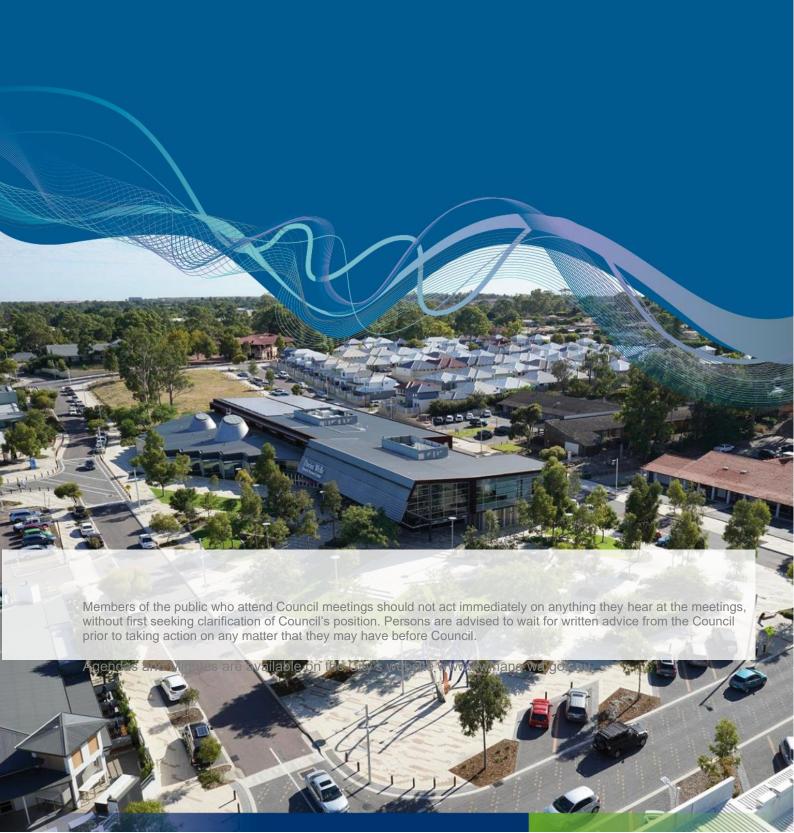


Ordinary Council Meeting

16 April 2025

Minutes



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18 REPORTS – BUILT INFRASTRUCTURE

18.1 AMENDMENT 165 TO CITY OF KWINANA LOCAL PLANNING SCHEME NO.2 - DELETION OF ANCILLARY ACCOMODATION FROM TABLE 1 - ZONING AND USE CLASSES

DECLARATION OF INTEREST

There were no declarations of interest declared.

SUMMARY

In early 2024, the State Government released a revised version of the Residential Design Codes (R-Codes). The changes were made as part of the State Government's latest planning reforms to support the ongoing delivery of affordable housing and improved design standards and sought to relax planning requirements in relation to ancillary dwellings.

An Ancillary Dwelling, commonly known as a granny flat, is a self-contained dwelling on the same site as an existing home. It may be attached to, integrated with, or detached from that home. An Ancillary Dwelling must be associated with either a Single House or a Grouped Dwelling.

The current City of Kwinana Local Planning Scheme No. 2 (LPS2) includes Ancillary Accommodation as a land use in Table 1 - Zoning and Use Classes. Although the intent is identical, the terminology used in LPS2 is slightly different to the modern terminology of Ancillary Dwelling. Table 1 requires development approval for all ancillary dwellings across various zones, including the Residential zone.

Treating Ancillary Accommodation as a separate land use is inconsistent with contemporary planning schemes and state planning policy. The LPS2 framework also results in a confusing framework for applicants and neighbours whereby the assessment process does not add meaningful value to an Ancillary Accommodation proposal, other than where building form and design matters require assessment.

Amendment 165 proposes to delete the 'Ancillary Accommodation' land use from Table 1 of LPS2 to align with current planning requirements and practice, and to facilitate better delivery of housing and housing diversity. Amendment 165 can be considered a 'basic' amendment as it will align LPS2 with state planning policy and planning reform. A 'basic' amendment does not require public advertising before determination by the Minister for Planning. In the event that the Western Australian Planning Commission decides that Amendment 165 is not a 'basic' amendment, but rather a 'standard' or 'complex' amendment, public advertising will be required.

