

Draft Submission to the Department of Planning, Industry and Environment in response to the proposed Employment Zones Framework

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission on the Proposed Employment Zones Framework. LGNSW consulted with councils to help inform the content of this submission.

This is a draft submission awaiting review by LGNSW's Board. Any amendments will be forwarded in due course.

The proposed employment zones framework is part of a package of reforms for employment lands, which includes proposed changes to complying development in zones and new guidance on employment land strategies. LGNSW also understands that the Greater Sydney Commission is reviewing its 'retain and manage' industrial lands policy.

As noted in previous submissions on planning reforms underway, local government fully supports initiatives for economic recovery, including planning for locally-led job creation, and actively looking at ways to improve the planning system. LGNSW also acknowledges and supports the need for ongoing review of the Standard Instrument LEP to ensure it is contemporary and meets the needs of the community and business.

LGNSW understands the Department of Planning Industry and Environment (DPIE) has engaged with councils in the development of this framework, however, the overarching concern in this submission is that **the proposed employment zones framework, together with many other reforms, will undermine local government strategic plans and decision making contrary to provisions in the *Environmental Planning and Assessment Act 1979*.**

Together with other reforms to complying development these amount to considerable structural change to the planning system, which warrants far greater thought and consideration than the timeframes proposed will allow.

Background to proposed Employment Zones Framework

DPIE is reforming the employment focussed zones under the Standard Instrument Principal Local Environmental Plan (2006) (SI LEP). The SI LEP currently includes eight business (B) zones and four industrial (IN) zones.

This reform was announced as part of the budget in November 2020 and builds on ongoing work by the Department, reviews by the Australian and NSW Productivity Commissions and broader planning reforms to support economic growth and productivity.

The position paper released to outline the proposed employment zones framework notes that since the SI LEP was prepared 15 years ago it has not been subject to significant review despite changes to planning processes, business operations, technology and how cities and regions function. It further states that emerging businesses blur historically distinct land uses and technological improvements reduce traditional land use conflicts.

DPIE sees a need for a framework for managing employment land uses that is flexible and able to respond to unexpected challenges – such as the COVID-19 pandemic and subsequent job losses and economic contraction.

Supporting documents for the proposed reform include:

- Position Paper
- Draft Standard Instrument Principal LEP Amendment Order
- Employment Zones Implementation Plan
- Proposed Land Use Matrix

Role of local government in relation to employment generation

Local councils play an important role in supporting local and regional economies by making provisions in their land-use plans for businesses to operate and providing infrastructure and other services to support their efficient function. Local government is also a significant employer, particularly in regional areas and supports many local businesses and services.

Councils have recently completed Local Strategic Planning Statements (LSPSs) which respond to the economic and business objectives in District and Regional Plans, as well as local issues and priorities, and are translating these into Local Environmental Plans. In many cases this work is informed by comprehensive and detailed employment zone strategies, commercial centres reviews and retail centre studies.

Councils have detailed knowledge of their local economies, know what their communities need and are pro-actively identifying initiatives to support locally-led recovery. This includes understanding the impacts of their local plans and strategies and what changes best support their unique centres and good place-making. Councils have also been continuously improving their planning and development services, through changes to systems and processes.

Current Proposal

The employment zones framework proposes to replace the existing business (B) and Industrial (IN) zones with five new employment zones and three supporting zones under the *Standard Instrument Principal Local Environmental Plan (2006)* (SI LEP).

The framework is intended to:

- Maximise productivity while minimising land use conflicts and ensuring they are fit for purpose
- Address the current barriers within the planning system that limit the ability of businesses to establish, expand or adapt, and
- Better support councils in the delivery of the strategic vision contained in their Local Strategic Planning Statements and background studies.

The proposed reforms respond to various trends, exacerbated by the COVID-19 pandemic, including the growth of online retail, reliance on freight and logistics, the importance of local centres, flexible working arrangements and the continued rise of multi-use businesses and the experience economy.

The proposed framework includes:

- a rationalised set of employment zones replacing the existing Business (B) and Industrial (IN) zones;
- a clear strategic intent for each zone;
- an additional 97 mandated permitted land uses from what is currently mandated
- support for urban services uses by providing a dedicated zone; and
- three new land use terms and an update to six existing terms.

The proposed framework aims to introduce a more consistent application of land use zones across NSW.

The five new employment zones proposed are:

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

Two further zones, not related to productivity are proposed:

- MU Mixed Use
- W4 Working Foreshore

To allow for bespoke planning for unique precincts a new Special Purpose zone is proposed:

- SP4 Local Enterprise.

LGNSW Comments

LGNSW recognises the need to respond to the changing nature of business (retail and commercial) and industry and is supportive of reforms that reduce complexity and improve flexibility and that facilitate emerging new businesses and sectors.

