

7 July 2008

Grocery prices inquiry - Submissions  
Australian Competition and Consumer Commission  
GPO Box 520  
MELBOURNE VIC 3001

E-mail: [grocerypricesinquiry@accc.gov.au](mailto:grocerypricesinquiry@accc.gov.au)

Dear Sir/Madam

## **Further Public Submission to the Grocery Prices Inquiry by the Urban Taskforce Australia**

Further to our public submissions made on 2 June, 19 May 2008 and 11 March 2008 we wish to make a further submission.

### **1. Federal parliament has the power to resolve planning issues**

The Urban Taskforce has obtained an opinion from Senior Counsel, Robertson Wright, as to the power of the Australian parliament to force changes to state planning systems that would break the stranglehold of the current shopping centre owners.

Mr Wright found that the Federal Parliament had the power to give retail developments access to a streamlined development process, if State governments refused to amend their planning laws to make them more competition-friendly. State governments could be forced to amend their planning laws so that decisions must promote competition, as well as satisfying other objectives. Town planners would also be barred from making decisions aimed at protecting existing businesses from any loss of trade.

The ACCC's grocery prices inquiry is able to recommend tough federal action to deal with anti-competitive town planning rules. Federal action will be crucial if any meaningful reform is to be achieved.

A copy of the option of Robertson Wright SC is attached.

### **2. Examples of everyday occurrences in the planning system**

Right now local communities are being denied the benefits of competition and cheap local groceries, because of State Government planning rules. The planning system deliberately prevents competition amongst retailers.

The current pending development application for a new supermarket and speciality stores on Hamilton Road in Fairfield West is an excellent example of what's been going on for years. Both Stockland and Westfield have objected to the new supermarket and they've been up-front about their reasons.

Stockland operates a shopping centre at Wetherill Park, around two kilometres from the proposed new supermarket. In its letter it claims that the new supermarket will "have adverse impacts on the viability of existing retail centres" and will be a "detriment to other centres."

Westfield Shoppingtown is located at Liverpool, six kilometres away. Westfield has objected because – to quote its submission – the development would “result in the establishment of a significant district shopping centre drawing trade from a wide catchment.” Westfield says that the extra choice for Fairfield residents would be “inconsistent with State Government and local planning controls.”

Customers should have a genuine choice – they should not be forced to shop in a particular location because state government policies deny them the opportunity to shop elsewhere. State Government policies are helping major companies secure monopolies and are denying shoppers the benefits of competition.

A copy of the letters of objection from Westfield and Stockland are attached.

As always, we remain available to meet with officers of the ACCC and/or answer any requests you may have for additional information.

Yours sincerely

**Urban Taskforce Australia**

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is written in a cursive style with a long horizontal stroke extending from the end of the name.

Aaron Gadiel  
Chief Executive Officer

Encl.

URBAN TASKFORCE AUSTRALIA LTD  
and  
FEDERAL LEGISLATION IN SUPPORT OF COMPETITION IN  
THE RETAIL SECTOR

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MEMORANDUM OF ADVICE

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Attention : Mr Aaron Gadiel

30 June 2008

# MEMORANDUM OF ADVICE

## URBAN TASKFORCE AUSTRALIA LTD

and

## FEDERAL LEGISLATION IN SUPPORT OF COMPETITION IN THE RETAIL SECTOR

### Introduction

1. Urban Taskforce Australia Ltd ("the Taskforce") is an industry organisation representing property developers and equity financiers in Australia. Part of the Taskforce's role is to engage in constructive dialogue with both government and the community in relation to property development and related issues.
2. In response to the Minister for Competition Policy and Consumer Affairs request of 22 January 2008, the Australian Competition and Consumer Commission ("ACCC") established an Inquiry into the competitiveness of retail prices for standard groceries.
3. The Taskforce has already made one submission dated 2 June 2008 to the ACCC Inquiry in which the Taskforce argued that so long as planning authorities are required or permitted to make zoning or development assessment decisions based upon protecting existing retail grocery outlets from competition, the planning system itself will frustrate efforts to encourage lower retail grocery prices.
4. The Taskforce believes that if the Commonwealth Parliament enacted legislation which would permit retail developments to be undertaken despite non-compliance with State

or Territory planning laws which are potentially anti-competitive<sup>1</sup>, this would encourage and effectively require State and Territory legislatures to amend their planning laws so as to abolish protection of existing retailers from competition as a relevant planning consideration. If this were done, it is argued there would be greater scope for competition among retailers and thus a likelihood of lower retail prices.

5. I have been asked to advise whether the Commonwealth Parliament has power under the Commonwealth Constitution to enact such a law and, in particular, whether the legislative power of the Commonwealth extends to enacting a law to the effect of the Proposed Commonwealth Statutory Provision set out in the Schedule<sup>2</sup> to this Memorandum (the "Proposed Provision").
6. For the reasons set out below, my answer to the question whether the legislative power of the Commonwealth extends to enacting a law to the effect of the Proposed Provision is: Yes.

### **The Constitutional Power**

7. The legislative power of the Commonwealth is vested in the Federal Parliament – section 1 of the Constitution. The Parliament's power to make laws is conferred and circumscribed by the Constitution. If legislation passed by the Federal Parliament is not supported by a head of power found in the Constitution, the law will be invalid<sup>3</sup>.
8. There is no provision in the Constitution which expressly refers to planning or development as a subject of Commonwealth legislative power. This is not fatal, however, if there is another head of power that can be relied upon.
9. The Proposed Provision is limited to "constitutional corporations" (that is the types of corporations listed in section 51(xx) of the Constitution) and relates generally to their trading or business activities. In these circumstances, the obvious source of support

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<sup>1</sup> This would include laws which did not exclude protection of existing retail outlets from competition as a relevant consideration under the planning laws.

<sup>2</sup> Some additions and amendments to the terms of the Proposed Provision are included in the Schedule to this Memorandum.

<sup>3</sup> Subject to provisions such as section 15A of the *Acts Interpretation Act 1901* (Cth) which provides "Every Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power."

for the enactment of the Proposed Provision is the so called "corporations power"<sup>4</sup> found in section 51(xx).

10. In order to determine whether the power in section 51(xx) would support the Proposed Provision, it is necessary to construe the text of that section of the Constitution, to identify the legal and practical operation of the Proposed Provision and then to assess the sufficiency of the connection between the Proposed Provision and the head of power relied upon<sup>5</sup>.

### Construction of Section 51(xx)

11. Section 51(xx) of the Constitution is in the following terms:

51    *The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:*

...

(xx)   *foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth;*

...

