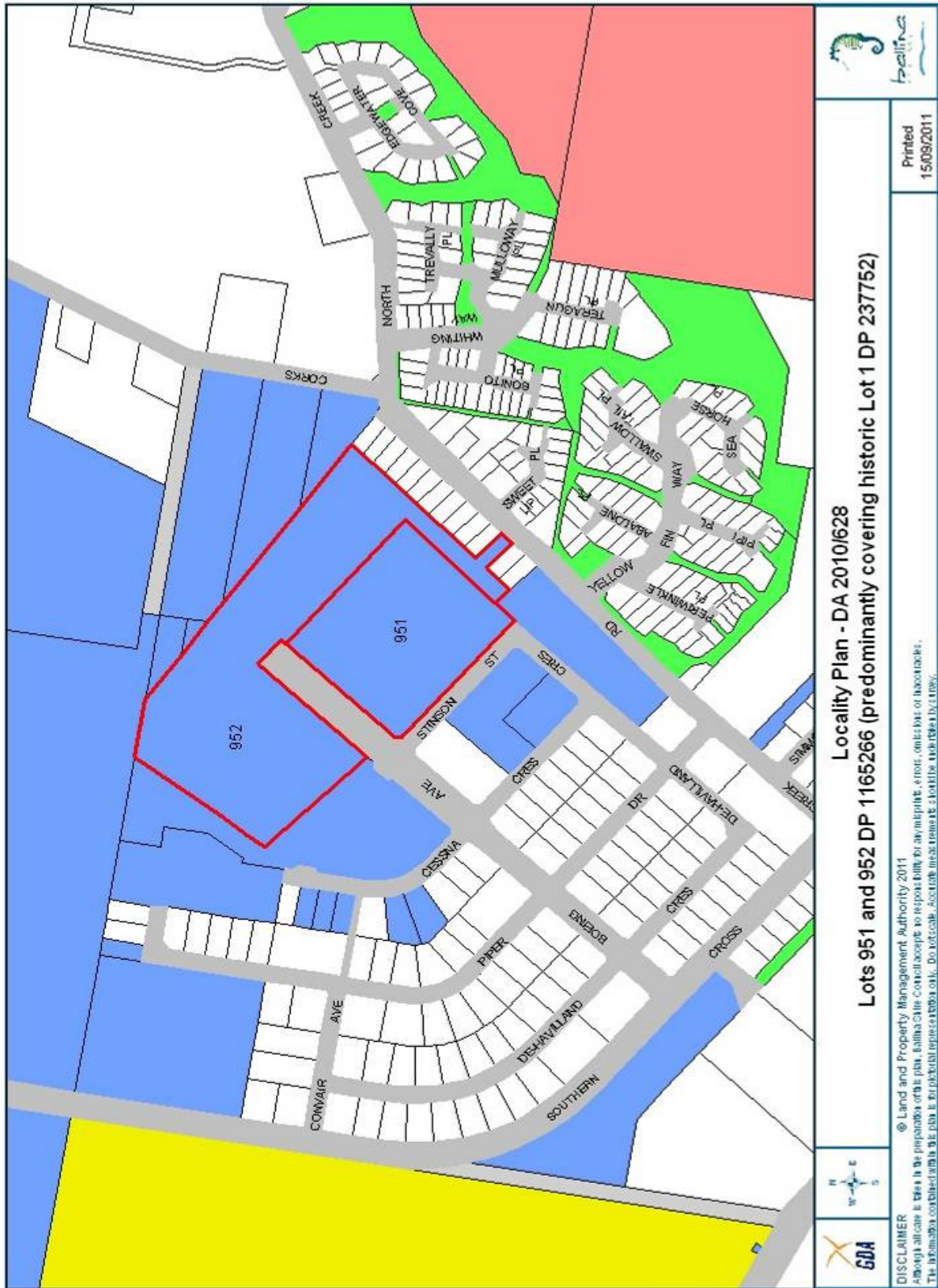


8.1 **DA 2010/628 - Pharmacy Warehouse at Unit 4, Harvey Norman Complex**

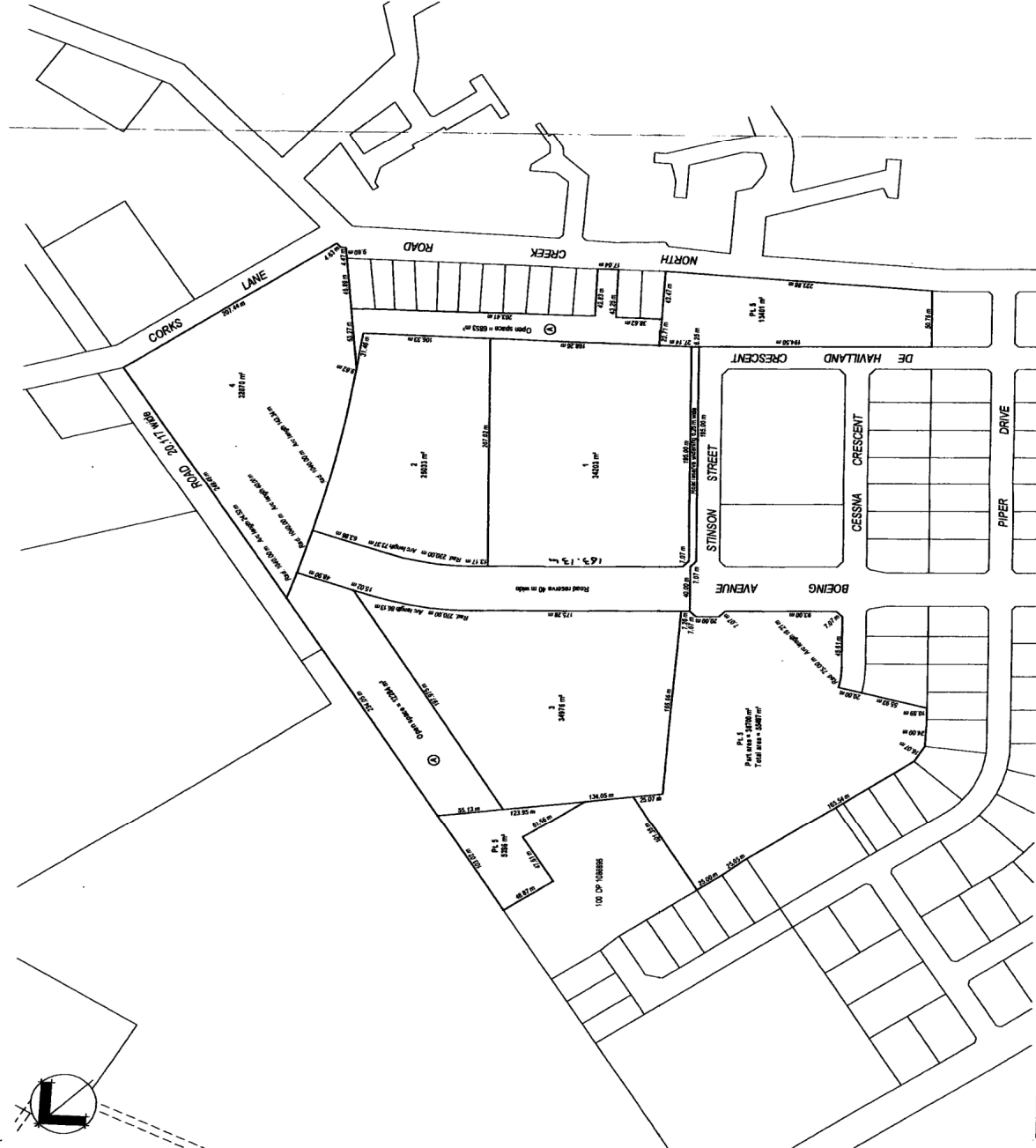


Printed  
15/09/2011

**Locality Plan - DA 2010/628**  
**Lots 951 and 952 DP 1165266 (predominantly covering historic Lot 1 DP 237752)**



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 The information contained in this plan is for informational purposes only. Do not rely on this information for any legal or financial purposes.  
 The information contained in this plan is not to be used for any other purpose.



Open spaces to be dedicated as public reserves

No.	Description	Area	Notes
1	Open space	100.00 m²	
2	Open space	100.00 m²	
3	Open space	100.00 m²	



Level 14 Valley Road  
Ballina NSW 2463  
Tel: 02 6621 7782  
Fax: 02 6621 7783  
Email: info@geolink.com.au  
www.geolink.com.au

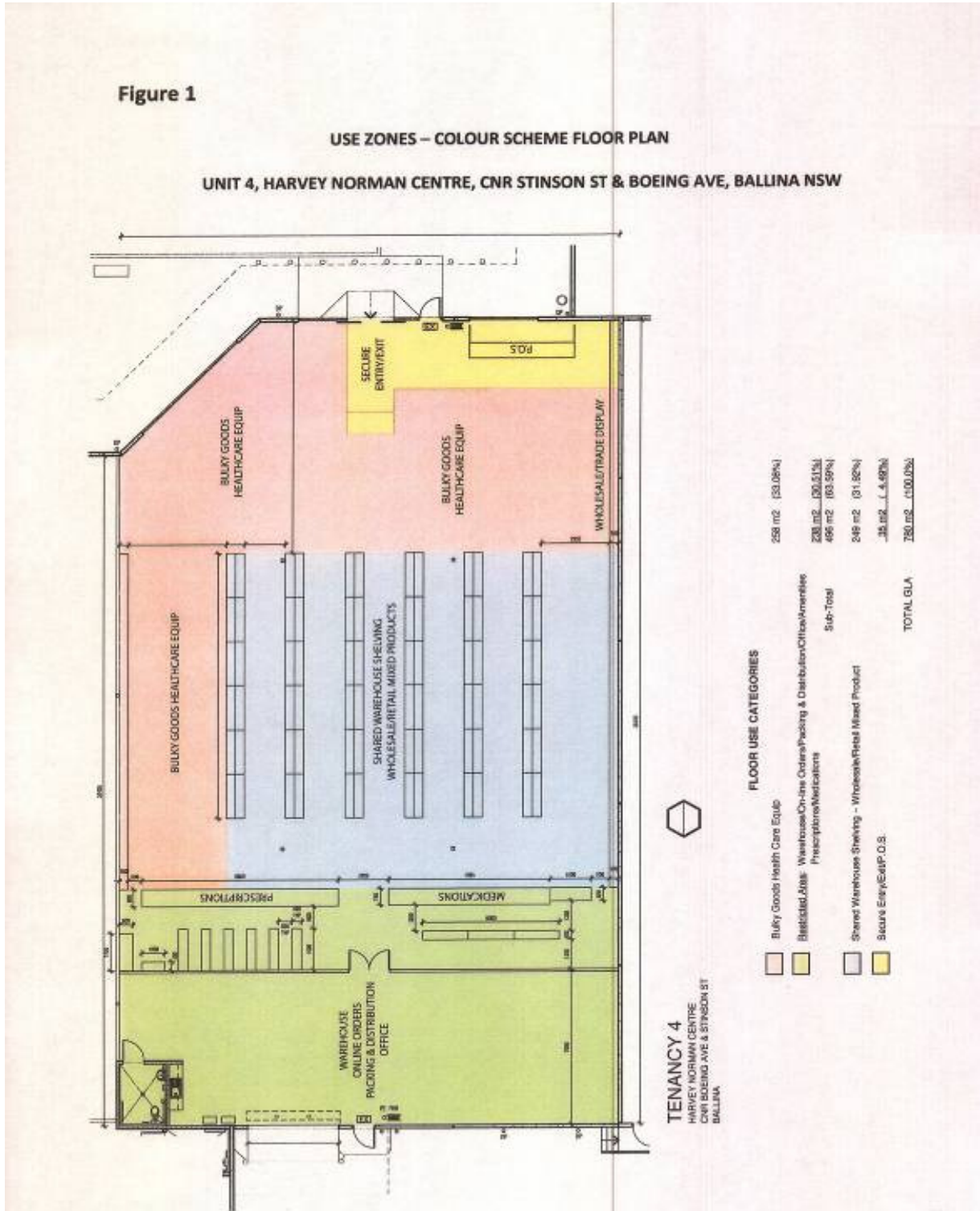
Project No	Client	
123126	Southern Cross Industrial Estate	
Design	Phase	Date
Final	100%	12/10/11
Author	Check	Date
J. Smith	M. Jones	12/10/11

