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Liquor & Gaming Specialists

Our Ref: TH:MS:00391
Your Ref:

19 July 2018

2018 Remake of the Liquor Regulation
Liquor & Gaming NSW
GPO Box 7060
SYDNEY NSW 2001

By email: Policy.Legislation@liquorandgaming.nsw.gov.au

**RE: SUBMISSION IN RELATION TO THE LIQUOR REGULATION REMAKE
ON BEHALF OF ALDI STORES**

We act for ALDI Stores ("ALDI").

ALDI owns and operates a large number of supermarket businesses throughout New South Wales, many of which include liquor departments. In recent years, ALDI has had considerable experience with regard to the application processes under the Liquor Act and Liquor Regulation.

On the whole, ALDI welcomes the proposed amendments to the Liquor Regulation. That said, ALDI does foresee some difficulties and anomalies which may arise from five of the suggested amendments to the Liquor Regulation.

The purpose of this submission is to identify those areas, discuss the practical problems that may arise if the Regulation is implemented as presently envisaged and to make suggestions for improvement.

Issue #1 – Notification and Service Area

ALDI welcomes the proposed simplification of the process, which will require community notification on one occasion only, rather than the present system which requires neighbouring occupiers to be notified twice.

In our experience, double notification causes confusion to many recipients of notices.

We appreciate the theory behind the proposed amendment, which is that there will be wider community consultation (notifying neighbours within a 200-metre radius, rather than 100 metres) without additional cost to industry. The theory is that this measure will be revenue neutral to industry, as applicants will be spared the necessity of having to notify twice.

ALDI agrees with the proposal that a notification radius should be measured from the outer perimeter of a retail shopping centre, rather than from the proposed licensed premises within the shopping centre.

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In the case of large complexes, taking the proposed shop as the focal point can sometimes result in circumstances where very few neighbours outside the shopping centre are notified. Taking the whole of the shopping centre as a focal point for radius calculation will enhance community consultation.

However, a particular problem arises from the combination of the proposed two reforms (that is, taking the whole of the shopping centre as the focal point for radius calculation and then applying a 200-metre radius for notification).

In the context of communities characterised by higher density development, this may result in inordinately large numbers of residents and other neighbouring occupiers having to be notified of an application.

Attached to this submission are the following maps illustrating the required service/notification area under the proposed new rules.

- Chatswood Westfield
- Bondi Junction Westfield
- Parramatta Westfield

As can be seen from these maps, the 200-metre radius will often include many multi-floor high-rise developments, housing hundreds of residents. Indeed, the way the Regulation reads, residents located outside of a 200-metre radius will still need to be notified if any part of the land upon which their building is constructed falls within the 200-metre radius: proposed cl 20(1) definition of “neighbouring premises”.

Behind the map of each of these shopping centres, we provide photographs of some high-rise developments that fall outside the 100-metre radius, but inside the 200-metre radius, such that residents of those developments will need to be notified of applications under the new rules.

The proposed rule change makes it far more likely that applicants in future will have to notify many hundreds, or perhaps even thousands, of neighbouring occupiers.

In our own experience, we have had circumstances where close to or over 1000 people have had to be notified. These include applications for ALDI Waterloo, ALDI Bondi Junction, and ALDI Top Ryde; and that was where notification was required within a 100-metre radius, not 200 metres as is now proposed.

Such broad notification requirements are unduly wide and impose significant cost to industry.

In the case of small operators (who often seek to undertake the process without professional help), the process is positively daunting and may even act as a barrier to entry into the marketplace.

ALDI foresees that this issue will only grow in frequency and intensity under current government policy, which is to expand the stock of housing in metropolitan areas by facilitating the development of high-rise housing in and around transport nodes and on transport corridors: See, for example, the *Sydney to Bankstown Urban Renewal Corridor Strategy*.

As we see it, the problem can be alleviated in one of two ways:

1. Include a further regulation to clarify that, in the case of multi-storey developments, it is sufficient (as an alternative means of notification) to notify any person or corporation who holds themselves out to be a manager of the development, or in the case of strata scheme, the relevant owners' corporation.

