

August 2010

The voice of Australia's leading retailers

Performance Benchmarking of Australian Regulation: Planning

The logo for the Australian National Retailers Association (ANRA) is displayed within a blue rectangular box with a white border. The letters "ANRA" are in a white, serif, all-caps font.

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Retailers Association**

The voice of Australia's leading retailers

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About ANRA

The Australian National Retailers' Association ("ANRA") was established in 2006 to represent the interests of Australia's leading national retailers.

Members of ANRA are:

Best & Less	Just Group Portmans Peter Alexander Dotti Smiggle Just Jeans Jay Jays
Bunnings	Luxottica OPSM Laubman & Pank Budget Eyewear Bright Eyes Sunglass Hut
Coles	Dymocks
Costco	RedGroup Retail Angus & Robertson Borders
David Jones	Reece Plumbing
Franklins	Super Cheap Auto Group
Harvey Norman	Woolworths Supermarkets Big W Dick Smith

Their combined turnover exceeds \$100 billion of the \$215 billion turnover across the retail industry, representing 6.2% of Gross Domestic Product.

The members of ANRA employ over 450,000 Australians – 37.5% of the retail workforce and 4.1% of the Australian workforce. Approximately 100,000 of these employees are located in regional and rural Australia. Over 750,000 Australians hold shares in members of ANRA.

Our members lead the Australian retail industry, across all types of retail goods and services. The spectrum of their businesses, their scale and their contribution to all Australian communities means that the development of robust policies is critical, to strengthen the retail sector and protect the interests of retail businesses and consumers.

A key objective is to ensure that governments and the community understand the vast contribution the retail industry makes to the national economy. ANRA develops and endorses public policies which will enhance the capacity of the sector to meet consumer needs. ANRA recognises that retailers rely on all Australians, and must competitively deliver to consumer needs. Conversely, the industry and members of ANRA in particular, are leading employers, contribute to community and regional development, and strongly interrelate with other Australian industries, not the least of which is the agricultural industry. ANRA's food and grocery retailers overwhelmingly supply Australian produce.

The Australian National Retailers Association (ANRA) appreciates the opportunity to have input into the Productivity Commission's inquiry on best practice planning.



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1. Executive Summary

- 1.1. The dynamic business models of Australia's leading retailers mean they regularly navigate the nation's numerous planning systems.
- 1.2. This submission aims to compliment the analytical work of the Productivity Commission, with feedback from retailers operating within Australia's multitude of planning systems.
- 1.3. From a retailers perspective, the ideal planning system has four key features:
 - delivers certainty for new developments,
 - is applied consistently,
 - is responsive to the reality of the modern consumer, and
 - provides adequate land for retail use.
- 1.4. This submission is divided into four sections – business compliance costs, competition, city planning and future trends.
- 1.5. The combination of multiple regimes and multiple regulators means the planning system imposes compliance costs on retailers who are trying to expand their services to customers.
- 1.6. Many planning systems also incorporate competition considerations, which can lead to “gaming” practices that deliberately delay the process of delivering new stores for customers.
- 1.7. City planning approaches are also failing to recognise the shopping experiences modern consumers are looking for – convenient access that is close to workplaces, schools and homes.
- 1.8. Finally, there is a need to ensure that planning systems can deal with future retailing trends.
- 1.9. ANRA looks forward to the findings of this Productivity Commission report and hopes this is the first step in developing a modern planning system for the future.

2. Introduction

- 2.1. Australia's leading retailers provide convenient and accessible shopping experiences for their customers. It is essential that retailers have access to a best practice planning system so they can continue to deliver on this commitment in the future.
- 2.2. From a retailer's perspective, a well-functioning planning system delivers certainty for new developments, is applied consistently, is responsive to the reality of the modern consumer and provides adequate land for retail use.
- 2.3. Retailers need a planning system that provides certainty for operators opening new stores. Planning instruments should be clear about the type of development that is allowed on potential sites. The hierarchy of instruments – from regional plans down to LEPs – should provide clear guidance about community and regulator expectations for sites. Such clarity at the early stages of the development process would minimise business compliance costs around development applications.
- 2.4. Further to this, the planning system should make more use of 'as of right' or complying development opportunities for stores that meet the provisions of the LEP. A DA process that involves an active decision by a planning authority should only be needed if a new store does not meet current LEP provisions. Some states, such as Victoria and NSW, are making use of such provisions in some instances – mainly residential development – but there is the potential for this to be used more extensively.
- 2.5. The other benefit of increased complying development provisions is that it reduces the likelihood that retailers trying to open new stores will be subjected to 'gaming' behavior to block their proposal.
- 2.6. Retailers need a planning system that is applied consistently. Planning decisions that are consistent mean past decisions can be used to assess the potential for a successful outcome in the future. Conversely, the inconsistent application of planning laws increases business compliance costs and discourages new investment.
- 2.7. Retailers need a planning system that is as responsive to the reality of the modern consumer. The modern customer combines their shopping with other activities, such as work, school runs and recreation. They also generally drive to do their shopping, rather than use public transport. The planning system must ensure these needs are met and move away from out-dated ideas – such as retail should be confined to a designated area – and unrealistic ideas – such as people can do all their shopping by using public transport.
- 2.8. Retailers need a planning system that provides adequate supplies of land available for retail use. Some States and urban centers already have a shortage of retail space available. This will only worsen as urban populations increase.
- 2.9. A planning system that included these features would ensure Australia's leading retailers could continue to provide high-quality service to their customers and the community.

