

**NSLPP MEETING HELD ON 05/04/2023****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Height of Buildings
4. Clause 4.6 – Min Lot size for Dual Occupancies
5. Applicant's View Impact Assessment

**ADDRESS/WARD:** Unit 2, 5 East Avenue, Cammeray**APPLICATION No:** DA 269/2022**PROPOSAL:** A roof addition to an existing dwelling within a two storey attached dual occupancy to construct an additional bedroom with an ensuite.**PLANS REF:**

Plan No.	Issue	Description	Prepared by	Dated
A1.10	5	Level 2 Plan	Dieppe Design	16/01/2023
A1.11	4	Level 3 Plan - Attic		16/01/2023
A1.12	5	Roof Plan		16/01/2023
A2.01	5	Elevations		16/01/2023
A3.01	4	Sections A & B		16/01/2023

**OWNER:** James Dimic and Jennifer Dimic**APPLICANT:** Dieppe Design Pty Ltd**AUTHOR:** Michael Stephens, Senior Assessment Officer**DATE OF REPORT:** 27 March 2023**DATE LODGED:** 8 September 2022**AMENDED:** 23 January 2023**SUBMISSIONS:** 5 Objections**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

This development application seeks consent for a roof addition for an existing dwelling (Unit 2) within a two storey attached dual occupancy to construct an additional bedroom with an ensuite within a new pitched roof form with dormer windows on land at 5 East Avenue, Cammeray.

**The application is reported to the North Sydney Local Planning Panel for determination as the application seeks a variation to the development standards in clause 4.3 *Height of Buildings* and sub-clause 6.6(1)(c) *Minimum lot size for Dual Occupancies* in NSLEP 2013 by more than 10%. In accordance with the Ministers direction of 1 August 2020 a public determination meeting is not required because there were less than 10 Submissions.**

The proposed development breaches the maximum permitted building height of 8.5m by up to 1.3m, equating to a variation of 15.2%. The proposed variation relates to the proposed roof addition. The applicant has submitted a written request to vary the development standard in sub-clause 4.3(2) pursuant to clause 4.6 in NSLEP 2013.

The provisions of clause 6.6 *Dual Occupancies* in NSLEP 2013 apply to the proposed alteration and additions. The existing dual occupancy is located on a lot less than the minimum subdivision lot size required for dual occupancies. The applicant has submitted a written request to vary the development standard in sub-clause 6.6(1)(c) pursuant to clause 4.6 in NSLEP 2013.

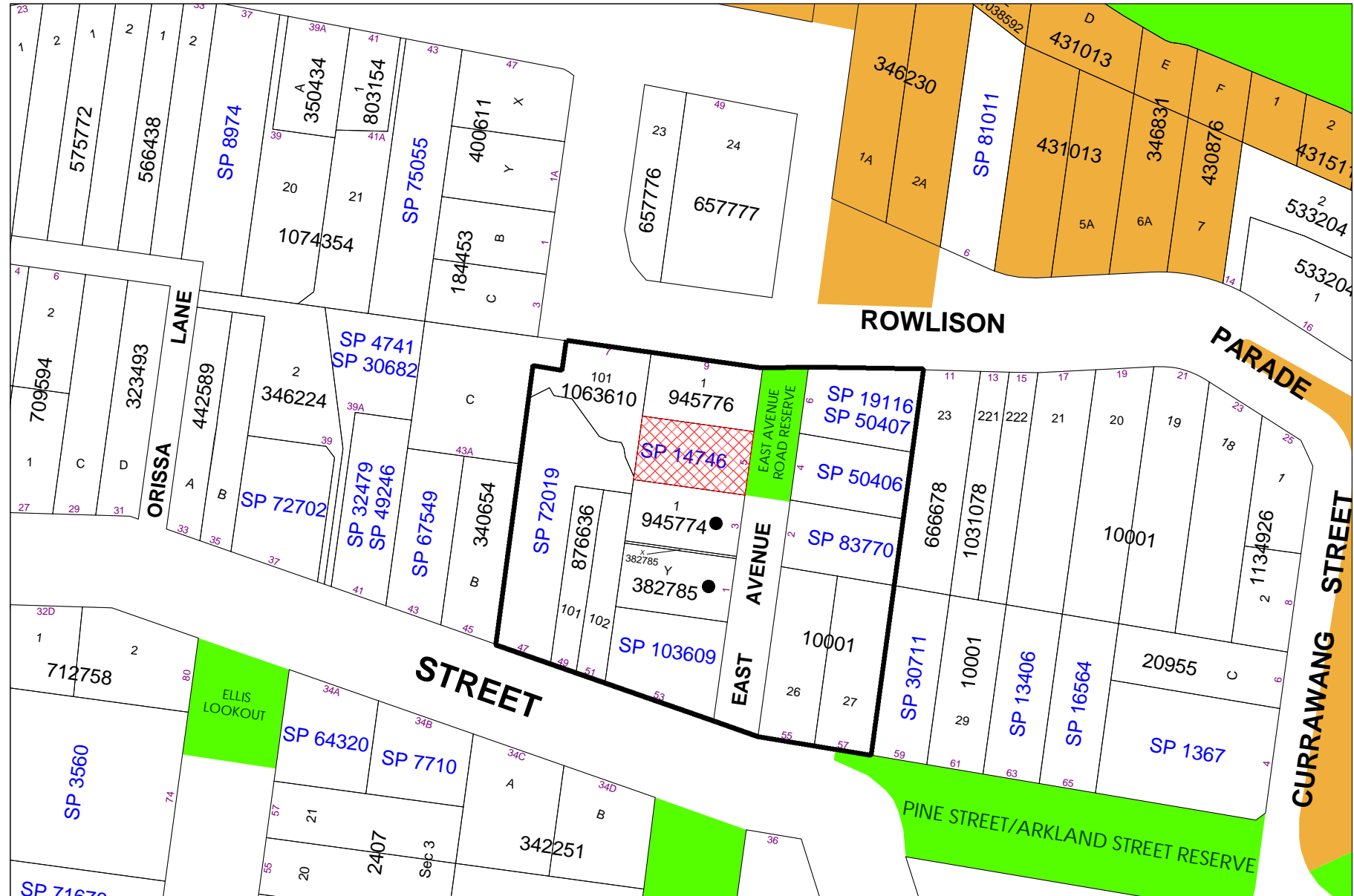
The written requests referred to above are considered satisfactory to demonstrate that compliance with the development standard is both unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the variation. The proposed development would be in the public interest. The submitted written requests are considered to be well founded and worthy of support.

The application and amended plans were notified in accordance with Council's Community Engagement Protocol and a total of 5 unique submissions were received raising concerns regarding the height variation, accuracy of information, inadequate clause 4.6 written request, loss of views and outlook, and consistency with the character of the area. The submissions informed the amended plans and all remaining issues have been addressed in this assessment report.

