

# **Voluntary Planning Agreement**

**For exhibition**

**City of Parramatta Council**

**ABN 49 907 174 773**

**Zaki Property Pty Ltd ATF Zaki Property Trust**

**ABN 85 020 549 690**

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# Agreement

**Date**

2023

## Parties

### Council

<b>Name</b>	City of Parramatta Council ( <b>Council</b> )
<b>ABN</b>	49 907 174 773
<b>Address</b>	126 Church Street, Parramatta
<b>Contact</b>	Manager, Land Use Planning
<b>Telephone</b>	(02) 9806 5050

### Applicant

<b>Name</b>	Zaki Property Pty Ltd ATF Zaki Property Trust ( <b>Applicant, Developer and Landowner</b> )
<b>ABN</b>	85 020 549 690
<b>Address</b>	Suite 1.04, Level 1, Quad 1, 8 Parkview Drive, Sydney Olympic Park
<b>Contact</b>	Veselin Krajcic
<b>Telephone</b>	0424 518 955

## Background

- A. The Applicant is the Developer and Landowner of the Land.
- B. The Land is zoned SP2 Infrastructure (Educational Establishment) pursuant to the *Parramatta Local Environmental Plan 2023* and has an area of approximately 4,249m<sup>2</sup>.
- C. On 5 November 2021, the Developer submitted a Planning Proposal to Council seeking the rezoning of the Land to R2 Low Density Residential.
- D. On 18 October 2022, Parramatta Local Planning Panel endorsed the rezoning of the Land from SP2 Infrastructure (Educational Establishment) to R2 Low Density Residential and amending the Land Zoning Map (Sheet LZN\_002) to reflect this change.
- E. The land zoned SP2 Infrastructure and marked Classified Road per the Land Reservation Acquisition map is proposed to be acquired by Transport for NSW (pursuant to clause 5.1 of the *Parramatta Local Environmental Plan 2023*). This will be subject to a separate process and is separate to this Agreement.
- F. The changes are sought for the purpose of making Development Applications to the Council for Development Consent to carry out the Development on the Land.

- G. On 28 November 2022, Council endorsed the Planning Proposal for the purposes of seeking a Gateway determination from the NSW Department of Planning and Environment.
- H. On 31 January 2023, the Gateway Determination was issued.
- I. The Applicant has offered to enter into this Agreement to make contributions for public purposes in connection with the Planning Proposal and the Proposed Development Consent.

## Operative provisions

### 1 Definitions

In this Agreement, unless the context indicates a contrary intention:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW);

**Address** means a party's address set out in the Notices clause of this Agreement;

**Applicant** means Zaki Property Pty Ltd ATF Zaki Property Trust;

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this Agreement;

**Associated Entity** has the same meaning as in section 50AAA of the *Corporations Act 2001* (Cth);

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

**Bank Guarantee** means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

**Bond** means an insurance bond provided by an insurer licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moody's, Standard & Poors or Bests, or a cash bond;

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this Agreement;

**Construction Certificate** means a construction certificate as defined under section 6.4 of the Act;

**Contribution** and **Contribution Item** means the contribution provided by the Applicant as outlined at clause 8 of this Agreement and being an item from the Contributions Table;

**Contributions Plan** has the same meaning as under the Act;

**Contributions Table** means the table at Schedule 1;

**Council** means Parramatta City Council;

**CPI** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

**Development Application** means each 'Development Consent' as that term is defined in the Act;

**Development Consent** means each 'Development Consent' as that term is defined in the EPA Act or an approval under Part 4 of the Act for the Development or any part of it and includes any modification granted with respect to the Development Consent;

**Dispute** means a dispute or difference between the Parties under or in relation to the Agreement.

**Explanatory Note** means the explanatory note in Schedule 4 of this Agreement and prepared under s 205 of the Regulation;

**Future Development Consent** means any development applications lodged with respect to the Land after determination of the Proposed Development Consent.

**GST** has the meaning it has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

**Insolvent** means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re

amalgamation, is presented and not withdrawn or dismissed within 21 days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;

- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;
- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable.

**Land** means the land comprised in Lot 3 in Deposited Plan 775621 and known as 8 Lincluden Place, Oatlands, and includes any lot created by the consolidation or subdivision of the lot from time to time;

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**LEP** means the *Parramatta Local Environmental Plan 2011*, and subsequently amended to *Parramatta Local Environmental Plan 2023*;

**Modification Application** means any application to modify the Development Consent under section 4.55 of the Act;

**Monetary Contribution** means monetary contribution payable by the Applicant, calculated in accordance with the mechanisms detailed in this Agreement and as outlined at clause 8 of this Deed.

**Occupation Certificate** means an occupation certificate as defined under section 6.4 of the Act and includes Occupation Certificate for a part of a building;

**Offer** means the offer made on behalf of the Applicant (in the form of a letter dated 29 September 2022) to enter into this Agreement and which is included under Schedule 2 of this Agreement.

**Planning Proposal** means the document proposing amendments to the LEP, being the Planning Proposal lodged by the Developer with Council on 5 November 2021, and which is included under Schedule 3 of this Agreement

**Proposed Development Consent** means the Development Consent with respect to the application for development approval to be lodged with Council regarding the future development of the Land.

