



23 March 2018

Mayor and all Councillors
Ku-ring-gai Council
818 Pacific Highway
GORDON NSW 2072

**RE: BUNNINGS DEVELOPMENT AT 950 PACIFIC HIGHWAY,
PYMBLE
VARIOUS LAND AND ENVIRONMENT COURT PROCEEDINGS**

Dear Councillors,

I refer to the following minuted resolution from Council's meeting of 13 March 2018:

File: S10721

Vide: QN.1

Question Without Notice from Councillor David Citer

Resolved:

The Director Development and Regulation advised he would take the question regarding legal expenses on notice.

In relation to the legal action against Bunnings, the Director advised Bunnings lodged the appeal, not Council.

In relation to whether or not the Notice of Intention to appeal has been lodged, that is correct, it is merely a holding measure to enable Council to have that option should, based on consideration of the decision, which is only recently been released in written form determine Council's prospects warrants such. And as I indicated earlier, Jamie Taylor in an email last week there would be a briefing for Councillors, basically explaining the circumstances and answering any questions in relation to this matter.

Arising from the above resolution and comments of the Council officers, on behalf of Bunnings, I wish to take the opportunity to provide our response for Councillors' further consideration.

The Cases Between Bunnings and Council.

The below information reveals that Council has initiated as many of the appeals as has Bunnings.

Decision 1 (File 2016/152878)

Bunnings Properties Pty Ltd (appellant) vs Ku-ring-gai Council (respondent).
Decision: 20/7/16 interim judgement Amended Plans invited (*Bunnings Properties Pty Ltd v Ku-ring-gai Council [2016] NSWLEC 1658*)

Decision 2 (File 16/152878)

Bunnings Properties Pty Ltd (appellant) vs Ku-ring-gai Council (respondent).
Decision: 25/10/16 Leave granted to reopen proceeding to address new heritage item caselaw (*Bunnings Properties Pty Ltd v Ku-ring-gai Council; (No 2) [2016] NSWLEC 1659*)

Decision 3 (File 17/43289)

Ku-ring-gai Council (appellant) vs Bunnings Properties Pty Ltd (respondent)
Decision: 3/3/17 Appeal dismissed with costs (*Ku-ring-gai Council v Bunnings Properties Pty Ltd [2017] NSWLEC 16*)

Decision 4 (File 2016/152878)

Bunnings Properties Pty Ltd (appellant) vs Ku-ring-gai Council (respondent).
Decision: 16/5/17 Appeal upheld with conditions (*Bunnings Properties Pty Ltd v Ku-ring-gai Council (No.4) [2017] NSWLEC 1238*)

Decision 5 (File 2017/206960)

Ku-ring-gai Council (appellant) vs Bunnings Properties Pty Ltd (respondent)
Decision: 28/2/17 Appeal dismissed with costs (*Ku-ring-gai Council v Bunnings Properties Pty Ltd (No 2) [2018] NSWLEC 19*)

On 10 February 2017 Ku-ring-gai Council commenced proceedings in the Court of Appeal against Bunnings (Case 2017/43289). This matter has not yet been heard.

On 13 March 2018 Ku-ring-gai Council filed a Notice of intention to appeal to the Court of Appeal (Case 2018/81252). No formal appeal has yet been filed.

On 5 October 2017 Bunnings filed an appeal against the quantum of section 94 contributions. (Case 17/1266642) A hearing date has been set for 25 & 27 July 2018.

On 20 March 2018 Bunnings filed an appeal against the deemed refusal of DA 307/17 (Case 2018/89311) – DA identical to May 2017 Court approval. This is yet to have its first directions hearing.

Why did Bunnings' Appeal in the First Instance

Bunnings' formed a view very soon after our DA was lodged in April 2015, that Council would not support the proposed development. This view was informed by the following facts:

1. In 5 heritage reviews and studies undertaken between 2006-2011 for Ku-ring-gai Council, which are available on Council's website, the former 3M building was not identified as an item of heritage significance
2. In considering submissions on the draft LEP relating to the Pymble Business Park, Ku-ring-gai Council resolved on 17 July 2012 not to support listing of the 3M building as a heritage item
3. Bunnings purchased the site in December 2012
4. Bunnings submitted a rezoning application on 15 May 2013
5. Ku-ring-gai Council resolved on 21 August 2013, 10 December 2013 and 11 November 2014, to investigate heritage significance of and subsequently support heritage listing of, the 3M building
6. Bunnings lodged its DA on 8 April 2015
7. On 1 May 2015 the 3M building was listed as a heritage item in Schedule 5 of the KLEP 2015 (Amendment No 1)

Thank you for your continued consideration of this matter. I look forward to being advised of the outcome of Council's decision in due course.

Please feel free to contact me on 03 8831 9101 or 0406 535 491, or Philip Drew on 02 9846 7334 or 0413 098 609 if you wish to discuss this further.

Yours sincerely,



Andrew Marks
General Manager – Property Australia / New Zealand
Bunnings Group Limited