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### Attachment A

Submission from the LFRA to the NSW Productivity Commission Green Paper - Continuing the **Productivity Conversation** 

## Attachment B

Foreword by the Hon Anthony Roberts, NSW Planning Minister to the 2019 Large Format Retail Directory



#### 1. Introduction

This submission has been prepared by the Large Format Retail Association (LFRA) with the assistance of Ethos Urban in response to the exhibition of a position paper and new legislative outline to support a new employment zone framework for NSW.

We welcome the opportunity to provide feedback to the NSW Department of Planning, Industry and Environment (DPIE) on the key policy reforms outlined within the position paper and legislative outline from the perspective of the Large Format Retail industry and commend DPIE on actively providing and looking to implement initiatives that will reform the planning system, drive the economic recovery of NSW and encourage innovation and productivity within the commercial and industrial sector.

The LFRA has proactively engaged over the last 5 years with the NSW Retail Expert Advisory Committee (REAC), created by the Hon Rob Stokes and headed up by NSW Chief Planner Gary White, as well as DPIE, the Greater Sydney Commission, various Local Council's and the NSW Productivity Commission to voice its concerns regarding the current planning system and the associated land use zoning controls that restrict the Large Format Retail industry's ability to find suitable sites and invest in NSW.

Minister Roberts informed our members in the 'Foreword' to the 2019 edition of the LFRA Directory ('Attachment B'), that in 2019 the NSW Government "...will finalise the State-wide retail planning policy and provide advice to councils on how to consider retail supply and demand as part of their local strategic plans...". However, the Local Strategic Planning Statements have been finalised and a State-wide retail planning policy has not been released, as was promised. In addition, since Minister Stokes was re-appointed as the Minister for Planning in June 2019, the NSW Government has done little, to support the important role that the Large Format Retail industry plays.

The LFRA's vision is clarity, consistency and certainty of the various laws and government regulations that relate to the Large Format Retail industry in Australia. The LFRA's policy agenda encourages investment and employment growth and opportunities. Good urban planning, smart competition policy and cheaper and sustainable energy underpins our agenda.

The proposed employment zone framework provides for a significant rethink of how employment zones are categorised and located. This is a significant reform and is indeed the most ambitious rethink of employment zoning since the inception of the Standard Local Environmental Plan Instrument in 2010. In our opinion the reform is a positive step towards achieving greater clarity, consistency and certainty within the NSW.

The LFRA supports the majority of the reforms in the employment zone framework, however it must be noted that key impediments to investment in NSW by existing and new entrants within the Large Format Retail sector continue to be:

The failure of DPIE to provide a State-wide planning policy to guide retail land use objectives and decisions; and



The NSW Government's inability to recognise and proactively plan for future growth of the Large Format Retail industry.

In response to DPIE's proposed employment zone framework, the position of the LFRA in relation to the proposed reforms is as follows:

- The LFRA supports the establishment of fewer but broader zones in which employment uses and economic activity can occur;
- The LFRA strongly supports the fact that 'Specialised Retail Premises' will be a mandated use in the E3 Productivity Support zone;
- The LFRA supports the ongoing involvement of the NSW Department of Planning to implement the reformed zones through the use a State Environmental Planning Policy and the oversight that the Department will have to ensure that correct land-use decisions are made in translating employment zones;
- The LFRA does not support the fact that whilst a new definition of 'Home Improvement Retail Premises' is proposed, it has not been drafted or exhibited. Without exhibiting a draft of a definition of 'Home Improvement Retail Premises', it has made it difficult for the LFRA and its members to understand the scope, context and objectives of creating this new definition;
- The LFRA as the sole and national peak industry body for the Large Format Retail sector is concerned it has not been consulted about the creation of new definition of 'Home Improvement Retail Premises'.
- The LFRA does not agree with the manner in which the draft objectives of the E3 Productivity Support Zone have been drafted;

Notwithstanding the proposed reforms, the LFRA request that DPIE consider the following additional amendments to the legislation and strategic planning system, which in our view are also required to enable the Large Format Retail sector to continue to invest in NSW and ensure the physical supply of floorspace meets the current and forecast levels of demand within NSW and the Sydney Metropolitan Area:

- DPIE to produce a State-wide planning policy to guide retail land use objectives and decisions;
- The NSW Government to support and adequately consider the growth of all forms of retail activity and in particular the Large Format Retail industry which is a significant and growing segment of the retail sector;
- Provide opportunities for 'emerging' and 'innovative' retail formats to locate within the NSW that are not currently recognised within the Standard Instrument LEP (Local Environment Plan) land use definitions; and
- Require Local Government areas to proactively plan to increase Large Format Retail floorspace to meet the required demand.



### 2. **Large Format Retail Association and Sector Overview**

The LFRA is Australia's peak industry body which supports and advocates for Australia's Large Format Retail sector. Our membership base comprises of Large Format Retailers, investors, owners, developers and service suppliers. The LFRA's policy agenda strongly encourages investment and employment growth and opportunities. Issues such as good urban planning, smart competition policy and cheaper energy underpin our agenda. Our vision is clarity, consistency and certainty of the various laws and government regulations that relate to the Large Format Retail industry in Australia.

The LFRA's Retail members include some of Australia's largest and most respected Large Format Retailers including the 65 individual business brands listed in the following table:

ABS Automotive Service Centres	Domayne	Petbarn
Adairs	Early Settler	PETstock
Adairs Kids	Fantastic Furniture	Pillow Talk
Adelaide Tools	Freedom	Pivot
Amart Furniture	Harris Scarfe Home	Plush
Anaconda	Harvey Norman	Provincial Home Living
Animates	House	Rebel
Autopro	IKEA	Reece
Autobarn	James Lane	RoadTech Marine
Baby Bunting	Jaycar Electronics Group	Robins Kitchen
Barbeques Galore	JB Hi-Fi	RSEA
Bay Leather Republic	JB Hi-Fi Home	Sleepys
BCF	Joyce Mayne	Snooze
Beacon Lighting	Kitchen Warehouse	SPACE
Beaumont Tiles	Lincraft	Sprint
Bedshed	Macpac	Spotlight
Bunnings	Midas Auto Service Experts	Supercheap Auto
Bursons	Mountain Design	The Good Guys
Chemist Warehouse	Oakland Mowers	The Sleeping Giant
City Farmers	Officeworks	Total Tools
Costco	Original Mattress Factory	Urban Home Republic
Decathlon	OZ Design Furniture	



The LFRA is also supported by its patron, PwC, and the following 74 Associate Members that comprise of Large Format Retail developers, investors, owners and service suppliers:

Acure Asset Management	Cornwalls	Morgans Financial Limited
ADCO Constructions	COVA	MPG Funds Management
Advent Security Services	CV Media & Signage	Moray & Agnew Lawyers
Agora Property Group	Deep End Services	National Storage
Aigle Royal Properties	Deluca	Newmark Capital Limited
Arise Developments	DOME Property Group	Planning Solutions
AsheMorgan	Edgewise Insurance Brokers	Primewest
Arkadia	Ethos Urban	Properties and Pathways
Aventus Group	Re Grow Development Group	QIC
AXIMA Logistics	FTI Consulting	Realmark Commercial
AXIOM Properties Limited	Gazcorp	Savills
Bayleys	Gibb Group	Sentinel Property Group
Birdsong Legal	Geon Property	Solar Edge
Blackmont	Grosvenor Engineering Group	Terrace Tower Group
Blueprint	HLC Constructions	TK Maxx
Buchan	Home Consortium	Tomkins
Burgess Rawson	Humich Group	Transact Capital
BWP Trust	Jape Group Australia	Transcend Property
CBRE	KHQ Lawyers	Troon Group
Charter Hall	Knapp Property Group	Tutch
Cherry Energy Solutions	Leedwell Property	Upstream Energy
Citinova	Leffler Simes Architects	Vend Property
Colliers International	Lester Group	VPG Property
Complete Colour	Mainbrace Constructions	Wavin Technologies
Coombes Property Group	Major Media	

Australian's love affair with Large Format Retail has been on full display during the pandemic, with sales on track to increase by almost 13% during the 2020 - 21 financial year despite the COVID-19 restrictions. In simple terms, the trading performance of the Large Format Retail sector has been buoyed by the following key factors:

- The much-needed economic boost by the Federal Government in the form of Jobseeker and Jobkeeper payments;
- Reactionary purchases by the population due to the various Government restrictions such as work from home requirements and the closure of gymnasiums;
- The take-up of DIY projects;
- The desire by many to transform their homes into an oasis; and
- The spatial element of the Large Format Retail sector (i.e. large car parks, large floorplates that automatically aid social distancing, the limited numbers of spacious internal shopping malls, and ease of access for 'click and collect' and 'drive and collect' services.



Demand assessment economists, Deep End Services, estimates the following approximate key industry metrics for both Australia and New South Wales for the year ending 30<sup>th</sup> June 2021:

Key Industry Metrics	Australia	New South Wales
Total retail sales	\$ 361.9 billion	\$ 115.3 billion
Large Format Retail percentage of total retail sales	26.4%	26.5%
Large Format Retail sales	\$ 92.4 billion	\$ 30.5 billion
Number of direct employees in Large Format Retail	199,144	60,196
Number of indirect employees in Large Format Retail	247,337	74,763
Total number of employees both directly and indirectly in Large Format Retail	446,481	134,959
Large Format Retail floor space	20,184,699 million square metres which equates to 35% of all retail floor space	

The LFRA has also seen a broader trend in that there has been a rise in the take-up of floorspace within established homemaker centres by uses other than traditional Large Format Retail uses, these include:

- Allied medical/health and wellness (dental, radiology, blood donation centres);
- Automotive sales and servicing (sales, servicing, tyres, car washes);
- Business premises (financial services, government agencies, training services); and
- Entertainment and recreation centres (play centres, bowling, climbing, gymnasiums).

Independent research commissioned by the LFRA indicated that over the last five (5) years Queensland, WA and Victoria have been the leaders in permitting non-Large Format Retail uses within homemaker centres whereas NSW has been the worst performer. This trend is considered to be directly linked to the responsiveness of the States respective planning and land use zoning regulations.

The effect of Victoria's commercial zoning evolution and reform over the last 20 years, and the fact that Victoria's 'Restricted Retail Premises' definition has continuously evolved has meant that new entrants and business formats within the Large Format Retail sector have been recognised and supported.



Furthermore, the Australian Government Productivity Commission paper 'Victoria's Commercial Land Use Zoning - Productivity Reform Case Study', dated September 2020, specifically looked at whether perceived adverse impacts of an increase in out-of-centre-growth arising from the Victoria zone reforms has occurred, and it was found that they did not appear to have come about.

It was specifically noted that "...the adverse impacts of out-of-centre development are likely small. The broadening of commercial zones in Victoria enabled commercial activity that some stakeholders characterize as 'out-of-centre developments'....as the Commission has previously argued, declines in activity centres often reflect changing consumer preferences, as so are not always a direct consequence of the out-of-centre development. Equally, locational competition can bring community benefits. Several reports on competition (such as the Competition Policy Review (2015) have found that, among other things, the impacts on competition between individual businesses, and proposed developments on the viability of existing businesses should be irrelevant for planning matters (Harper et al. 2015; PC2011a). This is because planning and zoning laws can create barriers to business entry and/or restrict competition, leading to a lower variety or quality of goods and services. Adverse impacts from competition should only be considered when future planning is conducted, not when a development proposal is being considered.

A related concern is the availability of industrial land. In Melbourne, State Significant Industrial Precincts (SSIOs) are zoned IN3Z and IN2Z, where only limited retail activity is allowed. These sites are not a natural fit for core retail activity. There is a case for Large Format Retail in industrial areas to the extent that it is established on vacant or underutilized industrial land (which generally meets the requirements for Large Format Retail use), particularly in the industrial areas outside the SSIPs. In response to concerns about the availability of industrial land, the Victoria Department of Environment, Land, Water and Planning (DELWP) has indicated that it will review the range of uses permitted within industrial zones.

