SUBMISSION TO THE VICTORIAN RETAIL POLICY REVIEW DISCUSSION PAPER

Bulky Goods Retailers Association (BGRA)

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EXECUTIVE SUMMARY

This submission is made by the Bulky Goods Retailers Association (BGRA) on behalf of its members and associate members, who represent the majority of Australia's largest and most respected bulky goods retailers, developers and consultants to the industry. The bulky goods industry is of economic significance at both a national and state level, generating $55.2 billion of sales nationally during 2007/2008. In Victoria, the product categories (as defined in the Victorian Planning Provisions (VPP) definition of Restricted Retail Premises) accounted for $10.7 billion is sales during 2007/2008 representing around 17.3% of total retail spending.

The BGRA is actively engaged with all levels of Government across Australia, in working towards the continuous improvement of retail planning policy and the achievement of more consistent regulatory approaches. Our submission benefits from a genuinely national perspective on the direction of retail policy, and reflects the significant experience of our members in working within a wide variety of planning and policy regimes across different states and territories. On the whole, our membership is broadly supportive of most of the key principles that have been advanced in the Retail Policy Review Discussion Paper. We believe it identifies many of the strategic challenges facing the future growth and regulation of the retail industry in Victoria. This in itself is a positive step forward in their resolution.

The BGRA is concerned however that many of the proposed responses to these challenges do not go far enough, and in several instances represent little more than an unhelpful preservation of the status quo. The decision to leave the current definition for 'restricted retail premises' unchanged, in spite of clear evidence that it continues to foster planning uncertainty and litigation, is one such response. The BGRA strongly advocates the need to amend the interim definition of 'restricted retail premises' and have included our preferred definition in this submission.

Apart from the recommendation to retain the existing definition of 'restricted retail premises', there is no further discussion or review of the whole suite of retail landuse definitions in the VPP. This is inconsistent with some of the key purposes of the Retail Policy Review, which sought to review and implement a "whole of retail" policy for all of Victoria. In this regard, the BGRA is disappointed that the opportunity for a more comprehensive, strategic review has not been embraced.

The Discussion Paper is also lacking in a clearly articulated path to implementation. Without further detail of ways in which the proposed initiatives will be advanced, and in particular the specific roles to be performed by state and local government in driving the required change processes, it is difficult to properly evaluate their potential impact and effectiveness.

In our view, the Victorian Government must take a strong leadership role in driving the implementation process and assuring an adequate supply of bulky goods floorspace is maintained that enables continued growth and investment to occur. With over 1.5 million square metres[1] of new restricted retail space located in 'Homemaker Centres' required to be accommodated to meet projected community demand by 2030, coupled with the contraction in supply that will result through the proposed prohibition of restricted retail premises in industrial zones, it is clear that major new supply pipelines will need to be found in both established and greenfield areas. Supply constraints are already in evidence across many parts of the metropolitan area, and these will only be exacerbated if there are significant delays in the delivery of appropriately zoned land.

[1] *as estimated by Deep End Services (January 2009)*

EXECUTIVE SUMMARY (Continued)

In relation to industrial land, the BGRA does not support the proposal to amend industrial zones so that ‘restricted retail premises’ becomes a prohibited use. There is a substantial proportion of existing restricted retail floorspace located on industrial land in Victoria and this proposal would create considerable uncertainty with regard to existing use rights. It would also result in an immediate reduction in land supply which is inconsistent with the requirement to increase land supply to meet the demand for growth in retail floorspace. The BGRA advocate the State Government should undertake a review of industrial land in Victoria, particularly in inner metropolitan areas, prior to implementing any amendments to the Industrial zones in the VPP.

The approach outlined in the Discussion Paper appears to rely strongly on Councils to work together through a variety of major strategic planning processes (e.g. major landuse reviews of industrial areas, revisiting approved structure plans, undertaking regional retail assessments, etc). The reliance on Councils to work through this implementation in a timely and consistent manner, and to embrace genuinely long range metropolitan planning imperatives in their activity centre planning processes, is in our view a high risk approach.

The retail challenges acknowledged in the Review are matters of key significance to the State, in terms of the competitiveness and certainty afforded by our regulatory environment, Victoria’s economic attractiveness as a place for retail investment and innovation, and the ability of the bulky goods industry to meet the needs of Victorian consumers. They are big challenges that warrant big solutions. Conventional or incremental approaches to implementation will not assure future supply nor bring about substantive improvements in the efficiency or certainty afforded by the planning system.

We believe that in the current economic climate it is particularly critical that the State Government adopts a strong and decisive leadership role in the implementation process. This is critical if the economic consequences of stalled investment are to be avoided. The employment benefits arising from the forecast increase in Homemaker retail floorspace are significant. The development of 60,000 square metres of new homemaker retail floorspace per annum over the next 25 years would generate more than 1,340 full time equivalent jobs per annum in direct retail employment and associated services. Employment in the construction sector would equate to more than 1,100 full time equivalent jobs per annum. The BGRA is cognisant of the fact that the forecast increase in floorspace is the maximum supportable quantity that is derived from economic modelling. Market forces in conjunction with Government policy will ultimately determine the total quantity of floorspace that is delivered in the timeframe up to 2030 and the quantity progressively brought on line each year. The increase in floorspace required is significant and will deliver significant net community benefit from expansion in this market sector.

We also urge Government to consider a more holistic and innovative approach to the planning and regulation of retail activity in the State, directed towards a stronger nationally integrated approach.

The BGRA is a key stakeholder in the Retail Policy Review and has positively contributed to the project via our role as a reference group member. We are committed to continuing in this role and working proactively with Government and other stakeholders to achieve a successful outcome.

The BGRA has advanced a number of recommendations in the submission for consideration by Department of Planning & Community Development (DPCD), which is outlined in the following section of this submission.

