

Deed of Variation to Planning Agreement – Sydney Science Park

Celestino Developments SSP Pty Ltd (ABN 67 607 351 642)

Penrith City Council (ABN 43 794 442 563)

Contents

1.	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Interpretation	1
1.3	Interface with Agreement	2
2.	Amendment of Original Agreement.....	2
3.	Acknowledgement.....	2
4.	General	2
4.1	Amendments	2
4.2	Counterparts	2
4.3	Severance	2
4.4	Entire agreement.....	3
4.5	Further Assurances.....	3
5.	Governing Law and Jurisdiction.....	3

Deed of Variation

Date

2023

Parties

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

Penrith City Council (ABN 43 794 442 563) of 601 High Street, Penrith NSW (**Planning Authority**)

Background

- A. On around 9 September 2016 the parties entered into a deed titled Planning Agreement – Sydney Science Park, being a planning agreement under then s. 93F of the Act (**Original Agreement**).
- B. The parties have agreed to vary the Original Agreement on the terms and conditions set out in this Deed of Variation.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this Deed of Variation capitalised terms not otherwise defined take their meaning from the Original Agreement and the following other definitions apply:

Act means the Environmental Planning and Assessment Act 1979.

Original Agreement has the meaning given to that term in recital A of this deed.

Deed of Variation means this Deed of Variation.

Effective Date means the date on which this Deed has been executed by the parties.

Regulation means the Environmental Planning and Assessment Regulation 2021.

1.2 Interpretation

In this deed headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a party includes that party's executors, administrators, liquidators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

- (e) a reference to a document or a provision of a document is to that document or provision as varied, novated, ratified or replaced from time to time;
- (f) a reference to this Deed is a reference to this Deed as varied, novated, ratified or replaced from time to time;
- (g) a reference to **\$** or **dollar** is to Australian currency; and
- (h) this Deed must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Interface with Agreement

- (a) In the event of any inconsistency between the provisions of this Deed of Variation and the provisions of the Original Agreement, the provisions of this Deed of Variation shall prevail to the extent of such inconsistency.

2. Variation of Original Agreement

On and from the Effective Date, the Original Agreement is varied such that it now comprises the document attached to this Deed of Variation as "Annexure A" (**the Varied Agreement**).

3. Acknowledgement

The parties agree that:

- (a) save for the amendments to the Original Agreement set out in this Deed, the Original Agreement remains in all other aspects valid and effective;
- (b) the Varied Agreement comprises a variation to the Original Agreement, rather than a termination or replacement of the Original Agreement; and
- (c) this Deed of Variation, together with the Varied Agreement, comprises an amendment to a planning agreement for the purposes of clause 203 of the Regulation.

4. General

4.1 Amendments

This Deed of Variation may only be varied by a deed executed by or on behalf of each party.

4.2 Counterparts

This Deed of Variation may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

4.3 Severance

If at any time any provision of this Deed of Variation is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed of Variation; or

- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed of Variation.

4.4 Entire agreement

This Deed of Variation and the Varied Agreement contain the entire agreement between the parties with respect to their subject matter and supersede all previous agreements, understandings and negotiations on that subject matter.

4.5 Further Assurances


Each party must do all things and execute all further documents necessary to give full effect to this Deed of Variation.

5. Governing Law and Jurisdiction

This Deed of Variation is governed by the law applying in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed of Variation and waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 5.

Executed as a deed.


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:



Witness

Penny Dixon

Name of Witness (Print)



Signature of Attorney

John Camilleri

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:

Witness

Name of Witness (print)

Officer

Name of Officer (print)

Annexure A – Varied Agreement

Planning Agreement - Sydney Science Park

Celestino Developments SSP Pty Ltd
ABN 67 607 351 642

Penrith City Council
ABN 43 794 442 563

CONTENTS

KEY DETAILS	1
BACKGROUND	2
TERMS	4
1 Planning Agreement under the Act	4
2 Application of this Agreement	4
3 Commencement and Operation of this Agreement	4
4 Definitions and interpretation	4
5 Development Contributions to be made under this Agreement	11
6 Indexation of Contributions (excluding Affordable Housing and Permanent Community Facilities)	12
7 Indexation of Affordable Housing and Permanent Community Facility Contributions	12
8 Works	13
9 Dedication or Lease	15
10 Publicly Accessible Roads	17
11 Monetary Contribution for road works	19
12 Road Works Review	19
13 Consultant support for assessment of Lease Submissions and ongoing management and administration	20
14 Substitution of Contribution for Agreed Better Outcome	22
15 Application of sections 94, 94A and 94EF of the Act to the Development	22
16 Contributions towards Penrith City-wide facilities	22
17 Registration of this Agreement	23
18 Review of this Agreement	23
19 Dispute Resolution	23
20 Security and Enforcement	25

21	Notices	25
22	Approvals and consent	26
23	Assignment and Novation	26
24	Release and discharge	27
25	Insolvency or inability of Developer to fulfil obligations	28
26	Force Majeure	29
27	Change in Law	30
28	Costs	30
29	Entire Agreement	31
30	Further acts	31
31	Governing law and jurisdiction	31
32	No fetter	31
33	Representations and warranties	31
34	Severability	32
35	Waiver	32
36	GST	32
37	Effect of schedules	34
38	Relationship of Parties	34
39	Counterparts	34
40	Rights cumulative	34
	Schedule 1- Section 93F Requirements	36
	Schedule 2 - Explanatory Note	38
	Schedule 3 – Novation Deed	43
	Schedule 4 - Land	51
	Schedule 5 - Tables	49

Schedule 6 – Criteria to be satisfied when making a Lease Submission	61
--	----

Schedule 7 – Form of services easement	63
--	----

KEY DETAILS

1	Date	See execution on page 35
----------	-------------	--------------------------

2	Parties	
----------	----------------	--

	Developer	
--	------------------	--

Name	Celestino Developments SSP Pty Ltd ABN 67 607 351 642
Address	642 Great Western Highway, Pendle Hill, NSW 2145
Attention	The Directors
Email	legal@celestino.net.au with a copy to contracts@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 represents a new vision for Australia to cluster leading science based businesses, tertiary institutions, research and development providers in one location to advance innovation in a range of fields. The Development will comprise research and development, employment, education, retail and residential uses. Supporting residential uses, provision of a new town centre and an extensive network of open space are also key features of the Development.
- C In terms of area, 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.
- D Sustainability and the environment are key parts of the Development and its science and technology focus. Through innovative master plan design, the Developer intends to develop significant tracts of embellished open spaces and integrate the site's environmental features into parklands, water bodies and view lines to the nearby Blue Mountains.
- E Against this background, the Developer's parent company submitted the Planning Proposal to the Planning Authority in August 2013. 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.
- F As part of its commitment to deliver a world class masterplanned hub, the Developer submitted an offer in support of the Planning Proposal and the Development to make certain Development Contributions and enter into a planning agreement on 27 October 2015, to ensure the delivery of a range of infrastructure to meet demands generated by the Development, such as a range of open spaces, footpaths and shared pathways, public art, community facilities and water sensitive urban design and wetland facilities. This Agreement records the Agreement with the Developer and the Planning Authority in relation to the agreed Development Contributions and how they may be dealt with.
- G This Agreement also addresses the management of certain public spaces within the Development known as the Management Lands. For the most part, the Management Land is Dedication Land that is part of the Development Contributions. The Developer has also agreed to provide consultancy support to the Council to assist with assessment of innovative aspects of the Development Contributions on a trial basis, as set out in this Agreement.
- H The guiding vision for the Development is to be a vibrant, integrated and sustainable city, founded as a centre for disruption and innovation where people can innovate, learn, live, play and trade in a connected and responsive community. A key aspect of this vision is to provide a 'safe to fail' environment because trial and error is at the core of innovation. For innovation to thrive there must also be flexibility and nimbleness, with certainty as to the regulatory environment.
- I In support of this vision, the parties have agreed to implement a mechanism for managing the Management Land that is in itself innovative. That is, if the criteria established by this Agreement are satisfied, the Management Land may be privately managed pursuant to a Lease instead of being managed by the Council or another public authority.

