



STATEMENT OF ENVIRONMENTAL EFFECTS

SUBDIVISION OF THE SITE INTO 2 LOTS AND THE CONSTRUCTION OF A PAIR OF SEMI-DETACHED DWELLINGS, SWIMMING POOLS AND SITE LANDSCAPING.

59 BANKS ROAD | EARLWOOD

CLIENT: BECHARA CHAN & ASSOCIATES
REF: 23130
DATE: 2 JUNE 2025

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1 INTRODUCTION

This Statement of Environmental Effects is to accompany a development application to Canterbury Bankstown Council seeking consent for the subdivision of the site into 2 lots and the construction of a pair of semi-detached dwellings, swimming pools, and site landscaping at No. 59 Banks Road, Earlwood.

The proposal has been designed by Bechara Chan & Associates Architects and is detailed on the accompanying architectural drawings.

As outlined in this report, the proposal complies with the relevant planning controls as prescribed by Canterbury Bankstown LEP and DCP 2023. The Architectural Plans and this Statement of Environmental Effects are supplemented by the following:

- **Survey Plan:** Prepared by NJB Surveying;
- **Landscape Plan:** Prepared by ATC;
- **Stormwater Plan:** Prepared by Amity Engineers;
- **Basix & NatHERS Certificates:** Prepared by eCerts.

This Statement of Environmental Effects evaluates the subject site and its context, details the proposed works, and provides an assessment of the proposed development with consideration to the relevant planning framework and the impacts of the development on the natural and built environment in accordance with S.4.15 of the Environmental Planning & Assessment Act, 1979 (Section 4).

This Statement concludes that the application is satisfactory and achieves an appropriate response to development that is anticipated within the R2 – Low Density Residential Zone. In addition, this Statement concludes that the development will have an acceptable impact on the natural and built environment and is recommended for approval.

2 SUBJECT SITE AND SURROUNDING DEVELOPMENT

The subject site is comprised of a single residential lot located on the north side of Banks Road and is known as No. 59 Banks Road, Earlwood. The site has a legal description of Lot 2 in DP 313820 and its location is shown in Figure 1.



Figure 1: Subject Site (Source: NSW Planning Portal)

The development site has a regular shape with parallel side boundaries and an angled front and rear boundary. The site area is surveyed as 650.095m² with a street and rear boundary measuring 15.665m and side boundaries measuring 42.67m. The site has a 12.5m fall across its length from the rear to the street, which is steeper within street frontage portion of the lot. As shown on the submitted Survey Plan, the site is not burdened or benefited by any easements or restrictions.

The subject site is located on a north-west to south-east axis, consistent with the subdivision pattern of the adjoining lots, as shown in Figure 1. The existing site consists of a mix of deep soil areas and exposed rock formations. It has been poorly maintained, featuring deteriorated structures and excessively overgrown vegetation. The vegetation includes a mix of exotic ornamental species and unmanaged natural growth in addition to a small tree within the street frontage.

Existing on the site is a single storey dwelling that is positioned towards the middle of the site. The dwelling is cottage-esque and of sandstone masonry construction, and has a rusted pitched metal roof. The dwelling contains small windows that overlook the street and towards adjoining properties, and a hardstand private open area and detached shed are located at the rear. The location of the dwelling is evidently excavated from the exposed rock formation which surrounds the dwelling. Pedestrian access to the dwelling is gained via a steep, curving garden path excavated into the ground. Only on-street parking is available for the dwelling. Views of the Mascot commercial centre and the opposing streetscape are gained from the site.

Photographs of the existing dwelling are included at Figures 2 to 7.



Figure 2: Streetview of the subject site



Figure 3: Existing Dwelling



Figure 4: Pedestrian site access



Figure 5: Views of the Mascot commercial centre



Figure 6: Hardstand space at the rear



Figure 7: Exposed rock formation at the rear

2.1 Adjoining Properties & Locality

The subject site is located within an *R2 - Low Density Residential Zone* and shares a common boundary with 5 adjoining properties, being Nos. 55, 55A, 57, 63 & 61 Banks Road Earlwood. These adjoining dwellings are shown in Figure 8.



Figure 8: Aerial View (Google Maps)

Adjoining the subject site to the east is a similarly shaped residential property known as No. 55 Banks Road. The site is also similarly sloped towards the street and contains a dwelling positioned in the centre of the site and a detached garage at the street boundary. The front setback has been modified to create terraced plantings and accommodate hedges, ornamental plantings, and a legible pedestrian access.

The dwelling is constructed of face brick and a pitched tile roof and contains large windows on the front elevation overlooking the street, and small windows on the side elevation facing towards the subject site. Open areas include a balcony on the street elevation (facing south-east) and a rear yard containing a shed and a carport accessed via an internal road to the east.

Views over the opposing streetscape are gained from this site, and the common boundary with the subject site is bordered by a metal fence. Photos of the site are provided at Figures 9 & 10.



Figure 9: Streetview of No. 55 Banks Road Earlowood



Figure 10: Relationship between the dwelling at No. 55 and the subject site

A right of carriageway to the east of No. 55 Banks Road provides access to two dwellings that share a common boundary with the subject site; Nos. 55A & 57. Both dwellings are two-storey and are located topographically higher than the roof of the subject site. Views of the Mascot commercial centre to the east are gained from balconies on the front elevation and do not rely on overlooking the subject site. The common boundary between the sites is bordered by a solid metal fence and tall hedges.

The relationship between the subject site and these dwellings is depicted at Figure 11.



Figure 11: Rear of the subject site viewed from the driveway of No. 55A Banks Road

To the east, the subject site adjoins a residential site known as No. 61 Banks Road. The site contains a multi-storey dwelling of recent construction positioned at street level and is adjoined by a battle axe driveway providing access to a residential property known as No. 63 Banks Road. The dwelling contains a balcony and large windows on the front elevation that overlook the street. The area containing the rear of the dwelling has been excavated from the same exposed rock feature located on the subject site and borders the common boundary between the two sites. As a result the dwelling is unable to gain Mascot views to the east. The dwelling at No. 61 is depicted in Figures 12 & 13.



Figure 12: Streetview of No. 61 Banks Road



Figure 13: Relationship between the subject site and No. 61 Banks Road

Located behind No. 61 Banks Road, the residential property at No. 63 Banks Road contains a dwelling with a layout and site positioning similar to those at Nos. 55A and 57. Positioned higher ground, the dwelling at No. 63 sits above the roofline of the proposed development and enjoys views toward the opposite street from its front-facing balcony. Access to No. 63 is provided via a battleaxe driveway, consistent with its rear allotment position. Views towards the subject site are obscured by existing vegetation.



Figure 14: Front elevation of the dwelling at No. 63 Banks Road



Figure 15: Subject site viewed from No. 63 Banks Road

3 PROPOSED DEVELOPMENT

The proposal seeks consent for the subdivision of the site into 2 lots and the construction of a pair of semi-detached dwellings, swimming pools and site landscaping.

The proposed development is designed by Bachara Chan & Associates.

3.1 Demolition

The proposal involves demolition of all existing structures. Demolition will be undertaken by a licensed contractor in accordance with AS 2601: 2001 and any relevant conditions of development consent.

3.2 Subdivision

The subject site is proposed to be subdivided lengthwise into separate Torrens title lot of equal size, 325.05m² each. Each resulting lot will be capable of accommodating a semi-detached dwelling, featuring a shared pedestrian access along the frontage and separate vehicular access points to each residence. The resulting lots are shown on the preliminary subdivision plan within the architectural plans.

3.3 Earthworks

The proposal required cutting into the natural ground level as detailed on Section B-B within the architectural plans. As has occurred on nearby properties in order to accommodate a reasonable building platform, cuts are proposed into the exposed rock formation and deep soil areas. The largest cut is approximately 7m to accommodate the basement and lower ground floor levels, where the site rises from the street. Given the site slope, the proposed extent of excavation is largely unavoidable. As the slope eases, minimal cuts are required to accommodate the finished floor level of the ground floor. An extract of Section B-B is provided in Figure 16 below.



Figure 16: Sections diagram

3.4 Vegetation Removal

All vegetation on the site and a tree within the street frontage is proposed for removal, however, no existing trees are large native species or significant.

3.5 Proposed Semi-Detached Dwellings

The proposal seeks consent for the construction of a pair of multi -storey semi-detached dwelling houses designed to front and be accessible from the street and step up the rising slope.

The dwellings are generally mirrored in design and with staggered setbacks from the street and separated by a cavity brick party wall. Despite the challenging site conditions, the proposed dwellings are well-designed and largely comply with all building development standards, with the exception of building height and the number of storeys, an area of non-compliance resulting from the site's sloping topography. Each dwelling comprises of the following:

Basement

Vehicular access to each dwelling is gained via a double garage at street level. Each garage contains bin storage areas and internal access to the lower ground floor above, and a common corridor with street access containing an elevator for each dwelling. For this aspect of the development, a reciprocal right of pedestrian access will be created which burdens and benefits each lot in the development.

An extract of the basement floor plan is provided at Figure 17.

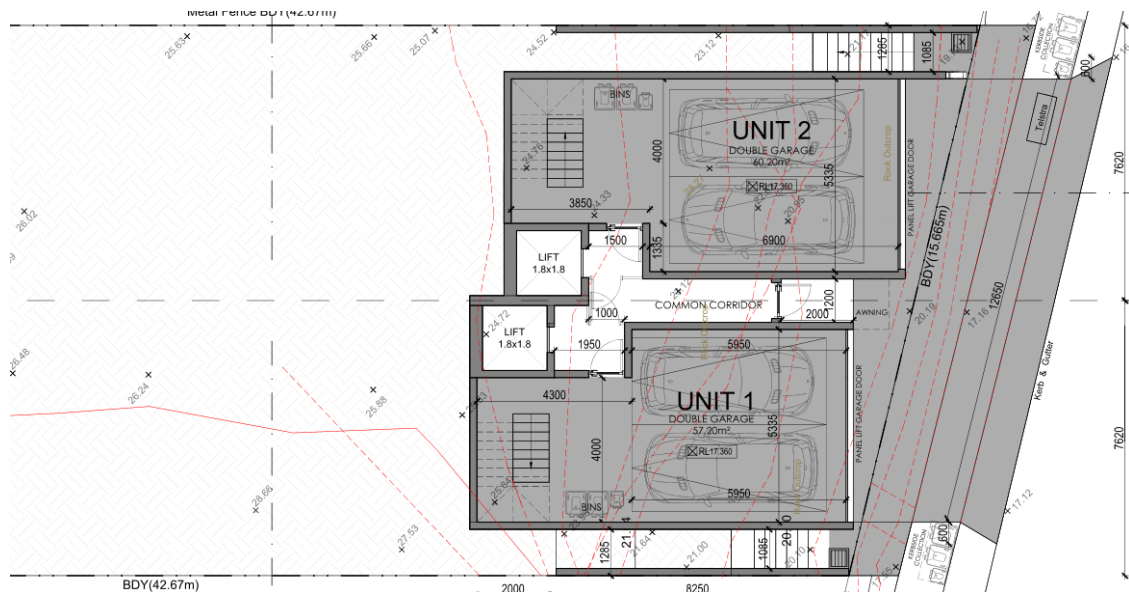


Figure 17: Extract of the Basement floor plan

Lower Ground Floor

Each Lower Ground Floor contains an entry foyer and storage space is located directly above the basement and is accessed by an elevator, internal and external stairs. The foyer overlooks a green roof directly above the basement. An extract of the Lower Ground Floor plan is provided at Figure 18.

