

Environmental Planning and Assessment Regulation 2000 (Clause 25E)

Explanatory Note for planning agreement under section 7.4 of the Environmental Planning and Assessment Act 1979

75 Mary Street, St Peters

1 Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*, prepared in connection with a planning proposal with respect to 75 Mary Street, St Peters (**Planning Proposal**).

This Explanatory Note has been prepared jointly by the parties to the Planning Agreement as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (Regulation)*.

This explanatory note explains what the Planning Agreement is proposing, how it delivers public benefit and whether it is an acceptable means of achieving the proposed planning outcomes.

In this Explanatory Note, capitalised terms have the meaning given to those terms in the Planning Agreement unless otherwise defined.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

2 Parties to the Planning Agreement

The parties to the Planning Agreement are:

- (a) Inner West Council ABN 19 488 017 987 (**Council**); and
- (b) JVM Holdings Pty Ltd ACN 108 640 642 as trustee for the JVM Family Trust and Chalak Holdings Pty Ltd ACN 108 830 084 as trustee for the Chalak Family Trust (**Developer**).

3 Land subject to the Planning Agreement

The Planning Agreement applies to:

- (a) Lot 1 in DP 556914
- (b) Lot 1 in DP 745014
- (c) Lot 1 in DP 745657
- (d) Lot 1 in DP 180958
- (e) Lot A in DP 331215
- (f) Lot 1 in DP 87885

and known as 75 Mary Street, St Peters (**Land**).

The Planning Agreement is to be registered on the Land.

4 Description of the Proposed Change to the Environmental Planning Instrument

The Developer is seeking an amendment to the planning controls for the subject land in accordance with Planning Proposal (with Department reference PGR_2016_MARRI_001_00) and has made an offer to enter into a planning agreement in connection with the planning proposal.

The Planning Proposal proposes a change to *Marrickville Local Environmental Plan 2011* to rezone part of the Land from IN2 Industrial and R2 Low Density Residential to B4 Mixed Use, increase the maximum floor space ratio from 0.6:1 and 0.95:1 to 2.2:1 and increase the maximum building height from 9.5m or no building height to varying heights between 9.5m and 29m across the Land.

5 Description of the Planning Agreement

The objectives of the Planning Agreement are to facilitate the delivery by the Developer of:

- (a) a monetary contribution to Council of \$2,000,000; and
- (b) the construction of Artist Studios with a cumulative area (including shared toilet facilities) of approximately 239m²; and
- (c) the dedication of the strata or stratum lot containing the Artist Studios to Council; and
- (d) public access to open space of at least 600m² and 250m².

(together **Contributions**).

The nature of the Planning Agreement is a binding commitment by the Developer to provide the Contributions which will also bind its successors in title because it will be registered on the title.

The effect of the Planning Agreement will be to oblige the Developer to provide the Contributions before its development of the Land is completed.

The Contributions required by the Planning Agreement will be provided in addition to contributions under the Contributions Plan.

In order to secure the obligations of the Developer under the Planning Agreement, the terms of the Planning Agreement require the provision of security in the form of bank guarantee or performance bond for the amounts stipulated in the Planning Agreement.

The public benefits to be provided under the Planning Agreement are summarised as follows:

- (a) the construction and dedication to Council of the Artist Studios to assist in supporting creative industries with suitable space;
- (b) public access to open space in the development equal to or at least 850m² (as a cumulative total);
- (c) monetary support for the provision of or management by Council of affordable housing; and
- (d) monetary support for public infrastructure upgrades in the vicinity of the Land to be undertaken by Council.

6 Assessment of the merits of the Planning Agreement

6.1 How the Planning Agreement promotes the public interest and one or more of the objects of the Act

The Planning Agreement provides a creative space for artists that will be managed by Council and funding for other public works and affordable housing to be delivered by Council.

In doing so, the Agreement promotes the following objects of the Act:

- (a) to promote the social welfare of the community (section 1.3(a));
- (b) to promote the orderly and economic use and development of land (section 1.3(c));
- (c) to promote the delivery and maintenance of affordable housing (section 1.3(d));
and
- (d) to promote good design and amenity of the built environment (section 1.3(g)).

The delivery of the Contributions under the Planning Agreement will be in the public interest because they will result in the provision and/or funding of social public infrastructure. The provision of these items will promote the social and economic welfare of the community.

6.2 How the Planning Agreement promotes the objects of the Local Government Act 1993 (LG Act) and the elements of the Council's charter

The Planning Agreement promotes the exercise by Council of its functions in accordance with the guiding principles set out in Chapter 3 of the LG Act because it will assist Council to provide social infrastructure and public spaces or facilities for the benefit of the community in the area of the Land.

The Planning Agreement will help Council deliver affordable housing being a goal of its Affordable Housing Policy. It will also assist the Inner West Council local government area to be a creative and cultural engine room of Sydney being a goal of the Community Strategic Plan.

6.3 The impact of the Planning Agreement on the public or any section of the public.

The scope of the Planning Agreement will benefit the local and wider community as it will create creative artist studios for the Council to manage and make available for the benefit of the public and will enable the public to use open space which is to be maintained by the land owner (not Council). The Planning Agreement will also help Council in funding additional public infrastructure works and the provision or management of affordable housing. At least 50% of the monetary contribution of \$2,000,000 is for affordable housing.

6.4 Whether the Planning Agreement conforms with Council's capital works program

The scope of the Planning Agreement is consistent with Council's capital works program.

6.5 The planning purpose or purposes of the Planning Agreement

The public purpose of the Planning Agreement is the provision of primarily social infrastructure that will provide a public benefit in terms of improving access to artist studios, open space and affordable housing. The Contributions to be delivered under the Planning Agreement will ensure that there is sufficient infrastructure for the Development, producing a good planning outcome from the future development of the Land. The dedication of the Artist Studio land to Council will be subject to a restriction on use that will be registered on the title ensuring that it is used for as a publicly operated community space for artists or creative industries including use as a workroom of an artist for the practice of fine arts,

performing arts or someone who uses the skills of art in their work such as a commercial artists. As it would be difficult to obtain these public benefits through other statutory means, the Planning Agreement is the most suitable means of achieving that purpose.

6.6 Compliance of certain requirements prior to issue of construction, occupation or subdivision certificates

The Contributions under the Planning Agreement must be provided in accordance with the timing provisions as set out in Planning Agreement being:

- (a) provision of instrument enabling public access to open space, artist studios and dedication to Council prior to the first occupation certificate for a residential apartment on the Land that relies on the planning proposal; and
- (b) provision of the monetary contribution of \$2,000,000 before the first construction certificate for development on the Land that relies on the planning proposal.