

# PROPOSAL TO INITIATE AN AMENDMENT TO THE PLANNING & DESIGN CODE

## Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment

By the Chief Executive (the Designated Entity)

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CHIEF EXECUTIVE, DEPARTMENT FOR TRADE AND  
INVESTMENT

Date: 5/12/2023

This Proposal to Initiate document together with conditions specified by the Minister forms the basis for the preparation of a proposed amendment to the Planning and Design Code for the purpose of section 73(2)(b) of the *Planning, Development and Infrastructure Act 2016*.



(Signature)

MINISTER FOR PLANNING

7/2/24

## Contents

<b>1. INTRODUCTION</b> .....	2
1.1. Designated Entity for Undertaking the Code Amendment.....	2
1.2. Rationale for the Code Amendment.....	3
<b>2. SCOPE OF THE CODE AMENDMENT</b> .....	4
2.1. Affected Area .....	4
2.2. Scope of Proposed Code Amendment .....	4
2.3. Additional Measures .....	6
<b>3. STRATEGIC ALIGNMENT</b> .....	6
3.1. Alignment with State Planning Policies.....	6
3.2. Alignment with Regional Plans.....	7
<b>4. INVESTIGATIONS AND ENGAGEMENT</b> .....	8
4.1. Investigations Already Undertaken.....	8
4.2. Further Investigations Proposed.....	10
4.3. Engagement Already Undertaken.....	10
4.4. Further Engagement Proposed.....	11
<b>5. CODE AMENDMENT PROCESS</b> .....	11
5.1. Engagement Plan.....	11
5.2. Engagement Report.....	12
5.3. Code Amendment Timetable.....	12

## ATTACHMENTS

Attachment A – Timetable for Code Amendment

## 1. INTRODUCTION

The Chief Executive of the Department for Trade and Investment (the Chief Executive) seeks to amend the Planning and Design Code (the Code) pursuant to section 73(2)(b) of the *Planning, Development and Infrastructure Act 2016* (the Act).

The Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment (the Code Amendment) proposes to review the definitions for 'ancillary accommodation' and 'student accommodation' to support the establishment of self-contained ancillary accommodation, and allow for self-contained student accommodation.

This 'Proposal to Initiate' details the scope, relevant strategic and policy considerations, nature of investigations to be carried out and information to be collected for the Ancillary Accommodation and Student Accommodation Definitions Review Code Amendment (the Code Amendment). It also details the timeframes to be followed in undertaking the Code Amendment.

The Chief Executive is the 'designated entity' responsible for conducting this Code Amendment process and is required to undertake consultation in accordance with the Community Engagement Charter and make final recommendations to the Minister for Planning (the Minister) prior to consideration whether to approve, amend or refuse the Code Amendment.

It is acknowledged that the Minister may specify conditions on approving this Proposal to Initiate, under section 73(5) of the Act. In the event of inconsistency between this Proposal to Initiate and any conditions specified by the Minister, the conditions will apply.

### 1.1. Designated Entity for Undertaking the Code Amendment

In accordance with section 73(2)(b) of the Act, the Chief Executive will be the Designated Entity responsible for undertaking the Code Amendment process. As a result:

- 1.1.1. The Chief Executive acknowledges responsibility for undertaking the Code Amendment in accordance with the requirements Act.
- 1.1.2. The Chief Executive intends to undertake the Code Amendment by:
  - a) Engaging with relevant State Government agencies and local governments, and
  - b) Utilising professional expertise of employees of the Department including:
    - professional planning staff
    - communications staff
    - mapping and spatial data expert staff

- ePlanning staff responsible for the management and operation of the Code.

## 1.2. Rationale for the Code Amendment

### Ancillary Accommodation

Under Part 7 – Land Use Definitions of the Code, ancillary accommodation:

*Means accommodation that:*

- a) is located on the same allotment as an existing dwelling; and*
- b) is not a self-contained residence; and*
- c) contains no more than 2 bedrooms or rooms or areas capable of being used as a bedroom; and*
- d) is subordinate to and does not have separate connection to utilities and services (such as electricity, gas, water, telecommunications, sewerage system, wastewater system or waste control system) to those servicing the existing dwelling.*

The requirement for ancillary accommodation to not be a self-contained residence was introduced by the recently approved Miscellaneous Technical Enhancement Code Amendment, which altered the previous definition for ancillary accommodation by:

- Inserting the words “is not a self-contained residence” at clause b), and
- Changing the wording of clause c) from:

*“is subordinate to and shares the same utilities of the existing dwelling”*

to

*“is subordinate to and does not have separate connection to utilities and services (such as electricity, gas, water, telecommunications, sewerage system, wastewater system or waste control system) to those servicing the existing dwelling”*

The change to explicitly state that ancillary accommodation is not self-contained, as well as to specify the nature of utilities which must be shared, was requested by some to clarify that ancillary accommodation is not an independent dwelling.

