
Sent: 5/02/2020 2:06:05 PM
Subject: Online Submission

05/02/2020

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RE: DA2019/1419 - 49 Frenchs Forest Road East FRENCHS FOREST NSW 2086

Dear Assessing Officer

I am writing on behalf of the Owners Corporation of Building 7 in Forest Central Business Park (FCBP) at 49 Frenchs Forest Rd to express concerns in relation to the above development. I note that Northern Beaches Council is assessing the application but that the Department of Planning is the consent authority that will determine the application.

The Owners Corporation is of the view that this is a poorly formulated DA which fails to adequately address numerous matters and is non-compliant with various relevant controls. The quality of the submission reflects on the lack of a period of adequate notification which should have involved consultation and discussion with the Owners Corporation of Building 7, the closest structure to the DA. As a consequence, considerable time and unnecessary expense has been required to analyse and assess the many impractical and unsafe aspects of this proposal. Erilyan Pty Ltd's proposal should have better addressed issues concerning the detrimental impact on neighbouring uses and amenity. These detrimental impacts include (but are not limited to):

- excessive earthworks and the potential structural damage caused by vibration impact to Building 7;
- financial damage caused to Building 7 businesses and others in FCBP by excessive earthworks;
- structural road damage and related reduced business amenity;
- the business impact of traffic issues both during excavation and construction and also with the subsequent use of the proposed development; and
- the reduced amenity caused by the extinguishment of a right of way.

All of these matters will severely impact on neighbouring uses and the amenity of Building 7 and other FCBP properties and businesses. To better explain our concerns, I have initially provided some background on Building 7 and the FCBP roadway and then subsequently detailed how the proposed development will impact upon both.

Building 7

Building 7 is the closest neighbouring site to the proposed development and is directly up the hill and to the north of the site. It is a fifteen year old, three-storey commercial building with one level of basement parking and it has the largest physical footprint of any of the structures in FCBP. Despite this, the Building itself is consistent with the size and scale of other buildings in FCBP. The Building is set back from its southern site boundary by approximately 20m. Building

7 has two ground level carparks on the western and southern side of the building. The southern on grade car park borders the proposed development. It is concrete surfaced & contains a ramp to the basement car park. Adjacent to this carpark, at its eastern end, is a telecommunications compound containing a tall communications tower and other related equipment.

This compound, combined with rooftop space, is known as Lot 30 and is leased by Telstra and Optus. The Telstra components of Lot 30 were upgraded in December 2019 and the Optus components are shortly to also be upgraded.

Building 7 is a strata complex occupied by a group of approximately 15 small businesses providing professional services, predominantly medical, health and allied health professionals. Suites within Building 7 itself are individually owned as are all of the car parking spaces. The property manager is Body Corporate Services but there is no building manager nor has there ever needed to be. Over a number of years the Strata Committee, representing these individual small business owners, has been steadily upgrading and enhancing Building 7 and it is now considered to be in excellent condition.

FCBP roadway

FCBP is accessed by a single, centrally located, private roadway. It is registered on the title to each of the 12 individual lots contained within Deposited Plan 1022897. The respective titles to the lots show that each lot has ownership to the middle of the road. Usage of the road is by way of reciprocal 4.6 metre wide right of way available to each owner. It is not a through road and access from the Park is via a set of traffic lights which are phased to maximise the traffic flow along Frenchs Forest Rd.

On either side of the road there are narrow concrete strips, finished with pebblecrete, which are utilised informally for visitor parking. The strips also include a dish drain design concrete kerbing which reduces the usable area.

The road is effectively only one way with the parking on both sides. Larger delivery vans and tradesmen's trucks also use the road. The roadway is also utilised by garbage trucks and emergency service vehicles when required. There are a large number of independent garbage contractors servicing individual businesses which utilise the road and several trucks can arrive simultaneously causing congestion on a regular basis.

The roadway ends in a narrow cul-de-sac with insufficient space for a typical sized medium car to turn around in without reversing. It would not be possible for any articulated vehicles to manoeuvre within the cul-de- sac.

FCBP has an unusually high percentage of businesses which are medically related. The patients of these businesses essentially comprise the elderly and infirm who require safe and unrestricted access to the many medical services that are located within FCBP.

