



ACT Planning System Review and Reform Project – Submission on the Draft new Territory Plan and Draft District Strategies

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1. Introduction

This submission has been prepared by the Large Format Retail Association (LFRA) in response to the ACT Government's recent release of the Draft new Territory Plan and new District Planning Strategies for community consultation as part of its' Planning System Review and Reform Project.

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 has a clear policy agenda centred around energy, 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. The LFRA's policy agenda encourages investment and employment growth and opportunities. Good urban planning, smart competition policy, and sustainable and cheaper energy underpin our agenda.

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 30th June 2022:

Key Industry Metrics	Australia	Australian Capital Territory
Total retail sales	\$ 362.6 billion	\$ 6.6 billion
Large Format Retail percentage of total retail sales	25.5%	28.5%
Large Format Retail sales	\$ 92.4 billion	\$ 1.9 billion
Number of direct employees in Large Format Retail	199,144	4,069
Number of indirect employees in Large Format Retail	247,337	5,054
Total number of employees both directly and indirectly in Large Format Retail	446,481	9,123
Large Format Retail floor space	20,184,699 million square metres which equates to approximately 35% of all retail floor space	

Whilst it is encouraging that aims of the Territory Plan Review Process is to *deliver “...a clear, easy-to-use planning system...”* with changes proposed to achieve an *“...outcomes focused planning system...”* rather than a compliance approach, concerns are raised with changes to uses, definitions and zones in the context of the Large Format Retail sector.

The submission provided herein seeks ACT Government’s consideration to align the relevant Draft new Territory Plan and new District Strategies to the LFRA’s vision is for clarity, consistency and certainty of the various laws and government regulations that relate to the Large Format Retail industry in Australia.

2. Large Format Retail Association

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, and 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 76 individual business brands listed in the following table:

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

The LFRA is supported by its Patron, PwC, and the following 85 Associate members that comprise of Large Format Retail developers, investors, owners and service suppliers:

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

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. Overview of New Planning Reform

The following is understood in relation to the structure and application of the new planning system.

3.1 Planning Bill 2022

The Planning Bill 2022, which will become the *Planning Act 2023*, sets the foundation of ACT's reformed outcomes-focussed planning system. The Planning Bill has several key principles which have guided its' development:

Easy to use	<i>Easy to use</i> – less layers, clear processes, simple language and better digital experience.
Certainty	<i>Certainty</i> – of processes and requirements, and how applications will be assessed.
Flexibility	<i>Flexibility</i> – for design approaches to meet planning provisions, flexibility for appropriate use. *This does not mean a system with no rules, or the removal of key provisions such as building height limits in residential areas.
Transparency	<i>Transparency</i> – more information available on processes and decisions, community participation in the planning system, website access to public register information.
Outcomes-focussed	<i>Outcomes-focussed</i> – how the development works as a whole, rather than meeting minimum rules.

3.2 Draft District Strategies

District strategies have been prepared for nine (9) districts in the ACT these inform the specific directions and future planning outcomes to be delivered in each district.

The District strategies are intended to allow for managing growth and change strategically within and between districts whilst recognising the distinctive character of each district. The District strategies inform the District policies under the Territory Plan in identifying areas of potential future land use change and providing guidance on the expected character of development in those areas.

3.3 Draft New Territory Plan

The Draft new Territory Plan will allow the statutory functions of ACT's planning system to become less focussed on rules and criteria and more defined by outcomes and needs of the community. It is understood that the draft Territory Plan does not include major changes to current zoning and still sets parameters that development must meet, such as land use, building height and setback.

Through introducing supporting material such as design guides and technical specifications and focusing on policy outcomes and assessment requirements, the focus for development assessment under the Draft new Territory Plan is on the impacts and outcomes of a development, rather than a prescriptive compliance approach.

The district policies will be a new part of the statutory planning system, replacing the existing structure plans, concept plans and precinct codes. Principles and controls that need to apply to a site beyond what is allowed under the zoning will be specified in the district policies. This will include specific sites identified in the district strategies.

Zone policies outline desired policy outcomes unique to each zone and include key assessment requirements, expected assessment outcomes and development compliance provisions as appropriate. Zone policies inform development decisions and provide clarity about land uses.

