

**RAIL CORPORATION
NEW SOUTH WALES**

INFORMATION MEMORANDUM

**FOR
PROSPECTIVE LESSEES OF PROPERTIES
OWNED BY
RAIL CORPORATION NEW SOUTH WALES (RAILCORP)**



Table of Contents

<u>Item</u>	<u>Page No.</u>
1. Introduction	3
2. What is the process for a prospective lessee to enter into an occupancy agreement with RailCorp	4
3. Lease Terms and Conditions generally incorporated into RailCorp Occupancy Agreements	4
4. Conditions relating to the leasing process	7
5. Evaluation of Applications	7
6. Possible Risks to lessees of RailCorp-owned properties	8
7. Documents to be submitted for RailCorp approval	8
8. Further information	9
9. RailCorp details	9

1. Introduction

Rail Corporation New South Wales (**RailCorp**) (ABN 59 325 778 353) owns a range of retail, industrial, commercial and residential properties together with vacant land throughout the RailCorp Metropolitan rail network. RailCorp's Property Division, or its managing agent, manages these properties to satisfy the following objectives:

- a) to provide additional services to the customers of RailCorp (e.g. newsagency located on the concourse of a railway station);
- b) to meet the medium and longer term operational requirements of RailCorp (e.g. land may be held for possible future expansion of the rail network); and,
- c) to optimise revenue whilst working to the benefit of NSW taxpayers.

RailCorp (as lessor) may offer land and buildings for lease through on-site advertising, the Internet, advertisements in the metropolitan and local press, expressions of interest and formal tender programs.

In many instances, Occupancy Agreements incorporate a break clause allowing RailCorp to terminate the agreement for operational reasons by giving a period of notice. No compensation will be payable by RailCorp in these circumstances.

In all instances the following criteria will take precedence over any tenancy considerations:

- a) safety, reliability and operation of the railway network; and,
- b) optimisation in the use of taxpayer funds.

2. What is the process for a prospective lessee to enter into a lease with RailCorp?

A lessee will be required to make an application to RailCorp for a lease of vacant premises (**Application to Lease**). As part of the application, prospective lessees will be required to submit the following documents:

- a) an asset and liability statement certified by an approved professional (See Note 1 below);
- b) two written business references;
- c) a certified photocopy (See Note 2 below) of a current driver's licence or passport identification details;
- d) a current utilities notice or bank statement for the lessee's home address; and
- e) a completed electronic funds transfer form.

Note 1: An approved professional shall mean an Accountant being a member of one of the following associations – Chartered Practising Accountants Australia; Institute of Chartered Accountants; National Institute of Accountants.

Note 2: A photocopy of the relevant document is to be inscribed with the words "This is a certified photocopy of an original document sighted by myself". The photocopy is to be signed by a Justice of the Peace, a police officer, a pharmacist, a medical practitioner, a dentist, a nurse, a legal practitioner, a Member of Parliament, or a permanent employee of the Commonwealth, state or territory with 5 or more years continuous service (including Commonwealth, state, territory or local government authorities).

The Application to Lease must be completed in full and submitted to RailCorp's managing agents for consideration.

Note: a non refundable application fee is payable to RailCorp's management agents.

3. Lease Terms and Conditions generally incorporated in RailCorp occupancy agreements

The information below is provided to give a general indication of the requirements associated with leasing a property from RailCorp. Specific requirements will be included in the specific lease document and/or the Lessor Disclosure Statement.

- a) **Lease term** – The lease term will not exceed five (5) years and may be for a lesser term depending upon the type of premises and RailCorp future requirements. (Only in exceptional circumstances will RailCorp consider granting a longer-term lease).
- b) **Lease option** – The lease will not incorporate an option to renew/extend the lease term. Unless required by statute, RailCorp is not obliged to offer a lease of the premises to the existing or any previous lessee upon expiry of a lease.
- c) **Rental guarantee** – RailCorp will require a rental security in the form of an unconditional bank guarantee or bond. The bank guarantee or bond will be for an amount equivalent to at least four months rental (including GST) and will be assessed at the time of considering the application. The Lease may require that the lessee provides a replacement bank guarantee or bond during the Lease term as a consequence of rent increases.

