

19 November 2010

Ms Louise Sylvan
Commissioner
Business Regulation Benchmarking –
Planning, Zoning & Development Assessments
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Ms Sylvan

PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS REGULATION: PLANNING, ZONING AND DEVELOPMENT ASSESSMENTS

1.0 INTRODUCTION

This report has been prepared by 7-Eleven Stores Pty (7-Eleven). Ltd. in response to the Australian Government Productivity Commission – Performance Benchmarking of Australian Business Regulation: “Planning Zoning and Development Assessments” Issues Paper (the Paper).

2.0 EXECUTIVE SUMMARY

For 7-Eleven and other convenience retailers, the issues that result from an inefficient planning process are often exacerbated by the lack of consistency between States and Territories. The added burden of inconsistency between local government authorities within the same State just serves to compound the existing problem.

There are several regulatory burdens particularly under the NSW planning system in relation to convenience store development which are addressed in this submission. These restraints on trade need to be abolished or amended to improve the efficiency of the development approvals process. This will ultimately foster economic growth and will improve retail competition within NSW and Australia. In summary, the following amendments to the planning system are required to promote economic growth and competition in relation to convenience store land use and development:

- There are a number of elements within the NSW Planning Framework that we consider to be onerous and / or superfluous to convenience store retailing and should be abolished or amended, including:
 - Development approval requirements for land use for new convenience stores in business zones or where the previous use was lawfully being used as a retail premises;
 - Development Control Plans that restrict convenience store trade, for example through the imposition of trial periods and locational controls such as prohibiting convenience stores from trading within proximity to other convenience stores;
 - Requirements for detailed plans of management to be lodged with development applications;
 - Development contribution requirements generated by development application requirements for internal works; and
 - Ambiguous and inconsistent land use definitions for convenience stores and service stations within different local government authorities and/or consent authorities.
- The streamlining of the development application approvals process will afford greater certainty to proponents in the planning process. Examples relating to convenience stores and convenience/service stations include:
 - Expediting timeframes to gain development approval;
 - Minimising development application requirements. For example requirements for detailed matters such as management plans, security plans, waste plans, acoustic reports and so on should be required as conditions of consent (This is the case in the Victorian System); and
 - Removing the requirement for public notification for convenience store development applications in non-residential locations or when the proposed development is not located near a sensitive land use.

In addition, we consider small, minimal impact convenience retailing outlets such as 7-Eleven should be permissible within all business zones (as is the case in Queensland) within the standard Local Environmental Plan template to address the issue of lack of appropriately zoned land in existing centres.

These matters are detailed in the following submission and the removal of these unnecessary provisions from the planning framework will give rise to a more efficient development application process for both proponents and consent authorities alike, there will be greater certainty for proponents, and there will be flow on effects in terms of time, cost and resource savings for all parties involved.

3.0 BACKGROUND TO 7-ELEVEN OPERATIONAL PROCEDURES

7-Eleven Stores Pty. Ltd. has a strong interest in economic growth and competition policy in Australia. Until recently, there was in excess of 400 7-Eleven convenience stores including service stations on the eastern seaboard of Australia. 7-Eleven has recently acquired the retail assets of Mobil Oil Australia. This involves some 250 Mobil service station sites and we are now in the process of integrating these sites into our current store network.

7-Eleven's Stores are generally one of two types, being:

- Traditional 7-Eleven convenience stores located in inner suburban shopping strip locations; or
- Service station sites, which include petrol retailing as well as an associated 7-Eleven convenience store.

A re-branding and refurbishment phase has recently been undertaken that has created a 'new look' for its existing stores and service stations. This has involved the refurbishment of many of the existing 7-Eleven shopfronts as well as internal refurbishments and signage packages. 7-Eleven has also introduced a new brand 'Munch,' which comprises a pre-packaged, healthy, food and beverage range of products for customers.

4.0 PRODUCTIVITY COMISSON ISSUES PAPER MATTERS

The specific issues for discussion as set out in the Paper are addressed as follows.

1) Planning or zoning requirements which Convenience Retailers feel particularly restrict the manner in which their business operates:

(a) provisions in strategies or environmental planning instruments

It is 7-Eleven's strong contention, based on years of relevant experience in Victoria, New South Wales and Queensland, that the current NSW planning system is overly regulated, complex and onerous. Indeed, many Councils have different application requirements, local planning instruments and decision making processes that result in an ad hoc planning framework for the assessment of development applications. This is just in NSW alone.

The complexity and diversity of Development Control Plans (DCPs) makes it very difficult to increase our store numbers with any certainty. Whilst the NSW Governments' initiative to introduce a standard instrument Local Environmental Plan (LEP) template for all local Councils is supported, there are many other measures that need to be addressed to ensure an efficient planning system in respect of convenience store development, and these are addressed as follows.

In Queensland, the town planning process for the development of service stations is inefficient because of the extraordinarily lengthy timeframe to obtain a decision from any of the local Councils. The process is further complicated because appellants objecting to developments on a commercial or emotional basis, with no relevance to town planning issues, can delay projects for 12 months or more by taking these matters to the Planning and Environment Court. Whilst the rights of all citizens must be protected, the issue at hand is town planning and commercial/emotional issues raised by appellants should be resolved by other means.

Victoria experiences similar issues whereby appellants can totally derail an application on issues other than town planning and the matter is set down for hearing by VCAT.

Land Use and Internal Works

Throughout NSW, many LEPs include requirements for proponents to obtain development approval for the use of land and internal works. This differs markedly from Victoria. In this regard, development consent should not be required for the use of land for convenience shops or for internal works, when the premises is located in a zone that encourages commercial and / or retail use, or on land that currently operates lawfully as a commercial or retail premise.

