

Blue Mountains City Council - Submission Employment land zone reform

Introduction

Thank you for the opportunity to respond to the proposed employment zones reform framework, on exhibition until 30 June 2021.

The Department is framing this reform as a commitment to supporting a productive economy by enabling business and jobs in the locations where they are needed. The stated delivery of this reform is proposed through what is described as a simplified framework, which provides clarity, and increases flexibility around land uses and is supportive of the delivery of strategic plans.

It is proposed that these changes take effect through replacing the existing Business (B) and Industrial (IN) zones with five new employment zones and three supporting zones under *Standard Instrument Principal Local Environmental Plan (2006)* (SI LEP). This reform is being undertaken concurrently with the “productivity acceleration package”, the aim of which is to expedite capital investment in employment zones using complying development certification (CDC) development pathways. Amendments to the SI LEP and changes to the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) are pitched as an urgent COVID economic recovery response. The Department has been progressively releasing proposed planning reforms, which pose significant challenges due to the volume and the undesirability of the changes. The proposed Employment Zones Reform is the most recent and is deeply concerning due to the potential for significant impacts to the existing zone hierarchy, local context and community needs. Significantly, the exhibition material is not just proposing a SI LEP amendment, or planning reform, it is a fundamental shift in the NSW planning system and is being implemented with little notice or meaningful discussion.

For context setting, in the Blue Mountains, employment zones relate to industrial zones (IN1 General Industrial and IN2 Light Industrial) and business zones (B1 Neighbourhood Centre, B2 Local Centre and B7 Business Park). They are used to differentiate between the role of different employment areas, and maintain an established hierarchy of town centres, which allows for orderly and efficient planning of services and infrastructure.

While it is understood that there is need to utilise policy to respond to COVID and deliver public benefit, as raised in Council’s submission to the Codes SEPP employment lands, the cost of these fundamental and permanent changes, needs to also be examined. A quick response now may result in unintended environmental, economic or social impacts. There is concern that haste in the name of streamlining removes the ability to appropriately consider planning matters, especially at the local level. Rushed implementation effectively increases complexity, the very thing that the reform is purporting to remove.

Following is overarching feedback on the proposed changes and recommendations.

1. Case for change

As with other recent reform packages, the case for change is not convincing and distinctly lacks well-rounded foresight. Rather, it simply provides a mechanism for development that can forego any meaningful planning considerations, couched as removing complexity and inflexibility, effectively allowing particular development models without regard for local context or needs. In addition, there is a lack of co-ordination and inconsistencies between this reform and other policies recently exhibited, such as the Design & Place SEPP. This reform is at odds with the principles of designing sustainable, resilient and diverse places for enduring communities.

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The Department has raised concerns that not all Councils use all zones, and reform that creates alignment across the state is desirable; stating it also makes working across multiple LGAs easier for economic investment. However, it appears that such a model would benefit only large businesses and developers. The envisioned outcome, therefore, is an expansion of where certain retail and commercial land uses can occur. Flexibility in the planning system is supported, but not at the expense of being able to plan for the orderly or economic development of land. As a core place-based planning principle, it is reasonable that not all local government areas contain all available types of employment areas.

It is acknowledged that in some growth areas, the current delineation between existing employment zones is not clear, particularly when these zones adjoin each other. Marsden Park in Blacktown City Council provides an example that contains zones B5, B7, IN1 and IN2, with a range of what appears to be specialist retail premises across these zones, a land use that might preferably be located in a town centre. In this example, a collapsing of zones to address this retail demand and growth makes sense, and aligns with the local place based planning of that area.

However, addressing issues occurring in growth centres – areas undergoing significant change and establishing themselves – is not justification for State wide reform, which will impact established areas differently. The “Marsden Park effect” is not transferrable to the Blue Mountains context, where existing industrial areas abut a range of residential zones and environmental zones. Complicating this further, some industrial zones in the Blue Mountains are also heritage conservation areas.

Comparatively, the concerns of growth areas differ considerably from one that is charged with sustainable living in a World Heritage Area. It is not reasonable then, to enforce a blanket approach, which will clearly have a more substantial impact on rural and metro-rural areas.

