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Sydney Olympic Park Authority

Summary of Stadium Australia contracts





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This report is intended for use only as an introductory guide to the contracts it covers and should not be relied upon for legal advice.



Summary of Stadium Australia contracts

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I Introduction

This report summarises the main contracts, from a public sector perspective, concerning Stadium Australia at Olympic Park, Homebush Bay.

Many of the original contracts have been amended since they were first executed in 1996, and others have been added. This report focuses on the contracts as they stood in April 2002, but it includes references to earlier versions of the older contracts to assist readers in following the development of the project and its contractual structure.

Some of the original contracts were concerned solely with arrangements for the Olympics and Paralympics and no longer affect the development, financing, operation or maintenance of the project. For completeness, these contracts are summarised in *Appendix A*.

This report focuses on those Stadium Australia project contracts under which public sector organisations have entered into contractual obligations with private sector entities. Other project contracts and the parties to them are referred to only to the extent necessary to explain the public sector's exposure. For more information on the original (1996) versions of these other contracts, from the perspective of the private sector parties, the reader is referred to the *Stadium Australia Group's Gold Package and Platinum Package Prospectuses* of 30 September 1996 and the *Supplementary Prospectuses* issued on 23 December 1996.

I.1 Sources of project financing

The original private sector sponsors of the project, forming the "Stadium Australia Group", were Multiplex Constructions, Hambros Australia, Obayashi Corporation and Macquarie Corporate Finance. All of these "founders" except Hambros contributed equity to the project, Hambros' original commitment to contribute equity upon completion of the stadium having been taken over by a new "founder", Ronnwin Pty Ltd, in March 1999.

Gardner Merchant, Sodexo Alliance and Coca-Cola Amatil have also made significant equity investments in the project.

Other funding has come from:

- Two fully underwritten public floats which opened on 7 October 1996, with 34,400 "Gold Membership" packages, each costing \$10,000, and 600 "Platinum Membership" packages, each costing \$34,000, being offered by the Stadium Australia Group.

The underwriters of these floats were Deutsche Morgan Grenfell Structured Finance Australia, ANZ Securities, Macquarie Underwriting and ABN Amro Hoare Govett.

- Debt funding for the initial construction of the stadium, from ANZ Bank and ABN Amro Hoare Govett
- Term debt funding for the operation of the project, from ANZ Bank
- Additional debt funding from ANZ Bank and a Multiplex special purpose company, Multiplex Stadium Financing Pty Limited, and
- The NSW Government, which has made a series of capital contributions and two loans to help fund various aspects of the project.

The stadium site is owned by the NSW Government through the Sydney Olympic Park Authority (SOPA), which took over the relevant responsibilities of the Olympic Coordination Authority (OCA) on 17 July 2001.

Members of the Stadium Australia Group have a lease of the stadium until 31 January 2031 and will operate, maintain and repair the stadium throughout this lease, after which ownership and control of the facility will revert to the Government.

I.2 Project history

In August 1994 the NSW Government issued a *Call for Proposals* for private sector investment in a stadium for the Olympics and Paralympics at Homebush Bay.

Following a review of the proposals received, three proponents were shortlisted by the Government and issued with a *Call for Detailed Proposals* on 14 June 1995, with a closing date of 11 September 1995.

Proposals were received from all three shortlisted proponents, and a detailed final assessment report was completed by the OCA on 19 December 1995.

In January 1996 the Olympic Subcommittee of Cabinet approved the OCA's recommendation that the OCA should enter into negotiations with the Australia Stadium 2000 consortium (as the preferred proponent was then known) to build, finance and operate the stadium.

Execution of the negotiated Project Agreement for the design, construction, financing, operation and maintenance of the stadium

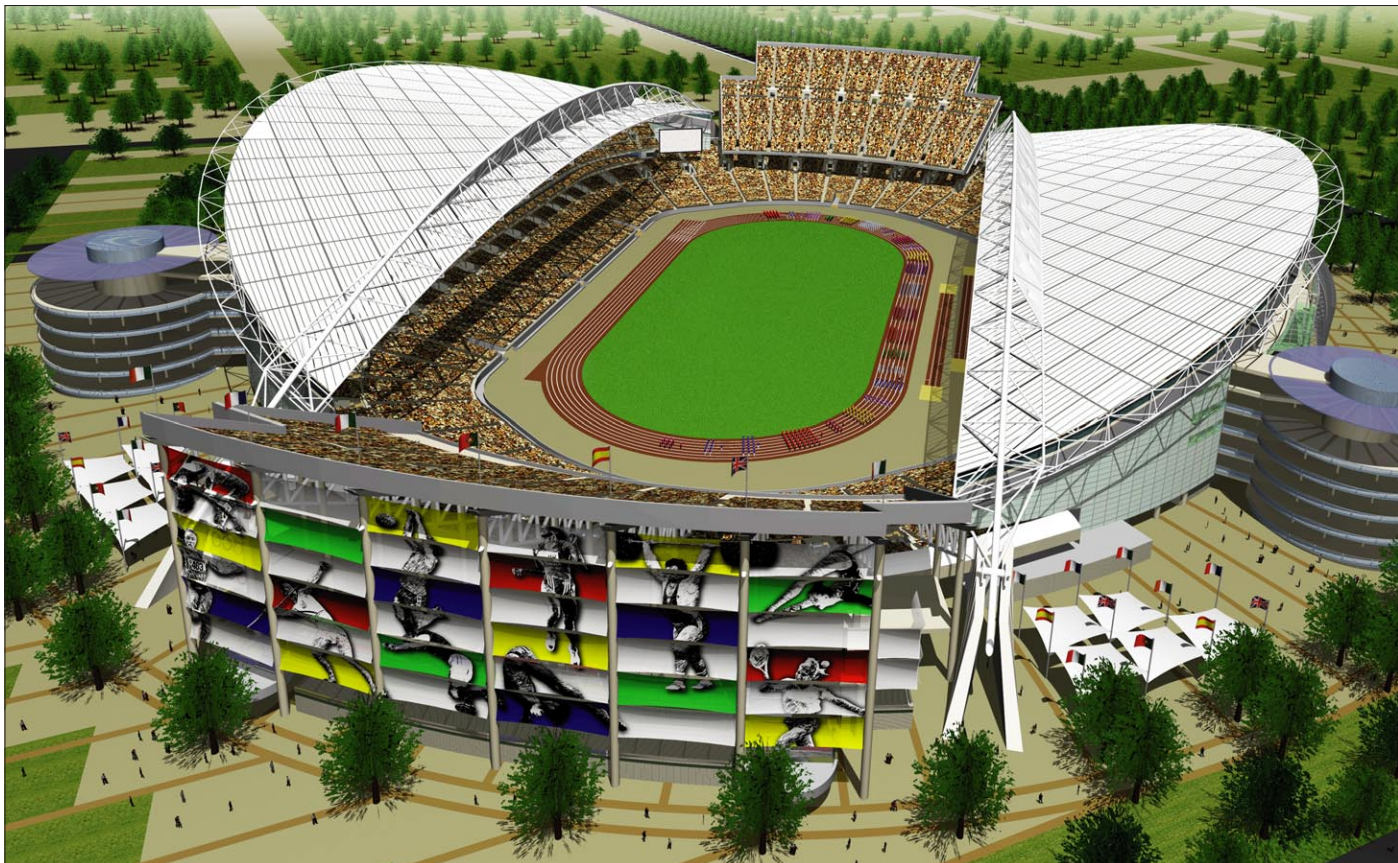


Figure 1. A 1996 artist's impression of Stadium Australia in its Olympics ("Stage 1") configuration, with seating for 110,000 people.

was approved by the Olympic Subcommittee of Cabinet in July 1996.

Development consent for the stadium under the Environmental Planning and Assessment Act was granted by the Minister for Urban Affairs and Planning on 8 August 1996.

On 27 August 1996 the Government, the Sydney Cricket and Sports Ground Trust and members of the Stadium Australia consortium agreed on Government-funded rebates to members of the Sydney Cricket and Sports Ground Trust who subscribed to Stadium Australia "Gold" or "Platinum" packages, along with a capital grant to the Sydney Cricket and Sports Ground Trust to reduce its debts.

On 9 September 1996, the Government announced the commencement of work and the formal signing of the Project Agreement and other contracts with the Stadium Australia Trust and Stadium Australia Management, a unit trust and company formed by the Australia Stadium 2000 consortium, now known as the Stadium Australia Group, to oversee and manage the stadium's development and operation.

The main initial contracts summarised in this report were progressively signed from 16 September 1996 and became binding on 31 December 1996.

The first of a series of building approvals under the Local Government Act was granted by the OCA on 13 September 1996.

The public floats for "Gold Membership" and "Platinum Membership" packages opened on 7 October 1996 and were originally scheduled to close on 29 November 1996. On 13 December 1996,

following a shortfall in "Gold Membership" subscriptions, the OCA and the Sydney Organising Committee for the Olympic Games (SOCOG) agreed to an extension of the offer period to no later than 27 March 1997, in return for changes to the project contracts to ensure earlier payments of securities and other funds to the OCA and SOCOG and to ensure that OCA and SOCOG would receive all the payments stipulated in the original contracts regardless of the final success of the floats. *Supplementary Prospectuses* were issued by the Stadium Australia Group on 23 December 1996.

This extension did not affect construction work on the stadium, which proceeded as originally scheduled. A number of the contracts were amended, however, as discussed in this report, to reflect other changes necessitated by the extension of the floats and to ensure that the OCA, SOCOG and all other parties, except for the underwriters of the floats, were placed in substantially the same commercial and financial position they would have been in had the extension not been granted.

Practical completion of the stadium in its Olympics ("Stage 1") configuration, with a seating capacity of 110,000 people, was achieved on 1 March 1999, and a lease until 31 January 2031, commencing on 1 March 1999, was executed on 20 December 1999.

The stadium is now being reconfigured to seat at least 72,000 people when it is being used for Australian Football (AFL) matches and at least 76,000 people when it is being used for Rugby League, Rugby Union and soccer games.

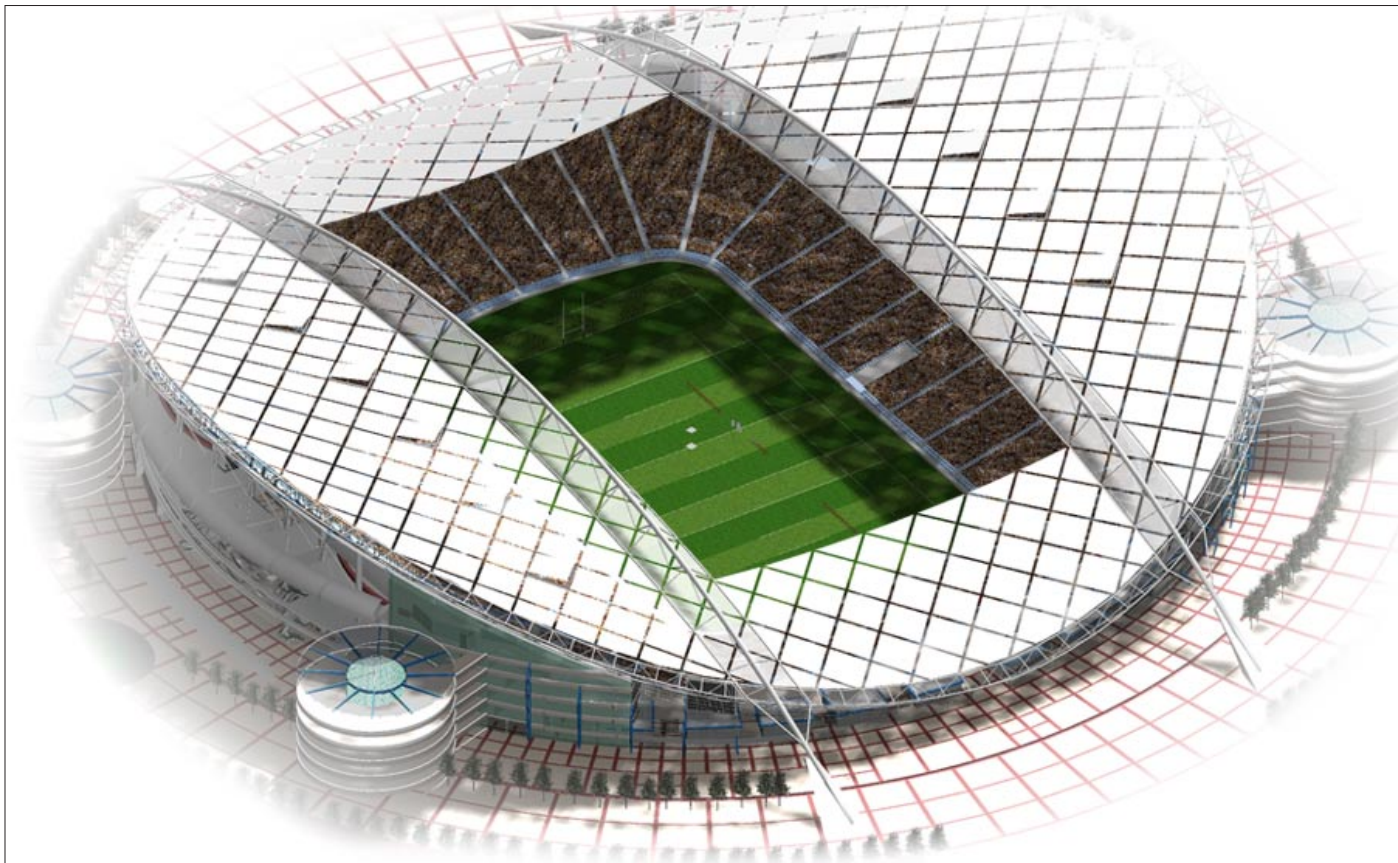


Figure 2. A 1996 artist's impression of Stadium Australia after the current "Stage 2" works, with seating for at least 72,000 people in the stadium's AFL mode (below left) and at least 76,000 people in its Rugby League/Rugby Union/soccer mode (below right and above).

Some of these "Stage 2" conversion works, now scheduled for completion by 31 March 2003, were covered by the initial (1996) project contracts, but others, including the AFL works and other changes in the nature and funding of the reconfigurations, were the subject of new and amended contracts executed on 20 December 1999 and between 21 August and 13 November 2001. The changes during 2001 were also associated with arrangements for the hiring of the stadium for AFL games by the Sydney Swans and with revised private sector financial and management arrangements.

Miscellaneous other amendments to the contracts, arising from the introduction of GST and changes in the identity of the trustee of the Stadium Trust, were also made in 2000 and 2001.

1.3 The structure of this report

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

Sections 3 to 8 summarise the main features of the key agreements which are still in operation.

Appendix A summarises some of the main features of other agreements, now terminated, specifically concerned with arrangements for the Olympics and Paralympics.



2 Overview of the project contracts

2.1 The participants in the project

The principal original public sector party to the Stadium Australia project contracts was the **Olympic Co-ordination Authority (OCA)**. Constituted under the Olympic Co-ordination Authority Act 1995, the OCA was responsible for delivering the major Olympic facilities, including the stadium, and also had functions with respect to the orderly and economic development of the Homebush Bay area of Sydney.

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

On 17 July 2001, upon the commencement of the Sydney Olympic Park Authority Act 2001, the OCA's functions of relevance to the Stadium Australia project were taken over by the **Sydney Olympic Park Authority (SOPA)**, which automatically stepped into the OCA's shoes for all the then-existing project contracts to which the OCA had been a party.

The other main original public sector party was the **Sydney Organising Committee for the Olympic Games (SOCOG)**, constituted under the Sydney Organising Committee for the Olympic Games Act 1993. SOCOG's primary objective was to organise and stage the Olympic Games in Sydney in 2000.

In addition to contracting in this role, SOCOG entered into various Stadium Australia project contracts on behalf of **Sydney Paralympic Organising Committee Limited (SPOC)**, whose primary objective was to organise and stage the Paralympics in Sydney in the same year.

The **Minister for Sport and Recreation** and the **Sydney Cricket and Sports Ground Trust** contracted with two of the Stadium Australia parties on issues relating to the rights of members of that Trust to obtain complimentary tickets purchased by that Trust to major sporting events transferred to Stadium Australia, and also to arrange Government-funded rebates for members of that Trust who subscribed to Stadium Australia "Gold Membership" or "Platinum Membership" packages.

The principal private sector sponsors—termed its "founders"—were:

- **Multiplex Constructions Pty Limited ("Multiplex")**, the design and construction contractor for the project.
- **Hambros Australia Limited ("Hambros")**, which has operated as a merchant bank in Australia since 1978. A subsidiary of Hambros Australia, Hambros Corporate Finance Limited, was a joint financial adviser to the Stadium Australia consortium.

Ronwin Pty Limited subsequently took over Hambros' obligation, under a September 1996 Founders' Subscription Agreement, to make an equity contribution to the project upon the completion of the stadium in its Olympics ("Stage 1") configuration. This change was formalised in a novation deed executed on 5 March 1999.

- **Macquarie Corporate Finance Limited**, part of the Macquarie Bank Group, a large Australian owned investment bank. Macquarie was the other joint financial adviser to the consortium.
- **Obayashi Corporation ("Obayashi")**, the head contractor in the project.

In addition to the equity investments in the project made by these project founders (and also, in Multiplex's case, by a subsidiary, Multiplex Constructions (Investments) Pty Limited), equity investments have been made by three "commercial investors":

- **Ogden International Facilities Corporation (Australia) Pty Limited**, a 50:50 joint venture between Ogden Corporation and Queensland Leisure Pty Limited. A subsidiary, **Ogden International Facilities Corporation (Sydney) Pty Limited ("Ogden IFC")**, is operating and managing the stadium.
- **Sodexo Alliance**, a French catering and management services group. Originally this equity contribution was to have been made by Gardner Merchant International Holdings Limited, a wholly owned subsidiary of Sodexo, under a September 1996 Commercial Investor's Subscription Agreement. Sodexo's assumption of this obligation was formalised in a novation agreement on 10 March 1999. Another Sodexo subsidiary, Gardner Merchant (Venues) Australia Pty Limited, is the caterer for the stadium.

- **Coca-Cola Amatil Limited**, which is also the exclusive supplier of soft drinks for the first ten years of operation of the stadium (apart from during the Olympics and Paralympics).

As indicated earlier, the public floats to raise funding for the Stadium Australia project were fully underwritten by **Deutsche Morgan Grenfell Structured Finance Australia Limited**, **ANZ Securities Limited**, **Macquarie Underwriting Limited** and **ABN Amro Hoare Govett Limited** (“**ABN Amro**”).

Construction debt finance was provided by **ANZ Banking Group Limited** (“**ANZ Bank**”) and **ABN Amro**, and after Stage 1 of the stadium was completed **ANZ Bank** provided long-term debt finance.

2.2 The parties to the contracts

The private sector parties to the project contracts to which the OCA/SOPA and/or SOCOG are or were also parties (*Figure 3*) are:

- The trustee of the Stadium Australia Trust (“the Trustee”), a unit trust established by the Stadium Australia consortium on 19 January 1996. The original trustee was **Perpetual Trustee Company Limited**. On 30 June 2000 **MTM Funds Management Limited** became the trustee and also took on the role of the trust’s “responsible entity”, following changes to the then Corporations Law, and on 10 July 2001 both roles were taken over by **MTM Investment Management Limited**.
- The trustee of the Olympic Rights Trust (the “Olympic Rights Trustee”), a trust established on 22 August 1996 to act for the rights of successful “Gold” and “Platinum Package” applicants to tickets for seats in the stadium during the Olympics. The original trustee was **Perpetual Trustee Company Limited**. On 30 June 2000 **MTM Funds Management Limited** became the trustee and “responsible entity” of this trust, and it continued in these roles until the trust was dissolved after the Olympics.
- The Manager of the Stadium Australia Trust (“the Trust Manager”), originally **Tower Hill Investment Managers Limited**, co-owned by **Hambros** and **Multiplex**. This role was taken over by **MTM Funds Management Limited** on 30 June 2000, when it became the “responsible entity” of the Stadium Australia Trust, and then by **MTM Investment Management Limited** when it became this trust’s “responsible entity” on 10 July 2001.
- **Stadium Australia Management Limited** (“the Operator”), which is now operating and maintaining Stadium Australia for the Stadium Australia Trust and for **Stadium Australia Club Limited**, a club to which successful “Gold” and “Platinum Package” applicants belong, giving them free seats at most sporting events during the 31¾-year lease of the stadium by the Stadium Australia Trust.
- **Obayashi** and **Multiplex**.
- For the purposes of agreeing to the private sector’s equity subscription arrangements, the “founders” (**Multiplex**, **Hambros**, **Macquarie Corporate Finance Limited** and **Obayashi**, and later **Ronnwin Pty Limited**) and the “commercial investors” (**Ogden International Facilities Corporation (Australia) Pty Limited**, **Gardner Merchant International Holdings Limited** and **Coca-Cola Amatil Limited**, and later **Sodexo Alliance**).
- **ANZ Capel Court Limited** (“the Security Agent”), as the security agent for the Stadium Australia Trust’s debt financiers, **ANZ Bank** and **ABN Amro**.
- For the purposes of the agreements that permitted the extension of the public floats, the Trustee, the Trust Manager, the Operator, **Hambros** and the underwriters of the floats, **Deutsche Morgan Grenfell Structured Finance Australia Limited**, **ANZ Securities Limited**, **Macquarie Underwriting Limited** and **ABN Amro**.
- For the purposes of arrangements associated with the hiring of the stadium for Australian Football (AFL) games, **Sydney Swans Limited**.

