

IN THE MATTER of the Resource Management
Act 1991

AND

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

**STATEMENT OF EVIDENCE OF KAY PANTHER KNIGHT
ON BEHALF OF BUNNINGS LIMITED
6 MARCH 2017**

INTRODUCTION

1. My name is Kay Panther Knight. I hold the position of Director at Forme Planning Limited. I commenced this position this month and prior to that, I held the position of Principal Planner at Civitas from November 2015 to February 2017.
2. I hold the Degree of a Master of Planning Practice from the University of Auckland. I am also a Graduate Plus member of the New Zealand Planning Institute.
3. I have 14 years' experience covering a wide range of land use planning matters on behalf of local authorities, government departments and private entities in New Zealand. During that time, I have been involved with many aspects of resource management including preparation and lodgement of resource consent applications, submissions and presentation of evidence to local authorities in respect of proposed plans and plan changes.

4. Most notably, I have prepared submissions and presented evidence on behalf of Bunnings Limited (**Bunnings**) in regards to the Auckland Unitary Plan, the Hamilton Proposed District Plan, and the Rotorua Proposed District Plan, among others. I have had extensive involvement in consenting a number of Bunnings stores throughout New Zealand and am therefore familiar with the nature of the activity and associated effects. Further, I assisted with the preparation of Bunnings' submission on the Queenstown Lakes Proposed District Plan (**Proposed Plan**).
5. I have been engaged by Bunnings to provide evidence in relation to how the definitions in the Proposed Plan relate to its activities and to ensure that Bunnings' activities are appropriately provided for in the District.

CODE OF CONDUCT

6. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise.

BACKGROUND AND SCOPE OF EVIDENCE

7. Bunnings operates trade supplier activities that sell building-related products to tradespeople and the general public. Bunnings Warehouses also typically include outdoor nurseries, timber trade sales and building materials and landscape yards. By way of further explanation, Bunnings can be considered a "one-stop shop" for building products, all available under one roof. For these reasons, Bunnings generally requires a large building footprint, ranging from 7,000m² – 10,000m² in gross floor area. In addition, a typical site area requirement to accommodate the building, car parking, landscaping, loading and servicing needs would measure approximately 2.5 – 3ha, as a minimum.
8. I have been asked to provide evidence in relation to the definition of "Trade Supplier" in Chapter 2 of the Proposed Plan. Bunnings' interest in Chapter 2 primarily relates to how their activities sit within the context of the Trade Supplier definition, and its associated or referenced definition, Building Supplier. Finally, in its primary submission, Bunnings sought that Trade Suppliers or Building Suppliers be expressly excluded from the definition of Retail in the Proposed Plan.

9. I have read the Council's section 42A Hearing Report¹ (**Hearing Report**) on Chapter 2, the expert evidence prepared on behalf of Bunnings by Mr Tim Heath and the corporate evidence of Mr David Boersen. I have also read the Hearing Report relating to the Proposed Plan Chapter 16 Business Mixed Use zone,² which addressed similar issues to this hearing.

10. My evidence will cover the following matters:
 - (a) The appropriate definition for Bunnings.
 - (b) Application of the appropriate definition, including examples in other local authorities.
 - (c) Comments on the Hearing Report.
 - (d) Conclusions.

THE APPROPRIATE DEFINITION FOR BUNNINGS

11. As described in paragraph 7, Bunnings sells building-related products to trade customers and the general public. Within a Bunnings Warehouse, there are typically three or four defined areas accommodating the main warehouse, the outdoor nursery, the timber trade sales area and in many cases, but not all, a building materials and landscape yard.

12. As further described in paragraph 7, the above typical physical characteristics of the stores and indeed the nature of many of the products sold (i.e. large or bulky items) require a larger footprint and associated site area on which to establish. Further, by virtue of the outdoor display areas and the scale of warehousing required to accommodate stock, Bunnings Warehouses generally appear utilitarian in design and form.

13. As a result, Bunnings' activities have traditionally straddled historic planning definitions for retail and light industrial activities, which include warehousing, wholesaling and trade retail. That approach has often led to debate as to which definition Bunnings' activities most appropriately fall under.

14. In recent times, many Councils have recognised that such activities do not sit comfortably within the definition of Retail and have adopted various terms, including Building Improvement Centre, Trade Retail, Trade Supplier and Building Supplier to distinguish

¹ Queenstown Lakes District Proposed District Plan – Stage 1 Section 42A Hearing Report For Hearing Commencing 13 March 2017. Report dated 15 February 2017. Report on Chapter 2 – Definitions.