Overall, it is difficult to find clear evidence that out-of-centre developments have had adverse impacts that warrant regulatory restriction...".

This evidence therefore indicates that the broadening of uses within the new E3 Productivity Zone to include uses that are not traditionally permitted in Large Format Retail centres, (as noted above) is unlikely to give rise to significant impacts.



## 2.1 NSW Productivity Commissioner's White Paper 2021

In May 2021. the New South Wales Government released NSW Productivity Commissioner's 'White Paper' titled 'Rebooting the Economy'. Within the report, sixty (60) opportunities were highlighted as ways to improve productivity including several recommendations to improve the NSW planning system. The key recommendations regarding improvements to the planning system include:

- Creating a long-term housing target system which is supported by evidence and government support;
- Reviewing the Apartment Design Guide amongst the proposed Design and Place SEPP to make certain the benefits of good design are highlighted within the SEPP;
- Understanding the sections of lengthy delay within the planning system and how to best resolve these;
- Research into management of industrial lands and urban services and reforms to the zoning of employment lands;
- Highlighting areas which are susceptive to further infrastructure capacity such as housing and business zones; and
- Accepting all recommendations made to the contributions system through the Review of Infrastructure Contributions.

Within the 'White Paper', the NSW Productivity Commission acknowledged that overly prescriptive and complex planning regulations can stifle business competition, and that ....presently the States overly prescriptive zoning is inflexible, limiting competition and innovation..." which discourages business investment and hampers employment growth.

Whilst the NSW Productivity Commission's White Paper has been the most recent document that seeks urgent need for appropriate planning and zoning legislation reform, numerous independent and reports issued between 2008 and 2020 have also called for such reform, namely:

- *'Plan to Identify Planning and Zoning Reforms'* Information Paper by the Productivity Commission (March 2021) Plan to identify planning and zoning reforms -Information paper (pc.gov.au)
- 'Victoria's Commercial Land Use Zoning' Research Paper by the Productivity https://www.pc.gov.au/research/completed/vic-Commission (July 2020) commercial-zoning;
- 'Shifting the Dial: 5 Year Productivity Review' by the Australian Productivity Commission (2017) https://www.pc.gov.au/inquiries/completed/productivityreview/report/pro ductivity-review-supporting10.pdf;
- New South Wales Retail Expert Advisory Committee's (REAC) 'Independent Recommendations Report' (June 2017) <a href="https://www.planning.nsw.gov.au/-">https://www.planning.nsw.gov.au/-</a> /media/Files/DPE/Reports/retail-expert-advisory-committee-independentrecommendations-report-2017-06.pdf;



- 'Harper Review' by the Federal Government (2015);
- 'Economic Structure and Performance of the Australian Retail Industry' by the Productivity Commission (2011);
- 'Performance Benchmarking of Australian Business: Planning, Zoning and Development Assessments' by the Productivity Commission (2010);
- 'Market for Retail Tenancy Leases in Australia' review by the Productivity Commission (2007);
- 'Inquiry into the Competitiveness of Retail Prices for Standard Groceries' by the ACCC (2008);

In fact, the LFRA's evidence-based report (February 2015), titled 'Investment + Competition = Jobs', written by Ethos Urban (formerly JBA) with economic input from Deep End Services outlined many of the key challenges facing the Large Format Retail Sector in NSW, and highlighted that the sector principally suffers from:

- a lack of clarity in determining whether its retailers 'fit' within the current available land use definitions; and
- a lack of sufficient appropriately zoned, sized and configured land to support new development.

'Investment + Competition = Jobs' was also the catalyst for the Minister for Planning, the Hon Rob Stokes' creation of the Retail Expert Advisory Committee (REAC) which was headed up NSW Chief Planner, Gary White. The LFRA was a key stakeholder in the review undertaken by the REAC, and as such, made submissions and actively participated in the REAC Review.

The 'REAC Report' released by the then Department of Planning & Environment (DP&E) in November 2017, acknowledged the structural shift in the retail market and competition of 24-hour on-line trading with bricks and mortar retailers who have limited trading hours. In addition, the 'REAC Report' made five (5) recommendations to the NSW Government on how the planning system could be improved to support retail in NSW, including:

- Develop a State-wide retail planning policy;
- Consider retail supply and demand in strategic plans;
- Change the Standard Instrument Local Environmental Plan;
- Improve assessment processes, and
- Provide clearer planning guidance.

In response to the REAC report, the DP&E proposed amendments to the 'Standard Instrument LEP' and also issued the 'Planning for the Future of Retail' Discussion Paper to obtain a wider understanding of how the NSW planning system can better support a robust, diverse and evolving retail sector that meets the needs of businesses and the community.

Following a significant number of submissions made by the LFRA and other representatives of our industry, in August 2018, the land use term 'Bulky Goods Premises'



was replaced with 'Specialised Retail Premises'. The new definition overcame significant problems with the previous definition of 'Bulky Goods Premises'.

However, whilst the new definition assists our members in terms of providing clarity, consistency and certainty in respect of the goods that can be sold and services provided, i.e., the 'what you can sell' and has made it a little easier for our industry to do business in NSW, as the the NSW Productivity Commissioner's 'White Paper' recognises, there is still more to do as the 'where you can sell' issue is yet to be sorted. It is akin to being given a car with no petrol in the tank!

It is in this regard that we are pleased to see that the proposed Employment Zoning Reform Framework is consistent with the 'White Paper', in terms of its measures to cut-red tape and complexity in the planning system, by including:

Recommendation 7.4 which seeks to:

Progress reforms to employment zones, including the following:

- Rationalise existing business and industrial zones in the Standard Instrument Local Environmental Plan to reduce the number of zones.
- Broaden the range of permissible activities to ensure prescriptions are reserved for genuinely incompatible land uses. Progress reforms to expand complying development assessment pathways.

The LFRA's detailed submission on the NSW Productivity Commissioner's 'Green Paper', which preceded the 'White Paper' (appended to this submission) provides a detailed explanation of the key challenges that are faced by the Large Format Retail sector and a response to the draft recommendations noted above. In addition, the LFRA considers that for the Large Format Retail sector to continue to invest in NSW and ensure the physical supply of floorspace meets the current and forecast levels of demand within NSW and in particular the Sydney Metropolitan Area, it is imperative that strategic planning that seeks to facilitate suitable sites for Large Format Retail is undertaken.

Accordingly, we feel that it is important for the DPIE to read this submission in conjunction with the previous submission on the 'Green Paper' to truly understand the barriers within the current NSW planning system to economic recovery within the Large Format Retail sector before finalising the complying development reforms and the employment zone reforms.

In addition, in March 2021 the Federal Productivity Commission, issued a further information paper entitles 'Plan to Identify Planning and Zoning Reforms'. The paper builds upon previous work done by the Federal Productivity Commission, such as 'Shifting the Dial: 5 Year Productivity Review' (2017), the Harper Review (2015) and the work by the NSW Productivity Commissioner and emphasises once again (pages 6 and 8) that uplanning and zoning systems guide and facilitate growth and development in cities,..." towns and regions. They comprise of various regulatory bodies, the rules that define their powers and roles, and the plans and instruments under which they make decisions.....Alignment of strategic planning at the State and local level is ... an important



issue for industrial and commercial land use. In Victoria, for example, the Government recently released the Melbourne Industrial and Commercial Land Plan (DELWP 2020), which assessed the current and future demand and supply for industrial and commercial land in the Melbourne metropolitan area, and provides a framework for local governments to manage industrial and commercial land supply. Challenges in industrial and commercial land use planning include ensuring appropriate sites for warehousing activity and other uses [such as Large Format Retail] is appropriate locations, while making better (higher value) use of old industrial sites in built up urban areas..."

Furthermore, the 'Plan to Identify Planning and Zoning Reforms' also replicated the policy position of the LFRA in regard to the planning and zoning system and notes that "...zoning policies often exhibited four characteristics that may result in added costs to business and households that wish to make use of land:

- a proliferation of zone types
- a lack of standardisation in zone definitions across local government areas, adding to the proliferation of different rules about permitted land use
- excessive restrictions on land use enshrined in state-wide planning provisions for *local planning schemes*
- insufficient (or note at all) 'as-of-right' uses in various zone types..."

"...Although zoning plays an important role in managing land use conflicts, overly prescriptive zoning imposes costs and reduces land use flexibility and adaptability. For example, prescriptive rules about permitted land uses can limit new employment and productivity improvements in, and competition between, businesses.

State, Territory and Local Governments should move to fewer and more broadly-stated land use zones, which have a large range of 'as of right' uses (for which council approval is not required). This would allow greater diversity of land uses and would make it easier for new businesses to enter and for existing businesses to expand (PC2017). It would also reduce administrative and compliance costs and enable planning systems to respond to changing land use activities..." The Federal Government Competition Policy Review ('The Harper Review') also recommended that "...business zones should be as broad as possible..." (Treasury 2015, p45).

Therefore, whilst the LFRA generally supports the provisions set out in the proposed Employment Zone Reforms, DPIE need to explicitly look at further reforms to the legislation and planning system. Specifically, the LFRA consider that the following is required:

- DPIE to produce a State-wide planning policy to guide retail land use objectives and decisions;
- The NSW Government to support and adequately consider the growth of all forms of retail activity and in particular the Large Format Retail industry which is a significant and growing segment of the retail sector;
- Provide opportunities for 'emerging' and 'innovative' retail formats to locate within NSW that are not currently recognised within the Standard Instrument LEP (Local Environment Plan) land use definitions; and



Require Local Government areas to proactively plan to increase Large Format Retail floorspace to meet the required demand.

### 3. **Response to the Proposed Policy Reforms**

In response to DPIE's proposed Employment Zone Framework, the position of the LFRA is as follows:

- The LFRA supports the establishment of fewer but broader zones in which employment uses and economic activity can occur;
- The LFRA strongly supports the fact that 'Specialised Retail Premises' will be a mandated use in the E3 Productivity Support zone;
- The LFRA supports the ongoing involvement of the NSW Department of Planning to implement the reformed zones through the use a State Environmental Planning Policy and the oversight that the Department will have to ensure that correct land-use decisions are made in translating employment zones;
- The LFRA does not support the fact that whilst a new definition of 'Home Improvement Retail Premises' is proposed, it has not been drafted nor exhibited. Without exhibiting a draft of a definition of 'Home Improvement Retail Premises', it has made it difficult for the LFRA and its members to understand the scope, context and objectives of creating this new definition;
- The LFRA does not support the removal of 'Hardware & Building Supplies' definition, and its replacement with two (2) definitions being 'Trade Retail Premises' and 'Home Improvement Retail Premises'.
- The LFRA as the sole and national peak industry body for the Large Format Retail sector is concerned it has not been consulted about the creation of new definitions of 'Home Improvement Retail Premises' and 'Trades Retail Premises'; and
- The LFRA does not agree with the manner in which the draft objectives of the E3 Productivity Support Z one have been drafted;

The LFRA supports that the proposed zone amendments are implemented through two (2) tranches of self-repealing SEPPs by mid-2022 as anticipated within the position paper.

These positions are explained in further detail below.

#### **Support For Fewer But Broader Zones** 3.1

The LFRA supports the creation of fewer and broader employment zones. The artificial delineation between the B5, B6 an B7 zone has been a source of confusion to our industry and to consumers. The often-negligible difference in land-use planning and characteristics between these zones has been one of the root causes of a lack of supply for land zoned suitable for 'Specialised Retail Premises'. The disparity of how some Council have applied the B5, B6 and B7 zoned land and disparity between on whether 'Specialised Retail Premises' are permitted in the zones was highlighted in the LFRA's evidence-based report



(February 2015), titled 'Investment + Competition = Jobs'. This report clearly demonstrated how the NSW zoning system resulted in a:

- A lack of clarity in determining whether its retailers 'fit' within the current available land use definitions; and
- A lack of sufficient appropriately zoned, sized and configured land to support new development.

