

# Chatswood Transport Interchange



**Transport Infrastructure**  
*Development Corporation*

**Contract Summary**



This Contract Summary provides summaries only of various transaction documents.

Consistent with the NSW Government's *Working with Government: Guidelines for Privately Financed Projects*, the Summary does not cover matters which might disclose:

- the private sector's cost structures or profit margins;
- matters relating to intellectual property; or
- any other matters where disclosure would put the private sector parties at a commercial disadvantage with their competitors.

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# Chatswood Transport Interchange Transaction Documentation Summary

## Background

Chatswood is a key regional retail and commercial centre for Sydney's lower North Shore and a rapidly growing high density residential centre. Whilst Chatswood grew as a town centred around its railway station, in recent years it has become geographically divided by the rail corridor.

Chatswood Station is the ninth busiest on the CityRail network. It is currently used by more than 35,000 people per day and by 2021 this number is expected to increase to more than 50,000.

The station, together with the bus interchange and taxi facilities, forms the Chatswood Transport Interchange – a significant public transport hub in Sydney.

The station will provide the passenger connection between the North Shore Line and the future Epping to Chatswood Rail Line (ECRL), presently under construction and scheduled to commence services in 2008.

As Chatswood Station plays a key role in the operation of the ECRL, the original planning approval for the ECRL included a reconfiguration of Chatswood Station to provide two side platforms and a single island platform to accommodate the proposed four tracks (two for the existing North Shore Line and two for the new Epping to Chatswood Line.) In late 2001, it was decided that, for passenger operational convenience, two island platforms would provide a better solution. This configuration will provide cross-platform interchange between South-bound trains on the North Shore and Epping to Chatswood lines and also between North-bound trains on the two lines, without the need to transfer between platforms.

The adoption of a twin island configuration required acquisition of certain properties, including the Marketplace Interchange and the Buddhist Temple, to accommodate the new track and platform arrangement. The reconfiguration also provided an opportunity to rectify some of the shortcomings of the then existing transport interchange, including the lack of access for people with limited mobility, poor security, poor station identity and confused way finding, tired retail areas surrounding the

station and poor connections between the Eastern and Western parts of the Chatswood central business district.

In January 2002, the project team established a Chatswood Transport Planning Co-ordination Committee. Chaired by the Government Architect, the Committee was established to oversee the preparation of a concept design for the Chatswood Transport Interchange that would provide the required transport and civic amenity outcomes within budget and in time to accommodate the commencement of services on the ECRL. The Committee included representatives from Willoughby City Council, the Roads and Traffic Authority, State Rail Authority, Rail Infrastructure Corporation, Department of Transport and the project team.

Over a twelve month period the Committee considered a number of options with associated development components to supplement the funding required to achieve the agreed transport and civic outcomes. A minimal development option was also considered as a baseline for comparison. The selected option, known as Option 4D, was endorsed by the then Minister for Transport and the Mayor of Willoughby in February 2003.

The preferred option provided for the railway tracks to be supported on an elevated concrete structure, with the rail concourse and associated station accommodation below, and a bus interchange at the North Eastern corner of the site, accessed from Orchard Road. This would allow transfer between the bus interchange and the station on grade and provide convenient pedestrian linkages to Chatswood Mall, the Garden of Remembrance and Railway Street. The proposed development included a convenience retail component and three residential towers, with underground carpark.

## Procurement Process

In December 2003, the NSW Government approved the procurement of the CTI development through a public private partnership (PPP) process.

The Transport Infrastructure Development Corporation (TIDC), a statutory State Owned Corporation, is the agency responsible for delivering the ECRL and the Chatswood Transport Interchange on behalf of the NSW Government.

As the first stage in the PPP procurement process, in January 2004 TIDC advertised for registration of interest by design and construction contractors capable of carrying out the major transport engineering works and those parts of the development works ( such as the excavation and structures

for the underground car parks and foundations and cores for the residential towers) which for structural and logistical reasons would need to be constructed at the same time. TIDC's intention through this process was to ensure that the major engineering works to be carried out under and immediately adjacent to the operating railway would be undertaken by a capable and experienced contractor, to minimise risks to the safe continued operation of the transport systems. Following evaluation of the registrations of interest received, TIDC approved a short list of six potential contractors.

The second stage in the procurement was an open Call for Detailed Proposals (CFDP), advertised in the media in May 2004. A condition of the CFDP was that the Proponent must include as part of its team one of the six short listed design and construction contractors from the first stage registration of interest.

