

Panel Reference	2018SWT005
DA Number	DA18/0264
LGA	Penrith
Proposed Development	Construction of a Part Twelve (12) Storey & Part Fifteen (15) Storey Mixed Use Development including Basement, Podium Level 1 & Level 2 Car Parking, Ground Floor Business and Commercial Uses, 187 Residential Apartments & Construction and Dedication of a Public Road, Stormwater Drainage, Civil and Public Domain Works & Landscaping
Street Address	87 – 93 Union Road Penrith
Applicant	Toga Penrith Developments c/- Urbis
Owner	Toga Penrith Developments Pty Ltd
Date of DA Lodgement	16 March 2018
Regional Development Criteria	Capital Investment Value > \$30M
Addendum Report Authors	Gavin Cherry, Development Assessment Coordinator Kathryn Saunders, Acting Principal Planner
Addendum Report Date	27 September 2019
Date of this Addendum Report	8 October 2019

Further Assessment Report Addendum

This Further Assessment Report Addendum addresses the request for additional information and advice received from the Sydney Western City Planning Panel (the Panel) following on from the public meeting held 6 May 2019, in relation to the subject development proposal.

In follow up advice issued 25 June 2019, the Panel's Chair has specifically requested, that:

'Before the Panel determines the DA, I expect that the Panel would be assisted by specific advice from the Council assessment staff (taking into consideration the matters discussed above) as to:

- (i) what the relevant "nature and value of the community infrastructure to the City Centre" is considered to be; and*
- (ii) whether it is considered to be sufficient for the council to recommend a grant of consent of the DA under clause 8.7, if all other relevant matters are satisfactorily addressed and the DA is otherwise considered to have merit.'*

In addition to the above, the Panel was briefed on the status of the application and in the Record of Briefing dated 16 September 2019 the Panel noted that:

'Ultimately the consideration required by clause 8.7(5) is to be undertaken by the Panel, but the Panel will take into account the Council's assessment of the matters it raises noting the Council has adopted guidelines for such assessment'.

Council has considered the matters raised by the Panel in the correspondence dated 25 June 2019 and agrees with the matters contained within and with the position of the Panel having particular regard to the effect of clause 8.4(4) and clause 8.7 of PLEP.

In order to address the request at (i) above, as to what the relevant “*nature and value of the community infrastructure to the City Centre*” is considered to be, an assessment of the proposal against clause 8.7 of PLEP and Council’s supportive Community Infrastructure Policy has been undertaken and is outlined within this report.

In response to the request at (ii) above, as to whether it is considered to be sufficient for Council to recommend a grant of consent under clause 8.7, the following advice is provided:

- (a) The applicant has confirmed that, notwithstanding the addition to the proposal of an offer to enter into a planning agreement (the Offer), the proposal remains as lodged, and seeks consent for a maximum of height of RL70.50m AHD or 43m (being 19.25m above the 24m HOB development standard) and a maximum height of RL80.10m AHD or 52.8m (being 28.8m above the 24m HOB standard) for Buildings 1 and 2 respectively, and is reliant on the submitted written request under clause 4.6 of PLEP, to vary the Height of buildings (HOB) development standard.

Under PLEP clause 4.3 *Height of buildings*, the maximum height shown for the site is 24m. For developments such as the subject development, that have undergone a competitive architectural design competition, an additional 10% bonus to the applicable HOB standard is available, resulting in a maximum HOB control of 26.4m for the proposal.

- (b) Notwithstanding the applicant’s proposal, which is seeking not to rely on the provisions of clause 8.7 of PLEP, sufficient detail is included within the Draft Offer and accompanying documentation, which has allowed Council to undertake an assessment of the proposal against clause 8.7 *Community infrastructure on certain key sites*.
- (c) It is considered that the Panel, upon review of the detail contained herein and as attached, may feel satisfied as to the acceptability of the proposal to be supported pursuant to clause 8.7 *Community infrastructure on certain key sites* of PLEP, which is regarded as a suitable pathway to development consent.

As a result of the assessment of the development proposal and having regard to the effect of clause 8.7 and having regard to the matters raised by the Panel and the issued Record of Briefing documents, the development application is recommended for approval, subject to the attached amended recommended conditions set.

There are 7 attachments to this Assessment Report Addendum, as detailed below.

