

Decision following the hearing of an application for resource consent under the Resource Management Act 1991

Proposal

To construct and operate a 24/7 drive-through restaurant.

This resource consent is **GRANTED**. The reasons are set out below:

Application number	LUC60431090
Site address:	152 Kepa Road, Orakei
Applicant:	McDonald's Restaurants (New Zealand) Limited
Hearing commenced:	Monday 5 th 9.30am and Tuesday 6 th 11:45am May 2025
Hearing panel:	Karyn Sinclair (Chairperson) Andrew Wilkinson Rebecca Skidmore
Appearances:	<p><u>For the Applicant:</u></p> <ul style="list-style-type: none">• Francelle Lupis (Legal Counsel);• Warwick Stevens (McDonalds - Applicant);• Vanessa Liu (Architecture);• Cameron Wallace (Urban design);• Todd Langwell (Transport);• Leo Hills (Transport - Peer Review);• Peter Runcie (Acoustic);• Stephen Sobey (Lighting);• Matthew Norwell and Hannah Hoogeveen (Planning). <p><u>For the Submitters:</u></p> <ul style="list-style-type: none">• Palestine Solidarity Network Aotearoa - Tamaki Makaurau represented by Neil Scott• Leeann Wahanui-Peters• Hāpai Te Hauora Tāpui Ltd represented by Amelia Paxton & Jason Alexander• Marama Royal - Ngāati Whatua Ōrakei Trust (via MS Teams)• Alastair Peter Bell and Rob Sherlock - Orakei Community Association Inc• Penny Coman• Fleur Nixon• Paul J Davies (tabled statement) <p><u>For Council:</u></p> <ul style="list-style-type: none">• Sam Gibbs, Team Leader

	<ul style="list-style-type: none"> • Perry Ng, Planner • Honwin Shen, Traffic Engineer • Neil Stone and Paul Schischka, Auckland Transport Development Planner • Chayla Walker, Senior Hearings Advisor
Hearing adjourned	Tuesday 6 May 2025
Hearing Closed:	Thursday 8 May 2025

Introduction

1. This decision is made on behalf of the Auckland Council (“**the Council**”) by Independent Hearing Commissioners Karyn Sinclair (Chairperson), Andrew Wilkinson and Rebecca Skidmore appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 (“**the RMA**”).
2. This decision contains the findings from our deliberations on the application for resource consent and has been prepared in accordance with section 113 of the RMA.
3. The applications were publicly notified on 21 November 2024. A total of 381 submissions were received, with 45 in support, 5 in neutral support and 331 in opposition.
4. The Commissioners were either very familiar with the site and one chose to undertake an independent site visit prior to the hearing commencing.

Summary of proposal and activity status

5. The applicant proposes to construct and operate a 24/7 drive-through restaurant. The proposal requires resource consent for the following reasons.

Land use consent (s9) – LUC60431090

Business – Mixed Use Zone

To construct a new building, is a restricted discretionary activity under rule H13.4.1(A45).

The proposal involves development under rules H13.4.1(A45)) that fails to meet the following standards and is a restricted discretionary activity under rule C1.9(2):

The proposed landscaping buffer will have a maximum width of 1.0m over a length of approximately 9.0m or a shortfall of approximately 7m² landscape buffer which is less than the 2m required under standard H13.6.6.

Transport

The proposal involves accessory loading and access that does not meet the following loading and access standards and is a restricted discretionary activity under rule E27.4.1(A2).

The proposal does not provide a dedicated loading space which meets the minimum loading space requirements of one loading space for retail uses greater than 300m² and up to 5,000m² gross floor area required under E27.6.2.7(T109).

The proposed vehicle crossing is 7m wide, and therefore exceeds by 1m the maximum vehicle crossing width of 6m under standard E27.6.4.3(1)(b) and table E27.6.4.3.2(T153).

The proposal involves the construction and use of a vehicle crossing for which a Vehicle Access Restriction applies under Standards E27.6.4.1(2) or E27.6.4.1(3) as the site has frontage to Kepa Road, which is identified as an arterial road on the planning maps. This is a restricted discretionary activity under rule E27.4.1(A5).

Signs

To install comprehensive development signages within the site for wayfinding purposes, is a restricted discretionary activity under rule E23.4.1.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS)

The site includes a 'piece of land' under Regulation 5(7) of the NES-CS as activities included on the Hazardous Activities and Industries List have potentially been undertaken on the site and the soil disturbance proposed exceeds the Permitted Activity threshold for the piece of land under NES-CS Regulation 8(3). As a Detailed Site Investigation exists this is a Controlled Activity pursuant to Regulation 9(1) of the NES-CS.

6. The proposal has been considered as a **restricted discretionary** activity.

Procedural matters

7. Under sections 37 and 37A of the RMA, the time limit for the receipt of submissions is waived to accept the late submissions of Suraya Esau, Jill and David Tyler and Del Robie and David Robie for the following reasons.
- The submitted comments in the late submissions are generally the same as those other submissions.
 - The submissions from Jill Tyle & David Tyler and Suraya Esau submissions were submitted within 3 working days after the submission period.
 - The submissions from Del & David Robie were signed on the last day of the submission period being 31 January 2025, but there was a delay from staff, and the submission was only available to the resource consent team on 18 February 2025.
 - The Applicant indicated they did not have any objection to accepting the late submissions.

Relevant statutory provisions considered

8. In accordance with section 104 of the RMA, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and section(s) 104, 104C and 108.

Relevant standards, policy statements and plan provisions considered

9. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents.
 - National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES:CS)
 - National Policy Statement on Urban Development (NPS:UD)
 - Auckland Unitary Plan Chapter B Regional Policy Statement (notably B2 and B3)
 - Auckland Unitary Plan (operative in part) (AUP (OP) OP) notably E27, H13, E23 and Proposed plan changes 78 and 79)
10. We also considered the following other matters to be relevant and reasonably necessary to determine the application in accordance with section 104(1)(c) of the RMA.
 - Submissions received in so far as the matters raised were relevant to those matters over which we have discretion.

Local Board comments

11. The Ōrakei Local Board provided comments on this application. These comments are clearly set out in the section 42A report (page 53). The Commissioners have taken these into consideration in so far as these matters are relevant to our restricted discretion.

Summary of evidence heard

12. The Council planning officer's recommendation report was circulated prior to the hearing and taken as read.
13. Statements of evidence by prepared by expert witnesses were circulated prior to the hearing. These statements were taken as read and the witnesses were provided with the opportunity to highlight the main points raised in their evidence and to respond to questions from the Commissioners.
14. The evidence presented at the hearing responded to the issues and concerns identified in the Council planning officer's recommendation report, the application itself and the submissions made on the application.
15. As the pre-circulated evidence forms part of the public record, only a brief summary of evidence presented by the applicant at the hearing is provided below.

McDonalds

Francelle Lupis (Legal Counsel)

Opening submissions were provided by Legal Counsel Ms Lupis. She noted that the Commissioners were “significantly”¹ confined in the consideration of the application in front of us to a limited number of matters. She noted that there was a single matter that was in contention, being the risk of cars queuing out of the site and onto Kepa Road. Ms Lupis noted that drive-through restaurants were a permitted activity on the site, and that the trip generation did not require resource consent. She went on to submit that given the restricted nature of our discretion, there should be forensic² consideration of those matters over which discretion is restricted, citing by example the Vehicle Access Restrictions, where, in her submission, the intent is clear, and that the Commissioners have to be very mindful of the outcomes sought by the relevant provisions.