Final Lot Layout  
Drawing No: 123126  
Drawing Date: 12/10/11  
Drawing Scale: 1:1000

Figure 1

USE ZONES – COLOUR SCHEME FLOOR PLAN

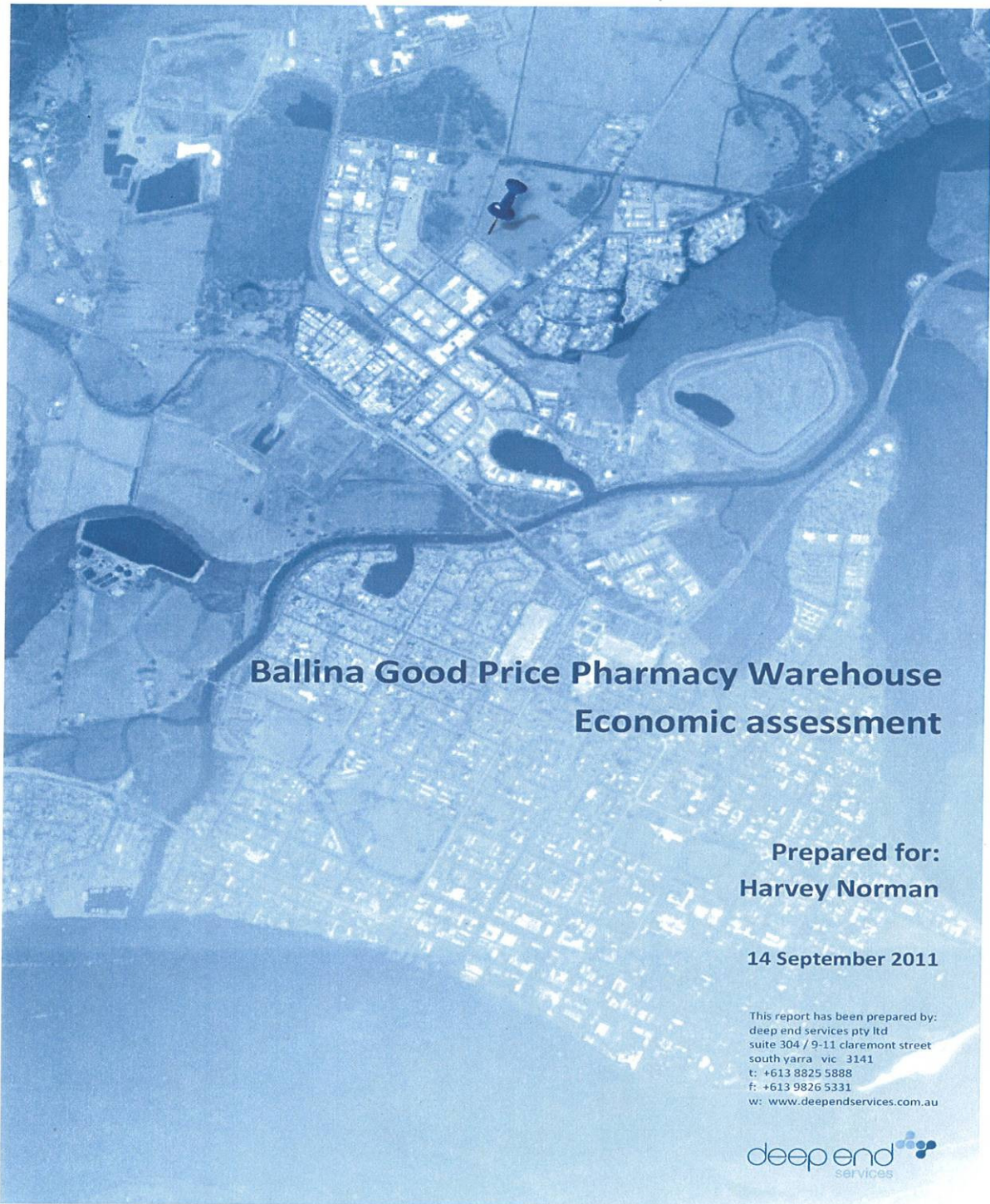
UNIT 4, HARVEY NORMAN CENTRE, CNR STINSON ST & BOEING AVE, BALLINA NSW



TENANCY 4  
 HARVEY NORMAN CENTRE  
 CNR BOEING AVE & STINSON ST  
 BALLINA

FLOOR USE CATEGORIES

Bulky Goods Health Care Equip	258 m2	(33.06%)
Retail/Trade: Warehouse/On-line Orders/Packing & Distribution/Office/Amenities/Prescriptions/Medications	238 m2	(30.21%)
Sub-Total	496 m2	(63.27%)
Shared Warehouse Shelving - Wholesale/Retail Mixed Product	248 m2	(31.56%)
Secure Entry/Equip O.S.	35 m2	(4.49%)
TOTAL GLA	780 m2	(100.00%)



**Ballina Good Price Pharmacy Warehouse  
Economic assessment**

**Prepared for:  
Harvey Norman**

**14 September 2011**

This report has been prepared by:  
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Project Code            DH1201  
Date                      14 September 2011

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This report contains forecasts of future events. These forecasts are based upon numerous sources of information, including historical and forecast data provided by organisations such as the Australian Bureau of Statistics, Good Price Pharmacy Warehouse, Harvey Norman and MapInfo Australia. It is not always possible to verify that this information is accurate or complete.

It should be noted that the factors influencing the findings in this report may change and hence Deep End Services Pty Ltd cannot accept responsibility for reliance upon such findings beyond a date that is six months from the date of this report. Beyond that date, a review of the findings contained in this report may be necessary. This report should be read in its entirety, as reference to part only may be misleading.

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## 1. Introduction

This report has been prepared by Deep End Services ("Deep") on the instructions of David Scurr, Senior Development Manager for Harvey Norman. Harvey Norman has asked Deep to prepare an assessment as required by the Ballina Shire Council ("Council") under Clause 27(4)(c) of the 1987 Ballina Local Environment Plan ("LEP") for the proposed opening of a large format Good Price Pharmacy Warehouse ("GPPW") at the Harvey Norman Centre in Ballina.

Clause 27 applies to the sale of bulky goods and not involving the selling of "...food or clothing... for the purposes of produce stores." It includes Clause 27(4)(c) which states that "The council shall not consent to an application to carry out development referred to in subclause (3) unless it is satisfied that the proposed development will not detrimentally affect the viability of any business centre."

Bulky goods have been defined as "large goods which are, in the opinion of the council, of such a size and shape as to require...a large area for handling, storage or display...and easy and direct vehicular access to enable the goods to be collected by customers after sale."

In preparation for this report, Deep has reviewed background material from a number of sources and documents including:

- *Ballina Retail Assessment Background Report*, dated 13 January 2003, produced by IBECON for Ballina Shire Council;
- *Market review for the proposed Harvey Norman Centre*, produced by Deep in September 2008;
- *NSW/ACT Shopping Centre Directory, 2010*, published by the Property Council of Australia;
- Overview report dated 25 March 2011 and submitted by Remnus Pty Ltd in support of Development Application (DA) No. 2010/628 for a GPPW in the Harvey Norman Centre;
- Letter dated 19 April 2011 from Maddocks to Ballina Shire Council in respect to DA 210/628;
- Letter dated 30 May 2011 from Thomsons Lawyers to Harvey Norman in respect to DA 210/628;
- Supplementary Overview Report dated 19 June 2011, submitted by Remnus;
- Letter dated 2 August 2011 from Harvey Norman to Council; and
- Letter from Council dated 1 September 2011.

In September 2011, Deep also inspected all existing pharmacies and business centres in Ballina.



## 1.1 Abbreviations

The following abbreviations are used throughout this report:

ABS	Australian Bureau of Statistics
CBD	Central Business District
Council	Ballina Shire Council
DDS	Discount Department Store (Kmart, Target, Big W)
Deep	Deep End Services Pty Limited
GPPW	Good Price Pharmacy Warehouse
HNC	Harvey Norman Centre
LEP	Local Environment Plan
LGA	Local Government Area
SEE	Statement of Environmental Effects
Sqm	square metres

## 1.2 About Deep End Services

Deep End Services is an economic consultancy business formed in June 2003 and now consisting of ten staff and one contractor. Deep's managing director is Justin Ganly who had more than ten years of prior retail economics consulting experience at KPMG, Coopers & Lybrand and Coles Myer. During this time, Justin developed sales forecasting and expansion models for a range of specialty retailers including Terry White Chemists, Strandbags, Portmans and Australia Post. He also developed similar models for larger scale retailers such as Rebel Sport, Freedom Furniture, Bunnings, Big W, Kmart, Target, Myer, Coles, Bi-Lo and Franklins.

Justin worked extensively with Fly Buys data during his time at Coles Myer and used this to gain an insight into the customer distribution patterns for new stores and impacted stores.

Deep provides economic consulting services to leading Australian and New Zealand retail and financial services clients such as The Good Guys, Fantastic Furniture, Spotlight, Anaconda, Beacon Lighting, Harris Scarfe and ANZ as well as to property owners and developers such as AMP, Charter Hall Retail REIT, Macquarie Bank, Stockland, Australand, Walker Corporation, Harvey Norman, ISPT and Cbus Property.

Deep has detailed knowledge of all retail centres and precincts in Australia and New Zealand and has used this knowledge to develop store trading models for a number of private equity targets including Myer, Witchery (retail outlets and concessions), Godfreys, Super Amart and Kathmandu.

In more recent times, Deep has also developed sales forecasting models for specialty retailers including Sheridan, Clarks, Mossimo, Homemart and Bay Audio.

This detailed retail knowledge is vital when working on projects which contemplate future retail floorspace requirements. As a consequence, Deep has completed more than 30 EIAs for shopping centre and homemaker centre projects in the past six years.

For further details please see [www.deependservices.com.au](http://www.deependservices.com.au).

## 2. Background

### 2.1 Context

Ballina is the main township on the far north coast of NSW, situated on the stretch of coast between Byron Bay to the north and Evans Head to the south (refer Figure 1). Ballina is approximately 200 km south of Brisbane and 750 km north of Sydney.

The population within Ballina's Local Government Area ("LGA") was 42,708 as at June 2010, growing at an average rate of 1.3% per annum since 2001. Population is forecast to grow at similar rates, reaching 48,762 by 2021, or an increase of more than 6,000 people. The nearest major township is Lismore, located 32 km west.

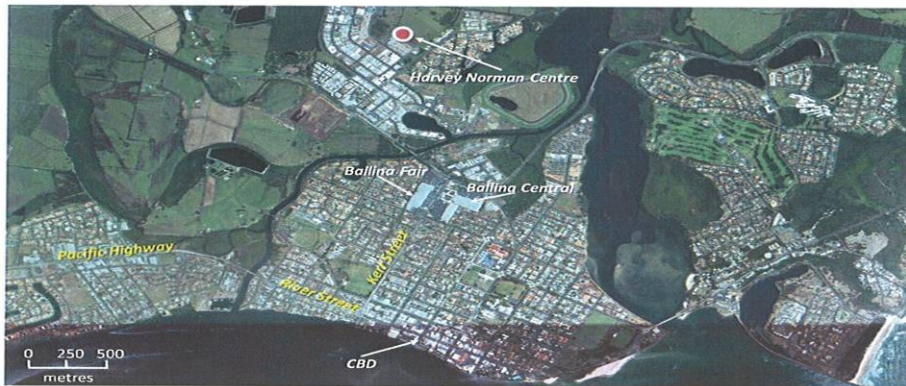
Figure 1 Regional location



## 2.2 Harvey Norman Centre

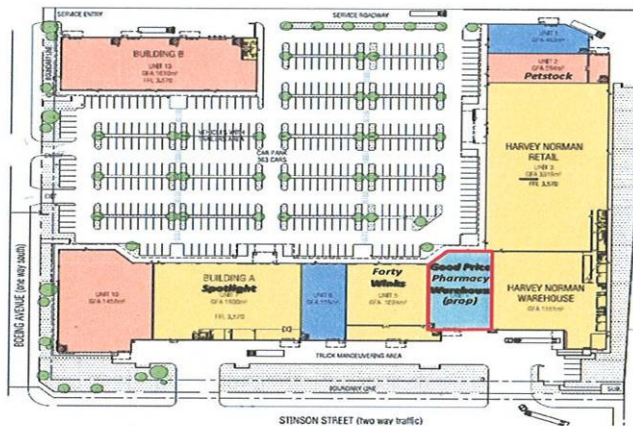
The 13,156 sqm Harvey Norman Centre (“HNC”) is located on the northern periphery of Ballina, approximately 4 km north of the CBD and 1 km south of Ballina airport (refer Figure 2). The precinct surrounding the HNC is characterised as containing a range of bulky goods, trade, industrial and other employment uses.

