

20 September 2011

Mr Sam Haddad
Director General
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Dear Mr Haddad,

Re: Implementing the Metropolitan Plan: Planning Principles for Industrial Lands, August 2011

The Urban Taskforce represents Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment to engage in constructive dialogue with both government and the community.

We support the move in the Metropolitan Plan to drop the assessment of "categories and potential future roles of existing industrial sites" from the subregional strategies. These matters are dealt with on a case-by-case basis, in the context of particular proposals, against broad criteria. We commend the Department for seeking to improve the policy framework in this area.

We have reviewed the most recent draft of *Implementing the Metropolitan Plan: Planning Principles for Industrial Lands*. Our specific comments are set out below.

1. Planning principles should be directed to employment lands generally

Fundamental to planning for employment generating land uses is the recognition that industrial uses are but one of many land uses essential to job creation. Successful planning for industrial land is predicated on a holistic approach to the supply of land for employment generating land uses. Therefore, a useful planning policy would be one that engages in *employment* lands and establishes planning principles for the supply of land zoned for a wide range of uses including industrial, technology, research, manufacturing, warehousing, logistics, office, retail and business, to name just a few.

The Metropolitan Plan itself envisages that a "strategic assessment checklist" and a "common set of criteria" should apply to "employment lands", rather than to the more narrow category of "industrial lands".

This narrow focus of the planning principles is a significant limitation to their usefulness and we question their relevance.

The planning principles should be directed to employment lands generally, which should include land uses associated with the largest share of employment in our economy - retail and office premises.

We think that the Department is using the regulation permitted land uses is to control impacts on infrastructure. That is, there is an assumption (by the Department) that industrial uses are low-intensity employment uses, while retail and office uses are high intensity uses. We can think of no other rationale for the distinction that the Department insists on making between industrial employment and other employment lands.

However, the assumption that industrial uses are low-intensity is challenged by the text of the *Planning Principles* document itself. For example, as the document says:

Industrial Lands precincts with significant quantities of high-tech or other light industry ... can yield over 100 jobs per hectare.¹

As a result, there is no intellectual justification why industrial lands (which apparently can be both high intensity and low intensity) should be planned separately from other employment lands. The real issue for land use planning is the intensity of the employment-related use, not the particular kind of employment (e.g. industrial, commercial or retail).

To the extent that the *Planning Principles* need to differentiate between different types of employment-related development, they should concentrate on intensity of use, not the nature of employment.

2. Single uses zones do not reflect the needs of contemporary employment generating activities

The nature of industry has changed and will continue to change rapidly. Changes in manufacturing processes, introduction of new high technology industry and the rise of larger format retail means that land traditionally zoned "industrial" must permit a variety of land uses, all of which are significant generators of employment opportunities. Hence, maintaining single use industrially zoned land is rapidly losing relevance.

Of course, zoning rules may still be required to separate heavy, potentially polluting industry from other uses. However, lighter, cleaner, modern industry is compatible with other land uses and these uses should be able to co-locate within the same zone. In fact, this is the most effective means of allowing industry clustering. Permitting a variety of land uses within a zone enables a market response to business establishment and location selection.

Interestingly, the draft *Planning Principles for Industrial Lands* states

[a]s the nature of industry changes, so too must the planning system adapt to meet the needs of modern industry.²

and

Principle 2: Ensure planning for new Industrial Lands meets the long-term needs of industry growth³

These are encouraging statements, yet the actual underlying policy position of the planning principles remains with the more traditional application of industrial land use zones.

(Although, strangely, the *Planning Principles* document suggests that "creative industries" - a predominantly white collar employment sector - are an industrial use, without an explanation of how this relates to the Standard Instrument, or why other white collar employment sectors are not equally industrial uses.)

A desire to meet the long-term needs of industry growth necessitates the abandonment of the many separate Standard Instrument land uses zones that permit various forms of employment generating land uses. Instead these zones should be replaced with a single multi-purpose employment zone. A heavy industrial zone should remain as we agree there is a limited range of heavy industry that should remain isolated from other land uses.

Even if there is to be no reform of the Standard Instrument, the *Planning Principles* document should exhort planning efforts to focus on the use of multiple-use zones, such as the mixed use zone, the business park zone or (with modifications) the enterprise corridor or business development zone.

In any event, a relevant industrial land supply policy would be one that focuses on employment generating land uses and facilitates the provision of land for employment generating enterprises.

¹ NSW Department of Planning and Infrastructure. *Draft Implementing the Metropolitan Plan: Planning Principles for Industrial Lands: August 2011* 8.

² *Ibid* 5.