**Public Purpose** means the public purpose to which the Contribution will be applied, being the provision of a shared path which can be used by the public or a portion of the public, subject to clause 8 of this Deed, to provide public pedestrian access.

**Public Reserve** has the same meaning as in the *Local Government Act 1993*;

**Public Road** has the same meaning as in the *Roads Act 1993*;

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

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

**Related Body Corporate** has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

**Shared Pathway** means the pathway shown on the plan included at Schedule 5 of this Agreement and described at clause 8.1(a)(ii) of this Agreement..

**TfNSW** means Transport for NSW or any other successor constituted under the Transport Administration Act 1988.

**Total Contribution Value** means the total value of all Contributions to be provided under this Agreement as specified in the Contributions Table, as adjusted, where necessary, for CPI.

## 2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO, general manager or managing director)** the president, CEO, general manager or managing director of a body or Authority includes any person acting in that capacity;

- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

### 3 Planning Agreement under the Act

- (a) The parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.

- (b) Schedule 4 of this Agreement, being the Explanatory Note, summarises the requirements for planning agreements under section 7.4 of the Act and the way this Agreement addresses those requirements.
- (c) The parties acknowledge and agree that, in accordance with section 4.15 of the Act, the terms of this Agreement must be considered by any consent authority when determining a Development Application for the Development, or any part of the Development.

## 4 Application of this Agreement

This Agreement applies to:

- (a) the Planning Proposal; and
- (b) any Proposed Development Consent and Future Development Consent;; and
- (c) the Land.

## 5 Operation of this Agreement

- (a) This Agreement commences on and from the date it is executed by all parties.
- (b) For the avoidance of doubt, the obligations to deliver contributions under clause 8 do not take effect until the Planning Proposal is approved and the amendment to the LEP has been published on the NSW legislation website, and are payable in the manner as set in Contributions Schedule.

## 6 Staged provision of Contributions

- (a) Subject to clause 6(b), below, each Contribution Item must be delivered by no later than the timeframe specified in the Contributions Table. However, the Developer may complete and deliver a Contribution Item earlier than the timeframe specified in the Contributions Table.
- (b) Council may, at its sole discretion, agree to the delayed delivery of a Contribution Item, provided security is provided by the Developer to the Councils satisfaction. Council's decision regarding the delayed delivery of a Contribution Item may not be the subject of a dispute under this Agreement.

## 7 Proposed Development Application

### 7.1 *Requirement of Voluntary Planning Agreement*

- (a) The Applicant, pursuant to its Offer dated 29 September 2022, has expressed its interest in developing the Land by constructing residential dwellings, which are not permitted by the current zoning of the Land being SP2 Infrastructure (Educational Establishment).

### 7.2 *Lodgement of Development Application*

- (a) Once the amendment to the LEP has been published on the NSW Legislation website, the Applicant is to lodge a development application with Council for the proposed development of the Land (**Proposed Development Consent**).

- (b) The Material Public Benefit provided by the Applicant will depend on the dwelling yield of the Proposed Development Consent and is particularised below:
  - (i) The base dwelling yield for the Proposed Development Consent which is covered by this Agreement is a maximum of three (3) allotments, including the continued use of the existing educational facility on the Land (**Base Dwelling Yield**). The Base Dwelling Yield for the Proposed Development Consent which is covered by this Agreement is inclusive of any development that may accommodate less dwellings than the maximum allowance under the Base Dwelling Yield.
  - (ii) The maximum dwelling yield for the Proposed Development Consent which is covered by this Agreement is no more than five (5) allotments, accommodating up to a maximum of two (2) low density dwellings per allotment (up to ten (10) low density dwellings in total) on the Land (**Maximum Dwelling Yield**).
  - (iii) If the Proposed Development Consent approves development for more than ten (10) dwellings, or if a Future Development Consent is lodged with respect to the Land for a different form of development, a condition of consent will be imposed on the Proposed Development Consent or Future Development Consent, whereby the Applicant is to submit a new Letter of Offer to enter into a new voluntary planning agreement. (**Exceeding Maximum Dwelling Yield**).
- (c) Nothing in this Agreement relieves the Applicant of its statutory obligations under the Act to obtain the necessary development consent/s for any such future redevelopment of the Land.
- (d) Nothing in this Agreement fetters Council's discretion under the Act in assessing and determining as it sees fit any future development applications for a future redevelopment of the Land.

## 8 Contributions to be made under this Agreement

### 8.1 Material Public Benefit

- (a) Subject to clause 7.2(b), clause 8.2 and Schedule 1, the Applicant agrees to either:
  - (i) Make payment of a monetary contribution to Council in accordance with the Contributions Table (**Monetary Contribution**); OR
  - (ii) Construct a shared pathway upgrade along Pennant Hills Road, specifically between Gollan Avenue and Glencoe Avenue (**Shared Pathway**).
- (b) The Applicant must provide Council with written confirmation of their election in Clause 8.1 by no later than three (3) months following the submission of the Proposed Development Consent. This written notification must be addressed to Manager, Land Use Planning and [council@cityofparramatta.nsw.gov.au](mailto:council@cityofparramatta.nsw.gov.au).
- (c) In the event that the Applicant does not lodge with Council a development application for the Proposed Development Consent within twelve (12) months of the amendment to the LEP being registered on the NSW Legislation Website, the

Applicant must construct the Shared Pathway in accordance with clause 8.1(a)(ii), 8.3 and Schedule 5 of this Deed.

