
Productivity Commission
Performance Benchmarking of Australian Business:
Planning, Zoning and Development Assessment

A submission by the
Shopping Centre Council of Australia

August 2010

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EXECUTIVE SUMMARY

This submission focuses on only one particular aspect of the terms of reference of the Productivity Commission's study, which is the impact of the planning system on competition.

The Productivity Commission's Issues Paper recognises that some impacts on competition are almost inevitable in a regulatory environment which is intended to impact on the operation of the market place in order to achieve optimal societal benefits.

Accordingly, we agree with the Productivity Commission's approach that what is at issue ***is whether competition is restricted by more than that which is necessary to achieve optimal community allocations and uses.***

It is the Shopping Centre Council's view that there are aspects of planning systems across Australia that are unnecessarily restrictive; but not to the extent that fundamental planning policy approaches (such as activity centres policy) should be abandoned or diluted.

We believe that the challenge of this review is to explore how greater competition can be achieved *without* compromising the multiple benefits of the planning system. In understanding what opportunities do exist to optimise competition within a regulatory environment, it is important to 'interrogate' and challenge some common misconceptions that are peddled by certain interest groups. These misconceptions include:

- The myth that there is a shortage of retail floor space in Australia that in itself is a barrier to increased competition;
- That 'activity centre policies' which promote and encourage retail development to be located within, or adjacent to, nominated activity centres are inherently anti-competitive;
- That 'new and innovative competitors' are prevented from entering the market;

This submission seeks to assist the Productivity Commission by:

- Providing evidence and examples of the performance of the planning system in respect to the provision of retail services in Australia;
- Providing an understanding of the important role of 'activity centre' policies in order to optimise social, economic and environmental outcomes;
- Identifying the areas of the planning systems where improvements can be made to ensure that competition is optimised.
- Seeking to answer the specific questions posed in the Issues Paper.

We have identified a number of 'best practice' approaches and recommendations for Retail Centres Planning which we consider to be highly relevant to the Productivity Commission's review. These are listed as follows:

- Activity centres policies that promote commercial and retail developments to co-locate within identified activity centres (such as regional, town and village centres) should remain the cornerstone of orderly and proper planning and must be maintained.
- Continually support the growth of existing activity centres, by proactively 'upzoning' those centres, so that more businesses can enter that particular market and existing business can more readily expand.
- The need for improved processes to achieve the timely, orderly and proper creation of new activity centres, which are most likely to occur in areas of significant population growth.
- Provide clear policy positions in respect to how 'out of centre' retail development proposals should be evaluated. To this extent, we support the 'sequential test' approach that is proposed to be adopted in NSW, although the need for the application of this test will be reduced if there is more effective planning within and around existing activity centres.
- Planning regulations should avoid the imposition of retail floor space caps on development within existing or proposed activity centres.

- Activity Centre typologies should avoid being prescriptive regarding the size and/or nature of the specific retail services capable of being provided.
- There is a role for planning restrictions to continue to control retail uses outside activity centres such as retail development in bulky goods zones or enterprise corridors.
- There is no necessity for a 'competition test' in the planning system as this is regulated under the Trade Practices Act and overseen by the ACCC.
- Planning authorities should produce transparent policies or guidelines in respect to the relevance of competition in the assessment of development proposals (such as the NSW Government's Draft Competition SEPP).

We would welcome the opportunity to discuss this submission with the Commission. Our contact details appear at the end of this submission.

SECTION 1 - INTRODUCTION

The Shopping Centre Council of Australia welcomes this opportunity to lodge a submission to the Productivity Commission's study into Australian business regulation through planning and zoning systems and land development assessments.

This submission focuses on one particular aspect of the terms of reference of the Productivity Commission's study, being the impact of the planning system on competition, including the specific requirements:

"to report on planning and zoning laws and practices which unjustifiably restrict competition and best practice approaches that support competition, including:

....processes in place to maintain adequate supplies of land suitable for a range of activities;

...ways to eliminate any unnecessary or unjustifiable protections for existing businesses from new and innovative competitors."

Previous Inquiries

The terms of reference and the Issues Paper relating to the competition aspects of the planning system acknowledge two major national inquiries, which commented on the so-called 'anti-competitive effects' of Australia's planning and zoning systems, suggesting that these have been to the benefit of established shopping centres and the two major supermarket chains, Coles and Woolworths.

The first was the 2007 Productivity Commission's inquiry into the market for retail tenancy leases in Australia which "while recognising the merits of planning and zoning controls in preserving public amenity", recommended "states and territories should examine the potential to relax those controls that limit competition and restrict retail space and its utilisation."

The second was the 2008 Australian Competition and Consumer Commission's (ACCC) inquiry into the competitiveness of retail prices for standard groceries ("the Grocery Inquiry"). This inquiry concluded that "zoning and planning regimes act as an artificial barrier to new supermarkets establishing in areas with a, likely unintended, consequence of thereby potentially impacting on competition between supermarkets to supply consumers."

The argument that planning controls protect existing businesses from 'new and innovative competitors' appears to be based on several assertions, none of which was critically examined by either the Productivity Commission or the ACCC in the reports referred to above. These assertions, most of which are misleading, have continued to be pushed by self-interested groups who are actually seeking privileged treatment under planning rules and thereby seeking to derive a competitive advantage.

Provision of Retail Floor Space

A key misconception is there is a shortage of retail floor space (in aggregate) in Australia and, in particular, a shortage of retail floor space for supermarkets. The argument is commonly put that the planning and zoning systems have been the main cause of this shortage by restraining the growth of retail space. This line of reasoning posits that by limiting competition for retail space, planning and zoning controls have led to higher rents for retailers. We have addressed this spurious line of enquiry in this submission and believe it is important for this Productivity Commission study to critically examine these assertions and the resultant claims for special treatment for new market entrants.

Activity Centres Policy

In this submission we also address the particular planning policies known as 'activity centres' policies, or 'centres policies' as they are commonly short-handed. Activity centres policies generally require commercial and retail developments to co-locate within identified activity centres, such as regional, town and village centres. This is the aspect of the planning system most commonly singled out for criticism on the grounds that activity centres operate in an anti-competitive manner (particularly regarding retail development). We argue in this submission that,

far from hindering retail competition, activity centres policies encourage greater competition as well as delivering important economic, social and environmental benefits for the community.

Debates about competition in the planning system have often been centered on retail development and the constraints of new entrants to enter the market. Therefore, a key focus of the review and the key features of the planning system that need to be addressed, in order to support further competition, relates to the role of activity centres and specifically:

- the failure of some governments to adequately enable the *growth of existing activity centres*;
- the failure to promote the orderly, timely and proper creation of *new activity centres*.

We believe that governments should be doing much more to grow activity centres and to enable more uses in activity centres. This must be the principal approach – or to reference the Commission's terms of reference, the "best practice approach" – in order to pursue the social, economic and environmental benefits of the planning system while promoting greater competition, including in the retail sector.

The Commission is no doubt aware that COAG has endorsed major cities planning criteria which effectively reiterate the activity centres policy approach. This has been reaffirmed in the Commonwealth's infrastructure funding criteria which also reiterates the activity centres policy approach.

New and Innovative Competitors

We also believe that it is important that the Productivity Commission examine critically the notion of 'new and innovative [retail] competitors.' Each new retailing format which arrives in Australia asserts that it is 'new and innovative' and that the planning system needs to be adapted to accommodate its unique qualities. This includes, incidentally, the modern shopping centre format which, when it arrived in Australia in the 1950s and 1960s, was a 'new and innovative' competitor to the main streets and central business districts. The early shopping centre developers argued that they were different and should be permitted to locate away from the main town centres. While some of these early shopping centres succeeded in locating in what would now be described as 'out-of-centre' locations, the planning authorities generally disregarded this special pleading and shopping centres were forced to locate in the town centres and activity centres so that the community would achieve broader public benefit outcomes. It is somewhat amusing, therefore, to find ourselves labeled anti-competitive when arguing that other retail formats should also be treated similarly – forced to compete on a level playing field - and be based in activity centres such as regional, town and village centres.

The Commission will no doubt receive submissions from some developer and retailer groups highlighting their 'special needs', which translates into the need for unlimited development opportunities in out of centre locations where land is cheaper, development costs are less (including lower development levies, lesser design quality, fewer requirements for mixed uses and community facilities), and where competition is less intense. It is these requests for special treatment that are anti-competitive. These special pleaders don't argue for a level playing field or for optimal competition outcomes.

The structure to this submission is to:

- Firstly, canvass and support with evidence our contention against the proposition that there is a systemic restriction on retail space;
- Secondly, interrogate the arguments that activity centre policies are 'anti-competitive';
- Thirdly, debunk the misnomer that 'new and innovative' (retail) competitors should be afforded special treatment within the planning system; and
- Finally, provide direct responses to the sixteen set issues put forward by the Commission under the 'Impact on Competition' section of the Issues paper.

SECTION 2 – THE MYTH OF A RESTRICTION ON RETAIL SPACE

The argument that the planning system operates in an anti-competitive manner rests on a number of assertions. These assertions are:

1. That there is a shortage of retail floor space (in aggregate) in Australia and, in particular, a shortage of retail floor space for supermarkets;
2. The planning and zoning systems have been the main cause of this shortage by restraining the growth of retail space;
3. Planning and zoning controls, by limiting competition for retail space, have led to higher rents for retailers.

Below we address each of these assertions which were not examined critically by either the Productivity Commission in its inquiry into the market for retail tenancy leases in Australia or by the Australian Competition and Consumer Commission in the Grocery Inquiry.

2.1 - Is there a shortage of retail space in Australia?

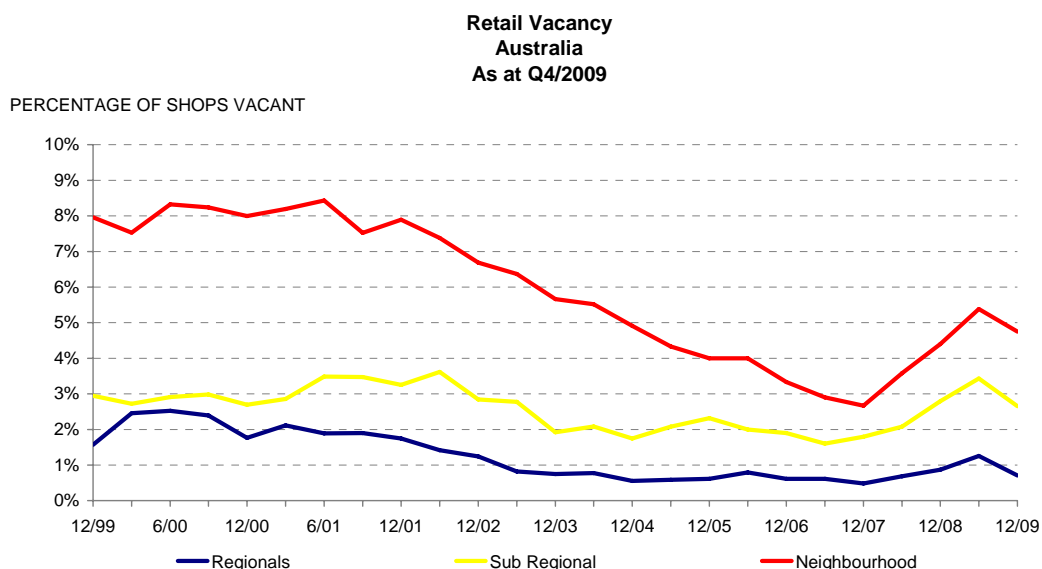
We know that, internationally, there is much more retail space per capita in the USA (around 3.6 sq m) than in Australia (around 2.2 sq m), and much less in the United Kingdom (around 1.3 sq m) but these figures don't tell us anything about the optimum amount of retail space for a country. The substantial supply of retail space per capita in the USA, for example, is now contributing to an urban blight problem as many shopping centres and other retail formats in some cities are simply being abandoned as retail vacancy rates continue to rise.

We also have to make a distinction between a cyclical shortage of retail space, which Australia was obviously experiencing prior to the onset of the global financial crisis (and which came at the end of a seven-year boom in retail demand), and a chronic shortage of retail space.

If there is a chronic shortage of retail space in Australia, one would expect that vacancy rates across all types of retail formats would be consistently low and largely unaffected by the state of the economy and fluctuations in the health of retail sales.

Reliable data on vacancy rates are only available for the shopping centre industry but since this is the format most commonly accused of being 'protected' from competition by the planning system, it is useful to examine shopping centre vacancy rates over a reasonable period of time. Since shopping centres are usually located in activity centres this data -is also a reasonable 'proxy' of retail vacancy rates in activity centres.

Jones Lang LaSalle has provided us with data on shopping centre vacancy rates over the 10 years until December 2009. These are demonstrated in the following graph:



Note: Arithmetic average of all major cities.
Sub-regional vacancy excludes Canberra.

Jones Lang LaSalle Research

This graph reveals that for some of the years of this decade there was actually an over-supply of shopping centre retail space in Australia.