The sector will require between 1.74 and 2.2 million square metres of Large Format Retail floorspace over the period 2011 to 2031 which accounts for approximately 40% of retail demand<sup>1</sup>. The Large Format Retail sector is forecast to have significant surplus floorspace demand at 2031 that is not met by estimated supply levels and the strategic planning system, including the Greater Sydney Regional Plans, the District Plans and many Council Local Strategic Planning Statements do not facilitate suitable sites for Large Format Retail development.

The provision of fewer but broader zones is consistent with the recently released 'White Paper' and the NSW Government is to be applauded for pursuing this. It will – when implemented be a real step in the right direction towards increasing the supply of land zoned for 'Specialised Retail Premises'.

#### **Support for Mandating Large Format Retail Land Uses in the E3 Zone** 3.2

The LFRA strongly supports the fact that the following core Large Format Retail definitions will be made a mandatory use in the E3 zone:

- 'Specialised Retail Premises'
- 'Hardware and Building Supplies'; and
- 'Garden Centres'.

The 'REAC Report' (page 7) indicated and acknowledged that one of the "...Change Factors..." within the retail industry is the "...consolidation of bulky goods retailing...", which occupies "...23% of the retail market...", is a "...legitimate and popular format..." and is "...here to stay", the LFRA consider therefore that it is critical that these uses be made mandated in the E3 zone. It is also critical that Council's not be allowed to water down or limit their effectiveness by the adoption of local provisions such as floor space caps or tenancy sizes for 'Specialised Retail Premises' in the E3 zone. We draw your attention to the floorspace and tenancy restrictions that are contained within clause 7.23 of the 'Liverpool Local Environmental Plan 2008' as an example of where such provisions have been implemented.

<sup>&</sup>lt;sup>1</sup> 'Sydney Retail Demand and Supply Consultancy', Deep End Services, 2016



## 3.3 Objectives of the E3 Productivity Support Zone

The proposed objectives of the E3 Productivity Support zone are as follows:

"...Objectives of zone

- To provide a range of facilities and services, light industries, warehouses and offices.
- To provide for land uses that meet the needs of the community, businesses and industries that are not suited to locations in other employment zones.
- To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.
- To encourage employment opportunities.
- To provide opportunities for new and emerging industries
- To enable limited retail uses to meet the day to day needs of workers or to sell goods of a large size, weight or quantity or goods manufactured on-site..."

The LFRA is concerned and objects to the language used in the third and last proposed objective of the E3 zone.

## **Third Objective**

For many years, the Large Format Retail industry has had to endure the misuse and application of the current B5 Business Development zone which states:

"...To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres..."

Our members have direct experience of this definition being used by Councils to provide an additional layer of assessment that meant that 'Specialised Retail Premises' would not be approved at development application stage unless economic and retail evidence was provided to demonstrate the viability of centres. This is not withstanding that 'Specialised Retail Premises' were explicitly permissible in the zone and had been nominated as a mandatory use in the B5 zone.

We are concerned as to how the following proposed objective of the E3 zone will be interpreted by some Councils.

To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.

It has long been held by the Courts that economic competition between individual trade competitors resulting from a proposed development is not a matter relevant to the economic impact of a proposed development but was a matter for market forces. In Fabcot Pty Ltd v Hawkesbury City Council (1997) 93 LGERA 373, Lloyd J held that the correct criteria to be applied by a consent authority in assessing the economic impact of a development is not whether the proposed development will result in direct competition



with another retailer but rather whether the proposed development will detrimentally impact upon services or a centre over which the community currently enjoys.

His Honour said that the criteria for consideration of the economic impact of a development is its effect 'in the locality'. He referred to the case of Kentucky Fried Chicken Pty Ltd v Gantidis (1979) 140 CLR 675 where the High Court stated:

"...If the shopping facilities presently enjoyed by a community or planned for it in the future are put in jeopardy by some proposed development, whether that jeopardy be due to physical or financial causes, and if the resultant community detriment will not be made good by the proposed development itself, that appears to me to be a consideration proper to be taken into account as a matter of town planning. It does not cease to be so because the profitability of individual existing businesses are at one and the same time also threatened by the new competition afforded by that new development. However the mere threat of competition to existing businesses, if not accompanied by a prospect of a resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development be proceeded with, will not be a relevant town planning consideration..."

The references to 'competition' with land-uses in a commercial centre are entirely at odds with long standing judicial authority about the role of planning system in limiting competing between private companies. It is also entirely at odds with findings from the 'Harper Review' and other Productivity Commission findings.

This objective should be removed entirely. The fact that certain appropriate retailing uses have been nominated as permissible in the E3 zone should be self-evident and not need the imposition of other objectives that seek to limit competition and require a finding of compatibility with land-uses in commercial centres.

## **Last Objective**

The LFRA is particularly concerned with the language that is used in relation to last objective. This concern is twofold. Firstly, the majority of the objectives are written in a facilitative manner. That is, they seek to promote or encourage certain employment uses. The language adopted in the last objective relating for 'Specialised Retail Premises' is negative in tone and is concerned with the limitation of retailing.

Secondly, the objective purports to adopt some of the language found in the definition of 'Specialised Retail Premises' but does so in a less than adequate manner. 'Specialised Retail Premises' is defined as:

- ....Specialised retail premises means a building or place the principal purpose of which is the sale, hire or display of goods that are of a size, weight or quantity, that requires—
- a large area for handling, display or storage, or (a)
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles 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, hire or display of other goods referred to in this definition..."

The objective only refers to the sale of goods, and ignores both the hire and display of goods, both of which are key parts of the definition. Furthermore, the objective does not refer to the sale of ancillary goods which is also a key part of the definition. This demonstrates that the operative parts of a land use definition such as 'Specialised Retail Premises' should not be recited in a zone objective.

Accordingly, we are particularly concerned to see a zone objective which derogates or otherwise erodes the definition of what 'Specialised Retail Premises' are. Furthermore, the objective fails to recognise other definitions which are commonly used by the Large Format Retail industry such as 'Hardware and Building Supplies' and 'Garden Centres', both of which are anticipated to be mandated as permissible uses in the E3 zone.

We have provided below an alternative drafting of an objective which would achieve the aims of the Department of Planning and would be written in a clear and positive tone:

...." no provide for Specialised Retail Premises, Neighbourhood Shops, Building and Hardware... Supplies, Garden Centres and Industrial retail outlets..."

The LFRA supports the ongoing involvement of the NSW Department of Planning to implement the reformed zones through the use a State Environmental Planning Policy and the oversight that the Department will have to ensure that correct landuse decisions are made in translating employment zones;

The LFRA supports that the proposed zone amendments are implemented through two (2) tranches of self-repealing SEPPs by mid-2022 as anticipated within the position paper.

The LFRA supports an appropriate level of review and guidance for Councils in translating from the current Business zone to the proposed Employment zones. The effectiveness of the employment zone reform program will come from its appropriate use and transitioning from existing zones.

The LFRA supports the fact that guidance and assistance will be given to Council to ensure that this transition to the new employment zones occurs in an effective and economically sensible manner. We ask that the Department ensure that there is no nett loss of zoned land for Large Format Retailing uses and in fact the Department must ensure that there is a nett increase in viable appropriately zoned land for Large Format Retail. Whilst the ability to undertake 'Specialised Retail Premises' in centres and mixed use zones is appropriate, it is often not economically feasible or can give rise to other planning and design challenges. The Department should ensure and report back in its finalisation report of the self repealing SEPPs - the quantum of growth of E3 zoned land especially when compared to the B5 zone.



The LFRA recommends that there should be a doubling of appropriately and viably zoned land in which 'Specialised Retail Premises' can be undertaken when measured against the current stock available in 2021.

3.5 The LFRA does not support the fact that whilst a new definition of 'Home Improvement Retail Premises' is proposed, it has not been drafted nor exhibited. This lack of detail means that the objective of the new definition is unclear and may lead to confusion and misunderstanding.

The Department is proposing a new definition of 'Home Improvement Retail Premises' which proposes combining two (2) existing definitions of:

- 'Hardware and Building Supplies'; and
- 'Garden Centres'.

This is proposed whilst adding the additional definition of 'Trades Retail Premises'. From our review of the Position Paper, it is simply proposed to combine these two (2) definitions together into a single definition known as 'Home Improvement Retail Premises'. We have several significant concerns with this.

Firstly, the LFRA is the peak body representing the Large Format Retail industry. We are perplexed as to why the Department of Planning did not consult with the LFRA regarding this proposed definition. As the Department is aware, the definition of 'Bulky Goods Retail Premises' and 'Specialised Retail Premises' was a matter that took almost a decade to resolve. The introduction of a new definition of 'Home Improvement Retail Premises' without consultation with the peak industry body is not in keeping with the co-operative way the Department has previously engaged with our industry.

Secondly, it is unclear as to what the positive planning outcome will be because of the new definition. The simple agglomeration of definitions does nothing more than transform two (2) definitions into one and in the case of hardware operators, adds an additional definition of 'Trades Retail Premises'. There are currently hundreds and hundreds of defined terms in the in the Standard LEP template. If the purpose of this change is simply to remove a single definition without any consideration of rethinking the terms of the definition, then the positive planning outcome that arises from the new definition is simply an administrative one and a marginal one at that. The opportunity for general confusion arising from the new definition is likely to outweigh any marginal administrative gain from the combined definition, as discussed below.

The term 'Home Improvement Retail Premises' is a broad term and does not match the narrow way it will be defined. Many of our members consider themselves as home improvement retailers. Our members that sell furniture for the home are in the business of home improvement retail as are members that sell curtains, carpets, rugs and white goods, barbeques and alike. These are all goods that consumers buy to improve their homes but seemingly would not be captured by the new definition of 'Home Improvement Retail Premises'. It is both confusing and at odds with the goal of simplifying the planning



system to adopt definitions that are not drafted in a common parlance and language as used in our society, and split current businesses into two (2) or more definitions.

This is further highlighted by the fact that businesses that may have nothing to do with home improvements will have to operate under a planning definition that suggests otherwise. For example, a building supplies company that specialises in commercial and restaurant kitchens would need to operate under a definition of 'Home Improvement Retail Premises'. This lacks a degree of common sense and will lead to confusion in the industry and amongst the public.

This same fault arises from the proposed definition of 'Trade Retail Premises', which is proposed to be a combination of the following definitions:

- 'Landscape Material Supplies'
- 'Rural Supplies'; and
- 'Timber Yards'

A cursory review of this term 'Trade Retail Premises' would suggest that a business involved in say, the sale of commercial and industrial plumbing supplies should on its face be able to operate under the definition of 'Trade Retail Premises'. However, it would not qualify and instead would have to operate under the terms of the definition of 'Home Improvement Retail Premises', irrespective of whether they are involved in the business of home improvements or not.

Finally, we note that the land-use terms 'Hardware and Building Supplies' and 'Garden Centres' are both mandated uses in the E3 and E4 zone. This provides for a comparable outcome to current circumstances. Accordingly, any risk that businesses which may rely upon both terms being disadvantage by operating under two separate definitions in one zone has been addressed by the Department by mandating these uses together.

Having regard to the considerations above, the LFRA recommends that the proposed definitions of 'Home Improvement Retail Premises' and 'Trade Retail Premises' be abandoned by the Department. These definitions bring no real or tangible planning gain and in face will be a source of confusion for the industry, the public and Councils.

