

22 April 2014

Nelson City Council
PO Box 645
NELSON 7040
Attention: Gayle Brown

Dear Gayle

Re: Nelson City Council's Proposed Plan Change 16: Hearing Statement (4 May)

I write on behalf of our client, McDonald's Restaurants (NZ) Limited ("McDonalds"), in relation to their submission on Proposed Plan Change 16: Inner City Noise. Although I will not be attending the Hearing on the 4th May on behalf of McDonalds, I would like to request that this letter be treated as evidence and tabled accordingly.

Having reviewed the section 42A report, and further to McDonalds' original submission, the key points I wish to address are as follows:

1. Original Submission

In the original submission, McDonalds raised concern that the plan change affected its operations at Selwyn Place / Rutherford St by default, for the fact that the existing restaurant includes an outdoor area. However, given the effects the proposed rules were looking to mitigate, it appeared that the focus was more on bars and nightclubs and therefore should not have incorporated McDonalds' family restaurant activity.

Under the operative provisions, McDonalds' restaurant (24hours operation) is a permitted activity (the certificate of compliance is attached) in the Inner City zone and therefore, additions and alterations to the existing activity are also permitted. One restriction applies and that is in relation to the use of its existing outdoor area, which falls within the 50m threshold to residential zoned properties and therefore, to retain its permitted activity status, McDonalds cannot use this outdoor area during the hours of 11.00pm to 7.00am, Sunday to Thursday, and between 1.00am and 7.00am Friday, Saturday, Christmas Eve and New Year's Eve. Doing so would trigger the requirement for a discretionary activity consent pursuant to operative rule ICr.46 Closing Times – Services to the Public.

PC16 requires that assembly of people in an outdoor area between the hours of 11.00pm to 7.00am, Sunday to Thursday, and between 1.00am and 7.00am Friday, Saturday, Christmas Eve and New Year's Eve falls to be considered a "noise-generating activity" and would therefore require discretionary activity consent.

The logo for Barker & Associates, consisting of the letters 'B' and 'A' in a large, bold, sans-serif font, with an ampersand (&) between them.

While it is clear the above does not affect McDonalds, since it does not use its outdoor area during those restricted times, the plan change is worded in such a way that it introduces ambiguity, particularly when McDonalds seeks to undertake additions and alterations to the restaurant component, in a manner that does not affect the use of the outdoor area.

McDonalds therefore originally sought clarification as follows:

- That the plan change does not apply to McDonalds' family restaurant, particularly as regards alterations to the existing activity which do not affect the use of the outdoor area in accordance with its certificate of compliance; and
- That, as a result, an exclusion be added to the table at proposed rule ICr42A.1 as follows:
"Sub-point (a) does not apply to internal (unlicensed) restaurant or dining space that would otherwise not fall to be considered a noise generating activity".

2. Section 42A Report

The planning officer's report has responded to McDonalds' submission and notes at paragraph 6.10 that *"in terms of unlicensed restaurants potentially being included in the definition this is intentional"* for the reason that in Council's opinion, *"it is not just noise from bars and nightclubs that can cause a noise problem in the Inner City"*.

To this end, the plan change text is unchanged from that as notified, and further, the Council has clarified in the section 42A report that it does and should apply to McDonalds' activities.

I disagree with this approach for the following reasons:

- As clarified above and in the original submission, McDonalds' restaurant can already operate 24-7 as a permitted activity, especially as use of the outdoor area after 11pm and 1am (depending on the day) is restricted in accordance with operative rule ICr46.
- Any changes to the existing restaurant's operation, which may increase its patronage beyond the 10% threshold proposed in rule ICr.42A (but that does not affect the outdoor area such that external noise and anti-social behaviour would be an issue) should retain its current permitted activity status.
- Indeed, the operative rule ICr.46 and proposed rule ICr.42A are effectively repetitious and therefore the plan change is not necessary in terms of ensuring the McDonalds activity avoids, remedies or mitigates any adverse effects.

What is most important to clarify is whether that scenario referenced above, whereby McDonalds seeks to expand the restaurant but not the "after-hours" use of the outdoor area, falls to be considered a "noise-generating activity" and therefore require discretionary activity consent. The proposed definition of a "noise-generating activity" as set down in PC16 is as follows:

The logo consists of the letters 'B' and 'A' in a large, bold, black, sans-serif font, with an ampersand (&) between them. The letters are slightly stylized with rounded edges.

