

**2.2: DEVELOPMENT APPLICATION – AMENDED PLANNING CONSENT –  
190 SOUTH COAST HIGHWAY, MCKAIL**

- Land Description** : 3 Webb Street, McKail (formerly 190 South Coast Highway)
- Proponent** : The Trustees of Albany Gospel Trust
- Owner(s)** : Robert Dowell, Andrew Hill, Russell Dartnall, Nicholas  
: Dartnall & Stephen Slack
- Business Entity Name** : N/A
- Attachments** : Letter of request for reconsideration
- Appendices** : Letter from Albany Gospel Trust to neighbours  
: Letters of objection
- Responsible Officer(s)** : E/Director Planning and Development Services (G Bride)

**Maps and Diagrams:**



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| <b>CEO:</b> | <b>RESPONSIBLE OFFICER:</b> |
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**IN BRIEF**

- A request has been received for reconsideration of Condition C2 of planning scheme consent number P295035. The condition restricts the hours of operation to between 8:00am and 10:00pm on any day.
- The request seeks permission for this condition to be amended to allow a 6am start on Sundays only.
- The requested change has been advertised to surrounding landowners with objections received.

**ITEM 2.2: RESPONSIBLE OFFICER RECOMMENDATION**

**THAT Council REFUSES to amend Condition C2 of Planning Scheme Consent P295035 associated with the Change of Use – Public Worship at 190 South Coast Highway, McKail (now 3 Webb Street, McKail), as:**

- A. the property is located within a residential area, in close proximity to residential properties, to permit public gatherings at the property from 6am on Sundays would give rise to activity that could potentially have a detrimental impact on the residential amenity of the locality.**

**BACKGROUND**

1. The subject lot is located on the north side of South Coast Highway to the west of the intersection with Webb Street. The land is zoned 'Residential' under Town Planning Scheme No. 3.
2. Council's Local Planning Policy 3C (Consulting Rooms, Public Worship and Childcare Centres) gives additional direction in relation to Places of Public Worship, encouraging locations on corner lots on local distributor roads.
3. Places of Public Worship are an 'A' use in the Residential zone of Scheme No. 3 and require express planning scheme consent from Council. Although such applications are not required to be advertised, the surrounding landowners were consulted on the proposal given the nature of the proposed use.
4. The concerns and objections raised in response to the consultation resulted in certain conditions being applied to the approval that were considered by officers to alleviate these concerns and thus make the proposed use acceptable.
5. One such condition was condition C2 restricting the hours of operation of the premises. The proponent did not appeal the condition at the time and have now requested Council's support to reconsider this condition, allowing the proponent to operate from 6am on Sundays.
6. Clause 5.3.6 of Town Planning Scheme No. 3 allows for an owner to write to Council to request reconsideration of a granted application or a condition attached to a granted application. It is on this basis that the current request is referred to Council.

7. Since the application was submitted and approved, a preceding subdivision approval has been cleared with new lots created. A Main Roads requirement of this subdivision was for ingress/egress to/from South Coast Highway to be prohibited with access to the lots to be provided from Webb Street. This has resulted in the site address changing from 190 South Coast Highway to 3 Webb Street.

## **DISCUSSION**

8. When the original application was received from the Albany Gospel Trust there was limited detail provided in relation to the proposed operating hours or the proposed pattern of usage. In referring the application to neighbouring properties the major concerns received related to noise during early morning hours. In order to address these concerns it was considered reasonable by officers to restrict the hours of use to prevent congregating at the property at unsociable hours given the residential setting.
9. A letter from the Trustees of the Albany Gospel Trust has been received requesting reconsideration and variation of condition C2 relating to the restricted hours of operation. The justification behind the request is to allow a meeting at 6:00am on Sunday mornings for a gathering to celebrate the 'Lords Supper' (Holy Communion).
10. Given the concerns raised previously in response to the consultation on the application for the use, this request for a relaxation of the condition has been referred to the surrounding landowners. This consultation was sent to fifteen (15) surrounding landowners on 28 February 2011. A total of five (5) responses were received and a summary of these is provided under the Public Consultation / Engagement heading.
11. As the property is within the residential zone, the amenity of the neighbouring residential properties in the locality needs to be considered. From the consultation responses received in relation to this matter, it is clear that the local residents feel the relaxation as requested would have a detrimental impact on their amenity. They have requested the current conditioned hours be retained as a reasonable and acceptable control over the use of the building.
12. Although most churches and places of public worship do not have their hours of operation restricted by planning conditions, most of these pre-date modern development controls and are set further away from residential properties. Where properties have been built close to such places of worship, the pre-existing place of worship has been an accepted and established feature of the locality. Where a new place of worship is proposed in a residential area it is appropriate for Council to consider the potential impacts of this new use on the occupiers of residential properties in the vicinity.
13. As the application relates to a general place of public worship, it could potentially be used by multiple groups with varying impacts (noise) on the surrounding area depending on their method of worship (quiet reading of scripture or loud singing etc). Therefore, to protect the existing residential amenity of the area, it is appropriate for Council to impose controls on the hours of use of the building. The existing condition is considered to adequately fulfil this purpose and is recommended to be re-affirmed without alteration.