² Queenstown Lakes District Proposed District Plan – Stage 1 Section 42A Hearing Report For Hearing Commencing 28 November 2016, Report dated 2 November 2016. Report on Chapter 16 – Business Mixed Use zone.

the likes of Bunnings from general retailers, and recognise that the nature of the activity is more akin to industrial activities. Examples used by other local authorities are addressed in the following section of this evidence.

15. The Hearing Report has adopted two definitions, being Trade Supplier and Building Supplier, with Building Supplier being a subset of Trade Supplier. For ease of reference, these definitions are reproduced below:

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.*

Building Supplier: Means a business primarily engaged in selling goods for consumption or use in the construction, modification, cladding, fixed decoration or outfitting of buildings and without limiting the generality of this term, includes:

- *Glaziers;*
- *Locksmiths; and*
- *Suppliers of:*
 - *Awnings and window coverings;*
 - *Bathroom, toilet and sauna installations;*
 - *Electrical materials and plumbing supplies;*
 - *Heating, cooling and ventilation installations;*
 - *Kitchen and laundry installations, excluding standalone appliances;*
 - *Paint, varnish and wall coverings;*
 - *Permanent floor coverings;*
 - *Power tools and equipment;*
 - *Safes and security installations; and*
 - *Timber and building materials.*

16. The Hearing Report does not expressly confirm its consideration that a Bunnings activity would fall within the above definitions, however I consider it is a straightforward interpretation. On that basis, I support the proposed definitions and their introduction into the Proposed Plan. I make further comment on the Hearing Report in paragraph 35 onwards.

APPLICATION OF THE APPROPRIATE DEFINITION

17. Related to the above definitions, it is important to consider how those definitions will be applied within the Proposed Plan, insofar as what activities are permitted in which zones and what activities are compatible, inter-related, or, conversely, not suited to certain environments.
18. In light of that consideration, Bunnings' submission specifically seeks that Trade Suppliers and Building Suppliers are not incorporated into the broad definition of Retail. The reason for the distinction relates to the characteristics described above, particularly in respect of the different physical form and quasi-industrial nature of Bunnings' activities, when compared to traditional retail activities.
19. Trade Suppliers of Bunnings' scale are not easily accommodated within locations that are identified as suitable for core retail activities, namely town centres and "high street" style commercial areas. Rather, these centres or zones are suited to, and attract, small-scale, highly frequented convenience and comparison retailing. These activities, along with services and other commercial activity, including offices, contribute to the vitality and amenity of a retail core or town centre.
20. Further, sites within these centres or zones are typically smaller in size, fragmented in subdivision pattern and land ownership and, of course, have greater commercial value in terms of rental or price per square metre. This matter is addressed in Mr Heath's evidence and I support his conclusions.
21. Finally, while Bunnings provides for alternative modes of transport including walking and cycling, where possible, in its development proposals, the nature of the products sold means that almost all of Bunnings' trade relies on car transport. Large service vehicles also regularly visit the site with deliveries and require ease of access and manoeuvring, which cannot be readily provided for in town centre or "high street" style commercial areas.

22. The corollary of the above analysis is that general retail activity (as a broad definition) is not appropriate in other locations throughout the District. In the case of the Proposed Plan, if not controlled, core retail activity outside the identified centres would not achieve the Proposed Plan's Strategic Directions.
23. In this regard, I consider it is critical to ensure that Trade Suppliers and Retail activities are not "caught up" in one definition. In recognising and providing for the differences between these activities at the definition stage, Council can avoid conflating the two types of activity when undertaking its later analysis of where, and in which zones, these activities are best located.
24. The proposed exclusion of Trade Supplier from the definition of Retail as sought by Bunnings is one approach to achieve this distinction. Examples of how this approach has been adopted in recent policy reviews by other local authorities are addressed below.
25. For example, the Christchurch District Plan³ established the following definitions for Trade Supplier and Building Supplier:

Trade supplier means a business engaged in sales to businesses and institutional customers (but may also include sales to the general public) and consists only of suppliers of goods in one or more of the following categories:

- a. automotive and/or marine suppliers;*
- b. building suppliers;*
- c. catering equipment suppliers;*
- d. farming and agricultural suppliers;*
- e. garden and patio suppliers;*
- f. hire services (except hire or loan of books, videos, DVDs and other similar home entertainment items);*
- g. industrial clothing and safety equipment suppliers; and*
- h. office furniture, equipment and systems suppliers*

Building supplier means a business primarily engaged in selling goods for consumption or use in the construction, modification, cladding, fixed decoration or outfitting of buildings. It includes:

- a. glaziers;*
- b. locksmiths; and*
- c. suppliers of:*

³ Decisions 16 and 58 being Operative in Part as of 7 June 2016, and 25 November 2016 (Chapter 2 Definitions).