District and zone policies provide the higher-level considerations that development must meet. Under these policies **Assessment Requirements** specify the '**mandatory**' considerations i.e. matters that must be met for a development application to be approved. The **Assessment outcomes** within the district and zone policies however contain the key matters that any development proposal will be assessed against and allow for flexibility, creativity and innovation.

The Draft new Territory Plan is also supported by **Design guides** including the Urban Design Guide and Housing Design Guide which provide important guidance in preparing, assessing and deciding development proposals.

Additionally, **Technical Specifications** are used as one possible solution or to provide certainty for identified aspects of a development proposal. The Technical Specifications are typically numerical, quantifiable or relate to an accepted standard. Examples include pre-determined setbacks, heights, stormwater management or certain standards for parking or storage. Technical specifications are therefore limited in their application and do not replace the more comprehensive consideration provided by Design Guides, nor are Technical Specifications mandatory.

This submission has specifically considered the following components of the Draft new Territory Plan as they relate to the Large Format Retail sector:

- Part E2 – Commercial Zones Policy
- Part E3 – Industrial Zones Policy
- Part G1 – Dictionary
- TS2 – Commercial
- TS3 – Industrial

4. Challenges Facing the Large Format Retail Sector under the Reforms

The LFRA has consistently advocated for, and maintains its' position that planning and zoning laws within the ACT 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;
- A lack of sufficient appropriately zoned, sized and configured land to support new development.

These key challenges have been considered below in the context of the ACT Planning System Review and Reform Project and the Draft new Territory Plan.

4.1 Changes to Definitions

The Large Format Retail sector has long suffered from a lack of clarity in determining whether its retailers *'fit'* within the current available land use definitions. Accordingly, new entrants within the Large Format Retail sector and new Large Format Retail developments in ACT that don't *'fit'*, face high risk and an uncertain and lengthy planning pathway, which often involves a Crown Lease Variation or Territory Plan Variation.

The ACT Government identified in the *Proposed New Territory Plan – Supporting Report November 2022* that changes to definitions – uses of land are proposed “...to improve the interpretation of provisions within the Territory Plan, improve the policy outcomes and remove ambiguity...”.

Of concern to the LFRA is the revision of the *'Bulky goods retailing'* definition as outlined in the table below.

Item	Issue raised	Considerations	Change proposed
Bulky goods retailing	Some developments have suggested they are bulky goods retailing due to the shop being of a large size (and selling small sized items), rather than selling large/ bulky items	Definition needs to be refined to clarify that it does not cover a large shop area that sells smaller items. Also reference to a loading dock within the building is not considered to be necessary.	Revised definition: <i>bulky goods retailing</i> means the use of land where the goods or materials sold or displayed are predominantly of such a size, shape or weight as to require: <ul style="list-style-type: none"> a) a large area for handling, storage or display; and/or b) direct vehicular access to the <i>site</i> by members of the public, for the purpose of loading goods or materials from the loading dock into their vehicles after purchase, but does not include any <i>shop</i> used primarily for the sale of food or clothing.

The LFRA has subsequently reviewed Part G1 – Dictionary of the Draft new Territory Plan and notes the revised ‘*Bulky Goods Retailing*’ definition identified in the Supporting Report November 2022 is proposed to be adopted as shown below with example uses.

Definition	Example uses
<p><i>bulky goods retailing</i> means the use of land where the goods or materials sold or displayed are predominantly of such a size, shape or weight as to require:</p> <ul style="list-style-type: none"> a) a large area for handling, storage or display; and/or b) direct vehicular access to the <i>site</i> by members of the public, for the purpose of loading goods or materials from the loading dock into their vehicles after purchase, but does not include any <i>shop</i> used primarily for the sale of food or clothing. 	<p> auction rooms camping equipment sales carpet sales do-it-yourself home improvement centres furniture sales hardware stores showroom for bulky goods </p>

The revised ‘*Bulky Goods Retailing*’ definition under the Draft new Territory Plan is unreasonably restrictive and fails to allow for emerging and innovative market trends. Large Format Retailers want to remain innovative and adapt to ensure future expansion for which this definition change does not allow.

In order to succeed, Large Format Retailers’ primary focus is to deliver a seamless retail experience to the customer. The retail sector, like many markets, is facing incredible disruption and change, especially throughout the COVID-19 pandemic. Technology, in many forms, has been a significant part of the disruption, but as shown in recent times it is a massive enabler. Retail must continue to innovate, adapt, and remain connected to the most important person; its’ customer.

