

**NSLPP MEETING HELD ON 01/12/2021****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement (Building Height)

ADDRESS/WARD: 8 Baden Road, Kurraba Point (V)**APPLICATION No:** D206/21**PROPOSAL:** Alterations and additions to a heritage listed dual occupancy including an attic addition and partial enclosure of ground floor verandah.**PLANS REF:**

Plan/Rev No.	Description	Prepared by	Dated
A102 Rev D	Site & Roof Plan	Anne Colville Architect	13.10.21
A103 Rev D	New Ground Floor Plan	Anne Colville Architect	13.10.21
A104 Rev D	New first Floor Plan	Anne Colville Architect	13.10.21
A105 Rev D	New Attic Plan	Anne Colville Architect	13.10.21
A200 Rev D	New East Elevation	Anne Colville Architect	13.10.21
A201 Rev D	New North Elevation	Anne Colville Architect	13.10.21
A202 Rev D	New West Elevation	Anne Colville Architect	13.10.21
A203 Rev D	New South Elevation	Anne Colville Architect	13.10.21
A300 Rev D	Sections	Anne Colville Architect	13.10.21

OWNER: Gail Pemberton**APPLICANT:** Anne Colville**AUTHOR:** Robin Tse, Senior Assessment officer**DATE OF REPORT:** 22 November 2021**DATE LODGED:** 8 July 2021**RECOMMENDATION:** Refusal

EXECUTIVE SUMMARY

This development application seeks NSLPP approval for alterations and additions to a dual occupancy including an attic addition and partial enclosure of the ground floor verandah.

The application is reported to North Sydney Local Planning Panel for determination as the proposal involves a variation to the building height development standard which is greater than 10%. It also involves part demolition of a heritage item, that requires determination of the application by the Panel as directed by the Minister of Planning, Industry and the Environment.

Notification of the proposal has attracted a total of eight (8) submissions raising particular concerns about non-compliance with the LEP building height limit, inappropriate bulk and scale, adverse view impacts and privacy impacts. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

The development application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013 and was found to be unsatisfactory.

The applicant has submitted a Clause 4.6 statement seeking a variation to the permissible height limit. However, the variation to the building height development standard is not supported because the uncharacteristic design of the building elements above the LEP maximum building height limit would result in a full third level within a two storey heritage listed building. Furthermore, the unsympathetic design for the attic addition would cause a minor loss of water views from the adjoining properties. Therefore, a variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

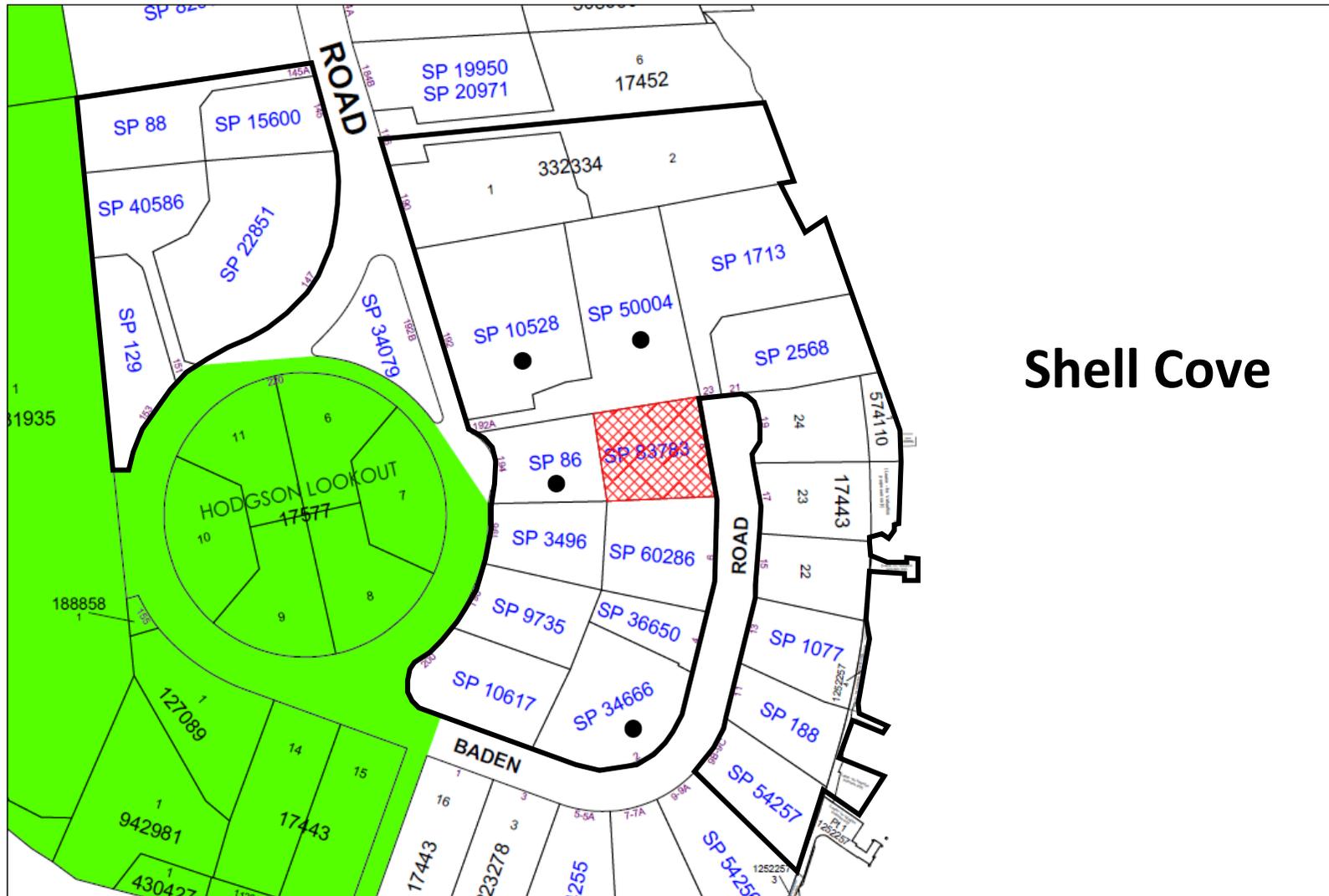
The proposed development is contrary to the objective of the R3 (Medium Density Residential) zone because the proposal would detract from the significance of the subject heritage listed building.

Furthermore, the proposal would result in an addition on the front elevation of the existing roof of a heritage listed building and is contrary to the requirement in Clause 6.6 (2)(b)(i) of the LEP requiring dual occupancies to be contained substantially within the existing building fabric of a heritage item.

The application was referred to Council's Conservation Planner who considered the proposal unacceptable because of the adverse impacts on the heritage significance of subject heritage item.

Accordingly, the proposed development is recommended for **refusal**.

LOCATION MAP



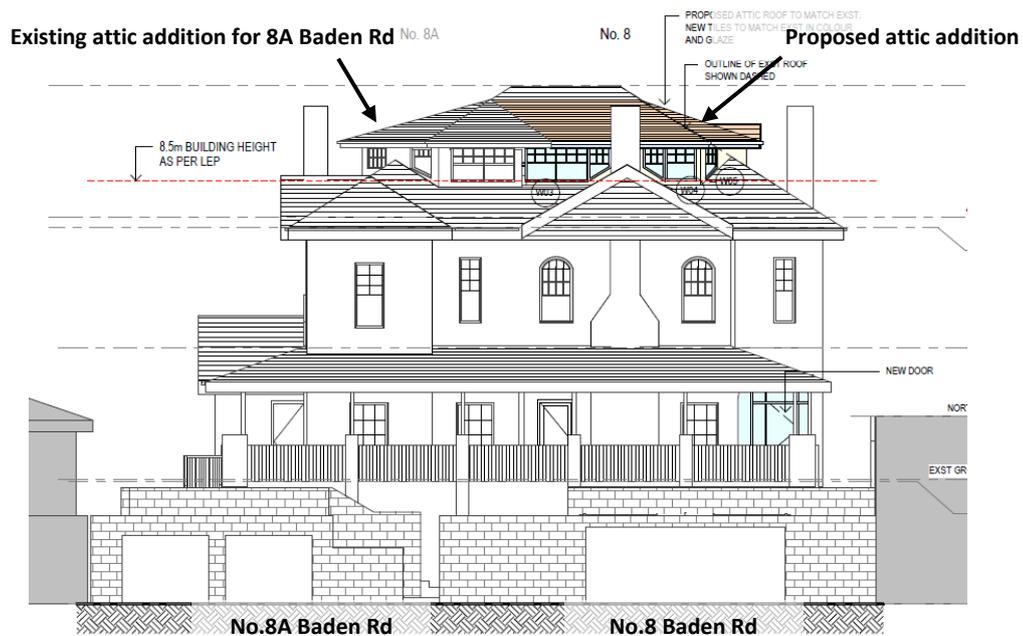
Shell Cove

Property/Applicant ● Submitters - Properties Notified

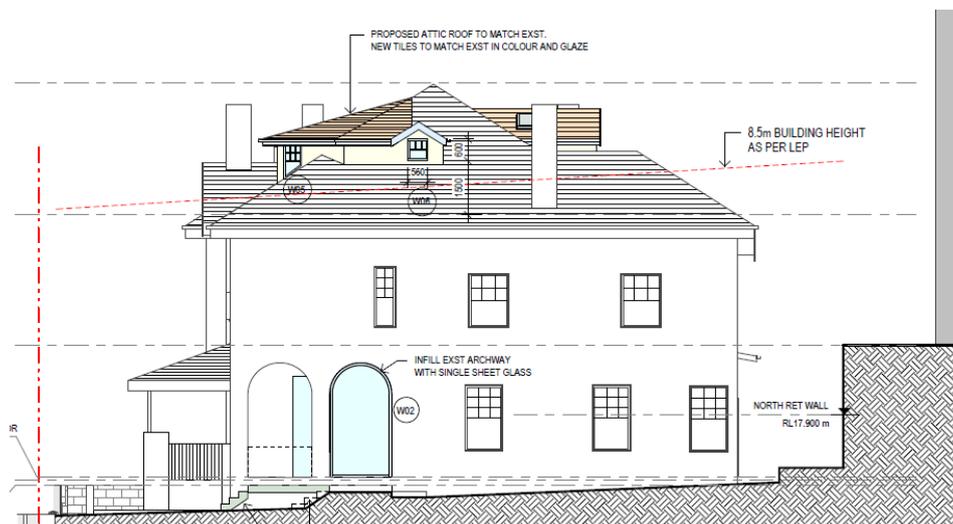
DESCRIPTION OF PROPOSAL

The applicant seeks NSLPP approval for alterations and additions to a heritage listed dual occupancy (attached dual occupancy). The proposed works are related to the northern occupancy known as No. 8 Baden Road. The proposed works are summarised below:

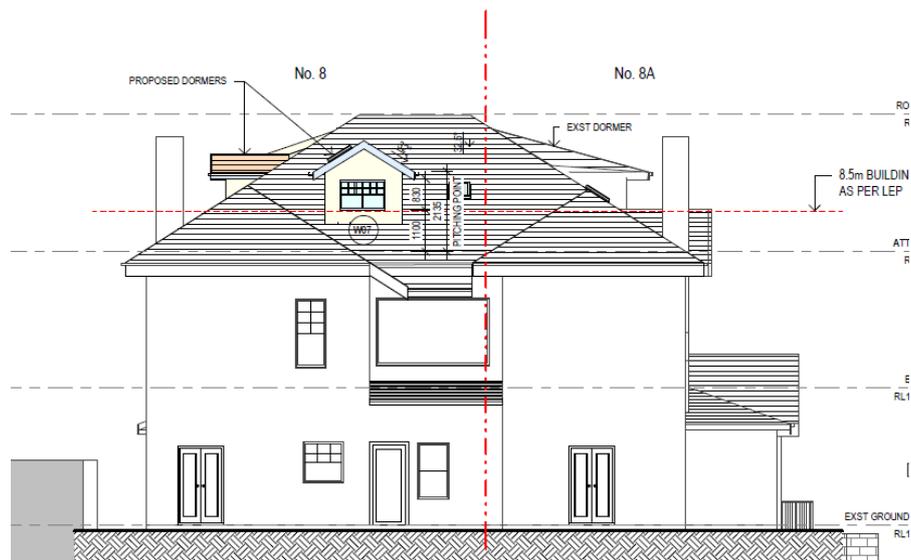
- (a) Ground Floor – Re-configuration of the living/dining area layout including the partial enclosure of the existing verandah and the installation of a new front door;
- (b) First floor – Re-configuration of the study to provide a staircase to the proposed attic addition; and
- (c) New Attic Level – Construction of a new attic addition to provide a bedroom, an ensuite bathroom and a staircase to the first floor below.



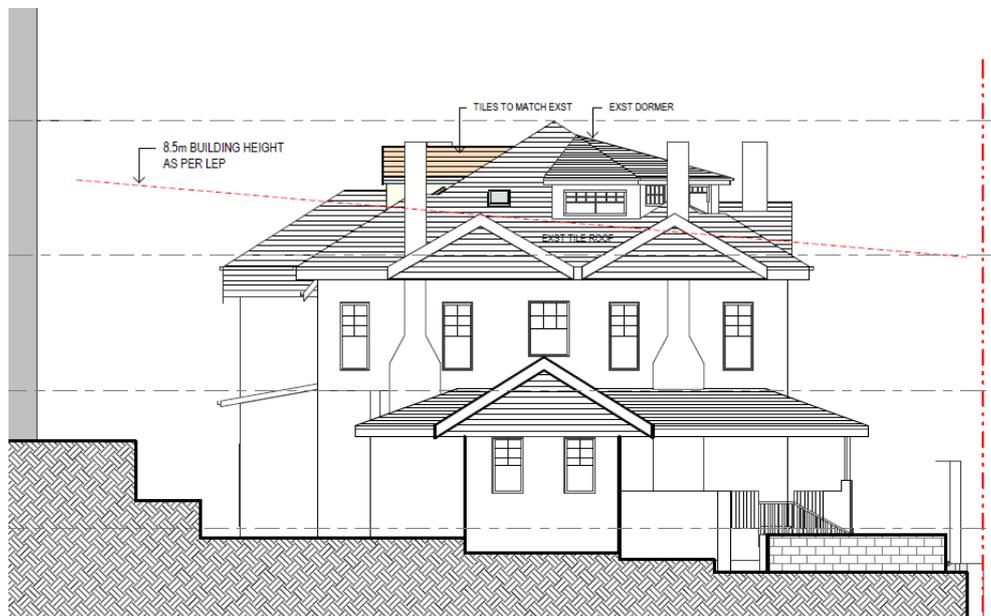
Eastern (Baden Road) elevation



Northern elevation



Western (Rear) elevation



Southern elevation

Figures 1 – 4 : Proposed development

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R3 (Medium Density Residential)
- Item of Heritage – Yes
- In Vicinity of Item of Heritage – Yes – Nos. 6 & 6A Baden Road
- Conservation Area – No

- Environmental Planning & Assessment Act 1979 (As amended)
- SREP (Sydney Harbour Catchment) 2005
- SEPP 55 – Remediation of Land & Draft SEPP
- SEPP (Building Sustainability Index: BASIX) 2004

- Draft SEPP Environment 2017
- Local Development

POLICY CONTROLS

DCP 2013

Sydney North Sydney Local Infrastructure Contributions Plan 2020

Harbour Foreshores & Waterways Area DCP 2005

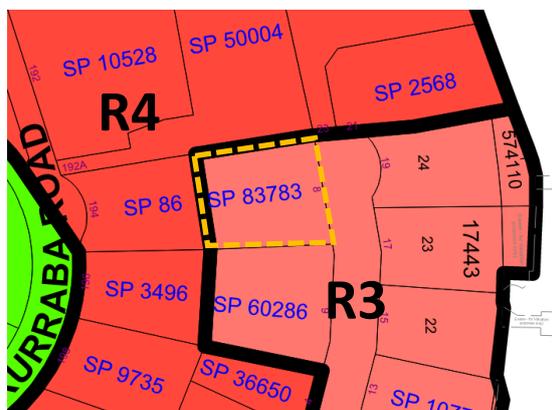


Figure 5: Zoning Map

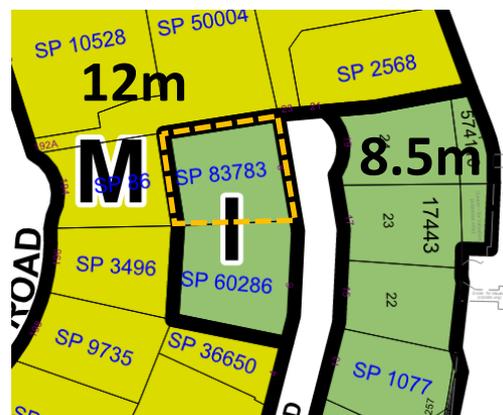


Figure 6: Building Height Map

DESCRIPTION OF LOCALITY

The site is located on the western side of Baden Road at the end of the cul-de-sac and is currently occupied by a heritage listed dual occupancy with excavated garages known as (Nos. 8 and 8A Baden Road, SP83783). The existing development contains two (2) full storeys and an attic addition on the southern side of the building (No.8A Baden Road). The proposed works are to be carried out within the northern side of the building (No. 8 Baden Road).

The subject dual occupancy has a frontage to Baden Road of 21.665m with a total site area of 473.06m². The site rises from the front boundary (RL12.41) to the rear boundary (RL16.83) with a rise of approximately 4.4 metres.

The subject dual occupancy is a heritage item but not located within a conservation area. Surrounding development is predominately residential with a mixture of dwelling houses and apartment buildings. Whilst the roof of the building may not be highly visible from Baden Road, the existing attic addition on the roof plane of the southern occupancy (No.8A Baden Road) is visible as illustrated below in **Figure 7**. Furthermore, the subject occupancy is also visible as seen from the Harbour/Shell Cove and the western foreshore of Cremorne Point as illustrated in a photo taken at Cremorne Point (**Figure 9**).

To the south of the subject site is another heritage item (Nos. 6 & 6A Baden Road) with a similar built form with two full storeys and an attic addition on the southern side of the building.

Apartment buildings are located to the north and west of the subject site including No. 192A Kurraba Road to the north, No.192 Kurraba Road to the north-west and No.194 Kurraba Road to the west (rear) of the subject site.