12. This head of power has been held sufficient to support:

- (a) competition regulation of constitutional corporations – *Strickland v Rocla Concrete Pipes Ltd* (1971) 124 CLR 468 at, for example, 489 – 490 (per Barwick CJ);
- (b) industrial relations regulation of constitutional corporations – the *Work Choices Case* (*New South Wales v The Commonwealth*) (2006) 229 CLR 1.

13. In the *Work Choices Case*, it was held by the majority (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ) at [178]:

178    *This understanding<sup>6</sup> of s 51(xx) was subsequently amplified by Gaudron J in her reasons in Re Pacific Coal Pty Ltd; Ex parte Construction, Forestry, Mining and Energy Union [(2000) 203 CLR 346 at 375 [83]] where her Honour said:*

"I have no doubt that the power conferred by s 51(xx) of the Constitution extends to the regulation of the activities, functions, relationships and the business of a corporation described in that sub-section, the creation of rights, and privileges belonging to such a corporation, the imposition of

<sup>4</sup> As far as Commonwealth legislation relating to trade practices and competition regulation is concerned, it is the corporations power which has proved to be the power generally relied upon to provide the widest underpinning for such regulation of businesses operating in the Australian economy. That is not to say, however, that other heads of power cannot be relied upon to provide support for specific types of provisions. See generally Heydon JD, *Trade Practices Law* (Law Book Co) at [2.50] ff which identifies and discusses other heads of power which may be relied upon.

<sup>5</sup> *Work Choices Case* (*New South Wales v The Commonwealth*) (2006) 229 CLR 1, at [197].

<sup>6</sup> Referring to Gaudron J's reasoning in relation to section 51(xx) in *Re Dingjan; Ex parte Walker* (1995) 183 CLR 323 at 365.

obligations on it and, in respect of those matters, to the regulation of the conduct of those through whom it acts, its employees and shareholders and, also, the regulation of those whose conduct is or is capable of affecting its activities, functions, relationships or business."

*This understanding of the power should be adopted. It follows, as Gaudron J said, that the legislative power conferred by s 51(xx) "extends to laws prescribing the industrial rights and obligations of corporations and their employees and the means by which they are to conduct their industrial relations". [Footnotes omitted]*

14. Thus, the power in section 51(xx) extends to legislation regulating constitutional corporations' activities and business, creating rights and privileges belonging to such corporations and regulating those whose conduct may affect the corporations' activities, functions or business.
15. One issue that has arisen in the past as to the extent of the corporations power is whether that power is a power with respect to a class of persons, namely the corporations identified in placitum (xx), and covers all aspects of their activities, or whether it is a narrower power limited, for example, to the trading and financial activities of Australian trading and financial corporations respectively<sup>7</sup>. This issue will, however, only become relevant if the legislation in question does not directly relate to the trading or financial activities of the corporations to which it is addressed.

### **The Legal and Practical Operation of the Proposed Provision**

16. The Proposed Provision is addressed to constitutional corporations. It operates where a constitutional corporation is carrying out a retail development. As defined, a retail development would involve:
  - (a) the use or subdivision of land; or
  - (b) the use, demolition or construction of, or carrying out work on, a building,for the purpose of the retail sale or hiring of products. These would be likely to be characterised as trading or financial activities of any corporation carrying out such a development.
17. In relation to those activities the Proposed Provision creates a right to carry them out, notwithstanding that certain state laws relating to environmental planning and assessment of developments might otherwise prohibit such development.
18. Thus, it can be said that the legal and practical operation of the Proposed Provision is to regulate the business or trading activities of the constitutional corporations to which

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<sup>7</sup> See *Commonwealth v Tasmania* (1983) 158 CLR 1 and *Re Dingjan; Ex parte Walker* (1995) 183 CLR 323.

it is addressed, and to confer a privilege on those corporations, namely, an exemption when undertaking a retail development from complying with state planning laws that fail to satisfy certain competition related criteria.

### **Sufficiency of the Connection between the Head of Power and the Provision**

19. The Proposed Provision can, of course, also be characterised as a law relating to environmental planning and assessment of developments. This, however, does not have the consequence that section 51(xx) cannot provide the required constitutional support for the Proposed Provision.
20. In circumstances where an enactment can be characterised in more than one way, it is sufficient if one of the characters is within a head of legislative power conferred on the Federal Parliament. To be within a head of legislative power the enactment must be able to be fairly described as "with respect to" the subject matter of the power.
21. The High Court has held in *Actors Equity and Announcers Equity Association v Fontana Films Pty Ltd* (1982) 150 CLR 169 at 194 (per Stephen J):

*More recent authority that valid laws of the Commonwealth may possess several characters and that the fact that one or more of such characters is not within a head of Commonwealth power will not spell invalidity is provided by Seamen's Union of Australia v Utah Development Co (1978) 144 CLR 120 at 154 per Mason J, and by Re Linehan; Ex parte Northwest Exports Pty Ltd (1981) 55 ALJR 402 at 405 per Gibbs CJ, at 406 per Stephen J and at 409 per Mason J.*

*It follows that in testing validity the task is not to single out one predominant character of a law which, because it can be said to prevail over all others, leads to the attaching to the law of one description only as truly apt. It will be enough if the law fairly answers the description of a law "with respect to" one given subject matter appearing in s 51, regardless of whether it may equally be described as a law with respect to other subject matters. This will be so whether or not those other subject matters appear in the enumeration of heads of legislative power in s 51.*

22. This statement, and statements to the same effect, have been approved and applied in subsequent cases – see, for example, *Re F; Ex parte F* (1986) 161 CLR 376 at [387] (per Mason and Deane JJ), *Re Dingjan; Ex parte Walker* (1995) 183 CLR 323 at [368] (per McHugh J) and *Bayside City Council v Telstra Corp Ltd* (2004) 216 CLR 595 at [27] – [28].
23. In the present case, the connection between the practical operation and legal effect of the Proposed Provision and constitutional corporations is direct and is not capable of being characterised as "so insubstantial, tenuous or distant"<sup>8</sup> that the Proposed

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<sup>8</sup> To use the words of Dixon J in *Melbourne Corporation v The Commonwealth* (1947) 74 CLR 31 at 79.



Provision could not fairly be described as a law "with respect to" the corporations referred to in section 51(xx).

24. Accordingly, it can be concluded that the Proposed Provision falls within the scope of, and is supported by, the corporations power in section 51(xx), as expounded by the majority of the High Court in the *Work Choices* case. Thus, the Federal Parliament would have power to enact legislation to the effect of the Proposed Provision.

