

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 LGRA 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

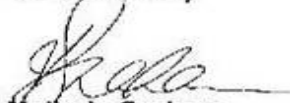
The proposed use for the sale of bulky goods and medical and surgical supplies and equipment, with the ancillary sale of personal health care items and the dispensing of pharmaceutical products, prescriptions and medicines is consistent with the objectives of Zone 4 -- Industrial Zone and is permissible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




**Melinda Graham**

Partner

T +61 2 8248 3410

M 0415 189 215

E [mgraham@thomsonslawyers.com.au](mailto:mgraham@thomsonslawyers.com.au)



**Amanda Johnstone**

Senior Associate

T +61 2 8248 3408

M +61 468 988 734

E [ajohnstone@thomsonslawyers.com.au](mailto:ajohnstone@thomsonslawyers.com.au)

property/574535\_2

**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



## Maddocks

Lawyers  
Level 21, Angel Place  
123 Pitt Street  
Sydney New South Wales 2000 Australia  
GPO Box 1692  
Sydney New South Wales 2001

Telephone 61 2 8223 4100  
Facsimile 61 2 9221 0872

info@maddocks.com.au  
www.maddocks.com.au

DX 10284 Sydney Stock Exchange

Contact Cecilia Rose  
Direct 02 8223 4105  
Email cecilia.rose@maddocks.com.au  
Partner Stan Kondilos  
Our Ref SXX,CYR:5792277  
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.

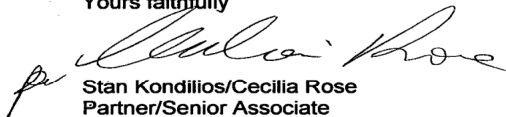
**Additional matters for consideration**

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

considers that the "preliminary" enquiry of consistency with the zoning objectives is met, and moves onto a further merit assessment of the proposal.

If you have any questions, please do not hesitate to contact Stan Kondilios on **8223 4102** or Cecilia Rose on **8223 4105**.

Yours faithfully

  
Stan Kondilios/Cecilia Rose  
Partner/Senior Associate  
Public Law, Planning and Environment

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# ARDILL PAYNE & PARTNERS

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

ABN 51 808 558 977



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

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6859 Further information (March 2011).doc

**28 March 2011**

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

**Attn: Messrs Rod Willis and Bob Thornton**

**Dear Sirs**

**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 letter dated 13 September 2010)
- our meeting with the Mayor, General Manager and Rob Curtis (Remnus) on the 23<sup>rd</sup> November 2010

Attached herewith is a second submission from Remnus (dated 25<sup>th</sup> March 2011) which provides:

- further detail on and explanation of the proposed land use
- an explanation of the differences between the Wodonga GPPW and the proposed Ballina GPPW
- comments in respect of the issues raised in the "Vanarey and Ors" submission dated 28 July 2010

Photographs and details on the type and range of bulky goods that will be stocked at the Ballina GPPW have been provided previously to Council (Remnus 13 September 2010 and APP May 2010).

As has now been provided in explicit detail, the proposed Ballina GPPW is **not** a traditional pharmacy, is **not** a large format retail chemist premises and is **not** the same as the Wodonga GPPW. 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

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79 Tamar Street  
PO Box 20  
BALLINA NSW 2478

Phone: 02 6686 3280  
Fax: 02 6686 7920  
e-mail: [info@ardillpayne.com.au](mailto:info@ardillpayne.com.au)

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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)

Mr Curtis has advised that he would welcome the opportunity to discuss further any issues or questions that Council Offices (or Councillors) may have in clarifying/explaining the proposed land use and make up of the Ballina GPPW.

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

# DA 2010/628

UNIT 4 HARVEY NORMAN CENTRE, Cnr STINSON STREET & BOEING AVENUE,  
SOUTHERN CROSS ESTATE, BALLINA

## OVERVIEW REPORT

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**RETAIL INDUSTRY CONSULTANTS**

25 March 2011

**DA 2010/628**

Ardill Payne & Partners  
PO Box 20  
BALLINA NSW 2478

**ATTENTION: Mr PAUL SNELLGROVE**

Dear Paul,

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

We have been requested to provide an upgrade and overview relating to issues concerning various aspects of the assessment of the above DA by Ballina Shire Council.

The proposed Lessee (GPPW) is deeply concerned and frustrated that the Council does not appear to have recognised or correctly interpreted the intended use of the premises. There are further concerns that the Council may be unduly influenced by the Objection by "Vanarey & Ors", the contents of which are based on serious misinterpretations and in its over-all context, may be best described as inaccurate and misleading.

In this Overview, for the benefit of Ballina Shire Council, we attempt to correct various misinterpretations and erroneous assumptions of key issues of concern. For the sake of expediency, we have provided our comments in précis format.

**OVERVIEW REPORT**

**1. DEFINITION OF "PHARMACY" – NSW PLANNING LEGISLATION**

- (a) The term "**pharmacy**" is not defined anywhere in **Local** or **State Planning legislation**.
- (b) In its own right, "**pharmacy**" is not a **defined land use** and has no specific meaning in planning terms.
- (c) The term originates and is defined within **Section 90 (3AB)** of the **National Health Act 1953**.

**2. DEFINITION OF "PHARMACY" – NATIONAL HEALTH ACT 1953**

- (a) **Section 90 (3AB)** of the **National Health Act 1953** defines "**pharmacy**" as follows:-

**"pharmacy"** means a business in the course of the carrying on of which pharmaceutical benefits are supplied.

- (b) To grasp the true meaning and application of the word "**pharmacy**" it is necessary to read the definition carefully and note the following:-
  - "**pharmacy**" means a "**business**" – the term **does not** extend to specify or identify "**bricks & mortar premises**"
  - To fall under the meaning of "**pharmacy**", it is a **condition precedent** that the **business must supply Pharmaceutical Benefits** during the course of its operation

2.

