

STATEMENT OF ENVIRONMENTAL EFFECTS

Modifications to Development Consent No. DA-662/2017 and as modified by DA-662/2017/A & DA-662/2017/B for the demolition of existing structures and construction of an attached dual occupancy and Torrens Title Subdivision

21 Saltash Street, Yagoona



11 DECEMBER 2023
FINELINE PLANNING & DESIGN

Project Details

Project: Modifications to Development Consent No. DA-662/2017 and as modified by DA-662/2017/A & DA-662/2017/B for the demolition of existing structures and construction of an attached dual occupancy and Torrens Title subdivision

Property: Lot 100, DP 35516, No. 21 Saltash Street, Yagoona

LGA: Canterbury- Bankstown

Client: Chehade

Document Control

Date	Purpose	Issue	Author	Reviewed
6/12/2023	Draft for review	1	NM	NM
7/12/2023	Final	2	NM	NM
11/12/2023	Revision 1	3	NM	NM

Signed



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1. INTRODUCTION

Fineline Planning and Design has been commissioned to prepare this Statement of Environmental Effects in support of a Modification Application seeking modifications to Development Consent No. DA-662/2017 and as amended by DA-662/2017/A and DA-662/2017/B issued for the demolition of existing structures and construction of a 2-storey attached dual occupancy with Torrens Title subdivision at 21 Saltash Street, Yagoona. The proposal seeks approval to regularise unauthorised building works that have not been constructed strictly in accordance with the stamped approved plans.

Canterbury-Bankstown Local Environmental Plan 2023 is applicable to the site. The site is zoned R2 under the LEP, the proposed development is permissible with consent and remains consistent with the objectives of the zone.

The site is situated on the eastern side of Saltash Street within the residential suburb of Yagoona. It currently consists of a 2-storey attached dual occupancy development with swimming pools at the rear.

The application has been prepared with reference to the provisions of Canterbury-Bankstown Local Environmental Plan 2023 and the Canterbury-Bankstown Development Control Plan 2023. It has also been considered having regard to the Heads of Consideration of Sections 4.12 & 4.55 of the Environmental Planning and Assessment Act, 1979. It provides an assessment of the proposed development against the relevant statutory requirements, social, economic and environmental impacts and potential amenity impacts of the development on the surrounding locality. It also outlines the measures proposed within the application to mitigate such impacts.

The assessment concludes that the proposed modified development remains consistent with the aims and objectives of Canterbury-Bankstown LEP 2023 and the Canterbury-Bankstown DCP 2023. The proposed modified development remains compatible with the character of the area and would have minimal impacts on surrounding properties. The amendments would not be discernible from the public domain nor adjoining properties. Furthermore, the proposed modified development is considered to be substantially the same development as that originally approved.

2. SITE DESCRIPTION AND CONTEXT

2.1 Site Locality

The context for the development is the residential suburb of Yagoona, within the Municipality of Canterbury-Bankstown Council. The site is located roughly 1 kilometre to the west of the Yagoona Town Centre and roughly 350 metres to the south of the Hume Highway. It is within an area generally zoned R2 Low Density Residential under Canterbury-Bankstown LEP 2023 and has good access to local shops and schools.

Low density housing developments are generally encouraged type of residential accommodation within the R2 zoned land. The existing building stock found in the area is characterized by one and two-storey detached dwelling houses of varying architectural periods including fibrous cement clad residents, weatherboard clad residences and brick residences, interspersed with dual occupancies and multi-dwelling housing developments. These houses are generally on rectangular parcels of land with front gardens created as a result of historical subdivision pattern for the streets. The area, however, is undergoing transition to 2-storey attached dual occupancies of modern contemporary designs.

The site is located on the eastern side of Saltash Street, which is a north-south oriented residential street connecting the Hume Highway at the northern end with Marion Street at the southern end.

It is a rectangular shaped allotment, having 16.15m frontage and a depth of 41.86m and 42.15m, with a total site area of 678.44m². It is legally described as Lot 100 in Deposited Plan 35516. The land slopes from the front to the rear boundary and has been re-developed into an attached 2-storey dual occupancy.

The immediate adjoining property to the north is a corner allotment on the corner of Saltash Street and Willett Street that consists of a single storey freestanding detached fibrous cement cottage with a detached garage at the rear. The immediate southern adjoining property contains a 2-storey multi-dwelling housing development fronting Saltash Street. The property to the rear (east) is a 2-storey attached dual occupancy fronting Dargan Street. The site fronts onto a public reserve.

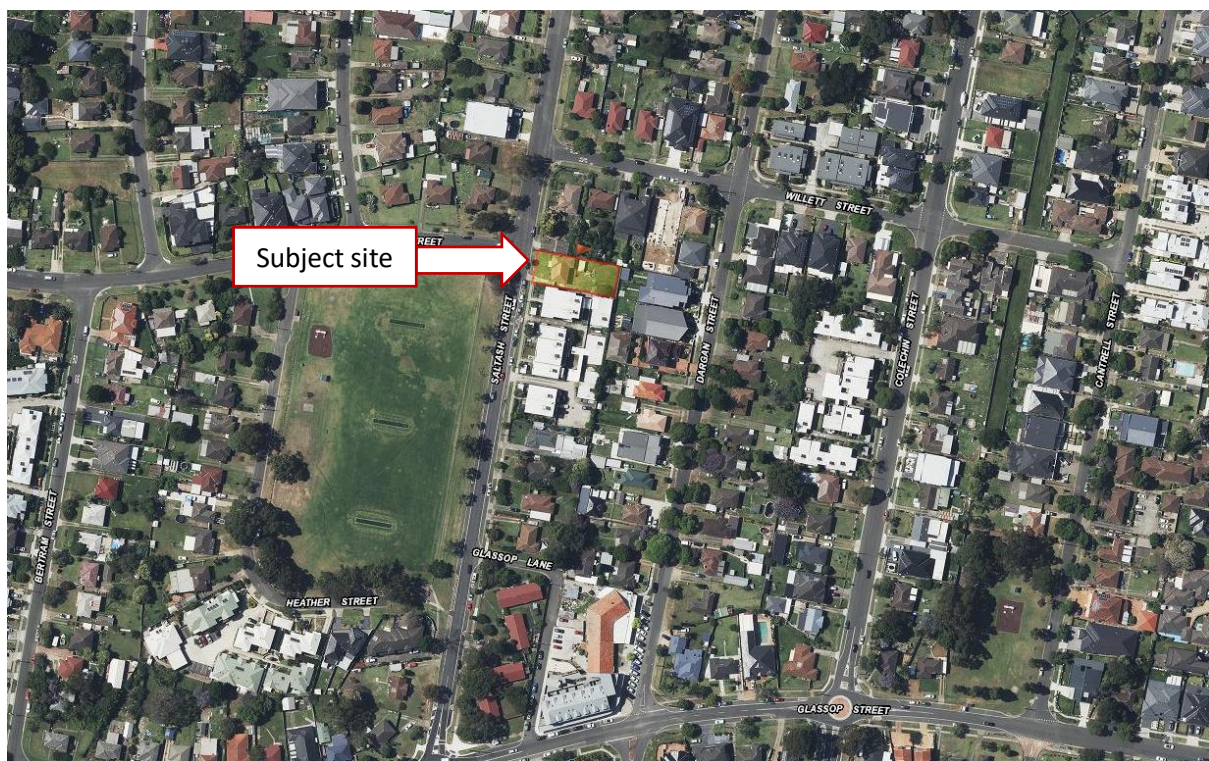


Figure 1: Aerial view of the locality with the subject site highlighted (Source: Six Maps November 2023).



Figure 2: Street view of the subject attached dual occupancy as seen from Saltash St – a combination of brick and rendered dual occupancy (Source: FPD)



Figure 3: Street view of the eastern adjoining multi-dwelling housing development (Source: FPD)

2.2 Development History

DA-662/2017

- a. DA-662/2017 was approved by Canterbury-Bankstown Council on 5 October 2017 for the demolition of existing structures and construction of an attached dual occupancy and torrens title subdivision at 21 Saltash Street, Yagoona. The approval was subject to standard conditions.
- b. CC-2018/149 was issued by Mohammad Abdullah Hussein Accredited Certifier on 5 March 2021 for the demolition of existing structures and construction of an attached dual occupancy and torrens title subdivision.
- c. Modification Application DA-662/2017/A was approved by Canterbury-Bankstown Council on 26 November 2021 that enabled internal layout changes and associated changes to the façade of the development.
- d. CC-2022/238 was issued by Mohammad Abdullah Hussein Accredited Certifier on 28 July 2022 for the demolition of existing structures and construction of an attached dual occupancy and torrens title subdivision.
- e. Modification Application DA-662/2017/B was approved by Canterbury-Bankstown Council on 10 August 2023 that enabled minor changes to the internal Torrens title boundary.

3. PROPOSED MODIFIED DEVELOPMENT

The Modification Application proposes amendments to the approved 2-storey attached dual occupancy development to regularise unauthorised building works that have been constructed not strictly in accordance with the approved stamped plans. The proposed amendments seek to regularise the internal arrangements of the approved dual occupancy as a result of a reduction of the internal courtyards of the development.

