



Proposed Standard Instrument Local Environmental Plan Amendment – ‘Bulky Goods Premises’ Definition

**SUBMISSION FROM THE
Large Format Retail Association (LFRA)
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1.0 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 includes the Large Format Retail sector’s interface with urban planning, competition policy and energy. Its vision is clarity, consistency and certainty of the various laws and government regulations that relate to the Large Format Retail industry in Australia.

In the past year, Large Format Retailers in Australia generated more than \$68.2 billion in sales which accounts for a market share of around 22% or more than \$1 out of every \$5 in retail transactions in the country. In NSW alone, Deep End Services estimates that sales by Large Format Retailers currently sits at more than \$22.5 billion per annum.

The Large Format Retail sector occupies around 30% of all retail floor space in Australia.

It is estimated that the Large Format Retail sector, both directly and indirectly, currently generates more than 437,000 (FTE) jobs in Australia, and of this figure, more than 142,700 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 54 individual business brands listed in the following table:

ABS Automotive Service Centres	Decathlon	Petbarn
Adairs	Domayne	PETstock
Adairs Kids	Early Settler	Pillow Talk
Amart Furniture	Fantastic Furniture	Plush
Anaconda	Forty Winks	POCO
Autopro	Freedom	Provincial Home Living
Autobarn	Harvey Norman	Ray’s
Babies R Us	House	Rebel
Baby Bunting	IKEA	Rebelfit
Barbeques Galore	JB Hi-Fi	Robins Kitchen
Bay Leather Republic	JB Hi-Fi Home	Sleepys
BCF	Joyce Mayne	Snooze
Beacon Lighting	Kitchen Warehouse	SPACE
Beaumont Tiles	Lincraft	Spotlight
Bedshed	Midas Auto Service Experts	Supercheap Auto
Bunnings	Officeworks	The Good Guys
City Farmers	Original Mattress Factory	Toys R Us
Costco	OZ Design Furniture	Urban Home Republic

The LFRA is supported by its Patron, PwC, and the following 61 Associate members that comprise of Large Format Retail developers, investors, owners and service suppliers:

ACTON Commercial	Deep End Sevicecs	Major Media
ADCO Constructions	DOME Property Group	Morgans Financial Limited
Aeris Environmental	Ethos Urban	Newmark Capital Limited
Aigle Royal Properties	Eureka Home Maker Centre	Planning Solutions
ALTIS Property Partners	Excel Development Group	Primewest
Arise Developments	Gazcorp	Properties and Pathways
Arkadia	Gibb Group	Ray White Retail
Avalon Airport	Gibbens Group	Realmark Commercial
Aventus	Gregory Hills Corporate Park	REST Industry Super
AXIMA Logistics	Geon Property	Savills
AXIOM Properties Limited	Grosvenor Engineering Group	Sentinel Property Group
Blueprint	HLC Constructions	SI Retail
BNE Property	Home Consortium	Terrace Tower Group
Burgess Rawson	H Troon	The Buchan Group
BWP Trust	Humich Group	TIC Group
CarbonetiX	Jana Group of Companies	Transact Capital
CBRE	JVL Investment Group	Upstream Energy
Colliers International	Leedwell Property	Vend Property
Cornwall Stodart	Leffler Simes Architects	Virtus Insurance Brokers
Cushman & Wakefield	Mainbrace Constructions	VPG Property
CV Signage and Media	Major Media	

The LFRA is a key stakeholder in the planning and zoning laws that affects 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.

By invitation of the Retail Expert Advisory Committee (REAC), the LFRA provided written submissions and attended Stakeholder Reference Group workshop meetings to provide feedback and share the experiences of its members. Whilst there is an undeniable structural shift in the retail market, the LFRA has 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.

The LFRA congratulates the authors of the REAC Independent Recommendations Report (REAC report), issued by the Department of Planning & Environment (DP&E) in November 2017 for clearly acknowledging the dynamic and changing face of retail, as well as the need for change. The NSW Minister for Planning, the Hon Anthony Roberts MP, is to also be congratulated for embracing the REAC report and instructing the DP&E to implement all recommendations within it, as he announced at the LFRA Forum on 8th November 2017.

Large Format Retailing is an important form of development, employment and service provider, and it is important that this is acknowledged by the DP&E in the context of this submission and any future amendments to the *'Standard Instrument LEP'* or planning policy reforms that may follow the adoption of the recommendations made in the REAC report.

