

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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**I MUA I TE KOOTI TAIAO
I TÁMAKI MAKAURAU ROHE**

IN THE MATTER

of an appeal under section 174 of the Resource
Management Act 1991 ("**RMA**")

BETWEEN

**CENTURIA FUNDS MANAGEMENT (NZ) LIMITED
AND BUNNINGS LIMITED**

Appellant

AND

AUCKLAND TRANSPORT

Respondent

NOTICE OF APPEAL

2 APRIL 2024

**Russell
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To: The Registrar
The Environment Court
AUCKLAND

1. Bunnings Limited ("**Bunnings**") and Centuria Funds Management (NZ) Limited ("**Centuria**") appeal against parts of the decision of Auckland Transport in respect of a notice of requirement for a designation for the Auckland Airport to Botany Bus Rapid Transit Project, from Rongomai Park to Puhinui Station ("**NOR**").

DECISION APPEALED

2. The property at 55 Lambie Drive, Manukau is owned by Lambie Dr Nominees Limited as the custodian of the Lambie Dr Property Scheme, which has approximately 37 private investors with the property and asset management services conducted by Centuria Funds Management NZ Limited.
3. The property at 55 Lambie Drive is occupied by the large format retailer, Bunnings Limited who operates Bunnings Manukau from the site.
4. Bunnings is one of the leading retailers of home improvement and outdoor living products in Australasia, with 42 warehouses and smaller format stores, and 9 trade centres throughout New Zealand, along with a distribution centre, trade studio and support office.
5. Bunnings and Centuria presented a joint case at the council-level hearing.
6. On 13 December 2023, Panel released its recommendation to Auckland Transport on the NOR. The Panel were largely in agreement with the concerns raised by Bunnings and Centuria, and recommended conditions be imposed which addressed their concerns. Of particular interest to both Bunnings and Centuria was ensuring Bunnings' carparks were maintained and access to the site was not adversely impacted through both the construction and operational stage.
7. On 8 March 2024, Bunnings and Centuria received notice of Auckland Transport's decision on the NOR ("**Decision**").
8. The parts of the Decision being appealed are those which are inconsistent with, reject or accept only in part the matters raised in the submissions of Bunnings and Centuria.

9. Neither Bunnings nor Centuria is a trade competitor for the purposes of section 308D of the RMA.

REASONS FOR APPEAL

10. The Decision does not meet the relevant requirements of the RMA, and is contrary to Part 2 of the RMA. The Decision:
- (a) will not promote the sustainable management of the natural and physical resources in Tāmaki Makaurau, and is contrary to or inconsistent with Part 2 and other provisions of the RMA;
 - (b) is inconsistent with other relevant planning documents, including the Auckland Unitary Plan;
 - (c) will not meet the reasonably foreseeable needs of future generations;
 - (d) will not enable the social, economic and cultural wellbeing of the community; and
 - (e) does not avoid, remedy or mitigate actual and potential adverse effects on the environment.
11. In addition to the general reasons outlined above, Bunnings and Centuria jointly appeal the Decision on the basis the NOR and Decision:
- (a) fail to include conditions and designation boundaries which will appropriately avoid, remedy or mitigate the adverse effects of the NOR on Bunnings Manukau during both construction and operational phases;
 - (b) fail to address the potential for significant disruption to Bunnings' customers when attempting to access the store as a result of the signalised intersection at Lambie Drive;
 - (c) fail to ensure that safe and convenient access to Bunnings Manukau is being provided to customers generally both construction and operational phases;
 - (d) fail to ensure that Bunnings can continue to safely and efficiently access its loading store and restock the store at all times both during the construction and operational stage;
 - (e) fail to ensure the adequate provision for safe and efficient parking;

- (f) place undue and unreasonable reliance on "management plans" to manage the effects of the project;
- (g) fail to provide effective engagement provisions for affected tenants, such as Bunnings;
- (h) fail to reduce the planning blight on landowners through a shorter lapse period; and
- (i) fail to adequately consider alternative sites, routes or design methods which would minimise the impact on Bunnings Manukau.

