiers Side Deed, a copy of the demand must also be sent to Westpac, as agent for ANZ and Westpac.

Lend Lease Corporation has also unconditionally and irrevocably indemnified the OCA for all losses, costs and liabilities incurred as a result of:

- A failure by the developers to perform the “guaranteed” obligations
- Any unenforceability of these obligations
- Any rescission or termination of these obligations by the developers or the OCA, except for wrongful repudiation or default by the OCA
- Any disregard by the developers of an order for specific performance of the obligations

- Any insolvency of the developer(s), inasmuch as it affects the “guaranteed” obligations
- The “guaranteed” obligations’ not being enforceable against Lend lease Corporation, or not being capable of being performed for any reason whatsoever.

The maximum liability of Lend Lease Corporation under the Project Delivery Agreement, including any separate actions for negligence or other default, is \$450 million until practical completion of the “Olympic works”, and \$50 million for the next ten years.

Damages for breaches

Under the Project Delivery Agreement, all damages suffered by the OCA, SOCOG, SPOC, the Government and/or the State of NSW as a result of any breach of the agreement by the developers or the completion guarantor are expressly to be treated as damages suffered by the OCA. Neither SOCOG nor SPOC may make any claim against the developers in addition to any claim the OCA is entitled to make.

If liquidated damages are payable by the developers for late practical completion of the “Olympic works” or late achievement of the “major milestones” in the construction program, no other damages arising from these breaches of the agreement are payable by the developers, except when the Project Delivery Agreement has been terminated (see section 3.10 below).

This exception aside, the parties to the Project Delivery Agreement are entitled to their normal common law rights to damages for breaches of the agreement. The developers’ liabilities are, however, limited to their gross assets, including any contingent or anticipated rights and assets. The completion guarantor’s liability, in contrast, is limited to \$450 million or \$50 million, as discussed above.

Confidentiality

The OCA, the developers and Lend Lease Corporation (as completion guarantor) are subject to confidentiality restrictions in their use and/or disclosure of information provided by the other parties and SOCOG.

No other securities

The developers have undertaken that unless the OCA consents they will not create or allow any security interest on their property other than:

- The SPV1, SPV2 and Borrower Charges, which secure the debt facilities provided to the developers by ANZ and Westpac under the Syndicated Facility Agreement, and any similar charges that might have to be given to Westpac Custodian Nominees Limited (as security trustee for ANZ and Westpac) by any other wholly owned subsidiary of Mirvac Limited.

- Any statutory charge or lien in favour of a Government agency, but not if there is a default in the payment of money secured by the charge or lien or if it arises from retention of title arrangements.

Transfer of developers’ interests, etc

The developers require the OCA’s approval before they may:

- Assign, novate or otherwise dispose of or deal with a substantial part of their interest in the Project Delivery Agreement or the land in a single transaction or a series of transactions.
- Create or allow any encumbrance over the land or their rights and interests in the project’s contracts
- Change the character of their business
- Increase or allow an increase in the amount to be financed under the project’s finance documents
- Appoint an administrator
- Accept any finances for the “Olympic works” other than under the project’s current finance documents, or
- Grant any guarantee or other assurance against financial loss in connection with money they borrow or raise or money that is borrowed or raised at their request.

Once all temporary structures have been removed from the village after the Paralympics, or the “reinstatement and retrofit works” have reached practical completion (whichever occurs first), the OCA may not unreasonably withhold or delay its consent to a proposed assignment, novation, disposition of or dealing with a developer’s interest in the agreement, or any of the other project contracts, if:

- The developer(s) reasonably demonstrate to the OCA that the proposal is in favour of an entity whose ability to perform the relevant developer’s obligations under the agreement (and, if relevant, the other contracts) is substantially similar to that of the developer, and
- The OCA is reasonably satisfied that its revenue from the sale of residential units and non-residential improvements will not be adversely affected.

Transfer or encumbrance of the OCA’s interests

The OCA may not transfer, sell, encumber, grant third party rights or otherwise encumber its interest in the site’s land, except in accordance with the Project Development Agreement, and may not create an interest in this land inconsistent with the developers’ rights under the agreement.

Additional indemnities

In addition to the risk allocations and indemnities described so far in this report, the developers have:

- Agreed to pay or reimburse the OCA, on demand, for the OCA's costs in connection with any consent or approval, any exercise or non-exercise of its contractual rights, any tax or fee arising from the village contracts and any enquiry by an authority concerning the developers, Lend Lease Corporation or their related entities.
- Indemnified the OCA against any liabilities, losses or costs incurred in connection with these payments, defaults by the developers entitling the OCA to terminate the Project Delivery Agreement (see section 3.10 below), currency conversions on judgments, orders or proofs of debt under the main village contracts, or any act by the OCA, in connection with the contracts, that is made in good faith on the basis of facsimile or telephone instructions purporting to originate from the developers' offices or an authorised officer of the developers.

In return, the OCA has indemnified the developers against any liabilities, losses or costs they may incur by acting, in connection with the village contracts, in good faith on the basis of facsimile or telephone instructions purporting to originate from an authorised OCA officer.

3.10 Defaults and termination of the Project Delivery Agreement

The Project Delivery Agreement's termination provisions associated with the project's development consents and certain types of legal proceedings have already been discussed in sections 3.4 and 3.5 above. More generally applicable default, "cure" and termination provisions are summarised below. As discussed below, these provisions of the Project Delivery Agreement itself are supplemented, and in some cases limited, by the Financiers Side Deed – Olympic Village, which is summarised more generally in section 5 of this report.

