











development, I was able to appeal the decision. On advice from Town Planners and Lawyers, it was decided I had a case that was worth testing in the Land and Environment Court of Queensland. Unfortunately the cost of 5 days in Court was prohibitive and beyond my means. We were forced to withdraw the objection.

#### CONSEQUENCES FOR LACK OF RETAIL DIVERSITY IN TOOWOOMBA.

In a grocery market dominated by Coles and Woolworths to the extent that it is in Toowoomba, it is difficult to get the turnover out of a business to provide customers with a sustainable retail offer that is both competitive with those of the major chains yet diverse enough to be different. The turnover at Northlands Foodworks fell from approx. \$95k per week to \$70k per week when Northpoint opened. We continue to have a policy of offering Australian-made, local and gourmet brands that the ever-more homogenous Big Two do not stock readily. However, when companies and lines are deleted from 80% of the grocery market, they too have a struggle to survive. The EFFECT of the major chains' generic range and strategic deep discounting on a small number of stable lines e.g. bread & milk means the major supermarkets are ostensibly targeting the convenience market. This deliberate targeting of small convenience stores, fruit & veg barns, and independent operators will have disastrous consequences for the Australian Consumer in the long term.

#### RESPONSE TO THE HARPER COMPETITION REVIEW DRAFT REPORT

I heartily endorse the recommendation that:

1. Australian Competition Law should incorporate an Effects Test that challenges corporate behaviour on its *effect*, not its intent.
2. Competition Laws should be taken into account in Town Planning approvals.
3. Queensland Liquor Laws should be reviewed and reimagined as per the Victoria model.
4. A Review Tribunal should be available to small business that would allow them to affordably challenge Planning approvals.

5. When it can be demonstrated that markets are totally dominated by Woolworths and Coles, a divestiture mechanism should be able to be triggered.

In sum, the current state of the grocery retail industry in Australia is not only morally inadequate, it is wholly unsustainable. I have faith that there are measures which can and should be implemented to restore some equilibrium to Toowoomba's consumer options specifically, and I look forward to discussing these with you further.

Best regards,

Deborah Smith

# SUBMISSION TO THE PROPOSED NORTHPOINT SHOPPING CENTRE

Prepared For:  
NORTHLANDS & BLUE MOUNTAIN FOODWORKS

Prepared By:  
WOLTER CONSULTING GROUP

DECEMBER 2011



**WOLTER**  
consulting group



## 1. INTRODUCTION

This submission is made by Wolter Consulting Group Pty Ltd on behalf of our client, Debbie Smith, the owners and operators of the Northlands Foodworks Supermarket on land located at 3 Andrews Street, North Toowoomba and the Blue Mountain Foodworks on land at 281 – 285 New England Highway, Harlaxton. This submission expresses strong objection to the Development Application lodged with Toowoomba Regional Councils for the Northpoint Shopping Centre, Council Reference MCU/2011/4899, which is on public notification until 19 December 2011.

More specifically, this submission focuses on the strategic and statutory planning arguments which demonstrate that this proposal represents out of centre development. The arguments in this report clearly indicate that the proposed Northpoint shopping centre will have a detrimental effect on the role, function and viability of existing centres and as well as seriously undermining the City's centre hierarchy.

Furthermore this submission identifies that the nature and scale of the existing Northlands Centre is commensurate with the role and function of an emerging District Centre. The existing centre is located on a land parcel of 8,172m<sup>2</sup> and has the capacity to grow and expand strengthening the district centre role the centre already plays in the North East Toowoomba region. Furthermore, additional landholdings have already been acquired by the centre owner with the view to expansion.

In addition to the above, this submission raises a number of preliminary points regarding the 'properly made' status of the current development application.

## 2. DEVELOPMENT APPLICATION BACKGROUND

### 2.1 Proposed Northpoint Shopping Centre

The development application was lodged on the 19<sup>th</sup> of August, 2011 for a Preliminary Approval Varying the Effect of the Planning Scheme under Section 242 of the *Sustainable Planning Act, 2009* and a Development Permit for a Material Change of Use for Supermarket, Shops and Medical Centre. The application was lodged over the subject land at – 121, 125, 127 & 129 Ruthven Street, 2, 4 & 6 Parrot Street, 2, 4, 6 & 12 Jones Street and 101 & 103A North Street, Harlaxton

