



**Submission to  
Australian Government Productivity Commission  
5-Year Productivity Inquiry: The Key to Prosperity –  
Interim Report**

21<sup>st</sup> October 2022

PO Box 78 Balwyn North VIC 3104 | 10/828 High Street Kew East VIC 3102  
P (03) 9859 5000 F (03) 9859 6077

[www.lfra.com.au](http://www.lfra.com.au)

ACN 131 555 612 ABN 31 131 555 612

## Contents

|  |           |
|--|-----------|
| <b>1. Introduction</b>   | <b>3</b>  |
| <b>2. Large Format Retail Association and Sector Overview</b>      | <b>5</b>  |
| <b>3. The LFRA's Involvement in NSW Planning Reform</b>            | <b>9</b>  |
| 3.1 Investment + Competition = Jobs                                | 9         |
| 3.2 Retail Expert Advisory Committee (REAC)                        | 9         |
| 3.3 NSW Productivity Commission White Paper: Rebooting the Economy | 10        |
| 3.4 Employment Zone Reforms  | 10        |
| 3.5 Industrial Lands Policy Review                                 | 14        |
| <b>4. Challenges Facing the Large Format Retail Sector</b>         | <b>16</b> |
| <b>5. Recommendations</b>  | <b>17</b> |

**Attachment A – Minister Roberts' 'Foreword' to the 2019 edition of the Large Format Retail Directory**

**Attachment B - LFRA Submission to NSW Employment Zone Reforms and LGA audit of proposed E3 zone translations**

## 1. Introduction

This submission has been prepared by the Large Format Retail Association (LFRA) in response to the Australian Government's Productivity Commission (Productivity Commission), '5-Year Productivity Inquiry: Key to Prosperity – Interim Report' (Interim Report) and note the Productivity Commission's intention to prepare a series of interim reports that will examine productivity reforms within the four (4) focus areas:

- Healthcare;
- Cities;
- Education; and
- Markets

We also note that the Interim Report highlights that:

*"...Although the past five years have been an eventful period for the Australian economy, the themes from Shifting the Dial, and the 28 recommendations from that report are, if anything, increasingly relevant following the significant COVID-10 disruptions of the past 2 years. However, overall, the dial has yet to be shifted by government..."*

The LFRA's particular focus area is related to productivity of and investment in cities. Our vision is for **clarity, consistency and certainty** of the various laws and government regulations that relate to the Large Format Retail industry in Australia. The LFRA's policy agenda encourages investment and employment growth and opportunities. Good urban planning, smart competition policy, many of the tentacles of Environmental Social Governance (ESG), including the circular economy, as well as sustainable and cheaper energy underpin our agenda.

We therefore welcome the opportunity to provide feedback from the perspective of the Large Format Retail industry to the Productivity Commission regarding the challenges it faces by planning frameworks, particularly in NSW and how the previous recommendations from the Productivity Commission's first five yearly review – 'Shifting the Dial' – released in 2017 continue to be relevant.

**The NSW Large Format Retail sector is lagging behind more competitive States such as Victoria, South Australia and Queensland. In those States, the State Government policy settings foster competition, jobs and development of new sites.**

**The current NSW planning policy settings are holding investment back.**

The LFRA considers that the key impediments to investment in NSW by existing and new entrants within the Large Format Retail sector are:

- The failure of the NSW Department of Planning, and Environment (DPE) to provide State-wide planning policy to guide retail land use objectives and decisions; and
- The NSW Government's inability to recognise and proactively plan for the future growth of the Large Format Retail Industry.

Over the last two years, the NSW Government committed to and undertaken a review of the Employment Zones Framework and its Industrial Lands *'Retain and Manage'* Policy in response to the following recommendations made within the NSW Productivity Commissions Green Paper – *'Continuing the Productivity Conversation'* and subsequent White Paper – *'Rebooting the Economy'*.

#### **RECOMMENDATION 7.4: CONSOLIDATE EMPLOYMENT ZONES**

Progress reforms to employment zones, including the following:

- Rationalise existing business and industrial zones in the Standard Instrument Local Environmental Plan to reduce the number of zones.
- Broaden the range of permissible activities to ensure prescriptions are reserved for genuinely incompatible land uses.

Progress reforms to expand complying development assessment pathways.

