

- 65 Under *Clause 22.01 Urban Design* it states that the basis of this policy is to retain and improve the 'urban design qualities of urban areas and achieving good presentation and quality of tourist developments in the Shire'.
- 66 Under *Clause 22.01* they are objectives to:
- Preserve and enhance the visual amenity and character of the shires, cities and towns.
 - Ensure the siting and design of new development has regard to built form landscape character and visual qualities of urban centres.
- 67 Under *Clause 22.01* it is policy to 'encourage development where the design and siting of new development has demonstrated the following:
- How building scale height mass and external finishes reflect the dominant building forms particularly heritage buildings and structures.
 - How the proposal contributes to the overall appearance and character of the town.
 - The site has the capacity to accommodate the proposed development including traffic circulation and car parking.
 - How the proposal responds to identified streetscape character.'
- 68 It is also policy to 'discourage unplanned linear development along major highways and roads'. The policy also states that where a permit is required for development proposals that affect the Maryborough Central Business Area (CBA) it is policy to support development proposals that protect or enhance the Maryborough Central Business Area character. Central Business Area character is defined as a compact centre with heritage streetscapes and good pedestrian amenity.
- 69 It is submitted that this proposal has the potential to undermine the existing compact centre and other aspects of policy, as well as not meeting the policy objectives itself. The current centre is eminently walkable. It has a surprisingly high quality of urban character given the socio-economic characteristics of the town. The vacancies are confined to Nolan Street and the main street has vibrant shop fronts and even the occasional lawyer's office doesn't interrupt the continuity of the pedestrian retail experience.
- 70 This proposal will draw significant trade away from the existing centre leading to vacancies and underperforming retailers. By locating the facilities where they are proposed, at least without a strategy to establish connections to the existing centre the overall centre will become fragmented and lose its compact form.

Economic Issues

- 71 The Panel has heard from three economists on the justification or need for the proposal, and on the economic impacts of the proposal. Ultimately, the Proponent bears the burden of justifying this proposal.

- 72 It is noted that Council made submissions to the effect that several new initiatives will produce an increase in the number of jobs in Maryborough. IGA notes that none of the three economic witness have concluded that this new information will have any significant effect on their evidence.
- 73 Council has also made representations to the Panel that the words of the MSS which indicated that a 10% increase in floorspace to approximately 2012 should be disregarded, despite the fact that subsequent MSS reviews has endorsed that approach. At page 31 of Council's submission it states 'the proponent has undertaken a body of work and associated business case which refutes the floor space projection resulting in the proposal being considered favourably by Council'. On question this body of work was found to be the Macroplan report which was prepared well after the time that the amendment was exhibited. As we understand Council's response, it has not been privy to any other economic reports prepared by Coles or the Proponent.
- 74 To this end the Proponent has relied on Mr Haratsis, who was recently engaged to retrospectively appraise the proposal and its impacts. Mr Haratsis evidence:
- 74.1 Fails to provide estimates of the retail turnovers of any of the existing centres affected by the development (including Maryborough Town Centre) – the vital starting points for any proper and accurate assessment of economic impact. Instead we are forced to derive figures from his evidence.
- 74.2 Estimates the turnover of the proposed centre by using broad average turnover per square metre levels from the ABS 1998-99 Retail Industry Survey (for Australia) for broad retail industry groups and inflating these through to 2005/2006. The terminology used is "Retail Turnover Densities". Whatever name it is given it is simply an analysis of the average productivity of retail floor space. Mr Haratsis then uses these averages to derive the turnover of the proposed centre (\$42.4 million dollars). This method of analysis implies you would get the same result for a development anywhere in Australia, be it Maryborough or Melbourne.
- 74.3 Does not adequately account for the effect of a half size Kmart and the strength of the existing DDS stores in Ballarat and Bendigo. Quite simply this store cannot and will not compete on an even level.
- 74.4 Considers a Main Trade Area whose population has an average income level that is 23% below the Regional Victorian average, which suggests that average per capita retail spending will be around 12% to 14% below the average for regional Victoria. Yet Mr Haratsis' expenditure is 4.6% above the average for regional Victoria.
- 74.5 Fails to accurately assess the competitive framework affecting Maryborough by omitting supermarkets in competition. His evidence also fails to account for expenditure in the smaller towns within the trade area which artificially boosts the Maryborough expenditure figures.