SUMMARY OF RECOMMENDATIONS

Managing Growth and The Network of Centres

1. Adopt a consistent and robust approach to the allocation of retail floorspace targets across the metropolitan area that is facilitated and lead by State Government. As a key component of this approach, Councils should be required to adopt a long term, strategic approach to the identification of sufficient land that is located ‘in-centre,’ within ‘edge-of-centre,’ and where appropriate, ‘new centre’ locations that are appropriate for rezoning within their MSS.
2. Refocus Activity Centre planning to take a long term perspective that accommodates opportunities for retail growth and evolution of the retail sector over a 10-15 year horizon. This must include a strategic review of existing Structure Plans to ensure they reflect floorspace targets identified in Regional Retail Assessments.
3. Open up new supply pipelines though a major state-facilitated strategic review of non residential zoned land, with a particular focus on poorly performing and located industrial zones to create new retail supply pipelines.
4. Review the ‘Essential Economics’ Report to revise assumptions and update retail floorspace estimates.
5. DPCD should provide further details with regard to implementation including the next steps in the process to amend the VPP and the timeframe for the adoption of new Structure Plans by Councils.

Facilitating Appropriate Development in Appropriate Locations

6. The network of centres is reviewed to recognise the legitimate role of existing and potential future Homemaker Centres.

Managing Restricted Retail Premises

7. The Victorian Government takes the lead in driving a nationally consistent approach to the definition of bulky goods retailing uses in landuse planning systems.
8. DPCD should adopt a revised definition for ‘restricted retail premises’ which delivers improved planning certainty whilst allowing for continued retail innovation.
9. DPCD should undertake a review of all retail landuse definitions in the VPP to improve planning certainty and deliver a ‘whole of retail’ approach to retail planning policy.

Managing Retailing in Industrial Areas

10. DPCD should undertake a review of industrial land in Victoria, particularly in inner metropolitan areas, prior to implementing any amendments to the industrial zones in the VPP. This review should identify industrial land that has merit for rezoning to increase the supply of land for retail purposes. The proposed prohibition of restricted retail premises in industrial zones should only occur subsequent to such rezoning, so as to maintain a broad equilibrium of supply.
11. DPCD should ascertain the amount of restricted retail located within industrial zones to allow the consequences of the proposed prohibition to be fully understood.

Managing New Centres and Major Retail Proposals

12. The requirement for a sequential test for rezoning proposals is implemented in conjunction with a review of activity centre boundaries and of the existing network of Centres.

13. The criteria set out in the sequential test for rezoning proposals must be pragmatic and provide consistent and fair treatment.

14. DPCD should provide further details of criteria to be applied when considering a request for a new centre or to reclassify a centre.

Improving Design Outcomes

15. The BRGA and other stakeholders are included in the finalisation of the ‘Guidelines for Large Format Retail Development’ to ensure they are responsive to new and innovative retail formats and typologies and informed by key tenancy and operational requirements.

INDUSTRY OVERVIEW

Bulky Good Retailers Association

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

Retail members of the BGRA comprise the majority of Australia's largest and most respected bulky goods retailers including Harvey Norman, Bunnings, Ikea, Forty Winks, Snooze, Mitre 10, Spotlight, Beacon Lighting, The Good Guys, Bedshed, Beaumont Tiles, Autobarn, Fantastic Furniture, Super Cheap Auto, Freedom, Bay Leather Republic, Anaconda, BCF, Plush, OZ Design Furniture, Barbeques Galore, Clive Peeters, The Outdoor Furniture Specialists, Baby Bunting, Kleenmaid, JB Hi-Fi, Domayne, Super A-Mart, Repco, Clive Anthony, WOW, Goldcross, Early Settler, Recollections and Adriatic Furniture.

The BGRA also has a large number of associate members, many of whom are significant developers, owners, service suppliers and agents of bulky goods developments across Australia including Charter Hall Group, Valad Property Group, Mirvac, Axiom Properties Limited, Primewest Management, Linc Property, McMullin Group, Ticor, BB Retail Capital, Northern Territory Airport, Deacons, Blueprint Group Australia, The Buchan Group, Major Media, CB Richard Ellis, Colliers International, Silverton, Century Funds Management and The Belgrave Group of Companies.

The BGRA is a key stakeholder in planning and zoning laws that regulate this market sector. Consequently, we are actively involved across Australia in numerous reviews of planning policy and planning regulations that affect our industry.

Restricted Retail is Increasing Proportionally as a Percentage of Total Retail Spending

Based on data from the Australian Bureau of Statistics' *Australian National Accounts* series, sales of restricted retail goods in Victoria has increased at an average rate of 6.9% per annum in recent years, from $6.7 billion in 2000/01 to $10.7 billion in 2007/08. Sales of all retail goods and services has increased at a lower average rate of 6.4% per annum, from $40.1 billion to $61.9 billion during the same period. As a consequence, the proportion of retail spending directed to restricted retail goods has increased in Victoria from 16.7% in 2000/01 to 17.3% in 2007/08. This proportional change is also reflected at a national level.

Increasing Employment within Restricted Retail Sector

Research undertaken by Deep End Services indicates that direct employment within the sector in Victoria has increased by 8,800 Full Time Equivalent (FTE) from 20,900 in 2000 / 01 to 29,700 in 2007 / 08. In addition, indirect employment supported by the sale of restricted retail goods in Victoria has increased by 10,929 FTE from 25,958 in 2000 / 01 to 36,887 in 2007 / 08.

Floorspace Growth

Using data from sources such as the ABS' *Retail Industry 1998 / 99* it is estimated that 85% of restricted retail goods were sold through restricted retail premises in 2007/ 08, with the balance of goods being sold through retailers located within shopping centres and traditional strip centres. This equates to an estimated 2.52 million sqm of floorspace dedicated to the sale of restricted retail goods within restricted retail premises in Victoria in 2007 / 08.

Floorspace growth within the Victorian restricted retail industry has been substantial. Adopting an estimated average trading level of $3,200 per sqm in 2000 / 01, it is estimated that total floorspace allocated to the sale of restricted retail goods has increased by 880,000 sqm, from 2.09 million sqm at June 2001 to 2.97 million sqm at June 2008. The increase in floorspace located specifically within restricted retail premises during this period is also substantial at 748,000 sqm, representing an average growth of 106,857 sqm per annum.

