

**IN THE ENVIRONMENT COURT
AUCKLAND**

ENV-2016-AKL-000232

IN THE MATTER

of the Local Government Act (Auckland Transitional Provisions) Act 2010 ("**LGATPA**") of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

of an appeal under section 156(3) of the Local Government (Auckland Transitional Provisions) Act 2010

AND

IN THE MATTER

of Proposed Plan Hearing Topic 081 - Rezoning and Precincts (Geographic areas)

BETWEEN

BUNNINGS LIMITED

Appellant

AND

AUCKLAND COUNCIL

Respondent

**AMENDED NOTICE OF APPEAL TO ENVIRONMENT COURT
BY BUNNINGS LIMITED
10 OCTOBER 2017**

**Russell
McLeagh**

D J Minhinnick / L J Eaton
P +64 9 367 8000
F +64 9 367 8163
PO Box 8
DX CX10085
Auckland

BUNNINGS LIMITED ("Bunnings") appeals against part of the decision of the Auckland Council ("**Council**") in respect of the Proposed Auckland Unitary Plan ("**Unitary Plan**").

1. Bunnings made a submission and further submission on the notified Unitary Plan.
2. Bunnings is not a trade competitor for the purposes of section 308D of the RMA.
3. Bunnings received notice of the Independent Hearings Panel's ("**Panel**") recommendation on the Unitary Plan ("**Recommendation**") on 27 July 2016, and notice of the Council's decision on the recommendation ("**Decision**") on 19 August 2016.

Parts of the Decision that Bunnings is appealing

4. Bunnings appeals that part of the Decision relating to the Redhills Precinct plan.
5. Bunnings filed an application for judicial review of the Recommendation. Through that application, Bunnings challenged the Panel's failure to identify the introduction of the amended Redhills Precinct plan, which included arterial roads, amendments to the alignment of those arterial roads relative to the alignment of the collector roads shown in the submissions on the Redhills Precinct, and the new arterial connection to the roundabout intersection of Fred Taylor Drive and Don Buck Road ("**Roundabout**") as part of the Redhills Precinct plan, as being beyond the scope of submissions.
6. The High Court issued its judgment on the judicial review application on 6 September 2017, setting aside the Recommendation in relation to the amended Redhills Precinct plan. The effect of the High Court's decision is that a right of appeal to the Environment Court is now available.¹
7. This appeal is made under section 156(3) of the LGATPA on the basis:
 - (a) that the Recommendation regarding the introduction of the amended Redhills Precinct plan, which included arterial roads, amendments to the alignment of those arterial roads relative to the alignment of the collector roads shown in the submissions, and the new arterial connection to the Roundabout as part of the Redhills Precinct plan, was beyond the scope of submissions.

¹ *Bunnings Limited v The Auckland Unitary Plan Independent Hearing Panel* [2017] NZHC 2141 at [24] and [68].

- (b) Bunnings is unduly prejudiced by the Panel's out of scope Recommendation for the reasons outlined in this appeal.

Grounds for appeal

- 8. Bunnings' grounds for appeal are that the amended Redhills Precinct plan:
 - (a) will not promote the sustainable management of resources, will not achieve the purpose of the RMA, and is contrary to Part 2 and other provisions of the RMA;
 - (b) will not meet the reasonably foreseeable needs of future generations;
 - (c) does not manage the use of resources in a way that enables the community to provide for their social and economic well-being;
 - (d) does not represent an efficient use and development of natural and physical resources;
 - (e) does not avoid, remedy or mitigate the adverse effects on the environment; and
 - (f) does not represent the most appropriate way to achieve the objectives of the Unitary Plan in terms of section 32 of the RMA.
- 9. Without limiting the generality of the above, the specific grounds of appeal are set out below.
- 10. Bunnings owns 2.8 ha of land at 21 Fred Taylor Drive, on the corner of Fred Taylor Drive and Te Oranui Way (identified on **Figure 1** below) ("**Site**"). The Site is within the Westgate Precinct under the notified Unitary Plan.



Figure 1: Bunnings store – Locality Plan

11. Bunnings has obtained resource consents for the establishment of a new Bunnings Warehouse comprising 17,789 m² in gross floor area (“GFA”) over two levels, underground parking, loading, access, and a series of individual retail tenancies (with a total GFA of 745 m²) with frontage onto Te Oranui Way. Primary customer access to the carpark for the Bunnings store and retail tenancies is provided from Te Oranui Way. Land use consent for the construction and operation of these activities (LUC-2015-2365) was approved on 11 May 2016.
12. Te Oranui Way is one of the four existing arms of the Roundabout. The main customer vehicle entrance to the carpark of the Site is provided from Te Oranui Way. Additional vehicle egress / access is provided from the existing Rotu Drive frontage, and from Fred Taylor Drive to accommodate circulation of service delivery vehicles. The design of the approved Bunnings Warehouse and associated retail tenancies is primarily oriented to Te Oranui Way as the primary access, with provision of a landscaped frontage along Fred Taylor Drive.
13. Te Oranui Way serves an essential traffic management purpose, providing safe and efficient access and egress to the Bunnings Warehouse, in addition to servicing the existing Pak'n'Save and providing a link through to the adjoining mall.
14. The resource consent process required consideration of the urban design requirements in the Operative District Plan. This included designing the store to provide a quality frontage and activation of the Te Oranui Way frontage, to

