



Shire of Denmark
Local Planning Scheme No. 3

Amendment No. 150

Basic Amendment aligning provisions for Ancillary Accommodation in the Residential Zone with the Residential Design Codes

20 July 2021 - Attachment 9.1.2

Planning and Development Act 2005

**RESOLUTION TO ADOPT AMENDMENT
TO LOCAL PLANNING SCHEME**

*Local Planning Scheme No. 3
Amendment Number 150*

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

- Deleting Clause 5.3.7 from the text of Local Planning Scheme No. 3.

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

- The proposed amendment removes inconsistency in *Local Planning Scheme No. 3* with the deemed provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* per Part 5, Division 1, Clause 34:

In this Part –

basic amendment means any of the following amendments to a local planning scheme...

(c) an amendment to the scheme text to delete provisions that have been superseded by the deemed provisions in Schedule 2...

Dated this _____ day of _____ 20____

(Chief Executive Officer)

Shire of Denmark – Local Planning Scheme No. 3

Amendment No. 150

1.0 INTRODUCTION

The Shire of Denmark Local Planning Scheme No. 3 (the Scheme) currently includes a clause that varies the provisions of the Residential Design Codes (R-Codes) by imposing additional requirements on the development of ancillary accommodation. Since updates to the R-Codes in 2019 these requirements are now inconsistent with the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations).

This basic amendment has been prepared on the advice of the Department of Planning, Lands & Heritage to remove relevant clauses in the Scheme to achieve clarity and consistency with the R-Codes and the Regulations.

2.0 BACKGROUND

Location

This amendment will affect all land within the Residential Zone within the Scheme and potentially impact on land adjoining.

Infrastructure

Land included within the Residential Zone is generally well serviced by local roads, water and power infrastructure.

A number of residential areas within the Denmark townsite are not currently serviced by a reticulated sewerage service. The Denmark townsite and surrounds is almost entirely contained within a designated 'sewerage sensitive area' under the Government Sewerage Policy (2019).

As the development of ancillary accommodation relies on the services and infrastructure that support an existing residential dwelling the Shire considers there to be a very low risk that this amendment would result in impacts on water quality within the Wilson Inlet and tributaries.

3.0 LOCAL PLANNING CONTEXT

Planning and Development (Local Planning Schemes) Regulations 2015

Local Planning Scheme No. 3 incorporates the deemed provisions outlined in Schedule 2 of the *Regulations*. This includes Part 7, Clause 61 which outlines:

- (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.*

Table

	Column 1 Works	Column 2 Conditions
7.	<p><i>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 –</i></p> <ul style="list-style-type: none"> <i>(a) an ancillary dwelling;</i> <i>(b) an outbuilding;</i> <i>(c) an external fixture;</i> <i>(d) a boundary wall or fence;</i> <i>(e) a patio;</i> <i>(f) a pergola;</i> <i>(g) a verandah;</i> <i>(h) a deck;</i> <i>(i) a garage;</i> <i>(j) a carport.</i> 	<ul style="list-style-type: none"> <i>(a) The R-Codes apply to the works.</i> <i>(b) The works comply with the deemed-to-comply provisions of the R-Codes.</i> <i>(c) The works are not located in a heritage-protected place.</i>

Reference to the R-Codes is defined as ‘*the Residential Design Codes prepared by the Western Australian Planning Commission under section 26 of the Act, as amended from time to time*’.

State Planning Policy 7.3 – Residential Design Codes

The Residential Design Codes have been prepared and adopted by the WAPC as State Planning Policy 7.3.

The Codes identify site, building design, access and servicing standards for residential development, and when these standards are met a proposal is not required (through the Regulations) to seek planning approval. These ‘deemed to comply’ standards for ancillary accommodation are as follows:

5.5.1 Ancillary dwellings

C1 Ancillary dwelling associated with a single house and on the same lot where:

- i. the lot is not less than 450m² in area;*
- ii. there is a maximum plot ratio area of 70m²;*
- iii. parking provided in accordance with clause 5.3.3 C3.1; and*
- iv. complies with all other R-Code provisions, only as they apply to single houses, with the exception of clauses:*
 - a. 5.1.1 Site area*
 - b. 5.2.3 Street surveillance (except where location on a lot with secondary street or right-of-way access); and*
 - c. 5.3.1 Outdoor living areas.*

Where a proposal for ancillary accommodation meets with the ‘deemed to comply’ development standards of the R-Codes the deemed provisions direct that planning approval is not required. At

present the Shire's Scheme conflicts with this by providing additional development requirements and necessitating approval, largely consistent with previous versions of the R-Codes.

