

# Competition Policy Review: Draft Report September 2014

City of Sydney submission

17 November 2014





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## Introduction

The City of Sydney (the City) is pleased to be able to provide this submission to the Competition Policy Review draft report published in September 2014. The submission focuses on responding to issues raised in Section 8.3 of the draft report entitled 'Planning and Zoning'.

The Competition Policy Review Panel's view on the relationship between competition and planning, zoning and land use is summarised on page 97 of the draft report as follows:

*Effective economic objectives and proper consideration of competition are lacking from planning and zoning legislation and therefore processes. Planning and zoning requirements are a significant source of barriers to entry, particularly in the retail sector. They are also overly complex, geared towards very local issues and can place undue weight on the impact on incumbents. This is producing poor outcomes for consumers*

Based on this view, the draft report contains a draft recommendation which seeks to include competition principles among the objectives of laws dealing with planning and zoning to ensure competition issues are always considered. Suggested principles should include:

- *A focus on long-term interests of consumers generally*
- *Ensuring arrangements do not explicitly or implicitly favour incumbent operators*
- *Internal processes that can be triggered by new entrants to a local market*
- *Reducing the cost, complexity and time taken to challenge existing regulations*

This submission outlines the City's existing evidence based centres policy and retail hierarchy strategy. It argues that the City's planning policy framework acts to protect the broader public interest and does not inhibit competition or economic growth. Furthermore, it shows that the major issue for competition is the retail landscape and the practices of retailers.

## Rationale for Centres Planning

Planning aims to ensure that development is in the public interest, is environmentally sustainable and makes efficient use of investment in local infrastructure (roads and footpaths), public transport, health, education and social infrastructure. Zoning locates land uses appropriately so that it avoids conflicts between incompatible uses and important infrastructure investment. In terms of retail uses, zoning seeks to ensure that retail businesses are located in order to maximise wider community benefit and residential amenity. A primary aim of retail zoning strategies is to reduce the need for travel, particularly by private motor vehicle and reduce the economic impacts that arise from inefficient infrastructure investment.

Centres planning is a sound and proven approach to achieving these objectives. It involves focussing primary retail development in mixed use centres where they can be supported by residential populations, complementary business and services and community and transport infrastructure. It provides the flexibility for existing centres to grow while allowing new centres to establish.

A robust centres policy also provides certainty for business and infrastructure investment. By providing clear detail on where retail should be located, the market and the community can have confidence about the future uses of their land and surrounding land. This confidence means they will be more likely to invest which will drive economic growth and employment. Conversely, ambiguity about the future use of land creates risk and may result in otherwise viable projects being delayed or abandoned.

By providing a clear hierarchy of centres, State and Federal Government and the private sector can invest in public transport, health, education and social infrastructure where it will be best patronised. Local Government can focus investment in the public domain, walking and cycling facilities, open space and other cultural and community facilities and services where it will provide maximum benefit for the most people. Existing infrastructure investment can also be protected through this approach. Likewise, *“development outside of centres can detract from economic growth by diluting public and private investment in centre related activities, facilities and infrastructure”* (South East Queensland Regional Plan – 2009). A key foundation of this approach is the objective to promote efficient investment in and use of infrastructure in the locations where there is greatest return on investment.

Centres planning is a defining characteristic of Sydney's urban planning and has been for decades. The NSW Metropolitan Plan for Sydney 2036 and draft Metropolitan Strategy for Sydney to 2031 provide a framework for accommodating future residential and job growth through a network of different sized centres. This approach has been employed successfully around the world and examples such as N1 Islington and Chapelfield in the UK, Market Common Arlington in the US and Subi

Centro in Western Australia illustrates its success<sup>1</sup>. It is important that Sydney continues to take this approach to remain globally competitive. Centres planning in Green Square will concentrate of trip-generating activity into the catchment of the Green Square Town Centre and away the freight and passenger transport network that support the nearby Sydney Airport and Port Botany Container terminal, infrastructure of national significance. The Green Square Urban Renewal Area will soon become the area with the densest residential population in Australia. The 278 hectare area is approximately twice the size, and significantly denser, than Sydney's current densest suburbs - Pyrmont and Ultimo.

Restriction of certain land uses in areas that primarily serve other purposes, for example restricting large scale retail in residential zones or in viable industrial areas, is an important method of ensuring existing centres are strengthened and planned centres can establish and thrive. Removing this mechanism would weaken the ability of consent authorities to create viable and attractive centres.

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<sup>1</sup> Green Square and Southern Areas Retail Study, September 2008, Prepared by JLL and Hassell. Downloadable at: [http://meetings.cityofsydney.nsw.gov.au/council/about-council/meetings/documents/meetings/2008/Committee/Planning/050508/080505\\_PDTC\\_ITEM03\\_ATTACHMENTS.PDF](http://meetings.cityofsydney.nsw.gov.au/council/about-council/meetings/documents/meetings/2008/Committee/Planning/050508/080505_PDTC_ITEM03_ATTACHMENTS.PDF)

## The City's approach for Green Square

The Green Square Urban Renewal Area is Australia's largest urban redevelopment. Figure 1 shows the area within the regional context.



