

WOOLWORTHS LIMITED

Woolworths Limited

**Productivity Commission Performance
Benchmarking of Australian Business
Regulation: Planning, Zoning and
Development Assessments**

28 September 2010

1 Executive Summary

Woolworths Limited welcomes the opportunity to provide input into the Productivity Commission's Performance Benchmarking review of planning, zoning and development approval frameworks across Australia.

With some of the most recognised and trusted brands in Australian retailing, Woolworths currently makes a significant contribution to economic development and employment across the country. Woolworths has over 3,100 stores across Australia consisting of Woolworths and Safeway supermarkets, BIG W department stores, Dick Smith electronics outlets, Woolworths Petrol sites and Dan Murphy's and BWS liquor outlets. These stores are supported by a network of Distribution Centres and support offices. Woolworths also recently acquired the Danks hardware wholesale business and will shortly be injecting new competition into the hardware market in Australia. This will be through the launch of a chain of large-format home improvement outlets in a joint venture with the Lowes Group of Companies. Woolworths plans to secure 150 sites for these stores in the next five years.

Woolworths plays a particularly important role in the development of retail facilities across Australia – our stores are often the anchor stores in shopping centres developed by third parties. Woolworths is also a major developer of shopping centres and stores in our own right. This was particularly significant during the recent global financial crisis when it was increasingly difficult for shopping centre developers to obtain development finance.

Woolworths continuing ability to contribute to economic and employment growth across Australia is closely tied to the effectiveness of the planning, zoning and development approval frameworks in each State and Territory across Australia. Our ability to grow a network of world class retail offerings, to service the needs of a growing population, is heavily dependent on there being sufficient land made available for retail development into the future – both in terms of greenfields and brownfields development areas. In addition, the planning, zoning and development approval frameworks must facilitate new retail development in a timely and efficient way that does not involve unnecessary risk, delay and/or cost. Where the planning framework fails to facilitate appropriate levels of retail development, Woolworths is concerned that areas across Australia will continue to experience, or will experience in the future, an undersupply of retail facilities. This is particularly relevant where demand for retail floorspace has increased in recent years and is expected to continue to do so in the future.

Woolworths faces a range of challenges when developing and opening new stores due to the planning, zoning and development approval processes across Australia. Accordingly, any increase in co-operation and co-ordination between different levels of Government when it comes to planning, zoning and development processes would be welcomed by Woolworths. As a national retailer with multiple developments underway concurrently, one of the key challenges Woolworths faces is a lack of certainty as to how each re-zoning or development application will be handled and assessed by the respective development authority – Woolworths would welcome moves to tackle this issue. Woolworths would also welcome moves to address the current artificial scarcity of land suitable for retail development across Australia. In our view, this scarcity has arisen from a forward planning failure to set aside appropriate amounts of land for modern retail uses. In addition to addressing the availability of land, it is also vital that planning instruments do not place unnecessary and unworkable restrictions on retail developments either in terms of their location, their operating hours or their format.

Increasing costs and delays involved in development approval and re-zoning processes across Australia are also an area of significant concern for Woolworths. This uncertainty has a material impact on the overall viability of many new developments. The most pressing area of concern involves the significant increase in infrastructure charges/contributions currently being levied by development authorities as a condition of development approval for new retail development. Whilst this is a national issue, Queensland is of particular concern as the charges in this state have increased exponentially over the last five years.

A final impediment to efficient retail development arises where the planning framework specifically inhibits new retail competition – either through explicitly protecting existing businesses as a development approval consideration or by enabling competitors to “game” the planning process to frustrate new development. In this regard, Woolworths has experienced attempts by our competitors to frustrate new store development by strategically lodging objections during planning processes which are motivated by commercial concerns. Woolworths would therefore welcome the introduction of legislative reforms in all States to increase transparency in this area and prevent competitors from gaming the planning and development approval process in this manner.

2 Overview of Woolworths Limited

As a leading Australian retailer, Woolworths makes a significant contribution to Australia’s economy.

Woolworths has over 3,100 stores cross Australia consisting of Woolworths and Safeway supermarkets, BIG W department stores, Dick Smith electronics outlets, Woolworths Petrol sites and Dan Murphy’s and BWS liquor outlets. These stores are supported by a network Distribution Centres and support offices. Woolworths also recently acquired the Danks hardware wholesale business and will shortly be injecting new competition into the hardware market in Australia. This will be through the launch of a chain of large-format home improvement outlets in a joint venture with the Lowes Group of Companies. Woolworths plans to secure 150 sites for these stores in the next five years.

