

SUBMISSION ON PROPOSED EMPLOYMENT ZONES FRAMEWORK (released May 2021)

FOREWORD

Willoughby City Council (WCC) notes the proposed employment zones framework and that these changes will result in a range of changes to the Standard Instrument LEP and LEP mapping. It is understood that the proposed changes aim to better align the employment zones framework to the way cities and regions are evolving. This submission is provided by Council officers.

While measures to improve economic investment and stimulation of economic activity are supported in principle, there are a number of concerns with some of the proposed changes. It is considered that some of the proposed changes may result in undesirable planning and environmental impacts which could undermine delivery of a high quality, robust and well-designed built environment within NSW.

Director, Planning and Infrastructure
June 2021

GENERAL OBSERVATIONS

Summary of the main changes include:

The Position Paper notes that the proposed employment zones framework aims to better align to the way cities and regions are evolving. It includes:

- three jobs-focused zones and two industrial zones (down from 12 currently)
- three supporting zones that capture land uses and locations that have a focus beyond jobs (mixed uses, local enterprise and waterways)
- A clear strategic intent for each zone that builds on strategic work by the State and councils over the past five years
- Across the proposed employment zones framework an additional 97 mandated permitted uses from what is currently mandated.
- the retention of core retail uses in centres
- support for urban services uses by providing a dedicated zone
- three new land use terms and an update to six existing terms to meet contemporary needs.

It is noted that the proposed changes are broad ranging and will have significant impacts on the Standard Instrument LEP and local LEP planning frameworks in relation to employment lands.

It is noted that a cost benefit analysis is underway to examine zoning options and provide a baseline costing of the DPIE preferred approach. A social impact assessment is examining the social impacts of the proposed employment zones framework. The final framework will be informed by this work.

There is concern that this information is not available for scrutiny as part of the public exhibition of the proposed changes. It is requested therefore that this information be released and the exhibition be extended or a new period for comment is offered to enable this information to be reviewed and

considered as part of submissions. It is difficult to make a fully considered response without this information.

There is also concern that the changes proposed for the existing *Exempt and Complying Development Codes SEPP* for complying development in industrial and business zones (i.e. *EIE for Building Business Back Better*) have not been fully considered in this review and could conflict with some of the aims of the Employment Zones review. For example, allowing additional uses as complying development could permit undesirable uses in some of the new employment zones.

There is also concern that the proposed zone changes and more “open zones” approach could undermine the new *Design and Place SEPP* currently under consideration by DPIE. The proposed changes could potentially conflict with the principles of the *Design and Place SEPP*, which aims to enable this type of development to contribute to a greener, well-designed built environment.

Councils have been encouraged to renew their local instruments to align with and implement the District Plans of the Metro Strategy. This suite of system changes makes it difficult for this to occur smoothly particularly for those Councils with Planning Proposals which are on or about to go on exhibition later this year such as in the case of Willoughby. As a result, the period to finalisation of a new aligned LEP could be extended by between 1-2 years negating the extensive effort put towards meeting those earlier deadlines established for completion of new LEPs under the District Plans.

RESPONSE TO SPECIFIC ASPECTS OF THE REVIEW

1. Proposed employment zones framework

Commercial Centre and Local Centre zones

Council generally supports the proposed Commercial Centre and Local Centre zones. It is noted that the proposed new employment zones will be “E” zones. It is noted that if these changes are made the names of the existing environment protection zones (E1-E4) will also need to change. It may be less confusing for the proposed employment zones to be “EM” zones and retain “E” zones for the existing environment zones.

Council strongly supports residential uses not being mandated in the Commercial Centre zone. There is concern therefore about statements for this zone such as:

- *Avoids mandating residential uses although higher density residential may be appropriate in some areas so long as the primary employment focus is preserved. (Position Paper P.7)*

This position has caused on-going uncertainty and confusion, undermining the strategic intent of this zone particularly in areas such as Chatswood CBD where it works against attracting top quality commercial interest and investment. The strong message from those working in the suburban office markets is to keep commercial core areas free of residential as this inevitably diminishes its value and status. It is also noted that it conflicts with the zone objectives proposed for the E2 Commercial Centres zone as outlined below:

- *To provide the principal commercial centre for surrounding areas.*
- *To provide a range of business, office, retail, community, entertainment and other land uses that meet the needs of the community.*
- *To encourage employment and business investment.*
- *To promote vibrant and active street frontages, including during evenings and weekends.*

In relation to the B2 Local Centre zone, it is noted that the preferred residential uses in local centres are boarding houses and shop-top housing. This position is supported and it is considered that additional residential uses such as residential flat buildings should not be permitted in the local centre zone.

