



**Supreme Court of New Zealand
Te Kōti Mana Nui**

17 July 2017

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

AUCKLAND COUNCIL v WENDCO (NZ) LTD AND WIRI LICENSING TRUST

(SC 14/2016) [2017] NZSC 113

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The Wiri Licensing Trust (the Trust) owns land on the corner of Ronwood Avenue and Great South Road, Auckland. The site is occupied by a number of tenants, including Wendco (NZ) Ltd (Wendy’s), which operates a hamburger restaurant. A tenant, Mobil, left the site in 2013. Its departure was followed by a substantial redevelopment.

Because the redevelopment involved alterations to two vehicle access points between the site and Great South Road, a resource consent under the Resource Management Act 1991 was required. Auckland Council granted the consent without notification.

Wendy’s sought judicial review of: (a) the Council’s decision not to notify the consent application; and, consequentially, (b) the consent. Its complaint was that it was adversely affected by the reconfigured on-site circulation and parking arrangements associated with the access point alterations and should accordingly have been notified. This application called for consideration of the Manukau Operative District Plan 2002 (the Plan) and, in particular, a determination whether the matters over which the Plan reserved discretion encompassed on-site adverse effects of the kind asserted by Wendy’s. The application

also focused directly on the Council's approach to the non-notification decision.

Wendy's were unsuccessful in the High Court before Peters J. The Court of Appeal, however, held that Auckland Council had been required to notify Wendy's of the resource consent application. In reaching this conclusion, the Court held that discretion had been reserved in respect of parking and circulation only to the extent of potential roading network effects and therefore did not extend to the on-site effects Wendy's complained of. It nonetheless concluded that it was necessary for the Council to consider whether Wendy's was required to be heard on what steps should be taken to avoid adverse roading network effects; this with a view to minimise adverse effects on Wendy's which were consequential on such steps as might be taken. In the view of the Court of Appeal, the Council had failed to do so adequately.

The Supreme Court has, by majority, allowed the appeal by the Council. William Young J delivered the majority decision on behalf of himself, O'Regan and Ellen France JJ, while Arnold J delivered a dissenting judgment on behalf of himself and Glazebrook J.

All members of the Court agreed that the matters in respect of which discretion had been reserved in the Plan encompassed on-site effects of the type Wendy's complained of.

The majority held that the Council had appropriately engaged with the on-site effects of the new arrangement, the material before the Council was sufficient to justify its conclusion and its analysis of that material was rational and free from any obvious error. The minority disagreed on this point.

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