

An Evaluation of Planning Systems - Barriers to Entry for Grocery Retailing

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Summary

The location of grocery retail stores is regulated by the planning system because they are crucial to the success of town, district and community activity centres. A network of strong activity centres helps build sustainable and productive cities. By consolidating a range of activities including commercial, community and residential uses in designated areas, these networks maximise the use of public transport, minimise car use, improve community access to a range of public and private facilities and foster business synergies through clustering.

Most Australian States and Territories have strong activity centres policies as a foundation element of their metropolitan and regional planning strategies. These policies identify a centres hierarchy, under which larger format grocery retail stores are generally confined to existing or planned shopping locations which draw from a relatively wide catchment. Locating grocery retail stores outside centres designated for these higher order retail activities, or even on the fringes of such centres, is often difficult to negotiate through the planning system.

These arrangements undoubtedly create a regulatory barrier for would-be entrants to the grocery retail sector in some areas. Whether these constraints on competition are warranted or efficient depends on the extent to which they strike the right balance between improved choice and lower prices for consumers on the one hand, and the external costs associated with a diluted hierarchy of centres, including increased vehicular travel and foregone opportunities for urban consolidation, on the other.

The case studies of proposed out of centre supermarket projects described in the body of this report reveal significant scope for improvement in the way planning laws and regulators seek to achieve this balance between competition and sustainable urban development. Our recommendations for planning system reforms are that jurisdictions consider:

Recommendation 1 - elaborating and publishing their retail policy frameworks on a nationally harmonised basis, highlighting performance objectives;

Recommendation 2 - regularly undertaking a supply and demand review to determine if there is enough commercially zoned land on a regional basis;

Recommendation 3 - reviewing the wording of current strategic planning and policy documents to ensure that anti-competitive statements are not included within these regulations and supporting materials;

Recommendation 4 - ensuring the definition of 'retail' is sufficiently broad to incorporate innovative retail formats;

Recommendation 5 - adopting a nationally consistent methodology in all planning regimes for sequentially testing the net community benefit offered by proposals which do not immediately comply with centres policy;

Recommendation 6 - promoting land assembly policies in activity centres to facilitate the entry or expansion of competitors and to monitor land banking; and

Recommendation 7 - discouraging development assessment 'gaming' by requiring greater transparency on the part of decision authorities and appellants on their reasons (on net community benefit grounds) and by the awarding of punitive costs for vexatious appeals.

1 Introduction

1.1 Regulation of Retail Land Use as a National Policy Issue

Maintaining healthy competition within Australia's \$54 billion grocery retail sector¹ is of vital interest to Australians given that spending on groceries (food and non-alcoholic beverages) is in the order of 17 per cent of total household expenditure on goods and services.²

Two recent reports commissioned by the Australian Government have found evidence that grocery prices might be higher than they need be, for want of competition.

In 2008, the Productivity Commission's review of retail leases regulation and the Australian Competition and Consumer Commission's (ACCC) review of grocery pricing found that while zoning and planning laws are designed to regulate land use, they could also influence the quantity and location of retail floorspace available and therefore competition in the retailing market.

For example, the ACCC found that the presence of an ALDI store has a significant influence on the major supermarket chains' (MSCs) local store pricing. Where a Coles (Woolworths) has an ALDI within 1km of it, Coles' (Woolworths') grocery prices were on average 0.8 (0.7) per cent lower than if there was no ALDI within 5km. The effect on prices was even more significant for a narrower, but more comparable, basket of goods offered by ALDI in competition with the MSCs.

The Australian evidence is that grocery retailing is workably competitive but that competition is inhibited by high barriers to entry and expansion³.

Barriers to entry can be categorised as natural, regulatory or strategic.⁴

Natural or intrinsic barriers to entry are "are a function of the technology, production methods or some other factor necessary to establish an effective presence in the market." In this context modern retailing grocery operations in Australia require a critical mass of stores to capitalise on the extensive investment required in supply chain management (IT, produce and product sourcing contracts, logistics, marketing etc). The fact that heavy up-front investment is required in

¹ Industry value added by retail at current prices. Source:

[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/0012EAAE05065033CA2576850015910F/\\$File/52040_2008-09.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/0012EAAE05065033CA2576850015910F/$File/52040_2008-09.pdf)

² Source: [http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6530.02003-04%20\(Reissue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6530.02003-04%20(Reissue)?OpenDocument)

³ According to the ACCC the other two factors inhibiting competition are the limited incentives for Woolworths and Coles to compete aggressively on price and the limited competition that Coles and Woolworths face from the independent sector (page XIV).

⁴ UK Competition Commission (2003) Market Investigation References: Competition Commission Guidelines p23

business infrastructure which is not readily redeployed to other uses can, by itself, act as a deterrent to new entrants to the mainstream supermarket industry. To the extent that there may be a tendency towards natural or intrinsic barriers to entry, it is all the more important to ensure that any unnecessary regulatory barriers imposed by governments are avoided.

Regulatory barriers to entry can include rules:

“or other types of consumer protection that may make it difficult for new firms to develop products. It should be noted that the concept of regulation in this case is broader than the conventional sense and includes things such as intellectual property law, the planning regime, voluntary or compulsory standards and codes of practice for example.”⁵

In this context, by restricting the availability of retail space, State, Territory and local government planning laws in Australia may hinder or even prevent supermarkets being established in particular areas. Planning laws are particularly an issue for independent supermarkets in Australia, since most States and Territories have adopted ‘centres policies’ to concentrate their retailing activities in one location and shopping centre owners have a strong incentive to lease space to the largest retailers – Coles and Woolworths.

Other barriers, termed “strategic”, are the result of existing grocery retailers acting with the specific intention to deter entry or expansion by competitors. Planning and zoning laws in Australia are necessary for the creation of efficient urban form, traffic and transportation management, public amenity and environmental protection. Nevertheless there is potential for them to be exploited with the purpose of stifling competition. This is most apparent where planning laws allow existing grocery retailers to object to applications so as to prevent or delay entry by rivals which may affect their commercial interests. This can include making use of protracted appeal processes such as through the lodging of frivolous and vexatious appeals.

In response to the Productivity Commission and the ACCC’s findings, in 2009 the Australian Government referred the potentially anti-competitive impacts of State and local zoning and planning laws to the Business Regulation and Competition Working Group established by the Council of Australian Governments (COAG). Subsequently at its meeting on 7 December 2009, COAG adopted the following.

“To ensure a continued focus on the competitive benefits which can be secured through appropriately balanced planning and zoning systems, COAG agreed to commit to ensuring that:

- opportunities for gaming of appeals processes are minimised*
- processes are in place to maintain adequate supplies of land suitable for a range of retail activities; and*
- any unnecessary or unjustifiable protections for existing businesses from new and innovative competitors are eliminated.*

Further, COAG agreed to the Productivity Commission in 2010, conducting a performance benchmarking exercise of States’ and Territories’ planning and zoning systems with the objective of identifying current best practices approaches to supporting competition, as well as any practices which unjustifiably restrict competition, with the terms of reference for the

⁵ UK Competition Commission (2003) op cit.

benchmarking exercise agreed in consultation between the Commonwealth and the States and Territories.”⁶

The Productivity Commission is currently examining the operations of the States’ and Territories’ planning and zoning systems, particularly as they impact on business compliance costs, competition and the overall efficiency and effectiveness of the functioning of cities. In doing so, the Commission is to report on best practice approaches that support competition. It is expected to report in April 2011.

In order to progress the COAG agenda, the Commonwealth Treasury commissioned SGS Economics and Planning Pty Ltd (SGS) to investigate the impact of planning regulation on competition in the grocery retailing sector, and to outline options to alleviate any barriers to entry in this sector.

Central to this study is an exploration of the potential to lift levels of competition in the grocery retailing sector without putting at risk the policy objectives underpinning planning regulation. In this regard, it is important to bear in mind the interaction between COAG’s ongoing efforts to build competitive markets and the more recently adopted COAG objectives for sustainable and efficient cities.

1.2 Focus of the Current Study

The brief for the current project called for a...

... review and report on the extent to which aspects of State and Territory and local government planning systems have the effect of restricting competition in grocery retailing. These aspects include legislation, policies, legislative instruments, guidelines, decision making processes and appeal mechanisms.

More specifically, the brief required identification of practical examples (based on the experiences of new retail entrants) of where State and Territory and local government planning systems act to:

1. *provide unjustifiable protections for existing businesses from new competitors – such as imposing limitations on land suitable for retail activities; numbers of large format supermarkets; the geographic proximity of a new business competitor to an existing business; or the commercial impact (say, through loss of business) of that new competitor on an existing business.*
2. *delay or prevent the entry of potential new competitors through:*
 - *development appeals processes - where there is a commercial incentive for an existing business to ‘game’ the planning system by frustrating or preventing a competitor entering a market by objecting or further appealing a development application; and/or*
 - *inflexible retail definitions that make it difficult for rivals to enter the market.*

Finally, the brief sought practical options for remedial action that could be implemented in individual jurisdictions immediately, or taken up across jurisdictions more broadly.

⁶ COAG, BRCWG Report Card, 7 December 2009

1.3 Report Structure

In Section 2, the report briefly revisits the rationale for planning regulation of where different types of grocery retailing may locate. It explains that due to extensive externalities (non-traded costs and benefits) and natural monopoly conditions, it is unlikely that an unregulated market would deliver a welfare maximizing (efficient) allocation and distribution of land for grocery retailing. However, it stresses that any necessary regulation must be well designed and give proper attention to facilitating competition wherever possible.

Having explained the reasons for planning regulation, Section 3 of the report discusses *how* this regulation is effected, based on a review of current practice across all Australian jurisdictions. This Section examines these planning provisions with a view to highlighting effective barriers to entry or expansion in grocery retailing. It also briefly appraises the common processes and analytical techniques deployed when disputes or decisions about the enforcement of these barriers arise.

The report then moves in Section 4 to a discussion and analysis of several issues identified by stakeholders and then to specific case studies. Each case study includes an assessment of the scope for improved competition outcomes (within the confines of valid overarching planning policy), achievable through application of 'best practice' techniques demonstrated in other jurisdictions, or with respect to other markets within the same jurisdiction.

Finally in Section 5, the report sets out some strategic directions for policy reform and some specific recommendations for optimizing competition within Australian planning frameworks.

2 Why Regulate the Location of Grocery Retailing?

2.1 The Rationale for, and Processes of, Town Planning

The practice of town planning works to reconcile competing interests in the built and natural environment and to deliver urban development which can be shown to be *efficient* and *sustainable*. Efficient urban development is characterised by the avoidance of negative externalities (or recovery of these costs from development proponents) and the facilitation of positive externalities, such as business agglomeration benefits. Sustainable urban development is capable of meeting today's community needs without unnecessarily limiting options for future generations.

Sound town planning considers a range of social, economic and environmental issues, and is undertaken in the context of diverse governance and legislative frameworks across the country. It is characterised by:

- a focus on the long term, recognizing the long lived nature of the urban environment once built;
- effectively zero discount rates on long term benefits, recognizing the 'sustainability' imperative; and
- a commitment to resolving tensions between competing objectives through community consultation and input, as well as consideration of technical or 'evidence based' analysis.

Whilst on the face of things one might expect great differentiation in planned urban development because of the diversity of communities across Australia, in practice, there is considerable convergence in planning strategies and policies across the country.

Whether dealing with urban development at the local or regional (including metropolitan) levels, contemporary statutory and strategic plans across States and Territories tend to emphasise:

- consolidated and sequential urban growth in the interests of optimizing capacity utilisation in sunk and planned infrastructure such as schools, roads, public transport, trunk water supply and sewers;
- a shift towards higher densities to promote housing choice and more efficient use of infrastructure especially around transport networks;
- a planned hierarchy of centres (such as town and regional centres) to support objectives for housing diversity, employment access, business agglomeration and a more favourable travel mode split (public transport versus car use); and
- walkable and 'healthy living' neighbourhoods.

2.2 Planning for a Hierarchy of Centres

The purpose of planning is to efficiently create a network of centres that cater for the needs of business and are places where individuals and families want to live, work and shop. Within planning systems, retail centre hierarchies are driven by and reflect the needs, behaviour and identity of communities (see Text Box).

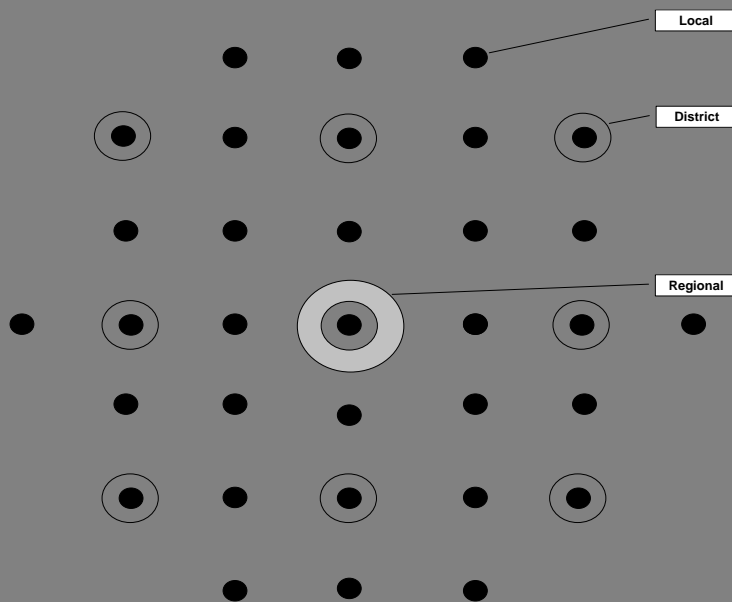
Shopping Centre Hierarchies

Planning policy across all jurisdictions in Australia has recognised the continuing tendency for retail activity to form into hierarchies of centres.

These hierarchies of centres reflect typical citizen perceptions of 'community'. That is, the sense of local, district and regional identity is often defined by reference to the centres serving these various geographic spheres of affiliation.

These hierarchies also reflect typical shopping behaviours. More frequent, short distance and low spend visits are made to a local centre, versus occasional high spend visits to more distant centres offering higher order goods and services. In these hierarchies, lower order functions can nest within higher order centres.

For these reasons, the retail network in greenfield and relatively recently developed suburban areas will tend to display an orthodox hierarchy of activity centres.



In most planning strategies in the States and Territories, there is a hierarchy of centres in which existing or planned "higher order" centres act as the focal points for private and public investment (public transport, recreation and civic uses, health facilities, child care etc). This co-location of facilities and employment opportunities, in turn, facilitates higher density housing, and leads ultimately to more compact forms of urban development at the town or metropolitan level.

These forms of urban development are known to deliver a range of external benefits in terms of lower travel distances and vehicle operating costs, more vibrant and engaging town centres, and enhanced labour and capital productivity through superior urban agglomeration.

Where vibrant centres do not exist, or if they are unable to 'promise' a continuity of services and public transport for their walkable catchments, it is likely that households will prioritise space – in dwelling floor area and lot size – over convenience of access to services. Ultimately, this generates low density environments where retail services can migrate relatively freely and 'reinvent' themselves in alternative locations, leaving behind the occasional 'grey' (or obsolete) mall.

Moreover, unlike other markets where oversupply can be self-correcting, with the parties to transactions carrying the costs (if sellers) or benefits (if buyers), oversupply in retail floorspace can result in underperforming centres. Where this occurs, the consequential effects of urban degradation, crime, loss of community facilities etc are borne by the wider community.

The nexus between the management of retailing land uses and overall metropolitan structure can be illustrated by contrasting the "form" of urban development in Australia and the US.

Whilst it would be incorrect to characterise all US cities in this way – indeed some US jurisdictions operate much more restrictive planning codes than those typically found in Australia – the general pattern of urban development in that country is distinctively oriented towards the car and land consumption.

