

QELA SEMINAR – 27 October 2016

ECONOMIC EXPERT – 101

By

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Abstract

Economics is one of many disciplines the Queensland Planning & Environment Court draws upon as experts. This paper seeks to provide an overall summary of the role of the Economic Expert in this Court, a basic “101” class as it were. It provides an overview of the economic discipline, reviews the history of how we became involved in the Court process and summarises the key principles and terms applied by Economic Experts.

Economic Consultants

Economics is a social science that studies the wealth of people, businesses and nations. In particular, it is a study of the allocation of scarce resources to satisfy the wants and desires of these three entity types. It is thus concerned about individual, firm and national behaviours and how wealth is created, distributed and consumed.

Economics is typically broken down into two main streams; macroeconomics and microeconomics.

Macroeconomics is the study of economies at the global and national level, typically utilising a top-down approach and involving such concepts as national income, national output, economic growth, unemployment rate, price inflation, interest rates, monetary policy and fiscal policy. Many macroeconomists are employed by treasury departments contained within the federal and state governments. Some remain within academia. A very small number act as consultants to government agencies.

Microeconomics is the study of how individuals and businesses operate within market systems, typically utilising a bottom-up approach. Microeconomics involves concepts such as supply, demand, market power, market failure, monopoly, market equilibrium, economic cost of production, economic efficiency, comparative advantage, utility, marginal cost, elasticity, factors of production, externalities and uncertainty. Microeconomists are typically employed within government departments, large businesses and academia. A small number act as consultants to businesses and government agencies.

I describe myself and my competitors as applied microeconomists. We apply microeconomic theory to problem-solve real world issues at the business level. Most of our clients are businesses, although a portion of our work is relevant to government agencies. Prior to the influence of the Planning & Environment Court (and its predecessors) our consulting projects typically involved the following:

1. Market assessments – assessing the market potential of a new product, project, property development, etc;
2. Feasibility studies – assessing the financial feasibility of a particular project, development or business unit;
3. Demographic reports – reporting on the population and demographic characteristics of a catchment within which a business was operating or intending to operate;
4. Highest and best use studies – assessing the various potential uses of a property and recommending the use that would deliver the greatest return to the owner;
5. Shopper surveys – surveys of shoppers to a shopping centre to understand their origin, characteristics, behaviour and attitudes. This would assist the shopping centre owner with its marketing and development strategies; and
6. Branch location strategies – development of a strategy designed to maximise a business' reach into a particular market sector.

A common theme to the above types of studies was the desire of our business client base to maximise its profits. As discussed below, this is an aspect that is not relevant to the Planning & Environment Court, and hence the planning assessment process.

As a social science, we rely upon more than just the discipline of economics, borrowing heavily from geography, statistics, finance, market research and regional development.

Historic Involvement in Queensland Planning Assessment

To the best of my recollection and research, the role of the economic expert in Queensland's planning system commenced, or at least increased exponentially in 1980 as a result of legislative amendments. The *Local Government Act and Another Act Amendment Act 1980* and the

City of Brisbane Town Planning Act & Another Act Amendment Act 1980

required the preparation of an Economic Impact Assessment where a planning application applied to a Major Shopping Centre or part thereof (section 33(6A) of the *Local Government Act 1936*

), with the relevant definitions being:

*"Economic Impact Assessment – A study report including an assessment of the **public need and demand***

for a major shopping development and a statement of the

likely economic impact

upon existing development of a similar nature or involving similar activities in the locality and in the estimated area of influence of the proposed development if such proposal were implemented"

(section 33(1) of the

Local Government Act 1936

– emphasis added).

"Major Shopping Centre – A development that includes or comprises –

1. *(a) the use of land exceeding 1.5 hectares in area or such other area as the Governor in Council prescribes from time to time by regulation; or*
2. *(b) the erection or use of any building or other structure or part thereof where the building or other structure or part thereof has a gross floor area exceeding 4,000 square metres or such other area as the Governor in Council prescribes from time to time by regulation,*

where the use of land or the erection or use of the building or other structure or part thereof is primarily for the purpose of shops“ (section 33(1) of the Local Government Act 1936).