³ *Ibid* 6

We note that we are not alone in our view. The Productivity Commission's recent draft report into the retail sector says that:

Local governments should significantly reduce prescriptive planning requirements to facilitate new retail formats locating in existing business zones and ensure that competition is not needlessly restricted.⁴

In the same report the Commission found that:

Broadening the zones — for example, by limiting industrial areas to only narrow high-impact industrial uses and creating broad employment zones which can include commercial, light industrial, retail and even high-density residential where appropriate — and reducing prescriptive land use conditions will free up land and make it available to its most valued uses ...⁵

The Commission believes that:

Only high impact industrial businesses would be located separately because of their adverse effects on other land users or because planning outcomes are improved through their location near major economic infrastructure.

Broader zones would remove the artificial distortions created by the current planning and zoning system both within retail (general retail and bulky goods) and between retail and other businesses (such as commercial and light industrial).⁶

In the Productivity Commission's separate (and final) report on planning, development assessment and zoning, the Commission said that:

For most businesses (commercial, service providers and some light industrial), there are limited and identifiable impacts associated with their location decisions and therefore few planning reasons why they should not be co-located in a business zone.⁷

We ask that the *Planning Principles* document be re-focused on the implementation of a more flexible, multi-purpose employment zoning. Even within classic "industrial zones" - if they are to continue - there needs to be more flexibility as to the range of permitted uses. We also note that the Victorian Government recently announced that the retailing of bulky goods will be allowed in that state's industrial zones. The state's Planning Minister, Matthew Guy, told parliament on 30 August 2011 that:

We will not be banning bulky goods retailing in industrial areas. We will be removing floor space requirements on restricted retail centres and ... we will also be amending the definition of 'restrictive retail' to ensure that business can continue to grow in those bulky goods centres around Victoria. ...

It is quite an odd situation that until the Baillieu government's reforms, in certain zones if you had 500 square metres of space, you could sell lights, but if you 499 square metres of retail space, you could not sell a light -- bizarre. ... the Baillieu government means business on job growth in Victoria.⁸

The mandatory permissible uses in existing "industrial zones" in the Standard Instrument should be expanded to include bulky goods premises, hardware and building supplies, garden centres and landscaping material supplies.

3. Development capacity in excess of minimum targets is essential

It is encouraging to note that Planning Principle 1 recognises the need to "maintain competitive pressures" in the market. We imagine that, by saying this, the Department accepts that "adequate" land supply means that the supply of land should exceed minimum targets.

⁴ Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry: Draft Report* (2011) XXXIX.

⁵ Ibid 208.

⁶ Ibid 222.

⁷ Productivity Commission, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments: Productivity Commission Research Report Volume 1* (2011) XLVI.

⁸ Hon. M. J. GUY. "Planning: retail zoning", *Victoria Legislative Council Hansard* (30 August 2011).

Nonetheless, it is not enough that we must infer that this is what the Department is saying. Such an important concept needs to be clearly articulated in its own right.

The maintenance of competitive pressures in the market can mean different things to different people. Therefore, **the planning principle must express clearly and plainly the need to supply land to exceed minimum expected demand targets to ensure that supply is never outstripped by demand.**

As we have previously highlighted, the 2005 Metropolitan Strategy addressed this issue in a much better way when it said that:

The supply of land available for development should *always* exceed market demand to ensure that land values are not unreasonably raised and lower the intended level of development (emphasis added).⁹

Working with loosely worded principles that imply an aim rather than stating the aim clearly makes it too easy to “talk around” or mask non-performance. Unless planning policy overtly states its aims, in plain understandable English, it becomes increasingly difficult to monitor performance against the stated aims of the policy.

We note our view is supported by the recent finding of the Productivity Commission, who said that such changes

would increase competition by allowing a wider range of businesses and developers to bid for the same land, better harness the market in allocating land to its most valued use, and cater much more easily for innovations in business and service delivery without requiring rezoning.¹⁰

The planning principles should expressly state that the supply of land available for employment-related development (including industrial uses) should *always* exceed market demand to ensure that land values are not unreasonably raised and lower the intended level of development. This should take place in the context of multiple use zoning, so as to ensure that an oversupply of employment-land does not create shortages in the supply of land for other uses.

4. Regulators are not well-placed to decide if land is still required for purely industrial reasons

The proposed planning principle 3 says that land use regulation must:

Retain strategically important Industrial Lands and support renewal of existing Industrial Lands to meet the changing needs of industry.¹¹

Firstly, this policy clearly assumes that, without land regulation, “strategically important industrial lands” will be re-developed for non-industrial uses. There is, therefore, an intent to prevent normal market activity occurring in relation to these lands.

Secondly, this policy assumes that wider class of industrial lands may be renewed, but only “to meet the changing needs of industry”, not to meet the needs of non-industrial businesses or other land uses. Again, the policy assumes that normal market activity would re-direct the use of this land away from industry without tight land use regulation.