Excessive earthworks - detrimental structural impact

The proposed development currently involves the construction of an eight level building incorporating four levels of basement car park directly adjacent to the Building 7 site. This car park equates to an anticipated excavation depth of approximately 14m below existing surface levels with locally deeper excavations required for lift overrun pits and services.¹

Accordingly, the DA is required to be assessed against the requirements of cl 6 of the Warringah Local Environment Plan (WLEP) which aims to ensure that earthworks do not have

a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.²

In particular, section 3(d) of CI 6.2 requires that, before granting development consent for earthworks, the consent authority must consider "the effect of the proposed development on the existing and likely amenity of adjoining properties".

It must also be assessed against Parts C7 and 8 of the Warringah Development Control Plan (WDCP) which establishes various objectives and controls relating to excavation and landfill, including that excavation and landfill works must not result in any adverse impact on adjoining land or its surrounding amenity and that excavations be constructed to ensure the geological stability of the work.³

The DA responds to these requirements by stating that the development will be constructed in accordance with the recommendations suggested in the Geotechnical Investigation Report prepared by JK Geotechnics (Geotech Report).⁴

Unsurprisingly, the Geotech Report identifies that the primary geotechnical issue concerning the proposed development is maintaining the stability of the excavation sides and nearby structures during deep excavation works.

The risks here are exacerbated by the fact that the land is mostly comprised of sandstone of a very low to low strength. Accordingly, it is not strong enough to be cut vertically and requires the installation of a full depth shoring system. ⁵ Of note, the implementation of this shoring system will likely require approval from neighbouring landowners as anchors may need to be installed below their property. ⁶ The Geotech Report states that "at least one additional row of anchors would be expected to be added during detailed design, following the addition of a fourth basement level." ⁷

An additional excavation strategy report on 11 December 2019 from Taylor Thomson Whitting states that: "External ground anchors are proposed to be installed approximately at mid-height of the excavation." The number of ground anchors that will be requested isn't specified but will need to commence at the boundary of the proposed development. From there they will need to extend for an also unspecified distance into Building 7 property. The Report concludes that "Provided these measures are undertaken through both the design and construction of the project, the risk of damage to neighbouring properties will be reduced." ⁸

Clearly there is potential risk involved by the proposed excavation to Building 7 property and it is considered that this risk may be reduced by anchors to Building 7 property itself. However these anchors may, of themselves, not only be damaging to Building 7 property but also considerably inconvenience individual owners and businesses using their property.

The Geotech Report suggests an answer to this problem: "The use of temporary batters will not be feasible for the depth of the excavation proposed and the full depth shoring system will need to be installed prior to the start of excavation... Where movements behind the wall are to be limited, such as adjacent to the telecoms compound or other structures, more rigid contiguous pile walls or closely spaced soldier piles may be required in order to limit movements." It goes on to conclude that "If permission cannot be obtained to install anchors...

it would be necessary to use internal props". 9

So, apparently, there is a time/cost differential involved. By inference, support for the deep excavation can be provided quickly and cheaply through the use of anchors attached from around half the depth of the excavation or, alternatively, a full depth shoring system using internal props needs to be constructed. Given the proposed excavation is directly adjacent to the full length of Building 7's forty metre southern boundary, these anchors would impact on Building 7's carpark and possibly beyond while only, apparently, reducing the risk of damage to Building 7 property.

We consider that the proposed development will adversely affect neighbouring uses in Building 7 and the existing and likely amenity of its businesses. We regard the zone of influence of the proposed deep excavations as being dangerous both in terms of land slip and also in terms of potential damage to Building 7, its occupants and related facilities. Consequently, should the proposed development proceed in its current form, temporary anchors such as are described in the Geotech Report will not be permitted by the Owners Corporation on or under any part of Building 7 property.

Groundwater hydrology reports identify the water table as being at the 7 metre depth. As the proposed excavation is to 14 metres and as the surface area of the excavation is more than 1,000 square metres, water from beneath Building 7 will drain down the hill into the proposed excavation. Although provision for this has been made with the proposed installation of sump pumps, there does not appear to be any consideration given to the volume of water collected, where it is to be discharged and the effect that this will have on other buildings. Over time, the drainage of water from porous rock and the drying of permeable soil from beneath Building 7 and surrounds will result in settling and cracking. This will not be immediately apparent in dilapidation reports as it will be a long term consequence of the proposed excessively deep excavation impacting on the structure of Building 7.