- d) **Legal Fees** – Subject to the *Retail Leases Act 1994* (NSW) each party will be responsible for their own legal costs in relation to the preparation and execution of the lease (except for assignment of lease – see clause m) Sale of business and assignment of lease). The lessee will bear the costs of any negotiated changes to the standard lease at the current hourly charge of the lessor's solicitors, plus GST. The lessee will be responsible for all stamp duty and registration fees in respect of the lease.
- e) **Personal Guarantees** – If the lessee is a private company, all directors and shareholders will be required to give guarantees.
- f) **Insurance** – The lessee is required to maintain \$20,000,000 public and product liability insurance, in it's own name, noting the lessor as an interested party.
- g) **Rental review** – Rent will be reviewed periodically. RailCorp Occupancy Agreements will normally include rent review provisions based upon one or more of the following review provisions:
- (i.) structured rental adjustments;
 - (ii.) fixed percentage increases;
 - (iii.) increases based upon movement in the consumer price index; and,
 - (iv.) an independent review of market rents.
- h) **Payment terms** – Rental will always be required to be paid in advance by the lessee on the first day of the month, whether the payment cycle is monthly, quarterly or yearly. Where the first payment cycle is incomplete eg less than one month, for a monthly payment cycle, the first payment will be pro-rated accordingly based on the lease commencement date. RailCorp will require all lessees to pay rental by direct debit.

Non payment of rental is a breach under the occupancy agreement, regardless of the form of payment, and will lead to termination of the lease by RailCorp.

- i) **Operating expenses** – Leases for the majority of RailCorp properties will usually require the lessee to pay for all operating costs in relation to the tenancy for such outgoings as rates, land tax, public liability and tenancy risk insurances, cleaning, refuse services, electricity, communications, water and gas. This will be clearly set out in each lease on a property by property basis.
- j) **Tenancy fit-out** – RailCorp requires all lessees to construct, at their own cost, a tenancy fit-out of a quality and standard suitable for the type of business and use of the premises. For retail leases, RailCorp requires the lessee to meet the requirements of its Retail Fit-out Guide. This may involve the use of the services of a nominated tenancy fit-out coordinator, with the lessee paying the costs for this service. The lessee is required to obtain RailCorp approval to the tenancy fit-out design prior to commencement of construction.

In all instances, the lessee is obliged to obtain all necessary approvals from the local Council or consent authority to the proposed fit-out or an exemption from being required to obtain approval. All approvals must be in writing from Council or consent authority with copies provided to RailCorp.

- k) **Maintenance/make good of premises** – RailCorp requires all lessees to maintain the premises in good condition. RailCorp will periodically inspect the premises and will, if necessary, advise the lessee of non-compliance. Before lease expiry, termination, or assignment of lease, lessees will be required to make good the premises (ie. restore it to good order in a re-lettable condition and/or remove all tenant fit-out)
- l) **Compliance with Regulations** – Lessees are required to comply with all statutes and regulations relating to their occupation and use of the premises including but not limited to:
- i. *Contaminated Land Management Act 1997;*
 - ii. *Environmental Planning and Assessment Act 1979;*
 - iii. *Noxious Weeds Act 1993;*
 - iv. *OHS Act 2000;*
 - v. *Protection of the Environment Operations Act 1997;*
 - vi. *Rail Safety Act 2002;*
 - vii. *Retail Leases Act 1994 & Retail Leases Amendment Act 2005;* and,
 - viii. *Water Management Act 2000.*
- m) **Sale of business and assignment of lease** – A lessee must consult with RailCorp prior to listing his/her business for sale. A lessee must then submit a written request for approval from RailCorp to assign the lease after having entered into a conditional contract of sale to sell the business. Before RailCorp will consider approving an assignment, the lessee must submit to RailCorp the following documents:
- i. An application for assignment of lease fee. This will be advised on application. This fee partly covers RailCorp costs for administering the assignment. Please note this fee is not refundable should an assignment not proceed or not be approved;
 - ii. A bank cheque for two (2) months rental in advance (inclusive of GST);
 - iii. An Application to Lease form – completed by the proposed assignee;
 - iv. An Asset and Liability statement relating to the proposed assignee, certified by an approved professional (See Note 1 on page 3);
 - v. Two written business references relating to the proposed assignee;
 - vi. A certified photocopy (See Note 2 on page 3) of a current driver's licence or passport identification details for the assignee;
 - vii. A current utilities notice or bank statement for the assignee's home address; and
 - viii. A completed electronic funds transfer form.

The Application to Lease must be completed in full and submitted to RailCorp for consideration. Where Fit-out of the premises is to be undertaken, the prospective assignee should prepare a preliminary plan of the fit-out works and include the plan with the Application to Lease.

The assignor may be required to pay RailCorp's legal and other costs associated with an assignment of lease.