Given Minister Roberts' support for the REAC reports recommendations, the DP&E should also ensure that a consistent approach is adopted to the planning of Large Format Retail developments by the Greater Sydney Commission through its finalisation of the draft *'Greater Sydney Region Plan'* and draft *'District Plans'*. It is essential that the Large Format Retail sector is acknowledged and proactively planned for within these key strategic planning documents for Metropolitan Sydney.

2.0 Investment + Competition = Jobs

In February 2015, the Large Format Retail Association released an evidence based report on the NSW Large Format Retail sector titled *'Investment + Competition + Jobs'*. The report was produced by planning consultancy JBA (now known as Ethos Urban), with economic input from Deep End Services. The preface of 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 <http://175.107.187.129/~wwwlfra/wp-content/uploads/Investment+Competition=jobs/Large-Format-Retail-in-NSW.pdf>

Findings from *'Investment + Competition = Jobs'* have informed this submission to the DP&E and previous submissions to the Retail Expert Advisory Committee (REAC).

3.0 Response to the Proposed Amendment to the Bulky Goods Premises Definition

3.1 Introduction

The proposed change is welcomed by the LFRA and is considered to be the minimum that can be done by the DP&E to support the Large Format Retail Industry. In reality, this simply places the industry in the position it was in 2012 when the definition was changed without consultation. The retail environment has altered substantially in the last 6 years and NSW deserves and requires a new definition for 'Large Format Retail Premises' to better reflect the nature of the sector and bring certainty and clarity that is achieved in other states.

It is the position of the LFRA that the proposed amendments should be enacted without delay and the DP&E immediately progress with the introduction of a new 'Large Format Retail Premises' definition within the 'Standard Instrument LEP'.

The Large Format Retail industry in Australia is facing difficulties as a direct result of planning and zoning legislation across Australia, particularly in NSW.

The Large Format Retail 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.

Accordingly, new Large Format Retail developments in NSW currently face a high risk, uncertain and lengthy planning pathway, which often involves the rezoning of land through a planning proposal.

The Large Format Retail Sector within NSW currently provides over 6.6 million square metres (m²) of floorspace and approximately 142,700 full time equivalent (FTE) direct and in-direct jobs. It is also responsible for approximately 40% of retail floorspace demand¹ within the Sydney

¹ Sydney Retail Demand and Supply Consultancy – Stage 1 Report, prepared by Deep End Services, May 2016

Metropolitan Area and by 2025 is forecast to require 2.74 million m² of additional Large Format Retail floorspace which is the equivalent of approximately 20 additional homemaker centres.

The Large Format Retail sector is therefore forecast to grow, but the challenges which lead directly from the current planning and zoning legislation within NSW simply stifle and stagnate investment in this sector and limits the ability of Large Format Retailers to be able to grow and evolve their business models to provide greater consumer choice and experiential benefits.

The proposed amendment to the *'Bulky Goods Premises'* definition within the *'Standard Instrument Local Environmental Plan (LEP)'* is welcomed by the LFRA, and is considered a step in the right direction.

However, this minor amendment to the *'Standard Local Instrument LEP'* does not go far enough. The LFRA fails to understand that if Victoria, South Australia and Western Australia have all moved towards a definition/s for the Large Format Retail sector that are similar, why is it that the NSW definition, even if it is amended as proposed within the current amendment, is not in line with definitions in other states. In a world where businesses are bogged down by red tape, it would seem a logical and appropriate move to implement a definition for the sector that is consistent with many other states in Australia.

If the proposed amended definition is to be implemented, the LFRA strongly believes it should only be a starting point for significant retail planning policy amendments and further amendments to the *'Standard Instrument LEP'*.

The REAC's *'Terms of Reference'* encompassed "...providing advice on appropriate reforms to improve the planning system for retailing and encourage competition and retail investment in NSW..." The LFRA's June 2016 submission to the REAC review indicated that simply replacing the word *'and'* with *'or'* in the *'Bulky Goods Premises'* definition does not provide sufficient certainty, clarity and consistency within the NSW planning system for Large Format Retail operators to make the type of economic and job investment desirable in NSW, however in line with the REAC report recommendations, the LFRA's position is that:

- The proposed amendment to the *'Bulky Goods Premises'* definition should be enacted, but the DP&E should continue to pursue other planning policy reforms such as:
 - the introduction of a specific product-based land use definition for *'Large Format Retail Premises'* that is in-line with the comparable definitions for *'Restricted Retail Premises'* within Victoria; *'Bulky Goods Showroom'* in Western Australia and *'Bulky Goods Outlet or Retail Showroom'* in South Australia; and
 - the expansion of the number of zones where *'Bulky Goods Premises'* and *'Large Format Retail Premises'* uses are permitted, to enable the sector's floorspace demand to be met both now and into the future.

