

## **ANNEXURE 4 (UPDATED)**

### **SUMMARY OF SUBMISSIONS RECEIVED**

The application was notified for 28 days from 20<sup>th</sup> July 2022 – 17<sup>th</sup> August 2022 in accordance with Council's notification policy. **During the notification period** the following public submissions were received:

<b>SUBMITTER</b>	<b>DATE OF SUBMISSION</b>	<b>CONTENT OF SUBMISSION</b>
Q. Gao	27 <sup>th</sup> July 2022	Height of buildings, Traffic impacts.
D. Assheton – on behalf of 2 Marshall Avenue	1 <sup>st</sup> August 2022	Email to Council setting out landowner's timeline of negotiations between developer and owner of 2 Marshall Avenue and attaches email correspondence of negotiations. <ul style="list-style-type: none"> <li>• 3 May 2021</li> <li>• 20 August 2021</li> <li>• 26 August 2021</li> <li>• 19 December 2021</li> <li>• 4 January 2022</li> <li>• 6 January 2022</li> </ul>
L. Lui	7 <sup>th</sup> August 2022	Construction noise, dust from construction, impacts to on-street parking, request for parking timing restrictions, no stopping.
V. Ting	10 <sup>th</sup> August 2022	Bulk and scale, impacts on neighborhood character, overpopulation, traffic and parking impacts, construction noise, pedestrian and cyclist safety, energy impacts, lack of green space, overshadowing, privacy, impacts on property values, impacts to public infrastructure from construction vehicles
S. Yelland	14 <sup>th</sup> August 2022	Concerns that a clause 4.6 variation for site area has been lodged. Negotiations of sale with 2 Marshall and sale price, impacts on incentive requirements for 900sqm pocket park, isolation of 2 Marshall, separation to Area 3.
B. Lee	14 <sup>th</sup> August 2022	Concerns with traffic report submitted by applicant, increased traffic impacts.
A. Jubian	15 <sup>th</sup> August 2022	Quality of public open space and communal open space. Does not demonstrate design excellence, traffic and parking impacts, shadows onto public domain and lack of solar access to units, site isolation of 2 Marshall Avenue, bulk scale and massing, materials and finishes, concerns with non-compliance with FSR (Areas 1 and 2), non-compliance with minimum site area, building separation SEPP 65, building separation, shadows onto Newlands Park, loss of trees and impacts on wildlife, closure of Canberra Avenue, heritage impacts.
S. Yelland – Submission 2	16 <sup>th</sup> August 2022	Non-compliance with minimum site area, isolation of 2 Marshall Avenue, building depth, building separation, setback from tower 1 and 2 Marshall Avenue, non-compliance with FSR.
A. Jubian	16 <sup>th</sup> August 2022	Non-compliance with minimum site area, Non-compliances with ADG /SEPP 65 solar access and ventilation, does not demonstrate design excellence, building configuration, building setbacks and envelopes, urban design, tree

		removal, overshadowing of Newlands Park, green spine, neighbouring properties, traffic and parking, closure of Canberra Avenue, privacy,
A. Jubian	16 <sup>th</sup> August 2022	Non-compliance with minimum site area, non-compliance with FSR, site isolation of 2 Marshall Avenue, inadequate evidence of negotiations between developer and 2 Marshall Avenue, the proposal does not demonstrate design excellence, the proposal does not demonstrate compliance with objectives DCP, solar access and shadows, Quality of landscaping, public open space, and communal open space. Shadows onto green spine and pocket park, building envelopes, bulk ad scale, environmental sustainability, closure of Canberra Avenue, impacts on flora and fauna.

The following submissions were received by Council **after the completion of the notification period.**

SUBMITTER	DATE OF SUBMISSION	CONTENT OF SUBMISSION
Minter Ellison Lawyers on behalf of 2 Marshall Avenue	31 <sup>st</sup> August 2022	Letter to Council, discussion of timeline of negotiations between developer and owner of 2 Marshall, deficiencies of clause 4.6 variation and non-compliance with planning principles of the Karavellas caselaw, Pre-DA discussion.
Minter Ellison Lawyers on behalf 2 Marshall Avenue	31 <sup>st</sup> August 2022	Timeline of negotiations between previous developer (Piety) and owner of 2 Marshall Avenue, email correspondence of negotiations. <ul style="list-style-type: none"> <li>• 8 March 2018</li> <li>• 13 November 2020</li> </ul>
IPV Property Valuations on behalf of 2 Marshall Avenue	18 <sup>th</sup> August 2022	1 <sup>st</sup> Property valuation obtained by owner of 2 Marshall Avenue.
Minter Ellison Lawyers on behalf 2 Marshall Avenue	21 <sup>st</sup> September 2022	Copy of letter to Mills Oakley re: the sale of 2 Marshall.
IPV Property Valuations on behalf of 2 Marshall Avenue	18 <sup>th</sup> October 2022	Peer review of JLL property valuation obtained on behalf of applicant.
IPV Property Valuations on behalf of 2 Marshall Avenue	18 <sup>th</sup> October 2022	Peer review of M3 property valuation obtained on behalf of applicant.
IPV Property Valuations on behalf of 2 Marshall Avenue	18 <sup>th</sup> October 2022	Peer review of Charter Keck Cramer property valuation obtained on behalf of applicant.

