



**D-PLAN**  
URBAN PLANNING CONSULTANTS PTY LTD

# STATEMENT OF ENVIRONMENTAL EFFECTS

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**TO CONSTRUCT A NEW TWO  
STOREY DWELLING HOUSE**

**2 BURLEY ROAD, PADSTOW  
(LOT 2 DP 804039)**

25/3/2022

D-Plan Urban Planning Consultants Pty Ltd

# TABLE OF CONTENTS

1.0	EXECUTIVE SUMMARY	1
2.0	SITE/LOCALITY DESCRIPTION	2
3.0	THE PROPOSAL	4
4.0	RELEVANT PLANNING CONTROLS	5
4.1	<u>Bankstown Local Environmental Plan 2015 (BLEP 2015)</u>	5
	Clause 4.3 – Height of Buildings	6
	Clause 4.4 – Floor Space Ratio	6
	Clause 4.6 – Exceptions to development standards	6
	Clause 5.10 – Heritage Conservation	6
	Clause 6.1 – Acid Sulfate Soils	6
4.2	<u>Draft Consolidated LEP</u>	7
4.3	<u>Bankstown DCP 2015</u>	8
	<u>Part B1 – Residential Development</u>	8
	Desired Character	8
	Dwelling Houses	9
	• Subdivision	9
	• Storey Limit	9
	• Setbacks	9
	• Private Open Space	9
	• Access to Sunlight	9
	• Visual & Acoustic Privacy	10
	• Road/Rail Noise & Vibration	10
	• Building Design	10
	• Building Design (Car Parking)	11
	Landscaping	11
4.4	<u>Other Requirements</u>	11
	BASIX	11
	Dwelling Entry & Security	11
	Drainage	12
4.5	<u>Non-Compliance</u>	13
	Wall Height	13
	Front Setback	13
5.0	CONCLUSION	14

## ATTACHMENTS

1. Variation Request (Wall Height)
2. Control Table

# 1.0 EXECUTIVE SUMMARY

Canterbury Bankstown Council promotes well-designed residential development that does not intrude on the amenity of existing neighbourhoods characterised by significant private trees and planting that complement street trees.

Dwelling house development is an acceptable form of development when good planning and urban design controls are established to guide the building industry. Council has comprehensive planning and urban design standards to ensure that this form of development complements existing residential areas.

The urban design qualities of the proposed development are complementary to the established character of both Burley Road and Davies Road and will substantially improve the streetscape amenity by incorporating the following:

- A well-balanced façade with articulation which produces an aesthetically pleasing presentation to both street frontages;
- Subservient garaged parking accessed off the Burley Street frontage;
- Formalised landscaping; and
- Passive surveillance opportunities from habitable room windows and a first-floor balcony.

Desired outcomes such as, usable landscaped areas and streetscape amenity were some of the prime considerations in the design process which has resulted in a high-quality development that will enhance the locality.

