

32 Ettalong Street, Wheeler Heights NSW 2097 Lot 61; DP 8871

**This is a request for a Clause 4.6, Variation Request to Wall Height & Side Boundary Envelope, under clause B1 & B3 of the DCP.**

The land is administered by Northern Beaches (Warringah) Council.

Relevant Planning Instruments: Warringah Local Environmental Plan 2011, *current version 14 July 2021*.

Relevant Development Control Plan: Warringah Development Control plan 2011, *amd. 15 Dec 2020*.

#### **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.
- (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.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
  - (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 justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
  - (a) the consent authority is satisfied that—
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
  - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
  - (b) the public benefit of maintaining the development standard, and
  - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

**Note—**

When this Plan was made it did not contain Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition or Zone R5 Large Lot Residential.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which [State Environmental Planning Policy \(Building Sustainability Index: BASIX\) 2004](#) applies or for the land on which such a building is situated,

(c) clause 5.4.

(8A) Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the [Height of Buildings Map](#) on land shown on the [Centres Map](#) as the Dee Why Town Centre.

(8B) Despite subclause (8A), development on Site C or Site E may exceed the maximum height of building shown on the [Height of Buildings Map](#) if the maximum height is allowable under clause 7.14.

## B1 Wall Heights

### Applies to Land

This control applies to all land identified on the Warringah Local Environmental Plan 2011 - Land Zoning Map as:

- RU4 Primary Production Small Lots
- R2 Low Density Residential
- E3 Environmental Management
- E4 Environmental Living

and to which an 8.5m maximum height of building control applies under LEP 2011.

### Objectives

- To **minimise the visual impact** of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.
- To ensure **development is generally beneath the existing tree canopy level**.
- To provide a **reasonable sharing of views** to and from public and private properties.
- To **minimise the impact** of development on **adjoining or nearby properties**.
- To ensure that development **responds to site topography** and to discourage excavation of the natural landform.
- To provide sufficient scope for **innovative roof pitch and variation in roof design**.

### Requirements

1. Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).

### Exceptions

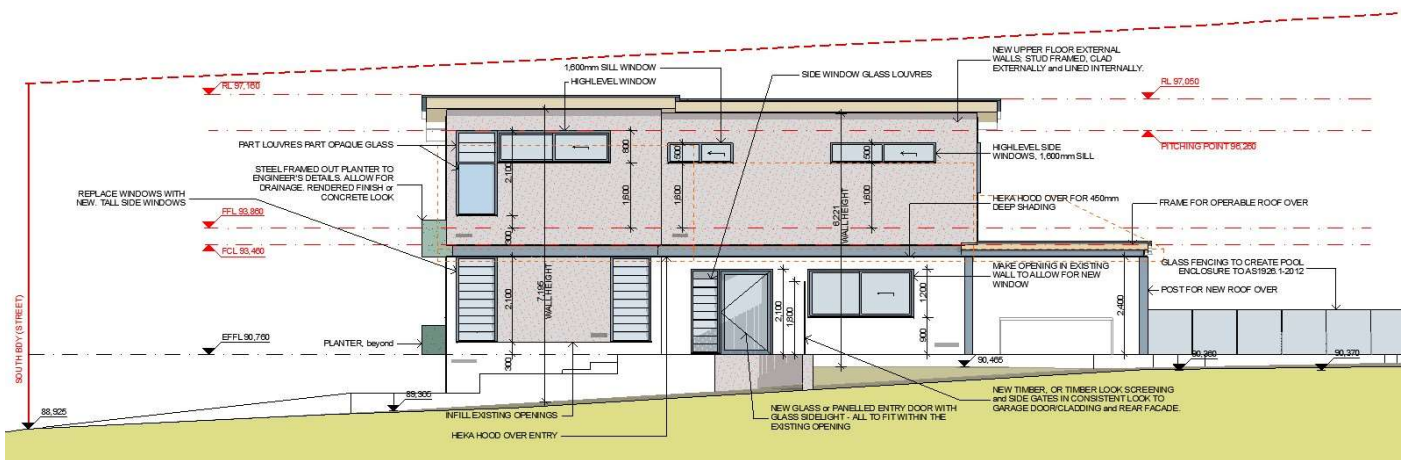
This control may be varied on sites with slopes greater than 20% within the building footprint (measured at the base of the external walls), provided the building:

- does not exceed the 8.5 metre height development standard; **COMPLIES**
- is designed and located to minimise bulk and scale; and **MERIT ASSESSMENT. THE DESIGN DOES MINIMISE THE BULK and SCALE**
- has a minimal visual impact when viewed from the downslope sides of the land. **THE SCALE and VIEW FROM THE DOWNSLOPE OF ETTALONG STREET IS COMPARABLE and COMPATIBLE TO THE IMMEDIATE AREA**

The proposed development will have an encroachment upon the controls of **B1**, given the proposed **Wall Height** is measured at 7.610m at its maximum point to the underside of the eaves of the uppermost roof level. The requirement under this clause is a maximum of 7.2m to underside of ceiling on the uppermost floor.

