

ATTACHMENT A COMMUNITY INFRASTRUCTURE OFFER

614-632 HIGH STREET PENRITH

1 APRIL 2020

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PURPOSE AND SCOPE

This report seeks to provide Council with a preliminary calculation of the Community Infrastructure Offer to be made to Council in accordance with Clause 8.7 of the Penrith Local Environmental Plan 2010 and the adopted Community Infrastructure Policy (dated 30.4.18).

The report is set out as follows:

- contributions summary including schedule of relevant floor areas
- preferred community infrastructure items
- key site exclusions from community infrastructure contribution calculation.

CI CONTRIBUTIONS SUMMARY

Levy/works	Area	Amount to pay	Off set value
Site area	4,715m ²		
Site GFA	28,276m ²		
FSR above 3.3:1	12,716.5m ²		
Minus non residential uses			
Retail	727m ²		
Commercial	1,529m ²		
Serviced apartments	4,277m ²		
Lobby and amenities	464m ²		
TOTAL NON RESIDENTIAL USES	6,997m ²		
FSR above 3.3:1 minus non residential uses calculation	12,716.5m ² - 6,997m ² = 5,719.5m ²		
Levy applies to:	5,719.5m ²		
Current CI rate	\$150 per m ²		
CI payable is	\$857,925		
		Total contribution owing	\$857,925

SCHEDULE OF FLOOR AREA CALCULATIONS

Floor area	GFA m ²	FSR:1
Lobby and amenities	464	0.10
Retail	727	0.15
Commercial	1,529	0.32
Serviced apartments	4,277	0.91
Residential apartments	21,279	4.51
Total	28,274	5.997 (6)

PREFERRED COMMUNITY INFRASTRUCTURE ITEMS

The total contribution for the proposal amounts to \$857,925 which can be allocated to upgrades to the intersection treatments at High Street and Civic Centre – as listed under Clause 2.5 of the Council's Community Infrastructure Policy as well as improvements to pedestrian safety and connectivity along High Street.

The contribution is to be allocated to the construction of a signalised intersection at the intersection of the new north-south road and High Street, subject to agreement on construction details, timing, landowners' consent, RMS and other authority approvals.

The proposal also assists with delivery of a through site link which provides a new connection from the City West Precinct through to the River. Please note this through site link is not requested to be considered an off-set. This connection will provide a broader community benefit to existing and new developments to the south as well as the subject site and the adjoining site to the east. The through site link has an added benefit in that it forms part of the common property within this site meaning the body corporate will ensure the through-site link is well maintained, kept clean and safe in perpetuity.

KEY SITE COMMUNITY INFRASTRUCTURE CONTRIBUTION CALCULATION

Exclusion of non residential floor space

As specified in the Community Infrastructure Policy under Section 2.4 “Non-residential development will not be required to provide a community Infrastructure Contribution. Non-residential floor area is excluded from the calculation of the Community Infrastructure Value.”

Further reading of the AEC report that unpins the Council’s Community Infrastructure Policy reveals that consideration was given to applying a rate to non residential development however due to the critical lack of employment floor space within Penrith, the absence of attracting a contribution would further assist with encouraging the delivery of commercial and retail floor space. Thus all non residential floor space has been excluded from the contribution calculation.

PRINCIPLES OF COMMUNITY INFRASTRUCTURE

To determine if an offer of Community Infrastructure will be considered acceptable by Council, the following Principles of Community Infrastructure as outlined in Council's Community Infrastructure Policy are to be met. Each principle is listed below with discussion about how the proposal meets these principles.

1. COMMUNITY INFRASTRUCTURE MUST BE IN THE PUBLIC INTEREST AND TO THE SATISFACTION OF COUNCIL.

The proposed monetary contribution is to contribute toward the construction of a signalized intersection at the intersection of the new north-south road and High Street. The new north-south road is both clearly required by Council's DCP controls and is a public investment to improve both vehicle and traffic connections through from High Street to the City West Precinct.

2. COMMUNITY INFRASTRUCTURE MUST BE OVER AND ABOVE CURRENT DEVELOPMENT STANDARDS AND COUNCIL POLICIES.

The proposed monetary contribution is over and above the current development standards. This is shown in the calculation provided earlier in this report showing how the contribution relates to the additional floorspace above 3.3:1.

3. COMMUNITY INFRASTRUCTURE MUST CONTRIBUTE TO THE CITY CENTRE OR TO NEARBY LOCATIONS AND FACILITIES LIKELY TO BE USED BY CITY CENTRE OCCUPANTS.

