

# Stations, Systems, Trains, Operations and Maintenance PPP

## Project Summary

April 2023

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An artist's impression of St Marys metro station.



Australian Government



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# Part A

## Project overview



An artist's impression of Orchard Hills metro station.

# 1 Introduction

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This Project Summary summarises the main contracts, from a public sector perspective, for the Stations, Systems, Trains, Operations and Maintenance (**SSTOM**) Public Private Partnership (**SSTOM PPP**), entered into by Sydney Metro and the Parklife Metro consortium in December 2022. The SSTOM PPP is a key component of the Sydney Metro – Western Sydney Airport project (**Project**).

This document has been prepared by Sydney Metro (ABN 12 354 063 515) a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) (**Sydney Metro**) in accordance with the public disclosure requirements of the New South Wales Government's NSW Public Private Partnerships Guidelines 2022.

Sydney Metro as a statutory authority came into effect in 2018 under Part 3D of the *Transport Administration Act 1988* (NSW). It is a NSW Government agency and is part of the NSW Transport cluster, with a principal objective of working across government to lead the delivery of a world-class metro rail system focused on customers and great local places, driving the state's economic growth well into the future as a result.

This document provides a summary of the contracts only and should not be relied upon for legal interpretation of the contracts. It is based on the contracts as at 20 December 2022. Subsequent amendments of, or additions to, the contracts are not reflected in this document.

The defined terms used in this document are provided in the Glossary in Appendix A to this document.



## 2 Project history and strategic need

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The Project is part of the biggest urban rail infrastructure investment in Australian history – Sydney Metro.

By 2030, Sydney will have a network of four metro lines, 46 stations and 113km of new metro rail. Sydney Metro is revolutionising how Australia's biggest city travels, connecting Sydney's north west, west, south west and greater west to fast, reliable turn-up-and-go metro services with fully accessible stations.

The Project is being delivered under the Western Sydney City Deal, a 20-year partnership signed in March 2018 between the NSW and Australian governments and eight councils of the Western Parkland City.

It is a key part of delivering an integrated transport system for the Western Parkland City, as envisaged in the NSW Government's 'Future Transport Strategy 2056' (**Strategy**). The Western Parkland City is bound by the Blue Mountains to the west and the Greater Parramatta metropolitan area to the east and is part of the Greater Sydney Commission's vision for a metropolis of three cities. It incorporates the future Western Sydney International (Nancy-Bird Walton) Airport (**Western Sydney International**) and Western Sydney Aerotropolis, as well as the Penrith, Liverpool and Campbelltown-Macarthur urban areas.

The new metro rail will become the transport spine for Greater Western Sydney, connecting communities and travellers with the new Western Sydney International Airport and the growing region.

The city-shaping project, from St Marys through to the new airport and the Western Sydney Aerotropolis, will provide a major economic stimulus for western Sydney, supporting more than 14,000 jobs during construction for the NSW and national economies.

The 23-kilometre new railway will connect the Western Sydney Aerotropolis in the south with St Marys in the north – where customers can connect to the existing Sydney Trains suburban T1 Western Line, as shown in Figure 2-1.

The NSW and Australian governments have a shared objective of having Sydney Metro – Western Sydney Airport operational when Western Sydney International opens for passenger services.

Figure 2-1: Western Parkland City Indicative Future Network



## **2.1 Future Transport Strategy 2056**

The Strategy provides a 40-year vision, direction and framework for customer mobility in NSW, which will guide transport investment over the longer term. The Strategy places the customer at the centre of everything we do. It is the first plan integrating transport and land-use in Australia to harness technology to improve customer and network outcomes, and it starts with a long-term vision for our communities.

The Strategy aims to reshape future travel behaviours, revitalise regional areas, improve safety and reduce the cost of providing infrastructure. This will be done through long-term, agile planning that supports a productive economy, liveable communities and more sustainable transport solutions.

Planning the future of the transport network has been aligned with land-use planning by the Greater Sydney Commission, Infrastructure NSW and the Department of Planning, Industry and Environment. To support the Greater Sydney Commission's 'Greater Sydney Region Plan', the Strategy aims to improve public transport so that by 2056, 70 per cent of people will live within 30 minutes of work, study and entertainment.

## **2.2 Western Sydney International (Nancy-Bird Walton) Airport**

Western Sydney International, located at Badgerys Creek, will support growth of the international and domestic tourism markets, and the district's economy, by attracting visitors to the Western Parkland City. The construction of stage one of Western Sydney International is currently underway. It will comprise a single runway, a passenger terminal and other relevant facilities to accommodate around 10 million passengers annually as well as air freight traffic. As demand grows over time, Western Sydney International is expected to include an expanded terminal and ultimately a second runway.

It is recognised that rail access to the new airport will support its success and that of the Western Parkland City by reducing road congestion and supporting the economic viability of Western Sydney International. Therefore, a passenger rail corridor has been identified and protected on the airport site, as well as at the station sites.

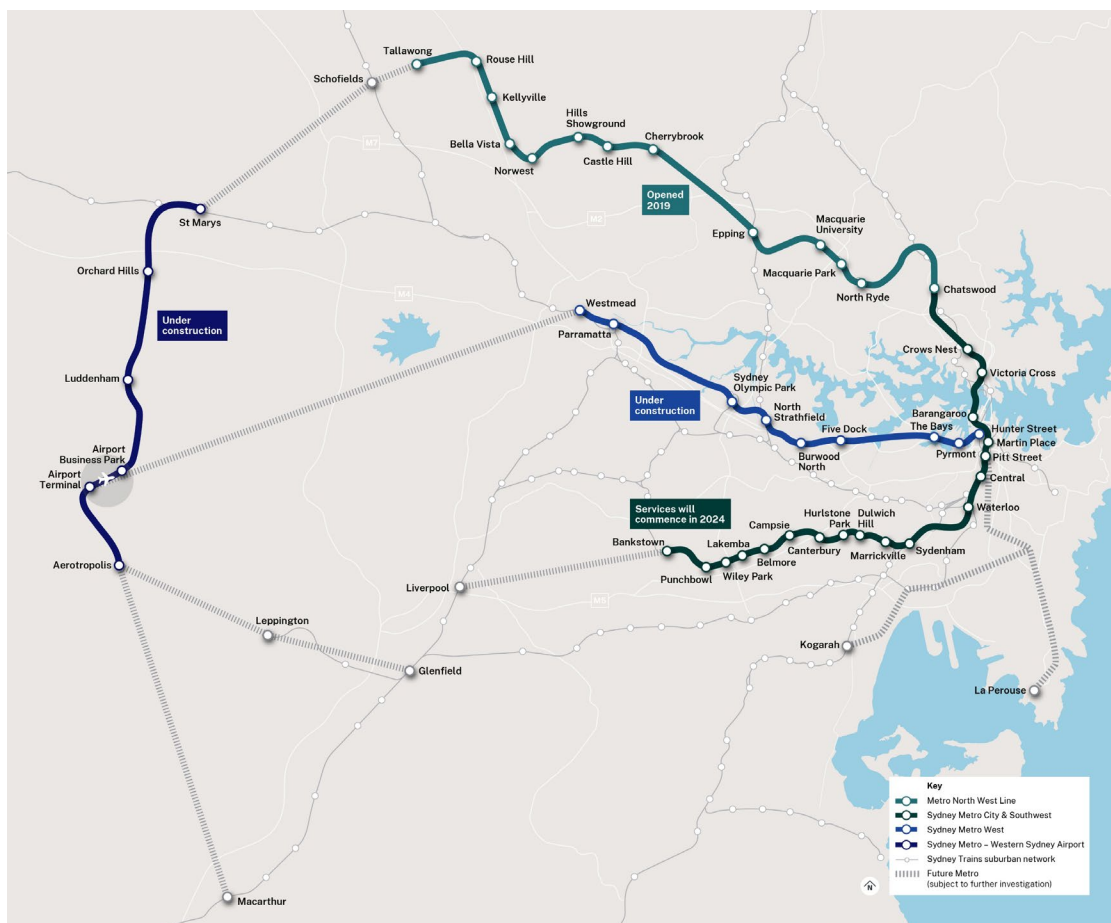
The Project will help cater for the anticipated growth in population and industry in Western Sydney that will be driven by the development of Western Sydney International and Western Sydney Aerotropolis at Bringelly.

## **2.3 Sydney Metro**

An overview of the Sydney Metro network including existing infrastructure, infrastructure under construction and potential future Extensions is provided in Figure 2-2.



**Figure 2-2: Sydney Metro network**



The Project forms part of the broader Sydney Metro network which includes:

- Metro North West Line** – Opened in May 2019 with driverless trains running every four minutes in the peak in each direction between Tallawong station in Rouse Hill and Chatswood.
- Sydney Metro City & Southwest** – A new 30-kilometre metro line extending the new metro network from the end of the Metro North West Line at Chatswood, under Sydney Harbour, through the Sydney central business district and south-west to Bankstown.
- Sydney Metro West** – A new 24-kilometre metro line that will connect Greater Parramatta with the Sydney CBD. Confirmed stations include Westmead, Parramatta, Sydney Olympic Park, North Strathfield, Burwood North, Five Dock, The Bays, Pyrmont and Sydney CBD. This infrastructure investment will double the rail capacity of the Greater Parramatta to Sydney CBD corridor, with a travel time target between the two centres of about 20 minutes.
- Sydney Metro – Western Sydney Airport** (this Project) – A new metro rail line that will service Greater Western Sydney and the new Western Sydney International forming the transport spine of the Western Parkland City, and further described in section 3 (*Project description*).

## 3 Project description

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### 3.1 General

Sydney Metro – Western Sydney Airport will become a transport spine for Western Sydney and will support the growth of Western Parkland City for generations to come. It will be the metro railway from St Marys to Western Sydney International and Western Sydney Aerotropolis, as shown in Figure 3-1, connecting travellers from Western Sydney International to the rest of Sydney's public transport system at St Marys.

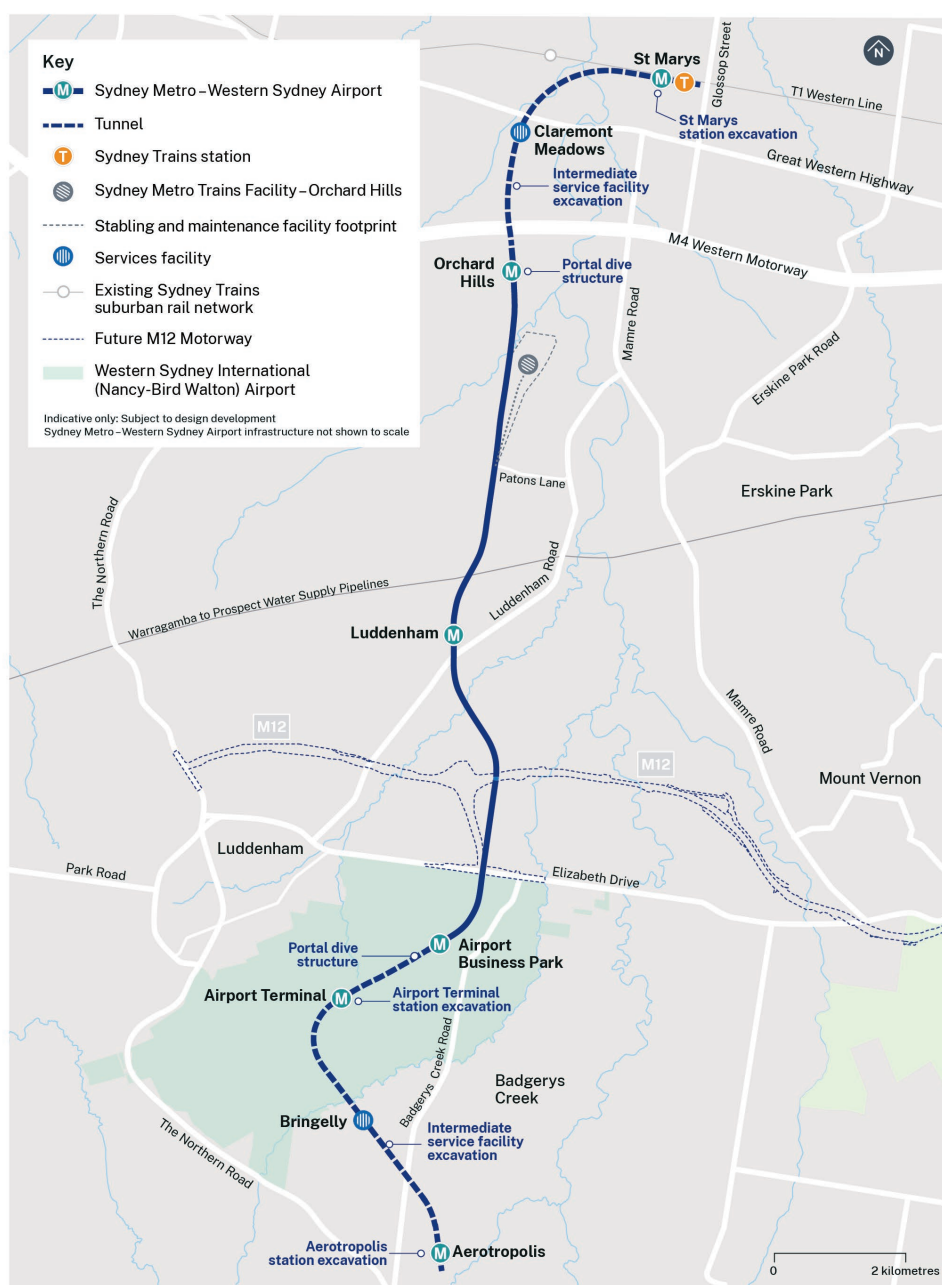
The Project includes the following scope:

- a) approximately 23 kilometres of tunnels and surface civil structures, including:
  - i) two sections of twin-running tunnels:
    - A. northern section from St Marys station to Orchard Hills station (approximately 4.3 kilometres long); and
    - B. southern section from the southern side of Airport Business Park station through to Aerotropolis station (approximately 5.5 kilometres long).
  - ii) surface civil and alignment works between the two TBM tunnel sections south of Orchard Hills portal, transitioning to a mixture of viaduct, bridges, cut and fill embankments, and entering a trough in the Western Sydney International site; and
  - iii) all associated rail infrastructure and systems;
- b) six new metro stations comprising:
  - i) an underground terminating station at St Marys, interchanging with the existing station on the T1 Western Line and connecting customers with the rest of Sydney's rail system;
  - ii) two intermediate stations between St Marys and Western Sydney International – Orchard Hills station and Luddenham station;
  - iii) two stations within Western Sydney International – Airport Business Park station and an underground station at Airport Terminal station; and
  - iv) an underground terminating station at Western Sydney Aerotropolis;
- c) transport interchange, precinct streets, street modifications and plazas at selected stations;
- d) a stabling and maintenance facility, and operational control centre at Orchard Hills;
- e) provision of underground tunnel stubs beyond St Marys and Western Sydney Aerotropolis terminating stations that would allow for minimal disruption of the operating line during construction of possible future Extensions;
- f) provision of future-proofing measures within the systems, facilities and built environment to efficiently and effectively enable future Extensions from either end to the north and to the south;

- g) allowance for future passenger interchanges with potential Extensions of a future east west rail link connecting Western Sydney Aerotropolis to Greater Parramatta and/or the Southwest Rail Link extension;
- h) provision and operation of fully-automated trains between St Marys and the Western Sydney Aerotropolis;
- i) provision of customer services at stations and interchanges; and
- j) provision of asset management services, including maintenance of infrastructure and rolling stock.

The SSTOM PPP is a key component of the Project and will deliver the stations, rail infrastructure and systems and trains and provide the operations and maintenance for Sydney Metro – Western Sydney Airport.

**Figure 3-1: Sydney Metro - Western Sydney Airport route**





Designed with customers at their centre, metro stations will be quick and easy to get in and out of. Trains will be fast, safe, proven and reliable, and technology will keep customers connected at every step of the journey.

Sydney Metro – Western Sydney Airport will:

- k) have a maximum journey time of 20 minutes between St Marys station and Aerotropolis station; and
- l) link to the existing Sydney trains suburban T1 Western Line at St Marys station.

Trains and rail systems will incorporate grade of automation level 4 technology with high levels of performance and reliability. Stations will be fully-accessible and incorporate lifts and escalators and platform screen doors.

Trains will operate initially as three-car trains, with a design capacity for 645 customers, providing a capacity of 12,900 passengers per hour per direction (at an ultimate capacity frequency of 20 trains per hour in each direction).

There will be a train every five minutes in the peak in each direction (twelve trains per hour per direction), with an ability to grow capacity in the future. Specific additional train set and expansion options for the State have been agreed as part of the SSTOM PPP. Off-peak services will operate every 10 minutes (six trains per hour per direction).

Services will operate for up to 21.5 hours a day, with the capability of providing 24-hour passenger services for a continuous period of up to 68 hours.

Sydney Metro – Western Sydney Airport is a key part of delivering an integrated transport system for the Western Parkland City. It will:

- m) provide a major economic stimulus in the heart of Western Sydney, supporting more than 14,000 jobs during construction for the NSW and national economies;
- n) support Western Sydney Aerotropolis and 200,000 new jobs that will be created as a focal point for Australian innovation, research and productivity;
- o) support population growth in Sydney past six million by 2036 – an extra 1.7 million people will progressively move into Australia's biggest city, which will support an extra 840,000 jobs and 680,000 homes;
- p) improve the region's liveability through better connectivity, an improved environment, and more housing and education outcomes for the region;
- q) support a 30-minute city that changes the patterns of where people live and work, how they enjoy their spare time and how they travel; and
- r) help optimise land use and is key to the development of future precincts in the Western Parkland City.

## 3.2 Project objectives

Sydney Metro has developed six Project objectives for Sydney Metro – Western Sydney Airport, as shown in Table 3-1, which have been refined from previous Sydney Metro project experiences.

**Table 3-1: Project Objectives**

No	Objective	Description
1	Safe and customer-focused transport service	Deliver easy, safe and accessible transport services that meet the needs of our customers.
2	Successful airport and Western Parkland City	Support the long-term success of Western Sydney International and the Western Parkland City by optimising land use and development, transport and green infrastructure.
3	Attracting knowledge and internationally competitive jobs	Support Western Sydney's international competitiveness and productivity by supporting employment precincts and attracting knowledge-intensive jobs.
4	Realising the 30-minute city	Connect Western Sydney communities with an integrated transport network to maximise the 30-minute city catchment of the Western Parkland City.
5	Great places with an increased housing supply	Facilitate the development of the Western Parkland City to create liveable, vibrant and environmentally sustainable precincts and places with a diverse mix of new dwellings.
6	Delivering a value-for-money solution	Ensure a value-for-money, sustainable and deliverable solution to support long-term growth of the Western Parkland City.

In support of the Project objectives, the objectives of the SSTOM PPP are:

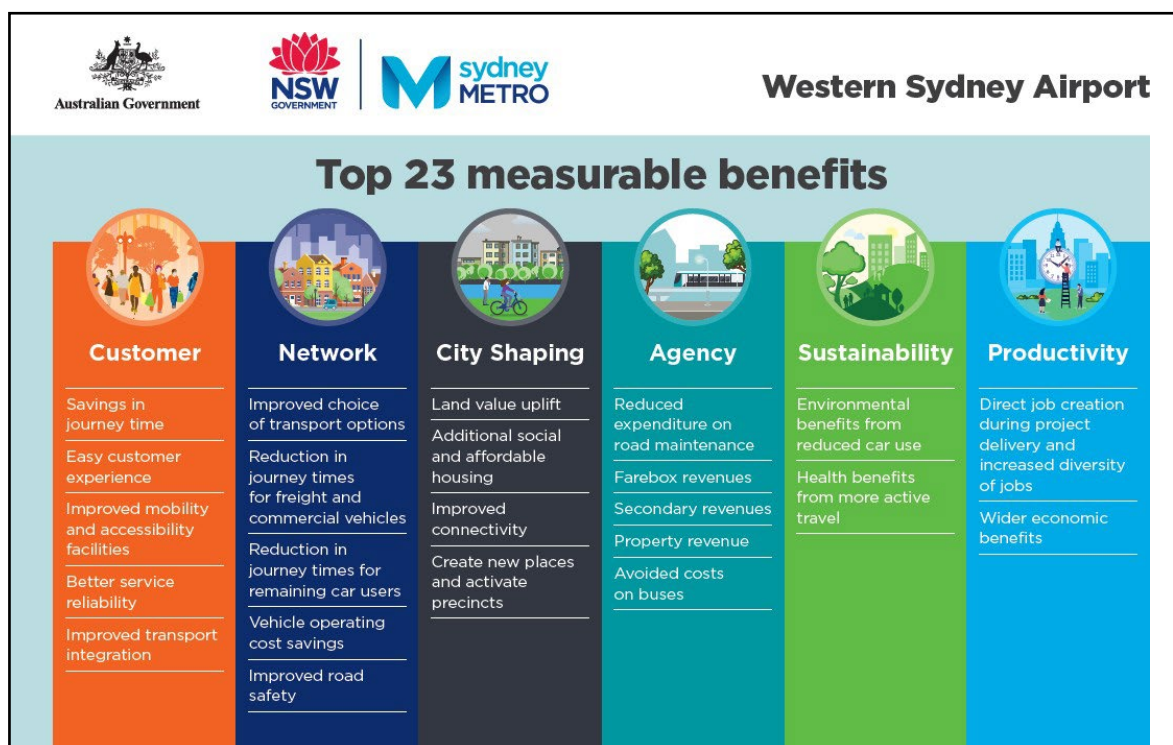
- a) to deliver world class metro services which will provide customers with a safe, high quality, reliable, efficient and affordable public transport solution and meet the specified performance requirements;
- b) to provide a customer experience with:
  - i) a fully-integrated transport solution with convenient and seamless connections between transport modes;
  - ii) high quality stations, station precincts and trains which are safe, easy to use, and highly accessible;
  - iii) high quality and reliable information, and intuitive and clear wayfinding and signage consistent with the Sydney Metro brand; and
  - iv) retailing and services close to stations, integration with adjacent land uses, environmentally friendly transport interchange facilities, and car parking;
- c) to develop a long term, collaborative working relationship between Sydney Metro and OpCo and OpCo contractors;

- d) to design, deliver, test and commission, and operate a safe metro system, including the development of an effective safety culture;
- e) to set new benchmarks for the future development and operation of Sydney's transport network;
- f) to provide a holistic approach to design, construction, operations and asset management throughout the duration of the deed;
- g) to provide future proofing and flexibility within the technical, commercial and financial solutions that safeguards for future expansion of services and any potential future Extensions on a demonstrable value-for-money basis and without impact to customers and/or network operations;
- h) that OpCo will engage with the community and implement proactive stakeholder and community liaison strategies to minimise disruption and develop community ownership of Sydney Metro – Western Sydney Airport;
- i) that OpCo will deliver sustainable social and environmental outcomes by minimising energy use and maximising sustainability, minimising impacts on the environment, and promoting workforce development; and
- j) that OpCo will deliver a sound financing strategy for the SSTOM PPP which provides value-for-money to the State, and a robust and financially sustainable business for the operation of Sydney Metro – Western Sydney Airport.

