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Subject: Online Submission

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RE: DA2020/1514 - 0 L Federal Parade BROOKVALE NSW 2100

TO: Northern Beaches Council
Re: Development Application 2020/1514

Objector:
J. Truszewski
76 Federal Parade Brookvale.

Objection to Increase of Student Population, and New Car Parking Spaces.

I am a resident and owner of a property directly facing the school. I object to this Development application on several grounds which I will further detail in the body of this letter.

1. Legal.
2. Safety concerns
3. Parking concerns
4. Traffic issues
5. Noise and general.

Background:

1) St Augustine's College has a current student cap of 1200 students and no cap on staff numbers.

2) On 9 November 2018, the College wrote to neighbors informing them about the upcoming, complying development they were planning to build. In this letter the College advised, "it is not our intention at this stage, to increase student numbers. To vary this, Development Application through Council would be required.

3) Under the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (SEPP) complying development provisions, the College increased the building footprint, adding additional floors, classrooms and an outdoor rooftop terrace, thus creating additional space to house an increase in the student population. Although the College claimed that its intention was not to increase student numbers, the facts are that the College proceeded to increase the student population by 18.5%, and its staff population accordingly.

The College framed the development as a Complying Development, hence there was not a requirement for Public Exhibition, community participation, Council, and local planning panel consideration and approval. Neighbours did not have an opportunity to voice their concerns around impacts to Views, Privacy, Noise, out of scale development, and other impact to amenity.

4) Despite the assurance to neighbours that the College population would not increase, the College subsequently increased its student population from 1200 to 1422 during 2019-2020, either due to poor governance, or deliberately flouting the law and breaking its promise to the community. An increase in population requires a corresponding increase in College staff, rooms and facilities.

5) The College seeks to increase student numbers to 1500, by submitting a Development Application retrospectively after already having increased its student numbers . The development application has 3 components:

- a) Student population increase from 1,200 to 1,500
- b) Construction of a 15 space car park
- c) Line marking of parking spaces.

Issues:

1) The College constructed additional classrooms under a CDC, and subsequently increased student numbers. In doing so, the College has created a problem for itself, the Council and the public.

I do not see the DA as a straightforward development application. It is not simply a DA to increase student numbers add parking spaces, and a traffic management plan. Although his DA attempts to retrospectively correct a breach of a condition of an existing development application, this DA is inherently more complex. This DA is inextricably linked to the SEPP's complying development provisions and runs contrary to the rationale behind the SEPP.

2) This DA is linking the addition of parking spaces to increasing student numbers. The addition of parking spaces is immaterial to the primary need for the College accommodate the increased number of students.

The existing 222 students over the current permitted cap is not an insignificant amount. It amounts to an approximate increase in classroom and teaching space, potentially 10 additional classrooms. It also requires outdoor space for recreation.

The College did construct additional classrooms under a Complying Development Certificate. Circular PS 17-004 clarifies the complying development provisions of the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 "Some types of College developments will be permitted as 'complying development' provided that certain predetermined standards are complied with, including height limits and setbacks requirements. This includes the construction of additional classrooms, but only if the works do not contravene any existing conditions on development consents relating to student or staff numbers that apply to the land within the boundaries of an existing College"

The College looking at this current Development Application as an instrument to retrospectively rectify a non-compliance, i.e., increase student population, which was created as a direct result of creating additional classrooms and teaching spaces by using the CDC of 2018. The act of increasing the student population as a result of creating additional classrooms to house the students, negates the CDC's compliance.

I do not know how the NSW Courts would embrace the concept of utilising a Development Application as an instrument to rectify non compliances that were caused by College not complying to the SEPP's complying development provisions.

Given that the SEPP is a relatively new instrument, and the fact that the Council has no previous precedents to follow with respect to non-compliances to this SEPP, I suggest that the Council obtains specialist legal advice to determine if the Council has the power under Section 7 of the Local Government Act 1993 to grant approval to an application which would have the effect of overcoming a breach of the SEPP Section 39 that has already been committed.

3) The Development Application makes no reference to the CDC that was used to construct the additional classrooms and teaching spaces to accommodate the increased student population.

