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Contact Officer: David Ongkili - 9093 6793

6 June 2018

Ms Alison Frame
Deputy Secretary,
Policy and Communications,
Department of Planning and Environment
GPO Box 39 Sydney NSW 2001

Attention: Mr Michael Murrell

Dear Ms Frame,

RE: PLANNING FOR THE FUTURE OF THE NSW RETAIL SECTOR

I refer to the Department of Planning and Environment's (DPE) review of the NSW retail planning sector as outlined in the *Discussion Paper – Planning for the future of retail*, April 2018, and the proposed amendments to the Standard Instrument LEP. Council submits the following comments for consideration in the review process.

Council notes that the Review basically has two approaches: firstly, it outlines three potential future strategic directions for retail planning. Secondly, it proposes 5 initial amendments to the Standard Instrument LEP land use definitions to remove "impediments within the planning system" to current changes in the retail sector. This submission responds to these two approaches separately.

Firstly, Council's response to the DPE's strategic directions for retail planning is as follows:

Potential Directions for Retail Planning

Direction 1: Better local strategic planning for retail

Council supports the role of strategic planning in local councils in planning for the future retail development in local government areas. Retail guidelines should be provided by the DPE to assist Councils to develop retail narratives within the broader local strategic planning statements which Councils will be required to prepare in 2019 to set out the vision for land-use in their local area. However, Councils should also be given reasonable autonomy to determine how best to accommodate new retail formats; assess local impacts on existing public infrastructure, access to jobs, services and transport; and evaluate the role of retail in the economy of existing centres and their vibrancy. This will then allow Councils the choice of tailoring their retail strategy to local circumstances. Council welcomes the emphasis on strategic planning for retail and will seek to carry out useful work to build the data and evidence base for future planning for retail in Randwick especially when reviewing its local environmental plan in the future.

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

Council supports the principle of a broader approach to planning for centres so that a wider range of retail formats can be introduced within existing centres. In particular, Council

would request that consideration be given to promote non-retail activities such as live entertainment, arts, dining facilities and small bars both in the daytime and in the evening. This is especially relevant for Randwick Council as it embarks upon a Night-time Economy Strategy for the LGA.

Council has noted through its economic studies for town centres, that a key driver for changes in retail trends in town centres in Randwick City is for:

- more frequent shopping trips (largely associated with the shopping expectations future demographics of the Randwick's Hospital & University Campus) and
- a renewed trend towards convenience shopping formats and increased shopping locally within local centres.

Council looks forward to raising these issues with the DPE as Council develops its retail strategy within the local strategic planning statements process in the future.

Direction 3: Adaptability and certainty for retail

Council understands the need to amend and streamline statutory controls to reflect the needs of a contemporary retail sector. Streamlined consent processes will need to be considered for a range of uses that can support planning for retail and centres, including as raised above, non-retail activities such as live entertainment, arts and dining facilities in the daytime and in the evening, and new innovative night-time economy businesses that would be compatible in local centres. The broader implications of this approach in terms of impacts on residential uses should also be considered as part of any review of statutory controls.

Additionally, Council raises concern regarding the existing multiplicity of retail uses that can be carried out as "retail premises" under the current Standard Instrument definition and the fact that each of these retail uses are also separately defined in the Standard Instrument such that when applied to relevant permitted zones they can be open to a wide, if not confusing, range of interpretation. This is further complicated by another layer of multiple definitions for related generic terms like "business premises", and "commercial premises". This confusing hierarchy of definitions can often result in retail uses that, while permissible in a particular zone, are, nevertheless, incompatible with relevant objectives of that zone. This has been Council's experience in a recent Land and Environment Court approval of a development application for the establishment of a Dan Murphy's retail liquor store in an existing commercial building in a Residential R3 zone in Coogee. In that case, the Court upheld that such a use, despite Council's submission that the size of the facility at almost 1,000 sqm would be more akin to a supermarket in scale and impact in terms of traffic and environmental amenity.

