

**ECONOMIC STRUCTURE AND PERFORMANCE  
OF THE AUSTRALIAN RETAIL INDUSTRY: PUBLIC INQUIRY (INQUIRY)  
SUBMISSION TO THE PRODUCTIVITY COMMISSION (COMMISSION)  
ON THE DRAFT REPORT OF JULY 2011  
BY STOCKLAND CORPORATION LIMITED (STOCKLAND)**

## **INTRODUCTION**

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Stockland has considered the Commission's Draft Report on the Economic Structure and Performance of the Australian Retail Industry dated July 2011 (**Draft Report**) and is grateful for the opportunity to make the following submissions in respect of that Draft Report.

As a member of the Shopping Centre Council of Australia (**SCCA**), Stockland supports and adopts the submission of the SCCA of September 2011. In particular, Stockland focuses on the Commission's findings and draft recommendations in respect of the related issues of planning and zoning regulation and retail tenancy leases. Stockland's submission also addresses the following issues:

- the structure of the retail industry;
- trends and issues related to online retailing; and
- retail trading hours regulation.

## **SUBMISSION**

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### **1. PLANNING AND ZONING REGULATION**

#### Importance of activity centres policies

Stockland supports activity centres policies.

Stockland adopts the submission of the SCCA that activity centres policies support other Government policies currently being pursued, including, in particular, the National Urban Policy and the nine key criteria for future strategic planning of capital cities – namely, that capital city strategic planning systems should, in short:

- (a) be integrated;
- (b) provide for a consistent hierarchy of future orientated and publicly available plans;
- (c) provide for nationally significant economic infrastructure (both new and upgrade of existing);
- (d) address nationally significant policy issues;
- (e) consider and strengthen the networks between capital cities and major regional centres, and other important domestic and international connections;
- (f) provide for planned, sequenced and evidence-based land release and an appropriate balance of infill and greenfield development;
- (g) clearly identify priorities for investment and policy effort by governments, and provide an effective framework for private sector investment and innovation;
- (h) encourage world class urban design and architecture; and
- (i) provide effective implementation arrangements and supporting mechanisms.

(see *Metropolitan Plan for Sydney 2036*).

Further, activity centres cluster retail activities into proximate areas resulting in competitive outcomes for consumers. As the Commission states, "*Competition among retailers is most intense when they are geographically close to each other.*"<sup>1</sup>

Stockland also notes that current planning regimes, which aim to match supply with demand, limit the risk of over development associated with less stringent planning controls (such as has occurred in the US, resulting in significant oversupply and high vacancy rates). While the intent of a system that supports out-of-centre development might be to increase competition, the unfortunate and inevitable outcome is likely to be poorer quality retail offerings and oversupply.

To avoid the risk of over-supply, while maintaining a healthy level of competition, Stockland supports a combination of the broadening of activity centre zones<sup>2</sup> and ensuring that zoning provisions are sufficiently flexible that retail uses are considered as permissible developments with little or no restrictions.

In Stockland's view, the broadening of land use zoning and the increased flexibility of the planning system to accommodate new and additional retail formats will result in more competitive outcomes and increased choice for consumers. Stockland reiterates that such zonings should sit within a clear framework of activity centres and not be the result of spot rezoning which favour one retail format over another. These types of rezoning, while attempting to accommodate new retail formats, will ultimately lead to speculative land acquisitions by existing major retail chains in an attempt to shore up future locations for their own growth.

Operating within a clear activity centres framework will enable responsiveness to consumer needs/preferences and accelerate new and innovative formats thereby providing for greater competition while at the same time achieving the criteria of the National Urban Policy.

Where land use zonings are broadened outside of any agreed activity centre framework, there is unlikely to be any improvement in the Planning framework which might otherwise enable more cost effective, timely and transparent planning outcomes.

#### Highly prescriptive zoning

In Stockland's experience there are seldom shortages of sites within activity centres. In any event, provision for expansion of centres and broader land uses and more flexible zonings will ensure that land supply continues not to be an issue.

