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Comments on the Retail Expert Advisory Committee – Terms of Reference

Dear Mr White

The NSW Business Chamber (the Chamber) welcomes the opportunity to review the Terms of Reference for the Retail Expert Advisory Committee (REAC) and provide some initial feedback on the proposed work to be pursued by the committee.

As you may be aware, the NSW Business Chamber (NSWBC) is one of Australia's largest business support groups, with a direct membership of more than 18,000 businesses, providing services to over 30,000 businesses each year. Tracing its heritage back to the Sydney Chamber of Commerce established in 1825, NSWBC works with thousands of businesses ranging in size from owner operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises. NSWBC is a leading business solutions provider and advocacy group with strengths in workplace management, occupational health and safety, industrial relations, human resources, international trade and business performance consulting.

The Chamber is in broad support of the establishment of the REAC. The NSW Retail industry contributes more than \$17.2 billion to the NSW economy, is a significant employer and acts as a key attractor in our offering to both domestic and international visitors. For its part, over recent years, the Chamber has been a keen advocate on issues impacting the retail sector calling for; reductions in Sunday penalty rates for the retail, restaurant and hospitality sector; liberalising trade across NSW on Boxing Day; and innovative approaches to support business through the planning process.

In respect of the terms of reference provided by the REAC, the Chamber makes some brief comments set out below.

Planning Restrictions

While planning frameworks and processes are quite clearly separate to negotiations between retail tenants and landlords, as was recognised by the Productivity Commission in its 2011 review of the *Economic Structure and Performance of the Australian Retail Industry* (the PC Review), planning and zoning regulation appears to be a root cause of many of the problems that arise in retail tenancy.

As planning regulation can restrict the number and use of retail sites, they can also confer significant negotiating power on established landlords and restrict commercial opportunities for others.

In circumstances where there is a large shopping centre landlord and many small tenants competing for limited retail space, imbalances in negotiating power are likely to exist. Without any other options available for tenants, the landlord can simply operate on a “take it or leave it” basis.

As the Australian Retailers Association said in its submission to the PC Review:

Where a general retail shopping centre is permitted, there is invariably an exclusive zoning which excludes any further development of a competing shopping centre in a similar area. Accordingly, the existing shopping centre is granted an effective monopoly on the marketplace for consumers wishing to shop from a shopping centre in that area.

It is a false assumption to think that a shopping centre retailer can choose to relocate out onto the strip in the same area if they don't like the centre operators. Invariably, the retailer is forced to meet the shopping centre's terms because retailing from the outside strip is simply not commercially viable and any relocation will almost certainly realise the failure of that business.

(sub. 71, p. 7)

Removing unnecessary constraints on planning and zoning regulation would help new development and increase competition in the marketplace. It would also help “level the playing field” for small retailers, especially those who operate in large shopping centres.

The Chamber supports a more flexible approach to zoning and regulation to help support a diversity of retail land uses and increase the competitive opportunities for retailers. A focus in achieving this would be to work to ensure that planning frameworks are aligned to the six planning principles identified in the Draft Centres Policy for Retail and Commercial Centres¹.

Standard Instrument (Local Environmental Plans) Order 2006

As you would be aware, in 2015 the Standard Instrument (Local Environmental Plans) Order 2006 was amended to better accommodate the development of hardware, building supplies and garden centres within industrial zones. These were amendments supported by the Chamber which had previously called on the Government to make these changes.

The provisions of the Standard Instrument LEP had previously not included “hardware and building supplies” and “garden centre” as uses permissible with consent within industrial zones. The omission seemed odd, given that such uses are consistent with the character and intent of industrial precincts.

Due to this omission, proposed hardware, building supplies and garden centre developments within B7 Business Park, IN1 Industrial and IN2 Light Industrial zones often required rezoning, with development approvals taking up to three years to obtain. Other states, such as Victoria, had already recognised the economic importance of such activities and were actively encouraging such developments within their planning frameworks.

