

Consultation Paper

Opportunities to generate further competition in the grocery sector through Queensland's planning framework

Not Government Policy – For Consultation Only



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Part 1 - Overview

1.1 About this paper

This paper proposes opportunities for the planning framework to enhance competition in the grocery trade, with the aim of helping to reduce grocery prices. This is in response to the recommendations from the Queensland Parliamentary Supermarket Pricing Select Committee Inquiry into Supermarket Pricing (the Committee Inquiry).

Opportunities have been considered having regard to:

- key grocery retailers and their development preferences in Queensland
- the interaction between the planning framework and grocery retailer competition in Queensland and aspects that may limit competition between grocery retailers
- The recommendations and findings from the Committee Inquiry.

This paper is intended to provide an opportunity for all stakeholders – including local governments, the supermarket and grocery sector, planning and development industry and the community to provide feedback on the opportunities put forward.

Feedback will help inform the government's implementation of the Committee Inquiry recommendations.

1.2 Background

Supermarkets and other grocery retailers are essential retail outlets used by consumers to purchase a variety of food, beverages, and household products. There are four main grocery retail chains in Australia, including Woolworths, Coles, Aldi and IGA. Small grocery retailers such as butchers, bakeries corner, convenience and bespoke stores and fruit and vegetable stores also play an important role in the grocery sector which all provide varying levels of products and services.

Between July 2022 -2024 the Australian Bureau of Statistics recorded a consumer price index increase of 9.6% for food and non-alcoholic beverages. Increased grocery prices contribute to elevated inflation and cost of living pressures being experienced in Queensland and Australia.

1.3 Government response to increased grocery prices

The Government is responding to increased grocery prices at both the State and Federal Government level.

1.3.1 The Queensland Parliamentary Supermarket Pricing Select Committee review

The Queensland Parliamentary Supermarket Pricing Select Committee (the Committee) was established to examine the causes and effects of increased supermarket prices and identify opportunities to increase transparency in the supermarket sector for consumers and producers.

On 31 May 2024, the Committee published its Inquiry into Supermarket Pricing and identified eight (8) recommendations. These recommendations broadly relate to five key areas:

- Strengthening the Food and Grocery Code of Conduct
- Supporting Queensland's growers and producers
- Promoting healthy competition in Queensland's supermarket sector
- Supporting Queensland's regional and remote communities
- Empowering consumers in Queensland.

The Queensland Government has accepted all the recommendations of the Committee Inquiry.

The considerations of this paper respond to recommendation four (4) which states:

That the Queensland Government reflect on statements provided by industry representatives to the committee and assess the viability of how planning guidelines could generate further competition in the supermarket sector, providing an expanded variety of product and price choice for Queensland consumers.

1.3.2 Federal government responses

A number of federal government reviews are currently underway, including the:

- ACCC Supermarkets Inquiry, examining supermarket pricing and the relationship between wholesale and retail prices.
- Australian Government Food and Grocery Code of Conduct Review 2023-24 (Treasury), investigating a mandatory food and grocery code of conduct.
- Select Committee on Supermarket Prices (Senate) hearings process that consists of a cross-party committee that will question supermarket executives on their prices and hear from producers.
- Select Committee on Cost of Living (Senate), the committee's interim report found that the rise in grocery prices was a large contributor to Australia's cost-of-living crisis.

1.4 Summary of opportunities

Following a review of grocery retailers in Queensland and aspects of the planning framework that may limit competition in the grocery sector, the following opportunities may encourage competition in the sector.

- *Development of guidance* - guidance can assist in addressing complex planning matters and achieving best practice planning principles. State guidance could be implemented to assist local governments in implementing updated supermarket provisions such as definitions and/or a new 'competition test' for certain types of grocery retailers.
- *Making State policy changes* –State policy changes could be made to formally recognise the importance of grocery retailer competition within Queensland's planning framework. This could include making grocery competition a State interest, to accelerate new supermarkets.
- *Amendments to planning legislation* - Amendments to planning legislation could include:
 - new definitions to acknowledge alternative grocery retailer typologies such as municipal markets, corner stores, neighbourhood supermarkets.
 - Establish State-wide capped category of assessment for different scales of grocery retail uses such as prescribing that lower categories of assessment are to be given to grocery retail uses in centre zoned land
 - Establishing a competition test to be used in the development assessment process
 - 'Use it or lose it' development approvals whereby the State could legislate a maximum timeframe for grocery retail use development approvals before they lapse and/or limit the ability for extensions to these development approvals.
- *Limit ability to appeal on commercial grounds* - there may be opportunities to further investigate the provisions outlined in the Planning and Environment Court Rules 2018.

