

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSEC-6
<b>DA Number</b>	DA-2019/286
<b>LGA</b>	BAYSIDE
<b>Proposed Development</b>	Demolition of existing building and two bowling greens and erection of a two storey registered club, with associated car parking and refurbishment of bowling green.
<b>Street Address</b>	72 Laycock Street, Bexley North, NSW 2207
<b>Applicant/ Owner</b>	Order of AHEPA NSW Incorporated/ Bayside Council
<b>Date of DA Lodgement</b>	14 August 2019
<b>Number of Submissions</b>	Thirty eight (38) submission to initial notification/seventy seven (77) submissions to second notification
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	Council is the owner of the land and the cost of the proposal is \$7,437,436
<b>List of all relevant s4.15C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Environmental Planning &amp; Assessment Act 1979, Part 4 – Development Assessment &amp; Schedule 7 of the SEPP- State and Regional Development 2011 which regional panels may be authorised to exercise consent authority functions of councils</li> <li>• Environmental Planning &amp; Assessment Regulation 2000, Part 6 – Procedures relating to Development Applications</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</li> <li>• Rockdale Local Environmental Plan 2011</li> <li>• Rockdale Development Control Plan 2011</li> </ul>
<b>List all documents submitted with this report for the panel's consideration</b>	<ul style="list-style-type: none"> <li>• Architectural plans – Katris Architects Pty Ltd</li> <li>• Statement of Environmental Effects – Planning Ingenuity</li> <li>• Landscape Plans – Site Design + Studios</li> <li>• Updated Traffic Impact Assessment - PDC</li> <li>• Noise Impact Assessment (Acoustic Report) – Rodney Stevens Acoustics</li> <li>• Plan of Management - Planning Ingenuity</li> <li>• Arboricultural Impact Assessment – Tree and Landscape Consultants</li> <li>• Existing Use Rights submission document by applicant</li> </ul>
<b>Clause 4.6 Request</b>	No
<b>Summary of Key Submissions</b>	<ul style="list-style-type: none"> <li>• Unacceptable increase in intensity of use/change from daytime to night-time use</li> <li>• Inadequate parking provision/loss of on-street parking for residents</li> <li>• Excessive hours of use</li> <li>• Noise impact from patrons/loading/garbage</li> </ul>

	<ul style="list-style-type: none"> <li>• Shadow impact upon 70 Laycock Street</li> <li>• Privacy impact upon 70 Laycock Street</li> <li>• Inappropriate in the zone</li> <li>• Existing Use Rights abandoned</li> <li>• Inappropriate bulk and scale/out of character with the streetscape/inappropriate materials and design for residential area</li> <li>• Functions use is inappropriate in residential area</li> </ul>
<b>Report prepared by</b>	Kerry Gordon - Town Planning Consultant
<b>Report Date</b>	29 July 2020

#### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

#### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (\$7.24)? **No**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

#### Conditions

Have draft conditions been provided to the applicant for comment? **No**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## RECOMMENDATION

In view of the assessment contained within this report, it is RECOMMENDED that the Sydney Eastern City Planning Panel (SECPP), exercising its function on behalf of Council as the consent authority, resolve to:

Refuse Development Application No. 2019/286 for the demolition of the existing building and two bowling greens and erection of a two storey club, with associated car parking and refurbishment of the bowling green at 72 Laycock Street, Bexley North for the following reasons:

1. The application should be refused as the intensity of the proposed functions use is such that the use is considered to be a separate use from a club use and not an ancillary use. As function centres are a prohibited use in the RE1 Public Recreation zone under the provisions of Rockdale Local Environmental Plan 2011 and the site does not have existing use rights for a function centre, part of the proposal is prohibited development.
2. The application should be refused as the operation of a function centre on the site is inconsistent with the objectives of the RE1 Public Recreation zone under the provisions of Rockdale Local Environmental Plan 2011 as it is not a compatible land use.
3. The application should be refused as the number of patrons and hours of use proposed represent an unacceptable intensification of the existing club use of the site and would result in an unacceptable impact upon the residential amenity of the surrounding area.
4. The application should be refused as it would have an unacceptable impact upon the streetscape of Laycock Street and Oliver Street due to the bulk and scale of the proposed building and the large concrete slab proposed over the car park.
5. The application should be refused as it proposes excessively long hours of use which are likely to result in unacceptable acoustic impacts upon the residential amenity of the area.
6. The application should be refused as the design of the development has not included appropriate noise mitigation measures to internalise noise from parking, loading and garbage storage and collection, resulting in the likely unacceptable acoustic impact upon the residential amenity of the area.
7. The application should be refused as it is not supported by an appropriate traffic and parking assessment that addresses the proposed use of the site as a function centre and the provision of parking on the site is inadequate for a function centre use as proposed. Further, the traffic and parking assessment does not address sustainable transport options for the development.
8. The application should be refused as the loading area is located in an external position adjoining a residential property and requires trucks to either enter or exit in a reverse direction from a residential street, resulting in unacceptable noise and safety impacts upon the residential area.
9. The application should be refused as the site is flood prone and the application is not accompanied by an appropriate flood study showing the design of the building and basement parking is appropriate having regard to the Flood Planning Levels of the site.

10. The application should be refused as the length, height and location of the building in proximity to the adjoining residential property results in an unacceptable and unnecessary loss of solar access.
11. The application should be refused as the design of the building makes inadequate provision for the privacy of the adjoining dwelling, with the first floor kitchen window allowing overlooking of the adjoining residential property.
12. The application should be refused as the stormwater plans do not address water sensitive urban design criteria and contain inconsistencies with the landscape plan, providing a detention tank in the landscaped setback.
13. The application should be refused as the design makes inadequate provision for staff facilities.
14. The application should be refused as the site is not suitable for the proposed intensity of use and hours of use of the club and is not a suitable location for a function centre use.
15. The application should be refused as it is not in the public interest to approve the operation of a function centre or a club with extended hours of operation within a residential area.

## **EXECUTIVE SUMMARY**

Council received Development Application No. 2019/286 on 14 August 2019 for the demolition of the existing building and two bowling greens and erection of a two storey club, with associated car parking and refurbishment of the bowling green at 72 Laycock Street, Bexley North.

The Development Application is required to be referred to the Sydney Eastern City Planning Panel (SECPP) pursuant to Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011 as the Capital Investment Value of the proposal is greater than \$5,000,000 and the property is owned by Council.

The Development Application was advertised for a period of fourteen (14) days attracting 38 submissions. Amended plans were advertised for a period of fourteen (14) days attracting a further 77 submission. Concerns raised in the submissions included height, bulk and scale, intensity of use for functions, hour of operation, lack of parking, traffic generation, loss of privacy and overshadowing.

The key issues in the assessment of the development application include permissibility of the use, in particular the functions hire component, and existing use rights, hours of operation, design of the development, car parking provision, flooding, impact on surrounding properties and suitability of the site.

The application is considered to, in part, be for a prohibited use of function centre and as such this component cannot be approved, it not being considered to be ancillary to the proposed club use due to its frequency, size and intensity of use.

Notwithstanding this, the proposed hours of use of the proposed club use is not considered to be acceptable within a residential area due to the potential for detrimental impacts upon the residential amenity of the area. Further, the design of the development is not considered to be compatible with the character of the area and will result in unacceptable impacts upon adjoining residential properties by way of shadowing, noise and unacceptable impacts upon the streetscape of the area.



Therefore, the application cannot be supported in its current form and is recommended for refusal.

## **SITE DESCRIPTION**

The site comprises 11 allotments and is located at the south-eastern corner of the intersection of Laycock Street and Edwards Street and also has frontage to Oliver Street, Bexley North. The site is irregular in shape and has an area of 7,231.6m<sup>2</sup>, with frontages of 77.1m to Laycock Street, 85.3m to Edward Street and 92.4m to Oliver Street. The site is bound to the south by two residential properties, with 70 Laycock Street containing a two storey dwelling house and 69 Oliver Street containing a one storey dwelling house.



**Subject site (outlined in red) identified on an aerial photograph**



**Existing club building viewed from Laycock St looking south-east**



The southern boundary is a staggered boundary such that the subject site has a boundary with the northern and eastern boundary of 70 Laycock Street. The site is currently occupied by a part one/two storey bowling club building (to the north of the adjoining dwelling at 70 Laycock Street) and three bowling greens (immediately to the north of the dwelling at 69 Oliver Street and fronting Edwards Street). Opposite the site in Edwards Street is a park and surrounding the site to the west, south and north are one and two storey detached dwelling houses.



**Existing club building (to left) and adjoining dwelling at 70 Laycock St viewed from Laycock St**



**Proposed location of loading bay and relationship with windows of 70 Laycock Street**





**Club building and trees in the rear yard of 70 Laycock St viewed from Oliver St**



**Dwelling at 69 Oliver Street immediately adjoining the proposed “basement” car park.**

The site is zoned RE1 Public Recreation and is surrounded by land zoned R2 Low Density Residential, other than the park opposite in Edwards Street which has the same zoning as the subject site. The site has no FSR or height control, but is surrounded by land with a FSR control of 0.5:1 and a height control of 8.5m. The site is partially designated as being in a Flood Planning Area.

## **BACKGROUND**

### Site History

The following is a summary of the history of use and approvals for the site and supporting information provided by the applicant.

The existing club appears to have been approved between 1948 and 1951, though there is no record of its approval.

