

ITEM 3

POST EXHIBITION - DRAFT PLANNING PROPOSAL HOME EMPLOYMENT USES (PP-2019/10)

On 25 May 2020, Council resolved to prepare a draft Planning Proposal 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 2009 (LEP). The draft Planning Proposal was exhibited between 9 December 2020 and 1 February 2021.

The purpose of this report is to provide feedback on the public exhibition process and make recommendations relating to finalisation of the Planning Proposal.

## RECOMMENDATION

- 1 The draft Planning Proposal to resolve anomalies in the permissibility of home employment uses be progressed by finalising the Planning Proposal that seeks to amend the Wollongong Local Environmental Plan 2009 to:
  - a Include home occupations as permitted without consent in the land use tables for the R3 Medium Density Residential, R4 High Density Residential, B2 Local Centre, B3 Commercial Core, B4 Mixed Use and B6 Enterprise Corridor zones.
  - b Include home businesses as permitted with consent in the land use tables for the RU2 Rural Landscape, RU4 Primary Production Small Lots, R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, R5 Large Lot Residential, E3 Environmental Management, E4 Environmental Living, B2 Local Centre, B3 Commercial Core, B4 Mixed Use and B6 Enterprise Corridor zones.
  - c Include home industries as permitted with consent in the land use tables for the RU2 Rural Landscape, RU4 Primary Production Small Lots, R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living 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>.
- 2 The final Planning Proposal be referred to the NSW Department of Planning, Industry and Environment for the making of arrangements for drafting to give effect to the final proposal.
- 3 Note that the General Manager will thereafter proceed to exercise his Plan Making delegations issued by the NSW Department of Planning, Industry and Environment under Section 3.36(2) of the Act in relation to the final proposal.

## REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

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

## ATTACHMENTS

There are no attachments for this report

## BACKGROUND

Home based enterprises are a business or commercial use undertaken within a home. They are usually a low-key use that does not interfere with the amenity of the neighbourhood. In NSW there are three types of home-based enterprises -

- Home Occupation
- Home Business
- Home Industry

Council receives regular enquiries from residents wishing to establish home-based businesses. Additionally, as a consequence of the COVID-19 pandemic and need for alternate employment, Council received numerous requests around the establishment of home-based food businesses. Recognising that renting premises can sometimes be an impediment to starting a new enterprise, there is an opportunity for people to start and incubate a new business from home, with the aim of expanding into other premises as the business grows.

Home enterprises are a vital part of the NSW economy and it is important that a clear framework be established to clarify permissibility, simplify the process and make it easier for these operations to be set up and thrive.

Under the SEPP, a house may be used for a home business, home industry or home occupation as exempt development (i.e. no local Council development assessment or approval required if the SEPP definition and standards are satisfied), provided the use of the premises does not involve the manufacture of food products or skin penetration procedures. A home business or home industry must also comply with the maximum floor area requirements specified in clause 5.4 of the relevant local environmental plan and not interfere with the amenity of the neighbourhood.

Under the SEPP home businesses that involve the manufacture of food (e.g. preparing food for sale at markets in a domestic kitchen, home-based catering businesses) are regarded as Complying Development (a development that can be determined through fast track assessment by Council or a private certifier). Councils in NSW have the responsibility to ensure all food businesses are operating in accordance with the relevant standards for producing safe food where that food will be sold directly to the final customer. The NSW Food Authority regulates domestic kitchens that only sell food to other businesses, such as cafes, restaurants and supermarkets.

Home businesses that involve skin penetration require development consent from Council.

An inconsistency between the SEPP and Council's LEP (created by amendments to the SEPP) has resulted in confusion around the permissibility of all three home employment uses. The permissibility of land uses relating to home occupations, home businesses and home industries requires clarification as follows -

- Home occupation is enabled as Exempt Development under the SEPP. Home occupation is currently only listed as being permitted without consent in a number of rural and residential zones in the Wollongong Local Environmental Plan (WLEP) 2009.
- Home business is enabled as Exempt Development under the SEPP, excluding:
  - Home business, involving food production, is enabled as Complying Development under the SEPP if a home business is permitted in the WLEP. Home businesses are not permitted in any zone in the WLEP.
  - Home business involving skin penetration is not enabled under either Exempt or Complying Development under the SEPP. The only provision for approval is via development consent, however home businesses are not permitted in any zone in the LEP.
- Home industry is enabled as Exempt Development under the SEPP. Home industry is only otherwise permitted in zones as a form of light industry, namely in the B6 Enterprise Corridor, B7 Business Park and industrial zones.
- The Wollongong LEP currently does not limit the size of home occupations, however home business and home industry are limited to 30m<sup>2</sup> and 50m<sup>2</sup> respectively. As the SEPP does not limit the size of home occupations the size limit would only apply to a home occupation that is permitted under the LEP.

On 25 May 2020, Council resolved to prepare a draft Planning Proposal to resolve anomalies in the permissibility of home employment uses between the SEPP and LEP.

