

## Explanatory Note

### 140 – 142 Curlewis Street, Bondi Beach Development Application No. DA-355/2021/A

(Section 205 of the Environmental Planning and Assessment Regulation 2021)

#### Planning Agreement

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

This explanatory note has been prepared in accordance with clause 205 of the *Environmental Planning and Assessment Regulation 2021*.

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

#### 1 Parties

The parties to the Planning Agreement are Waverley Council (**Council**) and HSN Property Group Pty Ltd (ACN 632 854 810) (**Developer**) and Curlewis Investment by HSN Pty Ltd (ACN 646 316 396) and Curlewis St Bondi Pty Ltd (ACN 646 270 662) (**Landowner**).

#### 2 Description of subject land

The land to which the Planning Agreement applies is the whole of the land being Lots 1 – 8 in Strata Plan 31173, Common Property in Strata Plan 31173, and Lot 2 Section 3 in Deposited Plan 747, known as 140 – 142 Curlewis Street, Bondi Beach (**Land**).

The Landowner is the registered proprietor of the Land.

#### 3 Description of Development

The proposed development comprises demolition of buildings and construction of a new 4-storey shop top housing building with retail at ground, residential units above, basement parking and modification to provide one additional unit and expand an approved unit at the uppermost level and consolidate plant (**Development**).

#### 4 Background

On 25 May 2022, development consent was granted in respect to development

application DA-355/2021. On 4 October 2022, the Developer made Development Application DA-355/A to modify development consent, DA-355/2021. The Developer subsequently made an offer to Council with the consent and agreement of the Landowner, to enter into a Planning Agreement and make a monetary contribution as the Development Application DA-355/2021/A sought additional floor space which exceeds floor space controls permitted for such buildings under Council's Planning Controls. Development Consent was granted on 17 April 2023. The Agreement is consistent with the Developer's offer.

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

The objective of the Planning Agreement is to secure a public benefit in connection with the Development Application so that the Development delivers a community benefit.

The Planning Agreement requires the Developer to pay to Council a monetary contribution in the amount of \$731,000 to be applied towards the Waverley Affordable Housing Program (25%) and the Curlewis Street Streetscape Upgrade (75%). The monetary contribution is payable to Council prior to the issue of any Occupation Certificate for the Development.

The Planning Agreement is a binding relationship between Council, the Developer and the Landowner. The Planning Agreement requires the Developer to comply with certain requirements including registration of the Planning Agreement, provision of a Bank Guarantee and registration of a Caveat. The Planning Agreement contains a number of machinery provisions including in relation to dispute resolution and enforcement.

The Agreement does not exclude the application of Sections 7.11, 7.12 or 7.24 of the Act to the Development and the monetary contribution is not to be taken into consideration in determining any development contribution under Section 7.11 of the Act.

The effect of the Planning Agreement is a monetary contribution towards the Waverley Affordable Housing Program and towards the Curlewis Street Streetscape Upgrade.

## **6 Assessment of the merits of the Planning Agreement**

### **(a) How the Planning Agreement promotes the public interest and the objects of the Act**

The Planning Agreement promotes the objects of the Act, in particular Section 1.3(a) of the Act, which is 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 and 1.3(d) of the Act, which is to promote the delivery and maintenance of affordable housing. The

objects are satisfied as the Planning Agreement secures a monetary contribution towards the Waverley Affordable Housing Program and towards the Curlew Street Streetscape Upgrade.

Public interest is promoted by virtue of the Planning Agreement because it assists Council in upgrading and improving the streetscape nearby the Development, in particular the beautifying of road reserves and works towards safe pedestrian-friendly streets. The upgrades and improvements will encourage business and development within the precinct.

Further, public interest is promoted by virtue of the Planning Agreement because it assists Council in the provision of affordable housing and housing for low income and disadvantaged people within the community.

In addition, it assists in facilitating a socially diverse and inclusive community and enabling diverse social and economic groups to have similar opportunities for accommodation in the Waverley Local Government Area.

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

The Planning Agreement will benefit the public and local community including families, people of all ages and diverse communities as it secures funds to deliver streetscape upgrades and improvements which will positively affect the social and economic wellbeing of the precinct incorporating the Development and wider community. Both residents and visitors will benefit from the contribution under the Planning Agreement.

In addition, the Planning Agreement will benefit the public and local community as it seeks to improve and maintain access to affordable housing in the Waverley Local Government Area and facilitates a diverse social mix.

There is considered to be no negative impact on the public arising from the Planning Agreement.

**(c) The planning purpose(s) served by the Planning Agreement**

The Planning Agreement facilitates the provision of (or the recoupment of the cost of providing) affordable housing and public amenities and/or the funding of recurrent expenditure relating to the provision of affordable housing. In addition, the Planning Agreement facilitates the conservation or enhancement of the natural environment. The provision of affordable housing, public amenities and conservation or enhancement of the natural environment are public purposes under Section 7.4(2) of the Act.

The Planning Agreement implements Council policy and legislative provisions around affordable housing, public amenities and conservation or enhancement of the natural environment.

The Planning Agreement provides a reasonable means of achieving the planning purpose purposes set out above.

**(d) How the Planning Agreement promotes the guiding principles for Councils (previously referred to as Council's Charter) under section 8A of the Local Government Act 1993**

The Planning Agreement provides a means by which the Council shows a regard for the long term and cumulative effects of its decisions. The Council's decisions impact public areas. The Council is conscious of a need for upgrading, improving and maintaining safe and accessible open space and road reserves as well as affordable housing within the public areas in its local government area and how its decisions and policies impact seeking to fulfil these needs.

The Planning Agreement provides a means by which Council shows it bears in mind that it is the custodian and trustee of public assets and seeks to effectively plan for and manage the assets for which it is responsible and facilitates its engaging in long term strategic planning on behalf of the local community.

In addition, as the Planning Agreement is a means by which the Council can implement its Affordable Housing Policy, in doing so, Council exercises community leadership in an area of concern to the wider community.

**(e) Whether the Planning Agreement conforms with the Council's Capital Works Program**

The Planning Agreement is not inconsistent with the Council's Capital Works Program.

**(f) Whether the Planning Agreement specifies that certain requirements of the Agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

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

- (i) A construction certificate:** registration of the Planning Agreement, provision of a Bank Guarantee and registration of a Caveat
- (ii) An occupation certificate is issued:** payment of the monetary contribution.
- (iii) A subdivision certificate is issued:** Not applicable.