- (d) Prior to any sale of the Land by the Applicant, and if a Material Public Benefit has not yet been provided by the Applicant, the Applicant must make payment in accordance with the Base Dwelling Yield development scenario outlined in clause 7.2(b)(i) and clause 8.2(b). Payment must be made prior to any settlement of the transfer of Land.

## 8.2 Monetary Contribution

- (a) This Agreement includes a calculation for how monetary contributions will be derived, but the final monetary amount will be calculated once actual yield is ascertained and approved by Council.
- (b) If the Proposed Development Consent reflects the Base Dwelling Yield or less than the number of dwellings that can be accommodated under the Base Dwelling Yield, then the Applicant must make a monetary contribution of \$300,000.
- (c) If the Proposed Development Consent reflects the Maximum Dwelling Yield, then the Applicant must make a monetary contribution in accordance with the following formula (the figures in the following formula may be increased but not decreased and all monetary contributions will be indexed to CPI):

$$\begin{array}{l} \text{Monetary} \\ \text{Contribution} \\ \text{payable} \end{array} = \$300,000 + \$37,500 \times \begin{array}{l} \text{dwelling that is in addition to} \\ \text{the Base Dwelling Yield} \end{array}$$

- (d) If the Applicant elects to make payment of a Monetary Contribution in accordance with clause 8.1(a)(i), then the following conditions apply:
  - (i) The Applicant must pay Council the Monetary Contribution calculated by Council following the determination of the Proposed Development Consent and once actual yield is ascertained. The figures may be increased but not decreased in accordance with the following formula:

$$\begin{array}{l} \text{Monetary} \\ \text{Contribution} \\ \text{payable} \end{array} = \begin{array}{l} \text{Monetary} \\ \text{Contribution} \\ \text{Calculated in} \\ \text{accordance with} \\ \text{Clause 8.2(c)} \end{array} \times \frac{\begin{array}{l} \text{The CPI at the time of payment} \end{array}}{\begin{array}{l} \text{The CPI at the date of this} \\ \text{agreement} \end{array}}$$

- (i) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (ii) The Monetary Contribution will be taken to have been made when the Council notifies the Applicant in writing that the bank cheque has been

received and cleared funds or electronic funds have been deposited in the Council's bank account.

- (iii) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards the Public Purpose.
  - (iv) Despite clause 8.2(d)(iii), the Council may apply the Monetary Contribution towards any other public purpose which satisfies section 7.4(2) of the Act, other than the Public Purpose, if the Council reasonably considers that the public interest would be better served by applying the Contribution towards that other public purpose.
  - (v) In the event the Council directs the Contribution to another public purpose, the Applicant in paying the Contribution has fulfilled its obligations pursuant to this Agreement.
- (e) The Contribution is to be paid to Council in one instalment with payment to be made within 14 days of the earlier of:
- (i) the issue of a valid tax invoice for the Contribution in the name of the Applicant; or
  - (ii) receipt by the Applicant of the Construction Certificate for the Proposed Development Application.

### **8.3 Shared Pathway**

(a) If the Applicant elects to construct a shared pathway upgrade in accordance with clause 8.1(a)(ii) and Schedule 5, then the following conditions apply:

- (i) Construction must be in accordance with the plan annexed at Schedule 5 and to Council's satisfaction;
- (ii) Must be constructed within twelve (12) months of the date of election pursuant to clauses 8.1(a) and (b) of this Agreement, subject to obtaining necessary approvals from TfNSW and or any other consent authority; and
- (iii) Must be, in the reasonable opinion of Council, satisfactory.

(b) If the Applicant elects to construct a Shared Pathway pursuant to clause 8.3, or is required to construct a Shared Pathway pursuant to clause 8.1(c), then:

- (i) The Applicant must obtain all necessary approvals from TfNSW or any other consent authority within twelve (12) months; and
- (ii) If the Applicant does not receive all necessary approvals within twelve months, they must provide evidence of the application and or correspondence with the consent authority to Council within seven (7) days of Council's request.

### **8.4 Contribution Values**

The parties acknowledge and agree that the contribution values set out in the Contributions Table and clauses 8.2(b) and (c) will be adjusted based on the dwelling yield pursuant to the Proposed Development Consent and according to the CPI formula provided in clause 8.2(d) only and:

- (a) the Applicant assumes all cost and risk in relation to the provision and the making of the Contribution, and

- (b) All Parties acknowledge and agree that the costs outlined in the Contributions Table is the complete amount payable to the Council.

## 9 Overdue payments

### 9.1 *Interest on overdue money*

- (a) The Applicant agrees to pay interest to the Council on any amount payable by it under this Agreement from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

### 9.2 *Compounding*

- (a) Interest which is not paid when due for payment may be capitalised by the Council at intervals which the Council determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this Clause 9.

### 9.3 *Interest on liability merged in judgment or order*

- (a) If a liability under this Agreement becomes merged in a judgment or order, then the Applicant agrees to pay interest to the Council on the amount of that liability as an 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 8.
- (b) For the avoidance of doubt, if a liability under this Agreement becomes merged in a judgment or order then the Developer will only be required to pay either interest payable under the judgment or order or interest calculated under this Clause 8 but not both.