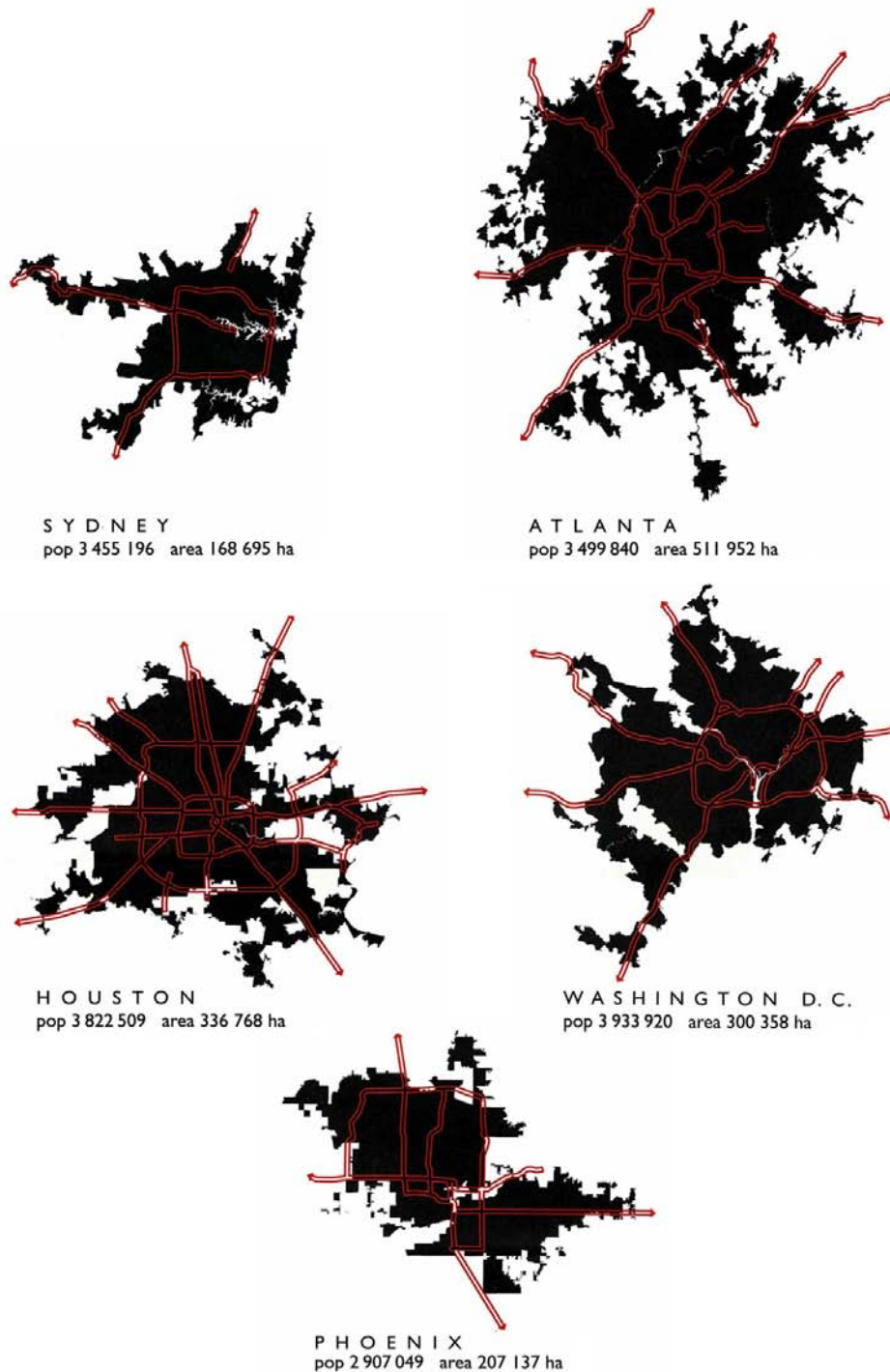
According to the Neptis Foundation's review of selected cities in Europe, North America and Australia, Sydney's direct physical footprint is substantially smaller than those for US metropolitan areas with similar populations (Figure 1). Amongst other things (including, perhaps, somewhat higher per capita incomes in the US), these lower density cities with more loosely regulated retailing give rise to greater vehicular travel for shopping purposes (shown in Table 1), carrying with it a range of adverse externalities.

Table 1 Shopping Travel by Car – Selected US Cities vs Sydney

	Population	Average distance per shopping trip (klm) - by car
Sydney SD 2005	4,191,000	6.8
USA 2001	277,203,000	10.8
Atlanta 2001	4,433,000	11.5
Boston 2001	6,175,000	8.4
Denver 2001	2,608,000	21.8
Los Angeles 2001	15,584,000	9.3
San Francisco 2001	7,146,000	10.1

Source: SGS and US Department of Transport

Figure 1 Urban Form, Density and Transport Comparisons (uniform scale)



Source: Neptis Foundation (<http://www.neptis.org/>)

By definition, private investors in grocery retailing projects do not factor externalities such as higher travel loads and lost opportunities for metropolitan wide urban consolidation into their

financial appraisals⁷. This potentially leads to sub-optimal distributions of retail floorspace. Prima facie, this justifies regulation of the location of such floorspace. The question is whether this regulation is carried out in the most efficient manner; that is, is the level of competition maximized within the 'envelope' set by overarching planning policy?

Although it has a sound rationale in positive economics, planning is a normative process, generally transacted through democratically mandated institutions and local consultative processes. In contrast to other forms of warranted market regulation, the determination of planning policies and rules for retail investment is particularly exposed to a range of influences which are inevitably sensitive to multiple local agendas. This makes the design of efficient regulatory systems inherently difficult. As shown in this report, it cannot be taken for granted that planning regimes at the local level in particular will consistently avoid unnecessary barriers to entry in the grocery retailing sector.

⁷ See Productivity Commission (2010) Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments, Issues Paper (May) for a fuller discussion of why unregulated land markets are unlikely to generate efficient settlement patterns (pages 16 – 17).

3 Planning and Barriers to Entry in Grocery Retailing

3.1 Regulatory Practices across Australia

SGS reviewed the strategic context and regulatory systems relating to retail policy and development in all the States and Territories. A full account of current planning provisions with respect to the grocery retailing sector across these jurisdictions is provided in Appendix A. This includes a summary of the objectives and principal implementation mechanisms for retail policy, with particular reference to grocery retailing floorspace.

This Section of the report provides a synthesis of principles and mechanisms applied to the planning regulation of grocery stores across Australia.

In this context it is worth noting, in passing, the development in recent years of retailing centres on airport land, which was formerly owned by the Commonwealth and is now held privately in long term leases or outright ownership.

In some cases these developments have been approved by the Commonwealth in contravention of the metropolitan centres hierarchy and without the support of the State or Territory Government. Constitutionally, development on Commonwealth owned land does not require approval of State and Local Governments although consultation with these entities is generally required under the relevant legislation.



The 'Essendon Fields' shopping centre in Melbourne, provides a recent example of a major retail development undertaken without Victorian Government planning approval on former airport land leased from the Commonwealth.

The exemption of Commonwealth land from State and Territory planning regimes can lead to 'rogue' retail projects that do not conform to regional centres policy. Such projects can detract from broader urban strategies for the distribution of employment, housing and associated transportation systems.

3.2 Land use regulation

Land use regulation proceeds on the basis of a strategically justified 'plan' which sets out the broad allocation of land uses in a region or district. In most cities this is firstly done at the metropolitan level and then "cascades" down to incorporation into the local government planning scheme.

Typically, the strategic intent for a local government area is then incorporated into a statutory zoning scheme which sets out the types of uses which are permissible within various classifications of land and the conditions under which they might be permitted. Conditions may be prescribed, or they may be contingent upon policies adopted by the authority hosting the planning scheme in question. Proponents of particular projects or land uses must demonstrate compliance with these conditions. This occurs through a development assessment (or 'planning permit') process.

As noted, planning schemes across the Australian jurisdictions invariably encompass a planned activity centres hierarchy. This may be explicitly incorporated into the statutory planning instrument, or it may be a 'called up' policy by the scheme such as a State policy which must be considered by the local government. For example, often the centres hierarchy derives from a higher level metropolitan planning strategy which promotes more compact, higher density development across the region in question.

In a centres hierarchy, proponents of developments featuring larger scale ('anchor') grocery retailing stores are explicitly or implicitly limited to higher order centres. That is, these developments are generally not entertained in smaller centres or in 'out of centre' locations because the consequential dilution of the planned hierarchy is deemed to cause more shopping related travel, weaken the potential for strong public transport destinations and impact adversely on surrounding development (often residential use).

To this end, some planning codes identify a threshold floorspace size for the categorisation of grocery retailing developments. For example, a grocery retailing development of more than 1,000 m² may be deemed to be performing a higher order retail function, with the potential to anchor an activity centre (see below for further discussion).⁸

The barriers to entry potentially faced by proponents of larger grocery retailing developments therefore include:

- refusal by planning authorities to change the planning scheme (re-zoning) to enable otherwise prohibited development of the store(s) in question, based on an adopted centres policy;
- refusal by planning authorities to issue a development consent (permit), because the project in question is not consistent with an adopted centres policy; and

⁸ Some planning policies fix upper limits to the floorspace of centres as a whole, as opposed to the individual grocery stores (or other shop types) within the centre. Usually, this is intended to protect the integrity of the hierarchy. However, this approach can introduce other competitive distortions. For example, the expansion of very small independent traders (such as might be found in small freehold premises in the 'High Streets' of older urban areas) may be unnecessarily stifled by floorspace caps.

- approval by the planning authorities but with onerous conditions that make the project unworkable from the proponent's point of view (for example, requiring proposed floorspace to be pared back to what is prescribed or outlined in centres policy).

In assessing whether to entertain a rezoning or to grant a development approval, planning authorities will typically address themselves to what are sometimes loosely referred to as the 'market impacts' of a proposed new development. This may involve analysis of shifts in market share. In these assessments, it is not the loss of trade to any particular market participant which is relevant, but rather any consequential external impact in terms of blighting of impacted centres or the loss or underutilization of publicly funded services such as public transport, libraries, recreation facilities etc. Assessment criteria have been developed in the planning industry to guide the acceptability or otherwise of 'adverse impacts on existing centres'. A rule of thumb is that any trade diversion of less than 10% can be absorbed without detrimental external effects, partly because such diversion will typically be remediated through natural growth in the local market, fuelled by income growth if not population growth.

A further potential barrier to entry relates to the conventions of procedural fairness and principles of natural justice applied by approval authorities when considering whether to issue a discretionary consent for a development incorporating a larger grocery retailing development. In some jurisdictions, incumbent grocery retailers may object to the grant of permits and seek reviews by appeal courts or tribunals, with the specific objective to increase the time, cost and risk faced by a would-be competitor.

This issue presents particularly difficult challenges for remedial policy. Most planning legislation in Australia has been deliberately framed to allow any interested party to make submissions or lodge objections in planning matters.

Planning regulation, including regulation of land supply and development in the grocery retailing sector, may be conducted on a 'prescriptive' or 'performance based' model.

A 'performance based' model avoids enforcement of pre-set solutions in favour of inviting project proponents to meet the outcomes or objectives set out in the planning scheme, using their own innovative solutions. To be effective, performance based planning instruments should include a prescriptive 'deemed to comply' provision as a fall back which would be applied should the proponents be unable or unwilling to demonstrate satisfactory performance through alternative strategies. Unfortunately, few performance based planning instruments have a prescriptive provision as a fall-back. The consequence is that on occasions there may be heightened potential for litigation, where the assessment criteria for a development may not be clear, potentially leading to additional barriers to entry.

Some jurisdictions including NSW, Queensland and Victoria have either adopted, or plan to adopt, State level guidelines which explicitly allow for flexibility in the interpretation of centres policy.

Specifically, these guidelines allow for a step wise or 'sequential' appraisal of proposals which may not be immediately consistent with the centres policy. Thus, for example, proponents of out-of-centre retail projects may be encouraged to find edge-of-centre locations, or failing that, demonstrate a clear net community benefit (as described in the policy) from an outright, out-of-centre location.

There is scope for greater consistency across the country as to when a sequential test might be used and how it should be applied. This is clearly evident in the case studies discussed in Section 4, and is a matter taken up in our recommendations in Section 5.

3.3 Competitive Outcomes

In effect, the planning system in Australian jurisdictions can be seen to grant quasi exclusive licences to trade over a given catchment area reflecting the generally hierarchical nature of shopping behaviours. As explained, large format grocery stores are effectively denied access to locations reserved as lower order centres in the hierarchy, as maintenance of a robust centres hierarchy is widely accepted as being critical to the achievement of more compact, sustainable and efficient urban forms.

There is usually no planning limit on the number of large format traders that may operate from higher order centres, but new entrants typically face non-regulatory barriers in breaking into these locations, most notably that available sites are rare or tightly held.

These quasi exclusive licences are generally granted without payment of fees to government, similar to those applied in other markets which are regulated for anticipated public benefit (e.g. commercial fishing, taxis, broadcasting etc).

This promotes rent seeking behaviour, primarily amongst the developers of shopping centres. The corporate owners of shopping centres stand to gain sometimes dramatic increases in underlying land value if they are successful in securing ownership of designated higher order centres or key sites within them.

Rent seeking behaviours triggered by the planning system can include:

- tying up available alternative sites for competing facilities within designated higher order centres; and
- controlling the portfolio of smaller tenancies anchored by larger grocery stores (and the like) within designated higher order centres, thereby erecting barriers to entry for small, independent retailers.

The fact that such windfalls may be on offer is not lost on planning authorities. In the absence of explicit licence fees, such authorities may engage in protracted development approval negotiations in order to extract some 'in-kind' public benefit, for example, by requiring proponents to contribute community facilities such as libraries as part of a development agreement. These negotiations come at their own cost in terms of uncertainty, delays in decision making and lack of transparency.

In these ways, both shopping centre owners, their major tenants and development approval authorities may be inclined to engage in 'gaming' tactics to preserve their interests and market positions. These behaviours create barriers to entry for potential competitors in some local markets.

This behaviour was confirmed by the ACCC in its assessment of the evidence to its inquiry:

“Further, the complexities of planning applications, and in particular the public consultation and objections processes, while soundly based, provide the opportunity for incumbents to ‘game’ the planning system to frustrate or prevent potential competitors entering local markets.”⁹

The charging of a licence fee in these circumstances may be warranted on both equity and efficiency grounds. Through planning regulation, the community creates the semi or fully exclusive trading opportunities in the public interest, and therefore should share in the returns. These returns can be used to facilitate the entry of new competitors to local markets (see Section 5).

⁹ ACCC report page 194

4 Case Studies of Barriers to Entry

4.1 Market structure

The demand for retail floorspace, and grocery retailing in particular, has expanded over time with growth in the population and changes in household spending habits. This trend rise in retail space per capita in Australia has supported the expansion of the MSCs as well the growth of the smaller and independent grocery retailers.

Together, the MSCs have expanded the number of stores by over 40 per cent in the last ten years, mostly by developing new greenfield sites (and not by acquisition). Woolworths and Coles are clearly the largest grocery retailers in Australia by a significant margin - Woolworths has over 820 stores nationwide while Coles has around 750 stores. Typically these MSC stores are above 2000m² in area, although both chains now operate significantly smaller formats in downtown, inner city and resort locations, tailored to local demand profiles.

According to Woolworths their target is to open 15-25 new supermarkets per annum, while Coles anticipate opening 20 new stores annually in addition to refurbishment of existing stores.

ALDI is the best example of a recent new entry to grocery retailing in Australia, and accordingly has supplied 4 of the 5 case studies in this Section. Since 2001 ALDI has grown to have more than 230 stores along the mainland eastern seaboard, with stores having an average trading area of 850m². ALDI has said that it sees a long term opportunity to achieve a store network of around 500 stores on the east coast of Australia.

Costco is another example of a recent entrant, opening its first store in 2009 in Docklands in Melbourne. Costco too is planning expansion, and has supplied a case study in this Section. Further stores are planned for Melbourne, and the company intends to expand into NSW with one store initially in western Sydney, up to five in total in Sydney and others to be developed in regional centres. Costco is also planning to establish stores in Queensland, South Australia and the ACT.

Metcash provides marketing and wholesale services to the majority of independent and franchising grocery retailers in Australia, including the more than 1200 IGA stores, Foodland IGA and Foodworks. Franklins is NSW based with the majority of stores being between 1000 m² and 2000m².

On 2 July Metcash announced that it would acquire Franklin's 85 supermarkets with a view to selling them to independent IGA retailers. The offer is subject to ACCC approval.

Other grocery retailers include SPAR which is a grocery wholesaler based in Brisbane supporting approximately 140 affiliated grocery retailers; and Superbarn which operates exclusively in Queanbeyan (NSW) and the ACT with five stores.

4.2 Lessons from the case studies

Taken together, the five case studies offer several key lessons regarding the impact on competition of planning regulation as it applies to the grocery retailing sector.

Wording makes a big difference. While State level policy and legislation generally avoid anti-competitive clauses, the cascading nature of planning regulations (whereby local governments are required to interpret and reflect higher order policies in their own districts) offers great opportunity for key ideas to be ‘lost in translation’.

One evident tendency is to confuse the policy goal of protecting a robust hierarchy of centres in the interests of urban consolidation with ‘protection of the investments’ made by incumbent grocery retailers in higher order centres. Case law makes very clear that competition and market share impacts per se are not relevant planning matters. Rather, planning must confine itself to the consequences of market share impacts in terms of the public domain and other externalities (Kentucky Fried Chicken Pty Ltd v Gantidis (1979) 140 CLR 675). It is important that the wording of planning instruments at all levels reinforces this point.

Maintaining an ***adequate supply of zoned land*** is also crucial. Most local governments claim to keep their assessments of demand for new retail floorspace and associated land requirements up to date. However, there is no ‘quality assurance’ in this regard; local governments make their own determinations as to when demand and supply assessments should be refreshed.