The Codes also provide performance-based criteria that proposed variations from the residential development standards can be assessed against. The 'design principles' of the R-Codes for ancillary accommodation are:

- P1 Ancillary dwelling for people who live either independently or semi-dependently to the residents of the single house, sharing some site facilities and services and without compromising the amenity of surrounding properties.*

Local Planning Strategy

The Shire's most recent Local Planning Strategy was adopted in 2011 and is currently under review. This review will consider a range of potential changes relating to housing diversity, density and improving the alignment of zoning and development control provisions.

This amendment proposes to align the Scheme's provisions for ancillary accommodation with the deemed provisions of the Regulations and the R-Codes. As a means to support the achievement of greater housing diversity this Amendment is consistent with the objectives of the Local Planning Strategy.

It is note that the Scheme does not currently provide direction for the development of ancillary accommodation in zones where the R-Codes do not apply. As such, the Shire is investigating the need for additional guidance to be included within the local planning framework. This may include the application of consistent provisions for ancillary accommodation within the Residential and Special Residential zones.

Local Planning Policies

The Shire currently has no planning policies that relate to the development or use of ancillary accommodation in the Residential Zone.

4.0 PROPOSAL

This amendment proposes to delete Clause 5.3.7 in its entirety to remove additional requirements for the development of ancillary accommodation that currently exist in the Scheme. This is proposed in acknowledgement that this is inconsistent with the deemed provisions of the Regulations where the Residential Design Codes apply (ie. in the Residential Zone).

Clause 5.3.7 currently reads as follows:

5.3.7 Ancillary Accommodation

- a) Where ancillary accommodation is added to an existing building, direct internal access shall be provided from the newly added part of the building to the original part of the building.*
- b) Where ancillary accommodation is not itself added to an existing building Council may request there be constructed between the added accommodation and the existing building a fully covered connection.*
- c) The total area of ancillary accommodation shall not exceed 60 square metres, exclusive of any fully covered connection unless approved by Council.*
- d) An applicant for planning consent for ancillary accommodation shall provide the Council with a completed statutory declaration in the form of Appendix 15, signed by the owner of the building and each relative, aged or dependant person of the owner for whose occupation the*

ancillary accommodation is intended for use by that relative, aged or dependent persons, as the case may be and for no other purpose.

In practice this Amendment will remove the requirements imposed by sub-clauses a), b) and d) while deferring to the R-Codes standard for size (70m²) in place of sub-clause c).

This amendment proposal is classified as a 'basic' amendment in accordance with the Regulations (Part 5, Division 1, Clause 34(c)) as its purpose is to delete provisions that have been superseded by the deemed provisions.

Planning Justification

This amendment:

- Seeks to remove ambiguity and promote consistency with the Regulations and R-Codes.
- Will reduce the requirement for planning approval for new proposals for ancillary accommodation within the Shire, where these are consistent with the R-Codes, thereby removing an unnecessary regulatory burden on the Shire's landowners.
- This amendment will help to promote diversity in housing type, contributing to the achievement of greater sustainability and housing affordability.

5.0 CONCLUSION

This amendment is proposed in order to align the Scheme with the Regulations and R-Codes as they relate to the development and use of ancillary accommodation in the Residential Zone.

COUNCIL ADOPTION

This Basic Amendment was adopted and is recommended for approval by resolution of the Council of the Shire of Denmark at the Ordinary Meeting of the Council held on the [day] day of [month], 20[year] and the Common Seal of the Shire of Denmark was hereunto affixed by the authority of a resolution of the Council in the presence of:

.....
MAYOR/SHIRE PRESIDENT

.....
CHIEF EXECUTIVE OFFICER

WAPC ENDORSEMENT (r.63)

.....
DELEGATED UNDER S.16 OF
THE P&D ACT 2005

DATE.....

APPROVAL GRANTED

.....
MINISTER FOR PLANNING

DATE.....