HWL EBSWORTH
LAWYERS

Deed of Variation of Planning Agreement

Randwick City Council

and

Cbus Property Sydney Residential Pty Ltd

17/02/20

Doc ID 708652363/v1

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Deed of Variation of Planning Agreement

Date

Parties	**Randwick City Council** ABN 77 362 844 121 of 30 Frances Street, Randwick, New South Wales (**Council**)
	Cbus Property Sydney Residential Pty Ltd ACN 607 511 035 of Level 7, 550 Bourke Street, Melbourne VIC 3000 (**Developer**)

Recitals	A.	The Developer and the Council entered into the Deed.
	B.	The Developer and the Council have agreed to vary the Deed in the manner set out in this Deed of Variation.

The parties agree as follows:

1. Definitions and Interpretation

1.1 Definitions

In this Deed of Variation except where the context otherwise requires:

Deed	means the deed between the Developer and the Council dated 7 August 2017 a copy of which is attached to this Deed of Variation as Annexure A.
Deed of Variation	means this document and all annexures, schedules and attachments and exhibits.

1.2 Interpretation

In this Deed:

(a) headings are for convenience only and do not affect interpretation;

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(b) a reference to legislation includes legislation as amended, re-enacted, or replaced, and includes any subordinate legislation made under it;

(c) if a word is defined, then another part of speech is given the same meaning;

(d) singular includes the plural and vice versa; and

(e) any example, illustration, or inclusion of a right, obligation or concept does not limit the scope of that thing,

a reference to a body or authority includes any body or authority that replaces it.

2. Variation of Deed

The Deed is varied as follows:

2.1 Clause 5 definitions , insert the following words:

Ausgrid Easement *means the easement in favour of Ausgrid as required for the kiosk substation, electricity & other purposes and right of access way over the Public Park Land as shown in the plan in Annexure B to this Deed of Variation.*

EMP *means an environmental management plan required as part of the Site Audit Statement, prepared by a suitably qualified environmental consultant with expertise in soil contamination and approved by Council.*

EMP Positive Covenant *means a positive covenant on the Big Stable Land requiring compliance with the EMP as may be required the Site Audit Statement.*

Monetary Contribution 3 *means the amount set out in Item10(iii) of Schedule 1.*

Paine Reserve North *means the northern portion of the public reserve at 197-203r Botany Street Randwick known as Paine Reserve as shown in Annexure C to this Deed of Variation*

Site Audit Statement h*as the same meaning as in the Contaminated Land Management Act 1997*

Stormwater Easement *means an easement 2.5m wide for the purposes of drainage in favour of proposed Lot (PT 35) on which Building E4.1 is constructed over the Big Stable Land as shown on the plan in Annexure B and in the terms set out in Annexure D to this Deed of Variation*

2.2 Clause 5 definitions, delete the following words:

Encumbrances *means an interest or power:*

(a) reserved in or over an interest in any asset;

(b) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed

or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or

(c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

And replace with the following words:

Encumbrances *means an interest or power:*

(a) reserved in or over an interest in any asset;

(b) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement (excluding the Ausgrid Easement, EMP Positive Covenant and the Stormwater Easement), subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or

(c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

2.3 Delete clause 10.1(a) and replace with the following words:

(a) Monetary Contribution 1 and Monetary Contribution 3 must be paid to Council prior to or upon the transfer of the Big Stable Land to the Council in accordance with clause 8.1.

2.4 Insert the following provision as Clause 10.4 (c);

(c) Monetary Contribution 3 for the purposes of the Big Stable Building and/or upgrade works to Paine Reserve North.

2.5 Item 6(b) of Schedule 1 delete the words:

Annexure C - Conceptual Draft Subdivision Plan for Newmarket Randwick- Ground Level

And replace with

Annexure C- Draft Plan of Subdivision - Stratum Lot Part Road ST1 & Easements

2.6 Insert the following words to Item 10 of Schedule 1:

(iii) *Monetary Contribution 3;*

$200,000, for the purpose of design, works, repairs and maintenance to the Big Stable Building and the Big Stable Land and/or upgrade works to Paine Reserve North.

2.7 Delete :

Annexure C - Stratum Lot Part Road ST1 of the Deed

And replace with

Annexure B of this Deed of Variation entitled

Draft Plan of Subdivision - Stratum Lot Part Road ST1 & Easements

3. No other change

The parties confirm the Deed will continue in full force and effect as varied by this Deed of Variation. Nothing in this Deed of Variation will be read or construed as implying any form of variation or waiver other than as expressly set out in this Deed.

4. Costs

Each party will bear its own legal costs in relation to the preparation and execution of the Deed of Variation.

5. General

5.1 This Deed of Variation contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Deed of Variation are of no effect.

5.2 A right may only be waived in writing, signed by the party giving the waiver, and:

(a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

(b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(c) the exercise of a right does not prevent any further exercise of that right or of any other right.

5.3 The invalidity, illegality or unenforceability of any provisions of this Deed of Variation will not affect the validity or enforceability of any other provisions.

5.4 This Deed of Variation may only be varied in writing by the agreement of the parties.

5.5 This Deed of Variation is governed by and construed in accordance with the law of the State of New South Wales. The parties submit to the jurisdiction of the courts of that state.

5.6 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Deed of Variation.

5.7 Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this deed and all transactions incidental to it.

5.8 The parties represent and warrant that they have power to enter into this Deed of Variation and that entry into this Deed of Variation will not result in the breach of any law.

Signing page

Executed as an agreement

Executed by **Randwick City Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

General Manager (Signature)	Mayor (Signature)
Name of General Manager (Print Name)	Name of Mayor (Print Name)

Executed by **Cbus Property Sydney Residential Pty Ltd**
ACN 607 511 035 by its attorneys under Power of Attorney dated 13 August 2014 in the presence of:

Witness	Attorney
Full name (print)	Full name (print)
Witness	Attorney
Full name (print)	Full name (print)

Annexure A Copy of Deed

HWL EBSWORTH
LAWYERS

Planning Agreement

Randwick City Council

and

Cbus Property Sydney Residential Pty Ltd

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9/06/17

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Planning Agreement

Date

Parties

Randwick City Council

ABN 77 362 844 121 of 30 Frances Street, Randwick, New South Wales

(Council)

Cbus Property Sydney Residential Pty Ltd

ACN 607 511 035 of Level 7, 550 Bourke Street, Melbourne VIC 3000

(Developer)

Recitals

A. The Developer is the owner of the Land.

B. Development Consent to the Master Plan Development on the Land was granted by the Land & Environment Court of New South Wales on 3 April 2017.

C. A condition of the Development Consent requires a planning agreement to be entered into in accordance with an offer made by the Developer in its letter to the Council of 21 March 2017.

D. The Developer intends to lodge further development applications for the development of the Land in accordance with the Master Plan Development and such applications will relate to the stages of the Development (the Staged Development Applications).

E. The Developer has offered to enter into this Planning Agreement with the Council to provide the Development Contributions if the Staged Development Applications are granted Development Consent.

F. The Developer and the Council agree to enter into this Planning Agreement.

The parties agree, in consideration of, among other things, the mutual promises contained in this deed as follows:

1. Planning Agreement under the Act

The parties agree that this deed is a Planning Agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.

2. Application of Section 94,94A and s94EF of the Act to the Development

2.1 The parties agree that this deed does not exclude the operation of Section 94 and 94A of the Act in relation to the Development.

3. Application of this deed

This deed applies to both the Land and to the Development.

4. Operation of this Agreement

4.1 This deed takes effect on execution of this deed.

5. Definitions and interpretation clauses

5.1 **Definitions**

In this deed:

Act	means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under that Act.
Affordable Housing	has the same meaning as in the Act.
Affordable Housing Units	means the affordable housing units referred to in Item 9 of Schedule 1.

Big Stable Building	means the building erected on the Big Stable Land being State Heritage Item No. 00388.
Big Stable Land	means the land referred to in Item 8 of Schedule 1.
Building E4.1	means the building marked E4.1 on the plan at Annexure D.
Claims	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
CPI	means the Consumer Price Index (All Groups) Sydney.
Commencement Date	means the date on which development consent for the Stage Infrastructure is granted.
Community Land	has the same meaning as in the Local Government Act 1993.
Contribution Values	means the values specified for the Developer Works on the Public Park Land in Schedule 2.
Council's Representative	means the person specified in Item 2 of Schedule 1 who is duly authorised to give approval under this deed on behalf of Council.
Dealing	means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.
Defects Liability Period	means, in respect of each item of the Developer's Works, the period of 365 days beginning on the date on which the relevant item of the Developer's Works has achieved Practical Completion.
Developer	means the Owner of the Land and the entity described in Item 1 of Schedule 1.
Development	means the development set out in Item 4 of Schedule 1 to be completed by the Developer in accordance with the Development Consent.