The proposed development would not have an adverse impact on the amenity of the adjoining properties with respect to privacy and solar access and would have an acceptable impact on the existing urban bushland outlook enjoyed from the adjoining property to the south given the potential impact is minimal and other more significant views are retained. The proposed element causing the view impact does relate to the non-compliance with the height of buildings development standard although has been justified and is in part caused by the historical evacuation of the site.

On balance, the application has met the relevant statutory requirements and the proposed development is considered reasonable and is therefore recommended for approval.

**LOCATION MAP**



Property/Applicant    ● Submitters - Properties Notified

## DESCRIPTION OF PROPOSAL

The development application seeks consent for a roof addition to an existing dwelling on the upper level of a two storey attached dual occupancy to construct an additional bedroom with an ensuite. The addition is contained largely within a new pitched roof form with gabled ends and dormer windows.

The proposed works include:

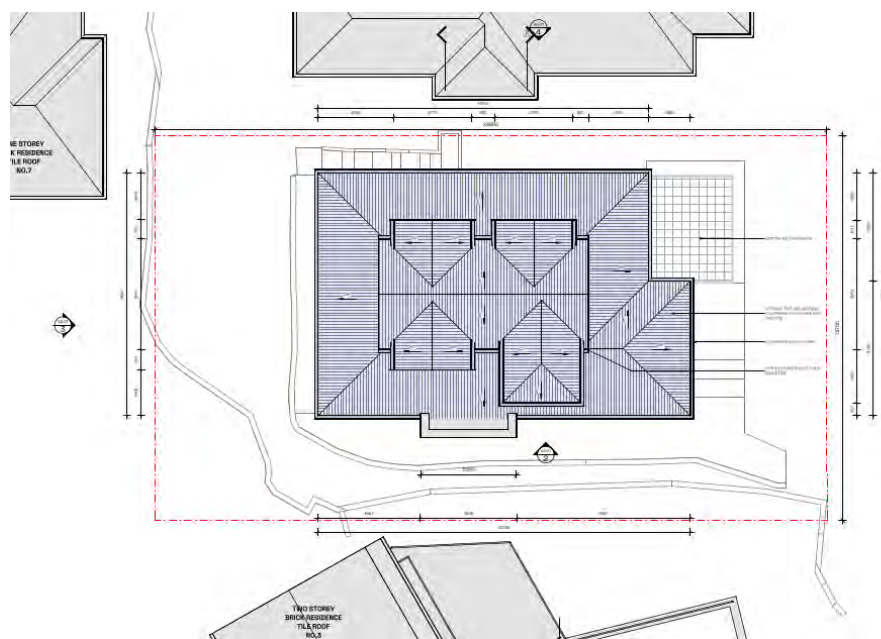
### First Floor Level (RL 48.310)

- Conversion of the existing ensuite and laundry into a bathroom; and
- Demolition of the existing bathroom to construct an internal staircase to the proposed new level above with a laundry cupboard below the staircase.

### Second Floor Level (RL 51.340)

- Construction of a roof level addition within a new roof form with a steeper pitch, gabled central ridgeline element and two dormer windows on each side of the ridgeline. There is a short wall plate, approximately 100mm - 300mm high, between the re-pitched existing roof form and the proposed central gabled element. The external wall plate is clad with horizontally orientated weatherboards; and
- The addition contains a bedroom, bathroom and small study nook.

There are no works proposed to the ground floor level dwelling (Unit 1) or the common stairwell, although the works to the roof form would affect common property. Appropriate owner's consent has been provided from the Strata Plan for the proposed works. An engineer's assessment has also be submitted to confirm that the proposed works would not require any additional structural works that may affect Unit 1.



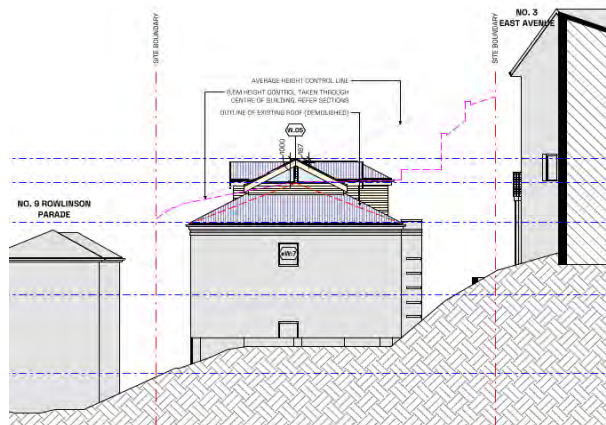
**Figure 1. Proposed Site Plan**



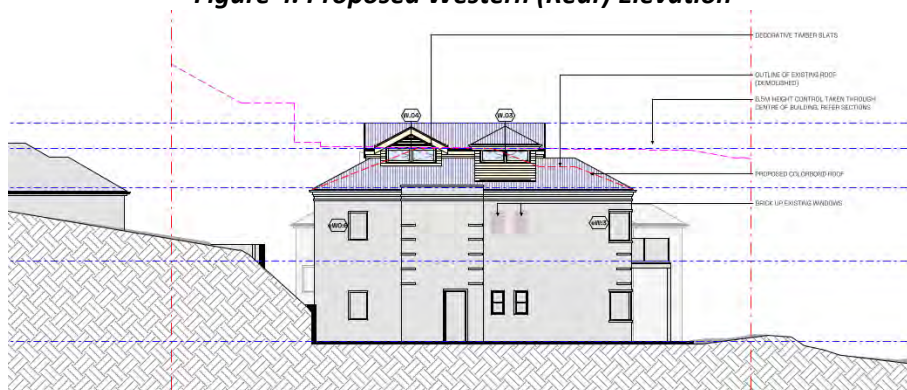
**Figure 2. Proposed Eastern Elevation (East Avenue)**



**Figure 3. Proposed Northern Elevation**



**Figure 4. Proposed Western (Rear) Elevation**



**Figure 5. Proposed Southern Elevation**



**Figure 6. Proposed Perspective View**

## **STATUTORY CONTROLS**

North Sydney Local Environmental Plan 2013

- Zoning – R2 Low Density Residential
- Item of Heritage - No
- In Vicinity of Item of Heritage – Item 0021 (49 The Boulevard)
- Conservation Area - No

Environmental Planning and Assessment Act 1979

- s7.11/12 Infrastructure Contributions

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Resilience and Hazards) 2021

