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24 July 2023

Mr Andrew Jackson  
Director – Development and Regulatory Services  
Penrith City Council  
PO Box 60  
PENRITH NSW 2751  
Via email

Dear Andrew,

## **184 LORD SHEFFIELD CIRCUIT, PENRITH (DA22/0213 & DA22/0214): REVISED COMMUNITY INFRASTRUCTURE OFFER 19 JULY 2023**

On behalf of the applicant (Thornton Operations Pty Ltd) we are writing in response to the recent briefing with the Sydney West Planning Panel on 26 June 2023.

Specifically, the Panel Chair directed the applicant to provide a formal draft Community Infrastructure (CI) Offer within 14 days of the briefing, and to ensure this is lodged on the NSW Planning Portal.

As you will be aware, the current offer in relation to both the Station Plaza and Penrith High Street works have been in discussion since late last year, and we have been awaiting feedback and direction from Council on this prior to formalising the offer. On 9 June 2023 we provided a detailed email to Council outlining the 'in principle' terms of the offer, as well as a summary of the scope of works, costings and preliminary design. This offer was uploaded on the NSW Planning Portal in July 2023.

However, on 7 July 2023, Andrew Jackson from Council provided an email indicating that Council's internal working group "support in principle the full CI offer amount to be spent on High Street works in accordance with the adopted master plan and based on the previous advice provided".

Accordingly, this letter therefore seeks to provide the following to assist Council and the Planning Panel have a clearer understanding of the offer, as well as relevant background information to assist with this.

In response, this letter is accompanied by:

- Detailed Community Infrastructure Costings (St Hilliers)
- Draft Voluntary Planning Agreement (Corrs Chambers Westgarth)

In summary, our project team genuinely feel that the proposed community infrastructure is positive, and of a nature and value to the local community that will have long lasting direct public benefits.

## 1. BACKGROUND

The applicant has undertaken considerable engagement with a range of stakeholders over the past 2 years to ensure that community infrastructure provided as part of the development application can be of appropriate 'nature and value' to the City Centre. This has been at a significant expense including a variety of options that has included detailed input from the applicant's legal advisers, planning consultant, architect, landscape architect, quantity surveyor and retail consultant. Ultimately, while the 'value' can be quantitatively defined within the context of the Council's Community Infrastructure Policy, the 'nature' of works is less defined and ultimately at the discretion of the consent authority.

The flow-chart below details the various offers made to Council to date:



For background, the proposed initiatives by the applicant to critically understand the nature of community infrastructure works with a genuine need have included:

- Agreement by the applicant to align the 'value' of the proposed infrastructure with the Council's interpretation of the CI contribution, which has differed considerably from the applicants (in the order of approximately \$2.5 million).
- Direct engagement with the local community to understand community needs of the precinct;
- Tabling a suite of potential infrastructure works around the North Penrith precinct to Council in a preliminary manner;
- Exploring other sites in the North Penrith precinct which could potentially be enhanced for community infrastructure uses defined in Clause 8.7 of the LEP.
- Proposing an option to provide a series of indoor private recreation spaces (on site) within the proposed podium space which could be made available to Council at no charge for a wide range of recreation needs and to a value aligned with the Council's CI Policy.
- Following guidance from Council Officers to explore embellishment of Penrith City Park (given funding gaps to provide this infrastructure). Subsequently, this included the applicant's team forensically analysing the 'Schedule of Works' of Penrith City Park, and providing Council with agreement to work with Council to physically deliver infrastructure works – including preparation of a draft planning agreement (prepared by the applicant's planning and legal team).
- Notwithstanding the above, the following feedback was provided on the proposed CI offer in relation to Penrith City Park:



*The Community Infrastructure Panel has now reviewed and considered your Offer to enter into a Voluntary Planning Agreement to provide Community Infrastructure. The Panel has recommended that your Offer is **not** supported. Specifically, the Panel stated the following.*

*“The Panel notes the following:*

*The land to which the Community Infrastructure Offer relates is not included in the description of land nor development under the terms of the VPA hence the proposed development does not include Community Infrastructure contrary to the requirements of Clause 8.7(3);*

