

# DEXUS Property Group (ASX: DXS)

ASX release

12 November 2013

## Substantial Holder Notice - Commonwealth Property Office Fund

DEXUS Funds Management Limited ("DXFM") refers to the announcement it lodged on 8 November 2013 about its entry into a confidentiality and exclusivity agreement ("Confidentiality and Exclusivity Agreement") with Commonwealth Bank of Australia Limited ("CBA").

That agreement relates to a possible transaction under which CBA would be paid a single cash payment of \$41 million for, amongst other things, facilitating DXFM and the Canada Pension Plan Investment Board's proposal to acquire 100% of the units in the Commonwealth Property Office Fund ("CPA").

As a consequence of entry into the Confidentiality and Exclusivity Agreement it is possible that DXFM and CBA have become associates in relation to CPA.

DEXUS is lodging the attached substantial holder notice to reflect that possibility.

For further information please contact:

### Investor relations

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## About DEXUS

DEXUS Property Group (DEXUS) is one of Australia's leading real estate groups, investing directly in high quality Australian office and industrial properties. With over \$13 billion of assets under management, DEXUS also actively manages office, industrial and retail properties located in key Australian markets on behalf of third party capital partners. DEXUS manages an office portfolio of over 900,000 square metres across Sydney, Melbourne, Brisbane and Perth and is one of the largest institutional owners of office buildings in the Sydney CBD, Australia's largest office market. DEXUS is a Top 50 entity by market capitalisation listed on the Australian Securities Exchange under the stock market trading code 'DXS' and is supported by more than 18,000 investors from 15 countries. With over 25 years of experience in commercial property investment, development and asset management, DEXUS has a proven track record in capital and risk management, providing service excellence to tenants and delivering superior risk-adjusted returns to investors. [www.dexus.com](http://www.dexus.com)

Download the DEXUS IR app to your preferred mobile device to gain instant access to the latest stock price, ASX Announcements, presentations, reports, webcasts and more.



DEXUS Funds Management Ltd ABN 24 060 920 783, AFSL 238163, as Responsible Entity for DEXUS Property Group (ASX: DXS)

# Form 604

Corporations Act 2001  
Section 671B

## Notice of change of interests of substantial holder

To Company Name/Scheme Commonwealth Property Office Fund ("CPA")

ACN/ARSN ARSN 086 029 736

### 1. Details of substantial holder (1)

Name This notice is given by DEXUS Funds Management Limited ("DXFM"), as responsible entity of DEXUS Industrial Trust, DEXUS Diversified Trust, DEXUS Operations Trust and DEXUS Office Trust, on behalf of itself and on behalf of each of its related bodies corporate ("DEXUS Subsidiaries") that are held by DXFM as an asset of the DEXUS Office Trust

ACN/ARSN (if applicable) ACN 060 920 783

There was a change in the interests of the substantial holder on 8/11/13

The previous notice was given to the company on 18/10/13

The previous notice was dated 18/10/13

### 2. Previous and present voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in when last required, and when now required, to give a substantial holding notice to the company or scheme, are as follows:

Class of securities (4)	Previous notice		Present notice	
	Person's votes	Voting power (5)	Person's votes	Voting power (5)
Fully paid units ("Units")	To the extent that section 608(8) conferred the same relevant interest on DXFM as held by DBA as at 11 October 2013, DXFM had a relevant interest in 318,135,354 CPA units ("Units"). Under the document attached as Annexure A to the substantial holder notice ("Notice") lodged by DXFM on 25 July 2013 ("Arrangement"), DXFM has an enforceable right to acquire from Deutsche Bank AG ("DBA"), and after that acquisition DXFM will have the ability to vote, 350,000,000 Units.	To the extent that section 608(8) conferred the same relevant interest on DXFM as held by DBA as at 11 October 2013, the technical position is that DXFM had a relevant interest in Units with voting power of 13.55%.	580,596,439  This includes the 318,135,354 arising under the Arrangement referenced in the previous notice.  Under that arrangement, to the extent that section 608(8) conferred the same relevant interest on DXFM as held by DBA as at 11 October 2013, DXFM had a relevant interest in 318,135,354 Units. Under the Arrangement DXFM has an enforceable right to acquire from DBA, and after that acquisition DXFM will have the ability to vote,	24.73%  This includes the 13.55% arising under the Arrangement referenced in the previous notice.  The remainder of DXFM's voting power arises as a result of its possible association with CBA - see details below.

