

6 April 2010

Ms Louise Sylvan
Presiding Commissioner
Performance Benchmarking Australian Business Regulation
Productivity Commission
PO Box 1428
Canberra City 2601

Dear Ms Sylvan

Re: Woolworths Limited Submission - Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments

Woolworths thanks the Productivity Commission for the opportunity to provide comment in response to the Commission's Draft Report regarding the Performance Benchmarking Review of the planning, zoning and development approval frameworks across Australia. As the Commission is aware, Woolworths previously lodged a comprehensive initial submission to assist the Commission as part of this review.

Woolworths welcomes the detailed and thorough findings of the Commission contained in the Draft Report. In particular, and consistent with content of Woolworths' initial submission, Woolworths welcomes the Commission's finding that there are a number of opportunities for Governments across Australia to reform their planning and zoning systems to greatly improve the availability of land for retail development and, in doing so, to promote competitive outcomes for Australian customers. Woolworths specifically welcomes the Commission's support for:

- implementing statutory timeframes for rezoning and statutory planning;
- reducing the prescriptiveness of zones and allowable uses within those zones;
- facilitating more "as of right" development processes to reduce uncertainty for business and the remove the scope for gaming by commercial competitors.
- eliminating the impacts on the viability of existing businesses as a consideration for Development Approval and rezoning approval;
- making consideration of impacts on the viability of centres a consideration only during the strategic planning stages only as opposed to during the development approval and rezoning process;
- the provision of clear guidelines on eligibility for alternative assessment paths for new development; and

- ensuring there are appropriate mechanisms and disincentives in place to prevent gaming of third party appeals by commercial competitors to frustrate new development.

Woolworths also notes, and supports the Commission's finding that the ACT Government's current supermarket competition policy has been instituted in the absence of any evidence adverse competition outcomes and is not likely to result a net increase in competition for groceries in the ACT.

In making this supplementary submission, Woolworths wishes to clarify one comment in the Commission's Draft Report. On page 293, the Commission extracts the finding of the ACCC's 2008 Grocery Inquiry report which states that Woolworths had a strategy of using the planning process to deter new entry even where there were no legitimate planning concerns for such an objection:

The ACCC also received specific and credible evidence of incumbent supermarkets using planning objection processes to deter new entry in circumstances where the incumbent supermarket had no legitimate planning concerns. When questioned about this practice, Woolworths said such appeals are lodged to protect Woolworths' opportunities for new stores and to protect existing business. Woolworths further state that this is a practice adopted regularly by other supermarkets ... Further, the complexities of planning applications, and in particular the public consultation and objections processes, provided the opportunity for Coles and Woolworths to 'game' the planning system to delay or prevent potential competitors entering local areas. (ACCC 2008, p. xix)

As the Commission may be aware, following the Grocery Inquiry Woolworths has been in a close and cooperative dialogue with the ACCC regarding the issues that were raised during that 2008 Inquiry. As part of this process, Woolworths has voluntarily made a number of changes to its property development practices to address the concerns that were raised and address any uncertainty around Woolworths' position. This has included Woolworths giving a voluntary undertaking to the ACCC in September 2009 to amend supermarket leases to remove clauses identified as restrictive provisions – no such clauses are included in new supermarket leases and any existing provisions in current leases are now subject to a five year sunset clause.

Further, for some time, Woolworths has taken an internal policy decision that it will not object to new competitive developments at or near Woolworths' developments or our existing stores. The only exception to this policy would be where a new development is expected to have significant immediate impact on the amenity, operations or access for our stores. That is, whilst Woolworths may be subject to gaming of the approval process by competitors (as outlined in our initial submission and noted in the Draft Report), Woolworths itself does not engage in any such gaming processes and, in fact, supports that introduction of measures to prevent such gaming. As stated in our initial submission, Woolworths would welcome the introduction of legislative reforms in all States and Territories to prevent competitors from gaming the planning and development approval process in this manner to prevent competition. One such mechanism would be to increase transparency in overall development approval and re-zoning process through requiring a greater degree of disclosure regarding the financial interests of parties who object to new development.

In the interests of accuracy, we therefore ask Woolworths' current practices and position around lodging objections to development be noted in the Commission's Final Report.

Woolworths once again thanks the Commission to the opportunity to provide input to the Commission as part of this Benchmarking review.

Yours sincerely

Nathalie Samia
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Woolworths Limited