

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2017-AKL-

IN THE MATTER of the Local Government (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 LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (“**Hearings Panel**”) on the proposed Auckland Unitary Plan (“**Proposed Plan**”)

AND

IN THE MATTER of Proposed Plan Hearing Topic 081 – Rezoning and Precincts (Geographic areas)

BETWEEN **THE NATIONAL TRADING COMPANY OF NEW ZEALAND LIMITED**

Appellant

A N D **AUCKLAND COUNCIL**

Respondent

NOTICE OF APPEAL

DATED: 11 October 2017

**ELLIS GOULD
SOLICITORS
AUCKLAND**

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TO: The Registrar
Environment Court
AUCKLAND

1. The National Trading Company of New Zealand Limited ("**NTC**") appeals against a decision of Auckland Council ("**the Council**") on the Auckland combined plan, now the Auckland Unitary Plan: Operative in Part ("**Unitary Plan**").
2. NTC received notice of the Auckland Unitary Plan Independent Hearings Panel's ("**Hearings Panel**") recommendation to Auckland Council that it confirm the provisions of the Redhills Precinct ("**Precinct**" and "**Recommendation**") on 27 July 2016. NTC received notice of the Council's decision to accept the Recommendation ("**Decision**") on 19 August 2016.

Part of Decision appealed

3. NTC appeals the part of the Decision approving I610.10.1. Redhills Precinct: Precinct plan 1 ("**Precinct Plan**"), and in particular the part of the Decision approving the inclusion of arterial roads, amendments to the alignment of those arterial roads relative to the alignment of the collector roads shown in submissions, and provision of a new arterial connection to the Don Buck Road/Fred Taylor Drive roundabout as part of the Precinct Plan.
4. NTC was an intervener in judicial review proceedings filed by Bunnings Limited challenging the Hearings Panel's failure to identify its Recommendation as being outside the scope of submissions on the Unitary Plan. In *Bunnings Limited v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2141, the High Court has now declared that the Recommendation in relation to the Precinct Plan was outside the scope of submissions, and has accordingly set aside that part of the Recommendation.¹ Council's notification of the High Court's decision, and notice that appeal rights are thereby triggered in relation to the Decision, was published on the Council's website on 14 September 2017.

¹ *Bunnings Limited v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2141 which declared that: "the Panel made an error of law by recommending the inclusion of 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 precinct plan, without identifying those recommendations as beyond the scope of submissions made on the PAUP."

5. NTC is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (“**RMA**”). In any event, it is directly affected by effects of the Decision that:
 - (a) adversely affect the environment; and
 - (b) do not relate to trade competition or the effects of trade competition.

Standing to appeal

6. NTC has the right to appeal the Council’s decision to the Environment Court under section 156(3) of the Local Government (Auckland Transitional Provisions) Act 2010 because:
 - (a) The High Court has declared that the Recommendation was beyond the scope of submissions and should have been identified as such.
 - (b) The Council’s Decision resulted in a matter being included in the proposed plan. That is, the identification of arterial roads on the Precinct Plan for the Precinct.
 - (c) NTC will be unduly prejudiced by the inclusion of that matter, as described in the reasons for this Appeal set out in paragraph 7 below.

Reasons for appeal, and undue prejudice to NTC

7. The reasons for this Appeal, and why NTC is unduly prejudiced by the Decision, are:
 - (a) Foodstuffs North Island Limited is one of two regional buying co-operatives that collectively operate throughout New Zealand. Its members operate supermarkets and grocery outlets throughout the North Island under the Pak’n Save, New World and Four Square brands. NTC is the property holding company for those outlets and is a wholly owned subsidiary of Foodstuffs.
 - (b) NTC owns a Pak’n Save supermarket at 17-19 Fred Taylor Drive (“**Supermarket**”). The Supermarket has two vehicle accesses, from Tawhia Drive and from Te Oranui Way. Te Oranui Way is one of the four existing arms of the roundabout intersection of Fred Taylor Drive and Don Buck Road (“**Roundabout**”).
 - (c) The Supermarket was established pursuant to LUC-2012-1109 and Permit 410526 (“**Consents**”). The Consents were granted in reliance on the roading layout shown in Plan Change 15 to the Auckland Council District Plan (Waitakere Section) and the Massey North Urban

Concept Plan, which included Rua Road and the Don Buck Road Extension (now, Tawhia Drive and Te Oranui Way respectively). This roading layout is now set out in I615.10.2. Westgate Precinct plan 2 – conceptual road network. Te Oranui Way is identified in Westgate Precinct plan 2 as a “strategic road alignment”, and the intersection as a “strategic access point – signals”.