Figure 2 Harvey Norman Centre location



The HNC was formally opened in September 2011 and is currently occupied by Harvey Norman, Spotlight, Forty Winks, Petstock and Pillow Talk (refer Figure 3). The GPPW is proposed to be located in a 780 sqm tenancy within the HNC.

Figure 3 Harvey Norman Centre



Source: Harvey Norman

## 2.3 Good Price Pharmacy Warehouse

GPPW operates 29 outlets in four states, summarised in Table 1:

Table 1 Good Price Pharmacy Warehouse – outlets by state

State	No. of outlets
QLD <sup>(1)</sup>	20
NSW	6
TAS	2
VIC	1
Total	29

<sup>(1)</sup> Includes two affiliated stores

The closest GPPW outlets are located more than 100 km from Ballina on the Gold Coast (Robina, Ashmore and Carrara) and Grafton in NSW.

The predominant use of GPPW's proposed 780 sqm premises will be the "...retail and wholesale supply of bulky goods, medical and surgical supplies and equipment, and ancillary personal health care items and pharmaceutical products and ancillary dispensary."<sup>1</sup> Accordingly, the store will predominantly provide physically bulkier items not supplied by traditional pharmacies, as well as a wholesaling and distribution function for online, phone, fax or postal orders.

To further validate the intentions for this business, the Statement of Environmental Effects ("SEE") describes the proposed use as follows:

*"The premises will be used for the display by retail and wholesale and the warehousing of a broad range of pharmaceutical, medical, health care and invalid related products. A large proportion of the medical, health care and invalid related products are large and bulky and require large floors areas for display, trial/testing and handling."*

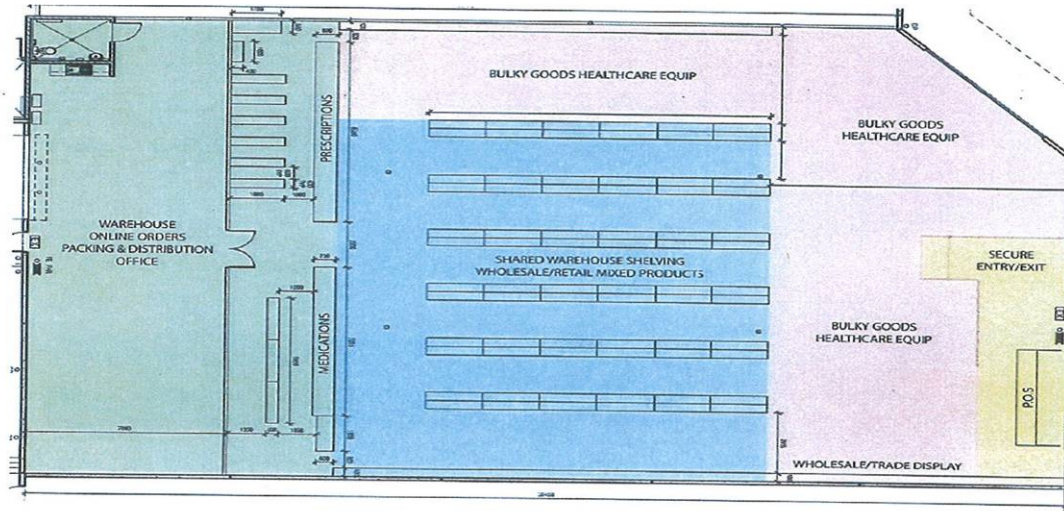
The Ballina GPPW would be seen as a new 'One Stop Concept', therefore decidedly different to traditional pharmacies, and will sell large and bulky items such as wheelchairs, walking frames, commodes, exercise bikes, walking machines, 'gophers', easy-lift lounge chairs and treadmills. Examples of these products are shown in Appendix 1.

First year sales for GPPW are estimated by the business owners at \$3 million, with an apportionment of 75% of sales being for retail customers, with the balance being to the wholesale trade.

The proposed layout of the premises is shown in Figure 4.

Figure 4 GPPW Ballina store layout

<sup>1</sup> Letter from Thomsons Lawyers dated 30 May 2011



**TENANCY 4**  
 HARVEY NORMAN CENTRE  
 CNR BOEING AVE & STINSON ST  
 BALLINA



**FLOOR USE CATEGORIES**

Bulky Goods Health Care Equip	258 m <sup>2</sup>	(33.08%)
Restricted Area: Warehouse/On-line Orders/Packing & Distribution/Office/Amenities Prescriptions/Medications	238 m <sup>2</sup>	(30.51%)
	496 m <sup>2</sup>	(63.59%)
	Sub-Total	
Shared Warehouse Shelving - Wholesale/Retail Mixed Product	249 m <sup>2</sup>	(31.92%)
Secure Entry/Exit/P.O.S.	35 m <sup>2</sup>	(4.49%)
	TOTAL GLA	780 m <sup>2</sup> (100.0%)

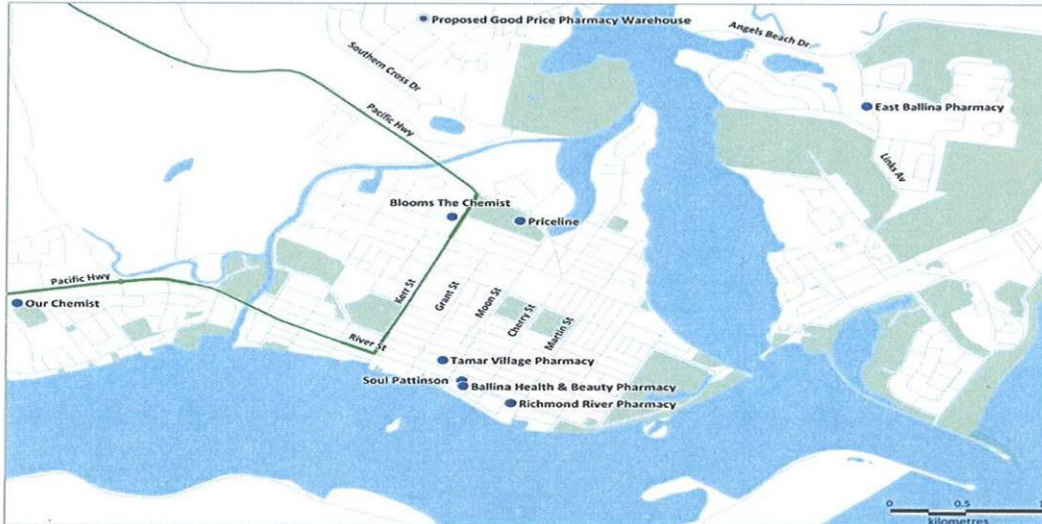
Source: Harvey Norman

### 3. Ballina pharmacy network

The pharmacy network in Ballina comprises eight existing outlets as shown in Figure 5 and described in detail below. The proposed GPPW is also located more than 1.5 km from the nearest pharmacy in Ballina, an important consideration in the granting of new pharmacy licences.

Following a review of these existing pharmacies, it is evident that the proposed GPPW at the Harvey Norman Centre will offer a vastly different product range and will not rely on business generated by nearby medical centres. This is now discussed in more detail.

Figure 5 Ballina pharmacy network



### 3.1 East Ballina Pharmacy

The East Ballina Pharmacy is located at the north east corner of the East Ballina Shopping Centre and is the only pharmacy situated on the east side of North Creek. The pharmacy is approximately 220 sqm and provides a traditional offer comprising a dispensary, pharmaceuticals and a small range of gifts. The pharmacy does not sell items identified as 'bulky goods' such as wheelie walkers, shower chairs and crutches.



East Ballina Shopping Centre



East Ballina Pharmacy

### 3.2 Blooms The Chemist – Ballina Fair

Blooms The Chemist is a well presented, modern tenancy of approximately 160 sqm, located adjacent to the central entry of the Ballina Fair Shopping Centre. The pharmacy sells a limited range of bulky items such as a wheelie walker, crutches and a shower chair in addition to a traditional pharmaceutical and cosmetics range.



Blooms The Chemist store entry



Blooms The Chemist centre access and frontage

### 3.3 Priceline – Ballina Central

The Priceline tenancy, at approximately 400 sqm, is located at the eastern end of the Ballina Central Shopping Centre. A large medical clinic is situated adjacent to Priceline which offers a traditional range of products, including many grocery-style goods, as befits the Priceline business. A dental surgery is also located in the shopping centre. Only one bulky goods item, a wheelie walker, was identified in the Priceline store.



Priceline Pharmacy – Ballina Central



Ballina Central – looking towards Priceline Pharmacy

### 3.4 Tamar Village Pharmacy

The 180 sqm Tamar Village Pharmacy is an older and smaller tenancy, when compared to other pharmacies in Ballina. The pharmacy is located adjacent to Lincraft in the recently rebranded Lincraft Shopping Square, one street north of the Ballina CBD core. In addition to the small, traditional range of pharmaceuticals and dispensary, the pharmacy also sells several walking sticks. The Grant Street Medical Centre is located only 100 metres east of the pharmacy.



Tamar Village Pharmacy



Lincraft Shopping Centre car park and frontage



### 3.5 Soul Pattinson Chemist – Ballina CBD

Located on the north side of River Street in the heart of Ballina’s CBD, the 300 sqm Soul Pattinson Chemist affords excellent exposure to passing traffic. The well presented pharmacy provides a traditional offer with a small array of bulky goods items (e.g. a wheelie walker and several walking sticks). The Grant Street Medical Centre is approximately 500 metres from the pharmacy.



Soul Pattinson Chemist and adjacent tenancies



Soul Pattinson Chemist

### 3.6 Ballina Health & Beauty Pharmacy – Ballina CBD

The Ballina Health & Beauty Pharmacy is located diagonally opposite the Soul Pattinson Chemist, on the south side of River Street. This locally owned pharmacy is approximately 140 sqm and presents as an older style tenancy with a traditional range of products comprising cosmetics, pharmaceuticals and a dispensary. The pharmacy does not appear to sell items identified as ‘bulky goods’ such as wheelie walkers, shower chairs and crutches.



Ballina Health & Beauty Pharmacy – looking east



Ballina Health & Beauty Pharmacy frontage

### 3.7 Richmond River Pharmacy – Ballina CBD

The small approximately 100 sqm Richmond River Pharmacy is located at the eastern perimeter of the Ballina CBD. The older style pharmacy provides access to a rear car park as well as on-street parking. No bulky goods were evident in this pharmacy. A nearby Family Medical Centre is located 200 metres from the pharmacy at the corner of Martin Street and Tamar Street.



Richmond River Pharmacy – looking west



Richmond River Pharmacy frontage

### 3.8 Our Chemist – Ballina West

Our Chemist is located centrally within the Ballina West Shopping Centre which fronts the Pacific Highway. This relatively small tenancy, at approximately 140 sqm, does not appear to stock any bulky goods and provides a traditional range of pharmaceutical items.