Figure 7: Subject site - Eastern (Baden Road) elevation



Figure 8: Subject Site (as seen from the driveway of the adjoining apartment development at No.192A Kurraba Road)



Figure 9: The subject site as seen from the western foreshore of Cremorne Point Reserve

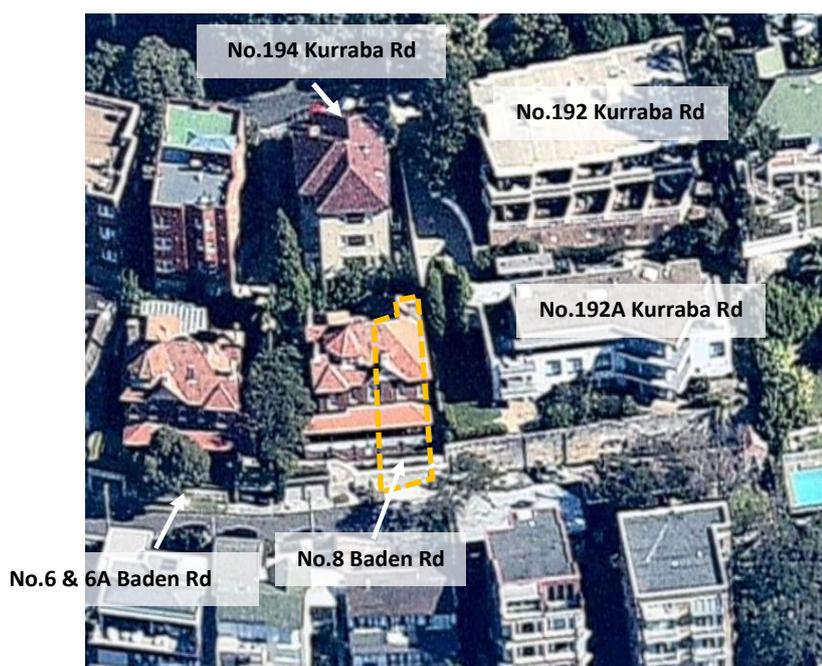


Figure 10: The locality

RELEVANT HISTORY

Previous applications

- **17 November 2003** - Development Application (**D402/03**) for the construction of an excavated double garage on the Baden Street frontage, construction of a roof terrace above and landscaping works was refused by Council. A Class 1 Appeal was lodged with the Land and Environment Court against the refusal of the development application, wherein the Commissioner upheld the appeal.
- **18 August 2008** - Development consent (**D175/08**) was granted by Council for alterations and additions to an existing building to create a dual occupancy (attached dual occupancies) development including further excavation of the site to extend the existing garage to provide a further two (2) car parking spaces, extension to the existing sandstone front wall and provision of new entry gates to each dwelling, internal reconfiguration of the dwelling to separate each dwelling at ground and first floor, demolition of a stair case and elevated walkway at the rear of the building, modifications to fenestrations including the installation of six (6) new skylights and creation of new attic within roof space including a new balcony in between existing gables and a stair case from the level below.
- **16 April 2009** – A Section 96 Application (**D175/08/2**) was approved under delegated authority which granted consent for the reduction in size of the approved excavated garage to three (3) spaces, internal reconfiguration to both units, deletion of the attic level terrace and modifications to fenestration.
- **6 January 2010** – A Section 96 Application (**D175/08/3**) was approved under delegated authority which granted consent for the reduction in size of the garage, deletion of the attic addition and skylights, deletion of planter boxes and revised strata subdivision.
- **23 April 2012** - Development consent (**D402/11**) was granted by Council for alterations and additions to an attached dual occupancies including a new double garage, an attic, internal alterations and amendments to the strata plan. This application approved the current attic addition at No.8A Baden Road.

- **29 June 2012** – A Construction Certificate (**BSN12198**) for development consent (**D402/11**) was issued by a PCA (Peter J Boyce & Associates). It is noted that the approved CC drawings are consistent with the approved DA drawings. The approved construction Certificate drawing from the eastern (Baden Road) elevation is illustrated below (**Figure 11**).



Figure 11: Approved Construction Certificate drawing eastern (Baden Road) elevation

- **7 November 2012** - A section 96 application (**D402/11/2**) was approved under delegation which granted consent for the relocation of the northern garage further to the south.
- **31 July 2014** - A Section 96 application (**D402/11/3**) was lodged for a new laundry that was rejected because the application was considered not to be “substantially the same” development as previously approved so this application was rejected by Council whereupon the applicant was advised to lodge a new development application.
- **25 November 2014** - Development application (**D417/14**) for a new laundry was lodged with Council and was subsequently withdrawn by the applicant following concerns raised about the proposed non-compliant site coverage.
- **20 April 2015** - A Section 96 application (**D402/11/4**) requesting the removal of the central sandstone piers in each garage door & to provide new door/ staircase to/ from northern garage was approved in part but required the retention of the central pier to the southern garage.
- **5 August 2015** - A review of the determination (**D402/11/4**) was approved by NSIPP.
- **11 March 2019** - A Section 4.55 application (**D402/11/5**) was approved under delegated authority which granted consent for modifications to the double garage to retain the central sandstone pier.

Current Application

- **8 July 2021** – The subject development application (**D206/21**) for alterations and additions to the heritage listed attached dual occupancy at No.8 Baden Road including an attic addition was lodged with Council.
- **23 July to 6 August 2021** – Council notified the subject Development Application to the adjoining properties and the Kurraba Precinct.
- **18 & 19 August 2021** – The applicant was advised about the concerns raised by Council’s Conservation Planner regarding the heritage impacts of the proposal.

The applicant was also requested to provide further information/comments regarding the inconsistencies between the design of the attic addition for the southern dual occupancy (No.8A Baden Road) as shown on the submitted DA plans and the design as shown on the DA and the Construction Certificate approved drawings issued in 2012. A comparison of drawings has revealed some inconsistencies between the 2012 plans and the current DA plans including variation to the window design/location and the eave line.

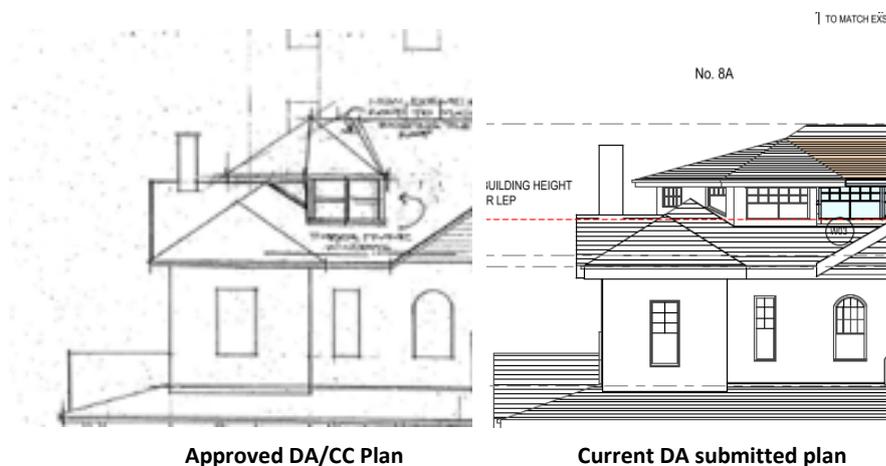


Figure 12: Attic addition at No.8A Baden Road

The matter has been referred to Council’s Building Compliance Unit for further investigation/action.

- **2 September 2021** – The applicant indicated further comments were sought from the heritage consultant in relation to the proposed design.
- **22 September 2021** – A teleconference was held between the applicant, the applicant’s heritage consultant and Council Officers.
- **28 October 2021** – The applicant submitted amended plans including modifications to the design of the attic addition with the deletion of a balcony and the addition of a rear dormer.
- **5 to 19 November 2021** – Council notified the subject Development Application to the adjoining properties and the Kurraba Precinct.

INTERNAL REFERRALS

Building

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

HERITAGE

The application, including the amended plans submitted by the applicant, was referred to Council's Conservation Planner who provided the following comments:

Heritage Impact Assessment

a) North Sydney LEP 2013

The amended proposal still does not satisfy clause 5.10 in that the front façade is not retained and conserved as there will be a new accretion on the roof visible in the context of the front façade. The proposed attic conversion will result in a new floor level and will alter the perceived storey height of the building.

While the existing dormer at 8A Baden is perceived as a minor accretion to the roof form, the proposed roof addition on the amended plans will still result in additional bulk which will be perceived as a whole new level and an alteration in the scale of the building from two storeys to three storeys.

In addition, the ground level verandah will be partially enclosed resulting in further modifications to the primary façade of the dwelling. The design similarity with the adjacent mirror reversed building 1/6 and 2/6 Baden Road will therefore be further altered thus detracting from the heritage significance of the group of heritage items.

b) North Sydney DCP 2013

An assessment of the proposal, with reference to Part B Section 13 of the North Sydney DCP 2013 has been made with the following elements of the DCP being of note:

13.4 Development in the Vicinity of Heritage Items - *The proposal will detract from 1/6 and 2/6 Baden Road, as it will remove the design similarity between the mirror reversed pair of buildings 1-2/6 and 8-8A Baden Road.*

13.5.1 Heritage Items – Objective O1 – Ensure changes to heritage items are based on an understanding of the heritage significance of the heritage item - *The amended proposal does not comply as the roof addition and verandah enclosure will detract from the aesthetically significant primary façade. Only conservation works should occur to the primary façade.*

Provision P5 Locate change away from original areas of the heritage item that are intact - The proposal does not comply as the new works will be visible from Baden Road.

13.5.2 Form, Massing and Scale - Objective O1 To allow new alterations and additions to heritage items, where new work does not impact on the heritage significance of the heritage item - The proposal does not comply as the new roof top addition and changes to the entry will alter the aesthetic significance of the item.

13.5.3 Additional Storeys – Objective O1 To minimise the visual dominance of any new work from public places -The amended proposal does not comply as the proposed attic level addition will link with the existing dormer on 8A Baden Road, creating a full floor addition. This will visually dominate the roof plane as it will be forward of the primary roof ridge and will be visible from the public domain.

13.5.4 Roofs – Objective O1 To ensure that original roofs, their hierarchy and materials are maintained -The proposal does not comply as the proposed works to the attic will visually dominate the primary roof plane and will be forward of the primary roof ridge.

13.5.5 Interior Layouts – Objective O1 To ensure that significant interior elements are retained and preserved - The latest submission has clearly shown the impacts to significant interior fabric. The new stairs from the first floor to the proposed attic have been relocated in this latest proposal to retain the pressed metal ceiling, cornices and skirting boards in the hallway. This is satisfactory. The proposed ground floor works however, will result in the interior space being expanded into the existing wrap around verandah which is an architectural element characteristic to 1- 2/6 and 8A Baden Road. The enclosure of original verandahs is not supported. The only works that would be acceptable in this location would be re-instatement of the original door and window openings.

13.5.7 Group Heritage Items - Objective O1 Retain the significant features or characteristics of the group but allow flexibility for change where significance will not be affected - The proposed works will detract from the significance of the group of dwellings at 1-2/6 and 8A Baden Road in that the perceived storey height and wrap around verandahs will differ.

13.9.1 Skylights, Solar Panels and Satellite Dishes – Objective O1 To ensure that skylights, solar panels and satellite dishes do not detrimentally impact upon the significance of heritage items and heritage conservation areas - No objection is raised to the proposed skylight at the rear of the building.

13.9.2 Dormers – Provision P2 – New dormer windows are to secondary in scale to the roof and setback from the eaves and ridge line - The proposed rear dormer on the amended design is acceptable in scale and proportion.

13.9.3 Verandahs and Balconies - Objective O2 To encourage the retention and reinstatement of original verandahs and balconies, especially where they are significant or contributory to an individual, row or group of buildings. P4 Enclosing front balconies and verandahs is not supported - The proposal does not comply as the enclosure to the verandah will detract from the building's heritage significance. The similar glazed infill panels at 1/6 Baden Road were approved in July 2000, prior to the adoption of the current heritage controls.

13.9.4 Materials - Objective O1 To ensure that materials and finishes are consistent with the characteristic elements of the heritage item or heritage conservation areas - The proposed materials for the roof addition will generally have compliant materials in that the new roof cladding will match the existing cladding. The proposed works to the verandah enclosure however, will be contemporary, visible in the context of the primary facade and will utilise a single pane of glazing in the arched opening and a largely glazed new front door with a glazed highlight and sidelights.

Conclusion

The amended proposal is still considered to be unsupportable with regard to heritage. The original heritage-listed building has already been subjected to change by being subdivided into two dwellings.

The proposal seeks to further detract from the building's heritage significance. The existing attic conversion on 8A Baden Road is perceived from the street as a single dormer and is read in the context of the front roof plane of the whole building, not just 8A. The dormer on 8A Baden Road is also similar to that at 1/6 Baden Road which was constructed prior to 2000, prior to the existing heritage controls being adopted.

The amended proposed new attic works however, will still result in the existing dormer at 8A being read as part of a full floor roof addition, as the addition will extend across the majority of the front roof plane forward to the primary roof ridge and wrap around the side. This will result in the building being perceived as three storeys in scale, rather than two storeys. This will detract from the aesthetic significance of the primary façade.

In addition, the proposed changes to the Ground level entry will partially enclose the original verandah and alter significant fabric using a single glazed panel in the brick archway a largely glazed new entry door with glazed highlight and side lights. Only conservation works should be undertaken to the primary façade on a heritage item.

Both the proposed roof addition and verandah enclosure will result in new architectural elements that are not consistent with the group of heritage items located at 1/6, 2/6 and 8A Baden Road and will further detract from the aesthetic significance of the group of heritage items.

Comment

The comments from Council's Conservation Planner are noted and concurred with. The proposed works would result in substantial new works on the roof of the subject dual occupancy resulting in the creation of the third floor level. The proposal, as amended by the applicant, is not supported due to the detrimental impacts on the significance of the heritage listed item.

SUBMISSIONS

Original proposal

Council notified adjoining properties and the Kurraba Precinct of the proposed development seeking comment between 23 July to 6 August 2021. Council received six (6) submissions. The matters raised in the submissions are listed below:

Basis of Submission

- Concerns are raised about the loss of visual privacy/overlooking arising from the proposed attic addition.
- Concerns are raised about the impacts on views as seen from the adjoining apartment building to the north-west of the site.
- Concerns are raised about the loss of visual privacy/overlooking and noise impacts arising from the proposal.
- Non-compliance with LEP building height limit.
- The submitted Clause 4.6 variation failed to address the impacts on significant views as seen from the adjoining apartment building to the west of the subject site arising from the proposal.
- Non-compliance with LEP building height limit.
- Excessive height, bulk and scale of the proposed addition resulting in the loss of views as seen from the adjoining apartment building to the west of the subject site.
- The loss of water views as seen from the adjoining apartment building to the west of the subject site.
- Additional loss of water impacts if solar panels are to be installed on the roof in the future.
- Objection raised to the proposal because of the on-compliance with LEP building height limit and other planning regulations.
- The proposal would affect the adjoining properties in terms of views, solar access and privacy.

The issues raised in the submissions are summarised below and addressed later in this report. The original submissions may be viewed on DA tracking on Council's website https://www.northsydney.nsw.gov.au/Building_Development/Current_DAs and are available for review by NSLPP members.

Amended Proposal

The applicant submitted amended plans that were renotified to adjoining properties and the precinct for 14 days between 5 and 19 November 2021. Council received two (2) submissions, including a submission in support. The matters raised in submission objecting to the proposal are listed below:

Basis of Submission

- Excessive height, bulk and scale of the proposed addition resulting in the loss of views as seen from the adjoining apartment building to the west of the subject site.
- There would be a loss of visual privacy resulting from the proposed dormer on the rear (western) elevation facing the apartment building to the west of the subject site.
- Adverse impacts on property values.
- The non-compliance with the LEP building height limit should not be supported due to the impacts arising from the proposed development.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

SREP – (Sydney Harbour Catchment) 2005

Having regard to the SREP (Sydney Harbour Catchment) 2005 and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development would be visible from the Harbour, it is not considered to be detrimental to general scenic quality and the ecology of the Harbour and will not unduly impose upon the overall character of the foreshore given that the scale and the localised nature of the proposed development. As such, the development is generally acceptable having regard to the provisions contained within SREP 2005 and the Sydney Harbour Foreshores and Waterways DCP 2005.

SEPP 55 – Remediation of Land & Draft

The provisions of SEPP 55 require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site. The subject site has only previously been used for residential purposes and as such is unlikely to contain any contamination; therefore, the requirements of SEPP 55 and the Draft SEPP have been satisfactorily addressed.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate has been submitted with the application to satisfy the aims of the SEPP.

Draft SEPP Environment 2017

This draft SEPP proposes to integrate the provisions of seven (7) SEPPs/SREPs including SREP (Sydney Harbour Catchment) 2005. The majority of the current provisions of SREP (Sydney Harbour Catchment) 2005 would be transferred to the draft SEPP with necessary updates and some amendments. The proposal generally would not offend the relevant provisions of the draft SEPP due to the localised nature of the proposed development and negligible impacts on the scenic quality and the ecology of Sydney Harbour and its foreshores.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The subject site is zoned Residential R3 (Medium Density Residential) under the provisions of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). Development for the purposes of alterations and additions to an existing dual occupancy is permissible with Council's development consent.

2. Aims of the LEP

In addition to the objectives of the R3 (Medium Density Residential) zone, consideration has been given Clause 1.2 (2)(a) of North Sydney LEP 2013 relating to the following:

(2)(a) to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment

The proposal is inconsistent with the character and context of the subject heritage item because the proposed works would result in the partial loss of the ground floor verandah and alterations to the original roof form. Therefore, the proposed development would detract from the significance of the subject heritage listed building. Furthermore, the proposal would adversely affect the amenity of the locality in terms of some loss of views for the neighbouring properties.

2(b)(i) to ensure the new development is compatible with the desired future character of an area in terms of bulk, scale and appearance,

The proposal for an attic addition to the original roof plane is considered to be incompatible with the character of the subject heritage listed building due to its form, bulk, scale and the changes to the roof form of the original building. The proposed three storey appearance of the dwelling also detracts from the significance of the adjoining heritage listed building at No.6 & 6A Baden Road that shares a similar design.

2(c)(i) to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing

The proposed attic addition would have some view impacts on the neighbouring properties as detailed later this report.