### **The *Melbourne Corporation* Doctrine**

25. Notwithstanding the conclusion expressed in the preceding paragraph, there is a further issue that might be thought to give rise to concern. Given that environmental planning and development assessment is a matter for the States under the Constitution, is there any constitutional difficulty with the Commonwealth becoming involved in planning and development issues as envisaged under the Proposed Provision? More specifically, is there a difficulty with Commonwealth legislation that deliberately seeks to override State environmental or planning laws or to prescribe in effect the content of State laws in an area of State responsibility?
26. This raises what is known as the *Melbourne Corporation* doctrine<sup>9</sup> which involves an inquiry whether the federal law in question, looking to its substance and operation, in a significant manner curtails or interferes with the capacity of the States to function as governments<sup>10</sup>.
27. The High Court considered the application of this doctrine in *Bayside City Council v Telstra Corp Ltd* (2004) 216 CLR 595 where the issue was whether a law exempting telecommunications carriers from discriminatory state tax laws was valid, relying upon the posts and telegraphs power in section 51(v) of the Constitution. Gleeson CJ, Gummow, Kirby, Hayne and Heydon JJ held:

[30] *A law conferring upon [telecommunications] carriers an immunity from all state taxes and charges would be a law with respect to telecommunications services; and so is a law conferring an immunity from some state taxes and charges. It does not make a difference that the chosen discrimin requires not only examination of the content of the state law but also comparison with the operation of other state laws. The clause does not affect the capacity of the states to function as governments. Their legislative capacity remains unimpaired, except to the extent to which otherwise s 109 provides. That is a matter to be considered below. There is, in cl 44, no more an attempt to dictate the content of state revenue laws than there was, in Botany Municipal Council v Federal Airports Corp,*

<sup>9</sup> As it is based upon comments in *Melbourne Corporation v The Commonwealth* (1947) 74 CLR 31 – see *Bayside City Council v Telstra Corp Ltd* (2004) 216 CLR 595 at [29] – [33].

<sup>10</sup> *Bayside City Council v Telstra Corp Ltd* (2004) 216 CLR 595 at [31].

*[Botany Municipal Council v Federal Airports Corporation (1992) 175 CLR 453] an attempt to dictate the content of state environmental laws.*

- [31] ... *In Re Lee; Ex parte Harper* [(1986) 160 CLR 430 at 453], in a passage later approved by six justices in the Native Title Act Case [*Western Australia v The Commonwealth* (1995) 183 CLR 373 at 477] Mason, Brennan and Deane JJ emphasised that, although the purpose of the doctrine:

... is to impose some limit on the exercise of Commonwealth power in the interest of preserving the existence of the States as constituent elements in the federation, the implied limitations must be read subject to the express provisions of the Constitution. Where a head of Commonwealth power, on its true construction, authorizes legislation the effect of which is to interfere with the exercise by the States of their powers to regulate a particular subject-matter, there can be no room for the application of the implied limitations.

- [32] *The states are left by the relevant federal law in cl 44 free to exercise their legislative powers to impose liability to taxation, as cl 39 envisages. All that is forbidden by cl 44 is the imposition of a state law which discriminates against a carrier or person or corporation in the nominated categories. The enactment by federal law of this prohibition is within the ambit of the legislative powers of the parliament. The prohibition is designed to ensure the effectiveness of the law with respect to carriers and others which is enacted under those powers and attracts the operation of s 109 of the Constitution.*

- [33] *Thus, there remains applicable the primary proposition stated by Dixon J in Melbourne Corp* [(1947) 74 CLR 31 at 78]:

The prima-facie rule is that a power to legislate with respect to a given subject enables the Parliament to make laws which, upon that subject, affect the operations of the States and their agencies. That, as I have pointed out more than once, is the effect of the Engineers' Case stripped of embellishment and reduced to the form of a legal proposition.

(Footnotes omitted)

28. There are certain similarities between the circumstances of the *Bayside* case and consequences that might arise if the Proposed Provision were enacted. There would appear to be considerable support in the circumstances for the conclusion that the Proposed Provision does not affect the capacity of the States to function as governments. Their legislative capacity would remain unimpaired, except to the extent to which otherwise section 109 of the Constitution provides<sup>11</sup>.
29. In the *Bayside* case, although the telecommunications carriers were exempted from discriminatory state tax laws, this was held not to dictate the content of those laws. Similarly, it could be argued that the Proposed Provision does not dictate the content of state laws, notwithstanding that it exempts constitutional corporations from complying with state laws that do not meet certain competition related criteria.

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<sup>11</sup> As to the application of section 109 see [32] – [34] below.

30. From the passages cited above it is also likely that where the Federal Parliament has power to legislate with respect to constitutional corporations, that will include the power to make laws that interfere with the exercise by the States of their powers to regulate particular subject matters. Indeed, in *Botany Municipal Council v Federal Airports Corporation* (1992) 175 CLR 453, there was a federal regulation which authorised licensed contractors to carry works at Botany Bay in relation to Sydney Airport in spite of New South Wales environmental assessment laws that might have prohibited the work. It was held that the federal law was valid. The High Court held (at 465):

*There can be no objection to a Commonwealth law on a subject which falls within a head of Commonwealth legislative power providing that a person is authorized to undertake an activity despite a State law prohibiting, restricting, qualifying or regulating that activity. Indeed, unless the law expresses itself directly in that way, there is the possibility that it may not be understood as manifesting an intention to occupy the relevant field to the exclusion of State law.*

31. In respect of the *Melbourne Corporation* doctrine and the matters raised above, in my opinion, there would be nothing in the Proposed Provision that would be likely to render its enactment an invalid exercise of the legislative power of the Federal Parliament.

### **Section 109 of the Constitution**

32. Section 109 of the Constitution provides:

*When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.*

33. In the present case, if the Proposed Provision was validly enacted, to the extent that a state planning law that was not a complying planning law operated to prohibit a constitutional corporation from carrying out a retail development in relation to urban land, the non-complying state planning law would be inconsistent with the Proposed Provision. As a result of the operation of section 109 of the Constitution, the state law would to that extent be invalid<sup>12</sup>.
34. Although there may be a qualification upon the operation of section 109 in cases which fall within "a *debateable area where federal laws may be found that seem to be aimed rather at preventing State legislative action than dealing with a subject matter assigned to the Commonwealth Parliament*"<sup>13</sup> it is unlikely that such a qualification is relevant in the case of the Proposed Provision. In the *Bayside* case, it was held at [37] that such a qualification did not apply where the federal law was a valid law with respect to a

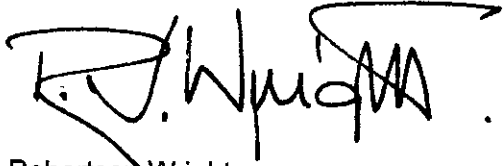
<sup>12</sup> See the similar reasoning in *Bayside City Council v Telstra Corp Ltd* (2004) 216 CLR 595 at [34] - [39].