The LFRA would like to work with Department to consider a meaningful definition in the future that captures a broader consideration of Home Improvement Retailing and is permitted in broader zones

The LFRA would like to work with the Department in the future to establish a meaningful definition of 'Home Improvement Retail Premises' that could be applied across a broad range of zones, including industrial zones and which would truly encompass businesses involved in home improvement retailing.

Where increased employment generation can be supported by allowing a broader range of compatible uses in industrial zones, there is little benefit in restricting the uses permitted in industrial land to traditional industrial uses. It has been consistently noted



that attempts by planning authorities to limit the decline of particular activities in some locations (through the imposition of restrictive planning policies) are rarely effective. Simply zoning land for a particular purpose does not mean that the desired activities will remain.

Permitting Large Format Retail uses in industrial zones would allow flexibility within the planning system to enable Large Format Retail premises to be developed within appropriate industrial precincts without necessitating spot rezonings. Such a change would not only create more certainty for Large Format Retailers but would encourage job growth. Analysis in the report 'Investment + Competition = Jobs' shows that the employment generation of a Large Format Retail use is almost three (3) times that of a typical industrial use.

#### **Conclusion** 4.

The LFRA welcomes this opportunity to provide feedback on the reform of Employment Zones in NSW. Many of these reforms have been long overdue and have been recommended by Productivity Commission review of planning systems in NSW and throughout Australia.

As explained within this submission, the Large Format Retail sector faces many challenges when it comes to the supply of available land which is suitable for our members. Furthermore, like many industries, the retail sector has experienced enormous disruption over the last five (5) years.

The LFRA's vision is clarity, consistency and certainty of the various laws and government regulations that relate to the Large Format Retail industry in Australia. This document proposes reforms to employment zones in NSW is a positive step towards achieving greater clarity, consistency and certainty within the NSW and accordingly the LFRA supports the provisions contained within the reform as they relates to the creation of fewer and broader zones that have definitions commonly used by the Large Format Retail sector as mandated uses.

The LFRA remains concerned with the manner in which a new definition of 'Home Improvement Retail Premises' and 'Trade Retail Premises' are proposed to be introduced. From our review, they do little to establish any planning gain and in our view is self-defeating with regard to administrative gain. We think the benefits of the introduction of these two new definitions is far outweighed by the lack of clarity and confusion that these definitions would bring to the characterisation of businesses associated with the Large Format Retail sector. Accordingly, it is the position of the LFRA that the establishment of these two (2) terms should be abandoned.

The LFRA would like to work with the Department in the future to establish a meaningful definition of 'Home Improvement Retail Premises' that could be applied a broader range of zones and which would truly encompass businesses involved in home improvement retailing.

However, to ensure that the Large Format Retail sector continues to invest in NSW and the physical supply of floorspace meets the current and forecast levels of demand within the NSW and in particular the Sydney Metropolitan Area, it is imperative that additional strategic planning which seeks to facilitate suitable sites for Large Format Retail is undertaken. This additional



strategic planning work needs to go beyond the reclassification of employment zones, and specifically require:

- DPIE to produce a State-wide planning policy to guide retail land use objectives and
- The NSW Government to support and adequately consider the growth of all forms of retail activity and in particular the Large Format Retail industry which is a significant and growing segment of the retail sector;
- Recognise that not all forms of retail activity belong in 'centres' and acknowledge the role that Large Format Retail centres provide to the NSW economy;
- Provide opportunities for 'emerging' and 'innovative' retail formats to locate within the NSW that are not currently recognised within the Standard Instrument LEP (Local Environment Plan) land use definitions; and
- Require Local Government areas to proactively plan to increase Large Format Retail floorspace to meet the required demand.

It is important to acknowledge the contribution that Large Format Retail makes to the economy and the wider retail sector. The retail sector is more diverse than just shopping centres and malls.

The LFRA would be happy to meet with the Department of Planning, Industry and Environment to discuss this submission and further detail and reinforce the critical importance to plan appropriately for the Large Format Retail sector.

Please	contact	the	LFRA's	Chief	Executive	Officer,	Philippa	Kelly		
		s	nould yo	ou wish	to discuss	any asped	ct of this s	submis	sion.	







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Attachment A - Foreword by Anthony Roberts NSW Planning Minister to the 2019 LFRA Directory



#### 1. Introduction

This submission has been prepared by the Large Format Retail Association (LFRA) with the assistance of Ethos Urban and Deep End Services in response to the exhibition of the NSW Productivity Commission's 'Green Paper', 'Continuing the Productivity Conversation'.

We welcome the opportunity to provide feedback to the NSW Productivity Commission on the draft recommendations within the 'Green Paper' from the perspective of the Large Format Retail industry.

Whilst the LFRA supports many of the draft recommendations, the key impediments to investment in NSW by existing and new entrants within the Large Format Retail sector continue to be:

- The failure of the Department of Planning, Industry and Environment (DPIE) to provide a State-wide planning policy to guide retail land use objectives and decisions; and
- The NSW Government's inability to recognise and proactively plan for the future growth of the Large Format Retail industry.

The primary focus of this submission are the draft recommendations included in Section 7 – 'Planning for the housing we want and the jobs we need'. The LFRA support all draft recommendations within Section 7. In particular, we have provided our support and feedback on draft recommendations:

- 7.3 Consolidate employment zones;
- 7.4 Generate economic strategies;
- 7.5 Optimise Industrial land use; and
- 7.6 Cut NSW planning assessment gap.

The LFRA commend the NSW Productivity Commission in providing these practical and feasible recommendations to provide the productivity gains, but consider that in regard to draft recommendations 7.3, 7.4 and 7.5 that it is imperative that DPIE provide a State-wide retail planning policy to guide retail land use objectives and planning reform decisions.

Indeed, within the Australian Government Productivity Commission's Report 'Victoria's Commercial Land Use Zoning' report, dated July 2020, states that "...governments should establish a clear policy case for intervention before introducing more regulation...".

The NSW Large Format Retail sector is currently lagging behind more competitive States such as Victoria, South Australia and Western Australia. In those States, the State Government policy settings foster competition, jobs and development of new sites.



In addition to the draft recommendations within Section 7 of the 'Green Paper' progressing significant amendments to the NSW planning system are also required to:

- Support and adequately consider the growth of all forms of retail activity and in particular the Large Format Retail industry which is a significant and growing segment of the retail sector;
- Recognise that not all forms of retail activity belong in 'centres' and acknowledge the role that Large Format Retail development provides to the NSW economy;
- Provide opportunities for 'emerging' and 'innovative' retail formats to locate within NSW
  that are not currently recognised within the Standard Instrument Local Environment Plan
  (LEP) land use definitions; and
- Require Local Council areas to proactively plan to increase Large Format Retail floorspace to meet the required demand.

The secondary focus of this submission relates to draft recommendations included within Sections 4 and Section 5.

# 2. Large Format Retail Association and Sector Overview

The Large Format Retail Association is Australia's peak body representing the interests of its membership base, being Large Format Retailers, investors, owners, developers and service suppliers. The LFRA's policy agenda strongly encourages investment and employment growth and opportunities. Issues such as urban planning, competition policy and energy underpin our agenda. Its vision is clarity, consistency and certainty of the various laws and government regulations that relate to the Large Format Retail industry in Australia.

Demand assessment economists, Deep End Services, estimates the following approximate New South Wales key industry metrics for the year ending 30<sup>th</sup> June 2020.

Key Industry Metrics	New South Wales		
Total retail sales	\$105.9 billion		
Large Format Retail percentage of total retail	24.6%		
sales			
Large Format Retail sales	\$26 billion		
Number of direct employees in Large Format	59,601		
Retail			
Number of indirect employees in Large	74,024		
Format Retail			
Total number of employees both directly and	133,625		
indirectly in Large Format Retail			
Large Format Retail floor space	6.7 million square metres which		
	equates to 35% of all retail floor space		

The NSW Treasury acknowledges that the retail sector is the second largest employer within the State, accounting for 10% of employment and it is estimated that the Large Format Retail Sector,



both directly and indirectly generates more than 441,800 (FTE) jobs in Australia, and of this, 133,625 of these positions are in NSW.

Retail members of the LFRA include some of Australia's largest and most respected Large Format Retailers including the 65 individual business brands listed in the following table:

ABS Automotive Service Centres	DeRucci	OZ Design Furniture
Adairs	Domayne	Petbarn
Adairs Kids	Early Settler	PETstock
Adelaide Tools	Fantastic Furniture	Pillow Talk
Amart Furniture	Freedom	Pivot
Anaconda	Harris Scarfe Home	Plush
Animates	Harvey Norman	Provincial Home Living
Autopro	House	Rebel
Autobarn	IKEA	RoadTech Marine
Baby Bunting	James Lane	Robins Kitchen
Barbeques Galore	Jaycar Electronics Group	RSEA
Bay Leather Republic	JB Hi-Fi	Sleepys
BCF	JB Hi-Fi Home	Snooze
Beacon Lighting	Joyce Mayne	SPACE
Beaumont Tiles	Kitchen Warehouse	Sprint
Bedshed	Lincraft	Spotlight
Bunnings	Macpac	Supercheap Auto
Bursons	Midas Auto Service Experts	The Good Guys
Chemist Warehouse	Mountain Design	The Sleeping Giant
City Farmers	Oakland Mowers	Total Tools
Costco	Officeworks	Urban Home Republic
Decathlon	Original Mattress Factory	

The LFRA is supported by its Patron, PwC, and the following 80 Associate members that comprise of Large Format Retail developers, investors, owners and service suppliers:



**ACTON Commercial** Cushman and Wakefield Lester Group Acure Asset Management CV Media & Signage Mainbrace Constructions **ADCO Constructions** Deep End Services Major Media Deluca Morgans Financial Limited Advent Security Services Aigle Royal Properties DOME Property Group MPG Funds Management Aisleplus Earlytrade Moray & Agnew Lawyers Arise Developments Edge Electrons National Storage AsheMorgan Edgewise Insurance Brokers Newmark Capital Limited Arkadia FRM Power Perth Airport Aventus Group Ethos Urban **Planning Solutions** Eureka Home Maker Centre **AXIMA Logistics** Primewest AXIOM Properties Limited Excel Development Group Properties and Pathways Bayleys FTI Consulting OIC Birdsong Legal Gazcorp Realmark Commercial Savills Blackmont Gibb Group Sentinel Property Group Blueprint Gibbens Group **BNE Property** Geon Property Solar Edge Buchan Grosvenor Engineering Group Terrace Tower Group Burgess Rawson HLC Constructions TK Maxx **BWP Trust** Home Consortium **Tomkins CBRE** Humich Group Transact Capital Charter Hall Transcend Property **IRetail** Cherry Energy Solutions Jape Group Australia Troon Group Citinova Upstream Energy **KHQ Lawyers** Colliers International Knapp Property Group Vend Property Complete Colour Leedwell Property VPG Property Cornwalls Leffler Simes Architects

The LFRA is a key stakeholder in the planning and zoning laws that affect this sector of the retail industry and is actively involved across Australia in reviews of planning policy and planning regulations; proactively engaging with planning authorities across the nation to promote and achieve greater clarity, consistency and certainty within and across all planning frameworks.

## 2.1 The LFRA's Involvement in NSW Planning Reform

In February 2015, the LFRA released their commissioned evidence-based report titled 'Investment + Competition = Jobs'. The report was written by JBA (now known as Ethos Urban) with economic input from Deep End Services. The 'Preface' to the report was written by Professors Allan Fels AO and David Cousins AM. A copy of 'Investment + Competition = Jobs' can be accessed via the following link:

https://www.dropbox.com/s/1s91q5tynq8of06/%27Investment%20%2B%20Competitio n%20%3D%20Jobs%20%27%20Large%20Format%20Retail%20in%20NSW.pdf?dl=0

'Investment + Competition = Jobs' was the catalyst for the Minister for Planning, the Hon Rob Stokes' creation of the Retail Expert Advisory Committee (REAC) which was headed up NSW Chief Planner, Gary White. The LFRA was a key stakeholder in the review undertaken by the REAC, and as such, made submissions and actively participated in the REAC review.



