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When telephoning please ask for: Patrick Robinson

Dear Sirs

Penrith Masterplan

We write at the request of our Clients to comment upon the consequences of the Council's resolution on 10 January 2019 that the proposed Masterplan should be the subject of further public consultation.

The surrounding context in which this resolution was passed is informative to interpretation of its meaning.

The Council has already undertaken a consultation exercise and if it now simply repeats that process it will repeat the errors of its consultation to date. We set out here how those errors can be avoided.

In case there is any remaining misapprehension within the Council that restyling the previous consultation by calling it an 'engagement' after launch somehow changed the consultation into a something different, let us draw your attention to para 14 in the opinion of Zach Simons where he gives his clear legal opinion that describing consultation as informal (presumably what the Council meant by "an engagement") after its launch does not release a body from the legal requirements of a proper consultation.

Otherwise we are unclear why Councillors would believe it would make sense to consult again on a Masterplan the Council has already consulted upon (but in a flawed and unlawful way).

The Council remains on notice of the threat of legal challenge arising from the process that it has pursued to date. Leaving aside criticism of the steps taken to date, if there is no change in that process the Council is driving itself towards the point where a legal challenge is inevitable.

To assist the Council in being clear on the steps it needs to take to move away from its flawed process to date we refer you back to our pre-action protocol letter of 25 October 2018. We mention in passing that this letter was based upon the information available at that time but that in the 10 or more weeks since it was sent, we still have not received any meaningful information disclosure in response to our requests contained in that letter. The briefest of list of illustrative classes of documents that might be released was sent to us on the 10 January 2019.

Despite this, the pre-action protocol letter still lists a series of concerns that would have to be addressed in any legitimate re-consultation. It includes:

- (a) Full consideration of alternative options with a meaningful opportunity for respondents to put their case for alternatives.
- (b) A level playing field in which alternatives are assessed fairly and transparently in the consultation document.

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Classification: Confidential

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- (c) The lack of any stated pre-disposition of the Council towards individual options in advance of receipt and consideration of the consultation responses.
- (d) Correction of past factual or technical errors such as proposing development impinging on a high pressure gas line.
- (e) The removal of distracting elements within the proposal such as the reference to development of The Beacon woodland.

This is not intended as an exhaustive list and inevitably, given the complexity of a fully constituted consultation on a significant urban extension feedback cannot be expected to be made in advance of seeing at least a draft of the consultation material proposed.

In light of the above, we invite the Council to publish for stakeholder comment the scope of any further consultation that is proposed. Given the delay and cost that has been caused by the Council's misconceived consultation in the last 3 months a preliminary communication over the nature of the consultation proposed would seem an entirely proportionate step to put the Council's mistakes of the past behind it and to move forward in an open and collaborative way from here.

Yours faithfully

A handwritten signature in dark ink, appearing to read "Burgess Salmon UK".

BURGESS SALMON LLP