

# ADVISORY NOTICE LEGISLATION

01/16

*Advisory Notices are issued to assist in the interpretation of the Development Act 1993*

*December 2016*

On 8 December 2016, the *Development (Residential Code) Variation Regulations 2016* were made. These regulations, which vary the *Development Regulations 2008* under the *Development Act 1993*, commenced operation from this date.

The Variation Regulations include a number of minor amendments to the *Development Regulations 2008* which are intended to provide better guidance, clarity and consistency for private certifiers and councils in relation to Residential Code Complying development.

Regulation 8A has been replaced with more detailed provisions to clarify that:-

- an assessment of an application against *complying* development criteria in the regulations is an assessment against the Development Plan for the purposes of section 35(6) of the Development Act, which requires that a relevant authority must accept that a proposed development complies with the provisions of the Development Plan to the extent that such compliance is certified by a private certifier.
- a consent issued for a *complying* development under the regulations or the Development Plan is a **development plan consent** for the purposes of section 33(1)(a) of the Act.
- if a private certifier is engaged to assess a development application for residential code development, the private certifier can make an assessment as to whether an application complies with the criteria specified in the regulations for residential code development.
- in undertaking an assessment against the residential code criteria, a private certifier can determine and accept 1 or more minor variations from those criteria.
- for the purposes of section 35(1b) of the Act a reference to minor variation from complying development is a reference to a variation from the complying development criteria.

## **Other amendments**

Regulation 15(3) – if an application is for development plan consent only, the fee must not exceed the base amount.

Regulation 15(3)(a) – an applicant must not be required to comply with a requirement under Schedule 5 or 6 unless it is directly relevant to the application.

Regulation 15(7a)(a) – where an application is lodged with a private certifier, only a copy of the application form, and excluding any accompanying plans, drawings, specifications or other documents or information specified in subregulation 15(1)(c) is required to be forwarded to the relevant council within 2 business days (and consequential amendments to regulation 15(7b)).

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Regulation 15(7b)(b) – councils to provide advice as to whether the relevant development plan specifies any requirements relating to finished floor levels within the time specified in regulation 15(7a)(a).

Regulation 15(11) – the requirements of schedule 5 may not be modified so as to require more or less information for a Residential Code assessed development. In any other case the relevant authority must not, when requiring plans, drawings, specifications and other documents, require an applicant to provide more information than specified by schedule 5.

Regulation 15(12) – a relevant authority may in exercising its discretion under section 39(4)(b) dispense with the requirements of schedule 5 in relation to an application.

Regulation 42(2) – where a council receives certification from a private certifier that a proposed development complies with the relevant development plan (including certification for the purposes of section 33(1)(a) assessing the development as complying development under schedule 4 part 1 in accordance with section 35(1) and regulation 8A, and the proposed development has been granted building rules consent, a notice of the decision must be given within 2 business days of receipt by the council.

Regulation 47A(2) – clarifies that nothing in regulation 47A(1) prevents an applicant seeking more than one minor variation to a development authorisation (whether simultaneously or at different times).

Regulation 89 – provides that the authorised functions of a private certifier include the powers and duties of a relevant authority under regulation 8A, regulation 16(3) or (4) and section 35(1b).

Schedule 1A clause 3(1)(g)(iii)(C) and clause 4(1)(g)(iii)(C); schedule 4 clause 1(2)(g)(iii)(C) and clause 1(3)(g)(iii)(C) have been clarified regarding the location of carports and garages by inserting the following words... ‘will be via a kerb that is designed to allow a vehicle to roll over it.’

Schedule 4, heading to part 1 has been amended and a note inserted to reflect the intention of the regulatory amendments in respect of defining what is complying development. Clause A1 has been subsequently deleted. Of particular relevance is the following statement in the note:

Development that is assessed by a relevant authority as being in a form described in this Part (including development that is assessed as being a minor variation from such a form), is declared to constitute a *complying development* under the regulations and relevant development plan (see section 33(1)(a) and regulation 8A).

Schedule 4 clauses 1(2) and (3), 2A and 2B – various changes to:-

- Replace use of the word “prescribes” with “specifies”.
- Clarify driveway access requirements.
- Clarify that a driveway can be used as a car parking space.

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- Clarify requirements, increasing flexibility in relation to building setbacks and providing that setbacks should be measured from the wall of the building. This is in addition to any minor variation in setbacks that may be acceptable under section 35(1b) of the Act.
- Clarify issues in relation to private open space and provide that up to 50% of that space may be a covered outdoor area or areas.

Schedule 5 - various changes to reduce and clarify information requirements.

Note: Planning Advisory Notice 25 issued March 2009 relating to *Minor Variation to Complying (Residential Code) Development* is no longer relevant and has been withdrawn. It should not be used as a guide.

### Useful Links

[Development Act](#)

[Development Regulations](#)

[Government gazette](#)

### Further information

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