

18 February 2009

Retail Policy Review
Department of Planning and Community Development
GPO Box 2392
Melbourne VIC 3001

Dear Sir/Madam,

RE : SUBMISSION TO THE RETAIL POLICY REVIEW – DISCUSSION PAPER

AMP Capital Shopping Centres (AMPCI) thanks the Victorian Government for the opportunity to review the “retail policy review – discussion paper” as owners and/or managers of Knox, Southland, Casey Central, Malvern and Gateway Plaza Shopping Centres.

Properly incentivised and market led development has allowed AMPCI to create iconic places such as Ozone at Knox Shopping Centre, Botany Town Centre (New Zealand), Pacific Fair (Gold Coast), Warringah Mall (NSW) – all becoming the symbolic heart as well as reflecting the aspirations of the communities which they represent. It is our vision that the Victorian Government encourages the shopping centre development industry to create places such as these through good, consistent, flexible and market led policy.

AMPCI is generally supportive of the overarching principles governing current planning framework and retail policy in Victoria, however, it is our experience that the strategic and statutory retail planning framework system is one that is cumbersome, slow and often internally inconsistent. We take this submission as an opportunity to voice our concerns in this regard as detailed in the attachment.

Whilst the overarching principles governing planning policy may be sound, our experience suggests that there are inherent difficulties being encountered at the local level particularly in relation to process, the planning controls, the technical expertise of authorities and individuals assessing proposals. It is also our experience that the idealist and philosophical attitudes held by authorities and individuals assessing shopping centre design is often at odds with the real needs of the community that use these facilities and the owners/developers that create them.

It is AMPCI's opinion that the retail planning system could and should be improved by developing a State Planning Policy which encapsulates and centralises activity centre planning policy and design guidelines, and complementing that by an Activity Centre zone which simplifies and streamlines the controls derived from existing schemes.

AMPCI is pleased to make this submission for the consideration of Government. We welcome questions and comment via Ms Vanessa Walker on 02 9257 1893 or vanessa.walker@ampcapital.com.au.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Louise M'.

Louise Mason
Head of Shopping Centre Development and
Acting Head of Asset Management

Attach/

SUBMISSION TO THE RETAIL POLICY REVIEW – DISCUSSION PAPER

This submission is made by AMP Capital Shopping Centres (AMPCI) and responds to the invitation issued by the Victorian Government calling for comment on the proposed approaches and responses outlined in the Retail Policy Review Discussion Paper, dated October 2008.

1. BACKGROUND

The Retail Policy Review (RPR) was initially announced by the Minister for Planning in May 2007. A key purpose of the Review was to examine existing policy and statutory frameworks in the Victoria Planning Provisions (VPP) and planning schemes, which guide planning and development of, and investment in, retail activity in Victoria.

AMPCI is generally supportive of the current framework governing retailing and retail policy in Victoria, however, we have experienced recent difficulties in attempting to secure approvals for the development of a number of shopping centre expansion projects. Whilst the overarching principles governing policy may be sound, our experience suggests that there are inherent difficulties being encountered at the local level particularly in relation to process, the planning controls, the technical expertise of authorities and individuals assessing proposals and the philosophical attitudes governing trends in retailing and shopping centre design.

The Review has examined various aspects of the statutory planning framework relevant to retailing in Victoria including land use definitions, zoning controls and other related provisions contained in Victorian planning schemes. In doing this, the review identifies a number of principles that are said to underpin the six key issues and challenges outlined and discussed in the Paper. There are also 17 proposed responses identified to address each of the issues and challenges identified.

This submission addresses the various principles identified in the Discussion Paper, the challenges confronting retail planning that emanate from that discussion and each of the responses proposed to address those issues and challenges as identified by the Review.