-
- J Managing the Management Land in this way will contribute to the success of the Development by helping to realise the vision described in paragraph H.
- K In addition to the Management Land, the Developer will also construct Publicly Accessible Roads within the Development. Like the Management Land, some of these Publicly Accessible Roads are intended to be accessible to the public but to remain privately managed under a Lease or privately owned if the criteria in this Agreement are satisfied. This is to support the vision of the Development and to allow for the free flow of innovation and to keep pace with fast changes in technology. While Publicly Accessible Roads are not the subject of the Development Contributions, they have been included in this Agreement to record the arrangements agreed by Council and the Developer in relation to Publicly Accessible Roads.
- L Since this Agreement was entered into on 9 September 2016, the following has occurred:
- a. on 28 October 2016, the Amending LEP came into effect and the Land was rezoned in accordance with the Planning Proposal;
 - b. on 25 March 2022, the Land became subject to the provisions of SEPP (Precincts – Western Parklands City) instead of the Penrith LEP; and
 - c. on 25 March 2022, part of the land to which this Agreement originally applied was compulsorily acquired by Sydney Metro for the purposes of the Sydney Metro – Western Sydney Airport project and is no longer owned by the Developer.
- M Notwithstanding the changes outlined at paragraph L above, the Council and the Developer intend for this Agreement with the amendments which are incorporated in this document to continue to apply, with:
- a. the Land to which this Agreement applies being the Land as defined in Schedule 4 to this Agreement which remains in the Developer's ownership; and
 - b. references to:
 - i. the Penrith LEP to be taken to be references to SEPP (Precincts – Western Parklands City) on and from 25 March 2022;
 - ii. "Precinct Plans" to be taken to be references to the Western Sydney Aerotropolis Precinct Plan on and from 25 March 2022; and
 - iii. "Penrith DCP" to be taken to be references to any development control plan that may come into force and apply to the Land under SEPP (Precincts – Western Parklands City) in future,
- as well as all applicable environmental planning instruments, precinct plans and development control plans that may apply to the Land from time to time in place of the above.

TERMS

1 Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 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.

Agreement for Lease means the agreement for lease document titled "Agreement for lease – Sydney Science Park" between Penrith City Council and Celestino Developments SSP Pty Limited, which has reference number 21184/80198254 as at the date of this agreement, and as may be amended by agreement between the parties from time to time.

Amending LEP means the proposed instrument as detailed in the Planning Proposal, which proposes to amend the Penrith LEP 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.

Consultant means a third party not employed by the Council with relevant expertise to enable them to assess a Lease Submission.

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 the DOS Payment under Clause 6.5 and the Temporary Community Facility.

Dedication Roads are roads that the Developer nominates to be dedicated to the Council as a public road (as defined under the Roads Act 1993 (NSW)). It is intended, but not mandatory, for these roads to consist of roads where access to testing and enabling innovation in road infrastructure is not of principal consideration. These roads are likely to be immediately proximate to Torrens titled lots in residential areas, where it is appropriate for road access to be conventional.

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 any part or stage of the Development.

Development Consent means the determination by approval of the Development Application for the Development or any part or 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,
which:
 - (ix) prevents a party from carrying out its obligations under this Agreement, or the Developer from carrying out the Development;
 - (x) is beyond the control of the affected party; and
 - (xi) 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.

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.

Lease means a lease of any Management Land or Leaseback Road entered into, or to be entered into between the parties, in the form that is annexed to the Agreement for Lease.

Lease Submission means a submission to Council for an area of Management Land or a Leaseback Road to be subject to a Lease, which must address the criteria set out in Schedule 6.

Leaseback Roads are roads that the Developer nominates to be dedicated as fee simple to the Council (but not as a public road (as defined under the Roads Act 1993 (NSW)), and which the Council will lease back to the Developer under a Lease. It is intended, but not mandatory, that these roads will comprise boulevard and other higher order roads and will typically include hi-tech infrastructure, such as sensors for autonomous vehicles or drone stations. It is likely that roads in this class will be ones where access to testing and enabling innovation is a principal consideration, but public access is also essential. These roads would be 'operational land' owned by Council.

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

LRS means the NSW Land Registry Services or any other Authority replacing it.

Management Land means:

- (a) any Dedication Land; or
- (b) the library in Table B of Schedule 5 if that would be undertaken as works in kind by the Developer and transferred to the Council in the ordinary course if the Lease did not apply;
- (c) the Temporary Community Facility referenced in Table C of Schedule 5;
- (d) any other land within the Development that would be required to be dedicated to Council as part of a development consent or other planning approval.

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.

Partial Occupation Certificate means an Occupation Certificate issued in relation to only part of a new building or development in accordance with Division 6.3 of Part 6 of 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.

Penrith DCP means the Penrith Development Control Plan 2014.

Penrith LEP means the Penrith Local Environmental Plan 2010.

Permanent Community Facility has the same meaning as "community facility" in the Penrith 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 proposed to rezone the Land from RU2 Rural Landscape to:

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

Private Roads are roads that the Developer nominates to be retained in fee simple ownership by the Developer. It is intended, but not mandatory, for these types of roads to exist within campus-style, superlot or similar stages of the Development where general public access is not required. Access arrangements for these roads would be between the Developer (or the then owner of the land) and the primary occupant of the land.

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 7.4(2) of the Act.

Publicly Accessible Road means any one of:

- (a) a Dedication Road;
- (b) a Leaseback Road; or
- (c) a Private Road.

Regulation means the Environmental Planning and Assessment Regulation 2021 (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 Penrith LEP, Penrith DCP and 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).

SEPP (Precincts - Western Parklands City) means the State Environmental Planning Policy (Precincts—Western Parkland City) 2021.

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 DCP and the Penrith Water Sensitive Urban Design Policy 2013, or any succeeding Plan or Policy.

