



04 June 2021

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

RE: Submission to the Employment Zones Reform Package

Thank you for the opportunity to provide feedback on the proposed simplification of employment zones and land use definitions in the Standard Instrument LEP.

While Sutherland Shire Council supports the objective of a simpler and more responsive planning system, this should not come at the expense of other strategic priorities and environmental planning outcomes.

The reforms appear to be undertaken in isolation from the other current reforms to Complying Development provisions and the review of the *"retain and manage employment land"* direction of the South District Plan by the Greater Sydney Commission. It is imperative that these reforms do not undermine the value of our limited employment land for industrial uses and urban services. Such an outcome would be contrary to State strategic directions and current intentions of Council's Local Strategic Planning Statement.

Please note the attached submission to the proposed reforms is a draft submission, yet to be endorsed by Council. An endorsed submission which will be considered at the 22nd of July Council meeting will be provided after the close of the exhibition period. Should you require further information please contact [REDACTED]

Yours sincerely,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Submission on Employment Zone Reforms

Sutherland Shire Council will be in Tranche 2

Sutherland Shire Council is undertaking a two stage LEP update process to achieve compliance and alignment with the South District Plan and Council's Local Strategic Planning Statement. We are undertaking consultation from 1 July 2021 with the intention of exhibiting a draft LEP in 2022. These timeframes do not align with Tranche 1, so therefore we request that Sutherland Shire Council be included in Tranche 2.

Proposed Employment Zones

Use of "E" lettering for Employment Zones conflicts with Environmental Zones

The draft amendment of the Standard Instrument uses E1, E2, E3, E4 & E5 for enumerating the proposed employment zones.

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

This obviously overlaps with the existing environment zones:

- E1 National Parks and Nature Reserves,
- E2 Environmental Conservation,
- E3 Environmental Management, and
- E4 Environmental Living.

The simultaneous use of "E" for employment zones and environment zones with the same numbers will create confusion for everyone who reads our LEPs and interacts with them, especially when using zone maps. It is not necessary to overlap zone numbers and there are no benefits from doing so.

Councils will need certainty and plenty of notice in order to realign all their documentation, Planning Certificates, DCPs and contributions plans to match the new zoning framework whatever zone numbering is finally adopted. As such Regulations should allow existing zone names in subordinate documents to be retained until the documents are next reviewed.

Mandatory Inclusion of Specialised Retail Premises in the Productivity Support Zone

Sutherland Shire Council has sought to contain large format retail uses (like specialised retail premises) with what were traditional industrial zones since the introduction of the Sutherland Shire Local Environmental Plan 2006. The 2006 Plan zone designated areas where bulky goods retailing could occur and prohibited it in all other parts of the industrial zone. This measure sought to limit the relocation of retailing from centres, and thus maintain the viability of town centres. It also sought to protect industrial uses and urban services from higher value retail uses that could be accommodated elsewhere.

The translation of the 2006 Plan into the Standard Instrument Format (SSLEP2015) saw the previous plan's single industrial zone split out into IN1, IN2, IN3, IN4, B5, B6 and B7, each specialised to a particular purpose. The B5 zone is the designated "bulky goods retail zone" and significantly extended the area of industrial land available for large format retail (specialised retail premises) along the eastern side of Taren Point Road. Specialised retail premises are also permitted in the B6 zone. This catered to a growing demand for large format retail in industrial areas while still reserving the bulk of employment land for industrial, office and business uses.

The proposed translation of B5, B6 and B7 into the Productivity Support Zone mandates that “specialised retail premises” be permissible with consent in all of these zones. This would further increase the amount of land available for “specialised retail premises” and is inconsistent with the intention of the B7 Business Park zone.

‘Specialised retail premises’ coupled with ‘industrial retail outlets’ are essentially ‘shops’. Such uses are able to pay higher rents/land prices and consequently displace traditional industrial/urban services uses, and potentially office uses. This would likely lead to a further erosion of commercial activity in town centres, and the exclusion of true industrial and urban services from business parks.

A recent study from SGS Economics and Planning on the future management of employment lands in the Sutherland Shire supported the ‘*retain and manage*’ approach in the Greater Sydney Region Plan and Southern District Plan. Furthermore, this study recommended Council monitor the amount of ancillary uses such as recreational facilities (gyms, play centres and the like) which are also a mandated use in these zones, as they are potentially undermining the purpose of the zone.

Mandating these uses contradicts the “retain and manage” principles for industrial and urban services land applied by the South District Plan which prioritise the “*..mix of economic outcomes to support the city and population.*”

To avoid this, ‘Specialised retail premises’ must be removed from the list of mandatory permissible uses in the Productivity Support zone. Alternatively, Council may be forced to use additional permitted use provisions to craft the zone as desired.

Increased permissibility in the industrial zone and centre zones will likely be accompanied by increased complying development provisions. Hence the impacts of uses in proximity to residential land needs to be carefully controlled/managed to prevent adverse amenity impacts and from further undermining centres. Mandated permissible uses should not be able to be undertaken as complying development. This is where the two separate reforms need to work in harmony.