Moreover, when demand projection studies are undertaken, there is a danger that they will lock in contemporary ‘industry standards’ in terms of retail turnover densities (RTD’s \$/m²), when these ‘standards’ may simply reflect the entrenched quasi monopoly positions of major traders and their accompanying specialty stores. The application of lower (or lower end) RTD’s to estimate future floorspace requirements in planning strategies may be warranted in the interests of creating a more open and competitive market, with more opportunities being offered to independent grocery stores and small traders alike. This is particularly relevant in greenfield areas, where there may not be a pre-existing stock of underutilised retail floorspace or zoned land to accommodate retail innovation and small business development¹⁰.

Given the significance of competition in grocery retailing for households, regional planning authorities could be given a role in signalling macro level demand and supply trends across a sub-metropolitan district, for subsequent action by local planning authorities.

It is also evident from the case studies that ***centre design*** can be a make or break issue. Land supply may be adequate in nominal terms, but the land actually available within formal centre boundaries will inevitably be constrained by fragmentation in property ownership and the expectations of current occupiers of the sites in question.

¹⁰ In this context, the model of single ownership shopping centres in greenfield areas is especially problematic.

Alternative approaches to centre structure planning are needed so that 'second best' sites on the fringes of centres can be successfully integrated into these activity precincts, notwithstanding barriers like major roads. Simply opening up the threat of alternative sites will impact positively on the expectations of land owners within the core centre boundaries.

There is the potential for planning authorities to **facilitate access to suitable sites** within designated centre boundaries, although few have done so to date. Councils in most jurisdictions have limited powers in this regard. In theory, councils could call upon State Government development corporations such as VicUrban, Landcom (NSW), LMC (SA) or ULDA (Queensland) to increase land supply. However, there appears to be a gulf between the formulation of centres policy and the capacity of most State and Territory jurisdictions to deliver these objectives through means other than development controls. With the possible exception of the ACT, jurisdictions have rarely applied urban regeneration and property acquisition powers to create development opportunities within designated higher order centres.

Perhaps the strongest message arising from the case studies is the need for a clear '**sequential test**' for appraising out-of-centre proposals. Clarity is required both in the content of the test (how is net community benefit to be measured using well accepted quantification techniques) and the point in the development assessment process where this test might be used. For example, in some jurisdictions, access to such a test is contingent upon appeals to courts or tribunals. This is costly and, as explained, constitutes a barrier to entry in itself.

In the case studies below SGS purposely set out to identify examples of where the planning system may have posed unjustified barriers to entry. It is important to note, however, that there are many instances where the planning system works well. For example, our discussions with ALDI revealed that the company had generally had 'positive experiences' in its roll out of stores in non-metropolitan areas. It particularly cited the opening of its store in Lithgow NSW as an example of a local government facilitating development in a 'fringe of centre' location after ALDI had demonstrated the lack of appropriate sites in the centre proper. ALDI also identified its investment in Villawood, NSW as a 'win-win' case study as described below.

ALDI Development, Fairfield City Council, New South Wales

The development of an ALDI store on Woodville Road in Villawood has been a catalyst for the regeneration of the neighbourhood centre. The Villawood town centre is located approximately 5km from the Parramatta Central Business District (CBD).

Prior to the development of ALDI, the Villawood town centre was a degraded shopping strip. After a nearby Plaza opened, many Villawood businesses went into decline, leaving abandoned shop fronts and buildings, including an abandoned supermarket site.

The development of ALDI in 2001 induced further private sector investment into the area. ALDI acknowledged that the local government was supportive of this development in terms of the site's location and appropriateness for this use



4.3 Case Studies

SGS identified a range of case studies of instances where would-be competitors in the grocery retailing sector in a particular area have encountered barriers to entry linked to the planning system. For each case study in this Section, SGS:

- describes the circumstances of the application in question (size of development, location, relationship to local planning policy, position of incumbents etc);
- identifies the key issues from the proponents perspective;
- identifies the key issues from the local planning authority's perspective;
- frames these key issues in terms of the theory and concepts outlined earlier in the report; and
- identifies possible ways forward in mitigating the restraint on competition in cases like the one illustrated.

4.3.1 ALDI Development, former Maroochy Shire Council (now Sunshine Coast Regional Council), Queensland

In its submission to the ACCC inquiry ALDI highlighted that planning policy within Queensland's former Maroochy Shire¹¹ is preventing the development of a new ALDI store despite market analysis suggesting that the region could accommodate up to six stores.

According to ALDI, attempts at 'in centre' development have been unsuccessful due to insufficient supply of appropriately zoned land within the Shire's existing activity centres. ALDI highlighted that the Shire's activity centre hierarchy (Principal Activity Centre, Major Activity Centres, District Centres, Village Centres and Local Centres) is aggravating this issue as the policy is prescriptive with respect to the preferred uses and size of commercial development within each type of activity centre. This limits the potential development of a grocery store such as Aldi to the Principal, Major and District Centres within the Shire.

Under Maroochy Shire's Retail and Commercial Centres Hierarchy, commercial uses that have a gross floor area of greater than 1,000 square metres are not allowed within identified 'Village' and 'Local' centres. Furthermore, Council's strategic plan for local activity centres is explicit in ruling out the potential development of a supermarket within these centres both now and in the future.

¹¹ Caloundra City, Noosa Shire and Maroochy Shire amalgamated in 2008 to form Sunshine Coast Council. However, Maroochy Plan 2000 still directs planning policy within the former Maroochy Shire boundary.

'Local centres are not intended to be established as, or to expand into, higher order centres comprising or containing a standard size or larger supermarket. Any such facilities are defined (in Volume 1) to be a Shopping complex, and it is intended that such facilities be located only within District centres or higher order centres within the hierarchy. It is acknowledged that such facilities may be argued to serve day-to-day needs in a similar way to a Local centre, and that they may therefore serve a community need.'

Source: Maroochy Shire Council, *Maroochy Plan 2000, Retail and Commercial Strategy*

Typically, ALDI stores have a total footprint of between 1,300 and 1,500 square metres (850 square metres plus amenities), ruling out potential development within these centres. ALDI believes that there would be substantial public benefit in increasing this threshold for smaller developments to 1,500 square metres, citing that planning policy should recognise the concept of small format supermarkets that by virtue of their size, limited trading hours and relatively few truck movements, are qualitatively different from full-line supermarkets.

Further investigation of Maroochy Shire's Retail and Commercial Strategy highlights that the Strategic Plan for Retail and Commerce is poorly worded, citing the protection of investments made in centres as an objective of consolidating and maintaining the integrity of the Retail and Commercial Centres Hierarchy.

'The maintenance of the Retail and Commercial Centres Hierarchy protects the investments made in existing centres and promotes private and public sector confidence in, and public knowledge of, the Council's continuing commitment to that investment.'

Source: Maroochy Shire Council, *Maroochy Plan 2000, Retail and Commercial Strategy*

This case study highlights a number of issues. In the first instance, a lack of appropriately zoned land within the Shire's existing higher order centres has been a significant barrier to entry for ALDI. Secondly, the Shire's hierarchy uses rigid floorspace limits to restrict development, thereby constraining the potential to cater adequately for growth and change in retail demands.

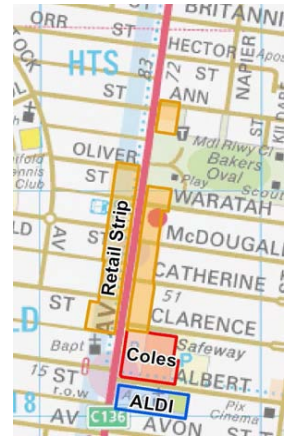
Finally, the case study highlights that the Shire's Strategic Plan for Retail and Commerce is poorly worded, if not misguided, in emphasizing the protection of existing investment in higher order centres. This places an unwarranted constraint on competition and points to a lack of understanding of the benefits competition can bring to activity centres.

4.3.2 ALDI Development, City of Greater Geelong, Victoria

Discussions with ALDI's Victorian representative identified that ALDI have had difficulty in establishing stores within the City of Greater Geelong. ALDI currently has three stores within the region but has determined that the City has the ability to support up to ten of its stores.

According to ALDI, there is not enough suitably zoned land within the City's activity centres to accommodate future growth. ALDI is currently investigating four sites for potential development, all of which will require rezoning.

One of these sites is located within Geelong West. ALDI is proposing the development of a supermarket with a gross floor area of 1,668 square metres plus associated car parking and loading facilities. The site is located at the southern edge of the Geelong West activity centre and opposite an existing Coles supermarket. ALDI highlighted that no suitable infill development sites, greater than 2,000 square metres and zoned Business 1¹² currently exist within the area's activity centres. To determine the next most appropriate site available ALDI undertook a sequential test.



The sequential test is a proposed mechanism by the Victorian State Department of Planning and Community Developments (DPCD) to provide greater clarity about how or when to consider retail in a new centre location¹³, as is the case within Geelong West.

DPCD propose that the assessment process should proceed in three sequential steps:

- Firstly, an assessment to determine whether a policy preferred in-centre or edge-of-centre location is available.
- Secondly, an assessment of the strategic merits of the proposal in its proposed location.
- Thirdly, an assessment of a range of local matters relating to the proposed site and development.

Based on ALDI's analysis, a proposed site was chosen that would be a logical expansion to the existing commercial area and have a clear functional relationship with the activity centre.

The City of Geelong Retail Strategy (2006) recognises the need for flexibility in terms of planning the retail hierarchy.

'While there is strong support for a retail strategy which concentrates retail activity in a defined hierarchy of activity centres, there is also a recognition that such a strategy should ensure that activity centres continue to evolve and change in response to retail sector dynamics and shifts in shopper preferences and shopping patterns.'

Source: City of Greater Geelong Retail Strategy, June 2006

Consultation with the City of Greater Geelong revealed that where a permit or planning scheme amendment is required for an out-of-centre or other non-compliant retail development, it is Council's policy to require the following information:

¹² Under Victorian Planning Policy Framework the Business 1 Zone is considered to be the most appropriate zone to facilitate the development of an Aldi Store. The purpose of the zone is 'To encourage the intensive development of business centres for retailing and other complementary commercial, entertainment and community uses.'

¹³ This mechanism was proposed as part of DPCD's Retail Policy Review conducted in 2008. The objective of the review was to inform development of a clearer, whole-of-retailing policy and statutory framework for Victoria. The Retail Policy has not yet been finalised (as at July 2010).

- an **Economic Impact Assessment** for all proposals involving a major tenant such as a supermarket, all proposals that are located out-of-centre, applications relating to an increase in the existing floorspace cap and new retail developments involving 2,000 square metres or more in gross leasable floorspace; and
- demonstration through a **sequential test** of why the proposed out of centre location is being considered for development. In line with Council's policy this includes demonstrating:
 - *Why the proposal cannot be accommodated in an existing activity centre, or failing that,*
 - *Cannot be accommodated on an edge of centre location (which has a functional relationship with an activity centre) or, failing that,*
 - *Cannot be accommodated in the nominated homemaker precincts.*
 - *An out-of-centre proposal should then demonstrate that the location is consistent with the urban context of the surrounding area, including potential impacts of the proposed development on local character and amenity.*

The application to rezone and develop land for an ALDI store in Geelong West has been 'called in' by the Minister, in the interests of facilitating economic development in the State given the Global Financial Crisis. Discussions with ALDI highlighted that where rezoning is required it is often a lengthy and subsequently costly approvals process.

Another site identified by ALDI that will require rezoning is opposite the Waurm Ponds shopping centre. The proposal seeks to rezone and develop land for an ALDI store on the east corner of a major intersection opposite the Waurm Ponds shopping centre. The site previously contained a garden supplies business and concrete batching plant. These businesses are prohibited uses within the site that is zoned as residential, but had been operating on the site for in excess of 15 years under existing use provisions.



Australian Unity (the owner of the Waurm Ponds shopping centre) has objected to ALDI's rezoning application despite being unable to offer ALDI a tenancy within their Centre. Incidentally, Australian Unity, in a joint venture with Coles, is proposing an expansion of the Waurm Ponds Shopping Centre.

In Australian Unity's submissions it is agreed that demand can be established for an ALDI store within the catchment and that trading impacts would be relatively modest and quickly offset by market growth. However, Australian Unity is objecting on the basis that the proposed development is out-of-centre, with the Princes Highway acting as a substantial physical and psychological barrier between the proposed site and the existing activity centre. Australian Unity argues that this is not consistent with the objectives of urban consolidation but rather encourages multi-purpose trips and discourages pedestrian shoppers.

Australian Unity also argues that the benefits of the site location as described by ALDI (to broaden the role of the activity centre, create local employment opportunities and provide retail choice and more competitive prices) are not site specific and could be achieved if the ALDI store were to have

an in-centre location. Australian Unity also suggests that there is nothing to prevent further expansion of the existing shopping centre to accommodate an ALDI store, noting that this would require another planning scheme amendment to rezone the adjacent portion of land from Residential 1 to Business 1 Zone. Discussions with ALDI highlighted that this solution is 'tokenistic, not realistic', as Australian Unity has not formally offered ALDI the site and Council does not support the suggested development of the site as it is intended to be used for residential purposes as a retirement village.

Discussions with Geelong City Council confirmed that ALDI had been effectively "locked out" of developing within the Waurin Ponds shopping centre due to current leasing arrangements. However it is worth noting that the planning system cannot solve leasing arrangements between two parties.

The application to rezone and develop land for an ALDI store in Waurin Ponds has also been 'called in' by the Minister. The Council was not supportive of the location given the rural residential nature of the area and the site being adjacent to the Waurin Ponds Sub-regional Activity Centre. However, the State Government felt the project required a quicker decision time given the need to stimulate economic activity in Victoria.

Both case studies within the City of Greater Geelong highlight a number of issues. Again, a lack of appropriately zoned land was identified by ALDI. However, in further discussions with Geelong City Council this issue was explored further. Council's view is that there is an adequate supply of suitably zoned land within the City, however, it does not always meet the particular requirements or preference of a grocery store such as ALDI. According to Council, a key issue is that ALDI is often not prepared to pay the market price to acquire land and may be unreasonably selective in its choice of site, preferring locations that front a main road.

Council indicated that although it does not regularly review the 'amount' of commercially zoned land within the City, it does periodically review its Retail Strategy, noting that this incorporates reassessment of the location of activity centres and the activity centre hierarchy, including determining the need to expand activity centres to cater for future growth.

The Waurin Ponds case study highlights an example of where a supermarket operator may have used planning laws to frustrate competitive entry, attempting to lock ALDI out of the market though there may be an argument that ALDI was unrealistic in its expectations.

It should also be noted that due process under the Victorian planning system allows for the screening out of objections on non-land use planning grounds, albeit that this takes some time to work through.

4.3.3 ALDI Development, Redland City Council, Queensland

Alexandra Hills located within Redland City Council (RCC) was identified by ALDI as a potential area to develop. Prior to identification of the subject site, ALDI contacted Mirvac to discuss the potential of locating within the Alexandra Hills Shopping Centre. Being advised they were unable to

accommodate ALDI on the site, opportunities for other sites were pursued with the objective of finding a location as close as possible to the Alexandra Hills Shopping Centre.

The site chosen is located immediately adjacent to the designated district centre and adjoining a service station. The site is made up of seven allotments within the Urban Residential zone. While the proposed development was in conflict with the planning scheme, ALDI decided to proceed with its application to the RCC, arguing that its proposal would:

- *provide additional choice, competition, lower prices and a differentiated product range for both essential groceries and other product; and*
- *introduce a different shopping experience, level of shopper comfort and amenity than is currently available; and*
- *provide increased levels of employment both during the construction and ongoing operation of the proposed development; and*
- *bolster economic sustainability; and*
- *meet a latent unsatisfied need that cannot be satisfied on suitably designated land.*
- *bring about aesthetic streetscape improvement by the modern and attractive nature of the centre design and the use of appropriate landscape treatment; and*
- *amalgamate seven allotments to provide an integrated and coherent streetscape and character for the locality; and*
- *reduce the number of vehicle access points to reduce the potential for both pedestrian and vehicle conflict and potentially improve the efficiency of the local road network; and*
- *have no adverse impact on the amenity of neighbouring properties; and*
- *act as an appropriate transition from the Centre zoning designation to the east and the Open Space zoning designation to the west.*



Prior to submitting its application, ALDI had a number of meetings with the RCC in early 2007 to discuss how the application might satisfy the objectives of the planning scheme. Although the RCC officers highlighted that they did not support the proposal, ALDI submitted an application in June 2007.

Between June 2007 and January 2008 RCC made several requests for additional information. During this time the application was advertised and four objections received, including an objection from Mirvac (the owner of the nearby Alexandra Hills Shopping Centre). Mirvac was then approached to explain why they had objected when they had previously advised that they could not accommodate ALDI on their site. Mirvac advised that they might now be able to accommodate an ALDI store. ALDI duly entered into discussions with Mirvac but were subsequently advised that the tenancy could not be delivered due to the requirements of existing long term tenants. ALDI determined to continue with its original application.

The RCC decided to refuse the application in May 2008. ALDI instituted an appeal in the Planning and Environment Court in June 2008. The appeal was heard in March 2009. Judgement in favour of ALDI was made in April 2009. In response, RCC lodged an application to the Court of Appeal. The Court of appeal refused the RCC's application.