2(f) to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance

As detailed in the heritage discussion above, the proposed works would detract from the significance of the heritage listed building.

In summary, the proposal is inconsistent with the above aims of the LEP.

3. Zone Objectives

The objective of the R3 (Medium Density Residential) zone relevant to the proposed development is as follows:

- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development does not promote or reinforce the character of the subject heritage item and the character of the surrounding areas. The proposed development would have adverse impacts on the significance of the subject heritage listed dwelling as detailed in the comments from Council's Conservation Planner.

Furthermore, the proposal would cause impacts on the amenity of the surrounding properties in terms of some view loss as detailed later in this report.

The proposal is therefore contrary to the above zone objectives.

4. Building Heights

Compliance Table

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 473.06m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	11.05m	8.5m	NO – Clause 4.6 Development Standard variation received.

The height of the existing dual occupancy does not comply with the maximum building height control pursuant to Clause 4.3(1) of NSLEP 2013. The maximum height of the proposed works (roof of the attic addition) at 11.05m and the new dormer on the western (rear) roof plane would breach the LEP building height control as illustrated below in **Figure 13** below:

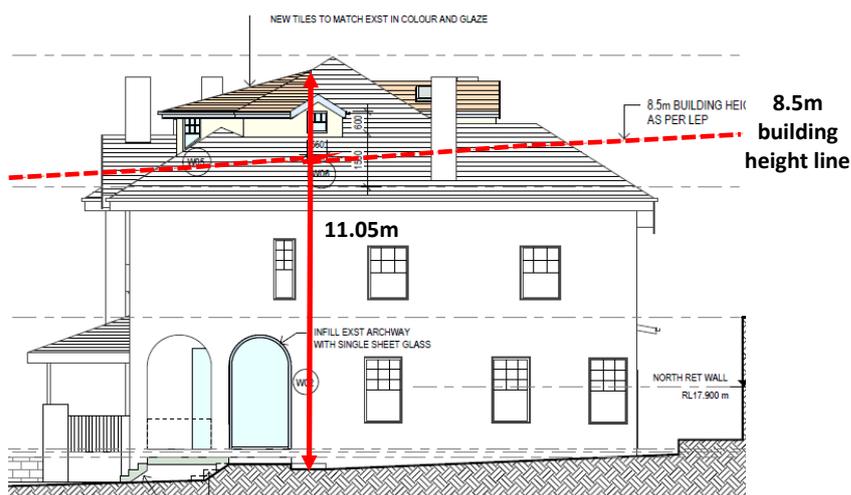


Figure 13: Proposed building height

The applicant has submitted a written request seeking variation to the building height development standard in accordance with Clause 4.6 of NSLEP 2013.

5. Clause 4.6 Exceptions to Development Standards

The proposed breach has been assessed against the requirements of Clause 4.6 of NSLEP 2013 and the objectives of the building height control. These matters have been considered below: -

- (1)(a) To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient** – The proposal would not alter the existing landform of the subject site given that there would be no excavation because the additions would be located well above the ground level.
- (1)(b) To promote the retention and, if appropriate, sharing of existing views** - The building elements in breach of the LEP building height limit would primarily be the attic addition on the front (eastern) roof plane and the proposed dormer on the rear (western) roof plane as shown on **Figure 13**. These elements are likely to cause some loss of views/outlook as seen from the surrounding properties.

Whilst the proposed building elements are unlikely to cause the loss of significant views for properties to the east and south of the subject site due to the location of these adjoining properties away from the proposed development, the proposal may impact on views/outlook as seen from properties towards the north and west of the subject site.

A view assessment in accordance with the four (4) step process adopted by Commissioner Roseth of the NSW Land and Environment Court centering around *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* (also known as the Tenacity Test) is detailed below to ascertain the potential impacts on views currently enjoyed by the adjoining/nearby properties, particularly Nos. 192, 192A and 194 Kurraba Road that adjoin the subject site.

Inspections of all affected properties were not possible due to COVID health order restrictions. However, the view loss assessment is based on photos supplied by the submitters, photographs publicly available from real estate websites and the photograph taken during an inspection of one property by the Assessment Officer.

First Step:

“The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible, is more valuable than one in which it is obscured.”

Comment:

192A Kurraba Road

This adjoining property to the north contains a three storey apartment building.

The proposed attic addition would cause some obstruction to the view to the sky but no impact on water views as seen from apartments within this property because of the location of the proposed works located the water views of Shell Cove as illustrated in the photo taken from an outdoor terrace of a second floor apartment of this adjoining property (**Figure 14**).



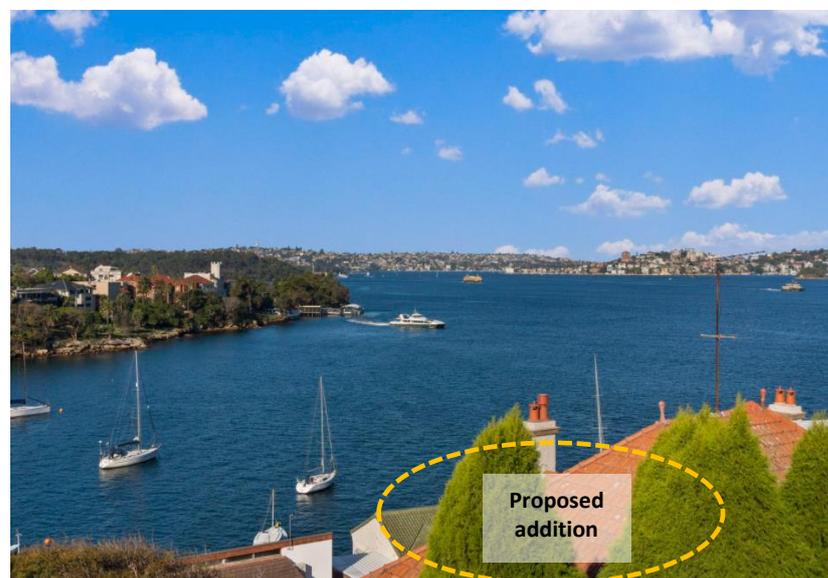
Figure 14: Views from the outdoor terrace of a 2nd floor apartment at No.192A Kurraba Road

No.192 Kurraba Road

This adjoining property is located to the north-west of the subject site and contains a two storey townhouse style development with basement car park.

The views as seen from this development consists of waters views of Shell Cove to the east and the Sydney Harbour to the south-east, the water and land interface of Cremorne Point and the skyline view of the Cremorne peninsula to the east.

A real estate photograph taken from the balcony of the townhouse at the southern end of the development indicates that the proposed works is likely to cause an obstruction to some water views as seen from this unit, however, the impacts would be largely screened by existing vegetation along the side property boundary.



Figures 15 & 16: Views from a balcony of a townhouse unit at No.192 Kurraba Road

No.194 Kurraba Road

This adjoining property is a three storey apartment building located to the west (rear) of the subject site.

The proposal is likely to have impacts on views/outlook as seen from the first and second floor apartment on the eastern side of the apartment building facing the subject site (Unit 3 on the first floor and Unit 5 on the second floor).

The views/outlooks as seen from the other apartments within this development are unlikely to be affected by the proposed development as these apartments are either located on the lower level or have no windows facing the proposed works.

Unit 3, 194 Kurraba Road:

This first floor apartment contains two (2) bedrooms, each bedroom has a window facing the subject site. The living room has one window facing the subject site.

The window of the northern bedroom has an outlook of the roof of nearby buildings (including the subject building at No.8 Baden Road)/vegetation, district views of Cremorne Reserve and the eastern skyline.

The proposed attic addition would cause partial obstruction to the district views of Cremorne Reserve with the retention of the skyline as indicated in **Figure 17**.

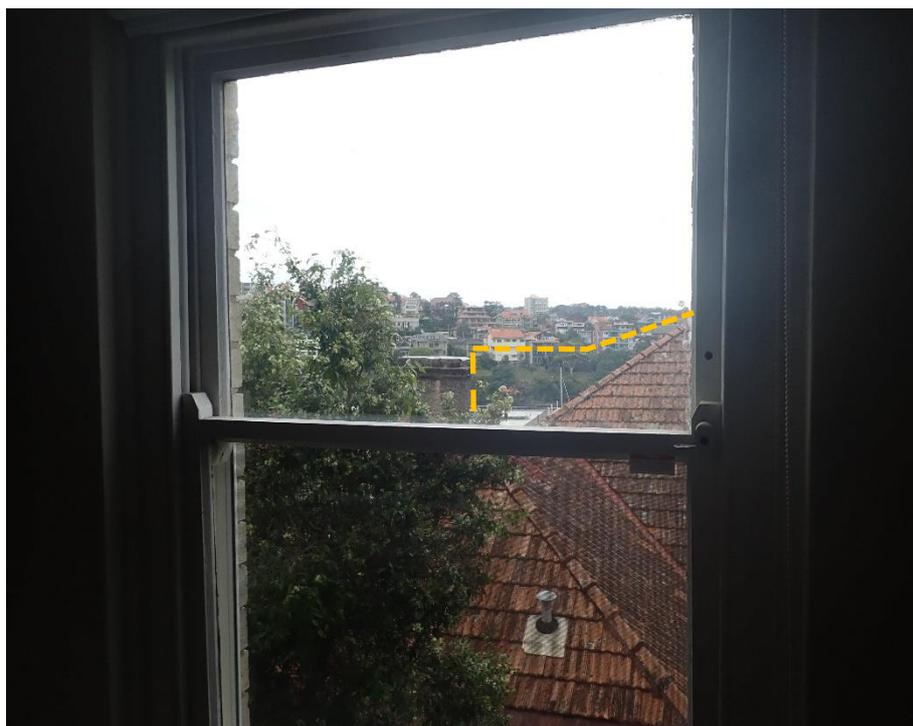


Figure 17: View from the window of the northern bedroom within Unit 3 147 Kurraba Road

The window of the second/middle bedroom, located between the northern bedroom and the living room on the southern side of the apartment, provides an outlook to the roof of the subject dual occupancy (No. 8 Baden Road) and the Cremorne Point skyline to the east. The proposed rear dormer would have no impacts on the views to the Cremorne Point skyline as the height of the proposed dormer would not be higher than the height of the existing roof ridge (**Figure 18**).



Figure 18: View from the second bedroom window within Unit 3 147 Kurraba Road

The living room window provides water views of the Shell Cove and the Sydney Harbour. The proposal would have no impact on views as seen from this window because of the location of the proposed works away from view of this window (**Figure 19**).



Figure 19: View from the living room window within Unit 3 147 Kurraba Road

Unit 5, 194 Kurraba Road:

This second floor apartment has a similar layout as the apartment below on the first floor (i.e. two bedrooms windows and a living room window facing the subject site).

A submitter has provided a photograph of the view as seen from the middle bedroom window consisting water views of Shell Cove, water and land interface along the western foreshore of Cremorne Point and eastern skyline view of Cremorne Point.

The proposed attic addition would cause partial obstruction to the water views of Shell Cove with the retention of the remaining water views, water and land interface and the view of Cremorne Point skyline as indicated in **Figure 20**.

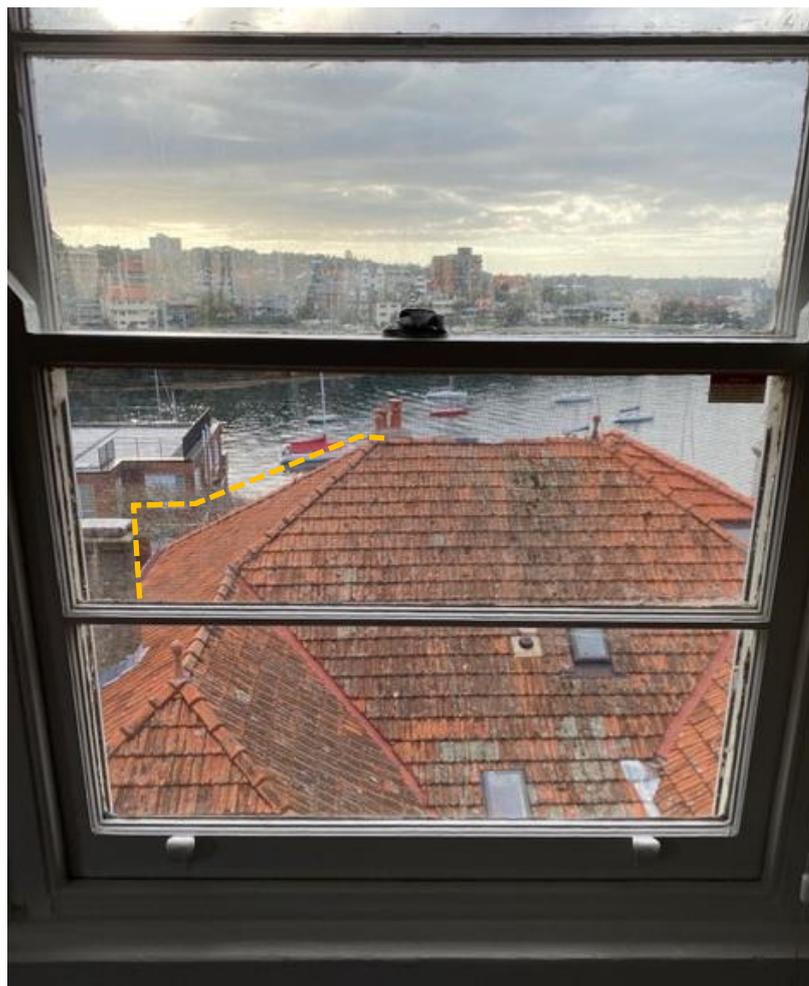


Figure 20: View from the middle bedroom window within Unit 5 147 Kurraba Road

Second Step:

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.”

Comment:

No.192 and 192A Kurraba Road

The view/outlook from the two properties are obtained across the side boundaries of the subject site and are likely to be in a standing position.

Unit 3, 194 Kurraba Road:

The views/outlook from all east facing windows are obtained across the rear boundary of the subject site from a standing position.

Unit 5, 194 Kurraba Road:

The views/outlook from all east facing windows are obtained across the rear boundary of the subject site. The view is likely to be obtained from a standing position.

Third Step:

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.”

Comment:

No 192A Kurraba Road

It is considered the partial obstructions to the view to the sky is negligible given that there would be no impact on the significant water and district views as well as the views of Shell Cove and Sydney Harbour as seen from the outdoor terrace of a second floor apartment located to the north of the subject site.

No 192 Kurraba Road

It is considered likely that there would be partial obstruction to water views as seen from a terrace of the southern-most town house unit that is negligible given that the proposed works are likely to be screened by vegetation and there would be no impact on the significant water and district views as well as the views of Shell Cove and Sydney Harbour as seen from this property.

Unit 3, 194 Kurraba Road

The proposal would cause some obstructions to the district views of Cremorne Point as seen from the northern bedroom window and no view impacts for the middle bedroom window and the living room window. The view impact is considered to be minor given that the window affected would be a bedroom window and no change to the water views as seen from the living room.

Unit 5, 194 Kurraba Road

The proposal would cause some obstruction to the water views of Shell Cove as seen from the second bedroom window with the retention of the remaining water views and district/skyline views of Cremorne Point. The view impact is considered to be minor for this apartment.

Fourth Step:

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment:

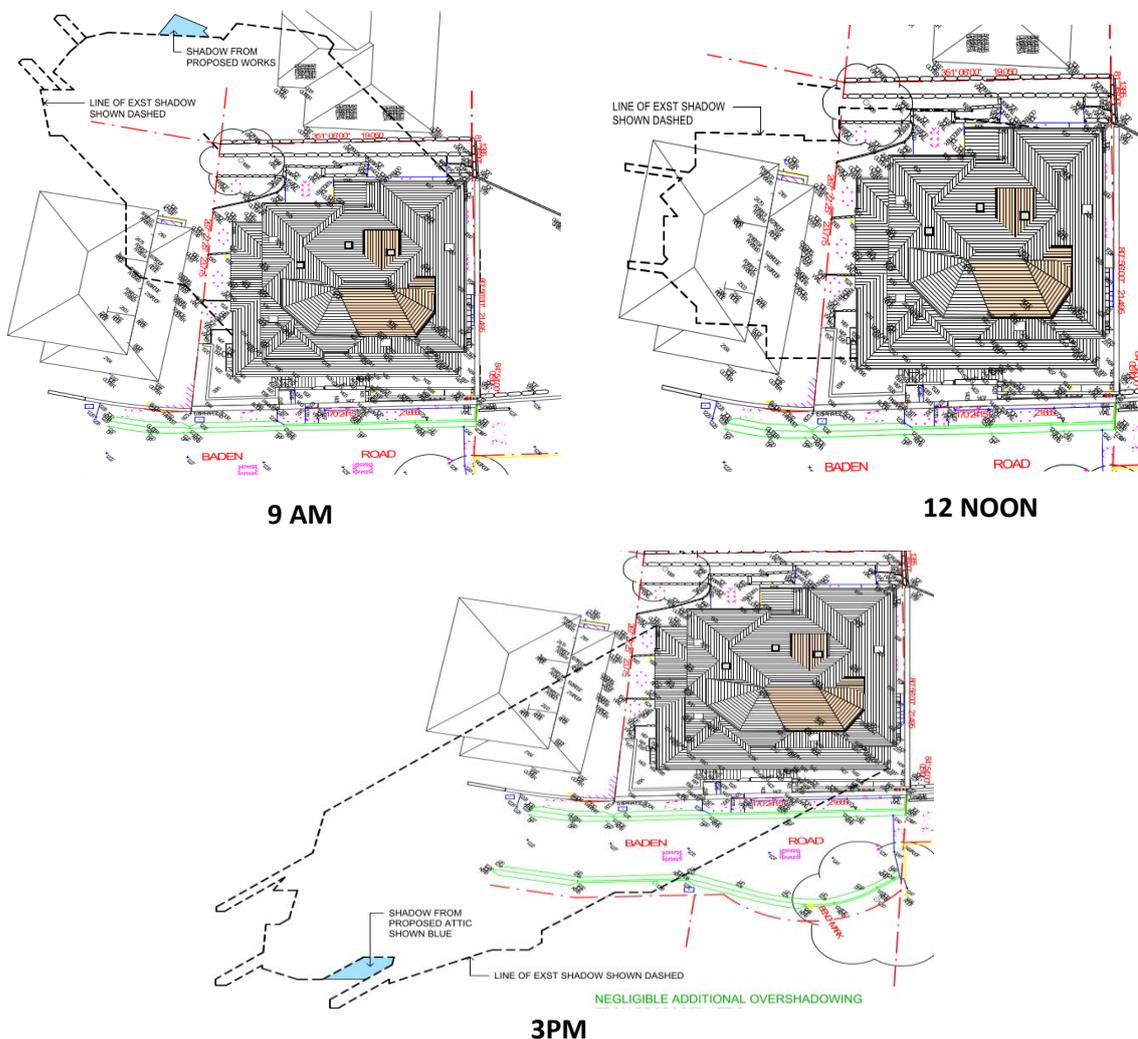
It is noted that the non-complying building elements would cause minor impacts on views/outlook as seen from the adjoining properties. Notwithstanding this, it is considered that a more skilful and sympathetic design with the new accommodation substantially contained within the existing roof of the heritage listed dual occupancy would not only minimise view impacts, this is also likely to achieve a more desirable heritage outcome.