We draw the Department’s attention to the NSW Government’s own *Guide to Better Regulation*.¹²

Government action is commonly justified on the basis of responding to market failures or imbalances. It is important to determine whether there is a need for government to be involved, or whether the problem will be solved through market forces or by existing regulations at the State or Commonwealth level.¹³

⁹ *Metropolitan Strategy – Supporting Information* 123.

¹⁰ Productivity Commission, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments: Productivity Commission Research Report Volume 1* (2011) XLVI.

¹¹ NSW Department of Planning and Infrastructure. *Draft Implementing the Metropolitan Plan: Planning Principles for Industrial Lands: August 2011* 6.

¹² NSW Department of Premier and Cabinet, *Guide to Better Regulation* (2009).

As the guide makes clear:

Competitive markets:

- provide the most efficient means of allocating resources to maximise the benefits to the community
- ensure the goods and services that consumers demand are produced efficiently, and
- encourage innovation and broader consumer choice.

'Market failure' has a very precise meaning in economics. It does not simply mean dissatisfaction with market outcomes. It refers to a situation when a market left to itself does not allocate resources efficiently. Where market failure exists, there is a potential role for government to improve outcomes for the community, the environment, businesses and the economy.

Governments may intervene to change the behaviour of businesses or individuals to address market failure or to achieve social and environmental benefits that would otherwise not be delivered. Government intervention is not warranted in every instance of market failure; in some cases the private sector can find alternative solutions. ...

Externalities are costs or benefits arising from an economic transaction received by parties not involved in the transaction. Externalities can be either positive (external benefit) or negative (external cost). The existence of externalities can result in too much or too little of goods and services being produced and consumed than is economically efficient. For example, where the cost of producing a good does not include its full costs, say in relation to environmental damage, then a negative externality is said to exist. This results in the good being over-produced (and under-priced).¹⁴

This extract explains that regulatory intervention may be necessary if:

- there is serious prospect that the market will not factor in negative externalities; and
- these costs are likely to outweigh the positive benefits created through normal market process.

The *Planning Principles for Industrial Lands* document does not expressly set out the externalities that justify land use regulation designed to prevent normal market activity from occurring. The only justification offered for the heavy regulation proposed is that:

Existing Industrial lands, especially in established parts of Sydney, are coming under high pressure for rezoning to alternative uses (generally commercial or residential), driven largely by higher financial returns for those uses and uncertainty about the future of industrial activity within an area.¹⁵

This is no more than an observation that, indeed, the economic value of the land whose use is to be regulated would be higher in non-industrial uses. It does not establish that the community would be made worse off, due to the presence of externalities. The only basis for artificially lowering the economic value of land through regulation, is that there are unpriced external costs equal to or greater than the loss caused via regulation.

Arguably, the paper attempts to make the case for the presence of externalities when it says that

many of the future needs of business and residents in those established areas will need to be met from the existing industrial zoned land, which serve a range of local and regional economic functions, such as warehousing and manufacturing, high-technology, auto repairs, storage facilities, building trades and local utilities. It will therefore be important to retain an adequate stock of existing zoned land to meet these needs.

However, if this is supposed to be a reasoned argument in support of government regulation it falls short of what is required. This analysis does not explain why the pricing provided through normal market activity is unable ensure that such land is available. After all, it is the NSW

¹³ Ibid 11.

¹⁴ Ibid 29-30.

¹⁵ NSW Department of Planning and Infrastructure. *Draft Implementing the Metropolitan Plan: Planning Principles for Industrial Lands: August 2011* 7.

Government that says that a competitive market is “the most efficient means of allocating resources to maximise the benefits to the community”.

If it is true that the needs of businesses and residents and can only be met by having an “industrial” use in a particular location, industrial businesses will be willing and able to pay more when they compete with other potential users of the land. The current low industrial rents are, in part, a reflection of the over-supply of (often inappropriately sized and serviced) industrial land, relative to demand, rather than any inherent inability of the capacity of industrial businesses to pay.

For example, it is true that there will be a need for smash repairers in the inner and middle ring suburbs. But if smash repairers were forced to compete with other non-industrial businesses for accesses to land, they will not necessarily disappear from a locality. Instead, insurance companies will end up having to pay smash repairers more, in order that they may meet the market price for access to essential land. This would abolish the current cross-subsidy by which residential and retail land is rationed (and therefore made more expensive) in order to provide “industrial” businesses cheap land. A more effective pricing arrangement reflecting *actual* need would prevail. The more transparent pricing may also encourage smash repairers to innovate and use land more efficiently as well as adopting other cost-saving devices.