#### **RECOMMENDATION 7.5: OPTIMISE INDUSTRIAL LAND USE**

Evaluate the retain-and-manage approach to managing industrial and urban services land in Greater Sydney against alternative approaches, to identify what would maximise net benefits to the State.

Adopt the approach that maximises the State's welfare in the next update to the Greater Sydney Region Plan.

Whilst some positives have arisen from the Employment Zones Reform, in our opinion the outcome of the *'reform'* fails to deliver on the majority of the intended outcomes.

Furthermore, the NSW Greater Cities Commission (GCC) review of their Industrial Lands *'Retain and Manage'* policy was also an opportunity to protect significantly important industrial lands, but also presented an opportunity to promote and support the evolution of industrial lands that are no longer fit-for-purpose.

The *'Industrial Lands 'Retain and Manage' Policy Review – Findings Paper'*, dated June 2022, however confirmed the LFRAs prediction that the GCC would maintain the status quo and do little to change the current situation. However, the Findings Paper proposed further red tape and hurdles in the form of a set of draft Guiding Principles that ultimately make it almost impossible to transition industrial lands to alternatives uses, including mixed uses.

Accordingly, in the LFRA's opinion, there is still work to do in NSW. The Strategic Planning System needs to go beyond the recent reforms and reviews. Accordingly, the LFRA sees the importance of the Productivity Commission to advocate for a re-evaluation of the work already undertaken and the need for additional amendments to the NSW planning legislation and strategic planning system.

Importantly, in order to enable the contribution that the Large Format Retail sector would like to make to the NSW's productivity levels, further amendments to the NSW planning system are required. Accordingly, the LFRA's recommendations are as follows:

- NSW DPE produce a State-wide planning policy to guide retail land use objectives and decisions for both retailers and Local Government Areas (LGA);
- GCC to provide a State-wide planning policy to guide the assessment of industrial lands that are not appropriate to be maintained and can be transitioned to other uses;
- The NSW Government to support and adequately consider the growth of all forms of retail activity and in particular the Large Format Retail industry which is a significant and growing segment of the retail sector, particularly in the forthcoming review of the new Region Plan and the District Plans;
- Recognise that not all forms of retail activity belong in ‘centres’, they are strongly compatible with other uses without resulting in adverse impacts upon the more traditional centres and industrial lands, and that the Large Format Retail sector has a significant role within the NSW economy; and
- Provide opportunities for ‘emerging’ and ‘innovative’ retail formats to locate within NSW that are not currently recognised within the Standard Instrument LEP land use definitions.

## 2. Large Format Retail Association and Sector Overview

The LFRA is Australia’s peak industry body which supports and advocates for Australia’s Large Format Retail sector. Our membership base comprises of Large Format Retailers, investors, owners, developers and service suppliers. The LFRA’s policy agenda strongly encourages investment and employment growth and opportunities. Issues such as good urban planning, smart competition policy, many of the tentacles of Environmental Social Governance (ESG), including the circular economy, as well as sustainable and cheaper energy underpin our agenda. Our vision is **clarity, consistency and certainty** of the various laws and government regulations that relate to the Large Format Retail industry in Australia.

Retail members of the LFRA include some of Australia’s largest and most respected Large Format Retailers including the 72 individual business brands listed in the following table:

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

The LFRA is supported by its Patron, PwC, and the following 80 Associate members that comprise of Large Format Retail developers, investors, owners and service suppliers:

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

Australian’s love affair with Large Format Retail has been on full display during the pandemic, with a substantial increase in during the pandemic despite the COVID-19 restrictions. Simplistically, the trading performance of the Large Format Retail sector has been buoyed by the following key factors:

- The much-needed economic boost by the Federal Government in the form of Jobseeker and Jobkeeper payments;
- Reactionary purchases by the population due to the various Government restrictions such as work from home requirements and the closure of gymnasiums;
- The take-up of DIY projects;
- The desire by many to transform their homes into an oasis; and
- The spatial element of the large retail format sector (i.e. large car parks, large floorplates that automatically aid social distancing, the limited numbers of spacious internal shopping malls, and ease of access for ‘click and collect’ and ‘drive and collect’ services).