The average vacancy rates for neighbourhood shopping centres in all major cities in June 2000, for example, was over 8%; while for sub-regional centres it was 3% and around 2½% for regional centres.¹

It was only the 'long boom' in retail demand, which began in 2002, that drove down vacancy rates so that by the end of 2007 the average vacancy rate for neighbourhood centres had fallen below 3% and for regional centres it had fallen below 1%.

The onset of the global financial crisis put an end to that and vacancy rates in shopping centres rose again as retailers were forced to rationalise space requirements by closing stores and putting expansions on hold and as other retailers exited the industry. By the middle of 2009 average vacancy rates in neighbourhood centres were again above 5% and in sub-regional centres they were above 3%.

This increase in vacancy rates in 2008 and 2009 occurred despite the fact that it has been acknowledged that shopping centre landlords generally sought to minimise vacancies during this period by carefully managing occupancy costs.

There is no reliable and extensive data on vacancy rates in shopping strips and high streets. But since shopping centres are more intensively managed, the vacancy rates in these other retail areas are generally higher than in shopping centres.

There is no doubt, as is obvious from the above graph, that there is a chronic shortage of retail space within regional shopping centres in Australia with vacancies over the last decade rarely reaching 2%. This shortage, however, is not an outcome of the planning system but a result of the limited availability of department stores to anchor such shopping centres or to enable the redevelopment of sub-regional shopping centres into regional shopping centres.

Even with a relaxation of planning restrictions, the development of regional shopping centres would still be dependent on the availability of department stores to anchor the development. This, in turn, would depend on the level of consumer demand and the consumer demographic of the surrounding trade area.

While Australia remains limited in the number of department store chains to only two there will be a limit imposed on the growth in regional shopping centres which is unrelated to planning considerations. It is the population constraints (reflected in the strength of retail sales in an area) and the availability of department stores (which is also tied to the strength of retail sales) which are the major constraint on the availability of regional shopping centres. A recent study noted: "An important influence on the level of retail floorspace supply in Australia is the limited domestic market, coupled with high levels of economic concentration in key retail sectors. These factors explain the relatively restrained supply of retail floorspace in Australia in comparison with the United States."²

It must also be recognised that regional shopping centres are the premium end of the retailing market. As such there will inevitably be a limited number of them. It is the same in any industry – just as you do not expect to see an unlimited number of 5-star hotels or premium grade office buildings. This does not mean there is a 'shortage' of supply of these centres; it is just a reflection of demand for space in them. If you cannot afford to rent office space in the only premium office building in your area, it does not mean that the office market is not working or that there is a shortage of supply. It simply means you must cut your cloth accordingly. There is no fundamental 'right' for a retailer to be able to open a shop in the most popular shopping centre anymore than there is a 'right' for someone to be able to own a house in the most popular suburb.

Is there a shortage of space for supermarkets?

Nor is there any evidence that there is a shortage of land for supermarkets in Australia. Last year the Federal Government released a report³ showing that, from 2001, Coles, Woolworths and Aldi had between them opened nearly 600 new supermarkets. On average, therefore, these three

¹ Regional shopping centres are centres anchored by at least one department store; sub-regional centres are those anchored by at least one discount department store; neighbourhood shopping centres are those anchored by at least one supermarket.

² Retail Policy Background Paper No 3 The Changing Retail Scene in Australia, Ratio Consultants for the Victorian Department of Sustainability and Environment September 2006 p.6

³ Media statement The Hon Dr Craig Emerson MP Minister for Competition Policy and Consumer Affairs 18 September 2009

chains have opened nearly 70 new supermarkets each year and this does not taken into account the rest of the supermarket sector (IGA, Foodworks, Franklins, Supabarn, Spar etc).

Despite having released this report himself, the Federal Minister for Competition Policy, Dr Emerson MP, claimed earlier this year that “[activity] centres policies limit the location of retail outlets to a small number of precincts, usually including a major shopping centre. . . . If one supermarket gets the gig for operating in a designated shopping centre, rivals are excluded from setting up nearby.”⁴

Urbis ⁵ has examined this assertion by analysing three major activity centres in Sydney, the city where competition for developed land is obviously the most intense. Urbis looked at the number of supermarkets within a 5 kilometre radius of Westfield Bondi Junction, Westfield Burwood and Warringah Mall. Urbis has also examined a major activity centre in Brisbane (Chermside) and Melbourne (Knox).

The radius of 5 km was selected because, as well as approximating the primary trade area of the shopping centre, it is the area the ACCC uses to approximate the ‘local area’ when deciding on approval for supermarket acquisitions under section 50 of the Trade Practices Act.

The Urbis analysis found that within a 5 km radius:

- Westfield Bondi Junction had 20 supermarkets (compared to 15 in 2000)
- Westfield Burwood had 17 supermarkets (compared to 12 in 2000)
- Warringah Mall had 14 supermarkets (compared to 9 in 2000)
- Knox City had had 15 supermarkets (compared to 12 in 2000)
- Westfield Chermside had 18 supermarkets (compared to 10 in 2000).

Maps of each of the above centres and analysis are provided at **Appendix 1**.

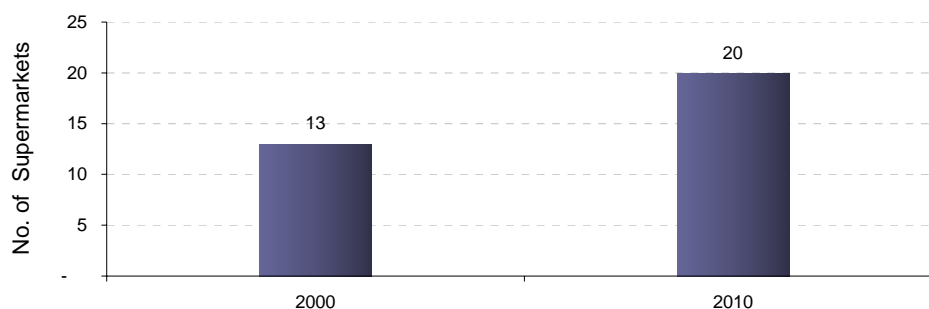
BONDI JUNCTION (SYDNEY)

Bondi Junction - Supermarket Development Activity within 5km, 2000-2010

Store Operator	Suburb	Development Type	Year Opened
Woolworths	Pagewood	new store	2002
Woolworths	Potts Point	new store	2004
Coles	Bondi Junction	new store	2004
Coles	Sydney CBD	new store	2005
Aldi	Edgecliff	new store	2005
Woolworths	Surry Hills	new store	2006
Coles	Rose Bay	new store	2006

Source : Urbis

Bondi Junction - Supermarket Development Activity within 5km, 2000-2010



Source : Urbis

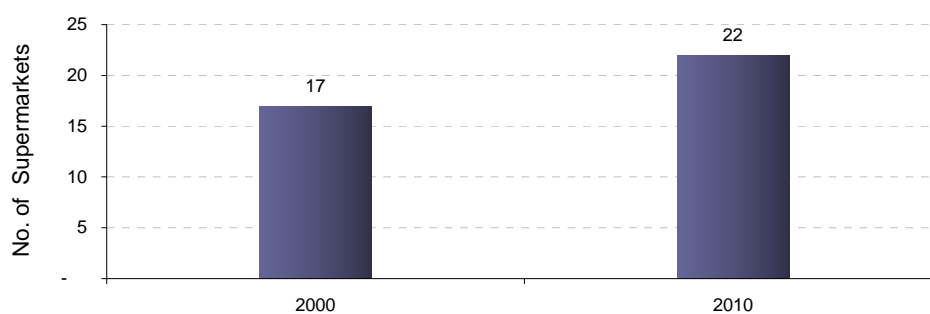
⁴ Address to the Sydney Institute 7 April 2010.

⁵ Analysis for the Shopping Centre Council of Australia.

BURWOOD (SYDNEY)**Burwood - Supermarket Development Activity within 5km, 2000-2010**

Store Operator	Suburb	Development Type	Year Opened
Supabarn	Five Dock	new store	2002
Aldi	Canterbury	new store	2003
Coles	Rhodes	new store	2004
Aldi	North Strathfield	new store	2004
Aldi	Leichardt	new store	2006

Source : Urbis

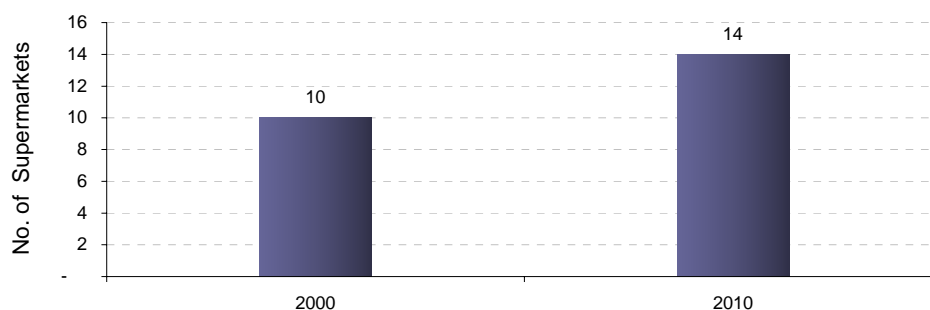
Burwood - Supermarket Development Activity within 5km, 2000-2010

Source : Urbis

WARRINGAH MALL (SYDNEY)**Warringah Mall - Supermarket Development Activity within 5km, 2000-2010**

Store Operator	Suburb	Development Type	Year Opened
Coles	Forestville	new store	2002
Aldi	Brookvale	new store	2003
Aldi	Manly	new store	2005
Coles	Balgowlah	new store	2009

Source : Urbis

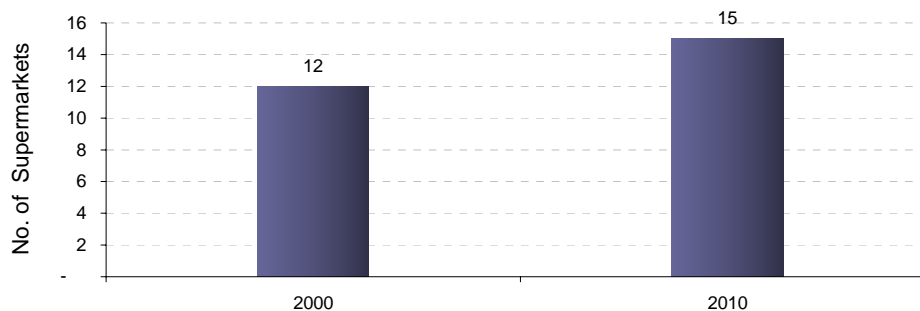
Warringah Mall - Supermarket Development Activity within 5km, 2000-2010

Source : Urbis

KNOX (MELBOURNE)**Knox - Supermarket Development Activity within 5km, 2000-2010**

Store Operator	Suburb	Development Type	Year Opened
Aldi	Ferntree Gully	new store	2003
Aldi	Bayswater	new store	2006
Coles	Bayswater	new store	2009

Source : Urbis

Knox - Supermarket Development Activity within 5km, 2000-2010

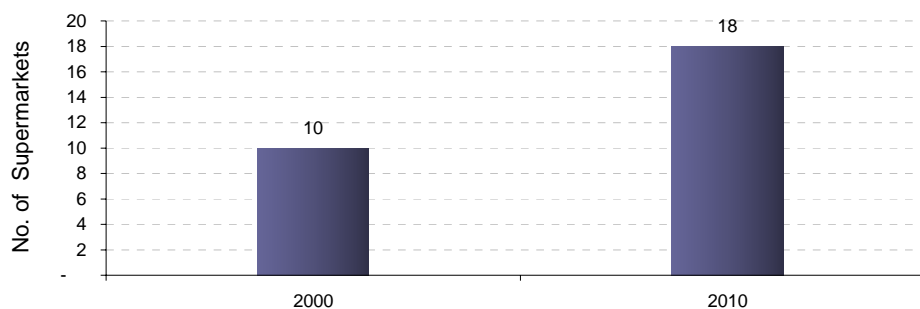
Source : Urbis

CHERMSIDE (BRISBANE)**Chermside - Supermarket Development Activity within 5km, 2000-2010**

Store Operator	Suburb	Development Type	Year Opened
Supa IGA	Stafford	new store	2001
Aldi	Chermside	new store	2004
Aldi	Toombul	new store	2006
Woolworths	Chermside	new store	2006
Woolworths	Nundah	new store	2007
Aldi	Lutwyche	new store	2008
Coles ¹	Aspley	new store	2008
Woolworths	Carseldine	new store	2009

1. Coles replaced the demolished Bi Lo store

Source : Urbis

Chermside - Supermarket Development Activity within 5km, 2000-2010

Source : Urbis

In other words a new supermarket has opened in these primary trade areas on average at least every two years. This is hardly evidence that under activity centres policies – or under planning and zoning policies generally – “rivals are excluded from setting up nearby.”

Incidentally, the Aldi supermarket chain is one of those relatively new entrants to the Australian market which has argued it is a ‘new and innovative’ competitor (on the grounds that its standard format occupies a lesser floorspace than that of Coles and Woolworths) and that planning rules needed to be relaxed to accommodate it.