Ms Lupis noted that the Resource Management Act was not a ‘no effects’ statute³, that there was a significant level of agreement between the Applicant’s team and the Council. She noted the matters that should not form part of our consideration, and which conditions the Applicant is offering up as Augier.

Warwick Stevens (Applicant)

Mr Stevens provided a statement of evidence which was taken as read by the Commissioners. In response to questions about the proposed Litter Management Plan, Mr Stevens noted that McDonalds has a complaints procedure, and a complaints form is available either on site or via the Head office. Also in response to questions, he noted that Uber Eats currently accounts for approximately 5% shift from drop in visits nationally. He noted that the staff would progress drive through customers in the event of a delay, to parking spots where any delayed order would be able to be provided, including the ‘grill order’ space. Mr Stevens noted that McDonalds relies on market analysis to determine both the likely custom and effect on other McDonalds and that analysis is consistent with the traffic data relied on by their experts. He further noted he has not had to address any significant queuing problems elsewhere across the McDonalds.

Ms Lui (Architect)

Ms Lui explained the functional requirements of a McDonalds restaurant that have informed the design, including the way the site layout responds to traffic circulation requirements, including a need for the pick up point being on the drivers side of the car and three windows.

Ms Lui also clarified aspects of the building design, including the use of different materials and the way roof plant would be screened from view.

¹ Opening submissions para 1.3

² Ibid para 1.8

³ Ibid para 1.12

Mr Wallace (Urban Design)

Mr Wallace explained that he was not involved in the preparation of the consent application but asked to provide urban design evidence. His assessment was that while the height and scale of the signage (most notably the “golden arches”) would be visually prominent, they were not, in his opinion inappropriate in their context.

Mr Runcie (noise)

Mr Runcie noted amendments to his evidence to correct the way in which the 11pm – 7 am and ‘all other times’ dB L_{eq} was correct and that dB L_{Aeq} was incorrect. He noted there were no outstanding areas of disagreement relating to noise with the Council’s acoustic expert.

Mr Sobey (lighting)

Mr Sobey confirmed that all of the lighting proposed complied with the Auckland Unitary Plan. He further noted that there were no outstanding areas of disagreement relating to lighting with the Council.

Mr Langwell (traffic)

The Applicant provided two briefs of traffic evidence, with Mr Langwell having prepared the initial traffic assessment for the application, and Mr Hills providing a peer review.

Mr Langwell made a minor amendment to his evidence in chief at para 6.33 which should read “...resulting in 11 cars queuing to make an order”.

Mr Langwell confirmed his understanding of the local traffic environment, including the upgrade of the intersection of Kepa Road and Kupe Street, noting that the works are expected to be completed in mid 2025. He confirmed that there were to be 16 car parking spaces for customers on the site.

Mr Langwell set out the conclusions of the Integrated Traffic Assessment. He reiterated that in his opinion⁴,

- a) the additional traffic generated by the activity would have less than minor effects on the flow of traffic on the network.
- b) with the right hand turn out of the site eliminated, the access would operate safely and efficiently.
- c) the anticipated queue lengths can be readily contained within the site.
- d) sight lines were good in both directions and vehicles would have good visibility of the nearby pedestrian crossing.
- e) Delivery vehicles can be accommodated on site.

He went on to address the four transport matters that necessitated resource consent and the outstanding areas of disagreement between Auckland Council/Auckland Transport (AC/AT) and the applicant. The area of disagreement hinges on whether there is

⁴ Langwell summary statement para 6

sufficient on site space for queuing to prevent traffic backing up into the flow of traffic on Kepa Road and potential associated impacts on cyclists and pedestrians. This area of disagreement in his view was due to insufficient information, in the view of Auckland Transport, to ‘fully understand the site trip generation’⁵.

Mr Langwell reiterated that the trip generation was derived from ‘analysis of multiple restaurants and utilising decades of experience and knowledge ... to provide the most accurate estimates for trip generation.’⁶ Mr Langwell set out his sensitivity analysis and confirmed that, with a monitoring and Drive Through Management Plan, conditions were appropriate.

Mr Langwell commented on the appropriateness of a condition requiring a raised triangular island to deter right hand turning out of the site, expressing reservations as it may suggest vehicle right of way over pedestrians. He also considered the visibility splay requirement to the west to be unnecessary, given the sight lines in any case.

In answer to questions, Mr Langwell confirmed that the vehicle crossing standard requires the provision of pedestrian priority across vehicle entrances through the application of a continuous ground surface across the entrance. In response to a query about behavioural patterns in response to queuing, he was not aware of any research that could be drawn on. Like other transport witnesses he drew on his own experience to provide a response.

Mr Langwell emphasised his position that the reference guidance documents referred to by AC/AT were not as reliable as the survey work carried out by the Applicant team, especially given the age of the documents, and the generic nature of the categories with differences in the type and location of restaurants and the characteristics of the restaurant. Mr Langwell referred us back to his evidence in chief and reiterated that, in his opinion, it is far more appropriate to use transaction data and convert it into trip generation. He noted that the trip generation data from RR-453 is not as reliable given, among other things, the age of the data and the changes that have occurred to drive through operations (including online ordering and delivery drivers (such as Uber)⁷.

Mr Langwell noted that if the vehicle crossing complied with the permitted activity standard, there would be more difficulties for the trucks accessing the site including the potential for additional manoeuvres and potential for clashes between cars exiting the drive through with cars entering the site.

Mr Hills (traffic)

Mr Hills set out his approach to the peer review he undertook. He confirmed that he was not constrained or limited in that peer review. He noted that, in his opinion, there would be a direct correlation between service time and queuing. He felt that the actual survey data of queue lengths he had collected from similar McDonalds restaurants in both

⁵ ibid 13(a)

⁶ Ibid para 14

⁷ Langwell evidence in chief para 6.17

Auckland and Christchurch was more accurate than “a number that is used to calculate something”⁸ relating to service time.

Mr Hills, in response to questions about the AT Network Operating Plan, noted that the document is more about the operation of the network. He noted that modelling and queuing analysis showed no noticeable impact on Kepa Road, including on public transport. He noted that the flush median for any right turning traffic into the site would not block westward traffic and that the traffic signals currently under construction at the nearby intersection of Kepa Road and Kupe Street would be the delay that may influence public transport especially, rather than the operation of the McDonalds site.

He agreed with Mr Langwell that the proposed vehicle access was the ‘best’ location available for the site.

In the unlikely event that queuing occurred, as signalled in AT’s memo, during peak periods, both witnesses agreed that the peak queues as a result of the traffic lights would hold back the demand from the site.

Mr Norwell/Ms Hoogeveen (planning)

Mr Norwell set out that while Ms Hoogeveen would give the evidence, they took a joint approach to the preparation of evidence, in part given his 25 years of experience with McDonalds and his familiarity with the AUP (OP) provisions through the hearings process for that document.

