

SELECT COMMITTEE ON ACT SUPERMARKET  
COMPETITION POLICY

# **Inquiry into ACT Supermarket Competition Policy**

AUGUST 2012

**Report**



## Committee membership

Ms Caroline Le Couteur MLA	Chair
Mr John Hargreaves MLA (from 6 December 2011)	Deputy Chair
Mr Zed Seselja MLA	Member
Dr Chris Bourke MLA (to 6 December 2011)	

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## Resolution of appointment and terms of reference

On 22 September 2011, the Legislative Assembly for the ACT (the Legislative Assembly) resolved that it:

(1) Notes:

- (a) that ACT consumers are best served by policies that promote supermarket competition; and
- (b) that development approval processes should be free from inappropriate political interference and offer certainty to supermarket operators and protection for ACT consumers;

(2) establishes a select committee to review the ACT Supermarket Competition Policy, including, but not limited to:

- (a) the operation of the policy as it interacts with the planning system;
  - (b) the appropriateness of settings as it applies to ACT Government direct sales, group centres and local centres;
  - (c) the impact of the policy on operators and consumers;
  - (d) impacts on the retail hierarchy; and
  - (e) future applications of planning and competition policies;
- (3) the decision to exercise the call-in power to approve the Giralang DA are not the subject of the Committee's inquiry while the matter is before the Supreme Court;
- (4) the Committee shall report back to the Assembly no later than the last sitting week in April 2012; and
- (5) the Committee shall consist of one Member nominated by the Government, one Member nominated by the Opposition and one Member nominated by the Crossbench, to be nominated to the Speaker by 4 p.m. on the day of passage of this motion.<sup>1</sup>

On 29 March 2012, the Assembly agreed that the resolution of the Assembly of 22 September 2011 relating to the referral of the ACT Supermarket Competition Policy

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<sup>1</sup> Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 120, 22 September 2011, pp. 1537-1539.

to a select committee be amended by omitting the words ‘last sitting week in April 2012’ and substituting ‘last sitting day in June 2012’.<sup>2</sup>

On 7 June 2012, the Assembly agreed that the resolution of the Assembly of 22 September 2011, as amended 29 March 2012, relating to the referral of the ACT Supermarket Competition Policy to a select committee be amended by omitting the words ‘last sitting week in June 2012’ and substituting ‘last sitting day in August 2012’ and inserting a new paragraph (4A):

(4A) if the Assembly is not sitting when the report is completed the Speaker, or, in the absence of the Speaker, the Deputy Speaker, is authorised to give directions for its printing, publication and circulation;<sup>3</sup>

## Abbreviations

ACAT	ACT Civil and Administrative Tribunal
ACCC	Australian Competition and Consumer Commission
ACTPLA	ACT Planning and Land Authority
DSEA Panel	Direct Sale Eligibility Assessment Panel
GFA	Gross floor area
IGA	Independent Grocers of Australia
Martin Report	<i>Review of ACT Supermarket Competition Policy</i>
SCCC	Supermarket Competition Coordination Committee
SCP	Supermarket Competition Policy
SCPIP	<i>ACT Supermarket Competition Policy Implementation Plan</i>

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<sup>2</sup> Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 144, 29 March 2012, p. 1850.

<sup>3</sup> Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 153, 7 June 2012, p. 2020.

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POLICY

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## RECOMMENDATIONS

### RECOMMENDATION 1

8.15 The Committee recommends that the Minister for Economic Development report on all matters acted on and currently progressing in the carrying out of the Supermarket Competition Policy Implementation Plan and that report be part of future annual reports of the Economic Development Directorate.

### RECOMMENDATION 2

8.16 The Committee recommends that the reports of the Supermarket Competition Coordination Committee, particularly the annual report required by the Supermarket Competition Policy Implementation Plan, be included in future annual reports by the Minister for Economic Development and the Economic Development Directorate.

### RECOMMENDATION 3

8.17 The Committee recommends that the Minister for Economic Development report to the Legislative Assembly as soon as possible on the implementation of, and response to, the recommendations of the Martin Review of the ACT Supermarket Competition Policy.

### RECOMMENDATION 4

8.18 The Committee recommends that the Minister for Environment and Sustainable Development, as the minister responsible for planning issues, report on all matters referred to him as part of the Supermarket Competition Policy Implementation Plan by the Direct Sale Eligibility Assessment Panel and that this report be part of the annual report from the Environment and Sustainable Development Directorate.

### RECOMMENDATION 5

8.24 The Committee recommends that the ACT Supermarket Competition Policy which has been in place and in course of implementation since October 2009 be the subject of a review similar in focus to the 2009 review by Mr John Martin, that this review be conducted at the end of 2013, that the review proceed in a similar manner to the Martin review process and that the

review findings and recommendations be tabled in the Legislative Assembly by June 2014.

**RECOMMENDATION 6**

8.33 The Committee recommends that the retail hierarchy be incorporated in the Supermarket Competition Policy Implementation Plan.

**RECOMMENDATION 7**

8.41 The Committee recommends that the Territory Plan be revised to specify Gross Floor Area limits for supermarkets in local centres.

**RECOMMENDATION 8**

8.42 The Committee recommends that the supermarket Gross Floor Area limit for each local centre should be individually specified, given the differing size of local centres as they were originally developed.

**RECOMMENDATION 9**

8.44 The Committee recommends that the supermarket Gross Floor Area limit prescribed for a local centre take into account the distance between the local centre and the nearest group centre.

**RECOMMENDATION 10**

8.47 The Committee recommends that the current provisions of the Territory Plan and Local Centre Development Code be reviewed to determine an exact definition of Gross Floor Area as currently applied to both supermarkets and other grocery and convenience stores in the ACT.

**RECOMMENDATION 11**

8.48 The Committee recommends that supermarket Gross Floor Area be calculated according to the whole area of a business accessible by the consumer but not include areas inaccessible by consumers such as loading docks, administrative areas and food preparation, packing and storage areas.

**RECOMMENDATION 12**

8.54 The Committee recommends that a small business impact statement is undertaken for similar businesses in a geographic area affected by a supermarket proposal under the ACT Supermarket Competition Policy Implementation Plan and the Territory Plan when assessing new supermarket proposals.

### **RECOMMENDATION 13**

8.55 The Committee recommends that the small business impact statement referred to in Recommendation 12 should be paid for by the proponent of a proposal, be independently commissioned by ACTPLA, and be open to public comment.

### **RECOMMENDATION 14**

8.62 The Committee recommends that the ACT Government should request that the Australian Competition and Consumer Commission consider acting to limit the market share held in the ACT by the major supermarket operators and act similarly to limit the market share held by the major supermarket operators in the ACT retail petrol market.

### **RECOMMENDATION 15**

8.64 The Committee recommends that the ACT Government provide an update on the situation for the introduction of an additional wholesaler in the ACT.

### **RECOMMENDATION 16**

8.68 The Committee recommends that the ACT Supermarket Competition Policy Implementation Plan be amended to include ease of access to supermarkets by people with mobility issues as a consideration in assessing new development applications for supermarkets and that this amendment be reflected in the Territory Plan.

### **RECOMMENDATION 17**

8.69 The Committee recommends that one objective of the ACT Supermarket Competition Policy be the preservation of viable local shopping centres, and this objective be reflected in the Territory Plan.

### **RECOMMENDATION 18**

8.70 The Committee recommends a study is made by the appropriate part of the Environment and Sustainable Development Directorate of future transport needs of the ACT and urban settlement patterns, and that the results of such studies be taken into account in ACT supermarket development policy.

SELECT COMMITTEE ON ACT SUPERMARKET COMPETITION  
POLICY

# 1 INTRODUCTION AND CONDUCT OF INQUIRY

## Referral of inquiry

- 1.1 On 22 September 2011, the Legislative Assembly passed the following motion establishing a Select Committee on ACT Supermarket Competition Policy (the Committee) and setting out its terms of reference:
- 1) notes:
    - (a) that ACT consumers are best served by policies that promote supermarket competition; and
    - (b) that development approval processes should be free from inappropriate political interference and offer certainty to supermarket operators and protection for ACT consumers;
  - (2) establishes a Select Committee to review the ACT Supermarket Competition Policy, including, but not limited to:
    - (a) the operation of the policy as it interacts with the planning system;
    - (b) the appropriateness of settings as it applies to ACT Government direct sales, group centres and local centres;
    - (c) the impact of the policy on operators and consumers;
    - (d) impacts on the retail hierarchy; and
    - (e) future applications of planning and competition policies;
  - (3) the decision to exercise the call-in power to approve the Giralang DA are not the subject of the Committee's inquiry while the matter is before the Supreme Court;
  - (4) the Committee shall report back to the Assembly no later than the last sitting week in April 2012; and
  - (5) the Committee shall consist of one Member nominated by the Government, one Member nominated by the Opposition and one Member nominated by

the Crossbench, to be nominated to the Speaker by 4 p.m. on the day of passage of this motion.<sup>4</sup>

1.2 This motion was subsequently amended twice in order to extend the deadline by which the Committee must report to the Legislative Assembly. On 29 March 2012 the Legislative Assembly agreed that the reporting date be moved from the last sitting week in April 2012 to the last sitting day in June 2012.<sup>5</sup>

1.3 On 7 June 2012, the Legislative Assembly agreed that the reporting date again be moved from the last sitting week in June 2012 to the last sitting day in August 2012. The Legislative Assembly also agreed that:

... if the Assembly is not sitting when the report is completed the Speaker, or, in the absence of the Speaker, the Deputy Speaker, is authorised to give directions for its printing, publication and circulation<sup>6</sup>

1.4 Although the ACT Government adopted its current ACT supermarket competition policy following the completion of the Review of ACT Supermarket Competition Policy (the Martin Report) in September 2009<sup>7</sup>, the immediate impetus for an inquiry into the policy was provided in August 2011 by the Minister for the Environment and Sustainable Development exercising his call-in powers under division 7.3.5 of the Planning and Development Act 1997 to approve the redevelopment of the Giralang shopping centre, which will include the establishment of a 1,500 square metre Woolworths supermarket.<sup>8</sup>

1.5 Following this decision, the Minister for the Environment and Sustainable Development made a statement to the Legislative Assembly pursuant to section 161(2) of the *Planning and Development Act 1997*.<sup>9</sup> The interaction of

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<sup>4</sup> Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 120, 22 September 2011, pp. 1537-1539.

<sup>5</sup> Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 144, 29 March 2012, p. 1850.

<sup>6</sup> Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 153, 7 June 2012, p. 2020.

<sup>7</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009; Mr Andrew Barr MLA, 'Supermarket review recommends more choice', Media release, 8 October 2009, accessed 3 August 2012, <http://andrewbarr.com.au/story/supermarket-review-recommends-more-choice>

<sup>8</sup> Mr Simon Corbell MLA, 'Minister approves redevelopment plan for Giralang shops', 19 August 2011, accessed 3 August 2012, <http://info.cmcd.act.gov.au/archived-media-releases/media27d4.html?v=10908&s=28>.

<sup>9</sup> Mr Simon Corbell MLA, 'Call-in powers—block 475, section 79, Giralang—Paper and statement by minister', Legislative Assembly for the ACT, *Debates*, 23 August 2011, pp. 3667-3668.

planning policy and supermarket competition was also the subject of a proposed motion and further debate in the Legislative Assembly on 21 September 2011.<sup>10</sup>

## Terms of reference

- 1.6 The terms of reference for the Committee are provided under paragraphs (2) and (3) of its resolution of appointment:
- (2) establishes a Select Committee to review the ACT Supermarket Competition Policy, including, but not limited to:
    - (a) the operation of the policy as it interacts with the planning system;
    - (b) the appropriateness of settings as it applies to ACT Government direct sales, group centres and local centres;
    - (c) the impact of the policy on operators and consumers;
    - (d) impacts on the retail hierarchy; and
    - (e) future applications of planning and competition policies;
  - (3) the decision to exercise the call-in power to approve the Giralang DA are not the subject of the Committee's inquiry while the matter is before the Supreme Court;<sup>11</sup>
- 1.7 Paragraph (3) of the resolution excludes from the inquiry the decision by the Minister for the Environment and Sustainable Development to call-in the development application relating to the Giralang shopping centre while this matter is before the Supreme Court. However, the Committee understood this paragraph to allow discussion of the Giralang shopping centre and its relationship with ACT planning and supermarket policies.
- 1.8 On 6 July 2012 Justice Burns of the Supreme Court refused an application by the owners of Kaleen and Evatt IGA supermarkets and local residents to appeal against the decision of the Minister for the Environment and

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<sup>10</sup> Legislative Assembly for the ACT, *Debates*, 21 September 2011, pp. 4131-4153.

<sup>11</sup> Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 120, 22 September 2011, pp. 1537-1539.

Sustainable Development to approve the redevelopment of Giralang shopping centre.<sup>12</sup> Further details of this judgement are contained in chapter 7.

## Submissions

- 1.9 The Committee called for submissions to the inquiry by advertising in the *Canberra Times* on 12 October 2011, the *Chronicle* on 18 October 2011 and writing to the responsible Minister and a range of stakeholders.
- 1.10 The Committee received 24 submissions and one supplementary submission. A list of individuals and organisations that provided submissions is provided in **Appendix A**.

## Public hearings

- 1.11 The Committee held public hearings on 18 and 19 April 2012, 28 May 2012 and 19 July 2012. Details of witnesses who appeared before the Committee are provided in **Appendix B**.

## Report consideration

- 1.12 The Committee met on 16 August 2012 to consider the draft report, which was adopted on 20 August 2012.

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<sup>12</sup> Towell, N., 'Woolworths gets green light at Giralang', *Canberra Times*, 6 July 2012, accessed 3 August 2012, <http://www.canberratimes.com.au/act-news/woolworths-gets-green-light-at-giralang-20120706-21176.html>.

## 2 BACKGROUND OF THE POLICY

### ACCC inquiry into retail grocery prices

- 2.1 On 22 January 2008 the Australian Competition and Consumer Commission (ACCC) was requested by the then Commonwealth Assistant Treasurer and Minister for Competition Policy and Consumer Affairs to undertake an inquiry into the competitiveness of retail prices for standard groceries.<sup>13</sup>
- 2.2 The ACCC published the results of its inquiry in August 2008, which included the following key findings:
- Grocery retailing is workably competitive, but there are a number of factors that currently limit the level of price competition, including:
  - high barriers to entry and expansion, particularly in relation to difficulties in finding new sites for development.
  - the limited incentives for Coles and Woolworths to compete aggressively on price.
  - limited price competition that Coles and Woolworths face from the independent sector. Independent supermarkets tend to focus on convenience and service. A key factor inhibiting price competition from the independent retailers is the wholesale prices of packaged groceries supplied by Metcash.<sup>14</sup>
- 2.3 The ACCC discussed the difficulties experienced by supermarket operators other than Coles and Woolworths in gaining access to sites in new shopping centre developments. This situation is partly due to the fact that shopping centre owners consider it essential to have Coles or Woolworths as tenants in order to ensure the viability of their centres. The ACCC found there was

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<sup>13</sup> Australian Competition and Consumer Commission, 'Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries, July 2008', accessed 3 August 2012, <http://www.accc.gov.au/content/index.phtml/itemId/838251>.

<sup>14</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, July 2008, p. xiv.

credible evidence to suggest that some leases between the two major supermarket chains and shopping centre owners are designed to restrict the entry of competing supermarkets.<sup>15</sup> The ACCC also found that planning and zoning laws can act as barriers to the establishment of new supermarkets and that established supermarket operators use planning objection processes to deter new entrants, despite having no legitimate planning concerns.<sup>16</sup>

2.4 In light of these findings, the ACCC recommended:

... all appropriate levels of government consider ways in which zoning and planning laws, and decisions in respect of individual planning applications where additional retail space for the purpose of operating a supermarket is contemplated, should have specific regard to the likely impact of the proposal on competition between supermarkets in the area. Particular regard should be had to whether the proposal will facilitate the entry of a supermarket operator not currently trading in the area.<sup>17</sup>

## The Martin Report

2.5 On 16 June 2009, the then Chief Minister and Minister for Business and Economic Development, Mr Jon Stanhope, appointed Mr John Martin as an expert advisor to the ACT Government's Review of Supermarket Competition Policy and required him to report on:

- the adequacy of the ACT Government's Supermarket Competition Policy in the light of the 2008 ACCC Inquiry into the competitiveness of retail prices for standard groceries, and the Commonwealth Government's response to that report;
- current competitive dynamics of the ACT supermarket grocery sector including the various players (the major grocery retailers, the small and independent retailers, wholesale suppliers and so on);

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<sup>15</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, July 2008, p. xviii.

<sup>16</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, July 2008, p. xix.

<sup>17</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, July 2008, p. xix.

- likely future trends in the Australian supermarket grocery sector and how they are likely to play out in the ACT;
- ways the ACT Government can support effective and sustainable competition in the grocery sector over the short, medium to longer term, taking into account the findings and recommendations of the 2008 ACCC Grocery Inquiry;
- the implications of government action for the wholesale sector;
- an overarching policy framework to guide the long run development of the supermarket grocery sector in the ACT;
- policies, procedures and processes that might be applied on a site by site basis to ensure site allocation supports the ACT Government's longer term policy objectives;
- the role of local planning authorities in supporting competition policy;
- appropriate competition criteria that might be used in assessing the eligibility of applicants for direct sales; and
- any other additional measures that might be considered by the ACT Government to facilitate a diverse and competitive retail grocery sector.<sup>18</sup>

2.6 The results of this review were released by the Government in October 2009, and included 15 recommendations. Recommendations 1 to 6 outline a number of general findings concerning the nature of supermarket competition in the ACT region and the means by which that competition could be improved:

**Recommendation 1**

The review recognises that while there is reasonable supermarket competition in the ACT region retail grocery market, there is a need to address:

- a shortage of larger full line supermarket capacity generally in central Canberra and Gungahlin; and
- the benefits of encouraging further full line independent supermarket chains to expand in the ACT to provide competition and diversity and potentially support an alternative source of wholesale grocery supply that could contribute to the price competitiveness of independents including smaller retailers.

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<sup>18</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009, p. 2.

**Recommendation 2**

Given the trends identified, planners and decision makers in the ACT need to ensure there is an adequate response to market and competition signals demanding larger format supermarkets relative to overall size of centres. This includes reinforcing efforts to ensure local centre viability by enabling some local supermarkets to expand.

This should be complemented by a more flexible approach to allow new entrants into new area development and in existing group centres.

**Recommendation 3**

The supermarket competition policy in the ACT requires substantial overhaul to address impediments in the planning and development regime.

A framework taking competition factors into account is required to free up retail zoning provisions particularly in group centres, to better reflect evolving consumer and market needs and address the barriers to new supermarket entrants at the retail and wholesale levels.

**Recommendation 4**

The ACT Government note that it is in no way constrained from intervening through the planning and land allocation system to achieve increased supermarket competition at sites where proposed acquisitions by a major chain have received informal ACCC clearance.