<sup>13</sup> *Wenn v Attorney-General (Vict)* (1948) 77 CLR 84 at 120.

subject of federal legislative power. It was only where the federal law could not be characterised as a "law of the Commonwealth" that the qualification might apply.

### **Conclusions**

35. Accordingly, in my opinion, the answer to the question: Does the legislative power of the Commonwealth extend to enacting a law to the effect of the Proposed Provision?  
is - Yes.

A handwritten signature in black ink, appearing to read 'R. Wright', with a stylized flourish at the end.

Robertson Wright

Chambers

30 June 2008

## SCHEDULE

### Proposed Commonwealth Statutory Provision

A constitutional corporation may, despite any **state planning law**, carry out a **retail development** in relation to **urban land** unless the state planning law is a **complying planning law**.

#### Definitions

**complying planning law** means a state planning law that:

- (a) prohibits a **planning authority**, when making a **zoning decision** or **granting an approval**, from giving any direct or indirect consideration to any possible loss of trade that might be suffered by any other existing or future **retail business** or businesses;
- (b) if it is not subordinate legislation – includes the promotion of competition as an express object of equal or superior priority to any other object;
- (c) if it is subordinate legislation – is made under legislation that includes the promotion of completion as an express object of equal or superior priority to any other object.

**constitutional corporation** means a foreign corporation or a trading or financial corporation formed within the limits of the Commonwealth

**development** means:

- (a) the use of land; and
- (b) the use of a building erected on land; and
- (c) the subdivision of land; and
- (d) the erection of a building; and
- (e) the carrying out of a work; and
- (f) the demolition of a building or work.

**granting of an approval** includes:

- (a) proposing to grant an approval; and
- (b) a merits appeal or review of a:
  - (i) decision to grant or not grant an approval; or
  - (ii) failure to grant an approval.

**planning authority** means:

- (a) a Minister of the State or Territory; or
- (b) a body corporate established for a public purpose by a law of the State or Territory; or
- (c) a body corporate established by:
  - (i) the Governor of the State; or
  - (ii) if the Territory is the Australian Capital Territory – the Governor General acting in relation to the Australian Capital Territory; or
  - (iii) if the Territory is the Northern Territory or Norfolk Island – the Administrator of the Territory; or

- (iv) a Minister of the State or Territory; or
- (v) any means other than under a law of the State or Territory; or
- (d) a company in which the whole of the shares or stock, or shares or stock carrying more than one half of the voting power, is or are owned by or on behalf of the State or Territory; or
- (e) a body corporate that is a subsidiary of:
  - (i) a body or company referred to in paragraph (b), (c) or (d); or
  - (ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be a planning authority for the purposes of this definition; or
- (f) a person holding, or performing the duties of:
  - (i) an office established by or under a law of the State or Territory (including a judicial office or an office of member of a tribunal); or
  - (ii) an appointment made under a law of the State or Territory (including an appointment to a judicial office or an office of member of a tribunal); or
- (g) a person holding, or performing the duties of, an appointment made by:
  - (i) the Governor of the State; or
  - (ii) if the Territory is the Australian Capital Territory – the Governor General acting in relation to the Australian Capital Territory; or
  - (iii) if the Territory is the Northern Territory or Norfolk Island – the Administrator of the Territory; or
  - (iv) a Minister of the State or Territory; or
  - (v) any means other than under a law of the State or Territory,

on whom functions are conferred by or under a **state planning law**.

**retail** means, in respect of a development, for the purposes of selling items by retail, or for hiring or displaying items for the purpose of selling them by retail or hiring them out, whether the items are goods or materials and whether or not the items are also sold by wholesale.

**state planning law** means a law of a State or a self governing Territory that has one of the following objects (whether express or implied);

- (a) to provide for environmental planning and assessment of development proposals;
- (b) to encourage: the proper management, development and/or conservation of towns and villages; and
- (c) the co-ordination of the economic use and development of land.

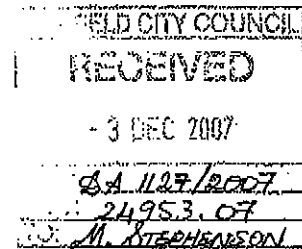
**urban land** means land upon which urban **development** is permitted with or without an approval, but does not include land where the only form of development permitted is dwelling houses or rural development.

**zoning decision** means making or proposing to make an instrument that controls or prohibits some or all **development** in a particular area.

## ATTACHMENT C

Item: 7

IHAP Report



30 November 2007

Council's Reference: DA/1127/2007  
Our ref: RJC/RH/07-212

The General Manager  
Fairfield City Council  
PO Box 21,  
FAIRFIELD NSW 2165

Attn: Mr. Mark Stephenson, Senior Development Planner

Dear Sir,

Re: DA 1127/2007:- Proposed Mixed Use Development, No. 386 Hamilton Road and  
No's 80 - 82 Tasman Parade, Fairfield West

We write on behalf of Stockland Limited with reference to a Development Application (DA) currently being assessed by Council seeking consent for a mixed use development including ground floor supermarket and specialty stores, ground floor car parking and multiple level building envelopes for future residential buildings. Stockland Trust Management Limited own and manage a shopping centre in Wetherill Park some 3.2km to the north-west of the development.

We have reviewed the DA documentation on exhibition. The proposed development is objected to on the grounds identified below. It is evident from this objection that the proposal is an overdevelopment of the site, and together with the existing Aldi supermarket and Hamilton Road Fruit Store, will change the nature of the retail centre in a manner totally inconsistent with Fairfield Council's established retail hierarchy. This will have adverse impacts on the planned retail hierarchy and to the viability of other existing retail centres. We suggest that Council encourage the applicant to scale back the proposed development to a proposal which respects the character of the locality and the role of the Fairfield West retail/commercial centre in the City's LGA.

The grounds for objection are as follows.

1. The proposal is at odds with Council's Retail and Commercial Centres/Activities Policy No. 1 - 203

While it is accepted that the economic impact of a particular proposal on a competitor or competitors within a particular retail/commercial centre is not a legitimate planning consideration, it is nevertheless an important public interest consideration to take into account the broader likely economic impact of the proposal. In this case, if because of the proposals size and scale it is likely to result in demise of retail development in an

## ATTACHMENT C

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established centre to the overall detriment of that centre, then this is a relevant matter for consideration by Council.