### 3.3 Project benefits

The Project has 23 measurable project benefits, which are outlined in Figure 3-2.

**Figure 3-2: Project benefits highlights**





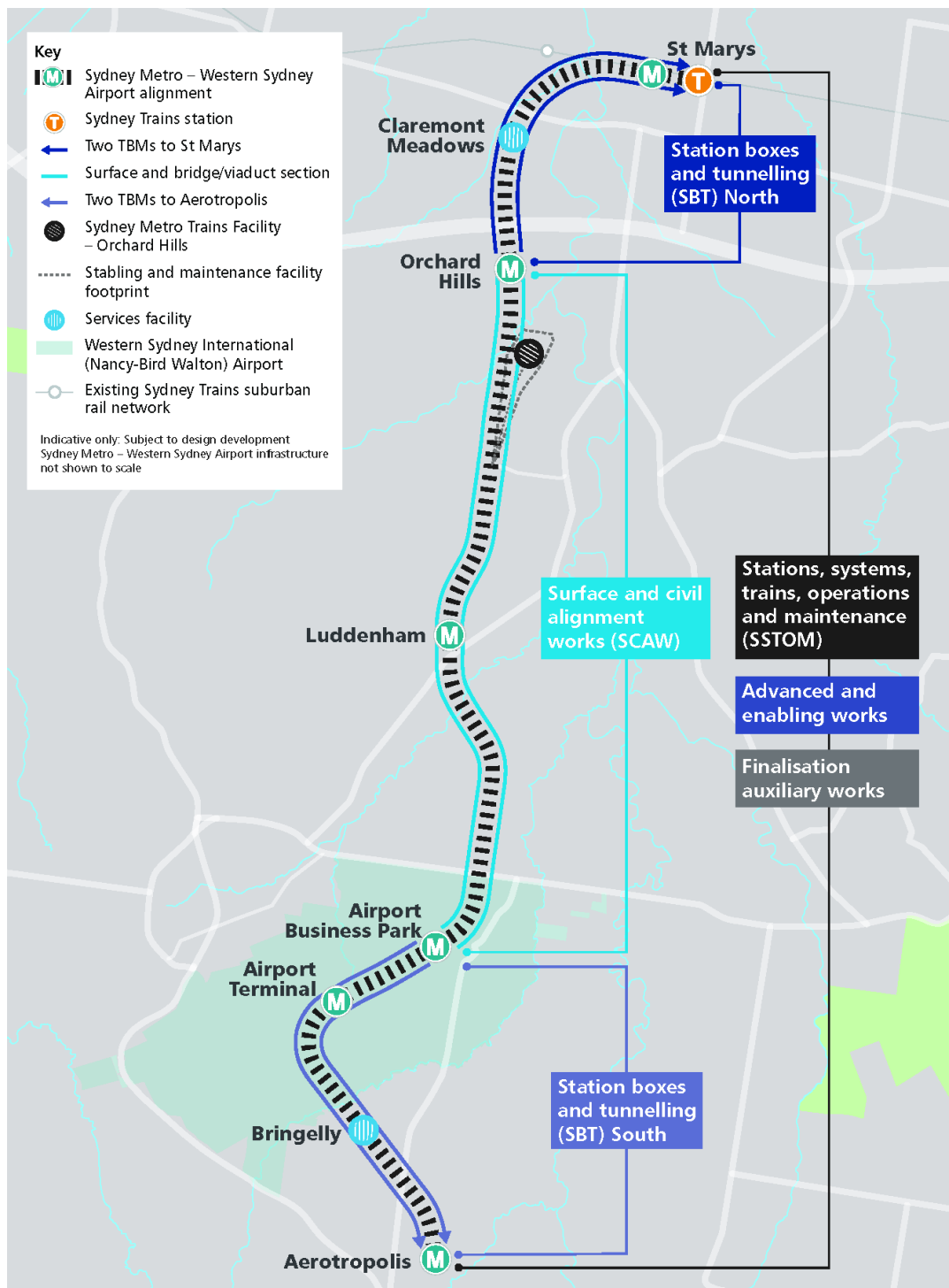
### 3.4 Major contracts

Sydney Metro will procure from the private sector the design, construction, integration, financing, operation and maintenance of Sydney Metro – Western Sydney Airport.

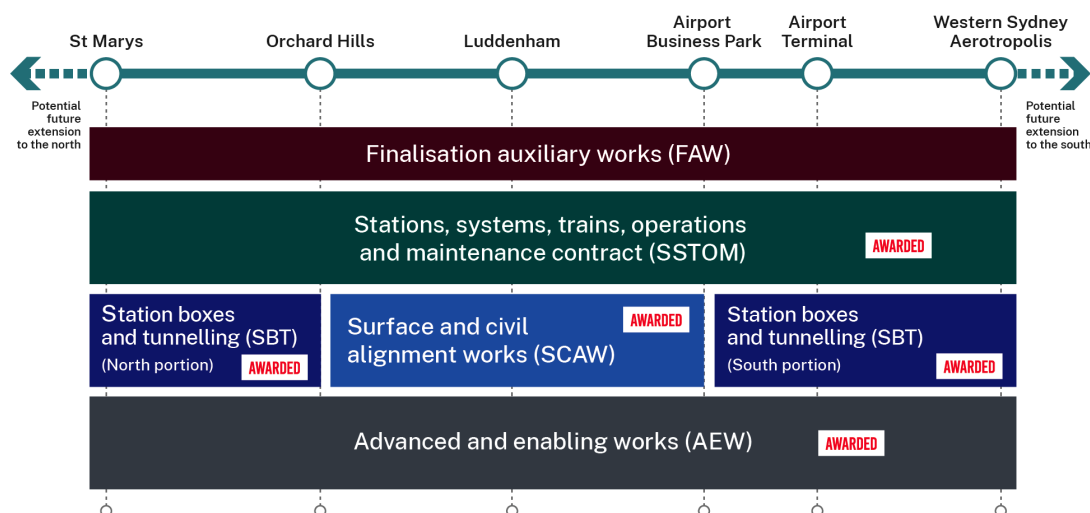
The Project is being procured through five main packages, being the Advanced and Enabling Works (**AEW**), the Station Box and Tunnelling Works (**SBT Works**), the Surface Civil and Alignment Works (**SCAW Works**), the SSTOM PPP and the Finalisation Auxiliary Works (**FAW**).

The Project delivery strategy is shown in Figure 3-3 and Figure 3-4. An overview of the scope and status of the main contract packages is set out in Table 3-2.

**Figure 3-3: Project delivery strategy**



**Figure 3-4: Project delivery strategy**



**Table 3-2: Scope and status of main contract packages**

Main contract packages	Description
<b>Advanced and Enabling Works (AEW)</b>	<p>Procured via a series of contracts of various types depending on the underlying nature of the AEW.</p> <p>The AEW includes works required to reduce overall program duration and mitigate risks to on-time commencement and completion of the major contract packages, such as:</p> <ul style="list-style-type: none"> <li>• geotechnical investigations to identify substrata conditions, contamination and archaeological issues;</li> <li>• utility services investigations to identify known and unknown utilities;</li> <li>• protection and/or relocation of existing utility services;</li> <li>• construction access and/or modifications to existing roads;</li> <li>• construction power and water supply for TBM(s) and roadheaders;</li> <li>• adjustments to rail systems, operations platform modification works at St Marys station;</li> <li>• demolition and property management works; and</li> <li>• the design and construction of the FSM Works that is being carried out on Sydney Metro’s behalf by TfNSW and its FSM Contractor.</li> </ul> <p>The AEW are being progressively undertaken in advance of the SBT Works, SCAW Works and SSTOM Works.</p>
<b>SBT Works</b>	<p>Procured via a design and construct contract titled "Sydney Metro – Western Sydney Airport Station Boxes and Tunnelling Works Design and Construction Deed" between Sydney Metro and the unincorporated joint venture between CPB Contractors Pty Limited ABN 98 000 893 667 and Ghella Pty Ltd ABN 85 142 392 461 (<b>SBT Contractor</b>) dated 21 December 2021 (<b>SBT Contract</b>)</p> <p>The SBT Works include the design and construction of:</p> <ul style="list-style-type: none"> <li>• two sections of twin running TBM tunnels with a total combined length of approximately 9.8 kilometres, plus associated portal</li> </ul>

Main contract packages	Description
	<p>structures, one from Orchard Hills to St Marys and the other under Western Sydney Airport to the Aerotropolis;</p> <ul style="list-style-type: none"> <li>excavations at either end to enable trains to turn back, and stub tunnels to enable future Extensions;</li> <li>station box excavations with temporary ground support for four stations at St Marys, Orchard Hills, Airport Terminal and Aerotropolis; and</li> <li>excavations for potentially two intermediate services facilities, one in each of the tunnel sections.</li> </ul>
<p><b>SCAW Works</b></p>	<p>Procured via a design and construct contract titled "Sydney Metro – Western Sydney Airport Surface and Civil Alignment Works and Design and Construction Deed" between Sydney Metro and the unincorporated joint venture between CPB Contractors Pty Limited ABN 98 000 893 667 and United Infrastructure Pty Limited ABN 39 634 541 807 (<b>SCAW Contractor</b>) dated 1 March 2022 (<b>SCAW Contract</b>). The SCAW Works includes the design and construction of approximately 10.4 kilometres of alignment up to the underside of track formation from Orchard Hills to Western Sydney Airport and including:</p> <ul style="list-style-type: none"> <li>a combination of viaducts, bridges, and 'cut-and-fill' earthworks from Orchard Hills to the Airport Business Park; and</li> <li>civil enabling works at Luddenham station.</li> </ul>
<p><b>SSTOM PPP</b></p>	<p>Procured as a PPP between Sydney Metro and Parklife Metro Pty Ltd ACN 657 249 682 in its personal capacity and in its capacity as trustee of the Parklife Metro Unit Trust (<b>OpCo</b>). The principal contract for the SSTOM PPP is the document titled "SSTOM Project Deed" between Sydney Metro and OpCo dated 15 December 2022 (<b>SSTOM Project Deed</b>).</p> <p>The SSTOM PPP includes:</p> <ul style="list-style-type: none"> <li>acceptance and fit-out of the SBT Works and SCAW Works (collectively referred to as the <b>Foundation Infrastructure Works</b> or <b>FIW</b>) with rail infrastructure for the metro line;</li> <li>six new metro stations (including precinct and transport integration works at selected stations);</li> <li>all stabling and maintenance facilities required to support the train fleet, and an operational control centre to safely operate the system;</li> <li>local area works, including new precinct streets, street and intersection modifications, landscaping and provision of new and upgrade transport interchange infrastructure at selected locations;</li> <li>property works and utility services works;</li> <li>supply and commissioning of the trains;</li> <li>operation and maintenance of Sydney Metro – Western Sydney Airport for the term;</li> <li>handback to Sydney Metro in an appropriate condition at the end of the term; and</li> <li>private financing for scope delivery.</li> </ul>

Main contract packages	Description
<b>Finalisation Auxiliary Works (FAW)</b>	Includes a suite of relatively minor non-rail works that were not able to be defined until after the award of the major contracts, and are likely to be performed by smaller contractors.

### 3.5 Project timeline

The NSW and Australian governments have a shared objective of having Sydney Metro – Western Sydney Airport operational when Western Sydney International opens for passenger services.

### 3.6 Main funding sources

OpCo is responsible for securing debt and equity finance for the SSTOM PPP. The financing structure comprises a mix of senior debt and equity (see section 235 (*Participants in the SSTOM PPP*)) for details regarding the debt financing and equity parties).

The Project is jointly funded by the NSW and Australian governments. In addition to the debt and equity financing, the SSTOM PPP will receive a capital contribution from this funding during the delivery phase. With regards to Sydney Metro's payment obligations, see section 14 (*Payment*) for further details.



*An artist's impression of St Marys metro station.*



## 4 Procurement

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### 4.1 Approach overview

The Project provided a unique and long-term opportunity for a global consortium to undertake the SSTOM PPP.

Sydney Metro recognises the value of working collaboratively and co-operatively with industry and achieving the objectives of the:

- a) *‘NSW Government Action Plan: A ten point commitment to the construction sector’* (June 2018); and
- b) Premier’s memorandum on *‘Procurement for Large, Complex Infrastructure Projects’* (June 2021).

Sydney Metro sought extensive market feedback from industry through pre-procurement engagement processes on the Project, and taking that into account, developed a flexible and tailored procurement process that incorporated a genuine interactive process during the interactive Expression of Interest (**EOI**) stage to enable Sydney Metro to collaborate with consortia to develop innovative commercial frameworks to deliver the SSTOM PPP. This was then followed by a highly interactive process during the second stage of procurement - the Request for Proposal (**RFP**) stage - aimed at achieving innovative, sustainable, long-term value-for-money solutions from consortia.

The SSTOM PPP was procured in accordance with the ‘National PPP Guidelines’ and the ‘NSW PPP Guidelines’. The procurement process is summarised below.

- c) The call for registrations of interest was issued on 28 May 2021 to invite suitably qualified entities (registrants) to register to participate in an interactive EOI stage with the aim of submitting an EOI to undertake the SSTOM PPP.
- d) The invitation for EOI was issued to registrants on 16 June 2021. The objective of the interactive EOI stage was to allow Sydney Metro to identify a shortlist of those applicants most likely to prepare high quality, innovative and competitive proposals for the SSTOM PPP. Four EOIs were submitted on 6 August 2021.
- e) On 28 October 2021, three proponents were shortlisted to be invited to submit proposals:
  - i) **Bradfield Metro Consortium**, comprising John Laing, Keolis Downer, FCC Construction Australia and Hitachi Rail STS Australia;
  - ii) **Parklife Metro**, comprising Plenary Origination, Webuild, RATP Developpement, Siemens Mobility, Siemens Project Ventures and Siemens Mobility Austria; and
  - iii) **WestGo**, comprising Pacific Partnerships, Acciona Concesiones, DIF Management Australia, CPB Contractors, Acciona Construction Australia, UGL Engineering, ComfortDelGro Transit, UGL Rail Services and Coleman Rail.
- f) The RFP was released to proponents on 26 November 2021, inviting them to participate in the interactive process as part of the RFP stage and to submit high-quality, innovative and competitive proposals. The purpose of the RFP stage was for Sydney Metro to select the successful proponent with whom Sydney Metro would enter into the Principal Project Agreements, including the SSTOM Project

Deed, to deliver the SSTOM PPP. Three proposals were submitted on 9 June 2022.

- g) The proposal evaluation process consisted of two stages:
  - i) Initial evaluation was undertaken after proposal submission for a period of approximately eight weeks. The outcome of the initial evaluation resulted in the down-selection to two proponents, being Parklife Metro and WestGo, to continue in the evaluation process. The overall third-ranked proponent, Bradfield Metro Consortium, was formally released from further evaluation and the remainder of the procurement process.
  - ii) Full evaluation was completed with the remaining two proponents in order to determine the appointment of the preferred proponent(s). This included an 'update, revise and confirm' request for clarification to incorporate scope refinements and value engineering opportunities into the SSTOM PPP.
- h) Parklife Metro was appointed the preferred proponent on 25 October 2022.
- i) On 15 December 2022, Sydney Metro entered into the Principal Project Agreements, including the SSTOM Project Deed, with Parklife Metro. On 20 December 2022, financial close of the SSTOM Project Deed was reached.

An independent probity advisor, O'Connor Marsden & Associates, oversaw the procurement process to ensure the fair and equitable treatment of all parties.

## 4.2 Public interest evaluation

A multi-criteria analysis to ensure that the Project is in the public interest was used as part of the final business case for the Project.

As part of this, the Project was developed to address Infrastructure Australia's strategic infrastructure priorities. The final business case also considered:

- a) the Project's strategic goals of productivity, liveability and sustainability;
- b) a number of Project benefits including transport benefits, key city-building benefits and key economic benefits to Sydney and NSW; and
- c) customer benefits and outcomes.

## 4.3 Proposal evaluation criteria

The evaluation criteria used to evaluate the proposals are set out in Table 4-1. The evaluation criteria were not weighted, and were provided to proponents in the RFP.

**Table 4-1: Proposal evaluation criteria**

Evaluation Criteria	Description
<b>1. Project Management, Integration, Safety and Collaboration</b>	The extent to which the proponent's overall approach for Project management, integration (across design, delivery and operations and maintenance) and collaboration demonstrates certainty of meeting the SSTOM PPP objectives.

Evaluation Criteria	Description
<p><b>2. Integrated Customer, Operations and Asset Management Solution</b></p>	<p>The extent to which the proponent's combined customer, operational and asset management solution:</p> <ul style="list-style-type: none"> <li>a) demonstrates provision of safe, sustainable and high-quality customer and stakeholder outcomes;</li> <li>b) demonstrates appropriate flexibility and collaboration to respond to customer needs and future changes, including for technological upgrades/advances;</li> <li>c) ensures assets are appropriately and safely managed and maintained on a whole- of-life basis consistent with providing high-quality customer outcomes and with the design, technical and operations solutions; and</li> <li>d) provides for efficient and effective handback at the end of term, including assets being in an appropriate condition.</li> </ul>
<p><b>3. Integrated Design and Technical Solution</b></p>	<p>The extent to which the proponent's design approach and integrated technical solution demonstrates:</p> <ul style="list-style-type: none"> <li>a) the ability to deliver a high-quality integrated design that will provide safe, innovative and sustainable outcomes in a timely and collaborative manner;</li> <li>b) application of a service led philosophy, appropriately integrating TfNSW customer service principles and Sydney Metro's nine customer satisfaction drivers;</li> <li>c) appropriate consideration of whole-of-life outcomes; and</li> <li>d) future proofing to enable efficient and effective enactment of future changes, including for technological upgrades/advances.</li> </ul>
<p><b>4. Integrated Delivery Solution</b></p>	<p>The extent to which the proponent's delivery phase solution demonstrates:</p> <ul style="list-style-type: none"> <li>a) certainty of timely delivery and commencement of high-quality services;</li> <li>b) best practice approach to work health and safety; and</li> <li>c) high levels of commitment to stakeholder and community engagement.</li> </ul>

Evaluation Criteria	Description
<p><b>5. Working with Government and Local Content</b></p>	<p>The extent to which the proponent demonstrates an ability to:</p> <ul style="list-style-type: none"> <li>a) work effectively with government and Project stakeholders;</li> <li>b) support the local economy (including industry, contractors, suppliers), including supporting the government’s skills and apprenticeship targets and Sydney Metro’s workforce development requirements; and</li> <li>c) high levels of commitment to the environment and sustainability.</li> </ul>
<p><b>6. Flexibility, including potential future Extensions</b></p>	<p>The extent to which the proponent’s overall design, delivery, operational, commercial and financial solution demonstrates flexibility and certainty to be able to efficiently and effectively respond to future changes, including potential future Extensions.</p>
<p><b>7. Commercial</b></p>	<p>The extent to which the proponent’s commercial approach demonstrates:</p> <ul style="list-style-type: none"> <li>a) appropriate, robust and sustainable governance, legal and commercial structures;</li> <li>b) compliance with the Principal Project Agreements and the acceptability and value-for-money impact of any proposed departures; and</li> <li>c) the ability to achieve contract close in accordance with Sydney Metro’s required timeframe.</li> </ul>
<p><b>8. Funding and Finance</b></p>	<p>The extent to which the proponent’s:</p> <ul style="list-style-type: none"> <li>a) financial strength and that of its key risk-bearing entities demonstrates the ability to support the SSTOM PPP;</li> <li>b) financial solution is robust and demonstrates the ability to actively and flexibly respond to SSTOM PPP opportunities and risks; and</li> <li>c) financial solution is committed and demonstrates certainty of being able to achieve financial close in accordance with Sydney Metro’s timeframe.</li> </ul>
<p><b>9. Comparative Cost</b></p>	<p>The proponent’s whole-of-life, risk-adjusted comparative cost, taking into account:</p> <ul style="list-style-type: none"> <li>a) proposed risk sharing mechanisms;</li> <li>b) priced options, including for Extensions; and</li> <li>c) comparative risks and impacts to Sydney Metro.</li> </ul>



## 4.4 Value-for-money overview

The 'National PPP Guidelines' and the 'NSW PPP Guidelines' were reviewed as part of developing a value-for-money framework for the SSTOM PPP:

The SSTOM PPP value-for-money framework provided a basis to assess whether the private sector proposals delivered the required outcomes and objectives in an efficient, innovative and cost-effective way, with appropriate regard to the allocation, management and mitigation of risks. This involved an in-depth analysis of each proposal received from proponents and comparison against a State-managed delivery option. The framework considered both quantifiable and non-quantifiable benefits, costs and risks. The assessment concluded that the SSTOM PPP proposal is value-for-money.

