

SHOPPING CENTRE

COUNCIL OF AUSTRALIA

23 November 2009

The Hon. Stirling Hinchliffe MP
Minister for Infrastructure and Planning
C/: Draft Queensland Planning Provisions Feedback
Department of Infrastructure and Planning
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Dear Minister

Draft Queensland Planning Provisions

The Shopping Centre Council of Australia (SCCA) welcomes the opportunity to comment on the Queensland Government's *Draft Planning Provisions* paper (DPPs), which is a key component of the *Sustainable Planning Act 2009*.

Our comments and recommendations specifically address the provisions that affect shopping centre owners and managers. We would be pleased to discuss our comments with you in more detail.

The SCCA supports the objective of the DPPs to provide a set of standard planning scheme provisions designed to assist local governments in preparing and managing new land use planning schemes and improve system efficiency. We believe our comments will strengthen the DPPs and enable the effective implementation and enforcement of strategic plans such as SEQ Regional Plan 2031.

In summary, our principal concerns are as follows:

1. The lack of appropriate **use** and **administrative definitions** (e.g. Showroom, Shopping centre, Gross Floor Area), particularly given the departure and variations from definitions in existing schemes such as the Gold Coast Planning Scheme which, for example, includes a broader clarification of retail use definitions and a definition of "Effective Gross Floor Area" which contains exclusions unique to shopping centres.
2. The lack of clarity and direction on the interpretation and application of the proposed **Centres zones**, particularly in the absence of an activity centres policy framework (see below).
3. The lack of direction and guidance in relation to the **prescription and levels of assessment** for certain developments within the standard suite of zones. As an example, in relation to use prescriptions, the prescription of general retailing and bulky goods outlets (or "Showrooms") in zones akin to out-of-centre locations is unclear (N.B. the Government released a *Draft Planning for Bulky Goods Retailing* discussion paper for targeted consultation in June 2007 which subsequently never progressed). As another example, in relation to the level of assessment, shops within existing shopping centres should be code assessable (based on an appropriate assessment framework).

Leaders in Shopping Centre Advocacy

The NSW Government has recently taken an important step in this regard with the implementation of a new *Commercial and Industrial Development Code* which provides a 10-day streamlined approval for shop fit-outs, changes of use and minor external works for shopping centres. If a local council believes a higher order of assessment and procedure should be required, it should be required to apply for and justify an exemption.

4. Whilst not a specific component of the DPPs, the lack of an appropriate **Queensland activity centres policy** framework for the planning and development of in-centre and edge/out-of-centre areas is a serious concern. While SEQ 2031 (sections 8.6-8.8) reinforces the important role and net community benefit of activity centres and provides a degree of an effective policy framework including centre hierarchies, networks, typologies and planning directions, we believe it doesn't provide an appropriate level of detail including how out-of-centre retail development proposals should be assessed. This is compounded given that (as noted above) the standard suite of zones are unclear and don't provide clarification on uses. NSW, WA and Victoria are currently reviewing their respective activity centre policies which (like SEQ 2031) all largely reinforce the net community benefit of a strong activity centre-based approach for retail and commercial development.

We have elaborated on these concerns below:

1. Definitions

We have a number of concerns with the proposed *use* and *administrative* definitions. We believe that some of the draft definitions require amendment. Further, additional definitions should be included.

Showroom

In relation to the *use* definitions, a headline concern relates to the definition of "Showroom" which in effect serves as the definition for bulky goods retail outlets. At page 93 of the paper, the definition reads as follows:

Showroom – Premises used for the display and sale of goods primarily of a bulky nature and of a similar or related product line. This includes but is not limited to large electrical goods, furniture, floor coverings, toys, bulk stationery supplies, motor vehicles, motor accessories, caravans, boats, sporting equipment and apparel, computer hardware and software, pools, spas and camping equipment.

The definition also references "Shop" (defined) in the "fourth column" (i.e. "exclusions") however we are unclear how this relates to the principal definition, notwithstanding the "explanation" for the suite of use definitions (p. 84). Does this expressly mean that a "Showroom" development is prohibited from having any component of what could be described as a "Shop" even if it is ancillary?

In any case, we believe this proposed definition is obscure, inappropriate and requires amendment.

First, the definition does not reflect the characteristics of bulky goods outlets nor how the bulky goods sector (as represented by the Bulky Goods Retailers Association or "BGRA") describes itself such as its "special" needs in terms of large floor space.

