

**BEFORE THE HEARINGS PANEL
FOR THE QUEENSTOWN LAKES PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER of a hearing before the Hearings Panel on Chapter 2
(Definitions) of the Queenstown Lakes Proposed
District Plan (Stage 1)

MEMORANDUM OF COUNSEL ON BEHALF OF BUNNINGS LIMITED

17 MARCH 2017

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MAY IT PLEASE THE HEARINGS PANEL

Introduction

1. Further to Bunnings' presentation to the Hearings Panel on Wednesday 15 March 2017, this memorandum sets out the amended definition of Trade Supplier now sought by Bunnings, as an alternative to the amended definition of Retail sought by Bunnings in its evidence.

Relief sought

2. The relief now sought by Bunnings is to amend the definition of Trade Supplier as follows:

Trade Supplier

means a business engaged in sales to businesses and institutional customers and may also include sales to the general public, and wholly consists of suppliers of goods in one or more of the following categories:

- automotive and marine suppliers;
- building suppliers;
- catering equipment suppliers;
- farming and agricultural suppliers;
- garden and patio suppliers;
- hire services (except hire or loan of books, video, DVD and other similar home entertainment items);
- industrial clothing and safety equipment suppliers; and
- office furniture, equipment and systems suppliers.

Trade Suppliers are to be treated in the Plan as both retail and industrial activities, unless Trade Suppliers are otherwise specifically provided for.

3. That relief falls within the scope of Bunnings' submission. Bunnings' submission addressed the failure of the proposed definitions to appropriately provide for Bunnings' operations.¹ The relief now sought is either alternative to, or consequential to the relief sought in Bunnings' submission.²

¹ Submission #746 by Bunnings Limited, paragraph 3.

² Submission #746 by Bunnings Limited, paragraph 5(iv).

4. There are three parts to the relief now sought, which are each addressed in turn below.

"Trade Suppliers are to be treated in the Plan as both retail and industrial activities..."

5. The evidence for Bunnings was that Trade Supplies are unique, in the sense that they have characteristics of both retail and industrial activities, and that it is therefore inappropriate to treat Trade Suppliers in the same manner as general retail activities.
6. The proposed amendments reflect that Trade Suppliers have characteristics that are industrial in nature, as well as involving sales to the public, which have a retail component.
7. Treating Trade Suppliers as both retail and industrial activities at a policy level allows Council to appropriately provide for Trade Suppliers across the various zones in the district. It also enables the Council to subsequently assess applications for resource consent against an appropriate framework.

"...unless Trade Suppliers are otherwise specifically provided for."

8. While the above change addresses the concern at an objective and policy level, there is the risk of unintended consequences at rule level. In particular, requiring Trade Suppliers to be treated as both retail and industrial activities creates a risk that a proposal for a Trade Supplier activity would require consent as a Trade Supplier, as a retail activity, and as an industrial activity. As the most restrictive activity status would apply, it would in effect fail to provide for Trade Suppliers in the very zones they are most appropriately located.
9. Accordingly, there is the need to ensure that where Trade Suppliers have their own specific activity status in a particular zone, that activity status applies (rather than also considering the activity status of retail activities and industrial activities). The proposed amendments provide clarity and certainty as to what activity statuses will apply (with the most onerous activity status to apply, in the absence of specific treatment for Trade Suppliers).

"Wholly"

10. The third change is to remove the term "wholly" from the definition of Trade Supplier. While Bunnings is confident that its activities fall within the definition of Building Supplier, and are therefore caught by the definition of

Trade Supplier, in light of the comments by Commissioner Robinson, it sees merit in avoiding the risk of uncertainty as to the scope of the definitions.

11. The amendment addresses the risk of uncertainty arising regarding proportionality of sales and / or product lines, which has been the subject of discussions in other plan review processes,³ and brings the definition in line with the wording of Trade Suppliers in the Auckland Unitary Plan.

Conclusion

12. In our submission, the amendments to Bunnings' relief are a more appropriate, efficient and effective means of achieving the objectives of the Proposed Plan and the purposes of the RMA than the status quo.

DATED 17 March 2017



Daniel Minhinnick | Aidan Cameron
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³ See, for example, the discussion of the definition of trade supplier in *Ferrymead Retail Ltd v Christchurch City Council* [2012] NZHC 358.