Termination for a default by the developers

(a) Before practical completion of the "Olympic works"

Prior to practical completion of the "Olympic works", the OCA may terminate the Project Delivery Agreement, by giving the developers and the completion guarantor a written notice, if any of the following "trigger events" occurs and has not been remedied within 60 days of a notice specifying the event being issued by the OCA to the developers, with a copy being given to Lend Lease Corporation (as

completion guarantor) and Westpac (as agent for the developers' debt financiers, ANZ and Westpac):

- The developers fail to submit development applications and building applications by the dates required, fail to substantially commence on-site activities for the "Olympic works" as contemplated in the construction program, fail to achieve any of the construction program's "major milestones" by the dates required, or fail to achieve practical completion of the "Olympic works" by the required date.
- The developers, the completion guarantor or a related entity that is a party to the project's contracts fails to pay any money payable under these contracts within two business days of the due date, or otherwise defaults on their obligations under these contracts, and the OCA reasonably believes this default has, or is likely to have, a "material adverse effect" — meaning a material adverse effect on the ability of the developers or the completion guarantor to perform all their obligations under the project's contracts.
- The developers or the completion guarantor default on any monetary obligation connected with their borrowings, fund raising or other financial transactions, or such a monetary obligation becomes prematurely payable, or a guarantee or indemnity by the developers or the completion guarantor in connection with their borrowings or fund raising is not discharged at maturity or when called, and the OCA reasonably believes this event has, or is likely to have, a "material adverse effect".

(In the case of the completion guarantor, the amount involved must be more than \$20 million for this provision to apply.)

- Distress is levied, or a judgment, order or encumbrance is enforced (or becomes enforceable, or can be rendered enforceable), such that the completion guarantor becomes (or will become) liable for \$20 million or more, or the developers or any other related entity that is a party to the project's contracts become (or will become) liable for \$1 million or more against their property, and the OCA reasonably believes this event has, or is likely to have, a "material adverse effect".
- Any representation or warranty made by the developers, the completion guarantor or a related entity that is a party to the project's contracts in connection with any of these contracts is found or notified to be incorrect or misleading when made or repeated, and the OCA reasonably believes this has, or is likely to have, a "material adverse effect".
- Any of the developers, the completion guarantor or a related entity that is a party to the project's contracts

becomes insolvent or a specified “insolvency event” occurs, and the OCA reasonably believes this has, or is likely to have, a “material adverse effect”.

- A controller (as defined in the Corporations Law) is appointed for any property of the developers, the completion guarantor or a related entity that is a party to the project’s contracts, and the OCA reasonably believes this has, or is likely to have, a “material adverse effect”.
- Any of the developers, the completion guarantor or a related entity that is a party to the project’s contracts stops payment or ceases to carry on its business or a material part of it, or threatens to do so, except for the purpose of reconstruction or amalgamation while solvent on terms reasonably approved by the OCA, and the OCA reasonably believes this has, or is likely to have, a “material adverse effect”.
- Any of the developers, the completion guarantor or a related entity that is a party to the project’s contracts take reconstruction or amalgamation action without the reasonable consent of the OCA, which may not be unreasonably withheld or delayed.

(In the case of the completion guarantor, this provision applies only if the reconstruction or amalgamation is likely to adversely affect Lend Lease Corporation’s Standard & Poors credit rating, and if the OCA reasonably believes the action has, or is likely to have, a “material adverse effect”. In the case of Mirvac Projects, it applies only if the OCA reasonably believes the action has, or is likely to have, a material adverse effect on Mirvac Projects’ own ability to perform all its obligations under the project’s contracts.)

- A person is appointed under legislation to investigate or manage any part of the affairs of any of the developers, the completion guarantor or a related entity that is a party to the project’s contracts, and the OCA reasonably believes this has, or is likely to have, a “material adverse effect”.
- Any of the project’s contracts is or becomes wholly or partly void, voidable or unenforceable, or is claimed to be so by the developers, the completion guarantor, a related entity that is a party to the contracts or anyone on their behalf, and the OCA reasonably believes this has, or is likely to have, a “material adverse effect”.
- Without the OCA’s consent, the shares of any developer, or any interest in its shares, are transferred or disposed of, or any new shares, convertible notes or options for shares in any developer are issued, or the direct or indirect control of any developer is changed, other than (in each case) to an entity related to the developer.

(Provided the OCA is reasonably satisfied that its revenue from the sale of residential units and non-residential improvements will not be adversely affected, it may not unreasonably withhold or delay its consent to such a transfer, issue or charge, prior to the post-Paralympics removal of all temporary structures or practical completion of the “reinstatement and retrofit works” (whichever occurs first), if the transaction or arrangement will not result in Lend Lease Development Pty Limited holding less than 50% of each class of issued shares in LLD Precinct 2. After that date, and subject to the same proviso, the OCA *cannot* withhold its consent if the transaction or arrangement will not result in Lend Lease Development holding less than 50% of each class of issued shares in LLD Precinct 2, or if the developer(s) reasonably demonstrate to the OCA that the transfer, issue or charge is in favour of an entity whose ability to perform the relevant developer’s obligations under the project’s contracts is substantially similar to that of the developer.)

- The developers or the completion guarantor fail to provide the OCA with evidence of the insurance policies required by the project’s contracts, and this default is not remedied to the OCA’s reasonable satisfaction within 30 days of a notice by the OCA specifying the default.
- The execution of the “Olympic works”, or any part of them, is suspended without the OCA’s consent, except as permitted under the agreement.
- Any statutory declaration provided to the OCA under any of the project’s contracts contains an untrue or misleading statement, and the OCA reasonably believes this has, or is likely to have, a “material adverse effect”.
- Any of the developers, the completion guarantor or a related entity that is a party to the project’s contracts purports to create a security interest over its property, or to assign or novate its interest in the Project Delivery Agreement or any of the other project contracts, without the OCA’s prior consent.
- The Partnership Agreement is varied or amended without the OCA’s prior consent, which may not be unreasonably withheld if the developers’ financial obligations under the Partnership Agreement, which are mirrored in the Project Delivery Agreement, are not affected.

