

## Explanatory Note

Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)

and

Celestino Developments SSP Pty Limited (ACN 607 351 842)

and

Sydney Science Park Pty Limited (ACN 608 971 697)

### Deed of Amendment to the Planning Agreement

#### Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft deed of amendment to a planning agreement (the **Amended Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**). The Amended Planning Agreement amends the planning agreement entered into by the parties on 7 December 2016 under the former section 93F (now section 7.4) of the Act (the **Original Planning Agreement**).

This explanatory note has been prepared having regard to the Planning Agreements Practice Note and its contents have been agreed by the parties.

Words which are capitalised in this explanatory note but are not defined take on the meaning given to those words in the Amended Planning Agreement and the Original Planning Agreement.

This explanatory note must not be used to interpret the Original Planning Agreement and the Amended Planning Agreement in accordance with s 205(5) of the *Environmental Planning and Assessment Regulation 2021*.

#### Parties to the Planning Agreement

The parties to the Amended Planning Agreement are the Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468) (the **Minister**), Celestino Developments SSP Pty Limited (ACN 607 351 842 (the **Developer**) and Sydney Science Park Pty Limited (ACN 608 971 697) (the **Landowner**).

#### Description of the Subject Land

The Original Planning Agreement applied to Lot 201 in Deposited Plan 1152191 and that part of Lot 202 in Deposited Plan 1152191 which is shown hatched on the plan annexed and marked "Annexure A" to the Original Planning Agreement (**Original Subject Land**).

Since the Original Planning Agreement was entered into, the Original Subject Land has been subdivided. On 25 March 2022, part of the Original Subject Land (now known as Lots 201, 203 and 205 in Deposited Plan 1280188) was compulsorily acquired by Sydney Metro for the

purposes of the Sydney Metro – Western Sydney Airport project and is no longer owned by the Landowner.

The Original Planning Agreement has been amended to remove the land acquired by Sydney Metro from the application of the Amended Planning Agreement.

The Amended Planning Agreement applies to Lot 2 in Deposited Plan 1242470, Lots 202, 204 and 206 in Deposited Plan 1280188 known as 180 Gates Road, 656 Luddenham Road, 581 Luddenham Road and 599 Luddenham Road, Luddenham NSW 2745 (**Subject Land**).

## **Description of the Proposed Change to Environmental Planning Instrument**

The Developer sought an amendment to the *Penrith Local Environmental Plan 2010 (LEP)* to rezone the Original Subject Land from zone RU2 Rural Landscape to zones B4 Mixed Use, B7 Business Park and RE1 Public Recreation and proposed to make future development applications to the consent authority to accommodate a specialised centre comprising research and development, employment, education, student accommodation, a town centre, retail and residential uses consistent with the proposed rezoning of the land, infrastructure such as roads, services and the like, and landscaped open space, sporting fields and parks (the **Proposed Development**).

The Developer is not seeking any changes to the scope of the Proposed Development.

## **Summary of Objectives, Nature and Effect of the Planning Agreement**

The Amended Planning Agreement amends the Original Planning Agreement to:

- update the references to the applicable environmental planning instrument and zoning from the LEP to *State Environmental Planning Policy (Precincts – Western Parklands City) 2021* (NSW), which commenced on 25 March 2022;
- remove the land acquired by Sydney Metro from the application of the Amended Planning Agreement; and
- make other administrative updates to the terms of the Planning Agreement, including in relation to the payment of the Contribution Amount.

## **Assessment of Merits of Planning Agreement**

### **The Public Purpose of the Planning Agreement**

In accordance with former section 93F(2) of the Act (now section 7.4(2) of the Act), the Original Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to the land.

The Minister and the Developer have assessed the Amended Planning Agreement and both hold the view that the provisions of the Amended Planning Agreement do not change the means of achieving the public purpose of the Original Planning Agreement. This is because the Amended Planning Agreement will continue to ensure that the Developer makes an

appropriate contribution towards the provision of transport or other infrastructure relating to the land.

### **How the Planning Agreement Promotes the Public Interest**

The Original Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of transport or other infrastructure to satisfy needs that arise from development of the Original Subject Land.

The Developer's offer to contribute towards the provision of designated State public infrastructure will have a positive impact on the public who will ultimately use it.

The Amended Planning Agreement promotes the public interest set out above by not changing the requirement that the Developer provides an appropriate contribution towards the provision of (or the recoupment of the cost of providing) transport or other infrastructure to satisfy the needs that arise from development of the Subject Land.

### **Requirements relating to Construction, Occupation and Subdivision Certificates**

The Original Planning Agreement required the payment of the monetary contribution in respect of a Parcel of land prior to the issue of the relevant subdivision certificate or construction certificate in accordance with clause 5(a) of Schedule 4 to the Original Planning Agreement.

The Amended Planning Agreement does not change this requirement and therefore contains a restriction on the issue of a subdivision certificate within the meaning of section 6.15(1)(d) of the Act and a restriction on the issue of a construction certificate within the meaning of section 21 of *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW).

The Amended Planning Agreement does not specify requirements that must be complied with prior to the issue of an occupation certificate.

### **Indicative Plan of the Proposed Development**

There is no indicative plan of the Proposed Development.

Schedule 4 to the Original Planning Agreement provided that the Developer is not to lodge a plan of subdivision or undertake any development (except for development solely in respect of subdivision works) over any part of the Subject Land until the Developer has submitted to the Minister, or Minister's representative, a plan for approval which defines a Parcel of land that includes the part of the Land being subdivided and/or developed. The Amended Planning Agreement does not change this requirement.