These opportunities are addressed in greater detail in Part 5 of this paper.

Part 2 – Have your say

2.1 Making a submission

We welcome your feedback on the proposed opportunities.

Please provide your submission by **12 November 2024** via the have your say website <https://yoursay.housing.qld.gov.au/grocery-sector-competition-consultation>.

You may use the stimulus questions included in this paper to prompt matters to include in your submission, noting these questions are not designed to limit the scope of your submission.

Matters to include in your submission

In addition to your feedback on the proposed opportunities, feedback is sought on the likely impact that the changes might have, for example:

- What is your current experience with land use planning regulations as a grocery sector developer or local government authority?

2.2 What happens after I make my submission

Once you have made your submission via the 'have your say' webpage, you will receive an automated email acknowledging receipt of your submission.

Part 3 – Grocery retailers and the current planning framework

3.1 Grocery retailers in Queensland

The market share within the grocery sector in Australia is largely held by Woolworths and Coles, who have a combined market share of 65%. Woolworths holds a 37% market share, while Coles follows closely behind with a 28% market share, Aldi holds 10% of the market share and IGA holds 7% market share (Statista Research Department, 2023). The remaining 18% of the market share is made up of smaller independent retailers. In Queensland, these retailers include, but are not limited to Foodworks, Harris Farm Markets, Fresh and Save Warehouse, Costco and speciality organic and international stores.

Municipal markets provide an alternative grocery option for consumers. Examples of these markets in other Australian states include the Queen Victoria Market, South Melbourne, Market, Prahran Market, Dandenong Market and the Central Market in Adelaide.

The key grocery retailers in Queensland have a range of store formats and sizes. Coles and Woolworths have adapted to include various store sizes to meet market demand and find appropriate sites. Coles and Woolworths have also expanded their offerings to co-branded petrol stations and associated liquor outlets. IGA also has multiple store formats and sizes ranging from small express stores to full line stores.

3.2 The planning framework and grocery retail development in Queensland

Under the Queensland planning framework, a development approval is generally required for new uses such as supermarkets and other grocery retailer uses. The Local Government authority is usually responsible for assessing the development applications which are assessed against the Local Government Planning Scheme.

The category of assessment is either code or impact assessment and is generally determined by the land use zone and/or the maximum gross floor area (GFA) of the development. For example, development on land intended for a supermarket use, such as a centre zone, is more likely to be code assessable. Development that is code assessable helps deliver expected development without undue delay and public consultation is not required. Code assessable applications are assessed against the relevant assessment benchmarks set out in the local planning scheme. Whereas development in a zone that is not intended to support a supermarket use, such as a residential or industrial zone is more likely to require impact assessment.

Applications undergoing impact assessment must undertake public notification, providing opportunities for submissions on the application. Submitters have rights to appeal the assessing authority decision in the Planning and Environment Court.

3.3 Importance of grocery retailer competition and the role of the planning framework

Competition in the grocery retail sector can lead to lower grocery prices, better quality products and increased choice for consumers. Convenience and accessibility are key drivers for grocery retailer competition. The entry of new supermarket retailers and the growth of existing smaller supermarket retailers has been shown to increase competition in the sector.

In Australia, Aldi is a relatively new supermarket retailer to enter the market. An ACCC inquiry published in 2008 found that a new Aldi store in an area had a significant influence on the pricing of nearby major supermarket retailers. For example, prices were 0.7% lower at a Woolworths store within 1km of an Aldi and 0.8% lower at a Coles store within 1km of an Aldi compared to those stores without an Aldi within 5km (Australian Competition and Consumer Commission, 2008). In 2023, Aldi estimated that it reduced the prices paid by shoppers at other supermarkets as a result of the competitive effect by \$675 million in 2022 (Aldi, 2023).