The proposal is known as the Northpoint Shopping Centre, Council reference Number MCUI/2011/4899. The proposal seeks approval to develop a full line supermarket, associated specialty stores and a medical centre on the majority of the block bordered by Jones St, Parrot St, North St and Ruthven St. The preliminary approval to vary the effect of the planning scheme component creates a new level of assessment tables and assessable codes through a Preliminary Approval Document (PAD)

The above mention application is not the only applicable application to the creation of the proposed Northpoint Shopping centre. There are three (3) additional applications that are currently in various states of assessment by Toowoomba Regional Council for various aspects of development relating to the ultimate development of the proposed centre. These can be identified as follows:

- Permissible Change to a Development Approval Super Rooster Application (corner of North St and Ruthven St)
- Reconfiguring a Lot application: Access Easement (to facilitate access and to integrate development between Super Rooster site and the Northpoint shopping centre)
- Reconfiguring a Lot application (to formalise and amalgamate development lots)

These 3 additional developments have all been lodged separately and all directly relate to the ultimate development of the Northpoint Shopping Centre

### 2.2 Super Rooster Permissible Change (MCUI/2009/2903/A)

This application seeks to alter a number of conditions in the approval package that was issued with the approved Super Rooster development. The main alteration being condition 1;

*“The development must be carried out in accordance with the approved plan/s listed below, subject to and modified by the requirements list below and by other conditions of this approval”*

This condition generally outlines that development must occur according to the approved plans. Subsequently, Super Rooster has asked to amend this condition to allow the site access point to be moved to integrate with the proposed Northpoint shopping centre design. This alongside changes to the drive-through and various other minor alterations have formed the majority of this application to seek a more dependent and integrated overall plan of development to the site.

### **2.3 Reconfiguring a Lot Application: Access Easement (RAL/2011/5691)**

This application relates to the access arrangement and seeks to legally formalise the access arrangements to integrate the two development sites. This application was lodged as a response to the information request issued by Toowoomba Regional Council with regards to the NorthPoint Development Application (MCUI/2011/4899).

It is noted that the application appears to not be 'properly made' as there are several items of mandatory information missing from the proposed plans according to IDAS form 7. Subject to the provision of suitable plans with the required mandatory information the application is to return to the Acknowledgement Notice Stage.

### **2.4 Reconfiguring a Lot Application: Boundary Realignment (RAL/2011/5697)**

This application was also lodged as a response to the information request issued by council with regards to the Northpoint DA (MCUI/2011/4899). The application seeks to amalgamate the lots over which the proposed shopping centre and associated car park with sit over. The Plan of Reconfiguration creates 2 lots with lot 1 forming the Northpoint Shopping centre and Lot 2 being noted as a future development site.

It is also noted that the application appears to not be 'properly made' as there are several items of mandatory information missing from the proposed plans according to IDAS form 7. Subject to the provision of suitable plans with the required mandatory information the application is to return to the Acknowledgement Notice Stage.

### 3. GROUNDS OF SUBMISSION

The grounds of submission are:

#### *Preliminary Points*

**i. The application is not properly made – Mandatory Information and Land Owners  
Consent not provided**

The applicant has failed to provide development plans which meet the mandatory information as identified in IDAS Forms 5 and 24. The application is not considered to be properly made. Should the applicant provide plans which meet the mandatory information requirements the application is to return to the Acknowledgement Notice Stage.

The application has failed to include land and provide landowners consent for a number of lots which are subject to the application. The lots containing the Super Rooster Development and the associated access easement are subject to the development and should be included as part of the development application for the North Point shopping centre. As the application has failed to provide land owners consent for all lots that are subject to the application is not considered to be properly made.

Should the above mentioned preliminary points be adequately resolved we raise objection to the follow items:

**ii. The application represents piecemeal development**

The proposal represents piecemeal development. The ultimate development outcome is subject to the approval of four separate development applications. A combined application should have been lodged so that the ultimate development outcome as a whole can be assessed. Failure to do this clearly represents piecemeal development.

**iii. Proposed Preliminary Approval Document (PAD)**

The level of assessment tables within the PAD provides no reinforcement of the centre hierarchy and the unintended outcome is that such unfettered development will seriously compromise the role, function and viability of other activity centres within the city.

**iv. Conflict with Strategic Plan and DEO's of the Toowoomba Planning Scheme 2003**

The proposal conflicts with the Desired Environmental Outcomes and Centres Strategy as they relate to centre hierarchy and impact on existing centres.