LGNSW commends DPIE for engaging with councils and other stakeholders at an early stage in the development of the proposed employment zones framework. However, given the significant structural change proposed, the sector must be confident that the reforms will deliver the outcomes sought, will not undermine existing plans or have unintended outcomes and that timeframes for implementation are reasonable and achievable.

While there has been significant work underway, the sector has important concerns about key elements of the approach and considers that the timeframe for implementation poses a risk to effectively resolving these concerns. Further, these concerns are exacerbated by uncertainties created as a result of other reforms being progressed separately (for complying development), and a review of the Greater Sydney Commission's policy to 'retain and manage' industrial land. It difficult to assess how the changes proposed in each of these separate reform pieces will align, what the cumulative impact of the changes might be and any potential unintended consequences that may arise due to their application in different local settings.

The position paper lists many studies and reviews, including the Productivity Commissioner's work, that underpin the proposed employment zones reform, however the paper does not consolidate these findings. The evidence base is also incomplete, as impacts which may emerge from the yet to be completed cost benefit and social impact analysis¹ have not been considered. As such the rationale for the approach delivering on the productivity outcomes sought is not clearly demonstrated.

The limited timeframe available for councils to undertake a detailed assessment of the impact of the rationalisation of zones in the proposed framework has been challenging. However, the following key issues have been raised across the sector:

1. Rationale and evidence base for this reform is incomplete.
2. The framework overrides community endorsed council plans and strategies.
3. The framework does not align well with the centres hierarchy in District and Regional Plans and local plans - collapsing zones will impact on viability of centres and uses, local character and amenity.
4. Cost, confusion and additional load on resources arising from changing the naming convention to 'E' zones.
5. Inappropriate timeframe for implementation.

¹ Proposed Employment Zones Position Paper, p4

1. Rationale and evidence base for this reform is incomplete

The position paper notes that the proposed framework is “informed by the best available evidence, data, knowledge and information”². It also refers to previous reviews and discussion papers including the *Planning for the Future of Retail - Discussion Paper (2018)* and various other reports prepared between 2012 and 2019. It also notes that the Department has reviewed all local strategies including Local Strategic Planning Statements and employment lands strategies and conducted surveys of council officers.

Critically, as discussed above, a cost benefit analysis and social impact analysis of the proposed changes are yet to be completed. The increased flexibility proposed through this reform of employment zones, together with the reduced assessment scrutiny associated with the recently proposed complying development reforms, should not be considered in isolation of how zones are used to shape places. Changes must demonstrate not only productivity gains, but clear benefits to achieving planning objectives.

LGNSW understands that the consolidation of zones in Victoria combined with increased permissibility of retail and some housing uses has not been a success³. Complexity has been reintroduced via overlays and other mechanisms while the ability to implement strategic outcomes for these places has been diminished from less precise tools being available.

LGNSW is concerned that the proposed reforms to employment zones are proceeding without a consolidated and succinct bringing together of the findings of the many reviews, combined with the further work proposed, and separately to the proposed expansion of complying development. The reforms should not proceed until a clear evidence-based rationale is available and the aggregate impact of the suite of reforms is determined.

Recommendation 1: The proposed reforms should not be finalised until the cost benefit and social impact analysis have been completed and councils and stakeholders have had the opportunity to review and comment on the findings.

Recommendation 2: The proposed reforms to complying development and the employment zones framework be progressed together as a package so that the aggregate impact of the changes can be properly understood.

2. The framework overrides community endorsed council plans and strategies

LGNSW is supportive of streamlining the planning system to support business and local economies to thrive where benefits can clearly be demonstrated and by taking full advantage of local government’s role in the planning system.

The approach proposed - with the NSW Government mandating an additional 97 permitted uses in a smaller number of zones - essentially overrides council strategic plans. This is

² Proposed Employment Zones Position Paper, p3.

³ Planning Institute of Australia (PIA), NSW, Submission to NSW Productivity Commission Green Paper, September 2020, p 4

another example of an overreach by the state into councils' local strategic plans and as such undermines the important role of local councils in the planning system.

Councils and their communities have invested significant time and resources to complete Local Strategic Planning Statements. Many have also developed specific plans and strategies for employment and business to understand needs of local businesses and their local economies. This is then balanced with social and environmental considerations to develop responsive local environmental plans and policies.

There are very clear differences between centres across the State, with the character of centres established over time by various factors including engagement with local businesses and communities through strategic planning. Ensuring that the proposed employment zones have alignment with council's employment lands strategies and plans is critical. A one-size-fits-all approach will not align with every council's endorsed employment lands and commercial and retail centres strategies.

Whilst it is acknowledged there may be scope to reduce the current number of business zones, there also needs to be an adequate number of zones within the framework to effectively differentiate between centres of different scales and functions and to support viability of different land uses.

