

STATEMENT OF ENVIRONMENTAL EFFECTS



98 Mackenzie Street,
Revesby

To construct a two-storey dual occupancy (attached) development with Torrens Title subdivision. Secondary dwellings (granny flats) will be achieved following subdivision.

Residential Logistics
Pty Ltd
Suite 1, Level 1, 208
-210 Northumberland
Street Liverpool NSW
2170
(02) 9602 7700

20/11/2024

TABLE OF CONTENTS

1.0	EXECUTIVE SUMMARY	1
2.0	SITE/LOCALITY DESCRIPTION	2
3.0	THE PROPOSAL	4
4.0	RELEVANT PLANNING CONTROLS	5
4.1	<u>SEPP (Housing) 2021</u>	5
4.2	<u>SEPP (Resilience & Hazards) 2021</u>	7
	<u>Coastal Management (Chapter 2)</u>	7
	<u>Remediation of Land (Chapter 4)</u>	8
4.3	<u>Canterbury Bankstown Local Environmental Plan 2023 (LEP)</u>	9
	Clause 4.1A – Min lot size & special provisions for dual occupancy	10
	Clause 4.3 – Height of Buildings	10
	Clause 4.4 – Floor Space Ratio	10
	Clause 4.6 – Exceptions to development standards	10
	Clause 5.10 – Heritage Conservation	10
	Clause 5.21 – Flood Planning	10
	Clause 6.1 – Acid Sulfate Soils	11
	Clause 6.2 – Earthworks	11
	Clause 6.3 – Stormwater Management	11
	Clause 6.7 – Development in areas subject to aircraft noise	11
4.4	<u>Canterbury Bankstown DCP 2023</u>	12
	<u>Chapter 2 – Site Considerations</u>	12
	Site Analysis	12
	Tree Management	12
	<u>Chapter 3 – General Requirements</u>	13
	Parking	13
	Waste Controls	13
	Sustainable Development	13
	<u>Chapter 5 – Residential Accommodation</u>	14
	Desired Character	14
	Dual Occupancies	15
	• Subdivision	15
	• Height	15
	• Setbacks	15
	• Private Open Space	15
	• Access to Sunlight	16
	• Visual Privacy	16
	• Building Design	16
	• Building Design (Car Parking)	16
	• Landscaping	17
	<u>Secondary Dwellings</u>	17
4.5	<u>Other Requirements</u>	18
	BASIX	18
	Dwelling Entry & Security	18
	Drainage	18
	Bushfire	19
4.6	<u>Non-Compliance</u>	19
5.0	CONCLUSION	20

ATTACHMENTS

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

1.0 EXECUTIVE SUMMARY

The subject site is located close to public transport links to Bankstown CBD as well as other infrastructure which provides good opportunity for redevelopment. This has been recognised through the current zoning of land in the general locality which allows various forms of residential development including dual occupancy and subsequent secondary dwelling development.

Likewise, the NSW State Government introduced the State Environmental Planning Policy (Housing) 2021 to help increase the amount and diversity of affordable rental housing throughout New South Wales.

The SEPP (Housing) promotes infill affordable rental housing in existing residential areas by providing development opportunities, including secondary dwellings (granny flats) and floor space incentives. Developments are generally required to be well-located, accessible and of a high-quality design.

Dual Occupancy and secondary dwelling development are an acceptable form of housing when good planning and urban design controls are established to guide the building industry. Council has comprehensive planning and urban design standards to ensure that this form of development complements existing residential areas.

Desired outcomes such as, the block principal and streetscape amenity are more easily achieved with dual occupancy development than any other form of low to medium density housing which is why they are permitted in the R2–Low Density Residential zone.

The urban design qualities of the proposed development are complementary to the established character of Mackenzie Street and will substantially improve the streetscape amenity by incorporating the following:

- A well-articulated contemporary two-storey design;
- Aesthetically pleasing presentation to the street;
- Adequate setbacks from all boundaries;
- Adequate off-street parking;
- Functional internal arrangement for resulting principal and secondary dwellings after subdivision is achieved;
- Usable private open space areas with adequate access to natural sunlight; and
- Passive surveillance opportunities from habitable room windows.

The proposed design promotes best planning practice and complies with SEPP (Housing) 2021 and most of Council's LEP and DCP requirements, resulting in a high-quality development that will enhance the amenity of the locality.

