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Director, Employment Policy and Systems  
Department of Planning & Environment  
GPO Box 39  
SYDNEY  
NSW 2001

**RE: Submission on Proposed amendments to the Standard Instrument LEP – definitions of retail premises and the 'Planning for the future of retail' discussion paper**

Thank you for the opportunity to comment on the proposed amendments to the Standard Instrument LEP relating to specific 'retail premises' definitions, and the accompanying discussion paper: 'Planning for the future of retail'. Attached is a single submission covering both documents.

If you require any further explanation of the issues raised, please contact Mark Carlon, Manager of Strategic Planning on 9710 0333.

Yours sincerely,

Mark Carlon  
Manager Strategic Planning

## Part 1: Proposed amendments to the Standard Instrument LEP – definitions of retail premises

Sutherland Shire Council generally endorses the changes which better support the needs of new business models while maintaining the existing centres hierarchy. Council concerns specifically relate to the proposed definition of “*specialised retail premises*”.

Sutherland Shire Council has a long established policy of encouraging retailing in centres. This approach aligns with the strategic planning of Greater Sydney over many decades. Allowing retailers in out-of-centre locations is inconsistent with the objectives of Council’s long term land use planning and is contrary to the South District Plan Planning Priority S10- *Retaining and managing industrial and urban services land*. A superior planning approach to this issue is to grow local centres - as per South District Plan Planning Priority S9 *Growing investment, business opportunities and jobs in strategic centres* and Planning Priority S6 *Creating and renewing great places and local centres, and respecting the District’s heritage*.

Council therefore objects to the proposed definition of ‘*Specialised retail premises*’ because it is considered to be too broad as drafted and can be exploited. As drafted it will allow bulky goods retail precincts to become de facto retail centres, undermining the strength of established local centres and accelerating the loss of crucial industrial and urban services land that is essential for the provision of local jobs.

Council has been committed to ensuring ‘bulky goods premises’ do in fact trade primarily in goods that require a large floor plate for handling, display or storage. This approach maintains most retailing in centres. However, it is considered that many of the categories under ‘*Specialised Retail Premises*’ in the proposed definition do not actually require a large floor plate and will simply take retailers from centres. Examples have been provided below to illustrate this point.

### *b) camping, outdoor and recreation goods*

This could include retailers that predominantly sell clothing and small items with only a minor trade in bulky recreation goods; such as Kathmandu and most surf shops.

### *m) sporting, cycling, leisure, fitness goods and accessories*

This could include small retailers that predominantly sell leisure clothing or sports/leisure shoes, with limited stock of bulky fitness goods; such as yoga/exercise apparel stores like Rebel Sport, Athletas Foot, Laura Jane and Bloch.

### *f) furniture, bedding, furnishings, fabric and Manchester and homewares*

While this will support retailers that predominantly sell furniture and currently fit the definition of bulky goods retail, the use of terms will also include retailers which are commonly found in town centres and local shopping centres; such as those that predominantly sell fabric, Manchester and small giftware for homes like Adairs, Spotlight and Wheel and Barrow.

### *k) baby and children’s goods, children’s play equipment and accessories*

This could include a children’s toy shop or clothing shop, with little or no trade in bulky play equipment.

Council has particular concerns that the ambiguous wording in *n)* has potentially major adverse consequences for retail policy.

### *n) goods and accessories which:*

- *require a large area for handling, display and 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 is considered that many shops currently located in town centres could fall into this category simply by proposing to build a large store. This is especially problematic given that the requirement for "a large floor area" has not been defined numerically. The definition features an exclusion which may have been intended to prevent supermarkets and clothing shops from exploiting this definition, specifically that the use "*does not include the sale of food, clothing and footwear unless it falls into one of the above categories.*" However, it is not clear from the drafting of the definition whether the exclusion is provided as part of item n) or as part of the whole definition.

