

22. The SEE argues:

"As is detailed in s.3.0 and attachment 5 of this report, a large proportion of the floor space 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" (p.18).

This is what might be called "the floor space argument": that so long as a not insubstantial area is set aside for the display of some bulky goods (there are eight items listed in the SEE), then that is sufficient to constitute a use of the land for the purposes of bulky goods retailing, and if it comprises the majority of floor space then it subsumes any other use, such as a shop. Earlier, the SEE argued that "many ... products are sold in bulk" (p.11), inferring that the sale of goods in bulk could constitute the sale of bulky goods.

23. The SEE's attachment 5 asserts that the dominant purpose of the use is for bulky goods retail and what is described compendiously as "wholesale showroom/warehouse/distribution centre" as well as "sale by retail and wholesale of ancillary pharmaceutical and health care products". This statement begs the question: ancillary to what? Wheelchairs? Gym equipment? Moreover, the argument that these uses are permissible in a warehouse retailing format depends upon examples from Queensland and Victoria under different planning schemes, but studiously ignores the long line of authority in New South Wales on identical definitions and comparable planning schemes. Mr Curtis measured the retail area of what he calls "mixed products" (not, I stress, "ancillary products") as about 32% of the site, in itself an area (250m²) the size of a small retail tenancy in a shopping centre (Fig 1 in the SEE "Use zones – colour scheme floor plan"). When you add the point of sale and entry (35m²) and the dispensary (about 80m²) the area for retailing "mixed products" comprises about 365m². Of course, this is an unrealistic calculation as there is a substantial back of house area which is described as "warehouse online orders packing and distribution office", that is, four uses of which the largest in area would comprise the warehouse.

The warehouse is ancillary to the front of shop retail area, as well as a use in itself, and to obtain a realistic notion of the floor space used for the purposes of retailing products (other than "bulky goods health care equipment"), one must include the part of the back of house area in which would be stored the small consumer products sold in the shop. That would exceed 50% of the floor space. Even if the warehouse is excluded, the area devoted to retailing non-bulky goods approaches 50% of the floor area. As I demonstrate below, however, the authorities do not support a floor area analysis for the purposes of characterising the use of the premises where multiple uses take place. Rather, the Courts look to the intensity of each use. In the case of retailing, the range of product lines and the lineal metres of shelving of them assist in understanding whether the sale of small consumer items is an independent use.

G. IS WAREHOUSE RETAILING A SHOP?

24. In *Westfield Management Ltd v Direct Factory Outlets Homebush Pty Ltd* (2004) 136 LGERA 174, the Court rejected a submission that a warehouse retail outlet was an innominate use rather than a shop:

"If the submission be correct, then ... [e]ven a specialised kind of shop, such as a pharmacy, would be permissible [in a bulky goods/industrial zone]. But all of these uses are kinds of shops. The submission would make nonsense of the definition of a shop."

This passage was cited and specifically approved on appeal: *Gazcorp* at [17]. Pharmacies and warehouse retailing are shops, according to the Court of Appeal.

25. In *Warehouse Group* (2003 LEC), Lloyd J squarely rejected submissions of the kind made in the SEE that warehouse retailing was a use distinct from "shop" which, because it displayed goods in bulk, was some innominate species of the genus "bulky goods" and permissible as such in industrial zones:

"Although the respondent is displaying and selling bulk quantities of small products, that does not constitute the display or sale of bulky goods. The respondent's business seems to me to be the retailing of a range of general merchandise which involves the display of items in a bulk manner, where the goods require the convenience of a warehouse building to be handled, stored and displayed. The storage and display of goods in a bulk manner, however, does not come within the definition of 'bulky goods salesroom or showroom'. In another way, it seems clear to me that the vast majority of the goods are clearly not bulky goods, and those which are bulky goods comprise such a small proportion of the total merchandise on display for sale as to be merely incidental to the respondent's business, being the selling of general merchandise. At its highest the respondent's use of the premises might be described as a form of small discount department store" (at [12]).

