

**Application Form to vary a Development Standard**  
**(per Varying Development Standards: A Guide – August 2011)**

**Lot 2083 DP 808462, No. 33 Kallaroo Circuit, Ocean Shores**

**To construct a new second dwelling to create a Detached Dual Occupancy**

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

Byron Shire LEP 2014 (came into effect 21<sup>st</sup> July 2014).

**2. What is the zoning of the land?**

R2 – Low Density Residential Zone.

**3. What are the objectives of the zone?**

- *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.*

**4. What is the development standard being varied? eg FSR, height, lot size**

Minimum lot size for a dual occupancy – Clause 4.1E.

Required minimum lot size for dual occupancies on R2 – Low Density Residential zoned land is 800m<sup>2</sup>.

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

The development standard is a numerical enabling standard, such that consent **may** be granted for a dual occupancy on an R2 zoned lot where the lot has an area equal to or greater than 800m<sup>2</sup>.

**6. What are the objectives of the development standard?**

The objective of Clause 4.1E is “..to achieve planned residential density in certain zones.”

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

800m<sup>2</sup> minimum lot size for dual occupancies on R2 zoned land.

**8. What is the proposed numeric value of the development standard in your development application?**

The subject land (Lot 2083 DP 808462) has an area of 760.73m<sup>2</sup> which is less than 800m<sup>2</sup>.

**9. What is the percentage variation (between your proposal and the environmental planning instrument)?**

The percentage variation proposed is 4.9% (ie the lot has an area that is 95.1% of the required 800m<sup>2</sup> lot size).

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

It is considered that strict compliance with the minimum 800m<sup>2</sup> lot standard required by Clause 4.1E of BLEP 2014 is unreasonable and unnecessary in the circumstances of the case for the following reasons:

- the subject lot has an area of 760.73m<sup>2</sup> which is a 4.9% departure from the required 800m<sup>2</sup> lot area

- dual occupancies (both attached and detached) are expressly permitted with consent in the R2 zone and are consistent with the zone objectives
- the proposed dual occupancy development complies with all of the other relevant provisions and development standards of the BLEP 2014 and BDCP , particularly the floor space ratio and building height
- the bulk, height, scale, external appearance and built form of the proposed building is consistent with that of other adjacent residential buildings
- there will not be any resultant adverse impacts on the natural or man-made environment or on the amenity of the neighbourhood or any adjoining property as a result of the dual occupancy being situated on a 760m<sup>2</sup> lot
- the proposed development will achieve the principles of urban consolidation and affordable housing
- the modified development has resulted in an area of 280m<sup>2</sup> of deep soil planting/landscaping areas being provided on the site

**11.How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?**

Strict compliance with the standard would hinder the attainment of the objects specified in Section 1.3 of the Act particularly:

- (c) to promote the orderly and economic use and development of land*
- (d) to promote the delivery and maintenance of affordable housing*
- (g) to promote good design and amenity of the built environment*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants*

## 12. Is the development standard a performance based control?

No the development standard is not a performance based control. It is a numerical based enabling development standard as defined in Clause 4.1E of the *EP & A Act 1979* viz:

**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, and
- (o) such other matters as may be prescribed.

## 13. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

Strict compliance with the standard having regard to the particular circumstances of the case is considered unreasonable and/or unnecessary due to the fact that:

- the proposal as submitted is in full compliance with all other applicable controls contained within DCP 2014 and LEP 2014
- the subject land has sufficient areas of unconstrained land for the siting of the second dual occupancy dwelling and ancillary improvements
- the proposed dual occupancy dwelling will maintain the existing use of the land for residential purposes, will not have any adverse impacts on the natural or man-made environment and will not result in any land use conflicts

- the proposed dual occupancy dwelling is permitted with consent and is consistent with the objectives of the R2 zone
- dual occupancies are considered to be such that attain the principles of affordable housing
- the proposed percentage of variation (4.9%) is minor

**14. Are the sufficient environmental planning grounds to justify contravening the development standard? Give details.**

It is submitted that there are sufficient environmental planning grounds to justify contravening the minimum lot size development standard, with details of such being provided above.

It is submitted that the proposed development:

- is not contrary to the objects of the *EP & A Act 1979* (per Section 1.3)
- is not contrary to the aims of the BLEP 2014 (per Clause 1.2)
- is permitted with consent in and is consistent with the objectives of the R2 zone
- is not contrary to the objective of Clause 4.1E of the BLEP 2014
- is such that will attain the principles of affordable housing, in that dual occupancies are considered to comprise and provide affordable housing stock
- is not contrary to the best public interest

Further, it is considered that there are sufficient environmental planning grounds to justify contravening the minimum lot size development standard for the following additional reasons:

- the proposal is for a single storey dwelling that will result in 2 x single storey dwellings being located on the property
- The proposed Floor Space Ratio is only 0.3:1
- The proposed dwelling effectively fronts a public reserve to the rear

- The proposal does not result in any amenity impacts for surrounding properties in terms of privacy, overshadowing and bulk and scale.
- The proposal provides greater deep soil areas than required by the DCP (190m<sup>2</sup> required where 280m<sup>2</sup> is proposed). Additionally, considering that the minimum lot size for a Dual Occupancy in the R2 zone is 800m<sup>2</sup>, it would be reasonable to require that the minimum amount of deep soil should in fact be 200m<sup>2</sup> which this proposal is in full compliance with.
- The proposal provides greater private open space than what is required by the DCP for both dwellings (30m<sup>2</sup> required where 44m<sup>2</sup> proposed for dwelling 1 and 60+m<sup>2</sup> for proposed dwelling 2).

To conclude, the proposal is in full compliance with all development standards contained within BLEP 2014 (apart from clause 4.1E) and in full compliance with all the applicable design elements contained within DCP 2014. The proposal does not create any adverse impacts on surrounding properties or the streetscape which would suggest that there are sufficient environmental planning grounds to justify contravening the subject development standard.