

**Response to Questions on Notice – retail policy – NSW Upper House enquiry
Fred Harrison, IGA**

1 Progress of the review by Department of Planning and Department of Better Regulation

It is difficult to obtain direct information about that review process, however there is a concern that there appear to be two independent processes, which have some things in common, but, as far as can be determined, are not fully relating to each other. At the present time the status of either review is unclear, however arrangements are being made to meet with both Departments to be better informed as to both processes, and the way the Departments are thinking about these issues.

Concern remains with the draft Centres policy in that it may create a similar situation to the one that occurred in the UK in the '80s – when a rash of “out of centre” development occurred that preceded a major property “crash”. 90% of out of centre development in the UK was approved in a 5 year period during the 80s when there was an absence of firm control. This indicates how rapidly an easing of controls can produce substantial negative change.

There are still concerns that the planning system will lose its balance between the promotion of appropriate competition and social and environmental goals.

2. UK Experience with a Competition test.

The UK Competition Act of 1998 (implemented in 2000) arose out of a variety of concerns based in part on research papers into competition.

The UK assessed issues of vertical integration (as is occurring in Australia) where this has been perceived to lead to much higher barriers to entry for new competitive entrants and also exclusive dealing, which raises overall prices. This, in the UK experience, is seen as predominantly an issue where market power occurs, leading to policy frameworks that seek to reduce market power. For example, in the UK “tied” hotels were forced to be largely sold off, where owned by specific brewing companies.

A further key finding from the UK is that concentration of market power is linked to higher profitability, suggesting strongly that such concentration is anti-competitive, whether occurring on a national or local level. This led to concerns over further concentration (UK Competition research paper No. 12).

One outcome was a strengthening of complex monopoly provisions where a group of companies which engage, for example, in parallel behaviour, but without evidence of collusion, can come under review.

Merger controls were developed based on the “trigger” of a 25% concentration in the market place, as indicating the need for review of further concentration.

3 How would Local Government deal with a competition test?

A competition test could operate in a similar manner to the current “tests” that are associated with, for example, exempt and complying development. In other words, provided that development does not involve certain things or meets certain criteria, it would continue to be

processed under a certain set of rules. When looking at a competition test, there needs to be some evidence provided that the triggers are not, in fact, exceeded.

In order for this evidence to be clear and unambiguous, there needs to be a clear set of guidelines promulgated about the provision of that evidence and its basis. It would certainly be possible to go to considerable lengths to obtain methodological "purity" however in practice, a simple but robust test would be preferred. This test would cover, for example, the determination of the area of study (a fixed radius or series of radii based on centre size may be appropriate) and also cover the measures to be used to assess presence in the market which would utilise easily available and verifiable figures (for example gross floor area).

In this way, local government would not be required to make subjective judgements regarding the test, but would simply need to verify the work complied with the policy. This would minimise the administrative loads on local government and also remove ambiguity.

It needs to be remembered that the competition test is purely a simple "trigger" which would require more detailed assessment to be undertaken of proposals outside the trigger level.

In terms of those more complex assessments, it is agreed that at the present time, there are limits on both the skills sets and resources of local government. In particular, few local government planners have direct training in retail planning or retail economics. That being said, there are ways to reduce the burden on local government in assessing more detailed assessments that might be triggered by a competition test. One of those is to require and apply a standardised methodology. While this may not be perfect it would have the benefit of consistency of approach. This would allow work to be easily reviewed to test for consistency with the methodology. As part of that, there needs to be the inclusion of sensitivity analysis, particularly for those assumptions underlying a methodology which are most often disputed. Again, these could be set out in the standardised methodology.

One of the things learned from the UK experience is that it may be better to use a simple, transparent method, based on local data where possible, rather than very complex models which are often open to argument. Again this produces consistent results which enable comparisons to be made. At the end of the day the interpretation of the results of any method is the most subjective element, and this is acknowledged. In the case of major developments, peer review can assist – a cost of say \$5000-\$7000 in the context of a major development worth 10s of millions of dollars is trivial.

