

Applicant's Guide - Development Applications Incorporating a Variation to Development Standards in Shoalhaven Local Environment Plans

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1. PURPOSE

- 1.1. To provide information to assist applicants with the preparation and submission of development applications that include requests to vary development standards under cl 4.6 of Shoalhaven Local Environment Plan 2014 (SLEP 2014) or Shoalhaven Local Environmental Plan (Jerberra Estate) 2014 (Jerberra LEP 2014); and
- 1.2. To clarify when the concurrence of the Secretary of the Department of Planning and Environment (DP&E) is also required.

2. STATEMENT

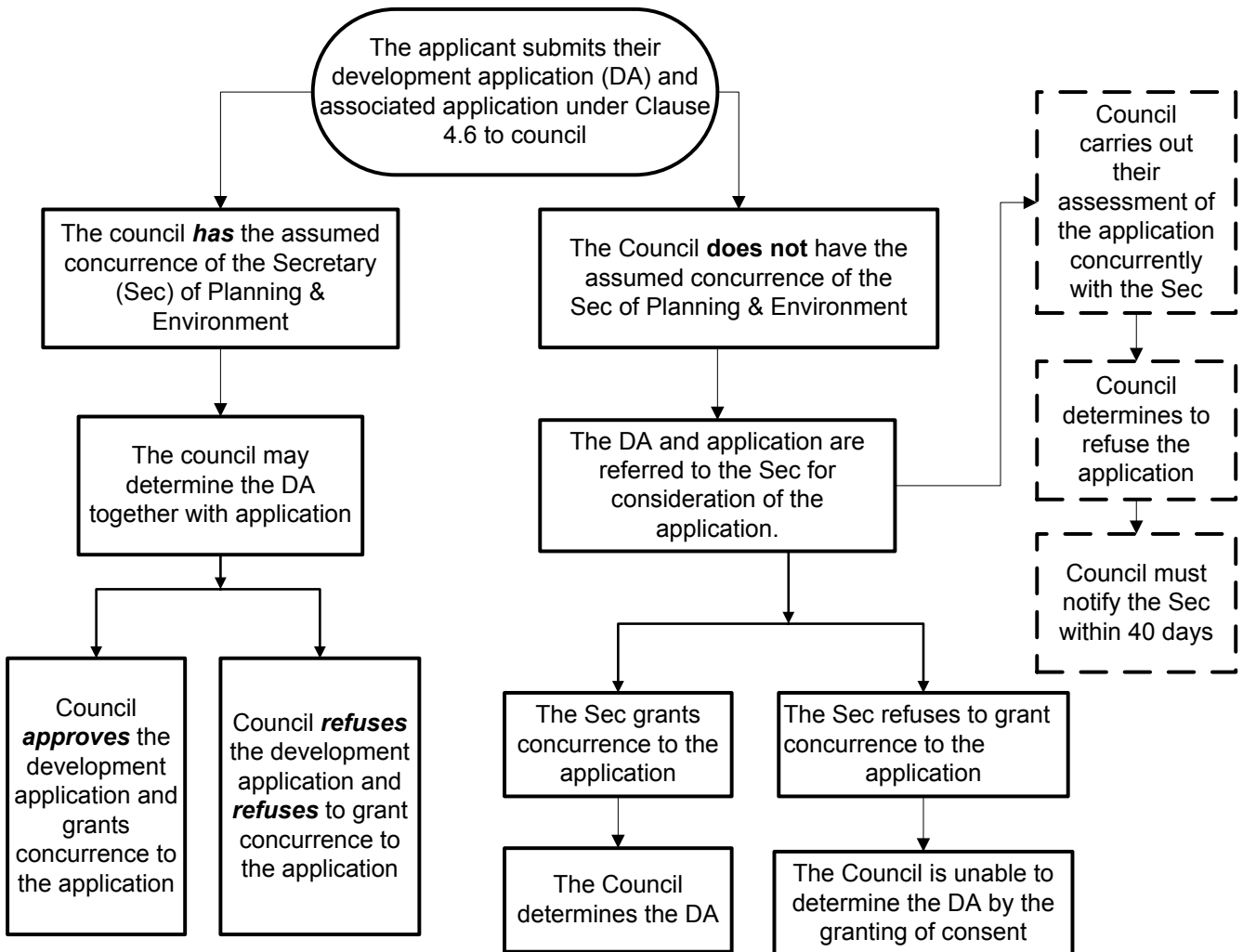
The NSW planning system provides flexibility in planning controls by providing the ability for council's to vary development standards in certain circumstances. This guideline has been prepared and should be read in conjunction with NSW Department of Planning & Environment publication – *Varying development standards: A Guide – August 2011* (the Guide).