Recommendation 1: Council objects to increased flexibility in land uses where the outcome does not result in orderly development of land. Place-based planning, as supported through Regional Plans, District Plans and local strategic planning statements, with a view to strong environmental outcomes, should inform local needs, not a one-sized-fits-all blanket approach.

2. Undermining of strategic land use planning

The proposed changes remove the ability for local government to implement strategic land use planning through the statutory planning framework. Following consideration of the aims of the plan, the primary statutory mechanisms available to implement strategic land use planning are the zone objectives, land use permissibility, and land use definitions. A Council can differentiate between the intended outcomes for different areas by these mechanisms. For instance, to ensure that the planning system can facilitate an existing strip of shops within a residential area providing a vibrant convenient neighbourhood shopping, whilst separately and concurrently also facilitating large established town centres to provide the retail and services needs of a local community in a well serviced location.

The current employment land definitions in the standard instrument, and mandated permissible uses, already provide an extremely flexible range of land uses. In conjunction with a many-fold increase in mandated uses, the proposed reforms go a step further and remove the ability to implement a hierarchy of centres, or to even ensure that core commercial activities remain in town centres, and are not dispersed in satellite, car based, out of centre locations.

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Current reforms effectively provide for blanket permissibility of certain land uses across all business and/or industrial areas. This submission raises issues not just with the exhibited changes, but also with existing issues with the standard instrument LEP related to employment uses and zones. These will be exacerbated by the proposed changes.

By collapsing the zones, and expanding where particular uses can occur, these reforms are effectively relying on the development assessment process to implement local strategic land use planning policy, in the absence of being able to do this through an LEP itself.

Recommendation 2: Council notes that the proposed changes are inconsistent with the Regional Plans, District Plans and undermine the strategic direction for land use in the local strategic planning statements. Consistency of approach is required.

3. Ensuring the right choices, in the right places

Analysis of the proposed zones indicates that the right choices are not available for an LGA wholly mapped as a metro-rural area, particularly one within a World Heritage Area; such is the case in the Blue Mountains. It has been made clear at the district level that design led place based planning is required in metro-rural areas, to help manage environmental, social and economic values. Further, rural and bushland towns and villages are not intended to play a role in meeting regional or district scale growth. Any changes to zoning ought to result in an equivalent or better outcome. Therefore, opportunities for other zoning options in metro rural areas should be made available, in order to respond appropriately. As such, it is requested that the Department meet with Council to discuss more appropriate options for the unique Blue Mountains setting.

Recommendation 3: That the Department meet with Council staff to allow for broader zoning consideration for Blue Mountains towns and villages, beyond those made available in the exhibition material, to enable an outcome that is consistent with the planning principles of a City within a World Heritage Area.

Notwithstanding the clear need for a bespoke approach in the Blue Mountains, below are specific issues raised with the proposed reform.

4. Proposed reforms facilitating big retail business model, not improving planning outcomes

It is clear and troubling, that these reforms primarily seek to facilitate the business model of big retail, at the expense of sound planning. The retail landscape in Australia means that Westfarmers and the Woolworths Group maintain a duopoly for the sale of groceries, alcohol, hardware, and petrol. This in and of itself is not a planning issue. However, the business model of these retailers is large, standalone, car reliant stores that are typically established outside of existing centres, often positioned for commercial reasons such as attracting commuters, rather than to achieve good place outcomes. This results in a negative impact on traditional town centres, where smaller retailers rely of their co-location with each other, and the attraction of anchor retail. This impact is felt not only by established town centres, but also undermines efforts to create vibrant, walkable town centres in new and emerging suburbs.

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Currently, the suite of zones is utilised to limit out of centre retail, whilst still attempting to maintain flexibility for some retailing, which is genuinely more appropriately located outside of established centres.

Recommendation 4: These reforms will benefit the large retail conglomerations where the business models are typically standalone retail outlets removed from existing business centres and rely on customers using private motor vehicles. This model impacts adversely on traditional, well-established town centres and undermines efforts to create vibrant, walkable town centres and is not supported. The retention of local place based planning, where land uses are informed by community consultation, is recommended.