**v. Conflict with Strategic Frameworks of the Draft Toowoomba Regional Planning Scheme**

The proposal conflicts with the Strategic Frameworks and Specific Outcomes as they relate to centre hierarchy and impact on existing centres.

**vi. Review of the Economic Impact Assessment Report Prepared by Urban Economics**

Review of the Economic Report prepared by Urban Economics dated July 2011 finds that: there is no need for the subject centre. Key supporting points include:

- The out of scale centre in relation to the size (and needs) of the actual catchment;
- The actual level of impact generated by the large centre that is proposed to service a mature and slow growth catchment;
- The poor location of the proposed centre with respect to the actual catchment; and
- The designated role of the Northlands Shopping Centre which is better located in the catchment and is in the process of expanding

The facts and circumstances relied upon are outlined in section 4.

## **4. FACTS AND CIRCUMSTANCES RELIED UPON**

The facts and circumstances relied upon in this submission are outlined in further detail in the sections below

### **4.1 Failure to supply Mandatory Information**

The Development Application is not 'Properly Made': The Mandatory Information required in Item 6 of the IDAS Form 5 (Material Change of Use) has not been provided namely:

A Site Plan which shows:

- The location and site area of the land and to which the application relates;
- Boundaries of the relevant land;
- Any road boundaries of the relevant land including the name of the road;
- The location and use of any existing buildings or structure on the site;
- The location and use of buildings on land adjoin the relevant land; and
- The location of any retaining walls and their height.

The applicant has also failed to provide plans showing where any notifiable activities, hazardous Contaminant or potentially contaminated activity has occurred on the premises in accordance with IDAS Form 24 (Contaminated Land)

In summary, the applicant has failed to provide plans which comply with the mandatory information identified in IDAS forms 5 and 24. Section 260 (1) (c) of the Sustainable Planning Act 2009 (SPA) requires each application to be accompanied by any supporting information the approved form states is mandatory supporting information for the application. Given the failure to provide the mandatory information this application cannot be deemed to be Properly Made. Should the applicant provide plans which meet the mandatory information requirements the application is to return to the Acknowledgement Notice Stage.

### **4.2 Failure to provide Land Owners Consent**

The application has failed to include land and provide landowners consent for a number of lots which are subject to the application. The development proposes to gain access from North Street via Access easements over the Super Rooster Development Site known as Lots 12 & 13 on SP142107 and Lots 14 & 15 on RP49315.

While it is acknowledged that the proposed development has access points to Ruthven, Jones and Parrott streets the proposed access easements are the development's sole access through to North Street. These lots are subject to the development application and should have been included as part of this application not as a separate development application. As land owners consent has not been provided over the lots within the Super Rooster development the application cannot be deemed to be properly made.

Should the above mentioned preliminary points be adequately resolved facts and circumstances relied upon in this submission are outlined in further detail in the sections below.

#### **4.3 The application represents piecemeal development**

The proposal represents piecemeal development. The ultimate development outcome is subject 4 separate development applications which include.

- MCUI/2011/4899 – MCU for Supermarket, Shops and Medical Centre and Preliminary approvals varying the effect of the planning scheme. (Northpoint Shopping Centre)
- RAL/2011/5691 – RAL Access Easements (over the Super Rooster Site)
- MCUI/2009/2903 – MCU for Shop /Supermarket, Food Outlet Cafe and Food outlet Convenience Restaurant (Super Rooster Development)
- (RAL/2011/5697)RAL – Boundary Realignment ( Creates 2 development lots)

The above mentioned applications in piecemeal fashion proposed

- Legal access to North Street for the Northpoint shopping centre via access easement through the Super Rooster Site,
- Amendments to the Super Rooster Ruthven Street access arrangements to integrate with the proposed shopping centre
- The creation of 2 development parcels with associated access easement.

A combined application should have been lodged so that the ultimate development outcome as a whole can be assessed. The proposed access easements and final lot amalgamation RAL should have been included as part of the current development application and the failure to include these clearly represent piecemeal development.

#### 4.4 Conflicting Preliminary Approval Document

From our review of the level of assessment tables for the Northpoint Preliminary Approval Area / North Point Commercial Area it is apparent that the overriding provisions provide for unfettered future development potential well beyond the supporting arguments within the planning and economic reports.

Specifically, the broad range of land uses to be changes to have a level of assessment that is generally 'exempt' or 'self assessable' development will undermine the centre hierarchy of the City on the basis that it facilitates significant unrestrained commercial development which is not envisaged by the community or the planning scheme.