We appreciate that the Act and Regulation is presently administered in this way, but some legislative clarification is required in order to provide certainty in this regard. Our own reading of the Regulation is that "all neighbouring occupiers" are required to be notified. On one view [and ALDI adopts this conservative view], notices should be provided to each individual occupier in a strata scheme.

2. Provide for a different, smaller, radius for notifications in the metropolitan areas.

In areas of low density, it is more likely that a resident located within a 200-metre radius might experience some adverse impact from the operation of a liquor store. In the case of high density living, this is far less likely to be the case.

For example, a person living in a house 200 metres away from a shopping centre in a country town might see people who drink on the street and who engage in anti-social behaviour. In the context of a densely-populated suburban environment, a person on the 11th floor of a strata building 200 metres away from Westfield Bondi Junction is much less likely to see street drinkers.

An appropriate alternative reform would be to provide for a 100-metre radius in the case where proposed licensed premises are located within a metropolitan area and 200 metres where the proposed licensed premises are located outside a metropolitan area.

The term "metropolitan area" is already defined in cl 80 of the Liquor Regulation.

We appreciate that the proposed Regulation includes a provision which enables the Authority to determine a shorter or longer distance, on a case by case basis, where special circumstances are said to exist. That is designed to provide for a measure of flexibility in cases where notification requirements are onerous.

Our concern with regard to that provision is that it will give rise to delays as applicants are required to state and argue a case to modify the standing notification requirements. It is preferable to have a standing set of well-defined and clear rules regarding notification that applicants can readily comply with, without having to seek an interim or advance determination of the notification area.

Issue #2 – Determining the Relevant "Organisations" "Located" in a Local Government Area

The intention of cl 22(2) is to widen the range of current community consultation by expressly notifying Aboriginal medical services, domestic violence support services, and organisations receiving RGF funding.

ALDI understands and accepts the underlying rationale; which is that such organisations may have an interest in the outcome of licence applications.

However, ALDI is concerned to ensure that there is some certainty and practicality concerning precisely who is required to be notified.

The present definition of the organisations required to be notified is vague. Being vague, the definition is apt to cause uncertainty and possible litigation.

In particular:

- (a) What is an organisation that “provides Aboriginal medical services”? Does that include organisations that provide medical services *only* to Aboriginal people? Does the requirement to notify “an organisation” exclude doctors who trade as natural persons, but include incorporated medical practices?
- (b) What is an organisation that “provides domestic violence support services”? With respect, there are many community organisations that offer support services to people who may have been involved in domestic violence. For example, community housing organisations (whilst not specifically targeting their services to victims of domestic violence) often are called upon to house people who have been the victims of domestic violence. Does that make them an organisation that “provides domestic violence support services”?

Some organisations act as coordinating agencies for a number of different community services (including youth groups, aged care, child care, multi-cultural services, medical outreach). In the course of providing those services, those organisations would inevitably provide some services to the victims of domestic violence. Are those services required to be notified?

In ALDI’s view, there is merit in publishing a list of domestic violence services that applicants can refer to and notify as required. It is desirable that Liquor & Gaming NSW publish a list of known service providers in each local government area, which is then periodically updated. Additional support services can elect to opt in from time to time.

A second issue is the question of when an organisation is said to be “located” within a local government area. Many such services will have an office in one place, but will offer services to people residing in a wider area. For example, if a support service has its offices in Liverpool, but provides services to people in the Fairfield LGA, can that organisation be said to be “located” in Fairfield?

There is an inherent uncertainty in the proposed definition, which is apt to cause confusion, delay, uncertainty and cost for applicants.

The requirement is also apt to give rise to inconsistent results, as some applicants will notify services in neighbouring areas whereas others will not.

Clarification of these aspects is required.

A central register of appropriate services (and the local government areas to which those services relate) would provide greater certainty to industry and avoid these difficulties.

Issue #3 – Affixation of Notices to Every Entrance to a Shopping Centre

ALDI foresees particular difficulty with regard to proposed cl 23(4).

