

## **NEW PLANNING ARRANGEMENTS: DA DECISION MAKING**

### **In Summary:**

**The move to an ‘outcomes focussed’ planning system involves**

- **Major deregulation of residential development, with DAs assessed against broad outcome measures**
- **Mandatory rules for Inner South involving site coverage, density and number of stories**
- **Other current rules; privacy, solar access, heritage, setbacks, tree planting will only apply if developer wants them to**
- **These other rules now in Technical Specifications document; not part of the Territory Plan and can be changed by ACTPLA as it wishes**
- **Technical Specifications proposed to be used to determine if a DA can be ‘deemed to satisfy’ requirements.**

### **Proposed Mandatory provisions**

The key change in the move to an ‘outcomes focussed’ approach is to drop most current rules from the Territory Plan.

Part E1 Residential Zones Policy of the new Territory Plan sets out ‘Assessment Requirements’ ie, mandatory controls, for the various residential zones. These cover, for RZ1 and RZ2

- Site coverage
- Density and minimum block sizes for multi- unit housing
- Number of storeys
- No apartments in RZ1.

The Inner South District Policy (TP Part D4) also includes a requirement of a maximum height in residential areas in Deakin and some Forrest sections.

There are also restrictions applying to specific sections, generally relating to commercial areas.

Current mandatory rules are more expansive, covering, for example, plot ratios, density, number of stories, solar access of developments, tree canopy cover, referrals to the Conservator and the Heritage Council, water sensitive design, noise.

## **Technical Specifications**

Rules other than those retained as 'Assessment Requirements' have been removed to a document titled 'Technical Specifications, November 2022'. These cover

- Development and site controls (setbacks, private open space)
- Height, bulk and scale (incl solar access)
- Environment & heritage (incl tree planting)
- Amenity, safety and accessibility (incl privacy)
- Transport, parking and movement
- Services and utilities.

The Technical Specifications document does not form part of the Territory Plan, and, to be approved, a development does not have to be assessed against them. Rather

*'Technical specifications are used as a possible solution or to provide certainty for identified aspects of a development proposal. Technical specifications may also be used as a reference or benchmark for technical matters in the preparation and assessment of development (TS p2)*

*'Where a proposed development complies with a relevant provision in the technical specifications and the technical specification comprehensively addresses the outcome, further assessment regarding those specific provisions will not be required' (TP partD4)*

A problem with this approach is that the Technical Specifications document is not part of the Territory Plan. It can be amended by ACTPA without reference to the Assembly (or indeed anyone.)

This means that ACTPLA can change the basis by which a DA is deemed to comply, and will certainly be under pressure from industry to water down the specifications.

## **Decision Making**

Under the proposed Act, a decision on a DA must consider, inter alia, 'any applicable desired outcome in the territory plan.' The relevant context here includes

- within the Territory Plan, the desired policy outcomes set out in the Residential Zones Policy and District policies
- more indirectly, the 'principles of good planning' in the draft Planning Act, given the Territory Plan must promote these principles
- The planning strategy and district strategies; the Plan is to give effect to these
- The Urban Design and Housing Design Guides.

On the face of it, focussing on desired policy outcomes has some logic, by bringing broader considerations to bear. For example, for RZ1, the Policy Outcomes set out in the Residential Zones Policy comprise

The fundamental desired outcome for the RZ1 zone is to achieve and/or maintain low density residential neighbourhoods in suburban areas.

Other important desired outcomes to be achieved in the RZ1 zone:

1. Provide for a range of housing choices that meet changing household and community needs.
2. Limit the extent of change that can occur particularly with regard to the residential density and original pattern of subdivision.
3. Ensure development respects valued features of the neighbourhood and landscape character of the area and does not have unreasonable negative impacts on neighbouring properties.

DAs will also be considered against general 'assessment outcomes', for example being consistent with the Design Guide.

The problem is that all of these statements are qualitative, broad in nature and not measurable. Their interpretation when applied to decision-making on a specific DA therefore involves subjective judgement.

They are not a good basis for consistent decision-making.

By comparison, current arrangements require developments be consistent with the relevant code in the Territory Plan, and assessment against the code's rules and criteria. Assessment against a broader range of desired outcomes, rather than against the more

specific rules and criteria, will be more open to differing interpretations.

## **Implications**

For those DAs that do not comply with the Technical Specifications, the use of broader, qualitative outcome criteria gives ACTPLA enormous discretion to approve applications.

It may be hard to win an appeal against approvals, as this will involve assessing competing subjective judgements regarding these diffuse concepts, rather than more specific assessment of whether a rule has been complied with or not.

Over time, court rulings may provide some clarification, but court appeals are only likely from proponents appealing against rejection of a DA. It may become difficult for ACTPLA to reject a DA.

If nothing else, there is likely to be a period of greater uncertainty. It is also likely that, increasingly, approval will be given after behind closed doors negotiations between ACTPLA and the proponent, to smooth of any rough edges of proposals before they are formally submitted.

The industry can certainly see how they think things will pan out:

*Yes. First of all, we support the move from a rules-based to an outcome-based system. It is one of the major features of this planning system that we support.*

*There will need to be a value judgement made. That will require us to trust the chief planner's decision, at the end of the day, because ultimately it is that position making those value judgements. We all need to trust that decision, whether we agree with it or not.*

(Master Builders Association CEO, presentation to Assembly Committee)

Alternatively, from a community viewpoint:

*The draft Planning Bill 2022 will effectively push planning and development toward deregulation. This is closer to the planning and development industry self-regulating their adherence to requirements.*

*One of the key drivers for this new Bill is to reduce prescription and seek outcomes. While this sounds nice it's not very effective. It's almost impossible to check compliance against broad outcome statements.*

*If the rules in zones are clear, all parties know what is expected and there shouldn't be any confusion on what can be built where.*

*The modus operandi of developers is well known – push the planning envelope to its limit. Because there is a financial advantage in building higher, bulkier or getting a greater yield on a specific block. This is not motivated by doing best for the community. The new Bill will make success in this process even easier for developers.*

*(Ian Hubbard, Ainslie resident)*

## **Possible Action**

An examination of the Queensland outcome focussed system concluded:

*Firm up the rules*

*We might start by exploring whether all aspects deserve the same amount of flexibility. We treat the urban footprint boundary as a firm policy position. Why can't we allow other aspects of significance to local communities and local governments to have a greater level of certainty?*

*The potential win-win is that greater certainty will give communities confidence and support amore efficient assessment process.*

*This is not to advocate removing all flexibility. But we could firm up the negotiating position on certain matters. We should be clever enough to modify our approach to achieve a better balance. Perhaps we can identify these are things as specific requirements or minimum standards (rather than optional), and that they are to be met unless there are special circumstances or a higher level of performance can be achieved.*

*(Jennifer Roughan, Director Buckley Vann Planning + Development Mar 2016)*

In the ACT context, and assuming that the Government will not walk away from the outcomes focussed approach, measures which would reduce ACTPLA's discretion and provide better protection in certain areas could include

- Technical Specifications to form part of the Territory Plan, and changes be regarded a major amendment to the Plan.
- Adopt a general principle that, for development to be approved, it cannot reduce amenity of neighbours (for example, with this defined as covering privacy and solar access)
- Adopt additional 'Assessment Requirements', ie mandatory requirements
- Retain a number of the current Rules and Criteria (on a non-mandatory basis).