Of the 26 additional supermarkets which have been established in the five locations above, eleven have been Aldi supermarkets. Aldi has only been operating in Australia for around 10 years and in that time it has opened more than 230 stores and it has not yet sought to expand beyond the eastern states and the ACT. This is a faster historic rate of store opening than either Coles or Woolworths achieve nationwide. Accordingly Aldi’s claims should be treated with scepticism in the light of its rapid expansion in what is obviously a mature grocery market in Australia.

2.2 Have planning and zoning systems limited the growth in supply of retail space?

The assertion that there is a chronic shortage of retail space in Australia is therefore not supported up by the evidence. Nevertheless let’s examine the second assertion outlined above: that the planning and zoning systems in Australia have limited the growth in the supply of retail floor space in Australia.

Of course planning and zoning controls obviously have an influence on the total amount of retail space, just as they have an influence on the total amount of residential space, office space, industrial space and so on.

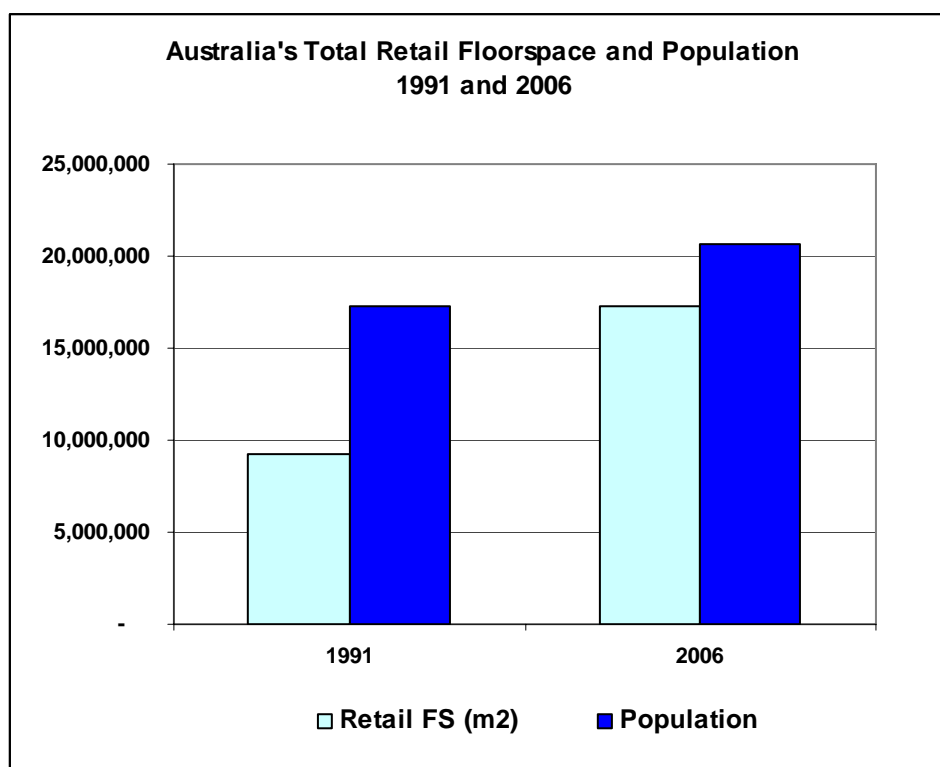
With the exception of planning laws in Perth, however, (and which are shortly to be repealed), planning laws do not impose a numerical limit on the amount of retail floor space. Nor do they impose greater space restrictions on retail property than they do on other property classes.

Australia has seen a massive increase in shopping centre floor space over the past 20 years. Supply almost doubled between 1991-92 and 2005-06 - from 9.2 million sq m to 17.3 million sq m - an increase of 88% in 14 years. ⁶(The equivalent increase in prime office space over the same period was only 19%⁷.)

This was much faster than the rate of growth of the population, resulting in an increase in the amount of shopping centre floor space per capita from 0.53 sq m in 1991-92 to 0.84 sq m in 2005-06. The following chart illuminates the dramatic growth in retail floor space as against population over this period.

⁶ Figures supplied by Mapinfo Dimasis, Australia: Growth in Floor Space 2007

⁷ Property Council of Australia Research



Source: SCCA; ABS

Non-shopping centre retail floor space also grew over the same period, although not as fast – from 23.6 million sq m in 1991-2 to 27.4 million sq m in 2005-06 – and the total retail floor space per capita increased from 1.88 sq m in 1991-92 to 2.18 sq m in 2005-06.

Until the onset of the global financial crisis, which obviously put retail developments and re-developments on hold (and also, of course, also reduced demand for retail space), there was no evidence that this amount of retail floor space per capita had stabilised or had begun to decline.

Has the limited supply of retail space led to higher rents for retailers?

Even though we have demonstrated the contrary, there is still a common assertion that planning and zoning controls, by limiting the supply of retail space, have led to higher rents for retailers.

If this was the case we would expect that occupancy cost ratios would have grown substantially over time. In fact, over the last decade, these have not changed much at all.⁸

In the case of regional shopping centres, average occupancy cost ratios (including marketing levies and GST) have moved within a very narrow band from year to year, hovering around 16%. In 2000-01 the ratio was 16% and in 2008-09 it was 16.4%.

This is also true for average occupancy cost ratios in sub-regional centres – hovering around 12.0%. In 2000-01 the ratio was 12.4% in 2008-09 and in 2008-09 it was 12.0%.

Similarly in neighbourhood centres average occupancy cost ratios have hovered around 11% over the past decade and in the last two years the ratio has fallen well below 11%.

Another way of testing the ability of shopping centre owners to charge excessive rents is to examine the relative returns over the long term in a variety of countries. If the planning system is providing Australian retail property owners with the capacity to charge excessive rents then, all other things being equal, we would expect that their returns should be above those achieved in countries with less restrictive planning policies.

⁸ SCCA Submission to the Productivity Commission Inquiry into the Market for Retail Tenancy Leases in Australia July 2007 pp.53-54.

Urbis has done a cross-country comparison of retail property returns in Australia, Canada, New Zealand, the UK and the USA for the period 1993-2007⁹. This shows an average total return in Australia over this period of 12.5% compared to 12.2% in Canada, 14.5% in New Zealand, 11.4% in the UK and 11.4% in the USA, when measured on one set of data, and 14.5% in the USA, when measured on a more comprehensive set of data (which Urbis warns may exaggerate total returns.)

Urbis concluded that this examination of five countries “does not provide any strong evidence of excess returns being generated in countries with more restrictive planning policies.”

The argument that Australia's planning and zoning policies have restricted the supply of retail space and that this has been to the detriment of the nation's retailers and consumers does not stand up to critical examination. Nor does the argument take into consideration the benefits, including economic benefits, which are derived from a well-designed and efficiently operating land use planning system.

⁹ Urbis Planning System Fact Finding Report September 2008 p.24

SECTION 3 - THE MYTH OF 'ANTI-COMPETITIVE' ACTIVITY CENTRES POLICIES

As noted in Section 1 our submission concentrates only on the 'impact on competition' aspect of the Productivity Commission's 'Study'. Our comments relate only to retail development and cover all aspects of the planning system that are common across jurisdictions such as strategic planning (e.g. metropolitan plans), zoning (e.g. local environment plans), the development assessment process (e.g. application, consideration, decision, objection rights), and development consent conditions (e.g. design quality, development levies).

Before addressing the specific issues listed by the Productivity Commission, however, it is important to address the matter of 'activity centres policies'. Activity centres policies generally require commercial and retail developments to co-locate within identified activity centres, such as regional, town and village centres. This is the aspect of the planning system most commonly singled out for criticism on the grounds that activity centres operate in an anti-competitive manner (particularly regarding retail development).

3.1 Why Activity Centres?

The Victorian Government's description of activity centres is as follows:

*"Activity centres provide the focus for services, employment and social interaction in cities and towns. They are where people shop, work, meet, relax and live. Usually well served by public transport, they range in size and intensity of use from local neighbourhood strip centres to traditional universities and major regional malls. They are not just shopping centres, they are multifunctional"*¹⁰.

The South Australian Government has a similar description:

*"Activity centres provide concentrations of business, administrative, civic, retail, entertainment, employment, research, education and community uses, and – increasingly – residential development. The purpose of activity centres is to cluster commercial and employment activity to improve accessibility, productivity and the efficient use of infrastructure"*¹¹.

The Queensland Government states:

*"Activity centres are accessible locations that have concentrated businesses, services and facilities for employment, research and education, as well as higher density residential development serving a regional population"*¹².

It is therefore clear that there are a number of social, economic and environmental reasons for these policies, including providing more equitable access for all residents to goods and services; providing a blueprint for the rational allocation of public infrastructure; achieving more sustainable cities; and reducing the number of car-generating trips.

All jurisdictions have long-established activity centres policies of some kind, in full recognition of the multiple and public interest benefits they provide. NSW and WA have stand alone activity centres policies (both under current review), while Victoria has a Retail Planning Policy (also currently under review). These, and all other jurisdictions have activity centre policy provisions (e.g. centre hierarchies, encouraging development within centres around transit nodes) as part of their major strategic plans (e.g. Sydney Metropolitan Strategy, SEQ Regional Plan 2009-2031, sections 8.6-8.8; 30-Year Plan for Greater Adelaide, Chapter D, sections D1 and D6). The Sydney Metropolitan Strategy is currently being reviewed, and recent public comments from the Director-General of the NSW Department of Planning, Mr Sam Haddad, indicate that submissions lodged during the recent consultation period clearly favour maintaining the activity centres approach as a key component of the Sydney's planning framework and urban structure.

These policies have, in recent times, come under criticism that they are anti-competitive because they allegedly 'protect' existing businesses from new competitors who, it is argued, should have greater freedom to locate in out-of-centre locations. The comments by the Federal Minister for Competition Policy, Dr Emerson, cited on page 9 of this submission, are an example of this criticism. Similarly the ACCC, in its Grocery Inquiry, argued that activity centres policies are "likely to lead to a greater concentration of supermarkets in the hands of [Coles and Woolworths]".

¹⁰ Melbourne 2030 – Activity Centres

¹¹ 30 Year Greater Plan for Adelaide – Section D6, Mixed use activity centres

¹² SEQ Regional Plan 2009-2031 – Section 8.6, Activity Centres and transit corridors

This argument that activity centres policies lead to anti-competitive outcomes rests on assertions that:

- there are no appropriate sites left for development within activity centres;
- they protect existing businesses located in the activity centres from competitors; and,
- they protect existing businesses from competition from 'new and innovative' retailers and retail formats which are not appropriate to be located in activity centres.

We address each of these claims in turn. We have also expanded on this in our answer to the Commission's Issue 3 in Section 5.

3.2 A shortage of activity centres?

All of Australia's major city strategic plans comprise a network and hierarchy of activity centres which outlines their general network, connection and function, in order to guide land use and infrastructure planning. Further, all states and territories actively identify 'planned' and 'emerging' activity centres as part of this process. The following table provides a general outline of the activity centres hierarchy from Australia's major metropolitan plans (from largest to smallest centres):

NSW Sydney Metropolitan Strategy	VIC Melbourne 2030 Strategy	QLD SEQ Regional Plan 2009-2031 / Brisbane City Plan 2000	WA Perth Metropolitan Region Scheme / Draft Activity Centres Policy for Perth and Peel	SA 30 Year Plan for Greater Adelaide	ACT ACT Territory Plan
Global Sydney (Sydney CBD & North Sydney)	Central Activities District (Melbourne CBD)	Primary Activity Centre / City Centre (Brisbane CBD)	CBD / Perth Central Area (Perth CBD)	Capital City (Adelaide CBD)	CBD/Civic
Regional Cities (e.g. Parramatta, Penrith)	Principal Activity Centres (e.g. Doncaster Hill, Moonee Ponds, Glen Waverley)	Principal Regional Centre / Major Centres (e.g. Robina, Chermside, Indooroopilly, Carindale, Sprinwood)	Primary activity centres (e.g. Joondalup, Rockingham)	Regional Centres (e.g. Marion, Elizabeth)	Town Centres (e.g. Belconnen, Woden, Tuggeranong, Gungahlin)
Major centres (e.g. Bondi Junction, Chatswood, Hornsby, Kogarah)	Major Activity Centres (e.g. Altona, Glenroy, Mount Waverley, Northcote)	Major Regional Centres (e.g. Toowong, Toombul, Coomera)	Strategic city centres (e.g. Armadale, Midland, Fremantle, Stirling)	Major Districts (e.g. Glenelg, Westlakes)	Group Centres (e.g. Dickson, Erindale, Manuka/Griffith, Kingston, Macquarie)
Specialised Centres (e.g. Macquarie Park)	Specialised Activity Centres	Suburban Centres	Strategic specialised centres (e.g. Curtin University)	District Centres (e.g. Sefton Park, Burnside, Norwood)	Local Centres (e.g. Kambah, Giralang)
Town Centres (e.g. Auburn, Carringbah, Gordon, Manly)	Neighbourhood Activity Centres	Convenience Centres	Regional Centres (Alkimos, Booragoon, Karrinyup, Mirrabooka, Warwick, Whitford)	Highway Centres (e.g. Mile End)	
Villages (e.g. Coogee, Engadine, Turramurra)			District Town Centres (e.g. Canning Bridge, Greenwood, Kelmscott)	Specialised Centres (e.g. Technology Park)	

Small Villages (e.g. Matraville, Arncliffe, Pymble, Collaroy)			Neighbourhood Centres	Neighbourhood Centres	
Neighbourhood Centres (e.g. North Bondi, Como, Killara)			Local Centres	Local Centres	

It is clear from this table that the notion and actuality of activity centres is neither static nor inflexible. Further, there is no shortage of activity centres within major metropolitan areas; and there is the potential to create new activity centres and grow existing activity centres. The Victorian Government provides that "Metropolitan Melbourne has a network of around 1,000 activity centres of various types and sizes", including "more than 100 Principal, Major and Specialised Activity Centres and more than 900 small-scale Neighbourhood Activity Centres".¹³ Further, six activity districts identified for expansion were added to the Melbourne 2030 update in 2008 including Box Hill, Broadmeadows, Dandenong, Footscray, Frankston and Ringwood.