Conclusion

The Tenacity tests suggested that the view loss caused by the non-complying building elements above the LEP building height limit would be negligible or minor for the adjoining properties. However, a more skilful and sympathetic design substantially within the existing building envelope would further minimise the view impacts and is likely to reduce the non-compliance with the LEP building height development standard.

It is therefore considered that the proposal fails the fourth step of the Tenacity Test.

(1)(c) To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access to future development – The shadows of the building elements above the LEP height limit is unlikely to cause material shadowing of the adjoining properties given that the additional shadows would fall primarily within the shadows of the existing dual occupancy because of the northerly aspect of the new building elements. The shadows resulting from the new building elements at 9am or 3pm during mid-winter would have no material shadowing for the affected properties due to the minor nature of the additional impacts as shown on **Figures 21-23**.



Figures 21 – 23: Shadow diagrams (mid-winter)

(1)(d) *To maintain privacy for residents of existing dwelling and to promote privacy for residents of new buildings*

The new windows on the front (eastern) elevation of the proposed attic addition are unlikely to cause privacy impacts due to the orientation of the windows toward the harbour and the distance separating the subject site and the residential properties on the opposite side of Baden Road in excess of 20m.

The windows on the northern elevation of the proposed attic addition are unlikely to cause material privacy impacts for the adjoining properties to the north (No.192A Kurraba Road) as this window orientates toward the north-east away from the apartment building to the north of the subject site including a minimum 10m separation between the subject window and a terrace off a second floor apartment within No.192A Kurraba Road.

The proposed dormer window within a stairwell on the northern elevation is unlikely to cause privacy impacts due to its higher sill height and the possible imposition of a condition requiring the windows to be fitted with obscured glass if approval is granted to the application.

The applicant has indicated that obscure glass would be fitted to the proposed bathroom dormer window on the rear (western) elevation. A further condition can be imposed that the requiring the lower window panes to be fixed to minimise any amenity impacts should consent be granted for the proposed development.

(1)(e) *To ensure compatibility between development, particularly at zone boundaries*

(1)(f) *To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of the area*

The proposed attic extension and dormer would increase the bulk and scale of the existing heritage listed dual occupancy with an uncharacteristic built form that is likely to detract from the significance of the subject heritage item and the adjoining heritage item to the south at No.6 & 6A Baden Road. Council's Conservation Planner has objected to the proposal on heritage grounds and found the proposed form and scale are unacceptable.

(1)(g) *To maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

The proposal would change the built form of the existing building with a third level and is contrary to the above objective seeking to maintain a single/two storey built form on land zoned for low/medium density residential uses.

Whether there are sufficient environmental planning grounds to justify contravening the development standard?

It is concluded that the building element above the LEP building height limit would have a material impact on the neighbouring properties and the locality in terms of uncharacteristic built forms and having a detrimental impact on the significance of the subject building and the heritage listed dual occupancy at the adjoining property to the south (No.6 Baden Road) and the amenity of the nearby residential properties. There are insufficient environmental planning grounds to justify contravening the building height control.

Whether the proposed development will be in the public interest?

The proposed development is considered to be unreasonable in terms of the adverse impacts on the heritage significance of the subject property. The proposal does not demonstrate any public benefits and is therefore likely to offend the public interest.

Conclusion

It is concluded that the proposal would detract from the significance of the subject heritage listed building in terms of the uncharacteristic built forms where a more skilful design would minimise any views impacts for the neighbouring properties.

Having regard to the above, the request under Clause 4.6 of NSLEP 2013 seeking a variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

5. Heritage Conservation

The application has been assessed against the relevant heritage objectives and provisions as contained in the North Sydney LEP 2013, particularly Clauses 5.10(1) and 5.10(4) of the North Sydney LEP 2013 and found to be unsatisfactory as indicated in the comments from Council's Conservation Planner because the proposal is likely to detract from the character and significance of the subject heritage listed building.

6. Dual Occupancies

The following matters apply to any attached dual occupancy development:

- (a) *the form of the building will appear as a dwelling house, and*
- (b) *the dwellings in the dual occupancy will be attached by at least 80% of the common wall or 80% of the common floor or ceiling, and*
- (c) *the area of the lot on which the dual occupancy is to be situated is at least 450 square metres.*

Comment:

Whilst the existing dual occupancy was approved back in August 2008, consideration is given to the provisions/requirements of Clause 6.6 of NSLEP 2013 to assess in what ways the proposal would affect the level of compliance within these LEP controls.

The proposal would generally be consistent with the requirements (item (a)) as it would still retain its appearance as a single dwelling house as seen from Baden Road because the modified entrance for No.8 Baden Road would not be highly visible from the public domain due to the elevated position of the building sitting on top of a retaining wall.

The proposal also complies with the 80% requirement relating to sharing of the common wall (item (b)) and the minimum lot size requirements under item 2(c).

- (2) *A dual occupancy must not be erected on land that is located within a heritage conservation area or on which a heritage item is located unless—*
- (a) *there is no existing building erected on the land, or*
 - (b) *the dual occupancy—*
 - (i) *will be situated substantially within the fabric of an existing building, and*
 - (ii) *will conserve the appearance of the existing building, as visible from a public place, and*
 - (iii) *will conserve the majority of the significant fabric of the existing building.*

Comment:

The subject dual occupancy is a heritage item, therefore, the requirements under 2(a), (b) and sub items (i) to (iii) apply.

Clause 6.6(2)(a):

This clause does not apply given that the subject site is currently occupied by the existing attached dual occupancy.

Clause 6.6(2)(b)(i):

As indicated in Council's Conservation Planner comments, the proposal attic addition would result in the creation of a new third storey across the existing roof with new external building elements. Therefore, the new building elements would not be contained substantially within the existing roof plane and building fabric.

Clause 6.6(2)(b)(ii):

The proposed attic addition would alter the appearance of the existing building with a full third storey, however, it would not be visually dominant as seen from Baden Road because of the elevated nature of the subject site from the street. However it would be visible from the Shell Cove and/or the western side of Cremorne Reserves as illustrated in **Figure 9** earlier in this report.

Clause 6.6(2)(b)(iii):

The proposed development would require the removal of some original building fabric, it is considered that the majority of the existing fabric would be retained given that the proposal would only affect the roof and the ground floor building entrance area.

It is concluded that the proposal is not consistent with Clause 6.6 (2)(b)(i) and (ii) of NSLEP 2013.

7. Earthworks

The proposal does not involve excavation/earthworks.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposal has been assessment under the following heading within NSDCP 2013:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development		
	<i>complies</i>	<i>Comments</i>
1.2 Social Amenity		
1.2.1 Population Mix 1.2.2 Maintaining Residential Accommodation 1.2.3 Affordable Housing 1.2.4 Housing for Seniors/Persons with disability	No change	The proposal would not change the population mix, the supply of residential accommodation, affordable housing and housing for senior/persons with disabilities within the locality.
1.3 Environmental Criteria		
1.3.1 Topography	No change	The proposal does not change the existing landform of the subject site.
1.3.6 Views	No	<p>As indicated in the Tenacity view loss assessment earlier in this report, the assessment suggested that there would be some view loss caused by the non-complying building elements above the LEP building height limit.</p> <p>However, the proposal does not fully satisfy all steps in consideration for the Tenacity view loss assessment because a more skilful and sympathetic design substantially within the existing building envelope would further minimise the view impacts. This is also likely to reduce the non-compliance with the LEP building height development standard.</p>
1.3.7 Solar Access	Yes	The proposal is unlikely to cause material shadowing of the adjoining properties as discussed earlier in this report.
1.3.8 Acoustic Privacy	Yes	The proposal is unlikely to cause adverse noise impacts for the adjoining properties given that the new accommodation involves mostly indoor spaces.
1.3.10 Visual Privacy	Yes/No	<p>The windows on the eastern elevation of the proposed attic addition would have no material visual privacy impacts for the adjoining properties because the orientation of these windows towards the water away from the adjoining apartment building to the north and west of the subject site.</p> <p>The windows on the northern and western elevations of the proposed addition are likely to cause some overlooking of the adjoining properties, however, these impacts can be addressed with a condition requiring the installation of obscure glass should approval be granted for the application.</p>
1.4 Quality built form		
1.4.1 Context	No	<p>The proposed development, involving the creation of a full third level within a two storey heritage item, which is inconsistent with the built form and design of the adjoining heritage listed building to south of the subject site.</p> <p>The proposal is also considered to be an overdevelopment of the subject building because the proposal is not in keeping with the context of the subject building and would not maintaining the two storey form of the existing building and the adjoining heritage listed item at No.6 Baden Road.</p>

<p>1.4.2 Subdivision Pattern 1.4.5 Siting</p>	<p>Yes</p>	<p>The proposal would not change the subdivision pattern of the subject site and the siting/orientation of the subject building.</p>																				
<p>1.4.6 Setback – Side</p>	<p>Yes</p>	<p>The proposal complies with the DCP side property setback requirements as follows:</p> <table border="1" data-bbox="738 432 1417 958"> <thead> <tr> <th></th> <th>Existing</th> <th>Proposed</th> <th>Control</th> <th>Complies</th> </tr> </thead> <tbody> <tr> <td>1st storey (Up to 4m) - N elevation - S elevation</td> <td>1.305m 2.015m</td> <td>1.305m No change</td> <td>900mm 900mm</td> <td>Yes No change</td> </tr> <tr> <td>2nd storey (up to 7m) - N elevation - S elevation</td> <td>1.305m 4.3m</td> <td>No change No change</td> <td>1.5m 1.5m</td> <td>No change No change</td> </tr> <tr> <td>3rd storey (> 7m) - N elevation - S elevation</td> <td>1.3m 4.3m</td> <td>3.375m No change</td> <td>2.5m 2.5m</td> <td>Yes No change</td> </tr> </tbody> </table>		Existing	Proposed	Control	Complies	1 st storey (Up to 4m) - N elevation - S elevation	1.305m 2.015m	1.305m No change	900mm 900mm	Yes No change	2 nd storey (up to 7m) - N elevation - S elevation	1.305m 4.3m	No change No change	1.5m 1.5m	No change No change	3 rd storey (> 7m) - N elevation - S elevation	1.3m 4.3m	3.375m No change	2.5m 2.5m	Yes No change
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<p>P1 Front setback P5 Rear Setback – Rear</p>		<p>The proposed attic addition would provide setbacks of 6.6m and 7.9m from the front and rear property boundaries respectively.</p> <p>The proposed would not change the overall building setback from the front (eastern) and rear (western) property boundaries given that the proposed building elements are located within the existing building footprint.</p>																				
<p>1.4.7 Form Massing Scale 1.4.8 Built Form Character</p>	<p>No</p>	<p>The proposed attic addition would increase bulk and scale of the existing building with an uncharacteristic built form due to the creation of a full third level that would further detract from the significance of the subject heritage listed building.</p> <p>It is noted that the bulk and scale of the proposed addition would be exacerbated by adopting a design of the existing addition located above No.8A Baden Road to the south which is inconsistent with the original DA approval.</p> <p>Council’s Conservation Planner has objected to the proposal on heritage grounds and found the proposed form and scale are unsatisfactory having regard to the significance of the heritage item.</p>																				
<p>1.4.9 Dwelling Entry</p>		<p>The proposed dwelling entry is likely to maintain the sense of address for the subject dual occupancy and would provide a reasonable level of security for residents. However, it is noted that the design is not supported by Council’s Conservation Planner in heritage terms.</p>																				
<p>1.4.10 Roofs</p>	<p>No</p>	<p>The proposal does not comply as the proposed works to the attic will visually dominate the primary roof plane and will be forward of the primary roof ridge.</p>																				
<p>1.4.11 Dormers</p>	<p>Yes</p>	<p>The proposed rear dormer is acceptable in scale and proportion.</p>																				
<p>1.4.12 Materials</p>	<p>Yes/No</p>	<p>The proposed materials for the attic addition are generally compliant in that the new roof cladding will match the existing cladding. The proposed materials for the ground floor verandah enclosure however, will be contemporary, visible in the context of the primary facade and will utilise a single pane of glazing in the arched opening and a largely glazed new front door with a glazed highlight and sidelights.</p>																				

1.5 Quality Urban Environment		
1.5.4 Vehicle Access and Parking	No change	The proposal would not change the existing vehicular access and parking arrangements within the subject site.
1.5.5 Site Coverage 1.5.6 Landscape Area	No change	The proposed works would be carried out within the existing building footprint and no excavation/landscape works, therefore there would be no change to the site coverage, unbuilt upon area and landscaped area of the existing development.
1.5.7 Excavation	N/A	The proposal does not involve excavation/earthworks.
1.5.8 Landscaping	N/A	The proposal does not involve landscaping works.
1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency	Yes	The applicant has submitted a BASIX certificate for the proposed development.

South Cremorne Planning Area (Kurraba Point South Neighbourhood)– Part C of NSDCP 2013

The proposed development would result in the creation of a full third level for a heritage listed building and is inconsistent with the desired future outcome for Cremorne South Planning Area requiring development to reflect and reinforce the existing distinctive built form.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and is subject to payment of contributions towards the provision of local infrastructure. The contributions payable have been calculated in accordance with Council’s Contributions Plan as follows:

Contribution amounts payable

Applicable contribution type		
s7.12 contribution details	Development cost:	\$225,000.00
<i>(payment amount subject to indexing at time of payment)</i>	Contribution: (1% of the development cost)	\$2,250.00

Accordingly, a condition can be imposed requiring the payment of contributions at the appropriate time should approval be granted for the proposed development.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	N/A
5. Traffic generation and Carparking provision	N/A
6. Loading and Servicing facilities	N/A
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

Council notified adjoining properties and the Kurraba Precinct of the proposed development seeking comment between 23 July to 6 August 2021. The amended plans that were renotified to adjoining properties and the precinct for 14 days between 5 and 19 November 2021. Council received a total of eight (8) submissions including two (2) submissions from a submitter and one (1) submission in support of the current proposal.

The issues raised in relation to non-compliance with the LEP building height limit, bulk and scale, view impacts and privacy impacts have been considered/addressed throughout this report.

PUBLIC INTEREST

The proposal is not considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal is considered to be unsuitable for the subject site because its design would detract from the significance of the subject heritage listed property. Furthermore, the proposal does not comply with the LEP maximum building height development standard given that the design of the proposed attic addition does not promote the character of the subject building and the views impacts are likely to be addressed by a more skillful design.

CONCLUSION + REASONS

The development application has been assessed against the North Sydney LEP 2013 and North Sydney DCP 2013 and was found to be unsatisfactory.

Consideration has also been given to the Clause 4.6 request for a variation to the LEP's building height development standard as submitted by the applicant.

The variation to the building height development standard is not supported because the uncharacteristic design of the building elements above the LEP maximum building height limit would result in a full third level within a two storey heritage listed building. Furthermore, a more skilful and sympathetic design would address the likely view impacts caused by the proposed attic addition. In addition, the uncharacteristic nature of the proposal and its impacts on the heritage item does not demonstrate public benefit. Therefore, a variation to the LEP building height control is not considered to be well-founded and strict compliance with the standards is necessary.

The proposed development is contrary to the objective of the R3 (Medium Density Residential) zone because the proposal would detract from the significance of the subject heritage listed building.

Furthermore, the proposal would result in an addition on the front elevation of the existing roof of a heritage listed building and is contrary to the requirement in Clause 6.6 (2)(b)(i) of the LEP requiring dual occupancies to be contained substantially within the existing building fabric of a heritage item.

The application was referred to Council's Conservation Planner who considered the proposal unsatisfactory because of the adverse impacts on the heritage significance of subject heritage listed item.

The issues raised in the submissions received have been addressed in this report.

Accordingly the proposed development is recommended for **refusal**.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

Council notified adjoining properties and the Kurraba Precinct of the proposed development seeking comment between 23 July to 6 August 2021. The amended plans that were renotified to adjoining properties and the precinct for 14 days between 5 and 19 November 2021. Council received a total of eight (8) submissions including two (2) submissions from a submitter and one (1) submission in support of the current proposal. The issues raised in the submissions have been considered/addressed throughout this assessment report.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel, exercising the functions of Council, resolve to refuse development consent to Development Application D206/21 for alterations and additions to an existing attached dual occupancy at No.8 Baden Road, Kurraba Point for the following reasons:-

1. The written request pursuant to clause 4.6 of NSLEP is not supported

The written request pursuant to clause 4.6 of NSLEP seeking a variation to the height of building development standard in clause 4.3 of NSLEP is not considered to be well founded.

Particulars:

- (i) The proposed attic addition breaches the 8.5m maximum height of building development standard specified in clause 4.3(2) in NSLEP 2013.
- (ii) The written request submitted with the application seeking a variation to the maximum height of building development standard has inadequately addressed the matters required to be addressed in subclause (3) in clause 4.6 in NSLEP 2013.
- (iii) The written request has failed to adequately demonstrate that compliance is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the height of building development standard.
- (iv) The proposed development is not considered to be in the public interest as the development is not consistent with the objectives of the height of building standard in clause 4.3(1) in NSLEP 2013 and the objectives of the R3 (Medium Density Residential) zone (dot point 4) under NSLEP 2013.

2. Unacceptable heritage impacts

The proposed development is unacceptable because of the adverse impacts on the subject heritage item and the adjoining heritage item.