5. Business zone changes - Diminishing of established centres hierarchy approach

The benefits of having an established centres hierarchy are well known. It provides certainty for the community and business about what can be expected in particular centres. This gives confidence for businesses to invest in established centres. It also allows infrastructure, housing, public and active transport, and community facilities planning to align with a centres hierarchy. Currently the B1 and B2 zones allows Councils to implement a hierarchy of centres

Weakening of a centre hierarchy increases the risk of out of centre development or one off large developments in lower order centres, changing the centres hierarchy. The impact of this is the potential for development to occur where infrastructure is not in place to support it, or where public transport opportunities are limited. This impact may not be as great in denser metro Sydney areas, which have a more extensive network of public transport service, and by their nature are more walkable. In suburban or regional areas, such development is likely to increase car dependency and diminish efforts to establish vibrant walkable centres.

It is accepted that the role of centres can change over time. However, what is proposed creates potential for sudden and disruptive change. As raised in the previous section, large retail developments, such as home maker type centres or supermarkets, can significantly change the shopping habits of consumers and the functioning of centres. It is known that these types of retail attract consumers because of their reputation rather than their location. Therefore, opportunities will be sought to develop in areas with lower land values – typically out of centre or in lower order centres. Once such a development occurs outside of a centre, it will draw people away from established town centres. If a critical mass of people are drawn to a new location it can be expected that cafes or take-away outlets will seek to establish nearby, increasing the pull of people away from existing town centres.

The downside of this is that other services are located in existing centres, particularly higher order centres, and it is around these centres that higher residential densities are typically located, where there is the expectation that people can walk or take public transport to access the majority of their retail or service needs. Dispersing of retail activity increases car dependency and makes it harder for anyone who relies on public transport to access services.

The Blue Mountains is a string of villages along a transport corridor. Long standing strategic planning for a strong hierarchy of centres has meant that despite the City being spread over a large distance, individual communities have convenient access to a neighbourhood or local centre. Except for residents in more peripheral bushland interface locations, most residential areas of the Blue Mountains are within a walkable catchment of one of these centres. The result is walkable and vibrant centres, despite the suburban nature of the City.

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The proposed changes have the potential to undermine this by allowing retail and commercial development to become more dispersed. There is the real risk of this occurring where there are currently small neighbourhood centres located on or close to the Great Western Highway. These B1 centres currently limit uses, which maintains their role serving the immediate community. Meanwhile, larger 'anchor' retail is located in higher order B2 centres where there is a concentration of activity and services with better public transport access and a catchment of higher density residential.

If the ability to maintain this hierarchy through statutory planning instruments is removed, there is the risk that larger format retail could establish in a smaller neighbourhood centre, making use of the lower land values and highway location to attract passing motorist trade, rather than serving the needs of the immediate local community. This would mean that these communities would lose this local servicing, having to drive elsewhere for this.

Recommendation 5: The principle of having an established centres hierarchy are of benefit to planners, developers and the community and the principles are well established in the Blue Mountains. This principle gives confidence for businesses to invest in established centres as well as planning for infrastructure, public and active transport and community facilities. The role of centres can change over time, however what is proposed opens the door for rapid and disruptive change, and is not supported.

6. Industrial zone changes - Removal of light industrial areas

The proposed reform effectively removes a light industrial zone. This means areas currently zoned as light industrial will either have to be elevated to general industrial, with the potential for more impactful industries, or transitioned to productivity support, which permits a range business and retail uses. Neither of these outcomes align with the existing fine grained approach that the Blue Mountains planning framework relies upon for orderly, locally appropriate outcomes.

Recommendation 6: Broad upscale and intensification of use is not supported. A buffer between residential uses and industrial uses is required, with the recommendation that a light industrial use remain within the suite of employment lands zones.

7. Use of 'E' prefix for proposed zones and zoning translation

Of concern is the proposal to amend the well established existing Environment Protection Zones of E1 National Parks and Nature Reserves, E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living to free up the E prefix for Employment Zones. In the Blue Mountains context, the majority of the LGA is currently an Environment Protection Zone (E1-E4). It is understood that if the proposed Employment Zones are adopted, the names of the existing Environment Protections Zones will be changed. This does not accord with the objective of a simplified framework that provides clarity. Instead, the conversion of existing E zones, of which there is significant amounts in the Blue Mountains, creates expediential confusion and introduces complexity.