3. PROVISIONS

- 3.1. Clause 4.6 **cannot** be used to:
 - 3.1.1. Subdivide land in a zone listed in cl 4.6(6) (rural, R5 & environmental) if it will result in two or more of the lots being less than the minimum lot size OR at least one lot that is less than 90% of the minimum lot size; and
 - 3.1.2. Vary any of the excluded development standards in cl 4.6(8), i.e. complying development; BASIX; miscellaneous permissible uses and certain requirements for urban release areas.
- 3.2. An application to vary development standards is considered as part of the assessment of a development application that includes a written request from the applicant in accordance with cl 4.6(3). **Attachment A** includes all the matters that need to be addressed in a written request.

- 3.3. Development Consent cannot be granted for an application varying development standards under cl 4.6 unless council is satisfied that the written request has adequately demonstrated:
 - 3.3.1. That compliance with the development standard is unreasonable or unnecessary in the specific circumstances of the case; and
 - 3.3.2. There are sufficient environmental planning grounds to justify contravening the development standard; and
 - 3.3.3. That the proposal will be in the public interest because it is consistent with the objectives of the relevant development standard and the zone objectives; and
- 3.4. When dealing with a variation to a development standard under cl 4.6, the council will also consider the following *five part test* (as outlined in the Guide) to determine if the variation is acceptable:
 - 3.4.1. The objectives of the standard are achieved notwithstanding noncompliance with the standard;
 - 3.4.2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
 - 3.4.3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
 - 3.4.4. The development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
 - 3.4.5. The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.
- 3.5. In relation to the minimum lot size requirements for dwellings in Jerberra Estate, Chapter N20 of Shoalhaven DCP 2014 identifies certain lots where a cl 4.6 variation request will be required to achieve the intended planning outcomes. Any such requests should be consistent with the relevant provisions and supporting information in Chapter N20.
- 3.6. Council is able to assume the concurrence of the Secretary (Sec) of DP&E for cl 4.6 variations in most circumstances. With applications to vary a development standard relating to the minimum lot size for the erection of a dwelling on land zoned RU1, RU2, RU3, RU4, R5, E2, E3 or E4 (i.e. cl 4.2D(3)(a) under SLEP 2014 and cl4.2A(3)(a) under Jerberra LEP 2014) concurrence can be only be assumed if:
 - 3.6.1. Only one allotment does not comply with the minimum area; and
 - 3.6.2. That allotment has an area equal or greater than 90% of the minimum area specified in the development standard.
- 3.7. In most cases where the proposal is more than a 10% variation of a development standard the variation will be reported to Council's Development Committee.
- 3.8. When concurrence of the Sec cannot be assumed the application needs to be notified and forwarded to the DP&E and the relevant additional fees paid in accordance with Council's Fees & Charges.

3.9. A flowchart of the processes associated with a cl 4.6 application is provided below:



Adapted from: *Varying development standards: A Guide*, August 2011, Department Planning & Infrastructure

Attachment A

Matters to be addressed in a written request to vary a development standard

To be submitted together with the development application (refer to EP&A Regulation 2000 Schedule 1 Forms).

Note: If more than one development standard is varied, an application will be needed for each variation (e.g. FSR and height).

1. What is the name of the environmental planning instrument that applies to the land?

2. What is the zoning of the land?

3. What are the objectives of the zone? Attach a zoning map of the land and surrounding properties

4. What is the development standard being varied and its numeric value? e.g. 40ha lot size. Attach a map of the development standard for the land and surrounding properties.

5. Under what clause is the development standard listed in the environmental planning instrument?

6. What are the objectives of the development standard?

7. What is proposed numeric value of the development standard in your development application and the percentage variation (between your proposal and the environmental planning instrument)?

8. How is the proposal consistent with the objectives of the zone in which the development is proposed to be carried out?

9. How is the proposal consistent with the objectives of the development standard?

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

11. How would strict compliance with the development standard hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the EP&A Act.

12. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

13. How will the proposal be in the public interest?

Adapted from: Varying development standards: A Guide, August 2011, Department Planning & Infrastructure