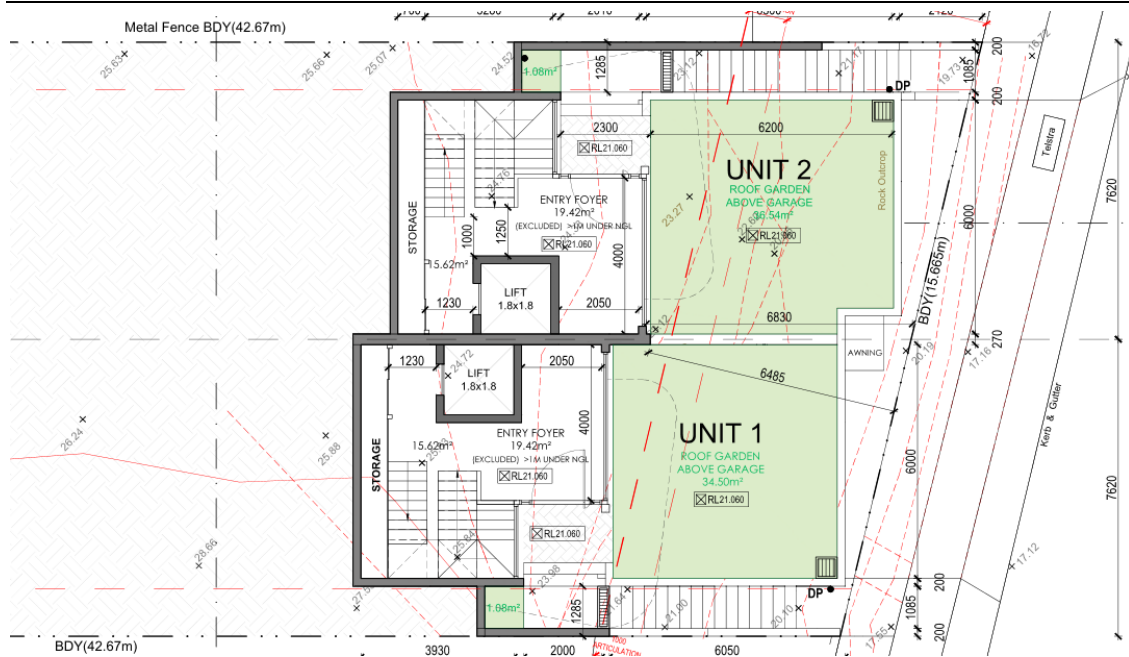


Figure 18: Extract of the Lower Ground Floor

Ground Floor

Primary living and outdoor areas including a combined living, dining and kitchen room, and an outdoor private open space adjoining a swimming pool are located on the Ground Floor of each dwelling.

The Ground Floors are accessed by an internal staircase and lift and also contain a laundry room, bathroom, storage areas and a bedroom with an ensuite and balcony overlooking the street. The dining and living areas, are enclosed by floor-to-ceiling glass windows and doors for increase amenity and solar access.

The outdoor private open space is in the form of an undercover alfresco area with storage, and barbecue and pizza oven facilities. The 3m x 8m lap pool is adjoined by a timber deck and water feature and surrounded by compliant safety fencing.

Decking stairs provide access to a fire pit and cascading infinity pool in a terraced upper portion of the site. The remainder of the rear yard and areas along the side boundary are landscaped. Clothes drying areas are provided in the side setbacks.

An extract of the Ground Floor Plan is provided at Figures 19 & 20.

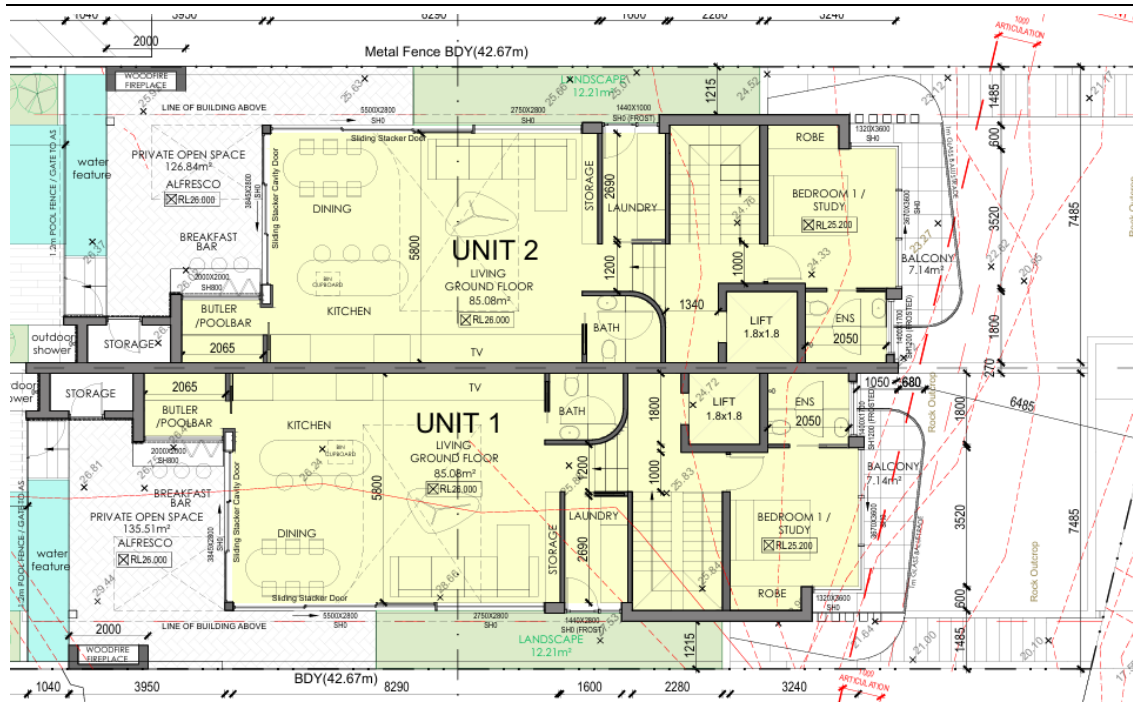


Figure 19: Extract of Ground Floor Plan

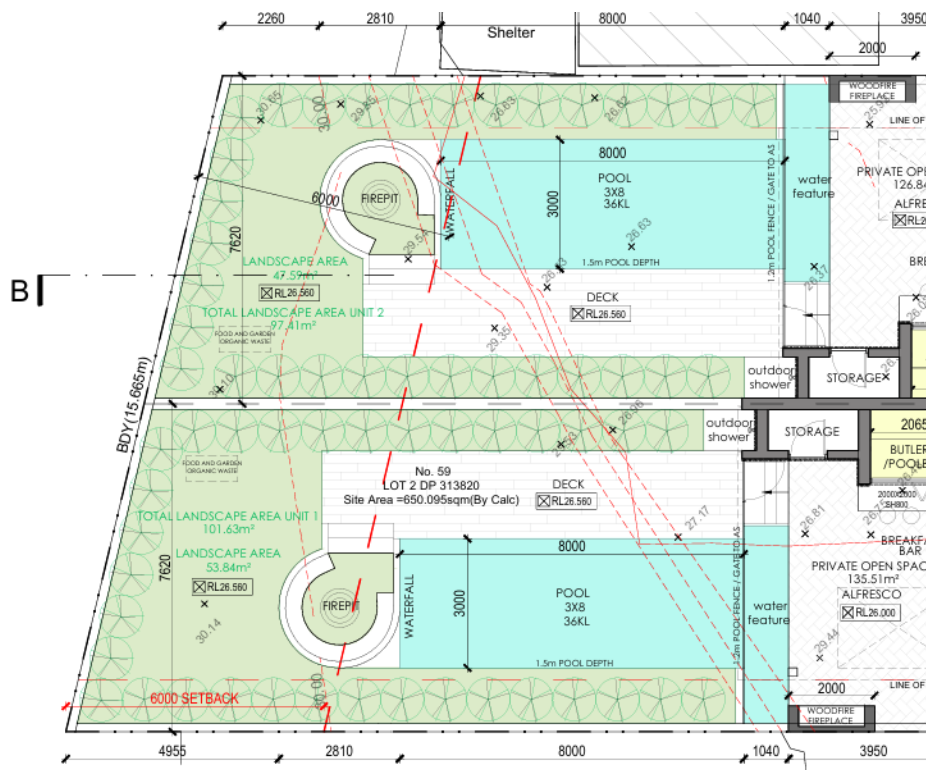


Figure 20: Extract of Ground Floor Plan

First Floor

The first floors contain 3 bedrooms with ensuites, and balconies on the front and rear elevations. The floor is accessed via the internal staircase and elevator. A large void beneath a skylight provides natural ventilation and solar access to the living areas below. It is screened with metal battens for privacy, while another portion of the roof is left open to the sky. Balconies on the front and rear elevations are accessed via floor-to-ceiling sliding glass doors for additional solar access and passive surveillance of the street and

are screened from the side for privacy. Windows on each external side elevation provide solar access to bedroom 3. An extract of the First Floor Plan is shown in Figure 21.