**Recommendation 5**

Any form of cap on the market share of participants should be rejected.

**Recommendation 6**

An alternative source of wholesale supply would be encouraged by a restricted approach for particular sites that precluded Metcash controlled ventures as well as the two major chains.<sup>19</sup>

- 2.7 Recommendations 7 to 15 outline specific administrative and planning actions the ACT Government should take in order to give effect to these general findings.<sup>20</sup> The 15 recommendations contained in the Martin Report are reproduced in full in **Appendix D**.

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<sup>19</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009, pp. 13-19.

<sup>20</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009, pp. 20-28.

## ACT Government response to the Martin Report

2.8 Upon receiving the Martin Report, the ACT Government adopted its recommendations and released its *ACT Supermarket Competition Policy Implementation Plan* (SCPIP) in January 2010.<sup>21</sup> This document outlines the key elements of the ACT Government's new supermarket competition policy as follows:

- A need to address a shortage of larger full line supermarket capacity generally in central Canberra and Gungahlin;
- Encouragement for further full line independent supermarket chains to expand in the ACT;
- Facilitation of the entry of suitable independent full line chains into new and redeveloped Group Centres;
- Support for an alternative source of wholesale grocery supply which would be encouraged by a restricted approach for particular sites;
- Recognition that market and competition signals are demanding larger format supermarkets relative to the overall size of centres, including in some Local Centres;
- Elimination of artificial constraints on supermarkets in appropriate Local Centres expanding in ways that are consistent with public amenity and enables those stores to provide a more competitive offer against full line stores in larger centres;
- New entrants should be allowed into new area developments and existing Group Centres;
- More flexibility in retail zoning provisions, particularly in Group Centres, to reflect evolving consumer and market needs and address barriers to new supermarket entrants;
- A progressive review of Group and Town Centres should be instituted;
- No cap on the market share of participants;
- The articulation of a transparent set of Supermarket Competition Factors (see more below) to help identify and facilitate entry by new full line supermarket competitors;

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<sup>21</sup> Economic Development Directorate, 'Supermarket Competition', accessed 6 August 2012, [http://www.economicdevelopment.act.gov.au/projects\\_and\\_initiatives/supermarket\\_policy](http://www.economicdevelopment.act.gov.au/projects_and_initiatives/supermarket_policy).

- The establishment of formal inter-departmental coordinating group for developing and delivering comprehensive whole-of-government advice on the Supermarket Competition Policy to the Government; and
- Regular consultation with industry stakeholders.<sup>22</sup>

2.9 The central administrative change adopted by the ACT Government in response to the Martin Review was the establishment of the Supermarket Competition Coordination Committee (SCCC). The SCPIP describes the SCCC as follows:

The SCCC comprises representatives from key Government Departments including the Department of Land and Property Services, which chairs and services the SCCC. Specialist advice is provided by the Review author Mr Martin. The SCCC is not charged with decision-making; it merely provides advice to the Government. The SCCC will monitor implementation of the Policy, consult with industry stakeholders and report to the Government annually on progress in implementing further supermarket competition in the ACT. It will also provide advice to the Government's Direct Sale Eligibility Assessment Panel in cases involving proposed direct sales ...<sup>23</sup>

2.10 The SCCC was established to provide advice to the ACT Government on the following matters:

- the commercial and community characteristics of a particular centre;
- the nature, existing presence and capabilities of a proposed supermarket operator;
- the competitive supermarket dynamics in the local and wider area including the potential to facilitate new wholesaling operations;
- the price and non-price nature of the proposed supermarket operator including source and quality of fresh produce and the levels of customer service;
- impact on competition in the wholesale market for groceries and liquor; and

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<sup>22</sup> ACT Government, *ACT Supermarket Competition Policy Implementation Plan*, January 2010, pp. 3-4.

<sup>23</sup> ACT Government, *ACT Supermarket Competition Policy Implementation Plan*, January 2010, p. 2.

- amenity issues including impact on surrounding development and infrastructure such as road access.<sup>24</sup>

2.11 With regard to potential site releases under its new supermarket competition policy, the Government stated:

Possible supermarket sites to be released by the Government in the next 18 months include sites in Dickson, Kingston, Casey, Amaroo and Bonner. The Dickson and Kingston sites are currently the subject of major planning studies which include comprehensive community consultation sessions to seek community views and to inform the community about the issues at each Centre. The preferred capacity and configuration of the Centres, including the location of possible additional supermarket sites, will be determined through the review process and separate agreement by Government. Decisions are expected by April 2010.

Given the significance of the Dickson and Kingston sites to addressing a number of the Martin Review recommendations, the Government intends to announce an integrated package of decisions about supermarket sites once it has considered these planning studies.<sup>25</sup>

2.12 On 6 May 2010, the Government announced a package of supermarket site releases covering group centre redevelopments in Kingston and Dickson and new group centre developments at Casey and Amaroo.<sup>26</sup> The details of these releases were as follows:

- Kingston - To release a site in the Eyre Street car park for a 3400 sq metre Supabarn supermarket as part of a mixed development;
- Dickson - To release a site for a large format supermarket to all players, except the incumbent Woolworths. The site, on the large surface car park adjacent to Woolworths, would be available for a store in excess of 2500 sq m;
- Casey - To release sites for ALDI and Supabarn, with a possible further release in three years for a large format supermarket site; and

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<sup>24</sup> ACT Government, *ACT Supermarket Competition Policy Implementation Plan*, January 2010, p. 4.

<sup>25</sup> ACT Government, *ACT Supermarket Competition Policy Implementation Plan*, January 2010, p. 7.

<sup>26</sup> Mr John Stanhope MLA, 'Boost for supermarket competition in the ACT', Media release, 6 May 2012, accessed 6 August 2012, <http://info.cmcd.act.gov.au/archived-media-releases/media3c45.html?v=9505&s=93>.

- Amaroo - To release a site for a large format supermarket, with Woolworths and Coles excluded from participating.<sup>27</sup>

- 2.13 The Government also stated that, in relation to the Kingston, Casey and Amaroo sites, it intended to release land for mixed developments with a pre-commitment to a selected supermarket operator. As such, any developer would be able to bid to develop these sites, but they would be required to lease space to a particular supermarket operator.<sup>28</sup>
- 2.14 Furthermore, the Government stated that it recognised that Supabarn intended to open a wholesale facility at Canberra Airport in May 2010, which it believed would increase competition in the ACT supermarket and wholesale sector.<sup>29</sup>

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<sup>27</sup> Mr John Stanhope MLA, 'Boost for supermarket competition in the ACT', Media release, 6 May 2012, accessed 6 August 2012, <http://info.cmcd.act.gov.au/archived-media-releases/media3c45.html?v=9505&s=93>.

<sup>28</sup> Mr John Stanhope MLA, 'Boost for supermarket competition in the ACT', Media release, 6 May 2012, accessed 6 August 2012, <http://info.cmcd.act.gov.au/archived-media-releases/media3c45.html?v=9505&s=93>.

<sup>29</sup> Mr John Stanhope MLA, 'Boost for supermarket competition in the ACT', Media release, 6 May 2012, accessed 6 August 2012, <http://info.cmcd.act.gov.au/archived-media-releases/media3c45.html?v=9505&s=93>.

### 3 OPERATION OF THE POLICY

- 3.1 In its submission to the Committee's inquiry, provided in November 2011, the ACT Government included a summary of progress that had been made to date on land releases under the new supermarket competition policy that arose from the Martin Report. This summary is reproduced below:

#### **Kingston**

The Government's May 2010 announcement provided for the release of a site with a pre-commitment to Supabarn for a 3400m<sup>2</sup> full-line supermarket, with a deed of agreement being subsequently reached between Supabarn and the Government. In June 2011, ESDD released a master-plan for the group centre as a whole, including identifying a site for a supermarket at Section 19, Blocks 47 and 48 as part of a future mixed use development. Work will be undertaken to progress land release consistent with the vision articulated in the master-plan.

#### **Dickson**

The Government's May 2010 announcement provided for the direct sale of a site to include a full-line supermarket of 3500m<sup>2</sup> to any supermarket operator other than the incumbent in the Dickson group centre (Woolworths). The master-plan for the centre released by ESDD in May 2010 nominated Block 19, Section 30 for this purpose. Since then work has been undertaken to progress the release of land consistent with the vision articulated in the master-plan. The Government is also committed to releasing land for an Aldi at the centre.

#### **Casey**

Within its May 2010 announcement, the Government indicated that the purchaser of the site for the planned Casey group centre would be required to sell a supermarket site to Aldi, a site to Supabarn, and hand-back a third site to the Government for potential future release three years after the construction of the Supabarn. On 16 May 2011, Worth Street Pty Limited purchased the group centre site from the Land Development Agency (LDA). An estate development plan is expected to be submitted in due course.

#### **Amaroo**

Within its May 2010 announcement, the Government indicated that the purchaser of the site for group centre planned for the suburb of Amaroo would be required to sell a supermarket site to a purchaser other than Woolworth or Coles. Community consultation around the design of the group centre was

conducted by the LDA in March 2011 and it is expected that a land release process will commence early in 2012 following land servicing.

### **Chisholm**

The Government has agreed to the direct sale to Aldi of an unleased block at the Chisholm group centre subject to their receiving development approval. The sale was announced in July 2011.

### **Local centres**

Direct sale applications for contiguous land have been received from a number of local centre supermarket operators or owners seeking to expand, with these having reached various stages of processing.

### **Wholesaling**

Following its decision to vacate the site of the wholesale warehouse it established at the Canberra Airport in 2010, Supabarn has recently expressed a desire to secure land for a distribution warehouse elsewhere. The Government remains, in principle, supportive of such plans with it being anticipated that a new wholesaling warehouse could be established at an industrial site such as Mitchell or Fyshwick.<sup>30</sup>

## **Direct sales and direct leasing**

- 3.2 The ACT Government has the ability to release land for sale without going through a competitive process. This method of land release can only be employed where an applicant and their proposed land use meet statutory requirements under the *Planning and Development Act 2007* and the *Planning and Development Regulation 2008* and can demonstrate a viable business case.<sup>31</sup>
- 3.3 The Martin Report noted that this method of releasing land provides a means of increasing diversity in the supermarket sector in the ACT:

Given the ACT Government's unique degree of ongoing land ownership within and adjacent to community centres, direct land sales offer an efficient and transparent way of short circuiting planning and redevelopment constraints to enable new entry or expansion of existing supermarkets. Any actions by the

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<sup>30</sup> ACT Government, Submission No. 1, pp. 16-17.

<sup>31</sup> Economic Development Directorate, 'Direct Land Sales', accessed 6 August 2012, [http://www.economicdevelopment.act.gov.au/land\\_release/direct\\_sales](http://www.economicdevelopment.act.gov.au/land_release/direct_sales).

ACT Government to support retail diversification over time through site facilitation, involves consideration of localised issues and factors as well as broader competition issues. It also needs to consider the integration of the new supermarket into the overall amenity and attractiveness of a centre.<sup>32</sup>

3.4 Direct sales of land can be sought in order to establish entirely new supermarkets or to expand existing supermarkets through the acquisition of contiguous land. The Martin Report noted that in the five years preceding 2009 direct sales of land had been made to enable the establishment of new ALDI stores at Conder and Kippax as well as the expansion of existing supermarkets at group centres in Curtin, Mawson, Calwell and Wanniasa. Direct land sales, both of new sites and of land contiguous with existing supermarket sites, had therefore benefited ALDI, Coles, Supabarn and Woolworths in the years preceding the Martin Review.<sup>33</sup>

3.5 The ACT Government's SCPIP states:

... where direct sales are involved, including for contiguous land, the SCCC will provide advice to the existing Direct Sale Eligibility Assessment Panel in the Department of Land and Property Services. The Panel is an inter-departmental committee charged with:

- assessing the eligibility of applicants and their proposed use of the land;
- assessing from a whole-of-government perspective how a proposed direct sale will benefit the community and meet or contribute to the achievement of government policy objectives beyond what a competitive sales process would deliver;
- identifying alternate means to a direct sale where appropriate, e.g. an expression of interest; and
- making a recommendation to Government after considering these issues.<sup>34</sup>

3.6 A related means of facilitating increased diversity and competition in the ACT supermarket sector is 'direct leasing'. Under this method, the ACT Government does not release land directly to a supermarket operator, rather it

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<sup>32</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009, p. 19.

<sup>33</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009, p. 20.

<sup>34</sup> ACT Government, *ACT Supermarket Competition Policy Implementation Plan*, January 2010, p. 6.

releases land to a developer but stipulates that they must lease or sell a supermarket site to a particular supermarket operator.

- 3.7 As noted in the Government's summary of strategic land releases flowing from the Martin Report, quoted above at paragraph 3.1, direct sales or leases of supermarket sites have been granted to Supabarn for sites at Kingston and Casey and to ALDI for sites at Dickson, Casey and Chisholm. The government has also set aside a further site at Dickson for direct sale to any supermarket operator other than Woolworths, which already operates a supermarket in Dickson.<sup>35</sup>
- 3.8 The Committee notes that the ACT Government recently endorsed a new master plan for the Kambah group centre, which includes the release of block 17 section 346, presumably via a direct sale, to allow the expansion of the existing Woolworths supermarket from its existing size of 1,611 square metres to 2,500 square metres.<sup>36</sup>

## Local centres

- 3.9 The ACT Planning and Land Authority's 2009 background paper *Retailing in Canberra* made the following comments on retailing in Canberra's local centres:

The intended primary function of local centres is to meet convenience-shopping needs and provide community and business services to meet the daily needs of neighbourhoods, particularly for people with low mobility. They provide a community focus and potentially reduce the dependence on private or public transport.

While local centres can be argued as promoting sustainability (lower car usage), social (provision of a community focus, locally available goods and services) and health benefits (encouragement of walking), such benefits are only achieved if the centres remain viable. In 1980, local centres provided 11 per cent of the retail space in Canberra and received 14 per cent of retail expenditure, with the

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<sup>35</sup> ACT Government, *Submission No. 1*, pp. 16-17.

<sup>36</sup> Environment and Sustainable Development Directorate, *Kambah group centre master plan*, July 2012, p. 22; Thistleton, J., 'Plans to expand despite falling Kambah population', *Canberra Times*, 31 July 2012, accessed 7 August 2012, <http://www.canberratimes.com.au/act-news/plans-to-expand-despite-falling-kambah-population-20120731-23cc6.html>.

share varying from 10 per cent in Tuggeranong to 16 per cent in Weston Creek (NCDC, 1980). In 2007 the estimated share of sales at local centres was 11 per cent varying from 17 per cent in Canberra Central, 13 per cent in Gungahlin, 9 per cent in Woden and Weston Creek, 7 per cent in Belconnen and 3 per cent in Tuggeranong (Ibecon, 2007). This decline is a result of factors including extended trading hours at higher-level centres, the population's preference to undertake supermarket shopping (based on range and price) at larger centres, the small population catchments of some local centres and the increased workforce participation of women.

...

In response to the declining trading position Territory governments have introduced measures to facilitate change at the centres. The initiatives have included programs to upgrade public infrastructure, the widening of lease purpose clauses and the land uses permissible, incentives to undertake redevelopment, the development of vacant land and the provision of business advice (ACT Government, 1999). Higher density housing is now permitted adjacent to local centres in excess of 500m<sup>2</sup> gross floor area. Some centres have responded by reconfiguring themselves to attract speciality clientele from a wider area with planning policies relaxed to remove the requirements for convenience retailing where a centre providing convenience retailing was within 1500m<sup>2</sup>. Several centres have closed, primarily in locations with small population catchments while another centre has redeveloped at a greatly reduced scale of retail provision. Local communities, valuing the service and focal point provided by the local shops, are often opposed to the redevelopment proposals.

In response to these trends local centres in developing areas are either being spaced more widely to provide a greater population catchment to assist their viability or the release conditions, while requiring commercial space, do not mandate the requirement for the provision of convenience retailing. In the later case, generally adopted to serve areas with a small population catchment, it is up to the market to determine the mix of commercial uses at the centre.<sup>37</sup>

- 3.10 The government notes in its submission that it has received a number of applications for direct sales from the operators or owners of supermarkets in

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<sup>37</sup> ACT Planning and Land Authority, *Retailing in Canberra*, September 2009, p. 3.

local centres. These applications relate to contiguous land and, if granted, would allow the expansion of existing supermarkets.<sup>38</sup>

## Wholesaling

3.11 With regard to the impact of wholesaling on competition in the supermarket sector in the ACT, the Martin Report observed:

... Metcash have got an overwhelming proportion of the independent retail sector locked in to sourcing dry groceries from the wholesaler at supply prices that make even full line independents uncompetitive with the majors. This 'catch 22' relating to the dominant wholesaler was an important finding from the ACCC Retail Grocery Report.

Metcash also seemed intent on extending that exclusive supply arrangement across to fresh products but the ACCC intervened based on findings from its Grocery Inquiry.

Thus there is a supermarket competition scenario where the market leader Woolworths, has a comfortable lead over its main competitor Coles, in supply chain efficiencies and an independent third force dominated by the wholesaler Metcash maximising returns to its wholesale operation in such a manner that independent retail prices are non competitive with the major chains to be sustainable.

Metcash is a very efficient operator and if competitive pressure was placed on it via an expansion of alternative independent wholesale supply there could be considerable competition benefits.<sup>39</sup>

3.12 The Martin Report also notes that the Cannons group, which had operated supermarkets at Calwell, Erindale, Kambah and Kippax group centres, operated its own wholesale distribution centre in Hume. Woolworths acquired the Cannons group in 1996 and subsequently closed this distribution centre.<sup>40</sup>

3.13 The ACT Government submission notes that Supabarn has abandoned the wholesale warehouse it established at Canberra Airport in 2010. However, Supabarn has expressed a desire to acquire land to develop a distribution

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<sup>38</sup> ACT Government, *Submission No. 1*, p. 17.

<sup>39</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009, p. 74.

<sup>40</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009, p. 5.

warehouse elsewhere. The ACT Government remains supportive of these plans and comments that industrial areas such as Fyshwick or Mitchell would provide suitable sites.<sup>41</sup>

## The appropriateness of the policy settings

3.14 The Committee notes criticisms of the appropriateness of the ACT Government's policy settings as a means of achieving increased diversity and competition in the ACT supermarket sector put forward by Nikias Nominees', the owner of the Giralang shopping centre.

3.15 As Nikias Nominees points out in its submission to the inquiry, the Martin Report stated:

Introduction of new and expanded formats at local centres or any other level in the retail hierarchy can only be pro-competitive. Stakeholder objections to such initiatives appear to reflect incumbents' self-interest to protect their own competitive position rather than promoting retail grocery competition.