- |          |   |
|----------|---|
| 14/1/47  | Council meeting minutes indicate the site was purchased and the formation of a club was “practically finalised” for the purpose of a municipal bowling green. Plaques from the club building suggest the club was planned by the then Bexley Municipal Council. |
| 14/5/48  | Bexley Bowling and Recreation Club Ltd was incorporated on 14 May 1948.   |
| 15/5/48  | Council meeting minutes note a desire to construct a bowling green and brick building comprising a residential flat and club room, with a permit having been granted but the building not having been built as yet.   |
| 27/10/51 | Bexley Bowling and Recreation Club was officially opened.   |
| 23/5/55  | Bexley Bowling and Recreation Club obtained a Club Liquor Licence.  |
| 22/8/63  | Approval granted for alterations and additions to the Club building, in relation to the kitchen, office, assembly room, bathroom and large assembly room.   |
| 25/7/17  | Council minutes refer to a resolution of Council on 2/12/15 to tender to community groups for proposed uses of the subject site.  |
| 25/7/17  | Bexley Bowling and Recreation Club’s Club Liquor Licence was cancelled.   |
| 17/1/18  | Bexley Bowling and Recreation Club Ltd was de-registered.   |

#### Development Application History

- |             |   |
|-------------|---|
| 5/7/19      | Pre-DA minutes issued. Concerns raised with: <ul style="list-style-type: none"><li>• Inadequate setback of building from Laycock Street,</li><li>• Visual bulk impact upon adjoining property at 70 Laycock Street.</li><li>• Overshadowing impact upon 70 Laycock Street,</li><li>• Proximity of loading bay to dwelling at 70 Laycock Street,</li><li>• Excessive provision of parking,</li><li>• Compatibility with objectives of zone,</li><li>• Need for contamination report,</li><li>• Requirement to provide information about second stage of proposal,</li><li>• Need for a Plan of Management,</li><li>• Need to address flood prone nature of site,</li><li>• Need for additional soft landscaping and canopy trees given zoning of site, and</li><li>• Need for an arborist report to address trees on and off site.</li></ul> |
| 14/8/19     | Development Application was lodged with Council.  |
| 29/8-5/9/19 | Development Application was placed on public notification. Thirty eight (38) submissions were received.   |
| 23/9/19     | Sydney Eastern City Region Planning Panel briefing  |



- 27/9/19 A letter was sent to the applicant suggesting withdrawal of the application due to concerns with the proposal and information provided. In particular concerns were raised:
- that existing use rights (which the application was seeking to rely upon) had not been established,
  - the information about the proposed use was unclear,
  - the design was not appropriate in the context of the streetscape given the lack of setback,
  - shadow, visual bulk and noise impact upon 70 Laycock Street,
  - location of loading bay adjoining dwelling at 70 Laycock Street,
  - inadequate landscaping to boundaries with residential properties,
  - accessibility of greens and parking area,
  - use and design of roof top of “basement” car park,
  - hours of use,
  - intensification of use,
  - function centre use,
  - lack of information about future stage and provision of parking for that stage,
  - adequacy of acoustic report,
  - adequacy of Phase 1 contamination assessment,
  - adequacy of Plan of Management,
  - design of stormwater plans,
  - amount of car parking proposed,
  - need to address flooding, and
  - food premises fitout information required.
- 2/10/19 Matter considered by Bayside Traffic Development Advisory Committee
- 23/10/19 Meeting with application to discuss concerns with application and lack of evidence provided to establish existing use rights.
- 20/11/19 Applicant provided additional information to support claim of existing use rights.
- 7/4/20 Applicant submits amended plans and additional information.
- 27/4-11/5/20 Amended application notified. Seventy seven (77) submissions received.

## **DESCRIPTION OF PROPOSED DEVELOPMENT**

The amended application submitted by the applicant seeks approval for demolition of the existing club house and two bowling greens and the erection of a two storey club, with associated car parking and the refurbishment and partial relocation northward of the remaining bowling green. The application is described in detail as follows.

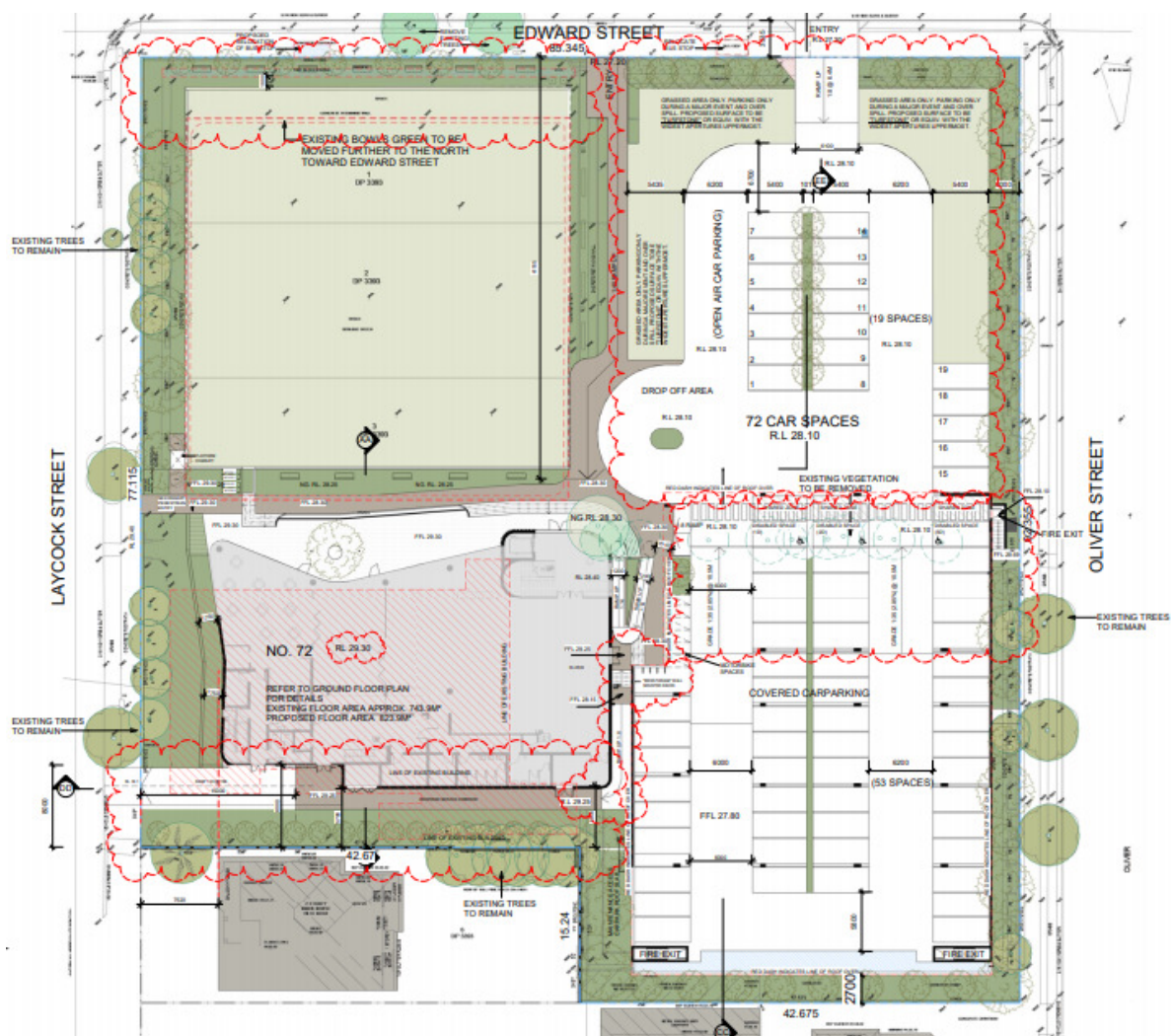
The proposed building is to be constructed in a similar location as the existing building on the site, adjoining the dwelling at 70 Laycock Street. The building is to be of two storey construction, with part basement cellar. The building is to have a front setback at ground level from Laycock Street varying between 6.6m and 7.6m and a setback from the common boundary with 70 Laycock Street of between 5.7m and 8m. The side setback increases to 6.7m for the rear third of the first floor and the front setback of the first floor is increased at both corners of the building.



**Montage of streetscape presentation as viewed from the north-west in Laycock Street**

The building is designed to have its primary outlook towards the retained bowling green on the corner of Laycock Street and Edward Street.

On the eastern half of the site it is proposed to construct a car park to contain 72 car and 6 motor cycle parking spaces at RL 28.10, with overflow capacity for an additional 23 cars. The parking area is proposed to be accessed by a driveway from Edward Street.

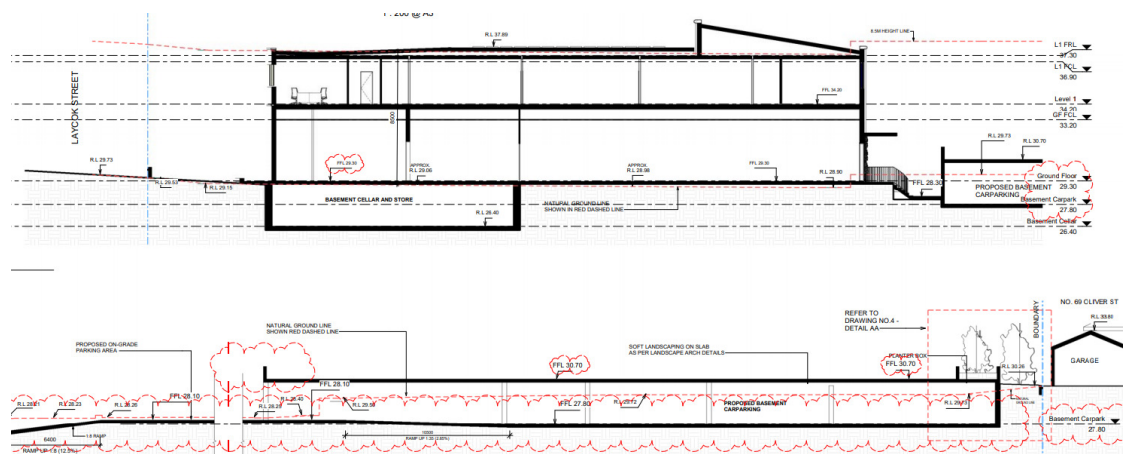


**Site plan showing layout of parking and location of bowling green and club building**



Of the 72 parking spaces, 19 are proposed at the northern portion of the car park in a landscaped setting, with a significant area proposed adjoining the access aisles to be treated with “turfstone” and to be used as overflow parking during major events. The northern portion of the site also contains a circular drop-off area located adjoining the bowling green and club building.