It is noted that under the parallel review, the changes proposed for the existing *Exempt and Complying Development Codes SEPP* for complying development in industrial and business zones (i.e. *EIE for Building Business Back Better*) will potentially allow a wider range of land uses as complying development in B1 and B2 zones with development standards for these new land uses to mitigate amenity impacts. Combined with the additional mandated land uses proposed in these zones, this could potentially open these centres to a range of unsuitable uses with minimal assessment requirements under the complying development pathway.

Urban Productivity zone

The Urban Productivity zone proposes to combine 3 existing zones into 1 (B5, B6 and B7 zones). It is noted that this zone will be quite an open zone where other types of “support uses” are permitted, such as health and education establishments and recreation facilities. Allowing function centres and hotel and motel accommodation in the Urban Productivity zone is not supported. In addition business premises are not supported however Council would support permitting office premises and child-care centres in this zone.

It is noted there are some key differences in Willoughby City Council’s B5 and B7 zones, such as shop-top housing permitted in B5 zone but not in the B7 zone. Specialised retail premises are also permitted in the B5 zone but not the B7 or IN2 zones. As such it will be necessary to reconsider the appropriate zonings for certain areas in Willoughby to ensure desired strategic outcomes are met.

The statement that there is no clear home for urban services land uses in the existing zones framework is questioned. These uses are typically located in the IN2 Light Industrial zone and in some cases the IN1 Industrial zone. Many of these uses are also permissible in the B5 and B7 zones. Urban services are critical to a sustainable and well-functioning city. These uses typically cannot compete with higher value land uses commonly found in centres.

It is noted that the proposed Productivity Support zone includes the following strategic intent:

- *Allows for a mix of services, low impact industry, creative industry, manufacturing, warehousing, office and limited supporting retail.*
- *Essentially replaces B5 Business Development, B6 Enterprise Corridor, some B7 Business Parks and in exceptional circumstances limited areas of IN2 Light Industrial zones that no longer function as traditional industrial precincts.*
- *Suits locations near catalyst development (such as health and education) to support those uses through development such as a larger campus style business park.*

- *Suits emerging and new industries that need larger floorplates*
- *Limits retail to uses requiring larger lots/floorplates (e.g. specialised retail premises), or that meets workers' or businesses' daily needs, or that sells products manufactured on site.*
- *Generally does not support residential uses.*

There is concern that the new framework of zones will put pressure on existing IN2 zones in some areas (eg Artarmon) to be converted to the new Productivity Support zone, which will put further pressure on limited industrial lands in the Willoughby LGA. This will allow a quite different range of uses such as health services facilities and recreation facilities in these areas without the need for a planning proposal. Council agrees that residential uses should not be permitted in this zone, however there is concern that the above strategic intent to “generally does not support” residential uses is not strong enough and could lead to pressure to undermine this with mixed-use proposals in this zone. As such this should be strengthened to ‘Does not support residential uses’ to avoid the inevitable confusion that will otherwise arise and instead provide the much sought certainty.

While the Council’s Local Strategic Planning Statement identifies a preferred expansion area for the health and education precinct at St Leonards/Artarmon, this would not indicate inevitable support the conversion of this area to the proposed Productivity Support zone without the full strategic implications of this being thoroughly examined.

It is noted that a number of proposed changes to complying development provisions are envisaged in industrial zones and the B5-B7 Business zones and that these changes would flow to the new Urban Productivity zone. It is understood that no changes are proposed to the existing Code SEPP provisions for commercial alterations and additions within the B1-B4 land use zones. It is considered that the current level of rigour proposed for B1-B4 zones should be the same as those applying to other business zones.

Mixed use zone

It is noted that the proposed Mixed Use zone has the following strategic intent:

- *Supports a mix of residential, retail, light industry and tourist accommodation.*
- *Supports genuine mixed use development rather than one dominant use.*
- *Replaces B4 Mixed Use, some B2 Local Centres and potentially B8 Metropolitan Centre.*
- *Promotes and encourages activities at ground floor and on street fronts.*
- *Considers the role and purpose of mixed use relative to other commercial and high density residential zones within the local government area.*

There is also concern about including the term “light industrial” term in the intent and objective of zone for proposed MU1 Mixed Use zone. It is also noted that “light industries” is proposed to be a permitted land use in the MU1 Mixed Use zone. While specific light industrial type uses may be permitted, the general term “industries” which includes light industry is not currently permitted in the Willoughby B4 Mixed use zone and the focus of this zone is business or employment uses rather than industrial. Allowing light industries in this zone will potentially result in significant land use conflicts such as with residential uses in this zone.

