

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and
Consumer Act 2010* by
Transit Systems Ferries Pty Ltd ACN 142 502
887
SeaLink Travel Group Limited ACN 109 078 257
and
Big Red Cat Pty Ltd ACN 120 817 683

1. Persons giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by:
- (a) Transit Systems Ferries,
 - (b) SeaLink Travel Group, and
 - (c) Big Red Cat Pty Ltd,
- (together **SeaLink**).
- 1.2 A reference in the Undertaking to 'SeaLink' refers to Transit Systems Ferries, SeaLink Travel Group and Big Red Cat Pty Ltd both jointly and severally.

2. Background

The Parties to the 2011 Acquisition and the transaction details

- 2.1 *Acquirer:* Stradbroke Assets (a wholly owned subsidiary of Transit Systems Ferries). Transit Systems Ferries was part of a privately owned group of companies which included Transit Systems. Transit was involved in the operation of a number of transport operations. These transport operations included a scheduled vehicle ferry service on the Brisbane-North Stradbroke Island route and scheduled passenger services to the south Moreton Bay islands.
- 2.2 *Target:* Stradbroke Ferries. The privately owned Stradbroke Ferries was involved in the operation of a number of ferry services in Moreton Bay, Queensland. These ferry services included a scheduled vehicle ferry service on the Brisbane-North Stradbroke Island Route and scheduled vehicle ferry services to the south Moreton Bay islands.

The 2011 Acquisition

- 2.3 On 1 April 2011 Stradbroke Assets made offers to acquire all of the issued shares in Stradbroke Ferries.
- 2.4 Completion of the proposed acquisition was subject to Transit Systems Ferries obtaining written confirmation from the ACCC that it has no objection to the transaction for the purposes of section 50 of the Act.

The ACCC's review of the 2011 Acquisition

- 2.5 On 5 April 2011, the ACCC commenced its public review of the 2011 Acquisition.
- 2.6 The ACCC undertook market inquiries and considered information provided by the parties, industry participants and others. The ACCC's inquiries were aimed at assessing whether or not the 2011 Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market in contravention of section 50 of the Act.

The ACCC's competition concerns regarding the 2011 Acquisition

- 2.7 The ACCC considered that, in the absence of the 2011 Undertaking, the 2011 Acquisition would result, or be likely to result, in a substantial lessening of competition in relation to the market for vehicle ferry services on the Brisbane-North Stradbroke Island Route.
- 2.8 The ACCC considered that the 2011 Acquisition would remove Stradbroke Ferries as a vigorous and effective competitor to Transit and leave Transit as the only supplier of vehicle ferry services on the Brisbane-North Stradbroke Island Route.
- 2.9 The ACCC considered that there are very high barriers to entry for the supply of vehicle ferry services on the Brisbane-North Stradbroke Island Route and that the threat of new entry would not be likely to constrain the merged firm. These barriers to entry largely consist of sunk capital costs and environmental regulatory restrictions in developing new landing sites, as well as the presence of exclusive access rights over existing landing sites.
- 2.10 The ACCC noted that the threat of switching by customers was unlikely to constrain the merged firm.
- 2.11 The ACCC considered markets relating to the south Moreton Bay islands but did not express concerns in relation to those or any other markets.

The 2011 Undertaking remedy

- 2.12 While Transit did not agree with the concerns expressed by the ACCC, Transit entered into the 2011 Surrender Agreement and gave the 2011 Undertaking to address the ACCC's concerns in a timely manner.

- 2.13 The objective of the 2011 Undertaking was to address the ACCC's competition concerns that would otherwise have arisen as a consequence of the 2011 Acquisition.
- 2.14 The 2011 Undertaking aimed to achieve this objective by ensuring that any potential new entrant on the Brisbane-North Stradbroke Island Route has access to landing sites by:
- (a) requiring Transit to surrender its exclusive rights to the Toondah Harbour Ramp and the Toondah Harbour Sub-lease Area should a new entrant require access in order to commence a vehicle ferry service on the Brisbane-North Stradbroke Island Route;
 - (b) prohibiting Transit from seeking exclusive rights in the future over the Toondah Harbour Ramp or the Toondah Harbour Sub-lease Area;
 - (c) prohibiting Transit from seeking exclusive rights in the future over the Junner Street Public Ramp or land adjacent to the Junner Street Public Ramp;
 - (d) requiring Transit not to hinder or prevent another person from using the Toondah Harbour Ramp or the Toondah Harbour Sub-lease Area to operate a ferry service;
 - (e) requiring Transit not to hinder or prevent another person from using the Junner Street Public Ramp or land adjacent to the Junner Street Public Ramp; and
 - (f) the effective oversight of Transit's compliance with the 2011 Undertaking.

The Parties to the Proposed Acquisition and the transaction details

- 2.15 *Acquirer:* SeaLink Travel Group. SeaLink Travel Group is a public company listed on the Australian Stock Exchange. Its operations are in marine tourism and transport. SeaLink runs ferry services located in Kangaroo Island, Murray River (Mannum based), Sydney, Townsville and Darwin. SeaLink Travel Group has no ferry operations in competition with Transit Systems Ferry Group.
- 2.16 *Target:* Transit Systems Ferries Group. Transit Systems Ferries Group operates vessels in Queensland at Gladstone, Southern Moreton Bay Islands and North Stradbroke Island. It operates contracted and non-contracted passenger and vehicular ferry services to Curtis Island,

Moreton Bay Islands and holds a contract with the Queensland State Government to own and operate the Moggill Ferry on the Brisbane River.