The remaining 53 parking spaces are proposed in what is referred to on the plans as a “basement” parking area, to be constructed sloping down to RL 27.8. The basement parking area is to be covered by a concrete slab roof constructed at RL 30.7, with a floor to floor height of 2.6m – 2.9m. The “basement” will be roughly 1.6m below the existing ground level of the bowling green and the concrete slab will be approximately 1.0m above the existing ground level of the bowling green.



#### Section detail of proposed “basement” car park

The “basement” car park is to have a landscaped setback from Oliver Street of 3m and from the common boundary with 69 Oliver Street of 2.7m. The sections of the car park show what appears to be an 800mm high balustrade around the roof of the car park. A planter box is shown on the roof of the “basement” car park at the southern end between the fire egress stairs.

The cellar of the building is to be located at the south-west corner of the building and is to have dimensions of 15.4m x 10.9m.

The ground floor of the club building is to contain:

- at the western side, facilities that appear to be for use in conjunction with the single bowling green to be retained, including change rooms, an accessible WC/shower, small kitchenette, small tea and coffee bar and seating area (102.5m<sup>2</sup>),
- at the eastern side, a community facility and function area for weddings, baptisms, birthday functions and cultural events such as lectures and overseas and local entertainment (300m<sup>2</sup>), with ancillary commercial kitchen, cool room, accessible WC, male and female WCs, green room and stage. The main entry foyer is located at the north-eastern corner.
- centrally, a bowling club seating area of 75m<sup>2</sup> is proposed, which is also to be used in conjunction with the community facility and function area for larger functions.

The three areas are separated by operable folding doors, allowing them to be used separately or all together. To the north of the three areas is a large outdoor seating area (157.7m<sup>2</sup>).

The first floor of the club building is to contain:

- at the western side, a large president's office, administration office and boardroom, accessible WC, locker room and cleaner's WC and shower,
- at the eastern side, a library, male and female WCs, AV room, prep room and small office.
- centrally, three rooms are proposed of 72m<sup>2</sup>, 75m<sup>2</sup> and 72m<sup>2</sup>. A kitchen, stage, green room and storage area are provided to the south of the three rooms and a 56m<sup>2</sup> balcony is proposed to the north of the three rooms.

The three rooms are separated by retractable panel walls, allowing the space to be used as a single large space.

### Use of Premises

The Plan of Management indicates the proposed building is to be used in the following manner:

- Internal and external spaces of the club premises will be utilised as a recreational facility and community facility.
- The westernmost bowling club seating area is to be used only on an ancillary basis to the bowling greens, however Area B is intended to be used to increase the capacity for functions and special events.
- The ground floor Club Community area is to be used by AHEPA for gatherings, community meetings and events and the general public for special events and functions. It will be the primary area for larger functions.
- The first floor multi-purpose areas will be used by AHEPA for educational, cultural and community uses. It will be also be available for community, cultural and educational gatherings and by the general public for special events and functions.

### Regular Operating Capacity and Hours

This does not apply to special events and functions

Monday to Sunday 9am-6pm

Bowling Green	20 persons
Ground Floor Bowling Seating Areas A & B	115 persons
Ground Floor Club Community Area	0 persons
First Floor Administration	30 persons
First Floor Multi-purpose	35 persons
<b>Total</b>	<b>200 persons</b>

Sunday to Thursday 6pm -11pm

Bowling Green	0 persons
Ground Floor Bowling Seating Areas A & B	115 persons
Ground Floor Club Community Area	0 persons
First Floor Administration	30 persons
First Floor Multi-purpose	80 persons
<b>Total</b>	<b>225 persons</b>



Friday to Saturday 6pm -1am

Bowling Green	0 persons
Ground Floor Bowling Seating Areas A & B	115 persons
Ground Floor Club Community Area	0 persons
First Floor Administration	0 persons
First Floor Multi-purpose	125 persons
<b>Total</b>	<b>240 persons</b>

#### Functions and Special Events Operating Capacity and Hours

The Plan of Management indicates these will predominantly operate on Friday, Saturday and Sunday, but will allow use other days as stipulated by the POM.

The POM indicates the bowling green and ancillary internal space will provide additional services for Australia Day, ANZAC Day, Melbourne Cup and Local Race Days. The bowling green will also be used for special competitive events on selected days. The bowling green and ancillary internal space will also provide for minor functions including birthdays and similar events.

The ground floor club community area will be hired out for weddings, birthdays, baptisms, ceremonies and the like on Fridays, Saturdays and Sundays.

The first floor multi-purpose area will cater for larger community meetings, cultural and educational events run by AHEPA and to the public for community, institution and business groups for meetings and professional development. This area will also be available for general hire of an evening.

Additional special events to be held on the premises include a Christmas Party for up to 300 persons between 7pm and 11pm on the ground floor, A Greek National Day party for up to 280 persons in the afternoon, Easter Sunday event for up to 445 persons during the day and New Years Eve event for up to 445 persons until 1am.

The POM indicates 2 security personnel will be onsite during special events and functions.

The POM indicates the functions and special events will be able to operate during the evening during the following hours and with the following capacities:

Sunday to Thursday 6pm-11pm  
Friday and Saturday 6pm-1am

Bowling Green	20 persons
Ground Floor Bowling Seating Areas A & B	115 persons
Ground Floor Club Community Area	280 persons
First Floor Administration	30 persons
First Floor Multi-purpose	185 persons
<b>Total</b>	<b>445 persons*</b>

\* **Note this assumes ground floor club community area and first floor multi-purpose area are not used simultaneously**

During night hours the maximum capacity will be 425 (ie excluding the 20 persons using the bowling green). The POM indicates the ground floor club community facility and function area will not be used concurrently with the first floor multi-purpose area.

The POM indicates the functions and special events will be “under the management” of the AHEPA Organisation but that the Committee Members will not be present during the Friday, Saturday or Sunday night events.

As such, during special events and functions of an evening, the operational capacity of the premises will be 330 if the first floor rooms are being used or 425 if the ground floor room is being used.

The premises is intended to be open every day of the year, with the exception of Good Friday.

## **PLANNING CONSIDERATION**

The proposed development has been assessed under the provisions of the Environmental and Planning Assessment Act, 1979. The matters below are those requiring consideration in the assessment of the application.

### **Section 4.15(1) Matters for Consideration – General**

#### **Provisions of Environmental Planning Instruments (S.4.15(1)(a)(i))**

The following Environmental Planning Instruments are relevant to this application:

##### *State Environmental Planning Policy No.55 - Contaminated Land (SEPP 55)*

The subject site has a history of use as a bowling club and as such has the potential for soil contaminants. A Preliminary Site Investigation has been prepared for the site by WITT Consulting, dated September 2019. The report indicated that soil samples were collected from 4 locations and testing revealed all samples to have concentrations of chemical contaminants below the threshold values for all proposed land uses under NEPM 2013. The report concludes there is a very low risk that the soils at the site may contain unacceptable levels of chemical contaminants and the site is suitable for the proposed public recreational land use setting.

##### *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

The State Environmental Planning Policy (Vegetation in Non- Rural Areas) 2017 (Vegetation SEPP) (Vegetation SEPP) regulates the clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent and applies to the Sydney and Newcastle, metropolitan areas. The aims of the policy are (A) to protect the biodiversity values of trees and other vegetation in non-rules of the State and (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The vegetation SEPP repeals clause 5.9 and 5.9AA of the Standard Instrument – Principal Local Environmental Plan and substantially reproduces the effect of these clauses in the Vegetation SEPP. Council will continue to regulate the clearing of vegetation (including native vegetation below the BOS thresholds through the DCP).

The application was reviewed by Council’s Tree Preservation Officer as well as Landscape Architect who have requested appropriate conditions of consent relating to protection of trees and a preservation bond. All trees on the site have received approval from Council’s Tree Officer for their removal.



## **Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment**

The Greater Metropolitan Regional Environmental Plan No. 2 applies to all land within Rockdale City local government area and requires consideration of the impact of development upon water quality in the catchment. The proposal is not currently supported by Council's engineer in relation to stormwater disposal and flooding.