With this in mind, the intent of the reforms to remove reference to ‘*Shop*’ from the ‘*Bulky Goods Retailing*’ definition places undue restrictions on many Large Format Retailers who sell a range of goods of various sizes to enter the Canberra market.

Further to the above, the example uses identified for ‘*Shop*’ under the Draft new Territory Plan capture a number of the Large Format Retail uses such as camping supplies, sports goods, and toy store.

Definition	Example uses
shop means the use of land for the purpose of selling, exposing or offering the sale by retail or hire, goods and personal services.	antique dealer art, craft or sculpture dealer auction room boutique butcher camping supplies store chemist convenience store delicatessen department store florist gift shop household appliances liquor store mobile phone store newsagent pet shop sports goods store toy store

Within the ACT's established Homemaker Centres (at Majura Park Homemaker Centre and Canberra Homemaker Centre), a number of existing retailers provide a range of land uses that would fall under the definition of 'Shop' and which would now be prohibited in both the IZ1 – General Industrial Zone and IZ2 – Business Zone under the Draft new Territory Plan due to the change in definition of 'Bulky Goods Retailing'.

Further, 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 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)

It is the opinion of the LFRA that the current 'Bulky Goods Retailing' definition under the existing *Territory Plan 2008* (as outlined in the table below) provides greater clarity, consistency and certainty for the Large Format Retail sector than that proposed under the Planning Reforms.

Umbrella Term	Development
<i>SHOP means the use of land for the purpose of selling, exposing or offering the sale by retail or hire, goods and personal services</i>	<p><i>Bulky goods retailing means a shop which includes a loading dock within the building, and where the goods or materials sold or displayed are of such a size, shape or weight as to require:</i></p> <p><i>a) a large area for handling, storage or display; and/or</i></p> <p><i>b) direct vehicular access to the site by members of the public, for the purpose of loading goods or materials into their vehicles after purchase, but does not include any shop used primarily for the sale of food or clothing</i></p>

The LFRA has a wide range of members (refer to **Section 2** of this submission) that fall within the definition of ‘*Industrial trades*’.

Whilst no change to the ‘*Industrial Trades*’ definition is proposed under the Draft new Territory Plan, as shown in the table below, this submission provides an opportunity to undertake a holistic review of the existing definitions relevant to the Large Format Retail sector including ‘*Industrial trades*’ as well as ‘*Bulky Goods Retailing*’.

Definition	Example uses
<p><i>industrial trades means the use of land for the selling, hiring, inspection or servicing of goods or materials for industrial, agricultural, construction, transport or like purposes where:</i></p> <p><i>a) a large area for handling, storage or display is required; and/or</i></p> <p><i>b) the activity carried out has the potential to have an impact similar to industry in terms of traffic and parking generation, noise and air pollution, and visual impact.</i></p>	<p>agricultural supplier</p> <p>agricultural machinery sales and service</p> <p>builders' supplies</p> <p>display of building materials</p> <p>industrial machinery sales and service</p> <p>timber yard</p> <p>vehicle repair and maintenance</p>

We bring to the attention of the ACT Government the ‘*Bulky Goods Showroom*’ and ‘*Trade Supplies*’ definitions under Western Australia’s ‘*Planning and Development (Local Planning Schemes) Regulations 2015*’ for your consideration. These two land uses are akin to the ‘*Bulky Goods Retailing*’ and ‘*Industrial Trades*’ land uses provided for within the Draft new Territory Plan.

As a result of proactive and prolonged advocacy by the LFRA during preparation of the Western Australia Regulations, these two land use definitions were introduced to the ‘*Model Provisions*’ to cater for Large Format Retailing activities.