The Geotech Report also states that the foundations and four levels of basement carpark are to be undertaken with a combination of large excavators and rock hammers. In the latter's case, the Report specifically states that excavation must be carried out with care due to the risk of damage to adjoining structures from the vibrations generated by the rock hammers. This is of such a concern that the Report states that there is a need to set up vibration monitors attached to flashing warning lights or other suitable warning systems, to ensure that the operator is aware when acceptable limits have been reached. It is proposed that these vibration monitors be solidly fixed to adjoining structures. According to the Geotech Report, vibrations, measured as Peak Particle Velocity (PPV), will need to be limited to no higher than 5mm/sec. However, if any particularly sensitive structures or equipment are present in adjacent properties then a lower target limit may be appropriate. 10 As aforementioned, there are potentially sensitive structures, in terms of the telecommunications tower and related rooftop arrays, and also medical equipment used for both diagnosis and treatment that are in both Building 7 and FCBP generally.

The Geotech Report goes on to say that the effect of ground movements on any structures and services that lie within the influence zone of the excavation must be taken into account. As the zone of influence of excavations is defined in the Geotech Report as the horizontal distance

from the wall of the excavation to twice the excavation depth, the potential impact will extend to at least twenty eight metres and affect around one quarter of the Building 7 structure itself. It will also impact on the car parks and telecommunication tower and compound which are around 2 metres from the proposed excavation. As noted previously, it should be emphasised that it is the southern quarter of Building 7 which will be impacted by the zone of influence and this encompasses business practices involving ophthalmic surgery, dental surgery and other wellness services.

Excessive earthworks - detrimental business impact

In our view, the findings and recommendations noted in the Geotech Report do not demonstrate how the earthworks will not have a detrimental impact on neighbouring business uses, as required by cl 6.2 of the WLEP and Part C7 of the WDCP. Rather, it highlights the potentially severe risks posed to neighbouring properties as a direct result of the excavation works for the proposed development. These risks are exacerbated by the highly significant degree of excavation proposed which is also inconsistent with all the adjoining buildings in this business park. In addition, the adjacent Parkway six story hotel accommodation has only one basement level approved. If additional parking is required for the proposed development, consideration could be given to leasing parking spaces in the directly adjacent hotel. Access between the hotel and FCBP is available via an existing right of way that has been available for 20 years.

Irrespective of the shoring system adopted for the deep excavation, the risks and potential impacts of the proposed development also need to be considered in the context of the surrounding land uses. In particular, as aforementioned, many of the existing tenants of Building 7 operate medical and health services with sensitive diagnostic and treatment equipment. These practices are, as you would expect, open to members of the public. Other buildings in Forest Central Business Park are similarly equipped. There are also other wellness areas in Building 7 involving a range of practices and services. The excessive earthworks increase the severity of any potential geotechnical impacts and disturbances that will be experienced as a direct result of the excavation works proposed, both on the businesses of the existing medical and health services and on members of the public who use those services. The entire southern end of Building 7 has medical practices which will be exposed to vibration and noise from the proposed development. They include practices undertaking delicate eye and dental surgery. Vibrations caused by the use of large excavators and rock hammers could place their patients at considerable risk and severely impact on the ability of these medical and allied health practices to conduct their professional services.

In relation to noise generated by the excavation and construction process, I note that the DA states that commercial areas on Warringah Road with standard glazing will achieve acceptable internal noise levels consistent with Australian Standards. However Building 7 would be around 70 metres closer and has standard glazing. The three levels of medical practices in Building 7 all have direct exposure to the southern face of the building.

The DA2019/1419 Noise Assessment document states that the contractor is responsible for the acoustic comfort for surrounding buildings, users and workers during construction. It also states that the contractor will liaise

with neighbours and clients to ensure noise does not exceed a certain decibel limit, or coordinate loud works to occur at certain times. However it does not specify how the contractor will ascertain and monitor the noise. Consequently, assuming the proposed development proceeds, noise loggers will need to be appropriately positioned.