## 10 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- 10.1 This Agreement does not exclude the application of section 7.11 of the Act to the Development.
- 10.2 This Agreement does not exclude the application of section 7.12 of the Act to the Development.
- 10.3 This Agreement does not exclude the application of section 7.24 of the Act to the Development.
- 10.4 The benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

## 11 Amendment to Parramatta Local Environmental Plan

- 11.1 Since 28 November 2022, being the date of the Gateway Determination, the Parramatta Local Environmental Plan 2012 has been repealed and the provisions were transferred into the new Parramatta Local Environmental Plan 2023.
- 11.2 Pursuant to s 30A(2) of the Interpretation Act 1987, where provisions are transferred, the “transfer does not affect the operation (if any) or meaning of the provision, and accordingly the provision is to be construed as if it had not been so transferred.”

## 12 Registration of this Agreement

### 12.1 Landowner Interest

The Landowner, being the registered proprietor of the Land at the time of execution of this Agreement, acknowledges that Council requires the registration of this Agreement on the folio of the Land under section 7.6 of the Act and that, on registration by the Registrar-General, this Agreement will be binding on and enforceable against the registered proprietor of the Land from time to time as if each registered proprietor for the time being had entered into this Agreement.

### 12.2 Registration of this Agreement

- (a) The Landowner agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Landowner, at its own expense, must:
- (i) procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement comes into operation, but in any event, no later than 10 Business Days after that date;
  - (ii) procure the registration of this Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Agreement is lodged for registration; and
  - (iii) provide documentary evidence that the registration of this Agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Landowner must at its own expense take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
- (i) the consent of each person who:
    - (A) has an estate or interest in the relevant Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land,
  - (ii) an acceptance of the terms of this Agreement and an acknowledgement in writing from any existing mortgagee in relation to the relevant land that the mortgagee will adhere to the provisions of this Agreement if it takes possession of the land as mortgagee in possession,
  - (iii) the execution of any documents; and

- (iv) the production of the relevant duplicate certificates of title, to enable the registration of this Agreement in accordance with this clause 12.2.
- (d) The Landowner consents to the registration of the Agreement in accordance with this clause 12.2.

### 12.3 *Removal from Register*

- (a) The Council will provide a release and discharge of this Agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this Agreement, and is not otherwise in default of any of the obligations under this Agreement. This release and discharge is to take place within 30 days of the Developer receiving the Occupation Certificate.
- (b) For the avoidance of doubt, the Council will provide a release and discharge allowing removal of this Agreement from the folios of the Register for any part of the Land to be subdivided into Residential Lots, provided that the Developer has fulfilled any obligations under this Agreement that, in accordance with the Contributions Table, will be due at the time an Occupation Certificate is to be issued for those Residential Lots to be released.

## 13 *Caveat*

### 13.1 *Caveatable interest*

The Applicant acknowledges that the rights under this Agreement give Council a caveatable interest in the Land and consents to the Council registering such a caveat.

### 13.2 *Restriction on dealings*

- (a) The Applicant (being the registered proprietor at the time of execution of this Agreement) is not to:
  - (i) sell or transfer the Land or any part of it, or
  - (ii) assign the Applicant's rights or obligations under this Agreement, or novate this Agreement,
 to any person unless:
  - (i) the Applicant has, at no cost to the Council, first procured the execution by the person to whom the Land, or part thereof, is to be sold or transferred or the Applicant's rights or obligations under this Agreement are to be assigned or novated, of a Agreement in favour of the Council on terms reasonably satisfactory to the Council, and
  - (ii) the Council has given written notice to the Applicant or the Landowner (as the case may be) stating that it reasonably considers that the
  - (iii) purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Agreement, and
  - (iv) the Applicant or the Landowner (as the case may be) is not in breach of this Agreement, and
  - (v) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- (b) Subject to clause 1.1(c), the Applicant and the Landowner (as the case may be) acknowledges and agrees that it remains liable to fully perform its

obligations under this Agreement unless and until it has complied with its obligations under clause 13.2(a).

- (c) Clause 13.2(a) does not apply in relation to any sale or transfer of the Land if this Agreement is registered on the title to the Land at the time of the sale.

## 14 Review of this Agreement

- (a) This Agreement may be reviewed or modified. Any review or modification of this Agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.
- (c) A party is not in breach of this Agreement if it does not agree to an amendment to this Agreement requested by a party in, or as a consequence of, a review.

## 15 Dispute Resolution

### 15.1 *Reference to Dispute*

If a Dispute arises between the parties in relation to this Agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

### 15.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the Dispute,
- (b) The alleged basis of the Dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

### 15.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified Dispute.
- (b) The parties may, without limitation:
  - (i) resolve the Dispute during the course of that meeting,
  - (ii) agree that further material or expert determination in accordance with clause 15.6 about a particular issue or consideration is needed to effectively resolve the Dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
  - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

### 15.4 *Further Notice if Not Settled*

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for

determination of the dispute (**Determination Notice**) by mediation under clause 15.5 or by expert determination under clause 15.6.

