



28 March 2024

Thornton North Penrith
Pty Limited

ABN 78 615 723 155

atf Thornton North Penrith
Unit Trust

NEW SOUTH WALES

Level 3
8 Windmill Street
Millers Point NSW 2000

GPO Box 5370
Sydney NSW 2001

T: 02 9259 5200
F: 02 9259 5201

By email: pwood@penrith.city

General Manager
Penrith City Council
601 High Street,
Penrith NSW 2750

Attention: Mr Peter Wood, Development
Services Manager

Dear Peter,

Thornton North Penrith Pty Ltd ATF Thornton North Penrith Unit Trust Offer to enter into Voluntary Planning Agreement

Thornton North Penrith Pty Ltd ATF Thornton North Penrith Unit Trust (**Thornton**) wishes to make an offer (**VPA Offer**) under section 7.4 of the *Environmental Planning and Assessment Act 1979* (**EPA Act**) to enter into a Voluntary Planning Agreement (**VPA**) with Penrith City Council (**Council**).

The VPA Offer is made in connection with Thornton's two development applications seeking consent for a mixed use development at Lots 3003, 3004, and 3005 in DP 1184498 and known as 41, 184 and 192 Lord Sheffield Circuit, Penrith (**Land**). The Land is identified as 'Key Site 11' on the *Penrith Local Environmental Plan 2010* (**LEP**) Key Sites Map. This VPA Offer is made in accordance with clause 8.7 of the LEP and Council's *Community Infrastructure Policy - Policy No CEP 001* adopted on 30 April 2018 (**CI Policy**) to satisfy the obligation to provide community infrastructure in connection with the described development. The public benefits Thornton proposes to make in the VPA are set out below.

In summary, the terms of the VPA are proposed to be as follows:

Parties	Thornton North Penrith Pty Ltd ATF Thornton North Penrith Unit Trust (ABN 78 615 723 155) (Thornton) Penrith City Council (ABN 43 794 422 563) (Council)
Description of the land (s7.4(3)(a))	The VPA will apply to the land comprised in Lots 3003, 3004, and 3005 in DP 1184498 and known as 41, 184 and 192 Lord Sheffield Circuit, Penrith (Land). The Land is owned by Thornton.