Stockland generally supports Draft Recommendation 7.1 that *State and Territory Governments should broaden zoning within and surrounding activity centres to facilitate new retail formats locating in existing business zones*. However, consistent with the position of the SCCA, Stockland considers that this must not favour only new retail formats, but should cover all retail formats to ensure a level playing field.

#### Local planning restrictions on retailers

As set out above, Stockland generally supports Draft Recommendation 7.2 that *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*. However, consistent with the position of the SCCA and with Stockland's position regarding Draft Recommendation 7.1, this must not favour only new retail formats, but should cover all retail formats to ensure a level playing field.

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<sup>1</sup> Commission Draft Report, page 206.

<sup>2</sup> Although, as set out later in this submission, Stockland considers that in many cases there are no shortages of retail sites within activity centres.

Stockland considers that local governments should focus on those issues with external impact (either on the community or sites) such as traffic, servicing, noise, overshadowing where such issues impact public space or adjoining site amenity. Local governments should not focus on / make specifications about internal fit-outs, signage, parking, landscaping, etc.

#### Adverse impact tests on existing businesses or activity centres

Stockland supports the Commission's finding that Governments should not consider the costs and benefits to existing businesses during the development assessment process. However, impacts on the viability of the activity centre should be considered when the application is out-of-centre. This is critical, as decisions in relation to out-of-centre development can have significant implications for local and regional infrastructure.

Stockland supports the Commission's finding that such consideration should occur as part of "*strategic plan preparation or major review*". However, Stockland considers that there is a lack of clarity around the meaning of these terms and that there needs to be clarity so that market participants can more clearly consider their positions and, for example, the scope for business gaming and appeal processes (referred to below) may be reduced.

Stockland supports the introduction of regular market-based reviews which support the growth, development and evolution of centres and enable the rezoning or creation of new centres based on fundamental market drivers.

To ensure that maximum benefit is delivered from a clear Centre's framework, Stockland respectfully suggests the Commission might consider that:

- (a) the alignment of Local Environment Plans (**LEPs**) and broad planning instruments be completed in an expedient manner; these currently take too long to complete and create significant uncertainty, delaying potentially beneficial projects,
- (b) regular timeframes (say, approximately every five years) are agreed for the strategic review of each LEP; and
- (c) clear assessment criteria be established for the strategic planning review and based on factors such as population growth, demand for retail floor space and escape expenditure.

Further, as stated above, there should be an adverse impact test on the viability of the activity centre as a whole in circumstances where there is out-of-centre re-zoning.

Stockland considers that, consistent with a policy that provides for expansion of centres and more flexible zoning within centres, consideration of out-of-centre zoning ought to be considered at a major review.

A consideration of an out-of-centre proposal where the proposed use or development is likely to generate a net benefit to the community, in such circumstances ought to occur together with a consideration of the detrimental impacts on an existing activity centre.

Stockland is concerned that this if such considerations were not to occur, the positive benefits considered by the proposed broadening of the land use zones would be undermined and, ultimately, there may result less certainty, poorer planning and poorer investment outcomes.

In the event that multiple or concurrent out-of-centre applications are considered without due regard for the existing centre viability in circumstances as set out above, there are significant risks of centre failure resulting in stranded assets, wasted infrastructure investment and disincentives in respect of future in-centre investment.

Further, where policy requires that no due regard is given to the viability of either the centre, or individual businesses within a centre during consideration of out-of-centre development,

there is a risk of potential action by those businesses operating in subsequently failed centres.

In a peculiarly Australian context, it is also likely that incumbent major tenants (who are developers in their own right) will acquire and rezone out-of-centre land for future development which may have the likely effect of lessening competition. While the intent of out-of-centre development would be to improve competition, it is highly likely that the result would actually be to lessen it.