26. In that case, the Court did not consider that the floor area occupied by categories of goods truly reflected the intensity of uses of the shop. Rather, it relied upon the linear metres of shelving to characterise the use, and in particular to determine whether the display of bulky goods subsumed the display and sale of general consumer items:

"The evidence shows that there is a wide range of products and goods on display for sale generally of the type identified in the floor plan attached to the Notice of Development Consent. The amount of space occupied by the various categories of goods does not, however, correspond to that shown on the floor plan. Many of the goods are small and easily portable and do not require a large area for handling, storage or display. Neither do such goods require direct vehicular access to the premises by members of the public for the purpose of loading items into their vehicles after purchase. The evidence ... shows that such goods comprise the vast majority of goods on display. The total percentage of linear shelving occupied by truly bulky goods is only about 32 per cent. Almost 40 per cent of the display space is occupied by goods that could never be considered bulky. The remaining about 30 per cent of the display space is occupied by categories of goods which some may be considered as bulky, such as sporting goods and camping goods. Apart from the furniture, however, most items of the latter category which were seen on display were not bulky."

27. This decision was upheld on appeal: *The Warehouse Group* (2003 CA). It is plain that the sale of a wide range of small consumer items of the kind sold by Good Price Pharmacy Warehouse is prohibited in the industrial zone.

H. IS THE SHOP USE SUBSUMED IN THE BULKY GOODS USE?

28. The floor space argument is wrong because planning law recognises that there may be more than one use of the same area, so long as they are independent one of the other, each of which regarded as a separate use of the land: *Foodbarn Pty Ltd v The Solicitor-General* (1975) 32 LGRA 157. Even if a use is ancillary to another use it is not precluded from being an independent use: *Baulkham Hills Shire Council v O'Donnell* (1990) 69 LGRA 404 (eg a convenience store in a petrol station). On ordinary principles of characterisation, the use of land for the purposes of a pharmacy (the dispensing of medicines by a qualified chemist) and the sale of convenience shopping items is the use of land as a shop, even if bulky goods are also sold.
29. The sale of bulky goods is a separate use. It could not rationally be argued that the sale of a treadmill or a walking frame reflected a dominant use to which the sale of hairspray, toilet roll and toothpaste was ancillary and hence subsumed within the bulky goods use. That is simply nonsensical. However, the Courts have rejected in terms the floor space argument in a succession of cases because they have recognised that it is not the area of the shop floor but rather the intensity of the use which matters. In *The Warehouse Group*, as in this case, the relevant business was a warehouse retailer which stocked thousands of small consumer items on high shelves in narrow rows and then devoted the remainder of the shop floor to a few classes of bulky goods or other permissible lines of goods. The obvious intention of the retailer, which had established its business in industrial zones where bulky specialised lines of goods were permissible, was to overcome the restriction imposed by the prohibition on shops. The attempt to incorporate a shop within a larger area and to physically overshadow the floor space occupied by the shop by the bulky goods or specialised goods use invariably failed. The Courts could see through the ruse.
30. Even if some goods are ancillary to others, the use of land as a shop is not for that reason ancillary to other uses. The wholesale use, where goods are

posted to customers or sold in bulk, is typical of a separate and independent use from retail premises, even if the two uses are co-located and share parts of the premises.

31. Finally, it is sometimes argued, based upon *Sutherland Shire Council v Telope Pty Ltd* (1994) 85 LGRA 103, that so long as some bulky goods are sold, it is permissible also to sell smaller items. In *Warehouse Group* (2003 CA), it was submitted that as 40% of the display shelving and areas were occupied by bulky goods, this was sufficient to bring the use of the premises within the definition even if the bulky goods were small in number in comparison with other items of merchandise available for sale. The SEE adopts this argument. The Court of Appeal rejected it:

"In my opinion, the reference in the reasoning in Telope to the existence of the ranges of goods for sale, in which bulky items would be included along with the small and portable items, is of paramount significance. In regard to such a range, the presence of small portable items would not prevent its characterisation as being one for the sale by retail of bulky goods, provided only that such bulky goods were not merely incidental to the range. In other words, it was necessary that the range could properly be characterised as one for the sale of bulky goods, in which the associated small and portable goods, however numerous, could properly be regarded as ancillary to the bulky goods.