Description of the development	<p>Thornton intends to seek development consent for the development of the Land comprising the construction and operation of a new mixed-use development (Development). The Development will be subject of two development applications.</p> <p>The first development application for the Development was lodged with Council on 11 March 2022 and given reference number DA22/0213 (the First Development Application). The First Development Application relates to the southern part of the Land comprised in Lot 3003. The Statement of Environmental Effects lodged with the First Development Application indicates that it seeks development consent for:</p> <ul style="list-style-type: none">• Demolition of all existing site features and improvements;• Construction and operation of a new mixed use development, comprising:<ul style="list-style-type: none">• One storey basement, containing a total of 85 x commercial car parking spaces, a click-and-collect facility, waste rooms, a retail lobby entry, plant rooms, and other ancillary back-of-house areas;• Five-storey podium comprising:<ul style="list-style-type: none">▪ Retail tenancies, a mainline supermarket, residential and commercial lobby entries, a loading dock, vehicle access, and back-of-house areas at Ground Level;▪ A child care centre and a Recreational Facility (Indoor) Community Infrastructure at Level 01;▪ Shared car parking at Levels 01 – 04 (providing a total of 325 x residential car parking spaces, 35 x commercial car parking spaces, and 4 x car wash bays);• A residential building (referred to as Tower A), with a maximum rise of 27 storeys (Level 05 – Level 31) containing a total of 241 x residential apartments;• A residential building (referred to as Tower B), with a maximum rise of 9 storeys (Level 05 – Level 13) containing a total of 75 x residential apartments;• Creation of new east-west publicly accessible public plaza;• New landscaping works and other public domain works; and• Ancillary works, including site services and connections and stormwater infrastructure.
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	<p>The second development application for the Development was lodged with Council on 11 March 2022 and given reference number DA22/0214 (the Second Development Application). The Statement of Environmental Effects lodged with the Second Development Application indicates that it seeks development consent for:</p> <ul style="list-style-type: none">• Demolition of all existing site features and improvements;• Construction and operation of a new mixed use development, comprising:<ul style="list-style-type: none">○ One storey basement, containing a total of 93 x residential car parking spaces, 4 x car wash bays, waste rooms, plant rooms, and other ancillary back-of-house areas;○ Five-storey commercial podium comprising:<ul style="list-style-type: none">• Retail tenancies, residential and commercial lobby entries, a loading dock, vehicle access, and back-of-house areas at Ground Level;• A commercial tenancy at Level 01;• Shared car parking at Ground Level – 04 (providing a total of 161 x residential car parking spaces and 22 x retail car parking spaces);○ A residential building (referred to as Tower C), with a maximum rise of 14 storeys (Ground Level – Level 13) containing a total of 74 x residential apartments;○ A residential building (referred to as Tower D), with a maximum rise of 26 storeys (Ground Level – Level 25) containing a total of 163 x residential apartments;• New landscaping works and other public domain works; and <p>Ancillary works, including site services and connections and stormwater infrastructure.</p> <p>It is anticipated that the two development applications will be assessed and determined concurrently. This VPA Offer assumes that the two development applications will be determined concurrently.</p> <p>The VPA Offer is made in connection with the Development described above.</p>
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Nature and extent of the provision to be made by the developer, and the times and manner in which the provision is to be made (s7.4(3)(c))	<p>The VPA is to take effect on exchange of executed copies by Thornton and Council. The VPA would be entered into by Thornton and Council after approval has been granted for the Development, and prior to construction commencement for the Development. Thornton anticipates that any development consents for the Development would be granted subject to a condition that required the applicant to enter into a VPA on the terms outlined in this VPA Offer prior to the commencement of construction. Thornton also anticipates, in respect of the development approved under the First Development Application, a condition of consent requiring the owner of the tenancy stratum lot to procure the use of the tenancy stratum lot as a public recreation facility.</p> <p><i>Public benefits – works in kind</i></p> <p>Thornton proposes to provide the development contributions in the form of the following works in kind:</p> <p><i>On-Site Level 1 Tenancy - Construction, Fit-Out and Dedication of public recreation facilities (indoor)</i></p> <p>Prior to the issue of the Occupation Certificate for the Development approved by the First Development Application, Thornton will construct and fit-out a tenancy on the northern portion of the Land (identified in the concept plans provided at Annexure A and itemised fit-out works as specified in the cost calculations at Annexure B) at no cost to Council for use by the public as a recreation facility (indoor) in perpetuity (with suitable relocation clauses subject to mutual agreement between the Building Owner and Council if required).</p> <p>Thornton anticipates that the development consent for the First Development Application would be granted subject to a condition of consent requiring Thornton, prior to issue of an occupation certificate for the development approved by the First Development Application, to:</p> <ul style="list-style-type: none">(a) stratum subdivide the Land to create the tenancy as a separate stratum lot;(b) grant a restrictive covenant to Penrith City Council over the tenancy stratum lot which prevents the use of that lot for any purpose other than a public recreation facility; and(c) enter into a lease (or a management agreement) with a third-party operator in respect of the tenancy stratum lot. Such lease or management agreement will require the
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	<p>operator to use the tenancy for a public recreation facility, insure and maintain the tenancy.</p> <p><i>Provision of a 'Recreation Area' (for an indigenous themed children's adventure playground & waterplay) and enhanced embellishment of Thornton Plaza.</i></p> <p>Prior to the issue of the Occupation Certificate for the Development approved by the Second Development Application, Thornton will construct and deliver a 'Recreation Area' (for a children's playground) and a suite of additional embellishments to the pedestrian through-site link (identified in the concept plans provided at Annexure A and itemised works in the cost calculations at Annexure B). The childrens playground, and pedestrian link will be open-to-sky and publicly accessible and the Applicant will grant to Penrith City Council an easement for public walkway, with the pedestrian link remaining in the ownership of the strata owners corporation, which will be responsible for its insurance and maintenance.</p> <p>(together, the Works).</p> <p>Contribution Value</p> <p>The total value is estimated to be \$13,556,089 (including GST).</p> <p>A spreadsheet breakdown of the estimated value of the Works is at Annexure B.</p> <p>The value of the contributions to be made in this VPA Offer is a capped estimated amount of \$13,556,089 (Capped Contributions Value). It is proposed that this amount will be provided in addition to the section 7.11/7.12 contributions that are otherwise payable in respect of the Development under the:</p> <ul style="list-style-type: none">(a) Penrith City Council Cultural Facilities Development Contributions Plan (2003);(b) Penrith City Centre Civic Improvement Plan (2008, amended 2015);(c) Penrith City District Open Space Facilities Development Contributions Plan (December 2007); and(d) Penrith City Local Open Space Development Contributions Plan (2007), <p>(Contributions Plans), as amended or replaced.</p> <p>Thornton proposes that:</p> <ul style="list-style-type: none">(a) to the extent the value of Works actually provided exceeds the Capped Contributions Value, the excess
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	<p>may be taken into account to offset any section 7.11/7.12 contributions payable for the Development;</p> <p>(b) the Capped Contributions Value specified in this VPA Offer reflects the value of the Community Infrastructure Contribution required by Council's Community Infrastructure Policy, which Thornton has calculated at the value of \$2,149,680, plus an additional contribution of an estimated \$10,917,168. This estimated additional contribution is offered by Thornton in good faith to contribute in a more significant manner to the provision of community infrastructure in the locality, and reflecting the anticipated additional floor space of 5:1 that may be achieved for the Development under clause 8.7 of the LEP;</p> <p>(c) Council has adopted a different method of calculating the Community Infrastructure Contribution required for the Land in light of the absence of any mapped floor space ratio control for the Land under clause 4.4 of the LEP, (i.e. based on the anticipated additional floor space that may be achieved for the Development above the current maximum height control of 32m that applies to the Land under clause 4.3 of the LEP, and pursuant to the incentive in section 8.7 of the LEP, if the Development were to achieve the maximum incentive FSR of 5:1). The value of the public benefits offered in this VPA Offer is not an endorsement by Thornton of the Council's method of calculating the Community Infrastructure Contribution Value for the Land; and</p> <p>(d) the actual value of the Works to be provided by Thornton and included in the VPA terms will reflect the FSR actually approved for the Development, and the VPA will include a mechanism for variation of the Capped Contributions Value as required to reflect the development consents ultimately granted by the relevant consent authority.</p>
<p>Exclusion of s7.11, s7.12, former s7.24 and Division 7.1, Subdivision 4 contributions (s7.4(3)(d))</p>	<p>(a) Sections 7.11 and 7.12 of the EPA Act are not excluded as they apply to the Land and Development, except as set out above; and</p> <p>(b) Former Section 7.24 of the EPA Act is not excluded as it applies to the Land.</p> <p>(c) Division 7.1, Subdivision 4 of the EPA Act is not excluded as it applies to the Land.</p>

