

30 June 2021
Marcus Ray
Group Deputy Secretary, Planning and Assessment
NSW Department of Planning, Industry and Environment

Via Planning Portal

UDIA NSW Submission on Employment Zones Reform

Dear Mr Ray,

The Urban Development Institute of Australia NSW (UDIA) is the leading industry body representing the interests of the urban development sector and has over 500 member companies in NSW. UDIA NSW advocates for the creation of liveable, affordable, and connected smart cities.

We welcome the opportunity to provide comment on the proposed Employment Zones Reform and commend the commitment by the NSW Government and the Department of Planning, Industry and Environment (DPIE) to deliver reform that promotes a more flexible and responsive planning system and delivers on the recommendations of the *Productivity Commission White Paper 2021 – Rebooting the economy* to support real productivity improvements for employment lands in NSW.

UDIA NSW strongly supports the intent of the Employment Zones Reform to move toward a more strategic led planning system, reduce the number of employment zones (business and industrial), improve consistency in the application of the zoning framework, increase opportunities for mixed use development supporting the way communities wish to live and businesses want to operate and increasing the mandated permissibility within employment zones.

These measures if realised will support improved productivity outcomes in NSW.

There are however opportunities where the reforms could go further to provide greater benefit to the people of NSW and support a more holistic reform of the NSW planning system. **UDIA NSW recommends that the following actions** be undertaken to ensure the best possible reform outcomes are realised:

- 1. Undertake greater coordination with employment related reforms including the Greater Sydney Commission (GSC) review of the retain and manage industrial lands policy, development of the local employment lands strategy guideline and expansion of complying development provisions.**
- 2. Further expand the list of mandated permissible land uses under each of the proposed new employment zones (see Appendix A). Noting that many councils already support businesses and productivity by permitting uses beyond the limited number of mandated land uses within the Standard Instrument LEP (SI LEP).**

- 3. Undertake a holistic review of the SI LEP, recognizing that employment and productivity outcomes are not limited to the existing business and industrial zones. There has not been a holistic review of the SI LEP in more than 15 years.**
- 4. Encourage greater adoption of mixed-use zoning by providing detail on the methodology and processes by which mixed-use zones should be applied by Councils.**
- 5. Expand further the proposed definition change for 'shop top housing' to permit any form of business, commercial or industrial premises on the lower floors, promoting true mixed-use developments.**
- 6. Support the transition existing IN1 General Industrial and IN2 Light Industrial land to the E3 Productivity Support zone, or in some cases the MU Mixed Use zone, where the new zone objectives better reflect the desired or existing land use composition of an area.**
- 7. The proposed SI LEP land use tables should identify which land uses can be undertaken as complying development under the proposed zones to support a simpler and more legible planning system.**
- 8. Introduce a mechanism to enable undefined land uses or multi-use businesses to be granted development consent without the need for a planning proposal or new land use definition.**

If these recommendations are adopted there is a real opportunity through the reform to deliver meaningful improvements to the planning system and support improved productivity outcomes for employment lands in NSW.

Detailed comments on each aspect of the reform are outlined below. Where appropriate, comments have been structured to align with the exhibited Position Paper and draft SI LEP Amendment Order.

Outstanding policy issues

There are a number of outstanding policy issues within the position paper and draft employment zone framework which require immediate resolution to ensure the desired benefits of the reform are realised.

Alignment with the review of 'retain and manage' industrial lands policy

There is limited detail on the relationship of the reform to the Greater Sydney Commission (GSC) review of the 'retain and manage' industrial lands policy. It is critical that these two programs are better aligned to ensure the outcomes of the GSC review can be considered when local governments are planning to transition across to the proposed new zoning framework.

Improved coordination will enable underutilised employment lands to better support their communities. Councils should be encouraged to transition underutilised 'light' or 'general' industrial land to the proposed Productivity Support zone or Mixed Use zone to better reflect the reality of how those lands operate today, promote mixed use typologies and improve productivity outcomes.

DPIE and the GSC should commit to aligning these programs, as well as the development of local employment lands strategies, and release a revised work program and timeline which demonstrates improved coordination and delivery.

