Retailing and the Productivity Commission Inquiry Report

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Whether you’re looking for a solid doorstop or summer reading, the Productivity Commission’s (PC) Inquiry Report on the Economic Structure and Performance of the Australian Retail Industry (Australian Government, No.56, 4 November 2011) does the job. And those with an interest in planning and development will enjoy the option to read the heavy tome.

The PC’s Terms of Reference required it to undertake an inquiry into the implications of globalisation for the Australian retail industry, with a view to informing the Commonwealth Government on whether current policy settings are appropriate in this environment. The 460-page report looks at: the structure, performance and efficiency of the industry; drivers of structural change (globalisation, the digital economy, etc); online purchasing; tax arrangements; and regulatory and policy issues that impact on structural change in the industry.

Of the many aspects of retailing under examination, a relevant one for consideration by those in the planning profession is the PC’s finding that planning and zoning regulations are complex, excessively prescriptive, and anti-competitive. This will not be news to most of us. The PC notes how zoning can unnecessarily reduce land available for particular uses; overly prescriptive local planning rules inhibit entry and cause unwarranted delay and costs through compliance burdens; and adverse impact tests provide inappropriate protection for existing businesses and activity centres.

Consideration is also given to out-of-centre developments. The PC is of the view that such locations should be permitted where it is likely to generate a net community benefit, even if there are detrimental impacts to an existing centre or to the commercial interests of an individual business within that centre. The advent of on-line shopping means that the flexibility of the planning system becomes an increasingly important consideration in the capacity for bricks-and-mortar retailers to compete and improve their productivity.

Underlying the PC’s approach to retailing is a desire to encourage higher business productivity, to promote the interests of the consumer, and to ensure that planning and zoning regulations don’t impede the ability of the retail industry to respond to changes in consumer preferences and retail formats.

In economics, these are seemingly rational concerns; like motherhood, no-one would disapprove of such good intentions. The PC concludes that “planning and zoning regulation which restricts the location of retail outlets or store formats has a negative influence on retail productivity growth” (p. 227).

In reaching this conclusion, the PC draws on experience in other countries, including the USA and in Europe. The PC also notes that “landlords’ underlying concerns seem to be less about retaining civic or public amenity and more about preventing or delaying the arrival of a new competitor”, and that “land use restrictions, by constraining the supply of appropriately zoned land, drive up property prices” (p. 231). Furthermore, the PC observes that planning and zoning regulations delay, restrict and even prevent the entry of new competitors, or unduly raise the cost of starting a new business (p. 235).

Planning system used to thwart new development

Experience in the planning sector in Australia indicates that, regularly, landlords and existing retailers use the planning system to thwart the establishment of new centres and the introduction of new retailers. Of course, sometimes this is for very good reasons, and with positive outcomes for the wider community. However, it seems that the PC report overlooks certain other important considerations associated with the retail industry and planning. These considerations include recognition of the important role of the retail centres hierarchy; the importance of critical mass associated with a centre’s size and role; the importance of maintaining and enhancing shopping amenity; and recognition of the considerable ‘sunk’ cost by both the public and private sectors in existing centres.

These are topics to discuss another day, but one aspect is worthy of consideration at this point, namely the PC’s consideration of introducing “broader business zones” to treat general retail and bulky goods the same, and – in the longer term – to have “open zone” or multiple use zone where a broad variety of land uses can be considered – such as retail, commercial and even some low-impact industrial uses” (p. 241).

This approach, the PC argues, would remove artificial distortions created by the planning system, both within retail (general and bulky goods) and between retail and other businesses (eg commercial and light industrial). However, a concern with such an approach revolves around centre function and amenity. Commercial (ie office) and retail uses generate different types of trips, and they impact on local amenity in different ways.

More thought needs to be given to the PC’s findings in this respect. Try to imagine your own shopping centre or strip where a proliferation of light industrial and office uses intervene in the streetscape, resulting in longer walking distances to get to the shops and probably more traffic congestion and conflicts with trucks serving light industrial activities.