## 4.5 Public Sector Comparator

The Public Sector Comparator (**PSC**) provides an estimate of the hypothetical, risk-adjusted whole-of-life cost of the project if the scope under the relevant contract package was to be designed, built and operated by the State using the State's best and/or likely alternative to the PPP. To develop the estimate, the PSC was based on a reference project developed by the State, consistent with the output specification and risk allocation proposed for the SSTOM PPP, and is based on the most likely and efficient form of conventional (that is, non-PPP) delivery by the State. The PSC assumed a design, build, operate and maintain (DBOM) delivery model would be utilised to deliver the SSTOM package of works.

The PSC performs the following central roles:

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

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

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

The PSC used a discount rate of 4.22%, where NSW Treasury considered the best proxy for the risk-free rate was TCorp's official 10-year rate for a semi-annual bond for the day prior to the notification of the updated discount rates to the proponents for use in their 'update, revise and confirm' financial models. The present value of the SSTOM PPP proposals were evaluated using discount rates that included a systematic risk premium that was specific for each payment stream.

Table 4-2 provides a summary of the financial value-for-money analysis of Parklife Metro's proposal agreed at financial close (i.e. Conditional Debt Pay Down (**CDPD**) not met scenario) presented against the PSC.

**Table 4-2: Financial value-for-money comparison between public sector and private sector project delivery**

PSC (NPC \$m)	SSTOM PPP (NPC \$m)	Difference (NPC \$m)	Difference (%)
6,095.5	5,737.9	(357.7)	(5.9%)

The financial value-for-money analysis at financial close indicates a forecast cost saving of \$357.7 million or 5.9% in net present cost terms to the State delivering the SSTOM package as a PPP compared to delivery via traditional public sector procurement.



*Next generation fully air-conditioned metro trains.*



# Part B

## Contractual overview



An artist's impression of Luddenham metro station.

## 5 Participants in the SSTOM PPP

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### 5.1 Public sector parties to the contracts

The public sector parties to the SSTOM PPP are:

- a) Sydney Metro; and
- b) the NSW Treasurer, for and on behalf of the State of New South Wales, who has executed a guarantee pursuant to section 6.27 of the Government Sector Finance Act 2018 (NSW), guaranteeing performance of Sydney Metro's obligations under several of the project's contracts (see section 6 (*Contractual structure*)).

### 5.2 Private sector parties to the contracts

The main private sector parties to the SSTOM PPP are described in this section 5.2 (*Private sector parties to the contracts*).

#### 5.2.1 OpCo and Finance Co

##### 5.2.1.1 OpCo

OpCo is Parklife Metro Pty Ltd in its personal capacity and as trustee of the Parklife Metro Unit Trust. OpCo is the private sector counterparty to the SSTOM Project Deed and various other project agreements.

OpCo HoldCo is Parklife Metro Holdings Pty Ltd ACN 663 673 489 in its personal capacity and in its capacity as trustee of the Parklife Metro Holdings Unit Trust. OpCo Hold Co holds all of the shares in OpCo and all of the units in the Parklife Metro Unit Trust.

##### 5.2.1.2 Finance Co

Finance Co is Parklife Metro Finance Pty Ltd ACN 657 444 141. Finance Co is a special purpose company which was established to raise debt finance for the SSTOM PPP and to securitise OpCo's licence payment obligations. The debt raised by Finance Co is contributed to the SSTOM PPP by way of a securitised licence payment structure governed by the "Securitisation Agreement" (see section 6 (*Contractual structure*)).

Finance HoldCo is Parklife Metro Finance Holdings Pty Ltd ACN 663 673 489. Finance Co is a wholly owned subsidiary of Finance HoldCo.

#### 5.2.2 Subcontractors

##### 5.2.2.1 Core Contractors and Core Contractor Guarantors

The Core Contractors are:

- a) unincorporated joint venture between Webuild S.p.A., Siemens Mobility GmbH (Commercial Register B Munich, HRB 237219), Siemens Mobility Austria GmbH (Registered in Austria, FN 483145 h) and Siemens Mobility Pty Ltd ACN 625 304 556 (**D&C Contractor**); and
- b) RATP Dev WSA Pty Ltd ABN 64 664 164 872 (**O&M Contractor**).

The Core Contractor Guarantors include:

- c) Siemens AG (HRB 12300) (**D&C Guarantor**); and



- d) RATP Developpement S.A. (RCS PARIS 389 795 006) (**O&M Guarantor**).

### 5.2.2.2 Significant Contractors

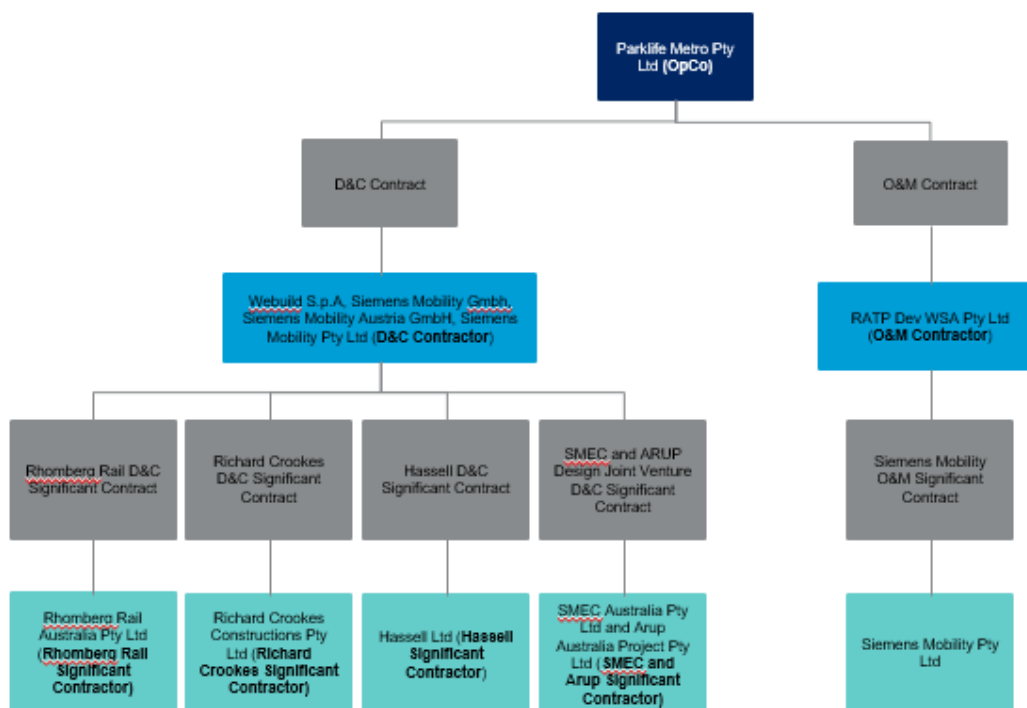
As at financial close, the Significant Contractors are:

- a) Hassell Limited ABN 24 007 711 435 (**Hassell Significant Contractor**);
- b) Rhomberg Rail Australia Pty Ltd ABN 70 082 016 608 (**Rhomberg Rail Significant Contractor**);
- c) Richard Crookes Constructions Pty Ltd ABN 33 001 375 266 (**Richard Crookes Significant Contractor**);
- d) Siemens Mobility Pty Ltd ACN 625 304 556 (**Siemens Mobility Significant Contractor**); and
- e) unincorporated joint venture between SMEC Australia Pty Ltd ACN 065 475 149 and Arup Australia Projects Pty Ltd ACN 625 911 711 (**SMEC and Arup Design Significant Contractor**).

### 5.2.2.3 Subcontractor diagram

Figure 5-1 sets out a summary structure of OpCo, the Core Contractors and Significant Contractors as at financial close. Further details of the relevant parties to each Significant Contract are provided in section 6 (*Contractual structure*).

**Figure 5-1: Subcontractor diagram**



### 5.2.3 TLS Contractor and TLS Contractor Guarantor

The **TLS Contractor** is Siemens Mobility Pty Ltd ACN 625 304 556 and the **TLS Contractor Guarantor** is Siemens Mobility GmbH Commercial Register B Munich, HRB 237219.

### 5.3 FIW Contractors

Sydney Metro has engaged the following contractors as the FIW Contractors who will deliver the FIW packages (as described in more detail in section 3.4 (*Major contracts*)):

- a) **SBT Contractor** – the unincorporated joint venture between CPB Contractors Pty Limited ABN 98 000 893 667 and Ghella Pty Ltd ABN 85 142 392 461; and
- b) **SCAW Contractor** – the unincorporated joint venture between CPB Contractors Pty Limited ABN 98 000 893 667 and United Infrastructure Pty Limited ABN 39 634 541 807.

### 5.4 Independent Certifiers

Sydney Metro and OpCo have engaged Systra (387 949 530 R.C.S. Paris) and Kellogg Brown & Root Pty Ltd (ABN 91 007 660 317) (together the **Independent Certifier**) to provide independent certification services in respect of the SSTOM PPP. The Independent Certifier has also been separately engaged by Sydney Metro and each FIW Contractor in respect of the SBT Works and SCAW Works.

OpCo and the D&C Contractor have also engaged WTP Australia Pty Ltd ABN 69 605 212 182 (**D&C Independent Certifier**) to provide independent certification services under the D&C Contract.

### 5.5 Debt financing parties

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



*Aerial view of St Marys station.*

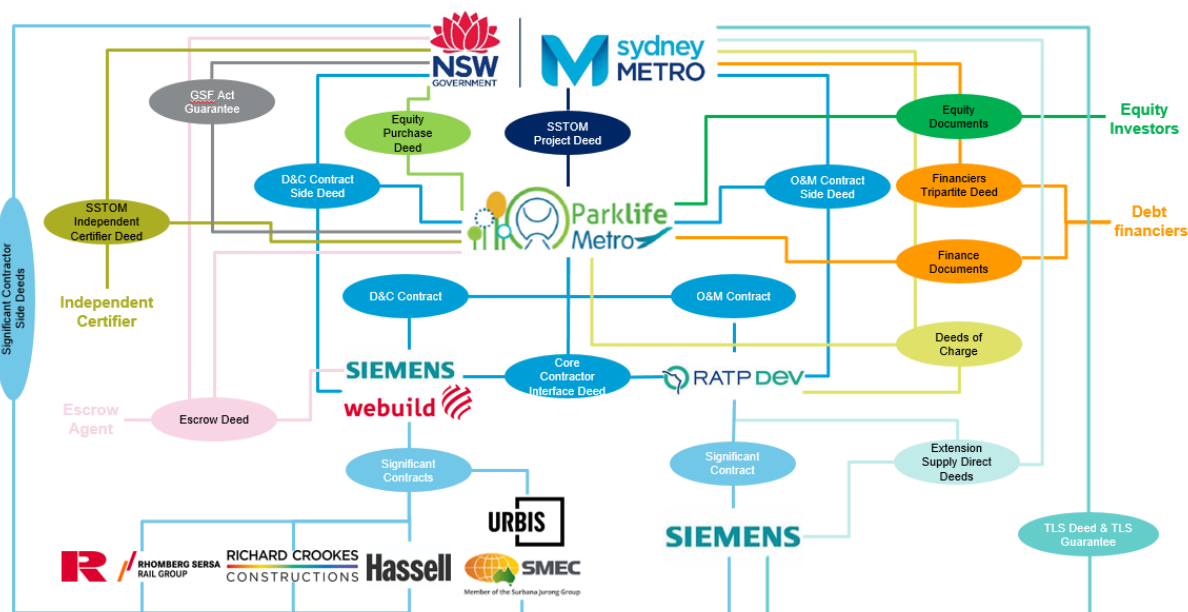
## 6 Contractual structure

Introductory summaries of the contractual structure of the SSTOM PPP as at 15 December 2022, in so far as the contracts affect or will potentially affect public sector rights and obligations, are summarised in a simplified form in this section 6 (*Contractual structure*).

### 6.1 Contract structure diagram

Figure 6-1 sets out the contractual structure diagram for the SSTOM PPP.

**Figure 6-1: Contract structure diagram**



### 6.2 SSTOM Project Deed

The principal contract for the SSTOM PPP is the SSTOM Project Deed.

The SSTOM Project Deed comprises a "Deed of Agreement" and attached to this Deed of Agreement are 38 schedules and 17 exhibits.

The SSTOM Project Deed sets out the terms under which OpCo must:

- a) finance, or procure finance for, the SSTOM PPP;
- b) design and construct the SSTOM Works;
- c) during the term, operate and maintain Sydney Metro – Western Sydney Airport; and
- d) handback Sydney Metro – Western Sydney Airport to Sydney Metro at the end of the term.

### 6.3 GSF Act Guarantee

The GSF Act Guarantee is the guarantee made by the NSW Treasurer (on behalf of the State of NSW) on 15 December 2022 pursuant to section 6.27 of the *Government Sector Finance Act 2018* (NSW) in respect of the Principal's obligations under the

Principal Project Agreements to guarantee certain monies payable from time to time by Sydney Metro to the beneficiaries. The Beneficiaries of the GSF Act Guarantee are OpCo, its holding company and the Security Trustee.

## 6.4 Interface documents

The performance by each Core Contractor of their obligations to OpCo to cooperate and liaise with each other is set out in the "Core Contractor Interface Deed" between OpCo and each of the Core Contractors. This deed sets out interface issues between certain activities on Sydney Metro – Western Sydney Airport and the performance of certain obligations of the parties related to that interface.

## 6.5 Debt and equity documents

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

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

In line with the 'NSW PPP Guidelines' and the express confidentiality provisions of the project's contracts (see section 30 (*Confidentiality and excluded material*)) details of the project's equity investments are generally beyond the scope of this summary.

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

Finance Co, OpCo and Sydney Metro have entered into the "Securitisation Agreement" dated 15 December 2022 (Securitisation Agreement) under which Finance Co will purchase Sydney Metro's right to receive licence payments payable by OpCo under the SSTOM Project Deed in respect of the licensed maintenance area and additional maintained assets. In consideration for the assignment of the right to receive the licence payments, Finance Co pays Sydney Metro monthly 'receivables purchase payments'. Sydney Metro uses the 'receivables purchase payments' to fund its obligation under the SSTOM Project Deed to pay OpCo the construction payments (see section 14 (*Payment*)).

Finance Co will borrow the funds which it needs to pay each 'receivables purchase payment' from a syndicate of lenders under the "Syndicated Facility Agreement" dated 15 December 2022 (SSTOM Syndicated Facility Agreement). Finance Co uses the licence payments it receives from OpCo as a result of the assignment described above to service the debt it borrows under the SSTOM Syndicated Facility Agreement.

The "SSTOM Payment Directions Deed" entered into by Sydney Metro, OpCo, Finance Co and National Australia Bank Ltd (as Agent and Security Trustee) on 15 December 2022, is an ancillary document to the Securitisation Agreement which allows the various securitisation related payments to be made directly from the original party making the payment to the end recipient, without the need for separate intervening transfers between the parties.

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



In line with the 'NSW PPP Guidelines' and the express confidentiality provisions of the project's contracts (see section 30 (*Confidentiality and excluded material*)) the details of the project's debt financing arrangements, are generally beyond the scope of this summary.

## 6.6 Core Contracts

OpCo will satisfy its obligations to design and construct the SSTOM Works and operate and maintain Sydney Metro – Western Sydney Airport through:

- a) the performance by the D&C Contractor of its obligations to OpCo to design and construct the SSTOM Works, including the trains and systems under the "D&C Contract" between OpCo and the D&C Contractor, dated 15 December 2022; and
- b) the performance by the O&M Contractor of its obligations to OpCo to operate and maintain Sydney Metro – Western Sydney Airport under the "O&M Contract" between OpCo and the O&M Contractor, dated 15 December 2022.

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

## 6.7 Significant Contracts

- a) Rhomberg Rail D&C Significant Contract being the construct-only contract titled "Construction Subcontract – Significant Contractor" between Webuild S.p.A and the Rhomberg Rail Significant Contractor dated 15 December 2022.
- b) Richard Crookes D&C Significant Contract being the construct-only contract titled "Construction Subcontract – Significant Contractor" between Webuild S.p.A and the Richard Crookes Significant Contractor dated 15 December 2022.
- c) Hassell D&C Significant Contract (Architecture and Urban Design) being the agreement titled 'Design Services Agreement – Architectural Design Services' between Webuild S.p.A and the Hassell Significant Contractor dated 15 December 2022.
- d) SMEC and Arup Design Joint Venture D&C Significant Contract being the agreement titled 'Design Services Agreement – Engineering Design Services' between Webuild S.p.A and the SMEC Arup Design Significant Contractor dated 15 December 2022.
- e) Siemens Mobility O&M Significant Contract being the contract titled 'Sydney Metro – Western Sydney Airport Stations, Systems, Trains, Operations and Maintenance (SSTOM) Services Contract' between the O&M Contractor and the Siemens Mobility Significant Contractor dated 15 December 2022.

Together these contracts are the Significant Contracts.

## 6.8 Guarantees

- a) Each Core Contractor's performance of its obligations to OpCo under the respective Core Contracts has been guaranteed to OpCo under parent company guarantees made by the D&C Guarantor and the O&M Guarantor dated on or about the date of the SSTOM Project Deed.
- b) The TLS Contractor's performance of its obligations under the TLS Deed has been guaranteed to Sydney Metro under the Deed of Guarantee and Indemnity

between Sydney Metro and Siemens Mobility GmbH dated on or about the date of the SSTOM Project Deed.

## 6.9 Financiers Tripartite Deed

The Financiers Tripartite Deed between Sydney Metro, OpCo, Finance Co, the Security Trustee, Agent and Account Bank relates to the interaction of their respective rights and obligations under the Principal Project Agreements and the debt financing documents.

## 6.10 Side Deeds

- a) In the event of any default by OpCo under a Core Contract or where the SSTOM Project Deed is terminated, Sydney Metro will be entitled, under the "D&C Contract Side Deed", dated 15 December 2022 and the "O&M Contract Side Deed" dated 15 December 2022 (Core Contractor Side Deeds) to 'step-in' and effectively assume OpCo's rights and obligations under each Core Contract.
- b) Similarly, in the event of:
  - i) any default by the Core Contractors under the Rhomberg Rail D&C Significant Contract, Richard Crookes D&C Significant Contract, Hassell D&C Significant Contract (Architecture and Urban Design), SMEC and Arup Design Joint Venture D&C Significant Contract or the Siemens Mobility O&M Significant Contract; or
  - ii) where the SSTOM Project Deed and the Core Contracts are terminated, Sydney Metro will be entitled under the:
    - iii) Rhomberg Rail D&C Significant Contractor Side Deed between Sydney Metro, the Rhomberg Rail Significant Contractor, the Significant Contractor Guarantor and Webuild S.p.A dated 19 December 2022;
    - iv) Richard Crookes D&C Significant Contractor Side Deed between Sydney Metro, the Richard Crookes Significant Contractor, the Significant Contractor Guarantor and Webuild S.p.A dated 19 December 2022;
    - v) Hassell D&C Significant Contractor Side Deed between Sydney Metro, the Hassell Significant Contractor and Webuild S.p.A dated 19 December 2022;
    - vi) SMEC & ARUP Design D&C Significant Contractor Side Deed between Sydney Metro, the SMEC Significant Contractor, the ARUP Significant Contractor and Webuild S.p.A dated 19 December 2022; and
    - vii) Siemens Mobility O&M Significant Contractor Side Deed between Sydney Metro, the Siemens Mobility Significant Contractor, the Significant Contractor Guarantor and O&M Contractor dated 19 December 2022,(as applicable) to 'step-in' and cure the relevant default or can elect to effect a novation of the Core Contractors' rights and obligations under the relevant subcontracts.