Figure 1 – Green Square in regional context

Development of the Green Square Town Centre at the heart of the development offers a significant opportunity to showcase best practice in terms of urban renewal, and transit oriented development. Retail facilities will play a major role in the success of the project.

The NSW Government's strategic plans identify Green Square as one of three planned major centres in metropolitan Sydney along with Leppington and Rouse Hill. Given the State wide importance of the success of Green Square, it is critical that it has a functioning and viable centre at its heart. A centres policy and retail hierarchy ensures that the Green Square Town Centre achieves a critical mass in terms of retail floor space, anchored by strong major tenants.

The City's approach to centres planning for Green Square is based on evidence, consultation and analysis and is informed by two key studies undertaken on behalf of the City between 2008 and 2010.

The *Green Square and Southern Areas Retail Study 2008* was undertaken by Jones Lang Lasalle. This study establishes the future demand for retail floorspace in Green Square and estimates the retail floorspace required to meet that demand in the best locations. The study recommends a retail hierarchy with the Green Square Town Centre as its primary core and a number of smaller centres in other high density areas such as Victoria Park and Ashmore. The study was adopted by the consent authorities (City of Sydney Council and the Central Sydney Planning Committee) in February 2010.

A subsequent study by SGS Economics and Planning provides advice in translating the adopting retail hierarchy into planning controls and proposes a 1,000 square metres limit on individual retail premises located outside of centres to ensure the realisation of these centres is not undermined.

Broadly, the City's centre strategy seeks to ensure the Green Square Town Centre develops a strong and vibrant retail focus and is as follows:

- The Green Square Town Centre forms the heart of the Urban Renewal Area and is supported by a network of successful and vibrant mixed-use centres that play a complementary role. All of these centres are located on planned key public transport routes, within denser residential areas. This ensures less reliance on private vehicle use.
- 'Major' retail development (namely major supermarkets and department stores) must be located in the nominated centres. Major retail uses act as catalysts for development, support other local businesses in centres and ensure public transport patronage is maximised. Supermarkets in particular, by virtue of the essential goods that they provide, are the glue for new communities and critical in community building and cohesion.
- Outside of nominated centres, smaller scale retail is encouraged to increase the amount of trips by foot for top-up shopping and to allow for smaller fringe business. This will allow for smaller scale grocers and markets to be developed on street corners or as part of mixed use developments.
- Neighbourhood shops are permitted in all zones in the area.
- 'Minor' retail premises, no greater than 1,000 square metres in floor area are permitted outside of centres.

This approach can provide ample choice to the community and suppliers of goods and services within a framework for orderly development rather than development of a scale that would create increased demands for infrastructure investment and amenity conflicts.



The mechanism for achieving this strategy is provided through the *Sydney Local Environmental Plan 2012* (the LEP) and supported with provisions in *Sydney Development Control Plan 2012*. The LEP restricts retail development in excess of 1,000 square metres in area throughout Green Square, the Southern Industrial Area, Rosebery and Ashmore and parts of Surry Hills except where the land is in a nominated centre. The restriction does not apply anywhere else in the City of Sydney. Furthermore, the LEP does not restrict the cumulative amount of retail development outside of centres nor does it limit the amount of retail floorspace within centres.

Retail planning through planning instruments, such as the LEP clause, is a vital planning tool that promotes the public interest, much like a height or floor space ratio (FSR) control. As it is a development standard, it can be varied by way of a clause in the LEP (clause 4.6 Exceptions to development standards). Where an applicant can demonstrate that the proposal would not impact on the viability of planned centres, more than 1,000 square metres may be approved. It should be noted that during public exhibition of the draft LEP both the Sydney Metropolitan Delivery Authority, and a consortium of landowners in the Green Square Town Centre including the NSW Government development agency UrbanGrowth NSW (known then as Landcom), expressed support for the City's approach.

In urban renewal areas such as Green Square with limited urban structure, it is critical to provide major retail such as supermarkets in defined locations to act as the glue for emerging centres. It is not acceptable to allow the market to locate these critical building blocks of new communities on out-of-centre sites which tend to lack appropriate infrastructure and are often in proximity to conflicting land uses.

The Green Square centres approach will provide adequate opportunities in nominated centres where retail will have appropriate access to infrastructure, public transport and other services. The argument that this will result in reduced competition and limited opportunities for retailers to expand has not been demonstrated with evidence and addressed in the following section.

Furthermore, the centres approach will concentrate trip-generating activity into the catchment of the Green Square Town Centre and away the freight and passenger transport network that support the nearby Sydney Airport and Port Botany Container terminal, infrastructure of national significance. This is because of the location and land use intensity of the Green Square Urban Renewal Area. It will soon become the area with the densest residential population in Australia. The 278 hectare area is approximately twice the size, and will be significantly denser, than Sydney's current densest suburbs - Pyrmont and Ultimo.