As the term ‘self-contained’ is not defined in the Code, it bears its ordinary meaning for the purposes of planning assessment. While the fundamental elements of what makes a residence ‘self-contained’ are not outlined under the Code, a residence is likely to be ‘self-contained’ (according to its ordinary meaning) if it has its own kitchen, bathroom and lavatory that is complete within itself and does not necessitate sharing. The absence of a laundry, by itself, is unlikely to be determinative of whether a residence is ‘self-contained’.

The changes made to the definition through the Miscellaneous Technical Enhancements Code Amendment reinforced the exclusion of ancillary accommodation from dwelling definition, which precluded it from being able to be

self-contained, and conversely if a self-contained ancillary accommodation proposal would require assessment under the Code as a form of dwelling.

Given the current housing crisis, as well as the need for a greater range of housing options to support both housing affordability and ageing in place, it is considered reasonable that the Code should support self-contained ancillary accommodation.

The Code Amendment will review the existing ancillary accommodation and student accommodation definition with a view to facilitate small, self-contained housing units on allotments that are shared with an existing dwelling.

Student Accommodation

Under Part 7 – Land Use Definitions of the Code, student accommodation:

*Means premises used to accommodate students in room or dormitory style accommodation that is not self-contained and that includes common facilities for shared use by student occupants such as:*

- a) shared cooking facilities and/or the provision of meals;*
- b) common rooms and recreation areas;*
- c) shared laundry facilities or a laundry service; or*
- d) shared bathroom facilities*

Recent student accommodation proposals have sought to incorporate small kitchenettes in individual dormitory units, meaning that these rooms would be considered self-contained, and therefore would no longer fall within the definition of student accommodation. It is considered reasonable for individual rooms to be self-contained, while ensuring that shared facilities, services, and common areas are still provided.

**2. SCOPE OF THE CODE AMENDMENT**

**2.1. Affected Area**

The whole of the State will be affected by the Code Amendment given it seeks to amend the land use definitions for ancillary accommodation and student accommodation contained within *Part 7 – Land Use Definitions*.

**2.2. Scope of Proposed Code Amendment**

<b>Current Policy</b>	<p><b>Ancillary Accommodation</b></p> <p>Ancillary accommodation is defined in Part 7 – Land Use Definitions of the Planning &amp; Design Code as follows:</p> <p><i>Means accommodation that:</i></p> <ul style="list-style-type: none"> <li><i>(a) is located on the same allotment as an existing dwelling; and</i></li> <li><i>(b) is not a self-contained residence; and</i></li> </ul>
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	<p>(c) contains no more than 2 bedrooms or rooms or areas capable of being used as a bedroom; and</p> <p>(d) is subordinate to and does not have separate connection to utilities and services (such as electricity, gas, water, telecommunications, sewerage system, wastewater system or waste control system) to those servicing the existing dwelling.</p> <p><b>Excludes:</b></p> <ul style="list-style-type: none"> <li>• Dwelling</li> <li>• Tourist Accommodation</li> </ul> <p><b>Student Accommodation</b></p> <p>Ancillary accommodation is defined in Part 7 – Land Use Definitions of the Planning &amp; Design Code as follows:</p> <p><i>Means premises used to accommodate students in room or dormitory style accommodation that is not self-contained and that includes common facilities for shared use by student occupants such as:</i></p> <ul style="list-style-type: none"> <li>(a) shared cooking facilities and/or the provision of meals;</li> <li>(b) common rooms and recreation areas;</li> <li>(c) shared laundry facilities or a laundry service; or</li> <li>(d) shared bathroom facilities.</li> </ul>
<p><b>Amendment Outline</b></p>	<p>The Code Amendment seeks to review the land use definitions for ancillary accommodation and student accommodation to enable self-contained variants of these development types. This review will consider related definitions for dwellings to ensure that changes to the definitions for ancillary accommodation and student accommodation do not impact upon the use of these definitions.</p>
<p><b>Intended Policy</b></p>	<p>Subject to investigations, the Code Amendment is anticipated to amend the definition for:</p> <ul style="list-style-type: none"> <li>• ancillary accommodation to make it clear that this can comprise ‘self-contained’ housing units on allotments shared with an existing dwelling</li> <li>• student accommodation to make it clear that individual dormitory units can be self-contained.</li> </ul>

