

Statement of Environmental Effects

89 Lucas Road
East Hills NSW 2213

Development Application for:
Unauthorized secondary dwelling

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1 Introduction

Council Approval Group has been engaged by Arthur Tserpes to prepare and submit a Development Application for seeking approval in retrospect for the continued use of an unauthorised secondary dwelling at No 89 Lucas Road, East Hills.

We thank Canterbury-Bankstown Council staff who have been of assistance during the formulation phase of this Development Application.

Specifically, this Statement of Environmental Effects (SoEE) includes:

- an analysis of the subject site and the surrounding locality;
- a description of the proposed development;
- an analysis of the proposal against the provisions of the Canterbury-Bankstown (LEP 2023), relevant SEPPs and deemed SEPPs, and other relevant statutory controls that apply to the site; and
- conclusion.

This SoEE is submitted in accordance with the requirements of the Environmental Planning and Assessment Act and Part 3 of the *Environmental Planning and Assessment Regulation 2021* for the purposes of

- demonstrating that the environmental impact of the development has been considered; and
- outlining the steps to be undertaken to protect the environment and to mitigate any potential harm, if necessary.

This SoEE concludes that the proposal is consistent with the objectives and provisions of the Canterbury-Bankstown Local Environmental Plan 2023. We are pleased to present this SoEE for the approval of a continued use of the secondary dwelling which, once approved, will create a lawful retrospective approval and hence provide for housing availability in the Canterbury-Bankstown area.

2 The Subject Site and Locality

2.1 Description of site and surroundings

Details of the site are provided below. The location of the subject property is shown on the location and aerial maps at **Figures 1** and **2**. A Google Street image of the property is included at **Figure 3**. The property is located in the Canterbury-Bankstown Council area.

The site is improved with dwelling house with four (4) bedrooms, two (2) bathrooms, one (1) car space garage, a shed at the rear portion of the property; and a shop building at the front which has been converted into a habitable dwelling.

Address	Title Details	Site Area	Site Frontage
89 Lucas Road, East Hills NSW 2213	Lot B, DP402664	333.32 sqm (approx.)	10.68 metres (approx.)



Figure 1: Site location (Source: EMC report)