Western Sydney Aerotropolis Precinct Plan means the Western Sydney Aerotropolis Precinct Plan prepared and in force under the provisions of SEPP (Precincts – Western Parklands City).

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:
 - (i) the Penrith LEP includes SEPP (Precincts – Western Parklands City) on and from 25 March 2022;

-
- (ii) "Precinct Plans" includes the Western Sydney Aerotropolis Precinct Plan on and from 25 March 2022; and
 - (iii) "Penrith DCP" includes references to any development control plan that may come into force and apply to the Land under SEPP (Precincts – Western Parklands City) in future,

as well as all applicable environmental planning instruments, precinct plans and development control plans that may apply to the Land from time to time in place of the above.

- (e) 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.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) 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.
- (j) 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.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) 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.
- (n) 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 Management Land, to instead implement a Lease for that land in accordance with this Agreement;
 - (iv) the payment of the Monetary Contributions to the Planning Authority; and
 - (v) payment of the reasonable costs of a Consultant to assist Council in assessing Lease Submissions as set out in clause 13
- (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 Consent, 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 Lease

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 LRS 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 LRS.

9.3 Lease of Management Land

- (a) At least four weeks prior to submitting a Development Application that includes land that is Management Land, if the Developer wishes for that Management Land to be subject to a Lease, the Developer must submit to Council the Lease Submission.
- (b) Council must promptly consider the Lease Submission made pursuant to clause 9.3(a) and must:

-
- (i) within 4 weeks of the Developer submitting the Lease Submission to Council, request any further information required to assist with the assessment of the Lease Submission from the Developer and issue a non-binding lease approval to the Developer, on a conditional basis, and subject to any necessary changes or amendments arising from the determination of the relevant development application; and
 - (ii) notify the Developer of its final determination as to whether the Lease Submission is approved or refused within one week of determining the Development Application.
 - (c) Council will not unreasonably withhold its approval to the Lease Submission if the Lease Criteria is satisfied and additional concerns do not arise.
 - (d) If Council approves the Lease Submission:
 - (i) the relevant area of Management Land will be dedicated to Council in accordance with clause 9.2;
 - (ii) Council must promptly and before the Lease commences classify the relevant area of Management Land as 'operational land' for the purposes of section 26 of the Local Government Act 1993 (NSW);
 - (iii) the Agreement for Lease applies to the relevant area of Management Land;
 - (iv) If the Developer is of the opinion that an easement for services on the terms set out in Schedule 7 in favour of the Developer or the benefitted land nominated by the Developer (or if the Developer is not the service provider, the service provider(s)) within the relevant portion of the Management Land lot(s), is required to allow the Developer to install, access and maintain the services, which will survive termination of the Lease, then the Developer may request that Council grant, at no cost, an easement for services; and
 - (v) When requesting an easement for services under clause 9.3, the Developer must ensure that the layout, design and dimensions of the easement minimises the portion of the Management Land lot(s) to be burdened by the easement. The Developer must also be able to confirm, to the satisfaction of Council, that the requirement for an easement for services could not be efficiently accommodated via Leaseback Roads and Dedication Roads.
 - (e) Council will not unreasonably withhold a request for an easement for services on Management Land lot(s) subject to the operation of clause 9.3(c).
 - (f) If Council does not approve the Lease Submission:
 - (i) Council must give the Developer reasons for its decision at the same time as notifying the Developer that the Lease Submission is not approved; and

-
- (ii) If the Developer does not dispute the reasons for decision under clause 19, the relevant area of Management Land will be dedicated to Council in the ordinary course pursuant to clause 9.2.
 - (g) For the avoidance of doubt, the submission to Council of a Lease Submission under clause 9.3(a) less than four weeks prior to lodgement of the relevant development application, does not affect:
 - (i) the validity of the Lease Submission or development application in any way;
 - (ii) the four week period that Council has to assess the Lease Submission in clause 9.3(b)(i).

10 Publicly Accessible Roads

10.1 Publicly Accessible Roads under this Agreement

- (a) The parties acknowledge that:
 - (i) for the purposes of the Development, the Developer will be required to construct a range of Publicly Accessible Roads on the Land;
 - (ii) however, while the Developer is not obliged to construct or dedicate any Publicly Accessible Roads under this Agreement, to ensure that the values and vision for the Development can be achieved, this clause 10 applies to the ownership and long term management of Publicly Accessible Roads.

10.2 Hierarchy of Publicly Accessible Roads

For the purpose of this Agreement, the following are the categories of Publicly Accessible Roads, as defined under clause 4.1:

- (a) Dedication Roads;
- (b) Leaseback Roads; and
- (c) Private Roads.

10.3 Nomination of Publicly Accessible Roads classifications

- (a) At least four weeks prior to submitting a Development Application that includes an application to subdivide that will result in, or for the construction of, a Publicly Accessible Road, whichever occurs first, the Developer must:
 - (i) classify and identify to Council whether the Publicly Accessible Road is intended to be a Dedication Road, a Leaseback Road or a Private Road; and
 - (ii) if the classification is a Leaseback Road, make a Lease Submission in relation to the Leaseback Road.

-
- (b) Council must promptly consider the Lease Submission made pursuant to clause 10.3(a)(ii) and must:
- (i) within 4 weeks of the Developer submitting the Lease Submission to Council request any further information required to assist with the assessment of the Lease Submission from the Developer and issue a non-binding lease approval to the Developer, on a conditional basis, and subject to any necessary changes or amendments arising from the determination of the relevant Development Application; and
 - (ii) notify the Developer of its final determination as to whether the Lease Submission is approved or refused within one week of determining the Development Application.

Council will not unreasonably withhold its approval to the Lease Submission if the Lease Criteria is satisfied.

- (c) If Council approves the Lease Submission:
- (i) the relevant Leaseback Road will be dedicated to Council as fee simple to the Council (but not as a public road (as defined under the Roads Act 1993 (NSW)) following the procedure set out in clause 9.2;
 - (ii) Council must promptly and before the Lease commences classify the relevant area of Leaseback Road as 'operational land' for the purposes of section 26 of the Local Government Act 1993 (NSW);
 - (iii) the Agreement for Lease applies to the relevant area of Leaseback Road;
 - (iv) Council must on request, at no cost, grant an easement for services on the terms set out in Schedule 7 in favour of the Developer or the benefitted land nominated by the Developer (or if the Developer is not the service provider, the service provider(s)) within the relevant portion of the Leaseback Road lot(s), to allow the Developer to install, access and maintain the services efficiently, and which will survive termination of the Lease.
- (d) If Council does not approve the Lease Submission:
- (i) Council must give the Developer reasons for its decision at the same time as notifying the Developer that the Lease Submission is not approved; and
 - (ii) if the Developer does not dispute the reasons for decision under clause 19, the relevant area of Leaseback Road will be dedicated to Council in the ordinary course following the procedure in clause 9.2.
- (e) In the case of Dedication Roads, on dedication of the Dedication Road, Council must on request, at no cost, grant an easement for services on the terms set out in Schedule 7 in favour of the Developer or the benefitted land

nominated by the Developer (or if the Developer is not the service provider, the service provider(s)) within the relevant portion of the Dedication Road lot(s) if considered necessary by the Developer and Council, to allow the Developer to install, access and maintain the services efficiently.