				350,000,000 Units.  The remainder of DEXUS's votes arise as a result of its possible association with Commonwealth Bank Limited ("CBA") - see details below.	
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### 3. Changes in relevant interests

Particulars of each change in, or change in the nature of, a relevant interest of the substantial holder or an associate in voting securities of the company or scheme, since the substantial holder was last required to give a substantial holding notice to the company or scheme are as follows:

Date of change	Person whose relevant interest changed	Nature of change (6)	Consideration given in relation to change (7)	Class and number of securities affected	Person's votes affected
N/A	N/A	N/A	N/A	N/A	N/A

### 4. Present relevant interests

Particulars of each relevant interest of the substantial holder in voting securities after the change are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Nature of relevant interest (6)	Class and number of securities	Person's votes
DXFM	<p>Unknown.</p> <p>However, as far as DXFM is aware, DBA currently holds a relevant interest in 318,135,354 Units and DXFM may be taken to have a relevant interest in those Units by reason of the Arrangement.</p> <p>Refer to the substantial holder notice lodged by DBA and appearing on ASX on 16 October 2013 for further information about the registered holder of Units in which DBA has a relevant interest.</p>	<p>Unknown.</p> <p>Refer to the substantial holder notice lodged by DBA and appearing on ASX on 16 October 2013 for further information about the person entitled to be registered as holder of Units in which DBA has a relevant interest.</p> <p>Note, however, that under the Arrangement, DXFM has an enforceable right to acquire from DBA, and after that acquisition DXFM will become the registered holder and have the ability to vote, 350,000,000 Units.</p>	<p>DXFM is not the owner of units. However, under section 608(8), it may be taken to have a relevant interest in Units by reason of the Arrangement.</p>	<p>To the extent that section 608(8) confers the same relevant interest on DXFM as held by DBA as at 11 October 2013, DXFM had a relevant interest in 318,135,354 Units.</p> <p>However, under the Arrangement, DXFM has an enforceable right to acquire from DBA, and after that acquisition DXFM will have the ability to vote, 350,000,000 Units.</p>	<p>To the extent that section 608(8) confers the same relevant interest on DXFM as held by DBA as at 11 October 2013, DXFM had a relevant interest in Units with voting power of 13.55%.</p> <p>However, under the Arrangement, DXFM has an enforceable right to acquire from DBA, and after that acquisition DXFM will have the ability to vote, 350,000,000 Units representing voting power of 14.9% in CPA.</p>

## 5. Changes in association

The persons who have become associates (2) of, ceased to be associates of, or have changed the nature of their association (9) with, the substantial holder in relation to voting interests in the company or scheme are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
CBA	<p>On 8 November 2013, CBA and DXFM entered into a confidentiality and exclusivity agreement (copy attached as <b>Annexure A</b>) in relation to a possible transaction under which CBA would be paid a single cash payment of \$41 million for amongst other things facilitating the proposal announced by DEXUS to the market on 11 October 2013 and the transition of CPA management to DEXUS.</p> <p>Accordingly, the parties to the agreement may be regarded as being associates pursuant to sections 12(2)(b) or (c) of the Corporations Act.</p> <p>CBA has a relevant interest in 262,461,085 Units in CPA (refer substantial holder notice lodged by CBA on or about the date of this notice).</p>

## 6. Addresses

The addresses of persons named in this form are as follows:

Name	Address
DXFM	Level 25, Australia Square, 264 - 278 George St, Sydney, 2000

## Signature

print name **John Easy**

capacity **Company Secretary**

sign here



date 12/11/13

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Annexure A

This is Annexure A of 10 pages referred to in Form 604 Notice of change of substantial holder by DEXUS Funds Management Limited (ACN 086 029 736) in its capacity as responsible entity of the DEXUS Office Trust.