We note that the Fairfield West retail/commercial centre is identified in Council's Retail and Commercial Centres/Activities Policy No. 1 -- 203 ("the Centres Policy") as a "Neighbourhood Centre".

The Centres Policy has as its principles:

- (a) *to implement a framework for consideration of retail and commercial proposals which have the potential to affect the economic well-being of Fairfield City, having regard to the findings and recommendations of the Fairfield City Retail and Commercial Centres Study 2005;*
- (b) *To provide guidance to stakeholders on desired directions for future development of various retail centres across Fairfield City;*
- (c) *To promote greater certainty in the rezoning and development application process for retail and commercial proposals by identifying Council's assessment requirements; and*
- (d) *To integrate the findings and recommendations of the Fairfield City Retail and Commercial Centres Study 2005 with directions identified under Council town centre and master plan strategies.*

The Centres Policy promotes the development of Fairfield West as a retail/commercial centre which is characterised by:

- *"generally containing <5,000 sq.m of retail floor space;*
- *providing convenience retail services to the residents of the neighbourhood or suburb to which it is located and may contain a small grocery/supermarket store - usually of <600 sq.m;*
- *providing a limited range of non-retail services such as a medical practice or hairdresser."*

The Fairfield community, including shopping centre owners such as Stockland Trust Management Limited, have the expectation that the Centres Policy will be used by the Council to direct the appropriate size and function of future development in retail/commercial centres.

The proposed development has a total retail component of 4,969sqm of retail floor space. This is in addition to the existing supply of approximately 2,000sqm already at Fairfield West.

The proposed development will change the character of Fairfield West from a neighbourhood centre to a local centre and will alter its role in the City's retail hierarchy. This will have an impact on other centres and the established pattern of retailing in the LGA.

It is not appropriate for the applicant to argue that the amount of land zoned for business use is 2.8 hectares and thus can accommodate additional retail uses. The centre zoning permits a wide range of business and residential uses. The policy applies only to the retail component and does not limit other forms of permissible development.



## ATTACHMENT C

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Any approval for additional retail floorspace of this magnitude should not take place until justified by a comprehensive review of the Centres Policy.

**2. The intensity of the proposal is unacceptable.**

The proposed development includes building envelopes for five residential buildings having heights between 2 and 4 storeys on top of a ground floor retail level.

The proposal for the residential building envelopes is totally out of character with the surrounding bulk and scale of residential development and should not be supported by Council. In this regard, the existing character of the surrounding residential development comprises 1 and 2 storey detached dwellings of modest size with generous street setbacks and significant landscaping.

The Applicant seeks to take advantage of an anomaly in the land use zoning where villas and residential flat buildings are permissible in the 3(c) Zone whilst the surrounding land is within the 2(a) Residential A Zone where multi-unit housing and residential flat buildings are prohibited. On this basis, it cannot be said that the development is in keeping with the intended character of the locality. In establishing a planning principle for bulk and scale where there is a lack of planning controls such as FSR, building height and setback standards, the NSW Land and Environment Court in *Veloslin v Randwick Council [2007]* NSWLEC 428 has directed consent authorities to pose the following question:

*"Does the proposal look appropriate in its context?"*

In our opinion it cannot be said that the proposal will look appropriate in the Fairfield West locality due to the excessive bulk and scale of the residential building envelopes. The Elevation Plans provided in the DA Drawings are indicative of the towering building form that will dwarf the existing low density character of the locality. The proposed setbacks will not be sufficient to mitigate the adverse visual, privacy and streetscape impacts of the proposal.

We refute the following assertion within the Applicant's Statement of Environmental Effects ("SEE"):

*"While there is an absence of built form controls, what is clear is that the LEP facilitates the potential for future development of a new character for the site."*

Contextually, the proposal needs to reflect the 1 and 2 storey residential character of the surroundings. In our opinion, the existing structures within the Fairfield West Public School, albeit significantly larger in scale than the surrounding residential dwellings, should not be any determinant of the bulk and scale of the proposed development as the Applicant claims, as these buildings were purpose-built and are located within a Special Use Zone. The predominant character of this locality in our opinion is low density single dwelling houses and the development should respect this character, not create a new character.

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**3. It does not appear that the Applicant has had regard to Council's pre-DA advice.**

The Applicant's Statement of Environmental Effects (SEE) identifies that Council's minutes of pre-DA discussions included the following issues with the pre-DA documentation, *inter alia*:

- The pre-DA proposal had been conceived in contextual isolation;
- The pre-DA proposal had been conceived without regard to the surrounding properties;
- The pre-DA proposal had been conceived without consideration of the opportunities and constraints of the site;
- The pre-DA configuration and siting of the development was inappropriate in that there was no logical integration between the residential and commercial aspects of the development;
- Higher density residential development is inconsistent with the current character of the surrounding residential area;
- The proposal is required to have a more balanced one and two storey built form that responds to orientation, constraints and opportunities; and
- A reduction in built form and scale from the pre-DA design was warranted.

Although we are not aware of the amendments made between the pre-DA documentation and the DA documents, we are unable to identify any instances where the proposed development may have addressed the above issues. In our opinion, each of the above findings and requirements still need addressing.

**4. Housing for Seniors or People with a Disability may not be permissible on the site.**

The development application documentation and pre-DA discussions make references to the application being for housing for older persons or persons with a disability. This should be clarified. If the applicant seeks a staged consent for development for housing for seniors housing, the application should be assessed under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. Furthermore the applicant would need to establish that a building complying with the requirements of the policy could be constructed on the site. No such assessment has been undertaken.

Clause 40 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 states as follows in relation to the minimum site frontage required for a seniors housing development to be permissible:-

*"1) General*

*A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.*

...

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## 3) Site frontage

*The site frontage must be at least 20 metres wide measured at the building line."*

The Applicant's SEE claims that the minimum site frontage control is not relevant to this stage of the DA and the SEPP refers to a minimum "site" frontage and not a minimum "street" frontage.

Clause 40 of the SEPP is relevant to this stage of the DA if the DA seeks development consent for the building envelopes of a future development under SEPP (Housing for Seniors or People with a Disability) 2004.

It is clear in the wording of Clause 40(3) that the requirement is for a minimum site frontage to a public street, hence the use of the terms "frontage" and "building line". Had it been intended to be read any other way, the clause would have referred to "minimum dimension" or "minimum width/depth". We note that no objection pursuant to State Environmental Planning Policy No. 1 - Development Standards has been provided by the Applicant.

