



**ALDI Stores**

(A Limited Partnership)  
ALDI 911 100 565 019

11 May 2011

Retail Industry Inquiry  
Productivity Commission  
GPO BOX 1428  
**CANBERRA CITY ACT 2601**

By Email: [retail@pc.gov.au](mailto:retail@pc.gov.au)

Dear Sir/Madam,

**Submission to the Productivity Commission Issues Paper March 2011**

We refer to the Productivity Commission Issues Paper (March 2011) regarding the economic structure and performance of the Australian Retail Industry. More specifically, we respond to Part 5 of the Paper which deals with planning and zoning regulation and its impact on the performance and efficiency of the industry and impediments to its contribution to the Australian economy.

By way of background, we confirm that since ALDI's initial investment in Australia, we have opened more than 250 stores across the eastern seaboard, invested more than \$2 billion in the Australian economy and now employ more than 5,000 Australians. This network of ALDI Stores has dramatically altered the grocery retailing landscape by bringing increased competition, offering more choice to consumers, significantly lowering grocery prices for millions of Australians and creating new employment opportunities.

Approximately half of ALDI's store network comprises freestanding stores generally with a gross building area of up to 1,500 square metres and approximately 80 car parking spaces. The balance of ALDI's stores are leasehold tenancies within shopping centres.

In comparison to "full-line" supermarkets of up to 4,000 sq.m., ALDI's stores are defined as "small format".

ALDI Stores offer a range of approximately 1,000 high quality 'private brand' products that enable customers to undertake a typical weekly shop, have only a small number of deliveries per day and limited trading hours, thereby having a relatively low impact on local amenity.

Since ALDI's establishment in Australia there have been a number of impediments that have significantly reduced growth and expansion opportunities, particularly for freestanding freehold stores.

ALDI would identify the shortage of appropriately zoned land as the primary impediment to its growth in Australia. Importantly, a public policy response to effectively address this situation must go beyond simply deleting anti-competitive features of current planning processes and extend to facilitating a competitive business environment for non-incumbent retailers.

The major planning and zoning issues that continue to affect the rollout of ALDI stores and other non-incumbent retailers across Australia are highlighted below:

- The unavailability of appropriately zoned and sized land. The structure planning process for activity centres at Local Government level varies considerably between Local Councils and States, is often years behind schedule, bears no relevance to changing community, business and economic needs and often results in a minimal expansion of suitably zoned retail/commercial land in existing Activity Centres in which retailers, including ALDI, wish to locate.

- Lack of 'as of right' retail/commercial zones in and around Activity Centres and, critically, the lack of recognition in planning policy of "small format" supermarkets as a new category of development;
- Large numbers of highly prescriptive zones across all States and highly prescriptive descriptions of businesses allowed in these zones;
- Inconsistent and unclear implementation guidelines to describe project eligibility for alternative development assessment paths;
- Slow, costly and unpredictable land re-zoning processes with a high degree of uncertainty, even with meritorious strategic support which are controlled almost entirely by Local Councils without appropriate rights of appeal;
- Limited incentive for Council's to consider competition or net-community-benefit in outweighing third party objections; and
- Vexatious and or fundamentally baseless third party objections and appeals which are uncontrolled and permissible in the process of development assessments under the various States' planning legislation and policies.

We contend that the following recommendations represent the greatest opportunities for Government to influence planning systems and regulations to facilitate competition. These recommendations are based on ALDI's experiences over the last decade and the difficulties experienced in various eastern seaboard states finding appropriate sites and securing development approvals.

Our recommendations are as follows:

### **1 Ensure an adequate supply of land in appropriate locations**

The unavailability of sites in appropriate locations is the most significant barrier that is stalling the roll out of ALDI Stores across Australia. The key issue ALDI faces (and other non-incumbent supermarket operators and retailers) is the unavailability of appropriately zoned and sized land. Planning policy throughout Australia seeks to locate larger scale retail and commercial uses in 'activity centres.' We understand the merits underpinning activity centres policy, however, at a basic level, planning authorities need to ensure that there is an adequate supply of land in these strategic locations. This is manifestly not the case currently, particularly in metropolitan areas of Australia's eastern seaboard states (ALDI does not currently trade in South Australia, Western Australia, Tasmania or Northern Territory). For this reason, an effective policy response should be seen as having both a:

- long-term objective: expanded supply of land, as appropriate, in particular activity centres (see reference to retail catchment studies in Section 5, below); and
- Short-term objective: sufficient flexibility in the planning system to permit development of 'small format supermarkets' in edge-of centre or out-of-centre locations.

