



# Board Charter

30 May 2007

**RiverCity Motorway Management Limited**

ACN 117 343 361 AFSL 297 867 as responsible entity for

**RiverCity Motorway Investment Trust** ARSN 119 128 326 and

**RiverCity Motorway Holding Trust** ARSN 119 128 193

# Board Charter

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## 1 Purpose of this charter

### 1.1 Background

RiverCity Motorway Management Limited ACN 117 343 361 AFSL 297 867 (“**Responsible Entity**”) has been engaged to act as the responsible entity of two listed registered managed investment schemes, RiverCity Motorway Holding Trust ARSN 119 128 193 and RiverCity Motorway Investment Trust ARSN 119 128 326 (“**Stapled Trusts**”). The Responsible Entity is a wholly owned subsidiary of ABN AMRO Australia Pty Limited.

The Responsible Entity has engaged RiverCity Motorway Services Pty Limited ACN 117 139 992 (“**Manager**”) to manage the day to day operations of the Stapled Trusts for an initial term of 5 years.

### 1.2 Purpose

The board of the Responsible Entity (“**Board**”) is responsible for the governance of the Stapled Trusts. The purpose of this Board Charter is to specify how the Stapled Trusts are governed so as to promote the Stapled Trusts and protect the interests of investors. This charter sets out the role and responsibilities of the Board, which responsibilities are delegated to the Manager and committees of the Board, as well as the membership and the operation of the Board.

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## 2 Role and responsibilities of Board

### 2.1 Role

The role of the Board is to provide overall strategic guidance for the Stapled Trusts and effective oversight of management. The Board ensures that the activities of the Stapled Trusts comply with the Stapled Trusts’ constitutions, from which the Board derives its authority to act, and with all legal and regulatory requirements.

### 2.2 Strategy

The Board is responsible for:

- (a) overseeing the development of the Stapled Trusts’ strategy;
- (b) reviewing and approving strategy plans and performance objectives of the Stapled Trusts consistent with the strategy and reviewing the assumptions and rationale underlying the strategy plans and objectives; and
- (c) monitoring implementation of the strategy plans.

### **2.3 Investors**

The Board is responsible for:

- (a) ensuring effective communication with investors, including convening investors' meetings, listening and responding to investors views of management and on the Stapled Trusts;
- (b) facilitating the effective exercise of investors' rights; and
- (c) reporting to investors and ensuring that all regulatory requirements are met.

### **2.4 Other stakeholders**

The Board is responsible for establishing and maintaining for the Responsible Entity, employment and occupational, health and safety policies.

### **2.5 Ethics**

The Board is responsible for:

- (a) actively promoting ethical and responsible decision-making;
- (b) establishing and maintaining a code of conduct to guide the Group's directors and management in the practices necessary to maintain confidence in the Stapled Trusts' integrity; and
- (c) the system of accountability for unethical practices.

### **2.6 Oversight of financial management and capital management**

The Board is responsible for:

- (a) reviewing and approving annual and half yearly financial reports;
- (b) monitoring financial results on an ongoing basis;
- (c) establishing and overseeing the Stapled Trusts' accounting and financial management systems;
- (d) reviewing and monitoring the progress of major capital expenditure, capital management, major acquisitions and divestitures and material commitments; and
- (e) determining the distribution policy of the Stapled Trusts and declaring distributions.

### **2.7 Compliance and risk management**

The Board is responsible for:

- (a) establishing and overseeing the Stapled Trusts' control and accountability systems and reviewing reporting under those systems;
- (b) establishing, overseeing and regularly reviewing a system for identifying, assessing, monitoring and managing material risk throughout the Stapled Trusts and informing investors of material changes to the Stapled Trusts' risk profile;
- (c) establishing, overseeing and regularly reviewing systems of internal compliance, risk management and control, and systems of legal compliance that govern the operations of the Stapled Trusts, and ensuring they are operating effectively; and
- (d) establishing and overseeing codes and procedures governing compliance, risk oversight and management.

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### **3 Role and responsibilities of chairperson and company secretary**

#### **3.1 Chairperson**

The chairperson is responsible for:

- (a) leading the Board in reviewing and discussing Board matters;
- (b) chairing Board meetings and formal investor meetings;
- (c) ensuring the efficient organisation and conduct of the Board's function;
- (d) briefing all directors in relation to issues arising at Board meetings;
- (e) facilitating effective contribution by all directors and monitoring Board performance;
- (f) overseeing that membership of the Board is skilled and appropriate for the Stapled Trusts' needs;
- (g) promoting constructive relations between Board members and between the Board and management;
- (h) ensuring that independent directors meet separately at least annually to consider, among other things, management's performance;
- (i) reviewing corporate governance matters with the company secretary and reporting on those matters to the Board; and
- (j) establishing and overseeing implementation of policies and systems for board performance review and renewal.