Second, in 2007 the Queensland Government attempted to develop a planning framework for bulky goods retailing through the above mentioned discussion paper, however this never progressed. We believe the draft framework was a good start and are very keen to know if it will resurface. Key locational principles and features for a proper definition for bulky goods were canvassed in that paper however none of those features have been translated into the proposed

"Showroom" definition. Nor have the features of current planning scheme definitions (e.g. Gold Coast) been translated into the proposed definition. Such features include minimum floor area, exclusion of goods and ancillary uses (refer to comments below).

Third, we question whether the categories in the draft definition in fact constitute goods of a "bulky nature". Computer hardware and software (which can include small items such as laptop and a small software box with a CD and installation manual) can hardly be considered "bulky". The fact that Apple's Australian flagship store is located in the heart of the Sydney CBD (and sits above a Rebel Sports or "sporting apparel" store), demonstrates that the selling of computers and related accessories can be carried out effectively within a centre location and is hardly worthy of a unique "bulky goods" status. Will smaller items such as CDs, DVDs and MP3 players be allowed to be sold in places selling "large electrical goods"? If so, to what extent? And will there be a limit so that the sale of "non bulky goods" does not become the predominant retail offer?

Fourth, this loose definition is too open to interpretation. We believe a statement should be provided that clarifies (similar to what was canvassed in the 2007 discussion paper and the NSW Government's *Standard Instrument Principal Local Environmental Plan* definition of "bulky goods premises") that the "goods are of such size or weight as to require a large area for handling, display or storage". Most other jurisdictions provide a rationale for recognising bulky goods as an independent or unique retail use and the logic for out-of-centre locations. This clarification would limit the definition being abused and ensure the bulky goods sector is not given a distinct and unfair low cost advantage by this favourably loose definition. This clarification would also limit further creep of non-bulky goods and general retailing in out-of-centre locations.

Fifth, we believe bulky goods outlet tenancies should have a minimum floor space such as 400m². This is similar to the current Gold Coast Planning Scheme definition. The sector's representative – the BGRA – itself highlights that "typical tenancy areas for major tenants is 1,000-3,500 sq m and for minor tenants 300-500 sq m". If the rationale for the establishment of bulky goods zones is that larger spaces are required for the handling of bulky goods than is usually obtainable in commercial/retail zones, it is inconsistent to then argue that there should be no minimum floor area because some of the goods sold from these stores are not bulky and therefore do not need such a large floor area. It would ensure that only those retailers who require larger spaces are given the advantage of being permitted to locate on cheaper land outside activity centres.

Sixth, notwithstanding our comment above in relation to how the exclusion of "Shop" relates to the principal definition, we believe there should be a limit on ancillary retailing – e.g. 10% – so that these centres (when located out-of-centre) do not morph into general retailing (e.g. foodstuff, clothing). We consider that 10% is a reasonable limit – for example, for large centres such as Domain Central in Townsville, 10% represents around 5,700m² of ancillary space (more than 50 retail shops); for the Homemaker City Fortitude Valley, this represents 3,800m² of ancillary space. It is worth noting that the Gold Coast Planning Scheme definition also excludes the sale of food items, clothing and footwear.

Seventh, we believe the definition should include the requirement for direct vehicular access for the purpose of loading and unloading of "bulky" goods that have been hired or purchased. Again, aside from reflecting the nature of this use, it is consistent with the BGRA's argument that its sector has special needs and requires special treatment.

In light of the above, we recommend the following definition:

Bulky goods outlet means:

a building or place used primarily for the sale by retail, wholesale or auction, the hire or the display of goods or materials, which are of such size, shape or weight to require:

- a) *a minimum floor space of 400 square metres, and*
- b) *a large area for handling, display or storage, and/or*
- c) *direct vehicular access to the site of the building or place by members of the public, for the purpose of loading and unloading the items into their vehicles after purchase or hire,*

but does not include a building or place used for the sale of foodstuffs or clothing, unless the sale of such items is ancillary to the sale of bulky goods and constitutes no more than 10% of the total floor space.

In anticipation of arguments to the Government that bulky goods outlets should not be defined as we have described above, we make the following key points.

In effect, bulky goods retailers argue for the need for special treatment; to locate out-of-centre (e.g. industrial or corridor land) where land is cheaper because they need larger, lower cost floor plates given their "need" for "low-to-medium rent" and "low outgoings" (as if other retailers have no interest in such things!). At the same time, however, representatives of this sector have consistently resisted attempts to be defined and controlled to this extent. This is despite the fact that other shopping centres and retailers are required to locate within centres and are restricted from locating in out-of-centre areas.