Council would point out some implications for the current retail review arising from this Court case:

- The Standard Instrument definition of a shop is too broad to allow for a meaningful application of the use relative to differing urban contexts. There should be a more refined definition of shops that distinguishes the appropriate urban context that they would be suited to. As it stands, the current definition merely defines shops by the type of merchandise for sale and, rather disparately, adds a provision that the definition also *"includes a neighbourhood shop"*. The Court may well have considered this view when it ruled that the patronage of the proposed retail liquor shop would be from the neighbourhood notwithstanding that the size of shop footprint at approximately 1000 sqm could well draw customers from beyond.
- The Court also upheld that shops are not a "business use" given the separate, but not unrelated, Standard Instrument definition of "business premises". In this

regard, Council argued that the proposed retail liquor shop was inconsistent with one of the R3 Zone objective, namely *"to enable small-scale business uses in existing commercial buildings"* as the proposal is a large scale business use. The Court, however, found that the proposed shop did not constitute a "business premises" but a "retail premises", and, more significantly, that *"there is no requirement to compare this proposal with another shop to appreciate (its) scale and that there is no requirement in Council's LEP instrument for a comparison of liquor stores in the area. Nor does it require a comparison of the floor space of other shops or traffic numbers."* In summary, the review of retail planning should ensure that clear and adequate definitions and controls are put in place to prevent large retail premises and their associated traffic and amenity impacts in residential neighbourhoods.

- The classification of large packaged liquor outlets as shops also allows for a change of use under the complying development regime and as such there is no mechanism by which to consider the social impacts arising from the potential introduction of a new liquor licence into an area

Council notes that one possible approach to allow for greater flexibility for new retail uses to be approved in existing town centres proposed by DPE is the introduction of a new category of "open zones". The Discussion Paper states that "open zones" would, among other things, *"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)"* by allowing *"... a proposal to be assessed on its merit" ... "without the need to periodically update the list of permitted uses (in existing "closed zones")"*. Council requests that more consideration should be given to the implications of diluting existing zoning controls in LEPs, and consultation with Councils be undertaken, before any use of "open zones" is adopted.

The new / amended land uses

The DPE's second approach is to make five initial amendments to the Standard Instrument LEP land use definitions as follows:

- 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'*; and
- an amended definition for *'bulky goods premises'* to be known as *'specialised retail premises'*

This section evaluates the implications of proposed amendments to the land use zoning, in particular, as they relate to Randwick LGA.

• Artisan Premises

Artisan Premises are proposed to be defined as:

A building or place used to produce and/or process foods and beverages on site, without being fully automated.

It can also include:

- a restaurant or café;*
- tastings;*
- tours;*
- sales; and*
- workshops*

Artisan Premises are intended to support emerging production/processing of boutique, craft or artisan foods or beverages. While the economic benefits in encouraging this new and emerging use are commendable, Council notes that the proposed definition of this use makes no references to the word "artisan or boutique" nor are there any restrictions on these specific uses within premises. Without these references and restrictions, the proposed definition would be applicable to all buildings used to produce and/or process food and beverages onsite, if not fully automated.

The Discussion Paper states that "initially" it is proposed to make artisan premises "*permissible wherever light industry is permissible*". Concern is raised that, should this proposed use be made permissible later in other zones, the adoption of the proposed definition would allow all buildings or places to be used in other zones to produce/process food and beverages on site, if not fully automated. Council recommends that any definition of Artisan Premises be specific to avoid uncertainty and prevent the proposed use being interpreted and applied broadly.

In the Randwick LEP 2012, light industries are permissible in the IN2 Light Industrial zone with consent. Among other things, "*food and drink premises*" are prohibited in Council's IN2 zone. "*Food and drink premises*" are defined as:

"food and drink premises" means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

In effect, restaurants and cafes are currently prohibited within Council's IN2 Light Industrial Zones. As the draft definition of Artisan Premises does not specify that the use '*produce and/or process foods and beverages*' must be the principal use within the building or place it is used for, it could be used to circumvent any current planning controls that prohibit restaurants and cafes in a zone where artisan premises are permitted.