The closing date for submission of proposals was 20 July 2004. Proposals were received from the following consortia:

Proponent	Key Parties
Chatswood Connect	Thiess, Macquarie Bank
CRI	CRI, Barclay Mowlem, Commonwealth Bank
Leighton Contractors	(informal proposal only)
Lend Lease	Lend Lease Developments, Bovis Lend Lease, Lend Lease Real Estate Partners
Shore Connect	Plenary Group, Multiplex, Deutsche Bank

The proposals were evaluated by an Evaluation Panel, assisted by specialist advisers, against the criteria set out in the CFDP Invitation Document. The weightings of the evaluation criteria were determined before the closing date for proposals. The evaluation criteria and weightings were:

Non-Price Criteria	Weighting
Capacity and capability of the proponent team	18
Development proposal and outline design	22
Design and construction methodology	14
Program	9
Legal framework	6
Asset management	6
Development and project management systems	4
Proposed commercial arrangements	21
<i>Sub-total for non-price criteria score</i>	100

<b>Weighted non-price score</b>	<b>70%</b>
<b>Weighted price score</b>	<b>30%</b>
<b>Total score</b>	<b>100%</b>

The Evaluation Panel's recommendation was endorsed by a Review Panel, with the entire process overseen by an external probity auditor.

## Public Sector Comparator

The proposals were also compared against a “Public Sector Comparator” (PSC), based on an option known as “Option 4 Basic” developed during 2002 as one of the options considered by the Chatswood Transport Planning Co-ordination Committee. This option would provide the same transport configuration, with retail development to the main pedestrian links and adjacent site but without residential development or car parks, and be delivered through a conventional design and construct contract. The PSC was further developed in early 2004 by TIDC with NSW Treasury, Evans & Peck and KPMG. The PSC provided a total risk adjusted net cost (NPV) to Government of \$81.4 million. This excluded certain sunk costs common to both the PPP and PSC schemes, such as acquisition costs of adjacent land, namely the Marketplace Interchange and Buddhist Temple.

## Preferred Proponent

Following a two tiered tender process, at its meeting on 15 November 2004, the Budget Committee of Cabinet approved CRI being nominated as the preferred tenderer for the Chatswood Transport Interchange, and authorised TIDC to finalise the transaction documents with CRI. It also approved TIDC dealing with both its own land and RailCorp land under the CTI Development Deed on the basis that all land, other than the Retail Complex, the Residential Stratum and the Car Park, will be owned by RailCorp following completion of the project.

The Chatswood Transport Interchange project procurement has been overseen by a Steering Committee, established by the Budget Committee of Cabinet at the end of 2003, comprising representatives of TIDC, RailCorp, NSW Treasury, Department of Infrastructure, Planning and Natural Resources (now Department of Planning and Department of Natural Resources) and the Department of Commerce. There has also been a Chatswood Project Control Group comprising representatives of TIDC, RailCorp, Willoughby City Council, State Transit Authority, RTA and Forest Coachlines.

## Early Works

TIDC entered into an Early Works Contract with CRI (and CRI contracted with Barclay Mowlem) in January 2005 for \$16.316m (this included provisional cost items of \$2.648m) to carry out demolition and construction of temporary platforms, pedestrian access ways and related works so that, on financial close of the main development agreement, the major construction works would be able to commence with minimum delay. These early works were common to public sector or private sector delivery of the CTI. The early works were completed in September 2005, allowing all rail services to operate from temporary platforms on the Eastern side of the corridor, leaving the Western side available for the first major stage of construction.

## Related Parties

There are a number of related CRI corporate entities in the development team, including:

Developer	CRI Chatswood Pty Limited
CRI Guarantors	CRI Australia Pty Limited and CRI Australia Holdings Pty Limited
Issuer	CRI Chatswood Finance Pty Limited
Trusts	CRI Chatswood Residential Trust No. 1 CRI Chatswood Residential Trust No. 2 CRI Chatswood Residential Trust No. 3 CRI Chatswood Car Park Trust CRI Chatswood Retail Trust



Other related parties are:

CTI Infrastructure Works Contractor	Barclay Mowlem Construction Limited
CTI Infrastructure Works Guarantor	Mowlem plc
Senior Agent	Commonwealth Bank of Australia
Security Trustee	CBA Corporate Services (NSW) Pty Limited
CTI Retail Pty Ltd	Babcock & Brown and Walker Corporation
Mez Subscriber	Babcock & Brown Real Estate Finance Pty Ltd
Credit Wrap	Babcock & Brown International Pty Limited

The transport-related elements of the new interchange and the retail will be completed in late 2007, ahead of commencement of services on the ECRL. Construction of the residential towers will be commenced in line with market demand.