Queensland's planning system provides a framework that is intended to guide future development. Given the link between grocery prices and competition, it is important to consider how the planning framework may be able to promote competition in the sector.

3.4 Types of grocery retail development in Queensland

3.4.1 Infill development in established areas

Grocery retail development often takes place in existing areas (both within an existing centre zone or outside of a centre zone). Development in an existing centre zone will often involve retailers choosing to develop supermarkets in existing centres such as shopping centres or main street 'strip' centres. This can involve retailers undertaking a fit-out of an existing tenancy to suit their business needs or demolishing an existing building and building new. This type of development would generally be consistent with the land use intent of centre zones and be assessed as code assessable development.

Grocery retailers can choose to establish a new store in established areas that are not within a centre zone. This is commonly referred to as 'out of centre development'. This type of development is more complex and often requires impact assessment by the assessing authority due to inconsistencies with zoning and greater impacts such as a need for more car parks.

3.4.2 'Greenfield' development and new growth areas

Supermarket retailers also choose to establish new stores in greenfield locations and new growth areas. Development in these areas may either be within centre zones of master planned communities or in rapidly growing areas where there is no current planning intent for centre activities.

Some growth areas have structure plans or master plans that earmark locations and planning requirements for centres of different sizes. These are the desired locations for new supermarkets. In these instance supermarkets might not require a separate development application. However, proposed supermarkets in other areas will likely need a development application. Supermarket retailers also often need to secure tenure over land in these situations from a developer.

Many rapidly developing growth fronts are not guided by overarching structure plans. In these situations, supermarket operators may secure tenancies over land and then need to lodge a development application for a new use such as for a supermarket or grocery store. These applications would typically be impact assessable due to the inconsistencies with the planning scheme.

Local governments and/or developers of master planned communities need to consider both the level of retail required to support new growth areas, including providing adequate land in centres for various scales of grocery providers and competition to occur.

Part 4 – Aspects of the planning framework which may limit competition in the grocery sector

4.1 Identification of issues

A review of how the planning framework currently operates and recent examples has identified a number of aspects of the planning framework which may play a role in restricting competition in the grocery sector in Queensland. These aspects are examined in further detail below.

4.1.1 Inconsistent assessment requirements and fees across planning schemes

As the assessing authority for most supermarket applications, local government authorities set the assessment regime for grocery retailers, including category of development assessment and application fees. A review of a range of local government areas (LGAs) in Queensland has found significant variation between the GFA threshold that determines whether an application for a supermarket is code or impact assessable. For example, in some LGAs, any new or increase in GFA is likely to require an impact assessable development application, whereas other LGAs allow larger GFA thresholds for code assessable development, such as up to 7,000m² in certain centre zones.

Some smaller grocery retailers have stated that they avoid impact assessable applications where possible due to the added complexity, cost and potential appeal risk. These retailers have advised that they reduce the GFA of their stores to avoid impact assessment. Retailers have found it difficult to locate stores in various LGAs due to the varied impact assessment GFA thresholds and have suggested that a more universal threshold should be applied to incentivise development.

Significant variation between the development application fees of different LGAs has also been identified as a potential barrier to entry for grocery retailers. Some LGAs, have a set fee for both code and impact assessable development, whilst other LGAs have fees based on the proposed GFA of a store.

Other LGAs have a base assessment fee plus an additional fee for each m² over a particular threshold. The additional m² fee in some of these LGAs could be used to disincentivise particular supermarket development. For example, an application fee of an additional \$15 per m² on top of the \$4,540 base fee equates to an application fee of \$31,540 for a 1,800m² supermarket and \$49,450 for a 3,800m² supermarket.