In terms of its broader contribution to the Australian economy, Woolworths currently employs over 190,000 employees across our store network and in our distribution and support centres. Woolworths is also one of Australia’s largest training organisations with over 5,000 trainees and apprentices.

Woolworths is also committed to being a leader in responsible and sustainable retailing, Woolworths has committed to a number of key environmental sustainability targets including:

- 40% reduction in carbon emissions on projected growth levels by 2015 (bringing emissions back to 2006-2007 levels)
- achieving a 200ML reduction in water use in our stores compared to 2007; and
- generating zero food waste in the general waste stream by 2015.

To achieve these and other key sustainability targets, Woolworths is in the process of rolling out new “green stores”, retrofitting our existing stores with green technology and making wholesale changes to our supply chain, logistics and support operations.

3 The Importance of Effective Planning and Zoning Frameworks for retail development

Woolworths' continuing contribution to economic and employment growth across Australia is closely tied to the effectiveness of the planning, zoning and development approval frameworks in each State and Territory across Australia. Our ability to grow a network of world class retail offerings, to service the needs of a growing population, is heavily dependent on there being sufficient land made available for retail development into the future – both in terms of greenfields and brownfields development areas. In addition, the planning, zoning and development approval frameworks must facilitate new retail development in a timely and efficient way that does not involve unnecessary risk, delay and/or cost. Where the planning framework is not structured to facilitate appropriate levels of retail development, Woolworths is concerned that areas across Australia will continue to experience, or will experience in the future, an undersupply of retail facilities.

The need to facilitate appropriate levels of new retail development is particularly important at the current time where demand for retail floorspace in Australia continues to increase – reflecting changing customer needs, customer sophistication and the more discerning shopping habits of Australian customers.

Woolworths' supermarket operations provide an illustration of the changes in retail formats that have been occurring in recent years and have been driving the increase in retail floorspace demand from consumers. In recent years, Woolworths supermarkets have been increasing considerably in size - the average size of a new Woolworths full-line supermarket has increased from approximately 2,400 m² to 3,200 m² over the last 20 years. The growth in store size is a reflection of changing customer needs, customer sophistication and the more discerning eating and shopping habits of Australian customers. More specifically, the customer lead drive to move to larger supermarket footprints has resulted from the introduction of extensive fresh food departments in supermarkets requiring additional floorspace that was not required when supermarkets were more focussed on packaged groceries. With the growing emphasis on healthy eating and growing customer preferences for organic products, it is likely that these sections will continue to increase in size in coming years. There is also a growing customer preference, and expectation, to be able to purchase a mix of fresh food, packaged food and non-food items from a single store. This is particularly so where supermarkets are open for extended hours and provide a convenience offer that is not matched by other retailers. This trend has resulted in a considerable increase in the range of products that need to be stocked in a supermarket. Finally, the growing customer preference for chilled foods, including pre-packaged and semi-prepared foods which has required a marked increase in the number and size of refrigeration units used in store. This has promoted a corresponding increase in store size.

The customer preference for larger one-stop-shop retail formats is not limited to supermarkets. As noted above, Woolworths is shortly to bring to market a network of large-format home improvement outlets to specifically address the customer demand for a retailer that offers an unmatched range of competitively priced home improvements products and services. The size of Woolworths other stores has also increased – for example, Woolworths has continued to roll out its BIG W department stores with an increasing number of new and innovative product and service departments now located in store such as the introduction of optometrist services.

In order to meet and respond to these changes in customer demand, Woolworths increasingly has had to find and develop larger parcels of land both for new store development and in order to refurbish and expand existing stores. Woolworths does not expect this trend of larger format retail outlets to decrease in coming years as there is no indication that family incomes, lifestyles and a customer demand for innovative and new retail offers will dissipate. In addition, despite the increased uptake of online shopping it is unlikely that shopping online will negate or significantly diminish the need for physical retail outlets. This is particularly true in relation to food products or the types of home improvement products to be supplied by Woolworths' new stores – because customers for the most part want to see and feel products before purchasing. There is also the social experience that is involved in visiting physical stores to shop that cannot be replicated online. Woolworths also considers that the overall economics of online retailing will limit the extent to which it competes with physical grocery stores on any wide-scale - for example, there are considerable labour costs and time involved in offering an online shopping in terms of picking, sorting, packing and delivering products. These costs are not easily passed on to customers in a competitive grocery product market. Bulky home improvement items are similarly not in general suited to online sales.