A number of specific aspects of the level of assessment table raise serious concern and these include the following:

- Shop (where using existing gfa and no increase in gfa of the premises) is exempt development and self assessable in all other circumstances
- Supermarket (where using existing gfa and no increase in gfa of the premises) is exempt development and self assessable where not using gfa and gfa does not exceed 3200m<sup>2</sup>
- Medical Centre (where using existing gfa and no increase in gfa of the premises) is exempt development and self assessable in all other circumstances
- Office (Service and General) is self assessable in all other circumstances
- Automotive Equipment showroom and Auto motive parts Accessories are Code Assessable

**The items raised above permit unfettered commercial development by way of uses at a scale and intensity which are well beyond the justification in the planning, traffic or economic reports.**

A major concern is that provided buildings are lawfully established, it would appear these can be converted to any type of shop, supermarket, or medical centre use without assessment, including consideration of the potential commercial impacts of such a change in use. There is an instance where a non commercial building such as a community facility could be approved via self assessable criteria then converted into commercial shop or supermarket uses as exempt development. The levels of assessment table encourage unrestrained commercial development over this side which will have detrimental impact on the city's centre hierarchy

Furthermore the nomination of offices and automotive sales uses are clearly outside the justification that the proposed centre is a used for convenience / weekly top up shopping needs. The amount of proposed floor space not used for a full line supermarket is not consistent with the scale and identify



used to justify this centre. It is likely that the proposed uses identified in the level of assessment tables and their scale and intensity will exceed the function of the neighbourhood centre role and will attract patrons from outside the trade area catchment. This proposal and uses permitted in the level of assessment tables are out of scale with the community needs and will have a detrimental effect on the existing centre and the centre hierarchy of the City.

The Preliminary Approval Area also covers the area nominated as staff car parking and stormwater bio retention / detention. As the level of assessment permits exempt and self-assessable uses, this will permit unconstrained commercial development over these areas of the site. Again, the potential for unfettered development permitted by the relaxed PAD is inconsistent with the scale and intensity of the proposed centre purported by the applications supporting planning and economic reports.

**In summation the level of assessment table provides no reinforcement of the centre hierarchy and the unintended outcome is that such unfettered development will compromise the role and function of other activity centres within the city.**

#### **4.5 Conflict with Strategic Plan and DEO's of Toowoomba Planning Scheme 2003**

The strategic outcomes for the Toowoomba Planning scheme are principally expressed through the Desired Environmental Outcomes identified in Chapter 2 – Strategic Provisions. The applicant has attempted to address DEO 1 Economic Development but has failed to address section 2.2.1 Centres Strategy.

DEO's 1 Economic Development states *Toowoomba is a regional centre with a diverse economic base that builds upon the City's strengths in manufacturing, education, community and health services, retailing and commercial activity, and provides a wide range of regional and local employment opportunities.* The applicant's justification notes that the proposal reinforces the node of local commercial activity and includes retail and commercial uses that are not of a sufficient scale or order to undermine the primacy of higher order centers including the CBD.

As identified in our assessment of the Preliminary Approval Document, the level of assessment tables permit unrestrained commercial and retail uses which is not consistent with the local /convenience top up shopping justification used throughout the proposal. Furthermore, the proposed floor space not used for a full line shopping centre is considered excessive for this type of centre and is likely to attract patrons from outside of the trade area which will have a detrimental effect on existing centers and undermine the centre hierarchy.

The proposal includes 7,291m<sup>2</sup> of gfa which is totally inconsistent with the purported role and function the Northpoint shopping centre will play. The proposal nominates that it is inline with a Suburban Centre in the current planning scheme. Suburban centres within the neighborhood precinct will generally range in size from 1,500m<sup>2</sup> to 6,000m<sup>2</sup> in Gross Floor Area (gfa). The proposed 7291m<sup>2</sup> of gfa already exceeds the scale of suburban centre neighbourhood precinct and this does not include the 1000m<sup>2</sup> of centre uses proposed as part of the Super Rooster Development or incorporate the increases in gfa permitted under the Preliminary Approval Document.

