

To: Clare Needham, Principal Customer Regulatory Specialist - Assessment

ASSESSMENT REPORT: McDonald's Restaurants (New Zealand) Limited

Date	19 April 2024	Classification	IN CONFIDENCE: Commercially sensitive
LINZ reference	202400234	Suggested deadline	26 June 2024

Purpose

We seek your decision on an application for consent to acquire an interest in residential (but not otherwise) sensitive land under the Non-residential use test in the Overseas Investment Act 2005 (**Act**).

This decision has been delegated to Toitū Te Whenua Land Information New Zealand.

Action sought

1. Review this report.
2. Determine whether to grant consent and, if so, on what conditions.
3. Indicate your decision from page 4.

Key information

Applicant	McDonald's Restaurants (New Zealand) Limited USA 100%
Vendor	Mt Iron Junction Limited
Land	Approximately 0.3 hectares of sensitive land at 237 Wanaka Luggate Highway, Wanaka, Otago.
Consideration	[s 9(2)(b)(ii)]
Application type	Sensitive land – Non-residential use test
Relevant tests	Investor test: s 16(1)(a) and s 18A Non-residential use test: s 16(1)(b)(i)(C) National interest test: s 16(1)(g)

Timing

4. The Overseas Investment Regulations 2005 specify the total assessment timeframe for this application is 55 working days. This application is currently on day 2, therefore a decision is due to the applicant by 8 July 2024.

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A. Decision

Investor test

6. I determine that:

6.1 The '**relevant overseas person**' is (collectively):

Relevant overseas person	Role
McDonald's Restaurant Operations Inc.	100% owner of the Applicant
McDonald's Restaurants (New Zealand) Limited	Applicant and Acquiring Entity

6.2 the '**individuals with control of the relevant overseas person**' are:

Individuals with control	Role
Kylie Freeland	Managing Director of the Applicant.
Malcolm Swan	Director of the Applicant.
Bradley McMullen	Chief Financial Officer of McDonald's Australia Holdings Pty Limited [s 9(2)(b)] [REDACTED] [REDACTED] [REDACTED]
William Vadbunker	Director of McDonald's Restaurant Operations Inc.
Eva Chamberlain	
Malcolm Hicks	
Daniel Parkinson	Member of Applicant's governance structure [s 9(2)(b)(ii)] [REDACTED]

6.3 One of the relevant overseas persons has established a factor contained in section 18A(4) of the Act. However, for the reasons in the report, I consider that this does not make any of the relevant overseas persons or individuals with control unsuitable to invest in New Zealand.

7. I am satisfied that the investor test in section 18A has been met.

Non-residential use test

8. I determine that the relevant business is the operation of the fast food chain McDonald's (**Relevant Business**).

9. I am satisfied that:

9.1 the Relevant Business is likely to continue for a reasonable period of time; and

- 9.2 the Land is likely to be used for non-residential purposes in the ordinary course of business for the relevant business; and
- 9.3 the Land is not likely to be used, nor held for future use, for any residential purposes.

Transaction of national interest

10. I note that the overseas investment in sensitive land is not a transaction of national interest under section 20A of the Act and the Minister of Finance has not notified it is a transaction of national interest under section 20B of the Act.

Decision

11. I am satisfied that the criteria for consent have been met (set out above). I grant consent to the Investment in the form of the Proposed Decision in **Attachment 1**.

[s 9(2)(a)]

Clare Needham

Principal Customer Regulatory Specialist - Assessment

Overseas Investment - LINZ

Date: 23 / 04 / 2024

Released under the Official Information Act 1982

B. Background and proposed transaction

12. McDonalds Restaurants (New Zealand) Limited (**Applicant**) is a fast-food chain operator.
13. The McDonalds group of companies has more than 30,000 restaurants in more than 120 countries. McDonald's New Zealand opened its first restaurant in 1976 in Porirua. Today there are 171 McDonald's restaurants across New Zealand.
14. The Applicant intends to acquire approximately 0.3 hectares of land at 237 Wanaka Luggate Highway, Wanaka, Otago (the **Land**). The Vendor is subdividing the property.¹ The Land is currently bare land.
15. Once settlement has occurred, the Applicant will construct and operate a new McDonald's restaurant. The Applicant anticipates the restaurant will be operational by late 2025.
16. The restaurant will be operated by a franchisee.
17. The franchisee will be provided with a [s 9(2)(b)(ii)] lease and licence from the Applicant as the franchisor to operate the McDonald's restaurant.
18. [s 9(2)(b)(ii)]
[REDACTED]
19. Aerial photos of the Land can be found in **Attachment 4**.

C. Application of the Act

20. The Land is sensitive because it is residential (but not otherwise sensitive) land,² so consent is required.³ Because the application is being made under the non-residential use test, the following criteria apply to this application:⁴
 - 20.1 The investor test must be met.⁵
 - 20.2 The non-residential use test must be met.⁶
 - 20.3 You must also note whether the investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the investment is contrary to New Zealand's national interest.⁷
21. In order to satisfy the Non-residential use test, the decision-maker must be satisfied that the following outcomes are met:⁸
 - 21.1 the Relevant Business is likely to continue for a reasonable period of time; and

¹ The Land is currently contained in record of title OT5B/1115. The Vendor will subdivide the property and create a new title for the Land, which the Applicant will then purchase.

² Table 1, Part 1, Schedule 1 of the Act.

³ Under sections 10(1)(a) and 12(a)(i) of the Act.

⁴ Set out in sections 16(1) of the Act.

⁵ Section 16(1)(a) and 18A of the Act.

⁶ Section 16(1)(b)(i)(C) of the Act.