## 5. The proposed development is poorly conceived.

The design is substandard in regards to integration with adjoining land and accessibility. The following grounds of objection are made:

- (a) The DA plans show an intention for a pedestrian crossing from Aldi's car park (i.e. relying on the Aldi car park to meet the demands of their customers) and a future vehicular connection between Aldi and the site which are not guaranteed. The proposal needs to cater for its own traffic and pedestrian access.

We also note that the proposed pedestrian connection to the Aldi store is across the primary site driveway, where all cars and trucks will access the site.

- (b) The proposed Hamilton Street heavy vehicle driveway threatens the safety of pedestrians and school children of Fairfield West Public School. There are poor sight lines around the Hamilton Street driveway that should be addressed prior to consideration of this access handle as a heavy vehicle driveway.
- (c) The proposed car parking is contrary to Australian Standard AS1428.1 in that separate car parking aisles and heavy vehicles are not defined. In this regard, heavy vehicles will share internal driveways containing car parking spaces.
- (d) The retail layout is of such as scale that it only allows a token amount of deep soil landscaping around the periphery of the site. The landscaping proposal of the development is not a suitable urban design outcome as it is not compatible with the character of the surrounding development.
- (e) The retail level and future residential development on top of the 'podium' created by the retail level is not integrated. In this regard, the proposed residential building envelopes are wholly above a concrete slab which forms the roof of the retail component. Such a proposal is not compatible with the character of development in the neighbourhood, does not cater for adequate site connectivity and does not promote significant amenity for future occupants of the residential components in

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terms of accessibility, through-site links, mature landscaping and convenient access to public transport.

**6. The traffic and parking impacts of the proposed future residential development have not been considered.**

The DA includes assessment of the traffic and parking impacts of the vehicles associated with the proposed retail uses but has not included any assessment of the impacts of the future residential traffic generation for the proposed seniors housing building envelopes, which includes a request for the density and configuration of the residential components. The Applicant's SEE states that there is provision for up to 140 residential apartments and approximately 148 residential car parking spaces. The impacts of this additional traffic must be considered at this stage. It may be the case that the local road network requires augmentation to cater for the additional cumulative traffic generated from the site by the residential component.

**Summary**

Objection to the proposed development lodged pursuant to Development Application DA 1127/2007 is made on the following grounds:

- (1) The proposal is at odds with Council's Retail and Commercial Centres/Activities Policy No. 1 – 203 and would change the role and function of the centre in the retail hierarchy to the detriment of other centres.
- (2) The intensity of the proposal is unacceptable. The proposed bulk and scale must be scaled back to allow the development to be compatible with the surrounding low density residential character.
- (3) It does not appear that the Applicant has had regard to Council's pre-DA advice.
- (4) If the application is for seniors housing, an assessment of compliance with the provisions of the SEPP is required and has not been provided. A SEPP No 1 objection may be required as the site for a seniors proposal needs a site frontage of 20m.
- (5) The proposed development is poorly conceived. The layout of the development requires revision to remove uncertain connections with the adjoining Aldi site and inherent safety and accessibility concerns.
- (6) The traffic and parking impacts of the proposed future residential development have not been considered. The Traffic Report has addressed the traffic and parking generation from the retail component of the DA, but not from the residential component.

**Conclusion**

Having noted the above concerns in relation to the proposed development, we believe that Council should defer the Development Application for amendment. In particular, the development should be redesigned to more appropriately respond to the character of the neighbourhood and integrate with the adjoining sites if the adjoining site owners agree. On the basis of the current plans, we believe the design is significantly substandard and an ambit claim for maximum development potential.

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In the event that Council should request the applicant to submit additional information, we request that we be given a reasonable opportunity to inspect the new material.

We request that we be advised in advance of the date of any Committee or Council meeting at which the DA is ultimately determined, in order that we may, if required, make appropriate arrangements to present our client's concerns with this application.

We thank Council for the opportunity to make this submission.

Yours faithfully,  
**BBC Consulting Planners**

A handwritten signature in dark ink, appearing to read 'Dan Brindle'.

**Dan Brindle**  
Director

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Mail Mail - Submission to DA 1127/2007 - 368 Hamilton Road, Fairfield West

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From: "David Winley" <david@inghamplanning.com.au>  
To: <mail@fairfieldcity.nsw.gov.au>  
Date: Wednesday, 21 November 2007 15:40:41  
Subject: Submission to DA 1127/2007 - 368 Hamilton Road, Fairfield West

At: City Manager

Please find attached a letter of objection to the above DA. Original to be sent by post.

FAIRFIELD CITY COUNCIL  
RECEIVED  
22 NOV 2007  
FEL: DA 1127/2007  
DOC: 24017.07  
TO: M. Stephenson

Regards

David Winley  
Ingham Planning Pty Ltd  
19, 303 Pacific Highway,  
LINDFIELD NSW 2070

ENTERED  
22 NOV 2007

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Our Ref: 07205(obj)

21<sup>st</sup> November 2007

The General Manager  
Fairfield City Council  
PO Box 21  
FAIRFIELD NSW 2165

Dear Sir/Madam

RE: D.A. 1127/2007 - 368 Hamilton Road, Fairfield West  
Fairfield Market Plaza at Tasman Parade and Hamilton Road

We act on behalf of Westfield Limited in regard to Development Application 1127/2007 for the construction of a retail shopping complex incorporating a large full line supermarket, specialty retailing and associated carparking.

The proposed building is over single retail shopping level and has a total gross floor space of over 6,205 sqm and has associated car parking provided at ground level. All access to the car parking area is from Tasman Parade with the narrow Hamilton Parade frontage of the site providing for truck access to a loading dock facility at the rear of the site. An additional vehicle access connecting the proposed development with the existing adjoining ALDI store is illustrated on the plans as being subject to future application.

While not specifically referred to in the Statement of Environmental Effects prepared by Urbis and submitted with the application, the elevations provided with the development application drawing indicate that the proposal for the Fairfield Market Plaza includes a Coles supermarket of 3,230 sqm (including back of house area) and specialty retail shops totalling approximately 1,704 sqm.

In addition to the retail development a conceptual illustration of residential buildings across the site is also provided. This includes the provision of approximately 8 built form ranging in height from 2 storeys to 5 storeys adjacent to the adjoining Fairfield public school.

#### Grounds of Objection

This submission is a formal objection to the proposed development on the following grounds:

##### 1. *The proposal is an overdevelopment of the site*

The subject site is a large undeveloped parcel of land (19,105 sqm) located within a interface area between single dwelling residential development and local business development.