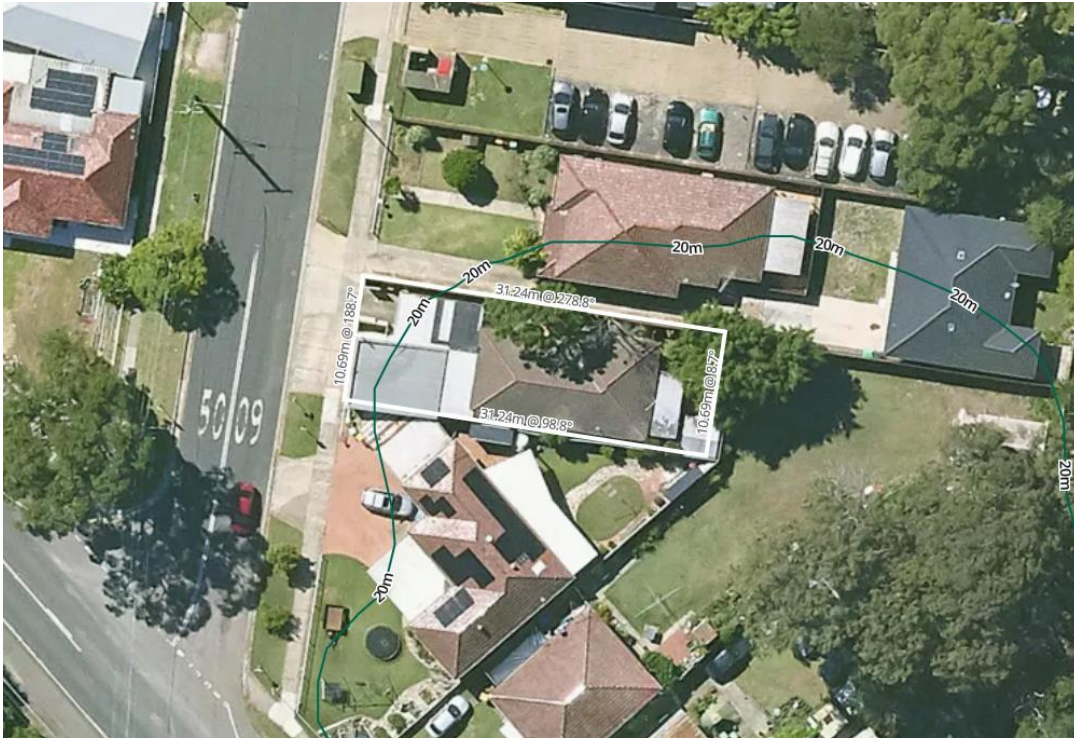


Figure 2: Site aerial (Source: EMC report)



Figure 3: Google Street View

2.2 Summary environmental mapping constraints

- Floor Space Ratio: 0.5:1
- Building Height: 9 m
- Minimum Lot Size: 450 sq m
- Heritage: not applicable
- Acid Sulfate Soils: Class 5
- Clause Application: Area 1

2.3 Site zoning

The site is zoned under Canterbury-Bankstown Local Environmental Plan 2023 (LEP) as Zone R2 Low Density Residential.

2.4 Development history

A search of Council's online database reveals the following:

Reference No.	Description of Works	Date Lodged / Determined
BA-1204/1993	Alteration to Dwelling	Approved 01/01/1994

3 The Proposed Development

3.1 Description of proposed development

The client has an investment property with a dwelling house and a small shop that has been converted into a secondary dwelling. In 2009, the council advised that the shop conversion to a dwelling was not approved. Recently, the client tried to sell the property which did not proceed. More recently, a compliance officer from council ordered the property to be restored to its original state.

The client is now seeking to rectify this issue by seeking retrospective approval for the continued use of the unauthorised secondary dwelling as converted.

3.2 Details of proposed development

3.2.1 Privacy, Views and Overshadowing

The proposal does not affect neighbouring properties or private open space. There are no view obstructions or changes to existing shadowing, as no external extensions or building height increases have been made.

3.2.2 Trees and Vegetation

No trees and vegetation are to be removed.

3.2.3 Access and Traffic

No additional parking is proposed for the secondary dwelling. Two car parking spaces are located within the existing carport in tandem arrangement.

3.2.4 Contamination

The entire site has been in residential use since its original subdivision and there is no evidence of any potentially contaminating uses occurring. It can be concluded beyond reasonable doubt that there is no likelihood of contamination on this site. No further consideration is therefore required under clause 4.6 (1) (b) and (c) of the SEPP.

4 Environmental Assessment

4.1 State Environmental Planning Policies

4.1.1 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

The secondary dwelling cannot be undertaken as complying development as it involves unauthorised works.

4.1.2 State Environmental Planning Policy (Housing) 2021

There is no provision in The Housing SEPP for a secondary dwelling or a self-contained habitable space to be complying development if it has been created without consent.

4.1.3 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX certificate and plans reflecting the BASIX commitments details in the certificate is submitted with the DA.

4.1.4 State Environmental Planning Policy (Resilience and Hazards) 2021

Clause 4.6 requires consent authorities to whether or not the land is contaminated and, if it is contaminated, whether or not remediation is required to make the land suitable for the proposed development.

This SEPP consolidated several SEPPs including State Environmental Planning Policy No. 55 – Remediation of Land which provides a state-wide practice for the remediation of contaminated land. Under clause 4.6 of the SEPP consideration must be given as to whether the land is contaminated. The entire site appears to have been in residential use since its original subdivision and there is no evidence of any potentially contaminating uses occurring. It can be concluded beyond reasonable doubt that there is no likelihood of contamination on this site. No further consideration is therefore required under clause 4.6 (1) (b) and (c) of the SEPP.

4.2 Local Environmental Plan

4.2.1 Canterbury-Bankstown Local Environmental Plan 2023

Canterbury-Bankstown Local Environmental Plan 2023 (LEP) applies to the subject site. The following provides an assessment of the proposed development against the relevant provisions of the Plan.

