

NEW PLANNING SYSTEM
RZ1 AND RZ2-MULTI UNIT
DEVELOPMENTS

TIM FIELD

NEW PLANNING SYSTEM

MULTI UNITS RZ1, RZ2

- WHAT'S ALLOWED IN NEW PLANNING SYSTEM
- HOW ARE DEVELOPMENTS ASSESSED
- IMPLICATIONS
- MOVE TO OUTCOMES FOCUSSED PLANNING
 - HAVE GOT RID OF MOST OF THE CURRENT RULES

MULTI UNITS EZ1
ASSESSMENT REQUIREMENTS

- WHAT MULTI UNITS ALLOWED IN RZ1?
- RZ1-MAXIMUM OF TWO DWELLINGS
 - to Unit Title, block min size 800 Sq m
 - Max size of second dwelling of 120 Sq m (plus garage)
 - No block consolidation
- ALSO CONTINUED SECONDARY DWELLING POLICY
 - Secondary dwelling max size 90 Sq m,(plus garage) Block min Size 500 Sq m
 - No separate title
- No new apartments are permitted in RZ1.

MULTI UNITS RZ2

ASSESSMENT REQUIREMENTS

- WHAT MULTI UNITS ALLOWED IN RZ2?
- DEPENDS ON BLOCK SIZE
 - 700 sq m –one dwelling
 - one extra dwelling for every 250 sq m ‘or part thereof’; block consolidation allowed
- INCREASED ALLOWABLE UNITS IN RZ2
 - dumped sliding scale, included ‘or part thereof’
 - 1000 sq m block now 3, was 2; 1300 sq m 4, was 3
- ALSO RZ1,RZ2 SPECIFIC REQUIREMENTS IN DISTRICT STRATEGIES
 - Specific blocks, mainly commercial

MULTI-UNIT DEVELOPMENTS ASSESSMENT

- NEED A DEVELOPMENT APPLICATION
- ALL SUBJECT TO
 - s186 of Planning Act 2023
 - Principles of Good Planning in Act, Part C of Territory Plan
 - Policy Outcomes, Assessment Outcomes and Assessment Requirements in Residential Zones Policy (Part E Territory Plan), Subdivision Policy
 - District Strategy
 - Housing Guide, Residential Specifications

MULTI UNITS RZ1,RZ2
PLANNING ACT 2023

- **S186 :CONSIDERATIONS WHEN DECIDING DEVELOPMENT APPLICATIONS**
- In deciding a development application under section 185, the decision-maker must consider the following:
 - (a) any applicable desired outcomes in the territory plan;
 - (b) any applicable design guidance in a design guide;
 - (e) the suitability of the proposed development in the context of the site and the site surrounds, including the permissible uses for those;
 - (f) the probable impact of the proposed development, including the nature, extent and significance of probable environmental impacts;
 - (g) the interaction of the proposed development with any other adjoining or adjacent development proposals for which a development application has been submitted or development approval given;
 - (h) any representation about the development application received by the territory planning authority and not withdrawn;

RESIDENTIAL ZONES POLICY-ASSESSMENT OUTCOMES

- Comprehensive: Built Form and Building Design, Sustainability and Environment, Site and Land Use...
- ‘The primary assessment consideration for a development application is the assessment outcomes in the district, zone and other policies’
 - S186 ‘desired outcomes’
- **EXAMPLE: Sustainability and Environment**
 - 18. Sufficient planting area and canopy trees are provided, and roofed areas and hard surfaces limited, to reduce urban heat island effects, minimise stormwater run-off and maintain ecosystem services. This includes consideration of water sensitive urban design measures.
 - 19. Deep soil zones are provided on site to support healthy tree growth and provide adequate room for canopy trees.
- **MORE SPECIFIC THAN POLICY OUTCOMES, PLANNING PRINCIPLES**
 - But still qualitative, subjective, open to interpretation

