

30 June 2020

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NSW Department of Planning, Industry and Environment
Locked Bag 5022,
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Online submission

Cc: Aoife Wynter, Director Employment Zones Reforms

Proposed Employment Zones Framework

Dear Marcus

I write in relation to the *Proposed Employment Zones Framework (Proposed Framework)* prepared by the Department of Planning, Industry and Environment (DPIE), for comment until 30th June 2021. A summary of recommendations is contained in Table 1 at page 7.

The clear intention of this reform process was:

- First to reduce the number of zones
- The second objective was to reduce complexity
- The third objective was to increase flexibility

The Proposed Framework has moved the policy discussion towards each of these objectives – but to date, is manifestly under-whelming.

The Urban Taskforce has been vocal in our calls for much needed and significant planning reforms to support economic growth and productivity. We welcomed the announcement of this employment zone reform work as part of the November 2020 State Budget “as an opportunity to create greater flexibility and allow businesses to change and adapt to changes in demand”.

This remains particularly important in this fast-changing COVID-19 world.

The Urban Taskforce supports the broad intention of the rationalisation of employment zones and the inclusion of additional mandated permissible land-uses.

However, the extent of the flexibility in the Proposed Framework, as proposed, falls well short of achieving the objectives in the accompanying Position Paper of:

- *Support businesses, industry and society to grow, respond and adapt as necessary, and*
- *Facilitate innovation and changes in business processes now and into the future.*

Urban Taskforce asserts that the Proposed Framework runs counter to the greater flexibility and competition needed in centres and will fail to facilitate activation of under performing employment areas.

Maintaining the current centres approach runs counter to flexibility and adaptability

The Proposed Framework maintains the historic protection of the Centres policy and the associated exclusion of competition and flexibility. It further relies upon a static typology of allowable land uses rather than shifting towards a much needed open zoning with nominated prohibitions where justified on the basis of a genuine conflict or impact. Further, the proposed zoning framework in combination with the proposed extent of mandated permissible uses could be used by some councils to effectively down-grade the development capacity of some commercial centres.

Rigidity of zones and land uses will not activate underperforming employment areas

The Proposed Framework by maintaining rigidity of land uses will fail to deliver the much needed activation of many established centres and employment areas delivered under the existing planning regime. An example is Macquarie Park (future E2 & E3 zone), which will continue to resemble a business park without residential activation.

Residential activation would increase feasibility of employment options beyond offices and office hours through viable entertainment premises, restaurants, bars, shops, other businesses. It would help facilitate reduced dependence on car travel and allow people to live work and play in these areas and realise their full productivity capacity – and yes this means ensuring that most forms of residential development are permissible.

Further, the Framework fails to fulfil the brief set by the *Productivity Commission's White Paper* of “consolidating and increasing flexibility of employment and industrial zones to accommodate new businesses”.

Accordingly, in the context of the Productivity Commission's White paper, and consistent with the 2018 *Planning for the future of retail discussion paper* **Urban Taskforce recommends** that the Proposed Framework be re-considered to identify additional zone consolidation and land use flexibility and open-up centres to competition and activation.

Flexible and Open zones are needed

This process of “reform” represents a missed opportunity constrained by myopic thinking arising from the dominance of a rule setting mentality in DPIE.

Genuine reform means cleaning up the mess. Too much is left to council discretion. While good councils which have encouraged flexible land uses will continue to be allowed to do so, those that have failed to be flexible (often for local political reasons) can continue to be obturate.

Developments should be determined on merit not just permissibility of use. Hence the DPIE should be bolder in requiring Council LEPs to allow for the broadest range of permissible uses, including new and unanticipated uses, within a smaller number of zones.

The more open a zone is, and the less regulation as to what can take place in the zone, both simplifies the planning framework and it also reduces risk.

Less regulation of land use would result in a substantial reduction in the number of planning proposals made – where there is the greatest perception of and capacity for corruption in the planning system.

The “reform” of the NSW Employment Zones Framework must provide for the flexibility now craved by employees in the post COVID era. Further, to drive productivity, it must deliver on the calls from the Productivity Commission and meet the aforementioned objectives. DPIE should also refer to their own earlier report, the 2018 *Planning for the future of retail discussion paper*. Recommendations in the 2018 paper included the following:

Direction 3: Adaptability & Certainty for Retail

- *Increase flexible **open** zones*
- *Establish an (interim) innovation in retail provision*
- *Introduce a strategic plan aligned zoning framework*

Open zones, as were recommended in the 2018 Paper, are open to all land uses with exceptions applied only for clearly conflicting uses – which are then prohibited. An effective open zone is still guided by objectives to inform development decisions and allow for merit based decision making. Importantly, an open zone can accommodate changes in technology and business and society preferences without the need for spot rezonings and other ad-hoc planning proposals.

