

30 June 2022

Lane Cove Council
48 Longueville Road
Lane Cove NSW 2066
Ph (02) 9911 3555
Email cshortt@lanecove.nsw.gov.au

Attn: Mr Christopher Shortt

**Subject St Leonards South | Area 1, 2 and 4 Development Application
 2 Marshall Ave St Leonards NSW 2065 (Lot 4/3/DP7259) 688m2**

**Sale price requirement by owner not commercially available to incorporate
into development**

**DA Applicant SLS Canberra Residences Pty Ltd
 SLS Holdsworth Residences Pty Ltd**

Dear Chris

Further to our discussions with Lane Cove Council during 2021-2022 regarding progress of amalgamation of the properties and preparation for Development Application as a combined Area 1, 2 and 4 development, we hereby record our attempts, sales agent & valuer engagements to acquire 2 Marshall Ave St Leonards – located within Area 1 future Park J location (2 Marshall) to form part of this Development Application.

The external valuations for 2 Marshall received recently were as follows:

- Valuer 1 | **JLL >> \$3.75m as is or \$10.93m as development site**
- Valuer 2 | **Charter Keck Cramer >> \$3-\$3.5m as is or \$10.75m as development site**
- Valuer 3 | **M3 >> \$3.1m as is or \$9.9m as development site**

2 Marshall Owner and DA Applicant final position:

- 2 Marshall owner requirement | **\$21m January 2022** final position (initial position \$30m May 2021)
- DA Applicant offer | **\$11.15m December 2021** final position (initial position \$9-\$10m April/May 2021 internal assessment, then increased to \$11m Q3 2021 after external valuations received).

Unfortunately, the price requirement from the owner of 2 Marshall \$21m does not make it commercially viable to include within this development.

We have reduced our FSR (factoring in the 688m2 parcel of land not amalgamated within Area 1) and still maintaining public open space & affordable housing requirements as required under St

Leonards South planning control requirements and demonstrated in our submissions to date to council and the design excellence panel.

Chronology

<p>29 April 2021 [Attachment 1]</p>	<p>Engagement of Colliers as Buyers agent for 2 Marshall Ave St Leonards.</p> <p>Our understanding is 'several previous parties' may have approached the owner of 2 Marshall Ave previously therefore we decided to approach via an external agent to be less intrusive.</p> <p>Note discussions prior to this engagement commenced also with regards to the potential purchase via Colliers for The Applicant and 2 Marshall owner.</p>
<p>Post Award of Colliers after 29 April 2021</p>	<p>Numerous verbal communications with Colliers and owner of 2 Marshall Ave (Mr Hart).</p> <p>Offers made \$9m-\$10m range based on our internal assumptions as a development site (note as a house standalone our internal assumption was circa \$3.5m)</p>
<p>3 May 2021 [Attachment 2]</p>	<p>2 Marshall owner email to Colliers, in response to the offers made above:</p> <ul style="list-style-type: none"> • <i>\$30m sale price required</i> • <i>Deposit \$6m</i> • <i>Settlement 1/12/21 (however property not handed over until 6 months after settlement)</i>
<p>Post May 2021</p>	<p>We proceeded to obtain tenders and quotes for professional valuation companies.</p> <p>We also asked Colliers to keep in touch with the owner of 2 Marshall Ave. during this time. However, no reconsideration of the \$30m purchase price requirement by Mr Hart.</p> <p>External valuations received, \$10.93m, \$10.75m & \$9.9m.</p> <p>After internal review, we amended the offer to \$11m.</p> <p>[Attachment 3A - JLL \$10.93m] [Attachment 3B – Charter Keck Cramer \$10.75m] [Attachment 3C1 - M3 Development site \$9.9m] [Attachment 3C2 - M3 As is]</p>
<p>19 August 2021 [Attachment 4]</p>	<p>Final Offer instruction issued to Colliers to write to Mr Hart (based on the valuation advice).</p> <ul style="list-style-type: none"> • <i>House purchase \$11m</i> • <i>Deposit \$15k in 7days</i> • <i>Exchange 12 weeks (with 5% deposit)</i> • <i>Settlement 9 months</i>