Ballina West Shopping Centre



Our Chemist frontage

#### 4. Business centres

The Ballina LEP makes reference to “business centres” in Clause 27(4)(c). The relevant business centres in this case have been identified by Council, are listed as follows and identified in Figure 6:

- Ballina CBD
- Ballina Fair
- Ballina Central
- East Ballina
- West Ballina

Figure 6 Ballina business centres



Source: Deep End Services; Google Earth

#### 4.1 Ballina CBD

The CBD is Ballina's commercial and civic hub and extends approximately 900 metres along River Street, from Kerr Street (Pacific Highway) to Martin Street (refer Figure 7). This precinct also includes Tamar Street which runs parallel to River Street and has a predominantly commercial and services representation. The CBD core extends approximately 500 metres along River Street, from Moon Street to Martin Street.

Figure 7 Ballina CBD



Source: Deep End Services; Bing Maps

Retail floorspace within the CBD core is in the order of 26,000 sqm. There is a further 3,700 sqm located within the CBD periphery and an additional 1,700 sqm of retail floorspace within the Lincraft Shopping Square (formerly Tamar Village) on Tamar Street. Therefore, the total retail floorspace contained within the Ballina CBD is approximately 31,500 sqm.

The retail mix within the CBD has evolved over time with development of retail further north along Kerr Street. A small Woolworths supermarket and accompanying specialty shops anchor the eastern end of the CBD which also includes commercial offices, services and non-retail tenancies. Heading west, the balance of the CBD core is dominated by eateries and a variety of non-food specialties, including two of the three identified pharmacies.

Current retail sales for the CBD are estimated at \$182 million. This is based in part on the *Ballina Retail Strategy Background Report* completed by IBECON for Council in 2003.



Ballina CBD – looking east along River Street



Ballina CBD – looking west along River Street

## 4.2 Ballina Fair

Ballina Fair is a 14,208 sqm sub-regional centre with internalised malls and located on Kerr Street (Pacific Highway). The centre forms part of a significant retail precinct which includes Ballina Central and the Kmart/Coles complex (currently being expanded and refurbished) situated opposite Ballina Fair. The centre is anchored by a 2,979 sqm Target discount department store (DDS) and 3,600 sqm Woolworths supermarket and was last refurbished in 2008. Blooms The Chemist is well located within the centre, at the central pedestrian entry point.

Retail sales for the centre are estimated at \$109 million (derived from the *NSW/ACT Shopping Centre Directory, 2010* as published by the Property Council of Australia).



Ballina Fair frontage

#### 4.3 Ballina Central

The 14,181 sqm Ballina Central shopping centre opened in 2006 and is located adjacent to the Kmart/Coles complex. Vehicular access is available between the two centres. Ballina Central is anchored by a 7,412 sqm Big W DDS and 3,761 sqm Ritchies Supa IGA. The centre also contains a Priceline Pharmacy, neighbouring medical centre and dental surgery.

Retail sales for the centre are estimated at \$61 million (derived from the *NSW/ACT Shopping Centre Directory, 2010* as published by the Property Council of Australia).



Ballina Central frontage

#### 4.4 East Ballina

The small 1,260 sqm convenience centre in East Ballina is the only shopping centre located on the east side of North Creek. East Ballina is bounded by North Creek, the Coral Sea and Angels Beach Drive to the north, with two access roads into Ballina. The centre, which contains the East Ballina Pharmacy, is located opposite a high school and adjacent to a childcare centre and Caltex petrol station.

Anchored by a small Foodworks supermarket, the centre also comprises 12 specialty tenancies facing an on grade car park. Retail sales are estimated at \$8 million.



East Ballina car park entry

#### 4.5 West Ballina

The West Ballina business centre comprises the 1,300 sqm Ballina West Shopping Centre, adjoining Westtower Tavern and Dan Murphy's plus Sam's Warehouse. The Ballina West SC is anchored by a 500 sqm Spar supermarket. The pharmacy trading as Our Chemist is centrally located within the shopping centre.

The 2.5 hectare Big Prawn site, located opposite the centre, has been recently purchased by Bunnings for development of a new hardware store. A large vacant retail tenancy, previously occupied by Joyce Mayne, is located adjacent to Sam's Warehouse.

Estimated retail sales for the business centre are \$25 million.



Ballina West SC



Sam's Warehouse

## 5. Impacts on Business Centres

GPPW has advised forecast sales of \$3 million for the first year of trade. Assuming 25% of sales are wholesale (i.e. \$0.75 million), then the balance of \$2.25 million would be redirected from the five business centres in Ballina as well as other retailers both within Ballina and beyond the town.

Impacts have been forecast for each of the five business centres, for both the pharmacies and other relevant tenancies such as DDSs and supermarkets in these centres, based on current estimated sales as follows:

Business centre	Pre-impact sales (\$m)	Impact (%)	Impact (\$m)
Ballina CBD	\$182.2	-0.5%	-1.00
Ballina Fair	\$108.6	-0.5%	-0.50
Ballina Central	\$60.6	-0.5%	-0.30
East Ballina	\$8.3	-0.2%	-0.02
West Ballina	\$24.8	-0.2%	-0.05
<b>Total business centres</b>	<b>\$384.5</b>	<b>-0.5%</b>	<b>-1.87</b>
Other (outside business centres)	-	-	-0.38
<b>Total GPPW retail sales</b>	<b>-</b>	<b>-</b>	<b>-2.25</b>

Each of the business centres are insulated from the proposed GPPW for a number of reasons including distance (East Ballina and West Ballina), strength of existing retail (Ballina Fair, Ballina Central and the CBD) and the local presence of medical centres.

The product offer for the proposed GPPW will also be significantly different to the existing pharmacies located within the business centres and so the impacts will be distributed across a range of retail formats including DDSs and supermarkets.

Each of the business centres would withstand the incoming GPPW due to the very low forecast impacts, with none exceeding a one-off impact of more than -0.5%. It is therefore anticipated that the viability of the business centres would not be detrimentally affected by the proposed GPPW.

**Indeed, the viability of any individual business, let alone an entire business centre, should be in no way threatened by the planned opening of GPPW at the Harvey Norman Centre at Ballina.**



Appendix 1  
GPPW product range



# Harvey Norman

Yoogala Pty Limited A.C.N. 002 269 152

A1 RICHMOND ROAD  
HOMEBUSH WEST N.S.W. 2140  
LOCKED BAG 2  
SILVERWATER DC, N.S.W. 1811

Telephone: (02) 9201 6111  
Facsimile: (02) 9746 0722

2<sup>nd</sup> August 2011

The General Manager  
Ballina Shire Council  
P.O. Box 450  
BALLINA NSW 2478

Dear Sir

## Re Tenancy application Harvey Norman Homemaker Centre

Thank you for taking the time to discuss the Good Price Pharmacy application (DA 2010/628). We note that due absences of the Assessing Officer due to illness/operations this matter did not meet to cut off point for the July meeting and in addition to this our not providing some confirming details in time did not help the situation.

In order to condense this submission I have attached the relevant legal comment both from Council's Lawyers and the advice given to us. This submission summarises the content in those submissions and provides other relevant operational information.

Firstly in looking at the matter as to whether or not Council could approve the application, we refer to the legal advice from Maddock's, which in summary says that the application is not consistent with objective A(a) and therefore cannot be approved on that basis, however it further adds that if Council do consider granting approval, the balance of Clause 27 (Objective A) must be assessed. Our own legal advice from Thomsons Lawyers supports Maddocks opinion on the facts they presented, (supplied by Council), however that research and assumptions were flawed and are not descriptive of the operation.

*Unfortunately this legal opinion has been based on the Company web site information and a recent catalogue relative to their normal retail activity, their opinion was further reinforced by physical inspections of some of the Company's existing stores. None of the mediums viewed or the stores visited, anywhere near represent the content or concept of this application. It is acknowledged that the review of existing operations would clearly show a traditional retail chemist shop, however this not what this application represents as the footprint is up to 4 times the area of normal outlets with a significantly increased range and stocking of goods.*

The land is zoned 4 -Industrial Zone under the B.L.P.P 1987. We believe that the proposed usage meets the objectives of the zoning, particularly having regard for the Appeals Tribunal hearing in relation the "Macpro" case which was attended by the Mayor. I also attended that hearing in support of Council. The interpretation of "industry" as determined by three senior judges gives me comfort that the application could be supported by Council.

We also believe that the conditions of clause 27 are consistent in that (2)(a) a large area is required for display and handling of bulky items, and clause (2)(b) applies in that there is a dedicated dock area to enable receiving and delivery of goods and customer pick up. In relation to clause 27(4) there is no other land available for this size and type of operation in a nearby centre, we are not aware of any other proposal within zone No 4. Given the nearest chemist shop is in excess of 1.5km away (Ballina Fair and Ballina Central) we deem it unlikely that any impact on a single store would

have a detrimental effect on those business centres. The site is more than 3km from the Town Centre.

Competition in any environment provides benefit to the consumer and we believe should be encouraged. Harvey Norman, the owner and anchor tenant in the Homemaker Centre have accepted Forty Winks, Pillow Talk and Spotlight who all provide strong competition to the Harvey Norman product range as tenants in the spirit of the recommendations in the Commonwealth Government's Productivity Report.

No part of the proposed operation is prohibited under the zoning.

**1. Breakdown of the functions to be performed.**

The proposed tenant will sell pharmaceuticals items in bulk as well as physically bulkier items not stocked by the traditional "main street" pharmacy. Additionally, they will also undertake wholesaling and distribution from the premises for members for online, phone, fax or postal orders.

Accordingly, the premises would constitute a "hybrid" chemist showroom that retails directly to the public but which is also used for storage and distribution.

The wholesaling and on-line sales component is quite reliant on quick turnover (i.e. low shelf life) and hygienic standards, so the warehousing is predominantly conducted front of house rather than the traditional back of house. In this situation, the staff will act as "pickers" filling bulk orders received via email or post, direct from the showroom floor.

Acknowledging this peculiarity, the approximate break of floor space occupied by the proposed functions to occur within the premises is anticipated to be generally as follows:

- Back of House Stock Receipt and Storage Space – 15%;
- Dispensary – 20%;
- Service, packing and administrative purposes – 10%;
- Bulky goods display (including home health care devices such as treadmills, walkers, Supports and Braces, motorised mobility aids and palletised bulk paper goods and bulk powders) – 20-25%;
- Other product display and storage including pharmaceuticals, vitamins, fragrances and cosmetics, vitamins, and baby care – 25-30%
- Surgical and medical supplies – 5-10%

The proportion of surgical and medical supplies and bulky items is expected to increase as the operation matures. Many of these lines will be now able to be supplied locally rather than being sourced from capital city based distributors.

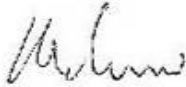
To be able to effectively market this extended product range requires a generous display area to allow customers to test drive and sample product from an operational aspect. Many of these items are delivered to the store in "flat pack" form and a back of house area has to be set aside for assembly, adjustment and storage. It is anticipated that local deliveries will form a substantial part of the operation both in respect to servicing retirement facilities, nursing homes and medical service providers, as well as home delivery of bulk items and supplies. In addition to this "back of house" provision has to be made for assembly of products and collating of orders.

The daily needs of the aged, disabled and severely disabled in relation to sanitary and general personal care products can be substantial. Not only is it difficult to accommodate the volume of products within a main street or Shopping Centre but provide the ability for convenient collection of products.

The total projected catchment for Ballina as at 2011 is 74,460 with a primary catchment of 36,192 being within a 20 minute drive from the town centre, with the over 55's representing 32% of the population compared to the State average of 23%. which well and truly justifies this type of operation.

This operation has a multiplicity of uses which are consistent with the aims of the LEP. Given the size of the catchment it is expected that a large patronage will be attracted from beyond the primary catchment which would currently be drifting to other areas. The fact that the Homemaker Centre has a limited products range and does not compete with Ballina Main Street and will result in an overall benefit through customers seeking other goods and services whilst in the area.