Draft Local Planning Scheme No.4 (LPS4) was recently adopted by Council for the purposes of advertising. Consistent with the approach taken by modern local planning schemes across the metropolitan area, LPS4 does not include Ancillary Dwelling as a land use in the zoning and use classes table of the scheme. Considering it will likely be at least two years until LPS4 is gazetted, this basic amendment is proposed to better align with current planning requirements and practice in a timely manner.

This report recommends that Council adopts Amendment 165. Council's decision will be forwarded to the Western Australian Planning Commission, who will advise on the amendment before it is forwarded to the Minister for Planning for determination.

OFFICER RECOMMENDATION

That Council:

- 1. Adopts Amendment No. 165 to the City of Kwinana Local Planning Scheme No. 2 (LPS2) as shown in Attachment A in accordance with Section 75 of the *Planning and Development Act 2005*.
- 2. In accordance with Regulation 35(2) of the Planning and Development (Local Planning Schemes) Regulations 2015, determines that Amendment No. 165 to the City of Kwinana Local Planning Scheme No. 2 is a 'Basic Amendment' for the following reasons:
 - The amendment amends the scheme so that it is consistent with a State planning policy (R-Codes)
- 3. Authorises the Mayor and the Chief Executive Officer, in accordance with Section 9.49a of the *Local Government Act 1995*, to execute under Common Seal Amendment No. 165 to City of Kwinana Local Planning Scheme No. 2.
- 4. Notes that if the Western Australian Planning Commission determines that Amendment No. 165 is not a basic amendment, but rather a standard or complex amendment, public advertising of Amendment No. 165 will be undertaken.

VOTING REQUIREMENT

Simple majority

DISCUSSION

Current Local Planning Framework

Cl. 60 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations) states that a person must not commence or carry out any <u>works</u> on, or <u>use</u>, land in the Scheme area unless development approval has been obtained, or if development is not required under cl. 61 of the Regulations. For the purpose of this report, it is important to note that 'works' and 'use' are considered separately under the Regulations and LPS2.

The City's LPS2 includes the land use term 'Ancillary Accommodation' in Table 1 – Zoning and Use Classes, thereby treating 'Ancillary Accommodation' as a distinct land use. LPS2 does not define 'Ancillary Accommodation', though the City has applied the Residential Design Codes (R-Codes) definition for 'Ancillary Dwelling':

'Self-contained dwelling on the same site as a dwelling which may be attached to, integrated with or detached from the dwelling.'

Table 1 – Zoning and Use Classes either requires development approval or does not permit Ancillary Accommodation as a land use depending on the zone. Contemporary planning schemes do not include Ancillary Accommodation (or Dwelling) as a separate land use in the Zoning Table as, by definition, the use is ancillary to the predominant use of the land, be that either a Single House or Grouped Dwelling. The Department of Planning, Lands and Heritage's 'Consistent Local Planning Schemes Report', 2024, also adopts this approach in providing a template zoning table for local planning schemes within the metropolitan area.

Cl. 61(1) of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations) allows <u>works</u> for an Ancillary Dwelling without requiring development approval, where the works comply with the Deemed to Comply provisions of the R-Codes. Recent State Government reforms and changes to the planning framework have focused on streamlining requirements that relate to the 'works' component of Ancillary Dwelling to address housing shortage and diversity objectives. These reforms do not override the requirement under the City's LPS2 to obtain development approval for the <u>use</u> component, meaning that even if an Ancillary Dwelling complies with the Deemed to Comply requirements of the R-Codes, development approval is still required for the <u>use</u> component.

Due to LPS2's land use permissibility of Ancillary Accommodation, assessment of a development application requires advertising to adjoining neighbours for comment. However, as the use is ancillary to the predominant residential use of the site, and in practically all instances consistent with the objectives of the zone whereby residential uses are permitted, there is essentially no circumstance whereby an Ancillary Accommodation application could be validly refused on a land use basis alone. This creates a confusing situation for neighbours who have been asked for comment, and a process for applicants that is essentially administrative and one that does not add meaningful value to the development outcome.

Proposal - Amendment No. 165

Amendment No. 165 to LPS2 proposes to simply remove 'Ancillary Accommodation' from Table 1- Zoning and Use Classes, thereby removing the need to obtain development approval for the land use.

The effect of Amendment 165 will be that land approved for Single House or Grouped Dwelling use will be able to have an Ancillary Dwelling as well, providing the 'works' component of the Ancillary Dwelling complies by either:

- 1. Meeting the Deemed to Comply provisions of the R-Codes for the building size and design, thereby being exempt from the need for development approval; or
- 2. Obtaining development approval for the building.

