

17 March 2023

2210638

Mr Craig Wrightson
General Manager
Lane Cove Council
48 Longueville Road
Lane Cove 2066

Attn: Mr Chris Shortt (Senior Town Planner)

RESPONSE TO SUBMISSIONS RECEIVED DURING SECOND EXHIBITION – DA79/2022 1-5 CANBERRA AVENUE, 2-8 HOLDSWORTH AVENUE AND 4-8 MARSHALL AVENUE, ST LEONARDS

This letter has been prepared by Ethos Urban on behalf of SLS Canberra Residences Pty Ltd and SLS Holdsworth Residences Pty Ltd, in response to the submissions received for DA79/2022 during the second round of exhibition in February 2023 for DA79/2022, which relates to the construction of three new residential flat buildings at 1-5 Canberra Avenue, 2-8 Holdsworth Avenue, and 4-8 Marshall Avenue, also known as Area 1, 2 and 4 of the St Leonards South Precinct (the site).

During (and after) the second round of exhibition, a total of 23 public submissions were received from local community members, including a submission from the landowner of 2 Marshall Avenue, which immediately adjoins the development site to the north-eastern corner. It is noted that out of the total 23 submissions, five submissions were in support of the application and 18 were against the application.

A response to the submissions (RtS) received is provided in **Table 1** of this letter. Additionally, this RtS is supported by a formal response to the further submission prepared by Minter Ellison which was prepared on behalf of the owner of 2 Marshall Avenue. The applicant's response has been prepared by Mills Oakley and is provided at **Attachment A**.

Submissions for

As noted above, five public submissions were received that are in support of the proposed development. A summary of these submissions and the reasons as to why they support the development is provided below:

- Significant improvement and enhancement to built form and design through the redevelopment of an old, dilapidated and rundown area.
- Development will result in a much cleaner and safer environment.
- Development is of a high quality design and achieves a high level of amenity.
- Creation of pocket park and a number of green spaces is a key public benefit to St Leonards and will also have great visual impact.
- Provision of affordable housing throughout the development is a great initiative.
- Provision of more housing within the area will have a positive impact on housing supply and demand and will assist with the current housing crisis climate within the area and across Greater Sydney.
- Various actions to improve energy efficiency.

As summarised above and throughout the various documents submitted throughout the development application, the development will have a significantly positive impact to the site and the surrounding area.

Submissions against

Notwithstanding the positive elements of the proposal and evidence of support from surrounding residents, 18 public submissions were received against the development. A summary of these submissions is provided below and responded to in **Table 1**. Key issues include:

- Non-compliance with minimum lot size, floor space ratio and building height controls.
- Impacts on 2 Marshall Avenue and site isolation.
- Inadequate provision of open space and landscaping.
- Traffic and parking impacts.
- Solar access and overshadowing.
- Sustainability.
- Construction Impacts
- Site suitability and public interest.

It is emphasised that the majority of the comments and concerns raised within the additional submissions are similar, if not the same as those submitted in the initial exhibition stage in August 2022. As such, this RtS also includes the initial response submitted to Council in September 2022 (**Attachment B**). Further, Council's planning report for the December 2022 Planning Panel also responded to these matters and recommended approval. No doubt Council will further re-consider the further 23 public submissions received in 2023. In the interest of thorough assessment, this correspondence also considers these further submissions overleaf.

We trust that the information provided in this response and **attachments** addresses the matters raised by the landowner of 2 Marshall Avenue and the community and allows the planning assessment and determination to proceed.

Yours sincerely,



Clare Swan

Director - Planning
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Table 1 **Response to Submissions**