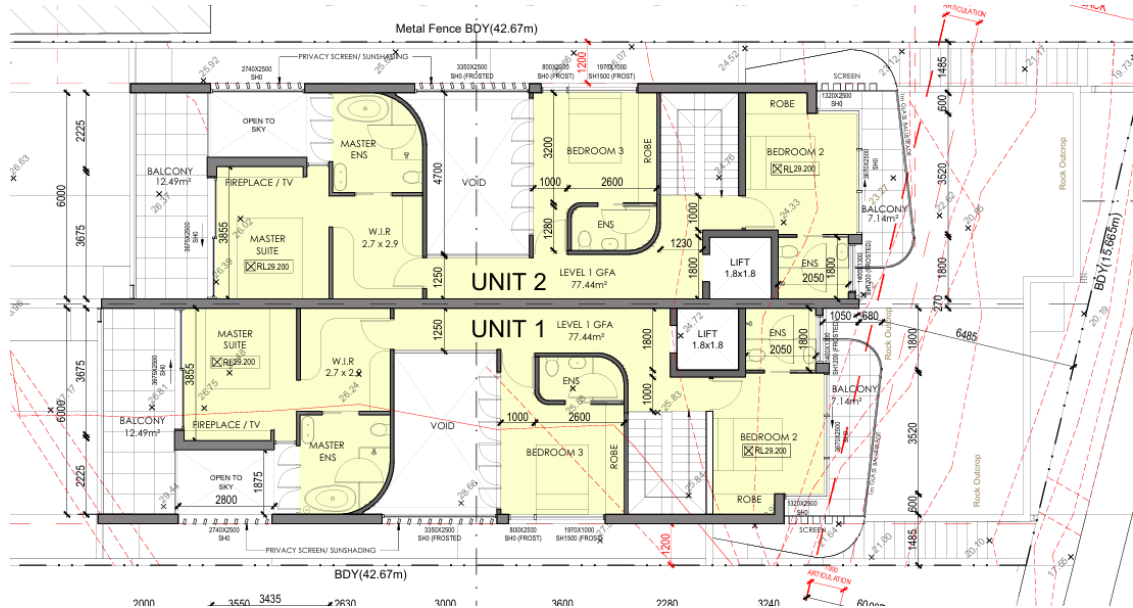


Figure 21: Extract of the First Floor Plan

3.5.1 External Finishes & Appearance

Material treatments include concrete rendered elements, aluminium batten, cladding and screens, stone tiles, dark finish window doors and frames, and overflowing landscape planters. The proposal is to have a flat roof with timber soffits for the balconies and angled roof eaves. The building is designed as a series of stepped building forms to minimise building height, bulk and scale, and is softened by proposed landscaping. Figures 22 to 24 depict 3D images of the proposal.



Figure 22: 3D Image of the street elevation



Figure 23: 3D Image of the private open space and living areas



Figure 24: 3D image of private open space and swimming pool area

3.6 Landscaping & Retaining Walls

As shown on the submitted Landscape Plan, the proposal seeks to completely reinvigorate the landscaping scheme for the whole site. Upon removal of the existing vegetation and the construction of the proposed semi-detached dwellings, the development will introduce carefully designed and visually appealing landscaped areas. Although the total landscaped area will be reduced, the new design represents a significant upgrade and will remain fully compliant with all relevant requirements.

A densely planted green roof is proposed above the garage, incorporating suitable soil depths to support native ornamental plantings, medium sized water gums and grasses.

The selected plant species will be resilient, heat-tolerant, and will enhance the building's visual appeal. Grassed areas are proposed on the street boundary.

The side setbacks along the ground floor will contain narrow lawns. The primary landscaping areas are grass lawns within the private open space around the swimming pool. Hedges, medium-sized plantings and trees are proposed along the side boundaries. A sunken fireplace with seating is located in each open area. At the rear, the internal boundary is bordered by a retaining wall.

The side, rear and internal boundaries are bordered by reinforced concrete retaining walls designed by a structural engineer and reinforced with identical stone cladding used on the garage façade. Retaining wall heights are as low as practicable, only exceeding 3m along the steeply sloped portion of the site by the lower ground floor. No fencing is proposed on the side setback. An extract of the landscaping plan is provided at Figure 25.



Figure 25: Landscaping Plan

3.7 Swimming Pool

Each dwelling contains a swimming pool comprised of a waterfall feature next to the fire pit, a 3m x 8m lap pool, and a shallow water feature adjoining the alfresco area. The lap pools are bordered by a 1.2m high compliant swimming pool fence, and pool equipment is located in a soundproof enclosure.

3.8 Stormwater Management

A stormwater design is submitted with the application, which was prepared by Amity Engineers. Stormwater is collected on the roof and directed to the green roof above the balcony, and 2 x 1,500L rainwater tanks, with overflow stormwater diverted to the street drainage system by gravity.

Overflow from the swimming pool will be managed through absorption into the landscaped areas at the rear.

4 STATUTORY PLANNING ASSESSMENT

Provided below is a statutory planning assessment of the proposed development in accordance with the matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act, 1979. This assessment considers the following:

- Relevant planning policies and controls - Section 4.15(1)(a);
- Impacts on the natural and built environment - Section 4.15(1)(b);
- The suitability of the site for the development - Section 4.15(1)(c); and
- The public interest - Section 4.15(1)(e).

4.1 Compliance with Planning Controls (Section 4.15(1)(a))

The following provides an assessment of the statutory and non-statutory planning policies that apply to the application under Section 4.15(1)(a) of the Environmental Planning and Assessment Act, 1979. The relevant policies are listed as follows:

- State Environmental Planning Policy (Resilience and Hazards) 2021;
- SEPP (Sustainable Buildings) 2022;
- Canterbury Bankstown Local Environmental Plan 2023; and
- Canterbury Bankstown Development Control Plan 2023.

Below is a consideration of the relevant State and Local planning provisions and an assessment of the proposed development.

4.1.1 State Environmental Planning Policy (Resilience and Hazards) 2021

This SEPP replaces former SEPP No. 33, SEPP No. 55 and SEPP (Coastal Management) 2018 and commenced on 1 March 2022. The SEPP contains separate chapters which prescribe controls to replace the abovementioned repealed SEPPs. Provided below is a response to Chapter 4 Remediation of Land. Chapter 2 Coastal Management and Chapter 3 Hazardous and offensive Development are not relevant to the site and subject proposal.

Chapter 4 – Remediation of Land

A review of aerial photographs indicates that the subject site has been historically used for residential purposes, with no other known use of the property. On this basis, there are no reasons to suspect that it is contaminated or requires any remediation works. The provisions of Chapter 4.6 of the SEPP are therefore satisfied, and the consent authority is able to support the proposed development.

4.1.2 SEPP (Sustainable Buildings) 2022

The proposal is defined as BASIX development and under the SEPP a BASIX Certificate is required, which also quantifies the embodied energy of the proposal. A BASIX Certificate has been obtained for the proposal, which demonstrates that the development, once operational, will comply with the thermal and energy requirements of the SEPP, and specifies the proposed primary building materials. Where required the BASIX commitments have been indicated on the DA drawings.

4.1.3 Canterbury Bankstown LEP 2023

CBLEP 2023 identifies the subject site as being located within the *R2 – Low Density Residential* zone. Amongst other things, semi-detached dwellings and swimming pools are permissible with consent from Council. The CBLEP 2023 defines the following:

Semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

The proposal comprises the construction of a pair of semi-detached dwellings on the proposed Torrens title subdivided lot. The dwellings are attached only to each other by a common party wall. The proposal is therefore compliant with the definition of a semi-detached dwelling and is therefore permissible in the R2 Zone.

The proposal is therefore permissible development with consent. In addition, the proposal is consistent with the consistent with the relevant zone objectives, as detailed below:

- *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.*

A review of relevant LEP maps indicates that the site is not flood affected, bushfire prone, as containing terrestrial biodiversity, natural landform nor as riparian land.

Provided at Table 1 is a consideration of the development standards and relevant LEP provisions that apply to the subject site and proposed development.

TABLE 1: RELEVANT PROVISIONS OF CBLEP 2023		
Provision	Proposal	Complies
2.6 Subdivision—consent requirements	Subdivision is permissible with consent. Torrens title subdivision is proposed.	Yes
2.7 Demolition requires development consent	Demolition is permissible with consent.	Yes
4.1 Minimum subdivision lot size (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.	Not applicable – refer to Clause 4.1A below.	N/A

TABLE 1: RELEVANT PROVISIONS OF CBLEP 2023		
Provision	Proposal	Complies
4.1A Minimum lot sizes and special provisions for dual occupancies (4) Development consent must not be granted to development for the purposes of dual occupancies on a lot on land identified as “Area 2” on the <i>Clause Application Map</i> unless: (a) the lot is at least 600m ² , and (b) the width of the lot at the front building line is at least 15m, and (c) each dwelling will have a frontage to a road. (5) Development consent must not be granted to the subdivision of a dual occupancy on a lot on land identified as “Area 2” on the <i>Clause Application Map</i> unless— (a) each resulting lot will be at least 300m ² , and (b) there will be 1 dwelling on each lot created.	The parent lot has an area of 650.095m ² . The width at the building line is 15.24m. Each dwelling will have a road frontage. Torrens title subdivision of the completed development will create lots that are 325.05m ² each. Each lot will contain 1 dwelling.	Yes Yes Yes Yes Yes
4.3 Building Height Maximum 9.5m	The forward portion of the first floor exceeds the 9.5m building height limit as shown on the west elevation in the architectural plans.	Refer to Clause 4.6 Statement
4.4 Floor Space Ratio (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. (2B) Despite subclause (2), the following maximum floor space ratios apply— (b) for a building used for the purposes of dwelling houses or semi-attached dwellings on land identified as “Area 2” on the <i>Clause Application Map</i> — (i) for a site area less than 200m ² —0.65:1, and (ii) for a site area greater than 200m ² but less than 600m ² —0.55:1, and (iii) for a site area of 600m ² or more—0.5:1,	The site is not mapped on the Floor Space Ratio Map. The site is mapped as being within Area 2. Not applicable. Site area = 325.05m ² . Gross Floor Area = 162.525m ² . FSR = 0.5:1 Not applicable.	N/A Yes N/A Yes N/A
6.1 Acid Sulfate Soils Class 5	The site is not located within 500m of any Class 1, 2, 3, or 4 land lower than 5m Australian Height Datum	Yes

TABLE 1: RELEVANT PROVISIONS OF CBLEP 2023		
Provision	Proposal	Complies
6.2 Earthworks In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—		
(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,	The proposal has been designed to have a neutral impact on drainage patterns and soil stability.	Yes
(b) the effect of the development on the likely future use or redevelopment of the land,	Earthworks will create level surfaces, suitable for residential uses or future redevelopment.	Yes
(c) the quality of the fill or the soil to be excavated, or both,	The excavated material from the site will be natural material and generally reused on site where possible or disposed of to the appropriate facility.	Yes
(d) the effect of the development on the existing and likely amenity and structural integrity of adjoining properties,	Excavation is within commonly expected limits and is not expected to impact on the structural integrity of adjoining properties. It is anticipated that Council will require dilapidation surveys as part of the Construction Certificate process.	Yes
(e) the source of any fill material and the destination of any excavated material,	No imported fill required.	Yes
(f) the likelihood of disturbing relics,	Relics are not likely to be discovered at the site given the existing building located and adjoining disturbed open spaces.	Yes
(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,	Standard construction management techniques, and erosion and sediment controls measured will be employed to prevent any adverse impacts on the adjacent waterway.	Yes
(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	As above, typical construction management measures including silt fencing will mitigate impacts of excavation.	Yes

In light of the above, the proposal is consistent with all relevant provisions of CBLEP 2023 with exception of building height, which is justified in the attached Clause 4.6 variation.

4.1.4 Canterbury Bankstown DCP 2023

A response to the relevant provisions of CBDP 2023 as they apply to semi-detached dwellings and swimming pools in the R2 Zone is provided in Table 2.