- The **preparation and supply of Pharmaceutical Benefits** takes place within the **DISPENSARY** component of the **business** premises. In effect, the term **“pharmacy”** applies to the **function of supplying PBS ITEMS in and from the secure confines of the ancillary DISPENSARY** within the business premises
- At the **Federal level**, the supply of **Pharmaceutical Benefits** is **not permitted** unless and until a **PBS Approval Number** is granted to a **specific (named) Approved Pharmacist** at **specific (identified) business premises** to **supply PBS ITEMS** under the provisions of **Section 90 of the National Health Act 1953** and the provisions of the **Pharmaceutical Benefits Scheme**
- As previously stated, the **supply of Pharmaceutical Benefits** takes place in and from the **DISPENSARY** which must be operated under **strict conditions** and under the **direct control** of the **specified qualified Pharmacist**. The **Dispensary** is located in the **restricted security area at the rear of the premises** and is **not accessible** by **members of the public**. Only employees authorised by the controlling Pharmacist may enter the Dispensary
- It is clear that the **generic** term **“pharmacy”** is the cause of major conflicts and confusion when attempts are made to **interpose the term** into **Town Planning land use** situations. In short, **“pharmacy”** has **no defined meaning** in **NSW Town Planning legislation** and it is therefore necessary to **seek and apply the true intended meaning as defined in the National Health Act 1953**

### 3. **PROPOSED USE OF UNIT 4**

- (a) It has been **clearly expressed** in **Submissions to Ballina Shire Council** that the proposed use is a new **“under one roof”** concept **totally dedicated to the supply of Personal Health Care Products** with emphasis on a **target market** consisting of a **disadvantaged sector** of the public in the form of **“the aged, disabled, trauma victims, recuperating surgery patients, home physiotherapy treatment, home orthopaedic patients and in general terms, those with limited mobility and requiring specialised equipment for home treatment and health care. In addition there is a broad range of Home Health & Fitness equipment available”**. As required under Federal legislation the **general public** must also have access to the premises although the **primary marketing strategy** for the proposed business is directed towards the **“disadvantaged sector”** described above
- (b) The products include **bulky goods health care equipment, accessories and aids, Medical & Surgical Supplies** including supply of **PBS items** from the **ancillary Dispensary** and to complete the **“under one roof concept”**, **ancillary personal care products** used by persons in the **“disadvantaged” target market**
- (c) It is appropriate to consider that the proposed use of the premises is **fully embraced** by the category **“MEDICAL AND SURGICAL SUPPLIES AND EQUIPMENT”** as **permitted** in **Zone 4** and is consistent with **CLAUSE 27** and **SCHEDULE 3** of the **BLEP**
- (d) **ALL** products sold **fall comfortably** under the **“Medical and Surgical Supplies and Equipment”** category including **personal care products** the likes of **shampoos, soaps, toothpastes, deodorants, skin creams, vitamins, tissues, toilet paper, sanitary pads** and without going into details, **disposable baby nappies for use by persons with needs for “special protection”**. These types of items are an **integral part** of the **“under one roof”** concept and are supplied to eliminate the need for persons with **mobility restrictions** to shop for their needs in several **locations**. These products are **ancillary** and **directly related** to the all embracing **“Medical and Surgical Supplies and Equipment”** products used by the **“disadvantaged”** category of persons
- (e) To encapsulate, a **DA** was **approved for the development of a “Bulky Goods Retail Complex” on Zone 4 land**. The sale of **“Medical and Surgical Supplies and Equipment”** is **permitted** under **Schedule 3**. The display and sale of **Bulky Goods** is also **permitted**. **THE CURRENT DA IS FOR THE USE OF UNIT 4 FOR THOSE PERMITTED USES**



#### 4. **STATUTORY PROTECTION FOR VANAREY & Ors**

- (a) The location of “**pharmacies**” is governed in accordance with the **Rules** set out in the **National Health (Australian Community Pharmacy Authority) Determination 2006** made under Subsection 99L of the **National Health Act 1953**
- (b) Under the applicable **Rule 106**, a new “**pharmacy**” **cannot** be approved if the **proposed premises** are located within a radius of 1.5 kilometres or 2 kilometres by the shortest lawful access route from an **existing “pharmacy”**. This is known as “**the distance Rule**”
- (c) The existing “**pharmacies**” (including East Ballina Pharmacy) which are located in the **Ballina CBD** are geographically in **close proximity** to each other. Under the “**distance Rule**” a **protection zone or precinct** is created for a distance of 1.5 kilometres radius from **each** of those pharmacies. With the overlapping “**blanket effect**” covering virtually the **whole of Ballina CBD**, **no new “pharmacy”** is able to be approved (at Federal level) within the **protected zone/precinct**
- (d) The existing “**pharmacies**” are **strategically located** in close proximity to existing **Medical Practices/Centres** within the **CBD** and **rely heavily** on capturing their respective shares of the “**Prescriptions Trade**” flowing from those **Medical Practices**. In effect, collectively, those existing “**pharmacies**” have a **protected monopoly** on the **Prescription Trade in Ballina**
- (e) **Conversely**, the proposed business at **Unit 4** does **not rely** on the **Prescription Trade** for the simple reason there is **no Medical Practice** in close proximity to the **Harvey Norman site**
- (f) It is a well established practice within the **Pharmacy profession** that “**pharmacies**” are located in **close proximity to Medical Centres/Practices** in the expectation that patients will gravitate to the nearest “**pharmacy**” for the fulfilment of their **PBS prescriptions**. **Contrary** to the erroneous arguments expressed by the objectors **Vanarey & Ors**, **it cannot be said** that the proposed business at **UNIT 4, Harvey Norman Centre** can be compared with the existing small “**community pharmacies**” located within the protected zone/precinct in Ballina **nor** can it be compared with their “**large format chemists**” counterparts which are not structured under a “**one stop**” concept
- (g) In short, the “**one stop**” concept of the proposed **Unit 4 business** **cannot be compared** with the existing “**pharmacies**” in Ballina. The **defining differences** for the **Unit 4 business** are:- **LOCATION** (outside the protected zone/precinct and does not rely on proximity to **Medical Centres/Practices**); **SIZE** (provides larger stock range capability including **Bulky Goods display and testing**); **PRICING** (provides heavily discounted prices); **ON-LINE ORDERING & DELIVERY** (optional for those persons with mobility problems); **PARKING** (ample and convenient parking to enable collection of goods by customers)
- (h) The Statutory **protection from competition** afforded to all existing “**pharmacies**” in Ballina under the **National Health Act 1953** satisfies by default the provisions of **Clause 27 (4) (a) & (c) & Schedule 3 of the BLEP**
- (i) Since **10 August 2010** we have sought information from Council as to the **identities** of the “**Others**” in the “**Vanarey Objection**” in order to provide a specific assessment of any likely detrimental effect on the trading activities of **each** existing “**pharmacy**” which may be **participating** in the “**Vanarey Objection**”.
- (j) At the time of this Overview Report, the requested **identities** have **not** been provided. There was **no response** to requests by Council to the **Solicitors** for “**Vanarey & Ors**” to reveal the identities until **Thursday, 10 March 2011** (a period of seven months from the first request). A **Solicitor** representing the **Objectors** advised **Senior Town Planner Ms Naomi McCarthy** by telephone that “.... there is no intention to reveal the identities of the ‘others’ ....” and they “..... do not consider it to be relevant to the application”
- (k) The proposed **Lessee** believes that its **rights and interests** to properly **rebut and respond** may be frustrated or compromised without knowledge of the **identities** of the “**Others**”. **For the purpose of this Overview Report** we are therefore obliged to adopt the assumption that **all** existing “**pharmacies**” in Ballina are participating “**Others**”