Zoning and Permissibility

Part 2 of LEP identifies that the subject site is zoned Zone R2 Low Density Residential. The Land Use Table for the zone is as follows:

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

The subject Development Application to Council seeks approval for the continued use of an unauthorised secondary dwelling. The proposal is permitted with the consent of Council.

The objectives of the Zone R2 Low Density Residential are as follows:

- *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.*

It is considered that the proposal is consistent with these objectives, in that:

- It provides housing diversity to the area.
- It maximises the development potential of an existing developed lot minimising impact on public infrastructure.

Other Relevant Clauses

LEP Clause / Provision	Statement of Compliance
1.2 Aims of Plan	
(2) The particular aims of this Plan are as follows— (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts, (a) to manage growth in a way that contributes to the sustainability of Canterbury-Bankstown, (b) to protect landforms and enhance vegetation, especially foreshores and bushland, in a way that maintains the biodiversity values and landscape amenity of Canterbury-Bankstown, (c) to identify, conserve and protect the Aboriginal, natural, cultural and built heritage of Canterbury-Bankstown, (d) to provide development opportunities that are compatible with the desired future character and amenity of Canterbury-Bankstown, (e) to restrict development on land that is sensitive to urban and natural hazards, (f) to provide a range of residential accommodation to meet the changing needs of the population, (g) to provide a range of business and industrial opportunities to encourage local employment and economic growth and retain industrial areas, (h) to create vibrant town centres by focusing employment and residential uses around existing centres and public transport, (i) to provide a range of recreational and community service opportunities and open spaces to meet the needs of residents of and visitors to Canterbury-Bankstown, (j) to achieve good urban design in terms of site layouts, building form, streetscape, architectural roof features and public and private safety, (k) to ensure activities that may generate intensive car usage and traffic are located near public transport that runs frequently to reduce dependence on cars and road traffic, (l) to consider the cumulative impact of development on the health of the natural environment and waterways and on the capacity of infrastructure and the road network, (m) to support healthy living and enhance the quality of life and the social well-being and amenity of the community, (n) to ensure development is accompanied by appropriate infrastructure, (o) to promote ecologically sustainable development.	<u>Complies</u> The development is consistent with the relevant aims of the plan, in particular (a), (d) and (f).
<u>Clause 4.3: Height of buildings</u>	

LEP Clause / Provision	Statement of Compliance
2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. (2A) Despite subclause (2), the following maximum building heights apply— (a) 6m for a secondary dwelling that is not attached to the principal dwelling in Zone R2 in Area 1, (2B) The maximum wall height for a secondary dwelling that is not attached to the principal dwelling in Zone R2 in Area 1 is 3m. (2C) The maximum wall height for a dwelling house or dual occupancy in Zone R2 in Area 1 is 7m.	<u>Complies</u> Maximum HOB mapped is 9m. For the purpose of a secondary dwelling the maximum HOB is 6m.
<u>Clause 4.4: Floor space ratio</u>	
(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.	<u>Complies</u> Maximum FSR mapped is 0.5:1. FSR. The existing FSR is 0.45:1.
<u>Clause 5.4: Controls relating to miscellaneous permissible uses</u>	
(9) Secondary dwellings on land other than land in a rural zone If development for the purposes of a secondary dwelling is permitted under this Plan on land other than land in a rural zone, the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater— (a) 60 square metres, (b) 10% of the total floor area of the principal dwelling.	<u>Complies</u> The total floor area of the secondary dwelling does not exceed 60 sqm.

4.3 Development Control Plan

4.3.1 Canterbury-Bankstown Development Control Plan 2023

Canterbury-Bankstown Development Control Plan 2023 applies to the subject site. The following provides an assessment of the proposed development against the relevant provisions of the Plan.