Mr Norwell noted that the AUP (OP) provides for drive-through restaurants in three zones, including the zone applying to the subject site. He further noted that the trip generation is not a relevant matter of consideration as the development threshold is not met under E27.6.1.1 (T8).

Ms Hoogenveen noted that in her opinion the NPS - UD should be considered in the round and not be narrowed to consider only one point. In addition, she noted that the evidence of Mr Langwell and Mr Hills regarding pedestrian safety had been relied on in their assessment of the proposal in relation to the NPS - UD.

Ms Hoogenveen, on a question from the panel, confirmed a number of matters contained in the draft conditions of consent that did not fall within the discretion of the Panel.

16. The evidence presented by the submitters is summarised as follows.

Palestine Solidarity Network Aotearoa

The Palestine Solidarity Network sought to address issues relating to human rights. The Panel did not accept this as evidence germane to the application, decision making parameters or Resource Management Act.

⁸ Verbal response to question at Hearing 5 May 2025

Leanne Wahanui-Peters

Ms Wahanui-Peters noted that she came from Orakei and noted that the proposal had received a 2000 signature petition in opposition to it. She said the area was very busy and did not want to have '24/7' traffic. She was concerned about the school children and wanted to retain the local character.

Hāpai Te Hauora

Amelia Paxton and Jason Alexander gave evidence on behalf of Hāpai Te Hauora. Mr Alexander gave a brief explanation of Hāpai Te Hauora, and why the organisation was submitting. Ms Paxton then set out the concerns they have in relation to the Proposal, including the perceived loss of amenity values and how the Litter Management Plan could be monitored to demonstrate it is effective.

Marama Royal

Ms Royal noted that congestion of Kepa Road was an issue. She noted that the optics of the proposed activity were not good for the tamariki who were walking to school, many of whom would walk past the site. She was concerned about the potential for anti-social behaviour, noting that the site may become a 'meeting point' for antisocial activity which may become a safety issue for local people. Ms Royal noted that there was a significant number of people who walked through the area, including through the nursery at Pourewa and down to the watercourse or to St Josephs school. She felt that safety was the biggest issue.

Alastair Bell & Rob Sherlock Orakei Community Association

Mr Bell noted that the 2400 housing units making up Orakei were very mixed and that community wellbeing was very important and should be given the same consideration as the expert evidence. He submitted that the likelihood of queuing beyond the site was highly likely, and that the impact on pedestrians and cyclists and vehicles was high. There was significant local opposition. Mr Bell questioned the appropriateness of the Business: Mixed Use zone, which he submitted had outlived its original intention. He made a distinction between the existing petrol station and the Proposal, noting that a petrol station that relies on a drive in function was "hard to refute unless very adverse traffic effects can be demonstrated and cannot be engineered around".

He submitted that wellbeing is a consideration that needs to be brought into the decision and that the community voice was important.

Mr Sherlock noted that they were neighbours, not consultants. He noted that the Flow Transportation Specialists memo was provided gratis, but that the Community Association could not afford to call expert evidence. They however relied on the Flow memo which noted an underestimate of the use, and queuing, and risks to pedestrians and cyclists through the access being blocked.

Penny Coman

Ms Coman gave a very thorough presentation of her concerns regarding the proposal. She raised concerns about the impact the proposal would have on traffic, noting the changes to the AUP (OP) that will transform the area and increased density, noting that there had been no attempt to improve the infrastructure of the area to cope with the growth. She noted her concerns at trying to interpret the traffic evidence, as a lay person, and was concerned that the modelling did not consider the increases in housing capacity, parking on site, potential for queuing to impact accessibility of parking, and whether the right hand turn prohibition out of the site would work without a raised island. She was also concerned about the lack of information regarding pedestrians and how the use might impact them, including the local school children. She was concerned about the public nuisance and noise issues that might arise, drawing on her observations of the Quay Street McDonalds.

Fleur Nixon

Ms Nixon presented on the potential impacts of the proposal in relation to the natural environment of the area, citing issues relating to night light pollution and the impact on birds, litter and its potential to create plastics pollution and attract vermin and poison birds. She raised concerns about stormwater carrying pollution through drains in the waterways. In addition she was concerned that the proposal would have adverse effects on the visual amenity of Purewa Cemetery.

Troy Churton for Orakei Local Board

Mr Churton noted that, in his opinion, the panel should be making a decision based on the current environment in 2025, and not 2016 provisions of the AUP (OP), to ensure the decision was appropriate now. He considered that a non-drive through activity would be more appropriate. He considered that the brand recognition of McDonalds was a clear juxtaposition to Pourewa and what Ngati Whatua were trying to achieve. He noted that Kainga Ora were proposing a significant redevelopment of their land holdings in Orakei in the near future. He also noted that there were no rubbish bins in the area.

17. The Council provided summary statements. Mr Ng confirmed that he had not changed his opinion. He remained of the opinion that the consent trigger for a vehicle crossing, required consideration of traffic modelling for the Site to determine how potential queueing would affect the crossing the functioning of the adjacent network. In his opinion, the queuing model used by AT was 'a more robust and conservative approach' to understanding the potential traffic effects of the proposal. In his opinion, he could not support the proposal as there were unacceptable adverse effects on the transport network and that the proposal "did not meet the objectives E27.2(4) and (5) and policies E27.3 (20) and (21)(a)".
18. The applicant's right of reply was given by Ms Lupis and addressed the following matters.

- The decision making responsibility of the panel is confined by the AUP (OP). The panel has no capacity to digress from those constraints, in spite of the desire of some, it is what governs our decision making.
- McDonalds does not subscribe to the 'strained interpretation' of 'access' as suggested by Mr Ng and Auckland Transport in part due to the AUP (OP) definition of 'vehicle crossing' and the interchangeably of the use of the two phrases "access" and "vehicle crossing" in E27. Ms Lupis noted the Plan definition of "vehicle crossing" as "a vehicle access between a road carriageway and a site boundary". She noted that "there is no other definition of "access" in the Plan or any broader policy indication that suggest that, in this restricted scenario, the concept of "access" should be artificially inflated to introduce a broad consideration of vehicle movements or trip generation".⁹ Ms Lupis highlighted the differences in the provisions of the AUP (OP) that direct us to consider vehicle access near a motorway interchange and distinguishes it from the provisions relating to access onto an arterial road, noting that we should not imply anything where the Plan is silent.
- Ms Lupis provided a final set of proposed conditions, noting those that were offered as Augier conditions by the applicant, and further noting that we must, as a principle of the law as it stands, assume compliance and that it was not appropriate for the Council concern to assert that they didn't know if conditions would be complied with.

Principal issues in contention

19. After analysis of the application and evidence (including proposed mitigation measures), undertaking a site visit, reviewing the Council planning officer's recommendation report, reviewing the submissions and concluding the hearing process, the proposed activity raises a number of issues for consideration. The principal issues in contention are:

- Whether the drive through component of the activity would result in cars queuing out onto Kepa Road and the resultant effect of this on the traffic network.
- Whether the assessment of relevant provisions of the National Policy Statement Urban Development (NPS - UD) and AUP (OP) objectives and policies results in an inconsistency that necessitates declining the activity.