A hearing in the Planning and Environment Court for the determination of conditions was set down to be heard over two days in April 2010 but was resolved by way of negotiation with RCC. The Planning and Environment Court made an order in March 2010 approving the application, almost three years after the original application was submitted to the RCC.

ALDI's Queensland representative referred to a number of issues raised by this experience. Of key concern to ALDI was the RCC's unwillingness to consider an application on land that is not correctly zoned even though the *Statutory Guideline 05/09* implemented under the *Sustainable Planning ACT 2009* (SPA) states that proposals can be considered based on sufficient grounds, even where the proposal does not conform to the current zoning.

The SPA provides that an assessment manager may decide a development application in a way that conflicts with a relevant instrument only in certain circumstances. One of these circumstances is that there are sufficient grounds to justify the decision, despite the conflict. This means that an assessment manager may:

- *approve an application, even though the proposed development conflicts with a relevant instrument, if there are sufficient grounds for approving the development despite the conflict; or*
- *refuse an application, even though the proposed development complies with the relevant instruments, if there are sufficient grounds for refusing the development despite the fact that the decision would conflict with the relevant instruments.*

Source: Department of Infrastructure and Planning, *Statutory Guideline 05/09*, December 2009

The *Statutory Guideline 05/09* goes on to define the meaning of 'sufficient grounds' as follows:

- *The **relevant instrument is out of date** due to its age or changing circumstances in the area and the proposal reflects or responds to these changed circumstances.*
- *The **relevant instrument is incorrect** in terms of its substance or underlying assumptions for the circumstances of the particular proposal.*
- *The **relevant instrument inadequately addresses development.***
- *The **Relevant instrument does not anticipate specific or particular development.** The type of development proposed may be of international, national, state or regional significance and may not have been anticipated by the relevant instrument.*
- *There is an **exceptional and urgent need for the proposal** to occur.*

Source: Department of Infrastructure and Planning, *Statutory Guideline 05/09*, December 2009

ALDI also raised a concern regarding how the proposal was presented by planning officers to Councillors, highlighting that these officials communicated all the reasons the application should be refused instead of presenting a balanced report (both arguments for and against) that also identified the merits of the application. According to ALDI this resulted in Councillors making an uninformed decision.

Discussions with Redland City Council show that it did not support the proposal because it was not aligned with Council's vision for the site and it is not consistent with the wider activity centre framework for the City. The site was zoned as Urban Residential and was deemed by Council as lying outside the District Centre zone. Under Council's Strategic Framework, out-of-centre development is actively discouraged.

'The Redlands Planning Scheme actively promotes the primacy of the Shire's centres by discouraging out-of-centre development and ensuring no existing centre expands to the next level in the centres matrix by virtue of size of function.'

Source: Redlands City Council *Redlands Planning Scheme, Part 3 Desired Environmental Outcomes, Division 2 Strategic Framework, s 3.2.3 (3)(k)*

Council has calculated the commercially zoned areas within each of its Major and District centres to guide the level of future development. The amount of commercially zoned land within each centre assists in defining the category of centre, (see below). According to Council, this is reviewed every 2-3 years.

Centre Hierarchy	Centre	Zone Area
Major	Capalaba	457 865 m ²
Major	Victoria Point	275 339 m ²
Major	Cleveland	364 346 m ²
District	Alexandra Hills	36 639 m ²
District	Birkdale	36 372 m ²

(Source: calculations taken from Redland Shire Council PD online mapping system)

ALDI argued that the inclusion of the existing service station and the site of the proposed ALDI store would still maintain the Alexandra Hills district centre within its position in the retail hierarchy and not threaten the integrity of the 'centres matrix' in terms of role, function, use or scale.

Council emphasized that it is strongly against out-of-centre development and that its strategic framework reiterates this. While it does not apply a formalised sequential test to assess the location of proposed development, Council requires an economic needs analysis to be undertaken.

As with the Geelong Council discussed earlier, RCC reported that in most cases sufficient commercial land within activity centres exists. However, ALDI is often not prepared to pay the market price to acquire land and is too rigid in its siting criteria, often targeting land just outside of existing activity centres. Council emphasized that if ALDI chose to locate on land within activity centres the planning process would be much simpler and less costly. This is an important point as the planning system can be used as a reason why new applications can be thwarted when other factors such as scale and siting criteria of the proponent may be more critical.

4.3.4 ALDI Development, Wyong Shire Council, New South Wales

The Lake Haven Centre in Wyong Shire is a successful and fully occupied centre. ALDI suggested that the centre's success is primarily due to the lack of surrounding shopping centre competition. ALDI sought to locate in an adjacent site. However, this land had been rezoned and approved only for bulky goods development.

Despite strong demand ALDI indicated that it had effectively been locked out of this market since 2001, including within the nearby Warnervale Town Centre.

ALDI believe that a development in this location would relieve some pressure from a centre that is over trading whilst also sitting comfortably with neighbouring commercial and residential uses.

Discussions with one of ALDI's NSW representatives highlighted that ALDI is no longer pursuing a development in this location and has instead received approval to develop in Toukley, a nearby suburb.



This case study highlights that a wider assessment of retail locations can be required by proponents.

4.3.5 Costco Wholesale, Victoria and New South Wales

Costco is an emerging retail format in Australia based on a low overhead warehouse model (large scale format). The Costco model has been successful in a range of countries, and unlike other Australian retailers, requires payment of an annual membership fee. Costco's stock line, which ranges from package foods, fresh foods, clothing, household appliances, hardware, office supplies and furniture, distinguishes it from other warehouse retailers. This has been a key factor in its experience with planning systems.

Discussions with Costco highlighted that the company had difficulty establishing its model in Australia as the planning system does not tend to recognise this new format of retailing which is premised on very large scale floor space with significant transport (car) requirements.

In its submissions to the NSW Government regarding the review of planning regulations on competition, Costco dwelt on its different experiences with the Victorian and NSW planning systems when seeking to establish stores in those States.

In Victoria, Costco found that permit application and approval processes were concluded smoothly. This meant that the Melbourne Docklands outlet was Costco's first Australian store, opening in August 2009.

The availability of an appropriately zoned site in a high quality location was critical to the development of a Costco store in Melbourne Docklands. The definition of Costco's use as a 'shop' was also important as this made the use as-of-right on the subject land in Melbourne Docklands. The development was also reinforced by the Melbourne Retail Strategy 2006 – 2012 which encouraged innovative new retail formats in the City. Additionally, Costco was allocated senior contacts in DPCD and Invest Victoria which provided increased investment certainty. The main reason why the Docklands Costco proposal was approved quickly was that it was consistent with planning policy.

In NSW, Costco attended a series of meetings with planners at the NSW Department of Planning and also liaised with NSW State and Regional Development. In its dealings with the Department of Planning, it found that the NSW planning system was ambiguous as to the classification of Costco within existing planning frameworks. Initially Costco were directed to find sites within existing retail centres. After it reported a lack of appropriate sites, Costco was directed to look at the fringes at bulky goods centres or in enterprise corridors.

Costco subsequently identified a site on Parramatta Road in Auburn and this was supported by Auburn City Council. Notwithstanding this support, and the fact that the Council had initiated planning studies to establish a Parramatta Road Retail Precinct, the zoning of the site in question under the Auburn Local Environmental Plan 2000 prohibited retail development. However, the submission of a Concept Plan allowed the Minister to give approval for prohibited land uses.

The Auburn Costco was declared a 'Major Project' under Part 3A of the *Environmental Planning and Assessment Act 1979*, and became eligible for direct approval by the Minister. Towards the end of the consultation period, the Shopping Centre Council of Australia and AMP lodged an objection to the Costco proposal. The Planning NSW website indicates that Westfield also lodged a submission. The State Government then requested Costco to respond to these submissions and, in turn, Costco commissioned further work. Following Costco's response, the Minister granted approval for the project on 23 April 2010¹⁴.

Costco's contrasting experience in the planning systems in Victoria and NSW points to a number of issues. Costco noted that the current planning system in NSW:

- "discourages competition by limiting the opportunity for new entrants into the market by way of restricted land zoning and by limiting the number of retail outlets in a given area;
- does not promote innovative investment and growth by retailers and retail manufacturers; and
- does not promote dynamic change or competition.¹⁵"

The importance of limiting investment risk for new market entrants was emphasized in respect of the time and uncertainty involved in planning processes. This risk was significantly reduced in Victoria where there was more certainty about Costco's acceptance under Victorian planning regulations. In NSW, Costco at its own risk purchased land where the Costco store was a prohibited

¹⁴ Costco advised SGS that the proposal is still within the 28 day judicial review period although this would appear to have expired.

¹⁵ Noone, P, 2009, Submission to the Department of Planning (NSW) on 'Promoting Economic Growth and Competition Through the Planning System'. On behalf of Costco, 18 June 2009, p 4.

use, thereby requiring rezoning on individual merit, and adding considerably to time and uncertainty. This time and uncertainty may deter new players from entering the market, thereby limiting competition.

In a submission made on behalf of Costco on the NSW Draft Centres Policy in May 2009, Costco suggested means to improve provision of emerging retail forms in NSW. These include:

- extending the type and range of retail uses catered for in NSW beyond “shop” and “retail premises”;
- establishing a new definition of “warehouse retail premises” to cater for larger retail forms like Costco; and
- permit “warehouse retail premises” in a range of business zones including B5 Business Development, B6 Enterprise Corridor and B7 Business Park where in some cases they may be more appropriately located than in conventional retail nodes.

This case study highlights a number of issues. In NSW in particular, the classification of retailers is problematic, particularly for emerging forms of retailing which are not readily related to existing retail definitions. Even where retailers such as Costco can be defined, existing zoning restrictions may restrict potential locations for such retailers to areas where land supply may be insufficient or inappropriate, such as in existing centres. In, addition the need to discuss each application on a case-by-case basis results in increased time and uncertainty for potential investors, thereby providing a potential deterrent for market entry.

5 Amending Planning Frameworks to Reduce Barriers to Entry

In this Section SGS identifies a range of policy initiatives that could be introduced into planning and zoning laws to reduce planning system barriers to entry in grocery retailing. These initiatives could equally benefit competition in other retailing sectors through introducing flexibility to deal with innovation in retail formats.

5.1 Clarity of Planning Policy Framework

As discussed in Section 2 town planning controls operate within a 'cascading' regulatory regime where higher order strategic directions set by State or Territory planning agencies are refined and implemented by local governments.

It is important to properly reflect local circumstances and priorities when it comes to the application of State and Territory policies for the built environment. However, there is, in these cascading arrangements and provisions for delegated planning authority, scope for fundamental regional or State policy directions to be diluted or usurped in the local interpretation. This can manifest itself in decisions to deny access for would be entrants to particular areas. The remedy in many jurisdictions is for 'call-ins' by the Planning Minister, to reassert State/Territory policy. This may be effective in the near term, but it burdens the planning system with excessive uncertainty and costs.

The 'first line of defence' against divergent local interpretations of State and Territory policy directions is clearer articulation of these directions in the first place. In other words, the limits to local discretion would be more clearly defined, both to approval and review authorities.

Our review of planning frameworks across the Australian jurisdictions (in Appendix A) showed great consistency with respect to the adoption of 'centres policy'. However, documentation and justification of these policies varies greatly. This opens the door for unnecessary and costly dispute at the local level.

In this context, competition in the grocery retailing sector could be assisted were State and Territory Governments to issue nationally consistent or harmonised policy statements on the planning of retail land use. For the sake of illustration, we outline in the following pages some potential key facets of such statements.

Potential content of statement on planning of retail land use

The retail policy would, firstly, divide the metropolis (or equivalent area) into broad economic regions. These are the wider regions within which communities might contemplate shopping opportunities (apart from trips to the metropolitan CBD, which will generally be seen to be opportunities open to most if not all metropolitan residents). In other words, these economic

regions will be largely 'self-contained' from a retail service point of view, with relatively few leakages of spending to other regions because of various barriers including distance, travel time, physical separators and cultural / historical relationships.

These economic regions will tend to follow labour market and housing corridors which have typically shaped perceptions of community boundaries.

For each economic region in turn, the policy could define the existing and proposed retail hierarchy by reference to such factors as scale of catchment, the geography of the catchment, retail specialism (e.g. food, tourism, fashion etc), frequency of visitation and time and money spent per visit. Some regions may display orthodox hierarchies, whilst others will feature greater or lesser variations on this model.

The policy would also note any shortfalls or other weaknesses in the retail network for each economic region. As discussed below, each region's system of centres will need to be continuously monitored and updated, by a planning authority with an appropriate 'supra-municipal' perspective. This monitoring would need to track the emergence of new retail formats and consumer shopping patterns which contribute to the continuing evolution of the retailing system, including any hierarchical pattern in activity centres. More particularly, the whole retail supply chain would need to be monitored, having regard to:

- demand and consumer needs within the economic region, noting that some needs (for fresh, healthy food, for example) may not be evident in demonstrated spending patterns;
- where customers travel from and to in search of needed / wanted goods and services; and
- changing synergies between the shopping network and other services including clinics (doctors, dentists, physios etc), libraries, postal services, education (formal and informal), entertainment (e.g. cinemas) and fitness / recreation centres (e.g. gyms, swimming pools etc).

Finally, and most importantly, the policy would include a set of objectives and performance criteria for the ongoing development of the retail system within each economic region. To a large extent, these objectives and criteria will be common to all economic regions across the metropolitan and non-metropolitan parts of a State or Territory, though there will be significant variations from time to time to reflect historical development of the retail system in the region in question, changing demographics and the impact of tourism.

The objectives and performance criteria will need to address an overarching goal for the retail system across the State / Territory, which might be something like....

.....The creation of an efficient and sustainable distribution system to meet the demand for goods and services by the people of the State/Territory.

This covers the issues of meeting community preferences, allocative efficiency (not wasting resources that could be put to some better use) and sustainability (containing externalities and building communities which are vibrant, diverse and fair). The sub-ordinate objectives and performance criteria therefore need to address a wide range of aspirations. Uppermost amongst these would be the maintenance of competition and choice for consumers. But, transport impacts, public domain and place quality, ecological performance and local community identity also need to

be dealt with. Table 2 sets out possible objectives and performance criteria which might be expected to apply across most economic regions.

As discussed below, these objectives and performance criteria, together with the mapped and annotated network of centres for each economic region, could provide the starting point, or 'contextual statement', for assessing whether proposals for retail development are in the community's interest.

Table 2 Possible Objectives and Performance Criteria for the Regional Retail System

<i>Ongoing development of the retail system should.....</i>	<i>Performance criteria</i>
1. Maintain a healthy level of retail competition and customer choice	<p>A. All metropolitan communities (and other communities with sufficient regional population) should have access to at least 2 supermarkets within a 15 minute drive or 30 minute public transport ride.</p> <p>B. Service gaps identified in the regional retail system are addressed, considering the effect on existing levels of retail competition and customer choice.</p>
2. Enhance or preserve local food security for all communities in the region	C. All households in the region should have a shop selling basic food and groceries within walking distance (approx. 400 m).
3. Maintain a strong small business community and a vibrant retail employment market	D. Per capita retail employment in the Region should not fall below 90% of the metropolitan or non metropolitan average, as the case may be.
4. Reduce or limit the growth of vehicle travel required to secure household goods and services	<p>E. All new retail developments should be located within or alongside a designated activity centre and with access to public transport.</p> <p>F. Retail developments which cater to higher order needs (that is, customers will typically come from a relatively large catchment) shall be located in designated centres which already draw from a similar catchment or which are expected to do so in the regional retail system.</p>
5. Reduce or limit the growth of vehicle travel required to deliver goods to retail outlets for on-selling	See criteria E and F.
6. Reduce or limit the growth of waste generated in the retail distribution process	G. All new retail developments should feature a whole of life-cycle waste management strategy, including on-site waste recycling facilities, covering the materials used in the building structure and the construction process, as well as the goods distributed through the store.
7. Reduce or limit the growth in total energy consumption involved in the retail distribution process	H. All new retail developments should feature 6 Green Star rated buildings and site works.
8. Enhance the role of activity centres, be they local, district, regional or specialised in character, as places of community interaction and engagement in non-retailing activity	<p>I. All new retail developments should comply with the Structure Plan and Urban Design Framework for the activity centre in question.</p> <p>J. Wherever possible, new retail developments should demonstrate synergies with local 'non retail' activities, including library, entertainment, fitness and health, medical and civic services.</p>
9. Avoid or contain the imposition of traffic, noise, light and building mass nuisance to surrounding activities	See criterion I

10. Preserve and enhance the heritage and cultural values of the locality

See criterion I

5.2 Land Supply for Retail Centre Development

It is vital that centres policies are up to date and that sufficient land is set aside in planning schemes to accommodate forecast demand for grocery retailing stores.