“is an activity that takes place at a site or building located in the Inner City zone, involving:

- *The assembly of people in an outdoor area (i.e. an area that is outside of the main part of the building such as garden bars, outdoor dining and smoking areas) associated with a commercial activity between the hours of 11.00pm and 7.00am Sunday to Thursday nights, and for the nights of Friday, Saturday, Christmas Eve and New Year’s Eve 1.00am and 7.00am” (emphasis added).*

Considering the comments in the section 42A report, and the emphasised rule wording above, McDonalds wishes to clarify that any future expansion of its internal restaurant space (outside of that 50m threshold for proximity to residentially zoned land) does NOT fall to be considered a noise-generating activity and that therefore, the appropriate permitted activity status is retained.

3. Response to section 42A report

For the points raised above McDonalds remains opposed to the plan change unless clarification is provided as requested. Specifically, any future extension to the existing restaurant should remain a permitted activity.

I ask that you table this letter on 4th May in place of personal attendance on McDonalds’ behalf at the hearing. Please do not hesitate to contact me should you have any queries regarding the above matters.

Yours faithfully

Barker & Associates Ltd



Kay Panther Knight

Senior Planner

DDI: 09 375 0902



RECEIVED

24 MAR 2009

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CERTIFICATE OF COMPLIANCE

Pursuant to Section 139 of the Resource Management Act 1991

Property Description: 111 Rutherford St, Lot 2 DP 13902, CT NL9C/709

This certificate is to certify in accordance with Section 139 of the Resource Management Act that the proposed operating hours of McDonalds restaurant, being 24 hours per day, seven days per week, with the activity being prevented from occurring in areas closer than 50m from the nearest Residential Zone boundary, through the means of a 1.8m high mesh fence erected with associated signage on the Rutherford street frontage, and as outlined in your application, received by Council on 12 February 2009 and further information received 9 March 2009 with relevant plans drawn by Planscapes titled 'Site Plan', Job number 0157 and dated 12/11/2008, is a permitted activity in terms of rules ICr.41 'Signs' and ICr.46 'Closing times - services to the public' of the Nelson Resource Management Plan (Operative in Part September 2004).

Please note:

This Certificate provides evidence of compliance with the Resource Management Act 1991 only and in no way indicates that this activity satisfies the requirements of Council Bylaws or other Regulations such as the Building Act 1991.

Granted Under Delegated Authority:



Mandy Bishop
Manager Resource Consents

Date: 20.03.2009

Mandy Bishop
Manager
Resource Consents
Nelson City Council
(Authorised Officer
Pursuant to Delegation)

Report on Certificate of Compliance

Applicant:	Suffolk Trading Ltd
Site Address:	111 Rutherford St
Legal Description:	Lot 2, DP 13902, CT NL9C/709
Management Areas:	Inner City Centre
Overall Status:	Permitted activity in relation to ICr.41 'Signs' and ICr.46 'Closing times – services to the public'
Other Consents Applied For:	RM085227
Site Visit Undertaken:	28 February 2009

1.0 APPLICATION DESCRIPTION

- 1.1 The application is to confirm the current McDonalds restaurant can operate for 24 hours per day 7 days per week as a permitted activity on this site. The application relates solely to consideration of the operating hours of the restaurant and drive through. The application states that patrons and cars will be prevented from entering the portions of the site that are located within 50m of the Residential Zone boundary. This will be achieved through the erection of a 1.8m high mesh fence with associated signage on the Rutherford Street frontage. The documentation provided shows that the fence prevents patrons from entering the restaurant from Rutherford St as well as restricting vehicle access off Rutherford St. A lock on the doors leading to Rutherford St will also be included. This lock will let people out only, therefore allowing access in the case of a fire but will be monitored by a security guard to ensure that people do not use the door on a casual basis. The Signs attached to the fence are for the purpose of directing patrons on foot to the Hardy St and Selywn Pl entrances.

