

**FURTHER SUPPLEMENTARY REPORT ADDRESSING LATE SUBMISSIONS
REQUESTED BY THE HUNTER & CENTRAL COAST JOINT REGIONAL PLANNING PANEL**

**DA 150/2015 and 2015HCC023
PROPOSED WOOLWORTHS SUPERMARKET, SPECIALTY SHOPS AND BWS LIQUOR**

Date of Proposed JRPP Determination: 16 June, 2016

Report Author: Julie Wells, Coordinator Development Assessment Singleton Council

Background

The decision of the JRPP (the Panel) on 21 January, 2016, determined to defer consideration of the development application to enable Council officers to submit a supplementary report for the panel's consideration, addressing the following:

1. Late Submissions;
2. The Zone Objective;
3. Landscaping and Engineering Matters; and
4. Relationship with the previous site works DA in context to the proposed development.

The supplementary report was provided to the Panel, accompanied by proposed associated amended conditions of development consent. Council was advised by correspondence of 5 April, 2016 from the Panel Secretariat, that the application would be determined by electronic means. Additional (late) submissions from Foodworks and John Gould were received after Council's report for the 21 January, 2016 JRPP meeting was available on the JRPP website. Council was asked by the Panel to provide a further supplementary report addressing specific matters raised in three (3) late submissions and the application was subsequently deferred to a further public meeting (rather than an electronic determination by the Panel) to be held on 16 June, 2016.

Whilst Council has previously addressed two (2) of the three (3) submissions in the Supplementary Report provided to the Panel on 28 April, 2016 and/or during the course of the JRPP meeting held on 21 January, 2016, Council has responded to the three (3) late submissions in each of three (3) associated, separate attachments (**Attachments 1, 2 and 3**) to this report. Each of the attachments document a succinct summary of matters raised and Council's associated response.

Concluding Comments

As also outlined in Council's Supplementary Report to the Panel on 28 April, 2016, Council is of the opinion that the proposed development is consistent with the strategic land use objectives adopted by Council for the growth of the associated locality. Council is also of the view that the proposed development positively satisfies the requirements of Section 79C of the *Environmental Planning & Assessment Act, 1979*.

Additional Submission from Applicant 1 June, 2016

Both Council and the Joint Regional Panel Secretariat received a further submission from the applicant on 1 June, 2016.

Council has been requested by the Panel Secretariat to provide this information as an annexure to its report. The information has not been the subject of any further Council response.

The further submission (2 documents) from the applicant is included as **Attachment 4**.

ATTACHMENT 1
Submission dated 15 January, 2016

A redacted copy of this submission is provided to the Panel for consideration as part of this attachment.

In detailed summary, itemised matters raised in the submission are documented and comments made by Council staff accordingly. Comments are in accordance with previous advices to the Panel in the Supplementary Report provided to the Panel on 28 April, 2016. The submission dated 15 January, 2016 recommends that the Panel refuse the application. Matters raised in the submission are detailed below:

Issue 1: Impact on the Singleton Heights Shopping Village:

Specifically: ***"The expected level of impact on the Singleton Heights Shopping Village has been significantly underestimated"; and
"I predict an impact of around 50% on the Singleton Heights Shopping Village based on customer survey evidence and from comparable location data".***

Comment: Council has considered the role and function of the Singleton Heights Shopping Centre and the associated impact of the proposed development. Analysis and comments in this regard follow, viz:

This is a neighbourhood centre which contains a limited range of retail goods and services serving a localised catchment. The Singleton Heights supermarket serves daily shopping needs and the centre contains a range of other non-retail uses. The non-retail uses would not be impacted by the proposed development meaning that customers will still be attracted to the centre despite the proposed development.

The submission argues the view that the provision of the proposed Woolworths development will have a significant impact on the future viability of the supermarket at this location. The MacroPlan Dimasi response postulates that the proposed Woolworths development will capture around 20 per cent of the available retail expenditure generated by residents in its trading catchment meaning that 80 per cent would be directed to other retail assets across Singleton. The MacroPlan Dimasi response also advocates that the existing Singleton Heights supermarket attracts a very small market share across its trading catchment with more than 95 per cent of supermarket expenditure escaping to other retailers. It is the view of the MacroPlan Dimasi response that the existing Singleton Heights supermarket is not meeting the needs of surrounding population because of the retail expenditure escaping to the Singleton CBD.

A further response on this specific matter is contained in MacroPlan Dimasi correspondence dated 8 March, 2016 provided previously to the Panel. Specifically, the correspondence states:

- The submission is really only concerned with potential trading impacts on one retailer – i.e. Foodworks. As per Section 79C of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, consent authorities are required to consider the economic impact of a proposed development. This consideration however, is to be applied to the impacts on planning policy objectives and defined retail centres. Competition, or trading impacts, on individual traders is regarded as a private matter, and thus beyond the scope of that consideration under the Act.
- In the above context the examples cited in the submission are not relevant as they are examples of impacts from new development on individual FoodWorks store sales across various towns in Australia.
- Estimated trading impacts on a "centre" are used as a means to determine the overall impact on the role, function, vitality and viability of a centre. If an individual retailer were to close (which is not expected to be the case of the FoodWorks at Singleton Heights), there would be no grounds to refuse the application on economic grounds, provided the role and function of the centre remains intact, particularly if a significant increase in retail facilities is the net result.
- Notwithstanding the above, the FoodWorks store locations demonstrating high levels of impacts, cited in the table on page 2 of the submission, are not directly comparable to the situation in Hunterview. The FoodWorks store at North Singleton is only small, at 421 square metres, with a proportion of the floorspace within the store operating essentially as a newsagency. Five of the nine cited examples are larger stores (i.e. 800 square metres and above), which would contain a much greater range of food and grocery items than the 421 square metres store at North Singleton, and thus would be more directly competitive to new supermarket developments.
- For three of the four smaller stores (i.e. less than 800 square metres), the new competitive stores in the locality were between 1,600 square metres and 1,900 square metres indicating a small surrounding catchment which is a different environment from the Hunterview proposal.
- The locations cited are small, regional towns/localities with immediate populations of around 2,000 – 5,000 persons. There are two exceptions. Gracemere (QLD) which is a suburb of Rockhampton - with around 10,000 persons and Leopold - which is a suburb of Geelong, with around 11,000 persons.
- For all of the locations listed in the submission, the existing FoodWorks stores were providing the only local supermarket/convenience option in these towns – with full-line supermarkets either non-existent or a significant distance away (e.g. Nambucca Heads is 10-11km from FoodWorks Macksville, Nowra is 20km from

FoodWorks Culburra Beach). This is unlike Hunterview, where FoodWorks provides a top-up shopping option, with most supermarket trips directed towards the four supermarkets in the Singleton CBD. The distance to the Singleton CBD is such that a shopping trip is inconvenient, but not avoided. Additional competition in these towns provided residents with additional choice and reduced travel distances for shoppers who were clearly leaving these towns to undertake larger shopping trips.

- The customer survey data may indeed show that a solid proportion of persons may be located close to new Woolworths but there are many other attractors that will continue to draw residents towards the FoodWorks anchored centre – including nearby schools, child care, sporting facilities and particularly the medical centre. There are also new residential subdivisions that will be closer to FoodWorks.
- The submission states that the Singleton Heights Shopping Village provides the only supermarket north of the river and that its trade area would fall within the Woolworths trade area. The FoodWorks store is not really a supermarket, rather a small foodstore/convenience shop that would serve a small localised trade area, so logically its trade area would be a sub-set of the proposed full-line Woolworths supermarket's trade area. In this context, the FoodWorks store only attracts a very small market share of the proposed Woolworths supermarket's main trade area, with more than 95% of supermarket expenditure escaping to retailers elsewhere. This is because the store provides a very limited range of items and virtually all of the retail expenditure generated by this population is escaping the surrounding area and is directed towards the Singleton CBD.
- To reiterate, the MacroPlan Dimasi report shows that the proposed development would only capture around 20% of the available retail expenditure generated by residents in the defined main trade area, meaning 80% would be directed to other retail assets across Singleton.
- The planning system seeks to encourage, not restrict competition, provided it is not detrimental to other centres. The FoodWorks store forms part of the larger Singleton Heights Shopping Village, which also contains a 215 square metres Medical Centre and a key activity generator to the centre. Even with some reduced trading levels at the FoodWorks store, it is not expected that the range of services and vitality of the Singleton Heights Shopping Village to be affected to any great extent.
- As discussed earlier, the trading impacts on the FoodWorks store itself are a private issue and the broader net community benefits that could be realised from the proposed Woolworths Hunterview development are the primary consideration.

The AEC Group third party review of the MacroPlan Dimasi report concurs with its methodology and associated findings. A copy of the AEC Group report has been previously provided to the Panel.

Issue 2: Impact on the Singleton CBD:

Specifically: "The impact on the Singleton CBD is expected to be conservatively 17%, which is in excess of the acceptable limit stated in the EIA".

Comment: Council has considered the role and function of the Singleton CBD and the associated impact of the proposed development. Analysis and comments in this regard follow, viz:

Singleton CBD

The Singleton CBD contains a significant extent of retail floor space (36,000sqm) which includes two full-line supermarkets, a discount department store and specialty retail shops which serve the sub-regional catchment.

The commercial role of the Singleton CBD would not be undermined by the proposed development even if trade is redirected from existing full-line supermarkets. The functioning and associated commercial hierarchy of the Singleton CBD is not solely reliant on full-line supermarkets and given that, even in the high-impact scenario as suggested by the submission; neither of the existing supermarkets would close as a result.

It is the view of detailed analysis that the commercial role of the Singleton CBD would remain unchanged and that the proposed development would not threaten its vitality or viability.

Issue 3: Underestimation of the potential turnover of the proposed centre, which as a consequence, has under-estimated the likely impact of the proposal on surrounding centres.

Comment: Council's position on this matter was addressed in items 1 and 2 above. On this matter, MacroPlan has provided the following opinion:

- Woolworths does not report its supermarket sales per square metres of gross lettable area in its annual reports, only its performance per square of 'trading area'. Therefore, the Foodworks figure of \$11,500 per square metres is an estimate. Based on an average sales per square metre rate of \$15,700 per square metre with around 25 - 30% of floorspace attributed to 'back of house', it is estimated that the average trading levels of Woolworths supermarkets to be \$11,000 - \$11,500 per square metre.
- The main issue with adopting an average (of \$11,500 per square metre), is that an average trading level represents an average across all established Woolworths stores across Australia. There are obviously many stores that trade above average and many stores that trade below average. This average

accounts for the trading performance of supermarkets in metropolitan cities, which accommodate more than 70% of Australia's population, yet tend to have much lower rates of supermarket provision per capita than regional areas – where sites are more readily accessible, population densities are considerably lower and land values/rents are cheaper – which means lower trading levels are required to achieve similar store profitability percentages.

- Similarly, the average of \$11,885 per square metre quoted for single supermarket based shopping centres is a national average, but is particularly influenced by trading levels in metropolitan locations.
- It is estimated that the overall average trading levels per square metre for all supermarkets across Australia including standalone stores and all types of operators (including Coles, Aldi, IGA and other independents) was around \$9,500 - \$10,000 per square metre in 2014/2015.
- MacroPlan Dimasi considers the estimated sales level per square metre of \$9,500 per square metre to be appropriate in the context of the above, given the store's position in a regional location, the existing store network in the Singleton CBD and having regard to the estimated market shares of the available main trade area retail expenditure modelled in the MacroPlan Dimasi's EIA.
- MacroPlan Dimasi is of the opinion that the submission provides an adjusted impacts analysis based on an erroneous assumption. The adjusted analysis suggests that because – in the submitter's opinion – sales per square metre would be \$11,500 per square metre rather than \$9,500 per square metre, then all impacts would therefore be around 20% greater than those modelled in the MacroPlan Dimasi's EIA. The analysis shows that impacts are not expected to be anywhere near the 30% – 50% that the submission postulates, and would be less than 10% as per the submitter's own calculations.

The MacroPlan Dimasi review indicates that residents of the locality would still visit Singleton CBD for higher order shopping trips and Singleton Heights for localised retail and to utilise its non-retail offer.

MacroPlan Dimasi also indicate that the planning system seeks to encourage, not restrict competition, provided it is not at the detrimental expense of a centre and associated commercial hierarchy. Competition is recognised as a public benefit as it enhances consumer choice, assists to lower retail prices, promotes innovation and encourages improved customer experience as retailers compete to attract trade. It is the stated view of MacroPlan Dimasi that any loss of trade to existing retailers as a result of the proposal is a private matter, not a matter of public interest.