### 15.5 *Mediation*

- (a) This clause applies to any Dispute arising in connection with this Agreement other than a Dispute to which clause 15.5 applies.
- (b) Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute (**Determination Notice**).
- (c) If a Determination Notice is given under clause 15.5(b), the parties must agree in good faith to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (d) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (e) The mediator appointed pursuant to this clause 15.5 must:
  - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (f) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (g) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (h) If the parties agree to resolve the Dispute is resolved by mediation, then the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (i) In relation to costs and expenses:
  - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

### 15.6 *Expert determination*

If the Dispute is not resolved under clause 15.3 or clause 15.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to a qualified expert if the Parties to the Dispute agree that it can be so determined, in which event:

- (a) A Dispute to which this clause applies, must be determined by an independent expert in the relevant field:
  - (i) Agreed upon and appointed jointly by the parties; and
  - (ii) In the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
  - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) The determination is in respect of, or relates to, termination or purported termination of this Agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

### 15.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 15, then either party is at liberty to litigate the dispute.

### 15.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 15.1, the referral to or undertaking of a dispute resolution process under this clause 151 does not suspend the parties' obligations under this Agreement.

## 16 Enforcement

### 16.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this Agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency, imposes an undue delay on performance of this Agreement, or imposes upon the Developer additional financial burdens.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 11 of this Agreement.

### 16.2 General Enforcement

- (a) Without limiting any other remedies available to the parties, this Agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
  - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

## 17 Assignment and Dealings

### 17.1 Assignment

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties, which must not be unreasonably withheld.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this Agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

## 18 Approvals and consents

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions, provided that the withholding is reasonable, fair, and the issue attaching to it can be reasonably remedied by the parties, and

- (a) Where the parties can reasonably remedy the underlying issue(s), it is agreed among the parties that the matter is to be negotiated in good faith.

## 19 No fetter

### 19.1 Discretion

This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this Agreement as a “**Discretion**”).

### 19.2 No fetter

No provision of this Agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

### 19.3 Planning Certificates

The Developer acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7 of the Act that this Agreement affects the Land.

## 20 Notices

### 20.1 Notices

Any notice given under or in connection with this Agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this Agreement:
  - (i) to City of Parramatta Council: PO Box 32, Parramatta, NSW 2124  
Email: [acrkovski@cityofparramatta.nsw.gov.au](mailto:acrkovski@cityofparramatta.nsw.gov.au)  
Attention: Senior Development Manager, Property Development Group
  - (ii) to Zaki Property Pty Ltd ATF Zaki Property Trust: Suite 1.04, Level 1, Quad 1, 8 Parkview Drive, Sydney Olympic Park  
Email: [veselin@littlezaks.com.au](mailto:veselin@littlezaks.com.au)  
Attention: Veselin Krajcic, Development Director

- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of an email, when the sender receives an email acknowledgement from the recipient's information system showing the email has been delivered to the email address for the recipient stated in clause 20.1(b); and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

## 20.2 *Notices sent by email:*

- (a) A party may serve a Notice by email if the Notice:
  - (i) includes a signature block specifying:
    - (A) the name of the person sending the Notice; and
    - (B) the sender's position within the relevant party;
  - (ii) states in the body of the message or the subject field that it is sent as a Notice under this Agreement;
  - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Agreement;
  - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:

- |  |  |
|--|--|
| (A) to City of Parramatta Council:                       | Attention: Senior Development Manager,<br>Property Development Group<br><a href="mailto:acrkovski@cityofparramatta.nsw.gov.au">acrkovski@cityofparramatta.nsw.gov.au</a> |
| (B) to Zaki Property Pty Ltd<br>ATF Zaki Property Trust: | Attention: Veselin Krajcic, Development Director<br><a href="mailto:veselin@littlezaks.com.au">veselin@littlezaks.com.au</a>   |

- (b) The recipient of a Notice served under this clause 20.2 must:
  - (i) promptly acknowledge receipt of the Notice; and
  - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 20.2 does not invalidate service of a Notice under this clause.

### 20.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 20.2 is taken to be given or made:
  - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
  - (ii) when the Notice enters an information system controlled by the recipient; or
  - (iii) when the Notice is first opened or read by the recipient,whichever occurs first.
- (b) If under clause 20.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

### 16.4 *Notices sent by email generally*

- a) Parties agree that Notices served under sections 16.2 and 16.3 have effect only as related to the communication between the Parties listed on the cover page; and
- b) For the avoidance of doubt, clauses 16.2 and 16.3 do not exclude the requirements of Service as stipulated in New South Wales, and where applicable, Commonwealth law.

## 21 Release and Discharge

The Council will promptly notify the Developer and the Landowner in writing that they are released and discharged from their obligations under this Agreement if any of the following occur:

- (a) The amendment to the LEP is declared void or invalid by a Court of competent jurisdiction and all opportunities for appeal have been exhausted.
- (b) The Developer and Landowner have fulfilled all of their obligations under this Agreement to the Council's reasonable satisfaction.
- (c) The parties agree in writing to terminate the Agreement on the basis that the performance of the Agreement has been frustrated by an event outside the control of the parties to this Agreement.
- (d) A decision is made by the NSW Government to not make the amendment to the LEP and communicated to the parties in writing, and Council (acting reasonably) is satisfied that the amendment to the LEP will not be made.

## 22 General

### 22.1 *Relationship between parties*

- (a) Nothing in this Agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.

- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

#### **22.2 *Landowner Obligations***

Any clause of this Agreement that requires the Developer to do any thing or imposes an obligation on the Developer, constitutes a requirement for the Landowner to procure that thing to be done or that obligation to be met, either by the Landowner, the Developer or another entity as requested by the Developer, so far as the requirement or obligation applies to that part of the Land owned by the Landowner.

#### **22.3 *Time for doing acts***

- (a) If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

#### **22.4 *Further assurances***

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Agreement.

#### **22.5 *Joint and individual liability and benefits***

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

#### **22.6 *Variations and Amendments***

A provision of this Agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

#### **22.7 *Counterparts***

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

#### **22.8 *Legal expenses and stamp duty***

- (a) The Developer must pay Council's legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this Agreement, including the reasonable costs of obtaining any legal advice in connection with this Agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.

- (b) The Developer agrees to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this Agreement in accordance with the Act.
- (c) The Developer agrees to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this Agreement.

#### **22.9 *Entire Agreement***

The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing,

- (a) A sole exception to clause 18.9 is the Voluntary Planning Agreement Letter of Intent Version 5 dated 2 June 2021.

#### **22.10 *Representations and warranties***

The parties represent and warrant that they have the power and authority to enter into this Agreement and comply with their obligations under the agreement and that entry into this Agreement will not result in the breach of any law.

#### **22.11 *Surrender of right of appeal***

The Applicant is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Agreement in so far as the subject-matter of the proceedings relates to this Agreement.

#### **22.12 *No waiver***

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this Agreement does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

#### **22.13 *Severability***

If a clause or part of a clause of this Agreement 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. 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 Agreement, but the rest of this Agreement is not affected;

- (a) Unless the severed clause was a material incentive for a party to enter into this Agreement. If so, clause 17(c) may be applicable at the first instance.

#### *22.14 Invalidity*

- (a) A word or provision must be read down if:
  - (i) this Agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this Agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Agreement has full effect even if clause 22.14(b) applies.

#### *22.15 Waiver*

- (a) A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. 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.

#### *22.16 GST*

- (a) Words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this Agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.
- (d) If the Council is obliged to pay any GST on any supply made under or in accordance with this Agreement, the Developer indemnifies the Council for the amount of any such payment is required to make.

#### *22.17 Governing law and jurisdiction*

- (a) The laws applicable in New South Wales govern this Agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## **Schedule 1 - Contributions Table**

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No.	Item	Public Purpose	Type of Contribution	Scope	Timing of Provision	Timing for provision of Bank Guarantee	Estimated Amount / Value of Item
1.	Monetary Contribution <b>OR</b> Construction of Shared Pathway	The provision of a shared path which can be used by the public or a portion of the public	Cheque or Electronic Bank Transfer.	If the Proposed Development Consent reflects the Base Dwelling Yield or any development scenario that can accommodate dwellings less than the Base Dwelling Yield.	<p>If the Applicant elects to make a Monetary Contribution, this Monetary Contribution is payable within fourteen (14) days the earlier of:</p> <ul style="list-style-type: none"> <li>(i) the issue of a valid tax invoice for the Contribution in the name of the Applicant; or</li> <li>(ii) receipt by the Applicant of the Construction Certificate for the Proposed Development Application.</li> </ul> <p>If the Applicant elects to construct a Shared Pathway, this Shared Pathway must be constructed within twelve (12) months of the date of election.</p>	N/A	\$300,000 plus GST  <b>OR</b> Construction of Shared Pathway

No.	Item	Public Purpose	Type of Contribution	Scope	Timing of Provision	Timing for provision of Bank Guarantee	Estimated Amount / Value of Item
2.	Monetary Contribution.	The provision of a shared path which can be used by the public or a portion of the public	Cheque or Electronic Bank Transfer.	If the Proposed Development Consent reflects the Maximum Dwelling Yield	<p>This Monetary Contribution is payable within fourteen (14) days the earlier of:</p> <p>(i) the issue of a valid tax invoice for the Contribution in the name of the Applicant; or</p> <p>(ii) receipt by the Applicant of the Construction Certificate for the Proposed Development Application.</p>	N/A	\$300,000 plus GST plus \$75,000 x additional dwelling (from the Base Dwelling Yield)
<b>TOTAL OF CONTRIBUTION TO BE DETERMINED ONCE DWELLING YIELD ASCERTAINED (excluding Maintenance)</b>							

## **Schedule 2 – Letter of Offer**

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Zaki Property Pty Ltd T/As Zaki Property Trust  
PO Box 1026  
Meadowbank NSW 2114  
Ph. (02) 8036 8390

ABN: 85 020 549 690

29 September 2022

General Manager,  
City of Parramatta Council,

**Initial Voluntary Planning Agreement Letter of Offer: 8 Lincluden Place, Oatlands.**

Zaki Property Pty Ltd ATF Zaki Property Trust offers to enter into discussions regarding a Planning Agreement to be negotiated with Council under Section 7.4 of the *Environmental Planning and Assessment Act 1979* in connection with a Planning Proposal for 8 Lincluden Place, Oatlands.