The Panel acknowledges the broad range of matters raised both in written submissions and in appearances at the Hearing. The resource consent application to be determined is a restricted discretionary activity. Our discretion as decision makers is limited to a discrete number of matters, constrained by both the requirements of the RMA and the AUP (OP).

⁹ Para. 1.16, closing legal submissions for McDonalds

Many submitters raised concerns about the Proposal that fell outside of the matters that we can consider in this decision.

Main findings on the principal issues in contention

20. Our main findings on the principal issues that were in contention are set out below.

Whether the drive through component of the activity would result in cars queuing out onto Kepa Road and the resultant effect of this on the traffic network

The position taken by the applicant's team was that the restricted discretionary assessment criteria relating to the vehicle access onto the arterial road (being Kepa Road) did not include a discretion to consider the internal functioning of traffic movements or traffic generation of the activity. The AC/AT position was that we had discretion to consider these matters. Consequently, AC/AT assessed the potential for queuing to occur beyond the site, tying it to the restricted discretionary activity criteria governing the vehicle access restrictions relating to the arterial road.

The applicant's team did not agree with the AC/AT interpretation but because of the s92 requests and subsequent s42A report did engage with that issue. Mr Langwell and Mr Hills for the applicant determined, based on modelling and real-life surveys undertaken, that the operation of the drive-through will not induce any queuing that would affect Kepa Road. In the unlikely event that queuing occurred, the applicant offered up a condition for a Drive Through Management Plan and a review condition to manage any resulting effects.

Auckland Transport, assisting Auckland Council, identified concerns relating to a lack of certainty regarding trip generation and drive through service times, the disparity between data relied on and technical guidelines, and the potential adverse effects on the transport network.

If queuing was to occur, according to AT/AC, it would be at peak periods. What we failed to see in the analysis by AT/AC was what the potential effect would be of vehicles entering the site in the context of Kepa Road, at peak periods. As noted by Mr Langwell and Mr Hills, any vehicles entering the site would already be part of the peak hour traffic and moving slowly and that the traffic signals at Kepa/Kupe would be determining traffic movement. AT/AC did not provide any such consideration but indicated that the cumulative delay of queuing would result in a delay of just shy of 4 minutes and a 6.4% probability of queuing during the peak hour, albeit spread across the peak hour, not occurring all at once. Mr Stone characterised this as a 'high impact' effect. However, in assessing the effects the AT memo notes "This level of delay (232 seconds of queuing) will cause significant driver frustration and might lead to unsafe and aggressive driver behaviour".¹⁰ This statement reads as if it is not an assessment based on the likelihood that the delay is not a single one off event but spread across the hour. Similar statements are made in relation to public transport "Any delays of more than a few seconds to Kepa Road will increase public transport journey time and would directly affect the perceived reliability of public transport"¹¹. There was no evidence provided to us to suggest that the

¹⁰ S42A report page 87

¹¹ Ibid page 88

public transport user rates their journey time by seconds. We note that the delay is again measured against a single PT trip, rather than by the three different services that operate in the peak period, and against a single 230 second delay rather than across the hour. The memo also assumes that the delays happen every day, affecting PT reliability, but the assessment was taken based on peak, being Thursday, Friday or Saturday¹².

Mr Stone's memo in the s42A report (updated 3 April 2025) states "...The applicant has not provided sufficient information to demonstrate that the vehicle crossing can operate without resulting in adverse effects"¹³ and "Based on AT's review ... as well as the transport specialist reports from PTM and Flow, it is evident that the applicant has not been able to demonstrate that the site will not cause queuing into Kepa Road..."¹⁴. We accept the legal submissions from Ms Lupis that "the Resource Management Act is not a 'no effects' statute"¹⁵.

We found Mr Hills additional analysis derived from his surveys, that correlated directly to this site and its likely operation, provided sufficient assurance that there is very little likelihood of queuing occurring out of the site and into Kepa Road. No one could categorically find that it would not occur. But in the event queuing does occur, there are mitigations in place through conditions of consent. In making this finding, the Panel are confident that the real time surveys undertaken by the applicant provide sufficient demonstration of how the proposal will operate, including the sensitivity testing. We note that our preference to rely on real time surveys and sensitivity testing over guidance documents accepting Mr Langwell's evidence on the reliability of these documents¹⁶. In addition, there is sufficient "belts and braces" provided by the Drive-through Management Plan and the review condition. We accept Ms Lupis's submissions that there is a well-established legal position that we "must assume that the proposed conditions will be complied with"¹⁷.

In addition, AC and AT have relied on the Flow memo provided to AT (which we note is similar but modified for Mr Sherlock as noted above). The author of that Flow memo was not made available to us for questions, and nor was the memo accepted as 'evidence'. We have accordingly assigned it very little weight.

Whether the assessment of relevant provisions of the National Policy Statement Urban Development (NPS - UD) and AUP (OP) objectives and policies results in an inconsistency that necessitates declining the activity

Both the application and the section 42 A report set out the relevant matters for our consideration under s104 and s104C. The matter of contention is a matter of professional opinion. S104 requires us to have "have regard to" relevant provisions of the NPS - UD, RPS and AUP (OP). Mr Norwell and Ms Hoogeveen were of the opinion that the proposal was consistent with the NPS - UD and the AUP (OP) RPS. Mr Ng was of the opinion that given the risks to pedestrians due to the potential obstruction from queuing vehicles, the

¹² Langwell, evidence in chief para 5.4(b)

¹³ S42A report page 82

¹⁴ S42A report page 92

¹⁵ Opening Legal Submissions para 1.12

¹⁶ Langwell, evidence in chief para 6.17

¹⁷ Reply submissions para 2.1

proposal would not meet “The relevant objectives and policies, particularly in relation to providing a safe pedestrian environment under objective 1”¹⁸. Further he was of the opinion that proposal would not meet the relevant objectives and policies of the RPS Chapter 2 with respect to providing a safe pedestrian environment and Chapter B3 in relation to the potential for queuing effects on the transport network.

Given our findings in relation to queuing above, we prefer the more balanced assessment of Mr Norwell and Ms Hoogeveen, that the proposal is consistent with the overarching higher-order framework set out in the NPS - UD and the RPS.

With respect to the provisions of the AUP (OP), we note the degree of alignment between Mr Norwell, Ms Hoogeveen and Mr Ng in relation to the relevant provisions of H13 and E23. We have no need to revisit these provisions. The areas of agreement are set out in the evidence of Mr Norwell and Ms Hoogeveen at para 8.1.

There are significant differences of opinion however in relation to E27 in relation to the assessment of the Vehicle Access Restriction. The Panel is mindful that the relevant provisions are established by the restrictions over which we have discretion. In relation to E27 and to the outstanding matter in contention, being the Vehicle Access Restriction, the matters of discretion are limited to those set out in E27.8.1(12) with the assessment criteria set out in E27.8.2(11). Vehicle Access Restriction provisions are triggered by the site being accessible only from an arterial road. The specific policy that informs these restrictions is E27.3(21) which we have repeated below:

(21) Restrict or manage vehicle access to and from sites adjacent to intersections, adjacent motorway interchanges, and on arterial roads, so that:

*(a) the **location, number, and design of vehicle crossings and associated access** provides for the efficient movement of people and goods on the road network; and*

(b) N/A

The bold represents the matters of relevance to achieve outcome, being the ‘efficient movement ...’.