Similarly the definition of ‘Creative industry’ also widens the opportunity for premises which will appear as shops. The definition is copied below and uses the phrase ‘mainly used for ..’ This means that a creative industry can be combined with any other use (whether permissible or not) because the combination of uses would fit within the definition is creative industries were the main use on the site.

Creative industry means a building or place mainly used to produce arts, crafts, design, media or other creative products, and includes artists’ studios, recording studios, and set design and production facilities.

Council’s primary concern with the widening of definitions, is that it is accompanied with increased use of complying development. This allows Private Certifiers to classify land use, and the flexibility within the definitions will be used “creatively” to justify uses that were never intended within the employment zones. For example under this definition a ‘creative industry’ could be an artist and a shop (selling totally unrelated products), as it fits the definition of being ‘mainly used to produce arts’. Shops are best located in town centres.

This ambiguity or lack of clearly articulated definitions is likely to lead to further erosion of the purpose of the zone and/or compliance issues for councils.

Mandatory Inclusion of Small Bars, Pubs and Function Centres in the Local Centre Zone

The Sutherland Shire has long used specific zones to express centres hierarchy - from centres to individual neighbourhood shops. Under SSLEP2015 small shops in residential areas are generally zoned B1 Neighbourhood Centre, reflecting their position as the lowest order retail and service centre. They may comprise as little as a single shop. This zoning allows them to take advantage of exempt and complying development provisions for changes of use and renovations (without the need to establish existing use rights), while prohibiting the uses which could have amenity impacts on adjacent residences.

The Local Centre zone mandates the following permissible uses - Small Bars, Pubs and Functions Centres - which can all have significant amenity impacts by drawing large crowds, occupying street parking, producing noise, and operating late into the night. Due to the introduction of clause “5.20 Standards that cannot be used to refuse consent—*playing and performing music*” to the standard instrument LEP, Councils have less regulatory power over noise created by new venues. Complying development – which facilitates permissible uses – may further allow these uses without an assessment of amenity impacts.

The translation of B1 Neighbourhood Centre directly into the Local Centre zone would open up clusters of small shops in residential areas around the Sutherland Shire to Small Bars, Pubs and Functions Centres. Council would be forced to rely on refusal of applications based on zone objectives. This could be alleviated if these uses were not mandated in the local centre zone, or if Council were provided with stronger objectives or specific standard provisions which allowed these uses to be excluded in inappropriate settings. Complying development provisions also need to be addressed accordingly.

Land Use Definitions

Shop top housing is problematic:

(a) Definition is too restrictive

From the standard instrument LEP: “**shop top housing** means *one or more dwellings located above ground floor retail premises or business premises.*”

Historically this definition related to small shops with bedrooms and living space above the shop, but often shared kitchen or bathroom facilities on the ground floor to the rear of the shop. In a contemporary context the definition relates to residential flat buildings with non-residential uses at the ground floor or in the building podium. However, the existing definition of shop top housing does not include the full range of non-residential uses which may operate in such ground floor premises but are not encompassed by the group terms for business premises and retail premises such as:

- tourist and visitor accommodation,
- high technology industry & artisan food and drink industry,
- educational establishments,
- function centres,
- entertainment facilities,
- early education and child care facilities,
- community facilities,
- health services facilities, and
- office premises.

The draft instrument amends the definition of shop top housing to include “commercial premises or health services facilities” but this still excludes most of the uses noted above. Many of these uses are desirable and assists the liveability of our centres – particularly

childcare centres which are a sensible ground floor use when a building has a landscaped setback.

Under the Sutherland Shire Local Environmental Plan 2006, the definition of Shop top housing was broad enough to accommodate any non-residential use permissible in the zone:

“shop-top housing means 1 or more dwellings located above the ground floor of a building, being a building in which a non-residential land use that is permissible with or without consent is carried out on the ground floor.”

The 2006 definition has clear advantages when a plan is attempting to accommodate diverse uses and active street frontages in town centres, and should be considered for implementation in the Standard Instrument LEP.

(b) Is a separate land use term for “Shop top housing” unnecessary?

The present value of the standard instrument’s shop top housing definition is only useful if a plan wants to ensure that non-residential uses and active frontages are provided at ground level when a site is redeveloped. Perhaps this is because some Councils have found that LEP or DCP mechanisms for requiring the inclusion of employment generating uses or active street frontages in development are less likely to survive appeals in the Land and Environment Court.

To overcome the limits on the definition, the Sutherland Shire Local Environmental Plan 2015 allows residential flat buildings (RFB) in the B2, B3 & B4 zones. An RFB can then be combined with any other permissible use as a mixed use development.

The shop-top housing land use definition could be entirely discarded if the standard instrument plan provided a durable alternative mechanism for requiring active street frontages and non-residential uses to be included in developments in centre or mixed use zones.

Furthermore shop top housing definition prohibits some form of residential development that may occur at ground level to the rear of retail/business premises – particularly relevant on large lots. The definition is unwieldy and could be improved.