- **Neighbourhood Supermarket**

The Discussion Paper proposes the introduction of a new land use, *Neighbourhood Supermarket*, which would be restricted to a maximum size of 1,500 sqm and would be made permissible in the B1 Neighbourhood Centre zone. The definition proposed is:

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

The intention is to enable small format local supermarkets that would generally be larger than the neighbourhood shops that are permitted in that zone which are restricted in size by local planning controls.

Currently, the Randwick LEP 2012, "shops" are permissible in Council's B1 Neighbourhood Centre zone, and shops are defined as:

"shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop, but does not include food and drink premises or restricted premises."

Currently, there are no restrictions on the size of shops in Council's B1 Neighbourhood Centre zone. Existing shops within this zone are typically small scale of roughly 80-100 sqm in size. The introduction of the proposed Neighbourhood Supermarket use in B1 Neighbourhood Centre with a proposed maximum of 1,500 sqm will create local issues in terms of traffic, parking, service and delivery impacts. Council suggests that the new land use, *Neighbourhood Supermarket*, may not be warranted as Council can consider supermarket proposals in B1 zones under the existing landuse category "shops" and take local issues into account in the development assessment process. This will allow Council to assess any increases in floor area for shops having regard to local impacts in terms of traffic, parking, service and delivery related impacts associated with supermarkets.

Lastly, the proposed definition of *Neighbourhood Supermarket* appears to contradict an important mandated objective for the B1 Neighbourhood Centre zone which is:

"To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood."

Whilst the word '*neighbourhood*' is used in the name of the proposed use, there are no provisions in the definition that would limit the sale of the food and other household items sold from the premises to those required to "*serve the needs of people who live and work in the surrounding neighbourhood*".

• **Specialised Retail Premises**

It is proposed to replace the current definition of Bulky Goods Premises with a new definition as follows:

Specialised Retail Premises

A building or place used to sell, display or hire:

- a) Automotive parts and accessories;*
- b) Camping, outdoor and recreation goods;*
- c) Electrical light fittings;*
- d) Animal supplies;*
- e) Floor, wall and window coverings;*
- f) Furniture, bedding, furnishings, fabric and Manchester and homewares;*
- g) Household appliances, household electrical goods and home entertainment goods;*
- h) Party supplies;*
- i) Swimming pools and spas;*
- j) Office equipment and supplies;*
- k) Baby and children's goods, children's play equipment and accessories;*
- l) BBQs, fireplaces and gas appliances;*
- m) Sporting, cycling, leisure, fitness goods and accessories; or*
- 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 does not include the sale of food, clothing or footwear unless it falls into one of the above categories.

Currently, "bulky goods premises" is defined in the Standard Instrument as:

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 weight 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.

The new definition aims to broaden the definition of bulky goods premises to address the needs of contemporary large format retailing. Council notes that the proposed definition lists the goods by type and replaces the term "bulky goods premises" with a list of specialised retail premises numbered (a) to (m) and a generic catch-all "Goods and accessories" premises numbered (n). The effect of this is that the new use will allow for the sale display or hire of all or one or some of the goods listed from a) to m) in a shop of any size regardless of whether or not the use requires "a large area for handling, display or storage of goods" or "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". Council is concerned that this combination of a number of "specialised retail premises" listed (a) to (m) and one generic premises listed (n) has the potential to create confusion in interpretation in any future LEP. It will also have critical planning impacts in Council's areas as the proposed *specialised retail premises* do not appear to be tied to any particular zone and, in fact, has a wide-ranging application.

Currently, for example, bulky good premises is prohibited in Council's IN2 Light Industrial Zones in line with one of the mandated objective of the zone which is:

"To support and protect industrial land for industrial uses"

The proposed amendment potentially undermines this objective.

Respectfully, Council request that DPE carefully consider the ramifications of combining 13 specialised retail premises (listed (a) to (m) in the proposed definition and one generic retail premises listed as (n) in the proposed amendment to the Standard Instrument as the application of these uses in Council areas will raise significant interpretation issues. Accordingly, it is requested that DPE undertake an all-round and wider review of the all the different types of "retail premises" definitions under the Standard Instrument before making substantive changes to one development type in the manner proposed.

