



**DA No: DA-1112/2020**

**Section 4.55(2)  
Modification of Development Consent**

***Amendments to  
approved two-storey dwelling house  
with swimming pool and landscaping***

***768C Henry Lawson Drive,  
PICNIC POINT***

**May 2026**

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## 1.0 INTRODUCTION

- 1.1 Reference is made to Development Approval DA-1112/2020 (the 'Consent'), issued by Canterbury Bankstown Council on 8 September 2021, for a *"Two-storey dwelling house with swimming pool and landscaping."*
- 1.2 The development site is legally described as Lot 21 in DP 1151940 and is more commonly known as No. 768C Henry Lawson Drive, Picnic Point.
- 1.3 The proposed Section 4.55 (2) application seeks to carry out amendments to the approved development. The assessment of the application can have regard to the Court decision in *Tipalea Watson Pty Ltd v Ku-Ring-Gai Council* [2003] NSWLEC 253. In that case the Council argued that the building appeared different to the approved development and as such could not be regarded as *substantially the same* however the decision confirmed that the appearance of the dwelling can actually change as the appearance is one aspect of the development.
- 1.4 The modifications include the construction of a new dwelling and a reconfiguration of the driveway approved under the Consent; the relocation of the existing stormwater easement to the eastern boundary; façade/layout changes and tree removal.
- 1.5 The new dwelling will largely be contained within the building footprint and building envelope approved under the Consent, though there will be minor changes in the building setbacks, facade and building height.
- 1.6 The proposed modification requires the amendment of Consent Condition No. 2 relating to the list of approved plans and supporting documentation, Consent Condition No. 10 relating to tree removal and Condition No. 31 relation to tree retention and protection.
- 1.7 This application for modification is made pursuant to section 4.55(2) of the Environmental Planning and Assessment Act 1979 (the 'Act') and seeks to amend the relevant conditions of the consent.
- 1.8 This application is not a review of the land use, rather a request for the proposed list of amendments that modify certain aspects of the approved development, as per the development approval. The amendments have been assessed and found to be, subject to conditions of consent, acceptable with regard to environmental impacts as they apply to the approved development.

## **2.0 PROPOSED AMENDMENT**

2.1 Development Approval DA-1112/2020, granted on 8 September 2021, for a “Two-storey dwelling house with swimming pool and landscaping,” is proposed to be amended.

### **2.2 The proposed changes to the development approval**

The key changes proposed under the amended application comprise the following:

#### **Lower Ground Floor Plan**

- Front terrace
- Guest room
- Theatre
- Office
- Bath
- Laundry
- Open plan living and dining area
- Kitchen
- Rear rumpus room
- Internal stair access to other levels of dwelling
- Rear outdoor terrace / dining area accessible from kitchen and living area
- Rear inground swimming pool
- Rear terrace area accessible from rumpus room

#### **Ground Floor Plan**

- Front entry area / foyer
- 3 x bedrooms, including master bed with ensuite, WIR and access to rear private terrace
- Bath
- WC
- Storeroom
- Internal stair access to other levels of dwelling

#### **Garage Floor Plan**

The amended application includes a freestanding double garage providing access to the dwelling entry at the ground floor level.

#### **Relocation of Stormwater Easement / Landscaping and Tree Removal**

The amended application proposes the relocation of the existing 1.25 m wide easement along the eastern side boundary to a position closer to that boundary. It also includes additional deep soil planting across the site, along with revisions to the extent of proposed tree removal.

The amended application includes additional deep soil plantings throughout the site, as well as a reduction in the number of trees to be removed on site.

The amended plans set has been prepared by KISLO Design Studio. These plans are submitted with the s4.55 application.

2.3 The following conditions under DA-1112/2020 are to be amended to reflect the proposed changes:

- Condition No. 1, regarding approved plans and supporting documentation
- Condition Nos. 7-10, regarding the landscape plan, tree removal, tree protection and associated requirements
- Condition No. 25 regarding the Storm Water Plan
- Condition Nos. 31, 33 and 34 regarding tree retention and protection

2.4 Extracts of the s4.55 plan set are provided below and the approved outline is provided for clarity in pink colouring:

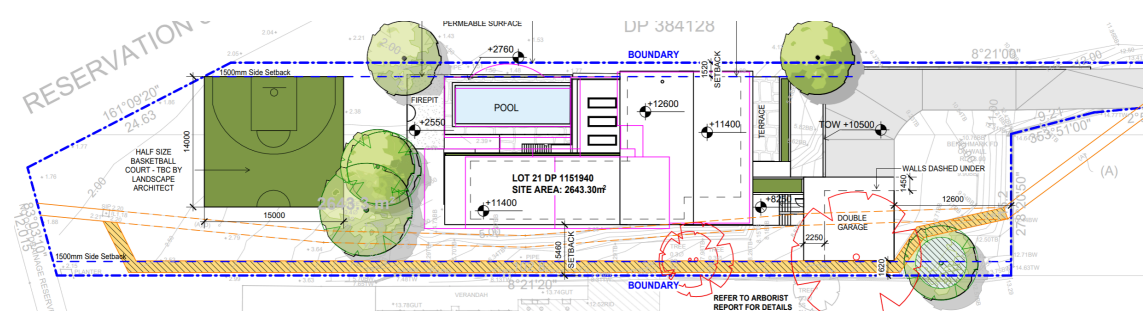


Figure 1: Site Plan Extract (with building outline approved under DA-1112/2020 shown in pink)

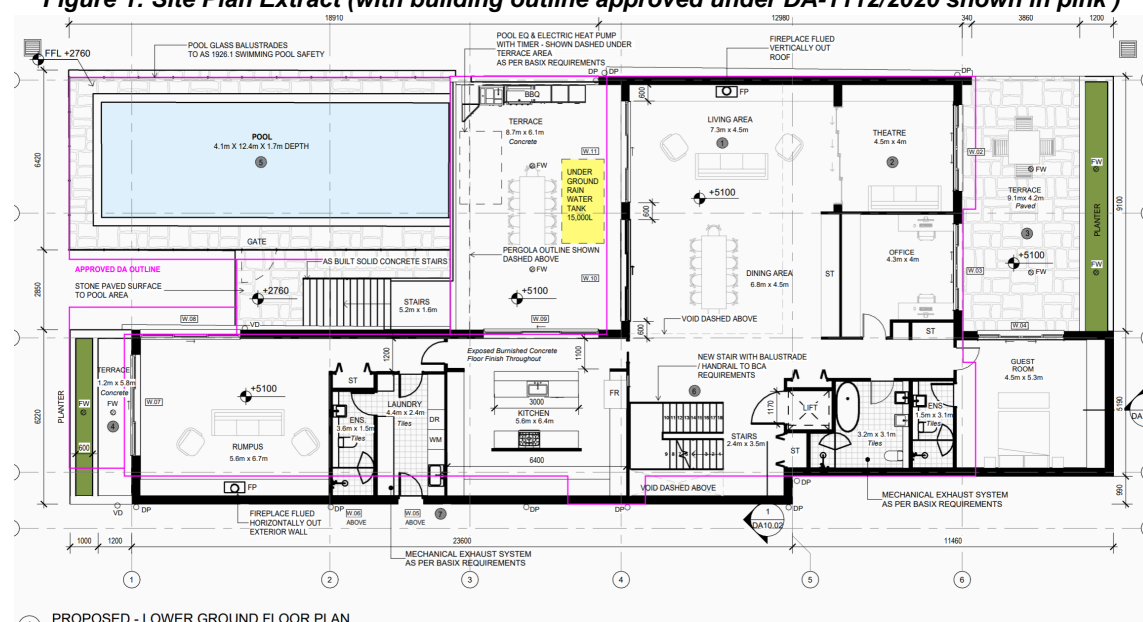


Figure 2: Lower Ground Floor Plan (with building outline approved under DA-1112/2020 shown in pink)