## **Rockdale Local Environmental Plan 2011 (RLEP 2011)**

The provisions of the Rockdale Local Environmental Plan (RLEP) 2011 have been considered in the assessment of the Development Application and the following information is provided:

<b>Principal Provisions of BBLEP 2013</b>	<b>Complies Yes/No</b>	<b>Comment</b>
Land use Zone	-	The site is zoned RE1 Public Recreation under the BBLEP 2013
Is the proposed use/works permitted with development consent?	No	The proposed use is identified by the application as club and the use is prohibited in the zone. The use is also considered to constitute a function centre which is also a prohibited use in the zone.
Does the proposed use/works meet the objectives of the zone?	No	<p>The proposed development is not consistent with the following objectives of the R1 zone:</p> <ul style="list-style-type: none"> <li><i>To enable land to be used for public open space or recreational purposes.</i></li> <li><i>To provide a range of recreational settings and activities and compatible land uses.</i></li> <li><i>To protect and enhance the natural environment for recreational purposes.</i></li> </ul> <p>The intensive use of the site for functions proposed is not consistent with enabling the land to be used for public open space or recreational purposes and is a land use which is not compatible with the zone or adjoining residential properties.</p>
What is the height of the building?	N/A	The site is not subject to a maximum height control.
What is the proposed FSR?	N/A	The site is not subject to a maximum FSR control.
<p>The following provisions in Part 6 of the LEP apply to the development:</p> <p>6.1 – Acid sulfate soils (ASS)</p>	Yes	The site is identified as being affected by Class 5 ASS. A geotechnical report has been prepared by WITT Consulting which indicates there is very low risk that the proposed development will have any adverse impact on adjacent Class 1 and 2 land as none are located within 500m of the site. Further, the report indicates there is an extremely low chance that the proposed development would lower the

Principal Provisions of BBLEP 2013	Complies Yes/No	Comment
6.2 – Earthworks	Yes	ground water table below 1m AHD in adjacent Class 1-4 land.  The proposal seeks to excavate for the “basement” car park. It is unlikely the development will disrupt or negatively impact the neighbouring properties or the groundwater given the limited depth of excavation. Any consent should include conditions requiring the preparation of a dilapidation report.
6.6 – Flood Planning	No	The site is flood affected as is shown by the diagram and table following which is an extract from the flood advice letter issued 17.4.19. The application has not addressed the flood affectation of the site. A 2D flood study is required to be provided for the development. All matters in the flood advice letter must be addressed, including provision of a flood risk management plan, FPLS adhered to, basement protection, economic analysis of flood losses and flood study. An enclosed carpark can't be supported below the flood level and the building may have to be designed with a suspended slab and void below. Based on the flood levels in the flood advice letter, the 1% AEP level where the building is proposed is RL29.36 and the finished floor level proposed is RL29.30. Further, where the “basement” parking is proposed the 1% AEP level is RL30.24 and the finished floor level is RL27.80.
6.7 – Stormwater management	No	Council's engineer has indicated that the proposed stormwater tank conflicts with planting and requires relocation. Further, the stormwater system needs to address the water quality requirements and water sensitive urban design requirements of Council. A kerb connection is not supported and the system will need to be connected to the underground system.
6.12 – Essential services	Yes	Services are generally available on the site. Conditions should be placed on any consent requiring consultation with relevant utility providers to ensure appropriate provision of services on the site.

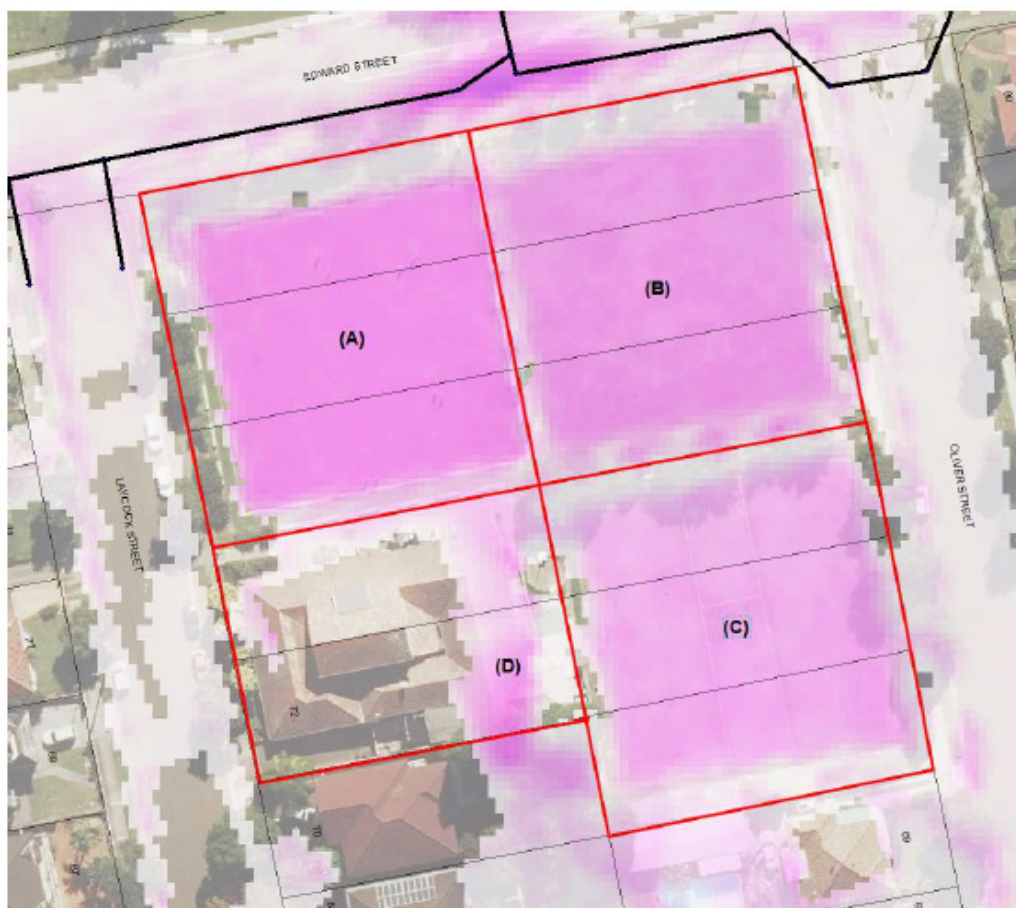


Figure 1: 1% AEP Flood extent map (dark pink indicates greater depth of water and pale pink graduating to white indicates shallower depth, black line indicates approximate location of the existing drainage network)

**FLOOD LEVELS** All levels are to Australian Height Datum (AHD)

Flood Event	Point A (m)	Point B (m)	Point C (m)	Point D (m)
PMF	28.54	28.50	30.26	29.59
0.5% AEP	28.38	28.40	30.24	29.36
1% AEP	28.37	28.39	30.24	29.36
5% AEP	28.35	28.38	30.24	29.34
10% AEP	28.35	28.38	30.24	29.33
20% AEP	28.35	28.38	30.24	29.33

**FLOOD RISK EXPOSURE**

The Flood Risk Exposure of the site has been assessed as

Overland Flooding: Flood Fringe and Flood Storage: Hazard: H1

**Provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (S.4.15(1)(a)(ii))**

Draft Bayside LEP has been exhibited and is a matter for consideration in the assessment of the application. The intent of the draft LEP is to combine the existing Rockdale and Botany Bay LEPs, whilst minimising changes to the applicable controls. The draft instrument does not seek to alter the controls applicable to the subject site as they relate to the application under assessment.



## Provisions of Development Control Plans (S.4.15(1)(a)(iii))

### *Development Control Plan 2011(DCP 2011)*

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below.

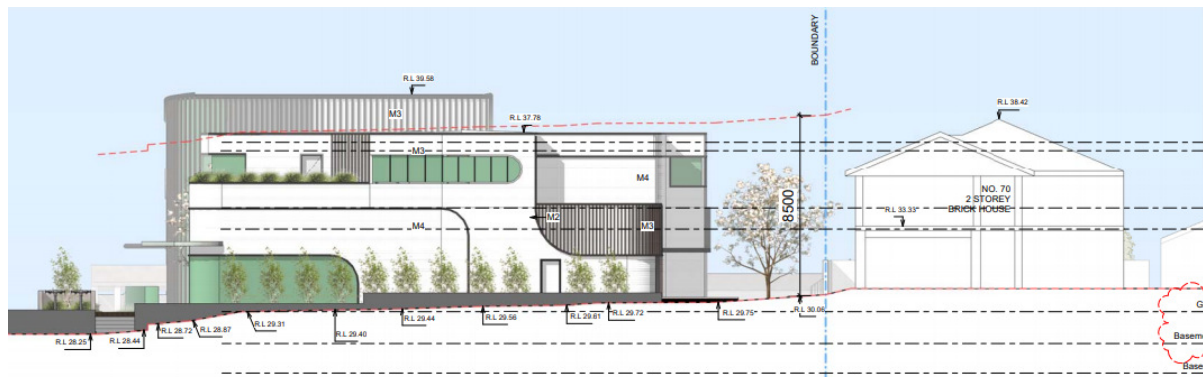
Relevant clauses	Compliance with objectives	Complies
4.1.1 Views and Vistas	The proposed building will have no detrimental impact upon views and vistas of significance	Yes
4.1.2 Heritage Conservation	The site is not a heritage item or located in a conservation area. The site is of sufficient distance to the nearest item of heritage such that it will not result in any adverse impact.	Yes
4.1.3 Water Management	The application has been assessed as being unacceptable in relation to water management by Council's Engineer	No
4.1.4 Soil Management	Soil and Water Management Plan submitted	Yes
4.1.5 Contaminated Land	See discussion in relation to SEPP 55	Yes
4.1.7 Tree Preservation	See discussion in relation to the Vegetation SEPP	Yes
4.2 Streetscape and Site Context	See following discussion	No
4.3.1 Open Space and Landscape Design	See following discussion	No
4.4.5 Visual and Acoustic Privacy	The design of the development will result in the loss of visual privacy to adjoining property from the first floor kitchen window.	No
4.4.6 Noise Impact	See following discussion	No
4.5.2 Equitable Access	See following discussion	Yes
4.6 Parking, Access and Movement	The parking and loading provision and access thereto have been addressed by Council's engineer as unsatisfactory. See following discussion.	No
4.7 Waste Storage and Recycling Facilities	See discussion below	No

### 4.2 Streetscape and Site Context

The relevant controls require development to respond and sensitively relate to the broader urban context, with development adjoining land use zone boundaries to provide a transition in form. The building design is to use materials, roof pitch and architectural features and styles having regard to those of surrounding buildings to ensure a cohesive streetscape and setbacks from streets are to be consistent with the prevailing setback.

The proposed building has been amended to increase the front setback from Laycock Street and provides a setback that is generally consistent with prevailing setbacks in the street. The design of the building in relation to materials, roof pitch and architectural features and style does not relate to surrounding development, nor does the footprint of the building, which is significantly larger than surrounding building which are in a low density residential zone.

Whilst there are no height controls under the LEP, the height of the building at the street frontage is commensurate with that of the adjoining building, albeit the bulk and scale is not. The proposed building presents an active design to part of the street frontage and allows for casual surveillance.