- 74.6 Suggests that the proposed shopping centre would produce a net increase of \$33.6 million in the turnover of the expanded Maryborough Town Centre. If that is the case, and the proposed centre is forecast to achieve a turnover of \$42.4 million, then clearly the existing Town Centre will suffer a loss of (\$42.4M - \$33.6M = \$8.8 million and since his assessed impact on the Town Centre's existing supermarkets and "DDS" is effectively neutral, this loss will be wholly borne by the balance of the Town Centre.
- 74.7 Results in the balance of the centre dropping from a turnover of \$1,400/sqm to \$1,100/sqm.
- 74.8 Fails to note that many of the indirect jobs created by the proposed Shopping Centre will in fact be beyond the Central Goldfields Shire.
- 75 In contrast it is noted that far more realistic economic data has been presented by Mr Quick on behalf of Woolworths and Mr Dally on behalf of IGA. In summary, Mr Dally's evidence is that:
- 75.1 The proposed shopping centre 'does not physically conjoin or integrate with the Town Centre's existing retail elements. It is a stand-alone shopping centre located on the periphery of the Town Centre'.
- 75.2 There is very slow population and retail growth in Maryborough.
- 75.3 The proposed development would equate to an approximate 25% increase in retail floorspace, the largest addition to Maryborough's floorspace ever.
- 75.4 'In broad generic terms, the food and grocery lines which the Coles supermarket would offer for sale would not be materially different from those already offered for sale by the existing Safeway and Supa IGA supermarkets'
- 75.5 The proposed centre would have an income of around \$31 million dollars (compared with Mr Haratsis' figure of \$42 million').
- 75.6 An overall 17.7% negative impact on the town centre comprised of 9% on non food retail outlets and 34% at the supermarkets.
- 75.7 A net increase of around 111 jobs in Maryborough.
- 76 It is IGA submission that these economic impacts must be considered in some detail over and above the raw numbers:
- 76.1 The Nolan Street limb of the core retail area is by far the weakest with a number of vacancies already in existence through this area. Nolan Street is already bolstered by the existence of the IGA store as a retail anchor. Part and parcel of a 34% reduction in turnover for IGA is a reduction in the number of patrons accessing the Nolan Street area. This will further undermine an already weak link in the retail core of Maryborough.

- 76.2 Council is proposing to vacate its offices which currently house approximately 50 to 55 staff. We are not aware of whether there is a tenant in waiting for this site. The removal of this many employees and the relocation of the office will reduce the vitality and expenditure on the High Street during the day. It is considered most unlikely that any significant portion of these staff would travel Nolan street to the retail core when the proposed Shopping Centre would be closer.
- 76.3 The Northern end of the retail core is currently anchored by Safeway. Safeway's car park is opposite Alma Street which has direct links through the High Street. Again, a 34% reduction in turnover equates to a significant reduction in visits to Safeway, and in IGA's submission the retail core.
- 76.4 As the proposed site is at the extremity of the retail core it will discourage visits to the High Street for those people east of the site coming in along the Pyrenees Highway. As a one-stop shop they are far more likely to use the shopping centre which is on the left hand side of the road than to continue in towards the High Street.
- 76.5 All economic experts have agreed that the proposed shopping centre will act as a catalyst for other business to open or relocate to the adjacent land. It is already zoned for restricted retail (within the Business 4 Zone) and will come under pressure for less restrictive retail zonings. This is even more likely to be the case if Council creates the pedestrian link proposed by the UDF.
- 76.6 Ultimately this development has the potential to reorient the retail core of Maryborough away from the High Street and result in Burke St, Tuaggra Street and surrounds becoming a principal retail area.
- 76.7 Mr Dally has acknowledged that a number of the business in existence on the High Street will be replicated in the shopping centre, creating direct competition in addition to the DDS offer.
- 76.8 Mr Quick and Mr Dally both agree that there is likely to be a reduction in offer of the supermarkets as they will all relatively undertrade.
- 76.9 The approval of such a large single increase in the retail offer of Maryborough all at one time is likely to exhaust demand for a considerable period of time. To this extent, the reorientation of retail outlets will then be biased towards relocation rather than new entrants to the market. This type of retail extension into Tuaggra Street and surrounds will by its very nature undermine the function and vitality of the High Street.
- 77 It is respectfully submitted that the significance of this proposal is great. IGA urge the Panel to consider the proposed development and its significant effects but also to turn its attention to the future. The proponent and council have considered only this development. There is no strategy in place, and in such circumstances there can only be an ad hoc planning response.

