

OUR REF: JOB NO. 22113 – S4.55

22 March 2024

The General Manager
Canterbury Bankstown Council
PO Box 8
Bankstown NSW 1885

95 paddington st, paddington nsw 2021
ph: 02 9362 3364 fax: 02 9362 3073
email: info@gsaplanning.com.au
www.gsaplanning.com.au
ABN 89 643 660 628

Attention: Priscilla Prakash

Dear Priscilla,

**RE: SECTION 4.55 MODIFICATION FOR DEVELOPMENT APPLICATION (DA NO. 477/2022)
NO. 45 WATERSIDE CRESCENT, EARLWOOD**

This Section 4.55 Modification has been prepared for Mr Richard Buda & Alexandra Stamatiou-Buda C/- Antoniadis Architects by George Karavanas Planning Pty Ltd – (hereafter referred to as GSA Planning). On behalf of the applicant, we hereby seek Council approval for a Section 4.55 modification of the approved (DA No. 477/2022) at No. 45 Waterside Crescent, Earlwood. The approval relates to the alterations and additions to the lower ground, ground and first floor levels of the existing dwelling, and construction of an above-ground swimming pool and new front fence.

This application seeks to modify one condition of the consent to reflect the revised architectural drawings. The proposed modifications relate to design refinements to the approved dwelling including an internal reconfiguration which will result in a new wine cellar and a new bedroom, reverting the number of bedrooms to four, as existing. External modifications include design refinements to the approved front fence and swimming pool, as well as modifications to fenestration. The proposed modifications will be within the approved building footprint and envelope, ensuring that approved levels of privacy, solar access and views for surrounding properties and the public domain are preserved.

The modification will maintain the overall bulk, scale and character of the approved building, when viewed from Waterside Crescent. The development will maintain the approved building height. The approved setbacks, wall height and site coverage will be retained. This will ensure that the amenity of surrounding properties and the streetscape is preserved.

The proposed development is the subject of a Section 4.55 modification and not a new development application. This is because the proposal is substantially the same as the approved development and generally retains the overall built form of the approved development.

This report includes an assessment of substantially the same; a brief site analysis; a brief background to the proposal; the conditions of development consent requested to be modified; a description and justification of the proposed modifications; an environmental planning assessment; and a conclusion.

1.0 SITE ANALYSIS

The Site

The subject site is located approximately 9.5km south west of the Sydney CBD, 2km from south east of Campsie and is located within the Local Government Area (LGA) of Canterbury Bankstown (see **Figure 1**).

The subject site is located on the northern side of Waterside Crescent, and is known as No. 45 Waterside Crescent, Earlwood, described as Lot C in DP339232. For the purposes of this report the rear boundary will be described as the northern boundary.

The site is a rectangular shaped parcel of land, with a northern boundary of 11.236 metres, an eastern boundary of 64.81 metres, a southern boundary of 10.92 metres, and a western boundary of 67.455 metres, providing a total site area of 722m² (see Survey Plan separately submitted).



 **Subject Site**

Source: SIX Maps

Figure 1: Location Plan

The site is occupied by a part two and three-storey brick dwelling with basement parking and a pitched tiled roof. The existing dwelling has a front setback approximately 11.6m from Waterside Crescent, side setbacks of approximately 1m to both the eastern and western boundaries and approximately 30.7m rear setback (see **Photograph 1** and **2** on the following page).

Vehicular access is currently provided via a crossover on Waterside Crescent leading into the basement parking below the street level. Pedestrian access is via stairs leading to the dwelling entry. The remainder of the site comprises rear hardstand area and landscaping including shrubs and trees.



Photograph 1: The subject site, as viewed from the street



Photograph 2: The subject site, as viewed from the rear

The Surrounds

The surrounding development comprises a mix of one (1) and two (2) storey dwellings of various ages and styles. As the area's topography falls from south to north, developments on the southern side of Waterside Crescent are typically elevated above the street. The opposite side of Waterside Crescent includes buildings that may appear as one (1) to two (2) storeys when viewed from Waterside Crescent, are in fact higher when viewed from the rear.

2.0 BACKGROUND

On **6 July 2022**, a Development Application (DA-477/2022) was submitted with Canterbury Bankstown Council for alterations and additions to the lower ground, ground and first floor levels of the existing dwelling and construction of an in-ground swimming pool at No. 45 Waterside Crescent, Earlwood. On **5 May 2023**, the application was approved by Council.