⁷ Section 16(1)(g) of the Act.

⁸ Schedule 2, Part 3 of the Act.

- 21.2 the Land is likely to be used for non-residential purposes in the ordinary course of business for the relevant business;
- 21.3 the Land is not likely to be used, nor held for future use, for any residential purposes; and
- 22. We assess the investor test in **Part D**, the Non-residential use test in **Part E**, and discuss national interest matters in **Part F**.

D. Applicant and investor test

Ownership

- 23. The Applicant is wholly owned by McDonald's Restaurant Operations Incorporated, a company registered in Delaware.
- 24. McDonald's Restaurant Operations Incorporated is wholly owned by McDonald's Corporation, a company listed on the New York Stock Exchange.
- 25. McDonalds Corporation is not identified as an ROP as it will have no relevant involvement in the investment due to the size of the New Zealand McDonald's property portfolio.
- 26. A transaction in New Zealand would not usually meet the financial threshold to require shareholder approval from McDonald's Restaurant Operations Inc, or McDonalds Corporation.
- 27. A diagram of the proposed ownership structure is in **Attachment 3**.
- 28. For these reasons, we recommend that the '**relevant overseas person**' is (collectively):

Relevant overseas person	Role
McDonald's Restaurant Operations Inc.	100% owner of the Applicant
McDonald's Restaurants (New Zealand) Limited	Applicant and Acquiring Entity

Control

- 29. The Applicant determines the location for possible restaurant sites. All decisions relating to restaurant property are made by the [s 9(2)(b)(ii)] and signed off by [s 9(2)(b)(ii)]
- 30. The Applicant has financial delegations in place, [s 9(2)(b)(ii)]
- 31. The decision to enter this transaction was approved by [s 9(2)(b)(ii)]
- 32. If this investment were divested, approval would be required from [s 9(2)(b)(ii)]

[s 9(2)(b)(ii)]

33. The Applicant will work with a franchisee to operate this restaurant. The Applicant manages day to day asset management operations. The franchisee manages day to day restaurant operations and the running of the site.
34. Thus, we recommend that the **'individuals with control of the relevant overseas person'** (IWC)¹² are:

Individuals with control	Role
Kylie Freeland	Managing Director of the Applicant.
Malcolm Swan	Director of the Applicant.
Bradley McMullen	Chief Financial Officer of McDonald's Australia Holdings Pty Limited [s 9(2)(b)] [REDACTED] [REDACTED] [REDACTED]
William Vadbunker	Director of McDonald's Restaurant Operations Inc.
Eva Chamberlain	
Malcolm Hicks	
Daniel Parkinson	Member of Applicant's governance structure [s 9(2)(b)(ii)] [REDACTED]

Summary of investor test

35. Previously, LINZ identified the Applicant had established an investor test factor, namely the factor contained in section 18A(4)(a)(vii) of the Act, which provides:
- "whether A has entered, in the preceding 10 years, into an enforceable undertaking or an equivalent agreement with any regulator in respect of any contravention or alleged contravention of any enactment."*
36. The Applicant established this factor when it entered into an enforceable undertaking with the Labour Inspectorate at the Ministry of Business, Innovation and Employment (MBIE) pertaining to annual leave pay remediation.
37. The matter was considered by LINZ in case 202100805. LINZ concluded the investor test was met at that time.
38. Since then, the Applicant has continued to work with MBIE on remediation. This process is now in its final stages.
39. For the reasons set out above, our conclusion is that **the investor test has been met.**

¹² Section 15.

E. Investment plan and Non-residential use test

40. This section describes the proposed investment and our assessment of whether it is likely to meet the Non-residential use test criteria in the Act.

Investment

Land

41. The Land is residential (but not otherwise sensitive) land under the Act. Further details relating to the sensitive land are set out in **Attachment 2**.

42. The Land is currently contained in Record of Title OT5B/1115. The Vendor is subdividing of the Land. When the Land is subdivided, a new title will be issued, which will be the title held by the Applicant.

43. The Land is currently bare land.

44. The Applicant and the Vendor have entered an arm's length agreement for sale and purchase (**ASP**).¹³

45. [s 9(2)(b)(ii)]

- [s 9(2)(b)(ii)]¹⁴

- [s 9(2)(b)(ii)]¹⁵

- [s 9(2)(b)(ii)]

- [s 9(2)(b)(ii)]¹⁶

Investment Plan

46. The Applicant intends to purchase the Land to construct and operate a new McDonald's restaurant.

47. Once complete, the restaurant will be operated by a franchisee. In New Zealand, approximately 90% of McDonald's restaurants are franchised.

48. The franchisee will be provided with a [s 9(2)(b)(ii)] lease and licence from the Applicant as the franchisor to operate the McDonald's restaurant.

49. [s 9(2)(b)(ii)]

50. The estimated date of settlement is [s 9(2)(b)(ii)]. The Applicant hopes to construct the restaurant within six months of settlement.

¹³ Dated 26 March 2023.

¹⁴ [s 9(2)(b)(ii)]

¹⁵ [s 9(2)(b)(ii)]

¹⁶ The Applicant applied for resource consent in November 2023. The Applicant awaits formal confirmation of public notification and the proposed date of the associated hearing.

¹⁷ [s 9(2)(b)(ii)]

Submissions

51. No third-party submissions were sought or received in relation to this application.

Non-residential use test

52. This section considers what business will be undertaken on the Land and, as a result, whether the Land is likely—

52.1 to be used for non-residential purposes and

52.2 not be used or held for residential purposes.

53. The Applicant has applied for consent under the non-residential use test.

54. We consider the relevant business of the Applicant for the purposes of this investment to be the operation of the fast food chain McDonald's.