Minter Ellison Lawyers on behalf of 2 Marshall Avenue	21 <sup>st</sup> October 2022	Letter to Council, response to Mills Oakley submission 9 September 2022 on behalf of applicant, dispute events of negotiation between New Hope and 2 Marshall, rejection of clause 4.6 variation to site area.
Titan Group on behalf 2 Marshall Avenue	21 <sup>st</sup> October 2022	2 <sup>nd</sup> property valuation obtained for 2 Marshall Avenue.
Minter Ellison Lawyers on behalf of 2 Marshall Avenue	21 <sup>st</sup> October 2022	Copy of Letter to Mills Oakley with offer of sale of 2 Marshall Avenue for \$13,775,000.
Minter Ellison Lawyers on behalf of 2 Marshall Avenue	31 <sup>st</sup> October 2022	Letter to Council, response to Mills Oakley for Applicant to address submissions to Council dated 25 <sup>th</sup> and 26 <sup>th</sup> October 2022. Invites applicant to re-enter negotiations with owner of 2 Marshall Avenue. Objection to ability of 2 Marshall to be re-developed in isolation, valuations obtained by the applicant, negotiations between applicant and 2 Marshall, conduct of the applicant and the DA process.
Minter Ellison Lawyers on behalf of 2 Marshall Avenue	7 <sup>th</sup> November 2022	Letter to Council, response to re-development options (A-J) of 2 Marshall Avenue as a stand-alone site.
Minter Ellison Lawyers on behalf of 2 Marshall Avenue	10 <sup>th</sup> November 2022	Photomontage of proposed development with 2 Marshall Avenue.
Minter Ellison Lawyers on behalf of 2 Marshall Avenue	22 <sup>nd</sup> November 2022	Copy of letter to SLS Canberra Residences Pty Ltd and SLS Holdsworth Residences Pty Ltd (New Hope) -Deed Poll.
ABC Planning on behalf of 2 Marshall Avenue	22 <sup>nd</sup> November 2022	Letter to Council, objection to clause 4.6 variation considered to be not well- founded, that the 4.6 variation requests directed to the wrong development standards, concerns of ability of 2 Marshall to be re-developed in isolation, non-compliance with planning principles in Karavellas caselaw.

On 23<sup>rd</sup> December 2022 the applicant submitted an updated clause 4.6 report, redevelopment options report, solar access analysis of the public park The following submission were received in 2023.

SUBMITTER	DATE OF SUBMISSION	CONCERNS RAISED
S. Jones	19 <sup>th</sup> January 2023	Concerns with 2 Marshall becoming an isolated site. Concerns with non-compliance site area and the pocket park.
S. Barber	19 <sup>th</sup> January 2023	Concerns with impacts to 2 Marshall Avenue, Impacts to public open space.
J. Erissy	20 <sup>th</sup> January 2023	Concerns with solar access and privacy to 2 Marshall Avenue.

S. Coley	19 <sup>th</sup> January 2023	Concerns that quality of the public open space will be compromised by the exclusion of 2 Marshall Avenue. Concerns with 2 Marshall being isolated. Concerns with negotiations between developer and 2 Marshall Avenue.
J. Truman	20 <sup>th</sup> January 2023	Concerns with size and scale of development.
D. Assheton for 2 Marshall Avenue	30 <sup>th</sup> January 2023	Concerns with non-compliance site area 1, and the impacts to quality of pocket park. Concerns with valuations presented by the applicant.
N. Maher	18 <sup>th</sup> January 2023	Concerns with 2 Marshall Avenue becoming an isolated site. Concerns with negotiations between developer and 2 Marshall Avenue.
C. Mischel	1 <sup>st</sup> February 2023	Concerns about the scale of the St Leonards South Precinct and impacts on light, privacy, and views from existing residential flat buildings.
S. Davidov	31 <sup>st</sup> January 2023	Concerns with 2 Marshall becoming an isolated site. Concerns with non-compliance site area and the pocket park.
J. Schneller	31 <sup>st</sup> January 2023	Concerns with 2 Marshall becoming an isolated site. Concerns with negotiations between developer and 2 Marshall Avenue. Concerns with amenity impacts to 2 Marshall Avenue. Concerns with apportioning FSR over multiple sites.
<u>Further submission on behalf of 2 Marshall Avenue</u>  Minter Ellison on behalf of 2 Marshall Avenue	6 <sup>th</sup> March 2023 (Received by Council)	Cover letter and summary of Appendices A-L.
<u>Further submission on behalf of 2 Marshall Avenue comprising Appendices A – M.</u>  Appendix A:  Minter Ellison on behalf of 2 Marshall Avenue	6 <sup>th</sup> March 2023 (Received by Council)	Objection to clause 4.6 site area variation request. Concerns that isolation of 2 Marshall is not in the public interest. Concerns that an isolated site at 2 Marshall would not achieve adequate solar access, would have visual and acoustic privacy impacts, non-compliance with planning principles in Karavellas caselaw.
Appendix B:  Barrister's opinion on whether the	6 <sup>th</sup> March 2023 (Received by Council)	Opinion that tests in Karavellas are not satisfied, and clause 4.6 variation request is not well founded. Based on assumptions disclosed in opinion.

planning principle in Karavellas has been satisfied - on behalf of 2 Marshall Avenue		
Appendix C:  ABC Planning on behalf of 2 Marshall Avenue	6 <sup>th</sup> March 2023 (Received by Council)	Letter to Council, objection to clause 4.6 variation considered to be not well- founded, that the 4.6 variation requests directed to the wrong development standards, concerns of ability of 2 Marshall to be re-developed in isolation, non-compliance with planning principles in Karavellas caselaw. Concerns with 6m setback of Area 1 from 2 Marshall Avenue. Concerns that an isolated site at 2 Marshall would not achieve adequate solar access,
Appendix D:  Titan Group Retrospective Valuation of 2 Marshall Ave, St Leonards.	6 <sup>th</sup> March 2023 (Received by Council)	Retrospective valuation of land backdated to July 2021. Valuation undertaken in February 2023 and expresses views about financial viability of redevelopment of 2 Marshall Avenue by a developer.  Submitted to the Sydney North Planning Panel for review and consideration.
Appendix E:  QS Building Economics - Feasibility Cost Estimate on behalf of 2 Marshall Avenue	6 <sup>th</sup> March 2023 (Received by Council)	Estimated total costs of re-development, cost for development of townhouses and a group home options.  Submitted to the Sydney North Planning Panel for review and consideration.
Appendix F:  The Lighting Society - Solar Access Study on behalf of 2 Marshall Avenue	6 <sup>th</sup> March 2023 (Received by Council)	Sun View Diagrams at winter solstice at hourly intervals.  Submitted to the Sydney North Planning Panel for review and consideration.
Appendix G:  IPV Property Valuations on behalf of 2 Marshall Avenue.  (Document previously submitted to Council 18 October 2022)	6 <sup>th</sup> March 2023 (Received by Council)	Submitted to the Sydney North Planning Panel for review and consideration.
Appendix H:  Titan Advisory Group Property	6 <sup>th</sup> March 2023 (Received by Council)	Submitted to the Sydney North Planning Panel for review and consideration.