3.0 REQUESTED MODIFICATIONS TO DEVELOPMENT CONSENT

As indicated, this submission proposes modification to one condition of DA No. 477/2022. This will be discussed below:

3.1 Condition 1.1 - Approved Development

Condition 1.1 of the development consent relates to the approved architectural plans and documentation. It is proposed to modify this condition to reflect the proposed design changes which form part of this modification. The existing conditions are as follows:

Existing Condition:

Plan No.	Plan Name	Dated	Rev	Prepared By
DA 2.11	Demolition Plans	13.05.2022	A	Antoniades Architects
DA 3.01	Site Plans	13.05.2022	C	
DA 3.09	Lower Ground	21.10.2022	D	
DA 3.10	Ground Level	21.10.2022	D	
DA 3.11	Level 01	21.10.2022	D	
DA 3.20	Roof Plan	13.05.2022	C	
DA 4.01	Section AA + BB	14.10.2022	C	
DA 5.01	Elevations East	13.05.2022	C	
DA 5.02	Elevations West	13.05.2022	C	
DA 5.03	Elevations North & South	13.05.2022	C	
DA 7.01	Materials Board	13.05.2022	B	

The recommendations contained within the following supporting documentation are to form part of this determination notice except where the conditions of this consent expressly require otherwise.

- a. *Aboriginal Impact Assessment, prepared by Hugh the Arborist, dated 16 June 2022 for 45 Waterside Cres, Earlwood NSW.*

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

It is proposed to amend the table to reference the drawings of the proposed modifications, as follows:

Proposed Condition:

Plan No.	Plan Name	Dated	Rev	Prepared By
DA 2.00	Site Plan	12.03.2024	S4.55 A	Antoniades Architects
DA 2.01	Demolition Plans	12.03.2024	S4.55 A	
DA 3.10	Lower Ground	12.03.2024	S4.55 A	
DA 3.11	Ground Level	12.03.2024	S4.55 A	
DA 3.12	Level 01	12.03.2024	S4.55 A	
DA 3.13	Roof Plan	12.03.2024	S4.55 A	
DA 4.01	Elevations East	12.03.2024	S4.55 A	
DA 4.02	Elevations West	12.03.2024	S4.55 B	
DA 4.03	Elevations North & South	12.03.2024	S4.55 A	

DA 5.01	Section AA + BB	12.03.2024	S4.55 A	
DA 6.30	Data Schedule/Area Diagrams	12.03.2024	S4.55 A	
DA 7.01	Material Board	12.03.2024	S4.55 A	

The recommendations contained within the following supporting documentation are to form part of this determination notice except where the conditions of this consent expressly require otherwise.

- a. *Aboricultural Impact Assessment, prepared by Hugh the Arborist, dated 16 June 2022 for 45 Waterside Cres, Earlwood NSW.*

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

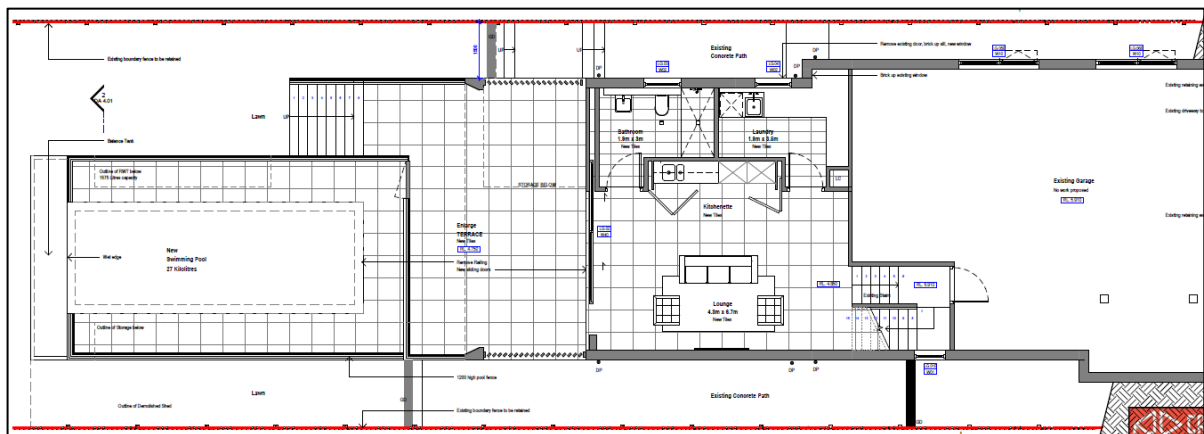
4.0 DESCRIPTION & RATIONALE OF MODIFICATIONS

The proposed modifications relate to an internal reconfiguration and fenestration changes. Externally, the front fence is proposed to be modified, as well as the entry stairs and swimming pool amongst other minor modifications. A floor-by-floor description is provided on the following pages. Further details of the proposed development are contained in the architectural drawings, separately submitted.