Yours sincerely



David Scurr  
Senior Development Manager  
HARVEY NORMAN

C.C Mr Rod Willis General Manager Regulatory Services  
C.C. Cr Phillip Silver Mayor

# ARDILL PAYNE & PARTNERS

Civil & Structural Engineers - Project Managers - Town Planners - Surveyors

ABN 51 808 558 977



WE Payne BE, MIE Aust ET Elford L & E S D TJ Cromack B.Tech (Eng), TMIE Aust PM Snellgrove BTP

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6859 Further information (June 2011).doc

**29 June 2011**

The General Manager  
Ballina Shire Council  
PO Box 450  
**BALLINA NSW 2478**

**Attn: Mr Bob Thornton**

**Dear Bob**

**re: Development Application No. 2010/628**

I refer to recent communications in respect of the subject matter and in particular to the following:

- APP's letter to Council dated 14 September 2010 (to which was attached Remnus's submission dated 13 September 2010)
- our meeting with the Mayor, General Manager and Rob Curtis (Remnus) on the 23<sup>rd</sup> November 2010
- APP's letter to Council dated 28 March 2011 (to which was attached Remnus's submission dated 25 March 2011)
- Council's letter dated 6 June 2011

**Attached** herewith is a further and final submission from Remnus (dated 19 June 2011) which provides the following:

- further explanation and detail on the type/description of the proposed land use
- further comments in respect of the "Vanarey & Ors" objection
- assessment of the impacts on the existing "community pharmacies" in the Ballina CBD
- comments in respect of Council's legal advice from Maddocks dated 19 April 2011
- comments in respect of Calardu Ballina No.1 (Harvey Norman) legal advice from Thomson Lawyers dated 30 May 2011 – **copy attached**

Council's attention is specifically drawn to the legal advice provided by Thomson Lawyers which concluded that:

*"The proposed use for the sale of bulky goods and medical and surgical supplies and equipment, with the ancillary sale of personal health care items and the dispensing of pharmaceutical products, prescriptions and medicines is consistent with the objectives of Zone 4 – Industrial Zone and is permissible under clause 27 and Schedule 3 of the Ballina LEP.*

*Accordingly, we can see no reason why Council cannot approve the DA."*

As has now been articulated on numerous occasions, the proposed Ballina GPPW is **not** a traditional pharmacy, is **not** a large format retail chemist premises and should **not** be compared to other existing GPPW large format retail chemists.

The proposed use is such that involves the display and sale of medical and surgical supplies and equipment, including bulky goods home health care equipment, aids and accessories, ancillary personal health care items and ancillary pharmacy (as defined in Section 90(3AB) of the National Health Act 1953) and thus is a reasonable use of the premises having regard to the following:

- provisions of Clause 27 and Schedule 3 of the BLEP 1987 which make express reference to shops used for the sale of "medical and surgical supplies and equipment" and "Any other use which closely resembles a use identified above"
- provisions of Zone No. 4 – Industrial Zone of the BLEP 1987
- situated in a tenancy within an approved bulky goods retail complex (per DA 2009/435 as amended)

I trust that sufficient information has been provided to Council to enable it to grant consent to the proposed land use.

**Yours faithfully**



Paul Snellgrove  
**ARDILL PAYNE & PARTNERS**

c.c. Mayor Phil Silver  
c/o Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478

**RETAIL INDUSTRY CONSULTANTS**

19 June 2011

**DA 2010/628**

Ardill Payne & Partners  
PO Box 20  
BALLINA NSW 2478

**ATTENTION: Mr PAUL SNELLGROVE**

Dear Paul,

**RE: DA 2010/628 – PROPOSED GPPW – UNIT 4 HARVEY NORMAN CENTRE, Cnr STINSON STREET & BOEING AVENUE, SOUTHERN CROSS ESTATE, BALLINA**

**SUPPLEMENTARY OVERVIEW REPORT**

We acknowledge your request for a **Supplementary Overview Report** addressing a number of specified issues. The contents of this Supplementary Report should be read in conjunction with our **previous Overview Report dated 25 March 2011** and our other submissions prior to that date. Our comments are set out hereunder.

**SUPPLEMENTARY COMMENTS**

**1. THE NEW "ONE STOP" CONCEPT**

- (a) The proposed new **"One Stop Concept"** cannot realistically be compared with traditional **"Community Pharmacies"** or **"Large Format Chemists/Pharmacies"** notwithstanding the **misleading efforts of the Objectors "Vanarey & Ors"** to do so
- (b) Council is urged to closely study and comprehend the **clearly recognisable differences** discussed in detail at **ITEM 3 (a) to (d)** in our previous **Overview Report dated 25 March 2011**
- (c) In our **Closing Comment at ITEM 11 on page 9** of our **initial Overview Report** we made the following suggestion:-

***"To remove any doubts, we suggest that an appropriate wording for a Consent Use for the proposed premises may be:-***

***"The display and sale of Medical and Surgical Supplies and Equipment including bulky goods Home Health Care Equipment, Aids, Accessories, Ancillary Personal Health Care Items and Ancillary Pharmacy (as defined in Section 90 (3AB) of the National Health Act 1953)"***

We urge Council **not** to be swayed by or give weight to the **grossly mischievous interpretations** put forward on behalf of **"Vanarey & Ors"** and to make a Determination supported by the **factual representations** on the new **"ONE STOP CONCEPT"** as set out in **ITEM 3 (a) to (d)** of the **Overview Report dated 25 March 2011**

**2. THE "VANAREY & ORS" OBJECTION**

- (a) The "Objection" submitted by **Baker Mannerling & Hart** on behalf of **"Vanarey & Ors"** goes to great lengths in attempting to present a case that the proposed use of **UNIT 4** is nothing more than a **"Large Format Chemist/Pharmacy"**. This perception by the "Objectors" is **grossly misleading and flawed**. Our earlier comments on this issue are set out in detail in our previous **Overview Report dated 25 March 2011 at ITEM 10 (a) to (d) on pages 8 & 9**

- (b) In his **Conclusion** at **ITEM 33** on **page 18** of his **Memorandum of Advice**, **TF Robertson SC** arrives at the conclusion that the proposed **"Discount Pharmacy Warehouse"** is a **"shop"**. This conclusion is based on his **erroneous assumption** that as the stores listed at **ITEM 3.2 (pages 10-11)** of the **Ardill Payne & Partners SEE dated MAY 2010** do **not** sell **Bulky Goods**, they are therefore **"shops/large format chemists"** and it follows that (notwithstanding its dominant area dedicated to display & sale of Bulky Goods), the proposed **"Discount Pharmacy Warehouse"** is also a **"shop/large format chemist"**
- (c) Had the "Objectors" paid attention to the wording of **ITEM 3.2** of the **SEE** and performed simple and basic investigations, it would have been revealed to them that **three (3)** of the **eight (8)** listed locations refer to **"large format chemists"** owned and operated by **"CHEMIST WAREHOUSE"**. For the record, we repeat the list below and detail the **Locations, Sites and Owner/Operators:-**
- **GYMPIE (HARVEY NORMAN BULKY GOODS CENTRE) – CHEMIST WAREHOUSE**  
(Note: A smaller GPPW pharmacy (shop) is located in the Core CBD Mall of Gympie)
  - **MAROOCHYDORE (SUNSHINE HOMEMAKER BULKY GOODS CENTRE) – CHEMIST WAREHOUSE**  
(Note: **NO** GPPW Store is located in Maroochydore)
  - **ROTHWELL (BUNNINGS CENTRE) – GPPW**
  - **CASTLE HILL (STAND-ALONE BULKY GOODS BUILDING) – CHEMIST WAREHOUSE**  
(Note: **NO** GPPW Store is located in Castle Hill)
  - **MCGRATHS HILL (HOME CENTRAL BULKY GOODS CENTRE) – GPPW**
  - **TAMWORTH (HOME SPACE BULKY GOODS CENTRE) – GPPW**
  - **CAMBRIDGE (TAS.) (HARVEY NORMAN BULKY GOODS CENTRE) – GPPW**
  - **KINGAROY (HARVEY NORMAN BULKY GOODS CENTRE) – GPPW**

**NOTES: ALL OF THE LISTED BUSINESSES ARE LOCATED IN BULKY GOODS CENTRES**

**THEY DO NOT SELL BULKY GOODS**

**THEY ARE "LARGE FORMAT CHEMISTS/PHARMACIES"**

**THEY ARE ALL PERMITTED USES APPROVED BY THE RESPECTIVE LOCAL AUTHORITIES**

**THEY ARE ESSENTIALLY AND SUBSTANTIALLY DIFFERENT TO THE NEW "ONE STOP CONCEPT" PROPOSED AT BALLINA AND IT IS GROSSLY MISLEADING AND MISCHIEVOUS TO DECLARE THEM TO BE IDENTICAL OR COMPARABLE**

### **3. IMPACT ON EXISTING "COMMUNITY PHARMACIES" IN BALLINA CBD**

- (a) Any perception or fear that the establishment of the proposed use in **UNIT 4** will **severely impact** on existing pharmacies in **Ballina Business Centre** is **misguided** and purely **competition based**
- (b) As set out in detail in **ITEM 4** under the heading **"STATUTORY PROTECTION FOR VANAREY & ORS"** commencing on **page 3** of our **previous Overview Report dated 25 March 2011**, the existing pharmacies are afforded protection under the Rules set out in the **National Health (Australian Community Pharmacy Authority) Determination 2006** made under **Subsection 99L** of the **National Health Act 1953**



- (c) The Map at FIGURE 1 on page 5 demonstrates the Protected Zone which embraces ALL existing pharmacies in the Ballina Business Centre
- (d) Notwithstanding the right (in Planning Scheme terms) of the Council to consent to a new Chemist/Pharmacy within the Protected Zone, these same Federal Statutory Rules prohibit the granting of a Medicare PBS Approval Number for the dispensing of prescriptions. In effect, Federal Legislation will not permit the dispensing of prescriptions by a new business within the Protected Zone
- (e) The existence of the Protected Zone effectually satisfies Subclauses (4) (a) & (c) of CLAUSE 27 of the BLEP

#### 4. THE MADDOCKS LEGAL ADVICE TO BALLINA SHIRE COUNCIL

- (a) We do not intend to be so presumptuous as to debate legal references appearing in this document but we must say that in its overall context, it is quite disappointing
- (b) It is apparent to us that Maddocks have also fallen prey to the complexities and vagaries of the Pharmacy and Health sector culminating in an Advice that does not address or even mention core issues
- (c) At ITEM 4 of their Advice Maddocks list information upon which they have relied upon and reviewed in the preparation of their Advice. In particular we refer to the document at 4.6 (Letter Ardill Payne to Council dated 28 March 2011) which attached a copy of our previous Overview Report dated 25 March 2011
- (d) The question must be asked if in fact Maddocks was actually briefed with the Overview Report. This question must be asked on the basis that the answers to a substantial number of negative comments appearing in their Advice, particularly relating to the characterisation of the proposed use, were set out in fine detail in the Overview Report. If Council cares to cross-reference these negative comments with the contents of the Overview Report, it will support our observations
- (e) Nowhere in the Advice is there any mention of the "One Stop Concept" servicing the needs of the Aged and Disabled sector of the community or of our references to Federal Legislative Instruments, the Protected Zone for existing pharmacies, the clear and lucid difference between the proposed use and traditional chemists/pharmacies etc
- (f) Maddocks make several references to the catalogues on the "Good Price Pharmacy" website which clearly indicates their lack of understanding of the difference between "Large Format Chemists/Pharmacies" and the Ballina "One Stop Concept"
- (g) As previously stated we do not intend to argue legal references contained in the Advice but we are obliged to reject Maddocks approach to and comments on Characterisation of the proposed use. We recommend that Council give preference to and rely upon the detailed information in the Overview Report dated 25 March 2011