Non-Residential Purposes

55. The decision-maker must be satisfied that the relevant business is likely to continue for a reasonable period of time, given the circumstances and nature of the business.

56. We are satisfied that the Applicant is likely to continue the relevant business for a reasonable period of time given that:

- a. McDonald's Corporation has restaurants in more than 120 countries, with 171 of them being in New Zealand;
- b. The Applicant's ultimate owner is listed on NYSE;
- c. The Applicant has been in the business in New Zealand since 1976;
- d. The Applicant has a strong client base demonstrated by 1 million people visiting its restaurants in New Zealand every week.

57. The Applicant intends to use the Land in the ordinary course of the relevant business. The Land will be a site for one of its restaurants. The restaurant is expected to be operational by 2026.

58. We therefore consider the Land is likely to be used for non-residential purposes in the ordinary course of the relevant business.

Land not to be used or held for residential purposes

59. Additionally, the Land will be operated as a site for a restaurant and the Applicant represents that all of the Land will be used as such and none of the Land will be used for any residential purposes.

Non-residential purposes and non-residential use outcome to occur within a short period

60. The decision-maker must also be satisfied that both the non-residential purposes, and the non-residential use outcome, will, or are likely to, occur within a short period after the overseas investment is given effect under the transaction.

61. Given that the restaurant is expected to be operational by 2026, and before this the Land will be bare land and then a construction site, with the Applicant having confirmed it will not be used for any residential purposes, we consider that both the

non-residential purposes and the non-residential use outcome will or is likely to occur within a short period of time.

F. Not a transaction of national interest

62. The transaction is **not** a transaction of national interest as the residential (but not otherwise sensitive) land exemption under regulation 3D(2)(a) of the Overseas Investment Amendment Regulations 2020 applies.
63. We also consider that this should not be a discretionary national interest call up,¹⁸ as the proposed investment:¹⁹
- will not pose a risk to NZ's national security or public order;
 - will not grant the relevant overseas person significant market power within an industry or result in vertical integration of a supply chain;
 - does not involve a non-NZ government investor which would gain disproportionate access to or control of the sensitive assets;
 - will not have outcomes that are significantly inconsistent with or would hinder the delivery of other Government objectives;
 - does not raise significant Treaty of Waitangi issues; and
 - does not relate to a site of national significance.

G. Conclusion and recommendation

64. We recommend you grant consent to the Investment as we consider all of the relevant criteria have been met.
65. The conditions we recommend are set out in the Proposed Decision (**Attachment 1**). These conditions include all required mandatory conditions and additional discretionary conditions.

[s 9(2)(a)]

Natasha Wall
Customer Regulatory Specialist - Applications
Overseas Investment - LINZ

Date: 19 April 2024

¹⁸ Under section 20B of the Act.

¹⁹ Ministerial Directive Letter (24 November 2021).

H. List of Attachments

1. Proposed Decision and Conditions
2. Sensitive Land Details and Maps
3. Intended ownership structure
4. Photos

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Attachment 1: Proposed decision

Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: 23 April 2024

The following people have been given the following consent:

Case	202400234
Consent	The Consent holder may acquire the Land subject to the Conditions set out below.
Consent holder	McDonald's Restaurants (New Zealand) Limited (Company number 96461) We will also refer to each Consent holder as you .
Land	A freehold interest in the following residential (but not otherwise sensitive) land: Approximately 0.3 hectares of sensitive land located at 237 Wanaka Luggate Highway, Wanaka, Otago currently contained in Record of Title OT5B/1115, as identified in Appendix 1 to these conditions. The Land is subject to subdivision and will be issued a new Record of Title.
Relevant Business	The operation of fast food chain restaurant McDonald's
Timeframe	You have until 30 April 2026 to acquire the Land.

Conditions

Your Consent is subject to the Special conditions, Standard conditions and Reporting conditions (Conditions) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the conditions, we refer to the Toitū Te Whenua Land Information New Zealand as LINZ, us or we.

Definitions

Act means the Overseas Investment Act 2005.

Regulations means the Overseas Investment Regulations 2005.

Any term or expression that is defined in the Act or Regulations and used, but not defined, in this consent has the same meaning as in the Act or Regulations.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and include conditions that we must impose under the Act:

Details	Required date
Special condition 1: Use the Land for non-residential purposes only	
<p>You must:</p> <ol style="list-style-type: none">use the Land for non-residential purposes in the ordinary course of the Relevant Business. Such non-residential use includes the construction and lease of a restaurant on the Land.not use or hold the Land for any residential purposes. <p>If you do not comply with this Special Condition, Standard Condition 6 applies and we may require you to dispose of all or some of the Land.</p>	At all times

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date
Standard condition 1: Acquire the land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> by the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and using the acquisition, ownership, and control structure you described in your application. Note, only you - the named Consent Holder - may acquire the Land, not your subsidiary, trust, or other entity. 	As stated in the Consent
Standard condition 2: Tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land. Include details of:</p> <ol style="list-style-type: none"> the date you acquired the Land (Settlement), consideration paid (plus GST if any), the structure by which the acquisition was made and who acquired the Land, and copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than two months after Settlement
Standard condition 3: Allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions. We will give you at least two weeks' written notice if we want to do this. You must then:</p> <ol style="list-style-type: none"> Allow a person we appoint (Inspector) to: <ol style="list-style-type: none"> enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions (Inspection), 	At all times