We were reminded by Ms Lupis that the definition of vehicle crossing in Chapter J is “*Facility for vehicle access between a road carriageway and a site boundary*”. Ms Gibbs confirmed that the Council practice was that access included access within the site in addition to the interface with the street. We note that the Council’s confirmation was subject to reply submissions. We are not persuaded by the Council’s interpretation in this instance, and draw several relevant provisions to support our findings including:

- the wording of policy 21 which seeks to manage vehicle access “to and from’ sites ... on arterial roads...
- standard E27.6.4.1.(2) which requires consent for a new vehicle crossing and then subsequently at (3) which specifically references the boundary of the site that

¹⁸ S42A report page 60

fronts the arterial road. The wording of this standard triggers the need for resource consent.

- The assessment criteria E27.8.2(11)¹⁹ for Vehicle Access Restrictions which addresses the safe and efficient operation of the adjacent transport network (all external matters from the site) having regard to

“(i) *visibility and safe sight distances;*

- *existing and future traffic conditions including speed, volume, type, current accident rate, and the need for safe manoeuvring;*

- *proximity to and operation of intersections;*

- *existing pedestrian numbers, and estimated future pedestrian numbers having regard to the level of development provided for in this Plan;*

- *existing community or public infrastructure located in the adjoining road, such as bus stops, bus lanes and cycleways;*”

Addressing the assessment criteria of (i) above, there is agreement between the experts that there is adequate visibility during normal traffic operations, and a relocation of the vehicle access would not result in any different an outcome. In addition, the matters relating to the traffic conditions, pedestrian safety and existing infrastructure including the cycleway are, given our finding above with respect to the potential for queuing, found to be satisfactory.

Turning again to the relevant objectives and policies, we rely on the evidence of Mr Norwell and Ms Hoozeveen, preferring it over that of Mr Ng. Our reason for this finding is that having preferred the evidence that the likelihood of queuing onto Kepa Road is very low, the corollary is that the proposal has had adequate regard to the relevant objectives and policies and certainly does not offend them.

We are of the view that the objectives and policies relevant to the proposal do not extend to managing internal vehicle movements, noting the language of policy 20 is “require vehicle crossings and associated access...” and policy 21 is “Restrict or manage vehicle access to and from sites ... on arterial roads...”. Neither policy, in our view, imports a discretion for us to consider the internal arrangements of the site as they relate to access from an arterial road.

Having considered all of the relevant provisions in the round, we find that the Proposal, on balance, is generally consistent with the relevant provisions of the relevant statutory documents.

¹⁹ The latter bullet points (ii) and (iii) are not relevant to our consideration

Decision

21. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104C, 108 and Part 2 of the RMA, we determine that resource consent to construct and operate a 24/7 drive-through restaurant is granted for the reasons and subject to the conditions set out below. In coming to this decision the Panel has not given consideration to matters that are outside of our discretion.

Reasons for the decision

- i. The proposal is not contrary to the relevant objectives and policies of the NPS - UD, the AUP (OP) RPS provisions of Chapters 2 and 3, and the AUP (OP) provisions of E23, E27 and H13.
- ii. The effects of the Proposal are found to be acceptable, subject to conditions as set out below.

Conditions

1. This consent must be carried out in accordance with the documents and drawings and all supporting additional information submitted with the application, detailed below, and all referenced by the council as resource consent number LUC60431090.
 - Application Form and revised Assessment of Environmental Effects prepared by Maiah Barnfield of Barker & Associates Limited, dated 20 June 2024.

Report title and reference	Author	Rev	Dated
Infrastructure Assessment Report	Eighty6 Engineering	C	20/05/2024
Proposed Stormwater catchment	Eighty6 Engineering	/	13/07/2023
Planting Maintenance Schedule	Gaynor Revill Design	/	/
Planting Specification	Gaynor Revill Design	/	/
Integrated Transport Assessment	Traffic Planning Consultants Limited	C	16/02/2025
Technical Memo	Commute Transportation Consultants	/	26/02/2025
Drive Through Management Plan	/	/	/
Servicing and Loading Management Plan	/	/	/
Environmental Site Assessment: Preliminary and Detailed Site Investigation at 152 Kepa Road, Orakei	Soil & Rock Consultants	B	15/08/2023
Site Management Plan	Soil & Rock Consultants	/	09/08/2023

Drawing title and reference	Author	Rev	Dated
Overall Site Plan, RC010	ASC Architects Group	F	07/04/2025
Signage Schedule, RC050	ASC Architects Group	B	07/04/2025
Signage Schedule, RC051	ASC Architects Group	/	17/03/2024

Overall Floor Plan, RC100	ASC Architects Group	A	19/08/2024
Roof Plan, RC170	ASC Architects Group	A	19/08/2024
Overall Exterior Elevations, RC200	ASC Architects Group	B	07/04/2025
Overall Exterior Elevations, RC201	ASC Architects Group	A	07/04/2025
Exterior Elevations, RC202	ASC Architects Group	A	07/04/2025
Exterior Elevations, RC203	ASC Architects Group	B	07/04/2025
Overall Sections, RC301	ASC Architects Group	/	17/03/2024
Exterior Perspective, RC900, RC901, RC902	ASC Architects Group	A, B, A	07/04/2025
Landscape Concept Plan, LA01	Gaynor Revill Design	RC2-2	07/10/2024
Earthworks Plan Finish Contour, FP383-20	Eighty6 Engineering	B	08/03/2024
Architectural Layout Change, FP383-21	Eighty6 Engineering	B	08/03/2024
Sediment and Erosion Control, FP383-22	Eighty6 Engineering	A	17/07/2023
Retaining Wall Layout Plan, RP383-26	Eighty6 Engineering	B	08/03/2024
Retaining Wall Longitudinal Sections, FP383-27	Eighty6 Engineering	B	08/03/2024
Driveway and Carpark Layout Plan, FP383-30	Eighty6 Engineering	B	12/10/2023
Driveway Longitudinal Sections, FP383-31	Eighty6 Engineering	A	17/07/2023
Kerb Layout Plan, FP383-36	Eighty6 Engineering	B	12/10/2023
Drainage Layout Plan, FP383-40	Eighty6 Engineering	C	08/03/2024
Drainage Longitudinal Sections, FP383-41	Eighty6 Engineering	A	17/07/2023
Stormwater Catchment Plan, FP383-42	Eighty6 Engineering	A	17/07/2023

Wastewater Catchment Plan, FP383-43	Eighty6 Engineering	A	17/07/2023
Water Plan, FP383-50	Eighty6 Engineering	C	08/03/2024

Other additional information	Author	Rev	Dated
Iwi Consultation on proposed McDonalds development at 152 Kapa Road	Barker & Associates	/	/
Section 92 Request Tracking Table	Barker & Associates Limited	/	20/06/2024
S92 responses	Traffic Planning Consultants	/	21/06/2024 16/08/2024 05/09/2024 02/10/2024 27/10/2024 25/02/2025

2. Under section 125 of the RMA, this consent lapses five years after the date it is granted unless:
 - a. The consent is given effect to; or
 - b. The council extends the period after which the consent lapses.
3. The consent holder must pay the council an initial consent compliance monitoring charge of \$1,170 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

Advice note:

The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, must be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge. Only after all conditions of the resource consent(s) have been met, will the council issue a letter confirming compliance on request of the consent holder.