The Planning Proposal seeks to alter the zoning from SP2 to R2 low density and the proposal will facilitate additional development potential on the site. The current architectural concepts show 2 additional dwellings on Gollan Avenue and retention of the existing buildings associated with the prior Educational Establishment. Discussions have occurred regarding a Rehabilitation Centre through adaptative re-use and alterations and additions to that part of the site. The final development outcome is not known however we acknowledge that local infrastructure demand will increase arising from the uplift that is sought by the Planning Proposal. The base outcome would be the creation of 2 dwellings and the retention of the educational establishment on the land.

This letter confirms the proponent's willingness to enter a Planning Agreement to support the Planning Proposal. The proponent would agree to enter discussions regarding a contribution to the footpath upgrades along Pennant Hills Road between Gollan and Glencoe Avenue. We note and agree that the exact amount of the contribution to be delivered will be determined through ongoing consultation with Council and be progressed if and when Gateway Determination is achieved.

This could be delivered either by way of a cash contribution or material public benefit (i.e. land dedication and physical works- or a combination of the two (2).

We also note that suitable valuations would be necessary to determine the cost of any infrastructure works and the value of any land dedication to ensure that a suitable 'value' is placed on such items if that is the way that the Planning Agreement is structured.

Yours faithfully

**Maged Zaki**  
Director and Authorised Officer  
Zaki Property Pty Ltd ATF Zaki Property Trust

### **Schedule 3 – Planning Proposal**

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## **Schedule 4 – Explanatory Note**

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## EXPLANATORY NOTE

### DRAFT PLANNING AGREEMENT FOR 8 LINCLUDEN DRIVE, OATLANDS

*Environmental Planning and Assessment Regulation 2021*

(clause 205)

#### 1. *Introduction*

The purpose of this Explanatory Note is to provide a plain English summary to support the exhibition of a proposed draft planning agreement (the **Planning Agreement**) prepared under section 7.4(1) of the *Environmental Planning and Assessment Act 1979* (the **Act**).

#### 2. *Parties*

The parties to the Planning Agreement are City of Parramatta Council ABN 49 907 174 773 (**the Council**) and Zaki Property Pty Ltd ATF Zaki Property Trust ABN 85 020 549 690 (**the Applicant**).

This explanatory note has been prepared jointly by the parties.

#### 3. *Description of Subject Land*

The Planning Agreement applies to the land legally known as Lot 3 in Deposited Plan 775621 and known as 8 Lincluden Place, Oatlands (**the Land**).

Zaki Property Pty Ltd ATF Zaki Property Trust is the owner of the Land.

#### 4. *Description of the Proposed Development*

The Applicant is seeking to redevelop the Land with residential dwellings pursuant to its Proposed Development Application.

The Planning Proposal seeks to rezone the Land zoned SP2 Infrastructure (Educational Establishment) to R2 Low Density Residential under *Parramatta Local Environmental Plan 2023*. It is noted that the portion of Land currently zoned SP2 Infrastructure (Classified Road) is to be retained. The portion of land identified within the Land that is proposed to be acquired, as per the Land Reservation Acquisition map, will be subject to a separate process.

The Planning Agreement does not permit the Proposed Development to be carried out and the Applicant will be required to seek and obtain the necessary development consent/s under the Act to do so.

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

The Applicant has offered to enter into the Planning Agreement with the Council.

The Planning Agreement provides that the Applicant will provide either:

1. Monetary contribution to Council to be determined once the Proposed Development

Application has been lodged and dwelling yield has been ascertained; OR

2. Construct a shared pathway upgrade along Pennant Hills Road, specifically between Gollan Avenue and Glencoe Avenue.

**(The Applicant's Contribution)**

Any monetary contribution provided by the Applicant will go towards providing a shared pathway along Pennant Hills Road, specifically between Gollan Avenue and Glencoe Avenue.

This is so the current SP2 Infrastructure (Educational Establishment) zoning of the land is varied to be R2 Low Density Residential under *Parramatta Local Environmental Plan 2023*.

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

### **(1) The Planning Purpose of the Planning Agreement**

The Planning Agreement will benefit the public by providing the framework for the efficient and equitable collection of Monetary Contributions towards the provision of a shared pathway along Pennant Hills Road, specifically between Gollan Avenue and Glencoe Avenue that is generated by the rezoning of the Land.

### **(2) How the Planning Agreement Promotes the Public Interest**

The Planning Agreement promotes the public interest by providing either:

- i. Shared pathway along Pennant Hills Road, specifically between Gollan Avenue and Glencoe Avenue; OR
- ii. Providing monetary contributions for the recoupment of cost required to construct a shared pathway along Pennant Hills Road, specifically between Gollan Avenue and Glencoe Avenue.

This is generated by the rezoning of the Land to meet the community's needs.

### **(3) How the Planning Agreement Promotes the Objects of the Act**

The Planning Agreement promotes the following objects of the Act:

- i. to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- ii. to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- iii. to promote the orderly and economic use and development of land.

In addition to the above, the Planning Agreement will not be inconsistent with any of the other objects of the Act.