Valuation on behalf of 2 Marshall Avenue  (Document previously submitted to Council 10 October 2022)		
Appendix I: IPV Property Valuations on behalf of 2 Marshall Avenue.  Peer Review of M3 Property Valuation  (Document previously submitted to Council 18 October 2022)	6 <sup>th</sup> March 2023 (Received by Council)	Peer Review of M3 Property Valuation  Submitted to the Sydney North Planning Panel for review and consideration.
Appendix II: IPV Property Valuations on behalf of 2 Marshall Avenue.  Peer Review of JLL Property Valuation  (Document previously submitted to Council 18 October 2022)	6 <sup>th</sup> March 2023 (Received by Council)	Peer Review of JLL Property Valuation  Submitted to the Sydney North Planning Panel for review and consideration.
Appendix J: Minter Ellison Lawyers on behalf of 2 Marshall Avenue  Alleged Misleading statements by Applicant Summary	6 <sup>th</sup> March 2023 (Received by Council)	Alleged Misleading statements by Applicant Summary  Submitted to the Sydney North Planning Panel for review and consideration.
Appendix K: Minter Ellison Lawyers on behalf of 2	6 <sup>th</sup> March 2023 (Received by Council)	Opinion on Council's management of DA.  Submitted to the Sydney North Planning Panel for review and consideration.

Marshall Avenue		
Council Management of DA		
Appendix L:  IPV Property Valuations on behalf of 2 Marshall Avenue.  Peer Review Summary	6 <sup>th</sup> March 2023 (Received by Council)	Summary of all valuation on behalf of objectors and peer reviews of applicant's valuation.  Submitted to the Sydney North Planning Panel for review and consideration.
J. G	13 <sup>th</sup> March 2023	Submission in support of proposal
C. Hu	13 <sup>th</sup> March 2023	Submission in support of proposal
W. L. Or	13 <sup>th</sup> March 2023	Submission in support of proposal
E. Rose	13 <sup>th</sup> March 2023	Submission in support of proposal
K. Yu	14 <sup>th</sup> March 2023	Submission in support of proposal

The above submissions were sent to the Sydney North Planning Panel (SNPP) for consideration as part of the assessment and determination of the Development Application.

## **COMDISIDERATION/RESPONSE TO GENERAL SUBMISSIONS**

The below table lists general issues raised by the unique submissions.

CONCERNS RAISED IN SUBMISSIONS	CONSIDERATION
<b>Minimum Site Area</b> -Non-compliance with minimum site area for Area 1. -Impacts on 900sqm public park required. -Objectives of clause 7.1 not complied with	Due to the inability to acquire 2 Marshall Avenue after pre-development application negotiations did not reach agreement, the site area of Area 1 is 264sqm or 8.8% below the required minimum site area of 3000sqm under Clause 7.2 of the LEP. The development standard of minimum site area is the only standard in <i>Clause 7- local provisions St Leonards South Area</i> which can be varied under a clause 4.6. As discussed in the assessment report, the written Clause 4.6 variation is considered to have merit and demonstrates that in this instance the development standard is unreasonable and unnecessary in the circumstances of the case that there are sufficient environmental planning grounds and that the variation to the standard is in the public interest being consistent with the zone and standard objectives. The required 900sqm pocket park (communal open space) in Area 1 is complied with. (913sqm provided)
<b>Impacts on 2 Marshall Avenue</b> -site isolation	Despite the variation, the proposal maintains consistency and compliance with the remaining

<p>-inappropriate setback to 2 Marshall Ave -no proof of negotiations between parties -DA not designed to respond to 2 Marshall Ave Shadow impacts.</p>	<p>controls and objectives for development on land in the St Leonard's South Area provided under Clause 7.1. Specifically, the proposal achieves the objectives in that it promotes residential development within the precinct and will:</p> <ul style="list-style-type: none"> <li>• Deliver a diversity of residential accommodation including 1-, 2-, 3-, and 4-bedroom dwellings including 28 affordable housing dwellings and adaptable units;</li> <li>• Provide high quality landscaping including public and communal open space.</li> </ul> <p>Council and the SNPP were provided with records of negotiations between the applicant and 2 Marshall Avenue. Both the Applicant (through its consultants and lawyers) and the owner of 2 Marshall (by himself, his agents, lawyers, and consultants) have made multiple submissions addressing the court's planning principles concerning site isolation which have been considered and are addressed in more detail below in the consideration of multiple objections and submissions made by or on behalf of 2 Marshall Avenue. In summary documentary evidence has been submitted which is considered to satisfy both limbs of the planning principles in <i>Karavellas v Sutherland Shire Council</i> {2004} NSWLEC.</p> <p>As per the clause 4.6 package, a number of high concept alternative redevelopments for the site were submitted and are permitted under multiple planning instruments including the Lane Cove LEP 2009 and the Housing SEPP 2021. The applicant has demonstrated that the site can be redeveloped in its own right and will not be isolated.</p> <p>Area 1 has been designed accordingly with respect of 2 Marshall Avenue. An appropriate setback of 6m adopted from the northern boundary of Area 1 fronting 2 Marshall Avenue, which exceeds the separation requirements under the ADG. The setback would provide an adequate building separation and will ensure a high level of residential amenity is retained on the adjoining land through angled louvers and orientation of balconies.</p> <p>Solar access diagrams submitted with the DA demonstrate that no shadows from the development fall on 2 Marshall between 9am and 3pm during winter solstice. The site is located south of 2 Marshall Avenue.</p>
<p><b>FSR</b> -Averaging out FSR across sites 2 and 4 should not be allowed</p>	<p>The applicant submitted a legal opinion in relation to totalling the FSR across the combined site areas of Area 2 and Area 4. The</p>