In regard to adverse impact tests on existing businesses or activity centres (p. 244), the PC recognises this is a generally-accepted consideration in Australia’s planning jurisdictions. The PC finds that “if, as a result of a new out-of-centre development, the existing centre declined, the conclusion which should be drawn would be that the community prefers the mix of services the new development is able to offer”. In fact, the PC goes further to say that it is the community that would “put the existing centre out of business” by withholding their patronage from the existing centre that does not provide them with what they want (p. 245). But we need to acknowledge the major economic, social and land use implications of this viewpoint in regard to the fate of existing centres.

Assessing economic and social costs

However, a journey through urban and suburban America indicates a proliferation of ‘new’ centres or malls, while older...
versions lie vacant next door or nearby. This must mean (from the PC’s perspective) that America has a deficit of anchor tenants and ever-changing catchment profiles or, more likely (in this writer’s view), the lack of planning regulation in America contributes to this dereliction of assets, resources and urban fabric – all of which has its own ‘economic cost’. And social cost. In Australia, our planning system has direct experience of these external costs and has to deal with them on a regular basis.

The PC also mentions that, among other factors, “rigid heritage regulation” is a reason preventing alternative uses of space in a more timely manner (p. 245). In this regard, we can only wonder where heritage legislation stands vis-à-vis retail development policy in the PC’s view.

Another aspect highlighted by the PC is that “a proposed development’s impact on the viability of an existing centre (should) be undertaken during the strategic planning stage or major review, rather than in the context of specific businesses during development assessment processes” (p. 247). The PC says dealing with specific planning applications “is likely to lead to adverse competition outcomes” (p. 249), although how this would result is not clearly demonstrated by the PC. However, this approach overlooks the reality that proposals to rezone land to provide for major retail development may well occur outside of the time a strategic plan is prepared for an area.

Experience indicates that the rezoning process involving Panels Victoria offers the best available opportunity for all parties to put their case for or against a proposed rezoning to allow more retail development. Even from the PC’s viewpoint, waiting for five years or more for the preparation of the next town centre strategy plan or review to take place could involve an extensive waiting period for a developer/retailer seeking to improve the consumer’s access to retail!

Much of the material presented in the PC report is of interest to those involved in all aspects of achieving good planning for activity centres, such as the need to ‘future-proof’ activity centres so that their (potential) future expansion can be readily achieved (while avoiding significant tracts of land lying idle for years or hampered by fragmented residential and commercial landholdings). Uniform ‘as-of-right’ uses are also promoted for retailers, and could result in less ‘spot’ rezoning. The aspect of ‘gaming’ – whereby third parties can avail themselves of objection or appeal rights in an attempt to prevent a development or slow a development – also makes for good reading (p. 255), especially in the context of regulatory controls and compliance costs.

The chapter on retail tenancy leases is also worth the read, with the PC indicating that Australia’s more regulated planning environment (which restricts floorspace provision) means landlords don’t have to offer retail space on terms that would be otherwise more favourable to their tenants if more floorspace was made available (p. 272). And the chapter discussing on-line retail sales is illuminating, with on-line sales now equivalent to 6% of total retail sales in Australia, and with growth of between 10% and 15% pa forecast to 2013 (p. 87).

Overall, the PC report is an easy read, providing much material to debate in retail and planning circles. However, the focus on productivity (while certainly understandable in terms of the role of Productivity Commission) revolving around the entry of new retailers to the marketplace and the importance of consumer preferences, while very important, overshadows any discussion of the significant role of existing town centres and shopping centres as part of our urban and community fabric, and underplays the attempt by planning regulations to provide some order of ‘balance’ in a system that otherwise appears to serve communities well. Yes, innovation in planning regulation and control is required, but the proliferation of new centres in an otherwise ‘unplanned’ or ‘less planned’ manner should be avoided because of the wider community costs involved.

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I love a sunburnt country, a land of sweeping plains,
Of ragged mountain ranges, of droughts and flooding rains.
I love her far horizons, I love her jewel-sea,
Her beauty and her terror – The wide brown land for me

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