

12.2 Draft Amended Local Planning Policy 2 'Home-based Businesses'

Location	Town-wide
Reporting officer	Leigh Parker
Responsible officer	Robert Cruickshank
Voting requirement	Simple majority
Attachments	1. Existing LPP 2 'Home Occupation' [12.2.1 - 5 pages] 2. Draft Amended LPP 2 'Home-based Businesses' [12.2.2 - 8 pages]

Recommendation

That Council:

1. Consents to the advertising of draft amended Local Planning Policy 2 'Home-based Businesses' (as contained within Attachment 1) for public comment for a minimum period of 21 days in accordance with deemed clause 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. Requests the Chief Executive Officer to provide a further report to Council summarising and responding to any submission received during the public advertising period along with a recommendation on whether to adopt draft amended Local Planning Policy 2 'Home-based Businesses' with or without modifications.

Purpose

To consent to public advertising of draft amended Local Planning Policy 2 'Home-based Businesses' (LPP 2), which has been renamed and revised to reflect recent amendments to Town Planning Scheme No. 1 and State Government legislation.

In brief

- Existing LPP 2 'Home Occupation' has been revised and broadened in scope to ensure it is consistent with recently gazetted changes to the *Planning and Development (Local Planning Schemes) Regulations 2015* as well as recent amendments to the Town's local planning scheme.
- The revised scope, objectives and development standards seek to encourage small scale, unobtrusive home-based businesses that do not unduly impact the amenity of surrounding residents or properties by way of traffic, parking, noise or other potential impacts.
- It is recommended that draft amended LPP 2 be advertised for public comment.

Background

0. Existing LPP 2 'Home Occupation' was last amended in June 2019, following its review by the Urban Planning service area, as detailed in the Ordinary Council Meeting Minutes of 16 April and 18 June 2019.
1. Amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015* were gazetted in December 2020 with the stated goals of streamlining development assessment processes, reducing unnecessary 'red tape' and helping to support the State's economic recovery.
2. The amendments to the Regulations are broad in scope, affecting the administration and processing of development applications, including their, vetting, assessment and advertising processes, as well as significantly expanding the range of works and land uses exempt from the requirement for development approval.

3. The majority of changes to the Regulations commence operation as of 15 February 2021, which has left little time for local governments to adapt their administrative processes and amend their local planning frameworks, particularly given the timing of their introduction over the Christmas/New Year holiday period and as many of the changes require consent by formal Council resolution and/or public advertising to occur.
4. In respect to LPP 2, the amended Regulations have altered the circumstances in which development approval is required from the Town of Victoria Park to carry out a home-based business activity, depending on the zone in which it is located and the permissibility of the particular land use as listed within the Zoning Table of the Scheme.
5. Amendments 80 and 84 to the Town of Victoria Park Town Planning Scheme No. 1 (the Scheme) have resulted in the addition of new and amended land use definitions being inserted into the Scheme, including the uses of Home Store and Home Business, which are currently not addressed by LPP 2.
6. In view of the changes to both the State Planning Framework through amendments to the Regulations, and the local planning framework through amendments to the Scheme, the review and amendment of existing LPP 2 has been completed.
7. The review and amendment of LPP 2 reflects one of at least four local planning policies that require amendment or revocation as a result of the amended Regulations.

Strategic alignment

Civic Leadership	
Strategic outcome	Intended public value outcome or impact
CL02 - A community that is authentically engaged and informed in a timely manner.	Community consultation and public advertising occurring in accordance with State legislative requirements and LPP 37 'Community Consultation on Planning Proposals'.
CL10 - Legislative responsibilities are resourced and managed appropriately, diligently and equitably.	The review of the Town's LPPs to ensure they remain relevant, effective and consistent with current legislative requirements and the State Planning Framework.

Economic	
Strategic outcome	Intended public value outcome or impact
EC01 - A desirable place for commerce and tourism that supports equity, diverse local employment and entrepreneurship.	The development of LPPs that facilitate local employment and other economic outcomes while balancing amenity impacts and land use compatibility issues with surrounding residential uses.

Environment	
Strategic outcome	Intended public value outcome or impact
EN01 - Land use planning that puts people first in urban design, allows for different housing options for people with different housing need and enhances the Town's character.	The development of LPPs that facilitate diverse housing and employment outcomes, including working from home, while minimising the potential for adverse amenity impacts.

Engagement

Internal engagement	
Stakeholder	Comments
Place Planning	The draft revised policy has been distributed to Place Planning officers for internal review and comment. The reporting officer (who undertakes duties across both the Place Planning and Urban Planning program areas) does not expect any significant internal feedback given the administrative nature and minor scale of the changes proposed to the existing policy, which will have minimal (if any) additional impacts from a place perspective. Notwithstanding, the opportunity to consider and incorporate any further internal officer comments can be undertaken during the community consultation period.
Urban Planning	Urban Planning officers have reviewed the draft policy and provided feedback, which has informed the provisions of the draft revised policy. The opportunity to consider and incorporate any further internal officer comments can be undertaken during the community consultation period.

Legal compliance

[Planning and Development \(Local Planning Schemes\) Regulations 2015](#)

8. The adoption or amendment of a Local Planning Policy is to be undertaken in accordance with deemed clauses 4 and 5 of the *Planning and Development (Local Planning Scheme) Regulations 2015*, including:
 - Publication of a notice in accordance with deemed clause 87;
 - Community consultation for a period of not less than 21 days after the day on which the notice is first published; and
 - Consideration of public submissions and a Council resolution to proceed with the new or amended policy with or without modifications, or not to proceed.
9. As per deemed clauses 4(5) and 6(b), the adoption of a new or revised local planning policy, or the revocation of an existing local planning policy, takes effect upon publication of a notice in accordance with deemed clause 87.

