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9th September 2011

The Commissioners
Productivity Commission Inquiry into the
Economic Structure and Performance of the
Australian Retail Industry
Email: retail@pc.gov.au

cc: Bill Henderson

Dear Commissioners,

Submission in response to draft Productivity Commission Report into the Economic Structure and Performance of the Australian Retail Industry

ALDI Stores welcomes the most recent review of factors impacting productivity and competition in the retail sector.

The purpose of this submission is to strongly support the relevant recommendations in the draft report being those which relate to planning and zoning regulation and to urge the Commission and associated Governments to fortify and act on the recommendations. This submission complements our original submission.

ALDI restates its prime concern, which relates to the unavailability of appropriately zoned and sized land, primarily in metropolitan areas, where "as of right" retail development can be undertaken. Our original submission suggested a range of mechanisms to address this issue across the short and longer term.

In particular, ALDI is adding to its earlier comments by seeking support for a defined "sequential test" that will seek to codify net community benefit for the purpose of evaluating the merit of edge of centre and out of centre retail development in the absence of adequately zoned activity centre land.

Further, we contend there should be put in place a mechanism and milestones to measure progress on implementation of outcomes across the various jurisdictions.

Background

ALDI provided a submission to the initial phase of the Inquiry. ALDI also participated in the Commission's earlier released report entitled "*Performance Benchmarking of Australian Business Regulation: Planning Zoning and Development Assessments*", released in May 2011.

These most recent submissions follow a significant period of highlighting at state government level, via other processes, ALDI's concerns about the lack of availability of suitably zoned land in eastern seaboard metropolitan areas, and its impact on ALDI's Australian investment plans.

As an independently acknowledged efficient and low cost provider of groceries, unnecessary constraints on the development of ALDI Stores can have adverse competitive, retail productivity and welfare effects that translate into higher than necessary consumer costs of living.

We note that the Commission has acknowledged and addressed key elements of ALDI's concerns. Specifically, in its analysis, the Commission refers to the exclusionary impact of prescriptive elements of activity centre policies and that these are more prevalent at the lower end of the activity centre hierarchy – for instance, to exclude the operation of a slightly larger grocery retailer if its products are deemed to provide for the weekly rather than the daily needs of local residents (page 203). This is highly relevant to ALDI's experience in Australia.

Comments on specific 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.

ALDI comment:

ALDI referred to this in its original submission and we strongly support this recommendation. The Commission's report acknowledges that this issue is broader than grocery retailing. Less complexity and prescription in business zonings would clearly have a positive impact on new and innovative retail formats such as ALDI.

Whilst ALDI has successfully established many stores located within existing activity centres, there are numerous examples in all jurisdictions along the eastern seaboard where we are effectively locked out due to a chronic undersupply of suitably zoned and/or sized land, despite our keen interest and capacity to invest into a new store.

In order to address this issue, ALDI proposes that two specific actions be implemented by State Governments, with COAG oversight of progress as follows:

1. Regular and public **retail floor space supply and demand assessments** be required by States/Territories be undertaken as a means of focussing State and local planning authorities on strategic (long-term) objectives. The nature of this suggested reform means that it is only likely to have a longer-term impact on retail land supply; and,
2. A consistent and codified **"sequential test" as proposed in Attachment A** is implemented across State/Territory jurisdictions via a formal planning instrument, as a means of planners evaluating net community benefit in the case of edge of centre and out of centre development in areas where there is an identified lack of suitably zoned land in activity centres. This is a critical shorter term measure that is required to address contemporary (and potentially ongoing) supply concerns.

Taken together, these reforms should increase the short and long term stock of land available to retailers like ALDI for development "as of right" whilst concurrently preserving the authority of local government in relation to planning. In this instance, "as of right" means implied development approval for the use, but still requiring individual development approval for the building design.

Further, proponents must be entitled to an avenue of redress where the local planning process under these arrangements becomes frustrated or exceeds the timeframes set out via the

formal planning instrument. The success of a sequential test hinges on its ability to attract bona fide interest from proponents willing to comply with the local planning process yet offer a corresponding right of appeal as is the case for conventional development proposals.