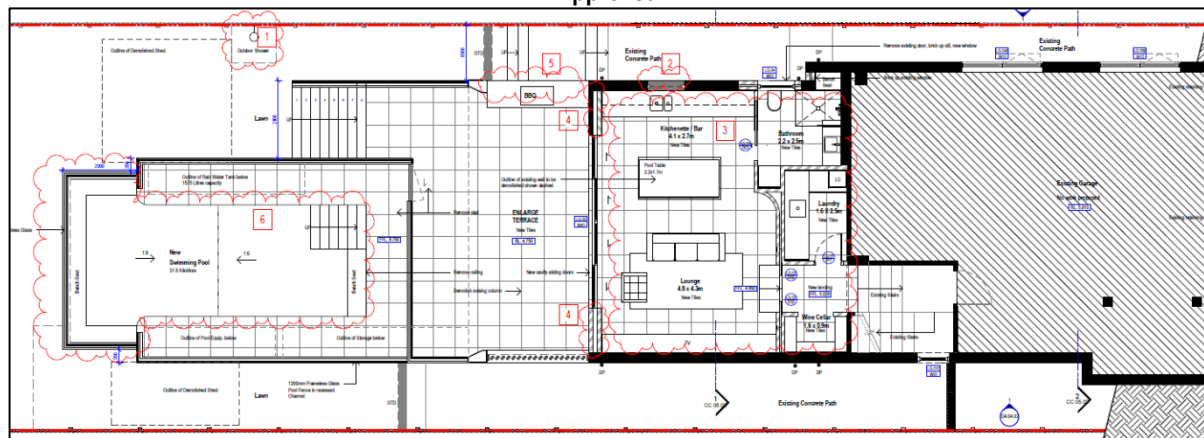
Lower Ground Floor Level

The proposed modifications to the Lower Ground Floor Level include:

- Internal reconfiguration including modified internal walls. This floor level will continue to contain a bathroom, kitchenette, laundry and lounge room, with a new wine cellar and landing at RL 5.026 proposed;
- An additional portion of the existing external wall demolished to accommodate new cavity sliding doors;
- Deletion of one window;
- Deletion of the eastern external privacy screen;
- New barbeque;
- Modified swimming pool layout and depth; and
- New outdoor shower no higher than the existing fence (see **Figure 2**).