3. Business Compliance Costs

- 3.1. ANRA considers compliance costs across the Australian planning system to be unnecessarily high.
- 3.2. The Productivity Commission's Issues paper associated with this inquiry featured a table (pg 20) which identified the possible sources of compliance costs in the planning system. Using this table as a guide, ANRA members have a number of insights into compliance costs in planning.

Legislative-related compliance costs

- 3.3. Many planning jurisdictions remain stuck in the mindset that customers want retail to be grouped together in a separate area away from where they live, work, study and play. Consequently, zoning laws often separate retail space from these other activities. This approach forces retailers to "locating in an area that does not give the most efficient outcome for the business"¹.
- 3.4. In reality, customers are leading increasingly busy lives and want to be able to combine their shopping, especially grocery shopping, with other activities such as working, studying, travelling to and from schools and recreation activities.
- 3.5. Legislation is also slow at keeping pace with new innovative retail formats which restricts the ability of the sector to meet emerging customer needs. Prescriptive planning regulations can restrict the emergence of these new formats.
- 3.9. The recent changes in South Australia to the definition of a retail showroom (bulky goods outlet) is a positive example of a government that has recognised the benefits of modernised planning definitions to keep pace with new retail formats.

Regulator-related compliance costs

- 3.6. Retailers have reported general concerns about the excessive time taken by some regulators to reach a decision. These time delays mean projects take longer to be operational, which adds to the cost of projects.
- 3.7. In some instances, these delays are caused by regulators being excessively influenced by public pressure, rather than making a decision based on planning instruments. Indeed, the public consultation process tends to be dominated by submissions that are at odds with planning instruments.
- 3.8. Assessment of such submissions is time consuming and creates delays in the assessment process as objectors apply public pressure and advocate for additional detailed investigations prior to planning approvals being issued. The result is additional holding and development costs, risk and uncertainty for retail developers, increasing costs of doing business and impeding or stifling the supply of new retail floor-space.

¹ Productivity Commission (May 2010), Performance Benchmarking of Australian Business Regulation: *Planning, Zoning and Development Assessments* Issues Paper, pg 20

- 3.9. One ANRA member has provided a case study on a bulky goods warehouse proposal in Balgowlah, Sydney that highlights the costs of these situations.
- 3.10. Since 1988 bulky goods development has been a permitted use under the Manly Local Environmental Plan in the light industrial precinct of Balgowlah. Since that time a number of bulky goods retailers have established outlets in the precinct including Harvey Norman, Pauls Warehouse and Fantastic Furniture. In mid-2008 Bunnings purchased land in the precinct and set about proposing a 2 level bulky goods retail outlet in consultation with the local Council. Initial meetings with Council staff were supportive, subject to the resolution of the typical functional issues associated with bulky goods retail outlets.
- 3.11. Upon lodging the initial application in late 2008, the application attracted 11 written objections and a petition of 25 signatories. Contrary to the recommendation of the Council officers, the application was refused by Council's Assessment Panel in June 2009, citing issue of bulk, traffic, scale, floor-space, hours of operation, amongst others. The application was amended and resubmitted in January 2010. Whilst this proposal was substantially similar to the previous proposal, this time is attracted far more public objection. Upon submitting revised plans in May 2010, the application attracted 150 submissions and a petition with 313 signatories.
- 3.12. Ultimately on 22 July 2010 the Joint Regional Planning Panel, comprising 3 State appointed members and 2 Council appointed members, resolved (by 3-2 vote) to approve the development application. The 2 dissenting votes were Council staff. The conditions imposed on the approval include onerous matters of infrastructure contributions of \$900,000 largely for streetscape improvements, reduction in overall height (related to an excavated ground level), and limited trading hours. As a result the proponent is currently preparing resubmissions that will further delay the opening of this store.
- 3.13. The clear outcome is that whilst strategic planning has been undertaken and land is appropriately zoned for a purpose, and where a development complies with development controls, public consultation can provide significant and substantial additional costs and delays on delivery of retail outcomes.
- 3.14. Another source of regulator-related compliance costs is when regulators develop a pedantic focus on documentation, rather than focusing on compliance with planning instruments and requirements.
- 3.15. This issue is illustrated in a case study from an ANRA member relating to a bulky goods warehouse proposal for Rouse Hill, Sydney.
- 3.16. Land in the Annangrove Road Light Industrial Area in north-west Sydney has been planned for a mixture of industrial, service industries, employment generating activity, and complementary bulky goods retail uses. This land is typically rural land located on the fringe of the north-western growth corridor of Sydney. Managing the environmental effects of developing former farmland, such as increased runoff into local watercourses, has not been adequately planned for by authorities and is left to the circumstances and solutions available in each development case.
- 3.17. A site located at a principal intersection of the two main roads in the precinct (Annangrove Rd and Windsor Rd) was secured in late 2009. Upon preparing a