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

| Key Industry Metrics  | Australia   | New South Wales  |
|---|---|------------------|
| Total retail sales  | \$ 362.6 billion  | \$ 115.5 billion |
| Large Format Retail percentage of total retail sales                          | 25.5%   | 25.4%            |
| Large Format Retail sales   | \$ 92.4 billion   | \$ 29.4 billion  |
| Number of direct employees in Large Format Retail                             | 199,144   | 60,196           |
| Number of indirect employees in Large Format Retail                           | 247,337   | 74,763           |
| Total number of employees both directly and indirectly in Large Format Retail | 446,481   | 134,959          |
| Large Format Retail floor space   | 20,184,699 million square metres which equates to approximately 35% of all retail floor space |                  |

The LFRA has also seen a broader trend in that there has been a rise in the take-up of floorspace within established homemaker centres by uses other than traditional Large Format Retail centre uses, these include:

- Allied medical/ health and wellness (dental, radiology, blood donation centres);
- Automotive sales and servicing (sales, servicing, tyres, car washes);
- Business premises (financial services, government agencies, training services); and
- Entertainment and recreation centres (play centres, bowling, climbing, gymnasiums);

Independent research commissioned by the LFRA indicated that over the last 5 years Queensland, Western Australia and Victoria have been the leaders in permitting non- traditional Large Format Retail uses within homemaker centres whereas NSW has been the worst performer. This trend is considered to be directly linked to the responsiveness of the States' respective planning and land use zoning regulations.

The effect of Victoria's commercial zoning evolution and reform over the last 20 years, and the fact that Victoria's 'Restricted Retail Premises' definition has continuously evolved has meant that new entrants and business formats within the Large Format Retail sector have been recognised and supported.

Furthermore, the LFRA was very interested by findings of the Productivity Commission's paper '*Victoria's Commercial Land Use Zoning – Productivity Reform Case Study*', dated September 2020, which specifically looked at whether perceived adverse impacts of an increase in out-of-centre-growth 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.*

*A related concern is the availability of industrial land. In Melbourne, State Significant Industrial Precincts (SSIOs) are zoned IN3Z and IN2Z, where only limited retail activity is allowed. These sites are not a natural fit for core retail activity. There is a case for Large Format Retail in industrial areas to the extent that it is established on vacant or underutilized industrial land (which generally meets the requirements for Large Format Retail use), particularly in the industrial areas outside the SSIPs. In response to concerns about the availability of industrial land, the Victoria Department of Environment, Land, Water and Planning (DELWP) has indicated that it will review the range of uses permitted within industrial zones.*

*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 promotion and support for the Large Format Retail Industry through effective strategic planning is unlikely to give rise to significant impacts.**



### 3. The LFRA's Involvement in NSW Planning Reform

#### 3.1 Investment + Competition = Jobs

In February 2015, the LFRA released their commissioned evidence-based report titled *'Investment + Competition = Jobs'*. The report was written by JBA (now known as Ethos Urban) with economic input from Deep End Services. The *'Preface'* to the report was written by Professors Allan Fels AO and David Cousins AM. A copy of *'Investment + Competition = Jobs'* can be accessed via the following link:

<https://www.dropbox.com/s/1s91q5tynq8of06/%27Investment%20%2B%20Competition%20%3D%20Jobs%20%27%20Large%20Format%20Retail%20in%20NSW.pdf?dl=0>

*'Investment + Competition = Jobs'* was the catalyst for the then NSW Minister for Planning, the Hon Rob Stokes' creation of the Retail Expert Advisory Committee (REAC) which was headed up NSW Chief Planner, Gary White. The LFRA was a key stakeholder in the review undertaken by the REAC, and as such, made submissions and actively participated in the REAC Review.

#### 3.2 Retail Expert Advisory Committee (REAC)

The *'REAC Report'* released by the DPE in November 2017, acknowledged the structural shift in the retail market and competition of 24-hour on-line trading with bricks and mortar retailers who have limited trading hours. In addition, the *'REAC Report'* made five (5) recommendations to the NSW Government on how the planning system could be improved to support retail in NSW, including:

- Develop a state-wide retail planning policy;
- Consider retail supply and demand in strategic plans;
- Change the Standard Instrument Local Environmental Plan;
- Improve assessment processes, and
- Provide clearer planning guidance.

In response to the REAC report, the DP&E proposed amendments to the *'Standard Instrument LEP'* and also issued *'Planning for the Future of Retail'* Discussion Paper to obtain a wider understanding of how the NSW planning system can better support a robust, diverse and evolving retail sector that meets the needs of businesses and the community.

