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19 May 2021

Mr Peter Wood  
Development Services Manager  
Penrith City Council  
Via Email: Peter.Wood@penrith.city

Dear Peter ,

## TOGA PENRITH: 634-638 HIGH STREET AND 87-91 UNION ROAD, PENRITH

Urbis is engaged by Toga Penrith Developments Pty Ltd (**Toga**) in relation to Development Application 20/0148 (**DA**) which seeks consent for development at 634-638 High Street and 87-91 Union Road, Penrith (**Site**).

### Development Application

The DA, lodged on 25 March 2020, seeks consent for a development with a 5.98:1 floor space ratio (**FSR**), utilising cl 8.7 of Penrith Local Environmental Plan 2010 (**LEP**) which applies as the Site is part of Key Site 10 as identified on the Key Sites Map in the LEP.

The original DA was accompanied by a letter from Urbis dated 19 February 2020 that offered to provide community infrastructure as part of the DA in satisfaction of cl 8.7 of the LEP (**First CI Offer**). The First CI Offer is now withdrawn and is replaced with the proposal for community infrastructure contained within this letter.

The First CI Offer proposed for Toga to enter into a voluntary planning agreement (**VPA**) with Council under which Toga was to provide a monetary contribution to Council of 50% of the value of the additional residential floor space proposed in the DA (calculated in accordance with Council's *Community Infrastructure Policy -Policy No CEP 001* (the **Policy**) adopted on 30 April 2018) to be applied by Council towards the construction of a signalised intersection to be located at the northern end of the new north-south road proposed in the DA (**N-S Road**), on Council owned land, with those works comprising 'community infrastructure' for the purposes of cl 8.7 of the LEP.

However, in light of the comments contained within the Record of Deferral issued by the Sydney Western City Planning Panel (**Panel**) dated 16 April 2021 (**Deferral**) together with the fact that Council has rejected the First CI Offer which could only be implemented through a VPA with Council's agreement, Toga has decided to revise its community infrastructure proposal.

Paragraph 2(c) of the Deferral (extracted below) indicates that it is the Panel's view that community infrastructure under cl 8.7 of the LEP must form part of the 'proposed development' in the DA, as opposed to being a monetary contribution towards the provision of community infrastructure external to the Site:

*"Construction of a signalized intersection of the new north-south road contained in the DA with High Street" would seem to comprise "community infrastructure" if it is included within the proposed development"*

Further, the Deferral confirms that the First CI Offer has not been accepted, stating in paragraph 2(c):

*“The Council report advises that the infrastructure is proposed to be the subject of a voluntary planning agreement (VPA) that Council at present does not agree to”*

The withdrawal of community infrastructure proposal contained in the First CI Offer and its replacement with the proposal contained in this letter has occurred in the circumstances discussed above.

### **Revised Community Infrastructure Proposal**

Having regard to the provisions of cl 8.7 of the LEP requiring the provision of ‘community infrastructure’ to enable approval for a development on the Site with an FSR up to 6:1 (being Key Site 10), we outline below Toga’s revised community infrastructure proposal in relation to the DA.

In making this proposal, Toga has considered the provisions of the Policy. Toga’s position is that the Policy is not prescriptive, and in that regard would agree with the apparent position expressed by the Panel at its meeting on 29 April 2021 that neither the Panel nor the Court is bound by the terms of the Policy. Notwithstanding that, the Policy provides useful guidance as to the monetary value of community infrastructure that Council expects to be provided and the types or nature of community infrastructure that Council would be supportive of (which relevantly includes road works). In addition, it is noted that cl 8.7(6) of the LEP defines ‘community infrastructure’ as *“development for the purposes of recreation areas, recreation facilities (indoor), recreation facilities (outdoor), recreation facilities (major), public car parks or public roads”* (emphasis added) and that the Panel accepted the construction of the N-S Road as community infrastructure for the purposes of cl 8.7 of the LEP in granting consent to DA18/0264 for the construction of a part twelve (12) storey and part fifteen (15) storey mixed use development including basement, podium level 1 and level 2 car parking, ground floor business and commercial uses, 187 residential apartments and construction and dedication of a public road, stormwater drainage, civil and public domain works and landscaping at the Site.

The value of the required community infrastructure to be offered as part of the DA is calculated in accordance with the provisions of Section 2.4 of the Policy, being:

- a. \$150 per square metre of “*additional Gross Floor Area*”. (page 9);
- b. ‘Additional Gross Floor Area’ is defined as being any Gross Floor Area above the maximum total Floor Area identified on the Floor Space Ratio map within the LEP. (page 9); and
- c. “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” (page 10).

The maximum permissible gross floor area (**GFA**) for the Site under the LEP is 3.3:1 (which includes a 10% FSR bonus for achievement of design excellence under clause 8.4 of the LEP).

Accordingly, if Section 2.4 of the Policy is applied, obtaining development consent for the desired 5.98:1 FSR triggers a requirement for the payment of \$150 per square metre for the ‘additional’ approved GFA above an FSR of 3.3:1.

Based on the area of the Site being 5,407 m<sup>2</sup>, this represents a maximum ‘additional’ 13,460 m<sup>2</sup> of non-residential GFA @ \$150 per square metre, equating to a total value of **\$2,019,000**.



This calculation is set out below:

| Toga Site Area       | FSR               | GFA   |
|----------------------|-------------------|---|
| 5,407 m <sup>2</sup> | 3.3:1 (LEP)       | 17,843 m <sup>2</sup>   |
| 5,407 m <sup>2</sup> | 5.98:1 (proposed) | 32,314 m <sup>2</sup><br><i>Less non-residential GFA of 1,011m<sup>2</sup></i><br><b>31,303 m<sup>2</sup></b> |

$$\begin{array}{rclclcl} \text{Proposed GFA} & - & \text{LEP GFA} & = & \text{"Additional GFA"} & \\ & & \text{being} & & & \\ 31,303 \text{ m}^2 & - & 17,843 \text{ m}^2 & = & 13,460 \text{ m}^2 \text{ "Additional GFA"} & \end{array}$$

**As a result - 13,460 of "Additional GFA" x \$150 per m<sup>2</sup> = \$2,019,000**

As such, Toga offers to provide community infrastructure in the form of the construction of the N-S Road on the Site (but not the dedication of the N-S Road land) in satisfaction of the requirement in cl 8.7 for the development the subject of the DA to include community infrastructure. The extent and design of the N-S Road is shown on the *DA Civil Plan C3-05 (Revision 11)*, titled *Staging Plan – Stage 1 – Connecting to Existing Roundabout*. The value of the N-S Road works is outlined below:

**Value of Contributions included within this Offer**

| Policy  | Contribution required |
|---|-----------------------|
| <b>Community Infrastructure Contribution</b><br><i>New N-S Road works</i> | <b>\$2,503,256</b>    |

The proposed N-S Road is over and above the requirements of the development the subject of the DA as outlined in Traffic Impact Assessment by PTC dated 23 March 2020 and the independent Traffic Peer Review by GTA Consultants dated 31 November 2020.

Please contact me if you have any questions.

Yours sincerely,

**JOHN WYNNE**  
**GROUP DIRECTOR**

**Copy:** Lauren Williams, Toga.