

Item 2.

Employment Zones Review

File No: X081951

Summary

The Department of Planning, Industry and Environment (Department) is making significant changes to business and industrial zones in local environmental plans (LEPs). They have requested that changes be reported to councils prior to them being placed on public exhibition. The stated purpose of the changes is to better accommodate the changing needs of businesses, better support state and local strategic planning, increase investment, and boost jobs growth.

Local environmental plans (LEPs) provide the primary planning controls, including land use zoning and key development standards, such as height and floor space ratios, that apply to land. The NSW Government's Standard Instrument – Principle Local Environmental Plan (the Standard Instrument) is state government legislation that provides a mandated standard template for LEPs. The City has only limited flexibility within the template when preparing LEPs.

The Standard Instrument provides the various zones councils may select from when preparing planning controls for land. Each available zone includes objectives and lists of defined land uses as either permitted with consent; permitted without consent; or prohibited in the zone. The Standard Instrument mandates that some land uses be permitted in a zone, but also allows councils to decide how some land uses will be categorised.

In early 2021, the Department initiated a review of the business zones ("B zones") and industrial zones (the "IN zones") and sought early feedback from councils in a series of workshops. In May 2021 the Department publicly exhibited its proposed Employment Zones Position Paper. The City made a submission raising concerns about the proposal.

In November 2021, the Department made the Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2021. The Order:

- inserted new employment zones ("E zones") into the Standard Instrument, commencing December 2021;
- introduced new land use definitions and updates some exiting definitions; and
- repeals existing "B zones" and "IN1 zones" as at 1 December 2022.

The effect of the Standard Instrument Order is that all Standard Instrument LEPs in NSW must be amended before 1 December 2022 to replace the current zones with the new Standard Instrument zones (before the current zones are repealed from the Standard Instrument).

The Department is preparing a draft state environmental planning policy for public exhibition that will amend all Standard Instrument LEPs in NSW on behalf of councils. This means the usual local planning process required to amend an LEP will not be required for LEPs that are based on the Standard Instrument.

In November 2021, the Department issued preliminary translations of the current zones to new zones in the relevant LEPs that apply in the local area. Preliminary translations were provided for the following City of Sydney LEPs:

- Sydney Local Environmental Plan 2012 (Sydney LEP 2012);
- Sydney Local Environmental Plan (Harold Park) 2013;
- Sydney Local Environmental Plan (Green Square Town Centre) 2013; and
- Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013.

The Department requested the City undertake a technical review of the preliminary translations and provide advice about any required adjustment. Advice was submitted to the Department ahead of their deadline of 28 January 2022.

To guide the technical review, an impact analysis was undertaken by the City to understand the impact of the preliminary translations and identify mitigation measures. The impact analysis is provided at Attachment A.

The key issues identified in the City's technical review include:

- the removal of the B8 - Metropolitan Centre zone, that applies to Central Sydney is a unique zone in NSW;
- the consolidation of a number of current zones under a single new zone, resulting in a loss of nuance that drives the strategic intent of the planning controls;
- some significant changes to zoning objectives, that will impact on considerations in the development application process; and
- the impact on current local provisions and mapping in the LEPs, that require amendment to maintain their strategic intent.

The City's recommendations are currently being considered by the Department prior to finalising the draft state environmental planning policy for public exhibition. The Department expects public exhibition will take place around April 2022 at which time the City may make a further submission.

Recommendation

It is resolved that:

- (A) Council note the preliminary translation of current zones in relevant local environmental plans undertaken by the Department of Planning, Industry and Environment, summarised at Attachment A to the subject report; and
- (B) Council note the impact analysis and resulting technical review made by the City to the Department of Planning, Industry and Environment, summarised at Attachment A to the subject report.