	<p>conclusions of the advice are considered satisfactory namely:</p> <p>i. The FSR is the same (3.55:1) across Areas 2 and 4; and</p> <p>ii. 'Site Area' is defined under LCLEP 2009 by the development site boundaries not individual areas.</p> <p>The proposal is considered satisfactory with respect to the maximum floor space ratio.</p>
<p><b>Solar Access</b></p> <p>- Concerns raised of shadow impacts of built form</p> <p>-The solar access ought to comply with the minimum 70%</p>	<p>The proposed development is compliant with the building envelopes (height/density) and setbacks from all street frontages and the green spine requirements outlined within the Lane Cove LEP and DCP.</p> <p>However, the significant slope on the site, together with the north-south orientation of the street grid and green spine introduce site-specific constraints and challenges impacting on solar access for any development.</p> <p>North and uphill of the site is No. 88 Christie Street which contains a 16-storey residential tower. This building would significantly overshadow Areas 1 and 2 at mid-winter. This constraint has been acknowledged and discussed with the DRP/DEP since PRE-DA stage. In response to advice by the DRP/DEP, the apartment layout and design was modified multiple times prior to lodgement to maximise solar access in an effort to get as close to 70% compliance as possible.</p> <p>The proposal includes 65% of all units across Areas 1, 2 and 4 achieving compliant 2 hours solar access during mid-winter.</p> <p>Considering the above, the proposed solar access is considered to achieve acceptable amenity in context to as individual site constraints.</p>
<p><b>Building depth</b></p>	<p>The maximum depth of the buildings 2 and 4 is approximately 20m which complies with the recommended ADG guideline of 18m – 22m.</p> <p>Building 1 has maximum depth of 25m. In this instance the proposal is considered acceptable as due to its relatively square floor plate, it maintains a high level of natural light and ventilation to all apartments. The configuration of apartments in Building 1 has been designed with light penetration and amenity considered.</p>
<p><b>Setbacks and Building Separation</b></p> <p>-Development ought to comply with DCP setback requirements</p> <p>- Non-compliance with building separation provisions of the ADG</p>	<p>The proposed building design includes setbacks which were established following an extensive urban design process with Council and the Design Review and Excellence Panel (DEP).</p>

	<p>The southern elevation of Building 2 and Northern Elevation of Building 4 complies with the ADG separation requirements for non-habitable elevations. The 'defensive' design with screening up 1.7m of windows and balconies ensures no opportunities for sightlines each building interface.</p> <p>Compliant ADG separation to any future development at Area 3 is achieved. 6m setback up to level 2, and a 12m setback from level 3 – 19.</p> <p>6m non-habitable to non-habitable separation is achieved between levels 2-5.</p> <p>18m non-habitable to habitable separation is achieved on levels 9 and above.</p> <p>Overall, the proposal achieves the objectives of the building separation requirements under the ADG and the objectives of the St Leonards South planning precinct controls including the envisaged housing target density.</p> <p>The proposed design achieves urban design excellence through its unique design and careful response to the above process.</p>
<b>Overshadowing</b> <ul style="list-style-type: none"> <li>Shadows onto Newlands Park,</li> <li>Overshadowing public space and communal areas</li> </ul>	<p>The 3 buildings have been designed in accordance with the built form controls set out in the St Leonards South Masterplan (including height setbacks and density) and therefore, any overshadowing impacts have been envisaged. Where possible the proposal has been designed to reduce overall shadow impacts to neighbouring properties and the public domain.</p>
<b>Sustainability</b>	<p>A ESD report was submitted with the DA which confirms that the proposal incorporates a high level of sustainability measures in its design. The NATHERS Certificate achieves 6 stars as required.</p>
<b>Urban Design and Architecture</b>	<p>The proposed development fully complies with the built form development standards prescribed under the Lane Cove LEP and DCP and the St Leonards South Landscape Masterplan. It has been designed accordingly as envisaged for the site and wider St Leonards South precinct.</p> <p>The selected materials, together, with the significant landscaping and planting ensures a high-quality development that is consistent with the relevant built form standards and objectives.</p>
<b>Tree Removal and Landscaping</b> <ul style="list-style-type: none"> <li>- Tree retention ought to be ensured</li> </ul>	<p>A detailed arborist report has assessed the potential to retain trees and recommends that they the majority be removed.</p> <p>A total of 19 trees are proposed to be removed as a result of the proposed development, the</p>

	<p>majority of which are found to either be exempt species or are of a low retention value.</p> <p>Suitable replacement planting is provided as part of the proposal as detailed in the updated landscape plans to the satisfaction to both Council's Tree Officer subject to recommended draft conditions including 1:1 tree replacement. All street trees are proposed to be retained.</p>
<b>Wind impacts</b> Wind tunnel of green spine/pocket park	A qualitative wind assessment was submitted which demonstrated that ground level wind speeds within all public access areas would remain at their present levels. The recommendations of the wind impacts report have been implemented in the design and are considered acceptable in mitigating associated wind impacts.
<b>Traffic</b> - Does not address traffic volume impact - Amount of traffic movement is unacceptable.	<p>A detailed traffic and car parking impact assessment report is submitted with the DA. The traffic assessment was prepared by a qualified engineer regarding the relevant traffic requirements in the Lane Cove Development Control Plan 2009 and Transport for NSW (TfNSW). The assessed traffic impact is considered acceptable.</p> <p>The parking area and vehicle access to the site were reviewed by Council's traffic engineers and considered to have adequate pedestrian and cyclist safety.</p>
<b>Parking</b> - The proposal provides too many parking spaces. - Reduced street parking	<p>The proposed car parking complies and exceeds the recommended minimum car parking rates prescribed by the Lane Cove Development Control Plan 2009. All parking generated by this development will be accommodated on site.</p> <p>The ten existing crossovers along Marshall, Canberra and Holdsworth Avenue will be consolidated into a single access. The redundant driveways will be removed with kerb invert be reinstated to match the adjacent footpath and kerbing. The reduction of crossovers would free up space for additional on-street parking.</p>

<b>Construction Impacts including Noise, Traffic and Pollution</b>	<p>A construction management plan has been conditioned to be provided prior to CC addressing traffic, construction noise, and vibration. Accordingly, appropriate mitigation measures will be implemented during construction to minimise adverse impacts to neighbouring properties.</p> <p>Standard conditions of consent will also assist with managing construction impacts.</p>
<b>DCP &amp; LEP Requirements</b> - Does not meet DCP objectives.	The DCP objectives are achieved where the proposal predominantly meets or are appropriately clarified/justified for site specific