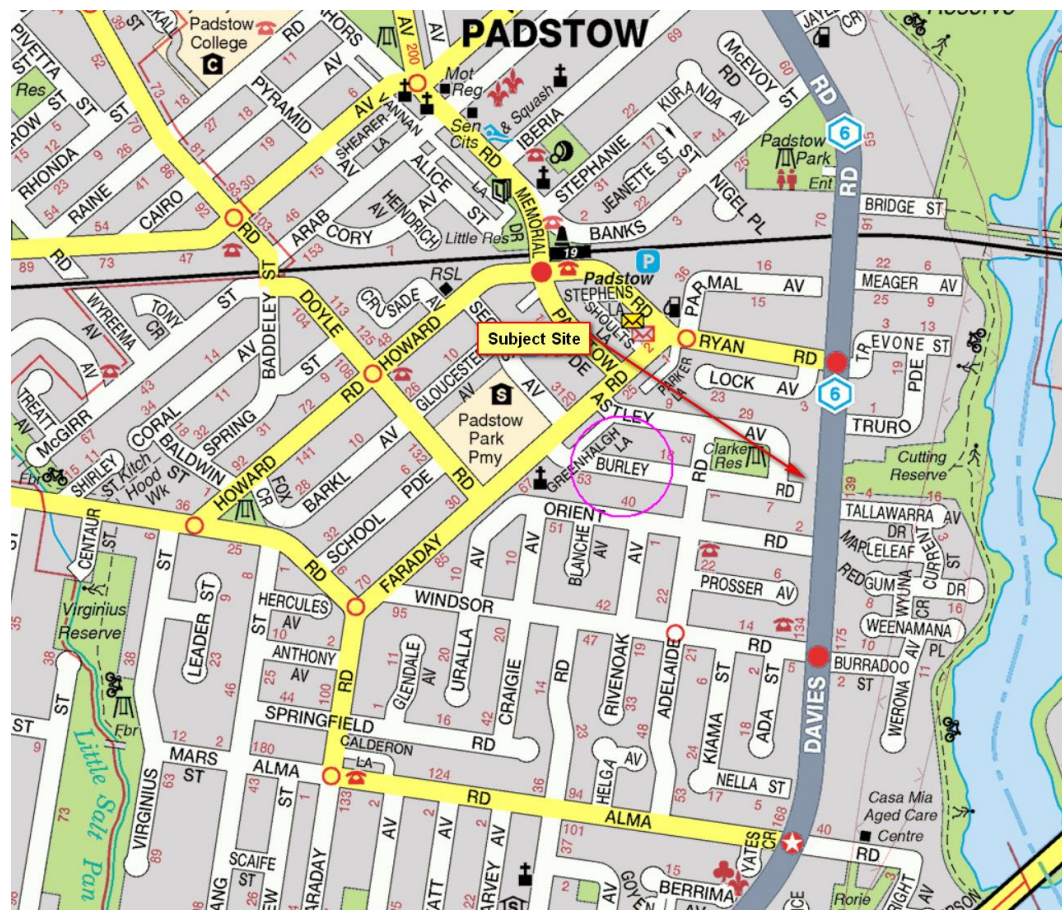
## 2.0 SITE/LOCALITY DESCRIPTION

The subject land, No. 2 (Lot 2 DP 804039) Burley Road, Padstow is located on the northwestern corner of Burley Road and Davies Road. The site is a slightly irregular shaped corner allotment, with a frontage of 18.26m (excluding splay), comprising a total site area of **533.8m<sup>2</sup>**.

Currently on the site there is a single storey clad dwelling with associated structures, which will be demolished under a separate application.

The locality is characterised by:

- Detached dwelling houses of various size and mixed architectural styles with interspersed dual occupancy and multi dwelling housing development;
- Standard width nature strips with a relatively consistent street tree planting theme (Bottlebrush);
- Variety of front fencing styles and heights;
- Well-kept front yards with small, medium and large trees and shrubs; and
- Davies Road also influences the character of the locality.

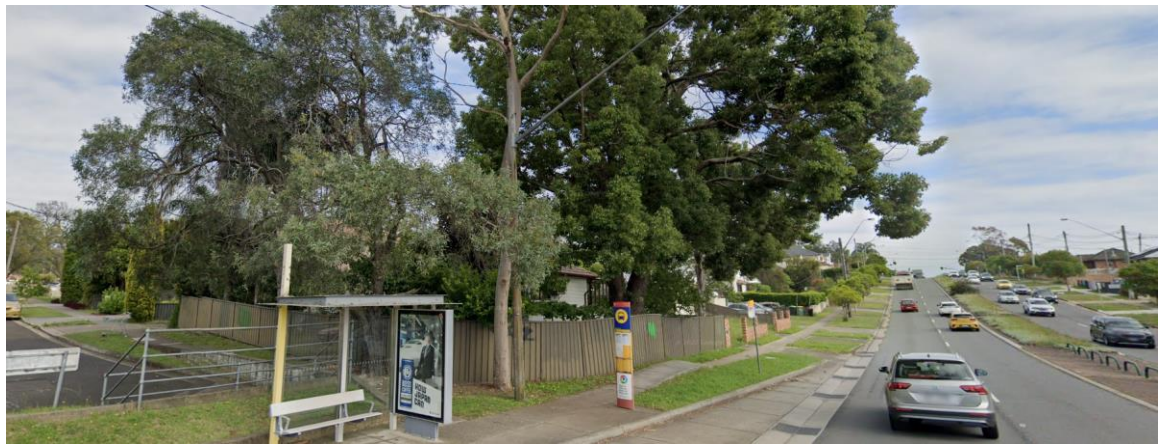


Locality Map





**Photo – Streetscape - Burley Road (Note: it is evident that the locality is experiencing a trend for improvement with older, smaller dwellings being replaced with larger dwellings and increased densities)**



**Photo – Streetscape - Davies Road**



**Photo – Subject site**

## 3.0 THE PROPOSAL

The proposal is to construct a new two storey dwelling house.