Whether benefits under the Agreement are or are not to be taken into consideration in determining a development contribution under s7.11 (s7.4(3)(e))	The benefits delivered under the VPA are intended to be used to offset against any contributions payable under section 7.11/7.12 of the EPA Act for the Land or the Development, but only to the extent the Works exceed the Capped Contributions Value.
Mechanisms for resolution of disputes (s7.4(3)(f))	Conventional dispute resolution mechanisms including mediation will be included in the VPA.
Enforcement of the agreement by a suitable means (s7.4(3)(g))	<p>The VPA will provide for:</p> <ul style="list-style-type: none">(a) registration of the VPA on title to all of the Land will occur after the later to occur of (1) 60 days after the grant of an operative development consent for the Development, or (2) exchange of executed copies of the VPA by Thornton and Council. The VPA will include an agreed mechanism for release of the VPA from the Land only once all obligations under the VPA to deliver the Works and grant the rights required as part of the First and Second Development Applications are met; and(b) a restriction on the issue of any Occupation Certificate for the Development until these obligations are met.
Other provisions	<p>Each party is to pay its own legal and other costs incurred relating to the negotiation, drafting, execution, exchange, registration and administration of the VPA.</p> <p>The VPA is to include a provision to the effect that the VPA does not limit or prevent in any way the exercise of any statutory discretion or duty imposed on the Council.</p> <p>The public benefits offered in the VPA will be taken to fully satisfy any obligation for Thornton to make a Community Infrastructure Contribution, calculated in accordance with the Council's Community Infrastructure Policy, in respect of the Development.</p> <p>The VPA is to include administrative provisions relating to:</p> <ul style="list-style-type: none">▪ notices;▪ entire agreement;▪ governing law and jurisdiction – in this case New South Wales;

