

## **RESPONSE TO PROPOSED STANDARD INSTRUMENT LEP AMENDMENT: BULKY GOODS PREMISES**

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### **OVERVIEW**

The Shopping Centre Council of Australia (SCCA) is pleased to provide this submission to the Department of Planning and Environment regarding the proposed amendment to the definition of 'bulky goods premises' in the Standard Instrument LEP.

We are incredibly disappointed that the NSW Government has proposed this amendment.

The exhibition material prepared by the Department is flimsy, inconsistent and includes nothing more than unsubstantiated and unquantified generalisations about the potential implications of the amendment and trends in retail, including the impact of online retailing and trends in floorspace requirements.

There is no evidence provided by the Department, or via the work of the Retail Expert Advisory Committee (REAC), that this amendment is anything other than the NSW Government, again, reacting to requests from the bulky goods sector for special treatment via the planning system.

Further, there is no evidence provided that gives us any confidence that the Department has considered whether the proposal will have any unintended consequences with regard to other components of the Standard Instrument LEP, or considered potential impacts on the broader and ongoing retail and centres planning deliberations, including the activities of the Greater Sydney Commission (GSC) with regard to the Sydney Region Plan and District Plans, and any future activities to roll-out the REAC recommendations.

We also note that, while the exhibition material seems concerned with reducing the costs being borne by bulky goods retailers as a result of the current definition, the NSW Government has not proposed any responses to address the various costs which must be borne by shopping centre investors when delivering equivalent retail floorspace in the Government's preferred locations i.e centres (e.g. infrastructure contributions, design requirements, parking requirements etc). As such, we have no confidence that the Department is approaching this matter in a balanced or credible way.

As a sector, we can't help but feel disenfranchised by the activities of the Department with regard to this proposal. We are concerned that it is being taken forward without due consideration and evidence, and has come in the absence of the Department having any particular understanding of the retail and shopping centre sectors.

### **POSITION**

We do not support the proposed change to the definition of 'bulky goods premises'.

We respectfully request that, at this time, the definition remain unchanged.

In the absence of understanding the process and scope that will be followed to see the consideration and future implementation of the balance of the REAC report recommendations, particularly as it relates to the further review of the Standard Instrument LEP, it is disingenuous for the Department to seek stakeholder feedback on an initial, incremental change.

Further, we are reluctant to propose alternative amendments out of concern that this may limit our future engagement and recommendations on any subsequent changes to the Standard Instrument LEP. This is a critical concern for us, particularly considering the poorly informed commentary and ill-conceived recommendations in the REAC report, which, if implemented, may undermine the activities of other arms government, including the GSC.

Over many years the SCCA has made representations to the Government about, for example, the need to set minimum floor area requirements, appropriately limit ancillary uses (which remains critical in light of the REAC's commentary and recommendations), and the need to ensure that that the nature of the goods sold are genuinely 'bulky' and require large areas to avoid 'use creep'.

These issues, and historical proposals from the SCCA, speak to the fundamental issue that bulky goods retailing must have boundaries, and that the incremental approach to 'deregulation', which has typified the approach in NSW, can't be allowed to continue.

That the Department has progressed to exhibit the proposed amendment without apparent consideration of these issues gives little confidence that this matter, and the concerns of stakeholders outside the bulky goods sector, are being taken seriously.

### FLIMSY BASIS FOR CHANGE

#### *Inconsistency with B5 objective*

Despite the implication in the exhibition material and in the REAC report that the proposed amendment is a simple 'reversion' to the pre-2011 definition, this fails to acknowledge the context of the 2011 change and the other amendments which were made regarding 'bulky goods premises' in the Standard Instrument LEP at that time.

For example, the amendment of the definition of 'bulky goods premises' in 2011 to require that both limbs (a) and (b) of the definition of 'bulky goods premises' be satisfied was done in the context of the broadening of the specific permissibility of 'bulky goods premises' to the B5 zone (otherwise known as the 'bulky goods zone').

This is acknowledged at page 4 of the exhibition material, as per below:

*The change to the definition was made in conjunction with wider amendments to the SILEP which expanded the zones where bulky goods premises are permitted...bulky goods were mandated as 'permitted with development consent' in the B5 business development zone..." (SCCA emphasis)*

Specifically, the 2011 amendments included the insertion of a specific reference to 'bulky goods premises' in the objective of the B5 zone, and its inclusion as a use 'permitted with consent'.