- Attachment 1 – SWCPP Correspondence, dated 25 June 2019
- Attachment 2 – SWCPP Record of Briefing dated 16 September 2019
- Attachment 3 – Further Addendum Assessment Report
- Attachment 4 – Amended Recommended Conditions of Consent
- Attachment 5 – Penrith City Council’s Community Infrastructure Policy

This report addends Council’s submitted assessment report provided for the Panel’s consideration for the public meeting held 18 March and 6 May 2019 and where any inconsistencies exist, the information in this addendum report prevails.

1. Offer to Enter into a Voluntary Planning Agreement

The applicant has amended their application to include a draft offer to enter into a Voluntary Planning Agreement with Council (the Offer).

This draft offer is in response to the provisions outlined within Clause 8.7 of Penrith Local Environmental Plan 2010.

The draft without prejudice offer outlines the following:-

- 1. The applicant proposes to construct a new road and dedication of associated land as road reserve as reflected within the development application*
- 2. The split between works associated with the proposed development and works forming part of the community infrastructure offer are apportioned having regard to the extent of roadway required to service the development, specifically the basement access points and service driveways.*
- 3. The remaining road construction and land dedication forms part of the proposed Community Infrastructure offer. This component is also effectively a 'works in kind' offset to necessary contributions under the City Centre Contribution Plan (under Section 7.11 of the EP&A, Act) 1979)*
- 4. In addition to the above, the applicant proposes a monetary contribution to District Open Space and Cultural Facilities (under Section 7.11 of the EP&A, Act) 1979) which is 'over and above' the required community infrastructure contribution.*
- 5. The applicant also has outlined agreement for the proposed monetary contribution to be adjusted during the VPA drafting process, if the valuation and QS assessment (as mutually agreed) differs from the current values.*

2. Comments in Response to The Proposed Offer

A review of the offer was undertaken by Council's Community Infrastructure Panel and while the general terms of the revised offer are considered acceptable, the Panel is seeking verification of cost estimates for the indicated road construction works.

In addition, an independent review of the land valuation component is also being pursued. The findings of that review can be presented to the Panel for consideration in the determination of the application.

3. Assessment Under PLEP Clause 8.7 Community Infrastructure on Certain Key Sites

Clause 8.7(1)

Clause 8.7 Community Infrastructure on certain key sites, states under (1) that:

'The objectives of this clause are:

- (a) to allow higher density development on certain land in the City Centre where the development includes community infrastructure, and*

(b) to ensure that the greater densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on those localities’.

‘Community Infrastructure’ is defined under clause 8.7 of PLEP as:

‘Development for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), recreation facilities (major), public car parks, or public roads.’

With regard to (a) above, the proposal which includes the construction and dedication of a two-way public road, spanning between Union Road and High Street, is not considered to be in conflict with these objectives and is defined as Community Infrastructure (public road) under PLEP.

The proposed works and roadway dedication is found to align with clause 2.2 *Principles of community infrastructure* and clause 2.5 *Preferred community infrastructure items* of the Community Infrastructure Policy which include Public roads and specifically include intersection treatments and upgrades at High Street and Civic Centre, Creation of new laneways or improvements to existing laneways (refer to Attachment 7 for full assessment of the development proposal against Council’s Community Infrastructure Policy).

With regard to (b) above, the package of documentation provided with the application sufficiently demonstrates that the density of development sought, will not be result in a development that is unreflective of the desired future character of the locality and that impacts of the built form and scale on amenity in the locality are not unreasonable or detrimental, and are minimised by the massing proposed.

Clause 8.7(2)

Clause 8.7(2) states that this clause applies to land identified as a key site on the Key Sites Map.

The subject site is identified as Key Site 10 on Council’s LEP map and as such the clause applies. It is noted that an LEP Amendment nominating the subject site as Key Site 10 had not come into force at the time the DA was lodged, although the adoption of the LEP Amendment was imminent and certain, and therefore appropriate weighting is given to its intended effect.

Clause 8.7(3)

As clause 8.7 states that despite clauses 4.4, 4.3 and 8.4(5), the consent authority may consent to development on land (to which this clause applies) that exceeds the maximum height shown for the land on the Height of Buildings Map or the floor space ratio for the land shown on the Floor Space Ratio Map, or both, if the proposed development includes community infrastructure.