Following a significant number of submissions made by the LFRA and other representatives of our industry, in August 2018 the land use term *'Bulky Goods Premises'* was replaced with *'Specialised Retail Premises'*. The new definition overcame significant problems with the previous definition of *'Bulky Goods Premises'*. However, whilst the new definition assists our members in terms of providing clarity, consistency and certainty in respect of the goods that can be sold and services provided and has made it a little easier for our industry to do business in NSW, it did not increase the supply of land for future Large Format Retail developments.

Minister Roberts informed our members in the *'Foreword'* to the 2019 edition of the LFRA Directory (refer to *'Attachment A'*) that in 2019 the NSW Government "...will finalise the State-wide retail planning policy and provide advice to councils on how to consider retail supply and demand as part of their local strategic plans...". However, there has not been a State-wide retail planning policy released and the NSW Government has not actioned any of the other recommendations. Accordingly, there continues to be no timetable or update provided that relates to the introduction of an appropriate *'Retail Planning Policy'*.

A key finding of the *'REAC Report'* (page 8) was that "...the planning system does not provide sufficient flexibility to accommodate the dynamic and rapidly evolving nature of the retail sector, resulting in an ad hoc approach to retail development, an undersupply of retail floorspace and inconsistent land use outcomes...".

Despite the findings of the *'REAC Report'*, and the adoption (at the time) of the recommendations within the *'REAC Report'* by the DPE, the NSW Government has done very little to address the challenges that are faced across the entire retail sector, but none more so that the Large Format Retail sector.

Indeed, following a meeting with a representative from Minister Stokes' office in July 2019, the LFRA wrote to the Minister to seek assurance that the recommendations from the *'REAC Report'* would be implemented and the State-wide planning policy would be finalised, noting that the NSW policy settings were holding back investment. To date no response has been received from the Minister's office addressing the issues raised.

### 3.3 NSW Productivity Commission White Paper: Rebooting the Economy

As noted in Section 1, over the last two (2) years, the LFRA has taken a keen interest in the NSW Productivity Commission's focus on how best the NSW Government could respond to productivity challenges it has been facing. To that end, the LFRA provided submissions original Discussion Paper *'Kickstarting the Productivity Conversation'* and the Green Paper *'Continuing the Productivity Green Paper'*.

With the publication of the White Paper *'Rebooting the Economy'*, the LFRA welcomed the full suite of recommendations, but in particular the recommendations to progress reforms to rationalise employment zones and evaluate the ways to manage industrial and urban services land.

These initiatives were seen to be a significant step forward in addressing the impediments that were and are current faced by Large Format Industry investors into the NSW market.

### 3.4 Employment Zone Reforms

Since June 2021, the LFRA has been a key stakeholder in the NSW Employment Zone Reform framework as this reform was seen to be a *'once in a generation'* opportunity. The LFRA supported and welcomed the DPE's gazetted changes to the *'Standard Instrument – Principal Local Environmental Plan'*, which introduced a new suite of Employment Zones, as it will undoubtedly increase the volume of land in which Large Format Retailing may be able to be located and provides a significant rethink of how employment zones are categorised and located.

The LFRA was also heartened by the fact that *'Specialised Retail Premises'* will be a mandatory permitted use in the E3 – Productivity Support zone, alongside other complementary land uses such as Neighbourhood Shops, Business Premises, Office Premises, Takeaway Food and Drink Premises.

However, in preparing its submission to the proposed implementation of the employment zone reforms, the LFRA undertook an audit of the 152 Local Environmental Plans in NSW, to understand the proposed translation of the existing B5, B6 and B7 zones into the E3 – Productivity Support zone and the accompanying proposed land use tables.

A copy of the LFRA's submission and accompanying audit is *'Attachment B'* to this submission.

**The LFRA's audit found that there are land uses which currently are permissible which are proposed to become prohibited. This issue is of great concern to our Association and its members.**

In particular, food and drink premises (including the land uses that fall under this group term) are not mandated in the E3 Productivity Support zone, and not all Local Government Authorities (LGAs) are looking to implement this group of land uses into the E3 Productivity Support land use table. *'Take-away food and drink premises'* is a mandated permissible use within the E3 – Productivity Support zone, but the wider food and drink premises group terms which includes restaurants and cafes are not. Accordingly, businesses ranging from small cafes through to large chain fast food restaurants like McDonalds and Oporto's which typically are located alongside Large Format Retail centres will be impacted.