- (l) On 14 February 2011, at our request, a staff member of **Ardill Payne & Partners** inspected all of the **eight (8) existing "pharmacies"** in **Ballina** to ascertain the level of **"Bulky Goods Equipment"** on display/sale in each of the respective premises. The results were as follows:-

Ballina Health & Beauty Pharmacy 148 River Street	No bulky goods
Blooms the Chemist Ballina Fair Shopping Centre	Wheellie Walkers x 2, Crutches x 1, Shower Chairs x 1
East Ballina Pharmacy East Ballina Shopping Centre	No bulky goods
Our Chemist West Ballina Shopping Centre	No bulky goods
Soul Pattison Chemist 57 River Street	Wheellie Walkers x 1, Walking Sticks x 6
Tamar Village Pharmacy	Walking Sticks x 4
Priceline Pharmacy Ballina Central Shopping Centre	Wheellie Walkers x 1
Richmond River Pharmacy River Street	No bulky goods

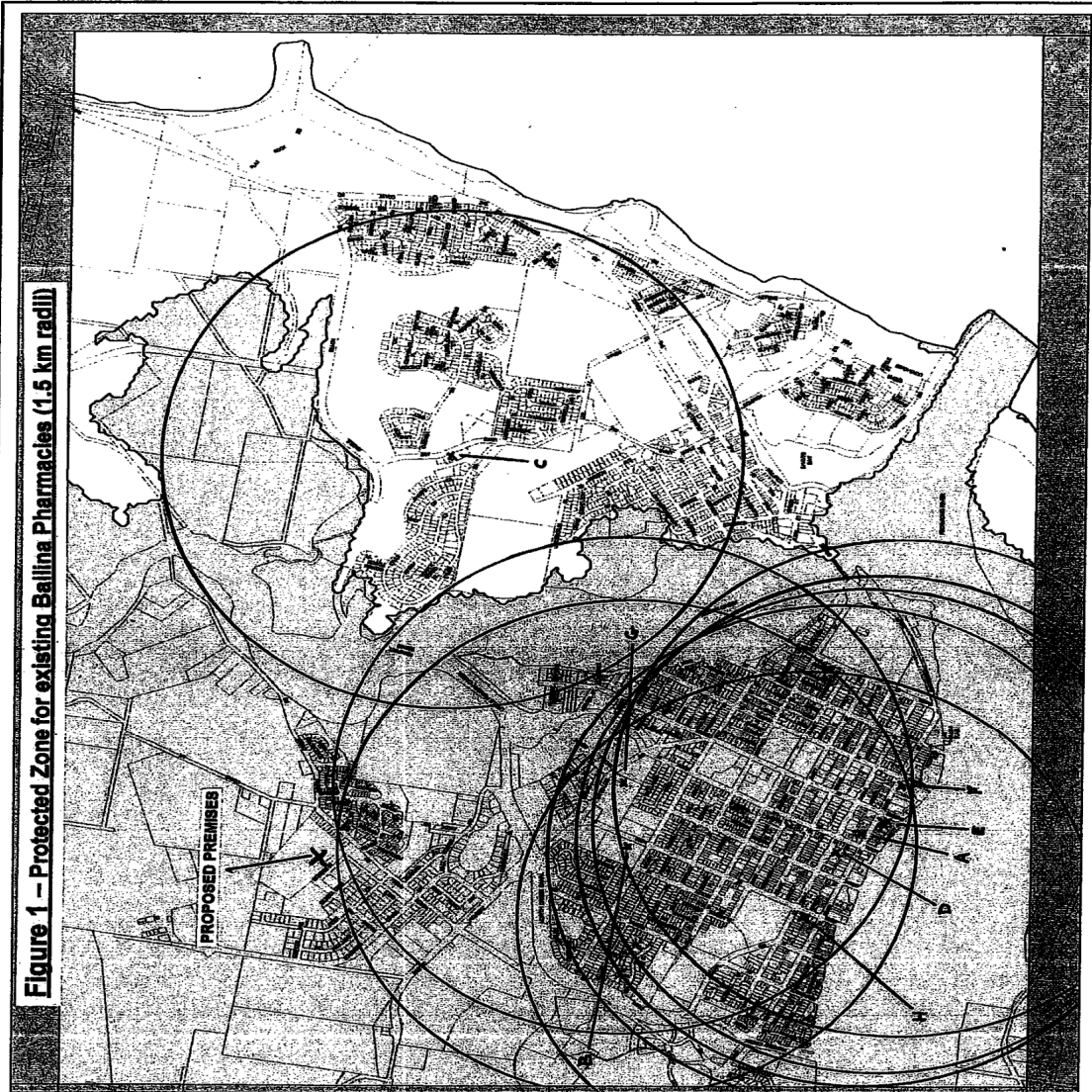
- (m) We have prepared a Map (FIGURE 1) showing the locations and identities of each of the eight (8) existing "pharmacies" in Ballina. The scaled 1.5 km radius from each "pharmacy" is marked on the Map. Collectively, all of the land within the outer perimeter of the overlapping radii represents the PROTECTED ZONE/PRECINCT for all existing "pharmacies" in Ballina.

