

Submission to Supermarket Competitions Enquiry

By Giralang Residents Action Group (GRAG)

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Background of GRAG:

GRAG was formed in 2005 in response to the closure of the Giralang shops in 2004 and proposed redevelopment of the site as a residential only precinct by the sole owner of the lease, Nikias Nominees. The aim of GRAG has been to restore a viable local shopping centre to the suburb.

Through our continued lobbying and public awareness activities the owners of the lease have, through several iterations, modified their plans to now provide for a 1500 square metre supermarket, and 5 ancillary commercial spaces. This proposal was “called-in” by the Planning Minister in September 2011 after a 7 year interregnum. GRAG strongly supports the current proposed redevelopment and is pleased that the government has acted decisively to expedite the return of a shopping centre to our suburb after such a lengthy absence.

This submission is based on the experience of a community group in fighting for a viable local shopping centre in their suburb as intended by the layout for the suburb and planning principles adopted across Canberra.

Key proposition

GRAG submits that any policies seeking to ensure greater competition between supermarkets should be assessed very closely to ensure that they do not have the potential to create any perverse outcomes and in particular that they do not destroy access to local shopping centres in Canberra, nor increase living costs to some members of our community. Too often well intentioned government policies have undesirable consequences that actually impact negatively on some sections of our community which end up underwriting at their own expense the perceived “greater good” that was originally sought. History suggests the additional imposts remain on the community while the anticipated “good” is seldom realised or captured by vested interests.

Any proposed competition policy proposals that threaten the delivery of the current approved redevelopment of the Giralang shops would be most unwelcome to the residents of Giralang and would be strongly opposed by them – we have waited 7 years for local shops, and consider we have carried the inconvenience and additional costs for too long.

GRAG submits that ensuring that a rich and widely spread range of supermarket outlets is an essential underpinning to competition for the shopping dollar, and as part of this, local outlets in the suburbs

must continue to exist, and their future protected. The reverse of this (namely reduced access to local shops) is hardly an acceptable outcome.

We would welcome the elected representatives of the community in the legislative assembly stating on the record of this enquiry their commitment to the provision and protection of local supermarkets, and to the reestablishment of shops at Giralang in particular.

Issues facing local shopping centres

This submission addresses three issues related to local centres which GRAG have addressed in their struggle to ensure local shopping in our suburb:

- Firstly, the benefits of ensuring local shopping;
- Second, the “ideal” size of local shops; and
- Thirdly, securing the viability of local centres

Benefits of ensuring local shopping centres

GRAG argues that the provision and security of local shopping is essential to effective competition for supermarkets and in meeting the needs of Canberra communities. Without local convenience retailing, only major centres would exist, requiring large investments by a necessarily limited number of players, and dependent on large turnovers. While such centres can, and do, provide for a level of effective competition between national (and international) companies who seek customer loyalty through pricing policies that reflect the efficiency of their purchasing and supply chains and local rents, local centres provide for a different, more distributed “business model” to operate allowing further players to enter the market, and provide a further source of competition.

However, for local shopping to offer effective competition to the major players, pricing must remain attractive, albeit at higher cost that shoppers judge reasonable given the greater convenience of local access. In most cases, this necessitates that, while a “local” outlet network is provided, the supply and supply chains delivering to those outlets are also large in scale. A case in point would be the fact that 7/11 chain, IGA and Supabarn are parts of much large national retailing concerns. As with players in major centres, prices at local shops are dependent of the effectiveness of their national purchasing and supply chains, not the fact that they operate in smaller outlets.

Seeking to design competition policy without recognising these price drivers would be an exercise in naivety and futility, and result in higher prices being faced by some sections of the community.

Further, GRAG submits that to ensure that local shops continue to offer any competitive influence on the market at all, even indirectly, they must themselves face price pressures within their own segment of the market. If the argument that there must be effective competition between national players holds water, then equally there needs to be effective competition between players in the local market sector.

