



Planning for the Future of Retail Discussion Paper April 2018

**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 (LFRA) 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 interface between urban planning and 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 55 individual business brands listed in the following table:

ABS Automotive Service Centres	Domayne	Petbarn
Adairs	Early Settler	PETstock
Adairs Kids	Fantastic Furniture	Pillow Talk
Amart Furniture	Forty Winks	Plush
Anaconda	Freedom	Provincial Home Living
Autopro	Harvey Norman	Ray's
Autobarn	House	Rebel
Babies R Us	IKEA	Rebelfit
Baby Bunting	Jaycar Electronics Group	Road & Tech Marine
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
Decathlon		

The LFRA is supported by its Patron, PwC, and the following 65 Associate members that comprise of Large Format Retail developers, investors, owners and service suppliers:

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

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 from 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. The LFRA congratulates the authors of the Retail Expert Advisory Committee Report (*'REAC Report'*), released 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. In particular it acknowledged that there is an undeniable *'structural shift'* in the retail market with innovation outpacing and out growing legislation; new entrants seeking to enter the market; and 24-hour on-line trading competing directly with bricks and mortar retailers who have limited trading hours and other restraints. **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 DP&E is also to be congratulated for the proposed amendments to the *'Standard Instrument LEP'* and the release of the *'Planning for the Future of Retail Discussion Paper'* and its quest 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.

The LFRA requests that the DP&E acknowledge the Large Format Retail sector within the 'New Retail Policy' and require Councils to proactively plan for this sector within the Local Retail Strategies and any updates to their Local Environmental Plans.

As stated within the REAC Report's recommendations for change "...clear policy directions that remove barriers, costs and complexity will assist to meet the State Priority to make NSW the easiest State to start a new business by making regulatory obligations easier to understand and implement...". The LFRA therefore requests that the following is considered in preparing the NSW Retail Planning Policy:

- The growth of retail activity is a key focus;
- The Greater Sydney Commission's 'centre focuses' approach with respect to retail planning is highly deficient and damaging to the Large Format Retail sector;
- The DP&E recognises the role that the Large Format Retail sector plays and proactively plans to increase Large Format Retail floorspace within the Local Council areas;
- The DP&E recognises that not all retail activity belongs in 'centres';
- A 'LEP' provision for 'emerging retail' is introduced;
- Simple, flexible and open Business Zones are provided;
- Prescriptive restrictions or restrictive controls on businesses, through the use of the strategic planning framework are not introduced to control permissibility.

The LFRA considers that in taking the above points on board, the DP&E will be able to deliver a Retail Policy that is supportive of all retail sectors, corrects the inadequacies of the 'Regional' and 'District Plans' and will:

- Provide greater flexibility and growth for retail development;
- Enable the NSW planning system that can respond to an ever-changing retail market;
- Provide incentives for investment;
- Provides clarity, consistency and certainty;
- Reduces regulatory burden; and
- Improves the NSW competitive advantage against other States.

2.0 Challenges Facing the Large Format Retail Sector in NSW

In February 2015, the Large Format Retail Association (LFRA) 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 REAC. It outlines many of the key challenges facing the Large Format Retail Sector in NSW. Principally, the sector 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.

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 including:

- *'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 *'Planning for the Future of Retail'* Discussion Paper.

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

The current definition of *'Bulky Goods Premises'* in the *'Standard Instrument LEP'* is as follows:

“...bulky goods premises means a building or place the principal purpose of which is the sale, hire or display of bulky goods, being goods that are of such size or weights as to require:

(a) A large area for handling, display or storage, and

(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,

And including goods such as floor and window supplies, furniture, household electrical goods, equestrian supplies and swimming pools, but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale or hire or display of bulky goods...”

We note that some Large Format Retailers also fall under the definition of ‘Hardware and Building Supplies’ or ‘Garden Centres’.