- (f) For the avoidance of doubt, the submission to Council of a Lease Submission under clause 10.3(a) less than four weeks prior to lodgement of the relevant development application, does not affect:
 - (i) the validity of the Lease Submission or development application in any way;
 - (ii) the four week period that Council has to assess the Lease Submission in clause 10.3(b)(i).

11 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.

12 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.

13 Consultant support for assessment of Lease Submissions and ongoing management and administration

- (a) Subject to this clause 13, the Council is entitled to claim from the Developer:
 - (i) its reasonable costs of utilising a Consultant to assist in the assessment of Lease Submissions; and
 - (ii) costs that Council reasonably incurs in the ongoing management and administration of the premises that are subject to a Lease that are more than the costs Council would incur to manage and administer the premises if the Lease was not in place.
- (b) On each occasion that the Council receives a Lease Submission under this Agreement, then within 7 days of lodgement of the Lease Submission it may send a notice to the Developer which:
 - (i) informs the Developer that the Council requires the support of a Consultant to assess the Lease Submission or that it reasonably expects to incur costs in the ongoing management and administration of the premises that may become subject to a Lease if the Lease Submission is approved and these costs are more than the costs Council would incur to manage and administer the premises if the Lease was not in place; and
 - (ii) provides a proposal that details, as relevant:
 - i. the identity of the Consultant proposed by Council, the work that Council envisages the Consultant will undertake, the time (in hours or days) that the Council considers are required for that Consultant to assist in the assessment of the Lease Submission and the cost of the Consultant; or

-
- ii. the costs that Council reasonably expects to incur (including as to time periods and activities) in the ongoing management and administration of the premises that are subject to a Lease where they will be more than the costs Council would incur to manage and administer the premises if the Lease was not in place.
 - (c) The Developer can respond to the notice in clause 13(b) within 14 days by either:
 - (i) accepting the notice, in which case:
 - i. in respect of costs relating to a Lease Submission: the Developer will be required to pay the Council for the costs of the Consultant as set out in the notice, after the Lease Submission has been assessed and a tax invoice has been given to the Developer
 - ii. in respect of costs relating to ongoing management and administration costs during the Lease term: the parties will include in the Lease an obligation on the lessee entity to pay the costs set out in the notice that has been accepted by the Developer, at the times and in the amounts specified in the notice;
 - (ii) accepting the requirement for the Consultant but rejecting the specific Consultant nominated, the time, or the costs nominated, in which case the Council and the Developer are to meet in an attempt to reach agreement on those outstanding matters within 7 days of the Developer's notice; or
 - (iii) rejecting the notice in its entirety, in which case the Council and the Developer are to meet in an attempt to reach agreement within 7 days of the Developer's notice.
 - (d) Should the Council and Developer be unable to reach agreement under either clause 13(c)(i) or 13(c)(ii) within the 7 day period specified in those clauses, then clause 19 will apply to those matters not agreed.
 - (e) Nothing in this clause 13 affects any time periods in clauses 9.3 or 10.3.
 - (f) The requirements under this clause 13 will apply on a trial basis for 12 months from the commencement date of this clause 13. The parties must meet prior to the expiry of that first year to discuss whether:
 - (i) the requirements of this clause will continue for the remainder of the term of this Agreement or another defined period; or
 - (ii) a different arrangement will be entered into for the Developer to support Council in its assessment of Lease Submissions under this Agreement or in relation to additional costs that Council may incur in the ongoing management and administration of areas that are subject to Leases.

14 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.

15 Application of sections 7.11, 7.12 and 7.24 of the Act to the Development

- (a) This Agreement excludes the application of sections 7.11 and 7.12 of the Act to the Development.
- (b) This Agreement does not exclude the application of section 7.24 of the Act to the Development.

16 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 7.11 contributions plans of the Planning Authority.

17 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 LRS 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 LRS 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 LRS 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 17(a).

18 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.

19 Dispute Resolution

19.1 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.

19.2 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).

19.3 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 19.2) 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.

19.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with clause 19.3; and
- (b) the Parties have been unable to reach an outcome identified in clause 19.3(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 19.3,

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.

19.5 Urgent interlocutory proceedings

At any time, a Party may, without inconsistency with anything in this clause 19, seek urgent interlocutory relief in respect of a dispute under this Agreement from any Court having jurisdiction.

20 Security and Enforcement

20.1 Security

The Parties agree that registration of this Agreement constitutes suitable means of enforcement for the purpose of section 7.4(3)(g) of the Act.

21 Notices

21.1 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: The Directors
Address: 642 Great Western Highway, Pendle Hill, NSW 2145
Fax Number: 02 9842 1059
Email: legal@celestino.net.au with a copy to contracts@celestino.net.au

21.2 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.

21.3 Giving of Notice

Subject to clause 21.4, 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.

21.4 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.

22 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.

23 Assignment and Novation

23.1 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.

23.2 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 24.
 - (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.

24 Release and discharge

24.1 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 LRS 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.

24.2 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 24.1 and 24.2, 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 LRS pertaining to the Land, or part of the Land.

24.3 Release and discharge for Publicly Accessible Roads

For the avoidance of doubt, the parties acknowledge that as no Development Contributions are required in respect of Publicly Accessible Roads, Council cannot maintain registration of this Agreement on the title of any parts of the Land, or refuse to de-register this Agreement from such title, due to the presence of, and requirements in relation to, any Publicly Accessible Roads.

25 Insolvency or inability of Developer to fulfil obligations

25.1 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 25.1(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.

25.2 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.

25.3 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 25, 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.

26 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 19.
- (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 LRS relating to the land within 20 Business Days of receiving written request from the Developer.
- (g) If paragraph (e) applies, the 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.

27 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 27(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 19.
- (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.

28 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.

29 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.

30 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.

31 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.

32 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.

33 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.

34 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.

35 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.

36 GST

36.1 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.

36.2 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.

36.3 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.

36.4 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.

36.5 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.

36.6 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.

36.7 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.

36.8 Application of clause

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

37 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.

38 Relationship of Parties

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

39 Counterparts

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

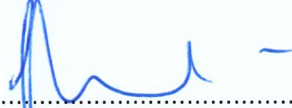
40 Rights cumulative

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

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:)




.....
Witness



.....
Name of Witness (print)



.....
Signature of Attorney



.....
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:)

.....
Witness

.....
Name of Witness (print)

.....
Officer

.....
Name of Officer (print)

Schedule 1- Section 7.4 Requirements

Provision of the Act	This Agreement
Under section 7.4(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 7.4(3)(a))	See schedule 4
Description of the development to which this Agreement applies- (Section 7.4(3)(b)(ii))	<p>The Development comprises development on the Land for:</p> <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 nature and extent of the provision to be made by the developer, timing and manner of delivery of Development Contributions required by this Agreement - (Section 7.4(3)(c))	See clauses 8, 8.5, 10 and schedule 5
Applicability of Section 7.11 of the Act - (Section 7.4(3)(d))	Section 7.11 is excluded.
Applicability of Section 7.12 of the Act - (Section 7.4(3)(d))	Section 7.12 is excluded.
Applicability of Section 7.24 of the Act - (Section 7.4(3)(d))	Section 7.24 is not excluded as it applies to the Development.
Applicability of Section 7.4(3)(e) of the Act	Not Applicable.
Mechanism for Dispute resolution - (Section 7.4(3)(f))	See clause 19.
Enforcement of this Agreement - (Section 7.4(3)(g))	See clause 20.
Registration of this Agreement (Section 7.6)	See clause 16.