2. PRINCIPLES TO GUIDE APPROACH TO RETAIL PLANNING

The following principles are identified at Section 3.1 of the Discussion Paper:

- Principle 1** Retail planning policy and controls should be consistent with and support activity centre policy and provide clarity and certainty on the appropriate location of retail facilities.
- Principle 2** Planning policies and controls should allow capacity for growth and change in retailing.
- Principle 3** Planning policies and controls should not limit retail competition or innovation and should not distinguish between or favour particular forms of retailing unless there is a clear public policy case for doing so.
- Principle 4** Planning policies and controls should ensure retail development proposals pay particular attention to the public realm (both public and private spaces) to ensure they contribute to a sense of place and the role of the activity centre as a focus for the community.

Broad planning objectives governing the promotion of activity centre policy, aggregation of major retail developments in activity centres, providing for growth and change, not distinguishing between particular types of retailing (unless there is good reason to do so) and promoting good design outcomes are embodied in the stated principles. These principles generally reinforce already accepted State planning policy and are supported by AMPCI.

However, AMPCI is concerned by discussion referring to retail developments which *“turn blank facades to the street, ignore their surrounds or are separated from the balance of an activity centre by an expanse of car parking etc....”* (refer page 6).

It is our opinion that this initiates further commentary in the Discussion Paper which is directed toward sustaining an underlying and mistaken belief that the *‘main street’* format of retailing is to be preferred over virtually all other formats, most particularly internalised shopping formats (pages 28-29). We are concerned that this position does not reflect:

- the needs and wants of customers who actually use shopping centres;

- expertise in retail planning,
- understanding of retail ownership and retail lease structures; as well as
- commercial considerations that heavily influence shopping centre design and development.

Community support for main street 'open-air' retailing formats as preferred design outcomes over internalised facilities espoused by the Review are not researched with actual shopping centre customers and contrary to independent research of market trends.¹ The position held by the Review is unhelpful and serves to highlight the difficulties the shopping centre development industry faces in its dealings with State and Local Government authorities when planning and designing shopping centre assets.

Taking these things into account, AMPCI consider that there should be a further principle as follows:

Principle 5 Planning policies and controls should not distinguish between or favour particular formats of retailing or shopping centre design over any other and should be guided by market trends and community preferences.

3. THE CHALLENGES

The following challenges are identified at Section 3.2 of the Discussion Paper:

Managing growth and the network of centres

The Discussion Paper acknowledges research commissioned by DPCD which indicates there will be a significant demand for retail floorspace both in metropolitan Melbourne and regional Victoria over the next 25 years. There is a concern expressed about the failings of the present system in accommodating growth and limiting the pressure for out-of-centre development in Melbourne over recent years.

The Paper references a critical need to prioritise planning to manage and accommodate the likely growth in retail floorspace required across the network and in appropriate locations to maintain a competitive retail sector.

Facilitating appropriate development in appropriate locations

The Paper reinforces Melbourne 2030 and the identification of 120 Principal Activity Centres (PACs) and Major Activity Centres (MACs) throughout Melbourne as preferred locations for change and growth, including retail development.

A concern in inhibiting the growth of these centres is the inappropriate use of various planning scheme tools such as floorspace limits - particularly in PACs and MACs. The Paper acknowledges that these often restrict or impose unnecessary and additional requirements on proposals, even though they are consistent with activity centre policy objectives. The Review has also found fault with the existing business zones in planning schemes and concluded that planning controls need to be reviewed.

Managing restricted retail premises

The Discussion Paper acknowledges the policy situation governing restricted retail premises (i.e. 'bulky goods retailing') is a contentious issue. Despite an amendment to the definition of '*restricted retail premises*' in September 2007, the Discussion Paper states that bulky goods retailers continue to push for further widening of the range of goods permitted to be sold at restricted retail premises while other stakeholders continue to argue for tighter controls and more consistent treatment of 'general' and 'restricted' retailing.

AMPCI considers that the restricted retailing provisions need to be strengthened to remove current inconsistencies and ambiguities. In our view, the definition of restricted retail premises needs to be tightened to ensure that only those activities legitimately falling within the bulky goods category are accommodated and not more generalised categories of merchandise are allowed due to the vagaries of the current definition.