Council resolved that:

- 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.*

The draft Planning Proposal has the following intended outcomes -

- To broaden the zones in which home occupation is permitted without consent.
- To permit home business with consent in certain zones in the Wollongong LEP 2009 to enable Complying Development (for home business involving food production) or development consent (for home business involving skin penetration). Noting that some home business is enabled as exempt development under the SEPP.
- To permit home industry with consent in certain zones in the Wollongong LEP 2009 to enable development consent to be issued. Noting that some home industry is enabled as exempt development under the SEPP.
- To limit home occupations under the Wollongong LEP 2009 to a floor space of 30m<sup>2</sup> (the same as home businesses).

### **Definition amendment**

Separate to Council's Planning Proposal, the State government has also recognised that uncertainty exists in relation to the definition of "home business" and "home industry". In October 2020, the *Standard Instrument (Local Environmental Plans) Amendment (Definitions) Order 2020* and the *State Environmental Planning Policy Amendment (Definitions) 2020* were made to clarify the definition of "home business" and "home industry". The new definitions which have been included in all LEPs are:

**home business** means a business, whether or not involving the sale of items online, carried on in a dwelling, or in a building ancillary to a dwelling, by one (1) or more permanent residents of the dwelling and not involving the following—

- (a) *the employment of more than two (2) persons other than the residents,*
- (b) *interference with the amenity of the neighbourhood because 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 adjacent premises or from a public place, of unsightly matter,*

- (d) *the exhibition of signage, other than a business identification sign,*
- (e) *the retail sale of, or the exposure or offer for retail sale of, items, whether goods or materials, not produced at the dwelling or building, other than by online retailing,*

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

**home industry** means an industrial activity, whether or not involving the sale of items online, carried on in a dwelling, or in a building ancillary to a dwelling, by one (1) or more permanent residents of the dwelling and not involving the following—

- (a) *the employment of more than two (2) persons other than the residents,*
- (b) *interference with the amenity of the neighbourhood because 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 adjacent premises or from a public place, of unsightly matter,*
- (d) *the exhibition of signage, other than a business identification sign,*
- (e) *the retail sale of, or the exposure or offer for retail sale of, items, whether goods or materials, not produced at the dwelling or building, other than by online retailing,*

*but does not include bed and breakfast accommodation or sex services premises.*

The amendment removes the uncertainty of home business and home industries by allowing small scale online retail activities as part of home businesses and home industries, including online retail sales of items that were not produced on site. This definition update recognises the changing nature of retail activity undertaken in home enterprises.

## PROPOSAL

To address the permissibility anomalies, a Housekeeping amendment to the Wollongong LEP 2009 has been exhibited to -

- Include home occupations as permitted without consent in the land use tables for the R3 Medium Density Residential, R4 High Density Residential, B2 Local Centre, B3 Commercial Core, B4 Mixed Use and B6 Enterprise Corridor zones (noting the use is currently permitted in the RU1, RU2, RU4, R1, R2, R5, E3 and E4 zones).
- Include home businesses as permitted with consent in the land use tables for the RU2 Rural Landscape, RU4 Primary Production Small Lots, R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, R5 Large Lot Residential, E3 Environmental Management, E4 Environmental Living, B2 Local Centre, B3 Commercial Core, B4 Mixed Use and B6 Enterprise Corridor zones.
- Include home industries as permitted with consent in the land use tables for the RU2 Rural Landscape, RU4 Primary Production Small Lots, R1 General Residential, R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living zones; and
- 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

The draft Planning Proposal was exhibited between 9 December 2020 and 1 February 2021 following the Gateway determination being issued on 25 November 2020. The Gateway determination did not require consultation with public authorities/organisations.

The public exhibition was advertised through Council’s website and in the Illawarra Mercury newspaper. Copies of the suite of documents were available for viewing on Council’s website, in all Council libraries, and at Council’s Customer Service Centre in the Administration Building, Wollongong. All active Neighbourhood Forums were notified of the public exhibition by email.

The suite of documents included in the public exhibition was as follows -

- Council Report and Minutes (25 May 2020)
- Draft Planning Proposal
- Gateway determination (25 November 2020)
- Rezoning Review Record of Decision – Wollongong Local Planning Panel (2 April 2020)
- Home Based Enterprise Information Sheet

As a result of the public exhibition the website page received 54 views, with 22 documents downloaded. No formal submissions were received during the public exhibition. During preliminary consultation Neighbourhood Forum 5 resolved to advise Council of its support for the draft Planning Proposal on Home Employment Uses.

The draft Planning Proposal was referred to the Regulation and Enforcement and Development Assessment and Certification Divisions within Council. 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 enforcement issues relating to these types of uses. It would also resolve an inconsistency as these uses are permitted in other Councils.

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 and 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.

## PLANNING AND POLICY IMPACT

This report contributes to the delivery of Our Wollongong 2028 objective “Local employment opportunities are increased in a strong local economy” under the Community Goal 2 “We have an innovative and sustainable economy”.

Community Strategic Plan	Delivery Program 2018-2022	Operational Plan 2020-21
Strategy	4 Year Action	Operational Plan Actions
2.1.3 Cross sector initiatives are coordinated and implemented to increase and attract business investment, supporting small businesses and encouraging jobs growth	2.1.3.1 Support regional activities and partnerships that promote business investment and jobs growth –	2.1.3.1.2 Implement the Economic Development Strategy 2019-29.

## CONCLUSION

It is recommended that Council resolve to finalise the exhibited Planning Proposal to remove legislative anomalies and clarify the permissibility of home occupations, home businesses and home industry in certain zones.