The objective of the B5 zone reads as follows:

*To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres. (SCCA emphasis)*

This zone objective, in addition to the requirement in the current definition that both limbs (a) and (b) be satisfied, indicates that it has been the Government's intention (since at least 2011) that 'bulky goods premises' must require a large floor area in order to access to B5 zoned land. Put differently, the definition was, presumably, amended in 2011 to ensure consistency with the objective of the B5 zone.

As such, in our assessment it wasn't an 'oversight' that the definition was amended in 2011 to include 'and' between limbs (a) and (b), but a balance achieved at the time to ensure that the permissibility of 'bulky goods premises' was not exploited by premises which did not require a large floor area.

If the definition of 'bulky goods premises' is changed as proposed in the exhibition material, the definition of 'bulky good premises' will, in our view, be inconsistent with the B5 zone objective.

The definition will also need to be interpreted and applied differently across the various zones, including B5, where 'bulky goods premises' are permissible. In this regard, we disagree with the 'potential impact of the proposed amendment' detailed at page 3 of the exhibition material which states:

*"The intent of the definition will be clearer and easier for consent authorities to assess development applications."*

We expect that the proposed change would, in fact, create more confusion for consent authorities.

#### *The proposed definition does not require large floor areas*

In our view, the nature of the proposed amendment, and its potential impacts, are poorly characterised in the exhibition material. As detailed below, this suggests that the Department is either unsure of the objective it is trying to achieve via the proposed amendment, or they don't understand its potential implications.

For example, at page 3, the following statement is made under the heading 'Potential impact of the proposed amendment':

*"Bulky goods retailers will have the ability to decide if they wish to provide public loading access, based on their business model and suitability of the site, and subject to normal council requirements;" (SCCA emphasis)*

Further, at page 3:

*"The current definition restricts bulky goods retailers to one building form and is making adaption to changing retail demands harder. Bulky goods retailers do not always require both large floor areas and direct vehicle access, but are required to have both under the current definition. The proposed amendment will allow bulky goods retailers the choice of whether they provide direct vehicle loading access". (SCCA emphasis)*

Both statements are clumsy as they fail to acknowledge that the proposed amendment means that bulky goods retailers will have the choice as to whether they provide 'a large area for handling, display or storage' (i.e. a 'large floor area' as per the objective of the B5 zone) **or** if they provide 'direct vehicular access'.

This proposed amendment means that a 'bulky goods premises' could be of any size, provided the use is permissible in the underlying zone and they meet limb (b) of the definition.

Consequentially, and following on from the above, if they only satisfy limb (b) of the definition regarding access requirements, the 'bulky goods premises' would, presumably, fail to meet the objective of the B5 zone.

This proposal also brings into question the true nature of bulky goods retailing. Put simply, either bulky goods and bulky goods retailers are 'different', and need larger, lower cost floorplates that are not otherwise available in centres, or they aren't, and they don't.

The flimsy explanation provided in the exhibition material suggests that neither the REAC or the Department have contemplated the wider implications of the proposed amendment to the definition of 'bulky goods premises'.

#### **INCONSISTENCIES IN THE REAC REPORT**

We note that the Department's exhibition material references the recommendation of the REAC as the basis of progressing the proposed amendment to the Standard Instrument LEP.

We have made our concerns about the REAC process, commentary and recommendations known to the Secretary of the Department of Planning and Environment.

With specific regard to the proposed amendment to the definition of 'bulky goods premises', having reviewed the REAC report in detail, beyond the specifics of the recommendation in Appendix H (page 70), we can find no detailed reference to the rationale or potential consequences of the proposed change in definition.

That this recommendation, in effect, 'comes out of nowhere' reflects the poor process which was run by the REAC, and the poor quality of its analysis and recommendations.

In this regard, we expect that the REAC was of the simplistic view that their recommendation encompassed a simple reversion of the definition to that pre-2011, without having given any particular consideration to the other amendments which were made to the Standard Instrument LEP at the time (e.g. B5 permissibility).

We also note that there is a very clear inconsistency in the REAC's contemplation of amendments to the Standard Instrument LEP.

At page 39, the REAC proposes 'options to respond to' *Retail Driver 8 – There is a demand by consumers for the offerings of bulky goods retailers and other retail formats which by their nature need a large floor plate* (SCCA emphasis). The first of these is as follows:

*"reverting the bulky goods premises definition to its original requirements, requiring either a large floor area or public vehicular access to a loading area".*

Firstly, this proposed response is inconsistent with the retail driver in the REAC report, which, quite specifically, references that bulky goods premises 'by their nature' need large floor plates.