To phrase this example more broadly, if it is true that industrial uses must remain in the inner suburbs (for example, due to the immediate vicinity of Sydney Airport or Port Botany) industrial businesses will respond by paying more for such land. These higher prices will mean that for truly locally essential industrial purposes, the continued industrial use will remain the highest and best use of the land and redevelopment will not occur. That is, regulatory controls to “protect” the land would not be necessary.

If the Department of Planning and Infrastructure believes the market will deliver a suboptimal outcome of the community, then the *Planning Principles* document should be amended to explain and quantify the external costs that would be borne under a market-driven outcome. Regulation should only be considered if those external costs outweigh the (private and external) benefits delivered by a market outcome.

For many industrial sites in the inner suburbs there is likely to be no convincing argument that sufficient externalities are present which require land to be exclusively reserved for industrial as opposed to more generalised employment or other uses.

Principle 3 should be clarified by providing a definition to the phrase: “strategically important industrial lands”.

“Strategically important lands” should be defined as those lands that, without an industrial zoning, are likely to be converted to non-industrial uses and the existence of externalities will result in economically inefficient undersupply of industrial land in a key location.

5. Industry clustering should be market led if economically efficient outcomes are to be achieved

Principle 4 is to:

Provide capacity to enable the development of specialised industry clusters.

We have no difficulties with this text of the principle itself, because its focus is on capacity, rather than a regulation-induced outcome.

However, in the text associated with the principle, it is stated that the principle will met by

retaining existing Industrial Lands or planning for future lands which can facilitate and *protect* the development of industry clusters (emphasis added) ...

Clustering is not *caused* by land use controls, except when land use controls are brutally used to prohibit a use in any location but one. Clusters emerge via market forces. For instance they can emerge via the “spinoff process” where spinoffs of leading firms locate in the vicinity of the parent firm. At times agglomeration economies related to labour pooling, proximity to suppliers, and localised knowledge spill-overs can foster clustering.

For economically efficient clustering to occur, these benefits must be present, and these benefits must be sufficiently great that they outweigh the costs of clustering. In most cases public authorities will not be in a position to determine whether additional private sector businesses will be able to benefit from agglomeration economies. For example, whether or not a business may benefit from being in close proximity to a competitor's suppliers, will be subject to the confidential exclusivity arrangements that may exist between the competitor and those suppliers. Typically it would take inside or implicit knowledge of the industry to know whether, in a particular case, a competitor's supply chain could be piggy backed. Local councils and the Department of Planning and Infrastructure will rarely be in possession of this information, and the existence of such agglomeration economies will only be apparent once private businesses start to agglomerate in one place.

We are concerned that land use controls are sometimes wrongly framed to force clustering by preventing businesses that are not part of an officially recognised "cluster" being established in an area. This is despite the fact that their impacts on environment and amenity might be indistinguishable from business favoured by the planning controls. The text associated with principle 4 will have this effect.

Cluster development, when it occurs, may carry social and economic benefits, but its occurrence will be a market based phenomenon. Land use controls should not *prevent* cluster development, but they should not try to *compel* it. That is, wherever possible, land use controls should allow sufficient development capacity for spin-offs, or for other firms willing to piggy back on the supply chains, labour pooling, etc built up by an established principle firm.

However a cluster brought about primarily through land use controls (rather than market circumstances) will cost the community far more than it was worth to make it happen. There may high social and economic costs from sterilising the development potential of land, in order to reserve it for a cluster development that never happens. Cluster development is a means to an end, i.e. business organised in a way that maximises economic efficiency. The use of regulation to try and force cluster development will lead to a misallocation of resources, an economically inefficient outcome.

The text associated with Principle 4 should be re-drafted to focus on providing for capacity for cluster development, without comprising on the availability of land for other competing land uses.

6. Land in the vicinity of public transport or commuter road corridors should not normally be reserved exclusively for industrial uses

Most forms of development would benefit from being located in areas accessible by public transport or commuter road corridors.

Of course, most areas of Sydney are not well serviced by public transport, thus there is a need to allow a wide range of activities away from such services, and ensure that the highest density development is possible in areas within walking distance of public transport.

Most uses in most industrially zoned lands are not high density or high intensity uses. So as a general rule, most new industrial lands can be safely located well away from existing and planned public transport services, allowing land in close proximity to such services to be available for high intensity uses, including commercial, retail and higher density residential. Indeed we note the definition of "Industrial Lands" in the *Planning Principles* document which says that such lands are "generally concentrated out of centre areas".¹⁶

The *Planning Principles* document embraces the concept of "high-tech" industrial uses which "can yield over 100 jobs per hectare". It then uses this assertion as a backdrop to the three methods of implementing Principle 5 (relating to the "use of infrastructure"). These three ways are:

¹⁶ NSW Department of Planning and Infrastructure. *Draft Implementing the Metropolitan Plan: Planning Principles for Industrial Lands: August 2011* 3.

