

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0932
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 2 DP 851739, 146 Forest Way BELROSE NSW 2085
Proposed Development:	Belrose Bowling Club - Registered Club - Use of a portion of the site for outdoor seating and a children's playground
Zoning:	Warringah LEP2011 - Land zoned RE2 Private Recreation
Development Permissible:	Yes, under Existing Use Rights
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Belrose Bowling Club Ltd
Applicant:	Belrose Bowling Club Ltd

Application Lodged:	09/06/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	21/06/2022 to 05/07/2022
Advertised:	Not Advertised
Submissions Received:	39
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

This development application seeks consent for use of part of the site (Registered Club - Belrose Bowling Club) for outdoor seating and a children's playground.

The application is referred to the Development Determination Panel (DDP) due to the application receiving more than 5 objections to the proposal. The public exhibition of the application resulted in 39 submissions being received by Council, 6 in objection and 33 in support.

Concerns raised in the objections predominantly relate to noise and general impact upon amenity to neighbours.

Critical assessment issues included noise.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for use of an existing bowling green for the purpose of an outdoor seating area and childrens playground. The proposed playground and outdoor seating area will be ancillary to the existing **registered club** (Belrose Bowling Club).

The proposed operational details are as follows:

- Hours of Operation (Seating area)
 - Monday - Tuesday: 11:00am - 8:30pm
 - Wednesday - Sunday: 11:00am - 10:00pm
- Hours of Operation (Playground)
 - Monday - Sunday: 11:00am - 8:30pm
- Patrons
 - Seating area: 100
 - Playground: 15

No physical works are proposed under this application.