The **FIGURE 1 Map** is shown on the following **Page 5**.

- (n) Notwithstanding the right for **Ballina Shire Council** to grant a **DA Consent** for a new "pharmacy" on land within the collective outer perimeters shown on the Map, **Rule 106** as set out in the National Health (Australian Community Pharmacy Authority) Determination 2006 made under Subsection 99L of the National Health Act 1953 prohibits the granting of Approval for a new/relocated "pharmacy" within the PROTECTED ZONE/PRECINCT. An Approval for a new "pharmacy" will not be granted at Federal Government level.

**FIGURE 1 – Protected Zone for existing Ballina Pharmacies (1.5 km radii)**

**(SEE NEXT PAGE 5)**



**Figure 1 – Protected Zone for existing Ballina Pharmacies (1.5 km radii)**

**Draft Ballina Local Environmental Plan 2010**

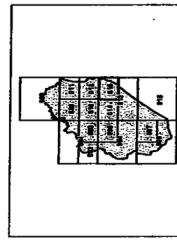
Flood Planning Map - sheet FPM-015

Flood Planning Map  
Flood Planning Area

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**LEGEND**

- A. Soul Pettinson
- B. Blooms The Chemist
- C. East Ballina Pharmacy
- D. Tamar Village Pharmacy
- E. Ballina Health & Beauty Pharmacy
- F. Richmond River Pharmacy
- G. Priceline Pharmacy
- H. Our Chemist



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## 5. COMPARISON – WODONGA GPPW v PROPOSED BALLINA BUSINESS

- (a) A pilot “One Stop” concept business for GPPW commenced trading in Wodonga, Vic, in March 2010. This business was established as the “test model” for future “One Stop” concepts in other locations (with higher population demographics than Wodonga) in the eastern States of Australia. The first target location for a larger upgraded model is Ballina
- (b) Over the first two years of the Wodonga operation there will be a “trial & error” period to establish best practice operations and adjustment of products ranges according to the demonstrated needs of customers in the Wodonga Region. These best practices and products ranges (with appropriate Regional adjustments) will flow on to Ballina and other locations to follow
- (c) We strongly suggest that a comparison of the Wodonga business with the proposed Ballina business is grossly premature and would produce a number of anomalies and distortions brought about mainly by the difference in population demographics and climate conditions between the two regions

## 6. POPULATION DEMOGRAPHICS – WODONGA v BALLINA

- (a) Extracts from **ABS Census 2006** provide the following Population data for comparison between Wodonga and Ballina:-
  - (i) Total Population LGA WODONGA – 33,006 persons (Age Groups 0-9 years to 100 + years)
  - (ii) Total Population LGA BALLINA – 38,462 persons (Age Groups 0-9 years to 100 + years) = 5,456 persons (16.53%) higher than WODONGA
  - (iii) LGA WODONGA – Age Groups 40 years to 100 + years – 13,753 persons
  - (iv) LGA BALLINA – Age Groups 40 years to 100 + years – 20,997 persons = 7,244 persons (52.67%) higher than WODONGA
  - (v) LGA WODONGA – Age Groups 60 years to 100 + years – 4,906 persons
  - (vi) LGA BALLINA – Age Groups 60 years to 100 + years – 9,674 persons = 4,768 persons (97.19%) higher than WODONGA

**COMMENTS:- WHILST THE TOTAL POPULATION OF BALLINA WAS ONLY 16.53% HIGHER THAN WODONGA, THE POPULATION IN BALLINA IN THE AGE GROUPS 40 YEARS TO 100 + YEARS WAS 52.67% HIGHER THAN WODONGA AND THE POPULATION IN BALLINA IN THE AGE GROUPS 60 YEARS TO 100 + YEARS WAS 97.19% HIGHER THAN WODONGA. THE CLEAR IMPLICATION IS THAT THERE IS A MAJOR DIFFERENCE BETWEEN WODONGA AND BALLINA POPULATION AGE GROUPS PARTICULARLY IN THE GROUPS 40 YEARS TO 100 + YEARS AND 60 YEARS TO 100 + YEARS. THIS SUPPORTS OUR CONTENTION THAT IT IS INAPPROPRIATE AND UNWISE TO ASSUME THAT MARKET CONDITIONS AT WODONGA CAN BE SAFELY ADOPTED AND COMPARED WITH THE DIFFERENT DEMOGRAPHICS WHICH WILL APPLY TO THE PROPOSED BALLINA BUSINESS**

**SEE APPENDIX #1 (CENSUS 2006 AGE GROUPS POPULATION TABLES)**

## 7. ABS SURVEY OF DISABILITY, AGEING AND CARERS 2009

- (a) The above Survey was conducted by **ABS in 2009**. The **Summary of Findings (CAT No 4430.0)** was released on **16 December 2010**
- (b) The full Summary publication is attached at **APPENDIX #2** and is **recommended reading for Ballina Shire Council Officers** involved in **assessment of DA 2010-628**. It will provide an insight into the needs of the “**Target Market**” of the proposed business. The **Glossary** commencing on **Page 25 of the Summary** contains very pertinent information for understanding the rationale behind the proposed business

