

HENRY DAVIS YORK

Planning Agreement - Sydney Science Park

Celestino Developments SSP Pty Ltd
ABN 67 607 351 642

Penrith City Council
ABN 43 794 442 563

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KEY DETAILS

1 **Date** See Execution on page

2 **Parties**

Developer

Name

Celestino Developments SSP Pty Ltd
ABN 67 607 351 642

Address

642 Great Western Highway, Pendle Hill, NSW 2145

Attention

John Vassallo

Email

John.vassallo@celestino.net.au

Planning Authority

Name

Penrith City Council
ABN 43 794 442 563

Address

601 High Street, Penrith NSW

Attention

General Manager

Email

city.planning@penrithcity.nsw.gov.au

BACKGROUND

- A The Developer intends to develop the Land for the Development.
- B The Development consists of approximately 340,000 sqm of research and development floor space, approximately 100,000 sqm of education floor area and associated student accommodation, a town centre comprising up to 30,000 sqm of retail space, 3,400 dwellings, a primary school site, new roads and infrastructure, and landscaping, open space, sporting fields and parks.
- C The Developer's parent company submitted the Planning Proposal to the Planning Authority in August 2013.
- D The Planning Authority forwarded the Planning Proposal to the Minister for Planning, and the Planning Proposal received Gateway approval from the Minister for Planning on 18 June 2014, and a further revised Gateway approval on 9 July 2015.
- E The Planning Proposal was placed on public exhibition between 16 November and 14 December 2015.
- F In connection with the Planning Proposal and the Development, the Developer submitted an offer to make certain development contributions and enter into a planning agreement on 27 October 2015.
- G This Agreement records the Agreement with the Developer and The Planning Authority in relation to the agreed Development Contributions.

TERMS

1 Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

This Agreement applies to the:

- (a) Land;
- (b) Amending LEP;
- (c) Development; and
- (d) any Development Application.

3 Commencement and Operation of this Agreement

This Agreement commences and operates on and from the later of the following dates:

- (a) the date the Amending LEP is published in the NSW Government Gazette; and
- (b) the date the Agreement is entered into as required by clause 25C(1) of the Regulation.

4 Definitions and interpretation

4.1 Definitions

In this Agreement the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979 (NSW).

Active Open Space means land and facilities typically – but not exclusively - providing for more formal recreational pursuits and organised sporting activities, supporting team or club-based sports, training and competition, which may occur indoor or outdoor and includes, but is not limited to ovals, sports pitches, indoor and outdoor courts, natural and synthetic surfaces and those facilities described in schedule 5 of this Agreement.

Affordable Housing means long term permanent rental accommodation for low income households, provided within the Penrith local government area and within 800 metres of public transport (being a regular bus or train service) and either a supermarket or neighbourhood shopping centre and delivered or managed by an approved local community housing provider.

Agreement means this planning agreement including any schedules means this planning agreement and includes any schedules, annexures and appendices to this agreement.

Amending LEP means the proposed instrument as detailed in the Planning Proposal, which proposes to amend the Penrith Local Environmental Plan 2010 (**Penrith LEP**) which proposes to rezone the Land from RU2 Rural Landscape to:

- (a) B4 Mixed Use;
- (b) B7 Business Park; and
- (c) RE1 Public Recreation;

by way of amendments to clauses in the Penrith LEP, and either amendments to maps or possibly additional maps for the Penrith LEP.

Authority means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

Better Outcome means when the parties agree in writing that a contribution, works or land not contemplated in this Agreement will deliver a greater public benefit, or is

more appropriate in the circumstances, than a particular Development Contribution, works or land which is required under this Agreement.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Sydney.

Commencement Date means the date upon which the Agreement is taken to operate under clause 3.

Completion means the date of practical completion in respect of relevant Works.

Construction Certificate has meaning given to it in the Act.

Dealing means subdividing, mortgaging, charging, encumbering or otherwise dealing with the Land.

Dedication Land means that part of the land referred to in Table C of Schedule 5 of this Agreement, except for Riparian Planting, the Temporary Community Facility and Water Sensitive Urban Design and Wetland Facilities.

Defects Liability Period means the period of 12 months which commences on the date of Completion of the any Works.

Development means development on the Land for:

- (a) approximately 340,000sqm of research and development floor space;
- (b) approximately 100,000sqm of education floor area and associated student accommodation;
- (c) a Town Centre comprising up to 30,000sqm of retail space;
- (d) no greater than 3,400 dwellings;
- (e) a primary school;
- (f) new roads and infrastructure;
- (g) landscaping open space, sporting fields and parks;
- (h) stormwater management, wetlands and riparian works;
- (i) community facilities; and
- (j) public art.

Development Application means a development application made under the Act for the Development or a stage of the Development.

Development Consent means the determination by approval of the Development Application for the Development or a stage of the Development.

Development Contribution means the development contributions set out in clause 5 of this Agreement.

Development Threshold has the meaning provided in schedule 5, corresponding with the Dedication Land, Works or Monetary Contribution identified in schedule 5.

DPE means the NSW Department of Planning and Environment or any other Authority replacing it.

Explanatory Note means the Explanatory Note attached at schedule 2.

Force Majeure Event means any of the following:

- (a) the declaration by a Court that the Amending LEP is invalid; or
- (b) any of the following:
 - (i) act of God;
 - (ii) law, rule, regulation, order or policy of any government or governmental authority;
 - (iii) act of war declared or undeclared;
 - (iv) accident, fire, explosion, epidemic
 - (v) public disorder;
 - (vi) riot, civil disturbance, insurrection, rebellion, sabotage or act of terrorists;
 - (vii) flood, earthquake, hail, lightning, severe weather conditions or other natural calamity;
 - (viii) strike, boycott, lockout or other labour disturbance,
 - (ix) which:
 - (x) prevents a party from carrying out its obligations under this Agreement, or the Developer from carrying out the Development;
 - (xi) is beyond the control of the affected party; and
 - (xii) was not caused by the affected party.

GFA has the meaning given to it in the Standard Instrument (Local Environmental Plans) Order 2006.

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.

Interim Occupation Certificate has the meaning given to it in section 109H of the Act.

Land means the land described in schedule 4.

Land Owner means Sydney Science Park Pty Ltd, or whichever entity owns the Land at the time the Agreement is in force, if Sydney Science Park Pty Ltd is not the owner of the Land.

Law means any applicable legislation, regulation, regulatory instrument, approval, consent, licence or official directive of the Commonwealth of Australia or any State or Territory, or any government authority.

Local Environmental Plan has the meaning given to it in the Act.

LPI means the Land and Property Information of New South Wales or any other Authority replacing it.