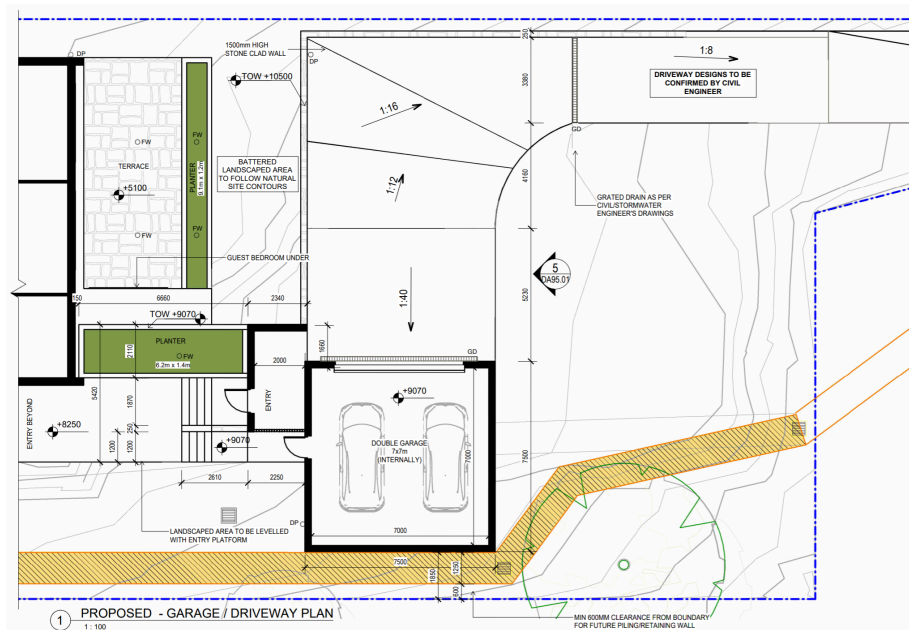


Figure 2A: Proposed Garage Change forming part of the S4.55

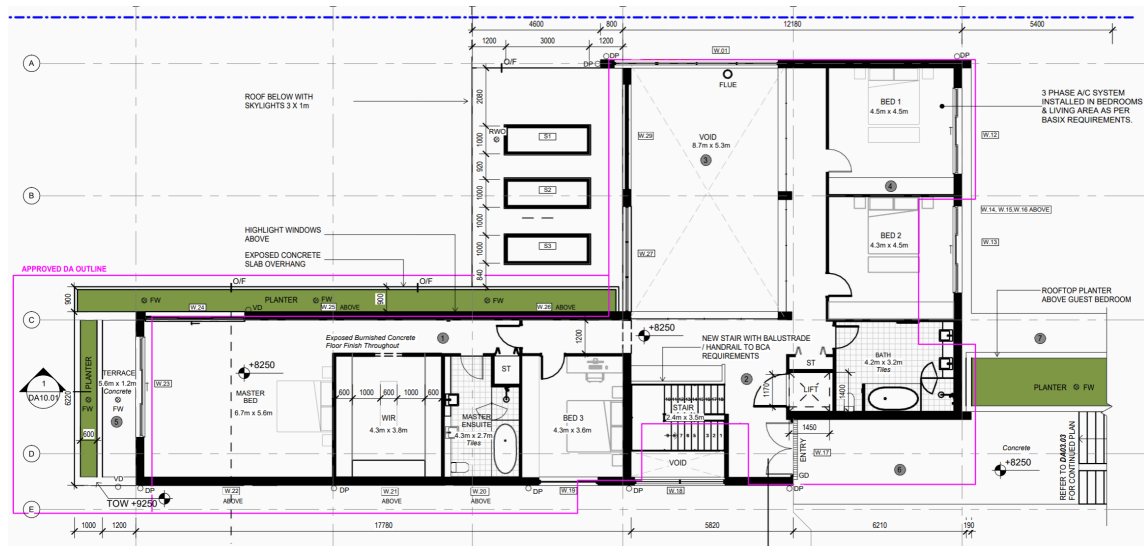


Figure 3: Ground Floor Plan (with building outline approved under DA-1112/2020 shown in pink)

