
app request for variation to a development control and supporting information

Request for Variation to a Development Control and Supporting Information

This request is to accompany a development application lodged with Council where the development does not meet the development control(s) contained within the Byron Shire Development Control Plan (BSDCP) 2014, and a variation to such control(s) is sought.

Application of the DCP and Variations

Under the Environmental Planning & Assessment Act 1979, Development Control Plans (DCP's) are required to be applied flexibly, and consent authorities are required to allow for alternate solutions to DCP requirements so that otherwise permissible development may be carried out. The role of the DCP is to give effect to an environmental planning instrument (EPI) by supporting the aims of the instrument, the range of permitted development under the EPI and the objectives of applicable land use zones.

Council will consider variations to the development controls set out in the DCP where a proposed development can otherwise demonstrate that it achieves the applicable planning objectives. Council will consider variations to the DCP provisions as set out below:

- a. Where a proposal does not comply with a particular development control, applicants may propose an alternative solution. In some circumstances, variations can produce improved and innovative solutions for particular site.
- b. A written variation request must:
 1. Identify the development control that is to be varied and detail the extent of variation proposed;
 2. Identify the general and/or specific objectives of that control and how the variation complies with the objectives;
 3. Justify why the specific provisions of the policy do not make appropriate provisions with regard to the subject application; and
 4. Demonstrate why compliance with the provisions of this DCP is unreasonable or unnecessary in the particular circumstances of the case.

Note: Variations to a development control(s) will only be considered where the specific development objective can be met.

The following section is required to be completed as part of any development application where a variation is sought to a development control(s) contained within the BSDCP 2014. Alternatively, the listed questions may be addressed within a Statement of Environmental Effects (SEE) document lodged with the development application. Further documentation may be attached to support your submission.

1. What is the development control(s)? (specify)

Chapter D1 – Residential Accommodation in Urban, Village and Special Purpose Zones – D1.2.2 – Setbacks from boundaries.

2. Provide details of the extent of variation (i.e. what is the non-compliance? Is it minor or extensive? Percentage of variation between your proposal and the development control)

The proposed open garage is setback 4.5m which is 1m within the required setback of 5.5m minimum street frontage. The encroachment is considered minor and is consistent with the performance criteria found in D1.2.2.



Figure 1. The subject dwelling (red shading) and adjoining residential development in Ruskin Street with setbacks depicted. This extract is modified by Extent Heritage from a plan illustrating the setback study for 39 Ruskin Street *Source: Wumara Group (2022).*

3. What are the objectives of the development control(s)?

- To achieve varied and interesting streets that complement and harmonise with existing and planned streetscapes and development in the locality.*
- 2. To achieve good orientation and spacing of residential developments that achieve high quality living environments relative to sunlight, shade, wind and weather protection, residential amenity and proximity of neighbouring development.*
- 3. To achieve effective use of allotments to create useable and liveable private open space and courtyards.*
- 4. To provide flexibility in siting and design of dwelling house development in urban residential areas.*
- 5. To ensure that development in residential areas seeks to minimise any negative impacts on neighbours caused by siting.*

4. How does the proposed variation comply with those objectives listed above?

- 1 The open garage provides a high degree of integration with the existing pattern of setbacks and is consistent with existing infill developments of the surrounding properties on Ruskin Street.
2. The open garage will provide a covered space to the occupants for increased weather protection. The open garage will also provide added privacy for the occupants and neighbouring property.
3. The open garage will retain the existing car space within the front boundary which satisfies minimum carparking requirements for dwellings.
4. There is limited ability to expand the open garage further from the boundary line due to the existing structure. The open garage will utilise the existing footprint of the car space which will enable cars to be parked entirely within the property boundary. The open garage has the same setback level as the extension.
5. The appearance and design features of the open garage will be consistent with the additions and alterations of the newly designed façade. There will be added privacy for occupants and neighbouring properties. No overshadowing will result from the minor encroachment.

5. Please provide justification/reasoning as to why the development control(s) does not make specific provision in relation to your proposal/does not enable you to achieve the outcome you are seeking?

- There is limited ability to expand the open garage further from the boundary line due to the existing dwelling layout. The proposal seeks to utilise the existing car space provided onsite.
- The open garage setback encroachment is considered minor and consistent with the objectives found in D1.2.2.
- Ruskin Street has a wide verge which provides a visual and spatial separation buffer to properties on Ruskin Street. The minor encroachment will not have a visual or functional impact on the streetscape.
- The open garage is a part of the overall design of the façade which integrates structural components including a low-pitched roof into its design.
- The alterations including the open garage will contribute to the overall attractiveness of the streetscape and provide further amenity to occupants.

6. Demonstrate why compliance with the development control(s) is unreasonable or unnecessary in your particular circumstance.

The proposed development will provide a satisfactory level of amenity for future residents within an urban environment.

7. Any other considerations?

No

Applicant Details

Name – Ardill Payne & Partners



Dwayne Roberts – 04/04/2023

Principal Town Planner.

Ardill Payne & Partners