From: Julie Lewis [redacted]
Sent: Friday, 28 February 2020 6:12 PM
To: DPTI:Planning Reform Submissions
Cc: Justin Cucchiarelli
Subject: Draft Code Submission Phase 3 - terminology proposed in the Suburban Activity Centre Zone

Attention Jason Bailey – Team Leader – Planning and Design Code DPTI

Dear Jason,

I provide an extract from the draft Suburban Activity Centre Zone (I have not reviewed the entire Code to see if it's used in other zones) :

PO 1.3

Dwellings developed only in conjunction with non-residential uses to support business, entertainment and recreational activities

DTS 1.3

Dwellings are developed only in conjunction with non-residential uses and sited:

(a) at upper levels of buildings with non-residential uses located at ground level; or

(b) behind non-residential uses on the same allotment.

URPS' recent experience in resolving the classification of a mixed use development in a Neighbourhood Centre Zone revolved around the interpretation of ***"in conjunction with"***. This is not a common term in existing developments plans. Our experience with it is derived from its use in the Onkaparinga DP .

The outcome was that Council, the relevant authority, was not satisfied that a development comprising a few Residential Flat Buildings and a mixed use building (ground level non-residential and dwellings above) comprised residential *in conjunction with*" non-residential development. The applicant owned all the land comprising 3 allotments and the applicant could not sell any part of the approved development without council considering a land division (eg draft/community title). It was also the authority's view that amalgamation of the titles into one allotment prior to the determination of the land use / built form application was not sufficient to address "in conjunction with". The other council concern was that the mixed use building may never proceed, and only the RFB dwellings would be constructed, thus suggesting the original application should have been treated as non-complying.

The applicant proceeded to undertake all the tasks associated with a land division and community/strata details (that would be required at the completion of the development before any land/building could be sold etc) that Council requested to merely avoid Council treating the mixed use application under the non-complying classification. This was a significant time commitment and cost up front (in addition to land division consent application costs) with no guarantee that it was going to be recommended for Development Plan Consent.

In the absence of any available legal opinion or appeal decision in SA that Council could point to, legal advice to URPS on similar matters (but not the exact term "in conjunction with") is a follows:

S.42(2) of the Act states

2) Any such condition—

(a) is binding on, and enforceable against—

(i) the person by whom the development is undertaken; and

(ii) any person who acquires the benefit of the decision or the development; and

(iii) the owners and occupiers of the land on which the development is undertaken; and

(b) may continue to apply in relation to the development unless or until it is varied or revoked by the relevant authority in accordance with an application under this Division

Based on the above, demonstrating "*in conjunction with*" should have nothing to do with land division. If the proposal for a mixed use development is all within one application, then it is satisfactorily demonstrating "in conjunction with", because any future owner is still bound by the conditions in the event one or more divisions occurs later. Any such mixed use development has to be the subject of a land division at some point to enable security of tenure for individual tenancies and dwellings. If the development is constructed as proposed and approved, the division should not make an approved development 'become' non-complying at a later date.

It is recommended this term is either defined or explained in a practice direction, or preferably not used at all given its open to interpretation. The term does not provide sufficient certainty as to the intent.

Any use of the term to determine public notification or classification (in the table) in any zone is not appropriate because it can be interpreted differently from one authority to the next.

In my view DTS 1.3 above will not result in much variation in design, particularly for smaller sites within centres that may be appropriate for housing.

I also note the Neighbourhood Centre Zone in Onkaparinga currently has no height/storey limit. The corresponding draft Code zone applies a two storey limit and equivalent maximum height. This outcome is not supported and 'down-zones' the land affected (our client's land the subject of a current application for 2 and 3 storey development is 12-18 Gulfview Road, Christies Beach).

I would be happy to provide clarification of the above in required.

Regards,

Julie Lewis RPIA
Senior Associate
Monday-Thursday

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