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**Sent:** 18/10/2019 3:04:31 PM  
**Subject:** Letter of objection to DA2019/0988 for proposed cancer treatment centre at 49 Frenchs Forest Road East, Frenchs Forest [HR-SYD.FID518218]  
**Attachments:** Letter of objection to Northern Beaches Council regarding DA2019 - 2019.10.18.PDF;

Dear Sir/Madam

Please see **attached** letter to you of today's date.

Regards

Georgia Appleby | Associate



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18 October 2019

Development Assessment  
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Customer Service Centre  
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Dear Sir/Madam

**Letter of objection to Development Application DA2019/0988 for proposed cancer treatment centre at 49 Frenchs Forest Road East, Frenchs Forest**

1. We act for Northern Beaches Cancer Care Centre Pty Limited. Our client currently occupies Building 4 in the business park located at 49 Frenchs Forest Road, Frenchs Forest (**Business Park**) and operates a radiation oncology facility at these premises.
2. We refer to Development Application reference DA2019/0988 (**DA**) which seeks consent for the construction of a cancer treatment centre and basement carpark on Lot 7 in DP 1020015 (**Site**) which is also located in the Business Park.
3. Specifically, the DA proposes the construction of a 4 storey building containing 7 consulting rooms, a radiation oncology unit with Linear Particle Accelerator, 12 bed medical oncology unit and medical imaging. The DA also proposes the construction of a 3 storey subterranean basement carpark situated underneath the building (**Proposed Development**).
4. The purpose of this letter is to outline our client's strident objections to the DA on the basis that:
  - (a) the DA has not been correctly exhibited, advertised or notified;
  - (b) the DA contains conflicting information regarding the proposed operation of the facility, particularly regarding the nature of the health facility, anticipated patient numbers, staff numbers and the proposed hours of operation;
  - (c) the Proposed Development does not make provision for a sufficient number of patient and visitor car parking spaces;
  - (d) the Proposed Development involves excessive earthworks, particularly given that it is located in an area of landslip risk;
  - (e) the design of the Proposed Development does not provide adequate waste management facilities, particularly in relation to waste collection; and

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- (f) the DA application form may not be complete in relation to the declaration on political donations and gifts.
- 5. This will result in significant unacceptable impacts to our client's existing facility, other businesses and other developments within the Business Park. In addition, this will lead to unsatisfactory planning outcomes as a result of a poorly formulated DA which fails to adequately address numerous matters and is non-compliant with various relevant controls.

### **Relevant planning controls**

- 6. The DA is subject to the controls specified in the following:
  - (a) *Environmental Planning & Assessment Act 1979 (EP&A Act)*;
  - (b) *Environmental Planning & Assessment Regulation 2000 (EP&A Regulation)*;
  - (c) *Warringah Local Environmental Plan 2011 (WLEP)*; and
  - (d) *Warringah Development Control Plan 2011 (WDCP)*.

### **Grounds of objection**

#### **Ground 1: the DA has not been correctly exhibited, advertised or notified**

- 7. Firstly, we are concerned that Council has failed to correctly exhibit, advertise and notify the DA in accordance with the requirements of Council's notification policy in Part A.7 of the WDCP.
- 8. Relevantly, Part A.7 of the WDCP provides that the minimum mandatory exhibition, advertisement and notification requirements are:
  - (a) the application is to be made available online via Council's website;
  - (b) notification letters must be sent to adjoining property owners and occupiers; and
  - (c) a notification sign is to be placed in a prominent position on the Site for the duration of the notification period.
- 9. In our view, Council has failed to satisfy these mandatory requirements because firstly, the Council has failed to exhibit the following architectural plans which are listed under the Sheet List prepared by Team 2 Architects:
  - (a) Drawing DA-100 Floor Plan – Basement 3;
  - (b) Drawing DA-101 Floor Plan – Basement 2;
  - (c) Drawing DA-102 Floor Plan – Basement 1;
  - (d) Drawing DA-103 Floor Plan – Ground;
  - (e) Drawing DA-104 Floor Plan – Level 1;
  - (f) Drawing DA-105 Floor Plan – Level 2;
  - (g) Drawing DA-106 Floor Plan – Level 3;

