

# SHOPPING CENTRE

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## COUNCIL OF AUSTRALIA

27 February 2009

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

By email: [retailpolicy.review@dpcd.vic.gov.au](mailto:retailpolicy.review@dpcd.vic.gov.au)

Dear Sir/Madam

### **Retail Policy Review**

The Shopping Centre Council of Australia welcomes the Victorian Government's renewed commitment to a centres-based policy for retail development outlined in the Retail Policy Review Discussion Paper. We agree that the current system in Victoria has been working well overall and there is no need for wholesale change.

Nevertheless, we support the proposals to close loopholes in the current policy such as prohibiting retail development, including Restricted Retail Premises (RRP), in industrial zones and ensuring that the system does not make it quicker and easier for retail to establish outside activity centres than inside.

The SCCA has reservations about some of the proposed responses, primarily in relation to the potential for local councils to impose floor space caps and be overly prescriptive about retail mix within activity centres; the definition of RRP; how the proposed regional retail assessments will be undertaken; and the potential for state and local government to try to dictate how much retail space is provided rather than leaving this to the market to determine.

### **Background**

The Shopping Centre Council of Australia represents shopping centre owners and managers. Our members are AMP Capital Investors, Brookfield Multiplex, Centro Properties Group, Colonial First State Property, Dexus Property Group, Eureka Funds Management, GPT Group, ISPT, Jen Retail Properties, Jones Lang LaSalle, Lend Lease Retail, Macquarie CountryWide Trust, McConaghy Group, McConaghy Properties, Mirvac, Perron Group, Precision Group, QIC, Savills, Stockland, and Westfield Group.

The SCCA was represented on the Reference Group for this Review, along with other key stakeholders, and we congratulate the Department of Planning and Community Development (DPCD) on the consultation process that was undertaken as part of this review.

## **Retail Policy Review**

The Discussion Paper identifies four principles that should guide retail planning:

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.
2. Planning policies and controls should allow capacity for growth and change in retailing.
3. Planning policies and controls should not limit retail competition or innovation, or distinguish between or favour particular forms of retailing unless there is a clear public policy case for doing so.
4. Planning policies and controls should ensure retail development proposals pay particular attention to the public realm (both public and private spaces) and contribute to a sense of place and the role of the activity centre as a focus for the community.

The SCCA supports these principles. Concentrating retail and commercial activities (ie. major trip generating activities) in designated urban (or activity) centres served by public transport has been a longstanding planning policy in Australia (and in many other countries). All Australian Planning and Transport Ministers have committed to the centres policies approach through the *National Charter of Integrated Land Use and Transport Planning*, which "seeks to ensure that the bulk of goods and services are located at hubs and linked effectively by an efficient transport system" which "allows for the optimisation of investment decisions and better use to be made of existing infrastructure and services". As the Discussion Paper notes, retail policy in Victoria has largely been based on a network of activity centres for the past 50 years starting with the Melbourne Metropolitan Planning Scheme in 1954.

Our comments on the 17 proposed responses follow.

### **1. Managing growth and the network of centres**

#### *Proposed responses*

1. *Undertake a program of improved monitoring and reporting on retail development.*

#### **SCCA supports**

The Paper notes that while DPCD has extensive land monitoring programs for the supply of and demand for residential and industrial land, there is no similar program for retail or broader commercial uses. The last audit of retail space was in 1991. The Paper claims that a centralised audit of retail space would establish a sound basis for strategic decision-making and development assessment.

The SCCA agrees that improved monitoring of the supply of and demand for retail development would be a positive step but emphasises the importance of industry input when collecting and assessing this data. Any assessments and reports produced in isolation from industry are unlikely to provide a sound basis for decision-making.

2. *Work with councils and the industry to develop Regional Retail Assessments.*

**SCCA supports in principle only**

The Paper notes that large retail development proposals are generally determined at a local level by one local council despite these centres' regional catchments which can encompass a number of council areas. The Paper proposes the development of Regional Retail Assessments to address this problem.