	<p>reasons and how an equal or a better planning outcome has been achieved in this instance. The proposal meets the relevant DCP controls as clarified in the main report or the DCP compliance table.</p>
<p><b>Design Excellence</b> Does not meet design excellence, some submissions raising general issue with each clause.</p>	<p>The proposed building and landscape design have been developed by rothelowman architects and Arcadia following an extensive urban design process including the Design Review and Excellence Panel (DEP).</p> <p>This design evolution resulted in the DEP being generally satisfied with the overall design intent, building height and form.</p> <p>On 27/06/22 the DEP comments confirmed:</p> <p><i>'The Panel provides conditional support for the proposed development and considers that design excellence can be achieved if the issues raised and recommendations made by the Panel are satisfactorily addressed.'</i></p> <p>The issues raised related to</p> <ul style="list-style-type: none"> <li>• the proportion of glazing on the building,</li> <li>• materiality of the facades perceived as 'commercial' appearance of the buildings.</li> </ul> <p>To resolve these issues further materiality changes were proposed.</p> <ul style="list-style-type: none"> <li>- Providing an increased diversity of materials for all towers by incorporating a variety of solid elements including shading structures and cladding panels. The changes have reduced the overall amount of surface glazing to enhance residential appearance; and</li> <li>- Modifications to colour palette and detailing for each tower to amplify individuality and provide clear architectural differentiation between Areas 1, 2 and 4.</li> </ul> <p>These changes were considered satisfactory for lodgement of the DA.</p> <p>The proposed development achieves urban design excellence through its unique design and detailed response to the sites constraints and opportunities whilst achieving the overall objectives of St Leonards South precinct planning controls.</p>

<b>Heritage impacts</b> Removal of the dwelling houses should not be permitted	The existing dwelling houses are not heritage items and are not required to be retained under Council's controls.
<b>Impacts to flora and fauna</b>	All trees to be removed will be replaced at the required ratio. Replacement tree planting will provide habitat for fauna in the future. Please see condition <b>F.19</b> in Annexure 1 Draft Conditions. <i>'Trees that are removed must be replaced on a 1:1 ratio'</i> .
<b>Acoustic/Noise impacts during construction and occupation</b>	The DA included the submission of an acoustic report which addressed the potential of surrounding noise impacts on the proposed development and surrounding nearby receivers. Mitigation and acoustic treatments have been incorporated throughout the duration of the demolition and construction phases, relating to roads traffic noise, on-site works, waste collection and mechanical plant. Council has recommended the inclusion of a draft condition requiring compliance with the recommendations of the acoustic report.

## **CONSIDERATION OF SUBMISSIONS BY OR ON BEHALF OF 2 MARSHALL AVENUE**

Multiple submissions were received by and on behalf of the owner of 2 Marshall Avenue during and after formal notification periods. The below table responds to those specific objections raised by and on behalf of 2 Marshall Avenue.

<b>CONCERNS RAISED IN SUBMISSIONS</b>	<b>CONSIDERATION</b>
<p><b>Submission by Minter Ellison on behalf of (2 Marshall Ave) 1 August 2022</b></p> <ul style="list-style-type: none"> <li>Concerns that negotiations between applicant and 2 Marshall were not sufficient.</li> <li>Concerns that offers made by applicant were not a reasonable price.</li> <li>Concerns that the 3 independent valuations of 2 Marshall Avenue were not made available to Mr Hart.</li> <li>Concerns that the clause 4.6 is not well founded and Karavellas principle</li> <li>Concerns that the valuations between the applicants and the valuation by Mr Hart are not aligned.</li> </ul>	<ul style="list-style-type: none"> <li>Both the Applicant and 2 Marshall supplied Council correspondence of negotiations. Chronologies and contents of negotiations. There is a debate between them as to the adequacy and reasonableness of the offers to purchase and the terms of offers, rejections and conditions. It is not the function of the consent authority to insert itself into the commercial negotiations between parties and determine a price. Where a site has not been able to be amalgamated, the development application is assessed against the Courts' planning principle in Karavellas. The principles are discussed and explained in the supplementary report in more detail. In summary and in response to matters raised in the submission:</li> <li>The first limb of the planning principle requires that negotiations commence prior to lodgement of a development application and mandates a reasonable offer be made based on at least one</li> </ul>

	<p>recent independent valuation and may include incidental costs;</p> <ul style="list-style-type: none"> <li>• Where negotiations fail, the DA should include details of the negotiations; the applicant included details of negotiations.</li> <li>• The second limb relates to development of the remaining lot and is discussed below in relation to (b), the applicant included details of negotiations.</li> </ul> <p>First limb:</p> <ul style="list-style-type: none"> <li>• On review of the documents provided by both the Applicant and the owner of 2 Marshall, two offers were made by the applicant to acquire 2 Marshall Avenue prior to the lodgement of the DA as follows: <ul style="list-style-type: none"> <li>- 19 August 2021 = offer of \$11 million</li> <li>- 18 December 2021 = offer of \$11.15 million</li> </ul> </li> <li>• the above offers were based on amounts determined <b>by 3 independent valuations made prior</b> to lodgement of the DA. The 3 independent valuations undertaken on 2 July 2021, 2 August 2021 and 13 August 2021. The 3 independent valuations were undertaken by accredited valuers.</li> <li>• The planning principle does not require the distribution of the valuations to the owner of 2 Marshall for review. It requires an offer to be informed by at least 1 valuation, which evidently occurred as the offers were higher than the valued amounts in the valuation reports. It is noted multiple reviews have in any event been undertaken on behalf of 2 Marshall.</li> <li>• The consent authority's task is to be satisfied as to whether the offer/s are reasonable.</li> <li>• The correspondence provided by the owner of 2 Marshall Avenue and provided by the Applicant indicates it was the owner of 2 Marshall who firstly requested</li> <li>• Much higher sales prices in order of \$30 million on 03/05/21 and then \$21 million on 04/01/22 were sought. No valuation supported such prices at the relevant time. The two counter offers for sale were not supported by site valuations at the time. No valuations have been provided since to support those asking prices.</li> </ul>
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	<ul style="list-style-type: none"> <li>Three valuations have been provided by the owner of 2 Marshall over the course of the assessment of the DA. The last valuation dated October 2022 valued the property at a sum higher than the valuations obtained by the Applicant but at a sum well under the original asking prices. The owner's valuations post-date the lodgement of the DA in July 2022.</li> </ul> <p>It is not the function of the consent authority to insert itself into the commercial negotiations between parties and determine a price. Where a site has not been able to be amalgamated, the development application is assessed against the Courts' planning principle in Karavellas in light of the negotiations that have occurred.</p> <ul style="list-style-type: none"> <li>The development standard of minimum site area is the only section which can be varied under a clause 4.6.</li> <li>As discussed in the assessment report the clause 4.6 variation meets the jurisdictional requirements is considered to have merit and demonstrates that in this instance the development standard is unreasonable and unnecessary in the circumstances of the case. (Refer to supplementary report).</li> </ul> <p>A planning ground in the cl 4.6 relies on the ability of the development to provide the required 900sqm pocket park. The public open space of 913sqm has been delivered in Area 1 notwithstanding the variation to the minimum site area.</p>
<p><b>Submission by Minter Ellison Lawyers on behalf (2 Marshall Avenue) 21 October 2022</b> Response to Mills Oakley correspondence (09/09/22)</p> <ul style="list-style-type: none"> <li>Concerns raised that offers made by the applicant were not supported by valuations.</li> <li>Valuations engaged by the 2 Marshall were higher than those by the applicant.</li> </ul>	<ul style="list-style-type: none"> <li>As set out above, the documentary evidence indicates that the offers were based on higher than the amounts stated in the 3 counter valuations at the time.</li> <li>Valuations were obtained by the applicant and prior reviews of the Applicant's valuations undertaken, after lodgement of the DA.</li> <li>The owner of 2 Marshall Avenue has obtained peer reviews of the 3 independent valuations provided by the applicant. The peer reviews have been forwarded to the SNPP for consideration.</li> <li>The planning principle requires any reasonable offers to purchase an isolated site be made at an early stage and prior to lodgement of the DA. This occurred and documentary evidence indicates that the peer reviews were obtained following lodgement of the DA.</li> </ul>