Development Consent	means the approval granted by the Land & Environment Court of NSW for the Master Plan Development on the Land dated 3 April 2017 identified in Item 4 of Schedule 1.
Developer's Works	means the works identified in Schedule 2.
Development Contributions	means the Public Roads, the Public Park Land, the Big Stable Land, the Affordable Housing Units. the Monetary Contributions and the Developer's Works.
Development Control Plan	means: (a) the Randwick City Council Development Control Plan 2013 as amended; and (b) any other development control plan relating to the Land from time to time.
Dispute	means any dispute in relation to this deed (or any part of it) or anything arising out of this deed.
Encumbrances	means an interest or power: (a) reserved in or over an interest in any asset; (b) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.
Encumber	means to grant an Encumbrance.
Environmental Planning Instrument	has the same meaning as in the Act.
Final Occupation Certificate	has the same meaning as in the Act.
GST	has the same meaning as in the GST Law.
GST Law	has the meaning given to that term in *A New Tax System (Goods*

and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Independent Certifier means a person appointed pursuant to clause 12.8 of this deed.

Insolvency Event means the happening of any of these events:

(a) application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up;

(b) an application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order;

(c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

(d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;

(e) a body corporate is or states that it is insolvent;

(f) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), a body corporate is taken to have failed to comply with a statutory demand;

(g) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth);

(h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate;

(i) a receiver, manager or receiver and manager is appointed to a body corporate;

(j) a body corporate becomes an externally administered body corporate within the meaning of the *Corporations Act*

2001 (Cth); or

anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Land	means the land identified in Item 3 of Schedule 1, comprising the land the subject of the Master Plan Development.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any authority.
Master Plan Development	means the Development approved by the Development Consent as set out in Item 4 of Schedule 1.
Monetary Contributions	means Monetary Contribution 1 and Monetary Contribution 2 as set out in Item 10 of Schedule 1.
Monetary Contribution 1	means the amount set out in Item 10(i) of Schedule 1.
Monetary Contribution 2	means the amount set out in Item 10(ii) of Schedule 1.
Occupation Certificate	has the same meaning as in the Act.
Operational Land	has the same meaning as in the Local Government Act 1993.
Owner	means the registered owner of the Land from time to time.
Party	means a party to this deed, and includes their successors and assigns.
Planning Legislation	means the Act, the *Roads Act 1993* (NSW) and the *Local Government Act 1993* (NSW).
Practical Completion	means in respect of and item of the Developer's Works, the stage in the construction of the Developer's Works when construction is complete except for minor omissions and defects: (a) which do not prohibit; or (b) which may be rectified without prohibiting;

	the item of the Developer's Works from being reasonably used for its intended purpose.
Public Park Land	means that part of the Land specified in Item 7 of Schedule 1.
Public Roads	means that part of the Land specified in Item 6 of Schedule 1.
Security	has the meaning ascribed to in clause 16.1.
Stage	means a stage of the Development as referred to in Item 5 of Schedule 1.
Stage Infrastructure	means the development proposed by the Staged Development Application for Stage Infrastructure as described in Item 5 of Schedule 1.
Stage 1	means the development proposed by the Staged Development Application for Stage 1 as described in Item 5 of Schedule 1.
Staged Development Application	means the development application for each of the Stages of the development of the Land as described in Item 5 of Schedule 1.

5.2 Interpretation

In the interpretation of this deed, the following provisions apply unless the context otherwise requires:

(a) Headings are inserted for convenience only and do not affect the interpretation of this deed.

(b) A reference in this deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

(c) A reference in this deed to dollars or $ means Australian dollars and all amounts payable under this deed are payable in Australian dollars.

(d) A reference in this deed 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 to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this deed.

(f) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular.

(g) References to the word 'include' or 'including' are to be construed without limitation.

(h) Reference to a party to this deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

(i) Any schedules and attachments form part of this deed.

(j) A word defined in the Act has the same meaning in this deed.

6. Dedication and Transfer of Public Roads

6.1 The Developer must at no cost to Council, dedicate the Public Roads shown in the plan in **Annexure 'B'** to the Council free of any trusts, estates, interests, covenants and Encumbrances.

6.2 The Developer must transfer to the Council the land shown as part of the public road ST1 on the plan comprised in **Annexure C** in fee simple as a freehold stratum lot free of any trusts, estates, interests, covenants and Encumbrances, but including the benefit of any easements for support, maintenance and easements for access required by Council and/or relevant service authorities to access their services under that road as required by Council.

6.3 The dedication and transfer of the Public Roads referred to in clauses 6.1 and 6.2 must occur not later than 60 days after Practical Completion of the Public Road for each Stage of the development as set out in Item 4 of Schedule 2 .

7. Dedication of Public Park Land

7.1 The Developer must dedicate the Public Park Land to the Council.

7.2 The Developer must dedicate the Public Park Land to Council free of any trusts, estates, interests, covenants and Encumbrances not later than 60 days after the Practical Completion of the Developer Works on the Public Park Land.

8. Transfer of Big Stable Land

8.1 The Developer must transfer to the Council the Big Stable Land as described in Item 8 of Schedule 1 in fee simple free of any trusts, estates, interests, covenants and Encumbrances.

8.2 On its dedication to Council, the Big Stable Land the Council must be classified as community land purusant to the terms of the Local Government Act 1993The

8.3 Transfer of the land referred to in clause 8.1 must occur within thirty (30) days of the later of the issue of the subdivision certificate to the Building E4.1, or issue of an Occupation Certificate for Building E4.1 .

8.4 The Developer will not unreasonably withold its consent to lodgement of a development application by the Council for the adaptive reuse of the Big Stable Land.

9. Transfer of Affordable Housing Units

9.1 The Developer must transfer the Affordable Housing Units following the registration of the strata plan of subdivision for the relevant building in which the Affordable Housing Units are located by doing the following:

(a) give the Council notice in writing of the registration of the strata plan for the relevant building;

(b) the notice referred to in clause 9.1(a) shall require completion of the transfer of the Affordable Housing Units within 14 days; and

(c) do all things reasonably necessary to complete the transfer of the Affordable Housing Units to the Council with 14 days of giving the notice referred to in clause 9.1(a).

9.2 The Council must accept the transfer of the Affordable Housing Units by doing the following:

(a) complete the transfer of the Affordable Housing Units within 14 days of receiving the notice under clause 9.1(a) by agreeing to such documentation that is necessary to transfer the Affordable Housing Units to Council;

9.3 The Council will be responsible for any stamp duty and other costs (including without limitation its legal costs and any adjustments for rates and taxes) in connection with the transfer of the Affordable Housing Units.

9.4 The Council agrees that:

(a) It will use the Affordable Housing Units for the purpose of Affordable Housing for a period of 10 years from the date of transfer; and

(b) If the Affordable Houding Units are sold after the expiration of the period referred to in 9.4(a) any funds derived from any such sale most be used for the purposes of Affordable Housing.

9.5 The transfer of the Affordable Housing Units in accordance with clause 9.1 will take place progressively as the development of the Land progresses, in accordance with the following allocations:

(a) 4 units will be provided in Stage 1;

(b) 3 units will be provided in Stage 2; and

(c) 3 units will be provided in Stage 3,

unless agreed otherwise by the parties.

9.6 The location of the Affordable Housing Units is entirely at the discretion of the Developer however the Developer agrees to consult with the Council prior to determining the final location of the Affordable Housing Units.

9.7 The Council agrees that the provision of the Affordable Housing Units pursuant to this deed satisfies the objectives of any Environmental Planning Instruments that apply to the Land and Development Control Plan requiring the provision of Affordable Housing on the Land and that Council must not require any further provision of Affordable Housing or any contribution for Affordable Housing beyond what is provided pursuant to this deed.

10. Payment of Monetary Contributions

10.1 The Developer will pay to Council the Monetary Contributions as follows:

(a) Monetary Contribution 1 must be paid to Council prior to or upon the transfer of the Big Stable Land to the Council in accordance with clause 8.1.

(b) Monetary Contribution 2 must be paid to Council prior to the issue of the first Construction Certificate for the Development the subject of the first Staged Development Application.

10.2 The Monetary Contributions must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.

10.3 The Monetary Contributions will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.

10.4 The parties agree and acknowledge that the Monetary Contributions shall be used by the Council for the following public purposes:

(a) Monetary Contribution 1 for the purposes of repairs and maintenance of the Big Stable Building; and

(b) Monetary Contribution 2 for the cost of undertaking a traffic study and or implementing traffic calming measures in the area covered by Middle Street and Meeks Street between Botany Street and Willis Street, as well as Young Street, Jane Street, Randwick and DV1.

11. Approval of Developer's Works

11.1 Definition of Scope of Works

The Parties agree that the works described in Schedule 2 comprise the Developer's Works for the purposes of this deed. The Parties acknowledge and agree that further design detail and refinement are/may be necessary, taking into account any approvals or development consents granted in respect of the Developer's Works (**Works Change**).

The Developer may request a Works Change by providing Council with a notice setting out the details of the Works Change (**Works Change Request**).

Council may, acting reasonably, approve or refuse the Works Change Request by notice in writing to the Developer.

11.2 Plans

The Developer must carry out the Developer's Works by itself or by a contractor in accordance with:

(a) the plans and detailed designs prepared and/or described in accordance with Schedule 2; and

(b) any development consent granted in relation to the Stage Infrastructure or approval relating to the Developer's Works (which must not be inconsistent with any plans referred to in paragraph (a)).