In NSW, we acknowledge that the recent SEPP (Exempt and Complying Development Codes) 2008 has tried to reduce planning red tape and facilitate faster approvals. We understand that Stage 2 of the introduction of the Commercial and Industrial Code SEPP (expected in 2011) will consider the potential to expand complying development provisions to allow additional external works to be undertaken on commercial sites without development consent. 7 Eleven strongly supports revision and expansion of these provisions related to commercial development.

When a lawful retail land use currently exists on a land parcel, it is illogical to require a new consent for the use of the land for retail purposes given the appropriateness of the use of the land for retail purposes is already established.

Restrictive Development Control Plans

It is also noted in NSW that some Development Control Plans (DCPs) include unreasonable restrictions that discourage or prevent the establishment and/or ongoing use of land for convenience stores, which unfairly restricts retail trade and competition. Examples of such planning controls include the *City of Sydney Convenience Store DCP 2004* (CSDCP) and the *City of Sydney Late Night Trading Premises DCP 2007* (LNTDCP). Unreasonable and unnecessary requirements under these City of Sydney controls include:

- *Trial Periods*

The imposition of 'Trial Periods' for late night trading by the LNTDCP are unreasonably onerous on operators of convenience stores. In this regard the imposition of trial periods on 7-Eleven Stores is contrary to the specific objective of the LNTDCP that seeks to *"ensure that development applications are accompanied by sufficient information so that proposals for night trading premises can be fully and appropriately assessed"*.

For its existing stores within the City of Sydney Local Government Area that have gained approval since the introduction of trial periods, 7-Eleven is required to re-apply for 'late night' trading hours at least once every five years (being the maximum trial period specified in the LNTDCP). This is an **ongoing requirement, every five years, often more frequently**, which is considered unreasonably onerous, given the 24 hour operation of all of our stores within the City has been justified during the application process when the original development consent for the store was granted.

In the case of our store at 466 George Street, Sydney, 7-Eleven's pre-application investigations with the Council when preparing the most recent Section 96(1A) modification for the new fit out indicated that there was no management issues or complaints registered on Council's file since the original consent was granted in October 2003. Nevertheless, 7-Eleven will still be required to re-apply for 24 hour trading for that store on an ongoing basis. **It is noted that some of 7-Eleven's stores have been on trial for 15 years and further consent for the ongoing 24 hour operation of the store will be required every five years.**

The 24 hour operation of convenience stores gives rise to a community benefit in the form of around-the-clock convenience retailing for consumers, as well as providing well-lit, secure late night places that improve late night public surveillance. The ongoing 24 hour operation of 7-Eleven Stores without ongoing trial period restrictions will ensure these public benefits are continued.

In Victoria and Queensland, a shop or service station use which is not restricted by conditions of a planning permit may open whatever hours it chooses.

- *Management Plans*

The requirement for detailed Plans of Management as set out at Section 4.4 of the City of Sydney DCP and Section 2.7 of the LNTDCP are again onerous requirements that many other retail premises would not be subject to.

We understand that venues that serve alcohol or are places of public entertainment should be required to have enforceable Plans of Management. However the requirement amongst some LGA's for such comprehensive Plans of Management for a simple Convenience Store are simply another burden on retailers such as 7-Eleven.

- *Signage*

It is noted that the majority of Councils have different DCPs for advertising signage over and above State Environmental Planning Policy No. 64 - Advertising and Signage, and the multiple tiers of signage controls are complex and inefficient for proponents.

Why have a State Policy when just about every LGA has their own controls?

- *Definitions*

The definition of a 'convenience store' as described in some DCP's is somewhat ambiguous and can give the relevant Council unreasonable discretion in its interpretation of convenience store. In this regard, the City of Sydney DCP states that *"in all cases, the discretion as to what development is considered to be a 'convenience store' for the purposes of this DCP shall be solely that of the consent authority and generally in accordance with this DCP."* This is not just ambiguous, but we contend is actually outrageous.

The abovementioned DCPs are examples from the City of Sydney and whilst the cited examples related to the City of Sydney DCPs, other municipalities within NSW that have specific controls for convenience stores and / or late night retail trading.

Throughout NSW in general, the definitions for use of 7-Eleven stores vary unnecessarily between Councils. This creates uncertainty and the definitions should be streamlined and standardised as a priority. Moreover, 7-Eleven premises should be consistently defined as either "retail premises", "shop" or "service station", depending on whether they offer fuel or not, and each Council should not have its own separate definition for 7-Eleven Stores (convenience stores).

We would like to draw the Commission's attention to Appendix A of this submission. Contained within Appendix A is a recent submission made by 7-Eleven's Planning Consultant in NSW, Milestone (AUST) Pty Limited which summarises the increased burden to 7-Eleven of the Draft Amendment 1 to the Late Night Trading Development Control Plan 2007.

(b) spot rezoning process

The time associated with gaining approval for a spot rezoning is cost prohibitive for the establishment of a convenience store, and hence 7-Eleven usually does not engage in this process. Should a new streamlined rezoning process become available in the future that is more cost and time efficient, 7-Eleven may consider using that mechanism to obtain new development sites for convenience stores in order to benefit competition.

(c) development approval process

Principal concerns with the Development Approvals Process is the prolonged timeframe in which it takes for applications to be processed, the requirements for development application lodgement and the public notification requirements and these are addressed as follows.

- *Time*

We advise that some planning approvals for 7-Eleven Stores within NSW, Queensland and Victoria have taken up to nine months or longer to obtain, which is considered to be totally unreasonable from any perspective. The majority of determination timeframes are in excess of the 40 day statutory timeframe for determinations. Specific examples of such development applications can be provided upon further request.

Attached as Appendix C is a chronology of events surrounding three recent applications for Planning Permits in Victoria which resulted in extensive delays and the indecision by Councils frustrated the entire planning process.