In a submission to the ACCC Grocery Inquiry (2008), the NSW Department of Planning challenges and clarifies what it describes as 'misrepresentations' from the Urban Taskforce on the Sydney Metropolitan Strategy. The first claim from the Urban Taskforce was that the Metropolitan Strategy will limit further retail development to a few major centres; the Department rightfully highlights that this is incorrect and also points to the location of over 800 existing centres (27 strategic centres, over 50 town centres, approximately 90 villages, 180 small villages and around 470 neighbourhood centres) which are all encouraged to provide for retail development.

Another claim from the Urban Taskforce was that no additional centres will be created. The NSW Department of Planning rightfully highlights that this is not the case; nor has it been the case based on Sydney's planning history. Between the 1985 Centres Policy for Sydney and the 2001 Draft SEPP 66 (Integrating Land Use and Transport) Camden, Castle Hill, Rouse Hill, Pyrmont, Richmond/Windsor and Miranda/Sutherland emerged as major centres. When the current Metropolitan Strategy was released in 2005, Brookvale/Dee Why, Kogarah and the emerging major centres of Green Square, Leppington, and potential major centres at Fairfield, Mt Druitt, Prairiewood and Cabramatta were identified as potential and emerging major centres. This equates to more than one new centre every two years – not a bad result for a supposedly "inflexible" activity centres policy approach and planning system.

Some governments also have targeted agendas to develop activity centres. The Queensland Government's Urban Land Development Authority (ULDA) is focused on urban growth and centres revitalization through urban renewal in areas such as Bowen Hills, Yarrabilba and Flagstone. Other initiatives are focused on 'Transit Oriented Development' in areas such as Coorparoo and Yeerongpilly. The Victorian Government has an active activity centres program, and in April 2010 released an Activity Centres Toolkit to assist in activity centre planning. The SA Government is also focused on the revitalization of 16 major activity centres, as well as pursuing 'Transit-Oriented Development' as a key aspect of its activity centres policy approach. The NSW Government had a focus through its 'Six Cities' initiative in 2007, however since then (despite the announcement of a Metropolitan Development Authority) there has been little focus or attention on specifically enable exiting centres to grow.

3.3 A Shortage of Land in Activity Centres?

We have demonstrated, in the first section of this submission, that the argument that there are no appropriate sites left for retail development within activity centres (i.e. that there is a shortage of retail space) is spurious. In reality, this argument is not one of a shortage of available land but a shortage of cheap land. Not surprisingly retail developers, if given the choice, would prefer to locate on cheap land away from the activity centres rather than seek to consolidate more expensive sites within the activity centres. That is not a reason for abandoning or undermining the activity centres policy. It is, however, an argument for planning authorities to:

- Continually support the growth of existing activity centres, by proactively 'upzoning' those centres, so that more businesses can enter that particular market and existing business can more readily expand.

¹³ Melbourne 2030 – Activity Centres

- Create opportunities for new activity centres, which are most likely to occur in areas of significant population growth.

The Shopping Centre Council has consistently argued to all State Planning Authorities for this approach in metropolitan planning.

Our members have all too frequently been limited in their own expansion opportunities within existing activity centres because of controls such as retail caps (addressed later in this submission) and a failure to provide additional floor space ratio and building heights. This has even occurred in instances where governments have had a concerted effort to revitalise and 'upzone' existing activity centres.

It should be noted that shopping centres, when they seek to redevelop and expand, must do so by acquiring and consolidating expensive land in the existing activity centres and pursuing development approval with the relevant local councils. In fact, many if not most major shopping centre expansions tend to 'lateral' extensions as opposed to vertical extensions, meaning that land including roads has to be acquired and in some cases rezoned. The argument that other retail formats seeking to enter particular activity centres are unable to similarly acquire sites for development or gain development approval therefore rings somewhat hollow.

3.4 Protection from competition?

The argument that activity centres protect existing businesses from competition is illogical. After all the purpose of activity centres policies is to *concentrate* competing businesses in the one location, enabling customers to have easy access to all competitors and to be able to conveniently comparison shop before making a purchase. Dispersing retail businesses outside activity centres means competing businesses will be spread out in such a way that they are, in effect, non-competitors unless the customer has the advantage of being highly mobile and time rich.

It is odd that retail formats which have argued that all retail formats should be put on a level playing field by requiring them to locate in activity centres have been labeled anti-competitive; while those who prefer not to enter that area to compete and instead to locate elsewhere in out-of-centre locations, where they can take advantage of cheap land, are seen as the 'champions of competition'. We believe all retail businesses should compete as far as possible on a level playing field and activity centres policy provides an opportunity to do so.

It is worth noting that both the Victorian and Queensland Governments expressly discourage out-of-centre retail development. (The Victorian Government has had probably the most successful centres policy, with bulky goods outlets frequently co-located with shopping centres). The Victorian Government's statement on activity centres highlights: "Stand alone uses do not constitute activity centres, nor do industrial estates. In fact, Melbourne 2030 seeks to restrict out-of-centre development and contains separate policies for industrial land"¹⁴. Similarly, the Queensland Government provides: "Out-of-centre development is inconsistent with the SEQ Regional Plan's strategic intent"¹⁵. The South Australian Government provides that retail and other services should only be provided "outside designated activity centres where development will contribute to the principles of accessibility,; a transit-focused and connected city; world class design and vibrancy; and economic growth and competitiveness"¹⁶.

¹⁴ Melbourne 2030 – Activity Centres

¹⁵ SEQ Regional Plan 2009-2031, Section 8.6, Activity centres and transit corridors

¹⁶ 30 Year Plan for Greater Adelaide, Section D6, Mixed use activity centres

SECTION 4 - 'NEW AND INNOVATIVE COMPETITORS'

Retailing is a dynamic industry and retail formats are constantly being reinvented. Each new retailing format which arrives in Australia asserts that it is 'new and innovative' and that the planning system needs to be adapted to accommodate its unique qualities. The modern shopping centre format, when it arrived in Australia in the late 1950s and 1960s, was undoubtedly a 'new and innovative' competitor to the town centres and main streets.

Not surprisingly the early shopping centre developers argued that they were different and should be permitted to locate away from the main town centres. While some of these early shopping centres succeeded in locating in what would now be described as 'out-of-centre' locations, the planning authorities generally disregarded this special pleading and shopping centres were forced to locate in the town centres and activity centres. This is why most shopping centres are located within activity centres.

Sydney is possibly the best example of where there are few 'stand alone' shopping centres within the metropolitan area, with the most notable exception being Centro Roselands (a former golf course), which emerged outside of established town centres and transport infrastructure. The argument, or special pleading, that 'we are a new and innovative competitor and need to be treated differently under the planning system' is therefore not a recent one.

The most spurious aspect of the claims regarding 'new' and 'innovative' retail formats is that the claims generally highlight the many similarities between these new retail formats and traditional shopping centres. This ranges from the need for 'large floor plates' (shopping centre floor plates can be larger), on-site large vehicle movement (shopping centres have similar large vehicle movements, often carrying the same type of goods) and the ability for similar uses to agglomerate (this is best achieved in an activity centre).

Incidentally the Australian shopping centre format has not stood still and has been continually reinventing itself over the last fifty years. Indeed the Australian shopping centre industry is recognised globally in terms of innovation. This includes the inclusion of supermarkets, food courts, cinemas, entertainment precincts, fine dining, community facilities, valet parking, membership and rewards programs, touch screen directories, iPhone applications and so on. Even today the shopping centre qualifies as a 'new and innovative retailer.'

4.1 Inherent Planning Policy Flexibility

While activity centres policy has been historically (and remains today) one of the cornerstones of city planning policy, the policy has not been applied with absolute rigour and in fact some generous flexibility and tolerance has been given to recognise changes in the market and retail formats. Some notable examples are identified and discussed as follows:

Bulky Goods Retailers

Since their emergence, bulky goods retailers have pleaded that their retail offer, being bulky in nature and requiring vehicular access, was such that they could not locate in activity centres. They were eventually successful in doing so and 'bulky goods zones' were created, usually in industrial zones, to accommodate these special features. (Incidentally this helped contribute to a reduction in the availability of industrially zoned land.)

In return for the advantage of having access to cheaper, out-of-centre land, planning authorities insisted on minimum floor plates (usually 500 sq m) and a restriction on the amount of ancillary retailing (usually 10%) in these zones. Ever since the bulky goods retailers, and their associations, have lobbied to remove these restrictions and so, increasingly, more and more general retailing is finding its way into these zones to the extent that the only distinguishing feature between a traditional shopping centre and a bulky goods centre is the provision of a supermarket and a department store (Bulky goods retailers, having been willing participants in turning these specialised zones into general retailing zones, now complain to governments about the shortage of appropriately zoned bulky goods sites.) This sector also continues to push the line that planning systems somehow 'don't recognise' them, despite the fact that they have been specifically catered for under the planning system.

Factory Outlet Centres

Many factory outlet centres have argued that they were also a 'new and innovative retail format' and deserved special planning considerations. This is despite the fact that the only innovation about this format was to translate the shopping centre format to the traditional factory outlet by collecting a number of retail outlet stores under the one roof. Factory outlet centres are simply

another form of shopping centre, albeit ones with a much lower standard of finish, presentation and fitout than most traditional shopping centres (and hence lower development costs). It is general retailing under another name. The average tenancy in these centres is of a lesser size than in a traditional shopping centre and they do not need the large spaces required for bulky goods. Similarly the argument that overheads, such as land costs and hence rent, need to be low because retail margins are lower on surplus stock or end-of-line stock is spurious.

The earlier factory outlet stores (after they had detached themselves from the factory) were located in retail-zoned areas in the city; not on industrially zoned land. If this argument was accepted, this would be an argument for also providing special planning rules for traditional shopping centres since all retailers, at regular intervals, find they have to dispose of surplus stock or sell at discounted prices. That is part and parcel of retailing. In any event this argument has been undermined by the fact that some factory outlet centres have located, as they should, in activity centres where they have been prepared to pay higher prices for land. An example of this is the DFO Factory Outlet Store at Southern Cross Station in Melbourne.

New Supermarket Retailers (Aldi)

Over the last decade we have also seen Aldi, a traditional supermarket chain, argue that planning rules needed to be changed to accommodate their entry to the Australian market, on the grounds that their standard store size is a much lesser floorplate than the standard Coles or Woolworths supermarket. We have already addressed Aldi's arguments on pages 8-12 of this submission.

New Retail Formats - Costco

Most recently we have seen the arrival of *Costco* in Australia. This company's managing director, has commented that:

"we're a new type of retailer, we don't fit into most planning laws . . . you have to be a supermarket or department store. We're none of that, but we're all of that ..The Costco business model...is that of a 'retail warehouse' " (*Daily Telegraph*, 16 April 2010).

But Australia has had retail warehouses before Costco and has even had 'member based' warehouses before. As Costco has demonstrated at Melbourne Docklands, it is quite prepared, when encouraged, to locate in an activity centre and there is nothing intrinsic to its format that requires it to be located outside activity centres. Indeed it is just the sort of attraction or magnet that would assist in the revitalisation of activity centres. As for the argument that Costco is too large to be located in activity centres we would point out that the retail floorspace of its proposed Sydney store is only the size of a large neighbourhood shopping centre.

All of these retail formats have justified an advantageous position in the planning hierarchy on the grounds of being a 'new and innovative' retail concept. In reality, this special pleading is simply a means of gaining a competitive advantage (cheaper land, lesser development levies, fewer design criteria, fewer requirements to include community facilities and infrastructure as part of the development etc.) than goes with locating in activity centres. These claims should be treated with great scepticism.

SECTION 5 - ISSUES RAISED BY THE PRODUCTIVITY COMMISSION

1. What are the ways in which regulations or government processes restrict competition for land and its use? What are social, economic or environmental purposes that these restrictions serve? Could the purpose be achieved without restricting competition?

The principle way governments restrict competition for land and its use is through the planning, zoning and development control system. The principle means of regulation is the relevant planning legislation (such as the Environmental Planning and Assessment Act in NSW, the Integrated Planning Act in Queensland etc.) and associated planning policies.

