

EXPLANATORY NOTE PURSUANT TO REGULATION 205 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

331-337 Kent Street, Sydney

Development Application: D/2021/35

Background

The Council of the City of Sydney proposes to enter into a Planning Agreement in relation to a development at 331-337 Kent Street, Sydney (**Land**).

The Planning Agreement provides for a public benefit by the Developer either by way of allocation of Heritage Floor Space or by way of a monetary contribution to the Heritage Conservation Fund.

The purpose of this explanatory note is to provide a summary to support the notification of a Planning Agreement, under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (**Act**).

This explanatory note has been prepared jointly by the parties as required by Reg 205 of the *Environmental Planning and Assessment Regulation 2021* (**Regulation**).

The public benefits do not in any way exclude the developer or owner (as the case may be) from paying monies under s.7.11, 7.12 or 7.24 of Act.

This explanatory note is not to be used to assist in construing the Planning Agreement.

1. Parties to the Planning Agreement

The parties to the Planning Agreement are 333 Kent Street Pty Ltd (**Developer**), and the Council of the City of Sydney (**Council**).

2. Background to the Planning Agreement

On 21 August 2021, a consent was granted for alterations and additions of the existing building.

A condition of the consent requires confirmation that 1,665sqm of Heritage Floor Space was allocated (purchased and transferred) to the development. The landowner, 333 Kent Street Pty Ltd, has purchased and registered 627.6sqm of HFS against this development. This public benefit offer seeks to secure the balance of 1,037.4sqm

The Planning Agreement will secure that Heritage Floor Space in accordance with Council's Alternative Heritage Floor Space Allocation Scheme.

3. Summary of the Objectives, Nature and Effect of the Proposed Planning Agreement.

The objective of the Planning Agreement is to secure public benefits in connection with the Development Application for the Land.

The nature of the Planning Agreement is to secure the remaining Heritage Floor Space allocation (purchase and transfer) for the development through the provision of a bank guarantee of \$2,929,503.49 in accordance with the Alternative Heritage Floor Space Allocation Scheme.

4. Assessment of the Merits of the Proposed Planning Agreement

(a) How the Planning Agreement promotes the public interest and one or more of the objects of the Act

In accordance with Section 7.4(2), the Planning Agreement promotes the public interest by allowing Council to secure the Developer's obligations and ensure they are satisfied.

The Planning Agreement promotes the objects of the Act, in particular objects identified in Section 1.3(f) of the Act which is to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage). The agreement supports the objectives of the City's Heritage Floor Space Scheme.

(a) How the Planning Agreement promotes the elements of the Council's charter

The Planning Agreement promotes a number of elements of the Council's charter under section 8 of the *Local Government Act* 1993 (NSW). In particular:

- (i) exercise community leadership;
- (ii) properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development; and
- (iii) engage in long-term strategic planning on behalf of the local community;

(b) The impact of the Planning Agreement on the public or any section of the public

The Heritage Floor Space Scheme allows owners of heritage buildings to be awarded Heritage Floor Space after completing conservation works on the building and then selling that Heritage Floor Space to developers who, as a condition of using accommodation floor space, are required to allocate Heritage Floor Space to their development. The Planning Agreement will benefit the public and local community as it will either secure a deferred Heritage Floor Space allocation, or funds to the Heritage Conservation Fund.

(c) The planning purpose or purposes of the Planning Agreement

The Planning Agreement will serve the planning purpose of securing Heritage Floor Space allocation in accordance with Council's Heritage Floor Space Scheme.

The Heritage Floor Space Scheme is set out in the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012. The objectives of the scheme are to establish a framework for the transfer of development potential from the site of a heritage building to another site in Central Sydney and to provide an incentive for the conservation and ongoing maintenance of heritage buildings in Central Sydney.

(d) Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates.

The following requirements of the Planning Agreement must be complied with before:

- (i) **A construction certificate is issued:** Nil.
- (ii) **An occupation certificate or compliance certificate is issued:** Allocation of Heritage Floor Space or contribution of funds to the Heritage Conservation Fund.
- (iii) **A subdivision certificate is issued:** Nil.