



ASSESSMENT REPORT

Local Development Application No: LDA2022/0293

Assessment Officer: Sandra McCarry
Report to Manager Assessment: 7 December 2022
Consent Authority functions exercised by: Delegate

EXECUTIVE SUMMARY

Application details

Subject land:	8 Moss St West Ryde
Lot and DP Number:	Lot 44 DP 1257
Site Area and dimensions:	626m ² with frontage of 15.46m to Moss Street.
Proposal:	Home-based Chinese food business
Applicant:	Sukie Tan
Owner:	Meizhu Z As & Yu Z As
Date lodged:	29 September 2022
Date clock stopped:	13 October 2022
Date clock started again:	2 November 2022
No. of days on STC:	20 days
Value of Works:	\$0.00
Submissions:	One submission and one petition containing 6 signatures received objecting to the development. Trim Checked on: 7 December 2022.
Zoning:	R2: Low Density residential under RLEP 2014
DCP Non-Compliances:	<ul style="list-style-type: none">• Nil
Clause 4.6 RLEP 2014 Objection Required:	No
Councillor Representations	None
Report Recommendation:	Approval

REPORT

THE SITE

The site is legally described as Lot 44 in DP 1257 and is rectangular in shape with a site area of 626m². The site has a frontage to Moss Street with rear lane access to Annie Lane. Currently on site is a newly constructed two storey dwelling with a single storey granny flat at the rear of the site.

The surrounding streetscape consists of single or two storey dwellings varying in scale and architectural style.

