

Modification Application No:	1566/2014/B.
Description of Proposal:	Multi-purpose courts and car parking.
Property Description:	Lot 913 DP 752053, Lot 1070 DP 752053, Lot 7304 DP 1131925, Lot 1073 DP 752053 and Lot 1034 DP 752053, Nos.130, 130A, 130X, 132 and 132A Boundary Road, North Epping.
Applicant:	North Epping Bowling Club.
Owner:	Crown Land and North Epping Bowling & Community Club.
Statutory Provisions:	Hornsby LEP 2013 - RE1 - Public Recreation.
Estimated Value:	N/A.
Ward:	C.

- The application proposes the modification of Development Consent No.1566/2014 for use of land at the North Epping Bowling and Community Club for multi-purpose sports courts and associated car parking by modifying the approved hours of operation.
- The proposal complies with the provisions of the *Hornsby Local Environmental Plan 2013* and the *Hornsby Development Control Plan 2013*.
- Twelve (12) submissions have been received during the exhibition of the proposed modification including 10 objections and 2 letters of support of the proposed modification.
- It is recommended that the modification be approved.

RECOMMENDATION

THAT Development Application No.1566/2014/B for the use of land at the North Epping Bowling and Community Club for multi-purpose sports courts and associated car parking be modified subject to conditions of consent detailed in Schedule 1 of this report.

BACKGROUND

On 14 February 2014, a public meeting was held on site in response to community concerns raised in respect of the application.

On 15 December 2014, Development Application No.1566/2014 was lodged with the Council.

On 2 February 2015, the applicant was requested to provide additional information regarding stormwater.

On 5 February 2015, the applicant submitted details of proposed lighting.

On 10 March 2015, the applicant submitted stormwater management plans.

On 1 April 2015, additional information regarding traffic impact was requested.

On 16 April 2015, an amended traffic report was submitted.

On 27 April 2015, further information regarding stormwater management was requested.

On 27 June 2015, amended stormwater plans were submitted.

On 7 October 2015, the North Epping Rangers Netball Club provided an email which responded to a number of the issues raised at the September 2015 Meeting of Council.

On 24 October 2015, a public meeting was held in response to the September 2015 resolution of the Council.

On 9 December 2015, Council approved Development Application No. DA/1566/2014 for addition of a multi-purpose court facility adjoining the North Epping Bowling Club and carpark upgrade at Nos.130, 130A, 130X, 132 and 132A Boundary Road, North Epping.

On 9 January 2020, a Section 4.55(2) application was lodged for the modification of DA/1566/2014 by amending two conditions (Condition No.50 Use of Premises and Condition 51 Noise) on the consent which restrict the hours of use of the facility.

On 24 February 2020, Council wrote to the applicant requesting the submission of a revised statement of environmental effects, updated acoustic report and traffic and parking assessment.

On 22 May 2020, the applicant submitted an acoustic report prepared by SLR Consulting.

On 27 July 2020, the applicant submitted revised Management Plan. Council engaged an independent acoustic consultant to review the acoustic assessment and relevant documents.

On 3 September 2020, Council wrote to the applicant raising concerns with respect to the revised Management Plan relating to the operation of the multipurpose courts.

On 4 September 2020, the applicant submitted a statement from the acoustic consultant and a further revised Management Plan dated September 2020.

On 26 October 2020, a traffic and parking report prepared by GTK consulting was submitted to Council.

On 29 October 2020, the applicant submitted a new Statement of Environmental Effects and a revised Management Plan.

On 24 November 2020, the applicant submitted a further amended Statement of Environmental Effects and a further amended Management Plan.

SITE

The site is located on the northern side of Boundary Road, North Epping near the intersection of Boundary Road with Norfolk Road.

The site is irregular in shape and has area of approximately 2.15 hectares. The majority of the site is Crown Land except for that part of the site owned by the North Epping Bowling and Community Club which contains the clubhouse of the bowling club. This section of the site has an area of approximately 0.08 hectares. The site has a frontage of approximately 150 metres to Boundary Road and has access from Boundary Road.