The Employment Zone (E-zone) naming convention

The proposed Employment Zone naming convention will create confusion with the existing environment group zones with both being referred to as E-zones but having significantly different objectives and focus. UDIA recommends a new naming convention which reflects the broader productivity focus for these lands beyond just employment. Recognising that many existing and future business models may have reduced physical employment numbers on site, but significantly increased productivity outcomes. Examples include, but are not limited to, advanced manufacturing and data centres.

Undefined (innominate) land uses

The position paper promotes flexibility and innovation within employment zones but is constrained by the rigid framework established within the SI LEP. A mechanism which enables new innovative business models and undefined land uses, beyond those listed in Direction 5 of the SI LEP, is desperately needed. UDIA NSW would welcome the opportunity to work with DPIE to develop an appropriate innovation clause or alternative approach to innominate uses. This will negate the need for costly and time-consuming planning proposals, or the drawn-out process to introduce a new definition within the SI LEP.

Proposed Cost Benefit Analysis

The Position Paper states that a Cost Benefit Analysis (CBA) is being undertaken to examine zoning options and provide a baseline costing of the preferred approach. There is no detail on the scope, methodology or timing of this analysis. DPIE are requested to provide greater detail on the CBA and make the outcomes of the CBA publicly available to support transparency and enable proper evaluation of the benefits of the proposed new framework.

Proposed employment zones framework

UDIA NSW supports the intent of the proposed new employment zoning framework to provide increased flexibility and support improved productivity outcomes. Detailed commentary on the strategic intent for each of the proposed zones is provided below. Commentary on the proposed land use tables is provided later in this submission and in **Appendix A**.

E1 Local Centre

UDIA NSW supports the intent of the zone and the practical consolidation of the existing B1 Neighborhood Centre and B2 Local Centre zones. This recognises the elevation of neighbourhood centres, especially during the COVID-19 pandemic and the recovery and the increase in flexible work from home arrangements. The new zone will further promote walkability and greater access to retail, services, business, entertainment and community uses. Concerns over the proliferation of certain business models under the 'shop' land use definition are unfounded as 'shop' is already a permitted land use in the majority of B1 Neighbourhood Centre zones.

UDIA NSW continues to support the inclusion of shop top housing to promote mixed use development and improve the viability and vitality of these centres.

E2 Commercial Centre

It is essential that higher density residential development is a mandated permissible use within the proposed zone. Commercial Centres are the exact locations where transport infrastructure is planned and provided to support the functioning of cities and regions. This infrastructure should be leveraged to enable people to live close to jobs, services, retail and recreation. Zone objectives and/or additional SI LEP provisions could be provided to ensure that the primary focus of the zone remains employment, with the residential component providing a complimentary supporting function.

E3 Productivity Support

UDIA NSW support the practical consolidation of B5 Business Development and B6 Enterprise Corridor zones. The intent of these zones has been confusing and resulted in inconsistent application over many years. The proposed new E3 Productivity Support zone is a welcome opportunity to provide more certainty and consistency for urban support and services land.

The foreseeable concerns around out of centre retail development, discussed in the policy paper, remain unfounded. General retail is not permissible and specialised retail premises (large format retail) will be subject to market forces including catchment size, location suitability, site consolidation and feasibility, which will limit uptake.

Local councils should be encouraged to transition existing IN1 General Industrial and IN2 Light Industrial land to E3 Productivity Support, where the new zone objectives better reflect the desired or existing land use composition of an area.

It is acknowledged that under the proposed land use matrix, 'resource recovery facilities' would not be a mandated permissible use in this zone. However, 'resource recover facilities' are currently widely permitted and located in IN2 Light Industrial zoned areas. It is therefore recommended that this land use is a mandated permitted land use in the proposed E3 Productivity Support zone. This is reflected in the proposed land use table additions in **Appendix A**.

UDIA NSW support the transition of the existing B7 Business Park zone to the E3 Productivity Support zone, or in some cases the MU Mixed Use zone, where it better aligns with the existing or future strategic objective for the area. Where business parks exist, which warrant a more curated list of permissible lands uses, the SP4 Local Enterprise zone may be more appropriate.