2.3 Contractual structure

The contractual structure of the project—inasmuch as the contracts potentially affect public sector risks and benefits—is summarised in *Figure 3* (for the original 1996 and 1997 contracts and a contract executed in March 1999) and *Figure 4* (taking account of later amending and new contracts, between 20 December 1999 and 13 November 2001).

The core contract is the **Project Agreement** of 16 September 1996 between the OCA/SOPA and the Trustee. This agreement:

- Permitted and obliged the Trustee to finance, plan, design, construct and commission Stadium Australia in its “Stage 1” mode, plus its fitout for the Olympics, apart from certain works to be undertaken for and financed by the OCA/SOPA under other contracts (the **OCA Construction Contract** of 16 September 1996 and the **OCA Works Co-ordination Deed** of 16 September 1996).
- Obliged the Trustee to procure the operation, maintenance and repair of the stadium during the term of the **Land Lease** from the OCA/SOPA to the Trustee (i.e. from the completion of Stage 1 on 1 March 1999 until 31 January 2031 or any earlier termination of the agreement).
- Obligated the Trustee to make the stadium available to SOCOG for the Olympic Games, the Paralympics and earlier “test” events, as set out in other contracts (the **Venue Agreement** and the **Commercial Rights Agreement**, both of which have since been terminated).
- Obligated and obliged the Trustee to reconfigure the stadium after the Paralympics to its long-term (“Stage 2”) mode, apart from certain works to be undertaken for and financed by the OCA/SOPA under other contracts (initially the **OCA Con-**

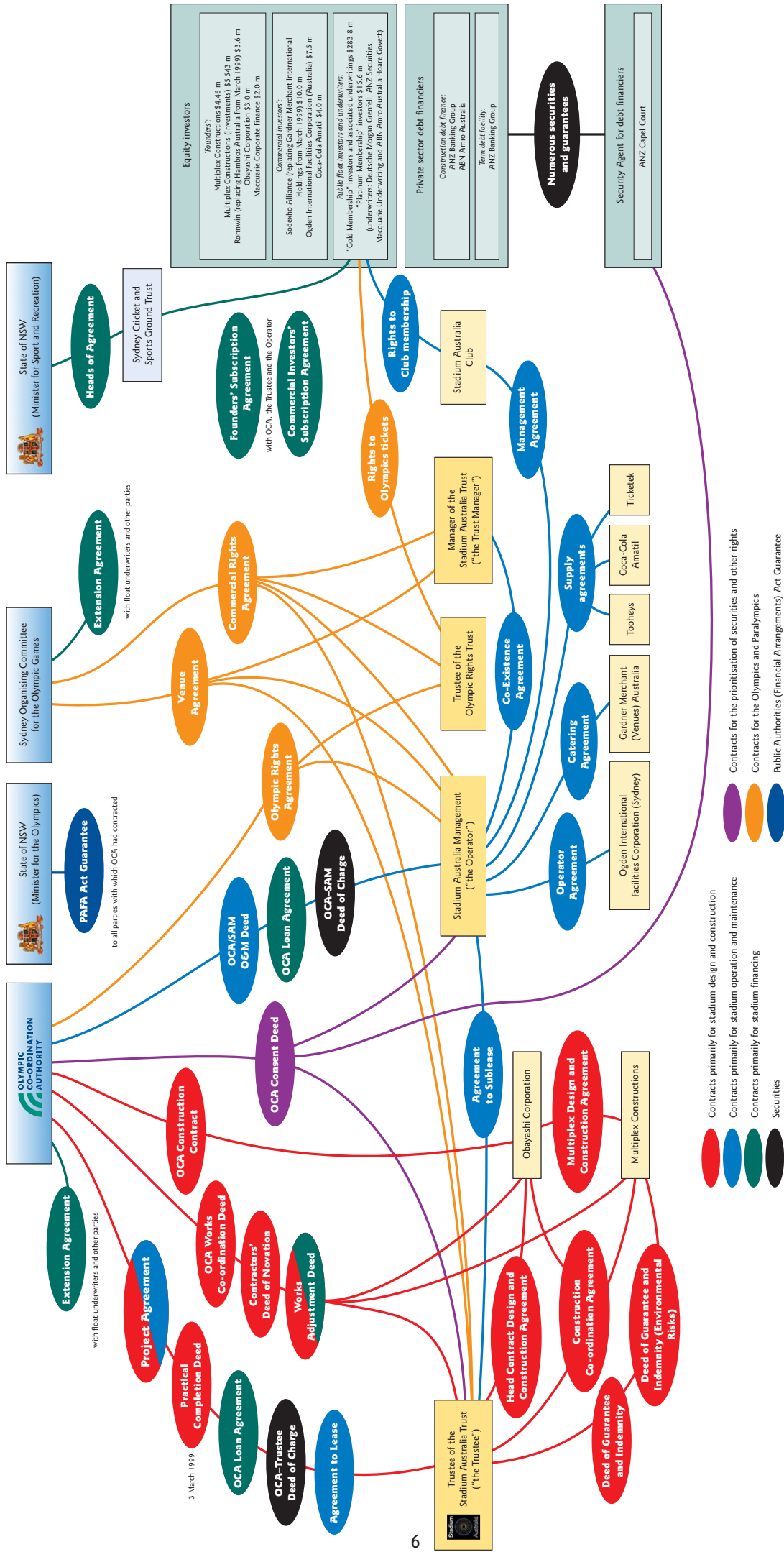


Figure 3. Original (1996, 1997 and early 1999) Stadium Australia contracts involving (or otherwise of direct relevance to) public sector parties.

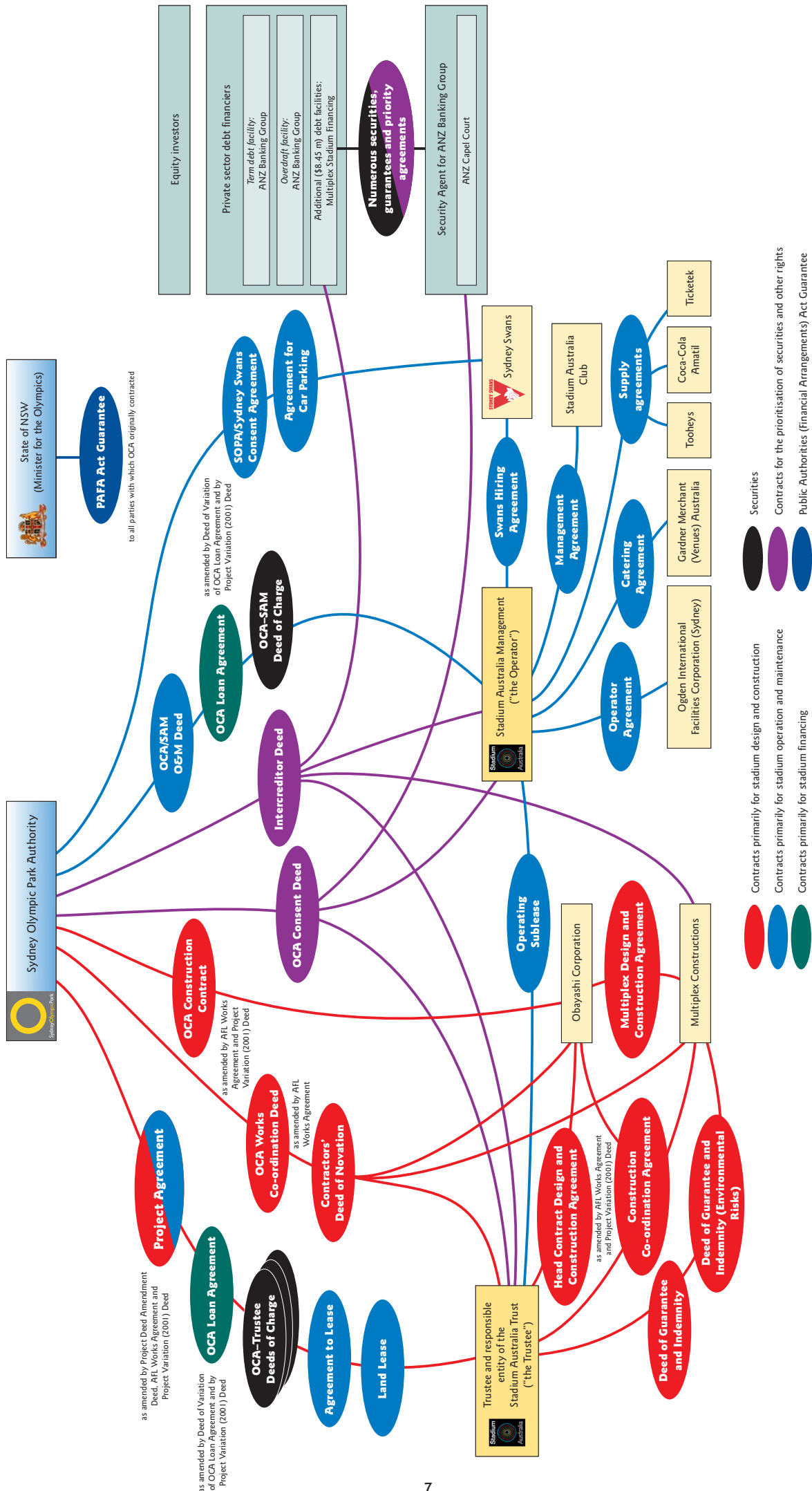


Figure 4. Current (June 2002) Stadium Australia contracts involving (or otherwise of direct relevance to) public sector parties.

struction Contract, the OCA Works Co-ordination Deed and the OCA Loan Agreement of 22 November 1996, and later the Works Adjustment Deed of 21 October 1997, the AFL Works Agreement of 20 December 1999, the Project Agreement Amendment Deed of 20 December 1999, the Deed of Variation of OCA Loan Agreement of 20 December 1999 and the Project Variation (2001) Deed of 13 November 2001).

- Obliges the Trustee to yield up possession of the stadium to the OCA on 31 January 2031 or any earlier termination of the agreement.

Under three OCA–Trustee Deeds of Charge (of 22 November 1996, 30 June 2000 and 21 June 2001) the Trustee has granted the OCA/SOPA fixed and floating charges over its assets and rights to indemnities—ranking second only to the security interests of the Trustee’s principal debt financier, the ANZ Bank—to secure the Trustee’s obligations to the OCA/SOPA under the Project Agreement and other key project contracts. Other “securities” required from the Trustee are set out in the Project Agreement itself.

Under an Agreement to Lease between the OCA and the Trustee, the OCA:

- Granted the Trustee, the Operator and their contractors rights of access to the construction site for the stadium and its surrounding precinct, and
- Agreed to grant the Trustee the Land Lease, for the land occupied by the stadium itself, from practical completion of Stage 1 of the stadium to 31 January 2031 or any earlier termination date.

Under this lease, which was subsequently executed on 20 December 1999 on terms based on those annexed to the Agreement to Lease, the Trustee must pay the OCA/SOPA rent linked to the rent payable to the Trustee by the Operator under the Operating Sublease, also executed on 20 December 1999 on terms based on an annexure to the Agreement to Sublease between the Trustee and the Operator. The Land Lease also entitled the Trustee, the Operator and their contractors to access the larger construction site around the stadium for the purposes of fitting out the stadium for the Olympics and entitles them to access these areas for the purposes of reconfiguring the stadium and its precinct.

To fulfil its design and construction obligations to the OCA/SOPA, on 31 August 1996 the Trustee entered into a Head Contract Design and Construction Agreement with Obayashi under which Obayashi assumed responsibility for the Trustee’s obligations under the Project Agreement for most of the design, construction and fitout of the stadium.

Shortly afterwards, on 16 September 1996, the OCA entered into the OCA Construction Contract with Obayashi to cover the construction of the balance of the stadium, all of the stadium precinct and parts of the work of reconfiguring the stadium and the precinct after the Paralympics. The OCA/SOPA has funded and

will fund the works carried out under this contract, the scope of which was subsequently varied by the Works Adjustment Deed, the AFL Works Agreement, the Project Agreement Amendment Deed and the Project Variation (2001) Deed.

In turn, Obayashi sub-contracted its design and construction obligations under the Head Contract Design and Construction Agreement and the OCA Construction Contract to Multiplex, under the Multiplex Design and Construction Agreement of 31 August 1996. The Trustee, Obayashi and Multiplex entered into a series of arrangements to co-ordinate their activities and provide backing for the Trustee’s and Obayashi’s obligations to the OCA/SOPA, including a Construction Co-ordination Agreement of 31 August 1996 (later amended by the AFL Works Agreement and the Project Variation (2001) Deed), a Deed of Guarantee and Indemnity and a Deed Of Guarantee and Indemnity (Environmental Risks). The Contractors’ Deed of Novation of 3 October 1996, between the OCA/SOPA, the Trustee, Obayashi and Multiplex, effectively provides that if the Project Agreement is terminated by SOPA, SOPA may step into the shoes of the Trustee under the Head Contract Design and Construction Agreement, and/or Obayashi under the Multiplex Design and Construction Agreement, and deal directly with Obayashi and/or Multiplex so that construction work can continue.

The OCA Works Co-ordination Deed of 16 September 1996, between the OCA/SOPA, the Trustee, Obayashi and Multiplex, is designed to co-ordinate and integrate:

- The performance of the Trustee’s design and construction obligations under the Project Agreement (and hence Obayashi’s and Multiplex’s performance of these “Trustee works” under the Head Contract Design and Construction Agreement and the Multiplex Design and Construction Agreement, respectively), and
- The performance by Obayashi of its design and construction obligations under the OCA Construction Contract (and hence Multiplex’s performance of these “OCA works” under the Multiplex Design and Construction Agreement).

Under this deed, the risk profile of the OCA/SOPA is essentially the same as it would have been had the “OCA works” formed part of the “Trustee works” under the Project Agreement, apart from its obligation to pay Obayashi for the “OCA works”. Among other things, Obayashi has promised to the Trustee that it will perform and complete the “OCA works” as if they were part of the “Trustee works” under the Head Contract Design and Construction Agreement, and integrate the design and construction of both sets of works, while the Trustee has promised that it will manage and supervise the performance of the “OCA works” as if they formed part of the “Trustee works” under the Project Agreement.

Under the original (1996) contracts the final scopes of the “Trustee works” and “OCA works” were to be finalised following the “setting” of interest rates as at 31 December 1996. Under the OCA Works Co-ordination Deed of 16 September 1996 and the

Works Adjustment Deed of 21 October 1997—based on a draft deed annexed to the OCA Works Co-ordination Deed—there was an adjustment to each scope of works, and hence the contract prices, to take account of movements in interest rates between 1 December 1995 and 31 December 1996. Because interest rates had fallen, the scope of the “Trustee works”, and hence the Trustee’s project funding obligations under the Project Agreement, was increased (by just under \$10 million), while the scope of the “OCA works, and hence the amount payable to Obayashi by the OCA/SOPA under the OCA Construction Contract, was correspondingly decreased. Under the **OCA Loan Agreement** of 22 November 1996, between the OCA/SOPA, the Trustee and the Operator, the OCA/SOPA agreed to lend the Trustee some or all of the funds needed for extra “Trustee works”, up to a limit of \$9 million. It was expected at the time that this loan would be for about \$6 million, but it is now expected to be for the full \$9 million.

On 3 March 1999 the OCA and the Trustee entered into a **Practical Completion Deed** under which the Trustee agreed to complete specified works which had not at that time been completed to the OCA’s satisfaction, and provided an additional bank security for its performance of these obligations.

On 20 December 1999 the scopes, timings and prices of the “Stage 2” “Trustee works” and “OCA works” were amended again—mainly to accommodate additional works to permit the final “Stage 2” stadium to be configured for Australian Football (AFL) games as well as Rugby League, Rugby Union and soccer games—by the **AFL Works Agreement**, the **Project Agreement Amendment Deed**, subsequent variation orders issued by the OCA under the Project Agreement and the OCA Construction Contract and the **Deed of Variation of OCA Loan Agreement**, which incorporated a **Revised and Restated OCA Loan Agreement**. Among other things, the OCA agreed to pay Obayashi \$6 million and lend the Trustee up to a further \$3 million for the AFL conversion works. The Project Agreement Amendment Deed also significantly relaxed provisions in the original Project Agreement requiring renegotiation of the Stadium Australia contracts if the project were adversely affected by the development or redevelopment of competitive stadiums.

The scopes, timings and prices of the “Trustee works” and “OCA works” were further amended on 13 November 2001 by the **Project Variation (2001) Deed** between SOPA, the Trustee, the Operator, Obayashi, Multiplex, ANZ Bank and the Security Agent.

The Trustee obtained debt funding for the design and construction of “Stage 1” of the “Trustee works” from ANZ Bank and ABN Amro under a \$161 million **Construction Loan Facility Agreement**. Upon the completion of construction, this debt was refinanced under a 15-year, \$125 million **Term Loan Facility Agreement** between the Trustee and ANZ Bank. Additional private sector debt finance was provided to the Trustee by ANZ Bank (through an overdraft facility) and Multiplex Stadium Financing Pty Limited in 2001. The original construction loan facility and the

current ANZ Bank term loan facility had and have priority over any loans provided by the OCA/SOPA under the OCA Loan Agreement, and also over Multiplex Stadium Financing loans, the securities for which rank equally, under the **Intercreditor Deed** of 13 November 2001, between SOPA, the Trustee, the Operator, Multiplex and Multiplex Stadium Financing, with SOPA’s securities for the OCA/SOPA loans.

Securities for the Trustee’s debt financing arrangements with ANZ Bank are held by the Security Agent, ANZ Capel Court. Under the **OCA Consent Deed** of 22 November 1996 between the OCA/SOPA, the Security Agent, the Trustee and the Operator, confirmed by the Intercreditor Deed of 13 November 2001, these financiers’ securities have priority over the securities of the OCA/SOPA under three **OCA–Trustee Deeds of Charge** and an **OCA–SAM Deed of Charge** with the Operator, Stadium Australia Management, discussed below. The OCA Consent Deed also regulates the manner in which the parties may exercise their rights if the Trustee defaults on its obligations or if the OCA/SOPA otherwise becomes entitled to terminate the Project Agreement, the Agreement to Lease or the Land Lease.

As indicated earlier in this report, most of the private sector’s funding for the project was raised through the public floats for “Gold Membership” and “Platinum Membership” packages which opened on 7 October 1996, and the underwriting of these floats.

On 27 August 1996 the Minister for Sport and Recreation, the Sydney Cricket and Sports Ground Trust and the Stadium Australia Operator and Trust Manager signed legally binding **Heads of Agreement** under which:

- The Government agreed to pay for rebates to be made by Stadium Australia to Sydney Cricket and Sports Ground Trust “gold” and “double gold” members who subscribed to Stadium Australia “Gold” or “Platinum” packages. These rebates were \$1,000 for each “gold” member who subscribed to one or more Stadium Australia “Gold” or “Platinum” packages, and \$2,000 for each “double gold” member who subscribed to two or more Stadium Australia “Gold” packages or one or more “Platinum” packages.
- The Government also agreed to provide a substantial capital grant to the Sydney Cricket and Sports Ground Trust to reduce its current debt. The savings achieved by that Trust as a result were to be used by it to purchase tickets at Stadium Australia for major sporting events that might be transferred to the new stadium, up to a limit of 5,000 seats for any individual event. These tickets are to be available from that Trust, free of charge, to those members of that Trust who did not become “Gold” or “Platinum” Stadium Australia subscribers, with a ballot for the tickets being held by that Trust if necessary.

The Stadium Australia public floats were originally scheduled to close on 29 November 1996, with the allotment of stapled units and shares to subscribers being made by 31 December 1996, but on 13 December 1996, after a shortfall in “Gold Membership”

applications, the OCA and SOCOG agreed, in an **Extension Agreement** with the floats' underwriters, the Trustee, the Trust Manager, the Olympic Rights Trustee, Multiplex, the Operator and Hambros, to an extension of the offer period to no later than 27 March 1997, together with other arrangements designed to place all the parties except the underwriters in the same commercial and financial position they would have been in had the extension not been granted.