D Garden Centre

The Discussion Paper proposes an amended definition for Garden Centre as follows:

A building or place where the principal purpose is the sale of:

a) plants; and/or

b) landscaping and gardening supplies and equipment

A garden centre may also include a restaurant or cafes and the sale of:

- a) Outdoor furniture and furnishings;*
- b) Barbecues;*
- c) Shading and awnings;*
- d) Pools, spas and associated supplies;*
- e) Items associated with the construction, maintenance and improvement of outdoor areas;*
- f) Pets and pet supplies;*
- g) Fresh produce*

The Discussion Paper states that the proposed amendment is necessary to restructure the definition to clarify principal and contemporary uses. It replaces the term 'ancillary', lists the uses that may be associated with a garden centre and restructures the definition to remove ambiguity."

The current definition of "garden centre" under the Standard Instrument is:

garden centre means a building or place the principal purpose of which is the retail sale of plants and landscaping and gardening supplies and equipment. It may, if ancillary to the principal purpose for which the building or place is used, include a restaurant or cafe and the sale of any the following:

- (a) outdoor furniture and furnishings, barbecues, shading and awnings, pools, spas and associated supplies, and items associated with the construction and maintenance of outdoor areas,*
- (b) pets and pet supplies,*
- (c) fresh produce.*

Council raises concern that the proposed definition deletes the word "retail" from the current Standard Instrument definition which removes the current requirement that the sale from such centres be restricted to retail sales. This will potentially lead to an additional whole-sale format for such centres carrying with it added environmental impacts including traffic and parking. Furthermore, the proposed definition replaces the word "and" with the "and/or" so that, in effect, overall, a garden centre can be a centre solely for the whole-sale sale of plants or landscaping material. This issue is of particular concern to Randwick Council as the Randwick LEP 2012 permits "garden centres" in Council's B1 Neighbourhood Centre and B2 Local Centre zones.

Council notes also that the proposed definition includes the removal of the word "ancillary" from the current Standard Instrument definition so that, in effect, there will be no restrictions on the proportion of space/activity allocated to restaurants, café, outdoor furniture and furnishings; barbecues; shading and awnings; pools, spas and associated supplies; items associated with the construction, maintenance and improvement of outdoor areas; pets and pet supplies; and fresh produce. As such, the proposed definition will have significant interpretation issues and planning implications for development in Council's B1 and B2 zones. Additionally, the removal of the word "ancillary" runs counter to how this word is commonly used in the definition of other land uses in the Standard Instrument.

Overall, Council is of the view that the current definition of "garden centre" suffices as the proposed rewording of the definition would be counterproductive to the retail industry and leads to misinterpretation in its application.

- **Local Distribution Premises**

The Discussion Paper proposes an amended definition for Local Distribution Premises as follows:

A building or place used for storing or handing items purchased or ordered for local delivery, but from which no retail sales are initiated.

The Discussion Paper states that intention for the new term is to *facilitate the establishment of local distribution premises alongside other urban services and business activity centres in highly accessible locations. This would clarify that these facilities are intended to be of a scale appropriate for local deliveries, rather than those of a regional, national or even global scale.*

It is proposed to make Local Distribution Premises permissible wherever a warehouse or distribution centre is permissible, but to also allow councils to make them permissible in other locations that may be suitable for servicing by smaller vehicles as opposed to traditional large freight vehicles.

The Discussion Paper describes "local distribution premises" as the *"last mile" distribution centres – places that support the final leg of the parcel delivery from a central distribution place to a place closer to the destination* where those *"distribution centres are smaller in scale than traditional distribution centres...(and)... closer to where the customers receiving deliveries live."* With this description, it would appear that these centres will be at the lower end of the distribution chain and will be relatively small in scale and size. As such, provided adequate measures are in place to protect local amenity, the introduction of this amended land use can be supported.

Council looks forward to participate and contribute to the next stages of the retail planning review process and would request that Council be kept up to date on any developments on this matter. Should you have any queries, please do not hesitate to contact David Ongkili, Council's Coordinator Strategic Planning, on 9399 0793.

Yours faithfully,



Alan Bright
Manager Strategic Planning