Overall for Woolworths, by reducing the difficulties associated with developing new stores, we will be able to offer more Australian communities the convenience, choice, low prices and excellent quality products that Woolworths businesses are known for. Woolworths will also be less able to continue to create the many thousands of jobs and training opportunities that come with new store developments. Woolworths is concerned that continued land scarcity combined with protracted development process will lead to diminished retail competition, busier and more inconveniently located stores and shopping centres and more congested carparks and transport facilities.

4 Government Co-ordination and Co-operation in Planning, Zoning and Development Assessments

Woolworths would welcome and support greater levels of co-ordination and co-operation between all levels of Government in relation to planning, zoning and development processes. As a national retailer with multiple developments underway at any one time, one of the key challenges Woolworths faces is a lack of certainty as to how each re-zoning or development application will be handled and assessed by each respective development authority or local council. This is despite the fact that, for the most part, the development authorities and local councils are meant to be complying with and applying the same legislative tests, processes and planning instruments. An example of the inconsistency of approach in assessing development approvals within one council area can be seen from the different infrastructure charges being levied within one council area (discussed in more detail in section 6.6).

Another example of emerging inconsistencies in planning frameworks can be seen in relation to the implementation of the standard Local Environment Planning (Standard LEP) template in NSW. The intended purpose of the Standard LEP template when introduced was to ensure consistency of zoning definitions across NSW planning areas. Notwithstanding this intent, Woolworths has begun to see significant

inconsistencies emerge in the adoption of permissible uses with or without consent and prohibited uses in each of the mandatory zonings under this template. More specifically, while the Standard LEP mandates certain zonings and specifies permissible land uses within those zonings, some NSW councils have been taking different interpretations and approaches to the permissible uses for certain zones of land. For example, the Wingecarribee Local Environmental Plan 2010 was recently gazetted utilising the Standard LEP template, where land which has been developed by Woolworths for a shopping centre has been rezoned to B5 Business Development (it was previously zoned 3(a) General Business). In effect, this means the Woolworths site has been “down zoned” such that Woolworths is limited in its ability to enlarge the centre in the future to cater to growing customer demand – this is because the surrounding land can now no longer be used for similar retail development. It is doubtful that Woolworths would have been able to develop the existing shopping centre at this site if this land was zoned as it now is.

Further evidence that the Standard LEP template is not being applied consistently can also be seen in the Draft Willoughby Local Environmental Plan 2010 which was exhibited in May to June 2010. In this Draft land which is currently zoned 4(b) Light Industrial is proposed to be rezoned to B5 Business Development however retail premises are not included in the permissible uses.

Woolworths is concerned that this uncertainty around permitted land uses caused by this inconsistent use of the Standard LEP template not only makes it difficult for retailers to know whether they can develop land but also, in Woolworths’ view, has the potential to undermine the broader planning policy objectives of the NSW State Government.

5 Impact on competition

Woolworths has long been concerned that restrictions on access to appropriately zoned and located land in the planning framework has created an artificial scarcity of land suitable for retail development across Australia. This is due to a failure to set aside appropriate amounts of land for retail uses when undertaking forward planning processes. It is also because planning frameworks also place unnecessary and unworkable restrictions on retail developments either in terms of their location, their operating hours or their format.

The planning process also negatively impacts on levels of retail competition where it has either specifically provided protection for existing participants as a development approval consideration or enabled competing retailers to frustrate and hinder new retail development.

5.1 A current underprovision of retail floorspace

A constraint on the development of new stores faced by Woolworths is a lack of sufficient appropriately zoned land being made available for retail development in Australia’s major metropolitan centres. In Woolworths’ view this is largely due to the fact that when setting planning policy, Governments have generally not taken into account the considerable growth in demand for retail floorspace outlined above nor the desire of the population to have conveniently located shopping facilities close to where they live, work and undertake recreation activities.

The most potent example of this issue is the Sydney Metropolitan Region which currently has a significant undersupply of retail floorspace - both generally and specifically in relation to supermarkets. This undersupply is not a new phenomenon,

rather it is a broader structural issue with the Sydney region consistently having a lower available proportion of retail floorspace than both the national average and all other Australia capital cities for many years - this is despite the higher income levels present in Sydney which would ordinarily result in a higher proportion of land being devoted to retail. This shortage of retail floorspace is particularly acute in relation to supermarket space - Figure 1 below sets out the average supermarket floorspace per 1000 people nationally and in Australia's main capital cities.