Further, we note that the implementation of the measures set out at Point 1a) above, to simplify the planning system, will also assist in reducing timeframes associated with the preparation and assessment of development applications. Flow on effects in terms of savings in time, money and resources exist for 7-Eleven franchisees, 7-Eleven Stores Pty Ltd and landowners (i.e. through the loss of rents based on standard commercial lease arrangements whereby leases do not commence until after the tenant has commenced trading).

- *Requirements for Development Application Lodgement*

The information required to be lodged with development applications prior to and throughout the development application process is too onerous, complex, and varies between each Council and each State. In this regard, the

application process should be amended to require matters that are not critical to the assessment of the appropriateness of the development proposal to be prepared after the consent is granted.

By streamlining application processes, upfront costs and resources associated with the preparation of certain documentation would be deferred until there is certainty that development consent is to be issued, resulting in economic savings for both proponents and Councils alike.

Further, similar to the Victorian Planning System, the introduction of a uniform development application form and checklist that can be completed electronically online is recommended. At present, every NSW Council has varying requirements and its own Development Application lodgement form. Again, by unifying the development application process, the planning system is made more efficient, reducing time and resources for proponents.

Furthermore, there are no planning controls in Victoria such as concentration controls or trial periods that apply to convenience stores or late night premises. Further, where management arrangements such as waste management or security plans are required, these are usually imposed by the Council as Planning Permit conditions.

In Victoria, the Council's assessment of the application is generally limited to the design and built form of the proposed external (shopfront) works and the advertising assessment criteria of the Melbourne Planning Scheme. In comparison, Development Applications for new convenience stores within NSW require the Council's assessment of the proposed land use under the applicable LEPs and DCPs, external and internal works, signage under SEPP 64 and DCP controls, specific management plans (i.e. security arrangements, store management and waste management plans to be lodged with the application), and Council's DCPs (e.g. in the case of the City of Sydney the CSDCP and LNTDCP, including trial periods, concentration controls, management plans and signage controls).

Under the Victorian planning system, detailed application documentation that is not essential to determining an application, is often required to be lodged with the Council following the granting of consent. Such an

outcome expedites approval and postpones the preparation of further detailed application documentation until after the consent is granted. The most obvious example is the frequent use of amended architectural plan requirements via condition on the approval permit; however other plans and consultant reports are often required by condition of permit also.

- *Public Notification*

Development applications as well as modification applications, for land that is not located within close proximity to residential or other sensitive land uses, should be exempt from public notification. In this regard, the relevant Council should not require an application to be notified when it would not result in unreasonable amenity to the surrounding properties. Such an outcome would assist to streamline the application process and would mean that objections could not be lodged by retail competitors to delay application processes.

2) If a competing Business has established or attempted to establish in the Members area in the past 5 years, at what stage did they become aware of this development (eg: when a rezoning was contemplated; when a development application was made public; when construction commenced; when the store opened) and did they feel adequately consulted by their local Council?

Please refer to our comments made above for our position on the public notification of Convenience Stores and the requirements of operators such as 7-Eleven to do so.

Convenience Stores are a growing retail use within Australia. As such, 7-Eleven Stores are regularly made aware of new and competing business operations by way of local council notification. This notification process takes the form of a brief letter from council and notification plans that generally describe the new proposal.

We note that 7-Eleven is aware of increasing competition in this sector. It should also be noted that 7-Eleven accept competition and in fact understand it is good for our business. A strong competitor or a multitude of smaller similar competitors ensures that 7-Eleven does not suffer from complacency and is always looking to improve our offer to customers.

As a business, 7-Eleven do believe that the local government notification process is adequate, albeit unnecessary. We are generally made aware of proposals in the planning approval stage. We then make appropriate submissions as and when required.

However, it is our strong held view that it is the inconsistency within the interpretation and implementation of local council development conditions and policies that pose a significant threat to 7-Eleven's operations. The Productivity Commission may be aware of the substantial investment that 7-Eleven Stores make in each and every Store we open. Our fitout's, finishes and equipment are of a high modern standard. We refurbish our Stores on a regular basis and as such, our costs per square meter of fitout are generally higher than our competitors.

It is our experience that often the same local council will apply different standards of enforcement of prescribed development conditions to different Convenience retailers. We refer to our earlier commentary (page 3) that a standardised definition is essential to ensure a level playing field for all Convenience Store operators is obtained.

3) Have your Members submitted a development application to their local Council in the past 5 years? If so, what was it for and do they consider they received very good/poor service from their Council (eg: in terms of time taken by council to respond; council explanation of their response; clarity of requirements, value for fees charged)?

It is common for 7-Eleven to submit multiple development applications across varying jurisdictions, each and every year. We also note that inconsistencies within and between LGA's regarding the implementation and enforcement of specific development conditions, policies and DCP's as they relate to Convenience retailing, are a major impediment to our business operations.

A relevant case study is our recent application to the City of Sydney (D/2009/1570A) which sought extension of trading hours of a 7-Eleven Store from Midnight (trial period) to 2am Monday to Thursday and Sunday, and

to 3am Friday and Saturday. In this case the Store is about 63m² and extended trading hours were sought to improve the commercial viability of the premises. During the application process there were no objections received from surrounding businesses or the community. In fact we had support of the local area Police Command. However, despite no objections and no identifiable external environmental impacts, the application was refused simply because it did not comply with the City of Sydney Late Night Trading Premises Development Control Plan (LNTDCP). We note that the site context of this Store is amongst several 24 hour operators including a service station and hotel. We would be happy to provide you with further details of this example as well as further examples of our experience with the approval process if required.

Refer also to Appendix A of this report for a more detailed assessment of the implications of this policy (now in Draft Amendment Form) to 7-Eleven Stores.

In this example and many other instances, 7-Eleven received a poor level of service from the City of Sydney. Unfortunately, this experience is not unique to the City of Sydney. In this instance however, we spent a significant amount of time and cost in pursuing the amendment to the "trial" period of our operating hours. Town Planning Consulting fees alone were in excess of \$17,000. More importantly though in this instance, the ongoing costs to our Business in this, and other locations as a result of restrictive policies that seek to reduce our available trading times pose the most significant cost burden to 7-Eleven Stores.