Provision of the Act	This Agreement
No obligation to grant consent or exercise functions - (Section 7.4(9))	See clause 22 and 32.

Schedule 2 - Explanatory Note

Environmental Planning and Assessment Regulation 2021 (Clause 205)

Explanatory Note

1 Planning Agreement

Under section 7.4 of the Environmental Planning and Assessment Act 1979 (NSW) and Clause 205 of the Environmental Planning and Assessment Regulation 2021

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 2 in DP1242470, and Lots 202, 204, 206 in DP1280188, 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

4.2 Changes since the Planning Agreement was entered into

Since the Planning Agreement was entered into on 9 September 2016, the following has occurred:

- on 28 October 2016, the Amending LEP came into effect and the Land was rezoned in accordance with the Planning Proposal;
- on 25 March 2022, the Land became subject to the provisions of SEPP (Precincts – Western Parklands City) instead of the Penrith LEP; and
- on 25 March 2022, part of the Land was compulsorily acquired by Sydney Metro for the purposes of the Sydney Metro – Western Sydney Airport project and is no longer owned by the Developer.

Notwithstanding these changes, the Council and the Developer intend for the Planning Agreement to continue to apply (as amended in this draft Planning Agreement), with:

- the Land to which this Agreement applies being the Land as defined in Schedule 4 to this Agreement which remains in the Developer's ownership; and
- references to:
 - the Penrith LEP to be taken to be references to SEPP (Precincts – Western Parklands City) on and from 25 March 2022;
 - "Precinct Plans" to be taken to be references to the Western Sydney Aerotropolis Precinct Plan on and from 25 March 2022; and
 - "Penrith DCP" to be taken to be references to any development control plan that may come into force and apply to the Land under SEPP (Precincts – Western Parklands City) in future,

as well as all applicable environmental planning instruments, precinct plans and development control plans that may apply to the Land from time to time in place of the above.

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 Lease instead of it being dedicated 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 Lease
- (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 7.11 contributions plan.
- (e) Provides that the Development Contributions are made in place of contributions normally required under s7.11 and s7.12 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 s1.3 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

KEY DETAILS	43
BACKGROUND	44
TERMS	44
1 Interpretation	44
1.1 Definitions	46
1.2 Construction	44
1.3 Headings	45
2 Novation	45
2.1 Original Agreement	47
2.2 Reference in Original Agreement	45
2.3 Address for Notices	45
2.4 Coordination of Works and Dedication	45
3 Affirmation of the Original Agreement	48
4 Indemnities	48
5 Warranties and Representations	46
5.1 Warranties	48
5.2 Survival of Warranties	46
6 GST	47
7 Stamp Duty and Costs	47
8 Further Acts	47
9 Amendment	47
10 Governing Law	47
11 Counterparts	47

KEY DETAILS

3	Date	See Execution on page 50
---	-------------	--------------------------

4 **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

The land located at 565-609 Luddenham Road, Luddenham NSW 2745 and legally described as follows:

Lot	Deposited Plan	Folio Identifier
2	DP1242470	2/DP1242470
202, 204, 206	DP1280188	202/1280188 204/1280188 206/1280188

Schedule 5 – Tables

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 Lease 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	Active Open Space	Embellishment of 10.2 ha of Active Open Space: Items may include: <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 • Picnic shelters and tables 	-----	16,000sqm	30,000sqm	26,000sqm	30,000sqm	\$10,682,460

		<ul style="list-style-type: none"> 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 the Penrith LEP, Penrith DCP and Precinct Plans.</p>							
2	Passive Open Space	<p>Embellishment of 11.316ha of passive open space which may include</p> <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 		10,000sqm	25,000sqm	50,000sqm	28,160sqm	\$10,071,240	

		<ul style="list-style-type: none">• Amenities buildings incorporating toilets, change rooms, canteens• Bike paths• Walking tracks• Synthetic tracks, playing fields and surfaces• Public Art• Open spaces• Water features and water play facilities• Nature Walks• District (City-wide) level Picnic Areas• District (City-wide) level Landscaping• Lighting• Car parking• Multi sport facilities• Basketball Courts• Netball Courts• Tennis Courts• Other hard paved courts• Any ancillary features ordinarily required in association with the above recreation features <p>This contribution may be provided by a cash contribution in accordance with clause 8.5 in the VPA.</p>																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																</
--	--	---	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	----

6	Permanent Community Facility	Construction of a multi-purpose community facility with a floor area of approximately 586sqm and site area of approximately 3,266sqm. Location and standard of facilities to be consistent with the Penrith LEP, Penrith DCP and Precinct Plans, Council Building Policy OPD004 (or its successor) and incorporate car parking, fitout, landscaping and any other attributes ordinarily associated with a community facility at a value described under this Agreement for this facility.	the 400 th dwelling						Delivered	\$3,135,000
7	Water Sensitive Urban Design and wetland facilities	7.75ha of WSUD and stormwater control devices within identified catchments and for works and facilities, consistent with the site's applicable Water Cycle Management Strategy Works to include: <ul style="list-style-type: none">Stormwater detention basinsRain gardensMaintenance period (12 months from completion) Location and standard to be consistent with the Penrith LEP, Penrith DCP and Precinct Plans.	Progressive as each precinct develops and prior to occupation of the first building in each precinct.	Progressive as each precinct develops and prior to occupation of the first building in each precinct.	Progressive as each precinct develops and prior to occupation of the first building in each precinct.	Progressive as each precinct develops and prior to occupation of the first building in each precinct.	Progressive as each precinct develops and prior to occupation of the first building in each precinct.	Progressive as each precinct develops and prior to occupation of the first building in each precinct.	Progressive as each precinct develops and prior to occupation of the first building in each precinct.	N/A\$
8	Public Art	Prepare a Public Art Strategy Public Art integrated with the public domain and public open space areas. Public Art Strategy to be completed in concurrence with Council and requires mutual agreement.	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.	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 contribution

									s 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 lots	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 3400 dwelling stock.						Delivered	
13	Footpaths and Shared Pathways	Location and standard of these facilities to be consistent with the Penrith LEP, Penrith 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	Progressive as each precinct develops and prior to subdivision certificate	N/A

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.

