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LFRA
Large Format
Retail Association

Draft Planning Bill

SUBMISSION FROM THE
Large Format Retail Association (LFRA)

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1.0 Large Format Retail Association (LFRA) Overview

The Large Format Retail Association (LFRA) is Australia's peak body representing the interests of its membership base, being Large Format Retailers, investors, owners, developers and service suppliers. Its vision is to encourage, develop and foster awareness of 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 58 individual business brands listed in the following table:

ABS Automotive Service Centres	Fantastic Furniture	PETstock
Adairs	Forty Winks	Pillow Talk
Adairs Kids	Freedom	Plush
Amart Sports	Godfreys	POCO
Anaconda	Goldcross Cycles	Provincial Home Living
Autopro	Guests Furniture Hire	Ray's Outdoors
Autobarn	Harvey Norman	Rebel
Babies R Us	IKEA	Recollections
Baby Bunting	JB Hi-Fi	Sleepys
Barbeques Galore	JB Hi-Fi Home	Snooze
Bay Leather Republic	Joyce Mayne	*'SPA'*CE
BCF	Kitchen Warehouse	Spotlight
Beacon Lighting	Le Cornu	Suite Deals
Bedshed	Lincraft	Super A-Mart
Bunnings	Masters Home Improvement	Supercheap Auto
City Farmers	Midas Auto Service Experts	The Good Guys
Costco	Officeworks	Toys R Us
Curtain Wonderland	Original Mattress Factory	Urban Home Republic
Domayne	OZ Design Furniture	Workout World
Early Settler	Petbarn	

The LFRA is supported by its Patron, PwC, and the following 66 Associate members that comprise of Large Format Retail developers, investors, owners and service suppliers:

20 Cube Logistics	CV Signage Solutions	Leedwell Property
ACTON Commercial	Deep End Services	Leffler Simes Architects
ADCO Constructions	DOME Property Group	Mainbrace Constructions
Aeris Environmental	DD Corporate	Major Media
Aigle Royal Properties	Eureka Home Maker Centre	Mc Mullin Group
ALTIS Property Partners	Excel Development Group	Morgans Financial Limited
Arise Developments	Gadens	Newmark Capital Limited
Arkadia	Gazcorp	Nunn Media
Ashe Morgan Harbour Town	G bb Group	Primewest
Aventus Property	Gregory Hills Corporate Park	Ray White Retail
AXIMA Logistics	Griffin Group	Realmark Commercial
AXIOM Properties Limited	HLC Constructions	RPS Australia Asia Pacific
BWP Trust	Humich Group	Savills
Blueprint	Jana Group of Companies	Sentinel Property Group
Brecknock Insurance Brokers	JBA	SI Retail
Burgess Rawson	JLL	StarTrack
CarbonetiX	Johns Lyng Group	Terrace Tower Group
CBRE	JV Property Management	The Buchan Group
CEVA Logistics	Lancini Group of Companies	TIC Group
Colliers International	Lander & Rogers Lawyers	151 Property
Comac Retail Property Group	La Salle Investments	Vaughan Constructions
Cornwall Stodart	LEDA Holdings	Vend Property

The LFRA is a key stakeholder in the planning and zoning laws that affects this sector of the retail industry and is actively involved across Australia in reviews of planning policy and planning regulations that affect the Large Format Retail sector.

In 2015, the Large Format Retail sector generated $63 billion in sales across Australia, with nearly more than $13.3 billion in sales in Queensland. This represents 22.1% of total retail sales in Queensland, or more than $1 out of every $5 in retail transactions in the state.
The Large Format Retail sector directly employs 20% of all people working in the retail industry in Australia. In Queensland, the sector generates more than 89,100 direct and indirect jobs.

The Large Format Retail industry in Australia is facing difficulties as a direct result of planning and zoning legislation across Australia.