Attachments

Attachment A. Employment Zone Review - Impact Analysis

Attachment B. Zoning Maps

Background

1. The Department of Planning, Industry and Environment (Department) is making significant changes to the land use zoning in local environmental plans (LEPs). They have requested that changes be reported to councils prior to the changes being placed on public exhibition for public comment. The stated purpose of the changes is to better accommodate the changing needs of businesses, better support state and local strategic planning, increase investment, and boost jobs growth.
2. Local environmental plans provide the primary planning controls, including land use zoning and key development standards, such as height and floor space ratios, that apply to land. The NSW Government's Standard Instrument – Principle Local Environmental Plan (the Standard Instrument) provides a mandated template for LEPs in NSW. The City has only limited flexibility within the template when preparing LEPs.
3. Not all of the City's LEPs are Standard Instrument and subject to automatic translation. Where they are, the Standard Instrument provides standardised land use definitions, provisions, as well as the various zones councils may select from when preparing planning controls for land. Each available zone includes objectives and lists defined land uses as either permitted with consent; permitted without consent; or prohibited in the zone. The Standard Instrument mandates that some land uses be permitted in a zone, but also allows councils to decide how some land uses will be categorised.
4. In early 2021 the Department initiated a review of the business zones ("B zones") and industrial zones (the "IN zones") and sought early feedback from councils in a series of workshops.
5. The Department publicly exhibited its proposed Employment Zones Position Paper in May 2021. The City made a submission raising several key concerns.
6. In November 2021, the Department made the Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2021 (Standard Instrument Order) that:
 - (a) inserted new employment zones ("E zones") into the Standard Instrument, commencing December 2021;
 - (b) introduced new land use definitions and updates some exiting definitions; and
 - (c) repeals existing "B zones" and "IN zones" as at 1 December 2022.
7. The effect of the Standard Instrument Order is that all Standard Instrument LEPs in NSW must be amended before 1 December 2022 to replace the current zones with the new Standard Instrument zones (before the current zones are repealed from the Standard Instrument).
8. The Department will prepare a draft state environmental planning policy for public exhibition that will amend all LEPs in NSW on behalf of councils. This means the usual local planning process that are required to amend an LEP will not be required.

9. In November 2021, the Department issued preliminary translations of the current zones to new zones. For the City of Sydney, preliminary translations were provided for the following LEPs:
 - (a) Sydney Local Environmental Plan 2012 (Sydney LEP 2012);
 - (b) Sydney Local Environmental Plan (Harold Park) 2013 (Harold Park LEP);
 - (c) Sydney Local Environmental Plan (Green Square Town Centre) 2013 (Green Square LEP - Stage 1); and
 - (d) Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013 (Green Square LEP - Stage 2).
10. The preliminary translations convert current zones in the City's LEPs to the most suitable new zone, in accordance with Figure 1.

Figure 1: Current zones in LEPs (left) to new zones (right)

Old Zones	New zone
B1 – Neighbourhood Centre B2 – Local Centre	E1 - Local Centre
B3 – Commercial Centre	E2 – Commercial Centre
B4 – Mixed Use	MU1 – Mixed Use
B5 – Business Development B6 – Enterprise Corridor B7 – Business Park	E3 – Productivity Support
B8 – Metropolitan Centre	SP4 – Special Enterprise
IN1 – General Industrial	E4 – General Industrial

11. Each of the existing zones (left) have their own objectives and land use tables that identify the land uses that are permitted with consent, permitted without consent, or prohibited in that zone. However, where zones are being translated and condensed to new zones (right), and objectives and land use tables do not match, an alignment process is required.
12. The Department's preliminary translations provided a 'first-pass' at aligning the current zones with the new zones, including suggested changes to affected LEP provisions. The Department requested council officers undertake a technical review and provide advice by 28 January 2022 with regard to the accuracy and suitability of the preliminary translations.
13. To guide the technical review, an impact analysis was undertaken by the City to identify how the preliminary translations would affect the City's LEPs. The impact analysis is provided at Attachment A.

14. The key issues identified in the City's technical review, discussed in more detail in this report, include:
 - (a) the removal of the B8 - Metropolitan Centre zone, that applies to Central Sydney and is a unique zone in NSW;
 - (b) the consolidation of a number of current zones under a single new zone, resulting in a loss of nuance that drives the strategic intent of the planning controls;
 - (c) some significant changes to zoning objectives, that will impact on considerations in the development application process; and
 - (d) the impact on current local provisions and mapping in the LEPs, that require amendment to maintain their strategic intent.
15. The City submitted its recommended changes to the preliminary translations on 14 January 2022. The Department are currently considering the City's response prior to finalising the draft state environmental planning policy for public exhibition. The Department expects public exhibition will take place around April 2022 at which time the City may make a further submission.

Zoning in the City of Sydney

16. Land use planning generally seeks to separate areas into zones and permit or prohibit various land uses to minimise environmental, social and economic conflicts. For example, noisier, dirtier industrial uses are typically separated from residential uses. Over time, however, this approach has been adapted to recognise the positive outcomes that can be achieved by locating a range of activities together. This can be successful so long as the externalities generated by one use do not have an unfavourable and/or unreasonable impact on another. Contemporary considerations when establishing zones and their various permitted uses include:
 - (a) operational considerations, for example, would a land use generate unreasonable traffic impacts on another land use;
 - (b) economic considerations, for example, would permitting private residential uses increase land values to the extent that employment generating uses become financially unviable;
 - (c) infrastructure considerations, for example, will a particular land use be appropriately supported by public domain, utilities, services, transport and social infrastructure;
 - (d) productivity considerations, for example, is there a sufficient amount of land zoned to fit land uses necessary to support an efficient and productive economy; and
 - (e) strategic consideration, for example, are land use zones conducive to the strategic directions established for the area by the NSW Government and the Council.
17. The zones, zone objectives, land use tables and local provisions in the City's various LEPs are carefully drafted to balance these considerations and achieve the strategic planning outcomes articulated in the City's Local Strategic Planning Statement.

