



Andrew Barr MLA

MINISTER FOR EDUCATION AND TRAINING
MINISTER FOR PLANNING
MINISTER FOR TOURISM, SPORT AND RECREATION
MINISTER FOR GAMING AND RACING

MEMBER FOR MOLONGLO

Mr Jon Stanhope MLA
Minister for Land and Property Services
Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Minister

I refer to your letter of 20 April 2010 about the Government's Supermarket Competition Policy and its relationship to Development Assessment. I note that your letter makes specific reference to the Development Application (DA) currently being considered by the ACT Planning and Land Authority (ACTPLA) over Blocks 4 and 5, Section 79 Giralang.

ACTPLA's role and the matters that it may lawfully consider in determining a DA are, as you know, set by the Assembly through the *Planning and Development Act 2007* and the Territory Plan. ACTPLA is therefore unable to consider the Supermarket Policy in determining any DA until the relevant parts of that policy have been incorporated, in some way, into the Territory Plan or other relevant law.

Your letter places some significance on the total gross floor area (GFA) of the building. Although the Territory Plan requires consideration of the economic impact on other local centres there is currently no specific GFA restriction.

I understand that you have been advised that in relation to the Giralang proposal "*...using the floor space definitions in the Territory Plan, the supermarket proposed in the DA, in fact, will create a supermarket of around 2,700 m².*"

I am concerned that you appear to be receiving incomplete advice on the interpretation of the Territory Plan from an agency that is not the agency charged with responsibility for applying the provisions of the Territory Plan.

There are six definitions contained within the Territory Plan that are of relevance in responding to this issue. These are: 'gross floor area', 'building', 'basement', 'shop', 'supermarket', and 'bulky good retailing'. Both 'supermarket' and 'bulky goods retailing' are sub-sets of 'shop'. These are detailed further at Attachment A for convenience.

I refer to 'bulky goods retailing' only because it specifically includes 'a loading dock' whereas the definition of 'supermarket' does not.

ACT LEGISLATIVE ASSEMBLY

It is not uncommon for Crown Leases to be drafted in a way that provide for a maximum (and in some cases minimum) GFA of a building limited to certain other uses within that building, including for example, retail, supermarket or undercroft car parking (noting that basement car parking is not included in the GFA calculation).

I understand that, by raising the matter of GFA, your concern is whether the storage area, loading dock and undercroft car parking located on the lower ground floor should be considered as retail. There is no disagreement that those areas are GFA for the purposes of restricting the size of the building.

In advising the applicant on this matter during pre-application meetings, ACTPLA has adopted the same methodology employed by Mr John Martin, the author of the Supermarket Policy.

In his report (page 44) Mr Martin, advises that "...The Review's attention was drawn to a Development Application for a large format Woolworths store of 2,570 m² to be established in a redevelopment of the Giralang local centre in Belconnen."

As highlighted in the table below, the figure quoted by the Supermarket Policy excludes other aspects of the building's GFA such as the loading dock, storage and undercroft car parking, etc for the purposes of "retail".

Comparison of gross floor area – current and previously refused DA

Component	DA201016972 Current DA	DA200914054 Previous refused DA
GROUND FLOOR		
Supermarket	1666.7	2570.0 ¹
Tenancies	172.5	221.2
Café	118.9	0
Entry/circulation	140.6	142.0 ²
Waste enclosure	15.9	15.9
Total - Ground	2114.6	2949.1
LOWER GROUND FLOOR		
Carparking – lower (ex basement area)	2287.2	2573.0 ³
Storage	554.5	585 ⁴
Plant	128.0	184.0
Loading dock	322.4	502.0
Total – Lower Ground	3292.5	3844.0
TOTAL GFA	5407.1	6793.1

This illustrates the importance of using consistent terminology and definitions when making comparisons. The advice provided to you is not based on comparing 'like for like' and this has fundamentally skewed the comparison of floor space. Given the importance of both the application of the supermarket policy and the assessment of a significant development proposal the advice should have been referred to ACTPLA to confirm before it was conveyed to you.

¹ Excludes stairs 1, 2, 3 but includes Lifts 2 and 3 and adjoining stair

² Includes entry, Lift 1, travelator and disabled toilets

³ Excludes travelator

⁴ Excludes Lifts 2 and 3 and adjoining stair

You have expressed strong views on this matter, particularly in terms of the way this DA ought to be assessed. In doing so, I believe that the ability of ACTPLA to make an independent decision on the DA has been compromised. My recent Statement of Planning Intent was very clear in terms of ACTPLA's statutory role in terms of development assessment:

To ensure development assessment is undertaken without political or commercial interference, the Government will continue to keep politics out of planning. It will remain a statutory function at arm's length from government, providing the community and industry with confidence in the separation of power between policy making and decisions makers.

This commentary is particularly relevant if the matter were to be appealed to the ACT Civil and Administrative Tribunal.

Therefore, I consider that the only option now available to the Government is to utilise the Ministerial call-in powers under the provisions of the Planning and Development Act. This not only removes appeal rights to all parties, but allows the consideration of matters beyond the statutory planning instruments.

Finally I would like to discuss with you the matter of agency involvement in ACTPLA's statutory processes such as the assessment of DAs. I am concerned that officers in the Department of Land and Property Services, in particular, appear to repeatedly over-step the mark when it comes to their interference, perceived or otherwise, in statutory processes which have served the government well.

I am mindful of the Government responses to the recent recommendations of the Public Accounts Committee in relation to the Auditor-General's report on the site selection for the gas-fired power station. These included the need to clearly define the respective responsibilities between LAPS, LDA and ACTPLA:

4.4 The Committee recommends that Government clearly defines the respective responsibilities of the Department of Land and Property Services, the Land Development Agency and the ACT Planning and Land Authority in regard to project facilitation to avoid confusing overlap. The Government should also clearly outline how these agencies will interact with each other.

Response – Agreed.

The respective roles of the Department of Land and Property Services, the Land Development Agency and the ACT Planning and Land Authority are clearly defined in relation to project facilitation.

7.59 The Committee recommends that, as part of the establishment of the Department of Land and Property Services and the creation of an ACT Planning Strategy, the Government critically examine the current roles played by agencies in strategic planning in the ACT with a view to establishing a sustainable strategic planning framework.

Response – Agreed in part.

As stated in response to Recommendation 15, the ACT has a Planning Strategy.

In establishing the Department of Land and Property Services, the Government has examined the roles played by the respective agencies in strategic planning in the ACT and for the purposes of strategic land use planning, which includes the review and monitoring of the planning strategy. This function remains with the ACT Planning and Land Authority.

I look forward to the opportunity to discuss these matters with you.

Yours sincerely

Andrew Barr MLA
Minister for Planning