**Artistic Impression**

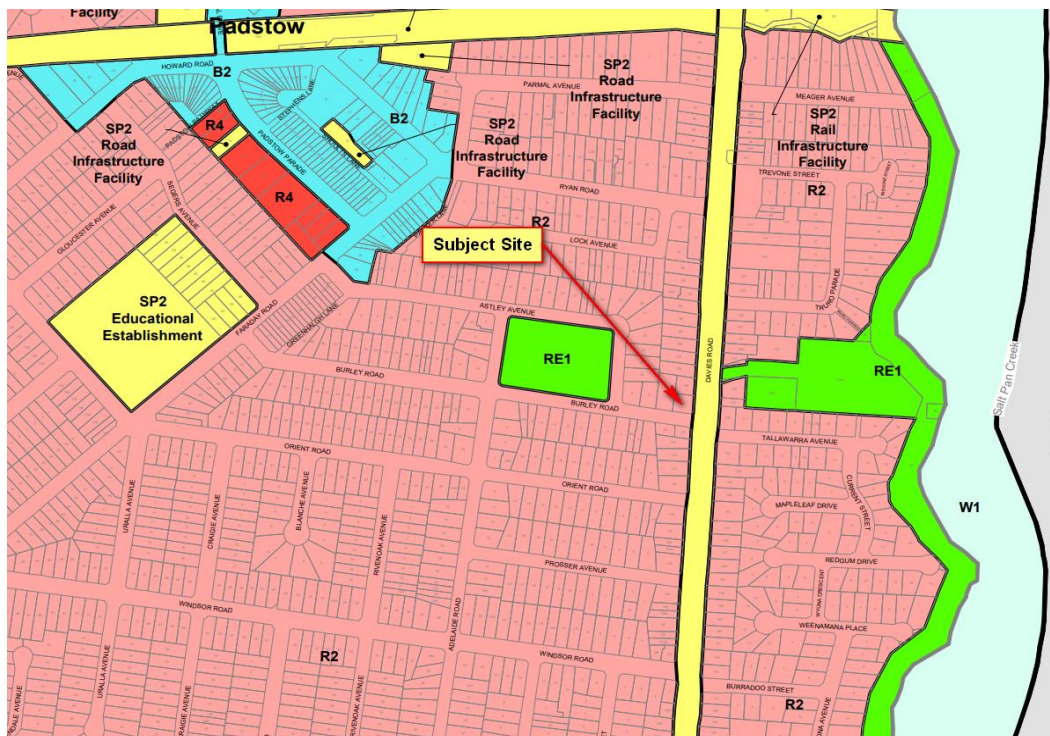


## 4.0 RELEVANT PLANNING CONTROLS

### 4.1 Bankstown Local Environmental Plan 2015 (BLEP 2015)

The subject site is within Zone R2 Low Density Residential under Bankstown Local Environmental Plan 2015 (BLEP 2015). The proposed development is permissible with the consent of Council provided that the proposal complies with all relevant clauses in BLEP 2015.

*dwelling house* means a building containing only one dwelling.



**Zoning Map**



Relevant Clause	Comment
<p><b>Clause 4.3 – Height of Buildings</b></p> <p>The Height of Building Map categorises the site within the maximum <u>9m</u> building height limit.</p> <p>Sub-clause (2B) stipulates a Wall Height of <u>7m</u> (max)</p>	<p>The proposed development has a maximum height of <u>7.71m</u> which satisfies the requirements of the clause.</p> <p>A maximum wall height of <u>7.71m</u> is proposed which exceeds the maximum wall height requirement, therefore a formal Variation Request accompanies the application (<i>see Attachment 1</i>).</p>
<p><b>Clause 4.4 – Floor Space Ratio</b></p> <p>The FSR Map indicates a maximum FSR of <u>0.5:1</u> for the subject site.</p>	<p>The proposal complies with this clause, having an FSR of <u>0.5:1</u>.</p>
<p><b>Clause 4.6 – Exceptions to development standards</b></p> <p>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.</p>	<p>In this regard, a Variation Request is sought in relation to the Maximum Wall Height requirement [<i>see Attachment 1 - Variation Request (Wall Height)</i>].</p>
<p><b>Clause 5.10 - Heritage Conservation</b></p>	<p>The subject site is not listed as a heritage item or located in the immediate vicinity of any heritage-listed items.</p>
<p><b>Clause 6.1 - Acid Sulfate Soils</b></p>	<p>According to the Acid Sulfate Soils Map, the subject site is not within any category (Class 5) which may limit excavation. The proposal does not involve extensive excavation that would affect the structural viability of the building due to the existing soil conditions.</p>

## 4.2 Draft Consolidated LEP

The subject site is within the R2 – Low Density Residential Zone under the draft LEP.



Dwelling house development will be permissible in the zone under the draft. It should be noted, however, that the draft standards are neither certain nor imminent and the draft LEP contains a savings provision. Furthermore, the proposal is not antipathetic to the objectives of the zone, in that the proposal results in a variety of housing types and would have the least impact in terms of amenity.

Council Staff have advised that the current LEP will be used as the assessment criteria.