Specifically, the proposed amendments relate to the following:

Ground Floor

- The internal courtyards between the dwellings have been reduced in length from 5m to 3.28m. In doing so, the Living Room length has been increased from 4.85m to 5.76m.
- The internal facing windows off the internal courtyards have been reduced in size.
- The kitchen, laundry and bathroom have been re-arranged and squared off.
- The hallway width between the internal courtyard and bathroom and laundry has increased to 1.83m.
- The connection between the kitchen and laundry has been deleted. There is no longer a direct link between the kitchen and the laundry.
- The quarter landing stairs have been replaced with straight stairs.
- The Entry Porch and Garage Finished Floor Level of Dwelling 21 have been lowered from RL 43.624 to RL43.61, whilst the internal Finished Floor Level of Dwelling 21 has been increased from RL43.71 to RL43.76.
- The internal Finished Floor Level of Dwelling 21A has increased from RL43.56 to RL43.59 at the front entry foyer, whilst the Finished Floor Level at the rear of Dwelling 21A has increased from RL42.99 to RL43.02.

- The Alfresco Area at the rear of Dwelling 21 has been slightly re-configured and its Finished Floor Level has increased from RL43.49 to RL43.54.
- The Alfresco Area at the rear of Dwelling 21A has been slightly re-configured and its Finished Floor Level has increased from RL43.8 to RL43.83.
- No changes are proposed to the overall length of the building and the setbacks of the building from the front, side and rear boundaries.

First Floor

- The internal courtyard length has been reduced from 5m to 3.28m.
- A straight stair is now provided connecting the ground floor with the first floor.
- The bathroom located between Bedroom 2 and Bedroom 3 has been re-arranged and access to it re-positioned.
- Linen cupboard provided adjacent to the internal courtyard wall.
- Master Bedroom has been re-arranged and a Walk-in-Robe added. The north-facing Master Bedroom window of Dwelling 21 has been deleted and relocated to the eastern elevation, whilst the east facing ensuite window has been re-positioned to the southern elevation. The south-facing Master Bedroom window of Dwelling 21A has been deleted and relocated to the eastern elevation, whilst the east-facing ensuite window has been re-positioned to the northern elevation.
- The roof over the Alfresco area has been adjusted to the suit the slightly re-arranged Alfresco area.

Front (West) Elevation

- The front facing horizontal slot windows adjacent the front entrance on the ground floor of each dwelling have been replaced with a vertical proportioned window.
- The front facing horizontal slot windows above the entry foyer of each dwelling has been replaced with a larger window.
- The RL at the top of the building has been changed from RL 49.81 to RL 49.98.

South Elevation

- The south-facing Master Bedroom window on the first floor of the southern elevation has been deleted.
- The rear Alfresco area facing the southern side boundary has been re-arranged including the installation of fixed aluminium louvres.

Rear (East) Elevation

- The rear facing ground and first floor windows have been revised.
- The roofs over the Alfresco areas have been revised.
- The top of RL of the building have been revised.

North (side) Elevation

- The north-facing Master Bedroom window on the first floor of the northern elevation has been deleted.
- The rear Alfresco area facing the northern side boundary has been re-arranged including the installation of fixed aluminium louvres.

Approved Site Plan

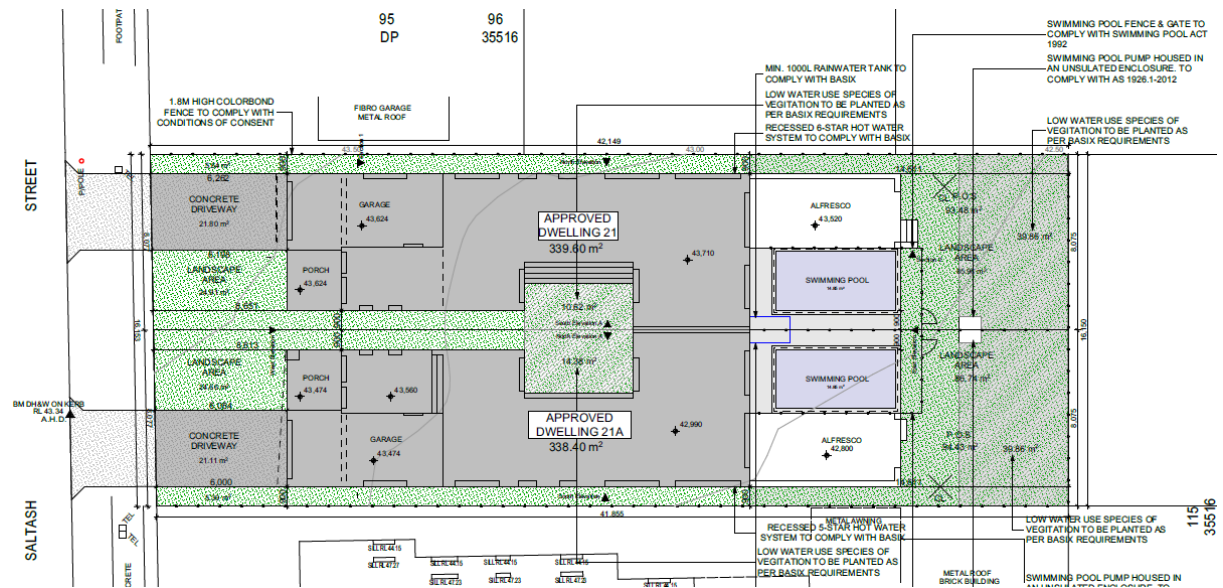


Figure 4: Site Plan approved under CC-2022/238

Proposed Modified Site Plan

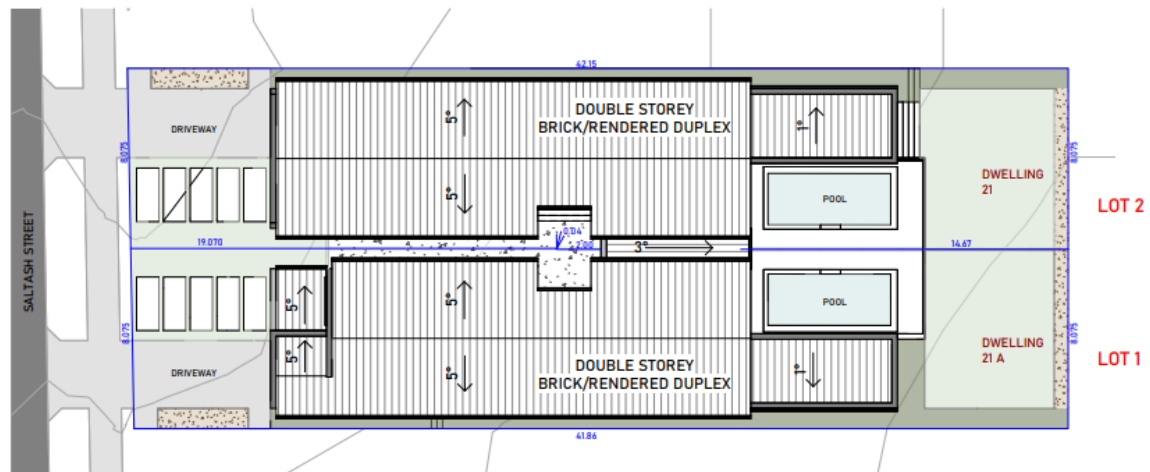


Figure 5: Proposed modified Site Plan showing slight amendments to the roof of the development.