Development approval for the use of land for Ancillary Dwelling will no longer be required.

There are four key reasons for removing *Ancillary Accommodation* as a land use in Table 1:

1. Lack of Definition in LPS2 or State Policy:

The term 'Ancillary Accommodation' is not defined in LPS2, any state planning policy, or regulation. The more relevant term is 'Ancillary Dwelling', as defined in the Residential Design Codes – Volume 1 (R-Codes). According to this definition, an Ancillary Dwelling is not a separate land use but rather a component of a Single House. Therefore, it should not be listed as a distinct land use in the LPS2 Zoning Table.

2. <u>Inconsistency with the Definition of 'Single House'</u>:

The R-Codes define Ancillary Dwelling as a dwelling associated with a Single House or Grouped Dwelling. The Single House and Grouped Dwelling land uses include associated structures such as sheds and patios, meaning an Ancillary Dwelling should not be treated as a standalone land use. Listing Ancillary Dwelling separately in the zoning table contradicts this principle and creates unnecessary and confusing duplication. This amendment is also consistent with the model scheme text and deemed provisions.

3. <u>Misalignment with State Government Planning Policy and Reforms:</u>

In April 2024, the State Government introduced changes to the R-Codes to promote greater housing diversity and affordability. Requiring a development application for the Ancillary Dwelling land use contradicts the intent of these reforms, which aim to streamline approval processes and reduce barriers to housing delivery. The state government released an

information sheet on Granny Flats that outlines the intent of the changes made in April 2024 which can be seen on the Department of Planning Lands and Heritage website.

4. Streamline planning process:

Listing Ancillary Dwelling in Table 1 means that planning approval is required across various zones, including the Residential zone. This adds unnecessary regulatory complexity and delays, making the approval process less efficient.

Since the planning reforms were announced in early 2024, several building companies and industry representatives have publicly criticized the City's processes regarding ancillary dwellings as unnecessary red tape, stating that they create delays and additional costs. These complaints are acknowledged and it is expected that this amendment to the scheme will also assist to reduce reputational damage while ensuring planning controls remain effective and appropriate.

Non-Residential Zones

The R-Codes only apply to Residential zoned land. Therefore, local planning policies, such as the Ancillary Dwelling Local Planning Policy and Special Rural Local Planning Policy, have been established to provide guidance on development, including ancillary dwellings. For example, these policies ensure that ancillary dwellings are located within designated building envelopes and complies with relevant bushfire requirements in Special Rural and Special Residential zones.

Additionally, the Ancillary Dwelling LPP allows a concession for ancillary dwellings to have a 100m² floor area, compared to the 70m² limit set under the R-Codes. Nonetheless, in relation to the use of the land, it should be emphasised that due to the definition of Ancillary Dwelling (being associated with a house), the permissibility of an Ancillary Dwelling in all zones is based on the permissibility of a Single House and/or Grouped Dwelling in Table 1. This means that where a house is not permitted, an Ancillary Dwelling cannot be considered. This is appropriate for industrial and service commercial zones where houses are generally not permitted.

Proposed Local Planning Scheme No. 4

Draft Local Planning Scheme No.4 (LPS4) was recently adopted by Council for the purposes of advertising. Consistent with the approach taken by all modern local planning schemes across the metropolitan area, LPS4 does not include Ancillary Dwelling as a land use in the zoning and use classes table of the scheme. Considering it will be at least two years until LPS4 is gazetted, Amendment 165 is proposed to address this issue in a more timely manner.

Amendment Type

As per Part 5, Division 1, Regulation 34 of the Regulations, there are three scheme amendment types: basic, standard and complex. In a local government resolution to prepare or adopt an amendment, Regulation 35(2) requires the local government to specify what type of amendment it is, as well as the explanation for forming that opinion.

Amendment 165 is classified as a basic amendment as outlined in Regulation 34 (Terms used). An explanation of the reason why this amendment is classified as a basic amendment is outlined below. Specific reference is made to item (c) as listed under the term *basic amendment* (Regulation 34).

- c) an amendment to the scheme so that it is consistent with a State planning policy.
 - The Residential Design Codes Volume 1 defines the term Ancillary Dwelling. Ancillary
 Dwelling should not be listed as its own, separately defined, land use in the land use
 table of a scheme. This approach is inconsistent with the definition of a Single House
 or Grouped Dwelling. The Single House or Grouped Dwelling land use encompasses
 Ancillary Dwelling, Sheds, patio's etc.

