



Clause 4.6 Variation Request Report

Warringah Local Environmental Plan 2011

Clause 4.3 Height of Building

52 Collaroy Street, Collaroy NSW 2097

approved



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Document Details

Revision	A
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Associated Development Application Details

Property Address	Lot 1 DP 514756 52 Collaroy Street, Collaroy NSW 2097
Local Government Area	Northern Beaches Council
Zone	R2 Low Density Residential
Existing Development	Part One and Two Storey Dwelling house, ancillary detached shed outbuilding
Calculations	Lot Area: 588.8m ² (survey) Proposed Upper Floor Additions Area: 84.59m ² . New Upper Floor Maximum Overall Building Height: 9.18m (at highest point) 680mm maximum exceedance at one single point, being upper floor balcony roof

1. Introduction

This Clause 4.6 variation application has been prepared to accompany the development application for alterations and additions to an existing dwelling house at 52 Collaroy Street, Collaroy.

Clause 4.6 of Warringah Local Environmental Plan 2011 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This application seeks a variation to Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011, which prescribes a maximum building height of 8.5m to the subject land. The proposed maximum height is 9.18m (680mm greater or 8%) and this Clause 4.6 variation request demonstrates:

- The proposed building height is appropriate for its location.
- The dwelling is in keeping with the character, context and setting regarding two-storey dwellings of which some others also breach the mapped building height by minimal amounts in Collaroy. Further, more excessive and various examples exceeding 10% could also be found in Council's Variation Register.
- The dwelling is a consistent coastal architectural design in keeping with the area, particularly the proposed lowset roof form.
- The slight exceedance in building height will allow sufficient all-weather roofing/eave coverage to the balcony and sliding doors of the master bedroom and living area for weather protection. The exceedance is only for a small area of the overhang due to the sloping site.
- The upper floor alterations and additions do not have excessive ceiling heights or roof pitches to exacerbate the height level rather it is a reasonable dwelling form.
- The height exceedance does not unreasonably impact on solar access, overshadowing, privacy, or views.
- A fully compliant building height of 8.5m would not result in a superior environmental planning outcome than that proposed or achievable for this site at 9.18m high for a small portion of the roofline over a balcony.

Overall, compliance with the development standard is unnecessary and unreasonable and the development displays sufficient environmental planning grounds to warrant slight contravention of the development standard on one building plane only (i.e. the other western elevation at the same point of the dwelling complies which further demonstrates the minor exceedance).

The use of Clause 4.6 to enable an exception to this development standard is necessary in this instance and the consent authority should be satisfied that all requirements of the Clause have been suitably addressed via the content in this written request.

2. Development Overview

2.1 The site

The subject site (the site) is located on the southwestern side of Collaroy Street. The locality consists of similar residential lot properties, and older single dwellings.

Development immediately surrounding the site is primarily low rise built forms such as dwelling houses displaying similar ancillary structures. This pattern can be observed in Figure 1.

The allotment is irregular in shape and orientated in a north to south direction. Lot 1 displays a 12.192 northern frontage and 4.572 metre southern frontage, general useable depth of 39.815 metres, and with a site area of 588.8m² and no easements.

The sites topography is sloping from the southern rear boundary down to the northern road frontage of the site. Direct vehicular access/egress is available from Collaroy Street into a lower set detached double garage.

The site currently contains a modest part one and two storey dwelling house (primarily single storey) and attached patio/balcony at the front. The site has scattered vegetation within the rear portion and landscaped, maintained lawns and gardens.

