

About these Guidelines

The purpose of these guidelines is to inform applicants of Council's requirements in relation to a proposed variation to a **Development Standard** contained within the Ballina Local Environmental Plan (BLEP) 2012 or the Ballina Local Environmental Plan (BLEP) 1987.

If you are seeking to vary a **Development Standard** contained within the BLEP 2012 or BLEP 1987, your development application must be supported by a written application detailing that compliance with that development standard is unreasonable or unnecessary in the circumstances of the case.

The majority of the information in this guideline is based on the NSW Department of Planning and Environment (DoPE) document 'Varying Development Standards: A Guide', August 2011. Refer to the following link for a copy of the NSW DoPE guide: planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/Resources?acc_section=varying_development_standards

What are Development Standards?

Development standards may be contained in State Environmental Planning Policies (SEPP's) or Local Environmental Plans (LEP's). Development standards exist to provide a framework of limitations for anticipated development in an area. In the case of the BLEP 1987 and BLEP 2012, development standards are provisions/controls which guide development to be carried out in accordance with particular requirements under certain circumstances, such as minimum building heights in residential areas. They can be numerical or may require compliance with a particular condition or require facilities to be provided in association with a development.

As defined in the Environmental Planning and Assessment Act 1979:

Development Standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- a) The area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point
- b) The proportion or percentage of the area of a site which a building or work may occupy
- c) The character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work
- d) The cubic content or floor space of a building
- e) The intensity or density of the use of any land, building or work
- f) The provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment
- g) The provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles
- h) The volume, nature and type of traffic generated by the development
- i) Road patterns
- j) Drainage
- k) The carrying out of earthworks
- l) The effects of development on patterns of wind, sunlight, daylight or shadows
- m) The provision of services, facilities and amenities demanded by development
- n) The emission of pollution and means for its prevention or control or mitigation
- o) Such other matters as may be prescribed.

A proposed variation to a **Development Standard** may, in some circumstances, achieve the underlying purpose of the standard, as much as a development which complies. If the development is not only consistent with the underlying purpose of the standard, but also with the broader planning objectives for the locality, strict compliance with the standard would be deemed to be unreasonable and unnecessary and Council could approve a variation.

It should be noted that even if a development standard is met, it does not guarantee that it will be approved. All development applications are assessed on a merits basis and may be refused despite development standards being met.

How are Development Standards Varied?

Currently there are two mechanisms within the Ballina Shire that provide the ability to vary development standards within the applicable local environmental planning instruments:

- Clause 4.6 of the Ballina Local Environmental Plan 2012
- State Environmental Planning Policy No. 1 – Development Standards (SEPP 1).

Both Clause 4.6 and SEPP 1 provide flexibility in the application of planning controls by allowing Council to approve a development application which does not comply with a development standard, where it can be shown that compliance is unreasonable or unnecessary.

Ballina Local Environmental Plan (BLEP) 2012

An application to vary a development standard can be made under Clause 4.6 of the BLEP 2012. The aim of Clause 4.6 is to provide a degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 also requires that the concurrence of the Director-General of the NSW DoPE be obtained prior to the granting of consent for development that does not comply with a development standard. In accordance with planning circular PS18-003, Council may assume the Director-General's concurrence in some instances.

Clause 4.6 is not to be used in Rural Zones (RU1 Primary Production, RU2 Rural Landscape) for the subdivision of land that will result in 2 or more lots that are less than the minimum area specified for such lots by a development standard, or the subdivision of land that will result in any lot less than 90% of the minimum area specified for such lots by a development standard.

State Environmental Planning Policy No. 1 - Development Standards (SEPP 1)

SEPP 1 applies to the BLEP 1987 and 'non-discretionary' development standards within the Plan. Council may not grant consent to a development application which is subject to a SEPP 1 application, except with the Concurrence of the Director-General of the NSW DoPE (Note: In some cases Council has delegations from the NSW DoPE to assume concurrence in respect of SEPP 1 applications).

Making an Application to Vary a Development Standard

If you are seeking to vary a development standard within the BLEP 2012 or BLEP 1987, you will be required to lodge with your development application a written application justifying the variation (refer to the attached application form). Alternatively, the listed questions within the form may be addressed within a Statement of Environmental Effects (SEE) document lodged with the development application.

Please note that there is no automatic right to vary a development standard. SEPP 1 and Clause 4.6 places the onus on the applicant to provide a written justification for the variation to the development standard through application.

Written applications to vary development standards are required to:

- address whether strict compliance with the standard, in the particular case, would be unreasonable or unnecessary and why, and
- demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

Variation to Development Standard(s) Application and Supporting Information

Clause 4.6 of the Ballina Local Environmental Plan (BLEP) 2012 and
SEPP 1 Ballina Local Environmental Plan (BLEP) 1987

Lodge Applications at Ballina Shire Council • 40 Cherry Street Ballina (Mon-Fri 8.15am to 3.00pm)
mail PO Box 450 Ballina 2478 • **e** council@ballina.nsw.gov.au
t 1300 864 444 • **w** ballina.nsw.gov.au

This form guides you to what should be included in a written request. Please complete the form and submit it with your Development Application. Further documentation may be attached to support your submission.

Note: If more than one Development Standard is proposed to be varied, an application is required for each variation (eg. floor space ratio (FSR) and height).

Development Standard Details

1. What is the name of the Environmental Planning Instrument (EPI) that applies to the land? *eg. BLEP 1987 or BLEP 2012*

2. What is the zoning of the land?

3. What are the objectives of the zone?

4. What is the Development Standard being varied? *eg. FSR, height, lot size*

5. Under what clause is the Development Standard listed in the relevant BLEP?

6. What are the objectives and purpose of the Development Standard? How are the objectives / purpose of the standard relevant to your development?

7. What is the numeric value of the Development Standard in the relevant BLEP?

8. What is the proposed numeric value of the Development Standard in your Development Application?

9. What is the percentage variation (between your proposal and the relevant BLEP)?

10. How is strict compliance with the Development Standard unreasonable or unnecessary in this particular case?

11. How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Environmental Planning and Assessment Act 1979? *relevant for BLEP 1987/SEPP1 applications only*

12. Demonstrate how the objectives of the zone and the objectives of the development standard have been complied with despite the variation to the development standard.

13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why? Will approval of the variation of the Development Standard set a precedent? Why or why not?

14. Are there sufficient environmental planning grounds to justify contravening the Development Standard?
provide details

15. Is compliance with the development standard unreasonable or inappropriate due to the current use of the land and current environmental character of the particular parcel of land? Should the particular parcel of land have been included within the current zone?

Applicant Details

Applicant Name

Property Details

DA Number *if known*

Applicant Signature

Date

Privacy Protection Notice

The completed Application for a Variation to a Development Standards form contains personal information which is being collected for the purpose of assessing this application. The information will be processed by the Development and Environmental Health Group and may be made available to public enquiries under the Government Information (Public Access) Act. The information will be stored in Councils electronic document management system.