In the view of the LFRA, the definition of ‘Bulky Goods Premises’ is restrictive for our members, in that the multi-part test through the use of the word ‘and’ does not:

- consider circumstances such as kitchen showrooms where large areas for display are required, but where customers may not necessarily be taking products directly home with them; nor does it
- contemplate premises such as carpet showrooms which may be able to hang and stack carpets to minimize display area, but where the products sold are bulky and cumbersome and would necessitate direct access for customer loading.

These examples are representative of a wider issue of barriers to alternative ways of delivering Large Format Retail planning solutions for LFRA members. Furthermore, the Large Format Retail sector is experiencing high disruption. It has been impacted by fast paced technological advancements, online shopping – be it online platforms such as Amazon; retail 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 traditional department stores to the Large Format Retail sector. The current definition restricts the ability of our members to evolve, respond to this disruption and meet their customers’ demands.

It is noted that proposed amendments to the ‘Standard Instrument LEP’ are being exhibited concurrently to the ‘Planning for the Future of Retail Discussion Paper’. The LFRA has prepared a submission to these changes, which is to be provided to the NSW DP&E under separate cover. In summary, the LFRA **strongly supports** the proposed introductions of definitions to the ‘Standard Instrument LEP’, particularly in relation to the proposed introduction of the ‘Specialised Retail Premises’ definition. These changes will contribute to the resolution of some of the challenges highlighted in this section with respect to lack of clear definitions for the sector.

Whilst the gazettal of the proposed definition of *‘Specialised Retail Premises’* will assist our members in terms of providing clarity, consistency and certainty in respect of the goods that can be sold and services provided, it will not in itself increase the supply of land for future Large Format Retail developments and/or clearly define appropriate locations for Large Format Retail developments, as detailed below.

2.2 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...”

‘Bulky Goods Premises’, *‘Hardware and Building Supplies’* and *‘Garden Centres’* are mandatory permitted uses in this zone. However, consent is still required for new Large Format Retail premises within this zone. Furthermore, 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 *‘Bulky Goods 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 *‘Bulky Goods 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 *‘Bulky Goods Premises’* at all within this zone.

Indeed, the key finding of the *‘REAC Report’* (*‘page 8’*), is 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...”*. These challenges are faced across the entire retail sector, but none more so than the Large Format Retail sector.

With regard to floorspace demand within the Large Format Retail sector, the 2016 Deep End Services report – *‘Sydney Retail Demand and Supply Consultancy’*, prepared for the DP&E in association with the Greater Sydney Commission (GSC) and included as *‘background material’* on the GSC website, recognises the Large

Format Retail sector as a “...*retail sub-market*...”. It identifies that between 1.74 and 2.2 million square metres of 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 acknowledges 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 is 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 fueled 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 provided updated floorspace supply figures to support the LFRA 2017 submission to the GSC in regard to the draft ‘*Regional*’ and ‘*District Plans*’. These floorspace figures 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, the 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 is acknowledged in the ‘*REAC Report*’ that “...*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 ‘REAC Report’ has identified key transformative elements influencing change from the current planning framework to a future policy position. Through this process, it acknowledges that the “...consolidation of bulky goods retailing...” is a “...legitimate and popular format...” which is “...here to stay...”. Given this finding, it is therefore appropriate that sufficient and appropriately zoned land is provided to support the sector.

The GSC did not take the REAC’s recommendations into account in finalising the ‘Regional’ and ‘District Plans’.

Furthermore, the LFRA, in conjunction with Deep End Services, has recently produced the latest version of the Large Format Retail Directory – Australia and New Zealand. This Directory has been produced annually for the past nine (9) years. Data from the Directories show that Large Format Retail vacancy rates have declined over the past six (6) years 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%

In addition, it should also be noted that the NSW Large Format Retail vacancy rates have also been below the national average since 2013/2014 which in 2016/2017 was 4.3%.

This further demonstrates that there are deficiencies in the supply of land for new Large Format Retail developments.