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDP 2023		
Provision	Proposal	Complies
Chapter 3 – General Requirements		
3.2 Parking Dual occupancies/ semi-detached dwellings: 2 spaces per 4 bedroom dwelling	Each dwelling has 2 spaces provided via a double garage.	Yes
3.3 Waste Management		
2.2 The bin sizes for residential development are: General waste: 140L Recycling 240L Garden Organics 240L	Appropriate bin storage is provided.	Yes
3.3 Development must provide an adequate sized bin storage area behind the front building line to accommodate all allocated bins.	Basement bin storage location provided.	Yes
3.4 The location of the bin storage area must not adversely impact on the streetscape, building design or amenity of dwellings.	Basement bin storage location provided.	Yes
3.5 The location of the bin storage area should ensure this area: (a) is screened or cannot be viewed from the public domain; and (b) is away from windows of habitable rooms to reduce adverse amenity impacts associated with noise, odour and traffic.	Basement bin storage location provided.	Yes
3.6 The location of the bin storage area is to be convenient to use for the dwelling occupants and caretakers, through reducing the bin travel distance from the bin storage area to the nominated kerbside collection point. The bin-carting route from the bin storage area to the collection point must not pass through any internal areas of the building/dwelling and must avoid stairs or slopes.	Convenient location proposed, which is directly accessed from the proposed lift and stair access.	Yes
3.8 Dwellings are to have access to an adequately sized on-site storage area to store bulky waste awaiting collection.	Basement bin storage location provided.	Yes
3.9 Development must comply with the	Noted.	-

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDCP 2023		
Provision	Proposal	Complies
requirements of the applicable Waste Design for New Developments Guide.		
3.7 Landscape Existing vegetation and natural features		
2.1 New landscaping is to complement the existing street landscaping and improve the quality of the streetscape.	Landscaping on the green roof is comprised of a range of small to medium sized plantings will complement and improve the quality of the streetscape.	Yes
2.2 Development, including alterations and additions, is to minimise earthworks (cut and fill) in order to conserve site soil. Where excavation is necessary, the reuse of excavated soil on site is encouraged.	Earthworks are necessary in the forward portion of the site due to the sloping topography. At the rear the site is stepped to mitigate earthworks	Yes
<u>Trees</u>		
2.6 Development must consider the retention of existing trees in the building design.	Existing ornamental trees within the site frontage are proposed for removal, which are considered to have low retention value. Removal of these trees will be suitably offset by the proposed landscaping.	Yes
2.7 Development must plant at least one canopy tree for every 12m of front and rear boundary width and: (a) Canopy trees are to be of a minimum 75 litre pot size. (b) Use deciduous trees in small open spaces, such as courtyards, to improve solar access and control of microclimate. (c) Place evergreen trees well away from the building to allow the winter sun access. (d) Select trees that do not inhibit airflow. (e) Provide shade to large hard paved areas using tree species that are tolerant of compacted/deoxygenated soils.	Refer to the submitted landscape plans for details. Council may also choose to impose suitable consent conditions to supplement the submitted landscape plans.	Yes
2.8 Development must provide street trees that will contribute to the canopy where possible.	Council may also choose to impose suitable consent conditions to supplement the submitted landscape plans.	Yes
Chapter 5 – Residential Accommodation		
SECTION 3–DUAL OCCUPANCIES AND SEMI-DETACHED DWELLINGS		
<u>3.1 Minimum lot size and frontage</u>		
Dual occupancy and semi-detached	Each dwelling fronts the street	Yes

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDP 2023		
Provision	Proposal	Complies
dwelling must have a street frontage.		
Minimum 15m width, measured at the street boundary. On corner lots, this means the short boundary.	Site is 15.665m wide	Yes
Each dwelling is required to have a minimum frontage width of 7.5m.	Each dwelling has a frontage of 7.62m	Yes
<u>3.2 Private open space</u>		
Dual occupancy and semi-detached dwellings with a frontage of 7.5m or greater must provide a minimum of 50m ² of private open space.	Dwellings are provided with 126.84m ² and 135.51m ² of private open space each.	Yes
Dual occupancy and semi-detached dwellings must provide one area of private open space with a minimum dimension in any direction of 4m.	Each dwelling has an alfresco area suitable for dining measuring 5.6m x 3.9m.	Yes
Dual occupancy and semi-detached dwellings must provide one area at least 2.5m x 2.5m suitable for outdoor dining facilities.	As above	Yes
The design of private open space must satisfy the following criteria:		
(a) Be located at ground level to the rear of an allotment behind the dual occupancy.	Not applicable. Regardless Private Open Space is located at the rear at ground level.	Yes
(b) Be located adjacent to the main living areas, such as a living room.	Adjoins the living areas on the ground floor.	Yes
(c) Have a maximum gradient of 1:50.	Grade is modified to be flat.	Yes
(d) The principal area of open space for each dwelling may comprise a combination of privacy screens, sun-shading devices and landscaped areas.	Alfresco areas are screened to the side, undercover and contain landscaped areas.	
(e) Be designed to prevent direct overlooking from a public place or from neighbouring buildings.	Privacy screening and boundary fences prevents views from neighbouring properties. Private open areas are not visible from the street. Noted	Yes
(f) Be designed to accommodate both recreation and service activities.	Clothes drying facilities are provided	Yes
(g) Include a suitably screened area for clothes drying facilities.	Private open space is oriented north to maximise solar access in midwinter.	Yes
(h) Be oriented to provide maximum exposure to midwinter sunlight whilst optimising privacy.		Yes
Ensure that balconies, verandas or pergolas do not encroach upon any	Balconies on the front and rear elevation do not encroach upon any	Yes

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDP 2023		
Provision	Proposal	Complies
required deep soil area.	deep soil areas.	
<u>3.3 Layout and orientation</u>		
Orientate development to maximise solar access and natural lighting, without unduly increasing the building's heat load.	The private open areas, living areas and master suite are oriented north and receive good amounts of solar access. Additional solar access is via the skylights.	Yes
Site the development to avoid casting shadows onto neighbouring dwelling's primary living area, private open space and solar cells.	<p>The proposal is sited in the forward portion of the site similar to dwellings to the east and west.</p> <p>In the morning period, the proposal will create an overshadowing impact on the dwelling at No. 61 Banks Road to the west. The balcony and windows on the front and side elevation and will be overshadowed. However, this impact is only limited to the morning and these areas will receive solar access between at least 12:00 pm and 4:00 pm. Open areas in the rear yard are not overshadowed in mid-winter.</p> <p>To the east, the balcony and front yard at No. 55 Banks Road will be overshadowed by the proposal at 4:00 pm mid-winter. No overshadowing impacts will occur at 8:00 am and 12:00 pm mid-winter.</p> <p>No solar panels were observed on the roof any adjoining dwellings and proposal will not create any significant overshadowing impacts that would limit the future capacity of adjoining dwelling to install solar panels.</p>	Yes
Coordinate design for natural ventilation with passive solar design techniques.	Each dwelling will be cross ventilated and will received good amounts of solar access.	Yes
Site new development and private open space to avoid existing shadows cast from nearby buildings.	Private open areas will not be overshadowed by dwellings on adjoining sites.	Yes
Site a building to take maximum benefit from cross-breezes and prevailing winds.	Openable windows on the side elevation allow cross breezes and solar winds.	Yes

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDP 2023		
Provision	Proposal	Complies
Do not compromise the creation of casual surveillance of the street, communal space and parking areas, through the required orientation.	Bedrooms and adjoining balconies on the front elevation overlook the street and provide casual surveillance.	Yes
<p><u>3.4 Height</u></p> <p>Development for the purposes of dual occupancy and semi-detached dwellings must not exceed the following numerical requirements:</p> <p>a) A maximum two-storey-built form.</p>	<p>The proposal is comprised of 4 storeys. However, all habitable rooms are contained within 2 storeys, and the additional storeys below are a basement and entry level, which serve a functional requirement because of the steep site slope.</p> <p>The proposed dwellings are sited in a manner consistent with neighbouring properties, however, unlike the previous dwelling, it incorporates direct pedestrian and vehicular access to the street through the basement and lower ground floor levels.</p> <p>The design also responds to the site's steep topography and seeks to create a connected and functional building form. A conventional two-storey structure at street level would necessitate extensive excavation and result in a visually odd, below-grade profile and an awkward connection between dwelling windows and private open space areas.</p> <p>The proposed design situates the two primary living levels in the central portion of the site, where the slope is more gradual, thereby minimizing the extent of earthworks needed to accommodate the dwellings.</p> <p>The proposal will be visually compatible with surrounding more recent development and future development as it is of an anticipated overall envelope and scale given the largely compliant form proposed, albeit with a minor protrusion above</p>	On Merit

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDP 2023		
Provision	Proposal	Complies
	<p>the 9.5m height limit where the site topography falls abruptly. The additional height will not impact on the amenity of an adjoining property in any significant way.</p> <p>The location of parking within the site frontage is consistent with the DCP given the steep site slope.</p> <p>The proposal is therefore consistent with the relevant DCP and zone objectives, and Council's flexible application of the DCP is warranted in the circumstances, as mandated by Section 4.15(3A) of the EP&A Act, 1979.</p>	
b) A maximum external wall height of 7m where the maximum height of buildings standard under the LEP is 8.5m.	Not applicable, the site is subject to a 9.5m height limit.	N/A
c) A maximum external wall height of 8m where the maximum height of building standard under the LEP is 9.5m.	As shown on the East and West Elevations, the walls of the dwelling do not exceed 8m above the natural ground level.	Yes
d) Finished ground floor level is not to exceed 1m above the natural ground level.	The finished floor level of the basement and ground floor is within 1m of the natural ground level – refer to the submitted section drawings.	Yes
<u>Attics and roof terraces</u> Attics and mezzanine floors do not comprise a storey.	No attics or mezzanine floors are proposed.	N/A
Roof top terraces are not acceptable on any building or outbuilding in any residential zone.	No roof top terraces are proposed.	N/A
<u>Retaining walls</u> Retaining walls that would be located along, or immediately adjacent to, any boundary:		
a) Maximum 3m for steeply sloping land, but only to accommodate a garage that would be located at street level; and	The site is characterized by steep slopes. Retaining walls are proposed along the side boundaries and will exceed 3 metres in height in some areas (maximum retaining wall height of 3.95m is proposed at the rear of the site). The extent of excavation and retaining walls is required in order to accommodate the site slope whilst	On-Merit