2.0 SITE & NEIGHBOURHOOD

- 2.1 A site visit was carried out on 28 February 2009.
- 2.2 The site is an established McDonalds restaurant located on the corner of Rutherford Street and Selwyn Place, having pedestrian and vehicle access off these streets and off Hardy Street. Vehicles access three sides of the building with the fourth side facing onto Rutherford St. The drive through is located on the east and south sides of the building. Parking is provided to the east and south.
- 2.3 The servery area faces Rutherford St and can be accessed from doors facing both west to Rutherford St and on the Northern side of the building. A café area with outdoor seating is on the Rutherford St frontage with seating centrally within the building and the children's play area to the north-east side.
- 2.4 The site is located on a prominent corner of the central Nelson area. Rutherford St is a heavily trafficked road as a main entry to the city from the South. The corner is controlled by traffic lights at the intersection with Selwyn Place.
- 2.5 Retail activities exist on the boundaries of the site with the Shell petrol station across Rutherford St and 4-seasons shop across Selwyn Place. Beyond the Shell forecourt the land

rises to include the Palace Backpackers and then residential properties within the Residential Zone. These have a clear view of the application site.

3.0 STATUS OF APPLICATION UNDER PLAN

- 3.1. Under the Operative (in part) Nelson Resource Management Plan (the Plan), the site is zoned Inner City Centre and has no overlays.
- 3.2. Relevant rules, ICr.41 'Signs' and ICr.46 'Closing times – services to the public' Permitted Activity
- 3.3. This application requests a certificate of compliance (s139, RMA) for operating hours in accordance with rule ICr.46 'Closing times – services to the public'. This rule, in section ICr.46.1 a) states:

ICr.46.1

a) Any activity located within 50m of a Residential Zone Boundary, which is open to the public, or is a place of public assembly, may be open to the public only during the following hours:
Sunday to Thursday inclusive: 7am - 11pm
Friday, Saturday, Christmas Eve and New Year's Eve: 7am - 1am the following day, and

- 3.4. The nearest boundary of the application site is located 44.73m from the nearest area of residential zoning. The rule noted above applies to an activity and not just to the site on which an activity occurs. Therefore if the activity itself is located 50m or more from the Residential Zone it complies with this rule.
- 3.5. In this case the applicant will keep their activity at least 50m from the Residential Zone boundary by implementing the following measures:
 - The outdoor seating area and the McCafe are to be closed after 11pm each night (these areas are within 50m of the Residential Zone)
 - 1.8m high mesh fence to be erected across the Rutherford St vehicle entrance/exit points to prevent their use during the hours specified in ICr.46.1 a)
 - Security guards used to prevent patrons using the Rutherford St entry/exit points and areas of the site within 50m of the Residential Zone during the hours specified in ICr.46.1 a)
 - An exit only door lock installed on the main Rutherford St doors to allow people out in the event of a fire but allowing no entry. Exit being prevented during normal operation by a security guard.
 - Attaching signs to the fence for the purpose of directing foot traffic to the Hardy St and Selywn Pl entrances.
- 3.6. The associated signage complies with the permitted standards set out in Appendix 20 of the Nelson Resource Management Plan, with specific reference to AP20.r.2.1.ii c). Rutherford St is classified as an arterial road in the urban road hierarchy map (Planning Map A2.1). This rule states that 'where any sign, other than a verandah sign, is within 20m of the nearest edge of the carriageway of a legal road **and** the sign message will be visible from that road, signs must:

- Have a maximum of five words or a combination of 6 words and symbols and,
- Have a letter height shown in Table AP.20r.2.1, and
- Be sited at the distances shown in Table AP.20r.2.1 from regulatory traffic control signs including traffic lights, advance direction signs and guide signs.

The applicant has stated that the signs will be amended to comply with the letter height and number of words/symbols specified in the above table. The applicant has also confirmed that the purpose of the signs is that they are not to be visible from the local road (i.e. for motorists) they are to inform patrons on foot, thus the signs are placed parallel to the road and will not be visible. The signs also comply with AP20r.11 – Apr.20r.15 ‘rules applying to the inner city, suburban commercial and industrial zones’ therefore qualify as a permitted activity and can be included in this certificate of compliance.

- 3.7. Should the applicant allow their activity to occur within 50m of the Residential Zone during the hours specified in ICr.46.1 a) or the signs are found to not meet the specifications stated above then they do not comply with these rules and at that time this certificate of compliance does not apply.