.....  
Name: John Easy  
Capacity: Company Secretary  
Date: 12/11/13

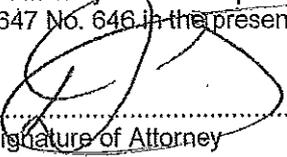
The agreement follows.

## CONFIDENTIALITY AND EXCLUSIVITY DEED

<b>Parties</b>	<p>DEXUS Funds Management Limited (ABN 24 060 920 783) ("DEXUS") in its capacity as responsible entity of DEXUS Industrial Trust (ARSN 090 879 137), DEXUS Office Trust (ARSN 090 768 531), DEXUS Operations Trust (ARSN 110 521 223) and DEXUS Diversified Trust (ARSN 089 324 541) Level 25, Australia Square 264 George Street Sydney NSW 2000 (together, the "DEXUS Property Group")</p>	<p>Commonwealth Bank of Australia (ABN 48 123 123 124) Tower 1 201 Sussex Street Sydney NSW 2000 ("CBA")</p>
<b>Confidential Information and Exclusivity</b>	<ol style="list-style-type: none"> <li>1 DEXUS has as part of a consortium with CPPIB, made a proposal to Commonwealth Managed Investments Limited ("CMIL") in relation to the acquisition of 100% of the units in the Commonwealth Property Office Fund (ARSN 086 029 736) ("CPA") to which DEXUS is not entitled under the forward contract it entered into with Deutsche Bank AG on 25 July 2013 ("Proposal").</li> <li>2 DEXUS has also approached CBA to discuss an ancillary proposal ("Ancillary Proposal") under which CBA (directly or indirectly through its subsidiaries) would be paid a single cash payment of \$41 million for amongst other things facilitating the transition of CPA management to DEXUS.</li> <li>3 A term sheet for the Ancillary Proposal is included in the Annexure to this deed. The Ancillary Proposal is conditional on completion of the Proposal (or a similar transaction through which DEXUS or the Consortium acquires control of CPA).</li> <li>4 The parties to this deed wish to exchange their, and their related bodies corporate, information in connection with discussions and investigations in relation to the Ancillary Proposal ("Purpose").</li> <li>5 Each party has agreed to disclose confidential information to the other on the basis set out in this deed. Each party agrees to keep the information confidential under the General terms scheduled to this deed. Each party gives the undertakings in this deed in consideration of the information being disclosed to it and the mutual confidentiality undertaking.</li> <li>6 In this deed each party is both a "Discloser" and a "Recipient" as appropriate.</li> <li>7 In order to further the Purpose, DEXUS wishes to commit resources to conducting due diligence on the management arrangements relating to CPA ("Due Diligence Investigations"). In consideration for DEXUS doing so, CBA has agreed to a period of exclusivity and other restrictions set out in clauses 8 to 10 of the General Terms scheduled to this deed.</li> </ol>	
<b>Date of deed</b>		

**We accept this confidentiality deed**

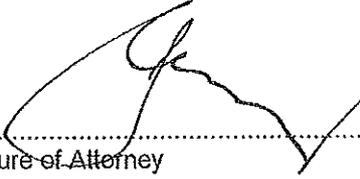
SIGNED SEALED AND DELIVERED )  
by DEXUS FUNDS MANAGEMENT )  
LIMITED (ABN 24 060 920 783) by its )  
duly authorised attorneys under Power )  
of Attorney dated 11 April 2013 Book )  
4647 No. 646 in the presence of: )

  
.....  
Signature of Attorney )