**Façade of proposed building facing Laycock Street and relationship with adjoining dwelling**



**Montage of proposed building viewed from Laycock Street**

The scale of the building appears to be driven by the proposed use for large functions catering for up to 425 persons onsite at one time. Were the function component of the use reduced in scale, the building could also be reduced in scale and would be more in keeping with the character of the area.

The car parking component of the development occupies half the site and is proposed partially in the form of at grade parking and partially in the form of a “basement”. It is noted, however, that the “basement” parking is not a true basement as it is not under a building. As such, this component of the development will consist of a partially excavated single level of parking with a concrete roof. The roof will have dimensions of approximately 46m x 31-34m. The roofing of the car park appears to have been proposed in anticipation of a potential future stage of development on the concrete slab however no information is available at this stage in relation to such future use.

It is not considered necessary or appropriate to provide a roof to the car park. The roofing of the structure is inappropriate in the streetscape and prevents the provision of trees throughout the car park which would visually soften the extensive area of hard surfacing and be more in keeping with the objectives of the zone. Further, the basement cannot be supported given its design and the flood prone nature of the site.

#### 4.3 Open Space and Landscape Design

The relevant controls require significant trees and natural features to be retained, the amount of hard surfaces to be minimised to reduce run-off and landscaping to relate to the scale of the building to help integrate it into the street character.

The site contains no significant trees or natural features.

The amount of hard surfaces on the site appears to be excessive, particularly given the Public Open Space zoning, and no attempt appears to have been made to minimise the hard surfacing. It is noted that club buildings of the scale proposed are usually provided with basement parking under the building, which would not only reduce the noise to surrounding properties, but would also reduce the hard surfaces proposed on the site. Such an approach would be more appropriate for the proposed development, particularly given the residential development surrounding the site, the non-permissible nature of the use in the zone and the intensity of the use proposed late at night.

The proposed landscaping of the site consists of a bowling green (1,391m<sup>2</sup>) and perimeter planting (1,397.8m<sup>2</sup>), totalling 2,788.8m<sup>2</sup>, equating to approximately 38.6% of the site area. The proposed perimeter planting includes retention of four existing Cyprus along the Laycock Street frontage which have poor form and are not considered appropriate for retention by Council's Landscape Architect. Further, the Landscape Architect indicated the northern parking area should be paved with permeable pavers and the quantity of medium-large canopy tree planting within the setbacks needs to be increased.

#### 4.4.6 Noise Impact

The relevant controls require non-residential development to not adversely affect the amenity of adjacent residential development as a result of noise, hours of operation and/or service deliveries.

The application is accompanied by an Acoustic Report prepared by Rodney Stevens Acoustics. The acoustic report describes the proposed use as a community club which will operate between the hours of 9am and 11pm Sunday to Thursday and 9am and 1am Friday and Saturday, with a maximum capacity of 445 patrons. The report also indicates that the capacity of 445 patrons "is only envisaged to occur on a few occasions (particularly during special events, etc)", whereas the regular capacity of the venue is considered to be closed to a maximum of 240 patrons, with a maximum of 225 from 6pm to 11pm on Sundays to Thursdays and 240 people from 6pm to 1am Friday and Saturday. The report identifies three special events as a Christmas Party, Greek National Day and Greek National Day Oxi Day, the latter two of which would occur during the afternoon and finish at 6pm. However, the report indicates the "worst case scenario" of 445 people has been used in the assessment.

The report has determined that the daytime (7am – 12am) operation of the premises with live music will comply with the noise assessment criteria if patron numbers are kept below 400 people, but will potentially exceed if above 400 people.

The report has determined that the night-time (12am-7am) operation of the premises with live music will exceed the noise assessment criteria when the venue is at capacity.

Assessment of noise from the car park use is based on doors slamming, engines starting and cars driving away with a maximum of 30 cars entering or leaving in a 15 minute span, or two per minute. It is noted there is no mention of noise from patrons leaving such as loud discussions/goodbyes and the like or of more than 30 cars leaving or entering within 15 minutes, which are likely, especially when the site is used for functions. In fact, other than the three special events, the assessment does not address functions at all.

Notwithstanding this, the report indicates there is an exceedance of the noise criteria by 1dB(A), but indicates that is not considered acoustically significant. It is also not indicated if the noise from the car park use has been added to the operational noise of the venue and the combined impact assessed.



Assessment of the noise from delivery vehicles is based on trucks and vans making deliveries on most days of the week and includes the reverse alarm based on a maximum of 1 truck and 1 van entering or leaving the bay in 15 minutes. The assessment determines that the noise criteria would be exceeded during night time periods.

Assessment of garbage collection vehicles is based on 1 truck entering or leaving the loading bay in 15 minutes. The assessment does not appear to consider 1 truck entering and leaving in a 15 minute period, which is considered likely to occur. It is also not clear whether the assessment has considered the noise from collection of glass or glass being placed in the storage area, which is likely to be a significant occurrence given the proposed club and function uses. Notwithstanding this, the report indicates there is an exceedance of the noise criteria by 1dB(A), but indicates that is not considered acoustically significant.

The recommendation of the report indicates noise emissions *“have the potential to comply with the required criteria when the venue is at capacity with the implementation of the following recommendations”*

- All external doors have self-closing mechanisms,
- All external windows and doors are closed at 10pm,
- External windows and doors are to be closed when all internal spaces are at capacity,
- Outdoor area to be closed at 10pm,
- All patrons advised to leave club in orderly and quiet manner with staff guiding patrons at the end of special events,
- Patrons must not congregate outside the club or in the carpark,
- Signs must be placed in the carpark advising patrons to not cause unnecessary noise when leaving the club,
- A noise limiter is to be installed on all speaker systems to ensure live music does not exceed 95dB(A),
- No live music after midnight,
- Mechanical plant not required 24 hours a day to be turned off when the venue is closed,
- Deliveries to occur during the day after 8am,
- All truck and van drivers to be instructed to minimise reversing time, and
- Trucks and vans should have “squawking” reverse alarms if possible.

Whilst the assessment carried out in the acoustic report is not criticised, it is not considered to reflect the nature of the proposed use. The assessment is based on 3 special events a year and a community club use.

It does not consider the use as a function centre catering for weddings, birthdays, etc and does not consider that such events could occur up until 1am every Friday and Saturday and up to 11pm every Sunday. It does also not consider that such events could also happen up until 11pm any other day. It does not consider that such events are characterised by significant numbers of people coming and going at the same time (ie more than 30 cars in a 15 minute period) and it does not consider that the events would not be run by the club, but rather would be only “under the management of AHEPA”, with no board members onsite for such event. Finally, it does not consider that the bowling green and attached internal space could also be hired out for birthdays and the like.

In conclusion, the suitability of the site from a noise emissions viewpoint only has *“the potential to comply with the required criteria”* if 13 recommended noise mitigation measures are adhered to, and if, according to the report, the venue does not exceed 400 people or have music after midnight.

Ten of the 13 noise mitigation measures involve management of events or patrons and the report appears to assume this is likely, presumably given the report is based on a community club use and only three large special events.

Given the potential for functions to be held at least three nights a week, which are not run by AHEPA, but rather utilising personnel, such as DJs, live bands, security staff and delivery drivers who will not be familiar with the 10 noise mitigation measures requiring management of events or patrons, it is considered unlikely that the function use can operate without significant detrimental impact to the acoustic amenity of the surrounding residential area. In this regard, it is particularly unlikely that weddings or birthday parties that are permitted to occur up until 1am are going to stop playing live music at 12am. It is also extremely unlikely that patrons from such an event are going to leave the venue at 1am in a quiet and orderly manner.

For these reasons, the use of the premises for large functions that are to operate until 11am Sunday to Thursday and until 1am on Friday and Saturday nights is not one that is appropriate given the location of the site within a residential area.

The location of the loading dock and garbage store adjoining the boundary with 70 Laycock Street is poor design, particularly given the size of the site and the fact the site is completely being redeveloped. Further, the provision of a loading dock that requires the truck to reverse into it is also inappropriate, particularly adjoining a residential property. Finally, the lack of internal connection between the bar and kitchen to the garbage store externalises the noise impact from disposing garbage, which is unacceptable, particularly in relation to the disposal of glass.

Notwithstanding this, it may potentially be appropriate to permit the community and bowling club use up until 10pm, extending to 11pm on Friday and Saturday, potentially with additional extended hours on New Years Eve, as the extensive list of management mitigation measures necessary to ensure appropriate noise levels are more likely to succeed for such uses where patrons do not all arrive and leave at the beginning and end of a particular event. However, such a use would not require such a large building as that proposed. The use of the site for large scale and regular functions unrelated to the club use is considered inappropriate for the site given its location in a residential area and the poor design choices which do not seek to physically mitigate noise impacts.

#### 4.5.2 Equitable Access

The provisions of the DCP and the Disability Discrimination Act are considered in this section of the report. Lift access is provided from the ground to first floor of the club building and an accessible ramp is provided from the three accessible parking spaces. An accessible path of travel is provided from Edward Street to the entrance of the building and a platform lift is provided from the ground level terrace to the bowling green. Adequate accessible parking spaces are provided in close proximity to the lift in the basement. The club provides an accessible WC. An accessible path of travel is available from the street and throughout the RSL Club, including the external terraces. The building contains an accessible WC and shower associated with the bowling club component and a separate accessible WC on each level of the building.

An Access Report was submitted with the application prepared by Ergon Consulting. The report addressed the originally lodged plans and concluded that the plans either comply or are capable of complying with Part D3, Clause E3.6, Clause F2.4 and Clause F2.9 of the Building Code of Australia 2019, Disability (Access to Premises – Building) Standards 2010, relevant Australian Standards as applicable to this project (i.e. AS1428.1-2009, AS1428.4.1-

2009, AS2890.6-2009, AS1735.12-1999), Bayside Council Rockdale DCP 2011 Part 4.5 and general best practice access requirements.