ACTPLA's approach to allow the market to determine these parameters in local centres seems more appropriate than applying some threshold that would inhibit efficient and diverse competition.<sup>42</sup>

3.16 With regard to ensuring the sustainability of local centre retailing, the Martin Report also stated:

In relation to local centres, no artificial constraints should be placed on supermarkets in appropriate centres to expand in a way that is consistent with public amenity and enables those stores to provide a more competitive offer against full line stores in larger centres. Local centre independent stores could be boosted if moves to increase independent wholesale competition are successful.<sup>43</sup>

3.17 The SCPIP lists the following two points among the key elements of its policy framework:

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<sup>41</sup> ACT Government, *Submission No. 1*, p. 17.

<sup>42</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009, p. 44.

<sup>43</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009, p. 86.

- Recognition that market and competition signals are demanding larger format supermarkets relative to the overall size of centres, including in some Local Centres;
- Elimination of artificial constraints on supermarkets in appropriate Local Centres expanding in ways that are consistent with public amenity and enables those stores to provide a more competitive offer against full line stores in larger centres;<sup>44</sup>

3.18 Nikias Nominees argues that the market cannot in fact determine the appropriate parameters of retailing in local centres as the scope of allowable development, including gross floor area (GFA) and purpose, is tightly controlled by the provisions of each crown lease.<sup>45</sup>

3.19 Nikias Nominees further argues that the measures the ACT Government has taken to grant direct sales of land in group centres to both Supabarn and ALDI have had the effect of favouring retailers that already have a foothold in the large format supermarket sector without granting smaller independent supermarket operators the ability to expand<sup>46</sup>:

The ACT Government's response to the dominance of Woolworths and Coles in the ACT supermarket sector has been to provide preferential support to another supermarket retailer, Supabarn, with hand-picked sites at both Kingston and Casey.

So, in effect, the ACT Government's Supermarket Competition Policy seeks to restrict competition to certain players, geographically and at different levels of the retail (commercial centres) hierarchy.

Through such direct intervention, the ACT Government appears to be favouring one particular supermarket business, while at the same time denying smaller independents the chance to enter large format supermarket retailing. The Kingston site will support a large supermarket and is likely to have the effect of diverging from two dominant players to three; but will not dramatically alter the current dominance of Woolworths and Coles.

The recommendations of the Martin Review (2009) advocate increased competition. However, the rigid control of retail space within commercial

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<sup>44</sup> ACT Government, *ACT Supermarket Competition Policy Implementation Plan*, January 2010, p. 3.

<sup>45</sup> Nikias Nominees Pty Ltd, *Submission No. 16*, p. 5.

<sup>46</sup> Nikias Nominees Pty Ltd, *Submission No. 16*, pp. 5-6.

centres, via crown lease provisions and the DA approval process, and the Government sponsored increase from two to three dominant players, is more suggestive of a reallocation of quotas, rather than true competition. Competition is surely better served by allowing as many alternatives as possible to be proposed, allowing market forces to control such enterprises.<sup>47</sup>

- 3.20 The Committee discussed the appropriate upper limit for supermarket GFA in local centres, in particular whether a limit should be set at 1,000 square metres or 1,500 square metres, with the Minister for Economic Development, supermarket operators and other witnesses.<sup>48</sup>
- 3.21 The Committee notes that, while allowing supermarkets in local centres to expand more easily might enable some independent operators to compete more effectively with large-format supermarket operators, it could also have the effect of making surrounding local centre supermarkets less viable. This position was put to the Committee by the proprietor of the IGA Kaleen, who felt that the development of a larger supermarket at Giralang would adversely affect his business.<sup>49</sup>
- 3.22 Support for a more clearly defined retail hierarchy, including limits on the size of supermarkets that can be established at each level, was also expressed by Supabarn Supermarkets in its submission.<sup>50</sup> Supabarn argues that the lack of a cap on the size of supermarkets in local centres means that these centres are increasingly likely to become the sites of competition between Coles and Woolworths:

Woolworths have exploited the Local Centre Policy to establish new 2000m<sup>2</sup> GFA stores at Bonner, Dunlop and Giralang local centres, thereby opening up a new tier of 'majors' competition. Coles have submitted direct sale applications for sites at Kambah, Erindale, Weston Creek and Kippax group centres, and are using the ACTPLA Master Planning Process of group centres to incorporate second full line supermarkets to be operated by them. Woolworths have

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<sup>47</sup> Nikias Nominees Pty Ltd, *Submission No. 16*, p. 5.

<sup>48</sup> See discussions with the Minister for Economic Development and representatives of Supabarn Supermarkets, Tzanetos Family Group, Spier Consulting and IGA Kaleen in *Transcript of Evidence*, 19 April 2012.

<sup>49</sup> *Transcript of Evidence*, 19 April 2012, p. 80.

<sup>50</sup> Supabarn Supermarkets, *Submission No. 4*, p. 14.

responded by contemplating the use of master planning to obtain further full line supermarkets at Jamison and Curtin.

3.23 With regard to the established retail hierarchy in the ACT, the Minister for Economic Development stated:

It has its strengths and its weaknesses, as any planning system does. If you want to go to the first principles, you could have no planning regulations at all and not seek to have a hierarchy, or you could go for the strictest of controls or you could be somewhere in between, which I think is probably how we would categorise the circumstances we are in. The problem is, of course, whether a planning system can evolve fast enough to keep pace with what is clearly a dynamic retail environment. I assume you may not have even discussed the context of online and how that is going to impact on the grocery market. The capacity to order and have stuff delivered to your home is certainly another factor that presumably over time will impact on business in the sector.

The retail hierarchy principles are fairly firmly established in Canberra's planning methodology. If you were starting from scratch with a blank canvas, would you design it again that way? That is an interesting debate. But it is what it is. There is certainly a worthwhile discussion to be had in relation to the future of local centres, but it is in many ways intrinsically linked to planning policy around those centres.

From most perspectives, Mr Hargreaves, people are fairly comfortable with what is occurring in town centres. But there is a highly contested debate around group centres and then the question of when does local stop being local and start scaling up beyond that. That undoubtedly is a highly contested space.<sup>51</sup>

3.24 With regard to setting specific caps on the GFAs that are allowable at each level of the retailing hierarchy, the Minister for Economic Development stated:

... at whatever point the Assembly determines in terms of a figure or a GFA or cap, the market will adjust to that and then presumably seek to relitigate matters. I imagine this will be an ongoing debate. As circumstances change, you will see these matters relitigated. I think there is another live question—that is, the different stages of the lifecycle, if you like, that some suburbs are in. Local centres are not homogenous and there are differing needs in different

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<sup>51</sup> Mr Andrew Barr MLA, *Transcript of evidence*, 19 April 2012, p. 98.

communities around that sort of convenience retailing. Suburbs go through different lifecycles as their populations' age and then renew.<sup>52</sup>

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<sup>52</sup> Mr Andrew Barr MLA, *Transcript of evidence*, 19 April 2012, p. 98.



## 4 IMPACT OF THE POLICY ON OPERATORS AND CONSUMERS

4.1 The Committee sought the views of government, market participants and others on the impact the Supermarket Competition Policy (SCP) has had and is likely to have in the future on ACT supermarket operators and consumers.

4.2 In its submission to the Committee, the ACT Government noted that:

It is difficult to assess thus far the impacts of the administrative, land release processes, and planning reform processes initiated since the introduction of the SCPIP. However, within Government it can be said there is now stronger awareness and understanding of supermarket sector issues and dynamics, and greater institutional capacity to address issues associated with the sector in the future.

Beyond the Government, as the land sales announced in May 2010 are completed, and new supermarkets are constructed and opened, it is expected that tangible benefits to consumers will become observable. The SCCC [Supermarket Competition Coordination Committee] expects that it will be in better position to evaluate the possible price and other effects of the current SCPIP at this time. Further land releases potentially resulting from group centre master-planning processes, and planning policy changes arising from the review of the Territory Plan are also expected to improve competition and choice within the ACT retail grocery market in so far as they enable the emergence of new supermarkets in the redevelopment of centres.<sup>53</sup>

4.3 The Government submission also noted that the main effect of the SCPIP to date has been to:

... signal to the ACT community and the business sector the Government's willingness to take strategic action to ensure the better functioning of key markets, including to enhance choice and diversity for consumers.<sup>54</sup>

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<sup>53</sup> ACT Government, *Submission No. 1*, p. 18.

<sup>54</sup> ACT Government, *Submission No. 1*, p. 18.

- 4.4 Submissions to the inquiry presented differing views and forecasts on how this aspect of the SCP would operate in this context. As the major ACT independent supermarket operator, Supabarn indicated:

The policy, as it is currently interpreted and implemented, will have the effect of decreasing the market share of independent supermarket operators, resulting in the closure of many independent supermarket operators and small independent businesses (butcher, baker, deli etc) throughout Canberra. The flow on effect of such closures will be the loss of jobs. Independent business is the largest single employer in the ACT outside the public service and Supabarn is the largest locally owned private enterprise employer in the ACT. More importantly closures and market share loss will result in higher prices and less choice for the consumer.<sup>55</sup>

- 4.5 This submission also noted that the policy had the effect of entrenching barriers to new entrants in favour of the major supermarkets:

It must be remembered that Canberra consumers currently have access to all major supermarket retailers within a five to seven minute travel time (with the exception of Costco and Supabarn). Woolworths, Coles and Aldi are easily accessible within these time frames. Canberra has the best road networks and travel times of any major capital city nationally. Therefore, the suggestion that more major supermarket stores are required for the benefit of consumers is simply an argument put to Government to camouflage the real intention of increasing market share to stop new entrants from entering the Canberra market.<sup>56</sup>

- 4.6 Independent supermarket operators IGA have a similar view on the matter — that is, the policy will not benefit either customers or operators.<sup>57</sup>

- 4.7 Owners of town centre shopping complexes, such as Tuggeranong Hyperdome, considered the prospect of significant additional floor space take-up at group and local centres as concerning and, if implemented as indicated, as having the potential to significantly compromise the catchments of town centres by diverting supermarket spending to lower tier centres.<sup>58</sup>

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<sup>55</sup> Supabarn Supermarkets, *Submission No. 4*, p. 12.

<sup>56</sup> Supabarn Supermarkets, *Submission No. 4*, p. 12.

<sup>57</sup> IGA, *Submission No. 5*, p. 11.

<sup>58</sup> Tuggeranong Hyperdome, *Submission No. 13*, p. 3.

4.8 The Tzanetos Family Group, currently lessees of the property subleased to Woolworths Kambah centre, told the Committee that the SCP could have the result for consumers and owners in Kambah of allowing more than one supermarket in to the area. The effect would be disadvantageous and undesirable for consumers and owners. A preferable policy would be:

... either enlarging existing supermarkets or when space is not directly available *only* then think about introducing a second supermarket if necessary at all. I know as a consumer I would prefer my local shops to have one large full line supermarket with plenty of variety rather than two small IGAs.<sup>59</sup>

4.9 Coles Supermarkets told the Committee that the continued operation of the SCP in its current form will be to the disadvantage of owners and consumers, due largely to factors such as the current operation of the planning system. Coles emphasised that:

The continued operation of Supermarket policy in its "current form and context will be to the disadvantage of both operators and consumers in the ACT due to the operation of the policy as it interacts with the planning system (Section 3, Term of Reference (2)(a)), coupled with the limitations identified in relation to the Direct Sale process (Section 4, Term of Reference 2(b)). From Coles' perspective, Supermarket policy in the ACT as it stands is the most restrictive in Australia. As a result, there is no evidence to suggest that the current policies are promoting competition nor resulting in any real benefits to ACT consumers.<sup>60</sup>

4.10 After detailing expected increases in ACT supermarket floor space, the Shopping Centre Council of Australia notes that, as far as this issue is concerned:

Not all of these projects will obviously proceed. Even taking this into account, however, it is possible that by 2014 the ACT will have by far the most competitive supermarket environment in Australia. This may well lead to an oversupply of supermarket floor space in parts of the ACT. The major supermarket chains have sufficient corporate strength to survive such an oversupply. The independent supermarket operators, particularly the smaller independents, may not be in a position to survive. Paradoxically, the outcome of

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<sup>59</sup> Tzanetos Family Group, *Submission No. 17*, p. 4.

<sup>60</sup> Coles Supermarkets, *Submission No. 8*, p. 33.

the current supermarket competition policy may therefore be the opposite, at least in part, of that which is intended.<sup>61</sup>

4.11 Questions asked of a number of witnesses at the Committee's public hearings followed up these comments. The Committee particularly sought to ascertain whether the likely effects on consumers and owners could be predicted or measured with any accuracy.

4.12 The Committee sought advice on this matter from the Minister for Economic Development. In response to the question as to how any measurement would be made of whether and to what extent the consumer may benefit from the changes in supermarket configuration, the Minister reflected on the difficulty in making such assessments:

It is a legitimate point but I think we have got to accept the limitations of any modelling, because it will have to make some assumptions about consumer behaviour. But again, there is a live debate about whether there is an adequate provision of supermarket space or in fact there is too much. I have not heard too many people argue of late that we need to dramatically increase the supply. There are a few people who would like to dramatically increase their share of the market but they are not necessarily advocating that what the city needs is thousands and thousands of additional square metres of GFA. In many regards, this is something for the market to determine. The government cannot, through a planning policy or through a supermarket competition policy, absolutely regulate and determine every outcome.<sup>62</sup>

4.13 Mr Greg Ellis, Director, Sustainable Land Strategy, Economic Development Directorate told the Committee that, in assessing proposals under the SCP:

... when we look at supermarket competition, it is usually via catchments but that does not mean we do not take into account a wider context of regions and subregions. But certainly the SCCC's deliberations on these issues will start with the detailed analysis of the impact of any expansion or new development on the surrounding catchment. It would be fair to say that it does have a catchment-by-

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<sup>61</sup> Shopping Centre Council of Australia, *Submission No. 14*, p. 3.

<sup>62</sup> Mr Andrew Barr MLA, *Transcript of Evidence*, 19 April 2012, p. 118.

catchment focus, while recognising there is a total ACT picture to take into account.<sup>63</sup>

## Small business

- 4.14 In its submission the Council of Small Business of Australia (COSBOA) confirmed its approach to the development of large supermarkets by the major supermarkets:

Over the last two decades large shopping centre developments have emerged across Australian communities. This has often resulted in closure of businesses outside the shopping centre. The closures have often resulted from rearrangement of streets and bus stops and closure of car parks outside the shopping centre. This has removed the capacity of consumers to access the existing shops and caused their closure. We consider this to be unconscionable and demand compensation to business owners for loss of business.<sup>64</sup>

- 4.15 Regarding major shopping centre developments that include large supermarkets, COSBOA has recommended:

That a small business impact statement is developed when any new significant retail or office development occurs in a town or community and that the developer compensates the family of any business that is unfairly affected by the development.<sup>65</sup>

- 4.16 The Committee does not consider that the proposal for compensation to small business holders is a matter it need discuss in this report, it does consider that a small business impact statement should accompany advice from the SCCC to the Government when supermarket development is being considered. The Committee's conclusions and recommendations regarding this issue are contained in Chapter 9.

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<sup>63</sup> Mr Greg Ellis, *Transcript of Evidence*, 19 April 2012, p. 100.

<sup>64</sup> COSBOA, *Submission No. 6*, p. 4.

<sup>65</sup> COSBOA, 'Small business impact statement—policy proposal', accessed 17 August 2012, <http://www.cosboa.org/policy/smal-business-impact-statement>.



## 5 IMPACTS ON THE CURRENT RETAIL HIERARCHY

### Current Retail Hierarchy

5.1 As described elsewhere, the current retail hierarchy is based on the idea that a hierarchy of centres is effective it is seen as:

... facilitating equity in terms of relative geographic access to employment, retailing and other services. Individual centres usually incorporate the co-location of retailing, employment activities, and some forms of social infrastructure. This co-location can reduce the number of trips people need to make and the distance of those trips. In cities where most trips are made by car, such as Canberra, fewer and shorter trips are likely to mean lower levels of carbon emissions and lower private transportation costs. The public may also benefit through lower road-building costs and lower costs in providing effective public transport than would be the case if commercial and other activities were inappropriately dispersed. The concentration of commercial development and other land uses such as community facilities that generate the coming and going of large numbers of people also can protect the amenity of people who would prefer to live in quieter, predominately residential areas.<sup>66</sup>

5.2 A consistent point of reference in the Committee's discussions on the current retail hierarchy in Canberra was the historical planning model in Canberra and how the original 1960s model had been established by the National Capital Development Commission:

- The city centre (or Civic), which has commercial and other development generally serving the Canberra metropolitan area as a whole.
- Town centres at Belconnen, Tuggeranong, Woden and Gungahlin, with commercial and other development generally serving district populations.
- Group centres such as the Jamison, Manuka and Lanyon centres whose commercial and other development generally serves 'groups' of nearby suburbs.

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<sup>66</sup> ACT Government, *Submission No. 1*, p. 9.

- Local centres such as the Ngunnawal, O'Connor or Chapman shops, which generally provide convenience shopping and other services and facilities to the surrounding suburb. Historically, these centres have featured both a relatively small supermarket along with other specialist shops and businesses.<sup>67</sup>

5.3 The hierarchy determines the distribution of supermarket GFA over the different types of centre across different districts of Canberra<sup>68</sup>:

*Table 1: Supermarket Provision by District and Centre Type (m<sup>2</sup> GFA)*

Centre Type	Belconnen	Gungahlin	Canberra Central	Tuggeranong	Woden & Weston Ck	Total
Town	9423	10208	7132	11070	8050	45883
Group	15185	0	8113	14751	7112	45161
Local	5337	1852	7541	4061	3740	22531
Total	29945	12060	22786	29882	18902	113575

Source: ACT Commercial and Industrial Floorspace Inventory, Environment and Sustainable Development Directorate

*Table 2: Distribution of Supermarket GFA by Centre Type across Districts (Percentages)*

Centre Type	Belconnen	Gungahlin	Canberra Central	Tuggeranong	Woden & Weston Ck	Average
Town	31.5	84.6	31.3	37.0	42.6	40.4
Group	50.7	0.0	35.6	49.4	37.6	39.8
Local	17.8	15.4	33.1	13.6	19.8	19.8

Source: ACT Commercial and Industrial Floorspace Inventory, Environment and Sustainable Development Directorate

5.4 The ACT Government made the point that the differing GFA (defined in the Territory Plan as 'the sum of the area of all floors of the building measured from the external faces of the exterior walls, or from the centre lines of walls separating the building from any other building, excluding any area used solely for rooftop fixed mechanical plant and/or basement car parking')<sup>69</sup> figures for different centre types was a result largely of the planning strategies made at the time district greenfield planning occurred, and that, in the case of most of North and South Canberra, this planning pre-dated modern

<sup>67</sup> ACT Government, *Submission No. 1*, p. 9.

<sup>68</sup> ACT Government, *Submission No. 1*, pp. 9-10.