- i. awnings and window coverings;*
- ii. bathroom, toilet and sauna installations;*
- iii. electrical materials and plumbing supplies;*
- iv. heating, cooling and ventilation installations;*
- v. kitchen and laundry installations, excluding standalone appliances;*
- vi. paint, varnish and wall coverings;*
- vii. permanent floor coverings;*
- viii. power tools and equipment;*
- ix. safes and security installations;*
- x. timber and building materials; and*
- xi. any other goods allowed by any other definition under 'trade supplier'.*

- 26.** These are almost identical to the definitions proposed to be introduced to the Proposed Plan in Council's Hearing Report. However, the Christchurch District Plan goes a step further, with the following definition for Retail specifically excluding Trade Suppliers, as sought by Bunnings in the Proposed Plan:

Retail activity means the use of land and/or buildings for displaying or offering goods for sale or hire to the public. It includes food and beverage outlets, second-hand goods outlets, food courts and commercial mail order or internet-based transactions. It excludes trade suppliers, yard-based suppliers and service stations (emphasis added).

- 27.** As a further example, the Auckland Unitary Plan (Operative in Part) (**AUP**) includes the following definition:

Trade Supplier: A supplier in one or more of the categories listed below, engaged in sales to business and institutional customers but may also include sales to the general public:

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

28. The definition of Building Supplier in the AUP is as follows:

A business primarily engaged in selling materials for use in the construction, modification, cladding, fixed decoration or outfitting of buildings. Includes:

- *glaziers;*
- *locksmiths; and*
- *suppliers of:*
 - *awnings and window coverings;*
 - *bathroom, toilet and sauna installations;*
 - *electrical materials and plumbing supplies;*
 - *heating, cooling and ventilation installations;*
 - *kitchen and laundry installations, excluding standalone appliances;*
 - *paint, varnish and wall coverings;*
 - *permanent floor coverings;*
 - *power tools and equipment;*
 - *safes and security installations; or*
 - *timber and building materials.*

29. Again, these definitions are almost identical to both in the Christchurch District Plan and as now proposed by Council in the Proposed Plan.

30. The AUP uses a nesting approach for definitions. In respect of the definition of Trade Supplier, the AUP nests that activity within the Definitions Commerce Nesting Table (J1.3.1), see below:

Commercial activities	Offices		
	Retail	Food and beverage	Bars and taverns
			Restaurants and cafes
			Drive through restaurants
		Dairies	
		Show home	
		Large format retail	Supermarket
			Department store
		Trade supplier	
		Service station	
		Markets	

		Marine retail	
		Motor vehicle sales	
		Garden centres	
	Commercial services	Veterinary clinic	
		Funeral director premise	
		Commercial sexual services	
	Entertainment facilities		

- 31.** This approach is in lieu of excluding Trade Suppliers from the definition of Retail. Rather, the AUP relies on the nested approach to determine general and/or specific activity status, where relevant. In other words, in certain zones, the activity table will only include a general Retail activity category with corresponding status. Where the AUP seeks to differ in its approach between different components of a broad term, like Retail, then it can pull the different nested definitions out and provide a separate activity status within the zone provisions.
- 32.** This means that Trade Suppliers can then be treated differently from retail activities in the balance of the AUP. In respect of activity status, Trade Suppliers are permitted activities in the Light Industry zone of the AUP. Conversely, Retail that is not ancillary to an industrial activity is non-complying in that same zone.
- 33.** Finally, Hamilton City Council’s Partly Operative District Plan (2016) resolved to provide for Building Improvement Centres⁴ as permitted activities within the Industrial zone⁵. By contrast, the same activities are discretionary within the two centre zones (Business 3 Sub-regional centre and Business 5 Suburban centre).⁶ In this way, Hamilton’s Partly Operative District Plan actively discourages Bunnings’ typical activities from occupying space in the centres that would otherwise accommodate core retail activities. Indeed, the Hamilton City Council’s section 42A Hearing Report confirmed that Building Improvement Centres were “*not considered to be core retail expenditure, nor a fundamental retail centre activity in terms of visibility, location, viability or functionality and therefore provision for this activity within the Industrial zone is considered appropriate*”.⁷

⁴ Defined as “premises used for the storage, display and sale of goods and materials used in the construction, repair, alteration and renovation of buildings and includes nurseries and garden centres”.

