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

BB3 (CIS)

17 May 2018

Dear Sir/Madam,

**RE: PLANNING FOR THE FUTURE OF RETAIL –  
Discussion Paper & Proposed Amendments to the Standard Instrument  
LEP**

Council would like to thank the Department of Planning and Environment (DPE) for the opportunity to provide comments on the *Planning for the Future of Retail – Discussion Paper* (Discussion Paper) and associated proposed amendments to retail definitions and provisions under the Standard Instrument Local Environmental Plan (SI LEP).

Whilst generally supportive of the directions outlined under the Discussion Paper and proposed amendments to the SI LEP, Council has identified a number of issues that require further clarification, investigation or amendment. The issues identified by Council are discussed in turn below.

## **DISCUSSION PAPER**

The Discussion Paper has been prepared to inform the *NSW Retail Strategy* and sets out the contemporary policy challenges relating to land use, statutory and local planning for retail premises. Three directions have been proposed with the aim to modernise the retail planning framework.

### Comment:

#### **Direction 1 - Better local strategic planning for retail**

No objection is raised with regard to the intent of *Direction 1* as it will provide a direct line of sight between the regional, district and local environmental plans greatly improves clarity and transparency.

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

No objection is raised with regard to the intent of *Direction 2* as it assists in managing the growth of emerging retail centres outside of traditional retail centres.

### **Direction 3 - Providing adaptability and certainty for retail**

The Discussion Paper suggests that there is very little consistency in permitting retail development across the state and that increased flexibility should be incorporated to enable emerging retail types to be permitted without going through the lengthy LEP amendment process.

It is proposed to address these issues by:

- ***Open ended land use tables*** – Incorporating “open ended” permissibility land use tables for business zones (i.e. anything that is not specifically identified as prohibited is permitted with consent) within the SI LEP. It is intended that such an amendment is adopted when councils are required to undertake a comprehensive review of their LEPs. This is seen as a long term solution.
- ***New retail definitions*** – As an intermediary step, that a number of new retail definitions under the SI LEP be incorporated in conjunction with a number of existing definitions to be revised to address existing shortfalls where planning is not adequately serving retail functions.
- ***Permitting undefined land use terms*** - introduction of a new provision to enable an undefined land use term to be evaluated and potentially permitted where it can clearly demonstrate alignment with the retail narrative and strategic planning objectives and no adverse environmental or amenity impacts occur. Feedback is sought on whether, with suitable safeguards and established criteria, a test could be put in place against which the value of a proposed unanticipated, undefined or prohibited (because of a closed zone) use could be evaluated.

#### ***Open ended land use tables***

Whilst it is acknowledged that a move towards the use of “open ended” land use permissibility tables provides more flexibility, it also has the potential to reduce certainty over what will actually be permitted in a particular zone. For example, it could be argued that a new type of industrial type of activity that is not particularly defined could be permitted in a business zone, even it is contrary to the objectives of the zone.

In addition, it would be difficult for some users of the document (namely developers and property owners) to determine what is actually permissible, given the need to understand the hierarchy of land use terms. Merely identifying a group term does not make it readily apparent that sub-terms are also included. For example, if retail premises are prohibited in a zone, and a proponent sought approval for a neighbourhood shop, there is no direct link in the definitions between a neighbourhood shop and retail premises, other than reviewing the definition of shop.

The current use of group and sub land use terms under the SI LEP already provides some level of flexibility with regard to undefined terms. It is considered that the number of unforeseen land use types would be very small and could easily be addressed in concurrent regular reviews of the SI LEP template.

#### ***New retail definitions***

New retail definitions are discussed in the next section of this submission.

### ***Permitting undefined land use terms***

The suggested proposal to introduce a local provision to allow undefined or unanticipated land uses would be a better alternative than using “open ended” land use tables. However, this would be subject to setting appropriate criteria as the DPE has suggested.