Before or during the 60-day notice period any of these “trigger events” may be remedied by the developers, the completion guarantor or the relevant related entity. If the completion guarantor performs any such non-performed obligations, or if it assumes the obligations of the developers or the related entity under the relevant project contract and

executes documents, as required by the OCA, so that the OCA is satisfied the completion guarantor is bound to perform these obligations, the “trigger event” will be deemed not to have occurred and the OCA may no longer rely on it to terminate the agreement. In these circumstances, if the OCA directs the completion guarantor to perform the “guaranteed” obligations (as discussed in section 3.9 above), which include most of the “Olympic works”, the completion guarantor will take on all the developers’ obligations and risks for these works and the OCA will have the same rights against the completion guarantor, in relation to the relevant “trigger event”, as it had against the developers.

In addition to the rights of the developers and Lend Lease Corporation (the completion guarantor) to remedy a “trigger event” within the 60-day notice period under the Project Delivery Agreement, under the Financiers Side Deed Mirvac Projects, Westpac (as agent for the developers’ debt financiers, ANZ and Westpac) and/or Westpac Custodian Nominees Limited (as security trustee for ANZ and Westpac) may also take steps to remedy the event or procure its remedy. Under this deed,

- The OCA must provide Westpac and/or Westpac Custodian Nominees (and their agents, consultants or contractors) with access to the site on request, and permit them to exercise all the rights and powers of the developers under the Project Delivery Agreement, without interference by the OCA, so as to enable them to remedy or procure the remedy of the event.
- The OCA must also provide them, on request, with all the information it has that is relevant to the event.
- During the first 30 days of the 60-day “cure” period, the developers, Lend Lease Corporation and Mirvac Projects will have an exclusive right to remedy the event, or to have the Project Delivery Agreement novated in favour of a party that is acceptable to the OCA and Westpac (as agent for ANZ and Westpac) in their absolute discretion.
- After this first 30 days of the 60-day “cure” period, Westpac Custodian Nominees may itself remedy the event, or have the Project Delivery Agreement novated, if:
 - The event has not been remedied, or the circumstances giving rise to it have not been solved to the OCA’s satisfaction, or the agreement has not already been novated, or
 - Westpac Custodian Nominees is not satisfied that the event will be remedied or the circumstances solved by the developers, Lend Lease Corporation and/or Mirvac Projects by the end of the 60-day “cure” period.

- If Westpac Custodian Nominees appoints a controller for the developers’ property secured under the SPV1, SPV2 and/or Borrower Charges, this appointment will be taken to remedy any prior “insolvency event” so long as the controller performs, or procures the performance of, the developers’ obligations under the Project Delivery Agreement.
- The OCA is free to extend the “cure” period beyond 60 days, or to choose not to do so. If it nominates a longer “cure” period, it may not exercise its rights to terminate the Project Delivery Agreement under the terms of that agreement unless the event is not remedied by the developers, the completion guarantor, Westpac or Westpac Custodian Nominees within the longer period.
- If the event cannot be remedied within 60 days,
 - Westpac or Westpac Custodian Nominees may nominate a course of action to the OCA to remedy the event, or solve the circumstances giving rise to the event, within a specified period of time. The OCA is completely free to accept or reject the suggested course of action, but if it accepts it it may not terminate the agreement at the end of the 60-day period.
 - ANZ and Westpac may elect to have the developers’ rights and obligations under the Project Delivery Agreement novated to themselves or to another organisation that the OCA is satisfied has the financial standing and technical expertise to meet the deadline for practical completion of the “Olympic works”. Again, in these circumstances the OCA may not terminate the agreement at the end of the 60-day period.

Under the terms of the Project Delivery Agreement itself, the OCA may not terminate the Project Delivery Agreement if the event being relied upon was materially caused by an OCA breach of the agreement, or if an OCA breach has substantially and materially delayed or prevented its being remedied.

Similarly, the OCA may not terminate the Project Delivery Agreement if the event being relied upon arose from by a “casualty event” (see section 3.5 above) and the OCA has stepped in to construct Olympic and Paralympic Games accommodation under the arrangements for responding to these events discussed in section 3.5.

The developers and the completion guarantor have undertaken that neither will seek an injunction or other court order restraining the OCA from terminating the agreement under these provisions prior to practical completion of the “Olympic works”. They may, however, claim damages from the OCA alleging wrongful termination.

(b) After practical completion of the "Olympic works"

The Project Delivery Agreement may be terminated by the OCA after practical completion of the "Olympic works" if any of the following events occurs and the procedures summarised below do not remedy the event:

- The developers fail to pay a sum of \$1 million or more payable to the OCA within two business days of the due date, and the OCA reasonably believes this default has, or is likely to have, a "material adverse effect".
- Any of the developers becomes insolvent or a specified "insolvency event" occurs, and the OCA reasonably believes this has, or is likely to have, a "material adverse effect".
- A controller (as defined in the Corporations Law) is appointed for any developer's rights under the Project Delivery Agreement, and the OCA reasonably believes this has, or is likely to have, a "material adverse effect".
- The Project Delivery Agreement is or becomes wholly or partly void, voidable or unenforceable, or is claimed to be so by any of the developers, and the OCA reasonably believes this has, or is likely to have, a "material adverse effect".
- Without the OCA's consent, the shares of any developer, or any interest in its shares, are transferred or disposed of, or any new shares, convertible notes or options for shares in any developer are issued, or the direct or indirect control of any developer is changed, other than (in each case) to an entity related to the developer.
- The developers or the completion guarantor fail to provide the OCA with evidence of the insurance policies required by the project's contracts, and this default is not remedied to the OCA's reasonable satisfaction within 30 days of a notice by the OCA specifying the default.
- Any of the developers purports to create a security interest over its property, or to assign or novate its interest in the Project Delivery Agreement or any of the other project contracts, without the OCA's prior consent.