- (i) The proposed development does not satisfy Clause 5.10(1)(a), Clause 5.10(1)(b) and Clause 5.10(4) in Part 5 of NSLEP 2013 due to the detrimental impacts of the proposed development on the subject heritage listed item, in particular the introduction of an uncharacteristic third storey and the partial enclosure of the original ground floor verandah.
- (ii) The proposal does not satisfy the aims of North Sydney Local Environmental Plan 2013 (NSLEP 2013) as listed in Clauses 1.2 (2)(a), (2)(b)(i), and (2)(f) in Part 1 of NSLEP 2013.
- (iii) The proposed development does not satisfy the objective of the R3 (Medium Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the adverse impacts of the proposed development on the significance of the subject heritage listed item, particularly dot point 4.

- (iv) The proposed development does not satisfy the provisions for dual occupancies on a heritage item because the proposed attic addition will not be substantially located within the fabric of the existing building in Clause 6.6 (2)(b)(i) and will not conserve the appearance of the existing building in Clause 6.6 (2)(b)(ii) in Part 6 of NSLEP 2013.
- (v) The proposed development does not satisfy the Area Character Statement for South Cremorne Planning Area in Section 6.0 in Part C of North Sydney DCP 2013 (NSDCP 2013) given that the proposal does not promote a quality built form within the planning area because the design of the proposal fails to reflect and reinforce the distinctive built form of the existing heritage listed building.
- (vi) The application fails to satisfy the development controls for the following sections in Part B of the NSDCP 2013 and is therefore considered unacceptable:
 - a. Section B – 13.5.1 – Protecting heritage significance
 - b. Section B – 13.5.2 – Form massing and scale
 - c. Section B – 13.5.3 – Additional Storeys
 - d. Section B – 13.5.4 – Roofs
 - e. Section B – 13.5.5 – Interior Layout
 - f. Section B – 13.5.7 – Group heritage items
 - g. Section B – 13.9.3 – Verandah and Balconies
 - h. Section B – 13.9.4 – Materials

3. Inappropriate context, excessive height, bulk and scale

The proposed development is unacceptable because of the proposed attic addition is inappropriate for the two storey built form of the existing building.

Particulars

- (i) The proposed development is inappropriate to its context being a heritage item because the proposed attic addition provides a third storey which is contrary to aim 1.2 (2)(a) in NSLEP 2013 as well as section 1.4.1 in Part B of NSDCP 2013.
- (ii) The proposed development is contrary to Section 1.4.7 and 1.4.8 in Part B of NSDCP 2013 because the proposed attic addition will increase the bulk and scale of the existing building with an uncharacteristic built form due to the creation of a full third storey that would detract from the significance of the subject heritage item.

4. View loss

The proposed development is unacceptable because the proposed attic addition will cause some loss of water views that could be retained with a more skilful design.

Particulars

- (i) The proposed attic addition will cause some loss of water view of Shell Cove currently seen from the adjoining property to the west and is contrary to aim 1.2 (2)(a) in NSLEP 2013 as well as section 1.3.6 in Part B of NSDCP 2013.

- (ii) The proposed development does not satisfy the objective of the R3 (Medium Density Residential) zone in the Land Use Table in Part 2 of NSLEP 2013 because of the adverse impacts of the proposed development on the amenity of the neighbouring properties in terms of the loss of existing water views.

5. Public Interest

The approval of the proposed development is not in public interest because of the adverse impacts on the significance of the subject heritage listed item and the adverse impacts on the amenity of the neighbouring properties.

ROBIN TSE
SENIOR ASSESSMENT OFFICER

ROBYN PEARSON
TEAM LEADER ASSESSMENTS

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

8 Baden Road, Kurraba Point



SHEET LIST			
Sheet Number	Sheet Name	Revision	Date
000	COVER SHEET	D	13.10.21
A102	SITE AND ROOF PLAN	D	13.10.21
A103	NEW GROUND FLOOR PLAN	D	13.10.21
A104	NEW FIRST FLOOR PLAN	D	13.10.21
A105	NEW ATTIC PLAN	D	13.10.21
A200	NEW EAST ELEVATION	D	13.10.21
A201	NEW NORTH ELEVATION	D	13.10.21
A202	NEW WEST ELEVATION	D	13.10.21
A203	NEW SOUTH ELEVATION	D	13.10.21
A300	SECTIONS	D	13.10.21
A701	PROPOSED PERSPECTIVE	D	13.10.21
SD01	SHADOW DIAGRAM - 21 JUNE 9am	D	13.10.21
SD02	SHADOW DIAGRAM - 21 JUNE 12pm	D	13.10.21
SD03	SHADOW DIAGRAM - 21 JUNE 3PM	D	13.10.21
SD04	SHADOW DIAGRAM EQUINOX 9 am	D	13.10.21
SD05	SHADOW DIAGRAM EQUINOX 12 pm	D	13.10.21
SD06	SHADOW DIAGRAM EQUINOX 3 pm	D	13.10.21

ANNE COLVILLE

ARCHITECT

8 BADEN ROAD, KURRABA
POINT NSW 2089

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COVER SHEET

Scale:	Date:	Stage:	Dwg No:	Rev:
@A3	13.10.21	DA ADDITIONAL INFO	000	D



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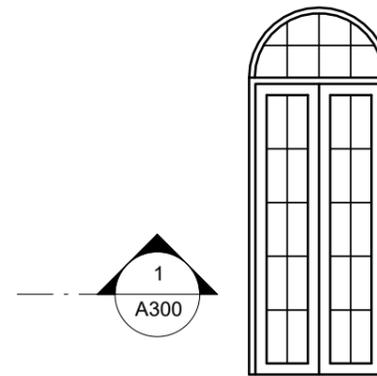
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NEW GROUND FLOOR PLAN

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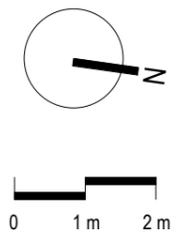
LEGEND

	BOUNDARY
	DEMOLISHED
	HIDDEN OVER
	HIDDEN UNDER



3 Exst study door to be relocated
SCALE 1 : 50

1 PROPOSED FIRST FLOOR
SCALE 1 : 100



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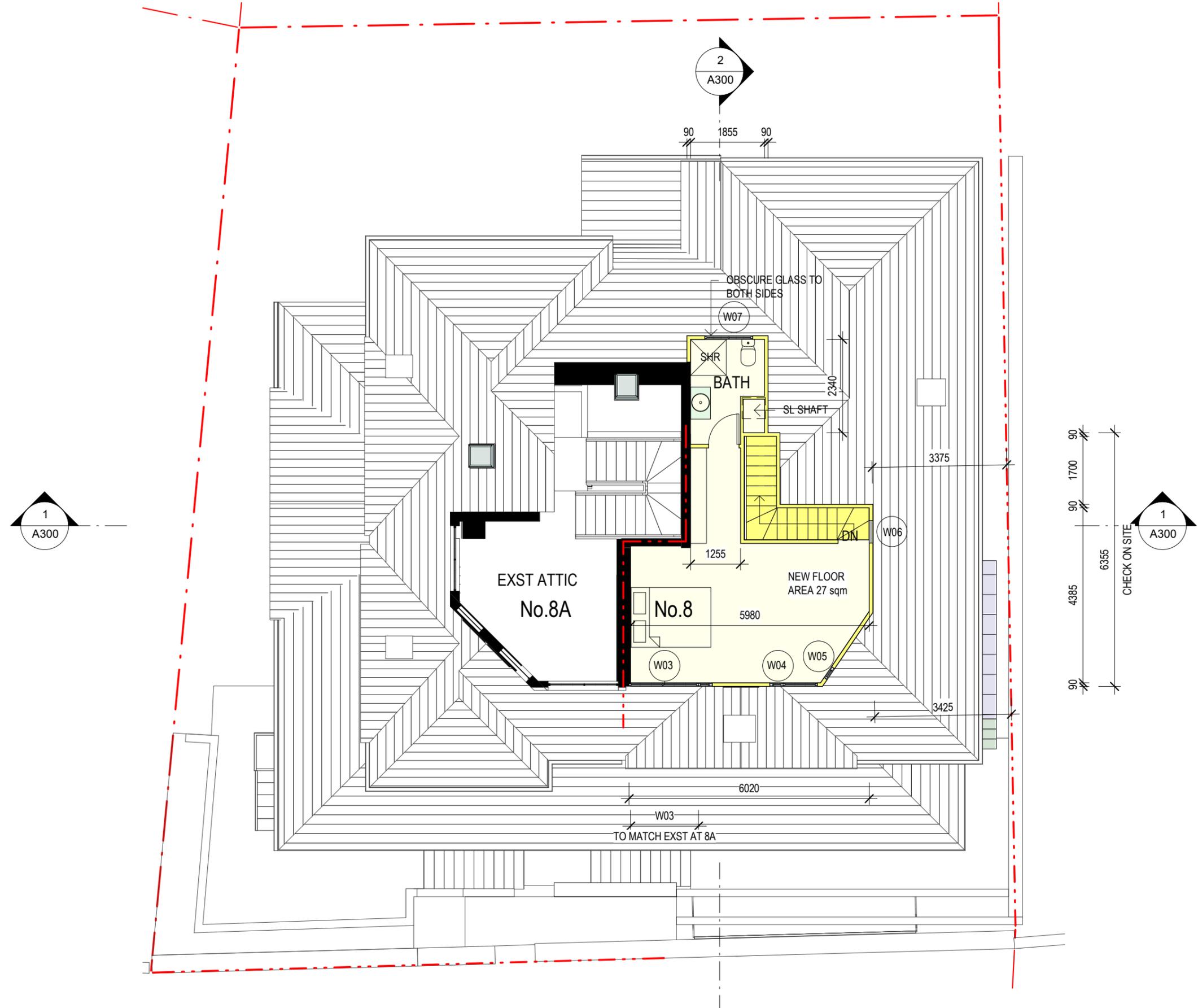
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NEW FIRST FLOOR PLAN

Scale:	Date:	Stage:	Dwg No:	Rev:
As indicated	13.10.21	DA ADDITIONAL INFO	A104	D



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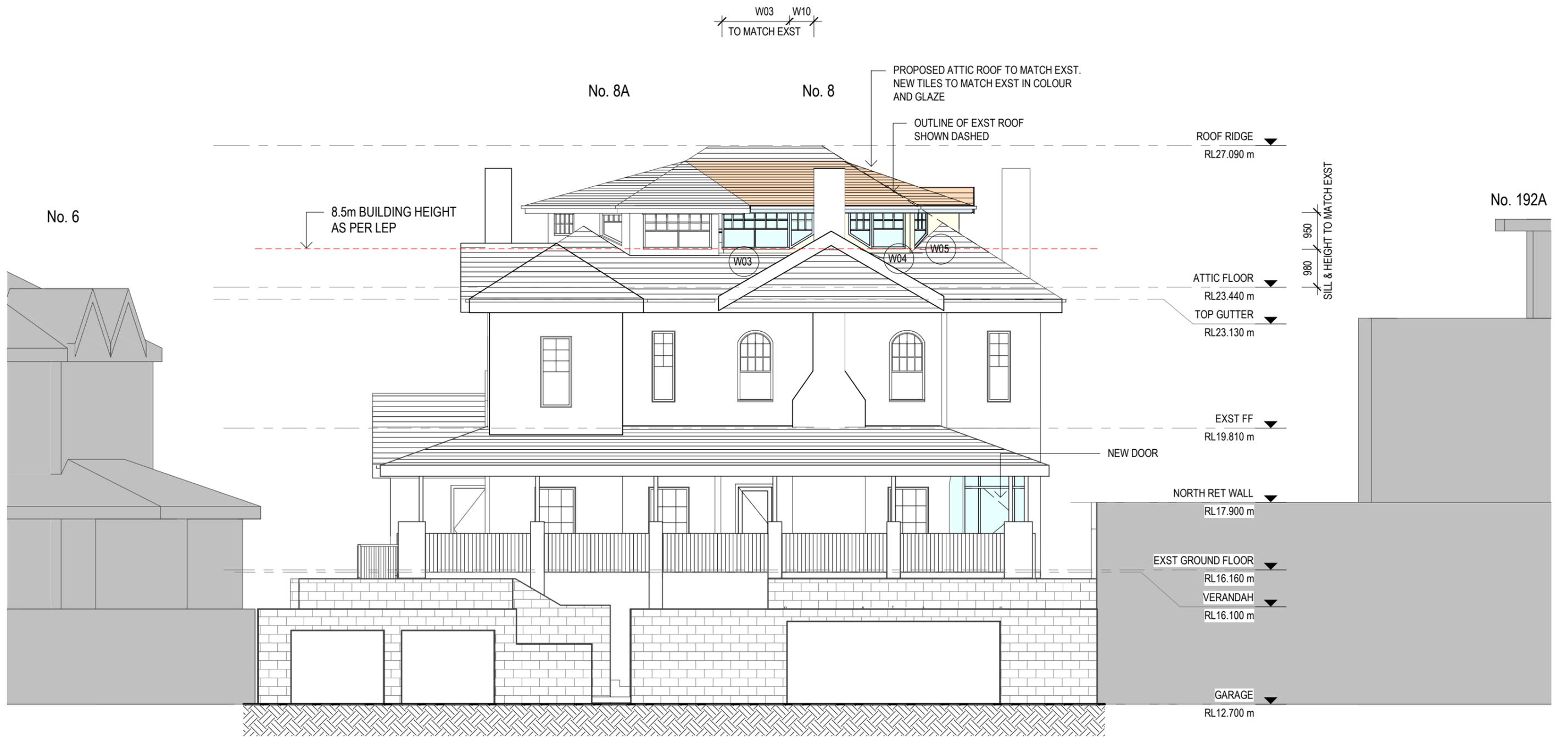
8 BADEN ROAD, KURRABA
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NEW ATTIC PLAN

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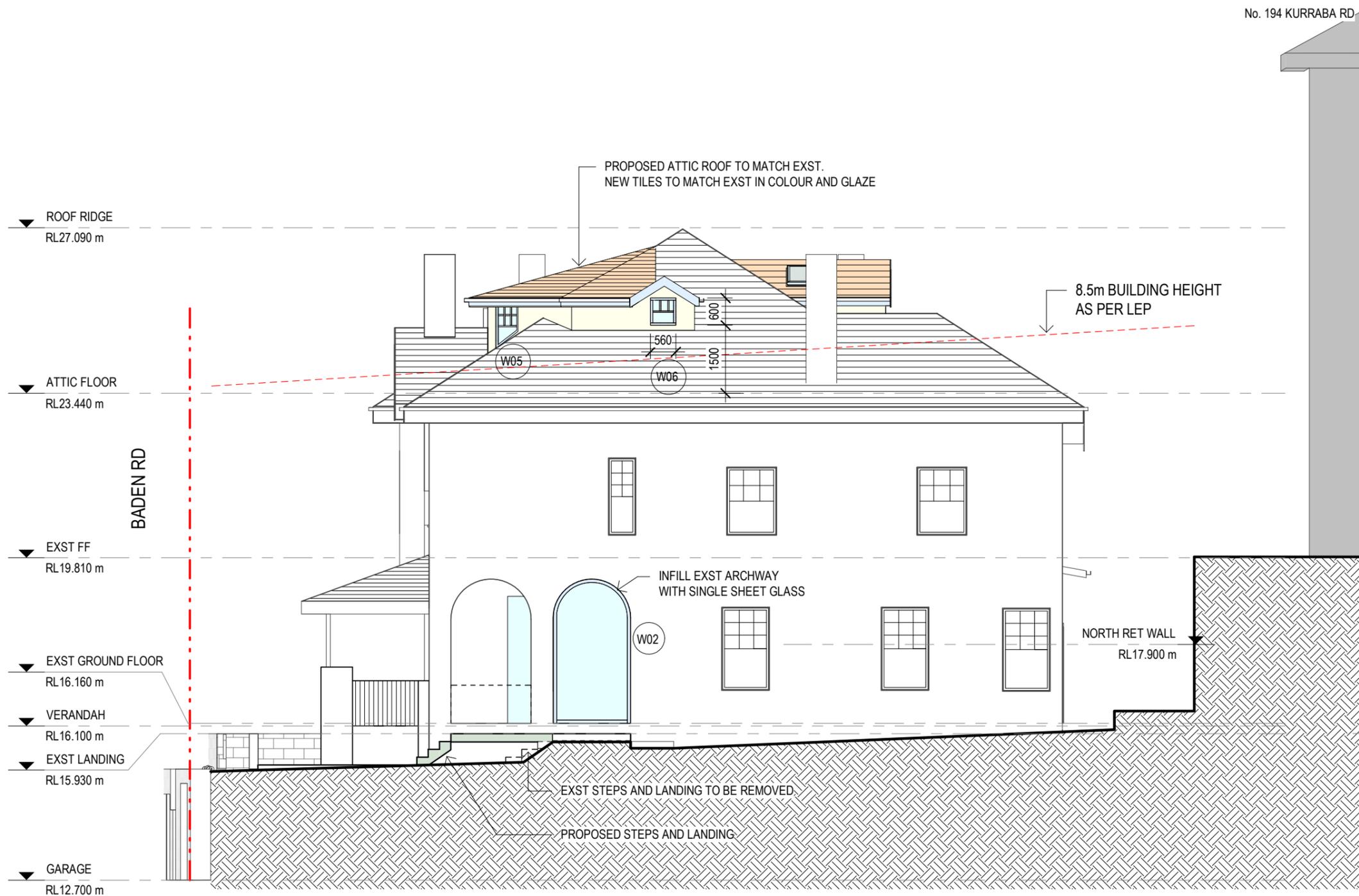
8 BADEN ROAD, KURRABA
POINT NSW 2089

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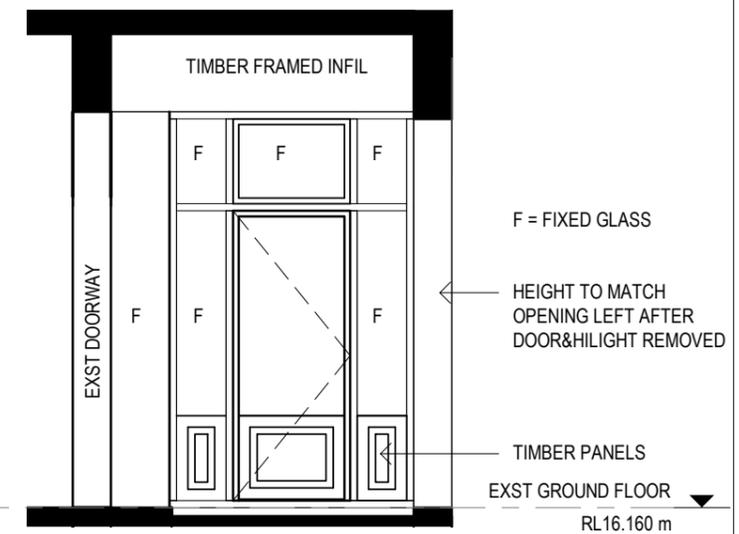
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NEW EAST ELEVATION