Schedule 6 – Criteria to be satisfied when making a Lease Submission

When the Developer makes a Lease Submission to Council, the Lease Submission must address each of the following criteria and the Developer must provide reasons for its response to each criteria:

Criteria	Explanation of criteria
Is the Lease required to achieve the vision of the Development?	The guiding vision for the Development is to be a vibrant, integrated and sustainable city, founded as a centre for disruption and innovation where people can innovate, learn, live, play and trade in a connected and responsive community
Is the Lease required to achieve one or more of the values of the Development?	There are a number of values that underpin the vision and inform how the Development is planned. The Development is intended to be: <ul style="list-style-type: none"> • a vibrant and integrated community; • a healthy living and working environment; • a cultural and artistic community; • a unique precinct where innovation is fostered and supported; • a sustainable ecosystem; and • a smart city (being a city in which information and communication technologies are integrated and used to enhance the quality and performance of services, utilities and the urban environment.).
If the Lease is granted, will the general public have access to the relevant area of Management Land or Leaseback Road as if Council or another public authority owned the area?	It is important to the Development and to Council that the management and control of the Management Land or Leaseback Road is seamless and as if Council or a public authority had management and control of the relevant area.
Will innovative infrastructure be used within the relevant area of Management Land or Leaseback Road?	<p>A key goal of the Development is to foster innovation, which will more readily happen if innovators will be able to quickly install emerging technology in public spaces and trial their products in real world situations (subject always to strict adherence with all relevant standards, safety and other legal requirements including development consent if required).</p> <p>If the area will include infrastructure that includes new technologies or is innovative, a better outcome will be provided to all stakeholders if management of the area housing emerging technology and infrastructure is given to the party that is able to implement, manage and maintain these new types of</p>

	technology and infrastructure across the affected areas of the precinct (including privately owned land) due to its ownership and/or management of the majority of landholdings in the Development.
Will the area the subject of the Lease Submission be used for trialling or testing innovation?	It is important to innovators to be able to operate in an environment that is nimble and flexible, but at the same time, providing long term certainty that such innovations will be encouraged and allowed. Meaningful innovation requires long term certainty, which can be provided under a long-term lease that sets out established rules of use..
Will the relevant area of Management Land or Leaseback Road be maintained to at least the standard it would be maintained if Council or a public authority managed and controlled the area?	It is important that the public has the same level of enjoyment of the area, and maintaining the area to a publicly acceptable standard (such as any standards which would apply if the Council was maintaining the area) is critical to ensuring this outcome.
Will the general public be disadvantaged if the relevant area of Management Land or Leaseback Road is managed and controlled by an entity other than Council or a public authority?	Council must ensure that it fulfils its governance role and provides all necessary services to its constituents.

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

Plan:

Plan of Subdivision of Lot [#] in Deposited

Plan [#]

Subdivision Certificate number: [#]

PART 1 - CREATION

**Full name and address of proprietors of the land or
Prescribed Authorities:**

Penrith City Council
ABN 43 794 422 563
601 High Street, Penrith NSW 2750

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	Easement for Access, Maintenance and Services (A)	Lot [#Council lot number in plan of subdivision]	Lot [#] in Deposited Plan [#] [Drafting note: Lot and plan details for Celestino utility or infrastructure lot to be included.]
2	Restrictive Covenant (B)	Lot [#Council lot number in plan of subdivision]	Lot [#] in Deposited Plan [#] [Drafting note: Lot and plan details for Celestino utility or infrastructure lot to be included.]

Plan:

Plan of Subdivision of Lot [#] in Deposited Plan [#]

PART 2 – TERMS

1. Terms of Easement for Access, Maintenance and Services numbered 1 in the Plan (A)

1.1. Easement for Access and Maintenance

- (a) The Grantor grants the Grantee, its successors and assigns and all Authorised Users the right:
 - (i) to full, free and unimpeded access to, by any means, and to pass and repass over, the Easement Site at any time together with any Equipment for any purpose including to access, inspect, maintain, repair, alter, operate and replace the Apparatus; and
 - (ii) to remain on the Easement Site for such purposes,
 on the following conditions:
 - (iii) the Grantee must take all reasonable precautions to ensure as little disturbance or damage as possible to the Lot Burdened and will as soon as reasonably practicable restore the Lot Burdened as nearly as practicable to its original condition and make good any collateral damage;
 - (iv) except in the case of an Emergency, before incurring any Costs in rectification of any damage occasioned by the exercise of the Grantee's rights, the Grantor must notify the Grantee in writing of any damage occasioned as a result of such exercise and, in the case of remediable damage, give the Grantee a reasonable period to rectify that damage;
 - (v) if any proposed development or other activity to be carried out by the Grantor on the Lot Burdened will:
 - A. materially and adversely impact or affect the Grantee's or its Authorised Users' use of, or interest in, the Easement Site;
 - B. materially and adversely impact or affect the provision of Services;
 - C. materially damage or otherwise materially and adversely affect any Apparatus; or
 - D. result in the Easement Site being inaccessible or substantially inaccessible by the Grantee or its Authorised Users,

Plan:

Plan of Subdivision of Lot [#] in Deposited Plan [#]

the Grantee may make an objection to the development or other activity in accordance with clause 1.1(d).

- (b) The Grantor for itself and its successors and assigns covenants with the Grantee and its successors and assigns that the Grantor will not, without the prior written approval of the Grantee (which approval must not be unreasonably withheld), permit, allow or cause:
 - (i) the access granted to the Grantee, its successors and assigns and Authorised Users over the Lot Burdened and to or from any land adjoining the Lot Burdened pursuant to this easement to be restricted in any way;
 - (ii) subject to the Grantor's rights and obligations in relation to any proposed development of the Lot Burdened under clause 1.1(c), anything to be done or omitted to be done to the Lot Burdened which would prevent or prejudice the Grantee and its Authorised Users exercising the rights granted to the Grantee pursuant to this easement.
- (c) Before the Grantor may develop the Lot Burdened, the Grantor must as soon as reasonably practicable (and in any event no later than the earlier of 60 days before the Grantor:
 - (i) lodges a development application (including an application for a modification of any development consent or approval that applies to the Easement Site) or applies for a complying development certificate in respect of any development within the Easement Site; or
 - (ii) commences any development works on or to the Easement Site (including works that do not require development consent)),
 give written notice of its proposed development to the Grantee with sufficient detail of the proposed development (including plans and specifications of the proposed development which demonstrate how the rights of the Grantee under this easement can continue to be exercised) to enable the Grantee to consider and form a view on the extent to which the proposed development may materially adversely impact or affect:
 - (iii) the Grantee's or its Authorised Users' use of, or interest in, the Easement Site;
 - (iv) the provision of Services;
 - (v) any Apparatus; or
 - (vi) the accessibility of the Easement Site by the Grantee or its Authorised Users.

