



09 April 2018

Ref: DOIA 1718-1122

Rachael Harris
fyi-request-7399-c201f301@requests.fyi.org.nz

Dear Rachael

Thank you for your email of 8 March 2018 to the Ministry of Business, Innovation and Employment requesting, under the Official Information Act 1982 (the Act), the following information:

Please provide all internal memoranda, policies, and letters of advice relating to the interpretation of s 112 of the Building Act.

The Ministry has no internal memoranda, policies, or letters of advice on the interpretation of section 112 of the Building Act 2004. The 'as near as reasonably practicable' provision in section 112 means that guidance can only be given on specific issues, usually specific to a building or project, and it is not possible to develop general guidance or policies. I am therefore declining your request under section 18(e) of the Act as the material you have requested does not exist.

Section 112 requires councils to apply the 'as nearly as is reasonably practicable' test. This is a weighing exercise and involves a costs and benefits assessment where the sacrifices and difficulties of achieving full compliance are balanced against the advantages of upgrading. The consideration of 'as nearly as is reasonably practicable' must be applied on a case-by-case basis. For this reason guidance on the interpretation of section 112 from the Ministry can only be offered on specific issues, usually specific to a building or project, and it is not possible to develop general guidance or policies.

The Building Performance website has a section on change of use, alterations and extension of life (<https://www.building.govt.nz/managing-buildings/change-of-use-and-alterations/#defining>) which has some general information on section 112 that may be useful to you.

The Ministry has a significant amount of external material that we have provided to councils and other industry members which we can make available to you. This includes training material for consenting officers, and guidance on specific buildings or projects. The volume of this material, which the Ministry has been producing since 1991, is large, and to provide all of it would take a significant amount of time and resources.

I would like to invite you to contact the Ministry to talk about what we have that is of interest to you. You can contact Senior Ministerial Writer Renée Maunder on 04 901 9822, or at renee.maunder@mbie.govt.nz. She will be able to advise you on what is available and to set up a meeting with the section 112 advisors if that would be helpful.

You have the right to seek an investigation and review by the Ombudsman of the decision to refuse your request. Information about how to make a complaint is available at: www.ombudsman.parliament.nz or freephone: 0800 802 602.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Hobbs', with a long horizontal flourish extending to the right.

Paul Hobbs
Acting Manager
Building Systems Assurance