



Large Format  
Retail Association

## **Submission to the Planning Reform Team**

Department of Planning, Lands & Heritage

## **Consistent Local Planning Schemes – Consultation**

2<sup>nd</sup> June 2023

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## 1 Executive Summary

This submission from the Large Format Retail Association (LFRA) contains detailed advice to the Planning Reform Team of the Department of Planning, Lands & Heritage regarding the planning reform proposal aimed at making local planning schemes more consistent and legible. The LFRA's positions are summarised as follows:

**The LFRA supports the general principles and intent of the reform proposal** as being consistent with the recommendations of the LFRA over many years. We strive for a planning and zoning regime across Australia that provides the Large Format Retail industry with **clarity, consistency and certainty**.

The LFRA objects in the **strongest possible terms** to any modification to the model *'Bulky Goods Showroom'* land use definition in Western Australia which would result in a **divergence from the best practice approach adopted by Victoria**. Our view is the Victorian model definition should not be substantially amended unless there are compelling reasons to do so (such as uncertainty within the industry or conflicts highlighted by SAT decisions).

The LFRA's view is that the reduction in the number of zones across local planning schemes is supportable, but that **the purpose and function of each zone requires further consideration alongside the recommended modifications to the zone objectives**.

The LFRA supports the standardisation of land use permissibility within commercial and industrial zones but is **concerned that the proposed zoning table will make land use regulation more prescriptive, rather than less**.

The LFRA has no firm position on the proposed standardisation of development requirements for commercial and industrial type zones via the adoption of a Design Code but does have a preference towards **adopting development requirements via the model scheme text or deemed provisions**.

The key recommendations contained within this submission are summarised as follows:

- *Either retain the existing 'Bulky Good Showroom' definition or if modifications are sought—amend the definition to bring it into closer alignment with the Victorian 'Restricted Retail Premises' definition or the LFRA's preferred "best practice" wording.*
- *Rename 'Bulky Goods Showroom' to 'Large Format Retail Premises'*
- *Make 'Bulky Goods Showroom' a 'P' use in the 'Centre' zone and 'Mixed Use' zone, and capable of approval in all commercial and industrial zones.*
- *Make 'Trade Supplies' capable of approval in the 'Centre' zone.*
- *Incorporate land use permissibility for some land uses in some zones (ie 'Bulky Goods Showroom' to be a 'P' use in the 'Service Commercial' and 'Centre' zones) in the deemed provisions.*
- *Undertake further investigation regarding the potential costs and implications of adopting a design code applicable to 'Service Commercial' and 'Industrial' zones.*

## 2 Introduction

The Large Format Retail Association (LFRA) welcomes the opportunity to make a submission on *Consistent Local Planning Schemes – Consultation (reform proposal)*, as recently advertised for public comment by the Department of Planning, Lands & Heritage (DPLH).

It is understood that the Reform Team has been instructed to prepare a report identifying actions and approaches for making local planning schemes more consistent. The advertised report addresses the following:

- Changes to land use terms (and definitions) applicable to local planning schemes.
- Changes to zones and reserves (and objectives) applicable to all local planning schemes.
- Standardised land use permissibility for commercial and industrial type zones within the Perth and Peel region areas only.
- An approach to standardising development requirements for commercial and industrial type zones within the Perth and Peel region areas only.

The reform proposal includes a number of recommendations which have been sought by the LFRA for many years and are supported. However, the proposal includes some specific recommendations relating to the *'Bulky Goods Showroom'* (BGS) model land use definition which would serve to erode clarity, consistency and certainty for the Large Format Retail sector, and as a result can only create adverse impacts of the planning framework and undermine investment in the State. The LFRA cannot identify **any** meaningful benefit arising from the proposed changes to the definition.

This submission reinforces the LFRA's position on the definition of *'Bulky Goods Showroom'* outlined at meetings attended by the LFRA, Planning Solutions and senior DPLH officers on 18<sup>th</sup> April 2023, and with representatives of the Planning Reform team on 20<sup>th</sup> April 2023.

## 3 The Large Format Retail Association (LFRA)

The LFRA is the national peak industry Association which represents the interests of Large Format Retailers, investors, developers, owners, and service suppliers to the Large Format Retail ('LFR') industry.

The LFRA is a key stakeholder in the planning and zoning laws that affect this sector of the retail industry. We have a clear policy agenda centred around energy, sustainability, competition policy and urban planning. Specifically, in relation to competition policy and urban planning, the LFRA advocates for reform of Australia's planning and zoning regimes across Australia to provide **clarity, consistency, and certainty** for the Large Format Retail sector.

### 3.1 Large Format Retail Key Metrics

Demand assessment economists, Deep End Services, estimates the following approximate key industry metrics for both Australia and Western Australia for the year ending 30<sup>th</sup> June 2022:

Key Industry Metrics	Australia	Western Australia
Total retail sales	\$362.6 billion	\$43.7 billion
Large Format Retail percentage of total retail sales	25.5%	25.4%
Large Format Retail sales	\$92.4 billion	\$11.1 billion
Number of direct employees in Large Format Retail	199,144	22,471
Number of indirect employees in Large Format Retail	247,337	27,910
Total number of employees both directly and indirectly in Large Format Retail	446,481	50,381
Large Format Retail floor space	20,184,699 million square metres which equates to approximately 35% of all retail floorspace	2.3 million square metres

### 3.2 Large Format Retail Association Membership

The LFRA was established in 1999 and today our membership stands are record levels. Uniquely, the LFRA's membership base includes not only Large Format Retailers, but also investors, owners, developers and service suppliers in the Large Format Retail market. Consequently, the LFRA advocates on behalf of a unified sector.

Retail members of the LFRA include some of Australia’s largest and most respected Large Format Retailers including the 78 individual business brands listed in the following table:

ABS Automotive Service Centres	Early Settler	My Pet Warehouse
Adairs	Fantastic Furniture	Oakland Mowers
Adairs Kids	Fernwood Women’s Health Club	Officeworks
Amart Furniture	Fitness Cartel	Opposite Lock
Anaconda	Focus on Furniture	OZ Design Furniture
Animates	Freedom	Petbarn
Autobarn	Harris Scarfe	PETstock
Autopro	Harris Scarfe Home	Pillow Talk
Baby Bunting	Harvey Norman	Planet Fitness
Barbeques Galore	House	Provincial Home Living
BCF	House Bed & Bath	Rebel
Beacon Lighting	IKEA	Reece
Beacon Trade	James Lane	Revo Fitness
Beaumont Tiles	Jaycar Electronics Group	RoadTech Marine
Bed, Bath & Beyond	JB Hi-Fi	Robins Kitchen
Bedshed	JB Hi-Fi Home	RSEA
Best Friends	Joyce Mayne	Sleepys
Bunnings	Kitchen Connection	Sleeping Giant
Burnsco	Kitchen Warehouse	Snooze
Chemist Warehouse	Lincraft	SPACE
City Farmers	Macpac	Spotlight
Clark Rubber	Midas Auto Service Experts	Supercheap Auto
Costco	Mitre 10	The Good Guys
Decathlon	Mocka	Tool Kit Depot
De Rucci	Mountain Designs	Total Tools
Domayne	My House	Tradelink

The LFRA is supported by the following 90 Associate members that comprise of Large Format Retail developers, investors, owners and service suppliers:

Accord Property	Deluca	MPG Funds Management
ADCO Constructions	Development Directive	Moray & Agnew Lawyers
Advantage All Development	DOME Property Group	National Storage
Advent Security Services	Edgewise Insurance Brokers	Newmark Capital Limited
Aigle Royal Properties	Ethos Urban	Norman Asset Delivery
Albion Property	FastTracker	Onefin
Amphis Commercial	FTI Consulting	PaidRight
Arise Developments	Gazcorp	Perth Airport
AsheMorgan	Gibb Group	Photon Energy Group
Arkadia	Geon Property	Planning Solutions
AXIMA Logistics	Grosvenor Engineering Group	Properties and Pathways
AXIOM Properties Limited	HLC Constructions	Ranfurlie Asset Management
Baycrown Property Group	Home Co.	Realmark Commercial
Bayleys	Humich Group	Redpath Partners
Birdsong Legal	Investore	Re-Grow Capital Group
Blueprint	Jape Group Australia	Re Ventured
Buchan	JVL Investment Group	Schaffer Corporation
Burgess Rawson	Knapp Property Group	Sentinel Group Australia
BWP Trust	Leedwell Property	Signify
CBRE	Leffler Simes Architects	Solar Edge
Centuria	Lester Group	Stockland
Charter Hall	Leyton Property	Terrace Tower Group
Cherry Energy Solutions	LVX Global	Titanium Property Investment
Citinova	Mainbrace Constructions	TK Maxx
Colliers International	Major Media	Transact Capital
Complete Colour	Marked Property	Troon Group
Coombes Property Group	Market Lane Developments	tutch
COVA Group	McGees Property	Upstream Energy
CV Media & Signage	McMullin	Vend Property
Deep End Services	Meyer Shircore Architects	Walker Corporation

The LFRA is a key stakeholder in the planning and zoning laws that affect 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.