The Proposed Acquisition

- 2.17 On 15 September 2015 SeaLink Travel Group entered into the Securities Sale Agreement under which it has agreed to purchase the Transit Systems Ferries Group by acquiring all the issued shares in the Transit Systems Sale Companies and all the issued units in the Transit Systems Sale Trusts conditional on satisfaction of certain conditions precedent. The Proposed Acquisition does not include the acquisition of Transit Systems.
- 2.18 It is a condition precedent to completion of the Proposed Acquisition that the parties execute a deed amending the 2011 Undertaking to remove Transit Systems as a party to that document and, if the ACCC requires, to substitute SeaLink for Transit Systems in that document.
- 2.19 In satisfaction of the condition precedent, and as required by the ACCC, SeaLink provides this Undertaking, which replaces the 2011 Undertaking but maintains the remedy to the ACCC's competition concerns provided by the 2011 Undertaking.

3. Commencement of the Undertaking

- 3.1 The Undertaking comes into effect when:
- (a) the Undertaking is executed by SeaLink Travel Group, Big Red Cat Pty Ltd and Transit Systems Ferries; and
 - (b) the Surrender Agreement is executed by SeaLink, Big Red Cat Pty Ltd, and the Redland City Council; and
 - (c) the Undertaking so executed is accepted by the ACCC.

4. Cessation of ongoing obligations

Withdrawal

- 4.1 The Undertaking is taken to be withdrawn on the date the ACCC consents in writing to the withdrawal of the Undertaking in accordance with section 87B of the Act.

Revocation

- 4.2 Notwithstanding anything else in the Undertaking, the ACCC may, at any time, revoke in writing its acceptance of the Undertaking if the ACCC

becomes aware that any information provided to it by SeaLink was incorrect, inaccurate or misleading.

Waiver

- 4.3 Notwithstanding anything else in the Undertaking, the ACCC may, at any time, expressly waive in writing any of the obligations contained in the Undertaking.

Completion

- 4.4 Clauses 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13 and 14 survive completion of the obligations in clause 5 and 6.

5. Surrender obligations

Surrender of interests in the Toondah Harbour landing site

- 5.1 After the Control Date SeaLink must:
- (a) surrender its interests in the Toondah Harbour Sub-lease and the Toondah Harbour Permit to Occupy in accordance with the terms of the Surrender Agreement upon the issuing of a surrender notice by the Redland City Council; and
 - (b) not amend, or agree to the amendment of, the Surrender Agreement without the prior written consent of the ACCC.
- 5.2 SeaLink must:
- (a) provide the ACCC with a copy of any notice from the Redland City Council requiring the surrender of its interests in the Toondah Harbour Sub-lease and the Toondah Harbour Permit to Occupy within two business days of receiving such a notice; and
 - (b) notify the ACCC of the surrender of its interests in the Toondah Harbour Sub-lease and the Toondah Harbour Permit to Occupy within two business days of the surrender taking effect.

Approved Surrender Agreement

- 5.3 It is a condition precedent of the ACCC's acceptance of the Undertaking that the Surrender Agreement, attached as Schedule 2 to the Undertaking, has been approved by the ACCC.
- 5.4 SeaLink unconditionally represents and warrants to the ACCC that, as at the Commencement Date, the Surrender Agreement referred to in clause

5.3 above constitutes a legal, valid and binding obligation of each party thereto and is enforceable in accordance with its terms.

Non-exclusive use of the Toondah Harbour landing site

5.5 From the Control Date, SeaLink must not:

- (a) land any vessel, other than the Big Red Cat, at the Toondah Harbour Ramp, except with the permission of the Redland City Council;
- (b) seek an exclusive right to use the Toondah Harbour Ramp or the Toondah Harbour Sub-lease Area; or
- (c) hinder or prevent another person from using the Toondah Harbour Ramp or the Toondah Harbour Sub-lease Area to operate a ferry service,

provided that nothing in this clause 5.5 is intended to prevent SeaLink using the Toondah Harbour Ramp or the Toondah Harbour Sub-lease Area for the berthing and operation of the Big Red Cat on terms agreed with the Redland City Council.

Non-exclusive use of the Dunwich landing site

5.6 From the Control Date SeaLink must not:

- (a) land any vessel, other than the Big Red Cat, at the Junner Street Public Ramp, except with the permission of the Redland City Council;
- (b) seek an exclusive right to use the Junner Street Public Ramp or any land adjacent to the Junner Street Public Ramp; or
- (c) hinder or prevent another person from using the Junner Street Public Ramp or any land adjacent to the Junner Street Public Ramp to operate a ferry service,

provided that nothing in this clause 5.6 is intended to prevent SeaLink using the Junner Street Public Ramp or the land adjacent to the Junner Street Public Ramp for the berthing and operation of the Big Red Cat on terms agreed with the Redland City Council.

Direction to personnel of SeaLink

5.7 As soon as practicable after the Commencement Date, SeaLink must direct its personnel, including directors, contractors, managers, officers,

employees and agents not to do anything in breach of or inconsistent with SeaLink's obligations under the Undertaking.