RELIEF SOUGHT

12. Bunnings and Centuria seek:
- (a) amendments to the NOR, to include conditions to address the concerns of Bunnings and Centuria;
 - (b) such further other relief or other consequential amendments as considered appropriate and necessary to address the concerns of Bunnings and Centuria; and
 - (c) costs.

ATTACHMENTS

13. The following documents are attached to this notice:
- (a) A copy of Bunnings' submission.
 - (b) A copy of Centuria's submission.

CENTURIA FUNDS MANAGEMENT (NZ) LIMITED and **BUNNINGS LIMITED** by their solicitors and authorised agents Russell McVeagh:



Signature:

D J Minhinnick | J H Fraser

Date:

2 April 2024

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TO: The Registrar of the Environment Court at Auckland.

AND TO: Auckland Transport.

AND TO: The submitters to the notice of requirement.

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

1. You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.
2. To become a party to the appeal, you must:
 - (a) within 15 working days after the period for lodging a notice of appeal ends, 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
 - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
3. 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.
4. 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, Wellington, or Christchurch.

**APPENDIX A – ORIGINAL SUBMISSION
BUNNINGS LIMITED**

**SUBMISSION ON REQUIREMENT FOR DESIGNATION THAT IS SUBJECT TO
PUBLIC NOTIFICATION UNDER SECTION 168 OF THE RESOURCE
MANAGEMENT ACT 1991**

To: Auckland Council ("**Council**")

Name: Bunnings Limited ("**Bunnings**")

Submission on: A notice of requirement from Auckland Transport for a new designation for Auckland Airport to Botany Bus Rapid Transit ("**BRT**") Project, specifically Rongomai Park to Puhinui Station ("**Notice of Requirement**")

Introduction

1. Bunnings is one of the leading retailers of home improvement and outdoor living products in Australasia. Bunnings operates 42 warehouses and smaller format stores, and 9 trade centres throughout New Zealand, along with a distribution centre, trade studio and support office.
2. Bunnings operations at 55 Lambie Drive, Manukau City Centre ("**Bunnings Warehouse Manukau**") will be adversely affected by the Notice of Requirement.
3. Bunnings could not gain an advantage in trade competition through this submission.

Scope of submission

4. This submission relates to the Notice of Requirement, particularly as it relates to the works in and around Bunnings Warehouse Manukau.

Nature of submission

5. Bunnings acknowledges the intent to provide for a BRT corridor and address both network congestion and safety issues while providing improved transport choices
6. However, Bunnings opposes the Notice of Requirement being confirmed as currently proposed on the basis that the Notice of Requirement will adversely affect the operation of Bunnings Warehouse Manukau.

Reasons for submission

7. The reasons for this submission are that the Notice of Requirement (as currently proposed), if granted:
 - (a) will not promote the sustainable management of the natural and physical resources in Tāmaki Makaurau, and is therefore contrary to or inconsistent with Part 2 and other provisions of the Resource Management Act 1991;

- (b) is inconsistent with other relevant planning documents, including the Auckland Unitary Plan;
- (c) will not meet the reasonably foreseeable needs of future generations;
- (d) will not enable the social, economic and cultural wellbeing of the people of Tāmaki Makaurau; and
- (e) does not avoid, remedy or mitigate actual and potential adverse effects on the environment.

