

Bega Valley Shire Council submission to Employment Zones Framework

Introduction

The NSW Government is proposing a new employment zones framework for NSW, with the stated intent to:

- provide greater certainty for the community, councils and the development industry
- support councils' long-term strategic planning objectives
- support businesses, industry and society to grow, respond and adapt
- facilitate innovation and changes in business processes.

The proposed reforms respond to various trends, exacerbated by the COVID-19 pandemic, including the growth of online retail, reliance on freight and logistics, the importance of local centres, flexible working arrangements and the continued rise of multi-use businesses and the experience economy.

The proposed framework includes:

- a rationalised set of employment zones replacing the existing Business (B) and Industrial (IN) zones
- a clear strategic intent for each zone
- an additional 97 mandated permitted land uses from what is currently mandated
- support for urban services uses by providing a dedicated zone
- three new land use terms and an update to six existing terms.

The proposed framework aims to address the inconsistent application of land use zones across NSW.

Five new employment zones are proposed:

- E1 Local Centre
- E2 Commercial Centre
- E3 Productivity Support (transition zone between centres and industrial zones)
- E4 General Industrial
- E5 Heavy Industrial

Three further zones are proposed:

- MU Mixed Use
- W4 Working Foreshore (direct translation of IN4 Working Waterfront that is considered better grouped with the other waterway zones)
- SP4 Local Enterprise (new special purpose, fully customisable zone)

Council response

While some of the reforms outlined in the Position Paper align with the current *Bega Valley Shire Local Environmental Plan 2013* and Council's *Commercial Land Strategy 2040*, other aspects of the reforms may have the potential to undermine Council's adopted land use directions contained in the *Commercial Land Strategy 2040* and *Local Strategic Planning Statement 2040* (LSPS). Inconsistencies between the proposals and Council's land use strategies are discussed in detail on pages 2-5 of this submission.

A detailed response to the impact of the proposed new and amended definitions and potential consolidation of existing definitions on the strategic planning of the Bega Valley Shire is included in pages 5-8 of this submission

Overall, it is felt that the proposed reforms do not address the underlying rigidity in the NSW Planning system and are therefore unlikely to lead to any significant improvement to the framework. It is considered that the reforms will cause confusion to land and business owners and come at a significant resource burden to Council to implement with no significant discernible benefit. These issues are discussed in detail on pages 9-10 of this submission.

Council requests that regional Councils such as ours, for which the reform will have no meaningful benefit, are excluded from the proposed reform.

It is noted that E zones already exist in the Standard Instrument and currently relate to Environmental zones, which are controversial in some parts of regional NSW. Labeling the new zones "E zones" could create confusion with the existing Environmental zones for landowners. It is suggested that a different letter is used such as "J" for jobs.

Implementation

Council response

Council requests that after implementation, a 6 or 12-month review is undertaken by DPIE alongside a process that permits Councils to address any issues or oversights that have arisen. In this way, Councils will not be burdened by having to prepare further planning proposals as a result of the reforms.

Strategic Intent

Local Centre zone (E1)

It is proposed that the new zone will:

- Replace B1 Neighbourhood Centre and most B2 Local Centres. Differentiation between centres would be limited to the size of the commercial centre rather than land uses.
- Provide for a range of retail, business, entertainment and community uses that serve the needs of people who live, work or visit the local area.
- The draft EPI and land use table matrix detail that various bulky goods land uses are mandated permitted land uses in the proposed E1 zone.

Council response

Council requests that the land use terms: landscaping material supplies, timber yards, vehicle sales or hire premises, hardware and building supplies, roadside stalls and rural supplies are not mandated permitted land uses in the E1 zone, but remain optional for Councils to decide on their suitability based on strategic direction.

The compulsory inclusion of these uses as permitted with consent is contrary to the *Bega Valley Shire Commercial Land Strategy 2040* (CL Strategy) regarding future development in the existing B1 and B2 zones to:

- Manage new development to retain and support the commercial hierarchy.
- Remove vehicle sales or hire premises.

- Avoid bulky goods premises in Bermagui, Cobargo, Tathra, Pambula and Eden as the impacts on existing centres is adverse without exception.
- Encourage vibrant and active centres that are easy to walk around.