6. Obligation to appoint independent auditor

- 6.1 If the ACCC becomes aware of a potential breach of the Undertaking, whether pursuant to clause 7.3 of the Undertaking or otherwise, the ACCC may require SeaLink to appoint an independent auditor on terms specified by the ACCC.
- 6.2 In the event that the Redland City Council issues a surrender notice to SeaLink pursuant to clause 2.1(a) of the Surrender Agreement, the ACCC may require SeaLink to appoint an independent auditor, on terms specified by the ACCC, to monitor SeaLink's compliance with the Undertaking for up to two years following the surrender taking effect.

7. Information

- 7.1 SeaLink must notify the ACCC of the Control Date within one business day of the completion of the Proposed Acquisition.
- 7.2 SeaLink must provide a written report to the ACCC one month after the Control Date and every six months thereafter, on terms specified by the ACCC, regarding its efforts to comply with its obligations in clause 5 of the Undertaking.
- 7.3 SeaLink must notify the ACCC within one business day of any potential breach of the Undertaking or any complaint in regard to a potential breach of the Undertaking.
- 7.4 The ACCC may direct SeaLink in respect of its compliance with the Undertaking to, and SeaLink must:
- (a) furnish information, documents and materials to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce information, documents and materials to the ACCC within SeaLink's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) direct its personnel, including its directors, contractors, managers, officers, employees and agents to attend the ACCC at a time and

place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.

- 7.5 Any direction made by the ACCC under clause 7.4 will be notified to SeaLink, in accordance with clause 12.2.
- 7.6 Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 7 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 7.7 Nothing in this clause 7 requires the provision of information or documents in respect of which SeaLink has a claim of legal professional or other privilege.

8. Disclosure of the Undertaking

- 8.1 SeaLink acknowledges that the ACCC may:
- (a) make the Undertaking publicly available; and
 - (b) publish the Undertaking on its public section 87B undertakings register; and
 - (c) from time to time publicly refer to the Undertaking.
- 8.2 Nothing in this clause 8 prevents the ACCC from disclosing such information as:
- (a) is required by law;
 - (b) is permitted by s 155AAA of the Act;
 - (c) is necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) is necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with the Undertaking.
- 8.3 Nothing in clause 8.1 prevents the ACCC from using the information contained in the Undertaking for any purpose consistent with its statutory functions and powers.

9. Obligation to procure

- 9.1 Where the performance of an obligation under the Undertaking requires a Related Body Corporate of SeaLink to take or refrain from taking some action, SeaLink will procure that Related Body Corporate to take or refrain from taking that action, as the case may be.

10. No Derogation

- 10.1 The Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of the Undertaking in respect of any breach by SeaLink of any term of the Undertaking.
- 10.2 Nothing in the Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that SeaLink does not fully implement and/or perform its obligations under the Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

11. Change of Control

- 11.1 In the event that a Change of Control is reasonably expected to occur, SeaLink must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on SeaLink pursuant to this Undertaking (or those obligations with which SeaLink is no longer able to comply as a consequence of the Change of Control), or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified SeaLink in writing that a section 87B undertaking under this clause is not required.

12. Costs

- 12.1 SeaLink must pay all of its own costs incurred in relation to the Undertaking, including any costs incurred pursuant to clause 6.

13. Notices

Giving Notices

13.1 Any notice or communication to the ACCC pursuant to the Undertaking must be sent to:

Email address: mergers@acc.gov.au,

Attention: Executive General Manager -
Merger and Authorisation Review Division

With an email copy sent to:

mergersucu@acc.gov.au

Director, Undertaking Compliance Unit
Coordination and Strategy Branch

13.2 Any notice or communication to SeaLink pursuant to the Undertaking must be sent to:

Name: SeaLink Travel Group Limited

Address: Level 1, 440 King William Street,
Adelaide, South Australia 5000

Fax number: +61 8 8202 8686

Attention: Mr Jeff Ellison, Managing Director

Email: jeff.ellison@sealink.com.au

Change of address or fax number

13.3 If SeaLink or the ACCC gives the other three Business Days notice of a change to its address, fax number or email address, any notice or communication is only given to the relevant entity if it is delivered, posted or faxed to the most recently advised address or fax number.

14. Defined terms and interpretation

Definitions in the Dictionary

14.1 A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Clause 1 of Schedule 1 to the Undertaking (Dictionary), has the meaning given to it in the Dictionary; or

- (b) which is defined in the *Corporations Act 2001*, but is not defined in the Dictionary, has the meaning given to it in the *Corporations Act 2001*.

Interpretation

- 14.2 Clause 2 of Schedule 1 to the Undertaking sets out rules of interpretation for the Undertaking.