Details	Required date
<p>b. remain there as long as is reasonably required to conduct the inspection,</p> <p>c. gather information,</p> <p>d. conduct surveys, inquiries, tests, and measurements,</p> <p>e. take photographs and video records, and</p> <p>f. do all other things reasonably necessary to carry out the Inspection.</p> <p>2. Take all reasonable steps to facilitate an Inspection including:</p> <p>a. directing your employees, agents, tenants, or other occupiers to permit an Inspector to conduct an Inspection,</p> <p>b. being available, or requiring your employees, agents, tenants, or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the Land. This includes providing transport across the Land if reasonably required.</p> <p>During an Inspection:</p> <p>a. we will not compel you and your employees, agents, tenants, or other occupiers to answer our questions or to let us look at, copy or take away documents,</p> <p>b. our Inspector will comply with any reasonable instruction and co-operate with any reasonable health and safety policy or procedure you notify to us before the Inspection.</p>	
Standard condition 4: Remain not unsuitable to Invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Assets in accordance with section 18A(1) of the Act.</p> <p>The Individuals Who Control You are individuals who:</p> <p>a. are members of your governing body</p> <p>b. directly or indirectly, own or control more than 25% of you or of a person who itself owns or controls more than 25% of you, and</p>	At all times

Details	Required date
c. are members of the governing body of the people referred to in paragraph (b) above.	
Standard condition 5: Tell us about changes that affect you, the people who control you, or people you control	
<p>You must tell us in writing if any of the following events happens to any of the Consent holders:</p> <ol style="list-style-type: none"> 1. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. 2. You cease to be an overseas person or dispose of all or any part of the Asset. 3. Your New Zealand Service Address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	<p>Within 20 working days after the change</p>
Standard condition 6: Dispose of the Land if you do not comply with key special conditions	
<p>If all or part of this Standard Condition 6 applies to a special condition, we have said so in that special condition. If we consider you have failed to comply with one of those special conditions in a material way we may require you to dispose of the Land. We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p>	
<p>Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer.</p>	<p>Within six weeks of the date of our notice</p>
<p>Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market.</p>	<p>Within six weeks of the date of our notice</p>
<p>Dispose of the Land: dispose of the Land to a third party who is not your associate.</p>	<p>Within six months of our notice</p>
<p>Offer without reserve: if you have not disposed of the Land within six months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land.</p>	<p>Within nine months of our notice</p>

Details	Required date
<p>Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land.</p>	<p>By the last day of every March, June, September, and December after our notice or at any other time we require</p>
<p>Report disposal to us: send us, in writing, evidence of the following:</p> <ul style="list-style-type: none"> a. that you have disposed of the Land (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor), and b. that the purchaser is not your associate. 	<p>Within one month after the Land has been disposed of</p>

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Reporting conditions

We need information from you about how your investment plan is tracking so we can monitor your progress against the Conditions.

In addition to Settlement reporting (as set out in Standard Condition 2), you must provide the OIO with reports detailing the progress of the investment. The reports must:

1. be submitted via our [Webform](#) by these dates:
2. 31 May 2026 and contain information about:
 - a. your progress in implementing the special conditions (which can include photographs, maps or aerial imagery as evidence of compliance with relevant conditions).
3. follow the format of the template annual report published on our website.

If requested in writing by the OIO, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- a. the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the Consent was granted, or
- b. the conditions of this Consent.

Power to vary reporting date

The dates on which reports are due to be provided may be changed by agreement between LINZ and the Consent holder, provided that this power may not be used to give a time extension for an individual report.