Management Plan means a document which will provide for the management and upkeep of any Works outlined in Table C of Schedule 5 to be undertaken on land which shall not be dedicated to the Planning Authority, and will include references to the rights and interests of stakeholders, standards of maintenance for Works, rules relating to the use of Works and Dedication Land that fall within the Management Plan and will address, where relevant, matters prescribed for Plans of Management under the NSW Local Government Act (LGA) 1993, recognising such land is not Community Land under the LGA 1993.

Monetary Contribution means the monetary contributions as set out in Table A, B C and D of schedule 5.

Novation Deed means a deed substantially in the same form as that attached at schedule 3.

Occupation Certificate has the meaning given to it in the Act.

Party means a party to this Agreement, including their successors and assigns.

Passive open space means areas which are typically used by the community in informal, unstructured ways, either individually or in groups and includes, but is not limited to, features such as parks, landscaped gardens, lakes, water features, picnic areas, seating, cycling and/or walking paths/trails, including those described in schedule 5 of this Agreement and which provide for less active or lighter physical activities, places for gathering and socialising, along with options for more active individual recreation such as running or cycling.

Permanent Community Facility has the same meaning as "community facility" in the LEP, but for the fact that it must be owned by the Planning Authority but may be operated by a private entity authorised by the Planning Authority at its sole discretion and must incorporate features required in schedule 5 to this Agreement.

Planning Proposal means the planning proposal submitted by the Developer's related entity to the Planning Authority in August 2013, and subsequently forwarded by the Planning Authority to the Minister for Planning under Part 3, Division 4 of the Act for the Amending LEP, DPE reference PP_2014_PENRI_001_00, and which received Gateway approval to proceed under s56 of the Act, from the Minister for Planning on 18 June 2014, and a further revised Gateway approval on 9 July 2015, which proposes to rezone the Land from RU2 Rural Landscape to:

- (a) B4 Mixed Use;
- (b) B7 Business Park; and
- (c) RE1 Public Recreation.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act matter or thing that meets a Public Purpose.

Public Purpose means any purpose that benefits the public or a section of the public, including as specified in section 93F(2) of the Act.

Regulation means the Environmental Planning and Assessment Regulation 2000 (NSW).

Riparian Planting means landscaping and treatment of riparian areas within the Sydney Science Park in accordance with requirements of the Office of Water Guidelines, the LEP, Penrith Development Control Plan 2014 (or succeeding Plans) and the relevant Precinct Plans and as described by schedule 5 to this Agreement.

Roads Authority has the meaning given to it in the Roads Act 1993 (NSW).

Subdivision has the meaning given to it in the Act.

Subdivision Certificate has the meaning given to it in the Act.

Temporary Community Facility means a space of at least 138 square metres, whether provided within a building or otherwise, which is to be made available for the purpose of the physical, social, cultural or intellectual development or welfare of the community until such time as the Permanent Community Facility has been completed.

Transfer Dealings means selling or transferring the Land, but does not include consolidating or subdividing the Land.

Water Sensitive Urban Design and Wetland Facilities has the meaning given to it under Penrith Development Control Plan 2014 and the Penrith Water Sensitive Urban Design Policy 2013, or any succeeding Plan or Policy.

Works means those works identified in Table B (if applicable) and Table C of schedule 5.

4.2 Interpretation

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

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day.

- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment, replacement or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (f) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (g) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (h) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (i) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (j) References to the word 'include' or 'including' are to be construed without limitation.
- (k) A reference to this Agreement includes the agreement recorded in this Agreement.
- (l) A reference to a Party to this Agreement includes a reference to the staff, agents and contractors of the Party, and the Party's successors and assigns.
- (m) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

- (a) Subject to this Agreement, the Developer is to make the following Development Contributions:
 - (i) the carrying out and the delivery of the Works; and
 - (ii) the dedication of the Dedication Land to the Planning Authority in accordance with this Agreement;
 - (iii) where the parties agree not dedicate all or some of the land referred to in Table C of Schedule 5, to instead implement a Management Plan for the that land in accordance with this Agreement; and

- (iv) the payment of the Monetary Contributions to the Planning Authority.
- (b) The Planning Authority is to apply each Development Contribution made by the Developer under this Agreement towards any public purpose for which it is made (as specified in schedule 5) and otherwise in accordance with this Agreement.

6 Indexation of Contributions (excluding Affordable Housing and Permanent Community Facilities)

All monetary contributions to be paid by the Developer under this Agreement, with the exception of that for Affordable Housing and the Permanent Community Facility, will be amended by indexation from the date of the signing of the Agreement in accordance with the following formula and applied on the date of payment, as follows:

$$RC = AC \times CPI/ACPI$$

Where:

RC is the amended contribution rate

AC is the monetary contribution amount or rate (as applicable) at the adoption of the plan

CPI is the latest Consumer Price Index (All Groups Sydney)

ACPI is the Consumer Price Index (All Groups Sydney), which applied at the date of the signing of this Agreement

7 Indexation of Affordable Housing and Permanent Community Facility Contributions

All monetary contributions to be paid by the developer under this Agreement for Affordable Housing and the Permanent Community Facility, will be amended by indexation from the date of the signing of the Agreement in accordance with the ABS House Prices Index – Established House Prices (Sydney), and applied on the date of payment as follows:

$$RC = AC \times HPI/AHPI$$

Where:

RC is the amended contribution rate

AC is the monetary contribution rate or amount (as applicable) in schedule 5

HPI is the latest ABS House Prices Index – Established House Prices (Sydney)

AHPI is the ABS House Prices Index – Established House Prices (Sydney), which applied at the date of the signing of this Agreement

8 Works

8.1 Carrying out the Works and use following practical completion

Subject to clause 8.5, the Developer must complete the Works identified in schedule 5 by the relevant Development Threshold.

Upon practical completion of the Works, the Developer must provide the community with immediate access to the land on which the Works have been completed for the purpose for which the facility was intended, unless the Planning Authority otherwise notifies the Developer in writing. The provision of access does not remove the Developer's responsibilities under the Defects Liability Period.

8.2 Pre-Conditions for Works

The Developer must obtain at the Developer's cost all necessary approvals (including Development Consents), consents, certifications and authorisations required to carry out the Works, or any component of the Works and, where it proposes to dedicate the Dedication Land or part of the Dedication Land, to subdivide the Dedication Land or part of the Dedication Land.

8.3 Works - Standard of Work

The Developer must carry out the Works in a good and workmanlike manner, in compliance with schedule 5 and all applicable laws, regulations and currently applicable road design standards (including any relevant Australian Standards, Austroads standards, RMS Supplements to Austroads standards or other standards), the conditions of any Development Approval, conditions of any approval under section 138 of the Roads Act 1993 (NSW), to a value as set out in schedule 5 and generally to the satisfaction of the Planning Authority, acting reasonably.

