
DATED

PLANNING AGREEMENT

**482 KIEWA STREET, ALBURY NSW 2640 (LOT 1 DP1070397 and Lot 1 DP
1113160)**

ALBURY CITY COUNCIL ABN 92 965 474 349

and

ZEONOS HOLDINGS PTY LTD ACN 156 444 441

and

SKAGIAS PTY LTD ACN 088 951 393



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3.2 The Parties agree that if the Developer:

- (a) has not lodged a Development Application for Development Consent to carry out the Proposed Development on the Land on or before the first anniversary of the Commencement Date; or
- (b) has obtained a Development Consent for that Development Application and the building, engineering or construction work relating to the building, subdivision or work the subject of the Development Consent has not physically commenced within 5 years of the date of the Development Consent,

then this Deed terminates and will be of no further force or effect.

4. Definitions and Interpretation

4.1 Definitions

Act means the *Environmental Planning and Assessment Act 1979*.

Application means an application for any Approval.

Assignment and Dealing Terms means the obligations imposed under on the relevant Parties under, and by virtue of Schedule 9.

Authorised Officer means, in the case of any party, a director or secretary or an officer or a person with delegated authority to act as an Authorised Officer for the purpose of this Deed.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier as defined in the Act.

Bank Guarantee means an irrevocable and unconditional undertaking by an Australian bank, and on terms, acceptable to Council, in the Council's absolute discretion, to pay the face value of that undertaking on demand.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Commencement Date means the date of this Deed.

Control or **Controlled** means in respect of an entity the possession, directly, or indirectly, of the power, whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights, directly or indirectly, to control the membership of the board of directors of the entity or to otherwise, directly or indirectly, direct or influence the direction of the management and/or policies of that entity, whether by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock or units or other interests of that entity or otherwise.

Party means a party to this Deed, including their respective successors and assigns.

Plan of Subdivision means a plan of subdivision in respect of the whole, or part of, the Land relating to the Proposed Development which has been approved by the Council.

Proposed Development means the development proposed by the Developer as described in Schedule 2.

Real Property Act means the *Real Property Act 1900*.

Related Entity has the meaning “related entity” has in the *Corporations Act 2001*.

Register means the Torrens title register maintained under the *Real Property Act 1900*.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Residential Allotment means an allotment of the Land which is intended to be developed, subject to development consent, by construction of a single dwelling house.

Release and Discharge Terms means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 6.

Review Procedures means the procedures set out in Schedule 7.

Security Arrangements means those security arrangements set out in Schedule 8.

Subdivision Certificate means a certificate that authorises the registration of a Plan of subdivision under Division 3 of Part 23 of the *Conveyancing Act 1919*.

4.2 General

In this Deed unless the contrary intention appears:

- (a) A reference to a document or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;

- 5.1 the Developer will provide, or procure the provision, of the Development Contributions; and
- 5.2 the Council acknowledges to the Developer that it is the Council's present intention that the Development Contribution will be made available for use or expenditure for the purposes set out in column 2 of Schedule 3; and
- 5.3 to the extent that a Development Contribution may be described in, or implied by, this Deed, including clause 5.2, as having a particular use (intended or otherwise), the Developer acknowledges and agrees that:
 - (a) the Council has not made any warranty or representation that a Development Contribution must, or will, be used for, or expended on, a particular purpose (other than as set out in clause 5.2); and
 - (b) the Council has no obligation to use or expend a Development Contribution for a particular purpose; and
 - (c) the Council does not have any obligation to monitor or follow-up the use or expenditure of such a Development Contribution including if the Council transmits a Development Contribution to any other Authority.

6. Application of the Development Contributions

The Developer will provide, or procure the provision of, the Development Contributions at the time or times and in the manner set out in the Development Contributions Schedule and in accordance with the Development Procedures, and the Development Program.

7. Application of sections 7.11 and 7.12 of the Act to the Proposed Development

The application of sections 7.11 and 7.12 of the Act to the Proposed Development are not excluded and may be imposed by virtue of a condition to any future Development Consent to the extent permissible by Council's *Infrastructure Contribution Plan 2014*.

8. Registration of this Deed

Not applicable to this Deed. This clause has been intentionally deleted.

9. Review of Deed

The Parties agree that this Deed will be reviewed or modified in the circumstances, and in accordance with, the Review Procedures.

- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
- (c) must inform the Parties before being appointed the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert setting out the terms of the expert's determination and the fees and expenses payable to the expert.

10.6 **Directions to expert**

In reaching a determination in respect of a dispute, the independent expert must give effect to the intent of the Parties entering into this Deed.

10.7 **Expert not arbitrator**

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing a final certificate as soon as practicable.

10.8 **Compliance with directions**

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) subject to paragraph (b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 10.13; or
 - (ii) if required by Law or the ASX Listing Rules to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (d) views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- (e) admissions or concessions made by Party during the expert determination or mediation in relation to the dispute; and
- (f) information, documents or other material concerning the dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

11. Security and enforcement

11.1 Security

The Developer has agreed to provide security to the Council for performance of the Developer's obligations under this Deed on the terms and conditions of the Security Arrangements, if any.

11.2 Enforcement

This Deed may be enforced by either Party in any court of competent jurisdiction.

11.3 No prevention to enforcement

For the avoidance of doubt, nothing in this Deed prevents:

12.3 **Receipt**

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted;
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

12.4 **Receipt – next Business Day**

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

13. **Approvals and Consent**

Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in the Parties absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14. **Assignment and dealings**

None of the Parties to this Deed may assign or otherwise deal with its rights under this Deed or allow any interest in them to arise or be varied in each case unless agreed in writing by all Parties.