### 2.3. Additional Measures

The Minister had previously requested the State Planning Commission (the Commission) amend the Code in the manner proposed by this Code Amendment, as well as to consider adjustments to policy to further support the development of self-contained ancillary accommodation, and consider streamlining approval pathways for ancillary accommodation in certain circumstances.

The Minister has since written to the Commission to advise he has requested immediate action in relation to the definition of ancillary accommodation, which is one of the purposes of this proposal to initiate. Given this, the Minister has requested that the Commission continue to pursue opportunities to review policies and assessment pathways related to ancillary accommodation outside of this review of definitions.

In addition, the Minister has also asked the Commission to investigate an update to Practice Direction 12 – Conditions to prohibit conditions on planning approvals restricting who may occupy ancillary accommodation.

The Minister has also indicated he will consider progressing amendments to the *Planning, Development and Infrastructure (General) Regulations 2017* to:

- clarify that existing conditions restricting the occupancy of ancillary accommodation no longer need to be complied with; and
- ensure that Build-to-Rent housing is required to contribute the Planning and Development Fund as is required for other residential development.

These additional measures to be undertaken by the Commission will complement amendments to the Code proposed by this Code Amendment.

It is not anticipated that this Amendment will seek to alter other policies related to Ancillary Accommodation or Student Accommodation.

## 3. STRATEGIC ALIGNMENT

Code Amendments occur within a state, regional and local strategic setting, which includes:

- State Planning Policies (SPPs)
- Regional Plans
- Other relevant strategic documents.

### 3.1. Alignment with State Planning Policies

The State Planning Policies (SPPs) set out the State's overarching goals and requirements for the planning system. Under section 66(3)(f) of the Act, the Code must comply with any principle prescribed by a SPP.

The proposed Code Amendment will be aligned with and seek to implement the following SPPs:

State Planning Policy (SPP)	Code Amendment Alignment with SPPs
<p><b>SPP 6: Housing Supply and Diversity</b></p> <p>To promote the development of a well-serviced and sustainable housing and land choices where and when required.</p>	
<p><b>SPP 6: Housing Supply and Diversity</b></p> <p>6.1 A well-designed, diverse and affordable housing supply that responds to population growth and projections and the evolving demographic, social, cultural and lifestyle needs of our current and future communities.</p> <p>6.3 Develop healthy neighbourhoods that include diverse housing options; enable access to local shops, community facilities and infrastructure; promote active travel and public transport use; and provide quality open space, recreation and sporting facilities.</p> <p>6.6 A diverse range of housing types within residential areas that provide choice for different household types, life stages and lifestyle choices.</p>	<p>This Code Amendment seeks to facilitate the development of different forms of ancillary accommodation, including those which support housing affordability and ageing in place, in addition to a wider range of student accommodation typologies. The Code Amendment seeks to provide greater opportunities for smaller housing options and student accommodation which take advantage of the locational advantages offered by established areas.</p>

### 3.2. Alignment with Regional Plans

Directions set out in Regional Plans provide a long-term vision and set out spatial patterns for future development in a region. This includes consideration of land use integration, transport infrastructure and the public realm.

*The 30-Year Plan for Greater Adelaide (2017 Update)* volume of the Planning Strategy (which has transitioned to a Regional Plan under the Act) is relevant to this Code Amendment.