### 3.3 Large Format Retail Directory

Each year for the past 13 years, the LFRA in conjunction with demand assessment economic firm Deep End Services has published the Australian & New Zealand Large Format Retail Directory. The 863-page Directory includes a section on the various planning and zoning regimes across Australia and New Zealand. **A copy of this directory has been provided to the Reform Team at the DPLH.**

## 4 Structural Shift in Retail

There has been an undeniable structural shift in the retail market. To succeed, a retailer's primary focus is the delivery of a seamless retail experience to the customer. The retail sector, like many markets, is facing incredible disruption and change. Technology, in many forms, has been a significant part of the disruption, but at the same time it is a massive enabler. Retail must continue to innovate, adapt, and remain connected to the most important person; its' customer.

Retail needs to be adaptive; planning and zoning laws need to provide for the flexibility to allow retailers to meet current and future challenges.

There is absolutely no doubt that the physical retail store remains as important as ever. The online component of the retail experience often provides a great selling tool, information and education to customers, as well as a purchasing function. Online sales do not detract from the need for Large Format Retail stores, instead an online capability is part of a holistic retail offer. A great example of the seamless retail offer is the exponential growth of *'click and collect'*, where customers can order the product of choice online and come into the retail store to collect it.

In order to compete, most of the Australian Large Format retail market is in urgent need of the freeing up and harmonisation of planning and zoning laws. This perspective is supported by the following reports/reviews:

- ['Plan to identify planning and zoning reforms'](#), prepared by the Australian Government Productivity Commission (March 2021)
- ['Victoria's Commercial Land Use Zoning – Productivity Reform Case Study'](#), prepared by the Australian Government Productivity Committee (July 2020)
- ['Continuing the Productivity Conversation'](#) Green paper prepared by the New South Wales Productivity Commissioner (August 2020)
- ['Shifting the Dial: 5 Year Productivity Review'](#), prepared by the Productivity Commission (August 2017)
- ['Independent Recommendations Report'](#), Prepared by the New South Wales Retail Expert Advisory Committee (REAC) (June 2017)
- The ['Competition Policy Review'](#) otherwise known as the *'Harper Review'*, a report to the Federal Government (March 2015)
- ['Investment + Competition = Jobs'](#) was a report prepared by planning consultancy firm JBA, with economic input from Deep End Services and published by the LFRA (February 2015)
- ['Economic Structure and Performance of the Australian Retail Industry'](#) prepared by Productivity Commission (December 2011)



- ['Performance Benchmarking of Australian Business: Planning, Zoning and Development Assessments'](#) research paper published by the Productivity Commission (May 2011)

Particularly of note is 'section 8.4' in the Productivity Commission's 2011 'Benchmarking' report which we wish to draw to your attention:

*"...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..."*

This subject was returned to again in the Productivity Commission's 2017 'Shifting the Dial' report, which recommended that:

*"...State, Territory and Local Governments should move to fewer and more broadly-stated land use zones to allow greater diversity of land uses. Such a move is likely to make it easier for new firms to enter local markets and for existing firms to expand, reduce administrative and compliance costs, and enable planning systems to more flexibly respond to changing land use activities..."*

**The conclusions and recommendations of the Productivity Commission are consistent with the advocacy positions of the LFRA.** The LFRA engages proactively with State and Local Governments, advocating for planning reforms which deliver consistency, certainty and clarity to the large format retail sector.

#### 4.1 Victoria's Commercial Land Use Zoning (July 2020)

Following the release of the 'Shifting the Dial' report in 2017, many Australian states and territories took steps to simplify land use zones to varying degrees of success. In July 2020, the Productivity Commission released 'Victoria's Commercial Land Use Zoning', which recognised the Victorian planning provisions as the Australia planning jurisdiction which has delivered the most in terms of a simplified, standardised, flexible and market-driven zone classification with a broad range of permissible uses. The report articulates the positive outcomes associated with these flexible provisions.

Relevantly, it specifically looked at whether perceived adverse impacts of development arising from the Victoria zone reforms has occurred, and it was found that they did not appear to have come about. It was specifically noted that:

*"...the adverse impacts of out-of-centre development are likely small. The broadening of commercial zones in Victoria enabled commercial activity that some stakeholders characterize as 'out-of-centre developments' as the Commission has previously argued, declines in activity centres often reflect changing consumer preferences, as so are not always a direct consequence of the out-of-centre development. Equally, locational competition can bring community benefits. Several reports on competition (such as the Competition Policy Review (2015) have found that, among other things,*

*the impacts on competition between individual businesses, and proposed developments on the viability of existing businesses should be irrelevant for planning matters (harper et al. 2015; PC2011a). This is because planning and zoning laws can create barriers to business entry and/or restrict competition, leading to a lower variety or quality of goods and services. Adverse impacts from competition should only be considered when future planning is conducted, not when a development proposal is being considered..."*

The report concluded that "...Overall, it is difficult to find clear evidence that out-of-centre developments have had adverse impacts that warrant regulatory restriction..."

This evidence therefore indicates that the broadening of uses within the 'Service Commercial' zone to include uses that are not traditionally permitted in Large Format Retail centres, (as noted above) is unlikely to give rise to significant impacts. This supports the LFRA's position that the 'Service Commercial' and 'Centres' zones should accommodate a wide variety of uses as-of-right including 'Bulky Goods Showroom', and 'Trade Supplies'.

## 5 LFRA Engagement in the Western Australian Reform Process

### **Absence of consultation or notification regarding the ongoing review of the definitions.**

The LFRA has reviewed 'Consistent Local Planning Schemes – Consultation' in detail. We were disappointed to discover that despite our extensive history of engagement, the Department conducted a review of the current 'Bulky Goods Showroom' model land use definition with industry representatives in September and October 2022 without extending any invitation to the LFRA to participate.

The Consultation Report concludes that there was "...general agreement..." amongst industry representatives that it was necessary to "...review and reconsider bulky goods showroom, supermarket, office and shop definitions and permissibility...". However, **no information regarding the makeup of the industry representatives is included within the report** and it is unclear how representative the views of the stakeholder reference group might have been.

Clearly the lack of input from the LFRA has resulted in the flawed conclusions outlined in the Stakeholder Consultation Report and in the ultimate recommendations of the Planning Reform team. Furthermore, these recommendations demonstrate an apparent lack of awareness regarding the evolution and development of the planning framework as it relates to Large Format Retail, and in particular—of the extensive stakeholder consultation undertaken by the Department in support of the current model definition prior to 2015, during which the LFRA was consulted extensively, and its recommendations adopted largely intact.

## 6 Planning Reform Proposal (Consistent Local Planning Schemes)

### 6.1 Changes to the 'Bulky Goods Showroom' Model Land Use Definition

The Reform Team is proposing to largely replace the existing model land use definition (originally developed in Victoria, and subsequently adopted in SA and WA), with a new definition which draws heavily upon the most recent definition adopted by NSW. In practice, the key differences between the existing and proposed definition are summarised as follows:

- 'Part (a)' of the current definition prescribing Large Format Retail product categories would be eliminated.
- Modifications to the definition wording, including within the current 'Part (b)' would have the effect of significantly narrowing the scope of the definition and restricting the classification to only retailers who can prove that a "...majority of goods..." sold are of a "...size, shape, weight or quantity..." to require a large area for display, handling or collection (potentially excluding many existing Large Format Retailers).
- Insertion of a specific exclusion for land uses involving "...*foodstuffs, alcohol, medicines, footwear or clothing unless their sale is ancillary to the sale of bulky goods...*".