There is concern also that it is proposed to allow restricted premises as a mandated permissible use in the MU1 Mixed Use zone. It is noted however that the land use terms 'home business', 'home occupation' and 'home industries' are not included as mandated in the draft instrument and it is considered they should be included in these changes.

Industrial zones

There are significant reservations about combining the IN1 and IN2 zones into a General Industrial zone as this would potentially allow more noxious industrial uses to operate in areas only suited to Light industrial uses. This change could also result in additional land use conflicts between industrial and neighbouring residential areas in a number of parts of the Willoughby LGA such as at East Chatswood. The proposed Heavy Industrial zone is supported; however this zone does not currently exist in the Willoughby LGA.

Industrial lands have a critical value to cities and regions. The statement that industrial land should be defined and separated from other higher value or sensitive land uses so industrial activities are not impacted operationally or available land eroded is strongly supported.

As part of the parallel review of exempt and complying provisions being undertaken by DPIE, there is concern that the proposed expansion of complying development provisions in industrial zones will potentially lead to a poorer development outcome in these areas and will undermine local planning controls. There is particular concern regarding the increase in floor space area and significant height proposed for buildings in industrial areas to be complying development. It is noted that there is no prescribed height limit in the Willoughby LEP industrial zones as proposals for increased height would require a Development Application and be subject to full assessment.

Local Enterprise zone

The plan to introduce a flexible mechanism to allow for bespoke planning for unique precincts with a new Special Purpose zone proposed, being the SP4 Local Enterprise zone, is noted.

Introducing the SP4 Local Enterprise zone recognises that certain precincts and their proposed land use activities are unique and cannot be accommodated in another proposed zone. The SP4 zone will allow a planning authority to set the land use table. It is understood that this zone will not be widely used in the majority of LEPs. The limited use of this zoning option is supported.

The proposed Local Enterprise zone is supported in principle but there is concern about the very open and flexible intent of this zone which may over-ride regional and local planning strategies with developers pushing a wide range of uses over potentially large sites resulting in poorly located development and inappropriate uses with poor transport connections.

Where SP4 is proposed to be applied within an LEP, it is understood that precinct-specific land use tables will be provided potentially through use of a new LEP schedule. The permitted land uses could be provided in a similar fashion to how they are laid out currently within SEPPs i.e. within the Activation Precincts SEPP or the State Significant Precincts SEPP. SP4 zoned sites could be mapped as SP4 with an identifier that links to the land use table in the new SP4 LEP schedule as Schedule 1 sites are currently identified within Standard Instrument LEPs.

It is considered that the criteria for the use of this zone would need to be clearly established. It is noted that the SP4 Local Enterprise zone is a proposed new Special Purpose zone and is an endeavour to

introduce a flexible mechanism within the Standard Instrument LEP that will allow for a bespoke planning response for unique precincts.

It is noted that under a parallel review of exempt and complying development, DPIE are consulting on a council-led (opt-in) pathway to allow a council to specify complying development on identified industrial or business zoned land in a masterplan. Is it understood that the SP4 zone would potentially apply to these masterplan areas if these changes are adopted.

Under this masterplan pathway, local councils would undertake up-front planning for the purposes of specifying complying development in a masterplan. Councils could partner with developers or landowners in order to carry out the land use studies necessary to use this pathway.

There are concerns that the masterplan concept as presented could undermine Council's planning controls including existing LEP and DCP provisions. While the proposed masterplan is meant to be Council led, Council is likely to be placed under pressure from developers to adopt the masterplan approach for complying development. This would also likely place additional resource burdens on local government to implement such an approach.

Master planning is supported in principle but can be more challenging to implement in established urban areas. It is strongly recommended that any proposed master plans are to be approved through the normal development consent process and that they be incorporated into Council DCPs to give the requirements local planning status.

2. New, updated or consolidated land use definitions

Key proposals include updated definitions for:

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

It is noted that new definitions are proposed for:

- Circular economy facility
- Creative industries

- Data centre.

Local distribution premises will become a separate land use decoupled from the parent term ‘warehouse or distribution centres’.

The above proposed definitions are generally supported and will result in more contemporary definitions being adopted in LEPs.