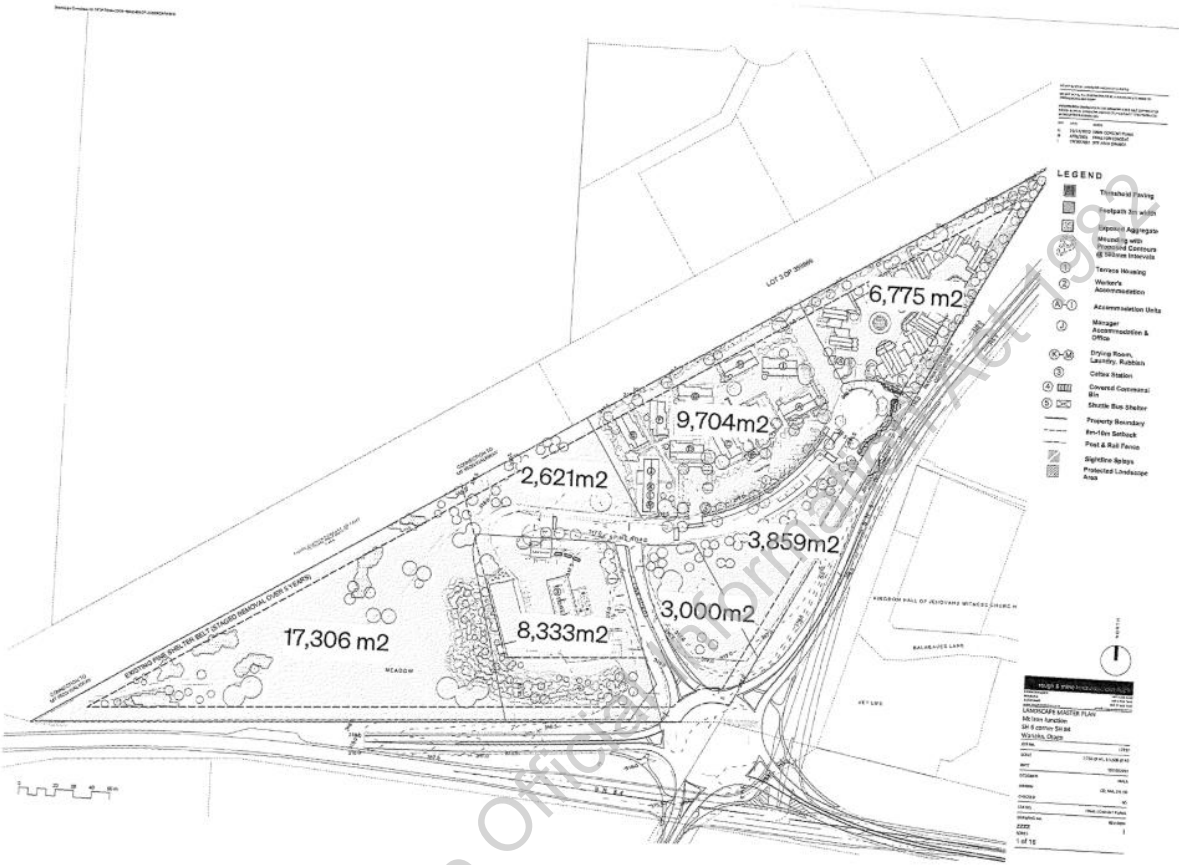
Power to narrow scope of reports

LINZ may temporarily or permanently waive the requirement to report on a particular matter.

Power not to require further reporting

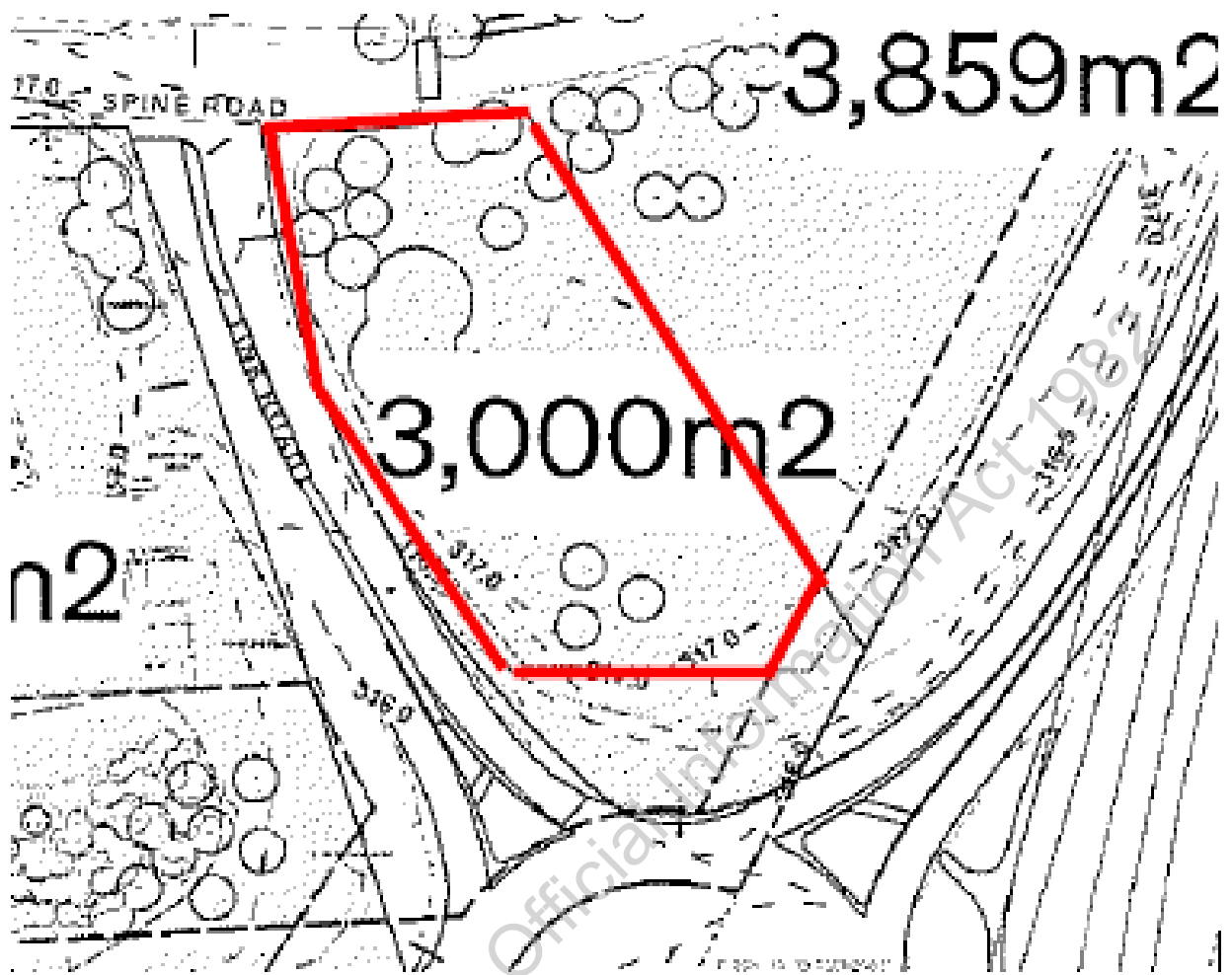
LINZ may waive the requirement to submit a report and may waive the requirement for future reporting.