MacroPlan Dimasi has indicated that the methodological approach used in the (their attachment 1) submission is not an accepted mechanism by which to assess trading impacts and that due to the unique nature of localities which may be subject to many different factors at play, it is extremely difficult (if not impossible) to definitively attribute a decline in trade to one single event and then apply that outcome to a new locality.

Further discussions from the proponent supported by professional advices suggest that, ultimately, the role of trading impact assessment is only to determine whether the potential impact could lead to a decline in the role and function of existing centres. If the turnover of a particular store declined, that is a matter of competition only and is a private issue.

In this case, according to MacroPlan Dimasi and AEC, both nearby centres are expected to continue to trade and fulfil their roles in the retail hierarchy and beyond that, trading impact is not a material consideration. Other economic impacts such as jobs creation, investment and travel patterns are no less important.

The AEC third party review stipulates that the assessment and economics utilised to support the development application are well founded.

Issue 4: The Economic Impact Assessment has failed to address the economic downturn in the region and the impact that this will have on population forecasts and the trading level of existing centres.

Comment:

- The issue of the economic downturn issue has been addressed previously in MacroPlan Dimasi's EIA. MacroPlan Dimasi has reiterated that the proposed supermarket development will help to create jobs (both permanent and temporary construction jobs) and will provide an immediate/short-term boost, setting a proportion of the foundations for the longer term recovery.
- The new supermarket development would be provided to serve residents for the next 50 - 60 years, i.e. a long term investment. Over this timeframe the Singleton economy will go through several businesses cycles.
- Expenditure on supermarket shopping tends to be very inelastic to income levels. Households with lower incomes may eat at home more often, and tend to spend similar amounts on supermarket retailing to wealthier households, that may allocate much higher proportions of their annual budget to eating out and other discretionary retailing.

Issue 5: The proposed development is inconsistent with the objectives of the LEP and the Land Use Strategy:

Comment:

The function of a Land Use Strategy is to inform the content of Council's LEP and/or DCP.

The subject site is zoned B1 *Neighbourhood Centre* pursuant to the Singleton LEP (2013).

The singular objective of the B1 Neighbourhood Centre Zone is:

- *"To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood".*

Importantly, neighbourhood shops and shops are permissible with development consent.

Neighbourhood shops are defined as: *"means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises"*.

Clause 5.4(7) of Singleton LEP 2013 specifies that the retail floor area of a neighbourhood shop must not exceed 80 square metres.

Shops are defined as: *"means premises that sell merchandise such as groceries, personal care products, clothing, music, home wares, stationery, electrical goods or the like or that hire such merchandise, and includes a neighbourhood shop but does not include food and drink premises or restricted premises."*

Shops are a type of retail premises.

The zone objective refers to *"small scale retail"*. In considering this objective, it is again noted that within the B1 zone, *"neighbourhood shops"* (maximum 80sqm floor area), and *"shops"* are permissible. There is no quantifiable means outlined within the LEP by which to determine whether a proposal is *"small scale"*.

The question was considered by the proponent on a comparative basis. In carrying out this comparison, the larger scale retail premises within Singleton were considered, and in particular, the Singleton Square premises. In comparison to the subject proposal which seeks approval for one (1) supermarket and five (5) specialty shops, Singleton Square comprises two (2) full line supermarkets, Big W, and over 45 specialty stores including a pharmacy, numerous cafes, a travel agent, newsagency, banks, medical, fashion stores and jewellers. Given the lack of any quantifiable means by which to

determine the scale of a proposal, this comparative analysis demonstrates that the proposal is deemed as smaller/local scale.

A comparison of the scale of the proposed development against the nearby B1 zoned premises was also considered, specifically the size difference between B1 parcels. While the subject site is approximately 2ha in area, the nearby B1 site on Blaxland Avenue is closer to approximately 0.5ha. Accordingly, the subject site has been zoned with a larger facility in mind. Importantly, the site specific provisions of Council's Development Control Plan (DCP) allow development of the site up to a cumulative maximum of 8,000 square metres. The proposed development, in totality, is approximately 4500 square metres, significantly less than that provided by the DCP.

The figure of 8000 square metres adopted for the purposes of the DCP was based specifically on the detail and conclusions of a Retail Demand Assessment from Castlecrest Consultants in 2005. This assessment considered the adequacy of the provision of retail and commercial land uses set aside in the then draft planning instrument for the Bridgman Ridge Estate (see further detail under 6, below).

The proposed development is consistent with Council's strategic land use planning policy.

It is relevant to note that the Singleton LEP 2013 does not contain a B2 *Local Centre* zone, instead providing B1 *Neighbourhood Centre* and B3 *Commercial Core* zones. The fact that there is no B2 Local Centre zone in the Singleton LEP means that the B1 zone is the zone in which neighbourhood/suburban retail development is expected to occur in Singleton. This zone is flexible enough to accommodate the proposed development, because the proposed development is small scale (4,462 square metres) in comparison with the retail offer in the Singleton CBD, being 36,000 square metres.

The eight examples of out-of-town development that have been listed in the submission appear misleading. In several of these cases the new development has been in the form of large shopping centre development out of town (e.g. Orana Mall in Dubbo (which is larger than 20,000 square metres); Highlands Marketplace in Mittagong (more than 16,000 square metres); Kempsey Marketplace (large Woolworths and Big W), or are not really out-of-town, rather edge-of-town.

The proposed development in the B1 Neighbourhood Centre zone would result in a significant increase in net community benefits, in particular for residents in northern Singleton. The positive impacts - which include a local full-line supermarket for residents in northern Singleton, increased competition and choice for local residents, reduced travel times/distances (time/cost savings), reduced pollution, job creation and investment in the local community. Such benefits outweigh any negative impacts associated with the proposed development, being trading impacts on some retailers/businesses at Singleton Heights Village and trading impacts primarily on incumbent supermarkets in the Singleton CBD.

A search of other regional Local Government Areas within various parts of the State found that supermarkets of a similar size have been approved in B1 zones in many other

areas, including sites in Dubbo, Bathurst, Maitland, Richmond, Kiama, Shellharbour, Gosford, Wyong, Lake Macquarie, and Newcastle. This search within a relatively limited sample size revealed 16 examples, and it is expected that a more exhaustive search of other regional, as well as metropolitan areas would reveal more examples.

Council's previous supplementary report to the Panel shows the results of this review, with each of the examples illustrating the zoning of the site, address, and name of the supermarket.

Issue 6: The Singleton Region is already well supplied with supermarket facilities and not in need of any more

Comment: Council's adopted strategic land use planning policy advocates the development of the subject site for purposes consistent with those proposed by the development application. Council's public strategic land use discussion of the site in this regard commenced in 2007, with relevant associated history and further documentation outlined below.

The rezoning of the site, and the preparation of the site specific DCP, were the subject of various reports to Council. The dates of the relevant meetings include:

- 17/12/07 (confirmed location of proposed B1 zone);
- 27/10/08 (resolve to request the LEP be Gazetted, and speaks of the need for a site specific DCP to be prepared);
- 15/3/10 (amendments to Singleton DCP to include the site specific provisions for the site, and including the 8,000sqm maximum floor space provision);
- 17/7/10 (report on exhibition of draft DCP amendments).

In further considering the question of the intent of Council in applying the 8,000sqm maximum floor area for the site, it is noted that Council commissioned a Retail Demand Assessment from Castlecrest Consultants in 2005. This assessment considered the adequacy of the provision of retail and commercial land uses set aside in the then draft planning Instrument for the Bridgman Ridge Estate.

The Castlecrest report took into consideration:

- The 2004 Local Environmental Study (LES) prepared by Global Perspectives on 2004;
- The Social Impact Assessment (SIA) prepared by Key Insights; the Singleton Commercial Strategy prepared by Hirst Consulting and adopted by Council in 2002; and
- The Singleton Community Social Plan, and Australian Bureau of Statistics (ABS) and Hunter Valley Research Foundation (HVRF) figures.

In considering the figures and predictions available at the time, Castlecrest noted that retail demand increases came about primarily as a result of population increases. The general trend of 1% increases in population per year meant that the previous Hirst

predictions were relatively low. Secondly, the report noted that the decrease in housing density (number of persons per household) would further increase the number of new households.

In considering the question of retail floor space capability and capacity, the report made several key findings which relate directly to the question of retail floor space, noting that retail land typically has a capacity to yield approximately 30% to 40% floor space ratio. These findings were partly based on an agreement with the Hirst report that the potential of the Singleton CBD was close to being reached, and that planning for the outlying areas in Singleton Heights – being the focus of population increases and new development – should allow for the development of neighbourhood and local centres.

These factors, along with the previously discussed population increases and household density decreases suggest a capacity for approximately 5,000sqm of retail floor space in the location of the proposed development.

In considering the recommendations of the SIA prepared by Key Insights, where uses such as "children's activity / baby clinic", "young people's outreach centre / performance space", "community education", and community youth / café" were contemplated, an allocation of 1,000 – 1,500sqm of floor space was suggested.

The SIA also suggested the possibility of restaurant, café, take away food premises, augmenting the nodal characteristics of the non-residential development. An allocation of 800 – 1,200sqm was suggested in the Castlecrest report.

A potential service station for the area, as contemplated in previous studies, was allocated 200sqm of floor space area.

These figures, along with the land area required are shown in the table below, which is reproduced from the Castlecrest report.

CATEGORY	FLOOR SPACE ESTIMATE	LAND REQUIREMENT
Retail	5,000	1.67ha
Commercial	500	0.15ha
Community	1,500	0.5ha
Tavern / Food	1,200	0.4ha
Service Station	200	0.15ha
Total	8,400	2.87ha

As demonstrated in the above table and the preceding points, it is clear that the 8,000sqm of commercial floor space referred to in the site specific DCP was based on the figures contained within the relevant report to Council.

Council's strategic land use policy also advocates substantial residential growth in the neighbouring locality, the likes of which is apparent in residential subdivision and associated housing development occurring in the area. Such residential growth requires the support of associated infrastructure, including the provision of retail/commercial development and related services which the proposed development seeks to provide. Existing retail/commercial services in Singleton are either too limited in their provision and/or too far removed from the site of residential growth in this locality, both existing and planned.

In terms of the submission's view of purported oversupply of retail floor space, MacroPlan Dimasi states the following:

- The NSW Draft Centres Policy (2009) states that it is for the market for determine demand for new retail floorspace and the role of the planning system to regulate its size and location.
- The submission postulates that there would be an over-supply of supermarket floorspace across the whole Singleton region. However it does note that *"...in isolation the North Singleton region may appear to be in need of an additional supermarket..."* (final page of submission).
- Even if a floorspace oversupply situation were to result across the whole Singleton region (as contended by the submission), this is immaterial to the permissibility of the proposed development given that overall net economic impact would be positive (as demonstrated in the MacroPlan Dimasi EIA). Furthermore, the issue of supermarket provision is not so much about the aggregate provision of facilities, rather the appropriate distribution of such facilities. There is a significant under-supply (i.e. no supermarket) in northern Singleton (noting the FoodWorks is a small foodstore/ convenience shop) and north Singleton residents are considerably disadvantaged.
- Notwithstanding the above, the issue of retail oversupply has already been raised in a previous submission which MacroPlan Dimasi addressed in its EIA. The MacroPlan Dimasi EIA indicated that the provision of supermarket retail per 1,000 residents in many other regional NSW towns is more than it is currently in Singleton.
- The submission openly states that there would be little left to share for the FoodWorks and existing supermarkets in the CBD were the proposed Hunterview supermarket to open. The MacroPlan Dimasi (further supported by the third p[arty review by AEC) analysis shows that the proposed development would only capture around 20% of the available retail expenditure generated by residents in the defined main trade area, meaning 80% would be directed to other retail assets across Singleton. Furthermore, the existing FoodWorks store only attracts a very small market share of the current main trade area at present, with more than 95% of supermarket expenditure escaping to other retailers. This means that the store is clearly not meeting the surrounding community's needs – because

virtually all of the retail expenditure generated by this population is escaping the surrounding area and is directed towards the Singleton CBD.

It is appropriate and acceptable for the proposed application to be approved: it is consistent with adopted, publicly sanctioned strategic land use planning direction for the locality and, as demonstrated above, will have a marginal impact on other retail/commercial centres throughout the LGA.




To the Regional Panels Secretariat
Joint Regional Planning Panels
NSW Government
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15 January 2016

Re: 2015HCC023 – Singleton Shire Council, DA 150/2015, 1 Glass Parade, Hunterview.

In my earlier submission I raised a concern that an Economic Impact Assessment had not been submitted as part of this application.