It is noted that the Wilsonton Shopping centre which is the subregional centre servicing the north side of Toowoomba only has a retail floor space of 8,852m<sup>2</sup>. The current proposal is positioning itself as a sub regional centre under the guise of a convenience and top up shopping centre. The creation of a centre with a at least 8200m<sup>2</sup> with opportunity to expand without further development applications will cumulatively have a deleterious impact on the viability, vibrancy of existing centre's and the centre hierarchy of the City

The applicant's justification for the proposed centre's compliance with DEO 1 also attempts to undermine the role and potential of the Northlands Centre instead of providing sound planning economic arguments in support of the proposed development. The condition of the Northland Centre should not be the rationale for Council to permit out of centre development which will seriously impact the role, function and variability of existing centre as well as undermining the City's centre hierarchy. It is noted that the owner of the Northland Centre has intentions to expand and has already purchased adjoining land holding with the aim to expand the centre.

As mentioned above the applicant has failed to address the section 2.2.1 Centers strategy of the Toowoomba Planning Scheme namely Item 4.

*(4) In relation to any proposal for additional floor space outside a zoned centre:*

- a) it must be demonstrated that:*
  - I. there is a need for additional floor space to serve the community. This will be considered in the context of such factors as additional population arising from in-fill residential development and the need for more modern floor space than may exist in older local or neighbourhood centre buildings;*
  - II. the existing Centres do not, and cannot, satisfy that need; and*
  - III. the economic viability of any existing centre will not be adversely affected; and*
- b) where the additional floor space is justified by (a) above, it is provided as an extension of an existing centre, rather than as a new centre.*

The supporting planning and economic reports prepared as part of this development application have not demonstrated consistency with the Centre Strategy in that:

- The existing centers (namely Northlands) can satisfy the need of the for additional floor space. It is also noted that the approved Super Rooster development includes a 500m<sup>2</sup> supermarket which will service the convenience, top up shopping needs for the immediate locality.
- The proposed centre with the capability for further unrestrained growth through a relaxed PAD will clearly impact on the viability of the existing centers (Northland's alone has been nominated as a 12% impact). It is acknowledged in the economic assessment prepared by Urban Economics notes that the **Northlands centre will experience tighter trading conditions with some increase in vacancies likely**. This is considered adverse given the low growth nature of the north east Toowoomba area. The Urban Economics Report further details that the Northlands centre will have an impetus for repositioning the convenience orientation of the centre. As detailed below there is no intention for the Northlands centre to be directed toward Convenience based shopping.
- The existing centers can expand and accommodate the justified additional floor space. The existing Northlands Centre is located on a land parcel of 8,172m<sup>2</sup> and has the capacity to grow and expand strengthening the district centre role the centre already plays in the North East Toowoomba region. Furthermore, additional landholdings have already been acquired by the centre owner with the view to expansion.

The Northlands Centre under the current provision is within the Neighbourhood Precinct of the Suburban Centres Zone and it is intended that centres within this zone will accommodate a variety of specialty shops, restaurants / cafes, small-scale medical and health services and commercial uses. Furthermore, it is intended that these centres will generally range in size from 1,500m<sup>2</sup> to 6,000m<sup>2</sup> in Gross Floor Area (GFA) and will include a medium to large scale supermarket of 500m<sup>2</sup> to 3,000m<sup>2</sup> GFA. There is **no intention** from the owner or the planning scheme for Northlands centre to be reorientated towards convenience shopping as nominated by the Urban Economics Report.

#### **4.6 Conflict with Strategic Framework of Draft Toowoomba Regional Planning Scheme**

Under the Draft Toowoomba Regional Planning Scheme, the site is located within the proposed Residential Living Zone, Residential Choice Zone and the Low-Impact Industry Zone. The Site has not been identified as an Activity Centre at any level. Should there be such a compelling needs argument for the proposed centre it would be envisaged that the proposed locality would have been nominated as a centre in the upcoming Toowoomba Regional Planning Scheme.

The draft planning scheme sets out Toowoomba Regional Council's intention for the future development in the planning scheme area, over the next 20 years. The need for a centre in this location has not been identified by Council within next 20 year timeframes clear making reference that the existing centers in this catchment can accommodate any additional growth / commercial needs.