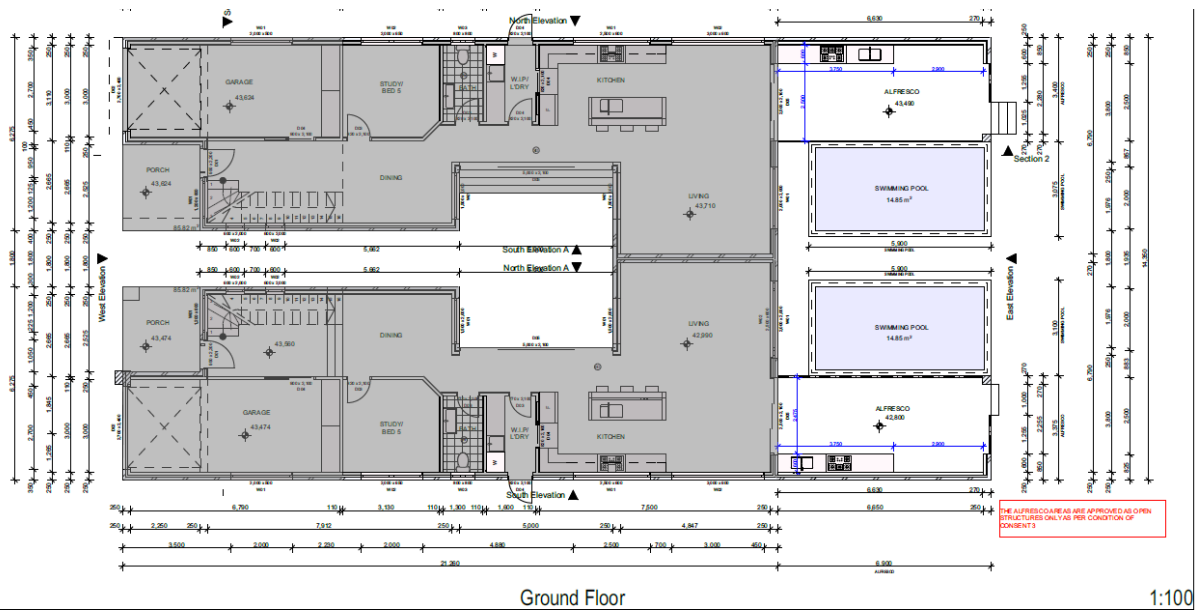
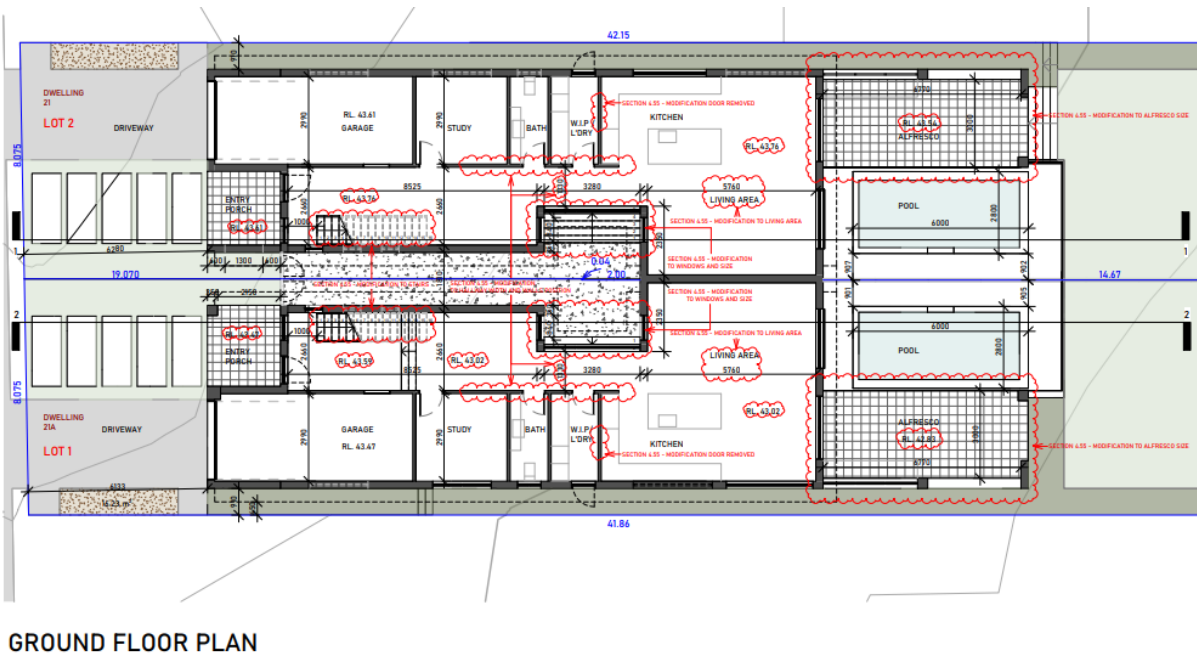


Figure 6: Ground Floor plan approved under CC-2022/238



GROUND FLOOR PLAN

Figure 7: Proposed modified ground floor plan showing amendments to the development, notably the reduction of the internal courtyards between the dwellings.



Figure 8: First floor plan approved under CC-2022/238

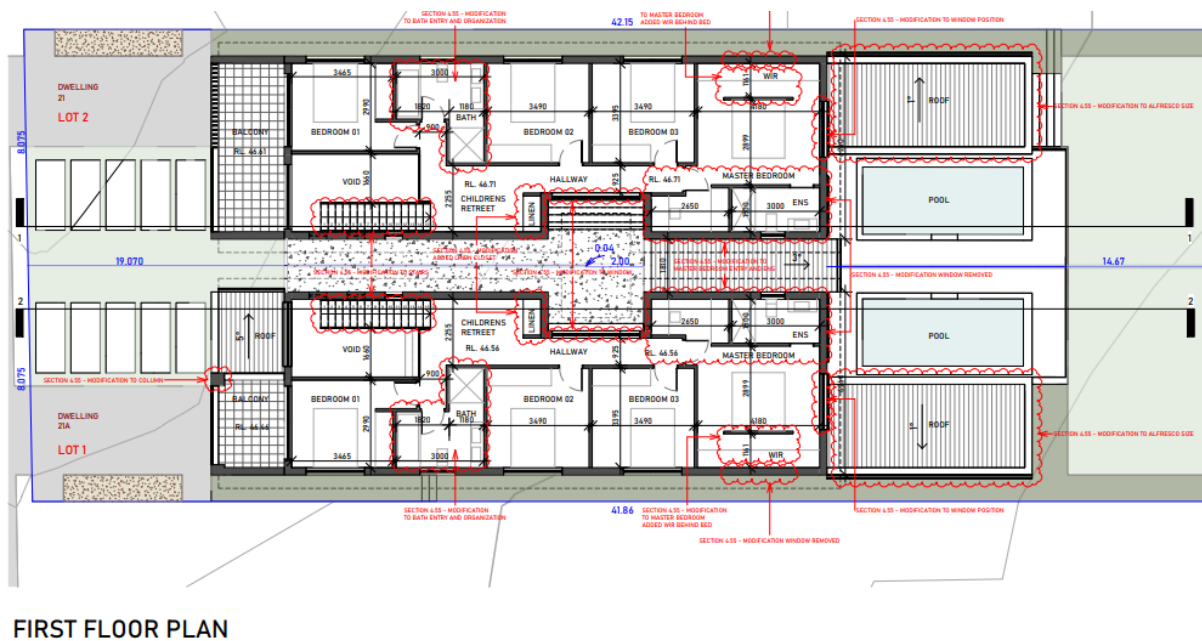
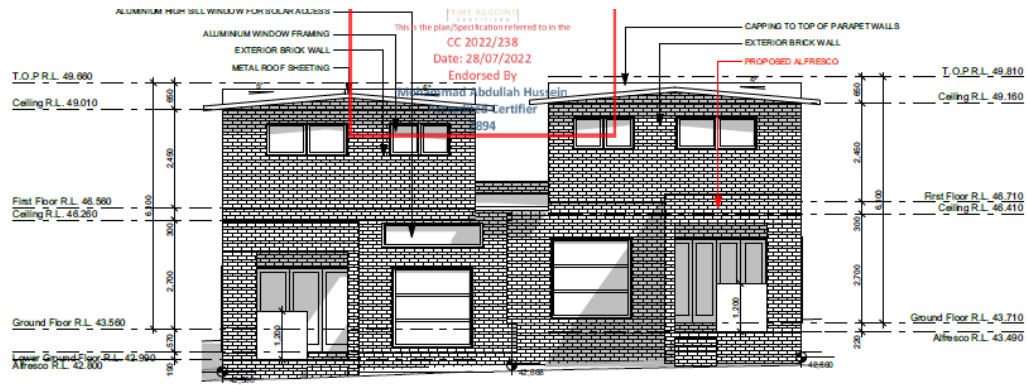
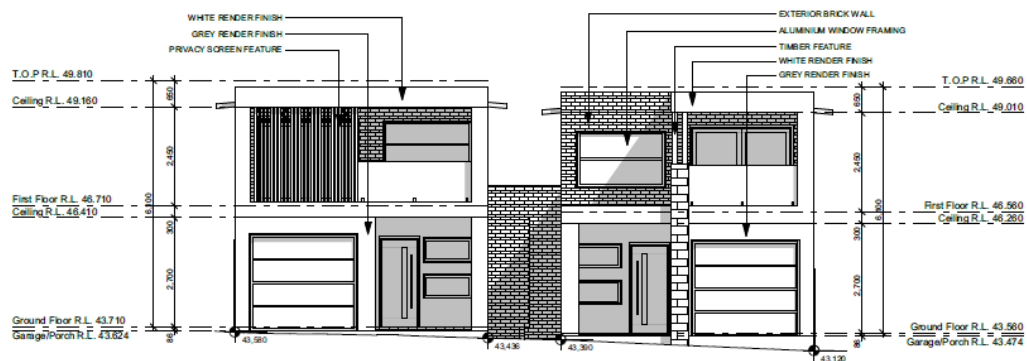


Figure 9: Proposed modified first floor plan.



East Elevation



West Elevation

Figure 10: Front and rear elevations approved under CC-2022/238



AS BUILT

EAST ELEVATION



Figure 11: Proposed modified plans showing the front and rear elevations.