	<ul style="list-style-type: none"> <li>- The consent authority's task is to consider whether the offers made are reasonable - not to determine a price by resolving competing valuations. In this case, the documents submitted by the applicant indicate they were based on 3 valuations and on review of the terms of the offers they are considered to be commercial terms and reasonable.</li> </ul>
<b>Submission by Minter Ellison Lawyers on behalf (2 Marshall Avenue) 7 November 2022</b>	<ul style="list-style-type: none"> <li>- Concerns in respect of negotiations are addressed in substance above. The second limb of the planning principle in Karavellas requires the consent authority to consider whether the site can achieve a development that is consistent with the planning controls despite not being amalgamated. The courts have found that development consistent with the planning controls does not have necessarily mean development to the highest or best use or full potential.</li> <li>- In addressing the development capability of 2 Marshall Avenue the applicant provided 10 redevelopment options for the site based on permitted uses in the R4 zone, and development permitted under the Housing SEPP 2021. Unless a use is prohibited within the R4 zone, Council can consider development proposals in a formal DA which may also include proposals with variations to Council's DCP controls, as the DCP controls are guidelines. It is considered these concept drawings demonstrate that 2 Marshall Avenue can be redeveloped on its own, such that the fact the site is not amalgamated by the current proposal would not adversely preclude some form of redevelopment potential consistent with the controls.</li> </ul>
<b>Submission by ABC Planning on behalf of (2 Marshall Avenue) 22 November 2022</b> <ul style="list-style-type: none"> <li>• Concerns that as the Area 1 has not acquired all sites, the planning controls revert back to base planning controls for dwelling houses and not incentive controls for St Leonards South. Concerns of ability of 2 Marshall to be re-developed in isolation, non-compliance with planning principles of the Karavellas caselaw.</li> <li>• Comment that the proposal would achieve better solar access in relation to the ADG requirements if 2 Marshall</li> </ul>	<ul style="list-style-type: none"> <li>• The development standard of site area prescribed by the operation of clauses 7.1(4)(e) and 7.2 of LEP 2009 expressly can be varied under a clause 4.6. The development standard for site area is not excluded from the operation of Clause 4.6 via clause 4.6(8) (cb). The incentive control for height and FSR still apply to the remaining sites in Area 1. The development controls do not revert to 9m and 0.5:1 as ABC planning submits.</li> <li>• The height and FSR prescribes in clause 7.1(3) apply to development as defined in clause 7.1(2) – “development which</li> </ul>