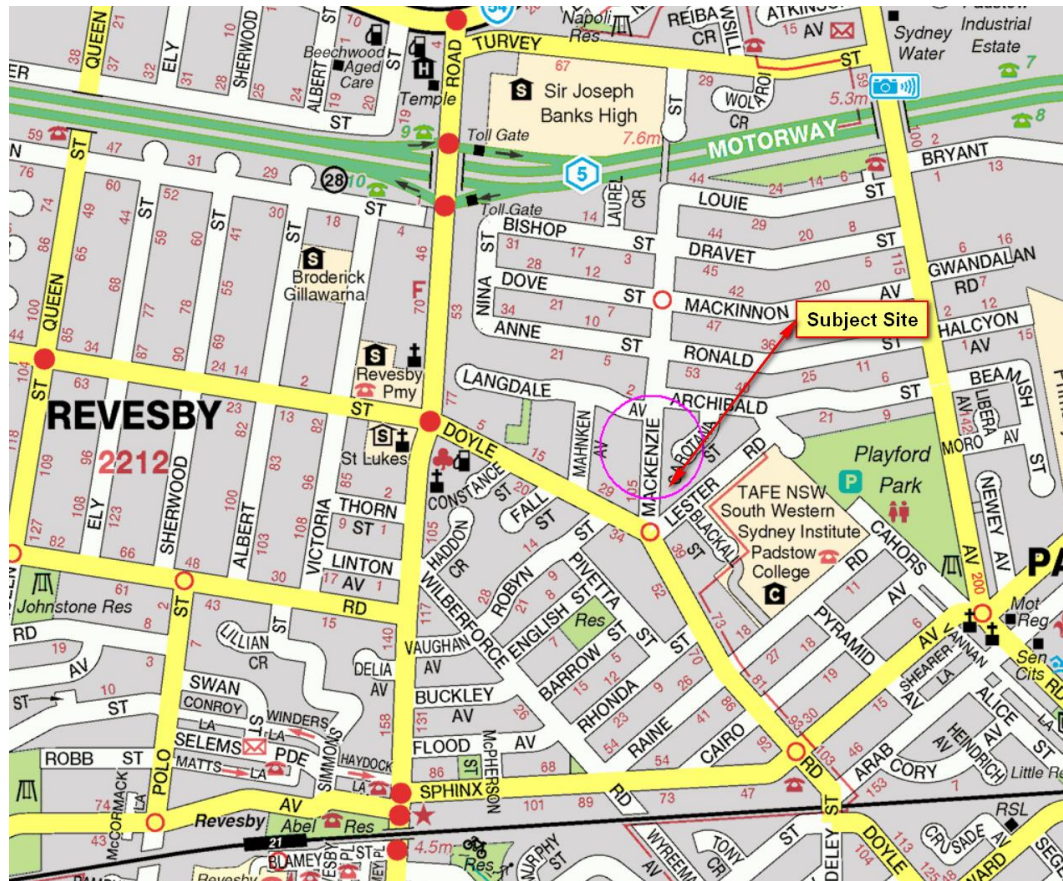
2.0 SITE/LOCALITY DESCRIPTION

The subject land is known as No. 98 (Lot A DP 416914) Mackenzie Street, Revesby and is located on the eastern side of the street, between Lester Road and Archibald Street. The site is an irregular shaped allotment, with a frontage of 16.08m and a minimum length of 50.565m, comprising a total site area of **908.3m²**.

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

The surrounding neighbourhood is characterised by:

- A mixture of residential development including detached single and two-storey dwellings with interspersed dual occupancy and multi dwelling housing development;
- Standard width road reserve with paved and unpaved nature strips;
- Relatively consistent street tree planting theme; and
- Low scale or no front fencing.



© Universal Publishers Pty Ltd

Locality Map



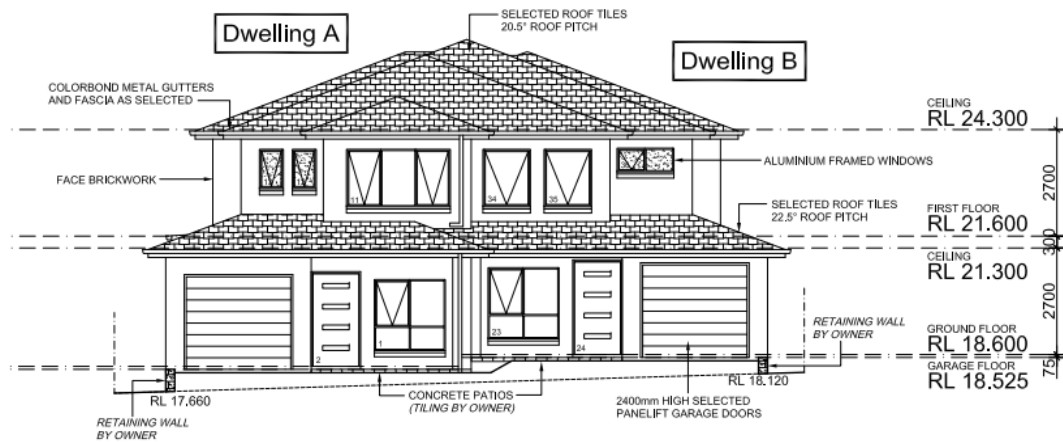
Photo – Subject site



Photo – Streetscape (*Note: the locality comprises a variety of building forms, including one and two-storey dwellings with interspersed dual occupancy and multi dwelling housing development*)

3.0 THE PROPOSAL

The proposal is to construct a two-storey dual occupancy (attached) development with Torrens Title subdivision. Secondary dwellings (granny flats) will be achieved following subdivision.



Mackenzie Street (Western) Elevation

4.0 RELEVANT PLANNING CONTROLS

4.1 State Environmental Planning Policy (Housing) 2021

The SEPP (Housing) 2021 provides a range of planning initiatives to encourage the development of affordable housing, residential flat buildings, secondary dwellings ('granny flats'), new generation boarding houses and social housing.

Secondary dwellings are sought in conjunction with the proposed principal dwellings in the proposed dual occupancy development, following subdivision which requires assessment under the SEPP.

development for the purposes of a secondary dwelling includes the following:

- (a) the **erection** of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note. The standard instrument defines secondary dwelling as follows:

secondary dwelling means a self-contained dwelling that:

- (a) **is established in conjunction with another dwelling (the principal dwelling)**, and
- (b) **is on the same** lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
- (c) is located within, or is attached to, or is **separate from**, the principal dwelling.

As such, Clauses 49-53 set out the primary requirements for such development, viz:

Relevant Clause	Comment
Clause 50 – Land to which Division applies	The subject site is within Zone R2 Low Density Residential under Canterbury Bankstown Local Environmental Plan 2023 which is a prescribed and applicable zone. Dwelling house development is permissible in the zone.
Clause 51 - Subdivision	Subdivision of the secondary dwellings is NOT permitted.