	<ul style="list-style-type: none"> • <i>Open for 7days</i> <p>We made it clear its not financially feasible to acquire the land for any higher amount. And we are trying to achieve a win-win outcome with the owner.</p>
20 August 2021 [Attachment 5]	Colliers email Mr Hart, with offer requested by Evergreen 19 August 2021 for \$11m.
26 August 2021 [Attachment 6]	Email to Colliers with our concern with 2 Marshall owner trying to incorrectly record that we are making no reasonable steps, however we have done so since Q1 2021
28 August 2021 [Attachment 7]	<p>Mr Hart respond to Colliers email.</p> <p>Lengthy email rejecting the quantum of the offer and stated <i>should the applicant wish to make an offer that reflects the current market.... I am happy to negotiate.</i></p> <p>Email concluded with: <i>"the offer of \$11M is manifestly inadequate"</i> .</p> <p>Also accusing the Applicant that this was the first attempt and first offer made which is misleading statement and incorrect.</p>
18 December 2021 [Attachment 8]	<p>Last attempt offer, instruction issued to Colliers to forward onto Mr Hart.</p> <ul style="list-style-type: none"> • House purchase \$11.15M (increased from previous) • 6 weeks due diligence • Deposit 5% • Settlement 6 months (reduced from 9 months) • Offer open 7days
19 December 2021 [Attachment 9]	Offer issued to Mr Hart by Colliers \$11.15M and commercial terms as above 18 December 2021.
4 January 2021 [Attachment 10]	<p>Mr Hart email response \$21M with terms agreed post an agreement on price.</p> <p>Mr Hart keeps referring we have not made adequate attempts, however this is misleading & incorrect as we have engaged Colliers to communicate to 2 Marshall owner orally and in writing with our offers, seeked external valuers, and from a period from April 2021 to December 2021.</p>

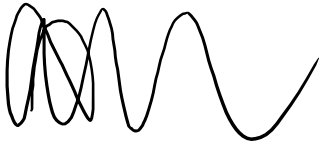
Ultimately the \$21m owners price requirement is almost double the x3 valuations received, and the project is not commercially viable to proceed this \$21m attributed to 688m2 of land within Area 1 future Park J location.

We have reduced our FSR (factoring in the 688m2 parcel of land not amalgamated within Area 1) and still maintaining public open space & affordable housing requirements as required under St Leonards South planning controls and demonstrated in our submissions to date to council and the design excellence panel.

Yours faithfully

DA Applicant for

SLS Canberra Residences Pty Ltd
SLS Holdsworth Residences Pty Ltd

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Alex Yim

General Manager

26 October 2022

Mills Oakley
ABN: 51 493 069 734

Your ref:
Our ref: AJWS/CYCS/3599035

Mr Craig Wrightson
General Manager
Lane Cove Council
48 Longueville Road
Land Cove

All correspondence to:
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DX 13025 Sydney Market Street

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Anthony Whealy +61 2 8035 7848
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By Email: service@lanecove.nsw.gov.au;
cwrightson@lanecove.nsw.gov.au

Dear Craig,

2 Marshall Ave - DA 79/2022, St Leonards

As you know, we act for SLS Canberra Residences Pty Ltd and SLS Holdsworth Residences Pty Ltd (**our Client**), the owners of 1-5 Canberra Ave, 4-8 Marshall Avenue and 2-8 Holdsworth Ave, St Leonards (**the Site**).

We refer to the submission to Lane Cove Council from Minter Ellison dated 21 October 2022. Our Client disagrees with a number of statements in the submission but we will not repeat matters covered in previous correspondence. The purpose of this letter is to provide a brief response to the assertion in the submission that the three separate valuations obtained by our Client from leading valuation consultants are flawed.

The "peer reviews" of our Client's valuations have all been prepared by Mr Craig Barrett of Independent Property Valuations (**IPV**). All 3 peer reviews have been prepared by Mr Barrett alone. Mr Barrett of IPV also prepared the valuation of 2 Marshall Ave for Mr Hart. That is, Mr Barrett of IPV prepared the valuation which Mr Hart obtained and relies upon. **Clearly Mr Barrett has a conflict of interest and is not in a position to provide an independent peer review. The three supposed reviews are simply self-serving letters prepared by the same consultant briefed by Mr Hart to provide a valuation and do nothing more than support his own valuation.**

The valuations obtained by our Client were from JLL, Charter Keck Cramer and M3 Property, three leading valuation consultants. Our Client objects to the unsubstantiated assertion by Mr Barrett that all three of the reports are not "fit for purpose".

We note that the second valuation report prepared for Mr Hart by Titon Advisory is dated 10 October 2022 (with instructions given on 6 October 2022). A report commissioned well after negotiations to purchase 2 Marshall Ave have ceased and just before our Client's development application is due to be determined is, in our view, of no relevance.