planning application, including pre-application lodgment meeting in October 2009 with the local Council, a DA was submitted in December 2009. The DA was exhibited in January 2010.

- 3.18. In accordance with the natural topography of the land, the development site will discharge its runoff into a proposed on-site storm-water system and over adjoining land, ultimately discharging into the local watercourse (Second Ponds Creek). The authority responsible for managing impacts upon natural water systems (the NSW Office of Water) provided their 'general terms of approval' to the development on 22 January 2010.
- 3.19. However, in the ensuing months Council determined to refer the application to the owner of the creek (Sydney Water). The response from this authority, provided in June 2010, required the undertaking of computer modeling to establish that runoff water quality will be achieved in accordance with best practice. Further it directed that only runoff from roof, driveway and parking areas can be directed to the storm-water system that will discharge into Second Ponds Creek.
- 3.20. This modeling was done to enable Council's assessment staff to report that the requirements of Sydney Water had been satisfied.
- 3.21. This delay did not assist in addressing the planning merits of the proposal, and simply transferred a technical discussion that should occur in conjunction with the preparation of the construction documentation, to impeding the issue of the planning approval. No change of significance was likely to occur to the development in addressing Sydney Water's requirements, with the net effect of delaying planning approval by 2 months. This is an example of delays that have no planning merit and place further unwarranted pressure on the viability of retail projects.

Inconsistency-related compliance costs

- 3.22. ANRA members are national businesses. This means they face compliance costs across their operations created by the need to operate under multiple planning systems across local councils and state governments.
- 3.23. ANRA recognises that differing local community preferences and geographic circumstances mean a comprehensive national planning system, with consistent LEPs across all local councils is unrealistic.
- 3.24. Nevertheless, ANRA would welcome moves towards a more cohesive approach to planning, at least at the strategic level. For example, a national system that delivered the same regulatory frameworks (including approval process, appeals process, definitions, community consultation requirements) would go some way to reducing compliance costs for national businesses.
- 3.25. For example, ANRA members would favor a national approach to the appeals process similar to the Western Australian and South Australian systems. These states have an extra level of arbitration and mediation, in contrast to NSW where proponents can only go to a Land and Environment Court situation – which can involve significant legal costs.

4. Competition

- 4.1. The planning system inevitably interacts with competition policy, with many jurisdictions requiring the DA process to consider the impact of new projects on existing businesses.
- 4.2. On December 7 2009, the Council of Australian Governments (COAG) committed that planning systems should ensure:
- opportunities for gaming of appeals processes are minimised
 - processes are in place to maintain adequate supplies of land suitable for a range of retail activities; and
 - any unnecessary or unjustifiable protections for existing businesses from new and innovative competitors are eliminated².
- 4.3. More recently, the New South Wales Government has released a draft SEPP addressing the issue of competition considerations in the planning system³.
- 4.4. This draft SEPP has four key elements:
- Planning authorities cannot take into account the financial viability of a proposal.
 - Planning authorities cannot take into account the viability of other existing commercial developments if a proposal is approved. The only exemption to this is if the development is likely to have an “overall adverse impact on the extent and adequacy of facilities and services available to the local community”.
 - Planning instruments cannot restrict the number of types of retail outlets in a particular development or geographic area. (For example, can no longer say this area can only have 2 supermarkets.)
 - Planning instruments cannot restrict the proximity of a retail store in relation to a similar retail store type. (For example, can no longer reject a proposal for a new store because a similar store already exists near-by.)
- 4.5. ANRA is broadly supportive of COAG's stated principals and the NSW Government's approach to meet these objectives.
- 4.6. However, ANRA seeks the removal of the exemption relating to the “overall adverse impact on the extent and adequacy of facilities and services available to the local community”.
- 4.7. This exemption simply creates a large loophole that will be used by incumbents to block new entrants and ensure that competition remains part of the planning decision process, irrespective of the intention of the rest of this SEPP.