E4 General Industrial

UDIA NSW broadly supports the intent of the new zone and the practical consolidation of the IN1 General Industrial and IN2 Light Industrial zones. However, the intent of the E4 General Industrial should be amended to ensure it is limited to those uses that actually require ongoing land use separation. This zone should be used sparingly in NSW. As stated above Councils should be encouraged to consider transitioning existing IN2 land to the proposed E3 Productivity Support zone or MU Mixed Use zone, where this better reflects the reality of the existing land uses or the desired strategic objectives of the land. The E3 Productivity Support zone or MU Mixed Use zone better supports the departure from outdated ideas of conflict inducing industries, to clean productive employment hubs which accommodate advanced technology, artisan food and drink industries, creative industries and the like.

The following amendments should be made to the zone intent:

- *Primarily accommodates ~~light and general industrial uses and warehousing uses~~ where these uses are likely to have an effect on the amenity of the neighbourhood.*

- *Allows for infrastructure and utilities.*

(note: infrastructure and utilities should be permissible and supported in the Productivity Support zone too).

- *Generally replaces IN1 General Industrial and IN2 Light Industrial zones.*

(note: light industrial areas should not be transitioned to the General Industrial zone. DPIE should provide guidance to prevent this from happening)

E5 Heavy Industrial

This appears largely a renaming exercise of the existing IN3 Heavy Industrial zone. It remains appropriate for this zone to exist to accommodate heavy industries which are unable to fully mitigate their impacts from surrounding land uses due to the nature or scale of their operations.

It is however imperative that land currently zoned IN1 General Industrial does not transition to this zone, as it will reduce productivity outcomes and employment opportunities on the land, which is contrary to the intent of the reforms.

MU Mixed Use

UDIA NSW strongly supports the adoption of mixed-use zoning that supports a mix of residential, retail, light industry and tourist accommodation. This zone supports contemporary cities with vibrant communities where people can live, work, shop and play while at the same time supports development viability and infrastructure coordination and investment.

Councils should be strongly encouraged to expand the application of mixed-use zoning and permit additional land uses more in line with the existing B8 Metropolitan zone. The City of Sydney have demonstrated that strategic objectives can be delivered through additional planning mechanisms while permitting a wide range of land uses. This would contribute towards the NSW planning system's transition towards a strategic, outcome focused system and away from the restrictive land use based conflict focused system that currently operates.

Councils should also consider opportunities to transition existing IN1 General Industrial and IN2 Light Industrial land to the MU Mixed Use zone, where this better reflects the desired or existing land use composition of an area.

W4 Working Foreshore

The transition of IN4 Working Waterfront to the waterways grouping is a logical move.

SP4 Local Enterprise

UDIA NSW strongly supports the intent to enable a flexible zone, where the council/government could set all the uses within the land use table to better support strategic outcomes. Local and state government in consultation with industry and their community, have undertaken a huge amount of strategic planning from Regional Plans to Local Strategic Planning Statements, and the current rigid framework under the SI LEP does not support the efficient realisation of these plans. The move towards a more principles-based planning system has been espoused by Minister Stokes for a number of years and this is a real opportunity to implement such a system.

The application of this zone should not be overly restricted as to negate any benefits from having it. The process by which a council can apply to utilise the zone and have their application assessed should be made public, to ensure there is consistency and transparency in the process.

This zone should be utilised as part of the initial transition to the new zoning framework, to establish a benchmark for the future broader adoption of the zone.

New, updated or consolidated land use definitions

The need to amend and introduce new land use definitions highlights the inflexible nature of the SI LEP and limitations of a finite list of land uses under Direction 5. UDIA NSW supports the introduction of a mechanism to enable new business typologies to be approved without the need for a new land use definition each time. DPIE should reinvestigate opportunities for a provision similar to the 'innovation in retail' provision proposed in the 2018 Discussion Paper: Planning for the Future of Retail [planning-for-the-future-of-retail-discussion-paper-2018-04-13.pdf \(nsw.gov.au\)](https://www.nsw.gov.au/planning-for-the-future-of-retail-discussion-paper-2018-04-13.pdf). An enabling mechanism in combination with the proposed SP4 Local Enterprise zone would facilitate the delivery of planned strategic outcomes and not be constrained by outdated ideas of conflict inducing land uses.

Commentary has been provided on new or significantly amended land use definitions below. Where a minor amendment is proposed, which is inconsequential to UDIA members, no comment has been provided.