In addition to being a contributor to greater overall competition, the presence of local shops has other social benefits that need to be supported.

Our city is relatively low density with limited public transport (that which does exist is focussed on peak time services to major employment centres, not on local short travel). Distances to larger centres are relatively long, inviting a reliance on cars, even for convenience shopping and “doing the messages”. The diversity of residents finding a particular suburb suitable to their needs is greatly reduced without ready access to shops, and car dependency rises in suburbs not served by local centres. There are other reasons for the provision and protection of local community centres, such as social interaction and the creation of a spirit of community. Other cities are able to accommodate local convenience shopping through provision of commercial precincts along major thoroughfares or the conversion of former residential areas to commercial purposes in a far more organic way that can happen in Canberra’s “planned” environment with its absence of the more flexible “high street shopping” model.

Ideal size for local centres

Those opposed to the current plans for the Giralang shops have argued that, at 1500 square meters, these plans somehow break an immutable rule of Canberra planning, or provide a base for one operator to gain some unfair advantage over other local operators.

There is no immutable rule that GRAG is aware of that limits the size of a local business undertaking – what exists is that total shopping centre size is set and limited by the original planning decisions in establishing a suburb. In reality, at any existing site, total available floor area is determined by the centre’s overall footprint and the requirements for reasonable parking and delivery/loading facilities. The hierarchy of the ACT shopping centres provides adequate differentiation in supermarket size without the need to make a judgement as to the minimum or maximum viable size of a particular outlet.

GRAG submits that endeavouring to centrally determine a maximum size of a supermarket outlet to apply to all local centres to be a very short-sighted and dangerous undertaking that can only end in tears - the tears in this case being unequal and unfair impositions on some communities. History teaches that such centralised planning inevitably fails, and imposes greater cost than would otherwise have occurred.

How could a maximum ever be identified and imposed given different (AND EVER CHANGING) drawing area size and densities, different transport flows and changing social trends?

Attempting to impose such restrictions would be equally impractical. It would necessitate controlling access to every lease in every shopping centre to avoid amalgamation of sub leases or splitting businesses across leases to avoid the restrictions. What would stop the Maribyrnong IGA taking over the lease of the adjoining florist shop as its liquor outlet, freeing up floor space for other grocery lines? Is it also proposed that planning would also determine what, and in what quantities, local shops sell?

Business can operate with competition (which is the goal of the enquiry after all) and without the creation of guaranteed monopoly rights. The evidence is everywhere: Melba shops thrive, a separate

liquor store operates alongside Supabarn's own offerings at Kaleen, Maribyrnong shops thrive within 2 kms of Supabarn at Kaleen. All this emerged without arbitrary artificial size restrictions.

Some existing supermarkets argue that an additional "larger than mine" outlet in Giralang threatens their very existence but these arguments of threatened viability are unsupported by any evidence, and contradicted by examples of other successful well managed local shopping centre, and the formal studies commissioned by ACTPLA in relation to the Giralang redevelopment. These arguments are simply self interest, nothing more, and should be ignored as such.

Securing the viability of local centres

Canberra planning has produced a rigid "hierarchy" of planned commercial presence in its suburbs, probably unique in the world, and with it imposed a very strict control over the normal arrangements for meeting the retail needs of its citizens. In fact, the notion of a strictly enforced "hierarchy" is an artifice of past planning which runs the very real risk of ossifying commercial opportunities and ignoring changing retail models. Local centres need to have the capacity evolve with social trends. Examples of recent social changes that have emerged since Canberra's retail "hierarchy" was adopted include greater dining out, internet shopping, the "coffee culture" and more working parents.

In other words, ways need to be found within this framework to ensure its effectiveness is marshalled and its risk avoided - it is a mistake to consider that the "hierarchy" of itself is immutable, sacrosanct or guarantees competitive outcomes across Canberra.