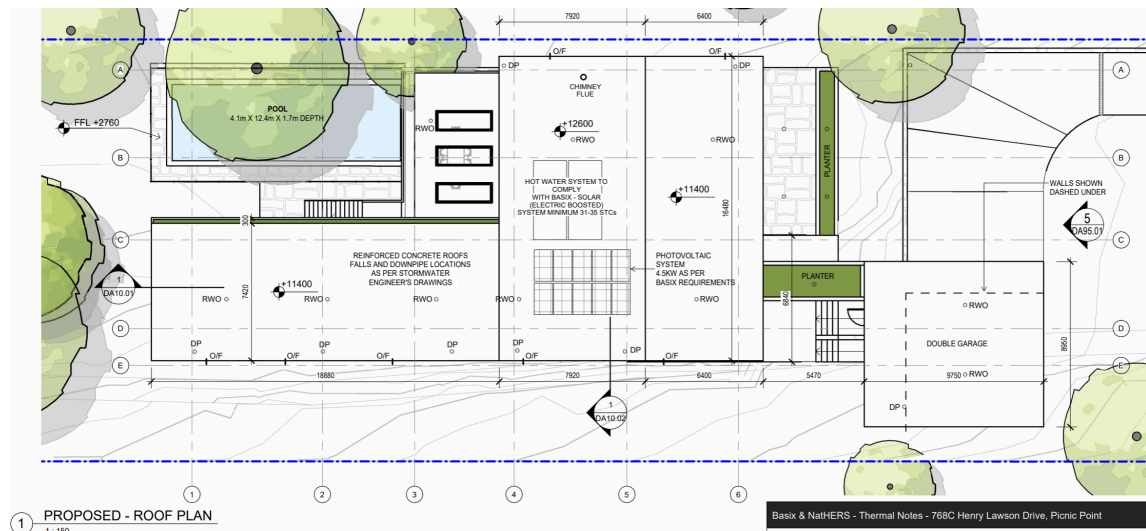


Figure 3A: Proposed Roof Plan S4.55

## COMPARISON OF ELEVATIONS - APPROVED V S4.55

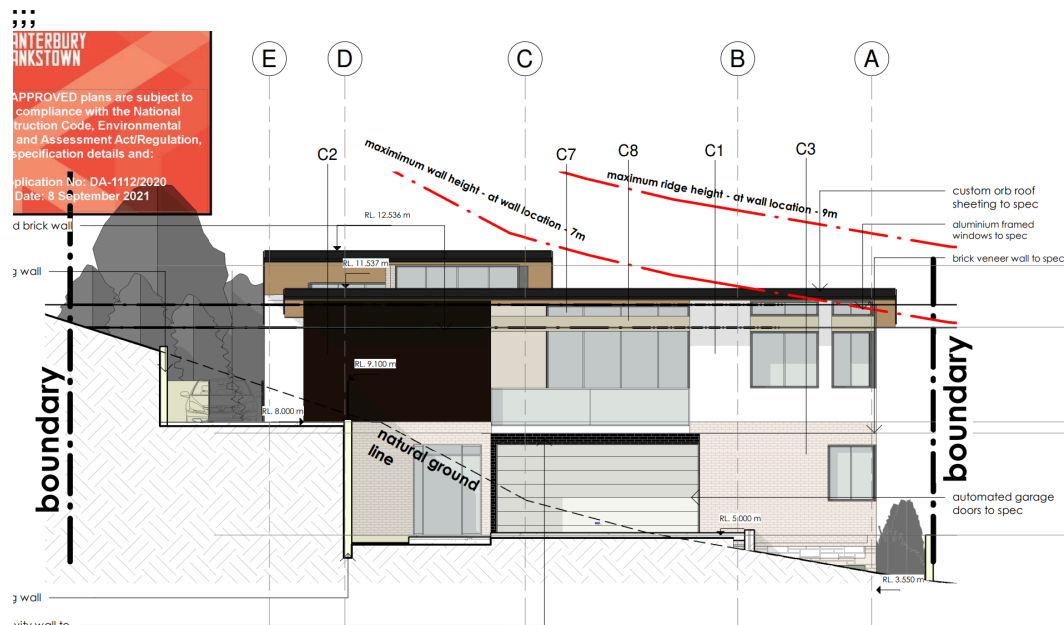


Figure 4: Approved west elevation

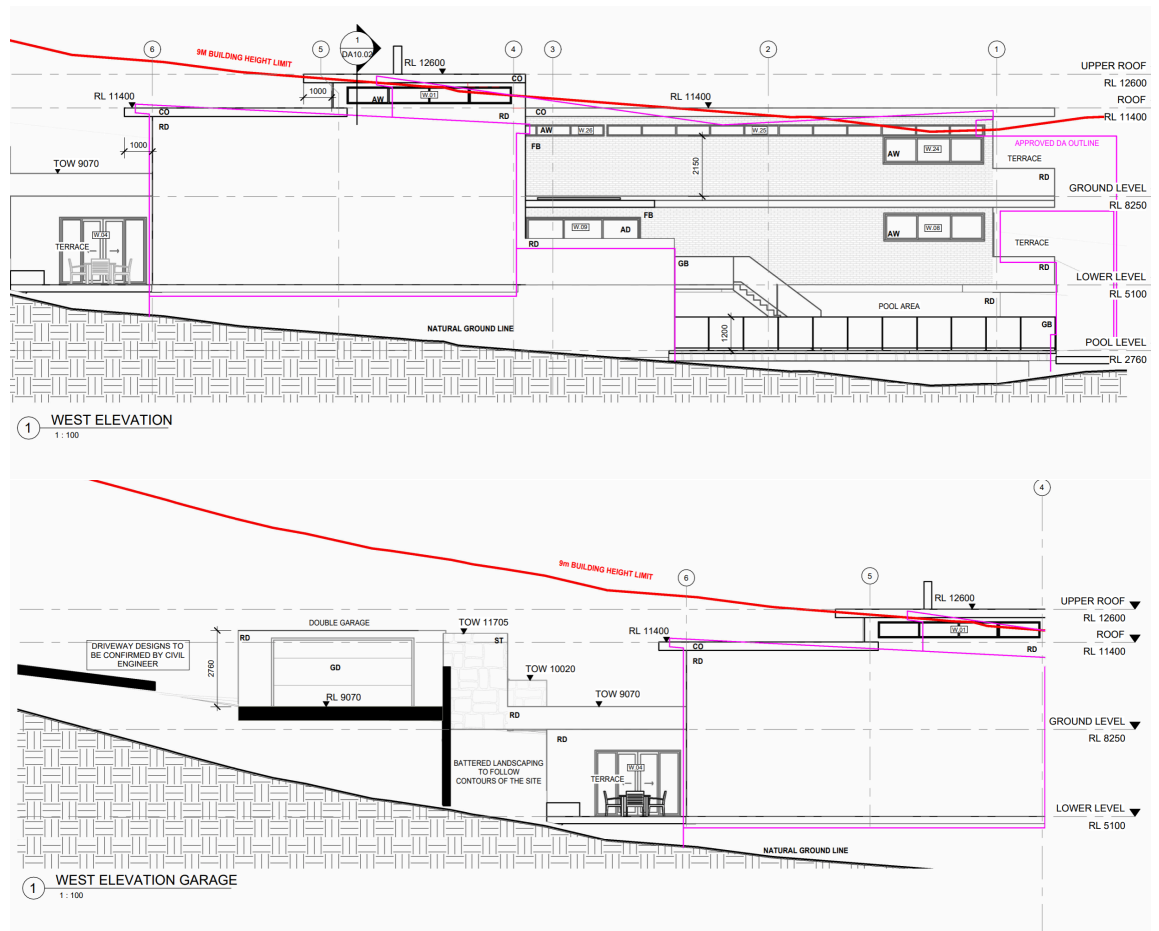