4.1.2 Inflexibility in the application of planning scheme requirements

Supermarket retailers have raised examples of challenges they have faced when attempting to gain a development approval from council. Stakeholders have reported concerns about the level of flexibility that a local government assessing authority may give an application that does not explicitly comply with the Planning Scheme requirements. This scenario often occurs when a development is proposed outside of an area specifically intended for a supermarket in the Planning Scheme (e.g. outside a centre zone or precinct). The assessing authority can require the applicant to demonstrate how the development will not detract from an existing centre or similar uses that exist in proximity to the proposed development. Applicants may also be required to demonstrate that there is an overriding need for the proposed development.

Local planning can become an impediment to creating appropriate competition when a supermarket is considered a detriment to an existing centres retail catchment, character, identity and viability. The local planning frameworks developed to create vibrant, viable centres in turn can limit the ability to create appropriate competition to better service and deliver economic outcomes for our communities.

Stimulus questions

- What is your experience with local government when lodging development applications for supermarket or grocery development?
- Have you been deterred from lodging a development application due to the fees or category of assessment (code or impact)?

4.1.3 Preference for centres hierarchies in the planning framework

Queensland's planning framework includes an established centres hierarchy which is established within the Planning Regulation 2017 through a series of centre zones that are adopted by planning schemes. A zone identifies the preferred land use in an area. The zone, and other planning controls, are identified in the planning scheme to guide development and use of land.

Table 1 outlines the key zones that make up the hierarchy which range from a principal centre zone to a neighbourhood centre zone. A mix of commercial, community, retail and business uses are favoured within these zones. The centres hierarchy is intended to consolidate similar uses for ease of access for the community and the efficient use of active and public transport and infrastructure provision. The consolidation of centre activities in particular also provides markers to cluster higher density housing, encourage a more compact urban form.

Table 1: Centres hierarchy under the Planning Regulation 2017

Centre zone	The centre zone covers land intended for commercial, business and community facilities, and services that cater to the needs of residents across the council area. This may include supermarkets, restaurants, shops, commercial or council offices, cinemas, museums, community facilities and services such as a bank, post office or medical surgery.
Neighbourhood centre zone	The neighbourhood centre zone covers land intended for small scale retail and services that meet the day to day needs of a surrounding neighbourhood. This may include small shops, cafes, restaurants and small medical centres.
Local centre zone	The local centre zone covers land intended for a variety of shopping, office and community services for local residents of the area. This may include small supermarkets, specialty shops, cafes and restaurants, offices, health services and some residential development.
District centre zone	The district centre zone covers land intended for a wide variety of shopping, office, community and entertainment activities that meet the needs of residents and workers. Development that could be expected in this zone includes a large supermarket with a variety of specialty shops, cafes, restaurants, offices, medical centres and small cinema complexes. The zone may also include residential development, for example apartments above shops and offices.
Major centre zone	The major centre zone covers land intended for a large collection of shopping, office, community and entertainment activities. Major centres are likely to be located with, or close to, transport hubs. Development that could be expected in this zone includes very large shopping centres, department stores, variety stores, specialty shops, cafes, restaurants, offices, specialised health services and cinema complexes. This zone may also include residential development, for example apartments above shops and offices.
Principal centre zone	The principal centre zone covers land intended for the business centre of a city or town with a large collection of shopping, office, community and entertainment activities. For example, major public transport stations serving the region.

	<p>Development that could be expected in this zone includes commercial and government offices, cafes and restaurants, specialised health services, multiple dwellings (apartments), hotels and cinemas. Often this zone will include the historical centre of the town or region, including council chambers, banks, churches and court houses.</p>
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To achieve the desired uses within the different centre zones, planning schemes regulate the size and types of uses intended in these zones. In doing so planning regulations can seek to limit the amount of development and may favour either a traditional full line supermarket type use, or small stand alone green grocer depending on the location.

Applicants are often required to demonstrate how they will not detract from the existing centre activities in an area and the existing centres hierarchy. This approach can discourage multiple grocery retailers in an area and therefore limit competition in the sector. Stakeholders have raised that this scenario occurs frequently within Queensland.

Stimulus questions

- Do you believe the centres hierarchy in planning schemes play a role in limiting competition in the grocery sector? If so, in what way?
- Have you made a development application for a supermarket that did not meet the centres hierarchy? If so, what was your experience through the development assessment process?
 - Was the application code or impact assessable?
 - What information/justification did the assessing authority require?

