

**CENTRAL GOLDFIELDS PLANNING SCHEME
AMENDMENT C12
and
PLANNING PERMIT APPLICATION NO. 116/06**

92-96 Burke Street, Maryborough

PROPOSED REZONING USE AND DEVELOPMENT

**SUBMISSIONS ON BEHALF OF
WOOLWORTHS LIMITED**

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1. INTRODUCTION

- 1.1. These submissions are made on behalf of Woolworths Limited which is the owner of the Safeway Supermarket in Tuaggra Street to the north-west of the Subject Site and at that street's north-east corner with Napier Street.
- 1.2. Woolworths opposes the planning scheme amendment as proposed and necessarily the grant of the planning permit and relies upon these written submissions and the written and oral evidence of the following Experts :-
 - Rhys Quick, Economic Impacts
 - Sarah Opperman, Strategic Planning/Urban Design Impacts
- 1.3. These submissions are made on the basis that the Responsible Authority will have referred this Panel to the relevant Statutory Planning Policy Framework, proposed Planning Scheme Amendment and Development Plan Application in detail.

2. GENERAL SUBMISSIONS

- 2.1. It is submitted the relevant issues at hand are conveniently grouped as follows :-
 - 2.1.1 Strategic planning justification for the proposed amendment (general).
 - 2.1.2 Economic justification for the proposed amendment (specific).
 - 2.1.3 Urban design/urban design response issues (general).
 - 2.1.4 Traffic/parking impacts of the proposed amendment (specific)

STRATEGIC PLANNING JUSTIFICATION FOR THE PROPOSED AMENDMENT

- 2.2. Prima facie it is submitted that this Panel should not be satisfied that the objectives for planning in Victoria as outlined in Section 4 of the *Planning and Environment Act 1987*, through providing for the fair, orderly economic and sustainable use and development of land, is achieved.

- 2.3. These matters are addressed in turn below.
- 2.4. The explanatory report to Amendment C12 correctly attempts to comply with the Minister's Direction Number 11 by responding to the Strategic Assessment Guidelines (DSE) for planning scheme amendments. Council's reason "why the amendment is required" is because it is asserted that the "subject land is the only site within the Maryborough Central Business Area which can suitably accommodate the additional supermarket and discount department store, which are a necessary addition to the Centre to strengthen the retail function of Maryborough".
- 2.5. This is not a good argument. A division of the Victorian Civil and Administrative Tribunal comprising Member Potts with him Member Rickards in *Kilkenny Walsh Pty Ltd v Maribyrnong City Council* [2006] VCAT 2282 (copy **provided**) said at Paragraph 33 :-

"Mr Henshall suggested that there were no suitable sites within or near to the Footscray Activity Centre, a matter that was the subject to some discussion. Regardless of the argument of that a lack of suitable sites and hence the default to this site, this line of logic holds little weight when considering the planning merits of the Subject Site for development. As put by Mr Song succinctly at the start of his presentation "Council would welcome a Dan Murphys outlet ... but not at this site". We agree. The lack of suitably zoned sites is not a reason to override orderly planning outcomes".

*[*Emphasis added]*

- 2.6. It is submitted an "orderly planning outcome" for this site having regard to the strategic intention for development of the Central Business Area (CBA) clearly expressed within the State and Local Planning Policy Framework of the Central Goldfields Planning Scheme, is not represented by this proposal.
- 2.7. It is asserted by Council that this Amendment is supported by the State and Local Policy Framework at Clauses 11.03-5, 14.01, 17, 21.02 and 21.12.

2.8. However it is submitted the following explicit policy statements within the Local Planning Policy Framework subvert that assertion:-

- Clause 21.02-1 wherein the MSS expressly states that "limited expansion of the Maryborough CBA will be required in the future".
- Clause 21.12, Objective:-

"Future planning however should allow for likely CBA expansion. Based on existing population trends and population/household growth, floor space addition in the order of 3,370 square metres (10% increase on current size) would be required in the next 15 years".

This proposal seeks to deliver a total of 7,132 square metres which is more than double the maximum floor space envisaged by the MSS. Mr Quick's evidence is that the Maryborough population remains relatively stagnant. Ms Opperman's evidence is that the proposed addition in floor space and resulting departure from the upper threshold of floor space indicated in the MSS is not justified.