*The offer identifies physical works proposed by Council for City Park and Allen Place road upgrade (subject of separate approval) to which the contribution offered could fund. It is accepted that these works could be categorised as development for the purposes of recreation areas or public roads as defined in Clause 8.7(6);*

*The offer is for a monetary contribution only for funding and enabling works (Urbis p4), not development for the purposes of recreation areas or public roads; and*

*The monetary contribution is proposed to be paid prior to the issue of Occupation Certificate(s) hence the Community Infrastructure is not delivered upon completion of the proposed development.*

*The Community Infrastructure Panel therefore determines that the Community Infrastructure Offer proposed is not of a nature and value to warrant support under Clause 8.7 of the LEP and allow consideration of height variation to the maximum applicable development standard.*

*Should the CI Panel be required to report to Council this offer to enter into a Voluntary Planning Agreement with Council, it would be recommended to Council that the offer not be supported.”*

*Further, it is considered that the proposed development does not meet the objectives of Clause 8.7, when having regard to the matters set out in that clause.*

*Specifically, the nature of the offer for Community Infrastructure cannot be a monetary contribution. The Community Infrastructure must be deliverable, and the works must be part of the proposed development. There are therefore challenges in relation to City Park being Community Infrastructure included in your proposed development.*

*In the absence of satisfactory Community Infrastructure being included and deliverable as part of your proposed development, the Development Applications do not meet the precondition that would allow additional height. The proposed development could therefore not be acceptable. You would need to consider alternatives that included providing the Community Infrastructure on the subject site, and/or as an integral part of your proposed development.”*

- Following the feedback on Penrith City Park the applicant explored a suite of CI works on Penrith Station Plaza and Penrith High Street. In relation to Station Plaza, this offer included:
  - Creation of a new public recreation area at Penrith Station Plaza at 182 Lord Sheffield Circuit, Penrith (Lot 101 DP 1233225) which is directly adjacent to the east of the site. This has an approximate site area of 1,948sqm.
  - The applicant was seeking to include these works as part of the current development application, and physically deliver the new park space prior to the occupation of the proposed development.

- The physical works proposed included Demolition and site preparation, Civil and landscape works (including irrigation), Canopies and pergolas, Seating, pavement, fixtures and furniture, Signage, Electrical, hydraulic and other services, Ongoing physical operational/maintenance
- The applicant engaged Hoyne (Place Making/Visioning Experts) and the Urbis Landscape Architecture team to prepare a concept plan for the Station Plaza and Pocket Park. Artist's Impression of proposed community infrastructure concept and landscape plan are below.





Artist's Impression | Thornton Plaza Concept Design



- Recent feedback from Andrew Jackson at PCC on 5<sup>th</sup> and 7<sup>th</sup> of July on a hybrid CI offer of both Penrith Station Plaza and Penrith High Street was as follows:



*The discussions of the internal panel are not complete, however I can advise that there is not internal support for the plaza works included in your latest draft proposal. We will have a position re High St on Friday (5<sup>th</sup> July 2023)*

..... and subsequently.....

*Further to my email earlier in the week, the internal working group support in principle the full CI Offer amount to be spent on High Street works in accordance with the adopted master plan and based on the previous advice provided.*

*While the Working Group was only considering the nature of the works, it did note that there will need to be a reconciliation of the final scope of works with the amount determined under the CI methodology.*

*I note that ultimately the consideration of the DAs and associated CI offer will be a matter for the Panel (7<sup>th</sup> July 2023)*

## **2. PROPOSED UPDATED COMMUNITY INFRASTRUCTURE OFFER: PENRITH HIGH STREET WORKS IN KIND**

Since late 2022 (and following the lack of support for Penrith City Park) the applicant has continued to work with senior members of Penrith City Council.

This has included engagement with Council's Planning, Property and Assets teams. In response to this feedback, the applicant is seeking to prepare a VPA offer that encompasses the following:

The total value of these works will be **\$5.1 million** (including GST).

