

11.3 EXHIBITION OF PROPOSED VOLUNTARY PLANNING AGREEMENT - THORNTON BRENTWOOD PTY LTD - OFF THOMAS COKE DRIVE, THORNTON

FILE NO:	103/41/66
ATTACHMENTS:	<ol style="list-style-type: none"> 1. Letter of Offer to Enter into Voluntary Planning Agreement 2. Draft Planning Agreement (Under Separate Cover)
RESPONSIBLE OFFICER:	Matthew Prendergast - Director City Planning Brett Gardiner - Manager Strategic Planning Adam Ovenden - Coordinator City Planning Anne Humphries - Principal Development Contributions Planner
AUTHOR:	Melissa Harvey - Development Contributions Officer
MAITLAND +10	Outcome 2 To easily get to where we want to go
COUNCIL OBJECTIVE:	2.1.1 Better align land use and transport planning to move toward the region's target of 15 minute neighbourhoods with access to housing, jobs, services and transport

EXECUTIVE SUMMARY

The purpose of this report is to inform Council of an offer from Thornton Brentwood Pty Ltd to enter into a Voluntary Planning Agreement (VPA) for the construction of a public road, parking and associated drainage works on Council owned land at Thomas Coke Drive Thornton. The draft VPA is linked to Planning Proposal 2022/1301 for the reclassification of the land from Community to Operational land.

Following negotiations with the applicant, the draft VPA has been prepared by Council staff and Lindsay Taylor Lawyers. The draft document is now presented to Council seeking endorsement for its public exhibition.

OFFICER'S RECOMMENDATION

THAT

1. Pursuant to clause 204(1) of the *Environmental Planning and Assessment Regulation 2021*, Council exhibit the draft Voluntary Planning Agreement for a period of 28 days;
2. Should no submissions objecting to the draft Voluntary Planning Agreement be received during the exhibition period, Council delegate authority to the Manager Strategic Planning to finalise and execute the agreement.
3. Should any submissions objecting to the draft Voluntary Planning Agreement be received during the exhibition period, a further report be presented to Council.

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REPORT

Thornton Brentwood Pty Ltd (the Applicant) lodged DA 19-682 on 9 August 2019 for the subdivision of land to create 32 residential lots at 30 Honeymyrtle Street and 35 Hillgate Drive Thornton. The subdivision is located in the Thornton North Urban Release Area (TNURA) and will be levied development contributions under the Thornton North Development Contributions Plan.

The Applicant previously lodged a concept masterplan for the subdivision under DA 11-932. As part of the assessment process for this DA, the application was referred to NSW Rural Fire Service (RFS) resulting in General Terms of Approval being issued requiring that the Applicant provide legal access for the subdivision via a through road over Council owned land off Thomas Coke Drive. The subject land which is zoned RE1 Public Recreation currently provides access to the Alan and Don Lawrence playing fields.

Figure 1 below shows the location of the development and adjoining Council owned land.