Consequently, provided that, in the case of the electrical goods shop, there was a substantial number of bulky goods, such as large television sets, the fact that the range also contained small and portable electrical goods would not prevent an overall characterisation of the business as being one for the sale by retail of bulky goods, provided, of course, that it was appropriate in the conduct of the business that there be relevantly large handling areas and/or vehicular access. ...

I am quite satisfied that the principles enunciated in Telope cannot rationally be extended to cover a situation where the conduct of a business and premises involves, in addition to the display for sale of one or more ranges of goods which could, consistently with Telope be described as ranges of bulky goods, but a display of other ranges of merchandise which contains large numbers of small portable goods but no significant quantity of bulky goods. A business, so conducted in my opinion, could not properly meet the definition of a bulky goods salesroom or

showroom ... if Telope were extended in this way, it would be possible to characterise any large or middle range department store as being a bulky goods salesroom or showroom" [39-41].

32. In this case, there is no range of goods for sale, part of which include non-bulky goods, but which predominantly involve bulky goods of such a size and shape as to require a large area for handling, storage or display and easy and direct vehicular access for collection. The bulky goods are the treadmills, wheelchairs, walkers etc. There is no range as such except, I suppose, there may be larger or smaller treadmills etc. There is certainly no relationship between these items and the kind of small consumer goods which are stacked on the shelves of the retail part of the shop. I have illustrated this point earlier and need not repeat it.

I. **CONCLUSION**

33. In my opinion, the proposed development is unlawful. Warehouse-style retailing where a wide range of consumer products are sold amidst a few bulky items in bulky goods zones is the equivalent of fitting a square peg into a round hole. In this case, it is evident that the "warehouse" is simply a pharmacy which also sells the kind of goods sold by discount department stores, supermarkets and convenience stores. The SEE invites an examination of the other stores operated by the proponent with which this proposal is said to be comparable. In every respect, including permissibility, those operations are shops. They do not sell bulky goods and they were not authorised by the relevant consent authorities because they sold bulky goods. In my opinion, the Council cannot grant consent to this development application. If it did it is likely that its decision would be successfully challenged.



T F ROBERTSON SC

27 July 2010

Frederick Jordan Chambers
Phone: 9229 7337
Fax: 9221 5747

From: Steve [RRPharm@bigpond.net.au]
Sent: Tuesday, 13 September 2011 11:33:50 AM
To: Mayor Phil Silver
Subject: DA for Good Price Pharmacy

Dear Philp

I was among the group of people who met with you and some of the other councillors last Wednesday regarding the application of the Good Price Pharmacy. Thank you for your time at this meeting but I came away feeling that there are some inaccuracies regarding the application.

You had mentioned about buying 3 months supply of goods on the internet and you would be happy to be able to buy these locally. Our legal advice is that buying/selling goods IN bulk does not constitute BULKY goods and should not be permitted.

Another concern that I have is the notion that the majority of floor space is for bulk goods. The floor space allocated to bulky goods is only 30%, and our legal advice again states that it is not the floor SPACE that is to be taken into account but the INTENSITY of the operation. The amount of shelving and number of items not ancillary to the equipment stated in the application, indicates that the majority of this business is for the retailing of non-bulky items.