It is important to note that these works will:

- Form part of the proposed development application(s) to be funded, designed and constructed by the applicant
- Works will be constructed/completed by the applicant prior to the Occupation Certificate for each respective stage (to be enacted through a formal Planning Agreement)
- The proposed CI works are for the purpose of works to a public road (Penrith High Street) which align with the definition of 'community infrastructure' in Penrith LEP 2010

These works have been formalised into a draft VPA offer attached to this letter.

### **2.1. PENRITH HIGH STREET WORKS**

As suggested by Council Officers in email correspondence dated 30 March 2023, it was advised that works in Penrith City Centre (on High Street) were nominated for funding as part of the Westinvest Program. However, this application for funding was not supported, and there remains a funding gap for important public domain upgrade works in the City Centre.

Subsequently, the applicant met with Council's Director of City Services (Brian Steffan) to discuss this matter on 27 April 2023, with the following agreed actions and observations:

- Brian Steffan acknowledged that Council wanted to assist the applicant to get a timely resolution of the proposed CI works.



- Council agreed to provide the QS costing analysis that underpinned the High Street public domain works to the applicant. It was agreed that the applicant would review this (to align with current construction estimates), together with any high level plans/details to ascertain an appropriate level of works that could be delivered by the proposed CI value 'split' with the Station Plaza Works.
- It was discussed that the delivery timeframes of the High Street works could align quite easily with the delivery of the proposed development and the works would have a strong benefit to the local retailers, and be seen as important community infrastructure.
- Urbis queried whether the existing High Street works were obtained via a development application or were works that didn't require formal development consent. Council believed these works may not have required a DA, but this was something that could be confirmed. Subsequent to this meeting, Council have advised these works are likely to be approved via an REF.
- It was agreed that there would be value in the applicants project team meeting with Council to workshop both tranches of CI works as soon as practically possible. However, it was acknowledged before the applicant commits extensive resources, consultant costs and the like, that some clear terms of reference need to be agreed to ensure that in principle:
  - The proposed works can readily and promptly form part of the current Development Application(s)
  - Landowners consent can be provided in an expedited manner from Council's Property Team for these works – noting the Council have ownership of both parcels of land which these works would relate to.
  - There is clear comfort and buy in from Council's planning and legal team in relation to the potential satisfaction of Clause 8.7 of PLEP 2012 and CI Policy for this suite of works.
  - That the Council's CI Panel are briefed on the matter at an early stage to ensure that we understand any practical issues as soon as practically possible

We felt it was important to make the applicant's position clear. The following is proposed:

- Delivery of upgrades to the public domain in Penrith High Street (from Woodriff Street to Lawson Street), specifically those noted as 'Stage 3A' and 'Stage 3B'. See attached plan mark up from Council's masterplan.
- The site to which the CI offer relates to the public domain which is in the ownership of Penrith City Council. It is not proposed to purchase or lease the land, but the proposed works would require the consent of Council to undertake these works and for them to be included as part of the development application.
- The applicant would seek to include these works as part of the current development application, and physically deliver the works prior to the occupation of the proposed development.
- The value of the works have been the subject of a detailed cost analysis by the applicant's quantity surveyor at come to an indicative value of **\$5.1 million** (including GST) . The physical works proposed include:
  - Preliminaries
  - Stormwater Management
  - Civil and road works



- Signage, traffic control, hoarding, fencing.
- Electrical, hydraulic and other services.

## 2.2. ALIGNMENT WITH PLANNING POLICY & GUIDANCE

### 2.2.1. Penrith LEP 2010

Clause 8.7(5) & (6) of Penrith LEP 2010 states:

- (5) *In deciding whether to grant development consent under this clause, the consent authority must have regard to the following—*
- (a) *the objectives of this clause,*
  - (b) *whether the development exhibits design excellence,*
  - (c) *the nature and value of the community infrastructure to the City Centre.*
- (6) *In this clause, **community infrastructure** means development for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), recreation facilities (major), public car parks or public roads.*

In response to the above:

- The proposed development seeks to include community infrastructure as part of the development application, to be funded, designed and constructed by the applicant.
- The proposed density reflects the desired character of the North Penrith locality and seeks to minimise adverse impacts, which has been the subject of a competitive design process and a subsequent robust design integrity process.
- The proposed development is capable of achieving design excellence in accordance with Clause 8.4 of Penrith LEP 2010. The applicant has engaged recently with GANSW in relation to separate comments raised by Council regarding the competitive design process. See commentary elsewhere in this letter.
- The nature of and value of community infrastructure to the City Centre are aligned with Council Policy (see detailed discussion and alignment with Council's CI Policy below).
- The proposed community infrastructure is for the purpose of a works to a 'public road' (i.e. Penrith High Street) which align with the definition of 'community infrastructure in Penrith LEP 2010.