<p>Avenue was included as part of the Area 1.</p> <ul style="list-style-type: none"> <li>Concerns that the proposed setback of Tower 1 does not comply with the ADG separation control and would result in adverse visual and acoustic privacy impacts.</li> </ul>	<p>involves the erection of one or more new buildings for the purposes of residential flat buildings on land within St Leonards South Area” Th proposal meets this definition.</p> <ul style="list-style-type: none"> <li>The legal construction of the operation of Part 7 of the LEP in the ABC submission is not accepted and considered incorrect. Consequently, there is no need for the proposal to seek to vary height and FSR controls as submitted.</li> <li>As discussed in the ADG assessment report (ANNEXURE 2), the significant slope on the site, together with the north-south orientation of the street grid, existing large developments to the north, introduce site-specific constraints and challenges impacting on solar access. North and uphill of the site is ‘The Embassy Tower’ No 1 Marshall Avenue which contains a 29-storey residential tower. Also, currently under construction to the northeast is a development with large towers at 88 Christie Street (26 storeys and 47 storeys) as well as medium scale residential flat buildings at 1- 13 Marshall and 15- 19 Marshall. Accumulatively, these buildings would significantly overshadow both Areas 1 at mid-winter. The above conditions would still impact solar access regardless of whether 2 Marshall is included as part of an amalgamated Area 1.</li> <li>The incorporation of 2 Marshall Avenue would not result in any material change to ADG solar compliance for the tower in Area 1. A building envelope extending northward by approximately 12m (as per the masterplan) would generally be subject to the same shadows or potentially greater adverse shadow impacts at 10am than the proposal which would be a further distance away from the large developments to the north. The sun diagrams submitted on behalf of 2 Marshall do not provide any comparative analysis to justify the position on ADG compliance.</li> <li>The ADG setback requirements are related to ensuring there is compliant separation distances habitable rooms. The Tower in Area 1 would be setback 6m from the rear boundary of 2 Marshall Avenue at all levels. This would result in habitable rooms of at 2 Marshall Avenue are located 16.3m - 18m from</li> </ul>
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	<p>development. (Refer to Level 13 plan below)</p> <ul style="list-style-type: none"> <li>• A 6m setback ensures a 18m separation distance between habitable rooms/balconies of the RFB and the single storey dwelling house at 2 Marshall. This complies with the ADG separation requirements. The redevelopment options by the Applicant indicate various development options for 2 Marshall Avenue, as a site adjoining the development site which are feasible under the planning framework and the case law principles.</li> </ul>
<p><b>Submission by T. Poisel Advice on whether the planning principle in Karavellas has been satisfied - on behalf of 2 Marshall Avenue. 6th March 2023.</b></p> <p>Expresses an opinion the proposal does not comply with the 2<sup>nd</sup> limb of the Karavellas principle, and that orderly and economic use and development of the separate site cannot be achieved.</p> <ul style="list-style-type: none"> <li>- <i>'Options will require a substantial variation to the minimum site area for Area 1 of 3,000m<sup>2</sup> (representing almost an 80% variation)'</i></li> <li>- Concerns that site at 2 Marshall does not achieve compliant solar access.</li> <li>- <i>'Solar access to the proposed development would be achieved if 2 Marshall Avenue is amalgamated into the Development Site'.</i></li> <li>- <i>'Given that the requirements of cls 7.1(4)(e) and 7.2 are not met in this instance, the height and FSR controls contained in cls 4.3 and 4.4, respectively, apply to the DA. The Applicant has not sought to vary these controls or justify their exceedance. In the circumstances, the <b>consent authority must refuse the DA</b>'.</i></li> <li>- <i>'The exclusion of 2 Marshall Avenue compromises the provision of the pocket park to be dedicated to the Council.'</i></li> </ul>	<ul style="list-style-type: none"> <li>- When addressing the first limb; reasonableness of offers; the opinion raises similar matters which have been addressed above and not repeated. It also identifies new matters which are considered below:</li> <li>- In relation to asserted consequences arising from the newly identified issue about identity of the entity the making offers - the planning principle does not prescribe who must make an offer. The courts have held an Agent may make offers. In this instance the offers were made by an agent.</li> </ul> <p>In response of the first limb:</p> <ul style="list-style-type: none"> <li>- The opinion incorrectly assumes that the controls specify a minimum lot size for 2 Marshall Avenue. There is no minimum lot size for 2 Marshall in the Lane Cove LEP except for the minimum lot size of 3000m<sup>2</sup> in Part 7 where one or more Residential Flat Buildings are proposed.</li> <li>- Clause 4.1 of the Lane Cove LEP prescribes minimum lot size for subdivision. It sets no minimum Lot size for 2 Marshall Avenue as shown in the LEP minimum lot size map. The only minimum lot sizes for the site under Clause 4.1 of the LEP relate to minimums for dual occupancy.</li> <li>- The statement in respect to solar access is not agreed. The majority of Area 1 (including 2 Marshall) is already subject to shadows in mid-winter due to existing large developments north of the site (including 88 Christie Street, 1 – 13 Marshall Avenue and 15 – 19 Marshall Avenue) and the existing topography which falls to the south. The opinion says the proposed DA would need solar</li> </ul>

	<p>access if amalgamated. It is noted that the proposed tower development in Area 1 would be located south of 2 Marshall Avenue and would not cast any additional shadows onto that site. The proposed development would not result in any accumulative solar impacts to the existing conditions experienced by 2 Marshall Avenue. Despite the existing solar conditions of the overall area, an orderly and economic use of 2 Marshall Avenue as a standalone site can be achieved.</p> <ul style="list-style-type: none"> <li>- The incorporation of 2 Marshall Avenue would not result in any material change to ADG solar compliance for the Tower in Area 1. A building envelope extending northward by approximately 12m (as per the controls) would generally be subject to the same shadows or potentially greater adverse shadow impacts at 10am than the proposal which would be a further distance away from the large developments to the north. The sun diagrams submitted on behalf of 2 Marshall do not provide any comparative analysis to justify that the proposal would benefit from increased ADG compliance from the inclusion of 2 Marshall as part of the development.</li> <li>- The open space is provided and will be dedicated to Council. The proposal exceeds the required minimum open space of 900sqm and provides 913sqm. It should be noted that the requirements for pocket parks in DCP and LMP are guidelines and not prescriptive and EP&amp;A Act requires flexible application. The applicant submitted solar analysis that demonstrates that the amended pocket park configuration would achieve higher solar access at mid-winter than the Masterplan configuration inclusive of 2 Marshall Avenue.</li> <li>- The construction of Clause 7 put forward in the opinion is not agreed. The development if the standard of site area requires variation which is permitted under a clause 4.6 fails to recognise clause 4.6(8) (cb) which precludes variation of the development standards in <b>Part 7, except clauses 7.1(4)(e) and 7.2.</b></li> </ul>
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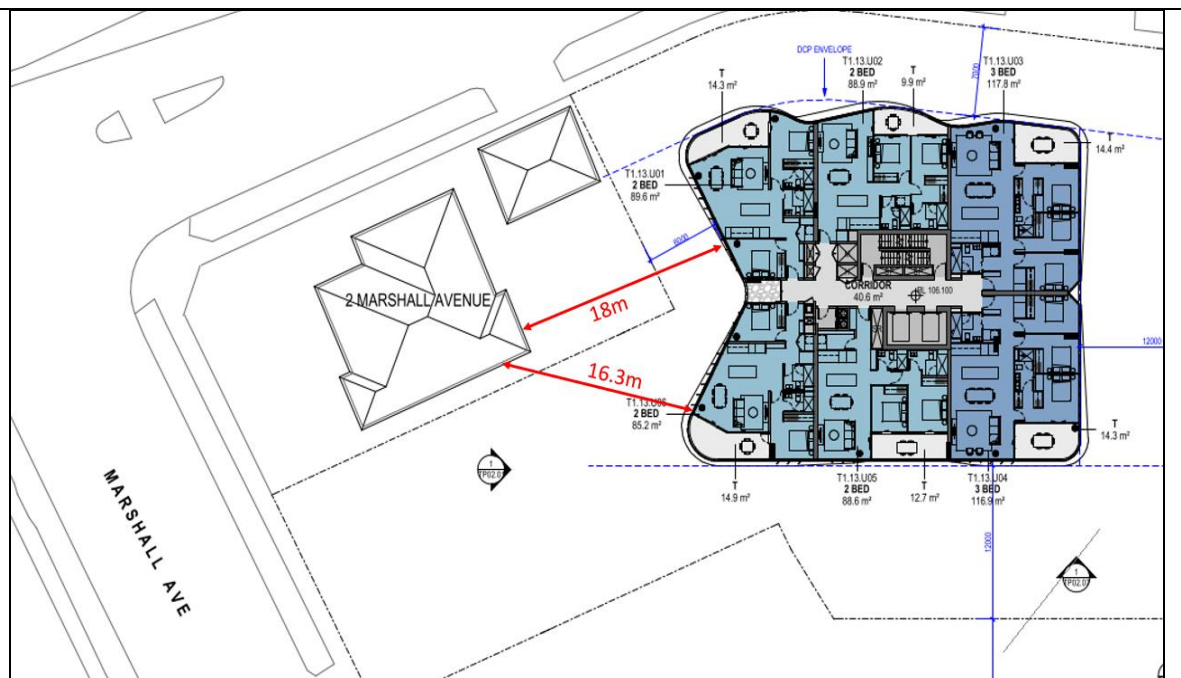
	<ul style="list-style-type: none"> <li>- The incentive controls for height and FSR still apply to the remaining sites in Area 1 for reasons described above. The proposal complies with the incentive height and FSR controls and no additional Clause 4.6 is required.</li> </ul>
<p><b>Submission by ABC Planning on behalf of 2 Marshall Avenue. Received by Council 6<sup>th</sup> March 2023.</b></p> <p>(a) <i>'The site's corner location and proximity to the primary plaza to the north are considered to make this property a gateway site that is vital to the intended outcomes of the recently introduced LEP provisions. The exclusion of 2 Marshall Avenue results in the proposal being inconsistent with the majority of the objectives'</i></p> <p>(b) <i>'Design excellence is not achieved due to non-compliance with setback/building separation between the proposed buildings and 2 Marshall Avenue. The proposed 6m setback from 2 Marshall Avenue is non-compliant and clearly inadequate for a building with a height of 60m'.</i></p>	<p>(a) Despite the exclusion of 2 Marshall Avenue the DA achieves design excellence and the objectives of the LEP result in positive urban design outcome for the area. The proposal was subject substantial a review by the Design Review Panel/Design Excellence Panel (DRP/DEP) prior to DA lodgement. On 27/06/22 the DEP comments confirmed: <i>'The Panel provides conditional support for the proposed development and considers that design excellence can be achieved if the issues raised and recommendations made by the Panel are satisfactorily addressed.'</i> Refer to Annexure 5 of Attachments to assessment report.</p> <p>The issues raised related to:</p> <ul style="list-style-type: none"> <li>• the proportion of glazing on the building,</li> <li>• materiality of the facades perceived as 'commercial' appearance of the buildings.</li> </ul> <p>To resolve these issues further materiality changes were proposed as summarised below:</p> <ul style="list-style-type: none"> <li>- Providing an increased diversity of materials for all towers by incorporating a variety of solid elements including shading structures and cladding panels. The changes have reduced the overall amount of surface glazing to enhance residential appearance; and</li> <li>- Modifications to colour palate and detailing for each tower to amplify individuality and provide clear architectural differentiation between Areas 1, 2 and 4.</li> <li>- These changes were considered satisfactory for lodgement of the DA and achieves design excellence. The site at 2 Marshall would be bounded by the public park at both the Marshall and Canberra Avenue frontages with mature trees and high-quality landscaping providing a green buffer either side. The proposed pocket park would allow for a more sympathetic integration with the overall streetscape when viewed from the public domain. (Refer to Figure 2 photomontage below)</li> </ul>

