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SYDNEY NSW 2000**

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22 June 2020

Mr George Dedes  
General Manager  
City of Ryde.  
By email: [SMcCarry@ryde.nsw.gov.au](mailto:SMcCarry@ryde.nsw.gov.au)

Attention: Sandra McCarry

Dear Sandra,

## **RE: OWNERS' CONSENT – 14-16 COTTONWOOD CRESCENT, MACQUARIE PARK -LDA 2018/0506**

### **INTRODUCTION**

Urbis writes on behalf of the Applicant in respect of development application reference LDA 2018/0506 at 14-16 Cottonwood Crescent Macquarie Park.

The purpose of this letter is to respond to Council's email of 2 June 2020 to obtain legal advice as to Legacy Property's rights to take over the carriage of LDA 2018/506 and to confirm that the owners' consent submitted remains valid.

### **OWNERS CONSENT**

MP No 1 Holdings Pty Ltd remains the applicant in respect of LDA2018/0506. As Council is aware, MP No 1 Holdings Pty Ltd assigned their rights to and appointed Legacy Property as its attorney in relation to LDA2018/0506. Council was advised of this by letter dated 12 September 2019.

As Council is also aware, LDA2018/0506 was lodged on 21 December 2018 with all owners' consent for 14 Cottonwood Crescent and 16 Cottonwood Crescent provided.

As requested by Council, the Applicant has obtained legal advice. Attached to this letter is legal advice provided by Holding Redlich dated 19 June 2020. The legal advice confirms that the existing owners' consent is valid, there is no requirement for the Applicant to obtain owners consent again when seeking to amend or vary LDA2018/0506, and that any purported revocation or withdrawal of owners consent is of no effect. It further concludes that there is no impediment to Council's continued assessment or determination of LDA2018/0506.

14-16 Cottonwood Crescent Cover letter\_FINAL



## CONCLUSION

We trust the above information and accompanying documentation satisfies Council's request. The Applicant therefore respectfully requests that Council continue its assessment of LDA2018/0506 without any further delay.

Yours sincerely,

A handwritten signature in black ink, appearing to read "David Hoy". The signature is fluid and cursive, with a long, sweeping tail on the letter "y".

David Hoy  
Director

Enc: Holding Redlich Legal Advice

19 June 2020

MP No 1 Holdings Pty Ltd  
C/- Legacy Property  
Level 45  
MLC Centre  
19-29 Martin Place  
SYDNEY NSW 2000

**By email: [mwilliams@legacyproperty.com.au](mailto:mwilliams@legacyproperty.com.au)**

**Associate** Georgia Appleby  
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**Partner** Breellen Warry  
**Our Ref** GJA 19750166

Dear Mike

### **LDA2018/506 - 14-16 Cottonwood Crescent, Macquarie Park**

1. We refer to development application reference LDA2018/506 (**LDA2018/506**) lodged with Ryde City Council (**Council**) in respect of land at 14-16 Cottonwood Crescent, Macquarie Park.
2. MP No 1 Holdings Pty Ltd (**MP 1**) seeks our advice in relation to whether owners consent can be revoked or withdrawn in relation LDA2018/506, including in the context of an application to amend the application under cl 55 of the *Environmental Planning and Assessment Regulation 2000* (**Regulation**).

### **Summary of advice**

3. In our view, where an applicant has obtained owners consent for the lodgement of a development application (**DA**) as required under the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) and Regulation, then:
  - (a) an applicant is not required to obtain owners consent again when seeking to amend or vary the DA under cl 55 of the Regulation; and
  - (b) any purported revocation or withdrawal of owners consent will be of no effect.

### **Background**

4. On 21 December 2018, MP 1 lodged LDA2018/506 with Council.
5. We are instructed that evidence of owners consent was submitted as part of LDA2018/506 to the satisfaction of Council (**Submitted Owners Consent**).
6. In September 2019, a commercial arrangement was agreed between MP1 and Legacy Property whereby MP 1 appointed Legacy Property as its attorney in relation to LDA2018/506 (and

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assigned its rights in relation to LDA2018/506 to Legacy). Correspondence was issued to Council to advise of this. Of note, MP1 remains the applicant for LDA2018/506.

7. MP 1 has subsequently sought to amend LDA2018/506 and has submitted amended architectural plans and an amended Statement of Environmental Effects (**Amended Application**).
8. On 27 and 28 May 2020, several of the owners who originally provided consent to the lodgement of LDA2018/506 wrote to Council stating that the owners "*do not provide consent*" to the Amended Application (**Relevant Owners**). They also state that:
  - (a) the grant of owners consent for LDA2018/506 (unamended) was only given subject to the satisfactory settlement for the purpose of the properties under the contract;
  - (b) MP 1 failed to settle on the contracts for the purchase of the properties and the sales did not proceed; and
  - (c) the owners consent was provided "*several years ago under the terms of the contract which is now void and invalid and so to is the [owners] consent*".
9. Council has written to MP 1's planning consultants and have stated that:

*Please see the email below from several owners of 16 Cottonwood Crescent withdrawing their consent for the reasons stated. Please seek legal advice and advise Council accordingly, as to Legacy Property P/L's rights to take over the carriage of LDA 2018/506 and that owners consent as submitted is still valid.*

### Detailed advice

10. In our view, the Submitted Owners Consent is still valid and cannot be revoked.
11. Firstly, we note that evidence of owners consent is required to be provided as part of a DA. This is because s 4.12(1) of the EP&A Act states that a person may make a DA "*subject to the regulations*". Relevantly, the Regulation provides that a DA may be made by any other person, with the consent in writing of the owner of that land: cl 49(1)(b).
12. Once that consent is provided, the application is a DA for the purpose of the EP&A Act and can be determined by the consent authority under s 4.16 or by the Court under Div 8.3.
13. Once owners consent has been given, there is no ability for a land owner to subsequently revoke or withdraw their consent to the application, even if an applicant elects to amend or vary its application sometime prior to that application being determined in accordance with cl 55 of the Regulation.
14. This is because in granting owners consent, the owner(s) "*must be taken to have intended the full development control process or course (including any appeal to this Court) under PtIV of the Environmental Planning and Assessment Act to apply to the development proposal*".<sup>1</sup> This includes the ability to amend or vary the application under cl 55.<sup>2</sup>

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<sup>1</sup> *Royal Motor Yacht Club v Sutherland Shire Council* (unreported 26 June 1987 per Bignold J) which was followed by Cripps CJ in *Reeson v Warringah Shire Council* (unreported 16 October 1990) and by Cripps CJ in *Wharf 11 Pty Ltd v Sydney City Council* (unreported 15 February 1991).

<sup>2</sup> *Rose Bay Afloat Pty Ltd (Formerly Known As Titanic Floating Restaurant Pty Ltd) v Woollahra Council & Anor.* [2002] NSWLEC 208 per Bignold J at [85].

15. This was recently confirmed in *Rothwell Boys Pty Ltd v Coffs Harbour City Council* [2012] NSWLEC 19. In that case, owners consent was provided subject to a Deed which prohibited the applicant from amending/varying the application without the applicant obtaining consent from the owner for that amendment/variation. The applicant then sought to amend the DA, despite the fact that it had not obtained consent from the owner as it was required to under the Deed.
16. The Court held that the owner's alleged withdrawal of consent to the amended DA was of no effect because owners consent was given to the initial DA and the obligations under the Deed were not matters relevant to the determination of the appeal.<sup>3</sup>
17. The policy reason for this is that development consent does not grant the consent holder any proprietary rights in respect of the land and accordingly, does not allow the consent holder to practically carry out the development on the land without the consent of the owner(s). This principle was expressed by Cripps CJ in *Wharf 11 Pty Ltd v Sydney City Council* [1991] NSWLEC 21:

*The legislation provides that a development application must be accompanied by the consent of the owner of the land on which the development is to take place. It appears to be assumed that the legislative purpose will be frustrated and that owner will be badly dealt with if they are not permitted to terminate the development consent process by withdrawing consents. A development consent raises a regulatory prohibition, namely, that development cannot be undertaken unless consent is given by a local authority. A development consent does not authorise development. **Generally speaking, the process is not concerned with relations between owners and other people who wish to implement the development consent.** The fact that a development consent runs with the land does not carry with it the notion that once a development consent has been granted the development can be undertaken on the land against the wishes of the owner. The submission suggesting a hardship to an owner by the Court determining that once his consent has been given it cannot effectively be withdrawn dissolves when the true nature of a development consent is understood.*

18. In the context of the current matter, the fact that the Relevant Owners allege that they provided consent to LDA2018/506 subject to the satisfactory settlement for the purpose of the properties under the contract is not relevant for the purposes of the assessment of a DA under the EP&A Act, nor is there any entitlement to revoke that consent.
19. As has been clearly demonstrated in the case law, the planning process is not concerned with relations between owners and developers and once consent is given to the lodgement of a DA, the full development assessment process can take its course. The fact that a commercial arrangement has been reached between MP1 and Legacy Property is not relevant to the assessment of LDA2018/506 under the EP&A Act.
20. Based on this advice, there is no legal impediment to Council progressing its assessment of LDA2018/506, nor for it to be determined by the Sydney North Planning Panel.

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<sup>3</sup> *Rothwell Boys Pty Ltd v Coffs Harbour City Council* [2012] NSWLEC 19 per Craig J at [38].

We trust that this advice is of assistance to you. Should you have any questions, please contact Breellen Warry on (02) 8083 0420 or [Breellen.Warry@holdingredlich.com](mailto:Breellen.Warry@holdingredlich.com).

Yours sincerely

A handwritten signature in blue ink that reads "Holding Redlich". The signature is written in a cursive, flowing style.

**Holding Redlich**