(c) **The following points from the Survey should be noted:-**

- **disability** is defined as any limitation, restriction or impairment which restricts everyday activities and has lasted or is likely to last for at least six months
- the Survey **does not include** persons with acute disabilities lasting or likely to last less than six months (trauma victims, sports injuries, persons recovering from surgery etc). Estimates for these categories should be factored into the "Target Market"
- the Survey found that there were 4,026,213 persons (18.5% of total population in Australia) with a disability, including 3,144,319 persons with **core activity limitation**
- **Core activity limitation** is defined as:-
  - (a) Four levels of core activity limitation are determined based on whether a person needs help, has difficulty, or uses aids or equipment with any of the core activities (communication, mobility or self-care). A person's overall level of core activity limitation is determined by their highest level of limitation in these activities. The four levels of limitation are:
    1. **profound** – the person is unable to do, or always needs help with, a core activity task.
    2. **severe** – the person:
      - sometimes needs help with a core activity task
      - has difficulty understanding or being understood by family or friends
      - can communicate more easily using sign language or other non-spoken forms of communication.
    3. **moderate** – the person needs no help, but has difficulty with a core activity task.
    4. **mild** – the person needs no help and has no difficulty with any of the core activity tasks, but:
      - uses aids and equipment
      - cannot easily walk 200 metres
      - cannot walk up and down stairs without a handrail
      - cannot easily bend to pick up an object from the floor
      - cannot use public transport
      - can use public transport, but needs help or supervision
      - needs no help or supervision, but has difficulty using public transport.

**SEE APPENDIX #2 (ABS Disability Survey 2009)****8. PERSONS WITH A DISABILITY – WODONGA v BALLINA (CENSUS 2006 CAT No 2068.0)**

- (a) **Census 2006 Cat No 2068.0 (SEE APPENDIX #3)** provides the following **Disability** data for comparison between Wodonga SLA and Ballina SLA for persons with **Core Activity need for Assistance (NOTE: Data does not include persons with acute/short-term disability lasting for less than six months):-**
  - (i) **SLA WODONGA – Need for Assistance stated = 1,299 persons, Need for Assistance not stated = 1,141 persons, TOTAL = 2,440 persons**
  - (ii) **SLA BALLINA - Need for Assistance stated = 2,036 persons, Need for Assistance not stated = 1,725 persons, TOTAL = 3,761 persons**

**SEE APPENDIX #3 (Wodonga & Ballina Disability Data Census 2006 Cat No 2068.0)****9. SALES ESTIMATES (FACE TO FACE v INTERNET)**

- (a) At the meeting on 23 November 2010 attended by Messrs Silver, Hickey, Willis, Curtis & Snellgrove, Mr Willis sought information on the estimated proportions of "face to face" sales versus "internet" sales at and from the proposed business. Mr Curtis undertook to discuss the matter at the Head Office level of GPPW
- (b) There is a need to remind Council Officers that the ON-LINE service offered to customers consists of **telephone, facsimile and internet ordering** for those who find the need (**limited mobility or distance factor**) to use that service. It is expected that the predominant medium used by customers will be **telephone**. It should also be noted that the ON-LINE service is for the use of customers **known** to GPPW and who have been registered and issued with Registration ID cards. A sample ID card has already been provided to Council in earlier Submissions

- (c) As pointed out earlier in this Overview Report, it is **inappropriate to compare Wodonga GPPW** with the **proposed business at Ballina** due to **demographic and climatic differences**. However, it is a **safe expectation** that **“Target Market” customers (or their carers)** would prefer to **inspect and test bulky goods equipment, aids and accessories on site** before deciding to purchase. No doubt, to avoid double trips, **some** customers, after making a decision to purchase, will communicate their order via the **ON-LINE service with delivery instructions**. The **ON-LINE service is complementary** to traditional **“face to face” onsite sales** and is designed to **assist** those customers with mobility restrictions. On this basis, GPPW declines to guess unpredictable proportions of use of ON-LINE services at Ballina
- (d) To assist Ballina Shire Council we attach at **APPENDIX #4** copies of **STOCK LISTS** for the **Opening Orders** for just **some** of the **Medical and Surgical Supplies & Equipment (including Bulky Goods Equipment, Aids, Accessories and associated products)** for **Wodonga**. **The proposed products range for Ballina will be expanded and larger than that at Wodonga**

#### **SEE APPENDIX #4 (Opening Orders Stock Lists – Wodonga)**

#### **10. OBJECTION BY VANAREY & Ors**

- (a) In its overall context, the **Objection** appears to be **“competition”** based on a **misguided perception** that the proposed business at **Unit 4** will **substantially affect the protected Prescriptions Trade** enjoyed by the existing **“pharmacies”** in **Ballina CBD**. This perception is **wrong** and **exaggerated**
- (b) It should be noted that **all Approved Pharmacists in Australia** must be aware of and comply with the governing provisions of the **National Health Act 1953**, the requirements of the **Pharmacy Location Rules** and consequently, the **protective nature of the “distance Rules”**. It follows that the **existing Approved Pharmacists in Ballina** should be aware of and familiar with these governing provisions. The question therefore arises as to why **Vanarey & Ors** have apparently **not fully briefed their Lawyers in this regard**
- (c) It is quite apparent that the **Vanarey & Ors objection** is based on a number of **fundamental errors, misinterpretations and incorrect assumptions** which, in our view, renders it **misleading** and with **little relevance** to the **actual structure** and **purpose** of the **proposed business**
- (d) In this Overview Report we do not intend to **itemise and rebut each “faulty” statement** in the **Vanarey & Ors objection** as we believe that **those matters will be dealt with in a competent Court of Appeal** should the occasion arise. However, we believe it is **appropriate to highlight the serious fundamental errors appearing in item C8 and C9 of the objection:-**
- In **C8 & C9** the objection attacks the passage **“Similar type operations exist in bulky goods centres in .....”** (and then goes on to list a number of locations), which appears in **Item 3.2 (pages 10/11)** of the **Ardill Payne & Partners DA Submission**. We consider this to be **selective manipulation and distortion of matters of fact** set out in **Item 3.2** for the following reasons:-
    - (i) The **sentence immediately preceding** the **listed localities** clearly states **“Similar type operations exist in bulky goods centres in”** (emphasis added)
    - (ii) The **paragraph immediately following** the **listed localities** clearly states that they are **“large format retail chemist premises”** (NOT **“ONE STOP” CONCEPTS AS PROPOSED AT BALLINA**)
    - (iii) Consistently throughout previous **DA Submissions to Council** on behalf of the Applicant, it has been **emphatically stated** that the **Ballina proposal is a new “One Stop”** concept **not** to be **confused with or likened to** small **“community pharmacies”** or **“large format retail chemist premises”**. Furthermore, it was indicated that the **first pilot “One Stop”** concept was established at **Wodonga** and **Ballina** was to be the **second** such business (expanded and upgraded to fit the regional demographics and **“Target Market”**)