As can be seen, at 249 m² per 1000 people Sydney significantly lags behind all other capital cities in terms of supermarket floorspace provision. It is also below the NSW average of 288 m² and falls considerably below the Australia average of 328 m² per 1000 people.

**Figure 1. Average Provision of Supermarket Space in Australia
(m² per 1000 people)¹**

State	Av. Retail Floor Space (m ²) per 1000 people	City	Av. Retail Floor Space (m ²) per 1000 people
National	328		
NSW	288	Sydney	249
VIC	328	Melbourne	390
QLD	359	Brisbane	390
WA	371	Perth	370
SA	355	Adelaide	372

This limited availability of retail floorspace in Sydney means that the retailers with stores in Sydney often experience greater customer numbers in store with consequent impact on convenience, amenity and customer experience. In practical terms, this means that customers in the Sydney Metropolitan Region are more likely to experience congested carparks, traffic jams in and around retail precincts, longer queues at checkouts and more crowded retail outlets than those elsewhere in Australia.

Woolworths' own trading experience reflects this trend with Woolworths' Sydney supermarkets generally trading considerably above and beyond the levels of Woolworths supermarkets in other capital cities.

Unless appropriately addressed Woolworths expects the existing undersupply to worsen as demand for retail floorspace per person continues to increase (for the reasons discussed in section 3). Woolworths is specifically concerned that, rather than addressing this undersupply, current reforms to the NSW Planning will potentially exacerbate and reinforce the current shortage of retail space. For example, as part of this reform process, the NSW Department of Planning has released Draft Sub-Regional Plans which place a limit of one or two supermarkets in Town Centres and one small supermarket in villages. As a result of this, Woolworths estimates that approximately 135 supermarkets that are currently in existence would not be allowed to be developed under these Draft Sub-Regional Plans, let alone any further supermarkets to account for population growth.

¹ PitneyBowes Business Insights (2009).

The Sydney Metropolitan Region is certainly not the only area where there is, or will be, an undersupply of retail floorspace in the future. Earlier this year the ACT Government announced its plans to release of a number of packages of land for new supermarket development. These land releases are being made in accordance with the ACT Government's Supermarket Competition Policy Implementation Plan. Woolworths understands a key objective of the ACT Government under this Plan, is to increase the number of sites available for full-line supermarkets in the Territory to address a current undersupply. Woolworths has a number of concerns regarding the ACT Government Supermarket Policy – a policy which specifically excludes Woolworths and other certain retailers from participating in upcoming land releases whilst giving preferential treatment to others. In doing this, Woolworths expects that this policy will actually reduce competition and increase prices for food and groceries in the Territory – a view confirmed by a recent study undertaken by the Institute of Public Affairs.² Putting aside these particular concerns, Woolworths also considers that, as part of these proposed land releases, the ACT Government has not made adequate provision of supermarket floorspace in the Territory to account for population increases in the key growth catchments. For example, Woolworths estimates that by 2030, areas such as the Gungahlin in the ACT will have a supermarket floor space provision that is approximately 28% less than the national average resulting in lower levels of competition and less convenient shopping for ACT residents.

5.2 Additional restrictions regarding the location, type or operation of retail facilities

In addition to an undersupply of retail floorspace, one of the key challenges for retailers arises where the planning framework places unnecessary or unworkable restrictions in relation to the location, type or operation of retail facilities that are allowed.

For example, there is a broad policy push across all jurisdictions (including NSW) to centralise future major retail development in “activity centres” or centres centred on major transport links / major employment centres with a key objective being to increase public transport use. The practical effect of this policy approach has been to further limit land available for retail development even where there are compelling reasons for allowing retail development away from the transport and major centres. For example, in Woolworths' experience, customers generally undertake their supermarket and other shopping to fit in, and around, other everyday activities (such as taking to children to and from school, attending sport and going to and from work) and therefore want access to convenient and competitively priced stores in their local community and not just near major transport links and employment centres. Linked to this is the fact that retailers (particularly full-line supermarkets, discount department stores and other large-format stores) have considerable difficulty obtaining land in these centres for new store development. This is due to a range of factors including the forms of tenure in these centres (often strata titles) and the resultant cost of difficulty of amalgamating sites. By their very nature and because of the products they sell (for example bulky home improvement items which necessitate on-grade carparking and delivery facilities adjacent to the store), it may not always be appropriate for these large-format stores to be located in such centres. For this

² Institute of Public Affairs, Forcing Prices Up: *The impact of the ACT government's supermarkets policy and implementation* (June 2010). Available at <http://www.ipa.org.au/sectors/food-environment>

reason, whilst Woolworths supports Government objectives of increasing use of public transport and decreasing car dependence, Woolworths considers this is best achieved through making a mix of land available for new retail development – both near transport links as well as near where people live and frequent.