Commercial Centre zone (E2)

It is proposed that the new zone will:

- Essentially replace B3 Commercial Core, could extend to larger B2 Local Centres and some B4 Mixed Use where there is a focus on jobs.
- Provide for large-scale commercial, retail, business and compatible associated uses like community uses, recreational and health care services.
- The draft EPI and land use table matrix detail that various bulky goods land uses are mandated permitted land uses in the proposed E2 zone.

Council response

Council requests that the land use terms: landscaping material supplies, timber yards, vehicle sales or hire premises, hardware and building supplies, roadside stalls and rural supplies are not mandated permitted land uses in the E2 zone, but remain optional for Councils to decide on their suitability based on strategic direction.

The compulsory inclusion of these uses as permitted with consent is contrary to the *Bega Valley Shire Commercial Land Strategy 2040* (CL Strategy) regarding future development in the existing B2 zones to:

- Locate bulky goods within existing commercial zones on the edges of regional and major town centres.
- Remove vehicle sales or hire premises as a permitted use in the B2 and B4 zones.
- Encourage vibrant and active centres that are easy to walk around.

Productivity Support zone (E3)

It is proposed that the new zone will:

- Replace B5 Business Development and in exceptional circumstances limited areas of IN2 Light Industrial zones that no longer function as traditional industrial precincts.
- Allow for a mix of services, low impact industry, creative industry, manufacturing, warehousing, office and limited supporting retail. Suit emerging and new industries that need larger floorplates.
- The draft EPI and land use table matrix detail that business premises is a mandated permitted land use in the proposed E3 zone.

Council response

The draft zone objective states: “To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres”. Therefore, Council requests greater flexibility in what land uses are mandated in the E3 zone to prevent out of centre development.

Council requests that the land use term: business premises (which includes banks, post offices, hairdressers, dry cleaners, travel agencies etc.) not be a mandated permitted land use in the E3 zone, but remain optional for Councils to decide on its suitability based on strategic direction.

The compulsory inclusion of this use as permitted with consent is contrary to the strategic direction for town centres in the Bega Valley Shire as follows:

- Reinforce the role and function of centres as the primary places for commerce, retail, social activity and regional services (South East and Tablelands Regional Plan 2036)
- Centres have a dense, compact form (CL Strategy)
- Consolidate commercial activities (CL Strategy)
- Prevent interference by out-of-centre development (CL Strategy)

General Industrial zone (E4)

It is proposed that the new zone will:

- Primarily accommodate light and general industrial uses and warehousing uses.
- Allow for infrastructure and utilities.
- Generally replace IN1 General Industrial and IN2 Light Industrial zones.

Council response

The reforms propose to combine the IN2 Light Industrial and IN1 General Industrial zones. This would have the effect of introducing general industries as a permitted land use to land currently zoned IN2 which is contrary to Council's strategic direction specified in the LSPS in relation to industrial land:

- to ensure suitable buffers between existing and proposed industrial land and any surrounding sensitive receivers or incompatible land uses.

Bega has evolved in such a way that the existing IN2 zone provides an important buffer between residential and general industrial land zones. Further, in many places the IN2 zone no longer functions as a traditional industrial precinct, but instead as a bulky goods retailing/urban support zone. It is essential that existing IN2 zones in the Bega Valley Shire be permitted to convert to E3 Productivity Support zone as required to align with the strategic direction of the LSPS.

Council requests that hardware and building supplies and garden centres not be a mandated permitted land use in the E4 zone, given that they are retail land uses that support home improvement, rather than industrial land uses, but remain optional for Councils to decide on their suitability based on strategic direction.

The compulsory inclusion of these retail land uses as permitted with consent in the E4 zone is contrary to the following strategies in relation to industrial land and location of bulky goods development:

- protect industrial land for industrial land uses and ensure it supports the co-location of industrial and warehouse land uses that are best located outside of town centres (LSPS)
- review the land uses permissible in industrial zones to ensure non-compatible uses do not impact on the potential expansion of existing industrial uses or establishment of new industrial uses (LSPS)
- Encourage the co-location of renewable energy infrastructure within industrial land (LSPS)
- Bulky goods are to be located within existing commercial centres on the edges of Bega and Merimbula (CL Strategy)

The State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) permits electricity generating works to be carried out in all existing Industrial zones, and it is recommended that this land use is visibly included in the land use table for the new E4 and E5 Industrial zones to encourage the co-location of renewable energy infrastructure on industrial land.