Executed as an Undertaking

Executed by Transit Systems Ferries Pty Ltd ACN 142 502 887 pursuant to section 127(1) of the Corporations Act 2001 by

Signature of director 

Name of director (print)
Graham Alexander Leitchman

Date

Signature of a director/company secretary 

Name of director/company secretary (print)
Lance William Francis

Date

Executed by SeaLink Travel Group Limited ACN 109 078 257 pursuant to section 127(1) of the Corporations Act 2001 by:

Signature of director 

Name of director (print)
JEFFREY ROY ELLISON

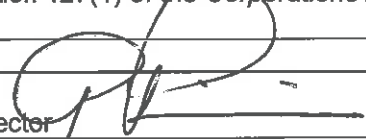
Date

Signature of a director/company secretary 

Name of director/company secretary (print)
TREVOR IAN WALLER

Date

Executed by Big Red Cat Pty Ltd ACN 120 817 683 pursuant to section 127(1) of the Corporations Act 2001 by:

Signature of director 

Name of director (print)
Graham Alexander Leitchman


Date

Signature of a director/company secretary 

Name of director/company secretary (print)
Lance William Francis

Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010 on:

And signed on behalf of the Commission:
Chairman 

Date 5/11/15
Date

Schedule 1

1. Dictionary

2011 Acquisition means the 2011 acquisition of all the shares in Stradbroke Ferries by Stradbroke Assets.

2011 Undertaking means the undertaking pursuant to s87B of the Act provided by Transit Systems Ferries, Transit Systems and Big Red Cat Pty Ltd and accepted by the ACCC on 1 December 2011.

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Big Red Cat is the vessel also known as the "Sea Breeze" (registration number 25965QD), used as a vehicle ferry on the Brisbane-North Stradbroke Island Route or any replacement vessel.

Big Red Cat Pty Ltd means Big Red Cat Pty Ltd ACN 120 817 683.

Brisbane-North Stradbroke Island Route means the ferry route between Toondah Harbour, Cleveland and Junner Street, Dunwich.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Change of Control means:

- (a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of SeaLink to any other person or entity in circumstances where, as a result of that assignment or transfer, SeaLink will or may be unable to comply with this Undertaking in whole or in part; or
- (b) the sale, assignment, transfer and/or licence (directly or indirectly) of assets necessary, or which may be necessary, to enable SeaLink to comply with this undertaking, in circumstances where, as a result of that sale or transfer, SeaLink will or may be unable to comply with this Undertaking in whole or in part.

Commencement Date means the date on which the Undertaking is accepted pursuant to clause 3.1(c).

Control Date means the date on which the Proposed Acquisition is completed.

Junner Street Public Ramp means the public boat ramp located at Junner Street, Dunwich, on North Stradbroke Island.

Proposed Acquisition means the acquisition of the Transit Systems Ferries Group comprising all the issued shares in the Transit Systems Sale Companies and all the issued units in the Transit Systems Sale Trusts by SeaLink Travel Group.

Redland City Council means the local government, any successor local government body or the State of Queensland, that has administrative responsibility over:

- (a) Queensland Lot 1/CPAP7166;
- (b) the Toondah Harbour Ramp; or
- (b) Queensland Lot 22/SP153278.

Related Bodies Corporate has the meaning given by section 4A of the Act.

SeaLink Travel Group means SeaLink Travel Group Limited ACN 109 078 257

Securities Sale Agreement means the securities sale agreement between Transit Systems, SeaLink Travel Group and others dated 15 September 2015.

Stradbroke Assets means Stradbroke Assets Pty Ltd ACN 146 684 148.

Stradbroke Ferries means Stradbroke Ferries Limited ACN 009 725 713.

Surrender Agreement means the executed agreement attached as Schedule 2 to the Undertaking.

Toondah Harbour Permit to Occupy means the Permit to Occupy over Lot 1/CPAP7166 that commenced on 1 October 2002.

Toondah Harbour Ramp is the landing ramp at Toondah Harbour which is, as at the Commencement Date, used by the Big Red Cat.

Toondah Harbour Sub-lease means the sub-lease over Lot 22 / SP 153278 that commenced on 1 March 2003.

Toondah Harbour Sub-lease Area means the area subject to the Toondah Harbour Sub-lease at the Commencement Date.

Transit means Transit Systems Ferries, Transit Systems and Big Red Cat Pty Ltd

Transit Systems means Transit Systems Pty Ltd ACN 135 200 609.

Transit Systems Ferries means Transit Systems Ferries Pty Ltd ACN 142 502 887.

Transit Systems Ferries Group means:

- (a) the Transit Systems Sale Companies;

- (b) the Transit Systems Sale Trusts;
- (c) Curtis Island Services Pty Ltd ACN 165 816 017 and BITS Ferry Services Pty Ltd ACN 108 664 857, each of which is wholly owned by TSA Ferry Group Pty Ltd ACN 108 664 848 as trustee of The BITS Trust ABN 50 899 219 034;
- (d) Sea Stradbroke Services Pty Ltd ACN 120 817 674, which is wholly owned by TSA Ferry Group Pty Ltd ACN 108 664 848 as trustee of the Sea Stradbroke Trust ABN 63 987 315 853;
- (e) BITS Assets Pty Ltd ACN 108 661 945, Big Red Cat Pty Ltd and Stradbroke Ferries, each of which is owned directly or indirectly by Transit Systems Ferries; and
- (f) Stradbroke Assets.

Transit Systems Sale Companies means Curtis Island Assets Pty Ltd ACN 149 075 114, TSA Ferry Group Pty Ltd ACN 108 664 848 and Transit Systems Ferries.

Transit Systems Sale Trusts means The Mineral Sand Transit Trust ABN 38 588 417 578, The Curtis Transit Trust ABN 72 693 327 144, The BITS Trust ABN 50 899 219 034 and the Sea Stradbroke Trust ABN 63 987 315 853.

Undertaking is a reference to all provisions of this document, including its Schedules and as varied from time to time under section 87B of the Act.