The first two of these three modifications are contrary to best practice, and deeply concerning to the LFRA. In our view, they would serve to erode any clarity, consistency and certainty for Large Format Retailers, landowners and service suppliers. The third change is positive and supportable, and has been specifically sought by the LFRA for a number of years.

A summary table containing both the current and proposed 'Bulky Goods Showroom' definitions is provide in Table 1 **below**.

**Table 1 – Comparison of Current and Proposed 'Bulky Goods Showroom' Model Land Use Definition**

Current WA 'Bulky Goods Showroom' Definition	Proposed WA 'Bulky Goods Showroom' Definition
<p>means premises –</p> <p>(a) used to sell by retail any of the goods and accessories of the following types that are principally used for domestic purposes–</p> <ul style="list-style-type: none"> <li>(I) automotive parts and accessories</li> <li>(II) camping, outdoor and recreation goods;</li> <li>(III) electric light fittings;</li> <li>(IV) animal supplies including equestrian and pet goods;</li> <li>(V) floor and window coverings;</li> <li>(VI) furniture, bedding, furnishings, fabrics, manchester and homewares;</li> <li>(VII) household appliances, electrical goods and home entertainment goods;</li> <li>(VIII) party supplies;</li> <li>(IX) office equipment and supplies;</li> <li>(X) babies' and childrens' goods, including play equipment and accessories;</li> <li>(XI) sporting, cycling, leisure, fitness goods and accessories;</li> <li>(XII) swimming pools;</li> </ul> <p>Or</p> <p>(b) used to sell by retail goods and accessories by retail if –</p> <ul style="list-style-type: none"> <li>(I) a large area is required for the handling, display or storage of the goods; or</li> <li>(II) vehicular access is required to the premises for the purpose of collection of purchased goods;"</li> </ul>	<p>means premises used primarily for the sale by retail, wholesale or auction of (or for the hire or display of) goods whereby the majority of goods are of such size, shape, weight or quantity as to require:</p> <ul style="list-style-type: none"> <li>(a) large area for handling, display or storage; or</li> <li>(b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading and unloading the items into their vehicle after purchase or hire,</li> </ul> <p>but does not include the sale of foodstuffs, alcohol, medicines, footwear or clothing unless their sale is ancillary to the sale of bulky goods.</p>

Having reviewed the modifications, the LFRA has reached the following conclusions regarding the implications of the change on the Large Format Retail sector:

- Under the new definition, all applications will need to demonstrate that the majority of goods require a large area for display, sale or handling;

- Large Format Retail development proposals are likely to get bogged down in disputes over statutory interpretation, with a potential increase in refusals and subsequent increase in costs associated with appeals and mediation;
- ‘New to WA’ retailers, particularly, are likely to suffer from considerable uncertainty, as Local Government officers will be unfamiliar with the retailer’s business model and product lines;
- Some long-standing Large Format Retailers within particular product categories are likely to find their business models subjected to additional scrutiny with questions raised as to whether they are appropriately classified as a ‘Shop’ or ‘Bulky Goods Showroom’;
- Local Government authorities with a history of opposition to Large Format Retailers locating on the periphery of, or at a distance from central business districts (ie: Bunbury and Busselton) will be empowered to interpret the ‘Bulky Goods Showroom’ definition more narrowly than at present and to classify some Large Format retailers as ‘Shops’; and
- Non-conforming use rights arising from these changes is likely to give landowners with existing approvals over built-out Homemaker Centres an advantage over new and emerging Large Format Retail precincts.

Our concerns, comments and recommendations are outlined in further detail as follows:

## 6.2 Response to the Intent of the Proposed Modifications

Whilst the proposed modifications are both concerning and deeply disappointing—they are also, to some extent - unsurprising, and only the latest in a long series of attempts to narrow the scope of the model definition.

Since the gazettal of the model definitions in 2015, there has been the perception amongst certain Local Governments and elements within the Department of Planning, Lands & Heritage that the model ‘Bulky Goods Showroom’ definition is flawed and contains two critical issues.

As outlined in our submission to David Caddy, Chairman of the WAPC on 9<sup>th</sup> November 2018, these two issues are generally understood by the LFRA as follows:

- **Issue 1** – Concern that the product list provided in ‘part (a)’ of the definition will result in small format/shopping centre retailers of such goods being classified as ‘Bulky Goods Showrooms’. Examples include small specialist stationery/paper stores (e.g. Typo, kikki.k) and outdoor apparel stores (e.g. Kathmandu).
- **Issue 2** – Concern that ‘part (b)’ of the definition is too permissive and could potentially be exploited to secure approvals for large food and clothing retailers that were not intended to fall under this definition (and should be treated as a ‘Shop’ land use). Examples include Aldi, Kaufland and TK Maxx.

Our response to these two key issues, which we believe to be the motivating considerations behind the Planning Reform Team’s recommendations, are provided as follows:

### **Issue 1 – Concern that Small Format Retail will be Classified as ‘Bulky Goods Showroom’ under ‘Part (a)’ and Excluded from Activity Centres**

We understand that the view of the Planning Reform team, as expressed within ‘Appendix D’, is that concerns regarding Issue 1 can be addressed by “...remov[ing] reference to the specific types of goods and accessories specified in the current definition...”. The clear intent of this is to allow retailers who sell those products, but do not retail bulky goods, to be classified as a ‘Shop’ instead of a ‘Bulky Goods Showroom’.

With respect, this is not a new proposal, and it is one that we have consistently and successfully advocated against in our many submissions and presentations to the DPLH, WAPC and local authorities. Previously this took the form of local authorities seeking to replace the “...or...” in the current definition with an “...and...” effectively rendering the ‘part (a)’ product list meaningless.

In response, our firm *position* has been that small format outlets retailing the goods listed in ‘part (a)’ of the definition are an exception to the general rule. The vast majority of office supply stores, outdoor/camping goods stores and other retailers of items listed in ‘part (a)’ of the definition are Large Format Retailers operating in established showroom precincts.

As we stated in our submission to David Caddy, Chairman of the WAPC, dated 9<sup>th</sup> November 2018:

*“...There will always be exceptions to the rule, and as such, planners must look at the full range of planning mechanisms available to manage such instances. A land use definition may provide the starting point for classifying activities carried out on land, but it is up to zoning, land use permissibility tables and other scheme/policy provisions to establish the suitability of land uses in certain locations...”*

We have previously contended that small format retail outlets of items listed in ‘part (a)’ of the definition should remain classified as ‘Bulky Goods Showroom’, and that the zoning/permissibility provisions of the scheme should make such uses capable of approval at the discretion of the decision maker within the full range of activity centres. This approach has been increasingly implemented in most recently advertised and gazetted local planning schemes - addressing many of those original concerns.

Furthermore, Local Governments can further inform discretionary decision making regarding in activity centre zones and whether such a use should be approved in certain locations by inserting additional scheme and/or policy provisions establishing development standards/design criteria (e.g. limiting the size of such stores in shopping centres and other activity centres, to maintain the desired ‘finer grain’ character of such environments).

Considering the above, the reform proposal provides an opportunity for the WAPC to implement a more comprehensive policy approach towards via the application of consistent land use definitions, zones and zoning tables in a timelier manner (ie, via the deemed provisions).

### Part (a) Improves the Consistency and Quality of Planning Decisions

We remind the Planning Reform Team of the reasons that the prescriptive ‘part (a)’ was included within the definition in the first place.

Historically, whilst all planning jurisdictions shared a common premise that Large Format Retailing was a separate category of retailing distinct from core retail or ‘Shops’, there were typically two methods of defining such land uses:

- The performance-based method, originating in New South Wales, defined Large Format Retail primarily by the nature of the goods sold (size, quantity, weight, etc) with potentially some examples of land use activities. This approach provided flexibility to accommodate new entrants but also resulted in inconsistent interpretation and application by local authorities.
- The prescriptive land use approach, originating in Victoria, listed specific product categories based on their ordinary meaning (ie; furniture) deemed to be automatically consistent with the land use. This approach provided certainty to existing Large Format Retailers but lacked the flexibility to permit new entrants with similar land use characteristics without an amendment to the local planning scheme<sup>1</sup>.