The redevelopment works include:

- upgrade of the Station including two new island platforms and passenger facilities including easy-access facilities;
- new pedestrian concourse, positioned below the rail platforms;
- relocation and upgrade of the bus interchange to Orchard Road;

- new taxi ranks and kiss-and-ride facilities;
- raising and widening of the Albert Avenue and Help Street bridges to accommodate the new rail tracks and provide improved clearance and width of the roads;
- 10,000 m<sup>2</sup> of convenience retail space; and
- three new residential buildings with underground carparking.

The redeveloped interchange will provide the following benefits:

- improved safety, access, functionality and aesthetic quality of the precinct;



- increased capacity of transport facilities to cater for future patronage growth and reconfigured station platforms to accommodate the future Epping to Chatswood Rail Line;
- ease of access for all pedestrians throughout the precinct and to the station platforms;
- a continuous link between transport modes and improved East-West pedestrian access across the precinct and to the Garden of Remembrance;
- new open-air bus interchange with weather protection at all bus stops; and
- combined residential and retail spaces forming a new centre for Chatswood and creating a sense of activity, vibrancy and security.

The CTI Development Deed dated 24 June 2005 between TIDC and CRI is the core delivery document (as varied). The construction aspects of that document are backed down by CRI into its CTI Infrastructure D&C Contract with Barclay Mowlem Construction Limited. A number of Call Option Deeds (as varied), with Contracts for Sale and a Lease attached and Back-Up Call Option Deeds, with Contracts for Sale and a Lease attached, have been signed. These will effect the sale of the Retail Complex, Residential and Car Park stratum on completion of construction of the Chatswood Transport Interchange. CRI has signed its loan documents and securities with the Commonwealth Bank and the Mez Financier. The TIDC Consent Deed is dated 24 June 2005, and has been varied to include, principally, the provision for the Back-Up Retail and Back-Up Residential Options and payment provisions as a result of the back-up arrangements, the replacement of the Mez Financier with a new party, novation of the TIDC Consent Deed to Babcock and Brown International, and step-in rights by the Retail Take Out.

CRI has received its Part 4 Approval for the non-transport aspects of the Chatswood Transport Interchange. Together with the satisfaction of the other conditions precedent, the CTI Development Deed and all other documents became fully operative on 22 September 2005.

The CTI Infrastructure Works are the subject of the CTI Development Deed. Barclay Mowlem Construction has agreed with CRI to construct the CTI Infrastructure Works for \$157m. This amount includes \$2.978m for the supply and installation of 3 lifts and the provision of a single temporary alternative access and a provisional sum for heritage interpretation works. TIDC's contribution is \$63.912m which includes the cost of the Albert Avenue and Help Street bridges and

associated road works of \$11.884m (excluding GST). The Commonwealth Bank and the Mez Financier are advancing the balance of the project funding. TIDC's contribution is payable first against work done, the Mez Financier's loans are then advanced and the Commonwealth Bank's loans are advanced last. RailCorp will retain ownership of the rebuilt Station and related transport infrastructure.

The CTI Infrastructure Works are scheduled to be completed by 31 December 2007. Currently, it is anticipated that the 3 Residential Towers will be completed between 2009 and 2012, but this will depend upon the market appetite for residential units in this part of Chatswood.

Commonwealth Bank has undertaken to complete the Chatswood Transport Interchange by continuing to fund even if CRI and/or Barclay Mowlem Construction become insolvent, subject to there being adequate funds available to complete the Chatswood Transport Interchange within its existing facility limits and a builder to complete the CTI. This arrangement is evidenced in the TIDC Consent Deed.