The proposed contribution towards the new north-south road and High Street intersection works are confined to the City Centre and will result in a general improvement to the City Centre to be enjoyed by City Centre occupants. The proposed contribution will assist with facilitating the delivery of the road on the adjoining site will support better connections from the Civic Centre, Westfields, the Joan Sutherland Centre and surrounding are to the City West Precinct. The new road and intersection will also greatly assist with improving connections through to the south of Penrith.

4. COMMUNITY INFRASTRUCTURE MUST BE ACHIEVABLE, MEASURABLE, ECONOMICALLY VIABLE AND SOCIALLY AND ENVIRONMENTALLY SUSTAINABLE.

The contribution towards a new north south road and High Street intersection is measurable, economically viable and socially and environmentally sustainable. The proposed road and intersections works are clearly nominated in Council's planning documents as a part of Council's essential infrastructure that will assist in easing the

flow of traffic in and around the growing CBD.

5. COMMUNITY INFRASTRUCTURE MUST BE CONSISTENT WITH THE THEMES WITHIN COUNCIL'S STRATEGIC PLANNING FRAMEWORK.

The proposed CI offer is demonstrably consistent with the following key strategic planning framework:

- The Community Plan, Operational and Delivery Plan
- Penrith Progression – A Plan for Action
- The City Strategy
- Penrith Local Environmental Plan 2010
- Penrith Development Control Plan 2010
- Relevant District or regional Plan or other Plans or Strategies.

Further consideration of these key policies is provided below.

Greater Sydney Region Plan – Metropolis of 3 Cities – A Vision to 2056 (March 2018)

The Metropolis of Three Cities provides a framework for the predicted growth in Greater Sydney. The Metropolis of Three Cities presents polycentric approach to Sydney which re-enforces the significant role of Penrith within the Western City and within Greater Sydney. Greater Sydney experiences a step change in population growth, with population growth levels being revised even further upwards since the release of the Plan for Growing Sydney. To accommodate this population growth and respond to issues of housing affordability housing supply in key strategic centre such as Penrith need to be accelerated.

The proposal delivers and supports all these key aims, through making use of a currently vacant site which sits currently as a gaping hole within the Penrith CBD and providing a contribution towards the new road and intersection work that has been specified by the Council. The proposal will deliver a development that can support growth and change within this key site of the Penrith CBD. Future development of this land will enhance the creation of a liveable, productive and sustainable city.

Western City District Plan (Greater Sydney Commission March 2018)

The Western City District Plan sets out the priorities and actions for the Western Parkland City and these are structured around the same key themes as highlighted in the Greater Sydney Region Plan. As relevant to the subject site the importance of Penrith's City Centre and growing this CBD in terms of both jobs and housing are continually emphasised in the District Plan. Particularly with reference to the 30-minute

city. The proposal seeks to deliver a contribution towards the new road and intersection required for a new key road link within the CBD to assist with the amenity for future housing but also jobs within a 30- minute city scenario.

The proposal seeks to deliver mixed-use development including housing to the market quickly and in a highly liveable location which is well within the 30-minute city scenario and in fact within walking/cycling distance of the Penrith City Centre. The site as it currently lies is largely unused and creating an unsightly gap in the urban cohesion for the Penrith CBD. Development including the new road and intersection works will bring far reaching benefits to this local community as well as the opportunity to bring onboard interesting and new retail as well as local business opportunities.

The proposal is consistent with any of the strategic priorities as set out under the Western City District Plan.

Penrith Community Strategic Plan 2017

This Plan provides a representation of the community's vision for the entire council area and establishes several outcomes and objectives for the City. Penrith Council's vision is for a sustainable and prosperous region with harmony of urban and rural qualities with a strong commitment to environment protection and enhancement. The vision for Penrith is to facilitate delivery of a City that offers both cosmopolitan and cultural lifestyle of a mature city and the casual character of a rural community.

This proposal facilitates development that assists with the contributions towards a new road and intersection which supports the vision to encourage a range of housing types by responding to the need for increased density within the Penrith City Centre. The proposal incorporates public benefit contributions which will set out the community benefits that are to be delivered along with the proposed development of this site.