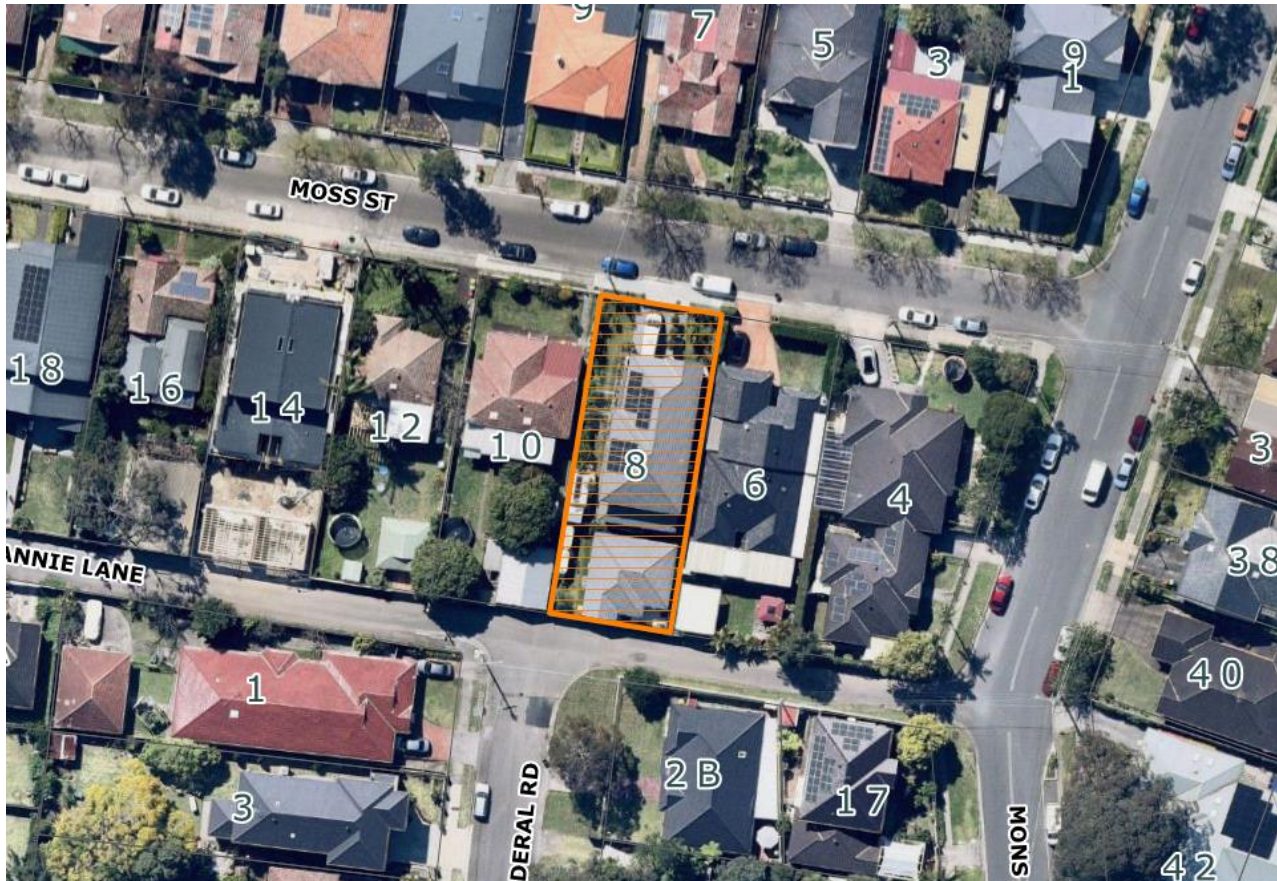


Figure 1 : Aerial photo of the subject site shown hatched.

THE PROPOSAL

The proposal is to commence a home industry business for preparation of Chinese takeaway. Details of the proposed development are as follows:

- Chinese style, food will be cooked and prepared on premise and be hand delivered to customers, who pays in advance for the service (up to 30 days in advance).
- Hours of operation: Monday to Friday, between the hours of 10am to 5pm.
- Maximum of three staff are involved in the business (one resides on the premise, one is the owner's son (who is a part owner of the property but no longer resides on the property) and the other does not reside on the property).
- A maximum of 20 meals will be prepared each day.

The proposal seeks consent to use the kitchen to operate a home business for preparation and cooking of Chinese style food for delivery to customers. The proposal will also maintain a separate stove and sink area (in the butler pantry) for the business use of the kitchen.

No signage is proposed.

HISTORY:

- Complying Development Certificate No CDC 2017/016 for construction of two storey dwelling and secondary dwelling issued 20 February 2017. Final Occupation Certificate issued on 12 March 2018.
- 29 September 2022: Subject application lodged.
- 13 October 2022 Council advised the applicant that the proposal is required to comply with Food Safety regulations. The premises is required to provide:

*Double bowl sink **OR** dishwasher/glass washer and single bowl (where all the food contact equipment will fit in the dishwasher/glasswasher) **OR** a double bowl sink and a dishwasher/glasswasher (where some equipment has to be washed/sanitized in the sink) **OR** a triple bowl sink (where rinsing is required before **OR** after sanitizing eg wash, rinse, sanitize procedure **OR** wash, rinse/sanitise, rinse procedure.*

- 1 November 2022 amended plans received and referred to Environmental Health.

Environmental Health: Council's Environmental Health Officer has provided the following comments:

The proposal is for a home-based food business with a secondary kitchen facility. The fit out has demonstrated compliance with AS4674:2004 and Food Standards Code 3.2.3.

The proposal includes a triple bowl sink where one basin is to be used as a hand wash basin. A dishwasher is also proposed as part of this application.

The proposed development's waste management plan includes utilising the residential household waste collection for the food business. The amount of waste predicted to be produced from the food business is expected to be minimal and therefore the residential household collection is expected to be sufficient for those purposes.

The proposal satisfies the requirements of Council's controls and can be supported, subject to standard and/or special conditions of consent.

STATUTORY PROVISIONS

SECTION 4.15 HEADS OF CONSIDERATION

(a) The provisions of

(i) Any environmental planning instrument:

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4
Remediation of Land

SEPP (Resilience and Hazards) 2021 (formerly SEPP No. 55 – Remediation of Land) aims to ‘provide a State-wide planning approach to the remediation of contaminated land’. Clause 4.6 of this SEPP requires Council to consider whether the site is contaminated, and if so whether it is suitable for the proposed development purpose.