RESPONSE TO KEY ISSUES

1. MANAGING GROWTH AND THE NETWORK OF CENTRES

Establishing Sufficient Supply

The BGRA welcomes the Government's commitment to ensure that the retail needs of a growing population are met over the coming decades. The Essential Economics report *Retail Floorspace Forecast for Metropolitan Melbourne, 2006 to 2030 (March 2007)* foreshadows that Melbourne's projected population growth will necessitate the development of around 696,870 sqm of new restricted retail floorspace by 2030 to cater for projected demand.

The BGRA has examined these projections in detail, and based on more recent modelling undertaken by Deep End Services, has reached the view that the 2006 projections grossly underestimate the likely demand, due to the following factors:-

- The Census 2006 data shows a significant underestimation in population growth with some 70,000 people more than previously estimated.
- Recent rates of population growth have been higher than initially forecast. Department of Planning & Community Development (DPCD) have now released new population forecasts to reflect the Government's view that Melbourne's population at 2020 will be 4,664,070 or 465,030 higher than previously estimated.
- The conservative forecasts for growth rates per capita used in the report;
- The report estimates restricted retail spending to be in the order of 15% of total retail spending. This does not reflect the sales information and changing proportion of retail spending over time. Our calculations estimate that restricted retail in fact represents around 16% of total retail spending.

Deep End Services have remodelled the estimated growth in supportable floorspace for restricted retail to take account of these factors. Adjusted modelling equates to a BGRA forecast of some 1,531,795 sqm of floorspace that will be required in new 'Homemaker Centres' between 2006 - 2030. This is well over double the initial projections, and will clearly have significant implications for the accommodation of future supply, both in established areas and new growth areas.

Currently, there are significant parts of the metropolitan area which are undersupplied in terms of access to restricted retail floorspace. Provision of adequate restricted retail floorspace delivered in nodes or centres that are well distributed through the metropolitan area results in a net community benefit, by increasing shopping choice, comfort and synergies through co-location, competition, convenience and access. The present supply constraints have served to limit the opportunity of new bulky goods floorspace to be comprehensively planned and integrated into existing bulky goods clusters, giving rise to a growing proportion of 'out-of-centre' proposals, for want of an adequate supply of land within centres.

As a way of addressing supply constraints and more proactively managing projected retail need, we understand that the Retail Policy Review recommends monitoring and reporting of supply and demand at a regional level. This is to be primarily achieved through the development of 'Regional Retail Assessments' that will inform regional and Council planning. The BGRA welcomes a regional approach, and subsequent initiatives to identify adequate land supply at a local level. However, we believe that in order to meet the required supply targets, significant changes to conventional structure planning approaches will be needed, particularly in established urban areas.

While the DPCD has advanced a number of potential strategies to address future supply challenges, the BGRA believe these strategies need to be substantially bolstered as follows:

1. <u>Adopt a consistent and robust approach to the allocation of retail floorspace targets across the metropolitan area that is facilitated and lead by State Government. As a key component of this approach, Councils should be required to adopt a long term, strategic approach to the identification of sufficient land that is located ‘in-centre,’ within ‘edge-of-centre,’ and where appropriate, ‘new centre’ locations that are appropriate for rezoning within their MSS.</u>

   The State Government must take a strong leadership role to ensure a viable supply of appropriated-zoned land is available in the market to support the industry’s growth. Specific and binding mechanisms must be put in place to translate demand projections identified through Regional Retail Assessments into sufficient, well located land supply at a local level, including sites that meet key locational requirements for restricted retail uses.

   Lessons must be learnt from the approach that has been pursued to deliver regional housing targets, where there has been an evident failure on the part of many Councils to effectively translate housing targets into local policies. Subsequent decisions at the planning permit stage are resulting in a continuing shortfall of dwellings to meet regionally identified demand, particularly within inner Melbourne and established urban areas.

   The State must also take the lead in developing an approach and methodology that ensures that Regional Retail assessments are transparent and consistently implemented. This is imperative to create certainty for retail investment and minimise the potential for disputes around floorspace allocations from one centre to another.

2. <u>Refocus Activity Centre planning to take a long term perspective that accommodates opportunities for retail growth and evolution of the retail sector over a 10-15 year horizon. This must include a strategic review of existing Structure Plans to ensure they reflect floorspace targets identified in Regional Retail Assessments.</u>

   The vast majority of current Structure Planning processes in established areas fail to make adequate provision for growth in restricted retail uses, either in centres or edge-of-centre locations. Activity Centre boundaries are often drawn tightly around existing retail core development, with no room to expand retail uses, particularly formats that require large sites and building footprints. As a consequence, the majority of existing restricted retail floorspace is located outside of current Activity Centre boundaries.

   We are pleased to see the new DPCD ‘Guidelines on Structure Planning for Activity Centres’ encourage study area boundaries to be larger than existing commercially zoned areas. This must be strengthened to become an explicit requirement of activity centre planning, with Councils required to show how the centre can physically grow over time to accommodate both conventional and restricted retail uses as appropriate, in line with proposed Regional Retail Assessments.

3. Open up new supply pipelines though a major state-facilitated strategic review of non residential zoned land, with a particular focus on marginal or poorly performing industrial areas.

   On the whole, the current approach adopted by Councils to the rezoning of land to accommodate restricted retail demand is piecemeal and ad hoc. In many established urban areas, Councils are often reluctant to rezone industrial land on the basis that it will diminish the municipality's employment base. This approach fails to recognise the important employment function of restricted retail uses. In other areas, industrial zones are retained in order to preserve historical associations with industry. An example of this is the 'Work' precinct established in Preston, Darebin. The "Bell Street Strategy" supports industrial uses within the area despite the fact that they are clearly declining, so as to maintain historical associations with the industrial past of Darebin. In these kinds of areas, where industrial uses are increasingly isolated and obsolete, restricted retail uses can offer a much improved interface with surrounding residential and other landuses, and a more sustainable employment base in the long term.

4. Review the 'Essential Economics' Report to revise assumptions and update retail floorspace estimates.

   Please refer to Appendix 1 for detailed justification to support this recommendation.

5. DPCD should provide further details with regard to implementation including the next steps in the process to amend the VPP and the timeframe for the adoption of new Structure Plans by Councils.

