

Attention: The Chair, M/s Caroline Le Courteur
Select Committee on the ACT Supermarket Competition.
Legislative Assembly for the ACT.

13.8.2012

Dear M/s Le Couteur,

As you know, I appeared briefly before your Committee on 23.4.2012 as the Chairman representing the Combined Residents Action Association to provide the Association's views on the Giralang development.

Whilst I was given little time to present our case to your Committee we appreciated your acceptance of our brief comments and our submission dated 23.4.2012.

Since then, Justice Burns has handed down his decision with respect to the Giralang re-development. Unfortunately, the decision has totally ignored the expressed wishes of some 4,500 Kaleen, Giralang and other residents. When the combined population of Kaleen and Giralang is about 12,000 to 13,000 residents then the number of signatories on the petition represents a considerable percentage of that population.

Whilst we are well aware that the case involved considerable legal and technical arguments it is very regrettable that the wishes of the very people who reside in the two suburbs that will be most affected by Justice Burns' decision have not been given any consideration.

It is of great concern that Justice Burns' decision gave no standing to the residents of Kaleen and Giralang and as a result they have been denied their rights to argue their case. The law is indeed an ass if it does not recognize the rights of ordinary citizens.

What is also very regrettable about this whole sorry saga is that everyone seems to have forgotten how this issue arose in the first place. People can be forgiven because it has dragged on for over 8-9 years and looks likely to drag on for a few more years now that all the parties opposed to the development are appealing to the Court of Appeal against his decision.

Everyone should be reminded that;

1. had the lessees of the Giralang centre been served with an order, by the relevant Government authorities prior to the closure of the shopping centre to refurbish the shops (in accordance with their lease purpose clause/Local Centres development Code)
2. then the Giralang and surrounding communities would have had their new local shopping centre long ago.

Alternatively had the lessees failed to comply with that order then action may well have been instituted against them for a failure to comply.

The demise of the Giralang shopping centre, we understand, was due to the lessees' reluctance to re-invest in it, preferring to set aside any refurbishment of the shops, including the supermarket, in favour of the development of a block of apartments.

It must also be remembered that the owners of the Giralang shopping centre were also the operators of the supermarket.

Had the centre been under the control of say, a Westfields, it would never have been allowed to run down as it would have been continually refurbished. This sadly was not the case with Giralang and as a result the residents in that suburb and to a lesser extent, those in the surrounding suburbs, have been totally deprived of a local supermarket and shopping centre for the past 8-9 years.

The failure of Government authorities not to direct the lessees to immediately redevelop the Giralang local shops once they were closed down is an indictment of the territory's administration and system of government. That it was allowed to happen was bad enough but to then compound the lack of action by setting into train a series of events that have cost and is continuing to cost the community and all the parties concerned an enormous amount of time, energy and money. We can only hope that some lessons have been learned from this costly fiasco.

Justice Burns' decision to approve the development ignores the Territory Plan as well as the results of any economic impact statements. This has now opened the "flood gates" for the Coles and Woolworths duopoly to buy local supermarket sites whenever they become available and replace them with group centre sized supermarkets. This can only mean one thing. The demise of the small local supermarkets in their orbit will follow. This is clearly documented in the expert witness evidence of the Giralang case.

When it is all considered, the Coles and Woolworths' duopoly are now well represented in town and group centres, in service stations throughout the ACT as well as in "super" stores at Canberra Airport. It is logical therefore, if they are to continue to grow their business, that the only other sector that they are not represented in is the local supermarket sector. This has now been opened up to them by the Minister, Mr. Corbell's and Justice Burns' recent decisions. Once they have taken over this sector, their domination of the supermarket market in the ACT will be complete as there will be no other sector to expand into, let alone any competition.

Unfortunately, this continued push for total market dominance seems either to be lost on a lot of people or ignored by most, particularly those who have the political power to curb their expansion. The only people it is not lost on are the people who are most affected by the decision. The residents of Kaleen and Giralang and the operators of the shopping centres at Kaleen local centre and Kaleen group centre who stand to lose the most.

