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Mr Michael Lennon
Chair
State Planning Commission
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Dear Michael

Phase 3 Planning and Design Code (Round 2) – Deemed to satisfy policies

This submission is made on the second version of Phase 3 of the Planning and Design Code (**Code**) on behalf of a group of Accredited Professionals who act as private planning certifiers for deemed to satisfy developments for the purposes of Regulation 22 of the *Planning and Development (General) Regulations 2017*.

This submission is not an exhaustive survey of all deemed to satisfy (**DTS**) policies throughout Phase Three of the Code. It focusses on those DTS policies relevant to residential development and largely by reference to the Suburban Neighbourhood and City Living Zones.

Need for objective criteria

1. The DTS development concept is broadly intended to expedite the assessment pathway for kinds of development which are considered to be straightforward. It is important that the relevant DTS criteria be objectively based rather than of a subjective nature. This is because:
 - a. the assessment of a proposal against objective criteria is more likely to be straightforward, and relatively speedy;
 - b. the assessment against objective criteria makes the role of an accredited professional more certain. It avoids the need to make subjective planning judgments.
2. As an example only, in the City Living Zone DTS 5.1, which in the case of access to parking and service areas seeks that such areas should be provided "... from

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minor streets, or side or rear lanes provided road width is suitable and the traffic generation does not unreasonably impact residential amenity". Clearly, that criteria is subjective (what is a minor street, what is suitable road width and what is an unreasonable impact on residential amenity). That form of policy drafting makes the assessment process difficult for Accredited Professionals and renders decisions more exposed to criticism.

Building height definition consistency

3. In the City Living Zone (and elsewhere) one of the relevant DTS criteria for "dwelling addition" is Built Form and Character DTS 2.2. That particular criterion refers to the concepts of "maximum building height (levels)" and "maximum building height (metres)".
4. Part 8 of the Code sets out so-called "Administrative Terms and Definitions". Within that Part the terms "building height" and "building level" are defined.
5. Within the definition of the term "building height" reference is made to the "... *maximum vertical distance between the lower of the natural or finished ground level at any point of any part of a building ...*", meaning that it is important to know what is meant by "natural or finished ground level". However, Part 8 does not define the terms "natural ground level" or "finished ground level".
6. Note that clause 3(4) of the PDI (General) Regulations, 2017 provides for the purposes of those regulations, a reference to "... *the natural surface of the ground, in relation to a proposed development, is a reference to the existing ground level before the development is undertaken (disregarding any preparatory work or related work that has been (or is to be) undertaken for the purposes of the development.*" This is not the same as the term used in the definitions in the Code.
7. These concepts regularly arise. They are partially defined but unfortunately the terms are not completely defined. The missing elements of the definitions are however critical to their proper application. Ideally the Code would include a definition of "natural ground level" and "finished ground level". The definitions could incorporate or refer to the definition of "natural surface of the ground level set out in clause 3(4) of those Regulations.
8. It would seem desirable to have a definition to avoid uncertainty for accredited professionals when determining whether DTS criteria is satisfied.

Conjunctive criteria?

9. The DTS criteria in for example, the City Living Zone relevant to Built Form and Character (in particular, DTS 3.5) includes a "requirement" that applies to buildings that do not have a common wall, or any wall sited on a side boundary. The specific criteria listed in subparagraphs (a) to (d) is, it would seem, conjunctive/cumulative in the sense that all of that criteria has to be satisfied for the relevant DTS to be satisfied. However, the wording at the moment, perhaps, is a little unclear, ie, it could make it abundantly clear that all of the listed criteria must be satisfied.
10. You are also referred to clause 8.1 for the "Design in Urban Areas (All Development (Earthworks and Sloping Land))" criteria contained in the General Development Policies column of the City Living Zone. That particular clause provides that development should not involve any of the following:
 - a. excavation exceeding a vertical height of 1 metre;
 - b. filling exceeding a vertical height of 1 metre;

c. a total combined excavation and filling height of 2 metres or more

11. Where in the case of excavation and/or filling is the vertical height measured from? Is it existing ground level? Is it at any point from existing ground level along the length of the cut line or the base of the fill area, or is it the average or mean vertical height measured along the entire line of the cut and/or fill?

Site area references

12. In the Suburban Neighbourhood Zone, DTS 2.1 sets out the minimum site areas for a range of residential forms of development. The terminology used is, for example, a “minimum site area for a residential building is 300m²”.
13. That begs the question of whether the calculation of that minimum site area for a residential form of dwelling comprising multiple dwellings is calculated on an average basis or whether it is a matter of determining, somehow or other, the minimum site area associated with each of the dwellings? If that is the case, what happens to “communal” areas such as common driveways, parking areas and potentially other facilities like outdoor open space or communal laundry areas etc?
14. Plainly, DTS provisions should not inspire that sort of ambiguity.
15. It may be prudent for the purposes of DTS 2.1 to express the minimum site area as an average site area for forms of residential development with more than one dwelling.

Suburban Neighbourhood Zone DTS 2.2 – extra dwelling on an existing house site

16. The issue of dwellings and sites particularly for residential flat buildings also arises in DTS 2.2. The performance objective and DTS provide as follows -

PO 2.2 Development creating new allotments/sites in conjunction with retention of an existing dwelling ensures the site of the existing dwelling remains fit for purpose.

*DTS/DPF 2.2 Where the site of a **dwelling** does not comprise an entire allotment:*

- (a) the balance of the allotment accords with site area and frontage requirements specified in Suburban Neighbourhood Zone DTS/DPF 2.1*
- (b) if there is an existing dwelling on the allotment that will remain on the allotment after completion of the development, it will not contravene:*
 - (i) Private open space requirements specified in Design in Urban Areas Table 1 - Private Open Space*
 - (ii) Car parking requirements specified in Transport, Access and Parking Table 1 - General Off-Street Car Parking Requirements or Table 2 - Off-Street Car Parking Requirements in Designated Areas to the nearest whole number.*

17. The DTS is problematic in the case of residential flat buildings which will often be divided by community title division once the building is erected (because such strata plans of community division are based on the building structure to define the boundaries). The site area requirements in DTS2.1 refer to the building (“residential flat building”) not the dwelling. At the time of the application, the dwellings in the RFB proposed won’t comprise an entire allotment. One solution would be to link the policy intention in PO2.2 to DTS 2.2 by a preamble such as -

Where a development proposes a new dwelling or dwellings on an allotment already containing a dwelling (or dwellings),

- a. the site area for the existing dwelling (or dwellings) and the site area for the new dwelling (or dwellings) shall accord with site area and frontage requirements specified in Suburban Neighbourhood Zone DTS/DPF 2.1; and*
- b. [as per para (b)]*

Building set-backs

18. DTS 5.1 – deals with situations where there are two adjoining buildings (paragraph (a) and where there is only one building adjoining (paragraph (b)) and then defaults to “in all other cases”.
19. In many development sites, there might be a land division creating several allotments where the central sites do not adjoin any existing buildings whereas the outer allotments do. Proposals for those sites one (or more) “in” from the edge will therefore default to 8m. If were they to be assessed later (once the edge allotments were developed), the application of (a) or (b) would result in much reduced set-backs because of the adjoining buildings already in existence.
20. This policy has the potential to create a central depressed setback effect. The solution is to include a further set-back measure dealing with such sites, to allow reference to the setbacks of any buildings subject to any approvals granted for adjoining sites or to include in paragraphs (a) and (b) words such as “or buildings on sites that would adjoin the site if not separated by vacant allotments” after the words “a public road”.

Yours faithfully



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