   In addition, the following key questions will need to be addressed in the implementation process:

   - How will the boundaries of the "retail regions" be determined given overlapping retail catchments?
   - Who will be responsible for funding and implementing the initial and subsequent 5 yearly reviews of retail floorspace in the region(s)?
   - What will the interim arrangements be in relation to retail assessments?
   - How will economic considerations regarding the practical ability to deliver desired regional retail objectives be addressed as part of the assessment?
   - How will regional allocations be distributed across activity centres and between retail types?

2. FACILITATING APPROPRIATE DEVELOPMENT IN APPROPRIATE LOCATIONS

The Discussion Paper advances some provocative discussion around the current retail hierarchy, retail mix and the role of centres, including the potential to shift towards a system that does not distinguish between 'general' and 'restricted' retailing. The BGRA welcomes debate around these issues, and agrees the broader network of centres and the range of functions and roles should be reviewed.

Currently, the vast majority of established Homemaker Centres are not recognised within the Activity Centre network. In a number of cases these centres enjoy comparable access to public transport as other 'traditional' activity centres and indeed function as legitimate retail destinations with broad community appeal. Lack of clarity around the status and strategic role of these centres within the activity centre network results in an ad hoc and inconsistent approach to their treatment, and the landuse decision making within them.

The BGRA believes there is merit in affording recognition to existing, well established Homemaker Centres within the network of Centres, where they have evident potential to fulfil key imperatives of state planning policy in relation to public transport integration, design and community place making. In addition, we believe there is strong potential for the identification of new Homemaker Centres as part of the strategic planning processes that will flow from the regional retail assessments.

The BGRA therefore recommends the following:

6. <u>The network of centres is reviewed to recognise the legitimate role of existing and potential future Homemaker Centres.</u>

   Currently, the potential to locate restricted retail uses within Activity Centres is extremely limited due to escalated land values and the lack of sites capable of accommodating large building footprints. Current planning policy, however, strongly discourages out-of-centre development. The Retail Review proposes to address this dichotomy through the introduction of a sequential test. The BGRA acknowledges that activity centres are the primary location for core retailing, and concurs that, where possible and where suitable sites are available, that restricted retail can appropriately locate within activity centres. However the scarcity of land within activity centre boundaries results in the prioritisation of highest and best landuses (including core retail and residential development) which often leaves little room for restricted retail uses. It is clear that suitable sites for restricted retail must also be found outside of activity centre locations if the projected floorspace required to 2030 is to be accommodated.

   The implementation of the sequential test and prioritisation of retail towards activity centre locations can only be implemented alongside the creation of adequate land supply as part of a comprehensive program of new strategic planning work. In addition, Homemaker Centres must be given appropriate recognition as legitimate elements of the activity centre network to address ongoing confusion and uncertainty around their apparent 'out-of-centre' status. The current policy discouragement around 'out-of-centre' retailing can only be sensibly implemented if the current network of centres is sufficiently grown to enable projected restricted retail growth to be accommodated.

Homemaker Centres Acknowledged

The Panel considering Amendment C45 (City of Kingston) in relation to the former Nylex site in Mentone provided direct acknowledgement of the role that existing Homemaker Centres can play as significant retail nodes. The Amendment provided for the rezoning of a redundant industrial parcel to facilitate the development of a Homemaker Centre of some 37,800 square metres, in conjunction with an area of new residential development.

The Panel acknowledged the existing retail function of the area:

> "…The site abuts an already significant bulky goods node, one of the largest in the City of Kingston. The panel considers this proposal is building upon an existing bulky goods node".

The further development of a Homemaker Centre at this node was deemed by the Panel as entirely consistent with Melbourne 2030:

> "…Given the location of the Nylex site near transport routes and in close proximity to the Mentone Activity Centre, the Panel considers the proposal is consistent with Melbourne 2030 and has support of both State and Local Planning Policy".

In supporting the Amendment, the Panel clearly identifies the net community benefit to be derived through building up the existing homemaker node:-

> "…The panel considers that the proposed development will enhance and protect the competitive edge for bulky goods retailing in the City of Kingston, and will add to an already thriving bulky goods sector along the Nepean Highway. It will provide a shopping destination of regional significance that will result in a net community benefit for both the local and wider community. There are clear and distinct advantages in providing a diverse retail offer in one destination, where comparison shopping can be undertaken in a competitive format."

In many respects, Homemaker Centres already function as specialised retail nodes or centres, and in some cases, fulfil a much wider range of functions. The activity centre network recognises there are many different forms of activity centres, including specialised activity centres that cater for specific landuses. The identification of Homemaker Centres as part of this network is consistent with this notion that there is no one size fits all approach, and that different types of centres are appropriate and indeed necessary to cater for increasingly diverse consumer needs.

The Need to Identify Locations Suitable for New Centres

In addition to recognition and expansion of existing Homemaker Centres, new centres will be required to accommodate projected restricted retail floorspace requirements and retail needs. Identification of future locations for new Homemaker Centres will allow a strategic approach that ensures sufficient supply of land is available for restricted retail premises, in locations that support the imperatives of Melbourne 2030 and State Government Policy.

To provide suitably zoned and located land to meet supply forecasts, we believe it is necessary that:

1. Activity Centre boundaries are to be widened; and / or

2. Homemaker retail centres are recognised as activity centres in their own right (outside of existing activity centres) and provided with strategic policy support.

3. MANAGING RESTRICTED RETAIL PREMISES

While the Discussion Paper provides an excellent overview of the issues and anomalies surrounding the management of restricted retail premises by the planning system, its failure to advance beyond a ‘do nothing’ approach is extremely disappointing.

The terms of reference for the Retail Policy Review included consideration of the statutory framework that supports retail policy, including the landuse definitions. There appears to be no consideration or recommendations in the draft Discussion Paper relating to the current suite of retail landuse definitions. The only recommendation is to maintain the existing definition of the Restricted Retail Premises.