#### 4.6 Car Parking, Access and Movement

Concern is raised by Council's engineer in relation to the adequacy of the traffic report as it doesn't appropriately address the proposed uses or operational hours of the uses. Rather, it refers to the "community facilities area" and "multi-purpose indoor/outdoor area" which is not acceptable for the purpose of determining parking demand. The splitting of uses into different daytime and evening operations in the Statement of Environmental effects is not reflected in the traffic report's assessment. No consideration has been given to the overlapping of uses on the site to determine peak parking demand.

Council's engineer has advised that without this information the true parking demand for the use cannot be determined. However, based on RTA guidelines, 26.4 spaces per 100m<sup>2</sup> of gross floor area is required for a club which would equal 152 spaces for a club with a gross floor area of 575m<sup>2</sup>, a bowling green requires 30 spaces and assuming the "community facility/multi-purpose facility is a function centre then 1 space per 40m<sup>2</sup> for a community facility may not be supportable.

Council's engineer has indicated the development has not addressed sustainable transport requirements and would need to consider:

- Provision of a Green Travel Plan and Transport Access Guide prepared by a suitably qualified traffic engineer.
- Incorporating a shuttle bus service to service nearby train stations and the site to improve the connectivity.
- Provision of bicycle and motorcycle parking spaces at a rate of least 1 space per 150m<sup>2</sup> GFA.
- Provide priority parking for people who car pool.
- Consideration for the provision for electric vehicle charging spaces.

Council's engineer has indicated a reversing movement from the loading bay is not ideal and the swept paths for the loading bay are not supported.

Finally, the development requires the relocation of the bus stop and the engineer has requested information in relation to TfNSW's and/or the bus operator's support of the relocation.

#### 4.7 Waste Storage and Recycling

Concern is raised with the location of the waste storage room in relation to noise and odour impacts upon the adjoining property. Concern is also raised that there is no direct access to the storage area from the premises, again raising concerns with noise in relation to waste handling, especially the handling of glass bottles.

### **Bayside Council Plan of Management for Community Land and Public Open Space**

The site is identified as community land under the Bayside Council Plan of Management for Community Land and Public Open Space 2016 (BPOM). Within BPOM the site is categorised as sportsground (northwest bowling green) and general community use.



Part 11.5 of BPOM identifies permitted uses for areas of general community use and for the subject site identifies permitted uses as being those “*aligning with zoning and existing use applicable to the site*”, with scale and intensity of use to be “*subject to applicable zoning and subject to development consent*”.

The suitability of the uses proposed in relation to existing use rights is addressed elsewhere in this report, as is the scale and intensity of the proposal. Given the intensity of the proposed functions use, it is not considered to be ancillary to the existing use rights applicable to a club, but rather a separate use which is prohibited on the site. Accordingly, the functions use is not permitted under the BPOM.

**Any Planning Agreement that has been entered into under section 93F, or any draft planning agreement that the developer has offered to enter into under section 93F (S.4.15(1)(a)(iiia))**

The proposal is not subject to a Voluntary Planning Agreement (VPA).

**Provisions of Regulations (S.4.15(1)(a)(iv))**

All relevant provisions of the Regulations have been considered in the assessment of this proposal and the application is satisfactory in relation to the Regulations.

**Impact of the Development (S.4.15(1)(b))**

Potential impacts related to the proposal have been considered in response to SEPP, LEP and DCP controls. Further issues have been discussed in response to resident's submissions and the existing use rights provisions of the Act later in this report.

It is considered that the likely impacts of the functions use proposed will be unacceptable, resulting in unreasonable disturbance of the acoustic environment of the surrounding low density residential area given the proposed hours of use and intensity of the use. The bulk and scale of the proposed building is excessive for the stated maximum number of users and is unacceptable in relation to its presentation within the streetscape and the character of the area. It is further considered that the extensive size of the concrete slab over the “basement” carpark is inappropriate to the location.

Concerns are raised not only at the size and hours of operation of the function use component of the proposed use, but also the ability of management to ensure such use does not have a significant detrimental impact upon the amenity of the residential area. This is particularly the case for casual hire for weddings, 21<sup>st</sup> and general celebrations as there is no incentive for the attendees of such events to behave in a manner which will protect the amenity of neighbouring properties and the ability of management to contain such impact is not evident from the Plan of Management.

**Suitability of the Site (S.4.15(1)(c))**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. It is considered that the proposed functions use of the premises and the proposed hours of use are not appropriate for the site which is surrounded by a low density residential area. It is also considered that the bulk and scale of the building and the design of the parking is not suitable for the site given the character of the area.

## **Public Submissions (S.4.15(1)(d))**

The development application was notified in accordance with the provisions of Rockdale DCP 2011, with the initial notification attracting thirty eight (38) submissions (including multiple submissions from the one property). After receipt of the amended plans, the application was notified again and attracted seventy seven (77) (some of which are pro forma letters) submissions (note where more than one submission is received from the same person only one has been counted), including from persons identifying themselves as members of the Order of AHEPA NSW Inc. The submissions also included some letters in support of the proposal. The issues raised in both sets of submissions are discussed below:

- Increase in intensity of use/change from daytime to night-time use

Comment: It is agreed that the proposal significantly intensifies the use of the premises and seeks to utilise the site significantly more during the evening.

- Inadequate parking provision/loss of on-street parking for residents

Comment: Council's engineer has indicated there are concerns in relation to the amount of parking given the functions proposed at the premises and the intention to hire out the space for events unrelated to the club use of the premises.

- Excessive hours of use

Comment: It is agreed that the proposed hours of use are excessive and inappropriate for a site surrounded by a low density residential area.

- Acoustic impact

Comment: It is agreed that the acoustic impact from the excessive hours of use and location of the loading area and garbage store and in particular the proposed use for functions late at night are highly likely to result in an unacceptable impact upon the acoustic amenity of the area.

- Loss of privacy from use of "basement" roof

Comment: It is not considered that the proposal will result in a loss of visual privacy to adjoining properties, it being noted the use of the "basement" rooftop for special events has now been removed from the proposal.

- Inappropriate in the zone

Comment: It is considered that the use represents an unacceptable intensification of the existing use of a club and that the proposed intensity of use of the function component constitutes a separate use and does not fall under the definition of a club. It is considered that the hours of use proposed are excessive and therefore the proposal is not appropriate to the site.

- EUR abandoned

Comment: As has been discussed in the existing use rights section of this report, it is considered that there is sufficient evidence that Council did not have an intention to abandon the existing use rights of the site and as such they have not been abandoned.

- Traffic impact

Comment: The application has been assessed by Council's engineer who has not raised a concern with the amount of traffic generated by the use.

- Inappropriate bulk and scale/out of character with the streetscape

Comment: The bulk and scale of the development is not consistent with the character of the streetscape, however the front setback is appropriate.

- Historic building to be lost

Comment: The existing building is not listed as an item of heritage.

- Shadow impact

Comment: The proposed building is a high two storey structure, that extends past the rear yard of the dwelling at 70 Laycock Street and accordingly reduces the solar access to that property. The amended design increases the side setback of the building from the common boundary with 70 Laycock Street, reducing its shadow impact. A series of tall pine trees exist along much of the common boundary with the subject site on 72 Laycock Street which result in much of the yard being in shadow (though some sunlight penetrates through the lower portion of the trees as can be seen in the following photograph).



**Trees along northern boundary of 70 Laycock Street showing sparse low canopy allowing filtered sunlight and tree in centre of yard (to left)**

According to the applicant's shadow diagrams, currently the rear yard of 70 Laycock Street receives solar access to a reasonably sized (30m<sup>2</sup>-46.3m<sup>2</sup>) triangular portion of the south-east rear corner of the yard between 9am and 10.30am, reducing to a smaller area by 11am. The solar access to this area is not impacted by the proposal, with impacts on solar access occurring after 11am.



However, the shadow diagrams do not take into consideration the large tree (seen in the above photograph) located at the centre of the rear portion of the garden which also results in shadowing of this area.

Between 12.30pm and 2pm an area of yard close to the rear of the dwelling currently receives solar access. The proposed building reduces solar access to this area by between approximately one third to one half. According to the applicant's calculations the solar access to this portion of the yard is reduced from an area of 22.2m<sup>2</sup> to 13.1m<sup>2</sup> at 12pm, from 38.8m<sup>2</sup> to 23.5m<sup>2</sup> at 1pm, from 38.8m<sup>2</sup> to 20.5m<sup>2</sup> at 2pm and from 40.5m<sup>2</sup> to 0m<sup>2</sup> at 3pm.

The shadow diagrams indicate the living areas of the dwelling are located at the north-eastern corner of the building with the family room on the ground floor and the living room (with an east facing balcony) located on the first floor. The applicant's shadow diagrams show the northern window to the first floor living room retaining solar access between 9am and 3pm at midwinter and the east facing living room doors and balcony retaining solar access between 9am and 11am, however the elevation shadows do not consider shadowing from the pine trees which are likely to overshadow the east elevation in the morning. Notwithstanding this, the solar access to this room and balcony is not likely to be significantly impacted by the proposal.

The shadow diagrams indicate the ground floor family room only has an east facing opening, which is likely to progressively lose the existing solar access between 9am and 11am, it being noted it does not enjoy solar access at midwinter beyond 11am.

- Impact upon trees

Comment: The proposed building has been relocated further from the trees on 72 Laycock Street and is not likely to detrimentally impact them. The site contains no significant trees.

- Risk to children in area due to trucks reversing

Comment: The reversing of trucks onto the site does introduce risk to pedestrians that could be eliminated with a better design and location of loading facilities given the size of the site.

- Loss of sporting facilities

Comment: The proposal will result in the loss of two bowling greens, however the greens currently appear to be unused as the club has closed.

- Inadequate public transport provided for use

Comment: The site is located some distance from public transport other than buses with limited service and it is likely the users of the site will largely travel by car.