Penrith City Strategy

The proposal aligns with the directions set forward by:

- Providing contributions to facilitate the creation of the new road and intersection works which will assist with delivery increased housing and housing diversity as well as design excellence.
- Implementation of design excellence to ensure new development is of a high standard and contributes to the enhancement of the character of the city.
- The proposed mixed-use development will revitalise this somewhat sterile part of the city centre and offer the opportunity to create a vibrant place where people want to live and work. The new public domain works will increase the permeability within the city centre and create a more amenable place for people to live and work.

Penrith Progression

The Penrith Progression Action Plan aims to transform Penrith City Centre and makes specific reference to key sites within the centre. This strategic document identifies that 5,000 new dwellings need to be delivered in the city centre, with the proposal makes a significant contribution to this target.

The proposal will achieve the Penrith Progression's vision for urban transformation of key sites with a new high-density mixed-use development that will support the functions of a thriving city centre.

The proposal also seeks to permit development of a western marker or gateway for Penrith City Centre which also achieves design excellence. The proposal is consistent with Penrith Progression Action Plan, as it seeks to act upon all relevant initiatives and actions of the plan.

Additional assessment relating to the Penrith Local Environmental Plan 2010 and Development Control Plan 2010 are provided in the Statement of Environmental Effects provided with this development application submission.

SECTION 7.11 CONTRIBUTIONS

In future detailed discussions are to be entered into about off-setting Section 7.11 contributions for land dedication and works-in-kind which will include:

- Land to be dedicated to the new road – land area of 270m² as shown in Figure 1 below.
- Construction of public domain – across the same area as shown in Figure 1.