The SCCA agrees that large retail developments should be assessed on a regional rather than a local level and supports the development of Regional Retail Assessments to identify the likely scale of future retail growth that will need to be accommodated in particular regions over the next 15 years. However, there are a number of issues that need to be resolved before the assessments could be supported.

First, the regional retail assessments are likely to be based on regions set up by grouping local councils together, possibly using the regions established for the regional housing working groups. However, these regions have little in common with retail trade area patterns and will therefore lead to very different outcomes. As an example, Chadstone sits on the boundary of the eastern region of the housing group. The southern region which extends to the Mornington Peninsula commences on the southern side of Princes Highway, across the road. How will these issues be resolved?

Second, by their nature, Regional Retail Assessments will take a "top-down" approach. It is unlikely that innovation, risk-taking and competition will flourish when policy dictates that certain centres should be encouraged to change and grow. The Assessments should not become *determinants* (rather than assessments) of the amount of retail space. We do not want to end up with a situation where councils are refusing to approve retail development proposals simply because the Regional Retail Assessment suggests there is already plenty of retail space.

Third, any lifting of floor space caps in centres could be negated by the Regional Retail Assessments. For example, if an assessment were done in such a way as to allocate floor space to centres across the region, it could result in some centres being identified as too large and therefore as having little or no policy support for further investment.

Fourth, industry involvement in the assessments will be problematic. In many instances, commercial competition will inhibit full disclosure of future plans by industry so final assessments may not be a true reflection of the available opportunities. Moreover, some councils are themselves investors in retail property and may not be unbiased where these assets are concerned.

There are also a number of implementation questions that need to be considered:

- Who will fund the assessments and who will be responsible for their preparation?
- How will boundaries be determined?
- What happens to a retail development proposal when an assessment is unfinished or unable to be resolved?
- How could investors have a stake in the process?

- How will market considerations such as the ability to deliver a major proposal be dealt with?
- How will allocations of floor space be resolved between bulky goods centre, regional, sub-regional, local centres and on what basis?
- Will there be a requirement for a common methodology to be developed before regional retail assessments could commence?

The SCCA considers that the Assessments should be conducted under state government auspices to avoid a situation where groups of local councils are determining the future potential of major public and private investments in large retail centres.

3. *Provide greater assistance to councils in preparing municipal strategies that provide for future retail growth.*

### **SCCA supports**

The SCCA supports this proposal subject to the comments noted above regarding the need for industry input.

4. *Work with councils to ensure structure planning for activity centres provides for adequate retail growth.*

### **SCCA supports with reservations**

The SCCA has been concerned that structure planning for activity centres has had the effect of making it more difficult to obtain development approval for in-centre proposals than for out-of-centre proposals. Obviously, such a situation can only encourage out of centre development and undermine the activity centres policy. In addition, most structure plans have too local a focus and do not adequately address a centre's regional role or the interests of investors in that centre. This is unlikely to change while local councils remain responsible for preparing structure plans. Therefore, while supporting DPCD efforts to ensure that structure planning provides for adequate retail growth and better supports appropriate in-centre proposals it may also be necessary to consider reallocating responsibility for preparing the structure plans.

## **2. Facilitating appropriate development in appropriate locations**

### *Proposed responses*

5. *Refine planning policies to provide greater clarity and guidance for retail proposals.*
6. *Undertake adjustments to the Business 1 Zone and schedule to allow better delivery of policy outcomes.*
7. *Encourage councils to investigate and implement non-regulatory mechanisms as well as planning controls to deliver the desired outcomes for a centre.*

### **SCCA supports with reservations**

The SCCA supports measures to streamline development approval processes for retail proposals within activity centres. As noted above, the multiplicity of

development controls imposed on activity centres by local councils can make it more difficult and time consuming to locate retail development within activity centres than without. As an example, one of our members has noted that a major retail expansion within an existing activity centre would probably involve 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.

Clearly there is the opportunity to streamline the development assessment process as it operates in activity centres.