Appendix 1 – Map of the Land to be Acquired



Subdivision Plan

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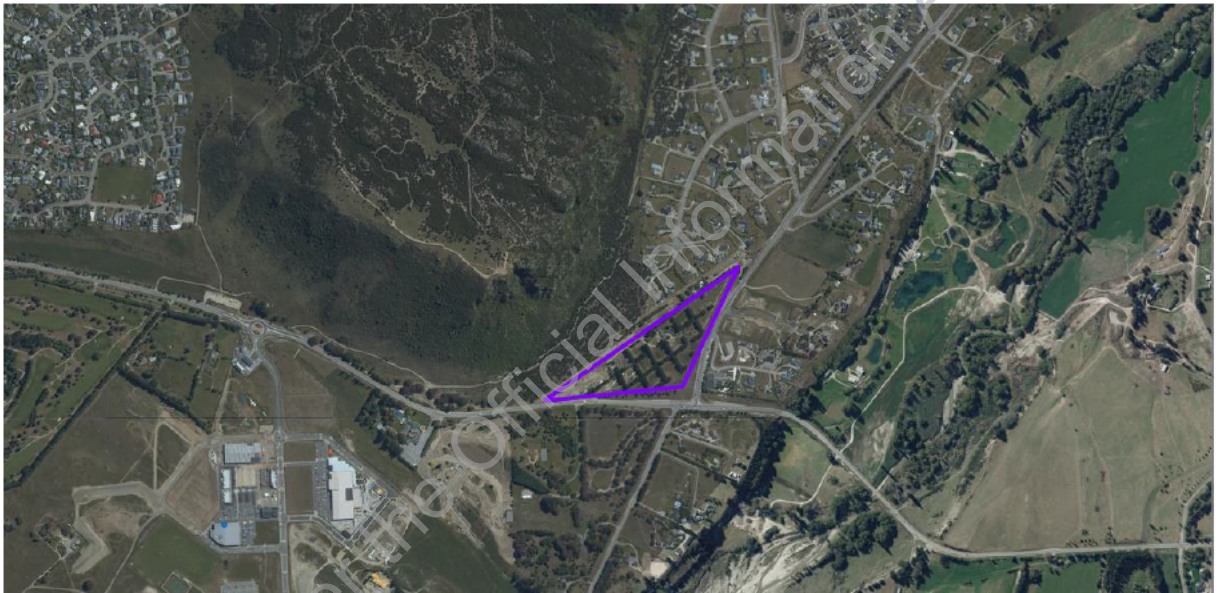
The Land to be acquired by the Applicant is identified in red.

Attachment 2: Sensitive Land Details and Maps

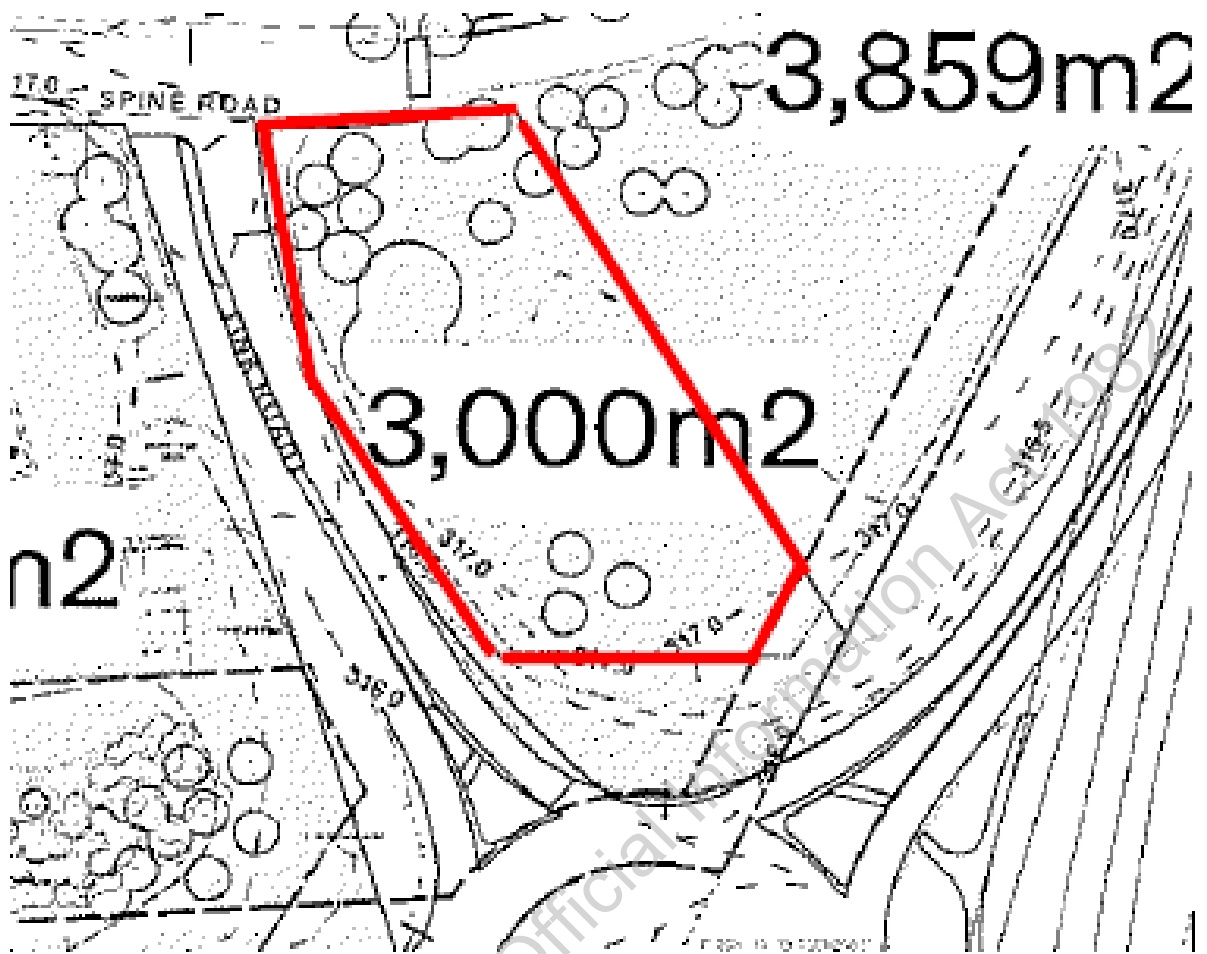
1. 237 Wanaka Luggate Highway, Wanaka, Otago

Land interest	Freehold Interest (approximately 0.3 hectares)
Record(s) of Title	Part of OT5B/1115 (Otago)
Sensitivity	Includes residential land

The following image is from IntraMaps (a LINZ database) showing the entire area of the Record of Title OT5B/1115.