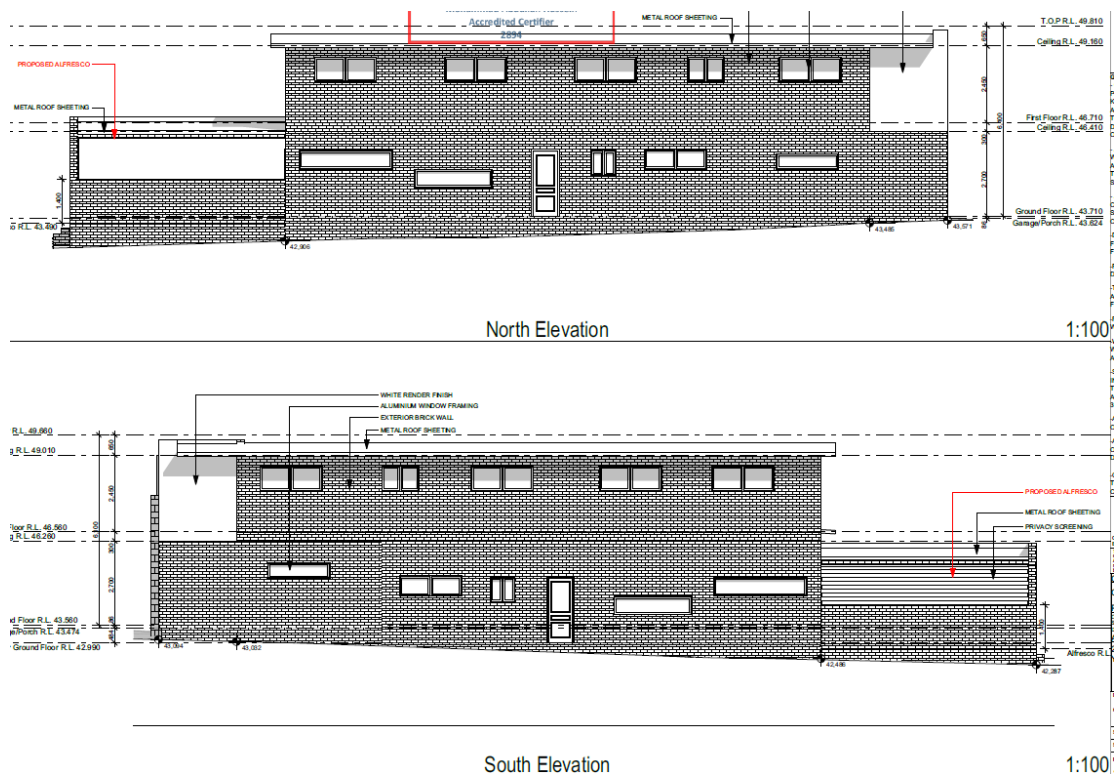


Figure 12: North and South Elevations approved under CC-2022/238

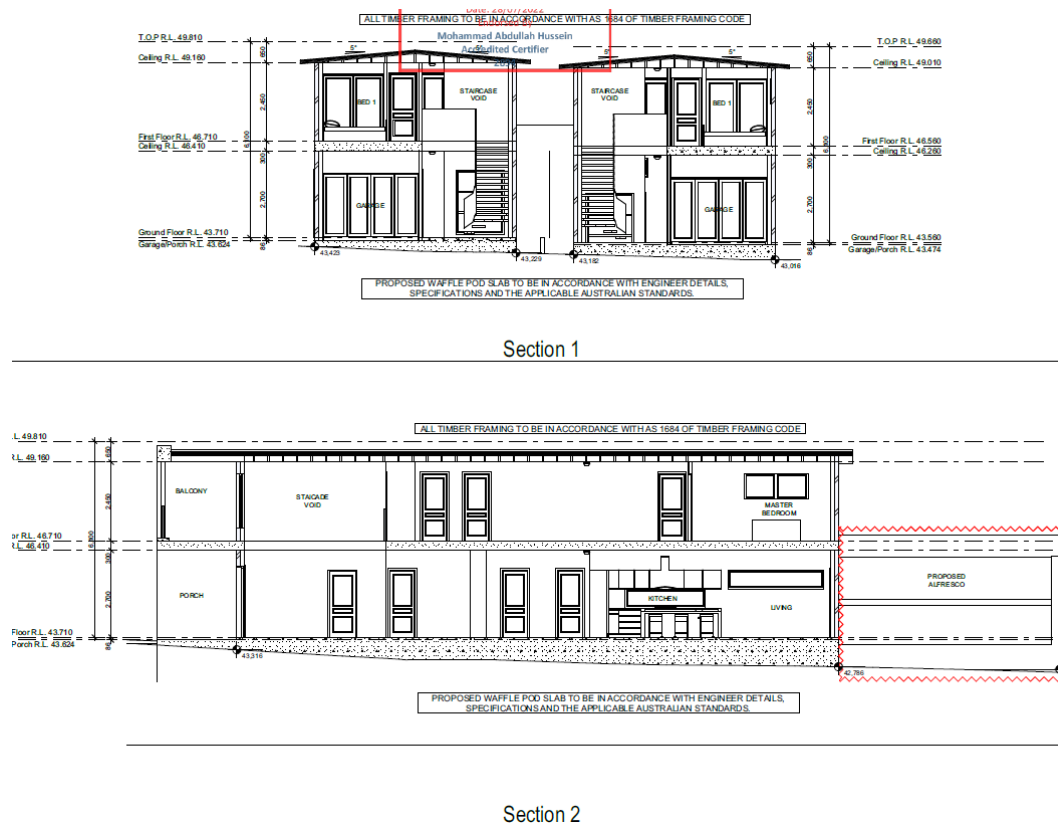
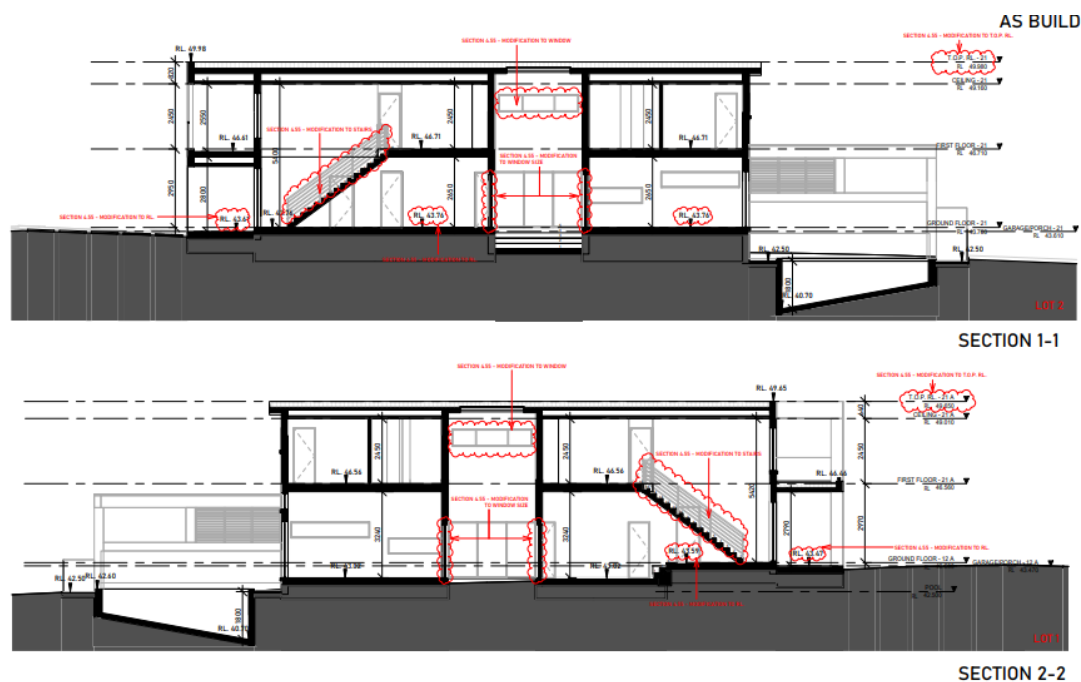


Figure 14: Sectional drawings approved under CC-2022/238



SECTIONS

Figure 15: Proposed modified plan showing sectional drawings of the proposal.

4. STATUTORY FRAMEWORK

The following planning instruments have been considered in the planning assessment of the subject Development Application:

- Canterbury-Bankstown Local Environmental Plan 2023
- Canterbury-Bankstown Development Control Plan 2023

4.1 CANTERBURY-BANKSTOWN LOCAL ENVIRONMENTAL PLAN 2023

The subject site is zoned R2 Low Density Residential pursuant to Canterbury-Bankstown Local Environmental Plan 2023, which was gazetted on 24 June 2023. The modification application, relating to an attached dual occupancy, would be properly characterised as a dual occupancy, which is permissible with consent within R2 zone.

Figure 16 below identifies the zoning of the site under Canterbury-Bankstown Local Environmental Plan 2023.



Figure 16: Zoning Map (Source: NSW Planning Portal Spatial Viewer)

The LEP R2 Low Density Residential Land Use table is reproduced below:

Zone R2 Low Density Residential

1 Objectives of 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.
- To allow for certain non-residential uses that are compatible with residential uses and do not adversely affect the living environment or amenity of the area.
- To ensure suitable landscaping in the low density residential environment.
- To minimise and manage traffic and parking impacts.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To promote a high standard of urban design and local amenity.