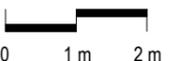
Scale:	Date:	Stage:	Dwg No:	Rev:
1 : 100 @A3	13.10.21	DA ADDITIONAL INFO	A200	D



1 NORTH ELEVATION
SCALE 1 : 100



2 NEW FRONT DOOR
SCALE 1 : 50



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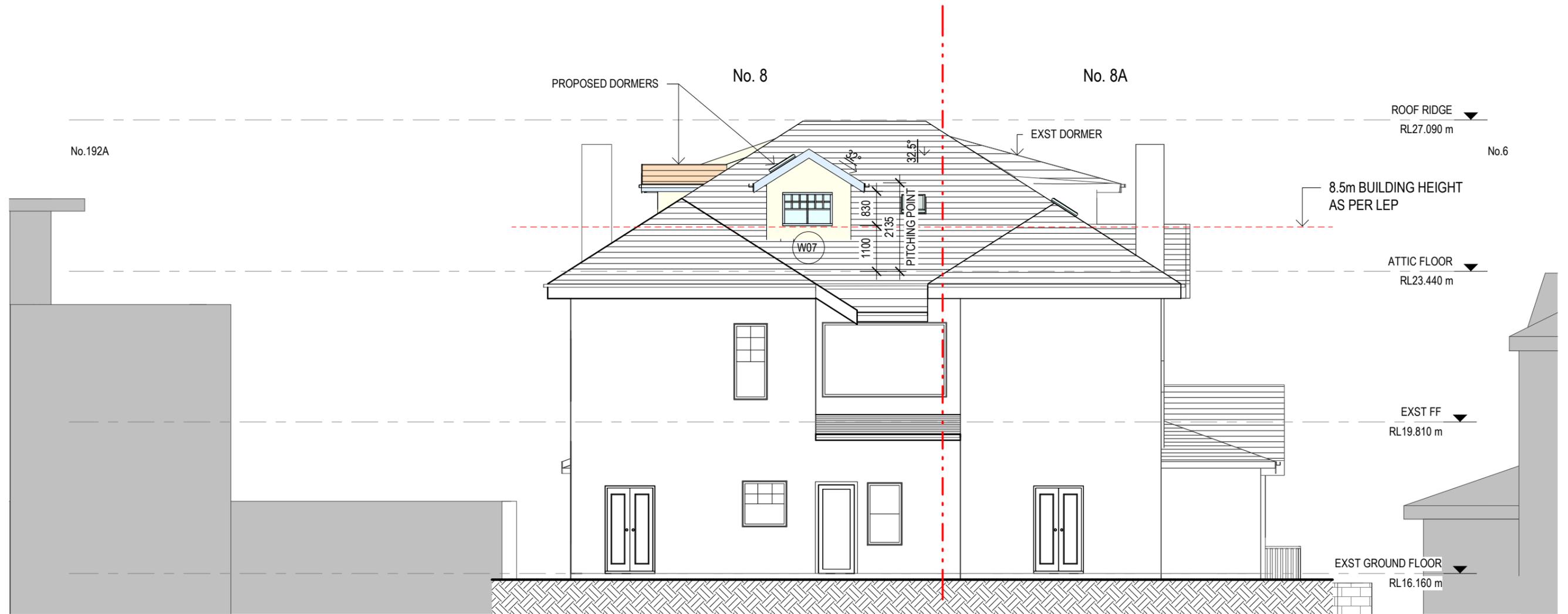
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NEW NORTH ELEVATION

Scale:	Date:	Stage:	Dwg No:	Rev:
As indicated	13.10.21	DA ADDITIONAL INFO	A201	D



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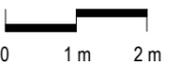
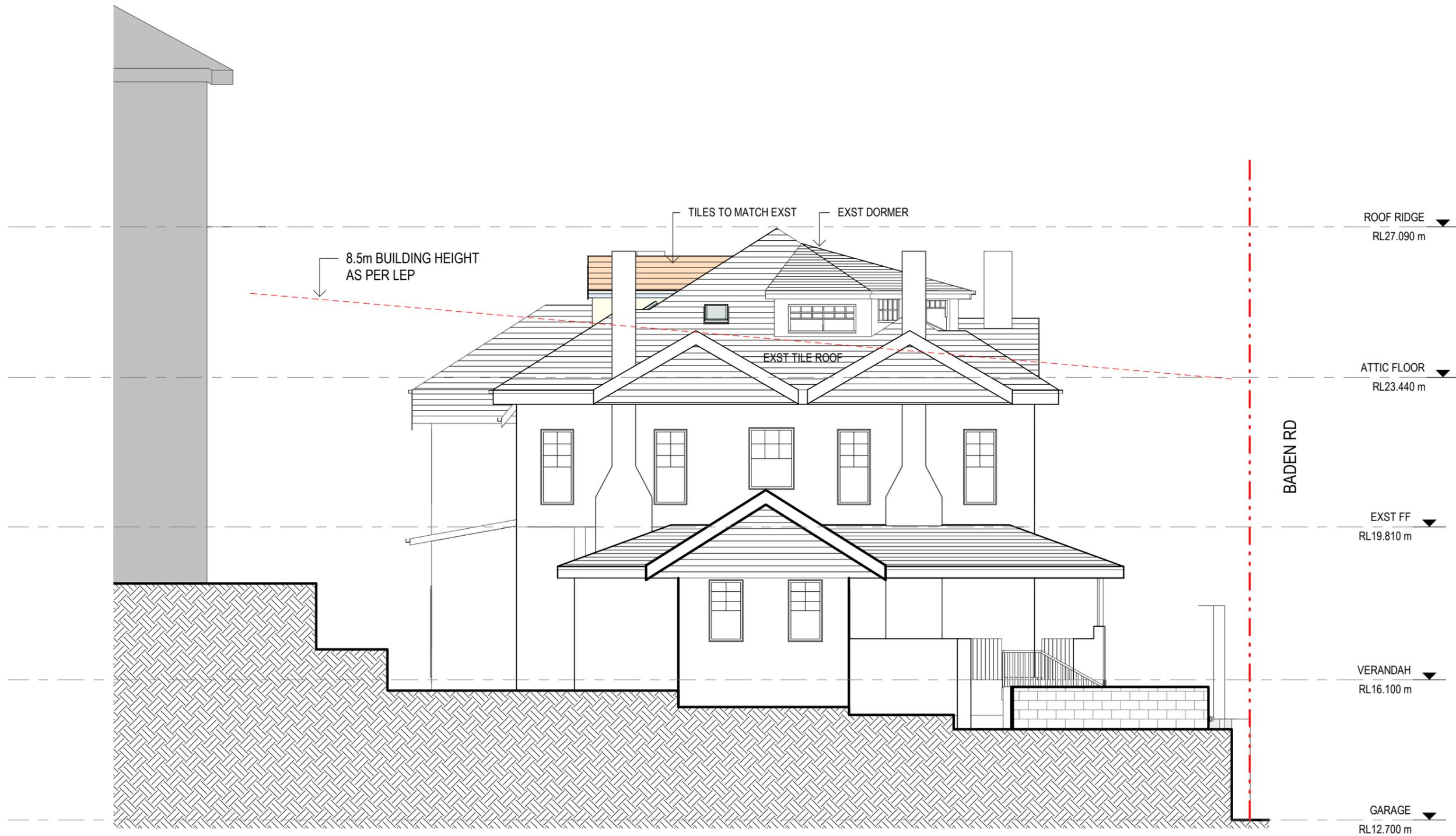
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NEW WEST ELEVATION

Scale:	Date:	Stage:	Dwg No:	Rev:
1 : 100 @A3	13.10.21	DA ADDITIONAL INFO	A202	D



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ARCHITECT

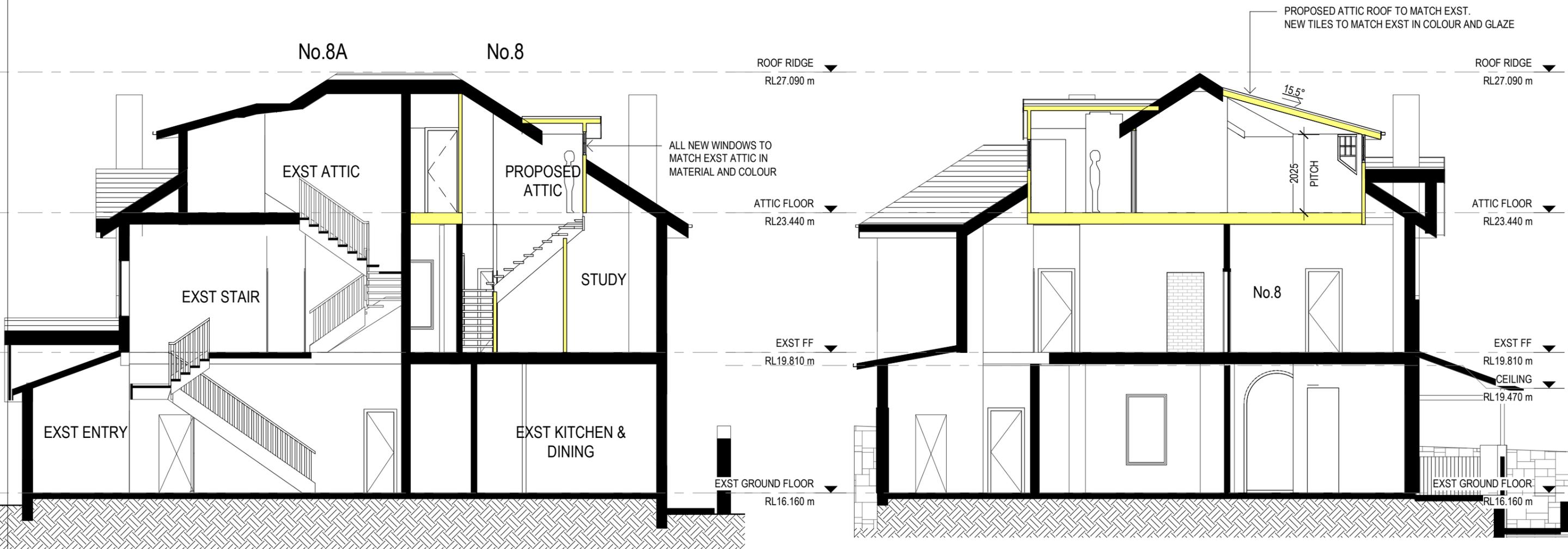
8 BADEN ROAD, KURRABA
POINT NSW 2089

NEW SOUTH ELEVATION

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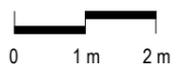
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Scale:	Date:	Stage:	Dwg No:	Rev:
1 : 100 @A3	13.10.21	DA ADDITIONAL INFO	A203	D



1 Section 1
SCALE 1 : 100

2 Section 2
SCALE 1 : 100



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8 BADEN ROAD, KURRABA
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SECTIONS

Scale:	Date:	Stage:	Dwg No:	Rev:
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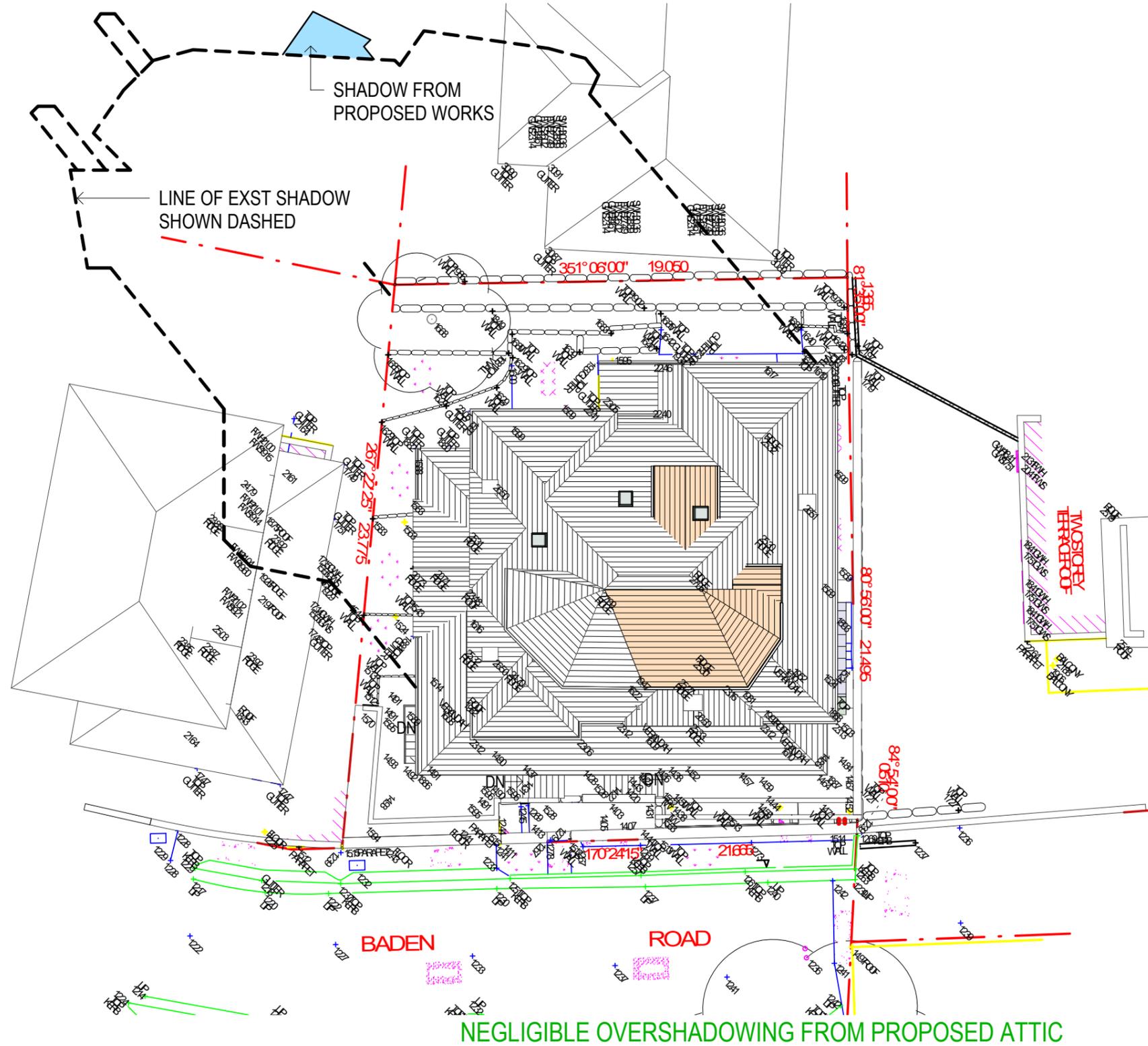
8 BADEN ROAD, KURRABA
POINT NSW 2089

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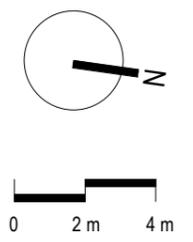
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PROPOSED PERSPECTIVE

Scale:	Date:	Stage:	Dwg No:	Rev:
@A3	13.10.21	DA ADDITIONAL INFO	A701	D



1 SHADOW DIAGRAM 21 JUNE 9 am
SCALE 1 : 200



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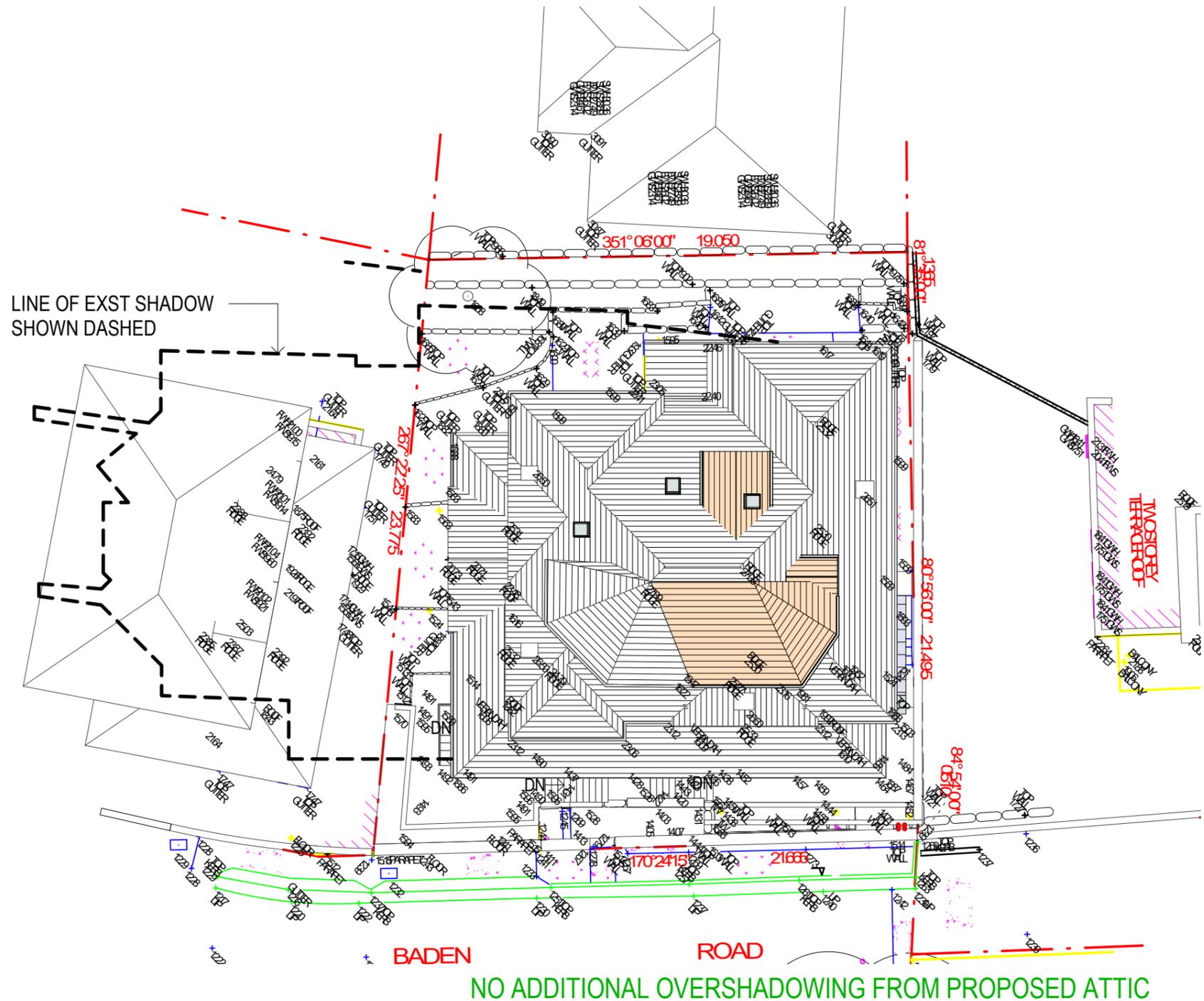
8 BADEN ROAD, KURRABA
POINT NSW 2089