Figure 5 and 5A: Proposed S4.55 west elevations

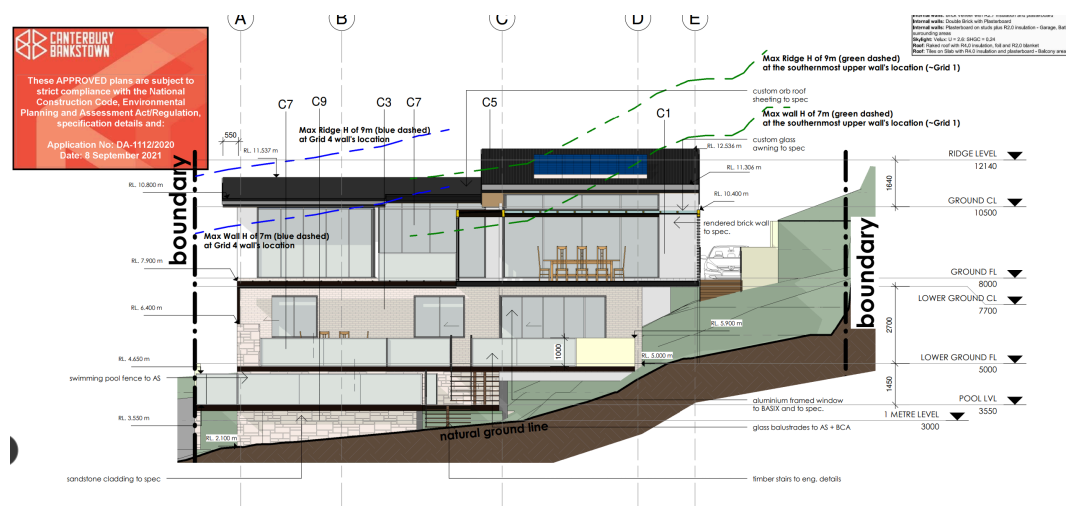


Figure 6: Approved south elevation

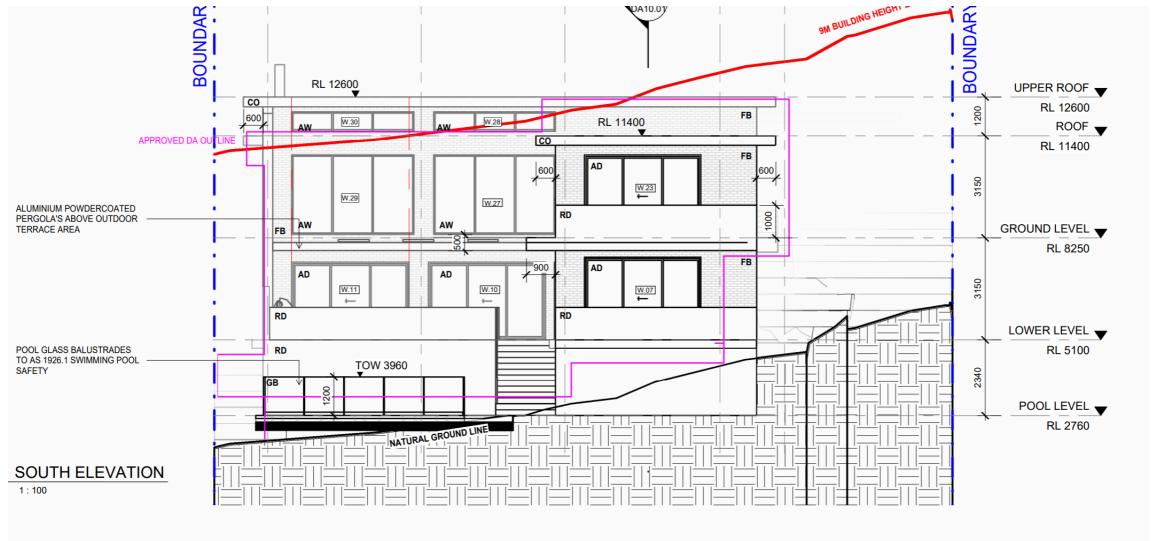


Figure 7: Proposed south elevation

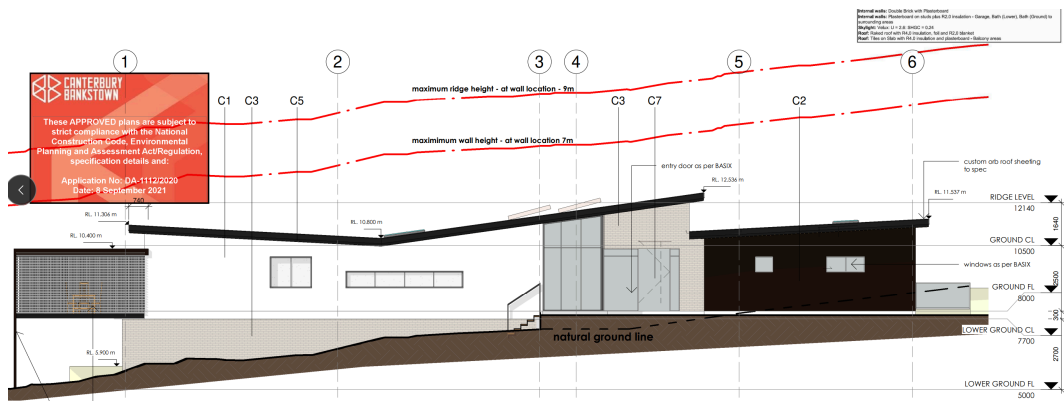
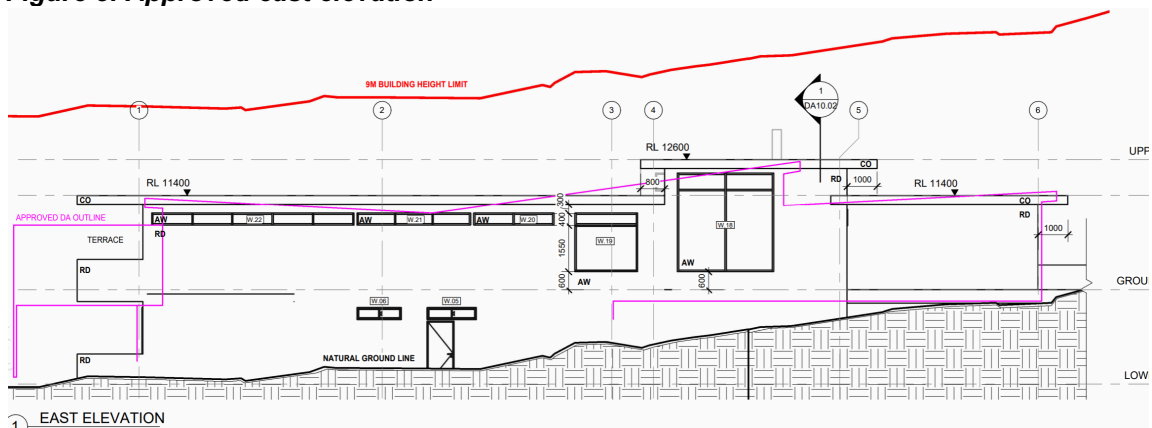