This requires that the required form of Liquor Act notice be “*displayed at or near every entrance by which members of the public may enter the premises...in such a manner and in such a position that persons coming in by the entrance would reasonably be expected to be alerted to its contents.*”

In the case of large shopping centres, it is common for there to be multiple entry points into a mall area housing the shops. Usually, there will be multiple entry points from a carpark (either through ramps, escalators or lifts), multiple entrances from the street and, in some cases, multiple entrances from adjoining properties. It is conceivable that this will require applicants to put up many notices. That, in turn, will require applicants to ensure that all those notices are kept up at all times during the notification period.

ALDI’s experience has been that shopping centre owners are resistant to notices being placed in common areas. In some cases, it might be impossible to comply with the requirement.

In any event, the requirement is excessive, in ALDI’s view. It ought be sufficient that a single notice should be erected in a position where it can be readily seen by members of the public passing by the proposed licensed premises.

In cases where there are multiple liquor applicants (for example, the refurbishment of an existing food court area with the provision of a number of licensed restaurants), ALDI foresees circumstances where multiple notices will need to be posted at multiple entry points in shopping centres.

ALDI submits that, for the reasons set out above, cl 23(4)(b) should be deleted.

Issue #4 – Fee Hikes

ALDI does not support further increases in fees, including the proposal for automatic fee increases in line with inflation.

Very substantial fee increases were implemented in late 2014, which effectively increased licence fees by an average of around 80% at that time.

In light of those increases, it is difficult to justify entrenching future increased costs to industry and consumers.

Indeed, entrenching automatic future increases acts as a disincentive to governments finding ways to make regulatory processes more efficient.

Issue #5 – Inappropriate Exercise of Discretion to Extend Time for the Making of Submissions

The proposed new Liquor Regulation contains a provision (cl 27(4)) which enables the Authority to extend the period in which persons may make submissions in relation to a particular application. There are no limits to the time extensions that may be granted.

A similar provision is contained in the existing Regulation: cl 12(4).

ALDI appreciates that, in particular circumstances, it may be in the public interest to extend some time for the making of submissions. For example, a neighbouring occupier may have been hospitalised and has therefore been unaware of an application made next door. An extension of time may be appropriate in those circumstances, in order to provide practical fairness.

On the other hand, it is important that applications be determined with reasonable promptitude and that there should be some practical certainty around the timeframes in which applications can be expected to be dealt with.

Industry participants enter into contracts to acquire or lease sites on the basis that licensing approvals will be procured (or refused) within a certain timeframe. Property owners, in particular, require specific timeframes within which applications must be determined.

The Regulation sets out an important function in specifying the timeframes for the making of submissions.

In ALDI's experience, these timeframes are sometimes exceeded (and sometimes well exceeded), occasioning substantial delay when officers routinely allow extended time for stakeholders and agencies to make submissions. These submissions can extend timeframes well past the 30-day deadline date.

This also raises a related issue. Departmental officers often actively seek out submissions from government agencies (such as Police or Council) even where those agencies have indicated that they do not have a substantial response. This gives the appearance that the relevant departmental officers are acting in a partisan manner. The communications sent to those government agencies appear to imply that the relevant agencies *should* object to an application or else provide further data which might then form the basis of a refusal.

Even attributing the most honest of intentions to officers who engage in this practice, it nonetheless creates an appearance of bias on the part of the regulator.

For these reasons, ALDI considers that proposed cl 27(4) should be qualified. The power to extend time to make a submission should not be generally exercisable "in such cases as the Authority thinks fit" but rather, "in special circumstances" only, and where reasons for the extension have been communicated to the applicant simultaneously with the exercise of the power.

Further, the power should be exercised no later than fourteen (14) days after the last date on which submissions were due, to provide a measure of certainty regarding the length of the process.

Extensions of time, if granted, should not extend more than 14 days after the original due date for making submissions.

Those changes would appropriately balance the certainty that industry requires, with a need for some flexibility to take account of special circumstances where submissions are unable to be made within the 30-day period.

Thank you

ALDI appreciates the opportunity to provide this input into the remake of the Liquor Regulation.