Other planning related restrictions impacting on retail development include council requirements around trading hours and delivery times. Woolworths recognises that the need for an appropriate balance between the interests of residential and retail development when considering development and re-zoning applications. However, Woolworths is concerned that Councils are, or will be, unnecessarily precluding new retail development by imposing, unworkable or unjustified restrictions on trading and delivery hours as part of development and re-zoning approvals. These restrictions are a particular issue for everyday needs retailers such as Woolworths supermarkets that need to constantly replenish stores and, to minimise inconvenience to the local community, often need to do this outside peak trading hours. Of most concern to Woolworths is a recent situation where a council sought to retrospectively impose such restrictions on a store that was already trading when Woolworths sought development approval to refurbish that store. This is a problem which Woolworths expects to grow in coming years as there is a greater planning policy focus and push on redeveloping brownfields sites through creating mixed-used retail/residential precincts with “shop top” housing.

The final issue, in terms of restrictions on permitted type of development, arises where planning frameworks do allow retail development but narrowly prescribe the type of store or formats allowed. In this regard, Woolworths has recently made submissions to the NSW Government regarding the need for flexibility around permitted retail formats. The issue in NSW related to restrictions around the definition of “shop” where particular planning instruments only allow a certain number of “shops” in that centre. Woolworths has suggested to the NSW Government that the term “*comprehensive supermarket*” be included in the definition of both “*shop*” and “*retail premises*”. Further, what constitutes a “*supermarket*” should be construed broadly to address the fact that supermarkets are moving beyond the supply of groceries and fresh food products to provide a range of other goods and services. Only through enabling the market to determine the appropriate retail format, do local communities and customers get the best levels of price, service and product competition both now and into the future.

6 Impact on Compliance Costs

The level of costs and delays involved in development approval and re-zoning processes is another impediment to new store and centre development. The issue of cost and delay are closely linked where the length of the development process exacerbates the costs incurred by developers in the forms of increased holding, legal and expert costs. The resulting uncertainty from cost and delay also has material impacts on the ability of developers to finance new development.

In terms of cost, Woolworths’ most pressing concern is the increasing trend of infrastructure charges/contributions currently being levied by development authorities as a condition of development approval. Whilst this is a national issue, Queensland is of particular concern as the charges in this state have increased exponentially over the last five years. Another growing, albeit less immediately critical, area of cost concern for Woolworths is the increasing volume and complexity of supporting evidence, material and studies required to support development and re-zoning approval applications.

6.1 Escalating Infrastructure Charges / Contributions

Woolworths acknowledges the need for developers and retailers to contribute to public infrastructure works when undertaking new development such as the construction of a new retail outlet. Woolworths is nevertheless becoming increasingly concerned about the escalating and disproportionately high nature of these infrastructure charges/contributions. Woolworths is similarly concerned about the lack of consistency in the way that these charges/contributions are levied – not just across States but also within States and even within the same local government areas in some cases. In combination, the high nature of these charges and the lack of certainty as to how they are calculated and levied has resulted in a combination of large and small scale retail developments either being considerably delayed or, in some instances, no longer viable. It has also made it difficult to undertake project viability assessments and undermined the ability of developments to obtain development finance on commercially appropriate terms.

In making these comments, Woolworths notes that it is currently in a fairly unique situation in that it is currently undertaking a national rollout of large format home improvements stores which, to a large extent, are the same size buildings on similar sized land parcels. Woolworths has seen first hand the significant variations in infrastructure charges being levied by various Council each using different methodologies, for what are, in most respects, the “same” development.

The best illustration of the challenges for retail development created by infrastructure charges/contributions can be seen in Queensland where these charges have increased by a reported 1,300% in the last five years. In Woolworths’ own experience, infrastructure charges for a neighbourhood shopping centre in an inner Brisbane suburb have increased from approximately \$285,000 in 2005/2006 to \$2,790,000 in 2009/2010. Increases of this magnitude have taken Queensland from being, on average, the most economical State from an infrastructure charges/contributions point of view to being the most expensive where it is now significantly more expensive (on average) than all other States.