In 2006 when the Minister for Planning agreed to make minor amendments to the definition for restricted retail premises, the BGRA understood that the amendments were essentially made as an interim ‘stop gap’ measure, to avoid a wave of litigation arising from the decision in the case Woolworths vs. Warrnambool CC (Red Dot) [2005] VCAT 2211. At the time, Department of Sustainability & Environment (DSE) made it clear that a more strategic review of the definition would be undertaken as part of the forthcoming Retail Policy Review. Government recognised the need for a more holistic overhaul based on:-

- The inadequacy of the current definition to deal with the nature of contemporary bulky goods retailing.
- The need for a more sophisticated, long term approach to be put in place which allowed for ongoing retail innovation and investment to occur.
- The significant costs to industry and the economy generated by current definitional ambiguities.
- The need for industry-wide consultation around any new definition, given the impact of any change across different stakeholder groups.

The BGRA appreciates that there are some divergent industry views around the form and content of any new definition, but the recommendation to maintain the status quo, is in our opinion, simply deferring the debate for another day. In the meantime, planning uncertainty will be perpetuated, and investment and resources will continue to be tied up in planning litigation at VCAT, where definitional vagaries are forced to be addressed on a case by case basis. This is not an efficient approach.

The current anomalies with the definition are well understood, and indeed have been highlighted in two recent VCAT decisions which have exposed contrary interpretations of the definition in the way that has been applied to various retail proposals.

In Radford vs Hume City Council [2006] VCAT 2662, Deputy President Helen Gibson allowed the grant of a permit for a pet supplies outlet as a “Retail Premises” under the Business 4 Zone, commenting on the need for the planning system to be responsive to the dynamic nature of the retail industry:-

> “…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 to try to force uses into inappropriate locations by taking a restrictive view about which definition certain activities fall within...”

A contrary interpretation was reached however by Deputy President Mark Dwyer in Hall vs Kingston City Council (Red Dot) [2008] VCAT 1060, in which a decision by the Council to refuse an application for a bicycle superstore was upheld by the Tribunal. In that decision the view was formed that a strictly legal interpretation of the current product listing in the definition left no room for a more sophisticated or pragmatic approach to assess the merits of the proposal:-

> *"…Such an outcome serves to expose one of the current anomalies in the retail planning policy framework in Victoria whereby large format retailing is regulated by an arbitrary list of goods in the definition of "restricted retail premises" rather than through a more sophisticated planning approach. However, this is a matter for the policy makers to resolve, and I must apply the planning scheme and its definitions as they exist. "*

Both decisions highlight the need for urgent reform at the policy making level to redress current ambiguities around the characterisation of bulky goods retailing by the planning system. In the absence of a clearer and more progressive approach to the way that the system defines this use, it is likely that ad hoc decision making will continue, requiring the arbitrators of the system to become de-facto policy makers. This is clearly not a desirable long term approach.

There is widespread consensus across all segments of the industry that the current definition has evolved as an ad hoc product list that exhibits little consistency in terms of the types of goods that are included and those that are not. While the BGRA appreciates there are different views around the content of any proposed change, we believe it is difficult to dispute the need to bring the definition into a form in which goods of a comparable 'bulky' nature are treated consistently.

The economic importance of achieving improved planning consistency in the regulation of retail use and development has in fact been recently highlighted in separate enquiries undertaken by the Productivity Commission (Enquiry into the Market for Retail Tenancies in Australia; August 2008) and the Australian Competition And Consumer Commission (ACCC) (Enquiry into the Competitiveness of Retail Prices for Standard Groceries; July 2008). Both enquiries have called for a review of planning and landuse inconsistencies across state and territory boundaries, as a means of improving regulatory efficiency.

Accordingly, the BGRA recommends:

7. <u>The Victorian Government takes the lead in driving a nationally consistent approach to the definition of bulky goods retailing uses in landuse planning systems.</u>

   There are essentially two different forms of definition contained in planning laws across Australia for bulky goods retail uses:-

   1. Performance based definitions (NSW and in part in other states)

   2. Product List definitions (VIC and in part other states).

   Within these general approaches, there are a large number of definitional variations that have been adopted from one state and territory to another, and in some states, from one Council to another. The BGRA's members operate on a national basis and the current inconsistencies across different geographic regions results in much uncertainty around obtaining planning permits and the lawful operation of businesses.

   The BGRA is aware the Federal Government is seeking to improve national consistency across a range of regulatory spheres as a means of driving economic growth and improved competitiveness. Given the majority of key players in the bulky goods industry operate across a national platform, the benefits of having one consistent landuse definition that applies across all states could vastly improve planning and investment certainty and industry competitiveness. Flow on benefits to the consumer would also ensue. Given the NSW Government is presently undertaking a similar broadscale review of retail policy, and the QLD Government is requiring the preparation of new format planning schemes (including the adoption of new landuse definitions) across many Council areas, the opportunity to tackle a more nationally consistent approach to the characterisation of bulky goods retailing has never been more timely. The South Australian Government is also currently reviewing their suite of landuse definitions. In South Australia they are progressing towards the public exhibition of a revised definition of "bulky goods outlet" put forward by the BGRA, to replace their existing definition of Retail Showroom. We believe the current Retail Review presents an important strategic opportunity for the Victorian Government to take the lead in driving a nationally consistent approach.

8. <u>DPCD should adopt a revised definition for restricted retail premises which delivers improved planning certainty whilst allowing for continued retail innovation.</u>

The BGRA strongly supports the adoption of an improved definition which provides clarity around the specific uses/product categories that are captured within the definition, but also includes a performance based component that enables new retail concepts/innovations to be considered in the future, subject to demonstration that they fulfil the required performance characteristics.

The BGRA's recommended definition is as follows:-

Restricted Retail Premises:

Land used to sell or hire:

a) automotive parts and accessories;
b) camping, outdoor equipment and recreation supplies
c) electric light fittings;
d) equestrian, pet supplies;
e) floor and window coverings;
f) furniture, bedding, furnishings, fabric, manchester and homewares
g)household appliances, household electrical goods and home entertainment goods;
h) party supplies;
i) swimming pools
j) office equipment and supplies.
k) baby equipment and accessories
l) sporting, fitness equipment and accessories

Or, if not one of the above categories, a premises which satisfies the following:

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

(b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading and unloading the items into their vehicle after purchase or hire, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale of bulky goods.