- prioritising the retention of strategically important existing Industrial Lands and provision of new Industrial Land in areas with good access to critical transport infrastructure;
- locating higher density Industrial Lands uses (such as high-tech) near rail stations or strategic bus corridors; and
- accompany significant Industrial Land releases with a coordinated infrastructure servicing strategy.¹⁷

Retaining strategically important existing Industrial Lands near critical transport infrastructure

“Critical infrastructure” is not defined in this context. It follows discussion about public transport, so some may interpret it as a reference to that kind of infrastructure. We suspect it is meant to be a reference to infrastructure such as the Western Sydney Freight Line, the Airport, Port Botany, etc. **Public transport services are not “critical” to any industrial use, and therefore this phrase should be defined to ensure that it is clear.**

Locating higher density Industrial Lands uses near rail stations or strategic bus corridors

The last thing government should be doing is reserving any land near rail stations or strategic bus corridors for a restrictive range of uses. We remind the Department that their paper has already conceded that “Industrial Lands” are generally located “out of centre”. The idea of zoning specifically for “higher density” industrial lands, is a nonsense. If land is capable of supporting 100 jobs per hectare, then it should not be zoned “industrial” at all, but should be zoned generally to permit commercial, retail and industrial uses. **If the Planning Principles document remains focused on industrial land only, then nothing in it should suggest that employment-related land near rail stations or strategic bus corridors should be anything but multiple-use.**

Requiring a coordinated infrastructure servicing strategy

Obviously we are in favour of “a coordinated infrastructure servicing strategy”. However, this point follows a sentence in the *Planning Principles* document that says that:

Existing services should be reviewed and new public transport provided to service appropriate Industrial Lands, including cycling and walking routes.¹⁸

Industrial lands precincts are typically low density environments, on very large lots, with considerable distance between premises, and are “out of centre”. They are not ideal walking environments. They will often not lend themselves to cycling either - particularly when they are located on the edge of urban areas. Any servicing strategy must be realistic, and focus on infrastructure that is likely to be useful. A servicing strategy that requires a pedestrian and bicycle friendly environment is likely to prevent or delay the release of industrial land, rather than facilitate it.

Low intensity employment precincts are, and will continue to be, car dependent. Infrastructure servicing strategies will be unrealistic and counter-productive if they fail to recognise this.

7. Checklists should only guide assessment

Checklists, when blindly applied, have the potential to restrict good decision making. A checklist should always be an indicative guide to decision making and used as a tool to assist in the demonstration of the issues that are to be considered when making a decision. We are always cautious when the Department produces a checklist as our experience has been that such are simply used as a means to block rezoning and development, not as a guide to assessment. Furthermore, checklists that simply encourage yes/no answers must be used carefully, lest they are thought to apply the same weighting to minor issues as they do to critical issues.

The Planning Principles document says:

¹⁷ Ibid 8.

¹⁸ Ibid.

The checklist may not give an end value or even a clear yes or no answer as to whether a particular site should be rezoned. ... While attention should be given to each of the strategic considerations listed, not all subset questions will be applicable for each case.¹⁹

The text, in itself, is fine. But the text fails to give a truly useful guide on how the checklist is to be applied. Long checklists will almost always lead to a mix of “yes” or “no” answers. **The text needs to explain that a proposed rezoning will often need to proceed even when the answer is “yes” to some questions, but “no” to others.** The decision on whether or not a rezoning should take place will be qualitative and be informed by the information generated by the checklist, but not bound by it. If the document does not make this clear, it is highly likely that council and department officers will consistently (and inappropriately) recommend against the rezoning of industrial land on the basis that some or all of the answers to the checklist questions were negative.

The checklist itself is highly convoluted, repetitive and not consistent with the idea, advanced early in the *Planning Principles* document, that Industrial Lands are best located “out of centre”. Our specific comments are worth considering.

There is needless duplication: Points 2(c) and 2(e) overlap. Points 2(e) and 3(c) overlap. There is major duplication between Point 3(f) and the rest of the checklist (see below).

Point 1 of the check list asks whether a proposal to rezone is consistent with the Metropolitan plan, Subregional or Regional Strategies and/or council's strategic work on the future role of Industrial Lands as part of its Standard Instrument LEP. **A proponent-initiated study that demonstrates the strategic merit in a rezoning should be given equal weight as a local strategy.** These documents are often more up-to-date and prepared with more resources than existing local council materials.