A large percentage of our turnover per Store is achieved between Midnight and 6am as workers and visitors of cities frequent our Stores. Like many other retailers, we pay rent per annum, not per hour. If we cannot trade during the hours when a significant proportion of our sales could be achieved, our cost base just continues to increase and our productivity and competitiveness is eroded.

We have also commented previously in this submission on the time it takes for some consent authorities to process our applications for development consent. Rarely, if at all, do Council's approve our applications within the 40 day statutory timeframe for determinations (NSW timeframe). These excessive approval timeframes also add unnecessary costs to business and reduce productivity.

A complete cost summary of the above case study is held at Appendix B of this report.

4) Competition Issues & the Broader Public Interest

The current planning system in NSW does not achieve an appropriate balance between competition and the 'broader' public interest in respect of convenience stores. More specifically, the planning system needs to give greater emphasis to the public benefits provided by 7-Eleven through its convenience retail offer, including 24 hour convenience retailing as provided by many of its stores. In this regard, it is noted that 7-Eleven Stores are traditionally a convenience retail outlet where local residents, visitors and workers can purchase convenience items 24 hours a day, and this retail

activity (which includes but is not limited to pre-packaged foods, newspapers, tobacco, telecommunication services, confectionary and other household items) is clearly in the public interest.

As detailed above, many DCPs seek to limit trading hours and impose trial periods for 'late night premises'. These planning instruments discourage the late night operation of convenience stores and hence prevent economic growth and competition as well as consumer choice. Whilst it is recognised that planning controls for late night premises are required to prevent anti-social behaviour and adverse amenity impacts, convenience stores should be exempt from those requirements given they operate in a passive retailing environment.

In balancing the public interest and economic growth and competition, it must also be recognised that late night trading of 7-Eleven Stores offers other benefits such as the positive outcome in terms of late night surveillance and the stores also act as a 'safe haven' for any nearby pedestrians that may feel threatened in late night hours. These reasons provide further justification to why the 24 hour operation of 7-Eleven Stores is considered to be in the public interest. Having after hour's retail convenience shopping stores enhances safety and surveillance of urban areas, and this is an important social benefit when other businesses have closed late at night.

Furthermore, the small sized, convenience retail offer that 7-Eleven provides is suitable for both neighbourhood centre zones as well as higher order centres and the any new LEP template should ensure the permissibility of 7-Eleven Stores across all business zones.

Overall, greater emphasis and flexibility should be provided within the planning framework for the establishment of 24 hour convenience store retailing in appropriate locations to serve local communities.

In summary, the existing requirements associated with obtaining development consent for convenience stores are unreasonably laborious and the abovementioned development assessment criteria should be amended to make the development application process for convenience stores more efficient for proponents and Council's alike.

We appreciate the opportunity to provide these comments and would be happy to provide further clarification on any matter.

Yours Sincerely

Maree Ball
National Property Development Manager

APPENDIX A

MILESTONE SUBMISSION TO DRAFT AMENDMENT NO. 1 - LATE NIGHT
TRADING PREMISES DEVELOPMENT CONTROL PLAN 2007

22 October 2010

The Chief Executive Officer
Tamara Bruckshaw – Planner
City of Sydney
GPO Box 1591
Sydney NSW 2001

Reference No.: S055498

Dear Ms Bruckshaw

DRAFT AMENDMENT No. 1 - LATE NIGHT TRADING PREMISES DEVELOPMENT CONTROL PLAN 2007

We write on behalf of our client, 7-Eleven Stores Pty Ltd (7-Eleven) in response to the draft Amendment to the City of Sydney Late Night Trading Premises Development Control Plan 2007 (LNTP DCP) currently on exhibition. We have reviewed the exhibited material and wish to strongly object to the proposed amendments and the continued inclusion of 7-Eleven Stores within the LNTP DCP.

The LNTP DCP and the proposed amendment contain a number of provisions that are restrictive to the operation of 7-Eleven Stores within the City of Sydney LGA. The City of Sydney's policy approach should be amended to remove the rigid application of a policy based on imposition of indefinite trial periods, restrictive hours of operation, and the requirement for detailed plans of management for legitimate and low amenity impact retail businesses (such as 7-Eleven Stores), which has the effect of unfairly restricting trade.

This letter outlines the key concerns related to the LNTP DCP in its current form and the significant detrimental impacts the proposed amendments to the LNTP DCP will have on 7-Eleven Stores.

Convenience Store Use

Section 2.3(e) of the LNTP DCP states *that "any commercial premises which in the opinion of the Council may impact on the amenity and safety of the neighbourhood resulting from its operation at night"* would be classified as a Category B premises. Convenience Stores are specifically listed as a Category B Premises in the LNTP DCP and we note that this use continues to be specified as a Category B Premises within the draft Amendment.

Other Category B Premises include hotels that have a capacity of up to 120 persons and have a general bar license and Premises that have a capacity of up to 120 persons where the primary purpose is the sale or supply of liquor for consumption on the premises. We support Council's commitment to ensure late night areas are more diverse and safe as well as cumulative impacts being appropriately managed, particularly impacts by licensed premises. Convenience Stores do not serve liquor nor do they prepare food. 7-Eleven Stores are a passive retail use with minimal external environmental impacts. The draft LNTP DCP should recognise the proven track record of good management of 7-Eleven Stores and their positive contribution within the urban context.

We maintain the firm view that 7-Eleven Stores (Convenience Stores) should not be specifically classified as Category B Premises. 7-Eleven Stores are defined as either "neighbourhood shops" or a "retail premises" under the Standard Instrument LEP Template and the LNTP DCP should also utilise the standard template definitions. The inclusion of 'Convenience Store' is somewhat ambiguous and gives unreasonable discretion to Council in its interpretation of use.