SUPPORTING MATERIAL HOUSING DESIGN GUIDE

- Minister may prepare design guidance
 - Notifiable (but not disallowable) instrument
 - Supporting material: not part of Territory Plan. But delegated legislation
 - s186: must be considered by decision maker where a DA
 - Overall, the guides are critical in the design and assessment process' (TERR PLAN , PART A)
- QUALITATIVE, OPEN TO INTREPRETATION
 - Full of 'reasonable,' 'where possible', 'appropriate', 'consideration of' 'sufficient'
 - Not clear how would be applied in making a decision
 - Check list: 130 separate items! 'Tick and Flick'
- WHERE SPECIFIC, UNCLEAR LEGAL BASIS
 - Eg, . 'Incorporate as much tree canopy cover as possible and as a minimum compliant with zone planning specifications...'
 - Very uncertain that this is able to be enforced

SUPPORTING MATERIAL

RESIDENTIAL ZONES SPECIFICATIONS

- STATUS-Chief Planner may prepare specifications
 - Notifiable instrument: delegated legislation; not part of Territory Plan
 - Possible solution or to provide guidance for a development proposal.
- DETAILED,QUANTATIVE -LIKE PREVIOUS RULES AND CRITERIA
 - Example: 18. Sufficient planting area and canopy trees are provided...18.1 Planting area meets the following minimum area. To be included in planting area, the area must have a minimum dimension of 2.5m.
- But nothing in the Act says these have to be considered
 - not referred to in s186
 - A decision maker may reasonably consider them, but not a mandatory consideration, and application has to be judged on its merits

DA ASSESSMENT SUMMARY:

- The small number(5!) of Assessment Requirements are the only mandatory controls on residential development
- The detailed Residential Zones Specifications don't have to be considered
- The Housing Guide has to be considered , but mainly general, subjective
- Similarly, planning principles, assessment outcomes and policies all general, subjective

DA ASSESSMENT SUMMARY

- Given the statements that have to be considered are qualitative, broad in nature and not measurable:
 - Their interpretation involves subjective judgement.
 - They are not a basis for consistent decision-making
 - But decisions have to be based on these, including rejecting proposals
 - Assessment against a broad range of desired outcomes will be open to differing interpretations.
 - This gives ACTPLA enormous discretion to approve applications, and possibly limited power to reject them or impose conditions

MULTI UNITS ASSESSMENT IMPLICATIONS

- INCREASED ALLOWABLE DENSITY INCREASES FINANCIAL INCENTIVES TO MAXIMISE NUMBER OF DWELLINGS FOR GIVEN SIZE BLOCK
 - Generally proponents will want to build number of dwellings up to allowed maximums
 - increases need to provide driveways, turning circles, decks etc, rather than tree planting, solar access
 - with the development able to be justified by 'cherry picking' from vague outcome statements
- VERY FEW CONSTRAINTS (mandatory Assessment Requirements)
- CHALLENGING DECISION MAKING FRAMEWORK
 - hard for community to win an appeal against approvals, and hard for ACTPLA to win when reject an application
 - Without objective criteria-race to the bottom
- PROBLEM: EXPLANATIONS MISLEADING-OR SIMPLY UNTRUE
 - Requirements that apply to a dual occupancy including ...**boundary setbacks, private open space, planting area, tree canopy cover and car parking. These requirements are in place to minimise the impacts on neighbour blocks, particularly in relation to solar access and privacy, and to provide sufficient planting area.**
 - (EPSDD:FREQUENTLY ASKED QUESTIONS, ACT PLANNING SYSTEM, SEPT 2023, P26)
 - These items not a mandatory Assessment Requirement

MULTI UNITS RZ1, RZ2

CONCLUSIONS

- NEW ARRANGEMENTS WILL NOT ACHIEVE BROADER ENVIRONMENTAL AND QUALITY OUTCOMES
 - Financial incentives will prevail
 - If rejected, will appeal; good chance of winning given lack of objective criteria
 - tree canopy, privacy, solar access etc will become residual items
- WILL GENERATE CONFLICT
 - increased complexity; onus on adjoining blocks
 - inconsistent decision making
 - reduced trust, support for greater densities
 - So much for certainty
- IMPORTANT ISSUES NEED TO BE PROTECTED BY MANDATORY ASSESSMENT REQUIREMENTS
 - To avoid any doubt
 - living infrastructure, privacy, solar access
 - contrary to statements, not a requirement
 - basis already there in Residential Zones Specifications, existing codes
 - Not a challenge to outcome focussed planning
- NOT MANDATORY AT THE MOMENT AS NOT SEEN AS IMPORTANT