8.4 Access to Planning Authority's Land and Assistance

- (a) If requested, the Planning Authority must promptly grant, at no cost to the Developer, such licences or other rights (as are reasonably necessary) over the Planning Authority's land and roads (subject to the provisions of the *Roads Act 1993*) to enable the Developer, its contractors, employees and staff to carry out the Works in accordance with a licence to be agreed between the Parties.
- (b) Subject to this Agreement, the Planning Authority must use its best endeavours to assist the Developer in complying with its obligations under this clause.
- (c) Should the Developer (including its contractors, employees and staff) cause any damage or disturbance to the Planning Authority's land or roads when accessing them under this clause 8.4, then the Planning Authority may give notice to the Developer which requires it to make good any such damage or disturbance.

- (d) If the Developer fails to make good any such damage or disturbance within a reasonable amount of time following notice from the Planning Authority, then the Planning Authority may carry out works to make good the damage or disturbance in place of the Developer. The Planning Authority may recover its reasonable costs in carrying out those works from the Developer as a debt in a court of competent jurisdiction.

8.5 Cash contribution in place of Works

- (a) This clause 8.5 only applies to the Works described in Item 4 of Table C of schedule 5 being "District Open Space (DOS)" (**Eligible Works**).
- (b) At any time 12 months prior to the relevant Development Threshold for any Eligible Works, the Developer may, at its sole discretion, elect to provide a cash contribution in place of all or some of the Eligible Works (**DOS Cash Contribution**) by providing the Planning Authority with written notice of its intention to do so.
- (c) If the Developer has elected to provide the DOS Cash Contribution in place of all or some of the Eligible Works, the Developer must provide the DOS Cash Contribution prior to the relevant Development Threshold for that item of Eligible Works, according to the following formula:

$$DC = A \times DR$$

Where:

DC = DOS Cash Contribution

A = the area of the Eligible Works in hectares for which the Developer is providing the DOS Cash Contribution in lieu

DR = District Open Space Rate of \$332,077.92 per hectare (with this rate being subject to indexation in accordance with the ABS Consumer Price Index, as provided for under this Agreement)

- (d) On providing the DOS Cash Contribution in place of the Eligible Work(s), the Developer will be held to have complied with all of its obligations in respect of the Eligible Works or the component of the Eligible Works under this Agreement. For the avoidance of doubt, the Developer is not required to dedicate the land the subject of the DOS Cash Contribution to the Planning Authority.

9 Dedication or Management Plan

9.1 Dedication

Subject to clause 9.3, the Developer shall generally dedicate the Dedication Land to the Planning Authority prior to the relevant Development Threshold for the Works associated with the Dedication Land.

9.2 Manner of Dedication

Subject to clause 9.3, the Developer must, prior to the relevant Development Threshold:

- (a) procure the dedication of the Dedication Land or the relevant part of the Dedication Land to the Planning Authority at no cost to the Planning Authority;
- (b) do all things necessary to effect dedication of the Dedication Land, including ensuring that the registered proprietors of the Dedication Land provide to the Planning Authority an instrument in registrable form under the Real Property Act 1900 that is effective to transfer title to the land to the Planning Authority when registered;
- (c) cause to be produced to the LPI the certificate of title to that part of the Dedication Land to be dedicated, or a direction allowing the certificate of title to be used for that purpose to enable registration of an instrument of transfer; and
- (d) deliver to the Planning Authority the certificate of title if that certificate is released to the Developer by the LPI.

9.3 Management Plan in place of dedication

- (a) No later than three months prior to the relevant Development Threshold, the Developer may provide to the Planning Authority a draft Management Plan in relation to the long term management of the land (or relevant part of that land) referred to in Table C of Schedule 5 as an alternative to the dedication of that land to the Planning Authority.
- (b) The Planning Authority must, in good faith, consider accepting the draft Management Plan in lieu of the land dedication, in order to ensure the Developer meets its objective of delivering a Science Park of international standing.
- (c) Should the Planning Authority agree that the relevant land is not to be dedicated, it must then negotiate in good faith with the Developer on the finalisation of the draft Management Plan.
- (d) Within seven (7) days of reaching agreement on the draft Management Plan, the Developer must adopt and execute the agreed Management Plan.
- (e) If the parties cannot agree on the final Management Plan, then the dispute shall be dealt with in accordance with clause 17 of this Agreement.
- (f) The Developer must comply with any Management Plan which has been adopted and executed by the Developer.
- (g) This clause is subject to review and amendment within 90 days of the commencement of this Agreement subject to the Planning Authority's consideration of policy changes that may allow the Developer, at its sole discretion, to elect not to dedicate the land outlined in Table C of Schedule

5. The parties agree that any change to this clause does not constitute an amendment to the Agreement for the purposes of section 93G(1) of the Act.

9.4 Amendment of the Management Plan

A Management Plan which has been adopted and executed by the Developer can only be amended by written agreement of the parties.

9.5 Dedication Land can be owned and managed by another entity

Notwithstanding any other clause in this Agreement, the Developer may transfer ownership of any Dedication Land to another entity, including but not limited to a community association, owners' corporation or the like, provided that the entity is contemplated in the Management Plan, and is a party to, or has executed the Management Plan.

10 Monetary Contribution for road works

- (a) By 31 March 2024, the Developer will carry out a traffic report to determine the projected traffic volumes on Luddenham Road at 1 January 2026.
- (b) Should the traffic report identify that, as a result of the Development, the full monetary contribution outlined in Table D of Schedule 5 is required by 2026 the Developer must pay the balance of the monetary contribution set out in Table D by 1 January 2026.
- (c) Should the traffic report identify that the full monetary contribution is not required by 2026, then the timing for its payment will be that shown in Table D of schedule 5 of this Agreement.
- (d) For the avoidance of doubt, irrespective of the finding of the traffic report, the monetary contributions payable by the Developer for road works are limited to those amounts set out in Table D of schedule 5.

11 Road Works Review

- (a) No later than 10 days after the commencement of this Agreement, the parties must jointly engage a suitably qualified traffic expert (Traffic Expert) to review the accuracy of the modelling used by the Developer to identify the monetary contributions set out in Table D in schedule 5.
- (b) If the parties cannot reach agreement on who the parties shall appoint as the Traffic Expert within 7 days after the commencement of this Agreement, the parties must request the Chief Executive Officer of Engineers Australia to appoint the Traffic Expert as soon as practicable.
- (c) The Traffic Expert must be engaged to provide the parties with a draft opinion on the accuracy of the modelling used by the Developer to identify the monetary contributions set out in Table D in schedule 5 within one month of their appointment.