In recognition of the advantages and disadvantages inherent in both approaches, the LFRA developed a single a single land use definition containing both a ‘part (a)’ prescriptive component and a performance-based ‘part (b)’ which was adopted by the Victorian government in 2012. This definition was subsequently adopted in Western Australia three years later, on the recommendation of the LFRA on the basis that Victoria’s definition was best practice and should be applied.

Whilst NSW still retains a largely performance-based approach (supplemented by ‘*Planning Circular*’ which identifies land use activities which fall within the definition)—it has received consistent criticism from the Large Format Retail sector who would like to see it to move towards the Victorian-based model.

It’s worth noting that here in Western Australia, prior to the adoption of the model definition and its incorporation into most of the metropolitan local planning schemes, retailers, landowners and developers were routinely frustrated by onerous and outdated

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<sup>1</sup> Refer to *Hall v Kingston CC (Red Dot)* [2008] VCAT 1060 and *City Of Cockburn* [2012] WASAT 43.

land use definitions and planning decisions that had little relevance to modern retailing practices. Some particularly frustrating examples included:

- An Officeworks being prevented from selling office supplies and paper;
- A pet supplies showroom being refused on the basis that it sold ‘*food items*’ (i.e. dog food);
- Showrooms being required to tape off and designate separate areas of floorspace for ‘bulky’ versus ‘*non-bulky*’ items;
- Arguments whether a 25 kilogram bag of pet food constitutes a ‘*bulky good*’; and
- A sporting goods store being required to separate ‘*bulky*’ and ‘*non-bulky*’ and display them in separate parts of the store, using an arbitrary figure of 10 kilograms to distinguish between them.

In a submission from the LFRA to the Minister for Planning dated 18<sup>th</sup> January 2017 we drew attention to a Large Format Retailer of toys and children’s goods who sought to invest in opening two new showroom stores in Western Australia – one in the City of Melville, and one in the City of Cockburn.

A substantial amount of time and money was incurred interrogating the land use definitions of the respective local planning schemes, and requesting the advice of local authority planning staff. Ultimately, the retailer was deemed to be a ‘*Bulky Goods Showroom*’ in the City of Melville, but not to be a ‘*Showroom*’ in the City of Cockburn. Only one of the two proposed new stores (within the City of Melville) ultimately proceeded.

‘Part (a)’ of the current definition was created specifically to address such issues. By removing all scope for (re)interpretation in relation to certain well-established product categories, the model definition provided the Large Format Retail sector with the **clarity**, **consistency** and **certainty** necessary to stimulate new investment and reduce the costs associated with identifying new locations. The removal of part (a) threatens all of this.

## Issue 2 – Concerns that the Scope of ‘Part (b)’ of the Definition Facilitates ‘Out of Centre’ Development

**Claims that the existing definition facilitates ‘Out of Centre’ development have never been substantiated.**

The current wording of ‘*part (b)*’ has been carefully drafted to preserve the flexibility necessary to address other/new Large Format Retailers that don’t sell the products listed in part (a). (e.g. musical instrument showrooms, and retailers of barbeques, fireplaces and gas appliances).

The Large Format Retail sector has experienced rapid changes in customer preferences and business models in recent times and yet the scope of the current definition has



allowed new businesses to emerge without requiring updates to the ‘part (a)’ list of product categories, or the progression of site-specific ‘spot rezoning’ proposals.

This flexibility has been consistently characterised negatively by certain Local Government authorities who have alleged that the definition facilitates ‘out of centre development’. Whilst these claims have been made repeatedly since the adoption of the model definition—we are yet to see any substantiation.

Whilst on occasion we have been pointed to examples of shops and supermarkets in ‘Service Commercial’ or ‘Industrial’ zones, Large Format Retail precincts and Homemaker Centres—a preliminary review has generally found such examples to be capable of approval as ‘shops’ under the applicable planning framework (i.e., with site-specific additional use designations, or because discretion is available under local structure plans).

We note correspondence from the WAPC, dated 24<sup>th</sup> July 2019, advising as follows with respect to a specific scheme amendment sought by the City of Bunbury on similar grounds:

*“...I note that the Minister previously supported a change to the Model definition of ‘Bulky Goods Showroom’ within the City of Bunbury Scheme No.8, based upon perceived concerns raised by the City, that the use could be misconstrued to allow ‘out of centre’ large format shop uses. However, more recently the Model definition of ‘Bulky Goods Showroom’ has been applied to new Schemes and amendments with no resulting evidence that the concerns raised by the City have eventuated...”*

It is disappointing that the Planning Reform Team would state that *“...there is a need to update the definition to remove the potential for other uses to utilise this definition...”* without including any additional evidence that might warrant a change in the established position of the WAPC and the Minister.

**The proposal would revert back to an approach previously recognised as flawed and inconsistent with a modern planning system.**

The Reform Team recommends that the scope of ‘part (b)’ of the definition should be modified by *“...specifying that goods and services are of a bulky nature...”*, which they propose to implement with the insertion of the words *“...the majority of goods are of such size, shape, weight or quantity...”*.

This is not exactly the same thing as specifying that goods that *“...goods and services are of a bulky nature...”*, but lends itself to exactly the same issue—an onerous level of scrutiny on the precise quantity and qualities of the goods being sold by a particular retailer rather than a relatively straightforward assessment of whether the retailer requires a large display and handling area, or vehicular access for the collection of at least some of their purchased goods.

This kind of exhaustive analysis of the particular goods sold by a retailer in terms of the proportion of total stock, product characteristics and categories, frequencies of

transaction, portability, storage and presentation and modes of access was on full display in ‘Walding and City Of Cockburn [2012] WASAT 43’ and ‘Humich and City of Gosnells [2008] WASAT 298’ prior to the adoption of the model definitions in 2015.

In conclusion, the addition of the words “...the majority...” would unreasonably constrain the scope of the definition to the extent that it would be either impossible to satisfy or incapable of meeting the needs of industry and accommodating the full range of legitimate showroom activities.

Anaconda provides an illustrative example - bulky goods (tents, vehicle racks, gazebos, tables, etc) constitute a minority of both total floor space, product range and quantity of products sold—and yet these products remain a primary customer draw and are critical to the entire business model.

### 6.3 Exclusion of Supermarkets and Clothing Stores

With respect to the recommendation that the scope of the definition be narrowed to specifically exclude “...the sale of foodstuffs, alcohol, medicines, footwear or clothing unless their sale is ancillary to the sale of bulky goods...” we note that **the LFRA has consistently supported a similar amendment in our previous submissions.**

Although the LFRA is not aware of any example of a supermarket having been approved under the existing definition, the LFRA previously identified that the lack of specific exclusions within the model definition (unlike Victoria’s and South Australia’s definition) was contributing towards Local Government resistance to adopting the model definition, as stated in our submission to the Planning Reform Team on 20<sup>th</sup> July 2018:

*“...The resistance of some local authorities to the model ‘Bulky Goods Showroom’ definition appears to stem from concerns that it could be applied to retailers principally selling food, clothing and/or footwear. Such concerns could have been avoided by including additional wording to the effect that it “...does not include the sale of food, clothing and footwear unless their sale is ancillary to the primary use...”. Such an approach would be consistent with that employed in Victoria, and remove the incentive for planning authorities to pursue poorly worded and meaningless ad-hoc definitions...”*

In light of the above, we recommend that if the DPLH wishes to proceed with incorporating this exclusion that they do so by bringing the definition into alignment with:

- **either the wording of the Victorian definition as follows: “...It does not include the sale of food, clothing, and footwear unless their sale is ancillary to the primary use...”; or**
- **The preferred wording of the LFRA as follows: “It does not include the sale of food, clothing and footwear unless it falls in to one of the above categories.”**

Whilst the wording of the Victorian definition is entirely acceptable, the LFRA’s preferred wording provides a higher level of certainty, clarity and consistency for industry, and at the same time prevents any prospect of exploitation for (principally) food and clothing stores.