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.

ALDI comment:

ALDI supports this recommendation and referred to this issue in its original submission. Relaxing local restrictions, where they exist in local planning instruments, on retail business type, size and number, would represent an important and worthwhile change that would greatly improve competition and consumer choice.

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.

ALDI comment:

ALDI supported the process in NSW which produced the Draft Competition SEPP, which was placed on exhibition in August 2010. The SEPP has not been formally enacted at this point, but effectively sought to address some anti-competitive aspects of the planning system, identified by the Department of Planning and the Better Regulation Office in the Department of Premier & Cabinet.

In short the draft SEPP proposed that:

- the commercial viability of a proposed development may not be taken into consideration by a consent authority, usually the local council, when determining development applications;
- the likely impact of a proposed development on the commercial viability of other individual businesses may also not be considered; except:
 - if the proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities, taking into account those to be provided by the proposed development itself; and
- any restrictions in local planning instruments on the number of a particular type of retail store in an area, or the distance between stores of the same type, will have no effect.

We have attached this draft SEPP at **Attachment B**, and would support enactment of this policy generally at State level, and not solely in New South Wales.

DRAFT RECOMMENDATION 7.4

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

ALDI comment:

ALDI agrees. Lack of “as of right” retail zones was referred to in ALDI’s original submission. The proposal for floor space demand assessments should guide local government in their strategic planning to ensure an adequate ongoing supply of zoned land for retail uses, within broad definitions.

As we originally stated, a good existing example of a zone that works well is the current Victorian Business 1 Zone.

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.

ALDI comment:

ALDI agrees. In our original submission, we called for an “objector pays” model, and for objectors to detail reasons. We note that this recommendation aligns with our points.

We mentioned the NSW Government’s intention to look at guidelines for objectors, possibly backed by sanctions.

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 assessments.

ALDI comment:

ALDI is generally supportive of the range of leading practices identified in the benchmarking report. In the comments on recommendations above, ALDI has sought to focus on the simplest approaches to resolving longstanding and pressing concerns that are having real impacts on competition and consumer choice.

Other regulatory burdens

DRAFT RECOMMENDATION 12.1

Governments must prioritise efforts directed at the review and reform of regulations that are unnecessarily burdensome and reduce regulatory inconsistency across jurisdictions where that affords net benefits to business and the community.

ALDI comment:

ALDI agrees. ALDI recognises that significant resources have been committed to inquiries directly or indirectly on land use planning and zoning at Federal and State level in recent years. For its part, ALDI has participated in all of these inquiries, making similar points to above, and including the provision of a range of case studies. Generally, the inquiry recommendations have recommended similar approaches to those advocated by ALDI.

ALDI is therefore interested to see that these efforts convert into a work plan and action endorsed by, and oversighted at, COAG. With all three levels of government interested in planning and zoning issues, and all these levels represented at COAG, what is needed is a resourced plan of action, with milestones and progress reporting.

Additional NSW case studies

ALDI has provided a range of case studies to inquiries over previous years. Most recently, ALDI provided some case studies to the ACCC and the Productivity Commission benchmarking study, and the Treasury-commissioned "Evaluation of Planning Systems – Barriers to Entry for Grocery Retailing", undertaken by SGS Economics and Planning. These case studies help underscore the reality of the issues we refer to generically above, and also to illustrate where the current issues are.

Two relevant case studies are the Local Government Areas (LGAs) of **Marrickville** and **Hurstville** in Sydney where the lack of appropriately zoned sites presents a significant barrier to entry for ALDI.

The existing and draft Planning Frameworks (in the NSW case these are Local Environmental Plans and standard format lists of permitted uses within zones) have not adequately considered the changes in consumer demand and the retail market, and do not provide appropriately zoned commercial sites to match the housing, employment and residential growth in these LGAs.