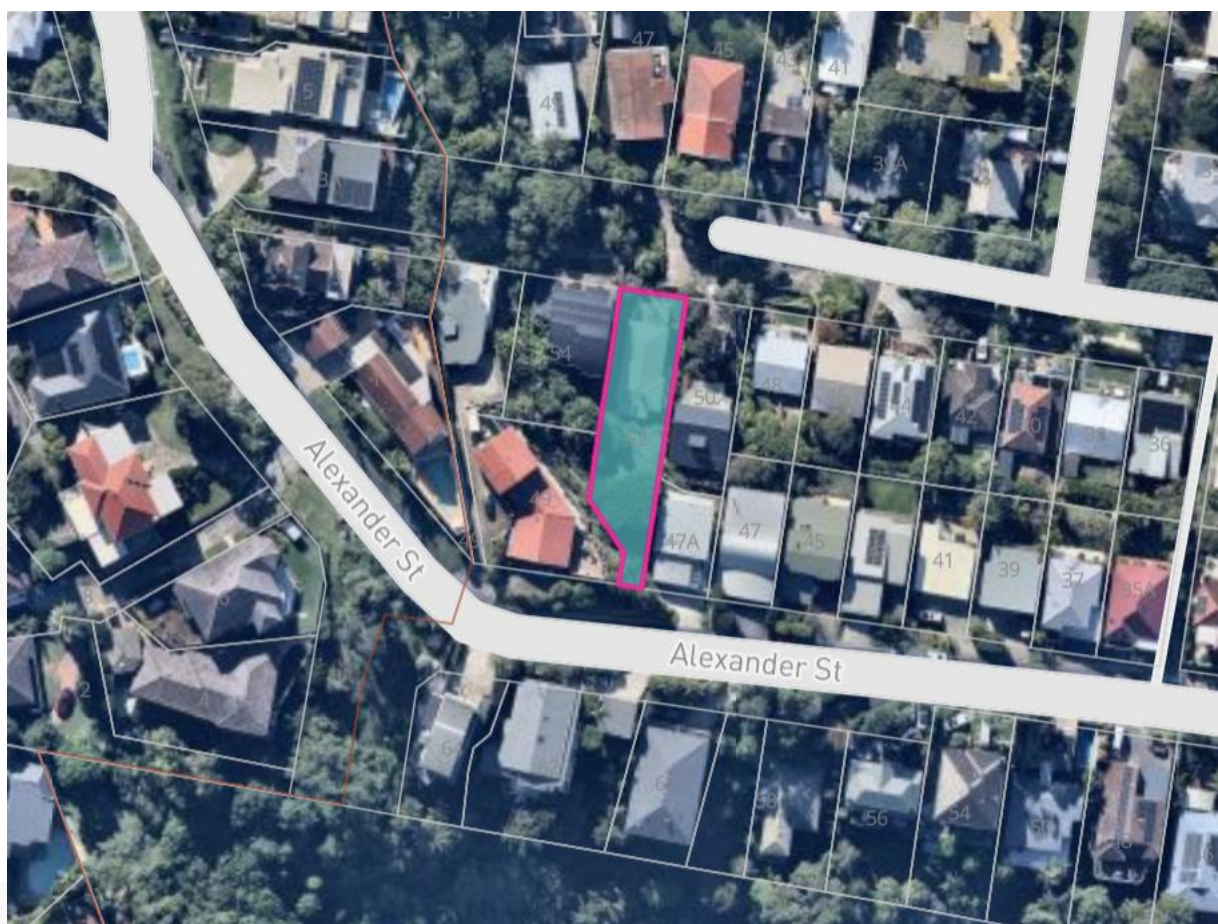


Figure 1: Aerial view, showing subject Lot outlined in red (Source: Nearmap Viewer).

2.2 The development

The applicant seeks development consent for alterations and additions to an existing dwelling house at 52 Collaroy Street, Collaroy. The proposal will result in an updated double storey dwelling on the site, consistent with the double storey dwelling stock in the area.

Specifically, the proposal includes the following details:

- Demolition of existing internal walls and roofing elements.
- Provide upper floor area directly above the existing disturbed footprint for use as three bedrooms (main with ensuite), bathroom, laundry, and front/rear balcony, having an internal floor area of 84.59m². The upper floor area is to be accessed via an external staircase from the ground floor.
- A BASIX Certificate is required and is attached.
- Earthworks (other than for the external staircase footings) are not required, given the extensions are contained to the existing disturbed curtilage of the dwelling.
- No removal of trees is required.

Overall, the development is considered to provide excellent residential amenity for the future occupants having regard for the narrow, sloping site, whilst not impacting significantly on the existing neighbouring dwellings to the east and west. Refer to below concept designs:

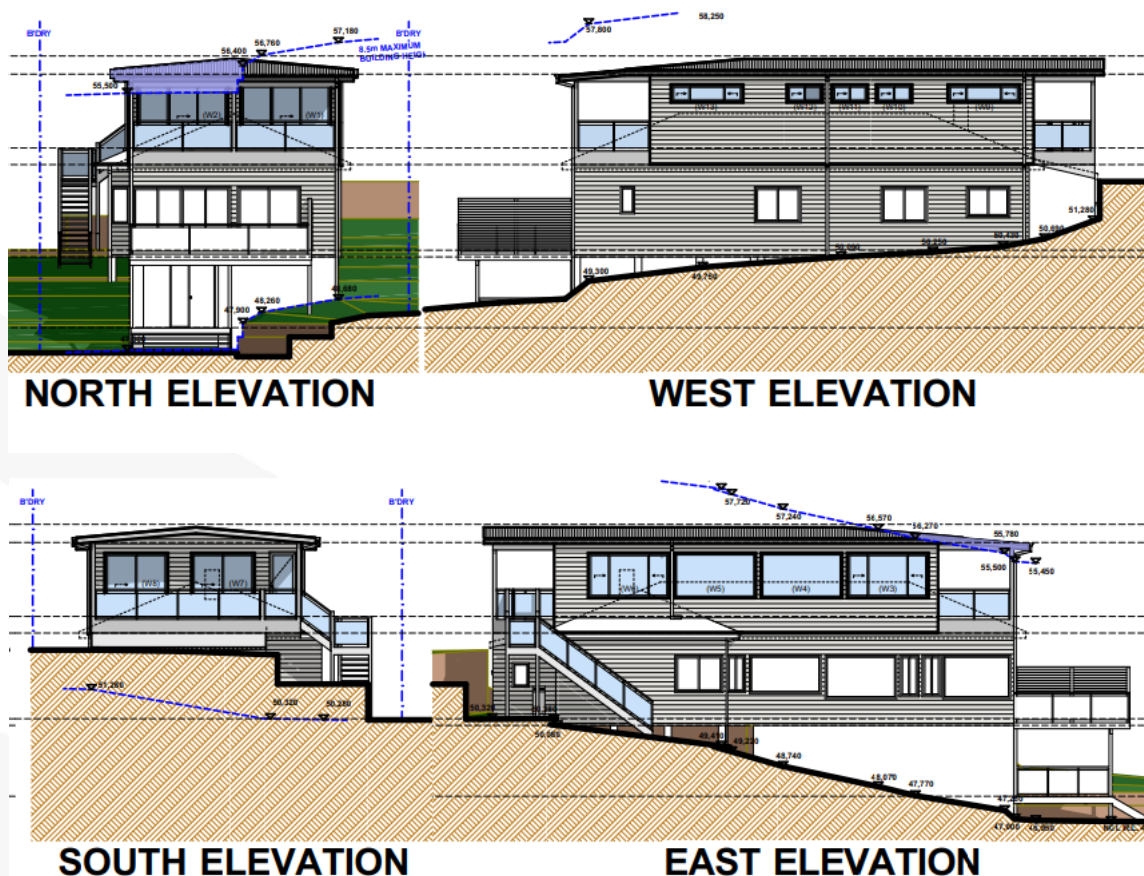


Figure 2: Various elevations of the proposal showing height exceedance shaded (Source: Architectural Plans)

2.3 The context and setting

When considering this development in the broader area for context and setting it is noted that there are a variety of housing styles including:

- Single storey
- Double storey
- Brick
- Weatherboard
- Tile roof, and,
- Colorbond roof.

In addition, a number of redeveloped dwelling sites in the area have building heights over 8.5m to accommodate sloping sites. Therefore, the proposal is in keeping with its context and setting.

3. Clause 4.6 Variation Assessment

3.1 Environmental Planning Instrument details

3.1.1 Relevant Environmental Planning Instrument

Warringah Local Environmental Plan 2011 (WLEP 2011).

3.1.2 Zoning

The land is zoned R2 Low Density Residential.

3.1.3 Zone Objectives

The R2 zone objectives are:

- *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 ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

3.1.4 Development Standard to be varied

Height of buildings.

3.1.5 Applicable Clause containing standard

Clause 4.3 Height of Buildings.

3.1.6 Objectives of the standard

(1) *The objectives of this clause are as follows—*

- (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

3.1.7 Numerical value

A building height limit of 8.5m is mapped over this entire site.

3.1.8 Proposed variation

The proposal will display a building height of 9.18m at its highest point (not for the entire roofline). This equates to a variation of 8%.

3.1.9 Exclusions under Clause 4.6

Clause 4.3 is not excluded from consideration under Clause 4.6(8), (8A) or (8B) and a request for variation can be sought.

3.2 Clause 4.6 Assessment

The following section addresses the provisions of Clause 4.6 of the Warringah Local Environmental Plan 2011 together with requirements of the Environmental Planning and Assessment Regulation 2021 and principles established in the NSW Land and Environment Court Case Law.

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows—

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Council's flexibility (to a small degree) is sought in its application of the height of buildings development standard in this instance.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

As stated previously, clause 4.3 is not a development standard that is expressly excluded from the use of clause 4.6 by subclause (8), (8A) or (8B). Council has the authority to grant minor variations and there are many examples of Council, the Local Planning Panel, the Joint Regional Planning Panel and the NSW Land and Environment Court approving developments with variations to building height.

Clause 4.6 is commonly utilised to vary building height as evidenced by Council's variation register kept in accordance with subclause (4).

Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

"4.6(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

4.6(3)(b) there is sufficient environmental planning grounds to justify contravening the development standard."