Penrith City Council

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	<ul style="list-style-type: none">▪ the process for amending the VPA;▪ waiver; and▪ execution of the VPA in counterparts.
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We look forward to receiving Council's response to the above VPA Offer.

Yours sincerely,



TIM CASEY
Director

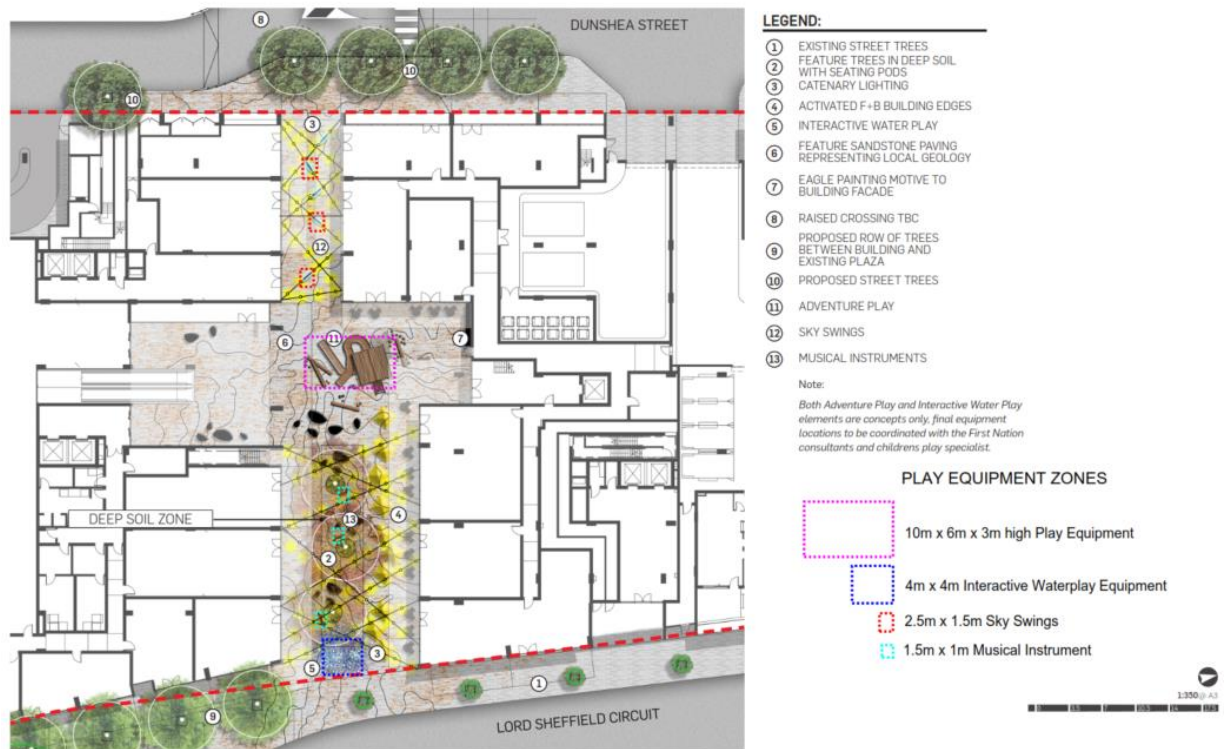


MARK HOVEY
Director

Annexure A
Works Concept Plan

Recreation Area and Through-Site Link

LANDSCAPE CONCEPT DESIGN - GROUND LEVEL DETAIL PLAN



On Site L1 Tenancy

Example layouts in different modes:

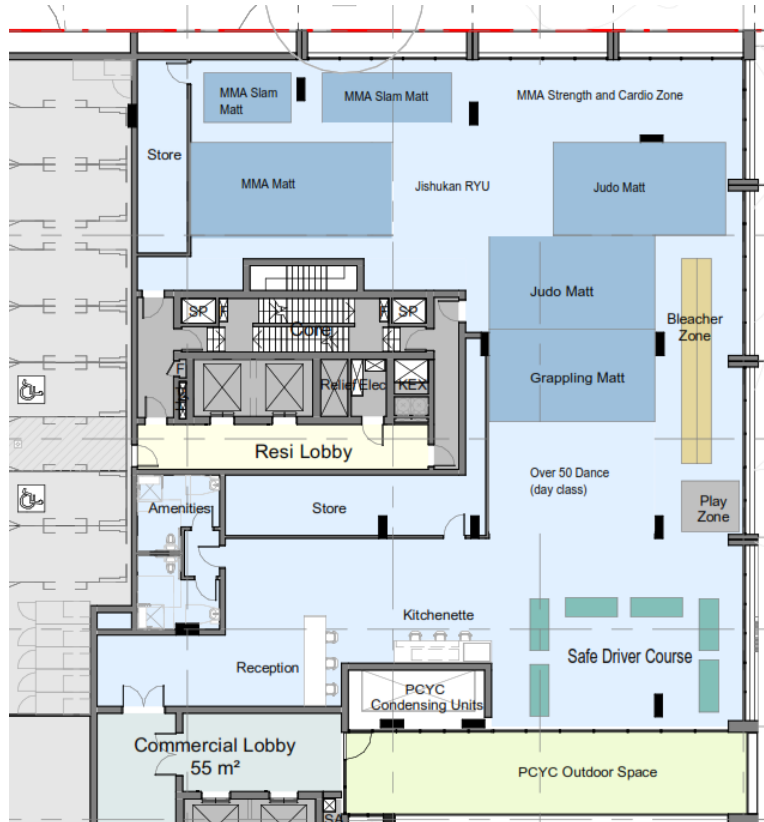


Diagram 1: Example Monday Layout (Martial Arts focus)



Diagram 2: Example Tuesday Layout (Gymnastics Arts focus)

Annexure B

Summary Total DA01 + DA02

DA01 Total Value* = Tenancy + Outgoings + Utilities + Cars + Fitout				\$	8,555,585
DA02					
Cost of Thornton Plaza CI Embelishment				\$	1,921,169
Cost of Thornton Plaza Operational and repalcement cost (assumes replacement in 20 years)				\$	3,079,335
Total Thornton DA01 and DA01 CI Costs					\$13,556,089

Detail Costings DA01 – Indoor Recreation infrastructure

- In perpetuity use of space as indoor recreation
- 2 x parking spaces
- 20 years rent free
- 20 years outgoings and maintenance
- Fit-out included

Thornton Community Recreational (Indoor) Infrastructure - DA01 L1 Tenancy					
				NLA (m2)	
			Tenancy 1	631	
Total NLA (circa)				631	m2
Rent Calc as at:				Feb-24	
Net Rent/m2 (increasing 4% pa)				\$	525
Cap. Rate					6.25%
Tenancy Value				\$	5,300,400
Outgoings (Council rates, water rates, land tax, insurance, cleaning, management, repairs and maintennce, fire protection @ \$125/m2)**	\$	78,875	pa.	over 20yrs	\$ 2,119,401 *
Utilities (electricity, water and gas circa \$3,580/qtr)	\$	14,320	pa	over 20yrs	\$ 384,784 *
Dedicated 2 Car spaces (@ \$60,000/car)				\$	120,000
Fitout (Suspended ceilings, lighting, mechanical, floor finishes, waste and water point @ \$1,000/m2)				\$	631,000
DA01 Total Value* = Tenancy + Outgoings + Utilities + Cars + Fitout				\$	8,555,585