DARREN STEINBERG )  
.....  
Name (please print) )

  
.....  
Signature of Witness )

Katarina Robinson )  
.....  
Name (please print) )

  
.....  
Signature of Attorney )

JOHN CAMPBELL EASY )  
.....  
Name (please print) )

SIGNED SEALED AND DELIVERED )  
by Commonwealth Bank of Australia )  
by its attorney: )

  
.....  
Signature of Attorney )

Edward Eason )  
.....  
Name (please print) )

  
.....  
Signature of Witness )

Nicole Underhill )  
.....  
Name (please print) )

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## **Schedule: General terms of confidentiality**

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### **What is confidential?**

- 1 All information which will be provided by one party ("Discloser") to the other party ("Recipient") for the Purpose constitutes confidential information unless it is of a type described in clause 3.6 (including the terms of this deed or the content of, any communications between the parties concerning the Purpose) ("Confidential Information"). Each Recipient agrees to keep all Confidential Information confidential and not to disclose the Confidential Information provided by the other party to third parties, except in accordance with the terms of this deed.

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### **Disclosure**

- 2.1 Neither party may disclose any Confidential Information except as permitted by this deed or as required by law or by any securities exchange or by any court, tribunal or similar (including the Takeovers Panel) or after obtaining the other party's prior written consent.
- 2.2 However, nothing in this deed prevents DEXUS, CBA, CPPIB or any of their respective directors, employees or advisers from disclosing to third parties:
  - (a) the existence of this deed;
  - (b) the following in relation to the terms of this deed:
    - (i) that the deed requires both DEXUS and CBA to keep the Confidential Information confidential;
    - (ii) that during the "Exclusivity Period", defined in clause 8.1 below, CBA but not CMIL has agreed to be bound by the obligations set out in clauses 8 and 9 below; and
    - (iii) that CBA agreed to the restrictions in clauses 8 and 9 below in consideration for DEXUS committing resources to conduct due diligence on the management arrangements relating to CPA;
  - (c) that DEXUS and CBA are in discussions, or not, in relation to the Ancillary Proposal; and
  - (d) any Confidential Information a party has received to any Minister (or their representative or delegate), government agency, regulatory body, court or tribunal (including ASIC, the ACCC, FIRB or the Takeovers Panel) in any formal or informal proceedings, investigation or regulatory process or in response to any inquiry by such a person in connection with the Proposal or Ancillary Proposal, provided that the Recipient uses all reasonable endeavours:
    - (i) to minimise disclosures to that which is necessary, having regard to the circumstances in which it is made;
    - (ii) to ensure to the maximum extent possible that the body to whom the information is disclosed has an obligation to keep it confidential; and
    - (iii) to provide a copy of any such disclosure to the other party or parties to this deed before it is made.

If a disclosure is made under this clause 2.2(d), the party that made the disclosure must provide a copy of the disclosure to the other party or parties (as relevant) to this deed if it has not already done so.

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### **How must a Recipient treat Confidential Information?**

- 3.1 Each Recipient must use the Confidential Information solely for the Purpose. The Recipient must not use or exploit the Confidential Information for any other purpose, or allow any other person to do so without the prior written consent of the relevant Discloser.
- 3.2 Each Recipient may only disclose the Confidential Information to the following:
  - (a) its directors;
  - (b) its employees;
  - (c) its advisers; and,
  - (d) in the case of DEXUS, CPPIB, a related body corporate of CPPIB or any of their directors, employees or advisers,(each a "Third Party Recipient"), and must ensure that the Third Party Recipients keep all Confidential Information confidential and only use it in connection with the Purpose and in accordance with this deed. The Recipient must ensure that any person to whom it discloses the Confidential Information complies with clauses 1, 2, 3, 4, 5 and 6.2 of this deed as if those obligations were imposed on the relevant Third Party Recipient. The parties acknowledge that it will be a breach of this deed by a Recipient if any of its Third Party Recipients does not comply with clauses 1, 2, 3, 4, 5 or 6.2 of this deed. This deed does not give a Recipient or any person to