- (d) The parties shall have 14 days to comment on the draft opinion of the Traffic Expert.
- (e) The Traffic Expert must then finalise the opinion having appropriate regard to the comments of the parties and provide a final opinion to the parties within a further 14 days.
- (f) Should the Traffic Expert's opinion demonstrate a manifest error in the amounts of the monetary contributions or the specified road works set out in Table D of Schedule 5, then the parties are to negotiate in good faith on the appropriate next steps.
- (g) The parties must pay the costs of the Traffic Expert and for any costs of the Chief Executive Officer of Engineers Australia in relation the nomination of the Traffic Expert in equal shares within 14 days of receiving appropriate tax invoices.

12 Substitution of Contribution for Agreed Better Outcome

- (a) If the Parties agree in writing that a contribution, land or works not contemplated in this Agreement (**Substitution Contribution**) will deliver a Better Outcome than a particular Development Contribution which is required under this Agreement (**Superseded Contribution**), then the Parties may agree, in writing, to substitute the Substitution Contribution for the Superseded Contribution.
- (b) In agreeing to substitute a Substitution Contribution for the Superseded Contribution, the Parties may also agree to a different Development Threshold for the Superseded Contribution. If no different Development Threshold is agreed, then the Development Threshold for the Superseded Contribution becomes the Development Threshold for the Substitution Contribution.
- (c) If the Parties agree in writing to substitute a Substitution Contribution for a Superseded Contribution, then:
 - (i) the Substitution Contribution will function in place of the Superseded Contribution for the purposes of this Agreement as if it were the Superseded Contribution; and
 - (ii) provision of the Substitution Contribution by the Developer will constitute compliance with the Developer's obligations in relation to the Superseded Contribution for the purposes of this Agreement.
- (d) The Parties agree that if they substitute the Substitution Contribution for the Superseded Contribution, that will not constitute an agreement to amend the Agreement for the purposes of clauses 25C(3) and 26(1) of the Regulation.

13 Application of sections 94, 94A and 94EF of the Act to the Development

- (a) This Agreement excludes the application of sections 94 and 94A of the Act to the Development.
- (b) This Agreement does not exclude the application of section 94EF of the Act to the Development.

14 Contributions towards Penrith City-wide facilities

The Parties acknowledge and agree that the Monetary Contributions under Table A of schedule 5 include monetary contributions towards open space, cultural facilities and library facilities which are equal to the monetary contribution which would be required under the application section 94 contributions plans of the Planning Authority.

15 Registration of this Agreement

- (a) The Developer must, at its expense, procure the registration of the Agreement on the relevant folios of the register held by the LPI pertaining to the Land as soon as reasonably practicable after the Commencement Date and, in any event, no later than 120 Business Days after the Commencement Date.
- (b) Until such time as this Agreement is registered on the relevant folios of the register held by the LPI pertaining to the Land, the Developer agrees that the Planning Authority may lodge a caveat on the relevant folios of the Register held by the LPI pertaining to the Land.
- (c) If the Planning Authority lodges a caveat in accordance with clause 14(b), then the Planning Authority must during such time as the caveat remains lodged on the title of the Land:
 - (i) provide written consent within 5 Business Days to any proposed Dealing in respect of the Land other than a Transfer Dealing;
 - (ii) provide written consent within 5 Business Days to a proposed Transfer Dealing in circumstances where the proposed assignee, transferee, purchaser or other party (the **Incoming Party**) of the Land or part of the Land has executed a Novation Deed in substantially the same form as contained in Annexure A;
 - (iii) ensure that the caveat does not prevent or delay the registration of this Agreement; and
 - (iv) remove the caveat from the title to the Land promptly, following registration of this Agreement in accordance with clause 15(a).

16 Review of this Agreement

- (a) This Agreement may be reviewed or modified and any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the Parties.
- (b) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

17 Dispute Resolution

17.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then neither Party can commence proceedings, except in compliance with this clause.

17.2 Notice of Dispute

The Party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying Party wishes to achieve (if practicable).

17.3 Representatives of Parties to Meet

- (a) The representatives of the Parties must promptly (and in any event within 20 Business Days of the written notice provided in accordance with clause 17.2) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution);
 - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

17.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with clause 17.3; and

- (b) the Parties have been unable to reach an outcome identified in clause 17.3(b)(i) to (iii); and
- (c) either of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 17.3,

then, that Party may, by 14 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement and either Party may proceed to enforce this Agreement in a Court of competent jurisdiction.

17.5 Urgent interlocutory proceedings

At any time, a Party may, without inconsistency with anything in this clause 17, seek urgent interlocutory relief in respect of a dispute under this Agreement from any Court having jurisdiction.

18 Security and Enforcement

18.1 Security

The Parties agree that registration of this Agreement constitutes suitable means of enforcement for the purpose of section 93F(3)(g) of the Act.

19 Notices

19.1 Delivery

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement 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 below.
- (b) Faxed to that Party at its fax number set out below.
- (c) Emailed to that Party at its email address set out below.

Penrith City Council

Attention: General Manager
Address: 601 High St, Penrith NSW 2750
Fax Number: 02 4732 7958
Email: city.planning@penrithcity.nsw.gov.au

Celestino Developments SSP Pty Ltd

Attention: John Vassallo

Address: 642 Great Western Highway, Pendle Hill, NSW
2145
Fax Number: 02 9842 1059
Email: john.vassallo@celestino.net.au

19.2 Change of Details

If a Party gives the other Party three Business Days' notice of a change of its address, email address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, electronically sent, posted or faxed to the latest address, email address or fax number.

19.3 Giving of Notice

Subject to clause 19.4, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address;
- (b) if it is sent by registered post, two Business Days after it is posted; and
- (c) if it is sent by email, when a delivery confirmation report is received by the sender, unless subsequently the sender receives a delivery failure notification, indicating that the electronic mail has not been delivered.

19.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered 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.

20 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement 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.

21 Assignment and Novation

21.1 Assignment

- (a) The Developer must not assign, encumber or deal with any right, obligation or interest under this Agreement without the prior written consent of the Planning Authority, such consent not to be unreasonably withheld.
- (b) Approval is reasonably withheld if the proposed assignee or person is not solvent and reputable and the assignment or encumbrance will materially

adversely affect the obligations of the Developer and the rights of the Planning Authority.

21.2 Transfer Dealings

- (a) The Developer must not have any Transfer Dealings with the Land or part of the Land, unless:
 - (i) the proposed assignee, transferee, purchaser or other party (the **Incoming Party**) enters into the Novation Deed; or
 - (ii) the Planning Authority has provided in writing a partial release and discharge of the Agreement in respect of the relevant part of the Land pursuant to clause 22.
- (b) As and from the date of execution of the Novation Deed by the Planning Authority, the Developer and the Incoming Party, and other than as set out in the Novation Deed, the Developer is released from the obligations contained in this Agreement to the extent that they:
 - (i) are novated to the Incoming Party, and
 - (ii) remain to be performed.

