



New South Wales Land and Environment

Court

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Joyce & Ors v Blue Mountains CC [2005] NSWLEC 111 (17 March 2005)



Last Updated: 21 March 2005

NEW SOUTH WALES LAND AND ENVIRONMENT COURT

CITATION: Joyce & Ors v Blue Mountains CC [\[2005\] NSWLEC 111](#)

PARTIES:

APPLICANT

Edward Joyce,
Warwick Kennard and
Joseph Joyce as trustees for the
Katoomba  **Gospel Trust** 

RESPONDENT

Blue Mountains City Council

CASE NUMBER: 10234 of 1993

CATCH WORDS: Appeal

LEGISLATION CITED:

Blue Mountains City Council Local Environmental Plan 1991

CORAM: Bly C

DATES OF HEARING: 21/02/2005

DECISION DATE: 17/03/2005

LEGAL REPRESENTATIVES

APPLICANT

Mr C McEwen, SC

RESPONDENT

Mr A Seton, solicitor
of Marsdens Law Group

JUDGMENT:

**THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES**

Bly C

17 March 2005

**10234 of 1993 Edward Joyce, Warwick Kennard and Joseph Joyce as trustees for the Katoomba
← Gospel Trust → v Blue Mountains City Council**

JUDGMENT

Introduction

1 This appeal relates to an application pursuant to [section 96\(2\)](#) of the [Environmental Planning and Assessment Act 1979](#) (" [the Act](#)") to amend Development Consent No. 1237/92 ("the consent"). The application involves a proposal to amend the approved hours of operation for Saturday church services at the Katoomba Gospel Church ("the church") at 22 Denison Road. Leura.

2 The church is located on the northern side of Denison Road approximately one kilometre north-east of the Great Western Highway. It comprises a church building and a car park for 148 cars. The locality

surrounding the church mainly comprises detached dwellings in a bushland setting.

3 The appeal was conducted as an on site hearing in the church hall. A number of residents from the locality were in attendance as were a number of members of the church.

Background

4 On 26 November 1993, the Court upheld by consent an appeal against the council's refusal of the original development application. [*Katoomba* ← *Gospel Trust* → *v Blue Mountains City Council (10234 of 1993) Talbot J*].

5 In his judgement, Talbot J in dealing with the hours of operation of the church commented that: Although the Court appreciates that the freedom of worship is an important consideration, nevertheless that must be balanced against the duty of the Court to exercise its powers and obligations in accordance with the requirements of the EPA Act.

6 And that:

If conditions of consent are required to control the impact on the environment, that is a prevailing imperative for the Court which, nevertheless, must recognise other important factors such as the freedom of worship and attempt to balance the competing interests by tempering conditions so that they do not unnecessarily constrain use of a development site.

7 Talbot J. imposed conditions of consent including setting limits on car parking and hours of worship as indicated in the original condition 15 of the consent . This condition incorporates a proviso that dispensation to the hours of worship can be granted by Council's town planner if a reasonable cause is shown. Condition 15 of the consent provides:

15. Except with prior written consent of a Council town planner: -

- (a) The number of vehicles admitted to the site shall be limited to 60 at any one time except on 71 occasions per annum when no more than 148 vehicles shall be admitted
- (c) There shall be no use of the site for the purpose of church services:
 - (i) after 10:00 pm on any day;
 - (ii) before 7:00 am on any day except Sunday when the site may be used from 6:00 am

8 On 23 Nov 1999 condition 15 was modified pursuant to [section 96\(2\)](#) of [the Act](#). The modified condition now provides:

15. Except with prior written consent of a Council town planner:

- (a) The number of vehicles admitted to the site shall be limited to 60 at any one time except on 71 occasions per annum when no more than 148 vehicles shall be admitted.
- (b) There shall be no use of the site for the purpose of church services:
 - (ii) after 10:00 pm on any day;
 - (iii) before 7:00 am on any day except:

Sunday when the site may be used from 6:00 am; and

For a trial period of two (2) years from 23 November 1999 one (1) Saturday per calendar month when the site may be used from 6.00 am

- (c) Vehicles shall not be admitted to the site more than fifteen (15) minutes before the scheduled start of

the first service each day.

