



27 August 2007

Mr Neil Byron & Dr Steven Kates
Productivity Commissioners
Productivity Commission
Level 28
35 Collins Street
MELBOURNE VIC 3000

Dear Mr Byron & Dr Kates,

**Submission Regarding Productivity Commission's Review
The Market for Retail Tenancy Leases in Australia**

The Bulky Goods Retailers Association (BGRA) is the national peak industry association whose primary focus is on issues relating to appropriate planning and responsible development of bulky goods outlets.

Bulky goods is a well-established retail sector and recent figures from BIS Shrapnel indicates that the sector represents 22 per cent of all retail sales or a massive \$38.5 billion annually.

The association's membership consists of 25 (32 brands) of Australia's largest and most respected retailers including Harvey Norman, Bunnings, Forty Winks, Snooze, Mitre 10, Spotlight, Beacon Lighting, The Good Guys, Bedshed, Beaumont Tiles, Autobarn, Fantastic Furniture, Super Cheap Auto, Freedom, Leather Republic, Anaconda, BCF, Plush, OZ Design Furniture, Barbeques Galore, Clive Peeters, The Outdoor Furniture Specialists, Clark Rubber, Kleenmaid, JB Hi-Fi, Domayne, Godfreys, and Repco.

Aside from members of the association, the BGRA is supported by a large number of sponsors, many of whom are significant developers and owners of bulky goods developments across Australia including Charter Hall Group, Valad

President: Ian Robinson
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Executive Director: Philippa Kelly
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Principal Sponsor:
PRICEWATERHOUSECOOPERS

Property Group, Mirvac, Terrace Tower Group, Pivot Group, Primewest Management, Linc Property, McMullin Group, Ticor, BB Retail Capital, and The Belgrave Group of Companies.

The BGRA's representation is extremely diverse; we clearly represent the interests of large retailers, but we also represent the interests of small retailers, as many of our members have franchised businesses. Aside from the significant developers and owners of bulky goods properties that sponsor the BGRA, many BGRA members are bulky goods developers and owners in their own right.

The BGRA is extremely proud of the ethos that has developed between all key stakeholders in the bulky goods industry.

There are a number of key issues that the Productivity Commission has been asked to consider and the BGRA hereby makes the following comments regarding the same.

What are the strengths and weaknesses of the current structure and functioning of the retail tenancy market? What are the effects (both positive and negative) on your business, and the wider community?

We note with interest the debate about sales figure disclosure and security of tenure that this, and other, retail tenancy reviews has raised and make the following comments:

Sales Figure Disclosure

In the vast majority of cases bulky goods retailers do not disclose their sales figures to their landlord. There are some leases entered into where sales figures are disclosed and this is because the rent is either totally or predominately based on a formula that relates to the retailer's turnover.

Lease Terms

Security of tenure is extremely important. It is standard practice that bulky goods retailers enter into leases with options exercisable by the tenant. Generally speaking the initial lease term can range from between 5 to 10 years and the total lease term including options ranges from between 15 to 20 years. A market rent review at the commencement of an option is standard practice.

There is no evidence whatsoever to suggest that the bulky goods market has been detrimentally affected by the above practices. In fact, the bulky goods retail market has, in recent times, been the fastest growing sector in the retail market. Deep End Services has estimated that the bulky goods retail sector has grown 3% greater per annum for the past 6 years when compared with the remainder of the retail market. Please refer to the attached report from Deep End Services.

What are the implications, if any, for the market in retail tenancy leases, of trends in urban and regional development, and in changes in consumer preferences, in technology and in ways of working? How might such changes affect retail tenants, landlords and investors?

There is a current trend in various State Governments' strategic planning policies that focus on a planning framework to cater for a significant increase in population in all States of Australia over the next 25 years.

The Victorian Government's strategic planning policy is Melbourne 2030. In New South Wales, the State Government's strategic planning policy is the Metropolitan Growth Strategy. Both States are currently planning for an increase in population of more than one million residents each over the next 25 years.