Given these risks, we consider that the applicant has not sufficiently demonstrated how the proposed development is consistent with cl 6.2 of the WLEP and Part C7 of the WDCP, particularly given the overall detrimental impact on neighbouring properties and businesses that this development will entail.

The Geotech Report also states that it is recommended that detailed Dilapidation Reports be prepared for the adjoining properties and services, particularly the development to the west of the site, and the carpark and telecoms site to the north. It indicates that such Reports can be used as a baseline against which to assess possible future claims for damage arising from the works, clearly anticipating that such claims are likely. This unsatisfactory legalistic approach, which may take many years to come to fruition, is unduly onerous on the small businesses concerned that are occupying Building 7.

Equipment, services or building damage that occurs and impacts on the businesses and their patients/clients/customers would need to be documented and proven, a particularly difficult process involving assessing opportunity cost for intangibles. An equipment failure resulting in less than satisfactory treatment during a medical procedure may result in a patient taking their business elsewhere, to the detriment of the practice concerned. The practitioner may not be aware of the reason for the lack of follow up appointments or be able to effectively prove that such impact on their business has occurred. Similarly vibration during treatment resulting in physical damage to a patient may involve a malpractice suit which may only occur after the passage of a considerable period of time. Moreover, in the case of a tenant of Building 7, this could require a potentially long line of legal claims including the suite tenant, suite owner, the developer, builder, assorted subcontractors and the relevant insurance companies. Clearly, in terms of the WLEP Cl 6.2, this impossibly tortuous chain of claims and the related bureaucracy will impose a direct detrimental impact and negative amenity on the neighbouring uses of the proposed development for the businesses concerned, for the individual suite owners, suite tenants and for the Owners Corporation.

In our view, it is highly unlikely that the precautions mentioned in the Geotech Report would be undertaken adequately, consistently, thoroughly enough or in a timely enough manner to ensure that they do not impact on the amenity or neighbouring uses of medical practices, other wellness and allied health businesses, telecommunications equipment or the complex of physical structures and other businesses that comprise the Building 7 site. A vibration monitor sounding a warning after excessive vibration has occurred is too late for someone who is in the process of delicate eye or dental surgery. A practitioner would understandably be aggrieved by a negligence claim when, through no fault of their own, vibration resulted in inappropriate equipment failure or hand movement.

Consequently, in assessing this application based on the current information submitted with the DA in relation to excessive earthworks alone, we consider that the consent authority simply cannot form the view that the proposed development adequately satisfies the requirements of the Warringah Local Environment Plan and the Warringah Development Control Plan.

Road damage - detrimental structural impact

Part C8 of the WDCP requires that development not have any unreasonable impact on the surrounding amenity, pedestrian or road safety. This requires that site impact be managed to ensure the number and frequency of vehicular movements have minimal impact on the neighbourhood which, in this case, includes Building 7 and other businesses in FCBP.

A major concern with the proposed development involves the installation of heavy specialised excavation machinery. The Geotech Report states that the foundations and four levels of basement carpark are to be undertaken with a combination of large excavators and rock hammers. Given that the RMS has previously opposed access to the development site to be via Warringah Road, this equipment will need to travel along the FCBP central roadway, incurring potential road damage. There are no apparent details in the DA concerning what the loading capacity is for this road and whether it will withstand this level of weight and activity.

Once this equipment is on site, the Waste Management Plan states that excavation work will involve the removal of some 15,500 cubic metres of predominantly sandstone rock. 11 As access to the site is limited by road width, road loading and other considerations, presumably only relatively smaller trucks may be used. Additionally, the only access roadway has been originally constructed in a concave manner to allow rainfall drainage to flow down the centre of the road. As a consequence, trucks will lean towards the centre, increasing the danger in passing each other and applying additional pressure on the middle of the road. The mooted construction of bollards and one metre footpaths on either side of the road, should it occur, will further limit the vehicular space available thus further reducing vehicular safety.