This Extension Agreement was itself amended on 23 December 1996 by an **Amending Agreement to Extension Agreement** between the same parties.

Among other things, this Extension Agreement, as amended, waived all the outstanding conditions precedent to the project contracts, subject only to three remaining conditions precedent: the availability to the Trustee of bridging finance from the underwriters, the OCA's receipt of Project Agreement security bonds, and the OCA's receipt of an initial portion of a Project Agreement cash performance bond. Under the terms of the waivers, and following the satisfaction of these three conditions precedent, all the contracts became binding on 31 December 1996.

Under the **Operating Sublease** granted by the Trustee when its Land Lease from the OCA became effective, the Operator is responsible to the Trustee for the performance of almost all the Trustee's obligations to the OCA/SOPA, under the Project Agreement, to manage, operate, maintain and repair the stadium from the completion of Stage I (1 March 1999) until the day before the end of the lease on 31 January 2031 or until any earlier termination of the lease.

In turn, the Operator has contracted:

- Under an **Operator Agreement**, for Ogden IFC to conduct the stadium's operational activities, including pre-opening services, marketing, staffing, maintenance, security, cleaning and emergency systems, managing sub-contractors and managing the Stadium Australia Club membership base.
- Under a **Stadium Catering Deed**, for Gardner Merchant (Venues) Australia to provide food, beverage and other catering services to patrons at Stadium Australia for events and functions during an initial ten-year term.
- Under exclusive supply agreements, for Tooheys to provide beer at the stadium, for Coca-Cola Amatil to provide soft drinks at the stadium and for Ticketek to provide ticketing services for general public admission.
- Under hire purchase agreements, for ANZ Bank to lease \$18 million of fitout equipment to the Operator for the operation of the stadium.

The **OCA/SAM O&M Deed** between the OCA/SOPA and the Operator sets out the terms and conditions under which the Operator is to discharge certain of the Trustee's operating, maintenance and repair obligations to the OCA/SOPA under the Project Agreement, and also stipulates arrangements for the Government

to hire the stadium for major post-Olympics international sporting events such as the Commonwealth Games.

On 21 August 2001 Ogden IFC (as the Operator's agent), Sydney Swans Limited, the Australian Football League and Sports Facilities Management Limited entered into a **Swans Hiring Agreement** under which the Sydney Swans will play specified numbers of AFL games at Stadium Australia during the 2002 to 2008 football seasons, with a possible extension of the agreement to 2016. In associated arrangements,

- SOPA and the Sydney Swans have agreed, in a **SOPA/ Sydney Swans Consent Agreement** of 31 August 2001, on negotiation and hiring arrangements for the Sydney Swans to continue to use the stadium if the Project Agreement and the Land Lease are terminated during the first four or seven years of the Swans Hiring Agreement, and
- SOPA and the Sydney Swans have agreed, in a **SOPA/ Sydney Swans Agreement for Car Parking** of 31 August 2001, that SOPA will provide at least 3,000 car parking spaces at Sydney Olympic Park for the Sydney Swans on AFL game days, and will operate shuttle buses to and from the car parks on these days.

The **Venue Agreement** between SOCOG, the Trustee, the Trust Manager and the Operator specified the terms on which the stadium was to be made available to SOCOG, rent-free, for the Olympic and Paralympic Games and various "test" events prior to the Olympics. This agreement, whose features are outlined in *Appendix A*, terminated automatically on 31 December 2000.

The rights of "Gold Membership" and "Platinum Membership" package investors to tickets for events at the stadium during the Olympics were set out in two documents.

The first, the **Commercial Rights Agreement** between SOCOG, the Trustee, the Olympic Rights Trustee, the Trust Manager and the Operator, provided for the granting by SOCOG of the requisite Olympic rights and regulated various marketing and operational activities by the Stadium Australia Group.

The second, the **Olympic Rights Agreement** between the OCA, the Olympic Rights Trustee and the Operator, committed the OCA to procuring:

- The issuing by SOCOG of Olympic tickets to people nominated by "Gold Membership" and "Platinum Membership" package subscribers, in accordance with the Commercial Rights Agreement, and
- The holding of the Olympics opening and closing ceremonies, track and field events and (subject to FIFA's approval) the men's soccer final at the stadium.

In return, the Olympic Rights Trustee paid the OCA \$1,750 for each "Gold Membership" package subscriber and \$8,000 for each "Platinum Membership" package subscriber—the "Olympic tickets" components of their \$10,000 and \$34,000 packages—or \$65 million in total. (Under the Extension Agreement, as amended by the Amending Agreement to Extension Agreement, the OCA

received this \$65 million, plus a \$215 million Project Agreement cash performance bond, notwithstanding the fact that the “Gold Membership” float was ultimately not fully subscribed.)

The Commercial Rights Agreement and the Olympic Rights Agreement terminated automatically on 31 December 2000. Their main features are outlined in *Appendix A*.

A **Public Authorities (Financial Arrangements) Act Guarantee deed poll**, made by the Minister for the Olympics on 26 November 1996 under delegation from the Treasurer and on behalf of the State of NSW under section 22B of the Public Authorities (Financial Arrangements) Act 1987, absolutely, irrevocably and unconditionally guaranteed and guarantees the performance of the OCA/SOPA under the Project Agreement, the Agreement to Lease, the Land Lease, the OCA Works Co-ordination Deed, the OCA Construction Contract, the OCA Consent Deed, and the OCA Loan Agreement, the Olympic Rights Agreement (now terminated) and any other project contracts approved by the Treasurer, to all the other parties to these contracts.

2.4 Conditions precedent

The substantive provisions of most of the project contracts outlined above and discussed below were subject to a series of conditions precedent, and were not to become binding until all of these conditions were either satisfied or waived.

In particular, the Project Agreement—other than its provisions relating to its conditions precedent, and certain obligations on the Trustee concerning earthworks under the OCA Construction Contract—was subject to the following conditions precedent:

- The execution of almost all the other “project documents”, as defined in the agreement, including most of the key contracts outlined above, plus the OCA Loan Agreement.
- The satisfaction of all conditions precedent in those documents, apart from some specified exceptions.
- The granting of all necessary Ministerial consents under the Public Authorities (Financial Arrangements) Act.
- The granting of development consent for Stadium Australia in a form acceptable to the parties.
- The receipt by the OCA of \$45 million in security bonds.
- A ruling or rulings by the Australian Taxation Office, acceptable to both the OCA and the Trustee, on specified taxation issues.
- The taking out of insurance policies as specified in the agreement, or as otherwise agreed by the parties.
- The execution of a Deed of Guarantee under the Public Authorities (Financial Arrangements) Act on terms satisfactory to the Trustee.
- “Financial close”, meaning the allotment of units in the Stadium Australia Trust and shares in the Operator to “Gold

Membership” and “Platinum Membership” package subscribers and the listing of these units and shares on the stock market.

- An audit of a “base case financial model” to the satisfaction of the OCA.

If these conditions precedent were not either satisfied or waived within ten or 16 weeks of the signing of the Project Agreement, depending on the particular condition precedent involved, either party had the right to terminate the agreement, and the Agreement to Lease, by giving 7 days’ notice.

However, as already indicated, the Extension Agreement of 13 December 1996, as amended by the Amending Agreement to Extension Agreement of 23 December 1996, waived all the outstanding conditions precedent to all the project contracts, subject only to three remaining conditions precedent:

- The availability to the Trustee of bridging finance by no later than 31 December 1996, in accordance with a draft agreement between the Trustee and the underwriters of the floats attached to the Extension Agreement.
- The OCA’s receipt of the Project Agreement’s security bonds by no later than 31 December 1996.
- The OCA’s receipt, by 31 December 1996, of an initial portion of the Project Agreement’s cash performance bond, calculated on the basis of float subscriptions at 19 December 1996.

These conditions precedent were satisfied, and all the original (1996) contracts became binding, on 31 December 1996.

2.5 Limits on the liabilities of the Trustee

All the contracts to which the Trustee is a party contain provisions limiting the scope of its liabilities.

These provisions stipulate that the Trustee has entered into the contracts solely in its capacity as the trustee of the Stadium Australia Trust, or solely as the trustee and responsible entity of that trust, and that if it breaches any agreement it will be liable only to the extent of its right to be indemnified out of the assets of the trust, unless:

- This indemnity is reduced because of the Trustee’s fraud, negligence, breach of trust or breach of duty, or
- The Trustee has made incorrect or misleading warranties about its powers to enter into or perform its obligations under the contracts.

As will be evident from the outline of the contracts in section 2.3, in most cases the obligations of the Trustee under its agreements with the OCA/SOPA were and are passed through to Obayashi, Multiplex, the Operator and their sub-contractors and suppliers, and these parties have in turn provided indemnities, guarantees and securities in favour of the Trustee and, in some cases, the OCA/SOPA.

3 The Project Agreement

Key features of the obligations of the OCA/SOPA and the Trustee under the Project Agreement dated 16 September 1996—as supplemented by the OCA Works Co-ordination Deed of 16 September 1996, the Contractors’ Deed of Novation of 3 October 1996, the Extension Agreement of 13 December 1996 (as amended by the Amending Agreement to Extension Agreement of 23 December 1996), the Works Adjustment Deed of 21 October 1997, the Practical Completion Deed of 3 March 1999, the Project Agreement Amendment Deed of 20 December 1999, the AFL Works Agreement of 20 December 1999, the SOPA/Sydney Swans Consent Agreement of 31 August 2001, the SOPA/Sydney Swans Agreement for Car Parking of 31 August 2001 and the Project Variation (2001) Deed of 13 November 2001—are summarised below.

3.1 The Trustee’s fundamental obligations and general acceptance of project risks

The Trustee’s fundamental obligations under the Project Agreement, as supplemented by the OCA Works Co-ordination Deed, the Extension Agreement, the Works Adjustment Deed, the Project Agreement Amendment Deed, the AFL Works Agreement and the Project Variation (2001) Deed, were and are to:

- Finance, plan, design, construct and commission the stadium in its pre-Olympics mode—“Stage 1” plus certain subsequent “overlay works” to fit out the Stage 1 stadium for the Olympics—apart from “OCA works” on the stadium that were undertaken by Obayashi for the OCA, and paid for by the OCA, under the OCA Construction Contract (as indicated earlier, Obayashi also carried out other “OCA works” under that contract on the stadium’s precinct).

The interactions between the Trustee’s works (the “Trustee works”) and the “OCA works” for “Stage 1” were governed by the OCA Works Co-ordination Deed. In practice, as discussed in section 4, all the design and construction of the “OCA works” for “Stage 1” were undertaken as if they formed part of the “Trustee works” under the Project Agreement (and, in turn, the Head Contract Design and Construction Agreement between the Trustee and Obayashi), the only difference being that they were paid for by the OCA, rather than the Trustee.

- Procure the operation, maintenance and repair of the stadium from the completion of “Stage 1” until 31 January 2031 or any earlier termination of the Project Agreement.
- Make the stadium available to SOCOG for the Olympic Games, the Paralympic Games and other events, as set out in the Venue Agreement and the Commercial Rights Agreement (see *Appendix A*).
- Reconfigure the stadium after the Paralympics to its long-term (“Stage 2”) mode.

The interactions between this “conversion works” component of the “Trustee works” and the “OCA works” to convert the stadium under the OCA Construction Contract, and the respective scopes of these works, are also governed by the OCA Works Co-ordination Deed, the Works Adjustment Deed, the Project Agreement Amendment Deed, the AFL Works Agreement and the Project Variation (2001) Deed. The “Stage 2” conversion works now include the “AFL works”, as broadly defined in the AFL Works Agreement, with these works being split into the “AFL Trustee works” (part of the “Trustee works” for “Stage 2”) and the “AFL OCA works” (part of the “OCA works” for “Stage 2”).

Again, all the design and construction of the “OCA works” for “Stage 2” are being undertaken as if they formed part of the “Trustee works” under the Project Agreement (and, in turn, the Head Contract between the Trustee and Obayashi), the only difference being that they are being paid for by SOPA, rather than the Trustee.

- Yield up possession of the stadium to SOPA on 31 January 2031 or upon any earlier termination of the Project Agreement.

Subject to specific terms in the Project Agreement discussed below, the Trustee accepted and accepts (as against the OCA/SOPA) all the risks associated with the project, including:

- The costs of development, financing and construction of the “Trustee works”
- The costs of procuring the operation, maintenance and repair of the stadium, and
- The risk that revenue from the project may be less than expected by the Trustee and its advisers.

More specifically,

- The Trustee is solely responsible for all expenses and damages associated with conditions encountered on the construction site, the clearing of the construction site, latent conditions, contamination, heritage and archaeological items and endangered flora or fauna on the construction site.
- Although the OCA/SOPA have paid and are paying for the “OCA works” on the stadium and its precinct under the OCA Construction Contract, the Trustee accepted and accepts all risks in relation to these “OCA works” as if they were part of the “Trustee works”.

The Project Agreement did not restrict the OCA and does not restrict SOPA in the exercise of any of their functions and powers under any legislation or fetter the discretion of the OCA/SOPA and the Government on whether or not to proceed with other facilities at Homebush Bay.

3.2 Design and construction of the ‘Trustee works’ under the Project Agreement

Scope of the ‘Trustee works’

Under the original (1996) contracts the “Trustee works” were defined by excluding from the work required for “Stage 1” and “Stage 2” of the stadium—as specified in a design brief exhibited to the Project Agreement—the “OCA stadium works” and “OCA stadium conversion works” identified in other exhibits to the Project Agreement and the OCA Construction Contract.

In general terms, the “OCA stadium works” were primarily the initial site earthworks, the stadium’s thrust blocks, its eastern and western roofs, artworks and works related to the Olympic flame and ceremonies, and the “OCA stadium conversion works” were most of the works then required to convert the stadium to its Stage 2 mode.

The “Trustee works” also included “overlay works”—again defined in an exhibit to the Project Agreement—to fit out the completed “Stage 1” stadium for the Olympics. These overlay works were quite separate from other Olympics fitout works undertaken and paid for by SOCOG in accordance with the Venue Agreement summarised in Appendix A.

As already indicated in section 2 of this report, under the OCA Works Co-ordination Deed of 16 September 1996 the OCA, the Trustee, Obayashi and Multiplex agreed that an adjustment would be made to the scopes of the “Trustee works” and “OCA works”—and, accordingly, to the contract prices and payment schedules under the Head Contract Design and Construction Agreement and the OCA Construction Contract—as soon as practicable after financial close, in accordance with a formula based on changes in interest rates. Under the Extension Agreement, financial close was deemed, for this and other purposes, to be on 31 December 1996,

even though the floats could, and did, remain open until 27 March 1997.

Accordingly, under the Works Adjustment Deed of 21 October 1997—based on a draft deed annexed to the OCA Works Co-ordination Deed—there was an adjustment to each scope of works, and hence the contract prices, to take account of movements in interest rates between 1 December 1995 and 31 December 1996. Because interest rates had fallen, the scope of the Trustee’s “Stage 2” works, and hence the Trustee’s project funding obligations under the Project Agreement, was increased (by just under \$10 million), while the scope of the OCA “Stage 2” works, and hence the amount payable to Obayashi by the OCA/SOPA under the OCA Construction Contract, was correspondingly decreased. (As discussed in sections 2 and 5, some of the funding for the increased scope of the “Trustee works” was provided to the Trustee by the OCA under the OCA Loan Agreement.)

On 20 December 1999 the scopes (and timings) of the “Stage 2” “Trustee works” and “OCA works” were amended again, mainly to accommodate additional works to permit the final “Stage 2” stadium to be configured for Australian Football (AFL) games as well as Rugby League, Rugby Union and soccer games, under the AFL Works Agreement and the Project Agreement Amendment Deed. Associated OCA variation orders under the Project Agreement and the OCA Works Co-ordination Deed, set out in two annexures to the AFL Works Agreement, were issued by the OCA to the Trustee and Obayashi on 24 December 1999. (As discussed in sections 2 and 5, some of the funding for the increased scope of the “Trustee works” was provided to the Trustee by the OCA under an additional loan facility under the OCA Loan Agreement, as amended by the Deed of Variation of OCA Loan Agreement of 20 December 1999.)

The scopes (and timings) of the “Trustee works” and “OCA works” were further amended on 13 November 2001 by the Project Variation (2001) Deed, mainly to accommodate work program delays and changes in some of the AFL conversion works.

General design and construction obligations

The Trustee has warranted that the design of Stadium Australia, as set out in the design brief exhibited to the Project Agreement, is and will be fit for its purpose and completed in accordance with the requirements of the Project Agreement. The Trustee was and is obliged to comply with this design brief, prepare design documentation and an asset management plan and submit them for progressive review by the OCA/SOPA, so that it may monitor this compliance.

The Trustee had and has an obligation to construct the stadium with good workmanship and materials, in accordance with the design brief, design documentation and other required construction documentation, and to ensure it is fit for its intended purpose.

The OCA could require the Trustee to take corrective action if it believed “Stage 1” was not being constructed in accordance with the requirements of the Project Agreement, and SOPA may do likewise concerning “Stage 2”. Before practical completion of either stage the Trustee was and is obliged to submit appropriate certifications by surveyors, consultants, Obayashi and Multiplex.

If the Trustee had not completed the “overlay works” by the due dates, the OCA would have been entitled to complete them and recover its costs from the Trustee.

Interfaces with other Homebush Bay developments

The Trustee was responsible for managing and co-ordinating the interfaces of the “Stage 1” “Trustee works” with works on adjacent developments, and was required to give contractors carrying out other works in the Homebush Bay area reasonable access to the stadium construction site. While the OCA accepted no responsibility for the interfaces between various contractors at Homebush Bay, it established a construction co-ordination committee to assist in managing these interfaces. The OCA/SOPA was and is entitled to grant easements over the stadium land, provided they do not substantially derogate from the Trustee’s rights under the Project Agreement.

Construction access

The Trustee and its contractors had and have non-exclusive access to the construction site under the Agreement to Lease (see section 6.1). Under the Project Agreement, the OCA/SOPA has provided the Trustee with access to this site through a designated access route, which the Trustee has acknowledged might be temporarily impeded by other works in the Homebush Bay area. The Trustee is responsible for any damage it may cause to the designated access route.

Intellectual property

The Trustee has warranted to the OCA/SOPA that it has title, copyright or adequate licences to all design and construction documentation and that there is no breach of any intellectual property rights in this documentation or materials. All title, copyright or adequate licences were assigned to the OCA/SOPA when the Project Agreement came into effect on 31 December 1996, and title and copyright in all subsequent and future design and construction documentation, as between the OCA/SOPA and the Trustee, belong to the OCA/SOPA.

Services and approvals

The Trustee is responsible for the provision of services necessary for the project, for the connection of utilities and for obtaining and complying with all approvals necessary to design, construct and procure the operation of the stadium, including development consents under the Environmental Planning and Assessment Act

and building approvals under the Local Government Act. (In the case of the “AFL works” under the AFL Works Agreement, this responsibility is assigned directly to Multiplex.)

The Trustee (and in the case of the “AFL works”, Multiplex) also bore the risk of any costs—and, in some cases, time delays—associated with:

- Proceedings commenced by any person concerning a development consent or building approval
- Appeals by the Trustee against the conditions of a development consent or building approval, and
- Third party appeals concerning a development consent or building approval.

The OCA was entitled to terminate the Project Agreement if an appeal lodged by the Trustee against the conditions of a building approval was not disposed of in time to enable the Trustee to meet its delivery program. No compensation was payable by the OCA for such a termination, and the OCA was then under no obligation to complete Stage 1 (see section 3.5 below).

Plans and site security

The Trustee was and is responsible for complying with an occupational health, safety and rehabilitation plan, an employee relations plan, a local industry plan, a quality assurance plan and an environmental plan agreed between the parties and exhibited to the Project Agreement. The Trustee also bears responsibility for the security of the stadium and the construction site until the “Trustee works” are completed, and for performing the “Trustee works” in a safe manner.

Employee relations

Among other things, the parties are bound to comply with the NSW Code of Practice for the Construction Industry. The risk of costs and delays which may result from industrial disputes rests with the Trustee.

Native title

The OCA has indemnified the Trustee for all its costs arising from proceedings or delays to the “Trustee works” as a result of any native title application. The Trustee must take reasonable steps to mitigate these costs.

Variations

The Trustee could and may propose a variation to the stadium and other facilities. All Trustee-proposed variations must be approved by the OCA/SOPA and must be carried out at the Trustee’s cost (unless there is a new agreement on this, as has occurred in practice in 1999 and again in 2001). If cost savings are achieved, half of these savings, or an amount agreed between the parties, must be paid to the OCA/SOPA.