## 6.11 Extension Supply Direct Deeds

Under the:

- a) O&M Contractor Extension Supply Direct Deed between Sydney Metro, OpCo and the O&M Contractor dated 15 December 2022; and
- b) Siemens Mobility Extension Supply Direct Deed between Sydney Metro, OpCo, Siemens Mobility, Siemens Mobility Austria GmbH and Siemens Mobility GmbH dated 15 December 2022,

Sydney Metro and OpCo are granted certain rights in respect of the scope of works in the SSTOM Project Deed in relation to future Extensions.

## 6.12 Equity Purchase Deed

The Equity Purchase Deed between Sydney Metro, OpCo, OpCo HoldCo, Finance Co and Finance HoldCo confers on Sydney Metro the right to purchase from OpCo's shareholders the option securities at certain points in time, and sets out the related terms and conditions on when this right may be exercised by Sydney Metro.

## 6.13 Principal security documents

Several charges have been entered into to secure Sydney Metro's rights relating to the SSTOM PPP. These include:

- a) the Principal Deed of Charge between Sydney Metro and OpCo dated 15 December 2022, which secures all of the obligations of OpCo to Sydney Metro under the Principal Project Agreements by charges over the assets, undertakings and rights of OpCo;
- b) the OpCo HoldCo Deed of Charge between Sydney Metro and OpCo HoldCo dated 15 December 2022 which secures the performance of obligations by OpCo HoldCo under the Equity Purchase Deed and any obligations to Sydney Metro;
- c) the Finance Co Deed of Charge between Sydney Metro and Finance Co dated 15 December 2022 which secures all of the obligations of Finance Co to Sydney Metro under the secured agreements;
- d) the Finance Co HoldCo Deed of Charge between Sydney Metro and Finance Co HoldCo dated 15 December 2022 which secures all of the obligations of Finance Co HoldCo under the Equity Purchase Deed and any obligations to Sydney Metro; and
- e) the O&M Contractor Deed of Charge between Sydney Metro and the O&M Contractor dated 15 December 2022 which secures all of the obligations of the O&M Contractor to Sydney Metro.

## 6.14 Master Interface Deed – Accession Deed Poll

The Master Interface Deed between Sydney Metro and the SBT Contractor dated 21 December 2021 facilitates the various interfaces associated with the Project setting out the terms on which the parties agree to cooperate with each other and integrate their respective works to deliver Sydney Metro – Western Sydney Airport. The SCWA Contractor previously acceded to the Master Interface Deed and OpCo acceded to the Master Interface Deed by an Accession Deed Poll dated 15 December 2022.

## 6.15 IDAR Panel Agreement

Sydney Metro will enter into an IDAR Panel Agreement with each member of the IDAR Panel to assist in the avoidance and resolving disputes under the project contracts. As at financial close, the IDAR Panel Agreement has not been signed. OpCo is required to accede to the IDAR Panel Agreement once it is entered into.

## 6.16 SSTOM Independent Certifier Deed

The Independent Certifier Deed between Sydney Metro, OpCo and the Independent Certifier dated 15 December 2022 setting out the rights and obligations in respect of the certification of the SSTOM works by the Independent Certifier.

OpCo has acceded to each of the SBT and SCAW Independent Certifier Deeds by Accession Deed Poll dated 16 December 2022 and 21 December 2022 respectively.

## 6.17 Third party and stakeholder agreements

The following agreements entered into with third parties and key stakeholders are relevant to the SSTOM PPP:

- a) "Western Sydney International (Nancy-Bird Walton) Airport – Airport and Rail Integration Deed" between Commonwealth of Australia (Commonwealth), TfNSW, and WSA Co Limited;
- b) "Sydney Metro Program SWC Interface Deed (000-TPA-SWC)" between Sydney Metro and Sydney Water Corporation dated 2 January 2018 and which was subsequently amended by letter of variation dated 27 September 2021;
- c) "Sydney Metro - Western Sydney Airport – Council Interface Agreement (Penrith City Council)" between Sydney Metro and Penrith City Council;
- d) "Sydney Metro - Western Sydney Airport – TfNSW (M12) Interface Deed" between Sydney Metro and TfNSW dated on or around 2 February 2022, as amended by the amendment deed dated 2 August 2022;
- e) "Sydney Metro - Western Sydney Airport TransGrid Interface Agreement" between Sydney Metro and Transgrid dated 18 February 2022, as amended by the side letter dated 11 August 2022;
- f) subleases between Sydney Metro and NSW Electricity Network Operations Pty Ltd (ACN 609 169 959) as trustee of the NSW Electricity Networks Operations Trust (ABN 70 250 995 390) (TransGrid) on the terms of the:
  - i) "sublease between NSW Electricity Networks Operations Pty Ltd (ACN 609 169 959) as trustee of the NSW Electricity Networks Operations Trust (ABN 70 250 995 390), as landlord, and Sydney Metro ABN 12 354 063 515 as tenant" over part folio identifier 92/1276404 for an initial term; and
  - ii) "sublease between NSW Electricity Networks Operations Pty Ltd (ACN 609 169 959) as trustee of the NSW Electricity Networks Operations Trust (ABN 70 250 995 390), as landlord, and Sydney Metro ABN 12 354 063 515 as tenant" part folio identifier 92/1276404 for a subsequent term;
- g) "Sydney Metro - Western Sydney Airport – WaterNSW Interface Agreement" between Sydney Metro and WaterNSW;

- h) "Roads Interface Agreement - Sydney Metro - Western Sydney Airport – Stations, Systems, Trains, Operations and Maintenance (SSTOM) Works" between Sydney Metro and TfNSW;
- i) "Third Deed of Amendment to the Sydney Metro City & Southwest – Transition Agreement – Foundation Infrastructure Works Contracts" between the Principal, transport asset holding entity and Sydney Trains as set out in Schedule 1 to the third amendment to the "Sydney Metro City & Southwest – Transition Agreement – Foundation Infrastructure Works Contracts" between the Principal, transport asset holding entity and Sydney Trains, such amendment being dated 27 September 2021;
- j) "Sydney Trains SSTOM Scope of Works and Access Schedule (SOWAS)" dated 27 October 2022;
- k) "Amendment to the Sydney Metro City & Southwest Global Safety Interface Agreement Document No: 11823" dated 21 December 2021 that amends the agreement titled "Sydney Metro City & Southwest Global Safety Interface Agreement Document 11823" between the Principal and Sydney Trains dated 7 April 2021;
- l) "Sydney Metro - Western Sydney Airport Interface Agreement (Western Parkland City Authority) SSTOM Works and WPCA Works" between Sydney Metro and the Western Parklands City Authority;
- m) "Deed of Agreement to Grant a Non-Exclusive Construction Licence – Gipps Street Claremont Meadows" between Sydney Metro and TfNSW;
  - i) lease between Sydney Metro the University of Sydney ABN 15 211 513 646 (University of Sydney) over part folio identifier 72/1277011 and part 74/1277011 on the terms of the "Lease between University of Sydney and Sydney Metro" dated 10 May 2022;
  - ii) lease between Sydney Metro and the University of Sydney over part folio identifier 72/1277011 and part 74/1277011 for the "Green Additional Leased Land" on the terms of the "Lease between University of Sydney and Sydney Metro";
- n) licence deeds between Sydney Metro and the Commonwealth of Australia (as represented by the Department of Defence (ABN 68 706 814 312) (Defence)) on the terms of the:
  - i) "Licence Deed – Ongoing Project Access"; and
  - ii) "Licence Deed – Interim Project Access",
- o) "Negotiated Connection Contract (Connection Establishment)" between Sydney Metro and Endeavour Energy; and
- p) "Negotiated Connection Contract (Supply Services)" between Sydney Metro and Endeavour Energy.

OpCo is required to comply with the obligations under these agreements, except to the extent any obligations are expressly retained by Sydney Metro.



## 6.18 TLS Deed

The TLS Deed between Sydney Metro and Siemens Mobility provides the terms on which Siemens Mobility will provide, among other things, through life support services in relation to the trains and rail systems associated with Sydney Metro – Western Sydney Airport.

## 6.19 Other documents

The Escrow Deed between Sydney Metro, OpCo, Siemens Mobility, Siemens Mobility GmbH, Siemens Mobility Austria GmbH and Perpetual Corporate Trustee dated 15 December 2022 provides the terms and conditions on which the escrow agent will hold any escrow materials.

Siemens Mobility, Siemens Mobility GmbH and Siemens Mobility Austria GmbH entered into Deeds of Assurance in relation to the SSTOM Project Deed and the TLS Deed for intellectual property provided by each entity respectively in relation to the SSTOM PPP.



*An artist's impression of Orchard Hills metro station.*

## 7 Contract term

Upon execution of the SSTOM Project Deed on 15 December 2022, certain provisions of the contract took effect immediately; these are referred to as "day 1 clauses". The remaining provisions came into effect on financial close on 20 December 2022, when all conditions precedent had been satisfied (or waived). Except for the day 1 clauses, the term of the SSTOM Project Deed commenced on 20 December 2022 and will expire on the original expiry date (the 15th anniversary of the date for completion or the date of completion, whichever is earlier) unless extended or terminated earlier.

Sydney Metro is entitled under the SSTOM Project Deed to extend the term of the SSTOM PPP for a period of up to two years.



*Working with the community.*



# Part C

## Key commercial and contractual features



An artist's impression of Aerotropolis metro station.

## 8 Risk allocation

Sydney Metro seeks to achieve best value-for-money by allocating risks to the party best able to manage them. The risk allocation process results in various risks being:

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

A structured approach to the identification and analysis of potential risk and opportunities on the Project was undertaken, in accordance with the Sydney Metro Risk Management Standard (SM-17-00000182) and consistent with the Australian/New Zealand Standard for Risk Management AS/NZS ISO31000.

Comprehensive integrated cost, schedule and risk analysis was undertaken on the Project which consisted of risk identification, assessment, allocation and mitigation strategies. The quantitative risk analysis undertaken was in accordance with the Australian Government Department of Infrastructure, Transport, Regional Development, Communications and the Arts' Guidance Note 3A – Probabilistic Contingency Estimation Guidance Note 3, and Sydney Metro's Quantitative Cost Risk Analysis Procedure (SM-17-00000183) and Quantitative Schedule Risk Analysis Procedure (SM-21-00009496). The quantitative risk analysis simulation of itemised delivery and operating risks was determined via statistical simulation using @RISK software. As discussed in section 4 (*Procurement*), the results of the quantitative risk analysis model provide a numerical estimate of the overall effect of inherent uncertainty and contingent risk of the Project, when considering risks, cost and schedule simultaneously.

The SSTOM Project Deed and associated documents establish the obligations of each party in managing these risks. The risk allocation arrangements for the SSTOM PPP are summarised in Table 8-1.

**Table 8-1: Risk allocation summary**

Type of risk	Description	OpCo	Sydney Metro
<b>APPROVALS AND PLANNING</b>			
This section sets out the risk allocation generally relating to land, site and planning responsibilities.			
Laws	Complying with applicable laws	✓	✓ (as applicable to its obligations)
Planning approvals	Obtaining or modifying planning approvals	✓ (for modifications required by OpCo)	✓
	Delay to SSTOM Works in reaching completion as a result of legal challenges to the planning approvals obtained by Sydney Metro (unless legal challenges are a result of OpCo's non-compliance)		✓

Type of risk	Description	OpCo	Sydney Metro
	Delays or additional costs to OpCo arising from any modification to planning approvals required by OpCo	✓	
	Complying with relevant planning approval conditions	✓	✓ (limited to conditions and requirements which are nominated to be satisfied by Sydney Metro)
	Engagement of an environmental representative as required by the planning approvals		✓
	Complying with the requirements of the environmental representative	✓	
Licences	Obtaining licences under the <i>Protection of the Environment Operations Act</i> (NSW)	✓ (in respect of OpCo's Activities)	
	Complying with licences under the <i>Protection of the Environment Operations Act</i> (NSW)	✓	
Accreditation	Obtaining and maintaining accreditation for construction of the SSTOM Works – rail infrastructure manager and rolling stock operator	✓	
	Obtaining and maintaining accreditation for operation of Sydney Metro – Western Sydney Airport for testing and commissioning purposes: rail infrastructure manager and rolling stock operator	✓	
	Maintaining accreditation for construction of FIW until handover of each works portion to OpCo		✓
Other approvals	Obtaining any other approvals and the risk of additional costs and delay associated with them	✓	
<b>LAND, SITE AND ACCESS</b>			
This section sets out the risk allocation generally relating to land and site access (other than FIW sites).			
Site availability	Acquire agreed site and make it available to OpCo at the agreed time and specified condition during the term		✓



Type of risk	Description	OpCo	Sydney Metro
	Availability of the Sydney Metro site to OpCo once the site has been made available by Sydney Metro in accordance with the above	✓	✓ (as per compensation events and relief events)
Additional land	Acquire rights to access and use land additional to that made available to OpCo	✓	
Information documents	Accuracy and completeness of information documents provided by Sydney Metro	✓	
Site conditions	Responsibility for geotechnical and other site conditions (other than contamination, artefacts, utilities and unexploded ordnances as set out in this table) in respect of all sites required for the SSTOM Works	✓	
OpCo caused contamination	Delay or additional costs due to contamination caused or disturbed by OpCo (including contamination migrating to or from the construction site caused by OpCo)	✓ (no obligation to trace contamination to source for contamination migrating onto the site)	
Sydney Metro, FIW Contractor and other contractor caused contamination	Risk of delay or additional cost due to contamination caused by Sydney Metro or its associates including by FIW Contractors and other contractors engaged by Sydney Metro		✓
Pre-existing contamination	Delay or additional cost due to pre-existing contamination on the Sydney Metro site (including risk of identification, management, disposal and remediation of the existing contamination)	✓ (in relation to time and cost, with cost assessed under a cost risk sharing mechanism)	✓ (in relation to cost only as assessed under a cost risk sharing mechanism)
Native title claims	Risk of delay or additional costs due to native title claims		✓
Aboriginal heritage and artefacts	Risk of delay or additional cost due to the unexpected discovery of state significant artefacts not previously identified in the information documents		✓

Type of risk	Description	OpCo	Sydney Metro
	Risk of delay or additional cost due to the unexpected discovery of artefacts or aboriginal objects (other than state significant artefacts) that prevents OpCo from carrying out its activities	✓ (in relation to time)	✓ (in relation to cost, to the extent that the additional cost impacts for OpCo are in excess of a specified threshold)
Unexploded ordnances	Risk of the presence of unexploded ordnance on or below the Sydney Metro site		✓ (where unexploded ordnance is discovered on or below the Sydney Metro site and OpCo is either required to suspend OpCo's activities or a change in OpCo's work methodology is required)
Services / utilities	Investigation, location, protection, relocation, provision, and modification of all utility services	✓ (in relation to pre-identified utility services in the utilities register)	✓ (in relation to utility services not previously identified in the utilities register or where utility service is owned or leased by different authority or of a different type)
	Cost of non-contestable utility service works		✓
	Risk of delay or additional cost due to OpCo being directed to carry out works that involve an enhancement or upgrade of utility services		✓
Workplace health and safety / principal contractor	Undertake role of being the principal contractor on the site for workplace health and safety purposes	✓ (for sites handed over to its control)	
Community	Exceedance of noise and vibration limits, unacceptable traffic impacts/delays and other disruptions to the community during the delivery phase	✓	

Type of risk	Description	OpCo	Sydney Metro
<b>INTERFACES (including FIW)</b>			
FIW - scope	Technical and performance requirements set out in the FIW Contracts are not fit for the purposes of the SSTOM PPP	✓	
	Changes in the FIW that materially affect the performance of the delivery activities or the operations activities or result in OpCo incurring additional costs		✓ (unless requested by OpCo)
FIW - site availability	Availability of the FIW site to OpCo at the agreed time and specified condition during the term		✓
FIW - delay	Time overruns on FIW delaying completion of the SSTOM Works		✓
FIW - maintenance	Maintenance of FIW prior to handover to OpCo		✓
	Maintenance of FIW following handover to OpCo	✓	
FIW - known defects	An accepted defect in the FIW that is not acceptable	✓ (if OpCo doesn't comply with the notification process in the SSTOM Project Deed)	✓
	A minor or agreed defect in the FIW that will not have an impact on OpCo's ability to perform its activities during the known defects rectification period	✓	
	A minor or agreed defect in the FIW that will have an impact on OpCo's ability to perform its activities during the known defects rectification period		✓

Type of risk	Description	OpCo	Sydney Metro
FIW - defects (other than known defects)	A defect in the relevant FIW delays completion of SSTOM Works or causes OpCo to incur additional material costs		✓ (for all FIW defects during the delivery phase)
	A defect in the relevant FIW occurs within a specified period after the commencement of operations which causes OpCo to incur increased costs or results in an event which triggers abatement of the service payment		✓
	A defect in the relevant FIW occurs after a specified period after the commencement of operations which causes OpCo to incur increased costs or results in an event which triggers abatement of the service payment	✓ (limited to non-structural defects only)	✓ (limited to structural defects only)
Third party interfaces	Responsibility for complying with, satisfying and fulfilling the conditions and requirements of third party agreements	✓	✓ (Sydney Metro will retain responsibility for satisfying a specified and limited range of obligations under the third party agreements)
FSM Works	SSTOM Works are damaged or adversely affected by FSM Works undertaken by or on behalf of TfNSW		✓
	Time overruns on FSM Works delaying completion of the SSTOM Works (other than to the extent caused on contributed by OpCo or its associates)		✓
Proximate works	SSTOM Works are damaged or adversely affected by proximate works undertaken by or on behalf of Sydney Metro		✓



Type of risk	Description	OpCo	Sydney Metro
<b>DESIGN, CONSTRUCTION AND COMMISSIONING</b>			
This section sets out the risk allocation for the design, construction and commissioning of the SSTOM Works.			
OpCo's design	OpCo's design does not meet the technical and performance requirements set out in the SSTOM Project Deed	✓	
Design interfaces	Overall management of design interfaces (unless relating to an interface managed by Sydney Metro)	✓	
Construction	Construction activities cannot be completed on time or to budget or do not meet the requirements of the SSTOM Project Deed	✓	✓ (as per compensation events and relief events)
Construction interfaces	Overall management of interfaces necessary to deliver the SSTOM Works	✓	
SSTOM Works	Technical and performance requirements set out in the SSTOM Project Deed are not suitable for the purposes of the SSTOM Project Deed	✓	
Satisfying commissioning requirements	Testing and commissioning of the entire Sydney Metro not successfully completed	✓	
Delays in commissioning	Delays in commissioning the SSTOM Works and commencement of revenue service (other than a risk borne by Sydney Metro)	✓	
Integration	Responsibility for integration of SSTOM Works with FIW	✓	
Quality	Compliance of SSTOM Works with the requirements set out in the SSTOM Project Deed	✓	
Design and construction completion	Design and construction of the SSTOM Works not completed on time or on budget (other than a risk borne by Sydney Metro)	✓	

Type of risk	Description	OpCo	Sydney Metro
Power and utilities (delivery phase)	Procure and pay for all utility services (including electricity) required for the construction, testing and commissioning of the SSTOM Works	✓ (subject to a price cap for testing and commissioning electricity)	✓ (to the extent electricity provider connection points are not operational by an agreed milestone)
<b>OPERATIONAL – ENTIRE SYDNEY METRO – WESTERN SYDNEY AIRPORT</b>			
This section sets out the risk allocation for operations of Sydney Metro – Western Sydney Airport.			
Operational interfaces	Managing Sydney Metro interfaces with third parties such as adjoining property owners, other transport providers, utilities etc.	✓	
Meeting performance requirements and service levels	Service solution or service performance does not meet the performance requirements and service levels specified in the SSTOM Project Deed including customer and station management key performance indicators	✓	
Adequacy of performance requirements and service levels	Risk that the specified performance requirements and service levels are not appropriate or sufficient to meet Sydney Metro's requirements		✓
Electricity supply including interruption	Insufficient electricity supply available to Sydney Metro during the operations phase to meet OpCo's requirements (unless due to a specified relief event)	✓	
Public transport information	Provision of information for Sydney Metro – Western Sydney Airport, and interface with Sydney Metro's systems	✓	
Ticketing system	Provision of and performance risk related to electronic ticketing system and equipment supplied by Sydney Metro		✓
	Ticket sales of Sydney Metro – Western Sydney Airport		✓
	Provision of power and communications for electronic ticketing system components and performance of any specified functions for Sydney Metro – Western Sydney Airport	✓	
Revenue protection (fare enforcement)	Provision of fare enforcement functions for Sydney Metro – Western Sydney Airport (e.g. inspection of tickets and issuing of infringements, prosecution of infringement notices)		✓