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDP 2023		
Provision	Proposal	Complies
<p>b) Maximum 1m for all other land.</p> <p><u>Cut and fill</u></p> <p>Maximum 1m cut below ground level where it will extend beyond an exterior wall of the building.</p> <p>No limit to cut below ground level where it will be contained entirely within the exterior walls of a building, however, excavated area is not to accommodate any habitable room that would be located substantially below ground level.</p> <p>Maximum 600mm fill above ground level where it would extend beyond an exterior wall of a building.</p> <p>If proposed cut and fill, or a retaining wall, would be deeper or higher than 1m, structural viability must be confirmed by suitably qualified engineers' reports.</p> <p><u>3.5 Setbacks</u></p> <p>Front Setback</p> <ul style="list-style-type: none"> Minimum setback of 5.5m from the front boundary (semi-detached dwelling on a lot that is less than 12.5m wide). Maximum 2m recess for the main entrance from the front building line. 	<p>creating functional dwelling and private open space layouts, as has occurred on surrounding sites. All retaining walls will be designed by a qualified structural engineer as part of the construction process.</p> <p>Not applicable</p> <p>The side setbacks between the dwellings and the side boundaries involve excavation exceeding 1m in depth, although are justified for reasons previously outlined with respect to the steep site slope and need to create functional dwelling and private open space arrangements.</p> <p>With exception of the private open space area discussed above, the proposed excavation is contained within the proposed building footprint. Living areas are located above the ground level on ground and first floor.</p> <p>Fill does not exceed 600mm outside of the exterior walls of the building. Refer to section B-B.</p> <p>The proposal will be assessed as part of the construction documentation process prior to any works commencing on-site.</p> <p>With the exception of the garage on the basement floor, as permitted by the DCP and discussed below, the proposal is setback 6m from the street boundary with exception of the proposed balconies which create building articulation and visual interest from the street.</p> <p>The pedestrian entrances on the lower ground floor plan are within 2m of the front building line. The common pedestrian entrance on the basement floor is recessed 1.5m from the front garage line.</p>	<p>N/A</p> <p>On Merit</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>On Merit</p> <p>On Merit</p>

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDP 2023		
Provision	Proposal	Complies
<p>Side Setbacks</p> <ul style="list-style-type: none"> Minimum setback of 900mm from side boundaries. For semi-detached dwellings, provide an unroofed light well, with minimum dimensions of 1m x 3m, by setting back part of the external side wall a minimum of 2m from the side boundary. For semi-detached dwellings, where a ground level addition to an existing dwelling is proposed, the external walls of the addition may be built to the same alignment as the common wall. 	<p>Proposed = 1.215m</p> <p>Internal voids and light wells are proposed that allow natural light to reach the lower level of each dwelling's living area. Good amounts of solar access will remain to the adjoining dwellings.</p> <p>Not applicable.</p>	<p>Yes</p> <p>On-merit</p> <p>On-merit</p>
<p>Rear Setbacks</p> <ul style="list-style-type: none"> Minimum setback of 6m from the rear boundary. 	<p>All parts of the dwelling, and alfresco areas is setback more than 6m from the rear boundary. Only the swimming pool, firepit and deck are located within the 6m rear setback, as permitted by the DCP.</p>	<p>Yes</p>
<p>Front and rear setbacks are to be provided as deep soil areas. Driveways and footpaths may cross deep soil areas.</p>	<p>Deep soil areas are provided adjacent to the garage on the basement floor and within the rear private open space. Deep soil is not possible within the site frontage given the site slope and permitted garaging within the site frontage.</p>	<p>On Merit</p>
<p>Minimum setback of 1m from any side or rear boundary for swimming pools and associated terraces. Landscaping shall be provided in the setback area to screen the pool from neighbours.</p>	<p>The swimming pools and deck areas are located more than 1m from any boundary. Medium sized hedges, trees and ornamental plantings are proposed around the side, rear and internal boundaries. A decorative shallow water feature is located within 1m of the side boundaries.</p>	<p>Yes</p>
<p>Swimming pools must not be located within any front setback.</p>	<p>Swimming pools are located at the rear.</p>	<p>N/A</p>
<p>On land identified as having a height of 9.5m on the Map, the following parking structures may encroach beyond the minimum front or side setback:</p>	<p>The site is identified as having a maximum building height of 9.5m</p>	<p>Yes</p>
<p>a) One carport that is not wider than 6m.</p>	<p>N/A</p>	<p>N/A</p>
<p>b) On sites that rise from the street frontage, one garage that is not wider than 6m and no higher</p>	<p>Each dwelling has a double garage 6m wide and 2.8m high.</p>	<p>Yes</p>

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDPC 2023

Provision	Proposal	Complies
than 3m above street level.		
The following minor building elements may project up to 1m into the minimum side setback area: a) Roof eaves, awnings, pergolas and patios; b) Stair or ramp access to the ground floor; c) Rainwater tanks.	Noted	Yes
<u>3.6 Building depth</u>		
Dual occupancy housing and semi-detached dwellings must not exceed a building depth of 25m.	Proposed building depth = 22.86m	Yes
<u>3.8 General design</u>		
New building forms and design features shall not mimic traditional features, but should reflect these in a contemporary design.	Contemporary building design proposed.	Yes
Access to upper storeys must not be via external stairs.	Access to upper storeys is via an elevator and internal staircase.	Yes
All dwellings must contain one kitchen and laundry facility	Provided on the ground floor	Yes
Entries to residential buildings must be clearly identifiable.	Entrances via the lower ground floor and basement are legible and identifiable	Yes
A minimum of one habitable room must be oriented towards the street to promote positive social interaction and community safety.	Bedrooms 1 & 2 on the first and ground floor of each dwelling adjoin balconies that overlook the street.	Yes
Sight lines to the street from habitable rooms or entrances must not be obscured by ancillary structures.	Clear views are available	Yes
Design interiors to be capable of accommodating the range of furniture that is typical for the purpose of each room.	Complies	Yes
The primary living area and principal bedroom must have a minimum width of 3.5m.	Master suites are 3.675m wide Living areas are 5.8m wide	Yes
Secondary bedrooms must have a	All bedrooms have a width > 3.5m	Yes

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDP 2023		
Provision	Proposal	Complies
minimum width of 3m.		
Provide general storage in addition to bedroom wardrobes and kitchen cupboards.	Storage is provided in the lower ground floor, living room and alfresco area	Yes
Use non-reflective materials, do not randomly mix light and dark coloured bricks, and treat publicly accessible wall surfaces with anti-graffiti coating.	Non-reflective materials or randomly mixed colours are not proposed, and the front garage façade is treated with anti-graffiti coating.	Yes
Facades visible from the street should be designed as a series of articulating panels or elements.	The front setbacks are staggered to reduce bulk and enhance visual interest. The balconies are separated and a green roof is provided to maintain privacy and reduce visual massing. A variety of external finishes are proposed to further articulate the building's form and provide architectural character.	Yes
The width of articulating panels should be consistent with the scale and rhythm characteristic of bungalows.	The width of the building form is reflective of contemporary semi-detached dwelling development.	Yes
Width of articulating panels:		
• Street elevation 4m to 6m	Front articulating panels < 6m	Yes
• Side elevation 10m to 15m	Side articulating panels <15m	Yes
Incorporate features to facilitate natural ventilation and convective currents - such as opening windows, high vents and grills, high level ventilation (ridge and roof vents) in conjunction with low-level air intake (windows or vents).	Openable windows, sliding doors and an opening in the ceiling maximum natural ventilation throughout the dwelling.	Yes
Where natural ventilation is not possible, energy efficient ventilation devices such as ceiling fans should be considered as an alternative to air conditioning. Explore innovative technologies to naturally ventilate internal building areas or rooms.	Ceiling fans are proposed in habitable rooms in the dwelling, although good levels of natural ventilation will be achieved throughout the dwelling.	Yes
<u>3.9 Roof design and features</u>		
Use a simple pitched roof that accentuates the shape of exterior walls, and minimises bulk and scale.	The proposal features a flat roof design, which enables a lower overall ridge height compared to a pitched roof, thereby reducing the building's visual and actual height.	Yes
Roof pitches are to be compatible and sympathetic to nearby buildings.	As above, a pitched tiled roof similar to nearby dwellings would be	Yes

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDCP 2023		
Provision	Proposal	Complies
	undesirable.	
Pitched roofs should not exceed a pitch of 30 degrees.	Not applicable.	N/A
<u>3.10 Fencing</u>		
Provide boundary definition by construction of an open fence or low hedge to the front street boundary.	No fencing is proposed along the street boundary.	Yes
Side fences may be 1.8m high to the predominant building line. Forward of the building line, side fences must taper down to the height of the front fence at a height no greater than 1.2m.	Side boundaries are bordered by retaining walls that exceed 1.8m high where necessary to maintain structural integrity including forward of the building line.	Yes
<u>3.11 Building services</u>		
All letterboxes be installed to meet Australia Post standards.	Complies	Yes
Design and provide discretely located mailboxes at the front of the property.	The letterbox is located adjacent to the garage at the street boundary	Yes
Location and design of service areas should include:		
(a) Screening of clothes drying areas from public places; and	Clothes drying areas are located on within the ground floor side setback and are screened from the street.	Yes
(a) Space for storage that is screened or integrated with the building design.	Storage space is integrated into the interior and exterior walls of the dwelling.	Yes
<u>3.12 Solar access and overshadowing</u>		
Where site orientation permits at least primary living areas of dwellings must receive a minimum of 3 hours of sunlight between 8.00am and 4.00pm on 21 June. Where existing overshadowing by buildings and fences is already greater than this control, sunlight is not to be reduced by more than 20%.	Living areas in both dwellings will receive more than 3 hours of direct sunlight via the north facing glass doors, and the skylight above the void. Dwelling 1 will receive additional sunlight in the afternoon via the west facing windows in the living room. Dwelling 2 will receive additional sunlight in the morning via the east facing windows in the living room.	Yes
Principle areas of private open space must receive a minimum of 3 hours of sunlight between 8.00am and 4.00pm on	The rear yard and alfresco areas are oriented north and receives more than 3 hours of solar access per day in	Yes

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDP 2023		
Provision	Proposal	Complies
21 June to at least 50% of the open space surface area. Where existing overshadowing by buildings and fences is already greater than this control, sunlight is not to be reduced by more than 20%.	mid-winter. The private open space at Dwelling 1 will receive additional sunlight in the afternoon and the private open space at Dwelling 2 will receive additional sunlight in the morning.	
If a neighbouring dwelling currently receives less than 3 hours of sunlight, then the proposed development must not reduce the existing level of solar access to that property.	Private open areas on all adjoining properties currently receive more than 3 hours of solar access per day in mid-winter.	Yes
Sunlight to solar hot water or photovoltaic systems on adjoining properties must comply with the following: (a) Systems must receive at least 3 hours of direct sunlight between 8.00am and 4.00pm on 21 June. (b) If a system currently receives less than 3 hours sunlight, then proposed development must not reduce the existing level of sunlight.	No solar panels were observed on the roof any adjoining dwellings and proposal will not create any significant overshadowing impacts that would limit the future capacity of adjoining dwelling to install solar panels.	Yes
Clothes drying areas on adjoining residential properties must receive a minimum of 3 hours of sunlight on 21 June.	Clothes drying areas on all adjoining properties currently receive more than 3 hours of solar access per day in mid-winter.	Yes
Windows and openings shall be appropriately located and shaded to reduce summer heat load and maximise sunlight in winter.	The proposal is compliant with the thermal comfort requirements of BASIX.	Yes
<u>3.13 Visual privacy</u>		
Locate and orient new development to maximise visual privacy between buildings, on and adjacent to the site.	The proposal is appropriately setback from the side boundary and does not place any primary living areas on the first floor.	Yes
Minimise direct overlooking of rooms and private open space through the following: (a) Provide adequate building separation, and rear and side setbacks; and (b) Orient living room windows and private open space towards the street and/or rear of the lot to avoid direct overlooking between neighbouring residential properties.	Side and rear setbacks are complied with. Living areas are located on the ground floor oriented towards the rear yard. Views from windows towards adjoining properties and obscured by retaining walls along the side boundaries.	Yes Yes

