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**Sent:** 6/02/2020 4:35:35 PM  
**Subject:** Submission regarding DA2019/1419  
**Attachments:** Signed copy of Building 5's response to DA2019-1419 6 February 2020.pdf;

Dear Council  
bcc Owners

Please find attached a signed submission from all of the owners of Building 5, 49 Frenchs Forest Rd, Frenchs Forest in regard DA2019/1419.

All correspondence can be directed to Building 5's strata manager Thomas-John Fotiou at JLL, via email.

As indicated in the submission, should Council wish to discuss our submission and/or our concerns, Building 5 welcomes Council's enquiry.

**Trevor Cain B.Ec, Grad Dip Fin, CPA, JP**

Principal & Head of Commercial | Frenchs Forest Commercial



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The Owners Strata Plan 73125  
Building 5, 49 Frenchs Forest Road  
Frenchs Forest NSW 2086  
Ph: 02 9453 1904

6 February 2020

Northern Beaches Council  
PO Box 82  
Manly  
NSW 1655

Attention: Development Assessment

**RE: DA2019/1419 for Building 9 at 49 Frenchs Forest Rd, Frenchs Forest NSW 2086**

We write as Owners of the lots in Strata Plan 73125 or Lot 10 DP 1020015 or more commonly known as Building 5, 49 Frenchs Forest Rd, Frenchs Forest (henceforth referred to as "**Building 5**").

This is our joint submission by all owners in respect of a development application submitted by Lot 7 DP 1020015, commonly known as Building 9, 49 Frenchs Forest Rd, Frenchs Forest (henceforth referred to as "**Building 9**").

This letter is addressed in relation to DA2019/1419 (the '**2<sup>nd</sup> DA**'). We note that an earlier application, DA2019/0988 (the '**1<sup>st</sup> DA**') was withdrawn, as the documentation associated with the 1<sup>st</sup> DA was inconsistent and was subject to a raft of errors as identified by Council and others.

Building 5 is supportive of the development of Building 9. Notwithstanding our in principal support, the 2<sup>nd</sup> DA still contains many issues that in our opinion causes DA2019/1419 to remain flawed and not capable of being appropriately assessed. Additionally, both the 1<sup>st</sup> DA and the 2<sup>nd</sup> DA impose unnecessary and unacceptable externalities upon us and our neighbours.

#### **Consultation & Consent**

In relation to the 1<sup>st</sup> DA and the 2<sup>nd</sup> DA, Building 5 has not been consulted prior to the lodgement of either DA. In regards to any matter, arising from both DAs, that would require our agreement and/or our consent, Building 5 has not been asked to consent, nor has Building 5 given any consent(s) for the DA.

We note that Council's Engineering Referral Response has made the observation that the applicant must demonstrate that consents were obtained with the statement;

*"The development proposes works within adjoining lands. Please ensure any necessary owners consents have been obtained."*

#### **Right of Way: Extinguishment and Blockage**

49 Frenchs Forest Rd is serviced by an internal road that is regulated by an easement on each owner's title. This right of way, across every lot, is dedicated to the benefit of all owners in 49 Frenchs Forest Rd.

The 2<sup>nd</sup> DA proposes to build under and onto the right of way, particularly that portion that runs along the northern boundary of Building 9. We object to the extinguishment of our right of way and we refuse to provide our consent.

It appears from the construction documentation submitted to Council, that during construction works, the applicant seeks to block the right of way that occurs at the junction of Buildings 7, 8, 9 and 10. We believe this imposes an unnecessary externality on us and our neighbours and we object to the proposed construction methodology and we refuse to provide our consent to this blockage of the right of way.

#### **Right of Way width; consequences for development and future use**

Building 9 enjoys a right of way to 49 Frenchs Forest Rd's internal road of 4.6m in width, although in parts it is variable.

We note there are many references throughout the 2<sup>nd</sup> DA's documentation that incorrectly state a greater width for the right of way or infers rights that extend beyond the 4.6m width. For this reason, the assessment for the 2<sup>nd</sup> DA, for the approval to construct and the approval for future usage, must be based only on the 4.6m right of way.

We refuse to give consent to any matter that seeks to extend the right of way beyond that easement's boundaries, namely 4.6m wide.

#### **Building 7's identified externalities**

Building 7, i.e. Stata Plan 731213, is the closest building to Building 9 and will be directly impacted by Building 9, during construction and post-construction.

We are aware of the matters raised by Building 7 in its most recent submission, dated 5 February 2020. In many respects, we shall bear similar imposts that Building 7 has addressed.

This submission supports and endorses Building 7's submission. On the following matters, Building 5, in agreement with Building 7 and objects to the DA;

- Excessive earthworks and the potential of structural damage caused by vibration impact,
- Unacceptable externalities arising from road damage and related reduced business amenity,
- Excessive and dangerous truck movements during construction, and
- Post construction traffic congestion and the inaccuracies of the traffic report produced by the applicant

#### **Pedestrian movement**

As we note above, the 4.6m right of way runs throughout the buildings of 49 Frenchs Forest Rd. Building 7 has made numerous points regarding pedestrian movement.