A rushed approach to mandate a wider range of uses across a smaller number of zones risks undermining the strategic planning and effective functioning of existing centres and place-based planning. Combined with the widespread expansion of complying development it also risks further eroding public confidence rather than providing greater certainty for the community, councils and businesses.

Recommendation 3: There should be greater flexibility for councils to decide which land uses are mandated in certain zones, to ensure the new framework caters to the differences between regional and metropolitan areas and the new employment zones have alignment with councils' strategic plans.

3. Does not align well with centres hierarchies in District, Regional and local plans

While councils understand the current challenges for retail and other industries and recognise that the way businesses operate is changing, there is concern within the sector that a blunt one-size-fits-all policy response to these challenges will likely have unintended impacts on local economies, local character and amenity. Some regional councils have in fact questioned whether the changes should apply at all, where reforming business and industrial zones has not been identified as a priority in LSPS's and implementation of the changes will impose a significant resource burden for no significant discernible benefit.

The current employment zones included in the SI LEP were developed based on a hierarchy of centres, which was developed by the State government as part of the Metropolitan and Regional Plan. To ensure consistency in the application of any new zones there needs to be clarity around the centres hierarchy and the application of zones with LSPS's to ensure that there is alignment with these high-level strategic plans.

The current framework of zones for example supports a retail hierarchy that ensures the viability of existing centres (and businesses) are not unduly impacted from new retail developments. It is also important in creating buffers between conflicting land uses.

Broadening land use within a smaller number of zones may help in facilitating a more diverse mix of commercial, retail and industrial uses, however careful consideration must be given to avoid compatibility and amenity impacts. It is likely that there will be increased need to resolve these conflicts through the development assessment process.

The Position Paper suggests that differentiating between the density and scale of different centres can be partly achieved by utilising development standards (e.g. height and floor space ratio controls). While this provides for some granularity, councils are concerned that the character of centres will no longer be able to be adequately controlled as a result of the additional number of mandated permissible uses.

The proposed changes recommend almost 100 additional mandated permissible land uses – further consultation is required with respect to these mandated land uses. Impacts of the new framework will vary significantly across council areas and between metropolitan and regional locations. Some examples of local government’s concerns about the broadening of mandated uses proposed within the new zones are discussed below. A detailed breakdown of these concerns is provided in individual council submissions.

Local Centre Zone (E1)

This proposed new zone is a combination of the existing B1 Neighbourhood Centre zone and some B2 Local Centre zones. The character of the B1 zone differs across LGAs, but the majority are situated within or adjacent to low density residential zones. Feedback from councils suggests that mandating a wider range of uses risks significant impacts in areas where the type of use is incompatible with the character, scale and amenity of the locality.

For example, this change will effectively allow for bulky goods such as landscape material supplies, rural supplies, specialised retail premises, and timber yards to locate in neighbourhood centres. These uses are likely to have amenity impacts on adjoining residents, such as heavy vehicles in residential streets and increased traffic. Councils consider it as poor planning to permit commercial premises such as *specialised retail premises* i.e. bulky goods, in the smallest of local centres.

In addition, there is likely to be a mismatch between the mandated uses permitted and existing buildings. In established urban areas a key concern is to be able to protect the existing character of neighbourhood centres – in some areas characteristic of the inter-war and Victorian era development – which in some centres is very important to the history *and* liveability of the local area.

General Industrial Zone (E4)

Councils are also concerned that replacing the IN1 General Industrial and IN2 Light Industrial zones with a single General Industrial zone will increase the potential for land use conflicts around existing IN2 zoned areas.

The new zone will include a range of higher impact uses as mandated permitted uses. In areas where existing small industrial zones are surrounded by residential properties amenity impacts are managed by permitting a limited range of industrial uses. There may also be conflicts between uses within the zone. For example, a new permissible use locating in close proximity

to but not compatible with an existing industrial use could compromise the ongoing and efficient operation of uses.

Productivity Support Zone (E3)

LGNSW understands there may be a benefit in consolidating the B5 and B6 zones into a single zone based on their similarities, however one of the issues of concern is the mandated permissibility of *specialised retail premises* in the Productivity Support Zone.

Councils have advised that *specialised retail premises* have the potential to significantly change and impact upon the function of centres and localities. In some areas the cumulative effects such as traffic generation from these large-floorplate uses would have a significant impact. These uses also drive out other uses, that are unable to compete.

Mixed Use Zone (MU)

Mixed use zones are supported, however it is important that this supports genuine mixed-use development rather than a dominant residential use. Councils are concerned that this will lead to land use conflicts and changes in land values and rentals making commercial floorspace provision less feasible than the residential floorspace, thereby 'crowding out' the potential for commercial.