2 Permitted without consent

Home occupations

3 Permitted with consent

Bed and breakfast accommodation; Building identification signs; Business identification signs; Car parks; Centre-based child care facilities; Community facilities; **Dual occupancies**; Dwelling houses; Early education and care facilities; Environmental facilities; Environmental protection works; Exhibition homes; Flood mitigation works; Group homes; Health consulting rooms; Home businesses; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Semi-detached dwellings; Tank-based aquaculture

4 Prohibited

Any development not specified in item 2 or 3

It is contended that the proposed modified development remains consistent with the objective of the R2 zone in that the proposal will continue to provide for the housing needs of the community within a low-density residential environment.

The following table provides an assessment of the proposed development against the relevant development standards outlined in the Canterbury-Bankstown LEP.

Table 1: Compliance with Canterbury-Bankstown LEP 2023

Criteria	Required/Permitted	Comments
Part 1 Preliminary		
1.3 Land to which this Plan applies	This Plan applies to the land identified on the Land Application Map.	The site is identified on the Land Application Map.
Part 2 Permitted or prohibited development		

2.2 Zoning of land to which Plan applies	For the purposes of this Plan, land is within the zone shown on the Land Zoning Map	The site is zoned R2 Low Density Residential under the LEP and dual occupancies are permitted land use with consent.
2.6 Subdivision—consent requirements	(1) Land to which this Plan applies may be subdivided, but only with development consent.	Subdivision of the dual occupancy into 2 Torrens Title lots formed part of the original approval.
Part 4 Principal development standards		
4.1A Minimum lot sizes and special provisions for dual occupancies	<p>(2) Development consent must not be granted to development for the purposes of dual occupancies on a lot in Zone R2 in Area 1 unless—</p> <p>(a) the lot is at least—</p> <p>(i) for dual occupancies (attached)—500m², and</p> <p>(b) the width of the lot at the front building line is at least—</p> <p>(i) for dual occupancies (attached)—15m, and</p> <p>(c) each dwelling will have a frontage to a road.</p> <p>(3) Development consent must not be granted to the subdivision of a dual occupancy in Zone R2 in Area 1 unless each resulting lot will be at least—</p> <p>(a) for dual occupancies (attached)—250m²,</p>	<p>Complies.</p> <p>The site has a total site area of 678.44m² and the width of the lot at the front building line is 16.15m.</p> <p>Each dwelling faces the street.</p> <p>The approved resulting lots are:</p> <p>Lot 1 – 337.7m²</p> <p>Lot 2 – 340.74m²</p> <p>No changes proposed to the approved resulting lots.</p>
4.3 Height of buildings	Max building height – 9m	Complies: the proposed building height – 6.5m.
4.4 Floor Space Ratio	Max permitted FSR – 0.5:1	Does not comply. Proposed FSR - 0.586:1.
Part 5 Miscellaneous provisions		
5.10 Heritage conservation	Site is not listed as a heritage item, nor located within a heritage conservation area.	NA.

6.2 Earthworks	Council to consider matters relating to drainage patterns, soil stability, quantity and quality of fill and any impacts on drinking water catchments.	Earthworks associated with the proposal have already taken place. Minimum disturbance to the site is proposed.
6.9 Essential services	Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required— (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable vehicular access.	Complies. The site is located in an established residential suburb and is provided with essential services in terms of water supply and disposal of sewage, and electricity. In addition, satisfactory stormwater drainage and vehicular access is provided.

4.2 CANTERBURY-BANKSTOWN DEVELOPMENT CONTROL PLAN 2023

The following table outlines the relevant development controls for dwelling houses detailed in Chapter 1, Chapter 2, Chapter 3 and Chapter 5 of the DCP.

Criteria	Development Control	Compliance
Chapter 1: Introduction		
Purpose of this DCP	The purpose of the DCP 2023 is to supplement the Canterbury-Bankstown LEP 2023 and provide more detailed objectives and controls to guide the form of development for the LGA.	Noted.
Application of the DCP	This DCP applies to all land within the Canterbury-Bankstown LGA.	The site is located within the City of Canterbury Bankstown but is within the former Bankstown LGA. This DCP is applicable to the proposal.

Aims of this DCP	<p>The objectives of the DCP includes:</p> <ul style="list-style-type: none"> - Provide a single document supporting the Canterbury-Bankstown LEP 2023. - Establish clear guidelines for effective and orderly development in Canterbury-Bankstown. - Encourage high quality urban environment and built form character in the LGA. - To ensure development contributes to the prosperity of the LGA. - Ensure development protects and enhances the natural environment of the LGA. - Ensure development incorporates the principles of ecologically sustainable development. - To provide for a safe and secure environment in Canterbury-Bankstown. 	The proposal is consistent with the aims of the DCP.
Chapter 2: Site Considerations		
2.1 Site Analysis	Outlines the requirements of site analysis and identifies forms of development warranting the submission of site analysis.	Already addressed as part of the parent approval for the site.
2.2 Flood Risk Management	Outlines the Council's requirements for regulating and management of flood liable land in the LGA.	Already addressed as part of the parent approval for the site. No changes proposed.
2.3 Tree Management	Providing objectives and controls for tree management.	The site is devoid of trees.
Chapter 3: General Requirements		
3.1 Development Engineering Standards	Sets out the objectives and controls to protect the integrity of Council's infrastructure in situations where it is impacted upon by building and	Already addressed as part of the parent approval for the site.

	subdivision development. It also provides additional controls relative to site civil engineering requirements, protection of Council infrastructure, vehicular and pedestrian access to development sites, stormwater management and conveyance, stormwater flooding and land subdivision.	No changes to the approved driveways and vehicular crossing to Saltash Street.																									
3.2 Parking	Dual Occupancies: 2 car spaces per 3 or more bedrooms	No changes proposed. 2 car spaces provided per dwelling.																									
3.3 Waste Management																											
Section 1	<p>This section of the DCP aims to integrate building design and waste management to support the efficient collection and management of waste. It includes identifying waste outcomes for development that are safe and efficient, maximise waste reduction and increase recycling. It also provides additional objectives and controls to ensure the design and operation of waste management systems are consistent with Council’s commitment to building and creating a sustainable city.</p>	<p>No changes proposed.</p> <p>Only domestic waste is provided.</p>																									
Section 2	<p>Standard service specifications for residential development</p> <table><tr><th>General waste</th><th>Recycling</th><th>Garden organics</th></tr><tr><td>140L</td><td>120L</td><td>120L*</td></tr></table> <p>Frequency of service</p> <table><tr><th rowspan="2">Residential development</th><th colspan="3">Service frequency</th></tr><tr><th>General waste</th><th>Recycling</th><th>Garden organics</th></tr><tr><td>Attached dwellings, dwelling houses, dual occupancies, secondary dwellings, semi-detached dwellings</td><td>One collection per week</td><td>One collection per fortnight</td><td>One collection per fortnight**</td></tr><tr><td>Manor houses, multi dwelling housing, multi dwelling housing (terraces)</td><td>One collection per week</td><td>One collection per fortnight</td><td>One collection per fortnight**</td></tr><tr><td>Low rise residential flat buildings, shop top housing, mixed use developmen</td><td>One collection per week</td><td>One collection per fortnight</td><td>One collection per fortnight**</td></tr></table>	General waste	Recycling	Garden organics	140L	120L	120L*	Residential development	Service frequency			General waste	Recycling	Garden organics	Attached dwellings, dwelling houses, dual occupancies, secondary dwellings, semi-detached dwellings	One collection per week	One collection per fortnight	One collection per fortnight**	Manor houses, multi dwelling housing, multi dwelling housing (terraces)	One collection per week	One collection per fortnight	One collection per fortnight**	Low rise residential flat buildings, shop top housing, mixed use developmen	One collection per week	One collection per fortnight	One collection per fortnight**	<p>Sufficient space provided within the rear yard to accommodate a General waste, Recycling and Garden Organics bins.</p> <p>The frequency of service of one collection per week for General waste and one collection per fortnight for Recycling is suitable for the proposal.</p>
General waste	Recycling	Garden organics																									
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Section 3	Residential Development	
All residential development types	3.1 Council or its contractors are solely to provide the waste services to all residential development types as required under the Local Government Act 1993.	Noted
	3.2 Each dwelling is to have: (a) A waste storage cupboard in the kitchen capable of holding two days waste and recycling and be sufficient to enable separation of recyclable materials. (b) A suitable space in the kitchen for a caddy to collect food waste.	A waste storage cupboard is provided in the kitchen for the storage of waste and recycling. Plenty of space in the dwelling to accommodate waste and recycling area.
	3.3 Development must provide an adequate sized bin storage area behind the front building line to accommodate all allocated bins.	Ample space available in the rear yard.
	3.4 The location of the bin storage area must not adversely impact on the streetscape, building design or amenity of dwellings.	Ample space in the rear yard to store bins and the bins would not be visible from the public domain.
	3.5 The location of the bin storage area should ensure this area: (a) is screened or cannot be viewed from the public domain; and (b) is away from windows of habitable rooms to reduce adverse amenity impacts associated with noise, odour and traffic.	Complies.
	3.6 The location of the bin storage area is to be convenient to use for the dwelling occupants and	Complies.