Type of risk	Description	OpCo	Sydney Metro
	Implementation of specified ticketing or revenue protection responsibilities for Sydney Metro to the extent specified in the SSTOM Project Deed	✓	
Safety and security	Safety and security of Sydney Metro – Western Sydney Airport system and its customers and staff (to the extent specified in the SSTOM Project Deed and excluding law enforcement functions)	✓	
Graffiti and vandalism risk	Responsibility for cost and disruptions caused by graffiti or vandalism within Sydney Metro areas managed by OpCo (other than a risk borne by Sydney Metro)	✓	✓ (to the extent the cost of rectifying the graffiti and vandalism in peripheral presentation areas exceeds an agreed annual cap in each financial year)
Branding and marketing	Control of branding and marketing activities for Sydney Metro – Western Sydney Airport		✓
	Conformance with Sydney Metro's branding requirements and meeting specified responsibilities	✓	
Station and interchange management	Control and management of Sydney Metro stations and interchanges (within specified boundaries) including all responsibility for asset availability, asset management, operations and cost risk (other than a risk borne by Sydney Metro)	✓	
Disruptions to passenger service	Disruptions to passenger services	✓	✓ (for certain specified events)
Customer and station Key Performance Indicators (KPIs)	Meeting required standards with respect to customer and station management KPIs for Sydney Metro – Western Sydney Airport	✓	
<b>ASSET MANAGEMENT</b>			
This section sets out the risk allocation for asset management.			
Asset Management	Meeting required standards with respect to asset management through the key performance indicators and other requirements in the SSTOM Project Deed during the term	✓	

Type of risk	Description	OpCo	Sydney Metro
Maintenance performance and cost	Cost of maintenance and performance of assets relative to the SSTOM Project Deed requirements	✓	
Asset condition through operations phase	Required asset condition standards are not achieved through the operations phase (for reasons other than a risk borne by Sydney Metro)	✓	
Residual life and end of term handover	Satisfying Sydney Metro's requirements for asset condition and residual design life at the end of the operations phase	✓	✓ (for certain assets)
Defects - SSTOM Works	A defect in the SSTOM Works causes OpCo to incur increased costs or results in an event which triggers abatement of the service payment (for reasons other than a risk borne by Sydney Metro)	✓	
<b>REVENUE AND COSTS</b>			
Service Payment	Risk that the service payments under the SSTOM Project Deed are insufficient to meet OpCo's costs in the operations phase, including if there are costs increases exceeding the amount of indexation provided for under the SSTOM Project Deed	✓	
Cost Risk Sharing (CRS)	The risk of cost overruns to the target outturn cost under the CRS mechanism	✓ (in accordance with an agreed painshare %)	✓ (in accordance with an agreed painshare %)
Ticketing	Ticket sales, ticketing responsibilities and revenue collection		✓
Farebox revenue	Farebox revenue differs from forecast		✓
Changes to fares	Fare setting responsibility		✓
Revenue protection (fare enforcement)	Provision of fare enforcement functions (e.g. inspection of tickets and issuing of infringements, prosecution of infringement notices)		✓
Changes in service levels	Changes in service levels to those specified in the SSTOM Project Deed (within certain bounds)	✓	
Lifecycle Costs	Risks associated with the replacement and refurbishment of assets over the term	✓	



Type of risk	Description	OpCo	Sydney Metro
Escalation	Risk of inflation indices impacting on indexed costs in the service payment calculation		✓
	Risk of annual increases in OpCo's costs running above the specified indices	✓	
Power and utilities (operations phase)	Procure and pay for all utility services required for the operation and maintenance of Sydney Metro – Western Sydney Airport	✓	✓ (electricity only)
Special events (pre-specified)	Cost of running recurring special events services as specified in the SSTOM Project Deed	✓	
Special events (unspecified)	Provision of additional services required for exceptional, non-recurring special events (e.g. major sporting events, political forums)		✓
Commercial opportunities	Commercial opportunities within stations and advertising opportunities		✓
<b>FINANCING</b>			
Financing	Private finance of the required amount for the SSTOM Works	✓	
Base interest rate risk	Risk of base interest rate increases before financial close		✓
	Risk of base interest rate increases after financial close through to 2 years into the operations phase	✓	
	Risk of base interest rate increases after the first 2 years of the operations phase		✓
Interest rate margin (post-financial close)	Changed interest margins post financial close	✓	
Refinancing gains	Gains on refinancing of debt terms, exceeding those assumed in the base case financial model	✓	✓ (Sydney Metro to be entitled to a share of the refinancing gain)
Refinancing losses	Losses on debt refinancing	✓	

Type of risk	Description	OpCo	Sydney Metro
Tax	Actual tax payable by OpCo differs from the base case financial model	✓	
Foreign exchange risk	Foreign exchange rate movements	✓ (from financial close)	✓ (before financial close)
Conditional Debt Pay Down	Satisfaction of condition debt pay down conditions	✓	
<b>INSURANCE, DAMAGE AND LOSS</b>			
Insurance	All costs and risk associated with all insurances required to design, deliver, operate and maintain Sydney Metro – Western Sydney Airport, with the exception of those insurances identified in the SSTOM Project Deed that are to be procured by Sydney Metro (being contract works insurance and public and products liability insurance)	✓ (subject to benchmarking of prescribed insurances during the operations phase)	
	Responsibility for insurance deductibles where OpCo bears risk of loss/damage or is liable under indemnity and makes a claim under a Sydney Metro procured insurance, or any claim is made under an OpCo procured insurance policy	✓	
Reinstatement and repair	Responsibility for costs of reinstatement or repair of any part of Sydney Metro – Western Sydney Airport if it is lost, damaged or destroyed	✓	✓ (for certain excluded risks)
<b>CHANGE IN LAW</b>			
Change in Law	Project-specific change in law, change in disability law, change in environmental law, pandemic change in law or change in rail safety law resulting in OpCo being delayed or incurring additional cost		✓
	General change in law (other than with respect to tax) resulting in OpCo being delayed or incurring additional cost)	✓ (up to thresholds in the SSTOM Project Deed)	✓ (above thresholds in the SSTOM Project Deed)
Change in Government Policy	Change in government policy that Sydney Metro has directed OpCo to comply with	✓ (up to thresholds in the SSTOM Project Deed)	✓ (above thresholds in the SSTOM Project Deed)

## 9 General obligations

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### 9.1 General

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

- a) finance, or procure finance for, the SSTOM PPP;
- b) design and construct the SSTOM Works;
- c) during the term, operate and maintain Sydney Metro – Western Sydney Airport from completion of the SSTOM Works; and
- d) handback Sydney Metro – Western Sydney Airport to Sydney Metro at the end of the term.

Sydney Metro's primary obligations under the SSTOM Project Deed are to:

- e) grant OpCo licences to use and occupy:
  - i) the construction site; and
  - ii) the licensed maintenance areas;
- f) procure the design, construction and handover (as applicable) of the FIW to OpCo; and
- g) make various payments to OpCo, which are explained in more detail in section 14 (*Payment*).

### 9.2 Collaborative framework

The SSTOM Project Deed includes a collaborative framework that incorporates relationship principles as well as key result areas (**KRAs**) for which Sydney Metro and OpCo can measure their performance.

#### 9.2.1 Relationship principles

Sydney Metro and OpCo agree that, in giving effect to the project objectives (refer to section 3.2 (*Project objectives*) above), they will comply with the following principles of behaviour:

- a) promoting a 'one team' culture co-operating to achieve the project objectives values and a 'best for project' outcome;
- b) establishing and maintaining a culture that emphasises and reinforces safety and wellbeing, innovation and collaboration, excellence and achievement, certainty and responsiveness, integrity, mutual trust and respect and personal relationships;
- c) notifying each other of potential, perceived or real differences of opinion or conflicts of interest as soon as they arise so as to promote the resolution of such issues within the shortest possible timeframe;
- d) always acting in a manner that delivers value-for-money for Sydney Metro;
- e) being transparent in all dealings and sharing all relevant information in a timely way and on an open book basis;
- f) ensuring their respective officers, agents, advisers, consultants, contractors, subcontractors and employees are also committed to relationship principles; and

- g) ensuring that learnings of the parties are identified and shared and capability is developed.

### **9.2.2 Key Result Areas**

The SSTOM Project Deed includes KPAs for Sydney Metro and OpCo. These KRAs are used to facilitate the achievement of the project objectives and inform senior project group meetings. Neither party is entitled to bring any claim against the other party in connection with the KRAs or breach of the collaborative framework more broadly.

While the SSTOM Project Deed sets out a number of KRAs which apply from financial close, the parties are required to periodically review the KRAs to ensure they remain appropriate and can agree to modify the KRAs from time to time during the term to ensure they remain fit for purpose.

OpCo is required to submit regular reports to the senior project group in relation to both OpCo's and Sydney Metro's performance against the KRAs.

## **9.3 Financial reporting**

The SSTOM Project Deed contains a financial reporting regime which sets out Sydney Metro's requirements for OpCo (and its contractors) to provide financial reporting information and other contractual provisions to facilitate financial capacity risk identification, mitigation and remediation.

OpCo is required to populate a financial information input template and provide financial statements every 6 months for itself as well as each contractor entity, contractor guarantors entity (as applicable) and significant contractors (upon request), to allow Sydney Metro to assess their financial capacity.

The financial reporting regime includes financial capacity events, financial reporting events and restructuring events. If Sydney Metro becomes aware of any of these events, it may request that OpCo (and its contractors) provide information that is reasonably required (such as a detailed financial review) in order to determine the extent and potential impact of the event. The financial reporting regime also contains provisions for a financial mitigation plan which seeks to avoid, mitigate or minimise and adverse effects of a financial capacity event.



## 10 Delivery activities

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### 10.1 OpCo construction works

OpCo will be required to design, construct, test and commission the new metro rail line from St Mary's station to Aerotropolis station. The SSTOM PPP will include taking over and integrating the SBT Works and the SCAW Works and delivery of:

- a) package integration activities;
- b) design, manufacture and supply of trains and infrastructure maintenance vehicles;
- c) design and installation of rail systems, including signalling and train control;
- d) design, construction, fit-out and/or installation of linewise systems;
- e) overall systems integration and commissioning activities, including the station systems integration and rail systems integration;
- f) design, construction, fit-out and/or installation of stations and station precincts;
- g) testing and commissioning of Sydney Metro – Western Sydney Airport;
- h) meeting all rail safety national law accreditation requirements; and
- i) meeting the requirements of the rail infrastructure manager and rolling stock operator requirements under certification of the Office of National Rail Safety Regulator.

During the delivery phase OpCo must:

- j) construct the SSTOM Works, and temporary works, in accordance with the SSTOM Project Deed (including the scope and performance requirements in the SSTOM Specification), the final design documentation, and any modifications directed or approved by Sydney Metro;
- k) use good workmanship and materials, which comply with the standards set out in the SSTOM Specification, and which are free from defects; and
- l) meet all sustainability requirements specified in the SSTOM Specification.

OpCo warrants that the SSTOM Works will, upon completion, during the term and at handback at the end of the term, be fit for their intended purpose, provided the FIW comply with the requirements of the FIW Contract.

### 10.2 Sydney Metro procured construction works

Sydney Metro is responsible for the design and construction of the FIW and has engaged the FIW Contractors to design and construct the FIW.

As part of OpCo's obligations, it must integrate the FIW into its SSTOM Works to provide a fully integrated railway. Further information is available in section 15 (*Foundation Infrastructure Works*).

TfNSW is also responsible for procuring the FSM Works at St Marys – refer to section 16 (*FSM Interface*).

### 10.3 Laws and approvals

OpCo must comply with all applicable laws including those relating to environmental heritage. Sydney Metro has obtained planning approvals required for the SSTOM PPP. Sydney Metro bears the risk of any legal challenge to these planning approvals (other than as the result of OpCo's non-compliance).

OpCo is responsible for:

- a) obtaining all other approvals;
- b) obtaining licences under the Protection of the *Environment Operations Act 1997* (NSW);
- c) complying with all conditions of all approvals (other than those conditions of the planning approvals which Sydney Metro has specifically agreed to comply with); and
- d) complying with the *Airports Act 1996* (Cth), *Airports (Building Control) Regulations 1996* (Cth) and any requirements and conditions of approvals by the Airport Building Control and Technically Assured Organisation.

### 10.4 Progressive handover of construction site

Sydney Metro must hand control of the construction site to OpCo in stages, corresponding with the program for completion of the FIW.

The Independent Certifier will be responsible for certifying when a portion of the FIW has achieved completion.

If Sydney Metro fails to hand over the relevant part of the construction site to OpCo by the agreed date (with the relevant portions of the FIW completed), this will be a compensation event.

### 10.5 Early handover

Sydney Metro may at any stage initiate discussions with OpCo to bring forward the site access dates for various parts of the construction site. Sydney Metro is required to provide regular updates to OpCo on the likely FIW completion date.

Where a portion of the FIW has achieved completion prior to the relevant site access date and later than the early site access date, OpCo is required to accept handover of the portion on the earlier date, up to a predefined date, and subject to Sydney Metro paying OpCo an early handover payment based on agreed daily rates. OpCo has no obligation to accept access that is earlier than the early site access date but must consult with Sydney Metro in good faith to agree the earliest practicable date from which OpCo can accept the relevant part of the construction site.

Early access to site will not change the date for completion, however, failure to use the early access will be taken into account by Sydney Metro when determining any claim for an extension of time.

### 10.6 Time

OpCo must achieve completion of the SSTOM Works by the 'date for completion' or as extended in accordance with the SSTOM Project Deed. Sydney Metro's sole financial remedy for the failure to achieve completion by the date for completion is limited to the amount of the service payments not required to be paid by Sydney Metro.

A failure by OpCo to achieve completion by the date for completion will also constitute an OpCo event of default which will oblige OpCo to prepare, submit and comply with a Cure Plan.

If OpCo is delayed in achieving completion due to a relief event, OpCo may make a claim for an extension of time extending the date for completion. OpCo can also seek relief to extend the site access expiry date of relevant portions. If an extension of time is granted by Sydney Metro, the date for completion will be extended for the period determined by Sydney Metro. The length of the operations phase will also be maintained (and not truncated) if any extension of time is granted.

Where the relevant relief event is also a compensation event, OpCo may also claim compensation in respect of its prolongation costs and financing delay costs as part of the net financial impact arising from the compensation event.

If any part of the delivery activities is delayed by a relief event and OpCo would have been entitled to an extension of time, Sydney Metro may direct OpCo to accelerate the SSTOM Works to achieve completion by the date for completion and compensate OpCo for the net financial impact of accelerating the delivery activities, in lieu of granting an extension of time.

Sydney Metro is also entitled to unilaterally issue a notice extending the date for completion in accordance with the SSTOM Project Deed.

If OpCo fails to achieve completion within 18 months after the date for completion (longstop date), and then fails to Remedy the OpCo event of default as prescribed by the cure plan, subject to giving the debt financiers the opportunity to remedy the OpCo event of default under the Financiers Tripartite Deed, Sydney Metro will be entitled to terminate the SSTOM Project Deed in accordance with termination arrangements and exercise its right to step-in and assume the rights and obligations of OpCo. The Financiers Tripartite Deed gives the debt financiers a further maximum cure period of 6 months (or 12 months if the remedy involves replacing a subcontractor that holds rail safety accreditation) to cure the OpCo event of default relating to the failure to achieve completion by the date for completion.

Notwithstanding the date for completion, the parties have agreed that they will aim to achieve completion on or as soon as reasonably practicable after the 'target date for completion' which occurs prior to the 'date for completion'. OpCo must use reasonable endeavours to identify and implement project efficiencies for delivery activities so as to achieve completion on or as soon as reasonably practicable after the target date for completion.

OpCo is not entitled to any payment and Sydney Metro will not be liable to OpCo for any costs, losses or damages suffered or incurred by OpCo relating to OpCo's acceleration, compression, resequencing or reorganisation of OpCo's activities to achieve completion on or after the target date for completion but before the original date for completion. Sydney Metro may grant a request for any additional payments in its absolute discretion.

## **10.7 Early completion**

OpCo may request to achieve completion earlier than the target date for completion. OpCo must provide at least 9 months' written notice to Sydney Metro that it anticipates it will achieve completion on the proposed early completion date. Sydney Metro is not obliged to take any action to assist or enable OpCo to achieve early completion.

OpCo is not entitled to any payment and Sydney Metro will not be liable to OpCo for any costs, losses or damages suffered or incurred by OpCo relating to OpCo's acceleration, compression, resequencing or reorganisation of OpCo's activities to achieve early completion.



*Construction at Aerotropolis site.*

# 11 Operations activities

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## 11.1 Operations and maintenance

OpCo is required to operate and maintain Sydney Metro – Western Sydney Airport throughout the term, including the stations, trains, trains facility, station precincts, rail corridor and infrastructure so that they are safe, clean, provide high customer utility, remain fit for their intended purpose and comply with the operating standards as set out in the SSTOM Project Deed.

OpCo is required to minimise the occurrence of and to remove and rectify graffiti and vandalism to the trains, infrastructure maintenance vehicles, stations, station precincts and licensed maintenance area (including assets affixed to the licensed maintenance area). For certain prescribed 'peripheral presentation areas', OpCo is only required to remove and rectify graffiti and vandalism up to an agreed cap per financial year. Any additional removal or rectification is required to be directed as a minor modification.

OpCo must provide the asset management, train and customer services in accordance with the contract service level requirements established in the SSTOM Project Deed.

## 11.2 Asset management system

OpCo is required to implement an asset management system comprising of an asset management policy, asset management strategy, asset management plan, operations and maintenance manuals and the asset maintenance standards to establish how OpCo will satisfy its asset management obligations.

OpCo must also provide a maintenance works program being a forward-looking program of its asset management activities, and a digital asset information system, that covers all assets, records OpCo's compliance with the asset management obligations, and provides an accurate representation of the condition of all assets and OpCo's asset management activities.

Where the digital asset information system consists of proprietary software of OpCo, OpCo's Core Contractors or OpCo's subsupplier(s), OpCo will provide Sydney Metro with a perpetual irrevocable license and support for the use of this software.

The data contained in the asset management system is the intellectual property of Sydney Metro.

The SSTOM Project Deed requires Sydney Metro and OpCo to meet annually, to review OpCo's compliance with the maintenance works program. Additionally, Sydney Metro has the right to conduct inspections and audits at any time as well as having access to condition monitoring information.

## 11.3 Asset management failure

Failure by OpCo to comply with its maintenance works obligations, may give rise to an asset management failure, obligating OpCo to remedy the asset management failure within an agreed period, failing which Sydney Metro is entitled to withhold service payment amounts from OpCo, each month, until OpCo has remedied the asset management failure.



## 11.4 Reporting

OpCo must provide to Sydney Metro's representative monthly, quarterly and annual reports on the asset management activities during the operation of Sydney Metro – Western Sydney Airport.

## 11.5 Handback audit final inspection

No earlier than 30 months prior to the original expiry date (and periodically thereafter), Sydney Metro's representative may procure a program of audits and inspections of Sydney Metro – Western Sydney Airport. An independent expert will inspect and assess the assets specified for handback and identify any rectification, maintenance or remediation works required, together with the estimated costs of any rectification, maintenance and remediation works. OpCo must carry out such works to the satisfaction of the independent expert and so as to satisfy the standards and requirements under the SSTOM Project Deed.

As soon as practicable following the end of the term, an independent expert will inspect and assess Sydney Metro – Western Sydney Airport and notify Sydney Metro and OpCo of the estimated cost of making good or rectifying any failure by OpCo. The amount notified by the expert will be a debt due from OpCo to Sydney Metro and Sydney Metro may deduct or set off this amount against any other amount otherwise payable to OpCo.

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



*An artist's impression of Luddenham metro station.*

## 12 Government contributions/obligations and any Conditional Debt Pay Down obligations

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### 12.1 Government contributions/obligations

In addition to the debt and equity financing for the SSTOM PPP, the SSTOM PPP is also funded by Sydney Metro through the capital contribution payments. With regards to Sydney Metro's payment obligations, see section 14 (*Payment*) and section 3.6 (*Main funding sources*) for further details.

### 12.2 Conditional Debt Pay Down obligations

If the CDPD conditions (see below) are met then Sydney Metro is obliged to pay to Finance Co an amount equal to the lesser of:

- a) 50% of project debt forecast in the financial model to be outstanding immediately on the CDPD payment date; and
- b) 50% of project debt actually outstanding on the CDPD payment date.

Sydney Metro's obligation to pay the CDPD amount is subject to the following conditions precedent:

- c) the CDPD period (being the period between the 2nd and 4th anniversary of the date of completion) has commenced and not expired;
- d) there is no subsisting OpCo event of default or OpCo termination event;
- e) no OpCo event of default has occurred in the 6 month period immediately prior to the CDPD notice date (other than a material breach by OpCo of an obligation under the SSTOM Project Deed or any other project agreement to which Sydney Metro is a party);
- f) not more than one OpCo event of default has occurred in the 18 month period immediately prior to the CDPD notice date (other than a material breach by OpCo of an obligation under the SSTOM Project Deed or any other project agreement to which Sydney Metro is a party);
- g) no OpCo termination event has occurred in the 12 month period immediately prior to the CDPD notice date;
- h) the aggregate cost of rectification of any single subsisting defect, other than certain FIW defects for which OpCo is entitled to relief, will not exceed a certain monetary amount;
- i) the aggregate cost of rectification of all subsisting defects, other than certain FIW defects for which OpCo is entitled to relief, will not exceed a certain monetary amount; and
- j) no amounts have been retained from the service payment where OpCo fails to remedy an asset management failure within the relevant remediation period and not subsequently released (other than interest retained).

The CDPD payment date is the last day of the "Interest Period" under the facility agreement, which is at least 15 business days after the delivery of the CDPD satisfaction notice or such earlier date determined by Sydney Metro in its absolute discretion.

## 13 User fees (if applicable), including escalation

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This section is not relevant to the SSTOM PPP.