The OCA/SOPA may also require a variation to be made under the OCA Works Co-ordination Deed, provided it is consistent with the development consent and building approvals and will not have a material adverse effect on the Trustee's ability to meet its obligations or the returns to investors in the project ("material adverse effect" provisions in the Project Agreement are outlined later). These variations must be paid for by the OCA/SOPA.

Completion

The Trustee was required to achieve "milestone completion" of specified "Stage 1" "milestone events" by dates set out in a schedule to the Project Agreement, and was required to achieve practical completion of Stage 1 by 1 June 1999, well before Sydney's international obligation to complete the Olympics-mode stadium by September 1999.

In turn, under the Trustee's Head Contract Design and Construction Agreement with Obayashi, and then under Obayashi's Design and Construction Agreement with Multiplex, the completion date for Stage 1 was set three months earlier, at 1 March 1999.

If the OCA had not been satisfied that milestone completion or practical completion under the Project Agreement had occurred, it would have been entitled to issue a notice to the Trustee listing the work remaining to be performed, and the Trustee would immediately have been obliged to perform this work.

Except as otherwise set out in the Project Agreement, principally in relation to extensions of time as discussed below, the Trustee bore and bears the risk of all delays to construction of each of the Stages and all costs arising from such delays.

The Trustee was liable to pay liquidated damages to the OCA of \$40,000 or \$60,000 per day for any failure to meet the "Stage 1" "milestone" dates, and \$80,000 per day for any failure to meet the date for practical completion of "Stage 1", and also risked possible termination of the Project Agreement in these circumstances (see section 3.5 below). There was no limit on the total amount of liquidated damages payable by the Trustee.

Practical completion of "Stage 1" was subsequently certified by the OCA as having been achieved on 1 March 1999. This certification was issued, however, in accordance with revised completion arrangements under the Practical Completion Deed, executed by the OCA and the Trustee on 3 March 1999, under which the Trustee agreed to complete specified "Stage 1" works which had not in fact been completed to the OCA's satisfaction by that time. The deadline for the completion of these specified works under the Practical Completion Deed was the same as that set under the original Project Agreement, 1 June 1999.

The original (1996) date for practical completion of the "Stage 2" works was 31 December 2001. On 20 December 1999 this deadline was extended to 31 March 2002 when the "AFL works" were added (under the Project Agreement Amendment Deed).

On 13 November 2001 the "Stage 2" deadline was extended again, to 31 March 2003, by the Project Variation (2001) Deed. The current delivery program for "Stage 2" works under the Project Agreement is set out in an annexure to the Project Variation (2001) Deed.

Extensions of time

Provided certain procedural pre-conditions are met, the Trustee was and may be entitled to an extension to a "milestone" date and/or a date for practical completion, by a reasonable period determined by the OCA/SOPA, if the "Trustee works" were or are delayed, or likely to be delayed, because of:

- A *force majeure* event, as defined in the Project Agreement (events that could not reasonably have been prevented by the Trustee, such as an earthquakes, sabotage, flood, enemy acts, etc, but not including industrial disputes)
- A discriminatory change in NSW law, as discussed in section 3.4 below
- A "major" variation directed by the OCA/SOPA (a variation was "major" if it was not proposed by the Trustee and if it had a value in excess of \$500,000, either by itself or in conjunction with other variations for the same component of work, or if there had already been more than 50 OCA/SOPA-directed variations, or if OCA/SOPA-directed variations already totalled more than \$20 million in value, or if the variation was directed within six months of a date for practical completion and would delay practical completion by two weeks or more)
- A failure by the OCA/SOPA to comply with its obligations under the Project Agreement
- A delay of more than four weeks in the issuing of the project's development consent or more than 13 weeks in the granting of a building approval
- A court order restraining the Trustee, Obayashi or Multiplex from carrying out the project, in response to a legal challenge to the development consent or a building approval (except for a challenge to any development consent or building approval modification requested by the Trustee), or
- The Trustee's having to suspend work because of a native title application.

The OCA/SOPA could and may also unilaterally grant an extension of time, even if none of the above situations applied or applies.

As an alternative to granting the Trustee an extension of time, the OCA/SOPA could and may elect to issue an acceleration direction under the OCA Works Co-ordination Deed, requiring the acceleration of construction works, provided it pays Obayashi acceleration costs in accordance with that deed.

Defects liability

The Trustee was and will be responsible for rectifying any defects in the “Trustee works” or the “OCA works” arising within one year of the completion of “Stage 1” or “Stage 2” of the works, as appropriate, or in the case of the “Stage 1” building monitoring and control system within two years of the completion of “Stage 1”.

Upon the completion of the “Stage 2” works an unconditional “defects bond” for \$1 million must be provided to SOPA to secure the performance of the Trustee’s “Stage 2” defects rectification obligations. This bond must be returned to the Trustee within seven days of the end of the “Stage 2” defects liability period.

Construction securities under the Project Agreement and the Practical Completion Deed

Under the original Project Agreement the Trustee was to lodge a “cash performance bond” of at least \$215 million, being part of the proceeds of the public floats, with the OCA no later than two days after “financial close” (the date on which units in the Stadium Australia Trust and shares in the Operator were to be allotted to “Gold Membership” and “Platinum Membership” package subscribers and listed on the stock market).

Under the Extension Agreement of 13 December 1996, as amended by the Amending Agreement to Extension Agreement of 23 December 1996, financial close under the Project Agreement was deemed to be 31 December 1996. However, the OCA and the Trustee agreed, together with the other parties to the Extension Agreement, that the Project Agreement would be amended to reflect the extension of the floats until as late as 27 March 1997. Under these changes, an initial payment of part of the cash performance bond was made on 31 December 1996, the amount being calculated on the basis of the shortfall in subscriptions as at 19 December 1996, and further payments were to be made within five days of any net decrease in the public floats’ subscriptions monies account, with a final payment of the balance of the \$215 million being made by no later than 4 April 1997. In addition, the OCA received payments to partly compensate it for lost interest earnings on the cash performance bond because of these delays in payment of the bond.

The funds received by the OCA in this way were to be progressively released to the Trustee by the OCA as construction proceeded, in accordance with a fixed monthly payment schedule ending on 7 February 1998, unless the Project Agreement was terminated in the meantime.

The Trustee also procured the provision (from Obayashi) of three \$15 million “security bonds”, in the form of unconditional, irrevocable bank undertakings in favour of the OCA/SOPA and the Trustee on terms satisfactory to the OCA/SOPA, to secure its

obligations until the completion of construction of “Stage 1” and “Stage 2”.

Prior to any termination of the Project Agreement, the OCA/SOPA had and has the right to access these security bonds if the Trustee breaches the Project Agreement—prior to the completion of “Stage 1”, in any way, but now only for breaches of specified construction-related provisions—or if the Trustee breaches its obligations to the OCA/SOPA under the OCA Works Co-ordination Deed.

These security bonds were to be reduced by \$15 million, to \$30 million, upon the completion of “Stage 1”. In practice—and in accordance with revised completion arrangements set out in the Practical Completion Deed of 3 March 1999, under which the Trustee agreed to complete specified uncompleted works by 1 June 1999 in return for the OCA’s agreement to certify that practical completion had been achieved on 1 March 1999—the OCA returned this \$15 million to the Trustee simultaneously with the lodgment by the Trustee of a new unconditional and irrevocable security bond, for \$5 million, for the performance of the Trustee’s obligations under the Practical Completion Deed. This new security bond was to be, and was, returned to the Trustee within seven days of the completion of the works listed in the Practical Completion Deed.

The original Project Agreement security bonds were then to be—and were—reduced by a further \$15 million, to \$15 million, upon the completion of the “overlay work” or one year after the completion of “Stage 1” (whichever was later).

The remaining balance of \$15 million must be returned to the Trustee upon the completion of “Stage 2”.

Other OCA/SOPA securities and their relationships to securities held by the Trustee’s debt financiers are summarised in section 7 of this report.

3.3 Operation, maintenance and repair of the stadium under the Project Agreement

General obligations

The Trustee has been and is obliged to procure:

- The operation of the stadium throughout the period between the completion of Stage 1 of the stadium and 31 January 2031 or any earlier termination of the Project Agreement (“the term”). The only exception to this was during the Olympic Games, the Paralympic Games and two test events prior to the games, when SOCOG operated the stadium in accordance with the Venue Agreement (see Appendix A).
- Maintenance and repair of the stadium throughout the term, apart from any repairs arising from SOCOG’s use of the stadium.

The operation, maintenance and repair procured by the Trustee must be in accordance with:

- A series of operational plans, procedures and manuals, including environmental and emergency response plans, that were exhibited in draft form to the Project Agreement, that had to be and will have to be finalised and updated as pre-conditions to practical completion of “Stage 1” and “Stage 2”, and that in some cases will also have to be updated during the term, and
- Other strategies and standards specified in the Project Agreement, including the best practices and standards recognised internationally by operators and managers of stadiums with comparable characteristics.

Subject to the former Commercial Rights Agreement (see *Appendix A*), the Trustee or the Operator were and are entitled (as against the OCA/SOPA) to all revenues from the operation of the project, except for some situations expressly provided for in the Project Agreement, such as the right of the SOPA to receive a percentage of revenues from the operation of hospitality tents in the stadium precinct (see below).

Availability for the Olympics and Paralympics

The Trustee was required to procure that the stadium would be made available to SOCOG and SPOC in accordance with the Venue Agreement (see *Appendix A*). During these periods, the Trustee’s rights—and thus those of members of the Stadium Australia Club—and the OCA’s obligations with respect to parking and the operation of commercial activities in the stadium precinct were suspended.

Government hire of the stadium

The Trustee has acknowledged that SOPA is entitled, on behalf of the Government, to hire and use Stadium Australia during the term, and has agreed that the stadium must be reasonably capable of being reconfigured, without unreasonable expense, for major athletics events, with a minimum capacity of 80,000 people. Arrangements for Government hire of the stadium for these events are set out in the OCA/SAM O&M Deed, as outlined in section 6.3 of this report.

Approvals

The Trustee must procure the attainment and maintenance of, and compliance with, all necessary approvals for the operation of the stadium.

Major maintenance and repair

The Trustee has been and is responsible for the major maintenance and replacement, routine maintenance and repair of the stadium itself and all plant, equipment, fittings, etc in the stadium.

The Trustee was obliged to procure the establishment of a major maintenance bank account to fund its major maintenance obligations.

Annual deposits to this “major maintenance account” must be made by the Trustee during the term, in priority to its debt financing repayment obligations, so that this account has sufficient funds for major maintenance in accordance with the Trustee’s obligations under an asset management plan agreed between SOPA and the Trustee.

In specified circumstances during the last ten years of the term, the Trustee may also be required to provide SOPA with a \$10 million bank guarantee, increasing by \$2 million per year (both indexed to the CPI), to secure its maintenance and repair obligations.

Event co-ordination

The Trustee must procure the participation of the Operator in an events co-ordination committee, comprising, among others, transport operators and other Homebush Bay venue operators, to co-ordinate the staging of events in the Homebush Bay area.

Changes to the stadium

Prior to the end of the Paralympics the Trustee was not entitled to make or permit any changes to the stadium without the OCA’s prior written approval, other than changes required by SOCOG under the Venue Agreement. Only structural changes now require SOPA’s written approval.

Commercial activities in the stadium precinct

During the term—apart from during Royal Easter Shows and the Olympics and Paralympics—no person other than the Operator or its nominee is entitled to carry on any food, drink or merchandising business in the stadium precinct on any day on which an event is being held at the stadium and the anticipated attendance is more than 5,000 people.

The rights of the Operator or its nominee to operate in this area on these days is subject to commercial terms agreed between SOPA and the Operator. The Operator or its nominee may erect and operate hospitality tents on a nominated portion of the stadium precinct, subject to the payment to SOPA of 5% of the gross revenues derived from the hospitality tents.

The OCA/SOPA has also agreed to consult with the Trustee in relation to proposals for the development of the “commercial precinct” land across Olympic Boulevard opposite the stadium and/or the walkway to the Olympic Park railway station. The Operator or its nominee must be given an opportunity to tender for concessions on the walkway to the railway station during the term.

SOPA estate management

SOPA must provide estate management services for the public areas of the “urban core” of Homebush Bay, including the maintenance of public spaces and facilities, landscaped areas, roads and the railway station, traffic management, the operation and maintenance of car parks, security services and the cleaning of public areas.

In return, the Trustee must pay SOPA an estate levy of \$1.25 million per year, indexed to the CPI, during the term.

In a letter to the Trustee on 14 August 2001, SOPA agreed to a deferral of these levy payments for 2001, 2002, 2003 and the first quarter of 2004, and this waiver was formalised in the Project Variation (2001) Deed of 13 November 2001. The deferred estate levies will then become payable to SOPA in eight equal quarterly instalments, the first being due on 1 April 2004, along with the estate levies due to SOPA for periods after 31 March 2004. These repayments of the deferred levies have precedence over the Trustee’s payments under its term debt facility with ANZ Bank.

The Trustee must also procure the Operator to pay SOPA the reasonable costs of cleaning the stadium precinct on days when there are events in the stadium, providing event security outside the stadium itself and providing traffic marshalling services (this provision did not apply during the Olympic and Paralympic Games).

Public transport and car parking

The OCA was obliged to procure the provision of the railway station and rail loop, a regional bus system and the Homebush Bay road system by 1 March 1999, and SOPA must maintain these systems during the term. SOPA has also undertaken to provide a regular, demand-based shuttle bus service between the various venues and car parks in the Homebush Bay area, on a “user pays” commercial basis (a similar commitment has been made to the Sydney Swans under the SOPA/ Sydney Swans Agreement for Car Parking of 31 August 2001).

On 20 June 1996 the NSW Department of Transport and the OCA entered into a Memorandum of Understanding, exhibited to the Project Agreement, for the provision of public transport to Homebush Bay. Under this memorandum the department agreed to take all necessary steps to ensure the provision of safe, effective and efficient public transport services, sufficient to meet anticipated demand as agreed at meetings of the events co-ordination committee, but subject to system capacity limits during commuter peak periods. The Memorandum of Understanding is not legally enforceable, and SOPA will not be liable to the Trustee for any failure by the Department of Transport or SOPA to perform its terms.

SOPA has undertaken that until the end of the term it will maintain 10,000 car parking spaces for the use of patrons to all of the venues in Homebush Bay. Stadium Australia Club Limited has the right to reserve up to 1,750 of these spaces in advance, for the

use of its members, on days when events with an anticipated attendance of more than 5,000 people are being staged in the stadium, and a similar commitment, for 3,000 spaces, has been made to the Sydney Swans under the SOPA/ Sydney Swans Agreement for Car Parking of 31 August 2001).

3.4 Miscellaneous general provisions of the Project Agreement

Rates and taxes

The Trustee was and is liable for all land-based rates, taxes and charges levied on the stadium land after the commencement of the Land Lease on 1 March 1999, and for all other rates, taxes and charges levied in respect of the project at any time (e.g. stamp duty).

Competitive stadiums

The Project Agreement does not limit or restrict the ability of the Government, either directly or through any department, authority or local council, to construct and/or operate other sporting or entertainment venues in NSW.

It does, however, set out provisions for possible renegotiation of the Stadium Australia contracts if the project is adversely affected by the development or redevelopment of a “competitive stadium”.

The original Project Agreement’s requirement for negotiations in these circumstances was significantly relaxed by the Project Agreement Amendment Deed of 20 December 1999, which narrowed both the definition of “competitive stadiums” and the types of redevelopments potentially triggering the requirement.

Under the Project Agreement, as amended by the Project Agreement Amendment Deed, SOPA may now be required to negotiate with the Trustee if the Government or one of its agencies:

- Develops a competitive stadium with more than 35,000 seats within 50 kilometres of the Homebush Bay area (other than in Wollongong or on the Central Coast)
- Redevelops such a competitive stadium in ways listed below, or
- Provides financial assistance of more than \$1 million (indexed to the CPI) for such a development or redevelopment,

and this competitive stadium’s development or redevelopment and operation are solely responsible for a “material adverse effect” on the Trustee’s ability to carry out the project or repay its debt financiers, or on the returns to the Stadium Australia Trust’s unitholders and the Operator’s shareholders.

In the case of the Sydney Football Stadium, Sydney Cricket Ground and Parramatta Stadium, the types of redevelopments

potentially triggering this requirement are confined to redevelopments which:

- Increase the number of permanent seats to more than 48,000, 48,000 or 35,000 seats respectively
- Provides a closed or closeable roof for the Sydney Football Stadium or Parramatta Stadium
- Increases the roof area of the Sydney Football Stadium to protect an additional 5% or more of its seats from the weather, or
- Increases the floor space of the enclosed corporate suites at Sydney Football Stadium by more than 30%.

For other venues, the types of redevelopments potentially triggering a requirement to negotiate are confined to permanent redevelopments or changes which:

- Increase the number of permanent seats to more than 35,000, or
- In the case of venues which already have more than 35,000 seats, enable the venue to attract different events or greater attendances or otherwise facilitate a material change in the functions or uses of the venue.

Any such negotiations must aim at enabling the Trustee to preserve its abilities to procure the operation and maintenance of Stadium Australia in accordance with the Project Agreement, maintain Stadium Australia as a competitive venue for major events, repay its debt financiers and provide Trust unitholders with previously forecast levels of return.

SOPA must also negotiate with the Operator with a view to enabling it to provide its shareholders with previously forecast levels of return. These negotiations with the Trustee and the Operator must consider, among other things, possible amendments to the project's contracts and possible variations to the operation and maintenance term and/or the financial and other contributions of SOPA and the Trustee.

In addition to these provisions for negotiations following an actual development or redevelopment of a competitive stadium, SOPA must discuss with the Trustee:

- Any serious proposal by the Government or one of its agencies to develop a competitive stadium with more than 35,000 seats within 50 kilometres of the Homebush Bay area (other than in Wollongong or on the Central Coast), or to redevelop an existing competitive stadium in any of the ways listed above, if the Trustee reasonably believes this proposal would be likely to have a “material adverse effect” on the Trustee, and
- Any serious proposal for the sale of the Sydney Cricket Ground, the Sydney Football Stadium or Parramatta Stadium to the private sector.

Changes in law

If there is a discriminatory change in NSW law that specifically and only affects :

- The Stadium Australia project
- The project and other privately owned venues within the Homebush Bay area, or
- The project and other competitive stadiums, but grants relief to the other competitive stadiums,

and this change has a “material adverse effect” on the Trustee, SOPA must negotiate with the Trustee and the Operator with a view to compensating them on the same basis as under the competitive stadium provisions outlined above.

The risk of all other changes in law (e.g. federal and other State changes) is borne by the Trustee, except for the native title indemnity provided by SOPA and other than to the extent that the changes affect the “OCA works” to be carried out in the stadium precinct.

Loss or damage and insurance

The Trustee bears the risk of loss or damage to the stadium and, unless otherwise provided in the Project Agreement—principally after certain force majeure events, as discussed below—it must make good any loss or damage at its own cost.

The Trustee has also indemnified the OCA/SOPA against all claims arising out of property and personal injury claims arising from the “Trustee works” or the operation, maintenance or repair of the stadium.

During the construction of “Stage 1”, the “overlay works” and the “OCA precinct works” the Trustee was required to effect and maintain specified insurance policies for contract works or construction risks, transit insurance, public liability insurance, professional indemnity insurance, employers’ liability and workers’ compensation insurance, motor vehicle insurance, advance business interruption insurance and directors’ and officers’ liability insurance.

The Trustee was and is also obliged to:

- Procure the Operator to effect and maintain similar policies for “Stage 2” and the “OCA precinct conversion works”.
- Effect and maintain, or procure the Operator to effect and maintain, industrial special risks insurance, public liability insurance, employers’ liability and workers’ compensation insurance, motor vehicle insurance, business interruption insurance and directors’ and officers’ liability insurance from the completion of “Stage 1” until the end of the term.

These insurances must be on terms approved by SOPA and, in some cases, must be in the joint names of the Trustee and SOPA and note that SOPA is a joint loss payee, together with the Trustee and the Operator. The Trustee is required to comply with the conditions of all insurance policies.

Any insurance proceeds in excess of \$50 million (indexed to the CPI) are subject to special provisions under the OCA Consent Deed summarised in section 7.2 of this report, under which in certain circumstances the Security Agent may require some or all of the proceeds to be applied to satisfy the Trustee's obligations to its debt financiers rather than to repair or replace the stadium.

Confidentiality

SOPA and the Trustee are both subject to confidentiality restrictions.

Force majeure

As already indicated, under the Project Agreement *force majeure* events include events beyond the control of the Trustee, such as earthquakes, sabotage, floods, enemy acts, etc but not industrial disputes, and must be such that the Trustee could not have prevented the effects of the event by taking those steps which a prudent, experienced and competent contractor or operator would have taken.