Managing retailing in industrial areas

As the Discussion Paper acknowledges, the current industrial zones allow for restricted retail premises to locate out-of-centre subject to a planning permit. The intention of the Review is to address this by

¹ Directional Insights *Consuming Passions* - 20,000 person customer survey

encouraging 'restricted' retailers to acquire sites and develop in or on the edge of existing centres rather than on industrial zoned land and/or in out-of-centre locations.

The Review advocates that policy and planning controls need to be developed to ensure that major retail facilities in industrial areas do not occur unless there has been adequate strategic assessment of the need for and appropriateness of the proposal relative to the broader network of activity centres.

Managing new centres and major retail proposals

The Review identifies a need for greater consistency in the way major retail proposals are assessed. It supports the development of a set of assessment guidelines that focus on how or when retail in new locations would be considered. It identifies the '*sequential test*' model that applies in the United Kingdom (UK) as a preferred model.

AMPCI cautions the use or referral to models that have been derived from international examples where the circumstances can be and usually are very different to local conditions. For example, in the UK situation, if reference to the 'sequential test' is to be relied upon in the same context as that advocated by Planning Policy Statement 6 – Planning for Town Centres in the UK, then we would object against any such reference.

The UK test is more focussed on the typical 'high street' town centre model that has less relevance to the Australian urban context and is not supported as an effective mechanism to assess proposals Victorian retail proposals.

AMPCI preference would be that:

- a simple principle as currently exists in Melbourne 2030 which acknowledges the benefits of preferring new retail development in in-centre locations over out-of-centre locations;
- and the arguments made in the Discussion Paper which identify a need for greater certainty and support for proposals that are locating in-centre as opposed to out-of-centre, that also deliver upon the outcomes sought as part of activity centres policies.

Improving design outcomes

The Review identifies urban design considerations as a concern and calls for retail developments to be assessed in terms of their contribution to the improvement of the public realm including links to the wider activity centre and its surrounds. This issue is central to the debate about main street retailing versus other retailing formats such as internalised malls or *hybrid* formats.

The Discussion Paper acknowledges a concern about retail developments that turn blank facades to the street, ignore their surrounds or are separated from the balance of an activity centre by an expanse of car parking. The Paper goes on to assert that this form of development makes no contribution to the safety, attractiveness and vibrancy of the public realm or to the community role of the activity centre in which they are located, and ultimately imposes costs on the community through a need to undertake additional public realm improvements.

Although it has not necessarily been highlighted, the issue of retail planning and design and the design of activity centres is at the heart of the Discussion Paper. The Paper raises concerns about internalised retail formats and seeks to put in place a system including development and design standards that will allow greater pressure to be brought upon shopping centre owners and developers such as ourselves to conform to the preferred activity centre model.

It is our view that much of the debate that centres upon justifying *main street* retailing formats over other proven and successful formats is without merit and lacking in community support. The focus appears to be directed at substantiating one particular form of retailing to the virtual exclusion of others that have an equally valid place in terms of meeting the shopping centre needs and expectations of the community.

AMPCI supports good urban design and the enhancement of public realm facilities as part of the development of new and the regeneration of existing retail facilities. Issues governing enhanced public safety, environmental sustainability, the provision of attractive community focal points and facilitating greater integration between facilities are important considerations in retail planning and design are well understood by the shopping centre development industry who develop retail facilities in strong correlation to customer and community demands and expectations.

AMPCI notes that achievement of the important considerations in retail planning and design is not dependent upon achieving a 'main street' outcome in all instances.

4. THE RESPONSES

The Review proposes seventeen Responses to address the key issues and challenges identified. These are summarised at Page 9 of the Discussion Paper. The proposed Responses are grouped under each of the stated 'Challenges.' In general terms, **Responses 1-4** relate to the issue of improving the management of the retail system through improved data, assessment tools, strategic plans and structure planning.

AMPCI supports an improved system including measures that would enhance decision-making, improve the assessment of retailing proposals and reduce the cost and delay of planning approvals.