The internal roadway of 49 Frenchs Forest Rd is approximately 5.5m in width. Internal pedestrian movement regularly occurs on the edge of the road, i.e. beyond the envelope for the 4.6m right of way.

This important distinction between the rights afforded to users of 49 Frenchs Forest Rd under the easement and the actual physical configuration of 49 Frenchs Forest Rd is not explained in any of the DA documents.

The Statement of Environmental Effects at page 32 states,;



*"The Frenchs Forest Central Business Park intends to install protective railings along the existing footpath to ensure the safety for pedestrians and prevent the current illegal parking on the footpath and along the private road. Overall, the installation of the protective railings would provide a trafficable driveway for vehicles and a safe passage for pedestrians to access the proposed fit for purpose medical centre. Nevertheless, it is noted that the installation of the railings would be undertaken by the Frenchs Forest Central Business Park and does not constitute part of the subject application. Further details of the installation of railings in the business park are provided in Appendix 20."*

Building 5 has not and does not intend to grant consent to the installation of bollards on Building 5's property outside of the 4.6m right of way envelope.

Building 5 believes that Appendix 20 suffers from many defects, principally Appendix 20 contains a drawing that shows bollards being placed outside the 4.6m right of way envelope. Page 2 of Appendix 20 shows cross-section hand drawings with widths respectively of "5500" and "6000" but omits the 4.6m right of way envelope from the drawing.

Building 5 believes that the statement extracted from page 32 of the SEE and Appendix 20 is not an accurate representation of matters pertaining to the rights for pedestrian and vehicle movement. Discussion about conceptual (and unconsented) bollards at 49 Frenchs Forest Rd is irrelevant in the consideration of DA2019/1419.

#### **Lack of clarity about other potential externalities**

The documentation for the 2<sup>nd</sup> DA contains inconsistencies and there are matters that cause externalities that are not addressed.

**i. Risk & financial assurance**

Building 9 imposes on its neighbours' considerable externalities. The DA documentation provides no information on the sureties and bonds that Building 9 is proposing to provide for the benefit of the owners of 49 Frenchs Forest Rd. Additionally, Building 9 has not provided dilapidation reports and/or offered to perform this task.

**ii. Sewage**

It appears from the DA documents that the sewage line bisecting Building 9 is to be relocated, either temporarily or permanently. Given the lack of information, Building 5 is unable to meaningfully comment on this diversion, the possible consequences and likely externalities.

**iii. OSD integrity undermining**

The DA documentation indicates that the southern wall's excavation for Building 9 shall be in close proximity to the OSD. The DA documentation seems to be silent upon the risk of undermining and/or damaging the OSD from the development.

**iv. Groundwater & OSD**

The DA documentation acknowledges that Building 9's development shall go below the water table and will result in a requirement for ground water disposal. The volume of this ground water appears not to be calculated/stated.

The engineering report indicates that ground water is to be pumped to the OSD. The report for the OSD appears to omit any mention or calculation arising from the ground water. This inconsistency between the Engineer and OSD expert must be addressed.

Council's Engineering Referral Response may have also partially addressed this issue when Council imposed a requirement "As such, the development shall be permanently tanked and appropriately conditioned."

**v. Movement across OSD**

The construction documents seem to suggest that during construction movement will occur over the OSD. There does not appear to be any mention of this movement, the controls to be applied to this movement and the likely effects from this movement.

**Conclusion**

As we demonstrate in this letter, as a neighbour to Building 9 we have not been consulted on the 1<sup>st</sup> or 2<sup>nd</sup> DA nor have we given any consents.

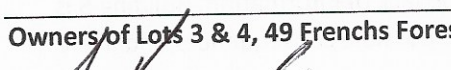
The 2<sup>nd</sup> DA remains sufficiently flawed to the extent that we believe the DA cannot be appropriately assessed to enable consent to be given, as is illustrated by Council's Engineers in their response for consents and the omission of acknowledgement of the width limitation of 4.6m that governs the right of way.

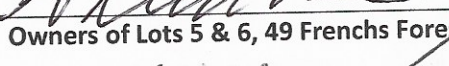
There are multiple externalities that arise from the 2<sup>nd</sup> DA. In our opinion, these externalities have been inadequately addressed or in some cases inaccurately documented and/or described.

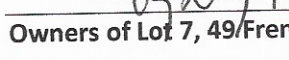
We would be more than happy to discuss the DA and our concerns in more detail with Council if required.


Yours sincerely,

  
Owners of Lots 1 & 2, 49 Frenchs Forest Road, Frenchs Forest

  
Owners of Lots 3 & 4, 49 Frenchs Forest Road, Frenchs Forest

  
Owners of Lots 5 & 6, 49 Frenchs Forest Road, Frenchs Forest

  
Owners of Lot 7, 49 Frenchs Forest Road, Frenchs Forest

  
Owners of Lot 8, 49 Frenchs Forest Road, Frenchs Forest