These policies are essentially similar in scope and content in that they provide a planning framework designed to cater for 'growth' of our major cities in terms of:

- The housing needs for an increased population;
- The physical infrastructure required to service the increased density of our cities;
- The goods and services (including retail) required to cater for this increase in population

The fundamental premise of these policies is that growth in population will require growth in our cities. This growth can only be provided in two ways;

1. Increase the density of our existing cities by increasing the number of households in close proximity to existing infrastructure, goods and services. Given the finite land supply within established metropolitan areas this increased density can only be achieved by accommodating more people per land area. This is currently being achieved by an increase in the height of buildings and the consequential reduction in the average residential land area per capita.
2. Increase land supply and provide opportunities to develop new cities in designated 'growth areas' These growth areas are generally 'Greenfield' locations (i.e. existing rural land) that is on the edges of our cities and suitable for development on the basis of extending and/or creating new infrastructure to service these areas.

There is an increasing demand for growth in the provision of retail floor space to service the planned increase in population over the next 25 years.

The Victorian Minister for Planning, the Hon. Justin Madden MLC, announced a Retail Policy Review at the Pivot Group BGRA Victorian 2007 Forum on 10th May 2007. The purpose of the Retail Policy Review is to examine the existing

policy and statutory framework in the Victoria Planning Provisions (VPP) and planning schemes guiding the planning, development and investment of retail activity in Victoria, and to make recommendations that focus on:

- Providing clarity as to the outcome sought by the Government;
- Revising the policy and statutory framework so it responds to current retail practices and can better adapt to future industry changes;
- Improving the structure of retail policy to provide a new 'whole-of-retailing' policy for all of Victoria;
- Identifying what other delivery mechanisms may be required to deliver the desired outcomes

To inform this Review, the Victorian Government commissioned a report by Essential Economics to provide Retail Floor space Forecasts for Metropolitan Melbourne 2006-2030. The key findings of this report are;

- Total Growth in Floor space for all Retail categories - 3,064,000 square metres;
- Total Growth in Floor space for the sub-categories of Homemaker / Factory Outlet : 696,870 square metres

Given the scarcity of commercial land within established metropolitan areas; the substantial demand for increased retail floor space; and the concentration of ownership of this commercial land, there is likely to be significant upward pressure on rental levels within established shopping centres in the foreseeable future. Any such increase in rental levels will be passed onto the consumer in terms of increased prices for goods and services.

Using Victoria as an example and accepting the fact that Victoria's strategic planning policy and estimated population growth is similar to New South Wales, it is reasonable to assume that this upward pressure on rental levels and land values will be similar in these States and similar in other States across Australia.

There are changes in consumer preferences and technology

Sales in bulky goods/homemaker retail products have significantly outgrown traditional retail categories over the past 5 years. This can be attributed to a variety of reasons including;

- The increase in demand for 'do-it-yourself' home improvement products brought about by the strong growth in the Australian economy and the recent property boom;
- The technology revolution has provided a substantial increase in new consumer products and the obsolescence of traditional household goods;
- The emergence of the internet and particularly online shopping has increased access to retail goods and services;

- Shopping has evolved into a leisure and lifestyle experience for many Australian families, particularly in relation to household goods expenditure;
- Increased supply of bulky goods/homemaker retail facilities and the provision of choice, convenience and competition provided by this increase in supply;

The above is supported by some comments in recent decisions handed down in the Victorian Civil and Administrative Tribunal.

In the decision *Glenwaye P/L v Glen Eira CC* the following comment was made:
"...Changes in technology & marketing, lifestyles, consumption patterns, the mix of activities that now occur within any one premises...and the growth of shopping as a leisure activity, all mean that definitions are continually falling behind where the retail industry stands and where it is heading..."

The decision *Radford v Hume CC* stated:

"...Retailing is a dynamic industry driven by competition and consumer demand, changes in technology and shifts in consumer patterns... it would be inappropriate to constrain opportunities for the retail industry to develop on the basis that new types of retail premises do not fit comfortably within existing definitions and traditional concepts of retailing which may have informed earlier decisions about how specific uses ought to be characterised. That would be contrary to the general principle of economic wellbeing ...that planning should support and foster economic growth and development as a means of contributing to the economic wellbeing of communities and the State as a whole. As new forms of retailing evolve, the role of planning is to ensure that they locate in appropriate places where they will best meet the needs of net community benefit and sustainable development. It is not the role of planning to frustrate the development of retailing or try to force uses into inappropriate locations by taking a restrictive view about which definition certain activities fall within..."

There are changes in the way we work. There is a clear trend in the decline of the manufacturing industry in Australia over the past 5-10 years.