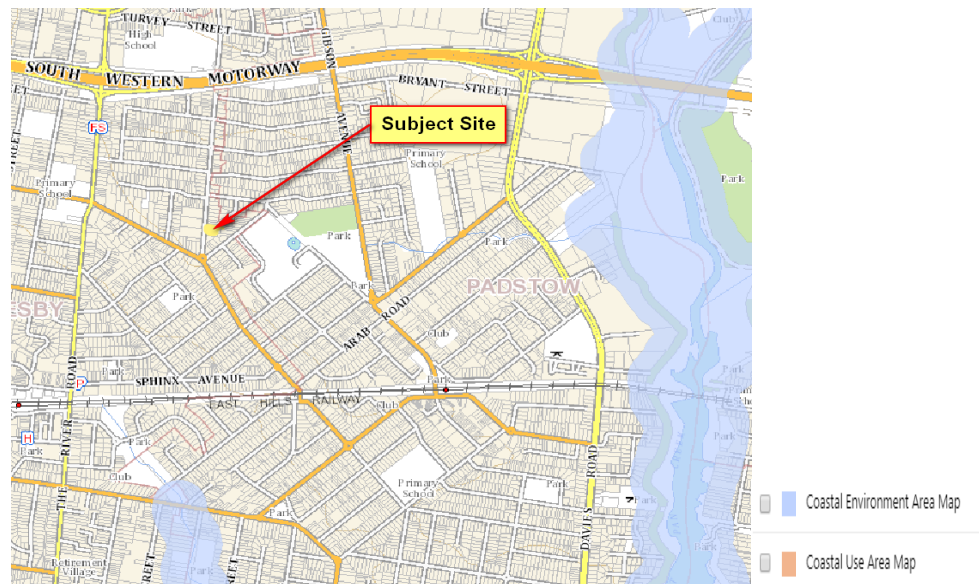
<p>Clause 52 - Development may be carried out with consent</p>	<p>Each proposed lot will contain a principal dwelling and secondary dwelling (following subdivision). The following development standards apply:</p> <ul style="list-style-type: none"> • Maximum Floor Area – the maximum floor area allowed under CBLEP 2023 is 0.5:1. - Proposed Lot 100 – 0.499:1 - Proposed Lot 101 – 0.499:1 • The total floor area of the secondary dwelling is no more than 60m² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another EPI, that greater floor area. <p>Canterbury Bankstown LEP 2023 allows a floor area of whichever of the following is the greater:</p> <ul style="list-style-type: none"> (a) 60 square metres, or (b) 10% of the floor area of the principal dwelling. <p>The proposed secondary dwellings each comprise an area of 45.7m² which complies with the provisions of the SEPP.</p>
<p>Clause 53 – Non-discretionary development standards</p>	<p>Site Area – the allotments will comprise the following areas (Lot 100 – 453.3m² and Lot 101 – 455m², which complies with the minimum area requirement for detached secondary dwelling development.</p> <p>Car Parking – no additional parking required for secondary dwellings.</p>
<p>Clause 54 – Complying Development</p>	<p>N/A (the secondary dwellings form part of this development application)</p>

4.2 State Environmental Planning Policy (Resilience and Hazards) 2021

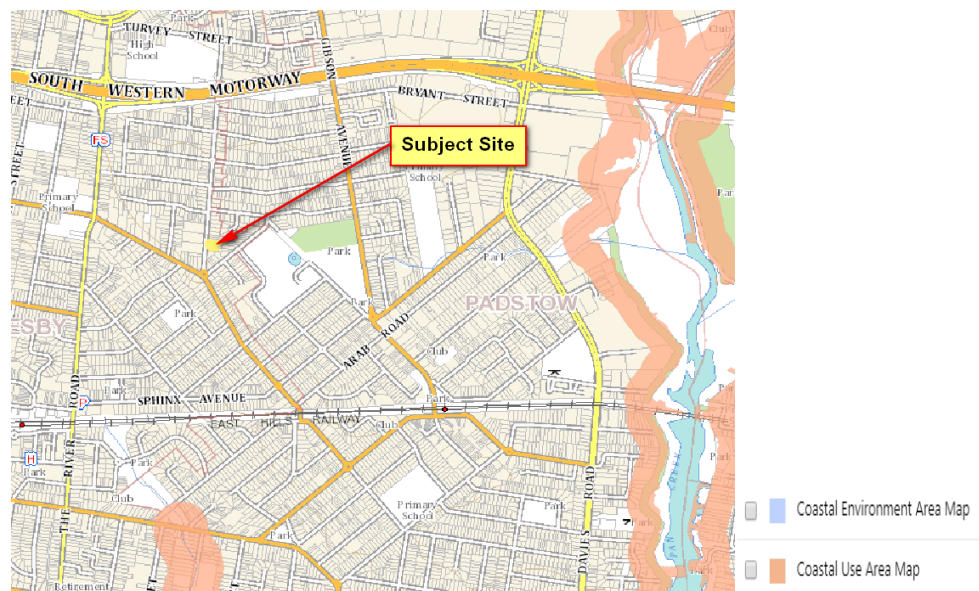
Coastal Management (Chapter 2)

The policy identifies sites within the coastal environment area and requires certain considerations for development applications under each respective heading/clause.

It is evident from the maps below that the site is not within any identified category.



Coastal Environment Area Map



Coastal Use Area Map

Remediation of Land (Chapter 4)

A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

Being in a well-established residential area it is unlikely that the site is contaminated. A Preliminary Site Investigation is not considered necessary under the circumstances.

4.3 Canterbury Bankstown Local Environmental Plan 2023 (LEP)

The subject site is within Zone R2 Low Density Residential under Canterbury Bankstown Local Environmental Plan 2023 (LEP). The proposed development is permissible with the consent of Council provided that the proposal complies with all relevant clauses in CBLEP 2023 and SEPP (Housing) 2021.