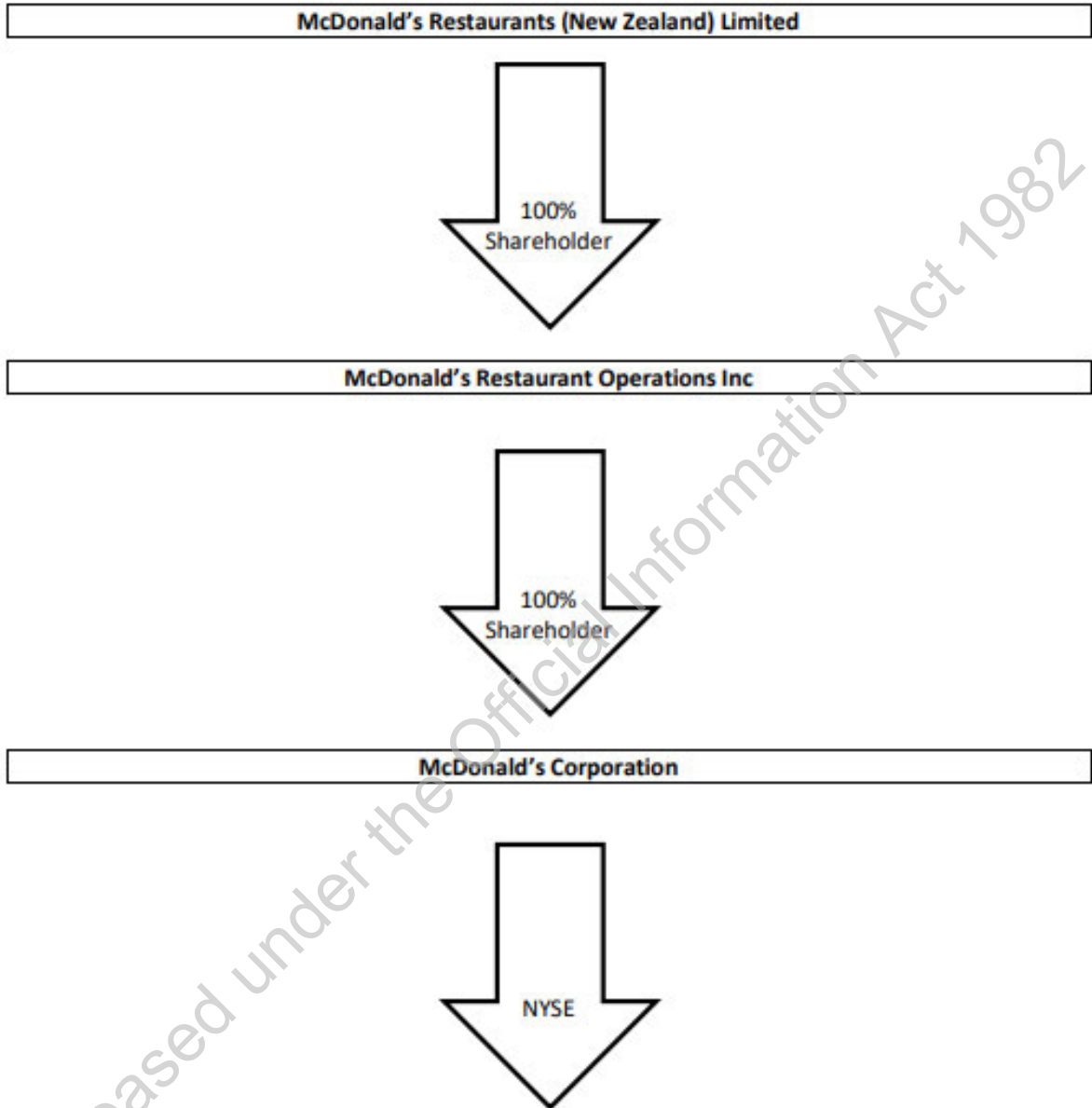


Only approximately 0.3 ha of this land will be acquired by the Applicant identified in the diagram below.



The 0.3 ha of Land the Applicant will acquire after subdivision.

