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28 March 2019

**To: The General Manager SCC**

Ref: DA19/1133  29 Tindalls Lane, Broughton

**Subject:**Submission re 'Temporary use of land for Events/Functions (incl weddings) & Camping.

We write in support of more than 120 community members who have made over 70 submissions to Council objecting to this DA. Very serious concerns have been raised by residents on neighbouring properties (see attached) and many Berry residents who comprehend the dangerous precedent this DA would set, if approved.

RMS owns a neighbouring property and has made a formal submission, which clearly and dispassionately identifies the major adverse impacts related to approval of this DA -

*“To allow this DA to proceed is to commence the destruction of the ambience of the area, to open the gates to similar transformation of the use of the land within your boundaries, and to adversely affect your residents in other properties in the district who enjoy their current quality of life. It will also potentially reduce the appeal of their properties and therefore their land values.”*

Key issues relating to noise impacts are –

* Clause 2.8 (3b) states that Council must be satisfied that the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood.
* In the Operational Plan the applicant admits there will be adverse impacts from the function centre, but refers to them as “a temporary inconvenience”.
* The applicant is relying upon an acoustics report prepared by Harwood Acoustics, which claims the noise impacts would be marginally acceptable, but warns that the impacts can only be constrained to ‘allowable’ levels provided all recommendations in the acoustics report are implemented at every function.
* Harwood Acoustics prepared an almost identical report for DA18/2115 at Strongs Road. A local acoustics expert with forty years professional experience reviewed the report and identified a number of serious shortcomings, which apply equally to the report prepared for 29 Tindalls Lane.
* Deficiencies in the acoustics report are also comprehensively addressed in the attached submission prepared by the immediate neighbours to the property at 59 Tindalls Lane.

The application's Statement of Environmental Effects does not acknowledge that the subject site sits within the Berry Wildlfe Corridor, which is currently being funded by Government Grant to increase native flora and fauna. The riparian area of Broughton Mill Creek that runs through the site has been well known for Platypus sightings, and the creeks of the lower escarpments are recognised as active wildlife corridors.

The Forum’s submission concerning DA18/2115 for 171B Strongs Road identified that a clear and unambiguous precedent had been set in the Land & Environment Court for dealing with applications that attempt to invoke Clause 2.8(3b) temporary use of land.

In November 2016, pre-eminent business law firm Hall & Wilcox reported that in the NSW Land & Environment case of *Marshall Rural Pty Ltd v Hawkesbury City Council and Ors [2015] -*

*“the Court held that when a use is prohibited in a zone, that use is fundamentally prohibited* ***irrespective*** *of whether the statutory instrument provides for a “temporary use” of the activity.”*

In this case, Justice Moore, after taking into all the evidence which included acoustic evidence and affidavit material put forward by all parties, concluded that Council failed to have regard to the correct, materially relevant consideration contained in clause 2.8 of the LEP.

His Honour stated that the assessment reports by both experts did not take into account the fundamental nature of the test required, namely that the standards envisaged the absence of adverse impact rather than an acceptable impact.

His Honour went further to state that the test under clause 2.8 “puts a very high hurdle in the path of any such application. The placing of such a hurdle requires that the Council must approach the consideration and determination of any such application with a marked degree of precision and caution.”

In addition to the adverse impacts on surrounding (within 2kms) properties, the loss of business for legitimately approved function centres must also be considered. There are permanent wedding facilities in and around Berry that have, or will need to go through, the full process of planning approval. They will suffer a loss of existing or potential business from this opportunistic development application.

We support the community's view that both this application and DA18/2115 for Strongs Rd would set a dangerous precedent across the Shoalhaven and should be refused by Council.

**Berry Forum Committee**

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