The main purpose of this regulation is to facilitate the orderly planning, management and development of Australia's cities and towns. The planning system therefore plays a key role in pursuing and balancing economic, social and environmental objectives. The economic benefits are mainly a managed approach to development, principally through more efficient use of infrastructure, greater certainty in investment decisions and a more efficient use of resources. The environmental objectives are primarily associated with greater urban sustainability through more concentrated land usage and a reduction in greenhouse gas emissions. The social objectives are many and include social and individual health, greater choice and convenience, sociability and livability.

Since land is a finite resource any system which confines particular land uses to specific areas or zones obviously limits competition for land and its uses. It is difficult to see how these economic, social and environmental objectives could be achieved without an orderly planning system and therefore without some restriction of competition. It must be stressed that this is true for all types of land use – residential, office, industrial and retail – it is not only in the retail area that competition is restricted in this way.

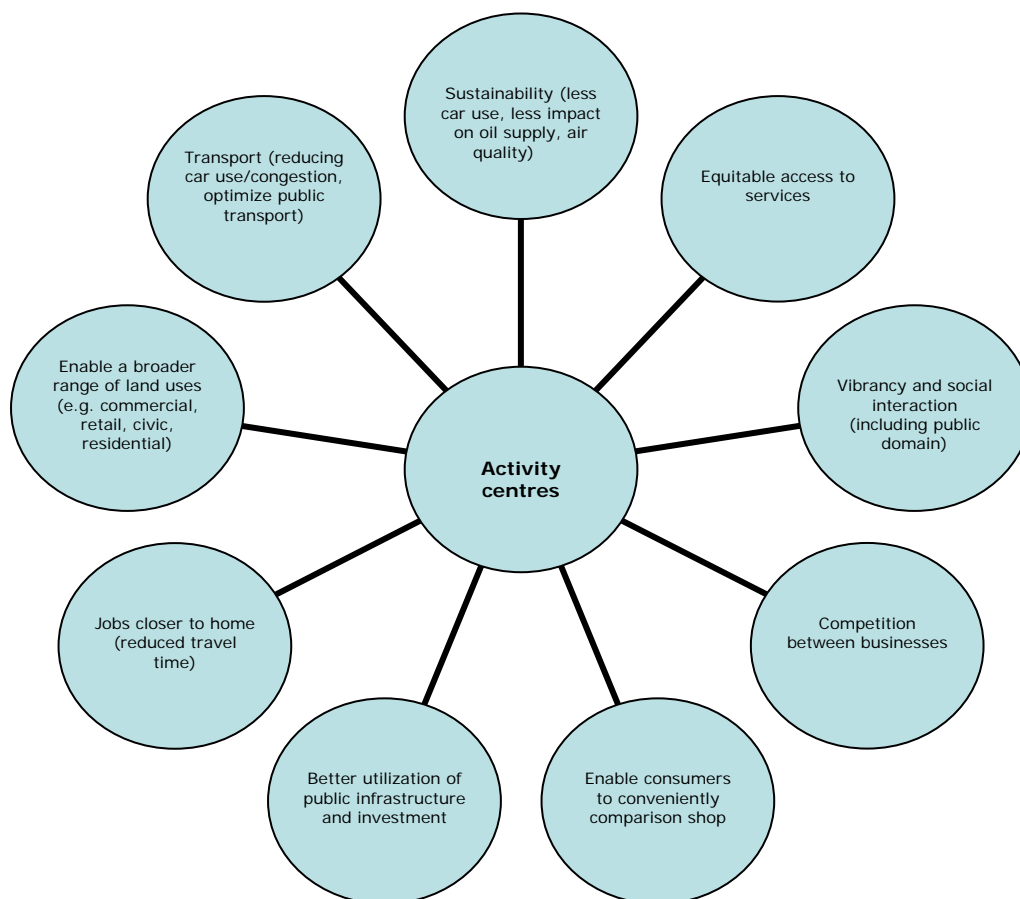
When the National Competition Policy principles were adopted in Australia in the late 1990s all jurisdictions were required to review their planning legislation to ensure they did not offend these principles. All jurisdictions found that the relevant legislation achieved its objectives in an effective and efficient manner and that the competition restrictions identified were in the public interest. Critical reforms did emerge from these reviews including private building certification and code assessment (or complying development), which enabled a self-assessment process for minor development, subject to relevant development and building standards.

As we have elaborated in other parts of this submission, activity centres policies enable the achievement of multiple social, economic and environmental objectives. It is for this reason that all Australian jurisdictions promote activity centres policies as a key component of the planning framework and urban structure. Contrary to the argument from some groups, activity centres policies provide an optimal competitive outcome, given the multiple public benefits they deliver, and in comparison with the alternative approaches of widespread out-of-centre development or de-regulated land use planning.

We believe the best way to enable competition through the activity centres policy framework is to enable more land uses to be permissible within activity centres through the relevant policy frameworks and zone provisions. It is also important for governments to provide more focus on the growth of existing activity centres, to enable more retail development, and on the development of new activity centres (so long as they are genuine activity centres which conform to all the requirements of an activity centre, and not single use stand alone centres).

The following diagram, summarised from Australia's major metropolitan plans and relevant activity centres policies, outlines the multiple and public benefits of activity centres policies. We do not believe these multiple objectives and benefits could be achieved through a more 'relaxed' approach to planning, such as abandoning the activity centres policy and more easily enabling out-of-centre development.

The multiple public benefits of activity centres



2. Do some governments (and their regulators) or government processes restrict competition more than others? If so, what are the ways in which they do this?

There is only one state – Western Australia - which restricts retail competition although that state is now taking action to remove the relevant anti-competitive regulation. Western Australia does this by placing limits or caps on the amount of retail floorspace which can be provided in the relevant activity centres. This state also limits competition through its trading hours laws, which restrict the trading hours of 'general' stores (i.e. large stores and retail chains) and also prevents certain retailers outside defined 'special trading precincts' from taking advantage of later trading hours during the week and prohibits them from trading on Sundays.

The *Statement of Planning Policy 4.2 - Metropolitan Centres Policy* imposes maximum retail floorspace limits on all of the identified activity centres. For example, neighbourhood centres have a limit of 4,500 sq m of net lettable area while regional centres (such as Karrinyup and Mirrabooka) are limited to 50,000 sq m and strategic regional centres (such as Armadale and Joondalup) have a limit of 80,000 sq m. These limits, which have been in existence since 1991, are expressed as 'guidelines' in the policy but, in practice, have been applied as limits or caps. These limits apply to the entire activity centre so they actually limit the expansion of all forms of retailing within the centre (e.g. strips, high streets, homemaker centres) and not just shopping centres. Once the caps have been reached new retailers have been prevented from locating in these activity centres and existing retailers and shopping centres have been prevented from expanding.

This has obviously limited the size of shopping centres in Perth compared to other capital cities, including cities with much smaller populations. Perth's largest shopping centre is Westfield Carousel (the 34th largest in Australia), with a gross lettable area retail of 82,078 sq m, while the largest shopping centre in the ACT (Canberra Centre) is 89,546 sq m and the largest shopping centre in Adelaide (Westfield Marion) is 109,549 sq m. Limiting the size of shopping centres (while also limiting other retail space in the activity centres) limits the variety of department store retailing, grocery retailing and specialty retailing and limits the variety of choice available to customers. It also, of course, bids up rents which in turn feeds into consumer prices.

This policy has been under review for several years and is about to be replaced with a new 'Activity Centres Policy for Perth and Peel.' Although the final policy has not yet been released, we understand the new policy will remove these floorspace limits.

The WA *Retail Trading Hours Act* also limits retail competition by preventing large retail stores being able to trade after 6pm during the week and on Sundays. Only retailers with less than 13 staff and with no fewer than three stores have unlimited trading hours. In addition, over the years, governments have created 'special trading precincts' (Perth city, Fremantle city and, most recently, Joondalup) where all retailers can trade until 9pm mid-week and on Sundays. This means the vast bulk of retailers throughout the Perth metropolitan area are unable to take advantage of those trading hours. While some other states still have restrictions on trading hours on Sundays (such as Adelaide, which limits trading hours for large retailers on Sundays to 11am to 5pm and prevents these retailers trading on any public holiday, and parts of regional Queensland), no other state discriminates against retailers and consumers to the same extent as Western Australia.

3. Are there particular examples where planning, zoning and DA systems are especially effective at encouraging competitive outcomes?

Activity centres policies are especially effective in encouraging competitive outcomes; both in their own right, and relative to the planning policy alternative of out-of-centre development, particularly out-of-centre development that involves a stand alone, single use retail enterprise. This fact, notwithstanding the multiple benefits of activity centres policies, has largely been overlooked and misunderstood in the recent commentary on planning and competition. Proponents of out-of-centre development can't deny that they are essentially seeking a competitive advantage over others - by locating in areas where development is cheaper and where there are often no direct competitors in the immediate local area or surrounds.

The following table outlines the competition benefits of development in activity centres compared with development in out-of-centre locations:

Competition attribute	Activity centre	Out-of-centre
Freedom of entry	Yes – more retail formats generally allowed through centres and mixed-use zoning.	Less retail formats allowed – typically more restrictive zoning in terms of permissible retail land uses.
Ability to enter market regardless of size	Various retail formats allowed under centres and mixed-use zoning – including shopping centres.	Less retail formats allowed – often limited to 'bulky goods' and 'retail outlet' centres (not shopping centres)
Ability to trade freely	Yes – subject to relevant shop trading hours legislation.	Yes – subject to relevant shop trading hours legislation.
Development costs	Higher – higher land costs, site amalgamation (e.g. acquisition costs, stamp duty), development costs (e.g. higher quality, public domain, mixed uses) and development levies.	Lower – cheaper land, larger lots that don't require amalgamation, lower quality development requirements, lower development levies.
Consumers can comparison shop more easily	Yes – multiple businesses selling similar products competing with each other, consumers need less mobility.	No – often fewer businesses, including stand alone enterprises – consumers need higher mobility.
Businesses competing against each other in the market	Yes. Density of businesses and competitors significant.	No. Fewer businesses to compete with – more stand alone operators.
Many buyers and sellers	Yes – often combination of shopping centre with multiple tenants and main street shops – all competing for business.	No – often less sellers in the market.
Ability to increase retail supply	Yes – however mostly limited by the planning system and proactive approach to zoning and development controls (e.g. height).	No – often located within industrial areas – more conflict (e.g. industrial erosion) and inability to develop into a proper multiple use/retail format centre.

On the reverse side, there are current examples where the planning system does not encourage competitive outcomes. This includes provisions under the NSW Government's proposed revised Activity Centres Policy, which despite being a centres policy and (at face value) promoting a 'centres first' approach, actually more easily enables out-of-centre development than in-centre development through a proposed 'Sequential Test' and 'Site Suitability Criteria'. There is also the suggestion that stand alone, single use out-of-centre development can be classified as a new activity centre, despite meeting none of the essential criteria in the policy itself or those identified in the diagram in the previous section. The NSW Government is also seeking to provide special treatment for 'Particular Classes of Development' such as DFOs, warehouse and cash and carry outlets, bulky goods outlets and 'big box' formats, by enabling them to easily locate in out-of-centre locations. Shopping centres are not being provided with similar treatment.

Such an approach makes a mockery of open and fair competition, particularly since there is little basis for certain retail formats being singled out for special treatment over others (despite having similar planning issues to resolve such as built form and traffic impacts).

4. Which regulatory requirements on developments unnecessarily restrict the final use of a site?

The planning system comprises a range of regulatory requirements across all land uses and development, including retail, commercial, industrial, tourism and residential development. From a planning system perspective, zoning provisions (in gazetted instruments) generally regulate the permissible and prohibited land uses, while development controls generally regulate the actual development through various government policies and development control plans, which translate into 'conditions of development consent'.

Usage restrictions in certain activity centres were proposed under the NSW Government's Draft Subregional Strategies for Sydney, however the Government has provided assurances that these will be removed as part of the current Metropolitan Strategy Review. These include, for example, statements that 'villages' should only have 'a small supermarket'. These provisions had the potential impact of artificially prohibiting or capping the development of retail floor space, specifically supermarkets, in certain activity centres. Again, we understand these requirements will not proceed.

The Victorian Government has also proposed, as part of its Retail Policy Review (yet to be finalised), that planning policies should be refined "to provide greater clarity and guidance for retail proposals", and that such policies "would...emphasise that the use of floorspace caps – and related controls - should be limited to circumstances where it can be demonstrated they are required to protect the effective functioning of the network of centres planning for the region"¹⁷. Our central concern is that this proposal (which we opposed in our submission) doesn't rule out caps being imposed. This would mean that, for instance, local councils could apply caps to prevent activity centres in their areas from growing and thus, constraining the supply of retail space.

Another example of an unnecessary restriction is in relation to Costco's proposed development on Parramatta Road in the Sydney suburb of Auburn, in particular Auburn Council's proposed Local Environment Plan (LEP) for the area to be known as the 'Parramatta Road Retail Precinct', which applies to Costco's site. Costco's proposal and the planning requirements to enable the proposal have been promoted as opening up competition. In announcing Costco's concept plan approval for its development, NSW Premier Kristina Keneally highlighted that "Costco are one of the top ten retailers in the world. The new Auburn facility increases their presence in Australia..." (Premier Keneally Media Release: US Retail Giant – Costco Sets Up Australian Headquarters in Sydney, 15 April 2010).