The challenge for the DP&E in formulating the NSW Retail Policy/Strategy is to provide clear guidance to Councils that:

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

It is noted that the GSC has identified within the ‘Principles for Greater Sydney’s Centres’ set out within ‘A Metropolis of Three Cities - The Greater Sydney Region Plan’ (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 does not provide 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*'.

In addition, it is quite clear that new Large Format Retail centres will generally not be able to meet the 'tests' for new centres (as discussed in '*Section 3.2*'). Therefore, unless the new '*Retail Planning Policy*' provides clear guidance to Councils that explains the role of Large Format Retail centres within the hierarchy and pushes them to proactively plan to allocate sufficient land to accommodate the increasing demand, there will be 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, 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 '*Regional Plan*' and '*District Plans*' adopt, their lack of consideration of the Large Format Retail sector and that pursuant to '*Section 3.8*' of the '*Environmental and Planning Assessment Act*' 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.

3.0 Response to the Retail Outlook for NSW

'Part 1 of the Discussion Paper' provides a discussion of the economic trends influencing the retail sector. In consideration of the data set out within this section of the *'Discussion Paper'*, the LFRA would like to make the following comments:

- The commentary on the retail pipeline (*'pages 11 and 12'*) states that *"...NSW has the largest supply pipeline of retail space among all the states surveyed, with a high proportion at development application stage, particularly in Sydney CBD, residential growth corridors and in the large format retail sector..."*.

However, the footnotes to *'Figure 3'* set out that the *"...pipe line data includes/new, additions, redevelopment, refurbishment projects under construction, committed or in planning..."*. It is considered therefore that the survey undertaken by Savills (as referenced) provides a skewed perspective of the actual supply of Large Format Retail floorspace within NSW.

Furthermore, and more importantly, the data does not provide information on the required levels of retail floorspace demand across the different sectors to meet the future needs of the anticipated growing population. As noted in *'Section 2.2'* above, the Large Format Retail Sector floorspace demand requirement of between 1.7 and 2.2 million square metres by 2031, significantly outstrips the supply level.

- The commentary on *'page 12'* also notes that vacancy rates in NSW are rising, however as set out in *'Section 2.2'* of this submission, that vacancy rates for Large Format Retail development has been declining and have also been below the national average since 2012/2013.
- The commentary on *'page 12'* also discusses a growing competitive pressure and notes the high-profile closures of local retailers. It should be noted that the Large Format Retail sector does not generally compete directly with the more traditional *'centre'* based retail uses, unlike shopping centre developments. The Large Format Retail sector has been constrained by planning legislation and those particular retailers and types of goods that are sold (as now specified in the *'Specialised Retail Premises'* definition) have certain land area requirements and vehicular access requirements that means that they are not suitable for *'centre'* locations.
- It should be recognised that the *"...a range of planning policy consequences has constrained the ability for ... for emerging and other retail opportunities to establish in NSW"* and that *"...planning policies and the supply of suitable land have not kept pace with a rapidly changing retail environment, community needs and simple population growth..."*, as stated in the *'REAC Report'* (*'page 16'*).

4.0 Response to the Emerging Trends

'Part 2 of the Discussion Paper' sets out what it considers to be emerging trends that influence the retail sector. In consideration of these emerging trends, the LFRA considers that:

- The commentary on how people shop (*'page 15'*) does not factor in that people shop at Large Format Retail homemaker centres and precincts, in addition to large shopping malls, on-line or in high density mixed-use locations.
- Whilst retailers, including Large Format Retailers, are innovating in terms of different store concepts and providing a multi-channel offer, the LFRA members in particular require a greater number of bricks and mortar stores to grow their businesses.
- As recognised in the proposed *'Specialised Retail Premises'* definition, Large Format Retailers sell goods that generally require direct vehicle access to the building by customers for the loading purposes. Therefore, whilst infrastructure improvements should be considered in areas where there is a high dependence on private vehicle travel, due to the nature of the products that are sold within Large Format Retail centres, it would not be practical to only seek to provide new all retail floorspace where infrastructure improvements can be provided.
- The *'Discussion Paper'* acknowledges that Large Format Retail is developing showrooms on former industrial sites and evolving with a greater focus on the mix of retailers within homemaker centres and combine elements of main street, Large Format Retail and other complementary retail uses. Despite this, as noted in *'Section 2.2'*, there is a significant lack of appropriately zoned land to accommodate new Large Format Retail development, and the development of Large Format Retail in industrial zones is only an option to those retailers that fall within the *'Hardware and Building Supplies'* and *'Garden Centres and Landscape Supplies'* definitions.
- Retailers want to remain innovative and adapt to ensure future expansion; however are challenged by the degree of flexibility within the current planning framework as acknowledged on *'page 20'*.
- Out-of-centre development can have a pronounced negative impact on regional centres and their main streets, however it should be recognised that the Large Format Retail sector has its own role to play in regional centres, and whilst they are not suitable forms of developments for main streets, they are essential to increasing the choice of the local offer and providing much needed employment. This view is also echoed in the *'REAC Report'* (*'page 7'*) which indicates and acknowledges that one of the *"...Change Factors..."* is the *"...Consolidation of bulky goods retailing..."*, occupies *"...23% of the retail market..."*, it is a *"...legitimate and popular format..."* and is *"...here to stay..."*.

5.0 Response to the Three Directions

5.1 Introduction

The LFRA welcomes the release of the DP&E's Discussion Paper '*Planning for the Future of Retail Discussion Paper*'. We acknowledge this paper as a positive step towards the realisation of much needed planning reform in NSW with regards to the retail sector.

The '*Discussion Paper*' proposes three (3) potential directions that the NSW planning system can take to respond to emerging retail trends. These three (3) directions and the position of the LFRA in response to these directions are as follows:

1. Better Local Strategic Planning for Retail

- The LFRA considers the GSC's '*centre focused*' approach with respect to retail planning is **highly deficient and damaging to the Large Format Retail sector.**
- Considering that the Large Format Retail sector occupies around 30% of all retail floorspace in Australia, it is imperative that future strategic planning for retail in NSW **recognises and proactively plans** to increase Large Format Retail floorspace within Local Council areas.

2. A Modern Approach to Retail Development that Reflects a Range of Retail Formats in Centres

- The LFRA **supports** the notion of a future '*LEP*' provision of '*emerging retail*' that is not otherwise defined. Entrants to the NSW market have faced a far greater degree of risk in developing new stores in NSW when compared to other sites. The NSW planning system simply does not cope easily with new entrants in the Large Format Retail market and the retail model that they offer. The concept of emerging retail would assist new entrants in reducing risk and therefore facilitating investment in NSW.

3. Providing Adaptability and Certainty for Retail

- The LFRA **supports** the notion of simplifying the Business zones in the '*Standard Instrument LEP*'. As explained, a simplification of the Business zones in Victoria to provide only two (2) Commercial Zones, amongst other things, provided greater flexibility and growth for retail and provided incentives for investment.
- The LFRA **strongly does not support** any move to use floor space caps in '*LEPs*'. As experience in Victoria has shown, floorspace restrictions needlessly restricted competition and were removed in 2012.

These positions are explained in further detail below.

5.2 District and Regional Plans

The LFRA notes that the *'Discussion Paper'* seeks to place greater emphasis on strategic planning and local placed-based outcomes to guide retail land use objectives and decisions. In particular, it specifically sets out that *"...Retail planning should also be aligned to the economic, social and environmental objectives of the NSW Government's district and regional plans..."*.

