MINOR VARIATION TO COMPLYING (RESIDENTIAL CODE) DEVELOPMENT

Introduction

The purpose of this Planning Advisory Notice is to provide guidance on the use of Section 35(1b) of the Development Act 1993 in relation to minor variations to development that is complying under Schedule 4, clauses 1(2), (3) and Clauses 2A and 2B (the Residential Development Code). This Planning Advisory Notice does not address other forms of complying development.

Section 35(1b) states:

“A development that is assessed by a relevant authority as being a minor variation from complying development may be determined by the relevant authority to be complying development (and that determination will have effect for the purposes of this Act).”

The standards for complying development under the Residential Code should be considered fixed. Notwithstanding this, a minor deviation/departure from the Code can be considered to constitute complying development. All other requirements under the Development Act 1993 relating to complying development are to be observed.

A deviation/departure from the Code which is not minor cannot be considered to constitute complying development. In this instance, the element(s) of the proposal which depart/deviate from the Code will be assessed “on merit” against the relevant Development Plan provisions (or may in fact become a ‘non-complying’ development).

The following information is provided for guidance to relevant authorities when considering if a departure from the Residential Development Code is to be considered minor. Whether the variance in an application is actually minor is a matter to be determined by the relevant authority in each instance.

Complying Standards

The Residential Code contains complying standards/requirements relating to:

- site contamination;
- minimum site area and frontage;
- setbacks (front, side and rear);
- side walls on boundary – length, height and distances between structures;
- wall heights and total dwelling height;
- finished floor levels
- excavation and fill;
- private open space area and dimensions;
- overlooking – windows, balconies and terraces
- garages and carports including associated driveway gradient;
- car parking provision and driveway crossovers;
- site coverage (total roofed area);
- utilities (water, wastewater and electricity)
Other matters to note
Reference to provisions of the Development Plan relating to the following matters is required in order to confirm compliance with the Code:

- Site areas
- Site frontages
- Front boundary setbacks
- Average Return Interval (flood level references)

Where a variation has been assessed and determined to be minor, a record of that variation, and the reasoning behind the determination, should be documented.

When will a variation not be considered minor?
- In all circumstances, if the variation is likely to cause unreasonable impact upon neighbouring property owners then it should not be considered minor.
- If the assessment as to whether a variation is minor requires detailed consideration or review then the variation is unlikely to be considered minor.
- If the variation would likely require an inspection of the site to assess its appropriateness, then the variation is unlikely to be considered minor.
- In circumstances where there is insufficient information to assess the impact of the variation, then the variation is unlikely to be considered minor (note, there is one opportunity to request additional information in order to assess the application)

When is a variation minor?
- The failure to meet with a complying standard to a trivial or minuscule extent is likely to be considered minor.
- Any variation that does not deviate substantially from the numeric standards specified for complying development is likely to be considered minor. However automatic acceptance of a percentage deviation from the complying standards is not appropriate.

The following questions provide guidance as to the factors/matters which might give rise to a variation being considered as minor:

- In relation to the front set back distance for single storey additions and alterations, is the configuration of the existing dwelling (or other buildings or features on the site) and the placement of dwellings, or structures, on adjoining sites, such that the minor variation in the front setback would not be appreciable?
- In relation to development on or near the southern boundary, will the variation increase overshadowing impacts? It is envisaged most variations in close proximity to their southern boundary will increase overshadowing impacts and will not constitute a minor variation.
- Is the variation for height related to a minor protuberance such as a chimney?
- Does the extent of excavation and filling decrease/increase the impacts of a variation to wall or building heights?
• Does the exceedance of wall height relate to a gable end and is its location in relation to the adjoining building/site unlikely to be visually prominent and not contribute to further overshadowing.

If the alley, lane or right of way providing access to a garage, carport or car park is less than 6.2m in width, has the structure or car parking space been set back sufficient distance from the site boundary, and the driveway designed, to provide for adequate exit/entry/turning?

• In relation to total width of garage or carport openings facing a road, is any increase in width broken by an additional setback or by the placement of columns

• Where an on-site wastewater disposal system does not exist on the site, does a current valid approval for a wastewater disposal system exist?

PLEASE NOTE: The above example questions are indicative only and do not purport to cover all elements which may require consideration. Every application must be treated according to the circumstances of the case.

Further information

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