## 4.3 Bankstown DCP 2015

### Part B1 – Residential Development

All relevant numeric DCP requirements have been tabulated and are provided as ***Attachment 2 - Control Table***, with additional comments provided below:

#### **Desired Character**

The surrounding neighbourhood is characterised by a mixture of residential development including;

- Detached dwelling houses of various size and mixed architectural styles with interspersed dual occupancy and multi dwelling housing development;
- Standard width nature strips with a relatively consistent street tree planting theme (Bottlebrush);
- Variety of front fencing styles and heights;
- Well-kept front yards with small, medium and large trees and shrubs; and
- Davies Road also influences the character of the locality.

The proposed development will continue an already emerging trend for improvement with newer building forms and densities. The design incorporates contemporary architectural themes with articulation and a low pitched (flat) roof design.

The proposed development is of two storey construction with clearly defined ***base elements*** through the effective use of design features, articulation, front porch, balcony and colours and textures. In terms of bulk and scale it is compatible with adjoining and nearby single and two storey building forms, whilst maintaining a similar front setback and new landscaping will enhance the amenity of the streetscape.



**Photo – emerging character**

## Dwelling Houses

### *Subdivision*

The subject site is an existing allotment comprising a site area which can accommodate a single dwelling and complies with most numeric requirements for this type of development.

### *Storey limit (not including basements)*

The proposal does not exceed two storeys as required.

### *Setbacks*

The proposed development satisfies the objectives and most of the numeric requirements stipulated in this section of the DCP (**See Attachment 2 – Control Table**) as follows:

- **Front** - the proposed minimum (front) setbacks of **5.5m** (GF) and **5.5m** (FF) are considered suffice and given the location and configuration of the site, it is easily justifiable as the majority of the development is setback further than the minimum requirement. The building line is staggered to reduce garage dominance and will not be visually interpreted as a non-compliance. Further comment is provided under the heading Non-Compliance.
- A **secondary** street setback of **7.983m** (min) complies.
- A **side** setback of **1500mm** complies.
- There is adequate space to provide landscaping, open space and privacy between adjoining dwellings.

**Note: the dwelling has presentation to Burley Road, however, it could be construed that the primary frontage is off Davies Road in which case the proposal fully complies with the setback controls.**

### *Private Open Space*

The Private Open Space area of the dwelling is in excess of the minimum DCP requirement (i.e., **90m<sup>2</sup>** with dimensions greater than 5m). It relates to the living areas of the dwelling and new landscape planting will be provided, incorporating native species of trees and shrubs to improve local biodiversity and continue the landscape theme along both street frontages.

### *Access to Sunlight*

The rooms in the dwelling have been appropriately orientated to receive access to natural sunlight, with northern exposure to habitable room areas. Likewise, the Private Open Space area receives sunlight to more than 50% of the yard for 3hrs during winter. The private open space area of the adjoining property is not affected by shadows cast by the proposed dwelling as shadows cast by the dwelling fall towards the street.



## ***Visual & Acoustic Privacy***

Privacy concerns are addressed by minimising the number of window openings facing the side/rear boundaries, raised/lowered sills and opaque glazing where required, together with adequate side/rear boundary offsets. Separation and new landscaping will provide adequate privacy between adjoining dwellings.

## ***Road/Rail Noise and Vibration***

The SEPP (Transport & Infrastructure) provides that if the consent authority considers that land that is in or adjacent to a busy road or rail corridor the consent authority must not consent to a residential development unless it is satisfied that appropriate measures will be taken to ensure that the following noise levels are not exceeded:

- (a) *in any bedroom in the building — Laeq 35 dB(A), at any time between 10.00 pm and 7.00 am*
- (b) *anywhere else in the building (other than a garage, kitchen, bathroom or hallway) — Laeq 40 dB(A) at any time.*

The prescription of internal noise level limits means that the building must be constructed to a standard that provides for sufficient reduction of the external noise so that the internal levels are achieved. The *Development near Rail Corridors and Busy Roads Interim Guideline* (DoP 2008b) provides guidance for the planning, design and assessment of development in or adjacent to rail corridors and busy roads to support the Infrastructure SEPP.

In this regard, the designer, builder and owner are aware of their obligations to achieve the internal noise levels and appropriate conditions of consent can be included to ensure compliance.

## ***Building Design***

The proposed development incorporates contemporary design features, with clearly defined **base elements** through the effective use of design features, articulation, front porch, balcony and colours and textures, which produces an aesthetically pleasing presentation to both street frontages.

The overall height of the development is comparable to adjoining and nearby development and complies with the maximum height requirement, notwithstanding that the wall height exceeds the 7m requirement. Furthermore, the contemporary design, together with effective base elements defining the ground level, and low pitched (flat) roof lines, produces an aesthetically pleasing appearance to the development which assists in reducing the bulk and scale of the building. Overall, it is considered that the design is skillful, and contributes to the streetscape amenity.