Regional Plan Identified Priorities or Targets	Code Amendment Alignment with Regional Plan
<p><i>30-Year Plan for Greater Adelaide (2017 Update)</i></p> <p><b>Policy Theme: Adelaide City Centre</b></p> <p>P.21 Increase the amount and diversity of residential accommodation in the city to support a variety of household types for a wide range of age and income groups, including students, professionals and the ageing.</p> <p><b>Policy Theme: Housing mix, affordability and competitiveness</b></p> <p>P.37 Facilitate a diverse range of housing types and tenures (including affordable housing) through increased policy flexibility in residential and mixed-use areas, including:</p> <ul style="list-style-type: none"> <li>○ Ancillary dwellings such as granny flats, laneway and mews housing</li> <li>○ Dependent accommodation such as nursing homes</li> <li>○ Assisted living accommodation</li> <li>○ Aged-specific accommodation such as retirement villages</li> <li>○ Small lot housing types.</li> </ul> <p>P.38 Explore the evolution of existing housing in local heritage areas to provide ancillary residences that encourage ageing in place and enable the release of equity to owners whilst protecting heritage values.</p> <p>P.39 Promote universal and adaptable housing principles in new housing stock to support changing needs over a lifetime, including the needs of those who are less mobile.</p>	<p>The Code Amendment will support the development of small self-contained ancillary accommodation units, promoting greater opportunities for small accommodation units and more diverse and affordable housing options and ageing in place, as well as supporting a wider range of student accommodation.</p>

## 4. INVESTIGATIONS AND ENGAGEMENT

### 4.1. Investigations Already Undertaken

The table below identifies what investigations have already been undertaken in support of the proposed Code Amendment.

Investigation Undertaken	Summary of Scope of Investigations	Summary of Outcome of Recommendations
Miscellaneous Technical Enhancement Code Amendment (June 2023)	Preliminary consideration and review of the land use definition for ancillary accommodation.	Mixed feedback was received regarding changes to the land use definition for ancillary accommodation. Whilst there was support for providing additional clarification of this definition, concerns were raised that this amendment could potentially limit certain types of ancillary accommodation where a separate utility connection could be beneficial. Some feedback also sought further clarity regarding the term 'self-contained'.
Review policy from interstate jurisdictions	Desktop review of recent reforms to ancillary accommodation policies by other states.	<p><i>Ancillary Accommodation:</i> A review of interstate jurisdictions has confirmed:</p> <ul style="list-style-type: none"> <li>• Several states have removed requirements for ancillary accommodation to be occupied by immediate family</li> <li>• NSW and Victoria have made ancillary accommodation under 60m<sup>2</sup> in floor area exempt development</li> <li>• WA now allows ancillary accommodation in all residential type zones and has increased the maximum floor area from 60m<sup>2</sup> to 70m<sup>2</sup></li> <li>• NSW defines 'secondary dwelling' (i.e., granny flats) as being self-contained: <b><i>secondary dwelling means a self-contained dwelling that:</i></b> <i>(a) is established in conjunction with another dwelling (the principal dwelling), and</i> <i>(b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal</i></li> </ul>

Investigation Undertaken	Summary of Scope of Investigations	Summary of Outcome of Recommendations
		<p><i>dwelling, and (c) is located within, or is attached to, or is separate from, the principal dwelling.</i></p> <p><i>Student Accommodation:</i></p> <p>A review of interstate jurisdictions has confirmed:</p> <ul style="list-style-type: none"> <li>• VIC: The Melbourne Planning Scheme – Student Housing Policy does not apply to self-contained units.</li> <li>• WA: The City of South Perth Town Planning Scheme No.6, Amendment 60, specifies that purpose built student accommodation may include “Self-contained units with all amenities except laundry facilities”</li> </ul>

#### 4.2. Further Investigations Proposed

In order to ensure that the amendment will not impact upon other land use definitions, further investigations will consider how proposed changes to the definitions for ancillary accommodation and student accommodation will interact with the following definitions:

- Dwelling
- Detached Dwelling
- Group Dwelling
- Residential Flat Building

#### 4.3. Engagement Already Undertaken

To date, no public engagement / consultation has been undertaken in relation to this Code Amendment. However, consultation was undertaken through the Miscellaneous Technical Enhancements Code Amendment which contained amendments to the Ancillary Accommodation definition. Since that time, informal preliminary consultation has been undertaken primarily with local government planning practitioners regarding the operation of the definition. Removal of the requirement for ancillary

accommodation to not be self-contained from the existing land use definition was broached during the Planning Policy Forum (a bi-monthly planning practitioner forum held by the Planning and Land Use Services division of the Department for Trade and Investment) on 18 August 2023, with some support expressed for this potential change.

#### 4.4. Further Engagement Proposed

In addition to the preliminary engagement already undertaken and identified above, the table below outlines the additional engagement proposed to be undertaken to support the Code Amendment.