The proposal to construct and dedicate a two-way road between High Street and Union Road and complete the extension of Union Lane, can be defined as ‘community infrastructure’.

Clause 8.7(5)

Clause 8.7(5) stipulates that the consent authority must not consent to the erection of a building on land to which this clause applies if the floor space ratio for the building exceeds, in relation to development on land identified as “Key Site 10” - 6:1.

The proposal is for an FSR of less than 3.3:1 and as such, the consent authority can be satisfied of compliance with the clause.

Clause 8.7(5)

Clause 8.7(5) states that 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.

As detailed above, the development proposal is considered to satisfy the objectives clause 8.7, and is satisfactory having regard to exhibiting design excellence, as the design has undergone an architectural design competition.

The proposal is considered to be acceptable having regard to nature and value of the community infrastructure to the City Centre, and the assessment of the Community Infrastructure against the associated Council Community Infrastructure Policy further within this report.

4. Assessment against the Community Infrastructure Policy

The Penrith City Council Community Infrastructure Policy was adopted in April 2018 and applies to development where Clause 8.7 *Community infrastructure on certain key sites*, of PLEP 2010 applies.

In developing the Policy, Council has undertaken various studies including economic feasibility assessments and urban design analysis and produced a Policy which establishes a Community Infrastructure Contribution Rate that seeks a reasonable share of the increase in the residual land value arising from the additional height and or floor area achievable on 'Key Sites', within the Penrith LGA.

(a) Aims of the Policy

Aims of the Policy include to:

- Provide an evidence-based framework justifying the Policy and its application;
- Identify Council's preferred Community Infrastructure;
- Outline the development assessment framework and processes regarding a Community Infrastructure contribution; and
- Provide guidance on how and when Council will deliver Community Infrastructure.

Consistent with the Aims of PLEP, the Policy seeks to ensure that the development of land in Penrith is well managed, orderly and accommodates the needs of Penrith's existing and future community.

Relationship with Section 7.11 Contributions

Council utilises Local Infrastructure Contributions to deliver essential and basis infrastructure and facilities. The Community Contributions Policy (CI Policy) relates to the provision of Community Infrastructure that is 'over and above' the base level that is being provided via development contributions. As a result, Local Infrastructure Contributions will still be required under the EP&A Act and the relevant Development Contributions Plan, in addition to an offer of Community Infrastructure.

The applicant, in their Draft Offer to enter into a planning agreement proposes a combination of Community Infrastructure offer, and payment of a component of Local Infrastructure Contributions levied in accordance with Section 7.11 of the EP&A Act.

The applicant has demonstrated in the detail of their Offer, that the Community Infrastructure contribution component, by virtue of the revised draft offer, is now 'over and above' their liabilities under Council's applicable Section 7.11 Contributions Plans.

The Community Infrastructure contribution rate under the CI Policy is set at \$150.00 per square metre of gross floor area, identified as being over the applicable Height of Buildings base rate for the site being 24m.

The CI Policy states that any additional FSR permitted under clause 8.4(5) is not subject to the Policy or the Community Infrastructure (CI) Contribution Value. Thus, the CI Value is taken to be \$150 x GFA over 26.8m being floors 8 through 14 inclusive.

The calculation is assessed to be as follows:

Calculation - 150sqm x 8385.3sqm (GFA for levels 8 to 14) = \$1,257, 795.00

Clause 2.2 Principles of Community Infrastructure

To determine if an offer of Community Infrastructure will be considered acceptable by Council, the following Principles of Community Infrastructure must be met:

- 1. Community Infrastructure must be in the public interest and to the satisfaction of Council*
- 2. Community Infrastructure must be over and above current development standards and Council policies*
- 3. Community Infrastructure must contribute to the City Centre or to nearby locations and facilities likely to be used by City Centre occupants*
- 4. Community Infrastructure must be achievable, measurable, economically viable and socially and environmentally sustainable*
- 5. Community Infrastructure must be consistent with the themes within Council's Strategic Planning framework*

The proposal to construct and dedicate a roadway (apportioned) between High Street and Union Road which will benefit the public and significantly contribute to pedestrian and vehicular connectivity in and around the City Centre is assessed to be supportable having regard to the above Principles.

Further, the value of the land and the estimated construction works have been verified by Council as being generally acceptable subject to the outcomes of the independent review currently being undertaken.

The offer of Community Infrastructure is considered to be in the public interest as outlined above and is considered to be fair and reasonable.