4) This development application does not include any reasons that led to the to the Colleges increase of student and staff numbers, nor any assurances that the College would adhere to its caps. The development application does not mention any corrective actions to address the non-compliance in the Colleges governance processes that led to the increase of 222 students above the current cap. If an increase was permitted, what assurances would the College provide to the Council and the Community that the new caps would be observed?

5) The development application does not address any resulting increase in staff numbers. The College currently has no cap on Staff Numbers. Because 90% of the staff travel to College by car, and staff use Car Parking spaces, and since this Development Application mostly addresses car parking, I suggest that Council, consider imposing caps on Staff Numbers in addition to student numbers as is the case with other schools.

6) The development application does not address how the College will cater for the increase in student numbers regarding the increase in recreation space that is required. The College is currently utilising the Community Section of Brookvale Park, known as the Village Green to accommodate students during recess and lunch times.

There is no provision in the Brookvale Park Plan of Management for the School to rent/hire or utilise this this section of Brookvale Park to the College. In fact, the Brookvale Park Plan of Management specifically disallows the land categorized as the Village Green to be used for the purpose of lease/license or grant for any purpose.

I question if Council has any agreements with the College regarding use of Brookvale Park by the College which indemnifies the Council.

Safety: Comments regarding Statement of Environmental Effects:

5.1.2 - Principle 4 - Health and Safety.

Issue: Safety: The Statement of Environmental Effects does not address any impacts to safety regarding the additional parking spaces that will be "linemarked" around the College. With 90% of staff travelling to College by car, and with 52% of the staff and 79% of students arriving between 730am and 8am, together with the departure of 62% of students and 28% of staff at 330pm, students and vehicles driven by staff will need to share the same entrances and access paths.

As an example, the plan shows 13 car park spaces which can only be accessed from the same Alfred Road entrance which shares student pedestrian traffic within the bus and car entry/exit and drop on /dropoff zones. The application does not mention, nor define the vehicular access paths to these parking spaces, nor the parking spaces compliance to any Workplace Health

and Safety, and Child Safety Standards or Requirements, and should be reviewed and reassessed in light of these requirements.

The above concerns additionally apply to the parking spaces allocated in the drop off/pickup zone on Federal Parade, and indeed in all locations within the College.

Traffic Congestion:

The Transport Impact Assessment document Section 3.1, Overview - "Deliver a communication strategy to ensure that Parents/Carers arrive and depart in the correct manner (general anti-clockwise circulation around the College). This means that cars with students to drop off in Gulliver Street would travel past the Alfred Road Drop off, the Bus Drop Off, the Federal Parade Drop off, and contribute to the queuing that is already occurring at the Federal Parade Location. There is already queueing occurring at the Gulliver St/Consul Road corner, with cars travelling down Consul Road from Beacon Hill Road competing to turn right in to Gulliver Road. The Transport Impact Assessment Document only mentions traffic impact at surveyed intersections, and the Gulliver Street/Consul Road intersection was not included.

Note that the Consul Road, Gulliver Road intersection was included in the 2013 Parking and Traffic Review: B12374TER02.docx (nsw.gov.au) but ignored in the current Development Application.

The conclusion of the Transport Impact Assessment is based on an increment in volumes to "existing conditions", not "permitted conditions", and is incorrectly assuming that the existing conditions are acceptable. i.e. "Clearly, such minor traffic volumes would have no impact on the operation of the surveyed intersections. They would continue to operate as per existing conditions, with some minor improvements likely associated with better distribution across the formalised set-down/ pick-up areas"

As a nearby resident I am impacted by unacceptable severe traffic congestion at times during the morning and afternoon peak times, which directly impact my travel times. When School resumes, I will provide some photographs to the council supporting my observations.

Parking:

The Traffic and Parking Management Plan Section 3.5 "Staff and Visitor Parking".

Provides for staff only, no visitor parking is specifically mentioned.

The plan does not address the parking spaces allocated to the College's private bus fleet. In the aerial photo figure 3.1, one of these buses is depicted occupying the majority of 4 of these parking spots.