If a *force majeure* event, as so defined, occurs, the Trustee's obligations under the Project Agreement which are affected by the event are suspended, but only to the extent that they are affected and only for so long as they are affected. The Trustee is obliged to use its best endeavours to remedy the effects.

If the Trustee was obliged under the Project Agreement to insure against the *force majeure* event, or has in fact done so, it must apply any insurance proceeds and promptly commence to reconstruct the stadium.

If the insurance proceeds are insufficient to fully undertake the reconstruction works because the Trustee has failed to maintain the relevant policy in accordance with the terms of the policy or the Project Agreement, the Trustee remains obliged to reconstruct the stadium within a reasonable time.

On the other hand, if the *force majeure* event is one which the Trustee was not required to insure against, or if the insurance proceeds are not sufficient to fully undertake the required rectification works even though the Trustee has taken out and maintained insurance in accordance with the Project Agreement and the terms of the policies, SOPA and the Trustee must meet together to try to agree on an appropriate course of action. If the parties are unable to agree, SOPA may terminate the Project Agreement by giving 20 days' notice, with the consequences summarised in section 3.5 below.

Dispute resolution and expert appraisal

Subject to the OCA Works Co-ordination Deed, if a dispute arises between SOPA and the Trustee under the Project Agreement either party may refer the dispute to a dispute resolution committee comprising two representatives of each party. The Project Agreement also specifies certain circumstances, especially concerning

design and construction documentation, in which a dispute must be referred to this committee.

If the dispute is not resolved within 20 days of being referred to the dispute resolution committee, or if a committee vote is not unanimous, or if the committee so decides, the dispute is to be referred immediately to the chief executive officers of SOPA, the Trustee and the Trust Manager, or their delegates. The CEOs are obliged to meet promptly and attempt to resolve the dispute in good faith. Their joint decisions, in writing, will be contractually binding on SOPA and the Trustee.

If the matter is not resolved within ten days of being referred to the CEOs, either party may require it to be determined by an expert appraisal.

The Project Agreement also stipulates, or provides the option of, a determination by an expert appraisal under the Project Agreement in other specified circumstances (e.g. whether there has been a "material adverse effect", or how best to overcome an event causing such an effect, or the cost savings associated with non-complying design documentation, or the costs of remedying non-complying construction works). Expert determination under the OCA Works Co-ordination Deed is also an option, for either party, if SOPA and the Trustee cannot agree on whether an event constitutes a variation under the Project Agreement.

The independent expert, as agreed between and appointed by both parties or otherwise as appointed by the Institute of Arbitrators, Australia, may proceed in any manner he or she thinks fit, acting as an expert and not as an arbitrator. The costs of the expert will be shared equally by SOPA and the Trustee. His or her determination will bind the parties in all cases concerning "material adverse effects", and will also bind the parties in all other cases unless it requires a party to pay more than \$5 million (indexed to the CPI) or unless a party gives notice of its intention to initiate proceedings in a court or other tribunal within 14 days.

3.5 Termination of the Project Agreement

The Project Agreement will terminate at the end of the term on 31 January 2031, unless it is terminated earlier, as discussed below, or unless the term is shortened or extended in response to a "material adverse effect".

Upon termination of the Project Agreement for any reason, the Trustee must:

- Yield up the stadium (including its plant and equipment) and its land in a fully functional condition which complies with the design brief, the agreed operating and maintenance standards, the stadium's asset management plan and the various operating and maintenance plans
- Transfer to SOPA the balance of the major maintenance account, and

- Do all other reasonable things necessary to enable SOPA to operate the stadium at a level at least equal to that immediately before the termination.

Upon termination, property in Stadium Australia will vest in SOPA free from any encumbrance.

The indemnity provided by SOPA to the Trustee for native title claims will also terminate, except for any costs, losses or damages advised to SOPA within 14 days or about which the Trustee could reasonably have become aware only after the date of termination.

The other consequences of termination vary, depending on which party terminates the Project Agreement and on what basis. The various circumstances, the first three of which are now of purely historical interest, are summarised below.

Discretionary termination by the OCA, without cause, prior to practical completion of ‘Stage 1’

At any time prior to practical completion of “Stage 1”, the OCA was entitled terminate the Project Agreement without cause, and without needing to give the Trustee any reasons or justification, by giving the Trustee five days’ written notice.

Had the OCA terminated the Project Agreement on this basis, it would have had to:

- Return the security bonds to the Trustee.
- Pay the Trustee, within 30 days, an amount determined in accordance with a schedule to the Project Agreement and intended to reflect—
 - The costs to the Trustee and the Operator of breaking their contracts with their contractors, financiers and suppliers of products and services
 - The Trustee’s and the Operator’s debts, and
 - The net present value (@12%) of forecast distributions to the Stadium Australia Trust’s unitholders and forecast dividends to the Operator’s shareholders, grossed up for the unitholders’ and shareholders’ income tax.

Unless the OCA was enjoined or otherwise restrained from using the cash performance bond, it would also have had to complete the design and construction of “Stage 1” generally in accordance with the design brief. Under the Contractors’ Deed of Novation between the OCA, the Trustee, Obayashi and Multiplex, the OCA could, by giving notice within 30 days of terminating the Project Agreement, step into the shoes of the Trustee under the Head Contract Design and Construction Agreement, and if it then terminated the Head Contract it could also step into the shoes of Obayashi under the Multiplex Design and Construction Agreement. In this way the OCA could have dealt directly with the design and construction contractors so that construction could continue. (These novation arrangements are discussed in more detail at the end of this section of this report.)

The rights of “Gold Membership” and “Platinum Membership” package subscribers, as Olympic rights holders and members of the Stadium Australia Club, would have been protected by obligations on the OCA under the Project Agreement to:

- Procure the issuing by SOCOG of Olympics tickets to them in accordance with the Commercial Rights Agreement, and
- Provide them with certain specified club membership benefits, suspended during the Olympic and Paralympic Games.

For the 17,200 “Gold memberships” subscribed to during the original float in 1996–97 these benefits would have included:

- Complimentary attendance at all major and minor sporting events held at the stadium, other than international events and competitions
- Preferential booking rights (assured seating at full ticket prices) at the stadium for international events and competitions, and for concerts and other non-sporting events, except during periods when the Government is hiring the stadium for events such as the Commonwealth Games under the OCA/SAM O&M Deed
- Subject to availability, booking rights for a limited number of places in the car parks near the stadium
- Access to Gold members’ facilities, including the Gold Members Reserve and various members’ lounges, bars and restaurants
- Reasonable annual membership fees, commencing at \$250 in 1999 (indexed to the CPI) for the first five years and reviewed after then, and
- Bearer transferability for a limited number of Gold memberships.

For the 600 “Platinum” members, the club membership benefits that would have had to be provided by the OCA, except during the Olympic and Paralympic Games, would have included:

- Complimentary attendance for the member and a guest at all major and minor sporting events, concerts and other non-sporting events held at the stadium. This would have included complimentary attendance for both at international events and competitions, except during periods when the Government is hiring the stadium for events such as the Commonwealth Games under the OCA/SAM O&M Deed
- Free car parking next to the stadium on days when events expected to attract more than 5,000 people are being held
- Access by the member and (subject to availability) a guest to Platinum members’ facilities, including the Platinum Members Reserve, dining room and bar, and also to all areas reserved for Gold members, and
- No annual membership fees.

(In November 2001, well after the completion of “Stage 1”, the Project Variation (2001) Deed added to these protected benefits for “Gold” and “Platinum” memberships subscribed to during the original float in 1996–97 by also protecting these members’ rights to:

- Appoint up to three “alternatives” to exercise their rights in their absence, and
- Purchase up to three additional seats.)

Termination by the OCA for a Trustee default prior to practical completion of ‘Stage 1’

Prior to practical completion of “Stage 1”, in addition to its right to terminate the Project Agreement without cause as outlined above, the OCA was entitled to terminate the agreement, with different consequences, in the event of a default by the Trustee that remained unremedied within “cure” periods specified in the agreement.

The events of default by the Trustee that might have led to termination by the OCA under these provisions included:

- A failure to achieve milestone completion by the relevant milestone date, followed by a failure to achieve this milestone completion within 28 days of a notice by the OCA to do so.
- Failure to reach practical completion of “Stage 1” by the due date (1 June 1999 or a later date if an extension of time had been granted), followed by a failure to achieve practical completion within 28 days of a notice by the OCA to do so.
- A material default by the Trustee on any of its other material obligations under the Project Agreement or any other project contract to which the OCA is a party, other than the OCA Loan Agreement, followed by a failure by the Trustee to start to remedy the default (if this could be done) within 20 days of a notice by the OCA to do so, followed by a failure to complete the remedy within a reasonable time as specified by the OCA in the notice.
- An “insolvency event” (as specified) in relation to the Stadium Australia Trust, the Operator, Multiplex or Obayashi, which has or would have a “material adverse effect”.

If any of these events had occurred, the OCA was entitled to terminate the Project Agreement by giving the Trustee 60 days’ notice of its intention to do so, during which time the Trustee would have had the right to remedy the event. Under the Project Agreement the total “cure” period for Trustee defaults involving late completion was thus 88 days (i.e. 28 days plus 60).

Under the OCA Consent Deed summarised in section 7.2 of this report, however, the cure periods set out in the Project Agreement might have had to be extended, upon a request by the Security Agent, by either 30 days or 60 days (the latter would have applied if the OCA had reasonably believed the Security Agent, the Trustee’s debt financiers or the Trustee were using their best endeavours to remedy the default).

If the default had not been remedied by the end of the 60-day period under the Project Agreement, plus any extension granted under the OCA Consent Deed, the OCA could have immediately terminated the Project Agreement. Further, if the OCA had reasonably believed the Trustee was not making reasonable efforts to remedy the default, it could have terminated the agreement before the 60 days were up, by giving the Trustee seven days’ notice of its intention to do so.

If the OCA had terminated the Project Agreement for a Trustee default, it would not have been liable to pay any compensation to the Trustee and could have taken action to recover damages from the Trustee.

However, unless the OCA was enjoined or otherwise restrained from using the cash performance bond, the OCA would again have had to complete the design and construction of “Stage 1” generally in accordance with the design brief, using the provisions of the Contractors’ Deed of Novation if it choose to do so, and once again Olympic rights holders and members of the Stadium Australia Club would have been protected as outlined above.

The OCA would have had the right to demand payment of all moneys under the security bonds, and the Trustee would not have been permitted to attempt to injunct or otherwise restrain the OCA from accessing these funds. The OCA could have used the funds obtained in this way, and the cash performance bond, only for the purposes of completing the “Trustee works” and “OCA works”, recovering any debts due and payable by the Trustee to the OCA and recovering any costs arising from the termination of the Project Agreement. Any balance then remaining would have had to be returned to the Trustee.

However, under the OCA Consent Deed summarised in section 7.2 of this report,

- The OCA would have had to pay the Security Agent, within 30 days of the termination, 70% of the net costs to the Trustee and the Operator of unwinding or terminating any interest rate hedging arrangements entered into by them in connection with the financing of the project, *plus* 70% of the Trustee’s debts and associated costs, *less* 70% of all equity committed to the project by the “founders” and “commercial investors” but not yet subscribed.
- The OCA would have had to pay the remaining 30%—which would have accrued interest at the Reuter’s BBSY reference rate plus 1.25% until “Stage 1” was completed and 1.5% thereafter—from any surplus cashflows generated by its operation of the stadium, and/or from the proceeds of any sale of the stadium by the OCA after it was completed, once the OCA had used these proceeds to recover its costs and losses from its completion of the stadium and the “OCA works”, the termination of the Project Agreement and the operation of the stadium, net of any income received by the OCA and the

proceeds of the security bonds and the cash performance bond.

Termination by the OCA for a building approval appeal delay

The OCA could have terminated the Project Agreement, on 14 days' notice to the Trustee, if a building approval appeal initiated by the Trustee had not been disposed of in time to meet the project's delivery program.

In these circumstances the OCA would not have been liable to the Trustee for any of the Trustee's costs, losses, expenses or damages, and the OCA would have had to promptly return the security bonds to the Trustee.

Within 90 days of the termination, the OCA could have elected, in its absolute discretion, whether or not to complete the design and construction of "Stage 1" generally in accordance with the design brief. In contrast with the situations discussed above, it would have been under no obligation to do so.

If the OCA had elected to complete "Stage 1",

- The remaining balance of the cash performance bond would have become the OCA's. Unless it was enjoined or otherwise restrained from doing so, the OCA would have been able to use this bond only to complete the "Trustee works" and "OCA works", recover any debts due and payable by the Trustee to the OCA and recover any costs arising from the termination of the Project Agreement. Any balance then remaining would have had to be returned to the Trustee.
- The OCA would have had to protect the rights of Olympic rights holders and members of the Stadium Australia Club as outlined above.

If the OCA had elected not to complete "Stage 1",

- The remaining balance of the cash performance bond, if any, would have had to be released to the Trustee, and
- The OCA would have had no obligations to protect the rights of Olympic rights holders and members of the Stadium Australia Club.

Under the OCA Consent Deed, however, and regardless of the election made by the OCA, if the Project Agreement had been terminated prior to practical completion of "Stage 1"—

- The OCA would have had to pay the Security Agent, within 30 days of the termination, 70% of the net costs to the Trustee and the Operator of unwinding or terminating any interest rate hedging arrangements entered into by them in connection with the financing of the project, *plus* 70% of the Trustee's debts and associated costs, *less* 70% of all equity committed to the project by the "founders" and "commercial investors" but not yet subscribed.
- The OCA would have had to pay the remaining 30% from any surplus cashflows generated by its operation of the stadium,

and/or from the proceeds of any sale of the stadium by the OCA after it was completed.

If the OCA or SOPA had terminated the Project Agreement for a building approval delay after the completion of "Stage 1", it would have had to protect the rights of members of the Stadium Australia Club as described above, and if this had occurred after the execution of the Project Variation (2001) Deed these protected rights would have included the new rights added to the list of protected benefits by that deed.

Termination by SOPA for a Trustee default after practical completion of 'Stage 1'

SOPA may terminate the agreement in the event of a default by the Trustee that remains unremedied within "cure" periods specified in the Project Agreement, but again as extended by 30 or 60 days under the OCA Consent Deed summarised in section 7.2 of this report. (Under that deed, if the Security Agent has exercised its "step in and cure" powers under the Trustee's debt financing security arrangements, a further period of up to four years may be granted if the Security Agent is diligently pursuing a remedy, and this four-year extension may itself be extended by agreement between SOPA and the Security Agent.)

The events of default by the Trustee that may lead to termination by SOPA in this situation include:

- A material failure to procure the operation, maintenance and repair of the stadium in accordance with the agreement, followed by a failure to cure this default within 28 days of a notice by SOPA to do so.
- A material default by the Trustee on any of its other material obligations under the Project Agreement or any other project contract to which SOPA is a party, other than the OCA Loan Agreement, followed by a failure by the Trustee to start to remedy the default (if this can be done) within 20 days of a notice by SOPA to do so, followed by a failure to complete the remedy within a reasonable time as specified by SOPA in the notice.
- An "insolvency event" (as specified) in relation to the Stadium Australia Trust, the Operator, Multiplex or Obayashi, which has or would have a "material adverse effect".
- A material default by the Operator on any of its material obligations under the OCA/SAM O&M Deed, followed by a failure by the Operator to start to remedy the default (if this can be done) within 20 days of a notice by SOPA to do so, followed by a failure to complete the remedy within a reasonable time as specified by SOPA in the notice.

If any of these events occurs, SOPA may issue a notice to the Trustee or the Operator, as appropriate, requiring it to rectify or procure the rectification of the default within a reasonable period specified in the notice. The Trustee or the Operator may seek an extension of the cure period, and an extension may be granted if the Trustee or the Operator is diligently pursuing a remedy.

If the default is not remedied within the period specified, as extended, SOPA may then require the Trustee to terminate its Operating Sublease with the Operator, replace Stadium Australia Management Limited with a new operator and remedy the default as soon as practicable, and in any event within 60 days.

SOPA may terminate the Project Agreement, by giving 20 days' notice, if either:

- The default is not remedied within the cure period specified in the original notice to the Trustee or the Operator, as extended, or
- The Trustee does not comply with SOPA's subsequent requirements, if any, to replace the Operator and remedy the default.

During this 20-day notice period the Trustee has the right to remedy the default. If it does not do so, SOPA may then immediately terminate the Project Agreement, subject to the provisions of the OCA Consent Deed summarised in section 7.2 of this report.

In these circumstances, SOPA will not be liable to pay any compensation to the Trustee and may take action to recover damages from the Trustee.

SOPA will, however, have to:

- Protect the rights of members of the Stadium Australia Club as described above, including the new rights added to the list of protected benefits by the Project Variation (2001) Deed, and
- In the case of a termination before 21 August 2008, meet its obligations to the Sydney Swans under the SOPA/Sydney Swans Consent Agreement, as outlined in section 6.4 of this report.

If the Project Agreement is terminated for a Trustee default on any of its "Stage 1" or "Stage 2" design and construction obligations or specified insurance obligations, SOPA will have the right to demand payment of all moneys under the remaining security bond or bonds, and the Trustee may not attempt to injunct or otherwise restrain SOPA from accessing these funds. SOPA may use the funds obtained in this way only to complete the "Stage 2" "Trustee works" and "OCA works", recover any debts due and payable by the Trustee to SOPA and recover any costs arising from the termination of the Project Agreement. Any balance then remaining must be returned to the Trustee.

Termination by SOPA for *force majeure*

As discussed earlier, the Project Agreement may be terminated because of a *force majeure* event only if this event is one which the Trustee was not required to insure against, or if the insurance proceeds are not sufficient to fully undertake the required rectification works even though the Trustee has taken out and maintained insurance in accordance with the Project Agreement and the terms of the policies.

In these circumstances SOPA and the Trustee must meet together to try to agree on an appropriate course of action. If they are unable to agree within 180 days of the *force majeure* event—before "Stage 1" was completed, the time allowed was 90 days—SOPA may terminate the Project Agreement by giving 20 days' notice.

If SOPA terminates the Project Agreement in these circumstances, it must:

- Within 180 days, pay the Trustee the market value (to a lessee) of the lease of the stadium land and improvements, as if the Project Agreement, Land Lease and Operating Sublease had not been terminated
- Return the security bonds
- Protect the rights of members of the Stadium Australia Club as described above, including the new rights added to the list of protected benefits by the Project Variation (2001) Deed, and
- In the case of a termination before 21 August 2008, meet its obligations to the Sydney Swans under the SOPA/Sydney Swans Consent Agreement, as outlined in section 6.4 of this report.

If there are any insurance proceeds, the Trustee and Obayashi must assign to SOPA any rights under the insurances and pay the balance of these proceeds to SOPA, in the Trustee's case after taking out any amounts due and owing to the Trustee's debt financiers.

If such a termination for force majeure had occurred before the completion of "Stage 1", the OCA could have elected within 90 days, in its absolute discretion, whether or not to complete the design and construction of "Stage 1" generally in accordance with the design brief. It is under no obligation to do so.

Had the OCA elected to complete "Stage 1",

- The remaining balance of the cash performance bond would have become the OCA's. Unless it was injuncted or restrained from doing so, the OCA could have used this bond only to complete the "Trustee works" and "OCA works", recover any debts due and payable by the Trustee to the OCA and recover any costs arising from the termination of the Project Agreement. Any balance then remaining would have had to be returned to the Trustee.
- The OCA would also have had to protect the rights of Olympic rights holders and members of the Stadium Australia Club as outlined above.

If the OCA had not elected to complete "Stage 1",

- The remaining balance of the cash performance bond would have had to be released to the Trustee, and
- The OCA would have had no obligations to protect the rights of Olympic rights holders and members of the Stadium Australia Club.

Under the OCA Consent Deed, however, and regardless of the election made by the OCA, if the Project Agreement had been terminated prior to practical completion of “Stage 1”—

- The OCA would have had to pay the Security Agent, within 30 days of the termination, 70% of the net costs to the Trustee and the Operator of unwinding or terminating any interest rate hedging arrangements entered into by them in connection with the financing of the project, plus 70% of the Trustee’s debts and associated costs, less 70% of all equity committed to the project by the “founders” and “commercial investors” but not yet subscribed.
- The OCA would have had to pay the remaining 30% from any surplus cashflows generated by its operation of the stadium, and/or from the proceeds of any sale of the stadium by the OCA after it was completed.

Termination by the Trustee for an OCA/SOPA breach after the end of the Paralympic Games

If SOPA:

- Breaches its obligations to negotiate to overcome a “material adverse effect” arising from the development or redevelopment of a competitive stadium or a discriminatory change in State law, to indemnify the Trustee for native title applications or to provide public transport infrastructure and car parking facilities, or
- Fails to pay money due to Obayashi or Multiplex under the OCA Works Co-ordination Deed or the OCA Construction Contract,

The Trustee may issue a notice to SOPA requiring it to rectify or procure the rectification of the breach within a reasonable period specified in the notice. SOPA may seek an extension of the cure period, and an extension may be granted if SOPA is diligently pursuing a remedy.