The subject site has been historically used for residential purposes. This application is for a home industry within the existing kitchen with no excavation works proposed. As such, it is unlikely to contain any contamination and further investigation is not warranted in this instead.

Sydney Regional Environmental Plan (Biodiversity and Conservation) 2021 (formerly SREP (Sydney Harbour Catchment) 2005)

Given the nature of the project and the location of the site, there are no specific controls that directly apply to this proposal. The proposal does not impact on the stormwater management and water quality on the site.

Ryde Local Environmental Plan 2014 (RLEP 2014)

Clause 2.3 - Zone Objectives and Land Use Table

The property is zoned R2 Low Density. The proposed use is defined as a home industry

Home industry is defined as:

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 1 or more permanent residents of the dwelling and not involving the following—

- (a) the employment of more than 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.

Note—

See clause 5.4 for controls relating to the floor area used for a home industry.

Home industries are a type of **light industry**—see the definition of that term in this Dictionary.

light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following—

- (a) high technology industry,
- (b) home industry,
- (c) artisan food and drink industry,

(d) *creative industry*.

Note—

*Light industries are a type of **industry**—see the definition of that term in this Dictionary.*

Industrial activity means 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.

The proposal involves the production of food would fall within the above definition and the use, Home Industry, is a permissible form of development within the R2 Low Density Residential Zone.

The proposed business for the cooking and preparation of takeaway meals, involving three staff, is not considered to be at a scale that would cause adverse impact to the amenity of the neighbourhood in terms of noise, smell, traffic etc. The applicant has advised that all the food will be delivered and no pick up of food will be from the premises. A condition will be imposed stating no pick up of food is permitted. See **Condition 12**.

Aims and objectives for R2 Low Density Residential Zone:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a variety of housing types.*

The proposed home industry for preparation and cooking of takeaway meals is considered to satisfy the objectives of the R2 Residential Zone as it enables other land uses that provide services to meet the day to day needs of residents.

Clause 4.3 & 4.4 - Height of buildings & Floor Space Ratio

The proposal does not alter the height or increase/alter the existing floor space of the building and as such, these clause are not applicable to this application.

Clause 5.4 Controls relating to miscellaneous permissible uses

Clause 5.4(3) states the following:

Home industries *If development for the purposes of a home industry is permitted under this Plan, the carrying on of the home industry must not involve the use of more than 30 square metres of floor area.*

The existing kitchen to be used for the proposed home business has a total area of approximately 16.5m² which complies with Clause 5.4(3).

(ii) Any proposed instrument (Draft LEP, Planning Proposal)

There are no relevant Draft Environmental Planning Instruments for the subject site.

(iii) Any development control plan

The proposed development is within an existing building and will not alter the built form, accordingly there are no applicable development controls in the DCP.

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The assessment demonstrates that the proposal will not have any significant adverse impacts upon any adjoining properties or the environment in general due to the nature of the development. All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report. The development is considered satisfactory in terms of environmental impacts.

(c) The suitability of the site for the development

The site is zoned R2 Low Density Residential. The proposal is for new home industry for the cooking of delivered meals. The assessment has demonstrated the proposal is consistent with the statutory requirements and policy controls. The assessment demonstrates the proposal will not result in any adverse impacts upon adjoining properties or the streetscape. The proposal is an appropriate development and this has been demonstrated in this report.

A review of Council's map of Environmentally Sensitive Areas (see CM) identifies the site has no constraints in terms of urban bushland, landslip, bushfire, overland flow or any other particular hazards. The proposed development is considered suitable.

(d) Any submissions made in accordance with this Act or the regulations

In accordance with DCP 2014 Part 2.1 Notice of Development Applications, adjoining properties owners were notified and given until 19 October 2022 to make submissions. One submission and one petition containing 6 signatures (6 couples) were received objecting to the proposal, raising the following concerns:

- *Over the last 12 months a constant flow of vehicles 7 days a week that pull up at 8 Moss Street. The occupants of the vehicles never stay for long, they mostly enter the property and then shortly leave, we can only assume they have been running the business for some time.*

Planner's comment:

This is only an assumption and not a valid planning ground warranting refusal of the application.