This Amendment was enacted by the then National Party government in response to lobbying efforts by Queensland shopkeepers who complained that the advent of new suburban shopping complexes during the mid- to late-1970s were forcing them out of business.

Economic consultants were then engaged by developers to prepare these Economic Impact Assessments and then by local authorities to interpret and peer review these Economic Impact Assessments.

The planning sections contained within the *Local Government Act 1936* were then replaced by the *Local Government (Planning and Environment) Act 1990*

, which included similar provisions. However, the threshold for Major Shopping Centres was increased to in excess of 2.5ha or involving a floor space exceeding 6,000m²

(s1.4(1)) and greater detail was set out for the requirements of the Economic Impact Assessment (s8.3(1)):

“For the purposes of this section the term “economic impact assessment” means a study report which is an assessment of the public need and demand for a proposed major shopping development and a statement of the likely economic impact upon existing development of a similar nature in the locality which is to include-

- 1. (a) a comprehensive statement of details of the proposed development incorporating the gross floor area of the proposed development, the types of major retailing envisaged (including pre-commitments, if any), vehicle parking provision proposed, major features (if any) and particulars of the site for the proposed development;*
- 2. (b) the geographic identification of the primary, secondary and, where appropriate, the tertiary market catchments for the proposed development together with reasons to support that identification;*
- 3. (c) assessment of the existing population in each of the catchment areas referred to in paragraph (b) together with the growth forecasts, demography and socio-economic profile for each population group identified;*
- 4. (d) identification of existing and approved market competition for the proposed development in the catchment areas identified pursuant to paragraph (b) and the gross floor area and the nature of that competition;*
- 5. (e) estimates of the value and distribution of retail sales within the total catchment area of the proposed development for the second year of trading of that proposed development;*
- 6. (f) identification of the beneficial and adverse effects that are likely to result from implementation of the proposed development; and*
- 7. (g) a summary of the findings of the study results.”*

In 1992, the requirement to prepare Economic Impact Assessments for Major Shopping Developments had been removed from the *Local Government (Planning and Environment) Act 1990* by the Labor government of the day through the *Local Government (Planning and Environment) Amendment Act 1992*. But by then the role of economic experts had become entrenched in Queensland’s planning system. Our involvement had been ongoing for 12 years and many local authorities had duplicated these provisions into their own planning schemes, ensuring that the requirement to produce

Economic Impact Assessments endured well beyond 1992.

The increasing complexity of subsequent planning legislation ensured that the concepts of Economic Impact Assessments, public need and economic impact remained relevant, even after their requirements had been removed from the legislation in 1992. The combination of strategies, planning policies, desired environmental outcomes and performance outcomes in planning schemes and the legislative requirements to demonstrate planning grounds and grounds perpetuated the involvement of economic experts from 1992 through to today.

This legislation may well explain why many of the economic consultants operating in this area are viewed as being shopping centre experts. We are perhaps not as well-known as being experts in other industry sectors.

This combination of legislative and planning scheme requirements gradually spilled over to uses beyond shopping centres. I have now participated in the planning assessment process for the following range of non-shopping centre uses:

1. Abattoir;
2. Aged care facility;
3. Airport;
4. Bottle shop;
5. Caravan park;
6. Car park;
7. Cattle saleyard;
8. Childcare centre;
9. Cinema;
10. Club;

11. Crematorium;
12. Cruise terminal;
13. Golf course;
14. Hospital;
15. Industrial;
16. Landfill;
17. Marina;
18. Medical centre;
19. Motel;
20. Nightclub;
21. Office;
22. Residential;
23. Resort;
24. Restaurant;
25. Retirement village;
26. Service station;
27. Tavern;
28. Tourist attraction;
29. Quarry; and
30. Workers accommodation village.

Essentially, economic experts apply the same suite of research tools to planning assessments that have been developed and traditionally applied to feasibility analyses. The main difference is the focus upon public need and economic impact, rather than profit or return. These tools include:

1. Gravitational theory to develop catchment areas;
2. Population projections;
3. Demographic analyses;
4. Surveys of shoppers and other members of the public;
5. Competitive assessments;
6. Supply and demand analyses, including various forms of modelling;
7. Input/output modelling;
8. Impact assessments; and
9. Assessment of externalities.