2. Interpretation

- 2.1 In the interpretation of the Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to the Undertaking includes all of the provisions of this document including its Schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of the Undertaking;
 - (c) if the day on which any act, matter or thing is to be done under the Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in the Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

- (e) a reference in the Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in the Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to the Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose or object underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of the Undertaking may be considered to:
 - A. confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - B. determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph, or in considering any

weight to be given to any such material, regard must be had, in addition to any other relevant matters, to:

- A. the effect that reliance on the ordinary meaning conveyed by the text of the clause would have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - B. the need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under the Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
- (p) in performing its obligations under the Undertaking, SeaLink will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of the Undertaking;
- (q) a reference to:
- A. a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - B. a party includes its successors and permitted assigns; and
 - C. a monetary amount is in Australian dollars.

Surrender of lease

Toondah Harbour Ferry Terminal

Redland City Council (**Lessor**)

Big Red Cat Pty Ltd (**Lessee**)

SeaLink Travel Group Limited (**SeaLink**)

Surrender of lease

Toondah Harbour Ferry Terminal

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Information table

Date

Parties

Name	Redland City Council ABN 86 058 929 428
Short form name	Lessor
Notice details	Cnr Bloomfield and Middle Streets, Cleveland Qld 4163 Facsimile: (07) 3829 8765 Attention: Chief Executive Officer
Name	Big Red Cat Pty Ltd ACN 120 817 683 (formerly known as TSA Stradbroke Assets Pty Ltd ACN 120 817 683)
Short form name	Lessee
Notice details	Level 1, 440 King William Street, Adelaide, South Australia 5000 Facsimile: +61 8 8202 8686 Attention: Jeff Ellison
Name	SeaLink Travel Group Limited ACN 109 078 257 ACN 109 078 257
Short form name	SeaLink
Notice details	Level 1, 440 King William Street, Adelaide, South Australia 5000 Facsimile: +61 8 8202 8686 Attention: Jeff Ellison

Items

Item 1	Lease Sublease dated 4 October 2006 between the Lessor and, originally Islands Transport Holdings Pty Ltd ABN 33 010 441 148, assigned to the Lessee under a Novation Agreement executed in 2006 and includes any renewal of the Lease pursuant to the option granted in the Novation Agreement.
Item 2	Premises The leased area pursuant to the Lease, known as Toondah Harbour Ferry Terminal.
Item 3	Land Lot 22 in SP153278.
Item 4	Surrender Date 30 days after the Lessor gives the Lessee a Surrender Notice under clause 3.1.

Background

- A The Lessor leases the Premises to the Lessee under the Lease.
- B The Lessor and the Lessee have agreed that:
 - (i) the Lessee will surrender and the Lessor will accept the surrender of the Lease on the Surrender Date; and
 - (ii) the Lessor will grant the Lessee the Access Rights, subject to this document.

Agreed terms

1. Defined terms & interpretation

1.1 This agreement, including each Access Right is at all times subject to the Land Act 1994 which prevails over any inconsistency with this agreement.

1.2 Defined terms

In this document:

Access Seeker means any person requiring access to the Toondah Harbour Ramp for the purposes of operating a vehicle ferry service between Toondah Harbour and North Stradbroke Island.

Annual Depreciation Charge means an annual charge calculated on the basis of the amortised value of Toondah Harbour Ramp and associated piles and dredging to be depreciated on a straight line basis over the remaining economic life of those assets, as determined by an Expert.

Annual Expenses means the annual amount that the Lessor must pay for:

- (a) renting the Premises from the State of Queensland;
- (b) the routine maintenance and repair of the Premises and the Marine Permit Area;
- (c) necessary repairs, replacements or renewals relating to the Premises and Marine Permit Area of a capital nature; and
- (d) statutory obligations imposed to calculate applicable fees and charges.

Attributable Share is calculated, for each Access Seeker, according to the following formula:

$$AS = \sum_i \frac{DV_i}{Users_i}$$

Where

i denotes each day of the Year on which the Access Seeker has a right to use the Toondah Harbour Ramp for the purpose of operating a ferry service

DV_i is the Daily Value for day *i*, calculated in accordance with the formula (Annual Depreciation Charge/Number of days in the Year)

$Users_i$ is the number of persons (including the Lessee) who have the right to use the Toondah Harbour Ramp for the purpose of operating a ferry service on day *i*

For the purpose of this formula, the first Year will commence on the date on which the Access Seeker first has the right to use the Toondah Harbour Ramp for the purpose of operating a ferry service, and each subsequent Year will commence on the anniversary of that date.

Big Red Cat is a vessel also known as 'Sea Breeze'.

Expenses Share is calculated according to the following formula:

$$ES = \text{Annual Expenses} / \text{Number of Users of Toondah Harbour Ramp (including the Lessee)}$$

Completion means completion of the acquisition of the Transit Systems Ferries Group comprising all the issued shares in the Transit Systems Sale Companies and all the issued units in the Transit Systems Sale Trusts by SeaLink Travel Group.

Completion Date means the date on which the acquisition of the Transit Systems Ferries Group comprising all the issued shares in the Transit Systems Sale Companies and all the issued units in the Transit Systems Sale Trusts by SeaLink Travel Group is completed.