The Position Paper broadly supports the concept of open zoning but there is no mechanism in the accompanying proposals to deliver this. Under the Proposed Framework many decisions on the application of the land use framework are left to the discretion of councils. From options for zone objectives to the decision on

whether many land uses are permissible in the relevant zone, there is still the capacity for councils to effectively prohibit otherwise suitable development. This situation will maintain the current monopoly that certain employment generating land uses have over others.

While the Position Paper and accompanying land use matrix show an additional 97 mandated permissible land-uses, many of these are already permissible in the current corresponding land use zones under numerous LEPs. Further, permissibility and flexibility will continue to be restricted by the unchanged restrictions under *Clause 5.4 of the Standard Instrument - controls relating to miscellaneous permissible uses*.

The nature of work has changed. High impact industrial or manufacturing work is the exception in metropolitan areas. Residential mixed use (often with people working from home) will increasingly mix to cafes, micro-breweries, warehouses and high tech manufacturing. All these land uses are compatible – so why would they not all be allowed in the one zone?

In the interests of delivering material increases to the flexibility of activated employment zones that will actually accommodate many new businesses and jobs it is essential that zones are 'opened-up' so that only a small range of clearly conflicting land uses are prohibited in each zone, with remaining land uses being permissible.

Accordingly, **Urban Taskforce recommends** an open employment zones framework be adopted based on the following zones and permissibility:

- A. (true) Mixed Use – all land uses within the commercial premises group term and all residential mandated as permissible with consent. High impact industrial (heavy industry and heavy industrial storage establishments) prohibited.
- B. Enterprise – all employment related land uses (excluding high impact industrial activities) mandated as permissible with consent. Residential could be prohibited by councils, but not mandated as prohibited. In some cases, Councils may make a case for the agglomeration of certain land uses (like high volume 24/7 warehouses) – but this should be done as an exception rather than the opposite.
- C. High Impact Activities– all high impact industrial and other activities permissible with consent.

This framework still allows for zone objectives to drive a focus on employment outcomes. The recommended framework also allows for setting of development scale via controls relating to height and FSR and allowable proportion of certain land uses in a zone either by the relevant council or in the standard instrument.

Notwithstanding our recommendations as to a preferred employment zones framework, the Urban Taskforce provides the following specific comments and recommendations to the framework as proposed:

Limiting opportunities for new homes

Urban Taskforce is deeply concerned about the proposed employment zones framework's impact on limiting feasible residential development. There is already a housing supply crisis without limiting feasible residential development further.

The Mixed Use Zone, as proposed, is likely to be used by Councils to restrict new residential development. The proposed zone objectives include an option of "to provide a range of retail, business, and community uses". This zone objective, if used by councils, will result in many areas that are currently zoned B4 no longer being an option for industry to provide much needed new housing in NSW. The transfer of the existing B4 zone into the new Mixed Use zone must not result in a loss of residential development potential.

Accordingly, **Urban Taskforce recommends** that there is no loss of residential development potential in the transfer of the existing B4 zone to the MU zone and that the zone objective option of "to provide a range of retail, business, and community uses" be deleted.

Further, **Urban Taskforce recommends** residential uses be expanded into the proposed employment zones E1, E2, E3. While it is acknowledged that a minimum percentage of employment GFA may need to be mandated to ensure the primacy of employment uses within these zones, residential uses would assist in activating a greater variety of alternative employment uses and should therefore be further considered.

Limiting opportunities to support businesses, industry and society to grow, respond and adapt as necessary

The framework includes the proposal to remove 'shops' as a type of 'business premises', which effectively removes 'shops' as a permissible use within the existing B6 (future E3) zones. This proposal goes against with the intention of expanding compatible uses and creating 'open zones' and land use flexibility. Further, this prohibition is at odds with the with the proposed zone objectives of "to provide opportunities for new and emerging industries" and "To enable limited retail uses to meet the day to day needs of workers..." Accordingly, **Urban Taskforce recommends** that shops are a permissible land use in the proposed E3 zone.

The proposed land use tables for the E4 (General Industrial) zones fall short on allowing for businesses grow and adapt. As such, as a minimum, **Urban Taskforce recommends** the permissible land uses in the proposed E4 zone be expanded to include:

- Ancillary retail within 'warehouse and distribution' facilities, rather than continuing to only permit 'industrial retail outlets' which sell goods manufactured within warehouses. Provided the primary use of the facility remains 'warehouse and distribution' there is no reason why ancillary retail should not be permitted.
- 'Click and collect' as permissible use within 'warehouses and distribution' facilities, where online purchases are able to be collected from the facility (collection window).

Implementation

The changes to land use tables could inadvertently result in administrative errors to LEPs. **Urban Taskforce recommends** a planning mechanism be developed to allow for the correction of errors efficiently without requiring planning proposals to rectify.