The following sections of this submission provide further detail in regard to the LFRA's requested additional policy amendments.

3.2 Introduce a Specific Product-Based Land Use Definition for ‘Large Format Retail Premises’

The Large Format Retail sector consists of retail businesses predominantly involved in the sale, hire or display of goods such as:

- automotive parts and accessories;
- baby and children’s goods, children’s play equipment and accessories;
- camping, outdoor and recreation goods;
- household appliances, household electrical goods and home entertainment goods;
- electrical light fittings;
- office equipment and supplies;
- sporting, cycling, leisure fitness goods and accessories;
- animal and pet supplies;
- party supplies; floor and window coverings;
- swimming pools and supplies;
- homeware, furnishings, bedding and manchester;
- hardware and building supplies; and
- musical instruments and accessories.

In addition, there are a number of distinct physical, trading and operational characteristics that distinguish Large Format Retail operations from standard retail premises. These comprise:

- large floor plate requirements to display and store goods;
- direct, at grade access to customers’ vehicles for loading; and
- good access and exposure to arterial roads for unloading requirements and to attract a broader customer base.

The concept of a ‘Large Format Retailer’, however is not recognised as an individual form of development under the ‘Standard Instrument LEP’ definitions. Large Format Retailers are therefore required to ‘fit’ with the definitions of ‘Bulky Goods Premises’, ‘Garden Centres’ or ‘Hardware and Building Supplies’ or be treated as ‘Shops’.

The LFRA has consistently argued that ‘Large Format Retail Premises’ should not be included under the ‘Shop’ definition, as:

- they share many structural and operational characteristics with ‘Bulky Goods Premises’ and ‘Hardware and Timber Supplies’ premises;
- there is not sufficient land available or suitable in traditional centres (i.e. ‘Zones B2-4’ and ‘B8’ which permit ‘Shops’) to accommodate the necessary large floorplates; and
- the provision of Large Format Retail operators within traditional centres are likely to create conflict in the context of the urban design of those centres.

Furthermore, inconsistency amongst NSW councils in how they define some Large Format Retailers provides significant uncertainty for those particular operators and landowners seeking to secure those operators as tenants as there is no ‘deemed to comply list’ of products or any

practice note to assist councils in interpreting the existing *'Bulky Goods Premises'*, *'Hardware and Building Supplies'* and *'Garden Centre'* definitions.

For example, there are instances where a council has taken a view that a certain retailer, which has consistently been recognised as a *'Bulky Goods Premises'* use in most NSW council areas, is not considered to be a *'Bulky Goods Premises'* by that particular council.

The inconsistency and lack of clear and consistent application of the existing *'Bulky Goods Premises'* definition is also problematic for new entrants into the Large Format Retail market who are being required to demonstrate that their retail business model falls within the *'Bulky Goods Premises'* definition. In many cases, they have no certainty as to whether their type of retail premises will be accepted as *'Bulky Goods Premises'* consistently across all NSW Councils which creates significant risk for new entrants when purchasing and/or leasing sites for new stores in NSW.

Furthermore, some Large Format Retailers are required to undertake lengthy and costly rezoning applications, as they do not readily *'fit'* within the *'Bulky Goods Premises'* definition. This also significantly restricts the ability of those retailers to find suitable sites in which to invest. This may apply to other new entrants, if *'Large Format Retail premises'* as a form of development in its own right is not clearly defined within the *'Standard Instrument LEP'*. The adverse consequence of this uncertainty is discouraging investment in NSW.