Figure 8: Approved east elevation



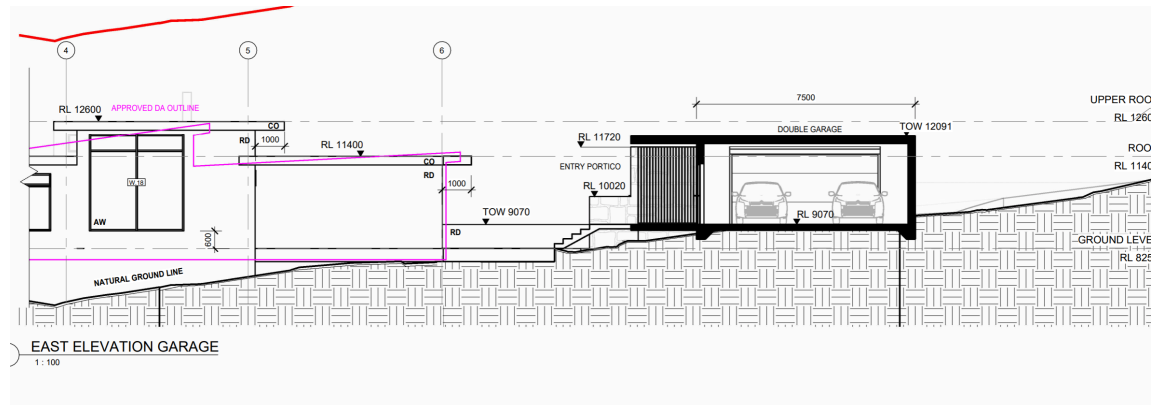


Figure 9 and 9A: Proposed east elevations

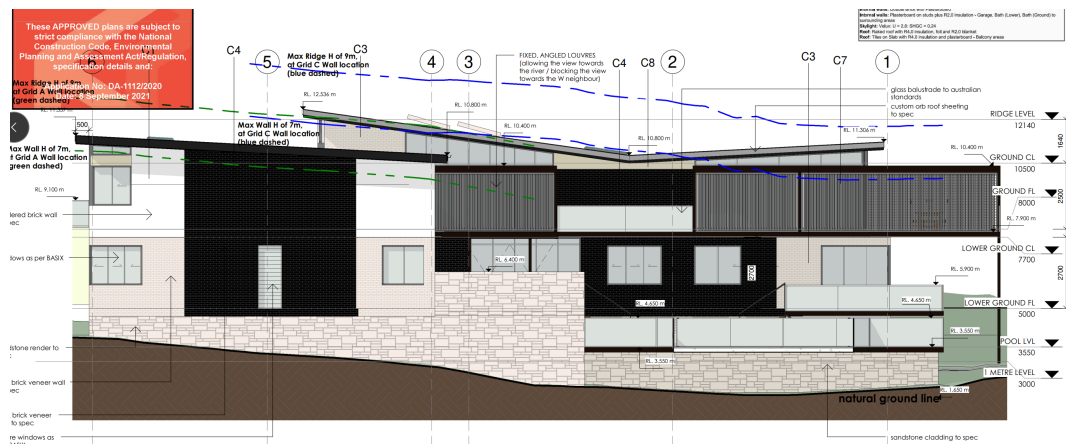


Figure 10: Approved west elevation

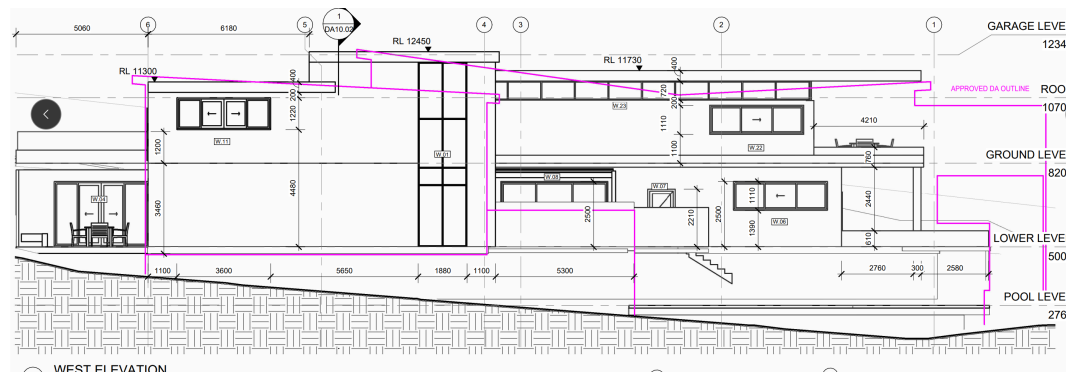


Figure 11: Proposed S4.55 west elevation

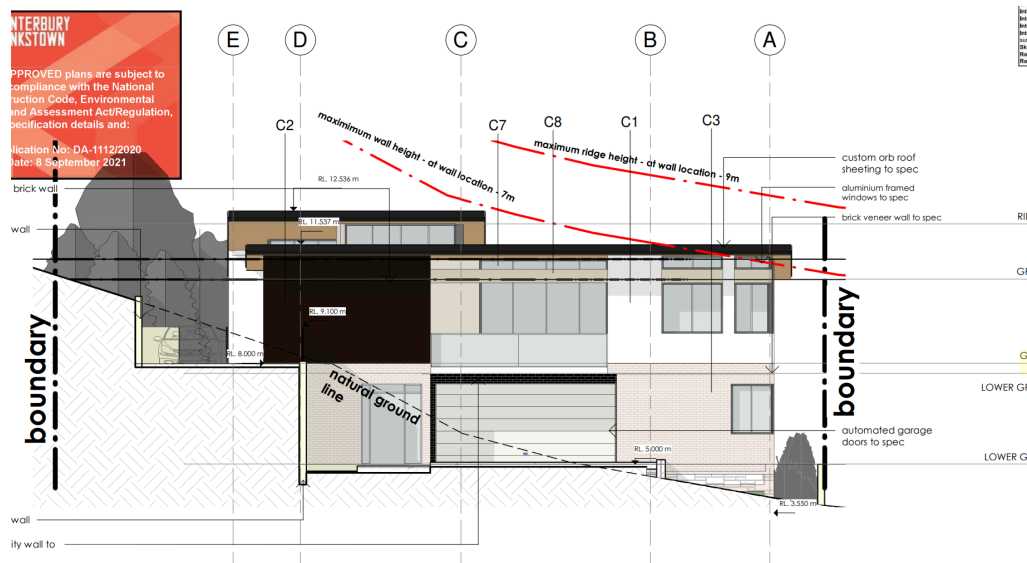


Figure 12: Approved North Elevation

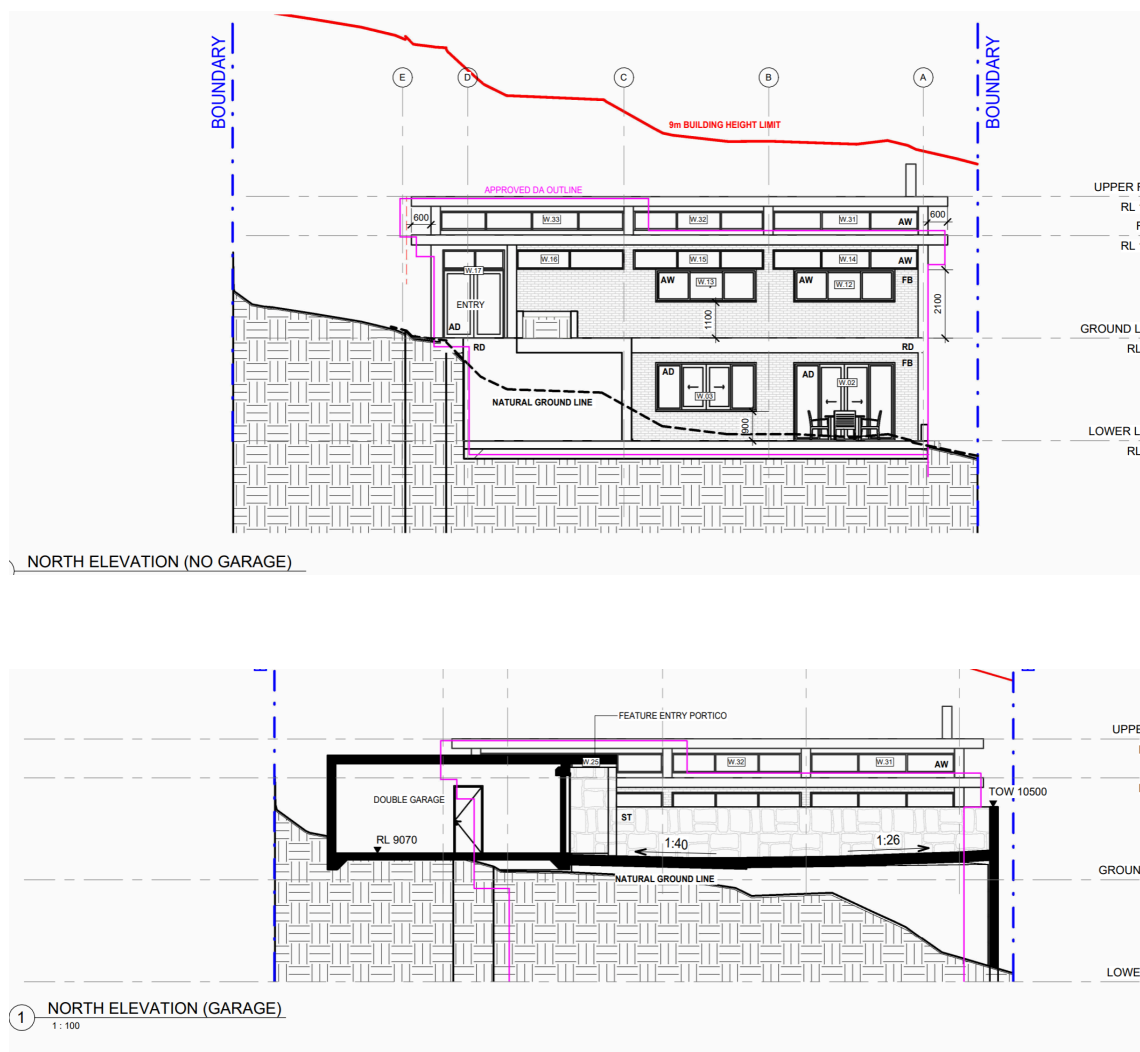


Figure 13: Proposed S4.55 North Elevations

### 3.0. ASSESSMENT – ‘MINIMAL ENVIRONMENTAL IMPACT AND SUBSTANTIALLY THE SAME’

- 3.1 The requirement for an amended development application to be ‘*substantially the same*’ as the original development arises from the requirements of s.4.55 of the *EP&A Act 1979*.
- 3.2 Application of the phrase ‘*substantially the same*’ has been the subject of much legal debate. Councils vary in the application of this clause based on a degree of subjectivity given there are no numerical standards against which to test the amendment.
- 3.3 In respect to the subject section 4.55 application, there is no change to the proposed land use which is maintained as a dwelling house. The modified proposal is therefore substantially the same from a landuse perspective.
- 3.4 The nature of Section 4.55 of the *EP&A Act 1979* assumes that there is likely to be some change between an originally proposed (and approved) development and a modified one. The decision of *North Sydney Council – v – Michael Standley & Associates Pty Ltd*, (97 LGERA 433, 12 May 1998, Mason P), added to the understanding of the appropriateness of permitting a modification as follows:
- “Parliament has therefore made it plain that a consent is not set in concrete – it has chosen to facilitate the modifications of consents, conscious that such modifications may involve beneficial cost savings and / or improvements to amenity.”*
- 3.5 In contemplating consent for a modification, it is the degree of change which determines whether the consent authority has the power to approve a modification adopting the threshold test under Section 4.55 of the *EP&A Act 1979*.
- 3.6 The word to *modify* means ‘*to alter without radical transformation*’ as confirmed in *Sydney City Council v Ilenc Pty Ltd* (1984) 3 NSWLR 414. The proposed changes are not considered to be radical. The dwelling is generally sited in the same location and the overall development density and intensity is similar to the approved development. In our opinion the development, as modified, is *substantially the same*.