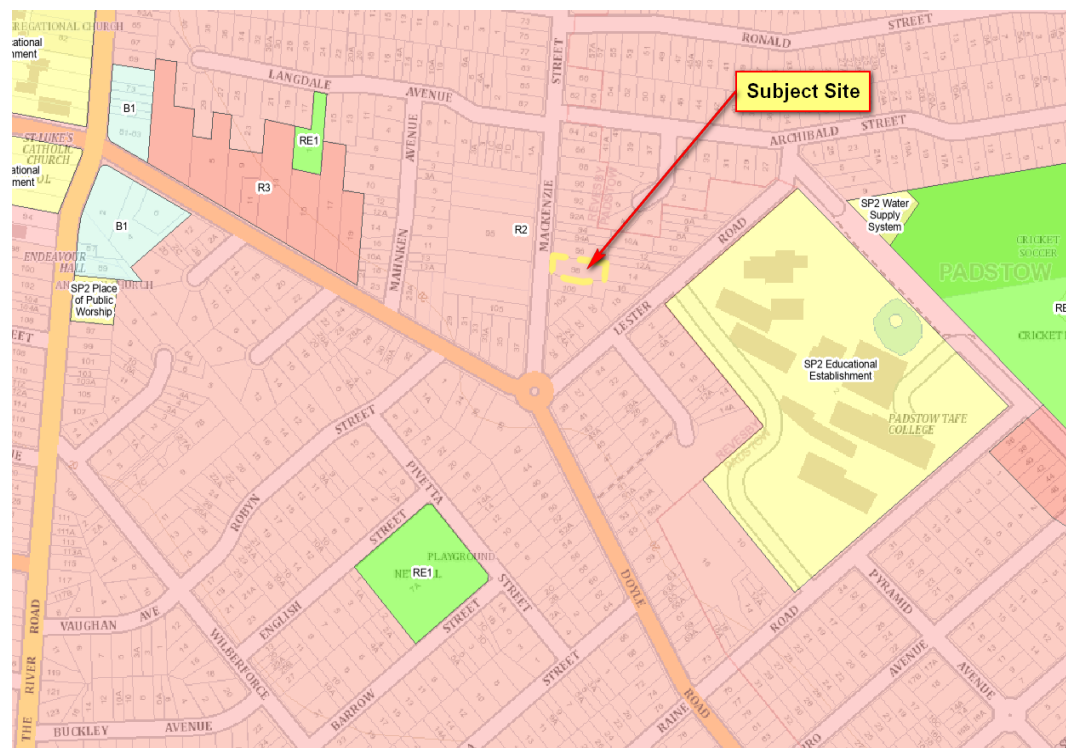
dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the **principal dwelling**), and
- (b) is on the same lot of land as the principal dwelling, and
- (c) is located within, or is attached to, or is **separate from**, the principal dwelling.

Note. See clause 5.4 for controls relating to the total floor area of secondary dwellings.

Note: with regard to the secondary dwellings, the requirements of State Environmental Planning Policy (Housing) 2021 prevail where there are any inconsistencies.



Zoning Map

Relevant Clause	Comment	✓/X
<p>Clause 4.1A – Minimum lot size and special provisions for dual occupancy</p> <p>A minimum allotment size of 500m² and width of 15m at the front building line is stipulated for dual occupancy development.</p> <p>The consent authority may grant development consent for the subdivision of:</p> <p>(a) a dual occupancy (attached), if the size of each lot to be created will be at least 250 square metres</p>	<p>The subject site comprises an area of 908.3m² and a width greater than 15m at the building line which complies with the requirements of this clause.</p> <p>It is proposed to subdivide the development (Torrens Title) to create separate titles for each dwelling and the proposed lot areas are:</p> <ul style="list-style-type: none"> Lot 100 – 453.3m² Lot 101 – 455m² <p>Both lots are similar in size and configuration and exceed the minimum lot size requirement.</p>	<p>✓</p> <p>✓</p>
<p>Clause 4.3 – Height of Buildings</p> <p>The Height of Building Map categorises the site within the maximum 9m building height limit.</p> <p>Sub-clause (2B) stipulates:</p> <p><i>Despite subclause (2), the following restrictions apply to development on land in Zone R2 Low Density Residential:</i></p> <p>(a) <i>for a secondary dwelling that is separate from the principal dwelling—the maximum building height is 6 metres and the maximum wall height is 3 metres.</i></p> <p>(b) <i>for a dwelling house or a dual occupancy—the maximum wall height is 7 metres,</i></p>	<p>The proposed dual occupancy development has a maximum height of 8.98m which satisfies the requirements of the clause.</p> <p>A maximum wall height of 6.578m is proposed which complies with the requirement.</p> <p>The secondary dwellings comprise the following heights:</p> <p><u>Lot 100</u> Maximum Building Height – 5.121m (Complies) Wall Height – 3.696m (does not comply)</p> <p><u>Lot 101</u> Maximum Building Height – 5.121m (complies) Wall Height – 3.116m (does not comply)</p>	<p>✓</p> <p>✓</p> <p>✓</p> <p>X</p> <p>✓</p> <p>X</p>
<p>Clause 4.4 – Floor Space Ratio</p> <p>The FSR Map indicates a maximum FSR of 0.5:1 for the subject site.</p>	<p>The proposal complies with this clause, having an FSR of 0.499:1. Once subdivided each dwelling also occupies an FSR of less than 0.5:1 on their respective allotment.</p>	<p>✓</p>
<p>Clause 4.6 – Exceptions to development standards</p> <p>Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.</p>	<p>In this regard, a Variation Request is sought in relation to the Maximum Wall Height requirement in relation to the secondary dwellings [see Attachment 1 - Variation Request (Wall Height)].</p>	<p>✓</p>
<p>Clause 5.10 - Heritage Conservation</p>	<p>The subject site is not listed as a heritage item or located in the visual context of any heritage-listed items.</p>	<p>✓</p>
<p>Clause 5.21 – Flood Planning</p>	<p>The site is identified as being flood affected, as such, a Flood Risk Management Report accompanies the application (Note: comments are provided further in the Statement with reference to the Stormwater System Report and Flood Risk Management Report).</p>	<p>✓</p>

Clause 6.1 - Acid Sulfate Soils	<p>According to the Acid Sulfate Soils Map, the subject site is not within any category which may limit excavation of the kind proposed (i.e., Class 5 - the site works would not affect the structural viability of the buildings due to the existing soil conditions).</p>	√
Clause 6.2 - Earthworks	<p>Suspended slab construction due to flood constraints and the crossfall of the site is required to establish the building platforms at the required levels.</p> <p>The Hydraulic Detail Plan demonstrates that stormwater can be appropriately drained, as such, no detrimental impacts are envisaged.</p> <p>The proposal aims to achieve the highest and best use of the site, therefore, the future housing needs of the community are being accommodated for.</p> <p>Excavated material taken from the site is unlikely to be contaminated, therefore, reuse would be acceptable.</p> <p>The design of the proposed development takes into account the preservation of amenity to adjoining properties, particularly in relation to controlled stormwater drainage and reasonable ground floor levels.</p> <p>Being an established residential area, it is unlikely that any relics will be found on the site.</p> <p>There are no natural water courses in the immediate vicinity of the subject site.</p>	√
Clause 6.3 - Stormwater Management	<p>The accompanying Hydraulic Detail Plan, prepared by a suitably qualified practitioner, identifies the measures to be implemented so as to satisfy the considerations of this clause. Specific conditions of consent can be included to ensure compliance.</p> <p>The flood characteristics of the site have also been taken into account.</p>	√
Clause 6.6 - Development in areas subject to aircraft noise <p>Development consent must not be granted to development for the purposes of a dual occupancy... on land in the vicinity of the Bankstown Airport where the ANEF contour exceeds 25.</p>	<p>The subject site is not affected by aircraft noise.</p>	√

4.4 Canterbury Bankstown DCP 2023

Chapter 2 - Site Considerations

Site Analysis

Site constraints and opportunities were carefully considered in the design of the development. It is evident that the design of the proposed development will not detract from the existing streetscape of Mackenzie Street.