 State Government changes to the ancillary dwelling provisions in the Residential Design Codes (effective April 2024) sought to provide greater housing diversity and affordable housing options. By listing Ancillary Dwelling in the land use table and requiring a development application for the land use component, is inconsistent with the intent of the State Government planning reform to provide greater housing diversity, affordable housing options.

A basic amendment is not required to be publicly advertised. Should Council resolve to support the recommendation of this report, the amendment will be forwarded to the WAPC for consideration and gazettal. It should be noted that if the WAPC disagrees with the above justification, under the Regulations it may request the amendment be considered a standard amendment, which would require public advertising.

Conclusion

Amendment 165 is a necessary and straightforward update to LPS2, aligning it with current state planning policy, planning reform and terminology. By removing the outdated 'Ancillary Accommodation' land use, the amendment simplifies the approval process and supports the State Government's planning reforms for greater housing diversity and affordability. This change ensures consistency with modern planning practices while maintaining appropriate development controls across different zones.

A report for submission to the WAPC is included as **Attachment A** to this report.

STRATEGIC IMPLICATIONS

This proposal will support the achievement of the following outcome/s and objective/s detailed in the Strategic Community Plan and Corporate Business Plan.

Strategic Community Plan								
Outcome	Strategic Objective	Action in CBP (if applicable)	How does this proposal achieve the outcomes and strategic objectives?					
5 – Visionary leadership dedicated to acting for its community	5.3 – Provide a high standard of customer service with the community as priority	N/A – There is no specific action in the CBP, yet this report will help achieve the indicated outcomes and strategic objectives	This amendment will result in streamlining development processes for ancillary dwellings, enhancing customer service and meeting community expectations.					
1 – A naturally beautiful environment that is enhanced and protected	1.2 – Maintain and enhance our beautiful, natural environment through sustainable protection and conservation	1.2.6 – Prepare the Local Planning Scheme	This amendment is a precursor to the draft new local planning scheme.					

SOCIAL IMPLICATIONS

This proposal will support the achievement of the following social outcome/s, objective/s and strategic priorities detailed in the Social Strategy.

Social Strategy								
Social Outcome	Objective	Strategic Priority	How does this proposal achieve the social outcomes, objectives and strategic priorities?					
5 – Caring and Supported	5.0 – Challenges to wellbeing are supported by a caring community	5.7 – Plan for housing diversity and advocate for appropriate housing support	This amendment will promote housing diversity by streamlining the development process for ancillary dwellings.					

LEGAL/POLICY IMPLICATIONS

Amendment 165 seeks to align the local planning framework with the state planning framework which results in positive legal implications. The amendment will make the statutory approach clear for ancillary dwellings.

The City is in the process of reviewing existing local planning policies. The current Ancillary Dwelling Local Planning Policy will be reviewed as part of this process although it should be noted that Amendment 165 does not have any immediate implications on the Policy.

For reference, the Deemed to Comply provisions of the R-Codes for Ancillary Dwelling (5.1 C1) are as follows:

'Ancillary dwelling associated with a single house or grouped dwelling and on the same site where:

- i. C1i deleted by amendment dated 10 April 2024;
- ii. There is a maximum internal floor area of 70m²;
- iii. Parking is provided in accordance with clause 5.3.3. C3.1;
- iv. Ancillary dwelling is located behind the street setback line:
- v. C1v deleted by amendment dated 10 April 2024;
- vi. Ancillary dwelling does not preclude the single house or grouped dwelling from meeting the required minimum open space and outdoor living area; and
- vii. Ancillary dwelling complies with all other R-Code provisions, only as they apply to single houses and grouped dwellings, with the exception of clauses:
 - a. Part D, 1.1 Site area;
 - b. 5.2.3 Street surveillance (except where located on a lot with secondary street or right-of-way access); and
 - c. 5.3.1 Outdoor living areas.'

FINANCIAL/BUDGET IMPLICATIONS

Amendment 165 is classified as a basic amendment and therefore advertising costs are not applicable. Regardless, any publication costs required as part of this amendment will be met through the planning operating budget.

ASSET MANAGEMENT IMPLICATIONS

There are no asset management implications as a result of this report.

ENVIRONMENTAL/PUBLIC HEALTH IMPLICATIONS

There are no environmental or public health implications as a result of this report.

COMMUNITY ENGAGEMENT

Amendment 165 is a basic amendment and therefore does not require public advertising.