- The strategies at clause 21.12 supporting the objective of promoting the CBA of the sub-regional centre for retail business and community services which provide, inter alia:-
 - * prevent the establishment of major retail facilities at locations isolated from the CBA;
 - * encourage the use and consolidation of floor space and investigate opportunities for new retail floor space on the east side of the CBA in the street block bound by Elmer and Napier Streets, and Tuaggra and Nolan Streets.
- The further objective at clause 21.12 which seeks to "maintain and enhance the character and qualities of the Maryborough CBA by retaining its compact urban form, pedestrian scale and heritage character" and the strategies supporting this objective which seek to

establish an Urban Design Framework Plan for the CBA which address, inter alia, the "completion of retail development of the ex Council depot site, opposite the new hardware store".

- The CBA Structure Plan which identifies a discrete precinct for supermarket uses which encompasses the Safeway supermarket and Mitre 10 (which is plainly much closer to the heart of the CBA than the subject site).

2.9. The following observations in respect to this policy cannot be ignored:-

- The relevant Local Policy Planning Framework is "fresh" policy, there having been an MSS review under Section 12B of the Act in 2005.
- Neither the MSS, LPPF or Urban Design Framework (August 2005) (UDF) have been reviewed since that time.
- The UDF sets out the urban design direction of the Council for, inter alia, the CBA. It is the strategic planning product of highly qualified expert consultants :-
 - Michael Smith, Landscape Architect
 - Peter McNabb, Planning and Business Analysis
 - Ben de Waard, Strategic and Environmental Planning.
- The UDF represents the adopted policy position of Council.

2.10. It is submitted that the Policy and UDF must be given great weight in these circumstances. The intent of the UDF is explicitly stated in the executive summary:

"it is a long term strategy which sets a vision and action strategies for the enhancement of the town"

To diverge from the express objectives and strategies of the LPPF and objective of the UDF, as a consequence of one errant amendment/planning permit application such as proposed, should not be supported

- 2.11. Simply put, it is submitted that when presented with this development proposal, Council has supported it with an eye on immediate short term economic prosperity to be generated by the development works per se, and has absented any rigorous assessment of whether this proposal is consistent with its adopted strategic policy direction for the CBA, which is the product of "very recent" and thorough strategic planning investigation.
- 2.12. A key strategic issues to be addressed relates to pedestrian connectivity within the CBA sought to be achieved through the UDF. It is Ms Opperman's opinion that this proposal does not achieve good connectivity with other land uses within the CBA for the following reasons:-
- As a periphery site this land is presently located within the Business 4 Zone. The rezoning will result in it being an isolated Business 1 Zone having regard to the identified supermarket precinct and the "High Street, core retail street" (see page 5 of 5 of Clause 21.12).
 - The UDF establishes links between the Civic Square and the railway station precinct, and advances strategies to enhance and promote Nolan Street as the main connection between the two precincts. Whereas, it is Ms Opperman's evidence that this proposal will draw pedestrian activity to Tuaggra Street.
 - Given the street frontages are dominated by car parking dedicated to customers of the proposed development, pedestrian linkages with Nolan Street along Burns and Burke Streets are not enhanced.
- 2.13. Another aspect of this issue is whether this site is inappropriately dislocated from the centre of the CBA?
- 2.14. There is disagreement between Andrew Ong and Sarah Opperman on the one hand and Robert Milner on the other in respect to siting. Mr Milner is of the opinion that the site is not "isolated" from the CBA, but accepts that it is "external to the CBA precincts" nominated within the Structure Plan (Plan 3) (see clause 3.1 of his report).

2.15. Respectfully it is submitted this Panel must carefully consider the benefits of this location in relation to the extant retail operations within Maryborough. In doing so it must have regard to pedestrian connectivity and the likelihood or otherwise of multiple trips occurring (or alternatively, single trips resulting with the existing retail areas being neglected as result). And perhaps more profoundly must carefully consider what impact this proposal will have on the economic viability of the CBA in circumstances where the development will provide double the MSS projected 15 year need for retail floor space in one fell swoop.

ECONOMIC JUSTIFICATION FOR THE PROPOSED AMENDMENT

2.16. It is submitted that the social and economic effects of the proposed Amendment do not warrant it being recommended for approval.

2.17. It is submitted the evidence of Mr Quick and Mr Dally is to be preferred to the evidence of Mr Haratsis.

2.18. Consistent with Mr Quick's evidence in summary it is submitted:-

- The links between the proposed site and core retail area are not strong which is at odds with Council's strategic direction. The town centre will not be consolidated and the pedestrian-friendly nature of the CBA will be reduced.
- The development far exceeds the floor space requirements of Council far into the future in circumstances where the population in the region serviced by retail facilities in Maryborough has been stable over the last 15 years and the region's population is not growing. Floor space additions will necessarily be required to capture increased real spending growth over time. However there is minimal growth in retail spending.
- This site will take trade from the town centre.
- There is an above average provision of retail floor space within Maryborough already, relative to population. The current provision of

space is more than 12% above the non-metropolitan Victorian benchmark of supermarket floor space for 1,000 people. An additional 3,000m² Coles supermarket will take supermarket floor space to excessive and unwarranted levels.