As a result of your correspondence to me on the 7 January 2016 I am now aware that the applicant has subsequently prepared and submitted an EIA supporting the proposal. Obviously we were not given the opportunity to comment on this important evidence during the exhibition period.

I have reviewed the EIA and with the assistance of  and have identified a number of serious concerns regarding the findings of the EIA. We therefore request that the panel take these additional matters into account in their assessment of the application.

In summary the key points I wish to raise include:

- The expected level of impact on the Singleton Heights Shopping Village has been significantly under-estimated.
- I predict an impact of around 50% on the Singleton Heights Shopping Village based on customer survey evidence and from comparable location data.
- The applicant has understated the potential turnover of the proposed centre, which as a consequence has under-estimated the likely impact of the proposal on surrounding centres.
- The impact on the Singleton CBD is expected to be conservatively 17%, which is in excess of the acceptable limit stated in the EIA.
- The EIA has failed to account for the economic downturn in the region and the impact this will have on population forecasts and the trading level of existing centres.
- The proposed development is inconsistent with the objectives of the LEP and the Land Use Strategy.
- The Singleton region is already well supplied with supermarket facilities and not in need of any more.

On the basis of my earlier submissions and these subsequent concerns I urge the JRPP to refuse the application.

These concerns are discussed in more detail below.



Singleton Heights Shopping Village

The applicant has significantly under-estimated the expected impact on the Singleton Heights Shopping Village. In particular, the report fails to take into account that:

- The Singleton Heights centre is the nearest centre to the proposal, being only 1.6 kms away.
- The Singleton Heights centre is the only centre north of the river, and is therefore currently the most convenient supermarket offer in this region.
- The catchment of the proposed Woolworths will overlap entirely the FoodWorks catchment.
- The proposed Woolworths will compete head to head with the Singleton Heights FoodWorks for the available supermarket spending.
- Woolworths supermarkets do not only target the weekly shopping trip, but also rely on the smaller convenience and top-up shopping trips. This is an important part of their business, and explains why Woolworths supermarkets offer Express Checkouts, include a range tailored to the convenience market and make shopping baskets available.
- A customer survey undertaken in the Singleton North FoodWorks in October 2015 showed that 73% of its customers live closer to the proposed Woolworths than the FoodWorks (ie Woolworths will be the most convenient supermarket option for these customers). The results of this survey can be made available to the panel if desired.
- The following locations demonstrate impacts of between 31% and 67%, with a number of stores ultimately closing as a direct result of similar competitor activity. These are small stores that have been impacted by larger chain supermarkets.

Location	Existing FoodWorks Store	New Store	Distance (kms)	FoodWorks Sales Impact
Country NSW (Macksville)	1,584 sq m	3,198 sq m Wwths	0.8	-34%
Country, NSW (Gracemere)	210 sq m	3,800 sq m Wwths	0.6	-45%
Country, NSW (Gloucester)	1,135 sq m	2,200 sq m Wwths	0.6	-49%
Country, Vic (Kilmore)	884 sq m	3,000 sq m Coles	0.3	-40%
Country, Vic (Yarram)	800 sq m	2,850 sq m Wwths	0.1	-63%
Country, NSW (Culburra Beach)	250 sq m	1,650 sq m Wwths	0.1	-65% (now closed)
Country NSW (Bermagui)	530 sq m	1,696 sq m Wwths	0.2	-67% (now closed)
Country VIC (Leopold)	469 sq m	1,850 sq m Coles	1.9	-31%
Country Qld (Childers)	1000 sq m	2,500 sq m Wwths	0.9	-35%

[REDACTED]

The level of impact on the FoodWorks is therefore expected to be around **50%**. This impact represents 194,000 fewer customer trips to the Singleton Heights Shopping Village over 12 months, significantly impacting the specialty shops in the centre that rely on this foot traffic to survive.

Proposed Centre Sales Potential

The EIA has under-estimated the potential sales of the proposed centre.

The EIA assumes that the proposed Woolworths will trade at only \$9,500 pa / sq m. This is well under the average trading level of Woolworths which, based on the Woolworths Annual Report, averages around \$11,500 pa / sq m GLFA. I also note that according to the shopping centre benchmarks report, prepared by MacroPlanDimasi, the average supermarket turnover in a single supermarket based centre is higher still at \$11,885 pa / sq m GLFA.

Given the applicant's glowing report on the suitability of this site for the proposal it could only be assumed that the centre and the supermarket would perform well above industry averages.

However, adopting the Woolworths average as a conservative estimate for the new centre, the centre turnover would therefore be expected to be \$47,562,000, which is 19% higher than the EIA estimate.

If our estimate of the centre's potential turnover is correct, it would of course **increase the expected impacts** on other centres compared to that estimated in the EIA.

Centre Impacts

Adopting our conservative estimate of the proposed centre's turnover, then the impacts on competing centres (based on the EIA assumptions) are expected to increase as follows:

Centre	Est. Sales with no Development 2017/18 (\$M)	Est. Sales with Development 2017/18 (\$M)	\$ Impact (\$M)	% Impact
Singleton Heights	6.0	5.4	-0.6	-9.9%
Singleton CBD	251	208.8	-42.2	-16.8%
Other centres (10% of sales)			-4.8	
TOTAL			47.6	

The EIA claims that retail impacts between 10% to 15% are considered by the industry to be significant but acceptable. The expected impact on the Singleton CBD at 17% is therefore in excess of this range and raises concerns over the continued viability of existing retailers.

[REDACTED]



Economic Downturn

The EIA has chosen to dismiss the importance of the current economic downturn. However, in our opinion retail spending in Singleton will be significantly impacted by these economic conditions.

Falling coal prices, the downturn in the mining industry, including various mine closures, and job losses have created difficult trading condition for local businesses in Singleton. As a result of the economic downturn the unemployment rate in Singleton has trebled since 2012, rising from a low of 1.8% in June 2012 to a current high of 6% and increasing. The wider Hunter Valley region, excluding Newcastle, now has an unemployment rate of 11.3%. As jobs leave the region, the population will be impacted.

The EIA however assumes that the economic downturn will have no impact on the current population level, nor future growth rates.

With less people in the catchment and less money to spend on retail goods, the trading performance of existing retailers will be impacted. These retailers will therefore be less capable of withstanding the expected impact from the proposed new centre.

In addition, by over estimating current retail sales in Singleton the EIA further underestimates the percentage impact the proposed new centre will have on the Singleton CBD.

Shop vacancies are already at a high level in Singleton, further evidence of the tough economic times in the region.

We also expect that the developer will target some of the better retailers in the CBD to relocate to the new centre. This will create even further vacancies in the CBD and make the CBD even less desirable.

An impact of 17% on the Singleton CBD now seems too conservative!

Zone Objectives

The proposal is contrary to the zone objective of the LEP which is to provide for a small-scale retail centre serving the needs of people living in the surrounding neighbourhood.


*"Zone B1 Neighbourhood Centre – 1 Objectives of Zone: To provide a range of **small-scale** retail, business and community uses that serve the needs of people who live or work in the **surrounding neighbourhood**."*

At 4,500 sq m and anchored by the largest supermarket in Singleton, the proposed centre is not small-scale and is designed to serve a much larger region than the surrounding neighbourhood. Further the proposed supermarket, which accounts for 85% of the total centre, can hardly be classified as small-scale retail.

The EIA also acknowledges that the centre will pull from beyond the surrounding neighbourhood, covering an area in excess of 970 square kilometres:

*"The proposed supermarket anchored convenience development will serve the needs of people who live and work in the surrounding neighbourhood, **as well as residents more broadly residing north of the Hunter River**". (Page 8).*





This issue was considered by the Land and Environment Court in *Warriewood Properties Pty Ltd v Pittwater Council*, 2010, NSWLEC 215 where the judge concluded that a supermarket of only 2,200 sq m would, due to its size and range, serve a region well beyond the surrounding neighbourhood. The judge refused the application and concluded that:

"Although I agree that a supermarket of 2,222 sq m would likely satisfy "the day-to-day needs of people who live and work in the local area", it would also likely satisfy the needs of people who live and work beyond the local area, given the size of the supermarket and the likely range of goods offered for sale" (Paragraph 89).

The proposal is also contrary to the objectives of the Singleton Land Use Strategy 2008 which is concerned about supporting the function and prosperity of the CBD:

"Maintain existing commercial zoned land, and strengthen the integrity of the CBD by adopting planning controls that consolidate commercial development." (Page 56)

With expected impacts of 17% or more, the proposed centre fails to complement, let alone strengthen the integrity of the CBD.


As discussed in my earlier submission there are many examples where new out-of-centre retail developments centres have been refused on the grounds that they would cause adverse impacts on existing town centres, contrary to zone objectives, including:

- Murwillumbah
- Kirrawee
- Pottsville
- Sunshine Bay

Unfortunately, there are also numerous examples of out-of-town developments that have been permitted that have resulted in serious impacts on established town centres, including:

- Taree
- Kempsey
- Inverell
- Tamworth
- Dubbo
- Coffs Harbour
- Maitland
- Mittagong

The JRPP is in a position to ensure that these adverse outcomes can be avoided in Singleton.





Retail Oversupply

The community of Singleton is already well supplied with supermarkets, with all major operators represented.

On the basis of supermarket floorspace per 1,000 people there appears to be agreement that the Singleton region is not under-supplied and not in need of additional supermarket facilities.

Whilst in isolation the North Singleton region may appear to be in need of an additional supermarket, it must be noted that this region is an important part of the primary trade of the Singleton CBD. Much of the customer traffic required to support the Singleton CBD comes from this region. What the EIA also doesn't explain is that the proposed centre will account for a very large share of the available food market in the North Singleton region, leaving little left to share between the FoodWorks at Singleton Heights and the four supermarkets in the CBD.

This issue was discussed in *Fabcot Pty Ltd v Latrobe CC* [2007] VCAT 354. The report notes that it is not practical for all locations to completely satisfy their retail demand. In order to support higher-order retailers and centres, like the Singleton CBD, it is necessary for surrounding regions to maintain an under-supply of floorspace and allow for sufficient outflow of customers and spending to these larger centres.

"... in a networked city there is an expectation that centres are not self contained and that they depend on one another to provide various services and facilities. In such a model it is implicit that there is no imperative for each centre to fully cater for the retail needs of its residents."

Large-scale retail uses, such as this proposed Woolworths, who rely on extensive catchments, are therefore best located in CBD locations. In this way they can bring the foot traffic that is necessary to support smaller specialty retailers and service providers, who cannot draw from such large areas on their own. They are the glue that holds these large regional centres together.

It should also be noted that for most residents in North Singleton, the CBD is only a short distance away, ~3.5 kms, which is far from inconvenient.

The EIA also fails to explain that the main cause of retail escape expenditure from Singleton to other nearby regional centre is the inadequate provision of key non-food retailers. Adding a second Woolworths supermarket to Singleton will not address this market gap nor help to retain escape expenditure in town. It is simply transferring trade from the CBD to the new centre.

Regards,



ATTACHMENT 2
Submission dated 18 January, 2016

A redacted copy of this submission is provided to the Panel for consideration.

In detailed summary, itemised matters raised in the submission are documented and comments made by Council staff accordingly. Comments are in accordance with previous advices to the Panel at the meeting of 21 January, 2016 and in the Supplementary Report dated provided to the Panel on 28 April, 2016.

It is also noted that the submission provides the following commentary: *"I am very much in favour of a second retail centre north of the Hunter River. However, I believe locating a major supermarket on this particular site must result in the serious degrading or closure of the nearby Singleton Heights shops, and ... this cannot be for the net benefit of the Singleton community"*.

Secondly, with ongoing and future major residential developments progressively occurring in the north eastern area of the town, I believe the second retail facility here should be the focus of a second and 'senior' or district activity north of the Hunter River.

Particularly, it should be the preferred site for the future higher level northern district's services, together with those associated developments seeking to be co-located on flood free lands; i.e. a retirement village. This objective is not achievable on this site".

Issue 1: Inconsistency with B1 Zoning and the proposal is not small scale.

The subject site is zoned B1 Neighbourhood Centre pursuant to the Singleton LEP (2013).

The singular objective of the B1 Neighbourhood Centre Zone is:

- *"To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood"*.

Importantly, neighbourhood shops and shops are permissible with development consent.

Neighbourhood shops are defined as: *"means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises"*.

Clause 5.4(7) of Singleton LEP 2013 specifies that the retail floor area of a neighbourhood shop must not exceed 80 square metres.

Shops are defined as: "means premises that sell merchandise such as groceries, personal care products, clothing, music, home wares, stationery, electrical goods or the like or that hire such merchandise, and includes a neighbourhood shop but does not include food and drink premises or restricted premises".