12. Construction of Developer's Works

12.1 Approvals and consents

(a) The Developer must (at its cost) obtain all relevant approvals and consents for the Developer's Works whether from the Council or any other relevant government agency, including any necessary road opening permit.

(b) Before commencing the Developer's Works, the Developer must give to the Council copies of all approvals and consents for the Developer's Works.

12.2 Indemnity

The Developer indemnifies Council against any Claims that arise in connection with:

(a) the carrying out by the Developer of any of the Developer's Works; and

(b) the performance by the Developer of any other obligation under this deed,

except to the extent that any such Claim is caused by or contributed to by an act or omission of Council or the Council's servants, agents or contractors.

12.3 Insurance

(a) The Developer must maintain the following insurances in relation to the Developer's Works required to be carried out by it under this deed:

(i) public liability insurance for at least $20,000,000.00 for a single occurrence, noting, naming or otherwise including the Council as an insured under the policy, for liability to any third party;

(ii) workers compensation insurance as required by law; and

(iii) any other insurance required by law.

(b) The Developer must ensure that any subcontractor engaged by it to carry out any of the Developer's Works maintains its own policies of insurance as referred to above.

(c) If the Developer fails to comply with paragraphs (a) or (b), Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose in which case the amount so paid is a debt due from the Developer to Council which may be recovered by the Council as it deems appropriate including:

(i) by calling upon the Security provided by the Developer under this deed, or

(ii) recovery as a liquidated debt due in a court of competent jurisdiction.

(d) The Developer must submit a copy of the certificates of insurance to the Council evidencing the insurances required to be held by it under this clause before the commencement of the construction of the Developer's Works.

12.4 Construction Work

The Developer must (at its cost):

(a) carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works (including the approval by Council of plans and any other information submitted under this deed) within the timeframe set out in Schedule 2; and

(b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this deed so that they are structurally sound, fit for purpose, and suitable for their intended use; and

(c) comply with any reasonable directions from the Council in respect of the construction of the Developer's Works.

12.5 Works Completion

When in the opinion of the Developer, the Developer's Works or part of the Developer's Works have reached Practical Completion, the Developer must notify the Independent Certifier in writing and must include in that notice:

(a) a statement from the person with direct responsibility carriage and supervision of that work that in their opinion the Developer's Works have reached Practical Completion; and

(b) copies of any certification, warranties, guarantees, maintenance information or other material (including works as executed plans) reasonably required for the ongoing repair, maintenance, or servicing (as the case may be) of any part of the Developer's Works.

12.6 Inspection by Independent Certifier

(a) The Independent Certifier must inspect the Developer's Works within 5 days of receiving notification under clause 12.5.

(b) The Independent Certifier must promptly by notice in writing to the Developer and the Council:

(i) concur that Practical Completion has been achieved; or

(ii) disagree that Practical Completion has been achieved and (if the Council's Representative so disagrees) identify the errors or omissions which have been identified and which in the opinion of the Independent Certifier prevent Practical Completion.

(c) Nothing in this clause 12.6, or in any notice issued under this clause 12.6, will be construed to reduce or waive in any manner the Developer's responsibility to correct minor defects or minor omissions, whether or not these are identified by the Independent Certifier.

12.7 Date of Completion of Developer's Works

The Developer must ensure that the Developer's Works reach Practical Completion on or before the timeframes set in Schedule 2.

12.8 Appointment of Independent Certifier

For the purposes of clause 12.6 and 12.7 the Developer and the Council will by agreement appoint a suitably qualified person as an Independent Certifier.

12.9 Early Completion

(a) For the purpose of progressing with the Development, the Developer may request that Council agree that any part of the Developer's Works is complete

even if that part of the Developer's Works has not reached Practical Completion (**Early Completion Request**).

(b) Council may, at it absolute discretion, approve or refuse the Early Completion Request including imposing any conditions for such approval such as:

(i) the provision of appropriate security for Practical Completion of the relevant works by the Developer at a later stage; and

(ii) the new time by which the relevant works must be completed.

13. Defects Liability Period

13.1 Defects in the Developer's Work

If the Council notifies the Developer of a defect in the Developer's Works within the Defects Liability Period, then the Developer must at the Developer's expense, remedy that defect to the reasonable satisfaction of the Council's Representative within the time period specified in Council's notice (which must be a reasonable time and not less than thirty (30) business days).

14. Compulsory Acquisition of the Designated Land

(a) The Developer consents to the compulsory acquisition by Council of the Roads Land and the Public Park Land (**Designated Land**):

(i) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**); and

(ii) on the terms set out in this clause 14.

(b) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer breaches a term of this deed (clauses 6 and 7) with respect the dedication and transfer of the Public Roads and the Dedication of the Public Park Land.

(c) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:

(i) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is $1.00; and

(ii) Council must complete that acquisition within twelve (12) months of the relevant breach.

(d) The parties agree that the provisions of this clause 14 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.

15. Compulsory Acquisition of the Affordable Housing Units

(a) The Developer consents to the compulsory acquisition by Council of the Affordable Housing Units from the Developer:

(i) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**); and

(ii) on the terms set out in this clause 15.

(b) Council may only acquire the Affordable Housing Units that remain to be transferred to it compulsorily in accordance with the Acquisition Act if the Developer breaches a term of this deed (clause 9) with respect to transfer of the Affordable Housing Units provided the Council has given a Breach Notice in accordance with clause 22 of this deed and the Developer has failed to rectify that breach wthin the time specified in the Breach Notice.

(c) If Council acquires the Affordable Housing Units compulsorily in accordance with the Acquisition Act:

(i) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is $1.00; and

(ii) Council must complete that acquisition within twelve (12) months of the relevant breach.

(d) The parties agree that the provisions of this clause 15 are an agreement with respect to the compulsory acquisition of the Affordable Hosuing Units for the purpose of s30 of the Acquisition Act.

(e) The Developer acknowledges and agrees that for the purpose of this clause 15, Council may select the Affordable Housing Units it acquires within the Development.

16. Security

16.1 Provision of Security

The Developer must deliver to Council an irrevocable and unconditional bank guarantee or guarantees in favour of Council without an expiry or end date and from a financial institution approved by Council prior to the issue of the Construction Certificate for the first Stage other than the Stage Infrastructure:

(a) for an amount of $3 million being the Contribution Value of the Developer's Works in relation to the Public Park Land and the Monetary Contribution 1 (**Primary Security**);

(b) for an amount of $500,000 being security for the dedication of the Public Roads (the **Roads Security**)made up as follows:

(i) Stage1 and Stage 1A the amount of $150,000.00;

(ii) Stage 2 the amount of $250,000.00

(iii) Stage 3 the amount of $100,000.00; and

(c) the Council may retain an amount equivalent to five (5%) of the Primary Security as security for the Developer's performance of its obligations under clause 12 (**Defects Security**).

(collectively referred to as the **Security**).

16.2 If the Developer has provided Security to Council under a Development Consent for any item of the Developer's Works, then the Developer agrees that any such Security may be deemed to be held under this deed as well.

16.3 Council may call on Security

(a) If the Developer commits an Event of Default (as defined in clause 22.2) Council, without limiting any other remedies available to it, may with written notice to the Developer call on any Security provided by the Developer.

(b) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

16.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this deed.

16.5 Partial Release of Security

(a) The Developer may by notice to the Council, upon completion of any stage of the construction of the Developer's Works the subject of the Primary Security, or upon payment of Monetary Contribution 1 request a partial release of the Primary Security. Any such request must be made in writing.

(b) The Council may by notice to the Developer consent to a partial release of the Primary Security unpon receiving a request pursuant to clause 16.5(a).

(c) The Developer may by notice to the Council, upon completion of dedication of the Public Roads at any Stage of the Development, request a partial release of the Roads Security. Any such request must be made in writing.

d) The Council may by notice to the Developer consent to a partial release of the Roads Security unpon receiving a request pursuant to clause 16.5(a)

16.6 Release of Primary Security

Unless:

(a) Council has made or intends to make a demand against any Security provided by the Developer;

(b) the Development Contributions on account of which that Security was provided have not been made;

(c) the Developer is in breach of this deed at the relevant time; or

(d) the Council has not been provided with the Defects Security

Council, upon a written request being made by the Developer, must return the Primary Security within ten (10) business days of such a request being made.

16.7 Release of Defects Security

Unless:

(a) Council has made or intends to make a demand against any Security provided by the Developer;

(b) the relevant Defects Liability Period has not expired; or

(c) the Developer is in breach of this deed at the relevant time,

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

16.8 Release of Roads Security

Unless:

(a) Council has made or intends to make a demand against the Roads Security provided by the Developer;

(b) the dedication of the Public Roads has not occurred; and

(c) the Developer is in breach of clause 6 of this deed at the relevant time,

Council upon a written request being made by the Developer, must return the Roads Security within ten (10) business days of such a request being made.

17. Registration

17.1 Registration

This deed will be registered on the title of the Land pursuant to s93H of the Act.

17.2 Obligations of Developer

The Developer must:

(a) do all things necessary to allow the registration of this deed to occur under clause 17.1; and

(b) pay any reasonable costs incurred by Council in undertaking that registration.

17.3 Release by Council

The Council agrees to provide the Developer with a release and discharge of this deed from any part of the Land with respect to which the Developer has complied with its obligations under this deed (**Release Land**) subject to clause 17.4.