- If the exclusion is read as part of item n), then, logically, a supermarket is excluded from this land use definition because "*food, clothing and footwear*" can only be sold as part of retail uses specified in items a) to m), regardless of whether "*a large area for handling, display and storage of goods*" is required. The result is equivalent to the status quo for supermarkets, and they will not be able to expand into zones where bulky goods premises are currently permissible.
- However, if the exclusion is read as being external to item n), then an applicant could argue that the sale of food, clothing and footwear in a supermarket does "*require a large area for handling, display and storage of goods*" or "*direct vehicle access*". A supermarket is therefore captured by item n) and not excluded from the definition of 'Specialised retail premises'. The effect of this reading would be to permit supermarkets in all zones where 'Bulky goods premises' are currently permissible. Again, this is inconsistent with the objectives of Council's long term land use planning and is contrary to the South District Plan Planning Priority S10- *Retaining and managing industrial and urban services land.*

It is accepted that this ambiguity may not have been the intent of the drafting; however, it should be addressed to avoid misuse and policy uncertainty. The policy direction should not be left to the Land and Environment Court to determine.

To summarise, the proposed definition of "*specialised retail premises*" is too broad because it explicitly incorporates too many retailers that are currently established in traditional town centres. These issues must be resolved to ensure Councils, applicants and the LEC have certainty about what this definition includes.

## Part 2: Planning for the Future of Retail - Discussion Paper

Council endorses the aims of the Paper, *to enable the retail sector to adapt innovatively, while encouraging activity in the right places, and to provide retailers with a clear and consistent set of rules*, yet it has concerns whether the proposed directions are consistent with these aims in a larger context. Similarly, Council acknowledges the importance of a vibrant retail sector as an important feature of a healthy, prosperous economy, yet it also supports a balanced approach to economic growth, with retail as one part of the overall mix.

The discussion paper commits the Department to providing guidance on retail issues and preparing supporting toolkits and data to help councils review retail trends in their local areas. However, there is no timing or detail on these. Given that the discussion paper supports local planning statements, which need to be completed by July 2019, greater detail regarding the timing and extent of the support would be very helpful to councils.

The following comments are in response to the three planning directions.

### Direction 1: better local strategic planning for retail

In its broadest sense, the proposal that retail planning is place-based, strategic and aligned to economic, social and environmental objectives of NSW Government's regional and district plans, is sensible and supported. However, far more detail is required before full support can be offered.

With regard to the proposed introduction of limitations on floor space for specific retail types in industrial zones, it is not clear whether the proposal is to limit the size of each retail premises or to cap the overall quantum of retail floorspace within an industrial zone. In either case, it is considered that any such cap would be difficult to justify and subject to perpetual challenge. As such, it is considered that the proposal would not provide *a clear and consistent set of rules* for industrial or retail businesses in these zones – a stated aim of the directions on exhibition.

Moreover, the strategic intent of this proposal is difficult to understand. Retail premises are generally prohibited in industrial zones (with some exceptions made to meet the day-to-day needs of local workers), yet the current suite of proposals introduces 'artisan retail' use in industrial zones, encourages more industrial/retail hybrid uses via open zones and establishes 'innovation in retail' 'co-location' clauses (Direction 3) - all of which encourage the expansion of quasi-retail uses into industrial zones. This approach gives incentive to a broad range of retail activities and seems to work against the stated concept of limiting retail floorspace in industrial zones. It is simply unclear how the proposal supports the aim of *encouraging activity in the right places* (another stated aim of the discussion paper) or assists councils to satisfy South District Plan Planning Priority S10- *Retaining and managing industrial and urban services land*.

### Direction 2: a modern approach to retail development that reflects a range of retail formats in centres

This direction emphasises the importance of retail in centres – reinforcing the vitality of centres, co-location with community etc. - which can be supported through local place-based planning. This aligns with the approach reflected in the Greater Sydney Region Plan and the South District Plan. The direction also acknowledges the importance of renewing main streets, through greater co-ordination and investment in social, cultural infrastructure and the public domain. This approach supports local place-based planning and allows councils to respond to local conditions and community expectations. It is supported.