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The proposed development provides its entire vehicle car park access from Tasman Parade a local residential street in Fairfield West. Tasman Parade is characterised by predominantly single storey residential dwellings and has a number of residential cul-de-sacs.

The site also has a narrow frontage to Hamilton Street which is proposed to be used as a truck access point to the site.

Fairfield West Public School adjoins the site to the east.

Other adjoining land uses include businesses supporting the surrounding locality including a Fruit and Vegetable business, an ALDI supermarket and a closed Calix service station fronting Hamilton Road, Fairfield West.

The adjoining commercial development in the local business zone, including the recently developed ALDI supermarket, is characterised by relatively low scale built form surrounded by open carparking areas provided at ground level. This is consistent with what would normally be associated with development within a local business zone.

The proposed development extends a 2-5 storey built form across the entire site, with a large parking facility and retail complex located between single storey residential development and the local public school.

While the plans illustrate an indicative built form it is our opinion that inadequate information has been provided with the application to fully consider the implications of the residential component of the development and its interrelationship with the proposed retail complex. Inadequate information is provided for consideration of carparking requirement, traffic generation, access and intersection design for a full and proper consideration to be undertaken of the current development application.

It is considered that prior to any further consideration of this matter, Council must ensure that adequate information is provided with the development application and placed on public exhibition to properly consider the intended mixed use development of the subject site.

Notwithstanding, it is our opinion that the proposed development is an overdevelopment of the site and is entirely inappropriate for a local business zone locality.

**2. The proposal is inconsistent with the objectives of the 3(c) Local Centre Zone within the Fairfield LEP 1994.**

Clause 8(2) of Fairfield Local Environmental Plan 1994 states that:

*"The Council must not grant consent to development on land within a zone unless it is of the opinion that the carrying out of the development would be consistent with one or more of the objectives of that zone."*

In other words, Fairfield City Council cannot give consent to the proposed retail shopping complex unless it is considered to be consistent with the objectives of the 3(c) Local Centre Zone.



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It is our opinion that the proposal is clearly not consistent with the objectives of the zoning of the land. The proposal conflicts with the established hierarchy of retail centres as established under the business zoning provisions of the LEP.

The following business zones apply throughout Fairfield LGA under the provisions of Fairfield Local Environmental Plan 1994:

**Zone 3(a) Sub-Regional Business Centre**

This zone applies to the Fairfield Town Centre and is to encourage comprehensive development and growth which will reinforce the role of the town center as a sub-regional centre and the dominant business centre in the City of Fairfield.

**Zone 3(b) District Business Centre**

The District Centre zone applies to the Cabramatta, Prairiewood and Bonnyrigg centres and objective (c) of the zone is to "encourage the District Centres.....to provide residents with major food, clothing and small item shopping opportunities."

**Zone 3(c) Local Business Centre**

The subject site is located within the 3(c) Local Centre zone under the provisions of Fairfield Local Environmental Plan 1994.

"The objectives of the zone are:

- (a) to provide for the establishment in a business centre of retail, commercial, professional and community services activities to serve local residents; and
- (b) to provide for residential development to support business activity in the centre."

The proposed development will result in a retail shopping complex at Fairfield West that comprises two large supermarkets (ALDI and Coles) and specialty retail shops with a total floor space of well over 7,000 sqm of retail floor space.

There is no commercial or professional floor space associated with either the existing ALDI store or the proposed retail development.

This size retail complex is well in excess of what is deemed to be local business centre serving the needs of local residents. The proposal if approved would result in the establishment of a significant district shopping centre drawing trade from a wide catchment.

It would also lead to impetus for additional retail/commercial development on adjoining underutilized land (eg. closed service station site etc.) that would further establish Fairfield West as a significant district centre.

It is considered that the proposal is clearly inconsistent with the objectives of the 3(c) Local Business zone and that therefore in accordance with the provisions of Clause 8(2) of the LEP must not be approved by Fairfield City Council.

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It is our opinion that any consideration of a retail centre the size and nature of the proposed development requires a review of Council's retail studies undertaken in the preparation of the existing LEP and the subsequent review, exhibition, assessment and amendment to the current zoning of the land via the Draft LEP process.

3. *The proposal is inconsistent with the provisions of Fairfield City Wide Development Control Plan 2006 for commercial development within Local Centres.*

From our review of the existing Fairfield City Wide DCP 2006 that applies to the land. Clause 8.1.1 states what matters need to consider in a development application on 3(c) zoned land as follows:

*"a) In a general context Council will assess development applications for commercial development in local centre 3(c) zones based on the following criteria:*

- The findings of the Fairfield Retail and Commercial Centres Study, as described in a report to Council's Outcomes Committee in September 2006 (Item No 105. File reference G07-19-163(9))."*

The Fairfield Retail and Commercial Centres Study identifies centres such as:

Fairfield Town Centre  
 Casbramatta  
 Prairiewood  
 Sonnyrigg Town Centre  
 Canley Heights  
 Canley Vale  
 Smithfield

It even refers to existing large neighbourhood centres anchored by a single supermarket including Greenfield Park and Edensor Park.

From our review of the provisions of this study and analysis of existing centres there is no mention of this land at Fairfield West as being identified as an existing centre or becoming an important retail district centre as currently proposed.

The key recommendation outlined within the findings of the above report is that:

*"Council prepare and adopt a new retail policy statement that specifically describes the retail role of each of the centre types in Fairfield. The policy should also outline the criteria by which Council will evaluate new retail development proposals in each type of centre."*

*"The proposed Retail Centres Policy should contain evaluation criteria that can be applied to the consideration of new retail proposals. Such criteria would be designed to assist in the assessment of whether the impact of new development on other centres in the system of centres is acceptable while retaining a degree of flexibility particularly where proposals in sub-regional centres are likely to reduce escape spending from Fairfield."*

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It is our opinion that any consideration of a retail centre the size and nature proposed for this location at Fairfield West requires a full understanding of the implications on the established system of retail centres and their ongoing roles of other centres in the future.

It is considered that in accordance with the provisions of the Fairfield City Wide DCP 2006 and findings of the Fairfield City Retail and Commercial Study, Council must not consider the current application until such time as a Retail Centres Policy has been adopted that considers the role of the proposed site in the retail system within the City of Fairfield and provides a evaluation criteria for the development of such a centre.

It is our opinion that the current application is inconsistent with the zoning of the land and planning policies within the relevant development control plan that applies across the whole of the Fairfield LGA.