This objective could be advanced by all jurisdictions regularly publishing forecasts of demand for retail floorspace on a regional and sub-regional basis, and monitoring supply, as they currently do for housing. Such a system would provide a regular (and potentially statutory) prompt to local authorities to update their plans. The availability of authoritative data on regional supply and demand would also expose local councils to greater scrutiny by planning review bodies should applications go to appeal.

As noted, it is also important that future floorspace requirements are assessed using RTD's and provision ratios geared to a competitive market. There is some evidence that standard planning models may result in underestimation of retail floorspace requirements in greenfield areas, in particular. For example, location quotients for retail employment in outer areas in Melbourne are typically well below parity (see Appendix C).

5.3 Exclusion of Competition Impacts as Planning Considerations

Competitor induced impacts on market share/trade volumes in and of themselves may not be admitted as relevant matters in planning deliberations, but this is not always well understood and reflected in local area planning instruments.

As noted by Justice Lloyd (1997), there are strict limits, outlined by the High Court in *Kentucky Fried Chicken Pty Ltd v Gantidis* (1979) 140 CLR 675 (at 687; cf 681), on the extent to which the economic impact of a development on businesses in the surrounding area may be considered in a planning assessment. In the *Kentucky Fried Chicken* case, Justice Stephen J stated that:

"If the shopping facilities presently enjoyed by a community or planned for it in the future are put in jeopardy by some proposed development, ... and if the resultant community detriment will not be made good by the proposed development itself, that seems to me to be a consideration proper to be taken into account as a matter of town planning".

However, Justice Stephen went on to stress that... *"the mere threat of competition to existing businesses, if not accompanied by a prospect of a resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development be proceeded with will not be a relevant town planning consideration."*

While planning assessments might require advice on current and prospective market share impacts, these competitive effects are only relevant in so far as they might provide insights to adverse environmental impacts or other externalities. In summary, assessing competition between individual retailers is not a valid planning consideration, but the economic impact of the development on the wider locality in terms of externalities should be considered (such as congestion, public investment and urban consolidation strategy).

Against this background, it is noteworthy that the NSW Government has recently announced a policy change that 'would strip back planning requirements that lead to anti competitive behaviour in the retail industry'. This policy statement places the 'onus of proof' firmly on Councils and other proponents of planning rules which would restrict the size, location and numbers of shop types in particular areas.¹⁶

Through COAG or some other appropriate national forum, the Commonwealth could re-confirm the principles articulated in the KFC versus Gantidis case and issue some practice guidelines, drawing on appropriate elements of the recent NSW policy statement.

5.4 Appropriate Planning Definitions and Measures of Retail Land Use

It is evident from the case studies reported in Section 4, that rigid planning definitions can sometimes unnecessarily constrain competition. As a general principle, definitions for the purposes of retail land use planning should address themselves to the *environmental impacts* of the activity in question, rather than the *type or format of retailing* per se. That is, land use types and proposals should be categorised in terms of catchment area, trip generation, impact on neighbouring areas and ability to act as an 'anchor' for an activity centre.

Floorspace may or may not be a good indicator of these impacts. Thus, where floorspace limits are used for differentiating between types of stores, they should be deployed only as 'deemed to comply' provisions in conjunction with performance standards which clearly articulate the retail function in question. By way of example, a planning policy may require that only grocery retailers that will serve a local catchment of, say, 3.0 km radius will be encouraged to locate in 'neighbourhood centres' (the third tier in a hierarchy). The planning policy may apply a limit of 1,000 m² as a *prima facie* indicator of a grocery retailer focussed on a local catchment. However, efficiency and competition would be well served by allowing proponents of larger stores to demonstrate, against specific catchment and trip generation criteria set out in the planning policy, that they are, in fact, fulfilling a lower order service function notwithstanding their floorspace size.

The same discipline should apply to other quantitative limits that might be specified in planning policies and codes, such as restrictions on overall retail floorspace, to prevent the unwarranted ascension of a particular centre in the planned hierarchy. If they are to be used at all, such limits ought to be seen as deemed to comply provisions only, with clearly stated performance objectives providing the ultimate guide as to whether any particular project may proceed.

¹⁶ NSW Planning and NSW Better Regulation Office, *Promoting Economic Growth And Competition through the Planning System -Review Report*, published April 2010

5.5 Consistent and Transparent Application of a ‘Sequential Test’ for Out of Centre Proposals

Land supply for retail development also needs to be rendered more ‘elastic’, and the sequential test for out of centre development has a key part to play in this. COAG could promote the preparation and promulgation of similar formal guidelines for the consideration of ‘non compliant’ projects across all jurisdictions.

One of the major concerns expressed by development proponents in the case studies in Section 4, is that assessments of out of centre or non policy compliant (but discretionary) proposals are not properly considered from a social cost benefit analysis perspective. They suggest that by not properly considering the proposals from a social cost benefit analysis perspective the assessments have delayed or prevented the entry of a competitor. To a large extent this issue could be resolved by improving the transparency of the sequential test or net community benefit test for non-complying proposals and reducing its associated transaction costs.

To operate effectively, a sequential test needs to be situated within a comprehensive policy for retail planning, as discussed at Section 5.1.

Broadly speaking, whether a proposal is in the community’s interest or not will depend on:

- the capacity of the proposal to add to overall retail service in the region (competition and choice) including addressing shortfalls or weaknesses in the retail network as identified in the policy;
- the capacity to deliver quality spaces and places for retail trade and community interaction;
- the capacity to strengthen community identity and social sustainability in other ways, including improvements in skills and employment outcomes; and
- maintenance or improvement in sustainable customer travel and retail distribution patterns.

These factors need to be measurable in order to clearly demonstrate the degree to which benefits from a retail development proposal flow to the community. Given the framework of policy objectives along the lines of Section 5.1, non-compliant proposals could be subject to a sequential assessment process, including rigorous cost benefit analysis.

Three tests could be applied – strategic fit, net community benefit and place quality.

A formalised and codified sequential test is not typically applied in Australian planning jurisdictions, though the NSW Government has foreshadowed such an approach in its draft Centres Policy (issued for public consultation in April 2009). Having regard to this draft, SGS has prepared some more detail on how the three tests might work in practice. This is provided in Appendix B.

5.6 Land Withholding

Ideally, policy should also address the undue withholding of land designated for major grocery store development. Some measures have already been taken at the national level in this regard. The ACCC is monitoring land assembly in strategic retail centres and is empowered to apply sanctions if it deems these strategies to be anti-competitive.

There is also scope to deploy State development corporations (VicUrban, Landcom, ULDA etc) to create a pipeline of grocery store development opportunities as part of the structure planning and regeneration of higher order activity centres. A more ambitious reform would see the introduction of development licence fees to capture part of the uplift in land value occasioned by the granting of quasi exclusive trading 'rights' under planning legislation. The proceeds of these licence fees could assist in land assembly within designated higher order centres.

One jurisdiction in Australia, the ACT, already charges for the right to develop retail floorspace (and other higher order land uses), under its 'Change of Use Charges (CUC)' regime. This is facilitated by the Territory's leasehold system, but is not contingent upon it. Similar arrangements could be implemented in other jurisdictions. CUC's currently operate on the basis of site by site valuations (before and after approval of the higher order land use in question), but the ACT Government is contemplating moving to a much simpler 'scheduled' arrangement whereby a standard fee per square metre would be charged within different sub-regions of the Territory.¹⁷

If applied, development licence fees would be conceptually quite different from an infrastructure usage charge, which the development contribution systems in State planning legislation cater for, and also quite different from an impact mitigation payment which is usually extracted during the approval process for the *unanticipated* infrastructure requirements of a project. In principle, a proponent could fairly be required to pay a licence fee, plus an infrastructure charge for planned works, plus costs for works to mitigate adverse impacts of the development.

Procedurally, a development licence fee need not add complexity to the approval process. This could work much as it does now. The proponent would need to purchase the relevant development licence before they could act on their approval. Any such licence could be sunsetted; that is, granted on the basis of use or lose within a period of, say, 2 years. The licence could be tradeable within this period.

The drawback with any licensing system is that Governments may have a revenue incentive to limit the number of development opportunities in any given region. Independent monitoring of supply and demand becomes critical in this context.

¹⁷ See Macroeconomics Pty Ltd (2010) Draft Report on the Review of the Change of Use Charges System in the ACT

5.7 Combating Gaming

As outlined in Section 3, planning approvals processes for retail projects fall into two broad categories; development permits for projects on land that is appropriately zoned for the purpose; and rezonings for projects that do not fit the land use designation and associated development controls on the site in question. Both processes are open to 'gaming', whereby market incumbents avail themselves of objection or submission rights to draw out the timing of approvals and/or increase the direct cost of gaining such approvals.¹⁸

Gaming behaviour can be difficult to prove. However, some steps can be taken to mitigate any such tendency amongst established traders in a supermarket catchment.

Firstly, as is already common practice in some jurisdictions, it is desirable to maximise the use of 'as of right' supermarket development within identified centres. This would mean that any permit process is focussed on design issues rather than the principle of whether the supermarket use itself may proceed. This approach requires sound strategic planning and consultation 'up front', during the formulation of development controls. As noted, it also relies on a sound analysis of demand for, and supply of, retail land.

It may be possible to limit third party notifications and/or appeal rights in these situations, though this can become problematic from a natural justice point of view. Approval authorities will always be obliged to inform themselves as fully as possible on the impacts of projects even if the proposed use is beyond debate.

Another approach is to render appellants more transparent in their motivations. For example, appellants and approval authorities alike could be required to publish a statement of net community benefit impact, as opposed to a simple statement regarding the compliance of the proposal with policy.

The awarding of punitive costs where appeals have been shown to have been brought on a vexatious basis could also be promoted.

Curtailling gaming behaviour in respect of rezoning applications is even more difficult. Changing a planning scheme is tantamount to a legislative change and there is a basic obligation in most planning statutes to consult thoroughly with affected or interested parties before such amendments are made. Again, the most effective strategy here may be to clearly communicate that competition impacts per se do not qualify as material planning considerations.

¹⁸ As part of its inquiry into grocery competition in Australia, the ACCC noted that it had "received specific and credible evidence of incumbent supermarkets using planning objection processes to deter new entry in circumstances where the incumbent supermarket had no legitimate planning concerns". P.xix, *The Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries* can be accessed at <www.accc.gov.au/content/index.phtml?itemId=838251>.

5.8 Summary of Recommendations

In summary, our recommendations are for State and Territory jurisdictions to consider:

Recommendation 1 - elaborating and publishing their retail policy frameworks on a nationally harmonised basis, highlighting performance objectives;

Recommendation 2 - regularly undertaking a supply and demand review to determine if there is enough commercially zoned land on a regional basis;

Recommendation 3 - reviewing the wording of current strategic planning and policy documents to ensure that anti-competitive statements are not included within these regulations and supporting materials;

Recommendation 4 - ensuring the definition of 'retail' is sufficiently broad to incorporate innovative retail formats;

Recommendation 5 - adopting a nationally consistent methodology in all planning regimes for sequentially testing the net community benefit offered by proposals which do not immediately comply with centres policy;

Recommendation 6 - promoting land assembly policies in activity centres to facilitate the entry or expansion of competitors and to monitor land banking; and

Recommendation 7 - discouraging development assessment 'gaming' by requiring greater transparency on the part of decision authorities and appellants on their reasons (on net community benefit grounds) and by the awarding of punitive costs for vexatious appeals.

Appendix A: Review of Planning Regulations Affecting Supermarkets across Australia

New South Wales

Objectives

Under NSW planning policy, supermarkets and other retail activities are typically required to be located in activity centres or in regional towns in main street settings. The rationale for concentrating retail activities within centres is that retail activities typically 'anchor' locations preferred for more intense development. As retailing is also a major driver of trip generation, concentration of these activities into a hierarchy is thought to facilitate more sustainable travel patterns. In turn, these uses can support more efficient use of public transport and other infrastructure, and improve amenity and liveability of centres.¹⁹

The Sydney Metropolitan Strategy – known as *City of Cities*²⁰ imposes a hierarchy of centres whilst also taking into account 'employment corridors'. A summary of the activity centre hierarchy for Sydney is provided in Table 3.

Table 3: Hierarchy of Centres, *City of Cities* – Sydney Metropolitan Strategy

Activity Centre Classification	Characteristics	Strategic Objectives
Global Sydney (Sydney CBD and North Sydney)	The main focus for national and international business, professional services, specialised health and education precincts, specialised shops and tourism. A recreation and entertainment destination of regional, national and international significance.	Builds on focus of the metropolitan public transport network. Optimises access to large pool of jobs and skilled workers. Supports specialisation in knowledge based industries. Strengthen the CBD's role as a retail destination.
Regional City	Important role as major employment centre—major health (teaching hospital) and education facilities (university/TAFE) are commonly located in or on the fringe.	Provides a commercial hub with a full range of business, government, retail, cultural, entertainment and recreational activities.
Major Centre	Major shopping and business centre serving immediate sub-regional residential population. Full scale shopping mall, council offices, taller office and residential buildings,	Fosters major shopping, civic and recreation centres around public transport nodes.

¹⁹ NSW Department of Planning & NSW Better Regulation Office; *Promoting Economic Growth and Competition Through the Planning System Review Report*, April 2010, p.6

²⁰ NSW Department of Planning; *City of Cities – Sydney Metropolitan Strategy*; Centres and Corridors

	central community facilities and a minimum of 8,000 jobs.	
Specialised Centre	Areas containing major airports, ports, hospitals, universities, research and business activities. Perform a vital economic and employment role which generates metropolitan-wide benefits.	Delivers specialised higher order economic activities.
Town Centre	One or two supermarkets, community facilities, medical centre, schools, etc. Contain between 4,500 and 9,500 dwellings. Usually more of a residential origin than employment destination.	Provides for needs of the host sub-region.
Stand Alone Shopping Centre	Internalised, privately owned centres located away from other commercial areas. Contains many of the attributes of a Town Centre but without housing or public open space.	May have potential to become a traditional town centre in the long-term.
Village	A strip of shops for daily shopping which typically includes a small supermarket, butcher, hairdresser, restaurants and take away food shops.	Provides for the daily needs of a local population.
Small Village	5–30 shops and services. Similar to village only smaller and without a supermarket.	Provides for the daily needs of a local population.
Neighbourhood Centre	1–5 shops and services. May include a milk bar, corner shop, petrol station/ convenience store, café and/or a newsagent.	Provides for the daily needs of a local population.

In April 2009 the NSW Government released a Draft Centres Policy for consultation to better articulate the principles behind a network of centres and to guide regional and local strategic planning. The policy notes the role of the market in determining retail need. It also highlights that planning should ensure sufficient land supply and provide design guidance.

Competition and the planning system

A further initiative to increase competition and lower prices to consumers in NSW was announced by the Minister for Planning, Tony Kelly on 19 April 2010. The NSW Government will implement the recommendations of a review that looked into promoting economic growth and commercial competition through the planning system.

The review process included a number of targeted consultations with a range of stakeholders including retailers, developers, local councils and individuals, and the receipt of 44 written submissions.

The recommendations of the NSW review report include:

- a Competition State Environmental Planning Policy (SEPP) be developed to clarify that competition between individual businesses is not in itself a relevant planning consideration;
- any restriction on the number of a particular type of retail store or any proximity restriction contained in a LEP or DCP is invalid;
- considering ways to increase opportunities for competition by allowing more types of shops into centres that currently only permit "neighbourhood shops";
- providing guidance on how to consider third party objections when assessing development proposals, including how to seek recourse for vexatious objections; and
- the Minister issuing a direction to councils under section 117 of the *Environmental Protection & Assessment Act* to ensure that, unless it can be justified on sound planning grounds, planning policies and instruments cannot apply retrospectively.

Work has begun on drafting the Competition SEPP and other recommended instruments.

Principal Implementation Mechanisms

Metropolitan Strategic Planning

The Sydney Metropolitan Strategy provides guidance as to the characteristics of centres to be used in regional and local strategic planning. The Draft Centres Policy notes that minimum floorspace targets should be set and that floorspace supply and demand assessments be carried out to inform this work.

Local Strategic Planning and Development Assessment

"The NSW Planning system is guided by strategic plans (metropolitan and regional strategies) and is supported by State Environmental Planning Policies (SEPPs), Local Environmental Plans (LEPs) and Development Control Plans (DCPs). Together, these documents set the context for decision making on development proposals."

The *Standard Instrument* guides the preparation of LEPs in NSW although councils are still able to include localised planning objectives and provisions, determine zoning, additional land uses, heritage items, and development standards such as height and minimum lot sizes.²¹ The *Standard*

²¹ Standard Instrument; <http://www.planning.nsw.gov.au>

Instrument provides the following definition of a 'shop', which is the most relevant to supermarkets:

'shop' means retail premises that sell groceries, personal care products, clothing, music, homewares, stationery, electrical goods or other items of general merchandise, and may include a neighbourhood shop, but does not include food and drink premises or restricted premises.²²

The Draft Centres Policy notes that in Local Environmental Plans, the Business 3 Zone (Commercial Core) or the Business 4 Zone (Mixed Use) should be applied to supermarkets in strategic centres while in local centres, the Business 2 Zone (Local Centre) or Business 4 Zone (Mixed Use) should be used.