18. The area most affected by the Department's zone review are the City's enterprise areas. These are some of the most strategically important employment lands in the Sydney metropolitan area. Mostly located between the Sydney Airport and the Central Business District in Alexandria, Rosebery and St Peters, as well as a small area of land along Parramatta Road, Glebe, they accommodate a wide variety of employment generating activities.
19. The enterprise area lands are generally zoned under the Sydney LEP as either IN1 - General Industrial; B5 - Business Development; B6 - Enterprise Corridor; or B7 - Business Park. These zones exclusively permit employment generating and population serving land uses, of varying intensity, and do not permit any residential uses, except for the B7 - Business Park zone that permits affordable housing as the only residential land use in the zone.
20. The Sydney LEP, and other LEPs that apply in the local area, also include other "B zones", including:
 - (a) B4 – Mixed Use zone, that is the predominant zone in the City's LEPs, permitting a broad range of land uses. It applies broadly across the local area;
 - (b) B1 – Neighbourhood Centre and the B2 – Local Centre zones, that signal general local commercial centres of activity. They also are located mostly along high streets elsewhere in the local government area;
 - (c) B3 – Commercial Core zone, that has limited application in the area, notably in parts of the Green Square Town Centre and a few locations in Pyrmont. The City's B3 - Commercial Core zone is focused on higher density commercial activity and does not permit residential land-uses; and
 - (d) B8 – Metropolitan Centre zone, which is uniquely applied in Central Sydney only, and nowhere else in NSW, and supports the primacy of the state's capital city.
21. The City's current zoning maps are shown at Attachment B.

Key Implications

Translation of current zones to new zones

22. The impact analysis, shown at Attachment A, provides comparison tables for each of the zone translations.
23. With regard to zone objectives, the wording of some objectives that now form part of the Standard Instrument Plan creates risks for the role and function of employment zones. It is essential that the wording of objectives is clear and do not allow for varied interpretation, particularly when it comes to land uses. Key objectives of concern include:
 - (a) E2 – Commercial Centre zone objective: *To enable residential development that is consistent with the Council's strategic planning for residential development in the area.* The existing B3 - Commercial Centre zone does not allow residential accommodation. The City does not propose to permit residential development in the new E2 zone, which is consistent with the current approach. The objective is therefore inconsistent.

- (b) E1 – Local Centre zone objective: *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.* This objective strengthens merit for standalone residential development within centres. This is not supported as it risks fragmenting and undermining retail centres.
 - (c) E3 – Productivity Support zone objective: *To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.* This objective refers to 'other land uses' which is open to interpretation and 'sell goods of a large size, weight or quantity' which alludes to specialised retail premises. The objective contradicts the approach of the City to manage retail and specialised retail premises.
24. In addition, there are new objectives for zones which refer to concepts of investment, viable use of land and generating employment opportunities and economic growth. The City is concerned by the introduction of this language into the zone objectives. These concepts are open to interpretation given any proposed development might demonstrate some level of investment, supporting economic growth and employment opportunities.
25. The City has strongly encouraged the Department undertake further consideration of the objectives and refinements to the wording that will undermine the City's strategic approach to managing our employment zones.
26. It is noted that should the Department accept the advice of the City in relation to the need to amend the zone objectives, an amendment to the Standard Instrument is required.
27. The consolidation of zones does reduce the ability of planning authorities to respond to and craft a suitable planning framework that best suits the current circumstances or future aspirations of an area, that is, there are less available zones that could be applied to land.
28. The consolidation of zones also means that in many circumstances the range of land uses that are currently permitted on land in the City's zones have been expanded. The Standard Instrument has also expanded the range of land uses that are now mandated in certain zones. In many cases this is unlikely to have a significant impact on the City's zones, however there are some circumstances where the changes undermine the strategic intent of the City's planning controls.
29. A key example of this is the approach the City takes to managing retail, particularly in the south of the local government area. The City retail hierarchy in its planning controls generally seeks to locate large supermarkets in centres, such as the Green Square Town Centre or on main streets, where there is adequate public transport and other infrastructure, and where they can contribute to the creation of places of community and economic focus. 'Specialised retail premises', that generally include bulky goods retail, such as Harvey Norman and the like, are currently permitted in only limited locations, including the southern extent of O'Riordan Street and the Moore Park Supa Centre. The consolidation of the current B5 Business Development; B6 Enterprise Corridor; or B7 Business Park zones will result in a broad expansion of where these uses may be permitted.