9. <u>DPCD should undertake a review of all retail landuse definitions in the VPP to improve planning certainty and deliver a 'whole of retail' approach to retail planning policy.</u>

The Discussion Paper considers the "two types of retail categories" being 'retail' and 'restricted retail'. This fails to address the whole suite of retail landuse definitions in the VPP namely the 'retail premises group' and the sub-group of 'Shop'. The somewhat narrow focus on the definition of 'restricted retail premises' without consideration of other definitions is inconsistent with some of the key purposes of the Retail Policy Review which sought to review and implement a "whole of retail" policy for all of Victoria. There is a need and an opportunity via this review to consider the entire suite of retail landuse definitions.

4. MANAGING RETAILING IN INDUSTRIAL AREAS

The BGRA accept that a shift towards a more strategically based approach to restricted retail uses is positive, however the impacts of the proposed prohibition of restricted retail uses within industrial areas zones must be carefully considered. In particular, there is substantial floorspace for Restricted Retail Premises use now located in industrial zones. Prohibition of Restricted Retail will create considerable planning uncertainty for these tenancies with regards to existing use rights, both now and in the future should they require additional planning permit approvals.

The BGRA commissioned Deep End Services to conduct a limited audit to gauge the likely impacts of prohibiting restricted retail uses in industrial zones. Their key findings are as follows:

The Floorspace Audit

Detailed floorspace audits have been carried out for the following precincts which contain significant amounts of restricted retail floorspace:

- Dandenong South
- Hoppers Crossing
- Nunawading
- Wendouree (Ballarat).

The first three chosen precincts are well distributed throughout Melbourne and represent a good mix of well-established versus developing areas. Wendouree is one of the largest precincts in regional Victoria.

Findings

Within each of the audited precincts a combination of on-site visits, use of Google Earth maps and information from the Property Council's Victoria / Tasmania Shopping Centre Directory (2008 edition) has been used to estimate the floorspace occupied by each restricted retail premise. The precincts contain substantial amounts of occupied restricted retail floorspace as set out below:

- Dandenong South 82,095 sqm
- Hoppers Crossing 74,714 sqm
- Nunawading 78,315 sqm
- Wendouree (Ballarat) 30,261 sqm
- **Total 265,385 sqm**

Digitised zoning maps supplied by Spatial Vision were then used to assign a zone to each individual restricted retail tenancy identified within the four audited precincts.

The results of this process are contained within the following table:

Precinct	Business 4		Mixed Use		Industrial (IN1Z & IN3Z)		Total
	Floorspace	Prop. of precinct total	Floorspace	Prop. of precinct total	Floorspace	Prop. of precinct total	Floorspace
Dandenong South	0 sqm	0%	0 sqm	0%	82,095 sqm	100%	82,095 sqm
Hoppers Crossing	7,503 sqm	10%	0 sqm	0%	67,211 sqm	90%	74,714 sqm
Nunawading	78,315 sqm	100%	0 sqm	0%	0 sqm	0%	78,315 sqm
Wendouree (Ballarat)	26,411 sqm	87%	3,850 sqm	13%	0 sqm	0%	30,261 sqm
Total	**112,229 sqm**	**42%**	**3,850 sqm**	**1%**	**149,306 sqm**	**56%**	**265,385 sqm**

It is apparent from this audit that significant variations exist in the zoning of restricted retail premises within major precincts within Melbourne and in regional Victoria. On one hand, none of the premises at Nunawading or Wendouree are operating on industrially zoned land. On the other hand, all premises at Dandenong South are operating on industrially zoned land (IN1Z) while almost all premises at Hoppers Crossing are on industrially zoned land (IN1Z and IN3Z).

Additional analysis

A random set of 431 restricted retail tenancies located outside of the three Melbourne precincts at Dandenong South, Hoppers Crossing and Nunawading have also been considered within the metropolitan area. Retailers considered within this process comprise:

Adriatic Furniture
Anaconda
Autobarn
Babyco
BCF
Beacon Lighting
Beds R Us
Bedshed
Betta
Bev Marks
Bi-Rite
Burson
Camping World
Carpet Call
Carpet Choice
Carpet Court
Clark Rubber
Clive Peeters
Dare Gallery
Dick Smith Powerhouse
Domayne
Early Settler
Everyday Living
Fantastic Furniture
Forty Winks
Freedom
Furniture Galore
Harvey Norman
Ikea
Kleenmaid
Lombard
Macey's The Flooring Giant
Nick Scali
Officeworks
Ofis
OZ Design Furniture
Plush Furniture
Radio Rentals
Ray's Outdoors
Recollections
Repco
Retravision
Sleeping Giant
Sleepys
Snooze
Solomons Flooring
Space
Spotlight
Super Cheap Auto
Sydney's Furniture and Bedding
The Good Guys
The Outdoor Furniture Specialists

As for the precinct audit, the zone within which each individual tenancy is operating was determined (although floorspace estimates were not completed).

The results of this process are summarised below:

Zone	No. of premises	Prop. of total
Business 1, 2 or 3	135	31%
Business 4	130	30%
Industrial 1 or 3	114	27%
Other	52	12%
Total	**431**	**100%**

It is apparent even outside of large restricted retail precincts that a substantial proportion of restricted retail premises are operating in industrial zones. In relation to the proposal to prohibit restricted retail within industrial zones, the BGRA recommends the following:

10. DPCD should undertake a review of industrial land in Victoria, particularly in inner metropolitan areas, prior to implementing any amendments to the Industrial zones in the VPP. This review should identify industrial land that has merit for rezoning to increase the supply of land for retail purposes. The proposed prohibition of restricted retail premises in industrial zones should only occur subsequent to such rezoning, so as to maintain a broad equilibrium of supply.

11. DPCD should ascertain the amount of restricted retail located within industrial zones to allow the consequences of prohibition to be fully understood.