## **POLICY CONTROLS**

North Sydney Development Control Plan 2013

North Sydney Local Infrastructure Contributions Plan 2020

## **DESCRIPTION OF SITE AND LOCALITY**

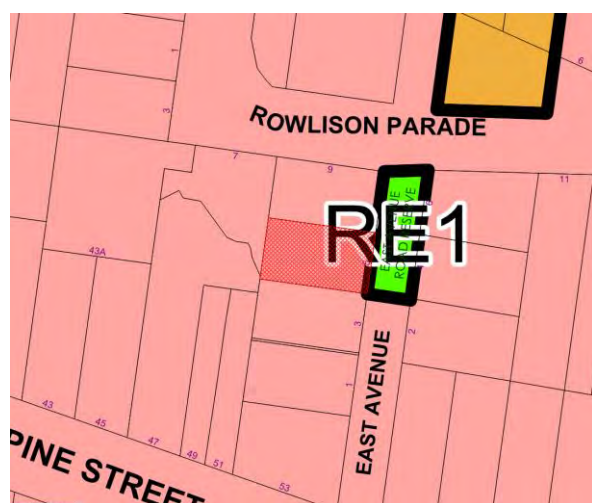
The subject site is legally described as Lot 2 in SP 14756 and is known as Unit 2, 5 East Avenue, Cammeray. The site is located on the western (high) side of East Avenue adjoining the unmade portion of the road reserve which is zoned RE1 and is extensively landscaped. The site is located between Pine Street to the south and Rowlinson Parade to the north.

The site is rectangular in shape and has a 13.7m frontage to East Avenue and a depth of 24m, equating to a site area of 330sqm. The land naturally falls from the south to the north by approximately 5m along East Avenue and by approximately 4m from the rear (west) to the front (east) towards East Avenue. However, the site appears to have been historically excavated resulting in terracing of the land towards the rear of the site and an approximately 3m high retaining wall adjacent to the southern boundary. The buildings along East Avenue step down the street towards Rowlinson Parade.



**Figure 7. Aerial Image of the subject site and surrounds (Nearmap 2023)**

The site is zoned R2 Low Density Residential and is located within the Cammeray Neighbourhood character area. The site, and its surrounds, is subject to a maximum permitted building height of 8.5m in clause 4.3 in NSLEP 2013. The site contains an existing two storey attached dual occupancy with each dwelling occupying a separate level with a communal staircase on the southern side of the building. The existing building is constructed of brick with a low (23-degree) pitched terracotta tiled roof. Each dwelling has a balcony at the front overlooking East Avenue. The building along the unmade portion of the East Avenue road reserve all share a similar building typology, being two storey, some with large subfloors where dictated by the topography, and were likely to have been originally constructed as flats containing two dwellings, consistent with the definition under historical planning instruments.



**Figure 8. NSLEP 2013 Land use zoning map (subject site crosshatched).**



**Figure 9. NSLEP 2013 Height of Buildings maps (subject site crosshatched).**

The adjoining property to the south (No. 3 East Avenue) contains a part two-part three storey dwelling house and is located at a substantially higher level, by approximately 7.2m, than the existing ground floor level of the subject site. The properties to the rear also contain dwelling houses and semi-detached dwellings facing Rowlinson Parade and Pine Street, respectively.

The site does not have any on-site parking given the site does not adjoin any road. There are several mature trees located at the rear of the site and within the East Avenue road reserve.

Additional photos of the subject site and surrounding area are provided below.



**Figure 10. Subject site from north end of East Avenue**



**Figure 11. Subject site from East Avenue road reserve**





**Figure 12. Subject site from northeastern private open space of No. 3 East Avenue**

### RELEVANT DEVELOPMENT HISTORY

Development Application **DA607/2003** for alterations to an existing duplex to construct a raised ground floor deck for the ground floor dwelling and a first floor balcony for the first floor dwelling was approved by Council on 15 March 2004.

The application was assessed under NSLEP 2001 which applied at the time and the building was characterised as a duplex, meaning “a single building containing only two dwellings, each dwelling attached to the other by a common wall or by the floor of one to the ceiling of the other”.

### RELEVANT APPLICATION HISTORY

Date	Assessment
8 September 2022	The application was lodged with Council via the NSW Planning Portal.
13 September 2022	A ‘STC’ letter was sent to the applicant requesting additional information regarding the cost of works and an amended SEE to address clause 6.6 in NSLEP 2013.
14 September 2022	The application was notified in accordance with Council’s Community Engagement Protocol from 23 September 2022 until 7 October 2022.
21 October 2022	The additional information requested in Council’s STC letter was provided.
3 November 2022	A site inspection was undertaken by Council assessment staff.
22 November 2022	A preliminary assessment letter was sent to the applicant advising that the application could not be supported raising concerns regarding the height of the building, the dual occupancy controls, the built form character controls, and insufficient information.
24 November 2022	A meeting was convened with the applicant to discuss potential amendments.
23 January 2023	Amended Plans were lodged via the NSW Planning Portal.
25 January 2023	The amended application was re-notified from 3 February 2023 until 17 February 2023.
23 March 2023	A clause 4.6 written request regarding clause 6.6(1)(c) in NSLEP 2013, and amended Clause 4.6 written request regarding clause 4.3 in NSLEP 2013 and a revised view impact assessment were submitted to Council.

## REFERRALS

### Building

The application was referred to Council's Building Surveyors and standard conditions were recommended. An upgrade pursuant to section 64 of the Environmental Planning and Assessment Regulations 2021 is not warranted because the proposed works effect less than 50% of the existing building and the existing measures are not deemed to be inadequate. The existing building is registered on Council's Annual Fire Safety Schedule. All new works should comply with the National Construction Code and the certifier would be responsible to ensure that all fire safety measures conform with the relevant requirements.

### Engineering

The application was referred to Council's Development Engineers who raised no objection to the proposed development and recommended standard engineering conditions regarding stormwater disposal and protection of public infrastructure.

### Landscape

The application was referred to Council's Landscape Development Officer who raised no objection to the proposed development because it does not require the removal of any trees or have any impact on any trees. A construction management plan is to be prepared to limit construction access to only the nearby East Avenue and not from Rowlison Parade to minimise the potential impact to the trees and vegetation within the East Avenue Road reserve. An appropriate bond has been recommended for the portion of the vegetated road reserve through which construction access would be required.

## SUBMISSIONS

The development application was notified in accordance with Council's Community Engagement Protocol from 23 September 2022 until 7 October 2022. Three submissions objecting to the proposed development were received by Council.

Amended plans were received on 23 January 2023 which amended the originally proposed third storey addition to a more room in the roof style roof addition with dormer windows. The overall height of the building was reduced by approximately 750mm and the internal floor area was also reduced by around 25%.

The amended plans were renotified in accordance with Council's Community Engagement Protocol from 3 February 2023 until 17 February 2023. Two further submissions objecting to the proposed development were received by Council.