Approved



Proposed

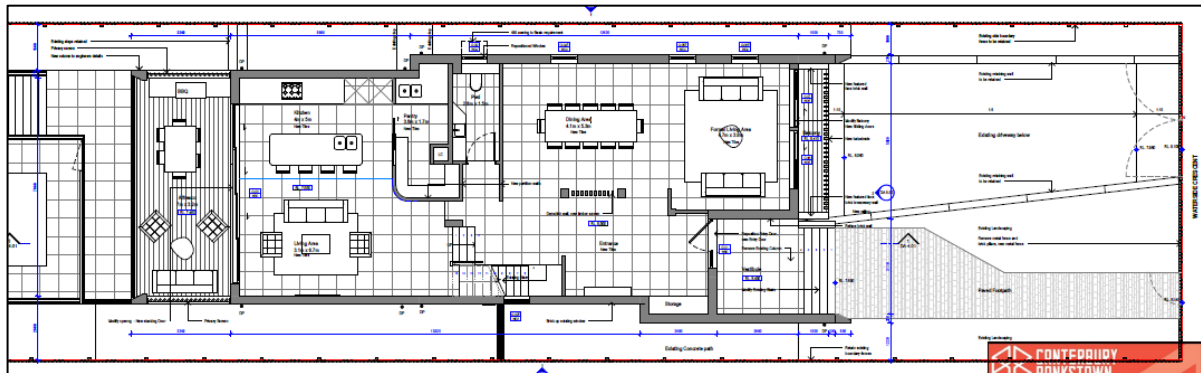
Source: Antoniades Architects

Figure 2: Approved and Proposed Lower Ground Floor Plan

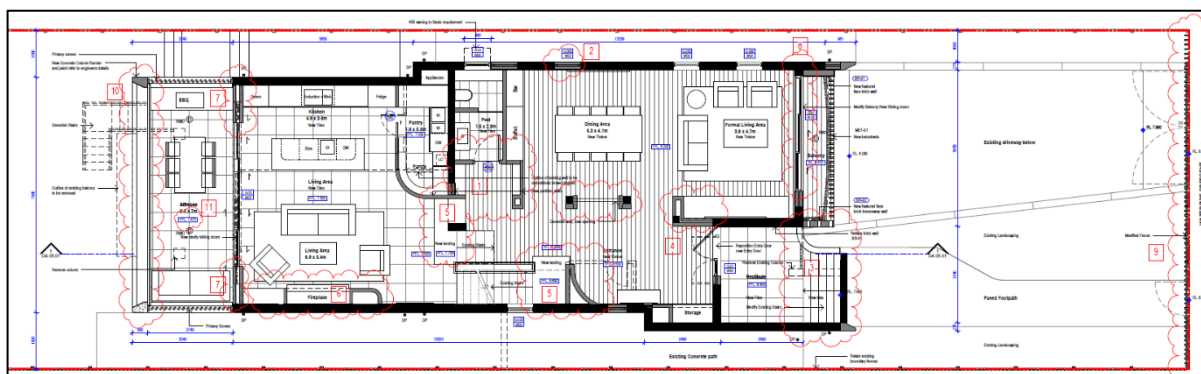
Ground Floor Level

The proposed modifications to the Ground Floor Level include:

- Revised material of the approved replacement front fence;
- Modified layout of the front entry stairs to accommodate a new curved wall;
- Select internal walls modified;
- Modified powder room and pantry layout;
- New fireplace;
- New landings at RL 7.706 and RL 8.69 to existing internal stairs;
- Infill/remove one existing window;
- An additional portion of the existing external wall demolished to accommodate new cavity sliding doors;
- Slightly altered RL of the alfresco from RL 7.46 to RL 7.47 to correct a minor error when compared to the approved plans; and
- Alfresco balustrade set back to accommodate the modified structural edge beam (see **Figure 3**).



Approved



Proposed

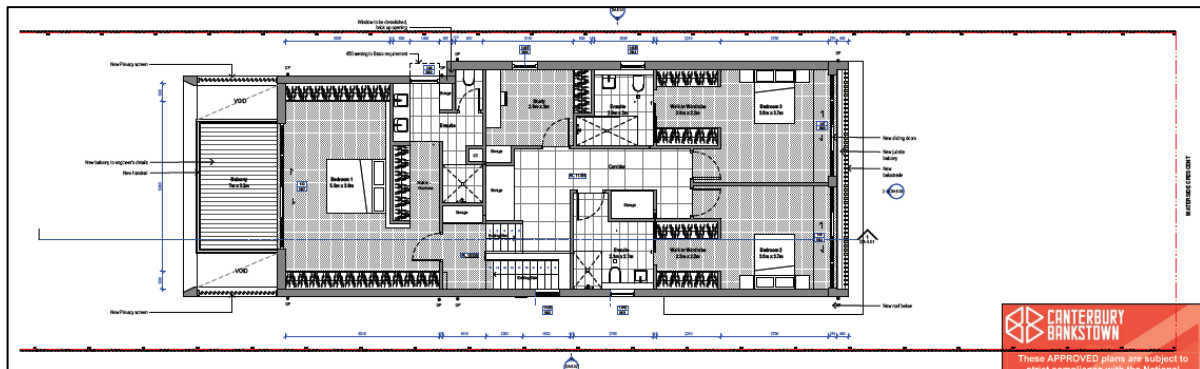
Source: Antoniadis Architects

Figure 3: Approved and Proposed Ground Floor Plan

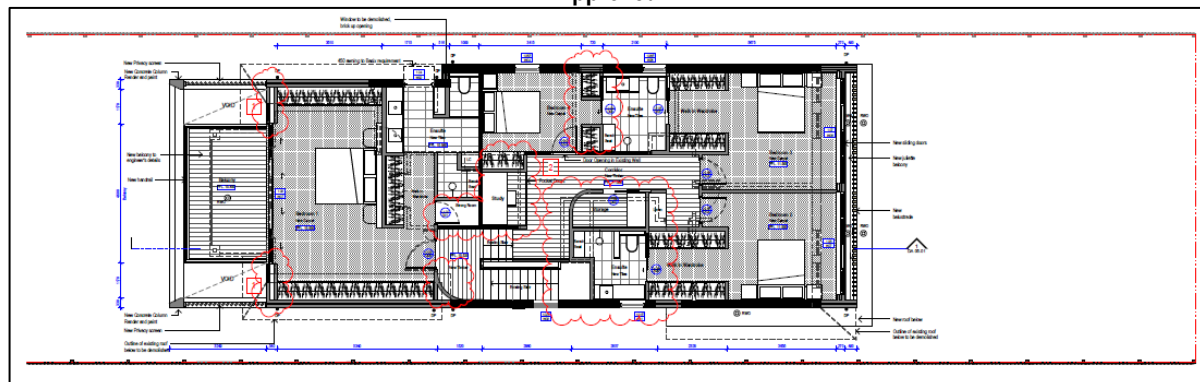
First Floor Level

The proposed modifications to the First Floor Level include:

- Internal reconfiguration including modified internal walls. The approved study will become a fourth bedroom, which reverts the dwelling to the same number of bedrooms as existing. The approved Bed 3 ensuite will be modified to connect with Bed 4. The study will be relocated elsewhere on this floor level; and
- An additional portion of the existing external wall demolished to accommodate new cavity sliding doors (see **Figure 4**).



Approved



Proposed

Source: Antoniades Architects

Figure 4: Approved and Proposed First Floor Plan

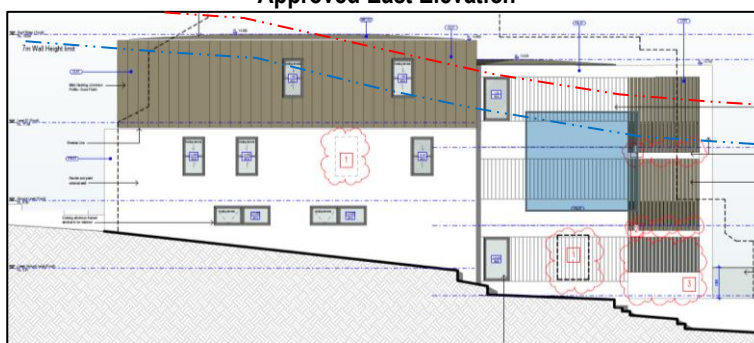
East and West Elevations

The proposed modifications at the east and west elevations in addition to the previously mentioned modifications include:

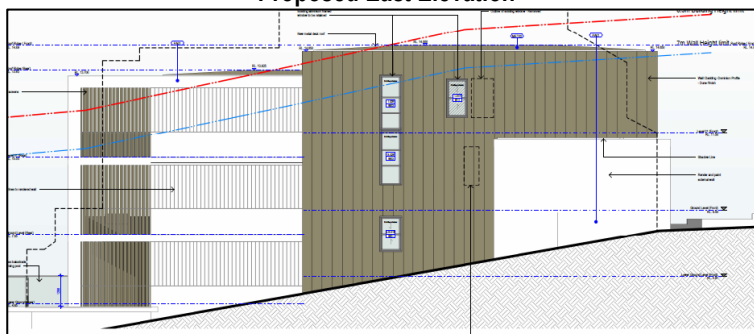
- Modified concrete edges and privacy screens extended (see **Figure 5**).



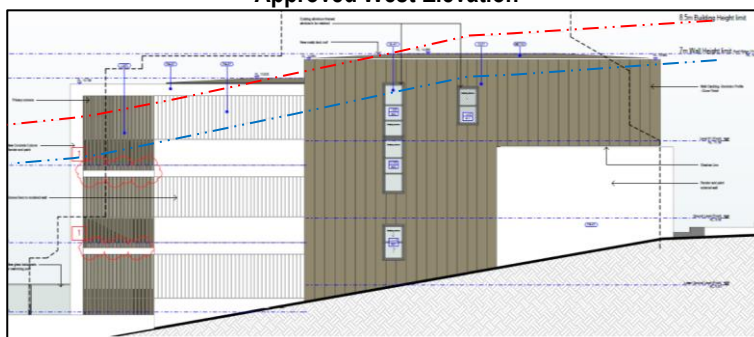
Approved East Elevation



Proposed East Elevation



Approved West Elevation



Proposed West Elevation

Source: Antoniades Architects

Figure 5: Approved and Proposed East and West Elevations

Rationale

The proposed modifications relate to relatively minor internal and external changes. The proposed internal reconfiguration will result in a new wine cellar and an additional bedroom which will improve amenity for occupants. An additional portion of the existing rear external wall at all floor levels is proposed to be demolished to accommodate new cavity sliding doors. This will ensure the rear sliding doors are a consistent size across all floor levels, as opposed to the approved sliding doors which are inconsistent in size.

