



18 June 2015

The General Manager
Lane Cove Council
48 Longueville Road
Lane Cove NSW 2066

Attention: Craig Wrightson

Dear Sir

VOLUNTARY PLANNING AGREEMENT: 472 – 494 PACIFIC HIGHWAY, ST LEONARDS

We refer to the Voluntary Planning Agreement between Council, Leighton Properties Pty Limited, Leighton Contractors Pty Limited, the Owners – Strata Plan No 73071 and Leighton Pacific St Leonards Pty Limited dated 1 May 2015 (**VPA**) in respect of the land at 472-492 Pacific Highway, St Leonards (**Site**).

The Site was sold to Mirvac St Leonards Pty Limited as trustee of the Mirvac St Leonards Trust (**Mirvac**) by Leighton Contractors Pty Limited (in respect of 472 Pacific Highway, St Leonards (also known as 472-484 Pacific Highway) and Leighton Pacific St Leonards Pty Limited (in respect of 486 Pacific Highway, St Leonards (also known as 486-492 Pacific Highway)) on 11 June 2015.

Attached is:

- (a) a letter confirming Mirvac is now also the applicant under Development Application 2014/222; and
- (b) the Deed of Novation (**Deed**) in the form attached at Annexure B of the VPA as executed by Leighton Properties Pty Limited, Leighton Contractors Pty Limited, The Owners - Strata Plan No. 73071 and Mirvac St Leonards Pty Limited as trustee of the Mirvac St Leonards Trust.

As the previous owner of the Site did not execute sufficient copies of the VPA to allow all parties to hold original copies executed by all parties, we ask that you arrange for Council to sign and return to the writer the two Deeds marked 'compiled version'. Council will then be able to retain the copy of the Deed that has the original signatures.

We ask that you execute this Deed at your earliest convenience and return a copy to us. Please do not hesitate to contact the writer or **Adrian Checchin, Project Director on 02 9080 8632** if you have any queries.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'HOB', followed by a long horizontal flourish.

Hugh O'Brien
Senior Legal Counsel

Direct line: (02) 9080 8569
Mobile: 0411 772 063
E-mail: hugh.o'brien@mirvac.com

11 June 2015

General Manager
Lane Cove Council
48 Longueville Rd
Lane Cove NSW 1595

Attention: Craig Wrightson

Dear Sir

**DEVELOPMENT APPLICATION 222/2014 – 472-492 PACIFIC HIGHWAY ST
LEONARDS NSW 2065 (THE SITE)**

Leighton Properties Pty Ltd (**Leighton Properties**) is the applicant for Development Application No. 222/2014 (**DA**) that was lodged with Lane Cove Council (**Council**) on 23 December 2014. The DA seeks development consent to carry out mixed use development on land at 472-492 Pacific Highway, St Leonards.

The Site was sold to Mirvac St Leonards Pty Limited as trustee of the Mirvac St Leonards Trust (**Mirvac**) by Leighton Contractors Pty Limited (in respect of 472 Pacific Highway, St Leonards) and Leighton Pacific St Leonards Pty Limited (in respect of 486 Pacific Highway, St Leonards) on 11 June 2015.

Leighton Properties wishes to inform Council that Mirvac will now be the applicant for the DA. We would appreciate Council confirming in writing that Mirvac is the applicant under the DA to the addresses below:

- a) Attention: Adrian Checchin, Project Director

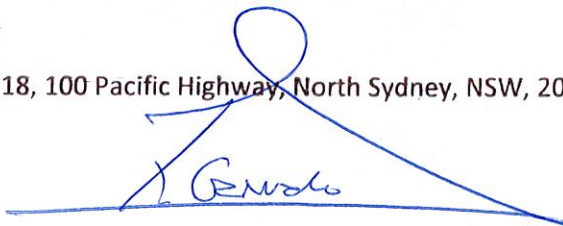
C / - Mirvac Group, Level 26, 60 Margaret Street, Sydney, NSW, 2000

- b) Attention: Andrew Cooper

Leighton Properties, Level 18, 100 Pacific Highway, North Sydney, NSW, 2000



Director *Stuart Cooper*
Leighton Properties Pty Ltd



Director *Roman Garrido*
Leighton Contractors Pty Ltd



Director *Stuart Cooper*
Leighton Pacific St Leonards Pty Ltd

Date:

Lane Cove Council

Leighton Properties Pty Limited ACN 009 765 379

Leighton Contractors Pty Limited ACN 000 893 667

The Owners - Strata Plan No. 73071

Leighton Pacific St Leonards Pty Limited
ACN 133 520 368

Mirvac St Leonards as trustee of the Mirvac St
Leonards Trust

Deed of Novation for Voluntary Planning Agreement

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Date

Parties

Lane Cove Council ACN ABN 42 062 211 626 of 48 Longueville Road, Lane Cove, New South Wales (**Planning Authority**)

Leighton Properties Pty Limited ACN 009 765 379 of 472 Pacific Highway, St Leonards, New South Wales (**Original Developer**)

Leighton Contractors Pty Limited ACN 000 893 667 of 'Tower 1', Level 8, 495 Victoria Avenue, Chatswood, New South Wales (**Leighton Contractors**)

The Owners - Strata Plan No. 73071 of 486 - 494 Pacific Highway, St Leonards, New South Wales (**Owners Corporation**)

Leighton Pacific St Leonards Pty Limited ACN 133 520 368 of Level 18, 100 Pacific Highway, North Sydney, New South Wales (**Leighton Pacific**)

collectively, **Original Land Owners**

Mirvac St Leonards Pty Limited as trustee of the Mirvac St Leonards Trust c/-Level 26, 60 Margaret Street, Sydney New South Wales (**New Developer**)

Background

- A The Planning Authority, the Original Developer and the Original Land Owners are parties to the Original Agreement.
 - B The Original Agreement relates to the whole of the Land.
 - C Leighton Contractors and Leighton Pacific wish to transfer the whole of the Land to the New Developer and novate all of their rights and obligations under the Original Agreement to the New Developer.
 - D The Original Developer, Leighton Contractors and Leighton Pacific wish to novate all of their rights and obligations under the Original Agreement to the New Developer
-

Agreed terms

1 Definitions

In this document these terms have the following meanings:

Effective Date	11 June 2015
Planning Authority	Lane Cove Council.
Land	Has the meaning given to that term in the Original Agreement.
Original Agreement	The voluntary planning agreement dated 1 May 2015 and made between the Planning Authority, the Original Developer and the Original Land Owners.

2 Novation

2.1 Original Agreement

Subject to **clause 2.2** and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer, Leighton Contractors and Leighton Pacific as a party to the Original Agreement;
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer, Leighton Contractors and Leighton Pacific; and
- (c) the Original Developer, Leighton Contractors and Leighton Pacific are released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement.

2.2 Reference in Original Agreement

All references to the Original Developer, Leighton Contractors and Leighton Pacific in the Original Agreement are to be construed as references to the New Developer.

2.3 Address for notices

The Planning Authority must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer:

Attention	Company Secretary, Mirvac St Leonards Pty Limited as trustee of the Mirvac St Leonards Trust
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Address: Level 26, 60 Margaret Street, Sydney, NSW, 2000
Fax: 02 9080 8811
Copy to: Hugh O'Brien, Senior Legal Counsel
C / - Level 26, 60 Margaret Street, Sydney, NSW,
2000
Fax: 02 9080 8811

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this document, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this document, the Original Agreement will continue in full force and effect.

4 Indemnities

The New Developer indemnifies the Original Developer, Leighton Contractors and Leighton Pacific on demand against all liabilities, claims, damages and loss which the Original Developer Leighton Contractors and Leighton Pacific suffer or incur in relation to the Original Agreement including those which arise or relate to acts or omissions occurring on or after the Effective Date.

5 Warranties and representations

5.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this document;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this document;
- (c) this document is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this document do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or

- (iv) any obligation of it to any other person.

5.2 Survival of warranties

The warranties and representations in **clause 5.1** survive the execution of this document and the novation of the Original Agreement.

6 GST

Where a supply made under this document gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) will be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this document. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

7 Stamp duty and costs

The New Developer will pay all stamp duty arising directly or indirectly from this document.