The purpose of the *'Standard Instrument LEP'* is to provide a consistent approach to land use planning across NSW. Therefore, **it is essential that a definition for *'Large Format Retail Premises'* be introduced into the *'Standard Instrument LEP'*.**

3.2.1 Suggested Wording for the *'Large Format Retail Premises'* Definition

Introduced in January 2012, the Victorian State Government implemented a broad product based definition for *'Restricted Retail Premises'*. The Victorian definition for *'Restricted Retail Premises'* is:

"...Land use to sell or hire:

- a) *Automotive parts and accessories*
- b) *Camping, outdoor and recreation goods*
- c) *Electric light fittings*
- d) *Animal supplies including equestrian and pet goods*
- e) *Floor and window coverings*
- f) *Furniture, bedding, furnishings, fabric, manchester and homewares*
- g) *Household appliances, household electrical goods and home entertainment goods*
- h) *Party supplies*
- i) *Swimming pools*
- j) *Office equipment and supplies*
- k) *Baby and children's goods, children's play equipment and accessories*

l) *Sporting, cycling, leisure, fitness goods and accessories*

Or,

m) *Goods and accessories which:*

*Require a large area for handling, display and/ or storage of goods;
or*

a. *Require direct vehicle access to the building by customers for the purpose of loading or unloading goods into or from their vehicles after purchase or hire.*

It does not include the sale of food, clothing and footwear unless their sale is ancillary to the primary use..."

The Victorian definition (along with other similar definitions in South Australia and Western Australia) provides a list of product categories and in doing so provides clarity, consistency and certainty for Large Format Retailers. The Victorian definition acknowledges that some types of products may not be captured under the standard list, but may still be bulky enough to require a large area for handling, storage and display **or** require direct customer loading. In this way, it allows for innovation and evolution in the Large Format Retail sector to encompass retailing that may not yet have been envisaged by policy makers, but may still involve the sale of Large Format goods.

The Victorian definition has been in operation for more than five (5) years and can reasonably be acknowledged as having stood the test of time, and not given rise to any adverse court findings. Furthermore, the land use definition change along with concurrent zoning reforms in Victoria, is considered to have given Victoria a significant competitive advantage over NSW and encouraged far greater investment in new Large Format Retail premises when compared to NSW. For these reasons, **the LFRA requests that the DP&E adopt the same or similar wording for the new 'Large Format Retail Premises' definition.**

3.3. Expand the Number of Zones Where Bulky Goods Premises and Large Format Retail Premises are Permissible

An analysis of the centre zones under the ‘Standard Instrument LEP’ was undertaken within ‘section 4’ of the ‘Investment + Competition = Jobs’ report. With the exception of ‘Bulky Goods Premises’, ‘Garden Centres’ and ‘Hardware and Building Supplies’, the analysis found that ‘Standard Instrument LEP’ treats all other retailing operations the same by only permitting retailing whether defined as a ‘Shop’ or as a ‘Retail Premises’ in four (4) zones:

- Zone B2 – Local Centre;
- Zone B3 – Commercial Core;
- Zone B4 – Mixed Use; and
- Zone B8 – Metropolitan Centre (only used in the City of Sydney and North Sydney Local Government Areas)

The definitions of ‘Shop’ and ‘Retail Premises’ are almost identical in terms of the operations that would be permitted under each definition. However, as noted in ‘section 3.2’, the characteristics of the land that is considered to be suitable for a ‘Shop’ or ‘Retail Premises’ within these zones cannot accommodate Large Format Retailing, which does not fall under the strict application of the definition for ‘Bulky Goods Premises’, ‘Garden Centres’ or ‘Hardware and Building Supplies’ despite the fact that they have the same or similar physical and operational site requirements.

These ‘centre’ zones are generally fragmented by landownership, comprised of small land parcels and dense urban fabric and Local Councils also generally apply restrictions on ‘retail premises’ within these ‘centre’ zones. This makes **it almost impossible for Large Format Retailers to find suitable and available sites within ‘centre’ zone to meet their business model requirements.**

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 large floor area, in locations that are close to, and that support the viability of centres...”

Whilst ‘Bulky Goods Premises’, ‘Hardware and Building Supplies’, and ‘Garden Centres’ are mandatory permitted uses within the ‘B5 Business Development’ zone, Large Format Retailers are only able to be permissible if they can demonstrate within the Development Application that they ‘fit’ with the definitions (as discussed in ‘section 3.2’).

Furthermore, analysis within the ‘Investment + Competition = Jobs’ report found that 49% of metropolitan councils within Sydney do not have a ‘B5 Business Development’ zone. A similar pattern also emerges for the ‘B6 Enterprise Corridor’ zone in which ‘Hardware and Building Supplies’ and ‘Garden Centres’ are mandatory permitted uses, but of the 21 (57%) metropolitan councils with a ‘B6 Enterprise Corridor’ zone, four (19%) do not permit ‘Bulky Goods Premises’ at all within this zone.