Trial Periods

The draft amendments to *Section 2.7 – Trial Periods* of the LNTD DCP includes revision of the wording relating to trial periods that reinforce their mandatory and indefinite nature for uses subject the LNTD DCP controls. A majority of 7-Eleven Stores in the City of Sydney LGA are already subject to indefinite trial periods as imposed by the current LNTD DCP controls. 7-Eleven Stores are firmly opposed to the imposition of trial periods for operating hours. Trial periods place uncertainty for a 7-Eleven Store operator and are an unnecessary and costly burden for low amenity impact retail uses such as a 7-Eleven Store.

We note and support the specific objective of the LNTD DCP that seeks to *“ensure that development applications are accompanied by sufficient information so that proposals for night trading premises can be fully and appropriately assessed.”* However, we do not believe that this objective is consistent with the imposition of trial periods.

We are concerned the proposed new section 2.7 of the draft Amendment will not alter Council's current practice and discretion of imposing on-going trial periods. To this end, we can provide you with many examples of 7-Eleven Stores which have been on trial for over 10-15 years (without any complaints being received) and still deemed not to be appropriate by Council without a further trial period being imposed.

We consider indefinite trial periods for 7-Eleven Stores are unreasonable for the following reasons:

- 7-Eleven Stores are a well established retail operation in the Sydney CBD. 7-Eleven has a proven track record of sound on-site management procedure and policy and has demonstrated that late night and 24 hour trading is acceptable and results in minimal environmental impacts on the community.
- 7-Eleven Stores positively contribute to increased street activity and increased passive surveillance in the public domain which discourages anti-social behaviour.
- 7-Eleven Stores implement comprehensive security measures including, but not limited to, security cameras, highly visible Store layout, deterrent signage, regular maintenance to discourage graffiti and vandalism and the use of security encoded below counter safes.
- The Section 96 applications submitted for continued 24 hour trading for existing 7-Eleven Stores have not received any objections when publically notified by the City of Sydney to surrounding land owners.

In addition to the above, the operation of 7-Eleven Stores is usually bound by conditions of consent imposed by Council relating to noise and other potential emissions. These conditions provide Council with adequate opportunity to ensure any amenity impacts are appropriately managed.

7-Eleven Stores provide a low amenity impact, convenience retail offer with appropriate management measures. The proposed amendments do not reward good management and the proven track record demonstrated by 7-Eleven Stores. In this regard, 7-Eleven Stores should not be subject to indefinite trial periods as stipulated in the LNTD DCP which are reinforced through the proposed draft amendment to the LNTD DCP.

Inclusion of all Applications under Part 4 of the Environmental Planning and Assessment Act 1979 (EP&A Act)

The draft amendment to LNTD DCP Section 1.5 specifies that the provisions of the LNTD DCP will apply to *“all applications made under part 4 of the EP&A Act which includes development applications and applications to review a determination or modify a consent.”* The proposed amendment does not acknowledge that Part 4 of the EP&A Act also includes complying development applications (CDCs) (Division 3 under Part 4 of the EP&A Act).

We note that the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) permits change of use as complying development. The proposed Section 1.5 to the draft LNTD DCP creates confusion as to matters to be considered, despite the Codes SEPP being the overriding legislation. This will lead to confusion in interpretation and is likely to give rise to costly and time consuming litigation.

Inclusion of Additional Land within the LNTD DCP

The draft amendments to *Section 3.2 – Late Night Trading Areas* of the LNTD DCP proposes to include the areas of The Rocks and Darling Harbour to reflect the transfer of consent authority from Sydney Harbour and Foreshore Authority (SHFA) to the City of Sydney for developments with a capital value less than \$5 million.

We do not support the expansion of the area to which the draft LNTD DCP applies to development applications or CDCs for 7-Eleven Stores.

Change of Use Provisions

The draft amendment to *Section 2.3 – What type of development does this development control plan apply?* of the LNTD DCP would apply to the change of use for an existing retail premises trading between 10pm to 7am the following day to another use which is deemed an "intensification". The proposed amendment is ambiguous and it is unclear whether Council would consider the change of use to a 7-Eleven Store to be an "intensification". This amendment creates uncertainty and ambiguity in the planning process and could place further restrictions on establishing any new 7-Eleven Store sites within the City of Sydney LGA.

We are opposed to the proposed amendment to Section 2.3 of the draft LNTD DCP in its current form. The proposed wording should be amended to clearly state intensification relates to the change of use resulting in a Category A premises as defined by the LNTD DCP.

Additional Matters for Consideration

The draft amendment to *Section 2.6 – Matters for Consideration* of the draft LNTD DCP adds "*relevant data and research relating to the impacts of late night trading premises*" as matters for consideration by Council in assessing an application for extended or continued extended trading hours. This proposed amendment would contribute to the cumulative costs associated with the preparation of development applications/ modification applications and is a further erosion of certainty for 7-Eleven Stores and its Store operators.

Other Matters

Night Time City Policy

The Council "Relevant Information for Council" memorandum dated 13 September 2010 (Item 9.4 of the Council Agenda) indicates that Council is in the process of preparing a Night Time City Policy that will operate outside the current planning controls. We are concerned that this policy will further increase the restrictions on 7-Eleven Store trading hours and operations.

In conclusion, the public benefit that 7-Eleven Stores provide in the form of 24 hour convenience retailing and enhancing public safety should not be compromised by the stringent requirements as set out in the draft LNTD DCP. The intent of the LNTD DCP is to manage the impacts of late night premises and therefore it should focus on premises that have the potential to cause significant amenity impacts including licensed hotels, clubs and night clubs as well as late night take away food and drink premises. **7-Eleven Stores provide a low amenity impact convenience retail offer with appropriate management measures, as such, they should not be subject to these ongoing onerous requirements.**

We appreciate your effort to understand the issues faced by 7-Eleven and would be pleased to meet with you. We request to be informed when the draft LNTD DCP will be considered at a Council Meeting and also request to be advised of any future consultation regarding formulation of new policies regarding late night trading premises.