As discussed in *'Section 2.2'*, the LFRA considers the GSC's *'centre focused'* approach with respect to retail planning is **highly deficient and damaging to the Large Format Retail sector.**

The GSC fails to recognise any existing Large Format Retail centres within the centres hierarchy and the role that the Large Format Retail sector plays as a major employer. The *'Regional Plan'* and *'District Plans'* specifically place great importance on *"...jobs being an important tool for investment and business growth..."*, yet they focus on job growth within the identified economic corridors, health and education precincts, strategic centres and the Western Sydney Employment Areas. The Plans do not recognise or acknowledge that the Large Format Retail Sector currently provides 142,700 direct and indirect full time equivalent jobs in NSW, which are typically located outside of existing centres. By refusing to strategically plan for the growth of the Large Format Retail sector, the GSC is reducing the ability for the Large Format Retail sector to contribute to jobs targets for the region and dismisses the associated economic benefits that this will create.

The GSC fails to proactively plan for and support the future growth of the Large Format Retail sector. 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 demand¹. The Large Format Retail sector is forecast to have significant surplus floorspace demand at 2031 that is not met by estimated supply levels. The Plans do not facilitate suitable sites for Large Format Retail nor guide local councils to do the same. The LFRA considers that in proactively planning for the growth of the retail sector and in particular the Large Format Retail sector in suitable locations within Sydney Metropolitan Area that the Plans should have introduced a set of definitive policy directions that clearly identified where new Large Format Retail developments are suitable and the criteria to demonstrate this. In the absence of such direction in the Plans, the LFRA does not consider that deferring to these plans is a strong direction for better retail planning.

Furthermore, the GSC has failed to take into account the findings and recommendations of the *'REAC Report'*, which was specifically commissioned to provide independent advice on reforms to improve the NSW planning system as it relates to retail. Specifically, the GSC fails to address *"...step 1..."* on *'page 8'* of the report which requires a framework that *"...addresses impediments to supply by*

¹ *'Sydney Retail Demand and Supply Consultancy'*, Deep End Services, 2016

enabling access to more sites for retail uses, both by increasing the availability of existing suitable land stock and the ability to readily convert sites to keep up with demand and create new employment opportunities...". By failing to proactively plan for the Large Format Retail sector, recognising existing Large Format Retail centres within the '*centres hierarchy*' and creating barriers that will prevent spot rezonings (as discussed below) for new Large Format Retail developments, it provides greater impediments to the supply of Large Format Retail floorspace.

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*'.

As mentioned previously, due to a shortage in available land, many LFRA members are required to undertake a Planning Proposal to rezone land to make it suitable for Large Format Retail. Planning Proposals require strategic justification and alignment with strategic planning documents. The difficulty in strategically justifying these proposals is that to plan for Large Format Retail in the same way that other retail premises are planned for fails to recognise the key differences and diversity of the sector.

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 style="list-style-type: none"> 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. 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.
Directly opposite a residential catchment accessible by a controlled pedestrian crossing.	<ul style="list-style-type: none"> 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. Locating a Large Format Retail cluster near to a residential catchment with pedestrian access is redundant, as Large Format Retail purchases are not everyday transactions that require immediate access.
More than a standalone supermarket.	<ul style="list-style-type: none"> 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. 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.	<ul style="list-style-type: none"> 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.	<ul style="list-style-type: none"> 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.

Given **'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 LFRA's position on this particular issue was verified within its *'Investment + Competition = Jobs'* report. In particular, the LFRA found that The Institute of Public Affairs had expressed the view that the application of restraints presented by activity centres policies have become the means by which shops and shopping centres are protected from competition.

Furthermore, over the past nine (9) years, the Productivity Commission has undertaken a number of inquiries and released four (4) reports that particularly make comment on the effects of planning and zoning legislation upon competition, and the economic performance of the retail industry. The most recent, *'Shifting the Dial'* released in August 2017, assesses 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. This document is the first of its kind and the process involved to produce the report is 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 DP&E 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, the planning system should not ignore the role of the Large Format Retail sector, that due to its land area requirements and vehicular access requirements are not suitable for many *'centre'* locations.