We also welcome the Paper's statements that as far as practical "the market should be able to operate unencumbered in a centre" and that councils and planning authorities are "unlikely to have the knowledge or be sufficiently responsive to determine an optimal mix for particular centres which can change over time".

In our view, state and local government should avoid prescriptive regulation of uses within activity centres. It is important not to 'overplan' or artificially constrain retailing. Allowing Government or councils to dictate the type of businesses that can locate within a centre will stifle the centre and prevent it from responding to customer and community needs. As the Paper notes, "if from a business case perspective a proposal doesn't stack up, there is limited opportunity for policy and controls to make it happen"

At the same time, however, the SCCA is concerned that the Paper also suggests that councils should retain the ability to impose controls such as retail floorspace limits as "it may be necessary to limit the overall amount of retailing" in some circumstances. There is the suggestion that floor space caps should be removed except for the largest retail centres where there may be "unrestrained growth". Such comments are very concerning.

The SCCA strongly believes that the retail policy should not allow councils to impose retail floorspace caps in activity centres. Such caps can only be to the detriment of consumers who are denied additional retail development. Councils do not have a good track record in relation to floor space limits and they should not be allowed to retain the power to impose them. We would point out that the community relies on the large privately developed centres to provide public infrastructure such as regional road works, bus facilities, libraries, and sporting facilities, as well as substantial developer contributions which have helped fund other public infrastructure. The level of private investment in the major centres

over the last decade would be in multiples of billions of dollars and would have created thousands of jobs.

Rather than restrict future investment, with mechanisms such as floor space caps, the government should look first at how it can leverage off private investment to achieve public policy outcomes. There is no evidence that the use of floor space caps has produced superior public policy outcomes. Instead they will work to drive investors to look at opportunities in other states. While the Government's intention may be that such limits are only imposed sparingly, in our experience many councils will be unable to resist the temptation to use these tools to dictate the retail mix in a centre or to limit its growth.

### **3. Managing restricted retail premises**

*Proposed response*

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

***SCCA does not support.***

Given that it was concern with the RRP definition (and the proliferation of RRP retail centres in out-of-centre locations) that led to the retail policy review in the first place, it is disappointing that the Paper ducks the issue and proposes no change to the definition. While the prohibition of RRP in industrial zones will go some way to addressing these concerns, the wide scope of the definition is still a concern in relation to B4 (bulky goods) zones. It is important for the credibility of the planning system and the ongoing viability of activity centres that the benefit of locating outside centres is restricted to those retail developments that warrant it – that is, genuine bulky goods retailing and trade supplies that cannot reasonably be accommodated in activity centres.

The Discussion Paper acknowledges that although there is general agreement among stakeholders that there should be a distinction between 'general' and 'restricted' retailing, there is no agreement on how that distinction should be formulated. The paper notes the ongoing concern about the increasing number of 'non bulky', high-value goods on sale at restricted retail premises (such as small household electrical goods). According to BIS Shrapnel (2008), audio-visual and data processing equipment now accounts for the greatest expenditure in 'bulky goods retailing', outselling furnishings, floor coverings and household appliances.

The RRP definition has been a concern of the SCCA's for some time because it is only RRP developments that can enjoy the significant cost advantages of locating on less expensive industrial land outside activity centres. The broader the definition of RRP the more retailers and retail property formats (including shopping centres) that can take advantage of this loophole in the centre policy. The SCCA opposed the 2007 amendments to the definition because they widened the type of goods that could be sold in these premises – for example, "home entertainment goods" were added to the definition allowing the sale of CDs and DVDs – thereby expanding the number of retailers who can locate outside activity centres.

In this regard, the Victorian definition is significantly broader than definitions in other jurisdictions. In NSW, for example, the *Right Place for Business and Services* planning policy states: "Regulation of the (bulky goods) format is often required to stop bulky goods outlets selling non-bulky goods . . . . Where such

concerns exist, councils are encouraged to apply floor space limits or restrictions on the type of goods for sale. This is a fair restriction in return for the cost and locational advantages not available to other retail outlets”.

