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10 October 2023

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Via email

Dear Kate,

PPSSWC-236 & PPSSWC-237: 184 LORD SHEFFIELD CIRCUIT, PENRITH: RESPONSE TO COUNCIL MEMORANDUM DATED 4 OCTOBER 2023

On behalf of the applicant, Thornton North Penrith Pty Ltd, we are writing in response to the recent 'Memorandum' prepared by Sandra Fagan (Principal Planner) at Penrith City Council dated 4 October 2023.

This follows the applicant providing a formal response on 3 October 2023 to the recent briefing with the Sydney Western City Planning Panel (held on 25 September 2023) as well as an updated Community Infrastructure Offer as requested by the Panel Chair.

While formal minutes have not been provided from the briefing on 25 September 2023, the applicant understood that the Panel were going to seek further clarity from DPE legal on the legal opinion provided in relation to the Concept Plan inconsistency, and then provide direction on next steps with further briefings or determination of the matter.

However, it is important to note at the time of lodging these responses to the Panel and Council, the applicant **was not aware that Council had actually uploaded an assessment report recommending refusal of the application(s)** only a few days after the actual briefing.

For a range of reasons, the applicant is extremely disappointed with this proposed action by the Council, given that there has been significant progress and work made following the recent briefings with the Planning Panel.

We will provide a separate detailed response to the Council's assessment report, but we firstly wanted to respond promptly to the Memorandum, and specifically the Council's request that the Panel "*reject the request to amend the development applications*".

Council Note	Applicant Response
<i>The development applications were lodged 558 days ago.</i>	We acknowledge that this is a complex development application for a number of differing reasons. However, the lengthy time which has passed since DA lodgement was largely out of the control of the applicant. Council's ongoing reluctance to

	<p>work collaboratively with the applicant to arrive at acceptable community infrastructure position has been very disappointing and highly frustrating.</p> <p>Conversely, the applicant has sought to proactively engage with the Council (and Panel) with respect to the applications to ensure that this highly strategic project can be approved and provide much needed high-quality housing, shopping and employment to the local community.</p> <p>While the application was 'submitted' on the NSW Planning Portal on 11 March 2022, the Council did not accept or exhibit the DA for approx. 200 days after it was submitted – i.e. September (with exhibition concluding on 10 October 2022). Therefore, a very large portion of time that has past was attributed initially to Council refusing to exhibit the application.</p> <p>More recently, the Panel's direction was for the applicant to engage with the Council in relation to Community Infrastructure. However, following various attempts from the applicant to do so, the recent feedback from Council was not to meet to resolve this - noting their preference for the applicant to withdraw the applications.</p>
<p><i>Council staff have completed the assessment of the applications and the assessment reports were provided to the Panel Secretariat on 27 September.</i></p>	<p>We have now been made aware of this – and <u>note that this recommendation to refuse the application was only 2 days following the recent briefing with the Planning Panel.</u></p> <p>We can only assume that an assessment report would have been well progressed at the time of the Panel Briefing, so the fact that there was no mention or discussion from the Council at the Panel Briefing that they were intending on swiftly finalising their assessment and seeking to recommend refusal of the application(s) is obviously very disappointing.</p>
<p><i>The development applications can be determined following a public meeting.</i></p>	<p>Noted.</p> <p>We appreciate that the development applications can be determined following a public meeting, however the applicant's very strong position is that there is nothing preventing the Panel from <u>approving</u> the development application(s). This will be outlined in the applicant's response to the Council Assessment Report.</p>
<p><i>This is the sixth offer for community infrastructure uploaded to the portal.</i></p>	<p>Noted. Frustratingly, Council have recommended the applicant explore Community Infrastructure options (i.e. such as High Street and Penrith City Park) that their own team have then separately rejected.</p> <p>However, the community infrastructure offer which was submitted in the NSW Planning Portal pre-dates a recent briefing with the Planning Panel where the Panel expressed concerns about <u>Council's suggestion</u> to the applicant to provide Community Infrastructure off-site (i.e. High Street). Accordingly, the applicant has sought to proactively respond to this concern</p>