### ***Building Design (Car Parking)***

Car parking is provided in the form of a well-integrated double garage. Burley Road terminates at the subject site, as such, reverse manoeuvres are considered safe.

### **Landscaping**

The amount of open space available provides landscaping opportunities to achieve the objectives outlined in the DCP as follows:

- Screening between adjoining properties;
- Softening the visual impact of hard surface areas and car parking spaces;
- Appropriate species selection for the climate; and
- Enhancement of the streetscape amenity.

As mentioned earlier, the Private Open Space area of the dwelling is in excess of the minimum DCP requirement (i.e., **90m<sup>2</sup>** with dimensions greater than 5m). It relates to the living areas of the dwelling and new landscape planting will be provided, incorporating native species of trees and shrubs to improve local biodiversity and continue the landscape theme along both street frontages.

## **4.4 Other Requirements**

### ***BASIX***

The State Government introduced BASIX, which consolidates planning provisions relating to water consumption and greenhouse gas emissions. A BASIX Certificate is provided for the dwelling demonstrating the applicant's commitments in achieving the objectives of the state government's policy.

Energy conservation principles will be achieved through the construction method and orientation of the building, together with thoughtful planting of trees and shrubs (i.e., maximise access to natural sunlight during the winter months and the use of materials with thermal massing properties).

### **Dwelling Entry and Security**

Design guidelines outlined in the Crime Prevention through Environmental Design (CPTED) were considered and incorporated as follows:

- Provision of a clearly visible entry;
- Passive surveillance treatment has been provided through the provision of habitable room windows and balcony with outlook towards the street;
- Suitable landscaping will produce a defensible open space at the front, resulting in some interaction with the public domain beyond; and
- Fencing will be provided to prevent intruders from accessing the private open space area at the rear.

## Drainage

Council's goal is to develop long term improvements to the health of waterways, which in turn enhances the ecological integrity of the system, whilst balancing the need to manage flooding, waste water and stormwater. To achieve this goal the proposed development provides the following:

- A Concept Drainage Plan which demonstrates that stormwater will be collected, stored and discharged by gravity to the street in a controlled manner;
- Rainwater harvesting also assists in reducing direct runoff from the site; and
- Erosion and sedimentation control measures will be implemented during construction.

The site is also affected by the following Council stormwater system components:

- *Overland flowpath [floodway] for excess stormwater runoff from the upstream catchment and associated with the drainage system located north of the site.*
- *Stormwater inundation from excess Stormwater runoff from the upstream catchment and associated with the drainage system through Davies Road.*

For this development, a Flood/Overland Flow Study to determine the 100 year ARI water surface level is NOT necessary, provided that the proposed development and stormwater design satisfies the terms stipulated in the Stormwater System Report, including:

- *Habitable floor levels are to be 500mm above the 100 year ARI flood level at the site (Note: in this instance is RL 11.7m AHD)*
- *Runoff on the site, and naturally draining to it is to be collected and disposed of to Council's requirements.*

## 4.5 Non-Compliance

### Wall Height

This matter is addressed in a formal Clause 4.6 Variation Request [**see Attachment 1 – Variation Request (Wall Height)**].

### Front Setback

The subject site, being in effect a corner site (Burley Road and Davis Road), requires a site-specific response, particularly given that Davies Road is a classified road. In this instance, the dwelling has been positioned as far back as possible from the Davies Road frontage (i.e., 7.983m – 9.735m).

Under the circumstances, some concession should be given to the Burley Road frontage as it can be construed as being the secondary street frontage, notwithstanding the presentation of the dwelling.

**Note: Council has accepted this approach for the development on the opposite corner.**

From an urban design viewpoint, corner sites should be emphasised through design treatment, siting and height. In this regard, the minor encroachment assists in:

- (a) Emphasising the corner site location;
- (b) Providing articulation to visually reduce the bulk and scale of the development; and
- (c) Reducing garage dominance, by emphasising main building elements and design features.

As such, the perception of the non-compliance is negligible.

The heads of consideration under Section 4.15 (previously Section 79C) of the Environmental Planning and Assessment Act 1979 set out the assessment criteria for development applications and the approach that assessing authorities should take.

Sub clause (3A) states:

*(3A) **Development control plans** - If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:*

- (a) if those provisions set standards with respect to an aspect of the development and the development application **complies** with those standards—is **not to require more onerous standards** with respect to that aspect of the development, and*
- (b) if those provisions set standards with respect to an aspect of the development and the development application **does not comply** with those standards—is to be **flexible** in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and*
- (c) may consider those provisions only in connection with the assessment of that development application.*

Given the proposed setback from Davies Road, it is considered that the proposal actually complies with the DCP controls relating to the front setback, as such, it should not be a determining factor in the success of the application.