Shops are a type of retail premises.

The zone objective refers to "small scale retail". In considering this objective, it is again noted that within the B1 zone, "neighbourhood shops" (maximum 80sqm floor area), and "shops" are permissible. There is no quantifiable means outlined within the LEP by which to determine whether a proposal is "small scale".

The question was considered by the proponent on a comparative basis. In carrying out this comparison, the larger scale retail premises within Singleton were considered, and in particular, the Singleton Square premises. In comparison to the subject proposal which seeks approval for one (1) supermarket and five (5) specialty shops, Singleton Square comprises two (2) full line supermarkets, Big W, and over 45 specialty stores including a pharmacy, numerous cafes, a travel agent, newsagency, banks, medical, fashion stores and jewellers. Given the lack of any quantifiable means by which to determine the scale of a proposal, this comparative analysis demonstrates that the proposal is deemed as smaller/local scale.

A comparison of the scale of the proposed development against the nearby B1 zoned premises was also considered, specifically the size difference between B1 parcels. While the subject site is approximately 2ha in area, the nearby B1 site on Blaxland Avenue is closer to approximately 0.5ha. Accordingly, the subject site has been zoned with a larger facility in mind. Importantly, the site specific provisions of Council's Development Control Plan (DCP) allow development of the site up to a cumulative maximum of 8,000 square metres. The proposed development, in totality, is approximately 4500 square metres, significantly less than that provided by the DCP.

The proposed development is consistent with Council's strategic land use planning policy. The figure of 8000 square metres adopted for the purposes of the DCP was based specifically on the detail and conclusions of a Retail Demand Assessment from Castlecrest Consultants in 2005. This assessment considered the adequacy of the provision of retail and commercial land uses set aside in the then draft planning instrument for the Bridgman Ridge Estate.

It is relevant to note that the Singleton LEP 2013 does not contain a B2 Local Centre zone, instead providing B1 Neighbourhood Centre and B3 Commercial Core zones. The fact that there is no B2 Local Centre zone in the Singleton LEP means that the B1 zone is the zone in which neighbourhood/suburban retail development is expected to occur in Singleton. This zone is flexible enough to accommodate the proposed development, because the proposed development is small scale (4,462 square metres) in comparison with the retail offer in the Singleton CBD, being 36,000 square metres.

The proposed development in the B1 Neighbourhood Centre zone would result in a significant increase in net community benefits, in particular for residents in northern

Singleton. The positive impacts - which include a local full-line supermarket for residents in northern Singleton, increased competition and choice for local residents, reduced travel times/distances (time/cost savings), reduced pollution, job creation and investment in the local community. Such benefits outweigh any negative impacts associated with the proposed development, being trading impacts on some retailers/businesses at Singleton Heights Village and trading impacts primarily on incumbent supermarkets in the Singleton CBD.

A search of other regional Local Government Areas within various parts of the State found that supermarkets of a similar size have been approved in B1 zones in many other areas, including sites in Dubbo, Bathurst, Maitland, Richmond, Kiama, Shellharbour, Gosford, Wyong, Lake Macquarie, and Newcastle. This search within a relatively limited sample size revealed 16 examples, and it is expected that a more exhaustive search of other regional, as well as metropolitan areas would reveal more examples.

Council's previous supplementary report to the Panel shows the results of this review, with each of the examples illustrating the zoning of the site, address, and name of the supermarket.

Issue 2: The creation of a stand-alone portion of the land for landscaping is 'probably prohibited'.

Comment: The area apportioned for landscaping is an ancillary part of the development and is not a prohibited land use.

Issue 3: The traffic study must consider the future traffic on Council's town road network.

Comment: Both Council's Development and Traffic Engineers have advised that on the basis of existing Council information and supplementary information provided by the proponent, the proposed development is able to be readily accommodated within Council's existing road hierarchy. Appropriate conditions of consent are provided to account for required traffic-related improvements.

Issue 4: The site is isolated from the surrounding residential area it will serve, with steep hills, discouraging walking and cycling to the shops.

Comment: The B1 zoned land, the subject of the DA, is suitably located. The history of the decision to locate a further supermarket in this location has been well documented by Council and the subject of due public consideration at that time.

Issue 5: In the public interest, it is desirable that the Singleton Heights Shopping Centre remains viable.

Comment: Council's previous reports to the JRPP and those provided concurrently, have advised that the proposed development is in the public interest, satisfying

Council's strategic land use planning objectives and positively satisfying the provisions of section 79C of the *Environmental Planning & Assessment Act, 1979*.

The MacroPlan Dimasi (further supported by the third party review by AEC) analysis shows that the proposed development would only capture around 20% of the available retail expenditure generated by residents in the defined main trade area, meaning 80% would be directed to other retail assets across Singleton, including the existing Singleton Heights centre.

Issue 6: Safer by Design

The submission raises the concern that only limited natural surveillance is provided.

Comment: The application was referred to NSW Police for specific advices on Safer By Design considerations. Advices received by NSW Police have been incorporated into proposed conditions of consent accordingly.

Issue 7: Suitability of the Site: The submission states that *"The proposed supermarket so close that its natural catchment will suck most of the trade out of the Heights Centre (sic)"*.

Comment: The site has been sanctioned by Council's strategic land use planning policy as a site for commercial and retail development since inception of discussions during 2007.

The site is considered to be suitable for the purposes of the proposed development, both in terms of strategic context and having regard for Section 79C considerations discussed previously in previous reports to the Panel.

Advices by MacroPlan Dimasi suggest that the proposed development will have a marginal effect on the Singleton Heights centre.

DA 150/2015. Comments on Applicant's Responses.

Introduction.

Firstly, I am very much in favour of a second retail centre north of the Hunter River. However, I believe locating a major Supermarket on this particular site must result in the serious degrading or closure of the nearby Singleton Heights shops and, for the reasons I submitted, this cannot be to the net benefit of the Singleton community.

Secondly, with ongoing and future major residential developments progressively occurring in the north-eastern area of the town, I believe the second retail facility here should be the focus of a second and 'senior' - or district - activity centre north of the Hunter River.

Particularly it should be the preferred site for the future higher level northern district's services, together with those associated developments seeking to be co-located on flood-free lands, e.g. a retirement village. This objective is not achievable on this site.

Responses to my Submissions.

The B1 Zoning: Non-conforming use 1:

My submission: The upper limit for 'small scale retail' is around 1,500 m², and 'Major Retail' has been defined in *Draft Centres Policy* as a floor area exceeding 2,500m².

Applicant's Response: Development of supermarkets and retail development that would not be considered "small scale", in the B1 – Neighbourhood Centre zone is not uncommon across NSW.

Comment: The *Urban Taskforce Australia's* comments says it all, (emphasis added):

"A subjective phrase such as "small-scale" should never have appeared in a statutory plan. The term "small-scale" is vague and undefined. True supermarkets or large format stores range from 1,500 square metres (six checkouts) for a typical Aldi or IGA Supa store to 2,500 to 3,500 square metres (12 to 16 checkouts) for a full-line Woolworths, Coles, Franklins or Superbarn. **So, in industry terms, a small scale supermarket will have a floor area of 1,500 square metres.** However, some government and local council planners have been known to argue that a store of 700 square metres is a larger retail establishment".

My submission: The proposal is not consistent with the aims and objectives of a B1 zoning, viz: "To provide a range of small scale retail, business and community uses ...".

Applicant's Response: (i) ADW Johnson: Shops as defined are a permissible use, and DCP limit of 8,000m² gross floor area applies to the site.

Comment: It is agreed that individual shops greater than 'Neighbourhood Shop' size are a permissible use here, but that does not remove the 'small scale' requirement. The limit on gross floor area is irrelevant as this limit applies to the sum of all permissible uses, not just these shops.

- (ii) MacroPlan Dimasi: Case studies – supermarkets now located in B1 Neighbourhood Centre zone.

Comment: Looking at their *Table 4.3* and starting at the largest supermarket, investigations indicate that when the *Arida Centre* DA was approved by Parramatta Council in 1999 the site was zoned Business 3(a), thus no '*small scale*' limitation could then apply. Since the Standard Instrument LEP for Blacktown only commenced six months ago the same appears to be true for these supermarkets. The Queanbeyan situation also appears to be similar.

For the *Southgate* supermarket in Tamworth the Standard Instrument B1 zoning was applicable at the time of the DA approval. However, as everyone involved was basically in favour of this development the issue of '*small scale*' was never specifically addressed.

Since conversion from the previous LEP's to the Standard Instrument can be done more or less directly for the other zones, it seems as though a lot of Councils have not perceived that this conversion process does not apply so simply to the Business zones. They appear to have assumed that B1 *Neighbourhood Centre* zoning can simply replace the old various *Neighbourhood Business* type zonings, whereas the B2 *Local Centre* zoning option should probably have been chosen for many of those larger retail developments serving the local district.

I have not the time to go through the smaller supermarkets in the table, but I would think that generally they were probably approved under previous LEP's or the '*small scale*' aspect was not raised as an issue, thus this limitation on the use under a B1 zoning was not addressed.

In conclusion: Preston C.J. in *Conservation of North Ocean Shores Inc v Byron Shire Council & Ors* [2009] said:

'If the Council fails to form the requisite opinion that the carrying out of the development is consistent with the relevant zone objectives, the power to grant consent will not be enlivened and any purported exercise of the power will be ultra vires.'

B1 Zoning: Non-Conforming Use 2.

My Submission: The creation of stand-alone substantial portion of land for 'landscaping' is probably prohibited.

Applicants Response: Ignored

My Submission: In the circumstances, the proposed use is probably a bushfire hazard. No vehicular access from the sub-arterial is shown for the proposed use or possible future urban uses.

Applicants Response: Ignored

Traffic Provision

My Submission: The Traffic Study must consider the future traffic on Council's principal town road network, as well as existing flows.

Applicants Response: Ignored

Comment: According to the Applicant's Traffic Report the existing two-way traffic in Glass

Parade at the proposed access point is 305 VPH in the peak hour. The *Singleton Traffic and Parking Study 2007* was completed by *Parsons Brinckerhoff* for Council, for the planning of the future traffic using the town's principal road network. With the development of the zoned residential lands this study forecast 1,125 VPH for in the peak hour traffic at this location (425 east-bound, 700 west-bound).

While the *Singleton Land Use Strategy* indicates possible future rezonings that would add to this traffic load, at the least the *Parsons Brinckerhoff* figures should be used in current analysis.

My Submission: Provide an additional traffic study to assess that both the existing right hand turn bay and the left-in slip lane are sufficient to accommodate deceleration and storage of entering vehicles.

Applicant's Response: A Sidra assessment was done (but only on the existing traffic situation and with no specific allowance for deceleration).

Comment: As Glass Parade has single lanes only, with no shoulders for following vehicles to pass or escape to, it is particularly important that the requirements in *Austroads Road Design – Part 4a – Clause 5.3* be adhered to. This requires the auxiliary lane (including the taper) to be long enough to accommodate both deceleration and the storage of turning vehicles. For a 50km/h approach and vehicles stopping behind waiting vehicles, the Guide requires 40m for comfortable deceleration and 30m for a maximum rate of deceleration.

With Glass Parade becoming an important part of the town's principal road network, the length required for the storage of turning cars should at least reflect the *Parsons Brinckerhoff* future traffic flows, as in this urban situation any upgrading at a future date would be far more difficult and expensive (and at public cost).

My Submission: The rear wheels of large trucks entering the service vehicles' entrance will be a hazard to a young child waiting on the shared pathway.

Applicant's Response: Ignored

Site Accessibility

My Submission: The site is isolated from the surrounding residential areas it will serve, with steep hills, discouraging walking and cycling to the shops.

Applicant's Response: Ignored

My Submission: Glass Parade roadway is too narrow and too busy to accommodate 'serious' cyclists, who must use the cycleway, to the hazard of slower users.

Applicant's Response: Ignored.

My Submission: No provision is being proposed to safely accommodate pedestrians and cyclists accessing the shops from the residential areas west of the sub-arterial (Bridgman Road).

Applicant's Response: There is currently no pedestrian footpath on the western side of Bridgman Road.

Comment: Precisely. The *Retail Demand Assessment* confirms that the western side of Bridgman Rd is a substantial part of the retail catchment. As detailed in my submission, this non-vehicular traffic needs to be safely accommodated.

Public Interest

My Submission: It is desirable that the Singleton Heights centre remain a viable shopping centre.

Applicant's Response: Estimated impacts on the Singleton Heights Shopping Village are expected to be minor-moderate.

Comment: The Applicant has produced not one example of a small, local shopping centre surviving the introduction of a major supermarket within a 1.5km radius.