### **(4) How the Planning Agreement Promotes Elements of the Local Government Act 1993 and the Guiding Principles for Councils**

The Planning Agreement promotes the guiding principles for council under section 8A of the Local Government Act 1993 by assisting Council to:

- i. Carry out functions in a way that provides the best possible value for residents and ratepayers;

- ii.* Manage lands and other assets so that current and future local community needs can be met in an affordable way;
- iii.* Work with others to secure appropriate services for local community needs.
- iv.* Recognise diverse local community needs and interests;
- v.* Consider the long term and cumulative effects of actions on future generations;
- vi.* Apply the principles of ecologically sustainable development;
- vii.* Invest in responsible and sustainable infrastructure for the benefit of the local community; and
- viii.* Identify and prioritise key local community needs and aspirations and consider regional priorities.

**(5) How the Planning Agreement Promotes Council's Capital Works Program**

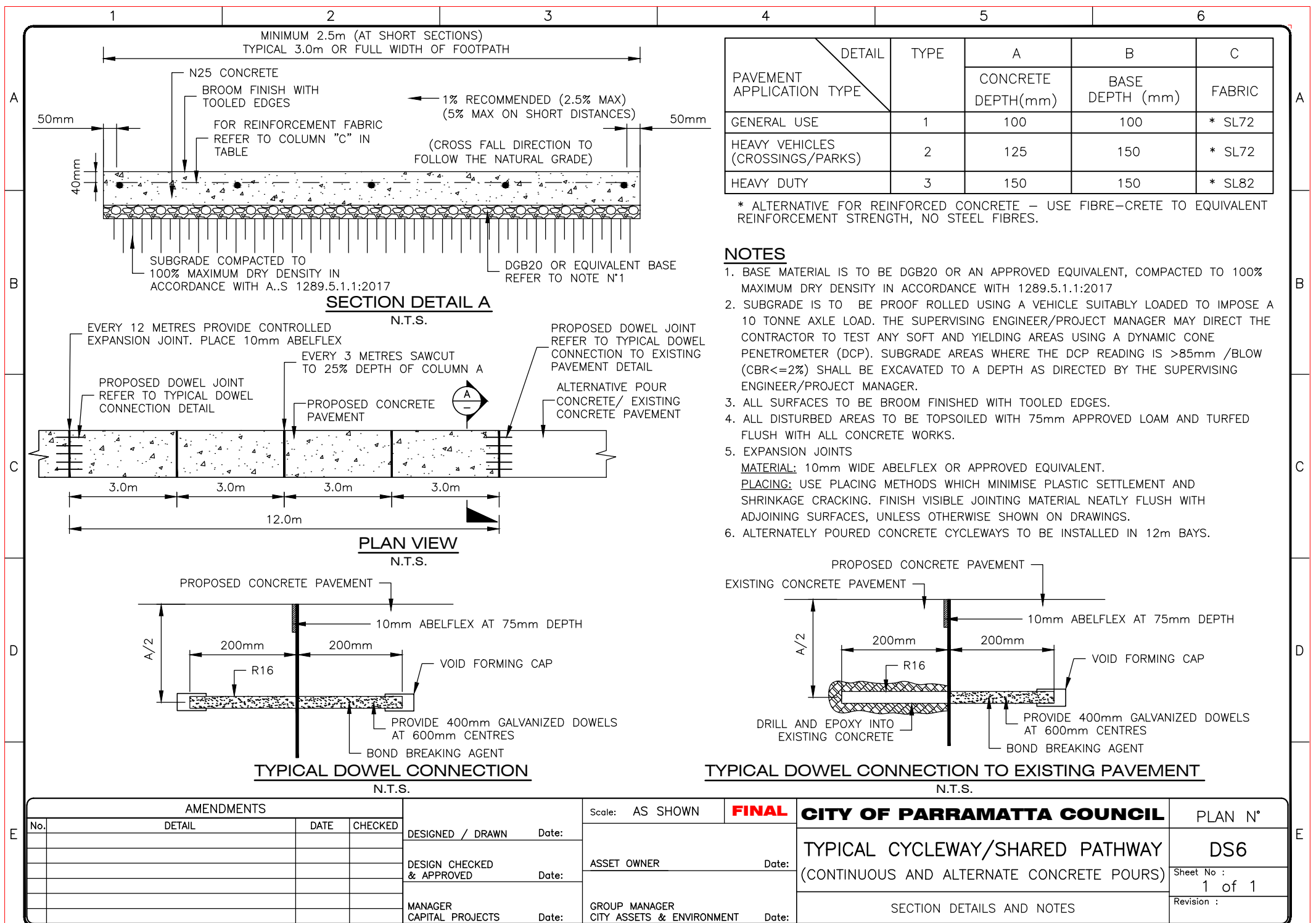
The planning agreement assists the capital works program by providing funds sourced from the proposed development. These funds facilitate works that support growth within the Parramatta centre.

**(6) Requirements relating to Construction and Occupation Certificates**

If the Applicant elects to construct the shared pathway, it must be, in the reasonable opinion of Council, satisfactory. If the Applicant elects to provide Monetary Contributions, these are to be paid prior to the issue of the Occupation Certificate.

## **Schedule 5 – Construction requirements for Shared Pathway**

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Executed as an agreement

Signed on behalf of **City of Parramatta Council** (ABN 49 907 174 773) by its authorised delegate pursuant to section 377 of the *Local Government Act 1993* in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Name of authorised delegate

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Position of authorised delegate

Executed by **Zaki Property Pty Ltd** as trustee for Zaki Property Trust in accordance with section 127 of the *Corporations Act 2001*:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director

Executed by **Zaki Property Trust**

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director