<sup>69</sup> *Territory Plan*, s. 13, Definitions.

supermarket retailing and the concept of a group centre focused around a large supermarket.<sup>70</sup>

- 5.5 Group centres became the major integrated centres used in the planning of Belconnen, and Woden in the late 1960s, and later in much of Tuggeranong and Gungahlin.<sup>71</sup>
- 5.6 Current policies are set out in the ACT strategic plan (currently the Spatial Plan) and the statutory Territory Plan, both of which are currently under review. Under the Territory Plan, centres are made up of combinations of different commercial zones. Each of the different centre types has an associated development code which sets out various policies used in the assessment of development applications under the *Planning and Development Act 2007*.
- 5.7 The policies relevant to competition are those that restrict the size of supermarkets in different centres, following the Territory Plan policy of directing supermarkets to 'core' areas . The ACT Government notes:
- ..it is recognised that such policies may make it difficult for new supermarket competitors to find sites (given past land release and development decisions).<sup>72</sup>
- 5.8 The following tables, from the ACT Government submission give maximum supermarket size in different centres as GFA:<sup>73</sup>

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<sup>70</sup> ACT Government, *Submission No. 1*, p. 10-11.

<sup>71</sup> ACT Government, *Submission No. 1*, pp. 10-11.

<sup>72</sup> ACT Government, *Submission No. 1*, p. 11.

<sup>72</sup> ACT Government, *Submission No. 1*, p. 12.

<sup>73</sup> ACT Government, *Submission No. 1*, pp. 9-10.

Table 3: Planning Controls for Maximum Supermarket Size in Different Centres, Gross Floor Area<sup>10 11</sup>

	City	Town centres	Group centres
CZ 1 – Core Zone	No maximum size	No maximum size	No maximum size
CZ 2 – Business Zone	Not applicable	Non-mandatory 200m <sup>2</sup> limit	Mandatory 100-300m <sup>2</sup> limit (depending on location)
CZ 3 – Services Zone	Mandatory 200m <sup>2</sup> limit	Mandatory 200m <sup>2</sup> limit	Mandatory 300m <sup>2</sup> limit (except for a specified block at Chisholm with a 1500m <sup>2</sup> maximum)

5.9 The policy has been designed to limit supermarket size at local centres to avoid the ‘cannibalisation’ of one local centre by another heavily developed local centre, with the intention of ensuring a maximum number of local centres retain economic viability and are able to provide convenience shopping.<sup>74</sup>

## Retail hierarchy and supermarket floor space supply

5.10 Current policy, the ACT Government advised the Committee, is intended to regulate the level of supermarket floor space through planning controls directed at various public policy interests. However, the regulation is limited, with the supermarket sector having ‘considerable freedom to operate within the market.’<sup>75</sup>

5.11 The ACT Government submission notes the following approach to this element of planning:

In greenfield areas, sites for new centres are identified within the structure and concept planning of new suburbs. The size of these centres will generally be based on projections of per capita floor space demand using industry benchmarks and spatialised retail modelling conducted by the Environment and Sustainable Development Directorate. Sites may then be released specifically for supermarkets (through lease controls) or more generally for a

<sup>74</sup> ACT Government, *Submission No. 1*, p. 12.

<sup>75</sup> ACT Government, *Submission No. 1*, p. 12.

range of commercial land uses including potentially a supermarket if a developer or operator believes there would be demand for such a facility.

Post land-release, the ACT's planning system does not regulate market entry or exit behaviours of particular supermarket operators. If a circumstance arises where a development application needs to be submitted, such as, for example, if a supermarket expansion or centre redevelopment is proposed, the application is assessed on its merits against the relevant provisions of the Territory Plan. In such cases, the planning system does not assess the proposal against targets or quotas for floor space. The operator of a supermarket, thus, is not a matter for consideration within the Territory Plan. Within the broader constraints of the Territory Plan in terms of issues such as (for example) building height, set back, or plot ratio controls, market participants are largely free to propose more floor space on suitably zoned land if they believe the market will bear such an increase.<sup>76</sup>

- 5.12 The current retail hierarchy policy is described as 'not seeing 'oversupply 'as a public policy issue, except in very specific circumstances, the most significant of which would be where there may be an oversupply at one local centre that could undermine the viability of other local centres nearby.'<sup>77</sup>
- 5.13 The current overall policy approach is to achieve a result where taking an excessively restrictive policy stance would outweigh the risks of 'oversupply' so that:

While [oversupply] may in extreme cases lead to 'retail blight' (or shop closures) at some centres, the former would likely stifle innovation and beneficial competition. The Government believes that it is important to recognise that the poor performance of individual businesses or shopping centres is often as much a function of factors such as the attractiveness of business' offers, or investment and maintenance decisions by shopping centre owners, as the quantum of competing floor space.<sup>78</sup>

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<sup>76</sup> ACT Government, *Submission No. 1*, p. 12.

<sup>77</sup> ACT Government, *Submission No. 1*, p. 12.

<sup>78</sup> ACT Government, *Submission No. 1*, p. 13.

- 5.14 The current approach under the SCPIP, using retail modelling commissioned by the Environment and Sustainable Development Directorate, suggests that there is some scope for expansion of supermarket floor space in the ACT.<sup>79</sup>

## Submissions to the Committee

- 5.15 Submissions to the Committee made a number of comments on the application of the SCP to the retail hierarchy. Supabarn's submission supported moves to more clearly define the current hierarchy—that is, the spectrum of development appropriate within those centres, provided a clear distinction is drawn. Supabarn's submission is based on the view that:

Until recently the centres hierarchy has been well understood and supported by both planning policy and development application decisions. Even relatively recent policy documents (such as the concept plans released for new Gungahlin local centres) demonstrate a consistent approach to the scale of local centres. It was consequently considered to be a robust basis for investment decisions. However more recent planning decisions, purportedly made in line with the Supermarket Competition Policy have blurred the line between local and group centres, with what has previously been understood to be group centre scale development approved (and facilitated by *direct* sales) in local centres.

...

Should the integrity of the hierarchy be further undermined by the loss or decentralisation of retail facilities, the policy imperative of co-location of community assets would also be undermined, thereby reducing community convenience and benefit. In the case of Kaleen, the loss of the anchor supermarket as a result of competing local centre development could ultimately result in the decline or loss of a post office, banking facilities, aged care facilities, sports and community centres and churches. This would further undermine the ability of the centre to fulfil its role, while also compromising the robustness of the *wider* hierarchy by perverting the direction of trade and reducing beneficial transport planning outcomes arising from linked trips.<sup>80</sup>

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<sup>79</sup> ACT Government, *Submission No. 1*, p. 13

<sup>80</sup> Supabarn Supermarkets, *Submission No. 4*, p. 13.

5.16 Coles supported the current retail hierarchy, but noted the Martin Report had recommended a consolidation of a number of zoning provisions in current planning regimes 'to allow for more competition between supermarket operators, particularly at the Group Centre level'.<sup>81</sup>

5.17 Coles' submission noted:

Coles is generally supportive of the existing ACT retail hierarchy, we have concerns with the micro-management of development within commercial centres which involves a number of commercial zones. These commercial zones impose excessive limits on growth and change within a centre.

To address this issue and in response Term of Reference 2(a) and (e), Coles recommends that:

- Commercial zones (e.g. CZ1, CZ2, CZ3, CZ5) across the City Centre, Town Centres, Group Centres and Local Centres be rationalised by making them all Core Zone 1 (CZ1) for each level of the hierarchy and without any sub zones within each centre.
- Where sites available at Group Centres are limited, commercial opportunities should not be precluded by the occupation of excessive areas of land for residential purposes.
- The existing number of commercial zones within Group Centres and Local Centres should be rationalised from six to one zone across the entire centre, together with less restrictive planning control requirements (which vary by locality) for floor areas, plot ratios, building heights, street frontage and setbacks etc.
- Development controls should be revised to include less restrictive planning control requirements (which vary by locality) for floor areas, plot ratios, building heights, street frontage and setbacks etc.
- A wider definition of allowable uses encompassed in a single commercial zone (refer to Recommendation 3), as this will mean that it is less likely that land with that zoning will require rezoning in order to be put to a different use.<sup>82</sup>

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<sup>81</sup> Supabarn Supermarkets, *Submission No. 4*, p. 12.

<sup>82</sup> Coles Supermarkets, *Submission No. 8*, pp. 5-6.

- 5.18 In its submission, the Nikias Group, which is the applicant developer for the Giralang local centre, noted that the hierarchy has these features:

The broad intentions for each commercial zone (CZ1-CZ6) are described in the Development Codes. The Development Codes provide no rules or criteria in relation to the quantification of the maximum or minimum size of any commercial centre. The quantification has been left to the ACT Government/ACT Planning Authority to provide in the lease purpose clause of the Crown Lease assigned to each commercial block within a retail core area.

Accordingly, via a leasehold system, the landlord (i.e. the Government) can pre-determine the location and size of any supermarket in the ACT. The DA process is then used to further regulate any proposals to later vary or add to the original constraints set out in the issued crown lease.<sup>83</sup>

- 5.19 In a further comment, the Nikias Group submission drew attention to the decision to restrict access to specific supermarket sites at Casey, Kingston and Amaroo, and how such preferential policy cut across the retail hierarchy and the development codes:

So, in effect, the ACT Government's Supermarket Competition Policy seeks to restrict competition to certain players, geographically and at different levels of the retail (commercial centres) hierarchy.

Through such direct intervention, the ACT Government appears to be favouring one particular supermarket business, while at the same time denying smaller independents the chance to enter large format supermarket retailing. The Kingston site will support a large supermarket and is likely to have the effect of diverging from two dominant players to three; but will not dramatically alter the current dominance of Woolworths and Coles.<sup>84</sup>

- 5.20 Witnesses put differing views to the Committee on the effect of the SCP on the retail hierarchy. Mr Wayne Holborow, Design and Development Manager, Leda Holdings Pty Ltd, owners of Tuggeranong Hyperdome, told the Committee:

Our concern is the fact that the supermarket policy really just seeks to provide a diversity of choice, and we can understand that. It should not be to the detriment of the established town centre hierarchy. Moreover, the fact that if centres such as Erindale town centre wanted to provide an additional

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<sup>83</sup> Nikias Nominees, *Submission No. 16*, p. 4.

<sup>84</sup> Nikias Nominees, *Submission No. 16*, p. 5.

supermarket infrastructure, there does not seem to be the economic or population support for doing that. As a consequence, we do not see the position being suggested by the planning department where they say we might want to put a 1,500 square metre supermarket in. They are talking about putting in 30,000 square metres of retail. We are saying that it is unsustainable retailing for a population and also it draws against the hierarchy of the town centre.

You are getting a situation where these regional centres are competing directly with the town centre, which is against the hierarchy. Leda invested and purchased Tuggeranong far in advance of the population. We were told that the population would grow to 150,000 and it has been stymied at around 80,000 to 90,000. This would be destroying that hierarchy.<sup>85</sup>

- 5.21 Mr Ken Henrick, Policy Manager, Master Grocers Australia, made an observation similar to others, namely, changing demographics of particular districts of Canberra have had an effect on the existing retail hierarchy:

The three-tier hierarchy is a valid way to look at a market. You have got the local centres, which are very important to local communities within the ACT and, for that matter, within the rest of Australia. They provide convenience and walkability and all the other things that modern town planners talk about. The group centres provide convenience also and are alternatives to the town centres. And the town centres are really the hub of the different regions within the ACT. So we think that is a valid way to plan a town.

I lived in the ACT for many years and I think that there were problems with the original planning of the ACT which resulted in a lot of issues for retailers particularly, retailers not just in grocery but in all sorts of sectors. The town planning back in the early days basically provided that developers came in and built a whole suburb at a time. All the houses were sold within a matter of months. But that is no longer the case. I think the ACT is big enough now to maintain that three-tier system and we think that is a good approach.<sup>86</sup>

- 5.22 Mr Arthur Petsas of the Argos Group strongly supported the current retail hierarchy in these terms:

We strongly support the existing territory plan hierarchy and consideration of alternative centre uses on a case-by-case basis. We do not support the concept of

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<sup>85</sup> Mr Wayne Holborow, *Transcript of Evidence*, 18 April 2012, pp. 45-6.

<sup>86</sup> Mr Ken Henrick, *Transcript of Evidence*, 18 April 2012, p. 11.

major retailers being located in local centres. We emphasise that centres should be able to adapt and change, but this needs to be done in a transparent, clear and consistent manner within a defined framework and, importantly, should service the local community without impacting adversely on surrounding centres.

We strongly believe that the establishment of major full-line supermarkets within local centres is not consistent with local centre policy or with the above statement of intention for local centres. The proposed local centre policy will redefine and change the fundamental objectives of the local centres across Canberra and ultimately result in serious consequences.

We consider that local centres should service the local community without impacting adversely on surrounding centres. The size of a local supermarket needs to meet the local needs, appropriate size and scale. A full-line supermarket offering provided by the major retailers requires a greater catchment than just the local suburb for it to be viable.<sup>87</sup>

- 5.23 The Spokesperson for the Giralang Residents Action Group, Peter Nolan, indicated a different view of the retail hierarchy in this comment:

I am really opposed to the concept of an arbitrary floor space limit. I think it is a contrivance that will not assist anybody. If you are in a retail catchment area that does not have a significant drawing pool, the purpose of having an enormous supermarket is not there—the vendor who wants to put that in place is committing themself to something fairly stupid—whereas if you are in an area where your catchment is fairly significant and you are going to be able to draw on a reasonable retail amenity and you want to make that a little bit bigger to make it more commercially viable than putting a shoebox there, I do not see that there is any problem with doing that.

**THE CHAIR:** So you do not think we need to protect the local, group and town centre hierarchy? That is not an issue.<sup>88</sup>

**Mr Nolan:** I do not think that is the way it is playing out at the moment. I think that every one of those types of centres is actually trying to make itself bigger at the moment. They are all trying to increase their size.<sup>89</sup>

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<sup>87</sup> Mr Arthur Petsas, *Transcript of Evidence*, 18 April 2012, p. 19.

<sup>88</sup> Mr Peter Nolan, *Transcript of Evidence*, 18 April 2012, p. 58.

<sup>89</sup> Mr Peter Nolan, *Transcript of Evidence*, 18 April 2012, p. 58.

5.24 The Minister for the Environment and Sustainable Development Planning, Mr Corbell MLA, provided updated advice on how the Government was approaching the retail hierarchy under the SCP, and the changes affecting local centres, from centres with a range of grocery and food retail services to centres with, at most, a local supermarket:

Increasingly, that is not the case now in local centres across the territory. It is a function of increases in shopping hours, the deregulation of trading hours in particular, changes in shopping preference—people choosing to do all their shopping in a single location and therefore wanting a broader range of choice and price competition—and also changes in workforce participation, particularly amongst women over the past three to four decades, which has seen a reduction in the level of shopping, for example, that would occur during normal working hours as opposed to outside working hours. So all of this has driven changes in the viability and also the size and choice of retailing provided for at a local centre.

Coming to your more direct question then, in terms of whether the government has a view on the suitable size of a supermarket in a local centre, the government is currently reviewing the commercial zones policy in the territory plan. Consultation on that review has recently closed and the government is giving consideration to the issues raised during that consultation period.

Consideration is being given to whether there should be a specified limit on GFA in the territory plan as a result of the reviews of the commercial zones policy. Generally speaking, there was not an overriding planning control in terms of GFA for local centres when they were established. Instead, this was controlled through the lease purpose clause, if it was referred to at all, and that varied from centre to centre across the city as the city was developing.

I would make the general observation that, as planning minister, I am interested in seeing viable local centres and I am interested in seeing local centres that provide convenience for retail shopping to consumers. I want consumers, I want residents, to be able to access convenience retail shopping in their local neighbourhoods. It is particularly important in terms of the resilience of the city that people perhaps who are living in the suburban environment and who do not have the same mobility as others still have the ability to access convenience local shopping. So whatever formula we strike upon, it must be able to deliver

the maintenance of a viable retail convenience offer to residents in the suburban environment.<sup>90</sup>

5.25 In his discussions with the Committee, the Minister for Economic Development, Mr Barr MLA, advised that the retail hierarchy has a number of aspects:

It has its strengths and its weaknesses, as any planning system does. If you want to go to the first principles, you could have no planning regulations at all and not seek to have a hierarchy, or you could go for the strictest of controls or you could be somewhere in between, which I think is probably how we would categorise the circumstances we are in. The problem is, of course, whether a planning system can evolve fast enough to keep pace with what is clearly a dynamic retail environment. I assume you they may not have even discussed the context of online and how that is going to impact on the grocery market. The capacity to order and have stuff delivered to your home is certainly another factor that presumably over time will impact on business in the sector.

The retail hierarchy principles are fairly firmly established in Canberra's planning methodology. If you were starting from scratch with a blank canvas, would you design it again that way? That is an interesting debate. But it is what it is. There is certainly a worthwhile discussion to be had in relation to the future of local centres, but it is in many ways intrinsically linked to planning policy around those centres.

From most perspectives, Mr Hargreaves, people are fairly comfortable with what is occurring in town centres. But there is a highly contested debate around group centres and then the question of when does local stop being local and start scaling up beyond that. That undoubtedly is a highly contested space.<sup>91</sup>

5.26 The Committee's conclusions and recommendations regarding this issue are contained in Chapter 9.

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<sup>90</sup> Mr Simon Corbell MLA, *Transcript of Evidence*, 28 May 2012, p. 124.

<sup>91</sup> Mr Andrew Barr MLA, *Transcript of Evidence*, 19 April 2012, p. 98.

## 6 EFFECT OF THE POLICY ON FUTURE APPLICATIONS OF PLANNING AND COMPETITION POLICIES

- 6.1 The SCPIP sets out policies on the future application of both planning and competition issues regarding supermarkets. The SCPIP is reproduced in full at **Appendix C**.