It is noted that there is reference to the land use term “op shop” however it is noted there is no definition proposed or contained in the current standard LEP dictionary for this use. Note the following definition repeated below for the proposed new definition for the following use:

“domestic goods repair and reuse facility means a building or place mainly used to collect, repair or refurbish domestic goods, including furniture and appliances, for the purposes of sale, lease or swap, but does not include a shop that is an op shop”. (Standard Instrument LEP Amendment P.8)

It is noted that data centres are currently classified as storage premises under State Environmental Planning Policy (Infrastructure) 2007. DPIE propose to support the complying development pathway with a new definition for data centres that would be added to the Standard Instrument—Principal Local Environmental Plan. This new definition will help accredited certifiers to easily characterise a data centre in a CDC.

While there is support for data centres being added as a new definition in the Standard LEP Instrument, there is concern regarding the proposed complying development pathway currently being considered for these types of developments which can have significant impacts such a noise, air quality, fuel storage, traffic and visual impacts on the local environment.

The fact that investigations of the environmental impact of data centres are being undertaken as part of the review of complying development provisions highlights the sensitive nature of these uses and potentially significant environmental impacts. The outcomes of these investigations should be used to help support and guide current approval processes by both State Government and councils in the consideration of these proposals. The use of the complying development pathway is not considered appropriate for such sensitive proposals.

- It is also noted that it is proposed to potentially consolidate a number of existing definitions which may have some merit.

3. Changes to Land use tables

The proposed land use tables contained in the revised standard instrument identify mandated permissible and prohibited uses within each of the new zones. It is understood that councils will still be able to permit or prohibit other land uses as they see fit and in alignment with relevant strategic plans.

Mandated permissible uses are proposed to be greatly expanded to clearly delineate the intent of the zones and allow greater consistency in application. It is stated that “Increasing the range of permissible uses while also managing contemporary land use conflicts is a key productivity gain” (P.14). Council would like to have access to the information and questions how this statement can be justified with the economic analysis not yet completed and not being made available for scrutiny. There is also concern whether land use conflicts can be effectively managed with the expanded mandated uses.

It is noted that increasing the range of permitted uses should reduce the need for a planning proposal for a development that is appropriate within the zone. It is considered that there should be greater flexibility retained in individual LEPs rather than allowing additional mandated permitted uses across all the proposed employment zones.

The Draft Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2021 details the draft land use tables of the proposed employment and supporting zones other than for SP4 Local Enterprise zone.

It is also noted that a variation in land use zone objectives is proposed, including optional objectives for both the Commercial centre and mixed-use zones. These include:

Commercial Centre zone

- To encourage employment opportunities and business investment

OR

- To encourage employment opportunities and business investment in the regional centre

OR

- To encourage employment opportunities and business investment in the Strategic centre.

Mixed use zone

- To provide a range of business, community, light industrial, retail and residential land uses.

OR

- To provide a range of retail, business, and community uses;

OR

- To provide a range of business, community, retail and residential land uses.

It is understood that Councils will have a choice in the selection of the above zone objectives. Furthermore, in addition to the above land use zone objectives, additional objectives can be added to these zones in individual LEPs.

4. Implementation

It is noted that a Toolkit is proposed to be released by the Department in August 2021 to assist with the implementation of these changes.

It is also noted that the Department will create the new maps incorporating the new changes in GIS and there will be no need for Councils to prepare PDF maps.

It is understood that all the changes to the Standard Instrument LEP are expected to be finalised by September 2021. This is considered a very ambitious timetable and is unlikely to provide time to take into account full consideration of feedback received on the proposed changes and the economic and social analysis that has been undertaken to assess the impact of the proposed reforms. There will also be significant implications for Councils in relation to completing their own LEPs and updating of DCPs.

5. Part H: Consequential amendments - EP&A Regulation

Legislative changes proposed include:

Standard instrument

DPIE propose to introduce a revised Standard Instrument—Principal Local Environmental Plan by September 2021.

Savings and transitional provisions

DPIE propose to include savings and transitional provisions in relation to the proposed amendments.

6. Conclusion

In conclusion there is significant concern in relation to the extent and far-reaching implications of these and other concurrent reforms underway to the NSW Planning system – all of which are occurring in the context of Councils having been encouraged to rapidly renew their local instruments to deliver on the District Plans for Metro Sydney.

The result could be described as a complex web of inter-related but not necessarily integrated changes the implications of which cannot be properly understood until the findings of other elements such as the cost-benefit analysis and social impact assessment also underway are released and reviewed.

As such it is strongly recommended that these proposed changes are not progressed until such findings have been released and Councils have had the opportunity to examine them thoroughly and understand how they may impact the local planning outcomes sought after years of Council's strategic planning with local communities.