There are many viable centres at 2.5km from a major supermarket, well exemplified at *Noosa Outlook Shopping Centre*, St Andrews Drive, Tewantin, Queensland, and the Bray Street Shopping Centre, Coffs Harbour, NSW.

On the other hand, there is a local example at West Cessnock of a good local shopping centre ruined by the nearby (1.4km) development of major supermarket. Richard Owens, a successful Hunter businessman, built a new small shopping centre at West Cessnock in the early '70s, and appeared to be trading well when I visited it in the 70's. The shops in this fine building are now seriously degraded, with only low rental uses, vacant shops, and no local supermarket for this community. Interestingly, the supermarket here was about the same size as Foodworks at the Heights.

Safety by Design

My Submission: Only limited natural surveillance

Applicant's Response: Ignored

Suitability of this Site

My submission: The proposed supermarket so close that its natural catchment will suck most of the trade out of the Heights centre.

Applicant's Response: the issue of competition between existing and proposed centres should not be a planning consideration.

Comment: It is agreed that the issue of competition in itself is not a planning consideration. However, the social and economic impacts on the local community is a legitimate concern.

Clause 79(C)(1)(b) requires Council to consider the likely impacts of a development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. Also it has been held that if shopping facilities presently enjoyed by community are put in jeopardy and are not made good by the proposed development then this is a relevant matter for consideration (*Kentucky Fried Chicken Pty Ltd v Gantidis* [1979] HCA 20).

For the reasons detailed in my submission the currently proposed site will have adverse social and economic impacts, particularly on the Heights locality. This will not be made good by the proposed supermarket.

ATTACHMENT 3
E-mail Submission dated 16 May, 2016

A redacted copy of this submission is provided to the Panel for consideration.

In detailed summary, itemised matters raised in the submission are documented and comments made by Council staff accordingly. The submission asks that the Panel refuse the DA.

Issue 1: Inconsistency with B1 Zone Objective: Specifically *"Uses are to be small scale; and Uses are to serve the needs of people who live or work in the surrounding neighbourhood"*.

The submission specifically cites the case of Warriewood Properties Pty. Ltd. –v- Pittwater Council 2010 (NSW LEC 215).

The subject site is zoned B1 Neighbourhood Centre pursuant to the Singleton LEP (2013).

The singular objective of the B1 Neighbourhood Centre Zone is: *"To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood"*.

Importantly, neighbourhood shops and shops are permissible with development consent.

Neighbourhood shops are defined as: *"means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises"*.

Clause 5.4(7) of Singleton LEP 2013 specifies that the retail floor area of a neighbourhood shop must not exceed 80 square metres.

Shops are defined as: *"means premises that sell merchandise such as groceries, personal care products, clothing, music, home wares, stationery, electrical goods or the like or that hire such merchandise, and includes a neighbourhood shop but does not include food and drink premises or restricted premises"*.

Shops are a type of retail premises.

The zone objective refers to "small scale retail". In considering this objective, it is again noted that within the B1 zone, "neighbourhood shops" (maximum 80sqm floor area), and "shops" are permissible. There is no quantifiable means outlined within the LEP by which to determine whether a proposal is "small scale".

The question was addressed by the proponent on a comparative basis. In carrying out this comparison, the larger scale retail premises within Singleton were considered, and in particular, the Singleton Square premises. In comparison to the subject proposal which seeks approval for one (1) supermarket and five (5) specialty shops, Singleton Square comprises two (2) full line supermarkets, Big W, and over 45 specialty stores including a pharmacy, numerous cafes, a travel agent, newsagency, banks, medical, fashion stores and jewellers. Given the lack of any quantifiable means by which to determine the scale of a proposal, this comparative analysis demonstrates that the proposal is deemed as smaller/local scale.

A comparison of the scale of the proposed development against the nearby B1 zoned premises was also considered, specifically the size difference between B1 parcels. While the subject site is approximately 2ha in area, the nearby B1 site on Blaxland Avenue is closer to approximately 0.5ha. Accordingly, the subject site has been zoned with a larger facility in mind. Importantly, the site specific provisions of Council's Development Control Plan (DCP) allow development of the site up to a cumulative maximum of 8,000 square metres. The proposed development, in totality, is approximately 4500 square metres, significantly less than that provided by the DCP.

The proposed development is consistent with Council's strategic land use planning policy. The figure of 8000 square metres adopted for the purposes of the DCP was based specifically on the detail and conclusions of a Retail Demand Assessment from Castlecrest Consultants in 2005. This assessment considered the adequacy of the provision of retail and commercial land uses set aside in the then draft planning instrument for the Bridgman Ridge Estate.

It is relevant to note that the Singleton LEP 2013 does not contain a B2 Local Centre zone, instead providing B1 Neighbourhood Centre and B3 Commercial Core zones. The fact that there is no B2 Local Centre zone in the Singleton LEP means that the B1 zone is the zone in which neighbourhood/suburban retail development is expected to occur in Singleton. This zone is flexible enough to accommodate the proposed development, because the proposed development is small scale (4,462 square metres) in comparison with the retail offer in the Singleton CBD, being 36,000 square metres.

The proposed development in the B1 Neighbourhood Centre zone would result in a significant increase in net community benefits, in particular for residents in northern Singleton. The positive impacts - which include a local full-line supermarket for residents in northern Singleton, increased competition and choice for local residents, reduced travel times/distances (time/cost savings), reduced pollution, job creation and investment in the local community. Such benefits outweigh any negative impacts associated with the proposed development, being trading impacts on some retailers/businesses at Singleton Heights Village and trading impacts primarily on incumbent supermarkets in the Singleton CBD.

A search of other regional Local Government Areas within various parts of the State found that supermarkets of a similar size have been approved in B1 zones in many other areas, including sites in Dubbo, Bathurst, Maitland, Richmond, Kiama, Shellharbour,

Gosford, Wyong, Lake Macquarie, and Newcastle. This search within a relatively limited sample size revealed 16 examples, and it is expected that a more exhaustive search of other regional, as well as metropolitan areas would reveal more examples.

Council's previous supplementary report to the Panel shows the results of this review, with each of the examples illustrating the zoning of the site, address, and name of the supermarket.

The proposed development will serve the needs of people who live and work in the surrounding neighbourhood.

Issue 2: The proposed development is contrary to the Singleton Land Use Strategy 2008 and to the Singleton retail hierarchy and should not be supported.

The submission asks that the Panel review other cases where large supermarket based developments were refused due to the likelihood of adverse impacts on existing town centres and non-conformity with retail centre hierarchies, citing the following cases:

Murwillumbah NSW – Tweed Shire Council, July 2015

Kirrawee NSW – Sydney East Joint Regional Planning Panel, April 2014

Sunshine Bay, Council NSW – Jetset Properties-v- Eurobodalla Shire Council, 2007, NSWLEC 198

Pottsville, NSW – Metricon Qld – v- Tweed Shire Council (2008) NSWLEC1453

Comment: The Singleton Land Use Strategy (2008) has informed the content and detail of the Singleton LEP 2013 and the Singleton DCP 2014. The proposed development is permissible in the B1 zone pursuant to Singleton LEP 2013 and is consistent with the requirements of Singleton DCP 2014.

Issue 3: Centre Impacts: Specifically Singleton Heights

Comment: Council has considered the role and function of the Singleton Heights Shopping Centre and the associated impact of the proposed development. Analysis and comments in this regard follow, viz:

This is a neighbourhood centre which contains a limited range of retail goods and services serving a localised catchment. The Singleton Heights supermarket serves daily shopping needs and the centre contains a range of other non-retail uses. The non-retail uses would not be impacted by the proposed development meaning that customers will still be attracted to the centre despite the proposed development.

The submission argues the view that the provision of the proposed Woolworths development will have a significant impact on the future viability of the supermarket at this location. The MacroPlan Dimasi response postulates that the proposed Woolworths development will capture around 20 per cent of the available retail expenditure generated by residents in its trading catchment meaning that 80 per cent would be directed to other retail assets across Singleton. The MacroPlan Dimasi response also advocates that the existing Singleton Heights supermarket attracts a very small market share across its trading catchment with more than 95 per cent of supermarket expenditure escaping to other retailers. It is the view of the MacroPlan Dimasi response that the existing Singleton Heights supermarket is not meeting the needs of surrounding population because of the retail expenditure escaping to the Singleton CBD.

A further response on this specific matter is contained in MacroPlan Dimasi correspondence dated 8 March, 2016. Specifically, the correspondence states:

- The submission is really only concerned with potential trading impacts on one retailer – i.e. Foodworks. As per Section 79C of the Environmental Planning and Assessment Act 1979 (EP&A Act), consent authorities are required to consider the economic impact of a proposed development. This consideration however, is to be applied to the impacts on planning policy objectives and defined retail centres. Competition, or trading impacts, on individual traders is regarded as a private matter, and thus beyond the scope of that consideration under the Act.
- In the above context the examples cited in the submission are not relevant as they are examples of impacts from new development on individual FoodWorks store sales across various towns in Australia.
- Estimated trading impacts on a "centre" are used as a means to determine the overall impact on the role, function, vitality and viability of a centre. If an individual retailer were to close (which is not expected to be the case of the FoodWorks at Singleton Heights), there would be no grounds to refuse the application on economic grounds, provided the role and function of the centre remains intact, particularly if a significant increase in retail facilities is the net result.
- Notwithstanding the above, the FoodWorks store locations demonstrating high levels of impacts, cited in the table on page 2 of the submission, are not directly comparable to the situation in Hunterview. The FoodWorks store at North Singleton is only small, at 421 square metres, with a proportion of the floorspace within the store operating essentially as a newsagency. Five of the nine cited examples are larger stores (i.e. 800 square metres and above), which would contain a much greater range of food and grocery items than the 421 square metre store at North Singleton, and thus would be more directly competitive to new supermarket developments.
- For three of the four smaller stores (i.e. less than 800 square metre), the new competitive stores in the locality were between 1,600 and 1,900 square metres indicating a small surrounding catchment which is a different environment from the Hunterview proposal.

- The locations cited are small, regional towns/localities with immediate populations of around 2,000 – 5,000 persons. There are two exceptions. Gracemere (QLD) which is a suburb of Rockhampton - with around 10,000 persons and Leopold - which is a suburb of Geelong, with around 11,000 persons.
- For all of the locations listed in the submission, the existing FoodWorks stores were providing the only local supermarket/convenience option in these towns – with full-line supermarkets either non-existent or a significant distance away (e.g. Nambucca Heads is 10-11km from FoodWorks Macksville, Nowra is 20km from FoodWorks Culburra Beach). This is unlike Hunterview, where FoodWorks provides a top-up shopping option, with most supermarket trips directed towards the four supermarkets in the Singleton CBD. The distance to the Singleton CBD is such that a shopping trip is inconvenient, but not avoided. Additional competition in these towns provided residents with additional choice and reduced travel distances for shoppers who were clearly leaving these towns to undertake larger shopping trips.
- The customer survey data may indeed show that a solid proportion of persons may be located close to the proposed new Woolworths development but there are many other attractors that will continue to draw residents towards the FoodWorks anchored centre – including nearby schools, child care, sporting facilities and particularly the medical centre. There are also new residential subdivisions that will be closer to FoodWorks.
- The submission states that the Singleton Heights Shopping Village provides the only supermarket north of the river and that its trade area would fall within the Woolworths trade area. The FoodWorks store is not really a supermarket, rather a small foodstore/convenience shop that would serve a small localised trade area, so logically its trade area would be a sub-set of the proposed full-line Woolworths supermarket's trade area. In this context, the FoodWorks store only attracts a very small market share of the proposed Woolworths supermarket's main trade area, with more than 95% of supermarket expenditure escaping to retailers elsewhere. This is because the store provides a very limited range of items and virtually all of the retail expenditure generated by this population is escaping the surrounding area and is directed towards the Singleton CBD.
- To reiterate, the MacroPlan Dimasi report shows that the proposed development would only capture around 20% of the available retail expenditure generated by residents in the defined main trade area, meaning 80% would be directed to other retail assets across Singleton.
- The planning system seeks to encourage, not restrict competition, provided it is not detrimental to other centres. The FoodWorks store forms part of the larger Singleton Heights Shopping Village, which also contains a 215 square metre Medical Centre and a key activity generator to the centre. Even with some reduced trading levels at the FoodWorks store, it is not expected that the range of services and vitality of the Singleton Heights Shopping Village to be affected to any great extent.

- As discussed earlier, the trading impacts on the FoodWorks store itself are a private issue and the broader net community benefits that could be realised from the proposed Woolworths Hunterview development are the primary consideration.