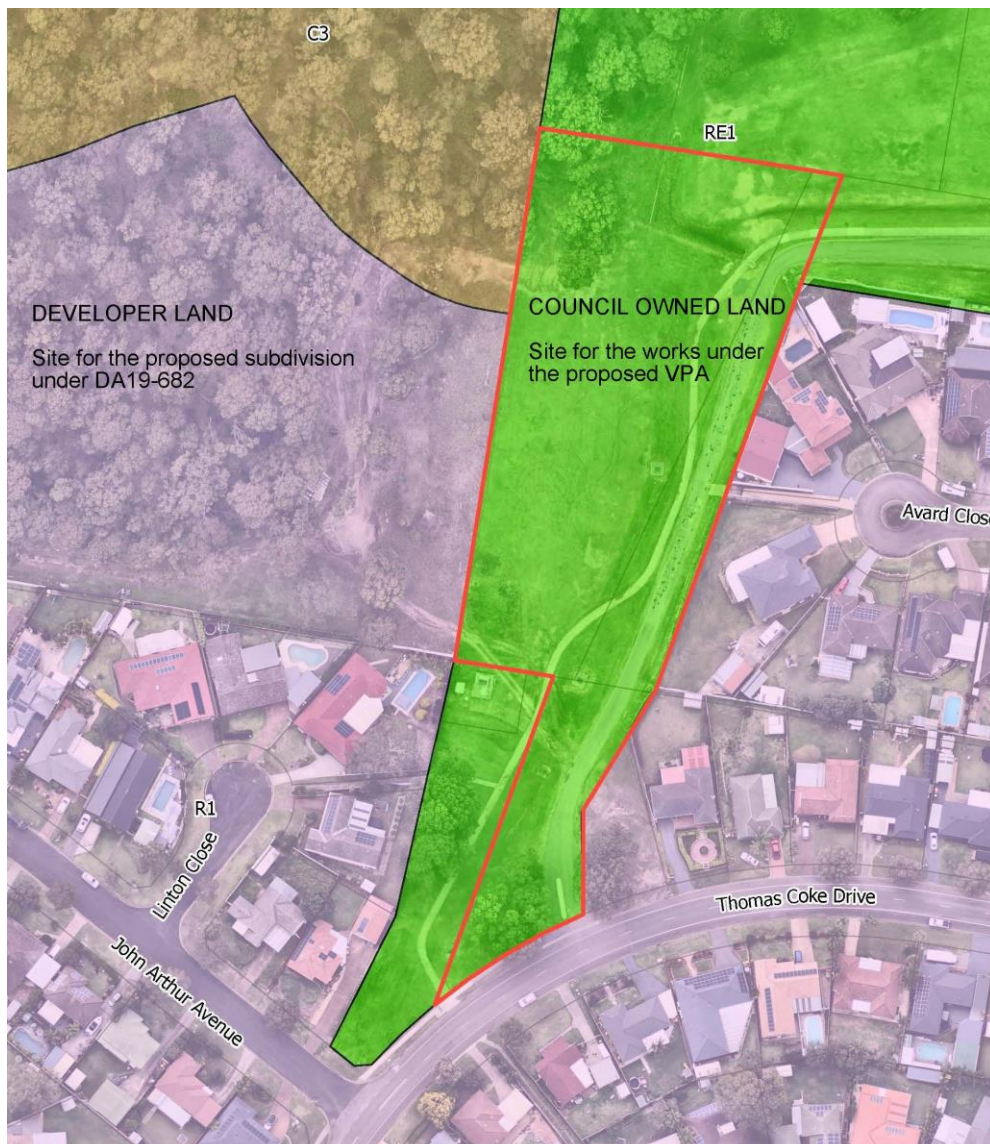


Figure 1 – Location of Proposed VPA Works and Land

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On 22 February 2022, Council resolved to submit a Planning Proposal requesting a Gateway Determination for the reclassification of the Council owned land from Community to Operational land. The Gateway Determination was issued on 30 June 2022 requiring the Planning Proposal to be placed on public exhibition. This took place from 5 September to 3 October 2022 and included a public hearing. Results of the exhibition process and public hearing were reported to Council on 11 April 2023. One of the outcomes of the public hearing was a recommendation that Council enter into a VPA with the Applicant to construct the new road over the Council owned land to service the proposed subdivision.

Due to delays outside of Council's control with the ongoing assessment of the planning proposal, the Department issued a new Gateway requiring its re-exhibition.

On 7th December 2023 Council received a letter of offer from the Applicant seeking to enter into a VPA for the construction of the road to provide legal access to the subdivision, as well as formalizing access to the Alan & Don Lawrence sporting fields. The proposed works also include on street parking, drainage and related infrastructure. The Letter of Offer is provided in Attachment 1 to this report.

PLANNING ASSESSMENT

DRAFT VOLUNTARY PLANNING AGREEMENT

The draft VPA as provided in Attachment 2 sets out the developer's obligations under the agreement, with the Explanatory Note summarising the planning merits and how the objects of the *Environmental Planning and Assessment Act 1979* and the public interest will be served.

Following is a summary of the proposed terms:

1. The works are to be undertaken on Council owned land that is subject to re-classification from Community to Operational Land under Planning Proposal 2022-1301.
2. The proposed works will provide the required secondary access to the development site and will formalise legal access to the sporting fields, improving parking, pathways and drainage, enhancing the overall condition of the sporting fields.
3. The works are to be undertaken by the Applicant at their cost with no compensation from the Thornton North Development Contributions Plan.
4. The Applicant will be required to provide security in the form of a bank guarantee or bond for the value of the works. The security will be held in escrow to ensure the Applicant delivers on the obligations of the Agreement and will only be released when works are completed.
5. If Council supports the VPA offer, a condition will be imposed on the development consent issued under DA 2019/682 requiring the VPA to be formally entered into.

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6. The VPA will include legal requirements for the registration of the Agreement on the land title.

CONCLUSION

This report seeks endorsement from Council to publicly exhibit the draft VPA concurrently with the Planning Proposal as required under the Environmental Planning and Assessment Regulations.

Should no submissions objecting to the draft VPA be received during the exhibition period, it is recommended that delegation be provided to Council staff to finalise and execute the agreement. Elsewise, a further report will be presented to Council at the conclusion of the exhibition period to consider any submissions received.