Plan:

Plan of Subdivision of Lot [#] in Deposited Plan [#]

- (d) If the proposed development to be carried out by the Grantor on the Lot Burdened will:
- (i) materially adversely impact or affect the Grantee's or its Authorised Users' use of, or interest in, the Easement Site;
 - (ii) materially adversely impact or affect the provision of Services;
 - (iii) materially damage or otherwise materially and adversely affect any Apparatus; or
 - (iv) result in the Easement Site being inaccessible or substantially inaccessible by the Grantee or its Authorised Users,
- the Grantee may, within 60 [CU Note: Additional time needed to seek and obtain expert advice (if necessary)] days of receiving written notice from the Grantor under clause 1.1(c), make an objection to the proposed development and provide feedback to the Grantor in relation to the proposed development in accordance with clause 1.1(f).
- (e) Without limiting the Grantee's rights in clause 0, the Grantor must obtain the Grantee's feedback under clause 0:
- (i) before the Grantor lodges a development application or applies for a complying development certificate in respect of any development within the Easement Site, or applies for a modification of any development consent or approval that applies to the Easement Site or commences any development works on or to the Easement Site (including works that do not require development consent); and
 - (ii) to the terms of consent to any such development application or consent to an application to modify such development consent (including plans and specifications referred to in such consents).
- (f) For the purposes of clause 1.1(d), the Grantee's feedback to the proposed development must provide sufficient details as to how the proposed development would in the Grantee's reasonable opinion:
- (i) materially adversely impact or affect the Grantee's or its Authorised Users' use of, or interest in, the Easement Site;
 - (ii) materially adversely impact or affect the provision of Services;
 - (iii) materially damage or otherwise materially and adversely affect any Apparatus; or
 - (iv) result in the Easement Site being inaccessible or substantially inaccessible by the Grantee or its Authorised Users.
- (g) If the Grantee's feedback under clause 1.1(d) and 1.1(f) establishes with sufficient detail that the proposed development of the Lot Burdened will:

Plan:

Plan of Subdivision of Lot [#] in Deposited Plan [#]

- (i) materially adversely impact or affect the Grantee's or its Authorised Users' use of, or interest in, the Easement Site;
- (ii) materially adversely impact or affect the provision of Services;
- (iii) materially damage or otherwise materially and adversely affect any Apparatus, or
- (iv) result in the Easement Site being inaccessible or substantially inaccessible by the Grantee or its Authorised Users,

the Grantee may, within 75 days of receiving written notice from the Grantor under clause 1.1(c), reasonably request changes to the proposed development for the purpose of minimising any material adverse effect on the Apparatus, the provision of Services or the rights granted to the Grantee and its Authorised Users under this easement and the Grantor must:

- (v) give reasonable and proper consideration to the Grantee's requested changes; and
- (vi) to the extent that it is reasonably practicable to do so, modify its development plans to accommodate the Grantee's requested changes and submit the modified plans to the Grantee for the Grantee's consideration and feedback. Any feedback provided by the Grantee under this clause must be provided to the Grantor within 30 days [CU Note: Again, to allow time for expert analysis and advice] of the Grantee receiving the modified plans.

(h) If, after the Grantor receives feedback from the Grantee under clause 1.1(g)(vi):

- (i) it is established with sufficient detail that the proposed development of the Lot Burdened will continue to:
 - A. materially adversely impact or affect the Grantee's or its Authorised Users' use of, or interest in, the Easement Site;
 - B. materially adversely impact or affect the provision of Services;
 - C. materially damage or otherwise materially and adversely affect any Apparatus; or
 - D. result in the Easement Site being inaccessible or substantially inaccessible by the Grantee or its Authorised Users; or

Plan:

Plan of Subdivision of Lot [#] in Deposited Plan [#]

- (ii) the Grantor, acting reasonably, deems that the Grantee's feedback and requested changes to the proposed development are not reasonably practicable to accommodate,

the Grantor may, subject to any necessary approvals and at its cost, from time to time relocate the Apparatus, Easement Site and Services at reasonable times and on reasonable notice, provided that such relocation does not interrupt the continuity or diminish the quality of the Services (excepting any reasonable temporary interruption to the continuity of the Services which occurs during the relocation).

1.2 Easement for Services

The Grantor grants to the Grantee, its successors and assigns and all Authorised Users full, free and unimpeded right and licence for the Grantee, its successors and assigns and all Authorised Users to:

- (a) install the Apparatus within the Easement Site;
- (b) excavate the Easement Site to install the Apparatus;
- (c) use the Lot Burdened to provide the Services to or through the Lot Benefited;
- (d) trim or remove any vegetation from the Lot Burdened that interferes with or prevents reasonable access to the Easement Site or the Apparatus;
- (e) remove any encroachments from the Easement Site and recover the Costs of carrying out the removal work and repairing any damage done to the Services or the Apparatus by the encroachment (which for the purposes of this clause 1.2(e) are limited to those Costs as may fairly and reasonably be considered as arising naturally from the encroachment without other intervening cause) provided that the Grantee must, before incurring any Costs in removing any encroachments from the Easement Site, notify the Grantor in writing of any encroachments on the Easement Site and give the Grantor a reasonable period to remove any encroachments on the Easement Site;
- (f) have the soil, rock and/or other material of the Easement Site within the Lot Burdened remain undisturbed; and
- (g) leave underground any Apparatus located underground within the Easement Site within the Lot Burdened.

1.3 Right to relocate Apparatus

The Grantee may, subject to the Grantee obtaining the necessary approvals and/or not requiring any further approvals from any Authority, from time to time relocate the Apparatus, at its cost, provided that the Grantee gives to the Grantor at least 7 days' prior written notice of the proposed relocation of Apparatus including details of the new location and specifications of the relocated Apparatus and the Grantee complies with the reasonable requirements of the Grantor.

Plan:

Plan of Subdivision of Lot [#] in Deposited Plan [#]

1.4 Release

The Grantee and its Authorised Users enter upon the Lot Burdened at their own risk and the Grantee hereby releases the Grantor from any claims and demands of every kind and from all liability that may arise in respect of any accident or damage to property or death or injury to any person entering upon the Lot Burdened under the terms of this easement except to the extent the claim, demand or liability is caused or contributed to by the negligence, or other wrongful act or default of the Grantor, its employees, agents or contractors.

1.5 Commencement and registration

This easement is granted on the Grant Date. The terms of this easement in clauses 0, 0, 0 and 0 do not become operative until the date on which the Lease expires, is terminated or otherwise ends. The Grantor must at the Grantee's request register this easement against the title to the Burdened Lot after the easement terms becomes operative.

1.6 Right to Release

The Grantee and the Grantor together are empowered to release, vary or modify these easements.

