

Submission
No 70

INQUIRY INTO NEW SOUTH WALES PLANNING FRAMEWORK

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**INQUIRY INTO THE NSW PLANNING
FRAMEWORK**

THE AUSTRALIAN RETAILERS ASSOCIATION

SUBMISSION TO

**THE STANDING COMMITTEE ON STATE DEVELOPMENT
OF THE NEW SOUTH WALES LEGISLATIVE ASSEMBLY**

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Australian Retailers Association

- Voice of the Retail Industry

The Australian Retailers Association (ARA) is the peak national retail association representing the interests of the largest employing industry in Australia. We provide leadership and solutions to improve the long-term viability and visibility of the retail industry by proactively dealing with government, media and other regulatory bodies on behalf of our members.

ARA members comprise a diversity of size and types of retailers reflecting the profile of the retail industry, ranging from large national chains to one-person operators throughout the nation.

The ARA provides a range of comprehensive services, advice and representation suited to both small and large retailers in the areas of employment relations, occupational health and safety, tenancy, consumer law and retail business solutions. This includes a range of retail specific training that supports best practice in retail.

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NSW Legislative Council Standing Committee on State Development Inquiry into the NSW planning framework.

The terms of reference are:

1. That the Standing Committee in State Development inquire into the NSW planning legislation and report on national and international trends in planning, and in particular:
 - (a) the need, if any, for further development of the NSW planning legislation over the next five years, and the principles that should guide such development
 - (b) the implications of the Council of Australian Governments reform agenda for planning in NSW,
 - (c) duplication of processes under the *Commonwealth Environment Protection and Biodiversity Act 1999* and NSW planning, environmental and heritage legislation,
 - (d) climate change and natural resources issues in planning and development controls,
 - (e) appropriateness of considering competition policy issues in land use planning and development approval processes in NSW,
 - (f) regulation of land use on or adjacent to airports,
 - (g) inter-relationships of planning and building controls,
 - (h) implications of the planning system on housing affordability.
2. That the committee report by 14 December 2009.

1. Executive Summary

1. The Australian Retailers Association (ARA) is only addressing those items in the terms of reference that have an impact upon its members and does not seek to offer any comments on those matters that are outside its member's interests.
2. Despite the changes that have been made to the *Environmental Planning and Assessment Act 1979*, the process for assessing development applications for retail shops is still taking an excessive time resulting in a cost borne by the retailer. Further section 94 contributions are still being held by local government authorities and are not being spent on the community infrastructure for which they were levied in a timely manner.
3. New South Wales should adopt the "*Leading Practice Model for Development Assessment*" as proposed by the Development Assessment Forum and implement as a matter of urgency the electronic processing of planning and development applications in line with the COAG meeting of 13 August 2008.
4. Given the protection the planning and zoning laws have given many shopping centres, it is essential a competition analysis be undertaken and considered in the assessment process. Further, the competition analysis should be reviewed some eighteen months after the retail development has been trading, to establish the accuracy of the original impact assessment. Compensation should be available to those impacted if the resulting impact exceeds that in the analysis.
5. Any retail development that is open to the general public on the land side of an airport terminal or on other airport land that is constructed in a manner allowing public access should be subject to the same provisions as any development assessment process similar to any retail development in any other part of New South Wales.
6. The inter-relationship of planning and building controls, especially for chain retailers, has streamlined the assessment process. However, for small independent retailers there are still issues outstanding, including the time taken for the application to be processed.

2. The need, if any for further development of the NSW planning legislation over the next five years, and the principles that should guide such development

Section 94 – investment accounts

The major reforms that have amended the *Environmental Planning and Assessment Act 1979* since 1997 have addressed the majority of obstacles that were impeding the smooth process of development applications through various authorities. However, despite the changes made to local development infrastructure levies, many local council are still holding Section 94 monies that had been paid for completed developments in investment accounts.

This matter needs to be addressed to ensure the monies that were meant for local infrastructure are in fact spent on those works they were intended for in a timely manner, rather than sitting in investment accounts as is current practice.

Development applications – store fit-outs

The development application process for many retailers undertaking fit outs of shops is still laborious and still extremely time consuming. Upon entering into a lease retailers are required to lodge a development application both in relation to usage as well as to fit out. For the smaller retailer this process is taking anywhere between eight and twelve weeks depending on the local authority.