The bulky goods sector then changes its tune and raises the argument that bulky goods retailers now keep less stock in the showroom (stock is held elsewhere and delivered directly to the customer following the order) and hence they do *not* need such large floor areas and therefore a minimum floor space limit is *not* appropriate. If this is indeed the case, then their claim and justification for special treatment is invalid. It is essentially a matter of having your cake and eating it too. Either bulky goods retailers need large, lower cost floor plates than are available in centres or they don't. If they no longer require larger floor plates then they should have to locate in centres like other retail formats. If they do require larger, lower cost floor plates then an out-of-centre location may be warranted but there should be no objection to a minimum floor space requirement and limits on ancillary retailing (e.g. shops).

In further anticipation that our comments might be labelled as anti-competitive, this would be wrong and conveniently simplistic. As an example, proponents who seek special treatment for out-of-centre development like to reference the ACCC's 2008 Grocery Price Inquiry (which only relates to groceries and supermarkets) and the Productivity Commission's 2008 Retail Tenancy Leases Inquiry as the justification for such special treatment and 'relaxing' planning laws (although sometimes to their own advantage and not others). This is an opportunistic interpretation of these reports. Providing special treatment and an unfair, unlevel and unwarranted competitive benefit for some retailers and not others is not open competition. In fact, it is the opposite of fair competition and providing a level playing field and certainty for Queensland investors. We welcome and promote competition, but it has to be fair and on a level playing field for all market participants, within of course the parameters and principles of good urban planning.

Special treatment would give certain shopping centre developers and retailers unfair advantages and opportunities over those who have done the right thing and located in activity centres and retail/commercial zones and paid the higher (market) price of land to develop, operate and expand in such locations. It is unfair that general centres and retailers (e.g. food, clothing) who have located and signed leases in areas required by governments should suddenly find themselves confronted by new competitors only short distance away, with lower rents and overheads all thanks to being in a complex deemed as bulky goods, but which in fact has a very different predominant retail offer.

It is important to note that we do not object to genuine bulky goods outlets being located in out-of-centre locations that are zoned appropriately and where such retailing cannot reasonably be accommodated in activity centres. Our principal concern relates to when there is a 'creep' into general retail, that is when a development is approved as bulky goods yet the retail offer over time becomes akin to general retailing (i.e. selling non bulky goods, including food and clothing) which would otherwise not be permissible. This is a particular concern when others who have a similar retail offer have been required by government to locate within activity centres. This makes a mockery of the system and is unfair to other players who must locate their general retailing in centres where land is more expensive to acquire, amalgamate, hold, develop, own and manage.

It's worth noting that nothing prevents bulky goods outlets from locating within centres – except for their preference for cheaper land, cheaper rents and cheaper outgoings. In fact, bulky goods can locate in specific precincts of activity centres and make a proactive contribution towards a mix of uses.

Shopping centre

The proposed definition, which in part prescribes "premises comprising two or more individual tenancies", would encompass very small retail developments (e.g. a small strip shop area with a handful of tenancies) that are not typically regarded as 'shopping centres'. Our central concern is that this may result in activity centre zones being assigned to (by definition) existing 'shopping centres' of only 3 or 4 shops in locations that would otherwise be inappropriate for an activity centre zone.

As a useful reference, the smallest shopping centre category recognised in the Property Council of Australia's *Shopping Centre Database* is "neighbourhood centre", which comprises "a supermarket and approximately 35 specialty shops" and an area less than 10,000sq.m of gross lettable area retail. We believe that the Government should investigate a more appropriate definition that reflects the market and does not inadvertently undermine activity centre network and hierarchy principles.

Shop, shopping centre and general retailing

We made some comments above relating to our confusion in relation to how the definition of "Showroom" relates to the "fourth column" appearance of "Shop". Similarly, we have general concerns on this matter including the definition of "Shop" and "Shopping Centre".

The definition of "Shop" includes a principal definition, complemented by undefined "examples" including "hairdresser, appliance repairs, alterations, retail dry cleaning, liquor store, department store, discount department store, discount variety stores and betting agencies". Whilst these terms are undefined in the paper (and the Act) and the explanation at page 84 refers to (in part) the use of "common meanings", we seek clarification as to what constitutes "common meanings" for these terms.

Similarly, given that the definition of "Shopping Centre" includes a principal definition which includes having a composition "primarily of shops", clarification on this matter would be appreciated.

Gross Floor Area

The definition of Gross Floor should be amended to increase the amount of excluded areas. The exclusions should include lifts and stairs, storage areas, access / egress of motor vehicles and plant room. The draft definition should also be clarified in relation to the term "shopping complex" which is not a defined term (however "shopping centre" is defined – as discussed above).