The AEC Group third party review of the MacroPlan Dimasi reports concurs with its methodology and associated findings.

From: [REDACTED]
Sent: Monday, 16 May 2016 11:12 AM
To: JRPP Enquiry Mailbox
[REDACTED]
Subject: FW: DA 150/2015 & 2015HCC023

To the Regional Panels Secretariat,
jrppenquiry@jrpp.nsw.gov.au

Subject: DA 150/2015 & 2015HCC023

It is my understanding that this matter is to be considered by the Hunter & Central Coast Joint regional Panel this afternoon at 2 pm.

I request that the following submission be circulated to the Panel members prior to this meeting.

I apologise for the lateness of our submission however we have been given very limited notification of the additional evidence presented to the Panel as follows:

- The Singleton Council, March 2016
- MacroPlan Dimasi, 8 March 2016
- AEC Group, 15 March 2016

I am concerned that these reports fail to address the fundamental planning deficiencies identified in our earlier submissions, in particular:

- The proposal does not satisfy the Zone Objective.
- The proposed development is not complementary to the retail hierarchy of Singleton.
- The development will result in unacceptable impacts on existing centres.

These issues are discussed in more detail below:

Zone Objective

One of the most important matters that the Panel must take into consideration when assessing this application is the objective of the zone:

"To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood."

There are two core components of this objective which must be met:

1. Uses are to be **small-scale**.

The application before the Panel fails to meet this condition. It is proposed to develop a massive 3,780 sq m supermarket, which accounts for 85% of the total centre. This would be the largest supermarket in Singleton. In any context it would be difficult to interpret this use as small-scale.

2. Uses are to **serve the needs of people who live or work in the surrounding neighbourhood**.

It has been established in the applicant's economic reports that the supermarket and therefore the development will draw customers from an extensive area, covering 970 square kilometres. This is not a use that is aimed at simply serving the needs of the surrounding neighbourhood. This fact has not been disputed.

Whilst there is no definition of neighbourhood or small-scale in the LEP there is legal precedent to rely upon. Previously we have brought to your attention *Warriewood Properties Pty Ltd v Pittwater Council*, 2010, NSWLEC 215 where it was determined that a supermarket of only 2,222 sq m would serve a region well beyond the surrounding neighbourhood. The judge refused the application and concluded that:

"89 Although I agree that a supermarket of 2,222 sq m would satisfy "the day-to-day needs of people who live and work in the local area", it would also likely satisfy the needs of people who live and work beyond the local area, given the size of the supermarket and the likely range of goods offered for sale. The use of the word "neighbourhood" further reinforces the intent of providing small retail facilities for a local area. While the undisputed evidence of Mr Leyshon and Ms Hill was that the proposed development would not have an unacceptable impact on existing centres at Mona Vale and Warriewood, the definition of "neighbourhood shop" does not require any form of economic assessment of the proposal against any existing centres."

Based on this precedent the Panel is well within its power to refuse the application solely on the basis that the proposal fails to meet the zone objective.

Retail Hierarchy

The concept of a retail hierarchy requires consideration of a number of

principles:

1. The town centre will typically contain the bulk of retail and service related facilities. It is the heart and life of the community. Its vitality and primacy need to be supported.
2. As the highest order centre in the region, the town centre will typically draw its trade from the entire town and beyond.
3. Depending on the size of the town, lower order centres may be needed to meet the day to day needs of the local community. These centres should complement and not compete with the town centre.
4. It is not necessary, or desirable, for every pocket of a town to have the same level of higher order services that can be found in the town centre (eg a full-line supermarket meeting their weekly grocery shopping needs). It is expected and necessary for the functioning and vitality of the higher order town centre to draw from these regions. Provided the town centre is conveniently located for the township population this model works well.

Given the relative compact geographical spread of Singleton, with most residents living within 4 kms of the town centre, it is able to provide a convenient services to all Singleton residents. The AEC Group acknowledge this in their report: *"The CBD is close to the PTA and easily accessible from it."* It is the norm that a significant proportion of people living in regional NSW towns would travel well in excess of 4 kms to visit a full-line supermarket. It is therefore difficult to understand why MacroPlanDimasi are now claiming that the residents of north Singleton are "considerably disadvantaged".

A town of the size of Singleton does not warrant a higher order centre, such as that proposed, which will compete head to head with the town centre. A neighbourhood centre providing complementary small-scale retail uses aimed at meeting the day to day needs of local residents is all that is warranted. The proposal for a full-line supermarket (the largest in Singleton) is therefore contrary to the desired retail hierarchy in Singleton.

The Council has determined the desired retail hierarchy in Singleton in the Singleton Land Use Strategy 2008 as follows:

1. A high-order town centre that is to be the primary focus for retail activity:

*"Maintain existing commercial zoned land, and **strengthen the***

integrity of the CBD by adopting planning controls that consolidate commercial development.” (Page 56).

2. Lower-order local/neighbourhood centres complementing the town centre:

*“Commercial land use in Singleton is concentrated within the town CBD area, with additional **local** shopping facilities in Singleton Heights. There is a need to provide additional **local** commercial areas to service future urban development in Singleton Heights,...” (Page 51)*

This hierarchy is clearly contemplating additional ‘local’ retail facilities similar to that of Singleton Heights, and not a higher-order centre that will compete with the town centre. Due to the size of the proposed supermarket, the largest in Singleton, and that it would attract people from a wide catchment area, the proposal would elevate the retail role of the proposed centre above that of a ‘Local’ or ‘Neighbourhood Centre’.

The proposal before the Panel is therefore contrary to the retail hierarchy of Singleton and should not be supported.

The Panel is also requested to review other cases where large supermarket based developments were refused due to the likelihood of adverse impacts on existing town centres and non-conformity with retail centre hierarchies:

- Murwillumbah, NSW – Tweed Shire Council, July 2015.
- Kirrawee, NSW - Sydney East Joint Regional Planning Panel, April 2014.
- Sunshine Bay, NSW - Jestset Properties v Eurobodalla Shire Council, 2007, NSWLEC 198
- Pottsville, NSW - Metricon Qld v Tweed Shire Council (2008) NSWLEC 1453

Centre Impacts

The Council and the applicant would like the Panel to believe that the impact of this proposal on the anchor tenant of the Singleton Heights Shopping Centre is not a relevant planning consideration. Whilst we agree that in isolation direct competitor impacts are not relevant,

however, when the trading performance of a centre is so closely related to the health and vitality of the main anchor tenant then it does become a matter worth considering.

This is a principle widely acknowledged in the industry, and is reported in *Jetset Properties v Eurobodalla Shire Council*, 2007, NSWLEE 198.

The Court concluded:

*"77. All experts agreed that, if the impacts were as Mr Booth predicted them, they would threaten the viability of the Batehaven and Surf Beach shopping centres. In his sensitivity analysis Mr Booth estimated that the reduction of turnover of the Bateman IGA would be in excess of 50%. If this happened, the supermarket would close and the Batehaven centre would effectively cease to function. However, even on the Shimmin/Dimasi estimates, the reduction would be 20%. This would reduce the number of staff and make it more a family operation. **The flow-on impact on the other shops, which have lower turnovers, would be devastating.** The centres would have a growing number of vacant shops and present a sight to potential shoppers that would further turn them away."*

Our estimate of the impact on the Singleton Heights FoodWorks at 50% is based on comparable real life examples. Whilst there may be variations between locations that would increase and decrease this impact, on balance a 50% impact is realistic. This impact represents **194,000** fewer customer trips to the centre in a year, significantly impacting the specialty shops and non-retail uses in the centre that rely on this foot traffic to survive.

In contracts, the applicant's economic analysis is based on a gut feel and not empirical evidence. Can the applicant's economic experts show examples of similar situations where the impact on existing small centres were within the estimates they predict for Singleton Heights? Can they also demonstrate how accurate their forecasts have been on small centre impacts?

We therefore urge the Panel to refuse this application.

Regards,



ATTACHMENT 4

Further Submission Provided by the Applicant 1 June, 2016

FABCOT PTY LTD

A.B.N. 55 002 960 983

1 June 2016

Julie Wells
Coordinator Development Assessment,
Singleton Council

via email: jwells@singleton.nsw.gov.au

Dear Julie,

RESPONSE PACKAGE FOR COUNCIL RESPONSE TO JRPP

**RE: 2015HCC023 – Singleton Shire Council, DA 150/2015
1 Glass Parade, Hunterview, NSW.**

Woolworths writes to Council and the JRPP today, to assist with providing information in response to the matters raised in the further submissions supplied to the applicant on 23 May 2016 regarding the above DA.

This letter is the applicant's response to the matters raised in those submissions to enable Council to prepare a further addendum report for the JRPP's consideration at the determination meeting scheduled for 16 June 2016:

1. The further submission raises concerns that the proposal is inconsistent with the zone objective and as such, is not permissible within the B1 Neighbourhood Centre zone (B1 zone).

a) As the further submissions raise this as a legal consideration, we engaged Corrs Chambers Westgarth (Corrs) to provide a legal opinion to assist Council assessment staff and the JRPP with the interpretation of the Singleton LEP and in particular the B1 zone objective. A copy of this legal advice is attached. This advice summarises the main points as follows:

(a) On review of both the LEP and DCP we consider that it is open to the determining authority to approve the Application on the basis of the following:

(i) the Zone Objective is not determinative of permissibility (see Abret Pty Limited v Wingecarribee Shire Council [2011] NSWCA 107). The determining authority must simply "have regard to" to the Zone Objective under clause 2.3(2) of the LEP. While the determining authority cannot ignore the Zone Objective, we consider that in this case parts of the Proposed Development meet the Zone Objective as set out in (c) below; and

(ii) the Proposed Development meets the LEP and DCP controls and the strategic planning vision for the Site (as evidenced by historical information and the DCP site specific controls). It is clear that the Site has been earmarked for retail development of a higher order than merely neighbourhood shops of 80sqm. There are a number of factors that support this view and which are set out in (b) – (e) below:

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(b)Strategic Vision: The masterplanning for the Site evidences an intention for the Site to be developed for higher order retail of up to 5,000sqm (and 3,000sqm allocated for commercial and community type uses):

(i)clause 3.3 of the DCP applies to the Site and contemplates a GFA of all buildings on the 2 hectare Site up to 8,000sqm; and

(ii)as part of the rezoning of the Site in 2007/2008 and the preparation of the site specific controls in the DCP (clause 3.3), a Retail Demand Assessment was commissioned by Council (Council's Retail Study). Council's Retail Study indicated that 5,000sqm of retail was suitable for the Site and this clearly informed the building GFA controls incorporated into the DCP. On that basis, the Proposed Development fits within Council's retail hierarchy for the Local Government Area.

(c)Components of the Development: Parts of the Proposed Development meet the Zone Objective. While there is no definition of "small scale" development in the LEP, in our view, "small scale" is not necessarily limited to "neighbourhood shops" of 80sqm. Accordingly, parts of the Proposed Development could be said to meet the Zone Objective, for example:

(i)some of the specialty stores (between 70sqm – 110sqm) themselves could be considered as "small scale"; and

(ii)the Proposed Development will still serve "the needs of people who live or work in the surrounding neighbourhood". This is despite the Proposed Development also servicing a wider trade area as noted in the economic report.

On that basis, parts of the Proposed Development can be said to meet the Zone Objective.

(d)The "Retail Gap": The LEP does not contain a B2 zone and only includes a B1 Zone and B3 "Commercial Core". Accordingly, to limit the B1 Zone to small scale neighbourhood shops would result in a significant "gap" in retail offering in the LGA which is clearly inconsistent with Council's Retail Study commissioned as part of the rezoning of the Site and the preparation of the DCP.

(e)Higher Order Retail: The zoning table for the B1 Zone contemplates both "shops" and "neighbourhood shops". In the absence of a prohibition on anything other than neighbourhood shops or a development standard in the LEP that required shops of a certain size in the B1 Zone, it is appropriate to approve higher order retail developments in the B1 Zone including of the scale contemplated as part of the Proposed Development.

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b) With respect to the concern regarding scale – we ask that the information prepared by ADWJohnson dated 16 March 2016 which includes an extensive summary and list be used as the basis to demonstrate that the scale of the proposal is acceptable. Further information with respect to the economic impact of the proposal in terms of its scale are addressed in the following points.

