

NSW DEPARTMENT OF PLANNING & INFRASTRUCTURE SUBMISSION ON PRODUCTIVITY COMMISSION DRAFT REPORT: *ECONOMIC STRUCTURE AND PERFORMANCE OF THE AUSTRALIAN RETAIL INDUSTRY (JULY 2011)*

Introduction

This submission complements the submission already made by the NSW Department of Planning and Infrastructure (the Department) by letter dated 16 June 2011, in response to the Productivity Commission Issues Paper of March 2011 on the same subject.

The Department's principal area of interest in the draft report is Chapter 7, Planning and zoning regulation.

This submission provides advice about the context in which planning for retail development occurs in NSW, and comments on the draft report's recommendations.

In regard to the draft recommendations in chapter 7, the Department's position is as follows:

- Draft recommendation 7.1: Supported.
- Draft recommendation 7.2: Supported, in principle.
- Draft recommendation 7.3: Supported, with a suggested amendment.
- Draft recommendation 7.4: Supported, in principle.
- Draft recommendation 7.5: Noted.
- Draft recommendation 7.6: Supported, in principle.

A draft *Centres Policy* was exhibited in 2009 which sought to address many of the same aims as the draft report, such as seeking to ensure that planning identifies sufficient land to accommodate demand for new retail development to facilitate new entrants into the market and to promote competition. Substantial stakeholder support was expressed for the draft policy which is being given further consideration. In the meantime the *Integrated Land Use and Transport* policy package (ILUT) continues to provide direction regarding the location of retail development across NSW. For the Sydney Region, this is supported through the *Metropolitan Plan for Sydney 2036*.

New South Wales land use planning context

Providing for the efficiency of the retail sector is an important concern of land use planning in NSW. Responding to the needs of the retail sector occurs within the broader context of planning to promote the overall social and economic welfare of the community. An important concern of urban planning, therefore, is to balance the needs and priorities of different landuses and activities – in a way which facilitates the creation of efficient and attractive urban areas with equitable access.

In NSW, this planning occurs within the framework established by the *Environmental Planning and Assessment Act 1979*. The objects of the Act (see appendix 1) cover a broad range of matters.

The object which most closely aligns with the scope of the Commission's inquiry is object (a) (ii) which encourages the promotion and co-ordination of the orderly and

economic use and development of land. Object (a)(i) encourages, inter alia, the proper management of cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment. Other objects include those which encourage ecologically sustainable development and the provision and co-ordination of community services and facilities.

New South Wales centres policy

In NSW, the centres policy – encouraging the concentration of a wide range of business and service activities in accessible urban centres – has been consistently applied since the 1950s, so as to maximise the overall productivity of urban areas.

The centres policy has sought to concentrate activity in accessible centres in order to: maximise the benefits of infrastructure investment; allow easy access to essential services; enhance the viability and attractiveness of higher density housing; and stimulate private investment by demonstrating strong and consistent encouragement for growth in existing and new centres.

All regional strategies and metropolitan strategies in NSW have identified centres policy as a key element for long term, sustainable spatial planning. The *Metropolitan Plan for Sydney 2036*, published in December 2010, identifies a series of Strategic Centres as being of greatest significance in the city's development. Centres policy is also articulated, on a statewide basis, in the NSW *Integrating Land Use and Transport* policy package (ILUT), published in 2001.

The objectives of the centres policy include locating trip-generating development which provides important services in places that: help reduce reliance on cars and moderate the demand for car travel; encourage multi-purpose trips; encourage people to travel on public transport, walk or cycle; and provide people with equitable and efficient access.

The ILUT package, *The Right Place for Business and Services – Planning policy* (the policy), provides direction for specific land uses. Regarding retail development the policy notes, inter alia "Retail is essential to the activity and 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." (P6)

Regarding bulky goods outlets, it is noted that these have a physical need for space to display and handle large goods, however, they can be located in centres. When it is not realistic for bulky goods outlets to be in centres, they should be located in one or two regional clusters to help moderate travel demand and allow for public transport accessibility. Existing clusters should be reinforced. If justified, new clusters should be in areas that would indirectly support major centres and link to public transport corridors.

The policy notes that trip-generating development cannot always be located within accessible centres because of the constraints of urban structure, redevelopment opportunities or local circumstances. Alternatives may be acceptable when a net community benefit can be clearly established.

A draft *Centres Policy* was exhibited in 2009 that sought to update the approach in ILUT. The draft policy included the important aim of seeking to ensure that planning accommodates market demand for retail development, in particular to ensure sufficient land is zoned to meet projected demand, and this is consistent with the aims of the draft report. There was substantial stakeholder support for the proposed policy which is being given further consideration.

