

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2016-AKL**

**IN THE MATTER**

of the Local Government Act (Auckland  
Transitional Provisions) Act 2010  
("LGATPA") and 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**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT BY BUNNINGS LIMITED**

**16 SEPTEMBER 2016**

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**RUSSELL McVEAGH**

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

#### **Decision**

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 Resource Management Act 1991 ("**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 ("**Redhills Decision**").
5. Bunnings, concurrent to this appeal, has filed an application for judicial review of the Panel's Recommendation. Through that application, Bunnings is challenging the Panel's failure to identify the introduction of the amended Redhills Precinct plan as being beyond the scope of submissions.
6. This appeal is made under section 156(3) of the Local Government (Auckland Transitional Provisions) Act 2010 on the basis:
  - (a) that the Panel's Recommendation regarding the introduction of the amended Redhills Precinct plan was beyond the scope of submissions.
  - (b) Bunnings is unduly prejudiced by the Panel's out of scope Recommendation for the reasons outlined in this appeal.

#### **Grounds for appeal**

7. Bunnings' grounds for appeal are that the Redhills Decision:

- (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 means of exercising the Respondent's function, having regard to the efficiency and effectiveness of other available means and is therefore not appropriate in terms of section 32 and other provisions of the RMA.
8. Without limiting the generality of the above, the specific grounds of appeal are set out below.
9. Bunnings owns 2.8ha 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**

10. Bunnings has obtained resource consents for the establishment of a new Bunnings Warehouse comprising 17,789m<sup>2</sup> in gross floor area (“GFA”) over two levels, underground parking, loading, access, and a series of individual retail tenancies (with a total GFA of 745m<sup>2</sup>) 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.
11. Te Oranui Way is one of the four existing arms of the roundabout intersection of Fred Taylor Drive and Don Buck Road (“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.
12. 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.

13. 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.
14. Immediately to the west of the Site and adjacent to the Roundabout is an area of approximately 600ha 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.
15. There were two submissions on the notified Unitary Plan from Hugh Green Limited and Westgate Joint Venture, who sought the introduction of a new Redhills Precinct for the Redhills Area. These original submissions each attached proposed precinct plans with an indicative roading layout for the Redhills Precinct, neither of which included a direct road connection with the Roundabout. Those proposed precinct plans are attached to this appeal as **Appendix 1** and **2**.
16. Subsequently, through evidence filed with the Panel, a materially different precinct plan was introduced which included an arterial road that connects to the Roundabout.
17. The Panel in its Recommendation, recommended for the amended precinct plan to be included in the Unitary Plan. A copy of the amended precinct plan is attached to this appeal as **Appendix 3**.
18. The Council accepted the Panel's Recommendation in its Decision.

19. Development of Redhills with the new road alignment (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.
20. Any reduction in accessibility to or from Te Oranui Way would have significant impacts on Bunnings.
21. The roading network proposed in the amended precinct plan is not the most efficient or effective roading layout, having regard to existing and planned development in the area.

#### **Relief sought**

22. Bunnings seeks:
  - (a) that the Redhills Precinct plan is replaced with the proposed precinct plan in either the Hugh Green Limited or Westgate Partnership original submission;
  - (b) such consequential or related relief as may be necessary to give effect to its concerns; and
  - (c) costs.

#### **Service**

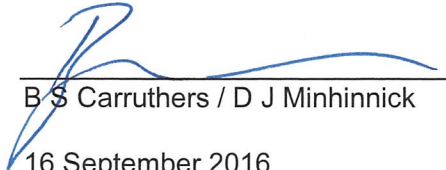
23. An electronic copy of this notice is being served today by email on the Auckland Council at [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz). Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service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

#### **Attachments**

24. 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:**

  
B S Carruthers / D J Minhinnick

**Date:**

16 September 2016

**Address for Service:**

C/- Daniel Minhinnick  
Russell McVeagh  
Barristers and Solicitors  
48 Shortland Street  
Vero Centre  
PO Box 8/DX CX10085  
**AUCKLAND**