The model land use definition for ‘*Bulky Goods Showroom*’ reads as follows:

“...Bulky Goods Showroom means premises –

- (a) *Used to sell by retail any of the goods and accessories of the following types that are principally used for domestic purposes –*
 - (i) *Automotive parts and accessories;*
 - (ii) *Camping, outdoor and recreation goods;*
 - (iii) *Electric light fittings;*
 - (iv) *Animal supplies including equestrian and pet goods;*
 - (v) *Door and window coverings;*
 - (vi) *Furniture, bedding, furnishings, fabrics, manchester and homewares;*
 - (vii) *Household appliances, electrical goods and home entertainment goods;*
 - (viii) *Party supplies;*
 - (ix) *Office equipment and supplies;*
 - (x) *Babies’ and childrens’ goods, including play equipment and accessories;*
 - (xi) *Sporting, cycling, leisure, fitness goods and accessories;*
 - (xii) *Swimming pools;*
- or*
- (b) *Used to sell by retail goods and accessories by retail if –*
 - (i) *A large area is required for the handling, display or storage of the goods; or*
 - (ii) *Vehicular access is required to the premises for the purpose of collection of purchased goods...”*

Importantly, it should also be noted that the ‘*Bulky Goods Showroom*’ definition does not specifically restrict or prohibit the sale of food or clothing which is the case in the Draft new Territory Plan.

As such, the potential exists to include these items under ‘*part (b)*’ of the definition, by demonstrating that a large area is required for the handling/display/storage of goods, or that vehicular access is required for the purpose of collecting purchased goods.

The Western Australia model land use definition for ‘*Trade Supplies*’ reads as follows:

- (a) *“...Trade Supplies means premises used to sell by wholesale or retail, or to hire, assemble or manufacture any materials, tools, equipment, machinery or other goods used for the following purposes including goods which may be assembled or manufactured off the premises –*
- (b) *Automotive repairs and servicing;*
- (c) *Building including repair and maintenance;*
- (d) *Industry;*
- (e) *Landscape gardening;*
- (f) *Provision of medical services;*
- (g) *Primary production;*
- (h) *Use by government departments or agencies, including local government...”*

Further to the strength of Western Australia's Model Definitions for '*Bulky Goods Showroom*' and '*Trade Supplies*', the LFRA has identified that 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.

For consideration by the ACT Government, Victoria's *Restricted Retail Premises* land use definition is provided below to demonstrate the breadth of the definition to meet the future expectations of the Large Format Retail sector:

"...Restricted Retail Premises;

Land used to sell or hire:

- (a) Automotive parts and accessories;*
- (b) Camping, outdoor and recreation goods;*
- (c) Electric light fittings;*
- (d) Animal supplies including equestrian and pet goods;*
- (e) Floor and window coverings;*
- (f) Furniture, bedding, furnishings, fabric, manchester and homewares;*
- (g) Household appliances, household electrical goods and home entertainment goods;*
- (h) Party supplies;*
- (i) Swimming pools;*
- (j) Office equipment and supplies;*
- (k) Baby and children's goods, children's play equipment and accessories;*
- (l) Sporting, cycling, leisure, fitness goods and accessories; or,*
- (m) Goods and accessories which:*
 - i) Require a large area for handling, display and/or storage of goods; OR*
 - ii) Require direct vehicular access to the building by customers for the purpose of loading or unloading goods into or from their vehicles after purchase or hire.*

It does not include the sale of food, clothing and footwear unless their sale is ancillary to the primary use..."

In addition, there is a separately defined land use term '*Trade Supplies*' that can apply to certain types of Large Format Retailers as follows:

"...Trade Supplies;

- Land used to sell by both retail and wholesale, or to hire, materials, tools, equipment, machinery or other*
- goods for use in:*
- Automotive repairs and servicing;*
- Building;*
- Commerce;*
- Industry;*
- Landscape gardening;*
- The medical profession; primary..."*

South Australia has now been operating under the 'Planning Development and Infrastructure Act 2016', since the implementation of the 'Planning and Design Code' ('Code') bringing into effect a single source of state-wide planning rules for simpler, clearer and more consistent zoning policy via the Planning and Design Code.

The Code' maintains the same definition for 'Bulky Goods' that was established in 2010, when the Minister for Planning facilitated changes to the land use definitions affecting Large Format Retail through changes from the previous definition of 'Retail Showroom' to a new definition for 'Bulky Goods Retailing'.

The key to this definition is the list of goods that may be considered to be available for display or sale within a 'Bulky Goods Outlet', and the explicit exclusion of foodstuffs, clothing, footwear or personal effects goods.