If you have any questions or require further information, please do not hesitate to contact Anthony Whealy on +61 2 8035 7848 or awhealy@millssoakley.com.au or Clare Collett at ccollett@millssoakley.com.au

Yours sincerely

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Anthony Whealy

Partner

Accredited Specialist Local Government & Planning

9 September 2022

Mills Oakley
ABN: 51 493 069 734

Your ref:
Our ref: AJWS/EKWS/3599035

Mr Craig Wrightson
General Manager
Lane Cove Council
48 Longueville Road
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By Email: service@lanecove.nsw.gov.au

Partner
Anthony Whealy +61 2 8035 7848
Email: awhealy@millsOakley.com.au

Dear Mr Wrightson,

Response to submission on behalf of 2 Marshall Ave for DA 79/2022, St Leonards

We act for SLS Canberra Residences Pty Ltd (**our Client**), the owners of 1-5 Canberra Ave and 2-8 Holdsworth Ave, St Leonards (**the Site**). As you know, our Client has submitted a development application DA79/2022 for a residential development on the Site (**the DA**). The DA was recently on public exhibition from 20 July 2022 to 16 August 2022.

The purpose of this letter is to provide a response to a submission which is dated 31 August 2022 and we presume was accepted by Lane Cove Council (**Council**) as a late submission on the DA. The submission was prepared by Minter Ellison on behalf of the owner of 2 Marshall Ave (**the Submission**).

The purpose of this letter is to draw Council's attention to a number of incorrect assertions which are made in the Submission. These relate to our Client's conduct in their design of the development the subject of the DA as well negotiations with the owner of 2 Marshall Ave to purchase their property. We also draw Council's attention to the timeline of the negotiation and the planning principal on site amalgamation.

We refer to and rely upon a letter to our client dated 18 August 2022 which provides detail as to the history of the negotiations with the owner of 2 Marshall Ave, which we understand has already been provided to Council and **attach** again for ease of reference. We do not repeat in detail the ground covered in this advice other than to correct factual inaccuracies in the Submission.

1. Factual inaccuracies

First and Final Offer

- 1.1 The Submission alleges that our client made a "first and final" offer to purchase 2 Marshall Ave on 20 August 2021 and asserts that the period of negotiation to purchase 2 Marshall Ave was too short.
- 1.2 This is not correct and is clearly shown by way of an email from the owner of 2 Marshall Ave, Mr Hart which is dated **3 May 2021 and responds to offers made by or on behalf of our client**. By way of email dated 3 May 2021 to Colliers (the buyers agent appointed by our client), Mr Hart states:

I wish to advise some small changes to the sale price and conditions as set out in my email of 13/11/2020.

Sale price: \$30,000,000 (\$30 million).....

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- 1.3 Clearly our client did not make a “first and final offer” on 20 August 2021 when Mr Hart himself refers to prior correspondence regarding the purchase of his property including offer to sell for \$30 million on 3 May 2021 (being **before** the supposed “first and final” offer was made).
- 1.4 The reason that the offer from Colliers dated August 2021 was expressed as a final offer is because it was made after lengthy negotiations with Mr Hart (or lack of negotiations on Mr Hart’s part as he maintained his ambit claim of \$30 million).
- 1.5 **Colliers was appointed 29 April 2021 and held numerous communications with Mr Hart and ultimately made the “final” written offer of August 2021 (which was further increased in December 2021 in a final attempt before the year close). This was in no way, shape or form the beginning of the negotiations with Mr Hart. Mr Hart’s own correspondence of May 2021 for instance (which pre-date the supposed “first and final” offer) clearly shows this.**
- 1.6 Even if there had in fact only been two offers made to Mr Hart (which is not the case), the assertion in the Submission (see para 2.11) that Mr Hart was willing to negotiate, and by implication that our client did not properly negotiate, is clearly not supported by Mr Hart’s conduct and email correspondence. Maintaining a steadfast position that his property was worth \$30 million (without any valuation evidence) for 9 months and then dropping to a value of approximately \$21 million (again without reference to any valuation evidence) is not the conduct of someone willing to negotiate. As outlined in our previous advice, Mr Hart also threatened in email correspondence to stymie the proposed development by not selling his property. This conduct is the conduct of someone who is clearly not willing to negotiate in any meaningful way, regardless of the length of the negotiations.

