



New South Wales Government

Department of Premier and Cabinet
Better Regulation Office

Governor Macquarie Tower,
1 Farrer Place, Sydney NSW 2000
GPO Box 5341, SYDNEY NSW 2001
T: (02) 9228 5414 F: (02) 9228 3062

DEPARTMENT OF PLANNING AND BETTER REGULATION OFFICE

ISSUES FOR CONSULTATION

PROMOTING ECONOMIC GROWTH AND COMPETITION THROUGH THE PLANNING SYSTEM

8 May 2009

Written submissions due Friday 12 June 2009

MESSAGE FROM THE MINISTER FOR PLANNING AND THE MINISTER FOR REGULATORY REFORM

The NSW Government wants to ensure the best competitive and economic outcomes are achieved in NSW.

In 2008, the Australian Competition and Consumer Commission and the Productivity Commission, while recognising the merits of planning and zoning controls in preserving public amenity, recommended that governments should consider relaxing those controls likely to restrict competition. It was recognised that improvements to competition could have positive flow-on effects for consumers through greater choice and lower product prices.

The aim of this review is to consider if aspects of NSW planning policies and legislation need to be adjusted to ensure the right balance in achieving sustainable social and environmental outcomes and in promoting a competitive business environment. NSW businesses and consumers benefit from a competitive business environment that encourages investment and creates jobs. The NSW Government has committed to effective and efficient regulation that creates the climate for this.

The review is one of a range of actions the NSW Government is taking to stimulate and grow the NSW economy. The need for this review is particularly acute given the current economic downturn.

The review will be jointly undertaken by the Department of Planning and the Better Regulation Office. The review is seeking:

- your experiences on how economic growth and competition have been influenced by the planning system in NSW
- your views and comments as to whether there is an appropriate balance to achieve the benefits of competition while taking into consideration the broader public interest
- any suggestions on how that balance can be improved to better support economic growth and investment in NSW.

We encourage all interested persons to forward their views on the issues raised in this paper and we look forward to the outcomes of this review.

The Hon Kristina Keneally MP
Minister for Planning
Minister for Redfern Waterloo

The Hon Joe Tripodi MP
Minister for Finance
Minister for Infrastructure
Minister for Regulatory Reform
Minister for Ports and Waterways

PROMOTING ECONOMIC GROWTH AND COMPETITION THROUGH THE PLANNING SYSTEM

Background

The planning system in NSW is established by the *Environmental Planning and Assessment Act 1979* (NSW). The Act is supported by the Environmental Planning and Assessment Regulation 2000 and a number of other documents, including the draft Centres Policy, the Metropolitan Strategy, regional strategies, draft subregional strategies, the *Standard Instrument (Local Environmental Plans) Order 2005* and Local Environmental Plans (LEPs).

This planning framework helps deliver social, environmental and economic goals including providing infrastructure, equitable access, amenity, local character and sustainability.

A number of recent reviews have commented on the potential impact of the planning system on competition. In 2008, the Productivity Commission's review of retail leases regulation and the Australian Competition and Consumer Commission's review of grocery pricing found that while zoning and planning laws are designed to preserve public amenity, they could also influence the quantity and location of retail space available and therefore competition in the retail market. The NSW Legislative Council Standing Committee on State Development is currently conducting an inquiry into the NSW planning framework, which includes consideration of competition policy issues. Additionally, the Council of Australian Governments (COAG) has recently identified competition in planning as an issue for discussion at the national level.

The NSW Government has released a draft Centres Policy designed to increase investment by providing flexibility for existing centres to grow, new centres to be established, and development to occur out of centre where justified. The draft Centres Policy recognises that the market is best placed to determine the need for development and ensures the supply of available floor space accommodates demand. When finalised, the draft Centres Policy will address some of the concerns about competition and investment raised in previous reviews.

The NSW Government has asked the Department of Planning and the Better Regulation Office to review the impacts of the planning system on competition and investment taking into consideration the public interest. There is an opportunity to examine the broader range of competition and investment issues which could be affected by the planning system and inform the NSW Government's input into COAG's national level discussion. This will not be a full scale review of the rationale and effectiveness of the planning system.