The issues raised in the objections to both the original and amended schemes remain relevant matters for consideration and are summarised below:

- *The proposed development would not comply with the maximum permitted height of buildings development standard in clause 4.3 in NSELP 2013.*
- *The written request made pursuant to clause 4.6 in NSLEP 2013 for an exemption to the height of buildings development standard is inadequate to justify the proposed variation.*

- *The proposed additions should be categorised as a third storey or second floor addition. References within the submitted SEE and Clause 4.6 written request identifying the addition as a first floor addition, or the like, are misleading.*
- *The proposed three storey scale of the building is inconsistent with the surrounding established context.*
- *The submitted SEE, View Loss Assessment and Clause 4.6 written request include misleading or incorrect statements. The existing basement laundry area has been omitted from the submitted plans.*
- *Reliance of other exceptions to the building height that have been approved within the surrounding area should not be utilised as precedent to justify the proposed addition.*
- *The proposed development is inconsistent with the objectives of the R2 Low Density Residential zone.*
- *The proposed additions would adversely impact the existing bushland views enjoyed from the ground floor level kitchen, living area and private open space of the adjoining property over the subject site. The potential impact has not been modelled or identified and the applicant has not visited the affected property.*
- *The references to the proposed addition providing a flood refuge are of no relevance to the subject application given that the area is not flood affected.*
- *The proposed additions would benefit the subject dwelling whilst being to the detriment of surrounding properties.*
- *The proposed development would have a major impact on the natural environment.*
- *The proposed development is not in the public interest.*

These issues have been addressed later in this assessment report. A copy of all submissions is to be provided to the Panel, in full, for their consideration.

## **CONSIDERATION**

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

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

#### **Chapter 2 Vegetation in non-rural area**

Section 2.6 of the Policy specifies that a person must not clear declared vegetation in a non-rural area of the State without consent. The Policy confers the ability for a council to declare vegetation in a Development Control Plan where consent is required to remove or impact the vegetation. Section 16 of Part B in NSDCP 2013 specifies declared trees for the purpose of the SEPP which includes primarily trees over 5m in height or crown width.

The proposed development does not seek to remove or impact any protected trees. Council's Landscape Development Officer recommended conditions to ensure that the existing trees on site, and trees and vegetation within the road reserve are protected during construction given the difficult site access.

## Chapter 6 Sydney Harbour Catchment

The subject site is not located within the Foreshores and Waterways Area as mapped in the Sydney Harbour Foreshores and Waterways DCP 2005 and is not overly visible from Sydney Harbour or its foreshores. The proposed development would therefore not adversely impact the scenic quality of the foreshore, or the natural environmental processes related to the water catchment.

### State Environmental Planning Policy (Resilience and Hazards) 2021

Section 4.6 of the SEPP requires the consent authority to consider whether the land is contaminated, and if so whether the land is suitable for the intended use, or any remediation measures required to make the site suitable. Council's records indicate that the site has historically been used for residential development and therefore is unlikely to be contaminated. Furthermore, the proposed works do not require any excavation and would not disturb soils. The subject site is therefore considered suitable for the proposed use given that contamination is unlikely.

### State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate reflecting the amended plans has been provided to meet the requirements of the Policy.

### North Sydney Local Environmental Plan 2013

#### Permissibility

The subject site is zoned R2 Low Density Residential. The proposed development seeks consent for alterations and additions to an existing attached dual occupancy. An attached dual occupancy is a permitted use within the R2 Low Density Residential zone.

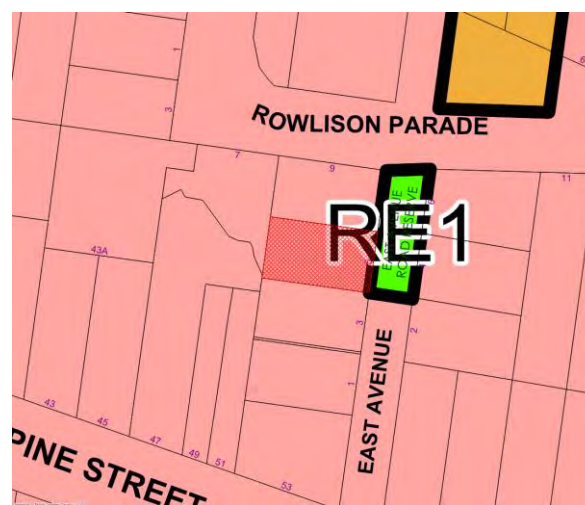


Figure 13. NSLEP 2013 Land use zoning map (subject site crosshatched).

#### Objectives of the zone

R2 Low Density Residential zone

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

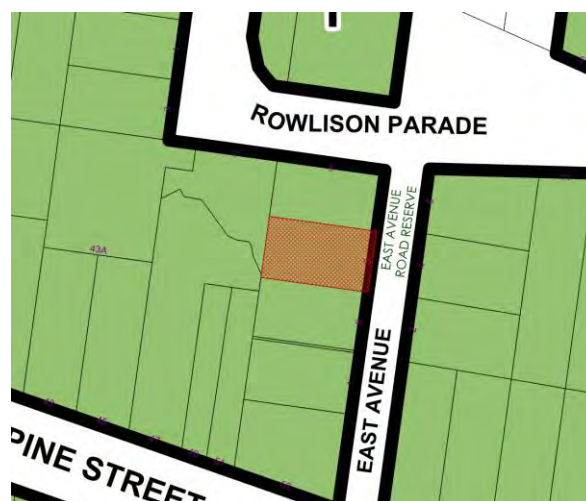
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed development is consistent with the objectives of the zone. The proposed development would improve the amenity of the existing dwelling, primarily through the provision of an additional bedroom, allowing the existing residents to grow in place or provide additional housing within a low density residential environment. The proposed development, being for the purpose of a dual occupancy, is a type of residential accommodation that is namely encouraged within the low density residential area, where, and in the case of the proposed development, it does not compromise the amenity or heritage significance of the surrounding area.

The proposed development would provide a reasonable level of amenity for the subject dwelling whilst also reasonably maintaining the existing high level of residential amenity for the surrounding dwellings. The potential impact to the urban bushland views enjoyed by the adjoining property is not considered to unreasonably impact the amenity of the property given the minimal extent of the view impact and the quality and quantity of views retained. There would be no material impact to the privacy, subject to condition C74, or solar access of the surrounding properties.