Specific reasons for submission

8. Without limiting the generality of paragraph 7 above, Bunnings opposes the Notice of Requirement as it relates to Lambie Drive to the east of Bunnings Warehouse Manukau as it will result in adverse effects (both during construction and once operational) on the operation of Bunnings Warehouse Manukau which have not been adequately avoided, remedied or mitigated, including:
 - (a) Adverse effects on traffic and the transport network during construction, including:
 - (i) various lane and road closures, which will increase congestion and travel time, and adversely affect the performance of key intersections surrounding the Bunnings Warehouse Manukau; and
 - (ii) increased pressure on customers shopping at the Bunnings Warehouse Manukau with limited carpark access due to restrictions on surrounding site accesses.
 - (b) Construction effects on the Bunnings Warehouse Manukau and its staff and customers, including amenity, dust, noise and vibration, traffic and access.
 - (c) Business disruption and other economic effects, including impacts on access to Bunnings Warehouse Manukau.
 - (d) Adverse effects resulting from the removal of approximately 46 carpark spaces, which will in turn both impact Bunnings' operations and will contribute to congestion on the road network where customers are required to queue for carpark spaces.
9. Inadequate consideration has also been given to alternative sites, routes and methods of undertaking the works for the BRT and in particular alternative routes, sites and methods that would minimise the impact Bunnings Warehouse Manukau as a whole. In particular, alternatives that minimise land take and adverse effects on Bunnings.
10. Auckland Transport has also not adequately considered appropriate weighting of the Notice of Requirement criteria along Lambie Drive. In particular, whether the proposed designation boundary and BRT could shift further to the

east of Lambie Drive to minimise or even avoid the extent of land required on the western side of Lambie Drive.

Recommendation sought

11. Bunnings seeks that the Council recommends:
 - (a) amendments to the Notice of Requirement, including by way of conditions to address Bunnings' concerns; and
 - (b) such further other relief or other consequential amendments as considered appropriate and necessary to address the concerns set out above.
12. Bunnings wishes to be heard in support of this submission.
13. If others make a similar submission, consideration would be given to presenting a joint case with them at any hearing.

BUNNINGS LIMITED by its solicitors and authorised agents Russell McVeagh:



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Date: 11 April 2023

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**APPENDIX B – ORIGINAL SUBMISSION
CENTURIA FUNDS MANAGEMENT NZ LIMITED**

Form 21

SUBMISSION ON REQUIREMENT FOR DESIGNATION THAT IS SUBJECT TO PUBLIC NOTIFICATION BY A TERRITORIAL AUTHORITY

Sections 168A, 169, 181, 189A, 190, and 195A, Resource Management Act 1991

To Auckland Council

Name of submitter: Centuria Funds Management (NZ) Limited (*Centuria*)

- 1 This is a submission on a notice of requirement from Auckland Transport (AT) for a designation for the Airport to Botany Bus Rapid Transit Project (*the A2B Project*). This submission specifically relates to "NoR 2", which is for the A2B Project section between Rongomai Park and Puhinui Station.
 - 2 The site to which this submission relates is 1/55 Lambie Drive, Manukau, Auckland (*the Property*). Centuria has authority to make this submission on behalf of the Property owner.
 - 3 Neither Centuria nor the Property owner is a trade competitor for the purposes of section 308B of the Resource Management Act 1991.
 - 4 Centuria's submission relates to the whole of NoR 2, particularly as it relates to works on and in the vicinity of the Property. Centuria is concerned about:
 - 4.1 The extent of the Property required for the designation and the effects on the ongoing operation of the retail activity located at the Property, (which is currently operated as a Bunnings Warehouse store by Bunnings Limited as a tenant of the Property);
 - 4.2 The effects of the modifications to Lambie Drive, including the altered access arrangements and signalised intersections, on the ongoing safe and efficient operation of the Property and on the surrounding transport network;
 - 4.3 The construction effects of the works proposed under NoR 2;
 - 4.4 The potential flooding effects of the works proposed under NoR 2; and
 - 4.5 The 15 year lapse period sought.
- Background**
- 5 The Property is occupied by a Bunnings Warehouse store, and includes at-grade customer parking for 274 vehicles. These activities were established under a resource consent granted by Manukau City Council on 2 April 1998 (reference 11557) (*the Resource Consent*). The Property has two vehicle access points onto Lambie Drive, which provide for a full range of vehicular movement to and from the Property. The Property is also subject to detailed body corporate arrangements, in connection to the original subdivision consent for the site.
 - 6 The Property has excellent road connections and has been developed, along with its neighbouring sites, as part of a destination commercial centre in a manner

consistent with the operative "Business – Metropolitan Centre" zoning under the Unitary Plan. Adjacent activities include large format retail activities such as "Mitre 10 Mega", the "Manukau Supa Centre", which includes such occupiers as "Warehouse Stationery" and "Noel Leeming", and office activities.