(iv) The Vanarey & Ors objectors went to great lengths to commission “independent” inspections and Town Planning Reports in relation to three (3) existing GPPW business locations and general enquiries into a fourth location (McGraths Hill, Coffs Harbour, Armidale and Tamworth). The outcome of each of the inspections and Reports indicate that those businesses are DIFFERENT to the “One Stop” concept proposed at Ballina. Oddly, the Reports CONFIRM that the proposed Ballina business is NOT a small “community pharmacy” of similar style to those existing in Ballina CBD and nor is it a “large format retail chemist premises” in the style of those which were the subject of the inspections and Reports

#### 11. CLOSING COMMENT

When assessing the subject DA we urge Council Planning Officers to correctly identify and recognise the special needs of members of the “Target Market” and the consequential difference between proposed Ballina business and traditional “community pharmacies” and “large format retail chemist premises”.

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)”

Yours faithfully,



**ROB CURTIS**  
Retail Industry Consultant

25 March 2011

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# ARDILL PAYNE & PARTNERS

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

ABN 51 808 558 977



WE Payne BE, MIE Aust ET Eford L&ESD TJ Cromack B.Tech (Eng), TME Aust PM Snellgrove BTP

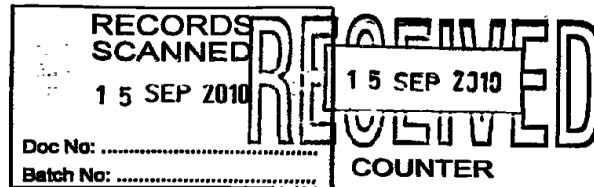
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6859 Letter to accompany Remnus (Sept 2010).doc

**14 September 2010**

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 prior communications in respect of the subject matter and in particular to the objection to the development application made on behalf of "Vanarey And Ors" (Baker Mannering & Hart, dated 28 July 2010).

A copy of this submission was forwarded to Mr Rob Curtis (Remnus Pty Ltd – Retail Industry Consultants) for consideration. Mr Curtis has prepared a detailed submission addressing the issues raised in the Baker Mannering & Hart submission, a copy of which is attached.

As is detailed in Mr Curtis's submission, there are a number of misconceptions in the objection in respect of the purpose, operational functions and use of the premises. There also appears to be similar misconceptions with Council's planners as is evidenced by the tenor of some of the Council's correspondence in this matter.

Once Council has had an opportunity to digest Mr Curtis's submission, it is requested that a meeting be convened as soon as practicable to discuss the proposed land use in detail. The meeting will be attended by Messrs Curtis and Snellgrove and it is respectfully requested that it also be attended by Council's Town Planner and the Mayor.

Mr David Scurr (Development Manager, Harvey Norman) has advised that the building contractor is scheduled to move on site this week and early resolution of this issue will assist with costings and also allow the development to be brought on line this financial year.

Yours faithfully

Paul Snellgrove  
ARDILL PAYNE & PARTNERS  
Document1

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79 Tamar Street  
PO Box 20  
BALLINA NSW 2478

Phone: 02 6686 3280  
Fax: 02 6686 7920  
e-mail: [info@ardillpayne.com.au](mailto:info@ardillpayne.com.au)



**RETAIL INDUSTRY CONSULTANTS**

13 September 2010

Mr Paul Snellgrove  
Ardill Payne & Partners  
P.O. Box 20  
BALLINA NSW 2478BY EMAIL: [pauls@ardillpayne.com.au](mailto:pauls@ardillpayne.com.au)

Dear Paul,

RE: **GOOD PRICE PHARMACY WAREHOUSE – UNIT 4, HARVEY NORMAN CENTRE, CNR STINSON ST  
& BOEING AVE, BALLINA NSW****RESPONSE TO BALLINA SHIRE COUNCIL ASSESSMENT AND OBJECTION BY  
VANAREY & ORS**

As requested we are responding to a number of matters which are set out in Council's letter to you of 29 June 2010, the Objection lodged on behalf of Vanarey & Ors dated 28 July 2010 and other various issues which have emerged in Council email communications with you.

We should state at the start that our comments are confined to correcting various misconceptions on the purpose, operational functions and in particular, the difference between the proposed use and what some Local Authorities and members of the public sometimes erroneously perceive as a traditional chemist/pharmacy "shop". We do not intend to debate legal points expressed by Mr T F Robertson SC in his Memorandum of Advice dated 27 July 2010.