Following Minister Roberts' attendance at the LFRA Forum in November 2017, the 'REAC Report' was released by the then Department of Planning & Environment (DP&E). The 'REAC Report' clearly acknowledged the dynamic and changing face of retail, the need for change as well as the structural shift in the retail market and competition of 24-hour online trading with bricks and mortar retailers who have limited trading hours. In addition, the 'REAC Report' made five (5) recommendations to the NSW Government on how the planning system could be improved to support retail in NSW, including:

- Develop a State-wide retail planning policy;
- Consider retail supply and demand in strategic plans;
- Change the Standard Instrument Local Environmental Plan;
- Improve assessment processes, and
- Provide clearer planning guidance.

In response to the REAC report, the DP&E proposed amendments to the 'Standard Instrument LEP' and also issued 'Planning for the Future of Retail' Discussion Paper to obtain a wider understanding of how the NSW planning system can better support a robust, diverse and evolving retail sector that meets the needs of businesses and the community.

Following a significant number of submissions made by the LFRA and other representatives of our industry, in August 2018, the land use term 'Bulky Goods Premises' was replaced with 'Specialised Retail Premises'. The new definition overcame significant problems with the previous definition of 'Bulky Goods Premises'.

However, whilst the new definition assists our members in terms of providing clarity, consistency and certainty in respect of the goods that can be sold and services provided and has made it a little easier for our industry to do business in NSW, there needs to be significant changes to the volume of land that is appropriately zoned to fundamentally increase the supply of land for future Large Format Retail developments.

Whilst we now have the 'what you can sell', there continues to be no change to the 'where can you sell' question. A reduction in DA assessment timeframes, as proposed within the 'Green Paper', is no assistance if there is no increase in supply of land appropriately zoned land that is suitable for Large Format Retail development.

Minister Roberts informed our members in the 'Foreword' to the 2019 edition of the LFRA Directory (refer to 'Attachment A') that in 2019 the NSW Government "...will finalise the State-wide retail planning policy and provide advice to councils on how to consider retail supply and demand as part of their local strategic plans...". However, there was not a State-wide retail planning policy released within 2019 as promised and since Minister Stokes was re-appointed as the Minister for Planning the NSW Government has not actioned any of the other recommendations, and there continues to be no timetable or update provided that relates to the introduction of an appropriate 'Retail Planning Policy'.



A key finding of the 'REAC Report' (page 8) was that "...the planning system does not provide sufficient flexibility to accommodate the dynamic and rapidly evolving nature of the retail sector, resulting in an ad hoc approach to retail development, an undersupply of retail floorspace and inconsistent land use outcomes...".

Despite the findings of the 'REAC Report', and the adoption (at the time) of the recommendations within the 'REAC Report' by the DP&E, the NSW Government continues to do very little to address the challenges that are faced across the entire retail sector, but none more so that the Large Format Retail sector.

Indeed, following a meeting with a representative from Minister Stokes' office in July 2019, the LFRA wrote to the Minister to seek assurance that the recommendations from the 'REAC Report' would be implemented and the State-wide planning policy would be finalised, noting that the NSW policy settings were holding back investment. To date no response has been received from the Minister's office addressing the issues raised.

Notwithstanding this, it is acknowledged that in his address to the '2020 Sydney Summer Summit – Keeping people in jobs and businesses in business' on 18<sup>th</sup> September 2020 Minister Stokes commented that "... Now is the time to innovate; now is the time to do the reform. I think the planning system has moved from people caring about what people do in their premises. I think what people really care about is how it interacts with their world and what it looks like. So, the planning system needs to focus more on design and how things look, and less on what people do with it. So let's do it...".

The LFRA hope that Minister Stokes' comments are a sign that the reforms and recommendations included within this 'Green Paper', and a State-wide Retail Policy are forthcoming in the near future.

#### 2.2 Challenges Facing the Large Format Retail Sector

Findings from 'Investment + Competition = Jobs' have informed this submission, our previous submission to the NSW Productivity Commission and previous submissions to DPIE, Greater Sydney Commission and the REAC over the last six (6) years, where the LFRA has consistently advocated for, and maintains its position that planning and zoning laws within NSW need to provide clarity, consistency and certainty to allow retailers to meet current and future challenges. Principally, the investment in the sector suffers from:

- A lack of clarity and flexibility in determining whether its retailers 'fit' within the current available land use definitions; and
- A lack of sufficient appropriately zoned, sized and configured land to support new development.



Furthermore, the challenges that face the Large Format Retail sector, and in particular, the urgent need for appropriate planning and zoning legislation to support the Large Format Retail sector has also been highlighted in numerous independent reports issued over the last twelve (12) years, including:

- 'Victoria's Commercial Land Use Zoning Productivity Reform Case Study' prepared by the Australian Government Productivity Commission (September 2020);
- 'Independent Recommendations Report', prepared by the Retail Advisory Expert Committee (June 2017);
- 'Shifting the Dial', prepared by the Australia Government Productivity Commission (August 2017);
- 'Economic Structure and Performance of the Australian Retail Industry', prepared by the Australian Government Productivity Committee (December 2011);
- 'The Sydney Retail Demand and Supply Consultancy Report', prepared by Deep End Services (May 2016);
- 'The Employment Centres Analysis', prepared by SGS Economics and Planning (February 2016);
- 'Industrial Precinct Review', prepared by Hill PDA (August 2015);
- 'Proposed Standard Instrument Local Environmental Plan Amendment to the Bulky Goods Premises Definition', prepared by the DP&E (November 2017).
- 'Performance Benchmarking of Australian Business: Planning, Zoning and Development Assessments', prepared by the Australian Government Productivity Commission (May 2011); and
- 'Market for Retail Tenancy Leases in Australia', prepared by the Australian Government Productivity Commission (March 2008).

These challenges are explained in further detail below and form the basis for our response to the draft recommendations within the NSW Productivity Commissions' 'Green Paper' 'Continuing the Productivity Conversation'.

## 2.2.1 Lack of Clarity in Definitions

The Large Format Retail sector has long suffered from a lack of clarity in determining whether its retailers 'fit' within the current available land use definitions. Accordingly, new entrants within the Large Format Retail sector from overseas and new Large Format Retail developments in NSW that don't 'fit', face high risk and an uncertain and lengthy planning pathway, which often involves the rezoning of land through a planning proposal.

Whilst the introduction of the 'Specialised Retail Premises' definition assists many of our members in terms of providing clarity, consistency and certainty in respect of the goods that can be sold and services provided and has made it a little easier for our industry to do business in NSW, other new entrants into the Large Format Retail sector continue to face significant problems.



Retailers want to remain innovative and adapt to ensure future expansion. The NSW Productivity Commission's acknowledgement (on page 238) of the evolving nature of business models and activities due to the growth of the knowledge economy and the requirement for increased flexibility in employment zones is welcomed.

In order to succeed, retailers' primary focus is to deliver a seamless retail experience to the customer. The retail sector, like many markets, is facing incredible disruption and change, especially throughout the COVID-19 pandemic. Technology, in many forms, has been a significant disruptor, but as shown, particularly in recent times it is a massive enabler. Retail must continue to innovate, adapt, and remain connected to the most important person; its' customer.

In conjunction with its commercial zoning evolution over the past 20 years, Victoria's 'Restricted Retail Premises' definition has also continually evolved to respond to new entrants and business formats within the Large Format Retail sector.

Therefore, given the 'REAC Report' (page 7) indicated and acknowledged that one of the "... Change Factors..." within the retail industry is the "... consolidation of bulky goods retailing...", which occupies "...23% of the retail market...", is a "...legitimate and popular format..." and is "...here to stay", the LFRA consider therefore that in conjunction with any changes to zoning arrangements within the Standard Instrument LEP, the retail land-use definitions also need to be reviewed on a regular basis to accommodate innovative and new retail business models.

## 2.2.2 Lack of Sufficient Appropriately Zoned, Sized and Configured Land to Support **New Development**

The LFRA supports the NSW Productivity Commissions key finding (on page 24) that "...prescriptive rules on land use by businesses are inflexible and cannot accommodate innovative businesses and the evolving needs of the economy...".

In response to this, the Large Format Retail sector suffers from a lack of sufficient appropriately zoned, sized and configured land to support new development.

Under the 'Standard Instrument LEP', the 'B5 Business Development' zone is intended to specifically support Large Format Retail premises. Its' objective is:

"...to enable a mix of business and warehouse uses, and 'Bulky Goods Premises' that require a larger floor area, in locations that are close to, and that support the viability of centres..."



'Specialised Retail Premises' (previously 'Bulky Goods Premises'), 'Hardware and Building Supplies' and 'Garden Centres' are mandatory permitted uses in this zone and although the 'B5' zone is intended to encourage Large Format Retail premises, a focus on activity centre development and the protection of existing centres is built in to the objective for the zone, which requires 'Specialised Retail Premises' to 'support the viability of centres'.

An analysis of NSW metropolitan councils with either a draft or finalised standard instrument was undertaken as part of the research that informed 'Investment + Competition = Jobs'. The 2015 analysis showed that 49% of metropolitan councils do not have a 'B5' zone (i.e. no zone that specifically contemplates and permits Large Format Retail uses). This is particularly the case in inner ring and northern metropolitan areas, as well as in the south-east of Sydney.

A similar pattern emerged for the 'B6 Enterprise Corridor' zone in which 'Hardware and Building Supplies' and 'Garden Supplies' – but not 'Specialised Retail Premises' is a mandatory permitted use. The 2015 analysis showed that of the 21 (57%) of Sydney metropolitan Councils with a 'B6' zone, four (19%) do not permit 'Specialised Retail Premises' at all within this zone.

As noted above, the 'REAC Report' stated, "...the planning system does not provide sufficient flexibility to accommodate the dynamic and rapidly evolving nature of the retail sector, resulting in an ad hoc approach to retail development, an undersupply of retail floorspace and inconsistent land use outcomes...".

## 2.2.3 Large Format Retail Floorspace Demand

Floorspace demand within the Large Format Retail sector was specifically identified in the 2016 Deep End Services report – 'Sydney Retail Demand and Supply Consultancy' prepared for the then DP&E in association with the Greater Sydney Commission (GSC). The report confirmed that between 1.74 and 2.2 million square metres of additional Large Format Retail floorspace will be required over the period 2011 to 2031 which accounts for approximately 40% of retail demand.

The Deep End Services report also acknowledged that the Large Format Retail sector has experienced a 2.3% growth per annum between 1992 and 2015, which is the second highest growth rate out of all other identified retail sub-markets. Growth between 2015 and 2031 is, however, expected to slow to 1.1% per annum, which was attributed in part to:

- The past trend of redeveloping industrial land in inner suburban locations for retail development is unlikely to occur to such an extent in the future; and
- Regulatory reform that in the past fuelled growth (e.g. removal of weekend trading restrictions) is unlikely to occur to such an extent in the future.



Deep End Services estimated that the Large Format Retail floorspace supply within the Sydney Metropolitan Area in 2015 was 2.9 million square metres which represents 27% of the retail distribution. Using the same methodology in its calculations, Deep End Services estimated that by 2031, Large Format Retail floorspace supply within the Sydney Metropolitan Area will account for 4.5 million square metres; this equates to an increase in supply of 1.6 million square metres, and a forecast demand requirement of between 1.7 and 2.2 million square metres outstrips the supply level.