The GSC has failed to engage with the Large Format Retail sector. The GSC has not responded to any of the research or submissions prepared by the LFRA to demonstrate the importance of the sector in terms of providing employment and economic outcomes for Sydney. These issues have been raised previously with the GSC and it was the hope of the LFRA that they would have been addressed in the final versions of the *'Regional'* and *'District Plans'*.

Given the above, the LFRA considers that the policy direction entitled *'Better Strategic Planning for Retail'* will not achieve positive outcomes for the Large Format Retail sector if it responds solely to the *'District'* and *'Regional Plans'*, as:

- It provides too much weight on what the LFRA considers to be the highly deficient *'District'* and *'Regional Plans'*;
- This *'one size fits all'* approach to new centres creation, disadvantages forms of retail which are not as compatible with the vision for centres as other fine-grain, every day retail;
- No existing strategic planning documents identify suitable locations for the Large Format Retail sector to expand; and
- Large Format Retail typically does not meet the objectives required to strategically justify new land through Planning Proposals due to the requirement for the sector to be treated as part of the general retail sector existing in Sydney's existing centres.

5.3 Recognising and Proactively Planning for Large Format Retail

The LFRA agrees with the intention of retail policy to achieve better local strategic planning for retail. However, as outlined in **'Section 2.2'**, to rely and respond to existing strategic planning policy within the *'District'* and *'Regional Plans'* will fail to achieve positive outcomes for the Large Format Retail sector.

Any future retail policy will need to recognise and proactively plan for the Large Format Retail sector. It will 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.

Any retail narrative needs to recognise Large Format Retail. The *'REAC Report'* (*'Page 7'*) acknowledges this *"...new thinking..."* and recognises that *"...complementary business zone 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 LFRA encourages any Retail Planning Policy to guide Councils on how to recognise and proactively plan for suitable sites for the expansion of the sector.

In terms of how this could be enacted, the LFRA agrees with the recommendations of the *'REAC Report'*, which seeks to amend the *'Standard Instrument LEP'* to prioritise retail in the business zones, review and consolidate the existing zones and broaden their permissible use. Key measures recommended include:

- Introducing a broader zoning framework – by collapsing and redrafting the standard instrument's business zones;
- Increased mandated permissible retail uses within zones and across local government areas to improve flexibility;
- A review of all standard definitions relating to retail; and

- Review the use and application of industrial zones to maximise opportunities as employment locations through the creation of a new 'employment zone'.

Further to the above, the LFRA agrees with the 'REAC Report' that the DP&E should provide updated best practice planning guidance on a range of common retail issues such as ancillary use and out of centre development.

5.4 Future LEP Provision for 'Emerging Retail'

The NSW planning system is extremely prescriptive, and as such is not responsive to the introduction of new entrants into the market. This position is supported in the 'REAC Report' which acknowledges that over regulation prevents innovation and new emerging business. The 'REAC Report' further states on 'page 16' that: *"...anecdotal evidence, including feedback received during the Committee's consultations, suggests that a range of planning policy consequences has constrained the ability for shopping centres to evolve, and for emerging and other retail opportunities to establish in NSW. Planning policies and the supply of suitable land have not kept pace with a rapidly changing retail environment, community needs and simple population growth..."*. In addition, the 'REAC Report' reflected the need for a planning system that was responsive, flexible and adaptive to emerging retail trends by highlighting this position as a key issue under 'Retail Driver 5'. Whilst this 'Retail Driver' specifically related to mixed use areas, as highlighted in 'Section 3.0' above, the Large Format Retail sector is also 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.

The LFRA's position in relation to the 'centre' focused 'Regional' and 'District Plans' is outlined in the preceding sections and welcomes the recognition that *"...there is an increasing trend toward the establishment of large-format sites with diversified offerings, and other changing land uses that require sites outside of the traditional centres hierarchy..."*.

However, the proposed 'Plan for New Retail' on 'page 31' simply re-states the criteria that is contained within the 'Regional' and 'District Plans'. 'Section 3.2' of this submission clearly demonstrates that these criteria should not be used to determine whether Large Format Retail Centre should be considered 'new centres'.