The manufacturing sector of the Australian economy is in increasing decline due to global economic pressure for manufacturing activities to locate in developing countries due to lower cost wage structures. As a direct result of this decline there is declining demand for industrial land particularly within established metropolitan areas. Planning policy in most States has yet to appropriately respond to this trend and on-balance the response has been contradictory.

There is a current trend at Local Government level to retain and protect industrial land for industrial purposes despite this declining demand. Often this approach is justified on the basis of preserving employment opportunities for lower skilled workers. This is despite the fact that the retail sector of the economy provides substantially more employment per square metre of

developed land than industrial uses and draws its employment base from a similar pool of lower skilled workers.

There is a need to increase land supply for development of commercial and residential purposes particularly within established metropolitan areas which is supported by various State Governments' strategic planning policies. The regeneration of industrial land for higher density development and higher value land uses is a logical and sustainable solution to this issue.

Are there any competition, regulatory and access constraints on the effective and efficient operation of the retail tenancy market?

There is a concentration of ownership of major shopping centres in Australia whereby a small number of companies control the vast majority of shopping centre retail floor space. Shopping centres are principally located in established metropolitan areas where land for expansion of retail floor space is scarce. The supply of new retail floor space within existing shopping centres is limited on the basis that the development potential of existing centres is constrained by current operations and existing leases with tenants.

In comparison, the ownership of bulky goods/homemaker retail facilities is more widely diversified. Bulky goods/homemaker centres are principally located on 'edge' or 'out-of-centre' locations where land for expansion and new development is more readily available.

The retail tenancy market is currently regulated and constrained by State and Local Government planning regulations that differentiate between various retail categories and the locations that these different categories can operate.

- Retail categories are regulated by a variety of separately defined land use terms i.e. shop, bulky goods retail, trade supplies etc;
- Location is regulated by land zonings under which different retail categories are permissible or prohibited i.e. Business, Commercial, Industrial and Residential Zonings and hybrid categories within this hierarchy

The combination of both constrains access to the supply of retail goods by the consumer.

In relation to bulky goods/homemaker retailing there are wide ranging inconsistencies between the States in relation to both of these key regulations. This results in uncertainty and contributes to in-efficiencies in the operation of national businesses. In recent years there has been a significant increase in legal disputes arising from these inconsistencies

There has also been an increase in legal disputes arising from the fact that the market is constantly evolving while planning regulations remain static. Planning policy needs to keep pace with current and future markets in order to provide certainty for the industry.

What is the scope of regulatory or policy change to improve the effectiveness, operation and economic efficiency of the retail tenancy market in Australia?

and

If participants see a need for reform to current arrangements, what should those reforms be and what are the likely benefits and costs of such reforms to retail tenants, landlords and investors?

There is a need to:

1. Provide a significant increase in the supply of retail floor space to cater for the projected increase in population in our major cities;
2. Reduce the current concentration of ownership of retail floor space by creating opportunities for the ownership of new retail floor space to be more widely diversified;
3. Increase consistency between the States in terms of planning regulations particularly in relation to land use definitions and land zonings;
4. Remove restrictions that currently stifle retail development; most notably the removal of restrictions for retail development in 'out-of-centre' locations;
5. There is a need for removal of outdated and protectionist planning policies that relate to preserving industrial land for industrial uses, particularly in established metropolitan areas;
6. Introduce a National retail tenancy legislative or compliance system. There are enormous complexities, and thus costs for National retailers, developers and landlords with the current individual State by State retail tenancy legislative system.

The impact of such reforms which contribute to an increase in the supply of retail floor space will deliver the following benefits;

- The ability to meet the needs of an increased population in terms of retail goods and services without compromising the sustainability and liveability of our cities;
- Reduction in the concentration of ownership of retail floor space will create a more competitive marketplace for retail tenancies and deliver fair and open market rental levels;
- Increased choice, convenience and competition for consumers in the marketplace will directly result in lower prices for retail purchases by consumers
- Simplification of retail tenancy compliance and a reduction in retail tenancy compliance costs

Should you require any elaboration or further information contained herein please feel free to contact the writer.

Yours sincerely,

A handwritten signature in purple ink, appearing to read "Philippa Kelly". The signature is fluid and cursive, with the first name "Philippa" written in a larger, more prominent script than the last name "Kelly".

Philippa Kelly
Executive Director

Attachment 1. Deep End Services Analysis