	caretakers, through reducing the bin travel distance from the bin storage area to the nominated kerbside collection point. The bin-carting route from the bin storage area to the collection point must not pass through any internal areas of the building/dwelling and must avoid stairs or slopes.	
	3.7 Where possible, development may consider providing each dwelling with a suitable space for composting and worm farming, located within the backyard, private courtyard or open space. Composting facilities should locate on an unpaved area, with a minimum size of 1m ² per dwelling.	NA
	3.8 Dwellings are to have access to an adequately sized on-site storage area to store bulky waste awaiting collection.	Complies.
	3.9 Development must comply with the requirements of the applicable Waste Design for New Developments Guide.	Complies.
3.7 Landscape		
Section 2 – Landscape Design	<p>Existing vegetation and natural features</p> <p>2.1 New landscaping is to complement the existing street landscaping and improve the quality of the streetscape.</p> <p>2.2 Development, including alterations and additions, is to minimise earthworks (cut and fill) in order to conserve site soil. Where excavation is necessary,</p>	No changes to the approved landscaping for the development.

	the reuse of excavated soil on site is encouraged.	
	<p>Design and location of landscape</p> <p>2.3 The landscape design is to contribute to and take advantage of the site characteristics.</p> <p>2.4 The landscape design is to improve the quality of the streetscape and communal open spaces.</p> <p>2.5 The landscape of setbacks and deep soil zones must:</p> <ul style="list-style-type: none"> (a) provide sufficient depth of soil to enable the growth of mature trees; (b) use a combination of groundcovers, shrubs and trees; (c) use shrubs that do not obstruct sightlines between the site and the public domain; and (d) where buffer or screen planting is required, use continuous evergreen planting consisting of shrubs and trees to screen the structure, maintain privacy and function as an environmental buffer. 	No changes proposed to the approved landscape design for the development.
	<p>Trees</p> <p>2.6 Development must consider the retention of existing trees in the building design.</p> <p>2.7 Development must plant at least one canopy tree for every 12m of front and rear boundary width</p>	No changes proposed.

	<p>and: (a) Canopy trees are to be of a minimum 75 litre pot size.</p> <p>(b) Use deciduous trees in small open spaces, such as courtyards, to improve solar access and control of microclimate.</p> <p>(c) Place evergreen trees well away from the building to allow the winter sun access.</p> <p>(d) Select trees that do not inhibit airflow.</p> <p>(e) Provide shade to large hard paved areas using tree species that are tolerant of compacted/deoxygenated soils.</p> <p>2.8 Development must provide street trees that will contribute to the canopy where possible.</p>	
Chapter 5: Residential Accommodation		
Section 4 – Dual Occupancies		
Storey limit (not including basements)	<p>4.2 Dual occupancies are limited to 2 storeys.</p> <p>4.3 The siting of dual occupancies and landscape works must be compatible with the existing slope and contours of the site and any adjoining sites. Council does not allow any development that involves elevated platforms on columns; or excessive or unnecessary terracing, rock excavation, retaining walls or reclamation.</p>	<p>The modified proposal remains at 2-storey in height.</p> <p>The modified proposal remains responsive to the existing slope and contours of the site and adjoining sites.</p>

Street setbacks	<p>4.6 The minimum setback for a building wall to the primary street frontage is:</p> <p>(a) 5.5 metres for the first storey (i.e. the ground floor); and</p> <p>(b) 6.5 metres for the second storey.</p>	No changes proposed. The modified proposal remains compliant.
Side setbacks	<p>4.8 For the portion of the building wall that has a wall height less than or equal to 7 metres, the minimum setback to the side boundary of the site is 0.9 metre.</p> <p>4.9 For the portion of the building wall that has a wall height greater than 7 metres, the minimum setback to the side boundary of the site is 1.5 metres.</p>	No changes proposed to the side setbacks, which remain at 910mm.
Private open space	<p>4.12 Dual occupancies must provide a minimum 80m² of private open space behind the front building line. This may be in the form of a single area or a sum of areas provided the minimum width of each area is 5 metres throughout.</p>	No changes to the approved private open spaces for the dual occupancies.
Access to sunlight	<p>4.13 At least one living area must receive a minimum three hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice.</p> <p>4.14 At least one living area of a dwelling on an adjoining site must receive a minimum three hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice.</p> <p>4.15 A minimum 50% of the private open space required for the dwelling house and a minimum 50% of the private open space of a dwelling on an adjoining site must receive at least three hours</p>	The proposed modified development has no impact on the ability of the dual occupancy and adjoining sites in receiving the require sunlight. The proposal remains compliant.

	<p>of sunlight between 9.00am and 5.00pm at the equinox.</p> <p>4.16 Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the site and neighbouring sites.</p>	
Visual privacy	<p>4.17 Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must:</p> <ul style="list-style-type: none"> (a) offset the windows between dwellings to minimise overlooking; or (b) provide the window with a minimum sill height of 1.5 metres above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5 metres above floor level; or (d) use another form of screening to the satisfaction of Council. <p>4.18 Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where:</p> <ul style="list-style-type: none"> (a) the window is to a bedroom, bathroom, toilet, laundry, storage room, or other non-habitable room; or (b) the window has a minimum sill height of 1.5 metres above floor level; or (c) the window has translucent glazing to a minimum height 	<p>The modified proposal does not result in any additional visual privacy impact upon neighbouring properties in comparison to the approved development. In fact, there is actually less impact as a result of the relocation of the north and south-facing first floor windows of the Master Bedrooms to the rear elevation.</p>

	<p>of 1.5 metres above floor level; or</p> <p>(d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling.</p>	
Building design	<p>4.22 The design of dual occupancies must ensure:</p> <p>(a) the street facade of dual occupancies (attached) adopt an asymmetrical design to provide each dwelling with an individual identity when viewed from the street; or</p> <p>(b) the street facade of dual occupancies (attached) or dual occupancies (detached) incorporate architectural elements that are compatible with the asymmetrical appearance of neighbouring dwelling houses, particularly where a pattern is established by a group of adjoining dwelling houses; and</p> <p>(c) the front porch and one or more living area or bedroom windows to each dwelling face the street; and</p> <p>(d) the garage, driveway and front fence do not dominate the front of the building and front yard; and</p> <p>(e) the two dwellings on a corner site each face a different frontage.</p> <p>4.23 The maximum roof pitch for dwelling houses is 35 degrees.</p>	No changes to the façade of the dual occupancy and the roof pitch.

Building design (car parking)	<p>4.27 Development must locate the car parking spaces behind the front building line with at least one covered car parking space for weather protection. Despite this clause, Council may allow one car parking space to locate forward of the front building line provided:</p> <p>(a) the car parking space forward of the front building line is uncovered and located in a stacked arrangement on the driveway in front of the covered car parking space; and</p> <p>(b) the covered car parking space is setback a minimum 6 metres from the primary and secondary street frontages.</p>	No changes proposed to the parking arrangements for the dual occupancy. Each dwelling provides for a single garage with a stacked parking space in front.
Landscape	<p>4.31 Development must retain and protect any significant trees on the site and adjoining sites.</p> <p>4.32 Development must landscape the following areas on the site by way of trees and shrubs with preference given to native vegetation endemic to Canterbury-Bankstown (refer to the Landscape Guide for a list of suitable species):</p> <p>(a) a minimum 45% of the area between the dwelling house and the primary street frontage; and</p> <p>(b) a minimum 45% of the area between the dwelling house and the secondary street frontage; and</p> <p>(c) plant at least one 75 litre tree between the dwelling house</p>	No changes are proposed to the approved landscape areas for the development.

	and the primary street frontage (refer to the Landscape Guide for a list of suitable trees in Canterbury-Bankstown);	
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The proposed modified development complies with all the requirements of the Canterbury-Bankstown LEP 2023 and Canterbury-Bankstown DCP 2023, except in relation to FSR. The non-compliance with FSR is addressed as follows:

FSR

The proposed modified development exceeds the allowable FSR of 0.5:1. It provides for a total FSR of 0.589:1 (an increase of 58.58m² of floor area, bringing the overall gross floor area of the development to 397.8m²).

i. Zoning of the Site and Consistency objectives of the Zone

The subject site is zoned R2 Low Density Residential pursuant to the Canterbury-Bankstown 2023. The objectives of the R2 zone include:

- *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 promote a high standard of urban design and local amenity.*

The modified proposal is consistent with the applicable objectives of the R2 zone in that it will continue to provide for the housing need of the community within in a low-density residential environment. In addition, the development recognises the desirable or contributing elements of the existing streetscape and built form that contribute to the general character of the area. The proposal also provides high quality residential amenity for its occupants and protects the residential amenity of surrounding residents.

The modified proposal would ensure a high level of residential amenity is maintained for surrounding residents and the residents of the proposed development. The development has been conceived to comply with all of the development standards and is of a bulk and scale that is consistent with the existing character of the area. The proposal would not have any adverse detrimental impacts on the surrounding built environment, by providing a built form and scale of development that would not result in any detrimental impact in terms of privacy, overshadowing and views.