The increases in the levels of infrastructure charges/contributions has lead to a number of projects being delayed and has stopped new stores coming to market including supermarkets and BIG W stores. For example, Woolworths is to be a major tenant in a number of planned shopping centres across Queensland where development has been held up for over two years due to disputes with Councils over what can be considered excessive infrastructure charges/contributions.

In terms of the inconsistency of these charges/contributions, Woolworths notes that there is currently little or no clarity as to the how these infrastructure charges/contributions are levied by Councils. This means that similar Woolworths’ developments have been subject to somewhat varied infrastructure charges - not just in different states but also within the same local government areas. For example, it is estimated that in the case of supermarket based infrastructure charges/contributions across Australia range from \$260/100m² of gross lettable area (GLA) to \$75,000/100m² of GLA.

Related to this concern about inconsistency is also a question about the lack of transparency and due process in relation to how these charges are levied by councils – and this issue is not just limited to one State. For example, it has been Woolworths’ experience in recent years that regardless of the particular development, Woolworths

has been required to bear the cost of considerable road improvement works. This is despite the fact that these roadworks are often not solely triggered by, or needed because of, the proposed development. Woolworths has also, on a number of occasions, been required to pay for additional council infrastructure above and beyond originally agreed infrastructure contributions as part of re-zoning applications. This is, in some cases, also despite the limited connection between the infrastructure being requested by Council and the actual development.

In light of the concerns raised above regarding infrastructure charges/contributions Woolworths would support an urgent review of the way in which infrastructure contributions/charges are levied across all states and territories in Australia – particularly in Queensland. In this respect, Woolworths welcomes the creation of the Infrastructure Task Force in Queensland which is looking at this issue.

In the course of this review, Woolworths would welcome the adoption of an agreed and consistent approach regarding the proportion of infrastructure cost that development parties are required to pay for infrastructure that is beyond the boundaries of their site. One potential solution would be to cap such contributions/charges at 1%-2% of construction costs across all types of developments. In this regard, Woolworths notes that the New South Government recently took steps to place a maximum on infrastructure charges for residential lots – Woolworths would welcome the extension of this measure to commercial developments.

6.2 Increasing volumes of complex supporting evidence, material and studies required as part of development applications.

Another area of concern for Woolworths in the planning process is a trend Woolworths is seeing across all States and Territories where Councils are requiring increasing volumes of complex supporting evidence, material and studies as part of development approval and re-zoning application processes. For example, depending on the local council Woolworths may be required to provide extensive expert information at the time of the development and re-zoning application related to issues including traffic, heritage, economic impact, environmental impact and archaeology of the site. Woolworths is also increasingly being required by Councils (and State Planning Departments) to provide Construction Certificate documentation at the Development Approval or re-zoning stage. This documentation would not ordinarily be prepared at this stage and imposes an additional cost at a time when it is not even clear that the project will be proceeding.

Whilst Woolworths acknowledges the importance of providing development authorities with adequate information to assist with their decision-making process, Woolworths is concerned that limited regard is had to the considerable cost involved in obtaining and preparing this supporting information, particularly where some of the information requested is not wholly necessary, particularly at the time of initial development approval and re-zoning applications. The other concern is the delay that these additional information requirements create in what is already a relatively slow process. For example, a full Economic Impact Statement can often take up to six to eight weeks to prepare at an average cost of \$25,000 - \$38,000.

6.3 Ongoing concerns about development delays

The issue of development delay and the time it takes to bring new stores and competition to market in a timely manner continues to be an issue of concern for Woolworths. This delay can be the result of a range of factors including the lack of suitably zoned retail land (discussed previously), the difficulties faced in amalgamating adjacent parcels of land to enable large-format store development, the length and complexity of the re-zoning and development approval processes and the practice of third parties (generally with a commercial interest) gaming or frustrating the development approval process (discussed in section 6.5 below).

The average time taken for Woolworths to develop and open a new supermarket, BIG W store or Dan Murphy's liquor outlet is considerable – taking on average more than two years or 26 months (from the time the land is originally acquired to the time of the store opening to trade). Developments in NSW have, on average, taken the longest to bring to market, Queensland follows with South Australia and Victoria next. Where construction time for developments is generally 6 months, the majority of development time is spent by Woolworths obtaining appropriate approvals and completing steps in the planning process.