Key Public Need/Economic Impact Principles

The development of public need and economic impact principles in Queensland's planning sector has mainly developed through the Court system.

A relevant starting point on the concept of need was set out in *Watts & Hughes Properties Pty Ltd v Brisbane City Council* [1998] QPELR 278:

"Need in the town planning sense does not mean a pressing need or a critical need or even a widespread desire. A thing is needed if its provision, taking all things into account, improves the physical wellbeing of a community. Need does not connote a pressing urgency but relates to the wellbeing of the community. A use would be needed if it would, on balance, improve the services and facilities available in a locality."

The following is a summary of the key principles of relevance to economic experts, although is by no means a complete list.

1. Need must **relate to the community** and not to an individual or applicant. *"A thing is*

needed if its provision, taking all things into account improves the physical wellbeing of the community"

Cut Price Stores Retailers Ltd v Caboolture Shire Council
[1984] QPLR 126).

2. Need should **not be speculative**. *"It should not, in my opinion, be thought that a rezoning can be justified by merely contriving a need which is essentially nothing more than an exercise in entrepreneurial skill, the effect of which is to give the applicant some commercial advantage"*
(*Williams McEwans Pty Ltd v Brisbane City Council* [1981] APA 165).

3. Public need is **not the same as demand**. *"What has been shown is that there will probably be a substantial demand for the new complex ... However, demand is not the same thing as need"*
(*Queensland Investment Corporation v Toowoomba City Council* [2000] QPLR 362).

"I interpret the phrase 'public need' as involving a different concept from the word 'demand'. The latter suggests a subjective desire for the development ... A responsible authority should not permit the establishment of a white elephant"
(*All-A-Wah Carapark v Noosa Shire Council* [1989] QPLR 155).

4. Need is **not the same as economic viability**. *"It should also be said that such an approach really looks at the matter from the point of view of economic viability which is not necessarily determinative of need"*
(*Holdings Pty Ltd v Caloundra City Council* [2002] QPELR 1).

5. Need requires the existence of a **latent unsatisfied demand** and/or the demonstration that there is **some inadequacy** about the current range of facilities.
"Given an addition to existing choices a number of consumers are likely to avail themselves of it as a matter of human experience. While this indicates a consumer preference, to an extent which is, however, debateable, it does not demonstrate inadequacy in the existing arrangements and therefore falls short of showing a planning need for the development"
(*Intrafield Pty Ltd v Redland Shire Council* [2000] QPLR 337).

6. Need involves a **lower test than pressing necessity**. *"Need in planning terms is a relative concept. It does not connote pressing urgency but rather relates to the general wellbeing of the community. A use would be needed if it would on balance, improve the services and facilities available in a locality"*
(*Roosterland Pty Ltd v Brisbane City Council*

[1986] QPLR 515).

7. Need does **not involve arguments about better sites** or the best use for the subject site. *"It was long ago established that in the former consent application appeals it was not the function of this Court to consider whether a better site existed for the proposed use but to decide whether consent should be given for the particular use on the particular site"*

(
Ugarin Pty Ltd v Logan City Council
[2004] QPELR 392).

8. **Commitments by retailers** is some assistance in demonstrating need. *"Various prospective tenants of the proposed shopping centre gave evidence of their plans. Together they will take 1,530 – 1,620 square metres. I consider that this alone is some indication of the need and demand for the proposal"*

(
Shillington Investments Pty Ltd v Brisbane City Council
[1992] QPLR 94).

9. **Planning policies and other designated land and approvals** is relevant to need. *"Planning need extends beyond economic or retail need, which is related only to public demand. Planning need embraces a consideration of planning policies and documents"*

(
Elfband Pty Ltd v Maroochy Shire Council
[1995] QPLR 290).

