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

BB3 (CIS)

28 June 2021

Dear Sir/Madam,

RE: SUBMISSION ON THE EMPLOYMENT LANDS ZONE REFORM

North Sydney Council (Council) would like to thank the Department of Planning, Industry & Environment (DPIE) for the opportunity to provide comments in response to the public exhibition of the Employment Lands Zones Reform package.

Council is generally supportive of the intent of the proposed reforms to reduce complexity and improve flexibility, making it easier for emerging new commerce sectors to establish themselves with limited obstacles. However, Council has identified a number of issues within the Package which require further investigation or further amendment. These issues are discussed in more detail below.

1. Zone References

The Package proposes to give the new employment zones an “E#” reference under the Standard Instrument Local Environmental Plan (SI LEP). This proposal will duplicate the reference currently applied to the Environment zones under the SI LEP (i.e. there will be two sets of “E” zones), leading to confusion. Both the SI LEP written instrument and the associated maps make sole references to the “E#” references without being spelt out in full as it is the land use table. With two “E references” it will be difficult to determine between zones for people with colour impairment. There does not appear to be any associated amendments to the Environmental zone references to reduce potential confusion.

If the “E” reference is applied to the new employment zones, then a subsequent change to the Environmental zone references will also be required. This in turn will create a significant amount of unintentional additional administrative work to correct Environmental Zone references within a large number of SEPPs, LEPs, DCPs, strategic planning strategies, planning policies, websites and other documentation in addition to that just for employment zones.

To avoid the need to undertake this significant amount of additional work to correct these potential additional amendments, it is recommended that the proposed Employment zone reference be changed to something other than “E#”. Consideration could be given to the use of:

- “J#” (i.e. jobs);
- “EM#” (i.e. EMployment);
- “C#” (i.e. recognising that these are areas of commerce); or
- “EC# (Employment / Commerce zones).

However, the use of “EM” or “EC” is still likely to result in reduced clarity for users when used in conjunction with the existing “E#” Environmental zones.

2. Zone objectives

The Position Paper states that a variation will be permitted to certain objectives to ensure they reflect strategic planning. It is suggested that “*a decision on which objective is to be applied will be made as land use tables are prepared and reviewed by councils*”. The following variable objectives were proposed:

<i>Proposed zone</i>	<i>Proposed optional objectives</i>
<i>Commercial centre</i>	<ul style="list-style-type: none"> • <i>To encourage employment opportunities and business investment</i> <p><i>OR</i></p> <ul style="list-style-type: none"> • <i>To encourage employment opportunities and business investment in the regional centre</i> <p><i>OR</i></p> <ul style="list-style-type: none"> • <i>To encourage employment opportunities and business investment in the Strategic centre.</i>
<i>Mixed use</i>	<ul style="list-style-type: none"> • <i>To provide a range of business, community, light industrial, retail and residential land uses.</i> <p><i>OR</i></p> <ul style="list-style-type: none"> • <i>To provide a range of retail, business, and community uses;</i> <p><i>OR</i></p> <ul style="list-style-type: none"> • <i>To provide a range of business, community, retail and residential land uses.</i>

However, the Draft Order does not include this flexibility. It specifically only mandates the first objective for both zones as outlined in the Position Paper.

The Draft Order requires amendment to allow this increased level of flexibility. Alternatively, a practice note could be drafted advising of how the objectives to the zones are to be drafted and applied if that is the actual intent.

The objectives to all of the proposed zones also do not seem to reinforce the desired outcomes for centre hierarchies. Consideration should be given to including generic objectives to align with these higher order strategic plans.

3. Collapsing of Zones

The Position Paper outlines that the reforms seek to provide greater uniformity and consistency as to how business and industrial zones are applied and broadening the mandated permissible land uses within these zones. Whilst it is acknowledged that there is a need for improved overarching direction and rationale for how zones are applied, a “one size fits all” approach across NSW to the application and operation of zones is not appropriate.

There are very clear differences between centres across the State. The character of these centres have largely been established over time by various factors including the local community through strategic planning. Councils should retain the ability to undertake this strategic planning to determine appropriate zonings and retain the ability to adapt the zones for the context of their individual LGAs.

The Position Paper notes that ‘only 5% of LEPs utilise all available business zones’. Whilst it is acknowledged there is scope to reduce the current number of business zones, there also needs to be an adequate number of zones within the framework in order to effectively differentiate between centres of different scales and functions and to establish centres hierarchy in line with strategic planning outcomes.