#### Lack of 'as of right' developments

As stated above, Stockland supports Draft Recommendation 7.4 that *local government should facilitate more as-of-right development processes to reduce business uncertainty and remove the scope for gaming by competitors to the extent they are within existing centres.*

#### Business gaming and planning systems and appeal processes

Stockland supports Draft Recommendation 7.5 that *State and Territory Governments should ensure that 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.*

#### Compliance costs associated with developments applications and planning scheme amendments

Stockland supports Draft Recommendation 7.6 that *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 assessments.* Those identified practices are summarised in the Draft Report and include, in short:

- (a) providing incentives for development applications to be adequate on first submission (such as escalating penalties associated with incomplete development applications);
- (b) limiting the range of reports that must accompany an application to those essential for planning assessment (leaving, for example, construction site management reports and most engineering and drainage reports until after planning approval is obtained);
- (c) adopting electronic development assessment/planning systems;
- (d) ensuring the skill base of local council development assessment staff includes a good understanding of the commercial implications of requests and decisions and the capacity to assess whether proposals comply with functional descriptions of zones rather than judging them against detailed prescriptive requirements;
- (e) streamlining development applications into assessment 'tracks' that correspond to the level of risk/impact and thus the level of assessment attention required to make an appropriately informed decision;
- (f) using deemed approval provisions for some development assessments taking longer than the statutory decision-making period;
- (g) using deemed approval provisions for referral agencies which fail to meet the referral time limit; and
- (h) as far as technically possible, resolving referrals simultaneously rather than sequentially.

## 2. RETAIL TENANCY LEASES

Stockland:

- (a) supports the Commission's position that this Inquiry should not revisit matters previously investigated by the Inquiry into the market for retail tenancy leases (2008) where no new issues were raised;
- (b) reiterates its support for a single system of national regulation of retail tenancies;
- (c) notes that retail tenancy reforms are not being implemented in a timely manner; and
- (d) supports draft recommendation 8.1 that *COAG should ensure that all current National Retail Tenancy Working Group projects are fully implemented. It should also re-examine the outstanding recommendations from the Commission's 2008 retail tenancy report with a view to expanding the work plan of the National Retail Tenancy Working Group.*

## 3. STRUCTURE OF THE RETAIL INDUSTRY

Stockland broadly concurs with the Commission's findings as to the structure of the retail industry.

However, as set out in Stockland's initial submission, it does not consider it to be commercially realistic to close the productivity gap between Australia and the US for the reasons that Australia does not have the same opportunities for economies of scale as the US due to lower population density.<sup>3</sup> Further, there are differences in the composition of retail, the availability of anchor tenants in each retail category, the amount of retail space per capital and sales productivity.

## 4. TRENDS AND ISSUES RELATING TO ONLINE RETAILING

Stockland supports the Commission's findings as to online retailing. It reiterates its position that online shopping and attendance at shopping centres are likely to be complementary (and not alternate) offerings. The impact of online retailing on landlords is not new – landlords must continue to adapt and innovate to cater for the shopping habits of consumers. It is imperative that landlords retain flexibility to enable such innovation and that planning regulations and retail tenancy legislation allow landlords to retain such flexibility. Without it, shopping centres would not be able to adapt to the fast moving retail sector and the community needs which they support.

Stockland supports Draft Recommendation 4.1 that *the ABS should monitor and report on online expenditure by Australian consumers both domestically and overseas either by upgrading existing surveys or conducting new surveys. The ABS should design surveys aimed at disaggregating online spending with multi-channel establishments and pure play online retailers. The ABS should also redesign its surveys to show levels of employment associated with online retail sales as reflected by the size of the workforce of pure play retailers and the online divisions of multi-channel retailers.*

## 5. RETAIL TRADING HOURS REGULATION

Stockland supports draft recommendation 9.1 that *Retail trading hours should be fully deregulated in all states (including on public holidays).*

## 9 SEPTEMBER 2011

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<sup>3</sup> Please refer to Section 4 of Stockland's submission (and in particular page 5) dated 6 June 2011. Further, Stockland submits that Australian shopping centres achieve relatively high sales productivity (sales per square metre of retail space).