

**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)

**LEGAL SUBMISSIONS ON BEHALF OF BUNNINGS LIMITED
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1. INTRODUCTION

- 1.1 These legal submissions are presented on behalf of Bunnings Limited ("**Bunnings**") and relate to the issue of whether "Trade Supplier" and "Building Supplier" activities (together, "**Trade and Building Suppliers**") are included in the definition of "Retail" within the Queenstown Lakes Proposed District Plan ("**Proposed Plan**").

Bunnings

- 1.2 A detailed description of Bunnings is outlined in Mr Boersen's evidence.¹ Bunnings operate building improvement stores or "do it yourself" centres that sell building related products. Bunnings has a total of 53 stores, consisting of Bunnings Warehouses, Bunnings Small Format Stores and Trade Centres, throughout New Zealand.
- 1.3 The store types (Bunnings Warehouses, Bunnings Small Format Stores and Bunnings Trade Centres) are differentiated by size and product offering. Increasingly, the larger footprint Bunnings Warehouses are replacing the Bunnings Small Format Stores (which have smaller footprints and range) to meet customer demand. Bunnings Warehouses have a gross floor area in the main warehouse area of greater than 3,000m² plus parking, and carry approximately 45,000 different product lines for home improvement, DIY and trade markets. To cater for the broad range of products on offer and the operating requirements, the stores are being designed with a layout that is industrial in nature. Bunnings Trade Centres service trade professionals, including bulk delivery directly to construction sites for commercial customers.²

Issue

- 1.4 Bunnings' key concern in this chapter relates to the definition of Retail in the Proposed Plan, and in particular the inclusion of Trade and Building Suppliers within that definition.
- 1.5 This concern was outlined in Bunnings' primary submission.³ However, no substantive response to Bunnings' submission point was provided in the

¹ Statement of evidence of David Boersen at paragraphs 4 – 12.

² Statement of evidence of David Boersen at paragraph 5.

³ Bunnings made a primary submission (submitter #746) and further submission (further submitter #1314) on the Proposed Plan on 23 October 2015. In its primary submission, Bunnings sought that Building Suppliers be expressly excluded from the definition of Retail in the Proposed Plan. Bunnings takes no issue with the definition of Trade Supplier and Building Supplier, as contained within the Council's Hearing Report.

Council's Section 42A Report. As such, it is not clear why the Council has rejected that submission point.

1.6 The definitions in Chapter 2 are critical to the interpretation and application of the objectives and policies of the Proposed Plan in its entirety.

1.7 The issue with the definition of Retail not excluding Trade and Building Suppliers bites when the Council's policies are implemented, which direct where retail activities are to be located. The Council's centres-based approach focuses on the "enhancement of the centres as the key commercial hubs of the District",⁴ which promotes consolidation of retail and commercial activities in town centres.

1.8 In our submission, the inclusion of Trade and Building Suppliers within the definition of Retail will lead to two outcomes that are contrary to the Council's overall strategy:

(a) Trade and Building Supplier Activities will be forced to locate in the town centres, which will undermine the Council's objective of locating core retail activities in those areas to create vibrant centres.

(b) Alternatively, and perhaps more likely, Trade and Building Suppliers will be precluded from locating in the District in totality as the industrial nature of the store is not suitable to be located in the town centres.

1.9 In our submission, the notified definition of Retail is not the most appropriate means of achieving the objectives and policies of the Proposed Plan, nor the purpose of the RMA. We submit that it would be more appropriate for the definition of Retail to exclude Trade and Building Suppliers, as follows:

Retail

Means the direct sale or hire to the public from any site, and/or the display or offering for sale or hire to the public on any site of goods, merchandise or equipment, but excludes recreational activities and Trade Suppliers.

1.10 Such an approach is also consistent with the approach taken in other recent plan making processes elsewhere in the country, which reflects a contemporary understanding of how Trade and Building Suppliers operate, compared to other forms of retail.

⁴ Proposed Plan, Chapter 3 – Strategic Direction, at 3.2.1.1.

Evidence

- 1.11 Evidence has been filed on behalf of Bunnings from the following witnesses:
- (a) **David Boersen** (corporate) addresses Bunnings' business operations, the characteristics of Trade and Building Suppliers, and the particular characteristics which distinguish those activities from retail. Unfortunately, Mr Boersen has become unavailable for this hearing. Ms Davidson, Property Development Manager at Bunnings, is in attendance and is able to answer any questions.
 - (b) **Timothy Heath** (retail economics) covers retail and economic matters associated with Trade and Building Suppliers, in particular the trade and distributional effects of those activities and the effect of those activities on retail or commercial centres.
 - (c) **Kay Panther Knight** (planning) discusses the appropriate definition for Retail along with examples from other local authorities which exclude Trade and Building Suppliers from that definition. Ms Panther Knight's evidence also discusses the Section 42A Hearing Report and provides a section 32 analysis of Bunnings' proposed amendments.