TABLE 2: RESPONSE TO RELEVANT PROVISIONS OF CBDCP 2023		
Provision	Proposal	Complies
3.14 Acoustic privacy Protect sensitive rooms, such as bedrooms, from likely sources of noise such as major roads and neighbouring living areas.	Bedrooms are located on the first floor, away from living areas on adjoining properties. The site is not located on a major road.	
3.15 Torrens Title subdivision Torrens Title subdivision of any dual occupancy approved by the former Canterbury City Council prior to 1 November 2005 are to be considered on its individual merits and subject to the following criteria: a. an objection under clause 4.6 of the Canterbury-Bankstown Local Environmental Plan 2023 being submitted with the application objecting to the minimum frontage requirements applied to subdivision of lots containing an existing dwelling contained in the Canterbury-Bankstown Local Environmental Plan 2023, if necessary; and b. the proposed subdivision would have been permitted at the time the original consent for the dual occupancy was issued; and c. the proposed subdivision complies with a minimum 230m ² lot size; and d. the proposal does not include dual occupancies involving the conversion of existing garages or outbuildings, granny flats or the like as it was never the intention of Council that these types of dual occupancies should be subdivided.	Not applicable.	N/A

In summary, the proposal is compliant with the core DCP provisions, with proposed variations being acceptable in the circumstances, as detailed above. Accordingly, the proposal is suitable for the site and its context.

4.2 Impacts on Natural & Built Environment (Section 4.15(1)(b))

Natural Environmental Impacts

The proposal involves the removal of all existing vegetation on the site, including a street tree, resulting in an initial reduction of natural elements. However, the development introduces a new, compliant landscaping scheme that significantly enhances the site's visual and functional amenity. The inclusion of a green roof, ornamental plantings, and small trees contributes to a well-integrated and attractive setting. Landscaped areas are distributed across various parts of the site, including private open spaces, side setbacks,

and the building frontage. Overall, the proposal delivers a marked improvement in landscape quality despite the initial vegetation loss.

Accordingly, the proposal results in acceptable natural environmental impacts.

Built Environmental Impacts

The proposed development is designed to achieve full compliance with the core LEP and DCP provisions, with variations only proposed in response to the specific constraints of the site, in particular the steep site topography, and with no material adverse impacts on neighbour amenity. The proposal will provide improved occupant amenity and functionality, within a contextually appropriate manner.

As outlined below, the proposal will only have reasonable amenity relationship with the neighbouring properties, thus further demonstrating that the proposed development is entirely reasonable in the circumstances.

Solar access: The shadow impacts at mid-winter are detailed on the accompanying shadow and sun eye view diagrams. In terms of achieving appropriate solar access to neighbouring properties, the DCP requires that:

Proposed development must retain a minimum of 3 hours of sunlight between 8.00am and 4.00pm on 21 June for existing primary living areas and to 50% of the principal private open space.

If a neighbouring dwelling currently receives less than 3 hours of sunlight, then the proposed development must not reduce the existing level of solar access to that property.

Sunlight to solar hot water or photovoltaic systems on adjoining properties must comply with the following:

- (a) Systems must receive at least 3 hours of direct sunlight between 8.00am and 4.00pm on 21 June.*
- (b) If a system currently receives less than 3 hours sunlight, then proposed development must not reduce the existing level of sunlight.*

Clothes drying areas on adjoining residential properties must receive a minimum of 3 hours of sunlight on 21 June.

As outlined previously, given the north-west to south-east orientation of the site, overshadowing will only be cast by the proposal onto No. 61 Banks Road in the morning and onto No. 55 Banks Road in the later afternoon period, at mid-winter. However, in excess of the required 3 hours will be achieved to the living area, private open space and clothes drying areas at Nos. 55 & 61, as required by the DCP.

It is noted that the extent of shadow cast by the proposed height non-compliance would also not materially impact on the amenity of an adjoining property or the public domain given its isolated location and minimal size.

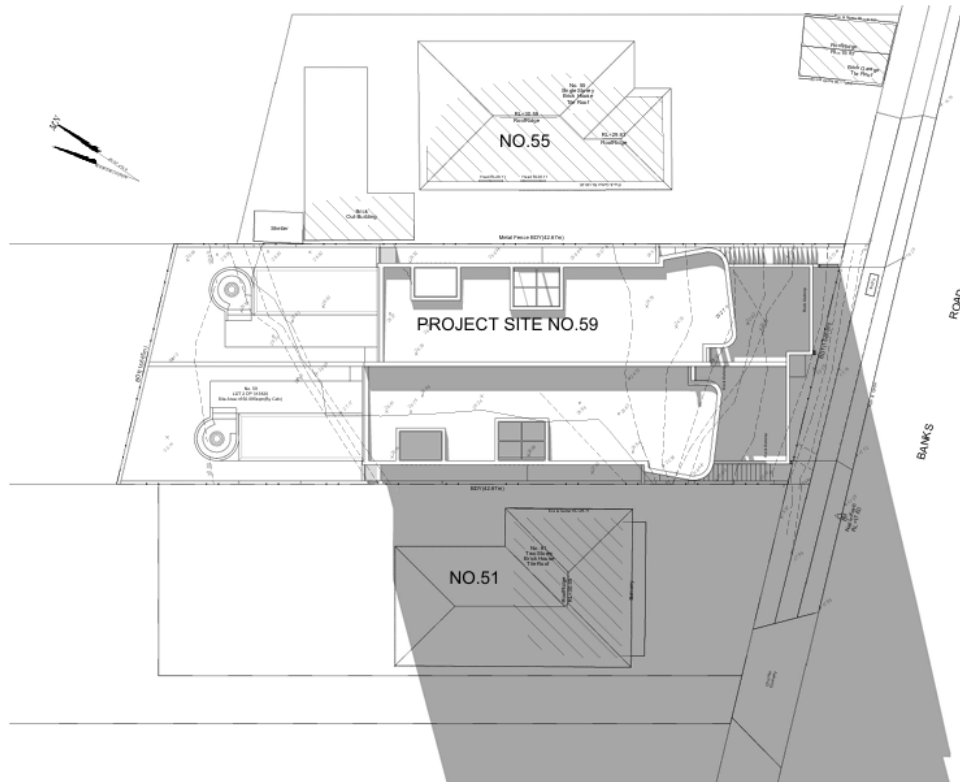


Figure 26: Shadow Diagram 21 June 8:00am

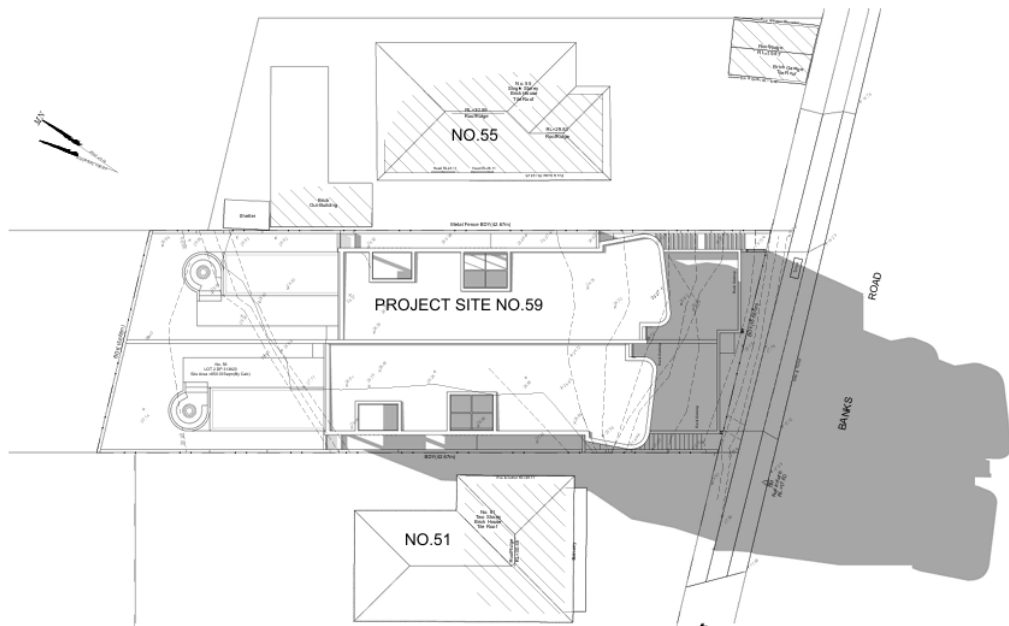


Figure 27: Shadow Diagram 21 June 12:00pm

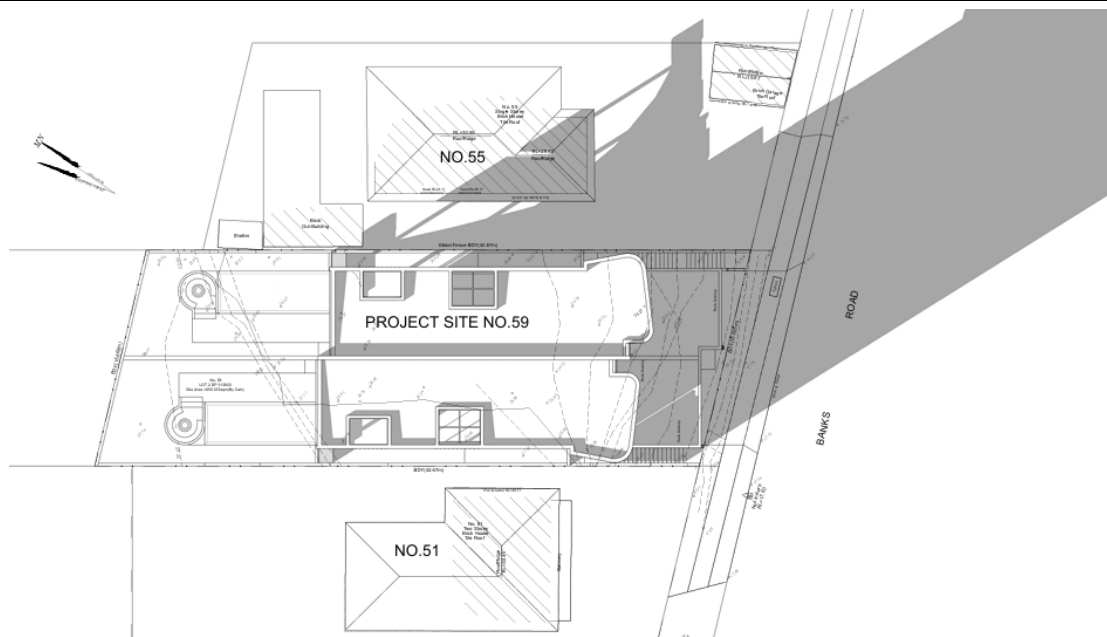


Figure 28: Shadowing Diagram 21 June 4:00pm

The proposal is compliant with the solar access and overshadowing provisions of the DCP and is therefore acceptable.