6.4 Proposed reforms to reduce cost and delay

Woolworths considers that many of the costs and delay noted above could be avoided through introducing the following measures:

- providing developers a right to refer development applications to an independent assessor;
- introducing appeal processes for site-specific re-zoning applications;
- requiring Councils to account for delays in development approval processes and, where appropriate, provide compensation for those delays; and
- greater use of accelerated planning processes by which State Planning Ministers are able to fast-track the development of projects deemed to be of state significance.

(i) A right to refer development applications to an independent assessor

Woolworths considers that there should be the ability for the proponent of a development application to refer that application for independent assessment. This should occur when sectoral or other local issues result in the refusal of a development application despite council's officers recommending approval of that application on its merits. A right to elect to refer the application to a Joint Regional Planning Panel in appropriate circumstances would assist, for example, and avoid the need for an appeal to the Land and Environment Court.

(ii) An appeal process for site-specific re-zoning applications

Notwithstanding Woolworths' desire to avoid court processes in relation to development processes, Woolworths is concerned that there is currently no right to appeal against a decision of the council to refuse or not consider a site-specific re-zoning in all States. While mechanisms in some States enable a planning Minister can agree to call-in or fast-track a re-zoning application there is currently no formal review mechanism available for small projects. This means that re-zonings tend to occur on an ad-hoc basis and without a sound policy basis. In

Woolworths' experience this means that some re-zoning applications have been refused despite the strong economic, community and planning policy arguments in favour of that re-zoning occurring.

In Woolworths' view, having a Court appeal mechanism or similar have the benefit of enabling logical merit based appeals based on market demand and merit assessment. In addition, creating this review process would have the added benefit of ensuring that proper and due process is followed by council when assessing re-zoning applications.

(iii) Councils should be required to account for delays in development approval processes

Woolworths considers that delays in the development approval process be achieved if councils were required to produce a report at the request of the proponent of the development application on the planning/environment grounds as to why a particular development application has not been determined by the commencement date of the proponent's appeal rights.

Woolworths also suggests that compensation rights and rights to seek costs orders should be widened. This should occur where an appeal is required to be commenced as a result of a failure by a consent authority to properly administer its duties to assess a particular development application in a timely manner or as a result of vexatious/anti-competitive litigation.

(iv) Increased use of fast-tracking processes

As noted above, one of the key challenges faced by Woolworths in introducing new stores to local areas is the length and development approval process and the uncertainty that these processes create. As such, Woolworths would strongly support the increased use of existing measures by which development approvals can be fast-tracked – such as the Ministerial call-in process in Victoria and establishment of the specialist planning list in the Victorian Civil and Administrative Tribunal (VCAT) to more efficiently resolve planning matters for developments worth over \$5 million.

In February 2010, the Victorian Government announced that it would be fast-tracking the development approval process for 11 Woolworths large-format home improvement stores across Victoria. The fast-tracking of these approval processes has been instrumental in furthering Woolworths' efforts to bring new jobs and investment to Victoria and introduce competition into the hardware market in Australia.

6.5 Removal of specific protections for existing businesses or favouring of particular businesses in the planning framework

An additional and important challenge Woolworths faces when developing new stores and centres arises where the planning, zoning and development approval process explicitly protects or favours existing businesses as a development approval consideration. Also of particular concern is the ACT Government's selective release of sites for supermarket development at Group Centres which is distorting the overall competitive process for the acquisition of land for supermarket development across the ACT.

In terms of the specific protection of existing businesses, on a number of occasions Woolworths has been unsuccessful in obtaining development approval or re-zoning approval for a new store on the basis that Council is specifically concerned that the proposed store would impact on the commercial viability of an existing retailer. This is despite the fact that the Woolworths development would provide local residents with enhanced competition and choice. It is also despite the fact that Council objections on this basis often lack credible economic evidence demonstrating that the existing traders' viability is actually threatened – in Woolworths' experience Councils have often been swayed by the interests of vocal local minorities, many of whom have a commercial interest in preventing the development occurring. In instances where developments have been disallowed on the basis of protecting existing business, Woolworths has either been required to expend considerable time and money either disproving this concern (sometimes through legal proceedings), or has ultimately walked away from proposed developments. In some instances, the mere risk or likelihood of a consent authority opposing a development application has itself discouraged Woolworths proceeding with a new development.