2. COUNCIL'S APPROACH TO RETAIL

- 2.1 In order to put this issue in context, it is important to understand the Council's broad policy approach in the Plan, particularly regarding the location of retail activities.
- 2.2 The Council has a broad policy approach outlined in its Strategic Directions. As this Panel will be well aware, the Strategic Directions of the Proposed Plan set out the "over-arching strategic direction for the management of growth, land use and development in a manner that ensures sustainable management of the Queenstown Lakes District's special qualities", including the following qualities:⁵
- (a) vibrant and compact town centres;
 - (b) compact and connected settlements that encourage public transport, biking and walking; and

⁵ Proposed Plan, Chapter 3 - Strategic Direction at 3.1.

- (c) an innovative and diversifying economy based around a strong visitor industry.

2.3 There are a number of the objectives contained within the Council's Strategic Directions to give effect to the overarching policy, including requirements that the Proposed Plan:⁶

- (a) recognise, develop and sustain the Queenstown and Wanaka central business areas as the hubs of New Zealand's premier alpine resorts and the District's economy; and
- (b) recognise, develop and sustain the key local service and employment functions served by commercial centres and industrial areas outside of the Queenstown and Wanaka central business areas in the District.

2.4 The Council's Strategic Direction is further promoted in the individual town centre zones. The Proposed Plan provides for town centres to:⁷

provide a focus for community life, retail, entertainment, business and services. They provide a vital function for serving the needs of residents, and as key destinations for visitors to our District, they provide a diverse range of visitor accommodation and visitor-related businesses. High visitor flows significantly contribute to the vibrancy and economic viability of the centres.

2.5 In the Queenstown Town Centre zone (as an example of the Council's centres-based approach), there are five objectives to fulfil the purpose of the RMA. Relevant to this issue, the Proposed Plan includes objectives that the Proposed Plan provides:

- (a) A Town Centre that remains relevant to residents and visitors alike and continues to be the District's principal mixed use centre of retail, commercial, administrative, entertainment, cultural, and tourism activity.⁸
- (b) A compact Town Centre that is safe and easily accessible for both visitors and residents.⁹

2.6 That context is important to understand when considering whether it is appropriate for Trade and Building Suppliers to be treated in the same way as general retail activities.

⁶ Proposed Plan, Chapter 3 Strategic Direction at 3.2.1.

⁷ Proposed Plan, Chapter 12 Queenstown Town Centre, 12.1; Chapter 13 Wanaka Town Centre, 13.1; Chapter 14 Arrowtown Town Centre, 14.1.

⁸ Proposed Plan, Chapter 12 Queenstown Town Centre, 12.2.1.

⁹ Proposed Plan, Chapter 12 Queenstown Town Centre, 12.2.4.

3. TRADE AND BUILDING SUPPLIERS ARE NOT LIKE OTHER RETAIL

- 3.1 Trade and Building Supplier are not like other retail stores. They have evolved over the past 10 - 15 years from the traditional "hardware store", like small format Hammer Hardware-type stores, which serviced largely local DIY customers, to much-larger format "one-stop shops" for DIY customers and tradespeople alike.¹⁰ Mr Heath's evidence states that the evolution of Trade and Building Supplier stores has led to the footprint of the stores increasing by 5-10 times.¹¹ These changes are not unique to the Bunnings brand. Other businesses, like Mitre 10 Mega, have also executed new stores throughout the country in the same manner.
- 3.2 Typical Trade and Building Suppliers, such as Bunnings, are not the types of core retail activity that has a functional need to locate in town centres to be easily accessible to both residents and visitors. Nor is it necessary or appropriate to locate Trade and Building Supplier stores within town centres to maintain their viability and vibrancy.¹² Owing to a range of factors (including their size, site requirements, and other particular characteristics) Trade and Building Suppliers do not contribute to the amenity of a town centre, and may in fact detract from that amenity. Given those factors, Mr Heath concludes that there is no risk of any consequential adverse retail distribution effects if such stores are located out-of-centre.¹³
- 3.3 Mr Boersen's evidence outlines further characteristics that show how Trade and Building Suppliers are different to other retail. His evidence provides figures of gross floor areas for other Bunnings stores¹⁴ and how the design of the Bunnings' buildings is "synonymous with industrial warehousing activities".¹⁵ Mr Boersen provides a comparison of three diagrams showing what the typical gross floor area (in this instance two hectares) of a Bunnings store would look like in the Queenstown CBD, Gorge Road and on the existing Countdown Queenstown site.¹⁶ These diagrams show that the (on average) two hectares of land required for a Bunnings Warehouse is not suitable to be developed within Queenstown's Town Centre or commercial district area, as it would dominate the limited land space available for fine-grain retail and other essential services to locate on.

¹⁰ Statement of evidence of Timothy Heath at paragraph 13; and statement of evidence of Kay Panther Knight at paragraph 7.

¹¹ Statement of evidence of Tim Heath at paragraph 13.

¹² Statement of evidence of Tim Heath at paragraph 14.

¹³ Statement of evidence of Tim Heath at paragraph 14.

¹⁴ Statement of evidence of David Boersen at paragraph 25.

¹⁵ Statement of evidence of David Boersen at paragraph 20.

¹⁶ Statement of evidence of David Boersen at paragraph 31 and page 10.

3.4 As Mr Boersen states, the nature of Trade and Building Supplier activities (and the nature of the products sold) tends to require a high mass of vehicle movements, in particular heavy vehicle movements are required for delivery of products, and also for customers when purchasing products.¹⁷ Similarly, due to the nature of the goods sold, Trade and Building Suppliers need to provide significant carparking at their stores for customers.¹⁸ Service and parking requirements for a Trade and Building Supplier make it equally less likely that such an operator would want to establish within the core retail district of the town centres, with the challenges those locations would present.

3.5 As Mr Heath notes, the large format and industrial-like nature of Trade and Building Supplier stores does not "fit into a centre environment either spatially, or by comparison to other types of retail within that environment" and is "no longer appropriate to sit within a retail definition within a planning context."¹⁹

4. **CLASSIFYING TRADE AND BUILDING SUPPLIERS AS RETAIL LEADS TO PERVERSE OUTCOMES**

4.1 Preserving the notified definition of Retail could lead to perverse planning outcomes for Trade and Building Suppliers, such as Bunnings, which would effectively lock them out of the market in the District.

4.2 As identified above, the Council has adopted a centres-based approach that promotes the consolidation of retail activities in and around existing town centres, to protect the vibrancy and vitality of those centres. The location of Trade and Building Suppliers as a Retail activity in town centres identified in the Proposed Plan would directly conflict with that approach.

4.3 Using the Queenstown Town Centre objectives as an example, Trade and Building Suppliers are inconsistent with the types of "mixed-use" activity the Council is promoting within the zones, by virtue of their large size and site requirements. Locating Trade and Building Suppliers within town centres would also not promote the compact form that the Council is seeking to achieve, comprising a range of core retail and essential services (and forcing those activities to look elsewhere).

4.4 On the other hand, if Council were to reject the development of Trade and Building Suppliers in town centres, given the strength of the Council's centres-based approach, Trade and Building Suppliers may be precluded from locating in the District in totality. Again, this is contrary to the Council's overall strategy.

¹⁷ Statement of evidence of David Boersen at paragraphs 21-25.

¹⁸ Statement of evidence of David Boersen at paragraph 25.

¹⁹ Statement of evidence of Tim Heath at paragraph 13.

4.5 Amending the definition of Retail to exclude Trade and Building Suppliers avoids this conflict, and is a more appropriate means of achieving the objectives and policies of the Proposed Plan, especially the Council's Strategic Directions outlined above. Ms Panther Knight notes in her section 32 assessment that the clarity and certainty provided by Bunnings' proposed amendments, along with the reduced planning and processing costs associated with that greater clarity (and the economic certainty provided for operators like Bunnings), will provide a more efficient and effective outcome than the status quo.²⁰ That clarity will flow through into the rule frameworks to be developed at later stages of this plan review process.

4.6 Other parts of the Proposed Plan already distinguish between Trade Supplier and Retail activities (for example, in the Business Mixed Use Zone rules). Maintaining that same distinction in the definitions of the Proposed Plan will avoid unnecessary confusion, and better give effect to the objectives and policies of those zones.

5. OTHER COUNCILS HAVE ACKNOWLEDGED THE NATURE OF TRADE AND BUILDING SUPPLIERS

5.1 There is nothing novel in the approach advocated by Bunnings. In fact, many councils now treat Trade and Buildings Suppliers differently from other retail activities in their second generation plans.²¹

5.2 As Ms Panther Knight identifies, the new plans in Christchurch, Auckland and Hamilton all distinguish Trade and Buildings Suppliers from other retail activities.²²

5.3 In our submission, the recent significant plan review processes undertaken in those cities demonstrate a consistent acknowledgement of the unique nature of Trade and Building Suppliers compared to other forms of retail. This reinforces the change sought by Bunnings to the definition of retail within the Plan.

6. CONCLUSION

6.1 In our submission, the notified definition of Retail (including Trade and Building Suppliers) is not the most appropriate means of achieving the objectives of the Proposed Plan, and the purposes of the RMA, as it would:

²⁰ Statement of evidence of Kay Panther Knight at paragraph 42.

²¹ Statement of evidence of Timothy Heath at paragraph 13.

²² Statement of evidence of Kay Panther Knight at paragraphs 24 to 33.

- (a) inappropriately conflate Trade and Building Suppliers with true retailing activities;
- (b) lead to perverse planning outcomes within the District (including the prospect that Trade and Building Suppliers would be excluded in their totality); and
- (c) be inconsistent with the Strategic Directions of the Proposed Plan.

6.2 Bunnings' proposed amendments will avoid those unnecessary and inappropriate planning outcomes, and result in provisions that are a more efficient and effective means of achieving those same objectives and the purposes of the RMA.

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