### Supermarket Competition Policy and planning

- 6.2 Under the heading 'Land release methodology' in the SCPIP, the overall approach taken on implementation of land and planning issues is:

A decision on any specific site and operator, as well as a decision about the appropriate method of land release, will *inter alia*, involve weighing up the Factors and, in some cases, giving a greater weight to one Factor over another. Each decision by the Government will also need to take account of the market conditions of the time and the progress that is being made in achieving the objectives of the Supermarket Competition Policy.<sup>92</sup>

- 6.3 In relation to decisions taken under the SCP, the SCPIP states that:

When making decisions in relation to the Supermarket Competition Policy, the Government will take into account the fact that the *Planning and Development Act 2007* permits the grant of a lease by auction, tender, ballot or direct sale, as well as permitting restricting the people eligible for the grant of a lease by stating, in the notice of auction, tender, ballot or direct sale, that a class of people is eligible or ineligible for the grant of a lease under the auction, tender, ballot or direct sale. While the Government's strong preference is for land to be released by auction, the application of the Supermarket Competition Policy may on occasions involve one of the other methods of land release available to the Government. This may include releasing land by restricted auction or other

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<sup>92</sup> ACT Government, *ACT Supermarket Competition Policy Implementation Plan*, January 2010, p. 5.

process that identifies a particular class of operator as the Government's preferred supermarket operator.<sup>93</sup>

6.4 Where direct sales are involved under the SCPIP, the SCCC will provide advice to the Direct Sale Eligibility Assessment Panel (DSEAP) in the Department of Land and Property Services, which is an interdepartmental committee charged with:

- assessing the eligibility of applicants and their proposed use of the land;
- assessing from a whole-of-government perspective how a proposed direct sale will benefit the community and meet or contribute to the achievement of government policy objectives beyond what a competitive sales process would deliver;
- identifying alternate means to a direct sale where appropriate, e.g. an expression of interest; and
- making a recommendation to Government after considering these issues.<sup>94</sup>

6.5 In its submission, the ACT Government advised that the SCPIP was accompanied by elements of land planning reform:

Supermarket competition matters have also been considered within planning policy reforms currently underway. The ACT's statutory planning document, the Territory Plan, is currently undergoing a staged review. In May 2011, a public discussion paper with a focus on the objectives and structure of the Commercial zones, the Group Centres Development Code, and the Local Centres Development Code was released by the Environment and Sustainable Development Directorate. Among the other issues raised, it canvassed the public's views on policies relating to supermarkets, including the possible expansion of the CZ 1 Core areas of centres, the revision of supermarket size restrictions within centres' CZ 2 Business and CZ 3 Services zones, and a possible specified maximum size for supermarkets at local centres. Consultation closed in July 2011 and ESDD is in the process of considering possible policy changes.<sup>95</sup>

6.6 ESDD is addressing supermarket competition through its group centre master planning program. The Dickson master plans have both made provision for

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<sup>93</sup> ACT Government, *ACT Supermarket Competition Policy Implementation Plan*, January 2010, pp. 5-6.

<sup>94</sup> ACT Government, *ACT Supermarket Competition Policy Implementation Plan*, January 2010, p. 6.

<sup>95</sup> ACT Government, *Submission No. 1*, pp. 17-18.

further supermarket sites in those centres. The Committee notes that the Kambah Village master plan, which was recently announced, makes provision for the expansion for the existing Woolworths supermarket.<sup>96</sup>

6.7 The ACT Government submission also notes:

Further land releases potentially resulting from group centre master-planning processes, and planning policy changes arising from the review of the Territory Plan are also expected to improve competition and choice within the ACT retail grocery market in so far as they enable the emergence of new supermarkets in the redevelopment of centres. As of the present moment, and not insignificantly, the main external impact of the SCPIP has perhaps been to signal to the ACT community and the business sector the Government's willingness to take strategic action to ensure the better functioning of key markets, including to enhance choice and diversity for consumers.<sup>97</sup>

6.8 The operation of the SCP and its interaction with the ACT planning system was a focus for comment during the inquiry. Supabarn took the view that:

Supabarn is of the strong belief that the Supermarket Policy and the ACT planning system, because of its unique characteristics including the availability of direct sales, have the potential to mutually reinforce one another thus enhancing competition to the benefit of local consumers. Because of the need to maintain the hierarchy, and thus the limited number of locations for supermarket development(notwithstanding the creation of new catchments and centres through Greenfield development), direct sales are an essential tool to managing access to markets for specific operators that would otherwise be precluded. This has successfully been done with ALDI when they have received multiple direct sales. However the manner in which the policy has been interpreted and applied through the ACT planning system has led to a high degree of confusion and at times lack of transparency in decision making processes.

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The policy does not specify criteria for identifying which centres are to expand, or defined tests to be used when assessing the sale of land on the assessment of

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<sup>96</sup> ACTPLA, Kambah Master Plan, August 2012, p. 22., accessed 17 August 2012, [http://www.actpla.act.gov.au/data/assets/pdf\\_file/0004/30847/2012\\_Kambah\\_MP\\_-\\_WEB.pdf](http://www.actpla.act.gov.au/data/assets/pdf_file/0004/30847/2012_Kambah_MP_-_WEB.pdf).

<sup>97</sup> ACT Government, *Submission No. 1*, p. 18.

a development proposal. Whilst requiring the ACT Government to take account of a range of factors, the Policy and its Implementation Plan do not specify which (if any) of these factors have priority *over* one another, the thresholds that should be achieved, or a comparative approach to the benefits an alternative grocery provider could bring to the market. While some clarity is provided by the Policy Implementation Plan, this document itself is poorly structured, does not include specific measures, targets, or timeframes<sup>15</sup>, provides poorly worded definitions for large format/full line and convenience/local supermarkets, and importantly, does not recognise the retail hierarchy which is a key element of spatial planning system in the ACT.<sup>98</sup>

6.9 This view was supported by other independent operators, including IGA and the Argos Group.<sup>99</sup>

6.10 Coles' view was put this way:

While Coles is generally supportive of the existing ACT retail hierarchy, we have concerns with the micro-management of development within commercial centres which involves a number of commercial zones. These commercial zones impose excessive limits on growth and change within a centre. Once a centre is established there is no sound planning reason to limit the type of use within the commercial centre, for example to prescribe a supermarket within one area of a centre rather than another.<sup>100</sup>

6.11 Coles Supermarkets' recommendations regarding aspects of the future applications of planning policies under the SCP are dealt with in Chapter 9.

6.12 The Shopping Centre Council of Australia's submission considered the SCP and the Martin Report's conclusions flawed with regard to planning issues:

There is no justification for government intervention in the land release program to discriminate in favour of, or against, particular supermarket operators. The Martin Report has demonstrated that such intervention, to the extent that it discriminates against Coles and Woolworths, will lead to Canberrans paying higher prices for their groceries. Because such intervention is also likely to reduce the number of parties bidding for supermarket sites, this

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<sup>98</sup> Supabarn Supermarkets, *Submission No. 4*, pp. 7-8.

<sup>99</sup> See IGA *Submission No. 5* and Argos Group, *Submission No. 7*.

<sup>100</sup> Coles Supermarkets, *Submission No. 8*, p. 14.

is also likely to mean that Canberrans will receive less revenue from land releases.

Nor did the Martin Report provide justification for changes to Canberra's land use planning system. The doubling of supermarket floor space in the ACT in less than two decades has occurred under the existing planning system. There can therefore be no suggestion that Canberra's well-established centres hierarchy, and the operation of the Territory Plan, has prevented the growth of new supermarkets and this growth has obviously been to the benefit of consumers.<sup>101</sup>

6.13 The submission from Nikias Nominees noted:

The dramatic changes in shopping patterns and consumer preferences in recent decades, throughout Australia, including increased consumer mobility, de-regulated trading hours and the growth of new retail products, indicate that the present rigidity in the implementation of Canberra's retail hierarchy no longer provides the flexibility to meet community expectations of the 21<sup>st</sup> Century. There seems to be little point adhering to such a rigid hierarchy within parts of Canberra to which the provisions of the Territory Plan apply, when (by contrast) a seemingly endless opportunity for retail expansion is facilitated at Canberra's Airport (an area administrated solely by the Commonwealth), with no regard for a strategic and planned approach to the provision of commercial facilities and infrastructure across Canberra.<sup>102</sup>

and that

We support the intention to amend the Territory Plan to facilitate the expansion of supermarkets in local centres. Not only will this permit existing centres to compete with the expansion and growth of these centres but it will also allow older centres to remain relevant and keep up with demographic changes and changes in neighbourhood demands.

Old paradigms for what should constitute a local or group centre should be challenged and new ideas liberated. If existing local or group centres are not permitted the opportunities to expand and compete (to meet the demand of their surrounding communities) then the viability of those centres will ultimately be called into question.

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<sup>101</sup> Shopping Centre Council Australia, *Submission No. 14*, p. 1.

<sup>102</sup> Nikias Nominees, *Submission No. 16*, p. 6.

What Canberra needs is a flexible planning system both at the Territory Plan and National Plan level that is able to respond to community demand, provides supermarket choice and allows commercial centres to remain viable. This flexibility also needs to be demonstrated in the implementation of decisions regarding development, variations of existing leases and the granting of crown leases for new supermarkets and associated retail.<sup>103</sup>

- 6.14 The Committee raised a number of the comments made in submissions with the Minister for the Environment and Sustainable Development, Mr Simon Corbell MLA. The Minister told the Committee that, in relation to the future of planning requirements—including floor space issues and the treatment of ‘express’ type stores, such as those attached to petrol stations—under the SCP:

...the point I am making is that there is no formal planning control currently in our statutory planning document—the territory plan. The government is currently giving consideration to that matter.

**THE CHAIR:** But you could not give potential entrants any guidance as to what size the government is currently thinking of. You have talked about local convenience shopping. In your thinking about that, have you started to factor in the new express stores which turn up principally in service stations? Also, I believe, we now have dotted throughout Civic smaller express-type stores that do the very short-term convenience shopping. Where are those going in terms of the government’s thoughts?

**Mr Corbell:** Generally speaking, those express-type stores are taking advantage of existing statutory planning controls to permit their operation. That is a particular business model which the government does not dictate or require. It is a response by the market to what it believes is a viable business model to provide a level of convenience retailing. Whether or not that type of business model can be accommodated in local centres would depend on the planning controls in those local centres.

I note, for example, that some chains have chosen to utilise existing service station sites. That is a matter which is considered in accordance with the lease conditions for a site and the territory plan zoning for a site. But the government does not give particular regard to that type of business model. Our interest is

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<sup>103</sup> Nikias Nominees, *Submission No. 16*, p. 6.

more in what is the overriding statutory planning control that is appropriate to maintain viable local centres.<sup>104</sup>

- 6.15 The ACT Government submission notes that the basis of the SCP, on competition policy grounds, is that:

The ACT Government's supermarket competition policy attempts, through strategic interventions, to improve competition within the ACT grocery retailing and wholesaling markets and to, ultimately, ensure that consumers are able to choose between retailers providing a wide range of competitively-priced groceries. The policy proceeds from the considered assessment that taking evidence-based action will likely lead to better outcomes than a (do-nothing' approach would, given the current structure of the market and past planning and development decisions.<sup>105</sup>

## ACT Supermarket Competition Policy and competition principles

- 6.16 Supabarn noted in its submission that, in relation to competition issues:

Supabarn acknowledges that competitive forces should act to lower prices to the benefit of consumers. However this is dependent on the assumption that a perfect market exists; it is clear from recent ACCC actions and statements that an imperfect market exists. Within this context, regulation of land sales and land use is a justified means of addressing market inequities.

The ACT Government is in a unique position in terms of its ability to regulate land sale and land use. The ACT Government needs to make a clear decision as to whether they wish to assist new entrants to compete against the Coles and Woolworths duopoly, which supports the ACCC position.<sup>106</sup>

- 6.17 The major retail supermarket operators put forward a strong view on this matter. The Australian National Retailers' Association (ANRA) noted that the Productivity Commission (PC) had conducted a benchmarking review of the planning policies of state and territory governments. The PC review had

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<sup>104</sup> Mr Simon Corbell MLA, *Transcript of Evidence*, 28 May 2012, p. 125.

<sup>105</sup> ACT Government. *Submission No. 1*, p. 19.

<sup>106</sup> Supabarn Supermarkets, *Submission No. 4*, p. 14.

criticised the planning policies that were aimed at resolving competition concerns and found that such policies often acted to reduce overall competition. ANRA and other submitters noted this comment from the PC review as endorsing their opposition to the SCP:<sup>107</sup>

The ACT policy is an example of a government using a regulatory constraint to competition (that is, the barrier to local market entry) in an attempt to boost another aspect of competition (increased variety of businesses in the market place). There may be instances when the benefits of such regulatory action exceed the opportunity costs of the restriction to the community. However, given the explicit competitive advantage afforded to particular operators and the higher grocery prices that are expected to result in the local ACT markets involved, it is not clear that this particular policy will result in a net increase in competition in the ACT grocery market.<sup>108</sup>

6.18 In its submission, the SCCA submitted that:

Since August 2008 there has been increased scrutiny by the ACCC of supermarket acquisitions. It is therefore unnecessary for state or territory governments to be establishing their own supermarket competition policies. Such governments do not have the expertise or competence to make assessments of whether acquisitions will lead to a substantial lessening of competition. Such matters should be left to the competition regulator to decide. Subject to the relevant provisions of the *Competition and Consumer Act 2010*, it is important that the commercial market determines the type of supermarket tenants in shopping centres. Owners should not be directed by governments as to which tenants should be located in shopping centres and on what terms and conditions.<sup>109</sup>

6.19 The ACCC scrutiny referred to by the SCCA, and others, was the , *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries* (Grocery Report).<sup>110</sup>

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<sup>107</sup> Australian National Retailers Association, *Submission No. 15*, p. 7.

<sup>108</sup> Productivity Commission, *Performance benchmarking of Australian business regulation: Planning, Zoning and Development Assessment*, April 2011, p. 306.

<sup>109</sup> Shopping Centre Council Australia, *Submission No. 14*, p. 2.

<sup>110</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail process for standard groceries.*, July 2008., <http://www.accc.gov.au/content/index.phtml?itemId=838251>.

- 6.20 The Committee approached the ACCC regarding matters raised by this inquiry. The ACCC advised the Committee that this inquiry went 'beyond the remit of the ACCC and its principal responsibility of administering the *Competition and Consumer Act 2010*.<sup>111</sup>
- 6.21 The ACCC drew the Committee's attention to the its Grocery Report and noted that it recommended that governments should consider ways in which planning and zoning laws and decisions should have specific regard to the impact on competition between supermarkets in the area.
- 6.22 Professor Frank Zumbo, in his submission noted:
- Put simply, the absence of independent competitors enables the existing dominant players in the market to entrench their market dominance and allows those dominant players to act as cosy club where they are able to push up price; prevent the entry of new players; and/or reduce choices available to consumers. It is within this context that the ACT supermarket policy is a valuable and measured policy for promoting diversity and competition. The ACT supermarket policy is appropriately designed to encourage the entry of new independent competitors into the ACT supermarket sector.
- In the absence of the ACT supermarket policy ACT consumers would not only be at risk of higher prices across the supermarket range, but also reduced access to products as the major supermarket chains are increasingly tempted to delete branded product lines from their shelves as a way of trying to shift consumer demand to the increasing number of homebrand products offered by the chains.<sup>112</sup>
- 6.23 Professor Zumbo recommended that the ACT Government maintain the SCP to address market failures or potentially anti-competitive conduct in the ACT supermarket sector:
- The dominance or stranglehold of Coles and Woolworths in the ACT supermarket sector;
  - Creeping acquisitions of potential supermarket development sites by Coles and Woolworths so as to protect and increase their dominance of the ACT supermarket sector; and

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<sup>111</sup> *Correspondence*, letter to Committee from the Chief Executive Officer, ACCC, 3 May 2012.

<sup>112</sup> Prof. Frank Zumbo, *Submission No. 25*, p. 3.

- The offering of artificially inflated financial premiums by Coles and Woolworths to acquire potential supermarket development sites so as to prevent each other or independent competitors from acquiring the sites.<sup>113</sup>

6.24 The Committee's conclusions and recommendations regarding this issue are contained in Chapter 9.

## Market share and floor space calculations

6.25 The Committee noted that there appeared to be some confusion among stakeholders regarding the methods by which the floor space of individual supermarkets and the market share of supermarket operators are calculated.

6.26 With regard to the calculation of total floor space—that is, the GFA—of individual supermarket sites, the Committee discussed with ACTPLA the specific case of the proposed redevelopment at Giralang shopping centre. The Deputy Director-General of Planning Policy explained that, although the proposed development at Giralang included a significant undercover area to be used for car parking as well as a shared loading dock area, these areas are not included in the GFA of the supermarket when considering the impact of the development on retailing in the area as they will not be used for retailing:

The proponent decided that it would provide additional car parking over and above the code. So that is gross floor area, but I do not believe that that is gross floor area for the purposes of considering impact on other retail areas, because it is not being utilised for retail. It is simply a car park.

The actual box itself, which is in the order of 1,500 square metres, is quite clearly GFA for the purposes of retail. There was a common loading dock. If that loading dock was only for the supermarket, I would be saying that that should be included for the purposes of assessment. In the case of Giralang, as I recall, it was shared with a number of other tenancies. Therefore, it was not considered specifically for the supermarket.<sup>114</sup>

6.27 The Committee received submissions from other supermarket operators who argued that the calculation of GFA was open to manipulation and was being

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<sup>113</sup> Prof. Frank Zumbo, *Submission No. 25*, p. 3.

<sup>114</sup> Mr Ben Ponton, *Transcript of evidence*, 28 May 2012, pp. 132-133.

used as a means to gain approval for supermarkets with larger GFAs than had previously been allowed in local centres:

Of late, the chains are currently successful in having full line supermarkets approved in local shopping centres (Giralang and Bonner, for example) by cleverly manipulating the definition of GFA, for example, 1,500m<sup>2</sup> plus ancillary use areas. This results in a supermarket approval which is much greater than 1,500m<sup>2</sup> and is really a full line supermarket disguised as a small local supermarket.<sup>115</sup>

6.28 The Committee notes the following recommendation of Supabarn Supermarkets with regard to clarifying the calculation of GFA of supermarkets:

The maximum Gross Floor Area (GFA) for any supermarket is 1,000 sqm gross floor area. For the purpose of assessing GFA, the definition in the Territory Plan should be applied and for the avoidance of doubt, this is to include any associated loading docks and storage areas, whether shared or not, and any commercial or other shop premises within the same building or centre associated with or related to the supermarket or the operator of the supermarket (for example, offices, bakeries or liquor stores).<sup>116</sup>

6.29 The calculation of the market share held by the major supermarket operators in the ACT is also a matter of confusion. The ACCC's 2008 inquiry into retail grocery prices examined various sources of data on market shares in the retail grocery market and concluded:

Based on the information available to it, the ACCC's view is that the MSCs [major supermarket chains] account for between 55 per cent and 60 per cent of consumer expenditure on grocery items. Woolworths accounts for at least 30 per cent and Coles around 25 per cent. Although each of these shares of retail grocery sales are large for a single company, to say that the MSCs enjoy an 80 per cent share of grocery sales exaggerates the position of the retailers.<sup>117</sup>

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<sup>115</sup> Kaleen IGA Supermarket, *Submission No. 20*, p. 2.

<sup>116</sup> Supabarn Supermarkets, *Submission No. 4*, p. 15.

<sup>117</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, July 2008, p. 48.

6.30 The ACCC inquiry also found:

Coles and Woolworths are seen as dominating the grocery sector. Nevertheless, there is a need for some caution when looking at figures used to describe market concentration because a variety of statistics are used. Also, it is clear from the analysis by the ACCC that there are local markets as well as wider regional and national markets.

Statistics analysed by the ACCC suggest that Coles and Woolworths account for approximately 70 per cent of packaged grocery sales in Australia and approximately 50 per cent of fresh product sales, such as meat, fruit and vegetables.