Point 1(b) asks if the site is in “close proximity to important infrastructure”, while the body of the *Planning Principles* document talks about “critical infrastructure” (see above). A rezoning of existing industrial land to a more flexible zoning should not be blocked merely because it is in the presence of good infrastructure. In fact, land in the vicinity of good infrastructure may be more suited to more intense uses that are not permitted under the existing industrial zoning. **Land should only be prevented from being rezoned because of the presence of infrastructure if the infrastructure is “critical” to industrial use.**

Point 2(b) suggests that a planning authority examine and form an opinion as to whether the current land owner's efforts to market and promote a vacant industrial site have been adequate. This is something that a government planning authority is not well placed to judge. Real estate marketing is a highly subjective process, and there is no right or wrong way to do it. The idea of a local council or a state government agency passing judgment on the adequacy of private marketing of private land is odd, to say the least. The costs of leaving land under-utilised or vacancy are very high for any land owner. The fact that a land owner has borne these costs should be evidence enough of the difficulty in putting the site to good use.

Point 2(c) asks whether the site forms part of a “regional/subregional cluster of industrial activity or ... [has] a specialised economic role”. In relation to the former, as we said above, clustering is something that the market will deliver when it is an economically efficient outcome (this is also relevant to point 2(e)). Clustering that only exists by reason of government regulation is highly unlikely to be an efficient outcome. This aspect of the question is inappropriate for this reason. In relation to the latter point, the phrase “specialised economic role” is not defined, and will be easy basis for someone to say “no” in response to a rezoning request. For example, I could argue that any use likely to be found in an industrial zone is a “specialised economic role” (e.g. personal goods storage”). The phrase is so general that it is devoid of meaning.

Point 2(d) asks whether the site “forms part of a supply chain or is located close to next stage industries (i.e. close to areas of on selling to retail or distribution centres)”.

Firstly, any industrial premises involving goods will, by definition, be part of a supply chain. The only such premises that are not part of a supply chain would be the extremely rare case where

¹⁹ Ibid.

a business mines raw materials, transforms those materials, assembles them and sells the finished product on site. So the first part of the question is meaningless, because it almost always will lead to a “yes”.

Secondly, an industrial zone in a major population centre *will* be close to retail or distribution centres. However, these are the industrial zones that are the ones that are most likely to be obsolete. Few modern industrial premises that handle merchandise service a local market. They generally are handling or dealing in goods for a city-wide, national or international marketplace. In this context it is their access to the transport network that is important, not their proximity to one tiny proportion of their market.

Point 3(b) asks for the “cumulative effect on the range of local employment opportunities and economic services” with a region.

Firstly, industrial employment has been in decline across Sydney, NSW and Australia for reasons that have nothing to do with zoning. There can be no doubt that any analysis in response to this question will end up showing a decline in industrial jobs. What does this tell you? Nothing of use. Our economy is in transition, and our job mix, particularly in urban areas and in Sydney, is shifting inexorably towards the types of services that are normally found outside of industrial zones. There is nothing that zoning can or should do to stop this.

Secondly, what is an “economic service”? How do we distinguish it from a “non-economic service”? This phrase has no meaning so it does not belong in the checklist. If it merely relates to the range of “services” in a region, it would still be unhelpful. If people are unwilling to pay a market price for, say, a local service that provides storage of their personal goods, then the service may cease to be available. It makes little sense for government to use land use regulation to make, say, residential land more expensive (by restricting supply) in order to provide a hidden subsidy to the users of Millers self-storage.

Point 3(c) asks whether a “rezoning will compromise the function of other industrial lands in the LGA/Subregion”. This term is so vague it could mean literally anything. If it is about the possibility of the introduction of (possibly) incompatible uses, such as high density residential, it should clearly say so. The phrase and the point should not be open-ended. This point is also relevant to 2(e).

Point 3(e) asks whether the site contributes a significant proportion of the total industrial lands for a subregion or local government area. If the lands are obsolete, grossly under-utilised or more suited to other uses because of their proximity to public transport or major commuter road corridors, then it is irrelevant what share they make up of the subregion’s industrial land. **Many local government areas and subregions no longer need to have any land to be exclusively reserved for industrial uses, particularly in Sydney’s inner and middle ring suburbs.**

Point 3(f) invokes a list of desirable “attributes” for industrial lands and essentially requires each of the attributes to be addressed. In a given case, if the land concerned has the attribute, then that will be a reason that the land should not be rezoned (to something other than pure industrial uses).

This list overlaps considerably with the rest of the check list. For example, the “strategy” attribute duplicates 1(a). The “supporting existing enterprise(s)” attribute duplicates 2(a). The “contiguous to other industrial activities” attribute duplicates 2(e) and 3(c). The “cluster” attribute overlaps with 2(c) and 2(e). The “supply chain” attribute overlaps with 2(e). The “freight hub” attribute duplicates 1(b). The “growing population” attribute duplicates 3(d). The “amount of industrial land supply” attribute duplicates 3(e). The “small business” and “offers potential to be “redeveloped” attributes duplicates 4(c) and 5. **The authors of the Planning Principles document seem to have taken the approach that everything they think is very important should be addressed more than once.** Some matters are so important that they should be addressed three times.