Mixed Use zone (MU)

It is proposed that the new zone will:

- Replace B4 Mixed Use, some B2 Local Centres and potentially B8 Metropolitan Centre.
- Support a mix of residential, retail, light industry and tourist accommodation.

Council response

In adopting this zone, it would be essential that additional residential land uses can be added to the land use table.

New and amended definitions

Updated definitions are proposed for:

- Shop-top housing
- Warehouse or distribution centre
- Business premises
- Industrial retail outlet
- Kiosk
- Neighbourhood shop
- Crematorium.

New definitions are proposed for:

- Circular economy facility
- Creative industries
- Data centre

Council response

The introduction of new land use definitions including circular economy facility and creative industries is supported and encouraged. The review of land use definitions should be expanded to consider what terminology is limiting ancillary uses and how land use definitions could be cloned and adjusted to be appropriate to different land use zones, especially with regard to accommodating multi-use businesses.

Shop-top housing

Council is supportive of the broadening of the shop-top housing land use definition to include health services facilities and commercial premises. It is unclear from the Position Paper whether it is also proposed to extend this to light industry. This may not be appropriate to some types of light industry such as data centres but could be a base to consider how to allow co-location of dwellings and creative industries to support artists.

Council strongly supports further review of the existing shop-top housing definition, which can be overly rigid and restrictive, especially when the existing subdivision pattern includes long, deep blocks. It would be preferable to only require an activated ground floor land use (such as

commercial premises or health services facility) at the street frontage, instead of over the entirety of the ground floor. However, the entirety of the ground floor could be constructed to be adaptable for both residential and commercial use to preserve the possibility of later conversion. Council requests a separate and distinct land use definition to facilitate this land use such as shop-front housing.

Local distribution premises

The Position Paper identifies that local distribution premises are appropriate in more locations than warehouse or distribution premises and proposes to separate the land uses. Of note is that the draft EPI proposes to permit the land use in existing E2 Environmental Conservation zones and even W1 Natural Waterways zones. In the Bega Valley Shire, the E2 and W1 zones only permit a very narrow range of land uses, most relating to use of the waterway. It is not clear how local distribution premises is an appropriate land use to be mandated permitted with consent in either of these zones, as the definition is broad and could be applied to many types and scales of commercial land uses. This could lead to significant issues in the Bega Valley Shire, where the foremost strategic land use planning documents of the Bega Valley Shire (the *South East and Tablelands Regional Plan 2036*, *Bega Valley Shire Local Strategic Planning Statement 2040* and the *Far South Coast Regional Economic Development Strategy 2018-2022*) identify the Shire's natural endowments as a principle foundational element of the region's economy.

Warehouse or distribution centre

It is proposed to remove inclusion of local distribution premises from the definition of "warehouse or distribution centre", and no objection is raised to this proposal. However, it is considered that the amendments to the definition do not go far enough. Warehouse or distribution centre is a good example of a land use definition that is overly rigid and restrictive. Warehouse or distribution centres are identified in the land use matrix as being permitted with consent in the E3 Productivity Support zone. Given this, and that the zone allows for limited supporting retail, it is recommended to either:

- amend the standard instrument definition of warehouse or distribution centres to remove the prohibition on ancillary retail use, as follows: **warehouse or distribution centre** means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, ~~but from which no retail sales are made.~~
- or, alternatively, retain the existing definition and develop a new definition that does not exclude retail sales, to allow for more flexible application of the land use over a variety of zones.

This would give effect to Council's adopted Commercial Land Strategy which recommends enabling "...consideration of new forms of mixed use such as combined warehouse or distribution centre and retail shop" by allowing ancillary retail use with warehouse or distribution centres, in appropriate zones and subject to a merit assessment.

Data Centres

The Building Business Back Better Explanation of Intended Effect detailed that "...data centres require extensive mechanical cooling plant and backup power generators and batteries to cool the computer servers and ensure continuous operation. These systems can have noise and air quality impacts and fuel storage hazards". Making data centres a subset of high technology industry may not be appropriate given that the definition of high technology industry includes "...but does not

include a building or place used to carry out an industrial activity that presents a hazard or potential hazard to the neighbourhood or that, because of the scale and nature of the processes involved, interferes with the amenity of the neighbourhood”.