The topography of the site is benched to accommodate the bowling greens on the site and the existing buildings on the site.

To the north east of the site is bushland which is part of the Lane Cove River National Park. Devlins Creek is located approximately 70 metres from the site. Council has installed a catchment remediation device at the low end of Boundary Road to treat stormwater prior to it being feed to the adjoining bushland and the Devlins Creek Catchment.

PROPOSAL

The Notice of Determination of Development Application No.1566/2014 contains Condition 50 relating to the use of the approved development. Condition 50 states:

50. Use of Premises

- a) *The development approved under this consent shall be used for "Multi-purpose courts" and not for any other purpose without Council's separate written consent. The uses are to be as follows:*
- i) *Winter Sport (March to September): Netball training*
Monday to Friday from 3:30pm to 8:30pm with a maximum of 20 players per hour;
 - ii) *Summer Sport (November to February): Futsal soccer competition or summer netball competition*
Monday to Thursday from 5:30pm to 9:00pm with a maximum of 30 players per hour;
 - iii) *School Holidays Tennis*
Three (3) days per week plus 2 days for tennis clinic with a maximum of 20 players per session, the hours being 8am to 8pm (Monday to Saturday) and 9.00am to 6.00pm on Sundays;
 - iv) *North Epping Public School Friday Afternoons (April to September)*
School netball games 9am to 3pm with a maximum of 30 players for two (2) hours;
 - v) *All Saints Church Friday Evenings*
Once every three (3) months between 6pm to 8pm with a maximum of 20 players up to the age of 15 years for two (2) hours.
- b) *The use must be conducted in accordance with the approved "Management Plan" as listed in the development consent.*
- c) *A sign must be displayed in prominent location displaying the emergency contact number when the premise is unstaffed.*

Documents submitted with the modification application state that:

In summary, the following amendments are sought under this application (Rev A) to the terms and conditions of DA/1566/2014:

Delete condition No 50 and insert in that place a new condition No 50 to read as follows:

"50. Use of Premises

- (a) *The development approved under this consent shall be used for "Multipurpose recreational activities" and not for any other purpose without Council's written consent. Such usage be allowed between:*

-
- i) 8:30am and 9.30pm on Mondays to Saturdays; and
 - ii) 9:00am to 9:30pm on Sundays and Public Holidays.
- (b) The maximum number of players per hour will be:
- I. 30 players per hour, from 8.30am to 6.00pm on Mondays to Saturdays and from 9.00am to 6.00pm on Sundays and public holidays;
 - II. 36 players per hour from 6.00pm to 9.30pm Monday to Sunday (7 days/week).
- (c) All players associated with the use of the facility shall depart the facility by no later than 9.45pm.
- (d) The use must be conducted in accordance with the approved "Management Plan".
- (e) A sign must be displayed in a prominent location displaying the emergency contact number when the premise is unstaffed."

The documentation submitted with the modification application also included a Traffic and Parking Assessment and an Acoustic Impact Assessment.

A document titled *North Epping Sports Centre Management Plan, 24 November 2020* has also been submitted with the modification application which is the Management Plan referenced in the proposed modified condition of consent.

ASSESSMENT

1. STRATEGIC CONTEXT

1.1 Metropolitan Strategy for Sydney and (Draft) North Subregional Strategy

The proposed development would be consistent with the *Metropolitan Plan for Sydney 2031* by providing additional recreational facilities to be used by the population of the locality.

2. STATUTORY CONTROLS

Pursuant to Sections 4.55(2) and (3) of the *Environmental Planning and Assessment Act 1979*:

(2) **Other modifications**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if -

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application in accordance with -*

- (i) *the regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

As noted in section 4.55(2), the Council must ensure that:

.... it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all),

Development application No.1566/2014 was for:

Proposed Operation B Multi-purpose Courts

North Epping Bowling Club has advised that the major user of the multi-purpose courts will be the North Epping Rangers Sports Club (NER). NER has a large existing soccer and netball team membership and expects to expand their activities to include promotional games at the Boundary Road venue, in particular futsal.

