

#. SUBJECT: DENILIKUIN LOCAL ENVIRONMENTAL PLAN 2013 – PLANNING PROPOSAL No 4

**FROM: DIRECTOR TECHNICAL SERVICES
MARK DALZELL**

RECOMMENDATION:

DIVISION

In accordance with the requirements of the Local Government Act, it is necessary for Council to call a division when voting on any resolution that involves making a planning decision.

That Council:

- a Prepare a planning proposal to amend the Deniliquin Local Environmental Plan 2013 in accordance with section 55(1) of the Environmental Planning and Assessment Act 1979 to permit with consent home industries in the R1 General Residential and B2 Local Centre zones.
- b Forward the planning proposal to the Minister for Planning and Infrastructure in accordance with section 56(1) of the Environmental Planning and Assessment Act 1979.
- c Request that the local planning making functions in relation to this planning proposal be delegated to Council.

BACKGROUND

Council recently received a complaint relating to the operation of a business from a residential area. This complaint was investigated and it was found that a business was operating in a residential area and under the Deniliquin Local Environmental Plan 2013 the use would be defined as a home industry. It became evident when determining the permissibility of the use in the R1 General Residential zone that home industries had inadvertently been prohibited in this zone and in the B2 Local Centre zone when LEP 2013 was initially drafted.

In order to correct this error a planning proposal must be prepared to amend the LEP 2013. Attachment 1 is the planning proposal.

COMMENT

Under the LEP 2013, a 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.'*

A home industry is considered to be a form of industry. It must be associated with a dwelling or a building ancillary to a dwelling and is limited to 50m² of floor area under clause 5.4(3) of the LEP 2013. The definition also limits the use in terms of employment, amenity, signs and retailing. Home industries should be permissible in the R1 General Residential and B2 Local Centre zones as it allows for small scale businesses to operate which may not wish or need to operate from an industrial premises.

When LEP 2013 was drafted home industries were identified in the land use matrix as being permissible with consent in the R1 General Residential and B2 Local Centre zones but this was not translated to the land use tables for these zones in the LEP 2013. This means that home industries are currently prohibited in these zones.

PLANNING PROPOSAL

The planning proposal has been prepared in accordance with 'A Guide to Preparing Planning Proposal' (NSW Planning Infrastructure, 2012) and is attached.

The planning proposal will amend the LEP 2013 by inserting 'home industries' into the land use tables under 'permitted with consent' for the R1 General Residential and B2 Local Centre zones.

PUBLIC PARTICIPATION AND GOVERNMENT AGENCY CONSULTATION

Council does not intend to exhibit the planning proposal or conduct any government agency consultation due to the minor nature of the proposal.

STRATEGIC IMPLICATIONS:

An amendment to LEP 2013 is required to achieve the objectives of the planning proposal.

BUDGETARY IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

LEGISLATIVE IMPLICATIONS:

To amend the LEP 2013 a planning proposal must be prepared in accordance with section 55 of the Environmental Planning and Assessment Act (the Act). This planning proposal is then forwarded to the Department of Planning in accordance with section 56(1) of the Act and a gateway determination is then issued in accordance with section 56(2).

Council will request that the plan making delegations functions be delegated to Council due to the minor nature of the planning proposal. A copy of the request for the delegation of plan making functions to Council is attached.

RISK ASSESSMENT:

What can happen?

Amend the LEP to permit home industries with consent in the R1 General Residential and B2 Local Centre zones.

How can it happen?

By preparing a planning proposal.

What are the consequences of the event happening?

Home industries will be permissible in the relevant zones.

What is the likelihood of the event happening?

High. This LEP amendment is considered to be minor.

Adequacy of existing controls?

Home industries are prohibited in the two zones and given that dwellings are permissible in these zones, then home industries should also be permissible.

Treatment options to mitigate the risk?

Prepare a planning proposal.

CONCLUSION:

Council should submit the planning proposal to the Department for a gateway determination.

ATTACHMENTS:

1. Planning Proposal – 7 pages
 2. Evaluation Criteria for the Delegation of Plan Making Functions – 4 pages
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