## 5.0 CONCLUSION

It is considered that the current strategy of Canterbury Bankstown Council to promote a variety of housing choice in the locality is being achieved by the proposed two storey dwelling house which provides accommodation for a family situation. Council's DCP requirements and good planning principles have been incorporated in the design, which has resulted in a high-quality development that will enhance the locality.

Consideration has been given to matters listed in Section 4.15 (previously Section 79C) of the Environmental Planning and Assessment Act 1979, concluding that the proposed development warrants approval.

David Bobinac  
Town Planner

## VARIATION REQUEST (CLAUSE 4.6 BANKSTOWN LEP 2015)

<b>Property:</b>	2 Burley Road, Padstow
<b>Proposal:</b>	To construct a two-storey dwelling house.
<b>Date:</b>	25/03/2022
<b>Development Standard:</b>	Maximum Building/Wall Height [Clause 4.3(2B)]

### Introduction

Clause 4.6 of the Bankstown LEP 2015 states:

- (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 Secretary has been obtained.*

This Variation Request satisfies the requirements of Clause 4.6 of Bankstown LEP 2015 as follows:

- It identifies the development standard to be varied - **Clause 4.3(2B) relating to the maximum building height for development.**
- Discusses the extent of the variation sought – **the variation to the standards is approximately 10%.**
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – **Clause 4.6(3)(a) (Method 1 and 4 of Wehbe v Pittwater Council).**
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Note: the focus being on the contravention NOT the development as a whole**) – **Clause 4.6(3)(b) - non-compliant elements of the development assist in neatly finishing off the top parapet element of the building and hence the objectives of the development standard. Furthermore, from an urban design context, building elements on corner sites should be emphasised. Consequentially, the minor exceedance to the height requirement produces a better environmental planning outcome, without compromising the amenity of adjoining properties.**
- Demonstrates that the proposed variation is in the public interest, being consistent with the objectives of the particular standard, and the objectives of the relevant zone in which the development is proposed - **hence satisfying Clause 4.6(4)(a)(ii).**

## Development Standard & Extent of Variation

In this particular case, the development standard relates to the maximum wall height for development under the provisions of the Bankstown Local Environmental Plan 2015, Clause 4.3(2B) in particular.

The EP&A Act defines development standard as follows:

*“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,...*

**NOTE: It is clear from the above definition that the ‘maximum wall height’ requirement of Bankstown LEP 2015 is a ‘development standard’.**

A variation is sought to Clause 4.3(2B) which states the following:

*(2B) Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:*

- (a) for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres,*
- (b) for a dwelling house or a dual occupancy—the maximum wall height is **7 metres**,*
- (c) for multi dwelling housing and boarding houses:*
  - (i) the maximum building height for a dwelling facing a road is 9 metres and the maximum wall height is 7 metres, and*
  - (ii) the maximum building height for all other dwellings at the rear of the lot is 6 metres and the maximum wall height is 3 metres.*

*(2C) In this clause, **wall height** means the vertical distance between ground level (existing) and the underside of the eaves at the wall line or the top of the parapet or the flat roof (whichever is the highest).*

**building height (or height of building)** means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

The proposed development exceeds the maximum wall height requirement due to the flood and slope characteristics of the site and the desire for a contemporary building design with parapet features (i.e., **7.71m** or **0.71m** or **10%**), hence, the need for a Clause 4.6 - Variation Request to accompany the application.

## Compliance with Development Standard is Unreasonable and Unnecessary

**Clause 4.6(3)(a)** – requires that the request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – **Method 1 and 4 of *Wehbe v Pittwater Council* is relied upon in this instance.**

Whilst *Wehbe* was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6.

Strict compliance with the standard in this particular case, would be unreasonable or unnecessary, because the non-compliant elements of the building do not undermine the objectives behind the standard and compliance with the development standard is not possible in this instance, due to the flood characteristics and slope of the site and the selected contemporary design, which inevitably causes the “wall height” development standard to be contravened. In other words, the application of the development standard is unreasonable and unnecessary in this instance because the 7m wall height requirement is too restrictive and would prevent contemporary architectural design outcomes.

This is not the intent or purpose of the standard (i.e., to restrict innovative architectural design), hence based on the various ways established by Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 - the underlying objective or purpose would be defeated or thwarted if strict compliance with the numeric requirement was required.

Council through its own admission in the DCP, acknowledges that the height requirement may under certain circumstances be varied, whereby, the exceedance is due to an “architectural roof feature” design outcome or the floor level needs to be specified due to stormwater/flooding constraints.