The Large Format Retail sector is therefore forecast to have significant surplus floorspace demand at 2031 which will not be met by estimated supply levels. It has been a common experience for LFRA members over the past few years that due to the current restrictive planning and zoning controls within NSW there has been and continues to be a lack of appropriately zoned, sized and configured land to support new Large Format Retail development.

This challenge to the Large Format Retail Sector was acknowledged in the 'REAC Report': i...it can be difficult for large format retailers to establish within the existing urban fabric... where either land is not appropriately zoned or where zoned land comprises small lots...". This has resulted in the sector becoming "...unnecessarily constrained, resulting in further distortions in the locations of such facilities and their market performance...".

In order to respond to this issue, the 'REAC Report' comments that "...strategic planning is required to ascertain the need and facilitate suitable sites for large format retail..." It further recommends that the "...District and Regional Plans must consider adequate retail supply in relation to demand created through their actions and objectives, linked to population growth, housing and job projections..." and that "...the State Government should also work with local councils to ensure there is an adequate supply of land available for retail uses provided through their planning instruments...".

Furthermore, the LFRA, in conjunction with Deep End Services, produced the latest and 11<sup>th</sup> annual edition of the Large Format Retail Directory – Australia and New Zealand. Data from the Directories show that Large Format Retail vacancy rates have largely declined over this period as shown in the following table:

Large Format Retail Directory Year of Publication	Vacancy Rate
2012/13	7.9%
2013/14	5.1%
2014/15	4.6%
2015/16	4.3%
2016/17	3.7%
2017/18	3.6%
2018/19	5.0%



This further demonstrates that there are deficiencies in the supply of land for new Large Format Retail developments and therefore a need for Councils and the NSW Government to consider:

- How to identify existing Large Format Retail centres and where their place is within the hierarchy of centres; and
- How to proactively plan to meet the significant demand for additional Large Format Retail floorspace.

The LFRA anticipated that the Greater Sydney Commission's (GSC) 'A Metropolis of Three Cities - The Greater Sydney Region Plan' (the 'Regional Plan') and the 'District Plans' would seek to address these deficiencies and implement the recommendations from the 'REAC Report'.

Yet, the Large Format Retail sector was largely ignored within the 'Regional Plan' and 'District Plans' and there is no synergy between the 'REAC Report' recommendations, dated June 2017 (but was released in November 2017 and the final 'Regional Plan' and 'District Plans' that were released in March 2018.

It is noted that the GSC identified within the 'Principles for Greater Sydney's Centres' set out within the 'Regional Plan' and the 'District Plans', that clusters of Large Format Retail are to be treated as part of the retail network, and planning for new clusters of Large Format Retail should be done in the same way as other 'new' centres.

However, the GSC has not provided any further guidance on how the Large Format Retail clusters are to be treated within the retail network or the centres hierarchy. Neither the 'Regional Plan' nor the 'District Plans' reference any existing and established Large Format Retail centres within the 'centre hierarchy'. Furthermore, the round of Local Strategic Planning Statements (LSPS) issued by the Metropolitan Council's throughout 2019 generally provided little or no guidance on where Large Format Retail demand should be accommodated within their Local Government Areas.

This clearly indicates that the GSC has largely ignored the Large Format Retail sector and that the DPI&E does not have an interest in securing investment within the State from our sector.

New Large Format Retail centres will generally not be able to meet the 'tests' for new centres. The role of Large Format Retail centres is not defined for Councils within the hierarchy and results in reactive planning to allocate sufficient land to accommodate the increasing demand, which will lead to stagnation and possibly decline in the NSW Large Format Retail market.

Due to the lack of policy and lack of appropriately zoned land, many Large Format Retailers have been forced into spot rezoning process, despite the risk, difficulty and uncertainty involved.



Furthermore, since the release of the 'Regional Plan' and 'District Plans' in March 2018, and the subsequent release and finalisation of the Council-led LSPS's which generally do not consider where the growth of the Large Format Sector should be accommodated, it is our opinion that the level of risk in achieving a spot rezoning within the Metropolitan Sydney area by Large Format Retailers has increased. This is due to the 'centre' focused policy direction that the 'LSPS', 'Regional Plan' and 'District Plans' adopt, lack of consideration of the Large Format Retail sector and that pursuant to 'section 3.8' of the 'Environmental and Planning Assessment Act 1979' planning proposals are required give effect to the 'Regional Plan' or the 'District Plans'. This therefore is likely to inhibit the scope and success of planning proposals which seek to zone new land for Large Format Retail.

### 3. Section 7 - Response to Draft Recommendations

#### 3.1 Draft Recommendation 7.3 – Consolidate Employment Zones

Draft recommendation 7.3 seeks to:

...Rationalise existing business and industrial zones in the Standard Instrument LEP to reduce the number of zones.

Broaden the range of permissible activities to ensure prescriptions are reserved for genuinely incompatible land uses.

Expand application of the complying development assessment pathway to the newly consolidated employment zones..."

The LFRA supports draft recommendation 7.3 and the NSW Productivity Commission's comment (on page 238) that "...presently, the State's overly prescriptive zoning is inflexible, limiting competition and innovation. This discourages business investment and hampers employment growth...". The LFRA also agrees that that "...Local Environmental Plans add to the complexity for land users by applying the standard categories differently across LGAs. This unnecessarily restricts where businesses can locate and how land can be used..." (page 240).

The potential consolidation of the B5 (Business Development), B6 (Enterprise Corridor), B7 (Business Park) and IN1 (General Industrial) zones is also supported.

As identified in the 2017 Productivity Commission report 'Shifting the Dial: 5-year Productivity Review', three (3) areas that should be priorities for all Australian Government jurisdictions in regard to reducing the number and complexity of restrictions on land use created by prescriptive zoning are:

....State, Territory and Local Governments should move to fewer and more broadlystated land use zones to allow greater diversity of land uses. Such a move is likely to make it easier for new firms to enter local markets and for existing firms to



- expand, reduce administrative and compliance costs, and enable planning systems to more flexibly respond to changing land use activities.
- Governments should apply competition policy principles to land use regulation and policies, which oblige consideration of the impacts of policies from the perspective of communities as a whole.
- Regulation that explicitly or implicitly favours particular operators and sets proximity restrictions is unjustifiable..."

Furthermore, it is acknowledged in Case Study 71 of the 'Green Paper' (pg 241), that the Victorian Government reformed its zoning system in 2013 and consolidated its commercial and business zones from five into just two. As noted in 'Victoria's Commercial Land Use Zoning – Productivity Reform Case Study' prepared by the Australian Government Productivity Commission, dated September 2020 ('Victoria's Commercial Land Use Zoning Case Study'), these changes effectively meant that local planners had less control over where to apply the new zones, or where particular types of businesses could open on commercial land.

'Victoria's Commercial Land Use Zoning Case Study' has specifically looked at the impacts of the implementation of the consolidated zoning system, as has found that "...the most direct links between the observed changes in commercial land use and the 2013 reforms were instances where businesses established new stores in areas where they were previously restricted.

- For instance, since 2013, Aldi has established 53 new stores in Victoria. Fourteen of these stores on sites where supermarkets were restricted under the previous zones. Of these 14 stores, 12 are on sites that previously prohibited supermarkets, while 2 are on sites that previously allowed supermarkets with a permit.
- Similarly, 317 new large format retail stores have opened in Victoria since 2013. 164 of these stores (or about 52 er cent) were established on sites where they were restricted under the previous zones.

Business benefited where, under the new zone rules, they were no longer required to apply for a planning permit.

Several stakeholders noted that the 2013 reforms have reduced the need for a 'spot rezoning' to address a shortage of suitable sites for new store. They noted that spot rezoning was a significant disincentive to business investment (far more so than the need to obtain a permit) due to the added costs, delays and uncertainties involved. For instance, some rezoning applications can take as much as two year or more; this makes site acquisition difficult for businesses, as land owners are unable to reserve sites for that long..."



Whilst the Victorian zoning consolidation exercise demonstrates that a rationalisation of the existing business and industrial zones, along with a broadening of the range of permissible activities can bring significant benefits in opening up land supply, the LFRA seeks that in conjunction with these anticipated reforms to the NSW land use system that the Department of Planning, Industry and Environment (DPIE) produce and finalise the State-wide retail planning policy.

### The LFRA is concerned that:

- Whilst the employment zones will be consolidated and the permissible uses broadened with the intention of "...better accommodating the changing needs of businesses and households...", that there will be no impetus to adequately quantify the actual amount of land that is required to be zoned to accommodate the increasing demands for floorspace from the Large Format Retail sector.
- The broadening of the permissible uses within each zone, may not still provide the flexibility for new entrants in the Australian market within the Large Format Retail sector to 'fit' within the existing definitions.
- It would be premature to undertake a review of the employment zones and the permissible uses within them without first finalising a State-wide retail planning policy that would guide retail land use objectives and planning reform decisions.

It is therefore recommended that the NSW Productivity Commission includes another recommendation which seeks to finalise the NSW State-wide retail planning policy prior to any amendments to the zones or permissible uses being finalised. With the State-wide policy specifically recognising the Large Format Retail sector, requiring LGAs to proactively plan to increase Large Format Retail floorspace to meet the required demand and reviewing all standard definitions relating to retail.

Indeed "Victoria's Commercial Land Use Zoning Case Study", has also looked at whether perceived adverse impacts of an increase in out-of-activity-centre growth arising from the Victorian zone reforms has occurred. Perceived adverse impacts were noted as being:

- Adverse impacts on businesses in activity centres;
- Higher travel costs for consumers when making multiple car trips for shopping, or those who are less able to access shops if they could not rely on car transport;
- Increased congestion and a less efficient use of public transport infrastructure; and
- an impact on the availability of industrial land for industrial activity.

'Victoria's Commercial Land Use Zoning Case Study' has noted that "...the adverse impacts of out-of-centre development are likely small. The broadening of commercial zones in Victoria enabled commercial activity that some stakeholders characterize as 'out-of-centre developments'....As the Commission has previously argued, declines in activity centres often reflect changing consumer preferences, as so are not always a direct consequence of the out-of-centre development. Equally, locational competition can bring community benefits. Several reports on competition (such as the Competition Policy Review (2015) have found that, among other things, the impacts on competition between individual businesses, and



proposed developments on the viability of existing businesses should be irrelevant for planning matters (harper et al. 2015; PC2011a). This is because planning and zoning laws can create barriers to business entry and/or restrict competition, leading to a lower variety or quality of goods and services. Adverse impacts from competition should only be considered when future planning is conducted, not when a development proposal is being considered.

A related concern is the availability of industrial land. In Melbourne, State Significant Industrial Precincts (SSIOs) are zoned IN3Z and IN2Z, where only limited retail activity is allowed. These sites are not a natural fit for core retail activity. There is a case for large format retail in industrial areas to the extent that it is established on vacant or underutilized industrial land (which generally meets the requirements for large format retail use), particularly in the industrial areas outside the SSIPs. In response to concerns about the availability of industrial land, the Victoria Department of Environment, Land, Water and Planning (DELWP) has indicated that it will review the range of uses permitted within industrial zones.

Overall, it is difficult to find clear evidence that out-of-centre developments have had adverse impacts that warrant regulatory restriction...".

The NSW Government should therefore not be scared to facilitate and support Large Format Retail development across the State and the Large Format Retail sector is in urgent need of recognition within the policy framework within NSW.

Indeed, the 'REAC Report' (page 7) also recognised that "...complementary business zones can accommodate other [non-traditional] forms..." of retail, "...centres are not able to accommodate all retail formats..." and there needs to be a "...proactive accommodation of sector needs...".