- (b) The ADG setback requirements are related to ensuring there is compliant separation distances between habitable rooms. The Tower in Area 1 would be setback 6m from the rear boundary of 2 Marshall Avenue at all levels. This would result in habitable rooms of 2 Marshall Avenue being located approximately 16.3m - 18m from development. (Refer to Figure 1 -Level 13 plan below)

A 6m setback ensures a 18m separation distance between habitable rooms/balconies of the RFB and the single storey dwelling house at 2 Marshall. This complies with the ADG separation requirements.

The proposed units opposite 2 Marshall would include angled privacy louvers to prevent direct views. The balconies of the closest units have also been positioned and oriented towards the Canberra Avenue frontage/green spine instead of the property at 2 Marshall.

Further to this, the building would incorporate design elements to ensure no adverse visual or acoustic privacy impacts



**Figure 1:** Level 13 Plan with separation between habitable rooms.



**Figure 2:** Photomontage of Areas 1 and 2 viewed from corner of Marshall and Holdsworth facing west.

**Other information submitted on behalf of 2 Marshall Avenue.**

- 01/08/22 - Timeline of negotiations between applicant and developer. (Deb Assheton)
- 18/08/22 - 1<sup>st</sup> Property valuation for 2 Marshall Avenue (Independent Property Valuers).
- 31/08/22- Timeline of negotiations between previous developer (Piety).
- 21/10/22 - Letter to Mills Oakley with offer of sale of 2 Marshall Avenue for \$13, 775 million. (Minter Ellison)
- 21/09/22 - Letter to Mills Oakley to continue negotiation for sale of 2 Marshall. (Minter Ellison)
- 18/10/22 - Peer review of 3 independent valuations prepared by JLL, M3 and Charter Keck on behalf of applicant. (Independent Property Valuers).
- 21/10/22 - 2<sup>nd</sup> property valuation for 2 Marshall Avenue. (Titan Group).
- 10/11/22 - Photomontage of proposed development with 2 Marshall Avenue.
- 22/11/22 - Letter to SLS Canberra Residences Pty Ltd and SLS Holdsworth Residences Pty Ltd (New Hope) -Deed Poll.
- 06/03/22 - Retrospective Valuation of 2 Marshall Ave (Titan Group)
- 06/03/22 - Feasibility Cost Estimate (QS Building Economics).
- 06/03/22 - Solar Access Study (The Lighting Society).
- 06/03/22 - Residential Valuation Assessment – 2 Marshall Avenue (Independent Property Valuations)
- 06/03/22 - A current Market Valuation - 2 Marshall Avenue (Titan Group)
- 06/03/22 - Peer review of independent valuation prepared by M3 (Independent Property Valuations)
- 06/03/22 - Peer review of independent valuation prepared by JLL (Independent Property Valuations)
- 06/03/22 - Misleading statements by Applicant summary (Minter Ellison)
- 06/03/22 – Council management of the DA. (Minter Ellison)
- 06/03/22 – Peer Review Summary – Valuation Summary (Independent Property Valuations)

The above documents were considered and have been provided to the Sydney North Planning Panel SNPP to facilitate the assessment and determination of the application.