- 78 IGA is concerned that the focus of evidence, including its own, before the Panel is too narrow. The Panel is urged to abandon this amendment or at the very least place it on hold while Council commission and consider appropriate strategic advice.

Planning and strategic justification

- 79 The planning issues relating to this development can be divided into:
- 79.1 strategic justification;
 - 79.2 planning effects of the proposal;
 - 79.3 urban design.
- 80 The Proponent has sought to justify this proposal through reference to the difficulty it faces in aggregating the required land in a better position, and by effectively dismissing (via Mr Milner) the local policy framework on the basis that it is at times contradictory. Neither of these reasons should be considered adequate.
- 81 Council on the other hand has sought to firm its strategic position by revisiting the 1997 Strategy Plan and the exhibited form of the first new format planning scheme. As convenient as these documents may seem, they should not be used a means to interpret, to extrapolate on the existing local policy framework. The very references Council seeks to rely upon were omitted from the Planning Scheme. The new format planning scheme went through a process of significant review and quite simply, the words Council now seeks to rely on did not make the cut.
- 82 Secondly, Council itself has been through a range of reviews of its MSS and local policy and has endorsed the current format. The most recent was completed by an external consultancy in unison with Council. No relevant action was recommended, despite this site being available since the MKM closure. Even the UDF prepared less than two years ago did not identify the site for retail purposes.
- 83 Council has also elected not to use this proposal as a catalyst for change. The proposal will lead to the creation of an island of land within the business 1 Zone, sandwiched between the land in the Public Use Zone and the Business 4 Zone land. Council accepts that its policy is unclear, at least without the use of the 1997 Strategy as an interpretative tool. The language of the local policies support an extension of the existing retail area, not the creation of an island, a competing second centre.
- 84 The current Business 4 zone on this site and the surrounding area predates the decision by Council to relocate its offices, develop the common and this proposal. This rezoning needs to be considered in a larger context.
- 85 It is implied in the planning report that accompanied the application that an earlier development fell through due to the difficulties of aggregating land. Surely this should have been a trigger, an alarm bell that further strategic planning was required. Yet no report or independent examination took place and there is no planned strategy update, local policy or to deal with the land between the Subject Land and the retail core.

- 86 This amendment and permit application is premature.
- 87 The case frequently cited regarding when economic effects become a planning considerations is the High Court decision in *Kentucky Fried Chicken Pty Ltd v Gantidis* (1979) 140 CLR 675. This decision was an appeal from the Supreme Court of Victoria which had granted an order setting aside an earlier Tribunal's decision on the grounds that it had failed to take account of relevant considerations. The factual matrix that had given rise to these events was the introduction of a 'chain' fast food restaurant in the town of Williamstown.
- 88 The decision of the Victorian Supreme Court was overturned on the grounds that the Tribunal, in making its decision, had not erred. In the course of its decision, two of the five High Court judges, Barwick CJ and Stephen J made comments on when economic impacts of a proposal may be considered a proper planning matter. It is notable that both judges' comments were in the nature of obiter dicta but, at least in the case of Stephen J's comments, they have been adopted since that time.

- 89 Barwick CJ stated:

'I desire to say that it is my opinion that economic competition feared or expected from a proposed use is not a planning consideration within the terms of the planning ordinance governing the matter ... The expression in Ground 5(c) of the order nisi "the economic viability of the adjoining area", is at best ambiguous. If it means simply the effect of competition by the proposed use with the existing uses of property in the area, it does not express a relevant ground. If it means that the proposed use will be destructive of the amenity of the neighbourhood, giving amenity a wide connotation, it may afford particulars of a general ground relating to the maintenance of the amenity of the neighbourhood.'

- 90 Barwick CJ's comments clearly indicate that loss of amenity due to economic effects are a relevant planning ground.
- 91 The words of Stephen J have been cited more often in cases considering whether the economic impacts of a proposed development are a planning and not just a competitive, consideration. This is most likely because his test is more clearly enunciated and his judgment adopted without comment by the other three sitting judges.
- 92 Stephen J said:

'if the shopping facilities presently enjoyed by a community or planned for it in the future are put in jeopardy by some proposed development, whether that jeopardy be due to physical or financial causes, and if the resultant community detriment will not be made good by the proposed development itself, that appears to me to be a consideration proper to be taken into account as a matter of town planning. It does not cease to be so because the profitability of individual existing business are at one and the same time also threatened by new competition afforded by that development. However, the mere threat of competition to existing businesses, if not

accompanied by a prospect of resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development be proceeded with, will not be a relevant town planning consideration.'