Restaurants and cafes are highly complementary to the Large Format Retail industry are often co-located with Large Format Retail developments and centres and are important for Large Format Retail anchors to attract customers and promote linked trips between the different stores within a centre.

The DPE hasn't provided any clear reasoning for only allowing *'take away'* food and drink premises and omitting the other food and drink premises land uses to be mandated into the E3 Productivity Support zone, especially where they are currently permissible. We understand the reason is that certain LGAs consider that such uses would allow Large Format Retail centres to be converted into *'town centres'*, however no clear evidence has been provided to back up this theory.

We strongly disagree with this proposition as we see that it is not the role of the DPE or LGAs to restrict competition.

To counter the potential detrimental impacts arising from land uses being *'lost in translation'* in the reform process, DPE proposed initially to introduce site-specific provisions in Schedule 1 of the Standard Instrument LEP to allow additional permitted uses on certain sites where needed. However, following completion of the public exhibition period, the DPE released further correspondence to advise that a savings and transitions clause is being prepared which will *"...maintain permissibility for two years where a specific land use was permissible under a previous zone but is not proposed to continue under an employment zone because a land use table of best fit has been applied where multiple zones are being merged..."*

The DPE has clarified that Additional Permitted Uses clauses will be included in Schedule 1 of the relevant LEPs for higher order uses such as a residential uses, food and drink premises and specialised retail, but where a Council does not wish to include them the savings and transitions clause will be a ‘catch all’.

The LFRA is of the view that whilst the Additional Permitted Uses clause is a legal mechanism that is open to the DPE, is it not simple and does not promote the establishment of broad zones in which the market can choose to operate within. Further, if a Council does not wish to include an Additional Permitted Uses clause, then existing business only have two years grace before they are no longer permissible and the permissibility and future operations of the premises will be solely reliant on ‘existing use rights’ pursuant to ‘Section 4.66 of the Environmental Planning and Assessment Act 1979’ (EP& A Act).

For example, the Large Format Retail hub in Minchinbury falls within the Penrith LGA and is proposed to transition from the current B5 Business Development zone to the E3 Productivity Support zone. This part of Western Sydney is home to Large Format Retail operators such as Bunnings, Supercheap Auto, Reece Plumbing and Swimart all of which provide a shopping experiences supported by separate food and drink premises such as McDonalds, Snatch Café, BurgerQue, and Wild Bean Café. Under the proposed translation these food and drink premises will all require a reliance on a complicated site-specific provision or on the two-year savings and transition provisions to remain permissible.

By contrast food and drink premises located in the nearby shopping precinct of Blacktown Industrial Area which will fall into the E3 – Productivity Support zone will be permissible under the E3 land use table. This demonstrates that whilst both shopping precincts are proposed to be zoned E3 Productivity Support, the permissibility of food and drink premises in the Penrith LGA versus Blacktown LGA is inconsistent.

The inconsistency generated creates further challenges and ultimately hinders the ability of the retail industry to generate employment and support economic recovery. To counteract this, the LFRA has recommended to the DPE the use and adoption of Standard Instrument Group Terms such as ‘Food and Drink Premises’ and a mandated use in the E3 zone.

We have evaluated the outcome of the proposed implementation of the Employment Zones Reform against the June 2021 Explanation of Intended Effects for the Employment Zone Reform and its objectives as well as the objectives identified in the REAC Report and the recommendations set out within the NSW Productivity Commissions White Paper. Tables 1, 2 and 3 provides our assessment against each of the key elements.