Issues for Discussion

Competition creates incentives for business to produce the goods and services customers want. The planning system allows for competition between and within residential, retail, commercial, recreational and industrial sectors. As much as possible, there should be a level playing field that allows for innovation and competition across the sectors. For consumers, this can result in access to a wider range of better quality and better priced goods and services. For competition to be most effective at delivering these benefits, it is essential that businesses have the flexibility to respond to market demand, including through ensuring that there are no unnecessary costs or requirements on their activities.

The planning system provides a framework to ensure that new development meets business and community needs, is environmentally sustainable, and makes the most efficient use of the State's investment in infrastructure. In doing so, a goal of the planning system is to recognise the opportunity costs of different uses of land and make appropriate trade-offs.

Under the planning system, it is the responsibility of the planning authority to ensure that development proposals are considered on their merits. The merit assessment process at both the zoning and development application stage should not normally take into consideration the likely competition impact of a new entrant on any existing centres or individual developments unless there is a public interest which requires consideration of broader issues, such as quality of life or infrastructure. Further, within a particular zone, the system should not favour a particular development over another unless there is a clear public policy case for doing so. As a result, the need for the development should not normally be a consideration as part of the merit assessment. Similarly, the impact on individual businesses, measured through, for example, the impact on turnover, should also not normally be considered as part of the merit assessment.

Where there is good reason to believe a competitor is trying to delay or prevent new entrants into an area (for example by objecting to an application even where the application will have no direct impact on the objector), the consent authority should not normally give it determinative weight. The consent authority would normally focus more on the implications for the broader community and any associated costs on the community, the council or agencies.

From a competition perspective, it is essential that the planning system minimises any regulatory burdens that could inadvertently constrain sustainable economic development and competition within the industry. This means ensuring there is sufficient suitable zoned land available for development to reduce barriers to entry. It also means that planning controls need to be kept up to date to provide for recent changes in industry formats or take into consideration any improved standards of performance by industry. In addition, as is currently being undertaken as part of the planning reforms, complex planning provisions which can lead to costs associated with preparation of assessment reports along with associated time delays need to be reviewed and streamlined so as to avoid having the zoning and development approval process providing a barrier to entry, and thereby restricting competition.

A well functioning planning system supports investment by providing certainty in land use zoning, development approval requirements and the provision of infrastructure. When firms and individuals have confidence about the future use of their own and surrounding land, they are more likely to commit to investment, which drives economic growth, employment and productivity. Uncertainty creates investment risk, imposing additional costs and difficulty securing finance, which may result in otherwise commercially viable projects failing to proceed.

Issues for Discussion

The review is seeking:

- 1) Comments on your experiences on how economic growth and competition have been impacted by the planning system in NSW including in relation to:
 - (a) provisions in strategies or environmental planning instruments
 - (b) the spot rezoning process
 - (c) the development approval process, or
 - (d) development contributions under s94 of the Act.
- 2) Your views and comments as to whether there is an appropriate balance in the planning system to achieve the benefits of competition while taking into consideration the broader public interest.
- 3) Any suggestions on how the balance can be improved to better support economic growth and competition in NSW, including any specific proposals for changes to the planning system.
- 4) Comments on your experiences on how economic growth and competition have been dealt with in the planning systems in other jurisdictions and if there are approaches that could be applied in the NSW system.

How to Make a Submission

Interested persons are invited to provide written submissions to the Department of Planning and Better Regulation Office.

Submissions are most useful when they are detailed, based on evidence, and suggest solutions to the problems identified.

Please send submissions by email to: planningreview@dpc.nsw.gov.au

If you do not have access to email, please send submissions to:

Better Regulation Office
GPO Box 5341
SYDNEY NSW 2001

Phone: 02 9228 5414

Fax: 02 9228 4408

Submissions must be received by **Friday, 12 June 2009**.

All submissions will be made publicly available. If you do not want your personal details released, please indicate this clearly in your submission.

Once submissions have been received, feedback will be analysed and potential recommendations will be developed. A report detailing suggested reforms to the NSW planning system will be provided for consideration by the NSW Government.