

NSW Department of Planning, Industry and Environment
Attention: Director Employment Zones
Locked Bag 5022,
Parramatta NSW 2124

By email only: employment.zones@planning.nsw.gov.au

Dear Sir/Madam,

Submission – Proposed Employment Zones Framework

The opportunity to provide comment on this important matter is welcomed and the principle aims of the *Proposed Employment Zones Framework* are generally supported.

Following consideration of a detailed report, Council resolved (MIN21.456) to make this submission on this important matter.

Submission Timeframe & Extension

Considerable documentation was required to be reviewed in order for Council to provide a thorough and appropriate response to the proposals. As you can appreciate, the submission process takes time to coordinate comments from multiple sections in Council and for the submission to be considered by the elected Council.

In recent months, Shoalhaven City Council staff have had to consider and prepare a number of submissions relating to proposed State Government planning reforms. In future, consideration of extended consultation timeframes is requested, not only to provide an appropriate and thorough submission, but to also allow the submission to go through the formal Council reporting processes so that it is the endorsed Council position.

Council staff appreciate the granting of our request for an extension, noting that a draft submission was provided on 30 June 2021.

General Comments

Council staff appreciate that the proposed planning 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 framework states that a cost benefit analysis is underway to examine zoning options and provide a baseline costing of the preferred approach, in addition to a social impact assessment examining the social impacts of the proposed employment zones framework. **Council staff request advice/consultation in due course on these findings.**

Proposed Employment Zones Framework

Five new employment zones are proposed, being:

- E1 Local Centre
- E2 Commercial Centre
- E3 Productivity Support
- E4 General Industrial
- E5 Heavy Industrial

Council staff note that the prefix of these zones, 'E', conflicts with the existing longstanding environmental protection zones within the Standard Instrument Local Environmental Plan (SI LEP). Council **does not support** the Department's proposal to rename the existing environment protection zones. Having new 'E' employment zones will cause confusion for numerous people, especially those who have difficulties with colour, despite the proposed renaming of the existing environment protection zones.

The community, Councils and the development industry have worked with the 'E' environmental protection zones for the past 7 years, not to mention they have been in the SI LEP Order since 2006. One of the Department's intentions for the framework is to "provide greater certainty for the community, councils and the development industry." This will not be achieved through the proposed introduction of the 'E' employment zones. The naming change should be reconsidered as it will cause confusion and an unnecessary workload to adjust.

10.7 Planning Certificates

Council staff raise additional concerns in regard to mapping and section 10.7 Planning Certificates (s10.7) if the proposed creation of 'E' employment zones is implemented. Whilst Council will no longer be required to prepare PDF maps for LEPs, staff will still be required to prepare the mapping and update the GEO database. The mapping associated with the repeal of or change to the 'B' and 'IN' zones and replacement with new zones is a significantly resource intensive and time-consuming task in itself, as it involves re-doing Shoalhaven's LEP template master, map sheets, GIS and the online maps. For this reason, the subsequent additional re-mapping required of existing environment protection zones, if the 'E' employment zones proceed, is considered superfluous and time consuming.

Furthermore, if the Department proceeds with the proposed naming for the 'E' employment zones and renaming of the existing environment protection zones, Council's entire s10.7 program will need to be re-coded. Council staff acknowledge that the introduction of new zones requires coding, however, in addition to the new zones, the re-coding of the existing 'E' environment protection zones will generate further work that could be avoided.

Council is currently in the process of transitioning into TechOne. As a result, Councils capacity to recode the s10.7 program is limited. The transition of Shoalhaven LEP 1985 took almost a

month to recode the s10.7 program. Additionally, recoding the s10.7 program will take the entire system offline, meaning Council will be unable to process s10.7 certificates for potentially an entire month. Given this, if this change proceeds Council staff request that sufficient notification time is provided to implement things, as staff will need ample time to begin re-coding the s10.7 program.

Shoalhaven Development Control Plan (DCP) 2014 and other Policies/ Procedures

In addition to Council's 10.7 Planning Certificate program, Shoalhaven has a detailed DCP made up of a number of chapters and other policies and procedures that refer to both the existing environmental zones, as well as the business and industrial zones. As with the planning certificates, these policy/procedure documents will all need amending if the zone re-naming aspect of the proposed amendment proceeds. This will require considerable subsequent amendments to these documents to ensure they are consistent, which will include reporting and exhibition.

Biodiversity Conservation Act 2016

If the NSW Government are serious about assisting employment and business opportunities then it should be recognised that the requirements of the *Biodiversity Conservation Act 2016* have a considerable impact on the feasibility of developing industrial land within regional NSW. This requires close reconsideration given the impact it is having on the release and development of industrial zoned land.

The Shoalhaven is identified as a growth region within the Illawarra Shoalhaven Regional Plan 2041, and the availability of employment lands is critical to achieve this growth. The introduction of the *Biodiversity Conservation Act 2016* was intended to provide a clearer legislative pathway. However, the unintended consequence of the legislation has severely impeded the development of key employment precincts that have been set aside via strategic planning for the future.