17.4 Progressive release by Council

The Council

(a) acknowledges that:

(i) the Development is likely to be constructed in stages;

(ii) certain components of the Development Contributions are not required to be provided until after the Final Occupation Certificate for the final stage of the Development;

(iii) prior to providing those components of the Development Contributions to Council, a number of dwellings will have been constructed and occupation certificates will have been issued for those dwellings; and

(iv) the Developer may enter into contracts for the sale of the dwellings before those components of the Development Contribution have been provided to Council; and

must, within 28 days of the Developer submitting the relevant documents to Council, sign such documentation as the Developer may require to remove this deed from the Register for that part of the Land which comprises constructed dwellings to enable the Developer to complete the sale of those dwellings, provided always that the Developer has then complied with its obligations under this deed.

18. Trustee's Capacity

18.1 Trustee's Capacity

The parties acknowledge that the Developer enters into this deed in its capacity as trustee of the Trust.

18.2 Limitations of Principal's Liability

(a) Except in the case and to the extent of a reduction in the extent of the Developer's indemnification out of the assets of the Trust as a result of the Developer's fraud, gross negligence, breach of trust or breach of duty:

(i) the Developer is not liable to pay or satisfy an obligation if the Developer is not entitled to be and is in fact not indemnified in respect of any liability incurred by it as trustee of the Trust;

(ii) the other parties may enforce any rights against the Developer arising from or in connection with the non-performance of the Developer's obligations only to the extent of the Developer's (as trustee) right of indemnity out of the assets of the Trust; and

(iii) the other parties to this deed waive their rights and release the Developer from any personal liability in respect of any loss which they may suffer or incur as a result of any:

(A) breach of this deed by the Developer; or

(B) non-performance by the Developer of the Developer's obligations,

which cannot be paid or satisfied out of the assets out of which the Developer is entitled to be and is in fact indemnified in respect of the breach or non-performance by it as trustee of the Trust.

18.3 Definitions

In this clause 18 the term "Trust" means the Sydney Residential 2015 Unit Trust.

19. Enforcement

This deed may be enforced by either party in any Court of competent jurisdiction.

20. Assignment and Dealings

20.1 No Dealings

Neither the Developer nor any subsequent Owner of the Land may sell, transfer, assign or novate or similarly deal with (Dealing) their right, title or interest in the Land (or any part thereof) or any of their rights or obligations under this deed, or allow any interest in them to arise or be varied unless the Developer and/or Owner of the Land:

(a) gives Council no less than twenty-eight (28) days notice in writing of the proposed Dealing;

(b) procures that the transferee, assignee or novatee executes and delivers to Council prior to any such Dealing taking effect an agreement in favour of Council in form and substance acceptable to Council, acting reasonably, whereby the transferee, assignee or novatee becomes contractually bound with Council to perform all of the Developer's and/or Owner's obligations and have the benefit all of the Developer's and/or Owner's rights under this deed; and

(c) Council provides its written consent to any such Dealing.

The Developer must meet any costs incurred by Council in relation to this clause 20.

21. Dispute Resolution

Any Dispute must be addressed in accordance with this clause 21.

21.1 Notice of Dispute

If a party believes that there is a Dispute, that party must serve a notice on the other parties:

(a) setting out the nature and extent of the Dispute; and

(b) advising (if practicable) what the party serving the notice needs to be done in order to resolve the Dispute; and

(c) any material impact which the dispute has upon the completion of the Developer's Works, the Developer's Contributions or the transfer of land in accordance with clauses 6,7 8& 9 (and in particular the completion of the remainder of the Development).

(**Dispute Notice**).

21.2 Further steps required before proceedings

(a) For the purpose of this clause 21.3, the **Representatives** are:

(i) in the case of the Developer, the General Manager of that company from time to time or any person acting in his capacity or with his delegation; and

(ii) in the case of Council, the General Manager or any person acting in the role of General Manager or such person as is nominated by that officer in writing from time to time.

(b) Within ten (10) business days of a Dispute Notice being served, the Representatives of the parties must meet in order to attempt to resolve the Dispute.

21.3 Disputes for mediation or expert determination

(a) If the Representatives of the parties have not been able to resolve the Dispute under clause 21.2 and:

(i) the Dispute is one that could be determined by an appropriately qualified expert, either party may refer the Dispute to expert determination under clause 21.5; or

(ii) the Dispute is not one that could be determined by an appropriately qualified expert, either party may refer the Dispute to mediation under clause 21.4.

(b) If, within five (5) business days after the expiry of the period referred to in clause 21.2, the parties cannot agree as to whether the Dispute can or cannot be resolved by expert determination, then either party may refer that dispute to the President of the Law Society of New South Wales for the time being for resolution.

(c) Any determination made by the President of the Law Society of New South Wales under paragraph (b) is binding on the parties.

21.4 Mediation

(a) This clause 21.4 only applies if the Dispute is to be determined by mediation.

(b) Any mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) business days, then by a mediator appointed by the President of the Australian Commercial Disputes Centre.

(c) If the mediation referred to in paragraph (a) has not resulted in settlement of the Dispute and has been terminated, then any party is at liberty to commence proceedings concerning the Dispute in a Court of competent jurisdiction.

21.5 Expert determination

(a) This clause 21.5 only applies if the Dispute is to be determined by expert determination.

(b) The Dispute must be determined by an independent expert (**Expert**) in the relevant field:

(i) agreed between and appointed jointly by the parties; or

(ii) in the absence of agreement within five (5) Business Days after the Dispute becomes required to be determined by expert determination, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.

(c) Each party must comply with all reasonable requests made by an Expert with respect to the determination of the Dispute, including:

(i) attending any meetings or conferences held by the Expert; and

(ii) providing the Expert with any information relevant to the Dispute.

(d) In reaching a determination of a Dispute, the Expert must:

(i) act as an expert and not as an arbitrator;

(ii) proceed in any manner that he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;

(iii) not accept verbal submissions unless both parties are present;

(iv) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;

(v) take into consideration all documents, information and other material which the parties give the Expert and which the Expert in its absolute discretion considers relevant to the determination of the Dispute;

(vi) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);

(vii) issue a draft certificate stating the Expert's intended determination (together with written reasons), giving each party ten (10) business days to make further submissions;

(viii) issue a final certificate stating the Expert's determination (together with written reasons); and

(ix) act with expedition with a view to issuing the final certificate as soon as practicable.

21.6 Final determination of Expert

The parties agree that the final determination by an Expert will be final and binding upon them except in the case of fraud or misfeasance by the Expert.

21.7 Costs – Expert determination

If any Expert does not award costs as part of his or her determination of the Dispute, each party must contribute equally to the Expert's costs in making that determination.

21.8 Conduct pending resolution

The parties must continue to perform their respective obligations under this deed if there is a Dispute but will not be required to complete the matter which is the subject of the Dispute, unless the appropriate party indemnifies the other relevant parties against any Claims that may arise in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

22. Breach of this deed

22.1 Breach Notice

If the Developer breaches this deed, Council may serve a notice on the Developer (**Breach Notice**) specifying:

(a) the nature and extent of the alleged breach;

(b) if:

(i) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or

(ii) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and

(c) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than twenty (20) business days.

22.2 Events of Default

The Developer commits an "**Event of Default**" if it:

(a) fails to comply with a Breach Notice; or

(b) becomes subject to an Insolvency Event.

22.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law or under this deed, call on any Security provided under this deed to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

23. Termination

23.1 Termination

This deed terminates in the following events:

(a) the parties agree in writing to terminate the operation of this deed at any time.

(b) Council serves notice on the Developer terminating this deed where the Developer has failed to comply with a notice issued in accordance with 22.1.

23.2 Consequence of termination

Upon termination of this deed:

(a) all future rights and obligations of the parties are discharged; and

(b) all pre-existing rights and obligations of the parties continue to subsist.

24. Notices

24.1 Service of Notice

Any notice, consent, information, application or request that must or may be given or made to a Party under this deed is only given or made if it is in writing and sent in one of the following ways:

(a) delivered or posted to that Party at its address set out in Item 9 of Schedule 1; or

(b) faxed to that Party at its fax number set out in Item 9 of Schedule 1.

24.2 Change of address

If a Party gives the other Party 10 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

24.3 Time of service of Notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

(a) if it is delivered, when it is left at the relevant address.

(b) if it is sent by post, two business days after it is posted.

24.4 Service after hours, on weekends and holidays

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

25. Approvals and consent

Except as otherwise set out in this deed, a party may give or withhold an approval or consent to be given under this deed in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

26. Variation of deed

The parties may agree to vary the terms of this deed. Any such variation shall be evidenced by a written variation and must comply with the provisions of Section 93G of the *Environmental Planning and Assessment Act 1979*.

27. Costs

27.1 Legal and administrative costs

The Developer must pay its own costs and agrees to pay

(a) Council's legal costs not exceeding an amount of $15,000.00 plus GST and disbursments in relation to the negotiation, preparation and execution of this deed; and

(b) Council's administrative costs and expenses in relation to the preparation and execution of this deed the giving effect to this deed;

otherwise each party shall pay their own legal costs and

27.2 Stamp duty

The Developer is liable for and must pay all stamp duty (including any fine or penalty except where it arises from default by any other party) on or relating to this deed, any document executed under it or any dutiable transaction evidenced or effected by it unless otherwise provided for in this deed..