External changes which include revised entry stairs and front fence materiality are a result of design development and will have a neutral to positive impact on the dwellings streetscape appearance. The approved swimming pool will have a slightly revised design which is not readily discernible from the approved design. A new barbeque and outdoor shower will improve amenity for occupants. The eastern privacy screen at the lower ground level which is proposed to be deleted was originally introduced to maintain visual consistency across all floor levels when viewed from the side elevations. As this screen is not required to maintain privacy to the neighbouring property, it is proposed to be deleted to accommodate the new barbeque. Additional minor changes to the side elevations include a modified concrete edge and vertical extension of the privacy screening which will not be readily discernible when compared to the approval.

The proposed modifications will not alter the approved building envelope or footprint and will maintain the amenity of surrounding residences and the streetscape.

5.0 SUBSTANTIALLY THE SAME ASSESSMENT

An application can be considered a modification under Section 4.55 if it is ‘substantially the same’ ‘qualitatively’, ‘quantitatively’ and ‘essentially’. This is in accordance with relevant case law, including:

- *Moto Projects (No. 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280; and
- *Chidiac v Canterbury City Council* [2012] NSWLEC 1335

The modifications will retain the previously approved building envelope and height; and only relate relatively minor internal and external changes.

In **quantitative terms**, the proposed modifications will retain the number of dwellings, levels, storeys and car spaces. The building height and setbacks will also be retained as per the approved proposal.

In **qualitative terms**, the proposed modifications will not increase the bulk and scale, alter the overall building type, increase overshadowing or reduce solar access to neighbouring properties. The modification will not result in any view impacts, nor will they lead to any additional privacy impacts.

The proposal will also remain the same ‘**essentially**’ or ‘**materially**’, being a dwelling with four bedrooms. Whilst the approval of DA No. 477/2022 reduced the number of bedrooms to three, the proposed modification will reinstate the number of bedrooms to four, as existing.

The extent of works that have previously been accepted as substantially the same include:

- Changes to the facades and external appearance;
- Changes to the envelope and profile of the development;
- Increases in floor space;
- Increases in height (in metres);
- Increases in number of storeys;
- Additional basement levels; and
- Increases in number of dwellings.

As the extent of the proposed modifications are significantly less than these examples, the proposal can also be considered substantially the same.

For all of these reasons, in our opinion, the proposed internal and external modifications is substantially the same.

6.0 ENVIRONMENTAL PLANNING ASSESSMENT

This section deals with the proposal's consistency with the various statutory and non-statutory provisions. It also addresses the relevant matters for consideration under Section 4.15(1)(b) to (e) of the Environmental Planning and Assessment Act 1979.

6.1 Canterbury-Bankstown Local Environmental Plan (LEP) 2023

The subject site is zoned R2 Low Density Residential under the Canterbury-Bankstown Local Environmental Plan (LEP) 2023. The proposal is permissible with consent under the LEP. The subject site is not identified as a heritage item pursuant to the LEP and is not located within a heritage conservation area.

The building works proposed in this modification do not alter the approved height of the building. No other controls contained within the Council LEP apply.

Accordingly, in our opinion, the proposed modifications are consistent with the standards and objectives of the LEP.

6.2 State Environmental Planning Policy (SEPP) (Sustainable Buildings) 2022

SEPP (Sustainable Buildings) 2022 was gazetted on 1 October 2023, and applies to the subject site. The Sustainable Buildings SEPP requires all alterations and additions in NSW to meet sustainability targets for energy and water use relative to their climate zones. In considering the merits of the proposal, it is appropriate to refer to the sustainability targets of the SEPP.

A BASIX Report prepared for the proposed development (separately submitted) shows the proposed dwelling house can satisfy the relevant water and energy reducing targets and thermal performance.

6.3 State Environmental Planning Policy (SEPP) (Resilience and Hazards) 2021

SEPP (Resilience and Hazards) 2021 came into effect on 1 March 2022 and consolidated the previous Coastal Management, Remediation of Land and Hazardous and Offensive Development SEPPs as Chapters 2, 3 and 4 within the new SEPP. The coastal management and remediation of land provisions are relevant in this instance.

6.3.1 Coastal Management

Clause 2.10 requires the consent authority to consider whether the proposal is likely to cause an adverse effect within the coastal environment area and coastal use area as follows, inter alia:

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

- (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
- (3) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

With regard to Clause 2.10, the proposal has been designed, sited and will be managed to avoid any adverse effects on the coastal environment area as the proposal is for alterations and additions of an existing dwelling house which maintains the approved building envelope. Furthermore, the proposed swimming pool remains located on what is an existing hardstand area. Therefore, the proposal avoids any adverse impacts on the coastal environment area as referred to in subclause (1) above.