Of note are the following reviews:

- *'A Review of Competition Policy'* otherwise known as the *'Harper Review'* commissioned by the Federal Government;
- *'Cutting Red Tape'* by the Federal Government;
- *'Costs of Doing Business: Retail Trade Industry'* by the Productivity Commission. This review, was in part, an audit on the implementation of recommendations that were included in the Productivity Commission's 2011 inquiry into the '*Economic Structure and Performance of the Australian Retail Industry';*
- Productivity Commission's 2011 inquiry into the '*Economic Structure and Performance of the Australian Retail Industry';*
- Productivity Commission's 2010 '*Performance Benchmarking of Australian Business: Planning, Zoning and Development Assessments';*
- Productivity Commission's 2007 review into the '*Market for Retail Tenancy Leases In Australia';* and
- ACCC's 2008 '*Into the Competitiveness of Retail Prices for Standard Groceries'*

The abovementioned inquiries all identified the need to review planning and zoning laws across all jurisdictions in Australia.

Clearly Large Format Retailing is an important form of development, employment and service provider, and it is important to ensure infrastructure charging, crediting and offsetting framework aids continued Large Format Retail development in Queensland.

2.0 Response to the Draft Planning Bill

2.1 Introduction

The statistics outlined above underscore the significance of the Large Format Retail sector as a component of the retail economy: as a significant contributor to the broader economy through its direct employment base, and through its importance to the property development and construction industry.

Large Format Retailing, however, has traditionally not been catered for in planning schemes. Frequently this has resulted in unnecessarily complex application processes. Key challenges include the desire by local government for these uses to be located within established centres, but with inadequate land

available in-centre to cater for them, and the associated challenges of seeking approval for out-of-centre development.

According the LFRA supports the Queensland Government's ongoing reforms to the Queensland planning system, and is keenly interested to ensure the new planning legislation provides for simplicity, certainty, and an outcomes focus in development assessment.

This submission addresses some specific provisions of the draft bill that require further refinement.

2.2 Categories of Assessment and Decision Rules

The LFRA supports the proposed new categories of development (i.e. accepted development, assessable development, and prohibited development), and accepts the proposed categories of assessment (i.e. code assessment and impact assessment) are to be carried over from *'SPA'*.

2.2.1 Terminology

The bill carries over the current *'SPA' 'code'* and *'impact'* terminology. In earlier consultation by the Department of Information, Local Government and Planning alternate terminologies of standard and merit assessment were presented.

As the new categories of assessment are to embody new decision rules, we suggest the use of new terminology (i.e. *'standard'* and *'merit'*) over the continued use of the current terms (*'code'* and *'impact'*), would have been appropriate including that:

- use of new terminologies would reflect that the decision rules for the new categories are different from the current levels of assessment under *'SPA'*; and
- use of the term *'merit assessment'* (in place of impact assessment) is potentially helpful in encouraging cultural change: implying that assessment managers should have a focus on the positives (i.e. the merits) of a proposal rather than being concerned primarily with potential impacts.

2.2.2 Assessment Benchmarks for Code Assessment

Regardless of terminologies used, we are concerned regarding some aspects of the decision rules for code assessment.

'Section 45(3)' indicates that code assessment is to include assessment against the assessment benchmarks identified in a categorising instrument. The bill does not provide certainty about what the assessment benchmarks will be for code assessment.

Currently 'section 313(e)' of *'SPA'* is explicit that assessment is against *'codes'* (i.e. *'purpose', 'performance outcomes'* and/or *'acceptable outcomes'*). Under the draft bill, it will be left to local authorities to determine this (in the planning scheme). Local authorities could, for example, determine that the assessment benchmarks for standard/code assessment are to be the quantifiable elements

of their existing codes (i.e. the Acceptable Outcomes only). The result would be elimination of scope for performance based outcomes and emergence of additional impact based assessment (either inadvertently or deliberately).

2.2.3 Decision Rules

'Section 60' of the bill contains the decision rules for code assessment.

We support the presumption in favour approval. The value of this presumption toward approval is potentially undermined, however, by the uncertainty surrounding assessment benchmarks.

If a local authority identifies that the assessment benchmarks are to be limited to acceptable solutions only, for example, any departure from those acceptable solutions (however minor) will force the hand of the local authority to impose conditions to require 100% compliance, or to refuse the application. Assessment benchmarks for code assessment **must** allow performance based outcomes.