3.2.1 Subclause (3)(a) Compliance is unreasonable or unnecessary in this case

With reference to Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827, the first and the most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, is to demonstrate that the objectives of the development standard are achieved, notwithstanding the non-compliance.

In addition, in the matter of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Justice held that "establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary".

The objectives of the development standard are:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Notwithstanding the numerical non-compliance the objectives of Clause 4.3 are met as:

- The proposed building height is appropriate for its location.
- The dwelling is lower set than those upslope to the west and slopes steeply from the southern rear of the site downwards towards the street to the north (a drop in elevation of approximately 20m over approximately 55m in length - therefore has less impact on the streetscape/views).
- The dwelling has a consistent architectural design in keeping with the area, in particular the lowset/minimal pitch roof form.
- Only a small section/portion of the upper roofline area is non-compliant, is centrally located over 10 metres from the northern front boundary and therefore has minimal impact on the streetscape. Refer to Figure 3 and Figure 4 below which demonstrates the minimal encroachment along the northern and eastern elevations via blue shading. This minor exceedance is only due to the shape drop off or crossfall of the topography at this point.

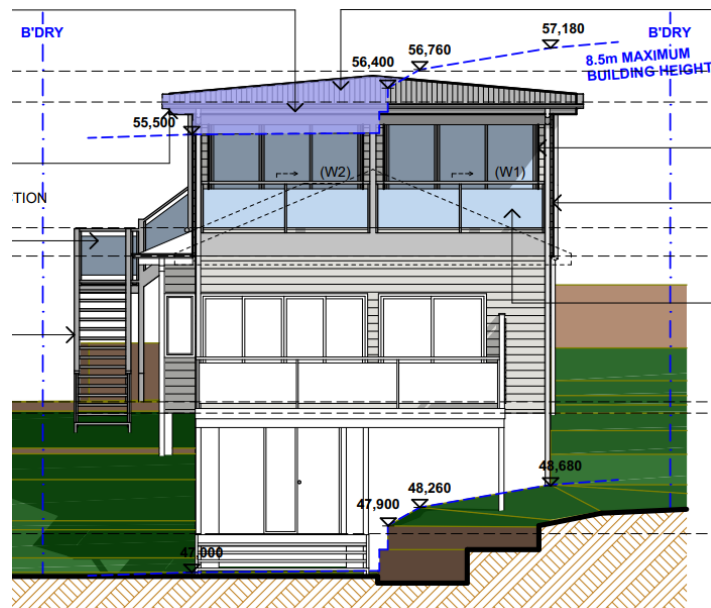


Figure 3: Showing minor nature of height encroachment at one point only and for minimal length along the northern front elevation in blue shading (Source: Architectural Plans)

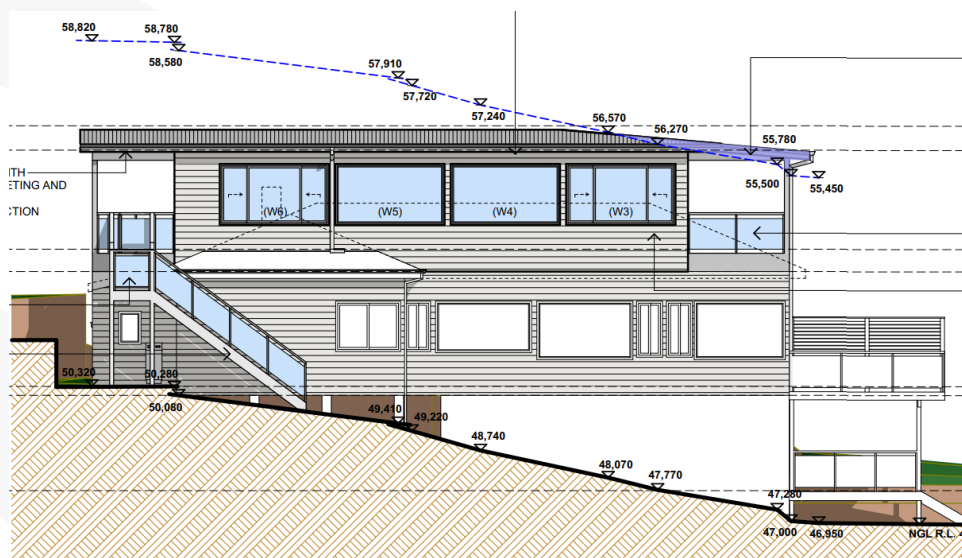


Figure 4: Showing minor nature of height encroachment at one point only and for minimal length along the eastern side elevation in blue shading (Source: Architectural Plans)

In consideration of these factors and the proposed alterations and additions, redesigning the development to lower the ridge height or not having the balcony covered thus meeting the mapped building height limit of 8.5m would not result in a design that achieves any greater compliance and built form quality than is achieved by the alterations and additions as proposed as there are no benefits achieved in relation to:

- Reducing the bulk and scale or visual impact.
- Reducing overshadowing/increasing solar access.
- Reducing overlooking/privacy.
- Reducing visual impact on the scenic quality of Warringah's coastal and bush environments.
- Reducing the visual impact when viewed from public places.