- (h) Drawing DA-300 Sections – Sheet 1; and
  - (i) Drawing DA-301 Sections – Sheet 2.
10. These plans are critical to illustrating the nature of the Proposed Development, the operation of the proposed facility and its impacts on the surrounding development. Accordingly, we consider that the failure to exhibit these documents has significantly impacted upon our client's ability to consider and respond to the DA, as it is entitled to do so.
11. Similarly, in our view, Council has also failed to satisfy the requisite advertising and notification requirements in the following respects:
- (a) the Notice of Proposed Development letter is deficient and fails to meet the minimum mandatory requirements under Part A.7 of the WDCP. In particular:
    - (i) it was sent to the occupier only, and not also sent to the landowner as required;
    - (ii) it fails to sufficiently identify the parcel of land relevant to the Proposed Development, in that:
      - (A) it merely refers to the land by reference to an incomplete street address, being 49 Frenchs Forest Road East, which is the address for the entire Business Park and does not identify the actual parcel proposed to be developed; and
      - (B) it fails to identify the land by reference to the relevant lot and plan numbers, which both have the effect that the land the subject of the DA is not identifiable; and
    - (iii) it provides a wholly inadequate description of the proposed development, being "*Construction of a Cancer Treatment Centre (Health Care Facility)*". This fails to provide key information regarding the scale of the development (ie. that it is 4 storeys) and that it also proposes the construction of a 3 storey subterranean basement car park; and
  - (b) the Council has failed to erect a sign in a "*prominent position*" on the proposed development site, in order to visually bring the DA to the attention of the public. In this regard, we are instructed that our client did not see a sign on or near the proposed development site. This suggests that the sign was either not erected, or was not placed in a prominent position, as required.
12. In our view, these breaches of the WDCP are contrary to the purpose of community participation which is to assist in bringing the application to the attention of the community so as to enable people to be informed and make submissions.<sup>1</sup>
13. By failing to comply with the WDCP, Council has undermined a legitimate expectation held by the people of its local government area that it would apply the notification policy indiscriminately to all developments. The critical nature of a breach of this kind has been described by Cripps J as follows:

*...when a public authority has promised it will follow a certain procedure, it ought, in the interests of good administration, be held to that promise...*<sup>2</sup>

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<sup>1</sup> *Scurr v Brisbane City Council [No 5] (1973) 28 LGERA 50 per Stephen J at p 57.*

14. It is therefore fundamental that the DA be notified strictly in accordance with Council's notification policy.

## **Ground 2: Operational discrepancies**

### *Inconsistent projected patient and staff numbers*

15. The documents lodged in support of the DA appear to provide conflicting information regarding the intended nature and operation of the Proposed Development.
16. In particular, the Statement of Environmental Effects (**SEE**) states that the Proposed Development will accommodate between 86-98 patients per day at full capacity.<sup>3</sup> However, the applicant's Assessment of Traffic and Parking Implications report prepared by TTPA (**Traffic Report**) relies upon 81-93 patients per day,<sup>4</sup> only 8-9 patients per hour,<sup>5</sup> and only 9 patients at any one time.<sup>6</sup>
17. Similarly, discrepancies between anticipated staff numbers also appear when comparing the SEE which estimates 52 staff,<sup>7</sup> with the GenesisCare Maui – Operational Management Plan (**Operational Management Plan**) which estimates 21 staff,<sup>8</sup> and also the BCA Assessment Report prepared by McKenzie Group (**BCA Report**) which estimates 32 staff.<sup>9</sup>
18. At best, these discrepancies illustrate a lack of understanding and clarity with respect to the intended operation of the proposed facility. Of more concern however, is that the expected numbers will necessarily alter the anticipated impacts of the DA and therefore, the fact that the relevant assessment reports have been prepared with varying numbers calls into question the ability to rely on these reports and the impacts assessed therein.
19. It is essential that these numbers be clarified as a matter of urgency. Also, in the event that reports have been prepared on the basis of incorrect assumptions (such as the Traffic Report and BCA Report), then these reports must be revised so that the impacts can be correctly identified and fully considered, with all reports to be prepared based upon consistent staff and patient numbers.
20. We are also instructed that these proposed figures are likely a gross underestimation of the actual operational capacity of the Proposed Development. This is because the projected figures:
- (a) do not include the number of patients anticipated to utilise the 7 consulting rooms, which we estimate may equate to at least 4 patients per hour per room, being a total of over 200 patients per day;
  - (b) fail to account for the number of family members, carers and visitors who may accompany patients while undertaking treatments or appointments at the facility (which given that the

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<sup>2</sup> *Hardi v Woollahra Municipal Council* (Land and Environment Court of New South Wales, 17 December 1987, unreported) Cripps J.