Submission details

- 7 Centuria opposes NoR 2 in its current form because it would not:
- 7.1 promote the sustainable management of physical resources, including enabling people and communities to provide for their health and safety, and their social, economic and cultural well-being;
 - 7.2 promote the efficient use and development of physical resources; and
 - 7.3 ensure consistency with good resource management practice.
- 8 Without limiting the generality of the above, the specific reasons for Centuria's opposition include (but are not limited to) the matters set out below.
- The designation over the Property is not necessary***
- 9 AT has not adequately considered alternative methods for undertaking the A2B Project works in the vicinity of the Property. In particular, AT has not considered:
- 9.1 Construction of a retaining wall instead of the proposed fill slope, which would require a less extensive designation footprint across the Property and would allow the retention of existing parking spaces;
 - 9.2 Engineering the A2B Project alignment to remove the need for medians on either side of the bus rapid transit (*BRT*) lanes in the vicinity of the Property, thus reducing the width of the designation footprint and the resulting land take; and/or
 - 9.3 Whether the proposed designation boundary could move further to the east of Lambie Drive to avoid or minimise impacts on private land on the western side of Lambie Drive.
- 10 Consideration of such alternatives is particularly important where private property interests are affected.
- 11 Instead, NoR 2 seeks to designate 2,303m² of the Property, to construct a widened road carriageway and an associated fill slope. AT also seeks to create medians on either side of the proposed central BRT lanes, which would considerably expand the footprint of the designation in the vicinity of the Property. The cumulative effect would be a substantial encroachment onto the Property that would require the removal of approximately 46 car parks and landscaping at the boundary of the Property.
- 12 The proposed designation in the vicinity of the Property is more extensive than is reasonably necessary for achieving AT's objectives for the A2B Project. AT's objectives could be achieved through less extensive works, in turn requiring a smaller designation footprint and less private land to be taken from the Property.

Effects on parking and access

- 13 AT's Assessment of Transport Effects (the *Transport Assessment*) states that no parking spaces would be required to be removed from the Property to facilitate the works.¹ However, this statement is not consistent with the general arrangement plans lodged with NoR 2, which illustrate the loss of approximately 46 parking spaces.
- 14 Bunnings is a large format, destination retail outlet, and the performance of the business relies on sufficient, convenient parking being available to meet customer demand, particularly during peak periods such as weekends. The loss of approximately 46 parking spaces would materially and detrimentally affect the operation of Bunnings. Similar concerns would apply to any potential future occupiers of the Property.
- 15 AT's Assessment of Environmental Effects (the *AEE*) states in relation to the loss of on-site parking that:²
- The NPS:UD specifically removes most parking minimum requirements from the AUP:OP. In this regard, the removal of on-site parking spaces because of the Project does not infringe any relevant provisions.
- The increased attractiveness and forecasted increase in demand for public transport is likely to lead to less demand for on-site parking for commercial and retail properties, with adequate parking facilities such as paid car park buildings available within proximity for use, if necessary.
- 16 The above assessment fails to recognise that in the Business – Metropolitan Centre Zone, the Unitary Plan only seeks to limit the supply of on-site parking for office activities, education facilities and hospitals. The Unitary Plan does not constrain the provision of parking for retail activities. Accordingly, it cannot be concluded that there would be no effects generated by NoR 2, merely because no minimum parking standards are infringed.
- 17 Similarly, it cannot be concluded that, in relation to large format, destination retail outlets such as Bunnings, a "*...forecasted increase in demand for public transport is likely to lead to less demand for on-site parking for commercial and retail properties*". The nature of trade retail activities and the products sold (eg timber, hardware and bulky goods) is such that private vehicles will be the preferred mode of transport to these stores for the foreseeable future. Again, the same concern would apply to any alternative future large-format retail occupiers of the Property.
- 18 The AEE also fails to recognise that some operators affected by NoR 2, such as Bunnings, are required through resource consent conditions to retain a minimum number of parking spaces.
- 19 Further, the general arrangement plans for NoR 2 do not show a footpath connecting the main entrance of the Bunnings building to the roadside public footpath on Lambie Drive. This outcome would put Bunnings in breach of the Resource Consent. These changes may also have flow-on impacts on access and circulation