In summary, the proposed community infrastructure is aligned with Penrith LEP 2010.

### 2.2.2. Penrith Community Infrastructure Policy

The purpose of the Penrith Community Infrastructure Policy is to provide guidance to the community, proponents and Council regarding an offer of Community Infrastructure as part of certain development within the Penrith City Centre.

The table below provides a review of the policy, provides commentary and an indication of alignment with the Council's Policy.

Table 1 – Alignment of the proposal with the CI Policy



2. Principles of Community Infrastructure	Commentary	Alignment
<p><i>Community Infrastructure must be in the public interest and to the satisfaction of Council</i></p>	<p>The proposed community infrastructure is in the interest of the general public by providing a upgraded public domain works in Penrith High Street.</p> <p>The proposed community infrastructure is first and foremost for the community, and not for the benefit of private landowners.</p> <p>The proposed Community Infrastructure will be accessible by all members of the community.</p>	<p>YES</p>
<p><i>Community Infrastructure must be over and above current development standards and Council policies</i></p>	<p>The proposed community infrastructure is not considered to be a 'general standard of development' and in our strong view would be 'over and above' what would typically be provided as part of a development application.</p>	<p>YES</p>
<p><i>Community Infrastructure must contribute to the City Centre or to nearby locations and facilities likely to be used by City Centre occupants</i></p>	<p>The proposed community infrastructure on Penrith High Street will contribute positively to the amenity of the City Centre, noting that there is currently funding gaps in Council undertaking these upgrades currently. The applicant will deliver these works to the benefit of the local community.</p>	<p>YES</p>
<p><i>Community Infrastructure must be achievable, measurable, economically viable and socially and environmentally sustainable</i></p>	<p>The applicant has agreed to provide community infrastructure in accordance with the Council's preferred CI Contribution Rate to a value of \$5.1 million.</p> <p>The value of the Community Infrastructure is directly measurable in terms of monetary value. Detailed costings of the proposed CI have been provided by the applicant (see attached).</p> <p>In accordance with the CI Policy the proposed Community Infrastructure will be socially sustainable to include outcomes such as enhanced access, inclusiveness and equity. In testing whether Community Infrastructure is socially sustainable, the Community Infrastructure offered must improve the quality of life for the people of Penrith.</p>	<p>YES</p>
<p><i>Community Infrastructure must be consistent with the themes within Council's Strategic Planning framework</i></p>	<p>The proposed community infrastructure is consistent with the following strategic policies:</p> <ul style="list-style-type: none"> <li>• <b>Penrith Progression: A Plan for Action:</b> The Plan has a very clear and overt action to prioritise public domain improvements in the City Centre.</li> <li>• <b>Penrith Operational Plan and Delivery Plan 2022-26:</b> Will directly respond to to a key focus area of 'Sustainability and Resilience' by increasing tree planting and landscaping and developing 'cool infrastructure' to reduce heat island effect.</li> </ul>	<p>YES</p>