### 3.2 Company secretary

The company secretary acts as secretary of the Board, attending all meetings of the Board as required. The company secretary is accountable to the Board through the chairperson on all corporate governance matters.

The company secretary is responsible for:

- (a) organising Board meetings and director attendance;
- (b) monitoring compliance with Board policy and procedures;
- (c) coordinating the completion and despatch of the Board agenda and briefing materials;
- (d) preparing minutes of meetings and resolutions of the Board and taking these to the chairperson for approval and circulation;
- (e) circulating minutes from committee meetings to the Board; and
- (f) ensuring the Stapled Trusts comply with the requirements under the Corporations Act regarding registered office, annual returns and notices to be lodged with the Australian Securities and Investments Commission.

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## 4 Delegations of authority

### 4.1 Delegation to Manager

The Board has appointed the Manager to assume specific responsibilities in respect of the day to day management of the Stapled Trusts under management deeds dated 2 December 2005, as amended (“**Management Deeds**”).

Pursuant to the Management Deeds, the Manager will provide corporate administrative, administration functions and asset management functions in respect of the Stapled Trusts. The functions delegated by the Board to the Manager include those set out in Schedule 1 to this Board Charter.

### 4.2 Delegation to committees

Under the Stapled Trusts’ constitutions, the Board may delegate responsibility to committees to consider certain issues in further detail and then report back and advise the Board.

Standing committees established by the Board will adopt charters setting out the authority, responsibilities, membership and operation of the committee

Currently, the Audit Committee is the only standing committee.

The Board may establish other committees from time to time to consider other matters of special importance.

Directors are entitled to attend committee meetings and receive committee papers. Committees will maintain minutes of their meetings and are entitled to obtain professional or other advice in order to effectively carry out their proper functions. The chairperson of each committee will report back on committee meetings to the Board at the next full Board meeting.

#### **4.3 Delegation to chief executive officer and management**

Pursuant to the Management Deeds, the Manager engages individuals to perform the functions equivalent to those that would ordinarily be performed by senior management, including a chief executive officer, chief financial officer and marketing manager.

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## **5 Membership**

### **5.1 Composition and size**

The Board will have at least three directors the majority of whom will be independent non-executive directors.

The Manager's board comprises a majority of independent directors.

### **5.2 Independence**

A director is considered independent by the Board if the director is independent of management and free of any business or other relationship that could materially interfere with the exercise of their unfettered and independent judgment or be perceived to do so.

A director who:

- (a) is a substantial shareholder of the Stapled Trusts or an officer of, or otherwise associated directly with, a substantial shareholder of the Stapled Trusts;
- (b) within the last three years has been employed in an executive capacity by the Responsible Entity or has been a director after ceasing to hold any such employment;
- (c) within the last three years, has been a principal of a material professional adviser or material consultant to the Responsible Entity or an employee materially associated with the service provided;
- (d) is a material supplier or customer of the Responsible Entity, or an officer of or otherwise associated directly or indirectly with a material supplier or customer;

- (e) has a material contractual relationship with the Responsible Entity other than as a director of the Responsible Entity or shareholder of the Stapled Trusts;
- (f) has served on the Board for a period which could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interests of the Stapled Trusts; or
- (g) has any interest and any business or other relationship with could, or could reasonably be perceived to, materially interfere with the director's ability to act in the best interest of the Stapled Trusts,

will not be independent unless the Board is satisfied on reasonable grounds that the director is independent despite the existence of one or more of these circumstances.

The Board will regularly assess the independence of each director in light of the interests disclosed by them. Each independent director must provide the Board with all relevant information for this. The outcome of this assessment will be reflected in the corporate governance section of the annual report.

### **5.3 Conduct of individual directors**

Directors must at all times act in accordance with legal and statutory requirements, and discharge all their duties as directors. Directors must:

- (a) discharge their duties in good faith and in the best interests of the Stapled Trusts and for a proper purpose;
- (b) act with care and diligence, demonstrate commercial reasonableness in their decision making and with the level of skill and care expected of a director of a major company;
- (c) avoid conflicts of interest except in those circumstances permitted by the Corporations Act;
- (d) not make improper use of information gained through their position as director;
- (e) not take improper advantage of their position as a director;
- (f) notify other directors of a material personal interest when a conflict arises;
- (g) make reasonable enquiries if relying on information or advice provided by others;
- (h) undertake any necessary inquiries in respect of delegates;
- (i) give the Australian Stock Exchange Limited all the information required by the Corporations Act; and

- (j) not permit the Stapled Trusts to engage in insolvent trading.