In neighbourhood level centres, the Business 1 (Neighbourhood Centre) Zone has traditionally been applied which prohibits conventional supermarkets, and instead provides for local convenience shops. Neighbourhood level shops are also permitted in residential areas. Supermarkets are generally discouraged in out-of-centre locations and in other business zones to ensure employment land is protected.

The Gateway plan-making process

In July 2009, the NSW Government changed the way that local environmental plans (LEPs) are developed and approved. This system is known as the 'gateway' plan-making process.

The gateway process has the following benefits.

- It assists in meeting the NSW Government's target of a 50 percent overall reduction in the time taken to produce LEPs.
- It provides clear and publicly-available justification for each plan at an early stage.
- It ensures vital NSW and Commonwealth agency input is sought at an early stage.
- It replaces the former 'one size fits all' system, under which all LEPs large and small were subject to the same rigid approval steps, with one that better tailors assessment of the proposal to its complexity.
- It improves links between long-term strategic planning documents, such as regional and metropolitan strategies.

Summary of Retail Policy Context

Table 4 provides a summary of the retail policy context in New South Wales relating to supermarkets.

²² NSW Department of Planning; Draft Centres Policy, April 2009, p. 30

Table 4: Summary of Retail Policy Context, New South Wales

Where can supermarket projects be located with favourable regulatory treatment?	In local and major centres which are zoned Business 2 (Local Centre) and Business 4 (Mixed Use). A supermarket is classified as a 'shop' use under the Local Environmental Plan template.
Can proponents of projects in these favourable locations expect a straightforward process of approval?	Yes. A shop use is permissible with consent.
What locations are generally denied to such projects?	Any location which is not within the Business 2 or 4 Zone, is within a lower order centre such as a neighbourhood centre, and/or is within an employment lands designated location intended for other business or industrial uses.
What is the rationale for these denied locations?	Maintenance of the integrity of a regional retail hierarchy and to provide opportunities for the consolidation of centres. Protection of employment lands from uses which are inconsistent with the purpose of a zone.
How is the denial of access to these locations enforced?	The denial of access is enforced by zoning of lower order centres Business 1 Zone (Neighbourhood Centre) where supermarkets are prohibited; through the refusal by local authorities to consider rezonings which would enable the development; and by refusal to grant permits, generally backed by reference to an overarching policy base and set out in the local planning scheme.
Is there any flexibility in gaining access to denied locations?	Yes, spot rezonings are possible based on a sequential approach to site identification and other tests. If a rezoning application is supported, the proposal proceeds through the new Gateway process which will elaborate and codify, as far as possible, the net community benefits test. Also, it is possible for the Minister to approve developments directly under Part 3A
Recent examples of where proponents were able to gain access to otherwise denied locations.	See Costco example in body of the report.

Victoria

Objectives

Retail policy in Victoria is laid down in *Melbourne 2030* – the Melbourne metropolitan strategy, and the subsequent update, *Melbourne @ 5 million*. Both strategy documents set in place a well-defined activity centres hierarchy. Further *Melbourne @ 5 million* has designated six centres as Central Activities Districts (CAD) which are prioritised for government investment. The activity centre hierarchy for Melbourne is shown in Table 5.

Table 5: Hierarchy of Centres, *Melbourne 2030* & *Melbourne @ 5 Million*

Activity Centre Classification	Characteristics	Strategic Objectives
Melbourne Central Activities District	Melbourne's largest, most diverse and dense centre which provides commercial, retail, specialised personal, education, government and tourism services.	Location for activities that have significant trip generation and benefit from a central position in the Principal Public Transport Network. Will be the main retail, office and destination node in Melbourne..
Central Activity District (CAD)	Regional centres in Melbourne that perform a similar role to Melbourne Central Activities District at a regional level. Centre of commercial, retail, specialised personal, entertainment, education, government and tourism activities.	Preferred location for: significant CAD-type jobs and commercial services; a strong and diverse retail sector; specialised goods and services drawing on a large regional catchment. Provides high levels of accessibility for walking, cycling, public transport or car achieved through location at a junction in the Principal Public Transport Network.
Principal Activity Centre (PAC)	A mix of developments including business, retail, services and entertainment. Well serviced by multiple public transport routes (being on the Principal Public Transport Network or capable of being linked to it). A large catchment covering several suburbs, and attracting activities that meet metropolitan needs.	Reinforces the network of centres by connecting all Principal Activity Centres to the Principal Public Transport Network. Encourages more mixed use development and provides a focus for a range of government and community services and facilities. Encourages a wider range of arts, cultural and entertainment facilities.
Major Activity Centre (MAC)	Serves a smaller catchment than a Principal Activity Centre and supplements the network of Principal	Encourages mixed use development and continue broadening the range of uses. Upgrades public transport services and

	Activity Centres. Provides additional scope to accommodate ongoing investment and change in retail, office, service and residential markets.	connects to the Principal Public Transport Network. These centres are not to grow substantially if there is a lack of public transport and there are better options to serve the same catchment.
Specialised Activity Centre (SAC)	Important economic precincts in Melbourne (e.g. airports, hospitals, universities etc) providing a mix of activities that generate jobs and visitor trips.	Supports specialised role and primary function. Should not compete directly with Principal and Major Activity Centres. Must be located on the Principal Public Transport Network.
Neighbourhood Activity Centre (NAC)	Generally, a limited mix of uses meeting local convenience needs and usually less than 10,000 square metres of retail floorspace in total. Accessible to local community via walking and/or cycling. Local bus services and public transport links to one or more Principal or Major Activity Centres.	Development of new growth areas should provide viable locations for Neighbourhood Activity Centres in areas where their distribution is inadequate. Locations should be planned in conjunction with the design of local public transport services.
Employment Corridors	Central Activities Districts will be supported by employment corridors that link activity centres, universities, research and technology precincts, medical precincts, and other areas with high job densities.	Provides for substantial increases in employment, housing, education and other opportunities along each corridor and better links them through improved transport connectivity. Links the growing outer areas to a greater choice of jobs, services and goods in the Corridors.

Principal Implementation Mechanisms

State Planning Policy Framework

The State Planning Policy Framework (SPPF) establishes state level policies which must be considered by Local Governments. It gives effect to *Melbourne 2030* directions including those relating to activity centres, for example Clause 12.01 (A More Compact City) and Clause 17.01 (Activity Centres).

To illustrate, the objective of Clause 17.01 is as follows:

"To encourage the concentration of major retail, commercial, administrative, entertainment and cultural developments into activity centres (including strip shopping centres) which provide a variety of land uses and are highly accessible to the community."

Local Planning Policies (administered by Local Government)

Local Planning Policies vary across municipal planning schemes that are prepared by Local Governments. Some schemes allow for some flexibility in the application of the centre policy. For example, the City of Greater Geelong includes a Clause 22.03 "Assessment Criteria for Retail Planning Applications". This policy gives effect to a sequential test for out-of-centre proposals.

Zoning Provisions (generally administered by Local Government)

The principal means of retail policy implementation is through municipal planning schemes built around the standardised mechanisms of the *Victoria Planning Provisions* (VPP's). A supermarket is classified as a 'shop' under the provisions and is defined as follows:

"Land used to sell goods or services, or to hire goods. It includes the selling of bread, pastries, cakes or other products baked on the premises. It does not include food and drink premises, gambling premises, landscape gardening supplies, manufacturing sales, market, motor vehicle, boat, or caravan sales, postal agency, primary produce sales, or trade supplies."

The Business 1 Zone (B1Z) in the VPP's is the principal zone for retailing and supermarkets. This is reflected in the purpose of the zone as follows:

"To encourage the intensive development of business centres for retailing and other complementary commercial, entertainment and community uses."

A shop is an "as-of-right" use (Section 1 – Permit not required) in the B1Z, although a planning permit may still be required for buildings and works. This zone is usually applied in the core retail areas of activity centres, including where supermarkets are typically located. A shop is a permit required use (Section 2 – permit required) under the Business 2 Zone (B2Z) and Mixed Use Zone (MUZ). In all three zones, the amount of retailing can be regulated through site specific maximum floorspace caps. These floorspace caps cannot be altered unless the local planning scheme is amended, requiring Ministerial approval.

A shop use is prohibited under the B3Z, B4Z and B5Z zones. Supermarket use is deemed to be inconsistent with the purposes of these zones, which are described as follows:

- **B3Z:** Offices and manufacturing industries and associated commercial and industrial uses.
- **B4Z:** A mix of bulky goods retailing and manufacturing industry and their associated business services.
- **B5Z:** Offices or multi-dwelling units with common access from the street.

A further 'Activity Centre' Zone does not specify a Table of Uses and allows local councils to establish a tailored set of sanctioned, conditioned and prohibited uses to suit local circumstances. This could include provisions which relate to a shop.

Summary of Retail Policy Context

Table 6 below provides a summary of the retail policy context in Victoria relating to supermarkets.

Table 6: Summary of Retail Policy Context, Victoria

Where can supermarket projects be located with favourable regulatory treatment?	<p>All designated higher order centres, provided the land is suitably zoned and a planning permit is obtained for the required development works. Shop uses do not require a planning permit in the Business 1 Zone (subject to complying with floor area requirements).</p> <p>Floorspace caps are regularly used to specify the 'maximum combined leasable floor area' for a shop use in a Business 1 and Business 2 Zone (B1Z & B2Z). Floorspace caps are based on strategic justification for maintaining the integrity of the retail system and hierarchy. Caps are established and can be modified through a planning scheme amendment</p>
Can proponents of projects in these favourable locations expect a straightforward process of approval?	<p>Developments in appropriately zoned locations still require planning permission for buildings and works, although a 'shop' use does not require a permit in a Business 1 Zone. Any party has a right to object and appeal to VCAT in the event of a Council decision which is unwelcome from their perspective. This can draw out the approval time significantly.</p>
What locations are generally denied to such projects?	<p>Any location which is not zoned for business purposes, which include retail.</p>
What is the rationale for these denied locations?	<p>Maintenance of the integrity of a regional retail hierarchy, to preserve the opportunity for more consolidated urban development generally.</p>
How is the denial of access to these locations enforced?	<p>Denial of access is enforced by; the refusal of local authorities and the State Minister to consider rezonings which would enable supermarket development; through the refusal of applications for out-of-centre locations or in a new centre which is inconsistent with an activity centres policy; and through the refusal to grant planning permission for sites which have an appropriate zoning but are located in lower order centres. Refusal to grant permits is generally backed by reference to an overarching policy base, set out in the local planning scheme.</p>
Is there any flexibility in gaining access to denied locations?	<p>Yes. If the land in question is not appropriately zoned but abuts or is seen to be sufficiently proximate to the higher order centre in question, the local authority and/or Minister may consider a 'spot rezoning'. However, there is no recourse to an independent arbiter if these authorities decide against rezoning.</p>

	In the case of refused planning permits on land which has the correct zoning, proponents may appeal to the planning division of the Victorian Civil and Administrative Tribunal (VCAT). VCAT will generally apply policies duly adopted by the State Government and the Council, though there is often scope for different determination of the policies.
A recent example of where project proponents were able to gain access to otherwise denied locations.	The development of an Aldi supermarket in Inkerman Street East St Kilda. The land in question was appropriately zoned, but was within a lower order centre. Council refused planning permission on the basis that the supermarket would undermine the role of the designated major activity centre in the district (nearby Carlisle Street, Balaclava).

Queensland

Objectives

The South-East Queensland Regional Plan (SEQRP) provides a framework for growth management across the region to 2031. Part F – Regional Policies (Section 8: Urban development) of the SEQRP sets out a hierarchy of regional activity centres which is summarised in Table 7.

Table 7: Hierarchy of Centres, *South East Queensland Regional Plan*

Activity Centre Classification	Characteristics
Primary Activity Centre	Brisbane CBD which accommodates the largest and most diverse mix of land uses. Focus of government administration, retail, commercial and specialised personal and professional services. Accommodates cultural, entertainment, health and education facilities of state, national and international significance.
Principal Activity Centres	Serves catchments of regional significance, accommodates key concentrations of employment and serves business, major comparison and convenience retail, and service uses. Served by multimodal public transport services and comprises key nodes in the regional public transport system. Accommodates regional government offices.
Major Activity Centres	Complements Principal Activity Centres and serves catchments of sub-regional significance. Provides business, service, limited comparison and major convenience retail functions. Accommodates district or branch offices of government.

Specialist Activity Centres	Precincts of regional economic significance including specialised economic activity, employment and/or education rather than a retail function.

Section 8.6 (Activity Centres and Transit Corridors) of the SEQRP provides discussion of out-of-centre development and special consideration of large format retail premises. Further, in preparing planning schemes, local governments are encouraged to develop measures to support and reinforce the roles of activity centres. This includes identifying activity centre boundaries and determining the potential extent of each centre's growth, including those lower down the hierarchy outlined in Table 7.

Principal Implementation Mechanisms

Statutory Regional Plans

The SEQRP comes with regulatory mechanisms, including formal legislative recognition, under the *Statutory Instrument Act 1992* and the *Integrated Planning Act 1997*, (and prospectively the *Sustainable Planning Act 2009*). All local government planning schemes must reflect the policy framework and Desired Environmental Outcomes in the SEQRP. The Department of Infrastructure and Planning is a referral authority in certain development application circumstances.

The 'Urban Footprint' set out in the SEQRP maps is protected through legislation. When local Council's prepare local planning scheme amendments, they must show how the plan is consistent with the Regional Plan.

Local Government Planning Schemes

The Integrated Development Assessment System (given effect in the *Sustainable Planning Act 2009*) sets a framework for local government approval processes as follows:

- a) *Exempt Development;*
- b) *Self-assessable development;*
- c) *Development requiring compliance assessment;*
- d) *Assessable development; and*
- e) *Prohibited development.*

Land use definitions across local planning schemes vary although the *Queensland Planning Provisions* propose a range of standardised definitions which will be consistent across planning schemes. Bearing this mind, a supermarket falls loosely within the definition of a 'shop' under the *Queensland Planning Provisions* 'shop' is defined as follows:

'Shop': Premises used for the display, sale or hire of goods or the provision of personal services or betting to the public.

Brisbane City Council Plan

The Brisbane City Council Plan 2000 defines centres for the purpose of assessing development applications as follows:

- *Multi-purpose Centre (City Centre);*
- *Multi-purpose Centre (Major Centre);*
- *Multi-purpose Centre (Suburban Centre);*
- *Multi-purpose Centre (Convenience Centre); and*
- *Special Purpose Centres*

“Centre Activities”, as defined in City Plan 2000, incorporate a wide range of land uses, such as shops, offices, community, cultural, higher density residential and some lower order industrial uses. The Strategic Plan (clause 4.4.2.6) strongly encourages “Centre Activities” to locate in-centre and strongly discourages their location out-of-centre.

“Out-of-Centre development of Centre Activities is inconsistent with the intent of the Plan unless overwhelming community need is demonstrated. Overwhelming community need will have to be demonstrated through the preparation of a Commercial Impact report as detailed in the Commercial Impact Assessment Planning Scheme Policy.”

In the Brisbane City Council Plan, supermarkets are permitted within all Multi-purpose Centres, depending on the availability of appropriately zoned land. A supermarket could also be located within a smaller Suburban Centre. However, where pre-set height and gross floor area (GFA) limits are exceeded, application requirements become more onerous.

Where a proposal is within pre-set height limits and GFA allowances for each centre type, applications are *code assessable* as is the range of other centre uses. Further, any proposed retail activity within an existing building would be *self-assessable* and not subject to any Council application. Where the application exceeds GFA limits, the application becomes *impact assessable* although the caps are regarded as generous. For out-of-centre proposals, a sequential test applies with the following criteria used to assist the assessment of alternative locations for retailing greater than 2,000sq.m.

- a) *First, look for locations in appropriate existing centres where suitable sites or buildings for conversion exist, or are likely to become available, ... and then if no sites are available;*
- b) *Look for Edge-of-Centre locations, with preference given to sites that are well connected to the Centre, and then if no sites are available;*
- c) *Look for out-of-Centre sites, with preferences given to sites that are well served by a range of transport (including public transport) and are able to be linked to the existing network of centres.*

Summary of Retail Policy Context

Table 8 provides a summary of the retail policy context in Queensland relating to supermarkets.