2. Restrictive Covenant numbered 2 in the Plan

2.1 Restrictive Covenant

The Grantor for itself and its successors and assigns covenants with the Grantee and its successors and assigns that the Grantor must not, without the prior written approval of the Grantee, permit, allow or cause the Easement Site to be used or occupied for any purpose unless the Grantor complies and continues to comply with the following conditions:

- (a) the Grantor will ensure that any equipment owned or controlled by the Grantor or vegetation on the Easement Site does not at any time prevent, restrict, reduce or prejudice the Apparatus or provision of the Services;
- (b) the Grantor will as soon as reasonably practicable rectify, maintain and (if relevant) prune, at its cost, any equipment owned or controlled by the Grantor or vegetation on the Lot Burdened so that it at all times complies with this restrictive covenant;
- (c) the Grantor must not:
 - (i) interfere with or undertake any works (including any maintenance works) to the Apparatus or the Services, except in the case of an Emergency, or in the situation where there is a risk of death or injury to people;

Plan: Plan of Subdivision of Lot [#] in Deposited Plan [#]

- (ii) do anything which damages the Apparatus;
- (iii) do anything which interrupts or diminishes the quality of the Services;
- (d) the Grantee hereby releases the Grantor from any damage caused to the Apparatus except to the extent any damage is caused or contributed to by the Grantor, its employees, agents or contractors; and
- (e) if the Grantor breaches this restrictive covenant, the Grantee or its Authorised Users may, after giving the Grantor a reasonable period to carry out the necessary works to rectify the Grantor's breach of this restrictive covenant (except in the case of an Emergency), carry out the necessary works (at the reasonable cost of the Grantor recoverable as a liquidated sum) to rectify the Grantor's breach of this restrictive covenant.

2.2 Commencement and registration

This restrictive covenant is made on the Grant Date. The terms of this restrictive covenant in clause 2.1 do not become operative until the date on which the Lease expires, is terminated or otherwise ends. The Grantor must at the Grantee's request register this restrictive covenant against the title to the Burdened Lot after the terms of the restrictive covenant become operative.

2.3 Right to Release

The Grantee and the Grantor together are empowered to release, vary or modify this restrictive covenant.

3. Interpretation

3.1 Definitions

These meanings, in any form, apply unless the contrary intention appears:

Apparatus means all equipment in connection with the Services, including the embedded network, geothermal network and geothermal plant.

Authorised User means every person authorised by the Grantee for the purposes of an easement, covenant or restriction on use created by this instrument, and includes any officers, employees, licensees, agents and contractors, including the operator of the Apparatus, of the Grantee.

Authority means any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality.

Celestino Group means:

Plan:

Plan of Subdivision of Lot [#] in Deposited Plan [#]

- (a) any corporation that has E.J. Cooper & Son Pty. Limited ACN 000 269 750 as its ultimate holding company; or
- (b) any corporation that is a Related Entity or Related Body Corporate of the Grantee.

Costs includes charges and expenses including those incurred in connection with advisers.

Easement Site means, in relation to an easement in this instrument:

- (a) the site of an easement on the Plan; and
- (b) all items within the site of the easement identified on the Plan which are the subject of the easement.

Emergency means any emergency situation, including one that involves a risk to a person's health or safety.

Equipment means all necessary tools, implements, materials, machinery and vehicles.

Grant Date means the date of commencement of the Lease.

Grantee means:

- (a) the owner or mortgagee in possession of the Lot Benefited; and
- (b) an Authority benefited (which for the avoidance of doubt excludes an Authority that owns the Lot Burdened).

Grantor means the owner or mortgagee in possession of a Lot Burdened.

Lease means any lease of the Lot Burdened between the owner of the Lot Burdened and a member of the Celestino Group (or any other tenant to whom the Celestino Group has lawfully assigned or transferred its lease interest).

Lot Benefited means a lot benefited by an easement, positive covenant or restriction on use in this instrument.

Lot Burdened means a lot burdened by an easement, positive covenant or restriction on use in this instrument.

Plan means the plan of easement to which this instrument relates.

Related Body Corporate has the meaning given in section 50 of the Corporations Act 2001 (Cth).

Related Entity has the meaning given in section 9 of the Corporations Act 2001 (Cth).

Services means the supply of services, including telecommunications, electricity, water, sewer, vacuum waste or geothermal energies.

Plan:

Plan of Subdivision of Lot [#] in Deposited Plan [#]

3.2 Headings

Headings do not affect the interpretation of this instrument.

3.3 Rules of Interpretation

In this instrument, and unless the context indicates a contrary intention:

- (a) an obligation or liability assumed by, or a right conferred on, two or more persons including two or more Grantors binds or benefits them jointly and severally;
- (b) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to this easement, to a document or to any other easement (including any approval) is to this easement, that document or that other easement (as the case may be) as amended, modified, varied, novated, ratified or replaced from time to time;
- (d) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (e) a reference to a clause is a reference to a clause of this easement;
- (f) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (g) "includes" in any form is not a word of limitation;
- (h) one provision of this easement does not limit the effect of another; and
 - (i) if at any time any provision of this easement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this easement; or
 - (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this easement.

3.4 Positive covenants and maintenance requirements

A requirement in an easement which requires a Grantee or Grantor to maintain or repair an Easement Site or anything in an Easement Site is a positive covenant according to Section 88BA of the *Conveyancing Act 1919* (NSW).

Plan:

Plan of Subdivision of Lot [#] in Deposited Plan [#]

4. Easements are covenants and agreements between Grantees and Grantors

4.1 Run with Land

The conditions, covenants and restrictions, including in this clause 4, in each of the easements, positive covenants and restrictions on use in this instrument are covenants and agreements between:

- (a) each Grantee for itself and its successors, assigns and transferees; and
- (b) each Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements, positive covenants and restrictions on use.

4.2 Ancillary Rights

The Grantee of an easement set out in this instrument may exercise, subject to the specific terms of that easement, all other ancillary rights and obligations reasonably necessary for the effective application of an easement including reasonable access to the Easement Site.

4.3 Unfettered discretion of statutory powers

The terms of this instrument do not fetter or limit the exercise of any statutory regulatory functions by the Grantor in its capacity as an Authority with respect to the Lot Burdened. The Grantee will not be given any preferential treatment by the Grantor in its capacity as an Authority when exercising its statutory or regulatory functions by virtue of the existence or terms of this instrument. However, this clause does not limit or prejudice the contractual obligations of the Grantor in its capacity as a contracting party under this instrument.

Plan: _____ Plan of Subdivision of Lot [#] in Deposited Plan [#]

SIGNING PAGE

Executed by Penrith City Council

Penrith City Council by its authorised officer pursuant to section 377 of the Local Government Act 1993

(Signature of officer)

(Name of officer)

I certify that I am an eligible witness* and that the delegate signed in my presence:

(Signature of Witness)

(Name of Witness)

(Address of Witness)

*An eligible witness is a person who has known the authorised delegate for more than 12 months or who has sighted identifying documentation

Plan:

Plan of Subdivision of Lot [#] in Deposited Plan [#]

Executed by [#owner of benefited lot]

I certify that I am an eligible witness* and that the attorney signed this dealing in my presence.

Certified correct for the purposes of the Real Property Act 1900 and signed by [#owner of benefited lot] by its attorney under Power of

Attorney dated

Book

No

who is personally known

to me:

Signature of witness

Signature of attorney

Print name

Print name

By executing this document the attorney states that the attorney has received no notice of revocation of the Power of Attorney

Address

*An eligible witness is a person who has known the authorised delegate for more than 12 months or who has sighted identifying documentation