Risk management consideration

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	Nil	Nil	Nil	Nil	Low	N/A
Environmental	Nil	Nil	Nil	Nil	Medium	N/A
Health and safety	Nil	Nil	Nil	Nil	Low	N/A
Infrastructure/	Nil	Nil	Nil	Nil	Medium	N/A

ICT systems/ utilities							
Legislative compliance and Reputation	Continued application of existing policy that does not provide adequate policy guidance in relation to all home-based business activities.	Low	Likely	Medium	Low	Consent to public advertising of amended LPP 2, which mitigates this risk.	
	Continued application of existing policy which contains inconsistent or outdated provisions that do not reflect the current Scheme or State legislative requirements.	Low	Likely	Medium	Low	Consent to public advertising of amended LPP 2, which mitigates this risk.	
Service delivery	Nil	Nil	Nil	Nil	Medium	N/A	

Financial implications

Current budget impact	Sufficient funds exist within the annual budget to address this recommendation.
Future budget impact	Not applicable.

Analysis

10. A review of existing LPP 2 'Home Occupation' (contained in Attachment 2) has been completed by Council officers. This review has considered:
- the effectiveness of the current policy including any issues of interpretation, application, gaps or deficiencies;
 - similar policies of other local governments;
 - alignment with relevant State legislation, policy and/or guidelines;
 - greater clarity in the objectives of the policy; and
 - improving the presentation and ease of use (for both the public and Council officers) of the policy.
11. The major issues identified during the review relate to:
- the policy's presently limited scope, which does not reflect the complete range of defined land uses for various home-based business types under the Scheme, as introduced through Amendments 80 and 83;
 - the superseded guidance in relation to the requirement for development approval of home-based business activities, which does not reflect the abovementioned Scheme amendments or recent changes to the Regulations; and
 - the consequential lack of any policy guidance or development standards in relation to Home Stores and Home Businesses, which of all the home-based business land uses, have the greatest

potential to result in adverse amenity impacts by way of noise, vehicular traffic, car parking and other impacts.

12. The review has also noted the prior review of LPP 2 in late 2018 and early 2019, which proposed the potential preparation of a separate, stand-alone policy for Home Stores (inserted into the Scheme by Amendment 80), given their potential for significantly greater impacts than those of a Home Occupation activity. However, since this time Amendment 84 has also been gazetted, resulting in the introduction of the additional land use of Home Business.
13. The review of the full range of land use definitions and their permissibilities, including where they are exempt from requiring development approval, has concluded that a single policy applying to all home-based business activities is the simplest and most straightforward approach, and that policy guidance specific to each use where required, can be adequately accommodated within a single policy.
14. In view of the above, existing LPP 2 'Home Occupation' has been amended as follows:
 - (a) Renaming of the policy to LPP 2 'Home-based Businesses' and broadening its scope to deal with all home-based business types under the scheme, including Home Office, Home Occupation, Home Business and Home Store, as well as those business activities which fall outside the Scheme definition of any of these land uses and must be considered as an Unlisted Use;
 - (b) Expanding the range of definitions to capture all of the abovementioned land uses, and outlining the specific development approval requirements for each (where necessary), taking into account the changes introduced by the amended Regulations;
 - (c) Inserting a general definition of 'home-based business' to enable the policy to set out provisions applicable to all home-based activities as well as those specific to defined land uses/sub-types;
 - (d) Inserting provisions related to business size/area, maximum employee number and dwelling type from which home-based business activities may occur (where development approval is required), which seek to ensure their compatibility with surrounding residential uses and minimise the potential for adverse amenity impacts; and
 - (e) Allowing for variations to certain development standards for Home Stores, where they are operating from a building (or portion of) that has historically been used as a delicatessen or similar retail use.
15. The amended policy provisions seek to promote home-based business activities, self-employment and contemporary hybridised work patterns, that have become increasingly attractive with improvements to technology as well as the significant work pattern alterations necessitated at various time during the continuing COVID-19 pandemic.
16. In doing so, the policy also seeks to ensure the amenity of surrounding properties, particularly within predominantly residential areas, in line with what are considered to be reasonable community expectations of what a home-based business may entail, noting that such activities must be carried out from an existing dwelling or property occupied primarily for residential purposes.
17. The proposed changes to LPP 2 are considered to appropriately address relevant amenity considerations that must be considered by the Town as part its determination of applications for development approval for home-based business activities. The amended policy will also serve as a single, comprehensive policy instrument that is reflective of the current local and State Government planning frameworks.
18. In view of the above, it is recommended that Council consent to public advertising of draft amended LPP 2 (as contained in Attachment 1). A further report will be presented to Council in the future following the conclusion of the public advertising period, reporting on any submissions received, and seeking a final decision from Council as to whether or not to adopt the amended policy (in its current form or in a further modified form).

Relevant documents

Not applicable.

COUNCIL RESOLUTION (34/2021):

Moved: Cr Claire Anderson

Seconded: Cr Vicki Potter

That Council:

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CARRIED BY EXCEPTION RESOLUTION (9 - 0)

For: Mayor Karen Vernon, Cr Claire Anderson, Cr Vicki Potter, Cr Ronhhda Potter, Cr Brian Oliver, Cr Luana Lisandro, Cr Wilfred Hendriks, Cr Bronwyn Ife, Cr Jesvin Karimi

Against: nil