Privacy: The proposal provides living areas at ground level and bedrooms on the upper level, with side elevations designed for privacy and security. The first floor is appropriately setback from the side boundaries. First-floor windows that are not oriented toward the street or rear open spaces are treated with high sill heights, opaque glazing, are recessed from the side elevation, or screened for privacy. Balconies on both the ground and first floors are similarly treated with privacy screens along the sides.

The primary living areas are internally oriented and not designed to capture external views, resulting in minimal opportunities to overlook neighbouring living or open space areas. Retaining walls along the side and rear boundaries further limit any potential views towards nearby dwellings. Additionally, neither dwelling includes windows that face each other, ensuring a high level of privacy between the two residences.

The dwelling at No. 55 contains minimal windows on the side elevation facing the subject site, as shown on Figure 10, and the windows on the side elevation of the dwelling at No. 61 are positioned at a lower RL further minimising views into the living areas of either dwelling.

For these reasons, the proposal will maintain an appropriate degree of privacy and separation to the adjoining properties.

View Impacts: The subject site and adjoining properties enjoy distant district views in an easterly direction and of the opposing streetscape. The district views on adjoining properties to the east and north of the subject site are captured from a variety of habitable room windows and balconies and will largely not be altered by the proposed development, given their positioning and ability to easily overlook the subject site. The dwelling at No. 61 to the west does not capture these district views and, therefore, views are not impacted by the proposal.

For the above reasons, the proposal will reasonably share the existing views with the neighbouring properties.

Economic & Social Impacts

There will be neutral to positive social and economic impacts of the proposal.

4.3 The Suitability of the Site (Section 4.15(1)(C))

The site is within an established residential area and it does not contain any identified hazards that would suggest that the proposed development is unsuitable at the site. The proposed works will not compromise the natural environmental qualities of the area, but will make a positive urban design contribution. The site will therefore be suitable for the proposed development.

4.4 The Public Interest (Section 4.15(1)(e))

The proposed development is permissible with development consent, is consistent with zone objectives and complies with all relevant aspects of the LEP and DCP, except as justified in this report and relating to the site-specific reasons.

Accordingly, the proposed development is in the public interest and satisfies the requirements of 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

5 CONCLUSION

The proposal seeks to demolish the existing structures, remove trees and to enable the construction of two semi-detached dwellings houses each with a swimming pool, and associated site landscaping at No. 59 Banks Road, Earlwood. The site is to be subdivided into 2 equal parts to achieve the semi-detached dwelling development outcome.

The proposal is permissible with consent and is mostly compliant with the relevant numerical controls of the LEP and DCP, and the impacts of the development on the natural and built environment are within expected limits. The non-compliance with the LEP building height development standard arises from the site slope and is appropriately justified within the attached Clause 4.6 variation request.

The proposal will result in new dwelling accommodation that will offer high occupant amenity and functionality, is consistent with the local character and will not give rise to any unreasonable adverse impacts on the environment or amenity of the surrounding properties.

In the absence of any material impacts, the proposal serves the public interest and is assessed as appropriate with respect to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. It is accordingly requested that Council grant development consent to the development as proposed.

Annexure A

Clause 4.6 Variation – Building Height

CLAUSE 4.6 VARIATION – BUILDING HEIGHT

ADDRESS: 59 BANKS ROAD, EARLWOOD

This Clause 4.6 Variation Request is to accompany a development application seeking consent for subdivision of the site into 2 lots and the construction of a pair of semi-detached dwellings, swimming pools and site landscaping at No. 59 Banks Road, Earlwood.

The proposal is designed to comply with the maximum building height limit across the site and requests that consideration be made for the atypical topography of the site. As such a variation to the maximum building height limit of 9.5m is requested.

The proposed design of the semi-detached dwellings includes a first-floor bedrooms positioned towards the front of the site. Due to the steeply sloping topography, the front portion of the first and ground floors overlap with the lower ground and basement levels, resulting in a four-storey built form. This configuration leads to a minor height exceedance, as illustrated in the Elevations Diagram and Sections Diagram within the submitted architectural plans, as extracted at Figures 1 and 2.

The proposal is uniquely designed to fully utilise the existing site, which was previously occupied by a dilapidated cottage-style dwelling. Alternative design approaches would either require substantially greater earthworks or result in significantly compromised vehicular and pedestrian access arrangements.

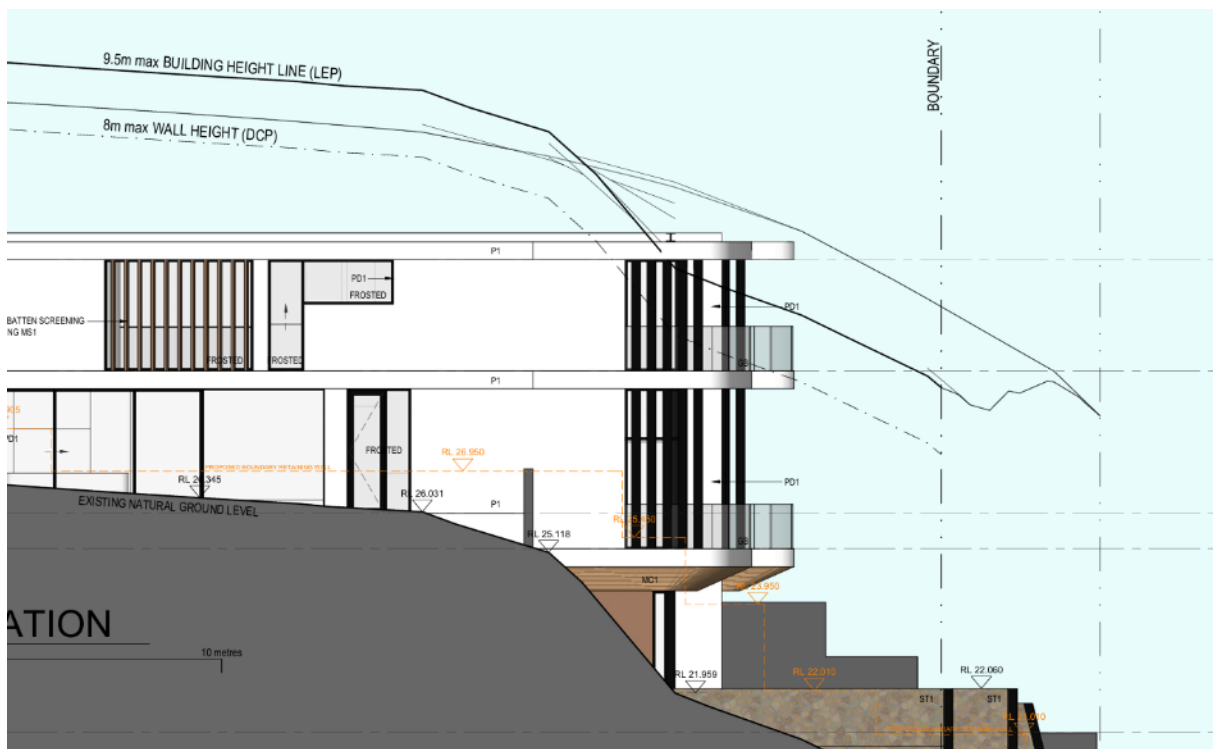


Figure 1: West elevation

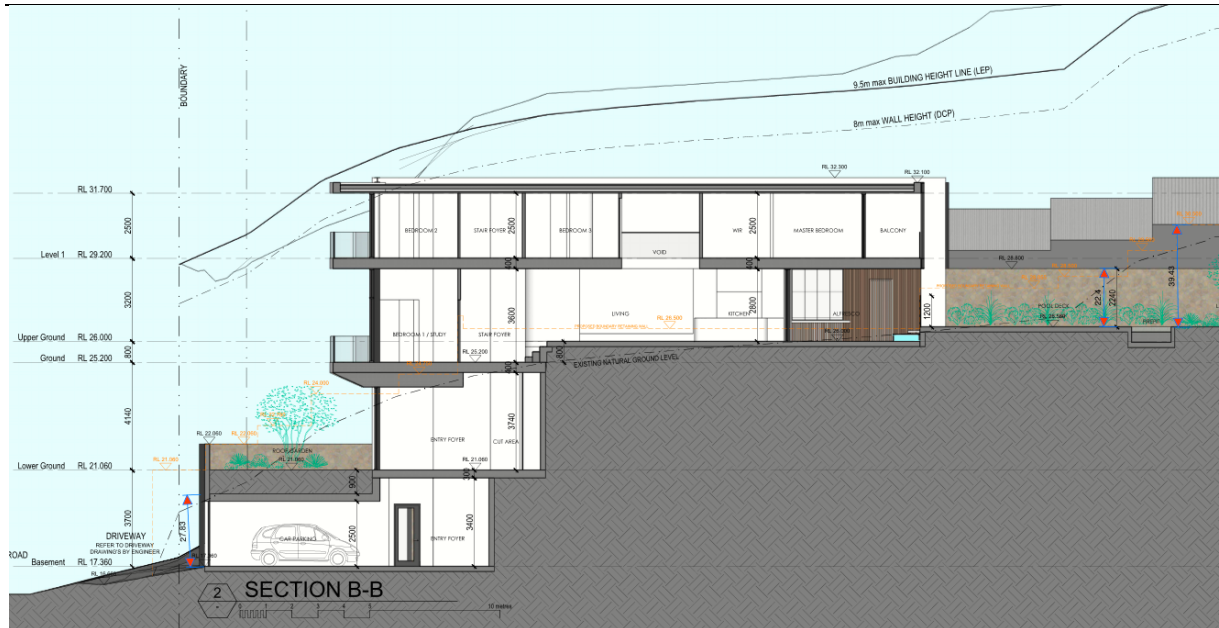


Figure 2: Section B-B

The top of the forward portion of the roof above the bedroom is located at RL32.21, 10.46m above the natural ground level below (RL 26.64). This represents a 960mm (10.12%) departure from the 9.5m maximum building height limit. The location of the height non-compliance is described in the below height blanket diagrams.

