



Director, Employment Policy and Systems
GPO Box 39,
Sydney, NSW 2000

13 December 2017

NSW Bulky Goods Premises

To whom it may concern,

The Australian Retailers Association (ARA) believes the New South Wales (NSW) has an important role to play reducing red tape and enabling more flexibility for retailers when determining where their business is best placed to operate, while protecting existing activity centres.

The proposal comes at a time when restrictions around planning and zoning needed to be considered in order to allow expansion for some types of bulky goods retail such as hardware formats. Changes will not only promote healthy growth in the retail sector but be positive in growing particular types of retail which require site size to meet the needs of their larger format type.

We also recognise the need to allow expansion and development in existing retail activity centres as an important fillip to allow expansion, increase foot traffic for existing retail, and encourage further usage of existing infrastructure.

Moves which will allow easier planning processes for retailers, create greater flexibility in location, approval times and possible cost reductions for the retail sector are welcome.

Removing some of the red tape along with the removal of planning delays associated with developing and operating will help retailers be more flexible and even out access to new retail space.

The proposed change is welcomed by the ARA. In reality, this simply places the Industry in the position it was in 2012 when the definition was changed without consultation.

Retail has changed considerably in recent 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.

We recommend additional changes in line with proposals by the Large Format Retail Association (LFRA):

- Introduce 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
- Expand 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.



Proposed amendments should be enacted without delay and the Department of Planning and Environment (DP&E) should progress with the introduction of a new 'Large Format Retail Premises' definition within the 'Standard Instrument LEP'. Further analysis on each of these two planning policy reforms is discussed overleaf.

Background and Industry Challenges

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 indirect jobs. It is also responsible for approximately 40% of retail floorspace demand¹ within the Sydney 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, which 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.

Large format retailers are typically attracted to homemaker centres as they display the following operational and physical characteristics, which distinguish them from standard retail premises:

- 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 loading requirements and to attract a broader customer base.

Retailers consistency face difficulties as a direct result of the NSW planning and zoning legislation. In particular there is:

- a lack of clarity in determining whether its retailers 'fit' within the current available land use definitions;
- Oligopolistic major shopping centre landlords with restricted stock availability and a lack of ability for retailers to develop or work with developers on new, more convenient low-cost sites;
- a lack of sufficient appropriately zoned, sized and configured land suitable for new development prospects.

Accordingly, our experience is that new Large Format Retail developments in NSW are at a higher risk and undergo an uncertain and lengthy planning process.

Introduce a Specific Product-Based Land Use Definition for 'Large Format Retail Premises'

The Bulky Goods sector consists of retail businesses predominately 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.

The concept of a '*Large Format Retailer*' 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*'.

However:

- 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.

It is essential that a definition for 'Large Format Retail Premises' be introduced into the '*Standard Instrument LEP*' which replicates the Victorian definition for 'Restricted Retail Premises'.

Introduced in January 2012, the Victorian State Government implemented the following broad product-based definition for '*Restricted Retail Premises*':

"...Land use to sell or hire:

- Automotive parts and accessories;
- Camping, outdoor and recreation goods;
- Electric light fittings;
- Animal supplies including equestrian and pet goods
- Floor and window coverings;
- Furniture, bedding, furnishings, fabric, manchester and homewares;



- Household appliances, household electrical goods and home entertainment goods;
- Party supplies;
- Swimming pools;
- Office equipment and supplies;
- Baby and children's goods, children's play equipment and accessories;
- Sporting, cycling, leisure, fitness goods and accessories.

Or,

- Goods and accessories which:
- Require a large area for handling, display and/ or storage of goods; or
- 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 Retail 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.

Expand the scope of the 'Bulky Goods Premises'

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

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...".

However, the 2015 LFRA research found that 'bulky goods premises' are only a mandated permissible use the 'B5 – Business Development' zone and 49% of metropolitan Councils in Sydney do not have a B5 zone.

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 it has not been considered at all and 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 recommend therefore 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 Large Format Retailers, that otherwise will continue to look to other states within Australia to focus their investment.

