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12 October 2017

The Committee Secretary  
Standing Committee on Planning and Urban Renewal  
Legislative Assembly for the ACT  
GPO Box 1020  
Canberra  
Australian Capital Territory 2601

By email

Dear Committee Secretary

## **Inquiry into Draft Variation No 329 – Weston Group Centre Representations by Scentre Management Limited**

We refer to your letter of 4 September 2017.

We are the solicitors for Scentre Management Limited (“Scentre”). Scentre is now the manager of the Australian shopping centre assets that were previously managed by Westfield Management Limited (“WML”). In the Australian Capital Territory, Scentre manages both Westfield Woden and Westfield Belconnen, and also has ownership interests in both by reason of its assumption of the position of WML as the title holder of all WML’s Australian assets.

The following comments are made in response to your invitation for submissions in your above letter regarding Draft Variation No 329 to the Territory Plan (“the Draft Variation”).

Scentre is a major stakeholder within the Belconnen and Woden Town Centres, with its Shoppingtown developments being the retail focal point in both these locations. It has a particular interest in ensuring that the scale and types of development permitted in different areas of Canberra are carefully considered in the interests of the Town Centres as a whole. Additionally, Scentre is concerned to ensure that any variations of the Territory Plan will provide a benefit to the community while maintaining the intentions of the Territory Plan and its zone hierarchy system, both in the present and in the future.

The Draft Variation seeks to significantly extend the CZ1 commercial core zone to the east of the Weston Group Centre to permit future expansion. The Draft Variation achieves this by rezoning an area of PRZ1 open space and CFZ community facility zone to CZ1. The Draft Variation also proposes certain amendments to the Weston Precinct Map and Code, particularly changes relating to increased building heights.

Scentre disagrees entirely with these proposals, on the basis that retail intensification in group centres is not consistent with the principles and intentions set out under ruling parts of the Territory Plan that are not being varied, and under the overarching National Capital Plan.

Under the National Capital Plan, the ACT is separated into separate and distinct townships.<sup>1</sup> The National Capital Plan recognises the importance of having one town centre as the focal point for each township, along with the importance of maintaining the integrity of the hierarchy. The National Capital Plan clearly stipulates that a “*hierarchy of centres*” will be maintained and in this hierarchy of centres each town will have a centre as the “*focal point for higher order retail functions, commercial services, offices and community facilities*”.<sup>2</sup>

The National Capital Plan goes even further, stating that major redevelopment of some group centres (including Dickson, Kingston and Manuka) “*would be undesirable*” if those changes went against the purpose of the Territory Plan hierarchy of established centres. The National Capital Plan together with the Territory Plan clearly indicates that it is not desirable for there to be increased retail intensification in centres which would detract from the primacy of the Town Centres. The point is even more concerning where the Weston Group Centre is located less than 3 kilometres from the Woden Town Centre.

The Weston Group Centre is considered a “*lower order centre*” under the National Capital Plan, intended to meet the varying needs of local residents.<sup>3</sup> The concept of lower order centres does not envisage an expansion of retail uses to the extent proposed in the Draft Variation. The extent of the retail expansion proposed in the Draft Variation is of a size that would encroach on the intended primacy of the Woden Town Centre within the Woden township and the hierarchy, and is not supported by Scentre.

Furthermore, an over-expansion of retail uses within the Weston Group Centre would have an adverse impact on the existing businesses and on the customers within the Woden Town Centre. These changes will detract from business profitability due to the resulting reduced customer base that each business would have. Where retail is intensified in areas outside the Town Centres, customers reduce their visits to those Town Centres. As a result, services and businesses within Town Centres falter, and can be expected to provide lower levels of service.

Ultimately, this will adversely affect the intensity of retail uses within the nearby Town Centre, by causing a shift in the position of the “*core*” of the Woden Town Centre, contrary to the vision that has, to date, been planned for the ACT. Transport hubs will be less frequently patronised, and the use of the Town Centre for community purposes will suffer. From an economic viewpoint, town centres like Woden will suffer and decline if retail over-expansion is permitted in areas that are not meant to be retail-intensive under the planning instruments for the Australian Capital Territory.

These are important economic interests, and are recognised by the High Court as being matters for genuine legal consideration in the making of planning decisions:

*It may well be right to say...that the Planning Act does not have as an object or purpose the “protection of the commercial interests of [individual] owners of shopping centres or supermarkets, or the protection of existing supermarkets from competition”. But it by no means follows that an individual owner or operator is not adversely affected by a planning decision that will have direct commercial consequences for that owner or operator. As the Planning Act makes plain in its statement of objects, it is concerned with the general commercial health of the Territory. So much appears from the use of the expressions “the orderly and sustainable development of the ACT”, “the social, environmental and economic aspirations of the people of the ACT”, and “sound financial principles”. Claims of individual*

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<sup>1</sup> National Capital Plan, pages 18, 56 and 57.

<sup>2</sup> National Capital Plan, pages 58.

<sup>3</sup> National Capital Plan, page 58.

adverse effect are not irrelevant to the pursuit of those general objectives.<sup>4</sup> (underlining supplied)

The concept of the hierarchy is not intended to create even competition in the uses, and the intensity of the uses, between a Town Centre and the Group Centres within the relevant township. Instead, the intention is for Group Centres to complement and support the Town Centre within the relevant township. Increasing the competition between a Town Centre and its surrounding Group Centres for the same kind of customers does not achieve this.

In summary, Scentre strongly objects to the Draft Variation based on:

- its detracting from the intention of the Territory Plan for the Weston Group Centre to complement and support the activities of the Woden Town Centre;
- its diversion from the Territory hierarchy of group centres and town centres; and
- the detrimental effect that retail intensification in group centres has upon nearby Town Centres that should be the focal point for retail services.

Scentre submits that the proposals in the Draft Variation to intensify retail in the Weston Group Centre should not be pursued, on the basis that they are directly and indirectly inconsistent with those parts of the relevant planning instruments that seek to maintain the hierarchy of centres in the ACT and the primacy of the Town Centres over the Group Centres.

Scentre confirms that it would like to appear at a public hearing, and looks forward to advice as to when that hearing will occur.

If you require any further information, please do not hesitate to contact the writer.

Yours sincerely



Lisa Eldridge  
Senior Lawyer

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<sup>4</sup> *Argos Pty Ltd v Corbell, Minister for the Environment and Sustainable Development* [2014] HCA 50 (10 December 2014) at [73].