The benefits of centres policy

A report prepared for the Australian Government Treasury, *An Evaluation of Planning Systems – Barriers to Entry for Grocery Retailing* (SGS Economics & Planning, 2010) notes, "In most planning strategies in the States and Territories, there is a hierarchy of centres in which existing or planned "higher order" centres act as the focal points for private and public investment... This co-location of facilities and employment opportunities, in turn, facilitates higher density housing, and leads to more compact forms of urban development at the town or metropolitan level. Where vibrant centres do not exist, or if they are unable to "promise" a continuity of services and public transport for their walkable catchments, it is likely that households will prioritise space – in dwelling floor area and lot size – over convenience of access to services..." (pp 7-8)

The SGS report identifies a nexus between the management of retailing land uses and overall metropolitan structure, and suggests that lower density cities with more loosely regulated retailing gives rise to greater vehicular travel for shopping purposes, carrying with it a range of externalities. (P8)

The Department's submission to the Productivity Commission's March 2011 Issues Paper has previously asserted that retail development plays a significant role in shaping the form and function of urban areas, and that the amenity provided by centres which offer a broad range of retail services can help to make adjacent higher density residential development a more viable and attractive form of housing.

In Sydney, the attractiveness of centres as a focus for higher density housing is critical.

A 'compact city' policy setting is supported by research commissioned in the preparation of the *Metropolitan Plan for Sydney 2036*, into alternative growth paths for Sydney – which found that accommodating 70 per cent of Sydney's housing growth in existing urban areas, and 30 per cent in greenfield release areas, would provide savings of approximately \$5 billion to society over the life of the Plan (2006 to 2036) relative to a 50/50 growth path (Centre for International Economics, 2010).

Furthermore, with sustainability and community health in mind, the *Metropolitan Plan* aims to locate 80 per cent of all new housing within the walking catchments of existing and planned centres of all sizes with good public transport.

Comments on draft recommendations

Draft recommendation 7.1

State and territory governments should broaden zoning within and surrounding activity centres to facilitate new retail formats locating in existing business zones.

The Department of Planning and Infrastructure supports this recommendation.

Providing space for new retail operations, and the expansion of existing retail operations, is an important concern of land use planning. In NSW, urban centres have consistently been identified as the most appropriate place for this growth to occur.

The draft report notes, "Competition amongst retailers is most intense when they are geographically close. While this type of localised competition is becoming less prevalent for goods that are easily purchased on the internet, to the extent that restrictive zoning and activity centres policies locate retailers closer than they would otherwise choose, these policies may improve competition and lower prices... But if there is a scarcity of appropriately zoned retail space (that is, some retail stores are excluded from the area because of insufficient space), or there are large numbers of prescriptive requirements which unjustifiably restrict competition, planning and zoning can have a harmful effect by creating local retail monopolies." (P199)

It is encouraging that the draft report acknowledges that locating retailing in centres may improve competition. As has been suggested earlier in this submission, the Department asserts that the benefits of clustered retail activity extend beyond improved competition in that sector – and include improved accessibility, improved conditions for higher density housing, and the wider benefits of a compact city.

It is acknowledged that a scarcity of appropriately zoned retail space within the central part of existing centres, and within the walking catchments of those centres, can restrict the entry of new operators and limit the extent to which existing operators can expand operations in response to increased demand– such as increased housing around the centre.

As a consequence, NSW's draft Centres Policy encouraged planning to accommodate future projections of demand and, in particular, for councils to zone sufficient land to meet this demand. The draft policy also encouraged strategic planning to be based on analyses of projections of future supply and demand and the Department is currently working towards guidance for councils to assist them in carrying out such work.

The *Metropolitan Plan for Sydney 2036* contains a number of relevant actions that:

- *Plan for centres to grow and change over time.*

This action establishes the important principle that not all centres will continue to play a role that accords with their current place in the centres hierarchy. Some centres in each local government area will be identified for growth, to provide additional housing, employment and services, including retail development. The additional capacity for development within such centres will be provided mainly through local environmental plans (LEPs).

- *Establish appropriate mechanisms in Subregional Strategies to provide sufficient capacity for commercial development in centres, taking into account identified demand.*

The commentary which follows this action states that by providing adequate capacity for commercial development in or adjacent to the commercial part of existing centres – or in identified emerging centres – more sustainable growth can be achieved, avoiding pressure for out-of-centre development.

Draft recommendation 7.2

Local governments should significantly reduce prescriptive planning requirements to facilitate new retail formats locating in existing business zones and ensure that competition is not needlessly restricted.

The Department of Planning and Infrastructure supports this recommendation, in principle.

Reducing prescriptive planning requirements to facilitate new retail formats locating in existing business zones is supported, to the extent that planning should accommodate demand for all uses including other commercial and industrial landuses.