SHADOW DIAGRAM - 21 JUNE 9am

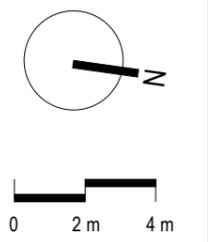
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Scale:	Date:	Stage:	Dwg No:	Rev:
1 : 200 @A3	13.10.21	DA ADDITIONAL INFO	SD01	D



1 SHADOW DIAGRAM 21 JUNE 12 pm
SCALE 1 : 200



ANNE COLVILLE

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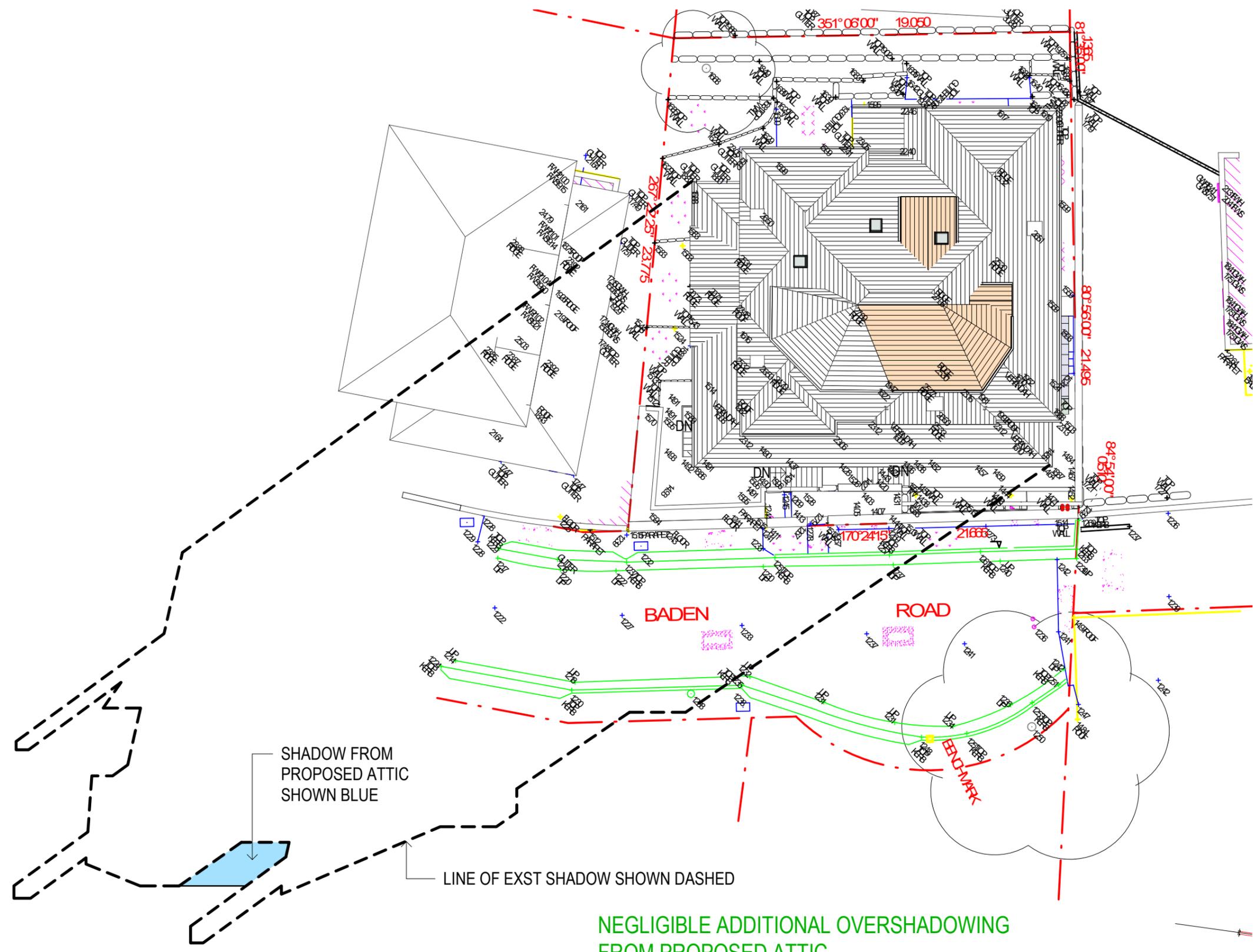
8 BADEN ROAD, KURRABA
POINT NSW 2089

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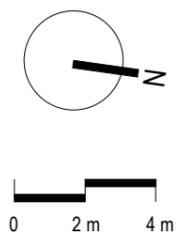
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SHADOW DIAGRAM - 21 JUNE 12pm

Scale:	Date:	Stage:	Dwg No:	Rev:
1 : 200 @A3	13.10.21	DA ADDITIONAL INFO	SD02	D



1 SHADOW DIAGRAM 21 JUNE 3 pm
SCALE 1 : 200



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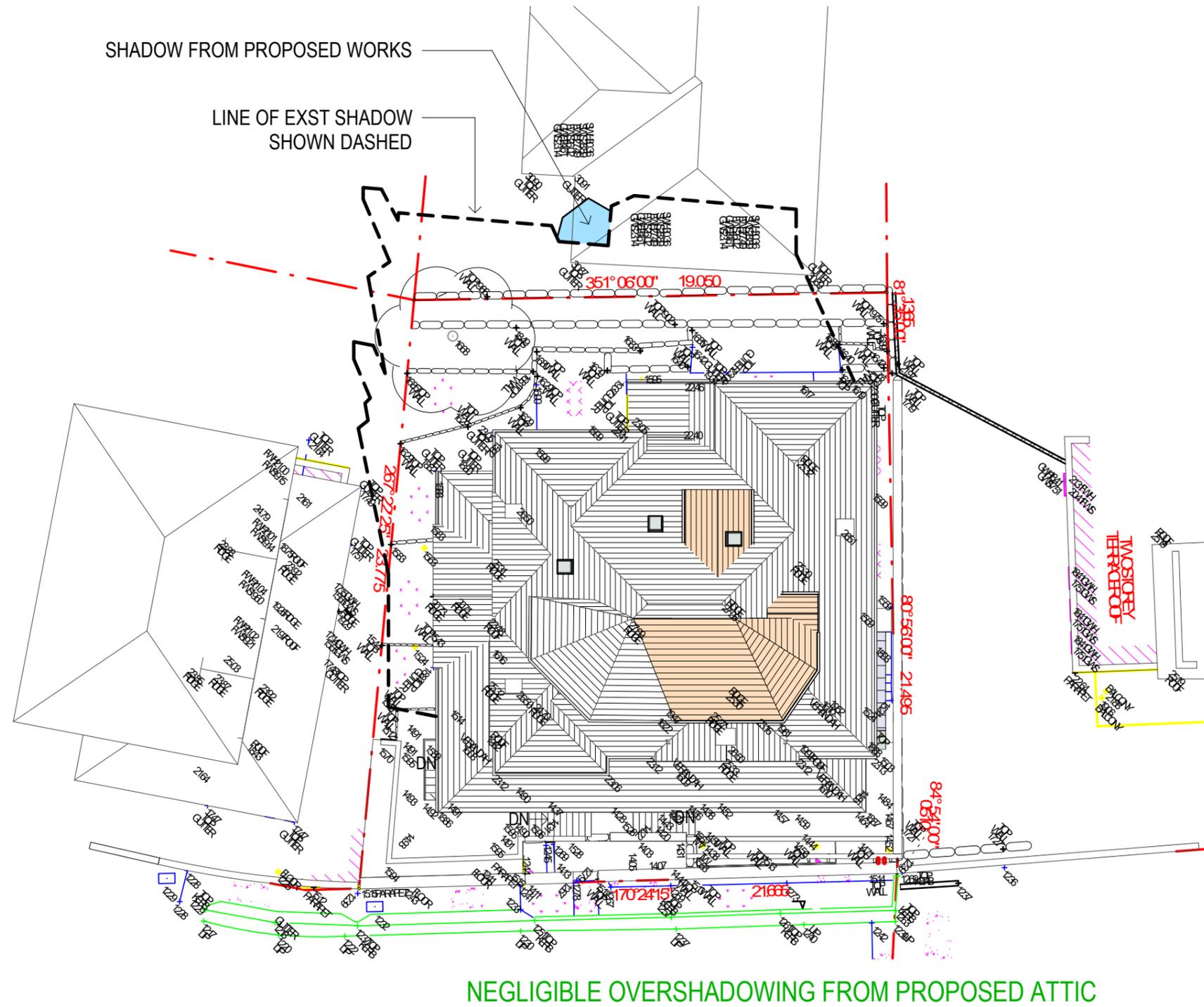
8 BADEN ROAD, KURRABA
POINT NSW 2089

SHADOW DIAGRAM - 21 JUNE 3PM

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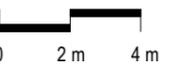
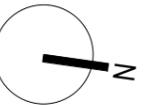
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Scale:	Date:	Stage:	Dwg No:	Rev:
1 : 200 @A3	13.10.21	DA ADDITIONAL INFO	SD03	D



NEGLIGIBLE OVERSHADOWING FROM PROPOSED ATTIC

1 SHADOW DIAGRAM EQUINOX 9 am
SCALE 1 : 200



ANNE COLVILLE

ARCHITECT

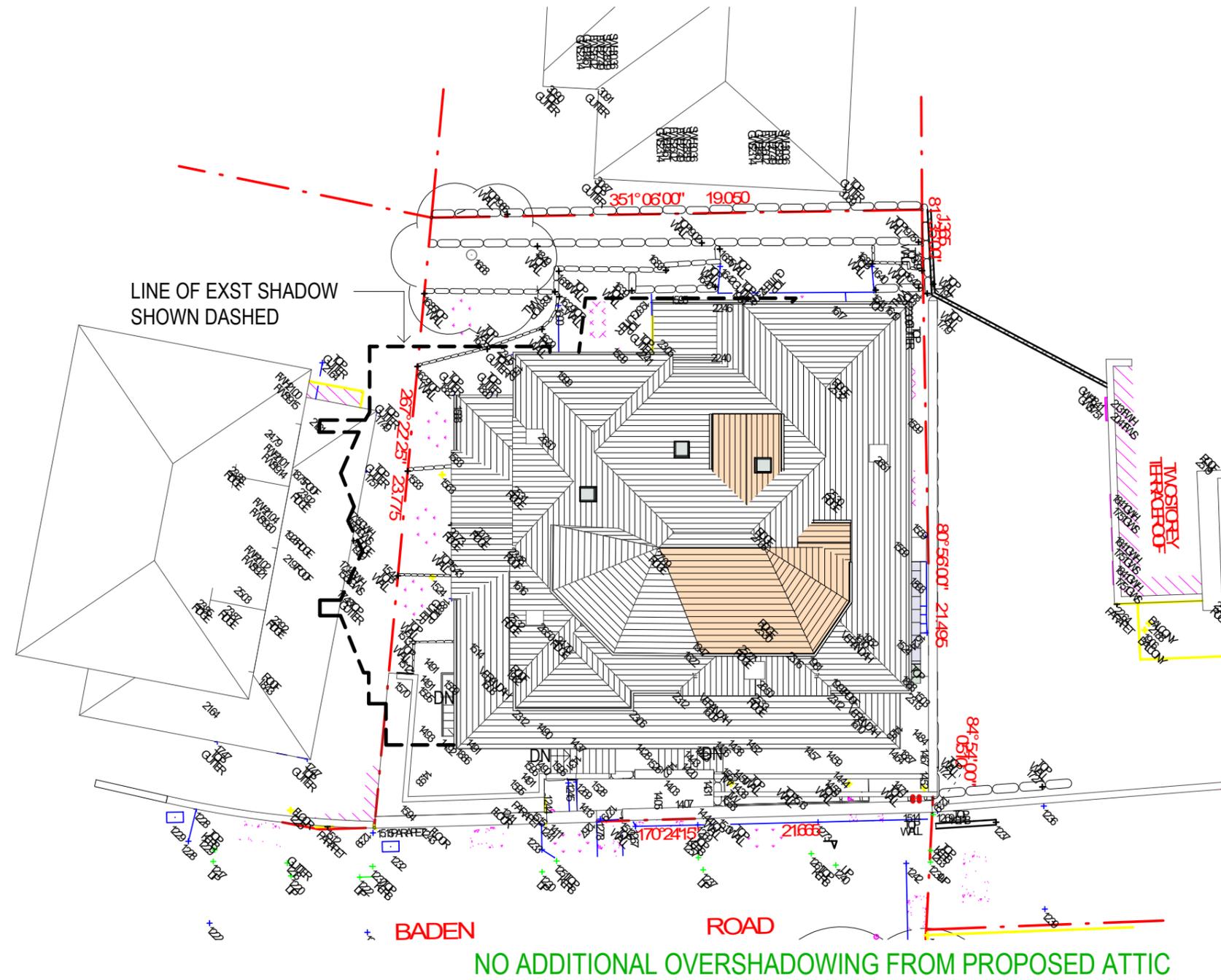
8 BADEN ROAD, KURRABA
POINT NSW 2089

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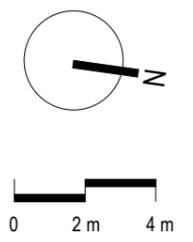
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SHADOW DIAGRAM EQUINOX 9 am

Scale:	Date:	Stage:	Dwg No:	Rev:
1 : 200 @A3	13.10.21	DA ADDITIONAL INFO	SD04	D



1 SHADOW DIAGRAM EQUINOX 12 pm
SCALE 1 : 200



ANNE COLVILLE

ARCHITECT

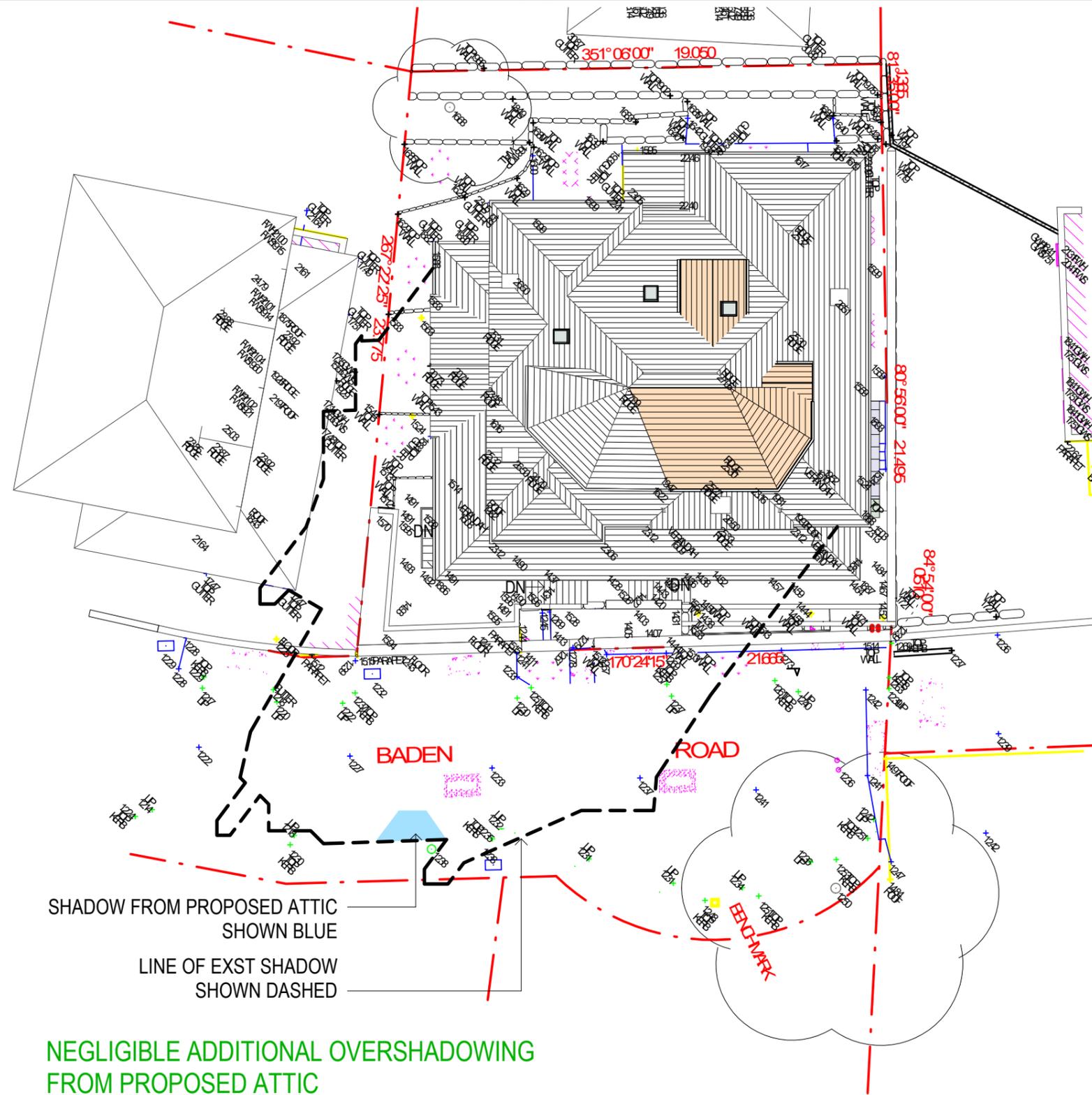
8 BADEN ROAD, KURRABA
POINT NSW 2089

B.ARCH GRAD.DIP.IND.DES. F.R.A.I.A., REG NO 3514 2 TOONGARAH RD, WAVERTON NSW 2060. PH: 9955 5603. FX: 9954 9312

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SHADOW DIAGRAM EQUINOX 12 pm

Scale:	Date:	Stage:	Dwg No:	Rev:
1 : 200 @A3	13.10.21	DA ADDITIONAL INFO	SD05	D



NEGLIGIBLE ADDITIONAL OVERSHADOWING
FROM PROPOSED ATTIC

1 SHADOW DIAGRAM EQUINOX 3 pm
SCALE 1 : 200

ANNE COLVILLE

ARCHITECT

8 BADEN ROAD, KURRABA
POINT NSW 2089

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SHADOW DIAGRAM EQUINOX 3 pm

Scale:	Date:	Stage:	Dwg No:	Rev:
1 : 200 @A3	13.10.21	DA ADDITIONAL INFO	SD06	D

INGHAM PLANNING PTY LTD

1

REQUEST FOR A VARIATION TO DEVELOPMENT STANDARD

CLAUSE 4.3 MAXIMUM BUILDING HEIGHT PURSUANT TO CLAUSE 4.6 OF NORTH LOCAL ENVIRONMENTAL PLAN 2013

1. Introduction

Clause 4.6 of North Sydney Local Environmental Plan 2013 (NSLEP 2013) allows for flexibility in the application of certain development standards to achieve “better outcomes for and from development by allowing flexibility in particular circumstances.”