Most definitions of bulky goods retailing tend to focus on the rationale for an out-of-centre location, such as the need for large floor areas or direct vehicular access, rather than prescribing a list of goods that can be sold (which can very quickly become out of date). NSW has adopted this approach in its state-wide definition of bulky goods retailing, as have a number of planning authorities in other states such as Redlands Shire in Queensland which has adopted the following definition of bulky goods showroom -

*“the use of premises for the purpose of display, retail sale or hire of goods of a bulky nature that generally require delivery by a vehicle and where the gross floor area of the use is no less than 400m<sup>2</sup>. The term includes, but is not limited to, large electrical appliances, furniture and carpets”*

The SCCA considers it is important to include a minimum floor space limit of 500 square metres to ensure that only those retailers who require larger floor plates are given the advantage of being permitted to locate on cheaper land outside centres. If the rationale for the establishment of bulky goods zones is that larger spaces are required for the handling of bulky goods than is usually obtainable in commercial/retail zones, it is inconsistent to then argue that there should be no minimum floor area because some of the goods sold from these stores are not bulky and therefore do not need such a large floor area.

More recently there has been the rather novel argument from some retailers that as bulky goods retailers now keep less stock in the showroom (stock is held elsewhere and delivered directly to the customer following the order) they do not need such large floor areas and therefore a minimum floor space limit is not appropriate. If this is indeed the case, and bulky goods retailers do not need at least 500sqm, then their justification for special treatment (that is, being allowed to locate outside centres on cheaper land) no longer applies. It is essentially a matter of ‘having your cake and eating it too’. Either bulky goods retailers need larger, lower cost floor plates than are available in centres or they don’t. If they no longer require larger floor plates then they should have to locate in centres like every other retail format. If they do require larger, lower cost floor plates then an out-of-centre location may be warranted but there should be no objection to a minimum floor space requirement.

It is also important that a limit be imposed on ‘ancillary retailing’ otherwise these zones simply become de facto general retailing zones. For example, in an average bulky goods development of 25,000 square metres, if 25% is allocated to the retailing of ancillary items, this means there is more than 6,250 square metres of non-bulky goods retailing – the equivalent of more than 60 retail shops. For this reason we believe that 10% is a reasonable limit on ancillary retailing.

We therefore suggest a definition of bulky goods retailing to replace the current RRP definition along the following lines:

*“bulky goods sales means a building or place used primarily for the sale by retail, wholesale or auction, the hire or the display of goods or materials, which are of such size, shape or weight to require:*

- (a) a minimum floor space of 500 square metres, and*
- (b) a large area for handling, display or storage, and/or*

*c) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading and unloading the items into their vehicles after purchase or hire,*

*but does not include a building or place used for the sale of foodstuffs or clothing, unless the sale of such items is ancillary to the sale of bulky goods and constitutes no more than 10% of the total floor space."*

#### **4. Managing retailing in industrial areas**

*Proposed response*

- 9. Amend industrial zones so that restricted retail premises become a prohibited use.*

#### **SCCA supports**

The crux of any activity centres policy is the restriction of out-of-centre retail development. Without such a restriction, retail development will invariably locate on less expensive land outside centres - to the obvious detriment of regional activity centres and sustainable development more generally. Retail developments that are permitted to locate outside activity centres generate their own demand for road and transport infrastructure and, in a constant climate of scarce public resources, this will inevitably be at the expense of continuing public investment in designated activity centres.

Not only does allowing RRP retailers to locate in industrial areas undermine activity centres, it also gives these retailers an unfair advantage over those who have done the right thing and located in retail/commercial zones and paid the higher price of land in those zones. It is unfair that retailers who have located and signed leases in appropriately zoned retail land should suddenly find themselves confronted by new competitors paying lower rents thanks to an RRP classification.

