

Submission - Planning for the future of retail

Context

Comments in this submission predominately relate to the impact of the proposed Directions on retail developments in regional cities and centres and the impact they will have on local communities and competition.

The retail planning environment is currently dominated by a significant power differential between Councils, which represents the interests of the local community, and Developers and their Retailer clients. The following factors lead to poor community outcomes in the planning approval process:

- 1) Large retailers, particularly the supermarket chains, have been pursuing a market saturation and land banking strategy for many years. This strategy has resulted in large retailers pursuing sites in markets which are adequately serviced by existing retailers, but the chain is not represented or dominant. This has resulted in the chains developing sites in regional areas to the detriment of local businesses, and subsequently competition, and the local community
- 2) Net Community Benefit and Economic assessments provided during the approval process, to advise the approval decision, are prepared by consultants to support their clients (the developers) position rather than as an independent assessment of the needs of the community
- 3) Under-resourced Regional Councils are the subject of bullying tactics by developers and frequently make planning decisions based on whether a position will result in legal action being taken against the Council, which they can't afford to defend, rather than making decisions on the best planning outcomes for the community

In this context the current prescriptive planning framework provides some support for Councils to make defensible decisions against these aggressive corporations. This support will be removed if the Directions recommended in the Discussion Paper are progressed without this power differential being addressed.

Overview

In reviewing the Paper, it is apparent there is a significant disconnect between the importance of protecting the main street and established centres in regional areas, as recognised in Part 2 of the Discussion Paper and the Directions identified in Part 3.

In the section on the "Strategic planning that revitalises regional centres" on pgs. 21-23, the Paper discusses the importance of the main street to regional communities and the need to invest in it. The paper even provides an example of the negative impact a recent development on the outskirts of Orange had on the vibrancy of the town centre and the local community.

Contrary to this stated Outcome many of the proposals in the Directions section of the Paper undermine the ability of Regional Councils to protect the main street and established retail centres from developments in outlying locations. By making it easier for developments to occur away from the main street, where property is cheaper and easier to access, Councils will not only have to approve developments that draw the community away from the town centre, but it will also starve them of development contributions that could be used to invest in and enhance the main street. This will result in the adverse impacts to regional areas that the paper claimed it wanted to avoid.

The Directions section also drives for significant amendments to the Standard LEP to reflect zonings that may be suitable in the Metro area, but which will not be suitable in the regions. This standardisation could provide developers with a back door for an application that would not be justified under the current framework. This undermines the “place-based planning” principle espoused in Direction 1 by driving all Councils to a one size fits all solution.

Specific Concerns

Direction 1: Better local strategic planning for retail

In the Discussion Paper it is noted that “place-based planning for retail should remain the hallmark of a flexible planning system in NSW (pg. 25)”. Contrary to this position the paper, in this recommendation, continues with a drive for further standardisation of LEPs. This standardisation will make it easier for developers to make applications in locations that will detract from the town centre.

The standardisation will also drive the removal of the prescriptive zonings in existing LEPs and have them replaced by a narrative which has not been prepared by most councils. As noted above the prescriptive zoning currently adopted may be inconsistent between LGA’s but provides a very clear explanation of what can or cannot occur within a specific location. Councils rely on this when considering applications and it provides a defensible position against an aggressive developer.

Prior to the recommendations in this Direction being implemented the power differential between Councils and Developers must be resolved, specifically:

- 1) There must be robust transparent objective tests to determine whether a proposal is consistent with the narrative, once it is completed. This includes a revamp of the current easily manipulated Net Community Benefit Test and the proposed Needs based test
- 2) These tests are to be informed by *Independent* advice commissioned by the Council, not biased reports from the developers’ consultants
- 3) Councils need to be protected from the costs of legal action when decisions are made in good faith, supported by these assessments against the developers’ interests

Amendments to the current framework should be halted until a suitable, robust, transparent alternative framework which addresses the power differential between Regional Councils and Developers is established and implemented in all LGAs.

Direction 2: A modern approach to retail developments that reflect a range of retail formats in centres

This Direction recommends that there needs to be changes to the traditional trading hierarchy to allow “clusters” of retail activity to occur away from existing centres. The paper notes this is especially relevant to regional NSW.

The proposed new clusters would not be suitable in most of locations in regional NSW, where such retail formats are not sustainable with the local population. This is particularly the case for locations outside of Regional Cities.

As the intention is for these clusters to be included in the Standard LEP, this may allow a developer a back door into getting an application approved that was not intended under the definition of the cluster, would not be permissible under the current framework or in the interests of the local community.

These new definitions should be excluded from the Standard LEPs for regional LGAs and an alternative process be considered for application of the zones to Regional Cities if deemed appropriate.

Direction 3: Adaptability and certainty for retail

As noted above there is a drive in the paper for the removal of prescriptive zoning which are often used “to control for scale or local character (pg. 33)”. Surely this is what the zoning requirements should be doing and removal of these prescriptive zones, without a robust, defensible, alternative framework will allow developers to further manipulate the power advantage they have over Regional Councils.

Specific concerns are:

- Creation of Open Zones, where purposes for zones will become less prescriptive than exists under current planning documents. This will allow for areas to be used for retail purposes that may not be consistent with the communities wishes and/or needs
- Establishment of an Innovation in Retail Provision as a mechanism to undermine the existing planning system and allow a test to “be put in place against which the value of the proposed unanticipated, undefined or prohibited because of a closed zone use, (proposal) could be evaluated (pg. 35)”

This would give developers the ability to completely undermine the existing controls by claiming their development fulfils the unknown criteria for this type of development. It is also unclear as to whether council or the Department of Planning and Environment would be responsible for evaluating such a proposal and if so on what grounds

Regional LGAs should be exempted from this Direction completely and be allowed to maintain prescriptive zoning until a control environment is established that addresses the power imbalance noted above.

The request for the implementation of a test by the Department of Planning and Environment should be denied until a suitable framework that addresses the power differential is implemented, given the inability to ensure that decisions are consistent with the “place-based planning” principle and the desired outcome of protecting the main street in regional locations.