Consultation is a vital component of any proposal to alter the existing system and it is important that initiatives driven from within Government are fully tested and opinion sought from affected stakeholders before actions to implement change via planning policies and/or controls are taken.

The Proposed Responses that bear further explanation and commentary are set out as follows:

5 *Refine planning policies to provide greater clarity and guidance for retail proposals.*

A review of retail floorspace caps is supported particularly in those circumstances where it can be demonstrated that they are no longer required to protect the effective functioning of the network of centres existing or planned for a particular region.

Reference to the broad objective of delivering walkable communities as stated in the Discussion Paper is supported only '*in principle*'. However, the reference in the Discussion Paper (at page 17) would appear to have little to do with ensuring the planning of new communities is provided with an opportunity for a finer grain of walkable centres into the long term. Given our earlier stated apprehensions, in our view this statement appears to be more directed at the underlying bias of the Discussion Paper towards main street retailing as a way of community living than it is about promoting walkability throughout activity centres and is not supported.

6 *Undertake adjustments to the Business 1 Zone and schedule*

This Response is principally directed at allowing Councils and other planning authorities to better manage and achieve outcomes sought for activity centres where it can be demonstrated that such an approach is required. It is envisaged that the Councils will be able to use the schedule to the Business zone to implement controls governing retail mix and other land uses.

A proposal that results in Councils or other planning authorities having more power to define the retail mix of a centre or issue prescriptive requirements that would otherwise impose restrictions on retail mix or inhibit the evolution of retailing in the marketplace outside the accepted retail hierarchy is not supported by AMPCI.

AMPCI hold the opinion that it is not appropriate for this power to be given to planning authorities without a clear understanding of its intended use and request that Government clarify its position in this regard before we could make further comment.

7 *Councils to investigate and implement non-regulatory mechanisms as well as planning controls*

Concern is raised in relation to this Response where Council's are being encouraged to use public assets as part of a redevelopment in circumstances where they were unable to secure their own strategic planning objectives and development outcomes through conventional processes or means.

AMPCI does not support the 'open-ended' nature of this response. Any ability for Council's to operate outside the established framework and not be subject to the same rules as others, would undermine the confidence and the credibility of the system as a whole. The prospect of Council's utilising their own assets should only be entertained if it occurs within the same framework and is subjected to the same level of control and policy direction as any other landowner.

8 *Maintain the existing definition of 'restricted retail premises' in planning schemes and the VPP*

This Response is only supported to the extent that no future changes to the definition should be permitted that would broaden the range of goods able to be sold at 'restricted retail' premises. AMPCI supports a tightening of the restricted retail definition or its replacement with a new definition of 'bulky goods retailing' which focuses on merchandise categories and development formats that only accommodate legitimate bulky goods and restricts general merchandise. In this regard, we believe that a review of merchandise categories, operational requirements and floorspace thresholds of legitimate bulky goods activities should be undertaken to inform the proper construction of a new or amended definition.

9 Amend industrial zones so that restricted retail premises become a prohibited use and be required to undertake an amendment process.

This Response is supported.

10 Develop transitional arrangements and work with councils to deal with restricted retail premises that are currently located within industrial areas.

This Response is supported.

11 Develop and implement Retail Assessment Criteria based on a sequential test approach to manage proposals outside the designated network.

The stated criteria are said to be applied to new centres or out-of-centre retail development proposals and are to be used in the assessment of rezoning proposals. For the purpose of applying the criteria, rezoning proposals to allow for major retailing are to be defined as proposals that allow for more than 2,000 square metres of retail floor space.

The extent to which the Retail Assessment Criteria are to apply is not clear. It appears that they are also to apply to rezoning proposals within designated activity centres as well those that are new centres and out-of-centre. This should be clarified.

The actual test to be applied needs to be clarified. AMPCI would hold substantial concerns if the UK model which purports to give preference to the 'high street' shopping strip as the first preferred location was to be used in assessing development proposals, noting that the Australian urban context is significantly different to UK circumstances.