The SSTOM PPP is an ‘Availability PPP’ as defined in the ‘NSW PPP Guidelines’, whereby the State retains patronage and revenue risk as well as responsibility for determining fares and other user fees in conjunction with TfNSW and NSW Treasury. Under the SSTOM PPP, OpCo’s revenue for operations is determined by the service payment set out in section 14 (*Payment*).



*Working with the community.*

## 14 Payment

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### 14.1 Payments

Under the SSTOM Project Deed, Sydney Metro has obligations to make the following material payments:

- a) service payment (monthly);
- b) the capital contributions;
- c) the CDPD amount;
- d) any pre-agreed option construction payment;
- e) early handover payment;
- f) delivery phase performance incentive payment;
- g) CRS principal share amount;
- h) final completion payment;
- i) construction payment B (a securitised licence payment which is the function of OpCo's financing structure); and
- j) any other payments expressly required under the SSTOM Project Deed.

The above payments are separate to any payments that Sydney Metro has to make in respect of matters such as compensation events and modifications.

It is estimated that the net present value of the financial costs of the SSTOM PPP over the term to Sydney Metro is \$5,737.9 million.

### 14.2 Cost Risk Sharing

A CRS mechanism was included for pre-agreed scope where Sydney Metro has determined that risk can be better managed through a collaborative risk sharing mechanism between Sydney Metro and OpCo. This equated to less than 3% of SSTOM PPP value, and included scope related to station precincts that will require further design development post financial close and for offsite removal of contamination.

The CRS mechanism provided key benefits of:

- a) ensuring focus during the RFP stage was not dedicated to areas that are centred around resolving design aspects that would benefit from more extensive engagement and Sydney Metro input (post financial close);
- b) providing the opportunity for Sydney Metro to have greater influence over precinct, urban design, placemaking, indigenous response, architectural and finish outcomes through working collaboratively with proponents and then OpCo to develop designs; and
- c) providing flexibility to minimise risk pricing while ensuring OpCo is adequately incentivised to minimise costs and support design outcomes, while being protected from excessive cost overruns.

### 14.3 Delivery Phase Performance Incentive

The SSTOM Project Deed includes a delivery phase performance incentive (DPPI) regime to motivate and incentivise OpCo's overall performance during the delivery

phase. The DPPI is assessed and paid by Sydney Metro at completion of the SSTOM Works.

The DPPI sets out a maximum fixed amount which OpCo may be entitled to. Sydney Metro is able to determine the amount payable at its discretion, provided it acts in good faith in assessing OpCo's performance against pre-agreed criteria and determining the amount payable.

The DPPI underpins a key requirement of Sydney Metro for incentivising active participation of equity in management of the SSTOM PPP throughout the delivery phase.

#### **14.4 Capital contributions**

Capital contributions are paid over the delivery phase once certain conditions are met. The capital contributions (including the final completion payment) equate to 50% of the total project funding requirements.

#### **14.5 Final completion payment**

Sydney Metro will pay OpCo a final completion payment upon completion of the delivery phase.

#### **14.6 Service payment mechanism**

Monthly service payments will be made to OpCo upon OpCo's achievement of completion and they will cover OpCo's cost of financing, design, construction, asset management and performance of all operations.

The service payment will be determined in accordance with the payment mechanism that is designed to incentivise OpCo to deliver the project's service performance requirements and includes:

- a) a service-based payment with no demand risk, with the State retaining revenue and the responsibilities for setting fares;
- b) a deduction regime that will reduce OpCo's service payment if it fails to meet KPIs based on the project's output specification;
- c) an asset management monitoring and retention mechanism to encourage effective stewardship of all assets; and
- d) an appropriate "bedding in" period for the deduction regime to enable OpCo to establish its operational performance.

#### **14.7 Service payment calculation**

More specifically, the service payment each month is comprised of:

- a) an indexed availability fee; plus
- b) an indexed lifecycle component; minus
- c) an availability deduction (measured against missed train services and closed station platforms); minus
- d) a timeliness deduction (measured against the frequency of train services and total train journey time); minus
- e) a service quality deduction (measured against the service quality KPIs described below); minus



- f) an asset functionality deduction (measured against the asset functionality KPIs described below); minus
- g) a reporting deduction (measured against the reporting KPIs described below); plus
- h) a customer satisfaction payment (measured against customer satisfaction surveys); plus
- i) an asset management adjustment (measured against compliance with the maintenance works program); plus
- j) the floating rate amount (measured against quarterly interest rate movements); plus
- k) an electricity compliance incentive payment (measured against a baseline annual electricity consumption rate); plus
- l) a one-off indexed initial month adjustment payment if operations commencement is not the first day of a calendar month.

The SSTOM Project Deed also sets out a regime that allows Sydney Metro to request 'service level adjustments' (i.e. short and long-term adjustments to the service timetable, which will subsequently impact the calculation of the service payment).

## 14.8 Key Performance Indicators

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

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

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

## 15 Foundation Infrastructure Works

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Sydney Metro is responsible for procuring the FIW, namely the SBT Works and the SCAW Works, and handing over these works to OpCo in accordance with the respective FIW Contracts. OpCo is responsible for integrating the FIW into its SSTOM Works to provide a fully integrated railway.

OpCo warrants that:

- a) it has carefully reviewed and considered the FIW Contracts and the FIW will be fit for OpCo's purposes if the FIW achieves Substantial Completion and comply with the requirements of the relevant FIW Contract (except for any FIW known defects and deviations that are within prescribed FIW Tolerances); and
- b) subject to certain limited rights (in relation to defects, repairs and OpCo's entitlements to compensation events), will not be able to make any claim or be entitled to any relief from its obligations, including related to the FIW not being fit for OpCo's purpose, if the FIW achieves substantial completion and complies with the requirements of the relevant FIW Contract (except for any FIW known defects and deviations that are within prescribed FIW tolerances).

### 15.1 Foundation Infrastructure Works changes

Either party may propose changes to the FIW.

Where Sydney Metro proposes an FIW change which prevents OpCo from complying with its obligations under the SSTOM Project Deed, Sydney Metro is responsible for the potential time, cost and relief impacts of such changes where it decides to proceed with the proposed FIW change in lieu of other options in the SSTOM Project Deed (i.e., withdrawing or amending the FIW change, issuing a modification impact request, or issuing a modification to accommodate the FIW change). Sydney Metro must also reimburse OpCo for any reasonably incurred third party preparation costs in considering the relevant FIW change.

If OpCo proposes an FIW change, Sydney Metro must not unreasonably refuse to procure the FIW change if OpCo agrees to pay all additional costs incurred by Sydney Metro in connection with the FIW change. Reasons for which Sydney Metro could refuse to procure the FIW change are set out in the SSTOM Project Deed. Sydney Metro may also require OpCo to meet with the relevant FIW Contractor and provide further information as required by Sydney Metro or the FIW Contractor.

If the FIW change is implemented by Sydney Metro, OpCo warrants that those works will remain fit for the purpose of enabling OpCo to comply with its obligations under the SSTOM Project Deed.

Sydney Metro may also provide OpCo with details of any FIW change it considers to be an accepted FIW change, where OpCo may agree, or if OpCo disagrees, the parties would meet to resolve to agree the accepted FIW change failing which, Sydney Metro may follow the abovementioned process to propose an FIW change to OpCo.

### 15.2 Maintenance of Foundation Infrastructure Works

Sydney Metro is responsible for the care and maintenance of the FIW prior to handover of each portion of the FIW to OpCo.

OpCo is responsible for the care and maintenance of the FIW in accordance with the FIW O&M manuals and asset management information from handover of each portion, during construction of the SSTOM Works, and during operations of Sydney Metro – Western Sydney Airport, until the end of the term, where OpCo will be required to satisfy handback conditions in respect of the entire Sydney Metro – Western Sydney Airport, including the FIW.

### **15.3 Foundation Infrastructure Works known defects**

Sydney Metro must deliver the FIW in accordance with the FIW Contracts. However, Sydney Metro may hand over the FIW to OpCo with FIW known defects, as listed in the relevant notice of completion.

FIW known defects comprise of:

- a) Minor FIW defects – which are defects that are capable of being corrected after the relevant part of the construction site has been handed over to OpCo, without causing delay or disruption to OpCo's activities.
- b) Agreed FIW defects – which are defects (other than a minor FIW defect) that Sydney Metro, the relevant FIW Contractor and the relevant Independent Certifier have agreed in writing, or Sydney Metro otherwise directs under the FIW Contract, does not need to be rectified to achieve FIW substantial completion.
- c) Accepted FIW defects – which are defects that Sydney Metro has directed under the FIW Contract, do not need to be rectified.

OpCo must notify Sydney Metro within the specified time period from hand over if the known defect is not acceptable or will have an impact on OpCo's ability to perform its obligations under the SSTOM Project Deed during the known defects rectification period. If Sydney Metro agrees, Sydney Metro must direct OpCo to carry out a modification to modify the SSTOM Works or OpCo's activities to accommodate the impact during the known defects rectification period.

Any dispute between Sydney Metro and OpCo in relation to the basis of any FIW known defect will be resolved via dispute resolution.

### **15.4 Foundation Infrastructure Works defects**

Sydney Metro will be responsible for any FIW defects which arise during specified periods depending on the FIW package. Outside of these periods, OpCo will be responsible for the rectification and consequences of any FIW defects.

OpCo may carry out urgent or temporary repairs to overcome any FIW defects.

## 16 FSM Interface

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TfNSW is separately procuring the design and construction of the footbridge linking Sydney Metro with Sydney Trains' St Marys station (**FSM Works**) on behalf of Sydney Metro but at Sydney Metro's cost. The contractor that has been engaged to deliver these works is Laing O'Rourke Australia Pty Limited ABN 71 111 023 431 (**FSM Contractor**).

The delivery of the FSM Works will interface with the delivery of the SSTOM Works at St Marys, including in relation to the integration of various physical works and systems. Accordingly, the SSTOM Project Deed includes a bespoke interface regime in respect of these works which (amongst other things):

- a) requires OpCo to cooperate and coordinate its activities and program (based on prescribed key program activities and dates) with the FSM Contractor;
- b) requires OpCo to review and comment on the design documentation prepared by the FSM Contractor and to work with the FSM Contractor to complete the design of the SSTOM Works so as to be fully compatible with the FSM Works;
- c) allows both OpCo and the FSM Contractor to access each of their respective sites and provides for the handover of control of the site to the FSM Contractor for pre-agreed windows to allow for the integration of the FSM Works to the SSTOM Works;
- d) gives OpCo the right to participate in the inspection and completion process of the FSM Works; and
- e) provides for an issues resolution process in the event that OpCo and the FSM Contractor are unable to resolve an issue in dispute.

OpCo also warrants that the FSM Works will be fit for the purposes of enabling OpCo to comply with its obligations under the SSTOM PPP if they are designed and constructed in accordance with the FSM interface requirement specification and is precluded from bringing any claim in connection with the FSM Works if they meet this standard.

Sydney Metro retains a number of specific risks in relation to the interface with the FSM Works in relation to damage and delay by the FSM Contractor. These risks are outlined further in sections 8 (*Risk allocation*) and 19 (*Entitlements to relief and compensation*).

## 17 Change and project modification procedures

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### 17.1 Principal initiated modifications

Sydney Metro may modify the SSTOM Project Deed requirements relating to Sydney Metro or OpCo's activities.

Sydney Metro may initiate modifications by issuing a modification impact request to OpCo. In response OpCo must prepare and submit a modification impact proposal setting out details of the cost of preparing the modification impact proposal, the net financial impact of the proposed modification, the effects on OpCo's ability to satisfy its obligations and any relief which OpCo may require from its obligations.

Sydney Metro may accept, accept a part or component of (including request updating of the modification impact proposal where a part or component is not standalone), or reject the modification impact proposal or choose not to proceed with the modification. Where the parties fail to agree on cost, time and/or relief related to any modification impact proposal, these matters would be determined via dispute resolution.

Specific particulars will apply to OpCo for the costs of preparing any modification impact proposal in addition to OpCo using reasonable endeavours to minimise the costs, these include:

- a) OpCo will only be entitled to claim genuine third party costs (external to the consortium), but must fund these costs up to a specified threshold (threshold WPI indexed);
- b) Sydney Metro will reimburse the extra over cost in excess of this threshold, as long as OpCo has first received approval from Sydney Metro to engage a third party provider; and
- c) costs internal to the consortium will not be claimable.

Sydney Metro may, regardless of whether it has issued a modification impact request, and whether OpCo has issued a modification impact proposal, require OpCo to implement a modification by issuing a modification order. OpCo must proceed to implement the modification and in this circumstance OpCo's cost, time and/or relief entitlements will be reasonably determined by Sydney Metro, until the parties agree on these entitlements, or a determination is made via dispute resolution.

### 17.2 OpCo initiated modifications

OpCo may propose a modification to the SSTOM Project Deed. Sydney Metro has absolute discretion to approve or reject the proposed modification. OpCo bears all risks and costs associated with a modification proposed by OpCo (unless otherwise agreed by Sydney Metro or where the Modification is required to comply with a Change in Law or a Change in Government Policy).

### 17.3 Minor Modifications

A minor modification comprises of a modification:

- a) to the temporary Works, the SSTOM Works, the delivery activities or any operations activities in the delivery phase that will not involve base costs exceeding a specified threshold, delay completion, or impact on the FIW; or



- b) to the operations activities during the operations phase that will not involve base costs exceeding a specified threshold (threshold WPI indexed) in any operating year or increase the recurrent costs of performing the operations activities.

As a Sydney Metro prescribed threshold, a minor modification must not involve any new, changes to, or have an adverse effect on existing approvals, or have any impact to OpCo's ability to satisfy its obligations under the SSTOM Project Deed. Financier approval will not be required for a minor modification.

The minor modifications regime:

- c) enables OpCo and Sydney Metro to agree to accumulate minor modifications on a monthly basis, or other period as agreed between the parties; and
- d) supports expedited provision of a cost approval, and election by Sydney Metro where there is a disagreement to the amount payable, refers to an independent assessor whose determination is final and binding, and will not be subject to dispute. The cost of the independent assessor will be shared between Sydney Metro and OpCo.



*Construction at Airport Terminal site.*

## 18 Flexibility

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### 18.1 Extensions

A range of mechanisms have been included in the SSTOM Project Deed to provide flexibility for delivering future Extensions.

Schedule 37 (Extensions) of the SSTOM Project Deed provides a regime under which Sydney Metro can progress a potential future Extension with OpCo, from initial concept stage through to contract or financial close for the Extension. The regime:

- a) establishes a process that is flexible but also gives both parties a level of certainty and clarity about the process;
- b) codifies key principles applicable to Extension proposals, including the preservation of existing agreed risk allocations and key aspects of the performance regime and payment mechanism;
- c) mandates an "open book" approach to all Extension pricing for OpCo or any Core Contractor or Significant Contractor;
- d) applies a range of pre-agreed pricing and benchmarking to non-contestable components; and
- e) ensures contestability arrangements for all remaining key Extension scope elements.

The regime contemplates different potential scope models for a future Extension, for example delivery of core unattended train operations scope, trains and operations and maintenance by OpCo. Schedule 37 (Extensions) of the SSTOM Project Deed contemplates various scope models but also provides optionality in this regard.

In addition, Sydney Metro has entered into Direct Deeds with OpCo's suppliers of unattended train operations systems and trains to ensure Sydney Metro can access relevant supply for direct procurement on pre-agreed terms, for example if agreement cannot be reached with OpCo or if Sydney Metro's preferred approach to a future Extension involves direct supply. These Direct Deeds also support the pre-agreed pricing provided under Schedule 37 (Extensions) of the SSTOM Project Deed.

Sydney Metro also has the right to terminate the SSTOM Project Deed if the parties are unable to reach agreement on terms for the Extension.

Separately but related to the delivery of future Extensions, Sydney Metro has entered into the TLS Deed with Siemens to provide the terms on which Siemens will provide, among other things, through life support services in relation to the trains and rail systems associated with Sydney Metro – Western Sydney Airport.. These through life support services may be useful in the planning for future Extensions, but also in other scenarios (e.g. to assist Sydney Metro in planning for and managing transition at end of OpCo's term under the SSTOM Project Deed).

### 18.2 Pre-agreed options

Schedule 5 (Pre-Agreed Options) of the SSTOM Project Deed sets out a number of pre-agreed options which Sydney Metro may elect to implement by prescribed times set out in the schedule. These include:

- a) the design, construction, operation and maintenance of the OSD enabling works at Aerotropolis station;
- b) the design, construction, operation and maintenance of the OSD above ground enabling works at Aerotropolis station;
- c) varying the service change limitations, involving the delivery, operations and maintenance of an additional 6 trains for the operation of 20 trains per hour during peak periods, and changes to the stabling and maintenance facility, including the construction of 2 additional stabling roads;
- d) the introduction of 7 additional trains and changes to the stabling and maintenance facility, including the construction of 3 additional stabling roads;
- e) the inclusion of a side access squeeze-way to emergency services and OpCo's operations and maintenance personnel can by-pass a stationary train between stations; and
- f) the substitution of OpCo's proposed compressed fibre cement sheet material with glass reinforced concrete as the wall cladding and ceiling and soffit material for the underground stations.



*St Marys station.*

## 19 Entitlements to relief and compensation

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### 19.1 Compensation events

The SSTOM Project Deed requires Sydney Metro to compensate OpCo for prescribed events which cause OpCo to incur a loss.

Where OpCo incurs any loss arising out of or in connection with any delay to its delivery activities, OpCo's entitlement to compensation is subject to and only in respect of the period of time which it has been granted an extension of time to the date for completion.

Compensation events include (but are not limited to):

- a) a breach by Sydney Metro of its obligations under the SSTOM Project Deed or any other project agreement;
- b) legal challenge to planning approvals, or the approvals are modified, revoked, replaced, invalidated or suspended, however excluding any modifications to planning approvals requested by OpCo;
- c) where another contractor of Sydney Metro (other than FIW Contractors) disrupts, interferes or adversely impacts OpCo, puts OpCo in breach of its accreditation, or causes damage to works which OpCo is responsible for, Sydney Metro – Western Sydney Airport or Sydney Metro site;
- d) damage caused by the ETS contractor or FSM Contractor to works which OpCo is responsible for, Sydney Metro – Western Sydney Airport or Sydney Metro site;
- e) where OpCo or its contractor is required to comply with an environmental notice which is not related to OpCo's obligations, or arising out of a failure by OpCo to comply with its obligations;
- f) Sydney Metro fails to provide OpCo access on the site access date;
- g) a change to the licensed maintenance area that impacts OpCo's operations and maintenance obligations;
- h) the discovery of a state significant artefact or unexploded ordnance not previously identified in the information documents;
- i) industrial action at the Sydney Metro site or otherwise in respect of the SSTOM PPP, resulting from an act or omission of Sydney Metro or its associates at the Sydney Metro site other than those permitted under project agreements, NSW guidelines or legislation;
- j) damage caused by the FIW Contractor or from a proximate work activity related to works which OpCo is responsible for, Sydney Metro – Western Sydney Airport or Sydney Metro site;
- k) an FIW defect where Sydney Metro is obliged to but has not directed a modification, or an FIW change;
- l) the discovery of contamination on the Sydney Metro site that was caused or disturbed by the FIW Contractor (and not dealt with as set out in the FIW Contract), or another contractor, or Sydney Metro; or
- m) a compensable change in law (including qualifying pandemic changes in law) and compensable change in NSW government policy.

The list of OpCo compensation events is due to the complexity of Sydney Metro – Western Sydney Airport and its delivery structure. OpCo will receive compensation from Sydney Metro for the net financial impact of the relevant compensation event (as calculated in accordance with the SSTOM Project Deed) provided OpCo complies with certain requirements.

The concept of net financial impact is used in various situations under the SSTOM Project Deed. As well as in relation to compensation events it is used in relation to other matters such as Sydney Metro directed modifications and certain changes in law or policy events. The calculation of the net financial impact includes matters such as additional capital costs along with margin and preliminaries, additional operation and maintenance costs along with margin, additional professional service provider costs, a risk and opportunity amount, redundancy payments, additional bank guarantees or insurance costs and additional liability exposure, additional financing and equity costs, escalation and foreign exchange adjustments (where relevant) and also loss of revenue.

Not all of these heads of costs will be relevant in every situation (e.g. some heads of costs are only recoverable in respect of delivery phase impacts) and the focus is on the net financial impact so savings are taken into account (e.g. if there is a modification to remove scope). The net financial impact regime requires granularity in terms of breakdown of costs at the various contractor levels. Certain margins and percentages for calculating preliminaries have been pre-agreed to avoid prolonged negotiations later. There are also a number of bespoke risk sharing regimes that impact the way in which the net financial impact is calculated, such as general changes in law and project specific changes in law.

Where the claim for compensation is in connection with a delay to the delivery activities, OpCo is only entitled to claim compensation for loss for the period of time it has been granted an extension of time up to the new date for completion.

## 19.2 Relief events

Sydney Metro recognises that there may be events out of OpCo's control, which prevent OpCo from performing its obligations. The concept of relief events in the SSTOM Project Deed permits OpCo to claim an extension of time to the date for completion.