### CTI Development Deed

TIDC, the Developer (5 special purpose unit trusts owned by CRI) and the Guarantors (CRI's operating and holding companies) entered into the CTI Development Deed on 24 June 2005. The Deed was subsequently varied by a number of variation deeds, including the Omnibus (3) CTI Amendment Deed (dated 26 August 2005) and First Deed of Novation and Variation of TIDC Consent Deed (dated 22 September 2005). This Deed is an umbrella deed for the Chatswood Transport Interchange development. It covers the provision of the CTI Infrastructure Works, being the works required to deliver the transport related components of the Chatswood Transport Interchange development, including the new Albert Avenue and Help Street bridges. For structural support, the integration of pedestrian accessways and logistical reasons, the CTI Infrastructure Works also include the underground car park, the adjoining Retail Complex and elements of the structural works required for the 3 future residential developments. This Deed also deals with the tenant fitout of the Retail Space (long term leasehold) and Retail Complex (freehold stratum).

The Chatswood Transport Interchange development has been classified as State Significant Development with the result that the Planning Minister is the consent authority to CRI's Part 4 Approval.

The conditions precedent under the Deed were satisfied on 22 September 2005. Accordingly, the Deed became fully operative on that date.



The Developer must design and construct the CTI Infrastructure Works in accordance with matters prescribed by TIDC. The deed deals in detail with the Developer's obligations in relation to the CTI Infrastructure Works, the construction, administration, payment for, and care of the CTI Infrastructure Works. Generally, the Developer is fully responsible for the Developer's CTI Infrastructure Activities despite subcontracting the carrying out of any part of those works, and is vicariously liable to TIDC for all acts, omissions and defaults of the CTI Infrastructure Works Contractor (and its employees, subcontractors and agents ) relating to, or in any way connected with, the Developer's CTI Infrastructure Activities.

The due and proper performance by the Developer of its obligations under the Deed with respect to the CTI Infrastructure Works is guaranteed by two unconditional undertakings procured by CRI Chatswood Pty Ltd and given in favour of TIDC, each for \$3,925,000 and each issued by Great Lakes Reinsurance (UK) PLC ("TIDC Bonds"). Additionally, pursuant to the CTI Infrastructure D&C Contract, the CTI Infrastructure Works Contractor provided to the Developer two Performance Bonds each for \$3,925,000 for the purpose of ensuring the due and proper performance by the CTI Infrastructure Works Contractor of its obligations under the CTI Infrastructure D&C Contract ("Security Trustee Bonds"). Upon the Mez Subscriber first providing financial accommodation to the Issuer, TIDC will assign (if assignable) the TIDC Bonds to the Security Trustee (CBA) ("Security TIDC Bond/s"). Within 28 days after the completion of the last portion under the CTI Development Deed, the Security Trustee will assign (if assignable) part of the Security TIDC Bond/s equal to \$3,925,000 or such lesser amount available at that time to TIDC. At the same time the balance of the Security TIDC Bond which has not been assigned to TIDC will be returned by the Security Trustee to the CTI Infrastructure Works Contractor. Whilst TIDC holds the TIDC Bonds, TIDC may have recourse to the TIDC Bonds at any time. Whilst the Security Trustee holds the Security TIDC Bond/s, TIDC may direct the Security Trustee to call the Security TIDC Bond/s in any circumstances where TIDC would have been entitled to call the TIDC Bonds under the CTI Development Deed if it had held them, including for the payment of TIDC Priority Moneys, and the Security Trustee may call the Security TIDC Bond/s to fund the cost of the CTI Infrastructure Works in any circumstances where TIDC would have been entitled to call the TIDC Bonds under the CTI Development Deed.

Access to the Construction Site will be given to the Developer progressively as set out in Schedule 10 to the Deed.

Within 4 weeks of being given access to any part of the Construction Site and at least two weeks prior to commencing any work on the Construction Site or any Extra Land that could damage property on or off the Construction Site, the Developer must identify and prepare a condition survey of all property that could be affected or damaged by the Developer's CTI Infrastructure Activities as determined in the Developer's DA Consent and as otherwise required by TIDC Part 5 Approval and the Developer's DA Consent.

The deed provides that the Developer must regularly and diligently progress and proceed with the Developer's CTI Infrastructure Activities with due expedition, take all reasonable steps necessary to mitigate any delay, and achieve Completion of each Portion by the relevant Date for Completion. Any extension to a Date for Completion will only be extended in accordance with the extension of time provisions in the clause and dispute resolution provisions in the Deed. If Completion of a Portion has not occurred by the Date for Completion for the Portion, the Developer becomes liable for payment to TIDC of liquidated damages at the rates in Schedule 1 to the Deed for every day after the Date for Completion of a Portion up to the Date of Completion of that Portion or earlier termination of the Deed, limited to \$10m. The rate of liquidated damages is \$1 per day in respect of every Portion other than the last Portion which has a daily rate of \$57,000.