4.1.4 Consideration of existing approvals

A development approval for a new use (material change of use) under the *Planning Act 2016* generally lapses six years from the date of the approval if the use has not commenced. This period can be extended before the lapsing date through an application to the assessing authority. Historically, larger supermarket retailers have been successful in gaining approvals for a new supermarket and extending the development approval for multiple years, with some supermarket stores in Queensland taking as long as ten years to commence following the development approval.

Supermarkets that have been approved and extended can limit competing supermarkets establishing in the area. This is because, local governments as the assessing authority consider not just existing developments, but approved developments that have not yet been constructed when assessing new development applications. Further, the presence of existing development approvals may prevent potential new operators from pursuing new stores. Similarly, the presence of long standing and unacted upon approvals can either deter potential new entrants or influence the determination of an application by the assessment manager.

4.1.5 Ability for competitor third party appeals

Queensland's planning framework includes a dispute resolution process whereby third parties have the ability to appeal an assessing authority's decision. In recent years there have been examples of supermarket competitors lodging a third party submitter appeal to the Planning and Environment Court against a decision to approve a supermarket development. These appeals are not often successful, however can significantly extend approval timeframes and are costly for smaller supermarket retailers.

The awarding of costs under Planning and Environment Court Rules is a consideration in ascertaining whether the court is used by third parties to frustrate approvals of new supermarkets in the marketplace. While the *Planning Act 2016* and recent updates to the Planning and Environment Court

Rules broadens the scope of what might be considered vexatious litigation and provides greater powers to impose cost orders, competitor commercially driven appeals can still occur.

Part 5 – Opportunities to generate further competition in the grocery sector through the planning framework

Following consideration of findings from the Committee Inquiry, grocery retailers in Queensland and aspects of the planning framework that may limit competition in the grocery sector, the following opportunities have been identified that may encourage competition in the grocery sector.

These opportunities have varying approaches, including both short and long term actions or opportunities that require further government investigation. Each opportunity is designed to be actioned either on its own or may be combined with other opportunities. The combination of opportunities may work together and solve a number of identified challenges.

5.1 Making State policy changes

State policy changes could be made to formally recognise the importance of grocery retailer competition within Queensland's planning framework. This could include making grocery competition a State interest, to accelerate new supermarkets.

This opportunity could involve policy changes that:

- reflect the evolved and current grocery retailer typologies, particularly 'out-of-centre' supermarkets in new or existing policies, which could include a revised approach to the centres hierarchy to allow more flexibility for grocery retailers around lower order centres.
- reference high impact proposals (large projects with the potential to impact higher order centres) and low impact proposals (smaller projects unlikely to impact higher order centres) and a requirement for local government authorities to undertake different levels of 'competition tests' depending on the category of the proposal.

Making State policy changes is the first step in the process, further local government planning scheme amendments may then be required to reflect the amended state policy position.

Stimulus question

- Do you believe a change to State policy is required to see effective change to grocery retailer competition filtering down to a local government level?

5.2 Amendments to planning legislation

The planning framework includes regulated requirements in the Planning Regulation 2017 such as zones and land use definitions that a local planning scheme must use. This includes the centre zones identified in **Table 1**. Each local government, through the planning scheme identifies the preferred land use and area for each centre zone. Currently, the only applicable definition in the Planning Regulation that relates to a grocery retail use is a 'shop'.

5.2.1 Definitions

Amendments to planning legislation could include new definitions to acknowledge alternative grocery retailer typologies such as municipal markets, corner stores and neighbourhood supermarkets. Additional definitions may send clearer signals about the government's expectations to local government authorities and applicants.

For example, local governments could be encouraged to consider lower categories of assessment for smaller grocery retail uses (such as code assessable rather than impact assessable). These changes

may assist in providing market variation where a smaller grocery retailer is located within proximity of a larger grocery retailer but within different zones (i.e. different competition or need considerations).