Noise: The Statement of Environmental Effects (SOEE), Section 5.2.6, Visual and Acoustic Privacy states "The proposal does not include new College-use related spaces with a high level of activity/noise and no new outdoor activity areas are proposed. In addition, College activities will be restricted to the daytime periods and weekend, public and/or College holiday use of the site is unlikely."

This statement conflicts with the current use of College facilities.

In the November 9 2018 letter to residents, the College wrote "The complying development legislation has strict requirements regarding acoustic impacts that must be adhered".

The rooftop terrace that was completed for the commencement of the 2020 year under SEPP, the College is required to comply with Schedule 2 - 6 - Noise, "A new building or (if the development is an alteration or addition to an existing building for the purpose of changing its use) an existing building that is to be used for the purpose of a College or College-based child care must be designed so as not to emit noise exceeding an LAeq of 5 dB(A) above background noise when measured at any lot boundary." This Rooftop terrace is already used by students during recreation activities, creating noise above the 5db(A) level. It is also used for after College events, sometimes with amplified music. It impacts the amenity of nearby residents and increasing student numbers will only increase the noise.

Circular PS 17-004 mentions "appropriate siting and design of buildings, facilities and play areas to minimise visual and amenity impacts (including noise) on surrounding areas. Where relevant, applications should be supported by a noise impact assessment, prepared by an appropriately qualified professional".

As a nearby resident, I am impacted by noise emitted from the Terrace Area.

I request the Council to address the noise impacts:

1. Provide a noise impact assessment, prepared by an appropriately qualified professional, during College days, when the terrace is in use.
2. Restrict the terrace area to hours of operation to weekdays 8am-430pm.
3. Disallow the use of amplified music.

Concerns around the Colleges future expansion plans.

Observing the events that have taken place in over the past 3 years, I conclude that the Colleges approach to expansion is:

1. Develop a master plan.
2. Use complying development processes to bypass Development Application requirements in order to build developments (which the College claims didn't increase student numbers). This bypasses the Councils and Local Planning Panels.
3. Increase Student numbers by disregarding existing student caps imposed on the College. This action in itself is enough to render the Complying development into a non-complying development.
4. Submit another Development Application to rectify the non compliant increase in student numbers directly related to the non compliance relating to the non-complying development. Constrain the development application to apply to a small insignificant development <\$500k e.g. car parking spaces. Assume that "existing conditions" i.e. with already increased student numbers and associated impacts to traffic, transport, noise issues are acceptable in the development application. The application is too small to need to be submitted to the local planning panels.

The College could have followed steps like:

1. Develop Master Plan.
2. Be upfront and transparent with its intentions to expand population. Engage with the community. Obtain Development approval for the construction of buildings, car parks, and increase in student numbers prospectively.
3. Build the works and increase the student numbers as permitted.

This Development Application is seeking an approval retrospectively for the increase in numbers of 222 (1422 from the current 1200) students and prospectively of an increase of 78

students.

Council is empowered to order the College to comply with its existing population caps to comply with the existing development approval in place and has not yet exercised this power.

The presumption that a school can use the Complying Development provisions of the SEPP, and subsequently retrospectively apply for additional approvals to address non-compliances by using a development application runs contrary to the rationale behind the existence of the SEPPs complying development provisions. It appears that the College has misused a combination of elements of this the SEPP by acting in either in a dishonest or incompetent manner to gain an advantage.

If the Council approved this development application in light of the background of this DA and related CDC, it could set a precedent for all kinds of non-complying CDCs to be retrospectively made compliant by the non-complying seeking ex post facto approval via an application development process.

Looking this Development Application holistically, in combination with the other events that have taken place implies that the College is not acting in the spirit of the SEPP. As mentioned earlier, I ask the Council to obtain specialist legal advice to ensure that the Council has power under Section 7 of the Local Government Act 1993 to grant approval to a development application which would have the effect of overcoming a breach of the SEPP Section 39 that has already been committed.

It may be that any decision made by the Council will be subsequently challenged, and I believe it would serve the public interest if the NSW Courts could have the opportunity to determine directions and set some case law directly arising from this matter.

Regards,
J. Truszewski.