This Deed, the Call Option Deeds and the Retail Space Lease are interdependent. If the CTI Development Deed is terminated prior to practical completion of the CTI Infrastructure Works, the Call Option Deeds to effect the sale of the Retail Complex, the 3 Residential Lots and the Car Park and the right to the Retail Space Lease will also terminate.

TIDC has agreed to procure RailCorp's consent for the purposes of providing access to the CTI Site and the registration of the stratum subdivision plan, the section 88B Instrument and the Building Management Statement, the leasing of the Retail Space and the sale of the Retail Complex, the 3 Residential Lots and the Car Park Lot.

Obligations are prescribed in favour of adjoining owners. During the CTI development, the Developer must provide temporary replacement rights of way, support and service lines to adjoining buildings.

This Deed provides for the preparation of a final stratum subdivision plan, section 88B Instrument and Building Management Statement close to completion of the CTI Infrastructure Works. Drafts are attached to this Deed.

A regime dealing with the default or insolvency of the Developer and/or the builder ties into the default regime in the TIDC Consent Deed.

The Developer must remain owned by CRI, unless TIDC agrees to a change.

### CTI Infrastructure D&C Contract

The Developer and the CTI Infrastructure Works Contractor (Barclay Mowlem Construction) entered into the CTI Infrastructure D&C Contract on 24 June 2005. The Contract became operational on 22 September 2005 and subsumed the Early Works CTI Infrastructure D&C Contract. Essentially, this contract back-to-backs the Developer's obligations in the CTI Development Deed in relation to the CTI Infrastructure Works.

Mowlem plc has guaranteed the performance of Barclay Mowlem Construction.

In order to accommodate the proposed timetable for the opening of the new Epping to Chatswood line, some building works were done prior to the satisfaction of the conditions precedent in the CTI Development Deed, pursuant to the Early Works Deed between TIDC and the Developer dated 14 January 2005 and under TIDC's Part 5 Development Approval.

TIDC funded the cost of the Early Works. These monies will be deducted from TIDC's Contribution under the CTI Development Deed.

The Early Works were completed on or about 20 September 2005. The CTI Development Deed provides that the Early Works Deed terminated automatically ab initio upon the satisfaction of the conditions precedent in the CTI Development Deed, that is, on 22 September 2005. Whilst the Early Works Deed terminated on this date, the CTI Development Deed provides that the provisions of the CTI Development Deed will apply to any works undertaken or completed under the Early Works Deed and the rights and obligations of the parties in respect of the Early Works Deed will be the same as they would be under the CTI Development Deed if the CTI Development Deed had been executed on the date of the Early Works Deed.

### Independent Certifier Deed

TIDC, the Developer, the CTI Infrastructure Works Contractor, the Security Trustee, Senior Agent and Mez Subscriber (on behalf of the Financiers), the purchaser of the Retail Complex (and lessee of the Retail Space) and the Independent Certifier entered into the Independent Certifier Deed on 29 July 2005. This Deed became operational on 22 September 2005. Pursuant to this Deed, the parties appoint the Independent Certifier for the purposes of the CTI Infrastructure Works. This Deed sets out the relationship between the parties and the Independent Certifier and the parameters of the Independent Certifier's exercise of its duties. The Independent Certifier will have duties in relation to the CTI Development Deed, the CTI Infrastructure D&C Contract and the TIDC Consent Deed.

The Independent Certifier Deed contemplates that the purchaser of the Retail Complex may, by notice in writing to the other parties to the Independent Certifier Deed, nominate a party to replace it as the retail purchaser for the purposes of the Independent Certifier Deed.

Accordingly, the parties to the Independent Certifier Deed entered into the Deed of Novation to Independent Certifier Deed on 29 September 2005 with CTI Shopping Centre Pty Limited (owned by Hartford Holdings), to novate the interests of the purchaser of the Retail Complex under the Independent Certifier Deed to CTI Shopping Centre Pty Ltd.

### Call Option Deeds (Sales and Lease) and Back-Up Call Option Deeds (Sales and Lease)

TIDC and the relevant CRI trust purchaser entered into the following Call Option Deeds on 24 June 2005:

- (a) one with respect to the sale of the Retail Complex Lot;
- (b) one with respect to the lease of the Retail Space (together the "Retail Call Options"); and
- (c) one each with respect to the sale of Residential Lot 1, Residential Lot 2, Residential Lot 3 and the Car Park Lot (together the "Residential Call Options").