NER's planned use of the Boundary Road courts are as follows:

Winter Sport (March to September)

Netball training - Monday to Friday from 4.00 pm to 8.30 pm. A maximum of 20 players per hour.

Summer Sport (November to February)

Futsal soccer competition or summer netball competition B Monday to Thursday from 6.00 pm to 9.00 pm. A maximum of 30 players per hour.

School Holidays

Tennis B three (3) days per week plus 2 days for tennis clinic. 20 players per session.

North Epping Public School Friday Afternoons (April to September)

School netball games till 3.00 pm. A maximum of 30 players (children) over two (2) hours.

All Saints Church Friday Evenings

Once every three (3) months between 6.00 pm to 8.00 pm. A maximum of 20 players up to the

age of 15 years for two (2) hours.

The development application was assessed on the basis of the above description of the proposed development and was approved generally in accordance with that description of the proposed development. This is reflected in Condition 50 of the consent.

With regard to whether ... *the consent as modified relates is substantially the same development as the development for which consent was originally granted* ... the SEE submitted with the modification application states:

The proposed modification will result in a development that is "substantially the same" as that which was consented to. The modifications sought to the approved hours of use will not substantially alter the approved development. The proposed development is substantially the same as the approved development for the following reasons:

- *The development remains the same to the use consented to under DA/1566/2014 namely a "Multi-purpose court facility adjoining the North-Epping Bowling Club and carpark upgrade".*
- *The proposed modifications to the current approved hours will improve the overall functioning of the site and will better reflect the nature of the operations following the establishment of the use on the site.*
- *The overall layout and configuration of the development will not be demonstrably changed.*
- *The external appearance of the development will remain essentially unchanged.*

The modified Condition 50 provided by the applicant deals with both the hours of operation of the approved development and the number of players who can use the facility at any one time.

In light of the nature of the proposed modification, it is considered that the modified consent would be substantially the same as that which was originally approved and the Council can be satisfied that section 4.55(2) of the Environmental Planning and Assessment Act 1979 is satisfied to the point where the proposed modification can be approved.

Clause 4.55(3) states:

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

Section 4.15(1) requires Council to consider any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and other prescribed matters.

2.1 Hornsby Local Environmental Plan 2013

The *Hornsby Local Environmental Plan 2013 (HLEP)* was gazetted on 27 September 2013.

The site is zoned RE1 Public Recreation under the *HLEP*.

The approved development is classified as a "*recreation area*" and "*car park*" which are defined in the *HLEP* as:

recreation area means a place used for outdoor recreation that is normally open to the public, and includes:

- (a) a children's playground, or
- (b) an area used for community sporting activities, or
- (c) a public park, reserve or garden or the like,

and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).

car park means a building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access thereto, whether operated for gain or not.

Clause 2.3(2) of the HLEP states:

- (2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the RE1 Public Recreation zone are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect and maintain areas of bushland that have ecological value.

The development, as modified, would be consistent with the objectives of the RE1 Public Recreation zone.

Clause 5.1 of the HLEP deals with the acquisition of land and states:

- (1) The objective of this clause is to identify, for the purposes of section 27 of the Act, the authority of the State that will be the relevant authority to acquire land reserved for certain public purposes if the land is required to be acquired under Division 3 of Part 2 of the Land Acquisition (Just Terms Compensation) Act 1991 (**the owner-initiated acquisition provisions**).

Note. If the landholder will suffer hardship if there is any delay in the land being acquired by the relevant authority, section 23 of the Land Acquisition (Just Terms Compensation) Act 1991 requires the authority to acquire the land.

- (2) The authority of the State that will be the relevant authority to acquire land, if the land is required to be acquired under the owner-initiated acquisition provisions, is the authority of the State specified below in relation to the land shown on the Land Reservation Acquisition Map (or, if an authority of the State is not specified in relation to land required to be so acquired, the authority designated or determined under those provisions).