- whom it discloses the Confidential Information any right, title or interest in the Confidential Information.
- 3.3 Each Recipient must take reasonable steps to protect the Confidential Information and keep it secure from unauthorised persons.
  - 3.4 Each Recipient must inform the relevant Discloser as soon as practicable if the Recipient:
    - (a) becomes aware or suspects that there has been a breach of these obligations; or
    - (b) is required to disclose the Confidential Information by law or by any securities exchange or by any court.
  - 3.5 If the Purpose is not pursued, or if the relevant Discloser asks for it earlier, each Recipient must either return the Confidential Information to the Discloser, together with all copies, notes and memoranda relating to it, or the Recipient must destroy the information, and the Recipient must certify that it has been destroyed or returned (as applicable). The Recipient must procure that each firm, company or entity that is a Third Party Recipient promptly provides a certificate confirming the return or destruction of all Confidential Information. Nothing in this clause 3.5 requires the return or destruction of any board committee papers of a Recipient prepared in connection with the Purpose or where the information is located in an off-site server as a result of the automatic back-up of data in the usual operations of the Recipient (for example, archive, disaster recovery or other purposes) and is not readily available to, or in the control of, the Recipient ("**Retained Information**").
  - 3.6 A Recipient does not have to treat as confidential, and this deed does not otherwise apply to, information:
    - (a) which is in or becomes part of the public domain, except information that is or becomes so because it has been disclosed without authority; or
    - (b) which is lawfully known to it before the date of this deed; or
    - (c) which is or becomes available to it from another person who is in possession of it lawfully and can disclose it to the party on a non-confidential basis.
  - 3.7 Other than entry into this deed, the Recipient must use reasonable endeavours to ensure that it does not, and must use reasonable endeavours to procure that its Third Party Recipients do not, do anything which would trigger a requirement under any law, rules of any securities exchange or court to disclose any Confidential Information. However, nothing in this clause 3.7 limits in any way a party's ability to disclose information in accordance with this deed.
  - 3.8 The parties agree that any Confidential Information in relation to CPA to be provided by or on behalf of CBA to DEXUS in connection with DEXUS's Due Diligence Investigations will be provided in accordance with protocols that are in a form to be agreed between the parties (acting reasonably).

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#### **No representations for accuracy of information**

- 4 Each Recipient acknowledges that:
  - (a) neither the relevant Discloser nor any of its related bodies corporate have made or makes any representation or warranty, express or implied, as to the accuracy, content or completeness of the Confidential Information, save as may otherwise be provided in any subsequent deed; and
  - (b) the relevant Discloser is under no obligation, by this deed, to notify the Recipient, or provide any further information to the Recipient, if it becomes aware of any inaccuracy, incompleteness or change in the Confidential Information; and
  - (c) it must make its own assessment of all Confidential Information provided to it and satisfy itself as to the accuracy, content or completeness of that information, including any financial information or forecasts and verify all information which it intends to rely on to its own satisfaction; and
  - (d) this deed does not oblige a party to disclose any Confidential Information to the other party; and
  - (e) to the extent permitted by law, the Discloser and its related body corporate are not liable, and the Recipient covenants not to make any claim or commence or pursue any proceedings against any of them, for any loss of any kind (including, without limitation, damages, costs, interest, loss of profits, or special loss or damage) arising from an error, inaccuracy, incompleteness or other defect in the Confidential Information, whether arising from default,

negligence or lack of care in relation to the preparation or provision of the Confidential Information or otherwise; and

- (f) any reliance by the Recipient, or its Third Party Recipients, or any use of any Confidential information is solely at its own risk.