- 3.7 While the modification involves an alteration in the building footprint and a minor change in the building height through a reconfiguration of the internal layout and a modified (i.e. flat) roof form, the change is limited in scale and does not radically alter the approved development. These changes are not deemed to be *radical*, as the overall building footprint will remain substantially the same and the approved land use of the site (for the purpose of a dwelling house) will remain unchanged.
- 3.8 In addition, the proposed changes are unlikely to result in any adverse environmental impacts and in fact the proposed garage design removes a lot of fill required for the driveway that was approved. On this basis the Council is well within its power to determine the application under s4.55(2).
- 3.9 The main consideration under Section 4.55 is what constitutes “the same development” and what are the parameters defining “substantially”. In the case of *Vacik Pty Limited and Penrith Council* (unreported 24 February 1992, Stein J), the Court held that substantially means “*essentially or materially or having the same essence*” and that the substance of determining these matters rests with a comparative analysis between the consent being varied and the modification and this approach is supported by the decision of Bignold J in *Moto Projects (No 2)*

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*Pty Ltd and North Sydney Council (NSWLEC 280, Appeal 10741A of 1997, 17/12/99).*

- 3.10 When considering material impact, it is our opinion that the proposed modifications are not of sufficient significance to warrant the submission of a new application. By way of guidance, the Macquarie Concise Dictionary defines material to mean, amongst other things: *of such significance as to be likely to influence the determination of a cause*. Other common meanings of material in relation to impacts would include *real, not incidental or slight*. As stated above the revised scheme will actually significantly reduce the extent of fill.

- 3.11 By way of relevant examples of the Court:

In the matter of *Wang v Woollahra MC* [2006] NSWLEC 106, the Court approved the addition of an additional storey at “*lower ground floor level (containing pool, sauna, pool plant area, ac area and bathroom*” such that the approved two storey building was now a 3-storey building and still deemed the proposal to be substantially the same.

In the matter of *258 Crows Nest Development Pty Ltd v North Sydney Council* [2006] NSWLEC 420, the Court approved an additional residential unit on the approved roof terrace level and still deemed the proposal to be substantially the same.

In the matter of *McKirdy v Hunters Hill Council* [2005] NSWLEC 200, the Court approved a section 96 to increase a basement area by approximately 28%, notwithstanding that the change was contrary to a specific condition of consent.