Of specific concern is the collapsing of the current *B1 Neighbourhood Centre* and *B2 Local Centre* zones into the proposed new *E1 Local Centre* zone.

The Position Paper envisages that the E1 zone is intended to cover centres of varying scales, from small scale neighbourhood centres to larger local centres. It is also suggested that this can be partly achieved by utilising development standards (e.g. height and floor space ratio controls) to differentiate between the density and scale of different centres. Whilst this is partly true, the character of the centres will no longer be able to be adequately control as a result of the increase in the number of additional number of mandated permissible uses that could be undertaken within the current *B1 Neighbourhood Centre*, if it were to change to the proposed *E1 Local Centre* zone.

The *B1 Neighbourhood Centre* zone is currently applied to small groups of strip shops and a large number of isolated sites throughout the North Sydney LGA. These zones also tend to be solely surrounded by *R2 Low Density Residential* zones, where interface amenity impacts are much higher than other residential zones. The E1 zone proposes to permit all forms of retail premises in the current B1 zone areas. This would introduce a number of uses which could significantly alter the character of an area, due to their higher level of amenity impacts, including: large format supermarkets, entertainment facilities, function centres, pubs and small bars.

One of the key objectives of the *B1 Neighbourhood Centre* zone is to “provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood”. The term “small scale” not only relates to physical dimensions, but also to the intensity of use.

There has always traditionally been a hierarchy of three commercial centres, comprising: district, local and neighbourhood centres. This basic hierarchy should remain. It is also acknowledged that there may be instances where there are hybrids of this hierarchy. The proposed reforms will effectively remove the ability to differentiate the most “local” of these centre types.

On this basis, Council strongly rejects the removal of the B1 Neighbourhood Centre zone and urges that it be incorporated into the future framework.

4. Car parks

The Draft Order seeks to mandate “car parks” a permissible use within the proposed E1 *Local Centre*, E2 *Commercial Centre*, and MU1 *Mixed Use* zones.

Mandating this use as permissible in these zones has the potential to significantly undermine the ability to require a mode shift away from private vehicles to public transport in highly accessible centres and would undermine the delivery on the goals, actions and deliverables of the Greater Sydney Region Plan and numerous District Plans and Local Strategic Planning Statements.

Council has actively sought to prohibit carparks in its centres to ensure that there is a move towards more sustainable transportation modes. This is embodied in the North Sydney Transport Strategy and rolled out through the Local Strategic Planning Statement and various statutory documents including the North Sydney DCP 2013,

It should be left up to councils to determine whether it should permit car parks as a permissible use or not in the zones that it chooses to adopt.

5. Home Business / Home Occupations / Home Industries

The Draft order seeks to mandate home business, home occupations and home industries as a permissible use in the E1 *Local Centre* and E2 *Commercial Centre* zones.

Each of these land uses must relate back to a “dwelling” which is covered by the majority of the sub-terms of “residential accommodation” (i.e. all but boarding houses, hostels and group homes).

It is noted that no forms of “residential accommodation” are mandated as permitted with consent within the E2 *Commercial Centre* zone. As home businesses, home occupations and home industries rely on a dwelling being permissible first, it is recommended that home businesses, home occupations and home industries be removed from the list of mandated permitted land uses within the E2 *Commercial Centre* zone. A direction could be added to the Land Use Table of the SI LEP May requiring home businesses, home occupations and home industries to be added to the list of permissible use if residential accommodation, except boarding houses, group homes or hostels are also permitted in the zone.

Conversely, it is noted that the MU1 *Mixed Use* zone proposes to mandate shop-top housing (the definition of which makes reference to a “dwelling”) as permissible with consent in the zone, yet home businesses, home occupations and home industries are also not identified as permissible in the zone.

It is further noted, that State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) currently permits home businesses, home occupations and home industries as exempt development with the only real restriction being compliance with the definition of the land use type and that they can’t involve food preparation or skin penetration activities.

Accordingly, where a home business, home occupation and home industry seeks to undertake food preparation or skin penetration they are capable of doing so with development consent in any zone where residential development. Maybe there should be a directive that where residential accommodation is permitted in a zone then home businesses, home occupations and home industries should be included as a permitted use also.

6. Local Distribution Centres

It is understood that “local distribution centres” are to be de-coupled from “warehouse and distribution centres” to enable smaller scale distribution centres to establish in typically commercial based centres. Whilst there is no objection to this approach, there is little to limit the size of such a facility to ensure that the original intent is made.