COUNCIL DECISION

629

MOVED DEPUTY MAYOR B WINMAR SECONDED CR D ACKER

That Council:

- 1. Adopts Amendment No. 165 to the City of Kwinana Local Planning Scheme No. 2 (LPS2) as shown in Attachment A in accordance with Section 75 of the *Planning and Development Act 2005.*
- 2. In accordance with Regulation 35(2) of the Planning and Development (Local Planning Schemes) Regulations 2015, determines that Amendment No. 165 to the City of Kwinana Local Planning Scheme No. 2 is a 'Basic Amendment' for the following reasons:
 - The amendment amends the scheme so that it is consistent with a State planning policy (R-Codes)
- 3. Authorises the Mayor and the Chief Executive Officer, in accordance with Section 9.49a of the *Local Government Act 1995*, to execute under Common Seal Amendment No. 165 to City of Kwinana Local Planning Scheme No. 2.
- 4. Notes that if the Western Australian Planning Commission determines that Amendment No. 165 is not a basic amendment, but rather a standard or complex amendment, public advertising of Amendment No. 165 will be undertaken.

CARRIED 9/0

ATTACHMENTS

A. Amendment Report - Amendment 165 J.



CITY OF KWINANA LOCAL PLANNING SCHEME NO. 2 AMENDMENT NO. 165

Deletion of Ancillary Accommodation land use from Table 1 - Zoning and Use Classes

Item 18.1 - Attachment A Page 57

Form 2A

Planning and Development Act 2005

RESOLUTION TO ADOPT AMENDMENT TO LOCAL PLANNING SCHEME

City of Kwinana Local Planning Scheme No.2

Amendment No. 165

Resolved that the local government pursuant to section 75 of the Planning and Development Act 2005, amend the above Local Planning Scheme by:

- 1. In clause 3.7, 'Uses Specified':
 - a. Delete Ancillary Accommodation from Table I Zoning and Use Classes

The Amendment is Basic under the provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* for the following reason:

1. The amendment amends the scheme so that it is consistent with a State planning

(Chief Executive Officer)

REPORT – AMENDMENT NO.165

PROPOSAL TO AMEND A LOCAL PLANNING SCHEME

1. Local Government: City of Kwinana

2. Description of Scheme: City of Kwinana Local Planning Scheme No.2

3. Type of Scheme: District Planning Scheme

4. Serial Number: Amendment No. 165

5. Proposal: Deletion of Ancillary Accommodation from Table 1 –

Zoning and Use Classes

6. Report by: City of Kwinana

1. Introduction

The purpose of this amendment is to amend the City of Kwinana Local Planning Scheme No. 2 to be consistent with the State planning policy (Residential Design Codes) with respect to ancillary dwellings by deleting Ancillary Accommodation land use from Table 1.

The amendment is required to ensure that ancillary dwellings which are deemed-to-comply are exempt from development approval, implementing successive State Government planning reforms for ancillary dwellings.

The following report provides further detail and background information on this change.

2. Background

An ancillary dwelling is a self-contained dwelling on the same site as a dwelling which may be attached to, integrated with or detached from the dwelling, as defined in the Residential Design Codes (R-Codes) Volume 1 (2024).

The State planning framework for ancillary dwellings is set out in Cl. 5.5.1 (Ancillary dwellings) of the R-Codes. The intended scale and relationship to the primary dwelling is described by Design Principle P1.1, which outlines an ancillary dwelling is of a small scale and designed to support people living independently or semi-dependently to the residents of a single house or grouped dwelling, sharing some site facilities and services. The design principles are implemented by deemed-to-comply provision C1, which amongst others, includes requirements for an ancillary dwelling to associated with a single house or grouped dwelling on the same site, with a maximum internal floor area of 70 square metres.

In April 2024, the State Government revised the R-Codes as part of broader planning reforms to support affordable housing and improved design standards. This builds on the reforms in 2013, which allowed ancillary dwellings to be occupied independently of the primary dwelling. The key change in the 2024 reforms was the relaxation of planning requirements for ancillary dwellings, removing the deemed-to-comply provisions relating to minimum site area and density requirements.

The intention of the reform, as outlined in the accompanying <u>press release</u> from Minister for Planning, Lands, Housing and Homelessness Hon. John Carey on 10 April 2024, is that '*R*-code compliant granny flats on residential lots of any size in Western Australia will not require planning approval, allowing homeowners to simply seek a building permit'.