The timing of any prohibition must coincide with release of additional rezoned land to ensure broad equilibrium in overall market supply is maintained. This will require the proposed statutory prohibition in planning schemes to be deferred until a metropolitan review of industrial areas has been carried out. This is imperative to ensure a secure supply pipeline is maintained and current investment proposals are not jeopardised. The BGRA strongly advocates for this process to be lead by DPCD to ensure consistency in approach and the adoption of a genuinely metropolitan perspective in the assessment of long term industrial need.

Transitional arrangements also need to be carefully considered to afford reasonable level of certainty to existing businesses.

5. MANAGING NEW CENTRES AND MAJOR RETAIL PROPOSALS

The BGRA understands the concerns outlined with regard to out-of-centre developments within the Discussion Paper. We agree there is benefit in establishing a clear process that provides certainty and equitable treatment in relation to the assessment of applications. It should be acknowledged however that there are fundamental constraints that currently prevent restricted retail premises from locating within centres, forcing the vast majority of restricted retailers to what are regarded as 'out-of-centre' locations.

Again, using Amendment C45 (City of Kingston) as an example, the Panel "…openly acknowledges that new sites need to found for bulky goods retailing, in areas not necessarily nominated within activity centres."

In its letter to the Panel, Department of Sustainability & Environment (DSE) observed that:

- *"It is recognised that there is a need to provide opportunities for bulky good retailing and that these needs will not be able to be met in many designated activity centres, especially in the established areas. Appropriate sites need to be found for this type of use. Ideally sites need to meet the needs of retailers as well as contribute to Melbourne 2030.*

The Panel went on to comment that "In the opinion of the panel, this letter says it all."

The Panel also acknowledges the specific format required by restricted retail development:

- *"Sites need to be found that can accommodate extensive floorspace requirements (generally in the order of 1,000 to 3,000 sqm) plus on-site car parking and landscaping. Bulky goods retailers therefore seeks sites that are sufficiently large, as well as affordable. In the context of existing activity centres, these sites are usually located at the edge-of-centres, away from the main retail centre".*

The BGRA's recommendations in Section 1 of this submission, including the designation of Homemaker Centres within the network of Activity Centres, will reduce the propensity for debate around 'out-of-centre' sites.

In relation to the proposed responses set out in the Retail Policy Review paper, the BGRA recommends to following:

12. <u>The requirements for a sequential test for rezoning proposals should be implemented in conjunction with a review of activity centre boundaries and of the existing network of Centres.</u>

    Implementation of a sequential test will only work if adequate land supply for restricted retail is identified in the manner set out above, including recommendations on ensuring land supply and recognition of Homemaker Centres within the network of activity centres.

    The proposed sequential approach appears to be largely based on the UK system of 'town centre first' policy, which also applies a sequential approach. This national policy set out in Planning Policy Statement 6 (PPS6) applies a process to site selection in a similar way set out in the retail policy review paper. The BGRA believes there is an important opportunity to learn from the implementation of this policy. Over the last few years, PPS6 has been subject to review and criticism in terms of the way in which the 'sequential approach' has been implemented. The UK's Institute for

Retail Studies2 identifies the following outstanding issues in relation to implementation of the policy:

- Some formats of retail are incompatible with the policy and multi-level storeys or changes to format are not always a satisfactory outcome.
- Town centres sites are expensive to develop
- Obtaining larger sites in town centres remain problematic
- Disaggregation of activities may be expensive

The paper identifies the impacts on the economic functioning of retail industry as a result. These include findings from the UK Competition Commission, which identify:

- *"…The sequential approach potentially creates barriers to entry as its requirements to develop in town centres may prevent the opening of new stores of a scale competing with existing stores".*

The paper also cites other specific cases of economic and community benefit can be achieved by ignoring the sequential test in favour of other qualitative factors.

13. <u>The criteria set out in the sequential test for rezoning proposals must be pragmatic and provide consistent and fair treatment.</u>

It is imperative that the sequential test is implemented in a clear, transparent and consistent manner across all Councils. The United Kingdom is now proposing that the sequential test be replaced with a new Test Impact Framework. In response to this proposal, the Town and Country Planning Association (TCPA) criticise the current sequential test in the UK:

- "The test in general terms had become a highly bureaucratic process that consumes large resources and did little for the cause of simplicity in planning." 3[3]

14. <u>DPCD should provide further details of criteria to be applied when considering a request for a new centre or to reclassify a centre.</u>

The BGRA requests additional details in relation to criteria for a new centre, which will be particularly relevant to inclusion of Homemaker Centres within the network of Centres.

[2] Town and Country Planning Association (TCPA) (UK) 2008 'Proposed Changes to Planning Policy Statement 6 – Planning for Town Centres, A TCPA Response, 3rd October 2008

[3] Town and Country Planning Association (TCPA) (UK) 2008 "Proposed Changes to Planning Policy Statement 6 – Planning for Town Centres, A TCPA Response, 3rd October 2008

6. IMPROVING DESIGN OUTCOMES

The BGRA supports the development of design guidelines for large format retail, however:

15. That the BRGA and other stakeholders are included in the finalisation of the ‘Guidelines for Large Format Retail Development’ to ensure they are responsive to new and innovative retail formats and typologies and informed by key tenancy and operational requirements.

    We assume that DPCD will conduct future consultation regarding these design guidelines.

APPENDIX 1 – Economic Research Summary by Deep End Services

The Essential Economics (EE) prepared the report Retail Floorspace Forecasts for Metropolitan Melbourne, 2006 to 2030 for the Department of Sustainability and Environment in March 2007. This document has been one of the key reference documents for the Victorian Retail Policy Review process and also for the recent review of Melbourne 2030.

The EE report is generally well set out and most of the basic assumptions used in generating key data within the report are reasonable. However, there are some issues in relation to the report which must be highlighted and these are:

1. The report was completed almost two years ago and some of the data inputs are now out of date, particularly historical and forecast population data.