9 The two-year trial period referred to in condition 15(b)(iii) has now lapsed.

10 The applicant now seeks the amendment of condition 15 to allow the church to be permanently used from 6:00 am one Saturday per calendar month

Statutory provisions

11 The site is zoned Residential - Bushland Conservation and is within an Environmental Constraints area under *Blue Mountains City Council Local Environmental Plan 1991* ("the LEP"). A church is permissible with development consent in this zone

12 The relevant zone objective is:

(f) To ensure that non-residential land uses are compatible with the residential character of the area in which development is proposed.

13 Similarly objective 3.1(a) of the LEP has the relevant effect of recognising and maintaining the distinctive character and amenity of local communities and the traditional lifestyle enjoyed by residents.

14 Clause 9.3 of the LEP in effect provides that consent shall not be granted unless the consent authority has considered the objectives of the plan and the objectives of the zone and is of the opinion that the carrying out of the proposed development complies with the relevant objectives. This application involves the amendment of an existing development consent and as a result because clause 9.3 refers to the granting of consent, it is thus not applicable. Nevertheless the relevant objectives of the LEP and the zone should be taken into account.

Advertising and Council's decision

15 The application was advertised and 33 submissions were received comprising 20 letters of objection and 13 letters of support. Council's senior town planner Mr B Tully considered these submissions in his report and recommended approval of the application. These submissions together with a number of additional letters provided between the advertising and the hearing were tendered and have been taken into account by the Court.

16 The application was refused by the council on the grounds of adverse impacts on residential amenity

The evidence

17 The following residents from the surrounding area gave evidence:

Mr A Andrews of 37 Queens Road.

Ms B Brooks of 19 Davison Road.

Dr M Carmody of 57 Queens Road.

Dr T Hockley of 44 Queens Road.

Mr C Ferguson of 45 Queens Road.

Mr J. Stevenson of 34 Strathearn Road

Mr M Toddhunter of 59 Queens Road.

Mr W Mallett of 39 Queens Road

Mr T Phelan of 9 Denison Road.

Mr J Post of 19 Denison Rd.

18 Matters of concern raised by these residents together with the concerns expressed in the letters of objection mainly comprise:

Excessive speed, noise and vibration associated with passing vehicular traffic going towards the church, often in convoy in the early morning especially at weekends when ambient noise levels are low.

Noise and vibration associated with the closing of car doors in the car park and the closing of building doors.

Noise associated with large coaches attending the church especially at night.

Noise impacts generally are of particular concern to shift workers and residents in ill health.

Failure to respond to repeated objections.

19 Several residents expressed concern that they were not aware of the trial period assuming that the early start on Saturdays had been approved. Had they known that a trial was underway they may have made their concerns known at the time.

20 In their letters the residents who did not object to the proposal commented that they have no concerns and have not experienced any undue disturbances.

21 In his report Mr Tully assessed the likely impact of the proposal. He concluded that commencing services one hour earlier is unlikely to change the amount of speeding vehicles attending the site and that excessive speed of vehicles on the local road network is a separate matter to the use of the site. The proposed earlier times of the service would not increase the existing extent of conflict between vehicles and pedestrians that may occur in the vicinity of site.

22 Mr Tully also said that noise associated with vehicles travelling along the road and the earlier starting time may impact on residential amenity however given the frequency of the earlier service, he considered that the potential for increased impacts would be within reasonable limits.

23 Mr J Joyce one of the trustees of the church told the court that the Saturday morning meeting was one that is held in high regard by the church having a number of purposes including church management and administration as well as pastoral care of church members. The total congregation for these meetings was about 145 people including children. The 6:00 a.m. Saturday meeting is common throughout the church worldwide and is a long standing institution. The starting time of 6:00 a.m. relates to the Scriptures and the first hour of the day. He did concede however that the starting time was sufficiently flexible to take into account daylight saving.