The Productivity Commission (PC) report into the retail sector identified the need for planning and zoning restrictions to be reviewed as a move towards tenancy reform in the retail sector. It is heartening to see the NSW Review Committee on Retail Planning working in the interests of NSW's 48,000 retail businesses in a balanced way.

The NSW planning system allows uses in certain planning zones, while changes to the NSW planning system should not be ruled out, there are also options that can be taken within the existing NSW planning framework to support greater investment in the retail sector which the ARA would strongly encourage as a first step. The Government and the Committee should initially concentrate on removing barriers in development of centres while working through specific retail category needs. This approach would be consistent with the Harper Review into Competition Policy and the Federal Government's response (see below).



Harper Review recommendation 8: Regulation review

All Australian governments should review regulations, including local government regulations, in their jurisdictions to ensure that unnecessary restrictions on competition are removed.

Legislation (including Acts, ordinances and regulations) should be subject to a public interest test and should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Factors to consider in assessing the public interest should be determined on a case by case basis and not narrowed to a specific set of indicators.

Jurisdictional exemptions for conduct that would normally contravene the competition law (by virtue of subsection 51(1) of the CCA) should also be examined as part of this review, to ensure they remain necessary and appropriate in their scope. Any further exemptions should be drafted as narrowly as possible to give effect to their policy intent.

The review process should be transparent, with highest priority areas for review identified in each jurisdiction, and results published along with timetables for reform.

The review process should be overseen by the proposed Australian Council for Competition Policy (see Recommendation 43) with a focus on the outcomes achieved rather than processes undertaken. The Australian Council for Competition Policy should publish an annual report for public scrutiny on the progress of reviews of regulatory restrictions.

The Government supports this recommendation.

The Government will expand its Regulatory Reform Agenda to incorporate a competition regulation review to remove unnecessary regulatory barriers to competition. It will also encourage the states and territories to undertake similar reviews by seeking agreement to a reform agenda, including a new set of competition principles as outlined in the response to Recommendation 1.

FEDERAL GOVERNMENT RESPONSE TO THE COMPETITION POLICY REVIEW 24 November 2015

A retail use can generally be changed to another retail use using the exempt or complying development provisions under the NSW planning system. This means that a new retailer seeking to occupy an existing retail store can typically do this without obtaining any planning approval, or do so via a certification process only.

Where our members have identified issues is where there is not sufficient existing retail space or the right type of space available for their specific types of retail format. Any planning or zoning review needs to include making access to development of existing strip, shopping centre and activity centre sites to support current retail activity along with genuine bulky goods options for specific needs.

Following the recent Victorian planning reform, the NSW government, can through those positive and negative experiences, work through effective planning system changes for large format retail which has an economic benefit while still supporting existing retail centres.



Without much doubt costly planning requirements have meant the retail and shopping centre development pipeline in NSW has underperformed compared with other States, with some of the ARA's large and rapidly expanding formats struggling to find adequate sites in existing activity centres in NSW.

The importance of growing existing centre availability as well as allowing those formats who cannot exist within current activity centre requirements, needs to be balanced to maintain the draw of existing centres to consumers, especially in our iconic strip shopping locations.

Retail development and planning needs to be undertaken with a fully integrated approach that takes into consideration the needs of all parties.

We need to make sure that there is investment in all types of retail formats and centres that gives retailers success, the ARA would support a strong planning framework where developments are positioned in areas which will allow the balance between the needs of small format retail and growing formats which require larger sites to operate.

The ARA sees competitive neutrality as the driver behind any review of the planning and zoning systems in NSW to make sure that a retail format or entrant receives no competitive advantage over another while keeping a balance in retail tenant space availability. It is important that planning and zoning systems deliver a level playing field for all participants.

Regulation which restricts competition should be carefully scrutinised, given the desirability of promoting competition as a means of achieving efficiency or for minimising the costs of achieving other objectives noting the Harper Review public interest for planning test and zoning as a good basis for the NSW Government which we have also considered in the below extract from the Harper Review.



Government response to the Competition Policy Review

While initial review priorities will be guided by the Harper Review's recommendations, including Recommendation 9 on planning and zoning, states will have responsibility for pursuing reforms where they have sovereignty. The initial priorities for review will also have regard to the need to promote international competitiveness and investment.