Notwithstanding, the specific exclusions form the type of goods that can be displayed or sold under this definition, these goods may be able to be sold if they are not the principal product and can be demonstrated that they are only incidental to the sale of goods identified with the list of acceptable examples.

"... Bulky Goods Outlet 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;

Examples – The following are examples of goods that may be available or on display at bulky goods outlets or retail showrooms:

- (a) Automotive parts and accessories;
- (b) Furniture;
- (c) Floor coverings;
- (d) Window coverings;
- (e) Appliances or electronic equipment;
- (f) Home entertainment goods
- (g) Lighting and electric light fittings;
- (h) Curtains and fabric;
- (i) Bedding and manchester;
- (j) Party supplies;
- (k) Animal and pet supplies;
- (l) Camping and outdoor recreation supplies;
- (m) Hardware;
- (n) Garden plants (primarily in an indoor setting);
- (o) Office equipment and stationery supplies;
- (p) Baby equipment and accessories
- (q) Sporting, fitness and recreational equipment and accessories
- (r) Homewares;
- (s) Children's play equipment..."

A *'Bulky Goods Outlet'* is an inclusion under the Genus definition of *'Shop'* which is defined as:

"...Means:

- (a) premises used primarily for the sale by retail, rental or display of goods, foodstuffs, merchandise or materials; or*
- (b) a personal or domestic services establishment..."*

Retail members of the LFRA include some of Australia's largest and most respected Large Format Retailers (as outlined in Section 2 of this submission) and it has been identified that a number of these retailers would currently fall under the prescribed definitions of *'Retail Plant Nursery'* or include undefined uses such as hardware and building supplies and garden centre. As such, review of the *'Bulky Goods Retailing'* definition to accurately capture the ranges of uses associated with Large Format Retail is requested.

With a view to achieving greater consistency and certainty for Large Format Retailers, the LFRA advocates for the adoption of more flexible land use definitions for both *'Bulky Goods Retailing'* and *'Industrial Trades'* akin to those adopted in Victoria, South Australia and Western Australia to provide opportunities for *'emerging'* and *'innovative'* Large Retail Formats to locate within ACT that are not currently recognised within the Draft new Territory Plan land use definitions.

4.2 Changes to Uses of Land

The LFRA has proactively engaged with the State and Territory Governments in recent years with a policy agenda that encourages investment and employment growth opportunities through good urban planning, smart competition policy and cheaper energy.

With this in mind, the LFRA supports the aspiration to simplify the planning process through an *'outcomes focus'* that removes ambiguity and improves clarity; however concerns remain that the reforms fail to address the issue of prescriptive rules on land use by businesses that are inflexible and cannot accommodate innovative businesses and the evolving needs of the economy.

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 fifteen (15) years, including:

- *'Plan to identify planning and zoning reforms'*, prepared by the Australian Government Productivity Committee (March 2021);
- *'Victoria's Commercial Land Use Zoning – Productivity Reform Case Study'*, prepared by the Australian Government Productivity Committee (July 2020);
- *'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).

In July 2020 the Australian Government's Productivity Commission (Productivity Commission) undertook a Productivity Reform Case Study in relation to Victoria's Commercial Land Use Zoning. The case study examined Victoria's system of commercial and industrial zoning, which provides relatively simple, standardised zone classifications with a broad range of permitted and 'as-of-right' uses with the aim to give jurisdictions a better sense of some of the potential advantages and trade-offs of more flexible zoning.

The case study identified that Victoria's commercial zoning arrangements, following reforms to commercial and industrial zones in 2013, are comparatively flexible and market-driven, in that:

- *There are relatively few commercial and industrial zones, with each zone covering a broad range of uses;*
- *The zones are standardised; and*
- *the zones allow many commercial uses as-of-right (without a permit).*

This flexibility has benefited businesses, and probably also consumers (via greater retail offerings), by reducing impediments to investment. There is limited evidence that the significant negative impacts predicted to result from the 2013 reforms have come about, although some stakeholders maintain that the more market-driven approach has detracted from urban amenity or unfairly affected some businesses (such as those that have lost business due to out-of-centre developments).

The Productivity Commission's Productivity Reform Case Study found a key benefit of flexible zoning arrangements is that they allow land use to adapt to changing economic circumstances (such as unanticipated shifts in the nature of office work) – Victoria's experience suggests it is possible to introduce greater flexibility into zoning arrangements with positive outcomes.