¹ Assessment of Transport Effects, Appendix A.

² Assessment of Environmental Effects, page 75.

arrangements within the Property, and may require amendments to the existing body corporate agreements.

Transportation effects

- 20 The nature of the Bunnings retail activities and product offering means that private vehicles will continue to be the preferred mode of transport to the Property for the foreseeable future. The operation of the business depends on customers being able to access the site in a safe and efficient manner, and the activity is highly sensitive to changes to the performance of the surrounding transportation system. The same position applies to large-format retail more generally.
- 21 The A2B Project as proposed involves alterations to access arrangements at the Property, and installation of signalised intersections (which as noted may impact internal circulation at the Property). The Transport Assessment only considers the A2B Project's effects on the performance of the Lambie Drive intersections during the weekday AM and PM peak periods. Without an analysis of the interpeak and weekend periods, it is not possible to determine NoR 2's transportation effects on the Property.

Construction effects

- 22 The ability of activities on the Property to operate in a safe, efficient, and economically viable manner during construction of the A2B Project is of fundamental concern to Centuria.
- 23 Accordingly, if the designation is confirmed, the continued operation of Bunnings (or any alternative future occupier) must be adequately provided for during construction. Site-specific management measures must be required to be developed in consultation with Centuria and Bunnings (or other occupier), and implemented during the construction stages of the A2B Project.

Flooding effects

- 24 The Property is identified on Auckland Council's GIS as being subject to the 1% AEP flood plain and an overland flow path. It is unclear from the Assessment of Flooding Effects submitted with NoR 2 as to whether the proposed works would result in an increase in flooding effects on the Property. Further assessment and clarification is required as to actual and potential flooding effects, and if, following such assessment, the Council is minded to recommend confirmation of NoR 2, Centuria submits appropriate conditions must be identified as necessary.

Lapse period

- 25 The lapse period of 15 years that AT has sought would create uncertainty for affected landowners and occupiers, and could result in "blighting" of affected land. Centuria does not consider that the imposition of a 15-year lapse period is appropriate in circumstances where:
- 25.1 There is no committed funding or certainty as to the timeframe for the construction of the A2B Project; and
- 25.2 AT has not provided any commitment to give effect to the works within a reasonable timeframe.
- 26 As the necessity for the large extent of the land requirement from the Property has not been demonstrated, it is not appropriate to impose a 15-year lapse period.

Recommendation sought

- 27 For the above reasons, Centuria seeks that the Council recommends:
- 27.1 Rejection of NoR 2; or
 - 27.2 Amendments to NoR 2, including by way of conditions, to address Centuria's concerns, including for example:
 - (a) amending the designation boundary for NoR 2 in the vicinity of the Property so as not to include existing carparks;
 - (b) appropriate conditions setting outcomes for the operation of the Property during construction of the A2B Project, and requiring engagement with Centuria and Bunnings (or other occupier) when preparing management plans; and/or
 - (c) a more limited lapse period for the designation; and/or
 - 27.3 Such further other relief or other consequential amendments as considered appropriate and necessary to address the concerns set out above.
- 28 Centuria wishes to be heard in support of its submission.
- 29 If others make a similar submission, Centuria will consider presenting a joint case with them at a hearing.

Signed for and on behalf of Centuria Funds Management (NZ) Limited by its solicitors and authorised agents Chapman Tripp



Paula Brosnahan / Brendan Abley
Partner / Senior Solicitor
11 April 2023

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