There is also an attribute which says that industrial sites that are “well located to take advantage of existing or proposed public transport” mean that the site is “well-located to accommodate future demand for industrial uses within the subregion”. For reasons we have discussed earlier, this does not make any sense at all. Land that is in close proximity to public

transport deserves the most flexible zoning, with the highest possibility of dense land uses, not a restrictive industrial zoning.

There is an attribute that says that industrial sites with an “export focus and/or generate multiplier effects in terms of jobs/economic activity” are “well-located to accommodate future demand for industrial uses within the subregion”. In the real economy, all businesses generate multiplier effects. There is no such thing as economic activity without multiplier effects. So this aspect of the attribute has no meaning and will make rezoning unnecessarily difficult.

It is unclear why land that is used by a business with an “export focus” should be treated differently from land occupied by serving purely domestic needs. An export focused business can occupy land in a wider variety of locations. Land in Sydney inner and middle ring suburbs that would better utilised for more intense employment uses or for high density residential development, should not be under-utilised just because the current tenant is involved in the export trade. Even if the tenant would go out of business if the land becomes unavailable (as unlikely as that is), this would merely mean that a disguised subsidy was in place whereby housing and/or commercial premises were made artificially expensive in order to provide cheap rents to an export firm. This kind of policy measure would not stand any serious scrutiny in the context of trade or industry policy.

There is an attribute that says that industrial sites that provide for “small industrial businesses serving the local area” are “well-located to accommodate future demand for industrial uses within the subregion”. Most industrial sites in the inner and middle ring suburbs are too small for large industrial businesses to make any sensible use of them. So, if they are not vacant, they will tend to be occupied by small businesses. This does not mean that the sites are well-located or the land is being used efficiently. It just means that these are the only tenants the landlord could find. This attribute will merely frustrate sensible rezoning proposals for no good reason.

There is an attribute that says that industrial sites that are “currently or planned to be serviced by adequate power and water supplies” are “well-located to accommodate future demand for industrial uses within the subregion”. This does not make any sense. If the site has electricity, it should stay as industrial!?! Surely the fact that a site has electricity and water supplies might also make it suitable for commercial or high density residential uses?

There is an attribute that says that industrial sites that are “well located in relation to relevant skilled labour pools to match local populations to local jobs” are “well-located to accommodate future demand for industrial uses within the subregion”. Again, surely this proximity to skilled labour may also mean the site is more suitable to higher order uses, such as commercial or retail development?

There is an attribute that says that industrial sites that are “located close to planned or existing economic infrastructure, such as a major hospital or TAFE/Uni” are “well-located to accommodate future demand for industrial uses within the subregion”. Again, surely this such a location means the land is less suitable for the narrow range of uses permitted on industrial land, and more suited to multiple use employment related (or, heaven forbid - residential) uses.

There is an attribute that says that industrial sites that are “located close to or [has the] potential to support the economic role of a nearby Strategic Centre” will be “well-located to accommodate future demand for industrial uses within the subregion”. As Strategic Centres are typically well serviced by public transport, why would you seek to restrict the development potential of land in their vicinity?

There is an attribute that says that industrial sites that are “under single ownership or offers [a] significantly large site for low density employment uses” is “well-located to accommodate future demand for industrial uses within the subregion”. The fact that a site is large or in single ownership is a very good reason that, if the site is in the inner and middle ring suburbs, the site should be rezoned for a more flexible range of uses and higher density activity. It is not a reason to keep an obsolete industrial zoning!

There is an attribute that says that industrial sites that have “potential for on-site expansion of existing businesses” are “well-located to accommodate future demand for industrial uses within the subregion”. This requires the council or the Department to form a commercial judgment at

odds with the current owner of the land. How is it that the public sector is more capable of making commercial judgments about how private land owners can invest their money, than that the land owners themselves?

There is an attribute that says that industrial sites that have “unconstrained vehicle access and exit” are “well-located to accommodate future demand for industrial uses within the subregion”. However, such ease of access is also crucial to the success of high density residential development, commercial development and new retail precincts. These uses are likely to more intensively use road infrastructure around most inner suburban industrial areas, than the existing uses, so it would make better sense to allow the more intense uses to occupy the site if the infrastructure is already there to support it.

Point 3(g) asks whether the loss of industrial land could be absorbed elsewhere in the subregion or the local government area.