"When considering whether additional land should be included within a zone, it is relevant to consider the extent to which land currently so zoned is available or can be utilised for the proposed purposes for which a need has been established ... Once public need has been demonstrated it is then relevant to consider whether that need could be met by land already zoned or whether there is a public requirement that additional land should be set aside out of the Town Planning Scheme in order to meet that need"

(
Anka Builders (Gold Coast) Pty Ltd v Maroochy Shire Council
[1986] QPLR 436).

10. **Prematurity can undermine need.** *"It would seem appropriate in those circumstances, to refuse an application which is contrary to the current planning documents and is premature in terms of any public or community need"*

(
Family Assets Pty Ltd v Gold Coast City Council
[2008] QPEC 003).

11. The consideration of need involves the **consideration of a wide range of community benefits**, including convenience, accessibility, choice, range, depth, price, employment, shopper comforts and amenity, economic sustainability, passing trade and escape expenditure.

12. **Economic impact** in a planning sense relates to the facilities enjoyed by the community rather than the profitability of individual businesses.

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

(
Kentucky Fried Chicken Pty Ltd v Gantidis
[1979] HCA 20).

Following a detailed review of the above (and many other) cases, I have found it convenient to split need into three quite discrete parts. These are community need, economic need and planning need. Some of my opposing experts are uncomfortable about the planning need component (preferring to leave this aspect to town planners), although I consider that there is little overlap with the planners, as explained below.

Community need is about identifying how the community may benefit from the proposed facility. It involves identifying who in the community would benefit, how many might benefit and how they would benefit (eg convenience, range, accessibility, price, etc). This community need really relates to the demand element mentioned by the Judge in *All-A-Wah Carapark v Noosa Shire Council* [1989] QPLR

155. Whilst it is perhaps difficult to think of a proposal that would not benefit someone or some element of a community, its identification, description and quantification should allow a view to be taken as to how strong or weak the community need might be.

Economic need follows from community need and involves an assessment as to whether the quantum of the community likely to patronise the proposed facility would be of a sufficient size as to support the proposal in an economic sense. Again referencing *All-A-Wah Carapark v Noosa Shire Council*

[1989] QPLR 155, the Judge found that there was a local community that wanted a department store to locate at Noosaville, but there was an insufficient population living in its catchment to support it on an economic basis. He ruled that the demand (community need) fell short of need (economic need). It is not in the public's interest to approve a facility that is doomed to fail.

Planning need is the third element to be examined and involves an examination of the extent to which the planning policies and documents can accommodate the identified community and economic need. As set out above, it requires an examination of the extent to which relevant planning zones and other approvals can accommodate the need. The differentiation of economic need and planning need was considered in *Smalley v Whitsunday Regional Council* [2011] QPEC 105. In that case Judge Searles found that whilst there was a strong economic need for the proposed use in the area, there was no planning need for the proposal to be developed on the subject site due to the availability of other suitable appropriately zoned land. In my view, planning need is restricted to the assessment of alternative sites that are appropriately zoned, designated and/or approved. It does not involve the assessment of a wider range of issues normally dealt with by town planners, such as amenity impacts, conflicts, sufficiency tests and the like.

An important aspect of community, economic and planning need follows from the Court of Appeal decision of *Weightman v Gold Coast City Council & Anor* [2002] QCA 234. This decision requires the Court to examine the nature of the conflict, determine whether there are any planning grounds (or grounds under current legislation) that may overcome the conflict and determine the extent to which those planning grounds (grounds) are, on balance, sufficient to overcome the conflict. With need frequently being cited as a principal ground to overcome planning conflicts, I say that it is necessary for the economic expert to form a view as to the strength or otherwise of community, economic and planning need in order to assist the Court in its weighing up of conflict against need as one of the grounds. Whilst the mathematician in me might prefer to award a score out of seven, I have gravitated towards using a range of

adjectives and leaving it to the Court to interpret those and compare against the nature and strengths of conflicts. I frequently use the following adjectives, listed from weakest to strongest: no (0); insignificant, inconsequential or negligible (1); minor (2); modest (3); considerable (4); strong, major, substantial (5); extremely large (6); and urgent, pressing or critical (7).