Pre-DA Meeting plans

- 1.7 Our client takes issue with the assertion at paragraph 2.14 of the Submission that they always intended to exclude 2 Marshall Ave from the DA. Our client would like it placed on the public record that this is not the case.
- 1.8 We confirm that our client did consider development of the Site including 2 Marshall Ave and only proceeded with the DA in its current form when it became clear that Mr Hart was not willing to negotiate and was maintaining a sale price that was not supported by any valuation evidence.
2. **Valuation and timing of offers**
- 2.1 The Submission refers to a valuation obtained by Mr Hart. We presume that this valuation was recently obtained as it does not support Mr Hart’s previous, consistent claims for a sale price of \$30 million and \$21 million respectively.
- 2.2 The Submission states that the valuation obtained by Mr Hart for 2 Marshall Ave values his property at \$12.5 million to \$13.8 million.
- 2.3 **Mr Hart’s claims for \$30 million and \$21 million therefore were not supported by valuation evidence and Mr Hart only obtained the valuation report after the DA was lodged.**
- 2.4 Putting aside the fact that this is clearly not the conduct of someone who is willing to negotiate in a meaningful way, we remind Council of the planning principal in *Karavellas v Sutherland Shire Council [2004] NSWLEC 251* at [17]-[19] (**Karavellas**) regarding site isolation.
- 2.5 In *Karavellas* the Court held that a key factor in determining whether amalgamation is feasible is whether negotiations between the owners of the properties commenced at an early stage and **prior to the lodgement of the development application.**
- 2.6 Negotiations did in fact commence well prior to the lodgement of the DA in this case. **What the principle in *Karavellas* shows is the importance negotiating prior to the lodgement of any development application so that the landowner can have certainty as to the land on which their development must proceed.**
- 2.7 That is, a landowner cannot be expected to continue to “negotiate” or engage with difficult landowners indefinitely and after a development application has been lodged. This would create significant uncertainty for landowners wishing to develop their land and undermine the orderly development which the planning system seeks to ensure. If neighbours could continue to negotiate after a development application had been lodged and landowners were required to

continue to “negotiate” for an indefinite amount of time, a developer would not have any certainty and would be subject to the whims of a neighbour, adding cost, time and unacceptable uncertainty and risk to any development application.

- 2.8 This is particularly important so that a developer is not put to the significant time and cost implications of redesigning a development proposal so as to incorporate another entirely separate parcel of land at a late stage of the proposal, or indeed at any time after the DA is lodged. Such a consequence could require the developer to be required to start the entire development design process over again, by way of a very different design, in fact requiring a new development application. This would be grossly unfair to development proponents, enabling them to be subject to the whims and strategies of objecting neighbours all the way through until the determination of their DA. Of course, this is entirely contrary to the object of the *Environmental Planning and Assessment Act 1979* itself to 'promote the orderly and economic use and development of land' (s1.3(c)). It is for this very reason that the Karavellas Planning Principle requires negotiations to begin **before a development application is lodged**, precisely as has occurred in relation to this application.

Conclusion

We request that the above be taken into consideration when reviewing the Submission.

We also enclose copy of the letter forwarded to Council with clear chronology of the lengthy negotiations from April 2021 to January 2022.

If you have any questions or require further information, please do not hesitate to contact Anthony Whealy on +61 2 8035 7848 or awhealy@millsoakley.com.au or Clare Collett at ccollett@millsoakley.com.au

Yours sincerely



Anthony Whealy
Partner

Accredited Specialist Local Government & Planning

25 October 2022

Mills Oakley
ABN: 51 493 069 734

Your ref:
Our ref: AJWS/CYCS/3599035

Mr Simon Ball and Ms Shivi Bhargava
Minter Ellison
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Sydney

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Dear Simon and Shivi,

2 Marshall Ave - DA 79/2022, St Leonards

We refer to your letter dated 21 October 2022. As you know, we act for SLS Canberra Residences Pty Ltd and SLS Holdsworth Residences Pty Ltd (**our Client**), the owners of 1-5 Canberra Ave, 4-8 Marshall Avenue and 2-8 Holdsworth Ave, St Leonards (**the Site**). On 18 July 2022, development application DA79/2022 for a residential development on the Site (**the DA**) was submitted to Lane Cove Council (**Council**). The DA was on public exhibition from 20 July 2022 to 16 August 2022.

As you know, our Client appointed a buyers agent, Colliers, and engaged in lengthy negotiations to purchase Mr Hart's property **prior to our Client lodging their development application**. A copy of the chronology of these negotiations which have been provided to Council is **attached** for ease of reference.