**PROPOSED USE OF THE PREMISES**

1.00 The Applicant has sought approval for the proposed Use described as:-

**"BULKY GOODS RETAIL & WHOLESALE SHOWROOM/WAREHOUSE****(Home Health Care Equipment/Medical & Surgical Supplies & Equipment & ancillary Medical  
& Pharmaceutical supplies by way of on-site sales and on-line ordering and distribution)"**

1.01 In "non-planning terms" the category of the business can be described as "A Bulky Goods Showroom including storage of stock (Warehousing) to be sold on-site and by On-Line Ordering and Distribution"

1.02 The term "Bulky Goods" is meant to include products ancillary to the use of those Bulky Goods by the category of person ("market") targeted by the business (Refer to Appendix "B" for details)

**THE "MARKET"**

2.00 The dominant activity of the business is targeted towards the special needs of persons coming under the following descriptions:-

**the aged, disabled, trauma victims, recuperating surgery patients, home physiotherapy treatment, home orthopaedic patients and in general terms, those requiring specialised equipment for home treatment and health care. In addition there is a broad range of Home Health & Fitness equipment available.**

2.01 The business concept is new in that it targets specialised needs of customers rather than the general needs of the community at large which are usually associated with smaller "traditional pharmacies". The concept may be described as "Total Health Care under one roof" for the targeted market

- 2.02 The sale of the Bulky Goods items and ancillary products (excluding PBS Items) are also directed towards Aged Care Homes, Nursing Homes, Retirement Villages, Medical Centres and the like, at discounted "trade" prices
- 2.03 Sales of all products by On-Ordering & Distribution will be pursued, particularly on a regional basis to serve the needs of customers in rural and remote areas of the Tweed to Coffs Harbour Region
- 2.04 On-line customers are registered and provided with Registration ID Cards. A sample of the Wodonga Registration Card together with samples of the On-Line Order Form are shown at Appendix "A"

#### **CATEGORIES OF BULKY GOODS & ANCILLARY PRODUCTS**

- 3.00 Due to the nature of the "conditions" of persons within the targeted market for the categories and ranges of Bulky Goods products, it is expected that carers of those persons would escort or convey the persons (where their condition permits) to the subject premises or in some cases, shop on behalf of those persons
- 3.01 The categories of Bulky Goods are predominantly those which cater to the needs of the aged and infirm, the disabled and trauma patients although there is also a comprehensive range of Home Fitness Equipment available. Virtually all these Bulky Goods require motor vehicle transport by the purchaser or by courier/carrier delivery
- 3.02 A wide range of products ancillary to the Bulky Goods are available and fall under the category of Medical & Surgical Supplies & Equipment. PBS prescriptions are also ancillary products fulfilling the needs of persons within the target market (NOTE:- The *National Health Act 1953* requires that PBS prescriptions must be dispensed to all classes of persons upon demand). Every day personal health care products are also essential to the needs of these persons and will be available. The combination of all of these products make up the "Total Health Care under one roof" concept to be provided at the subject premises
- 3.03 Numerically, individual products falling under the categories and sub-categories described in 3.02 above run literally into 1,000's. Examples of just some of them are demonstrated in the three bundles of lists shown at Appendix "B" (BULKY GOODS HOME HEALTH CARE EQUIPMENT & AIDS; BULKY GOODS HOME HEALTH & FITNESS EQUIPMENT; MEDICAL & SURGICAL SUPPLIES & EQUIPMENT). Lists of sub-categories can be seen in the left column of the first and third bundles

#### **DISPLAY OF BULKY GOODS**

- 4.00 Due to floor space limitations, Bulky Goods on display and for customer testing are usually confined to "fast sellers" or new or innovative products. Nevertheless, the Bulky Goods and their ancillary products component of the business is the dominant use of floor space in the premises using a combined 65% of total floor space
- 4.01 A "USE ZONES – COLOUR SCHEME FLOOR PLAN" (already in the possession of Ballina Shire Council) is shown again at Appendix "C". The definitive use of each zone clearly demonstrates that, by itself, Bulky Goods is the dominant use at 33.08% of total floor space and combined with floor space occupied by Bulky Goods ancillary products, utilises 65% of total floor space

#### **OBJECTION ON BEHALF OF B VANAREY & OTHERS**

- 5.00 As previously stated, we do not intend to debate legal matters raised by Mr T Robertson SC in his advice to his clients. We will however, make various comments, observations, arguments and denials to statements made by Mr Robertson in his advice/objection:-
- (a) The identities of all participants in this Objection have not been disclosed which places restrictions on the DA Applicant to fully and properly respond to the Objection. Such non-disclosure is in itself, objectionable
- (b) Vanarey is a Registered Pharmacist operating a small "community pharmacy" in Ballina. The "Others" are assumed to be anonymous other Registered Pharmacists operating "community pharmacies" in the Ballina area (SEE statement of Matthew Benson, Senior Consultant – Town Planning of Trevor R Howse & Associates in their Report at para 5.1). There is a total of six (6) "community pharmacies" currently operating in Ballina. These pharmacies rely to a large extent on being located in relative close proximity to Medical Centres and Medical Practices to capture trade through dispensing of PBS prescriptions to patients of those Medical Practices. The proposed BULKY GOODS RETAIL & WHOLESALE

**SHOWROOM/WAREHOUSE does not** rely on proximity to Medical Centres/Practices. It is located approximately 2 kilometres by road from the nearest Medical Centre/Practice