Expert means an independent quantity surveyor who is a full member of at least 5 years standing of the Australian Institute of Quantity Surveyors, whose appointment is agreed by the Lessor and the Lessee in accordance with clause 8.1.

Information table means the part of this document described as Information table.

Marine Permit Area means the area the subject of the Permit to Occupy.

Permit to Land means a non-exclusive right to use a ramp controlled by the Lessor for the purpose of operating a vehicle ferry service.

Permit to Occupy means the Permit to Occupy granted to the Lessor over Lot 1 Crown Plan AP7166 commencing 1 October 2002.

SeaLink Travel Group means SeaLink Travel Group Limited ACN 109 078 257.

Stradbroke Assets means Stradbroke Assets Pty Ltd ACN 146 684 148.

Stradbroke Ferries means Stradbroke Ferries Limited ACN 009 725 713.

Surrender means the surrender of the Lease on the terms of this agreement.

Toondah Harbour Ramp is the landing ramp at Toondah Harbour which is, at the date of this document, used by the Big Red Cat situated on lot 1 on Crown Plan AP7166 and lot 22 on SP 153278.

Transit Systems Ferries means Transit Systems Ferries Pty Ltd ACN 142 502 887.

Transit Systems Ferries Group means:

- (a) the Transit Systems Sale Companies;
- (b) the Transit Systems Sale Trusts;
- (c) Curtis Island Services Pty Ltd ACN 165 816 017 and BITS Ferry Services Pty Ltd ACN 108 664 857, each of which is wholly owned by TSA Ferry Group Pty Ltd ACN 108 664 848 as trustee of The BITS Trust ABN 50 899 219 034;
- (d) Sea Stradbroke Services Pty Ltd ACN 120 817 674, which is wholly owned by TSA Ferry Group Pty Ltd ACN 108 664 848 as trustee of the Sea Stradbroke Trust ABN 63 987 315 853;
- (e) BITS Assets Pty Ltd ACN 108 661 945, Big Red Cat Pty Ltd and Stradbroke Ferries, each of which is owned directly or indirectly by Transit Systems Ferries; and
- (f) Stradbroke Assets.

Transit Systems Sale Companies means Curtis Island Assets Pty Ltd ACN 149 075 114, TSA Ferry Group Pty Ltd ACN 108 664 848 and Transit Systems Ferries.

Transit Systems Sale Trusts means The Mineral Sand Transit Trust ABN 38 588 417 578, The Curtis Transit Trust ABN 72 693 327 144, The BITS Trust ABN 50 899 219 034 and the Sea Stradbroke Trust ABN 63 987 315 853.

1.2 Interpretation

In this document:

- (a) where a word defined in the Information table is used the word has the corresponding meaning set out in the Information table;
- (b) where a word is not defined in this document but is defined in the Lease, it has the meaning set out in the Lease;
- (c) reference to an agreement, document or other thing includes any amendment or replacement of it;
- (d) headings are for ease of reference only and have no effect on the construction of this document;
- (e) the singular includes the plural and the plural includes the singular;
- (f) reference to a gender includes the other genders;
- (g) other grammatical forms of defined words have corresponding meanings;
- (h) a reference to anything is a reference to the whole and any part of it;
- (i) a reference to a party includes a reference to that party's executors, administrators, successors and permitted assigns;
- (j) words importing natural persons or bodies corporate include partnerships, associations, governments and governmental and local authorities and agencies;
- (k) an agreement, representation or warranty in favour of two or more persons is in favour of them jointly and severally; and
- (l) an agreement, representation or warranty made by two or more persons binds them jointly and severally.

2. Commencement

The commencement of this document is subject to Completion and commences with effect on and from the Completion Date.

3. Surrender Notice

3.1 Service of Notice

The Lessor may give the Lessee a signed notice, in the form set out in **Schedule 1 (Surrender Notice)** requiring the Lessee to surrender its interest in the Lease and the Permit to Occupy if:

- (a) the Lessor is satisfied that an Access Seeker requires access to the Premises and Toondah Harbour Ramp for the purpose of operating a vehicle ferry service between Toondah Harbour and North Stradbroke Island and the Access Seeker has provided to the Lessor:
 - (i) a business plan for the operation of a vehicle ferry service between Toondah Harbour and North Stradbroke Island to commence within 3 months after the date of the Surrender Notice;
 - (ii) reasonable evidence that the Access Seeker has the financial standing to commence the vehicle ferry service in accordance with its business plan; and

- (iii) reasonable evidence that the Access Seeker has or is able to acquire a suitable vessel for use in the operation of the vehicle ferry service; or
- (b) during the Term:
 - (i) the redevelopment of the Toondah Harbour Precinct has been approved, and those works cannot be carried out practicably without vacant possession of the Premises;
 - (ii) all other relevant approvals have been obtained for those works to commence; and
 - (iii) the developer of the Toondah Harbour Precinct has entered into a legally binding agreement to complete those works.

3.2 Access Rights

If the Lessor gives the Lessee a Surrender Notice under clause 3.1(a), the Lessor grants to Lessee each of the following rights and interests on and after the Surrender Date:

- (a) a Permit to Land at the Toondah Harbour Ramp;
- (b) permission to berth the Big Red Cat or any replacement vessel at Toondah Harbour ramp overnight;
- (c) a non-exclusive right to use the Premises and the Marine Permit Area for loading and unloading vehicles and passengers onto and from the Big Red Cat or any replacement vessel; and
- (d) a right to use that part of the Premises on which SeaLink as at the Completion Date operates a ticket office, for that purpose,

(together referred to as the **Access Rights**).