It is noted that Warringah LEP 2000 generally does not prohibit any land use types, however permits certain development types under different assessment streams. If this approach was pursued, then the criteria for the worst development stream (Category 3) could be incorporated. In particular, the assessment criteria included that development for Category 3 purposes be accompanied by a Statement of Environmental Effects addressing a number of matters listed in a schedule to the LEP and that the proposal should be the subject of a public hearing.

## **SI LEP AMENDMENT – RETAIL DEFINITIONS & PROVISIONS**

The proposed amendments include the following:

- A new definition for ***artisan premises***
- An amended definition for ***garden centres***
- A new definition for ***local distribution premises***
- A new definition for ***neighbourhood supermarkets***
- An amended definition for ***bulk goods premises*** to be known as ***specialised retail premises***

No objection is raised with respect to the amendment of the definition of ‘garden centres’ or the amendment of the definition of ‘bulky goods premises’ and renaming to ‘specialised retail premises’.

However, further amendment and clarification is required with respect to the proposed definitions of ‘artisan premises’, ‘local distribution centres’ and ‘neighbourhoods supermarkets’.

### ***Artisan premises***

It is suggested that the following new definition be incorporated into the SI LEP:

*Artisan premises means a building or place used to produce and/or process foods and beverages on site without being fully automated.*

*It can also include:*

- a) *A restaurant or café;*
- b) *Tastings;*
- c) *Tours;*
- d) *Sales; and*
- e) *workshops*

It is also acknowledged that ‘artisan premises’ will form a sub-term of ‘light industry’ which are mandated as permissible with consent in the *B6 Enterprise Corridor*, *B7 Business Park*, *IN1 General Industrial*, *IN2 Light Industrial* and *IN4 Working Waterfront* zones under the SI LEP. It is also suggested that it may also be appropriate to allow ‘artisan premises’ in the *B5 Business Development* zone, but this change is not mooted at this stage.

### Comment

The proposed definition includes the use of the term ‘restaurant or café’. This land use term is defined elsewhere in the SI LEP and may create confusion as to what is being permitted.

There needs to be further clarity that any associated ‘restaurant or café’ forms an ancillary component of the development and not taken to be the primary purpose. This could be achieved by either:

- 1) replacing the term ‘restaurant or café’ with the serving of food or beverages for consumption on site; or
- 2) amending the proposed definition (insertions underlined), such that an ‘*artisan premises means a building or place principally used to produce and/or process foods and beverages on site without being fully automated. An artisan premises may also include: restaurant or cafe; ...*’; or
- 3) including a new definition for ‘artisan restaurant or café’ in a similar manner to ‘industrial retail outlet’, and include further restrictions within clause 5.4 of the SI LEP that restricts the level of floor area (via a sqm rate or a %) that the artisan restaurant or café may occupy.

There is also needs to be some further clarification given to ensure that some forms of artisan premises (i.e. micro-breweries) are not being primarily used as defacto ‘small bars’ or ‘pubs’.

### ***Local Distribution Premises***

It is suggested that the following new definition be incorporated into the SI LEP:

***Local distribution premises means a building or place used for storing or handling items purchased or ordered for local delivery, but from which no retail sales are initiated.***

It is initially proposed to permit local distribution premises wherever ‘warehouse and distribution centres’ are permitted. This will be achieved by making ‘local distribution premises’ a sub-term of ‘warehouse or distribution centres’. Currently, they are mandated as permissible with consent in the *B5 Business Development, B6 Enterprise Corridor, B7 Business Park, IN1 General Industrial, IN2 Light Industrial* and *IN3 Heavy Industrial* zones under the SI LEP.

### Comment:

There is very little difference between the proposed definition of ‘local distribution premises’ and ‘warehouse or distribution centres’. Warehouse or distribution centres are currently defined as follows:

***warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made***

The only apparent difference is that the goods are for ‘local delivery’. It will be difficult to quantify what a ‘local delivery’ will entail and leaves the definition open to interpretation.

The intensity and extent of the delivery service will depend on the scale of the business that is undertaking the deliveries.

