

STATEMENT OF ENVIRONMENTAL EFFECTS

Construction of two a storey house with basement and a swimming pool with Cabana.



PERSPECTIVE VIEW OF THE PROPOSED DEVELOPMENT

LOT 8 DP 20665
12 Bykool Avenue
Kingsgrove, NSW 2208
Date: 19 January 2026

Table of Contents

<u>1. INTRODUCTION</u>	<u>3</u>
<u>2. SITE AND SURROUNDS</u>	<u>3</u>
<u>3. PROPOSAL</u>	<u>8</u>
<u>4. SECTION 4.15 EVALUATION</u>	<u>11</u>
<u>4.1. PROVISIONS OF RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS (CLAUSE 4.15(1)(A)(I)).....</u>	<u>12</u>
STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021	12
STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2022.....	13
STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021	13
STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021	14
<u>4.1.2 CANTERBURY-BANKSTOWN LOCAL ENVIRONMENTAL PLAN 2023.....</u>	<u>14</u>
PART 2 PERMITTED OR PROHIBITED DEVELOPMENT	15
PART 4 PRINCIPAL DEVELOPMENT STANDARDS	15
PART 5 MISCELLANEOUS PROVISIONS	16
PART 6 ADDITIONAL LOCAL PROVISIONS	17
<u>4.1.3 CANTERBURY-BANKSTOWN DEVELOPMENT CONTROL PLAN 2023.....</u>	<u>19</u>
REQUIREMENTS APPLYING TO ALL TYPES OF DEVELOPMENT	19
PARKING REQUIREMENTS	19
RESIDENTIAL ACCOMMODATION (FORMER CANTERBURY LGA)	22
<u>4.2 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4,</u>	<u>35</u>
<u>5. CONCLUSION</u>	<u>36</u>
<u>CLAUSE 4.6 REQUEST FOR VARIATION</u>	<u>37</u>

1. INTRODUCTION

This statement of environmental effects has been prepared by Ehup Pty Ltd to accompany a development application to the City of Canterbury Bankstown Council for the demolition of all existing structures, construction of a new double storey dwelling with basement, swimming pool and cabana at 12 Bykool Avenue Kingsgrove NSW 2208. The application is being lodged, pursuant to Section 4.12 of the *Environmental Planning and Assessment Act 1979*.

The proposal has been designed to achieve the relevant provisions of Canterbury-Bankstown Local Environmental Plan 2023, and Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

This Statement of Environmental Effects provides the following:

- Description of the site and surrounding development
- Description of the proposed development; and
- Assessment of the proposal in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*, Canterbury-Bankstown Local Environmental Plan 2023 and Canterbury-Bankstown Development Control Plan 2023.

This statement should be read in conjunction with the following documentation:

- Architectural drawings by Natek Pty Ltd
- Survey plans by NSW Land Services
- Stormwater plan by Natek Pty Ltd

2. SITE AND SURROUNDS

The subject site is located on Bykool Avenue and is commonly known as 12 Bykool Avenue, Kingsgrove NSW 2208, legally described as Lot 8 DP 22665. The allotment is rectangular in shape, with a primary frontage of 12.79 metres to Bykool Avenue (southwest) and a rear boundary of 12.79 metres, with a depth of 40.97 metres. The total site area is 524.3 m² (by calculation).

The site is relatively flat, with a gentle fall from RL 52.62 at the rear to RL 52.18 at the front, representing a total fall of 0.44 metres over the site depth. This equates to an average gradient of approximately 1.07%, which is generally favourable for development and site drainage.

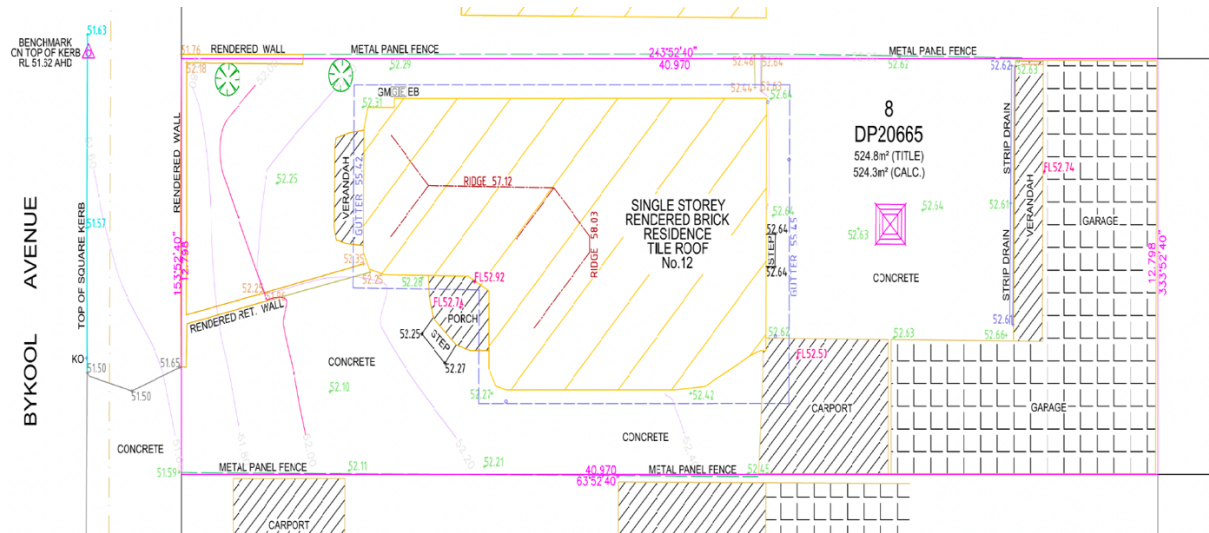


Figure 1: Depicts Survey Plan



Figure 2: Ariel image, Source: Six Map



Figure 3: Location of the site, six map.

The site presently contains a single storey dwelling house and driveway access to a detached garage from Bykool Avenue. The existing dwelling house, ancillary structures and driveway access are to be demolished under this application. Residential development within Bykool Avenue is not defined by a single architectural style but instead ranges from original dwellings to more contemporary developments. The past few years have seen many new homes being constructed in Kingsgrove and older dwellings undergoing extensive renovations. Future residential development in the locality is to preserve and enhance the landscape setting of the area and achieve compatibility with the established low to high density residential characteristic. The site is within R3 Medium Density Residential under the Canterbury-Bankstown Local Environmental Plan 2023. The site has been historically used as residential dwelling.



Figure 4: view of the site from Bykool Avenue



Figure 5: view of the adjoining properties to the North



Figure 6: Neighbouring properties to the South



Figure 7: View of opposite properties to the North



Figure 8: view of opposite neighbouring properties to the North

The site is located within close proximity to Kingsgrove Train Station, providing regular services on the T8 Airport & South Line for convenient travel to the Sydney CBD and surrounding suburbs. Kingsgrove Public School and Kingsgrove High School are both situated within approximately 1 kilometre of the property, offering accessible education options for local families. A bus stop with regular services to neighbouring suburbs and major centres, including Bexley North, Beverly Hills, and Hurstville, is located within a short walking distance of the site.

The property is also conveniently positioned near a variety of retail and service facilities, with Kingsgrove Shopping Village located approximately 650 metres away, offering supermarkets, specialty stores, cafes, and essential services. Beverly Grove Park and Kingsgrove Avenue Reserve are nearby, providing public open space for recreation and community use.

The site is not identified as an item of heritage, nor is it located within a heritage conservation area. The subject site is not within the immediate vicinity of heritage-listed items.

The site is NOT within flood planning area.

3. PROPOSAL

The proposed development seeks to undertake the following:

1. Demolition of all existing structures
2. Construction of a double storey dwelling with basement, swimming pool and cabana

The proposed dwelling is a modern style home with 6 bedrooms. The master bedroom and 4 other bedrooms are located on the first floor as shown on the plans. The kitchen, laundry, living room, lounge, bathroom, dining room and study rooms are all included on the ground floor. The development has been designed with consideration of minimising impacts to neighbours and maximise utility and amenity to future dwellings and occupants.

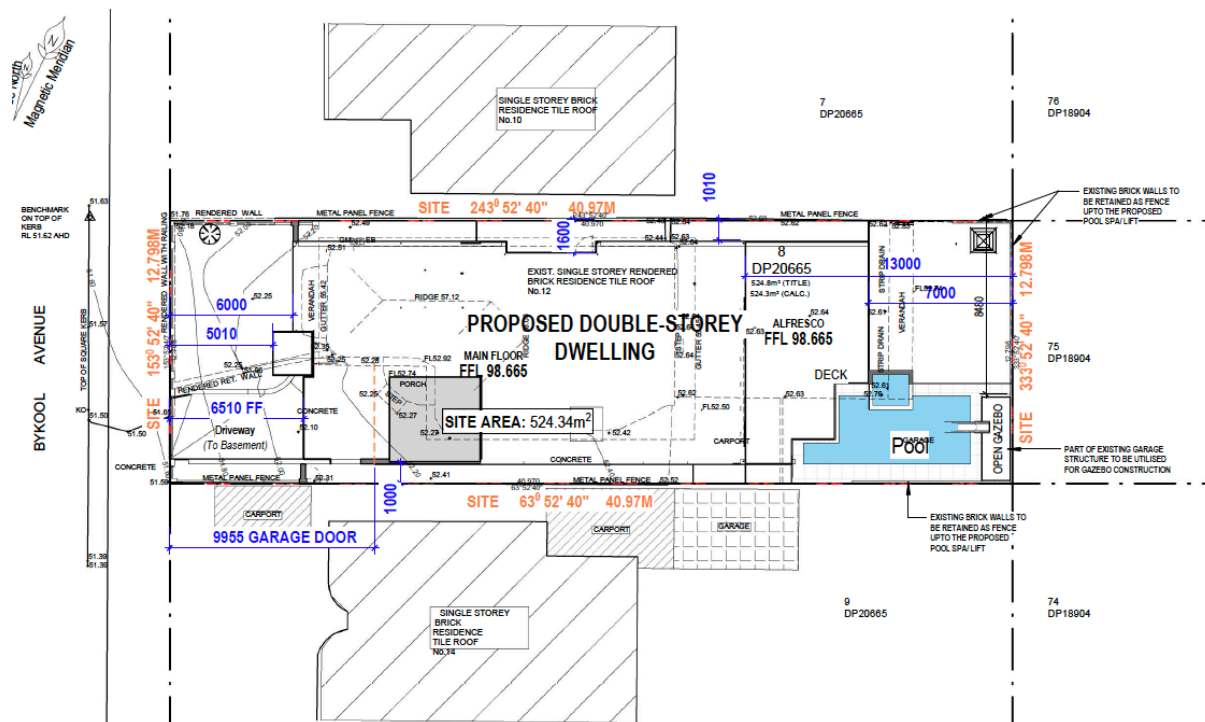


Figure 9: Site Plan

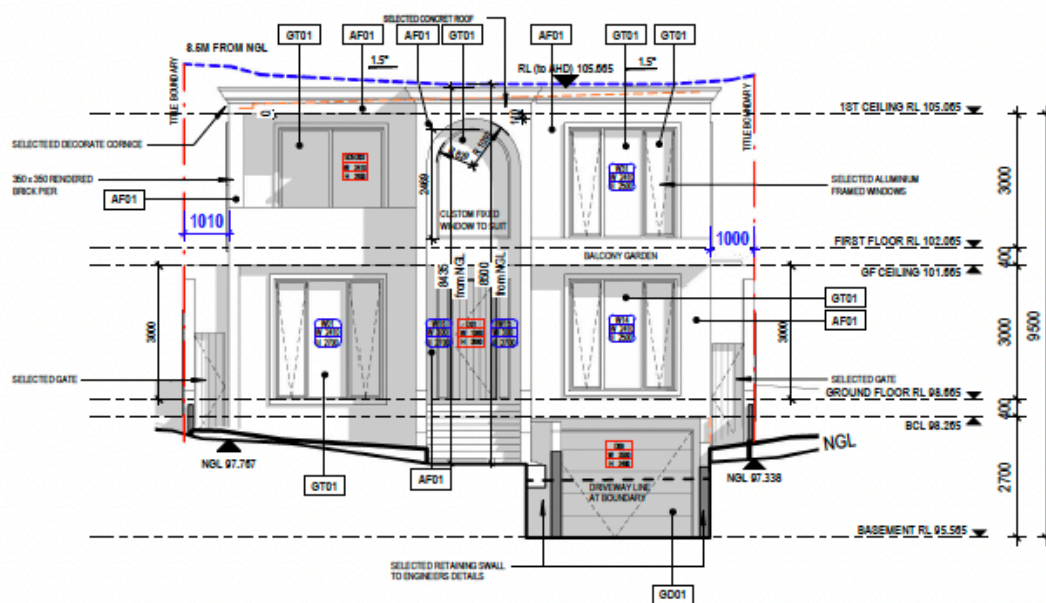


Figure 10: West elevation

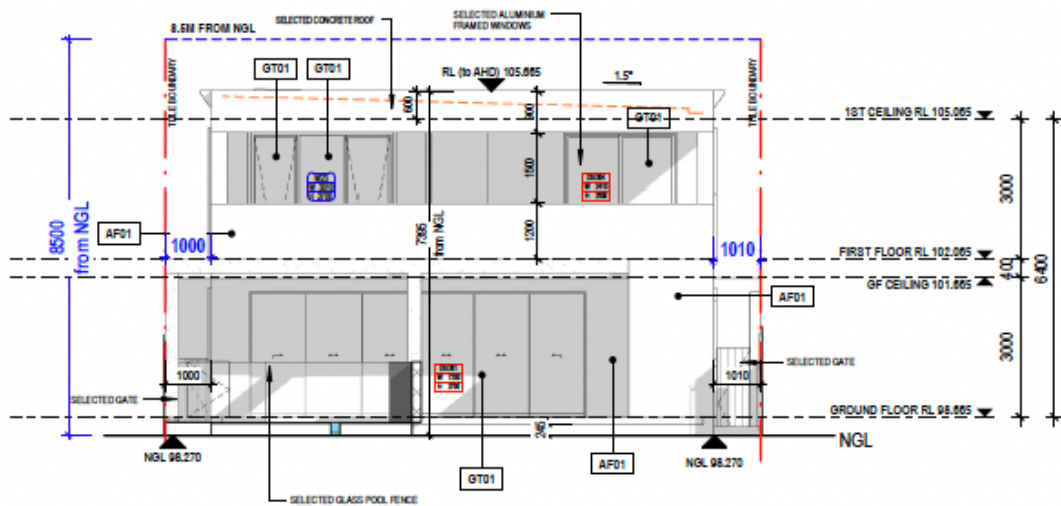


Figure 11: East elevation

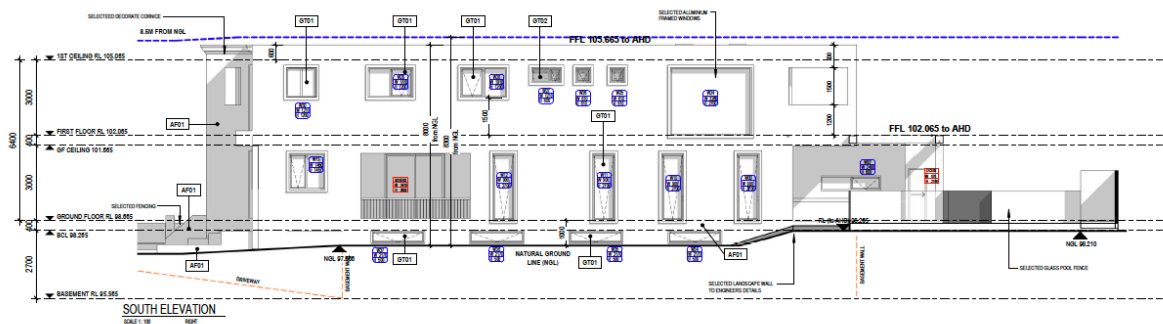


Figure 14: South elevation

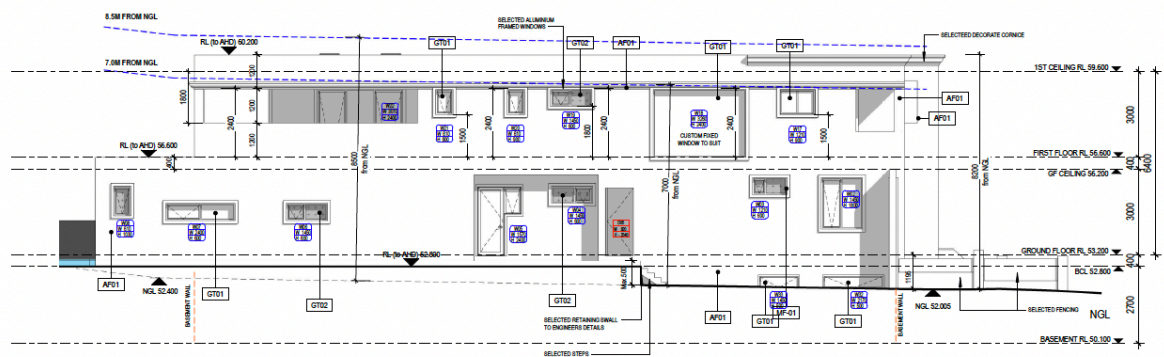


Figure 13: North elevation

4. SECTION 4.15 EVALUATION

Section 4.15 of the Environmental Planning and Assessment Act 1979 requires the consideration in the table below.

Clause		Assessment
<u>Section 4.15(1) Matters for consideration—general</u> <i>In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:</i>		
(a) the provision of:	I. any environmental planning instrument	An assessment has been provided against SEPPs and Canterbury-Bankstown Local Environmental Plan 2023. in part 4.1. of this SEE.
	II. 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	The proposal has been considered in relation to clause 4.15 (1) (ii) in this SEE
	III. any development control plan and (iia). 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, and	The development proposal has been considered against the planning objectives and provisions of the Canterbury-Bankstown Development Control Plan 2023, and no grounds for concern have been identified.
	IV. the regulations (to the extent that they prescribe matters for the purposes of this paragraph),	Considered
(b) the likely impacts of that development, including environmental impacts on both		The proposed development does not have any likely impacts.

<i>the natural and built environments, and social and economic impacts in the locality,</i>	
<i>(c) the suitability of the site for the development</i>	The land is appropriately zoned to permit the dwelling house, and the development meets the objectives of the Canterbury-Bankstown Local Environmental Plan 2023.
<i>(d) any submissions made in accordance with this Act or the regulations.</i>	It is envisaged that any submissions made in relation to the proposal will be appropriately assessed by Council.
<i>(e) The public interest.</i>	The public interest would be served by approval of this development. The proposal includes positive economic, social and environmental impacts by creating construction jobs and better meeting needs of the building residents. It is considered that the development is consistent with Council's policies and does not result in any unreasonable impacts. Under the circumstances of the case, it is considered that the development is acceptable and should be supported.

4.1. Provisions of Relevant Environmental Planning Instruments (clause 4.15(1)(a)(i))

4.1.1 Considerable State Environmental Planning Policies

State Environmental Planning Policy	Comment
State Environmental Planning Policy (Biodiversity and Conservation) 2021 This SEPP contains: <i>planning rules and controls for the clearing of native vegetation in NSW on land zoned for urban and environmental purposes that is not linked to a development application.</i>	<u>Chapter 2 Vegetation in Non-rural Areas</u> Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (the Biodiversity and Conservation SEPP) contains planning controls for the removal of vegetation on the land within non-rural areas of the State. The policy aims to protect the biodiversity values of trees and vegetation in non-rural areas and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. The site does not have trees.

- <i>the land use planning and assessment framework for koala habitat.</i> - <i>provisions seeking to protect and preserve bushland within public open space zones and reservations.</i> - <i>provisions to support the water quality objectives for the Sydney drinking water catchment.</i> - <i>provisions to protect the environment of the Hawkesbury-Nepean River system.</i> - <i>provisions to manage and improve environmental outcomes for Sydney Harbour and its tributaries.</i> - <i>provisions to manage and promote integrated catchment management policies along the Georges River and its tributaries.</i> -	<u>Chapter 6 Water Catchment</u> Water Catchments aims to ensure the impact of urban development on regulated catchments, including the Sydney Drinking Water Catchment, Sydney Harbour Catchment, Georges River Catchment, and the Hawkesbury Nepean River. The Site is not located within the catchment as such the provisions of this chapter does not apply.
State Environmental Planning Policy (Sustainable buildings) 2022	The State Environmental Planning Policy (Sustainable Buildings) 2022 requires all residential development in New South Wales to meet minimum standards for energy efficiency, water efficiency, and thermal comfort. The proposed development has been assessed against the relevant provisions of the Sustainable Buildings SEPP, with the accompanying BASIX Certificate confirming that the proposal meets the required performance targets in each category
State Environmental Planning Policy (Housing) 2021 This SEPP relates to: - <i>Boarding houses, build-to-rent, seniors, group homes, secondary dwellings, social housing, co-</i>	Not Applicable

<i>living housing, independent living units, dual occupancy, semidetached dwelling and retention of existing affordable housing.</i>	
State Environmental Planning Policy (Resilience and Hazards) 2021 This SEPP contains planning provisions: - <i>for land use planning within the coastal zone, in a manner consistent with the objects of the Coastal Management Act 2016.</i> - <i>to manage hazardous and offensive development.</i> - <i>which provides a state-wide planning framework for the remediation of contaminated land and to minimise the risk of harm.</i>	Chapter 4 of the Resilience and Hazards SEPP outlines requirements for managing contaminated land. It states that a contamination assessment must be carried out where there is reason to suspect land may be affected. In this case, it is understood that a contamination assessment was conducted during the original subdivision process. A review of the site's historical use found no evidence of previous activities typically associated with contamination, such as landfilling, mining operations, sheep dips, chemical mixing sheds, or industrial use. Based on this review, the site is considered to have a low risk of contamination and is regarded as suitable for the proposed development, consistent with the requirements of Chapter 4 of the policy.

4.1.2 Canterbury-Bankstown Local Environmental Plan 2023

Zone (Clause 2.2)	Objectives	Comply
R3 Medium Density Residential.	• <i>To provide for the housing needs of the community within a medium density residential environment.</i> • <i>To provide a variety of housing types within a medium density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> • <i>To allow for certain non-residential uses that are compatible with residential uses and do not adversely affect the living environment or amenity of the area.</i>	The proposed development fulfills the R3 zone's objectives by contributing to the community's housing needs through the delivery of a modern, well-designed residence that complements the established character of the area. The design supports medium density living while maintaining a high standard of urban design, incorporating appropriate setbacks, landscaping, and articulation to ensure visual interest and amenity. Its location within walking distance of Kingsgrove Train Station and

	• To allow for development that provides a suitable visual transition between high density residential areas and low density residential areas. • To ensure suitable landscaping in the medium density residential environment. • To minimise conflict between land uses within this zone and land uses within adjoining zones. • To allow for increased residential density in accessible locations to maximise public transport patronage and encourage walking and cycling. • To promote a high standard of urban design and local amenity.	local services enhances accessibility and encourages active transport, while the residential use remains compatible with surrounding properties, minimising potential land use conflicts. The proposal provides an appropriate transition in scale and built form between surrounding residential areas, ensuring it integrates harmoniously within its context
Part 2 Permitted or prohibited development		
Relevant Clause	Control	Comply
Clause 2.2 – Zoning The site is zoned R3 Medium Density Residential.	<i>The proposed development is defined in the plans as an “dwelling house” (as defined under the CBLEP) means a building containing only one dwelling</i>	Yes The proposed “single dwelling” development is permissible in the zone subject to development consent from Council.
2.7 Demolition requires development consent	<i>The demolition of a building or work may be carried out only with development consent.</i>	The proposal involves demolition works which are permissible with consent. In any event it is expected that the consent authority would impose relevant standard DA conditions, as applicable, on any consent to manage impacts which may arise during demolition.
Part 4 Principal Development Standards		
Relevant Clause	Control	Comply
4.1.3 Minimum Subdivision Lot Size.	<i>Minimum subdivision lot size provides that the size of any lot resulting from a subdivision of land is not to be less than the minimum size shown on the Lot Size Map in relation to that land.</i>	Not applicable

4.3 Height of Buildings –8.5m	<i>The clause provides that the height of any building is not to exceed the maximum height on the Height of Buildings Map, which specifies maximum height of 8.5m to the subject site.</i>	A maximum height is achieved to 8.4 and is therefore compliant.
4.3A Height restrictions for certain residential accommodation	<i>This clause identifies a range of residential accommodation forms which must not be higher than 2 storeys, including attached dwelling.</i>	The proposed development is compliant, as it does not exceed a height of two storeys.
4.4 Floor Space Ratio (FSR) – 0.55:1	<i>(2B)(b) for a building used for the purposes of dwelling houses or semi-attached dwellings on land identified as “Area 2” on the Clause Application Map—</i> <i>(ii) for a site area greater than 200m² but less than 600m²—0.55:1,</i> <i>The site is identified as “Area 2” on the Clause Application Map.</i> <i>The subject is 524.3 m² and allowed FSR 0.55:1</i>	0:6:1 proposed Non -Compliance Variation sought, see annexure 1.
4.5 Calculation of floor space ratio and site area		Yes
4.6 Exceptions to development standards	Exceptions for FSR sought under 4.6 clause.	Applicable.
Part 5 Miscellaneous provisions		
Relevant Clause	Control	Comply
5.10 Heritage conservation		The site is not identified as a heritage item nor located within a heritage conservation area nor are any located in the direct vicinity of the site.
5.11 Bush fire hazard reduction		This property is not affected by bush fire.
5.21 Flood Planning		This property is not affected by flood planning.

Part 6 Additional local provisions

Relevant Clause	Control	Comply
6.1 – Acid sulphate soils		The site is not identified as being affected on the Acid Sulfate Soils Map in Canterbury-Bankstown Local Environmental Plan 2023
6.2 - Earthworks		The proposal requires cutting into the natural ground as detail in the cross section and long section of the architectural plan. The largest cut is approximately 2.4m to accommodate basement and swimming pool. Clause 6.2 of the CBLEP 2023 states that development consent is required for any earthworks on the site. The proposed development has been designed to follow the topography and natural features of the land. Excavation across the site is contained wholly within the proposed building envelope to facilitate the basement car parking level, and the ground floor level predominately follows the natural ground level of the land which ultimately minimises the overall bulk and massing of the building when viewed from the streetscape and adjoining properties. The objectives of Clause 6.2 are successfully achieved as follows: a) Proposed excavation is will not have a detrimental impact on environmental functions and processes, neighbouring land uses, cultural or heritage items or features of the surrounding land. The development has been sensitively designed to respond to the natural landform and avoid significant impacts to mature trees and

		vegetation on the site and surrounds that contribute to the scenic quality of the locality. The subject site does not contain any heritage items and is not located within an area of historical significance. The overall development will set a desirable precedence for future works in the area. b) The proposed earthworks are considered to be suitable and necessary in providing a functional and liveable floor plan and basement level, without compromising the quality of the natural environment or the privacy and amenity of adjoining properties. The form and massing of the development, including height and overall bulk and scale, is considered to achieve a uniform integration with the characteristics of the streetscape. The proposed basement car parking configuration will not generate detrimental impacts to the environment. The proposed development scheme is highly compatible with, and sympathetic to, the site conditions and will positively contribute to the visual quality of the streetscape
6.9 Essential Services	Adequate services are available to the site	The site is fully serviced by water, electricity, sewage and stormwater infrastructure and appropriate conditions of consent can be imposed to this effect

4.1.3 Canterbury-Bankstown Development Control Plan 2023

The table below provides detail on the development standards relevant to the current proposal.

Canterbury-Bankstown Development Control Plan 2023			
Clause	Controls	Comment	Comply
Chapter 2	Requirements Applying to all Types of Development		
2.1	Site Analysis	A site analysis plan is not required for dwelling houses. However, a brief site analysis is provided above in Section 2. The proposed new dwelling is consistent with the character of lots in the locality.	Yes
2.2	Flood risk management	The land is NOT subject to flooding.	Yes
2.3	Tree Management <i>2.1 A person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy, lop or otherwise remove a substantial part of any prescribed tree defined in clause 2.3 or carry out excavation and earthworks within the tree protection zone except with a permit from Council and subject to any conditions specified in the permit.</i>	The proposed development does not involve tree removal.	Yes
Chapter 3	Parking Requirements		
3.2	Off-Street Parking Rates <i>Dwelling houses – 2 car spaces</i>	Provided in the basement	Complied
	Access driveway width and design <i>3.8 The location of driveways to properties should allow the shortest, most direct access over the nature strip from the road.</i> <i>3.9 The appropriate driveway width is dependent on the type of parking facility, whether entry and exit points are combined or separate, the frontage</i>	The location of driveways to properties allows the shortest, most direct access over the nature strip from Bykool Avenue.	Yes

road type and the number of parking spaces served by the access facility. 3.10 Driveway widths for existing dwellings and extensions to the existing properties are assessed on their merits. 3.11 For new residential development, necessary clear driveway widths are provided in the following table: <table><tr><td>Driveway width</td><td>Minimum clear width</td></tr><tr><td>One-way</td><td>3m</td></tr><tr><td>Two-way</td><td>5.5</td></tr></table>	Driveway width	Minimum clear width	One-way	3m	Two-way	5.5	3m width driveway provided	
Driveway width	Minimum clear width							
One-way	3m							
Two-way	5.5							
Basement Parking 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. 3.36 Vehicular access should be via secondary streets, rear lanes or internal driveways where possible. 3.37 Provide secure bicycle parking at basement level which is easily accessible from ground level, from apartments and other uses within the development 3.40 Optimise opportunities for deep soil, active street frontages, and good streetscape design, and minimise loss of street parking.	The form and massing of the development, including height and overall bulk and scale, is considered to achieve a uniform integration with the emerging character of the area, with many examples of two storey dwelling developments with basement parking throughout the locality The proposed basement level provides for the on-site car parking requirements of the development only and will not generate detrimental impacts to the environment as the depth of excavation and fill has been minimised as far as practicable. The basement level has minimal projection above natural ground level to ensure that it will not be highly perceivable from the public domain and will be completely screened from adjoining properties. When viewed from the side and rear building elevations, the development will present as a standard two storey building.	Yes						

		No secondary street for the subject site. Bicycle parking is proposed within the basement level. The inclusion of a basement level does not prevent the proposal from meeting the site's deep soil requirements. The overall design is well-articulated and complemented by extensive landscaping within the front, side, and rear setbacks, enhancing visual amenity. A 3m wide driveway at the front boundary is proposed to preserve on-street parking availability on both sides of the street.	
3.3	Waste Management <i>3.3 Development must provide an adequate sized bin storage area behind the front building line to accommodate all allocated bins.</i> <i>3.4 The location of the bin storage area must not adversely impact on the the streetscape, building design or amenity of dwellings.</i> <i>3.5 The location of the bin storage area should ensure this area:</i> <i>(a) is screened or cannot be viewed from the public domain; and</i> <i>(b) is away from windows of habitable rooms to reduce adverse amenity impacts associated with noise, odour and traffic.</i>	A Waste Management Plan is submitted with the application. Provided The bin storage area is proposed to be in the basement. Proposed bin storage area does not adversely impact the streetscape, building design or amenity of the dwelling. Achieved	Yes
3.7	Landscape <i>2.1 New landscaping is to complement the existing street landscaping and improve the quality of the streetscape.</i> <i>2.3 The landscape design is to contribute to and take advantage of the site characteristics.</i>	A Concept Landscape Plan has been submitted with the application. All controls related to landscaping have been taken into consideration.	Yes

	2.7 Development must plant at least one canopy tree for every 12m of front and rear boundary width and: (a) Canopy trees are to be of a minimum 75 litre pot size. (b) Use deciduous trees in small open spaces, such as courtyards, to improve solar access and control of microclimate. (c) Place evergreen trees well away from the building to allow the winter sun access. (d) (e) Select trees that do not inhibit airflow. Provide shade to large hard paved areas using tree species that are tolerant of compacted/deoxygenated soils. 3.1 Development must retain, protect and enhance indigenous/native vegetation and natural site features and incorporate it into the landscape design.		
Chapter 5	Residential Accommodation (Former Canterbury LGA)		
5.2			
2	Dwelling Houses		
2.1	Minimum lot size and frontage- <i>C1 The minimum primary street frontage width for dwelling houses is 15m.</i> <i>C2 Lots must be generally rectangular.</i> <i>C3 Internal and battle-axe blocks and lots with irregular dimensions or shallow depths must satisfy the objectives of the DCP.</i> <i>C4 Nothing in this section prevents Council giving consideration to the erection of a dwelling house on an allotment of land which existed as of 1 January 2013.</i>	The minimum primary street frontage width for dwelling houses is 12.8 m (refer to C4) The site is rectangular	Yes

2.2	Site Coverage – <i>C1 All development must comply with the numerical requirements contained in the table below:</i> <table><tr><th>Site Area</th><th>Maximum area of building footprint</th><th>Maximum floor area of all outbuildings</th><th>Maximum site coverage of all structures on a site</th></tr><tr><td>Up to 449m²</td><td>300m²</td><td>30m²</td><td>60%</td></tr><tr><td>450m² to 599m²</td><td>330m²</td><td>45m²</td><td>50%</td></tr><tr><td>600m² to 899m²</td><td>380m²</td><td>60m²</td><td>40%</td></tr><tr><td>900m² or above</td><td>430m²</td><td>60m²</td><td>40%</td></tr></table> Table 1: Maximum building footprint, floor area of outbuildings and site coverage	Site Area	Maximum area of building footprint	Maximum floor area of all outbuildings	Maximum site coverage of all structures on a site	Up to 449m ²	300m ²	30m ²	60%	450m ² to 599m ²	330m ²	45m ²	50%	600m ² to 899m ²	380m ²	60m ²	40%	900m ² or above	430m ²	60m ²	40%	Maximum area of building foot print proposed 290 m² against 330 m². Maximum floor area of all outbuilding proposed 5.7 m² against 45 m². Maximum site coverage for all structure on site is 50% which is 262 m². 243.3m² (46%) proposed	Complied
Site Area	Maximum area of building footprint	Maximum floor area of all outbuildings	Maximum site coverage of all structures on a site																				
Up to 449m ²	300m ²	30m ²	60%																				
450m ² to 599m ²	330m ²	45m ²	50%																				
600m ² to 899m ²	380m ²	60m ²	40%																				
900m ² or above	430m ²	60m ²	40%																				
2.3	Landscaping <i>C1 Deep soil permeable areas must be provided in accordance with the table below</i> <table><tr><th>Site area</th><th>Minimum deep soil area (% of site area)</th></tr><tr><td>Up to 449m²</td><td>15%</td></tr><tr><td>450m² to 599m²</td><td>20%</td></tr><tr><td>600m² or above</td><td>25%</td></tr></table> <i>C2 Deep soil areas must have a minimum dimension of 2.5m.</i>	Site area	Minimum deep soil area (% of site area)	Up to 449m ²	15%	450m ² to 599m ²	20%	600m ² or above	25%	23.98% which is 125.7 m²	Yes												
Site area	Minimum deep soil area (% of site area)																						
Up to 449m ²	15%																						
450m ² to 599m ²	20%																						
600m ² or above	25%																						
2.4	Layout and orientation <i>C1 Orientate development to maximise solar access and natural lighting, without unduly increasing the building’s heat load.</i> <i>C2 Site the development to avoid casting shadows onto a neighbouring dwelling’s primary living area, private open space and solar cells.</i> <i>C3 Coordinate design for natural ventilation with passive solar design techniques.</i> <i>C4 Site new development and private open space to avoid existing shadows cast from nearby buildings.</i> <i>C5 Site a building to take maximum benefit from cross-breezes and prevailing winds.</i>	The proposed design aligns with these controls by taking advantage of solar access, natural light and cross-ventilation while maintaining comfortable internal conditions. The dwelling is oriented toward the primary street, which supports passive surveillance and strengthens the visual connection with the public domain. The layout and siting avoid unreasonable overshadowing of neighbouring living areas and open space, and respond to prevailing breezes to enhance natural ventilation	Yes																				

	<i>C6 Do not compromise the creation of casual surveillance of the street, communal space and parking areas, through the required orientation.</i>		
2.5	Building Envelope <u>Height</u> <i>C1. Development for the purposes of dwelling houses must not exceed the following numerical requirements:</i> <i>(a) A maximum two storey built form.</i> <i>(b) A maximum external wall height of 7m where the maximum height of buildings standard under the LEP is 8.5m.</i> <i>(c) A maximum external wall height of 8m where the maximum height of building standard under the LEP is 9.5m.</i> <i>(d) standard under the LEP is 9.5m.</i> <i>Finished ground floor level is not to exceed 1m above the natural ground level.</i> <i>Note: Skillion and flat roof forms will be considered on merit.</i>	(a) <i>A external wall height of 7m proposed</i>	Yes
	<u>Basement and sub-floor projection</u> <i>C2. Any part of a basement or sub-floor area that projects greater than 1m above ground level comprises a storey.</i>	Less than 1 meter	Yes
	<u>Basement and sub-floor</u> <i>C5. Dwelling houses may provide basement or subfloor parking where site constraints warrant and it can be demonstrated that there will be no adverse impacts on amenity, streetscape or public domain.</i> <i>C6. Basement and sub-floor parking is only suitable where compliance with Chapter 3.2 of this DCP can be demonstrated.</i>	Chapter 3.2 of DCP satisfied	Yes
2.6	Setbacks <u>Front, side and rear setbacks</u>	C2. Front setback 6 m provided, Side setback 1 m provided, rear setback 7m provided	Yes

<i>C1. Development, including basement and sub-floor areas, fronting a major road must have a minimum front setback of 9m.</i> <i>C2. Development must comply with the minimum front, side and rear setbacks as detailed in the following table</i> <table><tr><th>Setback</th><th>Controls</th></tr><tr><td>Front Setback</td><td> • Minimum setback of 6m or the average of the existing setback of the nearest dwelling house to either side of the site. • Maximum 2m recess for the main entrance from the front building line. </td></tr><tr><td>Side Setbacks</td><td> • Minimum setback of minimum setback of 1m from side boundaries. • Corner lots: minimum setback of 2m from the secondary street frontage (the longer street boundary). </td></tr><tr><td>Rear Setbacks</td><td> • Minimum setback of 6m from the rear boundary. </td></tr></table> Table 4: Dwelling houses with frontages widths of 12.5m or greater	Setback	Controls	Front Setback	• Minimum setback of 6m or the average of the existing setback of the nearest dwelling house to either side of the site. • Maximum 2m recess for the main entrance from the front building line.	Side Setbacks	• Minimum setback of minimum setback of 1m from side boundaries. • Corner lots: minimum setback of 2m from the secondary street frontage (the longer street boundary).	Rear Setbacks	• Minimum setback of 6m from the rear boundary.		
Setback	Controls									
Front Setback	• Minimum setback of 6m or the average of the existing setback of the nearest dwelling house to either side of the site. • Maximum 2m recess for the main entrance from the front building line.									
Side Setbacks	• Minimum setback of minimum setback of 1m from side boundaries. • Corner lots: minimum setback of 2m from the secondary street frontage (the longer street boundary).									
Rear Setbacks	• Minimum setback of 6m from the rear boundary.									
<u>Exceptions and other requirements</u> <i>C3. External walls that enclose rooms, storage areas and/or garages are not to encroach beyond the specified setbacks.</i> <i>C4. For first floor additions, front and side setbacks may match the ground floor wall alignment of the existing dwelling for a depth of 10m or 50% of the length of the facade, whichever is the greater.</i> <i>C5. Minimum setback of 1m from any side or rear boundary for swimming pools and associated terraces. Landscaping shall be provided in the setback area to screen the pool from neighbours.</i> <i>C6. Swimming pools must not be located within any front setback.</i> <i>C7. One garage or carport may be constructed with a nil rear setback for sites that adjoin a rear laneway. The garage or carport must not comprise more than 50% of the rear boundary frontage to a lane and not be wider than 6m.</i> <i>C8. For a residential building that does not have basement parking lightweight carports may extend beyond the required side boundary setback.</i>	C3. Satisfies C4. NA C5. 1m distance achieved. Existing shed structure at the rear boundary will be retained to use as Cabana. C6. Satisfies. C7. NA C8. The development proposed basement parking.	Yes								

<i>C5. Retain and extend prominent elements of the existing roof (such as gables, hips or longitudinal ridges that run parallel to a street boundary).</i> <i>C6. Contemporary roof forms may be acceptable on additions at ground floor level if concealed substantially behind the existing dwelling, and not visible from the street or other public space</i>	C5. NA C6. NA	
<u>Building entries</u> <i>C7. Entries to residential buildings must be clearly identifiable.</i> <i>C8. The front door to a dwelling house may face a side boundary, or may be located beneath a carport, provided it is clearly identified by a porch or awning, and pathways.</i> <i>C9. A minimum of one habitable room must be oriented towards the street to promote positive social interaction and community safety.</i> <i>C10. Sight lines to the street from habitable rooms or entrances must not be obscured by ancillary structures.</i>	C7. Satisfies C8. NA C9. Satisfies C10. Satisfies	Yes
<u>Internal dwelling layout</u> <i>C11. Design interiors to be capable of accommodating the range of furniture that is typical for the purpose of each room.</i> <i>C12. The primary living area and principal bedroom must have a minimum dimension of 3.5m.</i> <i>C13. Secondary bedrooms must have a minimum dimension of 3m.</i> <i>C14. Provide general storage in addition to bedroom wardrobes and kitchen cupboards.</i>	C11. Satisfies C12. Satisfies C13. Satisfies C14. Provided	Yes
<u>Facade treatment</u> <i>C15. Development on corner lots must address both street frontages through façade treatment and articulation of elevations.</i> <i>C16. Use non-reflective materials, do not randomly mix light and dark coloured bricks, and treat publicly accessible wall surfaces with anti-graffiti coating.</i> <i>C17. Facade design should reflect the orientation of the site using elements</i>	C15. NA C16. Taken into consideration C17. Taken into consideration	Yes

<i>such as sun shading devices, light shelves and bay windows.</i> <i>C18. Facades visible from the street should be designed as a series of articulating panels or Elements</i> <i>C19. The width of articulating panels should be consistent with the scale and rhythm characteristic of bungalows.</i> <i>C20. The width of articulating panels shall be in accordance with the numerical requirements below:</i> <table><tr><th>Facade</th><th>Street elevation</th><th>Side elevation</th></tr><tr><td>Width of articulating panels</td><td>4m to 6m</td><td>10m to 15m</td></tr></table> Table 6: Width of articulating panels <i>C21. Avoid long flat walls along street frontages - stagger the wall alignment with a step (not a fin wall of other protruding feature) of at least 0.5m for residential buildings.</i> <i>C22. Vary the height of modules so they are not read as a continuous line on any one street between 2 - 4 storeys, step-back to the middle component and again at the top.</i> <i>C23. Incorporate contrasting elements in the facade - use a harmonious range of high quality materials, finishes and detailing.</i> <i>C24. Screen prominent corners with awnings, balconies, terraces or verandas that project at least 1 m from the general wall alignment.</i>	Facade	Street elevation	Side elevation	Width of articulating panels	4m to 6m	10m to 15m	C18. Satisfies C19. Satisfies C20. 3.9m provided, negligible deviation. C21. Satisfies C22. Satisfies C23. Satisfies C24. Satisfies	
Facade	Street elevation	Side elevation						
Width of articulating panels	4m to 6m	10m to 15m						
<u>Pavilions</u> <i>C25. The top storey of any two-storey dwelling should be designed as a series of connected pavilion elements to minimise scale and bulk.</i> <i>C26. Facades that exceed 25m in length shall be indented to create the appearance of multiple pavilion elements.</i> <i>C27. Pavilion elements shall have a depth between 10-15m.</i> <i>C28. Articulate upper storey pavilions with an additional side boundary setback, and identify by separate roofs.</i>	C25. Complies C26. NA C27. Satisfies C27. Satisfies	Yes						
<u>Windows</u> <i>C29 Large windows should be located at the corners of a building and may be designed as projecting bay-windows.</i>	Satisfies all requirements	Yes						

	<i>C30 Large windows should be screened with blinds, louvres, awnings or pergolas and be draft insulated.</i> <i>C31 Windows must be rectangular.</i> <i>C32 Square, circle and semi-circle windows are acceptable in moderation.</i> <i>C33 Vertical proportioned window openings can include multi-panel windows or multi-panel doors.</i> <i>C34. Windows and openings shall be appropriately located and shaded to reduce summer heat load and maximise sunlight in winter.</i> <i>C35. Dormer windows on buildings in the residential zone do not appear as additional storey must comply with the following design requirements:</i> <i>a) Individual dormers are no wider than 1.5m in width;</i> <i>b) Provide a minimum 2.5m separation between dormers; and</i> <i>c) Dormers do not extend encroach above the ridgeline of the building.</i>		
	<u>Ventilation</u> <i>C36 Incorporate features to facilitate natural ventilation and convective currents - such as opening windows, high vents and grills, high level ventilation (ridge and roof vents) in conjunction with low-level air intake (windows or vents).</i> <i>C37 Where natural ventilation is not possible, energy efficient ventilation devices such as ceiling fans should be considered as an alternative to air conditioning. Explore innovative technologies to naturally ventilate internal building areas or rooms.</i>	Satisfies all ventilation requirements.	Yes
2.9	<u>Roof design and features</u> <i>C1. Use a simple pitched roof that accentuates the shape of exterior walls, and minimizes bulk and scale.</i> <i>C2. Avoid complex roof forms such as multiple gables, hips and valleys, or turrets.</i> <i>C3. Roof pitches are to be compatible and sympathetic to nearby buildings.</i>	Satisfies roof design requirements.	Yes

	<i>C4. Parapet roofs that increase the height of exterior walls are to be minimised.</i> <i>C5. Use minor gables only to emphasise rooms or balconies that project from the body of a building.</i> <i>C6. Mansard roofs (or similar) are not permitted.</i> <i>C7. Pitched roofs should not exceed a pitch of 30 degrees.</i> <i>C8 Relate roof design to the desired built form and context.</i> <i>C9 Roofs with greater pitches will only be considered on merit taking into account matters such as streetscape, heritage value and design integrity.</i>		
2.10	AMENITY <u>Solar access and overshadowing</u> <u>Solar access to proposed development</u> <i>C1. Where site orientation permits at least primary living areas of dwellings must receive a minimum of 3 hours of sunlight between 8.00am and 4.00pm on 21 June. Where existing overshadowing by buildings and fences is already greater than this control, sunlight is not to be reduced by more than 20%.</i> <i>C2. Principle areas of private open space must receive a minimum of 3 hours of sunlight between 8.00am and 4.00pm on 21 June to at least 50% of the open space surface area. Where existing overshadowing by buildings and fences is already greater than this control, sunlight is not to be reduced by more than 20%.</i> <u>Solar access to neighbouring development</u> <i>C3. Proposed development must retain a minimum of 3 hours of sunlight between 8.00am and 4.00pm on 21 June for existing primary living areas and to 50% of the principal private open space.</i> <i>C4. If a neighbouring dwelling currently receives less than 3 hours of</i>	<u>Solar access to proposed development</u> The proposal satisfies the solar access and overshadowing controls. The design allows the primary living areas and private open space to receive more than three hours of sunlight between 8.00am and 4.00pm on 21 June. The shadow diagrams confirm there is no loss of sunlight to neighbouring living areas, private open space, or solar systems. Existing sunlight levels to adjoining properties are maintained, with no additional reduction. The development meets the required performance criteria with no unreasonable impact on nearby dwellings.	Yes

<i>sunlight, then the proposed development must not reduce the existing level of solar access to that property.</i> <i>C5. Sunlight to solar hot water or photovoltaic systems on adjoining properties must comply with the following:</i> <i>(a) Systems must receive at least 3 hours of direct sunlight between 8.00am and 4.00pm on 21 June.</i> <i>(b) If a system currently receives less than 3 hours sunlight, then the proposed development must not reduce the existing level of sunlight.</i> <i>C6. Clothes drying areas on adjoining residential properties must receive a minimum of 3 hours of sunlight on 21 June.</i> <u>Shading devices</u> <i>C7. Windows and openings shall be appropriately located and shaded to reduce summer heat load and maximise sunlight in winter.</i> <i>C8. Use shading devices to allow direct sunlight to enter and heat a building in winter and prevent direct sunlight entering and heating the building in summer. Devices include eaves, awnings, shutters, louvres, pergolas, balconies, colonnades or external planting.</i> <i>C9. Provide horizontal shading to north-facing windows and vertical shading to east or west windows.</i> <i>C10. Use moveable shading devices on large windows facing east and west that are capable of covering 100% of glazed areas. Eaves shall be a minimum of 350mm wide and allow for an overhang of approximately 65 degrees above the horizontal.</i> <i>C11. Avoid reducing internal natural daylight or interrupting views with shading devices.</i> <i>C12. Use double-glazing, solar coated windows, curtains, or internal shutters</i>	<u>Shading devices</u> The proposal meets the intent of these controls by incorporating appropriate window placement, shading and material selection to support efficient thermal performance. The design includes suitable eaves, adjustable shading elements and high-performance glazing that improve comfort across seasons. These measures help reduce heat gain in summer and allow adequate winter sunlight without obstructing natural daylight or outlook. The approach provides effective protection from glare, supports energy efficiency and ensures no adverse impacts on neighbouring properties.	
---	--	--

	<i>to prevent heat loss and provide extra summer protection.</i> <i>C13. Use high performance glass with a reflectivity below 20%.</i> <i>C14. Minimise external glare by avoiding reflective films and use of tint glass.</i> <i>C15. Use of draft insulation around windows and doors.</i>		
2.11	<u>Visual privacy</u> <i>C1 Locate and orient new development to maximise visual privacy between buildings, on and adjacent to the site.</i> <i>C2 Minimise direct overlooking of rooms and private open space through the following:</i> <i>(a) Provide adequate building separation, and rear and side setbacks; and</i> <i>(b) Orient living room windows and private open space towards the street and/or rear of the lot to avoid direct overlooking between neighbouring residential properties.</i> <i>C3 If living room windows or private open spaces would directly overlook a neighbouring dwelling:</i> <i>(a) Provide effective screening with louvres, shutters, blinds or pergolas; and/or</i> <i>(b) Use windows that are less than 600mm wide or have a minimum sill height of at least 1.5m above the associated floor level.</i> <i>C4 Screening of bedroom windows is optional and dimensions are not restricted.</i>	The proposal has been arranged to maintain a high level of visual privacy for occupants and neighbours. Living areas and private open space are oriented toward the primary street and the rear, which avoids direct overlooking of adjoining properties. Setbacks and separation distances provide an appropriate buffer between buildings. Where there is any potential for views toward neighbouring dwellings, screening measures and window design prevent direct overlooking. The layout ensures that the development respects the privacy of surrounding homes while supporting comfortable and functional internal spaces.	Yes
2.12	<u>Acoustic privacy</u> <i>C1 Protect sensitive rooms, such as bedrooms, from likely sources of noise such as major roads and neighbouring' living areas.</i> <i>C2 Bedroom windows in new dwellings that would be located at or close to ground level are be raised above, or screened from, any shared pedestrian pathway.</i>	The proposal satisfies these controls. The dwelling is set back from any major noise source and the layout places sensitive rooms away from potential disturbance. Bedroom windows at ground level are positioned to maintain privacy from any shared pathways, and openings facing internal access areas are screened to reduce noise and maintain	

	<i>C3 Screen balconies or windows in living rooms or bedrooms that would face a driveway or basement ramp.</i> <i>C4 Address all requirements in 'Development Near Rail Corridors and Busy Roads – Interim Guideline (2008)' published by the NSW Department of Planning.</i>	amenity. The development is not located near a busy road or rail corridor, so no additional acoustic measures are required	
2.13	FENCES AND ANCILLARY DEVELOPMENT <u>Fences</u> <i>C1. Provide boundary definition by construction of an open fence or hedge to the front street boundary.</i> <i>C2. Front fences within the front boundary setback are to be no higher than 1.2m.</i> <i>C3. Side fences may be 1.8m high to the predominant building line. Forward of the building line, side fences must taper down to the height of the front fence at a height no greater than 1.2m.</i> <i>C4. On corner sites where the facade of a building presents to two street frontages, fences are to be no higher than 1.2m.</i> <i>C5. Front fences shall not be taller than 1.2m.</i> <i>C6. Screens with a minimum of 50% transparency may be up to 1.8m high along the front boundary.</i> <i>C7. Landscaping should not include visually solid hedges that may conceal intruders.</i>	Taken into consideration	Yes
2.14	Outbuildings and swimming pools <u>Outbuildings</u> <i>C1. Council allows a maximum of one outbuilding on a site.</i> <i>C2. The outbuilding must be established in conjunction with the principal dwelling on the same site and must ensure that:</i> <i>(a) it is separate from the principal dwelling and any secondary dwelling on the same site, and</i> <i>(b) it is not used as a separate dwelling, and</i> <i>(c) it does not contain cooking facilities, toilet and shower, and</i> <i>(d) it does not function or can be adapted to function for industrial purposes.</i>	<u>Outbuildings</u> The proposal includes a small cabana that reuses the footprint of an existing shed. The structure has no roof and functions as an open outdoor space rather than a habitable outbuilding. Its size and location comply with the relevant controls, and it is not capable of being used as a separate dwelling as it contains no services or enclosed rooms. The cabana sits behind the front building line and maintains	

<i>The maximum site cover of the outbuilding is:</i> <i>(a) 36m² where the site is less than 300m² in area</i> <i>(b) 45m² where the site is 300m² to 600m² in area</i> <i>(C) 60m² where the site is greater than 600m² in area.</i> <i>For the purposes of this clause, site cover means the site area covered by the outbuilding and any attached roof, awning, balcony, deck, patio, pergola, terrace, verandah, carport, garage and the like</i> <i>C4. The outbuilding must not result in the principal dwelling on the site having less than the required landscaped area and private open space.</i> <i>C5. The storey limit for the outbuilding is single storey. An attic or basement is not permitted in the outbuilding.</i> <i>C6. The maximum building height for the outbuilding is 4.5m above ground level (existing).</i> <i>C7. The outbuilding must locate behind the front building line.</i> <i>C8. The minimum setback to the side and rear boundaries of the site is:</i> <i>(a) zero setback for carports or masonry walls that do not contain windows, eaves and gutters provided the structures comply with the Building Code of Australia;</i> <i>or</i> <i>(b) 0.45m for non-masonry walls that do not contain a windows, eaves and gutters;</i> <i>or</i> <i>(c) 0.9m for walls with windows.</i> <i>C9. The minimum setback to a dwelling, building, roof, awning, balcony, deck, patio, pergola, terrace, verandah, carport, garage and the like on the same site is 1.8m.</i> <i>C10. The maximum roof pitch for the outbuilding is 25 degrees.</i> <i>C11. Council does not allow the outbuilding to have roof-top balconies and the like.</i> <i>C12. Development must retain and protect any significant trees on the site</i>	all required setbacks. It does not affect the landscaped area or private open space of the principal dwelling. There is no impact on neighbouring properties, and the development retains existing trees on and near the site. The design outcome is consistent with the intent of the controls and does not increase bulk or visual impact.
---	---

	<i>and adjoining sites. To achieve this clause, the development may require a design alteration or a reduction in the size of the outbuilding.</i> <u>Swimming pools</u> <i>C13 Swimming pools must not be located within any front setback.</i> <i>C14. Minimum setback of 1m from any side or rear boundary for swimming pools and associated terraces.</i> <i>Landscaping shall be provided in the setback area to screen the pool from neighbours</i>	<u>Swimming pools</u> The proposed swimming pool meets the intent of these controls. It is located outside the front setback and maintains more than the required one metre clearance from the side and rear boundaries. The arrangement preserves privacy and provides adequate separation from neighbouring properties. Landscape planting is incorporated within the setback area to soften views and offer screening, which helps reduce visual impacts for adjoining residents.	
--	---	---	--

4.2 Section 4.15(1)(a)(iiia) 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,

Given the proposal at hand, it is considered that planning agreements are not required.

5. CONCLUSION

The proposed development has been assessed in accordance with Section 4.15 of the Environmental Planning & Assessment Act, 1979 (as amended) & relevant State & Council planning controls. It is a permissible form of development within the R3 Medium Density Residential zone & satisfies Council's relevant planning standards & controls.

The proposed development satisfies the Objectives of the Environmental Planning & Assessment Act, 1979, the aims of the Canterbury-Bankstown LEP 2023 & the objectives of the R2 Low Density Residential zone. It is considered that all relevant planning matters have been taken into consideration in the preparation of this proposal. It will provide a high-quality modern design, which will ensure its positive impact on the streetscape of Bykool Avenue. The proposed development will assist with the improvement of the streetscape by providing a high-quality contemporary building that will contribute to improving the value of property on the street. All utility services are available to the site & the proposed development. Overall, the subject site is well serviced by existing infrastructure.

It is considered that the proposed development will have a positive effect on the social & economic environment of the area. The proposed development will not adversely impact on the amenity of the surrounding area. It will provide a high-quality development reinforcing the functions of the streetscape. Council is requested to consider the benefits of the proposed development & therefore should approve the Development Application.

Annexure 1

CLAUSE 4.6 REQUEST FOR VARIATION TO CLAUSE 4.4 (2B)(b)(ii) FLOOR SPACE RATIO

OF

*Canterbury-Bankstown Local Environmental Plan 2023
(CBLEP 2023).*

12 Bykool Avenue, Kingsgrove NSW 2208

1. INTRODUCTION:

This submission seeks to vary a development standard pursuant to Clause 4.6 of the *Canterbury-Bankstown Local Environmental Plan 2023 (CBLEP 2023)*. The relevant provision is Clause 4.4 (2B)(b)(ii) – Maximum Floor Space Ratio for dwelling houses.

This written request supports the proposed demolition and construction of a two-storey dwelling house at 12 Bykool Avenue Kingsgrove. The proposal is based on the plans prepared by Natek Pty Ltd, dated 12 November 2025.

Under Clause 4.4 (2B) (b)(ii) and as identified on the *Clause Application Map “Area 2”* the maximum Floor Space Ratio allowed for dwelling houses is 0.55:1. The subject site has an area of 524.3 m². The proposed dwelling has a total 317.2 m² which is equivalent to FSR 0.60:1.

The maximum FSR control under Clause 4.4(2B) of the CBLEP 2023 is a development standard for the purposes of the *EP&A Act 1979*.

This request is made with regard to key planning principles established in:

- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*,
- *Wehbe v Pittwater Council [2007] NSWLEC 827*,
- *Big Property Pty Ltd v Randwick City Council [2021]*, and
- *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112*.
- *Legal and General Life v North Sydney Municipal Council (1990) 69 LGRA 201*,
- *FouR1Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (FouR1Five)*,
- *Winten Property Group Ltd v North Sydney Council [2001] NSWLEC 46*

This variation request addresses the relevant provisions of Clause 4.6 of CBLEP 2023 and outlines the reasons why strict adherence to the maximum floor space ratio standard is unreasonable and unnecessary in this case. It demonstrates that:

- The development is consistent with the objectives of the development standard under Clause 4.4 (2B).
- The proposal is consistent with the objectives of the Zone R3 Medium Density Residential zone.
- There are sufficient environmental planning grounds to justify the variation

2. DEVELOPMENT STANDARD TO BE VARIED – MAXIMUM FLOOR SPACE RATIO

The relevant development standard to be varied is the maximum FSR 0.55:1 control under Clause 4.4. Clause 4.4 (2B) (2) of CLEP 215 relevantly provides:

4.4 Floor space ratio

(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.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

(2B) Despite subclause (2), the following maximum floor space ratios apply—

(b) for a building used for the purposes of dwelling houses or semi-detached dwellings on land identified as “Area 2” on the Clause Application Map—

- (i) for a site area less than 200m²—0.65:1, and
- (ii) **for a site area greater than 200m² but less than 600m²—0.55:1, and**
- (iii) for a site area of 600m² or more—0.5:1,

The relevant maximum floor space ration identified below is identified below

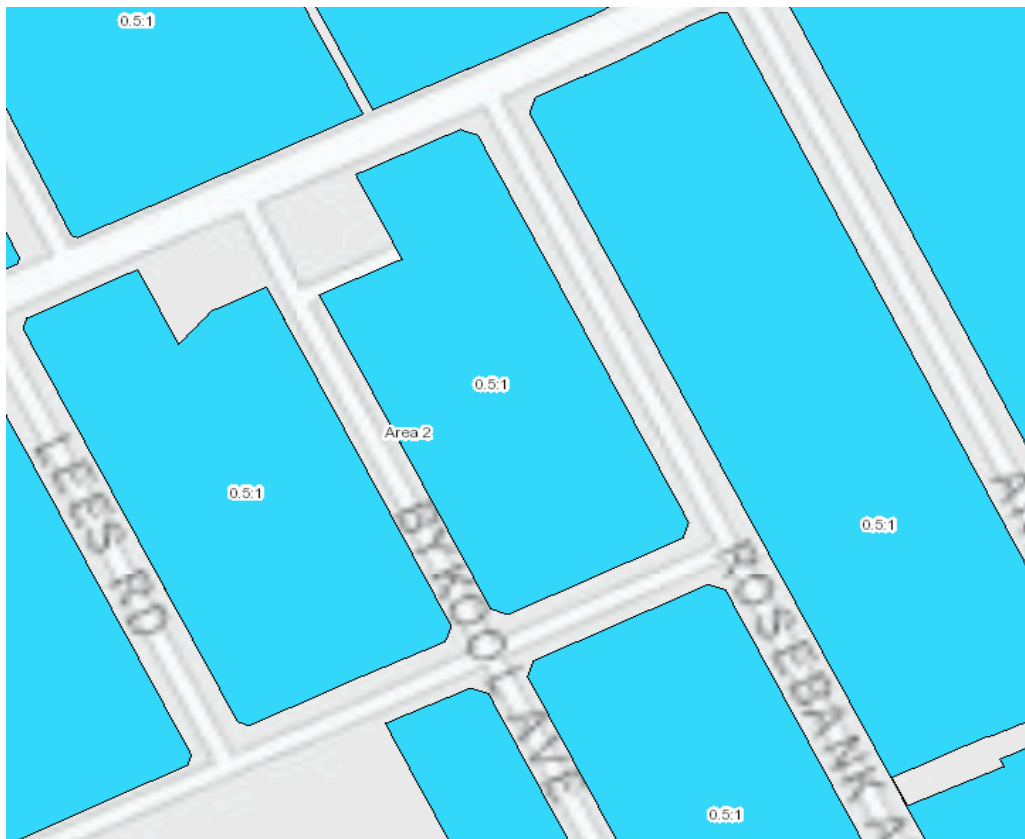


Figure 1: Area 2 Clause Application Map (CBLEP 2023), source: NSW Planning Portal

3. NATURE OF VARIATION SOUGHT

This clause 4.6 Request relates to the proposed two storey dwelling house.

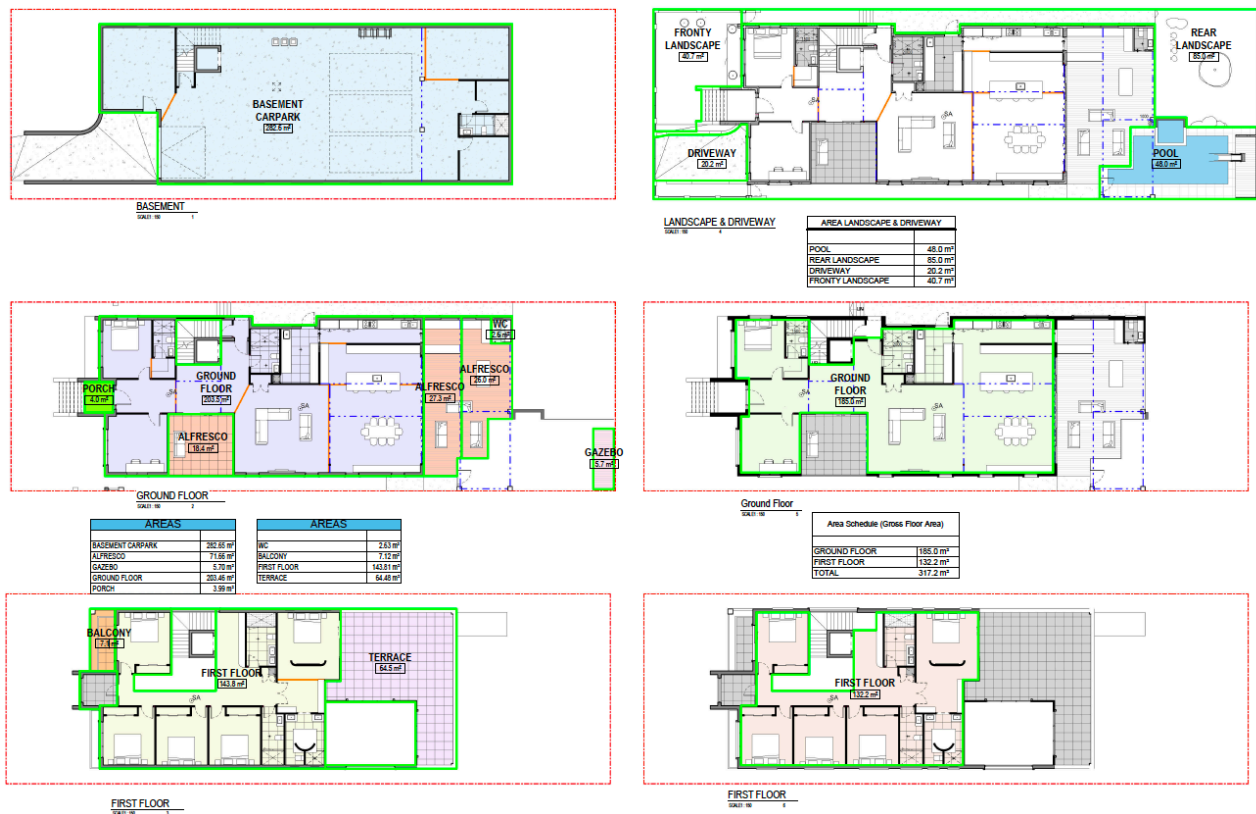
The subject site is located within a zone where the maximum FSR allowed for dwelling house is 0.55:1 under the Canterbury Bankstown Local Environmental Plan 2023 (CBLEP 2023).

Existing total site area: 524.3 m²

Maximum allowed Gross Floor Area (GFA) is 288.38 m² under CBLEP 2023 for the site.

The proposed Gross Floor Area (GFA) is 317.2 m², which is equivalent to FSR 0.60:1

Extent of non-compliance: **28.81 m² or 9.9%.**



It is important to highlight that Clause 4.6 functions similarly to State Environmental Planning Policy No 1 – Development Standards (SEPP 1) in that the magnitude or **percentage of the variation alone is not considered a material factor** in determining whether the variation should be permitted¹. In the matter of *Legal and General Life v North Sydney Municipal Council* (1990) 69

¹ The Court of Appeal considered the issue in *Legal and General Life v North Sydney Municipal Council* (1990) 69 LGR 201 (where North Sydney Council had approved a SEPP 1 objection allowing the FSR control of 3.5:1 to be increased to 15:1)

LGRA 201, the court upheld the decision of North Sydney Council to allow 329% variation for FSR control and 240% for Height control. To provide a basis for comparison, this particular Development Application (DA) involves a variation of **9.9%**.

4. CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

The following provides a response to relevant Clause 4.6 provisions of *Canterbury Bankstown Local Environmental Plan 2023*

Clause 4.6 (2) provides that

(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.

The maximum FSR for dwelling house development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6 (3) provides that

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

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

The proposed development does not comply with maximum Floor Space Ratio development standard pursuant to cl.4.4(2B)(b)(ii) of the *CBLEP 2023*. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

(329% variation), and the 5-storey height control to be increased to 17-storeys (240% variation).

The Court approved the following statement by Chief Judge (in *Legal and General Life v North Sydney Council* (1989) 68 LGRA 192, 203), and upheld the validity of the Council's decision:

The discretion vested in councils under SEPP No 1 is wide and, subject to limitations found in the instrument itself and its relation to the EP&A Act 1979, is unconfined. [emphasis added]

5. COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [CL. 4.6(3)(A)]

Compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case. In the decision of *Four2Five*, the Commissioner identified to satisfy Clause 4.6(3)(a) merit considerations were required to be amounted to no more than establishing an absence of environmental harm.

Also, in *Four2Five*, it was considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*). Under *Wehbe*, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the objectives of the standard were still met despite the contravention of that standard.

Therefore, to determine “unreasonable and unnecessary” the 5-Part-Test outlined in *Wehbe* is considered to be relevant in demonstrating unreasonable and unnecessary in the circumstances of the case. Although these tests are primarily relative to the function of SEPP1, the tests are not exhaustive or prescriptive. The tests assist in adequately addressing the non-conformity allowing the consent authority with the ability to grant consent.

Test 1: The objectives of the development standard are achieved notwithstanding the non-compliance.

The objectives of the Clause 4.4 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,,***

The proposed dwelling house contributes to the intended residential density for the R3 Medium Density Residential zone. While the site does not meet the numerical FSR standard, the development provides an appropriate residential yield within the capacity of local infrastructure and services.

This objective is achieved despite the variation. The proposed development presents as a well-articulated two storey dwelling that is consistent in scale, form and presentation with surrounding residential development within Bykool Avenue and the broader Kingsgrove locality. The building complies with the maximum height control, required setbacks, site coverage and deep soil requirements, which collectively regulate perceived bulk and scale more directly than FSR alone. The additional floor area is predominantly accommodated within the internal layout and basement level, resulting in no adverse increase in visual bulk when viewed from the street or adjoining properties. The streetscape character remains intact, and the development does not appear excessive or dominant. Amenity impacts relating to privacy, overshadowing and visual impact are adequately mitigated through compliance with DCP controls. Accordingly, the proposed density is consistent with the established character and amenity of the area.

- (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.***

This objective is not directly applicable to the proposal, as the development is a single dwelling house and does not involve non-residential uses. Notwithstanding this, the proposal reinforces residential character and does not introduce any use or built form that would undermine suburban amenity. As such, the intent of this objective is inherently satisfied.

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

This objective is not relevant to the subject development. The site is located within a residential street and does not form part of a commercial centre or involve lot consolidation. The proposed FSR variation does not undermine the intent of this objective, nor does it create any precedent that would discourage appropriate consolidation in commercial areas. The objective is therefore satisfied in principle.

(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.

This objective is achieved notwithstanding the minor exceedance in FSR. The proposal is for a single dwelling house, which will not generate traffic beyond what is reasonably expected for a residential use of this nature. On-site parking is fully provided within the basement in accordance with DCP requirements, ensuring no reliance on street parking.

The site is well serviced by existing infrastructure, including water, sewer, stormwater, electricity and public transport. The modest increase in floor area does not result in any additional demand that would exceed infrastructure capacity. Pedestrian and vehicular movements remain consistent with the intended residential function of the site. Accordingly, the maximum floor space objective is satisfied in a practical and planning sense.

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

This objective is clearly achieved. The proposal complies with site coverage and deep soil requirements, with approximately 23.98% of the site provided as deep soil area. Extensive landscaping is incorporated within the front, side and rear setbacks, contributing positively to visual amenity, softening built form and enhancing the streetscape.

The additional floor space does not reduce landscaped areas nor compromise private open space. The balance between built form and landscape is appropriate for a residential allotment of this size and zoning, and supports both environmental and amenity outcomes consistent with the intent of the control.

Test 2: The objective of the development standard is not relevant to the development (and therefore, it is unnecessary to comply with the standard).

While the development standard has a legitimate planning purpose in general terms, its strict application is not necessary in this instance, as the objective is already achieved as outline above. As such, compliance is unnecessary, and a variation is appropriate in the circumstances.

Test 3: Compliance with the standard would thwart or defeat the objective of the

standard (and therefore it is unreasonable to require compliance)

Requiring strict compliance with the FSR standard would compromise the ability to deliver a functional and well-designed dwelling that responds appropriately to the site's dimensions, zoning and context. Reducing the proposed floor area to achieve compliance would likely result in a less efficient internal layout or a design outcome that undermines residential amenity and architectural quality.

The proposal already achieves the objectives of the standard by maintaining an appropriate built form, respecting neighbourhood character, and ensuring adequate landscaping and open space. Enforcing compliance would not improve bulk, density or amenity outcomes and would instead frustrate the underlying objective of achieving high-quality residential development. Accordingly, compliance in this case would be unreasonable.

Test 4: The standard has been abandoned by the Council through other approvals that exceed the standard.

Within the surrounding locality, Council has approved a number of dwelling house developments that exceed the prescribed FSR control, particularly where proposals demonstrate compliance with height, setback, site coverage and amenity standards. This indicates a consistent and established planning approach that allows flexibility in the application of the FSR standard where the objectives are otherwise satisfied.

The approval of similar variations demonstrates that the standard is applied with discretion rather than rigidly enforced, especially for minor exceedances that result in acceptable planning outcomes. The proposed variation is modest in scale and consistent with this established approval pattern.

Test 5: The zoning is unreasonable or inappropriate and therefore the development standard applying to that zoning is unreasonable or inappropriately applied to the site.

Not applicable as the zoning of the site is appropriate.

6. THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [cl. 4.6(3)(b)]

There are sufficient environmental planning grounds to justify the proposed variation, as required under Clause 4.6(3)(b) of CBLEP 2023. This position is supported by the principles set out in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, which make clear that a variation must be supported by site-specific environmental planning grounds, not just general desirability or financial benefit. Further, in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*, the Court emphasised that the applicant must demonstrate a **sufficiently strong planning rationale** to depart from the standard.

In this case, the variation is well-supported by the following site-specific planning grounds:

- **Site functionality and suitability:** Although the proposed development exceeds the maximum permissible Floor Space Ratio by a modest margin, the subject site is demonstrably capable of accommodating the additional floor space while fully complying with all other critical development controls, including building height, setbacks, site coverage, deep soil provision,

landscaping and on-site parking. The proposal confirms that the FSR standard, while numeric in nature, is not determinative of acceptable planning outcomes in isolation. This approach is consistent with the findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827, where the Land and Environment Court recognised that compliance with a numerical standard is not, of itself, conclusive of whether a development achieves the objectives of the relevant planning controls.

- ***No adverse environmental or amenity impacts:*** The development maintains privacy, solar access, and visual separation from neighbouring properties. The variation does not give rise to any material environmental effects, satisfying the planning principles of *Winten Property Group Ltd v North Sydney Council* [2001] NSWLEC 46.
- ***Consistency with neighbourhood character:*** The proposed dwelling is consistent with the emerging built form within Bykool Avenue and the surrounding Kingsgrove locality, which includes a number of contemporary two storey dwellings with basement accommodation. The development presents as a conventional two storey residence when viewed from the public domain and integrates appropriately with the established residential character.
- ***High level of residential amenity achieved:*** The proposal satisfies DCP controls relating to solar access, overshadowing, visual privacy, acoustic privacy and private open space. Shadow diagrams confirm no unreasonable loss of sunlight to neighbouring properties, and window placement and setbacks ensure privacy is maintained. The variation does not result in any amenity impacts beyond what is acceptable in a medium density residential zone.

Taken together, these points demonstrate that the proposal is **well founded on environmental planning grounds**, specific to the site and supported by both policy and case law. Accordingly, the variation satisfies the legal and planning tests of Clause 4.6(3)(b) and is reasonable and appropriate in the circumstances.

7. OTHER MATTERS FOR CONSIDERATION

Consistency with the Zone Objectives:

Zone R3 Medium Density Residential

Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium 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 allow for development that provides a suitable visual transition between high density residential areas and low density residential areas.*
- *To ensure suitable landscaping in the medium density residential environment.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

- *To allow for increased residential density in accessible locations to maximise public transport patronage and encourage walking and cycling.*
- *To promote a high standard of urban design and local amenity.*

The following provides a review of the zone objectives:

- ***To provide for the housing needs of the community within a medium density residential environment.***

The proposed development delivers a contemporary two storey dwelling that contributes to the ongoing provision of housing within an established medium density residential area. The minor increase in floor space does not alter the residential nature of the development nor intensify use beyond what is appropriate for the zone. The proposal remains consistent with the intended residential function and supports housing supply without adverse impacts.

- ***To provide a variety of housing types within a medium density residential environment***

The proposal introduces a modern dwelling typology that reflects evolving housing needs and expectations within the R3 zone. The FSR variation allows for a functional internal layout and contemporary design outcome without changing the building's overall form or scale. This supports diversity in housing design while remaining compatible with surrounding development..

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

The development is residential in nature and does not inhibit the ability of the zone to accommodate complementary land uses. The proposal does not restrict access, infrastructure capacity or amenity that would otherwise support day-to-day services. Accordingly, the FSR variation does not undermine this objective.

- ***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.***

While the proposal does not include non-residential uses, it does not preclude or conflict with such uses within the broader zone. The scale, bulk and presentation of the development maintain residential amenity and compatibility, ensuring that the intent of this objective is upheld.

- ***To allow for development that provides a suitable visual transition between high density residential areas and low density residential areas.***

The development achieves an appropriate visual transition through its compliant two storey height, articulated façade and generous setbacks. The modest FSR exceedance does not result in excessive bulk or massing and does not visually distinguish the dwelling from other

contemporary residences in the locality. The proposal reinforces a transitional built form consistent with the zone's intent.

- ***To ensure suitable landscaping in the medium density residential environment.***

The proposal provides substantial landscaping and deep soil areas in accordance with DCP requirements. The additional floor space does not reduce landscaped areas or compromise the balance between built form and open space. Landscaping is integrated into the front, side and rear setbacks, enhancing visual amenity and contributing positively to the streetscape.

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

The development remains wholly residential and is compatible with surrounding residential properties. The FSR variation does not introduce additional intensity or impacts that would create land use conflict. Privacy, overshadowing, noise and visual impacts are appropriately managed, ensuring harmonious integration with adjoining sites

- ***To allow for increased residential density in accessible locations to maximise public transport patronage and encourage walking and cycling***

The subject site is located within close proximity to public transport, schools, shops and open space. The minor increase in floor space aligns with the strategic intent of accommodating residential development in accessible locations. The proposal supports sustainable transport patterns without generating additional traffic or parking demand beyond acceptable levels.

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

The proposal demonstrates a high standard of architectural design, with careful consideration given to scale, articulation, materials and internal amenity. The FSR variation facilitates a well-resolved design outcome without compromising neighbourhood character or residential amenity. The development complies with height, setback and design controls, resulting in a positive contribution to the local built environment

Despite the proposed variation to the Floor Space Ratio standard, the development satisfies the objectives of the R3 Medium Density Residential zone. The variation enables a high-quality, site-responsive residential outcome that aligns with strategic planning objectives, protects amenity and reinforces the intended character of the zone.

8. IS THE VARIATION WELL FOUNDED?

In summary, this Clause 4.6 variation request is well founded and satisfies the requirements of Clause 4.6 of the Canterbury-Bankstown Local Environmental Plan 2023 for the following reasons:

- **Strict compliance with the Floor Space Ratio standard would be unreasonable and unnecessary**

Compliance with Clause 4.4 (Floor Space Ratio) would be unreasonable in the circumstances of this application, as the proposed development achieves the objectives of the standard notwithstanding the minor numerical exceedance. The additional floor space does not result in excessive bulk, scale or density and does not give rise to adverse amenity or environmental impacts. As demonstrated, the numeric standard is not determinative of planning performance in this instance.

- **Sufficient environmental planning grounds justify the variation**

There are sufficient environmental planning grounds to support the departure from the FSR standard. The variation facilitates a high-quality design outcome that responds appropriately to the site's size, configuration and context. Achieving strict compliance would require a reduction in internal amenity or an inferior design outcome, without delivering any corresponding planning or environmental benefit.

- **Consistency with the objectives of the development standard and the R3 zone**

The proposal is consistent with the objectives of Clause 4.4 of the LEP, as it maintains appropriate bulk, scale and density, and ensures a suitable balance between built form and landscaping. The development also aligns with the objectives of the R3 Medium Density Residential zone by providing a compatible residential form that respects neighbourhood character, maintains amenity and supports housing in a well-served location.

- **The proposal is in the public interest**

The development is in the public interest as it delivers a well-designed dwelling in an accessible location without adverse impacts on surrounding properties or public infrastructure. There is no identifiable public benefit in rigidly enforcing the numerical FSR standard in this case, particularly where the proposal achieves a planning outcome equal to or better than a compliant development and aligns with State and local planning objectives.

Accordingly, the proposed FSR variation is reasonable, appropriate and justified on its planning merits. The consent authority may be satisfied that the requirements of Clause 4.6(3) and (4) of the Canterbury-Bankstown Local Environmental Plan 2023 have been met, and that the proposed development warrants approval.

Your sincerely



Abdullah Mamun (Director, EHUP)
M. Science, M. Planning, Grad Dip (Building Surveying)