Table 8 Summary of Retail Policy Context, Queensland

Where can supermarket projects be located with favourable regulatory treatment?	Usually within higher order centres designated in Local Plans or in the South-East Queensland Regional Plan.
Can proponents of projects in these favourable locations expect a straightforward process of approval?	Yes. Depending on levels of assessment across Local Area Plans, 'shops' could be self-assessable or at least code assessable.
What locations are generally denied to such projects?	Lower order centres in Local Area Plans, in out-of-centre locations or on employment land for other business/industrial uses.
What is the rationale for these denied locations?	Protection of the activity centre hierarchy and promoting the consolidation of centres. Concentrating land uses with high trip generation and public transport.
How is the denial of access to these locations enforced?	More onerous development application requirements or allocation of a 'shop' use in the 'generally inappropriate' section of the 'impact assessment' category of the provisions of a Local Area Plan. Exclusion of uses from a Local Area Plan where required.
Is there any flexibility in gaining access to denied locations?	Queensland operates under a performance based system. A Development Application may be made in order to determine the impacts of a proposed development against the whole of the Planning Scheme. Applicants can appeal a refusal or part refusal of a development application to the Planning and Environment Court.
Recent examples of where project proponents were able to gain access to otherwise denied locations.	<p>30 Harry Street, Ashgrove: Aldi secured an edge-of-centre site at 30 Harry St, Ashgrove. The proposal was for a 1,500sq.m supermarket adjoining the existing Coles and Woolworths stores. The Commercial Impact Report maintained that the Aldi store would complement the existing retail due to a narrower product base in comparison to full-line supermarkets. Additionally, it would provide an alternative operator for local residents (Core Economics, 2007, p. 5).</p> <p>261 Warrigal Road, Eight Mile Plains: The application at 261 Warrigal Rd, Eight Mile Plains contained a proposal for both Woolworths and Aldi supermarkets in the same centre adjacent to an existing Coles-owned BiLo supermarket. Council supported the</p>

proposal on the basis that the Local Plan had identified a commercial need in the area. The ALDI component has subsequently been removed from the proposal leaving one full line supermarket (Woolworths)..

Western Australia

Objectives

The State Government's *"Directions 2031 – Draft Spatial Framework for Perth and Peel"* sets a strategic direction for land use planning in the Perth and Peel region. The metropolitan plan includes strong direction around activity centres and an associated hierarchy as summarised in Table 9.

Table 9: Hierarchy of Centres, *Directions 2031 Draft Spatial Framework for Perth and Peel*

Activity Centre Classification		Characteristics
Perth Central Area		Greatest range of high order services and jobs, and the most intense concentration of commercial and residential development. Will continue to be the pre-eminent centre in the metropolitan hierarchy and the main focus of civic, cultural, administrative, business, retail and tourism activity.
Primary Centres		Functionally similar to strategic city centres, but are the preferred location for investment in high-order public and employment generating uses outside the inner and middle sectors. Joondalup and Rockingham have been identified as the two primary centres.
Strategic Centres- provide for a regional catchment	City Centres	Multi-purpose centres that provide a mix of retail, office, community, entertainment, residential and employment activities, and are well serviced by high frequency public transport.
	Specialised Centres	Centres which are focused on specific economic and institutional activities and generate a high number of daily work and visitor trips. Mixed uses that complement the primary function will be encouraged, at a scale that will not compete with other centres in the hierarchy.
	Industrial Centres	Provide for the highest level of industrial activity throughout the metropolitan area, with a focus on heavy manufacturing, processing, fabrication and overseas export.
Regional Centres –	Town Centres	Suburban centres that are generally based around retailing offering a range of convenience and comparison goods and services. Many are retail dominated while

serve smaller catchments than Strategic Centres		some have emerged as mixed use and employment centres.
	Specialised Centres	Centres with a specific institutional or economic activity focus. These centres are smaller in scale than strategic specialised centres and are expected to generate fewer daily work and visitor trips.
District Centres - Serve the daily and weekly needs of residents.	Town Centres	Serve weekly household shopping, service and community needs of the district. Predominantly retail focused but also include a limited mix of other uses such as offices, medical and professional services, hospitality and entertainment and housing.
	Industrial Centres	Primarily focused on the provision of general and light industrial services and products to meet the personal household and transport needs of the local population.
Neighbourhood Centres		Local community focal points that perform a vital role in providing for daily shopping and community needs of the neighbourhood. Typically include a minor supermarket together with a range of ancillary convenience tenancies.
Local Centres		Provide for incidental convenience shopping needs of the local community within a walkable catchment. Typically include a corner deli and newsagent and limited in retail offering.

Direction 2031 states that an activity centres network generally ensures an equitable distribution of services and facilities throughout the metropolitan region and can reduce the number and length of trips by locating activities closer to the catchment whilst also reinforcing the public transport network.

Principal Implementation Mechanisms

Directions 2031 – Draft Spatial Framework for Peel and Perth

Directions 2031 is a high level strategic plan for Perth and Peel which sets a vision and strategic framework for detailed planning. The plan builds on previous State Government metropolitan strategic plans which set a range of aspirational strategies for the region. The metropolitan centres policy is a key outcome of the Strategy, as will be the preparation of growth management strategies and sub-regional structure plans.

Draft Activity Centres Policy

Following on from *Directions 2031*, the Western Australian Planning Commission (WAPC) has prepared a Draft Activity Centres Policy which is a State Planning Policy (SPP) under Part 3 of the

Planning and Development Act 2005. It revokes State Planning Policy 4.2 Metropolitan Centres Policy Statement for the Perth Metropolitan Region – A policy statement for metropolitan centres, retailing, offices and associated development in the Perth Metropolitan Region.

The Draft Activity Centres Policy gives effect to the activity centre hierarchy as noted in *Directions 2031* and focuses on nominating primary centres, strategic city centres, strategic specialised centres, regional town centres, regional specialised centres, district town centres, and neighbourhood centres. Local centres are not explicitly addressed in the Draft Activity Centres Policy.

The following guidance is provided for local government in assessing rezoning and development proposals.

The responsible authority should not support rezoning or development proposals which are deemed likely to:

- *undermine the established and/or planned activity centre hierarchy;*
- *result in a deterioration in the level of service to the local community or undermine public investments in infrastructure and services; or*
- *unreasonably affect the amenity of the locality in terms of traffic or similar impacts.*

In relation to supermarkets, the Draft Activity Centres Policy provides guidance that supermarkets should be located in neighbourhood centres, district town centres, regional town centres, strategic and regional specialised centres, strategic centres and primary centres in the retail hierarchy.

The Draft Activity Centres Policy notes that 'shops' should not be permitted on land zoned for industrial purposes unless it provides a local convenience service for the industrial area and is ancillary to industrial activities. The definitions under the Draft Centres Policy note that a high trip generating shop use is one which greater than 1,000sq.m. of floor area.

Planning Schemes

A supermarket usually falls within the category of a 'shop' which is defined as follows:

"Shop: means premises used to –

- (a) sell goods by retail;*
- (b) hire goods; or*
- (c) provide services of a personal nature including a hairdresser or beauty therapist, but does not include premises otherwise defined in these land use definitions, such as a convenience store, department store, fast food outlet, or showroom."*

Summary of Retail Policy Context

Table 10 provides a summary of the retail policy context in Western Australia relating to supermarkets.

Table 10: Summary of Retail Policy Context, Western Australia

Where can supermarket projects be located with favourable regulatory treatment?	Most (i.e. higher order) activity centres such as neighbourhood centres, district town centres, regional town centres, strategic and regional specialised centres, strategic centres and primary centres under <i>Direction 2031</i> .
Can proponents of projects in these favourable locations expect a straightforward process of approval?	Yes, but only within the above activity centres, ie, other than low-order (local) activity centres.
What locations are generally denied to such projects?	Low order activity centres and out-of-centre locations where high trip generating uses such as supermarkets could undermine the hierarchy of centres.
What is the rationale for these denied locations?	Locating supermarkets in low order centres and out-of-centre locations which may not be well served public transport and other infrastructure will not assist in reducing trip generation. Locating supermarkets in industrial areas results in the loss of employment lands and may not be accessible to the public transport network.
How is the denial of access to these locations enforced?	Refusal of planning applications for supermarkets in land which is zoned appropriately but located within a low order activity centre. Making supermarkets and related shop uses prohibited in industrial and other business areas so as to protect employment land from retail activities. Refusal by local authorities to consider rezoning which would enable the development. Refusal by the Western Australian Planning Commission for proposals of a significant nature which require State consideration.
Is there any flexibility in gaining access to denied locations?	Yes. Applicants can appeal a refusal by a local council to grant a planning approval to the State Administrative Tribunal.

South Australia

Objectives

The South Australian Strategic Plan sets out a broad direction for the future of South Australia. The Strategic Plan also gives effect to regional planning initiatives across the South Australian Government's seven administrative regions of Greater Adelaide. There is a land use component of the Strategic Plan.

In addition the recently released *30-year Plan for Greater Adelaide* sets a land use planning framework for Adelaide. It is a statutory document within the terms of the South Australian *Development Act 1993*. The metropolitan strategy provides for a hierarchy of centres as set out in Table 11.

Table 11: Hierarchy of Centres, 30 Year Plan for Greater Adelaide

Activity Centre Classification	Characteristics
Adelaide City Centre	Provides the primary cultural and economic hub for South Australia and the Greater Adelaide region. The centre for peak services such as legal financial and banking, specialist health and medical, educational, the arts and high-quality specialty retail.
Regional Centres	Major strategic centres that provide a full range of retail, commercial, administrative, entertainment, recreational and regional community facilities. Priority centres for major investments in significant uses that serve regional catchments.
Major District Centres	Major shopping and business centres serving immediate sub-regional residential population. A more limited range of facilities and less opportunity for major expansion compared with regional centres.
District Centres	Large centres that provide a range of retail, office, community and entertainment facilities. Shopping usually provides the most significant role, with associated civic, community, commercial and recreational services.
Bulky Goods Centres	Centres usually containing large stores selling DIY and household goods and other specialty retail such as brand outlets. The centres cater mainly for car-borne customers and are located on main roads to ensure exposure to a large catchment.
Specialist Centres	Specialist centres include major airports, ports, hospitals, universities, and research and business centres that perform vital economic and employment roles.
Neighbourhood Centres	Neighbourhood Centres serve local residential communities and incorporate a mixture of services for their daily to weekly needs.

Local Centres	Local Centres provide for the daily needs of local neighbourhoods, encouraging communities to walk, and also cater for passing traffic.
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The *30-year Plan for Greater Adelaide* is linked with infrastructure expenditure and budgets of the South Australian Government and broader population and employment targets of South Australia's Strategic Plan. The Plan will also inform regional implementation strategies, Structure Plans for State Significant Areas and local strategic planning of local councils, particularly the preparation of Development Plan Amendments (DPAs).

Principal Implementation Mechanisms

The 30-Year Plan for Greater Adelaide

The Metropolitan Strategy is a statutory document and is part of the broader South Australian Planning Strategy pursuant to s.22 of the *Development Act 1993*. Five regional strategies covering rural South Australia will also be included as part of the Planning Strategy.

The Metropolitan Strategy provides the primary spatial and land use policy to guide development in Greater Adelaide over the next 30 years including the location of transit-oriented developments, activity centres and the distribution of employment and housing growth. The Metropolitan Strategy is therefore critical to South Australia achieving its overall vision.

Local Government Development Plans

Development Plans are the principal means of implementing local strategic planning in South Australia. All Local Government Development Plans are required to be consistent with the metropolitan strategy pursuant to the *Development Act 1993*.

Zoning ordinances vary across planning schemes in South Australia. However, a supermarket is generally preferred in higher order centres such as a Regional, District or Neighbourhood Centre so as to capture synergies with other higher order uses and to maximise public transport usage opportunities arising from high trip generating activity centres. A supermarket falls within the definition of a 'shop'.

By way of example, the City of Burnside Development Plan provides a 'Retailing and Centres' section to give effect to a hierarchy of centres and to provide a strategic base for zoning controls.

"The degree to which the various facilities can be located within a centre will depend, among other things, upon the size of the centre, the specific policies relating to the centre, the implications of competing centres for the population being served, and the characteristics of the population to be served. Each development proposal for a centre should be evaluated against the defined roles in the centre hierarchy of that centre and other centres."

In some cases, a floorspace cap can be used to direct different 'shop' uses into different centres within the hierarchy with 'shop' uses being 'complying development' within the higher order centres.

Summary of Retail Policy Context

Table 12 summarises the retail policy context in South Australia relating to supermarkets.

Table 12: Summary of Retail Policy Context, South Australia

Where can supermarket projects be located with favourable regulatory treatment?	In a regional, district or neighbourhood centre according to the activity centre hierarchy in the <i>30 Year Plan for Greater Adelaide</i> and in local government Development Plans.
Can proponents of projects in these favourable locations expect a straightforward process of approval?	Yes. 'Shop' uses (particularly supermarkets) are usually deemed to be 'complying development' in higher order activity centres and non-complying development in lower order activity centres. Edge-of-centre locations may also be looked on favourably, although the preference is for these uses to be in-centre.
What locations are generally denied to such projects?	<p>Lower order activity centres (Local Centres) where such intensive uses would be inconsistent with the hierarchy of centres.</p> <p>Supermarket proposals are discouraged in out-of-centre locations where synergies associated with a mixed use environment around public transport infrastructure would be lost. Sustainability and carbon targets would also be undermined with high trip generating uses locating out-of-centre.</p> <p>Locating supermarkets on other employment land is discouraged as this hinders the realisation of employment targets in strategic plans for business/industry areas and is also counter to activity centre objectives.</p>
What is the rationale for these denied locations?	The South Australian Government has tied its land use plan with its future infrastructure expenditure commitments. Locating high trip generating uses out-of-centre would be counter-productive to investments being made in public transport. Activity centre amenity and vitality would also be lost if anchor retail activities (supermarkets) are located out-of-centre.
How is the denial of access to these locations enforced?	Planning permit requirements become more onerous when development proposals fall into a non-complying category in a local government Development Plan. Infrastructure augmentation is also required.

Is there any flexibility in gaining access to denied locations?	<p>Yes. Rezoning processes are available provided the development proposal is in line with local government Development Plans and in line with State planning objectives. A proposal could also be given 'major project' status, in which case it is dealt with by the State.</p> <p>An applicant can appeal to the Environment, Resources and Development Court against an assessment, direction, a refusal to grant development consent and/or conditions.</p>
Recent examples of where project proponents were able to gain access to otherwise denied locations.	There are some examples of supermarket proposals being approved in Port Augusta and Mount Gambier in edge-of-centre locations. Other examples include projects at Renmark, Port Pirie and the Adelaide Airport (Woolworths at Harbours town).

Tasmania

There is currently no formal structure for the development of a coordinated retail policy framework at the State level. Planning is essentially devolved to the local government level where planning schemes specify a multitude of responses to retail development proposals, and where no centres policy applies at local or regional level.

The Tasmanian Government is currently developing a revised approach to standardised planning schemes at the local government level and a framework for State policies on centre hierarchies and retail policy development generally.

The elevation of strategic planning issues to State government level will ensure that there is a clear, comprehensive and well ordered future plan for development in Tasmania. Where local councils struggle to assess large and complex development applications that arise intermittently in individual local council areas, consideration at a State level will result in a more efficient allocation of planning resources and more streamlined assessment processes as well as allowing for a strategic State-wide analysis of the costs and benefits of the proposed development.

The Hobart City Council's Strategic Plan 2008-2013 is intended to give effect to the Hobart 2025 Vision.

Hobart is governed by three planning schemes - the City of Hobart Planning Scheme 1982, Sullivans Cove Planning Scheme and the Battery Point Planning Scheme 1979. Assessment of applications under these schemes is governed by the *Land Use Planning and Approvals Act 1993*.

In 2009, a draft of Hobart's new planning scheme was released by the Hobart City Council which will replace the current City of Hobart Planning Scheme 1982 and the Battery Point Planning Scheme 1979.

The Stage 1 HCC Central Area Zoning Review definition that is most relevant to supermarkets is the following :

General retail means use of land for selling goods or services, or hiring goods. Examples are an adult product shop, amusement centre, beauty salon, betting agency, department store, hairdresser, market, shop, shop front dry cleaner, supermarket and video shop.

Australian Capital Territory (ACT)

Objectives

The provision of retailing in Canberra occurs in the context of a planned metropolitan structure, based on accommodating growth in accordance with the development of separate urban districts and a strong hierarchy of centres (primarily Town, District, Group and Local). The activity centre hierarchy for the ACT under the Territory Plan is shown in Table 13.

Table 13: Hierarchy of Centres, *Territory Plan*

Activity Centre Classification	Characteristics
City Centre	Principal Central Business District for Canberra and the focus of local government, commerce and entertainment. Key directions are around growth in office development and residential intensification. The City Centre has 3 zones (CZ1, CZ2, CZ3). CZ1 is the primary location for shops in addition to other higher order uses. CZ3 is generally for fringe retailing including bulky goods.
Town Centres	Provides the main commercial and community focus for the centres of Belconnen, Gungahlin, Tuggeranong and Woden. Town Centres comprise 3 zones (CZ1, CZ2, CZ3). CZ1 is the primary location for shops in addition to other higher order uses.
Group Centres	These are larger shopping centres throughout Canberra that serve groups of nearby suburbs. They provide for major food retailing, whilst also offering opportunities for speciality shops and non-retail uses. These include Calwell, Charnwood, Chisholm, Conder, Curtin, Dickson, Erindale, Hawker, Jamison, Kaleen, Kambah, Kingston, Kippax, Manuka, Mawson, Wanniasa and Weston.
Local Centres	Local centres are smaller shopping centres throughout Canberra that provide for convenience retailing and other community and business services to meet the daily needs of the local population. The CZ4 (Local Centre Zone) provisions apply to local shops, non-retail commercial and community uses, service stations, and restaurants servicing a local community.
Office sites Outside Centres	Three key employment corridors (Gungahlin to Tuggeranong, Belconnen to Queanbeyan, and along the Majura and Monaro highways) are identified along key inter-town and regional connections for both public and private transport.