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## **6 Nomination and appointment of directors**

### **6.1 Nomination**

The Board has not appointed a nomination committee.

The Board does not consider a nomination committee to be appropriate as the Responsible Entity is a wholly owned subsidiary of ABN AMRO Australia Pty Limited.

The Board has however considered appropriate selection criteria in relation to the assessment of the necessary and desirable competencies of the Board members. These are:

- (a) integrity;
- (b) experience in the particular infrastructure sector and experience in other relevant areas such as finance, investments, funds management, legal and corporate governance, and the degree to which they complement the skill set of the existing board members; and
- (c) in the case of prospective independent directors, their actual and perceived independence from ABN AMRO Australia Pty Limited.

### **6.2 Appointment**

Before accepting appointment, independent directors will be formally advised of the reasons why they have been asked to join the Board and will be provided with a letter of appointment which includes an outline of what the Board expects of them.

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## **7 Remuneration**

The Board has not appointed a remuneration committee.

Directors of the Board are entitled to be paid fees out of the Stapled Trusts. All directors will be entitled to cost reimbursement.

The Stapled Trusts do not have senior executives. One of the responsibilities of the Manager under the Management Deeds is to provide the day to day executive functions in the management of the Stapled Trusts. The Manager is not paid a management fee under the Management Deeds. However, it is entitled to be reimbursed for costs incurred in properly performing its functions and the Stapled Trusts and the related controlled entities will ultimately be liable for these costs.

The Board does not consider it necessary or appropriate to constitute a remuneration committee given this limited exposure to remuneration expenses.

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## **8 Board process**

### **8.1 Meetings**

All Board meetings will be conducted in accordance with the Stapled Trusts' constitutions and the Corporations Act.

Directors are committed to collective decision making, but have a duty to question and raise any issues of concern to them. Matters are to be debated openly and constructively amongst the directors. Individual directors must utilise their particular skills, experience and knowledge when discussing matters at Board meetings.

Directors must keep Board discussions and resolutions confidential, except where they are required to be disclosed.

All directors are generally expected to prepare adequately, attend and participate at each Board meeting. Non-executive directors will periodically meet without executive directors or management present.

The Board may request or invite management or external consultants to attend Board meetings, where necessary or desirable.

The Board may conduct meetings by telephone or video conference.

### **8.2 Independent professional advice**

Following consultation with the chairperson, directors may seek independent professional advice at the Stapled Trusts' expense. Generally, this advice will be available to all directors.

### **8.3 Access to management**

The directors have complete and open access to management following consultation with the chairperson.

### **8.4 Board evaluation**

The performance of the Board and the directors will be reviewed annually. Such review will consider the Board's role, the processes of the Board and Board committees, and the performance of the Board and each director.

As required, the Board will implement changes to improve the effectiveness of the Board and its members and any continuing education of directors.

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## **9 Review and publication of charter**

The Board is responsible for reviewing this charter and the division of functions and responsibilities in the Stapled Trusts to determine its appropriateness to the needs of the Stapled Trusts from time to time. The charter may be amended by resolution of the Board.

The charter is available on the RiverCity Motorway Group's website and the key features are published in the Stapled Trusts' annual report.

Adopted by the Board on 30 May 2007.

## Schedule 1 - Functions of the Manager

The Manager has been appointed under the Management Deeds to perform corporate administrative, administrative functions and asset management functions in respect of the Stapled Trusts, including:

- 1 Corporate Administrative:
  - (a) maintaining secretarial records, and dealing with matters of internal governance;
  - (b) risk management, including assessment and management of credit, financial, operational and regulatory risk and obligations;
  - (c) financial operations including accounting, corporate reporting, financial planning, budgeting, regulatory reporting and accounts payable functions;
  - (d) tax planning, preparation of tax returns and balance sheets, meeting the requirements of any taxation law and liaising with external tax advisors and regulators; and
  - (e) liaising with external legal advisors and auditors.
  
