

6.3: ALBANY MOTORCYCLE CLUB INC – PROPOSAL TO OPERATE EIGHT (POSSIBLY NON-COMPLYING) EVENTS DURING 2012

Land Description : Reserve 30495, Plantagenet Location 7153, Roberts Road, Robinson

Proponents : Albany Motorcycle Club Inc.

Owner : Crown

Attachments : Incoming Correspondence from Albany Motorcycle Club Inc dated 28 February and 25 April 2012
Outgoing Correspondence from City of Albany to Albany Motorcycle Club Inc. 23 April 2012

Responsible Officer : Executive Director Planning and Development Services (D Putland)

ITEM 6.3: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY

1. THAT Council REFUSE the Albany Motorcycle Club Inc. approval to hold non-complying events under Regulation 18 of the *Environmental Protection (Noise) Regulations 1979*.
2. THAT Council GRANT consent to the Albany Motorcycle Club Inc. to hold events at “Miniup”, Roberts Road, Robinson on particular dates, conditional upon the Albany Motorcycle Club Inc. providing evidence to the satisfaction of the City of Albany Executive Director, Planning and Development Services, that breaches of the *Environmental Protection (Noise) Regulations 1979* will not occur at those events.

IN BRIEF

- Consider a request from the Albany Motorcycle Club Inc to operate eight possibly non-complying events at the Roberts Road motorcycle track during 2012.

CEO:	RESPONSIBLE OFFICER:
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BACKGROUND

1. The Albany Motorcycle Club Inc has written to the City of Albany requesting approval to hold eight events over the coming year.
2. It is possible that those events will be non-compliant as to noise control, under Regulation 18 of the *Environmental Protection (Noise) Regulations 1997*.
3. This matter has a long history:

In 2008, the City served an Environmental Protection Notice (EPN) on the Albany Motorcycle Club requiring it to:

“Ensure that no motor cycles use the motor cycle track at any time of the day.”

4. Following an appeal to the Minister for Environment, and with Council approval, the Albany Motorcycle Club Inc then held ten events in both 2009 and 2010.
5. In 2011, the Albany Motorcycle Club Inc used the track for two non-complying, Council approved events.
6. However, a number of motorcycle riders also used the track outside the approved events dates, and breached the requirements of the EPN.
7. While the use of the track by those riders was not sanctioned by Albany Motorcycle Club Inc, the Albany Motorcycle Club Inc still had legal responsibility to ensure that the requirements of the EPN were met.
8. Council considered a similar request at its February 2011 meeting and resolved:

*The Council note that in relation to the request by the Albany Motorcycle Club to hold two non-complying events on **Reserve 30495, Roberts Road**, community consultation will be undertaken with residents and property landowners within a radius of 1.5km;*

Where objections are received as a result of the community consultation the request shall be considered at the March Ordinary Council Meeting;

*Where no objections are received Council notes that the CEO will grant approval for two non-complying events in accordance with Regulation 18 of the *Environmental Protection (Noise) Regulations 1997*.”*

9. A total of 84 letters were sent to residents and property owners within a 1.5 kilometre radius of the motocross facility. A total of eight written submissions were received - five were opposed to the proposal and three supported the proposal.

10. Council again considered the matter at its March 2011 meeting, given the submissions received from nearby residents and property landowners, and resolved:

THAT Council GRANT the Albany Motorcycle Club Inc approval to hold two non-complying events under Regulation 18 of the Environmental Protection (Noise) Regulations 1979 conditional on no further breaches of the Environmental Protection Notice previously served on the Albany Motorcycle Club Inc. Should further breaches occur this approval will be withdrawn.