**Telephone:**

(09) 367 8000

**Email:**

daniel.minhinnick@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*

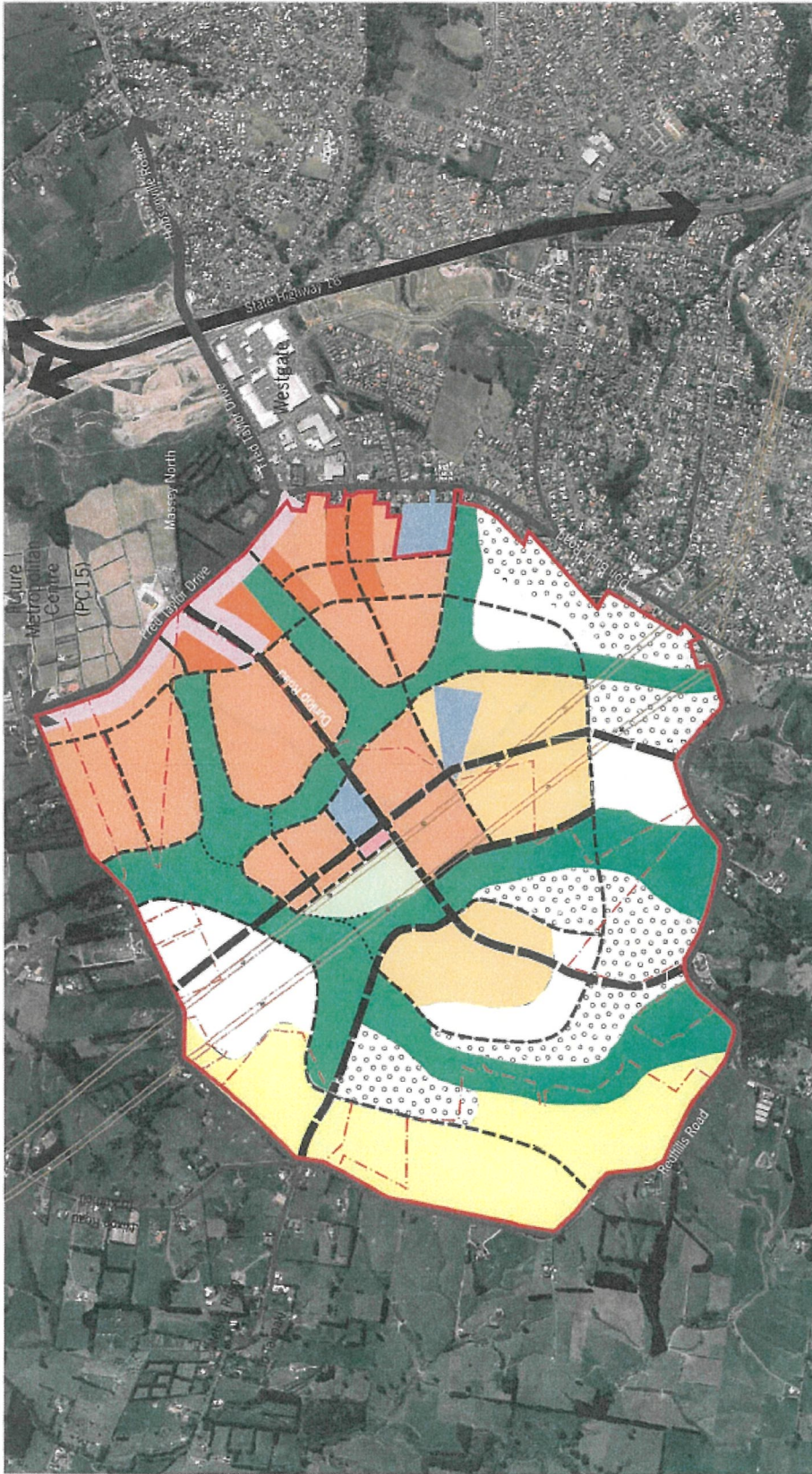
1. If you wish to be a party to the appeal, as per the requirements in Environment Court decision [2016] NZEnvC 153, within 15 working days after the period for lodging a notice of appeal ends you must:
  - (a) lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court by emailing [unitaryplan.ecappeals@justice.govt.nz](mailto:unitaryplan.ecappeals@justice.govt.nz);
  - (b) serve copies of your notice on the Auckland Council on [unitaryplan@aucklandcouncil.govt.nz](mailto: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.