Clause 2.11 requires the consent authority to consider whether the proposal is likely to cause an adverse effect within the coastal use area as follows, inter alia:

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.
- (2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

With regard to Clause 2.11, the proposal has been designed, sited and will be managed to avoid any adverse effects on the coastal use area as the proposed modifications are relatively minor, do not alter the approved building envelope and are contained wholly within the site boundaries. The proposal has taken into account the bulk, scale and size of the proposal, in relation to the surrounding coastal and built environment.

Additionally, Clause 2.12 applies to development within the coastal zone, generally. Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposal is not considered likely to increase risk of coastal hazards on the subject site or other land.

6.3.2 Remediation of Land

Clause 4.6(1) requires the consent authority to consider whether land is contaminated prior to the consent of development on that land.

The owners have advised that as the long-term use of the site has been residential, the site is unlikely to be contaminated. Additionally, site contamination was not raised as an issue in DA No. 477/2022. On this basis, further investigation is not considered necessary.

6.4 Canterbury-Bankstown Development Control Plan (DCP) 2023

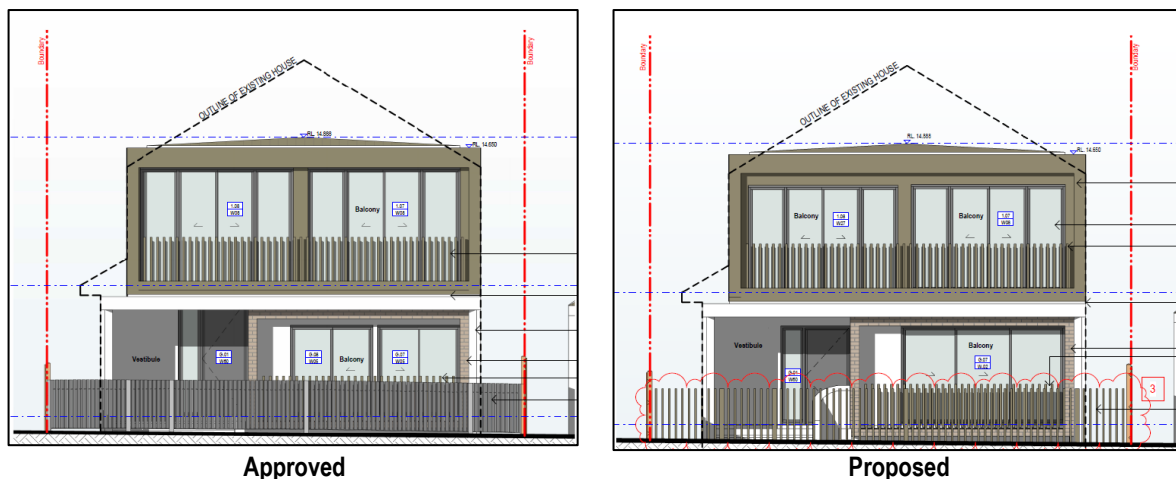
The DCP came into force on 23 June 2023 and applies to the site and the proposed development. As there are minor works proposed, many of the controls outlined within the DCP do not apply to this application. The proposed modifications retain existing levels of compliance with the applicable controls as follows:

TABLE 1: PROJECT COMPLIANCE - CANTERBURY DCP 2012			
Provision	Requirement	Proposal	Complies
Landscaped Area (Deep Soil)	Min 25% of site area with a dimension of 2.5m	34.07% Min. dimensions >2.5m	YES
Fencing (max)	Front - 1.2m (Screens with a minimum of 50% transparency may be up to 1.8m high along the front boundary)	50% transparent and between 1.15m and 1.24m high due to a slight slope in the topography	YES
Swimming Pool	1m setback from any side or rear boundaries. Landscaping to be provided in the setback area.	Swimming pool setback > 1m from any side and rear boundaries	YES

As such, in our opinion, the proposed modifications are considered appropriate and will not create adverse environmental impacts.

6.5 Appearance of the Building and Landscape Considerations

The proposed modifications to the front façade when compared to the approval are limited to a modified front fence design and a new curved wall next to the entry stairs (see **Figure 6** on the following page). The front fence will offer improved visual consistency with the approved dwelling, particularly with the approved first floor balustrades. The curved wall will have a neutral to positive impact on the dwelling's streetscape appearance.