Table 1: Performance of proposed reforms against objectives identified in the REAC Report

| Objective in REAC Report   | LFRA's report card on success in the implementation in the proposed reforms |  |
|--|---|--|
| <i>A simpler approach to land use zones focused solely on land use and not the intensity of development;</i>   | X   | The proposed amendments to the SILEP and the E3 zone will not simplify the zoning framework or the development process in the retail sector.   |
| <i>Genuinely incompatible uses are separated, but there is greater scope for complementary uses to develop and compete;</i>  | X   | Failure to translate the permissibility of the full suite of complementary land uses (such as food and drink premises into the E3 zone does not increase the scope for these uses to develop and compete.                                  |
| <i>A shift in focus from land uses to outcomes and impacts of development through planning guidance;</i>   | X   | By limiting the extent of mandated permissible uses in the E3 zone, and by retaining the predominant use of group terms in the E3 land use table, the focus of the zone remains on land uses rather than outcomes and development impacts. |
| <i>Open zones with fewer prohibitions provide for greater flexibility and will minimise the need for spot rezonings - which in turn reduces costs, time delays and uncertainty for businesses and the community.</i> | X   | The proposed changes to the E3 zone in many LGAs fail to provide greater flexibility and in fact, will create an increased reliance on existing use rights, Schedule 1 additional permitted use provisions, or spot rezonings.             |

Table 2: Performance of proposed reforms against Recommendation 7.4 – Consolidate Employment Zones (NSW Productivity Commission 2021)

| Recommendation in the White Paper  | LFRA's report card on success in the implementation in the proposed reforms |   |
|--|---|---|
| <i>Progress reforms to employment zones, including the following</i>   | ✓   | The DPE has progressed the reform of the employment zones   |
| <i>Rationalise existing business and industrial zones in the Standard Instrument Local Environmental Plan to reduce the number of zones.</i> | ✓   | The DPE has successfully rationalised the existing number of zones  |
| <i>Broaden the range of permissible activities to ensure prescriptions are reserved for genuinely incompatible land uses</i>                 | X   | The range of permissible activities has been expanded to a certain degree, however the mandated permissible uses within the E3 zone do not only prohibit uses that are genuinely incompatible land uses, but in certain areas prohibit land uses, such as food and drinks premises that are compatible and indeed support the zones. In some circumstances the reforms therefore create less flexibility that currently exists. |
| <i>Progress reforms to expand complying development assessment pathways</i>  | ✓   | The amendment to the Codes SEPP is welcomed and the changes it has provided undoubtedly rectifies previous change of use issues and provides significant flexibility and a reduction in red tape for LFRA members.  |

Table 3: Performance of proposed reforms against objectives identified in the Employment Zone Reform EIE

| Objective in EIE  | LFRA's report card on success in the implementation in the proposed reforms |   |
|---|---|---|
| <i>Provide greater certainty for the community, councils and the development industry</i> | X   | By limiting the mandated permissible uses in the E3 zone, this fails to provide consistency of land use tables across LGAs and does not provide certainty for stakeholders. |
| <i>Support councils' long-term strategic planning objectives</i>                          | ✓   | Can be achieved.  |
| <i>Support businesses, industry and society to grow, respond and adapt as necessary</i>   | X   | Prohibiting complementary land uses that are currently permissible does not allow for growth or adaptation.   |
| <i>Facilitate innovation and changes in business processes now and into the future.</i>   | X   | Reliance on existing use rights or Schedule 1 additional permitted use provisions does not facilitate innovation or changes in business processes.                          |

Accordingly, the LFRA considers that whilst on paper, the Employment Zones Reform meets some of the recommendations set out by the NSW Productivity Commission, the implementation of the Employment Zones Reform into the individual Local Environmental Planning documents, fails to adequately deliver on most of the intended outcomes as set by REAC and the Employment Zones Reform EIE.

### 3.5 Industrial Lands Policy Review

In August 2021, the LFRA made a submission to the GCC in respect of its' review of the Industrial and Urban Services lands '*Retain and Manage*' policy under the Greater Sydney Region Plan, known as the Industrial Lands Policy Review. The LFRA welcomed the review and agreed with the NSW Productivity Commissioner's White Paper that the existing '*Retain and Manage*' approach is effectively a moratorium on rezoning land to a higher and better use and there is a need for land uses to adapt to Sydney's changing economic and social needs. Furthermore, continuing to restrict the flexibility of development on the '*Retain and Manage*' industrial areas is likely to limit the ability of these area to adapt and evolve. It also prevents investment by existing sectors, such as the Large Format Retail sector, as well as new and innovative entrants to the market.

The LFRA's submission made it clear that continuing to restrict the flexibility of development on the '*Retain and Manage*' industrial areas, is likely to limit the ability of these areas to adapt and evolve and also it prevents investment by existing sectors, such as the Large Format Retail sector, as well as new and innovative entrants to the market.