As such, the DCP anticipates that the requirement will under certain circumstances need to be varied, as compliance with the development standard is not possible, restricts good design outcomes, or is difficult to achieve and thwarts the intent of the standard.

The Architectural Plans clearly demonstrate that the maximum wall height of the development exceeds the development standard only because of the flood and slope characteristics of the site, and the selected contemporary architectural style of the dwelling, with low pitched rooflines and parapet edging.

The most commonly invoked way to establish that compliance with the development standard is unreasonable or unnecessary is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The rationale is that development standards are not ends in themselves, but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).



In this regard, the development in general achieves the underlying purpose of the maximum wall height requirement, which is expressed through the following objectives contained in Clause 4.3 (1) of the LEP, viz:

- (a) to ensure that the height of development is **compatible with the character**, amenity and landform of the area in which the development will be located – **the proposed low scale residential development, comprising a contemporary building form, is compatible with the character of the locality as it complies with all other LEP/DCP requirements including the maximum building height requirement, and all residential amenities are available to the dwelling. The non-compliant elements of the development do not undermine this objective, namely due to the design's mitigating features including, articulation and increased setbacks as required by the DCP.**
- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a **maximum of two storeys** in Zone R2 Low Density Residential – **the proposal comprises a two storey built form, which is consistent with the envisaged suburban character. The non-compliant elements of the development form a neat finish to the top of the building and do not undermine this objective.**
- (c) to provide appropriate height transitions between development, particularly at zone boundaries – as previously mentioned, **the proposal complies with the siting requirements which establishes reasonable spatial relief within the site and between adjacent dwellings, therefore, the proposal and non-compliant elements occupy the low side of the allotment with the situation improving with the slope of the site and adjacent to adjoining properties, therefore, they are not antipathetic to the objective.**
- (d) to define focal points by way of nominating greater building heights in certain locations – **N/A**

The above objectives are achieved as the development takes into account the additional wall height by providing articulation and single storey elements and is fully compliant with the maximum building height requirement. Further, the development maintains a two storey appearance. Likewise, the siting and design ensures that it does not adversely impact adjoining development. The site-specific circumstances (i.e., corner site location) also assists in minimising any adverse impacts as a result of the non-compliant wall height.

The development is compatible with the character of development in the locality (both existing and likely future development) and will effectively assimilate with the existing streetscape, therefore, its appearance will not be in strong visual contrast, being within the environmental capacity of the zone. It would be unreasonable to reject the development due to a minor design issue which has no environmental consequences, nor would it be reasonable to insist on butchering the design with a common pitched roof or no edging.

## Environmental Planning Grounds

**Clause 4.6(3)(b)** – requires demonstration that there are sufficient environmental planning grounds to justify contravening the development standard. The specific circumstances with this particular site and features that contravene the development standard are:

1. The maximum wall height standard of 7m restricts the attainment of good urban design principles established for this particular site, which is influenced by the flood and slope characteristics of the site. It is therefore, specific to the site and immediate locality, and the delivery of permissible forms of residential development.
2. The proposed development aims to provide an interesting contemporary architectural outcome to replace the existing outdated dwelling and the non-compliant elements are a crucial component in achieving this objective. The urban design qualities of the building are complemented by the selected roof design and a traditional pitched roof would destroy the integrity of the proposal.

Good urban design is promoted by the Environmental Planning and Assessment Act 1979 and the Department of Planning who are continuing to promote the values of good design in recent design guidelines and policies, as such, there is sufficient environmental planning grounds to justify contravening the development standard, in this particular case, so as to achieve a better outcome from the development (i.e., the non-compliant elements of the development assists in neatly finishing off the top parapet element of the building).

Finally, the wall height exceedance will not result in any significant overshadowing impacts (i.e., there are no environmental consequences/impacts as a result of the additional wall height).

The EP&A Act also promotes the economic use of land, which will be achieved through a development that caters for the desired lifestyle of the occupants of the land and the highest and best use of the site, in this particular case, being a dwelling house, on an average sized parcel of land. **The alternative situation of restricting or limiting the design affects the economic viability of developing the site.**

In terms of orderly use – all residential amenities are available to the development (i.e., vehicular and pedestrian access, car parking, open space and services). The interface of the development with the public domain is consistent with envisaged outcomes described in the DCP.

It is a well-known fact that the strict application of numeric requirements in the planning process restricts the design process and often produces poor urban design outcomes, particularly on difficult sites with constraints. In this instance, the development aims to provide a cohesive contemporary architectural outcome and strict compliance with the wall height requirement hinders the attainment of this planning objective.

In other words, a compliant development with an alternative roof design would not, for all intents and purposes, achieve a **better environmental outcome** in the zone, or enhance the residential amenity of residents living in the development, given that the development is consistent with the envisaged building character in the locality.