- 2 Administrative Functions related to the Stapled Trusts and the Stapled Trusts' assets in accordance with policies and procedures approved by the Responsible Entity:
  - (a) day-to-day executive functions in the management of the Stapled Trusts and the Stapled Trusts' assets;
  - (b) administration of applications, redemptions, transfers and investor queries in relation to the Stapled Trusts;
  - (c) organising meetings of the Stapled Trusts' members if required;
  - (d) publicity and promotion for the Stapled Trusts;
  - (e) facilitating and managing capital raisings and offers of interests in the Stapled Trusts, including preparation of offer documentation and due diligence;
  - (f) dealing with the Stapled Trusts' property as applicable legislation requires;
  - (g) regulatory compliance;
  - (h) keeping of proper books of accounts and records, financial models, internal reporting for the Stapled Trusts, and preparation and dispatch of reports and communications for Stapled Trusts' investors;

- (i) meeting the Responsible Entity's obligations as a disclosing entity, if applicable, under applicable legislation;
- (j) complying with each Stapled Trust's constituent documents;
- (k) complying with each Stapled Trust's compliance plan;
- (l) reporting to the relevant securities regulator as applicable legislation and the conditions of the Responsible Entity's AFS licence require;
- (m) valuation of RiverCity Motorway Group assets as applicable legislation or the Responsible Entity requires;
- (n) cash management of the Stapled Trusts;
- (o) planning and payment of distributions of the Stapled Trusts (for the avoidance of doubt, this does not include the ability to declare distributions, or make any decision on distribution policy, of the Stapled Trusts);
- (p) monitoring performance of the registry;
- (q) monitoring performance of the custodian of the Stapled Trusts and giving instructions to the custodian;
- (s) liaising with the media, developing and implementing a public relations policy and advising on communication and public relations issues;
- (t) investor relations responsibilities, including liaising with stockbroking analysts, institutional clients, financial advisers, dealing with investor queries and complaints and facilitating offerings on interests in the Stapled Trusts;
- (u) complying with any other duties as responsible entity, manager or adviser as the case may be under applicable legislation or regulations, or any licence of the Responsible Entity;
- (v) complying with the requirements of ASX and applicable listing rules;
- (w) subject to the consent of the Responsible Entity, liaising with regulators on behalf of each Stapled Trust;
- (x) preparing annual reports, investor updates and other communications, notices of meeting and any other meeting materials, non-standard announcements and financial reporting announcements to the ASX;
- (y) conducting financial audits;
- (z) drafting product disclosure statements;
- (aa) undertaking capital raisings in respect of the Stapled Trusts;

- (ab) dealing with investor complaints under the constitutions of the Stapled Trusts; and
- (ac) advising the Responsible Entity of all current, pending and threatened litigation involving the Stapled Trusts of which the Manager is aware.

3 Asset management:

- (a) review and manage the Stapled Trusts' assets for and on behalf of the Responsible Entity and confer at regular intervals with the Responsible Entity regarding the investment and management of the assets, in particular in relation to:
  - (i) the exercise by the Responsible Entity of its options, discretions, rights and performance by the Responsible Entity of its obligations under the Material Contracts and the Project Documents (as defined in the Management Deeds);
  - (ii) the implementation of initiatives for improved financial performance of the assets including trading opportunities, cost efficiencies and plant, technical and operational improvements; and
  - (iii) the engagement, performance and termination (as applicable) of operation and maintenance contractors and other technical or asset service providers for the assets.
- (b) with the consent of the Responsible Entity, or under force of law and as advised to the Responsible Entity, give any information and assistance and make available any records relating to Stapled Trusts' assets and Stapled Trusts reasonably required by the auditors of the Stapled Trusts;
- (c) provide access to and a copy of any accounts in its possession relating to Stapled Trusts whenever reasonably requested by the Responsible Entity to any person duly authorised by the Responsible Entity;
- (d) promptly notify the Responsible Entity of any instructions given to Manager by the Responsible Entity which have not been complied with;
- (e) account to the Responsible Entity for any monetary benefits, fees or commissions received by the Manager or any Related Entity of Manager in relation to the investment of the Stapled Trusts' assets, other than benefits permitted to be received in accordance with the Management Deeds;
- (f) comply with any reasonable requests for information or assistance from the compliance committee or any auditor

appointed by the Responsible Entity to conduct an audit of the Stapled Trusts; and

- (g) use reasonable endeavours to ensure that the assets of the Stapled Trusts are vested as soon as practicable in the custodian, unless Manager believes having regard to the nature of the investment and the interests of the Responsible Entity it is not reasonably practicable to do so (for example, because an investment involves another party acting as custodian).