The Industrial Lands Policy Review, therefore was an opportunity to protect significantly important industrial lands, which the LFRA supports, however the '*Review*' also presented an opportunity to promote and support the evolution of industrial lands that are no longer fit-for-purpose.

*The Industrial Lands 'Retain and Manage' Policy Review – Findings Paper*, dated June 2022, confirmed the LFRA's prediction that the GCC would maintain the status quo and do little to change the current situation. However, the '*Findings Paper*' goes a step further and

strengthens the *'retention and manage'* policy by proposing the eight draft Guiding Principles, which will likely be implemented into the next iteration of the Regional Plan.

Whilst the transition of industrial lands to alternative uses is considered in draft Guiding Principle 8, when an industrial area (or part) is identified for possible transition to an alternative use, the draft Guiding Principle set out that proposals would be required to ensure that it:

1. Would not compromise the other seven draft Guiding Principles;
2. Must consider other employment uses first;
3. If evidence demonstrates that the transition to other employment uses cannot be achieved, then infrastructure and other community facilities are to be considered;
4. Gives effect to the Region and District Plans;
5. Does not compromise the integrity or effectiveness of industrial activities and their current and future ability to operate;
6. Demonstrates how comparable types of industrial lands can be accommodated within the local, region or city scale;
7. Is balanced to demonstrate the potential benefits from other alternative uses on the site; and
8. Demonstrates the lack of other appropriate sites in the surrounding area where the other alternative uses can be accommodated.

Notwithstanding this, the *'Findings Paper'* does not provide a particular definition as to what an *'employment use'* is.

The LFRA considers that *'Specialised Retail Premises'* and Large Format Retail are employment uses, especially in the context of the Employment Zone Reform amendments, however, as the GCC clearly stated in the Industrial Lands Stakeholder Information Session earlier this year that, *"...while Large Format Retail precincts are compatible with 'some of the other industrial' uses, there maybe a case to distinguish there location in relation to the Industrial Lands..."*, which effectively says, that Large Format Retail should be treated differently to other employment uses, and should not be located on Industrial Lands.

*'Hardware and Building Supplies'* and *'Garden Centre'* uses, which are part of the Large Format Retail sector, are already mandated permissible uses on Industrial land. The impacts associated with those uses are similar in nature to other *'Specialised Retail Premises'* uses, and therefore there should be no differentiation in terms of where one Large Format Retail use can locate in comparison to another.

Accordingly, a clear State-wide policy to guide the assessment of industrial lands that are not appropriate to be maintained and can be transitioned to other uses should be provided by the NSW Government. The purpose of this guidance would be to ensure that proposals are assessed on their merits and not on outdated protectionist policies, that do not provide any economic or social benefit. However we fear that, like the State-wide retail policy that has been promised by the NSW Government, this will not be forth coming.

Undoubtedly there are industrial lands throughout Sydney which are classified as *'retain and manage'* that have declined, are under-utilised and have little prospect of returning back to their former productive selves. Therefore, it is imperative for the NSW Government to amend the Industrial lands policy to promote growth, management and

adaptation of these underutilised Industrial lands to service the needs of the community and increase productivity levels.

#### 4. Challenges Facing the Large Format Retail Sector

The LFRA has consistently advocated for and maintains its position that planning and zoning laws within NSW need to provide clarity, consistency and certainty to allow retailers to meet current and future challenges. Principally, the investment in the sector suffers from:

- A lack of clarity and flexibility in determining whether its retailers *'fit'* within the current available land use definitions; and
- A lack of sufficient appropriately zoned, sized and configured land to support new development.

Furthermore, the challenges that face the Large Format Retail sector, and in particular, the urgent need for appropriate planning and zoning legislation to support the Large Format Retail sector has also been highlighted in numerous independent reports issued over the last twelve (12) years, including:

- *'Independent Recommendations Report'*, prepared by the Retail Advisory Expert Committee (June 2017);
- *'Shifting the Dial'*, prepared by the Australia Government Productivity Commission (August 2017);
- *'Economic Structure and Performance of the Australian Retail Industry'*, prepared by the Australian Government Productivity Committee (December 2011);
- *'The Sydney Retail Demand and Supply Consultancy Report'*, prepared by Deep End Services (May 2016);
- *'The Employment Centres Analysis'*, prepared by SGS Economics and Planning (February 2016);
- *'Industrial Precinct Review'*, prepared by Hill PDA (August 2015);
- *'Proposed Standard Instrument Local Environmental Plan Amendment to the Bulky Goods Premises Definition'*, prepared by the DP&E (November 2017).
- *'Performance Benchmarking of Australian Business: Planning, Zoning and Development Assessments'*, prepared by the Australian Government Productivity Commission (May 2011); and
- *'Market for Retail Tenancy Leases in Australia'*, prepared by the Australian Government Productivity Commission (March 2008).