Coles and Woolworths have maintained a fairly consistent share of supermarkets above 1000 m<sup>2</sup> over the last 10 years, with each having just over 30 per cent of stores nationally. Coles and Woolworths are much more significant in relation to larger stores, accounting for around 87 per cent of all supermarkets above 2000 m<sup>2</sup>.<sup>118</sup>

6.31 The Committee noted that some sources put the combined market share of the two major supermarket chains at between 80 and 90 per cent, whereas other sources estimate their combined market share to be between 60 and 65 per cent.<sup>119</sup> The Committee attempted to clarify these discrepancies in its discussions with representatives of Coles Supermarkets:

**Mr Mara:** Can I just make a point. Often when “groceries” is defined, it could be just dried groceries, like scanned data. So they are just counting boxes that are sold through the scanner at the checkout. There are a whole range of people who do not actually use scanners or have that kind of system or do not report it through to Nielsen or whoever actually does the calculations. That is a very narrow share of the food market. The ACCC and the ABS use a broader one, which includes not only that data but also fresh food and whoever else sells food, for example, fast food, which is a share of stomach, if you like.

**THE CHAIR:** So you include ready-to-eat and not just groceries?

**Mr Mara:** We are including that here particularly but, in terms of what the ACCC and the ABS count, their market assessment is that Coles and Woolies

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<sup>118</sup> Australian Competition and Consumer Commission, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, July 2008, p. xv.

<sup>119</sup> Supabarn Supermarkets, Submission No. 4, p. 3; Mr Russell Goss, *Transcript of evidence*, 18 April 2012, p. 2; Mr Chris Mills, *Transcript of evidence*, 18 April 2012, p. 36.

have about 55 to 60 per cent of the market. That is their official, if you like, calculation based on that market. There are 30,000 specialty food retailers in Australia, whether they are butchers, bakers, fruit and vegetable shops, those kinds of things. They all compete outside our front door. But often the narrow definition is used and, essentially, that is a dry grocery market and excludes all those players.<sup>120</sup>

- 6.32 The Committee also discussed the calculation of market share figures with representatives of the Economic Development Directorate, who explained that the higher market share figures are arrived at by only considering full line supermarkets, whereas the lower market share figures are arrived at by considering the total turnover of all grocery retailers.<sup>121</sup>
- 6.33 Given the importance of market share figures in justifying the Government's SCP, and the highly variable results that can be obtained by calculating these figures using different methodologies, the Committee believes the Government should make public which figures it is relying on to make decisions relating to supermarket competition policy, why it is has chosen to use those figures; and the definitions used to include or exclude different types of retailers from the calculations.

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<sup>120</sup> *Transcript of evidence*, 18 April 2012, p. 37.

<sup>121</sup> *Transcript of evidence*, 19 April 2012, pp. 94-97.



## 7 GIRALANG DECISION

7.1 The Committee notes that on 6 July 2012, Justice Burns of the ACT Supreme Court handed down a judgement in matter of *Argos Pty Ltd and others v Simon Corbell, Minister for the Environment and Sustainable Development and others*. The judgement outlines the background to this case as follows:

1. Nikias Nominees Pty Ltd (Nikias), the third defendant, owns Block 4 Section 79 Giralang. In 2007 Nikias made an application for the direct sale of Block 5 Section 79 Giralang, which is contiguous with Block 4. I understand that it is proposed under a draft Crown Lease that Block 5 will be consolidated with Block 4.
2. In recent years Nikias has made a number of development applications to develop the land at Blocks 4 and 5 Section 74 Giralang (the Giralang Local Centre). The first application was for a residential/commercial development including three commercial units with a total area of 350 square metres and thirteen residential units. This application was made on 6 March 2008 and refused by the Australian Capital Territory Planning and Land Authority (ACTPLA), the fourth defendant, on 6 September 2008. The second development application was made on 17 March 2009 and involved an application for consolidation of Blocks 4 and 5, and variation of the Crown Lease to permit a commercial development including a supermarket and specialty stores. This application was refused by ACTPLA on 3 September 2009. Nikias applied to the ACT Civil and Administrative Tribunal (ACAT) for review of the decision but discontinued the proceedings before the matter was heard. The third development application was made on 1 March 2010 and also proposed the consolidation of Blocks 4 and 5, and a variation of the Crown Lease to permit a commercial development including a supermarket and specialty stores. The application was subsequently amended, and the amended application was approved by ACTPLA on 5 October 2010. This approval was challenged in the ACAT by several persons, including the plaintiffs in these proceedings. At the request of the parties, ACAT made consent orders that ACTPLA's approval be set aside and substituted with a decision that the application was refused.

3. The fourth development (the proposed development) application was made on 27 April 2011 and also proposes the consolidation of Blocks 4 and 5, and a variation of the Crown Lease to permit a commercial development including a supermarket and specialty stores. This application was approved by the Minister for the Environment and Sustainable Development, Simon Corbell (the Minister) on 17 August 2011. It is this approval that is challenged in these proceedings.<sup>122</sup>

7.2 The parties to the case and the grounds of the appeal are outlined in the judgement as follows:

4. The first plaintiff, Argos Nominees Pty Ltd (Argos) holds the Crown Lease of the land where the Kaleen local centre is located, but does not operate the Kaleen IGA supermarket in that local centre. The sub-lease for the IGA Supermarket is held by Cavo Pty Ltd (Cavo), the second plaintiff. The third plaintiff, Koumvari Pty Ltd as trustee for the Vizadis Family Trust trading as IGA Evatt Supermarket, holds a sub-lease of the Crown Lease for the site of the IGA Supermarket at the Evatt local centre. The fourth plaintiff, the Combined Residents Association Inc (the Association) is an incorporated association formed on 18 May 2011.
5. In these proceedings the plaintiffs challenge the Minister's decision to approve the fourth development application on the following grounds:
  1. the Minister did not have jurisdiction to approve the development proposal because it was not consistent with the relevant code, contrary to s 119 (1) (a) of the Planning and Development Act 2007 (ACT).
  2. the decision to approve the development proposal was not authorised under the enactment under which it was purported to be made, the Planning and Development Act 2007 (ACT);
  3. the decision to approve the development proposal was an improper exercise of the power given by the Planning and Development Act because the Minister failed to take into account relevant considerations or, in the alternative, the making of the decision was an exercise of power so

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<sup>122</sup> *Argos Pty Ltd & Ors v Simon Corbell, Minister for the Environment and Sustainable Development & Ors* [2012] ACTSC 102 (6 July 2012).

unreasonable that no reasonable person could have so exercised the power;

4. in making the decision the Minister breached the rules of natural justice, and
  5. the making of the decision by the Minister involved an error of law.
6. The Australian Capital Territory Planning and Land Authority and the Australian Capital Territory Executive, the fourth and fifth defendants respectively, entered submitting appearances. The Minister appears opposing the orders sought by the plaintiffs on limited grounds. The second and third defendants also appear to oppose the orders sought. The defendants raise a preliminary issue concerning the standing of the plaintiffs to bring the present proceedings, which may conveniently be dealt with separately to the substantive issues raised by the plaintiffs. It is, however, necessary at the outset to consider the legislation relevant to these proceedings.<sup>123</sup>

7.3 In his judgement, Justice Burns discussed each of the five grounds outlined above and reached the following conclusion:

86. As the plaintiffs lack standing the application for review of the Minister's decision must be refused.<sup>124</sup>

7.4 The Committee has no further comment to make on the decision at this time.

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<sup>123</sup> *Argos Pty Ltd & Ors v Simon Corbell, Minister for the Environment and Sustainable Development & Ors* [2012] ACTSC 102 (6 July 2012).

<sup>124</sup> *Argos Pty Ltd & Ors v Simon Corbell, Minister for the Environment and Sustainable Development & Ors* [2012] ACTSC 102 (6 July 2012).



## 8 COMMITTEE CONCLUSIONS AND RECOMMENDATIONS

### Introduction

- 8.1 The Committee examined the ACT Supermarket Competition Policy (SCP) and the Supermarket Competition Implementation Plan (SCPIP) and the effect that the SCP has had to date on ACT supermarket sector competition.
- 8.2 The Committee focussed on the processes and outcomes of the SCP to date, and the working of the SCPIP in order to assess what developments and changes to the ACT supermarket sector have occurred since the introduction of the SCP and SCPIP in 2009.
- 8.3 This inquiry process was followed to ensure that submissions and evidence received during the inquiry, together with other commentary on the SCP, covered the current state of the ACT supermarket sector.

### Supermarket Competition Policy Implementation Plan (SCPIP)

- 8.4 In Chapter 2 of this report, the Committee provided details of the SCPIP, its role, structure and program. The SCPIP implements the SCP and was developed on the recommendations made in the Martin Report.<sup>125</sup>
- 8.5 The SCPIP operates under an arrangement whereby the SCPIP is used to implement the SCP under the general supervision and accountability to the Supermarket Competition Coordinating Committee (SCCC), an inter-departmental (now, inter-directorate) committee of officials from key directorates. As well as advising the Minister for Economic Development and Cabinet on supermarket-related matters, the SCCC also advises other relevant

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<sup>125</sup> The Plan is reproduced in full as **Appendix C** to this report.

administrative committees such as the Direct Sale Eligibility Assessment Panel (the DSEA Panel) on matters related to direct sales of supermarket sites.

8.6 The SCCC was to receive specialist advice from the SCP Review author, the late John Martin.<sup>126</sup>

8.7 Significantly, the SCPIP notes that the SCCC is to monitor implementation of the SCP, consult with industry stakeholders and report to the Government annually on progress in implementing further supermarket sector competition in the ACT.

8.8 The Committee considers that a number of important issues of transparency and accountability affecting the SCPIP and the SCP arise from this arrangement.

8.9 The ACT Government noted in its submission, under its heading, 'Impacts of the SCPIP':

It is difficult to assess thus far the impacts of the administrative, land release processes, and planning reform processes initiated since the introduction of the SCPIP. However, within Government it can be said there is now stronger awareness and understanding of supermarket sector issues and dynamics, and greater institutional capacity to address issues associated with the sector in the future.

Beyond the Government, as the land sales announced in May 2010 are completed, and new supermarkets are constructed and opened, it is expected that tangible benefits to consumers will become observable. The SCCC expects that it will be in better position to evaluate the possible price and other effects of the current SCPIP at this time. Further land releases potentially resulting from group centre master-planning processes, and planning policy changes arising from the review of the Territory Plan are also expected to improve competition and choice within the ACT retail grocery market in so far as they enable the emergence of new supermarkets in the redevelopment of centres. As of the present moment, and not insignificantly, the main external impact of the SCPIP has perhaps been to signal to the ACT community and the business sector the Government's willingness to take strategic action to ensure the better

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<sup>126</sup> SCPIP, p. 2.

functioning of key markets, including enhancing choice and diversity for consumers.

- 8.10 In this context, the Committee particularly observes that there is no public information made available by the Economic Development Directorate of either the activities of, or advice provided by, the SCCC to the Minister for Economic Development on the SCPIP.

### **Committee Conclusions**

- 8.11 The Committee considers this is a major gap in the process of accountability for the current SCP. There is no accessible public information available on either the SCPIP or on the implementation of the specific recommendations made by the Martin Review.
- 8.12 Submissions and evidence to the Committee emphasised there are examples of decisions regarding supermarket sitting and approval that were opaque to the extent that individual decisions required analysis of the decision-making process after announcement to ascertain the actual intention of the policy in individual decisions.<sup>127</sup>
- 8.13 The Committee is convinced that proper accountability for the SCP requires a desirable level of knowledge and understanding of the SCPIP and the SCCC. Only through a greater level of knowledge will the implementation of a complex and economically important policy such as the SCP be confidently assessed and judged.
- 8.14 The Committee makes a number of recommendations in this regard.

### **RECOMMENDATION 1**

- 8.15 **The Committee recommends that the Minister for Economic Development report on all matters acted on and currently progressing in the carrying out of the Supermarket Competition Policy Implementation Plan and that report be part of future annual reports of the Economic Development Directorate.**

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<sup>127</sup> See, eg, Nikias Nominees, *Submission No. 16*, pp. 5-6.

## **RECOMMENDATION 2**

- 8.16 **The Committee recommends that the reports of the Supermarket Competition Coordination Committee, particularly the annual report required by the Supermarket Competition Policy Implementation Plan, be included in future annual reports by the Minister for Economic Development and the Economic Development Directorate.**

## **RECOMMENDATION 3**

- 8.17 **The Committee recommends that the Minister for Economic Development report to the Legislative Assembly as soon as possible on the implementation of, and response to, the recommendations of the Martin Review of the ACT Supermarket Competition Policy.**

## **RECOMMENDATION 4**

- 8.18 **The Committee recommends that the Minister for Environment and Sustainable Development, as the minister responsible for planning issues, report on all matters referred to him as part of the Supermarket Competition Policy Implementation Plan by the Direct Sale Eligibility Assessment Panel and that this report be part of the annual report from the Environment and Sustainable Development Directorate.**

## **Current and future status of the Supermarket Competition Policy (SCP)**

- 8.19 **The Committee's report details the history of the current SCP in Chapter 2, and examines the effect of the policy on a number of issues which are relevant to the Policy's implementation and effect.**
- 8.20 **A central question raised in several submissions, and which was dealt with in some detail at the Committee's hearings, was whether the SCP should remain, or whether it should be revoked, and whether all competition issues raised by the supermarket sector should be left to the Australian Competition and Consumer Commission (ACCC).**

## Committee Conclusion

- 8.21 The Committee, on balance, and considering the special nature of the supermarket sector in Australia and in the ACT, considers that there is an expectation that a supermarket competition policy be in place in the ACT, particularly given a number of aspects of the three-tier hierarchy of shopping centre arrangements which prevails as part of the ACT planning system. The Committee does not consider that a change as fundamental as the revocation or significant weakening of the SCP is justified at this time.
- 8.22 However, given the Martin Review process was used to establish and define the current SCP, the Committee suggests, subject to the reporting requirements in Recommendations 1 to 4 that a review of the SCP be made in the future.
- 8.23 As the current SCP has been in place for some three years, the Committee considers that an appropriate time point to review the SCP and its results for the ACT consumer and the supermarket sector is after the SCP has been in operation for four years.

## RECOMMENDATION 5

- 8.24 **The Committee recommends that the ACT Supermarket Competition Policy which has been in place and in course of implementation since October 2009 be the subject of a review similar in focus to the 2009 review by Mr John Martin, that this review be conducted at the end of 2013, that the review proceed in a similar manner to the Martin review process and that the review findings and recommendations be tabled in the Legislative Assembly by June 2014.**

## Other issues examined in the Report

### Planning

- 8.25 In the course of this inquiry, the Committee was required to consider detailed terms of reference on how elements of the SCP might be improved or clarified, and in particular how relevant ACT planning policies might be adjusted

- 8.26 These matters focussed on a number of planning provisions which relate to supermarket and associated retail provision, in particular the following three factors:
- The current three-tier retail hierarchy and development codes;
  - The definition of supermarket activities in the SCPIP and the Territory plan;
  - Supermarket floor space limitations for the three-tiers of shopping centres.
- 8.27 The Committee details in Chapter 6 how the current retail hierarchy developed in the ACT, how it is affected by the SCP and how changes consequent on the SCP, such as the process currently underway in developing Group Centres, have affected supermarket development.
- 8.28 The Committee has considered submissions and evidence which indicate that, while the three-tier hierarchy has been applied in the ACT for some 50 years, application and relevance of the hierarchy has become blurred by 21<sup>st</sup> century demographic, consumer behaviour and demand factors. Some submissions to the Committee have expressed the view that the growth in size of supermarkets in some local centres runs the risk of destroying the established retail hierarchy.<sup>128</sup>
- 8.29 The Committee's discussion in Chapter 6 highlights the views of a number of supermarket operators and centre owners representing all levels of centre: town, group and local.
- 8.30 The Committee notes the conclusion of the ACT Supreme court in the case relating to the call in of the decision on the Giralang Supermarket.<sup>129</sup> In it Justice Burns states:
- I accept the second and third defendants' submission that the National Capital Plan does not mandate a "retail hierarchy".
- 8.31 The Committee also notes that the territory plan does not state a maximum size for supermarkets in local centres or the current CZ1 core zones at town or group centre level.

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<sup>128</sup> Canberra Independent Operators (IGA), *Submission 5*, p.12.; Argos Pty Ltd., *Submission 7*, p 5.

<sup>129</sup> <http://www.courts.act.gov.au/supreme/judgment/view/4762/title/argos-pty-ltd-and-ors>.

### Committee conclusion

- 8.32 The Committee agrees with the view that the SCPIP and the Territory Plan need to include clearer recognition of the retail hierarchy and to ensure that ACTPLA, the SCCC and the DSEA Panel have a clear set of criteria to apply in dealing with implementation decisions.

### RECOMMENDATION 6

- 8.33 **The Committee recommends that the retail hierarchy be incorporated in the Supermarket Competition Policy Implementation Plan.**

## Supermarket floor space limits for different tier centres

- 8.34 As the discussion in Chapter 6 indicates, the issue of floor space supply at different levels of the retail hierarchy is a difficult and controversial issue. The basis for measuring floor space is the Gross Floor Area (GFA) of a building or part of a building which constitutes distinct business premises.
- 8.35 The Committee took a considerable amount of evidence from operators suggesting the Martin Review recommendations on floor space limitation for supermarkets at various levels of the retail hierarchy exceeded limits discussed with Mr Martin during his review. So, for example, the Committee was told one operator's understanding was that Mr Martin accepted that a suitable maximum GFA for local centres was 1000 square metres.<sup>130</sup>
- 8.36 Submissions also made specific suggestions for maximum GFA by centre type which asserted that premises with floor space above appropriate maximum GFA would exceed business and competitive requirements.<sup>131</sup>
- 8.37 These submissions recommended<sup>132</sup> a mandatory level of floor space as follows:

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<sup>130</sup> Mr J Koundouris, *Transcript of evidence*, 19 April 2012, p. 72.; Mr Chris Haredimos, *Transcript of evidence*, 19 April 2012, p. 82.

<sup>131</sup> Independent Operators, *Submission 5*, p. 14.

<sup>132</sup> See, Supabarn Supermarkets, *Submission 4*, p. 15.; Independent Operators, *Submission 5*, p. 14.

- local centres – maximum 1000 square metres GFA
- group centres – maximum 1500 square metre GFA
- town centres – no maximum GFA

8.38 The Committee has given this matter consideration and concludes the maximum floor space levels in the Martin Review should be reviewed with a view to applying maximum GFA to local centres.

8.39 Submissions also commented on the effect of changes in GFA of centres – after the centres and nearby centres, were built. This potentially could lead to changes in the retail hierarchy by default and lead to issues with respect to the viability of other local centres if a supermarket at one centre has increased GFA. In the absence of growth in retail demand, an increase in one centre will lead to a decrease in revenue and threaten viability in other centres.