While the Chamber welcomed the change in the Standard LEP to more easily accommodate “hardware and building supplies” and “garden centre” uses, we recognise that there are other large format retail uses that could be similarly included as permissible with consent in lands zoned industrial under the Standard LEP. These could include land used to sell or hire auto parts, camping supplies, swimming pools or office equipment².

¹ The six planning principles in the Draft Centres Policy 2009 were:

- Retail and commercial activity should be located in centres to ensure the most efficient use of transport and other infrastructure, proximity to labour markets, and to improve the amenity and liveability of those centres.
- The planning system should be flexible enough to enable centres to grow, and new centres to form.
- The market is best placed to determine the need for retail and commercial development. The role of the planning system is to regulate the location and scale of development to accommodate market demand.
- The planning system should ensure that the supply of available floorspace always accommodates the market demand, to help facilitate new entrants into the market and promote competition.
- The planning system should support a wide range of retail and commercial premises in all centres and should contribute to ensuring a competitive retail and commercial market.
- Retail and commercial development should be well designed to ensure they contribute to the amenity, accessibility, urban context and sustainability of centre

² This list is not intended to be exhaustive

With industrial land supply increasingly constrained in NSW, we would however emphasise the need to appropriately maintain consistency and alignment in uses through planning frameworks. Compatibility of uses within a zone should be a clear consideration in the planning assessment process. Wherever possible, proponents and those currently operating in a zone should be brought together to identify ways in which more uses can be accommodated in a single zone where conflicts in uses are expected to arise.

Increase Entrepreneurial Activity

With NSW competing with our state neighbours in both Queensland and Victoria for investment and jobs, we need to be looking to improve our planning frameworks to ensure that they put NSW on at least a “level playing field” or if not, a more competitive footing to ensure we can attract opportunities and investment into our state.

A flexible planning framework which encourages both innovative and entrepreneurial activity is one area in which NSW lags its state neighbours and could play a key role in expanding opportunities for retail activity.

The Queensland Government has implemented State Development Areas³ which provide defined areas of land for industry, infrastructure corridors and major public works that promote economic development. With the State Government controlling developments and approvals in these areas, we have heard anecdotally that a number of businesses, frustrated with the overly complex planning frameworks within NSW, have relocated to Queensland to take advantage of these development areas. Opportunities to establish similar development areas within NSW, particularly in the North Coast region, should be considered by the REAC to see how they can play a role in promoting greater retail activity in NSW.

Support for Retailers – beyond Planning Frameworks

While the Chamber notes the critical role that planning legislation and regulation can play in supporting the development of industry, what is often missed by policy makers is the manner by which people interact with these frameworks.

The Chamber notes the positive work being undertaken by Service NSW in relation to the State Priority to ***Make NSW the easiest State to start a new business***. The *Easy to do Business* initiative focusses on five priority sub sectors (cafes, restaurants, small bars/clothing retail/print/ housing construction/freight transport) and is looking at ways to simplify the commencement of a new business in these sectors by bringing applications for development and licensing under a unified digital platform.

³ See <http://www.statedevelopment.qld.gov.au/coordinator-general/state-development-areas.html>

The Chamber is pleased with the progress of the program, with the first stage of live beta testing of the platform for cafes restaurants and small bars underway with Parramatta City Council. We believe that this program, implemented effectively, can serve to significantly improve the regulatory performance of both local government and state government agencies in undertaking their regulatory and assessment functions. The positive feedback the program is receiving from council and the community indicates that significant reform within planning can be achieved with generally positive community consensus.

We encourage the REAC to engage closely with Service NSW to understand the Easy to do Business program in more detail and to suggest ways in which it could be utilised to positively support the retail industry.

Again, the Chamber thanks you for the opportunity to provide input to the REAC as it commences its deliberations. Please feel free to contact Mr Luke Aitken, Senior Manager Policy NSW Business Chamber on 9458 7582 or via luke.aitken@nswbc.com.au if you would like to discuss any aspect of this submission further.

Yours sincerely

A handwritten signature in black ink that reads "Paul Orton".

Paul Orton
Director, Policy and Advocacy