Key Issues	Items raised	Response
Minimum site area	<ul style="list-style-type: none"> • Non-compliant with minimum site area and therefore, should not be allowed to achieve incentive FSR and height. • Impacts public recreation area and communal open space. • Clause 4.6 is not allowed to be used within the precinct and should not be supported. • Clause 4.6 is not well founded and does not meet the standards under clause 4.6(3)(a) and (b) • Clause 4.6 – seeking height incentives without the minimum required space or providing the public park space at the Gateway to the precinct. • Clause 4.6 should not be approved or accepted on the basis of not being able to acquire the site. • Clause 4.6 sets a dangerous precedent for surrounding development 	<p>The development standard for the minimum site area is the only development standard under Part 7 of the Lane Cove LEP that is not excluded from the operation of Clause 4.6 and therefore, variations to the recommended amalgamation pattern can be sought. As such, the Clause 4.6 Variation Request that accompanies the development application is valid and provides a detailed justification regarding the variation from the minimum site area for Area 1.</p> <p>It is recognized that the development proposes a site area of 2,736m² for Area 1, which is 264m² (8.8%) below the minimum site area of 3,000m² required under Clause 7.2 of the Lane Cove LEP. The Clause 4.6 Variation Request demonstrates that in this instance the development standard is unreasonable and unnecessary in the circumstances of the case and that the appropriate degree of flexibility available under Clause 4.6 is able to be exercised by the consent authority in this instance. This is further detailed within the Mills Oakley response to the landowner of 2 Marshall Avenue's submission provided at Attachment A.</p> <p>Despite the variation to the minimum lot size, it is emphasized that the Area 1 building, and the overall proposal maintains consistency and compliance with the remaining controls and objectives for development on land in the St Leonards South Area provided under Clause 7.1. Particularly, it is important to note that the proposed development will continue to deliver an abundance of open space, with approximately 1,300m² of public recreation area, which exceeds the requirement under the Lane Cove LEP.</p> <p>It is noted that a revised Clause 4.6 Variation Request was submitted in December 2022 in response to feedback received in public submissions. The revised document was thoroughly and extensively reviewed by Mills Oakley, who are of the view that the written request is comprehensive, robust and meets all legal requirements of a Clause 4.6 Variation written request.</p>
Site isolation	<ul style="list-style-type: none"> • Development will result in site isolation to 2 Marshall Avenue. • Unfeasible or isolation options provided to 2 Marshall Avenue • Development options provided will be overshadowed by northern properties. • No proof of negotiations and attempts to acquire the land. 	<p>Rothe Lowman have undertaken a development options analysis for adjoining land at 2 Marshall Avenue to ensure that it can be redeveloped. This document was provided to Council in October 2022 (and updated and appended to the December 2022 Clause 4.6 Variation Request) and highlights a number of options including, retention of the existing dwelling, multi dwelling housing, childcare facility, bed and breakfast accommodation, group home, boarding house, neighbourhood shops, shop top housing, hotel, and residential flat building.</p> <p>Additionally, and in response to the solar study prepared for 2 Marshall Avenue, it is emphasized that the proposed development does not result in any overshadowing to 2 Marshall Avenue (which is north of the subject site). However, it is recognized that the planned or approved development to the north (outside the scope of the subject site) will likely result in overshadowing impacts to 2 Marshall Avenue, as it also does to the subject site.</p>

Key Issues	Items raised	Response
		<p>However, the solar study included by the objection (to demonstrate this impact of overshadowing from development to the north of the St Leonards South Precinct) provides a view from the sun diagram impact diagram for a single redevelopment option on 2 Marshall Avenue, being a low rise development option. The objection acknowledges that overshadowing to the <i>lower levels</i> of redevelopment options at 2 Marshall Avenue will occur from planned and potential developments to the north. However, the objection does not complete the solar study for the remainder of the redevelopment options presented in the applicant's Clause 4.6 written request. The solar study is therefore incomplete, to demonstrate the objection being made.</p> <p>Further, If a degree of overshadowing to 2 Marshall Avenue is inevitable from planned and potential developments to the north, Council would continue to have discretion to approve redevelopment of 2 Marshall Avenue, for the reasons cited in Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189:</p> <p><i>"if variations to the planning controls would be required, such as non-compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity".</i></p> <p>Such variation to full solar compliance would be reasonable, given 2 Marshall Avenue is optimally located to achieve high quality amenity – direct proximity to open space, adjoins the planned pocket park, is within walking distance of St Leonards Station and the other amenities of the St Leonards Centre.</p> <p>Furthermore, and as detailed within the Mills Oakley response at Attachment A, the proposed development has appropriately addressed and responded to the site isolation planning principles provided in the Karavellas LEC case in that appropriate and reasonable negotiations were made based on three different independent valuation reports. Refer to the Clause 4.6 Variation Request submitted in December 2022 for further detail around the proposal addressing the site isolation Planning Principle.</p>
Impacts to 2 Marshall Avenue	<ul style="list-style-type: none"> Proposed development does not provide adequate privacy or light. The DA has not been designed to respond to the existing dwelling at 2 Marshall Avenue. 2 Marshall Ave being developed at a later time is not a good planning outcome. Privacy impacts to 2 Marshall Avenue 6m setback is non-compliant and inadequate with a building of its height 	<p>The proposed development has been designed accordingly with respect of 2 Marshall Avenue and an appropriate setback of 6m has been adopted on the northern boundary of Area 1 fronting 2 Marshall Avenue, which complies with the performance criteria of the ADG for developments up to 12m. 2 Marshall has a LEP height limit of 9.5m, and hence the relevant separation distance is 12m. The ADG requirement is equitably shared between two sites, and the proposal provides a 6m setback to the 2 Marshall Avenue boundary.</p> <p>It is also noted that a robust design solution has been adopted to ensure that the visual privacy objectives under the ADG are achieved. Specifically, privacy screens have been included within the design along the length of the facades addressing the boundary of 2 Marshall Avenue to achieve a good visual privacy outcome that is similar to a non-habitable room.</p> <p>Angled privacy blades are also proposed to prevent any direct overlooking to the neighbours, whilst still ensuring that the apartments within Building 1 will have access to the sun. On this basis, the visual privacy impacts to 2 Marshall Avenue are considered to be appropriately addressed and a good outcome for the site interface.</p>
Landscaping and Open Space	<ul style="list-style-type: none"> Does not provide adequate open space. The two pocket parks are not adequate for the development size. Overshadowed pocket parks do not make up for loss of genuine open space. 	<p>The proposed development will deliver an abundance of open space, with approximately 1,300m² of public recreation area and 1,603m² within the green spine. These open spaces have been designed to a high-quality standard with a variety of different amenities that cater towards different community groups, trees and vegetation planting, public art, etc.</p>