FINANCIAL IMPLICATIONS

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

The VPA offer does not exclude the payment of applicable development contributions which apply to DA 19-682. The developer is responsible for the full cost of the works included in the agreement.

POLICY IMPLICATIONS

Council's Voluntary Planning Agreements Policy sets out the principles governing the use of planning agreements and the specific circumstances where Council may consider negotiating such an agreement. The Policy contains guidance on the assessment and desirability of a proposed agreement. An assessment of these matters has been undertaken in accordance with the Policy to determine the suitability of the offer.

STATUTORY IMPLICATIONS

The cost of works is estimated at \$700,000. Section 55 of the *Local Government Act 1993* requires that Councils engage in a public tendering process for works with a value of \$250,000 or more. Under the provisions of Clause 55(3)(i) Council can resolve that because of extenuating circumstances, a satisfactory contract result would not be achieved by inviting tenders. Legal advice sought from Lindsay Taylor Lawyers confirms that in cases such as these a more satisfactory contract result will be achieved by the developer carrying out the works as required by their development consent.

City Planning

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Letter of Offer to Enter into Voluntary Planning Agreement

Meeting Date: 9 July 2024

Attachment No: 1

Number of Pages: 7

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7th December 2023

The General Manager
Maitland City Council
PO Box 220
MAITLAND NSW 2320

Attention: Anne Humphries – Development Contributions Administrator

Proposed Voluntary Planning Agreement

Planning Proposal gateway determination PP2022-1301

Dear Anne,

Brentwood Thornton offers to enter into a Planning Agreement with Council under section 7.4 of the *Environmental Planning and Assessment Act 1979* in connection with the subdivision of lot 425 DP 1262858, lot 848 DP 703278, Lot 1094 DP 807086 Lot 8884 DP 786883, lot 1538 DP 832922 and lot 206 DP 1228517. The proposed VPA would relate specifically to the planning proposal which has a gateway determination of PP 2022-1301

The proposed subdivision requires the creation of a public road over an existing parcel of community land owned by the Council that will need to be reclassified to operational to facilitate the construction of a public road and associated carparking and drainage. The amending LEP to reclassify this land currently is gateway determination PP 2022-1301

Development Description

The proposed subdivision intends to create 31 residential lots on lands zoned R1 Residential. The subdivision requires the creation of an additional access/egress point from the site. The access/egress proposed to be constructed on Council owned land that is currently used as an access handle to a local sporting facility and recreation area. In addition, a portion of the land will be created as a drainage reserve.

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VPA Proposal

The proposed VPA will see Brentwood Thornton construct a public road with the road side verge parking, associated drainage and foot paving to create a public road to the sporting reserve and access to Honeymyrtle Street over the lands to be reclassified as operational land. This land will not be transferred from Council ownership.

Item	Terms
Parties	Maitland City Council Thornton Brentwood Pty Ltd (ACN 622 242 497) ATF Thornton Brentwood unit trust. (Brentwood Thornton) Unit 8 41-46 Newcomen street Newcastle NSW 2300
Land	lot 425 DP 1262858, lot 848 DP 703278, Lot 1094 DP 807086 Lot 8884 DP 786883, lot 1538 DP 832922, and lot 206 DP 1228517, 52 Thomas Coke Drive Thornton and 35 Hillview Drive Thornton.
Planning Proposal/Development Application	<p>The DA is for the development of a 31 residential lot subdivision, associated road and infrastructure and dedication of drainage reserve.</p> <p>The planning proposal has a gateway determination number of PP 2022-1301.</p>
Works	It is proposed to construct a public road and on street parking areas as access to the public reserve, footpath and associated drainage works
The Public Interest	The proposal will formalise a legal access to the sporting fields improving and formalising parking along the street to improve the safety of users of the facility. The creation of improved drainage to improve the overall condition of the park lands and the construction of a pathway providing access to the park to improve the accessibility and safety of users of the facility.
Application of section 7.11, 7.12 and 7.24	This offer of a VPA is not exclusive to the payment of applicable Section 7.12 or 7.11 developer contributions.
Security	It is proposed that the delivery of the infrastructure would occur with the development of the proposed subdivision on the site. The security held by Council will

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	be the release of the subdivision certificate for the land preventing the newly created lots being registered until the required works have been completed in accordance with the approved designs.
Costs	Brentwood Thornton agrees to pay Council's reasonable costs of and incidental to the negotiation, preparation and entering into the agreement, as well as administration and enforcement of the planning agreement in accordance with the terms set out in the template planning agreement.