address the specific Operative District Plan requirements for this street typology. Consideration of the Fred Taylor Drive frontage was also required to achieve the design outcomes sought in the Operative District Plan. The approved resource consent requires establishment of a landscaped sculpture park at the north-western corner of Fred Taylor Drive and Te Oranui Way to achieve a visual entrance feature to the Westgate Precinct.

15. Immediately to the west of the Site and adjacent to the Roundabout is an area of approximately 600 ha of greenfields land, known as Redhills ("**Redhills Area**"). The Redhills Area is bordered by Fred Taylor Drive and Don Buck Road to the east, Redhills Road to the south and west and Henwood Road to the north, with the exception of a small portion that extends north of Henwood Road, between the Ngongotepara Stream and Fred Taylor Drive up to the northern cadastral boundary of 132-140 Fred Taylor Drive (opposite Northside Drive). The Redhills Area was zoned Future Urban in the notified Unitary Plan.
16. Through the Unitary Plan process, the Redhills Area was live zoned, subject to a precinct, known as the Redhills Precinct. The Precinct provisions in the Recommendation and the Council's decision included an amended precinct plan that was materially different from that sought in submission. A copy of the amended Redhills Precinct plan is attached to this appeal as **Appendix 1**.
17. Development of Redhills with the road alignment proposed in the Redhills Precinct plan (including an arterial road connection to the Roundabout) will necessitate the closure of Te Oranui Way or, at the very least, a reduction in available movements to and/or from Te Oranui Way.
18. Any reduction in accessibility to or from Te Oranui Way would have significant impacts on Bunnings and its consented operations.
19. The roading network proposed in the amended Redhills Precinct plan is not the most efficient or effective roading layout, having regard to existing and planned development in the area.

Relief sought

20. Bunnings seeks:
 - (a) that the Redhills Precinct plan is amended so that the amended roading layout:
 - (i) does not include an arterial (or other) road with a direct connection to the Roundabout; and

- (ii) does not impact on access to or from the Site, including through continuing to enable the full range of movements into and out of Te Oranui Way;
- (b) such consequential or related relief as may be necessary to give effect to its concerns; and
- (c) costs.

Service

21. An electronic copy of this notice is being served today by email on the Auckland Council at unitaryplan@aucklandcouncil.govt.nz. Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.

Attachments

22. Copies of the following documents are attached to this notice:
- (a) The relevant parts of the original submissions.
 - (b) The relevant parts of the Recommendation.
 - (c) The relevant parts of the Decision.

BUNNINGS LIMITED by its solicitors and authorised agents Russell McVeagh:



Signature:	<hr/> D J Minhinnick / L J Eaton
Date:	10 October 2017
Address for Service:	C/- Daniel Minhinnick / Lauren Eaton Russell McVeagh PO Box 8/DX CX10085 AUCKLAND
Telephone:	(09) 367 8000
Email:	daniel.minhinnick@russellmcveagh.com lauren.eaton@russellmcveagh.com

TO: The Registrar of the Environment Court at Auckland.

AND TO: Auckland Council.