If the breach is not remedied within the period specified, as extended, the Trustee may give 20 days’ notice of its intention to terminate the Project Agreement, during which time SOPA will continue to have a right to remedy the breach.

If the default has not been remedied by the end of the 20-day period, the Trustee may immediately terminate the Project Agreement.

In these circumstances, SOPA must, within 30 days, pay the Trustee compensation in accordance with a schedule to the

agreement. This compensation is similar to that payable by the OCA if it had terminated the Project Agreement without cause prior to the completion of “Stage 1”.

Novation of the Head Contract Design and Construction Agreement and the Multiplex Design and Construction Agreement

Under the Contractors’ Deed of Novation of 3 October 1996, if the Project Agreement is terminated by SOPA on any of the bases discussed above,

- The OCA Construction Contract and the OCA Works Co-ordination Deed will also be terminated, as discussed in section 4 of this report, and
- SOPA may, within 30 days, give Obayashi, as head contractor under the Head Contract Design and Construction Agreement between Obayashi and the Trustee, a notice requiring it to novate the Head Contract in favour of SOPA, with SOPA effectively stepping into the shoes of the Trustee.

If SOPA does not give Obayashi such a notice within three business days of any termination of the Project Agreement by SOPA, the rights and obligations of the Trustee and Obayashi under the Head Contract are suspended until the end of the 30-day period, or until SOPA gives Obayashi a notice stating whether it will require the Head Contract to be novated. SOPA will be liable to pay Obayashi for the reasonable costs it incurs as a result of such a suspension.

Similarly, if the Project Agreement and the Head Contract (as novated) are terminated—but not, in the latter case, if the termination is for a breach of the Head Contract by Obayashi arising wholly and directly from a breach of the Multiplex Design and Construction Agreement by Multiplex—SOPA may, within 30 days, give Multiplex a notice requiring it to novate the Multiplex Design and Construction Agreement in favour of SOPA, with SOPA effectively stepping into the shoes of Obayashi under that agreement.

Again, if SOPA does not give Multiplex such a notice within three business days of any termination of the Head Contract (as novated) by SOPA, the rights and obligations of Obayashi and Multiplex under the Multiplex Design and Construction Agreement are suspended until the end of the 30-day period, or until SOPA gives Multiplex a notice stating whether it will require the agreement to be novated. SOPA will be liable to pay Multiplex for the reasonable costs it incurs as a result of such a suspension.

4 Design and construction of the ‘OCA works’

Key features of the design and construction phase obligations of the OCA/SOPA, the Trustee, Obayashi and Multiplex under the OCA Construction Contract of 16 September 1996 and the OCA Works Co-ordination Deed of 16 September 1996, as supplemented by the Works Adjustment Deed of 21 October 1997, the Project Agreement Amendment Deed of 20 December 1999, the AFL Works Agreement of 20 December 1999 and the Project Variation (2001) Deed of 13 November 2001—are outlined below.

4.1 Scope of the ‘OCA works’

Under the original (1996) contracts the “OCA works” were identified in exhibits to the Project Agreement and the OCA Construction Contract. In general terms, these original “OCA works” comprised the initial stadium site earthworks, the stadium’s thrust blocks, its eastern and western roofs, artworks, works related to the Olympic flame and ceremonies, the precinct works and most of the works required to convert the stadium to its originally envisaged “Stage 2” mode.

The original date for completion of the “Stage 2” “OCA works” was 31 December 2001.

These works were priced in a schedule to the original OCA Construction Contract at:

- \$69.0 million (fixed price) for the “Stage 1” “OCA stadium works” (\$53.5 million) and a portion of the “Stage 2” “OCA stadium conversion works” (\$15.5 million)
- \$13.0 million (subject to escalation) for another portion of the “Stage 2” “OCA stadium conversion works”, the new roofs to be erected at the northern and southern ends of the stadium, and
- Approximately \$19.25 million (subject to escalation) for “Stage 1” “OCA precinct works” and “Stage 2” “OCA precinct conversion works”.

As already indicated in section 2 and discussed in section 3 of this report, under the OCA Works Co-ordination Deed of 16 September 1996 the OCA, the Trustee, Obayashi and Multiplex agreed that an adjustment would be made to the scopes of the “Trustee works” and “OCA works”—and, accordingly, to the contract prices and payment schedules under the Head Contract Design and

Construction Agreement and the OCA Construction Contract—as soon as practicable after financial close, in accordance with a formula based on changes in interest rates. Under the Extension Agreement, financial close was deemed, for this and other purposes, to be on 31 December 1996, even though the floats could, and did, remain open until 27 March 1997.

Accordingly, under the Works Adjustment Deed of 21 October 1997—based on a draft deed annexed to the OCA Works Co-ordination Deed—there was an adjustment to each scope of works, and hence the contract prices, to take account of movements in interest rates between 1 December 1995 and 31 December 1996. Because interest rates had fallen, the scope of the Trustee’s “Stage 2” works, and hence the Trustee’s project funding obligations under the Project Agreement, was increased (by just under \$10 million), while the scope of the OCA “Stage 2” works, and hence the amount payable to Obayashi by the OCA/SOPA under the OCA Construction Contract, was correspondingly decreased.

Following this agreement, the “OCA works” were priced in a revised schedule to the OCA Construction Contract at:

- Approximately \$59.04 million (fixed price) for the “Stage 1” “OCA stadium works” (\$53.5 million) and a portion of the “Stage 2” “OCA stadium conversion works” (approximately \$5.54 million)
- \$13.0 million (as before, and still subject to escalation) for the other portion of the “Stage 2” “OCA stadium conversion works”, and
- Approximately \$19.25 million (as before, and still subject to escalation) for “Stage 1” “OCA precinct works” and “Stage 2” “OCA precinct conversion works”.

On 20 December 1999 the scopes (and timings) of the “Stage 2” “Trustee works” and “OCA works” were amended again, mainly to accommodate additional works to permit the final “Stage 2” stadium to be configured for Australian Football (AFL) games as well as Rugby League, Rugby Union and soccer games, under the AFL Works Agreement and the Project Agreement Amendment Deed. Associated OCA variation orders under the Project Agreement and the OCA Works Co-ordination Deed, set out in two annexures to the AFL Works Agreement, were issued by the OCA to the Trustee and Obayashi on 24 December 1999. These varia-

tion orders were retrospectively amended, as of 24 December 1999, by the Project Variation (2001) Deed of 13 November 2001.

Under these agreements, the date for completion of the “Stage 2” “OCA works” was deferred until 31 March 2002, and the total price for the expanded “OCA works” was increased by \$6.0 million (fixed) for the “AFL OCA works”, which were described in the Variation Order issued by the OCA to Obayashi on 24 December 1999 and later retrospectively re-described by the amendments to this variation order made by the Project Variation (2001) Deed. The other prices remained unchanged.

The scopes (and timings) of the “Trustee works” and “OCA works” were further amended on 13 November 2001 by other provisions of the Project Variation (2001) Deed, mainly to accommodate work program delays and changes in some of the AFL conversion works.

Under this deed, the date for completion of the “Stage 2” “OCA works” has been deferred again, to 31 March 2003, and the “OCA works” were (and are still currently) priced, in two revised schedules to the OCA Construction Contract, at:

- Approximately \$57.65 million (fixed price) for the “Stage 1” “OCA stadium works” (approximately \$52.11 million) and a portion of the “Stage 2” “OCA stadium conversion works” (approximately \$5.54 million)
- Approximately \$16.50 million (fixed price) for the other portion of the “Stage 2” “OCA stadium conversion works”, the new roofs at the northern and southern ends of the stadium
- Approximately \$32.41 million (fixed price) for “Stage 1” “OCA precinct works” and “Stage 2” “OCA precinct conversion works”, and
- \$6.0 million (fixed price) for the “AFL OCA works”.

The total price of the “OCA works”, now fixed and not subject to escalation or adjustment, is \$112,558,579.

The increase in the cost of the “OCA precinct works” resulted from the implementation of the Hargreaves *Master Concept Design*, including the Olympic Plaza lighting towers. This *Master Concept Design* was adopted by the OCA after the original Stadium Australia contracts had been finalised.

4.2 The OCA Construction Contract

This relatively conventional turnkey contract between the OCA/SOPA and Obayashi sets out the terms and conditions under which Obayashi has been and is planning, designing, constructing and commissioning the “OCA works”.

These terms and conditions are substantially the same as the terms and conditions under which the Trustee must perform the “Trustee works” under the Project Agreement, as summarised in section 3 of this report. In turn, these terms and conditions are mirrored in the terms and conditions of the Multiplex Design and Construction Agreement between Obayashi and Multiplex.

The only major difference is the fact that under the OCA Construction Contract the OCA has an obligation to pay Obayashi for carrying out the “OCA works”, while under the Project Agreement the OCA has no obligation to pay the Trustee for carrying out the “Trustee works”.

Several provisions in the OCA Construction Contract—in addition to the scope and pricing provisions discussed above—need to be read in the light of the OCA Works Co-ordination Deed. For example, extensions of time for the “OCA works” may be granted under that deed, under the same circumstances as those under which extensions of time for the “Trustee works” may be granted under the Project Agreement and also if the OCA fails to meet specified obligations concerning street furniture, lighting, etc by dates specified in the OCA Construction Contract.

More generally, as discussed below, under the OCA Works Co-ordination Deed the “OCA works” are to be fully integrated with the “Trustee works” and performed as if they formed part of the “Trustee works” under the Project Agreement, with the relationships between the parties reflecting this arrangement.

4.3 The OCA Works Co-ordination Deed

Co-ordination and risk allocations

The basic premises of the OCA Works Co-ordination Deed of 16 September 1996, between the OCA/SOPA, the Trustee, Obayashi and Multiplex, are that:

- It is desirable to co-ordinate and integrate the performance of the “Trustee works” under the Project Agreement with the performance of the “OCA works” under the OCA Construction Contract, and
 - By entering into the deed and the OCA Construction Contract, the OCA/SOPA did not and do not have any obligation greater than would be the case if the “OCA works” formed part of the “Trustee works” under the Project Agreement, other than the obligation to pay Obayashi for carrying out the “OCA works”.
- Accordingly,
- Obayashi must perform the “OCA works” as if they formed part of the “Trustee works” under the Head Contract Design and Construction Agreement between the Trustee and Obayashi, with integration of the design and construction of all the works.
 - The Trustee must manage and supervise the performance of the “OCA works” for the SOPA as if they formed part of the “Trustee works” under the Project Agreement, and procure their practical completion by the dates for practical completion under the Project Agreement.
 - Apart from the obligation of the SOPA to pay for the “OCA works”, the rights and obligations of the OCA/SOPA and the

Trustee in respect of the “OCA works” are more generally be determined under the Project Agreement as if the “OCA works” formed part of the “Trustee works” under the Project Agreement.

- Prior to the termination of the Project Agreement the SOPA must not exercise its rights under the OCA Construction Contract concerning Obayashi’s obligations for the “OCA works”.
- The claims which the Trustee or Obayashi may make against the SOPA are limited to:
 - Claims by Obayashi for payment for the “OCA works”, and
 - Claims which the Trustee could have made successfully if the “OCA works” had formed part of the “Trustee works” under the Project Agreement and the deed and the OCA Construction Contract had not been entered into.
- As between the Trustee and Obayashi,
 - Obayashi’s claims in connection with the deed, the OCA Construction Contract or the “OCA works”—other than those limited claims for which SOPA may be liable, as listed above—are against the Trustee and may only be claimed against the Trustee as if the “OCA works” formed part of the “Trustee works” under the Head Contract Design and Construction Agreement.
 - More generally, the rights and obligations of the Trustee and Obayashi concerning the “OCA works” are to be determined under the Head Contract Design and Construction Agreement as if the “OCA works” formed part of the “Trustee works” under the Head Contract.
- The Trustee, Obayashi and Multiplex have provided indemnities to the OCA/SOPA and each other against liabilities incurred

by them as the result of any claims by any of them against the OCA/SOPA.

If there is any inconsistency between the deed and the terms of the Project Agreement, the Head Contract Design and Construction Agreement or the OCA Construction Contract, the terms of the deed will prevail.

Variations, extensions of time and acceleration directions

SOPA may require a variation to the “Trustee works” or the “OCA works” by issuing a variation order. SOPA must pay Obayashi the value of the variation after the work has, in the opinion of SOPA, been completed, and must also pay Obayashi for its reasonable costs in estimating the value of any major variation that does not proceed.

As already indicated, extensions of time may be granted in the same circumstances as under the Project Agreement. In addition, SOPA may issue an acceleration direction to overcome or minimise the effects of a delay and to maintain the milestone dates and dates for practical completion. Again, SOPA must pay Obayashi the net design and construction costs arising from such a direction.

Termination

If the Project Agreement is terminated, the OCA Construction Contract and the Works Co-ordination Deed are automatically terminated, and SOPA must pay Obayashi the unpaid contract value of all the work completed under the OCA Construction Contract. This will constitute full compensation for the termination, and Obayashi may not make any other claim against SOPA.

5 The OCA Loan Agreement

This agreement, between the OCA, the Trustee and the Operator, was originally designed to assist the Trustee in funding any increase in the sum payable by the Trustee to Obayashi for the “Trustee works” because of the adjustments to be made to the scope of these works under the OCA Works Co-ordination Deed and the Works Adjustment Deed, as outlined in sections 3 and 4 of this report.

The original OCA Loan Agreement, executed on 22 November 1996, was subsequently revised and expanded by the Deed of Variation of OCA Loan Agreement of 20 December 1999, between OCA/SOPA, the Trustee and the Operator, which incorporated an Amended and Restated OCA Loan Agreement.

The major changes included different interest rates, longer repayment periods and the addition of another loan facility to help the Trustee fund the “AFL Trustee Works” which had been added to the “Trustee works” at that time through the AFL Works Agreement and the Project Agreement Amendment Deed.

Further revisions, this time confined to the presentation of a purely indicative drawdown schedule, were made by the Project Variation (2001) Deed of 13 November 2001. This deed also made it clear that none of the obligations of the parties to the OCA Loan Agreement are affected by any cashflow statements or financial models in other documents circulated among the parties prior to 13 November 2001.

Two loan facilities are now provided for in the OCA Loan Agreement:

- An “OCA works facility”, essentially a revised version of the original loan facility, and
- An “AFL works facility”, specifically to help fund the “AFL Trustee works”.

5.1 The ‘OCA works facility’

The facility limit for the “OCA works facility” was to be determined by the OCA, in consultation with the Trustee and the Operator, when the first drawdown was requested by the Trustee, and was to be the lesser of:

- An absolute ceiling of \$9 million, and
- The increased amount payable by the Trustee for the “Trustee works” under the Works Adjustment Deed, less the Trustee’s savings in interest costs under its ANZ Bank term loan resulting

from the reduction in that loan’s actual interest rate, compared with the interest rate originally assumed in financial modelling for the project (to the extent that the Trustee had sufficient surplus cashflows after servicing its debt to ANZ and making lease payments to the OCA).

The facility limit has been set at \$9 million. An indicative drawdown schedule, subject to month-by-month updating, is set out in an appendix to the Project Variation (2001) Deed.

This loan must be repaid, through quarterly instalments, within ten years of practical completion of “Stage 2”.

The interest rate for this loan is 10.64% per annum. If interest is not paid when it is due, additional interest of 2% per annum will be payable, unless the payments have been deferred because of the subordination of this OCA loan to the ANZ term loan.

5.2 The OCA ‘AFL works facility’

The facility limit for this loan is \$3 million, less half the amount (if any) by which the total cost of the “AFL Trustee works” is less than \$18 million.

The first advance under this facility may be made only after at least \$6 million has been spent on the “AFL OCA works”. An indicative drawdown schedule, subject to month-by-month updating, is set out in an appendix to the Project Variation (2001) Deed.

This loan must be repaid, through quarterly instalments, within ten years of practical completion of the “AFL Trustee works”.

The interest rate for this loan is 7.91% per annum. If interest is not paid when it is due, additional interest of 2% per annum will be payable, unless the payments have been deferred because of the subordination of this OCA loan to the ANZ term loan.

5.3 Securities and subordination

Securities for amounts owed under the OCA/SOPA loan facilities include the three OCA–Trustee Deeds of Charge, the OCA–SAM Deed of Charge and an unconditional guarantee by the Operator under the OCA Loan Agreement itself. Recourse under this guarantee will be limited to funds otherwise available for distribution by the Operator to its shareholders.

Both of the OCA/SOPA loan facilities are, however, subordinate to the term loan facility provided to the Trustee by the ANZ

Bank. They may be repaid by the Trustee only from funds which would otherwise be available for distribution to Stadium Australia Trust unitholders, after servicing of the ANZ Bank term loan, the payment of operating costs and the satisfaction of other conditions.

Under the Intercreditor Deed of 13 November 2001, between SOPA, the Trustee, the Operator, Multiplex and Multiplex Stadium Financing Pty Limited, SOPA's securities for amounts owing under

the OCA/SOPA loan facilities rank equally with securities granted in favour of Multiplex Stadium Financing for amounts owing under loans it has made to the Trustee. The Intercreditor Deed also sets out arrangements for SOPA and Multiplex Stadium Financing to share information about any defaults under any of their loans and share payments by the Trustee of amounts owing to them under their loan agreements if one of them has not been fully paid.

6 The Agreement to Lease, the Land Lease, the OCA/SAM O&M Deed and agreements with the Sydney Swans

6.1 The Agreement to Lease

The Agreement to Lease, between the OCA and the Trustee,

- Granted the Trustee access to the construction site, and
- Provided for the Land Lease to be granted to the Trustee upon practical completion of Stage 1 of the stadium.

Construction site access

Until the Land Lease was granted, the OCA granted the Trustee, the Operator and their contractors, employees and other invitees access, possession and use of the construction site to achieve practical completion of “Stage 1” and (if necessary) to operate, maintain and repair the stadium.

This grant of access was subject to, among other things, the Trustee’s responsibility under the Project Agreement to manage the interface of the “Trustee works” with other works being undertaken in the Homebush Bay area, the OCA’s rights under the Project Agreement to access the construction site on reasonable notice, the rights of other contractors undertaking works in the Homebush Bay area to access the construction site at reasonable times and on reasonable terms, and an acknowledgement by the Trustee that the route by which it is to access the construction site might be occasionally and temporarily impeded because of other works in the Homebush Bay area.

Easements

The OCA undertook to grant easements over the stadium precinct for the services and utilities needed for the stadium’s construction and operation, subject to the OCA’s approving any easement’s location and dimensions,

Indemnity

The Trustee indemnified the OCA against any property loss or damage, economic loss or personal injury claims resulting from the Trustee’s use and occupation of the construction site.

Grant of the Land Lease

The OCA agreed to grant and the Trustee agreed to accept the Land Lease, which was to commence upon practical completion of “Stage 1”. The terms and conditions of this lease were to be as annexed to the Agreement to Lease.

The Agreement to Lease included a brief description of the land to be leased: in essence, the footprint of the stadium itself (within its walls, gates and turnstiles), plus the strata of overhangs, service and access roadways, entrance tunnels and roof trusses outside this footprint, but not other parts of the surrounding stadium precinct. The dimensions, areas and boundaries of the land to be leased could be subject to minor changes, but not so as to adversely affect the operation of the stadium. The Trustee was obliged to notify the OCA of the final boundaries as soon as practicable, and plans of consolidation or subdivision were then be registered by the OCA within six months.

Termination

Either party may terminate the Agreement to Lease if the Project Agreement is terminated. Otherwise the agreement will end on 31 January 2031.

6.2 The Land Lease

The Land Lease was executed on 20 December 1999, along with the Operating Sublease from the Trustee to the Operator. Both leases commenced on 1 March 1999, and the Operating Sublease will terminate on 30 January 2031, one day before the termination of the Land Lease. The Land Lease may be terminated earlier by either party if the Project Agreement is terminated.

The Land Lease was transferred from Perpetual Trustee Company Limited, the original Trustee of the Stadium Australia Trust, to MTM Funds Management Limited, the second Trustee, on 6 October 2000, and was later transferred again to the current Trustee, MTM Investment Management Limited.

Amendments to the Land Lease and the Operating Sublease concerning GST issues were executed on 11 August 2000 and 21 November 2000, respectively.