This is further detailed in the Planning Reform Granny flats Info Sheet, whereby: 'An ancillary dwelling does not need planning approval if it meets all the relevant deemed-to-comply requirements including not exceeding 70m2 and meeting the setback requirements within the local planning scheme for your area'.

The exemptions from planning approval relevant to ancillary accommodation are contained in deemed cl.61(1) in Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (LPS Regulations). Cl.61(1) provides as follows:

- '61. Development for which development approval is not required
 - (1) Development approval is not required for works if
 - (a) the works are of a class specified in Column 1 of an item in the Table; and
 - (b) if conditions are set out in Column 2 of the Table opposite that item — all of those conditions are satisfied in relation to the works.'

Item 7 in the Table, in Column 1 – Works, in its relevant part is as follows –

'The erection or installation of, or alterations or additions to, any of the following on the same lot as a single house or a grouped dwelling –

(a) an ancillary dwelling;

The Column 2 conditions relating to Item 7 sets out the following conditions -

- '(a) The R-Codes apply to the works.
- (b) The works comply with the deemed-to-comply provisions of the R-Codes.
- (c) The works are not located in a heritage-protected place.'

As outlined above, the R-Codes do apply to ancillary accommodation in residential areas, with the deemed-to-comply provisions set out in Cl.5.5.1. Consequently, provided the ancillary dwelling complies with the R-Codes and is not located in a heritage-protected place, the <u>works</u> does not require development approval.

The City of Kwinana's Local Planning Scheme No.2 (LPS2) includes a corresponding term for ancillary dwellings, 'Ancillary Accommodation' as a use class in Table 1 – Zoning and Use Classes. Table 1 outlines development approval is required for the land use across various zones, including the Residential Zone where it is listed as an 'SA' use, where development application and public advertising is required for an ancillary dwelling.

As the exemption provisions of LPS Regulations cl.61(1) apply to works only and there is no relevant exemption for use, a proposal to commence an ancillary accommodation use on land within the Residential Zone of LPS2 requires development approval.

Consequently, despite the intended exemption from development approval communicated in the reforms, R-code compliant ancillary dwellings are not exempt from development approval in the City of Kwinana.

Since July 2024, 40 development applications for ancillary accommodation were approved with none refused. Given the use is consistent with the zone, there is limited conceivable circumstance where the use of ancillary accommodation in a Residential Zone could be refused. Consequently, requiring and processing of a development applications for R-code compliant ancillary accommodation is not influencing or adding value to a planning outcome and is inconsistent with the R-Codes.

This Amendment seeks to rectify this by deleting the land use term Ancillary Accommodation from LPS2, ensuring that deemed-to-comply Ancillary Dwellings are exempt from development approval as intended by the reforms.

The amendment is considered to fall under the basic requirements, under clause 34 of the *Planning and Development (Local Planning Schemes) Regulations 2015*, due to it amending the scheme so that it is consistent with a State planning policy (R-Codes).

3. Proposal

Amendment 165 seeks to delete 'Ancillary Accommodation' from Table 1 of LPS2.

The amendment amends the scheme so that it is consistent with the State planning policy (R-Codes) to ensure that deemed-to-comply ancillary dwellings are exempt from development approval. Currently, the inclusion of Ancillary Dwelling in Table 1 results in the requirement for development approval to establish an Ancillary Accommodation use, including those that are R-code compliant. This is inconsistent with the intention of the deemed-to-comply provisions of the R-Codes. Removing this land use will amend the scheme to be consistent with the operation of the R-Codes, simplify the approval process and deliver the greater exemptions as intended by the planning reforms.

The term 'Ancillary Accommodation' is not defined in LPS2 or any state planning policy. The more relevant term, 'Ancillary Dwelling', is defined in the R-Codes as a secondary dwelling associated with a Single House or Grouped Dwelling. Since an Ancillary Dwelling is not a separate land use but rather ancillary to dwelling, it is not necessary to be listed separately in the zoning table or included in the scheme.

The R-Codes apply only to residential land, while local planning policies provide additional guidance for ancillary dwellings in other zones (e.g., Special Rural and Special Residential). Removing Ancillary Accommodation from Table 1 ensures that ancillary dwellings remain permissible where single houses are allowed while maintaining appropriate development controls in non-residential zones.

3. Conclusion

The proposed amendment will amend Local Planning Scheme No. 2 to be consistent with State planning Policy (R-Codes). The amendment will implement the 2024 planning reforms to ensure that R-Code compliant (deemed-to-comply) ancillary dwellings are exempted from development approval, facilitating greater housing supply and diversity.