Mr. Corbell's use of his call in powers and Justice Burns' subsequent decision has totally ignored the ACT Territory Plan, ACT Supermarket Policy and the competitive dynamics between supermarkets in Kaleen and Giralang and the neighbouring suburbs not to mention the changing demographics in the area. The population in these suburbs is ageing and their dollar spend on grocery lines and other goods is declining.

Their decisions have also ignored the impact that the massive supermarket development at Giralang will have on the viability of other shopping centres, on traffic flow, parking as well as on the local schools, which are in very close proximity. Of greatest concern is the economic impact of their decisions.

There are only so many shopping dollars in the Kaleen and Giralang communities and it is difficult to see how the Kaleen group centre and Kaleen local centre and the new group centre sized supermarket at Giralang will all remain financially viable.

The group centre sized supermarket in Giralang will only be profitable if it draws its sales from the Kaleen, Giralang and surrounding suburbs i.e. it will have an impact on all of the supermarkets in its catchment area. This was clearly documented, once again, during the Giralang case.

We recommend that your Committee read the NSW Draft Centres Policy, Planning for Retail and Commercial Development (refer website attached) and their DVD titled "Ghost Towns" which highlights the impact of Woolworths and Coles stores on general retailing and supermarket retailing not only in country towns but also in the cities. Over time, they eventually destroy their supermarket opposition. Where Woolworths and Coles are concerned there is no level playing field as they not only have market power but they also have the ability to change local re-zoning laws. Giralang?

With respect to the NSW Draft Centres Policy on retailing we draw your attention to the following proposal contained in that draft; one that we suggest should not only be considered by your Committee but incorporated into the ACT Government's final policy on supermarket planning, development and competition.

"The role of any government in the planning process is to regulate the location and scale of development to accommodate market demand".

"At a development assessment and rezoning level

- Where a development proposal is consistent with the permitted use in a zone, the development should be assessed on its merits taking into consideration the economic, social and environmental costs and benefits, and whether the scale and design of the development is in keeping with, or will improve, the character of the area.
- Where a development proposal comes forward that is inconsistent with the permitted use in a zone, the Net Community Benefit Test should be applied as part of the new 'Gateway' process. If the rezoning proposal is permitted through the Gateway, the process will be commenced to amend the local environmental plan (LEP) to permit the use on the site. Once permitted the development proposal will be assessed on its merits.

Monitoring and review

- Councils and the Department of Planning should monitor the supply of retail and commercial"

In conclusion, the needs of the residents of Kaleen and Giralang are simple. All they want is three vibrant, competitive and profitable shopping centres that will provide local services, remain competitive and financially viable; centres that will remain attractive to consumers and upgraded on a regular basis

The Kaleen community has no objections whatsoever to the Giralang community having a modern shopping complex; one that will service their daily needs without having to travel to Kaleen group centre and Kaleen local centre or one of the larger group centres.

However, this should not be at the expense of the other two centres. Whilst we are not against the free market we believe that the competition between the three centres must be fair. What we do not want is one of the centres to be given an unfair advantage in the market place over the other two through legislation, size and sheer market power as it will have a very adverse economic impact on the others.

Finally, the last thing we wish to see is one or both of the current shopping centres, the Kaleen group centre and Kaleen local centre, becoming unviable due to unfair competition (Woolworths putting a group centre sized supermarket where a local centre sized supermarket belongs), reduced sales and hence profitability. Canberra residents need their local centres, in particular the elderly, disabled and those residents without cars or reliable transport.

4If the Kaleen centres are unable to compete because of an oversupply of retail space in the catchment area it is quite conceivable that one or both of the centres will eventually close and the sites that they currently stand on will end up looking like the current Giralang shopping centre - closed down, boarded up and fenced off. A Ghost town.

Yours Sincerely

Anthony Senti,
Chairman,
Combined Residents Action Association

Cc: Mr, John Hargreaves
Mr. Zed Seselja

Attachments:

http://www.planning.nsw.gov.au/asp/pdf/draftcentrespolicy_apr09.pdf