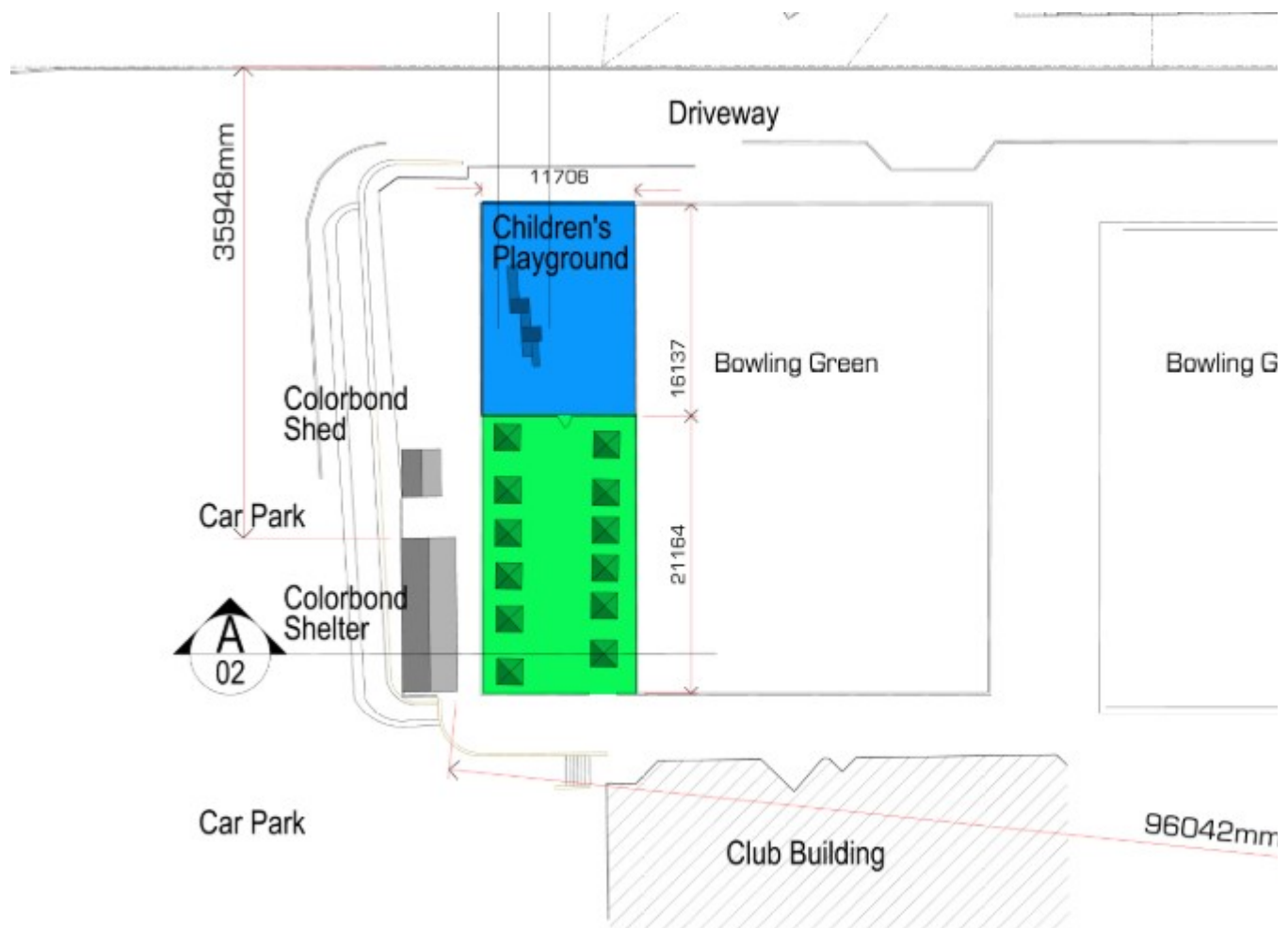


Image 1 - Proposed outdoor seating (green) and children's playground (blue).

The application seeks consent for the use only. While consent for works undertaken cannot be given retrospectively, the use and location of the outdoor seating and playground can be assessed.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone RE2 Private Recreation

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D23 Signs

SITE DESCRIPTION

Property Description:	Lot 2 DP 851739 , 146 Forest Way BELROSE NSW 2085
Detailed Site Description:	<p>The subject site consists of one (1) allotment located between Forest Way on its eastern boundary and Andove Street on its western boundary . The site is legally known as Lot 2 in DP 851739, No.146 Forest Way, Belrose.</p> <p>The site is irregular in shape with a frontage of 101m along Forest Way and a frontage of 10m on Andove Street and a depth of 223m on the northern boundary. The site has a surveyed area of 17,950m². An easement to drain water 3m wide is located on the north-western boundary of the site.</p> <p>The site is located within the RE2 Private Recreation zone under WLEP 2011 and accommodates three (3) bowling greens, a building used as a registered club and ancillary parking area located to the west of the bowling greens and club building.</p>

Surrounding development consists predominantly of detached residential dwellings. Adjacent the site's northern boundary is the Belrose Hotel.

The site has a gentle slope with a westerly aspect. Vegetation on the site is sparse, with no significant areas of native vegetation or landforms.

Map:



SITE HISTORY

EPA2022/0066

The site is currently under investigation for unauthorised use of the site. The assessment of the subject application is for the use of the outdoor area and playground only. Any authorised physical works is subject to a Building Information Certificate (BIC). The assessment of this BIC will need to be undertaken under a separate process.

MOD2016/0194 - Modification of Development Consent DA2015/0815 granted for Alterations and additions to a recreational facility outdoor and registered club. (Approved 8 March 2017)

DA2015/0815 - Alterations and additions to a recreational facility (outdoor) and registered club. (Approved 13 April 2016)

DA2006/1032 - Construction of a Smokers Terrace to Existing Bowling Club. (Approved 19 December 2006)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
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Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to noise (acoustic report).</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control</p>

Section 4.15 Matters for Consideration	Comments
	<p>Plan section in this report.</p> <p>(ii) Social Impact The proposed development will / will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will / will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered un/suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(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."*

This necessarily requires the following questions to be answered:

1. Was 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?

Comment:

Evidence has been provided in the form of historic consents, prior to the coming into force of Warringah

Local Environmental Plan 2011 on 9 December 2011. Development consent reference B212/57 and DA2003/1121 (Extensions to Existing Club Building (& Minor Demolition Work for Belrose Bowling Club) was approved on 7 July 2004. This provides evidence that confirms that the use of the site as a registered club commenced as a lawful purpose, prior to the coming into force of the Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

As noted above, the use of the land was lawfully approved as a registered club in 1957 with the more recent consent in 2004 and 2006 (DA2006/1032). All previous consents were approved under different LEPs, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011. It is noted that consent were also given for alterations to the club in both 2012 (DA2012/0848) and 2016 (DA2015/0815).

3. Has the use of the land 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?

Comment:

Evidence in the form of historic consent B212/57, DA2006/1032, DA2003/1121 which reveals that the use of the land was carried out before 2011. The use has therefore been carried out in accordance with the terms of the consent and there is no evidence to suggest that the various consents have lapsed.