24 Mr Joyce indicated that the church was keen to be a good neighbour. To assist in managing the impacts of vehicles travelling to the meeting, the church would agree to a limit of 30 attending vehicles. He said that appropriate management and the use of car-pooling could achieve this.

Court's findings

25 The balancing exercise referred to by Talbot J. in his judgement is the same as what the Court must

now apply to the present circumstances.

26 It is important to recognise that a church is permissible in this residential zone subject of course to the associated objectives of the LEP and the zone, which are relevantly about the protection of the relatively quiet amenity of this residential locality.

27 The church is normally accessed via Queens Road and Denison Road although other local roads can be used. Letters of support and letters of objection came from both roads and this support can be taken into account in determining the application. The fact that there were few if any complaints to the council during the two year trial period is also a matter to be taken into account but bearing in mind the extent of objection to this application and concerns that residents were not aware of the trial period, this should attract some but not determinative weight.

28 It is likely that cars attending the church are the major contributor of traffic in Queens Road and Denison Road early on weekend mornings and it became apparent during the hearing that the residents were mainly concerned about traffic noise generated by vehicles travelling to the church (ie before 6.00am on Sundays and before 6.00/7.00am on Saturdays) rather than traffic disbursing after church meetings. The impact is clearly worsened when these vehicles travel together in platoons.

29 The Saturday church meetings, when the meetings are proposed to begin at 6:00 am, are infrequent, being limited to 12 meetings per annum. But will a platoon of cars going past homes in these local roads prior to 6:00 a.m. result in unreasonable sleep disturbance?

30 The introduction of the church into this locality has already affected residential amenity and it is clear that the likely impact of traffic coming to the church prior to 6:00 am even if only on twelve Saturdays per annum would be a further intrusion. Several residents have already attested to this. This intrusion, especially the noise associated with a platoon of cars going past, will most likely disturb some people at an earlier hour than has been the case in past. This will be especially so if vehicles exceed the applicable 50 kph speed limit.

31 Taking all of these matters into account and my acceptance for the time being of the church's ability to better manage traffic coming to it's meetings I have decided that the impacts are not likely to be so significant as to reject this proposal. I have decided that the church should be given a further two year trial period to determine if appropriate management and conditions relating to buses, the maximum number of vehicles and other matters can mitigate the resident's concerns in relation to the 6.00 am starting time. During this time the applicant will be required to make available the name and telephone number of persons within the church who will receive, record and appropriately deal with any complaints associated with the activities of the church and church members when outside the church premises whether as pedestrians or in their cars. The applicant will also be required to encourage church members to be especially sensitive to the residential amenity by obeying traffic laws, cars not travelling in platoons and behaving in a quiet manner generally. These additional requirements will also apply to the Sunday meetings.

32 Whilst some residents expressed concern about noises associated with activities on the site I have not

been persuaded that these are likely to be of such significance as to deny the twelve days per annum of early starts on Saturdays.

Orders

33 It is therefore the decision of the Court that

1. The appeal is upheld.
2. Development consent number 1237/92 is amended as follows:
 - (a) The second bullet point in condition 15 (b)(iii) is deleted and replaced with the following:
For a trial period of two (2) years from 17 March 2005 on one (1) Saturday per calendar month when the site may be used from 6:00 am
 - (b) After the second bullet point in condition 15 (b)(iii) adding the following:
When church services begin before 7:00 a.m. on Saturdays vehicles attending the site shall be limited to 30 vehicles
 - (c) The inclusion after condition 15 (c) of the following:
 - (a) Buses are prohibited from attending the church between 10.00 p.m. and 7.00 a.m.
 - (b) The applicant is to make available to the council and the community the name and telephone number of a person or persons within the church who will receive, record and appropriately deal with any complaints associated with the activities of the church and church members when outside the church premises whether as pedestrians or in their cars.
 - (c) The applicant is to encourage its members when coming to church to be sensitive to the quiet residential amenity of the locality when meetings are held before 7.00 am by obeying traffic laws, vehicles not travelling in platoons, and behaving in a quiet manner generally.
3. The exhibits are returned.

T A Bly
Commissioner of the Court
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