The NSW Government and a future State-wide retail policy will also need to recognise the diversity of the retail sector, and that different formats require different sites in terms of scale, access, activity and exposure. Whereby a shopping mall or supermarket may require everyday access and contribute to a centre, Large Format Retail has different requirements that need separate strategic planning visions. During the recent COVID-19 pandemic, consumers have demonstrated a desire to shop in larger out-of-centre premises, where social distancing is better facilitated. Flexibility in formats to suit retailers as well as customer needs is imperative.

The safety of customers and employees is paramount. Spatial aspects of Large Format Retail which have better enabled social distancing through the COVID-19 pandemic have been embraced by customers including:

- Predominantly large and conveniently located open-air on-grade carparking;
- Limited internal malls; and
- Spacious stores.

Our position is supported by the strong sales performance announced to date by all publicly listed retailers in the Large Format Retail sector during the COVID-19 pandemic.



As noted in 'Investment + Competition = Jobs', "...an insistence on new entrants being required to meet the same prescriptive planning requirements that existing businesses are required to meet when establishing, is non-conducive to an adaptable regulatory system and does not encourage innovation. It would be of potentially greater benefit to the competitiveness of market outcomes in the longer term if zoning and definition requirements were flexible enough to allow both the entry of alternative business models and the modification of existing models...".

A planning system that was responsive, flexible and adaptive to emerging retail trends was highlighted in 'Retail Driver 5' within the 'REAC Report'. Whilst this 'Retail Driver' specifically related to mixed use areas, the Large Format Retail sector is also constantly evolving, with new entrants from overseas wishing to enter the Large Format Retail market in NSW, and existing retailers becoming more innovative and wishing adapt to ensure the future expansion of their business.

Retail is a constant changing dynamic, new ways to bring goods and services to market are constantly evolving. A vibrant world class retail environment encourages a vibrant dynamic manufacturing section. Manufacturers who create world class goods generally export to the worldwide market and emerging retail formats provide an important role in selling, promoting and establishing competition and innovation in the retail market.

Entrepreneurs and small businesses employ more people and create new dynamic ways to bring a variety of goods and services to market, all of which bring benefits to consumers and manufacturers. Productivity is also increased.

However, it has been the experience of LFRA members that have emerged into the Large Format Retail sector in NSW in recent years, that the NSW planning system discourages competition, does not promote speculative investment and growth by retailers and retail manufacturers and does not promote the dynamic change or competition. A planning system that requires 'spot rezonings' on an individual basis to foster development and rollout of a retail format such as Costco does not support or promote the levels of confidence and certainty for large scale investment.

A 2006 VCAT decision (Radford vs Hume City Council) set out a role for a planning system faced with new format businesses:

"...an expansive rather than a restrictive approach should be adopted that makes allowance for the evolution of the retail industry but in a way that will achieve a net community benefit....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...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 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..."



Any new NSW Government policy reform and State-wide retail policy therefore needs to focus on the growth of retail activity as opposed to concentrating retail activity within existing centres. It is imperative for the policy to increase flexibility and a level playing field for the whole retail sector, in order to provide more certainty and investment incentives for the entire NSW retail sector.

The LFRA encourages the NSW Productivity Commission to therefore pursue the finalisation of a flexible State-wide retail policy along with the rationalisation of business and industrial zones and broadening of permissible uses and instead of evaluation against how a proposal aligns with 'current' strategic planning objectives, consider matters such as:

- The economic impact of the retail proposal in terms jobs, economic benefits, innovation and social benefits;
- The general strategic locations that each particular form of known retail is best suited;
- A clear set of criteria for new entrants that will allow them to understand the location that they would be best suited, based on their own business model;
- How weight could be given to merit-based arguments, where new retailers do not
- The evaluation of the matters considered in 'section 4.15' of the 'Environmental Planning & Assessment Act'.

Furthermore, 'Victoria's Commercial Land Use Zoning Case Study', specifically concludes that

- "...Victoria's commercial zoning arrangements are comparatively flexible and market driven, in that:
- there are relatively few commercial and industrial zones, with each zone covering a broad range of uses;
- the zones are standardised;
- the zones allow **many commercial** uses as-or-right (without a permit).

This flexibility has benefited businesses, and probably also consumers (via greater retail offerings), by reducing impediments to investment. There is limited evidence that the significant negative impacts predicted to result from the 2013 reforms have come about....

There is merit in all State and Territory jurisdictions considering ways to make their commercial and industrial zoning arrangements more flexible to support a broader range of uses. Each jurisdiction starts from a different point, with different institutional and policy histories – so it is overly simplistic to say that other states or territories should adopt or replicate the precise parameters of Victoria's model for commercial and industrial zoning. Victoria, too, could potentially make its system more flexible, such as by expanding as-ofright uses in its commercial zones.

Each jurisdiction could gain from measured reforms in this area. This case study illustrates that greater flexibility can be achieved, generating positive economic outcomes



without undermining the appropriate role for land use regulation in managing 'spill-overs' and contributing to the public good".

In addition to the above, the LFRA notes that draft recommendation 7.3 also proposed the expanded application of the complying development assessment pathway to the newly consolidated employment zones is also supported. Further discussion is provided in response to this particular provision in Section 3.4 below.

#### 3.2 Draft Recommendation 7.4 – Generate Economic Strategies

Draft recommendation 7.4 seeks to:

....Require councils to prepare economic strategies (including commercial centre strategies)... with the aim of increasing employment and productivity outcomes when updating Local Environmental Plans..."

The LFRA supports draft recommendation 7.4. However, the economic strategies must acknowledge the role that the Large Format Retail industry and Large Format Retail development play in providing a significant amount of employment within the State.

As noted above, the Large Format Retail sector generates more than 133,625 jobs within NSW, yet the GSC's 'Regional Plan' and 'District Plans', as well as the recent round of LSPS's issued by the Metropolitan Councils generally provide little or no guidance on where large format demand should be accommodated within their Local Government areas.

Unless, more flexibility is provided into the NSW land uses zones and a greater volume of land is specifically allocated for Large Format Retail development, new Large Format Retail development will generally not be able to meet the 'tests' for new centres. The role of Large Format Retail clusters or precincts is not defined for Councils within the hierarchy therefore results in reactive planning to allocate sufficient land to accommodate the increasing demand. This will lead to stagnation and possibly decline in the NSW Large Format Retail market.

As noted in Section 3.1, the LFRA requires the NSW Productivity Commission to recommend that there is to be a greater emphasis placed on strategic planning and local placed-based outcomes to guide retail land use objectives and decisions. As the LFRA considers the GSC's 'centre focused' approach throughout Metropolitan Sydney, which has largely been adopted by the metropolitan Local Government Areas within their LSPS's to be highly deficient and damaging to the Large Format Retail sector.

The GSC has failed to proactively plan for and support the future growth of the Large Format Retail sector and the GSC's published directions for retail planning will not meet the demand for Large Format Retail floorspace in Sydney.

The 'Principles for Greater Sydney's Centres' set out within the 'Regional Plan' and 'District Plans' state that clusters of Large Format Retail should be treated as part of the retail network, and planning for new clusters of Large Format Retail should be done in the same



way other new centres are planned. With the exception of Marsden Park, no existing Large Format Retail cluster is identified as a strategic centre under the 'Region Plan'.

Large Format Retail is a unique type of retail format that can be differentiated from standard retailing by way of:

- The types of products sold;
- Vehicle access and connectivity requirements particularly to arterial roads;
- Requirements for exposure to passing traffic;
- Customer parking and loading requirements;
- Tenancy size requirements (height and floorspace) for display and storage of goods;
- Warehousing and distribution requirements for goods;
- Truck access and loading facilities (typically for semi-trailers) for delivery of large goods; and
- The format in which the products are sold and displayed.

Large Format Retail premises therefore, have a number of physical requirements that restrict their ability to locate in traditional centres. These physical requirements are inconsistent with the criteria outlined that the 'Regional' and 'District Plans' require consideration of when determining a new centre. These criteria, and the challenges faced by Large Format Retail operators in meeting these criteria, are addressed in 'Table 1' below.

Table 1 – The Large Format Retail Sector's Compatibility with Criteria for Determining a **New Centre** 

Criteria for Determining a New Centre	Characteristics of the Large Format Retail Sector
Located where public transport services are commensurate with the scale of the centre.	<ul> <li>Many purchases at Large Format Retail premises continue to require loading into private vehicles, whereby public transport services are generally redundant for transporting larger items.</li> <li>Provision of public transport services to Large Format Retail premises are generally inefficient due to the scale of developments and the large distances to walk between premises.</li> </ul>
Directly opposite a residential catchment accessible by a controlled pedestrian crossing.	<ul> <li>Large Format Retail premises have wide geographic catchments which therefore require sites that are well-located on major arterial roads with a high degree of visibility. These environments are often considered to be of a poorer amenity and unsuitable for a pedestrian oriented environment.</li> <li>Locating a Large Format Retail cluster near to a residential catchment with pedestrian access is redundant, as Large Format Retail</li> </ul>



	purchases are not everyday transactions that require immediate access.
More than a standalone supermarket.	<ul> <li>Due to the difficulty in locating appropriately sized land, a large proportion of Large Format Retail stores operate as stand-alone premises or in smaller groups of similar-type stores.</li> </ul>
	Notwithstanding the above, the concept of the homemaker centre has emerged as an important and successful development within the Large Format Retail sector, which would meet this criterion.
Of quality urban design with amenity, informed by a master plan.	■ The pedestrian amenity of Large Format Retail premises is often reduced by the general proximity to major arterial roads. Therefore, these are often not suitable locations for new centres, but are highly compatible locations for Large Format Retail premises.
Supported by planned and funded infrastructure commensurate with the needs of the centre.	■ Infrastructure needs to Large Format Retail premises are often major arterial roads with abundant at-grade car parking facilities. This often contradicts with the needs of traditional centres, which prioritise pedestrian movement and alternate forms of mass transit including trains and buses.

As demonstrated by 'Table 1' above, if the Large Format Retail sector is required to demonstrate compatibility with the criteria for establishing new centres, this is unlikely to lead to the creation of new sites to meet the demand for Large Format Retail floorspace.

The proposed future economic strategies, therefore need to step away from only allowing or contemplating retailing activities within existing Centres or on the existing B5 zoned land.

'Shifting the Dial' released in August 2017, assessed the factors and influences that affect Australia's productivity and economic performance in the medium term to aid Government in implementing policies and regulations to increase economic growth. As you would be aware, this document was the first of its kind and the process involved to produce the report was intended to be repeated every five (5) years.

As stated within 'Shifting the Dial', "...policy settings that have particularly egregious impacts on competition, include the creation and enforcement of activity centres and regulations that require consent authorities to consider the commercial impacts and viability of established businesses when assessing development proposals. Provisions that explicitly or implicitly favour particular operators or set proximity restrictions between businesses should be eliminated nationwide. These policies are at odds with competition



## policy and used to protect shops and shopping centres in designated areas from competition..."

The LFRA therefore urges the NSW Government to recognise the value of retail planning outside of the GSC's centres hierarchy and whilst it is recognised that not all retailing operations should be allowed in 'out of centre' locations, any guidance that DPIE provides to Local Council areas in regard to the preparing these economic strategies should not ignore the role of the Large Format Retail sector plays an the benefits it brings.

The LFRA therefore considers that the proposed economic strategies must acknowledge and take into consideration the role that the Large Format Retail sector plays in generating employment and productivity outcomes.

#### 3.3 Draft Recommendation 7.5 – Optimise Industrial Land Use

Draft recommendation 7.5 seeks to:

u...Better manage the retain-and-manage category of industrial and urban services lands..... in Greater Sydney to optimise employment and productivity outcomes..."

The LFRA supports draft recommendation 7.5 and seeks that a review of all 'retain and manage', 'review and manage' and 'plan and manage' industrial land is undertaken to ascertain what opportunities are available for alternative employment uses, such as large format retailing activities.