Variation on vehicle sales or hire premises and specialised retail premises

A new concept and land use definition may provide for bulky goods to have a presence within town centres without interfering with vibrancy and walkability. DPIE is encouraged to review how Tesla is adapting to opportunities in the fine-grain retail context in the United States. A new land use definition to permit bulky goods prototype display centres with a limited floor space area would enable customers to view a small range of bulky goods products without permitting the excess stock to be stored in the town centre. See: [Tesla Stores: What Are They and How Are They Different Than Dealerships?](#)

Potential consolidation of existing definitions

Home improvement retail premises

It is proposed to combine hardware and building supplies and garden centres into a single definition: home improvement retail premises. It would be a sub-term of commercial premises and permitted in E1-E4 and MU zones. Hardware and building supplies and garden centres would be deleted from the dictionary.

Trades retail premises

It is proposed to combine landscaping and material supplies, rural supplies and timber yards into a single definition: trades retail premises. It would be a sub-term of commercial premises and permitted in E1-E3 and MU zones. Landscaping and material supplies, rural supplies and timber yards would be deleted from the dictionary.

Council response

It is unclear why home improvement retail premises would be permitted in the proposed E4 General Industrial zone given the zone objectives.

The combining of land use definitions requires further consideration of impacts on rural and residential zones such as RU5 Village, RU1 Primary Production and RU2 Scenic Landscape, and not just existing B and IN zones. While combining hardware and building supplies into one definition would be relatively simple in relation to the land use table, combining landscaping and material supplies, rural supplies and timber yards into one definition would not (see Tables 1 and 2). Further, the impact on rural zones may have implications on local sealed and unsealed road networks, increasing traffic generation, and thereby increasing the road maintenance burden for Councils.

Table 1: Land use table comparison for home improvement retail premises

Definition	Existing land use zones								
	B2	B4	B5	IN1	IN2	RU1	RU2	RU4	RU5
Hardware and building supplies	c	c	c	c	c	c	c	x	c
Garden centres	c	c	c	c	c	c	c	c	c

Table 2: Land use table comparison for trades retail premises

Definition	Existing land use zones									
	R5	B2	B4	B5	IN1	IN2	RU1	RU2	RU4	RU5
Landscaping and material supplies	c	c	c	c	c	c	c	c	c	c
Rural supplies	x	c	c	x	c	c	x	x	x	c
Timber yards	x	c	c	x	x	c	x	x	x	c

Combining the landscaping and material supplies, rural supplies and timber yards land use definitions could result in more retail land uses being permitted in rural zones and potentially undermining the commercial centres, or alternatively, the land use could result in less flexibility as Council seeks to remove the land use from some zones.

Storage and distribution premises

It is proposed to combine storage premises and warehouse or distribution centre into one definition: storage and distribution premises. The land use would be permitted in E3-E5 zones. Storage premises and warehouse or distribution centres would be deleted from the dictionary.

Council response

In the Bega Valley Shire there are locations where storage premises have been considered appropriate, but distribution premises have not, such as in rural zones. It is recommended that further consideration be given to the varying impacts of each development type, such as traffic generation and visual impact on the scenic landscape, over a broader range of land use zones.

Table 3: Land use table comparison for storage and distribution premises

Definition	Existing land use zones						
	B5	IN1	IN2	RU1	RU2	RU4	RU5
Storage premises	c	c	x	c	c	x	x
Warehouse and distribution premises	c	c	c	x	x	x	c

Background and General Discussion

The Position Paper states that the framework for managing employment land uses must be flexible and able to respond to unexpected challenges, so that it can support business adaptation.

The Position Paper identifies that the basis of the reforms are the Federal Productivity Commission's report *Shifting the Dial: 5-year productivity review* and further case study work that came out of that. The report identifies three areas that remain priorities across jurisdictions to support the productivity potential of urban lands:

1. reducing the number and complexity of restrictions on land use created by prescriptive zoning systems
2. better planning and provision for growth
3. the need to continue moves towards a risk-based approach to assessing development proposals.

The findings of the first case study relate to Victoria's 2013 reform of the Commercial Land Use zoning, the findings which informed the development of this proposed employment zones framework.