Upon the occurrence of any of these events, the OCA may issue a notice to the developers requiring them to rectify the event, or procure its rectification, within a reasonable period of time specified in the notice. Under the Financiers Side Deed, a copy of this notice must also be sent to Westpac, as agent for the developers' debt financiers, ANZ and Westpac.

If the developers believe the specified period is insufficient for the event to be remedied, they may seek its extension. If the developers are diligently pursuing a remedy, the OCA must then extend the period by the amount necessary,

in the OCA's reasonable opinion, to enable the developers to remedy the event.

If the event is not remedied within the specified period, as extended, the OCA may give the developers 20 days' notice that it will terminate the agreement, during which time the developers may still remedy the event. Again, under the Financiers Side Deed, a copy of this notice must also be sent to Westpac, as agent for ANZ and Westpac.

If the event is not remedied at the end of this 20-day notice period, the OCA may terminate the agreement immediately, by giving a written notice to the developers, with a copy also being given to Westpac.

In addition to the rights of the developers to remedy any of the events listed above under the Project Delivery Agreement, under the Financiers Side Deed Lend Lease Corporation, Mirvac Projects, Westpac (as agent for ANZ and Westpac) and/or Westpac Custodian Nominees Limited (as security trustee for ANZ and Westpac) may also take steps to remedy the event or procure its remedy. Under this deed,

- The OCA must provide Westpac and/or Westpac Custodian Nominees (and their agents, consultants or contractors) with access to the site on request, and permit them to exercise all the rights and powers of the developers under the Project Delivery Agreement, without interference by the OCA, so as to enable them to remedy or procure the remedy of the event.
- The OCA must also provide them, on request, with all the information it has that is relevant to the event.
- During the period prior to the OCA's giving the developers and Westpac 20 days' notice that it will terminate the Project Delivery Agreement, the developers, Lend Lease Corporation and Mirvac Projects will have an exclusive right to remedy the event, or to have the Project Delivery Agreement novated in favour of a party that is acceptable to the OCA and Westpac (as agent for ANZ and Westpac) in their absolute discretion.
- After the OCA has given its 20 days' notice, Westpac Custodian Nominees may itself remedy the event, or have the Project Delivery Agreement novated, if:
 - ◻ The event has not been remedied, or the circumstances giving rise to it have not been solved to the OCA's satisfaction, or the agreement has not already been novated, or
 - ◻ Westpac Custodian Nominees is not satisfied that the event will be remedied or the circumstances solved by the developers, Lend Lease Corporation and/or Mirvac Projects by the end of the 20-day notice-of-termination period.

- If the event cannot be remedied within the original “cure” period (as extended) and the subsequent 20-day notice-of-termination period,
 - Westpac or Westpac Custodian Nominees may nominate a course of action to the OCA to remedy the event, or solve the circumstances giving rise to the event, within a specified period of time. The OCA is completely free to accept or reject the suggested course of action, but if it accepts it it may not terminate the agreement at the end of the 20-day notice period.
 - ANZ and Westpac may elect to have the developers’ rights and obligations under the Project Delivery Agreement novated to themselves or to another organisation that the OCA is satisfied has the financial standing and technical expertise to comply fully with the developers’ obligations under the Project Delivery Agreement. Again, in these circumstances the OCA may not terminate the agreement at the end of the 20-day notice period.

In addition to its rights to terminate the Project Delivery Agreement before or after practical completion of the “Olympic works” under the provisions outlined above, the OCA may also terminate the agreement in accordance with its normal contract law rights (e.g. for breach of an essential term by the developers or for repudiation by the developers), although it may not do so on the basis of a failure to execute the “reinstatement and retrofit works” or late practical completion of these works.

(c) Arrangements following termination

Upon termination of the Project Delivery Agreement by the OCA under the provisions outlined above, either before or after practical completion of the “Olympic works”,

- The OCA may make a demand under the bank guarantee(s), if these have not yet been returned following practical completion of the “Olympic works” and/or the “reinstatement and retrofit works”.
- The OCA may require the developers and Civil & Civic, as “head contractor” under the Delivery Services Agreement, to novate the Delivery Services Agreement in favour of the OCA, with the OCA effectively stepping into the developers’ shoes under that contract.
- The OCA may procure the execution of “default works” capable of meeting SOCOG’s requirements for accommodation for 15,000 (and maybe 15,300) competitors and officials during the Olympic and Paralympic Games period, to be completed by 15 August 2000 or any other date required by SOCOG. These works may be carried out in any manner determined by the OCA, with neither the developers nor the completion guarantor being entitled to object to the manner,

timing or choice of the works, and regardless of whether the works are in accordance with the previously approved plans, construction program, development consents and building approvals.

The developers and the completion guarantor have undertaken that neither will seek an injunction or other court order restraining the OCA from carrying out these works or otherwise using the land for purposes associated with the Olympic and Paralympic Games, and have expressly acknowledged that the OCA would be acting to mitigate losses to itself, SOCOG, SPOC, the NSW Government and the State of NSW.

- The OCA may take possession of the developers’ plant etc on or near the site, and documents, materials, etc produced by the developers, if these are reasonably required to facilitate completion of the work. Upon completion of the relevant parts of the works, surplus plant, documents, etc will be returned to the developers, unless the developers owe money to the OCA, in which case they may be retained until the debt is satisfied or, after reasonable notice to the developers, sold by the OCA, with the proceeds being applied to the debt and the costs of sale and any excess then being returned to the developers.
- The OCA may market, sell and lease the residential units and non-residential improvements without reference to the developers or the completion guarantor.
- The developers must compensate the OCA for its costs, losses and liabilities in exercising its rights to terminate the agreement, carrying out the “default works” (with these costs, which the developers acknowledge would be substantial, being certified by the OCA) and marketing, selling and/or leasing the residential units and non-residential improvements.
- The developers may also be liable to the OCA in damages. If the agreement is terminated by the OCA prior to practical completion of the “Olympic works”, this liability is, however, expressly limited to any actual costs, expenses and financial losses suffered by the OCA, SOCOG, SPOC, the Government and/or the State of NSW if these works are not completed by the previously agreed dates.
- As already indicated, the developers’ liabilities under the Project Delivery Agreement, including the liabilities described above, are expressly limited to their gross assets. However, the completion guarantor’s obligations will continue, as if the Project Delivery Agreement had not been terminated, and the cap on its liabilities prior to practical completion of the “Olympic works” is \$450 million.