Examples of relief events included in the SSTOM Project Deed are:

- a) a compensation event (see above for summary);
- b) a fire, explosion, flood, storm, tempest, lightning, cyclone, hurricane, mudslide, landslide, earthquake and drought;
- c) a terrorist act;
- d) war (declared or undeclared), armed conflict, riot or civil commotion;
- e) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- f) any blockade or embargo which only affects OpCo and/or one or more OpCo contractor, or is the result of or in connection with a pandemic;
- g) any event or occurrence which deprives OpCo of any access to the Sydney Metro site that it is entitled to under the SSTOM Project Deed;



- h) an act or omission of Sydney Metro which is not permitted by the project agreements or is in breach of its obligations under the SSTOM Project Deed;
- i) Sydney Metro directs an amendment to the ETS program;
- j) a direction by the Minister under Part 2 of the *Public Health Act 2010* (NSW) (other than a pandemic direction) to the extent that OpCo cannot, in compliance with law, comply with a material part of its obligations under the SSTOM Project Deed;
- k) a per- and poly-fluoroalkyl substances time event; and
- l) there is a total failure of all electricity supply at the electricity provider connection points due to an interruption of supply upstream from the electricity provider connection points and that failure occurs on or after the date on which OpCo first draws electricity from an electricity provider connection point but before the date of completion.

### 19.3 Force majeure events

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

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

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

## 20 Default and termination arrangements, including step-in arrangements

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### 20.1 OpCo event of default (persistent breaches, frequent breaches)

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

- a) Any failure by OpCo to regularly and diligently progress all the activities OpCo is required to perform in connection with the design and construction of the SSTOM works (delivery activities).
- b) Any failure by any of the projects debt financiers and equity investors to provide all of the funding contemplated under the senior debt financing documents or the equity documents.
- c) Availability of train services falls below a specified level.
- d) Timeliness of train services falls below a specified level.
- e) Service quality or asset functionality falls below specified levels.
- f) Any failure by OpCo to make a due payment, if this failure is not remedied within 20 business days of a written demand from Sydney Metro.
- g) Any material failure by OpCo to comply with the asset management plan and subsequent failure to rectify it within 6 months of expiry of the set remediation period.
- h) Any breach by OpCo's reporting obligations, including breach of routine reporting obligations or a material inaccuracy in an OpCo report which in either case has a material impact on Sydney Metro or government rail agencies or customers.
- i) Any breach by OpCo of the restrictions on refinancing.
- j) Any breach by OpCo of its subcontracting obligations to Sydney Metro.
- k) Any failure by OpCo or an associate to hold the required rail safety accreditations or to comply with their terms.
- l) Any act or omission by OpCo, while performing OpCo's obligations which leads or may lead to suspension or cancellation of OpCo's accreditation.
- m) Any fraudulent, collusive or dishonest conduct by OpCo or an associate of OpCo in performing obligations.
- n) Any false or misleading representation or warranty by OpCo in the SSTOM Project Deed or any other Principal Project Agreement.
- o) If OpCo has not achieved completion by the date for completion.
- p) If OpCo fails to remedy a probity event.
- q) Any failure to comply with modern slavery obligations including reporting any actual or suspected instances of modern slavery.
- r) Any other material breach by OpCo of the SSTOM Project Deed or any of the Principal Project Agreements.

If any of these OpCo events of default occur, Sydney Metro may issue a formal default notice. At the same time, Sydney Metro must also provide a copy of this notice to the Security Trustee/Agent under the Financier's Tripartite Deed. If the 'OpCo event of

default' can be remedied, OpCo must either remedy the event within ten business days of Sydney Metro's notice or prepare and submit a draft cure plan to Sydney Metro by the same deadline, describing what OpCo will do to remedy the event and proposing a cure period.

If Sydney Metro accepts an OpCo cure plan, OpCo must implement the cure plan within the cure period or diligently pursue the remediation of the 'OpCo event of default' in other ways. Provided OpCo is diligently pursuing a remedy, the cure period may be extended by Sydney Metro if necessary.

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

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

### **20.1.1 Persistent breaches**

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

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

### **20.1.2 Frequent breaches**

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

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

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

## 20.2 Sydney Metro termination rights

The SSTOM Project Deed entitles Sydney Metro to terminate the SSTOM Project Deed for a number of reasons. The following is a summary of Sydney Metro's rights to terminate.

## 20.3 OpCo termination events

Each of the following is an OpCo termination event:

- a) after the date of completion the number of missed train services in a month or rolling period exceeds a specified level;
- b) after the date of completion, more than a specified percentage of train services in a month exceeds the maximum train journey time by a certain level in a certain period;
- c) after the date of completion, OpCo accrues over a certain level of service failure points over a rolling period;
- d) Sydney Metro has issued a final persistent breach notice and the relevant breach has continued beyond a certain period or recurred on multiple occasions after the date of service of the final persistent breach notice;
- e) Sydney Metro has issued a final frequent breaches notice and frequent breaches continue to occur at any time in a certain period commencing after the date of service of the final frequent breaches notice;
- f) OpCo fails to remedy an OpCo event of default (which is capable of being remedied) within the applicable cure period;
- g) OpCo fails to prevent the recurrence of a OpCo event of default which is the subject of an approved prevention plan;
- h) OpCo fails to submit, amend or implement a cure/prevention plan in accordance with the SSTOM Project Deed;
- i) OpCo fails to achieve completion by the longstop date;
- j) OpCo abandons the SSTOM PPP;
- k) an insolvency event occurs in relation to an OpCo entity;
- l) the Office of the National Rail Safety Regulator suspends or revokes any accreditation required by OpCo or the Core Contractors to perform OpCo's activities;
- m) an insolvency event occurs in relation to a Core Contractor or a Core Contractor guarantor (and which, in relation to the D&C Contractor or the D&C Contractor guarantor, only occurs prior to the date of final completion) whether or not OpCo is then in breach of the SSTOM Project Deed, and:
  - i) that Core Contractor or Core Contractor Guarantor is not replaced within 120 business days; or
  - ii) at any time during that period, OpCo is not diligently pursuing the replacement of that Core Contractor or Core Contractor Guarantor (as applicable),  
by a person that:

- iii) satisfies the requirements of the SSTOM Project Deed; or
- iv) is otherwise acceptable to Sydney Metro (acting reasonably);
- n) OpCo does not effect and maintain an insurance required by the SSTOM Project Deed, and fails to do so within 10 business days after receipt of a notice from Sydney Metro directing it to do so;
- o) OpCo breaches its obligations not to assign, novate or otherwise deal with its rights or obligations under any project agreement without Sydney Metro's prior approval;
- p) a change in control of the D&C Contractor occurs without Sydney Metro's consent;
- q) a change in control of the O&M Contractor occurs without Sydney Metro's consent;
- r) a Core Contractor or a Significant Contractor is replaced by OpCo or a Core Contractor without Sydney Metro's approval and OpCo fails to:
  - i) terminate the relevant contract and retender the works or services within 90 days after receiving a notice from Sydney Metro directing it to do so; or
  - ii) ensure the Core Contractor terminates any contract with the replacement Significant Contractor and retenders the works or services within 90 days after receiving a notice from Sydney Metro directing it to do so;
- s) OpCo or a Core Contractor ceases to hold an approval or breaches a law, and such failure or breach is (in the reasonable opinion of Sydney Metro) material to the performance of OpCo's obligations under the SSTOM Project Deed and is not remedied within 30 days of Sydney Metro notifying OpCo of the failure/breach, or OpCo becoming aware of the failure/breach (whichever is earlier);
- t) any project agreement is revoked, terminated or otherwise ceases to be enforceable against OpCo or any other party (except Sydney Metro, TfNSW, the State, Sydney Trains or a FIW Contractor), and it is not remedied within 30 days of OpCo becoming aware;
- u) any project agreement becomes invalid, void or voidable (except where Sydney Metro, TfNSW, the State, Sydney Trains or a FIW Contractor has caused it to be as such), and it is not remedied within 30 days of OpCo becoming aware;
- v) it is (or becomes) unlawful for OpCo or a Core Contractor to perform any of its obligations under the project agreements, and it is not remedied within 30 days of OpCo becoming aware;
- w) OpCo fails to comply with its obligations in relation to a probity event;
- x) OpCo has failed to disclosed to Sydney Metro, prior to the execution of the SSTOM Project Deed, any modern slavery offences that any project entity or OpCo contractor has committed; and
- y) any project entity or OpCo contractor is convicted of a modern slavery offence during the term.



## 20.4 Termination payment – OpCo termination events

If the SSTOM Project Deed is terminated by Sydney Metro as a result of an OpCo termination event, Sydney Metro shall pay OpCo:

- a) the highest capital sum offered by a compliant tenderer (if the project has been retendered) or the estimated fair value of the project (if an independent expert has determined that value) and amounts due and payable by Sydney Metro to OpCo,  
less
- b) (if an independent expert has determined the estimated fair value) the adjusted post termination service payments paid by Sydney Metro, tender costs, amounts that Sydney Metro is entitled to set off or deduct, amounts owed by OpCo to Sydney Metro, net gains accruing to OpCo in connection with the termination, insurance proceeds, amounts held in certain bank accounts, amounts paid to OpCo by Sydney Metro for maintenance or refurbishment which has not been carried out and the securitisation refund payment.

If the SSTOM Project Deed is terminated as a result of OpCo's abandonment of the SSTOM PPP, OpCo will not receive any termination payment.

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

## 20.5 Voluntary termination by Sydney Metro

Sydney Metro may at any time for its sole convenience and without giving reasons terminate the SSTOM Project Deed by written notice to OpCo with effect from the date stated in the notice.

## 20.6 Termination in connection with an Extension

Sydney Metro may terminate the SSTOM Project Deed pursuant to the voluntary termination clause in the SSTOM Project Deed if the parties are unable to reach agreement on any matters that are the subject of a proposed Extension.

## 20.7 Termination payments - Principal termination events, voluntary termination and termination for Extensions

Subject to the below paragraphs, if the SSTOM Project Deed is terminated by Sydney Metro for its sole convenience or terminated as a result of a Principal termination event or in connection with an Extension, Sydney Metro shall pay OpCo:

- a) an amount equal to the senior debt as at termination, an equity amount determined by an independent expert, subcontractor breakage costs, amounts due and payable by Sydney Metro to OpCo and employee redundancy payments,  
less
- b) amounts owed by OpCo to Sydney Metro, net gains accruing to OpCo in connection with the termination, insurance proceeds, amounts held in certain bank accounts and the securitisation refund payment.

If such termination payment, or any other termination payment, is zero or a negative number, the negative number will be deemed to be zero.

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

Sydney Metro may terminate the SSTOM Project Deed following the occurrence of an uninsurable risk, if:

- a) OpCo and Sydney Metro are unable to reach agreement on appropriate measures to mitigate the risk; and
- b) the uninsurable risk causes material damage, loss or destruction to a substantial portion of Sydney Metro – Western Sydney Airport or the SSTOM Works.

Alternatively, Sydney Metro or OpCo may terminate the SSTOM Project Deed following the occurrence of a 'force majeure event', if:

- c) The parties are unable to agree on appropriate measures to mitigate the effects of the 'force majeure event' and facilitate the continued performance of the SSTOM Project Deed on or before the date falling 20 business days after the occurrence of the 'force majeure event'; and
- d) the 'force majeure event' is continuing or its consequence remains such that the affected party has been or is unable to comply with a material part of its obligations after a continuous period of 180 days.

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

If the SSTOM Project Deed is terminated for an uninsurable risk or force majeure, Sydney Metro shall pay OpCo:

- a) an amount equal to the senior debt at termination, an amount equal to a portion of the calculated equity amount for voluntary termination, amounts due and payable by Sydney Metro to OpCo and certain subcontractor breakage costs, less
- b) net gains accruing to OpCo in connection with the termination, amounts owed by OpCo to Sydney Metro, insurance proceeds, amounts held in bank accounts and the securitisation refund payment.

## 21 Contractual remedies available to Sydney Metro

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Should OpCo default on its obligations related to the SSTOM PPP, or should Sydney Metro terminate the SSTOM Project Deed, Sydney Metro will have a number of different contractual remedies available to it.

### 21.1 State step-in rights

Sydney Metro is entitled under the SSTOM Project Deed, D&C Contract Side Deed and O&M Contract Side Deed, to step-in and effectively assume OpCo's rights and obligations under the relevant agreement, see section 20 (*Default and termination arrangements, including step-in arrangements*).

### 21.2 Sue for breach

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

### 21.3 Enforcement of provisions

Sydney Metro may enforce provisions under the SSTOM Project Deed where OpCo has failed to meet certain performance standards. OpCo has promised that if it fails to comply with certain standards, this will result in either an adjustment to the service payment sum (see section 14 (*Payment*) for more on service payments) or an obligation to pay a civil penalty under section 38 of the *Passenger Transport Act 2014 (NSW)*. OpCo has promised to meet the following performance standards, including:

- a) compliance with the maintenance works program, a works program required under the asset management plan. If OpCo fails to comply this will result in Sydney Metro being able to withhold a specified amount from the service payment each month for a set period; and
- b) acceptable:
  - i) train cleanliness, condition and graffiti;
  - ii) station and station precinct cleanliness, condition and graffiti;
  - iii) rail corridor graffiti and litter;
  - iv) customer information during service disruption;
  - v) gate management;
  - vi) customer satisfaction;
  - vii) complaints management;
  - viii) on-train temperature;
  - ix) station temperature;
  - x) lift and escalator access;

xi) other assets availability (closed circuit television, help points, public announcement systems and induction loop);

xii) safety and security; and

xiii) reporting compliance,

failure to comply with these quality requirements by OpCo will result in an adjustment to the service payment.

## 21.4 Set-off rights

In certain situations, Sydney Metro is entitled to set-off certain debts or moneys owed to it or good faith claims for moneys owed to it from any amount due from Sydney Metro to OpCo under a Principal Project Agreement.

OpCo does not have these same set-off rights.

## 21.5 Bonds

In addition to the securities granted to Sydney Metro under the Deed of Charges given by OpCo, Finance Co, Finance Co HoldCo, OpCo HoldCo and the O&M Contractor, OpCo must give Sydney Metro an unconditional bank bond (handback security bond), to secure the performance of OpCo's handback obligations under the SSTOM Project Deed. This handback security bond must be provided within 20 business days of receiving notice of the handback rectification costs following the initial handback audit. If OpCo fails to comply with this requirement, OpCo will not be in breach of the SSTOM Project Deed but Sydney Metro may withhold a prescribed amount from the payment of service payments (by deducting from the payment of each service payment an amount equal to the prescribed amount divided by the number of remaining service payments payable by Sydney Metro before the original expiry date).

If the term of the project is extended (see section 7 (*Contract term*)), OpCo must provide an additional unconditional bank bond (extension security bond) for a prescribed amount under the SSTOM Project Deed (CPI indexed). Failure to provide the extension security bond will not be a breach of the SSTOM Project Deed but will result in the term of the SSTOM Project Deed expiring on the original expiry date.

Sydney Metro has the right to call on any bond at any time under the SSTOM Project Deed, however, Sydney Metro's right to apply the proceeds of either bonds is limited. Subject to these rights, if either of these bonds are not drawn upon, these bonds must be released by Sydney Metro as soon as practicable after receiving the interim or final inspection notices (as applicable).

## 22 State step-in rights

### 22.1 SSTOM Project Deed

Under the SSTOM Project Deed, Sydney Metro may step-in for an OpCo event of default or termination event and for safety-related matters. OpCo must cooperate with a step-in party and ensure that its Significant Contractors, and use its best endeavours to ensure all other OpCo contractors, do likewise.



*An artist's impression of Aerotropolis metro station.*



## **23 Change in control and assignment provisions**

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### **23.1 Change in control**

The SSTOM Project Deed places certain restrictions on Sydney Metro and OpCo in the event of a change in control.

Subject to certain limited exceptions, OpCo has undertaken that throughout the SSTOM PPP it will not permit any direct or indirect changes to the legal or beneficial ownership of its shares or units or any related body corporate specifically identified without Sydney Metro's prior written consent, which will not be unreasonably withheld.

With regard to other OpCo contractors, OpCo must also obtain Sydney Metro's approval (which must not be unreasonably withheld) if a change in control of the D&C Contractor or D&C restructure event has occurred prior to the date of final completion and provide full details of the change in control so as to allow Sydney Metro to assess whether to approve of the change in control.

Subject to certain limited exceptions, OpCo must also obtain Sydney Metro's consent (which must not be unreasonably withheld) for changes in control that relate to the O&M Contractor.

### **23.2 Assignment**

Sydney Metro may assign, novate, transfer or otherwise deal with its rights or obligations under any project agreement without OpCo's prior approval, provided the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister or a government entity (including a State owned corporation or any entity that is wholly owned or controlled by the State) supported by a guarantee from the State on terms no less favourable than those contained in the GSF Act Guarantee.

Except as expressly permitted by the SSTOM Project Deed, the Financiers Tripartite Deed or the FinCo Deed of Charge, OpCo must not assign, novate, transfer, mortgage, charge or otherwise deal with its rights or obligations under any project agreement, without Sydney Metro's prior approval.

## **24 Transition out provisions**

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Sydney Metro has the right at any time prior to the end of the term or on termination, to invite any person to perform all or any part of OpCo's activities for the period commencing after expiry or termination of the term. As such, OpCo must manage OpCo's activities in a way that a successor OpCo or nominee of Sydney Metro is able at any time to immediately take over the performance of OpCo's activities without interruption.

OpCo must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer of the performance of OpCo's activities to a successor OpCo or nominee of Sydney Metro.

### **24.1 OpCo employees**

During the term, OpCo's ability to vary the employment contracts of certain employees involved in the operation and maintenance of Sydney Metro – Western Sydney Airport is limited, and Sydney Metro's prior approval is generally required. At the expiry of the term, Sydney Metro must procure that a successor OpCo makes offers of employment to these employees.

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

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

### **24.3 Access**

OpCo must ensure that a successor OpCo or nominee of Sydney Metro has access to OpCo's assets, systems, the stabling and maintenance facility and the staff for the purposes of the successor OpCo or nominee of Sydney Metro receiving information about OpCo's obligations and preparing to take over the performance of those obligations.

### **24.4 Novation and handback of documents**

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

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

## 25 Handback obligations

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At the end of the term, OpCo must:

- a) surrender and return to the Principal or the Principal's nominee Sydney Metro – Western Sydney Airport and, to the extent it has been installed, the ETS equipment;
- b) transfer all of OpCo's rights, title and interest (if any) in the assets (including the handover spares) to the Principal or the Principal's nominee free from any security interests;
- c) ensure that the assets are in a state and condition which complies with the requirements of the SSTOM Project Deed including, if completion has occurred, the handback condition (fair wear and tear excepted);
- d) have completed all works scheduled to be carried out under the current maintenance works program for Sydney Metro – Western Sydney Airport;
- e) if the first passenger service has been provided, ensure that:
  - i) all trains meet the "level 3" requirements on the "car exterior assessment scale" and the "car interior assessment scale" as set out in Schedule 2 (Service Payment calculation) of the SSTOM Project Deed Annexure B Part A: KPI Tables KPI No. 1;
  - ii) all stations meet the "level 3" requirements on the "station views and station precincts views assessment scale" as set out in Schedule 2 (Service Payment calculation) of the SSTOM Project Deed Annexure B Part A: KPI Tables KPI No. 2; and
  - iii) the rail corridor (including the peripheral presentation areas) meets the "level 3" requirements on the "corridor and peripheral presentation area assessment scale" as set out in Schedule 2 (Service Payment calculation) of the SSTOM Project Deed Annexure B Part A: KPI Tables KPI No. 3;
- f) if the first passenger service has been provided, have completed the transfer of the asset information system database to the Principal or the Principal's nominee such that:
  - i) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;
  - ii) it remains fully functional and retains interface capabilities;
  - iii) all data entry is fully up to date;
  - iv) all data archives are included; and
  - v) all supporting documentation is included;
- g) deliver to the Principal or the Principal's nominee (or both, if required) all and any documents and information concerning OpCo's activities which is required for the efficient transfer of responsibility for their performance, including:
  - i) the project documentation;
  - ii) all data (as defined in Schedule 32 (Intellectual Property) of the SSTOM Project Deed);

- iii) (any documentation or programs required to be provided under Schedule 32 (Intellectual Property) of the SSTOM Project Deed; and
- iv) any other documentation specified in the SSTOM Specification;
- h) transfer all of OpCo's rights, title and interest (if any) in any extra land held by OpCo at the end of the term;
- i) in relation to:
  - i) hired moveable assets owned by any related body corporate of OpCo or a Core Contractor, procure the novation to the Principal of any lease or hire arrangement relating to any such hired moveable asset nominated by the Principal; and
  - ii) any other hired moveable assets, use its best endeavours to procure the novation to the Principal of any lease or hire arrangement relating to any such hired moveable asset nominated by the Principal; and
- j) procure the novation to the Principal or its nominee of, or execute any document required to effect OpCo ceasing to be a party to, any Significant Contract, and use its best endeavours to procure the novation to the Principal or its nominee of, or execute any document required to effect OpCo ceasing to be a party to, any other subcontract, in each case relating to OpCo's activities which the Principal may nominate (in its absolute discretion), with effect from the end of the term or such other date as the Principal may agree.