2. The further submissions raise concerns associated with the economic impact of the proposal. Woolworths wishes to advise in response:

a) The DA is accompanied by an Economic Impact Assessment by MacroPlan Dimasi (MacroPlan EIA) which has assessed the economic impact of the proposal on existing retailers within a primary and secondary catchment. This report concluded that while there would be an impact, this impact would not be so adverse to warrant refusal of the DA and there are a number of positive impacts which in their opinion outweigh the minor economic impact. In addition, MacroPlan provided direct responses to the economic issues raised in earlier submissions as can be found at Attachment 1 of the ADWJohnson dated 16 March 2016 information supplied to Council. The information prepared by MacroPlan demonstrates that the proposal is suitable in terms of its economic considerations.

b) The DA is also accompanied by a peer review of the MacroPlan EIA by AEC Group. AEC Group's peer review indicated that the MacroPlan EIA was acceptable and the DA can be supported. AEC Group have been requested to provide their feedback in relation to the further submissions supplied last week.

AEC Group have advised:

Zone Objective Response

The Commonwealth Government and its advisors have determined that land use zoning restrictions which are overly prescriptive, for example limiting the size of shops in a local centre, are anti-competitive and act contrary to the public interest. These have the effect of unfairly preventing new retailers from accessing new markets to the detriment of consumers. The submissions are seeking to use just such a narrow definition to see this proposal refused. This is contrary to government advice and the public interest.

The legal precedent referenced in the email submission is not applicable in this case. Every retail development is unique. This is why trade areas are tailored to the development in question, reflecting socio-demographic characteristics, retail spend, accessibility, competition, natural barriers and other local particularities which can never be the same in two different places. The dicta in the Pittwater case was made in the context of a different and distinct trade environment.

The crucial matter in determining the extent to which it would serve local needs is the size of the Primary Trade Area (PTA) as outlined in the Economic Impact Assessment (EIA) submitted by MacroPlan and confirmed by AEC Economics in their peer review. The PTA is the area within which most residents in would be likely to use the proposed development as their main food shopping destination. This applies to a small, localised area comprising Obanvale, Wattle Ponds, Fern Gully, Singleton Heights, Hunterview

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and parts of Sedgfield, Dunnolly, Dyring and Bridgman (Macroplan, 2016). To infer that shoppers will regularly travel 970km to undertake food and grocery shopping as inferred in the submission is incorrect.

The EIA provides a number of examples in which supermarkets have been permitted within B1 zones, which were approved based on appropriate evidence including technical studies completed by suitably qualified experts, such as the EIA and peer review in this case.

Centres Hierarchy Response

The submitter has misinterpreted the intention of the centres hierarchy which is not to restrict all competition in favour of existing centres. Rather it is to maintain the primacy of existing centres whilst promoting suitable retail development elsewhere where it is justified to promote competition.

Competition is a consumer benefit. It enables more choice, assists to lower prices, encourages investment in new facilities, promotes a dynamic retail offer allowing suppliers to respond to consumer demand and reduces the need for residents to travel. Beyond the overall impact on the role and function of a centre from a proposed development, other trading impacts on retailers are immaterial for planning purposes. They are a private matter.

Section 79C of the Environmental Planning and Assessment Act 1979 requires economic impacts to be considered in development proposals. This relates to impact on a centre overall not the impact on individual retailers or certain components of the offer of a centre. All new retail development will compete with existing retailers to some extent. The question is whether that competition would be such that the overall role and function of a centre would be threatened. Retail hierarchies are not meant to be restrictive or to be used as a means to stifle new development. A functioning hierarchy should be fluid, allowing centres to grow and new centres to form as they are required.

The proposed development would not lead to the role of Singleton CBD or its primary changing or affect the role of Singleton Heights. Beyond that matter the additional competition and retail supply it would create is a benefit for the consumer given that, for the consumer, trading impacts are a good thing. Restricting the proposed development due to potential impact on a narrow part of Singleton CBD or Singleton Heights, when the overall role and function of neither centre would change, is anti-competitive. Doing so would elevate private interests above the public interest.

Singleton CBD would remain a highest order centre in Singleton if the proposed development proceeds because it contains a wider offer beyond purely food shopping. The proposed development does not have the same diversity or depth of offer as Singleton CBD so it will remain subservient to it in the hierarchy. The proposal comprises a low order, local centre. It is not of a size, scale or range that would threaten or prejudice the primacy of Singleton CBD.

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Centres Impact Response

The appropriate method for ascertaining whether trading impacts would be such that the role or function of an existing centre being prejudiced is through an EIA. Impacts on individual retailers are immaterial. In this case, an EIA has been completed by MacroPlan and it has been peer reviewed independently by AEC Economics. Both of these experts have concluded that the trading impacts on existing centres would be acceptable. This reflects the different roles and functions of the centres as explored in the section above. As a result, the additional benefits of the proposed development in terms of competition is a public benefit.

Neither Singleton CBD nor Singleton Heights rely on the presence of a supermarket to maintain their role or function in the retail hierarchy. Singleton CBD has a range of other retail and non-retail facilities which would still attract shoppers to it. It is not reliant on supermarkets only to sustain trade, it has a much wider offer. The suggestion that this proposal would adversely impact it to the extent that it would cease to be a viable centre is not correct. It would impact a narrow part of its wide offer. To refuse this proposal on the basis of potential impact on a narrow retailer range in Singleton CBD would mean protecting existing retailers at the expense of a new market entrant. This is contrary to competitiveness and the public interest.

Singleton Heights offers a range of non-retail facilities which would continue to attract shoppers even in the absence of the FoodWorks. It should still function effectively as a neighbourhood centre. Even if the FoodWorks were to close, which is not expected, a new retailer could occupy the space and provide a different offer which would attract new shoppers to the centre. This represents a natural evolution for centres. It should be left to the market and ultimately residents themselves to decide where to shop for food and groceries. The planning system should not be gamed to protect the interests of an individual retailer. In this case the trading impact of the proposed development would be acceptable, so there are no further justifiable arguments to refuse it on economic grounds. Doing so would be to promote a private business interest over than of the public interest.

Ultimately the purpose of an EIA is to determine whether the public would be better off which a development proceeding. Due to the range of positive benefits associated with it and in the context of the local retail hierarchy, the public would be better off with it.

The legal case referenced by the submission is selective, and does not apply in this case. As advised every development is unique due to local characteristics. Whilst trading impact leading to the potential role of a centre being threatened is a valid reason for refusal, it is not applicable in this case. This has been shown through two expert economic analyses. The potential closure of the supermarket associated with a proposed development in Eurobodalla Shire is not applicable to this proposed development in Singleton.

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3. The further submission dated 16 May 2016 includes legal case law as a justification to their economic position. We engaged Corrs Chambers Westgarth (Corrs) to provide a legal opinion to assist Council assessment staff and the JRPP with the interpretation of these cases. A copy of this legal advice is included in the attachment A. This advice summarises the main points as follows:

.."Both cases deal with specific factual circumstances, environmental planning instruments and retail hierarchy controls that are markedly different to the current circumstances. Only general principles can be taken from those cases, including those principles more recently identified by Roseth SC in Metricon being:

The mere threat of competition between commercial interests is not a planning consideration;

the treat to the viability of a whole shopping centre is a relevant planning consideration; and

the relevant "locality" must be determined in each case..."

The legal objection referenced by the submission (*Jetset Properties v Eurobodalla Shire Council*) is selective, does not apply in this case. The excerpt referred to speaks to a "what if scenario", whereas the analyses carried out for the subject proposal have been definitive. As discussed in the first section of this response, every development is unique due to local characteristics. Whilst trading impact leading the potential role of a centre being threatened is a valid reason for refusal, it is not applicable in this case. This has been shown through two expert economic analyses. The potential closure of the supermarket associated with a proposed development in Eurobodalla Shire is not applicable to this proposed development in Singleton.

4. The further submission dated 15 January 2015 includes a table at page 2, we wish to advise that all of the sites nominated in NSW included with the submission of each DA a site specific EIA.

In each instance the EIA was assessed and each local Council formed the view regarding each proposal while there may have been some negative economic impact on an existing supermarket, that proposals all offered positive economic impacts which outweighed the negative impact including more choice for the local community, generate price competition, create new jobs, and material public benefits at location in addition to the EIAs indicating the proposals were acceptable in terms of the economic impact. All of these sites were considered to be positive outcomes by each Council for each community which outweighed the negative impact to a competitor in the supermarket sector and did not impact the hierarchy or primacy of each existing centre.

- a. Woolworths Macksville store opened more than 7 years ago. Council required as part of the combined rezoning and DA and EIA. This store delivered a significant number of public benefits including new traffic signalised intersection, convenient at-grade car parking for customers which also serves the other retailers nearby, and public toilets. Council evaluated the EIA submitted with the combined rezoning and DA, and Council formed the view that the proposal while it would have an impact on an existing supermarket, that proposed Woolworths offered more choice for the local community, would generate price competition, created new jobs, in addition to the material public benefits.

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A.B.N. 55 002 960 983

- b. Woolworths Bermagui store was initially approved by Council in 2013. That consent was the subject of a Class 4 appeal by a local resident action group which resulted in a further DA being submitted which was supported by a comprehensive EIA and approved by Council in early 2014. This store opened in April 2015. This store delivered a significant point of difference compared to the existing supermarket being convenient at-grade car parking for customers which also helps serve the other retailers nearby.
- c. Woolworths Gloucester store was approved by the local Council after consideration of a EIA which demonstrated that the impact of the proposal would be acceptable. This store delivered a significant number of public benefits including convenient at-grade car parking for customers which, also serves other retailers nearby and a number of flood mitigation measures.
- d. Woolworths Culburra Beach store was approved by the local Council in 2010. This store delivered a significant improvement to the local car parking in town providing a public car park in addition to upgraded street angled parking and lighting for customers which also benefited the other retailers.

Given the attached legal advice, the economic impact assessment reports and further information from MacroPlan, along with the peer review of the EIA by AEC Group and their further response above, all of which indicate the scale of the proposal is suitable in this location and will not result in an unacceptable economic impact, we believe that the JRPP can support the Woolworths proposal.

As such, we respectfully ask that the JRPP support the proposal in its current form subject to the revised draft conditions as supplied by Council to the JRPP on 9 May 2016.

Yours faithfully,

Fabcot Pty Ltd



Marc Lucas

Development Manager

P: 0481 007 683

E: mlucas3@woolworths.com.au

Attachment A: Corrs Legal Advice

Advice for Fabcot Pty Limited

Prepared for: John Frangi, Group Legal Manager - Property, Corporate Legal
Copy to: Marc Lucas, Property Development - Woolworths Limited
Prepared by: Christine Covington

CORRS
CHAMBERS
WESTGARTH
lawyers

1 June 2016

Privileged and confidential

Advice on Hunterview development at Singleton

Question

Fabcot Pty Ltd (**Fabcot**) lodged Development Application 150/2015 (**Application**) with Singleton Council on 18 August 2015. The Application seeks consent for the construction of the following development at 1 Glass Parade, Hunterview (**Site**):

- (a) a Woolworths supermarket;
- (b) a BWS;
- (c) five specialty stores;
- (d) ancillary facilities; and
- (e) an associated road, landscaping and other works.

(**Proposed Development**).

The combined gross floor area of the Proposed Development is 4,462.8sqm with parking intended for 205 vehicles.

The Site is zoned B1 "Neighbourhood Centre" (B1 Zone) and the Proposed Development is subject to:

- (a) the *Singleton Local Environment Plan 2013 (LEP)*; and
- (b) the *Singleton Development Control Plan 2014 (DCP)*. We have assumed for the purposes of this advice that the Site is subject to clause 3.3 of the DCP "Special requirements for certain neighbourhood centre zoned land at Hunterview".

The Hunter & Central Coast Joint Regional Planning Panel (**JRPP**) is the determining authority for the Application as a result of the capital investment value of the Proposed Development and that the Site was originally Council owned land. On 21 January 2016, the JRPP deferred its determination of the Application so that the Council could lodge a supplementary report for consideration. In particular, the JRPP requested additional information on:

- (a) late submissions;
- (b) the zone objectives;
- (c) landscaping and engineering matters; and
- (d) relationship with the previous site works DA in the context of the proposed development.

The JRPP's request for a further supplementary report on the zone objective

arises as a consequence of the submissions received objecting to the Proposed Development on the basis that it is inconsistent with the single objective of the zone (**Zone Objective**). That Zone Objective states:

'To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood'

Council has since lodged the supplementary report.

You have asked us to provide a legal opinion on whether it is open to the determining authority to approve the Proposed Development in light of the Zone Objective.

Set out below is our advice. Our advice does not include advice on the merits of the Application.