As RailCorp only has a contractual relationship with the existing lessee, it will not discuss aspects of the assignment with prospective purchasers/assignees.

4. Conditions relating to the leasing process

- a) RailCorp may, at its sole discretion, hold discussions with any one or more applicants. It may also decide not to proceed with any applicant.
- b) Applicants are responsible for all of their own costs incurred in preparing and submitting its application. For assignments of lease, the assignor may be required to pay RailCorp's legal and other costs associated with the assignment.
- c) Any applicants who are short-listed for any premises may be required to complete a more detailed Asset and Liability statement than that included in the Application to Lease.
- d) Applicants should note that lessees who may have occupied shops at a Station and who vacated because of redevelopment of that Station may have a "first right of refusal" for the shop you may wish to be considered for.
- e) All applications are to be delivered to the nominated address by the due date. Late applications may be considered at the discretion of RailCorp. Applications will only be accepted if sent in a sealed envelope and if hand written, must be legible. Applications sent by fax, e-mail or other electronic device will not be accepted.
- f) The completion and submission of an application is no assurance that an application will be accepted. RailCorp is not obliged to provide any reason if the application is not accepted.
- g) An application does not signify any contractual obligation on either party in respect of the proposed lease. All parties must sign the lease before it becomes effective.
- h) Applicants must notify any known, potential or apparent conflict/s of interest between themselves and RailCorp and its associated entities.
- i) If your application is successful, you will be required to enter into a formal agreement for lease of the premises. This is usually in a standard format, depending upon the type of premises.
- j) All applicants will be notified in writing of the receipt of their application.

5. Evaluation of applications

- a) Your application will be subject to review and assessment by RailCorp Property or its agent.
- b) Applications received will be assessed on the following criteria:
 - value for money to RailCorp;
 - commercial terms offered;
 - financial capacity of the applicant (eg. to pay rent, fit-out the premises etc);
 - relevant experience of the applicant/occupant;
 - proposed use and product mix of the business;

- ownership structure and management of the business;
 - competition affecting other tenancies; and
 - business plan.
- c) Following assessment of the applications, RailCorp may invite one or more applicants to enter into further discussions. Alternatively, RailCorp may call for new applications.
- d) The evaluation process will place a higher emphasis on applicants who demonstrate professional conduct in all dealings with RailCorp and its agents or advisers.
- e) Written advice of the outcome will be issued to all applicants, with no further correspondence being entered into with unsuccessful applicants.

6. Possible risks to Lessees of RailCorp-owned properties

Businesses operating in properties leased from RailCorp may be subject to disturbance or interruption to the business arising from:

- a) Alterations to train timetables resulting in a reduction in train services;
- b) Re-allocation of train services to alternate platforms;
- c) Temporary or permanent closure of railway lines to passenger train services; and
- d) Alterations to stations for safety, security and operational reasons.

For retail properties only, further details are provided in the Lessor's Disclosure Statement.

7. Documents to be submitted and approved

For you to take occupation of the premises, the following documents/forms must be returned to RailCorp for completion and execution of the lease agreement:

Item	Non-retail leases	Retail leases
Application form	√	√
Certified photocopy of drivers license or passport details	√	√
Copy of utilities account statement for your home address	√	√
Copy of Company Registration Certificate <u>and</u> the Certificate of Registration of Business Name	√	√
Electricity connection form (RailCorp) – if supply is agreed to be from RailCorp	√	√
Copy of business name registration	√	√
Business Plan (if available, or requested by RailCorp)	√	√

Two written references	√	√
Direct debit (EFT) form	√	√
Bank cheque for 2 months rental in advance (inclusive of GST)	√	√
Bank Guarantee	√	√
Certificate of currency (lessee insurance)	√	√
Agreement for lease	√	√
Executed Lease/Lease memorandum	√	√
Cheque to cover RailCorp legal & other costs	√	Assignment only
Lessee's disclosure statement		√
Fit-out plan	√	√
Council approval of proposed Fit-out	√	√

8. RailCorp details

The full, legal name of the organisation is Rail Corporation NSW. This may only be shortened to RailCorp.

RailCorp ABN

The ABN for RailCorp is 59 325 778 353.

Address

RailCorp Property Division,
C/- CI Australia Pty Limited
Level 4, 35 Clarence Street, Sydney NSW 2000
DX 10127
Stock Exch - Sydney

9. Further information

CI Australia may be contacted by telephoning (02) 8238 0000 if you require further clarification in relation to the information contained in this memorandum.