

11 March 2022

Ms Paulina Wythes
Director, Planning Legislative Reform
Department of Planning and Environment
Locked Bag 5022
Parramatta NSW 2124

Via email: planninglegislativereform@planning.nsw.gov.au

Submission – Rezoning Reform Discussion Paper

Dear Ms Wythes,

Thank you for the opportunity to make a submission in response to the Department's 'Rezoning Reform Discussion Paper' and for agreeing to accept our late response. As you would be aware, the Shopping Centre Council of Australia (SCCA) is the national industry group for major shopping centre owners, managers and developers.

The SCCA welcomes the NSW Government's initiative to review the rezoning process. However, there are a number of issues that we would like to bring forward in response to the Discussion Paper. Our suggestions and recommendations are focussed on providing practical insights and potential refinements to the proposed reforms, primarily that are aimed at avoiding unintended outcomes. We submit the following for your consideration.

Background and Policy Position

The SCCA advocates a 'centres' approach to strategic planning and development. We work to achieve a level playing field for all retail investments, which ensures that no retail format receives a competitive advantage over another. The SCCA endorses the approach taken by governments across Australia to concentrate retail and commercial uses in designated 'activity centres'.

We constantly urge governments to increase the supply of land for retail purposes in centres, and for the orderly development of new activity centres, rather than allowing an 'ad hoc' approach to retail investment which sees significant retail precincts delivered in out-of-centre locations. This 'ad hoc' approach leads to investment uncertainty and gives an unfair advantage to so-called 'new entrants' into a market.

Despite the strong centres-based approach that underpins strategic planning in NSW, the ability for our members to continue to invest in existing and newly planned centres can be challenging. This is because our planned centres are typified by inflexible statutory overlays. In instances where our members seek to vary these controls, which in all cases is in response to changing community demands, the current planning proposal process is cumbersome and unnecessarily impacted by political overlays and multiple touch points with planning bodies. As a result, the rezoning process can be beset with significant delays. For example:

- Vicinity Centres, Bankstown Square – Planning Proposal lodged in December 2019, with a Council resolution to advance to Gateway pending.
- AMP, Marrickville Metro – It took from November 2018 to 2 July 2021 (>2.5 yrs) to add a minor number of additional uses (child-care / community facilities / medical centre – uses normally found in shopping centres) into Schedule 1 of the LEP.
- Scentre Group, Eastgardens – Planning Proposal lodged in December 2017, with a Council resolution to advance to Gateway pending.

These delays can impact the broader competitiveness of NSW and the economic and social benefits that can flow from our members investing and continually renewing their centres. Accordingly, the issues laid out in Part A of the Discussion Paper generally reflect our sentiments. Having said that, we consider that there is an opportunity for several improvements or considerations that the Department should take account of in finalising its reforms as expressed below.

Specific Comments and Recommendations

We are concerned at the apparent winding back of the Department's involvement in Category 2 and 3 Proposals. Whilst it is recognised that a significant number of Planning Proposals do not warrant Departmental oversight, the strength of our industry and its broader economic and social contribution is based on Governments long standing support for a centres-based approach to Metropolitan and Regional Planning Policy.

Structural changes that have only been accelerated because of COVID-19 – including the continuing ramping up of on-line retail, increasing urbanisation, and the desire for people to live closer to areas of high activity and vibrancy, with good public transport connections – only serve to reinforce the importance of good planning and ongoing support for a centres-based approach to planning policy.

The SCCA has been a strong supporter of the Government's Employment Zones Reforms and engaged closely with your colleague, Aoife Wynter. The Reforms have provided equitable benefits to both existing and emerging retail operators, but have also been implemented in the context of supporting, not undermining, centres policy.

In our opinion the Discussion Paper, and its introduction of a new Scoping Phase, left entirely in the hands of local Council's, potentially exposes the risk of undermining Strategic Planning Policy. Accordingly, we recommended that strong guidance be issued to all Council's on requirements for Rezoning Applications that involve retail, particularly out of centre retail that is not recognised in Strategic Planning Policy. This would ensure a consistent approach to the level of expectation and assessment required to demonstrate strategic merit or intended departure from such. The Department should maintain an ongoing monitoring role in this regard.

The SCCA notes that a centrepiece of the proposed reforms is the introduction of an appeal mechanism. Our members generally support this proposition as it would potentially depoliticise the rezoning process, which can lead to the delays of the types listed in the examples above. The SCCA does not hold any particular view on the relative merits of the Independent Planning Commission (IPC) or the Land and Environment Court (LEC) as the forum for any appeal accept to say either approach would require a significant injection of funding and resources for it to be successful.

We also offer a view that the IPC could provide a more flexible platform to perform independent appraisals of Rezoning Applications earlier in the process to avoid what is otherwise potentially a process that would expose our members to significant up-front costs, when in a practical sense our members need certainty that strategic merit tests can be satisfied early in the rezoning process.

Without this comfort early in the process, there is a preference to withhold costly site-specific technical investigations. The converse of this is that an early IPC review could ensure that inappropriate rezoning applications are filtered out without unnecessarily burdening the system through to its finality as described.

The Discussion Paper makes no reference to infrastructure funding, which is a consistent matter in Rezoning Applications. The SCCA would like to understand how the concurrent Infrastructure Contributions reform process is intended to be integrated into the proposed Rezoning Reform process. In the absence of such, we would advocate for the Department to set clear guidance on this issue to inform expectations at the Scoping Phase.

Our members strongly support the value and ongoing role of the Planning Delivery Unit (PDU). Where they have become involved, the PDU has facilitated the necessary 'cut-through' required to support coordination between State Agencies and Councils.

Recommendations

1. That the Department issue Councils with clear Guidance on the expected levels of assessment of any retail-focused Rezoning Applications.
2. That the Department maintain strong oversight of Rezoning Applications that seek to depart from existing Strategic Planning Policy.
3. That Government commit significant funding to support either the IPC or LEC in implementing its proposed reforms.
4. That the potential role of IPC be broadened to provide an early 'filter' on the strategic merit or otherwise of retail focussed Rezoning Applications.
5. That the Scoping Phase explicitly address infrastructure.
6. That the role of the PDU be retained.

Summary

Thank you again for accepting this late submission. The SCCA broadly supports any reform that removes blockages or delays in the planning system that otherwise hinders our members investments that are typically aligned to and support established planning policy.

That said, we have listed number of recommendations that are focussed on strengthening the reforms in a manner that supports consistent application of long established centres-based planning policy. I would be more than happy discuss our submission at a mutually convenient time.

If you have any other questions please don't hesitate to contact James Newton (Manager, Policy and Regulatory Affairs) at [REDACTED] or at [REDACTED]

Yours sincerely,

Angus Nardi
Executive Director