#### 5. THE THOMSONS LAWYERS ADVICE TO HARVEY NORMAN (CALARDU BALLINA No. 1)

- (a) The Thomsons Advice stands apart from the Advices of Mr Robertson SC (for the Objectors) and Maddocks (for the Council). Thomsons clearly recognise and understand the proposed "One Stop Concept" and the distinct differences between it and traditional Community Pharmacies and "Large Format Chemists/Pharmacies" and have addressed issues competently and with the true Characterisation of the intended business at the forefront of their comments
- (b) On the other hand, the Robertson and Maddocks Advices attempt to convince Council that the proposed use is another "Large Format Chemist/Pharmacy", a mirror of others of that type. Neither of these Advices have addressed the actual proposed "One Stop Concept" which is the subject of DA 2010/628 but go out of their way to create their own versions of a Characterisation which is not intended or sought by the Applicant. Accordingly we

respectfully suggest that Council does not give weight to the Robertson and Maddocks Advices

- (c) There is no need for us to comment on specific items appearing in the **Thomsons Advice**. They are already dealt with in fine detail in our **Overview Report** dated 25 March 2011 and in this **Supplementary Overview**

6. SOCIAL AND COMMUNITY BENEFITS

- (a) In our **Overview Report** dated 25 March 2011 we have provided a copy of the **ABS Survey of Disability, Ageing and Carers 2009 (Appendix #2)** together with other supporting demographics (**Appendices #1 & #3**). Our comments to this material appear on **pages 6 & 7 at Items 6, 7 & 8**. This data identifies the core Target Market and purpose of the "One Stop Concept"
- (b) On **28 April 2011** an article appeared in the "**Courier Mail**" on the subject of the **difficulties of everyday living for Disabled persons and their Carers**. A copy of the article appears on the following **page 5** and it is recommended reading for Council and its Planning Officers

7. FINAL COMMENT

**WHILST ASSESSING THE SUBJECT DA2010/628 WE RESPECTFULLY URGE COUNCIL PLANNING OFFICERS TO DIRECT THEIR ATTENTION TO THE CORRECT CHARACTERISATION OF THE "ONE STOP CONCEPT" WHICH IS THE SUBJECT OF THE APPLICATION**

Yours faithfully,



ROB CURTIS  
Retail Industry Consultant

"COURIER MAIL" 28 APRIL 2011

## System disabling economy

Mark Henley

AT 42, Graham has quadriplegia and weighs only 45kg. He has to forgo lunch every day because his funding package for personal support doesn't stretch far enough to include a support worker during the middle of the day.

Lisa spent the first four years after sustaining quadriplegia crying every day. She went from being a busy, working mum of two teenagers to being unable to pick up a toothbrush.

She now spends most days worrying about how she's going to pay the ongoing costs caused by her disability, on top of the rising cost of living everyone else is dealing with.

Scott's wife has a permanent dent in her shoulder and chronic back pain from bearing most of the personal support of her husband, who has quadriplegia.

A split-second accident saw Josh go from being a young, busy stockbroker to someone who needs assistance to get out of bed. Josh says people don't understand how easily your life can completely change and that there aren't sufficient supports in place to assist with returning to home and work.

Suzanne was a self-funded retiree with travel plans for herself and her husband. Now they have to spend their hard-earned money on equipment, healthcare items and modifications to their home and car. These aren't luxury items and they're not cheap.

For the past 35 years, June has cared for her son Robert, who has quadriplegia. Now in her 80s, June worries about his future and how he will cope when she's gone.

These people's stories – and those of the 1.4 million Australians with a serious disability – demonstrate how severely our country's disability system is broken. While many of the Spinal Injuries Association's members and clients lead productive, fulfilling lives, too many are in crisis. A National Disability Insurance Scheme (NDIS) is needed before people with disabilities and those who care for them are plunged even further into crisis.

The Productivity Commission's draft report into an NDIS released on February 28 was extremely positive.

The final report will be handed down on July 31 and then it's up to the Government to decide on its future.

A positive outcome has the power to transform the lives of people who are born with a disability, or who sustain one, by giving them choice and providing them with adequate support to live in their own home, work and pay tax, study, enjoy hobbies and contribute to their communities.

Recent economic analysis from National Disability Services shows that if only 10 per cent of carers were able to return to the workforce because their family member with a disability had appropriate personal support, there would be a minimum \$3 billion boost to the economy. Or, if just 2 per cent of people with a disability could come off the pension to work because they had appropriate employment training, then there would be a minimum injection of \$2.5 billion into the economy.

An NDIS isn't just humane, it makes good economic sense.

Graham, Lisa, Scott, Josh, Suzanne and June all feature in the Spinal Injuries Association's campaign calling for an NDIS to be implemented. It's gaining momentum and has been sent to all state and federal MPs. It can be viewed at [www.spinal.com.au/ndis](http://www.spinal.com.au/ndis)

Mark Henley is the chief executive officer of the Spinal Injuries Association

Thursday, April 28, 2011 The Courier Mail 29

Our Ref: APJ:3267337

30 May 2011

Mr David Scurr  
Senior Development Manager  
Calardu Ballina No. 1 Pty Ltd  
C/- Harvey Norman  
Locked Bag 2  
SILVERWATER DC NSW 1811

BY EMAIL:  
david.scurr@au.harveynorman.com

Dear Mr Scurr

**Advice regarding DA 2010/628 for a Bulky Goods Retail & Wholesale Showroom/  
Warehouse at the corner of Stinson Street and Boeing Avenue, Southern Cross  
Industrial Area, Ballina**

We have been instructed to provide advice in relation to the permissibility of the use described in development application no. 2010/628 by Good Price Pharmacy Warehouse being for a Bulky Goods Retail and Wholesale Showroom/ Warehouse within an approved Bulky Goods Retail Complex in the Southern Cross Industrial Area in Ballina.

In providing our advice, we have also been instructed to consider the legal opinions of Mr Robertson SC on behalf of objectors to the proposed development and Maddocks Lawyers on behalf of Council.

**Executive Summary of Advice**

The legal opinions of Mr Robertson SC and Maddocks are based upon an incorrect assumption that the business to be conducted by Good Price Pharmacy Warehouse in Ballina is the same as the company's other businesses in Australia and appear to ignore the fact that the business model for the proposed Good Price Pharmacy Warehouse at Ballina is materially different from all the pre-existing Good Price Pharmacy Warehouses in Australia.

The proposed use consists of the retail and wholesale supply of bulky goods, medical and surgical supplies and equipment, and ancillary personal health care items and pharmaceutical products and ancillary dispensary.

In our view, the predominant use is the sale of bulky goods and the sale of medical and surgical supplies and equipment. The sale of personal health care items and the dispensing of pharmaceutical products, prescriptions and medicines are ancillary to the primary bulky goods and medical and surgical supplies and equipment uses.

The proposed use is permissible under clause 27 and Schedule 3 of the *Ballina Local Environmental Plan 1987 (Ballina LEP)* and is consistent with the objectives of Zone 4 – Industrial Zone.

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Even if we are wrong and the predominant use cannot be characterised as bulky goods retailing, the ancillary sale of pharmaceutical products, prescriptions and medicines and personal health care products is permissible as a "shop" and is therefore consistent with the objectives of Zone 4. "Shops" are not prohibited in the Industrial Zone.

#### Documents reviewed

In the preparation of this advice we have reviewed the following documents:

- a) Council Report regarding DA 2009/435 in the Agenda to the Council meeting held on 26 November 2009;
- b) Notice of Determination granting consent to DA 2009/435 for the construction of a Bulky Goods Retail Complex comprising two buildings containing 13 units/ tenancies, one warehouse, associated car parking and landscaping;
- c) Development Application Form for DA 2010/628 dated 17 May 2010;
- d) Statement of Environmental Effects prepared by Ardill Payne & Partners dated May 2010 (*SEE*);
- e) Letter from Ballina Council to Ardill Payne & Partners dated 29 June 2010;
- f) Email from Paul Snellgrove to Bob Thornton dated 6 July 2010;
- g) Letter of Objection from Baker Mannering & Hart on behalf of Vanarey and others dated 28 July 2010, attaching a memorandum of advice from Mr Robertson SC;
- h) Town Planning Investigation Report in relation to Good Price Pharmacy, McGraths Hill, prepared by Trevor Howse dated July 2010;
- i) Memorandum in relation to Good Price Pharmacy, Coffs Harbour, prepared by Petersen Consulting Group dated 17 July 2010;
- j) Review of Good Price Pharmacy Warehouse at Armidale, prepared by Wakefield Planning dated 16 July 2010;
- k) Email from Paul Snellgrove to Bob Thornton dated 14 February 2011;
- l) Letter from Ardill Payne & Partners to Ballina Council dated 14 September 2010 attaching a report prepared by Remnus Pty Ltd dated 13 September 2010;
- m) Letter from Ardill Payne & Partners to Ballina Council dated 28 March 2011 attaching a report prepared by Remnus Pty Ltd dated 25 March 2011; and
- n) Letter of advice from Maddocks Lawyers to Ballina Council dated 19 April 2011.

We have also reviewed relevant provisions of the Ballina LEP and DCP and the *Environmental Planning & Assessment Act 1979 (EP&A Act)* as well as relevant case law.

#### Legal framework

In relation to the legal framework, we largely agree with the legal opinions of Mr Robertson SC and Maddocks. In summary, the following provisions are relevant:

- a) Clause 9 of Ballina LEP;
- b) Zone 4 – Industrial Zone objectives and development control table in Ballina LEP;
- c) Clause 27 of Ballina LEP;
- d) Schedule 3 of Ballina LEP;
- e) Clause 4 Definitions in the *Environmental Planning & Assessment Model Provisions 1980*;
- f) Ballina Shire Combined Development Control Plan Chapter 1 (Urban Land) and Policy Statement No. 5 (Industrial Development) (*Ballina DCP*); and
- g) Section 79C of the EP&A Act.

The primary objectives of the Industrial Zone include land use for "industrial purposes and other uses specified in clause 27 and Schedule 3." The development control table in the Ballina LEP provides that "any purpose other than a purpose specified in item 4" is permitted only with development consent. "Commercial premises" and "shops (other than those referred to in clause 27 or Schedule 3)" are advertised development and are only permitted with consent.

No development is listed as prohibited. This is particularly relevant when reviewing the legal opinions of Mr Robertson SC and Maddocks, as set out further below.

Clause 9(2)(c) of Ballina LEP relevantly provides that advertised development may be carried out only with development consent provided that subclauses (3)-(5) have been complied with, which includes the provision of an environmental impact report. In our view, the Applicant has complied with this provision by submitting the SEE with the DA.

Clause 9(7) of Ballina LEP provides that "the council shall not grant consent to the carrying out of development on land to which this plan applies unless the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out."

Clause 27(3) of Ballina LEP permits bulky goods retailing on land within Zone 4 Industrial Zone. "Bulky goods" are defined as "large goods which are, in the opinion of the council, of such a size and shape as to require:

- a) a large area for handling, storage or display, and
- b) easy and direct vehicular access to enable the goods to be collected by customers after sale."

In accordance with clause 27(4), "the council shall not consent to an application to carry out development referred to in subclause [27](3) unless it is satisfied that:

- a) suitable land for the development is not available in any nearby business centre,
- b) to grant consent would not, by reason of the number of retail outlets which exist or are proposed on land within Zone No 4, alter the predominantly industrial nature of the zone, and

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- c) *the proposed development will not detrimentally affect the viability of any business centre.*"

Schedule 3 relevantly permits in Zone 4 "shops used for the sale of medical and surgical supplies and equipment" and "any other use which closely resembles" such use.

The subject land is designated I2 – General Industry under Ballina DCP. The control plan objectives are:

*"to encourage the establishment and expansion of general industriss, services trades and selected retail and commercial activities in accessible locations reasonably separated from existing and proposed living areas."*

The preferred land uses are:

*"light industry, showrooms and other businesses which require relatively large indoor and outdoor display and sales areas."*

Section 4.5 of Policy Statement No. 5 confirms that bulky goods retailing is permitted in the industrial zone. The proposed use as described in the SEE is consistent with the Ballina DCP.

#### **Characterisation of the proposed use**

We disagree with the characterisation of the proposed use as set out by Mr Robertson SC and Maddocks.