Thank you again for your time,
Regards
Steve Garzolini

From: Ballina Health & Beauty [ballinahb@westnet.com.au]
Sent: Friday, 9 September 2011 1:19:44 PM
To: Mayor Phil Silver
CC: Councillor David Wright; Councillor Keith Johnson; Robyn Hordern; Jeff Johnson; Councillor Sue Meehan; Alan Brown; Sharon Cadwallader External; Peter Moore; Councillor Ben Smith
Subject: GoodPrice Pharmacy Warehouse

TO THE COUNCILLORS OF BALLINA SHIRE COUNCIL

Re OBJECTION to GoodPrice Pharmacy Warehouse in Ballina Industrial Estate

The Development Application For GoodPrice Pharmacy Warehouse legally should not be approved and will be easily contestable in the Land and Environment Court.

Ballina Shire Council's own legal advice states that the proposal does not comply with the Ballina LEP

Clause 9 (7), Clause 27 and Schedule 3.

Independent legal advice commissioned by Mr T.F Robertson SC on behalf of Mr Vanarey also states that the decision to grant a development application under the Ballina LEP would be UNLAWFUL for the same reasons as stated by the Ballina Council advice above.

If the Ballina Council decides to LEGALLY change the LEP the ramifications to the Retail areas of Ballina will be many.

By granting approval to this development Ballina Council will shift the retail focus from the CBD and shopping centres to the industrial area. There will be a further deterioration to the state of the CBD, as retail demographics shift to the industrial area. A precedent will be set and more retailers will move their businesses to the industrial zones, so as to pay LOWER rent.

The issue has been raised that SPOTLIGHT has been granted approval, this is irrelevant to this application. Council may find that it has been very lucky the Spotlight approval has not been contested. The approval of Spotlight itself may be unlawful, but the Council will compound the problem by making another unlawful approval.

Ballina Shire is already well serviced with eight established pharmacies in Ballina retail shopping areas, one at Lennox Head and two at Alstonville. There are many different franchises and independent pharmacies. If the Council approves this Development Application it will disadvantage long established businesses who have always serviced, offered free advice and shown great support for Ballina Shires Communities. There will be a net job loss to the region warehouse type organizations offer no service and minimal staff.

Essential services will be lost and ultimately these services will no longer be easy and accessible for the public - the elderly and infirm will be disadvantaged as the retail focus will be at the industrial zones and will be less accessible.

We appeal to you to consider this application very carefully and follow the legal advice offered by your own lawyers.

Yours Sincerely

Carmel Doyle

Ballina Health & Beauty Pharmacy

0401 095 978

9 September 2011

file:///C:/DataWrks/temp/1876384/dwa222.htm

14/09/2011

From: Ballina Health & Beauty [ballinahb@westnet.com.au]
Sent: Friday, 9 September 2011 1:19:44 PM
To: Mayor Phil Silver
CC: Councillor David Wright; Councillor Keith Johnson; Robyn Hordern; Jeff Johnson; Councillor Sue Meehan; Alan Brown; Sharon Cadwallader External; Peter Moore; Councillor Ben Smith
Subject: GoodPrice Pharmacy Warehouse

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Essential services will be lost and ultimately these services will no longer be easy and accessible for the public - the elderly and infirm will be disadvantaged as the retail focus will be at the industrial zones and will be less accessible.

We appeal to you to consider this application very carefully and follow the legal advice offered by your own lawyers.

Yours Sincerely

Carmel Doyle

Ballina Health & Beauty Pharmacy

0401 095 978

9 September 2011

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15/09/2011

30 September 2011
Our Ref: SJC1313-931

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

Attention: Mr Bob Thornton

Dear Sir,

**Re: Development Application, Good Price Pharmacy Warehouse
Harvey Norman Centre, Southern Cross Industrial Estate**

Thank you for your email of 16 September 2011 attaching a copy of the Economic Impact Assessment prepared by Deep End Services Pty Ltd (Deep). I provide town planning advice to objections referred to by Council as Vanarey and Others. Pursuant to Clause 27 of Council's Local Environmental Plan, Council must have regard to the following:

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.*

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In relation to the provisions of that clause I wish to make the following observations:

1. At page 6, Deep defined the nature of the use by way of wholesale and retail operations. They say that some 75% of the sales will be by way of conventional retail. This statement would appear to fly in the face of the requirements of Clause 27(2).
2. Pursuant to Clause 27(4)(g), an applicant, if they pass the first threshold test, set out at Clause 27(2) (which my client says has not been met), must be able to demonstrate that adequate land within a business zone is not available to meet the needs of the proposed development. The Deep report does not do this. As Council will be aware from its own audits of land zoned for business purposes, property is available of the size applicable in the subject circumstances for the proposed use. By way of example, the proprietor of the Harvey Normal Centre at Southern Cross Industrial Park is the same group as the proprietor of land immediately adjacent to McDonalds in West Ballina. That land has an area and is zoned suitably for the subject use.
3. The Deep report does not address the considerations required under Clause 27(4)(b).
4. The Deep report purports to address Clause 27(4)(c) by comparing an estimate of the first year of turnover figures for the Good Price Pharmacy establishment against the retail turnover in the other business centres of Ballina. I submit that this is the wrong approach. The analysis should be carried out on the basis of the comparison of the likely normal turnover of the new shop (not its first year estimate) against the turnover of chemist facilities in each of the business centres. Only by completing such an analysis, will it be possible to opine about whether or not the integrity of the business centre will be adversely affected. I calculate that proposed Good Price Pharmacy Warehouse premises will diminish the turnover of certain existing retail chemists by almost 20%. Such an impact will adversely affect those businesses and is at odds with the considerations relevant to Council pursuant to Clause 27(4)(c).

Thus, to summarise, nothing in the Deep report addresses the criteria required by Clause 27(2). In fact it highlights the large percentage of the premises which is set aside for retail purposes. Nothing in the Deep report addresses the availability of other zoned land to meet the needs of this land use as required by Clause 27(4)(g). Further, the calculations in the Deep report do not properly address the requirement of Clause 27(4)(c) of the LEP. Having regard to all of the above, my clients respectfully submit that the subject application should be refused.

Yours faithfully



Stephen J Connelly FPIA
Certified Practising Planner
S J CONNELLY CPP 448
email: steve@connelly.com.au
mobile: 0419 237 982

Bob Thornton

From: Steve Connelly [Steve@connelly.com.au]
Sent: Wednesday, 5 October 2011 3:06 PM
To: Bob Thornton
Subject: good price pharmacy DA

Hi Bob

Below are my calculations with respect to the impact of the proposed pharmacy on other pharmacy stores in the locality. As you will see, I do not think it is appropriate to use "first year" figures to assess impact. Having regard to the size of the store proposed and the aggressive nature of the marketing associated with the proposed business I think a turnover of about \$3.6m pa is appropriate.

gross turnover for all 8 stores	\$	23,328,000
av. per store	\$	2,916,000
anticipated turnover for new store ~	\$	3,600,000

neighbourhood	store count	impact	turnover using average	impacted turnover	impacted
ballina island	6	extreme	\$ 17,496,000	\$ 14,119,272	19
west ballina	1	mild	\$ 2,916,000	\$ 2,828,520	3
east ballina	1	moderate	\$ 2,916,000	\$ 2,770,200	5
			\$ 23,328,000	\$ 19,717,992	

Yours faithfully
Steve Connelly

S J CONNELLY CPP FPIA | S J CONNELLY CPP PTY LTD ACN 125970783 | t: 02 66877171 | m:
0419237982 | e: steve@connelly.com.au | w: connelly.com.au |

From: adrian serafin [adrian-serafin@hotmail.com]
Sent: Monday, 19 September 2011 7:58:59 AM
To: Mayor Phil Silver
Subject: DA for Good Price Pharmacy at the Hravey Norman Complex

To Philip Silver,

I would like to express my concern over the recent DA for a Good Price Pharmacy at the Harvey Norman complex. The Harvey Norman complex has been zoned as a bulky good outlet. My concern is that councillors are unfamiliar with the pharmacy business model and may be led to believe that a pharmacy can operate as a bulky goods outlet.