Councils report difficulties in maintaining employment lands for purely employment purposes, when landowners and developers seek to develop lands for their highest and best use. It is critical that the use of this zone does not become a tool for future spot rezoning of industrial land to allow for residential uses, with a larger employment role used as justification. Careful consideration will be needed to develop planning controls and provisions to facilitate this outcome.

Recommendation 4: DPIE review the framework to address the significant concerns local councils have raised about the reduced zones and mix of mandated uses, with particular attention on making a broader range of uses optional rather than mandatory.

4. Naming of employment zones

It is noted that 'E' zones already exist in the Standard Instrument and currently relate to Environmental zones.⁴ As a consequence of using the proposed new naming convention for 'E – Employment' zones councils are concerned that this will:

- create unnecessary confusion as it will duplicate the reference currently applied to the Environment zones under the SI LEP and there does not appear to be any associated amendments to Environmental Protection zone references
- necessitate an entire new renaming process that would involve a number of other / unnecessary changes to the Standard Instrument in relation to the Environment Protection zones

⁴ A further, potential confusion is the use of 'e' in the term 'e-planning' where this is used as a reference to 'electronic'.

- require a number of other / unnecessary changes to the Standard Technical Requirements for Spatial Datasets and Maps in relation to the Environment Protection zones
- require other / unnecessary clause and map changes to every Council Local Environmental Plan (LEP) that currently uses the Environment Protection zones
- create an additional / unnecessary administrative burden on every Council that administers a LEP that currently uses the Environment Protection zones, including requiring unnecessary changes to property databases.

LGNSW opposes the reclassification of zones with this naming convention as it will create confusion for the community and industry and significant work for councils. Existing 'E' zones should be preserved an alternative naming convention developed for the new employment zone framework.

Recommendation 5: LGNSW opposes the proposed naming of new zones as Employment Zones and recommends that DPIE develop an alternative name to avoid confusion with Environment Protection zones and eliminate the need for the unnecessary widespread reclassification of zones.

5. Inappropriate timeframe for implementation

LGNSW appreciates that the Department has committed to undertake the upfront implementation works and to engage with councils to confirm the proposed translation, however implementation will still require significant work to be undertaken by councils.

Many councils advise that in addition to reviewing proposed changes they will need to make a significant number of complementary amendments to DCPs so they are in place when LEPs are amended. With current widespread shortages of planning resources, particularly in regional areas, councils are concerned this will be a challenge with their existing limited resources and alongside other strategic priorities such as finalisation of LEPs.

Ensuring there is sufficient time for this parallel work to be undertaken and providing councils with adequate support and resources will be crucial to ensuring the changes achieve their intent. Given the concerns raised LGNSW consider that when the approach to the framework is finalised (subject to consideration of concerns raised in this submission), the timeframe implementing the reform should be reviewed.

The approach and timeframe must allow adequate time for:

- Consideration of the cost benefit analysis and social impact work underway to demonstrate the extent to which reforms deliver productivity gains sought while also supporting local strategic planning objectives
- Alignment with council strategic plans and strategies to ensure that the flexibility does not erode the strategic intent of the zones and does not have unintended impacts on the integrity of the zones

- Adequate timeframes for councils to consider these adjustments

LGNSW understands that given the review of District and Regional Plans will be commencing shortly, there is considerable benefit in terms of efficiency and ensuring consistency with strategic planning to implement this reform as part of this strategic planning cycle.

Recommendation 6: The timeframe for this reform be reviewed and implementation be aligned with the upcoming review of District and Regional Plans.

Summary of Recommendations

In summary, LGNSW makes the following recommendations:

Recommendation 1: The proposed reforms should not be finalised until the cost benefit and social impact analysis have been completed and councils and stakeholders have had the opportunity to review and comment on the findings.

Recommendation 2: The proposed reforms to complying development and the employment zones framework be progressed together as a package so that the aggregate impact of the changes can be properly understood.

Recommendation 3: There should be greater flexibility for councils to decide which land uses are mandated in certain zones, to ensure the new framework caters to the differences between regional and metropolitan areas and the new employment zones have alignment with councils' strategic plans.

Recommendation 4: DPIE review the framework to address the significant concerns local councils have raised about the reduced zones and mix of mandated uses, with particular attention on making a broader range of uses optional rather than mandatory.

Recommendation 5: LGNSW opposes the proposed naming of new zones as Employment Zones and recommends that DPIE develop an alternative name to avoid confusion with Environment Protection zones and eliminate the need for the unnecessary widespread reclassification of zones.

Recommendation 6: The timeframe for this reform be reviewed and implementation be aligned with the upcoming review of District and Regional Plans.

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LGNSW would welcome the opportunity to assist with further information during this review to ensure the views of local government are considered.

To discuss this submission further, please contact LGNSW Strategy Manager, Planning at

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