In *Tipalea Watson Pty Ltd v Ku-Ring-Gai Council* [2003] NSWLEC 253, the Commissioner confirmed that external changes to an approved building may be acceptable under a section 96 application, noting that external appearance is only one aspect of a development as a whole. In that case, Council's expert considered that the proposed external changes would result in a ‘significantly different architectural appearance and character’, presenting differently to the streetscape and neighbouring properties. However, the Court did not accept this position.

- 3.12 Accordingly, Council may proceed to a merit-based assessment to satisfy the requirements of s.4.55(3) of the Act, as the amended development results in a development that is substantially the same as the development originally approved.

#### 4.0 SECTION 4.55 (2) ASSESSMENT

##### 4.1 Section 4.55(2) states that:

###### **(2) Other modifications**

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

*(a) it is satisfied that the development to which the consent as modified relates is the same or substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

*(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

*(c) it has notified the application in accordance with—*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

*(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

- 4.2 The proposed modification of the approved development, as outlined in Section 2 above and shown on the submitted s4.55 plan set, has no significant environmental impact and is substantially the same development approved by Council.
- 4.3 The conditions of approval that are not subject of the proposed modification will remain, and these conditions have been imposed to ensure that an adequate level of environmental performance and amenity are met by the development.
- 4.4 Accordingly, Council may proceed to a merit-based assessment to satisfy the requirements of s.4.55(3) of the Act, including consideration of such matters referred to in section 4.15 as relevant to the development considered under this modification application.

## 5.0 ASSESSMENT – SECTION 4.15 OF THE EP&A ACT 1979

### 5.1 Section 4.15 Heads of Consideration

The relevant heads of consideration under Section 4.15 of the *EP&A Act 1979* were considered as part of the assessment of the original application. This Section 4.55 application establishes that the development is the same as that approved by Council under DA-1112/2020.

#### 4.15 Evaluation

##### *(1) Matters for consideration—general*

*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:*

##### *(a) the provisions of:*

##### *(i) any environmental planning instrument, and*

*(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 (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

##### *(iii) any development control plan, and*

*(iiia) any planning agreement that has been entered into under section 4.7, or any draft planning agreement that a developer has offered to enter into under section 4.7, and*

*(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and*

##### *(v) (repealed)*

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

*(c) the suitability of the site for the development,*

*(d) any submissions made in accordance with this Act or the regulations,*

*(e) the public interest*

### 5.2 State Environmental Planning Policies

#### 5.2.1 SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

No change.

### 5.3 Bankstown Local Environmental Plan 2015 (BLEP 2015)

BLEP 2015 is the relevant local environmental planning instrument (EPI) applicable to the subject modification application. While this EPI has been repealed by Canterbury Bankstown Local Environmental Plan 2023 (CBLEP 2023), BLEP 2015 was the applicable EPI when the Consent was issued for the site.

The following provides an assessment of the modified application against the objectives and other relevant provisions of BLEP 2015.

#### **Zoning and Permissibility**

No change. The site is zoned R2 Low Density Residential under BLEP 2015. The approved development remains permissible with Council's consent.

**Table 2: BLEP 2015 Assessment**

| LEP Provisions                                  | S4.55 Proposal                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>4.3 Height of buildings</b>                  | Permitted: 9m max.<br><br>Approved: ~7m<br><br>Proposed: ~7.45m<br><br>Complies.                                                                                                                                                                                                                                                                                                 |
| <b>4.4 Floor space ratio</b>                    | Permitted: 0.5:1 max<br>Site area (prior to subdivision): 3544m <sup>2</sup><br><br>Permitted: 1772m <sup>2</sup><br><br>Approved*: 0.15:1 or 549.5m <sup>2</sup><br>(*Based on site area prior to subdivision)<br><br>Site area (after subdivision): 2643.3m <sup>2</sup><br><br>Permitted: 1321.65m <sup>2</sup><br><br>Proposed: 0.18:1 or 484m <sup>2</sup><br><br>Complies. |
| <b>4.6– Exceptions to development standards</b> | No variation requests required.                                                                                                                                                                                                                                                                                                                                                  |
| <b>5.10 Heritage Conservation</b>               | The approved development, as amended remains acceptable in relation to heritage items.                                                                                                                                                                                                                                                                                           |
| <b>5.21 Flood Planning</b>                      | Approved development considered flood impacts in original design. Conditions of consent remain valid.                                                                                                                                                                                                                                                                            |
| <b>6.2 Earthworks</b>                           | The proposed modification includes additional earthworks to accommodate the modified footprint. However, the extent of additional earthworks is not significant, and conditions of consent remain valid.                                                                                                                                                                         |

#### **5.4 Relevant Non-Statutory Development – Canterbury Bankstown DCP 2023 (CBDCP 2023)**

Canterbury Bankstown DCP 2023 is the adopted development control plan, which contains design controls for various types of development. These provisions support the CBLEP 2023 and apply to all land within the Canterbury Bankstown Local Government Area. Table 3 below is the DCP Assessment table for the proposed S4.55(2) application. It includes only those DCP provisions relevant to the modification and is not a reassessment of the whole.