The Land Reservation Acquisition Map of the HLEP shows that part of the site is to be acquired for Local Open Space, that land being Lots 1034 and 1073, DP 752053 which is that part of the site which contains the existing North Epping Bowling Club building and the land to the west of the Bowling Club which is land upon which the approved recreation area is located.

Clause 5.1A of the *HLEP* states:

5.1A Development on land intended to be acquired for public purposes

- (1) *The objective of this clause is to limit development on certain land intended to be acquired for a public purpose.*
- (2) *This clause applies to land shown on the Land Reservation Acquisition Map and specified in Column 1 of the Table to this clause and that has not been acquired by the relevant authority of the State specified for the land in clause 5.1.*
- (3) *Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that Table.*

With regard to the subject land detailed above for acquisition, the only land use listed in Column 2 is "recreation areas". As such, the development, as modified, remains permissible.

2.2 State Environmental Planning Policy No.55 - Remediation of Land

Clause 7 of *State Environmental Planning Policy No.55 - Remediation of Land* (SEPP 55) requires Council to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land.

Should the land be contaminated, Council must be satisfied that the land is suitable in a contaminated state for the proposed use. If the land requires remediation to be undertaken to make the land suitable for the proposed use, Council must be satisfied that the land would be remediated before the land is used for that purpose.

Development application No.1566/2014 was assessed against the requirements of SEPP 55 with the conclusion that it would be unlikely that the site is contaminated.

2.3 Hornsby Development Control Plan 2013

The proposed modification has been assessed having regard to the relevant performance criteria and prescriptive design standards within *Hornsby Development Control Plan 2013* (DCP 2013).

Transport and Parking

GTK Consulting has prepared a Traffic and Car Parking Assessment which accompanies the modification application.

Council's Traffic and Road Safety Branch has undertaken an assessment of the modification application and states:

Traffic Branch has reviewed the new documents provided and recommends the DA be approved with the following conditions:

Operational Conditions:

1. *The operation of the facility is monitored by Council and all traffic related issues will be reported to Hornsby Local Traffic Committee.*
2. *The 20-metre long "No Parking, 3PM-9PM Monday to Friday" be modified to 'No Parking' without a time limit on it, subject to approval of Hornsby Local Traffic Committee.*

3. ENVIRONMENTAL IMPACTS

Section 4.15(b) of the Act requires Council to consider *"the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality"*.

3.1 Natural Environment

The modified development would not impact the natural environment.

3.2 Built Environment

There would be no impact to the built environment as a result of the modified development.

3.3 Social Impacts

There would be no social impact as a result of the modified development.

3.4 Economic Impacts

There would be no economic impacts resulting from the modified development.

3.5 Acoustic Impact

The majority of the objections to both the original development application and to this application to modify the consent relate to noise generated by the development and the increase in acoustic impact which might arise from the development as modified.

The applicant has provided an acoustic impact assessment as part of the modified development documents.

Council has engaged an Independent Acoustic Consultant to assess the proposed modification. In this regard, the independent acoustic consultant states:

The original Acoustic assessment in 2014 presented two operating scenarios with respect to the 40 dB(A) noise target.

Table 12 identified:

- *Scenario 1 was with the bowling greens in use (100 people on the greens and 30 people on the multipurpose courts)*
- *Scenario 3 was no bowling greens in use (30 people on the multipurpose courts)*

The acoustic assessment did not include noise from the tennis courts.

Tables 13 & 14 identified exceedances for locations R1 and R2. This resulted in noise controls being required.

Table 15 identified under scenario 1 locations R5 and R6 were at the 40 dB(A) limit.

Table 16 identified under scenario 2 locations R5 and R6 were under the limit by 1 dB(A).

Locations R5 and R6 are along the SE boundary of the club site, with R6 being the closest residence to the multipurpose court.

Therefore an increase in the number of people on the multipurpose courts can only occur when the bowling greens are not in use (re Table 16 of the DA acoustic report).

The subsequent email from SLR identifies that the increase in numbers for the multipurpose court relates to table 16, i.e. can only occur when the bowling greens are not in use.