<sup>3</sup> Statement of Environmental Effects prepared by Willow Tree Planning, September 2019, page 11.

<sup>4</sup> Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates, September 2019, page 4.

<sup>5</sup> Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates, September 2019, page 4.

<sup>6</sup> Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates, September 2019, page 10.

<sup>7</sup> Statement of Environmental Effects prepared by Willow Tree Planning, September 2019, page 11.

<sup>8</sup> GenesisCare Maui – Operational Management Plan, page 1.

<sup>9</sup> BCA Assessment Report prepared by McKenzie Group, September 2019, page 9.

proposed use is for cancer treatment is arguably higher than might otherwise be the case if the use were as an ordinary medical centre); and

- (c) no explanation at all has been provided to justify the anticipated hourly/daily patient rates. We would suggest, at a minimum, some detail be put forward by the applicant justifying these figures, for example on the basis of current patronage of an existing similar development.
21. Also of note, the DA documents in our view, fail to clearly articulate the intended use of 2 overnight beds. This is because the SEE states that the facility would include 2 beds for “*anaesthetic procedure and recovery*”, which suggests that its use is limited to day only procedures.<sup>10</sup> However, later the SEE states that there will be anaesthetic procedures and patients staying “*overnight for recovery and treatment*”.<sup>11</sup> The Operational Management Plan does not mention these 2 beds at all. The inclusion of overnight beds requires a different licence under the *Private Health Facilities Act 2007*, higher BCA standards and a different staffing model, especially after hours. Therefore, clarity on whether consent is sought for overnight operations is critical to the assessment of the impacts and suitability of the Proposed Development.

#### *Inconsistent proposed hours of operation*

22. The SEE states that the operating hours of the proposed facility are 7am to 7pm, 6 days a week.<sup>12</sup> However, this is later contradicted by an acknowledge that “*patients may be required to stay overnight for recovery and treatment*”.<sup>13</sup> If this is the case, then the facility should more aptly be characterised as a 24-hour facility.
23. In addition to this, contradictory hours of operations are also provided in the Operational Management Plan which instead proposes for the facility to operate from 7am to 7pm Monday to Friday, and that sometime “*in the future*” to extend these hours to 8am to 1pm on Saturdays.<sup>14</sup> It does not mention at all the possibility of overnight stays.
24. It is therefore entirely unclear regarding the hours of operation of the proposed facility. It is also particularly unclear how and when “*in the future*” the applicant proposes to amend these hours and change the operation of the facility.
25. Clarification of the above is critical to being able to assess the impacts of the development on the surrounding industrial/commercial uses, as well as the nearby residential area.

#### *Inadequate Operational Management Plan*

26. The Operational Management Plan states that “*GenesisCare will be providing an integrated Cancer treatment centre*”.<sup>15</sup>
27. We therefore assume that the Operational Management Plan provides the basis upon which GenesisCare will operate the facility in the event that the DA is approved.

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<sup>10</sup> Statement of Environmental Effects prepared by Willow Tree Planning, September 2019, page 10.

<sup>11</sup> Statement of Environmental Effects prepared by Willow Tree Planning, September 2019, page 15.

<sup>12</sup> Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates, September 2019, page 11.

<sup>13</sup> Statement of Environmental Effects prepared by Willow Tree Planning, September 2019, page 14.

<sup>14</sup> GenesisCare Maui – Operational Management Plan, page 1.

<sup>15</sup> GenesisCare Maui – Operational Management Plan, page 1.

28. This is concerning for various reasons, including that the document is significantly lacking in information about how the facility intends to operate. Also, as noted above, where information is provided it appears to be inconsistent with other documents lodged in support of the DA including the SEE, Traffic Report and BCA Report.
29. Therefore, at a minimum, the Operational Management Plan must be revised so that it is consistent with the other documents and so that the proposed operation of the facility can be understood.
30. Also, in the event that consent is granted to the DA, then we would ask that this Operational Management Plan be incorporated by reference into the consent by the consent authority. This will ensure that the development will be carried out in a matter that is consistent with the described use.