Key Issues	Items raised	Response
	<ul style="list-style-type: none"> The site changes the land that was designated for primary open space as outlined in the LEP. Small park will suffer from surrounding high rise buildings. Open space must be retained. Open space must be allocated as outlined in the Key Site Maps Area within the LEP and DCP. No plants or vegetation will grow within the public open space because it will be overshadowed. Public open space provided is inadequate and hardly a trade-off for the VPA. Lack of green open space and trees. Only the residents can use the open space. 	<p>The public recreation area to the north of the site is being dedicated to Council as a pocket park and can be used by all community members. It is important to note that the size of the recreation area is compliant with the requirement under the Lane Cove LEP, regardless of the minor variation to the minimum site area of Area 1.</p> <p>The location of the pocket park and orientation of the green spine is compliant Lane Cove LEP and therefore, the solar access to these spaces is consistent with that envisaged under the St Leonards South Masterplan.</p>
Voluntary Planning Agreement	<ul style="list-style-type: none"> VPA benefits only covers few affordable housing units that are small sized. VPA doesn't provide optimal level of public facilities and services. VPA is not reasonable for the amount of contravention of development standards. VPA Pocket parks are not assessed on a practical basis. VPA does not calculate for the increased generated demand for the development VPA benefits council and one stakeholder instead of the entire community 	<p>The development application is accompanied by a voluntary planning agreement that intends to offer the construction, embellishment and dedication of a public open space with a total area of approximately 1,300m², and a total of 28 x 2 bedroom affordable housing dwellings. This is entirely consistent with the provisions of the Lane Cove LEP, which allows development within the precinct to utilise the incentive height and floor space ratio.</p> <p>The offerings of the VPA will have significant public benefit for the community in that it will contribute to the open space network within the St Leonards and Crows Nest precinct, as well as assist with the housing affordability crisis across Greater Sydney – through both housing supply and affordable housing dedication. This is considered reasonable and an appropriate outcome for the site.</p>
Floor Space Ratio	<ul style="list-style-type: none"> FSR and Height incentives should not be given because 900sqm of open space is not provided. Should not be allowed to distribute the FSR across the site area as it goes against the intent of the DCP. 	<p>Based on existing precedent within the precinct as well as legal advice prepared by Mills Oakley, gross floor area (GFA) can be distributed across Areas 2 and 4 as the same floor space ratio standard of 3.55:1 applies. The proposed development has adopted this strategy and therefore, the proposed FSR for Area 2 slightly exceeds the maximum, while the proposed FSR for Area 4 remains below the maximum. With this, the average FSR across Area 2 and 4 is compliant with the maximum FSR of 3.55:1 and therefore, the proposed development is consistent with the FSR control.</p>
Urban Design and Architecture	<ul style="list-style-type: none"> Do not support a development of this bulk and footprint. Do not support a development of this height. 	<p>The proposed development is compliant with the design development standards prescribed under the Lane Cove LEP and DCP and the St Leonards South Landscape Masterplan. It has been designed accordingly to implement appropriate architectural elements and finishes to create a human scale development that will enhance the public domain and streetscape.</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. The Urban Design Report prepared by Rothe Lowman includes a detailed analysis of the developments response to the local character and surrounding context.</p>