The Community Infrastructure identified is considered to be 'over and above' what is required simply to facilitate the development itself.

With regard to Principle 2, the Community Infrastructure has been assessed to be acceptable having regard to Council's engineering, waterways and civil and drainage specifications requirements, subject to the recommended conditions of consent.

With regard to Principle 4, the Community Infrastructure is material and is measurable and as detailed above, has been verified as being satisfactory with regard to the value (being of the land and any construction works).

2.3 Types of Community Infrastructure

The following types of Community Infrastructure can be considered by Council:

- (a) A monetary contribution; or*
- (b) Dedication of land or property; or*
- (c) Carrying out works; or*
- (d) A combination of all the above.*

Should a proponent provide the dedication of land or property or carry out works, the value of this Community Infrastructure must be appropriately valued. Where the value of land or works is less than the calculated Community Infrastructure Contribution amount, it can be topped up with a monetary payment.

As discussed above, the terms of the offer are generally considered to be acceptable subject to verification of the cost estimates that underpin the offer. Subject to the findings of the independent review currently being undertaken, the combination of monetary contribution, land dedication and the carrying out of works is found to be acceptable.

2.5 Preferred Community Infrastructure Items

As identified expressly within the Policy, Council's preferred Community Infrastructure items include:

- (a) Public Roads*
 - Intersection treatments and upgrades at High Street and Civic Centre,*
 - Additional street trees in priority areas outlined within Council's Cooling the City Strategy*
 - Creation of new laneways or improvements to existing laneways*
 - Pedestrian lighting of footpaths and places within the City Centre*
 - Creative lighting of objects, buildings, spaces and places*

The proposed Community Infrastructure is satisfactory having regard to the above.

3.2 Assessment of Community Infrastructure

A Community Infrastructure Panel has been established to make a recommendation to the consent authority (which may be the elected Council or the relevant Joint Regional Planning Panel) on whether to accept the offer of the Community Infrastructure. The Community Infrastructure Panel consists of Council's Manager City Planning, Development Services Manager and Legal Services Manager.

The CI Panel has met and reviewed the Offer of Community Infrastructure and has determined that the offer is generally acceptable subject to the findings of the independent review for the reasons provided above. The draft revised offer is considered to be consistent with the Principles of Community Infrastructure and can still be refined in response to the findings of the independent review of the costs and land valuation currently being pursued.

5. Proposed Amendments to the Recommended Conditions

As the development application has been amended to include a draft offer to enter into a Voluntary Planning Agreement (VPA), it is recommended that the previously recommended

conditions set previously provided to the Panel for their consideration, be amended to include the following:

- (a) A condition that requires that the VPA as detailed in the draft offer received, be executed prior to the issue of any Construction Certificate.
- (b) A condition which requires that the VPA be noted on the title of the land; and,
- (c) That effected references in conditions related to a Works in Kind Offer be deleted or appropriately amended.
- (d) That conditions related to section 7.11 contributions make reference to an alternative method of payment, being through a Voluntary Planning Agreement.

An amended recommended condition set is provided as an attachment to this addendum report.

5. Conclusion

As outlined within the proceeding assessment reports, the proposal has been assessed against the relevant environmental planning instruments and policies, including Penrith LEP 2010 and Penrith DCP 2014, including Part E11- Penrith City Centre. The proposal is found to satisfy the aims and objectives of these policies.

The proposal will have an acceptable impact on the surrounding character of the area and proposes a site responsive design which is compliant with Council's key development standards and as such is not contrary to the public interest.

Further, the proposal is found to be consistent with PLEP with regard to the anticipated density and built form transition across the site. The application is worthy of support, subject to the recommended conditions as revised and attached to this addendum report.

6. Recommendation

1. That DA18/0264 for a part 12, part 15 storey mixed use development at 87-93 Union Road, Penrith, be approved subject to the attached revised conditions;
2. That the proposed request to vary the Building Height development standard pursuant to Clause 4.6 of Penrith Local Environmental not be supported and instead the provisions of Clause 8.7 of Penrith Local Environmental Plan 2010 be relied upon to enable support of the proposal, by virtue of a suitable Community Infrastructure / Public Benefit Offer as outlined within the body of this report.
3. That those making submissions and the Roads and Maritime Services are notified of the Panel's determination.