Ironically, the proposed LEP that applies to the site is "anti-competitive" and would not enable certain other businesses and retailers to develop and open for business. The proposed LEP (clause 65 (3)) imposes a 'restriction on retail premises development' with a minimum gross floor area of 10,000m² (Costco's proposal is around 14,000m² of retail). This means that a single use development, with one business in operation (including a 'retail giant' like Costco), is permitted to develop on the site, while a shopping centre with a gross floor area of less than 10,000m², which has multiple tenants and businesses, is not. As an example, something like Forestway Shopping Centre, a neighbourhood centre with a Woolworths, Franklins, and 54 specialty stores, would not be able to be open for business in this location as it has a GFA of less than 10,000m². Similarly, Wattle Grove Plaza, with a Coles and 16 specialty stores would not be able to be open for business in this location, despite the significant and diversified retail offering. This is a classic

¹⁷ Victorian Draft Retail Policy – Discussion Paper (October 2008), pp 15-16.

example where out-of-centre retailing, promoted for competition reasons, is actually anti-competitive by limiting certain types of retailing that have a similar planning impact, and certainly provide consumers with a similar retail offer.

Another example relates to the need for 'mixed-use thresholds' or ratios as a component of retail development. This includes measures such as the proposed 'floorspace other than shop-retail' threshold under the proposed Draft WA Activity Centres Policy (June 2009). While this requirement has been carried over from the existing policy, which has a 'guide' (or 'aim') of a 20% mix-use threshold for regional and district centres, the revised policy is proposing different requirements for regional town centres, strategic and regional specialised centres and district centres (e.g. 1m² for each 1m² NLA shop above 15,000m² NLA shop)¹⁸.

While generally supportive of mixed-uses being part of a development, it is important that these threshold are properly interpreted as the 'ultimate development scenario' and used as a strategic guide, rather than a strict DA condition at every stage of development. We agree that (in the case of WA), 'centre plans' should show how these thresholds can be achieved over time, which will include consideration of the specific issues relevant to the particular activity centre.

We are not specifically arguing against these requirements, however these are not generally required in out-of-centre locations. This means that developers who get to locate in such areas get a distinct development cost (and competitive) advantage over those who are required to develop in activity centres.

5. How broad and transparent are the consultation processes for assessing public and business opinion on proposed planning and zoning options?

We believe that current requirements for consultation are appropriately broad and transparent. We are not aware of any jurisdiction where planning and zoning options are not made publicly available for comment. Certainly we are not aware of any that discriminate in favour of, or against, particular retail formats.

6. In assessing the potential impact of rezoning an area/site, do governments consider the potential benefits and costs of competition for the local economy and community? If so, how are these considered and what factors are taken into account?

Governments generally do not directly consider the potential benefits and costs of competition on the local economy and community, as generally, competition is not a relevant planning consideration. That is not to say that the broader community benefits (or costs) of a potential increase in competition are not contemplated when determining a rezoning, but the weight given to such issue is generally not significant nor is it likely to be a determinative issue.

In NSW, for example, consideration of the effects of development upon individual competitors is prohibited by law, and this has been confirmed by the courts. This is now further confirmed by a *Draft State Environmental Planning Policy (SEPP-Competition) 2010*.

The draft SEPP proposes 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 would not support a 'competition test' (or a test under a different guise such as a 'maximum threshold test') being part of the planning system. This should not be a relevant consideration under planning legislation. It also usurps provisions of the *Trade Practices Act 1974* and the role of the competition regulator, the ACCC. We are aware that some stakeholders have recommended (in other forums) that a 'competition test' should be adopted under the planning system, specifically in relation to supermarkets and grocery retailing. This recommendation is similar to the 'competition test' proposed by the UK Competition Commission as part of its *Inquiry on The supply of groceries in the UK market*, completed 30 April 2008, which (as proposed) applies "to proposed new stores (and proposed extensions to existing stores). The competition

¹⁸ WA Draft State Planning Policy – Activity Centres for Perth and Peel, Table 2 (June 2009)

test will favour new entrants and grocery retailers other than those which already have a significant local market shares"¹⁹. This test, while originally proposed in 2008, was reaffirmed by the UK Competition Commission in October 2009, after supermarket operator Tesco successfully challenged, in the Competition Appeal Tribunal, the lawfulness of Competition Commission's decision to apply the proposed test. The Commission reinvestigated the proposed test in light of the Tribunal's findings, and reiterated its support of the test and its aim to "prevent supermarkets' groceries developments, including extensions to existing stores, by retailers with a strong presence in the local area, to make competing developments from rival retailers easier"²⁰. We understand, however, that this is not yet law.

It is often forgotten that the ACCC specifically regulates this issue, in relation to competition in 'local markets', under section 50 of the *Trade Practices Act 1974*, in particular to determine if the acquisition of supermarket sites will result in a substantial lessening of competition. The ACCC has examined a handful of cases, including its decision announced on 25 June 2008 to refuse Woolworth's proposed acquisition of the Karabar Supabarn (Queanbeyan, NSW) supermarket, on the grounds that it "would be likely to have the effect of substantially lessening competition in the local retail supermarket market"²¹. Late last year, the ACCC investigated Woolworth's proposed acquisition of three sites in Newport (Sydney).

7. To what extent do planning and zoning systems have the effect of unnecessarily limiting the entry of new industries or supporting the continued existence of particular industries in some locations?

We have addressed this issue in previous commentary (see, in particular, pp. 12-13.)

We do not believe that planning and zoning systems unnecessarily limit the entry of new industries. There are some restrictions, such as on the types of goods sold in bulky goods outlets, however these restrictions are justified and merely reflect justifiable planning issues as well as the nature of this sector. The same applies to restrictions for retailing in places such as enterprise corridors, where maximum floorspace thresholds are in place. These thresholds aren't in place to restrict "new industries". Rather, they are in place to ensure that broader planning outcomes can be achieved such as ensuring that important road corridors (including for instance, dedicated bus lanes) are not interrupted with freight or private vehicles.

As an example, bulky goods outlets are restricted from undertaking general retailing, which limits the general retailing in these zones to ancillary retailing. We have supported such restrictions, including limits (e.g. 10% of floorspace) on ancillary retailing, as well as minimum floor space requirements for tenancies (e.g. 400m²). The Bulky Goods Retailers Association (BGRA) itself highlights that "typical tenancies for major tenants is 1,000-3,500 square metres and for minor tenants 300-500 square metres".

Despite this, the BGRA continues to argue for relaxations to bulky goods definitions to enable non-bulky goods to be sold, and enable bulky goods centres to morph into general retailing centres (e.g. foodstuff, clothing). If the rationale for bulky goods zones is that larger spaces are required for the handling of bulky goods that is usually obtainable in commercial / retail zones, it is inconsistent to then argue that there should be no restrictions which limit the sale of goods to bulky goods. It is therefore hardly unjustified that where bulky goods outlets are provided concessions under the planning system in response to the sector's own claims (i.e. the ability to locate in out-of-centre locations), there are restrictions to ensure the use is carried out in the appropriate manner.

As the NSW Government has stated in its policy – *The Right Place for Business and Services* – "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 for the cost and locational advantages not available to other retail outlets."

The bulky goods sector has continued to try and have it both ways. They argue for special treatment because of the 'bulky' nature of the goods they display and sell. They then argue for no restrictions to this special treatment, as well as the insertion of a broader range of retail uses that are not bulky. Supporting arguments that have been raised include the notion that bulky goods retailers now keep less stock in the showroom (stock is held elsewhere and delivered

¹⁹ UK Competition Commission, Final Report – Inquiry on the supply of groceries in the UK market, 30 April 2008

²⁰ UK Competition Commission, News Release, CC Renews Competition Test Recommendation, 2 October 2009

²¹ ACCC, Public Competition Assessment – Woolworths Limited proposed acquisition of Karabar Supabarn supermarket, 11 July 2008

directly to the customer following the order) and hence they do not need such large floor areas. Either bulky goods retailers need large, lower cost floor plates than are available in activity centres or they don't.

For the benefit of the Commission, our preferred definition for bulky goods outlets is as follows:

Bulky goods outlet 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 400 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.

8. What are some ways that governments could address anti-competitive practices the planning, zoning and DA systems?

Shopping centres are robust competitors in the retail environment and we strongly support governments addressing anti-competitive practices in planning systems. However, competition must cut both ways and it is crucial that competitive neutrality is a key decision making principle for planning agencies. It is critical that in addressing anti-competitive practices, that these practices are properly identified, and that governments act in an equitable manner. Governments must avoid special treatment and ensure unwarranted competitive advantages are not conferred on a handful of market participants, to the detriment of others. Further, governments should not demonstrate an apprehended bias to certain market participants over others, particularly when dealing with planning proposals. This would amount to an anti-competitive response to allegedly anti-competitive practices.

We support the recent NSW Government's draft State environmental planning policy "Competition" (SEPP), as previously identified in this submission, as being a transparent means by which to ensure that anti-competitive practices can be avoided.

While it has always been the case under existing law, and the effect of court decisions in NSW such as *Fabcot Pty Ltd vs. Hawkesbury City Council* in 1997, that competition between individuals is not a relevant NSW planning consideration, the proposed draft SEPP (along with the NSW Government's proposed 'Competition Guidelines') will provide clarity and certainty around this issue.

9. To what extent do the difficulties of dealing with fractured land ownership make it difficult for smaller developers to enter some markets? Should governments have a role in the merging of small separately-held parcels of land into larger plots in order to facilitate large-scale developments? If so, why?

We have no particular comment on this issue, however, we do note that governments intervene in the market from time to time, including the NSW Government's proposed Sydney Metropolitan Development Authority (SMDA), announced in February 2010, which is being established to identify and facilitate the growth of urban renewal areas, including activity centres. The Queensland Government's Urban Land Development Authority has a similar role.

Criticism is sometimes made of existing businesses 'land banking' (i.e. acquiring and consolidating surplus sites) on the grounds that this is undertaken to make it more difficult for other businesses to locate in that particular area. These existing businesses, however, acquire such land on the open market at market prices (and pay stamp duty, land tax, council rates and interest to hold that land), without any (substantial) income being derived from the land. This is a very significant financial commitment and it is unlikely that businesses could afford to do so simply to exclude competitors.

In the case of shopping centres such acquisitions are made to facilitate future redevelopments and expansion. Land acquisition by shopping centres is also often required because height controls imposed by governments and local councils often restrict the ability to increase retail

floor space through vertical expansion. For these reasons lateral expansion can sometimes be the only option for shopping centres.

It is also the case that shopping centres provide opportunities for 'smaller' retail players to access the retail market, without the need to use scarce capital or debt to purchase land. This also means that the property risk is being carried by the investors in the shopping centre, not by the retailer.

10. Are appeals to zoning and DA applications by competing businesses a regular part of operations for some businesses? Why are they made? Where third party appeals are possible, what might be effective ways of identifying and preventing those that contain no substantive complaint?

Please refer to our response to Issue 11 below.

11. Are there examples of 'gaming' occurring in zoning and DA processes?

We are unaware of 'gaming' occurring in zone and development approval processes if 'gaming' refers to attempts by competitors to 'frustrate' or influence the planning process on illegitimate grounds.

Individuals and organisations should be allowed to make representations on planning proposals, including meetings with public officials and submissions (including objections) on planning proposals, provided they are legal (i.e. in accordance with relevant consultation periods and applicable laws) and provided they address legitimate planning concerns. This right is enshrined in all State and Territory planning legislation. The right to make a legal and legitimate representation on a public policy issue, including planning proposals, is a fundamental component of the democratic process and should not be undermined.

12. Do developers who 'partner' with governments for particular projects and/or undertake government preferred projects receive differential treatment in the zoning and/or DA process? Does this differ depending upon whether the decision maker in the process is a local council, state/territory planning department, or a minister? If differential treatment occurs, is it justified in achieving planning objectives?

We are unaware of examples where developers who 'partner' with governments or local councils receive preferential treatment.

When governments do get actively involved in development processes they need to be scrupulous in ensuring that such intervention does not favour particular players. We address below one current example where this has not occurred.

13. How do planning/zoning/DA decisions on council or state-owned land affect the competitive environment? Are these decisions transparent and even-handed? If not, in what ways could the process be improved?

The ACT Government's Supermarket Policy (announced on 22 January 2010, in response to the Review of Supermarket Competition Policy released on 7 October 2009), is an example of government intervention which provides special treatment to certain market participants over others. We do not believe this differential treatment is justified and the policy has been criticised by the Federal Minister for Competition Policy, Dr Craig Emerson MP.

As part of the roll-out of this policy, ACT Chief Minister, John Stanhope, announced on 6 May 2010 that the government would specifically intervene in the market through its land tendering processes in such a way to exclude the major supermarket chains and provide special treatment for other supermarket operators.

The government justified its decision on competition grounds. But in selecting the preferred supermarket operators, and excluding others, it is obvious there will be a perceived bias in the planning process to enable such development. While there is no suggestion that a merit assessment will not be applied to the subject sites, there is a clear pressure on any planning applications (which the ACT government will itself be the consent authority) to enable the above supermarket policy announcements to be expedited. There is also a perception that any attempts to expand existing businesses through the planning system (which the ACT government would also consider) will be at a disadvantage, particularly where such development includes 'incumbent' supermarket operators such as Coles and Woolworths.