3.3 Conditions on the enjoyment of Access Rights

The Lessor may impose reasonable conditions on any of the Access Rights, in accordance with Local Laws and Policies, provided that such conditions do not materially derogate from the rights and interests granted to the Lessee under the Access Rights.

3.4 Lessor's Warranty

By issuing a Surrender Notice under clause 3.1(a), the Lessor warrants to the Lessee that the Access Seeker has provided to the Lessor each of the things required by clause 3.1(a)(i) to 3.1(a)(iii).

3.5 Term of Access Rights

Each Access Right will commence on the Surrender Date and subject to clause 3.6, end on 27 February 2023 (**Term**).

3.6 Consents

- (a) The Lessor must use its best endeavours to obtain any consents that are required in order to grant each Access Right to the Lessee for the Term.
- (b) If by the Surrender Date the Lessor is unable to secure all necessary consents required to grant an Access Right for the full Term then, if lawfully able, the Lessor grants the Lessee the relevant Access Right for a period after the Surrender Date that is:
 - (i) in each case, the maximum period that the Lessor may lawfully grant the Access Right in the absence of all necessary consents;
 - (ii) with respect to each of the Access Rights described in clauses 3.2(a) and 3.2(b), no less than 12 months; and

- (iii) with respect to each of the Access Rights described in clauses 3.2(c) and 3.2(d), no less than 36 months.
- (c) If the Lessor grants an Access Right under clause 3.6(b):
- (i) the Lessor must continue to grant that access right on a rolling basis for the period of the Term while ever it is lawfully able; and
 - (ii) the Lessor must continue during the period of the Term, to comply with clause 3.6(a); and
 - (iii) once all necessary consents are obtained the Lessor must grant the Lessee the Access Right for the Term.

3.7 Expenses

The Lessor must not charge the Lessee annually any more than the Expenses Share for the grant or continuation of the Access Rights, except to the extent Annual Expenses are attributable to an Access Right that is granted only to the Lessee, such as the right to berth a vessel.

4. Conditions precedent

- (a) In the case of a Surrender Notice issued under clause 3.1(a), the operation of clauses 4, 6 and 8 is subject to and conditional on:
- (i) the Lessor complying with clauses 3.2 to 3.7; and
 - (ii) the Lessee obtaining a binding agreement from each Access Seeker to pay the Lessee, annually in advance, the Attributable Share for each year that the Access Seeker has a right to use the Toondah Harbour Ramp, commencing on the date the Access Seeker first commences using the Toondah Harbour Ramp.
- (b) In the case of a Surrender Notice issued under clause 3.1(b), the operation of clauses 4, 6 and 8 is subject to and conditional on the Lessor granting to the Lessee, within the Toondah Harbour precinct, each of the rights described in clause 3.2 on terms that:
- (i) are no less favourable than the terms of the Lease and Permit to Occupy; and
 - (ii) give the Lessee an ability to operate a vehicle ferry service that is substantially the same as that provided under the Lease and Permit to Occupy.

5. Surrender

On the Surrender Date:

- (a) the Lessee surrenders the Lessee's interest in the Lease, the Premises and any right title or interest the Lessee has in the Permit to Occupy to the Lessor;
- (b) if the Lessee has complied with its obligations under this document, the Lessor accepts the surrender from the Lessee;
- (c) the Lessee must execute and deliver to the Lessor a surrender of the Lease in registrable form; and
- (d) the Lessee must give the Premises back to the Lessor.

6. Obligations of parties up to Surrender Date

6.1 Parties must obey obligations

Subject to clause 6.2, the Lessor and the Lessee must comply with their obligations under the Lease up to the Surrender Date.

6.2 Condition of Premises

The Lessee is not obliged to comply with the Lease provisions about returning the Premises to the Lessor in the condition specified in the Lease.

6.3 Lessee's obligations

No later than the Surrender Date, the Lessee must pay all money then due to any person in respect of the use and occupation of the Premises.

7. Payments

7.1 Money

On or before the Surrender Date, the Lessee must pay the Lessor all rent and any other money payable under the Lease for the period up to the Surrender Date.

7.2 Adjustments

If any money payable under the Lease up to the Surrender Date cannot be calculated at the Surrender Date, the Lessee must pay the Lessor an estimated amount in accordance with the lease provisions on a pro rata basis. If the actual amount of money payable by the Lessee exceeds the estimated amount paid by the Lessee, the Lessee must pay the Lessor the difference. If the actual amount of money payable by the Lessee is less than the estimated amount paid by the Lessee, the Lessor must refund the difference to the Lessee.

8. Expert

8.1 Appointment of Expert

- (a) At any time prior to issuing a Surrender Notice but after the conditions in clause 3.1 have been satisfied, the Lessor may request the Lessee to nominate an Expert to determine the Annual Depreciation Charge.
- (b) The parties will mutually agree on an Expert to determine the Annual Depreciation Charge:
 - (i) within 7 days of receiving a request from the Lessor under clause 8.1(a); or
 - (ii) if no Expert has previously been nominated, within 7 days of receiving a Surrender Notice under clause 3.1(a).
- (c) If the Parties cannot agree on an expert, a party may request the President of the Queensland Law Society to appoint an expert who is of recognised qualifications and experience to determine the Annual Depreciation Charge.