This Response is conditionally supported by AMPCI only to the extent that all references to the UK model are deleted, and any Retail Assessment Criteria are developed in collaboration with industry stakeholders and open to scrutiny and comment before they are finalised and adopted.

12 Develop criteria to be applied when considering a request for a new centre or to reclassify a centre.

This Response is supported.

13 Continue to provide advice and assistance to councils in planning for major retail proposals through DPCD programs that support planning for activity centres.

This Response is supported.

14 Finalise the Interim Design Guidelines for Large Format Retail Premises following feedback from users in conjunction with the Retail Policy Review.

This Response is supported.

15 Undertake a review of design guidelines for retail developments and where possible consolidate this advice, improve the content and minimise any duplication and ensure consistency with policy objectives.

The Discussion Paper includes commentary on the contribution of retail proposals towards the public realm as well as focussing on the development of larger format stores and internal shopping malls.

The Discussion Paper highlights a concern about “*the extent to which internal malls should or should not be utilised*” in planning for new activity centres and serves to reinforce the underlying philosophical bias permeating the Discussion Paper that appears to favour ‘*main street*’ retailing formats over any internalised shopping mall or other similar or *hybrid* models.

It is clear from the commentary on this issue in the Discussion Paper there is a desire on the part of DPCD to apply its own in-house developed standards and guidelines to retail development and activity centre outcomes to secure particular philosophical outcomes that purport to represent the community interest.

AMPCI is opposed to any proposal which amounts to adherence to ‘*main street*’ idealism or guidelines that are prepared by stakeholders not responsible or accountable for the design, development and on-going management of shopping centres. It is our opinion that any initiative to adopt guidelines or standards governing retail development should in the first instance be guided by market trends and developed in response to customer and community feedback within a legitimate, transparent and tested planning framework. We do not accept that DPCD has any role in developing in-house standards which on the material produced to date, will inevitably be singular in focus, biased in content and self serving in terms of their effect.

A more rigorous and tested model would be to allow industry players to have a substantial input into the derivation of any guidelines or standards. Any effort to draw together design guidelines governing retail planning and design needs to take full account of industry expertise and experience and not simply rely upon Government officials and academics.

16 *Update the Activity Centre Design Guidelines to incorporate design objectives and guidance on the development of new activity centres.*

AMPCI does not support the response nor the proposal to update the Activity Centre Guidelines with a particular emphasis on ‘*main street*’ activity without due regard for other formats of retailing.

The emphasis in the Discussion Paper on the importance of a “*main street and block system*” and its intended use as the ‘*basis for a centre’s structure*’ to the virtual exclusion of mall based retailing and other formats reinforces concerns with this particular Response.

The ‘*main street and block system*’ is not derived from any working or successful example of a town centre. The model is prescriptive in its application and is not supported by any discussion or evidence which could in any way justify its generic application across the State.

The principles of urban and regional planning call for an examination of net community benefit and sustainability and these should be the drivers and not unsubstantiated and misconceived ideals purporting to represent the community interest.

17 *Continue to provide assistance and advice to developers and councils on the design of major retail development.*

AMPCI only gives qualified support to this Response to the extent that DPCD’s involvement does not introduce another level of Government bureaucracy resulting in further delays and increased uncertainty in the approval process.

AMPCI also assumes that the DPCD’s involvement in the planning process would be more focussed on higher level strategic planning processes rather than delving at the local level into detailed planning and design outcomes.

5. THE OVERALL PLANNING SYSTEM

As noted earlier, AMPCI is of the opinion that The Retail Policy Review does not go far enough to reform the strategic and statutory retail planning system which in our experience is cumbersome, slow and often internally inconsistent.

The suite of relevant strategic documents includes documents that sit both inside and outside the planning scheme, including:

- Melbourne 2030;
- site specific structure plans;
- Interim Design Guidelines for Large Format Retail Premises;
- the Practice Note on Structure Planning for Activity Centres;
- Transit Cities;
- Creating Better Places;
- Planning for all of Melbourne; as well as
- the SPPF and the various LPPFs.

