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 competiveness 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 Competiveness 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^2 and carries around 30,000 items. A convenience/local supermarket in the ACT is under 1,500 m^2. ALDI stores are generally 1,300-1,600 m^2.