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SELECT COMMITTEE ON ACT SUPERMARKET COMPETITION POLICY  
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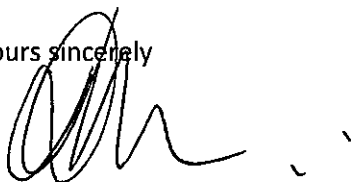
TO WHOM IT MAY CONCERN

**SUBMISSION BY NIKIAS DIAMOND/NIKIAS NOMINEES**

I am pleased to have the opportunity to provide this submission in response to the Assembly's review of the ACT Supermarket Competition Policy. I have also commissioned a separate opinion on the impact of the current policy on the ACT's retail market, from a specialist in retail economics who has previously provided advice to our company in the matter of the redevelopment of the Giralang Local Centre. This opinion is provided at Annexure A to this submission.

I look forward to the outcome of your review.

Yours sincerely



Dimitri Nikias

**Director**  
**Nikias Nominees Pty Ltd**  
2 December 2011

## 1. Historical background to retail planning and basis for establishment of a retail hierarchy

The ACT's tight control of supply, function and distribution of retail floorspace over the past 40 years has seen the prescriptive delivery of retail goods and services to its residents, via a planned hierarchy of town, group and local centres, with Civic as the highest order centre. Retail policy for Canberra during the city's formative years under the direction of the National Capital Development Commission (1958-1988), was determined in accordance with consumer needs, retailing economics and environmental impacts. A retail hierarchy was adopted to achieve a socially desirable and economically effective distribution of retail floorspace, while also aiming to achieve a balance between the economics of the retail market and the needs of the consumer; the need to ensure transport accessibility, as well as consideration for the potential environmental impacts on existing commercial centres and residential areas. In other words, well ordered planning which aimed to achieve good planning outcomes.

The ACT's retail planning aligned with the National Capital Development Commission's adoption of the "neighbourhood model" with the overarching concept that within every neighbourhood unit, all residents would be within walking distance (half a mile or 800 metres) of primary schools and shops. The shops were intended to provide sufficient variety to permit convenience shopping by those residents who found themselves stranded without a car in outlying suburbs.

Originally a two tier hierarchy (town centre and neighbourhood centre) the National Capital Development Commission (NCDC) was later persuaded that the way of the future would be drive in, supermarket dominated primary convenience centres. The abolition of neighbourhood centres was recommended in favour of bigger group centres serving 3-5 neighbourhoods, dominated by a large supermarket. However, the NCDC determined that neither retailers nor their customers were ready for such a drastic departure from the established pattern. Accordingly, the Group Centre became part of a four tier retail hierarchy, with Civic promoted as the dominant shopping centre and main Central Business District (Fischer, K F, *Canberra: Myths and Models*, Institute of Asian Affairs, Hamburg, 1984).

The Metropolitan Policy Plan and Development Plan for Canberra (NCDC, 1984) provides one of the few references to the NCDC's quantitative approach to the supply of retail floorspace in the ACT. In 1984 about 1.4m<sup>2</sup> per capita of retail floorspace was considered to be supportable in planned retail centres in Canberra. Apportioned to each level of the hierarchy the 1.4m<sup>2</sup> provided an approximate allocation of space per capita as follows: 0.9m<sup>2</sup> at Civic Centre and the town centres; and 0.5m<sup>2</sup> at group and local centres.

Similar hierarchies existed for the provision of office space, industries, community facilities, schools and recreational open space. The realisation of such planning concepts was only possible through the existence of planning powers and restrictions available through the leasehold system which provided planners with the instrument and tools (ie the crown lease and its specific provisions) with which to balance the distribution of shops and employment centres, precisely.

Numerous factors have influenced the determination of development controls and maximum gross floor areas for each retail centre developed throughout Canberra, resulting in a wide range of sizes at each level of the hierarchy, particularly the size of the 'anchor' supermarket or grocery store. For

example, Group Centres throughout Canberra have supermarkets ranging from 742m<sup>2</sup> (IGA Hawker) to 4350m<sup>2</sup> (Coles, Jamison).