This is further strengthened by Specific Outcome 5 of the Activity Centre and Employment element of the Strategic Framework in the draft Toowoomba Regional Planning Scheme. Specific Outcome 5 prevents out-of-centre land use and development that would detrimentally impact on the function and viability of existing activity centers. As identified previously sections of the report the proposed out of centre development will detrimentally impact on the function and viability of the existing Northlands Centre. Furthermore the relaxed provisions in the Preliminary Approval Document allows unfettered commercial development which will undermine the role and function of existing centre's and the City's centre hierarchy

In summation the draft Toowoomba Regional Planning scheme which will guide the city for the next 20 years has not nominated this locality as a centre and has not indentified the need for an additional centre in north east Toowoomba district demonstrating that the existing centre's can accommodate future demand an growth. This serves to reinforce the statutory planning position that establishment of a new shopping centre in this locality is not in accordance with the provisions of the planning scheme and represents inappropriate 'out of centre' development.

#### **4.7 Review of the Economic Impact Assessment Report prepared by Urban Economics**

Mr Will Owen the Technical Director – Economics from RPS Group has reviewed the Economic Report prepared by Urban Economics dated July 2011. The Urban Economics Report provides an economic assessment of the proposed 7,270m<sup>2</sup> Northpoint Shopping Centre. The proposal includes a 3,436m<sup>2</sup> supermarket (inc offices), 393m<sup>2</sup> medical centre, 2,117 m<sup>2</sup> of specialty retail and 469 Sq M of specialty retail/medical.

Initial observations are that the retail mix provides for an extensive amount of specialty retail space (up to 2,586m<sup>2</sup>). This amount of floorspace will easily host 25 to 30 specialty stores which is out of scale for a modern neighbourhood centre as contemporary full line supermarkets will only support (at most) 10 to 15 specialty stores. We are forced to conclude the centre is out-of-scale for the catchment or will exceed its function beyond that of a neighbourhood centre by catering to highway based trade or to patrons located outside the defined catchment.

This situation is exacerbated when considering the adjacent Super Rooster approval (which was not addressed in the Urban Economics Report). Together these centres will create a precinct that is out of scale with a neighbourhood centre, generate a significant number of vacant stores or create an unacceptable level of impact.

Whilst we are in general agreement with the methodology and data contained in the Urban Economics report, we do disagree with the definition of the trade area. The trade area extends too far to the west towards the Wilsonton Shopping Centre. The community that lives to the west of the industrial area will naturally gravitate towards the (soon to be expanded) Wilsonton Shopping Centre. **This places the subject site in an edge location with respect to the majority of the catchment population** and reduces the size of the catchment (reducing the scale of the needed centre).

These factors will combine to exacerbate the level of projected impact of the proposed centre. The EIA has not adequately assessed the level of impact that will be generated by a very large supermarket anchored centre that is out of scale with the needs of the community. It is very likely that significant long term vacancies will occur in this slow growth and mature catchment. This is (in part) attributed to the scale of the proposal and the lack of acknowledgement of the adjacent retail approval.

We concur with the overall premise that the north eastern suburbs of Toowoomba have the capacity (and need) to support a supermarket anchored shopping centre of some scale. The Northlands Shopping Centre is designated to fill this role. Development on the subject site will not only significantly impact the current operation of the Northlands Shopping Centre it will prevent this centre from expanding to fulfill its intended and designated role. It is understood the owner of the Northpoint Shopping Centre is acquiring sites and will expand the centre. The Northpoint Shopping Centre is preferred to the subject site as it is **located centrally in the catchment** and (after expansion) will be better scaled to meet the needs of the local residents.

Consequently, it is considered there is no need for the subject centre. Key supporting points include:

- The out of the scale centre in relation to the size (and needs) of the actual catchment
- The actual level of impact generated by the large centre that is proposed to service a mature and slow growth catchment
- The poor location of the proposed centre with respect to the actual catchment
- The designated role of the Northlands Shopping Centre which is better located in the catchment and is in the process of expanding

#### 4.8 Expansion of the Northlands Centre

The Northland FoodWorks is located at 3 Andrews Street, North Toowoomba and is more formally described as Lot 1 on RP120556. The site comprises an area of approximately 8,172m<sup>2</sup> and has frontage to both Hume Street and Andrews Street. As Figure 1 below illustrates, the site is located fronting and proximate to major higher order roads. The site is also centrally located to service the community of the north-eastern suburbs of Toowoomba.

The Northland Shopping Centre currently comprises, but it is not limited to, the following types of tenancies:

- FoodWorks Supermarket;
- Chemist;
- Butcher;
- Bakery;
- Newsagent;
- Bottle Shop;
- Hair Salon;
- Take Away Food Outlet;
- Heritage Bank; and
- Australia Post Office.