Attachment 1 - Hugh Green Limited's proposed precinct plan (submission #5259)



Hugh Green Ltd  
Submission on Proposed Auckland Unitary Plan  
28 February 2014

Key

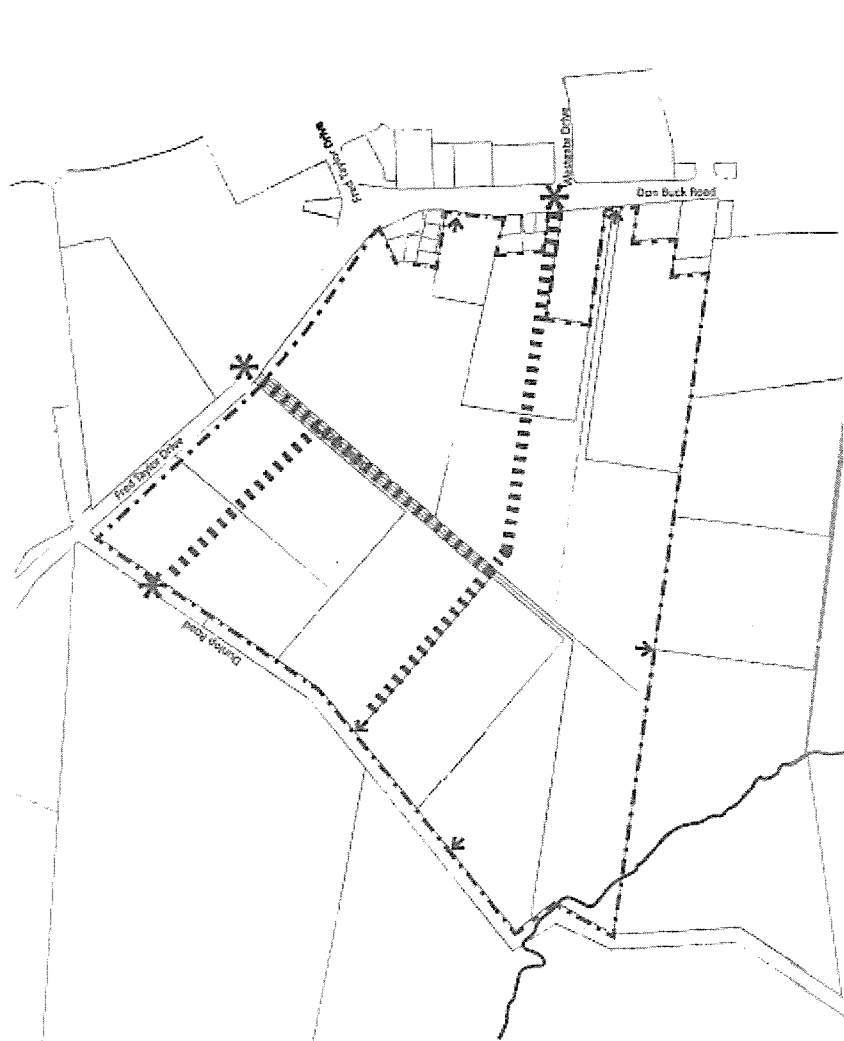
- Proposed Precinct
- HGL Land Holdings
- State Highways (Motorway)
- Existing Major Roads
- Existing Minor Roads
- Transmission Lines
- Indicative Location of Collector Roads
- Indicative Location of Local Roads
- Indicative Open Space Conservation
- Indicative Open Space Recreation
- Apartment and Terrace
- Mixed Housing Urban
- Mixed Housing Suburban
- Single House
- Single House Redhills Slope Protection (min 600m<sup>2</sup> and a min average 800m<sup>2</sup>)
- Large Lots
- Indicative Special Purpose
- Mixed Use
- Indicative Neighbourhood Centre
- Pedestrian and Cycleway Connection

The information and images included in this document are for illustrative purposes only and do not constitute an offer of any financial product. The information is provided as a general guide only and should not be relied upon for any specific purpose. For more information, please contact your broker.

HARRISON GRIFFITHSON  
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Attachment 2 - Westgate Partnership's proposed precinct plan (annexure 4 of submission #4373)

#4373



Westgate Partnership  
 Structure Plan, IGL 002  
 1:5000 @ A3

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ANNEXURE 4

- Site Boundary
- Main access point
- Future Road Connections
- Potential routes  
(indicative distributor road)

68/68 isthmus

Attachment 3 - Panel's Recommendation precinct plan

1610.10.1. Redhills Precinct: Precinct plan 1