Prior to Shoalhaven LEP 1985, Council set aside land within the Shoalhaven for future industrial use, however the *Biodiversity Conservation Act 2016* has rendered some of the previously set aside land unviable at present due to the fact they are vegetated or partly vegetated. The Biodiversity Offsets that are now required to be paid on the industrial zoned land have inflated the cost of development to around 500% of the market price, rendering projects undeliverable. As an example of this, an area of approximately 6ha zoned IN1 General Industrial in Council's Flinders Industrial Estate, at South Nowra on initial appraisal by a qualified assessor determined the biodiversity offsets could be in the order of \$6.2 million, or \$100/m².

Community members have also made representations to Council raising their concerns about the cost burden imposed by the current biodiversity offset scheme. For example, owners of land at South Nowra have expressed concern regarding the development of their 2.5ha property that is zoned IN1 General Industrial and would require the clearing of bushland vegetation. The owners engaged a consultant to undertake a preliminary ecological assessment, which detailed the combined costings to purchase and retire the ecosystem and threatened species credits for the subject land would potentially cost \$1,581,506 (incl GST) at the time the consultant report was prepared, which is more than the cost of the land itself. The costs are considered to be 'completely at odds' with both the Federal and NSW Government's

efforts to stimulate the economy following the devastating economic impacts experienced subsequent to the 2019-20 bushfires and COVID-19 pandemic.

It is noted that Council has a separate advocacy action to request that NSW Government address the implications of the *Biodiversity Conservation Act 2016* on developing employment lands. However it is suggested that if the NSW Government is serious about creating employment related opportunities into the future and making it easier to do business then that there are other areas of legislation that need to be reviewed and reformed, not just planning related.

Public Consultation

If the new employment zones naming is adopted, then the names of the environment protection zones will subsequently change. It would be appreciated if future consultation includes all relevant proposed changes (including the proposed names for the environment protection zone) within the Position Paper to enable councils to provide comprehensive comments, rather than requesting Councils to comment and provide options for the names and offering no further consultation or feedback opportunities.

In this regard, it is strongly requested that the prefix for the new employment zones remain as 'B' for Business and/or 'C' for commercial.

Further consultation in regard to the names of the employment zones is essential and is requested.

E1 – Local Centre zone

It is noted that the proposed 'E1 – Local Centre' zone will 'fundamentally replace the B1 Neighbourhood Centre and most B2 Local Centres.' However the following land uses are currently prohibited within the B1 zone in Shoalhaven LEP 2014, but are proposed to be permitted with consent in the E1 zone, as mandated under the SI LEP:

- All forms of 'tourist and visitor accommodation' (Shoalhaven LEP 2014 currently only permits 'backpacker's accommodation' and 'hotel or motel accommodation' with consent in the B1 zone).
- All forms of 'retail premises' (Shoalhaven LEP 2014 currently only permits 'food and drink premises, kiosks, markets, roadside stalls and shops' with consent in the B1 zone).
- Specialised retail premises
- Timber yards
- Vehicle sales or hire premises
- Entertainment facilities
- Function centres
- Service stations
- Veterinary hospitals

E4 – General Industrial zone

The proposed E4 General Industrial zone intends to accommodate light and general industrial uses and warehousing uses, and will generally replace the existing IN1 General Industrial and IN2 Light Industrial zones.

The proposed E4 zone does not support residential uses which is generally supported.

MU – Mixed-Use zone

The introduction of the revised Mixed-Use zone is aimed at enabling or supporting a mix of residential, retail, light industry and tourist accommodation and will replace the existing B4 Mixed Use zone, and some B2 Local Centres zones. This approach is generally supported.

The proposed Land Use Matrix for this zone shows an intention to mandate a number of additional permitted land uses within the MU zone via the SI LEP which are currently prohibited within the Shoalhaven and there may be conflicts as a result, these include:

- Farm stay accommodation
- All light industries (including artisan food and drink industry, creative industries, high technology industries, data centres, home industry, and domestic goods repair and reuse facilities)
- Local distribution premises

Throughout the position paper the Mixed-Use zone is referred to interchangeably as MU and MU1. There is a need to be clear on how the Mixed-Use zone will be referred to - as MU or MU1?

Council previously provided commentary on data centres in its submission to the Explanation of Intended Effect (EIE) for Building Business Back Better. As part of that reform package, data centres were not proposed within existing B2 Local Centres zone. As the proposed MU zone will essentially replace the existing B4 and B2 zones, there are concerns regarding existing B2 zones. Currently a number of the B2 zones are embedded within existing residential areas or popular tourism locations, such as Huskisson and Culburra Beach. As such, these localities are not necessarily considered appropriate for data centres.