15. **Costs**

15.1 The reasonable costs regarding the negotiation, preparation, execution, advertising, stamping and registration of this Deed and any deeds in relation to this Deed are to be borne by the Parties and in the proportions as set out in the Costs Schedule.

15.2 The Developer agrees to pay or reimburse the Council on demand for:

- (a) Costs of the Council in connection with any exercise or non-exercise of rights (including, without limitation, in connection with the contemplated or actual enforcement or preservation of any rights under this Deed) waiver, variation, release or discharge in connection with this Deed; and

22. **Severability**

- 22.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 22.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of the Deed is not affected.

23. **Modification or Variation**

No modification or variation of this Deed will be of any force or effect unless it is in writing and signed by the Parties as a Deed.

24. **Waiver**

- 24.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- 24.2 A waiver by a Party is only effective if it is in writing.
- 24.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25. **GST**

25.1 **Consideration does not include GST**

Any consideration expressed in this Deed is, unless otherwise specified, GST exclusive and does not include any amount for, or on account of, GST.

25.2 **GST payable**

If any supply under or in connection with this Deed constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply (**GST Amount**).

The GST Amount is:

- (a) equal to the value of the supply calculated in accordance with the GST Act multiplied by the applicable GST rate; and
- (b) payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the

independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause.

29. **Release and indemnity**

29.1 The Developer agrees that the Development Contributions, the Proposed Development and all property in the Land are at the risk of the Developer. The Developer releases the Council from liability or loss arising from, and Costs incurred in connection with any matter or thing contemplated by this Deed including the Development Contributions and the Proposed Development on the Land.

29.2 The Developer indemnifies the Council and the Council's employees, agents, officers or contractors against all costs and expenses paid or payable by the Council or any liability or loss arising from, and any Costs (including legal costs and expenses on a full indemnity basis or a solicitor and own client basis whichever is the higher) incurred in connection with any matter or thing contemplated by this Deed including the Development Contributions and the Proposed Development on the Land.

29.3 The indemnity in clause 29.2 is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends. It is not necessary for the Council to incur expense or make payment before enforcing a right of indemnity under this Deed.

30. **Explanatory Note**

The Explanatory Note must be used to assist in construing this Deed to the extent stated in Schedule 11.

Schedule 2 – Land

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- | | |
|----|--|
| 1. | Title |
| | The whole of the land comprised in Certificate of Title Folio Identifiers 1/1113160 and 1/1070397 and being the land described as 482 Kiewa Street, Albury NSW 2640. |
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- | | |
|----|--|
| 2. | Encumbrances |
| | The land is subject to a mortgage in favour of Westpac Banking Corporation |
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- | | |
|----|---|
| 3. | Proposed Development |
| | The proposed development is for the construction of four (4) retail premises. |
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Schedule 4 – Development Procedures

Not Applicable

Schedule 6 - Release and Discharge Terms

The Council agrees to provide a release and discharge of this Deed with respect to any part of the Land upon the Developer satisfying all of its financial obligations under this Deed.

Schedule 8 – Security Arrangements

The Developer must pay the Development Contribution to Council prior to the issue of the Occupation Certificate for the Proposed Development.

- (a) the New Parent agrees to comply with the Required Obligations as if it were the Developer (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of; and
 - (b) the New Parent acknowledges and agrees that the rights of the Council under this Deed are not diminished or fettered in any way;
- 4.3 any default by the Developer has been remedied by the Developer or waived by the Council; and
- 4.4 the Developer and the New Parent pay the Council's reasonable Costs in relation to that consent.

Schedule 11 – Explanatory Note

The Explanatory Note relating to this Deed must not be used to assist in construing this Deed.

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Planning Agreement

Under section 7.4 of the Environmental Planning and Assessment Act 1979

1. **Parties**

Albury City Council ABN 92 965 474 349 (Council)

Zevonos Holdings Pty Ltd ACN 156 444 441 and Skagias Pty Ltd ACN 088 951 393
(Developer)

2. **Description of Land**

Lot 1 Deposited Plan 1113160 and Lot 1 Deposited Plan 1070397 and being the land described as 482 Kiewa Street, Albury NSW 2640.

3. **Description of Development Application**

4. The proposed development is for the construction of four (4) retail premises.

5. **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

The Planning Agreement requires the Developer to financially contribute to the Council the sum of \$375,000 in recognition of a shortfall in the provision of off site car parking considered necessary to offset the impacts that a development of this size and intensity will have on the surrounding area. It is the intention of Council to utilise the contribution to provide additional public parking in the area.

6. **Assessment of the Merits of the Planning Agreement**

The Planning Purposes Served by the Planning Agreement

In accordance with section 7.4(2) of the Act, the Planning Agreement has the following public purpose:

EXECUTED as a Deed

EXECUTED by ZEVONOS HOLDINGS PTY
LTD ACN 156 444 441 in accordance with
section 127 of the *Corporations Act 2001*
(Cth):

.....
Signature of Director

.....
Name of Director



..... Signature of Director/Secretary **SOLE DIRECTOR**

JAMES KATEHOS

.....
Name of Director/Secretary

EXECUTED by SKAGIAS PTY LTD ACN 088
951 393 in accordance with section 127 of
the *Corporations Act 2001* (Cth):

.....
Signature of Director

ANGELO SKAGIAS

.....
Name of Director



..... Signature of Director/Secretary

NICHOLAS SKAGIAS

.....
Name of Director/Secretary

THE SEAL of ALBURY CITY COUNCIL ABN
92 965 474 349 was affixed in accordance
with Reg 400 *Local Government*
(General) Regulation 2021 pursuant to a
resolution made on _____ and
attested to by:

.....
Kylie King
Mayor



.....
Frank Zaknich
CEO