A cubic metre of sandstone, conservatively, weighs around 2 tonnes. As site access is very restricted, the type of truck likely to be used is the compact variety with dual rear axles with a gross weight of around 23 tonnes. Typically these trucks would transport around 20 tonnes per load so the number of loads is estimated at 1,550. Total truck movements would therefore be 3,100

For the excavation phase alone there will be at least 3,100 truck movements. Subsequently businesses in FCBP will need to endure the disruption, noise and pedestrian safety issues incurred as a consequence of the additional volume of traffic generated during the construction phase - the access and exit of specialised construction machinery and trucks conveying new building materials onto the site. Combined with general construction worker access, contractors connecting water, sewage, drainage, power, gas, fire services and equipment, air conditioning and the like, council inspections/authorisations etc, it would not be unrealistic to assume that this will amount to around 10,000 vehicle movements along the sole vehicular access road to the site. The DA itself is notably and negligently silent on the number of vehicle movements involved in the excavation and construction phases.

An additional factor concerning road use is that the Building 7 western boundary line for SP73123 and SP76739 is located at the middle of the access road. This is consistent with other buildings in FCBP. Consequently that part of the road that is on these two titles is the property of the Owners' Corporation of Building 7. In this regard, the Owners' Corporation of Building 7 reserves the right to take any and all actions necessary to defend their property in relation to any impact on the access road through the construction of the proposed development

or the installation of any structures on that property. Similarly, excavation and construction vehicles will not be permitted access to the individually owned parking spaces in Building 7's southern car park which is directly adjacent to the proposed development. Building 7 owners' cars or patients attending medical practices that park there will also incur the diminished amenity of vehicle deterioration owing to the abrasion qualities of settling dust and dirt particles generated by the proposed building site.

In relation to the central roadway, it should be noted that the main sewage line for the entire FCBP runs in a north/south direction at a depth of approximately 3m. Any damage to this line by heavy construction vehicles will have considerable negative amenity and health impacts for all businesses and members of the public using the entire FCBP site. Given the suggested volume and weight of vehicles using the access road as previously calculated, the DA provides no loading information to verify that this road has been designed and constructed to withstand these loadings or level of activity.

Consideration also does not appear to have been given to any provisions concerning the rectification of damage to property caused by construction equipment using the FCBP access road. Given there have already been significant repairs to several sections of the access road, the large additional volume of heavy traffic will undoubtedly inflict major damage. Consequently the DA needs to provide certainty concerning the responsibility and timeliness for road rectification given the high probability of severe damage and the number of business owners who would be disadvantaged.

It is also not evident from the DA how the development proposes to deal with the atmospheric pollution that it generates as no air quality monitoring appears to be included as a safety provision. Strong southerly winds frequently occur on the exposed site which slopes upwards to the north. These winds gust around Building 7 and have, in the past, caused damage to the Building. Dust generated from building excavation and construction will potentially cause issues with Building 7 air conditioning. Each individual small business suite has its own air conditioning with compressors being roof mounted. Excessive dust will potentially clog radiators and air intakes thus shortening the life of these expensive units. Once again, however, this detrimental structural impact will not be easy to quantify and, in many cases, will not be evident for some time leaving the cost to be borne by individual businesses. Similarly, dust generated will increase the cleaning bill for Building 7. Effectively, given the intangibles involved and the difficulty of attribution, these detrimental structural impacts of the proposed development will involve cost shifting onto the Building 7 Owners Corporation and the individual small businesses involved.

From the above, it can be seen that the sheer volume of traffic occurring as a result of the proposed development will result in detrimental structural impact to the roadway. This will cause issues for neighbouring uses, including the concomitant safety risk, and the need for subsequent road rectification. This is in direct conflict with the requirements of WLEP 6.2(1)(a).

Road use - detrimental amenity impact

The proposed development must be assessed against Parts C7 and 8 of the Warringah Development Control Plan which establishes various objectives and controls relating to excavation and landfill, including that excavation and landfill works must not result in any adverse impact on adjoining and adjacent properties or its surrounding amenity, pedestrian or road safety. Adverse impact would include the additional traffic generated by the proposed development over and above the existing traffic. The DA has not provided any statistics on either the current usage or the additional excavation and construction traffic. As an initial reference point, the Building 7 Owners Corporation conducted its own traffic count over a two day period. It indicated that current daily usage in normal business hours was in the order of 1400 vehicle movements per day. Given that there will be around an additional 10,000 vehicle movements associated with the proposed development, the volume of traffic alone will overwhelm road capacity and thus detrimentally impact on Building 7 business owners accessing their parking spaces and their businesses.