Secondly, at page 47, when detailing the specifics of its Recommendation 3: *Amend the standard instrument local environmental plan*, the REAC notes the following:

*“A number of stakeholders requested amendment of individual definitions to meet their business needs. Whilst acknowledging the issues, the Committee considers that it is not practical or equitable to review a handful of definitions in isolation from the broader retail sector. A small change for one definition, can have wider land use implications and potentially confer a competitive advantage on part of the sector. Therefore, the Committee recommends reviewing all relevant retail definitions to ensure they reflect modern retailing and to take into account the increased blurring of uses. (SCCA emphasis)*

If that be the case, we are unclear why the REAC, and the Department, have progressed the proposed change of definition to ‘bulky goods premises’.

### **IMPACT OF ONLINE RETAIL**

We would like the Department to produce the evidence which has been drawn upon to reach the following conclusion detailed at page 3 of the exhibition material:

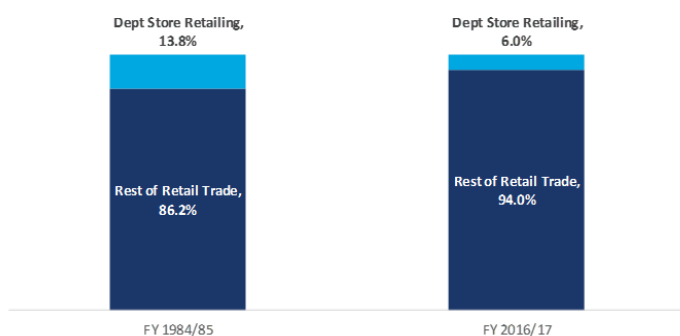
*“With the rise of online shopping, traditional storefront shopping is declining for many items. This trend means that large format retailers no longer need, or always require, the capacity to store large quantities of bulky goods in shops as well as direct vehicle access for customers”.*

There is no evidence presented in the Department’s exhibition material, or in the REAC report, of this trend or resultant impact on the requirements for ‘bulky goods premises’.

The SCCA is not aware of any evidence or data which specifically addresses, and conclusively demonstrates, the link the Department asserts between online retailing and the trends in the provision of, and access to, floor space. Online retailing is not a new phenomenon, and retailers and shopping centre landlords are required to respond to changing consumer preferences and dynamics as a matter of course.

However, we are aware from industry data that ‘Homewares’ tenancies in large shopping centres (i.e. Regional Shopping Centres) have, in fact, grown over the last 10 years, and the average store turnover over the same period has tripled. Although this is for a shopping centre context, this evidence is incongruous to the strong assertion of made by the Department in the exhibition material.

We are also aware of other trends in shopping centres, including the relative decline in department store sales. This demonstrates that all retail sectors feel the forces of change overtime and that, in this regard, the bulky goods sector is not unique or deserving of special treatment.



Source: ABS (Cat. No 8501.0)/SCCA Research

The Department also seems ignorant to the inherent contradiction in the statement in the exhibition material.

If online retailing is changing the demands for space and access in the context of bulky goods retailing, including to the effect of potentially reducing the need for large floor areas, why should bulky goods premises continue to be provided with ‘special treatment’, including access to relatively cheaper land outside of centres?

The bulky goods sector isn't the only sector which has had to respond to shifting retail dynamics, including the continue evolution of online retailing. However, unlike the bulky goods sector, the shopping centre sector does not come, cap in hand, to the Government looking for a leg up via the planning to assist in its response.

#### **HISTORY OF SPECIAL TREATMENT**

It can't be left unsaid that, if this amendment were to progress, this would be, at least, the third amendment to the Standard Instrument LEP specific to the 'needs' of the bulky goods sector.

The NSW Government has already facilitated the **1)** the expansion to the permissibility of 'garden centres' and 'hardware and building supplies' to IN2, IN2 and B7 zones (2015), and **2)** the expansion of the permissibility of 'bulky goods premises' to the B5 zone, including specifically identifying the use in the objective of the zone and making the use permissible with consent in that zone (2011).

After a very dissatisfying 18 months process run by the REAC, it is incredibly disappointing that the shopping centre sector is, again, being presented with incremental reforms which exclusively respond to the 'needs' of the bulky goods sector.

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