	<ul style="list-style-type: none"> <li><b>Penrith Local Environmental Plan 2010:</b> As discussed elsewhere, the proposal is directly aligned and in response to Clause 8.7 of Penrith LEP.</li> </ul>	
<b>2.4 Calculation of Community Infrastructure</b>	<p>The subject site is a 'key site' which currently doesn't have a mapped floor space ratio which presents some potentially differing interpretations on how the Community Infrastructure Contribution may be calculated (as there is no clear 'base' position to calculate the uplift).</p> <p>Notwithstanding, the applicant has agreed to aligning the value and quantum of community infrastructure with Council's interpretation.</p>	YES
<b>2.5 Preferred Community Infrastructure Items</b>	<p>Section 2.5 of the CI Policy provides the key land uses under Clause 8.7 of the LEP that are preferred, as well as a very limited list of specific 'preferred' community infrastructure items in Penrith City Centre.</p> <p>The proposed community infrastructure would be for the purpose of public domain upgrades in Penrith City Centre on a public road which is identified in Clause 8.7 of PLEP 2010.</p> <p>In addition, the proposed community infrastructure would also seek to provide a range of other items identified in the 'preferred' list including upgrades to the surface treatment of existing roads to encourage pedestrian connectivity/safety, enhanced pedestrian linkages and the like.</p>	YES
<b>3. Assessment</b>		
<b>3.1 Preparing a Development Application</b>	<p>In accordance with Section 3.1 of the CI Policy, the applicant has:</p> <ul style="list-style-type: none"> <li>Had numerous and ongoing pre-lodgement engagement on a range of community infrastructure initiatives over the past 2 years.</li> <li>The attached 'draft' offer provides a calculation of the CIC value, a description of the proposal, identifies location of the works, and provides a detailed cost/QS estimate.</li> </ul>	YES
<b>3.2 Assessment of Community Infrastructure</b>	<p>We note that any Development Application that includes the offer Community Infrastructure will follow Council's standard Development Assessment process and procedures. We also note that a Community Infrastructure Panel has been established to make a recommendation to the consent authority on whether to accept the offer of the Community Infrastructure.</p> <p>A previous CI Offer has not been supported by the CI Panel. The applicant would like to proactively brief the CI Panel on the proposed offer, as well as the Regional Planning Panel to ensure they are clear on the proposal and vision to deliver the proposed community infrastructure.</p>	YES
<b>3.3 Offer to Carry out works or dedicate land</b>	<p>A proposed offer was provided with the original development application lodgement. Given the feedback from the CI Panel that this was not supported, this 'draft' offer provides the following information:</p> <ul style="list-style-type: none"> <li>The works proposed to be undertaken;</li> <li>Whether such works are intended to be full or partial completion of the project;</li> <li>The estimated value of the works; and</li> </ul>	YES



	<ul style="list-style-type: none"> <li>The timeframe for when the works are proposed to commence and be completed. Community Infrastructure offers that include carrying out of works must be consistent with Council's Works-In-Kind Policy, which will be used to assess offers to undertake works.</li> </ul>	
<p><b>4. Timing and Implementation</b></p>	<p>We note that the CI Policy specifies detail around the timing of 'monetary contributions' needing to occur prior to the issue of Construction Certificates. Notwithstanding, Council have separately advised that monetary contributions are not 'infrastructure' and cannot be accepted.</p> <p>The proposed CI offer from the applicant is to provide physical infrastructure (and not a monetary contribution) with conditions to be imposed as part of the DA(s) and for the works to be undertaken prior to the issue of an occupation certificate for the development.</p> <p>Timing of the delivery or payment of Community Infrastructure will be outlined within the terms of the Voluntary Planning Agreement (assuming the draft offer is accepted). The applicant will be required to register the Planning Agreement on title.</p>	<p>YES</p>

### 3. SUMMARY AND NEXT STEPS

The applicant looks forward to engaging more closely with Council on the proposal, and working in more detail with Council on the Community Infrastructure.

In summary, we respectfully request that:

- Council reviews the attached supporting information;
- Arranges a subsequent briefing session with the Council's CI Panel to discuss the proposed CI Offer. We also feel there would be value to provide an updated briefing to the Regional Planning Panel on this to seek any preliminary views on the matter (as well as the other elements of the application).
- Assuming this is acceptable and feedback is provided, the applicant's planning and legal teams would finalise the Voluntary Planning Agreement (VPA) offer (or refine as needed) – and work closely with Council's property team to ensure that the use of community land can be supported (and landowners consent).
- Accordingly, the development application would be formally amended to include the proposed works, with appropriate design resolution to be approved as part of the application.

Please do not hesitate to contact the undersigned should you require any additional information of would like to discuss the above in further detail.

Kind regards,



A handwritten signature in blue ink, appearing to read "A. Harvey". The signature is written in a cursive style and is set against a light blue rectangular background.

Andrew Harvey  
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