Should you have any queries, please do not hesitate to contact the undersigned.

Yours sincerely
Milestone (AUST) Pty Limited



Lisa Bella Esposito
Director

APPENDIX B

DEVELOPMENT STATISTICS SUMMARY
7-ELEVEN STORE AT 672 CROWN STREET, SURRY HILLS
NEW SOUTH WALES

Development Statistics Summary

7-Eleven Store – 672 Crown Street, Surry Hills New South Wales

<i>Question</i>	<i>Response</i>
Local council	City of Sydney Council
State	New South Wales
Brief description of development (including: value of land; size of land (m ²); and value of buildings)	Shopfront modifications, new business identification signage and extended trading hours. Land size: 63sq.m.
Nature of application (Combined development application and rezoning, development application or other — please provide details)	Development application (DA): D/2009/1570 Section 96 (S96) Modification Application: D/2009/1570/A Subject land is Zoned 9(a) Arterial Road Reservation and 10 Mixed Use under the South Sydney Local Environmental Plan 1998. The 7-Eleven Store is defined as a shop and is permitted on the site with Council's development consent.
Date application lodged	23 September 2009 – development application (DA) for 7-Eleven shopfront modifications, signage and extended trading hours. 29 June 2010 – S96 application for extended trading hours.
Date decision(s) received (please provide separately for rezoning and development approval if they were received on different dates)	19 November 2009 – DA approval (57 days total assessment time) 24 August 2010 – S96 refusal (56 days total assessment time)
No. of objections to application (if known)	DA – Two S96 application – nil (petition in support containing 160 signatures submitted to Council during assessment of application)
Decision (approved/refused)	Original DA: Approved S96 application: Refused
Number of conditions on approval	Original DA: 13 conditions. S96 application: N/A
Matters covered in conditions (for example, environmental considerations, construction requirements, access requirements)	No graphics or opaque film to shopfront, trading hours restricted between 6am – 11pm, trial period of 11pm-12am (midnight) permitted for 12 months, further S96 application required to extend trial period, owner/manager required to ensure pavements/gutter kept free of litter at all times.

Types of studies required for application (economic impact, environmental impact, traffic studies, etc)

Statement of Environmental Effects (town planning report) including Late Night and 24 hour Trading Premises Analysis Map, Plan of Management and Waste Management Plan. Specialist Heritage Consultant Advice.

Cost of each study (\$)

Development Application Lodgement

Statement of Environmental Effects: \$8,527
Specialist Heritage Consultant Advice: \$770

Section 96 Application

Statement of Environmental Effects: \$3,423

Estimate of staff and resource costs incurred in preparing and lodging application and responding to council inquiries (\$)

Total of Milestone professional fees - Approx \$16,100 (excluding GST) for DA and S96 application.

Local council DA charges (\$)

DA lodgement fee: \$1,546

S96 application lodgement fee: \$940

Complying Development Certificate application (private certifier): \$2,500

Local council infrastructure charges (\$)

Nil

State infrastructure charges (\$)

N/A

Details of any 'payments or works in kind' required under DA such as infrastructure and community facilities (including equivalent dollar cost, if known)

N/A

APPENDIX C CHRONOLOGY OF EVENTS AND SUMMARY OF ISSUES – VICTORIA
7-ELEVEN STORES AT 262-264 BRIDGE ROAD, RICHMOND, 187 DOMAIN ROAD, SOUTH YARRA AND
969-975 HIGH STREET ARMADALE

7-Eleven Convenience Shop
262-264 Bridge Road, Richmond

Application for Planning Permit for:

- partial demolition and works (Shopfront only, internal works exempt)
- display advertising signs
- externally paint the building
- waive car parking requirement

Planning Controls

- Business 1 zone
- Heritage overlay (Bridge Road Richmond Precinct)

1. Chronology

- 1.1 Application lodged 25th November 2009 with Yarra City Council
- 1.2 Property enquiry lodged for previous permits and endorsed plans, and documents received 10/12/10
- 1.3 Council further information request received 22/12/10
- 1.4 Further information, and amended plans lodged with Council 24/12/10
- 1.5 Council required advertising and notices sent to local owners/occupants and signs put up on-site 12/1/2010 → 27/1/2010
10 objections received.
- 1.6 Council convened Consultative Meeting with applicant and objectors 3/3/2010
- 1.7 Responses to objections prepared, and amended plans prepared to address some objector concerns, and lodged 9/3/2010 with Council and objectors
- 1.8 Application put to Council Internal Development Assessment Committee 14/4/2010 (consists of 3 Councillors)
- 1.9 Council issued Notice of Decision to Grant Planning Permit, 15/04/2010 which included conditions to provide for amendments already offered to Council and objectors to improve lighting, CCTV, and screening of rear service yard
- 1.10 Objectors were allowed 21 days to appeal decision to Victorian Civil and Administrative Tribunal (VCAT), however no appeals were lodged.
- 1.11 Amended plans formally lodged with Council as per proposed permit conditions 12/05/2010
- 1.12 Planning Permit issued 13/05/2010
- 1.13 Further amended plans lodged to clarify shopfront works, at Council request, 21/05/2010
- 1.14 Amended plans endorsed with permit, 30/05/2010

Overall elapsed time: 6 months

2. Questions to be addressed

2.1 Restrictive Planning or Zoning Requirements

- The site location was in a Business 1 zone (B1Z) where a Shop, including Convenience Shop, was a permitted use, and therefore no need to seek consent for use.
- The B1Z is generally applied to activity centres, especially strip centres, where ground floor uses are generally retail.
This zoning is appropriate and facilitates retail use and shopfront works.
However planning consent is still required for signage under the B1Z.
- The Heritage overlay also required consent for external works and signage, to ensure compatibility with local heritage guidelines.
- There were no particular constraints imposed by the above controls.