- (d) The Consents were granted subject to conditions that Tawhia Drive and Te Oranui Way were constructed, and suitable access to Tawhia Drive and Te Oranui Way was available, prior to operation of the Supermarket. Further, conditions of the Consents require NTC to monitor traffic effects associated with the supermarket, particularly insofar as these relate to right turn movements to and from the site via the Supermarket’s Tawhia Drive access. A review of the Tawhia Drive access arrangements can be undertaken based on the results of that monitoring.
- (e) Accordingly, any reduction in accessibility to, or level of service of, the Roundabout, will have direct and significant effects on the operation of NTC’s Supermarket, and the ability of NTC to comply with conditions of the Consents for the Supermarket.
- (f) The Decision provides for the creation of a new arterial road connecting to the Roundabout as a fifth arm to the Roundabout. The provision of a fifth connection to the Roundabout, whether or not it is signalised in future, is likely to result in the introduction of limitations on access to and from Te Oranui Way, and will lead to the creation of an inappropriate, inefficient, ineffective and less integrated road layout when considered in the context of existing and planned future development in Massey North, Redhills and the broader area.
- (g) Finally, unless and until the Proposed Plan is amended to include the relief sought at para 8 below, the provisions will not:
 - (i) promote the sustainable management of resources;
 - (ii) enable social, economic and cultural well being;
 - (iii) otherwise be consistent with Part 2 of the RMA; or
 - (iv) be appropriate in terms of section 32 of the RMA.

Relief sought

8. The Appellant seeks the following relief:
- (a) That the Decision subject to this Appeal be disallowed.
 - (b) That the 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 Supermarket, including through continuing to enable the full range of movements into and out of Te Oranui Way.
 - (c) Such other orders, relief or other consequential amendments as are considered appropriate or necessary by the Court to address the concerns set out in this Appeal.
 - (d) Costs of and incidental to the Appeal.

Service

9. The Council will be served today with an electronic copy of this Notice in accordance with the decision of the Environment Court granting waivers (Refer: [2016] NZ EnvC 153) in respect of the requirement to serve a copy of any Notice of Appeal on a submission on the provision or matter to which the appeal relates.

Attachments

10. NTC **attaches** the following documents to this Notice of Appeal:
- (a) A copy of the Hearings Panel recommendations version of the Precinct Plan (**Annexure A**)
 - (b) A copy of the relevant parts of the Hearings Panel's reports to the Council which formed part of its Recommendation (**Annexure B**).
 - (c) A copy of the relevant parts of the Decision (**Annexure C**).
 - (d) A copy of the High Court decision, *Bunnings Limited v Auckland Unitary Plan Independent Hearings Panel* [2017] NZHC 2141 (**Annexure D**).

- (e) A map showing the location of the Supermarket at Westgate, which is affected by the Decision (**Annexure E**).

DATED at Auckland this 11th day of October 2017

**THE NATIONAL TRADING COMPANY OF
NEW ZEALAND LIMITED** by its solicitors and
duly authorised agents Ellis Gould



D J Sadlier

ADDRESS FOR SERVICE: The offices of Ellis Gould, Solicitors, Level 17 Vero Centre, 48 Shortland Street, PO Box 1509, Auckland, DX CP22003, Auckland, Telephone: (09) 307-2172, Facsimile: (09) 358-5215. dsadlier@ellisgould.co.nz (email service preferred).

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.

ANNEXURE A

HEARINGS PANEL RECOMMENDATIONS VERSION OF PRECINCT PLAN

ANNEXURE B
HEARINGS PANEL RECOMMENDATION REPORT

ANNEXURE C
COUNCIL DECISION EXTRACT

ANNEXURE D

BUNNINGS LIMITED v AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

ANNEXURE E

WESTGATE PAK'N SAVE LOCATION PLAN