Pre-commencement conditions

Finalised architectural design plans

4. Prior to the approval of Building Consent, the consent holder must submit a finalised set of architectural detail drawings and materials specifications must be submitted to the council. The information must include the following:
 - a. details of the building's façade treatment / architectural features;
 - b. materials schedule and specification, sample palette of materials, surface finishes, and colour schemes (including colour swatches) referenced on the architectural elevations; and
 - c. external / rooftop services / plant, and visual / aural screening elements.
 - d. The pedestrian crossing from Kepa Road boundary to the restaurant building.

The finalised set of drawings must ensure that the building's proposed architectural treatment and finished appearance is consistent with the plans and information referenced at Condition 1.

All works must then be carried out with the details confirmed by the council, and thereafter retained and maintained, in accordance with the confirmed plans.

Advice note:

As part of the condition monitoring process, Council's monitoring inspectors will liaise with members of the Council's Tāmaki Makaurau Design Ope (Urban Design Unit) to provide confirmation of design compliance in relation to architectural drawings and materials specifications under this condition. The confirmation of design compliance does not relate to Building Act 2004 or Building Code compliance. A separate building consent application is required, and all building work must comply with the provisions of the Building Act and Building Code. We recommend that you seek appropriate specialist advice to ensure coordination between compliance with design requirements and Building Act and Building Code compliance.

Finalised signage design

5. Prior to the approval of Building Consent, the consent holder must provide detailed information to illustrate the finalised design details of the proposed signage, including the proposed locations, dimensions, colours, materials, and surface finishes. The finalised design details must be established prior

to the development hereby consented being first operated, and thereafter retained and maintained in perpetuity.

Advice note:

As part of the design compliance process, Council's monitoring officers will liaise with the Council's Tāmaki Makaurau Design Ope (Urban Design Unit) to ensure that the submitted details are consistent with the approved plans and information.

Finalised landscape design drawings, specifications and maintenance requirement

6. Prior to the commencement of any work on site, the consent holder must provide to the council, a finalised set of detailed landscape design drawings and supporting written documentation which have been prepared by a landscape architect or suitably qualified professional. The submitted information must be consistent with the consented landscape concept plans by Gaynor Revill Design, dated 7th October 2024, and, at a minimum, must include landscape design drawings, specifications and maintenance requirements including:
 - An annotated planting plan(s) which communicates the proposed location and extent of all areas of planting.
 - A plant schedule based on the submitted planting plan(s) which details specific plant species, plant sourcing, the number of plants, height and/or grade (litre) / Pb size at time of planting, and estimated height / canopy spread at maturity.
 - Details of draft specification documentation for any specific drainage, soil preparation, tree pits, staking, irrigation and mulching requirements.
 - An annotated pavement plan and related specifications, detailing proposed site levels and the materiality and colour of all proposed hard surfacing.
 - An annotated street furniture plan and related specifications which confirm the location and type of all bins, lights, fences, walls and other structural landscape design elements.
 - A landscape maintenance plan (report) and related drawings and specifications for all aspects of the finalised landscape design, including in relation to the following requirements:
 - (i) Irrigation.
 - (ii) Weed and pest control.

- (iii) Plant replacement.
- (iv) Inspection timeframes.
- (v) Contractor responsibilities.
- (vi) All specimen trees must be 160L in size at time of planting.
- (vii) The retaining walls abutting the reserve to the north and west must be of keystone construction or stained in a dark recessive colour to ensure that the walls do not adversely affect the amenity qualities of the reserve.

The finalised landscape design must be consistent with the landscape design intent / objectives identified in the conceptual plans and information referenced at condition 1 and confirm responsibilities for ongoing maintenance requirements.

Advice note:

It is recommended that the consent holder consider a minimum three-year management / maintenance programme for plant establishment and provide, in particular, details of maintenance methodology and frequency, allowance for fertilising, weed removal / spraying, replacement of plants, including specimen trees in case plants are severely damaged / die over the first five years of the planting being established and watering to maintain soil moisture. As part of the certification process, the Council's monitoring team will liaise with landscape architects from the Council's Tāmaki Makaurau Design Ope (Urban Design Unit). to ensure that the submitted drawings and related information are consistent with the originally consented landscape concept plan(s).

Finalised construction traffic management plan

7. Prior to the commencement of any physical works on the site, the consent holder must submit a detailed Construction Traffic Management Plan (CTMP) to the council. The CTMP must include the following aspects of the construction process:
 - Estimation on number of heavy vehicle movements per hour and per day during the construction period.
 - Hours of work, staging of the development and construction period.
 - Details of how effects on the surrounding environment including pedestrian-and bicycle traffic as well as public transport will be managed.
 - Parking management plan for visitors and construction traffic. All parking must be contained within the site.

- Location of loading/working areas.
- Heavy vehicles including truck and trailer operation must be prohibited between the hours of 7.00 am – 9.00 am and 2:55 pm to 6.00 pm, Monday to Friday.
- Detail of where cleaning facilities will be provided within the site to thoroughly clean all vehicles prior to exit to prevent mud or other excavated material from being dropped on the road. In the event that material is dropped on the road resources should be on hand to clean-up as soon as possible.
- How the transportation and parking of oversize vehicles such as cranes will be managed.
- Traffic management plans in compliance with the latest edition of the NZTA “Code of Practice for Temporary Traffic Management” (COPTTM) document.
- A pedestrian management plan including temporary pedestrian routes which must be easily traversable, well-marked and safely separated from moving vehicles.
- Requirement that the site access point be clearly signposted and to ensure that access to neighbouring properties is not compromised.

The consent holder must not commence any construction activity until the CTMP has been certified by the council (at least three months prior to the commencement of construction), and all construction traffic must be managed at all times in accordance with the certified CTMP.

Advice Notes:

Construction loading or unloading from the street is to be permitted only with the approval of Auckland Transport.

The CTMP must be included in the application for a Corridor Access Request.

Construction Management Plan

8. At least 20 working days prior to the commencement of physical works, the consent holder must provide a development-specific Construction Management Plan (CMP) prepared in conjunction with the primary construction contractor/s and appropriately qualified personnel to the council. Physical works must not proceed until a CMP has been certified by the council.

The objectives of the CMP are to:

- a. avoid as far as practicable, and minimise when avoidance is not practicable, adverse effects arising from construction activities; and
- b. ensure compliance with the SMP certified by the Council in accordance with condition 1 in relation to site specific earthworks.

This plan shall include but not be limited to:

- a. Location of construction vehicle access to the site from Kepa Road;
- b. Contractor parking;
- c. Loading/unloading areas;
- d. Machinery parking;
- e. Site containment fencing/gates;
- f. Measures to limit migration of soil to the surrounding road network;
- g. Inspection and cleaning of material from surrounding road network (if/when required);
- h. Noise and vibration limits, mitigation and management measures to meet those limits;
- i. Erosion and sediment controls;
- j. Roles, responsibilities, and contact details (phone and email) for all relevant site staff (foreman) and key personnel (including environmental roles);

The ability to amend and adapt the plan from time to time as a consequence of monitoring, changing site circumstances, and factors not previously anticipated.

