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NSW COMPETITION REFORMS TO REMOVE RETAIL RESTRICTIONS

The NSW Government's [Promoting Economic Growth and Competition in the Planning System](#) review report, released this week by Planning Minister Tony Kelly MLC, contains seven recommendations to improve economic growth and competition ([Shop Talk 3/7/09](#)). The report was welcomed by the Federal Minister for Consumer Affairs and Competition Policy, Dr Craig Emerson. While some of the recommendations are supported, others are unclear in their operation and much of the detail has been deferred to a yet-to-be-determined new Competition State Environmental Planning Policy (SEPP). It is also still unclear how this SEPP will mesh with the revised Activity Centres Policy, which is still to be released. The Competition SEPP will also expressly clarify that competition between businesses is not a valid planning objection (although this issue is something of a 'straw man' since the present law, as interpreted by the courts, has long held this to be the case in NSW). The Shopping Centre Council has made clear in public comments on the report that if restrictions on location are to be removed for some retailers and retail formats, in the name of greater competition, then restrictions must also be removed for shopping centre developments and redevelopments. It was government policy, not the desire of investors, which forced shopping centres to locate in the activity centres and to pay the high price for land that goes with such locations. It would be farcical, as well as anti-competitive, if the removal of restrictions means the Government is "picking winners" and intends to relax planning restrictions for a select group of retail formats (such as stand-alone supermarkets and Costco etc) but not for others, including shopping centres. 'Greater competition' cuts both ways and shopping centres have no intention of playing under 'yesterday's rules' while other retailers and retail formats are operating under different rules.

PRODUCTIVITY COMMISSION INQUIRY INTO PLANNING SYSTEMS

Also on the issue of planning and competition, the Federal Government has [announced](#) that the Productivity Commission will undertake "a performance benchmarking of States and Territories' planning and zoning systems and land development assessments". As part of the terms of reference, which were determined by the Commonwealth and State Governments, the Commission will report on best practice approaches that support competition, including: "measures to prevent 'gaming' of the appeals process...[and] ways to eliminate any unnecessary or unjustifiable protections for existing businesses from new and innovative competitors". The Productivity Commission is expected to release an Issues Paper in May and a final report in December.

ASSOCIATE PROFESSOR FRANK ZUMBO SPRUIKS FOR COSTCO

In an extraordinary series of newspaper articles around Australia, Associate Professor Frank Zumbo, a small business champion from the University of NSW, has lauded the virtues of Costco. These articles amount to little more than unpaid advertisements. Despite acknowledging that "there are legal arguments that the Costco proposal [in Sydney] may not completely fit existing state planning and zoning requirements", Zumbo criticises the Shopping Centre Council for lodging a submission on the publicly exhibited Costco planning proposal ([Shop Talk 16/4/10](#).) This is a strange criticism from a lecturer in law and supposedly objective commentator. Contrast this with the managing director of Costco who said: "They have every right under the laws of the country to do what they're doing." While we have also welcomed the arrival of Costco, the question must be asked: why is a supposedly objective academic spruiking on behalf of a private company, particularly when that academic's salary is paid by the taxpayer?