Section 2.4.1 of the DA acoustic report refers to hours of operation of the bowling club.

Ascertaining the use of the bowling greens is difficult.

Assuming the acoustic assessment of 100 people on the greens relates to organised competition and not practice or small groups then the following times are assumed:

- *Men's bowls Wednesday and Saturday midday to 5pm.*
- *Men's bowls Sunday mornings*
- *Ladies bowls Tuesday 8.30am to 1pm*
- *School children Friday mornings in November /December*
- *Bowling Carnival days (weekdays 8.30am - 5pm (5 days a year)*

Condition 50 provided times of use for the multipurpose courts as per scenario 2

For the hours sought there are times when there is an overlap with the use of the bowling greens (from the DA acoustic report).

For the increase in numbers there would need to be a qualification that the increase to 36 players cannot coincide with the use of designated bowling green operations (that give rise to 80 people). This is the 1dB correction nominated by SLR for the increase.

The revised Management Plan in section 10 (a) has addressed the potential breach of the noise limit by providing two scenarios for the maximum number of people.

- (a) *The maximum number of players per hour will be:*
- i) *30 players per hour, when the bowling greens are in use; or*
 - ii) *36 players per hour, when the bowling greens are not in use.*

This restriction should be incorporated into the consent.

Comment: The above reference to the number of players/persons on the court facilities is reflected in the proposed modification of Condition 50 of the consent and also in the revised Management Plan which accompanies the modification application.

The independent acoustic assessment continues:

Current condition 51

Noise

- a) *All noise generated by the proposed development must be attenuated to prevent levels of noise being emitted to adjacent premises which possess tonal, beating and similar characteristics or which exceeds background noise levels by more than 5dB(A).*

- b) *The use of the premise must be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the Protection of the Environment Operations Act 1997 to any affected receiver.*
- c) *No amplified music/announcements are permitted.*

Part (a) is poorly worded and to an acoustician is ambiguous. I suggest the following changes:

- a) *All noise generated by the proposed development when assessed as an Leq, 15 minutes at any affected point on or within any residential premises must not exceed 40 dB(A), Where such noise being emitted to adjacent premises possess tonal, beating or similar characteristics a correction factor of 5dB(A) shall be added to the measured level in accordance with the EPA's Noise Policy for Industry.*

The revised Management Plan in section 10 should have control (b) amended to reflect the above condition.

The revised Management Plan in section 10 permits amplified music and PA systems. If the requirements relates to the Club then that is a different consent. The application council is reviewing relates to the Multipurpose courts. Therefore under condition 51(c) there is to be no amplified music or announcements. Section 10 of the management plan needs to be amended with respect to noise controls (c) and (d).

Having regard to the above assessment by the Independent Acoustic Consultant, there are changes which need to be made to both Condition 51 of the consent and the 24 November 2020 revised Management Plan to ensure that the acoustic impact assessment has been satisfactorily addressed. It is recommended that Condition 51(a) be deleted and replaced with the following Condition 51(a) and that the Management Plan be modified accordingly:

- a) *All noise generated by the proposed development when assessed as an Leq, 15 minutes at any affected point on or within any residential premises must not exceed 40 dB(A), Where such noise being emitted to adjacent premises possess tonal, beating or similar characteristics a correction factor of 5dB(A) shall be added to the measured level in accordance with the EPA's Noise Policy for Industry.*

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider *"the suitability of the site for the development"*.

4.1 Site Selection

The site is zoned RE1 Public Recreation. The proposed modification to the consent would have no impact on the suitable of the site for the development as modified.

5. PUBLIC PARTICIPATION

Section 4.15(1)(d) of the Act requires Council to consider *"any submissions made in accordance with this Act"*.