I am aware that a portion of the proposed pharmacy has mobility aids and pet food to justify it as a bulky goods business. To be classed as a bulky goods business the majority of sales generated would have to come from the bulky lines stocked. Figures from Community Pharmacy Sales Breakdown supplied by The Pharmacy Guild of Australia, shows that for a 12 month period, mobility aids generated less than 2% of turnover. If the majority of a business' turn-over (approx 98%) comes from retail items, then it is a retail business. Good Price Pharmacy describe themselves as a "leading retailer" (<http://www.goodpricepharmacy.com.au/aboutus.html>), not a bulky goods outlet.

The Good Price Pharmacy business model needs to reach a turn-over of \$5 million to break-even. The mobility needs of nursing homes and repat patients in Ballina have already been negotiated by local businesses. There is a limited market remaining in Ballina for mobility aids, and there are already five businesses in town that provide these products. More importantly they also provide home servicing of this equipment.

When talking with a local mobility shop owner, I found that 90 per cent of his business turnover was actually generated through home visits. He services the area between Yamba and Tweed Heads and also gives his customers with a free trial period of equipment, a service that the Good Price Pharmacy model does not provide.

To achieve a turn-over of \$5 million, Good Price Pharmacy will consequently be relying on the retail side of the business. Mobility aids is a very competitive market, and without the additional service of home visits and repairs, Good Price Pharmacy would be unable to compete in this market. Of the 29 Good Price Pharmacies currently trading in Australia, not one would be able to provide you with figures that show bulky goods generate the majority of sales.

A retail pharmacy needs a population of at least 3000 people to be viable. Ballina currently has nine retail pharmacies and to introduce a tenth would jeopardise the businesses that already exist in town. Good Price Pharmacy does not offer any additional services to Ballina, in fact this particular pharmacy model operates on low overheads, meaning lower wages therefore less staff. And as for "traditional" services like home deliveries, instore credit, free blood pressure checks, just to name a few, these are just not offered.

I would be very interested in hearing your views on this matter and more than happy to discuss any questions you may have about the pharmacy business model.

Thanking you for your consideration,

Adrian Serafin B.Pharm
Our Chemist, West Ballina
wk: 66813730
hm: 66874432

dwaD.txt

From: Ballina Soul Pattinson [ballinasoulpats@westnet.com.au]
Sent: Saturday, 17 September 2011 2:13:23 PM
To: Mayor Phil Silver
CC: Councillor David Wright; Councillor Keith Johnson; rhorden@ballina.nsw.gov.au; Jeff Johnson; Councillor Sue Meehan; brown@nsw.quick.com.au; Sharon Cadwallader External; Peter Moore; Councillor Ben Smith
Subject: Goodprice Pharmacy Warehouse application

To The Councillors Of The Ballina Shire Council

Re Objection to Good Price Pharmacy Warehouse Application, Ballina Industrial Estate.

I am writing to you to inform you of my concern regarding the recent proposal by the national retail franchise, Good Price Pharmacy Warehouse (GPPW). GPPW is intending to operate a retail business in a bulky goods area which has recently been rezoned from general industrial. This puts them at an unfair competitive advantage to pharmacies operating in commercial zones as they are able to operate a similar model of business while paying around half the rent of properties in commercial areas.

I have a share in 3 pharmacies in the CBD that would be in direct competition with this national retailer. For us to compete with such a store we will need to merge two of our pharmacies. This would mean another empty shopfront in River St and loss of employment opportunities as we streamline our operation to run with less staff and lower rent.

As Councillors I'm sure you know that there are currently 16 vacant shops in River St and if the GPPW proposal were to be allowed it would further split the retail precinct. Recently I have read about the council's plan to invest in River St and I wonder what the point is if retail business is being driven away from the town centre. If the intention of the council is to invigorate the main street, enabling it to remain a vibrant retail and tourist precinct, there need to be drawcards to support the retail businesses and cafes in River St. Pharmacy is one of those draw cards.