- **What is “the land on which the existing use was carried out” for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed development is for the use only. No physical work are proposed.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The existing registered club building is not proposed to be demolished or altered.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

While there are no proposed works under this application, the approval of the outdoor area and playground will have an increased acoustic impact on neighbouring residential properties. Subject to condition in relation to operation the proposed intensification of the club is deemed to be reasonable.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

This principle is not considered relevant to the subject application.

Conclusion

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Warringah Local Environmental Plan 2011).

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/06/2022 to 05/07/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 39 submission/s from:

Name:	Address:
Samantha O'Connor	Address Unknown
John Gibb	247 / 207 Forest Way BELROSE NSW 2085
Mr Guy Dunbar Wentworth Ward	20 Morgan Road BELROSE NSW 2085
Luke O'Connor	Address Unknown
Mr Andrew William Little	237 / 2 Dawes Road BELROSE NSW 2085
Mr Janusz Stepien	6 Kokoda Crescent BEACON HILL NSW 2100
Mr Neville Thomas Cleary	22 / 2 Dawes Road BELROSE NSW 2085
Heidi Hughes	Address Unknown
Mrs Stephanie McLafferty	9 Wyatt Avenue BELROSE NSW 2085
Sunil Patel	22 Chiltern Road WILLOUGHBY NSW 2068
Mrs Janice Margaret Johnson	24 / 2 Dawes Road BELROSE NSW 2085
Mr Simon Albert Ashton	52 Dundilla Road FRENCHS FOREST NSW 2086
Mr Kim Anthony Jephcott	15 Londonderry Drive KILLARNEY HEIGHTS NSW 2087
Kim McDougall	34 Nandi Avenue FRENCHS FOREST NSW 2086
Mr Carl Robert Baker	40 Sir Thomas Mitchell Drive DAVIDSON NSW 2085
Mr Noel Lynton Martin	78 Haigh Avenue BELROSE NSW 2085
Kevin Michael Pryor	8 Beltana Avenue TERREY HILLS NSW 2084
Mr Glen Tawharu	1 Kentwell Road ALLAMBIE HEIGHTS NSW 2100
Mr Raymond Leslie Freeth	70 Consul Road North NARRAWEENA NSW 2099
Mr Philip Alan Hurditch	19 Willow Tree Crescent BELROSE NSW 2085
Gail Stewart	Address Unknown
Andrew Otes	2 High Valley Place BELROSE NSW 2085
Mr Eric John Galloway	5 Turella Close BELROSE NSW 2085
Mr Charles Whit Chapman	21 Willow Tree Crescent BELROSE NSW 2085
Mrs Melanie Dale Cleary	1031 Pittwater Road COLLAROY NSW 2097
Mr Daniel Grant Page Mrs Samantha Jane Page	12 Lowanna Street BELROSE NSW 2085
Lorena Otes	Address Unknown

Name:	Address:
Mr Timothy Francis Costello	13 Cambage Court DAVIDSON NSW 2085
Mr Mark Alexander Kerr	C/- Nolan Planning Consultants 75 Oliver Street FRESHWATER NSW 2096
Withheld	BELROSE NSW 2085
Withheld	BELROSE NSW 2085
Mr Alexandar John Greig	31 Knightsbridge Avenue BELROSE NSW 2085
Michael Laurance Gullick	20 C Charleroi Road BELROSE NSW 2085
Mr Matthew Ian Brown	13 Sorlie Road FRENCHS FOREST NSW 2086
Rachel Sian Butterly	43 Cotentin Road BELROSE NSW 2085
Mrs Jeanette Suzanne Baptista	42 Jindabyne Street FRENCHS FOREST NSW 2086
Withheld	BELROSE NSW 2085
Mr Alistair Ian Morrison	146 Prahran Avenue DAVIDSON NSW 2085
Mr Ross William Downie	11 Isla Place BELROSE NSW 2085

The following issues were raised in the submissions:

- **Noise impacts (amenity) and anti-social behaviour**
- **Support of Development Application**

The above issues are addressed as follows:

- **Noise impact (amenity) and anti-social behaviour**

The submissions against the proposal raised concerns with regards to the noise impacts resulting from the development, specifically due to the proposed outdoor area and playground and its proximity to residential development. The submission suggests that the proposal be refused, due to the impact of the proposed intensification of use of the site.