- Net proceeds from the sale and/or leasing of the residential units and non-residential improvements, including any excess insurance proceeds arising from damage to the village or the works, will be distributed by the OCA, at times determined solely by the OCA, as follows:

- First, to reimburse the OCA for its costs, losses and liabilities in carrying out the “default works”, in marketing, selling and/or leasing the residential units and non-residential improvements and in exercising any of its other rights under the agreement, and to pay all amounts owing to the OCA by the developers and the completion guarantor under any of the project’s contracts, all taxes payable by the OCA because of the termination of the agreement and the OCA’s exercising of its consequential rights, and all interest payable by the OCA on these amounts.
- Second, if any of the net proceeds remain, to pay the developers for their expenditures in executing the works prior to termination, including their debt to ANZ and Westpac under the Syndicated Facility Agreement but taking account of any financial accommodation provided to the developers under that agreement, so as to avoid any double counting.

If any of the net proceeds then remain, the balance will become the property of the OCA.

The developers have expressly acknowledged that these provisions will adequately compensate them for any loss or damage they suffer, except to the extent that any of this loss or damage is caused by the OCA’s acts or omissions.

Different arrangements apply, however, if a “trigger event” leading to termination of the Project Delivery Agreement prior to practical completion of the “Olympic works” is caused solely by:

- Industrial action directed at the project as a result of acts or omissions by the Government or a Government authority, or as a result of an organised campaign of disruption primarily targeting the Olympic Games.
- Statewide or nationwide industrial disputes, stoppages or strikes.
- The imposition of a “discriminatory” law, as described earlier, that was not otherwise contemplated by the Project Delivery Agreement.

In these circumstances,

- The termination only applies to those parts of the site (in precincts 1 and 2 and part of precinct 4) on which

the “Olympic works” are being or will be carried out, and

- If the developers or the completion guarantor compensate the OCA for all its costs, losses and liabilities in exercising its rights to terminate the agreement, carrying out the “default works” and marketing, selling and/or leasing residential units and non-residential improvements in the “Olympic works” areas, the agreement will continue for the whole of the site as if the termination had not occurred.

In addition to the various consequences of termination set out in the Project Delivery Agreement and described so far, under the arrangements agreed between the OCA and the developers in May 1998 for the developers to carry out the “village fit out works” as part of the “Olympic works”, and proposals for further arrangements for these works, the developers will be entitled, in addition to any amounts payable by the OCA under the Project Delivery Agreement, to be paid:

- Any amounts that would otherwise be payable for the “village fit out works”, for work carried out until the date of termination
- The costs of any other materials, goods and equipment properly ordered by the developers for the “village fit out works” that have not already been paid for by the OCA and for which the developers are liable to pay others (these will then become the OCA’s property)
- Any amounts the developers have paid or are liable to pay under hire agreements for the “village fit out works”.
- *Less* the extra costs, if any, that the OCA will have to pay a replacement contractor to complete the “village fit out works”, beyond what it would have had to pay the developers.

Termination for a default by the OCA

If the OCA breaches its obligations under the Project Delivery Agreement concerning:

- Contamination of the site and adjacent land
- Its promised warranties in land sale contracts and leases concerning contamination
- The effects of Department of Defence blast arcs
- Threatened species claims
- Native title applications (provided the developers have complied with their own obligations concerning any such applications)
- Infrastructure and services to be provided or procured by the OCA

- Payments to be made to the developers for the “village fit out works”, the adjustment of liquidated damages for late construction “milestones”, acceleration works, maintenance and repair services during the Olympic and Paralympic Games, damage rectification works and the removal of the “village fit out works”
 - Payments to be made to the developers under the revenue-sharing arrangements following the sale or leasing of residential units and non-residential improvements,
- and these breaches occur, or continue, after the end of the Paralympic Games, the developers may issue a notice to the OCA requiring it to rectify the breach, or procure its rectification, within a reasonable period of time specified in the notice.

If the OCA believes the specified period is insufficient for the breach to be remedied, it may seek its extension. If the OCA is diligently pursuing a remedy, the developers must then extend the period by the amount necessary, in their reasonable opinion, to enable the OCA to remedy the breach.

If the event is not remedied within the specified period, as extended, the developers may give the OCA 20 days’ notice that they will terminate the agreement, during which time the OCA may still remedy the breach.

If the breach is not remedied at the end of this 20-day notice period, the developers may terminate the agreement immediately, by giving a written notice to the OCA.

Within 30 days of such a termination, the OCA must compensate the developers for their actual costs in executing the works prior to termination — including their debt to ANZ and Westpac under the Syndicated Facility Agreement, but taking account of any financial accommodation provided to the developers under that agreement, so as to avoid any double counting — *less* any net proceeds received by the developers under the revenue-sharing arrangements for the sale or leasing of residential units and non-residential improvements, *plus* an additional amount such that the developers will receive a rate of return on a deemed \$50 million capital investment in “development stage 1”, calculated on the basis of discounted cashflows, of 12% per annum. The developers will also be entitled to retain any excess insurance proceeds arising because of any damage to the village or works, to the extent of any damages payable by the OCA to the developers.

The OCA may require the developers and Civil & Civic, as “head contractor”, to novate the Delivery Services Agreement in favour of the OCA, with the OCA effectively stepping into the developers’ shoes under that contract.