A comparison of the state land use definitions and the LFRA’s preferred definition wording is provided in ‘*Appendix B*’.

## 6.4 Legal Advice Confirms the LFRA’s Position

The LFRA has sought independent legal advice from Belinda Moharich of Moharich & More (refer ‘*Attachment A*’) regarding the Reform Team’s recommended definition for ‘*Bulky Goods Showroom*’. The conclusions of this advice are summarised as follows:

- The removal of the ‘*part (a)*’ ‘*deemed to comply list*’ from the ‘*Bulky Goods Showroom*’ definition “...*is likely to lead to inconsistency of interpretation from decision-makers and uncertainty for Large Format Retailers and their landlords...*”.
- Confirmation that “...*prior to the current definition being introduced the question of whether a land use was properly classified as a ‘Showroom’ or ‘Shop’ was a regular argument before the State Administrative Tribunal...*”.
- An analysis of several such cases identifies that the key process followed in these disputations was typically:
  - An assessment of whether the goods sold by the proposed showroom fell within the “*listed inclusions*” present in the showroom definitions at that time; and
  - if not—whether the goods were of a bulky nature (requiring an analysis of each type of good to be sold); and
  - if the goods were determined to be bulky—further analysis of “...*the percentage of floor space and range of goods that would be of a bulky nature to determine showroom was the appropriate class...*”
- Whilst the proposed definition does not require a “...*bulky goods...*” assessment, it does require a “...*majority of goods...*” assessment, which “...*will require decision makers to embark on a similar exercise...*” (notwithstanding the fact that there will be “...*a requirement for the term ‘majority’ to be judicially defined...*”).
- The advice concludes by confirming that “...*the LFRA is right to be concerned about the impact of the proposed changes...*”

## 6.5 Support for Changing the Name of ‘Bulky Goods Showroom’

The Planning reform proposal does not recommend that the ‘Bulky Goods Showroom’ definition be renamed—but it does canvass the option of doing so in ‘section 4.3.3.1’ of the Background report (‘Appendix D’)

**The LFRA is supportive of the ‘Bulky Goods Showroom’ definition being renamed to reflect the scope of the existing land use definition more accurately.**

Whilst the origins of the Large Format Retail sector lie with showrooms located along transport corridors retailing bulky goods such as furniture, whitegoods, lighting, equestrian supplies etc - the sector has grown beyond this into a distinct retail category comprising a diverse mix of retail formats which commonly, but not exclusively retail bulky goods alongside other associated non-bulky items. The development of newer retail formats such as Homemaker Centres have occurred since the term ‘Bulky Goods Showroom’ was first introduced.

The LFRA submits the term could be changed from ‘Bulky Goods Showroom’ to ‘Large Format Retail Premises’ to reflect the usage of this term by industry and provide a term that has meaning to the layperson.

Adopting the term ‘Large Format Retail’ will:

- Remove the negative connotations with the current term;
- Be a true reflection of the nature of the retailers falling within the term; and
- Be a recognised terminology for industry, planners and the public; and
- Reduce the perception of incompatibility at lower levels of the activity centre hierarchy associated with ‘Bulky Goods Showroom’.

## 6.6 Standardisation of Land Use Permissibility in Certain Zones

### Recommendations regarding implementation of a standard zoning table

‘Appendix C’ of the Reform Proposal includes a proposal for a standard zoning table for Commercial and Industrial zones. The Reform Team proposes that this standard zoning table be implemented via the model scheme text and incorporated by Local Governments into individual local planning schemes. Having reviewed this proposal, the LFRA provides the following comments in relation to the proposed implementation:

**The LFRA supports the inclusion of a standard zoning table within the scheme text conditional on the table achieving increased land use flexibility, but also recommends that some land use permissibility within some zones be included in the deemed provisions.**

The position of the LFRA is that some land uses warrant a fully standardised approach in some zones—and that this includes ‘Bulky Goods Showroom’ and ‘Trade Supplies’. For

example, the LFRA has on occasion, been forced to lodge submissions with Local Governments in response to *'Bulky Goods Showroom'* being identified as a *'D'* use within the *'Service Commercial'* zone when it should always be a *'P'* use. **We recommend that the land use permissibility of these land uses should be included within the deemed provisions to apply to all local planning schemes in Western Australia.**

### **Recommendations regarding land use permissibility in certain zones.**

Regarding the proposed zoning table in *'Appendix C'* we have highlighted changes relevant to the LFRA and provided our comments and recommendations:

*'Bulky Goods Showroom'* to be a *'P'* (permitted) use within the *'Service Commercial'* zone; a *'D'* (discretionary) use within *'Centre'* and *'Mixed-Use'* zones; and prohibited within *'Local Centre'*, *'Neighbourhood Centre'*, *'Light Industry'*, *'General Industry'* and *'Rural Enterprise'* zones.

The LFRA recommends that *'Bulky Goods Showroom'* be a *'P'* (permitted) use within the *'Centre'* and *'Mixed-Use'* zones. The LFRA supports *'Bulky Goods Showroom'* being capable of approval within these zones but refers the Planning Reform Team to the recommendation of the Productivity Commission (*'Plan to identify Planning and Zoning reforms'*, 2021) that zones "...have a large range of *'as-of-right'* uses (for which council approval is not required)..."

The *'Centre'* and *'Mixed-use'* zones are highly suitable for Large Format Retail and contain many Large Format Retail precincts. Moreover, we do acknowledge that small-format stores within some of the product categories exist. Whilst we consider it likely that in the real world such stores within shopping centres and commercial strips are treated as *'Shops'* by either decision-makers or landowners—they are technically classified as a *'Bulky Goods Showroom'* under the current definition. This makes them a discretionary use within *'Centre'* and *'Mixed Use'* zones and could result in a requirement to obtain approval for matters such as a change of use. This is clearly absurd and can be easily corrected by making *'Bulky Goods Showroom'* a *'P'* use within these zones.

- We recommend that *'Bulky Goods Showroom'* be capable of approval within *'Local'* and *'Neighbourhood Centre'* zones. Whilst the prohibition on *'Bulky Goods Showroom'* within *'Local'* and *'Neighbourhood Centre zones'* is unlikely to affect our members, we recommend this change in the interests of a more flexible planning system, and to address concerns from stakeholders that small-format retailers falling within *'part (a)'* of the *'Bulky Goods Showroom'* definition might be excluded from activity centres.

Excluding *'Bulky Goods Showroom'* from Local and "Neighbourhood Centres" regulates against retailers developing small-format stores within local centres which is entirely unnecessary. Any concern that making *'Bulky Goods Showrooms'* capable of approval in local centres would achieve undesirable built form outcomes can be addressed on a local level by applying design requirements on all uses within

activity centre zones regarding scale and built form outcomes. Most Large Format Retailers have store networks which include small-format outlets well integrated with activity centres and dense urban environments.

- **The LFRA does not support prohibiting ‘Bulky Goods Showroom’ within ‘Light and General Industry’ zones and recommends that it be made capable of approval as either a ‘P’ or ‘D’ use.** The Planning Reform team’s own analysis identified that ‘Bulky Goods Showrooms’ were already capable of approval in 70% of surveyed ‘General Industry zones’, and 64% of ‘Light Industry’ zones. Furthermore, the amendment to the ‘Planning and Development (Local Planning Schemes) Regulations 2015’ **exempt** ‘Bulky Goods Showroom’ within the ‘Light Industry’ zone (effectively deeming ‘Bulky Goods Showroom’ a ‘P’ use).

Considering this, it seems unusual that no justification is provided from the Reform Team as to why they would recommend it be prohibited from both, other than a reference to “...encroachment of commercial uses across industrial zones land...”. In practice, ‘Bulky Goods Showrooms’ do not typically locate within Industrial zones unless a combination of site and locational advantages are present (such as large lot size, good visibility from high traffic transport corridors and safe and convenient access) - such as occurred along regional roads through Osborne Park. In these circumstances the Industrial zoning itself may be outdated, but pending a formal review of the zone it is appropriate that additional flexibility be built into the planning system through the land use permissibility table.