The composite streetscape comprises a variety of building forms. The bulk and scale of the proposed development is reduced by accommodating a clearly defined **base** element.

The following design principles were incorporated to ensure that the proposed development fits in with adjoining development, viz:

- Consistent building line;
- Front doors face the street;
- Passive surveillance opportunities;
- Subservient garaged car parking accessed from Mackenzie Street; and
- New landscaping.

The size and shape of the subject site easily accommodates the building form with adequate land for landscaping, access and parking, outdoor recreation and clothes drying. The design provides for a good relationship between the indoor and outdoor living spaces. A reasonable portion of the site will remain as soft soil capable of accommodating landscaping.

Access to sunlight is available to the private open space areas of the proposed dwellings and the adjoining dwellings in accordance with the DCP requirement. Existing microclimate conditions will not be significantly affected as a result of the proposed development.

Tree Management

The Architectural and Landscape Plans indicate the trees being removed and retained. In this regard, an Arboricultural Impact Assessment, prepared by Treerepairs, accompanies the application and discusses the tree removals.

Formalised landscaping as indicated on the Landscape Plan will enhance the future amenity of the site and locality.

Chapter 3 - General Requirements

Parking

Two car parking spaces have been provided for each dwelling in the form of a single width garage with a tandem car space available on the driveway. Separate driveways at opposite ends of the building assist in overcoming garage dominance issues.

The additional traffic generated by the proposed development will have a negligible impact on the existing traffic conditions and the servicing of intersections in the immediate locality.

No additional car parking is required for the secondary dwellings.

Waste Controls

A Waste Management Plan accompanies this application. The plan adopts the principles of ***Avoid Reuse Recycle and Dispose*** to minimise landfill waste.

Sustainable Development

Consideration has been given to achieving ESD objectives at the design and development stages, viz:

- A Waste Management Plan accompanies the application;
- Each dwelling has been designed to achieve a satisfactory energy efficiency rating through orientation and the use of building materials with thermal properties. The BASIX Certificate demonstrates that the design is satisfactory in terms of this consideration;
- Public transport is readily available (Bus/Rail links within walking distance);
- Soft soil areas will be available to establish native landscaping; and
- Stormwater will be collected and disposed of in a manner that complies with Council's requirements.

Chapter 5 - Residential Accommodation

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

Desired Character

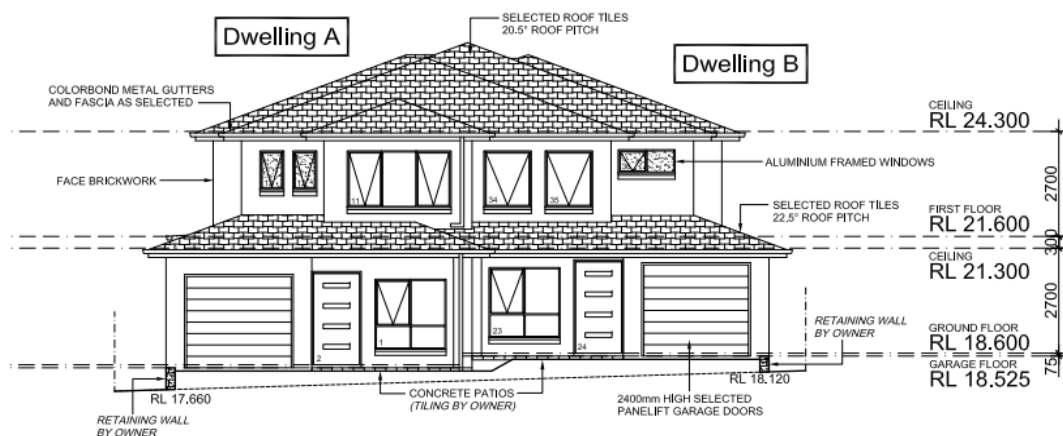
The surrounding neighbourhood is characterised by a mixture of residential development including:

- A mixture of residential development including detached single and two-storey dwellings with interspersed dual occupancy and multi dwelling housing development;
- Standard width road reserve with paved and unpaved nature strips;
- Relatively consistent street tree planting theme; and
- Low scale or no front fencing.

The proposed development will continue an already emerging trend for improvement with newer building forms and densities. The design incorporates simple contemporary architectural themes with articulation, single storey elements, design features and a pitched/hipped roof design.

Garage dominance issues are addressed through the provision of design features (i.e., clearly defined base element and front entry porches) and the use of subservient colouring.

The proposed development is two-storey construction with articulation and effective design features, including colours and textures. In terms of bulk and scale it is compatible with adjoining and nearby single and two storey building forms, whilst providing a large front setback and new landscaping will enhance the amenity of the streetscape.



Mackenzie Street (Western) Elevation

Dual Occupancies

Subdivision

The subject site is an existing allotment comprising a site area which can accommodate a dual occupancy and complies with all numeric requirements for this type of development. As mentioned earlier, it is proposed to subdivide the development (Torrens Title) and the resulting lot configurations are provided in the table below viz:

Lot	Frontage	Area
100	9.04m	453.3m ²
101	7.04m	455m ²

Both proposed lots are in excess of the minimum requirement of 250m² and are similarly configured which is consistent with the existing subdivision pattern in the locality.