**Figure 1: Aerial Photo**

Source: NearMap.com

### Land Use Zoning

Currently, under the *Toowoomba Planning Scheme 2003* the site is located within a Neighbourhood Precinct of the Suburban Centres Zone. Under the current provisions, it is intended that centres within the Neighbourhood Precinct will accommodate a variety of specialty shops, restaurants / cafes, small-scale medical and health services and commercial uses. Furthermore, it is intended that these centres will generally range in size from 1,500m<sup>2</sup> to 6,000m<sup>2</sup> in Gross Floor Area (GFA) and will include a medium to large scale supermarket of 500m<sup>2</sup> to 3,000m<sup>2</sup> GFA.

### Future Expansion

As identified throughout this report it is the intent of the Northlands owner centre to expand the centre. The existing centre is located on a land parcel of 8,172m<sup>2</sup> and has the capacity to grow and expand strengthening the emerging district centre role the centre already plays in the North East Toowoomba region.

Additional landholdings have already been acquired these include, 2 Hume St (Lot 9 R.P. 51984) and 110 North St (Lot 13 R.P. 51984) and there are ongoing negotiations with other landholders.

The Economic and Planning reports have attempted to undermine the role and function of the Northland Centre by saying it is in need of refurbishment. It has always been the intention of the centre owner to expand and grow the centre however recent extenuating circumstances have prevented any further action occurring on this during 2011. The centre expansion strategy was inadvertently impacted due to a series of extenuating circumstances which relate to centre owner losing 2 hotels in the January 2011 floods as well as another hotel this year which was gutted by fire. This unexpected adversity required the owner's full attention and finances to rebuild and establish his businesses. Nevertheless it is now the centres owners' main priority to resume the Northlands Centre improvement and expansion strategy.

In summation due to unforeseen circumstances the centre improvement and expansion strategy was impacted in 2011 nevertheless the condition of the Northland Centre (which is located within designated centre zone and has the capacity to expand) should not be the rationale for Council to permit out of centre development which will seriously impact the role, function and variability of existing centre as well as undermining the City's centre hierarchy.

## 5. ASSESSMENT AND DECISION RULES

The proposed development is Impact Assessable. Sections 327 and 329 of SPA set out decision rules applicable to the application.

Specifically section 329 (1b) sets out rules the decision rules for *development* - *The assessment manager's decision must not conflict with a relevant instrument unless*

*(b) there are sufficient grounds to justify the decision, despite the conflict;*

As outlines above the applicant has not demonstrated that there are any planning grounds to support the proposal despite the conflict. Any grounds would be matters of private interest only and there fall outside of the SPA definition of Sufficient Grounds. Furthermore the proposal compromises the achievement of the statutory and strategic intents of the Planning Scheme and should therefore be refused.



## 6. CONCLUSIONS AND RECOMMENDATIONS

The Grounds, facts and circumstances relied upon in this submission are summarised as:

- The application is not properly made as the relevant mandatory information and land owners consents have not been provided.
- The application represent piecemeal development as the overall development outcome is subject to four separate development applications. Failure to submit a combined development application has prevented the public from being able to adequately assess all impacts of the proposal.
- The level of assessment tables within the Preliminary Approval Document provide no reinforcement of the centre hierarchy and the unintended outcome is that such unfettered development will severely compromise the role, function and viability of other activity centres within the city.
- The proposal conflicts with Strategic Plan of the Toowoomba Planning Scheme 2003 including DEO's and the Centre Strategy in relation to the scale and role of the proposed centre and the adverse impacts on the existing centre and the city centre hierarchy
- The proposal conflicts with Strategic Framework of the Draft Toowoomba Regional Planning Scheme as they relate to centre hierarchy and impact on existing centres
- Economic Assessment report prepared by Urban Economics fails to demonstrate a need for the creation of a large out of centre development which is beyond the communities need and will have a detrimental impact on existing centres.
- The existing Northlands Centre is able to accommodate any expected growth for additional floor space within the North East Toowoomba district
- Due to extenuating circumstances the Northlands Centre improvement and expansion strategy was delayed in 2011 nevertheless the condition of the Northland Centre should not be the rationale for Council to permit out of centre development which will seriously impact the role, function and variability of existing centre as well as undermining the City's centre hierarchy.
- The applicant has not demonstrated planning grounds to support the proposal despite the conflict

Based on the abovementioned merit issues, the development application should be subsequently refused