As a result there is a limited mix of supermarket and retail operators in these LGAs and reduced grocery retail competition. Furthermore in the last decade ALDI have been limited to **one leasehold store only** in these LGAs as follows:

- ALDI Marrickville is located within Marrickville Metro Shopping Centre (AMP Capital Shopping Centre)
- ALDI Hurstville is located in Westfield Hurstville Shopping Centre

Both Marrickville Council and Hurstville City Council are densely populated areas of Sydney that could support at least three ALDI Stores in each LGA. Both Council areas have an estimated population of approximately 78,000.

Clearly, the best long-term solution would be the identification of additional commercial floor space.

ALDI has recently met with planning officers at both Marrickville Council (in June 2011) and Hurstville City Council Officers (in July 2011), and they have acknowledged the inadequate supply of appropriately zoned land and that existing centres are at capacity. To improve short-term access to developable sites for ALDI both Councils have offered in-principle support for spot rezoning for a new ALDI Store.

Council Officers stipulated that the key criteria for a suitable site would be (but not limited to):

- Look for edge of centre locations first that are connected to existing centres and then if no sites available look for out of centre sites.
- Demonstrate that the site is connected to appropriate public transport services, including the pedestrian and road network.
- Demonstrate the proposal will maintain the economic strength of existing centres.
- Demonstrate the existing unmet demand associated with existing and predicted residential and employment growth and need for the development.
- Demonstrate a net community benefit.

As stated above, the use of a sequential test in the form of a State Environmental Planning Policy (SEPP) or other formal policy document would provide a much needed consistent set of provisions to be considered in the assessment of rezoning applications across NSW. The

sequential test would provide the required clarity about how to assess new retail uses/centres for non-complying development proposals.

Despite this, ALDI considers that, in the vast majority of cases, the spot rezoning of land is not an appropriate means by which to secure a site for development. This is not only because of the lack of any right to a review of a rezoning decision but is also due to the significant time and cost penalties associated with this process.

ALDI's preference is to ensure greater flexibility of zoning provisions to enable the immediate lodgement of development applications for ALDI Stores across NSW in appropriate commercial zones.

Conclusion

The retail industry is changing like most other sectors in our economy. These changes are driven by forces within and beyond our shores, and impact our relatively rapidly increasing population, which concentrates in cities. This is changing Australians' lives and how we live, including our retail preferences. The retail sector needs to adapt to these changes, and to do that, it needs a more flexible and contemporary system of regulation that allows it to evolve.

Australians are feeling the cost burden across a wide range of essential items. In grocery retail, there is an opportunity to allow greater planning flexibility which will deliver increased competition and additional employment generation. In 2008, the ACCC found that, even if a citizen doesn't always shop at an ALDI store, they should want an ALDI store in their local area, as the major chains reduced their prices when there was a local ALDI store nearby.

This observation from the ACCC reinforces the case that planning reform has the potential to deliver significant economic benefits for all Australians which is a compelling reason to act now.

We look forward to receiving the Productivity Commission's final report.

Yours sincerely,

Andrew Starr
Managing Director
ALDI Stores – Derrimut Region

Attachment A – Proposed Sequential Test

The following Draft Sequential Test is proposed for use in the assessment of proposals to allow for retailing at the edge-of-centres or out-of-centre locations.

These assessment criteria are to be applied in addition to any other provisions of the relevant planning framework. They relate to rezoning requests and applications outside Activity Centres.

For the purpose of applying the test, proposals are divided into the following categories:

- Rezoning proposals within a designated activity centre boundary
- Rezoning and use and development applications outside of designated activity centre boundaries.

In each case the level of detail and analysis required should be proportionate to the scale and nature of the proposal.

Rezoning proposals within a designated activity centre boundary

Where a proposal for rezoning is in accordance with and consistent with a State policy, local policy and a structure plan that has been approved and implemented into the relevant planning scheme:

- No economic impact assessment is required
- Proposals are required to demonstrate they have been designed to enhance the character and functioning of the centre and reinforce the public realm.

