

Secondary Residence draft amendment – City of Clarence

1. In light of matters raised at the hearing, is it the policy intention that the draft amendment should operate to preclude the conversion of a primary residence and secondary residence to strata title? If so, does the current definition achieve this? If not, should additional words be considered? If so, the Commission would be assisted with the provision of any additional words.

The modification put forward by the SPO at (b)(i) of the modified definition is supported because it strengthens the intent for a secondary residence to be part of or associated with a single dwelling.

2. Should subparagraph (c) of the proposed 'secondary residence' definition be amended to include the specific requirement that 'private open space' should be shared with the single dwelling?

The draft definition is for a self-contained residence that is meant to be part of or associated with the single dwelling, where essentially it cannot exist without the single dwelling. A true self-contained residence would have its own laundry otherwise it is not technically self-contained. It is unclear why there is an option to share a laundry between the secondary residence and the single dwelling, and we suggest removing this option.

If the private open space and parking required for the single dwelling is not shared with the secondary residence, it creates doubt about whether the 'secondary residence' is even part of or associated with the single dwelling. It is suggested that the definition of 'single dwelling' be modified to plainly show that the secondary residence is part of or associated with the single dwelling. This would then remove any confusion about how to apply any applicable dwelling standards, including the parking requirement for a dwelling.

The inseparable link between a single dwelling and a secondary residence would be further strengthened by the removal of the individual use class of 'secondary residence' within the Residential use class.

3. At the hearing, there was a general consensus expressed by representors that the use of the word 'subordinate' in the definition of secondary residence was open to different interpretations which resulted in it not achieving the objective of clarifying the relationship between the primary and secondary residence. Will the definition operate effectively if the word 'subordinate' is removed? If so, would a definition of 'appurtenant' assist in achieving the policy intent if 'subordinate' was removed?

The removal of the word subordinate from the draft is supported and it is noted that the term 'secondary' implies it is of second rank, importance or value. A definition for appurtenant is supported.

4. At the hearing, it was suggested that a definition for 'appurtenant' should be added to the draft amendment, and for this term to be defined as 'attached to, near to, in proximity or within the curtilage'. Do the SPO support this suggestion? If so, should it be a general definition in the SPPs or a definition for the purposes of this draft amendment only?

A definition of appurtenant would be beneficial for the broader community given this term is not commonly used, nor is it categorised as being 'Plain English'. A clear definition of appurtenant would resolve issues currently experienced on larger lots, and the clarity provided would encourage the clustering of buildings to limit fragmentation of properties.

In addition to a definition for appurtenant, the modified draft definition of secondary residence put by the SPO to include (b)(i)(ii)(iii) is supported. However, to avoid confusion the term 'separated' should be used sparingly, and to give full effect to the term it should be replaced with 'detached' in (b)(ii) and (b)(iii).

Example –

b) is appurtenant to, and:

- (i) is not separated by a strata scheme to allow separate ownership independent of the single dwelling;
- (ii) can be located within, attached to or ~~separated~~ detached from, a single dwelling; and
- (iii) if ~~separated~~ detached from the single dwelling, is within or adjoins the development area of the single dwelling;

Notes:

The drafting of the preamble suggests that the single dwelling is to meet (a) through to (e). To remedy this, we suggest changing 'that' to 'and'.

Example –

...means an additional self-contained residence that is located on the same lot as a single dwelling ~~that~~ and:...

I note that there is a reference to 'studio dwelling' in the Residential section of Table C2.1 Parking Space Requirements, and am wondering if this is an error that could be easily corrected?