4 The Head Contractors Tripartite Deed

The **Delivery Services Agreement (Head Contract No 1)**, between the developers, LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2, and the “head contractor”, Civil & Civic Pty Limited, sets out arrangements for Civil & Civic to manage the design and construction of specified components of the village project.

The Delivery Services Agreement is not summarised in this report, because:

- The OCA is not a party to this contract, and has yet to approve it under the terms of the Project Delivery Agreement
- The Delivery Services Agreement simply provides a mechanism between private sector parties by which the developers will meet their obligations to the OCA under the Project Delivery Agreement, and these obligations have already been discussed in detail in section 3 of this report
- With the exception of its interactions with the Head Contractors Tripartite Deed (if it were signed) and the Project Delivery Agreement, as summarised below, the Delivery Services Agreement does not add to or subtract from any public sector rights or obligations, and
- The NSW *Guidelines for Private Sector Participation in the Provision of Public Infrastructure*, under which this report has been prepared for Parliament, expressly prohibit disclosure of private sector cost structures and profit margins or any other matters that would “substantially commercially disadvantage a contracting firm with its competition”, and the disclosure of some aspects of the Delivery Services Agreement would breach this prohibition.

The key features of the unexecuted **Head Contractors Tripartite Deed** between the OCA, the developers (LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2) and Civil & Civic, inasmuch as it would affect public sector rights and obligations if it were signed, are summarised below.

4.1 General provisions

The developers and the head contractor would undertake, among other things,

- Not to amend or waive the terms of the Delivery Services Agreement, or terminate or rescind it by

mutual agreement, or assign, transfer or encumber their rights and obligations under the Delivery Services Agreement (except as required or permitted by the Head Contractors Tripartite Deed and the Project Delivery Agreement), or to release the head contractor from any of its obligations under the Delivery Services Agreement, without the OCA’s prior consent.

- Not to change the scope, nature, sequence, configuration or design of the works to be carried out under the Delivery Services Agreement, if this would result in a breach of the Project Delivery Agreement, without the OCA’s prior consent.
- Not to instruct or carry out any variation to the works under the Delivery Services Agreement without the OCA’s prior consent.
- To advise the OCA of any notices under the Delivery Services Agreement that would result in an extension of time, an increase in costs or a change in quality or design.
- To notify the OCA of any dispute under the Delivery Services Agreement, or a subcontract, supply contract or consultancy agreement, that:
 - ◻ Involved more than \$10 million,
 - ◻ Concerned an extension of time that would adversely affect the developers’ ability to meet a “major milestone” deadline under the Project Delivery Agreement’s construction program, or
 - ◻ Would otherwise have a material adverse effect on the developers’ performance under the Project Delivery Agreement, where either party to the dispute was proposing to take enforcement action.

The head contractor would also make a series of promises to the OCA that would mirror its commitments to the developers in the Delivery Services Agreement and repeat its undertakings to comply with the provisions of the Delivery Services Agreement. These promises would cover, among other things, insurance policies, dealings with the project’s certifier, the assignability of all subcontracts and supply agreements, intellectual property, the waiver and release of encumbrances over the developers’ assets, and evidence of payments to subcontractors and suppliers.

As already indicated in sections 3.5 and 3.10, the Delivery Services Agreement, consistently with the Project Delivery Agreement, requires the developers and the head

contractor to novate the Delivery Services Agreement in favour of the OCA if the Project Delivery Agreement is terminated, in accordance with a draft deed of novation annexed to that agreement, with the OCA effectively stepping into the developers' shoes.

The Head Contractors Tripartite Deed would add to this by requiring the Delivery Services Agreement to be novated in favour of the OCA, if this were requested by the OCA, if:

- Any of the developers became insolvent or the subject of any other specified "insolvency event", or
- A "trigger event" (as described in section 3.10) occurred prior to practical completion of the "Olympic works", and had not been remedied within 60 days of the OCA's notifying the developers of this event, even if the OCA had not terminated the Project Delivery Agreement because of this event.

4.2 Defaults by the developers under the Delivery Services Agreement

The developers and the head contractor would have to notify the OCA promptly if:

- The developers failed to pay the head contractor as required under the Delivery Services Agreement
- The head contractor became entitled to terminate the Delivery Services Agreement because of a default by the developers
- Any act or omission of the developers, not caused by the OCA, would delay or be likely to delay the achievement of a "major milestone" under the Project Delivery Agreement's construction program or practical completion of the "Olympic works" or the "reinstatement and retrofit works".

If the developers' default were capable of being remedied, the head contractor would not be entitled to exercise its rights under the Delivery Services Agreement in relation to this default, including any right to terminate the Delivery Services Agreement, unless the OCA had been notified as required and the default had not been remedied by the OCA or the developers within 30 business days, or any longer period nominated by the head contractor.

Similarly, if the developers' default could not be remedied, and was not an "insolvency event" as discussed below,

the head contractor would not be entitled to exercise its rights under the Delivery Services Agreement in relation to this default unless the OCA had been notified as required, with a statement showing the head contractor's losses, costs and damages, and the head contractor had not been paid this stated amount by the OCA or the developers within 30 business days.

If any of the developers became insolvent or the subject of any other specified "insolvency event", the head contractor would not be entitled to exercise any of its rights under the Delivery Services Agreement if:

- The OCA, having been notified by the developers and the head contractor as required, had notified the head contractor that it would perform the developers' obligations under the Delivery Services Agreement, or
- Within 30 business days, the Delivery Services Agreement had been novated in favour of the OCA.

However, once the developers' obligations to the OCA for works under the Project Delivery Agreement had been complied with, the head contractor would be entitled to enforce any of its rights against the developers under the Delivery Services Agreement without regard to the OCA.

