

## ITEM 4 DRAFT PLANNING PROPOSAL - HOME EMPLOYMENT USES

A draft planning proposal is proposed to be prepared to resolve anomalies in the permissibility of home employment uses between the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP) and the Wollongong Local Environmental Plan (LEP) 2009. The permissibility of land uses relating to home occupations, home businesses and home industries requires clarification. In particular, home industry – food production, and home business – food production, which are not permitted by either the SEPP or LEP.

On 2 April 2020, the Wollongong Local Planning Panel supported the preparation of a draft Planning Proposal.

This report discusses the background and need for the preparation of the draft Planning Proposal. It is recommended that a draft Planning Proposal be advanced to resolve the anomaly.

### RECOMMENDATION

- 1 A draft Planning Proposal be prepared to update the permissibility of home employment uses in the Wollongong Local Environmental Plan 2009, specifically to:
  - a Include home occupations as permitted without consent in the land use tables for the R3, R4, B2, B3, B4 and B6 zones.
  - b Include home businesses as permitted with consent in the land use tables for the RU2, RU4, R1, R2, R3, R4, R5, E3, E4, B2, B3, B4 and B6 zones.
  - c Include home industries as permitted with consent in the land use tables for the RU2, RU4, R1, R2, R3, R4, R5, E3 and E4 zones.
  - d Amend Clause 5.4 Controls relating to miscellaneous permissible uses, to include a subclause that specifies that home occupation has a maximum floor area of 30 square metres.
- 2 The draft Planning Proposal be forwarded to the NSW Department of Planning, Industry and Environment for Gateway determination.
- 3 Following a Gateway determination, the draft Planning Proposal be exhibited for a minimum period of 28 days.
- 4 The NSW Department of Planning, Industry and Environment be requested to issue authority to the General Manager to exercise Plan Making delegations, in accordance with Council's resolution of 26 November 2012.

### REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

### ATTACHMENTS

- 1 Advice of the Wollongong Local Planning Panel

### BACKGROUND

Under the former Wollongong Local Environmental Plan 1990 home employment was permitted with consent in the (1), 2(a), 2(a1), 2(b), 2(c), 3(a), 3(b), 3(c), 3(d), 5, 6(c), 7(b), 7(c), 7(c1), 7(d) and 9 zones. Home employment was defined as:

**home employment** means an occupation which is carried on in, or from a dwelling, or within or from the curtilage of a dwelling-house or residential flats, by the permanent residents of the dwelling, and that does not involve any of the following:

- (a) the employment on the premises of persons other than those residents,

- (b) *interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise,*
- (c) *the display of goods, whether in a window or otherwise,*
- (d) *the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited to indicate the name and occupation of those residents),*
- (e) *the use of premises as a brothel or bed and breakfast accommodation.*

The Standard Instrument LEP program commenced in 2006 to create a common format and content for LEP's. Under the Standard Instrument home employment was redefined into three separate definitions - home occupations, home businesses and home industries.

**home occupation** means an occupation that is carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling and that does not involve:

- (a) *the employment of persons other than those residents, or*
- (b) *interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or*
- (c) *the display of goods, whether in a window or otherwise, or*
- (d) *the exhibition of any signage (other than a business identification sign), or*
- (e) *the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.*

**home business** means a business that is carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling and that does not involve:

- (a) *the employment of more than 2 persons other than those residents, or*
- (b) *interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or*
- (c) *the exposure to view, from any adjacent premises or from any public place, of any unsightly matter, or*
- (d) *the exhibition of any signage (other than a business identification sign), or*
- (e) *the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building,*

*but does not include bed and breakfast accommodation, home occupation (sex services) or sex services premises.*

**home industry** means a dwelling (or a building ancillary to a dwelling) used by one or more permanent residents of the dwelling to carry out an industrial activity that does not involve any of the following:

- (a) *the employment of more than 2 persons other than those residents,*
- (b) *interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise,*
- (c) *the exposure to view, from any adjacent premises or from any public place, of any unsightly matter,*
- (d) *the exhibition of any signage (other than a business identification sign),*

- (e) *the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail, except for goods produced at the dwelling or building, but does not include bed and breakfast accommodation or sex services premises.*

(Note: Home industry is a subset of the light industry use. **Industrial activity** is defined as the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.)

As part of the preparation of draft Wollongong LEP 2007-08 Council resolved to permit:

- Home occupations without consent in the RU1, RU2, RU4, R1, R2, R3, R4, R5, B1, B2, B3, B4, B6, E3 and E4.
- Home businesses with consent in the RU2, RU4, R1, R2, R3, R4, R5, B1, B2, B3, B4 and B6 zones
- Home industries with consent in the RU2, RU4, R1, R2, R5 and E4 zones (and where light industries were permitted in the IN1, IN2, IN3, IN4 and B6 and B7 zones)

The Draft Wollongong LEP was exhibited in 2008 on this basis.