8.40 The Committee acknowledge that different limits are required to reflect historic developments. This flows from the existing lower GFA profile in existing local centres, particularly in ‘old’ Canberra suburbs resulted from 1950s and 1960s business, planning and development decisions.

#### RECOMMENDATION 7

8.41 **The Committee recommends that the Territory Plan be revised to specify Gross Floor Area limits for supermarkets in local centres.**

#### RECOMMENDATION 8

8.42 **The Committee recommends that the supermarket Gross Floor Area limit for each local centre should be individually specified, given the differing size of local centres as they were originally developed.**

#### RECOMMENDATION 9

8.43 **The Committee recommends that the supermarket Gross Floor Area limit prescribed for a local centre take into account the distance between the local centre and the nearest group centre.**

## Definition of Gross Floor Area

- 8.44 A further matter relating to GFA, which is the cause of discussion and challenge, is the definition of GFA. There are contradictory views on exactly what area of a building is to be included in GFA, including questions as to whether such space as storage and liquor store areas should be incorporated in GFA for the purposes of determining supermarket size.
- 8.45 Evidence to the Committee particularly stressed the differing views on what could or should constitute GFA.<sup>133</sup> The Committee considers that GFA should be calculated according to the whole area of the business accessible by the consumer and not include areas such as loading docks, administrative areas and food preparation, packing and storage areas.

### RECOMMENDATION 10

- 8.46 **The Committee recommends that the current provisions of the Territory Plan and Local Centre Development Code be reviewed to determine an exact definition of Gross Floor Area as currently applied to both supermarkets and other grocery and convenience stores in the ACT.**

### RECOMMENDATION 11

- 8.47 **The Committee recommends that supermarket Gross Floor Area be calculated according to the whole area of a business accessible by the consumer but not include areas inaccessible by consumers such as loading docks, administrative areas and food preparation, packing and storage areas.**
- 8.48 A more recent development in grocery and convenience stores – the small ‘X-Press’ type stores such as the Coles Express, Woolworths stores, IGA Xpress and 7-Eleven stores on petrol station premises, have raised with the Committee the question of how such stores, which are growing in number and location, should be treated.

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<sup>133</sup> Supabarn Supermarkets, *Submission 4*, p. 14.

- 8.49 Whilst the Committee was told that the development of such stores is subject to Development Application consideration, the Committee considers that the SCC considers them when revising the SCPIP.

## Small business impact

- 8.50 In Chapter 5, the Committee notes the Council of Small Business of Australia (COSBOA) recommends that a small business impact statement is developed when any new significant retail or office development occurs in a town or community.
- 8.51 The Committee agrees with this recommendation from COSBOA and endorses such an approach for inclusion in the ACT SCPIP and the Territory Plan.
- 8.52 The Committee believes that such statement should be paid for by the proponent of a development proposal, be independently commissioned by ACTPLA, and be open to public comment.

## RECOMMENDATION 12

- 8.53 **The Committee recommends that a small business impact statement is undertaken for similar businesses in a geographic area affected by a supermarket proposal under the ACT Supermarket Competition Policy Implementation Plan and the Territory Plan when assessing new supermarket proposals.**

## RECOMMENDATION 13

- 8.54 **The Committee recommends that the small business impact statement referred to in Recommendation 12 should be paid for by the proponent of a proposal, be independently commissioned by ACTPLA, and be open to public comment.**

## Competition Issues

- 8.55 In Chapter 7, the Committee canvassed the issues raised by the inquiry in relation to competition policy issues, as they are administered in the ACT. The Committee noted in Chapter 7 that the ACCC had advised the Committee that

its terms of reference exceeded the remit of the ACCC and its responsibilities under the Competition and Consumer Act 2010.

- 8.56 The Committee also notes in Chapter 7 that a review by The Master Grocers' Association of Australia (MGA) '*Let's Have Fair Competition*'<sup>134</sup> which was published while the Committee was preparing its report, highlights a range of deleterious effects for smaller and independent operators that can occur when major supermarkets develop their stores in direct competition with existing businesses.
- 8.57 The Report from the MGA has analysed in considerable detail, and with reference to a large range of case studies, matters addressed by the Committee's inquiry. The Committee particularly notes that the MGA raised questions concerning the ability and the willingness of the ACCC to become involved in cases of possibly anti-competitive strategies used by the major supermarkets.
- 8.58 The Commonwealth government, through the ACCC has responsibility for the enforcement of Australian competition policy. The Committee noted that currently the main tools the ACT government have with respect to supermarket competition are planning and direct sales. Planning provisions – and in the case of the ACT Territory Plan – do not take into account ownership issues. Direct sales can, but these are only relevant in some instances.
- 8.59 The Committee considers that issues raised in Chapter 7, and particularly in submissions recommending that the ACCC become involved in the high market share of the major supermarkets should be addressed. The Committee considers that the ACT Government should request that the Commonwealth Government and the ACCC act on this issue.
- 8.60 The Committee considers that it would be appropriate for the ACT Government to approach the Commonwealth Government and the Australian Competition and Consumer Commission and advise them of the level of market dominance achieved in the ACT by the two major supermarket groups.

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<sup>134</sup> Master Grocers' Association of Australia, *Let's Have Fair Competition*, August 2012, [http://www.mga.asn.au/files/5313/4482/4428/Fair\\_Competition\\_Release\\_Aug2012.pdf](http://www.mga.asn.au/files/5313/4482/4428/Fair_Competition_Release_Aug2012.pdf).

## RECOMMENDATION 14

- 8.61 **The Committee recommends that the ACT Government should request that the Australian Competition and Consumer Commission consider acting to limit the market share held in the ACT by the major supermarket operators and act similarly to limit the market share held by the major supermarket operators in the ACT retail petrol market.**
- 8.62 The Committee notes further that the SCP Supermarket Competition Factors (in Appendix G to this report) includes a 'key market-related issue' is recognition of a potential entrant to expand into, or participate in, new wholesaling arrangements in the ACT.<sup>135</sup>

## RECOMMENDATION 15

- 8.63 **The Committee recommends that the ACT Government provide an update on the situation for the introduction of an additional wholesaler in the ACT.**

## Shopping centres, social justice, social support and community access

- 8.64 In the course of this inquiry, the issue raised in evidence and discussion centred on the importance of access to a shopping centre and the services provided by centres. This focus was predominantly on the role and significance of a local centre, although the discussion equally applies to ease of access to group centres, being large and more comprehensive.
- 8.65 Accordingly, planning and development of Canberra, as noted in the ACT Government submission, now provides for the following factors to be taken into account in assessing applications for new or redeveloped centre sites;
- The commercial and community characteristics of a particular centre
  - The price and non-price nature of a proposed supermarket operator including source and quality of fresh produce and the levels of customer service

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<sup>135</sup> See SCPIP, p. 4.; *Fig 1: Supermarket Competition Factors*, '3. Competitive dynamics'.

- Amenity issues including impact on surrounding development and infrastructure such as road access.<sup>136</sup>

8.66 The Committee endorses these values as being more 'community-centred' than the purely market and other market related factors spelled out in the SCP and the criteria guiding the SCPIP.

#### RECOMMENDATION 16

8.67 **The Committee recommends that the ACT Supermarket Competition Policy Implementation Plan be amended to include ease of access to supermarkets by people with mobility issues as a consideration in assessing new development applications for supermarkets and that this amendment be reflected in the Territory Plan.**

#### RECOMMENDATION 17

8.68 **The Committee recommends that one objective of the ACT Supermarket Competition Policy be the preservation of viable local shopping centres, and this objective be reflected in the Territory Plan.**

#### RECOMMENDATION 18

8.69 **The Committee recommends a study is made by the appropriate part of the Environment and Sustainable Development Directorate of future transport needs of the ACT and urban settlement patterns, and that the results of such studies be taken into account in ACT supermarket development policy.**

Ms Caroline Le Couteur MLA  
Chair  
August 2012

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<sup>136</sup> ACT Government, Submission No. 1, p. 15.



## 9 ADDITIONAL COMMENTS

### MS CAROLINE LE COUTEUR MLA

I would like to make 2 points which have not appeared in the main report.

1. **Measurement of GFA.** The consistent measurement of GFA is important for the effective and equitable regulation of size of supermarkets and the associated shopping centre. I think that we should be developing measurements at the centre level, not the building level. We have recently seen examples where the liquor store has been moved out of the supermarket building to an adjacent building. To the public, I believe that this equates to an increase in size of supermarket retailing but because they are in different buildings, it does not seem so to our current GFA definitions. Equally I think that where there are two companies operating side by side which are both part of the same group, for the purpose of measuring GFA both should be considered.
2. **Shopping centres are a vital part of our community infrastructure.** Our other community infrastructure such as schools, other shops, clubs, churches, playing fields, non-hospital medical facilities etc are normally grouped around and in the shopping centre. Supermarkets are, under our current methods of retailing, a significant part of most viable shopping centres. I think that the committee report did not pay enough attention to the social and cultural roles played by shopping centres. I think that preservation of an adequate number and geographic spread of shopping centres should be one of the goals of supermarket competition policy and the territory plan.



## 10 ADDITIONAL COMMENT

### MR ZED SESELJA MLA

I wish to make an additional recommendation.

#### **Additional recommendation**

That the Committee recommends that supermarkets in local centres be restricted to a maximum GFA of 1,000sqm

#### **Additional Finding**

The ACT Government should be condemned for its handling of the process leading up to the re-development of Giralang Shops. This process was so poorly handled by the Government that the former Chief Planner complained of political interference compromising the development assessment process. This political interference undermines public confidence in the planning process and should not be repeated. The Government's treatment of the former Chief Planner Mr Savery, a well respected public servant, was disgraceful and should be condemned. Mr Savery deserves an apology for the manner in which he was treated in this matter.



## APPENDIX A: Submissions

No. 1	ACT Government
No. 2	Mr Bill Burmester
No. 3	Kippax Fair Shopping Centre
No. 4	Supabarn Supermarkets
No. 5	Canberra Independent Operators (IGA)
No. 6	Council of Small Business of Australia
No. 7	Argos
No. 8	Coles Supermarket
No. 9	Combined Residents Action Association
No. 10	Mr Greg Hutchison
No. 11	Westfield (CBRE)
No. 12	Spier Consulting
No. 13	Tuggeranong Hyperdome
No. 14	Shopping Centre Council of Australia
No. 15	Australian National Retailers Association
No. 16	Nikias Nominees
No. 17	Tzanetos Family Group
No. 18	Master Grocers Australia
No. 19	Koundouris Group

No. 20	Kaleen IGA Supermarket
No. 21	Mr Kevin Cox
No. 22	Gungahlin Community Council
No. 23	Koundouris Group (supplementary submission)
No. 24	Metcash Limited
No. 25	Associate Professor Frank Zumbo
No. 26	Kaleen IGA Supermarket
No. 27	Combined Residents' Action Association

## APPENDIX B: Witnesses

### Public hearing—18 April 2012

- Mr Russell Goss, Policy Manager, Australian National Retailers Association
- Mr Brian Haratsis, Chief Economist, MacroPlan Dimasi
- Mr Ken Henrick, Policy Manager, Master Grocers Australia
- Mr Wayne Holborow, Design and Development Manager, Leda Holdings Pty
- Mr Chris Mara, Government and Regulatory Affairs Manager, Coles
- Mr Chris Mills, National Property Manager, Coles
- Mr Wayne Moodie, Regional Manager, NSW/ACT, Colonial First State Global Asset Management
- Mr Peter Nolan, Spokesperson, Giralang Residents Action Group
- Ms Margy Osmond, Chief Executive, Australian National Retailers Association
- Mr Arthur Petsas, Director, Argos Pty Ltd
- Mr Chris Wheeler, Partner, King & Wood Mallesons

### Public hearing—19 April 2012

- Mr Andrew Barr MLA, Minister for Economic Development
- Mr David Dawes, Director-General, Economic Development Directorate
- Mr Greg Ellis, Director, Sustainable Land Strategy, Economic Development Directorate
- Mr Chris Haridemos, Proprietor, IGA Kaleen
- Mr James Koundouris, Development Manager, Supabarn Supermarkets Pty Ltd
- Mr Theo Koundouris, Operations Manager, Supabarn Supermarkets Pty Ltd
- Mr Anthony Senti, Chairman, Combined Residents Action Association
- Mr Hank Spier, Director, Spier Consulting Pty Ltd
- Mr Peter Tzanetos, Tzanetos Family Group

**Public hearing—28 May 2012**

- Mr Simon Corbell MLA, Minister for the Environment and Sustainable Development
- Mr David Papps, Director-General, Planning Policy, Environment and Sustainable Development Directorate
- Mr Ben Ponton, Deputy Director-General, Planning Policy, Environment and Sustainable Development Directorate
- Mr Mike Quirk, Team Leader, Strategic Policy, Research and Forecasting, City Planning Division, Environment and Sustainable Development Directorate
- Associate Professor Frank Zumbo, private capacity

**Public hearing—19 July 2012**

- Mr Milton Cockburn, Executive Director, Shopping Centre Council of Australia

## **APPENDIX C: ACT Supermarket Competition Policy Implementation Plan**

Attached is a copy of the ACT Government's *ACT Supermarket Competition Policy Implementation Plan*:





DEPARTMENT OF LAND AND PROPERTY SERVICES

**ACT SUPERMARKET COMPETITION POLICY  
IMPLEMENTATION PLAN**

### **Background**

The ACT Government's Supermarket Competition Policy, which was issued in 2008, aims to achieve a competitive and diverse supermarket sector:

*The ACT Government believes that Canberrans are best served by a diverse and competitive retail grocery supermarket sector that supports consumer choice and convenience. In considering the use or sale of land for grocery supermarkets, the ACT Government will take into account the capacity of a retailer to access suitable sites as well as the nature of the benefits a particular type of supermarket may bring, such as product diversity, quality of service, environmental gains, integration with existing retail/commercial centre, footprint and car parking.*

This policy was developed in the context of a national review of the competitiveness of retail prices for standard groceries by the Australian Competition and Consumer Commission (ACCC), which concluded in July 2008 that:

*Viewed overall, supermarket retailing is workably competitive, but there are a number of factors that currently limit the effectiveness of price competition. These include higher barriers to entry for large-format supermarkets, a lack of incentives for Coles and Woolworths to compete strongly on price and the limited price competition from the independent sector. It is the ACCC's view that the appropriate policy response is to attempt to lower barriers to entry and expansion, in both retailing and wholesaling to independent supermarkets and potential new entrants. (Australian Competition and Consumer Commission Report of the ACCC Inquiry into the Competitiveness of Retail Prices for Standard Groceries July 2008 p.xvi.)*

On 16 June 2009, in light of the ACCC report and the Federal Government's response, the ACT Government announced the appointment of Mr John Martin to report on the adequacy of the ACT's supermarket competition policy. Mr Martin completed his report in September 2009 and on 7 October 2009 the ACT Government announced it endorsed Mr Martin's recommendations.

To support implementation of the Review recommendations, the Government has established the Supermarket Competition Coordination Committee (SCCC). The SCCC comprises representatives from key Government Departments including the Department of Land and Property Services, which chairs and services the SCCC. Specialist advice is provided by the Review author Mr Martin. The SCCC is not charged with decision-making; it merely provides advice to the Government. The SCCC will monitor implementation of the Policy, consult with industry stakeholders and report to the Government annually on progress in implementing further supermarket competition in the ACT. It will also provide advice to the Government's Direct Sale Eligibility Assessment Panel in cases involving proposed direct sales (see below).

### **Implementation of the Government's Supermarket Competition Policy**

The ACT Government's endorsement of the recommendations of the Martin *Review of ACT Supermarket Competition Policy* reflects the Government's determination to ensure Canberrans receive the benefits associated with promoting competition and diversity in the full line supermarket sector as well as assisting Local Centre viability by enabling some local supermarkets to expand. For this reason, the Government considers implementation of its Supermarket Competition Policy to be a major policy objective, including in relation to meeting provisions of the *Planning and Development Act 2007*.

The Government's acceptance of the Martin Review provides a more detailed framework for delivering the market competition and diversity sought under the

Supermarket Competition Policy. The key elements of the new framework include:

- A need to address a shortage of larger full line supermarket capacity generally in central Canberra and Gungahlin;
- Encouragement for further full line independent supermarket chains to expand in the ACT;
- Facilitation of the entry of suitable independent full line chains into new and redeveloped Group Centres;
- Support for an alternative source of wholesale grocery supply which would be encouraged by a restricted approach for particular sites;
- Recognition that market and competition signals are demanding larger format supermarkets relative to the overall size of centres, including in some Local Centres;
- Elimination of artificial constraints on supermarkets in appropriate Local Centres expanding in ways that are consistent with public amenity and enables those stores to provide a more competitive offer against full line stores in larger centres;
- New entrants should be allowed into new area developments and existing Group Centres;
- More flexibility in retail zoning provisions, particularly in Group Centres, to reflect evolving consumer and market needs and address barriers to new supermarket entrants;
- A progressive review of Group and Town Centres should be instituted;
- No cap on the market share of participants;

- The articulation of a transparent set of Supermarket Competition Factors (see more below) to help identify and facilitate entry by new full line supermarket competitors;
- The establishment of formal inter-departmental coordinating group for developing and delivering comprehensive whole-of-government advice on the Supermarket Competition Policy to the Government; and
- Regular consultation with industry stakeholders.

The Supermarket Competition Factors (See Figure 1) provide an indication of some of the key market-related issues to be addressed in advice to the Government. These matters include:

- the commercial and community characteristics of a particular centre;
- the nature, existing presence and capabilities of a proposed supermarket operator;
- the competitive supermarket dynamics in the local and wider area including the potential to facilitate new wholesaling operations;
- the price and non-price nature of the proposed supermarket operator including source and quality of fresh produce and the levels of customer service;
- impact on competition in the wholesale market for groceries and liquor; and
- amenity issues including impact on surrounding development and infrastructure such as road access.

Advice on these issues and any other social, economic and environmental objectives relevant to the achievement of good planning outcomes will inform the Government's consideration of the options it has available to it to achieve

the market competition and diversity objectives of its Supermarket Competition Policy.

### **Land Release Methodology**

The Supermarket Competition Policy is relevant to a number of important decisions by the ACT Government including in relation to:

- new land releases for supermarket operations;
- direct sale applications involving supermarkets, including on contiguous land; and
- proposed changes to the Territory Plan that would impact on supermarket competition and diversity.

A decision on any specific site and operator, as well as a decision about the appropriate method of land release, will *inter alia*, involve weighing up the Factors and, in some cases, giving a greater weight to one Factor over another. Each decision by the Government will also need to take account of the market conditions of the time and the progress that is being made in achieving the objectives of the Supermarket Competition Policy.