## **2. Role of leasehold system in implementing the ordered planning of shopping/commercial centres**

Canberra is the only jurisdiction in Australia that has leasehold land tenure. Statutory planning in other regimes has traditionally not attempted to influence market forces in the delivery of retail development. The provisions of statutory planning schemes provide the framework for the location and character (permitted uses, height, plot ratio etc) of commercial centres. The rest is left to the private enterprise and the market forces of supply and demand.

In the ACT, crown leases typically offered at auction for the development of new retail facilities usually include both a specific lease purpose clause and a maximum gross floor area for the proposed development. Other provisions of the lease, including the provision of car parking on site; the provision of loading and unloading facilities and other lease conditions specific to the use and proposed development, contribute to the ability of the Government landlord to strictly control the growth and development of retail facilities throughout Canberra.

Where re-development is contemplated, the ACT Government has the ability to approve or refuse a variation to the crown lease to increase the size and/or change the character of the retail offer at any location – regardless of the opportunities offered by either of our two statutory plans.

The leasehold system has no doubt been an invaluable tool during the initial development phase of the nation's capital in terms of encouraging private sector investment and ensuring high levels of certainty for planning outcomes. However the influence of Canberra's leasehold system on retail competition has implications for market performance in such a protected and orchestrated environment.

Although the ACT Government has absolute control over the location and size of supermarkets via the leasehold system, it has found it necessary to provide new opportunities for grocery retailers other than Woolworths and Coles, to expand their operations in Canberra, since land auctions have generally been dominated by these two major retailers.

## **3. Provisions of current planning system**

### **National Capital Plan**

The ACT is subject to the provisions of two statutory plans: the National Capital Plan and the Territory Plan.

The National Capital Plan, at its most general policy level, provides a framework determined by the Commonwealth Parliament, for land use and development throughout the Territory. The National Capital Plan provides detailed conditions of planning, design and development for *Designated Areas* of the Plan, being those Areas with the special characteristics of the National Capital.

The National Capital Plan states that a key principle of Canberra's urban structure has been that a hierarchy of centres has been developed, with each town having a centre acting as a focal point for higher order retail functions, commercial services and community facilities. The Plan specifies that each town should have a town centre and that the Territory Plan will provide for a range of lower

order centres to meet the varying needs of residents. In the matters of urban form, size or range of land use activities to be provide at other levels of the hierarchy, the Plan is silent.

### The Territory Plan

The Territory Plan provides **no minimum or maximum overall size** for commercial centres at any level of its retail hierarchy. There is no provision in the Territory Plan that imposes a maximum (or minimum) total gross floor area which has the effect of limiting retail development within core areas of any commercial centre.

The Territory Plan's *Statement of Strategic Directions* includes a statement at Section 2.3 that "commercial and retail activity will be concentrated in centres and other planned nodes of intensive activity" with emphasis on "strengthening and enhancing existing and new centres and nodes, including improved urban design and encouragement of more mixed-use development".

It should also be noted that the Territory Plan's *Statement of Strategic Directions* acknowledges that planning policies should facilitate a range of economic activity and promote new investment. In terms of policy content, the Territory Plan replicates the broad policies of the National Capital Plan with respect to urban development, since the Territory Plan must not, by law, be inconsistent with the National Capital Plan.

### Development Codes

The Local, Group and Town Centres Development Codes (Territory Plan) provide a brief overview of the ACT's hierarchical system of centres. Notably, the *Commercial Zones – Overview* states that "the hierarchy has been developed to ensure that people have a wide choice of facilities and services wherever they live or work within Canberra.

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.

#### **4. ACT's Supermarket competition policy**

The current ACT Government policy for supermarket competition established in 2008 aims at achieving a competitive and diverse sector to provide consumer choice and convenience. The policy is expressed in the following terms:

*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.*

A Review of ACT Supermarket Competition Policy by John Martin was released by the ACT Government in September 2009. The report is a comprehensive review of Government policy, current competitive dynamics and future development and redevelopment opportunities of the supermarket sector within the ACT.

