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**To: The General Manager SCC**

Ref: DA18/2115 171B Strongs Road

**Subject:** Submission re'Temporary use of land for the purpose of a function centre’

We write on behalf of community members who have registered their concerns with the Forum and made submissions to Council objecting to the amended development application. In this regard, it is important to note that many residents living in Strongs Rd and surrounding areas, who would be adversely impacted by noise from the function centre, have not been notified of the development or given the opportunity to make a submission.

We draw your attention to the issues raised by David & Ula Hole and other residents in their submissions –

* They have already experienced and been adversely impacted by noise from the ‘temporary’ function centre whilst it was being operated illegally. They point out that the ‘amendments’ will make no difference to the adverse impacts they have experienced.
* In the Operational Plan the applicant freely admits there will be adverse impacts from the function centre, but refers to them as “a temporary inconvenience”.
* The applicant also admits that the adverse noise impacts can only be constrained to ‘allowable’ levels if all recommendations provided in the acoustics report are in place.

As we stated in our previous submission (see below), a clear and unambiguous precedent has been set in the Land & Environment Court for dealing with applications that attempt to invoke Clause 2.8(3b) temporary use of land.

In *Marshall Rural Pty Ltd v Hawkesbury City Council and Ors [2015],*after reviewing the acoustics evidence, Justice Moore stated that the assessment reports did not take into account the fundamental nature of the test required, that there be an **absence** of adverse impact rather than an **acceptable** impact. In this case the applicant admits there will be adverse impact and, through illegal operation of the function centre, has also provided evidence of that adverse impact.

This is clearly an ‘open & shut case’ and the application **should be refused forthwith**. We believe it is unacceptable that community members should be subjected to lengthy periods of uncertainty and fear about their ability to retain the peaceful lifestyle that they have strived to achieve.

We also recommend that Council policy be amended in the case of applications creating noise impacts, so that residents in a broader area are notified.

Berry Forum Committee

<http://berryforum.org.au/>

15 February 2019

**Forum Submission dated 25 October 2018**

The Forum Committee has significant concerns about this application and draws Council's attention to the following issues that have been raised by residents -

1. 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.

It would appear that the owners are already promoting the venue for wedding functions and that neighbours are already experiencing adverse noise impacts.

1. The applicant is relying upon an acoustics report, which suggests that the noise impacts from the function centre would be marginally acceptable and that the level of noise emission from the operation of the facility will meet Council’s general noise requirements (providing a series of recommendations are implemented and adhered to).

In the Land & Environment Court case *Marshall Rural Pty Ltd v Hawkesbury City Council and Ors [2015],*after reviewing the acoustics evidence, Justice Moore stated that the assessment reports did not take into account the fundamental nature of the test required, that there be an **absence** of adverse impact rather than an **acceptable** impact.

In setting a clear precedent that applies to this application, Justice Moore stated the test under clause 2.8 “puts a very high hurdle in the path of any such application - Council must approach the consideration and determination with a marked degree of precision and caution.”

We also approached Bob Fitzell, an acoustics expert with forty years professional experience, and asked him to review the Environmental Noise Impact Assessment prepared by Harwood Acoustics. Bob identified a number of shortcomings with the report and detailed them in his own submission.

1. The upgrade of the Princes Highway has commenced and will continue for a number of years. Access to and from Strongs Road is now hazardous and the addition of wedding reception traffic every weekend will inevitably result in road accidents.

Stuart Coughlan, Secretary

<http://berryforum.org.au/>

25 October 2018