4.3 Defaults by the developers under the Project Delivery Agreement

If a Project Delivery Agreement "trigger event" (as described in section 3.10) occurred prior to practical completion of the "Olympic works", and had not been remedied within 60 days of the OCA's notifying the developers of this event, and the OCA notified the head contractor of this situation, the head contractor would not be entitled to exercise any of its rights under the Delivery Services Agreement if:

- The OCA had notified the head contractor that it would perform the developers' obligations under the Delivery Services Agreement, or
- Within 30 business days, the Delivery Services Agreement had been novated in favour of the OCA.

Again, however, once the developers' obligations to the OCA for works under the Project Delivery Agreement had been complied with, the head contractor would be entitled to enforce any of its rights against the developers under the Delivery Services Agreement without regard to the OCA.

5 The Financiers Side Deed

The Financiers Side Deed – Olympic Village, between the OCA, the developers (LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2), Lend Lease Corporation, Mirvac Projects, ANZ (as a debt financier), Westpac (as a debt financier and as the agent for both ANZ and Westpac) and Westpac Custodian Nominees (as ANZ and Westpac’s security trustee),

- Records the OCA’s consent to all the private sector finance documents: the Syndicated Facility Agreement, the Security Trust Deed – MVIC Security Trust, the SPV1, SPV2 and Borrower Charges (which are first-ranking fixed and floating charges in favour of Westpac Custodian Nominees over all the present and future assets of LLD Precinct 2, Mirvac Precinct 2 and MVIC Finance 2, respectively, in order to secure the performance of their obligations to ANZ and Westpac under the Syndicated Facility Agreement), the Lend Lease Corporation Performance Undertaking, the LLC and Mirvac Shareholder Undertakings and the “direct payment to Westpac” directions issued by MVIC Finance 2 to Lend Lease Corporation and Mirvac Limited under the Syndicated Facility Agreement.
- Regulates the manner in which the OCA’s rights under the Project Delivery Agreement, Westpac Custodian Nominees’ rights under the SPV1, SPV2 and Borrower Charges and the rights of ANZ and Westpac under all the financing agreements may be exercised.

The effects of the Financiers Side Deed on the default, “cure” and termination provisions of the Project Delivery Agreement have already been summarised in section 3.10 of this report.

The other main provisions of the Financiers Side Deed — including, in particular, its other impacts on the operation of the Project Delivery Agreement, some of which have also already been mentioned in section 3, and the effects of the OCA’s consent to the SPV1, SPV2 and Borrower Charges — are summarised below.

The Financiers Side Deed:

- Prohibits the developers, ANZ, Westpac and Westpac Custodian Nominees from amending or replacing any finance document, or creating or allowing any security interest over their rights under any of these documents, or transferring their rights and obligations under any of these documents, unless the OCA consents or (in the

case of the banks) unless the transferee is a corporation related to ANZ or Westpac or is a bank or financial institution with a long-term credit rating of A or higher.

- Prohibits the OCA, the developers, Lend Lease Corporation (as completion guarantor) and Mirvac Projects from amending the Project Delivery Agreement, or agreeing to any amendment of the Head Contractors Tripartite Deed or the PAFA Act Guarantee Deed Poll, without Westpac’s prior consent.
- Prohibits the OCA and the developers from entering into any agreement to change the project’s legal, financial and commercial arrangements, because of any “unacceptable” development consent conditions (see section 3.4) or legal proceedings by third parties (section 3.5), without Westpac’s prior consent.
- Prohibits the OCA from selling, encumbering, granting third party rights or otherwise disposing of its interest in the village site, except in accordance with the Project Delivery Agreement or with Westpac’s prior consent, and prohibits ANZ, Westpac and Westpac Custodian Nominees from lodging any caveats on the title to the site.
- Prohibits the OCA and the developers from agreeing to any variation in the works under the Project Delivery Agreement without Westpac’s prior consent, if this variation would:
 - Increase the costs of the project, unless the OCA is required to compensate the developers for their actual costs incurred under the Project Delivery Agreement’s variation provisions outlined in section 3.5, or
 - Adversely affect the developers’ ability to meet the absolute deadline for practical completion of the “Olympic works”, or adversely affect their expected revenue from the sale of any of these works.
- Prohibits the OCA and the developers from agreeing on any earlier and reduced financial contributions to the project by the OCA, instead of its current obligations to pay the developers \$100 million on 30 June 2000 and \$17.9 million on 31 December 2000 (section 3.7), without Westpac’s prior consent.
- Obliges the OCA to pay these contributions to the developers, and all other payments it must make to the

developers under the Project Delivery Agreement, directly to Westpac, as agent for ANZ and Westpac. (The OCA has also expressly acknowledged that the developers' rights to receive payments under the Project Delivery Agreement are subject to the SPV1, SPV2 and Borrower Charges.)

- Incorporates an express acknowledgement by the OCA of Westpac Custodian Nominees' rights under the SPV1, SPV2 and Borrower Charges.

These rights including the right to exercise or assume the developers' rights and obligations under the Project Delivery Agreement. If this right is exercised, Westpac Custodian Nominees must observe the terms of the Project Delivery Agreement as if it were the developers, but is not liable to the OCA for any loss or damage it suffers because of any failure by the developers or the completion guarantor to perform under the Project Delivery Agreement. If Westpac Custodian Nominees advises the OCA that it is exercising any of the developers' rights under the Project Delivery Agreement, the OCA is obliged to deal only with Westpac Custodian Nominees concerning the specified right or rights.