**4. The proposal is inconsistent with State Government centre's policies and planning policies for integrating land use and transport**

Discouraging out-of-centre general retailing and large scale commercial development is sound town planning practice and has long been a policy of State Government.

Whilst such policies existed prior to 1985, the 'Centres Policy for the Sydney Region' (Department of Environment and Planning) of July 1985, was the first specifically dedicated to the issue of promoting the development of centres.

The key objectives of the Centres Policy are identified as follows:

- a) A fairer distribution of jobs;
- b) Promotion of public transport;
- c) Access to shops and community services;
- d) Amenity of urban centres;
- e) Job retention and creation; and
- f) Appropriate environments for high density housing.

There were eight major policies which constitute the proposed Centres Policy and formed the framework for local planning. The first three policies of the Centres Policy established a hierarchy of centres with Sydney CBD and North Sydney promoted as the dominant regional centre, Parramatta established as the secondary regional centre, followed by a number of sub-regional centres nominated as the preferred locations for major commercial development. The sub-regional centres included are:

- |                     |                       |
|---------------------|-----------------------|
| (a) Bankstown;      | (h) Hornsby;          |
| (b) Blacktown;      | (i) Hurstville;       |
| (c) Bondi Junction; | (j) Liverpool;        |
| (d) Burwood;        | (k) Mt Druitt;        |
| (e) Chatswood;      | (l) Penrith;          |
| (f) Campbelltown;   | (m) St. Leonards; and |
| (g) Gosford;        | (n) Sutherland.       |

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Secondary Centres were also identified as playing an important role in the provision of retail and community services. Secondary Centres were identified as Ashfield, Camden, Castle Hill, Epping/Eastwood, Dee Why/Brookvale, Fairfield, Gordon, Katoomba, Manly, Miranda, Rockdale, St. Marys and Vvyong.

Policy 6 of the Centres Policy stated that:

*"Major retail developments will be encouraged to locate in regional, sub-regional and secondary centres."*

The policy states that *"major retail developments (of over 5,000 gross lettable square metres) which require a rezoning or an increase in floor space ratios are normally to be restricted outside regional, sub-regional, and secondary centres."*

*"The preferred location for all retail developments is existing centres. In special circumstances where retail facilities are required outside of centres, the rezoning of land should be restricted where possible to areas adjacent to the existing centre."*

*"In newly developing areas major retail facilities will provide the focus for the development of the future commercial centre. Access by public transport should be a key criteria in determination of centre location. Freestanding locations away from public transport will be strongly discouraged."*

The 1985 Centre's Policy established clear and concise planning controls over the location of retail development. The focus was on supporting the hierarchy of existing established centres.

The objectives of the above policy have been continually embodied in metropolitan planning strategies. These include:

- a) Cities for the 21<sup>st</sup> Century – Integrated Urban Management for Sydney, Newcastle, the Central Coast and Wollongong (Department of Planning, 1995);
- b) Draft Retail Policy for the Greater Metropolitan Region of NSW (Department of Urban Affairs and Planning, 1996);
- c) A Framework for Growth and Change – The Review of Strategic Planning for the Greater Metropolitan Region (Department of Urban Affairs and Planning, 1997);
- d) Emerging Centres (Department of Urban Affairs and Planning, 1998); and
- e) Shaping Our Cities – The Planning strategy for the greater metropolitan region of Sydney, Newcastle, Wollongong and the Central Coast (Department of Urban Affairs and Planning, 1998).
- f) Draft State Environmental Planning Policy 66 – Integrating Land Use and Transport

DRAFT SEPP 66 – Integrating Land Use and Transport

Draft SEPP 66 – Integrating Land Use and Transport was publicly exhibited for a 3 month period ending on 14 December 2001. This document forms part of a 'policy package' which represents the first attempt by the State Government to provide statutory

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control specifically related to the issue of integrating land use and transport, part of which includes the policy of discouraging out-of-centre general retailing.

Part of the draft SEPP 66 policy package includes 'the Right Place for Business and Services Planning Policy'. This policy identifies a number of centres as being those which will be supported by Government. Those centres are as follows:

- a) Sydney CBD (including North Sydney);
- b) Parramatta;
- c) Newcastle; and
- d) Wollongong.

These are the primary commercial and institutional hubs of the greater metropolitan region. The other major urban centres which are identified are the following.

Within Sydney		
* Bankstown	* Blacktown	* Bondi Junction
* Burwood	* Camden	* Campbelltown
* Castle Hill	* Chatswood	* Dee Why / Brookvale
* Fairfield / Cabramatta	* Hornsby	* Hurstville
* Liverpool	* Macquarie Park	* Mount Druitt
* Rouse Hill	* North Sydney	* Penrith
* Pyrmont	* Richmond	* St Leonards
* Sutherland / Miranda		
Within Newcastle		
* Charlestown	* Glendale	* Kotara
* Maitland		
Within Central Coast		
* Gosford / Erina	* Wyong / Tuggerah	
Within Wollongong		
* Werrawong	* Dapto	* Shellharbour Square

Within the draft Policy the following comment is made about retail locational requirements.

*"Retail is essential to the activity and the viability of most centres because of its dominance of economic activity and relationship with personal and other services. Shops typically generate high trip levels and those serving more than a neighbourhood catchment should always be located in centres and be provided with pedestrian, cycling and public transport access. Retailers often prefer locations on main roads which afford high exposure. These locations should make the best use of road and public transport infrastructure."*

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The proposal does not provide any clear and direct link to public transport facilities but is rather a car orientated development that provides the entire access for carparking from a single residential neighbourhood street.

In view of the above, it is considered that the use of the subject site within the local centre of Fairfield West for a large district retail centre is contrary to both the provision of the existing Fairfield LEP 1994 and the provisions of draft SEPP 66, as it is in an 'out-of-centre' location and as such, will be contrary to the objective of encouraging the development of centres.

#### CONCLUSION

Overall, it is considered that the proposed development is inappropriate for this locality within Fairfield West.

We believe that insufficient information has been provided with the development application to determine the nature of proposed residential use and the implications on the operation of the site and the surrounding road network.

The proposed retail uses will result in a district shopping complex at Fairfield West that is inconsistent with Council's statutory planning controls and development control plan that applies to the land.

It is considered that the development as currently proposed will effectively operate and function as a modern district retail shopping complex in an 'out-of-centre' location that is inconsistent with State government and local planning controls.

We formally object to the proposed development and request to be notified of any time at which this matter is to be considered by Fairfield Council.

Yours faithfully,

**DAVID WINLEY**  
Director