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### Each Recipient not to approach

- 5.1 Each Recipient must not, and must ensure that none of its employees or advisers engaged on the Purpose, without the prior written consent of the relevant Discloser:
- (a) contact any client or supplier of the Discloser or a related body corporate to discuss the Purpose; or
  - (b) for a period of twelve months solicit, induce or encourage any director, employee or contractor, in the nature of an employee, to terminate his or her employment or engagement with the Discloser or a related body corporate.
- 5.2 Clause 5.1(b) does not prohibit a Recipient or any of its employees or advisers from hiring any employee of the relevant Discloser or a related body corporate where:
- (a) that employee approached the Recipient on his or her own initiative without solicitation; or
  - (b) that employee was initially approached by an independent employment agency that was not directed to contact the employee by the Recipient; or
  - (c) that employee approached the Recipient as a result of general advertising not specifically directed to employees of the Discloser or its related bodies corporate.

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### Dealing in CPA units

- 6.1 Subject to clause 6.2, nothing in this deed prevents or in any way restricts DEXUS, CBA or any of their respective representatives from dealing, or causing another person to deal, in CPA units.
- 6.2 Each party acknowledges that the Confidential Information may contain material price sensitive information, which is not otherwise publicly available, and each party agrees that they will not deal, or cause another person to deal in any securities to which the Confidential Information relates contrary to Part 7.10, Division 3 of the Corporations Act 2001 (Cwth).

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### Term

- 7 This deed terminates on the earlier of:
- (a) 24 December 2013; or
  - (b) the date that the parties enter into a further deed which contains provisions superseding the terms of this deed, whichever occurs first; or
  - (c) the date that DEXUS gives, in its absolute discretion, notice of termination to CBA; or
  - (d) the date notified by CBA to DEXUS in writing within 7 calendar days after DEXUS notifies CBA that the Co-Operation Letter between DEXUS and CPPIB dated 11 October 2013 has been terminated. DEXUS must make this notification within 48 hours of the agreement being terminated, ("Term").

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### Exclusivity

- 8.1 During the period commencing on the date of this deed and ending on 24 December 2013 ("**Exclusivity Period**"), CBA must ensure that neither it nor any of its related bodies corporate, directors, employees or advisers (each a "**Representative**") directly or indirectly:
- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions ; or
  - (b) communicates any intention to do any of these things,
- with a view to obtaining any offer, proposal or expression of interest from any person in relation to a transaction for the management of CPA ("**Competing Transaction**"). For these purposes "a transaction for the management of CPA" includes any transaction under which any entity that currently provides responsible entity or management services to CPA: (i) is acquired; or (ii) sub-delegates its obligations to a third party that is not, or is not intended to remain, a member of the CBA group of entities. It does not, however, include any current internalisation proposal that CBA has put to CMIL.
- 8.2 During the Exclusivity Period, CBA must ensure that neither it nor any of its Representatives:
- (a) negotiates or enters into; or
  - (b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by CBA or its Representatives or the person has publicly announced the Competing Transaction.

- 8.3 During the Exclusivity Period, CBA must ensure that neither it nor any of its Representatives solicits or enables any person without the prior written consent of DEXUS to undertake due diligence investigations for the purposes of obtaining, or which may reasonably be expected to lead to a Competing Transaction.
- 8.4 Clauses 8.1 to 8.3 do not apply to the extent that they restrict CBA or a Representative from taking or refusing to take any action with respect to a bona fide Competing Transaction (which was not solicited, invited, encouraged or initiated by CBA or any Representative in contravention of clause 8.3) provided that the relevant board has determined:
- (a) in good faith; and
  - (b) acting reasonably; and
  - (c) after consultation with its external financial advisors; and
  - (d) after receiving written legal advice from its external legal advisor,
- that failing to respond to that bona fide Competing Transaction would be likely to constitute a breach of that board's fiduciary or statutory obligations.