Pre-start meeting

- 9. Prior to the commencement of the earthwork activity, the consent holder must hold a pre-start meeting that:
 - a. Is located on the subject site;
 - b. Is scheduled not less than five days before the anticipated commencement of earthworks;
 - c. Includes representation from the council including monitoring officer[s]; and

- d. Includes representation from the contractors who will undertake the works;
- e. Work arborist.

The following information must be made available at the pre-start meeting and available within the site until the completion of the construction work.

- Timeframes for key stages of the works authorised under this consent.
- Resource consent conditions.
- Engineering Plan / Building Consent Approval.
- Finalised Landscape Plan.
- Construction Traffic Management Plan.
- Construction Management Plan.
- Works around trees and vegetation within Kupe Reserve.

Advice Note:

To arrange a pre-start meeting, please contact the Team Leader, Compliance and Monitoring – Central. The conditions of consent should be discussed at this meeting. All additional information required by the council should be provided a minimum of 2 days prior to the meeting.

Development in progress conditions

Soil contamination management

10. The consent holder must undertake all earthworks in accordance with the Site Management Plan, prepared by Soil & Rock Consultants and dated 9 August 2023 ('the SMP'). Before the commencement of earthworks, the consent holder must notify and submit to the council if there are any variations to the SMP, for certification that the amended SMP can appropriately manage actual and potential soil contamination effects and is within the scope of this consent.

Advice Note: Site Management Plan

The Council acknowledges that the SMP is intended to provide flexibility of the management of the works. Accordingly, the SMP may need to be updated. Any updates should be limited to the scope of this consent and be consistent with the conditions of this consent. If you would like to confirm that any proposed updates are within scope, please contact the council. The Council's certification of the SMP relates only to those aspects

of the plans that are relevant under the RMA. The certification does not amount to an approval or acceptance of suitability by the Council of any elements of the management plan that relate to other legislation, for example, the Building Act 2004 or the Health and Safety at Work Act 2015.

11. Discharges of dust must not cause offensive or objectionable effects at any location beyond the boundary of the Site, in the opinion of an enforcement officer when assessed in accordance with the Good Practice Guide for Assessing and Managing Dust (Ministry for the Environment, 2016). The consent holder must ensure that dust management during the works generally complies with the recommendations of this Good Practice Guide and minimises dust generation as far as practicable. This includes having sufficient water to dampen exposed soil and unsealed areas, and/or other dust suppressing measures, available as necessary.
12. In the event of the incidental discovery of contamination during earthworks which has not been previously identified, including asbestos material, the consent holder must immediately cease the works in the vicinity of the contamination, notify the council, and engage a Suitably Qualified and Experienced contaminated land Practitioner (SQEP) to assess the situation (including possible sampling and revision of the SMP) and decide on the best option for managing the material.

Advice Note: Incidental discovery of contamination

Where unanticipated contamination is discovered during the works, a revision of the SMP may be required to ensure that the contamination is appropriately managed. Any revision of the SMP is required to be submitted to the council prior to its implementation.

13. Any excavated material that is not re-used on site must be disposed of at an appropriate facility licensed to accept the levels of contamination identified. Evidence of the locations where excavated material has been disposed of must be retained by the consent holder during the works and made available to the council on request.
14. The consent holder must ensure that the contamination level of any soil imported to the site complies with the definition of 'Cleanfill material', as set out in the AUP(OP).

Car parking and access

15. The pedestrian access within the site from Kepa Road must be a raised table and be of contrasting surface material and / or colour from that of the vehicle accessway to ensure it is distinguished from other trafficable areas.
16. Prior to the operation of the activity, the consent holder must design and form the new proposed vehicle crossing in accordance with the application plans RC010 in consultation with Auckland Transport at the consent holder's expense.

The consent holder must design and include treatment for the new proposed vehicle crossing to discourage right-hand turns from the site, including a mountable island in liaison with Auckland Transport with relevant sign/markings and provided in accordance with application plans RC010. Detail design shall be determined at the Engineering Approval Stage.

17. Prior to the operation of the activity, the consent holder must provide no right turn signage internally to the site as indicated on application plans RC010 revision F. The signage must face inwards towards the site and be visible to motorists within the site, the sign must be located on the eastern side of the proposed vehicle crossing. This sign must be provided in consultation with Auckland Transport, at the expense of the consent holder. The sign must also be maintained in working order for the duration of the activity at the expense of the consent holder. The sign board itself must not obstruct the visibility of vehicles leaving the site towards pedestrians on the public footpath.
18. The consent holder must install a speed management device and sign reading "Do Not Block Footpath" (or similar measures that achieve the same or better outcome) at the exit of the site to the vehicle crossing.

The consent holder must design and form measures to ensure that entering vehicles do not block the footpath.

The location and design of the speed management device and signage must be determined at the Engineering Approval Stage in liaison with Auckland Transport.

19. Prior to the operation of the activity, all access, parking and manoeuvring areas must be formed, sealed with an all-weather surface, marked out, sign posted and drained in accordance with the approved plans. The surface finish of the vehicle access, parking areas and pedestrian paths must be in accordance with the approved plans, with the exception of the pedestrian detail specified in Conditions 4 and 15 ("Pedestrian access from Kepa Road").

Advice note:

Parking areas should be marked out in accordance with the approved site plan to ensure appropriate parking supply, access, signage, directions and vehicle manoeuvring.

Redundant crossing

20. Prior to the operation of the activity, all redundant vehicle crossings must be removed and reinstated as kerbing, berm, and footpath to Auckland Transport's Transport Design Manual requirements, including a regrade of the footpath across the vehicle crossing to 2% cross-fall. This must be undertaken at the consent holder's expense.

Advice note:

Works within the road reserve require prior approval from Auckland Transport. This includes vehicle crossings, reinstatement of kerbing and temporary occupation of the footpath/verge/berm during construction. The consent holder should contact Auckland Transport as soon as possible to ensure any required approvals are issued prior to construction.

Pedestrian Visibility Splay

21. A pedestrian visibility splay (hatched yellow on RC010) must be provided on the eastern side of the proposed vehicle crossing. Any boundary fencing and/or landscaping within the visibility splay area of 5mx2m (5m on the eastern side of the driveway within the site and 2m on the eastern side of the front boundary from the edge of the crossing) must not exceed 600mm. Landscaping in the visibility splay area will need to be trimmed and maintained in perpetuity to comply with the stipulated height by the consent holder. Any signage in this splay area must be mounted on a slim metal pole with the sign being above 2m in height.