While the Harvey Norman Centre is a great addition to Ballina, enabling major furniture and homeware showrooms to be opened in the area and drawing customers to Ballina from the surrounding area, the addition of the Good Price Pharmacy Warehouse which is not a bulky goods store would have negative flow on effects for the businesses in the main street.

GPPW who describe themselves as "one of Australia's leading retailers in health, beauty and medicinal products" is attempting to represent themselves as a bulky goods outlet. If this

Page 1

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retailer is to be allowed into a bulky goods area, I would find it hard to believe that they would dedicate the required 33% of their floor space to a category that is likely to represent less than 2.3% of sales (home health care items are included in a category representing only 2.3% of total pharmacy sales nationally: The Pharmacy Guild Of Australia). Interestingly, in the economic assesment commissioned by Harvey Norman, Deep End Services included photographs from a Soul Pattinson Pharmacy (Astley Soul Pattinson in Pennant Hills) to show the GPPW range of bulky goods in appendix 11. Does no GPPW stock a range of bulky goods to photograph?

Ballina already has 2 scooter sales outlets and 3 surgical supplies stores. None of the pharmacies in Ballina specialises in bulky home health care items as the area is well serviced by these exising businesses.

As such I employe you to consider carefully the GPPW application.

Yours Sincerely

Susan Larkins
Ballina Soul Pattinson Chemist
157-9 River St
Ballina
NSW 2478
0266869155
0429855992

Page 2

From: Rob Blackburn [lennoxpharmacy@gmail.com]
Sent: Wednesday, 14 September 2011 12:10:52 PM
To: Mayor Phil Silver
Subject: Zoning Comments

Hello Phil,

I want to quickly run past you the problems I can foresee if you give consent to the Good Price Pharmacy out at the industrial estate under the guise of a bulky goods retailer.

I just see this as a cynical move by these people to try and move themselves into a low rent environment. The fact that they have the word "warehouse" in the name does not in anyway indicate their stock range.

I also feel that their suggestion to be the distribution point for 'all the other' Good Price outlets in the northern rivers area a sham too. There is only one and that is in Grafton, all the others (and there aren't that many... see attached) are hundreds of kilometres away. The way the pharmacy wholesalers are working these days is much more sophisticated than this DA would suggest. All pharmacies order electronically and the goods arrive overnight having been computer picked and packaged at huge distribution centres. Overnight freight companies then do the rest. The notion that this outlet in Ballina will be warehousing and shipping boxes of tissues, toilet paper etc to Grafton or Tamworth is so improbable to be not worth considering.

The reality here is that this marketing group called "Good Price Pharmacy" is just that. It is no different to Souls, or Priceline or Blooms or Chemist Warehouse etc. The way these groups are structured is exactly the same. It is more of the same and belongs in commercial retail premises competing on the same basis.

It will not help the town if the trend is for businesses to move out to the industrial estate in cheaper premises opened up by opportunistic out of town operators. Have you driven around the Byron Industrial estate lately?

How many empty shops are there in Ballina and Lennox now?

My understanding of the bulky goods precincts is to allow businesses that sell large bulky items the opportunity to display them in a low cost, plenty of space type of environment. It allows these businesses to operate close to the normally zoned retail premises but with a reduced overhead structure. Peppering retail businesses amongst the genuine bulky good retailers will put upward pressure on their rents. It is a lose lose long term.

Why fragment the town, put pressure on businesses who employ a lot of people and provide a lot of service to the local community for the sake of this person bending the rules for his own gain?

It just seems wrong to me that local government can overturn it's own planning policies in favour of some out of town business and thus make life difficult for the people who have worked away for the past 25 years paying rates, employing staff and generally being part of the community.

Yours faithfully,

Rob Blackburn.