The rent free period provided by most landlords at best is four weeks. Therefore, retailers are faced with payments to the landlord despite not be in a position to trade for an additional four to eight weeks.

The private certification process in respect of construction is working well and has assisted the fit out process considerably.

3. The implications of the Council of Australian Governments (COAG) reform agenda for planning in NSW

Further to previous comments regarding the time it takes to process a development application, a number of reforms proposed by the Local Government and Planning Ministers Council have not been implemented. In August 2004, it was agreed to facilitate trials of electronic processing of development applications. This followed a consultation process with the department and a local government.

The Development Assessment Forum, providing independent advice to the Local Government and Planning Ministers Council, developed the *"Leading Practice Model for Development Assessment"*. The purpose of the model was to provide a blueprint for all jurisdictions to adopt a similar approach to development assessment. Electronic assessment was to be an integral part of the model. However, despite initial discussions in 2004, electronic assessment is still on the agenda and has not yet been implemented.

New South Wales has adopted some elements of the model but not all. Retailers who operate on a national basis across Australia are still faced with different methods for development assessments for their stores in various jurisdictions, further adding to development costs.

From a retail perspective, the policy related to planning is inconsistent across jurisdictions. The definitions relating to shopping centres differ, as do trading hours and definitions for exempt or restricted stores.

4. Appropriateness of considering competition policy issues in land use planning and development approval process in New South Wales

The ARA has for many years highlighted the benefits planning laws give landlords by restricting shopping centre competition. We now see especially in regional shopping centres the creation of an oligopoly of ownership where a retailer has no option but to deal with the same owner if he wishes to trade in a particular catchment. In Sydney for example Westfield now has interests in the following regional centres:

- Hornsby
- Macquarie – North Ryde
- Warringah Mall – Brookvale
- Chatswood
- Sydney Central Plaza, Skygardens and Centrepoint – Sydney CBD
- Bondi Junction
- Eastgardens – Pagewood
- Hurstville
- Miranda
- Burwood
- Parramatta
- Mt Druitt
- Penrith
- Liverpool

The only regional centres in Sydney in which Westfield does not have an interest are:

- Chatswood Chase – Colonial First State
- Centro Roselands
- Centro Bankstown
- Castle Towers – Queensland Investment Corporation
- Westpoint Blacktown – Queensland Investment Corporation
- Macarthur Square

For many retail formats, there is no alternative space other than that provided by Westfield for a retailer to trade. The dominance of the regional centre is the result of planning laws restricting any competition being able to gain a foothold in the catchment. If it is accepted that planning laws based on zonings preserve the public amenity, there should also be a requirement in the assessment process to consider, in more depth, any economic impact assessment or statement accompanying the development application.

Currently there is no requirement in any legislation to review whether such economic impact statements are correct or, as in a number of cases, vastly understand the impact on existing retail within the catchment of the proposed development. It is a well known fact among leasing professionals that as much as 30 percent of retailers going into either a redevelopment or a new development are retailers already trading within the catchment.

With the retail flight to shopping centres there is a well established decline in street shop. The result is a drop in values and amenities surrounding the shopping centre. At present, no consideration is given in the assessment process to this decline. It is essential competition analysis in undertaken and considered in the assessment process. It should also be reviewed some eighteen months after the retail development has been trading to establish the accuracy of the original impact assessment.

5. Regulation of land use on or adjacent to airports

In recent years there have been a number of retail developments on Commonwealth land by-passing the State and local governments planning processes. In some instances where the retail developments were valued at under \$20 million, has been requirement to follow the process of the airport master plan.

Sydney Airport has published its Preliminary Draft Plan in 2009 which identifies areas where retail is to be developed. However, the existing terminal building (especially the international terminal) are now becoming shopping centres in their own right especially on the land side. These facilities do not have to comply with any New South Wales legislation as to planning or even trading hours. Expansion of the retail facilities within the terminal does not have to take into account any impact upon retailing in areas adjacent to the airport.

While there is no objection to the retail component on the air side not having to comply with New South Wales legislation, any retail outlet open to the general public on the land side of a terminal allowing public access, should be subject to the same provisions as any development assessment New South Wales.

6. Inter-relationship of planning and building controls

The introduction of private certifiers and the classification of "exempt development" and "complying development" has assisted in streamlining the assessment process. However, for many retailers the retrospective refit of services to comply with the introduction of new controls in the Building Code of Australia is an issue.