**‘Trade Supplies’ to be a ‘P’ (permitted) use within the ‘Light Industry’ and ‘General Industry zones’; a ‘D’ (discretionary) use within the ‘Service Commercial zone’; and a ‘X’ (prohibited) use in all other zones.**

- **We recommend that ‘Trade Supplies’ be classified as a ‘P’ use within the ‘Service Commercial zone’** given the long-standing zone objectives have been to “...accommodate commercial activities which, because of the nature of the business, require good vehicular access and/or large sites...” and, to “...provide for a range of wholesale sales, showrooms, trade and services which [...] cannot conveniently or economically be accommodated in, the central area, shops and offices or industrial zones...”. Noting our comments further down recommending these objectives be retained, it is entirely appropriate for ‘Bulky Goods Showroom’ and ‘Trade Supplies’ land uses to be permitted as-of-right within the ‘Service Commercial zone’. The classification of these uses as ‘P’ (permitted) within the ‘Service Commercial’ zone would greatly improve the level of **certainty** offered by the planning framework.
- **We recommend that ‘Trade Supplies’ be classified as a ‘D’ use within the ‘Mixed Use’ zone.** The ‘Mixed Use’ zone is both a transitional zone, and ‘Trade Supplies’ land uses simply are simply a specialised category of retail establishment which is entirely compatible with the commercial and residential land uses typically located within a ‘Mixed Use’ zone. The purpose of differentiating ‘Trade Supplies’ as a distinct land use is to provide flexibility in permitting these activities within

Industrial zones, not to prevent them from locating in other commercial zones. There are a number of examples of land uses that would fall within the definition of *‘Trade Supplies’* successfully integrating with a *‘main street’* urban environment, including Bunnings in East Victoria Park, Claremont and Kalamunda.

- **We recommend that ‘Trade Supplies’ be classified as an ‘A’ use within the Centre, ‘Neighbourhood’ and ‘Local Centre’ zones** as this would positively contribute towards the vitality of local to mid-size centres, many of which are struggling and would benefit from a wide range of potential tenants. Historically some land uses falling within the *‘Trade Supplies’* definition occupied locations in local and neighbourhood centres, and whilst the sector has changed there is no reason to regulate against such uses from being established in local centres subject to the assessment of any impacts on amenity.

## 6.7 Proposed Modifications to the Service Commercial Zone

*‘Appendix D’* of the reform proposal recommends that the *‘Service Commercial’* zone be retained, as distinct from the *‘Light Industry’* zone, but proposes amendments to the zone objectives. A comparison of the current and proposed objectives is provided in the table below:

**Table 2 – Comparison of Current and Proposed Objectives for Service Commercial Zone**

Existing Service Commercial Zone Objectives	Proposed Service Commercial Zone Objectives
<ul style="list-style-type: none"> <li>▪ To accommodate commercial activities which, because of the nature of the business, require good vehicular access and/or large sites.</li> <li>▪ To provide for a range of wholesale sales, showrooms, trade and services which, by reason of their scale, character, operational or land requirements, are not generally appropriate in, or cannot conveniently or economically be accommodated in, the central area, shops and offices or industrial zones.</li> </ul>	<ul style="list-style-type: none"> <li>▪ To provide for a range of wholesale sales, <b>showrooms/large format retail</b>, trade and services which, by reason of their scale, character, operational or land requirements, are not generally appropriate in, or cannot conveniently or economically be accommodated the centre zone(s).</li> <li>▪ <b>To ensure that the zone does not adversely impact on the mix of uses or activity within the centre zone(s).</b></li> <li>▪ <b>To promote high quality urban design, built form, landscape and streetscape outcomes.</b></li> </ul>

Considering the recommend changes, the LFRA makes the following observations and comments:

- **The proposed retention of the ‘Service Commercial’ zone as distinct from the ‘Light Industry’ zone is supported by the LFRA.** The retention of a distinct *‘Service Commercial’* zone is of critical importance to the Large Format Retail sector.

- The proposed deletion of the current zone objective “...to accommodate commercial activities which, because of the nature of the business, require good vehicular access and/or large sites...” is not supported. This objective accurately differentiates the zone from the ‘Light Industry’ zone in terms of both access and site requirements. We recommend that the objective be retained.
- The proposed insertion of a new zone objective “...to ensure that the zone does not adversely impact on the mix of uses or activity within the centre zone(s)...” is not supported. This objective appears to lean into the idea that ‘Service Commercial’ zones allow types of development which undermines established activity centres. As previously stated in this submission – this idea is entirely flawed in that many of the commercial projects held up as examples of ‘out-of-centre’ development are actually facilitated by site-specific planning instruments or mechanisms, including structure plans and additional use zones.
- The proposed insertion of a new zone objective “...to promote high quality urban design, built form, landscape and streetscape outcomes...” is supportable in-principle, but requires further work. The LFRA and its members support good quality development outcomes, but ascribing open-ended values (ie; “...high quality...”) and generic outcomes is not our recommended solution. Design outcomes are highly contextual—a large format retail precincts within a designated activity centre might warrant better urban design outcomes than a centre in proximity to an industrial area. We recommend that the DPLH allow local authorities to introduce reasonable design objectives specific to the local context—as they do at present. An acceptable example from a regional local planning scheme is “...to encourage the provision of landscaped areas in a manner that complements and enhances the natural setting of the surrounding area...”.

## 6.8 Proposed Standardisation of Development Requirements for Service Commercial and Industrial Zones

The Reform Proposal identifies the adoption of a ‘Industrial and Service Commercial Design Code’ similar to the existing ‘R-Codes’ as the preferred means of standardising development requirements across local planning schemes. However, we note that the Stakeholder Outcomes report and the Background Report in ‘Appendix D’, refers to the option of including some, or all, development requirements applicable to ‘Industrial’ and ‘Service Commercial’ zones within either the model scheme text; and/or the Deemed Provisions.

Whilst not directly opposed to the adoption of a Design Code—the LFRA has some reservations about the use of such an instrument for the following reasons:

- The adoption of a Design Code is likely to encourage policy ‘scope creep’ and the evolution of common-sense minimum standards into ever-expanding development ‘objectives’ likely to increase the cost of development within these zones. This process has been observed with the ‘R-Codes’ which were first adopted in Western



Australia in 1985 as a relatively concise set of development requirements but which have subsequently evolved over the decades to become one of the most expansive planning instruments in the state. There is no guarantee that such an evolution would not likewise occur if a Design Code applicable to Industrial and Service Commercial development was adopted.

A similar process has also been observed in the evolution of the relatively succinct activity centre guidelines that form part of the current SPP4.2 into the expansive guidelines prepared in support of 'State Planning Policy 7.2 – Precinct Design'. This contained, as we pointed out in our previous submission dated 15<sup>th</sup> October 2019, "...27 different objectives, 105 different considerations and 40 'Precinct Plan' outputs...".

- **The adoption of a comprehensive Design Code is unlikely to standardise development requirements in practice.** Again, experience with the 'R-Codes' demonstrates that attempts to impose universal policies and requirements are **never** accepted by every local authority. There will always be some who continue to seek to apply their own specific requirements on developments.
- **The adoption of a Design Code for Service Commercial and Industrial development may impose additional costs on the Large Format Retail sector over and above other commercial development.**

The proposed code excludes development within Commercial zones. As pointed out in our previous submission to the WAPC dated 3<sup>rd</sup> March 2021, "...it is not uncommon for the establishment of new Large Format Retail precincts or large developments to require the preparation of structure plans or local development plans as a pre-requisite to development approval. Likewise, we are also keenly aware that it is also not uncommon for large shopping centre developments and major redevelopment projects to be approved in the absence (or in advance) of an approved structure plan or activity centre plan, contrary to the longstanding policy position and expectations established by SPP4.2 (for example, Kardinya Park, Karrinyup and Morley Galleria)...". Our concern is that the adoption of the Design Code will once again, impose additional costs whilst Commercial development in other zones remains less encumbered.

For these reasons, the LFRA's preferred means of implementation would be the incorporation of development requirements within local planning schemes (via either the model text or Deemed Provisions, or a combination of both). This mechanism would ensure that only the most essential and universal requirements are incorporated, leaving local authorities to continue to adopt complementary local planning policies as and where they feel necessary (or as recommended by the WAPC in further guidelines or policies). The draft development requirements contained within Appendix D appear relatively concise and supportable.