OTHER ITEMS:	
Strata Title held by JV	
Restriction over title to be used as a Community Recreational (Indoor) Facility	
Operated by Local Community Group and suportred by the JV	
Outgoings to be paid by JV	
* Incl annual increases of 3%	

Detail Costings DA02 – Public Realm Recreation Space (Thornton Plaza)

- Base plaza costs (i.e. civil works, trees, standard grade paving) **NOT** included in costings, only embellishment works in order to establish true destinational recreation zone.
- Bespoke Playground offer increased to \$620,000 in response to assessment team feedback to ensure true destinational recreation offer

Thornton Plaza - DA02 CI Capital Outlay					
Description	Qty	Unit	Rate	Total	
Base 'Thornton Plaza' Construction Cost (includes civil, trees, allow	925	m2	\$ 487	\$ 450,429	
Extra over cost as per QS Report and Drawings					
Civil Works NA inc within base cost	1	Item	incl	\$ -	
Landscape recreation elements only	1	Item	\$ 51,000	\$ 51,000	Prov Sum
Seating	1	Item	\$ 30,000	\$ 30,000	
Pavement (EO for specialised Thornton plaza only sandstone)	925	m2	\$ 150	\$ 138,750	
Bespoke Playground	1	Item	\$ 620,000	\$ 620,000	Prov Sum
Interactive Waterplay/ Overhead Misting system on catenary cabling	1	Item	\$ 470,000	\$ 470,000	Prov Sum
Interactive Musical Instrument	1	Item	\$ 10,000	\$ 10,000	Prov Sum
Bespoke Recliner	1	Item	\$ 20,000	\$ 20,000	Prov Sum
Electrical Services	1	Item	\$ 80,000	\$ 80,000	
Other	1	Item	\$ 16,500	\$ 16,500	Prov Sum
Preliminaries (18%)	1	Item	\$ 186,530	\$ 186,530	
Total 'Through Site Link' Construction Costs				\$ 2,073,209	
Less Base 'Through Site Link' Construction Cost				\$ 450,429	
Cost of 'Through Site Link' CI Embelishment				\$ 1,622,780	
Add Initial Consultant Fees				\$ 40,570	
Add 5% Contingency				\$ 83,167.48	
Sub Total				\$ 1,746,517	
Add GST				\$ 174,652	
Total Budget Estimate of 'Through Site Link' CI Embelishment				\$ 1,921,169	

- Sinking fund established (details on following page) to ensure in perpetuity replacement of recreational facilities included
- Maintenance/operational costs and sinking fund capitalised at 6.025% per valuation report to accurately demonstrate the value of future works as at today.

Thornton Plaza CI in perpetuity cost			
	\$/Wk	\$/Mth	\$PA
Interactive multi head Waterplay			
Cleaning, chemical testing, checking and maintenance (2 x technicians allocated 4hrs per visit)	\$ 1,200		\$ 62,400
Chemical/consumable supply	\$ 250		\$ 13,000
Repairs/Lifecycle replacement			\$ 2,000
Misting System			
Maintenance/repairs			\$ 2,500
Soft Landscape			
Repair/replace and maintenance incl irrigation			\$ 1,500
Electrical			
Catenary Lighting repairs and maintenance			\$ 2,000
Playground Equipment			
Quarterly Inspections (@ \$1,250ea)			\$ 5,000
General Repairs and Maintenance			
Painting, furniture, hardscape			\$ 1,000
Vandalism incl graffiti cleaning (TBA)			\$ 2,000
PL Insurance (TBA)			\$ 5,000
Per Annum Operational Costs		as @ Y1	\$ 96,400
Replacement - Sinking Fund per annum as @ 2024 (every 20 years)		as @ Y1	\$ 96,058
Total per annum operational and replacement sinking fund costs		as @ Y1	\$ 192,458.43
Operational & Replacement Cost capitalised at 6.25% per valuation report			\$ 3,079,335