### Ground 3: Insufficient patient car parking

31. The SEE states that the Proposed Development incorporates a total of 56 parking spaces, with 10 spaces reserved for use by patients and the remaining 46 spaces for use by staff.
32. It also states that two spaces would be designated for disabled drivers, although of note it is unclear whether these two spaces are in addition to the 56 spaces allocated for patients and staff or whether these spaces are included in that total.
33. In order to demonstrate alleged compliance with minimum car parking requirements, the Traffic Report has referred to the car parking requirements for “*health consulting rooms*” under Appendix 1 of the WDCP. This control requires 3 spaces to be allocated per room used to see patients.<sup>16</sup>
34. However, in our view, this characterisation of the relevant controls is erroneous. This is firstly because the Proposed Development is not development for the purpose of “*health consulting rooms*”, which is relevantly defined in the Dictionary to the WLEP as:

*health consulting rooms means premises comprising one or more rooms **within (or within the curtilage of) a dwelling house** used by **not more than 3 health care professionals at any one time**.*

35. This development is plainly not development which is proposed to be carried out within a dwelling or within the curtilage of a dwelling. Also, the Proposed Development is to be serviced by approximately 52 staff (according to the SEE), which is far in excess of the maximum limit of 3 staff specified in the definition of health consulting rooms.
36. Rather, we are of the view that the Proposed Development is a “health services facility” as defined in the WLEP which comprises both a “medical centre” component and a “hospital” component. This much is admitted in the SEE which states that:

*The proposed cancer treatment centre is identified as a ‘medical centre’ with a portion of the facility identified as ‘hospital’.*<sup>17</sup>

37. Accordingly, the Proposed Development should in fact be assessed against the car parking requirements for a medical centre and a hospital.

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<sup>16</sup> Assessment of Traffic and Parking Implications prepared by Transport and Traffic Planning Associates, September 2019, page 10.

<sup>17</sup> Statement of Environmental Effects prepared by Willow Tree Planning, September 2019, page 14.

38. In this regard, the WDCP provides that for the medical centre, 4 spaces should be allocated per 100m<sup>2</sup> of GFA, while for a hospital, comparisons should be drawn with developments for a similar purpose.
39. Given that the Proposed Development has a GFA of 2,099m<sup>2</sup>,<sup>18</sup> it is required to allocate a minimum of 84 car spaces, based on the below calculation:
- $$\begin{aligned} 2099 / 100 &= 20.99 \\ 20.99 \times 4 &= 83.96 \end{aligned}$$
40. Therefore, we are of the view that the Proposed Development is wholly inadequate in that it provides significantly less car parking spaces than required to meet the demands of a development which, at full capacity, will see and treat 98 patients with at least 52 staff members (assuming that these numbers are not an underestimation, as noted above).<sup>19</sup>
41. Alternatively, it is open to Council to calculate the appropriate car parking requirements by reference to the actual number of staff and patients and accompanying support persons and visitors on the site at any one time. However, if this approach is to be adopted, the DA would need to be very precise and accurate in its calculation of these figures.
42. This is not the case with the current DA because, as noted above in relation to Ground 2, the DA (and the documents lodged in support of the DA) provide conflicting information regarding the proposed numbers of staff and patients and also fails to put forward a justification or explanation for these projected figures. We therefore question the accuracy of the figures proposed.
43. In our view, this has the consequence that Council is simply unable, on the face of the documents before it, to satisfy itself that the Proposed Development will not lead to unacceptable impacts on surrounding land uses and that sufficient parking has been provided for a facility of this nature.
44. Rather, we consider that the DA as currently formulated would necessarily result in 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.
45. Also of note, the Proposed Development currently only seeks to allocate 10 of its 56 spaces to patients. Given the fact that the facility can accommodate at least between 86-98 patients at any one time, we are instructed that the split between patient/staff parking is highly inadequate. This is because this assumes that between 88% and 90% of patients will arrive to the facility by public transport, rather than by private vehicle.
46. As no analysis or explanation has been put forward in the DA justifying this assumption, we are of the view that the applicant has failed to demonstrate how the Proposed Development is able to meet the needs of its clientele without resulting in adverse traffic impacts on the surrounding developments.
47. Furthermore, the Proposed Development fails to allocate any car spaces to accompanying support persons, carers and visitor parking. Noting that the proposed use is for cancer treatment, it is unclear why this would be the case. A failure to make adequate provision for these visitors will also further compound the traffic impacts associated with the development, both on the

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<sup>18</sup> Statement of Environmental Effects prepared by Willow Tree Planning, September 2019, page 9.

<sup>19</sup> Statement of Environmental Effects prepared by Willow Tree Planning, September 2019, page 11.



immediate industrial/commercial developments in the Business Park, but also the nearby residential area.

