

One dwelling or two? The answer may lie in proposed reforms to the R-Codes

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3 min. read

Worthwhile read for: Town Planners, Local Governments, Property Developers, Environmental Consultants

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The meaning of 'dwelling' and land use characterisation has been a recurrent theme in proceedings involving the *Planning and Development Act 2005* (WA). The State Administrative Tribunal has again considered the issue in *Mivianjama Pty Ltd and Shire of Mundaring* [2022] WASAT 3 (*Mivianjama*).

Traditionally, in determining land use, one is to have close regard to the precise activities undertaken on the land and then determine the land use objectively, by question of fact and degree. Land use characterisation questions often arise in the context of residential development particularly in ancillary accommodation, single, grouped or multiple dwellings.

The land use characterisation question which arose in *Mivianjama* was whether the proposed development was for a 'residential building' and capable of approval or a 'grouped dwelling' and incapable of approval. Following an objective examination, the Tribunal found the units were not independent but relied on the use of communal facilities which more closely aligned with 'residential building' and therefore capable of approval.

In *Corp and Town of Cambridge* [2019] WASAT 65, the question was whether the proposed development was for a two storey 'single' house or a 'grouped' or 'multiple' dwelling. The plans were for a single house with two separate mirror image wings with a common laundry area and a centrally located garage. The case turned on the ability to occupy each wing without reliance on any aspect of the other wing. The Tribunal determined that as each wing could be independently occupied, the proposed development was not for a 'single' house.

In *Fix WA Pty Ltd & Anor v City of Armadale* [2019] WASC 356, the question was whether the installation of an internal door converted a three bed two bath villa into two separate dwellings, which had been separately rented to unrelated tenants. On appeal, the Court found that the effect of the works carried out created another separate and independent dwelling.

Fire and safety considerations are often overlooked when determining the type of development proposed or being undertaken. A review of the R-Codes is underway with the public comment period now closed on draft State Planning Policy 3.1 – Medium Density Code.

In its submission on the proposed amendments, the Western Australian Local Government Association (**WALGA**) asserted that building surveyors will increasingly be called upon to determine the type of development proposed and if, in their opinion, a dwelling could be rented to unrelated people, that the proposal must be considered as a Class 2 dwelling. This would then trigger the need to satisfy the fire and safety requirements specified in the NCC Vol 1. WALGA also identified a need for amendment to the R-Codes to alert designers that a development will be classified as a Class 2 dwelling if it can be considered to be a separate dwelling.

If adopted, the proposed changes to the R-Codes would provide clarity to developers and safety to occupants where there is no common use of facilities and the development proposed or its use, effectively amounts to a self-contained and independent dwelling.

For more information on these case updates, please contact our [Planning team](#).

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