The site is sloping. The existing dwelling is partially elevated in its current configuration to the front western corner. The ground floor of the Primary Dwelling is measured at 2.98m above the street level. The Garage space, (at 32m<sup>2</sup>), is positioned as a subfloor, non-habitable space, at a width of 3.9m. The encroachment is to the area where the garage exists, the front western corner. At this location the proposal is seeking approval for a Front Balcony. This element provides a break or articulation void to the uppermost floor level to reduce the overall bulk and scale of this corner.

It is considered that the objectives of the clause are met and the variation be given consideration.



This architectural elevation drawing shows a building facade with various dimensions and elevation markers. The drawing includes a main building with a flat roof and a lower section on the left. Key dimensions and markers include:

- Roof Elevation:** RL 97.550 (left), RL 97.180 (right).
- Ground Elevation:** RL 96.550 (right), RL 96.740 (left), RL 96.840 (left), RL 96.865 (center), RL 96.820 (center), RL 96.620 (right), RL 96.515 (right), RL 96.350 (right), RL 96.540 (right), RL 96.100 (right), RL 97.780 (right).
- Vertical Dimensions:**
  - 3.520 (left section height)
  - 6.900 (main building height)
  - 2.400 (lower section height)
  - 2.700 (lower section height)
  - 2.690 (right section height)
- Horizontal Dimensions:**
  - 1.600 (main building width)
  - 1.200 (lower section width)
  - 0.800 (lower section width)
  - 0.500 (lower section width)
  - 0.400 (lower section width)
  - 0.300 (lower section width)
  - 0.200 (lower section width)
  - 0.100 (lower section width)
  - 0.050 (lower section width)
- Other Markers:**
  - VER RL 96.610 (left section elevation)
  - FFL 93.860 (right section elevation)
  - PCL 93.480 (right section elevation)
  - 90.700 (right section elevation)

Image 2: Western Elevation – Encroachment of 410mm

## B3 Side Boundary Envelope

### Applies to Land

This control applies to land shown coloured on the DCP Map Side Boundary Envelopes.

**APPLIES.**

### Objectives

- To ensure that development **does not become visually dominant** by virtue of its **height and bulk**.
- To ensure **adequate light, solar access and privacy** by providing **spatial separation between buildings**.
- To ensure that development **responds to the topography of the site**.

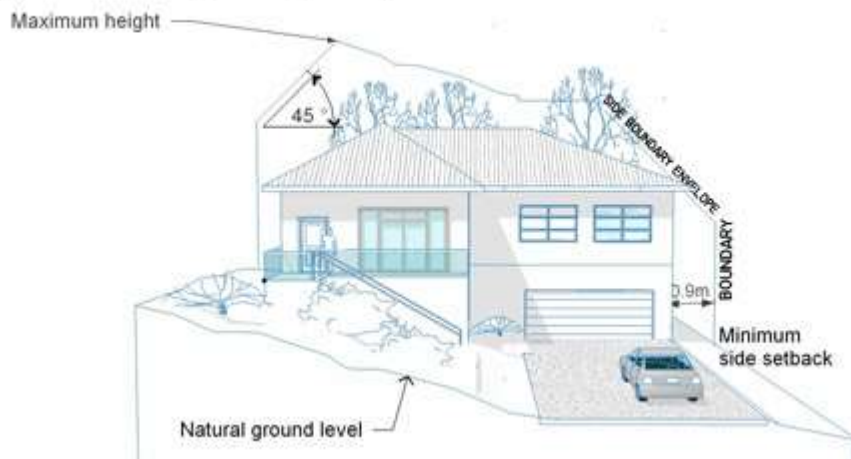
### Requirements

1. Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of:

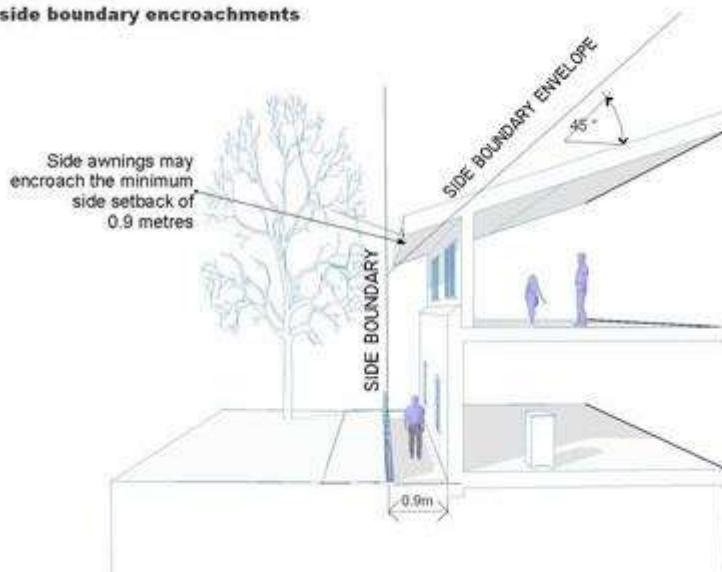
- 4 metres, or
- 5 metres

as identified on the map.