11. Council further considered issues in relation to the use, and possible lease of land to the Albany Motorcycle Club at its June 2011 meeting and resolved:

THAT Council:

- 1) *NOTES its previous resolution (OCM 15.03.2011 – Item 2.3 – Attachment A).*
 - 2) *GRANTS the final lease approval to the Albany Motorcycle Club Inc. over portion of **Reserve 1947 Parker Brook Road, Willyung** subject to the Club obtaining all remaining approvals and complying to all conditions detailed in OCM 15 March 2011 Council resolution and satisfying all conditions of the Planning Scheme Consent prior to any development and riding activities within the lease area.*
12. Council further considered the issue of granting the Albany Motorcycle Club Inc. a lease over portion of Reserve 1947 Parker Brook Road Albany at its November 2011 meeting, and resolved:

THAT Council notes the Officer's Report detailing the history and other information on the Great Southern Motorplex Group Inc. proposal and the suitability of Crown Reserve 1947 for Motor Sport activities;

THAT Council directs the CEO and Councillors Sutton, Hammond and Calleja to meet with the four key stakeholder groups of:

- *Albany Motorcycle Club;*
- *Albany City Kart Club;*
- *Great Southern Street Machine Association; and*
- *Albany Motorsport Group.*

To further discuss progression of a Motor Sport Complex at a site that is more appropriate as quickly as possible and taking into account the immediate needs of particular clubs for their upcoming events.

DISCUSSION

13. The Albany Motorcycle Club Inc has advised that it is important for its Club's future that it be allowed to conduct the proposed events, the first commencing on 12 May 2012.
14. The Albany Motorcycle Club Inc. advised in March 2012 that as it was unsuccessful in obtaining a lease for the alternative venue on Parker Brook Road, they are applying for permission to hold events at their existing venue at "Miniup", Roberts Road, Robinson.

15. Council minutes of the 20 April 2010 indicate that several residents in proximity to the Club's activities did not support further motorcycle events.
16. It appears that the majority of resident complaints were primarily in regard to noise resulting from extended track usage on practice days.
17. The current proposal suggests that the facility will be used for three practice days, four Club Race meetings and one Interclub Race meeting in 2012.

STATUTORY IMPLICATIONS

18. Regulation 18 of the *Environmental Protection (Noise) Regulations 1979* states:

"18. Venues used for sporting, entertainment purposes etc.

In this regulation—

approved non-complying event means an event approved under subregulation (3);

noise means noise associated directly with the approved non-complying event and does not include noise normally emitted from the venue (such as noise from plant, pumps and machinery) when it is not being used for the purposes of an approved non-complying event;

venue means any premises or public place.

(2) Despite any other regulation in this Part—

- (a) an approval under subregulation (3) has effect according to its terms; and*
- (b) except to the extent that the regulation is applied as a condition under subregulation (3), regulation 7 does not apply to noise resulting from an approved noncomplying event.*

Where the Chief Executive Officer is satisfied that a proposed sporting, cultural or entertainment event that is to be open to the public —

- (a) is likely to result in the emission of noise in contravention of the standard prescribed under regulation 7; and*
- (b) would lose its character or usefulness if it were required to comply with that standard,*

the Chief Executive Officer may approve the event, subject to such conditions as the Chief Executive Officer thinks fit, for the purposes of this regulation.

If a condition imposed on an approved non-complying event under subregulation (3) or (8) is breached—

- the event ceases to be an approved non-complying event; and*
- (b) regulation 7 has effect in relation to that event.*

An approval under subregulation (3) may extend to a practice or rehearsal or sound system test relating to an event even though the practice, rehearsal or sound system test is not open to the public.

An application for approval under subregulation (3) is to be—

- (a) made not later than 60 days before the event to which the application relates is proposed to commence; and*
- (b) accompanied by an application fee of \$500.*

Conditions imposed under subregulation (3) may —

- limit the duration of practice and rehearsal sessions, sound system tests and the event;*
- specify starting and completion times for practice and rehearsal sessions, sound system tests and the event;*
- specify times when facilities such as stages, temporary seating and lighting towers can be erected and dismantled; and*
- specify any other requirements, including maximum allowable noise levels, considered necessary to maintain the impact of noise emissions on other premises at an acceptable level.*

It is a condition imposed on the conduct of every event approved under subregulation (3) that, if the Chief Executive Officer determines that noise received as a result of the event —

- at any noise sensitive premises is likely to exceed 65 dB $L_{A\ Slow}$ between 0700 hours and 1900 hours on any day or 60 dB $L_{A\ Slow}$ between 1900 hours on any day and 0700 hours on the following day; or*
- at any other premises is likely to exceed 75 dB $L_{A\ Slow}$ at any time, the person to whom the approval is granted is to pay to the Chief Executive Officer, within the time specified by the Chief Executive Officer, a noise monitoring fee specified by the Chief Executive Officer.*

The Chief Executive Officer may amend any condition to which an approved non-complying event is subject, but must before doing so —

give to the person responsible for the conduct of the event at least 14 days' notice of the proposed amendment to enable the person to make written representations on the proposal; and where the condition was determined under subregulation (13), obtain the approval of the Minister.