#### Clause 4.3 - Height of buildings

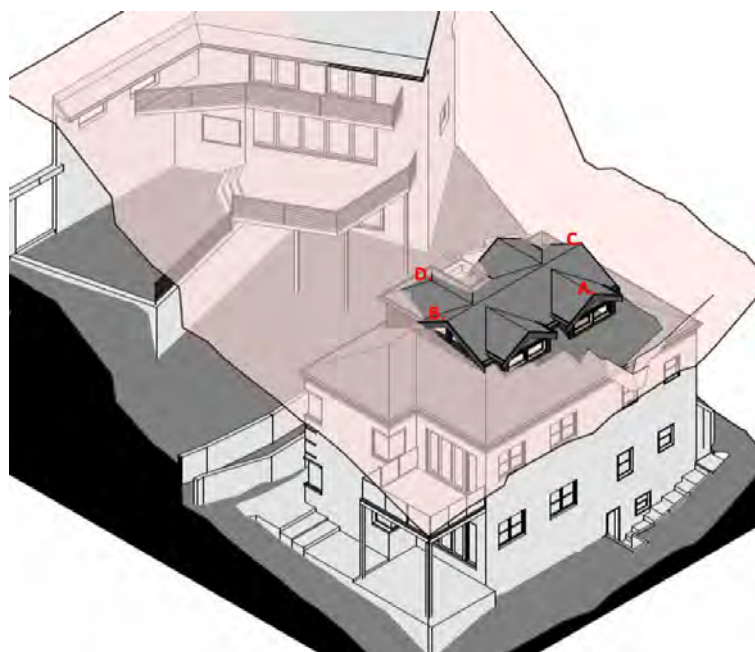
The subject site has a maximum permitted building height of 8.5m pursuant to clause 4.3(2) in NSLEP 2013.



**Figure 14. NSLEP 2013 Height of Buildings maps (subject site crosshatched).**

The extent of the proposed variations is identified in the table below referencing the diagram in **figure 15** below. The proposed additions have a maximum building height of 9.8m being a variation of 1.3m or 15.3%. The lateral extent of the variation relates to the whole of the roofs central gabled form and dormers with the surrounding re-pitched roof form complying with the development standard with the exception of a small area above the previously excavated lower ground floor communal storage area on the northern side of the building. The proposed ridgeline represents the maximum height of the building and results in a variation of 1.0m or 11%

	Non-compliant Building Element	Control	Height	Variation
A.	Northwestern Dormer	8.5m	9.8m	1.3m (15.3%)
B.	Central Ridgeline (Eastern End)		9.5m	1.0m (11.7%)
C.	Central Ridgeline (Western End)		9.5m	1.0m (11.7%)
D.	Southeastern Dormer (Staircase)		9.2m	0.7m (8.2%)



**Figure 15. Location of proposed height variations**

**Clause 4.6 - Contravention of a Development Standard**

A written request to contravene the height of buildings development standard has been submitted (**Attachment 3**) and has been considered below.

**Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?**

The most common way to demonstrate that compliance with the development standard in unreasonable and unnecessary is to demonstrate that the objectives of the development standard are met notwithstanding the non-compliance. This is identified as test 1 in *Wehbe v. Pittwater Council* [2007] NSWLEC 827 (“Wehbe”).

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

The written request has demonstrated how the proposed development conforms to and reflects the slope of the land. Firstly, the proposed development does not seek to alter the existing ground levels or slope of the land which falls from the south and west and has been historically terraced with excavation to the site to allow for the construction of the current buildings (see **figure 16** below). The breaching element, being the roof form, is located centrally on the existing building and would not be overly perceivable from the public domain. The retention of the pitched roof form, containing the new floor space, allows the building to present with largely the same massing as the existing building.

The developments along East Avenue, including the unmade portion of the road reserve would continue to appear to step down the land to follow the natural gradient. The proposed development would sit well below the surrounding development to the south and the west as indicated in the submitted 3D modelling.

The written request has also addressed relevant case law including *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 ("*Merman*") identifying the impact of the previous excavation of the site to construct the original building. It is noted that this is generally accepted to be an environmental planning ground to justify a variation, however, in this case also informs the siting of the building in relation to the existing slope of the land which has historically been excavated to construct this and other buildings along East Avenue. The ridgeline of the proposed addition would otherwise comply if the historical excavation was discounted when measuring the existing ground level.

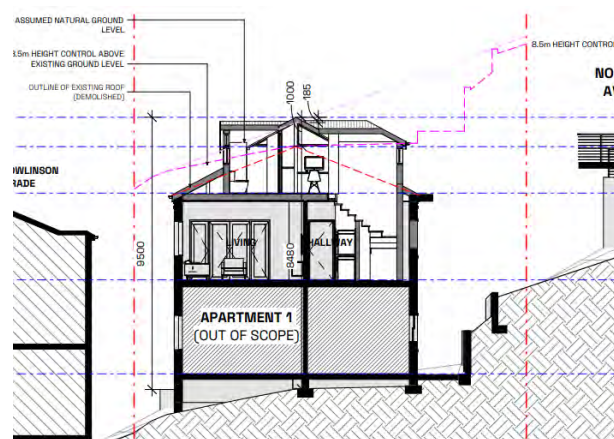


Figure 16. Section A

**Comment:**

As an observation the extent of the excavation to construct the original building is likely greater than any fill given the height of the retaining walls to the south of the site in comparison to the height of the subfloor to the north of the building, meaning that the overall height of the building is somewhat penalized by the excavation. The development would be significantly more compliant with the development standard if the land level was transposed from boundary to boundary as demonstrated in **Figure 16** above.

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

The written request, with reference to the submitted view impact assessment (**Attachment 5**), has demonstrated that the proposed development promotes the retention of existing views. The view impact assessment has addressed the four-step test in *Tenacity Consulting vs Warringah* [2004] NSLEC 140 ("*Tenacity*").

Access to the adjoining properties was not obtained by the applicant, which is a limitation of the assessment, although the assessment is considered to reasonably reflect the observations of Council Staff who attended the adjoining property to the south (No. 3 East Avenue).

The view impact assessment includes the following assessment:

***Step 1. An assessment of the value of views to be affected by reference to their nature, extent and completeness.***

Bushland views are gained from the adjoining property to the south (No. 3 East Avenue). Views are also gained to Middle Harbour which are identified in the submitted aerial map although not specified at *step 1*, however, nevertheless would not be impacted by the proposed development.

***Step 2. A consideration of how views are obtained and what part of the property the views are obtained from.***

The bushland views are gained from the outdoor private open space and ground level living areas of No. 3 East Avenue. The northeastern views to bushland would be unaffected. Looking perpendicular to the side boundary, the proposed new roofline would be visible. The assessment concludes that the ridgeline would be retained over the proposed additions. The referenced ridgeline is assumed to be the urban bushland ridgeline of Northbridge on the southern slopes above Tunks Park.

The written request has also demonstrated that there would be no impact to the properties located further to the southwest facing Pine Street which have water views over the subject site.

***Step 3. A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible, minor, moderate, severe or devastating.***

The written request has assessed the view impact as negligible primarily based around the principles established in *Furlong vs Northern Beach Council NSWLEC 1208* ("Furlong") regarding views across side boundaries.

*"In summary, the negligible impact on the bushland view currently available from No. 3 East Avenue is:*

- Is over a side boundary and through the central part of the development footprint available on No. 5 East Avenue, and is therefore difficult to protect; and*
- Is experienced from the ground floor level and open space area, which is significantly more vulnerable to impacts; and,*
- Is not considered a high value view as outlined in the Furlong decision, noting that it does not involve impact upon the available water view and is unlikely to impact the ridgeline; and,*
- Is replicated in other areas on the site, namely the upper level deck from which the bushland is wholly unaffected."*

***Step 4. An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. 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.***

The written request suggests that any potential impact is considered reasonable due to the negligible impact to a small portion of bushland views from the adjoining property with the majority of the views being retained.