Narrow advice leads to narrow outcomes

Urban Taskforce is deeply concerned by the composition of the Expert Advisory Group that has advised DPIE on the development of the Framework to date. The Expert Advisory Group is dominated by planning practitioners and academics with little or no practical experience in actual development. The involvement of SGS is particularly opposed due to their activist position on these matters which is not supported by industry. Worse, there is no representation from industry whose members are actually delivering development that delivers employment.

We are further concerned by the prospect of this group having further input into the Framework's finalisation.

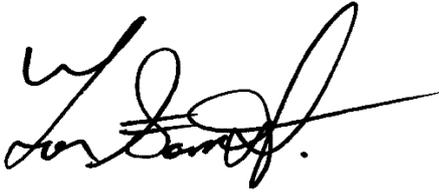
As such, **Urban Taskforce recommends** that the miss-named "Expert Advisory Group" have no further role in the finalisation of the Framework or that the Group is "refreshed" with a view to having significantly greater representation of industry investing and developing on employment lands.

The NSW Productivity Commission has been critical of the NSW Planning System, identifying it as a constraint on the productivity of the NSW economy. Reforms to the employment zone framework represented an excellent opportunity to open up the planning system to drive economic outcomes through additional employment, new housing supply and activation of centres and places. While the Proposed Framework presents an improvement to the current system, if delivered in its current form, will fall short of meeting its worthy objectives.

Urban Taskforce urges DPIE to seriously consider our recommendations in finalising the reforms and further developing much needed improvements to the NSW Planning System.

Table 1 includes a summary of Urban Taskforce recommendations.

Yours sincerely



Tom Forrest
Chief Executive Officer

Table 1:
Summary of Urban Taskforce recommendations

	Urban Taskforce recommendation
1.	<p>In the context of the Productivity Commission's White paper, and consistent with the 2018 <i>Planning for the future of retail</i> discussion paper Urban Taskforce recommends that the Proposed Framework be re-considered to identify additional zone consolidation and land use flexibility and open-up centres to competition and activation.</p>
2.	<p>In the interests of delivering material increases to the flexibility of activated employment zones that will actually accommodate many new businesses and jobs it is essential that zones are 'opened-up' so that only a small range of clearly conflicting land uses are prohibited in each zone, with remaining land uses being permissible. The more open a zone is, and the less regulation as to what can take place in the zone, both simplifies the planning framework and it also reduces risk.</p> <p>Urban Taskforce recommends an open employment zones framework be adopted based on the following zones and permissibility:</p> <ul style="list-style-type: none"> a. (true) Mixed Use – all land uses within the commercial premises group term and all residential mandated as permissible with consent. High impact industrial (heavy industry and heavy industrial storage establishments) prohibited. b. Enterprise – all employment related land uses (excluding high impact industrial activities) mandated as permissible with consent. Residential could be prohibited by councils, but <u>not</u> mandated as prohibited. In some cases, Councils may make a case for the agglomeration of certain land uses (like high volume 24/7 warehouses) – but this should be done as an exception rather than the opposite. c. High Impact Activities– all high impact industrial and other activities permissible with consent.

3.	<p>Urban Taskforce is deeply concerned by the composition of the Expert Advisory Group that has advised DPIE on the development of the Framework to date. The Expert Advisory Group is dominated by planning practitioners and academics with little or no practical experience in actual development. We are further concerned by the prospect of this group having further input into the Framework’s finalisation.</p> <p>Urban Taskforce recommends that the mis-named “Expert Advisory Group” have no further role in the finalisation of the Framework <u>or</u> that the Group is “refreshed” with a view to having significantly greater representation of industry investing and developing on employment lands.</p>

Notwithstanding our recommendations as to a preferred employment zones framework (recommendation 2), the Urban Taskforce provides the following additional recommendations to the framework as proposed:

	Urban Taskforce recommendation
4.	<p>Urban Taskforce recommends that there is no loss of residential development potential in the transfer of the existing B4 zone to the MU zone and that the zone objective option of “<i>to provide a range of retail, business, and community uses</i>” be deleted.</p>
5.	<p>Urban Taskforce recommends residential uses be expanded into the proposed employment zones E1, E2 and E3.</p>
6.	<p>Urban Taskforce recommends that shops are a permissible land use in the proposed E3 zone.</p>
7.	<p>Urban Taskforce recommends the permissible land uses in the proposed E4 zone be expanded to include:</p> <ul style="list-style-type: none"> • Ancillary retail within ‘warehouse and distribution’ facilities, rather than continuing to only permit ‘industrial retail outlets’ which sell goods manufactured within warehouses. Provided the primary use of the facility remains ‘warehouse and distribution’ there is no reason why ancillary retail should not be permitted. • ‘Click and collect’ as permissible use within ‘warehouses and distribution’ facilities, where online purchases are able to be collected from the facility (collection window).
8.	<p>The changes to land use tables could inadvertently result in administrative errors to LEPs. Urban Taskforce recommends a planning mechanism be developed to allow for the correction of errors efficiently without requiring planning proposals to rectify.</p>