Post-development conditions**Works completion report – contamination**

22. Within three months of the completion of earthworks on the site, a Works Completion Report (WCR) must be submitted to the Council for review and certification. The WCR must be prepared by a SQEP in accordance with the Contaminated Land Management Guidelines No. 1: Reporting on Contaminated Sites in New Zealand (Ministry for the Environment, revised 2021) and contain sufficient detail to address the following matters:
 - a. A summary of the works undertaken, including the locations and dimensions of excavations and the volume of soil excavated;
 - b. Conditions of the final site contamination profile, including details and results of any validation testing undertaken;
 - c. Details and results of any other contamination testing undertaken during the works (including any sampling undertaken on materials re-used on site or imported to site);
 - d. Records/evidence of the volumes and disposal locations for any material containing elevated levels of contaminants removed from the site;
 - e. Records of any unexpected contamination encountered during the works and response actions, if applicable;
 - f. Reports of any complaints, health and safety incidents related to contamination, and/or contingency events during the earthworks; and

- g. A statement certifying that all works have been carried out in accordance with the requirements of the SMP and consent, otherwise providing details of relevant approved variations or breaches, if applicable.

Advice Note: Works Completion Report

The WCR will enable the Council to update the property file information relating to soil contamination. Until a WCR is submitted and certified by the Council, the Land Information Memorandum for the property will not be updated to reflect any soil contamination remediation work undertaken.

Implementation of landscape plan

- 23. Prior to the operation of the activity and within the first planting season, the consent holder must implement the landscape design required under condition 6 and thereafter retain and maintain this landscape (planting, pavement and street furniture) in perpetuity in accordance with the landscape maintenance plan which has been approved under condition 6.

Servicing and loading management plan

- 24. The consent holder must comply with the Servicing and Loading Management Plan, dated June 2024 for loading and servicing requirements. The consent holder must keep a copy of the Servicing and Loading Management Plan on site and adhere to it at all times.

Drive-through management plan

- 25. Prior to the operation of the activity, the consent holder must prepare and submit a finalised Drive-through Management Plan to the council. The management plan must be developed in accordance with the draft drive-through management plan, required under condition 1.

The objective of the Drive-Through Management Plan is to establish the procedures and protocols for day-to-day managing of customer vehicles to avoid vehicle queues extending from the site onto Kapa Road.

The finalised Drive-through Management Plan must include, but not be limited to:

- a. Staff Training and Roles: Guidelines for staff roles and responsibilities, training programs, and customer service protocols relating to drive-through operations.
- b. Health and Safety Measures: Protocols to ensure the safety of both customers and staff when using the drive-through.

- c. Technology Integration: Use of technology to enhance efficiency, such as point-of-sale systems, order tracking, and queue monitoring mechanisms.
 - d. Performance Metrics and Evaluation: Methods for measuring the effectiveness of the drive-through operations, including customer satisfaction surveys and operational efficiency metrics.
- 26. The Final Drive-through Management Plan must be adhered to by the consent holder on an ongoing basis.
- 27. In the event that Phase 3 management is triggered, resulting in temporary crossing closure, the consent holder must:
 - a. Record the date, time, cause of queue, Kepa Road conditions and management actions, in report format.
 - b. Capture and retain video footage as supporting evidence.
 - c. Submit the report, including the footage, to the council within two weeks of the Phase 3 activation.

Litter management plan

- 28. Prior to the operation of the activity, the consent holder must provide a Litter Management Plan to the council.

The objective of the Litter Management Plan is to set out the procedures and protocols for day-to-day management of the McDonald's Orakei to mitigate litter on and around the restaurant and to encourage people in the neighbourhood to dispose of rubbish responsibly.

The consent holder must adhere to the Litter Management Plan on an ongoing basis.

Monitoring and review conditions

- 29. Pursuant to s128 of the RMA the conditions of this consent may be reviewed by the Manager, Resource Consents for a 5-year period following the operation of the activity at the consent holder's cost for the following:
 - a. Right-hand turn exits from the site vehicle crossing.
 - b. Right-hand turn enters into the site from Kepa Road.
 - c. Operation, safety and queuing issues of the drive-through restaurant resulting from the trip generation and servicing time.
- 30. The consent holder must engage a suitably qualified traffic engineer to review all records captured under condition 27 if applicable and undertake and analyse a 24-hour video monitoring survey for the busiest weekday

and typical Saturday, three months and six months after the full operation of the activity, and then annually thereafter for five years. The survey is to:

- a. Analyse the cause of the recorded queuing and efficiency of the management plan. To ascertain whether the temporary closure of the vehicle crossing resulted in further queuing beyond the site.
 - b. Ascertain whether any vehicles, while waiting to turn onto Kepa Road, are disrupting pedestrian and cyclist flow past the site or contributing to added delays for queued vehicles at the order points for the drive-through lanes.
 - c. Ascertain whether queuing from the drive-through lanes is affecting the operation of the restaurant carpark or the site entrance or adjacent pedestrian/cycling paths on Kepa Road.
31. Should any safety or operational issues (e.g. blockage on Kepa Road or cycle/pedestrian paths) be identified in any of the reviews carried out in accordance with condition 29, the consent holder must submit a mitigation plan to the council in liaison with Auckland Transport. Any required mitigation measures must be implemented by the consent holder (at the consent holder's cost) within one month of the mitigation plan being approved (or other timeframe agreed in liaison with council and Auckland Transport). The mitigation measures may include, but are not limited to:
- a. The provision of additional signage within the site (in addition to the no-right turn signage required by condition 17).
 - b. Physical changes to the vehicle crossing design to further encourage left turn exit movements and discharge blocking the footpath and bicycle path. This may include a solid median island in liaison with Auckland Transport.
 - c. Further on-site management measures to minimise queuing within the drive-through lane and from the order points, in particular reducing the servicing time.
 - d. The installation of a physical median on Kepa Road to physically prevent right turns into the site and right turns into Kepa Road, to manage and reduce the trip generations and right turn exit non-compliance.

Advice notes

1. *Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
2. *For the purpose of compliance with the conditions of consent, "the council" refers to the council's monitoring officer unless otherwise*

specified. Please email monitoring@aucklandcouncil.govt.nz to identify your allocated officer.

3. *For more information on the resource consent process with Auckland Council see the council's website: www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: www.mfe.govt.nz.*
4. *If you disagree with any of the above conditions, and/or disagree with the additional charges relating to the processing of the application(s), you have a right of objection pursuant to sections 357A and/or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of your receipt of this decision (for s357A) or receipt of the council invoice (for s357B).*
5. *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*
6. *All machinery associated with the earthworks activity should be operated in a way, which ensures that spillages of hazardous substances such as fuel, oil, grout, concrete products and any other contaminants are prevented.*
7. *Litter such as plastic bags/bottles and building material wrappings shall be removed from the work site at the end of each workday.*
8. *Adhesives, solvents, paints and other contaminants from building operations shall be prevented from entering stormwater drains and adjacent waterways.*
9. *A geotechnical report detailing filling works and recommendations for foundation design and construction may be required with the Building Consent application*
10. *Unless specifically provided for by this consent, there must be no damage to public roads, footpaths, berms, kerbs, drains, reserves or other public asset as a result of the earthworks and construction activity.*

In the event that such damage does occur, the Council will be notified within 24 hours of its discovery. The costs of rectifying such damage and restoring the asset to its original condition must be met by the consent holder.

11. *Works within the road reserve require prior approval from Auckland Transport. The consent holder should contact Auckland Transport as soon as possible to ensure any required approvals are issued prior to construction.*



Karyn Sinclair

Chairperson

28 May 2025