- Obliges the OCA to notify Westpac if it becomes aware of a failure by the developers to meet a "major milestone" deadline under the construction program or the village fit out works program, or if it becomes aware of a "casualty event" that has damaged the "Olympic works" and will prevent the developers from completing these works by the absolute final deadline, as discussed in section 3.5 of this report.
- Obliges the OCA to provide Westpac with copies of:
 - Any notice it issues under the Project Delivery Agreement concerning late development consents or "unacceptable" development consent conditions (section 3.4), a "trigger event" and any subsequent termination of the agreement prior to practical completion of the "Olympic works" (section 3.10), a developers' default event and any subsequent notice of intent to terminate or notice of termination after practical completion of the "Olympic works" (section 3.10), or a dispute between the OCA and the developers (section 3.9).
 - Any demand it makes on Lend Lease Corporation, as completion guarantor under the Project Delivery Agreement, to perform the "guaranteed obligations" under that agreement (see section 3.9)

The rights and obligations of Westpac, ANZ and Westpac Custodian Nominees following these notifications have already been discussed in sections 3.5, 3.8, 3.9 and 3.10.

- Obliges the OCA to notify Westpac of all its directions to the developers under the Project Delivery Agreement concerning the handling of any Aboriginal relics, the continuation of work following any native title application or threatened species claim, and the mitigation of the developers' costs, losses and damages arising from any threatened species claim. The OCA is not, however, liable to ANZ or Westpac for any failure or delay by the OCA in complying with these obligations.
- Obliges Westpac to keep the OCA informed about any default under the Syndicated Facility Agreement, and to give the OCA a copy of any notice it subsequently issues to MVIC Finance 2 reducing or cancelling the amount of money available under the ANZ and Westpac debt facilities and/or demanding immediate repayment of all money owing under these facilities.
- Obliges Westpac Custodian Nominees to keep the OCA informed about any action it takes to enforce its rights under the SPV1, SPV2 and Borrower Charges, and any other action it takes to seek the liquidation, administration or dissolution of any of the developers or the appointment of a controller for their secured property.
- Permits Westpac, Westpac Custodian Nominees and their representatives to participate in any consultation procedures set out in the Project Delivery Agreement, including its dispute resolution procedures summarised in section 3.9, and entitles Westpac and Westpac Custodian Nominees to force the developers to implement these dispute resolution procedures where they are entitled to do so.
- Provides an indemnity by the OCA to ANZ, Westpac and Westpac Custodian Nominees for any costs or losses they incur as a result of any contamination on the site when the developers gain access to the site, and any contamination that occurs on or escapes from the site after the developers are granted access, other than contamination caused by the developers.
- Prohibits the OCA from disposing of, dealing with or losing possession of its interests or rights under the Project Delivery Agreement, or allowing that agreement to be encumbered, except as allowed under the Project Delivery Agreement itself, unless the other party agrees to be bound by the Financiers Side Deed, or unless a statutory disposition, dealing or loss of possession is involved, with the other party being obliged to perform the OCA's obligations and with a new Public Authorities (Financial Arrangements) Act Guarantee being given to the developers, subject to the SPV1, SPV2 and Borrower Charges.

6 The PAFA Act Guarantee Deed Poll

The Public Authorities (Financial Arrangements) Act Guarantee Deed Poll, made by the Minister for the Olympics on 24 April 1997 under delegation from the Treasurer and on behalf of the State of NSW under section 22B of the Public Authorities (Financial Arrangements) Act 1987, absolutely, irrevocably and unconditionally guarantees OCA's performance under the Project Delivery Agreement, the Financiers Side Deed and the Head Contractors Tripartite Deed to all the other parties to these contracts.

This guarantee is a continuing obligation, remaining in force until all the OCA's obligations under these contracts have been fully performed.

If any payment, performance, conveyance, transfer or other transaction made by the OCA under these contracts is subsequently held or conceded to be void, voidable, unenforceable or compromised,

- The liability of the State will continue as if the transaction, and any release, settlement or discharge made by

the other parties to the contracts in reliance on it, had not been made, and

- The State must immediately take all the action needed, as required by the other parties, to restore the benefits available to them under the PAFA Act Guarantee Deed Poll before the transaction.

The State's obligations are also expressly not released, discharged or otherwise affected by anything that would otherwise have done so, including any illegality, avoidance, avoidability or unenforceability of any document or agreement.

The State must perform the obligations it has guaranteed within 21 days of a demand being made by any of the other parties to the guaranteed contracts. Such a demand may be made at any time, provided a demand has previously been made on the OCA and the OCA has failed to perform within 21 days.

7 Economic and financial benefits and costs

Even in the short term the economic benefits of the Olympic Village will be substantial, for one simple reason: without the village, Sydney would not be permitted to stage the Olympics, and the city, the State and the nation would therefore be denied the very significant economic benefits expected to flow from the Olympic and Paralympic Games.

In this respect the village ranks with the Olympic Stadium as one of the *essential* prerequisites for the economic (and other) benefits of the Olympics and Paralympics to be realised.

The Government's decision to contract the project out to the private sector was designed to minimise the financial impact of the village's construction on the Government.

Under the arrangements summarised in this report, the public sector will be meeting only an estimated \$276 million of the estimated \$590 million total cost of the project (for the village itself plus the "village fit out works" for the Olympics and Paralympics).

The public sector's \$276 million will comprise \$117.9 million in capital contributions to be paid by the OCA in 2000 as described in section 3.7 of this report (\$59.55 million of this is being paid to the OCA by SOCOG), up to

\$75 million to be spent by the OCA on purchasing the Newington site and remediating part of the land, an estimated \$8.9 million on OCA project procurement and project management costs and an estimated \$74 million to be spent by SOCOG on the "village fit out works" and associated works for the Olympics and Paralympics.

The private sector will be responsible for all other funding for the project. Under the contract provisions discussed in section 3.7 of this report, this will involve at least \$104.5 million (and potentially up to \$153.6 million) in private sector equity investments and up to \$225 million in private sector debt funding, part of which is to be repaid from the OCA's \$117.9 million contributions.

The OCA is forecast to receive about \$17 million (1996 \$) from post-Paralympics sales of village residences, and could receive more if market conditions are favourable, effectively reducing the public sector contribution even further.

Among its other benefits, the Olympic Village will have the potential to generate significant export opportunities and will set new standards for environmentally friendly construction and supply industries in Australia.