28. Entire Agreement

This deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this deed was executed, except as permitted by law.

29. Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this deed and all transactions incidental to it.

30. Governing law and jurisdiction

This deed is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

31. Position of Council

31.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

31.2 Deed does not fetter discretion

This deed is not intended to operate to fetter, in any unlawful manner:

(a) the power of Council to make any Law; or

(b) the exercise by Council of any statutory power or discretion,

(**Discretion**).

31.3 Severance of provisions

(a) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

(i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 31.3 is substantially satisfied;

(ii) in the event that paragraph (a)(i) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect; and

(iii) to endeavour to satisfy the common objectives of the parties on relation to the provision of this deed which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

(b) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this deed contracted out of a provision or exercised a Discretion under this deed, then to the extent of this deed is not to be taken to be inconsistent with the Law.

31.4 No obligations

Nothing in this deed will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

32. Representations and warranties

The Parties represent and warrant that they have power to enter into this deed and that entry into this deed will not result in the breach of any law.

33. Severability

If a clause or part of a clause of this deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the remainder of this deed is not affected.

33.1 Modification

No modification of this deed will be of any force or effect unless it is in writing and signed by the parties to this deed.

33.2 Waiver

A waiver by either Party is only effective if it is given in writing, and that waiver will only relate to the particular obligation or breach (as the case may be) identified in that communication.

34. GST

34.1 In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (**GST Act**).

34.2 If a party to this deed (the 'Supplier') makes a supply under or in connection with this deed and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

34.3 If this deed requires a party to pay for, or reimburse any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.

34.4 If a party to this deed has the benefit of an indemnity for a cost, expense, loss or outgoing (indemnified cost) under this deed, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.

34.5 Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this deed.

34.6 Subject to the operation of this clause, and unless otherwise expressly stated amounts in this deed are GST exclusive.

Schedule 1 Reference Schedule

Item 1	Developer's Details	Name:	Cbus Property Sydney Residential Pty Ltd
		ACN:	607 511 035
		Address:	Level 7, 550 Bourke Street, Melbourne VIC 3000
Item 2	Council's Representative	General Manager or Acting General Manager	
Item 3	Land	See Schedule 3.	
Item 4	Development	means the development generally consistent with Staged Development Application No. DA88/2016 that sets out a concept proposal for the development of the Land known as 'Newmarket Randwick' site for the purpose of building envelopes, subdivision into 9 development lots, 1 public open space lot, and 4 public road lots in accordance with section 83B (3) of the *Environmental Planning and Assessment Act 1979* approved by the Land & Environment Court on 3 April 2017.	
Item 5	Staged Development Application	The proposed Stages and the development applications for the staging of the development of the Land are shown in the plan comprising **Annexure "A"** - Staging Plan are as follows: (a) Stage Infrastructure - for services, infrastructure, public park and public roads. (b) Stage 1 - Building E1. (c) Stage 1A - Building E3 & E4. (d) Stage 2 - Southern precinct. (e) Stage 3 - Northern precinct. (f) Newmarket House for adaptable reuse.	

Item 6	Public Roads	means (a) the roads denoted as ST1, ST2, ST3, ST4, RL1 and DV1 on the plan comprising on **Annexure 'B'** - New Market Green Master Plan - Lots Subdivision plan DA02.001(G) dated 30 March 2017; and (b) a stratum lot in relation to part Road ST1 which is shown hatched in red on the plan in **Annexure "C"** - Conceptual Draft Subdivision plan for Newmarket Randwick - Ground Level.
Item 7	Public Park Land	An area of min 5000m^2 as shown coloured green and marked "Public Park E2" on the plan comprising **Annexure 'B'** - Newmarket Randwick Master Plan - Lots Subdivision plan DA02.001(G) dated 30 March 2017.
Item 8	Big Stable Land	The land at 29-39 Young street Randwick shown on **Annexure C** as proposed Lot 39 including the Big Stable Building and any other improvements erected on that land.
Item 9	Affordable Housing Units	affordable housing units being the greater of: (a) 10 residential apartments; or (b) 1.5% (rounded to the nearest whole number) of the total number of residential dwellings erected on the Land. comprising a mix of 70% one bedroom and 30% 2 bedroom apartments.

Item 10	Monetary Contributions	(i)	Monetary Contribution 1: $500,000 for the purposes of repairs and maintenance of the Big Stable Building.
		(ii)	Monetary Contribution 2: $50,000 to be applied towards the cost of undertaking a traffic study and or implementing traffic calming measures in the area covered by Middle Street and Meeks Street between Botany Street and Willis Street, as well as Young Street, Jane Street and DV1.

Item 11 Notices

Council

Name: Randwick City Council
Address: 30 Frances Street
RANDWICK NSW 2031

Attention: General Manager

Telephone: 1300 722 542

Facsimile: (02) 9319 1510

Email: Council@randwick.nsw.gov.au

Developer

Name: Cbus Property Sydney Residential Pty Limited

Address: Suite 5, Level 5, 5 Martin Place, Sydney, NSW

Attention: Thomas Ghossein

Telephone: (02) 9290 6201

Email: tghossein@cbusproperty.com.au

Schedule 2 Developer's Works

Public Roads developer works

2. Developer works

Construction of roads coloured grey shown on the plan in Annexure 'B' as:

(i) ST1 Proposed Street;

(ii) ST2 Proposed Street

(iii) ST3 Proposed Street

(iv) ST4 Proposed Street

(v) DV1 Proposed Street

(vi) RL 1 Proposed laneway

3. Design and Standards

The Developers works must be carried out in accordance with the following standards:

Relevant Australian Standards - Verge Works, Through site links

- AS 1725 Geotechnical Site Investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 1743 Road signs
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1428 Design for Access and Mobility
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures

- AS 2890 Parking Facilities
- AS 4282 Design for Access and Mobility
- AS 4454 Composts, soil conditioners and mulches
- Relevant Australian Standards - Roads (including pedestrian areas)
- AS 1725 Geotechnical Site Investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 4282 Control of the Obtrusive Effects of Outdoor Lighting
- AS 1428 Design for Access and Mobility
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 4282 Design for Access and Mobility
- AS 1742 Manual of uniform traffic control devices
- AS 1743 Road Signs

Council Standards (All Works)

- Randwick City Council - Private Stormwater Code
- Newmarket Green, Randwick Development Control Plan (DCP) - Chapter E5 Randwick DCP 2013 - dated on February 2015

4. Timing.

The developer works in relation to the Public Roads may be carried out in stages and must reach Practical Completion in the time frames set out below:

Item	Stage	Practical Completion
ST1 North	Stage 1	Prior to issuance of OC on Stage 1.
ST1 South	Stagw 1A	Prior to issuance of OC on Stage 1A
ST 2	Stage 3	Prior to issuance of OC on Stage 3.
DV1, RL1, ST3 and ST4	Stage 2	Prior to issuance of OC on Stage 2.

The parties agree that Practical Completion does not require the installation of the final primer seal layer.

The parties agree that the final primer seal layer will be undertaken after completion of all construction works on the Land at

(a) a time agreed to by the parties; or

(b) within thirty(30) days of the Council giving the Developer notice in writing to complete the final primer seal layer.

Public Park developer works

5. Developer works

Construction and embellishment of Public Park coloured green on the plan in Annexure "B"

6. Design and Standards

In accordance with the plans lodged with the development application for Stage Infrastructure.

7. Timing

The Developer Works in relation to the Public Park must reach Practical Completion prior to the issue of the Final Occupation Certificate for Stage 1.

8. Contribution Value

$3 million.

Schedule 3 Land Details

Address-	Lot	Deposited Plan
29-30.1,11 Young Street, Randwick	B	330407
162-174 Barker Street, Randwick	A	330407
158-162 Barker St , 8-12 and 14-20 Young St Randwick	1-3	1041725
28 and 30 Young Street,Randwick,	1	541576
21 Jane Street,Randwick	B	312682
181 Botany Street,Randwick	3	1102370
18 Jane Street,Randwick	1	85107
8-12 Young Street ,Randwick	1	187614
1,3-7,3 Jane Street,Randwick	B	344447
Unit 1-2 150 Barker st,Randwick	1	932027
152-154 Barker St, Randwick	1	81877
152-154 Barker Street, Randwick	4	1039981
156 Barker Street, Randwick	4	165055
90 Middle Street, Randwick	1	83414
32-42 Young Street, Randwick	1-6	1102864

Signing page

Executed as an agreement

Executed by **Randwick City Council** by its General Manager and ~~Mayor by the affixing of the Common Seal of Council in accordance with resolution dated~~ in the presence of:

General Manager (Signature)

~~Mayor~~ (Signature)

R. Bowman.

Name of General Manager (Print Name)

7 August 2017

Kerry Kyriacou

Witness

~~Name of Mayor~~ (Print Name)

Executed by **Cbus Property Sydney Residential Pty Ltd** **ACN** 607 511 035 by its attorneys under Book 4674 Power of Attorney dated 13 August 2014 in No 404 the presence of:

Witness

Attorney

THOMAS GHOSSEIN

Full name (print)

ADRIAN MATTHEW POZZO

Full name (print)

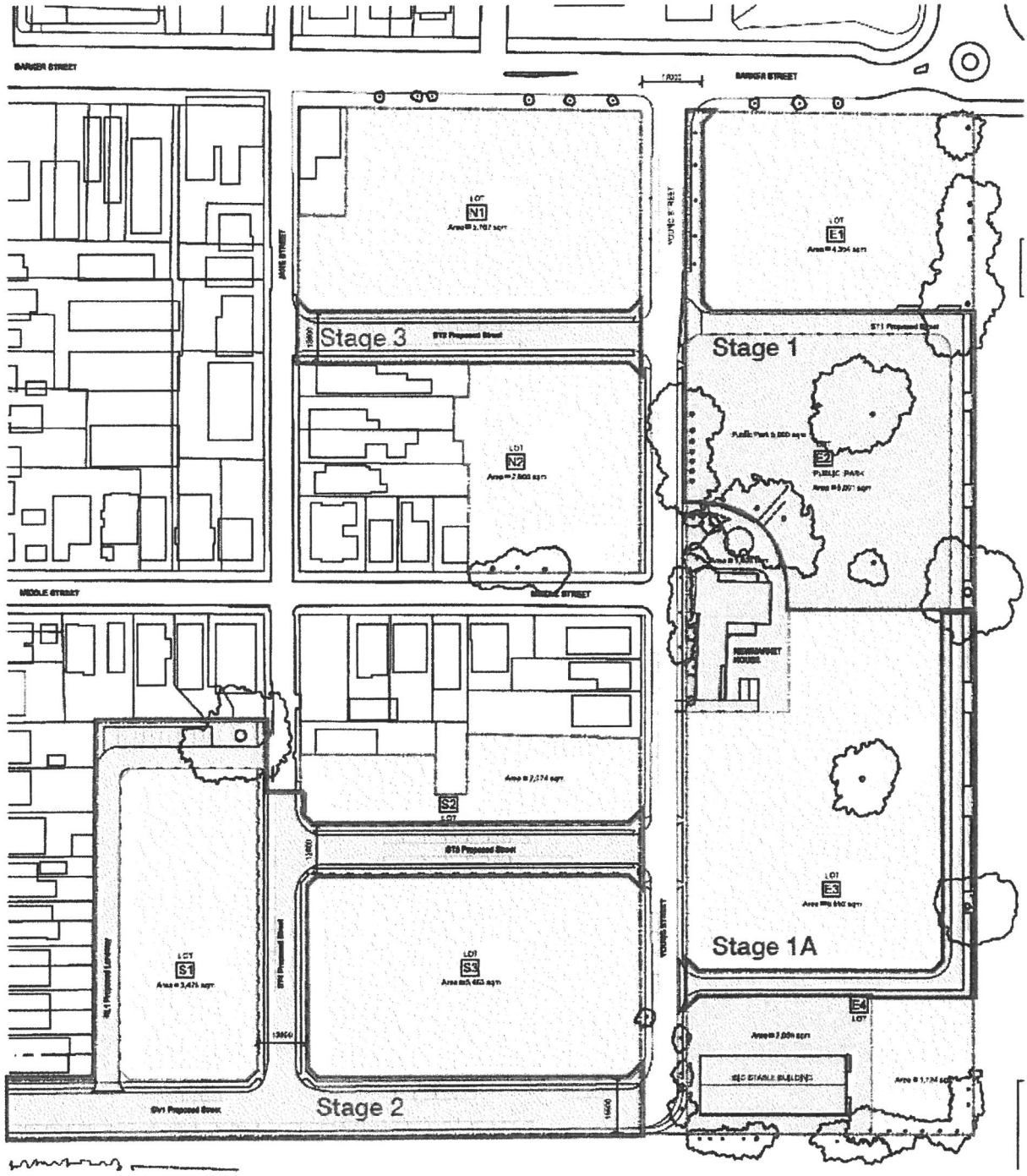
Witness

Attorney

Full name (print)

Full name (print)

Annexure A Staging Plan

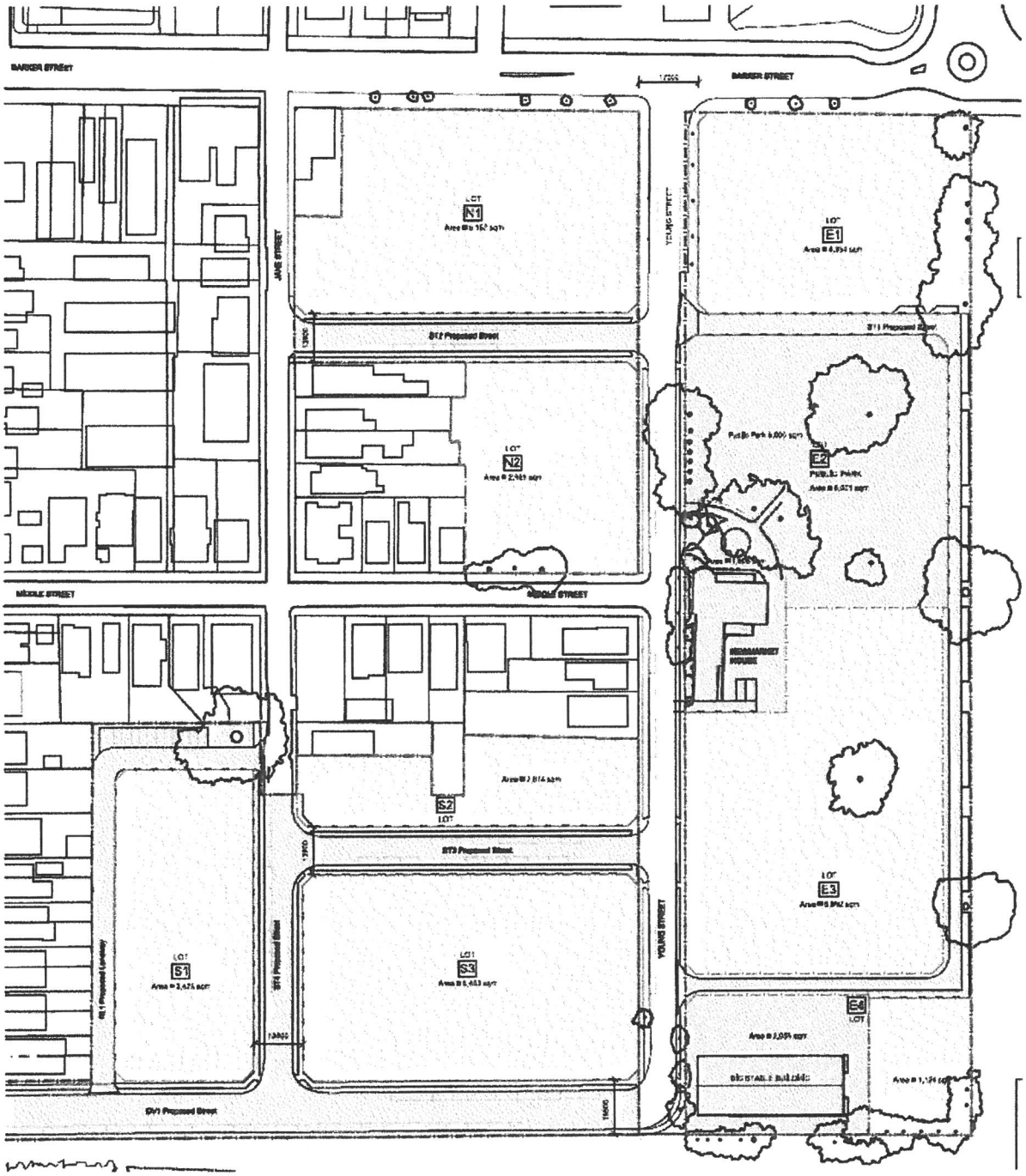


New Market Green, Randwick
Master Plan

DA01.001[A]

BATESSMART

Annexure B Plan New Market Randwick



FOR APPROVAL

New Market Green, Randwick
Master Plan

Lots Subdivision Plan

DA02.001[G]