## Public Interest

A contemporary style development with a two storey appearance and progressive articulation, including stepping in as the wall height increases due to the slope of the site, represents an orderly and economic use of the land, which promotes the objectives of the EP&A Act.

The interface of the development with the public domain will be consistent with the intent of the clause (i.e., the development will have an attractive two storey appearance when viewed from the street and single storey elements are proposed through the rear which ensures that the development has no adverse impacts on adjoining properties).

From an urban design viewpoint, the development (in its current form) will be consistent with the emerging building character in the locality and will generally enhance the amenity of the streetscape, thus satisfying the planning principles established in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191.

It provides for improved residential amenities, including off-street car parking expected for the lifestyle of its occupants, without any significant adverse environmental impacts to adjoining properties. There will be sufficient accommodation and realistic leisure areas to ensure the building is fit for its designed purpose. The design has sensible living areas that are not in any way considered excessive.

Furthermore, the proposed development will be in the public interest because it is consistent with the objectives of the R2 – Low Density Residential zone (i.e., the objectives of the zone encourage a variety of housing forms).

The objectives of the zone 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 allow for certain non-residential development that is compatible with residential uses and does not adversely affect the living environment or amenity of the area.
- To allow for the development of low density housing that has regard to local amenity.
- To require landscape as a key characteristic in the low density residential environment.

The proposed development satisfies the above objectives as follows:

- The proposed development is within the range of permissible uses and will meet the housing needs of the community;
- Consideration has been given to the desired future amenity and character of the area and it is considered that the proposed development will be sympathetic and harmonious with nearby development in the locality and wider locality in general; and
- The proposed development will enhance the amenity of the site and immediate locality by the provision of housing stock of a comparable scale as adjoining and nearby dwellings.

Given the above, it is considered that the proposed development is within the environmental capacity of the R2 – Low Density Residential zone and the variation will not undermine the standard, hence it is in the public interest and satisfies Clause 4.6(4)(a)(ii).

No state or regional issues will arise should Council approve the variation. The justification provided in this request satisfies the statutory tests set out by Clause 4.6 of the Bankstown LEP and there are sufficient environmental planning grounds to approve the variation.

## Conclusion

This Variation Request satisfies the requirements of Clause 4.6 of Bankstown LEP as follows:

- It identifies the development standard to be varied - **Clause 4.3(2B) relating to the maximum wall height.**
- Discusses the extent of the variation sought – **a parapet edging exceeding the wall height by 10%.**
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – **Clause 4.6(3)(a) (Method 1 and 4 of *Wehbe v Pittwater Council*).**
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (*Note: the focus being on the contravention NOT the development as a whole*) – **(Clause 4.6(3)(b) - non-compliant elements of the development assist in neatly finishing off the top parapet element of the building and hence the objectives of the development standard. Consequentially, the exceedance to the wall height requirement produces a better environmental planning outcome, without compromising the amenity of adjoining properties.**

**This approach will be promoting the Environmental Planning and Assessment Act 1979 and the Department of Planning good design guidelines and policies.**

- Demonstrates that the proposed variation is in the public interest, being consistent with the objectives of the particular standard, and the objectives of the relevant zone in which the development is proposed - **hence satisfying Clause 4.6(4)(a)(ii).**

David Bobinac  
Town Planner

## ATTACHMENT 2

### CONTROL TABLE CANTERBURY BANKSTOWN COUNCIL – SINGLE DWELLING

Control	LEP/DCP Requirement	Development Proposal	Complies
Site Area	450m <sup>2</sup> or existing lot	533.8m <sup>2</sup>	Yes
Floor Space Ratio	0.5:1	0.5:1	Yes
Building Footprint	10m x 15m (behind setbacks)	➤ 10m x 15m (behind setbacks)	Yes
Building Height	2-Storeys Max Height – 9m Wall Height - 7m	2-Storeys Max Height – 7.71m Wall Height – 7.71m	Yes Yes No
Outbuilding Height	Wall Height - 3m	N/A	N/A
<b>Setbacks</b> Front	5.5m (ground floor) 6.5m (1 <sup>st</sup> floor)	5.5m 5.5m	Yes No
Secondary Street	3m (min)	7.983m	Yes
Side/Rear	Min 0.9m OR 1.5m if wall height is 7m or >	1.5m (min)	Yes
Private Open Space	80m <sup>2</sup>	90m <sup>2</sup>	Yes
Minimal Dimension of Principle Private Open Space	5m x 5m (min)	> 5m x 5m	Yes
Front Landscaped Area (min)	45% of frontage	➤ 45%	Yes
Parking	2 spaces	provided	Yes
Roof Pitch	35°(max)	low pitched roof	Yes
Storage Area	8m <sup>3</sup>	provided	Yes