Height

The two-storey structure does NOT exceed a wall height of **7m** as required and suspended slab construction ensures that the height does not exceed the DCP requirement (**see Attachment 2 – Compliance Table**).

Setbacks

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

- The proposed minimum front setback of **6.7m** (GF) and **8.169m** (FF) complies with the DCP requirement.
- The side setbacks also comply with the minimum requirement, being **935mm**.
- There is adequate space in the front and rear yards to provide landscaping, open space and privacy between adjoining dwellings.

Private Open Space

Both dwellings have Private Open Space areas which comply with the minimum DCP requirement (i.e., Dwelling A – **99.8m²** and Dwelling B – **104.7m²**), with a Principle Private Open Space area adjacent to the Family/Dining Rooms and Outdoor Living (Alfrescos).

Access to Sunlight

Access to natural sunlight will be available to habitable rooms and can be achieved by various means within the living areas of each dwelling. The provision of Alfresco areas, which are extensions of the internal living areas, also assist in this regard. Likewise, the Private Open Space areas also receive sunlight in accordance with the DCP requirement (i.e., minimum 50% of each yard receives direct access to natural sunlight for 3 hours between 8am and 4pm in mid-winter).

In regards to solar access reaching the adjoining property, the DCP states:

“At least one living area of a dwelling on an adjoining allotment must receive a minimum 3 hours of sunlight between 8.00am and 4.00pm at the mid–winter solstice”

From the shadow diagrams, it is evident that the front and rear elevations contain living area windows which will continue to receive solar access in accordance with the DCP requirement.

Visual Privacy

Privacy concerns are addressed by limiting the number of first floor windows facing the side boundaries, raised/lowered sills and opaque glazing where required, positioning low impact rooms such as, bedroom and bathroom amenities on the upper floor level, together with adequate boundary offsets and landscaping. It should be noted that fencing and landscaping will effectively screen ground floor windows openings.

Acoustic privacy is maintained by appropriately positioning the rooms in each dwelling and granny flat, separation between adjoining development and the construction method of the party wall between the dwellings.

Building Design

The proposed development incorporates simple contemporary design features, therefore, a pitched/hipped roof with ground floor base elements and front porches, complements the architectural style of the development. Articulation, window selection and roofline variations produce an aesthetically pleasing presentation.

Building Design (Car Parking)

Two parking spaces have been provided for each dual occupancy dwelling in the form of a single width garage with a tandem car space available on the driveway. No additional parking is required for secondary dwellings.

The additional traffic generated by the proposed development will have a negligible impact on the existing traffic conditions and the servicing of intersections in the immediate locality.

Landscaping

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

- Front pervious area greater than **45%**;
- Screening between adjoining properties;
- Softening the visual impact of hard surface areas and car parking spaces;
- Appropriate species selection for the climate; and
- Enhancement of the streetscape amenity.

Secondary Dwellings

The proposed secondary dwellings comply with most DCP requirements, viz:

- **FSR** – (allowed 0.5:1 max – Proposed Lot 100 - **0.499:1** & Proposed Lot 101 – **0.499:1**)
- **Floor Area** – (allowed 60m² max – Proposed Lot 100 – **45.7m²** & Proposed Lot 101 – **45.7m²**)
- **Storey limit** – (allowed single-storey max - proposed **single storey**)
- **Max Building Height** – (allowed 6m – Proposed Lot 100 – **5.121m** & Proposed Lot 101 – **5.121m**)
- **Max Wall Height** – (allowed 3m – Proposed Lot 100 – **3.696m** & Proposed Lot 101 – **3.116m**). A formal Clause 4.6 Variation Request addresses the non-compliance.
- **Setbacks** – (side/rear 900mm min - proposed **924mm** (min))
- **Private Open Space** – (must not result in less than the minimum required for the principal dwellings). The proposal has private open space areas well in excess of the minimum requirement.
- **Solar Access** – available

4.5 **Other Requirements**

BASIX

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

Energy conservation principles will be achieved through the construction method and orientation of the buildings, together with thoughtful planting of trees and shrubs and the use of materials with thermal massing properties.

Dwelling Entry and Security

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

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

Drainage

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

- A Hydraulic Detail Plan which demonstrates that stormwater will be collected, stored and discharged to the street system;
- Rainwater harvesting also assists in reducing direct runoff from the site; and
- Erosion and sedimentation control measures will be implemented during construction.

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

- *Overland flowpath for excess stormwater runoff from the upstream catchment to the south of the site.*

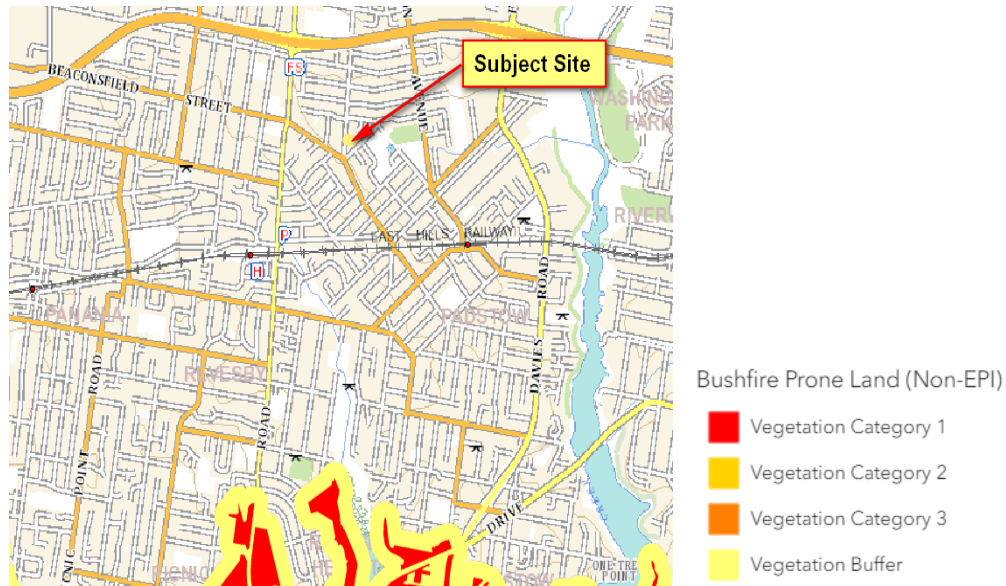
For this development, a Flood/Overland Flow Study to determine the 100 year ARI water surface level is NOT necessary, provided that the proposed development and stormwater design satisfies the terms stipulated in the Stormwater System Report, including:

- *Habitable floor levels are to be at least 500mm above the 100 year ARI flood level at the site*
- *Runoff from the dwellings is to be collected and disposed of to Council's requirements...*

Furthermore, NY Civil Engineering have provided a Flood Risk Management Report to accompany the application which has also been taken into account in the design and Hydraulic Detail Plan.