The additional floor area generated by the modified proposal is a direct result of the reduction of the internal courtyards of the attached dual occupancy and would not have any detrimental external impacts upon surrounding properties.

ii. Consistency with the Objectives of Clause 4.4 Floor Space Ratio

The objectives and controls of Clause 4.4 Floor Space Ratio of the CBLEP 2023 read as follows:

iii. **Clause 4.4 Floor Space Ratio of the CBLEP 2023**

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

- (a) to establish the bulk and maximum density of development consistent with the character, amenity and capacity of the area in which the development will be located,*
- (b) to ensure the bulk of non-residential development in or adjoining a residential zone is compatible with the prevailing suburban character and amenity of the residential zone,*
- (c) to encourage lot consolidations in commercial centres to facilitate higher quality built form and urban design outcomes,*
- (d) to establish the maximum floor space available for development, taking into account the availability of infrastructure and the generation of vehicular and pedestrian traffic,*
- (e) to provide a suitable balance between landscaping and built form in residential areas.*

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*

Despite the non-compliance with the FSR development standard, the proposed modified development maintains consistency with the relevant objectives of Clause 4.4 of the CBLEP 2023. The development does not provide a non-compliance that is inconsistent with the perceived height and scale of the surrounding built environment. When viewed from the street or public domain the proposal still presents at a height and scale that is consistent with the existing surrounding built environment particularly when having regard to the attached dual occupancies and multi-dwelling housing development along Saltash Street.

The extent of the non-compliance with the FSR development standard of 17.3% (or 58.58m² additional floor area) is considered acceptable and is imperceptible when viewed from the public domain, taking into consideration that the additional floor area is contained within the footprint of the dwelling and located central to the dwellings. The additional floor area generated by the proposed modified proposal is a direct result of the reduction of the centrally located internal courtyards of the approved dual occupancy. Therefore, the additional floor areas are not discernible from the public domain and would not have any impact upon neighbouring properties. Notwithstanding the exceedance in FSR, the proposal still presents an appropriate design and scale that limits any detrimental impact in terms of streetscape and overall current and desired future character of the area. The modified development would limit any detrimental impact on adjoining properties in terms of overshadowing and privacy impacts, and views.

The proposal incorporates sympathetic built form, scale and architectural elements including the careful placement of windows and openings to habitable rooms so as to alleviate privacy impacts on adjoining properties, including the provision of suitable privacy screens. The design of the development is compatible with the scale and character of contributing buildings in Yagoona. The proposal has also

incorporated a well-considered built form and scale appropriately matching the existing 2-storey attached dual occupancies in the area and is responsive to the orientation of the site ensuring that the proposal would not result in any overshadowing impacts on the adjoining properties.

The proposal remains compliant with all other applicable development standards including height and setbacks. It is also important to note that the proposal provides for a form of residential accommodation that is encouraged for the R2 zoned land.

The proposal maintains an appropriate visual relationship between new development and the existing character of the locality as it is providing for a design that is consistent with the predominant built form along Saltash Street. It also provides for an innovative design and an opportunity to enhance the residential amenity of the residents.

Based on the analysis of the proposed modified development against the requirements of Clause 4.4, it can be concluded that the proposed development is consistency with the objectives of Clause 4.4 of the CBLEP, and considering that the proposed development maintains compatible scale with neighbouring buildings and does not adversely impact upon them in terms of overshadowing, privacy and views, it is considered that the proposed development has merit and is within the public interest in this particular case.

iv. Application of the objectives and relevant Clauses of Clause 4.6 Exceptions to development standards

Clause 4.6 of the Canterbury-Bankstown LEP 2023 relevantly reads:

(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 is satisfied the applicant has demonstrated that:*

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

As part of the detailed assessment of the variation to Clause 4.4 of the CBLEP, consideration has been given to the objectives and relevant clauses of Clause 4.6 of the CBLEP 2013 which are addressed as follows:

(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.*

The assessment of the merits of the FSR variation, as detailed in the report, will outline the reasoning as to why the application of a degree of flexibility is warranted in this instance. In summary, the non-compliance is considered to be minor and acceptable. This is because the additional FSR is discernible when viewed from the street and does not contribute to an inappropriate bulk and scale that is out of character within the streetscape. The proposal provides a design that contributes to the achievement of good amenity for future residents of the detached dwelling, by providing well sized, designed and located living rooms and bedrooms for future occupants that will result in a better living standard.

Notwithstanding the non-compliance, the proposal does not compromise on other important aspects that could be detrimental to future occupants and on the surrounding locality. The development is compliant with all other requirements, is well-designed and orientated to enable great liveability standards for future residents. The proposal is well below the allowable building height, maintains the approved building footprint, and landscaped area, and maintains established setbacks, and is therefore considered to be of a bulk and scale that is consistent with the current and envisaged future character of the locality. Strict enforcement of the FSR standard will have no material benefit as it will likely result in an inferior design outcome that will have a reduced internal residential amenity for its occupants. The proposal has given due consideration for the surrounding local context, the existing site constraints and the limited impacts the proposal will have on adjoining properties it is considered that applying a degree of flexibility is warranted 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 articulated earlier, this request has been prepared to support a variation to Clause 4.4 relating to FSR as stipulated in the CBLEP 2023. Clause 4.4 is not a development standard that is expressly excluded from the operation of Clause 4.6.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

This request has been prepared to demonstrate compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify contravening the development standard.

As indicated previously in this variation request, it is considered that strict enforcement of the FSR development standard will not result in a superior built form outcome, nor will it have an identifiable result in improving amenity outcomes on adjoining properties. The proposal maintains the 2 storeys element and remains under the overall height limit across the site notwithstanding the exceedance in FSR. The proposed design maintains consistency with the predominate 2 storey-built form. As demonstrated on the architectural drawings, the proposal is compatible with the built form and character of the streetscape and would not have any detrimental amenity impact upon surrounding properties, and the non-compliance it is not readily identifiable or visible when viewed from the street.

The proposal has been purposely designed to suit the site attributes and provides appropriate amendments to the approved attached dual occupancy that respond well to the orientation and the east/west facing allotment. In this instance, the proposal demonstrates excellent solar access to the living room without any adverse impact upon neighbouring properties and the locality. In fact, solar access to the living room at the rear of each dwelling has significantly improved as a result of the careful placement of windows along the rear elevation and the relocation of the utility amenities (bathroom/laundry) to the side elevations.

The proposal maintains a significant amount of landscaping and has been designed to accommodate a design that has given due consideration to limiting the potential detrimental amenity impacts on future residents and adjoining properties.

The planning initiatives of the State and Federal Government should also be considered (i.e., population growth and the provision of a variety of housing options to accommodate the anticipated population growth for the area).

The proposed development is considered to be in the public interest as it is consistent with the objectives of the R2 Low Density Residential zone (i.e., to provide for the housing needs of the community within a low-density residential environment and ensure a high level of residential amenity is achieved and maintained), which is being provided and the particular purpose of the development standard has been achieved.

It is on the basis of the above, along with other reasons provided in this variation request, that strict compliance with the FSR standard is considered unreasonable or unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard.

v. Consideration of the NSW Land and Environmental Court: Case Law

a. Wehbe v Pittwater Council [2007] NSWLEC 827

The decision of Justice Preston in *Wehbe v Pittwater Council* [2007] expanded the findings of *Winten v North Sydney Council* [2001] and established a five (5) part test for consent authorities to consider when assessing an application to vary a development standard in order to determine whether non-

compliance with the development standard is well founded. The five (5) different ways in which an objection may be well founded are as follows:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- *The underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;*
- *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- *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 reasonable;*
- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

b. Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7

In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSW LEC 7 Preston CJ noted at paragraph 7 that development consent cannot be granted for development that contravenes a development standard unless the consent authority:

- *'Considers the cl 4.6 objections (the requirement in cl 4.6(3)); and*
- *Was satisfied that, first, the cl 4.6 objections adequately addressed the matters required to be demonstrated by cl 4.6(3) (the requirement in cl 4.6(4)(a)(i)) and, second, the development will be in the public interest because it is consistent with the objectives of the height standard and the FSR standard and the objectives for development within the R3 zone in which the development is proposed to be carried out (the requirement in cl 4.6(4)(a)(ii)).'*

Preston CJ noted at paragraph 39 that 'the [consent authority] does not have to be directly satisfied that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary'. In this respect, he also noted that in assessing whether compliance with the development standards was unreasonable or unnecessary an established test is consistency with the objectives of the standard and the absence of environmental harm.

Based on the assessment against the objectives of the zone and objectives of the development standard being varied namely Clause 4.4 of the CBLEP 2023 it can be concluded that in accordance with the above judgement compliance with the relevant development standard is unreasonable and unnecessary in this instance.

c. Moskovich v Waverley Council [2016] NSWLEC 1015

Commissioner Tour reflected on the recent decisions considering *Four2Five* and said:

- *‘Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the Wehbe ways of establishing compliance are equally appropriate [at 50]. One of the most common ways is because the objectives of the development standard are achieved – as per Preston CJ in Wehbe at 42-43.*
 - *Whereas clause 4.6(4)(a)(ii) has different wording and is focused on consistency with objectives of a standard. One is achieving, the other is consistency. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii) to determine whether noncompliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3). The latter being more onerous requires additional considerations such as the matters outlined in Wehbe at 70-76. Such as consideration of whether the proposed development would achieve the objectives of the standard to an equal or better degree than a development that complied with the standard.*
 - *Establishing compliance with the standard is unnecessary or unreasonable in 4.6(3)(a) may also be based on ‘tests’ 2-5 in Wehbe either instead of achieving the objectives of the standard (Wehbe test 1) or in addition to that test. The list in Wehbe is not exhaustive but is a summary of the case law as to how ‘unreasonable or unnecessary’ has been addressed to the meet the requirements of SEPP 1.*
 - *It is best if the written request also addresses the considerations in the granting of concurrence under clause 4.6(5)’.*
- v. **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.

