

(Clause 4.6 Variations) Template

Address of Site:

.....



INTRODUCTION

Development proposals need to be prepared with reference to development standards in all relevant environmental plans. These plans have been prepared and are consistently implemented to ensure appropriate and sensitive development of the Sutherland Shire.

Compliance with the development standards is usually necessary to ensure that the objectives are achieved. Where an applicant proposes to vary a development standard within Sutherland Shire Local Environmental Plan 2015 (SSLEP2015), Council cannot consider the variation unless a written Clause 4.6 Variation is included.

WHAT IS A CLAUSE 4.6 VARIATION?

A Clause 4.6 Variation is a written submission accompanying a development application and prepared by the applicant or their representative in which justification for a variation of the relevant development standard is provided. Council does not have the authority to approve a development application seeking a variation to a development standard contained within an environmental planning instrument in the absence of a Clause 4.6 Variation.

WHEN IS A CLAUSE 4.6 VARIATION REQUIRED?

Where a development proposal does not comply with a development standard contained in SSLEP2015, a Clause 4.6 Variation justifying non-compliance with that standard in the particular circumstances of the application is required.

A Clause 4.6 Variation cannot be made against all development standards in SSLEP2015. A list of the standards excluded from Clause 4.6 is provided in clause 4.6(6) and (8) of SSLEP2015.

A Clause 4.6 Variation is not needed for the variation of numerical controls contained within Development Control Plans although other written justification of these controls is required.

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

IN WHAT FORM SHOULD A CLAUSE 4.6 VARIATION BE SUBMITTED TO COUNCIL?

A Clause 4.6 Variation must be in the form of a document accompanying a development application and prepared by the applicant or their representative. The document must clearly state that it is a variation made under the provisions of Clause 4.6 of SSLEP2015.

It must demonstrate:

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- b) that there are sufficient environmental planning grounds to justifying contravening the development standard; and
- c) that the proposed development will be in the public interest; and
- d) whether the contravention of the development standard raises any matter of significance for state or regional planning; and
- e) the public benefit of maintaining the development standard.

This is best demonstrated by Clause 4.6 Variations being prepared in the following format.

CLAUSE 4.6 VARIATION TEMPLATE

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

Sutherland Shire Local Environmental Plan 2015.

2. What is the zoning of the land and what are the objectives of the zone? (Select applicable zone and follow link to find objectives for that zone. Copy the list of objectives for the relevant zone into the document).

Under the SSLEP2015, each zone has a series of objectives that need to be considered when assessing a development application. To answer this question you will need to list the objectives of the relevant zone that your development is proposed to ensure the variation of the standard will not conflict with these objectives. You only need to include the objectives of the zone the subject property is located within.

(a) [R2 Low Density Residential](#)

Objectives: (Example)

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To protect and enhance existing vegetation and other natural features and encourage appropriate bushland restoration particularly along ridgelines and in areas of high visual significance.*
- *To allow the subdivision of land only if the size of the resulting lots retains natural features and allows a sufficient area for development.*
- *To ensure the single dwelling character, landscaped character, neighbourhood character and streetscapes of the zone are maintained over time and not diminished by the cumulative impact of multi dwelling housing or seniors housing.*

(b) [R3 Medium Density Residential](#)

Objectives:

.....

(c) [R4 High Density Residential](#)

Objectives:

.....

(d) [B5 Business Development](#)

Objectives:

.....

(e) [B6 Enterprise Corridor](#)

Objectives:

.....

(f) [B7 Business Park](#)

Objectives:

.....

(g) [IN1 General Industrial](#)

Objectives:

.....

(h) [IN2 Light Industrial](#)

Objectives:

.....

(i) [IN3 Heavy Industrial](#)

Objectives:

.....

(j) [IN4 Working Waterfront](#)

Objectives:

.....

(k) [E3 Environmental Management](#)

Objectives:

.....

(l) [E4 Environmental Living](#)

Objectives:

.....

3. Identify the Development Standard to which this Clause 4.6 Variation applies?

To answer this question, reference needs to be made to the planning instrument (Sutherland Shire Local Environmental Plan 2015) and clause number containing the relevant development standard. Below are examples of development standards which may be varied and their relevant clause numbers.

- o [Clause 6.14 Landscaped areas in certain residential, business, industrial and environmental protection zones](#)
- o [Clause 4.1 Minimum subdivision lot size](#)
- o [Clause 4.3 Height of buildings](#)
- o [Clause 4.4 Floor space ratio](#)
- o [Clause 6.9 Limited development on foreshore area](#) (Foreshore Building Line)
- o Other (outline below):

.....
.....
.....

4. What are the objectives of the development standard?

It is necessary to identify the objectives of the development standard for which variation is sought. Each of the development standards within the SSLEP2015 contain objectives which need to be provided in response to this questions.