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...”.

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. 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...”.

The NSW 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 DP&E, to adopt an ‘*innovation in retail*’ provision when formulating a flexible NSW Retail Planning Policy. However, instead of evaluation against how a proposal aligns with strategic planning objectives, matters to consider could include:

- 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 'fit'; and
- the evaluation of the matters considered in 'Section 4.15' of the 'Environmental Planning & Assessment Act'.

5.5 Simplification of Business Zones

The LFRA **supports** the introduction of flexible, open zones. We note that the proposed amendments to the 'Standard Instrument LEP', including the introduction of the 'Specialised Retail Premises' definition that is being exhibited simultaneously to this 'Discussion Paper' will assist in alleviating previous barriers for Large Format Retail premises to be permissible in particular land use zones. Notwithstanding this, our members appreciate the ability to provide flexible combinations of uses which will assist the sector in being able to respond to significant disruptions and changes to consumer expectation in the market.

The LFRA agrees that introducing open zones would:

- Provide greater flexibility and enable a proposal to be assessed on its merits;
- Allow for new types of retail uses to emerge and be assessed, without the need to periodically update the list of permissible uses; and
- Reduce the instances of a site-specific planning proposal being required where a proposal is captured as prohibited because it was not included in a permitted list (closed zone).

This proposal will assist our members who are looking for more flexibility in terms of retail formats such as small supermarkets in Large Format Retail zones.

Furthermore, we note that in Victoria, the 'VC100' amendment (July 2013) removed the five (5) existing Business Zones and replaced them with two (2) new Commercial Zones. The rationale for the proposed amendment was to:

- Provide greater flexibility and growth for retail (as well as commercial and other forms of development);
- Enable the planning framework to respond to a growing and changing retail market;
- Provide incentives for investment and use of the planning system as an economic lever;
- Increase retail opportunities generally;
- Open up competition;

- Provide certainty; and
- Maintain the competitive advantage that Victoria currently enjoys.

Anecdotally, this has allowed new operators to enter the market with relative ease in terms of identifying potential sites and has increased the volume of land available that is suitable for ‘*Restricted Retail Premises*’. It should also be noted that the ‘*Restricted Retail Premises*’ definition, has continually evolved which has, to some extent, enabled innovation.

5.6 Floor Space Caps

Whilst the LFRA supports the introduction of flexible, open zones as discussed in ‘*Section 3.5*’, it is noted that the ‘*Discussion Paper*’ proposes that Council’s using a strategic planning framework to control permissibility and that Development control plans can be aligned with this intent by setting place-based controls.

‘*Investment + Competition = Jobs*’ investigated the use of fine grained controls such as floorspace restrictions to limit or control development. The research found that some NSW Councils still apply a minimum tenancy size to Large Format Retail, or a maximum floorspace limit. The application of floorspace restrictions on retail uses, and in particular Large Format Retail uses is considered anti-competitive. In short, they date easily and can result in poor design outcomes. It should also be noted that in Victoria, floorspace restrictions that were previously put in place, were removed in 2012.

The LFRA **strongly does not support** the use of floor space caps in ‘*LEPs*’ or the imposition of other restrictive controls to control permissibility.

Further, we wish to draw your attention to ‘*Section 8.4*’ of the Productivity Commission’s report on the ‘*Economic Structure and Performance of the Australian Retail Industry*’, (December 2011):

“...Prescriptive Local Planning Restrictions on Retailers

To meet evolving product market requirements, store formats must also be allowed to adapt. Restrictions on store formats impact on a retailer’s ability to adapt to new competition and changing consumer preferences within the market.

The Commission’s recent benchmarking report identifies that even where businesses are allowed to operate in a particular locality — because their business model is consistent with the overarching activity centre policy or zone description — they then face a raft of local planning restrictions. This regulatory overlap arises because the legal framework for zones is at the state and territory level, but the detailed specification of zones is at the local level.