Such a change would require amendments to all LEP zoning maps, not just those where there are employment areas, as well as impacting Councils property database, LEP and DCP references, planning certificate process, internal templates and so on. Additionally, State Environmental Planning Policies that currently reference Environment Protection Zones would also need to be altered. Notably, at the local level, given the breadth of impact, the resourcing required to implement such changes will be enormous for no material change, on top of the workload to implement the proposed reforms themselves.

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In addition, existing development consents that delineates between Environment Protection Zones for the purposes of development approval, would no longer hold practical relevance to applicants upon execution of this proposed change. Instead of clarity, this introduces confusion for the community, particularly in relation to planning certificates and written land use advice provided, especially in the proposed transitional period.

The deliberate introduction of such an unnecessary change, which knowingly will result in inefficient use of publicly funded resources, is careless, at best. Change for the sake of change is not the best strategy and is unsupported. More appropriately, consideration should be given to retaining the existing Environment Protection Zones, and naming the proposed collapsed employment zones something that demonstrates their point of difference, such as P for productivity or EZ for employment zones or some other name that clearly delineates, and does not result in an efficient use of resources.

The exhibition material notes that the reform will largely be a translation of existing zones to proposed zones. However, an initial comparative review of relevant Blue Mountains LEP 2015 zone objectives against the proposed new zone objectives and related land use tables does not support this statement. Further, the generalisation of objectives does not support strong place based planning, and clarification is sought that in any conversion, individual Councils can craft zone objectives to respond to local need.

In addition to reducing the number of zones available for Councils to select to use in their LEPs, the framework also proposes to update, consolidate or introduce thirteen (13) land use definitions, and significantly, as stated in the exhibition material, across the proposed employment zones framework, an additional ninety-seven (97) mandated permitted uses from what is currently mandated. For example, under the Standard Instruments in the current B1 Neighbourhood Centre zone, 11 land uses are mandated, whereas under the proposed E1 Local Centre zone, over 60 land uses are proposed to be mandated. While some of the proposed new uses are supportable (such as “creative industry”), and the inclusion of mandatory land uses in each land use zone is a regular component of the NSW planning process under the SI LEP, the proposed addition of ninety-seven (97) mandated uses is an excessive increase. These two areas of change are fundamental to the planning system. To propose both a reduction in the number and nature of zones, and to propose a significant increase in mandated land uses, removes the fine-grained approach to zoning at the local level, and the ability for Council to choose which uses are permitted in these zones. Consequently, the flexibility that the Department is purporting to provide through this reform appears to benefit business only. It does not provide Council or the community the flexibility to consider whether all of the proposed mandated uses are appropriate.

Recommendation 7: Clarification be provided that in any zoning conversion, individual Councils can craft new zone objectives to respond to local need.

Recommendation 8: The established existing Environmental Protection Zone “E” naming convention should remain, with a new and separate convention established for the proposed employment land zones.

8. Implementation

The proposed implementation timeframe suggests the SI Order will be released at the same time the Department will be providing Councils with draft LEP maps. This means that draft maps will have been prepared by the Department without Councils having the opportunity to interrogate the final zone objectives and land use tables, which will be critical for determining how existing zones should be best translated.

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Presumably the Department intends to consider submissions made during the public exhibition, and therefore it would be reasonable to expect that changes will be made post exhibition to proposed zone objectives, mandated permissible uses, and land use definitions. These should be available for council to review prior to any work being done to the translation to the new framework.

Recommendation 9: That the Department engage purposely and fully with local government to resolve matters raised prior to the release of an Explanation of Intended Effects in December 2021.

Conclusion and recommendation summary

Council is not opposed to reform that results in equivalent or better planning outcomes. However, the case for change in this instance has not been made. Following is a summary of the recommendations made in this submission in response to the proposed reforms:

Recommendation 1: Council objects to increased flexibility in land uses where the outcome does not result in orderly development of land. Place-based planning, as supported through Regional Plans, District Plans and local strategic planning statements, with a view to strong environmental outcomes, should inform local needs, not a one-sized-fits-all blanket approach.

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