

15 January 2024

By email: Andrew.Jackson@penrith.city

Director of Development and Regulatory
Services
Penrith City Council
601 High Street,
Penrith NSW 2750

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

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Sydney NSW 2001

T: 02 9259 5200
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Attention: Mr Andrew Jackson, Director of
Development and Regulatory Services

Dear Andrew,

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 medical facility at Level 01;▪ Shared car parking at Levels 01 – 04 (providing a total of 327 x residential car parking spaces, 35 x commercial car parking spaces, and 2 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 through-site link;• 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 95 x residential car parking spaces, 2 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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<p>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>	<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.</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 operator to use the tenancy for a public recreation facility, insure and maintain the tenancy.
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	<p><i>Enhanced embellishment of Thornton Pedestrian through-site link</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 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 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 of the Works is estimated to be \$10,253,168 (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 \$10,253,168 (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 may be taken into account to offset any section 7.11/7.12 contributions payable for the Development;(b) the Capped Contributions Value specified in this VPA Offer reflects the value of the Community Infrastructure
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	<p>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 \$8,103,488. 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>
<p>Whether benefits under the Agreement are or are not to be taken into consideration</p>	<p>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.</p>

in determining a development contribution under s7.11 (s7.4(3)(e))	
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; ▪ the process for amending the VPA; ▪ waiver; and ▪ execution of the VPA in counterparts.

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

We look forward to receiving Council's response to the above VPA Offer.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'T Casey', with a stylized flourish at the end.

TIM CASEY
Director

A handwritten signature in blue ink, appearing to be 'Mark Hovey', with a long, sweeping flourish at the end.

MARK HOVEY
Director

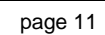
Annexure A
Works Concept Plan

Through-Site Link



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Penrith City Council
**Thornton North Penrith Pty Ltd ATF Thornton North Penrith
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Annexure B
Works Costs Plan

Thornton Community Recreational (Indoor) Infrastructure - DA01 L1 Tenancy				
				NLA (m2)
			Tenancy 1	631
Total NLA (circa)				631 m2
Rent Calc as at:	Sep-23	Sep-24	Sep-25	Sep-26 *
Net Rent/m2 (increasing 4% pa)	\$ 450	\$ 468	\$ 487	\$ 506
Cap. Rate				5.00%
Tenancy value at handover				\$ 6,388,103
Outgoings (Council rates, water rates, land tax, insurance, cleaning, management, repairs and maintenance, 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
Total Value* = Tenancy + Cars + Fitout				\$ 9,643,288
Value of Through Site Link CI Embelishment				\$ 609,880
Total CI asset value at handover				\$ 10,253,168
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 supported by the JV				
Outgoings to be paid by JV				
*Note for valuation purposes only:				
Development period circa 36 months to operational Centre				
Fixed rental increases (4% or CPI whichever is the greater)				
** Incl annual increases of 3%				

Through Site Link - DA02 Community Infrastructure Embelishment					
Code	Description	Qty	Unit	Rate	Total
1	Base Landscaping incl hardscape cost	937	m2	\$ 450	\$ 421,650
	<u>Extra over cost as per DA Drawings</u>				
2	Feature trees with Seating Pods				
	Seating pods	3	No.	\$ 5,000	\$ 15,000
	Galv steel frames set into paving	3	No.	\$ 1,850	\$ 5,550
	Feature Trees including deep planting works	3	No.	\$ 10,000	\$ 30,000
3	Catenary Lighting	1	Item	\$ 75,000	\$ 75,000 Prov Sum
4	Misting System for summer cooling	1	Item	\$ 25,000	\$ 25,000 Prov Sum
5	Activated F+B Building edges (no cost difference)	1	Item		\$ -
6	Interactive waterplay	1	Item	\$ 375,000	\$ 375,000 Prov Sum
7	Extra Over Feature sandstone paving presenting loc	937	m2	\$ 90	\$ 84,330
	Embellished Landscape incl hardscape cost				\$ 1,031,530
	Less base Landscaping cost				\$ 421,650
	Value of Through Site Link CI Embelishment				\$ 609,880