Further Engagement Proposed	Explanation of how the further engagement propose to address an identified issue or question
Community engagement	Broad community engagement to provide an opportunity for any interested community members to comment on the proposed outcomes of the Code Amendment.
Consultation with any person or body specified by the Commission under section 73(6)(e) of the Act.	The Engagement Plan will outline the specific method and nature of engagement.
Present changes to Local Government Assessment Managers Forum	Draft policy and procedures to be presented to the Local Government Assessment Managers Forum for feedback, used to inform proposed amendments to the Code and associated instruments

## 5. CODE AMENDMENT PROCESS

### 5.1. Engagement Plan

The Code Amendment process will occur in accordance with the Community Engagement Charter and *Practice Direction 2 – Consultation on the Preparation or Amendment of a Designated Instrument*.

The Designated Entity will prepare an Engagement Plan prior to the commencement of engagement on the proposed Code Amendment. The Engagement Plan will include the following mandatory consultation requirement:

- Given the proposal is relevant to councils, the Local Government Association must be notified in writing and consulted.

In addition to engaging with the Local Government Association, the Designated Entity will directly notify and consult with the following key stakeholders:

- Housing Industry Association
- Master Builders Association

- Planning Institute of Australia
- Property Council of Australia
- Urban Development Institute of Australia
- South Australian Council of Social Service
- Shelter SA.

It is anticipated Community Engagement on this Code Amendment will be undertaken in the first quarter of 2024 for a period of 4 weeks.

Along with directly notifying the above listed persons/groups, the Code Amendment will be published on the Plan SA webpage to invite submissions. Consultation will also be promoted by:

- An article within the Planning Ahead e-newsletter
- A piece in a Monthly Policy Forum with Planning Professionals (Council Code policy group and Accredited Professionals) and Agency Reference Group Forum.

## **5.2. Engagement Report**

Once engagement on the Code Amendment is complete, the Designated Entity will prepare an Engagement Report under section 73(7) of the Act.

The Designated Entity must ensure that the Minister is furnished with a copy of the Engagement Report and published on the SA Planning Portal. This will occur in accordance with Practice Direction 2.

The Engagement Plan and the Engagement Report may also be considered by the State Planning Commission during the final stages of the Code Amendment process if the Minister is of the opinion that the matter is significant. The Commission will provide a report to the Environment, Resources and Development Committee of Parliament under section 74(3) of the Act. The Commission's report will provide information about the reason for the Code Amendment, the consultation undertaken on the Code Amendment and any other information considered relevant by the Commission.

## **5.3. Code Amendment Timetable**

The Code Amendment is intended to be undertaken in line with the timeframe outlined **Attachment A**.

**ATTACHMENT A**  
**Timetable for Code Amendment**

Step	Responsibility	Timeframe
<b>Preparation of the Code Amendment</b>		
Engagement Plan prepared Investigations conducted; <b>Code Amendment Report</b> prepared Drafting instructions and draft mapping prepared	Chief Executive (as Designated Entity)	4-6 weeks
Preparation of Materials for Engagement	Chief Executive (as Designated Entity)	Informed by the Engagement Plan
<b>Engagement on the Code Amendment</b>		
<b>Code Amendment Report</b> released for public engagement in accordance with the Community Engagement Charter and the prepared <b>Community Engagement Plan</b>	Chief Executive (as Designated Entity)	To be specified in the Engagement Plan
<b>Consideration of Engagement and Finalisation of Amendments</b>		
Submissions summarised; Amended drafting instructions provided, <b>Engagement Report</b> prepared	Chief Executive (as Designated Entity)	4 weeks
Prepare report to the Commission	The Department	4 weeks
Consideration of Advice		
<b>Decision Process</b>		
Minister considers the <b>Code Amendment Report</b> and the <b>Engagement Report</b> and makes decision – decision published on the PlanSA Portal within 5 business days (policy is not live)	Minister	Unknown
<b>Implementing the Amendment (operation of the Code Amendment)</b>		
Implement the Code Amendment in the Planning and Design Code and the South Australian Property and Planning Atlas	The Department	2-4 weeks
<b>Parliamentary Scrutiny</b>		
Referral of adopted <b>Code Amendment</b> to Environment, Resources and Development Committee of Parliament – referred within 28 days of implementation		