Bushfire

The subject site is not identified as being in a bushfire prone area.



Bushfire Prone Land Map

4.6 Non-Compliance

Apart from the wall height requirement for secondary dwellings, which is addressed with a formal Clause 4.6 Variation Request, the proposal complies with all other SEPP, LEP and DCP requirements.

5.0 CONCLUSION

It is considered that the current strategy of Canterbury Bankstown Council to promote a variety of housing choice in the locality is being achieved by the proposed development. The SEPP (Housing), Council's LEP/DCP requirements and good planning principles have been incorporated in the design of the development, which has resulted in a high-quality development that will contribute positively to the built form of the locality, by providing a dual occupancy development with Torrens Title subdivision and construction of granny flats on each allotment. The proposal effectively utilises the shape, size and slope of the site.

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

VARIATION REQUEST (CLAUSE 4.6 CANTERBURY BANKSTOWN LEP 2023)

Property:	98 Mackenzie Street, Revesby
Proposal:	To construct a two-storey dual occupancy (attached) development with Torrens Title subdivision. Secondary dwellings will be achieved following subdivision.
Date:	20/11/2024
Development Standard:	Maximum Wall Height [Clause 4.3(2B)(a)]

Introduction

Clause 4.6 of Canterbury Bankstown LEP 2023 states:

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted to 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, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note—

The [Environmental Planning and Assessment Regulation 2021](#) requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

This Variation Request satisfies the requirements of Clause 4.6 of Canterbury Bankstown LEP 2023 as follows:

- It identifies the development standard to be varied - **Clause 4.3(2B) relating to the maximum wall height for the secondary dwellings.**
- Discusses the extent of the variation sought – **the variation to the standards is approximately Dwelling A - 23% and Dwelling B – 3.8%.**
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – **Clause 4.6(3)(a) (Method 1 of Wehbe v Pittwater Council).**
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Note: the focus being on the contravention NOT the development as a whole**) – **Clause 4.6(3)(b) - non-compliant elements of the development are necessary to mitigate against the impacts of flood waters during the 1% AEP flood event. Consequentially, the minor exceedance to the height requirement produces a better environmental planning outcome, without compromising the amenity of adjoining properties.**
- Demonstrates that the proposed variation is in the public interest, being consistent with the objectives of the particular standard, and the objectives of the relevant zone in which the development is proposed - **hence satisfying Clause 4.6(4)(a)(ii).**

Development Standard & Extent of Variation

In this particular case, the development standard relates to the maximum wall height for development under the provisions of the Canterbury Bankstown Local Environmental Plan 2023, Clause 4.3(2B)(a) in particular.

The EP&A Act defines development standard as follows:

“development standards” means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work,...*

NOTE: It is clear from the above definition that the ‘maximum wall height’ requirement of Canterbury Bankstown LEP 2023 is a ‘development standard’.

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

(2B) The maximum wall height for a secondary dwelling that is not attached to the principal dwelling in Zone R2 on land identified as “Area 1” on the [Clause Application Map](#) is 3m.

The proposed development exceeds the maximum wall height requirement due to the flood and slope characteristics of the site (i.e., Dwelling A – **3.696m** or 23% and Dwelling B – **3.116m** or 3.8%), hence, the need for a Clause 4.6 - Variation Request to accompany the application.

A summary of the wall and building heights for each dwelling is provided in the table below, viz:

Secondary Dwelling Number	Wall Height (Max)	Overall (max)	Height	Extent of compliance Wall/Overall (NGL's)	Non-Compliance as a percentage
Dwelling A (rear)	3.696m	5.121m		696mm/Complies	23%/N/A
Dwelling B (rear)	3.116m	5.121m		116mm/Complies	3.8%/N/A

Note: it is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6 (*Micaul Holdings P/L v Randwick City Council* and *Moskovich v Waverley Council*)

Compliance with Development Standard is Unreasonable and Unnecessary

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

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

Strict compliance with the standard in this particular case, would be unreasonable or unnecessary, because the non-compliant elements of the building do not undermine the objectives behind the standard and compliance with the development standard, in this instance due to the flood characteristics of the site, prevent the floor level and consequently the wall height to be reduced. In other words, the application of the development standard is unreasonable and unnecessary in this instance because the 3m wall height requirement is too restrictive and would result in flood inundation during the 1% AEP flood event.

This is not the intent or purpose of the standard, particularly when there are no adverse impacts from exceeding the stringent wall height requirement, hence based on the various ways established by Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 - the underlying objective or purpose would be defeated or thwarted if strict compliance with the numeric requirement was required.

The DCP anticipates that the requirement will under certain circumstances need to be varied, as compliance with the development standard is difficult to achieve and thwarts the intent of the standard. It is evident that the floor levels of the secondary dwellings have been stepped to correspond as much as possible with the slope of the site.

The Architectural Plans clearly demonstrate that the maximum wall height of the secondary dwellings exceeds the development standard only because of the flood characteristics of the site and it is impossible to comply with the onerous standard.

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

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

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

- (a) to establish the height of development consistent with the character, amenity and landform of the area in which the development will be located – the proposed low scale secondary dwellings with stepped floor levels to correspond with the slope of the site are compatible with the character of the locality as they comply with all other LEP/DCP requirements, including the maximum building height requirement, and all residential amenities are available to each dwelling.

The non-compliant elements of the development do not undermine this objective, namely due to the design's mitigating features including, window placement and reasonable setbacks.