⁵ Rule 9.3(bb).

⁶ Rule 6.3(dd).

⁷ Hamilton City Proposed District Plan Section 42A Hearing Report 5, 6, 9 and 10 December 2013 Report on Chapter 9 Industrial Zone, Volume 1 Incorporating Appendix 6 Industrial Zone, Volume 2 (page 69).

34. Based on the above analysis and considering that the distinction identified by Bunnings in its submission has been recognised and accepted in other recently established planning documents, I consider it is appropriate to provide a further amendment to the definitions proposed by Council in its Hearing Report. Specifically, I support the following proposed amendment to the definition of Retail:

Retail sales / retail / retailing: 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.

35. I acknowledge that the Proposed Plan review is ongoing and that the provisions of most relevance to Bunnings' activities and the definitions above (being the Industrial zone provisions (including appropriate activities) and Special zones that include industrial zoned land) will be considered in Stage 2 (scheduled for later this year). I agree that consideration of activity status of Trade Suppliers will be sensibly revisited at that point of the Plan review. However, I consider it is important that the foundations for that analysis are well-established through the Proposed Plan's definitions, as sought by Bunnings and supported in this evidence.

SECTION 42A HEARING REPORT

36. The Council's Hearing Report references the section 42A Hearing Report for the Business Mixed Use Zone² in which the Council established the need for an additional definition in the Proposed Plan, for Trade Supplier,⁸ as referenced in paragraph 15 above.
37. Further, the Council accepted that the Proposed Plan's definition of Building Supplier could be more broadly applied and thus removed the reference within the definition to only the Three Parks and Industrial B zones.⁹
38. I agree with the brief cost and benefit analysis set out in the Hearing Report which concludes that it is appropriate to include these amendments in Chapter 2.¹⁰
39. However, neither the Hearing Report for Chapter 2 nor the Hearing Report for Chapter 16 satisfactorily address Bunnings' submission point (746.6) regarding the proposed exclusion of Trade and/or Building Suppliers from the definition of Retail.

⁸ Paragraph 12.11 of the Hearing Report for Chapter 16.

⁹ Paragraph 12.10 of the Hearing Report for Chapter 16.

¹⁰ Pages 9-10 of Appendix 6 to the Hearing Report for Chapter 2.

40. Rather, in response to the submission point, the Hearing Reports¹¹ reject the relief sought and state that the changes sought to the definitions (not specifically identifying which ones) will provide “*an appropriate degree of certainty as to the activities that Rule 16.4.6 captures*”. In my opinion, the proposed definitions need to provide certainty regarding how activities will be captured across the District, rather than in one zone and in one activity table, particularly considering the staged nature of the District Plan review and the disconnected analysis of the zone provisions that should most likely accommodate Bunnings’ activities.

41. I consider the above points lend further weight to the importance of establishing a distinction between Trade Suppliers and general Retail activity within the Definitions chapter of the Proposed Plan.

Section 32

42. I consider that the amendments to the definitions proposed by Bunnings are a more appropriate means of achieving the objectives of the Proposed Plan. They provide clarity and certainty to plan readers, and will be a more efficient and effective means of achieving Objectives 3.2.1 and 3.2.2 of the Strategic Directions of the Proposed Plan, and the objectives of the relevant zones where these activities could take place (particularly the Business Mixed Use Zone in Chapter 16). Reduced planning and processing costs as a result of that greater clarity (and the lack of any discernible effects from the proposed change) will provide a more efficient and effective outcome than the status quo.

CONCLUSION

43. Overall, I consider the stated amendments need to be adopted to ensure that Bunnings’ activities are appropriately provided for within the District and in a manner that ensures certainty of interpretation, reflecting the most effective and efficient approach for the Proposed Plan.

Kay Panther Knight

6 March 2017

¹¹ Paragraph 12.19 of the Hearing Report for Chapter 16 and Page 6 of Appendix 3 to the Hearing Report for Chapter 2.