The view impact assessment has not dealt with the reasonableness of the proposal with respect to the height variation although the written request seeks to demonstrate how the objective is met notwithstanding the variation.

The written request suggests that the proposed development demonstrates a more skilful design through submissions of amended plans for a room in the roof style addition rather than a full storey which minimises any potential view impact.

In summary, the proposed development would promote the retention of views having regard to the minimal extent of the impact and the site circumstances.

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

The written request and accompanying solar access drawings demonstrate that the proposed development would maintain solar access to surrounding dwellings. The additional overshadowing caused by the non-compliant portion of the proposed addition would affect the lower garden areas of the adjoining property to the south throughout the day in mid-winter with some overshadowing to a lower ground floor glazed door at 9am when the overshadowing is at its at its greatest. The additional overshadowing would not impact the ground floor level living area or the external private open space. The additional overshadowing would not materially impact the amenity of the adjoining property.

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

The written request has demonstrated that the proposed addition would maintain privacy for residents of existing dwellings with existing setbacks being retained and no direct overlooking into any living areas. The location and offset of windows within the addition further minimises any potential impact.

**Comment:**

The proposed windows within the southern elevation comply with the development standard and despite potentially impacting the privacy of the adjoining dwelling is not a matter for the written request because the potential impact relates to a compliant element. This issue is assessed later in this report and a condition is recommended requiring adequate privacy measures to be installed.

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

The written request demonstrates that the proposed development is compatible with the surrounding development in that the scale of the proposed building is consistent with, or less than, surrounding development. The proposed additions would not be perceivable from the East Avenue unmade portion of the road reserve or from the south. Where the additions are visible from the south where the higher ground level overlooks the subject site, the addition would be consistent with the existing building forms that step down the site to follow the slope of the land.

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

The written request demonstrates that the proposed development would be compatible with the scale of surrounding properties. The proposed additions are well located within the existing building footprint and within a new amended roof form. The addition would be compatible with the character of the surrounding area. The written request also suggests that the proposed development would be consistent or lesser in scale than surrounding development. The included 3D modelling of the proposed development in its context demonstrates this assertion and further demonstrates how the development reflects the sloping topography of the land.

The written request has also provided a wider assessment of the scale of development within the area which included predominantly two storey buildings with some examples of three storey buildings.

*(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 written request has demonstrated that this objective is achieved. The proposed additions are sufficiently contained within the proposed new pitched roof form, like an attic, to substantially retain the two storey building form of the existing building. The use of dormer type windows provides acceptable internal ceiling heights whilst modulating the roof form rather than appearing as a third storey.

#### **Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation**

The written request has provided various environmental planning grounds to justify the variation on pages 16-19 of the written request (Attachment 4) which are briefly summarised below.

- The variation is caused due to the previous excavation of the site. Reference is made to the approach taken in Merman which sought to address the existing excavation of the site and how this would impact the measurement of the building height.
- The apparent bulk of the development, notwithstanding the variation, is reasonable given the containment within a pitched roof form satisfying CL1.3(g) of the EP&A Act.
- The proposed development is consistent with the objectives of the R2 Low Density Residential zone.
- The scale and design of the proposed building is consistent with the character of the locality.
- The proposed development would not impact the natural environment given that there is no loss of landscaped area or impact to any trees or other natural features of the site.
- The proposed development would represent environmentally sustainable development satisfying s1.3(f) of the EP&A Act.
- The proposed development would not have any adverse social or economic impacts satisfying s1.3(b) of the EP&A Act.
- The proposed development is an appropriate planning outcome for the site constraints and would not result in a built form inconsistent with those found in the immediate and wider context satisfying s1.3(c) of the EP&A Act.

Not all statements in the written request are entirely agreed with and some may reflect minor errors in the drafting of the request or unspecific to the site circumstances, however, when read in its entirety it is considered that sufficient environmental planning grounds have been identified to justify the variation in the circumstances of the case.

Firstly, it is evident that the variation is caused in part by the historical excavation of the site to allow the construction of the existing building. The depth of excavation towards the southern side of the site, as evidenced by the height of the retaining walls, exceeds the height of any subfloor on the northern side of the building. If the measurements of existing ground level were taken to be a continuation of the existing land levels surrounding the existing building, being the approach taken in *Merman* then the proposed additions, including the central ridgeline, would substantially comply with the development standard. The extent of the variation has been limited through the size of the addition with both the internal floor space and ceiling height being reduced so as to be contained within a pitched roof form.

Secondarily, the proposed built form is considered to be appropriate having regard to the surrounding context. The form, massing and scale of the building is consistent with surrounding development and continues to reflect the stepping down of development to follow the sloping topography of the area. The additions are efficient in the use of space and are primarily contained within a modified pitched roof form in turn retaining the existing building footprint and landscaping. The associated impacts for adjoining properties, on balance, are considered reasonable.

#### **Clause 4.6(4)(a)(i) Applicant's written request**

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above.

#### **Clause 4.6(4)(a)(ii) Public Interest**

The proposed development would be in the public interest because it is consistent with the objectives of the standard proposed to be varied and the objectives of the R2 Low Density Residential zone as discussed above.

#### **Concurrence with the Minister**

A Local Planning Panel as consent authority may assume concurrence with the Minister as per the Planning Circular PS 20-002.

#### **Conclusion**

The written request to vary the development standard provided by the applicant is considered to be well founded. The written request demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the variation. The proposed development is considered to be in the public interest. It is recommended that the variation be supported in these circumstances.

### Clause 5.10 - Heritage conservation

The subject site is located in the vicinity of a heritage item (Item 0021) of local significance listed in Schedule 5 to NSLEP 2013. The heritage item is a dwelling house located on the opposite side of Rowilson Parade. The proposed development would not form part of the visual catchment of the heritage item due to the separation and topography and therefore would not adversely affect the heritage significance of the heritage item.



Figure 17. NSLEP 2013 Heritage Map (subject site crosshatched)

### Clause 6.6 Dual Occupancies

The proposed development is for the purpose of an attached dual occupancy. Clause 6.6 contains provisions relating to the erection of a dual occupancy, which include alterations to an existing building as defined in Section 1.4 of the Act.

- (1) *Development consent must not be granted for the erection of a dual occupancy unless:*
- (a) *the form of the building will appear as a dwelling house, and*

The existing building was constructed prior to this provision and likely to be originally constructed as flats, as were other similar buildings along the unmade portion of East Avenue. Nonetheless, the existing building is two storeys with a pitched roof. The proposed addition is predominantly retained within a reconstructed roof form similar to an attic conversion. The proposed alterations and additions would not introduce any new element such as a separate dwelling entry or repetition of fenestration or balconies which would suggest that the building contains multiple dwellings. The proposed additions would not be readily visible from the public domain due to the location adjacent to the unmade portion of the road reserve which contains dense landscaping and is steeply sloping.