2. The adopted real spend per capita growth rates are too low and inconsistencies are apparent between the two tables of forecast rates (i.e. those presented on page 4 are lower than those presented on page 16)

3. Little justification has been made for the assumptions regarding distribution of retail spending by type of centre is provided on page 5, with particular concern regarding the assumption that Homemaker Centres and factory outlet centres currently capture and will continue to capture only 15% of retail spending

4. The report is only forward looking – it says nothing about the current distribution and/or quantum of floorspace

5. A key assumption is that there is no inflow of retail spending to Melbourne. Essential Economics has carried out studies within regional cities such as Geelong, Ballarat and Bendigo and would know that relatively large volumes of retail spending are directed out of these cities to Melbourne

6. Homemaker Centres and factory outlet centres are considered as a single category despite large differences in the tenant mix and tenant requirements for such facilities

7. The report does not address restricted retail requirements outside of homemaker centre locations despite the acknowledgement on page 9 that the Melbourne retail hierarchy contains "Homemaker Centres / Bulky Goods Precinct / Factory Outlet Centres" (our emphasis).

Implications

The model used by EE in generating its forecasts of supportable floorspace at 2006 and 2030 can be used to demonstrate the implications of changing some of the key inputs to the model as discussed above. The key findings with respect to increased requirements for homemaker centre and factory outlet centre floorspace are set out in the table as follows:

Model input	Supportable homemaker centre and factory outlet centre floorspace (sqm)		Growth in supportable floorspace (sqm)	Average growth in supportable floorspace (sqm per annum)
	2006	**2030**	**2006-2030**	**2006-2030**
1. Essential Economics report	1,741,300	2,438,170	696,870	**29,036**
2. Updated to incorporate 2006 Census data and then combined independently with:	1,771,365	2,469,831	698,466	**29,103**
2a. 2008 VIF forecasts	1,771,365	2,875,517	1,104,152	**46,006**
2b. Additional 0.1% per annum real growth in spending	1,771,365	2,528,890	757,528	**31,564**
2c. Homemaker Centres and factory outlet centres capturing an additional 1% of spending a Full Time Equivalent (FTE) 2006	1,771,365	2,634,486	863,121	**35,964**
3. BGRA forecast	1,771,365	3,303,160	1,531,795	**63,825**

1. Essential Economics Report

The EE report assessed Melbourne's supportable homemaker centre and factory outlet floorspace as 1,741,300 sqm at 2006, with the forecast being average growth of such floorspace of 29,036 sqm per annum to 2030.

It is noted that Melbourne was supplied with approximately 70,000 sqm of factory outlet floorspace in 2006 – this represented only 4% of total supportable floorspace for the combined homemaker centre and factory outlet category as calculated by EE at that time. Moving forward, it would be reasonable to expect that Homemaker Centres would require at least 90% of the combined category floorspace requirements.

2. 2006 Census Data

The ABS underestimated population growth within Melbourne by slightly more than 60,000 people between the 2001 and 2006 Census. EE had adopted an even more conservative population figure which was almost 70,000 lower than the actual figure and this must be adjusted with the result that the amount of supportable floorspace at 2006 increases by 30,065 sqm from 1,741,300 sqm to 1,771,365 sqm.

Almost all of the 'missed' people were living in inner and middle areas of Melbourne with the result being that all additional floorspace was required within established areas rather than growth areas.

The rebasing of the EE model to incorporate the 2006 Census results is then used in each of the following three forecast scenarios.

2a. 2008 Victorian In Future (VIF) Forecasts

DPCD released new population forecasts for Melbourne's LGAs in the Victoria in Future publication in late 2008. These forecasts are to replace the 2004 version used in the EE report and reflect recent high rates of growth within Melbourne and the expectation that rates will remain at significantly higher levels than previously contemplated. As a result, Melbourne's population at 2020 is now forecast to be 4,664,070 or 465,030 higher than the figure adopted in the Essential Economics report.

Adoption of these new forecasts has significant implications for retail floorspace demand within Melbourne, with an additional 1,104,152 sqm of homemaker centre and factory outlet floorspace required by 2030. This represents an increase of 405,686 sqm (16,904 sqm per annum) compared to the figure rebased for 2006 Census data (i.e. 698,466 sqm).

Increased population growth alone therefore means demand for 40,000 sqm of new homemaker centre development every three years than had been previously contemplated.

2b. Adoption of higher real growth rates in per capita retail spending

EE acknowledges that the forecast growth rates for per capita retail spending are conservative. The table above shows that an increase in the average rate by just 0.1% from 1.5% to 1.6% would result in demand for 757,528 sqm of new homemaker centre and factory outlet floorspace between 2006 and 2030. This represents an increase of 59,062 sqm (2,461 sqm per annum) compared to the figure rebased for 2006 Census data.

Whilst this may appear a reasonably modest increase, Access Economics forecasts real rates of retail spend per capita growth to be approximately 1.9% per annum for the next decade and therefore 0.4% above the figure adopted by Essential Economics. This would result in an annual floorspace requirement which was 9,800 sqm higher that the figure rebased for 2006 Census data.

2c. Homemaker Centres and factory outlet centres capture 16% rather than 15% of retail spending after 2006

Little justification is provided by EE for the assessment that only 15% of retail spending is directed to Homemaker Centres and factory outlet centres. Also, the proportion is not varied over time, despite the per capita spending growth figures on page 4 of the report indicating higher growth for bulky merchandise and homewares – which constitute the majority of sales in Homemaker Centres – than almost all other categories.

Increasing the proportion from 15% to just 16% in 2020 and then holding this constant to 2030 results in demand for 863,121 sqm of new homemaker centre and factory outlet floorspace between 2006 and 2030. This represents an increase of 164,655 sqm (6,860 sqm per annum) compared to the figure rebased for 2006 Census data.

3. BGRA Forecast

The BGRA forecast of demand for new homemaker centre and factory outlet centre floorspace is based on application of the EE model rebased for 2006 Census population data and incorporating:

- 2008 VIF forecasts
- Average annual real growth of 1.9% per annum
- 16% of retail spending being directed to Homemaker Centres and factory outlet centres.

As a consequence, Melbourne will require 3,303,160 sqm of homemaker centre and factory outlet centre floorspace by 2030. This represents an increase of 1,531,795 sqm between 2006 and 2030 or 63,285 sqm per annum.

The EE forecast was for a requirement of only 29,036 sqm per annum and the BGRA's forecast is therefore that more than twice this requirement must actually be anticipated, with much of the additional floorspace being required within inner and middle areas.