- Existing retail facilities in Maryborough are currently trading at below average levels (inter alia retail spending levels in the Maryborough trade area are low relative to the provisions of retail floor space).
- Escape spending is not excessive at around 15% of residents spending.
- Whereas a requirement for around 3,800 m² of additional retail facilities over 10 years (circa) is reasonable, 7,152m² is well above the required level.
- Impacts on existing retail facilities will be in the order of -20% relative to what those facilities would otherwise have achieved in around 2010. This impact would be beyond the bounds of a normal competitive environment.
- The proposed development will reduce escape spending slightly, but the vast majority of business of the new centre will simply be transferred from the existing businesses.
- Fairly, Mr Quick acknowledges that the K-Mart will be a new offer for residents and the proposal will provide some increased facilities, the scale of development is excessive relative to the market size which will result in very large impacts to existing retailers and as a consequence, will represent a net community dis-benefit.
- Additional short term employment will result during the construction stage, however, long term jobs in the Centre will be off set by jobs lost in existing facilities.

2.19. There appears to be no argument amongst the economic experts as to methodology per se but there are differences of opinion between them as to detail. In relation to Mr Haratsis' evidence, in summary it is submitted:

- The report does not take into account the fact that there is a large amount of retail floorspace already in Maryborough and surrounding towns.
- Two conclusions can be drawn from that, either:
 1. if there is as much spending escaping the area then average trading levels of existing stores are extremely low and almost unsustainable (ie: the existing retailers are vulnerable to any competitive impacts); or
 2. if existing retailers are in fact trading at average levels then those retailers are achieving a very high market share and escape spending is not actually high.
- The two 2 conclusions are contradictory, yet Mr Haratsis appears to make both arguments.
- Logically, it is clear that there are already facilities in Maryborough that serve the needs of residents and that the proposed development adds nothing much new, except perhaps for the Kmart DDS, and as such are unlikely to reduce escape spending to the extent claimed.
- The argument that there will be absolutely no impact on other retailers in Maryborough as a result of the proposed development is not credible given there will be a 25% or so increase in retail floorspace. This is what is implied by Tables 9 and 10 of Mr Haratsis' report.

The following comments are made in respect to Mr Haratsis' report using the HEADINGS included in the report for ease of reference.

Trading Performance

2.20. Mr Haratsis has determined the likely trading performance of the proposed centre based purely on industry average trading levels per square metre. While the averages chosen appear to be appropriate, there is no reference to the size of the spending market in the region to assess whether the likely turnover forecast is able to be achieved. Whereas, as Mr Quick discussed in his report, the market size is not significant and therefore the new centre is unlikely to achieve average turnover levels. This results in Mr Haratsis overestimating the likely turnover of the potential stores, which would increase the impacts felt, but it also exaggerates the extent to which escape spending is reduced due to the new development.

- 2.21. The forecast turnover generates market shares as shown at the bottom of Table 2. These can be used to imply the level of impact on other centres. On its face it suggests that if the new centre generates a 27.8% market share of the main trade area "CSS" market, then on average the impact on other retailers serving the main trade area "CSS" market would also be -27.8%. However, impacts of this magnitude far exceed anything outlined in the report.
- 2.22. There is very little (if any) discussion of the location of the proposed development relative to the rest of the town centre, apart from the comment at the end of Section 3, indicating that expansion of the town centre to the south is the only option.
- 2.23. He does not consider if the development is actually needed within Maryborough per se.

Trade Area Analysis

- 2.24. The trade area defined is larger than the area defined in Mr Quick's report. He believes some of the towns would clearly be more likely to travel towards Ballarat or Bendigo rather than Maryborough given the distance involved. For example :
- Castlemaine is said to be included in the trade area, even though it appears to be outside of the map provided. Castlemaine has easy access to Bendigo and much more difficult access to Maryborough.
 - Maldon has been included even though it is only 38 kms from central Bendigo, and just 33 kms from Kangaroo Flat (southern Bendigo) which has a Kmart Discount Department Store (DDS) and Coles and Safeway supermarkets. Where as it is 38 kms to Maryborough taking a shortcut on back roads.
 - Newstead has been included in the trade area. While it is closer to Maryborough than it is to Bendigo, it is not far from Castlemaine which already provides a selection of supermarkets. The inclusion of Newstead could be debated.