Floorspace demand within the Large Format Retail sector was specifically identified in the 2016 Deep End Services report – *'Sydney Retail Demand and Supply Consultancy'* prepared for the then DP&E in association with the Greater Sydney Commission (GSC). The report confirmed that between 1.74 and 2.2 million square metres of Large Format Retail floorspace will be required over the period 2011 to 2031 which accounts for approximately 40% of retail demand.

The Deep End Services report also acknowledged that the Large Format Retail sector has experienced a 2.3% growth per annum between 1992 and 2015, which is the second highest growth rate out of all other identified retail sub-markets. Growth between 2015 and 2031 is, however, expected to slow to 1.1% per annum, which was attributed in part to:



- The past trend of redeveloping industrial land in inner suburban locations for retail development is unlikely to occur to such an extent in the future; and
- Regulatory reform that in the past fuelled growth (e.g. removal of weekend trading restrictions) is unlikely to occur to such an extent in the future.

Deep End Services estimated that the Large Format Retail floorspace supply within the Sydney Metropolitan Area in 2015 was 2.9 million square metres which represents 27% of the retail distribution. Using the same methodology in its calculations, Deep End Services estimated that by 2031, Large Format Retail floorspace supply within the Sydney Metropolitan Area will account for 4.5 million square metres; this equates to an increase in supply of 1.6 million square metres, and a forecast demand requirement of between 1.7 and 2.2 million square metres outstrips the supply level.

**The Large Format Retail sector is therefore forecast to have significant surplus floorspace demand at 2031 which will not be met by estimated supply levels.** It has been a common experience for LFRA members over the past few years that due to the current restrictive planning and zoning controls within NSW there has been and continues to be a lack of appropriately zoned, sized and configured land to support new Large Format Retail development.

Data collated for the annual publication of the Large Format Retail Directory demonstrates that there are deficiencies in the supply of land for new Large Format Retail developments and therefore a need for Councils and the NSW Government to consider:

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

The LFRA anticipated that the GCC's Regional and District Plans largely ignore the Large Format Retail sector, and indeed by virtue of the recent outcome of the Industrial Lands Policy review, Strategic Planning Policy in NSW only seek to prevent the transition of and utilisation of industrial sites to alternative uses.

## 5. Recommendations

In light of the above, and as acknowledged in the Interim Report, *'the dial is yet to be shifted by Government'* and despite recent policy reforms and reviews in NSW, there is still work to do to provide greater certainty, support business, industry and society to grow and evolve and to facilitate innovation. The LFRA therefore requests that in preparing the *'Cities'* interim report, that the information contained within this submission and our following recommendations are considered:

- DPE produce a State-wide planning policy to guide retail land use objectives and decisions for both retailers and LGAs;

- GCC to provide a State-wide planning policy to guide the assessment of industrial lands that are not appropriate to be maintained and can be transitioned to other uses;
- The NSW Government to support and adequately consider the growth of all forms of retail activity and in particular the Large Format Retail industry which is a significant and growing segment of the retail sector, particularly in the forthcoming review of the new Region Plan and the District Plans;
- Recognise that not all forms of retail activity belong in '*centres*', they are strongly compatible with other uses without resulting in adverse impacts upon the more traditional centres and industrial lands, and that the Large Format Retail sector has a significant role within the NSW economy; and
- Provide opportunities for '*emerging*' and '*innovative*' retail formats to locate within NSW that are not currently recognised within the Standard Instrument LEP land use definitions.

The LFRA would be happy to meet with the Productivity Commission to discuss this submission and reinforce the critical importance to plan appropriately for the Large Format Retail sector within NSW.

Please contact the LFRA's Chief Executive Officer, Philippa Kelly should you wish to discuss any aspect of this submission.