Added to the traffic issue is the noise and dust that this construction will entail. The noise component will make it difficult for suite owners to conduct their normal business. Building 7 occupants have had first-hand experience of this with the RMS using the proposed development site as a works and storage depot over the last three years. However in the case of the RMS, after its initial establishment, access to the site was primarily via Warringah Road, something which we understand the RMS has previously indicated is not an option for the proposed development. Similarly the atmospheric impact of building site dust on health related businesses, which rely on survival by attracting public patients, cannot be underestimated. Added to that is the health impact on owners and staff of businesses that are forced to accept polluted air in their daily workplace.

Another major issue in terms of detrimental amenity impact relates to the safety of staff and members of the public accessing Building 7 and other FCBP buildings along the only access roadway where no footpaths are available. The DA addresses this issue by indicating that there is a proposal to install protective railings down either side of the central roadway to separate pedestrians from vehicles. This proposal comes on a letter headed "Forest Central Business Park Pty Ltd". Forest Central Business Park Pty Ltd is in fact another property owner in FCBP. However it should be noted that the letter is signed by the Chairman of the Umbrella Deed Committee. These are two separate legal entities and it appears that no formal provision of funding has been authorised by the Umbrella Deed Committee.

In addition, under section 9.6 of the Terms of Memorandum registered with the Land Titles Office, it is the Secretary of the Umbrella Deed Committee who is charged with administering communications on the Committee's behalf. However the Secretary of that Committee is not aware of any motion in relation to the installation of bollards and none has been recorded in minutes of the Committee. Consequently it appears that no formal provision of funding has been authorised by the Umbrella Deed Committee. This in turn casts doubt over whether this safety provision will proceed.

The Statement of Environmental Effects from Willow Tree Planning further adds to this confusion. It states that:

"...Frenchs Forest Central Business Park are [sic] seeking to resolve existing roadway issues within the business park to support the safe passage of both vehicles and pedestrians throughout the business park. 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." 12 [Our emphasis]

So if the installation of railings is not part of the subject application, the document headed "Report - Pedestrian Bollards" should not be part of the DA and should not be considered in relation to the assessment of the DA.

Additionally the proposal involves the installation of bollards on property which is owned by individual lots within FCBP. To be viable, this will require the permission of each and every lot owner and authorisation cannot be assumed. The Owners Corporation of Building 7 have certainly not received any request for the installation of bollards on our property. Some lot owners also claim this same space as usable, legal parking which they own. This limits the 4.6 metre right of way so that it is effectively no longer a dual carriageway. Given that the authorisation and ownership for the installation of bollards to create pedestrian access is unclear and the financial funding is uncertain, the overall issue of the amenity of safety must be questioned. Combined with the high volume of proposed excavation and construction traffic and subsequent congestion on this roadway, it is our view that the development, as proposed, should not proceed in its present form.

Traffic issues - detrimental business impact

Although the Movement Summary in the appendices of the Transport and Traffic Planning Associates' Report indicates statistics of pedestrian crossings of Frenchs Forest Rd East at Romford Rd, it does not include any details of pedestrian access to buildings within FCBP, via the only access road, or other traffic within FCBP. It also incorrectly states that "The access road has traditionally operated without any pedestrian hazards/risks. On this basis, the shared pedestrian access is adequate, functional and safe for its intended purpose and role."13 Judging by the absence of parked vehicles, many of the photographs from Transport and Traffic Planning appear to have been taken on a Sunday.

There is in fact considerable pedestrian traffic from Frenchs Forest Road East into FCBP and between buildings and car parks within FCBP. There is also regular and frequent Monday to Friday customer traffic to and from the onsite Café in Building 5 (between the hours of 7.30 and 15.30). Individual buildings are separated by gardens and hedges so effectively there are no walkways between buildings or Frenchs Forest Road East/Warringah Rd other than by the use of the central roadway. Use of this road has caused problems not only for pedestrians but also for people in wheelchairs, those with ambulatory issues or the partially sighted receiving medical treatment.