Yours faithfully

Paul Anderson
Director
PM.Anderson Consulting Pty Ltd

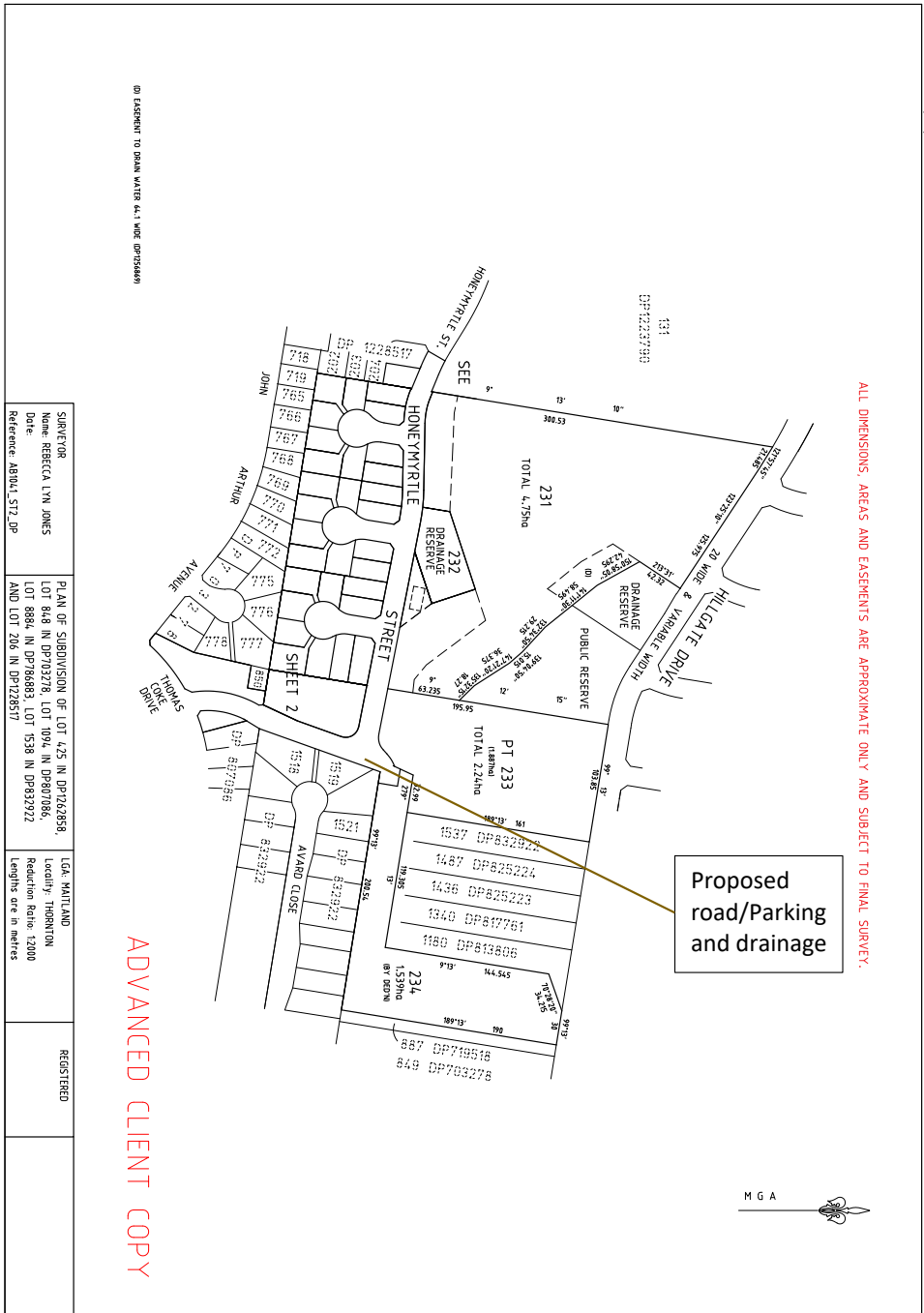
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Schedule A – Location Plan



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Schedule B – Contributions Land and Works Plan



SURVEYOR Name: REBECCA LYN JONES Date: Reference: A81041_S172_DP	PLAN OF SUBDIVISION OF LOT 425 IN DP76262858 LOT 848 IN DP70327781, LOT 1094, IN DP8070861 AND LOT 206 IN DP1228517	LGA: MAITLAND Locality: THORNTON Reduction Rate: 1:2000 Lengths are in metres	REGISTERED
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ADVANCED CLIENT COPY

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Schedule D – Contributions Work

Contribution Item Description	VPA Item No.	Works Value*
Construction of public road Construction of carparking Construction of footpath Construction of drainage and stormwater		\$700000
Totals		\$700000

* Works Value subject to provision of QS Costs.