Firstly, this point overlooks the fact that the types of employment found in “industrial” land are in decline, so when land that is exclusively reserved for this purpose is lost, there may be no need for it to be replaced.

Secondly, many subregions in Sydney, particularly in the inner suburbs, are now disproportionately home to middle and high income earners (as a result of high home prices and high rents). While the people who are more likely to be employed in the narrow range of activities permitted on “industrial” lands are in lower income groups, and are more likely to be residents in a small number of subregions, mostly in Western Sydney (because of that region’s more affordable housing). The idea of subregional ‘employment self-containment’ no longer requires an allocation of industrial land in each local government area and/or subregion. In fact that principle may actively demand that land be re-allocated from narrow “industrial” uses which could better located closer to their workforce in more affordable suburbs, to other uses. Similar issues are raised by point 4.

Point 4(c) and Point 5 are of concern as they demand that government interfere in the commercial decisions of property owners and/or require property owners to present a business case for redevelopment to the planning authority for consideration. Business decisions relating to continued use of land, redevelopment opportunities, what is a viable use, appropriate returns on investment etc are commercial decisions for property owners. **A planning authority is not in any position to judge what a “reasonable” market value of land is or whether existing development or redevelopment is financially feasible or not. These are commercial decisions for the consideration of the land owner and/or investor. If government was good at making these decisions we would have no need for a market economy.**

Point 7 (including (a)-(c)) of the checklist has the Department considering the “additional need” for office and retail space; whether the proposed development would “impact upon the commercial role/viability of nearby Strategic or local centres”. The only way a planning authority can form its own opinion on this matter is for it to make commercial decisions about:

- the appropriate price for a developer to pay to acquire a site within a centre;
- the practicality of a given developer forming a joint venture with incumbent landowners;
- the level of rent that prospective tenants (e.g. retailers) can afford to pay and should pay;
- the relative ease of vehicular access that is necessary to make a given commercial development viable;
- the amount of car parking required to make a new development viable;
- the volume of pedestrian foot traffic required to make a given retail development viable;
- the ability of a given location to sustain an additional commercial development; and
- the degree of difficulty for a new entrant in a locality to compete directly alongside incumbent players.

These are commercial decisions; different businesses will come to different commercial conclusions. It’s likely that different consultants will also come up with different answers to these

questions. In a free market economy, these questions are best answered by those who are risking their own capital in a new business venture. Regulators are not well placed to form a view about these issues.

Some of the above-mentioned factors, such as land price, and rent charges to tenants, will themselves be a product of the market power conferred on landlords by the planning system. That is, in an area where the planning authority has a history of blocking competitor developments, "market" land prices and rents will be high. This will be confirmed by the valuer hired by the planning authority who is assessing whether the rents demanded by incumbent property owners in a centre are reasonable or not. This will create a catch-22 situation. Retailers/developers cannot afford the oligopolistic rents and land prices in the centre, so they will seek to go outside the centre, but will be blocked by the planning authority who will say the rents/land prices in the centre are "market" and that the retailer/developer is merely seeking 'cheap land'.

Assessment of "market demand" - particularly something as ambiguous as whether or not demand is "significant" - will also vary among developers, landlords, retailers and the operators of entertainment facilities.

Innovative new retail formats may, in part, create new demand not previously considered possible by incumbent players (or regulatory authorities). Formats that offer lower prices may lead to greater purchases by consumers, sustaining additional retail outlets above levels predicted in consultants' reports. Market demand is not always homogenous – it may vary depending on the product on offer. Ultimately a regulator cannot be certain that demand for generic retail will be unchanged if the quality of the retail offer is improved or varied from the norm. This is something that a person risking their own capital is, again, best placed to decide.

In any event, even if the demand for an additional retail or commercial floorspace is not present, surely it is still in the public interest for incumbent landlords and (in the case of retail - their tenants) to be placed under competitive pressure? Few entrepreneurs will invest in new businesses to steal trade from incumbent players unless they believe the existing businesses are doing a poor job.

The appropriateness of a change of use in land should be assessed on the land's own merits, not the relative merits between the land in question and a centre located elsewhere. The economy is not a zero sum game. Prohibiting development in one place does not mean it will seamlessly spring up in another.

We draw your attention to the Productivity Commission's strong support for a policy approach that

eliminate[s] impacts on the viability of existing businesses as a consideration for development and rezoning approval ...²⁰

²⁰ Productivity Commission, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments: Productivity Commission Research Report Volume 1* (2011) XLVII.

Thank you for the opportunity to comment on this paper. We look forward to a continued dialogue on these important issues.

Yours sincerely
Urban Taskforce Australia

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is written in a cursive style with a long horizontal stroke at the end.

Aaron Gadiel
Chief Executive Officer