The proponent seeks approval for alterations and additions to an existing building containing two dwellings, which is proposed in part, to extend above the maximum permitted building height of 8.5m. The subject land and neighbouring sites are moderately sloping from the west to the east (towards the Harbour) and in the case of the subject land, the fall is approximately 4-5 metres from the western boundary to the footpath level of Baden Road. The ground floor level of the existing building (which is an original federation dwelling) has been established above the street level to obtain views of the Harbour.

The numerical variation to the height which is sought is less than that of the existing building as the RL of the new roof form will sit approximately 300mm below the ridgeline of the existing roof. Council has previously assessed the variation to the height control as part of the SEPP1 control to the existing attic as 11.4m (a variation of 2.9m). Therefore, the variation which is sought is approximately 2.6m at RL 26.79. As shown on the roof plan below (See Figure 1), the proposed roof of the extended dormer adjoins the existing roof. The original plans proposed a ridge height of the dormer at the same level as the existing roof however the plans have subsequently amended to reconfigure the floorspace resulting in the overall height being reduced by 300mm and the bulk and scale being reduced. This can be seen when comparing the original and proposed western elevations. The small balcony has also been deleted.

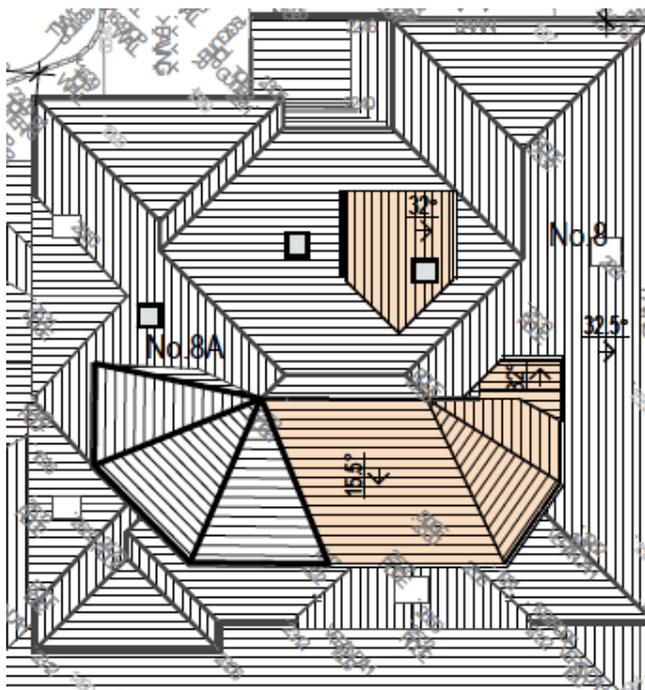


Figure 1 – extract of the plans showing the proposed roof form in relation to the existing.

The existing building height control, if strictly applied, would result in an unsympathetic change to the roof form or changes to other parts of the building, which would not be a good planning outcome in terms of the appearance of the heritage building, as the proposed extension has been designed to complement that part of the attic form already built. The requested variation to the maximum building standard provides for a better visual outcome with no loss of amenity as the noncompliance does not result in any material loss of sunlight or views to any surrounding property. The shape of the extended roof form, which is traditional in style and form has been located towards the front of the building and as shown on the western elevation, protrudes only slightly beyond the existing roof form (See Figure 2 below). This has enabled the geometry and presentation of the roof form and the integrity of the well-executed architectural response to the existing building to be retained but perceived impacts reduced.

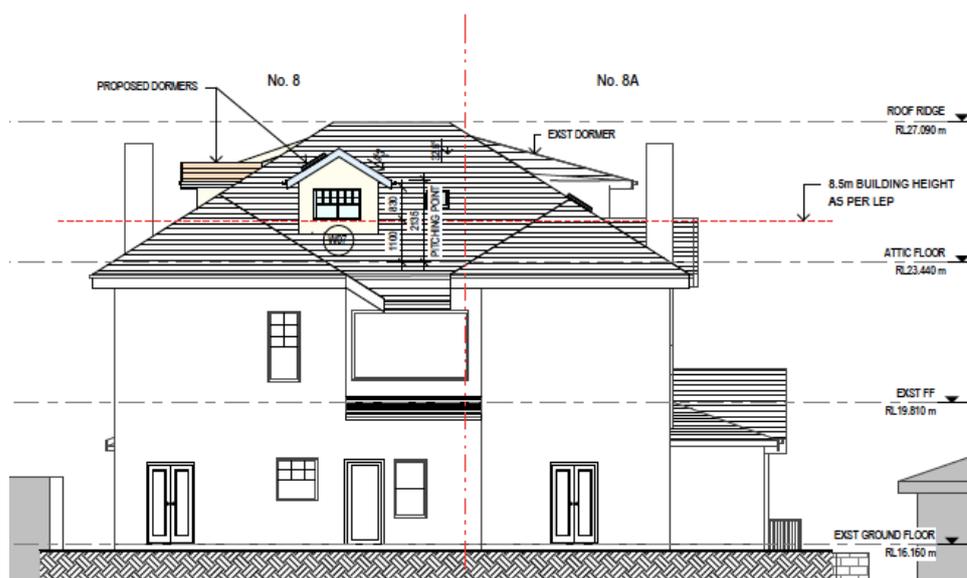


Figure 2: extract of western elevation showing the extent of the dormer when viewed from the rear. When compared to the original plans, the bulk and scale of the roof addition has been reduced in this area.

As detailed in this clause 4.6 submission, strict numerical compliance with the clause 4.3 - 8.5m building height as prescribed in NSLEP 2013 is unreasonable and unnecessary in the circumstances and a better planning outcome is achieved, by supporting the requested variation. Notwithstanding the height encroachment, the proposal achieves the objectives of the building height control applying to the site and the R3 Zone objectives, without impacting on neighbour amenity, the environment or streetscape.

2. The relevant development standards

Clause 4.3 of NSLEP 2013 sets out requirements in relation to height of buildings and prescribes a maximum building height of 8.5m for the subject land. Building height is measured as height above existing ground level, to the highest point of the building. The 8.5m building height standard allows for dwellings of up to 2 levels plus a pitched roof form. In this case, the existing attic level and all new works are focused on retention of and cohesion with significant fabric. As noted in the accompanying Heritage Statement:

“Details and form of new works are based upon historic precedent with minimal removal of original fabric.

Extension of the attic is based upon seamless additions matching the form of those recently approved to the attached residence at No.8A.”

3. Requested variation to the standard

The proponent seeks an increase in maximum building height. This is shown on the elevations and sections provided in the architectural plan set.

4. Requirements of clause 4.6 – Exceptions to development standards

The objectives of clause 4.6 are as follows:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

Clause 4.6(3) requires that a request to contravene the control, to demonstrate:

- “(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.”*

In considering whether to grant consent for a development that contravenes a development standard, a consent authority must be satisfied that:

- “(i) the applicant’s request has adequately addressed the matters required to be demonstrated by subclause (3), and
(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out, and
(iii) the concurrence of the Secretary has been obtained.*

These matters are addressed below in Sections 5 and 6.

5. Compliance with the development standard is unreasonable or unnecessary

It is considered that enforcing compliance would be unreasonable and unnecessary in this case, for the following reasons.

The proposal achieves the objectives of the maximum building height control.

The objectives of the building height control are noted and commented upon in the following assessment.

The objectives for the height control are as follows:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
- (b) to promote the retention and, if appropriate, sharing of existing views,
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- (e) to ensure compatibility between development, particularly at zone boundaries,
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The proposal achieves the above objectives as detailed in the following assessment.

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

The proposed extension of the existing attic form will occur on a building which was built at Federation. The building platform of the site has been established since the (former) dwelling was built. As was typical of the era, the building was placed above the street level to obtain views from the former home. The proposed extension of an existing attic level is appropriate in the circumstances of this case and will result in a good planning outcome. It is integrated into the roofscape and as noted in the conclusion of the Heritage Report:

“The proposed additions will continue the established pattern of additions sympathetic to the massing of the main residence and supportive of the symmetrical relationship of the residence with that at 6 Baden Road.”

- (b) to promote the retention and, if appropriate, sharing of existing views,

The requested variation to the maximum building height will have no impact on existing public and private views. Existing public and private views are largely maintained by-

- Maintaining the existing view corridors by not encroaching into the established side setbacks and stepping in the dormer from the northern side of the building as shown in Figure 2.
- Designing for the new works to the roof to sit at a lower level than the existing ridge height which has been established by the existing attic.
- In addition to the above, a detailed submission (view analysis) has been made to Council regarding the retention of views following objections from some unit owners to the rear. A comparison of the western elevations indicates a further decrease in the bulk and scale of the addition when viewed from the west towards the water view.

- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

Proposed bulk and scale substantially accord with the bulk and scale anticipated by the development controls and is generally consistent with prevailing built form, particularly when measured against the newer buildings in the locality.

Shadow diagrams have been provided with the architectural plans showing the extent of additional shadow created by the proposed building. These shadow diagrams confirm that the extent of additional shadow is minimal and confined to the 3pm period at both the winter solstice and equinox onto sites on the opposite side of Baden Road. Observations of these sites confirms that the rear of these sites accommodates parking structures, high walls and entrances and some private open spaces. The areas of increased overshadowing are minimal and would not materially affect the amenity of any dwelling.

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The proposed extension of the attic form will provide for one additional room in the attic space with a bathroom. This is not active living area and window openings are modest in size and as such there are no concerns envisaged with respect to privacy and overlooking. If Council was concerned with any aspect of the proposal in terms of overlooking, a condition could be applied to the glazing.

(e) to ensure compatibility between development, particularly at zone boundaries,

The subject site is within the R3 zone however is located immediately adjacent to a R4 Residential zone as shown in Figure 3 below.

The height limit which applies to the R4 zone is 11m. The proposed variation to the height standard will therefore ensure compatibility with development within this zone and will result in the modified roof form being read as part of the line of development which has been established between Kurraba Road and Baden Road, and between Kurraba Road and the foreshore immediately to the north of the site. Due to the addition being designed to seamlessly integrate into the existing roof form, any variation to the height control it will not be perceived from outside the site due to the height of the majority of surrounding development.

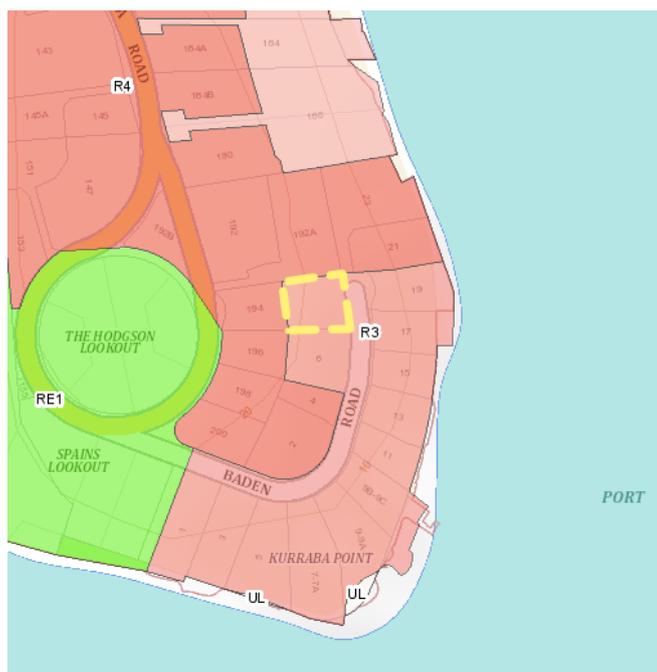


Figure 3 Extract of Zoning Map

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The proposed building is located on the eastern slopes of Kurraba Point within a variety of built forms and is screened from the foreshore by development to the east. The variation to the height control will not be perceived within the context of the surrounding built development. Proposed bulk and scale substantially accord with the bulk and scale anticipated by the development controls and is generally consistent with prevailing built form, particularly when measured against the newer dwellings in the locality.

The proposal achieves the objectives of the R3 Medium Density Residential Zone

The zone objectives of the R3 Medium Density Residential Zone are noted and commented upon below:

The zone objectives for the R3 Medium Density Residential Zone are as follows:

- *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 encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposal achieves the zone objectives as detailed in the following assessment.

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

The proposal maintains the use of the site as an attached dual occupancy (approved under the former LEP as a duplex). It was formerly a single dwelling house. This continues to meet the housing needs of the community by providing a dwelling which provides a higher level of occupant amenity, commensurate with expectations for harbourside living.

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

The continuing use of the site as an attached dual occupancy contributes to the variety of housing types within the R3 and adjacent R4 zones.

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

The zone objective relating to non-residential land uses is not applicable.

To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.

A Heritage Impact Statement forms part of the application which supports the proposal on heritage grounds. While small changes have been made to the application following a meeting with Council Officers in an attempt to resolve concerns held by Council, the basis of argument put forward in the Heritage Statement stands, however the proposed roof will now be slightly lower and a dormer is located over the bathroom. Further, the small in roof balcony has been removed from the proposal.

To provide for a suitable visual transition between high density residential areas and lower density residential areas.

The proposal is within a R3 Medium Density zone and adjoins a R4 zone. It is remote from lower density residential areas. The visual transition of the proposal has been assessed in regard to the higher density zone and has been found to be satisfactory.

To ensure that a high level of residential amenity is achieved and maintained.

The proposed building height encroachment has no material impact on neighbour amenity, as demonstrated in this clause 4.6 submission and the Statement of Environmental Effects submitted with the development application. If Council was to have any concerns regarding the small bathroom window, a condition could be applied. The proposal achieves an acceptable bulk and scale having regard to the planning controls, the siting of the building and established bulk and scale in the locality.

Compliance would result in a poorer planning outcome

One of the objectives of Clause 4.6 is to allow better planning outcomes to be achieved. In this case a substantially better planning outcome is achieved by allowing for some flexibility in relation to the building height control.

Any further changes to the roof form which would further reduce height would involve hiping the ends of the roof which would result in no material gain to views or to sunlight which are not detrimentally affected by the small area of non compliance with minimal gain in terms of building bulk and scale and poor design outcome. It is noted however that some reduction in height was achieved and these plans now form part of the development application.

Lack of impact

As noted in the above discussion and in the Statement of Environmental Effects, despite the numerical building height non-compliance, the environmental and visual qualities of the locality, streetscape and amenity of surrounding properties will be maintained to substantially the same extent, as a development that is of a numerically compliant building height.

6. There are sufficient environmental planning grounds to justify contravening the development standard

Strict application of the maximum building height would result in further changes to the design which would result in a less satisfactory planning outcome. A positive planning outcome is achieved in this instance by not strictly complying with the building height, as demonstrated in this clause 4.6 submission.

Supporting a building design that suitably responds to site constraints and context, without adversely impact on the environment, character or amenity of the locality is appropriate and by also providing for a better planning outcome, justifies contravening the subject development standards.

Council must also be satisfied that the proposal meets the objectives of the standards and the objectives of the subject zone. The proposal meets the objectives of the maximum building height standard, as discussed above and as detailed in the SEE and also meets the objectives of the R3 Medium Density Residential Zone.

Also in acting in the Secretary's concurrence role, Council must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

In relation to (a), the proposed height variation is minor and is not of any State or regional significance.

In relation to (b), there is no public benefit from maintaining the standard as there is no adverse impact on the public domain or neighbour amenity, the proposal is generally consistent with other relevant planning controls and a better planning outcome is achieved. The building height standard should be applied with some degree of flexibility on excavated and sloping sites. Such an approach is in the interest of orderly and efficient development of land.

As noted above enforcement of the control would result in a poorer planning outcome, which is not in the public interest.

In relation to (c), there are no other matters that require consideration.

7. Conclusion

The proposed building form and height is consistent with the established building scale in the locality and is compatible with the existing and desired future character and streetscape, as envisaged in the planning controls for the R3 Medium Density Residential Zone.

The development, in the form proposed, responds to the existing building site and form and the siting of neighbouring dwellings and provides for an appropriate building typology, density, scale and height, with no material environmental, streetscape or amenity impacts. The proposal is consistent with the objects of the EP&A Act. Requiring 100% compliance is unreasonable and unnecessary in this case, as it would not result in any material benefit and

in relation to urban design or amenity. As demonstrated in this submission, requiring strict numerical compliance would create a less desirable planning outcome.

Some flexibility with respect to the application of the building height control is appropriate on the subject site given the form and location of the established built form.

The additional building height has no material effect on perceived building bulk and scale, the desired future character of the area, the streetscape, or the residential amenity of neighbouring properties.

The proposal achieves the objectives of the R3 Medium Density Residential Zone and the building height standard, despite the numerical non-compliance. The requested variation to the 8.5m maximum building height standard is appropriate and worthy of support.

Leonie Derwent
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