As noted above, the Large Format Retail sector is forecast to have significant surplus floorspace demand at 2031 which will not be met by estimated supply levels, and 'Victoria's Commercial Land Use Zoning Case Study', acknowledges that there is a case for Large Format Retail in industrial areas to the extent that it is established on vacant or underutilized industrial land.

The LFRA agree with the statements within the Productivity Commission's 'Green Paper' that existing industrial land is not always effectively optimised. The LFRA considers that a review of all industrial land would be a good starting point to understand exactly how the industrial lands are operating and evolving and what opportunities exist to expand the range of permissible uses on that land. This review therefore has the potential to feed into a proactive planning approach that the Large Format Retail sector has advocated in previous sections of this submission.



### 3.4 Draft Recommendation 7.6 – Cut NSW Planning Assessment Gap

Draft recommendation 7.6 seeks to:

"...Continue to implement measures to reduce red tape and complexity in the planning system. Bring NSW approval assessment times into line with other jurisdictions times by the end of 2023..."

The LFRA supports draft recommendation 7.5. In particular it supports the:

- Establishment of a new class of appeals for planning proposals;
- Rationalisation of statutory time frames for development assessments to reduce significant assessment delays;
- Introduction of a deemed approval provision comparable to clause 64 of the Queensland Planning Act 2016 into the Environmental Planning & Assessment Regulation (EP&A Regs);
- Improvement to the concurrence and referral process, through the introduction of target times for concurrences and referrals as well as potentially integrating a deemed approval mechanism (similar to the Queensland approach) within the EP&A Regs;
- Expanding the complying development approval pathways specifically in regard to the proposed new and broader business and industrial zones.

With regard to the expansion of complying development approval pathways, we would like to note that the current exempt and complying development provisions under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) that a shop use can generally be changed to another shop use. This means that a new shop tenant seeking to occupy an existing shop tenancy can typically do this without obtaining any planning approval (exempt development) or do so via a certification process only (via a complying development certificate).

Notwithstanding this, the Codes SEPP does not appear to enable the change of one 'Specialised Retail Premises' to another as either exempt or complying development and therefore a development application is needed for a new 'Specialised Retail Premises' tenant to occupy and existing 'Specialised Retail Premises' tenancy. Notwithstanding this, there is significant uncertainty regarding this issue amongst the Large Format Retail operators and therefore expanding the complying development approval pathways in regard to the proposed new and broader business and industrial zones and clarification of such matters is welcomed by the LFRA.



### Section 4 - Response to Draft Recommendations 4.

## 4.1 Draft Recommendation 4.1 – Test our COVID-19 Regulatory Experiments

Draft recommendation 4.1 seeks to:

"... Extend the operation of temporary COVID-19 regulatory changes for 12 months while we evaluate their success. Keep them in place where we see a net public benefit..."

The LFRA supports draft recommendation 4.1. In particular it supports the regulatory changes that have increased flexibility and efficiency within the property and construction industry, such as enabling supermarkets and pharmacies to restock 24 hours a day and enabling weekday construction sites to operate on weekends and public holidays to keep more people in jobs and keep productivity up.

### Draft Recommendation 4.2 – Retain Recent Regulatory and Legal Relaxations 4.2 Draft recommendation 4.2 seeks to:

"...Retain the temporary adjustments to regulatory and legal formalities, including digital solutions to replace paper-based reporting, physical witnessing and attestation of documents and various other in-person requirements for compliance. Explore opportunities to similarly update other outdated regulatory requirements..."

The LFRA wholeheartedly supports draft recommendation 4.2. It is currently a requirement that lengthy leases in duplicate as well as annexures must be initialled on each page and be printed on single sided paper. This practice is onerous, outdated and unnecessary; it is a clear example of how red and green tape can be easily reduced.

### 4.3 Draft Recommendation 4.5 – Open Up Pharmacy Ownership and Location Draft recommendation 4.5 seeks to:

"...Remove pharmacy ownership and location restrictions, with licence requirements targeted at pharmacist control of quality systems and practices. Allow pharmacies to co-locate with supermarkets..."

The LFRA supports draft recommendation 4.5 and the proposition to allow pharmacies to co-locate with supermarkets. However, it is felt that the pharmacies along with other business premises uses should also be able to co-locate with 'Specialised Retail Premises' and other Large Format Retail uses in order to service the needs of existing customers that already shop at these centres and combine shopping trips with accessible local services. This would generate important economic and environmental benefits in terms of reduced travel costs and emissions as well as providing convenience for shoppers and workers.



Furthermore, it is widely acknowledged that the minor role that business premises play in the functioning of shopping centres is acknowledged by the fact that economic impact assessments specifically exclude business premises uses when considering trading impacts on centres, as they are unlikely to have any effect on the role or operation of the Large Format Retail or 'Specialised Retail Premises' development.

## Draft Recommendation 4.8 - Further Open Up Retail Trading

Draft recommendation 4.8 seeks to:

....Build on retail trading measures introduced during COVID-19 pandemic and allow..." all retailers to trade on restricted trading days, on the condition that staff freely elect to work..."

The LFRA supports draft recommendation 4.8 and considers that this provides increased flexibility, clarity and certainty to retailers, and not just those where the current 'exemptions' apply.

## Section 5 - Response to Draft Recommendations

#### 5.1 Draft Recommendation 5.12 – Rationalise Energy Regulation

Draft recommendation 5.12 seek to:

"...Establish a single NSW Energy Regulator and remove IPART's responsibility for regular monitoring of the retail electricity market..."

The LFRA agrees with draft recommendation 5.12 in principle and considers that cost savings through economies of scale and reduced duplications would be a significant benefit to all businesses and employers.

Electricity is generally the third highest expense in a retailer's business (i.e. the only greater expenses are wages and rent).

On 23<sup>rd</sup> October 2019, the Australian Competition and Consumer Commission (ACCC) provided final authorisation for competing Large Format Retail businesses to form the first ever national collective buying group to negotiate a better electricity deal than they could individually. The group comprises 41 of the LFRA members, which are the largest and best-known companies in the industry, that include Harvey Norman, Spotlight, Beacon Lighting, Bunnings and IKEA and spans 4,096 individual sites across every State and Territory in Australia. The ACCC authorisation provides the opportunity to double the current energy consumption of the group to no greater than 1% in State or Territory in Australia.



In 2018, the Large Format retail sector consumed over 1 TWh, with approximately 942GWh in the NEM, 86 GWh in the WEM and almost 10 GWh in the Northern Territory and the combined annual cost of electricity between the 41 participating members in 2018 was over \$200 million.

The collective ACCC authorisation means that the collective Buyers Group will be able to conduct a tender process for the supply of their aggregated electricity demand.

Further details of the LFRA's authorisation by the ACCC can be accessed via the following link: https://www.accc.gov.au/public-registers/authorisations-andnotifications-registers/authorisations-register/large-format-retailassociation-limited-ors

The LFRA has an implementation strategy to implement the ACCC approved authorisation, however COVID-19 and other factors has caused us to freeze advancement of this mammoth and complex project. The energy market is currently extremely fluid and dynamic. We are looking for a more settled energy environment until we advance the implementation of our strategy.

The LFRA recognises that the formation of a national collective buying group to negotiate a better electricity deal that they would individually, however support the NSW Productivity Commission's acknowledgement that greater policy certainty to reduce costs and guarantee supply from sustainable energy sources would undoubtably improve the investment outlook.

Because of the LFRA's extensive experience in the energy market we are well placed to support the recommendations proposed in the 'Green Paper'. Of specific consideration, we believe that data aggregation and bill validation should be evaluated.

We also believe that investigation into the imposition of higher energy costs to businesses via embedded networks is warranted. Many businesses are unaware of the mark-up of energy costs due to purchasing their energy via an embedded network operator versus purchasing electricity directly from energy retailers. Where 'Power of Choice' is available there are often financial impediments which make opting out of an embedded network cost prohibitive.

#### 5 Conclusion

The LFRA welcomes this opportunity to provide feedback on the NSW Productivity Commission's 'Green Paper' 'Continuing the Productivity Conversation'. As explained within this submission, the Large Format Retail sector faces many challenges when it comes to the supply of available land suitable for our members. Furthermore, like many industries, the retail sector has experienced enormous disruption over the last five (5) years.



To ensure that the Large Format Retail sector continues to invest in NSW and the physical supply of floorspace meets the current and forecast levels of demand within the NSW and in particular the Sydney Metropolitan Area, it is imperative that strategic planning that seeks to facilitate suitable sites for Large Format Retail is undertaken.

In addition to the draft recommendations that are included within the 'Green Paper', the LFRA specifically requires:

- The DPIE to produce a State-wide planning policy to guide retail land use objectives and decisions;
- The NSW Government to support and adequately consider the growth of all forms of retail activity and in particular the Large Format Retail industry which is a significant and growing segment of the retail sector;
- Recognise that not all forms of retail activity belong in 'centres' and acknowledge the role that Large Format Retail centres provide to the NSW economy and reflect this within the documentation provided to Local Councils to guide their economic strategies;
- Provide opportunities for 'emerging' and 'innovative' retail formats to locate within the NSW that are not currently recognised within the Standard Instrument LEP (Local Environment Plan) land use definitions; and
- Require Local Government areas to proactively plan to increase Large Format Retail floorspace to meet the required demand.

It is important to acknowledge the contribution that Large Format Retail makes to the economy and the wider retail sector. The retail sector is more diverse than just shopping centres and malls.

The LFRA would be happy to meet with the NSW Productivity Commission to discuss this submission and further detail and reinforce the critical importance to plan appropriately for the Large Format Retail sector.

Please	contact	the	LFRA's	Chief	Executive	Officer,	Philippa	Kelly	on			
should you wish to discuss any aspect of this submission.												

# Anthony Roberts MP

Minister for Planning, Minister for Housing, Special Minister of State



### **FOREWORD**

Soon after I became Minister for Planning in 2017, it was clear the Large Format Retail sector needed reform.

Its health was out-growing its regulation and the Retail Expert Advisory Committee (REAC) independent report confirmed it.

So in late 2017, I asked my department to commence work on implementing the report's recommendations, which were:

- 1. Develop a State-wide Retail Planning Policy
- 2. Strategic Plans must identify retail supply and demand and articulate objectives
- 3. Amend the standard instrument local environmental plan
- 4. Improve clarity and consistency in assessment processes
- 5. Provide clear planning guidance

In April, we asked you about potential amendments to the Standard Instrument Local Environmental Plan (SILEP). The proposal aimed to improve planning for retail formats in NSW and we delivered the following new and amended land use definitions: a new definition for 'artisan food and drink premises' an amended definition for 'garden centre' a new definition for 'local distribution premises' a new definition for 'neighbourhood supermarket' an amended definition for 'bulky goods premises', to be known as 'specialised retail premises'.

Since then we have amended the standard instrument, updated planning instruments to include these new and amended terms and provided planning guidance on each definition. We wanted the definitions to catch up to your modern sector and be fit for future purpose.

My department is currently working on the other REAC recommendations, including working with Councils to improve clarity and consistency in assessment processes.

Also in April, we released Planning for the Future of Retail: Discussion Paper. Many of the submissions received were from the LFR sector, showing how passionate the industry is about reform.

Next year we will finalise the State-wide retail planning policy and provide advice to councils on how to consider retail supply and demand as part of their local strategic plans.

I applaud the LFRA for its strong advocacy for its members and stewardship of a growing sector. Your industry is vital to the NSW economy's strength, with \$1 in every \$4 in retail being spent in your sector.

I commend to you the 2019, 10th anniversary edition of the Australian and New Zealand Large Format Retail Directory.

Yours sincerely,

**Anthony Roberts MP** 

Minister for Planning, Minister for Housing, Special Minister of State