ALDI agrees generally with the tenor of the amendments but respectfully suggests that the Regulation can be further improved, and potential anomalies removed, by making the improvements suggested in this submission.

Yours faithfully



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Chatswood Westfield



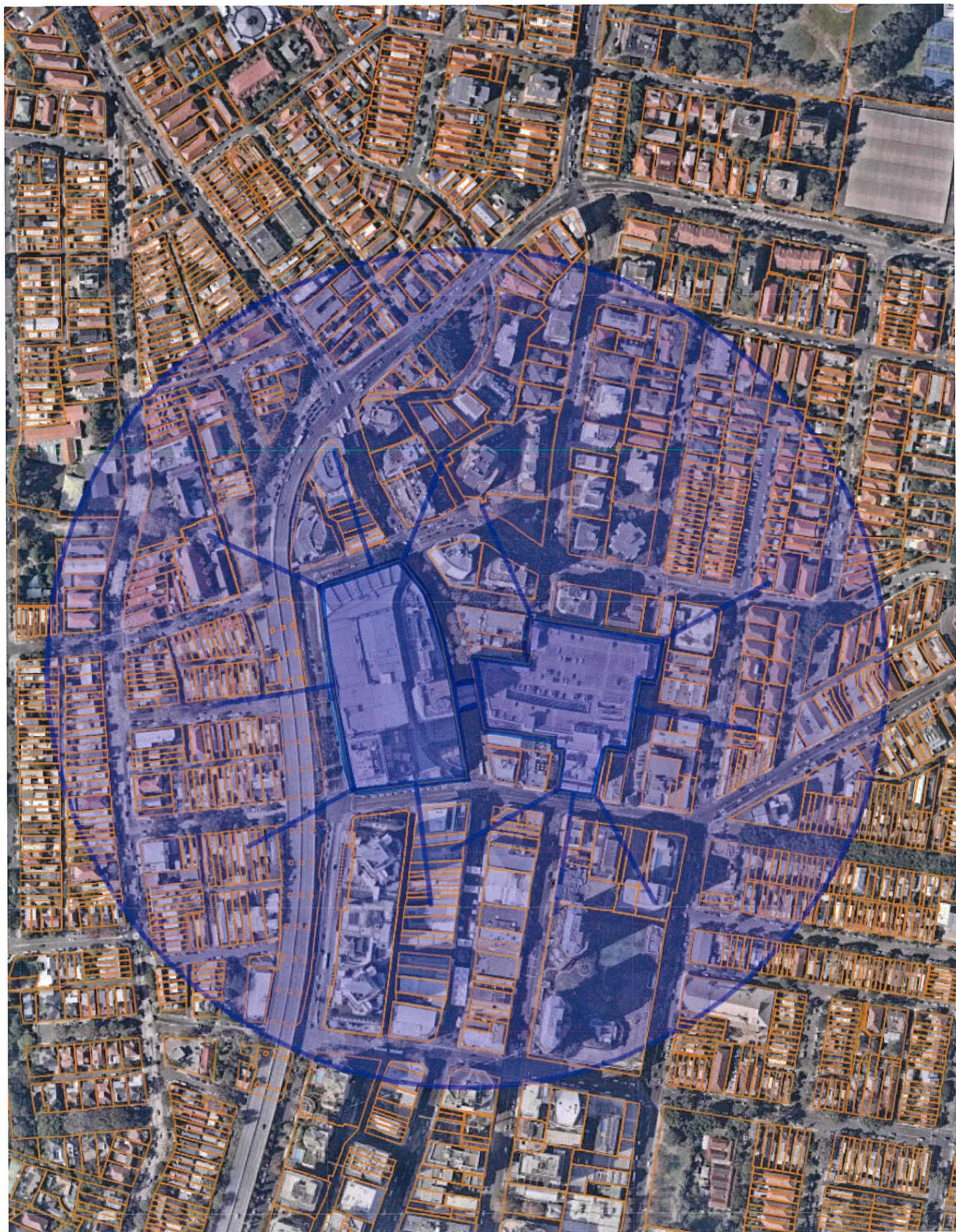
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BONDI JUNCTION WESTFIELD