Attachment 3: Intended Ownership Structure



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Attachment 4: Photos



Figure 1 – Ariel view of the Land

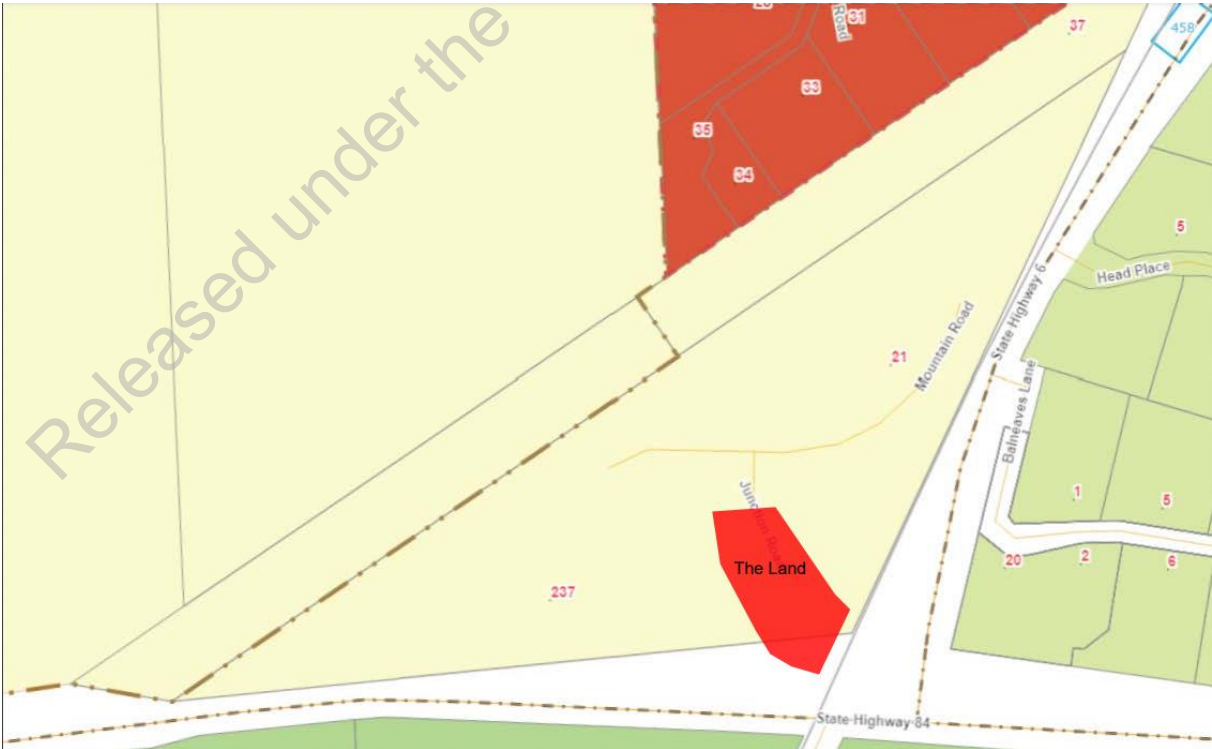


Figure 2 – Planning Map

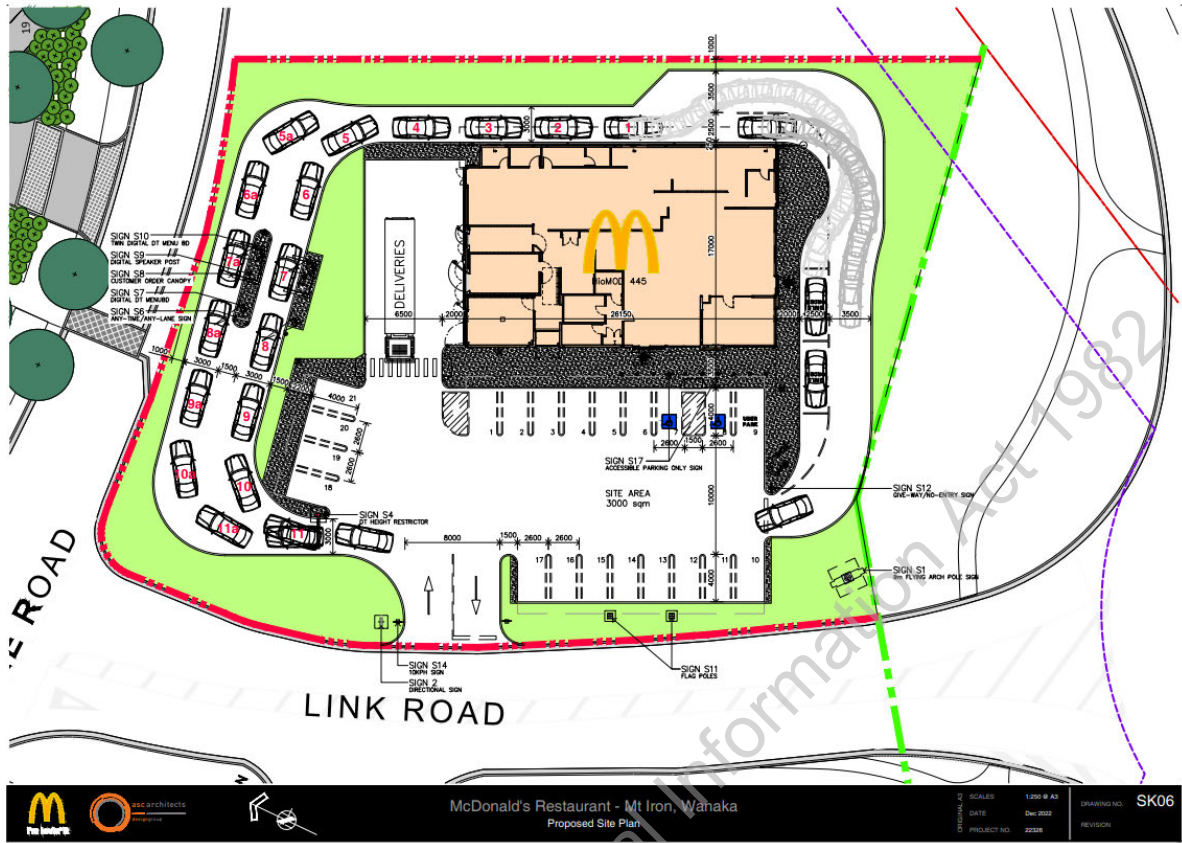


Figure 3 – Proposed Layout Map