48. Also, the DA documentation does not appear to make separate provision for parking for the daily pathology company pick up of specimens and for any other delivery/service vehicles. Rather, it appears that the intention is for vehicles to pull up or park in the “pick up/loading zone” in front of the entry lobby to the building. We consider this to be unsatisfactory for various reasons including that it would result in the main pedestrian entrance being obscured for an unknown period of time, but also because it will likely result in vehicles idling in the roundabout. This has significant ramifications on the traffic flow entering and leaving the premises as the roundabout services both the pick-up/loading zone and the basement car park.
49. It is also important to acknowledge that the developments in and around the Business Park will continue to grow in the coming years, including as a result of the development on land adjoining the Site for the purpose of modifications to the hotel and the construction of a new Dan Murphy’s. We are also instructed that GenesisCare is intending to relocate cancer services from another building in the Business Park to the proposed facility, leading to other additional uses 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 become increasingly problematic as the Proposed Development will be burdening an already densely developed area. It is therefore critical that the consent authority can be satisfied that the DA will not result in unacceptable traffic impacts. Based on the current information submitted with the DA, we consider that the consent authority simply cannot form this view.

#### **Ground 4: Excessive earthworks**

50. The Proposed Development currently involves the construction of a 3 storey basement car park. This equates to an anticipated excavation depth of between 9m to 11m below existing surface levels.<sup>20</sup>
51. Accordingly, the DA is required to be assessed against the requirements of cl 6.2 of the 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.<sup>21</sup>
52. It must also be assessed against Part C7 of the 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.<sup>22</sup>
53. The DA responds to this requirement 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**).<sup>23</sup>
54. 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 excavation works.

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<sup>20</sup> Geotechnical Investigation prepared by JK Geotechnics, 4 September 2019, page 1.

<sup>21</sup> *Warringah Local Environmental Plan 2011*, cl 6.2(1)(a).

<sup>22</sup> *Warringah Development Control Plan 2011*, part C7, Requirement 2.

<sup>23</sup> 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.

55. The risks here are exacerbated by the fact that the land is mostly comprised of sandstone of a very low to low strength.<sup>24</sup> Accordingly, it is not strong enough to be cut vertically and requires the installation of a full depth shoring system.<sup>25</sup> 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.<sup>26</sup>
56. Further, the Geotech Report identifies that given the close proximity of the site to adjoining structures, the use of hydraulic rock hammers throughout the excavation process may also lead to additional risks associated with the transmission of vibrations.<sup>27</sup> Given this risk, it recommends the installation of vibration monitors on adjoining structures with real time warning systems to alert construction workers as to vibration impacts on neighbouring properties.
57. In our view, these findings and recommendations noted in the Geotech Report do not demonstrate how the earthworks will not have a detrimental impact on neighbouring 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.
58. These risks are exacerbated by the fact that the degree of excavation proposed is very significant, especially when compared with the adjoining buildings.
59. These risks and potential impacts also need to be considered in the context of the surrounding land uses. In particular, many of the existing tenants of the Business Park, including our client, operate medical and health services with sensitive diagnostic and treatment equipment with practices which are open to members of the public. This increases the severity of any potential geotechnical impacts and disturbance experienced as a direct result of the excavation works proposed.
60. 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 potential detrimental impact on neighbouring properties.
61. Additionally, we note that the Site is also identified on the Landslip Risk Map and accordingly, is subject to cl 6.4 of the WLEP. While the SEE states that the Geotech Report has been prepared "*in accordance with the requirements of this clause*", we cannot see any express reference to landslip risk or cl 6.4 in the report. As such, we cannot see how the Geotech Report supports compliance with these provisions.
62. On this basis, we conclude that further information needs to be provided by the applicant in relation to how the DA satisfies the requirements of cl 6.4 of the WLEP relating the landslip risk.

#### **Ground 5: Inadequate waste management**

63. An Operational Management Plan prepared by GenesisCare has been lodged in support of the DA.
64. Part 5 of this Operational Management Plan states that the following waste management procedures will apply to the Proposed Development:

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<sup>24</sup> Geotechnical Investigation prepared by JK Geotechnics, 4 September 2019, page 5.

<sup>25</sup> Geotechnical Investigation prepared by JK Geotechnics, 4 September 2019, page 6.

<sup>26</sup> Geotechnical Investigation prepared by JK Geotechnics, 4 September 2019, page 9.