5.1 Community Consultation

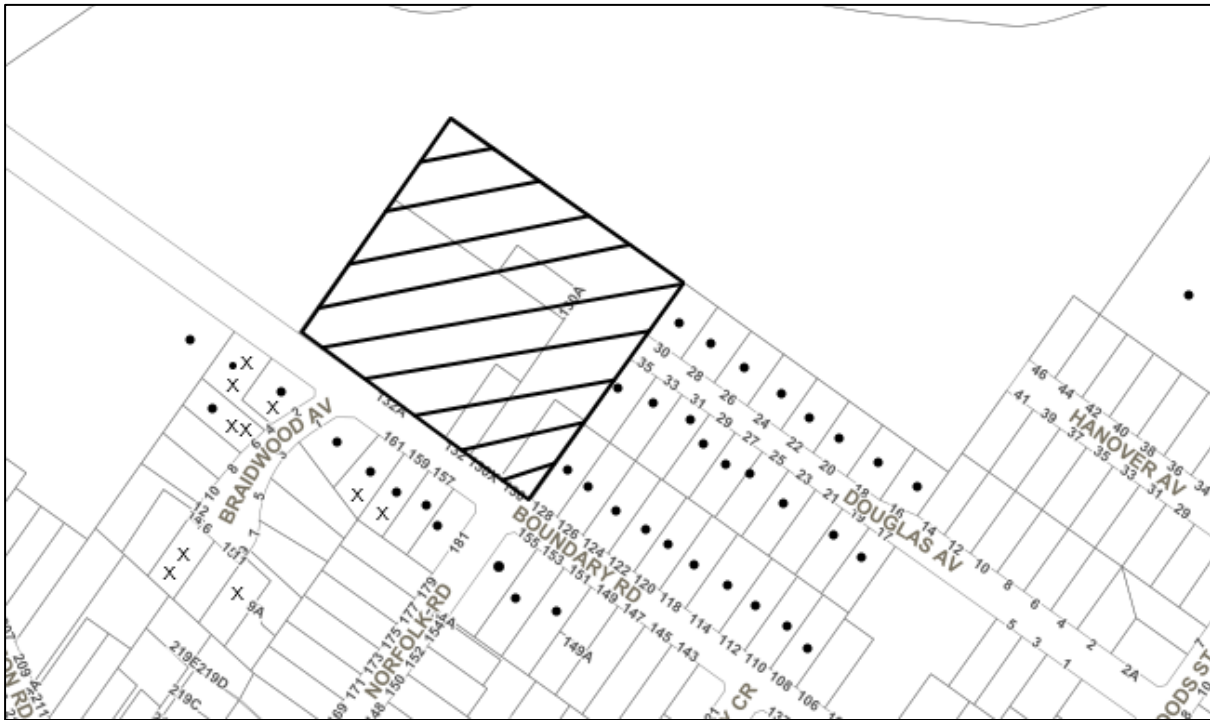
The modification application was placed on public exhibition and notified to adjoining and nearby landowners in accordance with the notification requirements of Council.

During this period, Council received twelve (12) submissions including:

- 10 objections

- 2 letters of support

The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED		PROPERTY SUBJECT OF DEVELOPMENT	
2 SUBMISSIONS RECEIVED OUT OF MAP RANGE				

The submissions objecting to the proposed modification generally relate to use of the site for a variety of uses, all of which have the potential to impact the acoustic privacy of existing residents.

Comment: The issue of acoustic privacy has been assessed in the acoustic impact assessment of the Independent Acoustic Consultant as discussed above.

6. PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider "the public interest".

The public interest is an overarching requirement, which includes the consideration of matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

As detailed in the body of this assessment, the development, as modified, would be substantially the same as that which was originally approved. As such, it is considered that the development, as proposed to be modified, is in the public interest.

7. CONCLUSION

The modified application seeks to modify Condition 50 of development consent No. DA/1566/2014.

The modification application deals with both the hours of operation of the approved development and the maximum number of players permitted to use the facility.

In light of the nature of the proposed modifications, it is considered that the modified consent would be substantially the same as that which was originally approved, and the Council can be satisfied that Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* is satisfied to the point where the proposed modification can be approved.

It is recommended that the Council approve the modification application with the additional modification to Condition 51(a) as recommended by the Independent Acoustic Consultant.