BATESSMART

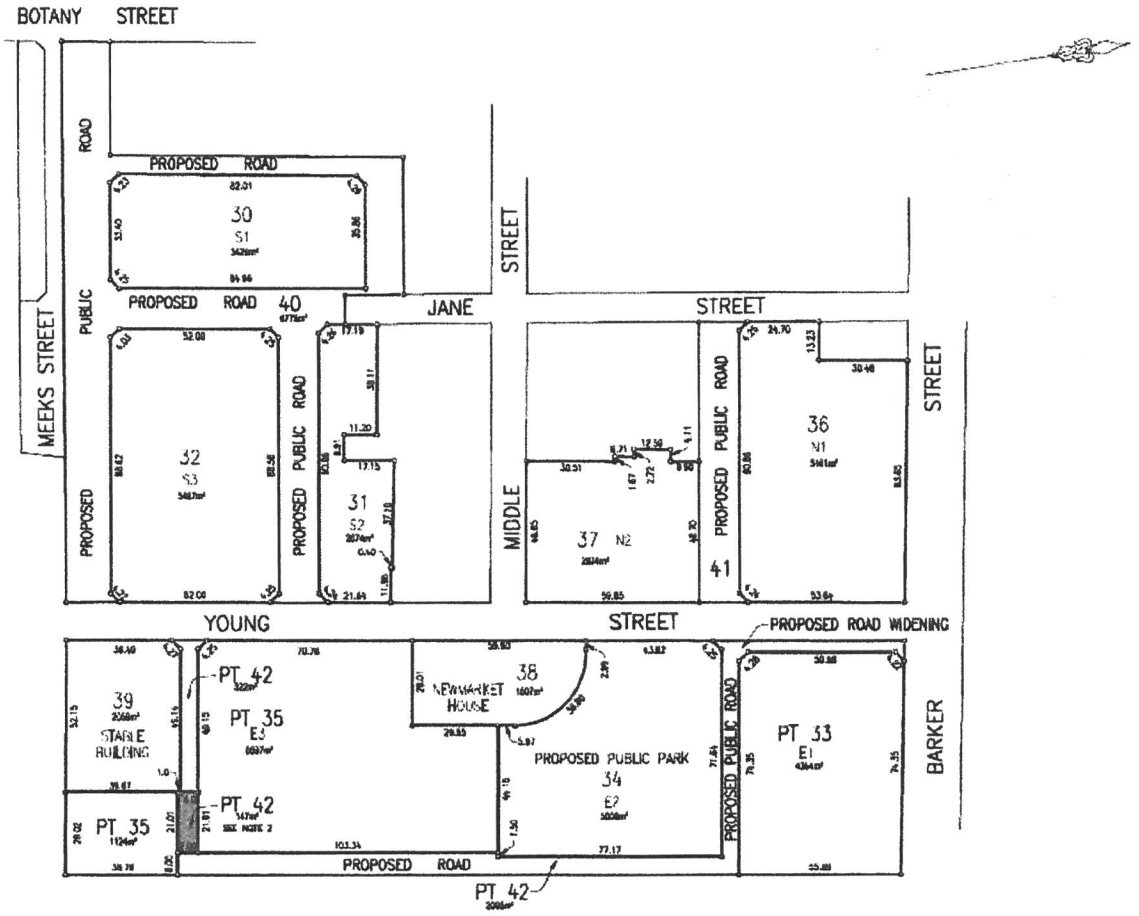
Annexure C Stratum Lot Part Road ST1

PLAN FORM 2 (A2) WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION Sheet No 1 of 1 Sheets

SCHEDULE OF STRATUM LOTS
LOT 30— SITE S1
LOT 31— SITE S2
LOT 32— SITE S3
LOT 33— SITE E1
LOT 34— SITE E2
LOT 35— SITE E3 (PARTLY LIMITED IN STRATUM)
LOT 36— SITE N1
LOT 37— SITE N2
LOT 38— NEW MARKET HOUSE
LOT 39— STABLE BUILDING
LOT 40— PROPOSED PUBLIC ROAD
LOT 41— PROPOSED PUBLIC ROAD
LOT 42— PROPOSED PUBLIC ROAD (PARTLY LIMITED IN STRATUM)

GROUND LEVEL & ABOVE

THIS PLAN IS BASED ON PLANS BY ARCHITECT
DWG No: [illegible]
DATE : 10 FEB 2016



NOTE 2 — PART OF PROPOSED ROAD LIMITED IN DEPTH BY THE LOT 35 BASEMENT STRUCTURE BELOW AND IS UNLIMITED IN HEIGHT

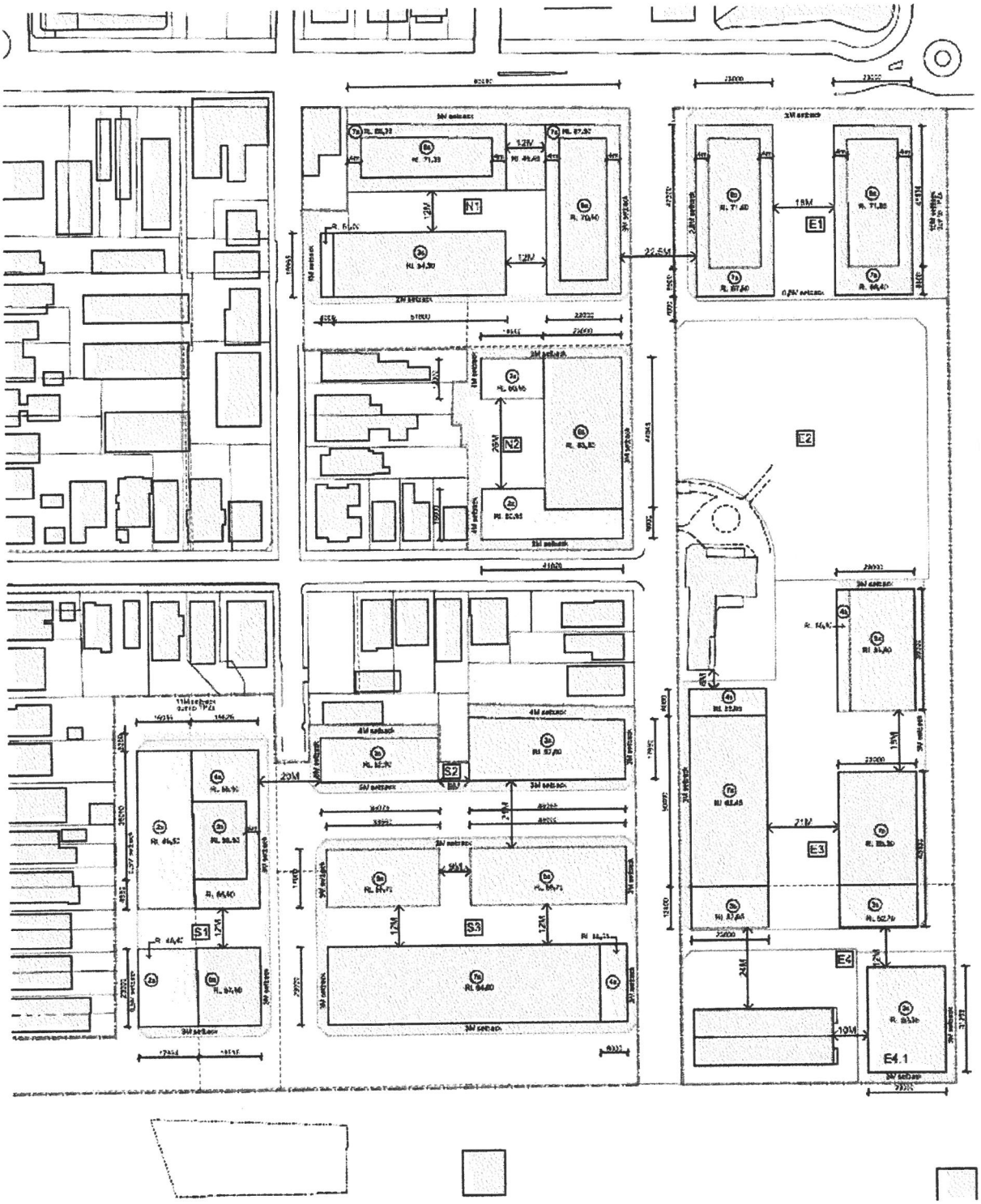
Surveyor: TASY MORAITIS Date of Survey: Surveyor's Ref: 151208 DSUB	CONCEPTUAL DRAFT SUBDIVISION PLAN FOR THE NEWMARKET GREEN YOUNG STREET AND BARKER ROAD, RANDWICK	LGA: RANDWICK Locality: RANDWICK Subdivision No: Lengths are in metres. Reduction Ratio 1:1200	REGISTERED CONTRACT PLAN File compiled from enclosures on this date. Plan is subject to final survey and completion of construction	DRAFT PRINTED 13 SEP 2016 ISSUE 6

Metres 10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 Table of mm

X:\15.0ES\151208 Newmarket Green\151208 DSUB\151208 DSUB SM01.Cnd.dwg

Doc ID 420711453/v1

Annexure D Building E4.1



FOR APPROVAL

New Market Green, Randwick
Master Plan

Proposed Building Envelopes

DA02.002[F]