22 Release and discharge

22.1 Full release and discharge

- (a) Upon satisfaction of the Developer's obligations under this Agreement, the Planning Authority must provide a release and discharge of this Agreement with respect to the Land, including any strata lot, within 20 Business Days of receiving a written request from the Developer and do all things reasonably necessary, including executing any necessary document to enable the Developer to remove the notation of this Agreement on the relevant folio(s) of the Torrens title register held by the LPI pertaining to the Land.
- (b) If there is a disagreement about whether the Developer has satisfied its obligations under this Agreement, the Planning Authority must provide a release and discharge of the Agreement where alternative security is provided by the Developer to the reasonable satisfaction of the Planning Authority to secure any obligations the Planning Authority considers are still outstanding in respect of the Land.

22.2 Partial release and discharge

- (a) From time to time, the Developer may request the Planning Authority provide a partial release and discharge of the Agreement. The Planning Authority must provide a partial release and discharge of this Agreement to the extent that the Agreement affects any part of the Land, including any strata title or community title lot, where:

- (i) the Developer has satisfied its obligations under this Agreement which physically relate to that part of the Land; or
 - (ii) no obligations under this Agreement physically relate to that part of the Land; or
 - (iii) the Developer has provided alternative security to the reasonable satisfaction of the Planning Authority to secure the performance of any outstanding obligations under this Agreement that physically relate to that part of the Land.
- (b) The Planning Authority must provide the release and discharge, or partial release and discharge, referred to in paragraphs 22.1 and 22.2, within 20 business days of receiving a written request from the Developer and do all things reasonably necessary, including execute any necessary document to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by the LPI pertaining to the Land, or part of the Land.

23 Insolvency or inability of Developer to fulfil obligations

23.1 Failure Event

Each of the following circumstances is a Failure Event:

- (a) the Developer becomes insolvent; or
- (b) the Developer notifies the Planning Authority that it is no longer able to comply with its obligations under this Agreement; or
- (c) where:
 - (i) the Developer has failed to comply with its obligations under this Agreement for a period of at least 3 months, for reasons other than due to a Force Majeure Event, dispute or change in Law; and
 - (ii) the Planning Authority considers, on reasonable grounds, that the Developer is unable, or unwilling, to continue to comply with its obligations under this Agreement; and
 - (iii) the Planning Authority notifies the Developer that it considers the Developer is unable, or unwilling, to continue to comply with its obligations under this Agreement; and
 - (iv) within 21 days of receipt of the Planning Authority's notice 23.1(c)(iii), the Developer fails to confirm that it will comply with its obligations under this Agreement, and thereafter, fails to comply with any outstanding obligations in a timely manner.

23.2 Planning Authority can undertake Works

If a Failure Event has occurred, in addition to any other remedies available, the Planning Authority may carry out any Works under this Agreement which have not yet been completed by the Developer, in the place of the Developer, provided that;

- (a) the Planning Authority has first notified the Developer of its intentions to carry out the Works; and
- (b) at least 21 days has passed after the Planning Authority notified the Developer of its intentions to carry out the Works; and
- (c) in the case of Works which have been partially undertaken by the Developer, the Developer has not undertaken any further work following the Planning Authority's notification of its intentions to carry out the Works.

23.3 Works undertaken by Planning Authority to function as a debt

If the Planning Authority undertakes Works in the place of the Developer in accordance with this clause 23, then the Planning Authority may recover the reasonable costs in carrying out those Works from the Developer as a debt in a court of competent jurisdiction.

24 Force Majeure

- (a) If a Party is unable by reason of a Force Majeure Event to carry out wholly or in part its obligations under this Agreement, it must:
 - (i) give to the other Parties prompt notice of the force majeure with reasonably full particulars; and
 - (ii) suggest an alternative method, if any, of satisfying its obligations under this Agreement.
- (b) If a Party is unable to satisfy its obligations under this Agreement by an alternative method, the obligations of the Parties, and any time periods, so far as they are affected by the Force Majeure Event are then suspended during continuance of the Force Majeure Event and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable endeavours to remove the Force Majeure Event or mitigate its impacts as quickly as practicable in the circumstances.
- (d) Any dispute relating to a Force Majeure Event, including its existence, is to be treated as a dispute under clause 17.
- (e) If a Force Majeure Event cannot be rectified to the mutual satisfaction of the Parties and the Developer, in its sole discretion, determines that it is unable to undertake or continue with the Development, then upon the surrender of any existing Development Approvals that relate to works that have not yet been physically commenced (as defined in the Act), the Developer may

terminate this agreement by written notice to the Planning Authority in which event neither Party will have any claim against the other under this Agreement.

- (f) If paragraph (e) applies, the Planning Authority shall do all things reasonably necessary including executing any necessary documents to enable the Developer to remove the notation of this Agreement on the relevant folios of the Torrens title register held by LPI relating to the land within 20 Business Days of receiving written request from the Developer.
- (g) If paragraph (e) applies, Planning Authority may give notice to the Developer that it requires works to be done to ensure that there is no immediate risk of harm to human safety arising from any incomplete Works or any part of the Development.
- (h) The Developer must be given a reasonable period of time, and not less than 10 Business Days, to carry out any works the subject of a notice under this clause and the Planning Authority must reasonably consider any variation sought by the Developer to any works requested under this clause.

25 Change in Law

- (a) On, or following, the occurrence of a change in any Law, any Party which considers that the change in Law will impact on the obligations or rights of that Party under this Agreement, then that Party may notify the other Party of the change in Law, and the impacts it says will arise from the Change in Law.
- (b) Following the notification under clause 25(a), the Parties must meet within 20 Business Days, to discuss the impact of the change in Law, and attempt, in good faith, to reach agreement in relation to any amendments to this Agreement as a result of the change in Law.
- (c) If the Parties are unable to reach agreement on the change in Law, then the matter is to be treated as a dispute in accordance with clause 17.
- (d) If the change in Law meets the definition of Force Majeure Event (in particular, that it prevents a party from carrying out its obligations under this Agreement, or the Developer from carrying out the Development), then the change in Law may be dealt with as a Force Majeure Event.

26 Costs

The Developer agrees to pay the reasonable costs of the Planning Authority in preparing, negotiating and executing, and, if relevant, modifying, this Agreement. All stamp duty (including fines, penalties and interest) payable on or in connection with this Agreement and on any instruments executed under or any transaction evidenced by this Agreement, must be borne by the Developer except where stated

otherwise in this Agreement, all other costs are to be borne by the party which incurs those costs.

27 Entire Agreement

- (a) This Agreement and its schedules contains everything to which the Parties have agreed in relation to the matters those documents deal 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 Agreement was executed, except as permitted by law.
- (b) Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Agreement.

28 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 Agreement and all transactions incidental to it.