8.2 Costs of the Expert

The cost of the Expert determining the Annual Depreciation Charge will be shared equally between the Lessor and the Lessee.

9. Releases

9.1 Release of Lessee

With effect from the Surrender Date, the Lessor releases the Lessee from all claims and actions and liability arising after the Surrender Date under or in connection with the Lease or in connection with or in respect of the Premises. For the avoidance of doubt, the release by the Lessor does not extend to claims and actions and liability arising under or in connection with the Lease or in connection with or in respect of the Premises prior to the Surrender Date.

9.2 Release by Lessee

With effect from the Surrender Date, the Lessee releases the Lessor from all claims and actions and liability arising after the Surrender Date under or in connection with the Lease or in connection with or in respect of the Premises. For the avoidance of doubt, the release by the Lessor does not extend to claims and actions and liability arising under or in connection with the Lease or in connection with or in respect of the Premises prior to the Surrender Date.

10. Costs

The Lessee must pay:

- (a) any duty assessed on this document; and
- (b) any registration or other fees in connection with this document or the transaction to which it relates.

11. Goods and services tax

11.1 Interpretation

Words or expressions used in this clause 11 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

11.2 Consideration is GST exclusive

Any consideration to be paid or provided to the Lessor for a supply made by the Lessor under or in connection with this document, unless specifically described in this document as **GST inclusive**, does not include an amount on account of GST.

11.3 Gross up of consideration

Despite any other provision in this document, if the Lessor makes a supply under or in connection with this document on which GST is imposed (not being a supply the consideration for which is specifically described in this document as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this document but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of that supply (**Recipient**) Recipient must also pay to the Lessor, an amount equal to the GST payable by the Lessor on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Lessor by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

11.4 Reimbursements (net down)

If a payment to a party under this document is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

11.5 Tax invoices

The Lessor will provide a tax invoice.

12. General

12.1 Further acts

Each party agrees to sign any documents or do any acts reasonably necessary to give effect to this document.

12.2 Jurisdiction

This document is governed by the laws of Queensland and each party submits to the non-exclusive jurisdiction of the courts having jurisdiction in Queensland.

12.3 Obligations continue


Any obligation of the Lessee that would have continued to bind the Lessee after expiry of this Lease by the effluxion of time shall continue to operate after the Surrender.

Signing page

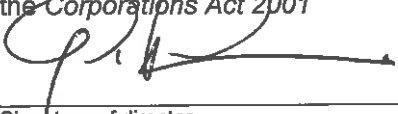
EXECUTED as a deed.

Signed for and on behalf of **Redland City Council** in the presence of

Andrew James Ross
Name of witness (print)



Chief Executive Officer
.....
William Harold Lyon
Chief Executive Officer
Redland City Council

Executed by Big Red Cat Pty Ltd ACN 120 817 683 in accordance with Section 127 of the *Corporations Act 2001*


Signature of director

← who states that he or she is a director of the company.

Graham Alexander Keithman
Name of director (print)


Signature of director

← who states that he or she is a director of the company.

Lance William Francis
Name of director (print)

Executed by SeaLink Travel Group Limited ACN 109 078 257 in accordance with Section 127 of the *Corporations Act 2001*


Signature of director

← who states that he or she is a director of the company.

JEFFREY ROY ELLISON
Name of director (print)


Signature of director *COM SECRETARY*

← who states that he or she is a director of the company.

TREVOR IAN WALLER
Name of director (print) *COM SECRETARY*

Schedule 1 – Form of Surrender Notice

SURRENDER NOTICE

TO: Big Red Cat Pty Ltd ACN 120 817 683 (the Lessee)

In accordance with clause 2.1(a) of the Surrender of Lease agreement dated [] (the **Agreement**), the Redland City Council (the **Lessor**), hereby requires the Lessee to surrender its interests in the Lease and Permit to Occupy in accordance with the terms of the Agreement, on the basis that:

- (a) the Lessor is satisfied that an Access Seeker requires access to the Premises and Toondah Harbour Ramp for the purpose of operating a vehicle ferry service between Toondah Harbour and North Stradbroke Island; and
- (b) the Access Seeker has provided to the Lessor:
 - (i) a business plan for the operation of a vehicle ferry service between Toondah Harbour and North Stradbroke Island to commence within 3 months after the date of the Surrender Notice;
 - (ii) reasonable evidence that the Access Seeker has the financial standing to commence the vehicle ferry service in accordance with its business plan; and
 - (iii) reasonable evidence that the Access Seeker has or is able to acquire a suitable vessel for use in the operation of the vehicle ferry service.

OR

In accordance with clause 2.1(b) of the Surrender of Lease agreement dated [] (the **Agreement**), the Redland City Council (the **Lessor**), hereby requires the Lessee to surrender its interests in the Lease and Permit to Occupy in accordance with the terms of the Agreement on the basis that:

- (a) the redevelopment of the Toondah Harbour Precinct has been approved, and those works cannot be carried out practicably without vacant possession of the Premises;
- (b) all other relevant approvals have been obtained for those works to commence; and
- (c) the developer of the Toondah Harbour Precinct has entered into a legally binding agreement to complete those works.

[Delete whichever is inapplicable]

Dated:
