



12 April 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 my previous letters to Councillors, most recently that dated 23 March 2018, wherein I itemized recent and unresolved legal actions between Bunnings and Council. Using the template from the 23 March letter, I have provided updates in red relevant to current status of those proceedings from Bunnings' perspective; as follows:

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 made, no further action*

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 made, no further action*

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 made. Costs awarded to Bunnings, yet to be resolved.*

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 made, no further action.*

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*) *Decision made. Costs awarded to Bunnings yet to be finalised. Bunnings offer dated 3 April 2018. No response from Council yet.*

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On 29 May 2017 Ku-ring-gai Council commenced proceedings in the Court of Appeal against Bunnings (Case 2017/96526). This matter has not yet been heard. *No hearing yet, prospective discontinuance by Council given later proceedings. Bunnings offer to settle costs arising from possible discontinuance dated 22 March 2018. No discontinuance nor response from Council.*

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. *No update – Council still reviewing its options?*

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. *Council has offered a compromise figure which Bunnings' supports in principle. Prospective consent orders to be heard by Court on 20 April. If this proceeds in this manner and is accepted by Court, this matter will be resolved.*

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. *Appeal lodged by Bunnings to preserve our appeal rights. No hearing and very early in Court process. This DA was listed on the Planning Panel agenda until removed by Council officers. Bunnings would prefer DA to proceed to the Panel for determination instead of proceeding through another lengthy Court process.*

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 Ltd