A person to whom notice of a proposal is given under subregulation (9)(a) may by written agreement accept the proposal and waive the period of notice.

The Chief Executive Officer is not to approve the holding of more than 2 approved non-conforming events in or at a particular venue in any period of 12 consecutive months unless the Chief Executive Officer is satisfied that the majority of occupiers on whom the noise emissions will impact have no objection to the holding of the additional events.

An approval must not be granted unless the local government of each district in which noise emissions received from the event are likely to fail to comply with the standard prescribed under regulation 7 agrees to the proposed conditions applicable to the approval.

Where an agreement cannot be reached under subregulation (12) the conditions are to be determined by the Minister after receiving the advice of the Chief Executive Officer.

The Chief Executive Officer may, if satisfied that the noise from approved non-conforming events held at any 2 or more venues affects generally the same noise-sensitive premises, determine that those venues are to be treated as a single venue for the purposes of subregulation (3) in which case subregulation (11) applies to those venues as if they were one venue.

Notwithstanding subregulation (6)(b), the Chief Executive Officer may, in his or her discretion and if satisfied that an application for approval is made by an organization licensed under the Charitable Collections Act 1946, and that money received from the event will be substantially applied for a charitable purpose within the meaning of that Act, waive or reduce the application fee payable under that subregulation.

PUBLIC CONSULTATION / ENGAGEMENT

19. The Albany Motorcycle Club Inc. proposal is to hold eight (possibly non-complying) events during 2012, but the Club has not undertaken any consultation with nearby land owners in that regard, claiming it is awaiting Council consideration of the matter, before doing so.

FINANCIAL IMPLICATIONS

20. Regulation 18(6) of the *Environmental Protection (Noise) Regulations 1979* requires applications for approval to hold a non-complying event to be accompanied by an application fee of \$500. This fee may be waived or reduced, by the Chief Executive Officer, if the applicant is an organisation licensed under the *Charitable Collections Act 1946*.
21. Should Council approve the holding of any event, and there is a complaint from neighbouring landholders, the City's Environmental Health Officers would be required to undertake noise monitoring to investigate the complaint and assess compliance with the Regulations. This is time consuming and may require additional staff time (beyond budgeted staff costs) to undertake such monitoring.

STRATEGIC IMPLICATIONS & ALIGNMENT TO CORPORATE PLAN

22. This item relates to the following Key Focus Areas in the City of Albany's Strategic Plan 2011-2021:

Community Focused Organisation: Support for community groups

Assist with improving access to suitable venues close to CBD that are affordable for community groups.

POLICY IMPLICATIONS

23. There are no policy implications associated with this proposal.

LEGAL IMPLICATIONS

24. Nil.

ALTERNATE OPTIONS

25. Council has three options in relation to the request from Albany Motorcycle Club Inc to hold non-complying events at Roberts Rd site. These are:

Option One. **GRANT** the Albany Motorcycle Club Inc approval, without conditions, to hold up to eight non-complying events during 2012 despite Regulation 18 of the *Environmental Protection (Noise) Regulations 1997*.

Option Two. **GRANT** the Albany Motorcycle Club Inc approval, with conditions, to hold two non-complying events during 2012, balancing requirements under the Regulation 18 of the *Environmental Protection (Noise) Regulations 1997*, with the inability to comply with those Regulations.

Option Three. **GRANT** the Albany Motorcycle Club Inc approval without conditions to hold two non complying events during 2012, consistent with Regulation 18 of the *Environment Protection (Noise) Regulations 1997*. All other events and practice sessions to be compliant with the *Environmental Protection (Noise) Regulations 1997*.

Option Four **REFUSE** the Albany Motorcycle Club Inc. approval to hold non complying events during 2012.

File Number (Name of Ward)	West Ward
Previous Reference	OCM 16/02/2010 Item 13.6.1 Recommendation 4 OCM 20/04/2010 Item 19.5 OCM 15/02/2011 item 2.6