- Inadequate information in relation to Stage 2

Comment: The initial application referred to a Stage 2 community hall development but this has now been removed from the application. No detail was given in relation to Stage 2 other than in the traffic assessment report. Any such development would need to be the subject of a separate development application.

- Unacceptable impact upon the amenity of a quiet residential area

Comment: For the reasons given in the report this concern is concurred with.

- Behaviour of intoxicated patrons

Comment: Given the proposed nature and timing of proposed functions, there is a concern that patrons leaving the venue will cause noise impacts to surrounding residential properties. Concerns related to damage to private property by intoxicated patrons cannot be ruled out given the functions proposed but could be mitigated by appropriate management of such events. However, given the events would be private events not related to the club and it is unclear who will be responsible for the management of such events, this concern cannot be discounted.

- Functions use is inappropriate in residential area

Comment: For the reasons given in the report this concern is concurred with.

- Inappropriate loss of public open space

Comment: This is a matter for Council.

- Concern regarding the fairness of the tendering process for the lease

Comment: This is a matter for Council.

- Inappropriate for Council to determine as it has an interest

Comment: The application is being assessed independently and determined by the Planning Panel.

- Inappropriate increase in hours as the bowling club shut at 7pm except on Fridays when it operated to midnight.

Comment: This concern is concurred with.

- Noise from functions on basement roof not addressed

Comment: The amended proposal has indicated the roof will now not be used.

- The development is twice the size indicated in the tender documentation.

Comment: This is a matter for Council.

- Question AHEPA's financial capacity and resources to be able to carry out such a large scale development.

Comment: This is not a matter for consideration in the assessment of the application. This is a matter for AHEPA to consider as the developer and Council as the landowner.

- Given concerns over the financial capacity of AHEPA to carry out the development it would be more appropriate to refurbish the existing building.

Comment: This is not a matter for consideration in the assessment of the application. This is a matter for AHEPA to consider as the developer and Council as the landowner.

- AHEPA would need to sell properties it owns to fund the development on a site it does not own.

Comment: This is a matter for AHEPA.

- The architecture and materials are severe and oppressive for a residential area.

Comment: The architectural style of the building is different from that characteristic in the area and the bulk and scale is larger than that typical in the area.

- The design does not provide a WC or shower in the green room on the ground floor making access to facilities for performers inadequate.

Comment: This is a not a planning matter but it would appear to be appropriate that such facilities were provided in proximity to the green room.

- The access to the cellar through the commercial kitchen is inappropriate.

Comment: This is a matter for the operator of the venue but access through the kitchen is likely to disrupt food preparation.

- The design does not provide direct access to the waste store from the kitchen and bar which are the areas which would result in the greatest generation of waste.

Comment: This concern is a valid concern as external access to the waste from the bar and kitchen are likely to result in increased noise for the adjoining property at 70 Laycock Street.

- The library/museum is too small for the intended purpose and the president's office is larger than the boardroom.

Comment: These are matters for the developer, however it is noted that the president's office is very large at approximately 26.7m<sup>2</sup> and is significantly larger than the staff dining area, which is only approximately 8.8m<sup>2</sup> and is attached to and has to share the commercial kitchen for the first floor. Notwithstanding the size of the president's office, the staff facilities appear to be inadequate.

- The parking assessment has been carried out in relation to a club use but the proposal is for a community cultural space and as such the traffic report does not appear to address the proposed use.

Comment: Refer to Council engineer's comments, concern is raised as to the proposed level of parking and the assessment of the traffic report related to the proposed uses.

- The AHEPA organisation has a large number of members in the older age group with additional mobility needs and there is insufficient accessible parking for the use.

Comment: This is a matter for the operator as provision of accessible parking beyond the statutory requirements cannot be conditioned.

- The development does not make provision for bus parking which is needed given the distance from the station.

Comment: Clubs generally provide a courtesy bus and no provision is made for the parking of such.



- The applicant has ignored the pre-DA advice and initial assessment letter from Council and has been given more than 14 days to provide the amended plans.

Comment: The applicant was granted additional time to address the concerns raised in the initial assessment letter. It is agreed that the amended proposal has not addressed all of the concerns raised in the pre-DA minutes and initial assessment letter.

- The development is likely to increase the risk of traffic accidents in the area.

Comment: No evidence has been provided to substantiate this concern and it has not been raised as a concern by Council's engineer.

- Inadequate information is provided in relation to Stage 2.

Comment: Initially the application indicated a Stage 2 development would occur on the site, however the amended information has clarified no approval is sought for a second stage.

- The scale of the development is more in line with a large commercial entertainment facility and should be located in a commercial/industrial zone rather than a residential area.

Comment: It is agreed that the scale and intensity of use of the development is inappropriate for a residential area.

- The development is not in the public interest.

Comment: It is agreed that it is not in the public interest to approve such a large scale development in a residential area given likely detrimental impacts upon the amenity of the area.

- The existing floor area of the club is 784m<sup>2</sup> and the proposed development increases this by almost 85%.

Comment: The proposed building is significantly larger than the existing club building however the above figures are not confirmed.

- The development will adversely impact the values of properties in the area.

Comment: This is not a matter for consideration in assessing the application.

- The applicants have no experience running a registered in club.

Comment: This is not a matter for matter for consideration in assessing the application.

- An underground car park is necessary to contain the noise from people coming and going from the premises.

Comment: It is agreed that a basement car park under the building with internal access to the building would provide for greater noise protection for adjoining properties.

- Not all eligible members of AHEPA were informed of the proposal

Comment: This is a matter for AHEPA and not a matter for consideration of the application.

- There is an appeal decision pending in the NSW Supreme Court and as such the application should have not been submitted. The Supreme Court judgement stated the Order of AHEPA NSW Inc is technically insolvent.

Comment: This is not a matter for consideration in assessing the application.

- The majority of AHEPA members have not supported the redevelopment, having only supported the refurbishment and use of the existing club building

Comment: This is not a matter for consideration in assessing the application.

- There are already 3 licenced venues within 1km so the development is not needed

Comment: This is not a matter for consideration in assessing the application.

- When the bowling club operated there was no impact upon residents until they started to hire out the premises for parties. This resulted in problems with noise and drunken and abusive behaviour, with police attending the premises on numerous occasions and the involvement of Liquor and Gaming NSW.

Comment: Noted. Whilst the operation of the previous use on the site is not a matter for consideration in assessing the application, concern is raised that the use of the premises in the past for functions may have occurred without approval and that a function use of the site of the intensity proposed is not likely to be permissible pursuant to the existing use rights of the premises as a club.

- The relocation of the bus stop 40m to the west will result in increased risk of accidents due to the reduced line of sight for vehicles exiting Laycock Street and raise safety risks to children and cyclists.

Comment: Council's engineer has not raised a concern in relation to this.

- The traffic report does not consider the operating hours of buses in the area, which cease in the early evening.

Comment: The availability of public transport late in the evening/early morning is relevant to the assessment of parking.

- The acoustic report indicates that a number of predicted noise levels are at the maximum or exceed the criteria.

Comment: This statement is agreed with.

- It would be more appropriate is reduced hours proposed if approved and any increase in hours in the future should be considered in the light of feedback from residents on the operation of the facility.

Comment: If the development were approved it is agreed that reduced hours of operation would be appropriate.

- The Plan of Management fails to adequately address measures to ensure patrons at event do not loiter in the area creating noise and other issues for residents.

Comment: This statement is agreed with.

- Overlooking of adjoining swimming pools, rear yards and properties.

Comment: The development includes a first floor kitchen window which will overlook the windows of the adjoining dwelling at 70 Laycock Street and if operable presents an opportunity for acoustic impacts. First floor windows in the eastern elevation are located sufficiently distant from adjoining properties and at an angle such that there is unlikely to be privacy impacts. It is noted, however, that the windows shown on the elevation do not correspond with the floor plans which don't show windows in the WCs.

- The entry to the car park is in close proximity to a roundabout.

Comment: Council's engineer has not raised concerns with the location of the driveway.

- The size of the building is excessive for the identified maximum 445 patrons and concern is raised that it will be used for more.

Comment: This statement is agreed with. It is unclear why function areas on the ground and first floor are both needed if only one will operate at a time. The removal of one of the two spaces would reduce the bulk and scale of the development.

- It is not clear from the traffic report if the driveway complies as it indicates that it "generally" complies.

Comment: Council's engineer has not raised concerns with the design of the driveway.

- On 5.3.2017 the applicant held a community day onsite without approval and the function exceeded 600 persons. Concern is raised the applicant will breach any consent issued.

Comment: Previous occasions of breaches by an applicant cannot be considered in the assessment of the application.

- Concern there is no overall master plan for the site.

Comment: Given the size of the development in a residential area by a party other than Council and the potential for a second stage, a master plan for the site would be appropriate.

- Provision of a side entrance off Laycock Street will lead to people parking in Laycock Street

Comment: It is not considered this is a significant concern as onsite parking is more convenient. However, if there is insufficient parking then on-street parking would result.

- Concern with construction noise, dust, etc.

Comment: These concerns can be appropriately addressed by conditions of consent.

- Concern with odour from garbage storage.

Comment: The proximity of the garbage storage area to the adjoining residential property is inappropriate.

- Breach of height control.

Comment: The site does not have a height control.



### **Public Interest (S.4.15(1)(e))**

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives and the controls. As demonstrated in the assessment of the development application, the proposal is considered to be inappropriate in relation to the proposed function use and hours of use for a site surrounded by a low density residential area. As such it is considered that approval of the development application is not in the public interest.

### **EXISTING USE RIGHTS**

As noted in the assessment of Section 4.15 of the Act, the proposed use identified by the applicant as a registered club is prohibited in the zone and the applicant seeks to rely upon existing use rights under the provisions of Section 4.65 of the Act. Under the provisions of the Act, existing use rights means:

- (a) *the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) *the use of a building, work or land:*
  - (i) *for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
  - (ii) *that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

For a use to constitute an existing use it has to be for a lawful purpose immediately before a new environmental planning instrument, which would prohibit the use, coming into force.