Further clarification is required in this respect. This could be achieved by placing a limitation on the size of the distribution facility, whether that relates to the size of the site, gross floor area, size of delivery vehicles servicing the site, catchment of deliveries or a combination of these. These restrictions could be incorporated into clause 5.4 under the SI LEP.

### ***Neighbourhood Supermarkets***

It is suggested that the following new definition be incorporated into the SI LEP:

*Neighbourhood supermarkets means a shop selling food and other household items where the selection of goods is organised on a self-service basis.*

It is also proposed to mandate 'neighbourhood supermarkets' as permissible with consent in all zones where 'shops' are permissible with consent under the SI LEP (i.e. *B2 Local Centre, B3 Commercial Core, B4 Mixed Use and B8 Metropolitan Centre* zones) and to mandate them as permissible with consent within the *B1 Neighbourhood Centre* zone.

It is also proposed to incorporate a new sub-provision under clause 5.4 to limit the size of neighbourhood shops to a maximum of 1500sqm (GFA).

### **Comment**

No objection is made with regard to where neighbourhood supermarkets are to be permitted with consent under the SI LEP.

Council sees the benefit in introducing a restriction on the size of a 'neighbourhood supermarket', as it would greatly increase certainty for developers, council and the wider community. However, Council does not support the suggested maximum size.

No justification has been provided for the establishment of the maximum floor space requirement at 1,500sqm of GFA. It is noted that the Regional and District Plans are supported by the outcomes identified within the *Sydney Retail Demand and Supply Consultancy*. This document identifies that there are 2 scales of supermarket – those in excess of 1,000sqm in area (i.e. a supermarket) and those which are less than 1,000sqm in area (i.e. neighbourhood supermarkets). This sizing is also reflected in the North District Plan. For the purposes of consistency and clarity it is strongly recommended that the maximum requirement for the floor space of a neighbourhood supermarket be reduced to 1,000sqm to align with the intent of the vision under the Regional and District Plans.

Consideration should be given to introducing a definition of 'supermarket' in conjunction with 'neighbourhood supermarket'. These definitions should form a sub-type of 'retail premises', instead of a 'shop'. This would help differentiate between large scale shops and low scale shops, where the overall impacts of the use can be quite different (e.g. higher parking rates may apply to a supermarket in comparison to a specialised shop, where patron frequency is much higher). This could also help further assist councils in controlling the scale of retailing facilities within their LGA.

It is noted that 'neighbourhood shops' also form a sub-term of 'shop' and are differentiated from normal 'shops' by restrictions under clause 5.4(7) to the SI LEP. The SI LEP suggests that a maximum rate of not less than 80sqm shop be applied. Of the 31 SI LEP instruments operating the Sydney Metropolitan Area:

- 19 adopt a maximum rate of 80sqm;
- 1 adopts a maximum rate of 90sqm;
- 14 adopt a maximum rate of 100sqm;
- 2 adopt a maximum rate of 200sqm; and
- 1 adopts a maximum rate of either 300sqm or 400sqm depending upon where the neighbourhood shop is located.

It is clear that the maximum adopted rate is typically between 80 and 100sqm. This would indicate that a neighbourhood shop is of a very small scale. This is principally due to neighbourhood shops being mandated as a permissible use within the *R3 Medium Density Residential* and *R4 High Density Residential* zones, where the impact of such uses need to be more controlled due to potentially higher levels of impact. However, there is also a need to allow other generally small scale shops (e.g. greater than 80sqm but less than 1,000sqm) in zones such as the *B1 Neighbourhood Centre* zone, where full sized supermarkets may not necessarily be appropriate. This demonstrates that the definition of 'shop' is too broad in its current form, and that supermarkets, regardless of size, should be removed from the definition of 'shop', to provide councils greater control over establishing retail hierarchies to align with Regional and District Plan priorities and objectives.

If you have any further queries, please contact Ben Boyd of Council's Strategic Planning Department on 9936 8100.

Yours sincerely,



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