The SEE describes the proposed use as follows:

*"The premises will be used for the display by retail and wholesale and the warehousing of a broad range of pharmaceutical, medical, health care and invalid related products. A large proportion of the medical, health care and invalid related products are large and bulky and require large floor areas for display, trial/ testing and handling."*

The SEE states that the proposed outlet will offer the following services and products:

- display and sale by retail and wholesale or bulky goods consisting of home health care and sports equipment, medical and invalid aids, home care equipment and ancillary health care products and the trialling of floor stock by customers;
- warehousing of pharmaceutical and cosmetic products;
- dispensing of Pharmaceutical Benefits Scheme prescriptions and ancillary products;
- sale of traditional pharmaceutical and related products; and
- online ordering of all products and the picking, packing and distribution of such to customers (public and trade).

A large proportion of the health, sports, invalid and medical aids and home care equipment that are proposed to be kept and displayed in the tenancy comprise large and bulky items such as:

- wheelchairs;

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- walking frames;
- commodes;
- exercise bikes;
- walking machines;
- "gophers";
- easy-lift lounge chairs; and
- treadmills.

In addition to these items specifically listed in the SEE, the range of products will include other bulky items set out in the Remnus report such as:

- Bathroom products including shower chairs, over toilet aids, shower stools, raised toilet seats, bath/shower mats;
- Walking aids including crutches, walking canes and Rollator walking frames;
- Bedroom products including over chair tables, over bed tables and specialised pillows;
- Chairs and support products including back supports, cushions, lumbar rolls, absorbent chair pads, lift chairs;
- Fracture management products including splints, casts, knee supports and bandages;
- Ride-on scooters;
- Cross-trainers;
- Exercise bikes.

These large and bulky goods require a large area for handling, storage or display, and easy and direct vehicular access to enable the goods to be collected by customers after sale, which is consistent with clause 27 and the objectives of Zone 4 in the Ballina LEP. The range of bulky goods products and the numbers of items within those ranges are, in our opinion, significant and numerous enough to categorise the use as predominately bulky goods retailing. This use is permissible with consent.

It is clear that a significant proportion of the products offered for sale will comprise medical supplies and equipment and other products that closely resemble such products. This use is consistent with Schedule 3 and the objectives of Zone 4 in the Ballina LEP and is permissible with consent.

Both Mr Robertson SC and Maddocks have concluded that the proposed use also includes an independent and distinct use being the sale of "personal care" products and household goods. This opinion is largely based upon a review of the Good Price Pharmacy Warehouse website and planning reports regarding other Good Price Pharmacy Warehouse sites.

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However, the documents supporting the DA make it clear that there are no comparable Good Price Pharmacy Warehouse sites operating within Australia with the same model as that proposed in the DA. The DA proposes a Bulky Goods/ Warehouse operation. The Applicant clearly distinguishes itself from traditional community pharmacies and "large format retail chemist/ pharmacy premises". According to the SEE, the proposed operation will offer a unique range of products and services not ordinarily available in traditional pharmacies and is designed and tailored for an ageing and disabled population. The target market also includes hospitals and aged care facilities, for which traditional pharmacies do not usually cater. The Remnus report dated 25 March 2011 states that the defining differences between traditional pharmacies and the proposed Bulky Goods/ Warehouse operation are:

- a) Location – outside the protected zone/ precinct and not in proximity to medical centres/ practices;
- b) Size – larger stock range capability including bulky goods display and testing;
- c) Pricing – provides heavily discounted prices;
- d) Online ordering and delivery;
- e) Parking – ample and convenient parking to enable collection of goods by customers.

According to the Remnus reports, the proposed operation will not directly compete with the community pharmacies in Ballina. The dispensing of pharmaceutical products, prescriptions and medicines and the sale of personal health care products is ancillary to the sale of bulky goods and medical supplies and equipment.

Mr Robertson SC also relies heavily in his advice upon a number of decisions of the Land & Environment Court and Court of Appeal to conclude that the proposed development is impermissible. In *Sutherland Shire Council v Telope Pty Ltd* (1994) 85 LGR 103, *Warehouse Group (Australia) Pty Ltd v Woolworths Ltd* [2003] NSWCA 270, *Gazcorp Pty Ltd v Westfield Management Pty Ltd* [2004] NSWCA 63, and *The Warehouse Group (Australia) Pty Ltd v Woolworths Ltd & Anor* [2005] NSWCA 269, "bulky goods salesroom or showrooms" were permitted with consent in Industrial zones, but "shops" were prohibited.

The present DA can be distinguished from these cases because "shops" are not prohibited in Zone 4 Industrial Zone. In fact, "shops used for the sale of medical and surgical supplies and equipment" and "any other use which closely resembles" such use are specifically permitted with consent in accordance with Schedule 3 of the Ballina LEP. In addition "shops (other than those referred to in clause 27 or Schedule 3)" are advertised development and are permitted with consent in accordance with the development control table.

Accordingly, even if we are wrong and the predominant use cannot be characterised as bulky goods retailing, the ancillary sale of pharmaceutical products, prescriptions and medicines and personal health care products is permissible as a "shop" and is therefore consistent with the objectives of Zone 4.

#### Conclusion

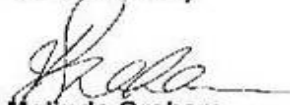
The proposed use for the sale of bulky goods and medical and surgical supplies and equipment, with the ancillary sale of personal health care items and the dispensing of pharmaceutical products, prescriptions and medicines is consistent with the objectives of Zone 4 -- Industrial Zone and is permissible under clause 27 and Schedule 3 of the Ballina LEP.

property/574535\_2

Accordingly, we can see no reason why Council cannot approve the DA.

Please do not hesitate to contact us if you wish to discuss.

Yours sincerely




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**RETAIL INDUSTRY CONSULTANTS**

31 May 2010

Mr Paul Snellgrove  
Ardill Payne & Partners  
P.O. Box 20  
BALLINA NSW 2478

Dear Paul,

**RE: DA: 2010/628 – GPPW BALLINA – SUPPLEMENTARY INFORMATION**

We refer to our telephone conference on Friday last which followed some queries raised by Senior Planner Mr Bob Thornton of Ballina Shire Council regarding the "Warehousing" component of the GPPW operations at Ballina.

We provide the following supplementary information for the benefit of Council:-

**REGIONAL SERVICE ZONE**

1. The primary function of GPPW BALLINA is to service the coastal region from Tweed to Coffs Harbour

**CLASS OF CUSTOMERS**

1. Retail sales to the general public via On-Line ordering and distribution (GPPW Priority Customers) and on-site sales
2. Wholesale sales and distribution to other **non-GPPW** pharmacies (all stocked products **except** restricted drugs)
3. Wholesale sales to small business retailers (excluding restricted drugs and PBS items)
4. Wholesale sale and distribution to other GPPW businesses in the service area (currently Grafton and Coffs Harbour) in addition to future other branches planned for the region) and to Medical Practitioners, Aged Care Homes and the like

**STOCK REPLENISHMENT & DELIVERIES**

1. The nature of the GPPW operations require fast stock turnaround and replenishment
2. Inwards stock is anticipated to be at the rate of 4 – 5 deliveries per day ex Brisbane and Sydney
3. Outwards deliveries are expected to be at the rate of 3 – 4 per day (regional couriers and carriers) with the main On-Line orders pick-up by Australia Post at late afternoons daily for delivery next day
4. Customers may also personally collect On-Line orders if they wish

**STOCK MANAGEMENT AND STATUTORY CONTROLS****REFER TO Figure 1 – USE ZONES – COLOUR SCHEME FLOOR PLAN**

1. The storage and handling of various pharmaceutical items are subject to controls by Regulation at both Federal and State levels, particularly in regard to temperature environment and security
2. The premises will be air-conditioned and should not be viewed as a traditional style warehouse



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Your Ref DA/2010/628

19/04/2011



### By Post And Email

Rod Willis / Bob Thornton  
Ballina Shire Council  
DX 27789  
BALLINA

Dear Rod and Bob

### Advice concerning DA 2010/628 for a Bulky Goods Retail & Wholesale Showroom/Warehouse at the Cnr of Stinson Street and Boeing Avenue, Southern Cross Industrial Area, Ballina

1. Council has requested advice as to whether development application no. 2010/628 for the establishment of a bulky goods retail and wholesale showroom/warehouse at the Cnr of Stinson Street and Boeing Avenue, Southern Cross Industrial Area, Ballina ("**the development application**") complies with the requirements for "bulky goods retailing" as described in the *Ballina Local Environmental Plan 1987* ("**BLEP**").
2. We set out a summary of our advice below, with a more detailed consideration of the issues following.
3. We note that this advice does not make an assessment of the application on its merits but rather analyses permissibility and lawfulness of the development application.

### Summary of Advice

- The development application proposes a warehouse with a number of uses, which are independent uses that need to be individually assessed against the relevant zone objectives.
- The proposal consists of a bulky goods use, a medical supply and equipment use, as well as another use which consists of the sale of personal goods and household goods.
- The bulky goods use and medical supply and equipment use can be assessed as being compatible with objective A (a) of the Zone 4 – Industrial Zone. The additional use for the sale of personal goods and household goods is not a use which is envisaged by either clause 27 or Schedule 3 and is not for a planning purpose consistent with objective A (a) of the Zone 4 – Industrial Zone.
- On the basis that the use for the sale of personal goods and household goods is not a use that permits use for industrial purposes and other uses specified in clause 27 and Schedule 3, the proposal is not consistent with objective A (a) of the Zone 4 – Industrial Zone and as such Council cannot be satisfied, as required by clause 9(7) of the BLEP, that the proposal is consistent with the objectives of the Zone, and so consent should not be granted on that basis.

[5792277: 7970501\_1]

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**Background and Information Provided**

4. We have relied upon and reviewed the following information in the preparation of this advice:
  - 4.1 Letter of instructions dated 8 April 2011;
  - 4.2 Development application and supporting information dated 17 May 2010;
  - 4.3 Letter from Remnus Pty Ltd to Paul Snellgrove dated 31 May 2010;
  - 4.4 Objection including advice from Mr Robertson SC dated 28 July 2010;
  - 4.5 Letter from Ardill Payne & Partners to Council dated 14 September 2010; and
  - 4.6 Letter from Ardill Payne & Partners to Council dated 28 March 2011.
5. We have also reviewed relevant provisions of the BLEP, and the *Environmental Planning and Assessment Act 1979* and where necessary referred to case law (and details of cases are contained herein).
6. Please note we have not included a review of the Draft Ballina Local Environmental Plan 2010, as we are not aware that the draft plan is at a stage that would be considered imminent or certain.

**The framework for assessing the application**

7. In order to determine firstly whether the use proposed in the development application complies with the requirements in the BLEP, the planning context must be examined.
8. The land the subject of the development application is zoned Zone No. 4 Industrial Zone. The zoning table specifies as follows:
  - 1 Objectives of zone
    - A The primary objectives are:
      - (a) to regulate the subdivision and use of land to permit its use for industrial purposes and other uses specified in clause 27 and Schedule 3,
      - (b) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for different industry types and intensities of development, and
      - (c) to ensure industrial development creates areas which are pleasant to work in, safe and efficient in terms of transportation, land utilization and service distribution.
    - B The exception to these objectives is development of land within the zone for public works and services, outside the parameters specified in the primary objectives.
  - 2 Without development consent
    - Nil.
  - 3 Only with development consent
    - Any purpose other than a purpose specified in item 4.

4 Advertised development—only with development consent

Advertisements; caravan parks; commercial premises (other than those used in conjunction with an industry and situated on the same land as the industry or referred to in clause 27 or Schedule 3); residential buildings (other than those used in conjunction with an industry and situated on the same land as the industry); mineral sand mining; mines; offensive or hazardous industries; recreation vehicle areas; shops (other than those referred to in clause 27 or Schedule 3); stock and saleyards.

5 Prohibited development

Nil.