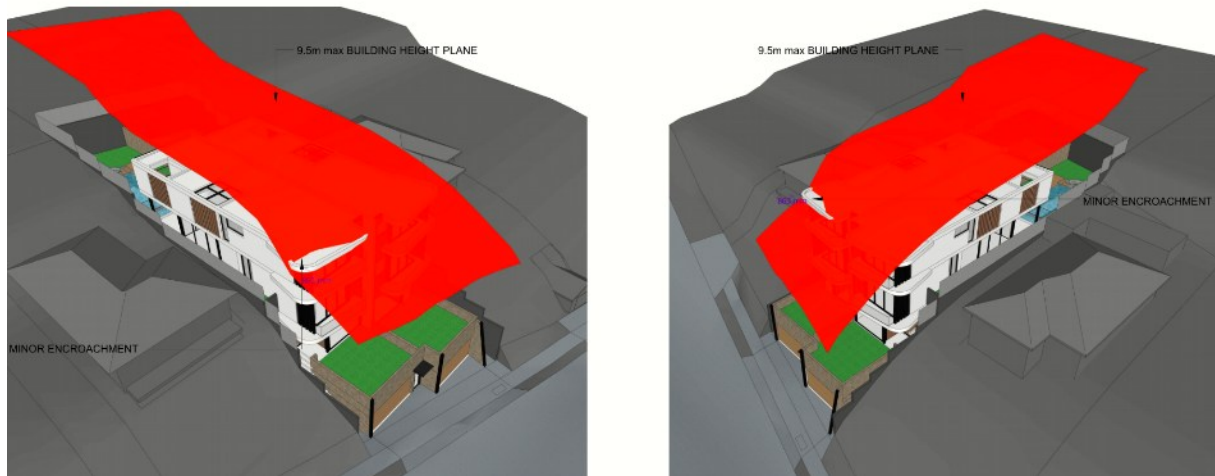


Figure 3: Height blanket diagram

The remaining parts of this variation request identify the extent of the proposed non-compliance and responds to the statutory requirements of Clause 4.6 of CBLEP 2023 detailing that the application of flexibility to the development standard in this instance appropriate.

1. What is the name of the environmental planning instrument that applies to the land?

Canterbury-Bankstown Local Environmental Plan 2023.

2. What is the zoning of the land and what are the objectives of the zone?

Objectives of Zone R2 Low Density Residential

- 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.

3. Identify the Development Standard to which this Clause 4.6 Variation applies?

This variation request relates to Clause 4.3(2) of Canterbury LEP 2023 – Height of Buildings. The relevant map identifies that the site has a maximum height limit of 9.5m.

4. Is the standard expressly excluded from operation of Clause 4.6?

Clause 4.3 is not identified as being expressly excluded from operation of 4.6 as it is not identified at Clause 4.6(6) or (8) of the LEP.

5. What are the objectives of the Development Standard?

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

- a) to establish the height of development consistent with the character, amenity and landform of the area in which the development will be located,*
- b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of 2 storeys in Zone R2,*
- c) to provide appropriate height transitions between development, particularly at zone boundaries,*
- d) to minimise overshadowing to existing buildings and open space,*
- e) to minimise the visual impact of development on heritage items and heritage conservation areas,*
- f) to support building design that contributes positively to the streetscape and visual amenity of an area.*

What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3(2) of the LEP requires a maximum building height of 9.5m.

The following LEP definitions are of relevance:

building height (or height of building) means—

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

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

ground level (existing) means the existing level of a site at any point.

6. How do the existing and proposed numeric values relate to the development standard? What is the percentage variation (between your proposal and the environmental planning instrument)?

The top of the forward portion of the roof above the bedroom is located at RL32.21, 10.46m above the natural ground level below (RL 26.64). This represents a 960mm (10.12%) departure from the 9.5m maximum building height limit.

7. How is compliance with the Development Standard unreasonable or unnecessary in the circumstances of this particular case?

The Court decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 provides the five part test to commonly determine if compliance with a development standard is unreasonable or unnecessary with only one test needing to be satisfied.

Note: These five tests are not exhaustive of the ways in which you might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. You do not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, you can demonstrate that compliance is unreasonable or unnecessary in more than one way.

Test 1: In our view, the proposal satisfies the first test in *Wehbe v Pittwater Council* [2007] NSWLEC 827 as the objectives of the standard are achieved notwithstanding non-compliance with the standard. Refer to discussion below relating to compliance with the objectives of the development standard.

8. Are there sufficient environmental planning grounds to justify contravening the development standard?

In considering whether there are sufficient environmental planning grounds to support the proposed building height non-compliance, the following principles are relied on.

*In the recent Court decision *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ further clarified the correct approach in the consideration of clause 4.6 requests. This advice further confirms that the clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.*

With regard to the above, it is our view that there are sufficient environmental planning grounds to support the proposed non-compliance for the following reasons:

- The extent or variation is associated with the steep and erratic topographical fall of the property and unavoidable whilst achieving a reasonable building form on the site.
- The location of the first-floor bedroom, which contributes to the height exceedance at the front portion of the dwelling, provides enhanced passive surveillance of the street below.

-
- As shown in the submitted height blanket diagrams, the proposed extent of non-compliance is minor and will not have any material or significant adverse impacts on neighbouring properties when compared to existing, this includes privacy, overshadowing or view loss impacts.

In addition to the above, the proposal is consistent with the objectives of the standard and the zone in which the development is carried out. Provided below is an assessment of the proposal with respect to the objectives of the Building Height Requirement and the Zone R2 – Low Density Residential.

The proposal is consistent with the objectives Clause 4.3 Height of Buildings and as detailed below.

- a) to establish the height of development consistent with the character, amenity and landform of the area in which the development will be located,*
- b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of 2 storeys in Zone R2,*
- c) to provide appropriate height transitions between development, particularly at zone boundaries,*
- d) to minimise overshadowing to existing buildings and open space,*
- e) to minimise the visual impact of development on heritage items and heritage conservation areas,*
- f) to support building design that contributes positively to the streetscape and visual amenity of an area.*

Objective *(a) to establish the height of development consistent with the character, amenity and landform of the area in which the development will be located,*

Response: The proposal is designed to respond to the landform and is a multi-storey dwelling with balconies on the front elevation similar to surrounding dwellings. The proposal will be consistent with anticipated future development given the permitted height limit and development form in the R2 zone. There are numerous dwellings located on the high side of Banks Road that surround and are near to the site, which are elevated well above street level and in a comparable manner to the proposed development.

The development is demonstrated to have no material or significant impact on the amenity of an adjoining property, and has a degree of excavation that is only related to the steep fall of the site and the desire to achieve a reasonable, function dwelling form. The extent of variation is visually minor and would not be perceptible to the casual observer when viewed from street level, or from an adjoining property.

The proposal is therefore consistent with objection (a).

Objective *(b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of 2 storeys in Zone R2,*

Response: The locality comprises many multi-storey dwellings, particularly on sites which are located on the high side of the street, including the immediately adjoining dwelling at No.

61 banks Road which has a 3 storey height, as well as dwellings at Nos. 31A, 35, 43 and 45 Banks Road, amongst others. Photographs of these properties are provided below.



Figure 4: 31A Banks Road



Figure 5: 35 Banks Road



Figure 6: 43 Banks Road



Figure 7: 61 Banks Road



Figure 8: 3D aerial view of the site surrounds

The existing character is therefore comprised of mix of 2, 3 and 4 storey dwelling forms.

The proposed 4 storey form is a functional requirement of achieving a reasonable development form on the site that is directed related to the site slope.

The proposal is therefore consistent with objective (b) when considered as part of the site context.

***Objective (c)** to provide appropriate height transitions between development, particularly at zone boundaries,*

Response: Not relevant, the site is surrounded by residential zones.

***Objective (d)** to minimise overshadowing to existing buildings and open space,*

Response: The submitted architectural plans include shadow and sun eye view diagrams. As outlined in the accompanying Statement of Environmental Effects, given the north-west to south-east orientation of the site, overshadowing will only be cast by the proposal onto No. 61 Banks Road in the morning and onto No. 55 Banks Road in the later afternoon period, at mid-winter. However, in excess of the required 3 hours will be achieved to the living area, private open space and clothes drying areas at Nos. 55 & 61, as required by the DCP.

The extent of shadow cast by the proposed height non-compliance would also not materially impact on the amenity of an adjoining property or the public domain given its isolated location and minimal size.

***Objective (e)** to minimise the visual impact of development on heritage items and heritage conservation areas*

Response: Not relevant, the site is located near any heritage items or heritage conservation areas.

***Objective: (f)** to support building design that contributes positively to the streetscape and visual amenity of an area.*

The proposal will replace the existing old, dilapidated dwelling and overgrown site with a new building form that significantly improves streetscape presentation and contribution, and the extent of height non-compliance would be visually imperceptible to the casual observer. The visual amenity of the area will only be enhanced for these reasons, and the objective is satisfied.

In addition to the above, proposal is consistent with the **objectives of Zone R2 Low Density Residential**, as detailed in the table below.

Compliance with the objectives of Zone R2 – Low Density Residential	
Objective	Response
<ul style="list-style-type: none"> <i>To provide for the housing needs of the community within a low-density residential environment.</i> 	The proposal is a pair of semi-detached dwellings that will assist Council with meeting local housing needs.
<ul style="list-style-type: none"> <i>To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.</i> 	The proposal does not impact the capacity of other land uses to provide facilities or services to meet the day-to-day needs of residents.
<ul style="list-style-type: none"> <i>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.</i> 	The site is not located near any non-residential uses.
<ul style="list-style-type: none"> <i>To ensure suitable landscaping in the low-density residential environment.</i> 	Sufficient landscaping is provided for each dwelling, the streetscape. Landscaped areas on surrounding residential properties is not impacted.
<ul style="list-style-type: none"> <i>To minimise and manage traffic and parking impacts.</i> 	Sufficient parking is available for each dwelling and the proposal will not create any significant parking impacts.
<ul style="list-style-type: none"> <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> 	The site is within an R2 Zone and not located near any non-residential zones or conflicting land uses
<ul style="list-style-type: none"> <i>To promote a high standard of urban design and local amenity.</i> 	The proposal has been skilfully designed with a high level of amenity and urban design principles, as outlined in this variation request.

9. The concurrence of the Secretary has been obtained

Clause 4.6 was amended on 1 November 2023 by removing the requirement for the concurrence of the Planning Secretary.

10. Matters of significance for State or Regional Environmental Planning.

The proposed variation to the building height development standard does not raise any matters of significance for State or regional environmental planning.

11. The public benefit of maintaining compliance with the Development Standard

This variation request demonstrates that the proposed variation is consistent with the relevant zone and standard objectives, and that insistence on strict compliance is unreasonable and unnecessary in the circumstances. As also demonstrated in this variation request, there are no unreasonable impacts that will result from the contravention to the maximum building height standard and to the contrary, the proposed development will make a positive contribution to the site's setting and its contribution to local residential character.

On this basis, there is no benefit in maintaining strict compliance with the development standard. The proposal's consistency with the relevant zone objectives and development standard objectives deems that the subject application is acceptable.

12. Conclusion

As noted above, the building has been designed in response to the steep site slope, which is significant and impactful in terms of achieving a reasonable, functional built form outcome.

Whilst the proposal seeks a height variation, it does so in a manner that does not impact on a neighbouring property but will benefit the external appearance and internal functionality of the building.

In satisfaction of the statutory tests of Clause 4.6 of CBLEP 2023 it is requested that Council support the variation as proposed.