

BEFORE THE ENVIRONMENT COURT

ENV-2009-AKL-

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an appeal under section 120 of the Act

BETWEEN

**Balmoral Community Group
Incorporated**

Appellant

AND

Auckland City Council

Respondent

Form 16

Notice to Environment Court of
Appeal on decision on application concerning resource consent

Section 121 Resource Management Act 1991

To: The Registrar
Environment Court
Auckland

1. Balmoral Community Group Incorporated appeals a decision by the Auckland City Council granting resource consent to an application in respect of a McDonald's restaurant and drive through facility.
2. McDonald's Restaurants (New Zealand) Limited is the applicant.
3. The land affected is at 1-5 Wiremu Street, Balmoral, Auckland, being Lot 1 on Deposited Plan 87695 (CT NA 45B/1328).
4. Balmoral Community Group Inc. received notice of the decision on 28 July 2009.
5. The decision was made by the Auckland City Council.
6. The decision Balmoral Community Group Inc. is appealing is the whole of the decision of the Auckland City Council granting consent.
7. The reasons for the appeal are:
 - (i) The decision will not promote the sustainable management of natural and physical resources, because:
 - (a) it does not enable people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while

avoiding, remedying, or mitigating any adverse effects of activities on the environment; and

- (b) it does not have adequate regard for
- the efficient use and development of natural and physical resources; or
 - the maintenance and enhancement of amenity values; or
 - the maintenance and enhancement of the quality of the environment; or
 - any finite characteristics of natural and physical resources.
- (ii) The grant of consent will result in reduced traffic safety. The increase in traffic through already dangerous intersections, including Wiremu Street/Dominion Road, Volcanic Street/Balmoral Road and Pine Street/Balmoral Road, will lead to an increase in accidents.
- (iii) The grant of consent will result in increased traffic intensity on local roads. The business is a high intensity vehicle-oriented activity that will turn local streets into feeder roads for the site. The site is currently used by a low intensity business. When the original consent was granted in 1976 the council specifically noted the residential interface and in their decision referred to the fact that a fast food restaurant would be a high intensity use and inappropriate.
- (iii) The grant of consent will result in a significant loss of amenity values in surrounding residential area through the separate and the cumulative impact of:
- (a) Litter, both on-site and in surrounding area;
 - (b) Noise from increased traffic, increased number of people in the area, after hours parking and eating, and the attraction factor;
 - (c) Reduced traffic safety and increased traffic intensity.
- (iv) The grant of consent is contrary to relevant District Plan objectives and associated policies and does not meet relevant assessment criteria, especially with respect to its scale and intensity. In particular, but without limitation:
- (a) Objective 8.3.2: to ensure that any adverse effect of business activity on the environment is avoided or reduced to an acceptable level;
 - (b) Objective 8.6.2.1(a): to provide for retailing, office and commercial service activity at a medium intensity suburban level;
 - (c) Objective 8.6.2.1(e): To ensure that any adverse environmental or amenity impact of business activity on adjacent residential or open space zones is prevented or reduced to an acceptable level;
 - (d) Objective 12.3.1: To manage the use and development of the City's transportation resources in a way that promotes the protection and enhancement of the City's environment;

- (e) Objective 12.6.1: To take full account of the impact of road traffic on the surrounding environment and to minimise adverse effects that may arise;
 - (f) Criteria 8.7.3.2(a), (c), (e), (f) & (g);
 - (g) Criteria 8.7.3.3.2(i) & (ii);
 - (h) Criteria 8.7.3.3.10(b), (d), (e) & (f);
 - (i) Criterion 12.9.1.2(a);
 - (j) Criterion 4.3.1.2B.
- (v) The conditions imposed as part of the grant of consent will be inadequate to avoid, remedy or mitigate the adverse effects of the activity and incapable of maintaining amenity values in the adjoining residential area. In particular, but without limitation:
- (a) Opening hours: The immediate neighbours could potentially be kept awake till 12am every Friday/Saturday night and then woken up at 6am. These opening hours are unlikely to stay restricted. McDonalds stated in the hearing that they would not guarantee that they would not seek extended opening hours if they were restricted (as has happened). Therefore there is real potential that the activity will increase its hours over time, notwithstanding the finding of acceptability by the commissioners being based on the present conditions.
 - (b) Off-site effects: The decision ignores, as being outside the scope of the decision, off-site effects that will be directly consequential to the activity such as increased litter, increased traffic and parking and increased noise. If an activity will cause effects that will have a major impact on neighbourhood amenity values and those effects cannot be adequately controlled by the operator of that activity then the proposal is inappropriate in that location and should be declined.
 - (c) Urban design issues: The proposed activity is not in keeping with the neighbouring residential environment and will damage the fabric of the neighbourhood.
 - (d) Delivery restrictions: The requirement that trucks do not turn right from the service lane is incapable of enforcement and will not prevent heavy commercial traffic in residential streets.

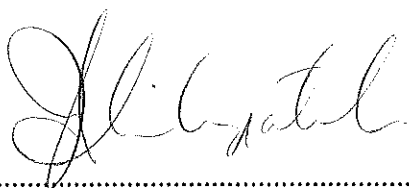
8. The relief sought is:

- (i) The cancellation of the Council's decision and the refusal of consent to the proposal.
- (ii) Such further or other relief as may be necessary or desirable as a result of the primary relief; and
- (iii) Costs

9. Balmoral Community Group Inc. attaches the following documents* to this notice:

- (i) a copy of the application;
- (ii) a copy of its submission;
- (iii) a copy of the decision;
- (iv) a list of names and addresses of persons to be served with a copy of this notice.

* These documents must be attached and lodged with the notice in the Environment Court. The appellant does not need to attach a copy of a regional or district plan or policy statement. In addition, the appellant does not need to attach copies of the submission and decision or recommendation to the copies of this notice served on other persons if the copy served lists these documents and state that copies may be obtained, on request, from the appellant.



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D A Kirkpatrick
Counsel for appellants

17/8/09

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Date

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Note to appellant or person seeking inquiry

You may use this form to lodge an appeal and to request an inquiry.

You must lodge the original and 1 copy of this notice with the Environment Court within 15 working days of receiving notice of the decision. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the consent authority within 15 working days of receiving notice of the decision.

If the notice relates to a recommendation of a hearing committee on a restricted coastal activity, you must also serve a copy of this notice on the Minister of Conservation on the same day as the notice is lodged with the Environment Court.

You must also serve a copy of this notice on the applicant or consent holder and on every person who made a submission on the application or review of consent conditions within 5 working days of lodging it with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* Form 38).

Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if you lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (*see* Form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the relevant application and the relevant decisions and recommendation. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department of Courts in Auckland.