



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: MM:LB
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7 September 2010

The Director
Policy, Planning Systems and Reform
NSW Department of Planning
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

State Environmental Planning Policy (Competition) 2010 (Draft Policy)

The Law Society appreciates the opportunity to comment upon this Draft Policy.

The Law Society's Environmental Planning and Development Committee has reviewed the Draft Policy and its comments appear below.

The Committee considers it unfortunate that the Draft Policy appears to have been produced somewhat in isolation from other government initiatives. The Committee notes that there is a need to clarify government policy intent in a number of areas identified below, to limit the potential for disputes as to interpretation.

Activities Centres Policy

The Committee notes in particular that the draft Activities Centres Policy published earlier last year proposed a number of matters dealing with the supply of retail space. Although referred to in the "Promoting Economic Growth and Competition through the Planning System Review Report April 2010", it is not clear when this policy will be finalised.

The draft Activities Centre Policy contemplated a Floor Space Supply and Demand assessment on a regional or, possibly, council basis. These assessments could be seen as contrary to the stated aims of the Draft Policy (clause 3). As a result, it is not clear how such assessments would be viewed in the light of the Draft Policy, and the April 2010 report recommendations give no guidance on the subject.

Producing the final Activities Centres Policy at the same time as the draft Competition Policy would remove that confusion. Consequently, the Committee suggests that the draft Competition Policy be made final when the final Activities Centre Policy is also known so that the stakeholders and all users of the system can be clear about government policy intent in this area.

Section 79C (1A) of the *Environmental Planning and Assessment (Amendment) Act 2008*

Section 79C(1A) of the *Environment Planning and Assessment (Amendment) Act 2008* which has not commenced - refers to the rejection of submissions in relation to certain development applications, where that submission is considered to have been made primarily to secure or maintain a direct or indirect commercial advantage for the objector. There is some crossover in the Draft Policy with this proposed section 79C (1A) but the section remains uncommenced. Any clarity in relation to the ultimate fate of this section would also assist in understanding the operation of the Draft Policy.

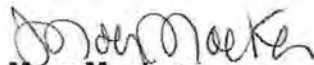
Clauses 10(2) and 11(2)

Finally, Clauses 10(2) and 11(2) have the potential to be particularly problematic in terms of their construction and interpretation.

By way of example, some council DCP's include provisions limiting either the number of convenience stores that may be located within a particular area or the distance by which they must be separated. It may be argued that the aspect of the development sought to be restricted is the impact that the proliferation of such premises in one location has on the character of the area which is merely a by product of the proximity or number of such premises. It is not clear whether the clauses are intended to or would apply in such circumstances. This should be clarified in the wording of these provisions of the SEPP so as to limit the potential for disputes on interpretation.

Thank you once again for the opportunity to comment on the Draft Policy.

Yours faithfully


Mary Macken
President