Rezoning and use and development applications outside of designated activity centre boundaries

For this category the assessment process will proceed in the following sequential steps:

- An assessment to determine whether a policy preferred in-centre or edge-of-centre location is available.
- An assessment of the strategic merits of the proposal in its proposed location.
- An assessment of a range of local matters relating to the proposed site.
- Economic impact assessment of the proposal.
- Consideration of other suitable sites in or edge-of-centre.

These assessments should be guided by the concepts of net community benefit and sustainability, where the objective is to balance economic sustainability with environmental and social-cultural sustainability.

The assessment criteria listed should be used to assist the discussion in these two areas.

Assessment of alternate locations

Where a proposal for rezoning and for development applications is located in an edge-of-centre location or an out-of-centre location, require an assessment which demonstrates a

sequential test has been applied to consider alternative locations for the proposal, in the following order:

- a. First, look for locations in appropriate existing centres where suitable sites or buildings for conversion exist, or are likely to become available, taking account of an appropriate scale of development in relation to the role and function of the centre, and then if no sites are available
- b. Look for edge-of-centre locations, with preference given to sites that are or will be well connected to the centre and then if no sites are available
- c. Look for out-of-centre sites, with preference given to sites that are well served by a range of transport (including public transport) and are able to be linked to the existing network of centres.

This assessment needs to:

- Demonstrate the development or centre is connected to appropriate public transport services and includes appropriate connectivity to adjacent pedestrian and road networks.
- Require all options in the centre to be thoroughly assessed before less central sites are considered for development.
- Demonstrate that an in or edge-of-centre location is not available, suitable and viable.
- Demonstrate there is an appropriate sized existing and predicted residential and employment catchment immediately available to the proposal and there is an existing unmet demand for the proposal.

Strategic assessment of the proposal

An assessment is required which examines the strategic context of the proposal. This strategic assessment is the overarching principle for decision making once the locational assessment has been undertaken. Specifically the strategic assessment needs to consider:

- Consistency with relevant planning objectives.
- The demonstrated need for the development, including how it will fill a gap in the network and/or meet increased demand for retail floor space.
- The extent to which the proposal would put at risk the spatial planning strategy for the area and the strategy for a particular centre or network of centres, or alter its role in the hierarchy of centres.
- The likely effect on the existing and future public or private sector investment needed to safeguard the vitality and viability of the centre or centres.
- Changes to the range of services or opportunities provided by centres that could be affected
- Potential changes to the quality, attractiveness, physical condition and character of the centre or centres and to its role in the economic and social life of the community.

- Whether the proposal will facilitate the entry of an operator not currently trading in the area to facilitate increased competition.
- Notwithstanding the above, the likely impact of the development on the commercial viability of an individual business, including loss of trade, is not a relevant consideration.

Implementation

To ensure that orderly and economic development of land occurs and to serve the public interest, merit based appeal rights and statutory timeframes are applicable to the Sequential Test.

Consultation draft



New South Wales

State Environmental Planning Policy (Competition) 2010

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

Minister for Planning

Consultation draft

State Environmental Planning Policy (Competition) 2010

Contents

	Page
Part 1 Preliminary	
1 Name of Policy	3
2 Commencement	3
3 Aims of Policy	3
4 Definitions	3
5 Land to which Policy applies	3
6 Relationship with other environmental planning instruments	4
Part 2 Removal of anti-competitive barriers to commercial development	
7 Definition of commercial development	5
8 Commercial viability of proposed commercial development	5
9 Loss of trade etc for other commercial development	5
10 Restrictions on number of particular types of retail premises	5
11 Restrictions on proximity of particular types of retail premises	6
Part 3 Miscellaneous	
12 Suspension of covenants, agreements and instruments	7
13 Savings and transitional	7
14 Review of Policy	7

Consultation draft

State Environmental Planning Policy (Competition) 2010

Clause 1

Preliminary

Part 1

State Environmental Planning Policy (Competition) 2010

under the

Environmental Planning and Assessment Act 1979

Part 1 Preliminary

1 Name of Policy

This Policy is *State Environmental Planning Policy (Competition) 2010*.

