

In the Matter of the Resource Management Act 1991 (**Act**)

And

In the Matter of an appeal under section 174 of the Act

Between Kumeu Central Limited

Appellant

And

New Zealand Transport Agency Waka Kotahi

Respondent

**Notice of Appeal against Decisions on the North-Western Strategic Network:
State Highway 16 Main Road Upgrade Notice of Requirement S2 & North-West
Strategic Network: Rapid Transit Corridor Notice of Requirement S3**

Dated 12 July 2024

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To: The Registrar
Environment Court
Auckland

1. Kumeu Central Limited (**KCL**) appeals part of a decision made by the New Zealand Transport Agency Waka Kotahi (**NZTA**) on notices of requirement for designations for:
 - a. North-Western Strategic Network: State Highway 16 Main Road Upgrade Notice of Requirement S2 (**NOR S2**); and
 - b. North-West Strategic Network: Rapid Transit Corridor Notice of Requirement S3 (**NOR S3**).
2. KCL made a submission on NOR S3 and NOR S2.
3. KCL received notice of NZTA's decisions on 20 June 2024 (**Decisions**).
4. KCL is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
5. The parts of the Decision KCL appeals are:
 - a. Those which reject, or accept only in part, the matters raised in KCL's submission or amend NOR S3 and NOR S2 in a way that is inconsistent with the matters raised in KCL's submissions. That includes:
 - i. **Condition 3**: The decision to reject recommended Condition 3 relating to requirements to engage with landowners regarding a designation review.
 - ii. **Condition 11**: The decision to reject recommended Condition 11 relating to existing property access including:
 1. The rejection and replacement of the term "agreed" to "addressed" in 11(a);

2. The rejection of the requirement for the Outline Plan to demonstrate how “on-site parking and manoeuvring” will be provided; and
 3. The rejection of the requirement for the Outline Plan to demonstrate how “safe efficient and effective access to the transport corridor” will be provided.
 - iii. **Condition 16:** the decision to reject the recommended additions to Condition 16(vi) relating to the Construction Traffic Management Plan (**CTMP**). Specifically, the rejection of the proposed references in the CTMP to “parking and manoeuvring” to and within property and/or private road where practicable, or to provide alternative “vehicle access, parking and manoeuvring” arrangements where the maintenance of access is not practicable.
 - iv. The decision to reject KCL’s submissions to review and reduce the level of impact on the site arising from the geographic extent of the designation boundaries.
6. The site or place to which the NORs apply is 102 – 104 Main Road, Kumeu (**Site**).
7. KCL owns land at 102 – 104 Main Road, Kumeu (**Site**) located on the corner of Putaki Drive and Main Road and extending through to adjoin Papatupu Lane. The Site contains a Burger King and associated drive-through and other office, retail and commercial activities providing a range of services.
8. As approved, the NORs significantly impact the Site by increasing the degree to which the existing designation extends into it by a relatively large distance. This has major adverse implications for carparking areas, vehicle circulation and manoeuvring generally and all commercial operations on the Site, with specific significant adverse effects on the operation of the Burger King drive-through (which has notable safety and operational implications).

9. Approximately 70 – 80% of the Burger King business is via the drive-through. Severe adverse commercial effects will result from the loss of its operation. The extent of the NORs render the drive-through unusable and severely impacts that lessee’s ability to operate on the Site. In addition, the approved designation significantly undermines the safe and effective operation of the Site.

Grounds of Appeal

10. The decision to reject the recommendations and submissions identified above:

- a. Will not promote the sustainable management of natural and physical resources and is contrary to Part 2 and other provisions of the RMA;
- b. Is inconsistent with other relevant planning documents, including the Auckland Unitary Plan (**AUP**);
- c. Will not meet the reasonably foreseeable needs of future generations;
- d. Will not enable the social, economic and cultural wellbeing of the community;
- e. Does not avoid, remedy or mitigate actual and potential adverse effects on the environment;
- f. Fail to demonstrate that the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
- g. Fails to give adequate consideration to alternative sites, routes, or methods of undertaking the work which would minimise the impact on the Site.