In Canberra, the threat to local shopping centres is twofold: firstly it is in the interests of supermarket owners/operators to maximise turnover, which is best achieved through serving wide catchments (often best achieved by limiting local competitors); secondly, leaseholders in the ACT have repeatedly shown that they perceive a financial benefit from converting leases established for one purpose to another purpose. This model certainly was the original plan of the owners of the Giralang shops in seeking to convert a shopping centre to residential use. In such cases, a community amenity and asset would be converted to private interests. See Attachment 1.

GRAG would submit that both these threats must be addressed to ensure local shopping remains a feature of our communities and that both can be addressed by prohibiting absolutely the conversion of leases for local shops to other purposes.

The present planning provisions of suburban shopping precincts allow exemptions where the current owner can claim lack of financial viability. This simply creates an incentive to owners to rundown, or in other ways destroy, the apparent viability of a particular site. GRAG would point to the obvious viability of numerous suburban based shopping centres to argue that there is no basis for the current exemption which, in practice, leads to the removal of public amenities from our suburbs. The irony of the Kaleen IGA leaseholder claiming that another outlet in Giralang would threaten his viability when he currently prospers within very close proximity to the Kaleen Plaza destroys the credibility of that argument altogether. GRAG argued convincingly in its submissions opposing the original plans to convert Giralang shops to residential that "financial viability" was not a factor in the demise of its shops, and that it is

very easy for the apparent viability of a local centre to be manipulated by the leaseholder were they intent on seeking lease purposes changes for the site.

From the surveys of other shopping centres undertaken by GRAG it would appear that those centres that are thriving do so because there is a diversity of retail offerings in the one place. This suggests that part of the planning principles that needs to be adopted for local centres is to ensure a range of retail opportunities need to be available in each centre.

As indicated above, there is an incentive under the current lease conversion exemption provision for a single “whole-of centre” leaseholder to destroy the apparent commercial viability of their holding. One such strategy would be for the one leaseholder of the entire site to set conditions on their tenants that most would find unacceptable (such as only offering month to month leases or failing to maintain a pleasant and welcoming ambiance at the site).

To overcome these conflicts of interest and intention, GRAG would submit that all local centres should be required to be body corporates, comprised of a number of separate strata titles, with a maximum proportion of the leased area being able to be held by related entities. Again this would go some way of matching the flexibility of provision of separate leases along the High streets of most other cities. It also avoids the far more intrusive size or purpose controls discussed above.

Conclusion - Avoiding additional costs on some

The fight for Giralang shops has been notable for the vested interests of commercial operators NOT IN THE SUBURB attempting to thwart the redevelopment of our shops as a viable concern. At times the residents of Giralang felt that they were held captive to the commercial interest of operators in adjoining suburbs. In the most recent instances these very same interest have argued that allowing the proposed Giralang development to proceed would have city wide implications. We have not yet heard that it would have national implications, but we are sure that that too will be invoked. Background on Giralang’s predicament is outlined in Attachment 1 to this submission.

In the meantime, the residents of Giralang face increased costs, and LESS competition for their grocery dollar than would otherwise be the case. Residents face either increased travel costs to distant supermarkets, or shopping at the only sizable supermarket in the area, Supabarn at Kaleen, that does not now face local competition. Existing supermarkets argue any additional outlet threatens their very existence but as indicated above, the arguments of threatened viability are unsupported by any evidence and contradicted by examples of other successful well managed local shopping centre and the formal studies commissioned by ACTPLA in relation to the Giralang redevelopment. These arguments are simply self interest, nothing more and should be ignored as such.

Under GRAG’s above suggested approach to requiring multiple businesses and diverse ownership of local centres, the size of local supermarkets would be limited without attempting to set a single, necessarily arbitrary, size limit across the city.