30. The City has requested the Department makes changes to the local provisions within the Sydney LEP 2012, concurrently with changes to zoning, to ensure the strategic intent of the current zones and planning controls are maintained.
31. The City is also concerned that where 'specialised retail premises' are listed as permitted with consent it will enable large-scale premises to occur as a form of complying development under the Exempt and Complying Development Codes SEPP 2008 (Codes SEPP). To ensure the City's strategic approach is maintained, the City has requested the Department amend the Codes SEPP to introduce an exclusion for these areas.

Removal of the B8 - Metropolitan Centre zone

32. The employment zone review removes the B8 - Metropolitan Centre zone from the Standard Instrument. The B8 - Metropolitan Centre zone applies only to Central Sydney and nowhere else in NSW.
33. The current B8 - Metropolitan Centre zone is proposed to be translated to the new SP4 - Special Enterprise zone, which is a flexible zone that individual councils may apply to land within their local areas. It is the only new zone in the Standard Instrument where councils are given total flexibility to prepare their own objectives and land use tables.
34. While this means the objectives and land use tables of the current B8 - Metropolitan Centre zone can be maintained as they currently exist, it also means the new SP4 - Special Enterprise zone cannot be applied anywhere else in the local area. This removes any possibility that we might apply the zone elsewhere in the local area where it may be needed in the future.
35. The removal of the B8 – Metropolitan Centre zone is also inconsistent with the approach of all other capital cities in Australia (apart from Canberra), which have a special zone allocated to their central business/city core area. This includes Melbourne, which retains their equivalent capital city zone, even after undergoing a rationalisation of their business zones.
36. Removing the B8 - Metropolitan Centre zone provides negligible benefit towards a more consistent NSW planning framework as the zone is only used in one location and its purpose and objectives are effective and clear. Furthermore, refinements and additional objectives to the B8 - Metropolitan Centre zone were delivered through the Central Sydney amendments made on 26 November 2021.
37. The City has requested the Department reconsider the removal of the B8 - Metropolitan Centre zone in the Standard Instrument.

New and updated definitions

38. This section describes the updated and new definitions that are replaced or introduced in the Standard Instrument as at 1 December 2021. These definitions are now applied in all of the City's LEPs.
39. Key updated definitions include:
 - (a) Business premises – to introduce the new definition “Goods repair and reuse”;
 - (b) Light Industry – to introduce the new definition “Creative industries”;

- (c) Shop top housing – to allow a wider range of non-residential uses at the ground floor of a building, “where at least the ground floor is used for commercial premises or health services facilities”; and
- (d) Crematorium – to replace the current definition with the definition “crematorium means a building or place in which deceased persons or pets are cremated or processed by alkaline hydrolysis, whether or not the building or place contains an associated building for conducting memorial services.”

40. Key new definitions include:

- (a) Goods repair and reuse premises - means a building or place the principal purpose of which is to collect, repair or refurbish goods, including furniture and appliances, for the purposes of sale, hire or swap, and includes premises known as op shops.

Note— Goods repair and reuse premises are a type of business premises—see the definition of that term in this Dictionary.

- (b) Creative industries - means a building or place the principal purpose of which is to produce or demonstrate arts, crafts, design or other creative products, and includes artists’ studios, recording studios, and set design and production facilities.

Note— Creative industries are a type of light industry—see the definition of that term in this Dictionary.

- (c) Data centre means a building or place the principal purpose of which is to collect, distribute, process or store electronic data using information technology.

Note— Data centres are a type of high technology industry—see the definition of that term in this Dictionary.

41. The new and updated definitions generally provide a clear categorisation of new and emerging land uses. The effect of the new and updated definitions is likely to be relatively minor.

Local provisions and Schedule 1 - Additional permitted uses

- 42. A number of provisions within the affected City’s LEPs require amendment to accommodate the changes being made to the land use zones. This includes provisions in Schedule 1 - Addition permitted uses.
- 43. The City has provided the Department with updated provisions to ensure the strategic intent of the City’s planning controls are maintained where strategically important.

Relevant Legislation

- 44. Environmental Planning and Assessment Act 1979.
- 45. Standard Instrument - Principal Local Environmental Plan and Standard Instrument (Local Environmental Plans) Order 2006.
- 46. Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2021.

Critical Dates / Time Frames

- 47. The City made comment to the Department's preliminary translations on 14 January 2022, prior to the cut-off date of 28 January 2022. This report responds to the Department request that the preliminary translations be reported to Council by the end of March 2022.
- 48. Following assessment of submissions made by councils, the Department will prepare a draft state environmental planning policy to make changes to LEPs and place it on public exhibition. The Department's estimated timeframe for this is April 2022.
- 49. Following public exhibition, the Department will consider submissions and prepare a summary report of issues, which the City understands will be made publicly available. The Department have requested the matter be reported back to Councils following preparation of the report. The estimated timeframe for the post exhibition report is between June and October 2022.
- 50. The Department's estimated timeframes for the changes to LEPs to come into effect is November 2022.

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