Figure 1: Area of proposed road widening

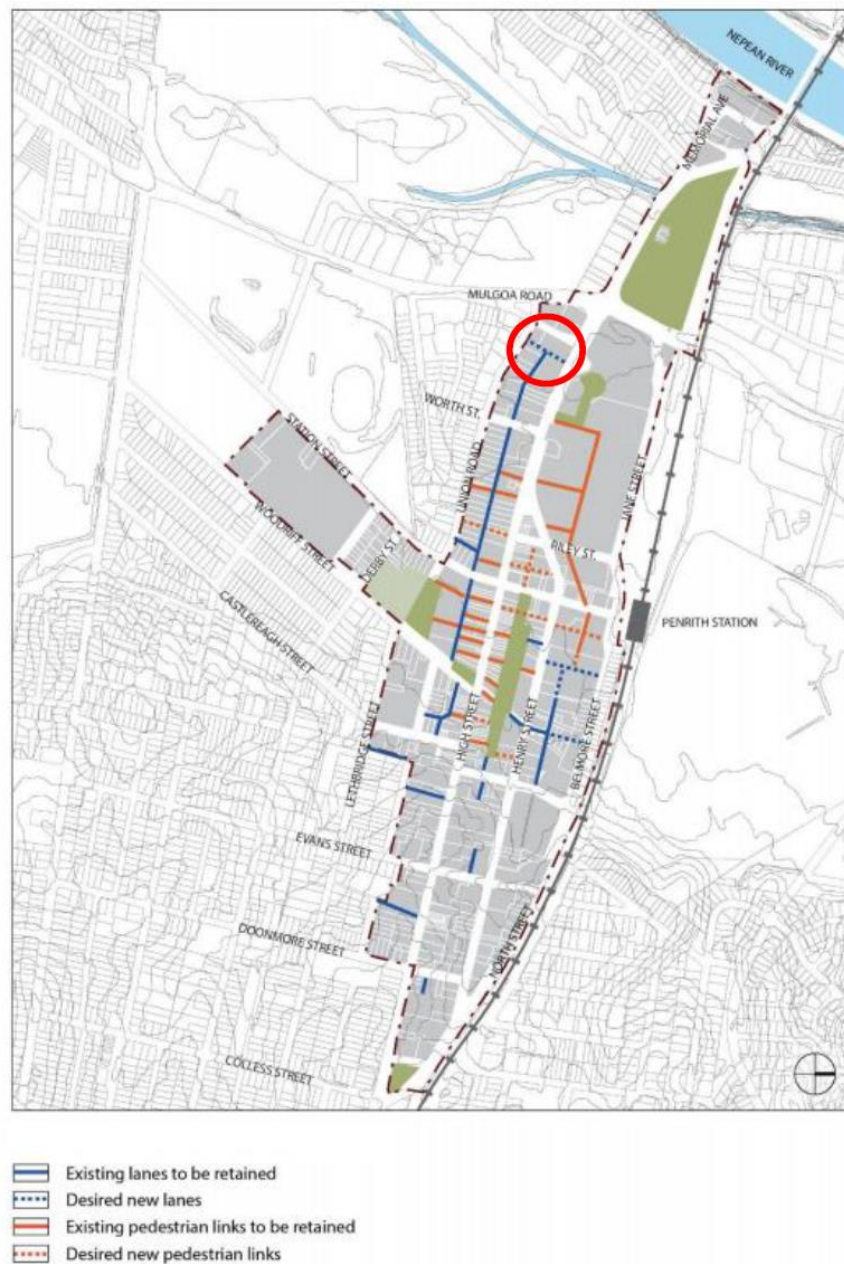


The Penrith City Centre Civic Improvement Plan provides that \$15 million is to be allocated towards traffic management and access improvements works within the CBD. The Section 7.11 then states the specific schedule of works are to be amended once additional data is revealed. In this case the road widening and public domain works are both in the interest of the general public as they will provide access which is clearly identified in Council's DCP Chapter E11 as shown in Figure 2 in the following page.

Further discussions will be entered into with Council staff at the appropriate time to consider off-setting the subject land dedication and works against the Section 7.11 contributions.

Figure 2: Extract from Penrith DCP City Centre Chapter E11

Figure E11.18 Existing and Desired Links



Our Ref: JEH:DLB:977869

1 April 2020

Mr Patrick Elias
CEO
Urban Property Group
Level 10
11-15 Deane Street
Burwood NSW 2134

Dear Patrick

Advice on interpretation of Penrith City Council's Community Infrastructure Policy

We refer to your email dated 11 March 2020 and your request for advice with respect to the interpretation of Penrith City Council's Community Infrastructure Policy (**Policy**).

1. Background

- 1.1 We understand that Urban Property Group or related entities is proposing to submit a development application to carry out a mixed use development on land known as 614-632 High Street, Penrith (**Land**).
- 1.2 The Land is 4,715m² in size and is zoned B4 and is marked as Key Site 3 on the Key Sites Map under *Penrith Local Environmental Plan 2010 (LEP)*.
- 1.3 Clause 8.7 of the LEP is an incentive clause that permits higher density development on key sites by allowing consent to be granted in circumstances where the maximum height and/or the maximum floor space ratio that applies to the Land if the development includes community infrastructure and design excellence is achieved in accordance with clause 8.4. Key Site 3 in effect has a maximum floor space ratio of 6:1 under clause 8.7(4)(b).
- 1.4 We are instructed that the proposed development:
 - (a) Includes a Community Infrastructure Offer prepared by Think Planners dated 26 March 2020 (**CI Offer**) in accordance with clause 8.7 of the LEP;
 - (b) will comprise retail, commercial and residential components and the proposed gross floor area in respect of each of these uses is as set out on page 3 of the CI Offer;
 - (c) will exceed the maximum building height of 24m allowable under clause 4.3 of the LEP;

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(d) has been the subject of an *architectural design competition* (as that term is defined by 8.4(7) of the LEP) and achieved design excellence in accordance with clause 8.4 of the LEP; and

(e) is not a staged or concept development application,

(Proposed Development).

1.5 You have instructed us that Penrith City Council (**Council**) has raised some concerns with the calculation of the Community Infrastructure Contribution set out in the CI Offer with particular reference to clause 2.4 of the Policy.

1.6 You have sought our advice regarding the correct interpretation and application of clause 2.4 of the Policy with reference to the Proposed Development and the CI Offer.

2. Community Infrastructure Policy

2.1 Principle 4 of the Principles of Community Infrastructure in section 2.2 of the Policy provides that the value of the Community Infrastructure will be determined by the Community Infrastructure Contribution Rate.

2.2 Clause 2.4 of the Policy relates to the calculation of Community Infrastructure and relevantly states:

"The Community Infrastructure Contribution Rate is \$150/sqm of additional Gross Floor Area.

Additional Gross Floor Area is defined as any Gross Floor Area above the maximum total Floor Area identified on the Floor Space Ratio map within the Penrith LEP 2010.

...

Non-residential development will not be required to provide a Community Infrastructure Contribution. Non-residential floor area is excluded from the calculation of the Community Infrastructure Contribution Value.

Staged Development Applications may be prepared that includes the offer of Community Infrastructure. Where such proposals exceed height controls but do not access the additional FSR until later stages, the Community Infrastructure Contribution Rate will apply based on any additional Gross Floor Area above the existing maximum building height until the threshold for the additional FSR is reached. During the final stages of a development, the overall Community Infrastructure Contribution Value will be balanced based the rate per Additional Gross Floor Area. Refer to Appendix 3 for an explanation of this calculation method.