9. In order for the proposed use to be permissible, it must be a use permitted by the zoning table (there are no prohibited uses in Zone 4 Industrial Zone), and by virtue of clause 9(7) of the BLEP, *must* be consistent with the objectives of the zone.
10. Objective A (a) of the Zone 4 Industrial Zone, requires that the proposed use be either for an industrial purpose, or another use which is specified in clause 27 or Schedule 3 of the BLEP. So in order for the proposed use to be permissible, it must either be industrial, or a use specified in clause 27 of the BLEP (bulky goods), or one of the uses listed in Schedule 3.
11. The BLEP adopts the definitions set out in the *Environmental Planning and Assessment Model Provisions 1980* ("**Model Provisions**"). The Model Provisions define industry as follows:  
  

*industry* means:

  - (a) any manufacturing process within the meaning of the *Factories, Shops and Industries Act 1962*, or
  - (b) the breaking up or dismantling of any goods or any article for trade or sale or gain or as ancillary to any business,

but does not include an extractive industry.
12. The proposed use is not an "industry" as defined, and so in order to be consistent with objective A (a) of the Zone 4 Industrial Zone, must be a use described in clause 27 or Schedule 3 of the BLEP.
13. To assess "consistency" with the zone objectives, as is required by clause 9(7) of the BLEP, the following principles should be considered:
  - o "...a development will be generally consistent with the objectives if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible." (*Schaffer Corporation Ltd v Hawkesbury City Council* (1992) 77 LGRA 21 (at 27)); and
  - o "The objectives for each zone provide the essential context, together with any applicable DCP, for the Council's consideration of every development application relating to land in that zone." (*Manly Council v Hortis* (2001) 113 LGERA 321 at [29]).
14. In general terms, this means that the development proposal when assessed against the zone objectives must not result in a development that is opposed in nature to the zone objectives, and is consistent with the 'essential context' which is set out by the objectives.
15. Clause 9(7) is framed in such a way that in the decision making process, Council must determine whether the proposed use is consistent with the objectives of the relevant zone, before it enters into a merits consideration of the development application. The requirement of clause 9(7) is a "threshold" or preliminary question upon which a conclusion must be

made, before the merits of the application can be considered – it is what is known as a "jurisdictional fact" or a condition precedent. So the initial determination of whether the proposed use is consistent with the zone objectives is a very important one.

16. Clause 27 of the BLEP provides:

**27 Retailing of bulky goods within Zone No 4 and on land referred to in Schedule 4**

(1) This clause applies to land within Zone No 4 and land referred to in Schedule 4.

(2) In this clause, *bulky goods* means large goods which are, in the opinion of the council, of such a size and shape as to require:

(a) a large area for handling, storage or display, and

(b) easy and direct vehicular access to enable the goods to be collected by customers after sale.

(3) Subject to subclauses (4) and (5), nothing in this plan shall prevent a person, with the consent of the council, from carrying out development for the purposes of the retail sale of bulky goods on land to which this clause applies.

(4) The council shall not consent to an application to carry out development referred to in subclause (3) unless it is satisfied that:

(a) suitable land for the development is not available in any nearby business centre,

(b) to grant consent would not, by reason of the number of retail outlets which exist or are proposed on land within Zone No 4, alter the predominantly industrial nature of the zone, and

(c) the proposed development will not detrimentally affect the viability of any business centre.

(5) This clause does not apply to development for the purposes of shops selling food or clothing or development for the purposes of produce stores.

17. Clause 27 provides a definition of "bulky goods" which must be satisfied, and then requires the Council to be satisfied (clause 27(4)) that suitable land is not available in any nearby business centre, that the proposal will not alter the predominantly industrial nature of the zone, or detrimentally effect the viability of any business centre. A discussion of whether the proposed use can be considered "bulky goods" within this definition is set out below under the heading "Characterisation of the Use".

18. Schedule 3 provides a further list of permissible uses which objective A (a) says are appropriate in the zone:

**Schedule 3**

Newsagency.

Shops used for the sale of:

Hardware,

Medical and surgical supplies and equipment,

Smallgoods and sandwiches.

Other premises used for:

Banking facilities,

Brothels,

Accounting and computing facilities,

Refreshment rooms.

Any other use which closely resembles a use identified above.

19. The analysis which needs to be undertaken is to assess whether the application proposes a use which is either consistent with the clause 27 definition of bulky goods or the Schedule 3 use as "medical and surgical supplies and equipment".

**Characterisation of the use**

20. The Statement of Environmental Effects states that [at p. 18]:

"a large proportion of the floorspace of the tenancy will be used for the sale by retail and wholesale of bulky goods (comprising medical, invalid and home health care related aids and equipment which require large areas for display, testing and handling as well as convenient vehicular access to enable collection after purchase.

Further to the above, a substantial proportion of the product offered for sale and on display in the tenancy will comprise medical supplies and equipment and other products that closely resemble such products.

A significant component of the floor area of the tenancy will also be used for warehousing purposes for the wholesale of product to service other retailers in the region.....

....there is sound and persuasive argument that the proposed use of the tenancy is such that constitutes bulky goods retail and would be permitted on the basis that the use is such that would satisfy the provisions of Primary Objective A(a) of the 4 – Industrial Zone (being a use permitted by Schedule 3) and Clause 27 of the BLEP."

21. It is on the basis of the above characterisation of the use that the development proponent says that the proposed use is consistent with the objectives of the Zone 4- Industrial Zone.
22. A correct characterisation of the use is necessary to assess whether the development application's proposed use is consistent to the objectives of the zone, and is in fact a "bulky goods" use as specified in clause 27 of the BLEP.
23. There are a number of principles that are relevant when undertaking the task of "characterising a use". Relevant principles include:
- When characterising the use of a development application, there is necessarily more analysis of the detail of the operations of the proposed use, than the more liberal approach taken in defining the use for the purposes of establishing an "existing use" ( see the *Turnbull Group v North Sydney Council* [1998] NSWLEC 253 [at 72]).
  - Where the whole of the premises is used for two or more purposes none of which subserves the others, there is no need to examine which of the purposes is dominant. If any one purpose is operating in a way which is independent and not merely incidental to other purposes is prohibited, it is immaterial that it may be overshadowed by the others whether in terms of income generated, space occupied or ratio of staff engaged [our emphasis] (*Foodbarn Pty Limited & Ors v Solicitor-General* (1975) 32 LGRA 157).
  - If a use is an "ancillary" use, it is not precluded from being a use independent to one of the other uses or a "dominant" use (*Baulkham Hills Shire Council v O'Donnell* (1990) 69 LGRA 404) (for example a café with a takeaway section)



- Comments made by his Honour Justice Bignold J in *Snowside Pty Ltd v Holroyd Council* [2003] NSWLEC 136 are also appropriate and helpful in understanding the task of characterisation:

"16. In undertaking the task of characterisation, two preliminary observations, which are relevant to the present case, may be made. Firstly, it has not been suggested (nor could it be suggested) that the expression "Bunnings Warehouse" although perhaps widely appreciated in our community as a fairly standardised form and format of merchandising of particular classes of goods, constitutes of and by itself, an established category of development for planning purposes.

17. Secondly, although the Applicant in its amended Executive Summary in the Statement of Environmental effects has described the merchandise stored, displayed and sold by Bunnings as "general merchandise", that description in the development application and the accompanying documentation is not, and cannot be, conclusive or determinative in the task of characterising the proposed development for planning purposes and in particular for the purposes of the LEP. This observation is supported by the following statement from my judgment in *Westpoint Corp Pty Ltd v Rockdale City Council* (2000) 109 LGERA 298 at 403:

*Description of a proposed development, and categorisation of it, are not necessarily co-extensive. Categorisation of a proposed development conventionally is undertaken by reference to defined terms or purposes in the relevant environmental planning instrument principally to determine whether the proposed development is for a permissible purpose. Unless a proposed development is shown to be for a permissible purpose of development, it is axiomatic that a valid development consent cannot in law be granted to that application."*

24. The above principles are adopted in the analysis carried out below, to characterise the use of the proposal.
25. The Applicant's description of the proposal summarised, is that it is a predominantly bulky goods display warehouse where customers can go and view the product, even use demonstrator models, then purchase them, and where "ancillary" products will be available, including medications. In describing the use the Applicant has focussed significantly on the area of floorspace that will be dedicated to each of the product ranges.
26. A large portion of the floorspace will be dedicated to the display and sale of bulky goods. The Applicant describes those goods as home health care and sports equipment, medical and invalid aids, and pictures of items such as wheelchairs, treadmills and walking aids are provided. The goods require a large area for handling, storage or display, and also require easy and direct access to enable the goods to be collected by customers after sale. This "bulky goods" use, based on the descriptions provided, fits within the definition of bulky goods provided within clause 27 and so can be assessed as "consistent" with the Objective A (a) of the Zone No. 4 – Industrial Zone.
27. However from the information provided and a review of extraneous material such as catalogues provided on the "Good Price Pharmacy" website, it is clear that there are additional *independent* uses proposed. The Good Price Pharmacy Warehouse describes itself as a "one of Australia's leading retailers in health beauty and medicinal products". A variety of products will be available at the proposed store, such as prescriptions, medications and other products which can broadly be described as "personal care" products. The personal care type products which are available on the "Good Price Pharmacy" website include the following:
  - Shampoos, conditions and hair care products;
  - Cosmetics and perfumes;
  - Baby products (such as nappies, formula, bottles, creams, wipes);

- Alternative care medicines such as vitamins and minerals; and
  - Toilet paper.
28. Further products that can be described as "household" goods that are available include washing powders. The development application also describes that these products would be offered in "bulk" (this does not qualify them as "bulky goods" pursuant to the definition in clause 27).
29. The inclusion of these additional products for sale is an independent and distinct use from the "bulky goods" use. It is not ancillary as described in the development application material. An analysis of the description of the categories of goods proposed in the development application and the types of goods commonly sold in the "Good Price Pharmacy" warehouses across NSW and Victoria, reveals that the types of products available will not be limited to "bulky goods" and "medical supplies" and prescriptions. A large proportion of what will be sold will be "personal goods" and "household goods" as described above. In order to be "consistent" with the objectives of the zone, the uses must be either a bulky goods use (which we have established a portion of the proposed use is) or fit into another category described in Schedule 3. The application has indicated that much of the other goods would be "medical and surgical supplies and equipment" constituting a use for that purpose or which closely resembles that use.
30. The description of the types of goods to be sold in the development application and an analysis of the types of products sold commonly at "Good Price Pharmacy" warehouses reveals the goods are not limited to "medical and surgical supplies and equipment" or goods that are closely similar. Whilst the development application describes further items to be sold as "ancillary personal health care items and ancillary pharmacy", a review of the types of goods available commonly in pharmacies and the "Good Price Pharmacy" stores and website make it clear the sale of these "personal care items" constitutes a separate and independent use which must also be considered against the objectives of the zone.
31. The comments that are outlined above in the *Snowside* case are appurtenant: the purpose of development must be shown to be for a permissible purpose. The large area in the proposed warehouse which is dedicated to "shared warehouse shelving, wholesale / retail mixed products" (see "Figure 1" at page 5 of the Report & Analysis prepared by Remnus Pty Ltd) is significant part of the proposed use and is separate from the area designated as "medications" and "prescriptions". It appears that the area dedicated to "shared warehouse shelving, wholesale / retail mixed products" will in fact be the area dedicated to the earlier described "personal goods" and household goods". It is this independent use which is not similar to, part of or can be described as either "bulky goods" or "medical and surgical supplies and equipment" (or any other use in Schedule 3). The sale of personal goods and household goods is not a permissible purpose described in planning terms, as it is plainly not consistent with objective A (a) of the Zone No. 4 – Industrial Zone.

**Additional matters for consideration**

32. Whilst we have set out above that we consider that the proposed application is not consistent with the objective A (a) and so should not be approved on that basis, in the event that Council makes a different assessment and considers granting consent, it is important to note that the balance of clause 27 must also be assessed.
33. Clause 27(4) requires Council to consider a number of additional matters, including the availability of land in a nearby business centre, whether the industrial nature of the zone will be maintained, and the effect of the proposal on the viability of any business centre. There is not sufficient information in the development application (in the information we have been provided with) for Council to make a determination of the matters in clause 27(4). There is no economic assessment provided which details the effect of the proposed out of centre warehousing business. Additional information should be requested in the event that Council