There may be occasions where the objectives will not always be expressed within the LEP in which case it may be necessary to ascertain by other means the likely objectives underlying the control. This may best be achieved by reference to other planning documents such as the

relevant [Development Control Plan](#) in which the standard is elaborated upon.

- [Landscaped area objectives:](#)

Example:

- a) *to ensure adequate opportunities exist for the retention or provision of vegetation that contributes to biodiversity and, in the case of trees, enhances the tree canopy of Sutherland Shire,*
- b) *to minimise urban run-off by maximising permeable areas on the sites of development,*
- c) *to ensure that the visual impact of development is minimised by appropriate landscaping and that the landscaping is maintained,*
- d) *to ensure that landscaping carried out in connection with development is sufficient to complement the scale of buildings, provide shade, screen parking areas and enhance workforce amenities.*

- [Minimum subdivision lot size objectives:](#)

.....

- [Height of buildings objectives](#)

.....

- [Floor space ratio objectives](#)

.....

- [Foreshore Building Line objectives](#)

.....

- Other (Outline below):

.....

5. What is the numeric value of the development standard in the environmental planning instrument?

The standard proposed to be varied needs to be identified. Some controls within the SSLEP2015 are site specific and are mapped. To determine the numeric value of the development standard affecting the subject property you may need to refer to the [SSLEP2015 Maps](#).

E.g. R2 Low Density Zone requires a minimum 35% landscaped area.

.....
.....
.....

6. How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between your proposal and the environmental planning instrument)?

To answer this question you will need to fill out the relevant table provided below based on the control being varied.

It must be clearly demonstrated what the existing site conditions are. You will need to identify what is on the site and what the current conditions of the site are in relation to the development standard being varied.

E.g. The site may currently have a landscaped area of 45% which is being proposed to be reduced under the subject application.

Outline numerically what you are proposing and how much you are seeking to vary the applicable development standard under the SSLEP2015 as a percentage in the following table.

E.g. A proposed reduction in landscaped area to 30% where the SSLEP2015 requirement is 35% would result in a variation of 14.3% to the landscaped area development standard under the SSLEP2015.

Landscaped Area			
Current Landscaped Area %	Landscaped Area Requirement under SSLEP2015	Proposed Landscaped Area %	Percentage Variation
E.g. 45%	E.g. 35%	E.g. 30%	E.g. 14.3%

Minimum Subdivision Lot Size			
Current Lot Size (m²)	Minimum Lot Size Requirement under SSLEP2015 (m²)	Proposed Lot Size (m²)	Percentage Variation

Height of Building			
Current Height of Building (m)	Maximum Height of Building under SSLEP2015 (m)	Proposed Height of Building (m)	Percentage Variation

Floor Space Ratio			
Current Floor Space Ratio (e.g. 0.45:1)	Maximum Floor Space Ratio under SSLEP2015	Proposed Floor Space Ratio	Percentage Variation

Foreshore Building Line

Current Distance of Building from MHWM (m)	Distance of Foreshore Building Line under SSLEP2015 (m)	Proposed Foreshore Building Line	Percentage Variation

Any other comments:

.....
.....
.....

7. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

The NSW Land and Environment Court in *Four2Five Pty LTD v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The court provided five tests as follows that can be used as prompts to answer the above question in relation to your application.

Note: These five tests are not exhaustive of the ways in which you might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. You do not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, you can demonstrate that compliance is unreasonable or unnecessary in more than one way.

Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard: (Answer below in Q.8)

.....

Test 2: The underlying object or purpose of the standard is not relevant to the development and compliance is unnecessary: (Give details)

.....

Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable: (Give details)

.....

Test 4: The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable: (Give details)

.....

Test 5: The compliance with 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: (Give details)

.....

8. Are there sufficient environmental planning grounds to justify contravening the development standard?

Note: Must be answered by identifying and focusing on the development that contravenes the development standard. The answer must demonstrate substantive justification as to why the contravention must be acceptable. Furthermore, this section must include justification on how the contravention will not have adverse impacts on the amenity of adjoining properties.

9. Is the proposed development, despite the contravention to the development standard, in the public interest?

The SSLEP2015 notes that for consent to be granted, consideration needs to be given to the public benefit of maintaining the development standard. Previous Land and Environment Court Cases have identified that a proposed development will be in the public interest as long as it is consistent with the objectives for development within the zone and the objectives of the standard in which the development is proposed to be carried out.

To answer this question, reference should be made to each of the objectives of the control and the zone and how the non-compliance with the control will maintain consistency with the applicable objectives. The focus of the test against each of the objectives needs to be on the aspect or element of the development that contravenes the development standard, not on the development as a whole. The environmental planning grounds advanced must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.

.....
.....
.....

10. Is there any other relevant information to be considered in order to justify varying the development standard?

Provide details of any other information you feel relevant in justifying your proposed variation to the subject development control.

.....
.....
.....