W4 – Working Foreshore

The W4 Working Foreshore is proposed to be a direct translation of the existing IN4 Working Waterfront zone. It is suggested that the W4 zone is being introduced, as land applying to this zone has more in common with the zone grouping of waterways than it does to employment zones.

The proposed new land use matrix appears to have transferred 'like-for-like' light industries into comparable zones. This means that under the new zones data centres would, for example, be permitted in the working foreshore, this may however not be appropriate.

SP4 – Local Enterprise zone

The Position Paper indicates the SP4 Local Enterprise zone will provide a place for planned precinct processes, special activation precincts and regional jobs precincts, should these areas and processes be transferred into the SI LEP in the future. This gives the impression that there is the potential for further reforms and functions to be transferred to local Councils in these circumstances and should be clarified.

The Paper states that: "the proposed SP4 zone will only apply in unique and predetermined circumstances subject to meeting strict established criteria and Department endorsement";

however, currently the predetermined circumstances and criteria to obtain endorsement from the Department are not outlined. Informed feedback cannot be provided at this point without the detailed information.

How the SP4 Local Enterprise zone will interact with *State Environmental Planning Policy (Activation Precincts) 2020* needs to be clarified?

Additionally, as the SP4 zone has not been included within the Draft Amendment Order, as such is it up to individual Councils to undertake an LEP Amendment to include this zone, if desirable or needed in the future for example?

Council staff request involvement in further consultation regarding the proposed SP4 Local Enterprise zone, particularly with regard to any guidelines relating to Department endorsement of SP4 zones.

New, updated or consolidated land use definitions

Updated definitions are proposed for the following land use terms:

- Business premises
- Industrial retail outlet
- Kiosk
- Neighbourhood shop
- Shop-top housing
- Crematorium
- Local distribution premises

The proposed updates to definitions, intended to remove reference to components that are outdated and to include reference to new and emerging land uses is generally supported.

New definitions are proposed for:

- Circular economy facilities
- Creative industries
- Data centre

In this regard, Council recently provided comment on the Building Business Back Better EIE that is considering complying development pathways within *State Environmental Planning Policy (Exempt and Complying Development) (Codes SEPP) 2008* for the development of Data Centres. As part of the complying development pathway, zone-based building controls would be introduced into the Codes SEPP for data centres within industrial zones and business zones. In addition, data centres within business zones would need to comply with the Business Zone Design Guideline. In addition to the zone-based building controls, data centres would need to comply with technical standards for noise and air quality.

As such, an online noise assessment tool is proposed to be utilised. This would produce a noise-compliance certificate that would be required to be submitted to an accredited certifying authority with a complying development application for a data centre. Changes to the *Environmental Planning & Assessment Regulation* would mandate this requirement for the submission of the compliance certificate.

In Councils previous submission, concerns were raised about the Online Noise Assessment Tool, as well as air quality studies not having been completed to date. Council sought confirmation that these issues have now been completed and requested further consultation once relevant development standards for data centres had been refined – to date further consultation has however not occurred.

Potential consolidation of existing definitions

The consolidation of existing definitions to provide for streamlining of definitions and reduce potential misinterpretation is generally supported. Further consultation of any land use terms that are proposed to be consolidated would be appreciated and is requested.

Land use tables

The proposed variation in objectives, and that SI LEPs will still be able to add additional local objectives, is appreciated as this will provide greater flexibility.

Relationship to other planning reforms

As stated previously, in recent months Council has considered and prepared a number of submissions relating to proposed State Government planning reforms. Given the time period and relationship between the two reforms, it would have been preferable for the Explanation of Intended Effect 'Building Business Back Better' and this reform to have been exhibited for feedback concurrently.

Given the number of interrelated planning reforms that are currently being considered it is essential that consideration is given to how they work together to ensure that no unintended consequences or difficulties arise when they are implemented.

Implementation

Council staff appreciate the support proposed by the Department in the implementation of the proposed employment zones. However, it is requested that further clarification is provided regarding the issues raised above and ample notification of proposed reforms is provided, so that Council is able to action the amendments in an appropriate manner given current workloads and commitments.

Conclusion

Thank you again for the opportunity to provide feedback on this very important matter. Given the relevance of this matter to Shoalhaven it is important that there is additional consultation and engagement with Councils to ensure that the final reforms are appropriate, can function as intended and impacts are balanced.

Further consultation/dialogue regarding the following matters is specifically requested:

- The outcomes of the cost benefit analysis intended to examine the zoning options and provide zoning options and a baseline costing of the preferred approach.
- The outcomes of the social impact analysis anticipated to examine the social impacts of the proposed employment zones framework.
- The naming future of the existing environmental protection zones should the proposed changes proceed as proposed.
- The proposed SP4 Local Enterprise zone

If you need further information about this matter, please contact [REDACTED]
[REDACTED] Please quote Council's reference 31157E (D21/297408).

Yours faithfully

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[REDACTED]

**Strategic Planning Manager
Shoalhaven City Council**