Comment:

This issue of noise is addressed under *Clause D3 - Noise* (Warringah DCP 2011) later in this report and was referred to Environmental Health for comment. In summary, both standard and reviewable conditions have been recommended to be imposed to mitigate potential noise impacts. The following measures are conditioned to be employed:

- Hours of Operation restricted to 8:30pm Sunday - Tuesday, and 10:00pm Friday - Saturday.
- Submission and implementation of a management plan.
- Incorporation of recommendation imposed by the Acoustic Report (Prepared by Pulse White Noise Acoustic, dated 8 December 2022).
- Reviewable conditions to determine if 'offensive noise' emanates from the proposed use.

It is considered that adherence to the imposed conditions would effectively reduce unreasonable impacts upon the amenity of the neighbouring residential area and address the issues raised.

This issue does not warrant the refusal of the application.

- **Support of Development Application**

Comment:

A number of submissions were received in support of the development application noting the positive social impact. The letters of support have been noted.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p><i>Supported, subject to conditions</i></p> <p>Environmental Health has been requested to review the application following the submission of additional information, an acoustic assessment (amended by Pulse White Noise Acoustics Pty Ltd Dated 8 December 2022) and a request from Environmental Health for additional information.</p> <p>It is considered that the use of the outdoor areas has high potential to create noise nuisance unless reasonable mitigation measures are put in place.</p> <p>Measures proposed such as reducing child play numbers and signage may not be sufficient in prevention of "offensive noise".</p> <p>Accordingly Environmental Health recommends that, if consent is granted, that it be initially granted for a 12 month "trial period" only with periodic acoustic assessments undertaken by a qualified acoustic consultant to determine whether "offensive noise" is emanating from the site.</p> <p>Should any acoustic assessment reveal that "offensive noise" is occurring, Council may require additional control measures as recommended by the acoustic report in relation to hours of operation, number of patrons and use of the playground equipment and the like.</p> <p>Environmental Health also recommends conditions of consent that require:</p> <ul style="list-style-type: none">• the provision of a management plan (to minimise noise impacts that may arise from the use of the outdoor areas)• the management of potential smoke and odour issues• restriction of hours of use of the outdoor areas
Traffic Engineer	<p><i>Supported, subject to conditions</i></p> <p>There are no traffic engineering objections to the proposal. The</p>

Internal Referral Body	Comments
	proposed outdoor seating area and children's playground support the existing use of the site and are not considered to result in any additional parking or traffic demands.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to conditions</i> The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
NSW Police - Licensing (Clubs, Hotels, Pubs)	<i>Supported without conditions</i> The application was referred to NSW Police with reference to the licensed premises. The police raise no concern with the proposed development, subject to the imposition of the acoustic report. Planner comment: Acoustic recommendations included as part of condition No. 1.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.20 Standards that cannot be used to refuse consent – playing and performing music	Yes
5.21 Flood planning	Yes

Detailed Assessment

Zone RE2 Private Recreation

A "Registered club" is not a permissible use in this zone. A discussion of this matter is included elsewhere in the report in the section titled "Existing Use Rights". In summary, the registered club is considered to enjoy the benefit of existing use rights and the development is therefore permissible with consent.

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
D23 Signs	Yes	Yes

Detailed Assessment

D3 Noise

Submissions received with the proposal, raised concern that the proposed use, (noting it previously operated without consent) would create unreasonable noise impacts generated by patrons both inside and outside the premise.

As noted previously within the assessment report the application seeks consent for the following hours of operation for the outdoor seating area and playground:

Seating area

- Monday - Tuesday: 11:00am - 8:30pm
- Wednesday - Sunday: 11:00am - 10:00pm

Playground

- Monday - Sunday: 11:00am - 8:30pm

Merit consideration:

The development is considered against the underlying Objectives of the Control as follows:

- To encourage innovative design solutions to improve the urban environment.*

Comment:

The application was supported by a detailed acoustic report and revised hours of operations to mitigate potential noise impacts that may result from the proposed intensification of use of the site. The proposed club has been in operation under existing licence arrangements and now

seeks the to extend the use of the club to the existing bowling green. The applicant has addressed the concerns of Council in terms of the Internal Referral sections (Environmental Health) to ensure the proposal does not unreasonably detract from the safety and security or amenity of nearby residential development. Conditions of consent include a Plan of Management, limiting hours of operation and ongoing review of the operation of the site.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

The proposed hours are likely to result in the disturbance of the amenity of neighbouring properties in relation to noise. Furthermore, the statement provides no reasonable justification that demonstrates such hours are required. As such it is recommended the hours of operation be limited by way of condition to not permit use of the outdoor seating area beyond the hours of 8:30pm Sunday to Thursdays (School and work nights). These hours will ensure the premises is consistent with the nearby residential premises and does not result in any unreasonable impacts on the safety and security of the area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D23 Signs

No signage is proposed.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;

- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

This proposal, for use of an existing bowling green for the purpose of an outdoor seating area and childrens playground has been referred to the Development Determination Panel (DDP) as the proposal attracted more than 5 submissions by way of objection.