Possession

Subject to the Project Agreement, and rights reserved by SOPA as described below, the Trustee has been granted:

- Exclusive possession of the land (as described above) for the term of the lease, and
- An exclusive licence, until the practical completion of “Stage 2”, over the area of the stadium precinct overhung by the stadium when it is in its 110,000-seat, “Stage 1” mode (“the Stage 1 area”), for all purposes connected with the “overlay works” to fit out the stadium for the Olympics, the “Stage 2” works and the Trustee’s procuring of the stadium’s operation, maintenance and repair.

SOPA has reserved its rights, for both the leased land and the “Stage 1 area”, to construct, maintain and use water, gas, communications and similar services on or over these areas, to access or grant easements over these areas for such services, and to conduct inspections of these areas and the stadium during business hours or on reasonable notice. In exercising these reserved rights, SOPA must not substantially derogate from the Trustee’s rights to use and enjoy these areas and (subject to SOPA’s rights under the Project Agreement) must minimise disturbance to or interference with the Trustee’s performance of its obligations or exercising of its rights under the Project Agreement and the lease. SOPA must also make good any damage it causes to the land or the stadium, and indemnify the Trustee for losses incurred by the Trustee, as a result of SOPA’s exercising of these rights reserved under the lease.

The Trustee, the Operator and persons authorised by them also have the right to access other parts of the stadium precinct, as designated by SOPA from time to time, in order to carry out the Stage 2 works, procure the operation, maintenance and repair of the stadium, comply with their other contractual obligations and exercise their other contractual rights.

Pedestrians must be granted unrestricted access to and egress from the stadium via the stadium precinct, in a manner that meets all statutory requirements for emergency access to and egress from such facilities.

Rent and other payments by the Trustee

The rent payable by the Trustee to SOPA has two components:

- An annual “base” rent. The first “base” rent payment will be due in July 2019 or in the July of the year immediately following the Trustee’s repayment of its term debt to the ANZ Bank if this is later, and will be for the period 1 January–30 June. Subsequent payments, for a full financial year, will have to be made in July each year.

The annual “base” rent payable to SOPA will be the lesser of:

- 35% of \$19 million, indexed to the CPI from 1 March 1999, plus GST if any, and
 - 35% of the rent payable to the Trustee by the Operator under the Operating Sublease, plus GST if any. This Operating Sublease rent comprises a “base rent” \$2.5 million per year (indexed to the CPI from 1 September 1996, plus GST, if any) plus 70% of the Operator’s gross revenues, plus GST if any, subject to limits set out in the Operating Sublease.
- An annual “incentive” rent, payable for each financial year throughout the lease, except for the first and final part-years of the lease, if the rent payable to the Trustee by the Operator under the Operating Sublease exceeds certain thresholds set out in the Land Lease.

This “incentive” rent will be a proportion of the amount by which any rent payable by the Operator exceeds that projected under a “base case financial model”, the proportion depending on both the extent of this excess and the year in which it occurs: the greater the excess, and the later the year, the greater the proportion flowing on to SOPA.

For example, if the Operator’s rent liability were 75–100% above the “base case financial model” projections, SOPA would be entitled to 15% of this excess if it occurred between the start of the lease and 2009, 30% if it occurred between 2009 and 2019 and 40% thereafter.

The Trustee is liable to pay the base rent and any incentive rent even if the Operator defaults in its rent payments to the Trustee under the Operating Sublease. The Trustee’s rent obligations also do not abate if any part of the stadium is damaged or destroyed.

The Trustee is liable for all utility and service charges attributable to its use of the land and all council rates, water rates, land taxes and estate levies.

Indemnity

The Trustee will indemnify SOPA against any property damage, economic loss or personal injury claims arising from the Trustee’s use and occupation of the land.

6.3 The OCA/SAM O&M Deed

This deed between SOPA and the Operator:

- Sets out terms and conditions under which the Operator is to discharge certain of the Trustee’s obligations to SOPA under the Project Agreement and the Operating Sublease for the operation, maintenance and repair of the stadium.
- Stipulates arrangements for the Government to hire the stadium for major post-Olympics international sporting events such as the Commonwealth Games.

Operation, maintenance and repair

The Operator must implement systems and procedures, employ staff and resources and do all other things necessary to ensure the stadium is operated, maintained and repaired in accordance with the Project Agreement.

In performing its operation, maintenance and repair obligations under the Operating Sublease, the Operator must:

- Ensure all substantial obligations of these types are carried out by reputable corporations with sufficient experience, expertise and ability and high financial and commercial standing, appointed on an arms-length basis
- Provide SOPA with prior written details of all proposed appointments and all proposed material changes to the terms of these appointments
- Terminate appointments only if replacements have been appointed, and
- Provide quarterly reports to SOPA on the parties involved and their performance.

The Government's rights to hire and use the stadium

SOPA is entitled, on behalf of the Government, to hire and use the stadium for major international sporting events, including the Commonwealth Games and the Regional Games. It must pay the Operator a negotiated fee for the use of the stadium, with this fee being based on contemporary commercial fees for the hiring of comparable venues and taking account of reconfiguration and fitout costs and the revenue foregone by and costs incurred by the Operator during the Government hire periods.

Consistent with the Trustee's obligations under the Project Agreement, the Operator has promised that it will not do anything to prevent the stadium being reasonably capable of being reconfigured, without unreasonable expense, for major athletics events, with a minimum capacity of 80,000 people.

The rights of members of Stadium Australia Club Limited will be suspended during these Government hire periods, but SOPA must use its best endeavours to negotiate preferential booking rights, with assured seating at full ticket prices, for members to attend any such major international sporting events.

Ownership of the stadium and its plant, equipment and fittings

The Operator undertakes that it will procure that at all times during the operating phase of the project each part of the stadium, including its plant, equipment and fittings, will be owned by SOPA, the Trust or the Operator or will be subject to an option to purchase in favour of the Operator. At the end of the term, or upon earlier termination of the Project Agreement, the Operator must exercise any such option, and SOPA will then have the

option of purchasing each part of the stadium owned or acquired by the Operator for \$1.

Termination

In a reflection of the equivalent provisions in the Project Agreement, if there is a material default by the Operator on any of its material obligations under the OCA/SAM O&M Deed, followed by a failure by the Operator to start to remedy the default (if this can be done) within 20 days of a notice by SOPA to do so, followed by a failure to complete the remedy within a reasonable time as specified by SOPA in the notice, SOPA may require the Trustee to terminate the Operating Sublease.

The OCA/SAM O&M Deed itself may be terminated by either party upon the termination of the Project Agreement, or will terminate automatically upon the termination of the Agreement to Sublease or the Operating Sublease, provided in either case that the Operator has complied with the ownership requirements outlined above.

6.4 Agreements with the Sydney Swans

As already indicated in section 3 of this report, on 21 August 2001 Ogden IFC (as the Operator's agent), Sydney Swans Limited, the Australian Football League and Sports Facilities Management Limited entered into a Swans Hiring Agreement under which the Sydney Swans will play specified numbers of AFL games at Stadium Australia during the 2002 to 2008 football seasons, with a possible extension of the agreement to 2016.

On 31 August 2001 SOPA entered into two associated agreements with Sydney Swans Limited: a SOPA/Sydney Swans Consent Agreement and a SOPA/Sydney Swans Agreement for Car Parking.

SOPA/Sydney Swans Consent Agreement

The SOPA/Sydney Swans Consent Agreement was developed in response to a request by the Sydney Swans for a commitment by SOPA that if the Project Agreement and the Land Lease were terminated SOPA would exercise its consequential rights and powers (described in sections 3.5 and 7 of this report) subject to the Swans Hiring Agreement.

The SOPA/Sydney Swans Consent Agreement does not include such an extensive commitment. Instead, it provides that:

- If the Project Agreement and the Land Lease are terminated before 21 August 2008, SOPA must negotiate in good faith with the Sydney Swans to reach mutual agreement on the terms of the Sydney Swans' continued use and hiring of the stadium, and
- If the Project Agreement and the Land Lease are terminated before 21 August 2005, and the stadium and its plant, fixtures, fittings and equipment are capable of being operated by SOPA to support the stadium's normal business, but SOPA

and the Sydney Swans are unable to agree on future use and hiring arrangements,

- SOPA must hire the stadium to the Sydney Swans, if the Sydney Swans request it to, from the date of termination of the Project Agreement and Land Lease to the end of the next full AFL football season, on terms substantially similar to those of the Swans Hiring Agreement, except for some specified payments to be made by the Operator to the Sydney Swans under that agreement
- The Sydney Swans must then play the agreed AFL games at the stadium, and
- If the stadium's facilities and operational capacity are degraded, SOPA must reasonably endeavour to restore them but is not obliged to the Sydney Swans to do so.

SOPA/Sydney Swans Agreement for Car Parking

Under the SOPA/Sydney Swans Agreement for Car Parking,

- The Sydney Swans have the right to reserve up to 3,000 car parking spaces in Sydney Olympic Park, annually in advance, for allocation by the Sydney Swans, on days when AFL games agreed to under the Swans Hiring Agreement, and may also reserve up to 3,000 car parking spaces for each other AFL game at the stadium in which the Swans participate, and
- SOPA must operate shuttle buses between the stadium and the relevant car parks on these days, on a "user pays" commercial basis.

The agreement also sets out arrangements for car parking payments and ticket returns and refunds.

7 SOPA securities and the OCA Consent Deed

7.1 The OCA–Trustee Deeds of Charge and the OCA–SAM Deed of Charge

These securities are in addition to the construction-phase performance “securities” held by the OCA/SOPA under the Project Agreement itself (the cash performance bond and the three security bonds), as discussed in section 3 of this report.

Under the three OCA–Trustee Deeds of Charge—the first of which was signed by the OCA and the then Trustee, Perpetual Trustee Company Limited on 22 November 1996, the second of which was signed by the OCA and MTM Funds Management Limited on 30 June 2000 and the third of which was signed by the OCA and MTM Investment Limited on 21 June 2001—the Trustee has granted SOPA fixed and floating charges over:

- All the assets of the Stadium Australia Trust, and
- The Trustee’s right to be indemnified from the assets of the trust,

in order to secure the Trustee’s obligations to SOPA under any of the key project contracts

These charges, which are subordinate to the charge granted by the Trustee to the Security Agent to secure its debt financing arrangements, may be enforced by SOPA if:

- SOPA becomes entitled to terminate the Project Agreement for a default by the Trustee
- SOPA becomes entitled to terminate any other key agreement, except when this right arises from a termination of the Project Agreement on grounds other than a default by the Trustee
- The Trustee fails to comply with its obligations under the Project Agreement upon the expiration or earlier termination of that agreement, or
- The Trustee fails to pay an amount due under the OCA Loan Agreement.

Subject to the other project contracts, SOPA may make good any default by the Trustee and claim its costs in doing so from the Trustee.

Similarly, under the OCA–SAM Deed of Charge, signed by the OCA and the Operator on 22 November 1996, the Operator has granted SOPA a fixed and floating charge over its present and future interests in:

- Letters of credit issued to the Operator under the agreements for equity subscriptions by the project’s “founders” and “commercial investors”
- All equity in the Operator subscribed by the founders and commercial investors
- Any option to purchase granted to the Operator concerning any fixtures, fittings, equipment or other parts of the stadium, and
- All other project assets
in order to secure:
- All the Trustee’s liabilities and obligations to SOPA under the key project contracts, and
- The Operator’s liabilities and obligations to SOPA under the OCA/SAM O&M Deed, the OCA Loan Agreement and the OCA–SAM Deed of Charge.

The Operator may deal with any part of the charged property, unless this is restricted by the Project Agreement, in the ordinary course of its ordinary business. These permitted dealings are, however, subject to a negative pledge specified under the deed.

The charge, which is subordinate to a charge granted by the Operator to the Security Agent to secure the project’s debt financing arrangements, may be enforced by SOPA if:

- SOPA terminates the Project Agreement for a default by the Trustee
- The Trustee fails to comply with its obligations under the Project Agreement upon the expiration or earlier termination of that agreement, and this failure is caused by any act or omission by the Operator
- The Operator fails to comply with its obligations under the OCA/SAM O&M Deed concerning the operation, maintenance and repair of the stadium, the ownership of the stadium or Government hire of the stadium, or

- The Operator materially fails to comply with any of its other material obligations under the OCA/SAM O&M Deed, the OCA Loan Agreement and the OCA–SAM Deed of Charge.

Subject to the other project contracts, SOPA may make good any default by the Operator and claim its costs in doing so from the Operator.

7.2 The OCA Consent Deed

This deed, executed by the OCA, the Trustee, the Security Agent and the Operator on 22 November 1996,

- Regulates priorities between the securities granted by the Trustee and the Operator to SOPA (the OCA–Trustee Deeds of Charge and the OCA–SAM Deed of Charge) and the Security Agent (under the private sector debt financing arrangements), and
- Regulates the manner in which the parties may exercise their rights if the Trustee defaults on its obligations or if SOPA otherwise becomes entitled to terminate the Project Agreement, the Agreement to Lease or the Land Lease.

The deed will terminate when the Trustee repays all its term debt to the ANZ Bank.

Ranking of securities

Each of the ANZ Bank’s securities has priority over any SOPA security over the same property. SOPA has agreed not to enforce or exercise its rights under the SOPA securities without the Security Agent’s consent.

Under the Intercreditor Deed of 13 November 2001, between SOPA, the Trustee, the Operator, Multiplex and Multiplex Stadium Financing Pty Limited, the SOPA securities rank equally with securities provided by the Trustee and the Operator to Multiplex Stadium Financing to secure the loans made to the Trustee by Multiplex Stadium Financing.

‘Project defaults’

For the purposes of the OCA Consent Deed, “project defaults” are:

- Any of the events that may lead to the termination of the Project Agreement for a Trustee default (see section 3.5)
- A Trustee default on its obligation under the OCA Works Co-ordination Deed to supervise and manage the “OCA works”, and
- Any event or circumstance entitling SOPA to terminate the Agreement to Lease or the Land Lease.

SOPA has undertaken to promptly notify the Security Agent if it becomes aware of such a project default.

It has also acknowledged that:

- In conjunction with the Trustee’s rights to remedy the project default under the Project Agreement, the Security Agent also has the right to remedy or procure the remedy of the

default. SOPA must provide the Security Agent with all necessary access to the stadium land.

- The Security Agent and the debt financiers have rights under the financiers’ securities to assume the rights and obligations of the Trustee under the key project contracts, including those to which SOPA is a party.

Accordingly, the OCA undertook not to terminate the Project Agreement prior to the practical completion of “Stage 1” except:

- Under the “discretionary termination without cause” provisions described in section 3.5 of this report, in which case the OCA would have had to pay the compensation due to the Trustee into a nominated account of the Trustee with the ANZ Bank; or
- Otherwise in accordance with the Project Agreement, provided the OCA had first given notice of the project default (if any) to the Security Agent and the Security Agent, the financiers or the Trustee had not remedied the default in the applicable “cure” period, or the Security Agent had advised the OCA that the financiers did not intend to remedy the default.

(Under the OCA Consent Deed, the cure periods set out in the Project Agreement must be extended, upon a request by the Security Agent, by either 30 days or 60 days. The latter applies if SOPA reasonably believes the Security Agent, the financiers or the Trustee are using their best endeavours to remedy the default.)

If the OCA had terminated the Project Agreement prior to the practical completion of “Stage 1” on any basis other than the “discretionary termination without cause” provisions—i.e. for a Trustee default, or for a building approval appeal delay, or for *force majeure*—the OCA would have had to:

- Pay the Security Agent, within 30 days of the termination, 70% of the net costs to the Trustee and the Operator of unwinding or terminating any interest rate hedging arrangements entered into by them in connection with the financing of the project, *plus* 70% of the Trustee’s debts and associated costs, *less* 70% of all equity committed to the project by the “founders” and “commercial investors” but not yet subscribed.
- Pay the remaining 30%—which would have accrued interest at the Reuter’s BBSY reference rate plus 1.25% until “Stage 1” was completed and 1.5% thereafter—from any surplus cashflows generated by its operation of the stadium, and/or from the proceeds of any sale of the stadium by the OCA after it was completed, once the OCA had used these proceeds to recover its costs and losses from its completion of the stadium and the “OCA works”, the termination of the Project Agreement and the operation of the stadium, net of any income received by the OCA and the proceeds of the security bonds and the cash performance bond.

These liabilities would have applied even if the OCA had not been obliged under the Project Agreement to build “Stage 1” and had elected not to do so.

Following the practical completion of Stage 1, SOPA may not terminate the Project Agreement unless it has notified the Security Agent of the project default (if any) and the default is not remedied by the Security Agent, the financiers or the Trustee within the applicable cure period (as extended), plus a further period of up to four years if the Security Agent has stepped in and taken over the project from the Trustee and is diligently pursuing a remedy. (This extension of up to four years may itself be extended, by agreement between SOPA and the Security Agent.)

For its part, the Security Agent has undertaken to keep SOPA informed of its own plans concerning any project default, including alternative courses of action it is considering and the progress being made in implementing its plans.

Under the project's debt financing arrangements, during a "cure" period (as extended under the OCA Consent Deed) the Security Agent may, among other things, appoint a receiver or agent to perform some or all of the Trustee's obligations under the Project Agreement, engage others to perform these obligations (provided they are acceptable to SOPA) or dispose of the Trustee's rights under the Project Agreement.

This is subject, however, to regulation under the OCA Consent Deed of the ways in which project defaults may be cured by the Trustee or the Security Agent in particular periods.

In essence, if the Trustee (or in certain circumstances the Security Agent) wishes to remedy a project default:

- By novating the design and construction contracts to a replacement contractor
- By novating the Operating Sublease or appointing a replacement operator, or
- (In the case of the Security Agent only) by selling the stadium in accordance with its rights or the financiers' rights under the debt financing arrangements,

the prior written consent of SOPA to this action must be obtained. This consent must not be unreasonably withheld, and must not be withheld when specified requirements designed to ensure that SOPA's position is maintained are met.

'Finance defaults'

The Security Agent has agreed to notify SOPA of the occurrence and circumstances of any default under the private sector's debt financing arrangements. Except where a delay would materially affect the financier(s), it must also notify SOPA in writing before taking any action to enforce the financiers' securities.

Insurance proceeds

Insurance proceeds must be deposited into a special purpose account of the Trustee with the ANZ Bank.

If the insurance proceeds received by the Trustee for any event or series of related events are \$50 million or less (indexed to the CPI), they must be applied for the repair or replacement of the stadium, regardless of the Trustee's ability to repay its debt financiers.

If the insurance proceeds are in excess of \$50 million (indexed to the CPI) and:

- There are sufficient funds to repair or reinstate the stadium within a reasonable time
- The Trustee is able to meet its obligations to repay its debt financiers substantially in accordance with the debt financing arrangements and ensure that its debt service cover ratio under the term loan will be not less than 1.4 (prior to the end of the Paralympics the limit on the debt service cover ratio was 1.3), and
- It is economically viable to repair or replace the stadium,

the proceeds must again be applied for the repair and replacement of the stadium. However, if the three conditions listed above are not satisfied, after any dispute resolution negotiations under the Project Agreement have been completed or in any event after three months, the Security Agent may require some or all of the insurance proceeds to be applied to satisfy the Trustee's obligations to its financiers, with the balance being paid to an account established by SOPA and the Trustee.

Amendment of project documents

If any of the project's private sector debt financing documents are varied, modified or replaced without SOPA's written consent, SOPA's liabilities under the key project contracts will continue as if there had been no variation, modification or replacement.

The Security Agent has undertaken that until SOPA has been fully repaid under the OCA Loan Agreement, the private sector debt financing documents will not be varied, modified or replaced in any way that adversely affects SOPA's interests as a subordinated lender, or in any way that in the Security Agent's opinion might do so, without SOPA's prior written consent. SOPA may not unreasonably withhold its consent if the Trustee is in material default under the debt financing documents.

Similarly, SOPA has undertaken not to supplement or amend the terms of the contracts to which it is a party—other than minor or technical variations or variations which could not reasonably affect the interests of the financiers—without the prior written consent of the Security Agent, whose consent may not be unreasonably withheld or delayed.

8 The PAFA Act Guarantee

A Public Authorities (Financial Arrangements) Act Guarantee deed poll, made by the Minister for the Olympics on 26 November 1996 under delegation from the Treasurer and on behalf of the State of NSW under section 22B of the Public Authorities (Financial Arrangements) Act 1987, absolutely, irrevocably and unconditionally guarantees SOPA's performance under the Project Agreement, the Agreement to Lease, the Land Lease, the OCA Works Co-ordination Deed, the OCA Construction Contract, the OCA Consent Deed, and the OCA Loan Agreement, and any other project contracts approved by the Treasurer, to all the other parties to these contracts. (The OCA's performance under the Olympic Rights Agreement, which terminated automatically on 31 December 2000, was also guaranteed.)

