Frequently Asked Questions

PlanSA

Ancillary accommodation, caravans and moveable housing

Like all states and territories in Australia, South Australia is facing a shortage of affordable housing for both rent and purchase. The state is also experiencing a rapid increase in single person households. As such, a diverse range of housing is required by the community.

Recent legislative and policy changes are making it easier to build smaller, secondary accommodation. But they still need planning and building approval to ensure occupants enjoy a safe place to live in harmony, considering proximity to neighbours.

We hope this document is helpful in unpacking the rules that apply to these forms of structures.

Ancillary accommodation

Q – What is ancillary accommodation?

A – Ancillary accommodation is accommodation that:

- is located on the same allotment as an existing dwelling; and
- contains no more than 2 bedrooms (or 2 rooms capable of being used as a bedroom); and
- is subordinate to and does not have separate connection to utilities and services (e.g. water, electricity etc) to those servicing the existing dwelling.

Under the proposed new definition, ancillary accommodation can be (but does not need to be) self-contained. Previously, ancillary accommodation was not permitted to be self-contained.

Q – What are some common terms used for ancillary accommodation?

A – Ancillary accommodation can be referred to with common terms such as:

- granny flats
- tiny homes
- modular, studios or demountables
- caravans or tiny homes on wheels.

Ancillary accommodation is always secondary to the dwelling on the same allotment.

If the allotment is vacant, the structure will be defined as a dwelling, as it is the primary or only structure on the allotment.

Q – Does the construction of ancillary accommodation require development approval?

A – The construction of ancillary accommodation requires development approval under the *Planning, Development and Infrastructure Act 2016* (the PDI Act). This includes planning and building approval.

Q – Why do I need both planning and building approval for ancillary accommodation?

A – Planning approval is required to ensure the ancillary accommodation is appropriately sited so it doesn't negatively impact on neighbours.

Building approval is required as it is considered a habitable structure under the National Construction Code. It is important that occupants live in a safe environment, connected to wastewater facilities, water and electricity. Minimum fire and structural provisions will apply under the Code.

Q – Who can live in ancillary accommodation?

A – There are no limitations or restrictions on who can occupy ancillary accommodation. *State Planning Commission Practice Direction 12 (Conditions) 2020* prohibits conditions being placed on approvals for ancillary accommodation that prevent it from being leased, rented or occupied.

The government also legislated that it is no longer an offence to fail to comply with an existing condition on an approval that prevents ancillary accommodation from being leased, rented or occupied.

Caravans and Tiny Homes on Wheels (THOWs)

There are different requirements for caravans and THOWs (or other forms of moveable housing).

Q – Does the use of a caravan require development approval?

A – The use of a caravan does not require development approval unless there is a change in the use of land (e.g. the caravan is being used on vacant and unused land) or the caravan is permanently fixed to the land. Parking a caravan on land used for residential purposes by a person who is an occupant of a dwelling situated on that land is **not** development. In these circumstances, development approval would not be required, provided the caravan or motorhome is "parked" on (and not fixed to) the land.

In determining whether a caravan has been fixed to land (rather than parked on the land), the following should be considered:

- whether the caravan can be readily moved
- whether there is intent to be able to move the caravan
- whether the caravan is connected to services (being water, sewage and electricity) and if so, how this connection is made
- the nature of any development immediately surrounding the caravan (e.g. construction of ramps to provide access).

A substantive extension to the caravan's normal towing footprint with hard building materials may mean the vehicle and accommodation is not considered a caravan.

You can park your private caravan on private land, but if someone moves into the caravan to live, planning and building approvals will likely be required to ensure the structure is suitable for habitation (building approval) and manages impacts to neighbours (planning approval).

Q – Am I able to live in a caravan/temporary accommodation on my property if my home has been damaged by a flood or fire?

A – Where a dwelling or part of a dwelling has been damaged by a flood or fire, a caravan or other temporary structure may be used as accommodation by the owner of the land provided it is used for a period not exceeding 2 years, or used until a new dwelling is able to be occupied in accordance with the PDI Act, whichever comes first.

Q – Does the use of a THOW or other moveable housing require development approval?

A – The use of a THOW (or any other form of moveable housing) would be considered development where there has been a change in the use of land or there has been building work.

A THOW or any other form of moveable housing is a moveable building or structure that is placed (and often relocated) on land. The PDI Act provides that the act of placing or relocating a moveable building or structure is development that requires approval.

Q – Do I need development approval each time I move moveable housing?

A – Each time moveable housing is placed or relocated on land, it would be considered development under the PDI Act (as it constitutes building work) and development approval would be required.

General

Q – What does it mean if development approval is required?

A – The PDI Act provides that no development may be undertaken unless the development is an approved development. A development application may be lodged at the relevant local council or online via the PlanSA portal.

Q – Is there a penalty for not obtaining development approval?

A – There is a maximum penalty of $120,000 for undertaking development without approval or undertaking development contrary to an approval that has been issued.

If you have undertaken development that requires approval but have not sought that approval, you should contact the relevant local council as soon as possible.

Q – What if the use of a caravan or moveable housing results in excessive noise or unsightly conditions?

A – If excessive noise or unsightly conditions arise because of the use of a caravan or moveable housing and it amounts to a 'local nuisance', action may be taken under the *Local Nuisance and Litter Control Act 2016* (the LNLC Act). This may not result in the removal of the caravan or moveable housing, but may address the local nuisance.

The LNLC Act does specify that certain noises are not local nuisances. These include noise principally consisting of music or voices, or both, resulting from an activity at domestic premises, as well as certain noise from vehicles.

Under the *Local Government Act 1999* (the LG Act), a council may also order a person to refrain from using a caravan or vehicle as a place of habitation if its use:

- presents a risk to the health or safety of an occupant; or
- causes a threat of damage to the environment; or
- detracts significantly from the amenity of the locality.

Such an order may be made under the LG Act to the owner or occupier of the land or a person apparently occupying the caravan or vehicle.

The EPA website lists contacts for various categories of noise.

Q – Will my local council charge additional rates under the *Local Government Act 1999* if I rent out an additional dwelling (ancillary accommodation, a caravan or moveable housing)?

A – Under the LG Act, council rates may be assessed against any piece or section of land subject to separate ownership or occupation (for example, an additional dwelling that is separately leased or licenced, as opposed to separately titled).

Accordingly, a council may charge rates on additional dwellings if it has determined to assess rates on the basis of occupation. However, such decisions must be made fairly and in accordance with principles and practices that apply on a uniform basis across the area of the council.

However, as rates are calculated on the basis of property valuations, even if a council does not charge rates based on occupation, the value of any additional dwellings may be included in the capital value of the land which may impact the rates imposed.

As individual councils make decisions about rates within their area, it is recommended to contact the council and/or refer to its rating policy to determine the specific rating arrangements that apply to an additional dwelling.

Examples of ancillary accommodation

Caravan

Caravan fixed to land

Demountable

Granny flat

Tiny house on wheels

Where to go for more information

If you are contemplating this form of structure, in the first instance please contact your local council.

You can also visit www.plan.sa.gov.au.