## 7 Conclusion

The existing WA definition was developed following extensive stakeholder consultation; is strongly supported by Large Format Retailers and landowners and has been consistently applied by the Western Australian Planning Commission in the face of opposition by some Local Governments.

The current definition provides the requisite level of certainty for those retailers selling the goods listed under *'part (a)'* of the definition, while also offering a clear functional set of criteria under *'part (b)'* to flexibly capture other Large Format Retailing activities not adequately covered by the *'part (a)'* product list.

This *'fit for purpose'* land use definition allows for innovation and evolution in the sector to accommodate Large Format Retailing that may not be explicitly captured in the product list, but genuinely require a Large Format Retail showroom store (e.g. a store selling musical instruments).

Whilst stakeholders have raised *'concerns'* and made assertions that the model *'Bulky Goods Showroom'* definition facilitates out of centre development by allowing *"...other uses..."* to fall within the definition - no evidence of such has been produced, and the WAPC and the Minister have previously concluded that such claims do not warrant changes to the *'Bulky Goods Showroom'* definition.

Should you wish to discuss any aspect of this submission, please do not hesitate to contact the LFRA's Chief Executive Officer, Philippa Kelly on (03) 9859 5000 or [pkelly@lfra.com.au](mailto:pkelly@lfra.com.au)

**Attachment A:  
Legal advice regarding implications of  
proposed modifications to Bulky Goods Showroom definition**

Our ref: 22-033

1 June 2023

Department of Planning, Lands and Heritage  
Gordon Stephenson House  
140 William Street  
PERTH WA 6000

**By email:**

planningreform@dplh.wa.gov.au

Dear Sir/Madam

**Proposed Changes to Land Uses – Bulky Goods Showroom**

- 1 I act for the Large Format Retailer Association (**LFRA**).
- 2 As part of the Action Plan for Planning Reform the Department of Planning, Lands and Heritage is proposing to change the definitions of land uses introduced in the Model Provisions<sup>1</sup> in 2015.
- 3 In particular, the definition of 'bulky goods showroom' will be changed to –
  - 3.1 Require that a majority of goods are of such size, shape, weight or quantity that they require either –
    - 3.1.1 a large area for handling, display or storage; or
    - 3.1.2 direct vehicle access for loading and unloading.
  - 3.2 Exclude the sale of foodstuffs, alcohol, medicines, footwear or clothing unless their sale is ancillary to the sale of bulky goods; and
  - 3.3 Remove reference to the specific types of goods and accessories specified in the current definition.

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<sup>1</sup> Schedule 1, *Planning and Development (Local Planning Schemes) Regulations 2015*

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4 The purported reason for the need for the amendment is set out in two locations within the consultation documents –

4.1 On page 11 of the document *Appendix D - Background Report – Land Use Permissibility and Development Requirements for Commercial and Industrial Type Zones in the Metropolitan Region and Peel Region Scheme Areas (Background Report)*. Under paragraph 4.3.3.1 it is noted –

There are concerns that the current Bulky Goods Showroom definition potentially allows for supermarket and department store uses. The outcomes in relation to Bulky goods showroom and shops are linked.

4.2 On page 2 of the document *Appendix A – Proposed Changes to Land Uses* it is noted –

The review of SPP4.2 noted concerns from stakeholders that shops (such as supermarkets and pharmacies) are starting to locate in bulky goods and large format retail precincts (e.g. service commercial zone) which undermines the role and function of activity centres.

## **Submission**

### **Appropriate response to perceived concern**

5 If the concern regarding businesses such as supermarkets or department stores locating in bulky goods and large format retail precincts, then the appropriate response would be to include a definition of –

5.1 ‘Supermarket’ and ensure that this land use was either –

5.1.3 not capable of approval in Commercial zoned areas outside of designated activity centres; or

5.1.4 only capable of approval in Commercial zoned areas outside of designated activity centres if limited to no greater than 1500m<sup>2</sup> NLA.

5.2 ‘Department store’ and sure that this land use was not capable of approval within Commercial zoned areas outside of designated activity centres.

6 The inclusion of a separate ‘Supermarket’ land use would have added benefit in circumstances where there was a planning objective to incentivise certain types of retail in particular locations.

### **Removal of list of items capable of sale**

7 Determining which goods meet the size requirement is difficult to make out, without the support of a list of items deemed to meet the size/shape/weight/quantity criteria. Removal of this list of deemed to comply items is likely to lead to inconsistency of interpretation from decision-makers and uncertainty for large format retailers and their landlords.

- 
- 8 Prior to the current definition being introduced the question of whether a land use was properly classified as a 'showroom' or 'shop' was a regular argument before the State Administrative Tribunal.
- 9 While previous definitions included a more limited number of inclusions, they did not include the detailed list included in the current definition in the Model Provisions.
- 10 In *Humich v City of Gosnells* [2008] WASAT 298 the Tribunal determined that the proposed use of a pet shop selling pets, pet food and accessories was not classified as a 'showroom' and rather a 'shop' as the sale of those goods of bulky nature was incidental or ancillary to the dominant proposed use.
- 11 The definition of 'showroom' in the *Humich* case:
- 'means premises used to display, sell by wholesale or retail, or hire, automotive parts and accessories, camping equipment, electrical light fitting, equestrian supplies, floor coverings, furnishings, furniture, household appliances, party supplies, swimming pools, **or goods of a bulky nature**'. (emphasis added)
- 12 As pets, pet food and accessories were not in the list of specific inclusions, the Tribunal was required to look at the broader question of whether the goods were of a bulky nature. This required an analysis of each of the types of goods proposed to be sold. Once it was determined which goods were bulky in nature the Tribunal ascertained the percentage of floor space and range of goods that would be of a bulky nature to determine showroom was the appropriate use class.
- 13 Similarly, in *Walding v City of Rockingham* [2012] WASAT 43 the Tribunal looked at whether the proposed use of a tenancy as a discount store was a showroom or shop. The definition of showroom was identical to that in the *Humich* decision. The Tribunal determined that there was a dual characterisation of both 'shop' and 'showroom' components in the use of the land. In doing so, the Tribunal accepted the applicant's evidence which included a forensic assessment of the goods sold at the premises and which ones could be characterised as being consistent with the 'showroom' definition as a percentage of the whole of the premises.
- 14 Again, this involved an exercise of whether the goods sold fell within any of the listed inclusions and, more importantly, for those goods that did not fall within a listed inclusion an assessment of whether or not they were goods of a bulky nature.
- 15 The proposed revision to the definition will require decision makers to embark on a similar exercise of examining whether the majority of the types of goods proposed to be sold met the size requirement, rather than simply whether they fall within the listed categories of goods.
- 16 The energy and time required to run these arguments cannot be overstated. There will be a requirement for the term 'majority' to be judicially defined, by either the amount of display space allocated for goods which meet the size requirement, or potentially by the turnover or income received from goods that meet the size

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requirement, compared with those that do not. Conditions would then need to be set to ensure that this mix did not change over time.

- 17 The current definition removes the uncertainty as to whether a particular mix of goods can be approved as a bulky goods showroom and avoids the issue such as that posed by the decision in *Gallway Investments Pty Ltd v City of Rockingham* [2006] WASAT 212.
- 18 In that case, the Tribunal determined in relation to a development application for an Officeworks store, that office furniture and equipment were of a bulky nature falling within the definition of showroom, however office supplies were not of a bulky nature – that is, the sale of furniture fell within the definition, but the sale of paper and pens did not.
- 19 The inclusion ‘office equipment and supplies’ in the current definition resolves this question, and similar questions as to whether the current specific types of goods and accessories are capable of approval without an assessment of whether they meet the size requirement.
- 20 It is telling that the current definition in the Model Provisions has not been the subject of review in the State Administrative Tribunal.

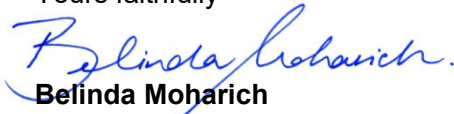
## Conclusion

- 21 In our submission the Department should be very cautious to revert to a definition which will increase uncertainty, and result in the need for judicial interpretation of the definition against a multitude of combinations of goods and activities.
- 22 As noted in the decision of *Glenwaye Pty Ltd v Glen Eira City Council* [2006] VCAT 300 –

Such disputes can consume an inordinate amount of resources. It must be questioned whether the degree of minutiae involved in resolving such disputes necessarily leads to better planning outcomes.