Some key dates and communications are as follows:

- **29 April 2021:** Colliers appointed as buyers agent and makes contact with Mr Hart regarding the purchase of his property. Colliers indicate to Mr Hart that our Client is willing to purchase his property for \$9-\$10 million;
- **3 May 2021:** Mr Hart writes to Colliers and informs them that a \$30 million sale price is required;
- **May – July 2021:** Our client obtains 3 independent valuations by leading valuation consultants;
- **20 August 2021:** Colliers writes to Mr Hart with an offer to purchase his property (on behalf of our Client) for \$11 million;
- **26 August 2021:** Mr Hart writes to Colliers and refuses offer with length response, including that the "offer of \$11M is manifestly inadequate";
- **18 December 2021:** Despite Mr Hart's clear response, Colliers writes to Mr Hart with an offer to purchase his property for \$11.15M;
- **4 January 2022:** Mr Hart writes to Colliers and indicates he requires \$21M to sell his property;
- **18 July 2022:** Our Client prepared DA documentation and lodges DA with Council.

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In our opinion, it is important to consider Mr Hart's responses to the offers to purchase his property made by Colliers on behalf of our Client.

- (a) By email dated 26 August 2021, Mr Hart writes:

.....

"My email of 13/11/2020 made Colliers and New Hope aware of my selling price which I have held consistent despite the positive change in current market conditions.....

.....

The offer of \$11M is manifestly inadequate."

- (b) By way of email dated 4 January 2022, Mr Hart writes:

"Given previous offers I have received, unit value increases, the LEP requirement for Area 1 site amalgamation and the scale of a \$500M plus development being undertaken by New Hope, it will be extremely difficult for New Hope to argue, should it need to, that it was not able to lift its offer commensurate with the level that I have decreased mine and accept my offer. In parallel to these discussions on price, I will be taking steps to vigorously challenge any attempt to exclude my property from the development of Area 1."

This correspondence from Mr Hart clearly shows that he is unwilling to accept any offer of \$11M or even in the vicinity of \$11M. He states that \$11M is manifestly inadequate in August and in January indicates that \$21M is a fair asking price as he has dropped his asking price (despite having no basis or valuation to support either the \$30M or \$21M asking prices)

Furthermore, in our view, **Mr Hart has not shown conduct which indicates he is willing to negotiate in good faith with our Client. To the contrary, he has blatantly threatened to disrupt our Client's DA process.** We refer to Mr Hart's email of 26 August 2021 to Colliers in which he writes:

"If New Hope attempts to lodge a DA without my property included it would likely result in council rejecting the DA for the reasons stated above in the LEP, and should Council accept the DA, that would result in a protracted Court action that would likely take several years to resolve. I have lived in this property for 56 years, a few more years won't be bothersome."

Our client made offers to Mr Hart and obtained 3 independent valuations which supported the offers made. Mr Hart vehemently rejected offers in the order of \$11M, made it clear that he would not accept anything close to \$11M and threatened to disrupt our Client's DA with court proceedings. Our Client then accepted Mr Hart's clear position at face value and proceeded to prepare and lodge their DA.

It is only after the DA has been lodged that Mr Hart has sought to obtain any independent valuation. Furthermore, it is 3 months after the DA was lodged that we now receive an offer to sell on behalf of Mr Hart that is completely inconsistent with his previous conduct. The DA was lodged on 18 July 2022 and it is not until 21 October 2022 that Mr Hart has provided our Client with this further "offer" to sell. This offer at this late stage appears to be an attempt to disrupt our Client's DA.

Mr Hart's conduct appears to be based upon a presumption that our Client is required to purchase his property, regardless of the unreasonableness of his position. This is of course not correct and is exactly why clause 4.6 is included in planning controls.

Our Client acted properly and in a manner consistent with the planning principle outlined in *Karavelas*, which requires negotiations to take place **prior to the lodgement of a development application**. This is because developers cannot be held at the mercy of unreasonable neighbours who change their position late in the piece and seek to require developers to re-design a development and bear significant additional costs and delays. To require developers to "negotiate" with neighbours indefinitely would undermine the planning system.

For the above reasons, our Client does not accept your client's offer of 21 October 2022.

We will provide Council with a copy of this letter for their records.

If you have any questions or require further information, please do not hesitate to contact Anthony Whealy on +61 2 8035 7848 or awhealy@millsoakley.com.au or Clare Collett at ccollett@millsoakley.com.au

Yours sincerely



Anthony Whealy

Partner

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26 October 2022

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The valuations obtained by our Client were from JLL, Charter Keck Cramer and M3 Property, three leading valuation consultants. Our Client objects to the unsubstantiated assertion by Mr Barrett that all three of the reports are not "fit for purpose".

We note that the second valuation report prepared for Mr Hart by Titon Advisory is dated 10 October 2022 (with instructions given on 6 October 2022). A report commissioned well after negotiations to purchase 2 Marshall Ave have ceased and just before our Client's development application is due to be determined is, in our view, of no relevance.

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