This issue has potential implications for commerciality of development projects, as drafting of planning schemes cannot anticipate all potential outcomes.

At the end of *'section 60 (2)'*, examples are given of instances where the assessment manager may approve an application despite non-compliance with an assessment benchmarks. These examples do not adequately address the issue identified above, however. These examples only relate to circumstances giving assessment managers the option to approve only where their decision resolves a conflict between assessment benchmarks or a conflict with a referral agency decision. It does **not** allow them to make a determination to approve a proposal simply where a 'relaxation' or performance based *'alternate solution'* is appropriate or justifiable.

2.3 Consistency Across Local Government Jurisdictions

Recent planning reform in Queensland has been successful in seeing increased consistency within planning schemes and development assessment across local authority jurisdictions (for example, through the QPP standard planning scheme structure, and standard use and administrative definitions.)

The bill, as currently drafted, will potentially see these reforms *'undone'*. In particular:

- Removal of the QPP from the regulation will allow local authorities to move away from standardised use and administrative definitions. Standard use definitions are particularly helpful in ensuring consistency in matters of interpretation, for example, regarding whether particular retail uses constitute a *'shop'* or *'showroom'*. Departure from standard definitions potential re-introduces complexity and uncertainty, that has been addressed through earlier planning reforms.
- The uncertainty discussed in *'section 2.2'* above regarding identification of assessment benchmarks could see each local authority take a different approach in determining assessment benchmarks. This could lead to significant variation, from one local authority area to another, in whether standard

assessment will be carried out against entire codes, or acceptable outcomes only etc.

2.4 Development Assessment Process

We support the proposed changes to the development assessment process, with increased focus on pre-lodgement resolution of issues, the two (2) stage (assessment stage and decision stage) assessment process, and the option for applicant's to *'opt out'* of the information request.

While we support the changes, we anticipate that issues will arise relating to the development assessment culture of some local authorities. We see that this is related to the culture of those organisations, not a deficiency the bill.

To this end, we identify the planned ability for an applicant to *'opt out'* of an information request as an important tool to drive cultural change. This will incentivise local authorities to implement effective and comprehensive pre-lodgement meeting processes, particularly for standard/code assessment.

2.5 Transitional Provisions

'Section 288' of the bill proposes that self assessable development (where not complying with all applicable codes for self assessable development) and code assessment development become subject to standard/code assessment.

We support all currently code assessable development transitioning/remaining subject to code assessment under the new Act, subject to assessment benchmarks being appropriately established to allow performance based outcomes for standard/code assessment.

As outlined in *'section 2.2'* above, these transitional arrangements will be unworkable, however, if a local authority was to identify, for example, the assessment benchmarks for standard assessment as only being the 'acceptable outcomes' of the applicable code/s. As outlined in *'section 2.2'*, provision for performance based outcomes for standard/code assessment is necessary.

2.6 Minor Change Provisions (Dictionary Definition at End of the Bill)

We welcome the retention of the minor change provisions in the draft bill (as articulated in the *'dictionary'* at the end of the Bill). The ability to modify an application without reverting to the start of the assessment process, and the ability to modify an existing approval is imperative.

In the Large Format Retail context, this is important, for example, to accommodate requirements of specific tenants, which often may not be known at the time of lodgement of an application or even until after planning approval has been granted.

The current permissible change *'criteria'* contained in *'section 367'* of *'SPA'* have been largely reflected in the new definition of *'minor change'* contained in the bill, except for two departures.

We support the retention of similar *'criteria'* as are current used in *'SPA'*, as these *'criteria'* are understood and work well. We provide comment on the two (2) key departures in the *'minor change'* definition, compared to the *'SPA'* criteria below:

- In the definition of *'minor change'* to a development approval, *'part (ii)'* of the definition indicates that a change is only a minor change where it does not introduce prohibited development, does not cause referral to a new/additional referral agency, cause a referral agency to assess against or have regard to extra matters prescribed by regulation, or cause public notification to be required.

  'Section 367 (2)' of *'SPA'* currently clarifies that in deciding whether a change is a permissible change (for *'section 367 (1)(b)'* or *'(d)'*) the planning instruments or law in force at the time the request was made apply.