Answer

Zone Objective

- (a) On review of both the LEP and DCP we consider that it is open to the determining authority to approve the Application on the basis of the following:
- (i) the Zone Objective is not determinative of permissibility (*see Abret Pty Limited v Wingecarribee Shire Council* [2011] NSWCA 107). The determining authority must simply **"have regard to"** the Zone Objective under clause 2.3(2) of the LEP. While the determining authority cannot ignore the Zone Objective, we consider that in this case parts of the Proposed Development meet the Zone Objective as set out in (c) below; and
 - (ii) the Proposed Development meets the LEP and DCP controls and the strategic planning vision for the Site (as evidenced by historical information and the DCP site specific controls). It is clear that the Site has been earmarked for retail development of a higher order than merely neighbourhood shops of 80sqm. There are a number of factors that support this view and which are set out in (b) – (e) below:
- (b) **Strategic Vision:** The masterplanning for the Site evidences an intention for the Site to be developed for higher order retail of up to 5,000sqm:
- (i) clause 3.3 of the DCP applies to the Site and contemplates a GFA of all buildings on the 2 hectare Site up to 8,000sqm (as per the below, up to 5,000sqm was allocated for retail and 3,000sqm allocated for commercial and community type uses); and
 - (ii) as part of the rezoning of the Site in 2007/2008 and the preparation of the site specific controls in the DCP (clause 3.3), a Retail Demand Assessment was commissioned by Council (**Council's Retail Study**). Council's Retail Study indicated that 5,000sqm of retail was suitable for the Site and this clearly informed the building GFA controls incorporated into the DCP. The remaining 3,000sqm was allocated for other types of commercial and community uses. On that basis, the Proposed Development fits within Council's retail hierarchy for the Local Government Area.
- (c) **Components of the Development:** Parts of the Proposed Development meet the Zone Objective. While there is no definition of "small scale" development in the LEP, in our view, "small scale" is not necessarily limited
-

to "neighbourhood shops" of 80sqm. Accordingly, parts of the Proposed Development could be said to meet the Zone Objective, for example:

- (i) some of the specialty stores (between 70sqm – 110sqm) themselves could be considered as "small scale"; and
- (ii) the Proposed Development will still serve *"the needs of people who live or work in the surrounding neighbourhood"*. This is despite the Proposed Development also servicing a wider trade area as noted in the economic report.

On that basis, parts of the Proposed Development can be said to meet the Zone Objective.

- (d) **The "Retail Gap"**: The LEP does not contain a B2 zone and only includes a B1 Zone and B3 "Commercial Core". Accordingly, to limit the B1 Zone to small scale neighbourhood shops would result in a significant "gap" in retail offering in the LGA which is clearly inconsistent with Council's Retail Study commissioned as part of the rezoning of the Site and the preparation of the DCP.
- (e) **Higher Order Retail**: The zoning table for the B1 Zone contemplates both "shops" and "neighbourhood shops". In the absence of a prohibition on anything other than neighbourhood shops or a development standard in the LEP that required shops of a certain size in the B1 Zone, it is appropriate to approve higher order retail developments in the B1 Zone including of the scale contemplated as part of the Proposed Development.

Economic Impacts

We have reviewed both *Jetset Properties Pty Ltd v Eurobodalla Shire Council* [2007] NSWLEC 198 and *Meticon Qld v Tweed Shire Council* [2008] NSWLEC 1453 and note that both cases turned on the specific facts. The submissions encourage the determining authority to rely on the specific facts of the cases to support a view that the Proposed Development should be refused on economic grounds. This approach is incorrect. Both these cases deal with specific factual circumstances, environmental planning instruments and retail hierarchy controls that are markedly different to the current circumstances. Only general principles can be taken from those cases, including those principles more recently identified by Roseth SC in *Meticon being*:

- (a) the mere threat of competition between commercial interests is not a planning consideration;
- (b) the threat to the viability of a whole shopping centre is a relevant planning consideration; and
- (c) the relevant "locality" must be determined in each case.

The above matters have been addressed in the MacroPlan Dimasi reports and supplementary reports prepared on behalf of Fabcot. Those confirm that on an assessment of the Proposed Development in the context of the retail offerings in the area, there will be no threat to other retail centres which would warrant refusal. In fact, future demand fully supports the proposed scale of the supermarket offering.

In terms of the retail hierarchy and as noted in the section above, the Site was specifically zoned with a 5,000sqm retail offering in mind and the site specific

DCP provisions support this intention.

What this advice covers

This advice focuses on the following issues:

The Application and controls applicable to the Site.....	5
Is it open to the determining authority to approve the Application in light of the Zone Objective?	6

The Application and controls applicable to the Site

B1 Zone and characterisation

- 1 The Site is zoned B1 "Neighbourhood Centre" (**B1 Zone**) under the LEP. The Land Use Table for the B1 Zone states:

Zone B1 Neighbourhood Centre

1 Objectives of zone

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

2 Permitted without consent

Home occupations

3 Permitted with consent

*Boarding houses; **Business premises**; Child care centres; Community facilities; Kiosks; Medical centres; Neighbourhood shops; Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Shop top housing; **Shops; Take away food and drink premises**; Any other development not specified in item 2 or 4*

4 Prohibited

Agriculture; Air transport facilities; Airstrips; Amusement centres; Animal boarding or training establishments; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Commercial premises; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Entertainment facilities; Environmental facilities; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Function centres; Heavy industrial storage establishments; Helipads; Highway service centres; Home-based child care; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Places of public worship; Public administration buildings; Recreation facilities (indoor); Recreation facilities (major); Registered clubs; Research stations; Residential accommodation; Resource recovery facilities; Restricted premises; Rural industries; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Warehouse or distribution centres; Waste disposal facilities; Water recreation structures; Wharf or boating facilities; Wholesale supplies

[emphasis added]

- 2 "Shops" are permissible with consent in the B1 Zone and the Woolworths supermarket component of the Proposed Development is best characterised as a shop.

3 Under the LEP, shop is defined as:

shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises.

4 The specialty shops could be any of "shop", "business premises" or "takeaway food and drink premises". All of those uses are permissible in the B1 Zone.

5 The Site is subject to the DCP and in particular, clause 3.3 which provides site specific development controls for the Site.

History of Assessment

6 The Application was assessed by Council as the consent authority and a planning report submitted to the JRPP recommending approval.

7 The Council planning report concluded that the Application:

- (a) was generally compliant with the requirements of the relevant State Environmental Planning Policies, the LEP and the relevant elements of the DCP;
- (b) was satisfactory in terms of the relevant matters for consideration under the Act; and
- (c) has a positive social and economic impact on the community and provides improved retail opportunities for a growing residential population.

8 At least three submissions made as part of the public exhibition process contend that the Proposed Development is incompatible with the Zone Objective. Specifically, that the Proposed Development is not 'small scale'.

9 On 21 January 2016, the JRPP determined to defer the Application to allow Council to submit a supplementary report covering a number of issues, which included the Zone Objective.

10 Council lodged the Supplementary Report and concluded that the strategy for the Site contemplated a development of the size proposed.

Is it open to the determining authority to approve the Application in light of the Zone Objective?

Yes, on review of both the LEP and DCP we consider that it is open to the determining authority to approve the Application.

1 The B1 Zone provides for only one objective as follows:

'To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood'

2 We note that the public submission dated 16 May 2016 cites *Warriewood Properties Pty Ltd v Pittwater Council* (2010) NSWLEC 215 as authority for the proposition that the JRPP would be 'well within its power to refuse the application solely on the basis that the proposal fails to meet the zone objective'. We disagree with this proposition noting the Court of Appeal's

later decision in *Abret* and on a proper interpretation of clause 2.3(2) of the LEP.

3 Clause 2.3(2) of the LEP states:

(2) *The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.*

4 Clause 2.3 is subject to the other provisions of the LEP (see clause 2.3(4)).

5 Clause 2.3(2) of the LEP reflects the Standard Template provisions.

6 In our view, there is no obligation on the consent authority to be satisfied that the Proposed Development is wholly consistent with the zone objectives prior to it approving the Application. In other words, the Zone Objective is not a development standard. Instead, the consent authority must "have regard to" the Zone Objective as part of its assessment. Compliance with the Zone Objective is not a matter which will determine the permissibility of the Proposed Development.

7 Further, the more recent Court of Appeal authority in *Abret Pty Ltd v Wingecarribee Shire Council* [2011] NSWCA 107 states that zone objectives are not provisions that control the permissibility of development¹ in the same way that principal development standards do. Instead, zone objectives constitute the framework in which the LEP operates.

8 Having regard to the structure of the LEP, the history of the zoning for the Site and the provisions of the DCP, it is clear that from a strategic planning perspective, the Site has been earmarked for retail development of a higher order than merely neighbourhood shops.

9 In particular:

- (a) clause 3.3 of the DCP applies to the Site and contemplates a GFA of all buildings on the 2 hectare Site at not more than 8,000sqm (as per the below, up to 5,000sqm was allocated for retail and 3,000sqm allocated for commercial and community type uses); and
- (b) as part of the rezoning of the Site in 2007/2008 and the preparation of the site specific controls in the DCP (clause 3.3), a Retail Demand Assessment was commissioned by Council (**Council's Retail Study**). Council's Retail Study indicated that 5,000sqm of retail was suitable for the Site and this clearly informed the building GFA controls incorporated into the DCP. The remaining 3,000sqm was allocated for other types of commercial and community uses. On that basis, the Proposed Development fits within Council's retail hierarchy for the Local Government Area;

10 Also, there is no definition of "small scale" development in the LEP and in our view, "small scale" is not necessarily limited to "neighbourhood shops" of 80sqm. Further, parts of the Proposed Development could be said to meet the Zone Objective, for example:

¹ *Abret* at 42

- (a) some of the specialty stores (between 70sqm – 110sqm) themselves could be considered as "small scale"; and
 - (b) the Proposed Development will still serve *"the needs of people who live or work in the surrounding neighbourhood"*. This is despite the Proposed Development also servicing a wider trade area as noted in the economic report.
- 11 The structure of the LEP provides further support for our view. Specially:
- (a) the LEP does not contain a B2 zone. Accordingly, to limit the B1 zone to small scale neighbourhood shops would result in a significant "gap" in retail offering in the LGA which is inconsistent clearly inconsistent with Council's Retail Study; and
 - (b) the zoning table for the B1 Zone contemplates both "shops" and "neighbourhood shops". In the absence of a prohibition on anything other than neighbourhood shops or a development standard that required shops of a certain size in the zone, it is appropriate to approve higher order retail developments in the B1 Zone and of the nature contemplated as part of the Proposed Development.
- 12 Having regard to the above, we consider that it is open to the determining authority to approve the Application on the basis of the following:
- (a) Zone Objectives are not determinative of permissibility; and
 - (b) the Proposed Development meets the LEP and DCP and the general strategy of Council for the Site (as evidenced by historical information).

Review of economic cases raised in submissions

- 13 The submissions included references to a number of cases on retail hierarchy and were proffered as examples of where the Court had refused retail developments based on the likelihood of adverse impacts on existing town centres and non-conformity with retail centre hierarchies. The supplementary MacroPlan Dimasi report dated November 2015 and 8 March 2016 responds to a number of issues including the way in which the Proposed Development sits within the retail hierarchy, competition and the expected demand for additional retail offerings in the Local Government Area.
- 14 As noted in the section above, the Site was specifically zoned with a 5,000sqm retail offering in mind and the site specific DCP provisions support this intention.
- 15 We have reviewed both *Jetset Properties Pty Ltd v Eurobodalla Shire Council* [2007] NSWLEC 198 and *Meticon Qld v Tweed Shire Council* [2008] NSWLEC 1453 and note that both cases turned on the specific facts. Reliance on the specific facts of the case to support a view that the Proposed Development should be refused on economic grounds is an incorrect approach. Both these cases deal with specific factual circumstances, environmental planning instruments and retail hierarchy controls that are markedly different to the current circumstances. Only

general principles can be taken from those cases, including those principles more recently identified by Roseth SC in *Meticon*. Roseth SC refers to a long line of cases that have descended from *Kentucky Fried Chicken Pty Limited v Gantidis* (1979) and goes on to summarise the guiding principles in relation to an assessment of economic impacts under section 79C(1)(b) including that:

- (a) the mere threat of competition between commercial interests is not a planning consideration;
- (b) the threat to the viability of a whole shopping centre is a relevant planning consideration; and
- (c) the relevant "locality" must be determined in each case.

16 The above matters have been addressed in the MacroPlan Dimasi submissions and confirm that on an assessment of the Proposed Development in the context of the retail offerings in the area, there will be no threat to other retail centres which would warrant refusal. In fact, future demand fully supports the proposed scale of the supermarket offering.

Reliance



7 This advice is for the benefit of the addressee. It is not to be disclosed to any other person without our prior written consent, nor relied upon by any other person for any purpose.

**Please call to
discuss any
aspects of this
advice**

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