The Government is willing to consider payments to states and territories for regulatory reviews where subsequent reforms improve productivity and lead to economic growth, consistent with its response to Recommendation 48. See also Recommendation 43 for the Government's response regarding the Australian Council for Competition Policy.

Harper Review recommendation 9: Planning and zoning

Further to Recommendation 8, state and territory governments should subject restrictions on competition in planning and zoning rules to the public interest test, such that the rules should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the rules can only be achieved by restricting competition.

The following competition policy considerations should be taken into account:

- Arrangements that explicitly or implicitly favour particular operators are anti-competitive.
- Competition between individual businesses is not in itself a relevant planning consideration.
- Restrictions on the number of a particular type of retail store contained in any local area is not a relevant planning consideration.
- The impact on the viability of existing businesses is not a relevant planning consideration.
- Proximity restrictions on particular types of retail stores are not a relevant planning consideration.
- Business zones should be as broad as possible.
- Development permit processes should be simplified.
- Planning systems should be consistent and transparent to avoid creating incentives for gaming appeals.

An independent body, such as the Australian Council for Competition Policy (see Recommendation 43) should be tasked with reporting on the progress of state and territory governments in assessing planning and zoning rules against the public interest test.

The Government supports this recommendation, noting this is an area of state responsibility.

The Final Report's findings focus on the impact of planning and zoning regulations on competition between commercial entities by creating unnecessary barriers to entry. There have been other reviews that have focused on the effect planning and zoning regulations can have by restricting the supply of residential land, which can place upward pressure on house prices. For example, recommendation 69 of the Australia's Future Tax System Review was that COAG review institutional arrangements to ensure planning and zoning arrangements do not unnecessarily inhibit housing supply and affordability. Two Productivity Commission reports, the *Economic Structure and Performance of the Australian Retail Industry* report (released 9 December 2011) and the *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments* report (released 16 May 2011) have also highlighted the importance of effective planning.



The Government recognises the productivity benefits of removing unnecessary red tape and implementing effective land-use planning, including through the transparent application of a community net-benefits test, as proposed by Recommendation 9, supported by robust institutional arrangements to apply such a test.

Further to Recommendation 8 (Regulation Review) above, the Government encourages the states and territories to review planning and zoning regulations and include competition principles in the objectives of planning and zoning rules so that they are given due weight in decision making. The Government will continue discussions with states and territories on ways to promote these reforms.

The Government is willing to consider payments to states and territories for reforms that improve productivity and lead to economic growth, including for significant regulatory reviews that are followed by reforms, consistent with its response to Recommendation 48. See also Recommendation 43 for the Government's response regarding the Australian Council for Competition Policy.

FEDERAL GOVERNMENT RESPONSE TO THE COMPETITION POLICY REVIEW 24 November 2015

Changing Face of Retail

We are all aware that the retail sector, including the Large Format Retail sector, undergoing significant disruption. It is imperative that the planning system provides the 'best fit' planning framework that allows bricks and mortar retailers to be competitive, adaptive and nimble. We believe that the NSW's adoption of the Victorian definition for 'Restricted Retail Premises' would, be a step in the right direction.

Planning in NSW has been typified by activity centres with an outcome of delivering benefits to the community by concentrating retail and other employment activities into specified locations.

Sometimes there can be unintended competition restricting effects which means there are likely to be fewer opportunities to provide scope to make changes needed to meet consumer needs or retailers' own requirements on an ongoing basis, which is why we emphasise balance in any changes between existing centres and genuine bulky goods development.

There does need to be an increase in the supply of available land for large format developments and a greater level of flexibility within the planning system to boost economic activity, deliver employment growth and provide choice to communities, which also must include existing centres as economic drivers.

Kind regards,

A handwritten signature in black ink, appearing to read 'R. Zimmerman'.

Russell Zimmerman
Executive Director



Australian
Retailers
Association

Australian Retailers Association

Heath Michael
Director of Policy, Government & Corporate Relations
Australian Retailers Association