  The new minor change definition under the bill does not include the same clarification provided by *'section 367 (2)'* of *'SPA'*.

  This clarification was specifically included in *'SPA'* to resolve frequent situations where a change which had occurred to the referral triggers in regulation or to the level of assessment in a planning scheme caused an additional referral to apply to a permissible change, as opposed to the *change itself* causing the additional referral.

  A clarification similar to that of *'section 367 (2)'* of *'SPA'* needs to be included in the minor change definition of the draft bill.

  To omit this clarification will be a retrograde step, taking the permissible change/minor change rules back to early days of IPA which too often precluded permissible changes being made where it would otherwise have been entirely appropriate to do so.

- The minor change definition removes the *'test'* about whether a third party might want to make a submission objecting to the change. We support the removal of this part of the criteria. The '*substantially different development*' criteria itself provides sufficient boundaries around the extent of changes that can be made and adequately contains potential new impacts. The submissions test has typically proved difficult for local authorities to make a determination around. Removal of this criteria will simplify the minor change test, without broadening the scope of minor changes.

2.7 Planning and Environment Court Rules - Costs

We support the new Planning and Environment Court rules. In particular, they embrace the progressive dispute resolution processes that currently exist in Queensland. Including these rules in a separate act aids their easy and clear identification.

We are concerned, however, that *'costs'* provisions have been *'rolled back'* to reflect the provisions of the early days of the *'Integrated Planning Act'*, with no provision for costs to be awarded. This has potential to give rise to increased commercially motivated and vexatious litigation. We urge that this be reconsidered.

2.8 Other Matters

Exemption certificates (*'Section 46'*)

We support the draft bill's intent to empower local governments with the ability to issue exemption certificates for assessable development where the effects are minor or inconsequential.

Deemed approvals (*'Section 64'*)

We support the retention of *'deemed approval'* provisions (*'section 62'*) for standard/code assessment. While not frequently used, the current *'SPA'* deemed approval provisions are effective in encouraging local authorities to adhere to assessment timeframes for code assessable development. (The fact that they are rarely used is evidence of their effectiveness). The *'SPA'* provisions have indeed lead to more timely approval of code assessable applications and have been effective in encouraging cultural change.

Terminology Changes

We support the changes to terminology for variation requests, change applications, currency periods etc. Generally, terminologies proposed appear clear and self explanatory.

Currency periods (*'Section 85'*)

We welcome the replacement of the complex and confusing *'rolling'* relevant periods, and reverting to fixed currency periods. Replacing the *'rolling'* relevant periods with a longer six (6) year currency period for material change of use approvals will lead to simplification and greater certainty.

Application Fees (*'Section 108'*)

We strongly support the proposal to allow assessment managers and referral agencies discretion to waive all or part of an application/referral fee. Introduction of referral agency assessment fees has seen instances where even small developments that might attract multiple referral triggers (that might even sometime elicit a *'no issues'* response) can incur hefty referral fees disproportionate to the scale or nature of the proposal, and the level of input required from the agency.

Referral Agencies (*'Sections 54 to 65'*)

The bill proposes that concurrence agencies and advice agencies will be brought together under the common term of '*referral agencies'*. While we have no objection to the common terminology in principle, it must be ensured that (current) advice agencies do not gain new rights to make information requests or provide responses that a binding on assessment managers.

We acknowledge that *'section 56(5)*' provides that a regulation may limit a referral agency's power (i.e. to limit it to an advice role). It is necessary to ensure this is achieved in the regulation, for current advice agencies.

3.0 Conclusion

The LFRA commends the Queensland Government for its ongoing reform of the Queensland planning system, and in particular for the substantial simplification of the planning legislation demonstrated in the draft bills.

The LFRA supports the Queensland Government's approach, and looks forward to operating in an improved planning environment in the years to come.

We would be pleased to discuss any issues raised above in further detail. Should you have any queries about this matter, please contact the LFRA's CEO, Philippa Kelly, on 03 98595000 via email pkelly@lfra.com.au