| Canterbury Bankstown DCP 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DCP Provisions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | S4.55 Proposal                                                                                                                                                                                                                                                                               |
| Chapter 5 Residential Accommodation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                              |
| Section 2 Dwelling Houses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                              |
| <b>Storey Limit</b><br><br>2.1 The storey limit for dwelling houses is two storeys.<br><br>2.2 The siting of dwelling houses and landscape works must be compatible with the existing slope and contours of the site and any adjoining sites. Council does not allow any development that involves elevated platforms on columns; or excessive or unnecessary terracing, rock excavation, retaining walls or reclamation.                                                                                                                     | Modified proposal will be a maximum of two storeys in height.<br><br>Modified proposal has been designed to be compatible with existing site conditions and site topography.                                                                                                                 |
| <b>Fill</b><br><br>2.3 Any reconstituted ground level on the site within the ground floor perimeter of dwelling houses must not exceed a height of 1m above the ground level (existing). For this clause, the ground floor perimeter includes the front porch.<br><br>2.4 Any reconstituted ground level on the site outside of the ground floor perimeter of dwelling houses must not exceed a height of 600mm above the ground level (existing) of an adjoining site. For this clause, the ground floor perimeter includes the front porch. | Modified application will not result in fill exceeding 1m above existing ground levels within the ground floor perimeter of the dwelling.<br><br>Modified application will not result in any changes to ground levels above 600mm in height above existing ground levels on adjoining sites. |
| <b>Setbacks</b><br><br><b>Front:</b><br><br>5.5m (ground floor / first storey)<br><br>6.5m (second storey)<br><br><b>Side</b>                                                                                                                                                                                                                                                                                                                                                                                                                 | Approved: ~80m from street<br><br>Proposed: ~80m from street<br><br>Complies.                                                                                                                                                                                                                |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>0.9m (wall height up to 7m)</p> <p>1.5m (wall height greater than 7m)</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p>Approved: Minimum 1.5m to dwelling at both levels</p> <p>Nil setback to timber pool decking at lower ground level</p> <p>Proposed: Minimum 1.5m to dwelling at both levels</p> <p>Minimum 1.5m to dwelling at both levels, including outdoor decking</p> <p>Complies.</p>                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p><b>Private Open Space</b></p> <p>Minimum 80m2 of POS behind the front building line.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>Approved development and proposed modification both provide adequate POS areas behind front building line.</p> <p>Proposed POS 840sqm - Complies</p> <p>Complies</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p><b>Access to Sunlight</b></p> <p>2.11 At least one living area must receive a minimum three hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Council may allow light wells and skylights to supplement this access to sunlight provided these building elements are not the primary source of sunlight to the living areas.</p> <p>2.12 At least one living area of a dwelling on an adjoining site must receive a minimum three hours of sunlight between 8.00am and 4.00pm at the mid-winter solstice. Where this requirement cannot be met, the development must not result with additional overshadowing on the affected living areas of the dwelling.</p> <p>2.13 A minimum 50% of the private open space required for the dwelling house and a minimum 50% of the private open space of a dwelling on an adjoining site must receive at least three hours of sunlight between 9.00am and 5.00pm at</p> | <p>Approved development provided adequate access to sunlight for internal living areas.</p> <p>Modified development also provides adequate access top sunlight for internal living areas.</p> <p>Complies.</p> <p>Approved development provided adequate access to sunlight for internal living areas for adjoining properties. Modified development also provides adequate access to sunlight for internal living areas of adjoining properties.</p> <p>Complies.</p> <p>Approved and modified development both provide adequate sunlight between 9:00am and 5:00pm during the winter equinox for POS areas within the site and within adjoining residences.</p> <p>Complies.</p> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>the equinox. Where this requirement cannot be met for a dwelling on an adjoining site, the development must not result with additional overshadowing on the affected private open space.</p> <p>2.14 Development should avoid overshadowing any existing solar hot water system, photovoltaic panel or other solar collector on the site and neighbouring sites.</p>                                                                                                                                                          | <p>Approved development and modified development do not overshadow solar hot water systems or photovoltaic systems within the site or on neighbouring sites.</p> <p>Complies.</p>                                                                                                                                                                                    |
| <p><b>Visual Privacy</b></p> <p>2.15 Where development proposes a window that directly looks into the living area or bedroom window of an existing dwelling, the development must:</p> <p>(a) offset the windows between dwellings to minimise overlooking; or (b) provide the window with a minimum sill height of 1.5m above floor level; or (c) ensure the window cannot open and has obscure glazing to a minimum height of 1.5m above floor level; or (d) use another form of screening to the satisfaction of Council.</p> | <p>Neither approved development nor modified development include windows that overlook into living areas or bedroom windows of adjoining / surrounding residents.</p> <p>Modified development maintains adequate visual privacy between site and surrounding / adjoining properties.</p> <p>Complies.</p>                                                            |
| <p><b>Building Design</b></p> <p>2.19 The maximum roof pitch for dwelling houses is 35 degrees.</p>                                                                                                                                                                                                                                                                                                                                                                                                                              | <p>Approved development included a skillion roof with a roof pitch of up to 8 degrees.</p> <p>Modified development proposes flat roof form throughout dwelling.</p> <p>Complies.</p>                                                                                                                                                                                 |
| <p><b>Building Design (Car Parking)</b></p> <p>2.26 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 facade.</p>                                                                                                                                                                                                                                                         | <p>Approved development included attached double garage integrated into the dwelling.</p> <p>Proposed modification involves a detached double garage forward of the building line. Double garage is situated over 80m from street frontage is compatible with design and form and will not dominate the façade of the new dwelling as modified.</p> <p>Complies.</p> |
| <p><b>Landscape</b></p> <p>2.28 Development must retain and protect any significant trees on the site and adjoining sites.</p>                                                                                                                                                                                                                                                                                                                                                                                                   | <p>Development will retain and protect significant trees on site and adjoining sites as far as practicable.</p>                                                                                                                                                                                                                                                      |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>To achieve this clause, the development may require a design alteration or a reduction in the size of the dwelling house.</p> <p>2.29 Development must landscape the following areas on the site by way of trees and shrubs with preference given to native vegetation endemic to Canterbury-Bankstown (refer to the Landscape Guide for a list of suitable species):</p> <p>(a) a minimum 45% of the area between the dwelling house and the primary street frontage; and</p> <p>(b) a minimum 45% of the area between the dwelling house and the secondary street frontage; and</p> <p>(c) plant at least one 75 litre tree between the dwelling house and the primary street frontage (refer to the Landscape Guide for a list of suitable trees in Canterbury-Bankstown)</p> | <p>Original approval includes consent for removal of several native trees within site.</p> <p>Modified development has reduced the extent of tree removal required.</p> <p>Proposed modification provides adequate landscaped areas throughout the site in accordance with the DCP requirements.</p> <p>Deep soil = 874sqm (33%) complies<br/>       Area forward of Building = 905sqm (45% = 407.25sqm). Proposed LA forward of the building line = 411.45sqm (45.46%)</p> <p>Complies.</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## 5.5 Suitability of the site for the development

It is considered that the proposed modifications are suitable for the subject site, as the development will continue to achieve compliance with the relevant standards and requirements of the BLEP 2015 and CBD CPP 2023.

In addition, the modifications do not significantly alter the building envelope and are unlikely to result in adverse environmental impacts.

The locational context of the development, being an established residential area, is not changed by the modifications, and the approved land use as a dwelling house remains the same.

It is therefore considered that the development, as modified, remains consistent with the future character of the locality and future built form envisaged by the BLEP 2015.

## **5.6 Any submissions made in accordance with this act or the regulations**

The application has been lodged pursuant to s.4.55(2) of the *Environmental Planning and Assessment Act 1979* and is therefore subject to notification in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2021* and Council's Community Participation Plan.

In this regard, the application is required to be notified in a manner consistent with the original development application, including notification to adjoining and nearby landowners and any other parties identified in Council's Community Participation Plan.

## **5.7 Public Interest**

The relevant matters have been considered in the context of the public interest, as informed by the applicable planning policies and codes relevant to the proposed amendment. In the circumstances of the case, the development is not anticipated to give rise to any adverse impacts on the public interest.

## 6.0 CONCLUSION

The proposed modification to the consent will result in a development that has minimal to minor environmental impacts and remains substantially the same as the development originally approved by Council under DA-1112/2020.

The proposed changes, in conjunction with the existing conditions of consent, will continue to ensure an appropriate level of environmental performance is maintained.

Accordingly, the subject Section 4.55(2) application, as described in this Statement, will not result in any undue environmental impacts and is substantially the same as the development originally approved.

On this basis, it is recommended that Council support the proposed amendments to the approved plans, as described in this Statement of Environmental Effects.

  
**Andrew Martin MPiA**  
**Planning Consultant**