² Promoting Economic Growth and Competition through the Planning System Review Report (April 2010), NSW Government.

³ State Environmental Planning Policy (Competition) 2010

- 4.8. If there are competition impacts of a development then opponents should use appropriate competition-related legal avenues, such as the Trade Practices Act, and not planning legislation.
- 4.9. ANRA encourages the Productivity Commission to monitor how this new SEPP process progresses and its impact, if implemented.
- 4.10. Finally, as discussed in the introductory comments in this submission, increased use of complying development provisions would reduce the opportunity for 'gaming' practices to be used in the planning process.

5. City Planning

- 5.1. Retailers have a number of concerns about the operation of planning systems in urban areas. This section outlines some of these concerns and features examples where retailers have incurred unnecessary costs.

Adequate land supply

- 5.2. Members have raised concerns that the amount of available retail space is currently insufficient and could become increasingly scarce as populations increase in Australia's major cities.
- 5.3. Sydney has 249 square meters of floor space per 1000 people. Compared to an Australia-wide average of 328 square meters per 1000 people. ANRA members estimate that at least 7.12 million square meters of additional retail floor-space will be required in the Sydney metropolitan region by 2036. This is to cater for current and future population growth and to account for continuing consumer driven demand for increased retail floor-space.⁴

Infrastructure charges

- 5.4. Members are also concerned about the high infrastructure charges that are currently levied on new retail developments. ANRA acknowledges that some of these funds are needed to provide key infrastructure, such as roads and sewerage. Nevertheless, these act as a deterrent to investment in new stores and new job opportunities.
- 5.5. These high charges have recently been acknowledged by the NSW Government, which lowered Section 94 charges for residential lots to a maximum of \$20,000. However, this has not been translated to commercial or retail developments.

Transport and planning

- 5.6. There is a growing view amongst state planning documents that retail should be located close to public transport hubs. This view is not supported by the actual behavior of consumers – who continue to prefer to shop using private cars.
- 5.7. Planning agencies need to recognise that consumers drive retail trends, not planning laws. Retail that is forced to be located near transport hubs will not attract interest from customers (and thus retail operators). This will increase pressure on existing retail areas and not achieve the aims of planning professionals to have people shop near where they live.

⁴ Submission to the NSW Department of Planning on the Metropolitan Strategy Review - Sydney Towards 2036 (May 2010), Woolworths Ltd.

Planning and sustainability policies

- 5.8. Responsible use, and re-use, of scarce resources is a key challenge for our community and ANRA members acknowledge that they have a role to play in this trend. Indeed, many ANRA members run comprehensive sustainability programs and are re-designing their stores to reduce their impact on the environment.
- 5.9. Nevertheless, there are increasing signs that sustainability policies will become legislated and these are likely to have implications for the planning system.
- 5.10. For example, the Federal Government is currently considering introducing a deposit scheme for bottles – similar to the scheme that has been in place in South Australia for some time. If implemented, this legislation will have impacts on planning with respect to store footprints having to accommodate storage areas for collected materials. This is not currently part of the planning considerations in most states and may have an impact on retail operations and the suitability of retail sites.

Centers policy

- 5.11. Planning systems that incorporate activity centers can fail to ensure that the centre provides adequate services for the community – including retail provision. These centre's policies often include restrictions on the number of types of stores in each centre. This non-market intervention acts to exclude potential competition and forces either increased reliance on motor vehicles and road infrastructure (as consumers are forced to travel to alternate, less convenient precincts) or the community incurs premium prices from incumbent operators.

6. Future Trends

- 6.1. During consultations with the Productivity Commission, ANRA was asked about the impact of internet shopping on future trends in retailing.
- 6.2. Following discussions with its members, ANRA can confirm that, to-date, only a small number of consumers choose to shop this way, especially for grocery shopping.
- 6.3. Going forward, even if this mode of shopping becomes more popular, there will still be a role for supermarkets to act as a 'distribution' centre to service these customers.
- 6.4. This means that the planning system and its impact on determining the physical location of stores, will continue to have a significant impact on retailers into the future.