29 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its Courts. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

30 No fetter

Nothing in this Agreement shall be construed as requiring the Planning Authority to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

31 Representations and warranties

- (a) The Developer represents and warrants that on the date of this Agreement that the Developer is either the legal and beneficial owner of the Land, or has the written consent from any Land Owner(s) to enter into and perform its obligations under this Agreement, and register the Agreement in the relevant folio of the Land titles.
- (b) The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement and that entry into this Agreement will not result in the breach of any law.

32 Severability

If a clause or part of a clause of this Agreement 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 rest of this Agreement is not affected.

33 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

34 GST

34.1 Definitions

In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

34.2 GST exclusive

All prices, Monetary Contributions or other amounts payable or Consideration to be provided pursuant to this Agreement are expressed as being exclusive of GST.

34.3 Taxable supplies

- (a) Subject to clause 34.3, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing

the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

- (b) Clause 33.3(a) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

34.4 Input tax credit

No additional amount shall be payable by the Planning Authority under clause 33.3(a) unless, and only to the extent that, the Planning Authority (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

34.5 Certain Supplies

If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the GST Law, the Parties agree:

- (a) to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies; and
- (b) that any amounts payable by the Parties in accordance with clause 33.2 (as limited by clause 33.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

34.6 Tax invoices

No payment of any amount pursuant to this clause 33, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

34.7 Exclusions

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

34.8 Application of clause

This clause continues to apply after expiration or termination of this Deed.

35 Effect of schedules

The Parties agree to comply with any terms contained in schedules to this Agreement as if those terms were included in the operative part of the Agreement.

36 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

37 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

38 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

EXECUTION

Executed as a deed on 9TH September 2016.

Executed by Celestino Developments)
SSP Pty Limited ACN 607 351 842 by its)
attorney under Power of Attorney dated 21)
August 2015 Book 4693 No 620 who is)
personally known to me:)

Grant Only
.....
Witness

GRANT ONLY
.....
Name of Witness (print)

George Tsekouras
.....
Signature of Attorney

George Tsekouras
.....
Name of Attorney (print)

.....
Name of Attorney (print)
By executing this document the attorney states that
the attorney has received no notice of revocation of
the Power of Attorney

Signed by Penrith City Council ABN 43)
794 422 563 by its duly appointed officer)
in the presence of:)

A. Mansiegn
.....
Witness

Sharon Mansiegn
.....
Name of Witness (print)

Alice Stoddart
.....
Officer

Alice Stoddart
.....
Name of Officer (print)

Schedule 1- Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument.	(a) Yes
(b) made, or proposes to make, a development application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Agreement applies- (Section 93F(3)(a))	See schedule 4
Description of the development to which this Agreement applies- (Section 93F(3)(b)(ii))	The Development comprises development on the Land for: <ul style="list-style-type: none"> • approximately 340,000sqm of research and development floor space; • approximately 100,000sqm of education floor area and associated student accommodation; • a Town Centre comprising up to 30,000sqm of retail space; • 3,400 dwellings; • a primary school site; • new roads and infrastructure; and • landscaping open space, sporting fields and parks
The scope, timing and manner of delivery of Development Contributions required by this Agreement - (Section 93F(3)(c))	See clauses 5, 8, 9, 10, 11 and schedule 5
Applicability of Section 94 of the Act - (Section 93F(3)(d))	Section 94 is excluded.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	Section 94A is excluded.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	Section 94EF is not excluded as it applies to the Development.
Applicability of Section 93F(3)(e) of the Act	Not Applicable.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 17.
Enforcement of this Agreement - (Section 93F(3)(g))	See clause 18.
Registration of this Agreement (Section 93H)	See clause 14.
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 20 and 30.

Schedule 2 - Explanatory Note

Environmental Planning and Assessment Regulations 2000
(Clause 25E)

Explanatory Note

1 Planning Agreement

Under section 93F of the Environmental Planning and Assessment Act 1979 (NSW) and Clause 25E of the Environmental Planning and Assessment Regulations 2000

2 Parties

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith New South Wales (**Planning Authority**)

Celestino Developments SSP Pty Ltd ABN 67 607 351 842 of 642 Great Western Highway, Pendle Hill, NSW 2145 (**Developer**)

3 Description of Subject Land

The Land is located in the suburb of Luddenham, on the south side of the Sydney Water Pipeline and the western side of Luddenham Road and is legally described as: Lot 201 and part Lot 202 in DP 1152191, known as 565-609 Luddenham Road, Luddenham. The Land is currently rural/agricultural, largely comprising open grasslands and dams, on undulating topography.

4 Description of Proposed Development

4.1 Planning Proposal

The Planning Proposal aims to facilitate the Development by amending the *Penrith Local Environmental Plan 2010 (Penrith LEP)*, to rezone the Land from RU2 Rural Landscape to:

- (a) B4 Mixed Use;
- (b) B7 Business Park; and
- (c) RE1 Public Recreation;

The Developer intends to submit Development Applications to the Planning Authority to facilitate development of the Land for the purposes of:

- approximately 340,000sqm of research and development floor space;
- approximately 100,000sqm of education floor area and associated student accommodation;
- a Town Centre comprising up to 30,000sqm of retail space;
- 3,400 dwellings;
- a primary school site;
- new roads and infrastructure; and
- landscaping open space, sporting fields and parks

5 Summary of Objectives, Nature and Effect of the Draft Planning Agreement

5.1 Objectives and Nature

The objective of the draft Planning Agreement is to facilitate the delivery of appropriate local infrastructure to meet the needs of the new community expected both on the site and more widely in Penrith City through Works, Dedication Land and Monetary Contributions associated with the rezoning of the Land, and the proposed Development.

The nature of the draft Planning Agreement is a contractual relationship between Penrith City Council and the Developer for the provision of Works, Dedication Land and Monetary Contributions to support the rezoning of the Land, and proposed Development, and how they will be provided.

Effect

The effect of the draft Planning Agreement is that the Developer must provide new local infrastructure and monetary contributions in a number of stages to satisfy Council standards.

The draft Planning Agreement:

- (a) Contains a schedule for the Works required in relation to the above Development Contribution including the timing for the delivery of these Works.
- (b) Provides for the dedication of the Dedication Land including the timing for the dedication of the Dedication Land. The Developer may elect to manage the Dedication Land under a Management Plan instead of being dedicated it to The Planning Authority. However, this can only occur following negotiations between the Planning Authority and the Developer on the arrangements for managing the land in the Management Plan
- (c) Contains a schedule for the Monetary Contributions required, including the timing for the delivery of these Monetary Contributions.
- (d) The Monetary Contributions include amounts payable for *Open Space, Library Facilities and Cultural Facilities based on amounts set out in the Planning Authority's section 94 contributions plan.*

- (e) Provides that the Development Contributions are made in place of contributions normally required under s94 and s94A of the Act.
- (f) Will apply to any future development of the Land for the purposes described in the Agreement, irrespective of who owns the Land.

6 Assessment of the Merits of the Draft Planning Agreement, including the impact on the public or any relevant section of the public

The draft Planning Agreement satisfies the objectives described in Part 4 through the Developer making Monetary Contributions, carrying out the Works, and dedicating or managing the Dedication Land to meet the infrastructure needs, additional demand, and impacts created by the Development and its new community, and to ensure that existing communities which may be affected do not bear the cost of meeting these needs, additional demand and impacts.

The positive impact on the public is that the new/additional infrastructure will be publicly accessible for use and enjoyment by all.

7 Other Matters

7.1 How the draft Planning Agreement promotes public interest and one or more of the objects of the Act

The draft Planning Agreement promotes the public interest by:

- Ensuring appropriate local infrastructure is delivered in a timely manner to meet the needs of the new community;
- providing Development Contributions comprising and
- providing for the carrying out of those required Development Contributions in a timely manner in connection with the Development;

and therefore promotes the objects of the *Environmental Planning and Assessment Act 1979* as set out in s5(a)(ii) of that Act.

7.2 How the draft Planning Agreement promotes one or more of the elements of the council's charter under Section 8 of the Local Government Act 1993

- (a) The draft Planning Agreement is consistent with Council's charter under section 8 of the Local Government Act 1993:
 - (i) to have regard to the long term and cumulative effects of its decisions;
 - (ii) to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible;

- (iii) to engage in the long term strategic planning on behalf of the local community; and
- (iv) to keep the local community and the State government (and through it, the wider community) informed about its activities.

7.3 The planning purpose/s served by the draft Planning Agreement

The draft Planning Agreement will provide for a reasonable means of achieving the planning purpose by the co-ordinated provision of local and State infrastructure and associated land dedication to enable the Development to occur and accommodate demand for additional housing and employment in a growing city.

7.4 Whether the draft Planning Agreement conforms with Council's capital works program

The draft Planning Agreement conforms with Council's capital works program as it provides infrastructure in a coordinated, fully funded manner consistent with Council's adopted standards and historic levels of provision.

Deed of Novation for Planning Agreement

Penrith City Council
ABN 43 794 442 563

Celestino Developments SSP Pty Ltd
ABN 67 607 351 642

[Insert name of New Developer]

CONTENTS

No table of contents entries found.

KEY DETAILS

1 **Date** See Execution on page

2 **Parties**

Planning Authority

Name Penrith City Council
 ABN 43 794 442 563
Address 601 High Street, Penrith NSW
Attention
Fax
Email

Original Developer

Name Celestino Developments SSP Pty Ltd
 ABN 67 607 351 642
Address 642 Great Western Highway, Pendle Hill, NSW 2145
Attention
Fax
Email

New Developer

Name [Insert]
Address [Insert address]
Attention
Fax
Email

BACKGROUND

- A The Planning Authority and the Original Developer are parties to the Original Agreement.
- B The Original Agreement relates to the whole of the Land *[or if only selling/transferring part of the Land, provide description of the relevant part of the Land]*.
- C The Original Developer wishes to novate all of its rights and obligations to the New Developer.

TERMS

1 Interpretation

1.1 Definitions

In this document:

Effective Date means *[Insert Date]*

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the planning agreement dated *[Insert Date]* and made between the Planning Authority and the Original Developer.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;

- (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

1.3 Headings

Headings do not affect the interpretation of this document.

2 Novation

2.1 Original Agreement

With effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be subject to the rights and obligations contained in the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer; and
- (c) other than in respect:
 - (i) [Parties to set out any responsibilities that the Original Developer is not discharged from],

the Original Developer is released and discharged from all obligations and liabilities to the extent they are novated to the New Developer and remain to be performed, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

2.2 Reference in Original Agreement

All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer.

2.3 Address for notices

The Planning Authority must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer:

Address: **[Insert]**

Fax: **[Insert]**

Contact Person: **[Insert]**

Email: **[Insert]**

2.4 Coordination of Works and dedication

[Parties to insert a clause setting out the implications of the novation on the coordination of the delivery of the Works and dedication of Dedication land]

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4 Indemnities

The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

5 Warranties and representations

5.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

5.2 Survival of warranties

The warranties and representations in clause 5.1 survive the execution of this document and the novation of the Original Agreement.

6 GST

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

7 Stamp duty and costs

The New Developer will pay all stamp duty arising directly or indirectly from this deed.

8 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) This deed binds each Party which signs it even if other Parties do not, or if the execution by other Parties is defective, void or voidable.

9 Amendment

This document may only be varied or replaced by a document executed by the Parties

10 Governing law

This deed is governed by the law in force in the place specified in the New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of that place.

11 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed

Executed by Penrith City Council)
ABN 43 794 422 563 by its duly)
appointed officer in the presence of:)

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

Executed by *[Insert Incoming Party*)
Name] [Insert ABN] by its duly)
appointed officer in the presence of:)

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

Schedule 4 - Land

Lot	Deposited Plan	Folio Identifier
201	DP1152191	201/DP1152191
That part of Lot 202 in Deposited Plan 1152191	DP1152191	202/DP1152191

Schedule 5:

Table A: Monetary Contributions

No.	Facility	Contribution Amount	Timing of Payment
1	Library expansion and/or associated library resources and facilities.	\$345 per person calculated in accordance with Note 1 and 2. This monetary contribution is subject to Table B.	Where Development Consent has been granted in respect of part of the Development which includes dwellings, the monetary contribution must be paid prior to the grant of the subdivision certificate for the relevant part of the Development
2	Cultural Facilities	\$145 per person calculated in accordance with Note 1 and 2	Where Development Consent has been granted in respect of part of the Development which includes dwellings, the monetary contribution must be paid prior to the grant of the subdivision certificate for the relevant part of the Development
3	Affordable Housing	\$159 per person calculated in accordance with Note 1 and 2	Where Development Consent has been granted in respect of part of the Development which includes dwellings, the monetary contribution must be paid prior to the grant of the subdivision certificate for the relevant part of the Development

Note 1: All Monetary Contribution Amounts are to be indexed in accordance with this Planning Agreement.

Note 2: For the purposes of calculating the Monetary Contribution payable under Table A, the following rate of persons per dwelling shall be applied:

- *Detached dwelling* (including detached dual occupancy) – 3.0 persons per dwelling
- *Multi Unit housing* (includes semi-detached, attached dual occupancy, townhouses, terraces, villa and comparable dwelling types) – 2.3 persons per dwelling
- *Apartment, residential flat building above 2 storeys, secondary dwelling* – 1.9 persons per dwelling
- *Student accommodation* – 1 person per bedroom or per single student room.
- *Any other dwelling type* – to be calculated by Council using the above rates to achieve closest approximation.

Table B: Community Facilities Capital Works

	Description	Works	Prior to	Threshold for Completion of Works				Value \$
				Prior to occupation of 750th dwelling	Prior to occupation of 1500 th dwelling	Prior to occupation of 2250 th dwelling	Prior to occupation of 3400 th dwelling	
1	Branch & Central Library	Should Council's policy on consolidating branch libraries change by the provision of the 1500 th residential dwelling to require a new library in the vicinity of the Science Park instead of cash towards expanding the existing library facilities, the Developer and Council may agree that the Developer is to pay the contribution as works in kind. The value of the works in kind shall be the Value set out in column of this Table B less the amounts already provided by the Developer as a cash contribution for item 1 in Table A. If the parties cannot reach agreement on the works in kind proposed to be carried out under this Table B, then the item is to be provided as a cash contribution in accordance with item 1 of Table A.	----			Delivered		\$2,380,500

Table C: Open Space, Recreation Works and Funding initiatives

Note 1: All Works in this Table C are limited by the value of the works in column 9.

Note 2: All works and land items identified in this table except Riparian Planting, the Temporary Community Facility and Water Sensitive Urban Design and Wetland Facilities may be the subject of Land Dedication or a Management Plan as contemplated by clause 9 of this Planning Agreement

	Embellishment works to be progressively delivered on RE1 Public Open Space zoned land.	Prior to .	Prior to occupation of 750th dwelling	Prior to occupation of 1500 th dwelling	Prior to occupation of 2250 th dwelling	Prior to occupation of 3400 th dwelling	Value
1	<p>Active Open Space</p> <p>Embellishment of 10.2 ha of active open space: Items may include:</p> <ul style="list-style-type: none"> • Ovals • Cricket Pitches • Soccer field or equivalent fields • Multi sport facilities • Basketball Courts • Netball Courts • Tennis Courts • Other hard paved courts. • Amenities block incorporating 2 x change rooms, showers, canteen room and equipment storage room • Car Parking • Drinking Fountains • Shade structures over relevant elements • Seating 	---	16,000sqm	30,000sqm	26,000sqm	30,000sqm	\$10,682,460

2	Passive Open Space	<ul style="list-style-type: none"> • Picnic shelters and tables • Outdoor gym equipment • Multi use courts • Alternative active open space facilities which may reflect community demand at the time development occurs • Synthetic grass playing fields • Floodlighting of fields, courts • Fencing <p>Location and standard of facilities to be consistent with LEP, DCP and Precinct plans.</p>		10,000sqm	25,000sqm	50,000sqm	28,160sqm	\$10,071,240
	Embellishment of 11.316ha of passive open space which may include	<ul style="list-style-type: none"> • Informal games areas • Football posts and hoops and children play areas • Local open space and parks • Kick about space • Play grounds • Children's play equipment • Tables and seating • Lighting • Picnic Areas • Toilets • Car parking • Outdoor Shower 						

	<ul style="list-style-type: none"> • Drinking Fountains • Shade Structures over relevant elements • Seating • Picnic Shelters and tables • Outdoor Gym Equipment • Youth Centric recreation facilities • Outdoor table tennis • Multiuse courts • Water play facilities • Fencing • Amenities buildings (toilets) and shared pathways for parks of sufficient size that these elements are necessary. 	24,000sqm	19,000sqm	64,100sqm	\$2,500,000 or the value required to meet the standards specified.
3	<p>Riparian Planting</p> <p>Embellishment and restoration of 10.7ha of creek line Environments to be provided in the locations and at no less than the standard specified by DPI Water Guidelines, LEP, DCP and Precinct Plans.</p> <p>All Riparian Planting and riparian areas are to be owned and maintained by Celestino or its successor under this VPA, unless transferred to Council by mutual agreement</p>				
4	<p>District Open Space</p> <ul style="list-style-type: none"> • Child play facilities 	49,000sqm	84,000sqm	199,000sqm	\$12,785,000,

8	Public Art	<p>Prepare a Public Art Strategy</p> <p>Public Art integrated with the public domain and public open space areas.</p> <p>Public Art Strategy to be completed in concurrence with Council and requires mutual agreement.</p> <p>Public Art is to be owned and maintained by Celestino or its successor under this VPA, unless transferred to Council by mutual agreement.</p>	Strategy to be completed	Strategy to be implemented progressively in accordance with the Public Art Strategy.	Strategy to be implemented progressively in accordance with the Public Art Strategy.	Strategy to be implemented progressively in accordance with the Public Art Strategy.	Strategy to be implemented progressively in accordance with the Public Art Strategy.	At least \$175,450, being 1% of the value of monetary contributions for non-roads upgrades contributions under this VPA, with scope for works of greater value at Celestino's discretion
9	Community Facilities Needs Study	Community Facility Needs study to ensure delivery of appropriate works and nature of Permanent Community Facility		Delivered				\$30,000
10	Community and Cultural Development Worker	Funding towards a worker to assist new resident population. Council is to tender for the position, employ the worker and manage the role.		Delivered				\$200,000
11	Community Initiatives Payment	Cash payment to support emerging community groups		Delivered				\$50,000
12	Affordable Housing dwellings or	To provide three (3) affordable housing dwellings (detached dwellings or multi unit housing dwellings with a minimum of 2 bedrooms) as part of the site's					Delivered	

13	lots	3400 dwelling stock.	Location and standard of these facilities to be consistent with LEP, DCP and Precinct Plans.	Progressive as each precinct develops and prior to subdivision certificate	Progressive as each precinct develops and prior to subdivision certificate	Progressive as each precinct develops and prior to subdivision certificate	Progressive as each precinct develops and prior to subdivision certificate	Progressive as each precinct develops and prior to subdivision certificate	N/A
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Table D: Road Upgrade Contribution

Upgrade location	Description of Proposed Works	Number / Length	Trigger	Contribution
Luddenham Road	Widen between Mamre Road and Sydney Science Park intersection	5920m	At 1 January 2031	\$13,007,000
Luddenham Road / Twins Creeks Drive	Upgrade intersection to traffic signals	1	At 1 January 2026	\$580,000
Luddenham Road / SSP site access	Upgrade intersection to traffic signals	1	At 1 January 2026	\$2,000,000

Note 1: The Monetary Contributions outlined in Column 5 are to be paid to Council for delivery of these works by Council

Note 2: The Contribution amounts outlined in Column 5 are capped and will not be exceeded.

Note 3: The Contribution totals shown in Column 5 must be paid by the Developer progressively at a contribution rate of \$4,584.00 per residential dwelling prior to the grant of occupation certificates for those dwellings.

Note 4: The timing of the contributions reflect the triggers in Column 4 and are subject to Clause 10 of this Agreement.