The applicant has not been able to document the original consent for the use but has provided evidence by way of Council minutes that the existing building was lawfully constructed and that lawful alterations and additions occurred to the building at a later date. Sufficient evidence is also provided that the building operated as a licenced bowling club from the early 1950's, being opened on 27/10/51 and obtaining a Club Liquor Licence on 23/5/55. The Bexley Bowling and Recreation Club's Liquor Licence was cancelled 25/7/17 and the Club was de-registered on 17/1/18.

It is considered that sufficient evidence was provided that the bowling club was lawfully commenced and continued until sometime in 2017. Sufficient evidence has also been provided that the use became a prohibited use and as such until it ceased being used the site benefitted from existing use rights.

In terms of whether the existing use rights have lapsed the applicant has provided evidence that Council, as the owner, did not intend the existing use rights to lapse and was making provision to find a lessor to occupy the site for a purpose, include one which had existing use rights. Based on the evidence provided it is considered that the existing use rights have not lapsed.

Clause 4.66 of the Act indicates that nothing in the Act prevents the continuance of an existing use.

Clause 4.67 permits the Regulations to make provisions for an existing use to be altered or extended or rebuilt, changed to another use or enlarged, expanded or intensified. Clause 4.67 also indicates that an environmental planning instrument cannot derogate or have the effect of derogating from the existing use rights provisions of the Act.

Part 5 of the Regulations addresses existing uses and Clause 41 permits any existing use to be enlarged, expanded or intensified, altered or extended or rebuilt. It does not permit an existing use to be changed to another prohibited use.

Clause 42 of the Regulation addresses intensification of existing uses and requires development consent for such intensification, permitting it only for the purpose of the existing use and requires it to be carried out only on the land on which the existing use was carried out immediately before the relevant date. The entire subject site is considered to benefit from the existing use rights.

The critical questions in relation to the operation of existing use rights for this application are what use has existing use rights, whether the proposed uses can be classified as the use having existing use rights and whether the proposed intensification is appropriate for the site in its residential context.

To determine what existing use rights apply it is required to look at the definition of the use at the time it became prohibited, not as suggested by the applicant, at the time it was originally approved. The existing use first became prohibited in 1972 under the Rockdale Planning Scheme Ordinance and was then defined as a club, which had the following definition.

*“Club” means a building used by persons associated, or by a body incorporated, for social, literary, political, sporting, athletic, or other lawful purposes, whether of the same or of a different kind, and whether or not the whole or part of such building is the premises is a club registered under the Registered Clubs Act, 1976.*

As such, existing use rights for a club apply to the site.

In relation to the proposed use, no concern is raised with the proposed use of the premises for bowling greens and a bowling club falling within the definition of registered club, being a direct continuation of the existing use. The use of the premises by AHEPA for their meetings, functions, educational, social and community operations as a licenced club is also considered to fall within the definition of club.

The areas of concern with the proposed use and its operation under existing use rights are the proposed car park and the intention to hire out a substantial portion of the floor space to the general public for private functions. In order for the car park to be permitted under existing use rights it would need to be classified as being ancillary to the purpose of a club as no parking existed with the approved use. Any parking used in association with the bowling or AHEPA use could be classified as being ancillary to a club use and could be permissible under existing use rights. Additional parking provided to cater for the use when hiring out part of the premises for functions would be ancillary to that use and therefore in order for it to have existing use rights, the functions use would need to be established as having existing use rights.

The Statement of Environmental Effects indicates that AHEPA will use these large facilities for approximately four special events held by AHEPA each year but will offer the facilities for private hire at least three days (Friday, Saturday and Sunday) each week of the year. It is also noted that the facilities will also be available for hire any other day of the week and that the hire can occur every day of the year except Good Friday.

The premises is intended to cater for up to 330 if the first floor rooms are being used or 425 if the ground floor room is being used and for such capacities to be possible Sunday to Thursday between 6pm and 11pm and on Friday and Saturday between 6pm and 1am.

The extent of use of the premises for private hire for which approval is sought is considered to be extensive, potentially involving use every day of the year except one and for extensive periods of time during each of those days. Such a use considered on its own would be defined as a function centre, as follows:

***function centre*** means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

It is considered that the intensity of use proposed for this purpose is such that it cannot be determined to be ancillary to the existing use rights of a club and as such is a separate use which is a prohibited use. In coming to this position consideration has been given to the floor space within the building taken up by the use, the numbers of patrons involved in the use, the intensity of hours proposed for the use and the potential continuous, rather than sporadic, operation of the use. As a separate use, function centres are a prohibited use and cannot be approved.

Notwithstanding whether the functions use is ancillary or a separate prohibited use, such a use with the number of patrons proposed, extensive operation hours and potential frequency of operation is inappropriate for the site given it is surrounded by residential properties. The use of the site for functions of this nature is highly likely to detrimentally impact the amenity of the neighbourhood by way of sleep disturbance due to the behaviour of patrons leaving the premises late at night and in the early hours of the morning.

The design of the proposal, with parking located external to the building, rather than in a basement with internal access from the building, would be likely to result in additional noise generation, rather than seeking to mitigate such noise levels for neighbours.

Further, the Plan of Management indicates functions would occur “under the management” of the AHEPA Organisation but that the Committee Members will not be present during the Friday, Saturday or Sunday night events. Such functions are likely to involve the use of security personnel, DJs or live bands and catering staff who are not employees of the club and are not familiar with the Plan of Management. Such personnel will not have a vested interest in ensuring the event does not impact the neighbours or that the various noise mitigation measures are enforced.

Further, the persons attending functions at the premises are not likely to be familiar with the facility and its sensitive location as would a member of the club who utilises the facility on a regular basis. It is again less likely that a patron of a function would have a vested interest in ensuring the neighbourhood amenity is not disturbed as a club member might.

Finally, the proposed hours of use of the premises are excessive for a residential area, offering an unacceptably small amount of respite for adjoining residents from the activities that occur at the premises. Such an intensity of use in terms of patron numbers and hours of use is more appropriate in a less sensitive location such as a business zone, and is not appropriate in a quiet residential area.

It is therefore considered that whilst the site enjoys existing use rights as a club, the proposed use constitutes two separate uses, being a club and a function centre and only the club use is permissible with consent as an existing use.

Further, notwithstanding permissibility, and if the characterisation of the function use as a separate use is not correct, the increased patronage and the proposed hours of use and the significant intensification of the function use will have unacceptable impacts upon the amenity of the residential area and represents an unacceptable intensification of the existing use and cannot be supported.

I note that were the size of the building reduced to better reflect the character of the area, the hours of use were reduced and the intensity of the functions use reduced such that it could be considered ancillary to the club use, the development may merit approval. However, notwithstanding the applicant has been advised the hours and intensity are of concern, no change has been proposed by the applicant in this regard and accordingly, refusal is recommended.

## OTHER MATTERS

The Development Application was referred to Council's internal and external departments for comment. The following table is a summary of the final comments provided in response to the referrals.

Referral Agency	Response Date	Comments
<b>External Referrals</b>		
Bayside Traffic Development Advisory Committee	4.9. 2019	<ol style="list-style-type: none"> <li>1. That the provided parking rates be revised by the applicant.</li> <li>2. That the existing bus stop on the southern side of Edward Street between Oliver Street and Laycock Street be relocated in coordination with Transport for NSW.</li> <li>3. That the existing island in Oliver Street south of Edward Street be upgraded to include a refuge island and associated ramps.</li> <li>4. That the existing island in Edward Street west of Oliver Street be upgraded to include a refuge island and associated ramps.</li> <li>5. That an extension to the existing island in Edward Street west of Oliver Street, fronting the proposed driveway in Edward Street, be extended to enforce a left in and left out restriction.</li> <li>6. That a new refuge island in Edward Street north of Laycock Street be constructed to include a refuge island and associated ramps.</li> </ol>
<b>Internal Referrals</b>		
Landscape Architect	11.9.2019	It has been recommended that additional medium-large canopy trees are required, the parking to the north should utilise permeable pavers and the Cypress to the Laycock Street frontage should be replaced.
	11.6.20	Stormwater plan inconsistent with landscape plan, providing detention tank in landscaped setback. Amendments required to the landscape plan.



Referral Agency	Response Date	Comments
Development Engineer	17.9.19	Inadequate information in relation to stormwater system and flooding. Suggested parking rate in traffic report not supported as it does not reflect proposed use.
	16.7.2020	Inadequate information has been provided in relation to flooding and the parking and traffic assessment does not adequately address the proposed uses. There are also concerns with the design of the stormwater disposal system.
Environmental Health	28.8.19	Insufficient information has been provided in relation to the proposed food business premises.
Environmental Scientist	26.9.19	Updated Preliminary site Investigation report required that includes soil testing. Additional information required regarding the proposed basement retention and groundwater cut off systems.
	12.6.20	No objections subject to recommended conditions.

## CONCLUSION

The proposed development has been considered under S4.15(1) and Division 4.11 of the Environmental Planning and Assessment Act, 1979. The application involves demolition of existing building and two bowling greens and erection of a two storey club, with associated car parking and refurbishment of bowling green at 72 Laycock Street, Bexley North.

The proposal is not considered to be an acceptable form of development for the site, involving a prohibited function centre use and seeking an unacceptable intensity of use and bulk and scale of design for the location of the site.

It is noted that were the size of the building reduced to better reflect the character of the area, the hours of use reduced and the intensity of the functions use reduced such that it could be considered ancillary to the club use, the development may merit approval. However, notwithstanding the applicant has been advised the hours and intensity are of concern, no change has been proposed by the applicant in this regard and accordingly, refusal is recommended.