...

Under the provisions of clause 8.4(5) of the Penrith LEP 2020, up to 10% of existing FSR or height may be permitted to achieve design excellence. Any

additional FSR permitted under clause 8.4(5) is not subject to this Policy or the Community Infrastructure Contribution Value."

3. Clause 2.3

While some parts of the Policy refer to types of physical works that may be suitable Community Infrastructure, clause 2.3 of the Policy provides that Council will consider certain types of Community Infrastructure including; a monetary contribution or dedication of land or property or the carrying out of works or a combination of all of the above.

4. Clause 2.4 analysis

4.1 "Additional Gross Floor Area" is defined in clause 2.4 of the Policy as "*any Gross Floor Area above the maximum total Floor Area identified on the Floor Space Ratio map within the Penrith LEP 2010.*" "Gross Floor Area" is also defined.

4.2 We note the following in relation to the calculation of the Community Infrastructure Contribution Value:

- (a) The Land has a maximum floor space ratio of 3:1 pursuant to clause 4.4 of the LEP and the Floor Space Ration Map. As the site area of the Land is 4,715m², the **maximum gross floor area permitted is 14,145m²**.
- (b) The Proposed Development includes a **total floor space of 28,276m²**.
- (c) The total floor space proposed includes **6,997m² of non-residential floor space**.
- (d) As design excellence has been achieved, the Land benefits from an additional amount of floor space equal to 10% of the maximum permitted floor area. Applying a maximum floor space ration of 3.3:1, **an additional area of design excellence floor space of 1,415m²** is permitted, bringing the maximum floor area permitted by the LEP on the Land 15,560m².

4.3 Pursuant to clause 2.4 of the Policy, it is clear that the following floor space areas are excluded from the calculation of the Community Infrastructure Contribution Value:

- (a) the additional 10% of design excellence floor area permitted under clause 8.4(5) (**1,415m²**); and
- (b) the floor space areas in respect of the non-residential components of the proposed development (**6,997m²**).

4.4 Accordingly the Additional Gross Floor Area that will be the subject of the calculation of Contribution Infrastructure is 5,719m². Having regard to the Community Infrastructure Contribution Rate of \$150/sqm, the Contribution Infrastructure Contribution Value is **\$857,850** (subject to indexation at the time of payment).

5. Staged Development Applications

- 5.1 The term 'Staged Development Application' is capitalised throughout the Policy but is not defined in the Policy, the LEP or the *Environmental Planning and Assessment Act 1979* (**EPA Act**).
- 5.2 We note that at the time of the adoption of the Policy by Council on 14 November 2016, the EPA Act did provide a definition for a staged development application in section 83B as follows:

'a **staged development application** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. The application may set out detailed proposals for the first stage of development.'

- 5.3 The EPA Act was subsequently amended on 14 August 2017 to delete this definition and provide a new definition for a 'concept development application'. Although some minor amendments were made, for the purpose of this advice, we note that the proposed Development is not a staged development application (as it was defined pre 14 August 2017) or a concept development application as it is now defined in the EPA Act.
- 5.4 In our view, the parts of the Policy which are expressed to apply to 'Staged Development Applications' plainly do not apply to the Proposed Development or the Calculation of the Contribution Infrastructure Contribution Value in accordance with the Policy as there is no 'later stage' proposed.
- 5.5 In these circumstances, the maximum height of the Proposed Development is completely irrelevant to the calculation of the Contribution Infrastructure Contribution Value and the amount is calculated in accordance with the clearly articulated box on the bottom of page 9 of the Policy.

6. Conclusion

- 6.1 Any part of the Policy which is expressed to apply to 'Staged Development Applications' does not apply to the Proposed Development or the Calculation of the Contribution Infrastructure Contribution Value in accordance with the Policy.
- 6.2 The additional 10% of design excellence floor area permitted under clause 8.4(5) and non-residential floor space areas in respect of the proposed development are excluded when calculating the Community Infrastructure Contribution rate. We support the calculation methodology outlined in the CI Offer which is consistent with the methodology set out in the Policy.
- 6.3 The Policy provides in clause 2.3 that a monetary contribution is a type of Community Infrastructure that will be considered by Council and therefore an offer of this nature is an appropriate Community Infrastructure offer.

Please contact Danielle Le Breton should you have any further questions or concerns.

Yours faithfully



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