DCP Clause / Provision	Comment
<u>Chapter 5 Residential Accommodation</u>	
SECTION 3—SECONDARY DWELLINGS	
Development controls	
Lot size	
3.1 A secondary dwelling is permissible on a site with a minimum lot size of 450m ²	<u>Non-compliant</u> The subject lot size is 333 sqm. There is no lot size requirement for a secondary dwelling in the LEP. This is a DCP requirement and a DCP is a non-statutory development standard unlike an LEP standard which must be met. The secondary dwelling fits neatly onto the site in the same footprint as the former shop front and there is adequate land area for private open space.
Site cover	

DCP Clause / Provision	Comment
3.2 Council must not consent to development for the purpose of secondary dwellings unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under an environmental planning instrument; and (b) 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 an environmental planning instrument, that greater floor area.	<u>Compliant</u> There is no maximum floor area for a dwelling house in the LEP. Clause 5.4 of the LEP limits the floor area of a secondary dwelling to 60 sqm. The existing floor area of the secondary dwelling is 60 sqm.
Street setbacks	
3.8 The minimum setback for a building wall to the primary street frontage is: (a) 5.5 metres for the first storey (i.e. the ground floor); and (b) 6.5 metres for the second storey. 3.9 The minimum setback to the secondary street frontage is: (a) 3 metres for a building wall; and (b) 5.5 metres for a garage or carport that is attached to the building wall.	<u>Non-compliant</u> The existing building is located up to the front boundary, which was a common siting for shop fronts. Front setbacks are traditionally required to create open space in the front of a dwelling and to enhance the streetscape. The nil setback from the front boundary has no adverse impact on residential amenity.
Side and rear setbacks	
3.10 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 and rear boundaries of the site is 0.9 metre.	<u>Non-compliant</u> The front section of the secondary dwelling on the western side is located less than 0.9m from the western side boundary. This wall is of brick construction. There are no openings in this wall. As advised in the BCA report, this is compliant for fire rating standards. Part of the external wall on the southern side (near the principal dwelling) is fibre cement on stud frame. This part is not required to be fire resistant as it is at a right angle to the wall of the principal dwelling. Please refer to the BCA report for further details. In terms of amenity, there is and will be no adverse impact on adjacent privacy given the absence of windows on the western boundary, preventing overlooking between properties.
Private open space	
3.12 Secondary dwellings must not result in the principal dwelling on the site having less than the required landscaped area and private open space.	<u>Compliant</u> The DCP requires a dwelling house to have a minimum 80m² of private open space behind the front building line. There exists approximately 50 sqm of private open space for the principal dwelling located to the far rear of the lot. There has been no depletion in this area as no extensions to the rear of the building has been undertaken.
Access to sunlight	

DCP Clause / Provision	Comment
3.13 At least one living area must receive a minimum three hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas. 3.14 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. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling. 3.15 A minimum 50% of the private open space required for the principal dwelling on the site and a minimum 50% of the private open space of a dwelling on an adjoining site must receive at least three hours of sunlight between 9.00am and 5.00pm at the equinox. Where this requirement cannot be met for a dwelling on an adjoining site, the development must not result with additional overshadowing on the affected private open space.	<u>Compliant</u> There is no change to any existing overshadowing given that no external extensions or increases in building height has been undertaken.
Visual privacy	
3.16 Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must: (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. 3.17 Where development proposes a window that directly looks into the private open space of an existing dwelling, the window does not require screening where: (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 of 1.5 metres above floor level; or (d) the window is designed to prevent overlooking of more than 50% of the private open space of a lower-level or adjoining dwelling. 3.18 Council may allow attached secondary dwellings to have an upper floor side or rear balcony solely where the balcony is not accessible from a living area or hallway, and the balcony design: (a) does not have an external staircase; and (b) does not exceed a width of 1.5 metres throughout; and (c) incorporates a form of screening to the satisfaction of Council such as partially recessing the balcony into the building. 3.19 Council does not allow secondary dwellings to have roof-top balconies and the like.	<u>Compliant</u> There have been no changes to window locations or configurations. If necessary to enhance privacy, screening of windows can be provided.
Building design	