Even where such sites are tendered for development, the government will be negotiating the commercial terms (including rent) with its preferred supermarket operator and the developer will need to accept these terms as part of the development package. This process will be far from transparent and uncertainty remains within the industry.

14. Is information on proposed developments available to local communities and all potential land buyers or users during the planning/zoning/DA processes in a complete, effective and timely manner?

Information on proposed developments is generally available to local communities in a complete, effective and timely manner. Generally, the relevant consent authority (e.g. state government department, local council, development authority) directly notifies adjoining and surrounding land owners and invites them to make a comment when a planning application is lodged. Once a development application is lodged, the application often appears on the consent authority's website, including the principal application and supporting documentation. Signage must also often be erected on the site advising that an application has been made, and where the application can be inspected and comments made. In certain cases, a public notice appears in the relevant local newspaper.

Our members understand that engagement with a local community is an important aspect of the development process and, accordingly, seek to engage in a meaningful way with local communities. For certain projects, a designated communications or public liaison officer is appointed. Our members regularly go further than the minimum consultation or community engagement requirements and convene stakeholder reference groups, meetings and briefings, research and surveys, direct mail and newsletters, public displays and site visits.

15. What are some examples of planning/zoning/DA processes which do not adequately consider the implications for competition?

The planning and zoning processes most commonly accused of not adequately considering the implications for competition are activity centres policies, bulky goods zones (and the restrictions imposed on the type of goods that can be sold in these zones) and limitations on the types of retailing that are permitted in enterprise corridors. We have addressed these arguments in previous commentary on pages 12-13 and 16-17 (activity centres); and page 19 (bulky goods zones and enterprise corridors.)

16. To what extent does influence by interested parties, particularly those who may be politically active within the community, affect the decision-making process? Does this improve or worsen outcomes? In what way? Do the views of these parties typically reflect the broader community sentiment?

Our members have broad experience in engaging with members of the community, including what could be described as 'politically active' community members, which can have an impact on the decision making process. As described at Issue 14 above, our members seek to undertake meaningful engagement with local communities, including stakeholder reference groups, meetings and briefings, newsletters and public displays. It can sometimes be the case that community groups are established to oppose a development (rarely is a group formed to support a project), and these groups can have significant influence in local media. In all cases, our members seek to actively engage with the community to ensure the best development outcome is delivered, including for retail tenants.

There is no doubt evidence of many planning decisions that have been unduly influenced by a "vocal minority" within the local community. In other words, local politics has often slowed or prevented a development that is otherwise consistent with and would further planning policy.

There is a growing trend across various jurisdictions towards removing the 'political' element of many planning decisions through processes such as Independent Panels in SA, Joint Regional Planning Panels in NSW and increasing use of State Government powers for "state significant" development. That is not to say that community involvement is not appropriate within the planning process, however, these alternative mechanisms also demonstrate that fair and reasonable decision-making processes can exist without undue political influence.

SECTION 6 – CONCLUSIONS AND RECOMMENDATIONS

This submission put forward a range of ideas and views for consideration by the Commission in its examination of the impact on competition by the planning and zoning systems across Australia.

Towards this is end we have sought to debunk a series of myths circulating around how the machinery of current regulatory provisions impacts upon competition between new and existing businesses – especially in relation to retail development.

The key points that we have outlined in some detail in relation to the role of planning and zoning systems in controlling the growth of retail development are that:

- It is a myth that there is a shortage of retail floor space in Australia – with total retail floorspace having grown at over twice the rate of population growth over the last fifteen years.
- There is no evidence of a shortage of land (or ‘opportunity space’) for supermarkets – indeed over the last 15 years Coles, Woolworths and Aldi have opened 600 new stores across the country.
- There is no evidence to suggest that planning and zoning systems have adversely limited the growth of retail space – indeed average cost-occupancy cost ratios have not changed much at all over the last decade.

We have outlined the intrinsic merit of activity centres as the cornerstone of rational and balanced planning policy and suggested:

- There is no aggregate shortage of activity centres – however the mechanisms to allow existing centres to grow could be improved.
- The argument that there are no appropriate sites for retail development within the national activity centre hierarchy is unfounded. In almost every instance there is not a shortage of available land – but a shortage of available cheap land.
- Activity centres policies provide an opportunity for all retail businesses to compete on a level playing field – despite claims to the contrary.
- The proposition that activity centre policies promote and encourage retail development to be located within or adjacent to nominated centres are inherently anti-competitive is spurious and not supported by evidence.

The other key arena explored is the evidence base for the proposition that ‘new and innovative competitors’ are being unfairly discriminated by the operation of activity centre and other planning policies. Again this has been demonstrated as a furphy as new market entrants have been consistently and amply accommodated through appropriate flexibility in planning regimes.

Best Practice Recommendations

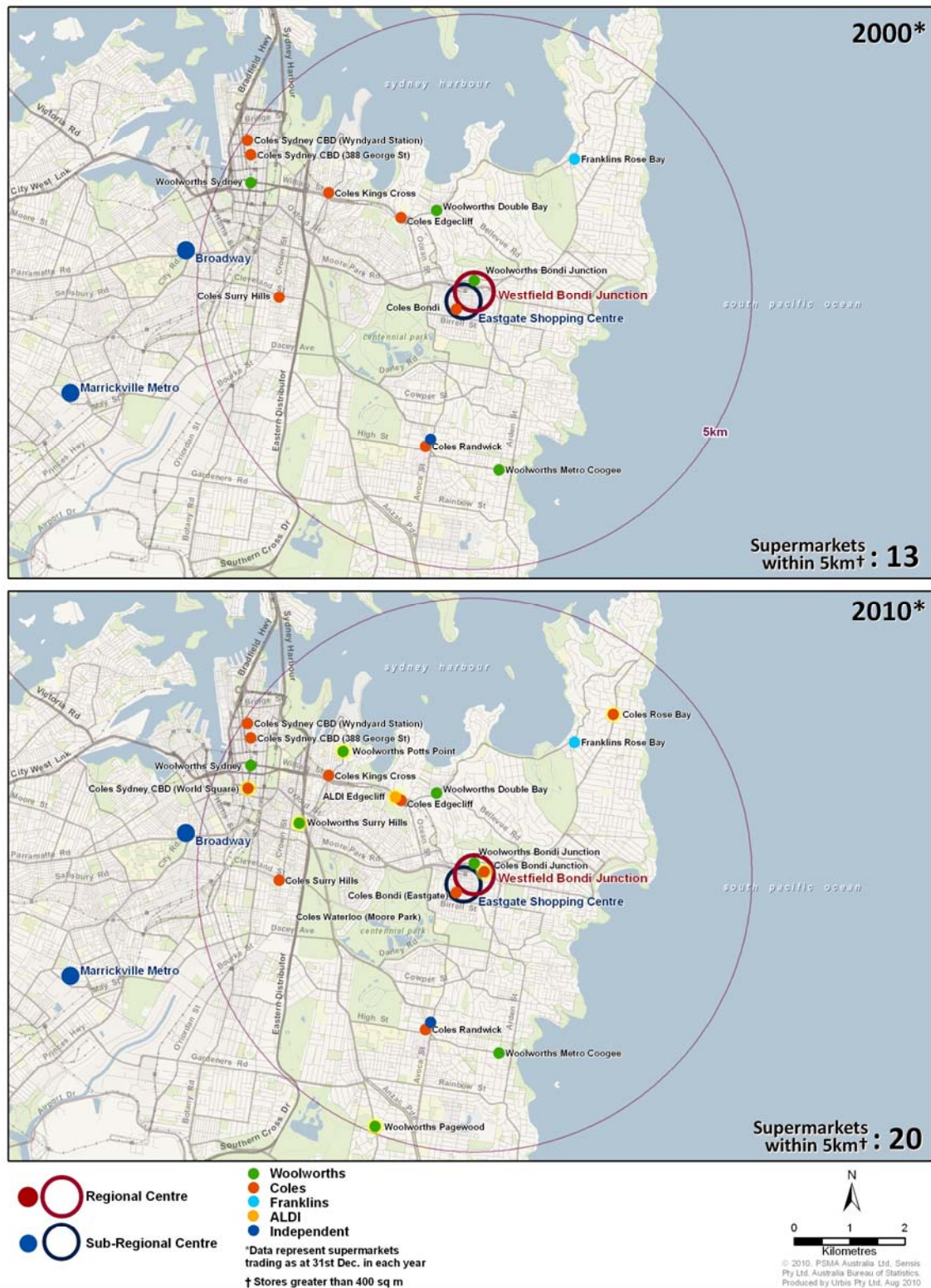
Through the development of this submission we have identified a number of ‘best practice’ approaches and recommendations for Retail Centres Planning which we consider to be highly relevant to the Productivity Commission’s review. These are listed as follows:

- Activity centres policy that promote commercial and retail developments to co-locate within identified activity centres (such as regional, town and village centres) remain the cornerstone of orderly and proper planning and must be maintained.
- Continually support the growth of existing activity centres, by proactively ‘upzoning’ those centres, so that more businesses can enter that particular market and existing business can more readily expand.
- The need for improved processes to achieve the timely, orderly and proper creation of new activity centres, which are most likely to occur in areas of significant population growth.

- Provide clear policy positions in respect to how 'out of centre' retail development proposals should be evaluated. To this extent, we support the 'sequential test' approach that is proposed to be adopted in NSW, although the need for the application of this test will be reduced if there is more effective planning within and around existing activity centres.
- Planning regulations should avoid the imposition of retail floor space caps on development within existing or proposed activity centres.
- Activity Centre typologies should avoid being prescriptive regarding the size and/or nature of the specific retail services capable of being provided.
- There is a role for planning restrictions to continue to control retail uses outside of activity centres such as retail development in bulky goods zones or enterprise corridors.
- There is no necessity for a 'competition test' in the planning system as this is regulated under the Trade Practices Act and overseen by the ACCC.
- Planning authorities should produce transparent policies or guidelines in respect to the relevance of competition in the assessment of development proposals (such as the NSW Government's Draft Competition SEPP).