Measuring the side boundary building envelope



Some side boundary encroachments



The proposed development will have an encroachment upon the controls of **B3, Side Boundary Envelope**. The site is mapped at 4m at a projected 45degree angle under the Side Boundary Envelope Map of the DCP. As per the issues raised for clauses B1 and B2, the change in levels between the existing ground floor and the street boundary create a constraint to the building footprint and the proposal is seeking approval for a new upper floor that fits to the existing ground floor footprint.

The design has taken into consideration this encroachment and has taken the following measures to reduce the overall impact and to retain consistency with the objectives of the development standard:

- The bulk of the new Upper Floor is kept to the front of the site, to reduce impact of overshadowing to the Eastern vulnerable neighbour.
- The Northernmost part of the dwelling is proposed to be removed, and that area will be retained as new outdoor space (no additional footprint to the Northern rear setback, including no upper floor to this part).
- The Upper Floor Footprint follows the building line below with a modest 11.28m wall to the Western Side.
- A front Balcony will assist with reducing the overall Bulk and Scale. Fitted with a screen for privacy and for a breakup in material.
- The Western Wall is articulated further with a feature detail structural element to eliminate the appearance of a blank wall.
- Street facing Planter Boxes to the façade are proposed to assist in reducing Bulk and Scale and improve the Architectural Integrity of the streetscape.
- The Upper Floor Wall Height is kept to a maximum of 2.4m at the Western Side, making the roof line low at this point.
- The overall Building Height is compliant and does not exceed the 8.5m height restriction.

The site is sloping. The existing dwelling is partially elevated in its current configuration to the front western corner. The ground floor of the Primary Dwelling is measured at 2.98m above the street level. The Garage space, (at 32m<sup>2</sup>), is positioned as a subfloor, non-habitable space, at a width of 3.9m. The encroachment is to the area where the garage exists, the front western corner and centrally to the house. The encroachment over the permitted 4m at a projected 45degree angle, of 6.47 and 6.0m is seeking consideration under a clause 4.6 Exception to a Development Standard.



Image 3: Cross Section S2: Encroachment to Western Side Boundary Envelope



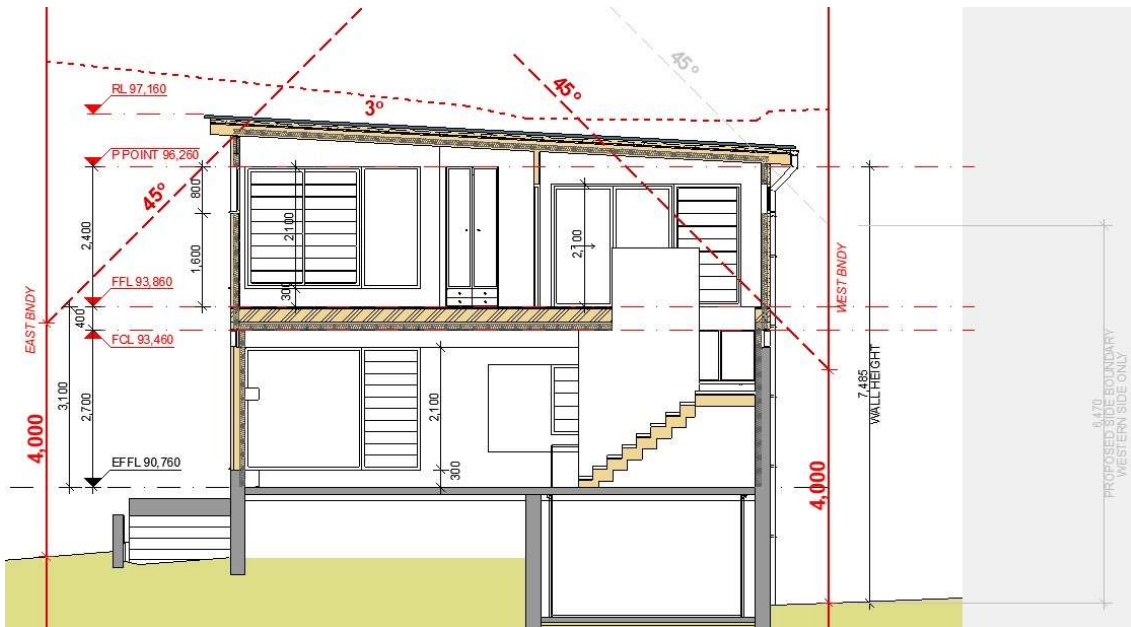


Image 4: Cross Section S3: Encroachment to Western Side Boundary Envelope

In conclusion, the extent of the variation is modest, and the building height is under 8.5m complying with bulk and scale reduction treatments, FSR, Landscaping, siting below main tree canopies and the side setback requirements. We request support of these variations given it does not compromise the objectives of the LEP or DCP and remains a compatible development to the immediate area.