Council response

Flexibility in NSW land use planning is limited by the structure of the broader framework which incorporates land use tables, permitted and prohibited land uses, and prescriptive definitions. This issue was identified in the Federal Productivity Commission's report *Shifting the Dial: 5-year productivity review* referenced on page 17 of the Position Paper. Business and economies, by necessity, evolve more quickly than government regulation, and meaningful change that achieves the stated aims must consider broader structural reform.

A large part of the proposed reform, and where Council anticipates the greatest resource burden, is the rationalisation of Business and Industrial zones. This is despite the Position Paper advising that "The Federal Productivity Commission in its case study acknowledged that the benefits of the [Victorian] reform arise from increased flexibility within zones (additional permitted uses) rather than a decrease in the overall number of zones". Reorganising the zones and the land use table will not effectively address the key issues identified in the Productivity Commission's report, and further, will erode (rather than provide) certainty for the community, councils and the development industry.

Instead of undertaking these proposed reforms which effectively replaces one prescriptive land use planning system for another, Council submits that DPIE could consider addressing the inflexibility in NSW land use planning by:

- providing a streamlined pathway (such as a site compatibility certificate), instead of a planning proposal, to add an Additional Permitted Use to a parcel of land. This would give effect to the Productivity Commission's recommendation to move towards a risk-based approach to assessing development proposals, without undermining the careful planning controls that protect town centre vibrancy and character. This could be facilitated by a new State Environmental Planning Policy.
- resourcing an ongoing review of land use definitions based on feedback received from Councils and stakeholders to provide greater flexibility through increased responsiveness.

- developing a framework for how to consider innominate land uses.

The risks and benefits of moving towards a “risk-based approach to assessing development proposals” as recommended by the Federal Productivity Commission must be weighed in the context of the NSW planning system and should not underestimate the substantial costs for Councils in defending an appeal through the NSW Land and Environment Court (LEC). This is another very significant difference between the NSW and Victorian planning system, which has the Victorian Civil and Administrative Tribunal (VCAT), which is a more accessible option for applicants and Councils compared with the LEC. Risks for Councils would be better managed by providing a streamlined pathway to add an Additional Permitted Use to a parcel of land, rather than trying to prevent unsuitable development in a zone where the land use is mandated permitted with consent.

It is acknowledged that it would be easier for developers and landowners if business and industrial land use zones were consistently applied across NSW. However, concurrently it is imperative that place-based planning can inform differences as to what land uses are permitted or prohibited in each zone. Industries and issues vary across NSW LGAs. A rationalised set of business and industrial zones will not be responsive to the needs of each centre or LGA if there is not flexibility in what land uses are mandated as permitted or prohibited in each zone.

Council undertook a large body of work in developing the first Local Strategic Planning Statement (LSPS) which was adopted in June 2020. The document reviewed and consolidated a raft of strategies to identify and order priorities for land use planning in the Bega Valley Shire. Reforming the business and industrial land use zones in the Bega Valley Shire was not identified as a priority, particularly since the majority of economic activity in the Shire is related to rural and regional specialisations such as agriculture, tourism, aquaculture, health care and social assistance, forestry and food manufacturing. Proceeding with this reform in regions such as ours will divert limited Council resources away from locally identified priority tasks, in order to carry out a large project for which there is no identified need or significant benefit. Further, there are only a handful of industrial land uses that are not already permitted with consent in the RU1 Primary Production zone in the LGA.

The proposed reform closely follows Council adopting a Commercial Land Strategy to refine and finesse business and village zones in the Bega Valley Shire, which was largely informed through engagement with business and community groups. The Commercial Land Strategy aligns with the Bega Valley Community Strategic Plan 2040 which identifies that: “Goal 8: Our places retain their character and scale, development is well planned...”. This Employment Zones reform is likely to interfere with the outcomes and recommendations of these strategies by mandating permitted land uses into new zones without considering the strategic directions for each LGA. Further, Council is concerned that the reform will create confusion and frustration (rather than greater certainty) in the local community with the introduction of new terminology and if permitted and prohibited land uses change.

In conclusion, Council requests that regional Councils such as ours, for which the reform will have no meaningful benefit, are excluded from the proposed reform.