On 22 February 2009, State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 commenced. At the time of its commencement Home businesses, home industries and home occupations was development specified in the General Exempt Development Code. There were no standards specified for this type of development except that the elements that comprise this type of development must be in accordance with the definitions in the Standard instrument. Accordingly, the three uses could occur as Exempt Development (no development assessment of consent required).

On 27 February 2009, the SEPP was amended to include a development standard for Home businesses, home industries and home occupations that this development must not involve a change of building use, which limits the change to 10% of the floor area under the Building Code of Australia.

On 26 February 2010 the Wollongong LEP 2009 was gazetted. In finalising the LEP, the Department of Planning removed home businesses and home industries, from some of the land use table as these uses were covered by the SEPP. The Department of Planning also reduced the number of zones that home occupations were permitted without consent. The Wollongong LEP 2009 Land Use Table permits the following:

- Home occupations are permitted without consent in the RU1, RU2, RU4, R1, R2, R5, E3 and E4 zones.
- Home businesses are not listed as permissible in any zone (permissibility relies on the SEPP).
- Home industries as a form of light industry, are permitted in zones where light industries are permitted with consent, namely in the B6, B7, IN1, IN2, IN3 and IN4 zones.

The Wollongong LEP 2009 was one of the first LEP's to be gazetted under the Standard Instrument LEP program. A review of other LEPs from Council areas that were gazetted after the Wollongong LEP 2009, including the West Dapto LEP 2010, do permit home businesses and home industries, with consent in certain zones and therefore the Exempt and Complying Development provisions of the SEPP are enabled in those Council's.

On 25 February 2011, the SEPP was amended to exclude manufacture of food or skin penetration procedures from being permitted as exempt development as a home business, a home industry or a home occupation. A development standard was also inserted requiring that if the development is on land to which an LEP applies it must comply with the applicable standards in clause 5.4(2) and (3). Clause 5.4(2) and (3) in the Wollongong LEP 2009 states that home businesses and home industries must be permitted in the zone and meet certain size restrictions (30m<sup>2</sup> and 50m<sup>2</sup> respectively).

On 22 February 2014 the SEPP was further amended to enable Home businesses that involve the manufacture of food, as Complying Development. The standards were that the development must not

involve a change of building use, must comply with Clause 5.4 of the applicable LEP and comply with AS4674-2004 *Design, construction and fit-out of food premises*. The 22 February 2014 amendment also inserted requirements for business identification signage for home occupations, home businesses and home industries.

Although the SEPP was amended to enable home businesses involving food manufacturing as Complying Development, as home businesses are not permitted under the Wollongong LEP as local development they are not enabled as Complying Development under the SEPP.

A Councillor Briefing on the proposed Planning Proposal occurred on 4 May 2020.

## PROPOSAL

The inconsistency between the SEPP and LEP, has created confusion around the permissibility of all three uses. In particular, it has impacted on home businesses or home industries that produce food or drink for markets or other sales. The food production use has been excluded from the SEPP as exempt development and is not permitted by the LEP as local development. As Complying development is a form of local development, the use must be listed in the LEP as being permitted with development consent.

Under the "Food Regulation Partnership" adopted by all NSW Councils and the NSW Food Authority in 2018, the increasing prevalence of home-based food businesses was recognised and the responsibility of surveillance of home-based food businesses was transferred from the Authority to Councils. As such, Council is now obliged under the partnership agreement to ensure all food businesses are operating in accordance with the relevant standards for producing safe food.

Council receives regular enquiries about from residents wishing to establish home-based businesses. Additionally, as a consequence of the COVID-19 pandemic and subsequent loss of employment, Council is currently receiving numerous additional requests around the establishment of home-based food businesses.

As home-based preparation of food for sale needs to meet NSW Health Food Authority standards to prevent food contamination, the assessment of a development application enables the standard for food production to be specified by Council. It also allows Council to identify all home-based food businesses operating in the LGA and ensure compliance with the Food Safety Standards.

Home industries are currently permitted in the light industrial zones, however the construction of new residential development is prohibited. Existing dwellings within industrial precincts, could be used for home industries. Home industries have historically been allowed in residential areas subject to requirements. Confirming the inclusion of home industries in residential zones has the potential to impact on local amenity. Therefore, the definition of home industry (and the other 2 uses) requires the use to not impact on the amenity of the neighbourhood by noise, fumes, waste, traffic and other emissions. If Council receives complaints the use will be investigated.

The LEP and SEPP currently do not include any development standards for home occupations. It is proposed to limit the size of the use to 30m<sup>2</sup> (the same standard as home businesses). To introduce the requirement, the use needs to be listed in the land use tables and the size restriction included in clause 5.4.