DCP Clause / Provision	Comment
3.20 The maximum roof pitch for attached secondary dwellings is 35 degrees. 3.21 Council may allow attached secondary dwellings to have an attic provided the attic design: (a) accommodates no more than two small rooms (for the purposes of a bedroom and/or study) and a bathroom plus an internal link to the storey below; and (b) ensures the attic does not give the external appearance of a storey. 3.22 The design of dormers must: (a) be compatible with the form and pitch of the roof; and (b) must not project above the ridgeline of the main roof; and (c) must not exceed a width of 2 metres; and (d) the number of dormers must not dominate the roof plane. 3.23 The maximum roof pitch for detached secondary dwellings is 25 degrees. An attic or basement is not permitted as part of the dwelling. 3.24 Development in the foreshore protection area (refer to map in Appendix 1) must use non-reflective materials that are compatible with the natural characteristics and colours of the area (such as olive green, grey and dark brown). 3.25 The change of use of outbuildings to secondary dwellings must comply with the National Construction Code.	Compliant The external building design is not being altered.
Building design (car parking)	
3.26 Secondary dwellings must not result in the principal dwelling on the site having less than the required car parking spaces.	Noted for parking
Landscape	
3.27 Development must retain and protect any significant trees on the site and adjoining sites. To achieve this clause, the development may require a design alteration or a reduction in the size of the secondary dwelling.	No tree removal is proposed.

4.4 Section 4.15 Considerations

4.4.1 Suitability of the site

The previous sections of this report have demonstrated the suitability of the site for the proposed usage, particularly in terms of:

- The proposal is consistent with the existing development within the locality.
- The proposal is consistent with the objectives and development standards applying to the land.
- Overall the development is considered an appropriate usage of the site.

4.4.2 Public interest

The proposal is considered to accord with the wider public interest in that:

- It provides an appropriate use of the site;
- It will have a positive effect on the streetscape and immediate locality; and
- It is consistent with all relevant LEP aims and objectives

4.4.3 Section 4.15 of the Environmental Planning and Assessment Act, 1979

Matters for Consideration	Considered?
Section 4.15 (1) (a)(i) – Has consideration been given to all relevant provisions of any relevant environmental planning instrument?	Yes

Matters for Consideration	Considered?
Section 4.15 (1) (a)(ii) – Has consideration been given to any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)?	Yes
Section 4.15 (1) (a)(iii) – Has consideration been given to all relevant provisions of any provisions of any development control plan?	Yes
Section 4.15 (1) (a)(iia) – Has consideration been given to all relevant provisions of 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?	N/A
Section 4.15 (1) (a)(iv) – Has consideration been given to all relevant provisions of the Regulations (to the extent that they are prescribed for the purposes of this paragraph)?	Yes
Section 4.15 (1) (b) – Are the likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality acceptable?	Yes
Section 4.15 (1) (c) – Is the site suitable for the development?	Yes
Section 4.15 (1) (d) – Has consideration been given to any submissions made in accordance with the EPA Act or EPA Regulations?	TBA by Council
Section 4.15 (1) (e) – Is the proposal in the public interest?	Yes

5 Summary and Conclusion

Council Approval Group is pleased to submit this Statement of Environmental Effects and accompanying information for seeking approval in retrospect for the continued use of an unauthorized secondary dwelling at East Hills, Lucas Road 89.

This Statement of Environmental Effects for the proposed development has considered:

- the circumstances of the case;
- an analysis of the subject site and the surrounding locality;
- an analysis of the proposal against the provisions of the *CBLEP 2023*, as well as relevant DCPS, SEPPs and deemed SEPPs, and other relevant statutory controls that apply to the site; and
- Section 9.1 Directions.

This report concludes that the proposal will substantially complement the objectives and vision of the Plan, Zone, and DCP in particular:

- It will continue to provide for the housing needs of the community within a low density residential environment.
- It provides housing diversity to the area.
- It will create a lawful retrospective approval and hence provide for housing availability in the Canterbury-Bankstown area.

We are pleased to present this SoEE for seeking approval in retrospect for the continued use of an unauthorized secondary dwelling, which, once approved, will increase to the variety of housing of the area.

5.1 Recommendation

Under all the circumstances of the case, it is therefore recommended to Council for favourable consideration.

Appendix I. Architectural plans

Appendix J. Owners consent

Appendix K. Checklist

Appendix L. BCA audit report

Appendix M. BASIX

Appendix N. Cost estimate report

Appendix O. Waste management plan