Circular Economy Facility

UDIA NSW supports the intent of a new definition that provides for a facility that allows for the collection, repair, refurbishment, dismantling, sharing and redistribution of goods found commonly in households. The final drafting of the definition should be exhibited prior to it being included in the SI LEP, as minor changes can have a significant impact on the realisation of the intent of the definition.

Creative Industry

It is unclear what the intent of the definition is and how it will support creative industries. Creative industries' concern is not with the identified land use, as all activities listed below could be undertaken under existing land use definitions, but rather their ability to access affordable locations to undertake their creative pursuits.

The use of the term 'mainly' within the proposed definition is likely to create confusion. How will this be determined?

Data Centre

UDIA NSW supports the proposed new definition provided it helps facilitate a complying development pathway for this type of land use.

Local Distribution Premises

Decoupling 'local distribution premises' from the parent term 'warehouse and distribution premises' is supported. Encouraging application of this land use will support the expansion of last mile freight and logistics and improve the functioning of our communities and promote improved productivity outcomes.

It is recommended that 'local distribution premises' be a mandated permissible use in all proposed employment zones (see **Appendix A**) and that exempt and complying development provisions under the Exempt and Complying Development Codes SEPP, should be expanded to provide for these kinds of facilities.

Shop Top Housing

UDIA NSW supports the intent to expand the list of permissible uses on which shop top housing can be accommodated. However, it is recommended that the proposed definition change is expanded further to permit any form of business, commercial or industrial premises on the lower floors. This acknowledges the changing nature of business and industry, the ability for impacts to be assessed for individual developments, for impacts to be mitigated where required, and the need to support development feasibility so that productivity boosting industries and businesses can establish themselves.

Consolidation of existing definitions

UDIA NSW supports the consolidation of definitions including the proposed 'home improvement retail premises', 'trades retail premises' and 'storage and distribution premises' and decoupling of 'self-storage units', provided that the new definitions are mandated permissible in the SI LEP in line with the existing decoupled definition, which has the broadest permissibility.

This approach must not lead to councils further restricting a land use which is currently permissible under the existing zoning framework.

Land use Tables

The expanded application of mandated permitted uses across all of the proposed land use tables is strongly supported. However, there is an opportunity for this reform to have greater planning and productivity outcomes by requiring more land uses as mandated permissible. This recognises that many local governments already permit land uses well beyond the limited list of mandatory permissible uses and successfully deliver desired strategic outcomes. Real and perceived conflicts can be managed utilising other planning mechanisms including strategic objectives and development control plans.

A revised set of land use tables is attached as **Appendix A** which includes the additional permitted land uses which UDIA NSW recommends be included.

It is also recommended that to further understand the true productivity gains of the new framework, DPIE identify which land uses can be undertaken as complying development under the proposed zones.

Variation in objectives

More flexible zone objectives for regional areas are supported recognising the differences between metropolitan and regional employment lands and the significantly reduced potential for land use conflicts.

To realize the true economic potential for regional employment lands the more flexible zone objectives should be mandated.

Land uses permitted under State Environmental Planning Policies

This reform is an opportunity to reduce complexity and make the planning system easier to navigate. Continuing to have land use permissibility spread across the SI LEP and a suite of other SEPPs, makes the system unwieldy and difficult to navigate. It is recommended that this reform is used as an opportunity to deliver on the intent of the Standard Instrument and bring all permissibility into council LEPs. This is consistent with the ongoing reforms to improve the planning system and reduce the number of SEPPs.

Parent terms to identify land uses

Parent terms only real effect is making the land use tables shorter and more difficult to navigate. There is inconsistency in the way parent terms are applied across LEPs with some councils including parent terms and the child terms within their land use tables.

DPIE should use these reforms as an opportunity to develop digital land use tables which can be easily navigated, are searchable and readily updatable. This would negate the need for parent terms and allow all land uses to be identified in the land use table for each respective zone.

Benefits of the proposed framework

Greater land uses within individual zones

Mandating an increased number of permissible land uses with the proposed zones is supported. It is acknowledged that councils already have the ability to permit land uses in any zone above and beyond the list of mandated permissible land uses in the SI LEP. It is essential that local governments maintain this ability to further support business and deliver on their unique strategic objectives for an area.