2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

3 Aims of Policy

The aims of this Policy are:

- (a) to promote economic growth and competition, and
- (b) to remove anti-competitive barriers in environmental planning and assessment.

4 Definitions

- (1) In this Policy:

commercial development—see clause 7.

the Act means the *Environmental Planning and Assessment Act 1979*.

- (2) Words and expressions used in this Policy have the same meaning as they have in the *Standard Instrument (Local Environmental Plans) Order 2006*, except as otherwise provided by this Policy.
- (3) Notes included in this Policy do not form part of this Policy.

5 Land to which Policy applies

This Policy applies to the State.

Consultation draft

Clause 6 State Environmental Planning Policy (Competition) 2010

Part 1 Preliminary

6 Relationship with other environmental planning instruments

If this Policy is inconsistent with any other environmental planning instrument, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency.

Consultation draft

State Environmental Planning Policy (Competition) 2010

Clause 7

Removal of anti-competitive barriers to commercial development

Part 2

Part 2 Removal of anti-competitive barriers to commercial development

7 Definition of commercial development

For the purposes of this Policy, *commercial development* is development for purposes of or including or any combination of the following:

- (a) retail premises,
- (b) business premises,
- (c) office premises.

8 Commercial viability of proposed commercial development

The commercial viability of proposed commercial development is not a matter that may be taken into consideration by a consent authority for the purposes of determining a development application under Part 4 of the Act to carry out the proposed development.

9 Loss of trade etc for other commercial development

- (1) The likely impact of proposed commercial development on the commercial viability of other commercial development is not a matter that may be taken into consideration by a consent authority for the purposes of determining a development application under Part 4 of the Act to carry out the proposed development.
- (2) However, any such likely impact may be taken into consideration if the proposed development is likely to have an overall adverse impact on the extent and adequacy of facilities and services available to the local community (having regard to the likely impact on existing facilities and services and the facilities or services to be provided by the proposed development).
- (3) Likely impacts referred to in this clause include likely loss of trade.

10 Restrictions on number of particular types of retail premises

- (1) A restriction in an environmental planning instrument or development control plan on the number of a particular type of retail premises in any commercial development, or in any particular area, does not have effect.
- (2) This clause applies to a restriction imposed expressly or by necessary implication, but does not apply to a restriction that arises because of development controls relating to the scale of development or any other aspect of development that is not merely the number of particular types of premises.

Consultation draft

Clause 11 State Environmental Planning Policy (Competition) 2010

Part 2 Removal of anti-competitive barriers to commercial development

11 Restrictions on proximity of particular types of retail premises

- (1) A restriction in an environmental planning instrument or development control plan on the proximity of a particular type of retail premises to other retail premises of that type does not have effect.
- (2) This clause applies to a restriction imposed expressly or by necessary implication, but does not apply to a restriction that arises because of development controls relating to the scale of development or any other aspect of development that is not merely the proximity of particular types of premises.

Consultation draft

State Environmental Planning Policy (Competition) 2010

Clause 12

Miscellaneous

Part 3

Part 3 Miscellaneous

12 Suspension of covenants, agreements and instruments

- (1) For the purpose of enabling development to be carried out in accordance with this Policy or with a development consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.
- (2) This clause does not affect the rights or interests of any public authority under any registered instrument.
- (3) Under section 28 of the Act, the Governor, before the making of this clause, approved of subclauses (1) and (2).

13 Savings and transitional

This Policy does not apply to or with respect to an application for an approval under Part 3A of the Act or for development consent under Part 4 of the Act that had been made but not finally determined before the commencement of this Policy.

14 Review of Policy

The Minister must ensure that the provisions of this Policy are reviewed:

- (a) as soon as practicable after the first anniversary of the commencement of this Policy, and
- (b) at least every 5 years after that commencement.