The John Martin report refers to the importance of increasing the number of supermarkets of varying formats, on competition, and the benefits this has for consumers:

*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."*

It is difficult to discern how ACTPLA's approach has allowed *the market to determine these parameters* when the provisions of each crown lease provides the absolute determination of development parameters, including purpose and maximum gross floor area. Martin (*op cit*) also suggests that *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.* However, via a leasehold system, the ACT Government has the ability to provide any number of "artificial constraints".

The ACT Government has recently announced that new supermarket sites at Casey, Kingston and Amaroo will not be available to either Woolworths or Coles, with independent retailer Supabarn being provided with the targeted opportunity to develop a 3400m<sup>2</sup> supermarket at Kingston (Canberra Times, 7 May 2010). The same article cites a Government decision to restrict access to three future supermarket sites at Kingston, Casey and Amaroo, by the major grocery retailers, Woolworths and Coles. 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 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.

ACTPLA has released a *Commercial zones policy review Discussion Paper, Phase 1* dated May 2011. ACTPLA states that the discussion paper responds to the Martin Review which calls for 'zoning reform' generally across commercial centres to increase potential land supply for new supermarkets.

On 10 January 2011 the Chief Minister announced in-principle support to the direct sale of land to ALDI at various sites, including at the Chisholm Group centre, to increase choice and value for money for Canberra residents.

Accordingly, ACTPLA issued Technical Amendment 2011-17 on 8 July 2011, with provision for the development of a supermarket of maximum GFA 1500m<sup>2</sup> within an existing CZ3 Services Zone of the Chisholm Group Centre. [A supermarket or shop selling food within a CZ3 zone is normally restricted to 300m<sup>2</sup> GFA].

The Amendment is effected by way of a change to the Group Centres Development Code (Rule 25) and ACTPLA states that the Amendment satisfies the first objective for Group Centres: *Provide for a wide range of shopping, community, business and recreation facilities predominantly serving the surrounding or nearby suburbs.*

This is not considered to be "zoning reform". Rather, it is a contrived operation to identify a specific site for the development of an ALDI supermarket.

The current supermarket policy and its implementation plan has little recognition for existing commercial centres and their needs to service their surrounding communities and for them to be able to compete and to remain viable. An antiquated model of inflexible implementation will produce antiquated inflexible outcomes.

## **5. Future role and applications of planning policies**

During the late 1990s, the ACT Government undertook comprehensive reviews and commissioned studies to inform its retail planning. This reflected the Government's awareness of changes in shopping patterns and consumer preferences during the previous decade, resulting in the poor performance of some Local Centres and some eventual closures (eg Latham, Aranda, Page).

There is inherent flexibility in the provisions of the Territory Plan which would allow existing underperforming retail centres in Canberra to expand and diversify in accordance with retail trends and consumer demands for a wide range of retail products. However, in practice, ACTPLA's role has become one of a regulatory authority, rather than a planning authority, with little or no capacity to undertake regular retail analyses to inform a planned distribution of new and improved retail centres throughout Canberra.

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.

## **6. Conclusions**

The current ACT supermarket policy and its implementation seems to be focused more on picking winners and dictating to the market (and the community) what choice they will have and what players they want.

It is inevitable that an inflexible implementation strategy will not be able to keep up with the constant changes in the market and the community's evolving desires.

The market should be allowed to respond to demand and opportunities should be allowed to be pursued. Existing stakeholders (particularly within local centres and group centres) should be allowed to compete and not be prejudiced just because they do not happen to be in new development areas.

The Territory Plan has the potential flexibility to permit renewal of existing centres. The difficulty arises when the brakes are imposed by the Planning Authority or the ACT Government either because of a desire to suppress opportunity in favour of other locations or because of the potential distorted financial objectives of the ACT Government as a seller of Land in its own right.

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 other 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.

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.

The current supermarket policy and its implementations can be improved to encourage diversity and opportunity within our existing local and group centres and to assist with ensuring these centres can become and remain more viable. Restricting competition and opportunity is not the answer.