The “needless” restriction of competition should always be avoided, to maximise the economic efficiency and productive capacity of the city. However, strategic planning and zoning in NSW limit the supply of land for retailing in out-of-centre locations – in order to achieve broader productivity benefits for centres.

In NSW, LEP Practice Note PN 11-002, *Preparing LEPs using the Standard Instrument: Standard zones* (Department of Planning, 2010b) provides advice to councils regarding the preparation of local environmental plans, and encourages the concept of an “open zone” for some Business Zones. The Practice Notes states, “An open zone is one where a broad variety of land uses can be considered... This “open” approach allows greater flexibility... The open approach minimises the need to undertake “spot rezonings” or other ad hoc LEP amendments to permit additional acceptable uses that were not anticipated during the initial LEP preparation.” (P2)

Distinct from Business Zones, are Industrial Zones – which are intended to protect land being used for industrial purposes (and other particular purposes such as warehouse or distribution uses) for ongoing industrial use. It is important to protect this land from retail uses, including bulky goods premises, and forward planning should be carried out to identify land to meet the demand for retail uses elsewhere when possible. That is, providing for the needs of the retail sector should not be at the expense of planning to accommodate other landuses.

Furthermore, the *Standard Instrument* (which applies to the preparation of local environmental plans in NSW) contains a number of Business Zones for specific non-retail purposes. For example, the B7 Business Park zone is principally intended to apply to land identified for office and light industrial uses. In Sydney, some of the most significant growth in office-based employment in recent years has occurred in business parks such as those at Macquarie Park, Norwest and Rhodes. Given the critical economic role these areas play in generating employment, it is important to restrict their use for other types of development, such as retail premises and residential development.

Draft recommendation 7.3

Governments should not consider the viability of existing businesses at any stage of planning, rezoning or development assessment processes. Impacts of possible future retail locations on existing activity centre viability (but not specific businesses) should only be considered during strategic plan preparation or major review.

The Department of Planning and Infrastructure supports this recommendation, but suggests the second sentence could be amended to “Impacts of possible future retail locations on existing activity centre viability (but not specific businesses) should only be considered during strategic plan preparation or major review or rezoning.” This suggested amendment recognises that proposals to rezone land to provide for retail development may occur outside of the preparation or “major review” of a strategic plan for an area.

The viability of particular businesses should not be a matter for consideration in the planning system. The viability of existing centres and planned centres is, however, a valid consideration, given the investment of governments and the private sector in servicing existing centres with infrastructure and services not easily replicated in other locations.

Draft recommendation 7.4

Local government should facilitate more as-of-right development processes to reduce business uncertainty and remove the scope for gaming by competitors.

The Department of Planning and Infrastructure supports this recommendation, in principle.

In NSW, the introduction of the *Standard Instrument* for the preparation of local environmental plans is providing a greater degree of predictability and certainty about the type of development that is appropriate in given locations.

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (the Codes SEPP) (Department of Planning, 2008) provides for many “change of use” scenarios (such as when the use of a building changes from one type of retail premises, to another retail premises) to occur as exempt development (requiring no application) or as complying development (which can be applied for through a process less complicated than a development application). The policy also allows for particular alterations to be carried out to buildings used as retail premises, as exempt or complying development.

The overall effect of the *Standard Instrument* and the Codes SEPP is to provide greater certainty for proponents of retail premises and other types of development.

The extent to which the planning system is simplified for the purpose of facilitating development will need to continue to be balanced with mechanisms for assessing the appropriateness of proposed development.

Draft recommendation 7.5

State and territory governments should ensure third-party appeal processes within planning systems include clear identification of appellants and their grounds for appeal and allow courts to award costs against parties found to be appealing for purposes other than planning concerns.

The Department of Planning and Infrastructure notes this recommendation.

Draft recommendation 7.6

State and territory governments should reduce the compliance costs associated with planning systems and development approvals by implementing the leading practices identified in the Commission's recent benchmarking report on planning, zoning and development assessment.

The Department of Planning and Infrastructure supports this recommendation, in principle.

In July 2011 the NSW Government announced a major review of the NSW landuse planning system, including the *Environmental Planning and Assessment Act 1979*. The review of the Act provides an opportunity to consider the practices identified in the Commission's draft report on planning, zoning and development assessment.

APPENDIX 1

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 5

Objects

5 Objects

The objects of this Act are:

- (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land,
 - (iii) the protection, provision and co-ordination of communication and utility services,
 - (iv) the provision of land for public purposes,
 - (v) the provision and co-ordination of community services and facilities, and
 - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
 - (vii) ecologically sustainable development, and
 - (viii) the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

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