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### **Unsolicited proposal**

- 9.1 During the Exclusivity Period, CBA must promptly inform DEXUS if it, or any of its Representatives, receives any unsolicited approach with respect to a Competing Transaction and must disclose to DEXUS all material details of the Competing Transaction.
- 9.2 If CBA or a Representative receives an unsolicited approach with respect to a Competing Transaction during the Exclusivity Period, DEXUS or a related body corporate of DEXUS may (in its sole discretion) match that Competing Transaction by giving written notice to CBA of the offer anytime within 5 Business Days of the receipt of the notification given by CBA or a Representative under clause 9.1. If:
- (a) DEXUS or the related body corporate gives notice of an offer under this clause 9.2 to CBA; and
  - (b) DEXUS or its related body corporate's offer, in CBA's reasonable opinion:
    - (i) is reasonably capable of being completed on a timely basis (or, in any event, on no less timely basis than the Competing Transaction); and
    - (ii) on terms no less favourable to the relevant CBA group entity, taken as a whole, than the Competing Transaction,
- taking into account all of their respective terms and conditions, CBA must not enter into or complete the Competing Transaction.

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### **Exclusions**

- 10 Clauses 8 to 10 do not apply to CMIL in its personal capacity or in its capacity as responsible entity or trustee.

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### **Expiry**

- 11.1 Subject to clauses 11.2 and 11.3, each Recipient's obligations under this deed expire at the end of the Term.
- 11.2 The Recipients' rights and obligations under clauses 3.2, 3.3, 3.4, 3.5, 4, 5, 6.2, this clause 11 and clause 12 continue after the expiry of the Term.
- 11.3 Despite the expiry of the Term, each Recipient's obligations under this deed continue for a period of 2 years from expiry of the Term in relation to Retained Information:
- (a) which:
    - (i) the Discloser informs the Recipient to be;
    - (ii) the Recipient knows to be or ought reasonably suspect to be; or
    - (iii) is self-evidently;subject to a duty of confidentiality; or
  - (b) which is "personal information" of any "individual" (as those terms are defined in the Privacy Act 1988 (Cth)) ("Privacy Act"), provided that it will not be a breach of this deed if such personal information is dealt with by the Recipient or Representative in compliance with the Privacy Act.

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## General

- 12.1 This deed may be varied only if both parties agree in writing. If a Discloser does not exercise a right at any time in connection with a default under this deed, this does not mean that it has waived the right or cannot exercise it later.
- 12.2 References in this deed to a Recipient include the related bodies corporate (other than, in the case of CBA only, CMIL) of the Recipient, and each Recipient agrees to procure that its related bodies corporate adhere to this deed as if they were named as a Recipient in it. Without limiting the foregoing, any reference to a related body corporate of CBA (including where CBA is a Discloser or Recipient) does not include a reference to CMIL in any capacity.
- 12.3 Each Recipient understands that if it breaches its obligations under this deed, damages will not be an adequate remedy to the relevant Discloser and its related bodies corporate and that the Discloser may apply to a court for an order preventing the Recipient from breaching its obligations and seek any other appropriate remedy, whether in law or equity.
- 12.4 Each Recipient agrees and acknowledges that each Discloser enters into this deed for itself and for the benefit of the Discloser's related bodies corporate which make Confidential Information available.
- 12.5 The Recipient agrees that, to the extent any Confidential Information of a related body corporate of the Discloser is disclosed to the Recipient, this deed applies to such information and the Discloser may enforce this deed in relation to any loss or damage suffered by the Discloser's related body corporate caused by a breach of this deed in relation to such Confidential Information as if the Discloser itself had suffered that loss or damage.
- 12.6 This deed is covered by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 12.7 This deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.
- 12.8 For the purposes of this deed:
- (a) subject to clause 12.8(b), "related body corporate" has the same meaning as is given to that term in the Corporations Act 2001 (Cwth);
  - (b) in the case of DEXUS and CPPIB, the term "body corporate" in the meaning of "related body corporate" includes any entity and the term "subsidiary" in that meaning has the meaning given to it in the Corporations Act, but so that:
    - (i) an entity will also be taken to be a subsidiary of another entity if it is controlled by that entity pursuant to section 50AA of the Corporations Act;
    - (ii) a trust may be a subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
    - (iii) an entity may be a subsidiary of a trust if it would have been a subsidiary if that trust were a corporation.
- For the avoidance of any doubt, "entity" in this context includes a trust and the trustee of a trust.