BATESSMART

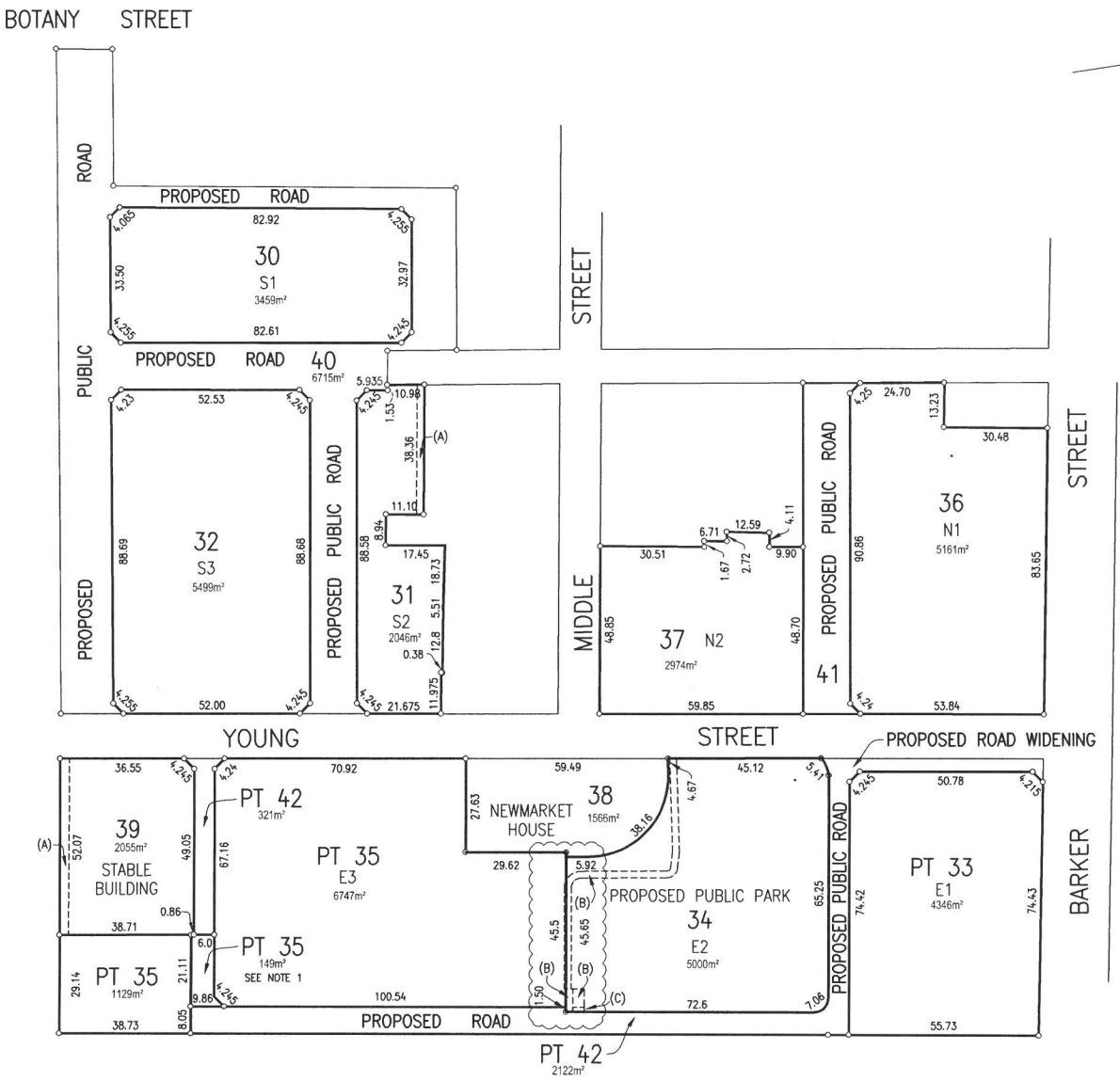
Annexure B Draft Plan of Subdivision - Stratum Lot Part Road ST1 & Easements

SCHEDULE OF STRATUM LOTS

LOT 30– SITE S1
LOT 31– SITE S2
LOT 32– SITE S3
LOT 33– SITE E1
LOT 34– SITE E2
LOT 35– SITE E3 (PARTLY LIMITED IN STRATUM)
LOT 36– SITE N1
LOT 37– SITE N2
LOT 38– NEW MARKET HOUSE
LOT 39– STABLE BUILDING
LOT 40– PROPOSED PUBLIC ROAD
LOT 41– PROPOSED PUBLIC ROAD
LOT 42– PROPOSED PUBLIC ROAD (PARTLY LIMITED IN STRATUM)

BASEMENT LEVEL & BELOW

THIS PLAN IS BASED ON PLANS BY ARCHITECT
DWG No.: DA03.0B1[A]_new road
DATE : 10 FEB 2016
SK-S66 – Lot E – Full Basement
DATE : 08 SEP 2016



NOTE 1 – PART OF LOT 35 IS LIMITED IN HEIGHT BY THE PROPOSED PUBLIC ROAD ABOVE AND IS UNLIMITED IN DEPTH

(A) EASEMENT FOR DRAINAGE OF WATER 2.5 WIDE
(B) EASEMENT FOR ELECTRICITY AND OTHER PURPOSES 2.0 AND 3.4 WIDE
(C) RIGHT OF CARRIAGEWAY 3.4 WIDE

Surveyor: TASY MORAITIS Date of Survey: Surveyor's Ref: 151208 DSUB	DRAFT SUBDIVISION PLAN FOR THE NEWMARKET GREEN YOUNG STREET AND BARKER ROAD, RANDWICK	LGA: RANDWICK Locality: RANDWICK Subdivision No: Lengths are in metres. Reduction Ratio 1: 1000	REGISTERED CONTRACT PLAN Plan compiled from architectural CAD data. Plan is subject to final survey after completion of construction.	DRAFT PRINTED 2 FEB 2020 ISSUE 11

10mm 20 30 40 50 60 70 80 90 100 110 120 130 140 150 Table of mm

X:\15JOBS\151208 Newmarket Green\151208 DSUB\151208 DSUB SH02.BAS.dwg

Annexure C Paine Reserve


DP 85107
1
DP 15638
7
6
A
DP 392501
B
A
DP 441740
B
1
DP 505009
2
DP 392502
B
A
DP 399651
A
B
DP 312682
A
B
2
DP 624884
1
DP 1104935
26
DP 541576
1
DP 1102370
3
DP 1102864
1
2
3
4
5
6
DP 330407
4
B
INGLIS
NEWMARKET
1
DP 729345
7024
DP 102802
1503
DP 752011
1532

Annexure D Terms of Stormwater Easement

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS A PRENDRE INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

Plan: Plan of Subdivision within Lot [ ] in DP1254050

Full Name and Address of the Registered Proprietor of the Land: Cbus Property Sydney Residential Pty Ltd
ACN 607 511 035
Level 7, 550 Bourke Street
Melbourne Vic 3000

Full Name and Address of the Mortgagee of the Land: Australia and New Zealand Banking Group Limited ABN 11 005 357 522
Level 3A, 833 Collins Street
Docklands Vic 3008

PART 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities
1.	Easement for Drainage of Water (A) 2.5 wide	39	35I

PART 2 (Terms)

1. Terms of easement for drainage of water (A) 2.5 wide

1.1 The owner of the lot benefited may:

(a) drain water from any natural source through each lot burdened, but only within the easement site; and

(b) do anything reasonably necessary for that purpose, including:

(i) entering the lot burdened; and

(ii) taking anything onto the lot burdened;

(iii) using any existing line of pipes; and

(iv) carrying out work, such as constructing, placing, repairing or maintaining pipes

channels, ditches and equipment.

1.2 In exercising those powers, the owner of the lot benefited must--

(a) ensure all work is done properly, and

(b) cause as little inconvenience as is practicable to the owner and any occupier of the lot burdened, and

Plan: Plan of Subdivision within Lot [ ]1 in DP1254050

(c) cause as little damage is practicable to the lot burdened and any improvement on it,

(d) restore the lot burdened as nearly as is practicable to its former condition, and

(e) make good any collateral damage.

1.3 The owner of the lot benefited acknowledges and agrees that Council may

(a) construct light weight structures (**Structures**) but only to the extent that they are within the site of the easement;

(b) must keep the Structures in good repair and safe condition;

(c) may do anything reasonably necessary for those purposes, including:

(i) entering the lot burdened, and

(ii) taking anything on to the lot burdened, and

(iii) carrying out work.

1.4 In exercising those powers in accordance with clause 1.3, Council must:

(a) ensure all work is done properly, and

(b) cause as little inconvenience as is practicable to the owner's rights in accordance with clauses 1.1 and 1.2;

(c) restore the lot burdened as nearly as is practicable to its former condition in order to preserve the rights granted in accordance with clauses 1.1 and 1.2, and

(d) make good any collateral damage.

1.5 The owner of the lot benefited must not do or allow anything to be done to damage or interfere with the Structures.

1.6 This easement only applies whilst the lot burdened is owned by Randwick City Council or such other authority.

1.7 This easement extinguishes when clause 1.6 applies.

Plan: Plan of Subdivision within Lot [ ]1 in DP1254050

Signed for and on behalf of **Cbus Property Sydney Residential Pty Ltd ACN 607 511 035** by its attorney Adrian Pozzo under power of attorney Book 4674 No 406 in the presence of:

Signature of witness

Full name of witness (print)

Address of witness (print)

Signature of attorney

By executing this deed the attorney states that the attorney has not received notice of revocation of the power of attorney at the date of executing this deed.

Signed for and on behalf of **Australia and New Zealand Banking Group Limited ABN 111 005 357 522** by the party's attorney pursuant to power of attorney dated 17 March 2017, being registered Book 4376 no 412 in the presence of:

Signature of witness

Despoina Arvanitaki

Full name of witness (print)

833 Collins Street, Docklands Vic 3008

Address of witness (print)

Signature of attorney

Name of attorney