- (b) *to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of 2 storeys in Zone R2– the overall development fully complies, being a two-storey built form that is within the height requirements, which is consistent with the envisaged suburban character. The non-compliant elements relate to the subservient secondary dwellings and their wall height (NOT) the overall or maximum building heights, which are well below the allowed maximum.*
- (c) *to provide appropriate height transitions between development, particularly at zone boundaries – as previously mentioned, the proposal complies with the siting requirements which establishes reasonable spatial relief within the site and between adjacent dwellings, therefore, the proposal and non-compliant elements occupy the low side of the allotment, with the situation improving with the slope of the site, therefore, they are not antipathetic to the objective. The variations are relatively minor and will not be visually interpreted as a non-compliance.*
- (d) *to minimise overshadowing to existing buildings and open space– the shadow impact of the single storey structures is minimal.*

The secondary dwellings maintain a single storey appearance. Likewise, the siting and design ensures that it does not adversely impact adjoining development. The site-specific circumstances (i.e., extremely long site) also assists in minimising any adverse impacts as a result of the non-compliant wall height, as it enables larger setbacks.

Environmental Planning Grounds

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

1. The non-compliant elements are relatively minor and will not be visually interpreted as a non-compliance to the standard. (Note: the variation is due to the constraints of the site i.e., flood characteristics and slope).
2. The maximum wall height standard of 3m restricts the attainment of reasonable development, given that the floor level MUST be above the flood event freeboard and consequently the wall height inevitably exceeds the standard. It is therefore, specific to the site and immediate locality, and the delivery of permissible forms of residential development.
3. The proposed development aims to provide appealing, livable internal environments for the occupants of the secondary dwellings and the non-compliant elements are a crucial component in achieving this objective.

Good urban design is promoted by the Environmental Planning and Assessment Act 1979 and the Department of Planning who are continuing to promote the values of good design in recent design guidelines and policies, as such, there is sufficient environmental planning grounds to justify contravening the development standard, in this particular case, so as to achieve a better outcome from the development.

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

The EP&A Act also promotes the economic use of land, which will be achieved through a development that caters for the desired lifestyle of the occupants of the land and the highest and best use of the site, in this particular case, being secondary dwellings on a relatively elongated site. **The alternative situation of restricting or limiting the design affects the amenity and economic viability of developing the site as proposed.**

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

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

Outcome

A contemporary style development with a two-storey appearance and low scale single storey secondary dwellings, including stepping floor levels to correspond with the slope of the site, represents an orderly and economic use of the land, which promotes the objectives of the EP&A Act.

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

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

There will be sufficient accommodation and realistic leisure areas to ensure the buildings are fit for their designed purpose.

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

The objectives of the zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To allow for certain non-residential 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.*

The proposed development satisfies the above objectives as follows:

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

Given the above, it is considered that the proposed development is within the environmental capacity of the R2 – Low Density Residential zone and the variation will not undermine the standard, hence it is in the public interest.

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

Conclusion

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

- It identifies the development standard to be varied - **Clause 4.3(2B) relating to the maximum wall height for the secondary dwellings.**
- Discusses the extent of the variation sought – **the variation to the standards is approximately Dwelling A - 23% and Dwelling B - 3.8%.**
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – **Clause 4.6(3)(a) (Method 1 of Wehbe v Pittwater Council).**
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (*Note: the focus being on the contravention NOT the development as a whole*) – **(Clause 4.6(3)(b) - non-compliant elements of the development are necessary to mitigate against the impacts flood waters during the 1% AEP flood event. Consequentially, the minor exceedance to the height requirement is unavoidable in producing a better environmental planning outcome (protection of life and property), without compromising the amenity of adjoining properties.**

Finally, affordable housing in the form of 'average sized secondary dwellings with improved residential amenities has been provided in a well-established area of the LGA, which assists in an even spread of demographics and the utilisation of existing infrastructure.

The proposed development is consistent with the objectives of the particular standard, and the objectives of the relevant zone in which the development is proposed, as such, the variation request should be supported.

ATTACHMENT 2

COMPLIANCE TABLE

Control	LEP/DCP Requirement	Development Proposal	Complies
Site Area	500m ²	908.3m ²	Yes
Minimum Lot Size	250m ²	Proposed Lot 100 – 453.3m ² Proposed Lot 101 – 455m ²	Yes Yes
Width (at front building line)	15m (min)	➤ 15m	Yes
Floor Space Ratio	0.5: 1	0.499:1 Dwelling A – 226.45m² or 0.499:1 Dwelling B – 227.1m² or 0.499:1	Yes Yes Yes
Building Height	2-Storey (max) 7m (wall height) 9m (max) <u>Secondary Dwellings</u> Max Height – 6m Wall Height - 3m	2-Storey 6.578m 8.98m <u>Lot 100</u> Building Height – 5.121m Wall Height – 3.696m <u>Lot 101</u> Building Height – 5.121m Wall Height – 3.116m	Yes Yes Yes Yes No Yes No
<u>Setbacks</u> Front Secondary Side/Rear	5.5m (ground floor) 6.5m (1 st floor) 3m Min 0.9m (Building Height < 7m) & Min 1.5m (Building Height > 7m)	6.7m 8.169m N/A 0.935m (min) N/A	Yes Yes N/A Yes N/A
Private Open Space	80m ²	Dwelling A – 99.8m ² Dwelling B – 104.7m ²	Yes Yes
Min Dimension of PPOS	5m x 5m (min)	> 5m x 5m	Yes
Landscaped Area	45% (min) within frontage	52.46%	Yes
Parking	2 spaces per dwelling	2 spaces per dwelling	Yes
Roof Pitch	35°(max)	20.5°	Yes
SEPP (Housing) 2021			
Site Area	Attached – No Minimum Detached - 450m ² (min)	Proposed Lot 100 – 453.3m ² Proposed Lot 102 – 455m ²	Yes Yes
Max Floor Area	EPI - 0.5:1 (max)	Proposed Lot 100 - 0.499: 1 Proposed Lot 102 - 0.499:1	Yes Yes
Dwelling Size	60m ² or EPI/DCP requirement	45.7m ² (each)	Yes