2.2 Awareness of other similar uses

- The establishment of other Shop uses in the B1Z, which covers the whole length of the Bridge Road Richmond activity centre, which are permitted uses, would not be part of applications, and thus not potentially be advertised, which is appropriate.
- Competition is not a planning issue for small scale retail uses, and Council would not assess need for new Convenience shop.
However many objectors raised this as a concern i.e. no need for the use given other outlets.

2.3 Processing of Application

- Of the 10 objections received, most raised issues not relevant to the application, e.g.
 - no need for 7-Eleven 24 hour trading hours
 - attract undesirable persons late at night, adding to security problems
 - amenity of adjacent residents
- Council officers did have success via the Consultation meeting in convincing objectors that they did not have valid planning grounds.

- In spite of above, 7-Eleven offered various features, not required but to respond to objector concerns e.g. additional side lane lighting, rear yard CCTV, additional roofing of new air conditioning and refrigeration plant in rear yard, opaque film on windows at the side.
- The above features were appreciated which led to none of the objectors going to VCAT.
- There was a lengthy delay of over 1 month between end of advertising and Consultative Meeting due to need to meet Councillors and Council officer availability.
There was another delay of 1½ months after Consultative Meeting in scheduling application for Committee meeting.
This probably relates to Council workload which can only be addressed by more qualified staff, which is affected not only by cost, but availability.

7-Eleven Convenience Shop
969-975 High Street, Armadale

Application for Planning Permit for:

- partial demolition and works (shopfront only, internal works exempt)
- display advertising signs
- use of premises as "Convenience shop"
- reduction of car parking requirement

Planning Controls

- Business 2 zone
- Heritage Overlay (Armadale Precinct)

1. Chronology

- 1.1 Application lodged 23 April 2010, for partial demolition, works and signage, and registered by Stonnington City Council, 03/05/2010
- 1.2 Property enquiry lodged for previous permits and endorsed plans, and documents received, 07/05/2010
- 1.3 Council further information request received 13/05/2010, in regard to existing use rights
- 1.4 Response to further information request, and amended application form to seek consent also for Convenience shop use and reduction in car parking requirement 27/05/2010
- 1.5 Council officers concerned about possible amenity impact of 24 hour operation on nearby residents
- 1.6 Meeting on-site to discuss plant and parking arrangements, 07/06/2010
- 1.7 Council advised that advertising required, and notices sent to adjacent owners and occupants, and signs put up on-site 09/06/2010 – 23/06/2010
- 1.8 Meeting with local Councillor, 17/06/2010
- 1.9 Objections (31No.) received by Council
- 1.10 Meeting with President of local Armadale Business Association, 24/06/2010
- 1.11 Request to Councillors to meet to discuss application and objections 24/06/2010, with no response
- 1.12 Meeting with Council officers, 20/07/2010
- 1.13 Council convened Consultative Meeting with applicant and objectors 22/07/2010, attended by 3 local Councillors
- 1.14 Application put to Council Meeting 06/09/2010.
Council officers recommended approval, including allowing 24 hour trading.
Councillors voted to refuse the application due to:
 - unreasonable impact on neighbours amenity
 - excessive signage
- 1.15 Council issued Notice of Refusal of Permit, 09/09/2010, received 13/09/2010
- 1.16 Appeal lodged with VCAT, 15/09/2010
- 1.17 Other parties served with copies of appeal, 22/09/2010
- 1.18 Statement of grounds submitted by 10 objectors to VCAT and applicant (by 19/11/2010)
- 1.19 VCAT Notice of Hearing received 19/11/2010. Hearing under "Short Cases List" at VCAT set down for 23rd December 2010.

Elapsed time up to VCAT Hearing – 8 months.

2. Questions to be addressed

2.1 Restrictive Planning and Zoning Requirements

- The site was originally in a Restricted Business zone, with a "Shop" being a permitted use.
- When the new Stonnington Planning Scheme was approved in July 2000 the zone allocated was Business 2 (B2Z) which is primarily an "Office" zone for peripheral activity centre locations.
The site is actually in the core retail area of the Armadale centre, with shops either side and opposite.
- Shop, including Convenience shop, became a discretionary use in the B2Z i.e. it may or may not be permitted.
- Given the need to seek permission also for the use, triggered a review of car parking provision, and the need to seek a reduction in the standard requirement.
This will require a traffic/parking consultant to be engaged as an expert witness at the VCAT Hearing.
- The use consent also enabled Council and objectors to consider hours of operation as an issue.
- The above has and will add costs to the approval process, assessing a hypothetical parking space reduction when there is no ability to provide any further off-street parking on-site or in the centre.
- A shop should be a permitted use in all activity centre locations, as it is entirely appropriate and would only occur at ground level frontage, with the ability for office development behind and above.
- The current restriction of 240sq.m. floor area in business zones is quite adequate for a typical 7-Eleven store in such activity centre locations.

2.2 Awareness of Other Similar Uses

- The development approval process for a similar Convenience shop would usually not involve advertising of the application for planning permit, as it would normally be a permitted use where consent would not be required (e.g. exception as above).
- Competition is clearly not a matter for planning authorities to take into account in cases of applicants for smaller scale retail uses. They do not have to justify the need for them. Larger retail development however in Victoria must be justified on market scope grounds.