DPIE should provide analysis to demonstrate where councils have already been permitting the proposed additional mandated permitted uses, to understand the true productivity gains of the reform.

UDIA NSW maintains that these reforms have the opportunity to go further and we recommend including even more land uses as mandated permissible within the land uses tables. A revised set of land use tables is attached as **Appendix A** which includes the additional permitted land uses, which UDIA NSW recommends be included.

Consistency in strategic intent

UDIA NSW supports improved consistency in the application of the SI LEP. DPIE should continue to work towards the implementation of a true standard instrument to promote a simpler and more efficient planning system. Consistency in structure and application of the SI LEP is a simple way of improving the NSW planning system, which should be done immediately.

Response to key policy questions

Planning for a centres hierarchy

UDIA NSW supports the intent to retain a centres hierarchy. We further support the Department's view that land use flexibility can facilitate evolution of centres and make for great places and productivity enhancing outcomes. It is however imperative that a centres hierarchy is not delivered through blunt land use prohibitions, rather, development controls and other strategic planning mechanisms should be utilised to set the appropriate scales of development and to maintain existing and desired future character.

Planning for industrial Land

The outcome of the GSC review of their retain and manage industrial lands policy must be incorporated into the final land use tables implemented in council LEPs. Finalising land use tables ahead of the outcome of the review, will only lead to more confusion and the potential for slow and costly planning proposals in order to allow productive development on lands where it is greatly needed.

UDIA NSW supports a more flexible approach to permissibility on industrial land to improve employment and productivity outcomes. Local councils should be encouraged to transition existing IN1 General Industrial and IN2 Light Industrial land to E3 Productivity Support, or in some cases the MU Mixed Use zone, where the new zone objectives better reflect the desired or existing land use composition of an area.

Simpler and more flexible planning systems

UDIA NSW supports the intent of the reforms to deliver a simpler and more flexible planning system.

Relationship to other planning reforms

GSC review of retain and manage

UDIA NSW maintains that it is critical that the GSC review of the maintain and manage industrial lands policy and the employment zones reform are better aligned to ensure the outcomes of the GSC review can be considered when local governments are planning to transition across to the proposed new zoning framework. For further detail please see commentary above on 'Outstanding policy issues' and 'Planning for Industrial Land'.

Building Business Back EIE: Exempt and Complying development

UDIA NSW supports the intent of the two reforms to make the planning system simpler, quicker and more consistently applied throughout the state.

It is appropriate for mandated permissible land uses to be eligible for a complying development pathway to deliver on the strategic intent of the zone. Appropriate development standards and controls can address real and perceived conflicts.

Design and Place SEPP EIE

UDIA NSW has raised significant concerns with the exhibited EIE for the Design and Place SEPP.

UDIA NSW is supportive of good design outcomes however the EIE as exhibited would do more to restrict development than promote good design outcomes and would considerably reduce any benefits from an improved employment zoning framework.

Implementation

The implementation process outlined while good intentioned, is likely to be impossible to deliver. It is acknowledged that the introduction of the SI LEP took more than a decade and still required considerable dispensation for councils to get them gazetted.

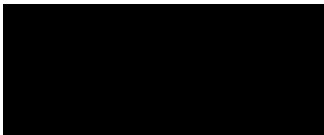
It is recommended that state government take the lead, introduce the changes into the SI LEP along with any council LEP that supports a direct translation and allow the remaining councils to update their LEPs as they are reviewed. It is acknowledged that this will result in two different zoning regimes operating at the same time, but NSW already has this across the state with deferred matters under pre-standard instrument LEPs.

Conclusion

The proposed new employment zones framework is a welcome step towards a more flexible, strategic focused planning system in NSW. UDIA NSW supports the proposed new zoning framework, and the expanded list of mandated permissible land uses within the land use tables. However, UDIA NSW strongly urges that DPIE and the NSW Government use this opportunity to go further to realise Minister Stokes' vision for a strategic lead planning system.

UDIA looks forward to continuing to work with the Government in working through the detail of this important reform for NSW and ensuring good outcomes for the community in housing and development.

Yours sincerely,



Steve Mann
Chief Executive
UDIA NSW

Appendix A

UDIA NSW recommends that the additional land uses with cells highlight in yellow are included in the list of mandated permissible uses for the respective zones under the SI LEP.