The Department of Planning, at a recent meeting, has requested that a draft net community test be developed which incorporates the above. **When completed, a copy of this will be forwarded to the Committee.**

4 Concerns with draft centres policy

The main concern with the draft centres policy is that it basically opens the door to any retail development without the current checks and balances. It promotes an oversupply of zoned land in the expectation that this will improve competition.

The problem is that the current dominant players will be far more able to push ahead with new development, potentially swamping the existing markets.

The policy also privileges retail as a land use above other forms of land use, which would be a distortion of the overall land market and investment economy. A "free for all" would, based on UK experience, undermine investment in existing centres and re-open the "boom/bust" land use development scenarios evident, for example, in the NSW residential land market during the 1970's. In that case, state government agencies such as Landcom were created to directly intervene in the market to improve stability, to protect both public and private investment.

In the case of retail development, it is suggested that the approach being recommended – to use the planning system to address issues of overall supply and market dominance would achieve similar aims without direct government intervention in the market. The proposals represent an approach that would avoid the wider "swings" of an unfettered market, while still allowing – and indeed promoting - a competitive market to operate. A submission made to the Department of Planning on the centres policy is appended.

5 Would there need to be statutory change?

Mechanisms do exist which would permit the competition test to be implemented without necessarily needing amendments to the Environment or Planning and Assessment Act 1979.

One method would be to utilise the designated development provisions already existing in the Act. Additional designated development types could be inserted in the Regulation (Schedule 3) or, alternatively promulgated by an environmental planning instrument – either a State Environmental Planning Policy or an amendment to the Standard Instrument. However specified, the criteria would need to be outlined so as to avoid "catching" routine development. In this respect, development below a certain scale would not need to address the "competition test".

It would also be necessary to review provisions relating to Environmental Impact Statements to incorporate a range of provisions relating to the additional use/development categories that do trigger the test. The regulations provide that the Director General can provide guidelines for environmental impact statements for particular forms of development. These guidelines would specify the methodology required for an environmental impact assessment of development that "triggers" competition or impact tests.

6 How do you calculate the floorspace that should be in a community?

There are a number of methods for calculating how much floorspace should be in the community. Looking across Australia as a whole, there is an average floor space provision per head of population of approximately 2.1 m². This represents a starting point for the consideration of floorspace adequacy. It is important to understand, however, that this floorspace includes everything from major regional centres (higher order retailing) through to neighbourhood shops. It is therefore important that an appropriate study area be identified when looking at the question of overall floorspace adequacy. For example, an area might appear inadequate in terms of floorspace but may have very major retail facilities located just outside its boundary. In practice, therefore, floorspace adequacy should be assessed on the basis of average floor space per capita within the catchment of major regional or town centres.

There are also some rules of thumb which are commonly used for assessing the adequacy of floorspace for, for example, neighbourhood shopping within an overall regional catchment. A figure of 15% of total floorspace is often quoted.

Another way of assessing floorspace adequacy is to examine the intensity of use of the floorspace. For example, if the percentage of vacant shops exceeds the usual range for a healthy commercial area (3-6% vacancy rate) then this can be a strong indicator that there is adequate floorspace in that particular area or centre for its particular role. An indication of floorspace oversupply in a particular centre is often taken to be 10% vacancies or greater.

Also, where there are either minimal vacancies or other evidence that stores are "overtrading" compared to average turnover levels for that type of store, there is a case that there is an undersupply of floorspace. There are common figures that are used when looking at turnover and what constitutes "overtrading". For example for a major supermarket chain store, average figures might be in the order of \$13,000 per m² of floor space. Independents tend to be somewhat lower, with average figures perhaps in the order of \$8000-10000 per m². This in part reflects their stronger presence in smaller communities and shopping centres which lack the drawing power of larger centres. Break-even for an independent operator might be in the vicinity of \$6000 m² per annum. These figures can be used as a starting point, and then adjusted up or down depending upon a range of factors. These include the overall economic performance of the region, its population demographics and the like.

In addition, floorspace may be available but not of a type or in the location that meets demand for additional retail facilities. In these circumstances, there can be benefits in additional floor space being provided if those additional retail facilities would strengthen the performance of an existing centre.