From a competition perspective, the lack of suitably zoned land translates into a significant advantage to incumbent supermarket operations and this will continue until there is strong recognition and action taken to address the issue of retail land supply.

In relation to the short-term objective set out above, we note that there has been a move towards a 'sequential test' approach in Victoria and New South Wales to help facilitate development where it can be demonstrated that there is no available land in designated activity centres.

The sequential test approach directs that edge-of-centre locations, or out-of-centre locations can be considered where there is no available land within activity centres.

This move towards a sequential test approach is recognition that activity centres policy has failed to provide an adequate supply of land for retailers and other business to enter new markets, and that this situation is not amenable to a 'quick fix'.

Where an edge-of-centre or out-of-centre location is identified under the sequential test in Victoria, in our experience these sites, in the majority of instances need to be rezoned to allow retail land uses. Problematically, under the sequential test approach in Victoria, the onus is on the applicant to identify the site and demonstrate why the site should be rezoned. This approach requires applicants such as ALDI to go through a lengthy rezoning process (up to 2 years) where the outcome is highly uncertain. Furthermore, the work required to be undertaken to justify a rezoning, is considered to be costly, particularly given the uncertainty surrounding the decision making process of rezoning requests. While the sequential test approach is clearly preferable to a blanket prohibition on development outside activity centres, we consider that this approach does not deal with the fundamental issue of ensuring that there is an adequate supply of appropriately zoned and located land to cater for future growth.

In the case of planned (new) activity centres in growth areas, we have noticed that in many cases, local planning authorities are failing to 'future proof' activity centres. The standard approach is to designate an area of land as an activity centre and then encircle it with periphery land uses including medium density residential development. There needs to be substantial rethink on how activity centres are planned and how they can be future-proofed to cater for inevitable and predictable growth. We consider that this can be achieved by restricting the fragmentation of land in edge-of-centre locations and identifying areas for future retail/commercial development through targeted strategic planning. Local planning authorities could then take into consideration the future growth needs of the activity centre before approving long term, 'generational' type land uses, such as residential land use on the periphery of activity centres, which as we are witnessing now, creates a barrier to future expansion.

## **2 Encourage 'small format' supermarkets in activity centres**

ALDI believes that the concept of 'small format' supermarkets (i.e. up to 1,500 square metres gross floor area) should be introduced to state and territory planning policies. This would provide further opportunities for expansion of non-incumbent competitive grocery retailers like ALDI who, by virtue of their size, limited trading hours and relatively few truck movements, are qualitatively different from 'full-line' supermarkets (which, for example, may be up to three times larger in gross floor area).

Currently, ALDI is typically included within the broader definition for retail shop and assessed as any other supermarket would be, despite significant differences in the scale and intensity of development. As a result, the distinctive characteristics of an ALDI Store (and other small supermarket operations such as IGA and FoodWorks etc) are therefore not acknowledged or understood when applications are assessed by relevant authorities. These smaller format supermarkets sit between a traditional corner store or convenience store and a full-line supermarket and hence, we recommend governments establish a specific definition for smaller scale supermarkets. This would enable small format supermarkets, for the purpose of land use zoning controls, to be located in a broader range of zones without requiring a planning permit for the use of land.

For example, in Victoria, a small format supermarket definition could be included in periphery activity centre zones, such as the Business 2 and Business 3 zones, so that a small format supermarket use is permitted 'as-of-right'. A permit would still be required for development/building approvals which would control building design and amenity considerations. This would provide greater certainty and would provide the opportunity for retailers such as ALDI to locate near existing activity centres where there is insufficient Business 1 Zone (the primary retailing zone). In our view, this would have a considerable positive competitive impact for the community.

## **3 Improve the rezoning process**

The rezoning process is different to that of the Development Application process. Unlike the development application process, there are no rights of appeal in the Victorian, NSW and Queensland planning systems', in the event a planning authority reject a rezoning request, nor are there any statutory timeframes. This leads to great uncertainty, increased costs and time delays. It is our view that this process is potentially holding up significant investment and future jobs to be created within Australia which are good reasons for the current process to be reviewed.

There are a number of options that could be implemented to improve the rezoning processes in Australia. Firstly, the rezoning processes in Victoria, NSW and Queensland, could be amended to include a right of appeal and statutory timeframes for local planning authorities to consider applications. This would be an effective tool in lowering current barriers and providing an increased level of certainty.