- 93 His Honour prefaced this comment by highlighting the word 'facilities' as the significant word.
- 94 It is IGA's submission that certainly the amenity of the shopping facilities on the High Street will be negatively affected firstly by the reduction on patronage that will accompany the introduction of a large retail magnet distinct from the central retail core. The street as we have seen during this hearing is currently lively and attractive.
- 95 IGA further submits that the extent of shopping offer available will be reduced. It is likely that the effect will first be centred on Nolan Street, however over time, we anticipate that there will be a shift of the retail core towards the new shopping centre. This will affect the overall functioning of the High Street.
- 96 Thirdly IGA submits that the economic effects of the proposal will undermine Council's aim of making Nolan Street the key link with the railway station.
- 97 The UDF is clearly the most recent statement of Council's policy intent for the Maryborough township. The Practice Note, Urban Design Frameworks states that an Urban Design Framework is:

An Integral part of the planning system. They are important tools to assist planning authorities develop local action plans and initiatives within a strategic context, helping the agenda established in the MSS to be translated into actual projects and initiatives. A great deal of importance has been placed on the need to clearly interlink all planning initiative flowing from the MSS to zones, overlays schedules and local policies, right down to action plans for specific localities or sites. An Urban Design Framework is a vehicle to help a community to set an overall direction for a particular place or locality

- 98 The UDF fulfils the roles of urban design initiatives but also extends further by considering uses for sites. This is indicated by the UDF itself which at Appendix 1 suggests that Council broadened the scope of the consultant's brief. The UDF therefore is a key document before this Panel.
- 99 While the UDF has been considered in some detail before this Panel, we wish to highlight some important features of the document:
- 99.1 It was prepared by a multidisciplinary team of consultants with input from Council officers and the view of these consultants was adopted by Council.
- 99.2 The UDF emphasises the importance of Nolan Street as the principal link between the High Street and the railway station.
- 99.3 The document encourages the introduction of a mid block link from the former school site to the High Street.

- 100 The Shopping Centre fails to reinforce any of the objectives above. It will draw the retail and functional axis of the town towards Tuaggra Street and fails to provide a meaningful mid block link. As it stands the proposed link is simply the front of the Shopping Centre. The Proponent's planning witness, Mr Milner, argued that this must be changed by providing some land at the back of the site for the link. How this can be done in a meaningful way is yet to be determined. In our submission it can only be achieved by a redesign to provide an active frontage to the walkway..
- 101 In relation to other aspects of the design, the walls on Burke and Burns Streets remain a concern. It is not enough to say that they are replacing a similar current form or that would have been the likely result with a Business 4 zone. The fact is, what is now proposed is retail not restricted retail such as on the north-west side of Tuaggra Street. If the site was developed for restricted retail there would be no issue regarding the creation of a pedestrian friendly environment and the urban design values would be different.
- 102 It is strongly arguable that the proposal represents an overdevelopment, as was put by David Gold. In other contexts, a development that fails caters for a bit over half its parking on-site, has compromised loading and access, problems with parking space dimensions, inadequate setbacks with boundary walls on two boundaries and fails to address urban design objectives would be regarded as an overdevelopment and refused. There is no reason why the size of the development cannot be reduced to achieve proper planning outcomes if despite our other arguments the panel is minded to approve it.
- 103 The residual land within the Business 4 Zone fronting Burke Street poses a particular strategic dilemma for Council. As it stands, as of right uses include industry, restricted retail and warehouse. These uses would produce low quality urban design results and would be likely to conflict with the use of Cross Street as the pedestrian link. Ms Opperman clearly stated that Business 4 Zone uses would produce an inconsistent and undesirable result.
- 104 Yet on the other had, if Council seeks to rezone this land to Business 1 Zone, which after all would be consistent with the development, this additional swathe of retail opportunity will actively undermine the High Street. All planning and economic experts expect that the shopping centre will be a retail magnet. This highlights again the lack of a strategic justification for the proposal.

Traffic Issues

- 105 There has been considerable discussion regarding parking provision and functionality of the design. It is clear that the proposal has been poorly designed with much detail not properly resolved.
- 106 At times, this discussion has strayed to the irrelevant looking at provision of car parking at the IGA supermarket which is clearly in a different context (adjacent to the High Street centre). That site has, based on the Council's reported survey, 3.79 spaces per 100sqm.
- 107 Put simply the Subject Land is unconstrained. The Proponent, equipped with a blank canvas has created a car parking conundrum by overdeveloping the land to such an

extent that it will accommodate only around 50% of the required car spaces. The design barely accommodates 2 spaces per 100m² on-site. This fact should not be lost in the maze of Stage 1, Stage 2 and Stage 3 provisions.