APPENDIX 1 – MAJOR ACTIVITY CENTRE ANALYSIS

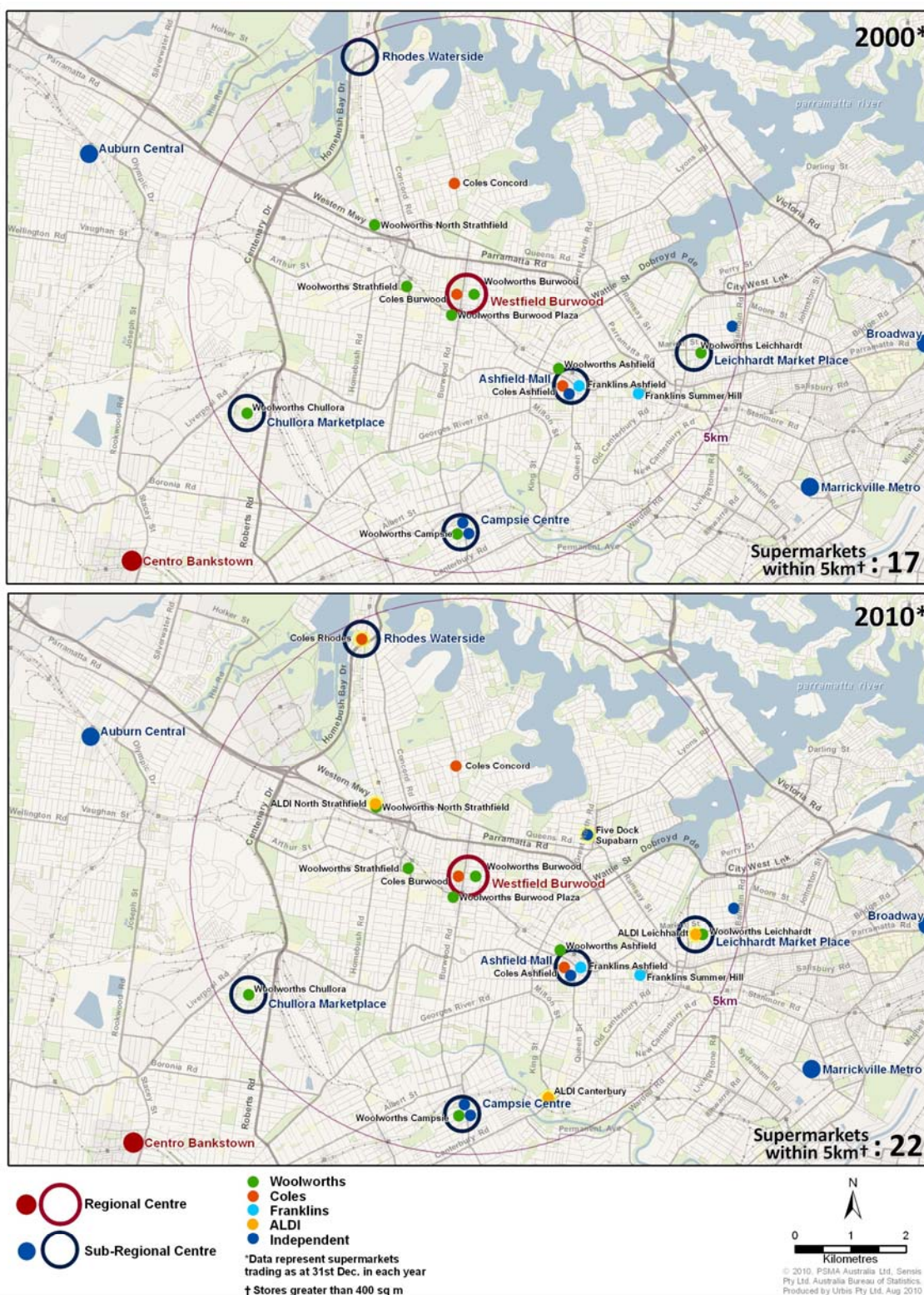
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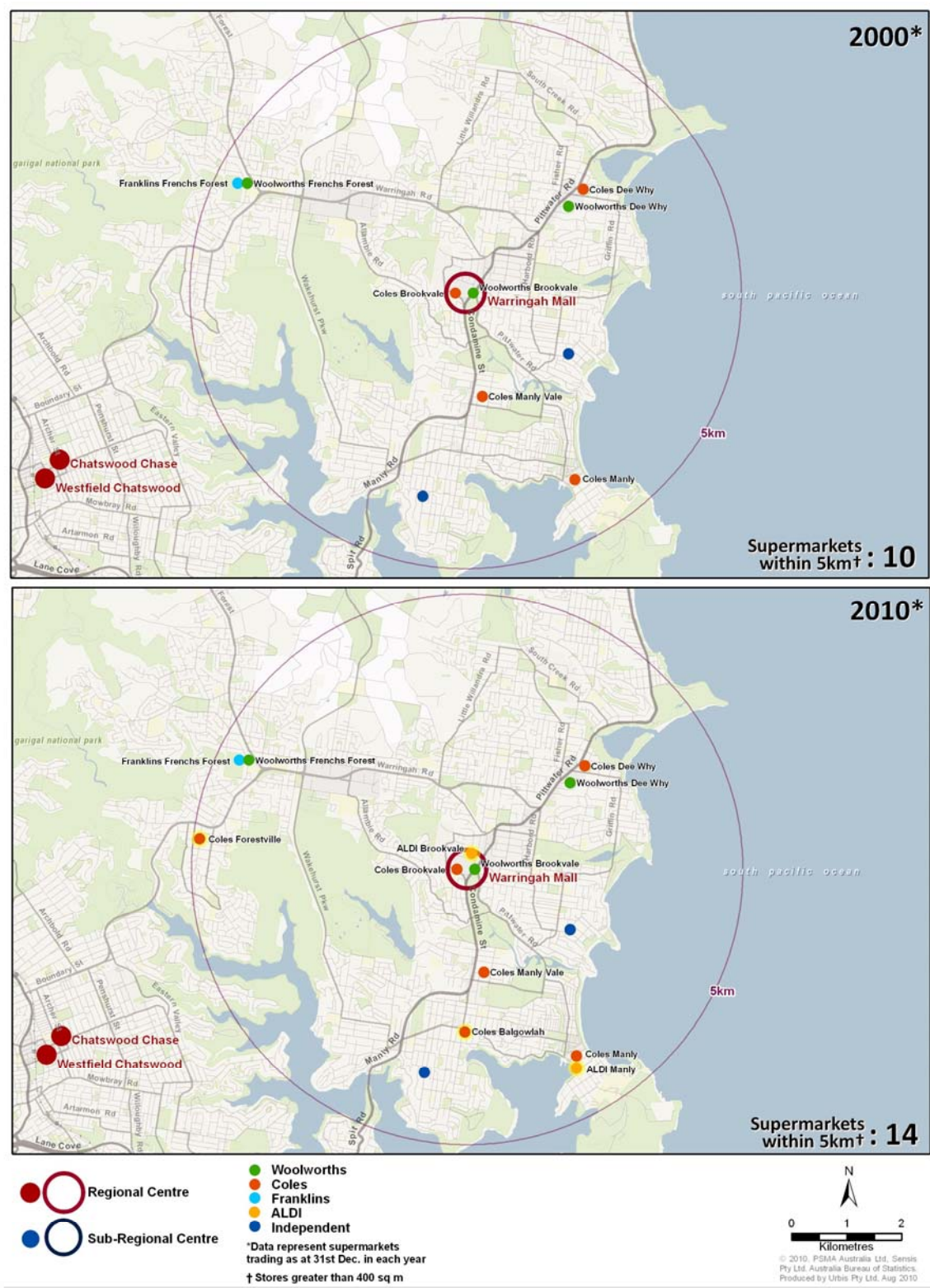


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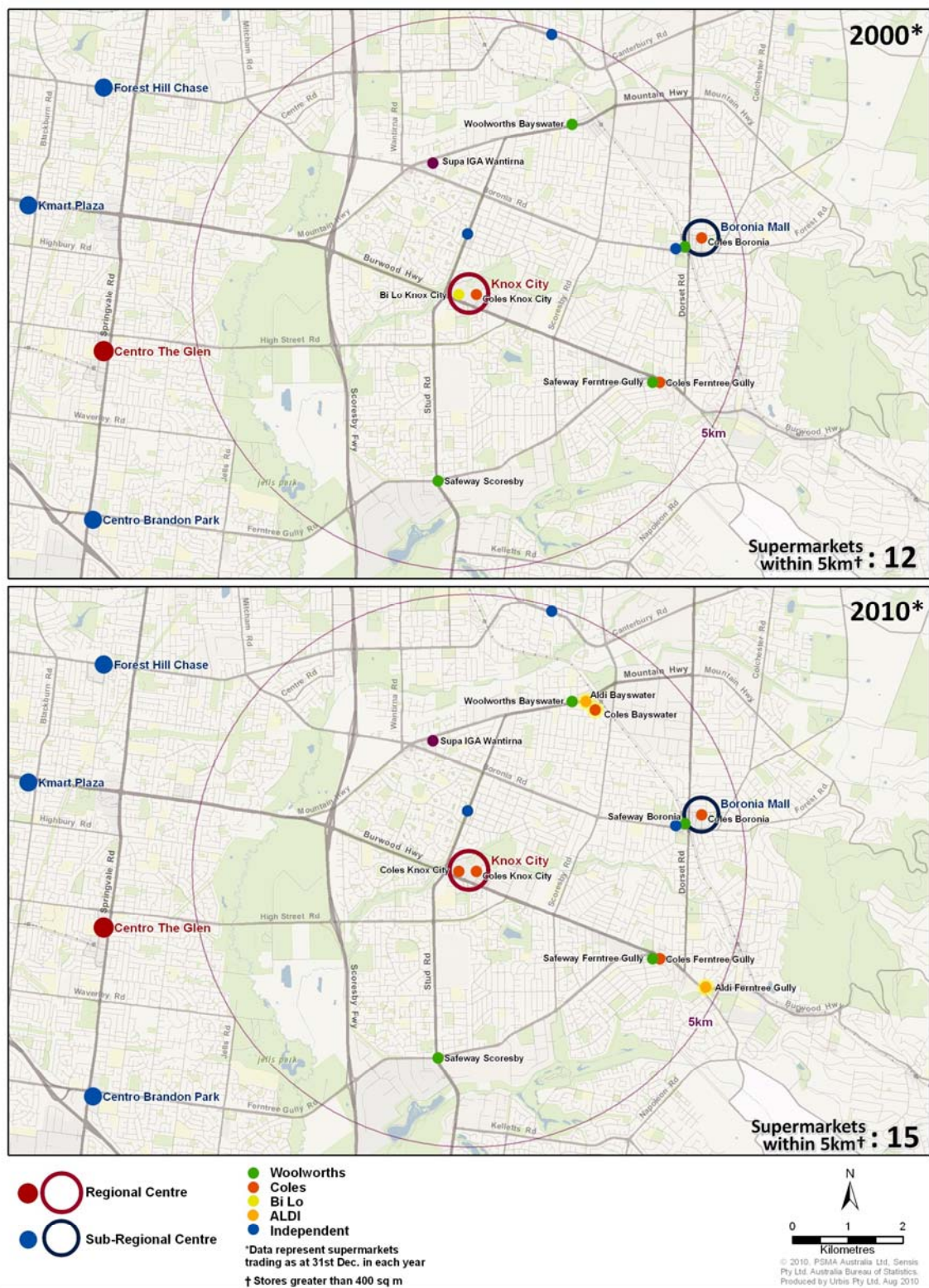
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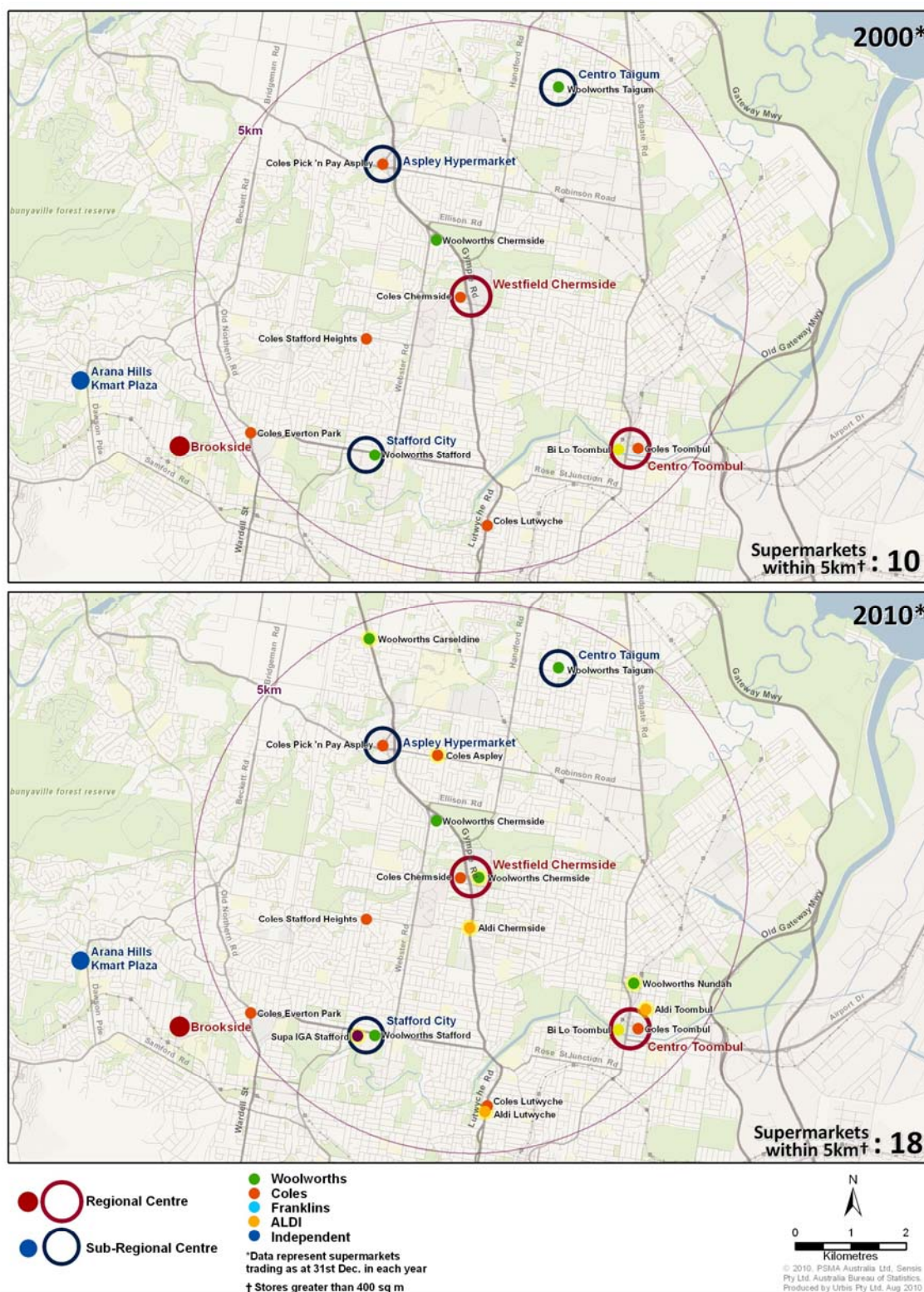
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ABOUT THE SHOPPING CENTRE COUNCIL

The Shopping Centre Council of Australia represents Australia's major shopping centre owners and managers, who own and manage more than 11 million square metres of retail space. Our members are AMP Capital Investors, Brookfield Multiplex, Centro Properties Group, Charter Hall Retail REIT, Colonial First State Property, Dexu Property Group, Eureka Funds Management, GPT Group, ISPT, Jen Retail Properties, Jones Lang LaSalle, Lend Lease Retail, McConaghy Group, McConaghy Properties, Mirvac, Perron Group, Precision Group, QIC, Savills, Stockland and the Westfield Group.

We would be happy to discuss any aspect of this submission. Please do not hesitate to contact us.

Milton Cockburn

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