8 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this document.
- (b) This document binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

9 Amendment

This document may only be varied or replaced by a document executed by the parties.

10 Governing law and jurisdiction

- (a) This document and the transactions contemplated by this document are governed by and are to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

11 Counterparts

This document may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

12 Mirvac Limitation of Liability Clause

- (a) Subject to clause 12(c) the Trustee enters into this document only in its capacity as trustee of the Trust constituted under the Trust Deed and in no other capacity. A liability arising under or in connection with this document is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (b) Subject to clause 12(c) no party to this document or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust in respect of this document;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee in respect of this document, except in relation to the assets of Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this document or otherwise against the Trustee in respect of this document in any capacity other than as trustee of the Trust.
- (c) This clause 12 does not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law:
 - (i) a reduction in the extent of the Trustee's indemnification as a result of the Trustee acting other than in the proper performance of its duties as trustee of the Trust; or
 - (ii) loss of the Trustee's right of indemnification as a result of the Trustee acting other than in the proper performance of its duties as trustee of the Trust; or
 - (iii) any failure by the Trustee to exercise its right of indemnity, out of the assets of the Trust.

- (d) The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in clauses 12(a) to 12(d).f
- (e) In this clause :
 - (i) **Trust** means the Mirvac St Leonards Trust;
 - (ii) **Trustee** means the Mirvac St Leonards Pty Limited; and
 - (iii) **Trust Deed** means the trust deed under which the Trust was established

13 General

13.1 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

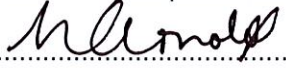
13.2 Headings

Headings do not affect the interpretation of this document.

Execution

Executed as a deed.

Executed by Lane Cove Council by its)
duly appointed attorney pursuant to)
Power of Attorney registered book 4637)
No.811 in the presence of:


.....
Witness

NIKKI ARNOLD
.....
Name of Witness (print)


.....
Attorneys Signature

Craig Wrightson
.....
Name of Attorney (print)

Executed by Leighton Properties Pty)
Limited ACN 009 765 379 in)
accordance with section 127(1) of the
Corporations Act 2001 (Cth):

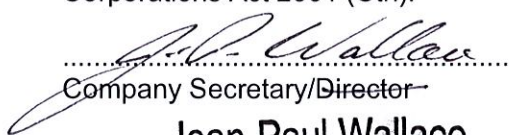
.....
Company Secretary/Director

.....
Director

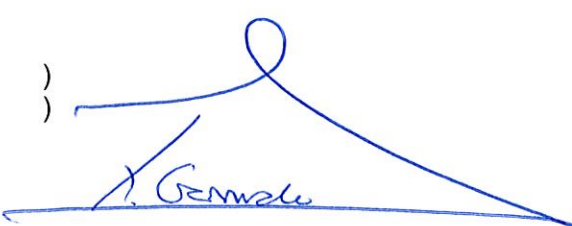
.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by **Leighton Contractors**)
Pty Limited ACN 000 893 667 in)
accordance with section 127(1) of the
Corporations Act 2001 (Cth):


.....
Company Secretary/Director

Jean-Paul Wallace
.....
Name of Company Secretary/Director
(print)


.....
Director

ROMAN GARRIDO
.....
Name of Director (print)

Executed by The Owners - Strata)
Plan No. 73071 under common seal:)

.....

.....

.....
(Print name)

.....
(Print name)

**Executed by Leighton Pacific St
Leonards Pty Limited ACN 133 520
368** in accordance with section 127(1)
of the Corporations Act 2001 (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

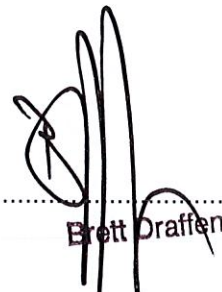
Executed by Mirvac St Leonards Pty)
Limited as trustee of the Mirvac St)
Leonards Trust in accordance with
section 127(1) of the *Corporations Act*
2001 (Cth):

.....
Company Secretary/Director

Sean Ward

.....
Name of Company Secretary/Director
(print)

.....
Director


Brett Draffen

.....
Name of Director (print)