In light of these concerns, Woolworths welcomes the introduction of policy measures such as the Draft Competition State Environment Planning Policy (Draft Competition SEPP) currently being considered by the NSW Government. Under the terms of the Draft Competition SEPP, consent authorities, for the purposes of determining a development application, cannot take into account the likely impact of proposed commercial development on the commercial viability of other commercial development (including loss of trade). Woolworths considers this reform in a broad sense, to be a positive development in removing barriers to new competitive retail developments in NSW.

However, Woolworths is concerned that, as currently proposed, the policy intent of the Draft Competition SEPP will be potentially undermined if a wide loophole remains which enables Councils to oppose developments on the basis that a development would have an "adverse impact on the extent and adequacy of facilities and services available to the local community". The specific concern is that consent authorities, seeking to block a development application for whatever reason, will be able to rely on an expansive interpretation of this clause to achieve their desired result.

As discussed in section 5.1, earlier this year the ACT Government announced the release of a number of sites for supermarket development at Group Centres in the ACT with these releases said to be consistent with the terms of its Supermarket Competition Policy Implementation Plan. In making these selective land releases, via a mix of open and closed tender and auction processes, the Government specifically excluded certain operators (including Woolworths and Coles) from bidding for particular sites. The Government also specifically favoured certain operators granting them rights to the land without in the absence of a competitive process. For example, the ACT Government released sites for large format supermarkets in:

- Kingston specifying that Superbarn would be the only operator allowed to develop this site;
- Dickson providing that Woolworths would not be allowed to acquire that site;
- Casey with a specification that only ALDI and Superbarn would be able to bid for the site; and
- Amaroo with a specification that neither Coles nor Woolworths would be allowed to develop that site.

Woolworths is concerned that this selective land release and restricted bidding process is not just impacting supermarket competition at Group Centres. It is also distorting competition for, and access to, land for supermarket development across all parts of the Territory. This reason for this is as follows - in smaller centres across the ACT where the Government is not responsible for the release of land, prices of sites for potential supermarket development/redevelopment are escalating considerably. These price increases reflect the fact that retailers such as Woolworths, locked out of the abovementioned Group Centres, are having to examine growth opportunities in other areas. The challenge, however, is that these significant increases in prices for land actually are making it unviable for new supermarket development either by retailers such as Woolworths or smaller independent operators. Overall, this means that the level of investment in supermarket development in the ACT is likely to remain subdued which, as mentioned previously, will reduce competition and increase prices for food and groceries in the Territory.

6.6 Attempts by competitors to frustrate new development by gaming the planning process

The final major impediment to store development is the use of the planning process by competing businesses to object to and frustrate new store development (often referred to as a gaming of the planning process). This is a constant challenge for Woolworths that faces such objections on a regular basis in relation to new store developments. Even where such objections do not successfully prevent the stores developed they often add to the delay and cost involved in the development process. Woolworths has recently experienced blanket and systematic attempts by particular competitors to “game” the planning process with the apparent intention to prevent or frustrate the rollout of some of its stores.

In light of these and similar actions, Woolworths would welcome the introduction of legislative reforms in all States to prevent competitors from gaming the planning and development approval process in this manner to prevent competition. More generally, Woolworths considers that a positive mechanism to increase transparency in overall development approval and re-zoning process is to require a greater degree of disclosure regarding the financial interests of parties who object to new development. Woolworths proposes this could be done through this introduction of a standard requirement whereby objectors to non-residential development must provide a statutory declaration in which the party declares any commercial interest that is relevant to their objection and the development in question.

7 Impact on efficiency and effectiveness in the functioning of cities

Woolworths has no specific comments in relation to this section that have not been addressed previously.

8 Ensuring adequate supply of land for different uses

Woolworths has no specific comments in relation to this section that have not been addressed previously.

9 Conclusion

Woolworths once again thanks the Commission for the opportunity to provide input into its review of planning, zoning and development approval frameworks across Australia. Woolworths hopes that this inquiry will provide Governments across Australia with the necessary evidence, analysis and tools to address and increase the efficiency and effectiveness of their respective planning, zoning and development approval frameworks.

Woolworths would specifically welcome any changes which ensure consistency and transparency across jurisdictions. Further, Woolworths hopes this process will unlock more suitable land for new retail development ensuring that retail competition in Australia is enhanced and Australia customers have access to increased convenience and choice in their local communities.