In July 2020, the Council on Federal Financial Relations (CFFR) asked the Productivity Commission to prepare a plan to identify planning and zoning reforms that jurisdictions could consider as part of their response to, and recovery from, the COVID19 pandemic.

Various studies identified in the plan, including the Commission's Shifting the Dial: 5-year productivity review, have highlighted how planning and land use regulations, and regulatory practices, can adversely impact the cost of doing business and the economy generally.

Although zoning plays an important role in managing land use conflicts, overly prescriptive zoning imposes costs and reduces land use flexibility and adaptability. For example, prescriptive rules about permitted land uses can limit new employment and productivity improvements in, and competition between, businesses.

The findings of the Productivity Commission's 'Plan to identify planning and zoning reforms' are particularly relevant in so far as the Draft new Territory Plan will continue to rely on zone policies that use the planning concept of land use zoning to allocate land uses and development opportunities based on the zoning of the land.

As stated in the Proposed New Territory Plan – Supporting Report November 2022:

"...Zone policies outline desired policy outcomes unique to each zone, and include key assessment requirements, expected assessment outcomes and development compliance provisions as appropriate for each zone. Zoning is a tested and widely used assessment tool used to inform development decisions. Zoning also provides clarity about land uses and often shapes public and private investment decisions..."

While the Zone Policies specifies the uses permitted in each zone, the District Policy specifies the uses permitted or prohibited for specific areas. The area specific allowance or restriction overrides the general zone permissions.

Each District Policy provides tables that specify additional types of development and land uses that are assessable in that individual district. These are additional to the development types and land uses specified as assessable within the applicable zone policy.

The LFRA has concerns that the reforms fail to provide for new opportunities (e.g. large parcels of retail/employment/industrial land) and whether there is sufficient appropriately zoned, sized and configured land to support new development in the Large Format Retail sector. The LFRA is of the view that additional permitted or restricted uses contained within the Draft District Policies does not promote the establishment of broad zones in which the market can choose to operate within.

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 recommends flexibility for 'Bulky Goods Retailing' and 'Industrial Trades' to be permitted in both the IZ1 – General Industrial Zone and IZ2 – Business Zone. The LFRA is of the opinion that continuing to restrict the flexibility of development in 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.

'Bulky Goods Retailing', 'Shop' and 'Industrial Trades', which are part of the Large Format Retail sector, are mandated permissible uses in a number of Commercial and Industrial zones however a number of District Policies place further restrictions on these uses.

The impacts associated 'Bulky Goods Retailing' or 'Industrial Trades' are similar in nature to 'Shop' uses, and therefore there should be no differentiation in terms of where one Large Format Retail use can locate in comparison to another.

By providing a more flexible land use definition for 'Bulky Goods Retailing' and establishing broad zones in which the market can choose to operate within, this will allow greater diversity of land uses, make it easier for new businesses to enter and for existing businesses to expand, and ensure that the Large Format Retail sector continues to invest in the ACT.

5. Recommendations

The overall intent of the proposed changes to move towards an outcomes-based and easy-to-use planning system supported by the LFRA however further restrictions through the narrowing of the definition under the Draft new Territory Plan is not supported by the LFRA.

The LFRA therefore requests that in progressing with the ACT Planning System Review and Reform Project, that the information contained within this submission and our following recommendations are considered:

- Review the '*Bulky goods retailing*' definition to provide opportunities for '*emerging*' and '*innovative*' retail formats to locate within the ACT that are not currently recognised within the Draft new Territory Plan land use definitions.
- Expand the list of mandated permissible uses in the IZ1 - General Industrial zone to include '*Bulky goods retailing*' to allow market demand to determine the most appropriate land use for a particular site.
- Allow flexibility for '*Bulky Goods Retailing*' and '*Industrial Trades*' to be permitted in both the IZ1 – General Industrial Zone and IZ2 – Business Zone.
- 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.

It is important to acknowledge the contribution that Large Format Retail makes to the economy and the wider retail sector. We thank EPSDD for the opportunity to provide feedback on the Draft new Territory Plan and new Draft District Strategies and respectfully request that you take our submission into consideration to provide clarity, consistency and certainty for the Large Format Retail sector.

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

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