Ensuring equitable access through ready provision of local shops is the first requirement for avoiding additional cost falling on some residents and not others. A second requirement is that real competition is provided at the local level, and that planning frameworks, or competition policies directed at overall market share across Canberra do not “ration” operators at the local level. Any rationing or allocation of sites runs the real risk of creating local monopolies which are not subject to competition, and where the allocated operator can price gouge knowing no one else is allowed to operate in “their patch”. GRAG is not convinced that it would be possible to establish a locally based regulatory regime which could effectively monitor, understand, anticipate and plan efficient outcomes for our local community within such a complex system. It also raises the prospects of introducing undue influence, bribery and other unacceptable practices to public administration and decision making in the ACT.

GRAG contends that the real dynamics of supermarket competition lie well beyond the presence of local shops within a particular geographic location. With national and international chains operating across Australia, the floor price for groceries is predominantly determined by global and national supply chains, the efficiency of supply logistic arrangements and levels of national turnover. None of these relate to individual outlets operating in a particular suburb and even the national instrumentality with a remit to monitor competition in the retail grocery area (the ACCC) has not had any apparent impact in changing the dynamics of the grocery trade.

Believing that Imposing artificial restrictions on local outlets can be achieved without cost is naive in the extreme. What is far more likely to achieve the lowest grocery prices is to allow those with the lowest prices to identify the sites at which they can still viably deliver their products within their business model. To do otherwise by reserving selected sites by definition increases the cost that would otherwise apply.

GRAG submits that at the local suburb level, within the planning framework set out above, commercial interest should be free to compete for individual outlets, and that there is no place for “picking winners” for individual outlets as part of ensuing greater competition across the ACT- other mechanisms need to be found that avoid making individual communities captives to other’s commercial self-interests.

Local centres - History

Three policy changes and an accident of history have conspired to take from the people of Giralang their local shopping centre, a facility that they, like people in other suburbs, expected they could take as a given.

Some years ago, the government of the day made three changes that have been retained substantially in tact by subsequent governments. These were:

- 1 investors who had bought 25 year leases on commercial land were given 99 year extensions for a token fee in the name of 'providing certainty'
- 2 planning controls relating to local centres were amended to allow residential development in the name of 'assisting the viability of the local centres'
- 3 the betterment tax levied on changes in the use of land was removed in the name of 'encouraging development'.

These three changes acted to totally alter the prospects for investors to obtain a return from their investment in a 25 year lease on a local centre site.

The value of a local centre lease changed:

- 1 it was no longer limited by the period remaining on the 25 year lease for which they had initially bid and paid
- 2 it was no longer limited by the value of the permitted commercial uses for which they had initially bid and paid
- 3 any enhanced value from a change in use was no longer subject to the betterment charge/tax.

This opened the option for investors to continue to operate the local centre sites as retail/commercial centres, convert them to retail/commercial/residential centres or, if they established an ill defined notion of 'a lack of viability' as a retail/commercial site, fully residential sites.

The impact of these changes differed between various sites depending on the period remaining on the 25 year lease. If a property was near the end of a lease, the investor — acting rationally — would have ceased investing in the property beyond the level required to return it to the owner in the minimum condition acceptable under the lease. This would mean that a site nearing the end of the purchased lease would be in greater need of repair than one at an earlier stage of the purchased lease.

However, an accident of history meant that a number of local centres in Canberra were far more strongly impacted by the change. In most suburbs the lease on the site of the local centre covers essentially only the land upon which the building sits. The car parking areas and much of the open space remains ACT Government land.

However, in a relatively few cases, such as Giralang, the lease purchased by the investor included the car parking area and open space.

With the policy changes mentioned above, this had a twofold impact that worked to reduce the value of the site as retail/commercial space and increase the value of the land for residential purposes, from the perspective of the investor. These are:

- 1 as a retail/commercial site, the investor is obliged to pay for the upkeep of the car park and open space, increasing their costs relative to those where these aspects are the responsibility of the ACT government
- 2 as a residential site, the investor had access to about twice the land area and thus the chance to develop and sell about twice as many residential dwellings.

Giralang is one suburb that suffered from this accident of history. It appears Latham was another and we have heard that there are about ten more suburbs that face the same problem, although it is unlikely the residents of the suburbs are aware of the situation.