5.2.2 Establish State-wide capped category of assessment for different scales of grocery retail uses

The state could instead make legislative changes to prescribe lower categories of assessment to grocery retail uses in centre zoned land. This may include consideration of:

- GFA thresholds for different scales of grocery retail stores across the centres zones (i.e. maximum grocery retail use GFA per centre zone)
- prescriptive category of development and assessment based on grocery retail stores type (aligned with possible new definitions) or GFA threshold
- capped category of development and assessment for grocery retail stores (i.e. code assessment).

5.2.3 Establish competition test during development assessment process

There may be an opportunity to make legislative changes to establish requirements for a competition test during development assessment for defined supermarket uses. This would assist local governments in assessing appropriate levels of competition within their LGA. This change would also reverse the onus on an applicant to demonstrate need, requiring a local government to assess the benefits of competition for the community.

Any changes to the planning legislation would be paired with supporting local government guidance as described in 5.4 below.

5.2.4 'Use it or lose it' development approvals

Given that long standing and unacted upon centre or centre use approvals must be considered as part of the assessment of a new centre or new centre activities, the State could legislate a maximum development approval currency period for grocery retail use development approvals and/or limit the ability for lengthy extensions to these development approvals.

Stimulus questions

- What do you think about the creation of new definitions to acknowledge alternate typologies?
- What GFA thresholds would you recommend to distinguish between grocery stores varying types and sizes? Are there other relevant factors that could form part of new definitions?
- Of the opportunities identified, which do you see would provide the most effective outcome to reduce competition and reduce grocery prices?

5.3 Limit ability to appeal on commercial grounds

Investigations by the department identified examples of competitor appeals in the Planning and Environment Court following *Planning Act 2016* decisions for grocery retail development. There may be opportunities to review the provisions outlined in the Planning and Environment Court Rules 2018, particularly regarding the awarding of costs in an appeal.

Given the complex and legal nature of the P&E Court process, specific reform opportunities have not been included in the scope of this review. Any changes to the P&E Court process or rules would require an approach subject to expert advice and input as well as extensive consultation.

Stimulus question

- Could the P&E Court rules do more to discourage commercial based competitor appeals for the grocery sector?

5.4 Development of guidance for local governments

The State publishes guidance for local governments to assist in addressing complex planning matters and achieving best practice planning principles. State guidance could be implemented to:

- assist local governments in implementing updated supermarket definitions and/or a new 'competition test' for certain types of grocery retailers
- indicate the most appropriate zoning and category of assessment for particular grocery retail development. For example, the guidance could recommend that supermarkets that are less than 2,000m² (or another threshold to be determined through consultation) in a neighbourhood centre zone should be code assessable.
- encourage flexibility when applying the centres hierarchy and demonstrated planning need criteria when assessing development applications for supermarkets and other grocery retailers in lower order centres.
- highlight the tactics that some of the larger grocery retailers use when extending the life of development approvals (refer to section 4.1.5 above). Guidance could recommend that local governments do not accept multiple extension applications for particular grocery retail developments or mandating a maximum approval period for this type of development.

Guidance can send a strong signal about the State's position on grocery retail competition and may encourage competition through local government planning schemes. Guidance is not mandatory, but can form part of more holistic planning framework changes.

Stimulus question

- Do you think guidance that encourages amendments to planning schemes to remove anti-competitive regulation and encourage flexibility would be effective, and why?

The State Government is committed to responding to the Committee Inquiry recommendations and making improvements to the Queensland planning framework to generate greater competition in the grocery sector. The opportunities put forward in this paper are not exhaustive and are a starting point to gain feedback and inform the government's implementation of the Committee Inquiry recommendations.

Stimulus question

- Are there other opportunities the State should consider in order to improve the planning framework to generate further competition in the grocery sector?

Part 6 – Next Steps

Please provide your submission by **12 November 2024** via the have your say website visit <https://yoursay.housing.qld.gov.au/grocery-sector-competition-consultation>.

All submissions received will be reviewed to inform further Government consideration of initiatives and improvements to Queensland's planning framework. This may take time and involve additional research, consultation, policy development and scenario testing.

The government is focussed on tackling this challenge and we look forward to your feedback to help implement effective changes Queensland's planning framework that will generate further competition in the grocery sector.