

Statement of Environmental Effects

Subject Site: 311-313 Stacey
Street, Bankstown NSW 2200

Lots D and E in DP 18432

Proposal: Development
Application for alterations and
additions, including:

- Roof extension
- Minor internal design and layout changes
- Basement configuration and area expansion
- Extension of northern retaining wall

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Table Of Contents

1	INTRODUCTION	6
2	SITE DETAILS	7
2.1	SITE LOCATION	7
2.2	SITE DESCRIPTION	8
2.3	EXISTING DEVELOPMENT	8
2.4	SURROUNDING DEVELOPMENT	8
2.5	TOPOGRAPHY & DRAINAGE.....	9
2.6	VEGETATION	9
3	PROPOSED DEVELOPMENT.....	10
3.1	BACKGROUND	10
3.2	DEVELOPMENT APPLICATION PLANS.....	11
3.3	SUMMARY OF PROPOSED WORKS	12
3.4	FLOOR PLANS.....	13
3.4.1	<i>Site Plan (A101)</i>	<i>14</i>
3.4.2	<i>Basement Plan (A104)</i>	<i>14</i>
3.4.3	<i>Ground Floor Plan (A106)</i>	<i>15</i>
3.4.4	<i>First Floor Plan (A108)</i>	<i>15</i>
3.5	EXTERNAL WORKS	16
3.5.1	<i>West Elevation (E-05)</i>	<i>16</i>
3.5.2	<i>North Elevation (E-01)</i>	<i>16</i>
3.5.3	<i>South Elevation (E-08)</i>	<i>17</i>
3.5.4	<i>East Elevation (E-03).....</i>	<i>17</i>
3.5.5	<i>Materials and Finishes.....</i>	<i>17</i>
3.5.6	<i>Landscaping</i>	<i>17</i>
3.5.7	<i>Sediment Control.....</i>	<i>17</i>
3.6	PROPOSED RESIDENTIAL USE.....	18
4	RELEVANT PLANNING INSTRUMENTS.....	19

4.1	STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021	19
4.2	STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2022.....	19
4.3	CANTERBURY-BANKSTOWN LOCAL ENVIRONMENTAL PLAN 2023.....	19
4.3.1	<i>Zoning</i>	19
4.3.2	<i>Principal Development Standards</i>	21
4.3.3	<i>Floor Space Ratio & Gross Floor Area</i>	22
5	ASSESSMENT OF ENVIRONMENTAL EFFECTS.....	26
5.1	ENVIRONMENTAL PLANNING INSTRUMENTS (s4.15(1)(A)(I))	26
5.2	DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS (s4.15(1)(A)(II))	26
5.3	DEVELOPMENT CONTROL PLANS (s4.15(1)(A)(III))	26
5.4	PLANNING AGREEMENTS (s4.15(1)(A)(IIIA))	27
5.5	THE REGULATIONS (s4.15(1)(A)(IV))	27
5.6	ENVIRONMENTAL AND SOCIAL IMPACTS (s4.15(1)(B))	27
5.7	SUITABILITY OF THE SITE (s4.15(1)(C))	28
5.8	SUBMISSIONS (s4.15(1)(D))	28
5.9	PUBLIC INTEREST (s4.15(1)(E))	29
5.10	DEVELOPMENT CONTROL PLANS (s4.15(3A)).....	29
6	CONCLUSION.....	29
	APPENDIX 1 – PHOTOGRAPHS OF CULTURAL AND RELIGIOUS ARTIFACTS TO BE HOUSED WITHIN THE BASEMENT STORAGE AREA	30
	APPENDIX 2 – CONTINGENT CLAUSE 4.6 REQUEST FOR VARIATION	37
	APPENDIX 3 – DCP ASSESSMENT TABLE.....	38

Figures

FIGURE 1: SITE LOCATION (REGIONAL CONTEXT)7

FIGURE 2: SITE LOCATION (LOCAL CONTEXT)7

FIGURE 3: SITE AERIAL8

FIGURE 4: CONTOURS.....9

FIGURE 5: VIEW OF PARTIALLY CONSTRUCTED DWELLING LOOKING EAST FROM STACEY STREET11

FIGURE 6: VIEW OF PARTIALLY CONSTRUCTED DWELLING LOOKING WEST FROM THE REAR YARD OF THE
SUBJECT SITE.....11

FIGURE 7: ZONING MAP21

FIGURE 8: 21 JUNE 3PM OVERSHADOWING ANALYSIS28

1 Introduction

This report has been prepared as a Statement of Environmental Effects (**SoEE**) for a Development Application (**DA**) seeking consent from Canterbury-Bankstown Council for yet to be completed building works at 311-313 Stacey Street, Bankstown, formally known as Lots D and E in DP 18432 (**the subject site**). The DA is also accompanied by a Building Information Certificate (**BIC**) application seeking to regularise building works which have not been carried out in accordance with approved plans in Development Consent, as modified.

DA254/2020/A, as modified on 26 April 2023 for:

Consolidation of two lots into one lot, demolition of existing structures and construction of a new two-storey dwelling with BBQ area and basement parking.

Building construction in accordance with DA254/2020/A had significantly progressed; however, it was identified by the Principal Certifier that the basement had been extended, and rear stairs had been added. These elements were not in accordance with the stamped approved plans. The Certifier issued a Written Directions Notice (**WDN**) under Section 6.31 of the *Environmental Planning and Assessment Act 1979*. This notice required the reinstatement of the basement as per the approved stamped plans and to provide a survey of the basement size including levels and setbacks. Several other inconsistencies were identified including minor changes to internal walls in the basement, ground and first floors, first floor rear balcony, fencing and retaining wall location.

The development to which this Development Application applies has been the subject of recent Court proceedings for: *Chien Gong Pty Ltd v Canterbury Bankstown Council – NSWLEC 2024/423541 (Class 1)*. At Section 34 conciliation conference held on 29 April 2025, the parties agreed that a new Development Application be submitted to address work not yet carried out under approved development consent DA254/2020/A.

Further background is provided in Section 3.1 of this Report. An itemised list of the proposed works is contained in Section 3.3.

This SoEE relates **only** to the yet to be completed works at the subject site, insofar as they differ from the approved plans, while the related BIC report addresses the already-completed unauthorised works.

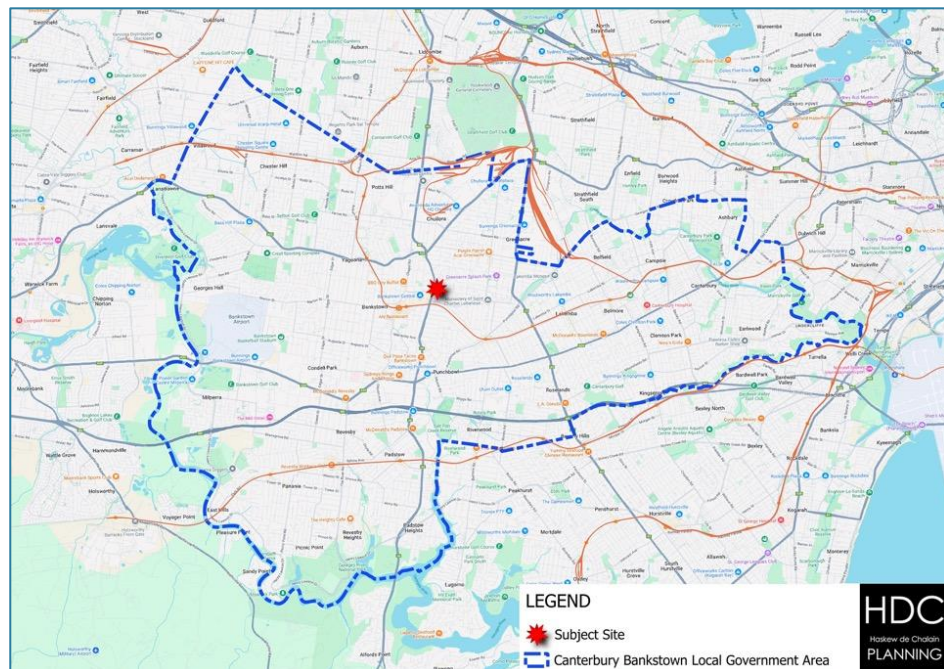
This report is submitted in accordance with Clause 24(1) of the *Environmental Planning and Assessment Regulation 2021*. The purpose of this report is to provide a description and general information about the site and the proposed development. Furthermore, this SoEE provides the following information:

- Description of the site, surrounding development and the wider locality.
- Description of the proposed development.
- Assessment of the proposed development in accordance with statutory controls and the relevant Development Control Plan; and,
- A broader environmental assessment of the proposal, having regard to the matters for consideration contained with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

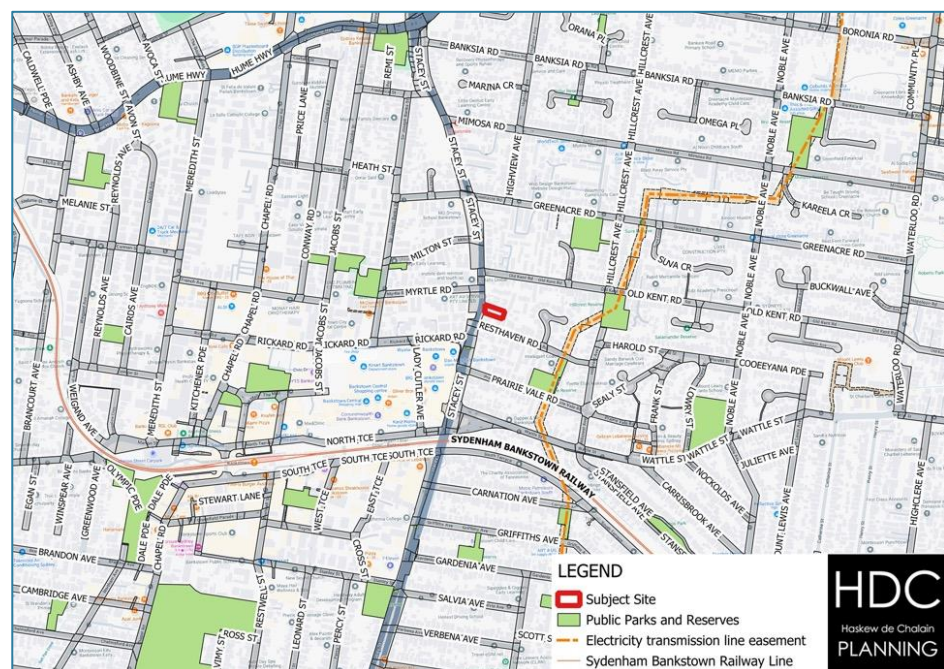
2 Site Details

2.1 Site Location

The subject site is located on the eastern side of Stacey Street, two lots north of Resthaven Road. It adjoins the suburb of Greenacre at its north eastern corner, with Bankstown Station approximately 1km walking distance to the south west. The site's location in the regional context is shown in Figure 1 and in the local context as Figure 2.



Source: Source: NSW Spatial Data Portal & Google Maps
Figure 1: Site Location (Regional Context)



Source: NSW Spatial Data Portal
Figure 2: Site Location (Local Context)

2.2 Site Description

The subject site is formally described as Lots D and E in DP 18432 and is commonly known as 311-313 Stacey Street, Bankstown with a site area of approximately 1,445.60m². It is generally regular in shape and has a frontage to Stacey Street of approximately 25m, with a variable depth averaging approximately 61m.



Source: NSW Spatial Data Portal & Nearmap

Figure 3: Site Aerial

2.3 Existing Development

The subject site has commenced construction of a two-storey dwelling house, the approval of which is the subject of DA254/2020/A, this current application, along with the related BIC Application.

2.4 Surrounding Development

Detached dwelling houses adjoin the site to the north and south. The rearmost part of the southern boundary adjoins 2 Resthaven Road as a rear to side boundary interface. The rear setback of 2 Resthaven Road is approximately 6m. The rearmost part of the northern boundary is adjoined by a detached outbuilding which will mirror the BBQ area approved at the north eastern corner of the subject site. Adjoining the rear boundary of the subject site is a relatively large well-vegetated area which comprises the rear yards of properties fronting Resthaven Road.

The broader area comprises a mix of low and medium density residential development. Medium density typologies are well represented in the low-density residential zone on the eastern side of Stacey Street.

2.5 Topography & Drainage

The subject site is relatively level with a gentle natural crossfall from north to south. See Figure 4 below for general contours of the subject site. Stormwater is approved to drain to Stacey Street.



Source: NSW Spatial Data Portal & Nearmap

Figure 4: Contours

2.6 Vegetation

The subject site is not constrained by vegetation. Trees situated on adjoining properties are well-removed from the location of the basement works.

3 Proposed Development

3.1 Background

DA-254/2020/A as modified on 26 April 2023, granted development consent for:

Consolidation of two lots into one lot, demolition of existing structures and construction of a new two-storey dwelling with BBQ area and basement parking.

The Construction Certificate (CCC-313STA/2023) (**CC**) was approved on 28 June 2023 with construction commencing in August 2023.

The building construction had significantly progressed; however, it was identified by the Principal Certifier that the basement had been extended, and rear stairs had been added. These works were not in accordance with the stamped approved plans which resulted in the Certifier issuing a Written Directions Notice (WDN) under Section 6.31 of the *Environmental Planning and Assessment Act 1979*. This notice required the reinstatement of the basement measurements as per the approved stamped plans and provision of a revised as-built survey of the basement area including levels and boundary setbacks.

Several other inconsistencies have been identified including minor changes to internal walls in basement, ground and first floors, first floor rear balcony, fencing, and the location of a retaining wall.

While departure from the approved plans proceeded without necessary approval, the unauthorised works have responded to deficiencies evident in the approved plans.

The most significant of the sub-optimum design elements of the approved development are twofold.

- The first, is that the approved lift did not extend to basement level. The proposed dwelling is intended to accommodate elderly residents, and the approved lift was proposed to facilitate improved mobility within the dwelling. That opportunity for improved mobility to not extend to the parking spaces was a significant design flaw.
- The second is that the approved dwelling did not provide sufficient storage area to accommodate a sizeable collection of religious and cultural artefacts owned by one of the intending residents. The collection is presently housed in various storage facilities but primarily overseas. Neither the approved basement nor habitable levels of the approved dwelling provided sufficient space to accommodate that collection.

The unauthorised works have responded to both issues. Eastward expansion of the approved basement would facilitate lift connectivity to the basement, while simultaneously creating a suitably sized storage area for the religious and cultural artefact collection.

From this primary design change followed numerous less significant amendments which are either consequential to the expanded basement or otherwise deliver modest design improvements or amendments which are often realised over time, and subsequent to originally approved plans.

In this regard, had prospective application been made for the unauthorised works, the differences between DA-254/2020/A and that which is collectively contemplated by the BIC and this DA, would have fallen comfortably within the gamut of s.4.55 of the EP&A Act 1979.

However, that much of the works have been carried out without consent has resulted in the need for a combination of regularisation by the BIC and development consent for proposed works not yet carried out.

Figure 5 and Figure 6 below provide photographs of the partially constructed dwelling.



Figure 5: View of Partially Constructed Dwelling Looking East from Stacey Street



Figure 6: View of Partially Constructed Dwelling Looking West from the Rear Yard of the Subject Site

3.2 Development Application Plans

The plans accompanying this DA have been prepared to enable clear identification of the following elements:

- **Works approved**, are those which are approved by the consent DA-254/2020/A, or by approval of the BIC Application (which for the purposes of this report must be assumed to be approved) , Works approved have been marked in **black line work and text**.
- **Works yet to be constructed**, are those works which are not in accordance with DA-254/2020/A but which are proposed by this development application. Works to be constructed have been marked in **green fill and text**.
- **Works not to be constructed**, are works which were approved by DA-254/2020/A but are now not proposed to be constructed. Works not to be constructed have been marked in **dotted green line work and green text**.

Note: The legend system employed for development application plans is the opposite to that which has been employed for the BIC plans. That is, like the DA plans, approved and constructed works appear in black, whereas unauthorised and constructed works appear in red linework and text.

3.3 Summary of Proposed Works

The proposed works that are yet to be constructed but which are **now proposed**, include:

- External to the building
 - Extension of retaining wall.
 - Front fencing.
 - Retaining wall and side return of variable height to be erected in the front setback area.
 - Portico to be framed by rectangular columns at first floor to match ground floor columns.
- Basement
 - Internal partition walls to separate parking and manoeuvring space from storage space.
 - Inclusion of storage room, accessible path between parking spaces and the lift and between parking spaces and the eastern stairs.
 - Provision of 2 parking spaces (and manoeuvring area) dimensioned to accommodate side loaded disabled access.
- Ground Floor
 - Internal two door glazed wall to enclose the western end of the ground floor lounge.
- First Floor
 - New internal partition walls to suit amended first floor layout.

- 784mm extension of first floor rear wall and balcony.
- Central recess 3.3m wide by 2.4m deep to off-set additional gross floor area arising from the first floor eastward extension.
- Reconfigured first floor layout to include home theatre, artwork display, storage, lounge, and study.
- Roof
 - Extension of roof at eastern end.
 - Roof skylights.

Works which were approved under DA-254/2020/A but which are **now not proposed** to be constructed include:

- Some internal basement walls.
- Some internal ground floor walls.
- Some internal first floor walls.
- Round columns at the first floor element of the portico.

Compared with development approved by DA-254/2020/A, the proposed development will:

- Not cause an increase in the building height
- Will not result in any additional gross floor area¹.
- Appear as substantially the same development when viewed from all above ground locations.

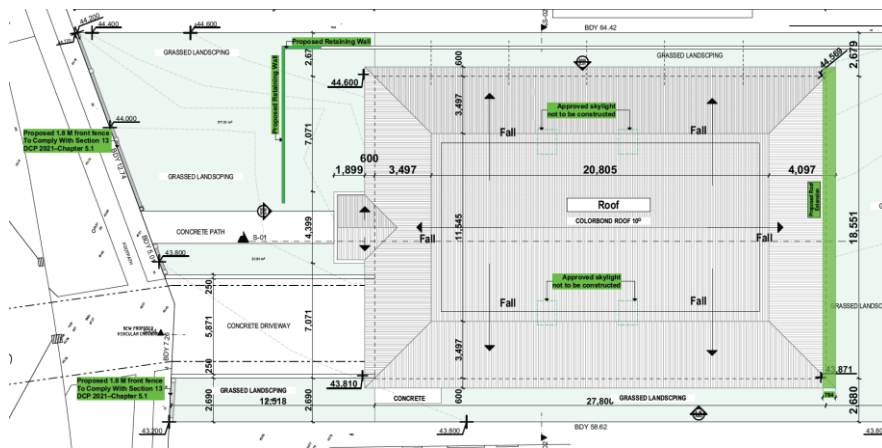
The proposed works are set out in more detail in the following Sections.

3.4 Floor Plans

The proposed works on the floor plans are set out below for all levels of the dwelling.

¹ Assessment of proposed gross floor area and floor space ratio is provided at Section 4.3.3 of this Report. Included as Appendix A is a contingent Clause 4.6 request for variation to the FSR development standard should that assessment not be agreed.

3.4.1 Site Plan (A101)

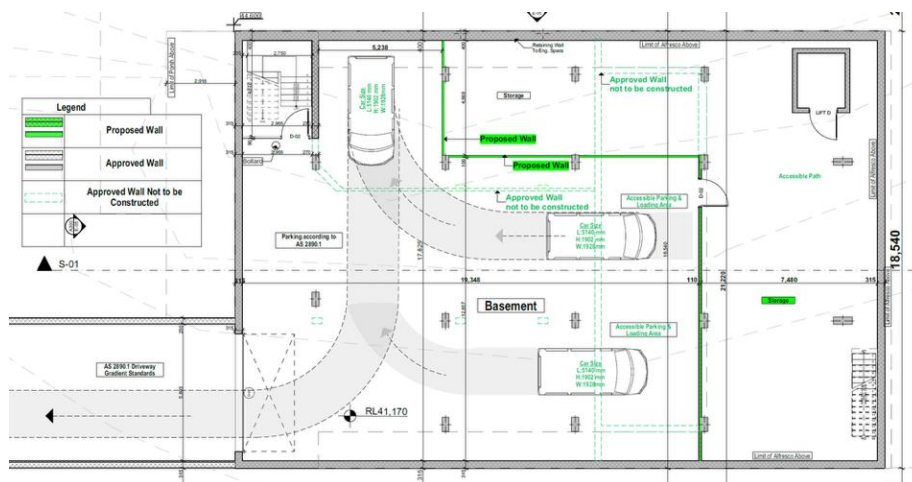


Works yet to be constructed

Works not to be constructed

- Extension of retaining wall to around the front of the dwelling
- Extension of rear roof by 784mm
- Front fencing with height of 1.8m
- All four skylights in roof structure

3.4.2 Basement Plan (A104)

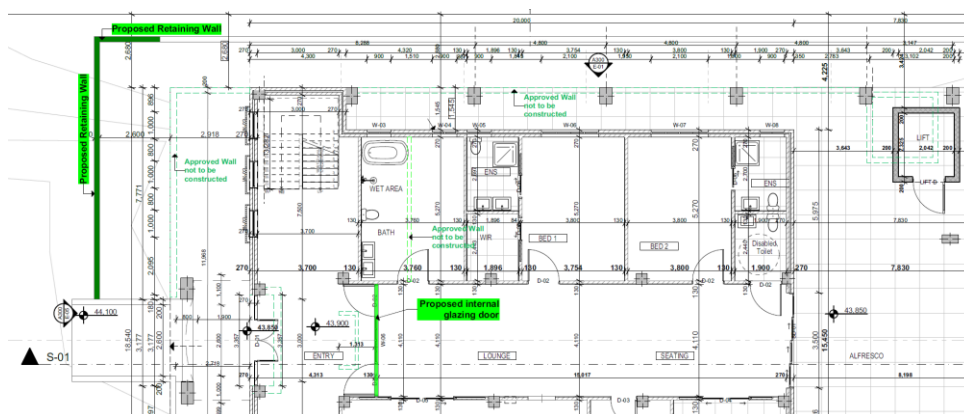


Works yet to be constructed

Works not to be constructed

- New internal walls and layout configuration
- Inclusion of storage area and accessible path at rear of basement
- Inclusion of accessible parking and loading area

3.4.3 Ground Floor Plan (A106)



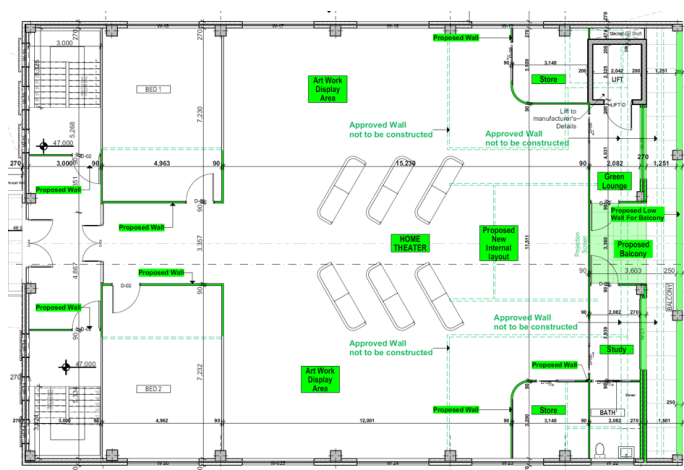
Works yet to be constructed

- Extension of retaining wall to around the front of the dwelling
- Internal door at entry

Works not to be constructed

- Front and side external wall
- Main door and wall at entry
- Internal wall in bathroom

3.4.4 First Floor Plan (A108)



Works yet to be constructed

- Multiple internal walls and layout
- Rear external wall of dwelling
- Rear balcony and balcony wall
- Inclusion of art work display and storage areas as well as a home theatre, lounge and study.

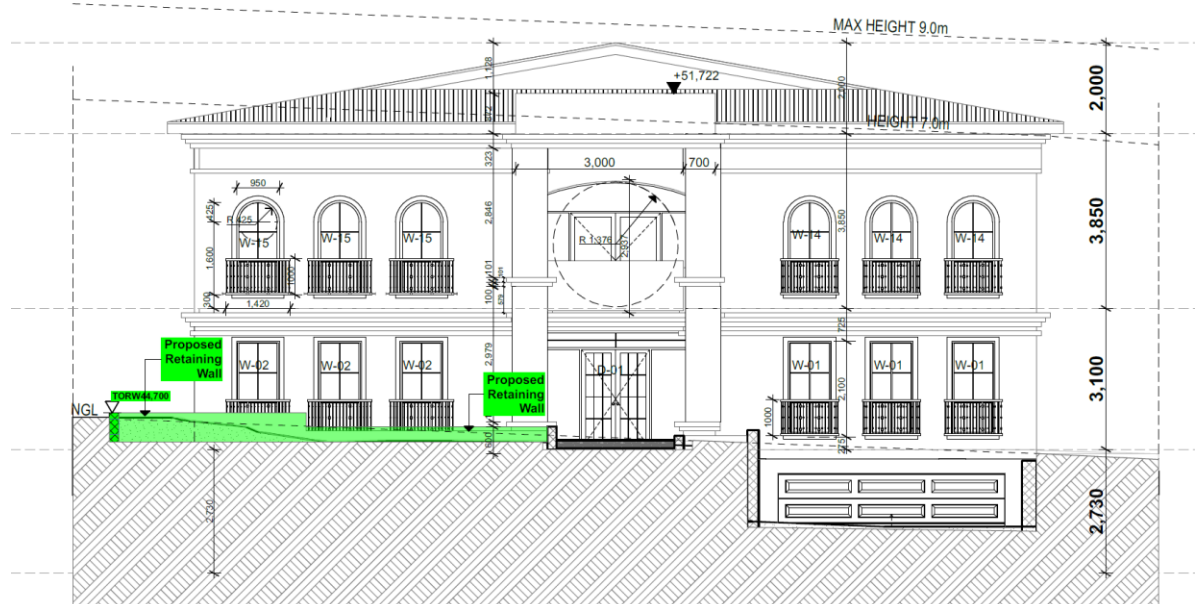
Works not to be constructed

- Multiple internal walls

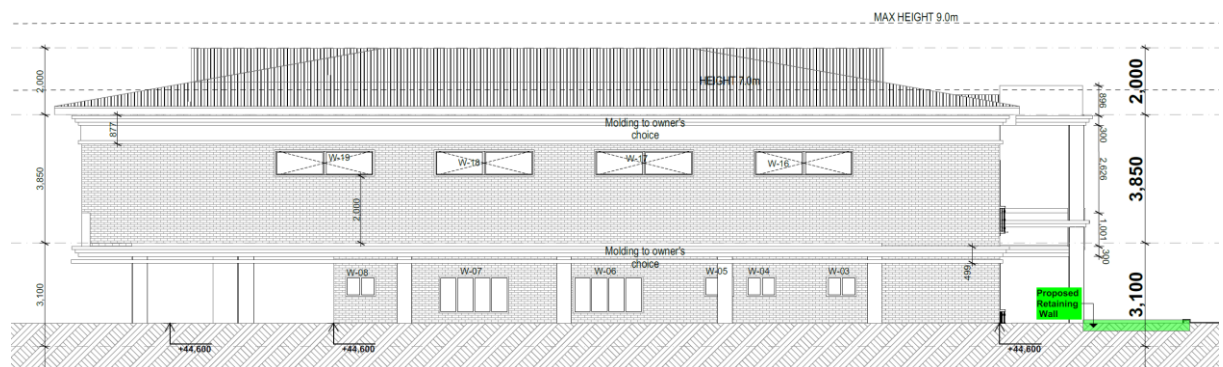
3.5 External Works

The proposed external works including the extension of the front retaining wall, amendments to the first floor at its rear and amendment of the column shape of the portico at first floor level.

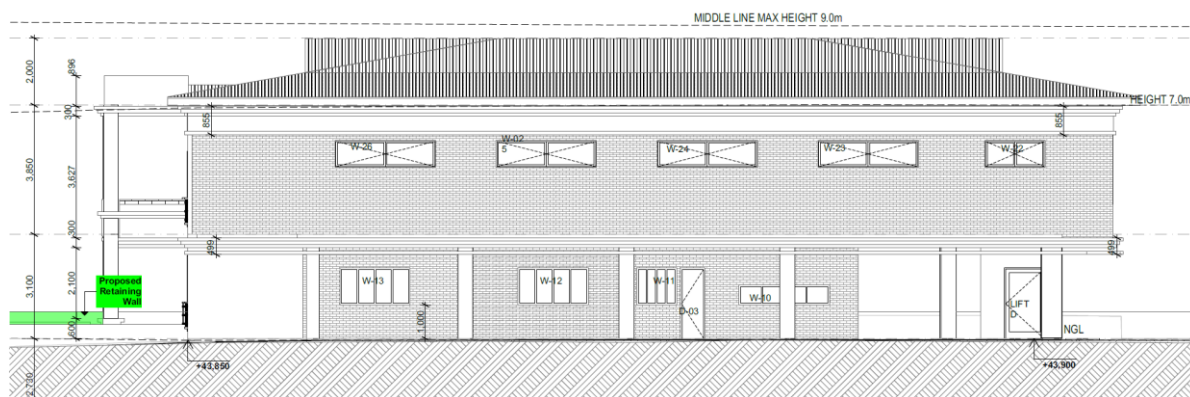
3.5.1 West Elevation (E-05)



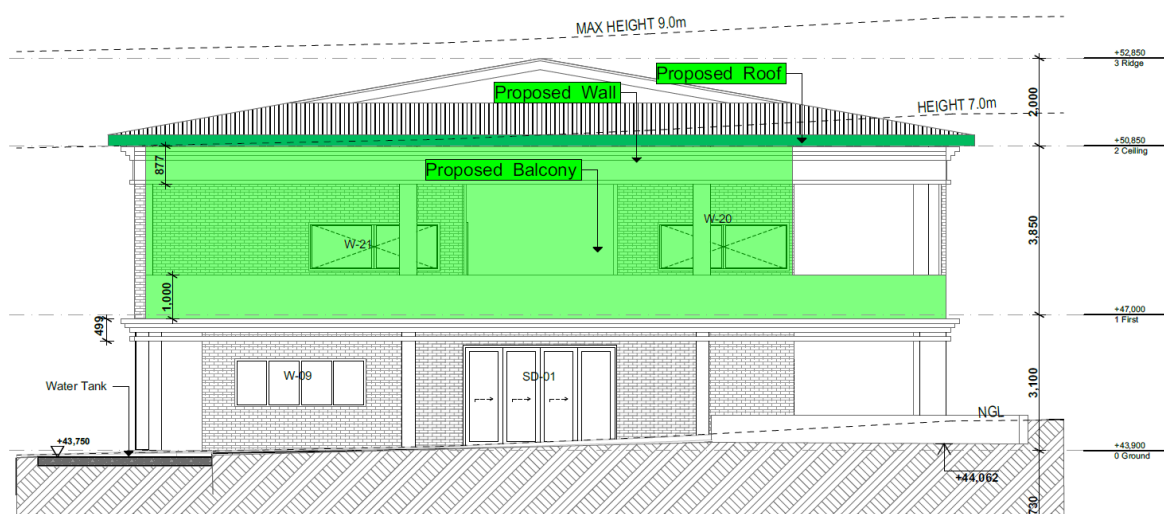
3.5.2 North Elevation (E-01)



3.5.3 South Elevation (E-08)



3.5.4 East Elevation (E-03)



3.5.5 Materials and Finishes

Proposed alterations to the materials and finishes are limited to the colour of the cement render of the exterior walls, as identified in Colour Scheme (A304) to be 'Owner's Choice'. Should Council desire, it would be available to Council to impose a condition of consent setting guardrails around the flexibility inherent from "owner's choice". Such condition might specify owners' choice from a palette comprising earthy tones as depicted in drawing A304.

3.5.6 Landscaping

No alterations to the landscaping are involved with this DA, see the related BIC report for more information on the relevant unauthorised works and their effect on landscaping.

3.5.7 Sediment Control

No major alterations to the existing sediment control plan are involved with this DA, see the related BIC report for more information on the relevant unauthorised works and their effect on sediment.

3.6 Proposed Residential Use

The development application proposes residential use of the building, including residential use for storage purposes of the basement storage area.

The basement storage area is large relative to the storage needs of typical dwellings. However, its size (approximately 143 m²) is reflective of the atypical storage needs to the intending residents. In this regard, they own a vast collection of Buddhist and South East Asian cultural artefacts. In the main, the collection includes large statues of Buddha, furniture, vases, artworks and similar. Presently, only a small part of the collection is located within Australia, with the majority housed in storage facilities in Taiwan.

The intending resident is desirous to consolidate this personal collection. Included as Appendix 1 are photographs of part of the collection which have been provided to us by the family of the intending residents.

The artifacts collection is a private collection for personal enjoyment. This development application does not propose, and the future residents do not intend, for the artifacts collection to be made available to the public. Individual items from the collection will be displayed for personal enjoyment within the dwelling house. Public display of any parts of the collection located within the dwelling is not proposed by this development application and is not intended by the future residents.

4 Relevant Planning Instruments

The relevant environmental planning instruments and development controls are outlined below and comment on compliance is provided.

4.1 State Environmental Planning Policy (Biodiversity and Conservation) 2021

The subject site is located within the Georges River catchment and as such Chapter 6: Water Catchments of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* applies to the proposed development, which aims to protect the river system by considering development and land use impacts in a regional context.

The proposal is supported by appropriate engineering plans and details demonstrating compliance with the relevant stormwater and water quality requirements of this Chapter and relevant requirements of Canterbury-Bankstown Council. This ensures that no adverse impacts relating to water quality, ecology or flooding occur to the Georges River Catchment due to the proposed development. See Sediment Control Plan accompanying this application for more detail.

4.2 State Environmental Planning Policy (Sustainable Buildings) 2022

This proposal involves residential development and as such Chapter 2: Standards for residential development – BASIX of *State Environmental Planning Policy (Sustainable Buildings) 2022* applies. This application is accompanied by an updated BASIX certificate which confirms that the proposed works subject to this application remain consistent with the relevant requirements of this Chapter and standards in Schedule 1.

4.3 Canterbury-Bankstown Local Environmental Plan 2023

The *Canterbury-Bankstown Local Environmental Plan 2023* (CBLEP 2023) is the principal environmental planning instrument applying to the subject site. The applicable provisions of that instrument have been outlined below.

4.3.1 Zoning

The subject site is zoned R2 – Low Density Residential pursuant to CBLEP 2023 (see Figure 7 below). The land use table has been reproduced below.

Zone R2 Low Density Residential

Objectives of zone

To provide for the housing needs of the community within a low density residential environment.

To enable other land uses that provide facilities or services to meet the day to day needs of residents.

To allow for certain non-residential uses that are compatible with residential uses and do not adversely affect the living environment or amenity of the area.

To ensure suitable landscaping in the low density residential environment.

To minimise and manage traffic and parking impacts.

To minimise conflict between land uses within this zone and land uses within adjoining zones.

To promote a high standard of urban design and local amenity.

Permitted without consent

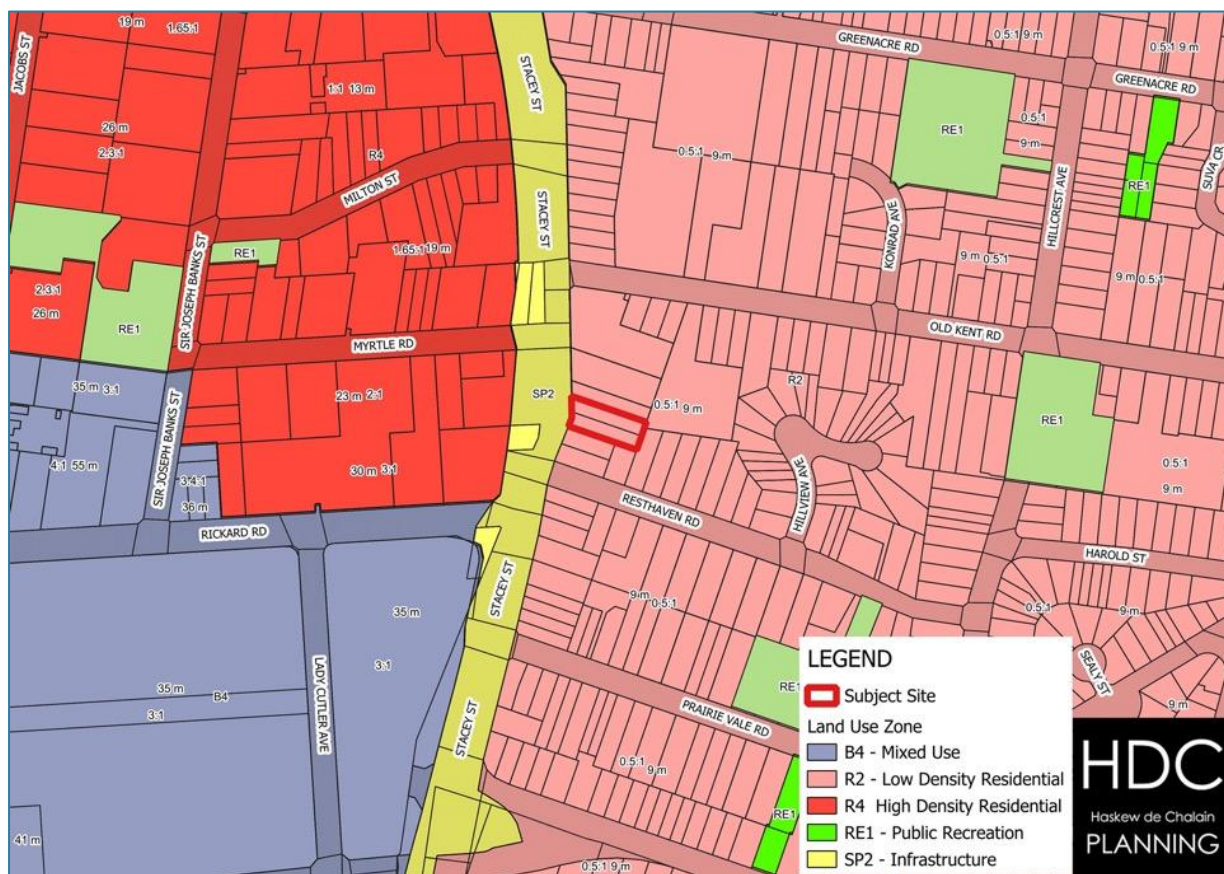
Home occupations

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

Prohibited

Any development not specified in item 2 or 3



Source: NSW Spatial Data Portal and SEED

Figure 7: Zoning Map

The proposed development involves alterations and additions to an existing incomplete dwelling house, which is permissible with consent in the R2 zone.

The proposed development is consistent with the zone objective in that it provides for the housing needs of the community, provides suitable landscaping within a low density environment and demonstrates a high standard of design and amenity.

4.3.2 Principal Development Standards

Part 4 of CBLEP 2023 contains that instrument's principal development standards. Those relevant to the subject site and the proposed development are set out in the table below.

Clause	Control/Comment
4.1 Minimum subdivision lot size	N/A – the proposed development does not involve subdivision.
4.3 Height of buildings	Complies – the proposed development does not exceed the maximum height of 9m.

4.4 Floor space ratio	Complies – the proposed development does not exceed the maximum floor space ratio of 0.5:1. See a discussion on the calculation of gross floor area of basement below.
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4.3.3 Floor Space Ratio & Gross Floor Area

The objectives of the floor space ratio controls are set out in clause 4.4(1) as follows:

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

Clause 4.5(2) of CBLEP 2023 defines floor space ratio (**FSR**) as the following:

The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

The Dictionary of CBLEP 2023 defines gross floor area (**GFA**) as:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and

- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

The Dictionary of CBLEP 2023 also defines a basement as:

basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

The section diagrams of the proposed works to the basement make plain that the floor level of the basement is wholly below the existing ground level, and that the floor level of the storey immediately above that, i.e. the ground floor, is less than 1m above the existing ground level. Therefore, the basement subject to this proposal satisfies the above definition.

There is no requirement in the above definition that the storey "immediately above" be located vertically above. The preposition "immediately" communicates only the next in sequenced order. On its own, it does not communicate any spatial relationship between items. The spatial relationship information is delivered by the word "above". That word, by ordinary meaning is not confined to 'vertically above'. It is simply a statement of fact that the floor level immediately above the basement is the ground floor and that the ground floor is not more than 1 metre above ground level (existing).

This interpretation is consistent with Council's DCP 2023, Chapter 5, clause 2.10, which does import a more specific spatial relationship than merely "above". This clause provides the basement level must not project beyond the ground floor perimeter of the dwelling house. For the purposes of this clause, the ground floor perimeter includes the front porch.

Clause 2.10 is different to the definition of "basement" in that it uses appropriate language to inform a more specific spatial relationship than "above". If these clauses were intended to be read in the same way, the same wording would have been adopted. The spatial relationship directed by clause 2.10 is not to be imported into the definition of "basement" under CLEP 2023.

DCP 2023 cannot be used as extrinsic material to inform the meaning of a provision of CLEP 2023 because it is not a document of a type or nature consistent with those listed in s.34(2) of the Interpretations Act 1997. The DCP is both subsequent and subordinate to the LEP. Its provisions cannot assist in understanding the mind of the legislature. If the definition of "basement" was intended to be read in the way Council suggests, the wording of clause 2.10 or similar would have been adopted.

It appears to this Practice that Council's interpretation of "basement" has been conflated by its reading of clause 2.10 wherein it has been presumed that the spatial relationship directed by clause 2.10 is to be imported into the definition of "basement" under CLEP 2023.

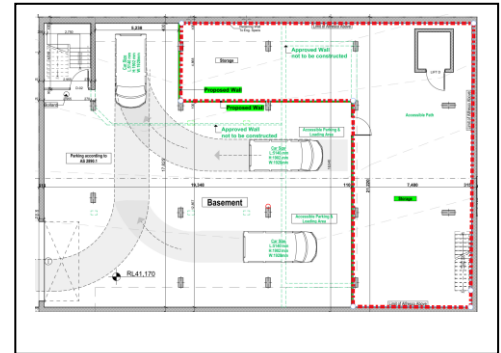
Returning to the "gross floor area" definition in CBLEP 2023, there are two exclusions relevant to the proposed development. These are the exclusions contained within paragraphs (e) and (g) of the gross floor area definition.

From paragraph (e), storage and vehicular access which are within a basement are excluded. From paragraph (g) parking to meet the requirements of the consent authority and access to it is also excluded.

The lift and eastern stairs comprise access to the parking spaces. The storage area is storage. Hence, the whole of the area outlined in red in the figure inset right is excluded from GFA.

Of the remaining area, the western stairs are access to parking and all other areas are parking to meet the requirements of the consent authority.

In that regard, Chapter 3, clause 2.4 of CBDP 2023 identifies that two parking spaces are required for dwelling houses.



Council's attention is directed to the recent decision of Commissioner Porter in *Keith v Randwick City Council* [2025] NSWLEC 1011. This case addressed specific exclusions pertaining to parking and manoeuvring areas as [32] – [34]. Relevantly, the Commissioner determined at [33]:

"... I see no reason to narrow that consideration of excluded areas even further to the exact vehicular manoeuvring/swept paths shown in red, simply because the nose of the car may not reach the very corner of the basement structure. I accept Mr Kerr's evidence and find that the areas directly surrounding the reasonable vehicular manoeuvring area forms part of 'access to that car parking' and is excluded by (g). 'Access' should not be so confined to only mean literal manoeuvring of a vehicle. The proposed space around that manoeuvring area is modest in size, cannot be used for another purpose and limited to simply encasing the manoeuvring area. On that basis, I find that the areas shown in blue surrounding the manoeuvring area are also excluded from GFA."

Adopting the reasoning of the Court in *Keith* at [32], the proposed manoeuvring areas have been excluded from the GFA calculations by (g). The manoeuvring areas are appropriate to the heightened safety needs of the intending residents, and form part of the 'access to that car parking' for the purposes of that clause.

Similarly, the pedestrian access, stairs and lift to the basement have also been excluded on the basis that they provide access to the car parking. For completeness, we note the lift is also excluded as "void area" in any event pursuant to paragraph (j). This approach is consistent with *Keith* at [30] and [34].

We additionally observe that paragraph (b) of the definition which directs a consent authority to include habitable rooms in a basement in GFA calculations.

In *Anderson v City of Sydney Council No. 2* [2015] NSWLEC 1144, [18] states a habitable room was defined according to the Building Code of Australia as "a room used for normal domestic activities and excludes spaces of a specialised nature occupied neither frequently nor for extended periods."

The proposed basement storage cannot be considered to be a room used for normal domestic activities, and as stated before, are highly specialised for the collection and maintenance of religious and cultural artefacts.

Further to this, Clause 2.17 in Chapter 5.1 of DCP 2023 refers to a storage room as a non-habitable room. Considering this and the above, the proposed basement storage, notwithstanding its reasonable exclusion under (e)(ii), cannot be regarded as a habitable room and therefore, is not included in the calculation of GFA.

Having regard to the above, there is no part of the proposed basement which is calculable as gross floor area.

Notwithstanding the forgoing analysis, for an abundance of caution, a contingent clause 4.6 request for variation to the FSR development standard is included as Appendix 2. This is relied upon in the event the Applicant's analysis regarding the calculation of GFA is not accepted, and there is determined to be an exceedance of the FSR development standard.

5 Assessment of Environmental Effects

In determining the environmental effects of a development proposal, the consent authority is required to consider those matters relevant as listed in section 4.15 of the *Environmental Planning and Assessment Act, 1979*. These matters are listed below with commentary where required.

5.1 Environmental Planning Instruments (s4.15(1)(a)(i))

Section 4.15(1)(a)(i) requires the consent authority to consider:

the provisions of any environmental planning instrument

The relevant environmental planning instruments have been identified and discussed in Section 4. The proposal satisfies the planning objectives and provisions of CBLEP 2023 and the applicable R2 – Low Density Residential zone. The provisions of all other environmental planning instruments relevant to this proposal have been also addressed within Section 4.

5.2 Draft Environmental Planning Instruments (s4.15(1)(a)(ii))

Section 4.15(1)(a)(ii) requires the consent authority to consider:

the provisions of 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

At the time of preparing this application there were no draft planning instruments that would affect the determination of this proposal.

5.3 Development Control Plans (s4.15(1)(a)(iii))

Section 4.15(1)(a)(iii) requires the consent authority to consider:

the provisions of any development control plan

The Canterbury-Bankstown Development Control Plan 2023 (CBDPCP 2023) applies to the proposed development. The proposal is consistent with the aims and objectives of this DCP and generally compliant with the specific provisions applicable to the subject site and the type of development proposed.

A summary of the relevant controls prescribed by the DCP and associated commentary is provided as Appendix 3.

The single DCP non-compliance which would result from the proposed development is to Chapter 5, clause 2.10 (cited above). That control relates to side setbacks. The constructed basement does not protrude beyond the footprint of the ground floor within the side setbacks. However, the stipulation against basement projection must be read more generally than side setback projections. If the control only related

to side setbacks, then the front porch exemption would be redundant. Accordingly, the proposed development is assessed as being non-compliant with clause 2.10.

However, this is a non-compliance which is relevant to the BIC Application and not to the subject development application. Assessment of the constructed basement non-compliance with clause 2.10 is provided within the separate BIC Report prepared by this Practice.

Contained in Appendix 3 of this Statement is a detailed DCP assessment.

5.4 Planning Agreements (s4.15(1)(a)(iii))

Section 4.15(1)(a)(iii) requires the consent authority to consider:

the 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.

This proposal is not subject to any planning agreement or draft planning agreement.

5.5 The Regulations (s4.15(1)(a)(iv))

Section 4.15(1)(a)(iv) requires the consent authority to consider:

the provisions of the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no relevant provisions in the *Environmental Planning and Assessment Regulation 2021* applicable to this proposal.

5.6 Environmental and Social Impacts (s4.15(1)(b))

Section 4.15(1)(b) requires the consent authority to consider:

the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed works are minor in their impact to the natural environment. Existing vegetation and trees on the site had already been removed in accordance with the existing consent, and importantly, the extended basement does not encroach into the landscaped area. Vegetation and trees on neighbouring sites will not be affected by this proposal.

In terms of the built environment, the extended basement area (while not directly relevant to the development application) is not visible or appreciable from adjoining properties or public spaces and does not affect the character or amenity of the area. Nor will it increase the level of activity which occurs in the dwelling. The extended first floor area will be similarly appreciated, being modest in size and located at the rear of the dwelling. The new articulation which is proposed for the first floor eastern elevation is an improvement to the approved building. Articulation is a design technique used to reduce scale (the perceived bulk). The approved articulation offsets or exceeds the minimal additional bulk resulting from the eastward extension of the first floor and balcony. Importantly, the first floor articulation results in the gross floor area of the proposed development being identical to the approved development.

The proposed first floor addition will cause negligible additional overshadowing. The largest overshadowing impact of the first floor addition will be experienced at 3pm where overshadowing affects the northern elevation of 2 Resthaven Road. The 3pm shadow diagrams have been georeferenced and digitised to enable overlay onto an aerial photograph. The additional overshadowing caused by the 780mm first floor eastward extension has then been distinguished by colour coding. The results are shown in Figure 8.

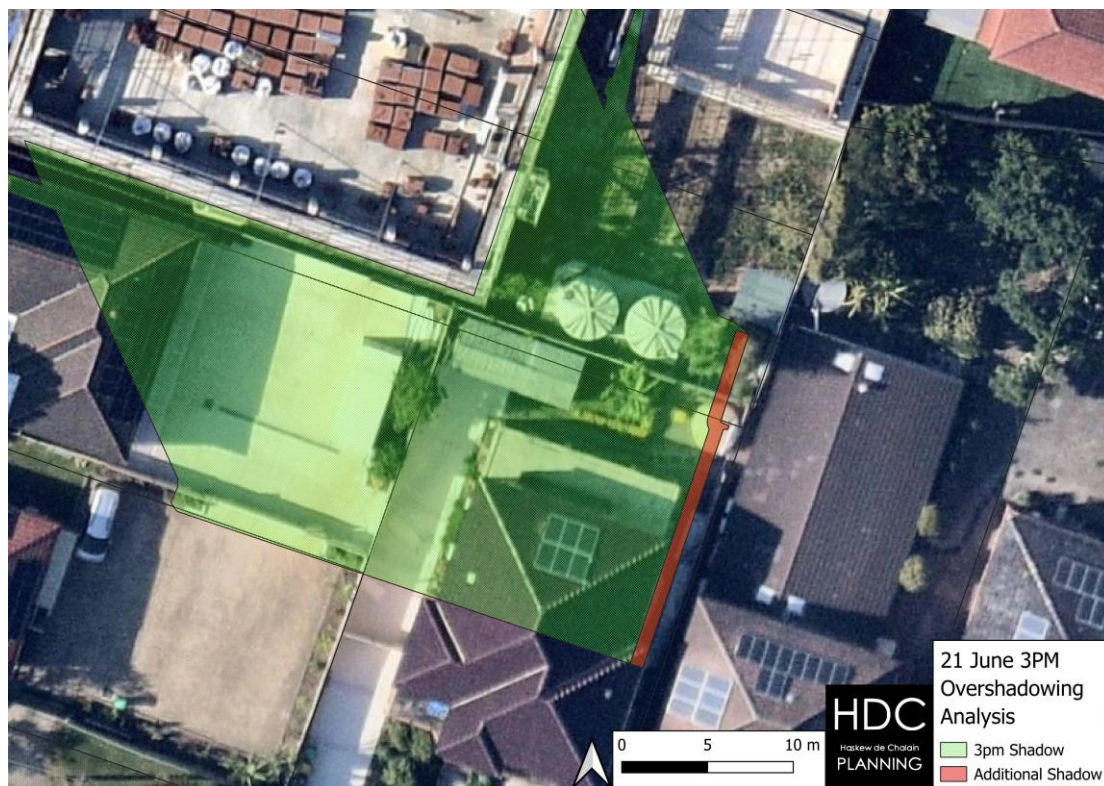


Figure 8: 21 June 3pm Overshadowing Analysis

Additional overshadowing caused by the proposed development will not result in any discernable amenity impacts.

5.7 Suitability of the Site (s4.15(1)(c))

Section 4.15(1)(c) requires the consent authority to consider:

the suitability of the site for the development

The subject site and adjacent sites do not provide any constraints which would render it unsuitable for the proposed development. As a double width site, there is a sizeable, landscaped area within the rear setback. It is also the case that there are no existing trees either on the site nor on adjoining properties which will be impacted by the proposed development, including the basement extension (being works the subject of the BIC Application)

5.8 Submissions (s4.15(1)(d))

Section 4.15(1)(d) requires the consent authority to consider:

any submissions made in accordance with this Act or the regulations

It is expected that this proposal will be publicly notified. In the event that submissions are received, the applicant would respectfully request the opportunity to review these and provide a reply or further assessment comments as needed.

5.9 Public Interest (s4.15(1)(e))

Section 4.15(1)(e) requires the consent authority to consider the public interest.

The public interest is best achieved by the orderly and economic use of land for permissible purposes that do not impact unreasonably on development and/or enjoyment of surrounding land. Each of these outcomes are achieved by the proposed development.

5.10 Development Control Plans (s4.15(3A))

Section 4.15(3A) requires the consent authority to be flexible in applying any applicable provisions of a development control plan and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development.

The proposed works subject to this application remain consistent with the applicable development controls and objectives contained in the *Canterbury-Bankstown DCP 2023* (where they do not contradict the provisions and definitions of CBLEP 2023).

6 Conclusion

This Report provides an assessment of a Development Application which seeks to formalise and approve proposed works not in accordance with the previous consent issued for a two storey dwelling at 311-313 Stacey Street, Bankstown.

The unauthorised works and proposed changes to the basement result in a more substantial storage area, but this does not include any increase in assessable GFA. There are no planning controls relevant to the physical size of basement storage areas. It has been demonstrated that the size of the approved dwelling and the circumstances of the intending residents require a large basement as well as the other design changes.

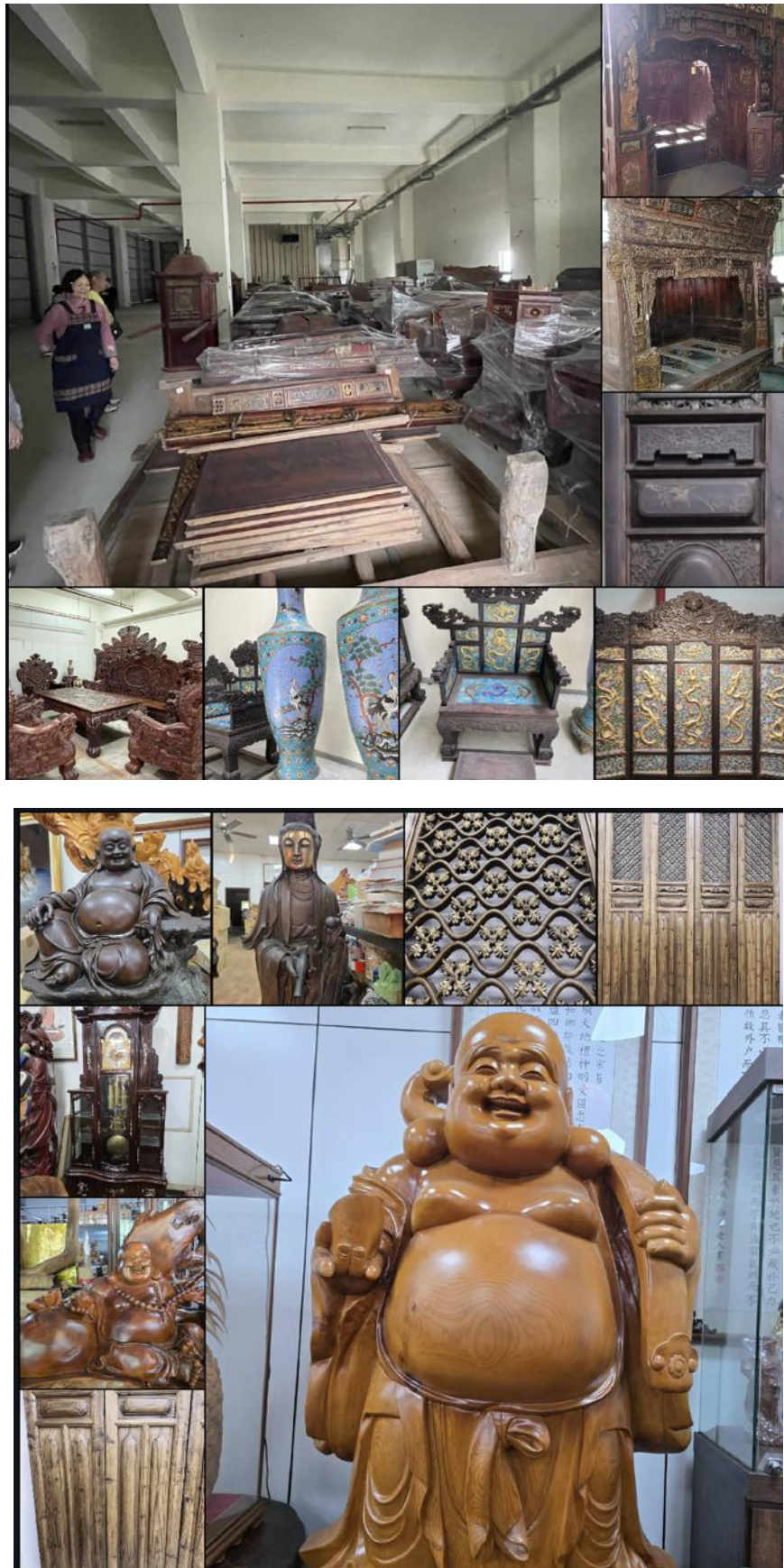
Consideration of the relevant environmental impacts and matters reveal that this development proposal is without significant impact and does not result in any statutory planning non-compliances.

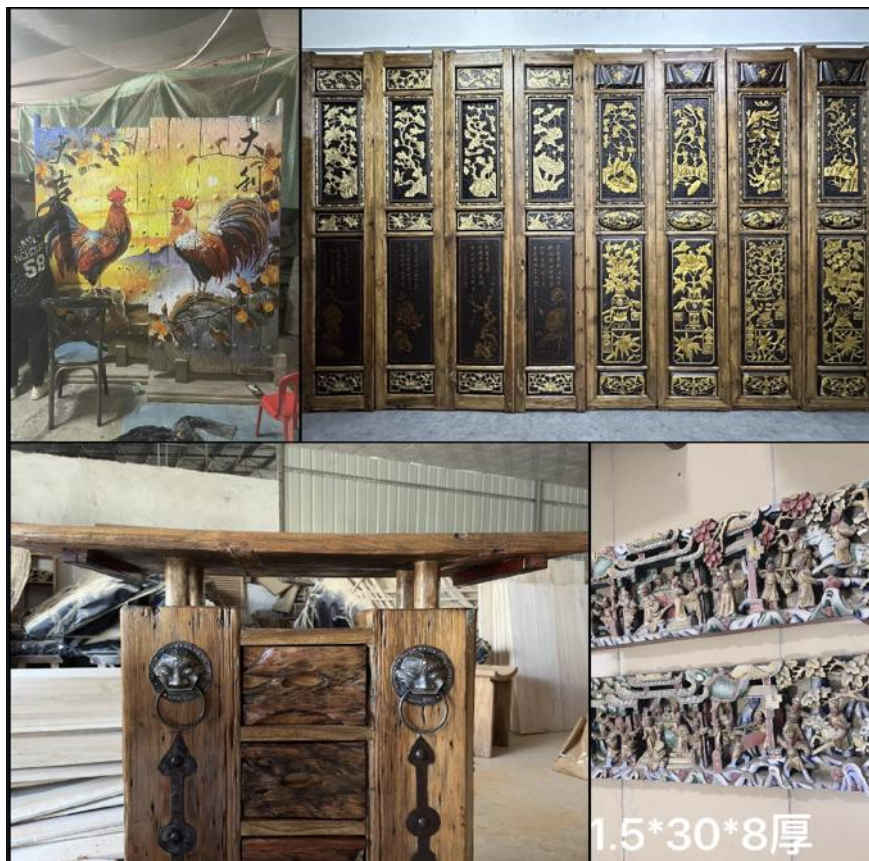
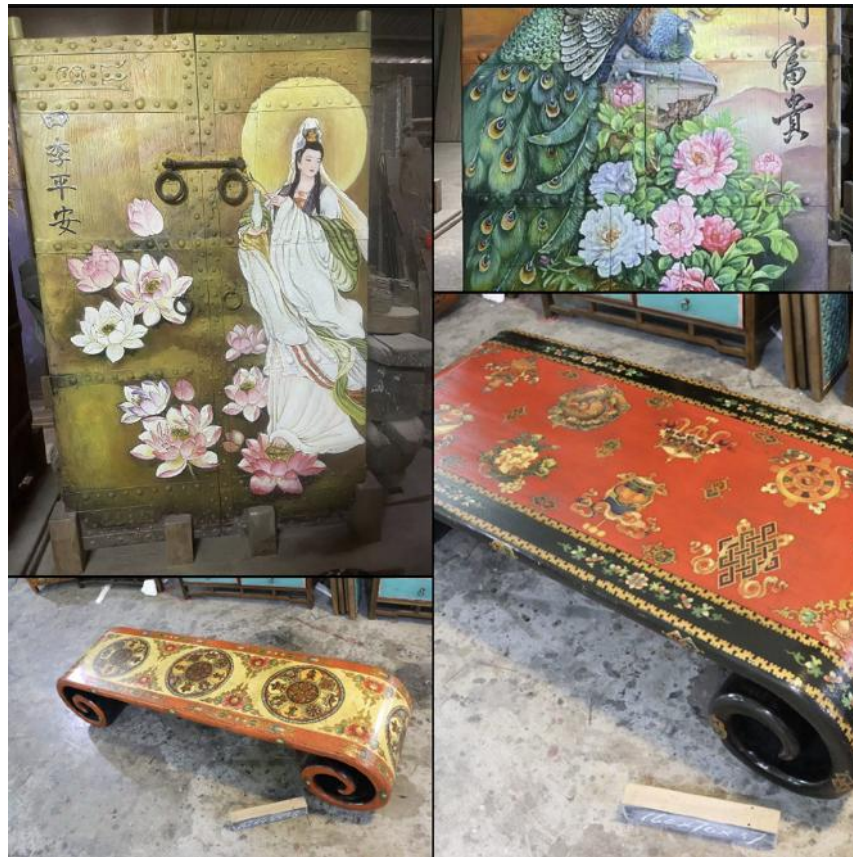
Having regard to the assessment detailed above, and to the conclusions herein reached, the application warrants approval.

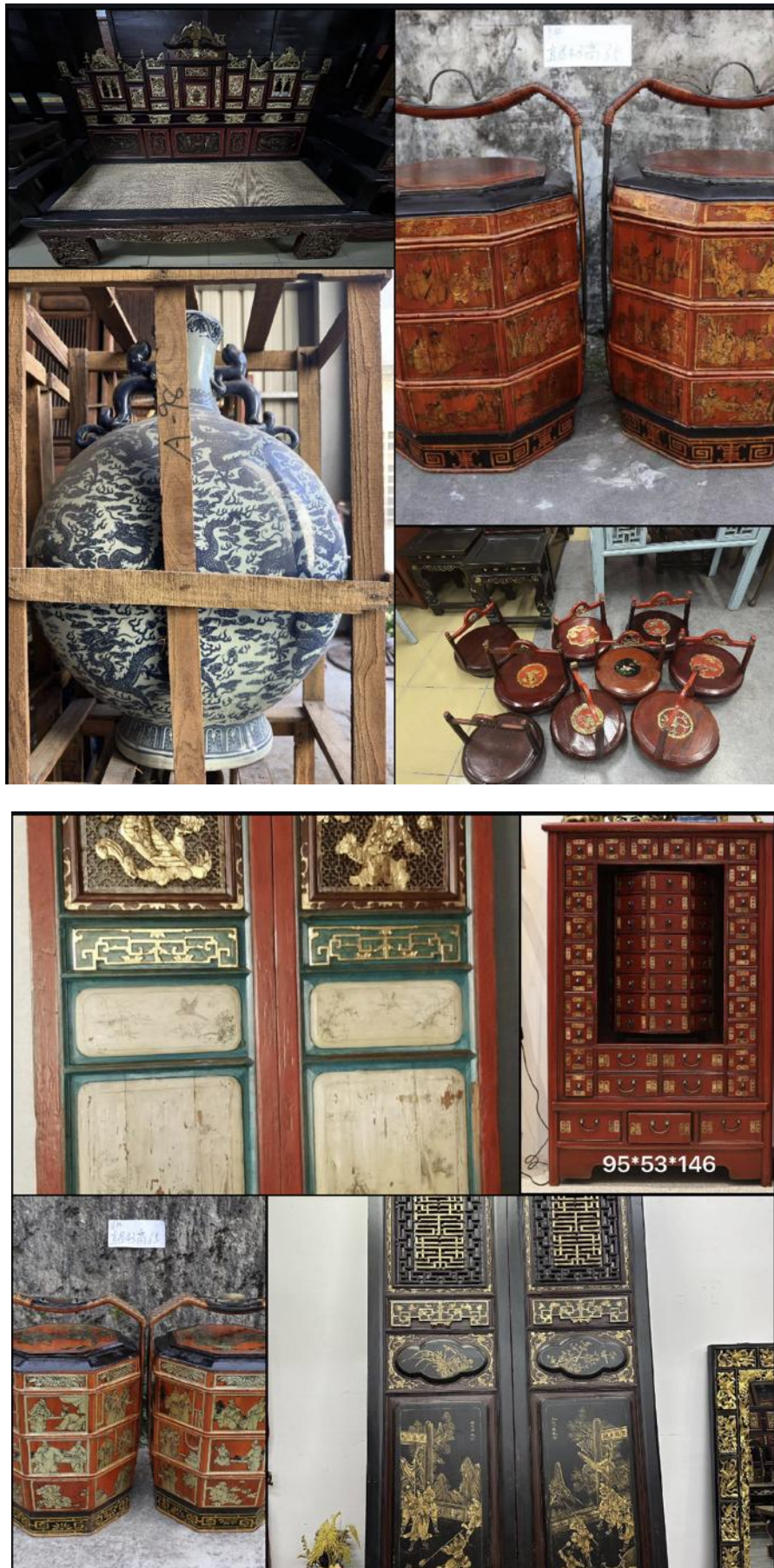
Appendix 1 – Photographs of Cultural and Religious Artifacts to be Housed within the Basement Storage Area











Appendix 2 – Contingent Clause 4.6

Request for Variation

(Contingent) Request for Variation to a Development Standard Made Pursuant to Clause 4.6 of Canterbury Bankstown Local Environmental Plan 2023

311-313 Stacey Street
Bankstown

June 11, 2025

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PLANNING

Table of Contents

1	Clause 4.6 Request for Variation	4
1.1	Statutory Context	4
1.2	What is the name of the environmental Planning instrument that applies to the land? .	5
1.3	What is the zoning of the Land?	5
1.4	What Are the objectives of the zone?	5
1.5	What Is The Development Standard Being Varied?	6
1.6	What are the objectives of the Development Standard?	6
1.7	What Is the Numeric Value of the Development Standard in the Environmental Planning Instrument?	7
1.8	What Is The Numeric Value Of The Development Standard In The Development Application?	7
1.9	What is the percentage variation between the proposal and the environmental planning instrument?	7
1.10	How is compliance with the development unreasonable or unnecessary in this particular case?	9
2	Reasons for Variation	10
2.1	Compliance With the Development Standard Is Unreasonable or Because the Objectives of the Development Standard Are Achieved Notwithstanding Non-Compliance With the Standard.....	10
2.1.1	Consistence with Objective (a) of Clause 4.4	10
2.1.2	Consistency with Objective (b) of Clause 4.4.....	11
2.1.3	Consistency with Objective (d) of Clause 4.4.....	11
2.1.4	Consistence with Objective (e) of the Standard	12
2.1.5	Conclusion Regarding Consistency with the Objectives of Clause 4.4.....	12
3	Environmental Planning Grounds	13
3.1	The Non-Compliant Floor Space is Not Visible from Any Location Other than Within the Expanded Basement.....	13
3.2	The Location of the Additional Basement Floor Space does not Have any Landscaping Impacts.	14
3.3	The Subject Site is a Double Width Lot which Will Accommodate a Large Dwelling.....	14
3.4	The Non-Compliant Basement Floor Space Does Not Offend the Zone Objectives Nor the Public Interest	14

Introduction

1. Situated on 311-313 Stacey Street Bankstown (**subject site**) is a partially erected two storey dwelling house. The dwelling was approved under DA 254/2020/A. The partial construction is not wholly consistent with the approved plans. The 'as-built' inconsistencies are proposed to be regularised by a building information certificate (**BIC**). The yet to be constructed elements of DA 254/2020/A are to be approved by a separate development application (**DA**). The DA and BIC Applications have been concurrently lodged. In addition to seeking approval for the yet to be constructed elements of the existing building, the DA seeks approval for use of the dwelling. The proposed use is residential.
2. The constructed basement, being the subject of the BIC application includes a large storage area of approximately 143 m². The DA seeks approval for use of the basement storage area for storage purposes. Specifically, the basement storage area is proposed to house a large collection of religious and cultural artifacts.
3. Given that the storage area is situated within the basement, it is excluded from gross floor area pursuant to paragraph (e)(i) of the definition of "gross floor area" contained within the definition of the same contained within Canterbury Bankstown Local Environmental Plan 2023 (**CLEP 2023**).
4. The Statement of Environmental Effects accompanying the DA provides an analysis of the definition of "basement". The definition of basement does not specify a positional relationship between a basement and the level above, except that the basement is beneath that level (i.e. there is no positional specification to indicate that the basement must be vertically beneath the ground level).
5. It is further concluded within the Statement of Environmental Effects that no part of the basement will be used for habitable purposes and that areas which are not storage are otherwise excluded from gross floor area as manoeuvring area, parking to meet the requirements of the consent authority, or access to it.
6. For the above reasons, it is the assessment conclusion of this Practice that the whole of the constructed basement is excluded from gross floor area calculations. If that is correct, then the combination of building works approved by the BIC and the DA will comply with the floor space ratio development standard contained within cl. 4.4 of CBLEP 2023.
7. However, if HDC Planning's assessment conclusions relevant to the definition of basement, or exclusions from calculable gross floor area are not accepted, then then the first floor building works component of the DA, when added to the constructed basement, will result in the completed dwelling exceeding the floor space ratio.
8. Under that scenario, there would be no power for the consent authority to approve the proposed development unless the development application was accompanied by a written request for variation to a development standard made pursuant to clause 4.6 of CLEP 2023.

9. This report has been prepared for that purpose. Its applicability is contingent on it first being determined that the gross floor area calculations contained within the Statement of Environmental Effects are not accepted. If it is determined that those gross floor area calculations are accepted, then this Report is otiose and should be excluded from the list of documents relied on for the attainment of development consent, including if that list is incorporated into conditions of consent.

1 Clause 4.6 Request for Variation

1.1 STATUTORY CONTEXT

10. Clause 4.6 of CLEP 2023 allows for variation to development standards. Components of Clause 4.6 relevant to the preparation of a Request for Variation are:
- (1) The objectives of this clause are as follows—*
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
 - (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
 - (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*
 - (4) The consent authority must keep a record of its assessment carried out under subclause (3).*
 - (5) (Repealed)*

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(ba) clause 4.4, to the extent that it applies to land in Zone B4 that has a maximum floor space ratio of 3:1,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 6.27.

11. The subject site is zoned R2 – Low Density Residential such that the exclusion under cl. 4.6(8)(ba) does not apply. The subject site is not within an area to which subclause (6) applies. Therefore, a request to vary the development standard may be made by the applicant.

1.2 WHAT IS THE NAME OF THE ENVIRONMENTAL PLANNING INSTRUMENT THAT APPLIES TO THE LAND?

12. Canterbury Bankstown Local Environmental Plan 2023

1.3 WHAT IS THE ZONING OF THE LAND?

13. The subject site is zoned R2 – Low Density Residential.

1.4 WHAT ARE THE OBJECTIVES OF THE ZONE?

14. The objectives of the R2 – Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To allow for certain non-residential uses that are compatible with residential uses and do not adversely affect the living environment or amenity of the area.*
- *To ensure suitable landscaping in the low density residential environment.*
- *To minimise and manage traffic and parking impacts.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To promote a high standard of urban design and local amenity.*

15. Consistency of the proposed development with the zone objectives is discussed at Section 3.4 of this Report.

1.5 WHAT IS THE DEVELOPMENT STANDARD BEING VARIED?

The subject Request for Variation relates to the floor space ratio development standard pursuant to clause 4.4 of the CLEP 2023. The proposed development seeks variation to the 0.5: 1 FSR development standard.

1.6 WHAT ARE THE OBJECTIVES OF THE DEVELOPMENT STANDARD?

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

(a) to establish the bulk and maximum density of development consistent with the character, amenity and capacity of the area in which the development will be located,

(b) to ensure the bulk of non-residential development in or adjoining a residential zone is compatible with the prevailing suburban character and amenity of the residential zone,

(c) to encourage lot consolidations in commercial centres to facilitate higher quality built form and urban design outcomes,

(d) to establish the maximum floor space available for development, taking into account the availability of infrastructure and the generation of vehicular and pedestrian traffic,

(e) to provide a suitable balance between landscaping and built form in residential areas.

16. It will be demonstrated in Sections 2 and 3 of this Report that the proposed development achieves and is consistent with the objectives of clause 4.4 of CBLEP 2023, despite the proposed variation to the floor space ratio.

1.7 WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

17. By reference to the floor space ratio map, clause 4.4 prescribes a maximum floor space ratio of 0.5:1.

1.8 WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE DEVELOPMENT APPLICATION?

18. If that part of the basement which projects under the ground floor alfresco area is calculated as gross floor area, then the combination of the BIC and DA will deliver a total of 865.1 m² GFA resulting in a FSR of 0.592:1.

1.9 WHAT IS THE PERCENTAGE VARIATION BETWEEN THE PROPOSAL AND THE ENVIRONMENTAL PLANNING INSTRUMENT?

19. The proposed extent of variation to the FSR development standard 0.59:1 or, 142.3 m². In GFA terms, this represents a 19.69% variation to the development standard.
20. Whilst the NSW Department of Planning and Environment includes a requirement to identify the percentage variation in its *Guide to Varying Development Standards*, there is no constraint on the degree to which a consent authority may depart from a numerical standard (GM Architects [2016] NSWLEC 1216 at [26]at [85]).
21. Provided below are examples of Court approved variations to Floor Space Ratio and Height of Buildings development standards. They assist in demonstrating that the degree of exceedance alone is not determinative in the assessment of a Request for Variation to a development standard.
22. We note the following examples:
- (a) In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a floor space ratio variation of 187 per cent.
 - (b) In *Abrams v Council of the City of Sydney* [2019] NSWLEC 1583 the Court granted development consent for a four-storey mixed use development containing 11 residential apartments and a ground floor commercial tenancy with a floor space ratio exceedance of 75 per cent (2.63:1 compared to the permitted 1.5:1).
 - (c) In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386, the Land and Environment Court approved a residential flat building in Randwick with a 55 per cent exceedance of the height limit (at its highest point) and a 20 per cent exceedance of the floor space ratio control.

- (d) In *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 the Court granted development consent to a six-storey shop top housing development with a floor space ratio exceedance of 42 per cent (3.54:1 compared to the permitted 2.5:1).
 - (e) In *Artazan Property Group Pty Ltd v Inner West Council* [2019] NSWLEC 1555 the Court granted development consent for a three storey building containing a hardware and building supplies use with a floor space ratio exceedance of 27 per cent (1.27:1 compared to the permitted 1.0:1).
 - (f) In *Stellar Hurstville Pty Ltd v Georges River Council* [2019] NSWLEC 1143 the Land and Environment Court granted development consent for 12-storey residential tower, on the basis of a clause 4.6 request, with a floor space ratio exceedance of 8.3 per cent.
 - (g) In *88 Bay Street Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1369 the Land and Environment Court granted development consent for a new dwelling house, swimming pool and landscaping at 6 Bayview Hill Road, Rose Bay with a height exceedance of 49 per cent (14.16m compared to the permitted 9.5m).
 - (h) In *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the Court granted a development consent for a residential flat building. In this decision, the Court approve a floor space ratio variation of 85 percent (from 0.65:1 to 1.21:1).
 - (i) In *Amarino Pty Ltd v Liverpool City Council* [2017] NSWLEC 1035 the Land and Environment Court granted development consent to a mixed-use development based on a clause 4.6 request that sought a 38 per cent height exceedance over a 15-metre building height standard.
 - (j) In *Auswin TWT Development Pty Ltd v Council of the City of Sydney* [2015] NSWLEC 1273 the Land and Environment Court granted development consent for a mixed-use development based on a clause 4.6 request that sought a 28 per cent height exceedance over a 22-metre building height standard.
 - (k) In *Season Group Pty Ltd v Council of the City of Sydney* [2016] NSWLEC 1354 the Land and Environment Court granted development consent for a mixed-use development based on a clause 4.6 request that sought a 21 per cent height exceedance over an 18-metre building height standard.
23. Clause 4.6 is a performance-based control, so it is possible (and not uncommon) for large variations to be approved. The key matter for development assessment is whether strict compliance is unreasonable or unnecessary in the circumstances of the case, and whether there are environmental planning grounds that justify to the variation.

1.10 HOW IS COMPLIANCE WITH THE DEVELOPMENT UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?

The matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (21 December 2007) sets out five ways in which strict compliance with a development standard can be demonstrated to be unreasonable or unnecessary in the circumstances of the case.

The 5 ways are:

1. *if the proposed development proffers an alternative means of achieving the [development standard] objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).*
2. *the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *"the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

The Court in *Wehbe*, also established that it is not necessary to establish all of the ways and that it is sufficient to establish only one way, although if more ways are applicable, then more than one way can be utilised to demonstrate that compliance with the development standard is unreasonable or unnecessary. This clause 4.6 request for a variation addresses the first method, namely that the objectives of clause 4.3 are achieved notwithstanding the non-compliance with the development standard.

Demonstrating that the development achieves the objectives of the development standard involves identification of what are the objectives of the development standard and establishing that those objectives are in fact achieved.

2 Reasons for Variation

2.1 COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR BECAUSE THE OBJECTIVES OF THE DEVELOPMENT STANDARD ARE ACHIEVED NOTWITHSTANDING NON-COMPLIANCE WITH THE STANDARD

24. The objectives of clause 4.4 are listed in Section 1.6 of this Report. Of those, Objective (c) is not relevant. The following subsections demonstrate that each of the remaining objectives are satisfied notwithstanding the numerical non-compliance with the floor space ratio development standard.

2.1.1 *Consistence with Objective (a) of Clause 4.4*

25. Objective (a) of clause 4.4 seeks to ensure that development bulk and density are consistent with the character of the area.
26. Compared with the originally approved development, the current proposal involves the following substantive differences relative to building volume:
- The basement is larger.
 - The first floor and balcony project eastwards an additional 784mm.
 - The first floor eastern elevation includes a 3.36m wide by 2.35m deep articulation recess at the centre of the elevation.
27. The perceived bulk from Stacey Street remains essentially unchanged. When perceived from the rear (looking square towards the eastern elevation), the perceived bulk is reduced by the first floor recess. In this regard, the additional first floor depth would have minimal if any appreciable impact on perceived bulk. However, the central recess introduces a noticeable break in the composition of the first floor elevation by reason of which, overall perceived bulk is reduced.
28. Perceived bulk when viewed from the side adjoining boundaries will be marginally greater than the approved development. The overall length of the first floor, to both north and south elevations is 27.62m. In percentage terms, the increase in length is less than 3% and applies to only one of the two proposed levels. The small increase in first floor length will not cause any appreciable difference in bulk. In any event, the proposed length of the northern and southern elevations complies with all relevant building envelope and site planning controls.
29. The perceived bulk from the basement extension beneath the rear alfresco area is nil.
30. Objectively, the above ground floor space is that same as the originally approved development.
31. With regard to density, the additional basement floor space is non-habitable. The reconfigured first floor reduces the number of bedrooms from that which was originally approved. Accordingly, the proposed development results in a net density reduction.

32. For the foregoing reasons, the proposed development satisfies the first objective of clause 4.4.

2.1.2 Consistency with Objective (b) of Clause 4.4

33. Objective (b) of clause 4.4 seeks to ensure that the bulk of new development is compatible with the prevailing suburban character and amenity of the residential zone.
34. The method of assessment of compatibility with prevailing suburban character is set out in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. Paragraph 26 states:

26 For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment ... The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by building height, setbacks and landscaping...

35. The constructed basement has no impact on building height, setbacks or landscaping. With specific regard to landscaping, the basement projection extends beneath the rear alfresco area. Irrespective of the basement projection, the rear alfresco area is not landscaped area.
36. When assessed in accordance with the principles set out in within *Project Venture* the constructed basement does not cause incompatibility with prevailing suburban character.
37. For the same reasons as set out under Objective (a) the proposed above ground floor space cannot be found to be incompatible with prevailing suburban character.
38. Compatibility with surrounding residential amenity is also achieved. Bulk and scale impacts of the proposed development have been addressed above. The additional overshadowing arising from the proposed first floor eastward extension is addressed within the Statement of Environmental Effects. Compared with the originally approved development, overshadowing impacts are negligible.
39. The proposed development is therefore demonstrated to deliver compatibility of bulk and amenity with the surrounding suburban character. Objective (b) of clause 4.4 is satisfied.

2.1.3 Consistency with Objective (d) of Clause 4.4

40. Objective (d) of clause 4.4 is concerned with the carrying capacity of infrastructure and roads. The underlying thesis of the objective is that there is a positive correlation between dwelling size and infrastructure demands, including road infrastructure.
41. While a correlation between residential floor space infrastructure / traffic impacts does exist, it is both non-linear and imprecise. The stronger and more robust correlation is between population and infrastructure / traffic impacts.
42. It is first observed that the basement storage area is non-habitable and cannot attract additional population. Similarly, compared with the originally approved development, the first floor, while having the same gross floor area will accommodate fewer residents.

- 43. That the proposed floor space does not facilitate an increase in dwelling occupancy argues against the development delivering unacceptable infrastructure and traffic impacts.
- 44. The specific proposed use of the basement storage area is also one which does not result in additional infrastructure burden. In the short term, the proposed basement storage can be expected to result in a small number of removalists trucks as the resident's private collection is delivered. Such impacts are short term and inconsequential relative to the operational life of the proposed development.
- 45. For the above reasons, the proposed development is consistent with Objective (d) of clause 4.4.

2.1.4 Consistence with Objective (e) of the Standard

- 46. Objective (e) seeks to achieve a suitable balance between landscaping and built form in residential areas.
- 47. The expanded basement is located beneath the originally approved alfresco area. The alfresco area is not a part of the site which is used for "the growing of plants, trees and grasses" and is therefore not part of the site's landscaped area. Hence, the expanded basement has no impact on landscaping.
- 48. The proposed private open space and landscaped areas comply with or significantly exceed minimum requirements under Chapter 5 of DCP 2023.
- 49. For the above reasons, the proposed development is consistent with Objective (e) of clause 4.4.

2.1.5 Conclusion Regarding Consistency with the Objectives of Clause 4.4

- 50. The preceding subsections have demonstrated that the proposed development will satisfy each of the relevant objectives of clause 4.4 of CLEP 2023. Pursuant to the first of the Wehbe Ways, strict compliance with the development standard is therefore demonstrated to be unreasonable and unnecessary in the circumstances of the case.

3 Environmental Planning Grounds

51. Clause 4.6(3)(b) of CLEP 2023 requires that contravention of the development standard must demonstrate that there are sufficient environmental planning grounds to justify the proposed contravention.
52. The term “environmental planning grounds” is not defined within the statute, however we are aware that the Court has provided some guidance about the meaning of the term.
53. In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be sufficient environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.
54. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.
55. The environmental planning grounds to justify the contravention of the floor space ratio development standard as set out in the following sections in detail. As discussed above, the non-compliant development does not result in any meaningful additional adverse environmental impact either objectively or comparative to the originally approved development. Rather, the proposed built form is consistent with the suburban character of the area and is consistent with (and achieves) the objectives of clause 4.4.
56. The following environmental planning grounds are identified as justifying contravention of the development standard.

3.1 THE NON-COMPLIANT FLOOR SPACE IS NOT VISIBLE FROM ANY LOCATION OTHER THAN WITHIN THE EXPANDED BASEMENT

57. Compared with the approved development on the subject site, the dwelling occupies the same gross floor area and is near identical in built form. The substantive difference is that the proposed basement contains 142.3 m² of gross floor area.
58. As an isolated work, the expanded basement does not offend any town planning controls. The assessment question for the development application is whether the above ground floor space should be 142.3 m² less than proposed so that compliance with clause 4.4 of CLEP 2023 is achieved.
59. If that question was to be answered in the affirmative it would, in effect, be to assess gross floor area which is above ground and gross floor area which is above ground as being substantively the same. However, above ground and below ground floor space are different in several crucial ways.
60. First, below ground floor space has no physical presence on suburban residential character.

61. Second, in this instance, it has no external amenity impacts of any form.
62. Third, the absence of windows makes it both unlikely and unlawful that it will be used for habitable purposes. It therefore has negligible impact on infrastructure load.
63. Last, given that below ground floor space is inherently less suited to residential occupation, equating it with above ground floor space encourages adaption for residential occupation with corresponding inferior amenity. Otherwise, it results in underutilisation of the residential land resource and is an offence to Objective 1.3(c) of the EP&A Act 1979.
64. For these reasons, below ground floor space is not equivalent to above ground floor space. An assessment determination which preferences the truncation of above ground floor space to off-set existing below ground floor space would be a manifestly unreasonable determination.
65. Hence, that the non-compliant gross floor area is below ground level is an environmental planning ground which supports variation to the gross floor area development standard as proposed.

3.2 THE LOCATION OF THE ADDITIONAL BASEMENT FLOOR SPACE DOES NOT HAVE ANY LANDSCAPING IMPACTS.

66. The non-compliant basement floor space is situation under the ground level alfresco area. That area is not used for the growing or trees plants and grasses and is therefore no landscaped area.
67. Accordingly, the non-compliant basement floor space does not affect landscaping, deep soil or aquifer recharge potential.
68. Additionally, the non-compliant basement floor space is not proximate to any trees. Hence, there is no impact on existing landscape elements on the subject site or adjoining properties.

3.3 THE SUBJECT SITE IS A DOUBLE WIDTH LOT WHICH WILL ACCOMMODATE A LARGE DWELLING

69. By comparison with surrounding sites, the subject site is very large. It will accommodate a commensurately large dwelling. The atypical grandeur of the proposed dwelling supports atypical storage opportunity. For the intending resident, the storage area will house a vast personal collection of religious and cultural artifacts.
70. The both the subject site and the proposed dwelling are atypically large by comparison with surrounding properties, is an environmental planning ground which supports the need for atypical storage opportunities.

3.4 THE NON-COMPLIANT BASEMENT FLOOR SPACE DOES NOT OFFEND THE ZONE OBJECTIVES NOR THE PUBLIC INTEREST

71. The objectives of the R2 – Low Density Residential zone are provided within Section 1.4 of this Report. Relevant to those objectives, the non-compliant basement floor space:
- Provides a storage function which is relevant to housing needs, and which does not derogate from or otherwise transform the low density residential environment.

- Does not impede or otherwise effect the delivery of generous landscaping consistent with all applicable planning controls.
 - Other than removalist vehicles at the commencement of use, Does not generate traffic or cause parking impacts.
 - Does not cause any land use conflicts.
 - Has no impact on the standard of design or local amenity appreciable from any above ground location.
72. Given that the proposed development is consistent with all relevant objectives of the R2 – Low Density Residential zone, it follows that the non-compliant basement gross floor area is also consistent with the public interest.

Signed



David Haskew (B.T.P Hons 1)
Senior Partner
HDC Planning

Appendix 3 – DCP Assessment Table

Clause		Guidance	Comment	Consistency
Chapter 1 - Introduction				
1.1		This Chapter provides the name, framework, purpose, structure, definitions and savings provisions of this DCP.	Noted.	YES
Chapter 2 – Site Considerations				
2.1	1.1	Development for the following purposes must submit a site analysis plan.	N/A – the proposed development is not one of the development types specified. Nevertheless, a site analysis plan accompanies the application.	YES
	1.2	The results of the site analysis must illustrate the following principles in the form of a site analysis plan: <ul style="list-style-type: none"> - Context - Scale - Built form - Density - Resource, energy, and water efficiency - Landscape - Amenity - Safety and security - Social dimensions - Aesthetics 	Complies – the site analysis plan is not inconsistent with any of the stated principles as the analysis has remained the same for the proposed development as the approved development application for the subject site.	YES
2.2	Sections 1 to 8	These Sections outline criteria, controls and considerations for development on flood liable land.	N/A – these Sections only apply to flood liable land in the local government area, which the subject site is not.	YES
	Sections 9 to 10	These Sections provide objectives and controls for stormwater and flood management for land in the former Canterbury local government area.	N/A – the subject site is not in the former Canterbury local government area.	YES
2.3	Sections 1 to 3	These Sections provide objectives and development controls for tree management.	N/A – the proposed development does not involve any tree management further to the approved development application.	YES
2.4	Section 1	This Section provides objectives and development controls to manage risk regarding development on land adjacent to the pipeline corridor.	N/A – the subject site is not adjacent to the pipeline corridor.	YES
Chapter 3 – General Requirements				
3.1	Section 1	Provides an introduction to the following sections and general objectives.	Complies – the proposed development is not inconsistent with the relevant objectives.	YES
Development Engineering Standards	2.1	Vehicular footway crossing design and construction	Complies – the proposed development involves no change to the vehicular footway crossing further to the approved development application.	YES

Clause	Guidance	Comment	Consistency
2.2	Vehicular footway crossing design criteria	Complies – the proposed development involves no change to the vehicular footway crossing further to the approved development application.	YES
2.3	Internal driveway requirements The on-site driveway layout must be designed so that a car may be able to access and exit all required car spaces in one motion. In addition, a required car parking space must be located so as to be outside and clear of any vehicular manoeuvring area or right of carriage way.	Complies – the proposed development improves the internal driveway of the approved development. The access to the car parking spaces is improved and provides adequate space outside the internal vehicle manoeuvring area.	YES
2.4	Sight distance requirements	Complies – the proposed development involves no change to the sight distances beyond the approved development application.	YES
Section 3	This Section provides objectives and development controls for stormwater drainage systems.	N/A – the proposed development involves no significant change to the stormwater drainage system of the approved development application beyond the relocation of the rainwater tanks.	YES
Section 4	This Section provides objectives and development controls for on-site detention systems.	N/A – the proposed development does not involve an on-site detention system.	YES
3.2 Parking	Section 1 Provides an introduction to the following sections and general objectives.	Complies – the proposed development is not inconsistent with the relevant objectives.	YES
	2.1 Development must use the Off-Street Parking Schedule to calculate the amount of car, bicycle and service vehicle parking spaces that are required on the site.	Noted. The required car parking has been determined and provided on-site.	YES
	2.2 In calculating the total number of car parking spaces required for development...	N/A – the land use of the proposed development does not require calculation of car parking spaces; it is fixed at 2.	YES
	2.3 Development comprising more than one land use must provide the combined parking requirement based on the individual rates of parking for each land use identified in the Off-Street Parking Schedule.	N/A – the proposed development does not involve more than one land use.	YES
	2.4 Car parking (and associated space such as access aisles) in excess of the Off-Street Parking Schedule will be counted as gross floor area.	N/A – this control is inconsistent with the definition of gross floor area set out in the <i>Canterbury-Bankstown Local Environmental Plan 2023</i> and interpreted in NSW Land and Environment Court decisions. Accordingly, under section 3.43(5)(b) of the <i>Environmental Planning and Assessment Act 1979</i> , this DCP control has no effect as it is inconsistent or incompatible with a provision of an environmental planning instrument. Further, no guidance is given for determining an appropriate area for access aisles within this DCP control.	YES

Clause	Guidance	Comment	Consistency
2.5	Development not included in the Off-Street Parking Schedule must submit a parking study for Council's consideration.	N/A – the proposed development does not involve development not included in the Off-Street Parking Schedule.	YES
2.6	The Off-Street Parking Schedule does not apply to changes of uses...	N/A – the proposed development does not involve a change of use.	YES
2.7	Accessible off-street parking rates	N/A – the proposed development is not a specified development type under this control.	YES
2.8 – 2.10	Monetary contributions in lieu of providing off-street parking spaces	N/A – not relevant to the proposed development.	YES
3.1	Development must not locate entries to car parking or delivery areas: (a) close to intersections and signalised junctions. (b) on crests or curves. (c) where adequate sight distance is not available. (d) opposite parking entries of other buildings that generate a large amount of traffic (unless separated by a raised median island). (e) where right turning traffic entering may obstruct through traffic. (f) where vehicles entering might interfere with operations of bus stops, taxi ranks, loading zones or pedestrian crossings; or (g) where there are obstructions which may prevent drivers from having a clear view of pedestrians and vehicles.	N/A – the proposed development does not involve changes to the car parking entry location beyond the approved development application.	YES
3.2	Parking areas for people with disabilities should be close to an entrance to development. Access from the parking area to the development should be by ramps or lifts where there are separate levels.	Complies – the proposed development improves the access from the parking area to the dwelling with the extension of the lift down to the basement.	YES
3.3	Where above ground parking is the only solution possible, locate to the rear of buildings.	N/A – above ground parking is not proposed.	YES
3.4 – 3.7	Alternate parking arrangements	N/A – these controls are not necessary to the proposed development.	YES
3.8 – 3.11	Access driveway width and design	N/A – the proposed development does not involve changes to the access driveway design further to the approved development application.	YES
3.12	Minimum headroom dimensions	N/A – the proposed development does not involve changes to the headroom dimensions of the approved development application.	YES
3.13 – 3.17	Loading and unloading facilities	N/A – these controls relate to loading and unloading facilities for commercial/retail development, which is not	YES

Clause	Guidance	Comment	Consistency
		relevant to the proposed development.	
3.18	Sloping ramps from car parks, garages and other communal areas are to have at least one full car length of level driveway before they intersect pavements and carriageways.	Complies.	YES
3.19	For all development, adequate sight distance must be provided for vehicles exiting driveways.	N/A – the proposed development does not involve any changes to the sight distance from the approved development application.	YES
3.20	Parking areas should be designed so that through-traffic is excluded, and pedestrian entrances and exits are separate from vehicular entrances and exits.	Complies – the pedestrian entrances and exits of the proposed development are designed to be separated from vehicular entrances and exits.	YES
3.21	Lifts and stair lobbies should be prominently marked to help users find them and to increase personal security.	Complies.	YES
3.22	In split-level/multi-level car parks...	N/A – not relevant to the proposed development.	YES
3.23 – 3.24	Car wash bay	N/A – the proposed development does not involve a car wash bay.	YES
3.25 – 3.29	Bicycle parking	N/A – the proposed development does not involve bicycle parking.	YES
3.30 – 3.32	Visitor parking	N/A – the proposed development does not involve visitor parking	
3.33	Provide ventilation to basement parking. Location and details of mechanical ventilation design must be outlined in applications to Council.	N/A – the proposed development does not involve changes to the ventilation of the basement further to the approved development application.	YES
3.34	Design and integrate basement parking so as not to accentuate the scale or bulk of a building or detract from the streetscape or front setback character.	Complies – the basement design of the proposed development is within the building footprint and so does not accentuate the bulk and scale of the development. Changes to the basement design are not visible from the street and so do not detract from the streetscape or front setback character.	YES
3.35	New vehicular access to shop top housing is not permitted from...	N/A – not relevant to the proposed development.	YES
3.36	Vehicular access should be via secondary streets, rear lanes or internal driveways where possible.	Complies – the vehicular access to the basement parking of the proposed development is within an internal driveway.	YES
3.37	Provide secure bicycle parking at basement level...	N/A – no bicycle parking is required or involved for the proposed development.	YES

Clause		Guidance	Comment	Consistency
3.38		Keep all loading docks, parking areas and driveways clear of goods and do not use for storage, including garbage storage, so that free movement is available at all times.	Complies – the proposed development represents an improvement in this regard. By providing more storage areas within the basement, free movement is freely enabled in the parking areas and driveways.	YES
3.39		Locate and design so that impacts such as noise, exhaust fumes and headlight glare, are minimised on adjoining residential uses or residential zoned land.	Complies.	YES
3.40		Optimise opportunities for deep soil, active street frontages, and good streetscape design, and minimise loss of street parking.	Complies – the proposed development to the basement does not compromise the achievement of deep soil area, does not alter the streetscape design of the approved development application and does not impact street parking.	YES
3.41		In shop top housing development...	N/A – not relevant to the proposed development.	YES
3.42 – 3.47		At-grade parking	N/A – these controls apply to at-grade parking, which is not involved in the proposed development.	YES
3.48 – 3.49		Electric vehicle charging equipment	N/A – the proposed development does not involve electric vehicle charging equipment.	YES
Chapter 4 – Heritage				
4.1 – 4.4		This Chapter applies controls to heritage items, heritage conservation areas, and development in the vicinity of places of heritage significance.	N/A – this Chapter is not relevant to the proposed development.	YES
Chapter 5 – Residential Accommodation				
5.1	Section 1	Provides an introduction to the following sections and general objectives as well as desired character of residential areas.	Complies – the proposed development is consistent with the relevant objectives and the relevant character statement.	YES
Former Bankstown LGA	2.1 – 2.2	Storey limit (not including basements)	N/A – the proposed development involves no change to the storeys of the approved development application.	YES
	2.3 – 2.4	Fill	N/A – the proposed development involves no change to the fill levels of the approved development application.	YES
	2.5	The erection of dwelling houses is prohibited within 9m of an existing animal boarding or training establishment.	N/A – the subject site is not within 9m of an existing animal boarding or training establishment.	YES
	2.6	The minimum setback for a building wall to the primary street frontage is: (a) 5.5m for the first storey (i.e. the ground floor); and (b) 6.5m for the second storey.	Complies.	YES
	2.7	The minimum setback to the secondary street frontage is...	N/A – the subject site does not have a secondary street frontage.	YES

Clause	Guidance	Comment	Consistency
2.8	For the portion of the building wall that has a wall height less than or equal to 7m, the minimum setback to the side boundary of the site is 0.9m.	Complies.	YES
2.9	For the portion of the building wall that has a wall height greater than 7m, the minimum setback to the side boundary of the site is 1.5m.	Complies.	YES
2.10	The basement level must not project beyond the ground floor perimeter of the dwelling house. For the purposes of this clause, the ground floor perimeter includes the front porch.	See BIC Application and Report	NO
2.11	Dwelling houses must provide a minimum 80m ² of private open space behind the front building line. This may be in the form of a single area, or a sum of areas provided the minimum width of each area is 5m throughout.	Complies – the proposed development does not compromise the achievement of compliance with this control for the dwelling house.	YES
2.12 – 2.15	Access to sunlight	N/A – the proposed development does not involve impacts to sun access beyond that of the approved development application.	YES
2.16 – 2.19	Visual privacy	N/A – the proposed development does not involve impacts to the visual privacy beyond that of the approved development application.	YES
2.20 – 2.23	Building design	N/A – the proposed development does not involve changes to the building design that would compromise compliance with these controls.	YES
2.24	Development on land bounded by Birdwood Road, Bellevue Avenue and Rex Road in Georges Hall...	N/A – the subject site is not nominated in this control.	YES
2.25	Development must locate the car parking spaces behind the front building line with at least one covered car parking space for weather protection.	Complies – the car parking spaces are located in the basement.	YES
2.26	Despite clause 2.25...	N/A – not relevant to the proposed development.	YES
2.27	Where development proposes a garage with up to two car parking spaces facing the street, Council must ensure the garage architecturally integrates with the development and does not dominate the street façade.	Complies – the proposed development involves no change to the architectural integration of the garage from the approved development application.	YES
2.28	Where development proposes a garage with more than two car parking spaces...	N/A – the proposed development does not involve a garage with more than two car parking spaces.	YES
2.29 – 2.30	Landscape	N/A – the proposed development does not involve the removal of significant trees, and the landscaped minimums are complied with.	YES
Section 3	Secondary Dwellings	N/A	
Section 4	Dual Occupancies	N/A	
Section 5	Semi-detached Dwellings	N/A	
Section 6	Attached Dwellings	N/A	

Clause	Guidance	Comment	Consistency
Section 7	Multi Dwelling Housing and Multi Dwelling Housing (Terraces)	N/A	
Section 8	Residential Flat Buildings and Shop Top Housing in Residential Zones	N/A	
Section 9	Boarding Houses and Co-living Housing	N/A	
Section 10	Group Homes	N/A	
Section 11	Liveable Housing	N/A	
Section 12	Ancillary Development (Outbuildings)	N/A	
Section 13	Ancillary Development (Outdoor Structures)	N/A	
Section 14	Site Facilities	N/A	
5.2 Former Canterbury LGA	Provides objectives and controls applying to residential accommodation within the former Canterbury local government area.	N/A – the subject site of the proposed development is not within the former Canterbury local government area.	YES

Other Chapters Not Relevant