	and upload a revised offer which aligns more positively with the Panel's observations on this matter.
<i>The offer relating to the first-floor indoor recreation facility is identical to a previous offer uploaded to the portal on 23 May 2022</i>	<p>This is a factually incorrect statement. The previous offer made in 23 May 2022 related to a different form of on-site community infrastructure. The new offer relates to different tenancies, changed area/sizes, includes changes to the pedestrian through-site link and actually increases to the nature and value of the proposed works.</p> <p>We would request that Council carefully review the updated offer as it differs to the offer made earlier.</p>
<i>The offer remains unsatisfactory based on the current information provided.</i>	As discussed in the cover letter which accompanies the updated CI Offer, we are of the view that the proposed offer of community infrastructure on-site is consistent with Clause 8.7 of Penrith LEP.
<i>The architectural drawings have not been updated to reflect the offer.</i>	This statement is incorrect, as the architectural drawings as submitted are accurate for our current on-site CI offer.
<i>The offer relating to the first development application (DA22/0213) is solely to embellish the proposed publicly accessible through-site link. It is questionable whether the value and nature of this offer is adequate for the proposed development in DA22/0213, noting that Tower A is proposed to have a building height of 107m.</i>	<p>For a range of reasons (separately articulated to Council), two development applications have been lodged for this project. However, the updated offer and VPA details that the various public benefits (works-in-kind) that will be provided for the project as a whole and ultimately delivered in a staged manner.</p> <p>We note that the first development application (DA01) can be conditioned to require the applicant to enter into the VPA for the provision of the tenancy by way of the second application (DA02), prior to the commencement of construction for DA01.</p> <p>In that way, DA01 "includes" community infrastructure within the meaning of Clause 8.7 of the PLEP, in that there is a mechanism requiring the parties to enter into a legally binding agreement for the provision of that infrastructure before the applicant would be entitled to commence works under DA01. To be clear, this would not require the tenancy actually be provided before the OC for the DA01, it would only require the VPA be finalised and exchanged.</p>
<i>The offer relating to the second development application (DA22/0214) is for the first-floor indoor recreation facility located in Tower C, which is proposed to be constructed as stage 2 of the development. The timeframe for stage 2 is unclear.</i>	<p>The intent is for the applicant to construct DA1 and DA2 concurrently. However, we acknowledge this query as they are two separate development applications.</p> <p>However, the VPA ensures that that prior to the issue of the Occupation Certificate for the Development approved by the Second Development Application (DA2) the applicant will construct, fit-out and dedicate to Council a tenancy on the northern portion of the Land (identified in the concept plans provided at Annexure A) at no cost to Council for use by the public as a recreation facility (indoor).</p>

<p><i>The offer for the recreation facility does not address preliminary design comments from the Design Integrity Panel at their meeting on 21 September 2023, including the size and proportions of the room, acoustic considerations to enable a range of activities without impacting of residential amenity, and improved connection to the ground floor and through-site link.</i></p>	<p>This statement is incorrect. Council were in attendance as an observer at this meeting, where the applicant has liaised with the Design Integrity Panel (DIP) and minutes have been provided stating that there was “strong endorsement of the inclusion of community infrastructure within the proposed development” by the Panel.</p> <p>The minutes from the DIP do not raise any comments relating to the size and proportions of the room, acoustic considerations and the like.</p>
<p><i>The offer for the recreation facility does not address matters relating to; whether the space is fit for purpose to allow a range of sporting uses; ensuring public access; ongoing ownership and management responsibilities; ongoing maintenance costs; and how the value is determined for the purpose of the community infrastructure offer.</i></p>	<p>A cover letter was prepared by Urbis which accompanies the VPA by the applicant. This details how the proposed offer is aligned with Council’s CI Policy with respect to these items. See attached again.</p>

In summary, our strong position is that as the application remains a ‘live’ matter and the applicant is working proactively to address feedback from the recent Panel Briefing, we would request that the Panel agree to accepting any amendments that may assist in resolving the determination (and approval) of the applications.

Yours sincerely,



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