The concerns raised in the objections have been addressed through the recommendation of conditions requiring the implementation of appropriate acoustic mitigation measures.

The critical assessment issues relate to the noise impacts of the proposal.

Overall, the development performs appropriately against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties. The proposal has therefore been recommended for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2022/0932 for Belrose Bowling Club - Registered Club - Use of a portion of the site for outdoor seating and a children's playground on land at Lot 2 DP 851739, 146 Forest Way, BELROSE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
CC-00.1	April 2022	Projects TT
CC-00.2	April 2022	Projects TT
MD-02.1	April 2022	Projects TT

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
DA Acoustic Assessment	8 December 2022	Pulse White Noise Acoustics

c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	N/A

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**

Nothing in this consent shall authorise the use of on site structures as detailed on the approved plans for any land use of the site beyond the definition of a **registered club**.

A **registered club** is defined as:

"**registered club** means a club that holds a club licence under the Liquor Act 2007."

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **No Approval for Land Use**

No approval is granted under this Development Consent for any land use outside of the nominated seating and playground area nominated on the approved plans.

Reason: To ensure compliance with the relevant Local Environmental Plan.

5. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the

footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

6. Extent of consent

No approval is granted or implied under this Development Consent for any physical works. Approval is given for the use of the site only.

Reason: To ensure compliance with the terms of this consent.

7. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments

Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
 - (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
 - (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
 - (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
 - (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
 - (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
 - (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

8. **Patrons**

The maximum number of patrons within the outdoor seating area shall not exceed one hundred (100) at any time.

The maximum number of patrons utilising the playground area shall not exceed fifteen (15) at any time.

Reason: To ensure compliance with the terms of this consent.

9. **Amplified Noise**

The use of amplified sound equipment is not permitted.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

10. **Management Plan**

- 1. A management plan shall be prepared and submitted to Council's Environmental Health Team for consideration and approval before being adopted.
- 2. The management plans must describe measures be implemented to control visitor numbers ; use of external areas, behaviour of children and adults and general noise
- 3. The management plan is to include a complaints register that is to be kept on site and is to the detail date and time any complaint received and the measures undertaken to address any noise concerns.
- 4. The management plan shall incorporate recommendations by Pulse White Noise Acoustic (Report 220147) and any subsequent noise control measures to be complied with.

Reason: To minimise any noise nuisance to residential receivers.

11. **BBQ Area- Smoke and odour**

Smoke and odour from the BBQ area is to be monitored and adjustments made to processes necessary to minimise any nuisance form smoke and odour emissions to residential receivers.

Reason: To minimise any nuisance from smoke and odour to neighbouring residential receivers.

12. **Hours of Operation**

The hours of operation are to be restricted to:

Outdoor seating area

- Sunday to Thursday – 11:00am - 8:30pm
- Friday and Saturdays and Public Holidays – 11:00am - 10:00pm

Playground area

- Sunday - Saturday (including public holidays) - 11:00am - 8:30pm

Both the Outdoor Family Area and Playground Area are not to be used by patrons after the above times on any day.

These approved hours are limited to a review period of a maximum of 12 months from the date of this consent, subject to the following:

Review of Approved Hours of Operation

1. Throughout the initial "review period", in addition to the implementation of recommendations as outlined in the above acoustic report, periodic acoustic assessments are to be undertaken by a qualified acoustic consultant at no more than 3-month intervals, to determine whether "offensive noise" is emanating from the site.
2. Each periodic assessment is to include data from attendance at the site on at least five occasions within the previous period with at least three weeknights included in the assessment period.
3. Written evidence by way of an acoustic report is to be submitted Council within seven days of the completion of each periodic assessment.
4. Should any acoustic assessment reveal that "offensive noise" is occurring, Council may require additional control measures as recommended by the acoustic report in relation to hours of operation, number of patrons and use of the playground equipment and the like.
5. At the completion of the review period and after reviewing reports and actions Council shall advise the site operator of any ongoing required changes to operations to be implemented.

Reason: To ensure that amenity of the surrounding locality is maintained and to review any potential noise related issues, to residential receivers.