4. CONCLUSION

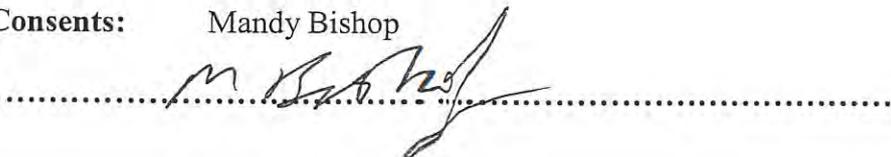
- 4.1. This application is considered to be permitted under the Nelson Resource Management Plan (Operative in part 1 September 2004).
- 4.2. The applicant has demonstrated how they intend to comply with ICr.41 ‘Signs’.
- 4.3. The applicant has demonstrated how they intend to keep their activity at least 50 from the nearest boundary with the Residential Zone, therefore demonstrating compliance to rule ICr.46.1 a).

Date: 20 March 2009

Reporting Officer: Pete Keyanonda



Manager Resource Consents: Mandy Bishop



Notes for Plan Change 16 Hearing on 2 May 2014

Submission No. 13 Gaile Noonan, Hathaway Terrace

The Nelson Resource Management Plan 3.1.2 Zone specific objectives and policies states for Objective IC5.2 regarding “residential zones; - special regard shall be had to preventing any deterioration of the amenity of the Residential Zone as a result of expansion of activities from the Inner City Zone, or as a result of adverse effects across the zone boundary.”

Match this reference to the officers’ comments on my submission and you will see reliance on the application for a resource consent (p54 end of para 1) when a new activity is applied for.

In my experience little or no reliance can be made on Resource Applications as per examples following:

1. Lighting at Trafalgar Park. When the large lights were applied for Rugby World Cup at Trafalgar Park the “experts” assured residents the lightspill would (at worst) be between the two apartment blocks at Hathaway Court. In fact the light spill falls on the northern wall of Trailways and bounces back into the rooms on the southern side of Hathaway Court (while also falling into upstairs bedroom windows (sometimes right through the night).
2. Lighting at tennis courts in Para Para Road. No notification at all was made to residents of Hathaway Court about any potential light spill from this activity. I am unsure if a Resource Consent was required? The light spill actually shines down both Hathaway Terrace and also through the Court at the level of a drivers eyesight.
3. Maitai Walkway – This work was a limited notified Resource Consent and (again) the residents of Hathaway were not consulted while all parties on the western side of the river and also Trailways (which is right next door to our complex) were all consulted. This Resource Consent allows construction work up to six days a week and up to 11 hours per day for the term of the contract. When Council was approached by Hathaway residents with their concerns regarding the impact on their residential amenity – the reply was that we could request a Judicial Review!
4. Tree Removal beside the Maitai River. About a year ago a number of very large trees were removed by chainsaws and commercial mulcher. This was extremely noisy and for several hours. The work was halted as no Resource Consent had been obtained. (In fact I hold a letter of apology from the Council admitting this error or non-compliance).

I am using these examples merely to illustrate why there is considerable mistrust of the Resource Management process . (My experience has been fraught, and I have not been alone in finding processes unsatisfactory). I acknowledge the positive aspects of the above projects for Nelson but for me the related resource consent process proved to be distinctly flawed. There is too the issue of

resource consent undertakings being honoured more in the breach than in observance; the rather greater than predicted light spill from Trafalgar Park being one case in point.

Referring to Page 54 the officer states that this plan change does not cover outside areas and goes on to say that should measurements show non-compliance with this rule and a resource consent is sought then as a discretionary activity impact on outdoor areas would be considered through the discretionary activity status of the rule and the assessment criteria". In fact how would this occur under this plan? Can this please be explained to me. Given the number of hours Nelsonians spend outdoors (even in the evening) I would expect this to be covered under this plan.

I strongly believe that the "city fringe" zone should be maintained for its vital buffering effect.

I refer to page 85 of the Planning Officers Report regarding amenity of neighbouring areas. Where it is stated that"the addition of further similar activities may eventually lead to an unacceptable level of effect." I believe the only way to prevent deterioration of the amenity of the residential zone is to ensure the inner city fringe is maintained to be used as a buffer in order to permit the activities of a vibrant inner city, while ensuring that these do not impinge upon the residential zone of Nelson.

Referring back to paragraph 1, the residential zone closest to the inner city has deteriorated over recent years (some of this deterioration has been outlined above) and their amenity compromised and I would like to see what special regard has been made to preventing any further deterioration.

Many thanks for your consideration and the extension of time to lodge my final comments due to my being overseas.

Gaile Noonan