In applying the principles established in the NSW Land and Environment Court judgements outlined above, compliance with the FSR development standard is considered unreasonable or unnecessary as:

Returning to Clause 4.6(3)(a), in *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

‘An objection under State Environmental Planning Policy (SEPP) 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.’

The judgement goes on to state that:

‘The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be

achieved. However, 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)."

However, in *Four2Five v Ashfield Council* [2015] NSWLEC 90 the Land and Environment Court said that whether something was 'unreasonable or unnecessary' is now addressed specifically in Clause 4.6(4)(a)(ii), with separate attention required to the question of whether compliance is unreasonable or unnecessary. Accordingly, while the objectives of the standard are achieved despite non-compliance with the standard, this request goes further. It seeks to demonstrate that requiring strict adherence to the standard would be 'unreasonable or unnecessary' for reasons that are additional to mere consistency with the development standard.

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Additionally, in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 Court of Appeal said that a requirement may be unreasonable when 'the severity of the burden placed on the applicant is disproportionate to the consequences attributable to the proposed development'. In support of this point:

- *The proposed FSR variation will be visually imperceptible when viewed from the adjoining properties and the surrounding public domain.*
- *The proposed development meets the objectives of the FSR control and strict compliance with the FSR control would undermine or thwart its objectives, or the zone's objectives (or both); and*

Given that compliance with the zone and development standard objectives is achieved and that the building complies with the overall height limit and setbacks insistence on strict compliance with the FSR control is considered to be unreasonable and unnecessary in the circumstances.

The proposal is compliant with the relevant objectives and will have no adverse environmental or amenity impacts. The proposal is therefore justified on environmental planning grounds. For the

reasons above, the proposed FSR variation is consistent with the requirements of Cause 4.6(3) of the Local Environmental Plan (LEP).

On this basis, the requirements of Clause 4.6(3) are satisfied.

The proposal will provide a residential development with superior amenity and streetscape presentation. This is achieved by well-planned and functional built form. This will provide significant high-quality amenity (views and solar access) to the current and future occupants of the building with minimal impact on surrounding development. There would be no broader environmental planning benefit achieved in requiring compliance.

Accordingly, for the reasons stated above, we respectfully request that Council permit the variation to the FSR development standard.

vi. Does the proposal provide sufficient environmental planning grounds to justify contravening the development standard?

The proposed variation does not result in any significant adverse environmental impacts. There are sufficient environmental planning grounds to support a variation of the development standard, as outlined below:

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, as discussed above, it is considered that there is an absence of significant impacts of the proposed non-compliance on the amenity of future building occupants, on area character and on neighbouring properties. The assessment of this numerical non-compliance is guided by the decision of the NSW LEC *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson.

On planning grounds and to satisfy that the proposal meets objective 1(b) of Clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve a better outcome for and from development, it is considered that the current proposal will facilitate greater amenity for future residents on a site that is highly suited for such purpose. The development standard variation is considered minor and is designed in a configuration that will not detract from the existing approved developments or future anticipated development on neighbouring properties.

There are sufficient environmental planning grounds to justify the variation of the FSR control, particularly given that:

- The development has been designed to minimise impacts where practicable on neighbouring properties and likely future adjoining properties;
- Strict compliance with the FSR standard would result in no material-built form benefits; and
- The proposed design does not adversely contribute to overshadowing or loss of privacy.

For the reasons stated above, this would not result in an unreasonable outcome on the development and is ultimately balanced with the impacts, or lack thereof, resulting from the non-compliance on adjoining properties and the existing and future local character.

viii. Will the proposed development be in the public interest?

The proposed variation to the FSR control satisfies the objectives of the development standard and the relevant R2 Low Density zone objectives by providing a residential development that is consistent with the existing and desired future built form. The proposal is also consistent with the objectives of the development standard to which the variation is sought. There are sufficient environmental planning grounds established in this case that demonstrates the variation to Clause 4.4 remains within the public interest.

For the above reasons, the proposal is considered to adequately satisfy the objectives of the R2 Low Density Residential Zone and the corresponding objectives of Clause 4.4 Floor Space Ratio under the CBLEP 2023. The extent of the variation has been adequately justified and would result in a negligible planning impact. Strict numerical compliance would not result in a better design outcome or material significant reduction of impacts. Furthermore, the non-compliance with the development standard does not raise any significant matters with respect to State or Regional Planning and no public benefit is obtained by adhering to the relevant planning controls. Therefore, it is considered that the variation to the FSR is worthy of support and is within the public interest under the circumstances.

5 ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

5.1 Section 4.55 Evaluation

The application has been lodged pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, which provides:

(1A) Modifications involving minimal environmental impact

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*

Comment: The amendments proposed under Section 4.55 (1A) seek to regularise unauthorised building works as a result of the reduction of the internal courtyards of the attached dual occupancy and consequently, the re-arrangements of the internal layout of the dual occupancy. As the unauthorised building works are internally facing and there are no external impacts upon neighbouring properties, that is the built form and scale, setbacks, landscaped area of the development remain unaltered, it is considered that the proposed modification is of minimal environmental impact.

- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

Comment: Despite the amendments proposed under the section 4.55(1A), the development is considered to remain substantially the same as that to which Council originally granted approval, being the construction of an attached dual occupancy.

- (c) *it has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

Comment: The section 4.55 application may be notified in accordance with Canterbury-Bankstown DCP 2023.

- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be*

Comment: This is a matter for Council to address.

Overall, the proposed modified development is considered to be consistent with the above requirements in that it has been demonstrated that the proposed modifications is of minimal environmental impact, and that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified.

5.2 Section 4.15 Evaluation

In determining an application, the consent authority must take into consideration the heads of consideration as contained in Section 4.15 of the EPA Act, 1979.

Matters for Consideration – General

- (a) *the provisions of:*
- (i) *any environmental planning instrument, and*

State Environmental Planning Policy (Hazards and Resilience) 2021

There are no known previous land uses relating to possible contamination. Given the residential nature of the subject site and surrounds, Council can be satisfied that the site is suitable for the proposed development.

State Environmental Planning Policy (Transport and Infrastructure) 2021

SEPP Transport & Infrastructure is not relevant to the proposed development.

Local Environmental Plan

The site is zoned R2 Low Density Residential pursuant to Canterbury-Bankstown Local Environmental Plan 2023. The proposed development is permissible with consent under the CBLEP. It has been demonstrated that the proposed development is consistent with the objectives of the zone and the development, where it does not comply has been appropriately justified.

- (ii) *any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and*

N/A

- (iii) *any development control plan, and*

Canterbury-Bankstown Development Control Plan 2023

The proposed development is consistent with the provisions of the DCP relating to dual occupancies and is worthy of approval based on both performance and merit.

- (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

There is no planning agreement proposed by the Applicant.

- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

There are no matters prescribed by Clause 92 of the Regulation which are relevant to the Development Application.

- (v) *(Repealed)*

that apply to the land to which the development application relates.

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*

It is considered unlikely that any adverse environmental, social or economic impacts would occur as a result of the proposed development.

- (c) *the suitability of the site for the development,*

The proposed development is considered to be suitable for the site. The development is a permitted land use, meets the objectives of the zone, and has demonstrated compliance with the relevant development controls contained within the Council's DCP.

The site is located in an established residential area and the proposed development will maintain the low-density residential character of the surrounding locality. Additionally, the proposed

development satisfactorily addresses the site constraints and adjoining properties. Furthermore, there are no site attributes conducive to the proposed development.

(d) *any submissions made in accordance with this Act or the regulations,*

Any submissions will be considered by Council as part of its assessment and determination of the Development Application.

(e) *the public interest.*

Approval of the application is considered to be in the public interest in that it enables for the orderly and economic use of the land and achieves compliance with Council's controls without having any adverse impact to adjoining and surrounding properties.

6 CONCLUSION

The proposed modified development has been considered against the provisions of the Section 4.55(1a) and Section 4.15 of the Environmental Planning and Assessment Act, 1979. The site is zoned R2 Low Density Residential under Canterbury-Bankstown LEP 2023 and the proposed development is permitted with consent.

The development, as modified, is considered to be satisfactory and worthy of support. The application has demonstrated that the proposed modified development remains compliance with Council's planning controls and is capable of integrating with the surrounding residential properties. Moreover, the proposal is unlikely to result in an adverse impact upon the amenity of surrounding residential properties.

The development, as modified, is considered to be substantially the same development as that originally approved. Accordingly, it is recommended that the modification application be approved and the relevant conditions of consent of Development Consent No. DA-622/2017, and as modified by DA-622/2017/A and DA-622/2017/B, be modified.