- *The site plan shows a garage with the Granny Flat, there is no garage on the granny flat, the garage roller door has been removed, it's been bricked up where the roller door once was, and a new fence has been put across the rear of the property preventing access from Annie Lane. If the owners are prepared to alter*

their DA without Council approval, what are they prepared to alter once approved with this proposed LDA Chinese Food Business?

Planner's comment:

The issue of the removal of the garage for the secondary dwelling is a matter for Council's Building Compliance Team and the matter has been referred to them to investigate. CRM – 2852393 has been created by Building Compliance.

Approval for the home industry is a separate matter with the proposal complying with the definition of home industry with conditions imposed with regards to the operation of the home industry. Any non-compliance with the conditions will be a matter of investigation by Council's Compliance Team at the time of occurrence.

- *Our street is extremely busy with traffic and pedestrians, parking is also a massive issue. We are concerned about the extra traffic this business will generate, parking issues, noise and school children being hit by cars that double-park to access 8 Moss Street to pick up their food.*

Planner's comment:

In the Statement of Environmental Effects, it states:

- *Chinese style, postpartum food will be cooked and prepared on premise and be hand delivered to customers, who pay in advance for our service for a maximum of 30 days. Activity is proposed on Monday to Friday, between the hours of 10am to 5pm.*

The applicant has advised that there will be no pick up of food from 8 Moss St and all food is delivered before 5pm. Condition 12 has been imposed which requires that no pick up of food by customers is permitted.

Moss Street has unrestricted street parking and any unlawful parking/driving concerns are a law enforcement matter and if this a constant occurrence should be referred to them at time of occurrence.

- *We are concerned about the ongoing cooking fumes, waste management and rodents.*

Planner's comment:

Council's Environmental Health Officer has reviewed the proposal and has advised that the proposed use/fitout demonstrated compliance with AS4674:2004 and Food Standards Code 3.2.3.

The amount of waste predicted to be produced from the food business is expected to be minimal and therefore the residential household collection is expected to be sufficient for those purposes.

- *Are the properties on Moss Street zoned to run a Chinese Food Business in them? If this LDA is approved, how will council monitor the business to ensure they do as*

they say on the LDA? Because clearly as I've pointed out in point 2, things might change once they receive the approval.

Planner's comment:

The proposed use is defined as a home industry:

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 1 or more permanent residents of the dwelling and not involving the following—

- (a) the employment of more than 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 proposal involves the production of food would fall within the above definition and the use, Home Industry is a permissible form of development within the R2 Low Density Residential Zone.

The proposed business for the cooking and preparation of takeaway meals, involving three staff, is not considered to be at a scale that would cause adverse impact to the amenity of the neighbourhood in terms of noise, smell, traffic, etc.

- *Why are they applying for this LDA? If they are cooking in their own kitchen and proposed to drop off some food we don't need to know, in fact, we would never know. I'd say they have bigger plans for this business.*

Planner's comment:

Approval is required under Local Environmental Plan 2014 as the home industry involves the manufacture of food and requires approval from Council.

Council has imposed conditions 3, 9,10,11 & 12 restricting the size and operation of the business, any non-compliance with these conditions will be a matter of investigation by Council's Compliance Team.

The public interest

Having regard to the assessment contained in this report, it is considered that approval of the development is not contrary to the public interest.

Objects of EP&A Act

Section 1.3 of the EP & A Act contains the following relevant objects:

- to promote the orderly and economic use and development of land,
- to provide increased opportunity for community participation in environmental planning and assessment.

The proposal achieves the relevant objectives.

CONCLUSION

After consideration of the development against section 4.15 of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions, the site is considered to be suitable for the proposed development and is not contrary to the public interest. Therefore, it is recommended that the application be approved.

RECOMMENDATION:

That LDA No. LDA2022/0293 at 8 Moss St West Ryde be approved subject to the conditions in the attached draft consent.



Sandra McCarry
Assessment Officer



Holly Charalambous
Senior Coordinator Development
Assessment

Agreed. Application approved.



Sandra Bailey
Manager Development Assessment

Date of Consent: 14 December 2022