Mixed Use Zone	This Zone provides for high-density residential uses in highly accessible locations (such as major Avenues) in conjunction with non-retail commercial uses, commercial accommodation and limited shops, restaurants and community uses.
Leisure and Accommodation Zone	The CZ6 zone provides for indoor entertainment and recreation facilities, clubs, drink establishments, restaurants and commercial accommodation. Limited shops, residential and non-retail commercial and community uses may also be included.

The hierarchy is based on meeting three basic types of shopping trips:

- trips to local centres to provide goods bought daily;
- trips to group centres for weekly grocery shopping; and
- trips to town centres to primarily meet the needs for higher order goods which were bought less frequently and for which customers would travel further.

The hierarchy has been an important management tool for allocating commercial activity to achieve retail objectives.

Principal Implementation Mechanisms

There are two mechanisms for implementing retail policy in the ACT – the Territory Plan and the Commercial Land Release Program.

The Territory Plan

The Territory Plan is the key statutory planning document providing the policy framework for the administration of planning in the ACT. A summary of supermarket and shop floorspace caps in the Territory Plan is provided in Table 14.

Table 14: Summary of Supermarket and Shop Floorspace Caps, *Territory Plan*

Activity Centre Classification	Characteristics
City Centre	CZ3: Maximum 200sqm GFA per lease. CZ1: no GFA cap
Town Centres	Maximum of one supermarket or department store per section in Gunghalin. CZ2: A 200sqm cap applies to a 'shop' with provision of convenience shopping as a criterion. CZ3: A 200sqm floorspace cap as a mandatory requirement on supermarkets or shop.
Group Centres	CZ2: A 100sqm cap; a 300sqm cap applies for shops which are physically contiguous with development in the CZ1 Zone and on key blocks. CZ3: Supermarket floorspace cap of 300sqm as a mandatory criterion.

Local Centres	Barton section 27: All other shops: a total maximum of 1,000sqm provided that the maximum GFA of a supermarket (or other shop selling food) does not exceed 400sqm.
Office sites Outside Centres	Deakin: Supermarket floorspace cap of 200sqm. Canberra Avenue Corridor and Drakeford Drive Corridor: all uses must be ancillary to the dominant uses.
Mixed Use Zone	Bruce: A 200sqm cap on supermarkets. Similar caps exist in other local centres.
Leisure and Accommodation Zone	Shops generally have a cap of 250sqm GFA. Yarralumla section 102: Site specific cap of 500sqm GFA.

Commercial Land Release Program

The ACT government prepares a commercial land release program each year which identifies the intended commercial releases for the following four years.

The sites identified for release in the program are expected to meet the community's need for retail space. The assessment of development applications, and the planning and release of sites in developing areas, is assisted by the application of an ACT Retail Model and background data on the existing floorspace provisions found in the ACT Commercial Centres and Industrial Areas Inventory, which is updated every two years.

Supermarket Competition Policy

The ACT Government has developed a Supermarket Competition Policy which was released in 2009 to achieve a competitive and diverse grocery retail sector. The policy was prepared in response to the national review undertaken by the Australian Competition and Consumer Commission (ACCC) into grocery prices. Mr. John Martin was commissioned to review ACT's supermarket competition policy.

In response, the ACT Government formed the Supermarket Competition Coordination Committee (SCCC) to advise Government on these matters.

Key elements of the framework include:

- *"A need to address a shortage of larger full line supermarket capacity generally in central Canberra and Gungahlin";*
- *"Support for an alternative source of wholesale grocery supply which would be encouraged by a restricted approach for particular sites";*
- *"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" and*
- *"No cap on the market share of participants".*

Airport Retailing

Canberra Airport is a significant retail destination in the region. Majura Park is located in the north-western sector of the Airport and contains major retail facilities including Supabarn Warehouse, Brand Depot, Chemist Outlet, Trade Secret, and Jim Murphy Airport Cellars. Costco is also expected to open a store at Majura Park. A range of other convenience retail is also located in the Park.²³

This retail destination, featuring campus style retail development as the predominant built form, differs significantly from conventional centre-based retailing. The retail facilities are highly accessible to the population, and compete significantly with Civic and other town centres. Further, the Park can also provide a tailored environment to facilitate maximum expenditure capture with efficient access and extensive parking available. Majura Park is also diversifying through the provision of services such as child care, postal services and medical services to service nearby catchments and support business precincts.

Summary of Retail Policy Context

Table 15 provides a summary of the retail policy context in the ACT relating to supermarkets.

Table 15: Summary of Retail Policy Context, Australian Capital Territory

Where can supermarket projects be located with favourable regulatory treatment?	Retail developments should take place in commercial and industrial zones identified in the Territory Plan. There are restrictions on the amount of floorspace, particularly selling food, that can occur in the various zones.
Can proponents of projects in these favourable locations expect a straightforward process of approval?	Yes, if consistent with the planning regulations and criteria and assessed impacts (particularly parking, transport and in the case of development at local centres (CZ4 Zone policies)) on the viability of nearby local centres. These projects are promptly assessed within the statutory time frames.
What locations are generally denied to such projects?	Proposals for food retailing are restricted in Industrial Zones and in several commercial zones. Restrictions also exist for bulky goods retailing in industrial zones.
What is the rationale for these denied locations?	The restrictions on retailing are based on encouraging such activity to locate in areas close to residential population, to reduce overall travel and maximize convenience.
How is the denial of access to these locations enforced?	Through the provisions in the Territory Plan.

²³ www.majurapark.com.au

Is there any flexibility in gaining access to denied locations?	If a proposal is inconsistent with the Territory Plan, ACTPLA would have to agree to the preparation of a Territory Plan variation which would be subject to the statutory processes outlined above.
Recent examples of where project proponents were able to gain access to otherwise denied locations.	Variations were made to industrial policies to allow the provision of large bulky goods outlets in the Fyshwick Industrial area. Local centres policies were varied to allow a wider range of uses at the centres and to encourage redevelopment of the centres.

Northern Territory

Objectives

The *Planning Act* provides for a single integrated Northern Territory Planning Scheme, as well as a specific planning scheme, the Jabiru Town Plan. The approach to retail policy development is not based on a formal or 'binding' hierarchy of centres although the Department of Lands and Planning is currently investigating the development of such a policy.

There are no restrictions on supermarkets in the form of floorspace caps when in Zone C – Commercial, although a 200sqm net floor area cap exists for a 'shop' in other non-commercial zones to ensure that any shop use is ancillary to the dominant use in the zone. Nonetheless supermarkets appear to be concentrating in regional centres based on market preference. Those centres are located around Darwin and Palmerston as well as the towns of Alice Springs and Katherine.

Principal Implementation Mechanisms

Northern Territory Planning Scheme

The Northern Territory Planning Scheme is the principal land use regulation document in the Northern Territory. Land use regulation is affected through a three way categorisation of land uses - permitted, discretionary and prohibited development - within zones.

In the planning scheme, a supermarket falls within the definition of a 'shop' which is defined as follows:

"shop" means premises used for the display and sale by retail or for hire of goods or services but does not include a restaurant, retail agricultural stall, service station, showroom sales or vehicle sales and hire."

These uses are best suited within Zone C – Commercial.

"The primary purpose of Zone C is to provide for a range of business and community uses. The zone applies to shopping areas ranging from neighbourhood convenience shopping to regional centres."

Within Zone C – Commercial, a 'shop' is a discretionary use (subject to a planning permit). It is a prohibited use in residential zones. Within most other commercial and industrial zones, a 'shop' is a discretionary use.

Summary of Retail Policy Context

Table 16 provides a summary of the retail policy context in the Northern Territory relating to supermarkets.

Table 16: Summary of Retail Policy Context, Northern Territory

Where can supermarket projects be located with favourable regulatory treatment?	Within Zone C – Commercial and within a regional/district centre.
Can proponents of projects in these favourable locations expect a straightforward process of approval?	A supermarket is a discretionary use and would still be subject to a planning permit, but would be supported if the site is in Zone C – Commercial.
What locations are generally denied to such projects?	A shop is a prohibited use in all residential zones. Supermarkets are generally not appropriate in industrial zones unless they are smaller and ancillary to industrial activities.
What is the rationale for these denied locations?	Supermarkets should be accessible to the resident population base and provide anchor functions for regional/district centres.
How is the denial of access to these locations enforced?	Zoning and the use of a 200sqm floorspace cap outside the core Zone C – Commercial zone.
Is there any flexibility in gaining access to denied locations?	Amendments can be made to the NT Planning Scheme based on the <i>Planning Act</i> and subject to Ministerial consent. There is no recourse to appeal if consent to amending the planning scheme is not granted.

Appendix B Three Elements of a Sequential Test

Test 1 – ‘Strategic Fit’

Any development proposal should improve levels of retail service across the community in a sustainable way, and contribute to quality places and spaces which act as focal points for social interaction.

Such objectives need to be properly articulated and enshrined in policy as noted above.

The first test would be a broad brush qualitative assessment of the extent to which the proposal in question aligns with stated policy.

If the proposal fully and unambiguously aligns with the policy objectives and associated assessment criteria, it may proceed directly to Test 3.

If it is not clear that the proposal fully meets the policy objectives and criteria, or if it meets only some of the criteria but is nonetheless deemed to have the potential to produce a development which is in the community's interest, the proponent may be invited to modify or further develop the proposal to improve policy alignment. These modifications could include:

- Working with appropriate authorities, such as the local Council or a Government development corporation to secure a better site for the facility;
- Urban design changes to make the proposal more compliant with the relevant Structure Plan and Urban Design Framework;
- Arranging for the provision of improved public transport services to the site in question;
- Making parallel investments in other activity centres to meet the policy objectives for the retailing region, for example, boosting convenience shopping elsewhere to enhance food security; and
- Combining the proposal with other retail investments with the effect of creating an activity centre which meets the policy objectives.

If, following these modifications, the proposal is found to align with the policy objectives and assessment criteria, it may proceed directly to Test 3. If, on the other hand, the proposal still does not fully align with the policy objectives and criteria but is deemed to have potential to deliver a net community benefit, it may proceed to Test 2.

Test 2 - Net Community Benefit

This would be a quantitative (\$) appraisal of merit. It would follow the standard rules / disciplines of social cost benefit analysis.

Whether a retail proposal will, on balance, create a 'net community benefit', can only be judged against a 'Base Case'. The Base Case might be assumed to be continuation of the activity centre network 'as is' for the duration of the evaluation period. Two cost benefit analyses against this Base Case would then be called for:

- Option 1 Approval of the (policy non-compliant) floorspace and/or services as sought by the proponent;
- Option 2 Allocating the floorspace and/or services in question in a manner compliant with policy, albeit that this provision might occur with some delays

In most cases, an assessment of whether the retail proposal (Option 1) leads to a net community benefit versus Option 2 should be able to be satisfactorily resolved by considering a relatively limited set of core impacts, relating to consumer choice/competition, centre vitality and travel sustainability. These are indicated in the following chart.

There may well be additional impacts in special cases, for example, the creation of jobs in areas of chronic unemployment or underemployment. Where they arise and where they are likely to be substantial, such additional impacts may be valued using customised shadow pricing or other well documented techniques. Alternatively, they may be noted qualitatively.

Benefits

	<i>quantified by...</i>
1. Improvement in retail choice and customer satisfaction	<ul style="list-style-type: none"> the marginal additional cost of travel (time and vehicle operating expenses) for shoppers accessing the new offering in Option 1¹.
2. Improved place amenity at the location receiving the investment	<ul style="list-style-type: none"> uplift in land value (both on the subject land and the surrounding areas)

Costs

	<i>quantified by...</i>
1. Loss of retail vitality and place quality in other parts of the network	<ul style="list-style-type: none"> loss in land value in impacted centres
2. Additional travel externalities - customers	<ul style="list-style-type: none"> modeled increase in Vehicle Kilometres Travelled per year, multiplied by standard externality rates per klm.
3. Additional travel externalities – supply chain	<ul style="list-style-type: none"> modeled increase in Vehicle Kilometres Travelled per year for delivery vehicles, multiplied by standard externality rates per klm.
4. Additional travel – supply chain	<ul style="list-style-type: none"> modeled increase in Vehicle Kilometres Travelled per year for delivery vehicles, multiplied by standard operating costs per klm.

This assessment may reveal that a superior net community benefit could be achieved under Option 2. If so the evaluation may need to focus on the likelihood that the retail service in question can be absorbed into the existing network, according to approved policy. This may include consideration of what the public sector needs to do to facilitate this outcome (e.g. land consolidation – see below).

Pending the results of this assessment, the project proponent may wish to further modify the development to address any major externality. It should be noted this evaluation approach does not focus on the redistribution of (future) sales in the system and other transfer effects (e.g. employment). Rather net community benefit as outlined above focuses on resource efficiency effects, namely customer outcomes, place quality and travel sustainability.

Test 3 – Place Quality

If the proposal fully meets Test 1, or if it returns a positive result on Test 2, the final appraisal of the proposal will focus on ***design quality***, and whether the proposal delivers a place that works well both from a trading and community interaction point of view.

Appendix C Retail Location Quotients

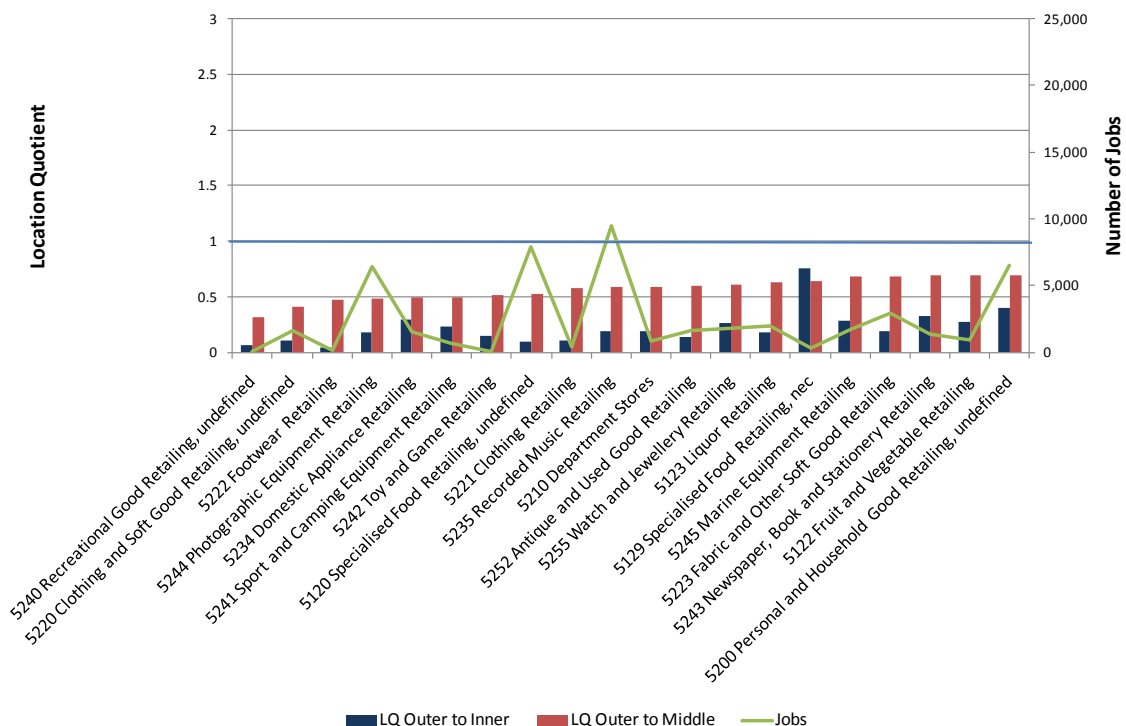
A location quotient can be used to compare two regions on a particular statistic. In this context the location quotient of region A to region B is given by jobs per capita in region A divided by jobs per capita in region B. As an example, to compare outer Melbourne to the middle ring, the formula for the location quotient is:

$$LQ = \frac{(\text{Jobs in outer Melbourne} / \text{Population in outer Melbourne})}{(\text{Jobs in middle Melbourne} / \text{Population in middle Melbourne})}$$

Retail jobs can be considered a reasonable proxy for retail floorspace and service provision.

A value of less than one indicates that outer Melbourne is underserved with regards to that retail category whilst a value of greater than 1 indicates that there is a relatively higher provision of that retail category within outer Melbourne.

Figure 2 Location Quotient of Retail Services, Outer vs Middle and Inner Melbourne



Source: ABS Census and Journey to Work Data (2006)