Unless transport demand generated by Green Square's intense development is concentrated around high capacity public transport infrastructure, the road traffic generated is likely to severely congest key strategic corridors. This includes corridors linking central Sydney to the Airport, freight corridors to Port Botany, and key east-west road corridors between the medical, educational and population concentrations in the inner west and south-eastern suburbs of Sydney. Many of these corridors already host bus routes serving the inner southern suburbs south of the City of Sydney boundary, and congestion on these routes could in turn undermine public transport use in the immediate surrounds of the Airport and Port Botany.

Concentrating activity around public transport is also economically responsible. It ensures maximum return on the NSW Government's investment in the Airport Rail Line, including investment to remove the station access fee for customers. Realising the full potential of this line by raising frequencies to 20 trains per hour is a key benefit of the Sydney Rapid Transit project, which will be one of the largest ever public transport investments in Sydney. Policies that permit development remote from this infrastructure will fail to maximise the benefits of this investment.

## Planning and competition in New South Wales

The effect of the planning system on competition in New South Wales has been the subject of a number of reports and inquiries by the ACCC and other committees.

In 2008 and 2009 the NSW Legislative Council Standing Committee on State Development conducted an inquiry into the NSW planning framework in the context of national and international trends. On the issue of competition, the report<sup>2</sup> includes comments from private enterprise, property representative bodies and local government.

In evidence to the inquiry, the Shopping Centre Council of Australia<sup>3</sup> put forward that there are a number of false perceptions regarding the planning system, particularly the centres policy, and its effect on competition. These false perceptions include that centres policies operate to protect established shopping centres from new competitors, have created a shortage of retail space and are locking out new grocery retailers.

An illustration of these false perceptions and the fact that competition and grocery prices are not necessarily related to retail area can be seen in Aldi's expansion into the Australian retail market. Aldi has opened 350 stores since entering the market in 2001 and has a 10.3% share of the national grocery market as of December 2013<sup>4</sup>. This rate of expansion far exceeded that of either Coles or Woolworths. This illustrates that securing developable retail space is entirely possible, as is entering into an existing market as a new competitor. This illustrates that there is sufficient land available for retail development, perhaps just not at the cheap price that retailers would prefer.

Contrary to arguments which suggest the planning system inhibits competition, a well-defined and clearly articulated centres policy can in fact lead to greater competition. For example, by clustering activity together, consumers are able to shop around in one location, compare products and prices and make more informed decisions which ultimately drives competition. A centres approach supports this by ensuring an adequate supply of well serviced land, that retail demand can be met and new competitors can enter the market. This will result in sustainable long-term retail developments which experience maximised patronage. Furthermore, by clustering activity together, consumer search costs are reduced through less time spent searching and comparing products,

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<sup>2</sup> NSW Legislative Council Standing Committee on State Development: New South Wales Planning Framework. Downloadable at:

[http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/fa717391372db3baca25768d0005cff6/\\$FILE/091210%20Final%20Report.pdf](http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/fa717391372db3baca25768d0005cff6/$FILE/091210%20Final%20Report.pdf)

<sup>3</sup> Ibid – Page 220

<sup>4</sup> Roy Morgan research article 5427. Downloadable at:

<http://www.roymorgan.com/~media/Files/Findings%20PDF/2014/February/5427-Supermarketshareofdollars.pdf>

Suggestions that lack of competition in the retail sector is the result of the planning system ignore the complexity of the issue. Previous reports and inquiries indicate other factors such as Australia's supermarket duopoly. As of December 2013, the major two supermarkets, Coles and Woolworths had a combined 72.5%<sup>5</sup> share of the Australian grocery market and practices including restrictive leasing and interfering in their competitors planning processes have been cited as major issues to be addressed. The 2009 Standing Committee found that this market dominance is a national issue to be resolved.

It is the intention of the planning system to protect the public interest, not act as an inadvertent barrier to competition. Overall, the significant benefits of an evidence based centres policy and retail hierarchy outweigh the minor adverse impacts on competition, if indeed there are any.

The draft report summarises the Panel's view that the planning system is contributing to poor outcomes for consumers and that planning should focus on the long-term interests of consumers generally. The City's centres policy is based on extensive research and sound conclusions. It will allow for the realisation of a strong hierarchy of retail areas throughout Green Square designed to meet forecast demand. By providing these retail areas in locations which are highly accessible by a variety of modes of transport and are well serviced by other existing and planned infrastructure, the City is prioritising community and consumer interests. An approach which allows out-of-centre retail development often favours the retailer through cheaper land but costs of fuel and car ownership are borne by the consumer. This approach provides a poor outcome for consumers. The City's approach not only represents sound and responsible planning practice but results in the best outcome for consumers and communities.

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<sup>5</sup> Ibid – Page 1