With vehicles passing in opposite directions, there is currently little safe space for pedestrians. With larger vehicles, this is less so. There is currently no separation between road and pedestrian traffic along this service road. The right of way is 4.6 metres wide. The typical 23 tonne truck is 2.4 metres wide and concrete trucks are 2.9 metres wide (mini concrete trucks are 2.5) so that, within the right of way, it will not be possible for two vehicles to pass each other without impinging on the pebblecrete verges. So if the installation of bollards proceeds, trucks can't pass; if the bollards don't proceed, pedestrian safety is sacrificed.

However, given that the installation of bollards to create a safe pedestrian zone is unlikely and is not part of the DA, traffic issues that will result from the DA proceeding will exacerbate safety issues and impact negatively on the amenity for both the staff of the businesses accessing their workplaces and also the customers/patients of those businesses.

Other traffic issues are considered in the Construction Management Plan. For example, it states "large deliveries will be coordinated with neighbouring property managers". This works on the assumption of dealing with a single entity. However Building 7 contains around 15 totally separate businesses so this approach to coordination is impractical. In common with some of the other FCBP buildings, Building 7 does not have, nor has ever needed to have, an onsite property manager. Body Corporate Services, based in Mona Vale, serve this role but are not contracted by the strata to provide management services to coordinate with an adjacent construction project. Should the proposed development proceed, any construction manager will need to be mindful of this considerable communication limitation.

It is also important to acknowledge that developments in and around the Business Park will continue to grow in the coming years, including the development detailed in DA2015/0901. This major hotel development is on land adjoining the FCBP site and is for the purpose of constructing a six storey 100 room accommodation facility and function space, new tavern and the construction of a new large retail premises for Dan Murphy's. The demolition works preceding this construction commenced last year. This development includes on-site parking for 306 cars, the majority of which are at ground level with some spaces reserved in the basement for hotel accommodation guests. The availability of the 306 car parking spaces with adjoining retail, dining, conference and other function facilities will attract considerably more vehicles to the area. This additional Frenchs Forest Road congestion does not appear to be a consideration for the Transport and Traffic Planning Associates' Report.

Added to this increased traffic, the Transport and Traffic Planning Associates' Report indicates that there will be 75 car parking spaces for the FCBP proposed development. This figure includes 44 car spaces for patients. Daily visitation has been assessed by this Report as being between 144 and 156 patients. It is estimated that 83% of those patients will be travelling to and from the proposed development in cars (either as a driver or a passenger).¹⁴ Assuming the average of around 150 patients, 83% amounts to 124.5 arrivals or 249 additional daily road movements to and from the proposed development. In other words, if this proposed development proceeds, there will be 44 spaces being used multiple times each day as patients come and go, thus considerably increasing the frequency of traffic on FCBP's internal roadway. This will also result in severely adverse traffic impacts on the surrounding residential area, access to FCBP itself and also create additional congestion for the other buildings and businesses within FCBP.

We also understand that GenesisCare is intending to relocate cancer services from another building in the Business Park to the proposed development, also leading to other additional uses and traffic in the vacated space. Given this, we consider that if the DA is approved based on the current design, the traffic impacts discussed above will also become increasingly problematic as the proposed development will be burdening an increasingly densely developed area.

We consider that the DA as currently formulated would necessarily result in detrimental impacts to surrounding developments in the Business Park as a result of increased congestion, as well as a likely increase in

on-street parking in the surrounding residential area. These traffic impacts are further compounded by the fact that kerb-side parking is generally prohibited on both sides of Frenchs Forest Road and completely prohibited on Warringah Road.

Additionally, although "no parking" signs were displayed on the central roadway within FCBP, this is more honoured in the breach as there are no penalties or effective enforcement of this parking restriction.

The legality of the parking restrictions has also been questioned by the owners of the space. The possible addition of the proposed bollards to provide safer pedestrian access on both sides of the FCBP central road will, should it occur, effectively prevent people from parking there and thus will also increase on-street parking in the surrounding residential area.

It is therefore critical that the consent authority can be satisfied that the DA will not result in unacceptable traffic and parking impacts. Based on the current information submitted with the DA, we consider that the consent authority simply cannot form this view.