In the circumstances it is considered appropriate that the form of the building remain consistent with its current presentation within the streetscape and this clause is considered to be satisfied in that the proposed alterations and additions do not give rise to any new element that would be inconsistent with the appearance of a dwelling house.

- (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*

The two dwellings would continue to be attached along 100% of the existing ground floor of the first floor dwelling and ceiling of the ground floor dwelling below and therefore complies with this provision.

- (c) *the area of the lot on which the dual occupancy is to be situated is at least 450 square metres.*

The subject site has a site area of 329.99sqm, which does not comply with the minimum lot size of 450sqm required for the erection of a dual occupancy. This numerical provision is a development standard as defined in Section 1.4 of the Act and therefore may be subject to the operation of clause 4.6 in NSLEP 2013 for variations to the development standard below.

### **Extent of the Variation**

The existing site area is 329.99sqm which is a variation to the development standard by 29.7%.

### **Clause 4.6(3)(a) Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?**

The most common way to demonstrate that compliance with the development standard is unreasonable and unnecessary is to demonstrate that the objectives of the development standard are met notwithstanding the non-compliance. This is identified as test 1 in Wehbe.

The written request submitted by the applicant has identified that clause 6.6 in NSLEP 2013 does not include any objectives, however, when the provisions of clause 6.6 are read in this context it can be inferred that the objectives are:

- “...to ensure that Dual Occupancies are designed and sited such that they:*
- appear as a consolidated footprint and as a single dwelling; and,*
  - provide adequate curtilage and setbacks to neighbouring dwellings. “*

In absence of written objectives, it is generally accepted the applicant's interpretation is a reasonable representation of the intent of the provisions, in particular the development standard in sub-clause 6.6(1)(c) in NSLEP 2013.

The written request demonstrates that despite the existing non-compliance with the minimum lot size requirement for dual occupancies, that the proposed development would continue to meet the intent of the provisions. The development complies with and in some cases outperforms the numerical requirements having regard to site coverage, landscaped area and setbacks, such that the proposed built form would be appropriate for the size of the site, notwithstanding the lot size variation. The proposed additions to unit 2 are largely contained within a pitched roof form and the building would continue to present as a single two storey building within the streetscape.

The applicant's assessment is largely concurred with. Notwithstanding the existing non-compliance, the proposed development would not defeat the purpose of the provisions and does not seek to overdevelop the site, particularly as demonstrated by the relatively limited site coverage of 36% on a site where a maximum site coverage of 45% is permitted.

### **Clause 4.6(3)(b) Are there sufficient environmental planning grounds to justify the variation**

The written request has provided various environmental planning grounds to justify the variation on pages 9-13 of the written request (**Attachment 4**) which are briefly summarised below.

- The non-compliance is an existing numerical non-compliance and does not arise out of the proposed development.

- The proposed additions are an adequate response to site constraints, including the size of the lot and no floor space ratio standard exists.
- The bulk and scale would not cause any amenity impacts arising through the lot size variation.
- The setbacks to adjoining properties are reasonable.
- The scale and design of the proposed building is consistent with the character of the locality.
- The proposed development is consistent with the zone objectives.
- The proposed development would not impact the natural environment given that there is no loss of landscaped area or any impact on any trees or other natural features of the site.
- The proposed development would represent environmentally sustainable development satisfying s1.3(f) of the EP&A Act.
- The proposed development would not have any adverse social or economic impacts satisfying s1.3(b) of the EP&A Act.
- The proposed development is an appropriate planning outcome given the site constraints and would not result in a built form inconsistent with those found in the immediate and/or wider context satisfying s1.3(c) of the EP&A Act.

Fundamentally, the dual occupancy is an existing development on an existing lot that does not meet the minimum lot size requirement. The proposed additions have regard to the size and density of the development and are considered appropriate for the size of the lot because the proposed development would remain proportional to the size of the undersized lot. This is achieved by limiting the size of the additions to be contained wholly within the existing building footprint and located substantially within the new roof form consistent with others in the locality.

Not permitting any alterations or additions because of the existing non-compliance which occurred prior to the introduction of the controls would effectively sterilise the site for any future development for the purpose of a dual occupancy despite this being the current and permitted use of the land and the proposed development adequately reflects the size of the lot.

#### **Clause 4.6(4)(a)(i) Applicant's written request**

The written request provided by the applicant adequately addresses the matters required by subclause (3) as discussed above.

#### **Clause 4.6(4)(a)(ii) Public Interest**

The proposed development would be in the public interest because it is consistent with the objectives of the standard proposed to be varied and the objectives of the R2 Low Density Residential zone as discussed above.

#### **Concurrence with the Minister**

A Local Planning Panel as consent authority may assume concurrence with the Minister as per the Planning Circular PS 20-002.

**Conclusion**

The written request to vary the development standard provided by the applicant is considered to be well founded. The written request demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the variation. The proposed development is considered to be in the public interest. It is recommended that the variation be supported in these circumstances.