From: Bart Vanarey [bart@pricelineballina.com.au]
Sent: Wednesday, 14 September 2011 11:31:52 AM
To: Mayor Phil Silver
Subject: Good Price Pharmacy Warehouse DA due for Council Decision in September

Dear Mayor,

Our names are Bart and Elizabeth Vanarey , proprietors of the Priceline Pharmacy Ballina Central.

We wish to voice our objection to the DA of Good Price Pharmacy Warehouse (GPPW) to open a pharmacy next to Harvey Norman in the Ballina Industrial Estate .

The issue we have with the DA is that the zoning for that area allows for the sale of 'Bulky Goods' and a GPPW Pharmacy Franchise is definitely NOT about 'Bulky Goods' The report we commissioned from Mr Stephen Connelly (Town Planner) regarding the zoning, was submitted to the Ballina Planning Department via our legal team and then presented to councillors by Stephen in early September. This report forms the basis of our objection.

The GPPW franchise chain has its headquarters in Brisbane from where 27 pharmacies on the east coast are controlled. When one visits their website, it is very clear that they are all about retail pharmacy and Not about wholesaling or distribution. There is no mention of any 'BULKY GOODS' on their website. Not ONE of their stores is anything LIKE the store that they are proposing for Ballina. I suggest that the initial layout as proposed in their DA would revert to their Franchise formula at a later time as the success of their chain is based on the sale of regular pharmacy items, not bulky goods.

I would like to bring to your attention two court cases involving Pharmacy Warehouse Franchise operations. One in Queensland and the other in Victoria.

At Pine Rivers in Queensland, Westfield's Senior Counsel successfully argued that the Heath ePharmacy was a retail operation and that should they be granted a DA in a 'Bulky Goods' zone it should stipulate the exclusion of the sale of prescription medicines, scheduled medicines AND any item that could be sold in a supermarket. A list of excluded items was established. The pharmacy did not proceed.

At Hoopers Crossing in Victoria, the local Council AND Chemist Warehouse combined to prevent the opening of a Direct Chemist Outlet Pharmacy Warehouse in a 'Bulky Goods' zoned area on the grounds of zoning.

As you are aware, the pharmacists in Ballina, Alstonville, Lennox Head and Bangalow are united in the rejection of this DA. The approval of this DA would allow GPPW (a major RETAIL Pharmacy chain) to operate in an industrial zone. All indicators show that GPPW would eventually present as a regular retail pharmacy, selling all items found in a regular pharmacy but operating in an Industrial Area. Indeed it would not be a viable proposition if the smaller pharmacy items were excluded. For this reason, the united pharmacists of the area intend to continue instruction to Mr Timothy Robertson S.C. from Sydney to take our case forward.

We implore you to vote against this DA that would grant a licence to sell retail items such as prescriptions, eye drops, cough and cold items, deodorants, toothpaste, cosmetics and perfumes in a 'BULKY GOODS' zoned area.

Bart and Liz Vanarey

From: Steve [RRPharm@bigpond.net.au]
Sent: Tuesday, 13 September 2011 11:33:50 AM
To: Mayor Phil Silver
Subject: DA for Good Price Pharmacy

Dear Philip

I was among the group of people who met with you and some of the other councillors last Wednesday regarding the application of the Good Price Pharmacy. Thank you for your time at this meeting but I came away feeling that there are some inaccuracies regarding the application.

You had mentioned about buying 3 months supply of goods on the internet and you would be happy to be able to buy these locally. Our legal advice is that buying/selling goods IN bulk does not constitute BULKY goods and should not be permitted.

Another concern that I have is the notion that the majority of floor space is for bulk goods. The floor space allocated to bulky goods is only 30%, and our legal advice again states that it is not the floor SPACE that is to be taken into account but the INTENSITY of the operation. The amount of shelving and number of items not ancillary to the equipment stated in the application, indicates that the majority of this business is for the retailing of non-bulky items.

Thank you again for your time,
Regards
Steve Garzolini