*Construction at Orchard Hills site.*

## 26 Dispute resolution

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### 26.1 Dispute avoidance process

All disputes between Sydney Metro and OpCo arising out of the SSTOM PPP must be resolved in accordance with the detailed procedures set out in the SSTOM Project Deed.

The dispute resolution procedure essentially involves three sequential phases: executive negotiation, expert determination (provided the dispute occurs before final completion) and arbitration. Throughout these processes both parties must continue to perform all of their obligations under the SSTOM Project Deed.

The dispute resolution process in the SSTOM Project Deed also provides flexibility for the executive negotiators to agree changes to the prescribed process where appropriate for particular disputes.

### 26.2 IDAR Panel

Sydney Metro will establish an IDAR Panel in accordance with a IDAR Panel Agreement. OpCo is required to accede to the IDAR Panel Agreement following establishment of the IDAR Panel. As at financial close, the IDAR Panel has not been established.

Following establishment of the IDAR Panel, the IDAR Panel will have the following functions in the dispute resolution process for the SSTOM PPP:

- a) **Dispute avoidance process** – the parties will be able to refer potential issues or matters to the IDAR Panel before the formal dispute resolution process has commenced under the SSTOM Project Deed. The aim of this process is to attempt to avoid a dispute arising in connection with a potential issue or matter; and
- b) **Dispute resolution process** – following commencement of the formal dispute resolution process and while the executive negotiators are attempting to resolve the dispute, either party may propose to engage the IDAR Panel to assist with the resolution of the relevant dispute in accordance with the IDAR Panel Agreement. This dispute resolution process will cease when the period for executive negotiation (refer to section 26.3 (*Dispute process*) below) is concluded.

### 26.3 Dispute process

If a dispute arises either party may give formal notice of the dispute, at which point executive negotiations will commence for a period of 20 business days. Unless the executive negotiators agree otherwise, if the dispute cannot be resolved by executive negotiation, the dispute must be referred to expert determination (if the notice of dispute was given before final completion) or to either litigation or arbitration as outlined further below (if the notice of dispute was given after final completion).

For disputes referred to expert determination, the expert has 50 business days to make its determination from its appointment. Expert decisions will be immediately binding, and will remain binding until overturned or otherwise changed in an amicable settlement or court judgement or arbitral award.



If either party is dissatisfied with the expert's determination, it may give a notice of dissatisfaction within 10 business days after receiving the determination. If a notice of dissatisfaction is given and there is no amicable settlement, Sydney Metro may issue a notice stating that the dispute is to be determined by litigation within 5 business days of the notice of dissatisfaction. If Sydney Metro does not elect to commence litigation, either party may refer the dispute to arbitration.

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

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

## **26.4 Disputes involving Core Contractors**

OpCo must immediately inform Sydney Metro if a dispute arises under the D&C Contract or O&M Contract.

Disputes between Sydney Metro and the relevant Core Contractor in connection with a Core Contractor Side Deed is to be resolved in accordance with the streamlined process set out in the Core Contractor Side Deeds. This process commences with executive negotiation and, to the extent the dispute remains unresolved, proceeds in accordance with the process in the SSTOM Project Deed as if the dispute resolution process in the SSTOM Project Deed was incorporated into the relevant Core Contractor Side Deed but as if references to "OpCo" were to the relevant Core Contractor.

OpCo also has obligations to ensure that the claims of OpCo contractors are bona fide and, if required by Sydney Metro, is restricted from issuing a notice of dispute under the SSTOM Project Deed unless it has procured a confirmation (on a non-reliance basis) from an independent legal adviser that the claim is bona fide and arguably has reasonable prospects of success.

## **26.5 Disputes with the Security Trustee**

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

## 27 Insurances and reinstatement

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### 27.1 Insurance obligations

Sydney Metro is responsible for effecting and maintaining the contract works policy, delay in start-up policy and public liability insurance policy and professional indemnity policy, and must comply with various obligations in relation to them.

OpCo is responsible for effecting and maintaining the following insurances and must comply with various obligations in relation to them:

#### *Delivery phase*

- a) plant and equipment insurance;
- b) marine cargo and marine advance consequential loss;
- c) employers' liability and workers' compensation insurance;
- d) own damage motor vehicle insurance;
- e) third party property damage motor vehicle insurance;
- f) compulsory third party motor vehicle insurance;
- g) terrorism insurance for trains and the trains manufacturing facility;

#### *Operations phase*

- h) industrial special risks insurance;
- i) plant and equipment insurance;
- j) public and products liability insurance;
- k) professional indemnity insurance;
- l) employers' liability and workers' compensation insurance;
- m) own damage motor vehicle insurance;
- n) third party property damage motor vehicle insurance;
- o) compulsory third party motor vehicle insurance; and
- p) terrorism insurance for trains.

### 27.2 Reinstatement

OpCo has general obligations to reinstate the SSTOM Works or Sydney Metro – Western Sydney Airport if they are damaged. To the extent that the loss, damage or destruction arises from or is due to certain events, including:

- a) a breach by Sydney Metro of any Principal Project Agreement;
- b) any fraudulent, negligent or other wrongful act or omission or wilful misconduct of the State or Sydney Metro or their associates;
- c) a day 1 uninsurable risk; or
- d) an uninsurable material risk,

OpCo shall not be obliged to undertake the reinstatement or repair of, or otherwise make good, the loss, damage or destruction of the relevant infrastructure.

If Sydney Metro directs OpCo to reinstate or otherwise make good the loss, or repair the damage where the relevant infrastructure has been lost, damaged or destroyed as a result of:

- e) the occurrence of an uninsurable risk which, at the date of the SSTOM Project Deed, in circumstances where it usually would be covered by the contract works or public and products liability insurance policies; or
- f) a day 1 uninsurable risk,

Sydney Metro must pay to OpCo an amount equal to the insurance proceeds that would have been payable under the contract works and public and products liability insurance policies.

### **27.3 Insurance proceeds**

Subject to the terms of the Financiers Tripartite Deed, OpCo must deposit all insurance proceeds received in respect of the costs of replacement, reinstatement of the SSTOM Works or Sydney Metro – Western Sydney Airport into an insurance proceeds account.

This money, with certain exceptions where the SSTOM Project Deed is terminated early, must only be applied by OpCo to promptly reinstate or repair the damage. If Sydney Metro requires OpCo to reinstate or repair the SSTOM Works or Sydney Metro – Western Sydney Airport on the basis of different specifications by directing a modification, available insurance proceeds will be taken into account in calculating the net financial impact of the modification.

### **27.4 Uninsurable risk**

An "uninsurable risk" arises where an insurance that is required to be effected and maintained under the SSTOM Project Deed is not available in the international insurance market with any reputable insurer in respect of that risk or the insurance premium payable for insuring the risk is such a level, or the terms or conditions are such, that the risk is not generally being insured against by prudent, competent and experienced providers in Australia of services similar to OpCo's activities at the time insurance is sought or maintained.

If a risk becomes an uninsurable risk the party that is required to maintain and effect such insurance is not required to do so as long as the risk remains uninsurable.

During such period, the relevant party has an obligation to approach the market on a regular basis (but no more than once every 12 months) to establish whether that risk remains uninsurable. Upon insurance becoming available, the party must effect the insurance in accordance with the SSTOM Project Deed and if the insurance is obtained by OpCo, any adjustments to the benchmarked insurance component of the service payment made accordingly. If the risk that has become an Uninsurable Risk is a risk against which OpCo is required to insure, unless the parties agree otherwise, each service payment will be adjusted by deducting the amount corresponding to the proportion of the total insurance premium (inclusive of brokerage and all taxes, levies and other statutory charges) for any insurance that was payable by OpCo for the insurance of that risk before it became an uninsurable risk.

## **28 Guarantees and security arrangements**

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### **28.1 GSF Act Guarantee**

The "GSF Act Deed Poll of Guarantee" executed by the NSW Treasurer (on behalf of the State of NSW) on 15 December 2022 in favour of the Security Trustee, OpCo HoldCo and OpCo (Beneficiaries), provides a guarantee by the State of NSW to the Beneficiaries in accordance with section 6.27 of the Government Sector Finance Act 2018 (NSW), of Sydney Metro's performance of its payment obligations under the SSTOM Project Deed, Financiers Tripartite Deed, Securitisation Agreement, Payment Directions Deed, Equity Purchase Deed and any other documents approved in writing by the NSW Treasurer in the future.

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

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

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

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

### **28.4 Significant Contractor Guarantees**

Each other Significant Contractor Guarantee is an irrevocable guarantee given by each other Significant Contractor Guarantor to D&C Contractor (or one of the participants in the D&C Contractor) to guarantee all liabilities and obligations of the Significant Contractor that arise out of or in connection with the relevant Significant Contracts and to indemnify the D&C Contractor (or one of the participants in the D&C Contractor) against any loss arising from any failure by the Significant Contractor to perform any of its obligations.

### **28.5 TLS Guarantee**

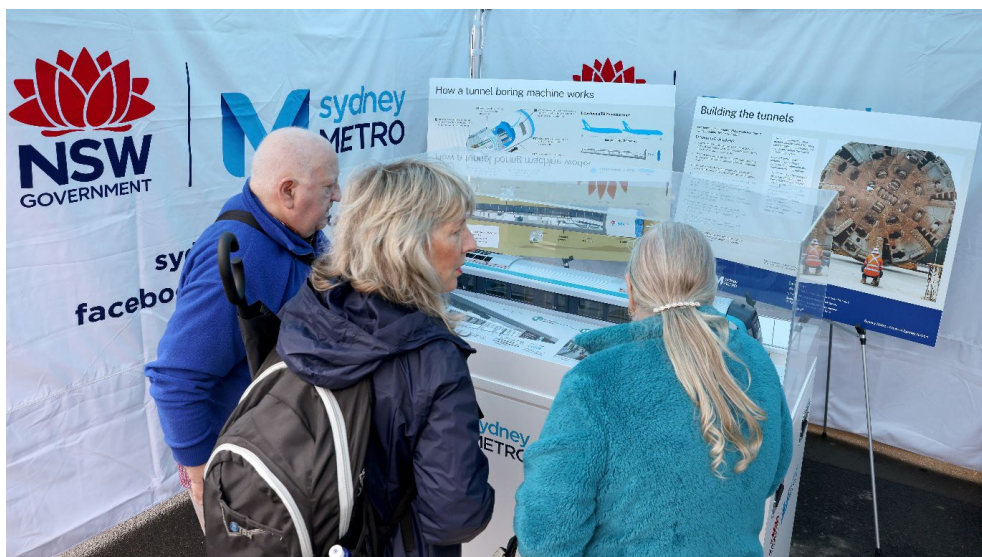
The TLS Guarantee is an irrevocable guarantee given by the TLS Guarantor to Sydney Metro to guarantee all liabilities and obligations of the TLS Contractor that arise out of or in connection with the TLS Deed, and to indemnify Sydney Metro against any loss arising from any failure by the TLS Contractor to perform any of its obligations.

## 29 Asset transfers

All works and assets which are affixed to Sydney Metro – Western Sydney Airport will become and remain the property of Sydney Metro from the time they are affixed. For example, this will include the stations, station precincts, railway track and the maintenance and stabling facilities.

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

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



*Community event at St Marys.*



## 30 Confidentiality and excluded material

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Under their own terms all of the SSTOM PPP major contracts and associated documents to which Sydney Metro is a party, including the SSTOM Project Deed, may be publicly disclosed by Sydney Metro, provided in all cases Sydney Metro redacts any commercially sensitive information (as defined and set out in Schedule 25 (Commercially Sensitive Information) of the SSTOM Project Deed), other than where the written consent of OpCo is obtained to the disclosure of such information.

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

## 31 Auditor General's function

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



*Construction underway on Western Sydney International (Nancy-Bird Walton) Airport.*

# Appendix

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## Appendix A: Glossary of terms

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**AEW** has the meaning given in section 3.4 (*Major contracts*).

**CDPD** means Conditional Debt Pay Down.

**Core Contractor Interface Deed** means the document titled "Core Contractor Interface Deed" between OpCo, the D&C Contractor and the O&M Contractor.

**Core Contracts** means the D&C Contract and O&M Contract.

**Core Contractors** means the D&C Contractor and the O&M Contractor, as described in section 5.2.2.1 (*Core Contractors and Core Contractor Guarantors*).

**Core Contractor Guarantors** means the D&C Guarantor and the O&M Guarantor, as described in section 5.2.2.1 (*Core Contractors and Core Contractor Guarantors*).

**Core Contractor Side Deeds** means the D&C Contract Side Deed and the O&M Contract Side Deed.

**CPI** means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (ABS).

**CRS** means cost risk sharing, which is described in more detail in section 14.2 (*Cost Risk Sharing*).

**D&C Contract** means the contract titled "D&C Contract" between OpCo and the D&C Contractor.

**D&C Contract Side Deed** means the deed titled "D&C Contract Side Deed" between the Principal, OpCo, the D&C Contractor, the D&C Independent Certifier and the O&M Contractor.

**D&C Contractor** has the meaning given in section 5.2.2.1 (*Core Contractors and Core Contractor Guarantors*).

**D&C Guarantor** has the meaning given in section 5.2.2.1 (*Core Contractors and Core Contractor Guarantors*).

**D&C Independent Certifier** has the meaning given in section 5.4 (*Independent Certifiers*).

**D&C Independent Certifier Deed** has the meaning given in section 5.4 (*Independent Certifiers*).

**Direct Deed** means each of the contracts listed in section 6.11 (*Extension Supply Direct Deeds*).

**DPPI** means delivery phase performance incentive, as described in section 14.3 (*Delivery Phase Performance Incentive*).

**ETS** means the ticketing system for Sydney Metro – Western Sydney Airport, including the ETS equipment, software, smartcards and all other aspects of the system, as modified or replaced from time to time.

**Expression of Interest**, or **EOI** means an expression of interest to deliver the SSTOM PPP in the interactive EOI stage of the procurement process.

**Extension** means a continuous extension to Sydney Metro – Western Sydney Airport to form an integrated, operational extended metro system.

**FAW** has the meaning given in section 3.4 (*Major contracts*).

**Finance Co** means Parklife Metro Finance Pty Ltd ACN 657 444 141.

**Finance HoldCo** means Parklife Metro Finance Holdings Pty Ltd ACN 663 673 489.

**Financiers Tripartite Deed** means the deed between the Principal, OpCo, Finance Co, the Security Trustee, the Agent and the Account Bank.

**FIW Contract** means the SBT Contract and the SCAW Contract.

**FIW Contractors** means the SBT Contractor and the SCAW Contractor.

**Foundation Infrastructure Works or FIW** means the:

- (a) SBT Works; and
- (b) SCAW Works.

**FSM Works** means the physical works in relation to the pedestrian overbridge at St Marys.

**FSM Contractor** has the meaning given at section 16 (*FSM Interface*).

**Hassell Significant Contractor** has the meaning given at section 5.2.2.2 (*Significant Contractors*).

**IDAR Panel** means the Independent Dispute Avoidance and Resolution Panel as described in section 26.2 (*IDAR Panel*).

**IDAR Panel Agreement** means the agreement titled "Independent Dispute Avoidance and Resolution Panel Agreement" between the Principal, the members of the IDAR Panel and any other party that accedes to the agreement from time to time.

**Independent Certifier** has the meaning given in section 5.4 (*Independent Certifiers*).

**Infrastructure NSW** means the independent statutory agency established under the *Infrastructure NSW Act 2011* (NSW).

**KPIs** means key performance indicators, as described in section 14.8 (*Key Performance Indicators*).

**KRAs** means key result areas, as described in section 9.2.2 (*Key Result Areas*).

**Master Interface Deed** means the deed titled "Sydney Metro Master Interface Deed" between the Principal, the FIW Contractors and any other party that accedes to the deed from time to time.

**National PPP Guidelines** means Australia's 'National Public Private Partnership Guidelines' published by Infrastructure Australia and available at [infrastructure.gov.au/infrastructure/ngpd/index.aspx](http://infrastructure.gov.au/infrastructure/ngpd/index.aspx)

**NSW** means the state of New South Wales, Australia.

**NSW PPP Guidelines** means the NSW specific 'Public Private Partnership Guidelines' published by the NSW Treasury and available at [treasury.nsw.gov.au/projects-initiatives/public-private-partnerships](http://treasury.nsw.gov.au/projects-initiatives/public-private-partnerships)

**O&M Contract** means the deed titled "O&M Contract" between OpCo and the O&M Contractor.

**O&M Contract Side Deed** means the deed titled "O&M Contract Side Deed" between the Principal, OpCo, the O&M Contractor, the O&M Guarantor and the D&C Contractor as described in section 6.10 (*Side Deeds*).

**O&M Contractor** has the meaning given in section 5.2.2.1 (*Core Contractors and Core Contractor Guarantors*).

**O&M Guarantor** has the meaning given in section 5.2.2.1 (*Core Contractors and Core Contractor Guarantors*).



**OpCo** means Parklife Metro Pty Ltd in its personal capacity and as trustee of the Parklife Metro Unit Trust.

**OpCo HoldCo** means Parklife Metro Holdings Pty Ltd ACN 663 673 489 in its personal capacity and in its capacity as trustee of the Parklife Metro Holdings Unit Trust..

**Principal** means Sydney Metro.

**Principal Project Agreements** means those project agreements to which the Principal is a party.

**Project** means the Sydney Metro – Western Sydney Airport project and the operation and maintenance of the same.

**PSC** means the public sector comparator as described in section 4.5 (*Public Sector Comparator*).

**Request for Proposal**, or **RFP** means the invitation to submit a proposal for the SSTOM PPP in the RFP stage of the procurement process.

**Rhomberg Rail Significant Contractor** has the meaning given in section 5.2.2.2 (*Significant Contractors*).

**Richard Crookes Significant Contractor** has the meaning given in section 5.2.2.2 (*Significant Contractors*).

**SBT Contract** has the meaning given in section 3.4 (*Major contracts*).

**SBT Contractor** has the meaning given in section 3.4 (*Major contracts*).

**SBT Works** has the meaning given in section 3.4 (*Major contracts*).

**SCAW Contract** has the meaning given in section 3.4 (*Major contracts*).

**SCAW Contractor** has the meaning given in section 3.4 (*Major contracts*).

**SCAW Works** has the meaning given in section 3.4 (*Major contracts*).

**Security Trustee** means National Australia Bank Limited ABN 12 004 044 937.

**Siemens Mobility Significant Contractor** has the meaning given in section 5.2.2.2 (*Significant Contractors*).

**Significant Contractor** means each of the entities described in section 5.2.2.2 (*Significant Contractors*).

**Significant Contract** means each of the contracts listed in section 6.7 (*Significant Contracts*).

**Significant Contractors** has the meaning given at section 5.2.2.2 (*Significant Contractors*).

**Significant Contractor Guarantor** means the guarantor for the relevant Significant Contractor.

**SMEC and Arup Design Significant Contractor** has the meaning given at section 5.2.2.2 (*Significant Contractors*).

**SSTOM PPP** means:

- (a) the financing, design and construction of the SSTOM Works and the temporary works and the performance of the other delivery activities;
- (b) the operation and maintenance of Sydney Metro – Western Sydney Airport; and
- (c) the handback to the Principal of Sydney Metro – Western Sydney Airport.

**SSTOM Project Deed** has the meaning given in section 3.4 (*Major contracts*).

**SSTOM Specification** means the Particular Specifications and the General Specification contained in Exhibit 1 (SSTOM Specification) to the SSTOM Project Deed.

**Strategy** means the NSW Government's 'Future Transport Strategy 2056', as further described in section 2.1 (*Future Transport Strategy 2056*).

**Sydney Metro** has the meaning given in section 1 (*Introduction*).

**Sydney Metro – Western Sydney Airport** means the railway line from St Marys to Western Sydney Aerotropolis including the SBT Works, SCAW Works and SSTOM Works.

**TAO** or **Technically Assured Organisation** means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status for the Project by TfNSW.

**TLS Contractor** is the Through Life Support Contractor and has the meaning given in section 5.2.3 (*TLS Contractor and TLS Guarantor*).

**TLS Contractor Guarantor** is the Through Life Support Contractor Guarantor and has the meaning given in section 5.2.3 (*TLS Contractor and TLS Guarantor*).

**TLS Deed** is the Through Life Support Deed and has the meaning given in section 6.18 (*TLS Deed*).

**TLS Guarantee** is Through Life Support Guarantee and has the meaning in section 28.5 (*TLS Guarantee*).

**TfNSW** means Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW).

**Western Sydney International** means Western Sydney International (Nancy-Bird Walton) Airport, as further described in section 2.2 (*Western Sydney International (Nancy-Bird Walton) Airport*).

**WPI** means the "Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses" as maintained and published quarterly by the Australian Bureau of Statistics (ABS).

### **Have your say**

If you have any questions or would like more information please contact our project team:

**1800 717 703** Community infoline open 24 hours

[sydneymetrowsa@transport.nsw.gov.au](mailto:sydneymetrowsa@transport.nsw.gov.au)

**Sydney Metro – Western Sydney Airport**

PO Box K659, Haymarket NSW 1240



### **Translating and interpreting service**

If you need help understanding this information, please contact the Translating and Interpreting Service on **131 450** and ask them to call us on **1800 717 703**.