Pursuant to these Deeds, TIDC and RailCorp granted a call option requiring TIDC and RailCorp to sell the respective lots to the purchaser or its nominee acceptable to TIDC. A similar arrangement applies to the Retail Space lease, the lessee of which must be the owner of the Retail Complex.



## Retail Call Options

Pursuant to the nomination provisions under the Call Option Deeds, new Call Option Deeds were entered into between TIDC and CTI Shopping Centre Pty Ltd (owned by Hartford Holdings) on 22 September 2005 (with respect to the Retail Space Lease and Retail Complex). CTI Shopping Centre Pty Ltd supported its obligations with a bank guarantee.

Babcock & Brown International provided a credit wrap to the Financiers. As part of this arrangement, Back-Up Call Option Deeds were also entered into on 22 September 2005 between TIDC and CTI Retail Pty Ltd (Babcock & Brown and Walker Corporation) (with respect to the Retail Space Lease and Retail Complex). Should Hartford's Call Option Deeds be terminated, the Back-Up Call Option Deeds will remain, but in this situation, CTI Shopping Centre Pty Limited's bank guarantee will be drawn.

TIDC and RailCorp will be obliged to transfer title to the Retail Complex Lot and grant the Retail Space Lease Lot to CTI Retail Pty Ltd, or CTI Retail Pty Ltd's nominee.

The Call (Retail Complex) Option Deed can be exercised during the period commencing 9.00am on 1 November 2005, and expiring 9.00am on 10 January 2006.

The Call (Retail Space Lease) Option Deed can be exercised during the period commencing on the date of completion of the CTI Infrastructure Works and expiring at 5.00pm on the date which is 10 Business Days after that date.

The Back-Up Call Option Deeds can be exercised at any time during the period commencing 9am on the later to occur of 20 Business Days after receipt of the Termination Notice, termination of all of the Retail Take Out's rights in each of the Retail Option Deeds and the date of registration of the stratum subdivision documents, and expiring at 5.00pm on that date.

The CTI Development Deed provides for an additional payment ("Price") to be paid to TIDC of \$2,000,000, adjustable based on the retail area approved under the Developer's DA Consent. The Price for the Retail Complex is guaranteed by CRI under the CRI Guarantors' Guarantee, and secured by a charge (3rd priority).

## Residential Call Options

The Residential Call Options can be exercised on completion of the CTI Development Works at the time the stratum subdivision will have been registered.

An Additional Price is payable to TIDC and RailCorp (\$3.17m adjustable in accordance with the approved square meterage of residential area approved under the Developer's DA Consent). The Additional Price is split between the 3 lots. Each purchase price is payable on the later to occur of the completion of the CTI Infrastructure Works and commencement of construction of the relevant residential building. However, in any event, each purchase price must be paid by no later than 31 May 2010. The purchase price is



indexed by CPI from completion of the CTI Infrastructure Works until payment. The relevant CRI trust purchaser's obligation to pay this deferred amount is guaranteed under the CRI Guarantors' Guarantee and secured by a charge (3rd priority) and a mortgage over the Residential Lots following completion (ranking 2nd behind the Financiers).

The TIDC Consent Deed also provides that the Developer must not commence construction of the 3 residential buildings without the prior written consent of the Security Trustee.

## Sale Contracts

A sale contract for each of the Retail Complex, the 3 Residential Lots and the Car Park Lot is attached to the Call Option Deeds.

The lots will be sold on completion of the CTI Infrastructure Works, following the issue of stratum titles.

The purchasers waive all rights and remedies in relation to noise and vibration which may adversely affect the respective properties and agree to take no action to restrain or require reduction of noise and/or vibration due to such operations. TIDC's and other Members of the Rail Family's rights to carry on operations which will give rise to noise and vibration will be protected by registered easements.

The contract is interdependent with the CTI Development Deed.

## Retail Space Lease

RailCorp will enter into the Retail Space Lease with the Retail Complex purchaser, following the issue of stratum titles. The Retail Space Lease will be a lease over parts of levels RL94 to RL106. The majority of the area subject to the Retail Space Lease will be at the concourse level, being RL94. The lessee will only be able to use specified areas for retail shops. The other leased areas must be reserved for public rights of way in accordance with the relevant registered easements and passageways.