- 108 In the words of Council, the car parking response is "innovative" but notably council did not address the issue of equity for future development. It is IGA's impression that this is because in general, there is a lack of strategic evaluation of the proposal as a whole. But it is acknowledged by all that if Burke Street and Burns Street develops, they will generate their own car parking demand and there will not be available on-street parking to accommodate those uses.
- 109 Mr O'Brien has designed the car parking and on street parking. His design is deficient in the following respects:
- 109.1 There is no allowance for specialty loading.
 - 109.2 There is no allowance for specialty rubbish collection.
 - 109.3 The proposed taxi/minibus area is exposed and not adjacent to the entry point.
 - 109.4 The bike rack provisions are not depicted to scale - the dedicated areas cannot accommodate them.
 - 109.5 The design is premised on cars overlapping footpaths both within and adjacent to the development. By Mr O'Brien's own admission these will extend up to and in excess of 40cm. With the majority of footpaths a mere 2.0 metres wide and already encumbered by landscaping and street furniture this is an entirely unsatisfactory result.
 - 109.6 The plans provided by Mr O'Brien apparently resulted from a desk top survey. They did not account for street trees in Burns Street, crossovers in Burke Street or telephone poles.
 - 109.7 The provision of showers does not comply with clause 52.34, nor is there any area for staff bicycle cages as required by that clause.
- 110 The net effect of the above is to reduce the availability of both onsite and on street parking which will have the effect of forcing the parking further along Burns and Burke Street.
- 111 With respect of the proposed roundabout, the layout shown by O'Brien (Fig 6) is unacceptable in terms of detail (e.g. no swept path assessments), it is not possible to adequately assess the width of the footpath at the apex of the property boundaries on the south west corner.
- 112 Page 130 of the UDF, Bullet point 6 highlights the importance of Burns street as a cycling route. Mr O'Brien acknowledge that his design for this street can not accommodate a dedicated bike path.

- 113 Because such a large proportion of the proposed parking is situated off the property it is reasonable to expect that a large number of shopping trolleys will be used on street. This creates a traffic hazard. Trolleys are likely to be utilized on the road when loading boots. This is a difficult task due to the need to negotiate curbs. Further it is noted that the narrow footpaths provided will provide an impediment to ease of pedestrian travel where there are multiple trolleys and persons travelling together.
- 114 In giving his evidence, Mr O'Brien could not point to any comparable example where this level of on street parking was relied upon. He provided examples in central Bendigo and a strip shopping centre in Bright only. Given that Mr O'Brien was anxious to rely on his extensive experience when forming his conclusions in other aspects of his evidence, this is most revealing.
- 115 IGA relies on the evidence of Mr Robertson. Mr Robertson is critical of certain aspects of the O'Brien evidence. In particular he has prepared a revised on-street parking plan. In order to accommodate adequate footpath widths and room for parking, he recommends that parking in adjacent streets is a combination of both angle on one side and parallel parking on the other side. A diagrammatic representation of this proposal is to be found at Appendix B of his report.

Conclusion

- 116 We submit that for all of the reasons outlined above the proposal should be rejected. The inadequate strategic justification, inadequate assessment of how the centre will integrate with the rest of the retail offering in Maryborough, numerous design problems and excess of retail floor space over existing and projected demand all suggest the proposal should be rejected.
- 117 However, it is recognised that the panel may see a potential community benefit in the addition of a Kmart to the retail offering in Maryborough. This might add to the town centre despite it being only a half size and not arresting a proportion of the escape expenditure. However such a proposal on this site will have a negative impact on the existing High Street and the overall structure of the centre unless properly planned for and managed.
- 118 An additional supermarket is likely to be of no benefit and would result in dilution of the supermarket offering with all supermarkets trading at some 70% of normal turnover.
- 119 The critical issue facing the panel is whether the potential gain from the Kmart is sufficient to ignore the potential impacts on the centre as a whole and the uncertainty about the relationship between the present design of the proposal and the future direction of surrounding zoning and land use.
- 120 We submit that the panel cannot be satisfied based on the evidence that there is in fact a net benefit when the locational problems of the proposal are weighed up against the purported benefits of the Kmart.
- 121 We suggest that if the Panel is of the view that the rezoning is justified on the basis of the proposed Kmart then it should recommend that: