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#### 4 Sydney Science Park Voluntary Planning Agreement Amendment

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<b>Outcome</b>	<i>We plan for our future growth</i>
<b>Strategy</b>	<i>Ensure services, facilities and infrastructure meet the changing needs of our community</i>
<b>Service Activity</b>	<i>Ensure our policies, strategies and plans provide for the services and infrastructure our City needs</i>

#### Executive Summary

This purpose of this report is to seek Council's endorsement to publicly notify an amendment to the Sydney Science Park Voluntary Planning Agreement (VPA) between Celestino and Penrith City Council.

Sydney Science Park represents a new vision for Australia - clustering science-based business, research and educational institutions in one location to advance science and innovation. As part of the planning for Sydney Science Park, Celestino Developments SSP Pty Limited (Celestino) has entered into a Voluntary Planning Agreement (VPA) with Penrith City Council (Council) to ensure the delivery of a range of infrastructure. While that infrastructure is intended for use by occupants and users of Sydney Science Park, and the broader general public, the VPA allows it to remain in private ownership, provided that a management plan is agreed between Celestino and the Council to ensure maintenance to requisite standards and continued public access to those facilities.

In order to attract and secure the type of investment that is anticipated for Sydney Science Park, a long-term certainty is required by Celestino. Therefore, Council and Celestino have worked collaboratively together to devise a mechanism that would enable (protect) both 'publicly accessible' land to be used by the general public and also give Celestino the freedom to modify the space/ infrastructure for the installation and testing of innovative or smart city technologies. This is a diversion from the business as usual Council-Developer relationship and also the existing legal framework.

Various mechanisms were considered, and both parties have agreed that progressing a package of an amended VPA, together with Agreement for Lease and standard form Lease is the best way forward instead of the management plan provided under clause 9.3 of the VPA. As a result, a VPA amendment is required. The VPA amendment sets out the framework for determining when land will be subject to the lease or otherwise. The lease itself sets out the maintenance obligations, how the land is managed and the other matters.

This report recommends that the amended VPA be adopted by Council and publicly notified before it takes effect upon signing by the General Manager.

#### Background

Celestino Developments SSP Pty Ltd (Celestino) and Penrith City Council entered into a VPA for Sydney Science Park on 9 September 2016. The VPA provided a range of public benefits, including monetary contributions, and the delivery of a range of publicly accessible areas (PAA's), such as:

- bike paths and pathways;
- active open space (sports fields, tennis courts, outdoor gym equipment, etc);
- passive open space (grass areas, play areas, tables and seating, picnic areas, etc);
- district open space (children play facilities, performance space, community gardens, etc);
- community facilities; and
- miscellaneous facilities and riparian plantings.

Under the VPA, the PAA's are to be delivered in various stages throughout the development of Sydney Science Park.

To allow Celestino to deliver the vision of a community that is innovative, responsive to technology, flexible, and a great place to live and work, clause 9.3 of the VPA allowed Celestino to retain ownership of PAA's instead of dedicating them to Council, if Celestino and Council agreed on a Management Plan to cover the PAA. The primary purpose of this was so that Celestino was able to integrate technology and other innovative uses into PAA's together with its technology partners (such as the CSIRO, Cisco and universities), and test emerging technologies in a 'safe to fail' environment. Examples of these would include sensors for drones and driverless cars.

### **The Aim of the VPA amendments**

Since 2017, Celestino and the Council have been in discussions on the best means of managing all PAA's as well as roads within SSP. Both parties have agreed that progressing a package of an amended VPA, together with Agreement for Lease (AFL) and standard form Lease is the best way forward instead of the Management Plan provided under clause 9.3 of the VPA. This is primarily because this package will give Council certainty in relation to management standards and that unrestricted public access is provided at all times (except for emergencies and the like).

The vision for Celestino and Council is to change the traditional transaction between regulator and land owner to the bond of a partnership; formed in the context of working toward a better outcome for all stakeholders through a co-created framework that supports innovation in all its forms in the urban environment while ensuring public access. In essence, the amendments to the VPA are a platform for seeing how Council and Celestino can do cities better, not just for Celestino or Penrith City Council, but for the broader community.

In practice, the VPA (and AFL and Lease under it) was drafted to ensure that Celestino and Council's priorities were aligned to address the interests and needs of all stakeholders.

The amendments to the VPA set up legal mechanisms for Celestino to seek approval from Council to retain possession and management of certain PAA's and roads within SSP, to ensure that Celestino can deliver innovation, while providing the Council with certainty in relation to management standards and public access.

While roads are not required to be dedicated under the current VPA, roads were also included in the amended VPA. This is to ensure that in the future, when Celestino lodges Development Application's that include subdivision and roads, there will be an agreed way for Celestino to retain management of the roads, while delivering the certainty to Council of agreed maintenance standards and public access.

## The VPA amendments

To deliver on the shared vision of Council and Celestino, a number of variations are proposed to the VPA. These include:

- A number of new recitals that set out the vision of SSP, and the guiding principles for managing PAA's and roads.
- Replacing the Management Plan process by a new process in which Celestino nominates those PAA's or roads Celestino wishes to manage. The process works as follows:
  - Celestino nominates those PAA's and roads (which are required to be dedicated to Council) that it wishes to manage, and be leased back to Celestino. This occurs prior to lodging a DA, known as the "Leaseback Submission".
  - Council then assesses the Leaseback Submission, according to a set of agreed criteria, which have been included as Schedule 6 to the VPA. The agreed criteria are designed to determine whether the PAA or road will be used for purposes consistent with the vision of SSP. Only Leaseback Submissions that satisfy these criteria have to be granted.
  - If Council approves the Leaseback Submission and grants development consent, then, at the relevant time that the PAA/road is dedicated, it is leased back to Celestino in accordance with the agreed terms of the AFL, and the standard-form Lease that is annexed to the AFL. The terms of the Lease are 40 years from the date the first Lease is granted (and so lease terms will decrease over time) plus an option for renewal of a further 40 years. All Leases will expire on a common date, no matter when they are granted.
  - The AFL and Lease include a number of safeguards to ensure that PAA's and roads are maintained to at least the same standard as if the Council was maintaining them, and to ensure that public access is provided at all times (except for emergencies and the like).
- A hierarchy of road typologies has been included in the VPA. These treatments are not mandatory but are included to give guidance to future readers as to how the parties intend for roads may be treated. This will ensure that Celestino and Council are in concert with regard to the manner in which various roads may be owned and managed. The proposed road hierarchy is as following:
  - Dedication Roads: Roads that will be dedicated to Council in the ordinary manner – primarily located adjacent to lots that are intended to be sold as individual Torrens titled residential lots.
  - Leaseback Roads: Roads that are dedicated to Council, but immediately leased back to Celestino. These will primarily be boulevards and other higher order roads.
  - Private Roads: Roads which will be retained by Celestino. These are primarily those roads that are within self-contained campus-style super lot areas.
- PAA's and Leaseback Roads are to be classified by Council as "operational land" under the Local Government Act 1993, to ensure that they are capable of being

leased, and used for the purposes intended under the VPA. Nonetheless, the provisions in the VPA, Lease and AFL will ensure that public access is provided, and that they are maintained according to Council's standards.

- The VPA also provides that when a road or relevant PAA is dedicated to the Council, Council will grant Celestino (or its service provider and/or the dominant lot) an easement for services in the relevant location (i.e. services trench) to allow Celestino to run and maintain innovative private services such as grey-water recycling, co-generation of electricity, ultra-fast broadband, and the like. The terms of the easement will be standard-form and are included as Schedule 7.

Celestino will be maintaining the publicly owned facilities which would otherwise have been maintained by council. Therefore, the lease document will allow Celestino to seek a maintenance contribution from council for publicly owned leased facilities.

A table of amendments to the Sydney Science Park Voluntary Planning Agreement is provided as Attachment 1 to this report.

### **Legal matters still being finalised**

Certain minor matters are still being finalised between legal representatives of both parties. These include the following:

1. A clause that requires an early submission from Celestino indicating which land in a future development application will be dedicated to council or retained in private ownership. This will give certainty to Celestino before a formal development application is lodged.
2. Negotiations around provision for an easement on council owned parks for technological services provided by Celestino
3. Legal matter around easement over roads that are covered by a lease. The lease will be for a period of 40 years and the easement may be affected after the end of the lease period.
4. Minor refinements to the wording of various clauses in the document.

### **Next Steps**

If Council resolves to enter into the amended VPA with Celestino, the next steps in advancing the VPA include:

1. The Lawyers representing both parties will refine and finalise the attached VPA.
2. Public notification of the amended VPA for a period of 28 days.
3. Following conclusion of the notification period, and assuming there are no significant objections, the amended VPA will be signed by the General Manager on Council's behalf. Upon signature, the VPA take effects and will be triggered when development of the site occurs in a manner described in the VPA.
4. When the amended VPA has been signed, Council's VPAs register will be updated (including on our website) and the Department of Planning and Environment must be notified in order to amend their register of Agreements.

### **RECOMMENDATION**

That:

1. The information contained in the report on Sydney Science Park Voluntary Planning Agreement Amendment be received
2. Council adopt the Amended Sydney Science Park VPA shown at Attachment 2 and note that this will be refined and amended in accordance with the final agreement between the lawyers representing both parties;
3. The draft Sydney Science Park VPA be publicly notified in accordance with the requirements of the Environmental Planning and Assessment Act, 1979;
4. Council authorise the General Manager to sign the Amended VPA upon conclusion of the public notification of the Agreement and to make any minor amendments necessary to ensure its legality (e.g. typographic errors, dates, etc.); and
5. The Department of Planning be notified of the signing of the VPA and Council's register of VPAs and website be updated to record the Agreement.

#### ATTACHMENTS/APPENDICES

1. Table of Amendments to the Sydney Science Park Voluntary Planning Agreement	1 Page	Attachments Included
2. Amended Voluntary Planning Agreement for Sydney Science Park	65 Pages	Attachments Included