## Annexure: Ancillary Proposal term sheet

Parties	CBA DEXUS
Facilitation Payment	<p>CBA to receive a payment of \$41 million ("<b>Facilitation Payment</b>") for agreeing to use its reasonable endeavours to assist DEXUS in relation to the transition of the management of CPA and for giving up the rights to receive responsible entity, funds management, property management and other fee income in relation to the management of CPA (as described below).</p> <p>The Facilitation Payment will be payable in cash to CBA on the date of implementation of a trust scheme involving CPA ("<b>CPA Trust Scheme</b>") or the date the Consortium otherwise obtains control of CPA.</p>
Areas of Facilitation	<p>In recognition of the Facilitation Payment, CBA will use its reasonable endeavours to assist DEXUS in connection with the following:</p> <ul style="list-style-type: none"> <li>• the appointment of DEXUS or a member of the DEXUS Property Group, as the responsible entity of CPA and the transfer of know-how, books, and records of CMIL as they relate to CPA;</li> <li>• procuring termination of all arrangements (including, without limitation, all long term management agreements between CBA Group Members and CPA) that entitle CBA Group Members to receive: <ul style="list-style-type: none"> <li>○ any funds management fees and performance fees under CPA's constitution;</li> <li>○ any property management fees derived from asset management, leasing, and development management agreements related to CPA-owned properties; and</li> <li>○ any other fee streams or benefits derived from the management relationship with CPA;</li> </ul> </li> <li>• enabling DEXUS to obtain an understanding of the operations of the CBA Group's funds and property management businesses associated with CPA in order to allow and facilitate the development and the implementation of the plans of DEXUS for the management of CPA following a change of responsible entity;</li> <li>• the preparation of the financial reports, taxation returns, tax statements and other taxation reporting requirements relating to CPA for the financial year ended 30 June 2014; and</li> <li>• reasonable assistance and advice in relation to DEXUS or the Consortium obtaining any change of control consents or waivers required in respect of agreed material contracts in connection with the Proposal or the Ancillary Proposal (including CPA facilities and related derivative contracts and co-ownership arrangements).</li> </ul>
Facilitation Deed	<p>The terms and conditions relating to the matters noted above (and other ancillary and related matters) will be documented in a facilitation deed ("<b>Facilitation Deed</b>").</p> <p>The Facilitation Deed will include standard no shop, no talk, notification and matching right conditions.</p>

	<p>The Facilitation Deed will be signed contemporaneously with the Consortium (or their nominee/s) and CMIL entering into a scheme implementation deed (or other similar documentation).</p> <p>The Facilitation Deed will be conditional on the implementation of the CPA Trust Scheme or the Consortium (or DEXUS) otherwise obtaining control of CPA by 31 May 2014.</p>
CPA Units	Nothing in this term sheet prevents or in any way restricts DEXUS, CBA or any of their respective representatives from dealing, or causing another person to deal, in CPA units.
Approvals and conditions	<p>Execution of the Facilitation Deed, will be subject to:</p> <ul style="list-style-type: none"> <li>• final agreement of key transaction terms, structure and binding legal documentation;</li> <li>• DEXUS undertaking satisfactory due diligence;</li> <li>• CBA Board approval;</li> <li>• DEXUS Board approval; and</li> <li>• CMIL and the Consortium having entered into a scheme implementation deed (or other similar documentation) pursuant to which the CMIL Board recommends the CPA Trust Scheme to CPA unitholders.</li> </ul>
Nature of term sheet	This term sheet is not legally binding, is indicative and is subject to due diligence.