Right of way extinguishment - detrimental amenity impact

Plans for the development show the proposed building extends to, and is contiguous with, the northern site boundary. Plan DP 1020015 for the subdivision includes an instrument setting out terms of easements and restrictions on use. The survey for this plan occurred on 21 March 2000, was registered on 19 April 2001 and is shown as pursuant to section 88B of the Conveyancing Act 1919 as amended. Effectively it provides for restrictions on the use of land within FCBP. The restrictions on the northern boundary of the site for the proposed development indicate an existing right of way. This right of way is 4.6 metres wide and variable and encompasses the entire northern boundary of the site. 15 The right of way has been available for twenty years and has benefited every other lot in the business park. Specifically, the terms of the right of way grants the rights for the owners of the lots benefitted "to enter, pass and repass over that part of the Lot Burdened marked Right of Way 4.6 Wide and Variable 'E' on the Plan for the purpose of entering or leaving the Lot Benefitted".

The proposed development directly impacts on this right of way which has been used consistently for pedestrian access to the adjacent hotel site and has effectively been the only relatively direct pedestrian access point to Warringah Road. Plans provided by Team2 Architects in support of the DA show a number of structures obstructing the 4.6 metre ground floor right of way. They include:

- a hydrant booster assembly;
- sprinkler booster assembly;
- sprinkler control valve;
- switch room; and
- part of the downward sloping norther section of the driveway to basement 1. 16

It is noted that the Building Code of Australia Report states that, where it is proposed to construct any part of the building work within an easement, the consent of the relevant authority and /or Council is required prior to the issue of the Construction Certificate. 17 This consent does not appear as yet to have been obtained and any such approval would be considered as being inappropriate.

Consequently, to ensure that this right of way on the northern side of the proposed development is not extinguished, the entire rear setback should be relocated 4.6 metres further to the south.

Conclusion

In consideration of the above-mentioned serious impact issues from the proposed development, it can be seen that the proposed development will increase conflict between land use in the business park and adjoining zones and is detrimental not only to Building 7 but also to the structures, businesses, safety, amenity and neighbouring uses of adjoining buildings and all other public users of FCBP. Should it proceed, it also impacts adversely on the surrounding residential area.

As a consequence, the determination by the consent authority should require considerable amendment to reduce the overall scale of design of the proposed development to better accord with the requirements of the Warringah Local Environment Plan and the Warringah Development Control Plan.

The Owners Corporation of Building 7 strongly recommends that the DA be withdrawn and that appropriate and comprehensive consultation and discussion be undertaken to enable all of the many serious and detrimental impact issues to be addressed and a compliant DA then be submitted to Council.

Yours faithfully

Charles Guthrie
Body Corporate Services

Endnotes

1. Geotechnical Investigation prepared by JK Geotechnics, 10 December 2019, Pages 5 & 15.
2. Warringah Local Environmental Plan 2011, cl 6.2(1)(a).
3. Warringah Development Control Plan 2011, part C7, Requirement 2 & 3.
4. Statement of Environmental Effects prepared by Willow Tree Planning, September 2019, page 19; DCP Assessment Table prepared by Willow Tree Planning, September 2019, page 5. 18 October 2019 Page 9.
5. Geotechnical Investigation prepared by JK Geotechnics, 10 December 2019, Page 16.
6. Geotechnical Investigation prepared by JK Geotechnics, 10 December 2019, Page 17.
7. Geotechnical Investigation prepared by JK Geotechnics, 10 December 2019, Page 5.
8. Soil retention and excavation strategy prepared by Taylor Thomson Whitting, 11 December 2019.
9. Geotechnical Investigation prepared by JK Geotechnics, Pages 16 & 17.

10. Geotechnical Investigation prepared by JK Geotechnics, 10 December 2019, Page 15.
11. Northern Beaches Council Waste Management Plan, Section 2, Page 7.
12. Report - Statement of Environmental Effects, Willow Tree Planning 25 November 2019, Page 32
13. Transport and Traffic Planning Associates' Report, December 2019, Page 20
14. Transport and Traffic Planning Associates' Report, December 2019, Pages 10 &13.
15. Report - Environmental Site Assessment, JKEnvironments, 10 December 2019, Page 213.
16. Plans - External, Team2 Architects, Drawing DA103 Rev 6, 4 December 2019
17. Building Code of Australia Assessment Report, McKenzie Group, November 2019, Page 11