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

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

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

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

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

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

Further, in contrast to arrangements applying for some other projects under PAFA Act guarantees provided following later amendments to the PAFA Act, the State's obligations are not released by any variation of the guaranteed obligations.

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

Appendix A

Arrangements for the Olympics

A1 The Olympic Rights Agreement

This agreement between the OCA, the Olympic Rights Trustee and the Operator committed the OCA to procuring:

- The issuing by SOCOG of Olympic tickets to people nominated by “Olympic rights holders”—the “Gold Membership” and “Platinum Membership” package subscribers—and accepted by SOCOG in accordance with the Commercial Rights Agreement summarised in section A3 below, and
- The holding of the Olympics opening and closing ceremonies, track and field events and (subject to FIFA’s approval) the men’s soccer final at the stadium.

In return, the Olympic Rights Trustee agreed to pay the OCA the \$1,750 for each “Gold Membership” package subscriber and \$8,000 for each “Platinum Membership” package subscriber—the “Olympic ticket amounts” in their \$10,000 and \$34,000 packages—or \$65 million in total, assuming both floats were fully subscribed (if they were not, as turned out to be the case, the OCA was to receive the balance of this \$65 million under the Extension Agreement, as described below).

Further, under the Extension Agreement, as amended by the Amending Agreement to Extension Agreement, prepayments of portions of this \$65 million were to be made by the underwriters to the OCA if and whenever the balance of the public floats’ subscription monies account decreased and the amount in this account was less than \$65 million. As it turned out, no such prepayments had to be made.

The Olympic Rights Trustee’s obligations

Under the Olympic Rights Agreement, the Olympic Rights Trustee was obliged to pay the “Olympic ticket amount” for each subscriber to the OCA on the day it received this amount from Perpetual Trustee Company Limited in its role as bare trustee for the sums subscribed in the public floats.

This was to occur when the units in Stadium Australia Trust and shares in the Operator were allotted to subscribers to the floats. Under the Extension Agreement, this had to occur by no later than 4 April 1997. If for any reason the OCA had not received a total of \$280 million in accordance with the Project Agreement, the Olympic Rights Agreement and the Extension Agreement by that date—\$215 million for the cash performance bond under the Project Agreement and \$65 million for the “Olympic ticket amount” under the Olympic Rights Agreement and/or from the pre-payments under the Extension Agreement described above—the underwriters of the public floats were obliged to (and did) directly or indirectly pay the balance to the OCA. Payments made to the OCA in accordance with the Extension Agreement were not refundable in any circumstances, except in accordance with the Project Agreement.

The OCA’s obligations

The OCA agreed to procure SOCOG to issue Olympic tickets to each Olympic rights holder in accordance with SOCOG’s obligations under the Commercial Rights Agreement.

As already discussed in section 3.5 of the main report, this obligation was to end if the Project Agreement were terminated in circumstances where the OCA was not obliged, or had not elected, to complete the design and construction of Stage I of the stadium generally in accordance with the Project Agreement’s design brief, or was enjoined or otherwise restrained from using the Project Agreement’s cash performance bond.

Provided the Olympic Games were held principally in Sydney and the stadium was available between 1 September 2000 and 22 November 2000,

- The OCA had to procure that the Olympic Games opening and closing ceremonies, track and field events and men’s soccer final would be held at the stadium. The last of these commitments was subject to the approval of FIFA and the resolution of timetabling issues.

- If any of these ceremonies or events was not to be held at the stadium, OCA was obliged, in its absolute discretion, either to—
 - Procure SOCOG to issue a ticket for a reserved seat of comparable quality to each Olympic rights holder (or two, in the case of “Platinum Membership” investors) for the event’s alternative venue; or
 - Pay each Olympic rights holder the official public ticket price for a reserved seat of equivalent quality at the event (or twice this amount, in the case of “Platinum Membership” investors).

The OCA could issue tickets to some Olympic rights holders and cash to others, on a random basis or as otherwise agreed.

If there were no official public ticket price, or if the public ticket price were demonstrably less than the price reasonably expected to be charged for admission to such events on a commercial basis, the OCA would have had to pay to each Olympic rights holder an amount equal to an equivalent ticket price for the same event or a comparable event at the Atlanta Olympics, indexed to the CPI.

The OCA’s maximum liability under these provisions was limited to \$65 million.

A2 The Venue Agreement

This agreement between SOCOG, the Trustee, the Trust Manager and the Operator specified the terms on which the stadium would be made available to SOCOG, rent-free, for the Olympic and Paralympic Games and various “test” events prior to the Olympics.

The agreement was to terminate on 31 December 2000, unless it was terminated earlier on the grounds discussed below.

Test events

The Operator granted SOCOG, for no rent, the exclusive right to occupy, use and control the stadium to organise and conduct two pre-Olympics “test” events: the Oceania Olympic Prelude, to be held between 17 January 2000 and 15 February 2000, and the Australian Olympic athletic trials, from 21 to 28 August 2000. SOCOG was not obliged to conduct either test event, and the nature of and dates for these events could be changed.

The Trustee and the Operator had limited rights to access the stadium during the test events, to perform obligations imposed on them under the Venue Agreement and the Project Agreement or to meet other legal requirements.

SOCOG was to make tickets to the test events available to the Operator, at no cost, for “Gold Membership” and “Platinum Membership” package investors.

The Olympic and Paralympic Games

The Operator granted SOCOG, for no rent, the exclusive right to occupy, use and control the stadium from 1 September 2000 to 22

November 2000 (“the Games period”), to organise and stage the Olympic Games and the Paralympic Games. The Trustee and the Operator had limited rights to access the stadium during this period, to perform obligations imposed on them under the Venue Agreement and the Project Agreement or to meet other legal requirements.

The Operator had to ensure that the stadium was available for the Olympics in its Stage 1 “as built” condition, except for fair wear and tear, and also had to ensure that its turf surfaces met a specified standard.

SOCOG fitout works

SOCOG had access to the stadium between 1 July 2000 and 31 August 2000 (“the pre-Games period”) to conduct fitout works for the Olympic Games.

During this period, apart from during the second “test” event period from 21 to 28 August, the Operator was also using the stadium for its own events. For this reason, by 30 September 1999 SOCOG and the Operator had to agree—if necessary by reference to an expert—on a program to co-ordinate the SOCOG fitout with the Operator’s events and any other SOCOG activities to organise the Olympic Games, such as rehearsals of the opening and closing ceremonies.

SOCOG was responsible, at its own cost, for the carrying out, maintenance and removal of all SOCOG fitout works for the test events and the Olympic and Paralympic Games, as described in an appendix to the Venue Agreement. It had to remove these fitout works as soon as practicable, and in any event by the end of each test event (in the case of the fitout works for these events) and 31 December 2000 (in the case of the fitout works for the Olympics and Paralympics). SOCOG also had to make good any damage caused by the fitout works and reinstate the stadium, including its turf surface, to the condition it was in immediately prior to the test event or the Games period.

FF&E, services, utilities and staff to be available for SOCOG’s use

During the periods SOCOG used the stadium, the Operator was obliged in accordance with procedural arrangements set out in the Venue Agreement, to:

- Procure that all fittings, furnishings and equipment owned or controlled by the Trustee, the Trust Manager or the Operator and ordinarily located at the stadium when it is operating were available for use by SOCOG, SPOC or any organisation granted concession rights by SOCOG under the Commercial Rights Agreement.
- Use its reasonable endeavours to make other stadium fittings, furnishings and equipment available, and procure the removal of any fittings, furnishings and equipment that were not made available, if SOCOG required this to be done, at the Operator’s expense.

- Procure the provision of certain building services, utilities and other services, unless SOCOG notified the Operator that it did not require them.
- Provide SOCOG with certain stadium operational staff.

The Venue Agreement and its appendices specified principles under which SOCOG would be liable to pay the Operator for part of the costs of complying with these obligations. SOCOG was also liable to pay the Operator for any utilities used by SOCOG during the periods SOCOG used the stadium, and for other direct venue costs incurred by the Operator during these periods, as agreed between SOCOG and the Operator.

If the Operator breached these obligations, the Trustee and the Trust Manager were obliged to perform them or procure their performance.

The Operator undertook that it would not knowingly do anything that would cause any Olympic or Paralympic body, including SOCOG and SPOC, to breach the Olympic Charter, Sydney's "host city" contracts for the Games or the Environmental Guidelines for the Summer Olympic Games, which formed part of Sydney's 1993 Olympic bid.

During the periods SOCOG used the stadium, SOCOG could adapt or alter existing services to the stadium, other than its building services, and/or use substitute services, provided the adapted, altered or new services did not interfere with any existing service. SOCOG could also, at its own cost, enter into alternative arrangements for the supply of electricity, gas, water or telecommunications, paying for the costs of disconnection and reconnection of the Operator's suppliers.

Maintenance, repair and liability for damage

Consistently with the obligations imposed on the Trustee under the Project Agreement and the Land Lease, and the obligations imposed on the Operator under the Operating Sublease, the Operator was generally obliged to maintain and repair the stadium, including its fittings, furnishings and equipment, at its own cost, except in relation to building services and utilities required by SOCOG, for which SOCOG was to provide limited reimbursement. If the Operator breached its obligation to repair, the Trustee and the Trust Manager had to perform or procure the stadium's repair.

However, SOCOG was liable to repair or replace, at its own cost,

- Any damage caused during the test events or the Games periods, unless this damage was caused by the Operator's employees, contractors, agents, consultants, etc not acting under a SOCOG direction, and
- Any other damage caused by SOCOG or SOCOG's employees, contractors, agents, consultants, customers, etc.

'Clean venue' requirements

A "clean venue" requirement applied during the test events and the Games period, under which the rights of the Operator's concession holders had to be extinguished or suspended and all their signage, materials and other equipment had to be covered or removed.

Insurance

The Operator was required to effect and maintain specified insurance policies for industrial special risks (under the Project Agreement), public liability and employer's liability and workers' compensation. These policies had to be on certain terms and in some cases had to be in the joint names of at least the Operator and SOCOG, the International Olympic Committee, SPOC and the International Paralympic Committee. The parties could agree to a "value in kind" insurance arrangement for public liability cover.

SOCOG had to reimburse the Operator for the incremental cost of any additional SOCOG insurance requirements beyond the requirements already imposed by the Project Agreement. SOCOG could also require the Operator to increase its public liability insurance at SOCOG's cost.

SOCOG was itself obliged to effect a number of insurance policies in relation to the SOCOG fitout works, with at least the Operator, the Trustee and the Trust Manager being jointly named as the insured.

If the Operator breached its insurance obligations, the Trustee and the Trust Manager were obliged to perform them or procure their performance.

During the periods SOCOG used the stadium, SOCOG bore all the risks not required to be covered by insurance under the Project Agreement or the Venue Agreement, if these risks arose as a result of, or in connection with, the Olympic and Paralympic Games being conducted by SOCOG at the stadium.

Dispute resolution and expert determination

The Venue Agreement set out agreed procedures for dispute resolution, including direct negotiations, mediation and expert determination.

Indemnities

The Operator indemnified SOCOG, the International Olympic Committee (IOC), the Australian Olympic Committee (AOC), SPOC, the International Paralympic Committee (IPC) and the Australian Paralympic Federation (APF), and their directors, officers and employees, against all losses, claims, actions, liability, damages or costs caused by:

- Any non-compliance by the Operator with its obligations under the Venue Agreement.

- Any breach of a representation or warranty made by the Operator under the Venue Agreement.
- Any negligent, wilful or malicious act, omission or default, or any mis-use of the stadium or the property of SOCOG or SOCOG's concession holders, by the Operator or its employees, agents, licensees, volunteers, contractors, subcontractors, consultants or advisers.
- Any dangerous, defective or malfunctioning property installed by or for the Operator, other than the SOCOG fitout works and any property installed by or for SOCOG.

Similarly, the Trust Manager indemnified SOCOG, the IOC, SPOC and the IPC, and their directors, officers and employees, against all losses, claims, actions, liability, damages or costs caused by:

- Any non-compliance by the Trust Manager with its obligations under the Venue Agreement.
- Any breach of a representation or warranty made by the Trust Manager under the Venue Agreement.
- Any negligent, wilful or malicious act, omission or default, or any mis-use of the stadium or the property of SOCOG or SOCOG's concession holders, by the Trust Manager while acting under its Venue Agreement obligations to perform or procure the performance of certain undertakings by the Operator if the Operator failed to do so, including the Operator's obligations to make the stadium available for the test events, Olympics and Paralympics, to maintain and repair the stadium, to provide services and utilities and to effect and maintain insurance policies.
- Any dangerous, defective or malfunctioning property installed by or for the Trust Manager while acting under the same obligations, other than the SOCOG fitout works and any property installed by or for SOCOG.

Subject to the general limitations on its liabilities summarised in section 2.5 of the main report, the Trustee indemnified SOCOG, the IOC, the AOC, SPOC, the IPC and the APF, and their directors, officers and employees, against all losses, claims, actions, liability, damages or costs caused by:

- Any non-compliance by the Trustee, the Operator or the Trust Manager with their obligations under the Venue Agreement (provided, in the last two cases, that claims had already been made by SOCOG against the Operator or the Trust Manager and had not been satisfied).
- Any breach of a representation or warranty made by the Trustee, the Operator or the Trust Manager under the Venue Agreement (subject, in the last two cases, to the same proviso).

In return, SOCOG indemnified the Trustee, the Trust Manager and the Operator, and their directors, officers and employees, against all losses, claims, actions, liability, damages or costs caused by:

- Any non-compliance by SOCOG with its obligations under the Venue Agreement.

- Any breach of a representation or warranty made by SOCOG under the Venue Agreement.
- Any negligent, wilful or malicious act, omission or default, or any mis-use of the stadium or the property of the Operator or the Operator's concession holders, by SOCOG or by any employee, agent, contractor, consultant, customer, workman, volunteer worker, sponsor, supplier, invitee, client or visitor of SOCOG, any SOCOG licensee, sub-licensee or concession holder or any other person or organisation at the stadium at SOCOG's invitation or direction (other than the Operator's employees etc).
- Any dangerous, defective or malfunctioning property installed by or for SOCOG.
- Any risks arising from or associated with the test events, Olympics and Paralympics, if these risks do not have to be covered by insurance policies under the Venue Agreement or Project Agreement.

Termination

The Venue Agreement set out the circumstances under which the agreement could be terminated before 31 December 2000. These were:

- Automatic termination, unless the parties agreed otherwise, 14 days after a termination of the Host City Contract by the International Olympic Committee under which Sydney lost the Olympic Games.
- Automatic termination, unless the parties agreed otherwise, 14 days after termination of the Project Agreement, the Agreement to Lease and/or the Land Lease for any reason prior to practical completion of "Stage 1" of the stadium, or for any reason other than a default by the Trustee after that date.
- Termination by SOCOG if the Project Agreement, the Agreement to Lease and/or the Land Lease were terminated for a default by the Trustee after practical completion of "Stage 1".

The Operator, the Trustee and the Trust Manager could not bring any claims against SOCOG or any other Olympic or Paralympic body as a result of such a termination, and SOCOG could claim damages or compensation from the Operator, Trustee or the Trust Manager only under the last of the circumstances listed above.

A3 The Commercial Rights Agreement

This agreement between SOCOG, the Operator, the Trustee, the Olympic Rights Trustee and the Trust Manager aimed primarily to:

- Ensure people nominated by "Olympic rights holders"—the "Gold Membership" and "Platinum Membership" package subscribers—and accepted by SOCOG would receive their tickets to Olympics events at the stadium.
- Establish joint marketing arrangements between SOCOG and the Operator, restrict other marketing by the Operator, the

Trustee, the Olympic Rights Trustee, the Trust Manager and numerous other parties, and protect the marketing programs of SOCOG, SPOC and the Operator against “ambush” marketing.

Only the main provisions in the agreement aimed at the former of these objectives are summarised below. For an outline of the marketing provisions, which were essentially aimed at protecting and reinforcing wider marketing rights associated with the Olympics and Paralympics, the reader is referred to the contract summaries in section 8 of the “Gold Membership” and “Platinum Membership” Prospectuses.

The Commercial Rights Agreement was to terminate on 31 December 2000, unless it was terminated earlier on the same grounds as for the Venue Agreement (see above) or upon the termination of the Venue Agreement itself.

Olympic Charter obligations

The provisions of the Commercial Rights Agreement (and also the Venue Agreement) were subject to the Olympic Charter. If the Olympic Charter applicable at the time of the Olympic Games in 2000 had included a provision not contained in the Olympic Charter applying when the Commercial Rights Agreement was signed, and the Operator had reasonably believed this would have a material adverse impact on the Operator, SOCOG and the Operator would have had to negotiate in good faith to identify and implement mutually acceptable means of minimising this impact.

‘Olympic rights’

SOCOG granted the “Olympic rights”—the rights of each “Olympic rights holder” to tickets to occupy one or two reserved seats in the stadium at each Olympics session, depending on whether they had obtained these rights under the “Gold” or “Platinum” packages—to the Olympic Rights Trustee, subject to terms set out in the Commercial Rights Agreement.

The Commercial Rights Agreement, as originally signed in September 1996, included a number of prohibitions and guidelines concerning these “Olympic rights”. Among other things, it:

- Required Olympic rights holders—who themselves, under the original floats, could only be individuals, family companies or family trusts—to nominate an individual to be the ticket recipient.
- Prohibited nominations, or the transfer of the “Olympic rights” (including the tickets), as part of any commercial, political, advertising or promotional scheme or inducement.
- Prohibited the sale or trading of the “Olympic rights” under any circumstances.
- Reserved SOCOG’s right to object to a nomination or transfer if it would have been likely, in SOCOG’s reasonable opinion, to cause material concern to present or prospective official Olympic partners, sponsors, supporters or suppliers.

- Limited requests for contiguous seat allocations to only six seats.

However, under the Extension Agreement SOCOG agreed, with the other parties to that agreement, that the Commercial Rights Agreement and marketing agreements with the underwriters of the floats would be amended to, among other things,

- Permit corporations other than family companies and trusts to apply for “Gold Membership” packages.
- In the case of these corporations, remove the need to nominate individual recipients of Olympics tickets.
- Include an acknowledgement by SOCOG that the number of packages applied for by a corporation would not, of itself, be an impediment to SOCOG’s approving the applications.
- Permit SOCOG to consider, on a case-by-case basis, allowing applicants to have more than six contiguous seats.

The Commercial Rights Agreement—along with four Underwriters Marketing Agreements between SOCOG and the underwriters of the Stadium Australia public floats, Deutsche Morgan Grenfell Structured Finance Australia, ANZ Securities, Macquarie Underwriting and ABN Amro Hoare Govett—set out arrangements for the Olympic Rights Trustee to hold “Olympic rights”, without some of the restrictions listed above, on behalf of the underwriters and their sub-underwriters in the event of a shortfall in either of the floats.

These provisions later came into operation for the “Gold” package’s unsubscribed “Olympic rights”.

The “Olympic rights” held on behalf of the underwriters and their sub-underwriters lapsed on 1 July 1998, after which SOCOG was obliged to use its best endeavours to sell the tickets representing the lapsed rights. SOCOG agreed not to promote the sale of tickets for lower priced seats elsewhere in the stadium in preference to the seats reserved for the lapsed rights.

SOCOG was liable to pay the underwriters 90% of the income it received, for each session of the Olympic Games, from the sale of the tickets representing the lapsed rights.

Indemnities

The Operator and the Trust Manager indemnified SOCOG, the IOC, the AOC, SPOC, the IPC and the APF, and their directors, officers and employees, against all losses, claims, actions, liability, damages or costs caused by:

- Any non-compliance by the Operator or the Trust Manager, respectively, with its obligations under the Commercial Rights Agreement, and
- Any breach of a representation or warranty made by the Operator or the Trust Manager, respectively, under the Commercial Rights Agreement.

In addition, and subject to the general limitations on its liabilities summarised in section 2.5 of the main report, the Trustee indemnified SOCOG, the IOC, the AOC, SPOC, the IPC and the APF, and

their directors, officers and employees, against all losses, claims, actions, liability, damages or costs caused by:

- Any non-compliance by the Trustee, the Operator or the Trust Manager with their obligations under the Commercial Rights Agreement (provided, in the last two cases, that claims had already been made by SOCOG against the Operator or the Trust Manager and had not been satisfied), and
- Any breach of a representation or warranty made by the Trustee, the Operator or the Trust Manager under the Com-

mercial Rights Agreement (subject, in the last two cases, to the same proviso).

In return, SOCOG indemnified the Trustee, the Trust Manager, the Olympic Rights Trustee and the Operator, and their directors, officers and employees, against all losses, claims, actions, liability, damages or costs caused by:

- Any non-compliance by SOCOG with its obligations under the Commercial Rights Agreement, and
- Any breach of a representation or warranty made by SOCOG under the Commercial Rights Agreement.

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