11. Without limiting the generality of the above, KCL also appeals the Decisions on the grounds below:

- a. On the basis the NORs and the Decisions:
- i. Fail to include conditions which ensure robust and effective consultation with KCL is undertaken in relation to impacts on parking, access and manoeuvring, and other matters which will impact the operation of the Site and its businesses both during and after construction;
 - ii. Fail to ensure the existing provision of parking and vehicle manoeuvring at the Site is maintained in its current location, or in a location which is convenient, safe and effective for lessees and lessees' customers;
 - iii. Fail to ensure that the existing drive-through can continue to operate in a safe efficient and effective manner; and
 - iv. Places undue and unreasonable reliance on "management plans".

Condition 3 (Pre-Construction Designation Review)

- b. Condition 3 was rejected by NZTA.
- c. Condition 3 is necessary to:
- i. Provide landowners and occupants with increased certainty as to the extent of designation required for the designation as soon as reasonably practicable (i.e. the recommended 5 yearly intervals from the confirmation of the designation);
 - ii. Ensure the requiring authority acts in a timely and efficient manner in pursuing detailed design for both construction and operation of the designation;
 - iii. Ensure the requiring authority acts in conjunction with landowners to undertake a review of the extent of designation required for construction purposes;

- iv. Ensure, specifically in relation to the Site, that any land not required for construction or operation of the designation is reviewed and removed from the designation boundary as soon as reasonably practicable; and
- v. Ensure that the adverse effects on the environment from the designation are appropriately managed.

Conditions 11 (Existing Property Access) and 16 (CTMP)

- d. NZTA rejected the recommendations to amend Condition 11 and Condition 16 to provide increased certainty for existing property access, including parking and manoeuvring for existing property access and during construction.
- e. The recommendations made by the Panel are appropriate and necessary because:
 - i. The safe efficient and effective access to the transport corridor is vital for businesses operating in this location (i.e. in proximity to SH16);
 - ii. In the case of Burger King, safe efficient and effective access to the drive-through is crucial and requires safe vehicular access, parking and manoeuvring to ensure the safety of pedestrians and other road users; and
 - iii. There is no conflict with the statutory requirement to achieve an effective, efficient and safe “land transport system”.

Reduction of Designation Boundary

- f. KCL appeals against the rejection of its submissions to reduce the geographical extent of the designations on the Site.
- g. A reduction in the extent of the designation boundaries is appropriate as:

- i. It is a more accurate representation of the extent of land which is reasonably necessary to achieve the project;
- ii. There is an evidential basis upon which an altered designation boundary can achieve the requiring authority's objectives while ensuring the continued operation (including access, drive-through, and carparking) of businesses on the Site; and
- iii. It provides increased certainty for KLC as the landowner as to the ability for the Site and its businesses to continue to operate now and in the future.

Relief Sought

12. KCL seeks the following relief:

- a. The appeal is allowed and NOR S3 and NOR S2 are declined, or in the alternative:
- b. That NZTA's decisions the subject of this appeal be cancelled and NOR S3 and NOR S2 be amended, including by way of conditions to address KCL's concerns; and
- c. Such further consequential or other relief as is necessary to address the issues raised and outcome sought in this appeal; and
- d. Costs.

13. The following documents are attached to this notice:

- a. A copy of KCL's submissions (**Attachment A**);
- b. A copy of the relevant parts of the decisions (**Attachment B**);
- c. A list of names and addresses of persons to be served with a copy of this notice (**Attachment C**).

Signature: **Kumeu Central Limited** by their authorised agent:



Jeremy Brabant

Date: 12 July 2024

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if—

- a) you made a submission on the matter of this appeal; and
- b) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- c) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

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

Advice

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

Attachment A - Copy of KCL's Submission

Attachment B – Decision Extracts

**Appendix C - List of names and addresses of persons to be served
with a copy of this notice**

Requiring Authority:

Auckland Transport

C/- Te Tupu Ngatahi Supporting Growth

Attn: Andrew Beatson / Leigh Ziegler / Megan Exton

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Relevant Authority:

Auckland Council

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