The discussion paper also acknowledges the trend to other retail formats, and that the growth of these could grow emerging centres. Some of these retail formats already exist as centres in Sutherland Shire (e.g. Menai Market Place, Southgate). The growth of others reflects the challenges faced by Council. The discussion paper suggests that where the growth of new retail clusters may support transitioning these areas into emerging centres, the approach should be consistent with the guidance in the Greater Sydney Region Plan for planning for centre development. This consistency of approach is supported.

### Direction 3: adaptability and certainly for retail

The direction asserts that the current planning framework is prescriptive and inflexible and, with significant variations between LEPs, at odds with changing retail models and issues in retail planning. Yet, the proposed move to local place-based planning will inherently lead to further variation between LEPs. What is more important than difference between LEPs is the ability of LEPs to accommodate change. More work is required in this regard.

The case to make LEPs more flexible is put forward through the proposed use of open zones (currently used in business and industrial zones) in combination with a new 'innovation in retail' clause. The intent is to accommodate new retail uses – as yet undefined in the Standard Instrument Dictionary - and to permit the co-location of uses such that, for example, one use may be prohibited, but in combination with the other(s) may not have adverse impacts, and provides commercial affordability.

It is considered that the use of open zones is sensible in those zones where there is a clear strategic intent e.g., most business zones. Particularly in the industrial (but also in the B7 Business Park zone), it is important that councils retain the ability to do fine grain planning. This will allow them to assign permissibility consistent with Greater Sydney Region and South District Plans directions and to promote employment diversity consistent with the high skills base and aspirations of the local population.

At the same time, it is important that 'co-location' is not used to create 'Potemkin villages' in industrial zones: where we pretend an area is providing urban and industrial services when in fact it is otherwise prohibited uses that have become the primary operators in the precinct. 'Support uses' such as shops, small bars, restaurants and cafes will be able to operate behind a façade of permitted industrial activities, thereby undermining industrial zone objectives and planning rationale. Once established, these precincts will function as centres, yet may fail to meet any of the other criteria needed in centres, such as the provision of parking or accessibility to public transport.

In the medium and long term, the thrust of Sutherland Shire's Economic Development Strategy is to transition to a knowledge base economy, based on the application of ideas, technologies and innovation. These activities will by necessity be located in industrial zones. Creating the conditions to make this future possible should not be compromised by effectively transforming industrial zones into catch-all zones, creating long-term entitlements for 'prohibited' uses. Retail interests must not be able to leverage 'co-location' into an effective land grab of inexpensive industrial lands.

Where council supports open zoning, an 'innovation in retail' provision is a sensible tool with which to assess unanticipated, undefined or prohibited uses. However, it is critical that the criteria against which a use is evaluated under this provision robustly align with the retail strategy, strategic planning objectives, local statement of intent for specific centres and impacts on the environment and/or neighbouring land uses.

In addition, the success of the open zone approach relies on the DCP to be able to effectively set place-based controls, which is uncertain at this stage, given that the standard DCPs format is still to be prepared.

The final proposal is the introduction of a strategic plan aligned zoning framework. In principle, this is a sensible approach, but is a long-term commitment. The discussion paper also foreshadows a review of the 13 zones which affect retail. This is significant and has the potential to eliminate important distinctions within the zoning framework. As part of an overall review of the zoning framework and the move to open zones, this will require further detailed consideration and consultation.

### Conclusion

There is insufficient detail to offer more than conditional support for these directions overall – and great concern about the implications of some of them individually. Council's overriding concern is that retail should not be considered in isolation, or given the primacy within the planning framework implied in the discussion paper. Economic and employment diversity is critical to making great places to live and work. While there is considerable merit in supporting the retail sector generally, there are equally valid competing interests that must be considered as part of councils' larger employment and economic development strategies.

It is recommended that this 'discussion' continues and expands to include other industry sectors.