**PUBLIC CONSULTATION / ENGAGEMENT**

14. The request for reconsideration of the condition was referred to fifteen (15) surrounding landowners on 28 February 2011 and they were given until 15 March 2011 to lodge any comments.
15. A total of five (5) responses were received containing many points of objection. A summary of these follows:
- The proposed opening time of 6am is far too early on a Sunday because of the noise generated that disturbs the neighbourhood as local dogs start barking.
  - This is not really a request for a 6am start but would be earlier as church goers arrive prior to the service in order for the service to commence at 6am.
  - The use increases traffic flow in the area and currently Sunday mornings is the only reprieve for residents.
  - The current opening times of 8am to 10pm are considered very generous by residents and the church has no reason to start earlier other than serving its own needs at the expense of others.
  - The Gospel Trust refers to the 6am Lords Supper service being sacred to them, but my Sunday morning sleep in is sacred to me.
  - The church members keep to themselves and do not promote a feeling of integration with the rest of the neighbourhood.
16. The proposal was referred to Main Roads as an adjoining landowner (South Coast Highway). The response received from Main Roads did not relate to the requested reconsideration but was instead about drainage and access arrangements to the site. These issues have already been addressed.

**STATUTORY IMPLICATIONS**

17. A Place of Public Worship is an 'A' use (discretionary use) in the 'Residential' zone of Town Planning Scheme No.3.
18. Clause 5.4 of Town Planning Scheme No.3 details the matters to be considered by Council when determining an application for planning consent. These matters are equally applicable to the reconsideration of a condition imposed on an approval. The matters listed that are directly applicable in this instance are:
- (i) *the compatibility of a use or development with its setting;*
  - (n) *the preservation of the amenity of the locality;*
  - (y) *any relevant submission received on the application; and*
  - (za) *potential impacts of noise, dust light, risk and other pollutants on the surrounding land uses.*
19. The proposal was assessed against these matters and the conditions imposed were considered sufficient control to minimise detrimental impacts and allow the proposal to be approved.

20. The request to review condition C2 has been considered against the above matters and taking account of the issues raised by surrounding landowners. The condition is considered appropriate and necessary to support the change of use to Public Worship.

### **FINANCIAL IMPLICATIONS**

21. A refusal of the request allows the proponent to lodge an appeal with the State Administrative Tribunal. This would have associated cost implications for the Council.

### **STRATEGIC IMPLICATIONS**

22. The proposal and the request for reconsideration of the condition are not directly reportable against any of the objectives of ALPS or Albany Insight.

### **POLICY IMPLICATIONS**

23. There are no policy implications as the development proposal was assessed as complying with the Development Guidelines Scheme No.3 – Guideline 1.3 (now known as Policy 3C in Council's recently adopted Local Planning Policy Manual).

### **ALTERNATE OPTIONS & LEGAL IMPLICATIONS**

24. Council has the option to grant the request and amend the condition to allow for use of the building from 6am on Sunday mornings as requested. Council may also impose additional conditions including noise attenuation measures being applied to the building (although the arrival of vehicles could still present an issue) and/or making the consent personal to the Albany Gospel Trust, if it is considered that their use provides exceptional circumstances to justify the relaxation.
25. However, such additional conditions may give rise to increased compliance complaints from surrounding residents, for instance, should the operators arrive prior to 6am to set up before a meeting. These compliance investigations outside of normal 'Office Hours' would have associated staff and cost implications for the Council.
26. In addition, the surrounding landowners may lodge a third party appeal with the State Administrative Tribunal. This would have associated cost implications for the Council.

### **SUMMARY CONCLUSION**

27. The request for reconsideration of planning condition C2 (restricted hours of operation) of approval P295035 (change of use to Public Worship), seeking permission to use the building from 6am on Sunday mornings was referred to surrounding landowners for comment. Five objections were received.
28. In assessing the reconsideration request, officers have reviewed the reason behind imposing the condition in the first instance. Although more information has been submitted with regard to the request by the Albany Gospel Trust; such information is unlikely to alleviate the

concerns for the detrimental impact on the residential amenity of the area that the requested hours could potentially give rise to.

29. It is recommended that the requested reconsideration of the planning condition to allow use of the building from 6am on Sundays be refused and the existing condition be re-affirmed.

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| <b>Consulted References</b>       | Town Planning Scheme No. 3<br>Development Guidelines Scheme No. 3 |
| <b>File Number (Name of Ward)</b> | : A210469 (West Ward)   |