The Retail Space Lease will be for a term of 50 years plus 3 options for renewal, one for 15 years and two for 5 years each, totalling 75 years. At any time commencing on the day which is 10 years after the commencing date of the Retail Space Lease, RailCorp may give to the lessee written notice that, 3 years after the date of the notice, the premises will be reduced by excising the "DWR Connection Area", being an area indicated as "DWR Connection Area" on a plan annexed to the Retail Space Lease.

The head lease rent payable to RailCorp will be \$500,000 per annum, indexed to CPI annually.

The lessee will be responsible for cleaning and maintaining the leased area and other adjoining areas outside the Paid Concourse. RailCorp will contribute \$300,000 per annum, indexed to CPI annually, for the performance of these cleaning and maintenance obligations. The lessee will be responsible for structural repairs to the leased area.

Advertising material approved by all relevant Authorities within the Advertising Strip (being that area outside the shops on the eastern side adjoining Chatswood Central Plaza facing the interchange) and on the backs and sides of any bus shelters, and in such other locations approved by RailCorp acting reasonably, are permitted to be erected. RailCorp is entitled to be paid 10% of revenue earned from advertising signs.

## Section 88B Instrument

This Instrument will be registered with the stratum subdivision. It will prescribe the terms for rights of footway, access ways, easements for support and shelter, easements for services, easements for signage, easements for communication and security equipment, easements for noise and vibration, positive covenants, restrictions on use and various other matters necessary for the use, operation and maintenance of the CTI.

The Instrument will also prescribe the terms of completion of the construction of the 3 residential buildings.

## Building Management Statement

A Building Management Statement can be used for stratum lots because the Chatswood Transport Interchange will form a building for the purposes of the Conveyancing Act. The on-going matters of access, maintenance on the common areas in multi-occupancy buildings and management of the shared services will be addressed by the Building Management Statement. Each of RailCorp and the owners of the Car Park Lot, the Retail Space Lot, Retail Complex Lot and the 3 Residential Lots will be a party to the Building Management Statement. Accordingly, upon registration of the Building Management Statement on the certificates of title to each lot the subject of the Building Management Statement, the current and future registered proprietor of each lot will be bound by the terms of the Building Management Statement.

The registered Statement will confer rights and impose obligations on the owners and occupiers of the various



stratums in the CTI building from time to time, thus providing certainty about the ongoing use and maintenance of the stratum lots with shared facilities, procedures about meetings and financial management. It will also deal with insurance of the CTI building structure, which must be covered by one policy.

Each party under the Building Management Statement must notify the other parties if they become aware of damage to or a defect in a Shared Facility. Each other owner will be responsible for undertaking structural repairs within its own lot. RailCorp must clean and maintain the Paid Concourse.

The Building Management Statement will also cover the future construction of the 3 residential buildings.

## TIDC Consent Deed

TIDC, CRI Chatswood Pty Ltd, CRI Chatswood Finance Pty Ltd, CRI Guarantors, Barclay Mowlem Construction Ltd, Commonwealth Bank, CBA Corporate Services (NSW) Pty Ltd and SPB Developments Pty Ltd entered into the TIDC Consent Deed on 24 June 2005. Mowlem plc acceded to the Deed on 13 July 2005 and CTI Retail Pty Ltd (Babcock & Brown and Walker Corporation) and Babcock and Brown International Pty Ltd ("BBIP") acceded to the Deed on 22 September 2005. Babcock & Brown Real Estate Finance Pty Ltd replaced SPB Developments on 22 September 2005 as Mez Subscriber.

This Deed combines the usual Contractor and Financier Tripartite Deeds. Accordingly, it deals with the default or insolvency of the Developer and/or Barclay Mowlem Construction.

TIDC, Commonwealth Bank of Australia and the Mez Financier each agree with the Developer and Barclay Mowlem Construction to pay directly to Barclay Mowlem Construction the portion of funds payable by TIDC, Commonwealth Bank of Australia and the Mez Financier referable to the amount of any Progress (Works) Claim or Progress Claim that has been made under the CTI Infrastructure D&C Contract, as certified by the Independent Certifier, when required to be paid under the CTI Development Deed.