The DP&E should expand the number of zones that make ‘Bulky Goods Premises’ mandatory permitted uses and should also include a new ‘Large Format Retail Premises’ definition within

the *'Standard Instrument LEP'*. The LFRA has consistently argued that it is appropriate for *'Large Format Retail Premises'* to be permitted in the same zones as *'Bulky Goods Premises'*.

The LFRA acknowledge the DP&E adopted amendments in April 2016 to make *'Hardware and Building Supplies'* and *'Garden Centres'* mandatory permitted uses in the *'B7 Business Park'*, *'IN1 General Industrial'* and *'IN2 Light Industrial'* zones in order *"...to provide greater consistency to local planning in NSW and greater certainty to businesses..."*

Furthermore, the REAC report acknowledges that *"...retail already occurs in employment, manufacturing, industrial and service distribution locations whilst not necessarily acknowledged within statutory provisions..."*

The permissibility of the Large Format Retail sector across Metropolitan Sydney is highly inconsistent.

Furthermore, it is clear that the provision of sufficient, appropriately zoned land to accommodate Large Format Retail uses has not been consistently considered in the preparation of local planning instruments, and is abundantly clear within the recently released key strategic planning *'vision'* documents – the draft *'Greater Sydney Region Plan'* and draft *'District Plans'* that strategic planning for the Large Format Retail sector has not been considered at all and has been actively ignored.

The inclusion of *'Bulky Goods Premises'* and *'Large Format Retail Premises'* uses as mandatory permitted land uses in a greater number of land use zones will immediately make additional land available for the Large Format Retail sector and address the current, severe shortage of appropriately zoned and located land.

The DP&E has already made *'Hardware and Building Supplies'*, and *'Garden Centres'* mandatory permitted uses in the *'B7'*, *'IN1'* and *'IN2'* zones and the REAC report recommends that *"...planning should broaden the scope for accommodating large retail formats in the B5, B6 and B7 zones and work with councils to undertake a strategic exercise to review industrial/employment land where more of these zones might be applied..."*.

We therefore, recommend that *'Bulky Goods Premises'* and *'Large Format Retail Premises'* uses are permitted beyond the *'B5 zone'* and be included as mandatory permitted uses in the *'Standard Instrument LEP'* within the *'B6 – Enterprise Corridor'*, *'B7 – Business Park'*, *'IN1 – General Industrial'* and *'IN2 – Light Industrial zones'* for the following reasons:

- *'Bulky Goods Premises'* and *'Large Format Retail Premises'* have clear synergies with the structural and operation requirements of *'Hardware and Building Supplies'* and *'Garden Centre'* uses which are mandatory permitted uses within the *'B6'*, *'B7'*, *'IN1'* and *'IN2 zones'*;
- *'Bulky Goods Premises'* and *'Large Format Retail Premises'* are consistent with the zone objectives for each of the *'B6'*, *'B7'*, *'IN1'* and *'IN2 zones'*;
- The widening of the range of zones where *'Bulky Goods Premises'* and *'Large Format Retail Premises'* are permissible will provide greater opportunity for emerging Large Format Retailers, thus providing greater certainty for investment in NSW; and
- The expansion of the number of zones where *'Bulky Goods Premises'* and *'Large Format Retail Premises'* will address the current and severe shortage of appropriately zoned and

located land to meet the needs of emerging and expanding Large Format Retailers, that otherwise will continue to look to other states within Australia to focus their investment.

4.0 Conclusion

The LFRA welcomes this opportunity to make comment on the proposed reversal of changes made to the definition of *'Bulky Goods Premises'* six (6) years ago; changes that were made without industry consultation. During this time, like many industries, the retail sector has experienced enormous disruption. It has been impacted by fast paced technological advancements, online shopping - be it retail platforms such as Amazon and Ali Baba or online stores either in a pure play sense or part of an omni-channel offer, evolving consumer demands, *'click and collect'* services and the transitioning of many product categories from departments stores to the Large Format Retail sector.

So that bricks and mortar Large Format Retailers are able to compete in an ever evolving and dynamic market it is imperative that laws impacting the sector provide clarity, consistency and certainty. By introducing a new *'Large Format Retail Premises'* definition, that is in line with the Victorian definition for *'Restricted Retail Premises'*, and expanding the number of zones that permit Large Format Retail land uses, the LFRA is strongly of the view that the NSW Government would be delivering on these fundamental needs.

Please contact the LFRA's CEO, Philippa Kelly on 03 9859 5000 or pkelly@lfra.com.au should you wish to discuss any aspect of this submission.