To address the permissibility anomalies, a Housekeeping amendment to the Wollongong LEP 2009 is proposed to be prepared. The draft Planning Proposal proposes to amend the Wollongong LEP 2009 to:

- a) include home occupations as permitted without consent in the land use tables for the following (additional) zones R3, R4, B2, B3, B4 and B6. Noting the use is currently permitted in the RU1, RU2, RU4, R1, R2, R5, E3 and E4 zones.
- b) include home businesses as permitted with consent in the land use tables for the RU2, RU4, R1, R2, R3, R4, R5, E3, E4, B2, B3, B4 and B6 zones.
- c) include home industries as permitted with consent in the land use tables for the RU2, RU4, R1, R2, R3, R4, R5, E3 and E4 zones.

- d) amend Clause 5.4 Controls relating to miscellaneous permissible uses to include a subclause that specifies that Home occupation has a maximum floor area of 30m<sup>2</sup>.

## CONSULTATION AND COMMUNICATION

### Consultation with Council Staff

The draft Planning Proposal has been communicated to internal Council staff from Regulation and Enforcement Division and Development Assessment and Certification Division. Both Divisions are supportive of the proposal as it would enable Exempt and Complying Development provisions for home business and home industries and/or permit a Development Application to be considered which would potentially resolve current enforcement issues relating to these type of uses. It would also resolve an inconsistency as these uses are permitted in other Council's except Wollongong LGA.

### Consideration by the Wollongong Local Planning Panel

The draft Planning Proposal was referred to the Wollongong Local Planning Panel for advice under the Local Planning Panels Direction – Planning Proposals issued under Section 9.1 of the Environmental Planning and Assessment Act 1979. The Panel considered the proposal at its meeting of 2 April 2020. The Panel advised that they accept the recommendation of the staff to resolve this anomalous provision in the current LEP to allow Home Occupations, Home Businesses and Home Industries to be made permissible uses thus allowing the SEPP provisions to apply (Attachment 1).

### NSW Department of Planning, Industry and Environment

Should Council proceed with a draft Planning Proposal to make the amendments, this would be forwarded to the NSW Department of Planning, Industry and Environment for a "Gateway" determination. The Gateway determination would outline the exhibition requirements (suggested at 28 days for exhibition) and the consultation with government agencies.

Exhibition would include documents being available:

- On Council's website.
- Council's Customer Service Centre
- Council's Central Library.

## PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 Goal 2 "we have an innovative and sustainable economy".

It specifically delivers on core business activities as detailed in the Land Use Planning Service Plan 2019-20.

## FINANCIAL IMPLICATIONS

There are no financial implications resulting from this report.

## CONCLUSION

It is recommended that Council support the preparation of a draft Planning Proposal to remove an anomaly to clarify the permissibility of Home Occupations, Home Businesses and Home Industry in certain zones.



**REZONING REVIEW  
RECORD OF DECISION**

|                                 |   |
|---------------------------------|---|
| <b>DATE OF DECISION</b>         | Date 2 April 2020                         |
| <b>PANEL MEMBERS</b>            | Alison McCabe, Sue Francis, Steven Layman |
| <b>APOLOGIES</b>                | Nil                                       |
| <b>DECLARATIONS OF INTEREST</b> | Nil                                       |

**REZONING REVIEW**

Planning Proposal PP-2019/10 – Home Occupation, Home Business, Home Industry housekeeping amendment

**LOCAL PLANNING PANEL CONSIDERATION AND DECISION**

The Panel considered the material provided in the Council planning report and the matters raised and/or observed at meeting.

Based on this review, the Panel determined that the proposed instrument:



- should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site-specific merit
- should not** be submitted for a Gateway determination because the proposal has
  - not demonstrated strategic merit
  - has demonstrated strategic merit but not site specific merit


The decision was unanimous

**REASONS FOR THE DECISION**

The Panel accepts the recommendation of the staff to resolve this anomalous provision in the current LEP to allow Home Occupations, Home Businesses and Home Industries to be made permissible uses thus allowing the State Exempt provisions to apply.

The PP should proceed to Gateway.

| PANEL MEMBERS  |   |
|--|---|
| <br>Alison McCabe | <br>Sue Francis |
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|  |  |
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| <br>Steven Layman |  |
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| <b>SCHEDULE 1</b> |   |                             |
|-------------------|---|-----------------------------|
| <b>1</b>          | <b>PANEL REF – LGA –<br/>DEPARTMENT REF - ADDRESS</b> | PP-2019/10                  |
| <b>2</b>          | <b>LEP TO BE AMENDED</b>                              | Wollongong LEP 2009         |
| <b>3</b>          | <b>PROPOSED INSTRUMENT</b>                            | n/a                         |
| <b>4</b>          | <b>MATERIAL CONSIDERED BY<br/>THE PANEL</b>           | Material in Planning report |