Key Issues	Items raised	Response
Traffic and Parking	<ul style="list-style-type: none"> Development will result in significant traffic and parking impacts. Development will put further impact on our public transport system due to the increase in residents. Additional cars will provide huge impact on Shirley Road and Pacific Highway. Any closures to Canberra Avenue are a major issue and should not be allowed. Inadequate parking provided. Request for Council to provide free and peak paid zoning parking, as well as maintain no stopping adjacent to the proposed driveway. Increased traffic flow in the Berry Road, Pacific Highway and Reserve intersection will create potential traffic hazards for health workers, residential and general public. 	<p>The proposed development has been designed accordingly to mitigate traffic and parking impacts on the local road network.</p> <p>The consolidated basement carpark strategy results in a positive outcome for the site as it minimizes the number of driveways and access points from the street, which is consistent with the provisions of the Lane Cove DCP. This strategy is considered a key public benefit as it will create a safer and more efficient pedestrian network and also allows the opportunity for an increase of street parking along Canberra, Holdsworth and Marshall Avenue by reducing the number of vehicular cross overs.</p> <p>Additionally, the proposed development provides generous parking within the consolidated basement parking above LCC minimum parking provisions specified under Part 4, Section 2.3 of the Lane Cove DCP, which will reduce the pressure on the existing street parking.</p> <p>As stated in the Traffic Impact Statement prepared by Stantec (Appendix N of the original submission) the proposal will generate 32 and 16 vehicle trips per hour in the AM and PM peak hours respectively. On this basis, the report confirms that the traffic impacts of the proposal have already been considered as part of the St Leonards South precinct and therefore, no additional impacts are expected to arise from the proposed development directly.</p>
Overshadowing	<ul style="list-style-type: none"> Development overshadows public open space. Overshadowed pocket parks are not a viable open space. Loss of property value due to overshadowing 	<p>The proposed development has been designed to minimize the impacts of overshadowing on the surrounding area. The proposed development is consistent with the required building envelope, including the maximum building height, and therefore, there are no substantive overshadowing impacts resulting from the proposal that were not already envisaged as part of the St Leonards South Precinct Masterplan.</p> <p>Given the location of the site on the outskirts of the St Leonards CBD, and the prevalence of significantly taller towers surrounding the site, most areas to the west and south of the site are already overshadowed. Notwithstanding, a detailed shadow analysis has been undertaken which demonstrates that the proposed development will have a minor additional overshadowing impact to the surrounding development.</p> <p>Further the Clause 4.6 Variation Request (December 2022) demonstrates:</p> <ul style="list-style-type: none"> - Improved solar access to LEP Area 1 and Area 4 minimum recreation areas, is actually achieved through the proposed development and variation to minimum site area development standard, when compared to the St Leonards South Masterplan open space layout. - Improved solar access to LEP Area 1 minimum recreation areas, is actually achieved through proposed development and variation to minimum site area development standard, when compared to the St Leonards South Masterplan open space layout.
Sustainability	<ul style="list-style-type: none"> Development will have impact on surrounding development's access to sun and ventilation, and therefore impact household energy consumption as air condition is more likely to be required. 	<p>The proposed development has been designed in accordance with the height planning controls and therefore, any overshadowing has been envisaged as part of the studies undertaken for the broader masterplan strategy. The DA submitted shadow analysis demonstrates that the proposed development will have a minor additional overshadowing impact to the surrounding development. The ESD report provided at Appendix I of the original submission confirms that the development will maintain a high level of sustainability and will achieve a minimum of 5 star NatHERS. Surrounding developments within the St Leonards South Precinct are also required to demonstrate this minimum.</p>
Construction Impacts	<ul style="list-style-type: none"> Further details on construction impacts and management measures proposed, relating to dust, noise, and safety. 	<p>A Construction Management Plan (CMP) will be prepared by the principal contractor at the construction certificate stage of the project. The CMP will include mitigation measures and strategies that address dust, air quality, noise, traffic and safety. Appropriate conditions of consent will be included.</p>

Key Issues	Items raised	Response
	<ul style="list-style-type: none"> Liaison construction to immediately report breaches of work hours, noise levels, pollutant spills, dust escapes etc. 	
Acoustic Impact	<ul style="list-style-type: none"> Excessive noise pollution from people and traffic. 	An Acoustic Report has been prepared by Stantec, which considers both the construction and operational noise impacts to the proposed development as well as the surrounding sensitive receivers. The report concluded that the relevant noise criteria and objectives can be met.
Site suitability and public interest	<ul style="list-style-type: none"> The development is not suitable for the site and is not in the public interest. 	As detailed within Section 6.10 and 6.11 of the Statement of Environmental Effects, the proposed development is considered suitable for the site and is in the public interest.