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

#### **SCCA supports**

The SCCA does not object to the adoption of transitional arrangements for those restricted retail premises that are already located in industrial areas. However we would not support measures that would allow these premises to further broaden their retail offer so that they are even more akin to a traditional shopping centre. This would simply compound the unfair cost advantage they already enjoy over retailers within activity centres as a result of their location in industrial areas.

#### **5. Managing new centres and major retail proposals**

*Proposed responses*

- 11. Develop and implement Retail Assessment Criteria based on a sequential test approach.*
- 12. Develop criteria to be applied when considering a request for a new centre or to reclassify a centre.*

## **SCCA supports**

The Discussion Paper notes the ease with which retailing can currently be established in industrial zones compared with in-centre locations and concludes there is a need for a set of consistent assessment guidelines for major retail developments to provide a more level playing field for retail development. The SCCA agrees and supports, in principle, the draft Retail Assessment Criteria for assessing rezoning proposals for retailing of more than 2,000 square metres. We also support adoption of the sequential approach whereby out-of-centre proposals will have to demonstrate that the development is unable to be accommodated in or on the edge of an activity centre elsewhere in the region. However, we would ask that there be further consultation with industry in finalising the assessment criteria.

- 13. Continue to provide advice and assistance to councils in planning for major retail proposals.*

## **SCCA supports**

### **6. Improving design outcomes**

#### *Proposed responses*

- 14. Finalise the Interim Design Guidelines for Large Format Retail Premises.*

## **SCCA supports**

We agree that many out-of-centre developments have relatively poor levels of public amenity and do not adequately consider integrated accessibility issues, environmental sustainability and the need for activity improvements and diversity. By contrast, traditional shopping centres are generally required to meet increasingly high standards of design and public amenity. Shopping centre developers make substantial commitments to community infrastructure such as pedestrian plazas, roads, bus and rail interchanges, meeting rooms, libraries and child minding centres. There is no reason that the same design standards and an equivalent level of commitment to community facilities should not be required of other retail formats.

- 15. Undertake a review of design guidelines for retail developments and where possible consolidate this advice, improve the content and minimise any duplication.*
- 16. Update the Activity Centre Design Guidelines to incorporate design objectives and guidance on the development of new activity centres.*
- 17. Continue to provide assistance and advice to developers and councils on the design of major retail development.*

## **SCCA supports with reservations**

The SCCA has no objection to a review and consolidation of retail design guidelines provided that industry is fully consulted on their content and that they do not become a 'one size fits all' edict based on whatever happens to be the current design fad. In this context, there is a worrying theme running through the Discussion Paper that there is only one acceptable retail centre design and that is a 'main street' design. This doctrinaire approach is just as bad as the

standardised mall design of 20 to 30 years ago that it so deplores. Any retail design guidelines must not prohibit internalised malls (which have proved popular with customers) and must recognise the importance of changing consumer preferences, climate considerations, and commercial realities. A mandated approach to design will only encourage homogeneity and discourage innovation.

### **Conclusion**

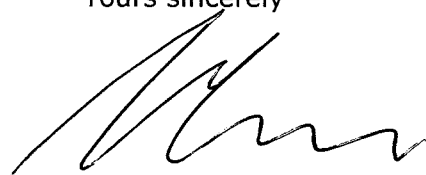
In summary, the SCCA supports the overall thrust of the Discussion Paper and most of the proposed responses subject to the following reservations:

- a number of implementation issues must be addressed before the regional retail assessments would be acceptable;
- councils should not be allowed to impose retail floor space limits on activity centres in any circumstances or to over plan and prescribe the type of retailing activity or retail mix in centres;
- the RRP definition should be amended;
- retail design guidelines should not mandate a uniform design but allow innovative design to meet changing consumer preferences and commercial realities.

We would also urge the Government to ensure that plans for retail growth are not developed in isolation from the retail industry which is best placed to determine the *need* for retail development while governments, planners and local councils should concentrate on the *location* of retail development.

We look forward to continuing consultation with the Department on this matter.

Yours sincerely



Milton Cockburn  
**Executive Director**