<sup>27</sup> Geotechnical Investigation prepared by JK Geotechnics, 4 September 2019, page 7.

- (a) a bin/waste disposal room will be constructed on the ground floor (**Ground Floor Bin Storage Area**);
  - (b) general waste, recyclable waste and clinic waste will be stored in a dirty utility room on each floor;
  - (c) waste from each floor will be transported to the Ground Floor Bin Storage Area once daily; and
  - (d) the Ground Floor Bin Storage Area will be emptied twice weekly.<sup>28</sup>
65. The Traffic Report also provides that:
- (a) waste bins will be removed from the Ground Floor Bin Storage Area by a 6.4m private contractor's small rigid waste vehicle;
  - (b) the collection of waste is to occur "*outside of the peak hours*"; and
  - (c) a waste vehicle management plan is to be prepared to ensure the appropriate use and prevent overuse of the drop-off space in front of the Ground Floor Bin Storage Area.
66. In our view, it is clear that the procedures relating to waste management under the DA are wholly inadequate.
67. This is because firstly, the Ground Floor Bin Storage Area is only 6m<sup>2</sup> and no analysis has been provided by the applicant to substantiate its claim that a room of this size is sufficient to meet the needs of a 4 storey building which is expected to generate general and recyclable waste, as well as clinical and cytotoxic waste which may require specialised storage. Accordingly, it is not possible to be satisfied that the Proposed Development has allocated sufficient space for the safe disposal of waste generated as a result of the proposed use of the Site.
68. Further to this, the collection of waste from the Ground Floor Bin Storage Area requires a vehicle to drive onto and reverse across the pick-up/loading zone at the entrance to the medical facility. Despite this, no information has been provided as to when this is to occur, how long the vehicles will need to remain parked there and how safety concerns are to be managed given these vehicle movements will obstruct the primary pedestrian thoroughfare.
69. Similarly, a copy of the waste vehicle management plan discussed in the Traffic Report has not been exhibited with the DA. Therefore, there is no certainty that the development will utilise only small rigid waste vehicles in the collection of waste on Site. In the absence of this, we take the view that the applicant is required to provide further swept path analysis to show that vehicles of various sizes can safely enter the Site to collect waste without impacting upon pedestrian access.
70. Also, for completeness we note that if the Ground Floor Bin Storage Area is to be serviced as described in the Traffic Report, then this information should be incorporated into the Operational Management Plan and/or any consent issued should be subject to conditions to this effect.

#### **Ground 7: Completeness of DA Application Form**

71. We note that the Council's DA form requires that the applicant state whether the applicant or "*any person with **a financial interest** in this application made a political donation or gift (greater than \$1000) in the previous 2 years*".

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<sup>28</sup> Operational Management Plan prepared by GenesisCare, page 2.

72. We are instructed to request that Council seek confirmation from the applicant in this regard. For example, the Operational Management Plan states that the proposed facility will be operated by GenesisCare Pty Ltd who are listed as a major political donor for the FY 2018/2019 on the register maintained by the NSW Electoral Commission. We are further instructed that there may be other private health service providers who are involved in the planning of the facility and who will be operating businesses in the facility.

## Conclusion

73. On the basis of the above information, we consider that the DA should be refused on the following grounds:
- (a) the DA provides conflicting information regarding the operation of the proposed facility, particularly with regards to anticipated patient and staff numbers and the proposed hours of operation;
  - (b) the Proposed Development incorporates insufficient car parking, increasing the likelihood that the development will adversely impact the surrounding land uses;
  - (c) the Proposed Development involves excessive earthworks as a result of the subterranean 3 storey car park, increasing the risks of landslip and vibration impacts on the neighbouring properties; and
  - (d) the Proposed Development does not adequately address waste management which, given the medical use, is likely to create operational issues if the development is permitted to proceed.
74. However, in the event that the Council is minded to further consider the DA, we request that, at a minimum, Council invite the proponent to withdraw their application and resubmit it after the application has been reformulated to address the matters raised in this letter or that the proponent otherwise amend the DA to address the concerns raised in this letter.
75. Furthermore, Council must re-exhibit, advertise and notify the DA (including any amendments made to it) in accordance with the provisions of Part A.7 of the WDCP and the relevant provisions of the EP&A Act, particularly having regard to the issues raised in this submission.
76. Should you have any questions regarding this content of this letter, please do not hesitate to contact us.

Yours sincerely



**Holding Redlich**