The Financiers, principally Commonwealth Bank of Australia, have agreed to continue to fund the CTI Infrastructure Works even if one or both of the Developer and Barclay Mowlem Construction default or become insolvent, provided a builder can be found to complete the CTI Infrastructure Works. This commitment is subject to the usual construction financing

"cost to complete" test being satisfied, i.e. sufficient funding within agreed limits is available to complete the CTI Infrastructure Works, however the Deed sets out a regime for two cost to complete tests to be conducted. The Independent Certifier performs the first and second cost to complete tests. The usual cost to complete test relates to a Progress Claim by the Developer for works conducted and the Developer's margin.

If Barclay Mowlem Construction is not paid at any time, it can suspend works for 30 days ("Suspension Period"). During this time all parties must try to find a solution to continue work. If no solution is found, Barclay Mowlem Construction may terminate its CTI Infrastructure (D&C) Contract. Regardless of default, Barclay Mowlem Construction must be paid for its work up to the date of suspension. The Independent Certifier must issue its Independent Certifier's Certificate, which includes the cost to complete test. If the usual (first) cost to complete test fails, it must carry out a second cost to complete test which relates to Barclay Mowlem Construction's costs only. If the first cost to complete test is not satisfied, TIDC may, but is not obliged to, put in funds sufficient to ensure that the first cost to complete test is passed. Any such amount will be a debt due to TIDC by the Developer and secured by the TIDC Securities. If the first and (if applicable) second cost to complete test has failed, the Independent Certifier must notify TIDC, the Developer and Barclay Mowlem Construction of the amount of the Progress Claim (Works) that would pass the second cost to complete test. The Financiers must pay Barclay Mowlem Construction that amount which satisfies the second cost to complete test. TIDC must pay the amount of the balance of the certified amount of that payment.

If TIDC is entitled to terminate the CTI Development Deed, subject to the rights of the Retail Take Out, TIDC may step into the place of the relevant Financier by taking an assignment of the relevant Finance Documents and the Financiers' Securities.

Alternatively, TIDC may fund the Developer to payout the Financiers and require a discharge of the Financiers Securities. This action would enable TIDC to avoid waiting for the Financiers extended cure periods to expire before being entitled to restart construction. In these circumstances TIDC will be entitled to the Performance Bonds.

TIDC's step-in right above is subject to the Retail Take Out's option to take out the Developer by serving a Retail Take Out

Notice requesting that TIDC and the CTI Infrastructure Works Contractor each consent to the Developer novating its rights and obligations under the CTI Development Deed, the CTI Infrastructure D&C Contract and the Independent Certifier Deed to the Retail Take Out. The Retail Take Out must pay or procure the payment of the Secured Moneys arranging substitute financing to complete the CTI Infrastructure Works. Such notice may only be given within the first 21 days of the Suspension Period.

Only after the Retail Take Out has been allowed to request TIDC's consent to the Retail Take Out substituting the Developer, if TIDC terminates the CTI Development Deed, the parties acknowledge that the Call Option Deeds terminate simultaneously and no party will have any claim against TIDC or RailCorp. Further, the parties acknowledge that the CTI Site will be owned by TIDC and RailCorp.

In addition, TIDC may exercise its rights to novate the CTI Infrastructure D&C Contract following termination with the effect that Barclay Mowlem Construction will become TIDC's builder. That contract will be in substantially the same form as the CTI Infrastructure D&C Contract with consequential amendments and the insertion of a new clause allowing TIDC

to direct substantial variations to the CTI Infrastructure Works, including such variations which omit a significant part of the CTI Infrastructure Works.

The Deed also makes provision for that part of lot 13 acquired by TIDC not yet forming part of the CTI Site. If requested in writing by the Developer, TIDC must permit the inclusion of Lot 13 in the Construction Site and include Lot 13 in the CTI Site (to form part of the Non-RailCorp Lots) in accordance with the CTI Development Deed and provide reasonable assistance to the Developer in relation to the obtaining of consent under s96 of the Environmental Planning and Assessment Act 1979 (NSW) in relation to a modification which is consistent with the Developer's DA Consent.

The Residential Purchaser will also become a party to the TIDC Consent Deed.

If the CTI Development Deed and the CTI Infrastructure D&C Contract are terminated pursuant to the TIDC Consent Deed, TIDC and BBIP must meet within 7 days of the date of termination and TIDC agrees to consider any written proposal by BBIP in relation to the CTI and BBIP's potential involvement in the CTI.





**Fig 1: Structure Diagram – Chatswood Transport Interchange**

(22 September 2005)