When making decisions in relation to the Supermarket Competition Policy, the Government will take into account the fact that the *Planning and Development Act 2007* permits the grant of a lease by auction, tender, ballot or direct sale, as well as permitting restricting the people eligible for the grant of a lease by stating, in the notice of auction, tender, ballot or direct sale, that a class of people is eligible or ineligible for the grant of a lease under the auction, tender, ballot or direct sale. While the Government's strong preference is for land to be released by auction, the application of the Supermarket Competition Policy may on occasions involve one of the other methods of land release available to the Government. This may include releasing land by restricted auction or other

process that identifies a particular class of operator as the Government's preferred supermarket operator.

As noted above, where direct sales are involved, including for contiguous land, the SCCC will provide advice to the existing Direct Sale Eligibility Assessment Panel in the Department of Land and Property Services. The Panel is an inter-departmental committee charged with:

- assessing the eligibility of applicants and their proposed use of the land;
- assessing from a whole-of-government perspective how a proposed direct sale will benefit the community and meet or contribute to the achievement of government policy objectives beyond what a competitive sales process would deliver;
- identifying alternate means to a direct sale where appropriate, e.g. an expression of interest; and
- making a recommendation to Government after considering these issues.

Information about the role of the Panel, and the information to be provided in any direct sale application, is on the website of the Land Development Agency at <http://www.lda.act.gov.au>. Applicants must meet the requirements of the relevant legislation which includes providing a business case demonstrating financial capacity, appropriate expertise, and how the proposed use provides a benefit to the community that would not otherwise be achieved if the land were sold for the same purpose in a competitive process on the open market.

The Panel is currently processing three contiguous land applications involving full line supermarkets in Charnwood, Kambah and Giralang. The SCCC will provide advice to the Panel on these applications as they bear on the Supermarket Competition Policy, and the Panel will then make a recommendation to the Minister for Planning.

One of the Martin Review recommendations caused concern to some local IGA operators. It related to the meaning of 'Metcash-controlled'. Mr Martin has since clarified that this means 'majority ownership by Metcash'. IGA has advised there are no majority Metcash-owned IGA stores in the ACT.

### **Potential Sites**

Possible supermarket sites to be released by the Government in the next 18 months include sites in Dickson, Kingston, Casey, Amaroo and Bonner. The Dickson and Kingston sites are currently the subject of major planning studies which include comprehensive community consultation sessions to seek community views and to inform the community about the issues at each Centre. The preferred capacity and configuration of the Centres, including the location of possible additional supermarket sites, will be determined through the review process and separate agreement by Government. Decisions are expected by April 2010.

Given the significance of the Dickson and Kingston sites to addressing a number of the Martin Review recommendations, the Government intends to announce an integrated package of decisions about supermarket sites once it has considered these planning studies.

### **Other Changes**

Turning to other aspects of the Government's Supermarket Competition Policy:

- ACTPLA is considering amendments to the Territory Plan to facilitate expansion of supermarkets in Local Centres to a level that is consistent with the role of those Centres in the metropolitan retail structure and that takes account of factors such as scale and bulk of the Centre, supporting a good local amenity, access, traffic and car parking;

- ACTPLA is monitoring Territory Plan policies to ensure that the full range of Government objectives are met in relation to accessibility, equity, public amenity and utilisation of existing infrastructure in Local Centres; and
- ACTPLA is reviewing the 'core' and 'secondary' zones that currently apply in the Territory Plan for all Group Centres in Canberra, with a view to providing greater opportunities for additional supermarkets provided the existing cores are not detrimentally affected.

The Government is aware from the most recent consultation process following its October 2009 decision to adopt the Supermarket Competition Policy, that all of the major supermarket chains currently operating in the Territory are seeking a presence in the Group Centres. There is also interest by new operators wishing to establish in the ACT. After this Implementation Plan is released, the Department of Land and Property Services will write to all supermarket entities that have expressed interest in potential sites and ask them to confirm their interest. Any other person or entity interested in establishing a supermarket in the Territory should advise this Department.

### Figure I: Supermarket Competition Factors

#### 1. The centre

- Existing supermarket and other retail grocery outlets in the centre.
- Commercial and community characteristics of the centre in terms of competing centres, catchment, regional placement and amenity.

#### 2. The parties

- Current number, floor space and turnover of stores in ACT.
- Market / floor space share of supermarket operations in the ACT, sub regional and local markets in which the centre is located.
- Capabilities and financial capacity to operate supermarkets.

#### 3. Competitive dynamics

- Grocery, fresh food and liquor competitors in a 5 km or 10 minute drive radius.
- Potential to attract customers from outside the 5 km or 10 minute drive radius.
- Prospect of an additional new entrant entering the centre or an adjacent centre.
- Effect of the party's entry on market shares in the ACT, sub- regional and local markets for supermarket services.
- Potential for an entrant to expand into or participate in new wholesaling operations.

#### 4. Retail Price and non Price Competition Factors

- Relative price performance by the potential competitors.
- Scope to shop around for the best prices at different supermarkets and non supermarket retailers.
- Differences in the composition and range of grocery, fresh and liquor products offered.
- Sourcing and quality of fresh produce.
- Levels of service and customer satisfaction - numbers of staff per customer, survey data.

#### 5. Wholesale competition

- Impact on competition in the wholesale market for groceries and liquor.

#### 6. Amenity issues

- Local considerations of the proposal related to road access and synergy with other development in the area.

Background information: A large format or full line supermarket is generally over 2,500 m<sup>2</sup> and carries around 30,000 items. A convenience/local supermarket in the ACT is under 1,500 m<sup>2</sup>. ALDI stores are generally 1,300-1,600 m<sup>2</sup>.

## APPENDIX D: Recommendations of the Martin Review

The Martin Review contains the following recommendations<sup>137</sup>:

### Recommendation 1

The review recognises that while there is reasonable supermarket competition in the ACT region retail grocery market, there is a need to address:

- a shortage of larger full line supermarket capacity generally in central Canberra and Gungahlin; and
- the benefits of encouraging further full line independent supermarket chains to expand in the ACT to provide competition and diversity and potentially support an alternative source of wholesale grocery supply that could contribute to the price competitiveness of independents including smaller retailers.

### Recommendation 2

Given the trends identified, planners and decision makers in the ACT need to ensure there is an adequate response to market and competition signals demanding larger format supermarkets relative to overall size of centres. This includes reinforcing efforts to ensure local centre viability by enabling some local supermarkets to expand.

This should be complemented by a more flexible approach to allow new entrants into new area development and in existing group centres.

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<sup>137</sup> ACT Government, *Review of ACT Supermarket Competition Policy*, September 2009, pp. 10-28.

### **Recommendation 3**

The supermarket competition policy in the ACT requires substantial overhaul to address impediments in the planning and development regime.

A framework taking competition factors into account is required to free up retail zoning provisions particularly in group centres, to better reflect evolving consumer and market needs and address the barriers to new supermarket entrants at the retail and wholesale levels.

### **Recommendation 4**

The ACT Government note that it is in no way constrained from intervening through the planning and land allocation system to achieve increased supermarket competition at sites where proposed acquisitions by a major chain have received informal ACCC clearance.

### **Recommendation 5**

Any form of cap on the market share of participants should be rejected.

### **Recommendation 6**

An alternative source of wholesale supply would be encouraged by a restricted approach for particular sites that precluded Metcash controlled ventures as well as the two major chains.

### **Recommendation 7**

#### **Processes, Procedures and Criteria**

Establish and regularly review processes, procedures and competition criteria to enable the government to facilitate entry of suitable independent full line chains in suitable new and redeveloped group centres to achieve a better balance of competitive tension, choice and diversity.

The approach could involve either limited tender direct sales or appropriate clauses in the lease requirements if it was considered more appropriate to ensure ownership integration in the sale of a new group centre (possibly even a single developer).

Special zoning mechanisms for this purpose could be cumbersome and vulnerable to legal challenge in contrast to the targeted, site by site and transparent direct sales process. The redevelopment of existing group centres is where flexibility in approach is most likely to be required to secure the best overall outcome in collaboration with property owners.

## **Recommendation 8**

The ACT Government endorse the above market and competition analysis approach together with the adoption of suitable eligibility criteria to identify and facilitate entry by new full line supermarket competitors.

## **Recommendation 9**

### **Coordination Mechanism**

Establish a formal co-ordination mechanism between ACTPLA, LDA, ACT Treasury and the facilitation arm of CMD to create a cohesive and transparent approach to planning and competition issues in growth areas and existing centres addressing:

- zoning reform in group and town centres;
- the evolution of local centres;
- facilitation of new supermarket entry on a site by site basis; and
- maintaining up to date data and analysis of the sector.

## **Recommendation 10**

### **Regular Review and Assessment**

CMD establishing and chairing a forum between the key agencies and industry stakeholders to periodically (at least yearly):

- review planning/zoning processes;
- assess progress on the supermarket competition framework;

- identify changes required to the framework;
- ensure processes are updated to respond to changes in grocery retailing development; and
- make recommendations to the ACT Government on possible changes.

## **Recommendation 11**

### **Urgent attention be given to Central Canberra shortages**

Addressing the shortage of full line supermarket capacity and competition in some existing central Canberra group centres (south Canberra/Kingston, north Canberra/Dickson).

Utilising a combination of direct sales (consistent with recommended procedures and criteria) and zoning flexibility in tandem with the ongoing ACTPLA planning framework reviews of Dickson and Kingston town centre precincts.

## **Recommendation 12**

### **Other Group and Town Centre Reviews**

The Government should progressively review other group and town centres, moving away from the "one size" fits all approach, learning from and drawing on redevelopments such as Jamison where • new entry and expansion of existing supermarkets has improved competition.

## Recommendation 13

### Facilitating Local Centre Competitiveness

Drawing on Recommendation 2, no artificial constraints should be placed on supermarkets in appropriate local centres to expand in a way that is consistent with public amenity and enables those stores to provide a more competitive offer against full line stores in larger centres, Local centre independent stores could be boosted if moves to increase independent wholesale competition are successful.

Reinforce ACTPLA's approach to allow the market to determine these parameters in existing local centres and to space local centres in developing areas either more widely or apply more flexible conditions subject to regular market feedback.

For existing local centres facing sustainability pressures, solutions should be based on conversion to intense, multi story residential usage combined with a proportionately scaled commercial and convenience usage.

## Recommendation 14

### Growth Area Initiatives

New approaches will be needed in Gungahlin and Molonglo. The following options are based on the present proposed group centre configuration and the two major chains position in the town centre.

Amaroo- consideration of full line independent plus a possible ALDI (released in 2010/11).

Casey- one of the two full line supermarkets to be an independent plus a possible ALDI (released in 2010/11).

The future multiple supermarket group centre development in Molonglo offers a further opportunity to facilitate specific independent entry but the approach should be informed on progress in Gungahlin and some existing centre "gap filling" under the overarching approach to supermarket competition policy.

## **Recommendation 15**

### **Existing Area Redevelopment**

#### **Dickson and Kingston Group Centres**

As a priority pursue the immediate opportunities offered by the two ACTPLA Urban Planning Framework Reviews for Dickson and Kingston/South Canberra to apply the overarching supermarket competition policy framework proposed by this Review including the competition criteria linked to direct land sales.

#### **Other Group and Town Centres**

Over time it would be appropriate under the overarching framework to review other group and town centres.

#### **Local Centres**

As stated in Recommendation 13, reinforce the ACTPLA market driven approach to new local centre development and renewal. For declining local centres facilitate conversion to intense, multi-story residential usage combined with a proportionately scaled commercial and convenience usage.

## APPENDIX E: Possible future supermarket floor space scenario

Table reproduced from Coles Supermarkets, *Submission No. 8*, p. 41:

Table 5 – Possible Future Supermarket Floorspace Scenario in Commercial Centres, ACT Over 5 Years

ACT Existing Floorspace Summary				ACT Future Floorspace Summary			
Centres	No. Stores	Sq m GFA	% Share of GFA	No. Stores	Sq m GFA	% Share of GFA	Assumptions
Woolworths	13	44,995	41%	17	55,095	36%	Assumes WW open new stores in Bonner (1,500m <sup>2</sup> ), Dunlop (1,500m <sup>2</sup> ), Giralang (1,500m <sup>2</sup> ), Canberra Airport (4,600m <sup>2</sup> ) and extend Charnwood (1,000m <sup>2</sup> )
Coles	8	25,607	23%	12	39,407	25%	Includes Coles Belconnen extension and assumes Coles open stores at Dickson (3,700m <sup>2</sup> ), Erindale (3,600m <sup>2</sup> ), Weston (3,500m <sup>2</sup> ), Kambah (2,000m <sup>2</sup> ) and extend Curtin (additional 1,000m <sup>2</sup> )
Aldi	8	11,321	10.4%	11	15,221	9.8%	Assumes Aldi open new stores at Chisholm (1,300m <sup>2</sup> ), Casey (1,300m <sup>2</sup> ) and Dickson (1,300m <sup>2</sup> )
Supabarn	3	7,775	7.1%	7	21,775	14.1%	Assumes Supabarn open at Casey (3,500m <sup>2</sup> ), Kingston (3,500m <sup>2</sup> ) plus 2 additional stores (7,000m <sup>2</sup> )
IGA	30	17,709	16%	35	20,859	13%	Assumes a further 5 new stores
Foodworks	5	1,918	2%	6	2,263	1%	Assumes one new store
<b>TOTAL</b>	<b>67</b>	<b>109,325</b>	<b>100%</b>	<b>88</b>	<b>154,620</b>	<b>100%</b>	

Estimates of future sq m GFA of supermarket floorspace are derived from average store size as shown in Table 1

Excludes the Costco at the airport – 13,500m<sup>2</sup>

Note the above figures exclude other convenience stores in Group/Local Centres.

Sources: Coles, Supermarket Retailing in the ACT, ACTPLA (Attachment 1), Martin Review, 2009



## APPENDIX F: Supermarket representation in the ACT

Table reproduced from Coles Supermarkets, *Submission No. 8*, p. 25:

**Table 3 – Supermarket Representation across the ACT**

ACT Retail Hierarchy	Supermarkets in Centre
<b>Civic</b>	S, A, I x 2
<b>Town Centres</b>	
Belconnen	C, W, A
Gungahlin	C, W, A
Tuggeranong	C, W, A
Woden	C, W
<b>Group Centres</b>	
Calwell	W
Casey	A*
Charnwood	W
Chisholm	C, A*
Condor	W, A
Curtin	C
Dickson	W, A*
Erindale	W
Hawker	I
Jamison (Macquarie)	C, A
Kaleen	S
Kambah	W
Kingston	I
Kippax (Holt)	W, A
Manuka	C
Mawson	W
Wanniassa	S
Weston	W, A

Abbreviations: C = Coles, W = Woolworths, S = Supabarn, A = Aldi, I = IGA

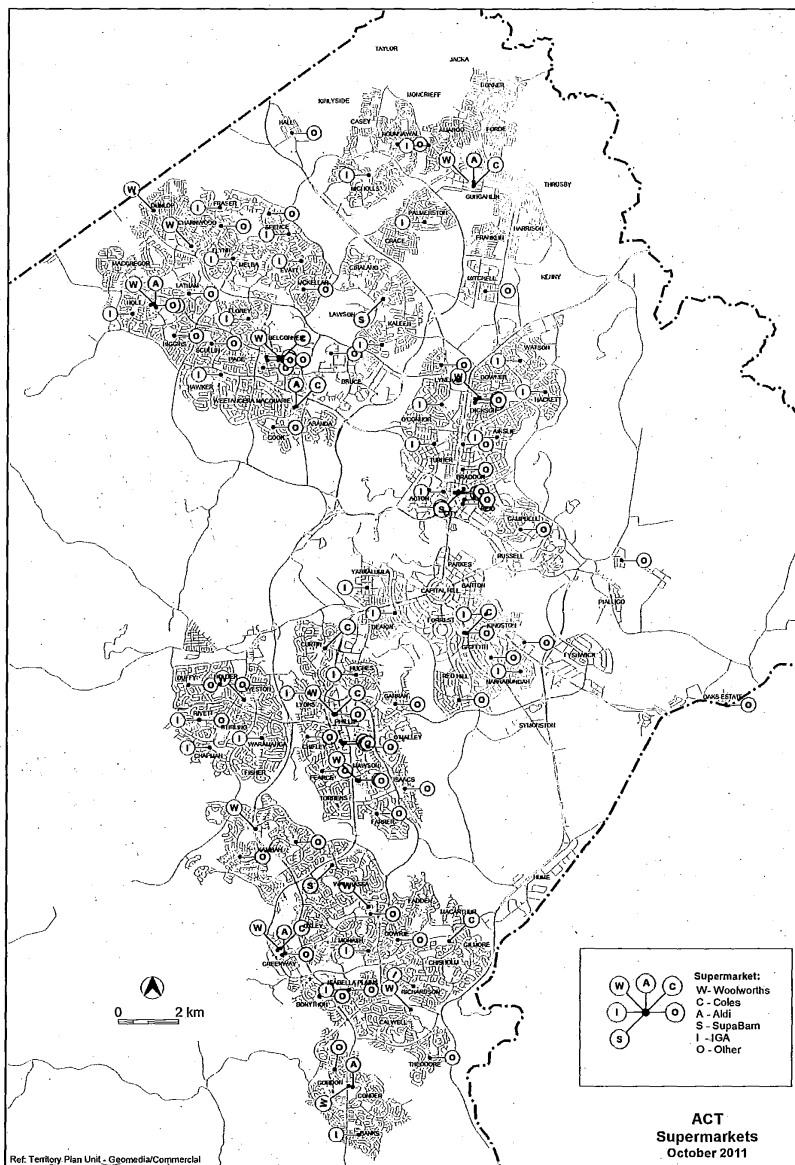
\* To be constructed

Source: Coles



# APPENDIX G: Distribution of supermarkets in the ACT

Map reproduced from ACT Government, *Submission No. 1*, p. 4:



Note: 'Other' supermarkets are those not associated with either of the two major chains, the Aldi group, or the larger independent groups (i.e. Supabarn or the IGA groups).



## APPENDIX H: Supermarket floor space in current master planning processes

Figures supplied in Koundouris Group, *Submission No. 23*.

Supermarket Operator	Location	Size (square metres)
Woolworths	Bonner	2,000
	Giralang	1,500
	Airport	4,500
	Dunlop	800
	Kambah	2,000
	Charnwood	2,000
	Jamison	4,000
	Canberra Centre	4,000
	<b>Total</b>	<b>20,800</b>
Coles	Erindale	4,000
	Kambah	4,000
	Canberra Centre	4,000
	Weston Creek	4,000
	Dickson	4,000
	Gungahlin Superstore	3,000
	<b>Total</b>	<b>23,000</b>
Supabarn	Kingston	3,300
	Casey	3,500
	<b>Total</b>	<b>6,800</b>
Supa IGA	Amaroo	3,000
	<b>Total</b>	<b>3,000</b>