- 23 LFRA is right to be concerned about the impact of the proposed changes.

Yours faithfully



**Belinda Moharich**

Director

## Attachment B: Comparison of Large Format Retail Definitions Between Australian States

	<b>LFRA Preferred Definition</b>	<b>South Australia Definition (adopted 2010)</b>	<b>Victoria Definition (adopted 2012)</b>	<b>Western Australia Definition (adopted 2015)</b>	<b>Western Australia Proposed Definition (advertised 2023)</b>	<b>LFRA preferred Western Australia definition</b>
<b>Name</b>	<b>Large Format Retail Premises</b>	<b>Bulky Goods Outlet</b>	<b>Restricted Retail Premises</b>	<b>Bulky Goods Showroom</b>	<b>Bulky Goods Showroom</b>	<b><del>Bulky Goods Showroom</del> Large Format Retail Premises</b>
<b>"Deemed-to-comply" list of product categories</b>	<p>A building or place used to sell, display or hire:</p> <ul style="list-style-type: none"> <li>(a) automotive parts and accessories;</li> <li>(b) camping, outdoor and recreation goods;</li> <li>(c) electric light fittings;</li> <li>(d) animal supplies including equestrian and pet goods;</li> <li>(e) floor and window coverings;</li> <li>(f) furniture, bedding, furnishings, fabrics, manchester and homewares;</li> <li>(g) household appliances, electrical goods and home entertainment goods;</li> <li>(h) party supplies;</li> <li>(i) swimming pools and spas;</li> <li>(j) office equipment and supplies;</li> </ul>	<p>Means premises used primarily for the sale, rental, display or offer by retail of goods, other than foodstuffs, clothing, footwear or personal effects goods, unless the sale, rental, display or offer by retail of the foodstuffs, clothing, footwear, or personal effects goods is incidental to the sale, rental, display or offer by retail of other goods;</p> <p>Examples – The following are examples of goods that may be available or on display at bulky goods outlets or offer by retail of other goods:</p> <ul style="list-style-type: none"> <li>(a) automotive parts and accessories;</li> <li>(b) Furniture;</li> <li>(c) Floor coverings;</li> <li>(d) Window coverings;</li> <li>(e) Appliances or electronic equipment;</li> </ul>	<p>Land used to sell or hire:</p> <ul style="list-style-type: none"> <li>(a) automotive parts and accessories;</li> <li>(b) camping, outdoor and recreation goods;</li> <li>(c) electric light fittings;</li> <li>(d) animal supplies including equestrian and pet goods;</li> <li>(e) floor and window coverings;</li> <li>(f) furniture, bedding, furnishings, fabric, manchester and homewares;</li> <li>(g) household appliances, household electrical goods and home entertainment goods;</li> <li>(h) party supplies;</li> <li>(i) swimming pools;</li> <li>(j) office equipment and supplies;</li> </ul>	<p>"means premises –</p> <ul style="list-style-type: none"> <li>(a) used to sell by retail any of the goods and accessories of the following types that are principally used for domestic purposes – <ul style="list-style-type: none"> <li>(i) automotive parts and accessories;</li> <li>(ii) camping, outdoor and recreation goods;</li> <li>(iii) electric light fittings;</li> <li>(iv) animal supplies including equestrian and pet goods;</li> <li>(v) floor and window coverings;</li> <li>(vi) furniture, bedding, furnishings, fabrics, manchester and homewares;</li> <li>(vii) household appliances, electrical</li> </ul> </li> </ul>	Deleted	<p>"means premises –</p> <ul style="list-style-type: none"> <li>(a) used to sell by retail any of the goods and accessories of the following types that are principally used for domestic purposes – <ul style="list-style-type: none"> <li>(i) automotive parts and accessories;</li> <li>(ii) camping, outdoor and recreation goods;</li> <li>(iii) electric light fittings;</li> <li>(iv) animal supplies including equestrian and pet goods;</li> <li>(v) floor and window coverings;</li> <li>(vi) furniture, bedding, furnishings, fabrics, manchester and homewares;</li> <li>(vii) household appliances, electrical</li> </ul> </li> </ul>



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	<p>(k) baby and children's goods, children's play equipment and accessories;</p> <p>(l) <b>barbeques, fireplaces and gas appliances;</b></p> <p>(m) sporting, cycling, leisure, fitness goods and accessories</p> <p>(n) <b>musical instruments, equipment and accessories;</b></p>	<p>(f) Home entertainment goods;</p> <p>(g) Lighting and electric light fittings;</p> <p>(h) Curtins and fabric;</p> <p>(i) Bedding and manchester;</p> <p>(j) Party supplies;</p> <p>(k) Animal and pet supplies;</p> <p>(l) Camping and outdoor recreation supplies;</p> <p>(m) Hardware;</p> <p>(n) Garden plants (primarily in an indoor setting);</p> <p>(o) Office equipment and stationary supplies;</p> <p>(p) Baby equipment and accessories;</p> <p>(q) Sporting, fitness and recreational equipment and accessories;</p> <p>(r) Homewares;</p> <p>(s) Children's play equipment</p>	<p>(k) baby and children's goods, children's play equipment and accessories;</p> <p>(l) sporting, cycling, leisure, fitness goods and accessories; or</p>	<p>goods and home entertainment goods;</p> <p>(viii) party supplies;</p> <p>(ix) office equipment and supplies;</p> <p>(x) babies' and childrens' goods, including play equipment and accessories;</p> <p>(xi) sporting, cycling, leisure, fitness goods and accessories;</p> <p>(xii) swimming pools;</p>		<p>goods and home entertainment goods;</p> <p>(viii) party supplies;</p> <p>(ix) office equipment and supplies;</p> <p>(x) babies' and childrens' goods, including play equipment and accessories;</p> <p>(xi) sporting, cycling, leisure, fitness goods and accessories;</p> <p>(xii) swimming pools;</p> <p>(xiii) <b>barbeques, fireplaces and gas appliances;</b></p> <p>(xiv) <b>musical instruments, equipment and accessories</b></p>
<b>Performance based definition for new market entrants</b>	<p>or</p> <p>(o) goods and accessories which:</p> <p>(i) require a large area for handling, display and storage of goods; OR</p> <p>(ii) require direct vehicle access to the building</p>		<p>or</p> <p>(t) goods and accessories which;</p> <ul style="list-style-type: none"> <li>Require a large area for handling, display and/or storage of goods; or</li> <li>Require direct vehicular access to the building by customers for the</li> </ul>	<p>or</p> <p>(b) used to sell by retail goods and accessories by retail if –</p> <p>(i) a large area is required for the handling, display or storage of the goods; or</p>	<p>means premises used primarily for the sale by retail, wholesale or auction of (or for the hire or display of) goods whereby the majority of goods are of such size, shape, weight or quantity as to require:</p> <p>(a) large area for handling, display or storage; or</p>	<p>or</p> <p>(c) used to sell by retail goods and accessories <b>by retail</b> if –</p> <p>(ii) a large area is required for the handling, display or storage of the goods; or</p>

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	<i>by customers for the purpose of loading or unloading into or from their vehicles after purchase or hire.</i>		<i>purpose of loading or unloading goods into or from their vehicles after purchase or hire,</i>	<i>(ii) vehicular access is required to the premises for the purpose of collection of purchased goods.</i>	<i>(b) direct vehicular access to the site of the building or place by members of the public, for the purpose of loading and unloading the items into their vehicle after purchase or hire,</i>	<i>(iv) vehicular access is required to the premises for the purpose of collection of purchased goods.</i>
	<i>It does not include the sale of food, clothing and footwear unless it falls in to one of the above categories.</i>		<i>It does not include the sale of food, clothing and footwear unless their sale is ancillary to the primary use...</i>		<i>but does not include the sale of foodstuffs, alcohol, medicines, footwear or clothing unless their sale is ancillary to the sale of bulky goods.</i>	<i>It does not include the sale of food, clothing and footwear unless it falls in to one of the above categories.</i>