Given the dynamic nature of the retail market, simple mechanistic measures have their limitations. In these circumstances a triangulation involving a range of measures can assist in providing a more realistic understanding of the actual floorspace adequacy situation.

7. What sectors should be nominated for inclusion in the test (eg hairdressers)?

There is a clear need for scale issues to be considered in terms of the sectors to be included within the test. When examining the principle of competition, competition is considered to work effectively when there are large numbers of competing businesses in the marketplace and there is good consumer information about those businesses. In addition, barriers to entry and exit should be low. In the case of a hairdressing business, for example, this type of business approximates the competitive model. In this regard, there are frequently numerous hairdressing businesses within a shopping centre or area and barriers to entry and exit are relatively low as these businesses can operate out of virtually any storefront.

On the other hand, where there are much higher barriers to entry into the market, such as locating a regional shopping facility, a major supermarket, or the like then there is a case that these sectors should be included within the test. A distinction can be drawn, for example, between service businesses (such as hairdressers, accountants and the like, which are numerous in number and which have low barriers to entry) and retail businesses (such as convenience retailing or comparison retailing) once these exceed certain size parameters. This will be outlined in the net community benefit test discussion paper being prepared for the Department of Planning.

8. What improvements could be made to the appeal process?

Recent changes to the appeals process occurring recently in NSW have provided significant improvements. In particular, the use of expert conferencing to narrow and refine issues in

dispute prior to hearings has significantly shortened the timeframe for many hearings. The key issue is how to reduce the number of appeals that occur.

Clear policy with good guidelines and with agreed and consistent sets of measures is an important element in reducing the number of matters that go to appeal and improving the appeal process if they do. Many appeals, particularly relating to retail and commercial development, revolve around apparent conflicts and contradictions within the policy framework. Given that policy must always represent a balancing act between (at times) competing objectives (such as stimulating competition but at the same time minimising car travel and environmental impacts) some conflict is inevitable. Nevertheless, clear guidelines as to how to measure elements such as impact and competition can reduce technical argument over, for example, the use of modelling. Draft guidelines are being developed as part of the requested submission to the Department of Planning on a net community benefit test.

9. Can more detail be provided on floorspace modelling?

It is understood that this question refers more generally to the issue of modelling the impacts of retail development.

There is a considerable literature surrounding retail modelling and its effectiveness. The model most commonly used in Australia is the "Marketinfo" model. This model utilises calculations of available expenditure based, in part, on census information and then, on the basis of assumptions about recovery of escape expenditure and diversion of trade from other businesses develops an estimate of the likely turnover of new development.

The model can be "run backwards" given an assumed turnover to estimate the potential impacts on other businesses of a change in the retail environment.

As with all models, the nature of the assumptions underpinning a particular "run" of the model are critical. These include assumptions such as the current amount of escape expenditure in different categories of goods, and the turnover per square metre of the proposed development. Frequently the models use aggregate data or national or regional averages. This substantially weakens the reliability of the model. Unless these assumptions are tested in the local area by use of actual survey data there is a risk that the assumptions will produce an over-optimistic estimate of the likely impact of the development.

All models should therefore be "data driven" being based on survey information from the area in which the model is being applied. This allows accurate determination of existing primary and secondary trade areas and also an accurate determination of the current level of escape expenditure by sector. Accurate information can also be included regarding existing centres and the amount of floorspace in different categories. This then allows better professional judgement to be exercised in terms of the likely impacts (in spatial terms) of new development.

The Marketinfo model is not, however, a particularly good tool for determining these spatial impacts, as its main use is demonstrating individual project viability. Alternative models such as the IBECON model have a much better level of detail regarding spatial impacts although they have relatively high data requirements.

An alternative approach to models, which is much more transparent in terms of the assumptions being made is the use of a spreadsheet matrix which looks at changes in expenditure flows to different centres by main category of goods as result of floorspace changes within a given area.

Again, for such a spreadsheet matrix to be effective, it is necessary for good local data to be collected.

In summary, modelling can be done well or can be done badly. There is always a tendency with developer prepared models for those models to present the most favourable scenario rather than the most realistic scenario based on local data. If there is a clear set of guidelines surrounding the use of local data and how assumptions should be derived from this modelling would become more consistent and reliable.