Land Use Matrix Excerpt- May 2021 [Based on version 4.2 Aug 2020]		DRAFT FOR INFORMATION PURPOSES							
EMPLOYMENT ZONES REFORM FRAMEWORK									
[LGA Name] Local Environmental Plan [YEAR]									
Legend									
o permitted without consent [mandated under the SI].									
o permitted without consent.									
c permitted with consent [mandated under the SI].									
c permitted with consent.									
x prohibited [mandated under the SI].									
x prohibited.									
A permitted under SEPP (Affordable Rental Housing) 2009.									
		Local Centre	Commercial Centre	Productivity Support	General Industrial	Heavy Industrial	Mixed Use	Local Enterprise	Working Foreshore
		E1	E2	E3	E4	E5	MU1	SP4	W4
(LAND USE terms WITHIN agriculture group term)									
agriculture									
aquaculture									c
Oyster aquaculture		c	c	c	c	c	c	c	c
Pond-based aquaculture		x	x	x	x	x	x	x	c
Tank-based aquaculture		c	c	c	c	c	c	c	c
extensive agriculture [eg grazing of livestock etc]									
bee keeping									
dairy (pasture-based)									

tourist and visitor accommodation		C	C				C		
	backpackers' accommodation	C	C				C		
	bed & breakfast accommodation	C	C				C		
	farm stay accommodation	C	C				C		
	hotel or motel accommodation	C	C	C			C		
	serviced apartments	C	C				C		
(LAND USE terms OUTSIDE tourist and visitor accommodation group term)									
	camping grounds								
	caravan parks								
	eco-tourist facilities								
(LAND USE terms WITHIN commercial premises group term)									
commercial premises		C	C				C		
	business premises [eg banks, post offices, hairdressers, etc]	C	C	C			C		
	funeral homes	C	C	C			C		
	office premises	C	C	C			C		
	retail premises	C	C				C		
	cellar door premises	C	C				C		
	food & drink premises	C	C				C		
	pubs	C	C				C		
	restaurants or cafes	C	C				C		
	take-away food & drink premises	C	C	C	C		C		
	small bars	C	C				C		
	garden centres	C	C	C	C		C		
	hardware & building supplies	C	C	C	C		C		
	kiosks	C	C				C		
	landscaping material supplies	C	C	C			C		
	markets	C	C	C			C		
	plant nurseries	C	C	C			C		
	roadside stalls	C	C				C		
	rural supplies	C	C	C			C		
	shops	C	C				C		
	neighbourhood shops	C	C	C	C		C		
	neighbourhood supermarkets	C	C				C		
	specialised retail premises	C	C	C			C		
	timber yards	C	C	C			C		
	vehicle sales or hire premises	C	C	C			C		
(LAND USE terms OUTSIDE commercial premises group term)									
	amusement centres	C	C				C		
	entertainment facilities	C	C				C		

(LAND USE terms WITHIN educational establishment group term)	
educational establishments [eg TAFE establishment etc]	E c c E c
schools	E c c E c
(LAND USE terms WITHIN health services facility group term)	
health services facilities	I I I I
hospitals	I I I I
medical centres	c c I c
health consulting rooms	I I I I
(Other LAND USE terms relating to community infrastructure)	
early education & care facilities	
centre-based child care facilities	c c c c c
home based child care	
school-based child care	E E E E E
community facilities	c c c c c
correctional centres	
emergency services facilities	I I I I I I I
industrial training facilities	c c c c c
information and education facilities	c c c c c
places of public worship	c c c c c
public administration building	c c c c c
research stations	c c c c c
respite day care centres	c c c c c
(LAND USE terms WITHIN signage group term)	
signage	
advertising structure	
building identification sign	c c c o o c
business identification sign	c c c o o c
(LAND USE terms relating to recreation)	
boat launching ramps	
boat sheds	
charter & tourism boating facilities	
environmental facilities	
jetties	
marinas	
mooring	
mooring pens	
recreation areas	c c c c c
recreation facilities (indoor)	c c c c c
recreation facilities (major)	c c c c c
recreation facilities (outdoor)	c c c c c
water recreation structures	
(Other miscellaneous LAND USE terms)	
cemetery	
crematorium or aquatorium	