The proposed definitions are as follows:

local distribution premises means a building or place used for the storage or handling of items (whether goods or materials) pending their delivery to people and businesses in the local area, but from which no retail sales are made.

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.

The proposed definitions alone do not enable an adequate level of certainty as to the scale and intensity of a local distribution centre in comparison to a warehouse or distribution centre.

To improve certainty and clarity it is recommended that a new subclause is added to Clause 5.4 *Controls relating to miscellaneous permissible uses* of the SI LEP whereby councils can nominate the maximum size that a local distribution centre can be. Size limitation could be in the order of no more than 1000-2000sqm in gross floor area.

7. Shop top housing

It is proposed to expand the range of uses that shop top housing can be located above. This initiative is supported to provide increased flexibility. However, there could be an unrealistic expectation that such uses below the shop top housing are also permissible, despite being specifically prohibited in the land use table. Further guidance will need to be prepared to ensure that the shop top housing must be located above one or more of the identified uses if permitted in the zone.

8. MU1 Mixed Use zone – Permissibility of Light Industrial Uses

The first proposed objective of the proposed MU1 zone seeks “to provide a range of business, community, light industrial, retail and residential land uses”. This is also reflected in the Proposed land use table to the MU1 zone which mandates “light industries” as a permissible use within the MU1 zone.

Council strongly objects to the inclusion of light industrial uses within this zone.

The Position Paper suggests that the existing B4 *Mixed Use* zone is predominately a residential zone and the that proposed zoned would be treated the same way.

Light industries have the potential to adversely impact on the amenity of residents in the zone (also mandated as a permissible use in the zone). This issue is exacerbated in dense urban areas such as North Sydney, due to increased numbers of residents being located in close proximity to light industrial activities. This is particularly an issue where the residential uses would be located above the light industrial activities.

9. Implementation

The Position Paper outlines that the DPIE will support Council in the implementation of the proposed reforms and will seek to do a significant level of heavy lifting in terms of legislative amendments. Council strongly supports this approach in moving forward. However, the Department needs to be made aware that councils will also need to do a significant number of complementary amendments to its DCPs that will need to come into force at the same time as a council's LEP is amended. Such amendments will require a mandatory 28 day public exhibition. This whole process could take 4-6 months depending on council reporting deadlines which typically occur only once a month.

10. Implications for Schedule 1 – Additional Permitted Uses

The introduction of new zones and the revised list of mandated permissible uses also has the potential to duplicate permissible uses identified by councils within Schedule 1 of their LEPs. The DPIE need to recognise that these sections should also be updated at the same time that land use tables are amended.

Conclusion

While North Sydney Council is in-principle generally supportive of the Department's initiative to revise the Employment zones to make it easier for emerging businesses and industries to establish, there are a number of matters which require further clarification or amendment before the reforms are imposed. In particular:

- The proposed Employment zone references are to be changed to something other than "E#";
- The first objective to the proposed *E2 Commercial Centre* and *MU1 Mixed Use* zones to the Draft Order are to be removed as a mandated objective and replaced with a direction or practice note that enables a flexible use of the objective depending on the use of the zone;
- The *B1 Neighbourhood Centre* zone be retained as an additional employment zone;
- "car parks" are removed as mandated permissible use within the proposed *E1 Local Centre*, *E2 Commercial Centre*, and *MU1 Mixed Use* zones as proposed under the Draft Order;
- home business, home occupations and home industries should only be mandated as a permissible use in a zone that permits any form of residential accommodation other than boarding houses, hostels or group homes;
- A clause 5.4 subclause be established to limit the physical size of a local distribution centre;
- Provide guidance that if shop top housing is permissible in a zone, that it does not automatically mean that any of the other uses which they are to be located above, are also not necessarily permitted in the zone;
- Remove light industrial uses as a mandated permitted use in the proposed *MU1 Mixed Use* zone; and

- The Department recognise the need for councils to undertake consequential amendments to its DCP and other planning documents to come into force at the same time as the amendments to a council's LEP occur; and
- The Department recognise the potential need for Schedule 1 of a council's LEP to be updated concurrently with Employment zone reforms.

Should you have any further queries please do not hesitate to contact [REDACTED]
[REDACTED]

Yours sincerely,

[REDACTED]
MANAGER STRATEGIC PLANNING
Electronically generated letter – no signature required