- (c) Mr Robertson makes several references to various case decisions involving **The Warehouse Group & Woolworths Ltd.** Members of the Retail Sector throughout Australia are very familiar with these cases and the numerous similar cases spread over a number of years in other States involving the same parties. These cases were originally initiated by **Woolworths Ltd** against **The Warehouse Group** in protest against the **selling of groceries and food items by The Warehouse Group**
- (d) Mr Robertson places emphasis on objection to the sale "**small items**" (as opposed to **Bulky Goods**). Is he suggesting that **Ballina Shire Council** should prohibit the sale of such "**small**" hand-held items as **Mobile Telephones, I-Pods, GPS devices, cameras and the like** by **Bulky Goods Retailers** such as **Harvey Norman, The Good Guys, Dick Smith Electrical et al** ?
- (e) The initial **Statement of Environmental Effects** by **Ardill Payne & Partners** lists and makes reference to "**similar type operations in Bulky Goods centres**" in various locations. This reference has been **misinterpreted** and has been **taken out of context** by Mr Robertson. Those listed **GPPW establishments ARE IN FACT "SHOPS"** (as opposed to **Bulky Goods Retail & Wholesale Showroom/Warehouse**) and are located in **Bulky Goods centres** and permitted under the relevant **Town Planning Schemes**
- (f) The "**Objectors**" commissioned three separate **Town Planning Consultants** to "**investigate**" the operations of three **GPPW "Shops"** (**McGraths Hill, Armidale and Coffs Harbour**). Each of the Reports **confirm** those establishments as being "**Shops**" and in fact support the contention of the **DA Applicant** that the proposed **Ballina operation** is a totally different concept to "**large format chemists/pharmacies**."
- (g) The listed "**shops**" were described as "**similar type operations**" by the Applicant but this term was meant to refer to the **visual amenity, size, layout etc** of **GPPW "large format chemists/pharmacies"**. **THESE "SHOPS" DO NOT STOCK LARGE RANGES OF BULKY GOODS NOR DO THEY PROVIDE ON-LINE ORDERING AND DELIVERY SERVICES AS IS ALSO THE CASE WITH THE EXISTING "COMMUNITY PHARMACIES" OPERATED BY THE "OBJECTORS" IN BALLINA.** There is a vast difference between "**community pharmacies**" (**Shops**), "**large format chemists/pharmacies**" (**Shops**) and the specialised target market and concept proposed at and from the subject premises
- (h) The "**Objection**" by **Vanarey and Ors** has clearly been lodged by **COMPETITORS** of the **DA Applicant (GPPW)** and we note that the **Exhibition Period** for the **Draft proposed SEPP (Competition) 2010 Policy** expired on **26 August 2010**. The aims and objectives of this **SEPP** are clearly stated in the draft document and should be taken into account by **Council Assessment officers**

#### **SOCIAL ISSUES**

- 6.00 The "**special needs**" of the categories of persons described in **Items 2.00 to 2.04** above have long been **uncoordinated and neglected** by the **Retail Sector** in the sense that the "**Total Health Care under one roof**" regional concept has not been developed or advanced until **GPPW** introduced and opened the first of its kind in **Wodonga** in the early part of **2010**. As stated in earlier communications to **Ballina Shire Council**, the proposed premises will be the **second regional "specialised" outlet** in **Australia** servicing those persons with "**special needs**" in the region **Tweed to Coffs Harbour and beyond**
- 6.01 A **refusal** of the subject **DA** will **consequentially** be a **rejection** of the concept that persons in the categories described in **2.00 to 2.04** above are **not entitled to the convenience** of the "**Total Health Care under one roof**" establishments. It is respectfully suggested that the **Council** considers the possible **social implications** of a **refusal** of the subject **DA**

Yours faithfully,



**ROB CURTIS**  
Director

ARDILL PAYNE & PARTNERS

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



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**DEVELOPMENT APPLICATION &  
STATEMENT OF ENVIRONMENTAL  
EFFECTS**

Submission to Ballina Shire Council

To permit the of use of a bulky goods retail  
tenancy for a bulky goods retail and wholesale  
showroom/warehouse

Cnr Stinson St & Boeing Ave, Ballina  
Proposed Lot 1 in a re-subdivision of Part Lot 87  
DP 1118585 & Lot 1 DP 237752

for:  
Good Price Pharmacy Warehouse Pty Ltd

May 2010

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79 Tamar Street  
(PO Box 20)  
BALLINA NSW 2478

Ph: (02) 6686 3280  
Fax: (02) 6686 7920  
Email: [info@ardillpayne.com.au](mailto:info@ardillpayne.com.au)

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*This section introduces the proposal and provides a general overview of the project. Details of public authority and other consultations that have been undertaken in conjunction with preparation of this development application are also provided.*

### 1.1 Background

Ardill Payne and Partners (APP) has been commissioned by Good Price Pharmacy Warehouse Pty Ltd to provide town planning services in the preparation and lodgement of a development application and statement of environmental effects with Ballina Shire Council.

Development consent is sought to permit the use of Unit/Tenancy 4 within an approved bulky goods retail complex (per DA 2009/435 as amended 6 April 2010) by the Good Price Pharmacy Warehouse for the purposes of a bulky goods retail and wholesale showroom/warehouse.

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 aid related products. A large proportion of the medical, health care and invalid aid related products are large and bulky and require large floor areas for display, trial/testing and handling.

### 1.2 Structure and Scope of Report

<b>Section 2</b>	Describes the subject land and its local and regional environmental context.
<b>Section 3</b>	Describes the development proposal in detail.
<b>Section 4</b>	Reviews the key environmental interactions and proposed management measures.
<b>Section 5</b>	Identifies the environmental objectives of the proposal.
<b>Section 6</b>	Reviews the statutory and planning policy provisions applying to the project.
<b>Section 7</b>	Provides a summary and conclusions.

A number of attachments form part of this report being:

- Attachment 1** Plan of proposed Lot 1
- Attachment 2** Locality plan
- Attachment 3** Aerial photograph of subject and adjoining land
- Attachment 4** Floor plan of Unit/Tenancy 4 (per DA 2009/435 as amended 6 April 2010)
- Attachment 5** Submission from Remnus Pty Ltd (Retail Industry Consultants)
- Attachment 6** Justification for development having regard to local planning provisions

### **1.3 Overview of Statutory Framework**

Ballina Shire Council is the consent authority for the development application as defined in Clause 4(1) and pursuant to Section 80 of the EP & A Act 1979.

The development is not integrated development for the purposes of Section 91 of the Act and as a consequence, no integrated approvals are required.

Should any additional information or clarification be required in respect of any matter raised in this report, it is requested that contact be made in the first instance with Paul Snellgrove of Ardill Payne & Partners prior to final determination of the application.

### **1.4 Site History**

The land that is subject of this application was rezoned from 1(d) – Rural (Urban Investigation) Zone to 4 – Industrial Zone under the provisions of Ballina LEP Amendment No. 95 (gazetted 20 July 2007).

The subject land is situated within an area that is identified in the Southern Cross Precinct Master Plan as a "bulky goods retail precinct."

GeoLINK Pty Ltd was engaged by Ballina Shire Council to prepare and lodge a development application for subdivision comprising an extension of the Southern Cross Industrial Estate. The development



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