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

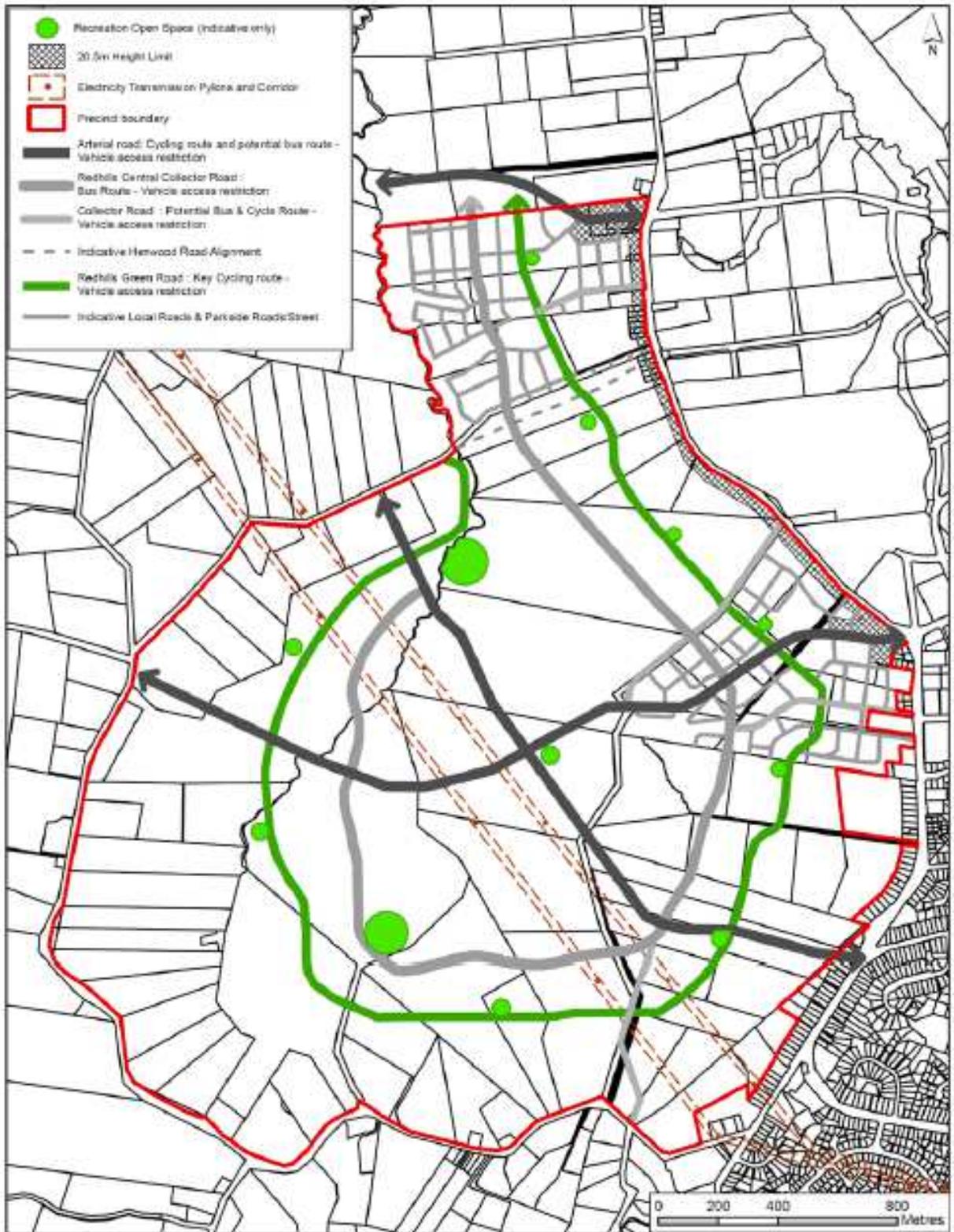
1. If you wish to be a party to the appeal, as per the requirements in Environment Court decision [2016] NZEnvC 153, within 15 working days after the period for lodging a notice of appeal ends you must:
 - (a) lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court by emailing unitaryplan.ecappeals@justice.govt.nz;
 - (b) serve copies of your notice on the Auckland Council on unitaryplan@aucklandcouncil.govt.nz; and
 - (c) serve copies of your notice on the appellant electronically.
2. Service on other parties is complete upon the Court uploading a copy of the notice onto the Environment Court's website.
3. 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).
4. 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.

Advice

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

Appendix 1 - Panel's Recommendation precinct plan

I610.10.1. Redhills Precinct: Precinct plan 1



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**MEMORANDUM OF COUNSEL ON BEHALF OF BUNNINGS LIMITED
10 OCTOBER 2017**

**Russell
McAugh**

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P +64 9 367 8000
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Auckland

MAY IT PLEASE THE COURT:

1. This memorandum of counsel is filed on behalf of Bunnings Limited ("**Bunnings**").
2. On 16 September 2016, Bunnings filed contemporaneous proceedings in the High Court and Environment Court in relation to the Redhills Precinct in the Proposed Auckland Unitary Plan ("**Unitary Plan**").
3. Under the application for judicial review, Bunnings challenged the Auckland Unitary Plan Independent Hearings Panel's failure to identify the introduction of the amended Redhills Precinct plan as being beyond the scope of submissions.
4. At the same time, Bunnings filed an appeal in the Environment Court, in the event that its judicial review was successful (as its ability to bring an appeal was reliant on a successful judicial review claim).
5. Bunnings' application for judicial review was granted by the High Court decision dated 6 September 2017. As a result of the High Court decision, a right of appeal to the Environment Court in relation to the Redhills Precinct was confirmed.
6. While Bunnings had already lodged its Environment Court appeal, Bunnings has taken this opportunity to file an amended appeal within the prescribed appeal period to reflect the course of events over the past year and to update its relief sought.

Dated 10 October 2017



D J Minhinnick / L J Eaton
Solicitors for Bunnings Limited