The statutory tools are also varied and often overlap and/or conflict. They include:

- Business zones which often contain floor space limits;
- Development Plan Overlays;
- Schedules; and
- Approved Development Plans.

These statutory documents must be read and understood in conjunction with a range of planning panel reports and VCAT decisions which build on, clarify, refine and/or enlarge on certain aspects of the policies and controls and seek to give meaning to common "terms of art" which are relied upon in the various material, but not clearly defined, such as the meaning of Neighbourhood Activity Centre, Major Activity Centre and Principal Activity Centre.

The plethora of policies, controls and interpretative tools results in it being difficult to readily identify those relevant to a particular site or application and they create a complex statutory environment which constrains flexible development and decision making. These policies place unreasonable burden on those seeking to develop. Moreover, it creates a decision-making process that is time consuming, uncertain and very costly.

For instance, the extension of an existing Major Activity Centre could easily involve all of the following steps:

- a planning permit application to expand the floor space limit contained in a schedule; or
- a planning scheme amendment to increase the floor space limit contained in the schedule,
- an informal Structure Planning Process;
- a planning scheme amendment to incorporate a Development Plan Overlay and a site specific schedule;
- the preparation and approval of a development plan which accords with the Overlay; and
- a planning permit for the buildings and works shown in the development plan.

This involves five separate planning approvals processes and it is not unusual for that to take between 2 to 5 years to complete, and to involve at least one Panel Hearing and a VCAT application, at significant cost to both the public purse and the proponent.

It is clear that the retail planning and development process should be simplified. This could be achieved by developing a State Planning Policy which encapsulates and centralises activity centre planning policy and design guidelines, and complementing that by an Activity Centre zone which simplifies and streamlines the controls derived from existing schemes.

Draft policies and controls could then be developed as part of this ongoing consultation process to ensure that the outcomes meet the key needs of stakeholders, as well as being workable and efficient.

6. SUMMARY OF KEY CONCERNS

AMPCI's analysis of The Review has identified some concerns that we hold in relation to its content. Whilst the underlying principles outlined in the Paper are generally adequate we note the need to extend these to recognise that shopping centre design should be guided by market trends and community preferences and not be fettered by underlying philosophical prejudices favouring main street developments.

The following summarises our key concerns:

- There is a clear underlying philosophical bias permeating the Discussion Paper that appears to favour '*main street*' retailing formats over any internalised shopping mall or other retail formats including those of a *hybrid* nature.
- There is an intention to introduce Design Guidelines to guide retail developments and activity centre planning which will be skewed towards '*main street*' retailing formats by adopting, without any substantiation, the "*main street and block system*" as the basis for an activity centre's structure.
- A review of retail floorspace caps is proposed with a view to removing such limits in centres where it can be demonstrated that they are no longer required to protect the effective functioning of the network of centres existing or planned for a particular region. The scope and details of this work have not been clearly articulated.
- It is proposed to modify the Business 1 Zone and schedule (or similar) which will potentially give Councils or other planning authorities more power to define the retail mix of a centre or issue prescriptive requirements that would otherwise impose restrictions on retail mix or inhibit the evolution of retailing in the marketplace.
- Details are not clear concerning the proposal to introduce Retail Assessment Criteria as well as a 'sequential test' for determining the preferred locations for retail development.
- The Retail Policy Review should go further by developing a State Planning Policy which encapsulates and centralises activity centre planning policy and design guidelines, and complements that by an Activity Centre zone which simplifies and streamlines the statutory controls and approval processes.

As a major stakeholder, investor and interested party in this matter, we wish to maintain an ongoing interest in the progress of the Retail Policy Review. We are concerned to ensure that we be kept informed of the Government's intentions and any further developments in this regard.

We would be particularly interested in reviewing any further work undertaken as part of this process and to participate in any ongoing discussions which may impact upon our interest. We would also welcome the opportunity to expand upon our concerns and the issues raised should you regard this as beneficial to the process.