2.3 Processing of Application

- This application was unusual in that the prior use of the tenancy for many years was a bank, carpet sales, and art gallery (the latter two not obtaining required permits) and the tenancy did not have existing use rights for a Shop. Thus the need to seek consent for the use, as well as consequent parking reduction, in addition to shopfront works and signage.
- A large amount of time was spent in sorting out this prior history and existing use rights.
- When it was confirmed that consent for the use was necessary, this enabled Council to consider whether the standard 24 hour operation was acceptable, and under considerable pressure from objectors to restrict evening hours to say 10pm or 11pm.
- Under Victorian legislation, a shop use which is not restricted by conditions of a previous planning permit with regard to operating hours, and does not require consent, may open whatever hours it chooses.
- The proposed use hours of operation could be restricted by the VCAT decision. This adds considerably to uncertainty for 7-Eleven, which can only realistically operate 24/7.
- Councillors were obviously subjected to intense pressure by objectors, including at the Council meeting, and overturned officer recommendation to approve use.
In this way they have avoided the "tough" decision and left it to VCAT to take responsibility. If VCAT approves the application, Council can be absolved of responsibility.

7-Eleven Convenience Shop
187 Domain Road, South Yarra
(SW Corner Domain Road and Park Street)

Application for Planning Permit for:

- partial demolition and works (shopfront only, internal works exempt)
- display advertising signs

Planning Controls

- Business 1 zone
- Heritage Overlay (South Yarra Precinct)
- Design and Development overlay (not relevant)

1. Chronology

- 1.1 Property enquiry lodged for previous permits and endorsed plans 6th July 2007, and documents received 24/07/2007.
- 1.2 Application lodged 28 August 2007, for alterations to shopfront and signage, and registered by Melbourne City Council of 11th September 2007.
- 1.3 Council urban design and heritage advisors expressed concern about amount of signage in Heritage overlay area, opposite Royal Botanic Gardens, 10/10/2007.
- 1.4 Building owner also expressed concern about extent of signage.
- 1.5 Amended plans forwarded to Council including deletion of awning fascia signs, and illuminated signs above shopfront windows on both street elevations, 11/10/2007.
- 1.6 Plans further amended as result of concerns by local Ward Councillor (Cr Sneddon) and Melbourne-South Yarra Group (resident group), to present only minimal (300x300) illuminated sign under Park Street awning, 19/10/2007.
- 1.7 Advice to client in regard to existing use rights for Convenience Shop.
- 1.8 Although the application was not formally advertised, Council convened a Community Consultation meeting with the applicant and local residents on 1/11/2007, and one objection resulted.
- 1.9 Council officers recommended approval of application, with reduced signage.
- 1.10 Application considered at Planning Committee Meeting 13/11/2007 and recommendation to grant permit was approved.
- 1.11 Notice of Decision to Grant Permit issued by Council, 16/11/2007. This was based on substantially reduced illuminated signage (Objectors had 21 days to appeal to VCAT).
- 1.12 Options considered to address anticipated appeals by objectors to VCAT.
 - reduce illuminated signage further
 - lodge application for non-illuminated signage which would not give appeal rights to objectors
- 1.13 Second Application for the same sign dimensions and locations, but non-illuminated above door and two under-awnings signs to provide fall back proposal.
- 1.14 Council officers recommended approval of second application.
- 1.15 VCAT advised that no appeals were lodged by closing dated 11/12/2007.
- 1.16 Planning Permit TP-2007-801 and endorsed plans issued for original application including illuminated signage, 13/12/2007 which was acted upon.
- 1.17 Planning Permit TP-2007-1107 and endorsed plans issued for second application including non-illuminated signage, 20/12/2007, which was not acted upon.
- 1.18 Local residents and local Ward Councillor concerned about BankWest illuminated sign suspended inside shopfront window, which was not shown on permit endorsed plans.
- 1.19 Application to amend Planning Permit TP-2007-801 to include BankWest sign, lodged 26/06/2008.
- 1.20 Council advised that it would deal with the matter under secondary consent entitlements of existing permit, and advised by letter of 09/09/2008 that such consent was refused.

Overall elapsed time: 3.5 months

2. Questions to be addressed

2.1 Restrictive Planning or Zoning Controls

- The tenancy on this corner property had a long history of convenience shop uses, and thus had existing use rights. The application did not need to seek consent for the use.
- There were no previous permit restrictions on hours of operation such that 24 hour use could not be a planning consideration by Council.
- The B1Z, under which a shop does not require consent, is to facilitate shop uses in activity centres such as the site location.
The B1Z also allowed shopfront alterations without consent.
However consent was still required for signage due to type and scale of signs proposed.
- The shopfront alterations and signage required consent under the Heritage overlay.
This brought into play Council heritage and urban design advice especially given the heritage "village" character, and nearby Royal Botanic Gardens.

- The planning control framework was appropriate
It rightly becomes a two-party matter between the Council (and its advisors) and the applicant.

2.2 Awareness of Other Similar Uses

- The B1Z does not require consent for the Shop use, and similar applications would not be advertised.
- Although consent is required under the Heritage overlay, an application is exempt from advertising and appeal rights to objectors, even if aware of an application.

2.3 Processing of Application

- Even though the zone and overlay controls effectively facilitated the application, the signage controls still enabled valid objections to be lodged, even though advertising was not formally required.
- Local residents put considerable pressure on the local Councillor to oppose the application, on a host of grounds, in spite of the consent triggers being exempt from appeals to VCAT, except in regard to signage.
- The basic objection was that the use was not appropriate for this "village" centre, even though objection to the use was not valid.
Other concerns were associated issues such as:
 - hours of operation
 - undesirable patrons attracted to area at night
 - lighting level
 which were also not valid grounds.
- The objectors were able to exert political pressure to get application put up to Consultative Meeting and Planning Committee Meeting, which would not normally occur where such limited Council discretion was involved.
This obviously added considerably to time for approval.
With no advertising, application should have been approved in 1½ -2 months.
- The Council officers facilitated application where possible, recognising limited valid areas of discretion.
- The objectors were successful in extracting various signage concessions, which the applicant offered to avoid objectors taking application to VCAT, and consequent delay of 3-4 months for a decision.