It is recognised that at times restrictions on competition may be required to achieve the objectives of the planning system, such as public amenity or

equitable access to facilities and services. This is because commercial businesses are usually focused on the private costs and benefits of a development or planning proposal and may not necessarily consider the public environmental, social or economic costs and benefits associated with their decisions. Consistent with this rationale for government intervention, Stockland suggests:

... local governments should focus on those issues with external impact (either on the community or sites) such as traffic, servicing, noise, overshadowing where such issues impact public space or adjoining site amenity. (sub. DR203, p. 3)

Nonetheless, there are large numbers of prescriptive requirements which can be found in approved council plans in some or all jurisdictions which appear to unjustifiably or needlessly restrict competition, including:

- *restrictions on business type (defined retail categories) allowed in particular zones in some council plans in New South Wales, Victoria and Western Australia*
- *site-specific restrictions on type and size of businesses allowed*
- *restrictions on business numbers (maximum) for different activities*
- ***restrictions on business size via use of floor space minimums and/or caps in all states and territories, but particularly in the ACT and some councils in Victoria and South Australia***
- *restrictions on business location (zones for individual retailer types)*
- *restrictions on business mix (floor space ratios)*
- *detailed specifications on aspects such as the internal fit-out of developments, landscaping, advertising signage, and the minimum provision of vehicle and bicycle parking (PC 2011b).*

Many of these local restrictions limit business expansion opportunities and capacity to compete. At worst, they may even discourage or prevent some businesses from entering the market in the first place. For example, restricting competition by placing limits on the number of a type of business that can establish in a particular geographic area or activity centre can have a number of adverse consequences. Protected from localised competitive pressure, incumbent businesses have greater incentive and more opportunity to charge higher prices and/or offer a lower quality..."

The full report can be accessed via the following link:

<http://www.pc.gov.au/inquiries/completed/retail-industry/report>

However, in 2012, the Victorian Government introduced the 'VC88' amendment that removed floorspace restrictions for 'Restricted Retail Premises' (the Victorian equivalent of the NSW definition for 'Bulky Goods Premises' in particular zone and broadened the types of goods that could be sold at 'Restricted Retail Premises'. The rationale for the change was to reduce regulatory burden, minimise economic restriction through statutory planning controls and allow more retail diversity and growth to meet the future interests of Victorians.

The changes to the '*Restricted Retail Premises*' definition was one of a number of changes over the past 20 years that has enabled the planning system in Victoria to evolve with the sector and provide certainty for investment. The removal of the floorspace restrictions has shown to provide flexibility to the market.

6.0 Conclusion

The LFRA welcomes this opportunity to make comment on the DP&E's Discussion Paper '*Planning for the Future of Retail Discussion Paper*'. The Large Format Retail sector has faced 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 grow 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.

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 proposed amendments to the '*Standard Instrument LEP*' make positive contributions to recognising this diversity, however any retail policy needs to recognise the Large Format Retail sector also.

This submission has reiterated the deficiencies in the GSC's '*Regional*' and '*District Plans*' in that they fail to recognise the Large Format Retail Sector. The Plans consider 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. Due to the scale and function of Large Format Retail, these premises are not always compatible with centres as envisaged by the GSC and therefore may act as a barrier to the future delivery of Large Format Retail floorspace that is in high demand. In the absence of this strategic planning, the LFRA encourages the DP&E to proactively plan for the delivery of Large Format Retail floorspace in any future Retail Planning Policy.

In the '*Implementation Plan*' appended to the '*REAC Report*', it recommends that the timeframe for the development and exhibition of a Retail Planning Policy should be six (6) months from the adoption of the report in November 2017. The LFRA is willing to work with the DP&E to assist them in meeting this recommendation as closely as possible.

In the view of the LFRA, future Retail Planning Policy in NSW needs to provide a clear set of guidelines to local Councils that are consistent on how they should provide sufficient amount of floorspace for all types of retail, but most importantly, Large Format Retail.

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