Therefore, a compliant height would not result in a superior environmental planning outcome.

Having regard for these matters, the objectives of the standard are achieved, notwithstanding the non-compliance with the height limit. It is considered that strict compliance with the development standard for building height limit is unreasonable and unnecessary in the circumstances of this proposal.

The height limit is not achieved due to the steep slope of the site from the south down to the north, coupled with the sharp crossfall from the western side boundary down to the eastern side boundary at the north-eastern corner of the existing dwelling house.

3.2.2 Subclause (3)(b) Sufficient environmental planning grounds to justify contravention

When considering environmental planning grounds associated with the proposed development, matters such as compatibility within the locality, management of site constraints, access to services and facilities, sustainable development practices, and response to the unique characteristics of the site should be demonstrated.

The alterations and additions to the existing dwelling have been designed with consideration of the site's topography and narrowness, neighbouring dwellings, views, privacy, and amenity. Although the roofline could be stepped back at this point, this is not a better sustainability outcome to achieve a compliant building height as it will allow too much solar access into the master bedroom and require additional artificial cooling and will require the sliding doors to be closed during wet weather (i.e. not allowing for passive cross ventilation to occur).

The dwelling consists of modest ceiling heights and roof pitches. In addition, the height exceedance does not impact on solar access, overshadowing, privacy of surrounding development, nor impacts unreasonably upon views to the ocean enjoyed by those higher set properties (having regard for view sharing principles), demonstrating it is a consistent and compatible quality urban form.

In the absence of any significant adverse impacts, insistence on compliance simply for the sake of compliance is not conducive of promoting either the Environmental Planning and Assessment Act, LEP zone or development standards objectives. There are sufficient grounds to justify the requested slight contravention in the unique circumstances of this case, but particularly due to the steep slope and crossfall on a narrow residential site.

4. Conclusion

Having evaluated the likely affects arising from this variation, which is considered minor in numerical and qualitative value, we are satisfied that the objectives of Clause 4.3 and Clause 4.6 of the WLEP 2011 are satisfied as the exceedance does not create any significant adverse environmental impacts.

In considering the balance between technical development standard compliance or support for this request to vary the building height development standard by 680mm or 8%, in the proposed form this development and site can be determined to have the following positive attributes:

- The proposed building height remains appropriate for its location despite the slight exceedance.
- The dwelling is in keeping with the character, context and setting regarding two-storey dwellings of which some others also breach the mapped building height by minimal amounts.
- The dwelling is a consistent architectural design in keeping with the evolving area/locality.
- The dwelling does not have excessive ceiling heights or roof pitches to exacerbate the height level rather it is a reasonable dwelling form.
- The height exceedance does not unreasonably impact on solar access, overshadowing, privacy, or views.
- The dwelling footprint does not extend further to the north having regard for the neighbour to the west. The dwelling complements the existing topography.
- The vast majority of the proposed dwelling complies with the maximum building height of 8.5m. Only a small section of the roofline exceeds this maximum height.
- Due to the lowset nature of the sloping site, the prominence of the building height will not look out of proportion, particularly when compared with the neighbouring dwellings to the west.
- A fully compliant building height of 8.5m would not result in a superior environmental planning outcome than that proposed or achievable for this site at 9.18m high at one single point of the roofline.

Accordingly, the negligible effect of the minor departure from the standard outweighs any negatives which would result from strict adherence to the standard as set out under Clause 4.3 Height of buildings.

Importantly, it is considered that a precedent will not be set by supporting the proposed departure as this proposal is responding to the unique attributes of this site (**lowset, steepness, crossfall, narrow site**) as well as the future needs of the residents of the property. While strict adherence to the set development standard is desirable generally, on the merits of this specific case there is the opportunity to achieve a better environmental planning outcome on this site, through the development as proposed.

Consequently, strict compliance with this development standard is unnecessary in this instance and the use of Clause 4.6 of the WLEP 2011 to seek exception to the maximum allowable building height for the land under Clause 4.3 is appropriate and Council is empowered and can favourably endorse the Development Application as lodged.