A second option could be to establish a statutory body or advisory committee in each state to assess rezoning requests. The committee could include planning experts, representatives from local governments and perhaps appropriate others, who would assess the rezoning request against local and state planning policy. In our view, this process would enable rezoning requests to be considered on the merits of the proposal, by experts at arm's length and decisions made that reflect a balancing of all of the issues at hand.

## **4 Elevate the weight given to competition and community benefit in the assessment of small format supermarket proposals**

There is clear lack of consistency between planning authorities in the weight given to issues on which planning decisions are made. In the current environment, the benefits associated with creating a statutory environment that encourages small format supermarkets in terms of economic investment, jobs creation and increased competition, are not given appropriate weighting. This is a fundamental barrier to ALDI's expansion across Australia.

If economic benefits, job creation and increased competition were given an elevated weighting in the decision making process, then development applications and rezoning requests could be assessed in a more balanced and meritorious manner.

We consider that there needs to be a refocusing of the relevant matters for consideration when assessing a development application and we consider that the Productivity Commission is well placed to initiate and lead an industry debate about the weighting given to economic benefits of development proposals.

## **5 The establishment of 'as of right' retail zones**

Although planning reforms have been implemented across Australia which includes attempts to rationalise and establish uniform zones, there is an absolute need for zones to be established that will allow the use of land for retail/shop to be 'as of right'.

If uniform 'as of right' retail zones were established for retail/shops uses, a supermarket developer such as ALDI would be able to identify sites appropriate to its requirements within the zones and know that it need only apply and obtain development approval for buildings and works to facilitate the use. Thus, the zones would establish greater certainty for small format supermarket operations as they would only be required to successfully negotiate and address the design of the development and its response to the surrounding built environment to obtain development approval from the relevant planning authority.

The Business 1 Zone within the Victorian Planning Scheme is an excellent example of the type of zone and specific planning provisions that would be sought in order to achieve such an outcome. Within it, no permit is required to use land for the purpose of a supermarket. Once established it will also be important to ensure the zones are applied in appropriate locations, particularly in and around existing and any planned future activity centres.

In order to aid Government in its application of appropriate zones, we recommend retail catchment studies are undertaken to objectively identify the areas where there is demand, for example, for additional competitive grocery retailing but a shortfall of appropriately zoned land. Although the studies may not result in an immediate rezoning of land, the studies would pin point locations where the Government needs to facilitate statutory or policy change if it is to assist non-incumbent operators to enter the market and establish themselves as a viable business.

## **6 Limit third party rights in development application and rezoning requests**

We believe there is serious merit in seeking to minimise the opportunities for non-bona fide third party involvement in development applications and rezoning requests. Local planning authorities exist in highly compromised political environments which can create significant uncertainty within the planning process. We support the ideals of consultative planning; however in our view, planning systems in Australia provide too much scope for objectors (individual persons or businesses) to lodge objections and to seek an appeal of decisions, particularly where ALDI has applied for a permit in appropriately zoned "as of right" land. The status quo in Australia allows competing businesses to lodge objections and to appeal decisions to frustrate the development approval (or rezoning) process. This is inappropriate and is significantly impacting competition in many market sectors and adding significant time and cost to development.

We consider that the following could be considered to address these issues:

- Adopt an 'objector pays' model – A party that wishes to object to a development application or rezoning request would pay a fee to do so. This would have the impact of discouraging objections for persons or businesses that make vexatious and baseless objections.
- Monitor objections from retail players to ensure any anti-competitive action is identifiable. This could be achieved by requiring commercial objectors (businesses) to clearly detail the grounds on which the objection is made and the businesses interest in the proposal (i.e. location and type of business etc). This would help planning authorities to identify commercially based and vexatious objections. For example, we note that the NSW Government is proposing to develop guidelines for considering planning objections, including possible sanctions against those with vexatious objections, and has sought to develop a framework in which anti-competitive activity conducted under the guise of planning objection is weeded out of the system. The final policy approach is set for imminent release.

## **7 Conclusion**

We strongly support any improvement to the structure, performance and efficiency of the retail sector and, in particular, the removal of planning and zoning impediments which currently limit ALDI's growth and restrict competition in Australia's supermarket sector.

We trust that our submission is helpful and look forward to the Commission's Report.

To request further information, or to discuss this submission, please do not hesitate to contact the undersigned on 03 8369 3211 at your convenience.

Yours sincerely,

**Andrew Starr**  
Managing Director  
ALDI Stores  
Derrimut Region