Source: Antoniades Architects

Figure 6: Approved and Proposed South (Front) Elevation

When viewed from the rear within the subject site, the façade will offer greater visual consistency compared to the approval, with the glass sliding doors aligning on each floor level (see **Figure 7**). The new outdoor shower will not be visible from the streetscape or neighbouring properties as it is no higher than the existing fence.



Source: Antoniades Architects

Figure 7: Approved and Proposed North (Rear) Elevation

Deep soil landscaping will continue to be provided at a level greater than required by the DCP. There are no proposed changes to the building footprint, envelope, height or GFA. The proposed changes are consistent with the approved architecture of the building and are consistent with the character of the area and streetscape.

Accordingly, in our opinion, the proposal will remain consistent with the existing and desired future character of the area.

6.6 Relationship to Surrounding Development

The proposed modifications have been designed to preserve approved levels of visual and acoustic privacy, views and solar access for neighbouring developments. This has been achieved by locating all modifications within the approved building envelope.

There will be no changes to the approved external setbacks and only minor changes to the rear private open space and landscaping to accommodate a slightly altered swimming pool and decking. Whilst the approved privacy screen to the east elevation on the lower ground level will be deleted, this will have no impact on privacy retention to neighbouring properties. The privacy screen was originally proposed to offer consistency in design along the rest of the side elevations rather than for privacy retention. A new barbeque is proposed in place of the screen. The proposal will not affect views as the approved envelope is entirely maintained.

As the proposed modifications largely relate to internal reconfigurations and minor external changes which will have no impact on the approved building footprint or envelope, solar access is considered to be maintained as approved.

Accordingly, the proposed development will preserve approved levels of amenity for surrounding properties.

6.7 The Suitability of the Site

The proposed modifications are relatively minor and will improve the overall function, amenity, and design of the development when compared to the approved. The intensity of the approval as a part two and part three storey dwelling house with a swimming pool will be retained. Whilst the modifications propose an additional bedroom when compared to the approval (four bedrooms total), the existing dwelling also has four bedrooms which is considered appropriate for the site. The modifications will not increase traffic generation or the likelihood of hazards such as landslip, bushfire or flooding. The proposal maintains the approved number of car spaces which complies with Council's car parking requirements and is likely to satisfy the parking demand.

6.8 The Public Interest

The proposed modifications will not result in any adverse social or economic effects in the locality. The proposal will retain the approved residential use and will continue to provide contemporary alterations and additions to an existing dwelling house, which will be compatible with the surrounding R2 Low Density Residential Zone. The proposed works have been designed to preserve approved levels of privacy, solar access and views of adjoining properties.

The minor modifications will enhance the amenity of the dwelling to meet the needs of the future residents and will not be readily discernible from neighbouring dwellings or the public domain. In addition, the proposal will provide short term employment opportunities during demolition and construction. Importantly, the proposal will remain consistent with the objectives of the zone.

Accordingly, in our opinion, the proposed modifications remain compatible with the area's character, preserves amenity, and are in keeping with the public interest.

7.0 CONCLUSION

The proposed modifications include minor internal and external modifications to the previously approved alterations and additions to a dwelling house. The proposed modifications are within the approved building footprint and envelope. Accordingly, we respectfully request that Council amend Condition 1.1 of DA No. 477/2022. It is supported by amended architectural plans prepared by Antoniades Architects and the updated BASIX certificate.

The proposal is substantially the same as the approval qualitatively, quantitatively and materially. The proposed modifications will maintain the approved use as a part two and part three storey dwelling house with a lower ground level, swimming pool and landscaping. This letter demonstrates the proposal is substantially the same as the approval. The proposed modifications have been considered both qualitatively and quantitatively, with reference to Land and Environment Court cases relating to modifications to consent. We noted Modification applications with a greater degree of change and impact have been approved by other NSW Councils and the Land and Environment Court.

As detailed in this letter, the proposed modifications are contained within the approved building footprint and envelope and do not significantly alter the approved appearance of the development. The proposal will enhance amenity for the future residents and will be consistent with character of the approved development and the surrounding area, while also maintaining the amenity of neighbouring properties. Accordingly, we believe the proposed modifications are appropriate for the site and the locality.

Council can be satisfied that the proposed modifications to development consent DA No. 477/2022 can be assessed as a Section 4.55 modification to consent.

We trust this information is of assistance to you. Should you require further information, please do not hesitate to contact our office on (02) 9362 3364.

Yours faithfully,



George Karavanas
MANAGING DIRECTOR