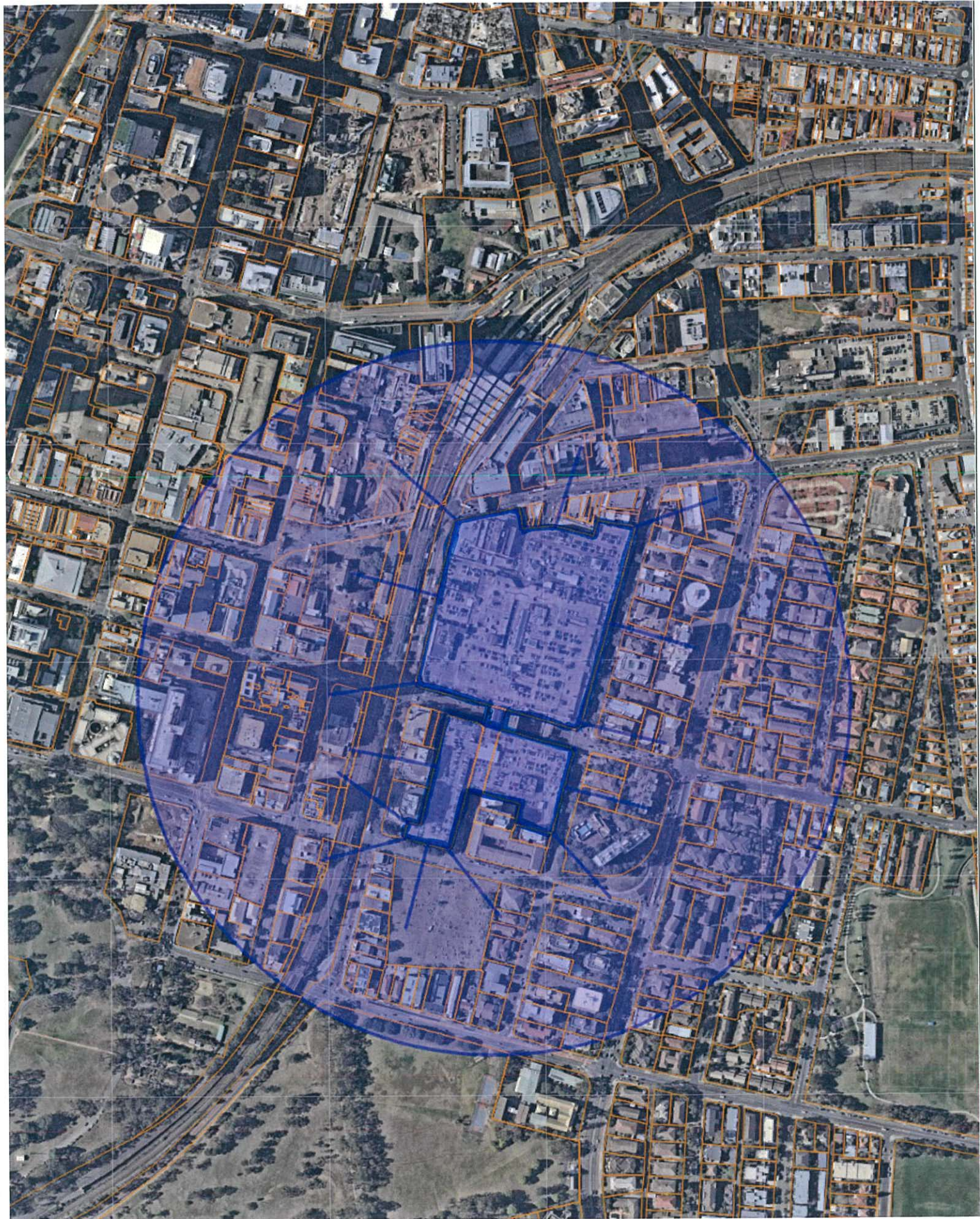
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REAL ESTATE
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Parranatta westfield



87 Marsden Street- 7 floors