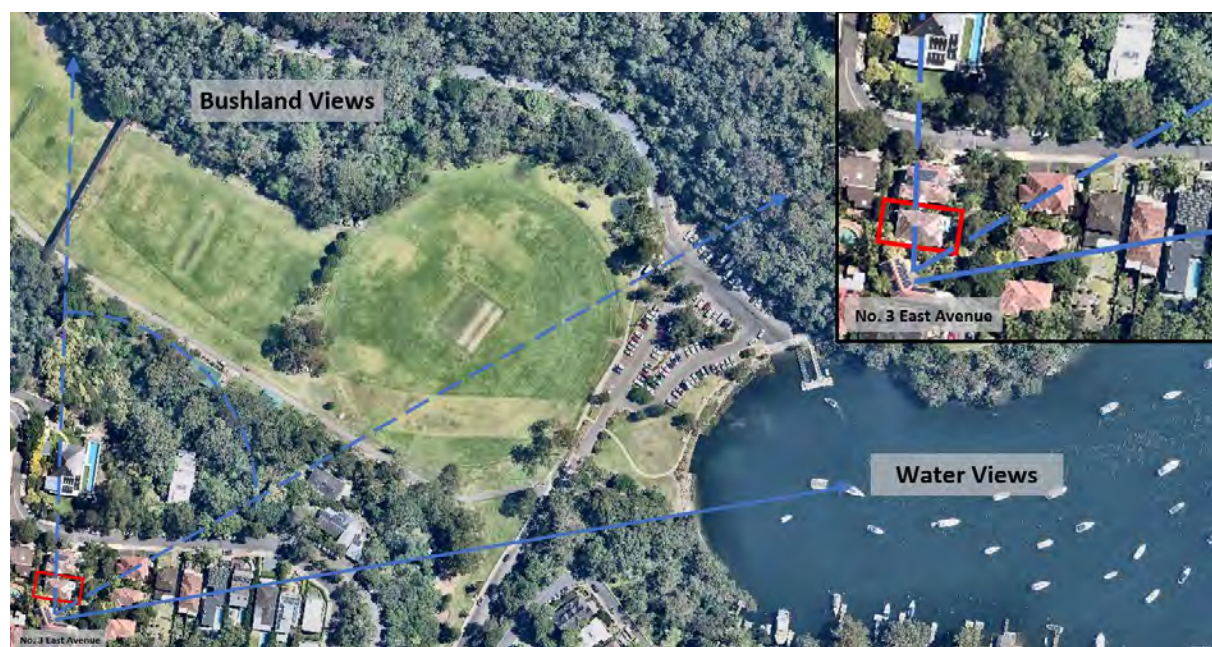
**POLICY CONTROLS**

**North Sydney Development Control Plan 2013**

<b>NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 PART B - SECTION 1 - Residential Development</b>		
	<i>Complies</i>	<i>Comments</i>
<b>1.2 Function</b>		
<b>Maintaining residential accommodation</b>	Yes	The proposed development would retain the existing residential density on the site and would improve the amenity of one of the two dwellings that comprise the existing dual occupancy.
<b>Maintaining affordable housing</b>	Yes	Part 3 Retention of Affordable Housing in SEPP (Housing) 2021 does not apply to the proposed development.
<b>1.3 Environmental criteria</b>		
<b>Topography</b>	Yes	There is no change to the siting of the building and no excavation associated with the proposed works. All proposed floor space is located above existing ground level.

**Views**

The subject building and surrounding buildings generally have water views towards to the northeast of Long Bay in Middle Harbour. The slope of the land towards the north and northeast assists in obtaining these views over other development. A secondary verdant view towards the urban bushland along the northern side of Tunks Park is also enjoyed towards the north and northeast.



*Figure 17. Direction of views in context*

The subject building sits low on the site given the fall of the land and the previous excavation to site the building. Views from the semi-detached dwellings and other dwellings located towards the west in Pine Street would not be impacted by the additions given these properties are located at a substantially higher level.

Similarly, the adjoining property to the south (No. 3 East Avenue) is located approximately 7m higher than the subject site and has water views towards the northeast and a verdant view towards bushland to the north.

There would be no impact to the existing water views enjoyed from No. 3 East Avenue given these views are gained more so towards the east and an existing view corridor is retained across the front boundaries of No. 3 East Avenue and the subject site.

The potential impact to the urban bushland views along the northern side of Tunks Park is assessed having regard to the view sharing principles established in *Tennacity*.

**Step 1. Assessment of view affected**

There would be no impact to the water views to the northeast. The verdant view towards bushland would be partly affected by the proposed additions which seek to raise the central ridgeline by 1m and increase the length of the ridgeline towards the east and west by introducing a gabled element. The outlook has limited value with respect to the reasoning in *Tennacity*, however, it is appreciated that a verdant outlook may be valuable to residents and is considered a view.

**Step 2. Where the views are obtained from**

The view is obtained from the ground floor level living room, dining room and private open space over the side boundary of the affected property. A similar outlook is obtained from the first floor level bedrooms and balcony over the same side boundary.



**Figure 19. Stitched image of view over northern side boundary from the ground level private open space of No. 3 East Avenue**



**Figure 20. View over northern side boundary from the first floor level balcony of No. 3 East Avenue**





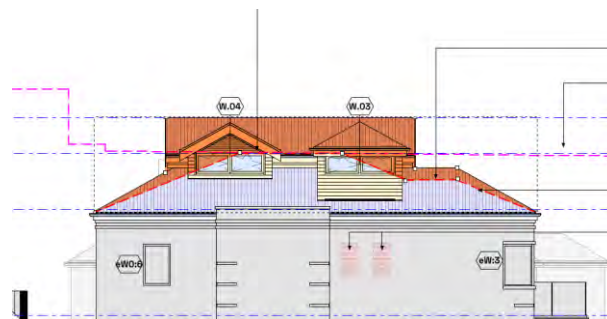
**Figure 21. Water glimpse towards the northeast from the ground level balcony of No. 3 East Avenue**



**Figure 22. Water view towards the northeast from the first floor level bedroom balcony of No. 3 East Avenue**

### **Step 3. Extent of the impact**

The verdant outlook is visible across the horizon towards the north. The existing roof form blocks a portion of the view, as does other surrounding development. The view does not benefit from its context because the bushland interface with the water or Tunks Park below cannot be seen from this vantage point. It is also observed that the southern slopes of Northbridge also include development which further detracts from the scenic quality of the bushland view.



**Figure 23. Additional massing highlighted orange in elevation.**


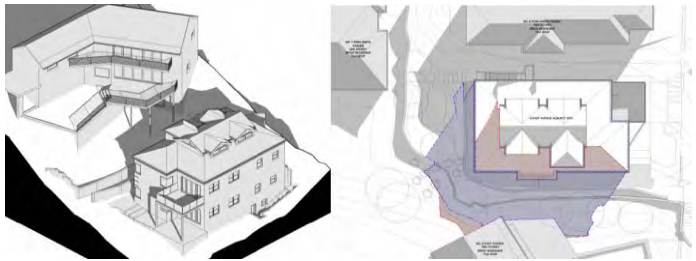
Overall, given the nature of the portion of the outlook lost, the expanse of the bushland along the horizon, and in particular the more favourable aspect towards the north-east which the dwelling at No. 3 East Avenue is designed to be orientated towards, the extent of the impact is considered minimal or negligible.

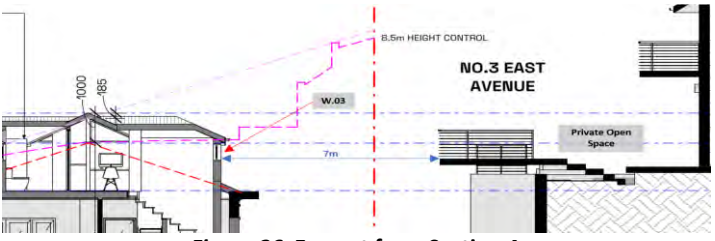
### **Step 4. Reasonableness of the proposal.**

The proposed development seeks a variation to the height of buildings development standard, with the elements causing the impact being a maximum of 1m above the height limit.

The proposed development otherwise is relatively modest given that the site coverage is significantly less than the relevant control and the setbacks for both the existing building and proposed addition also exceeds the relevant controls. Finally, the proposed development is an amended design which reduced the internal floor area and in part contained the addition within the altered roof form. It is not considered that a more skilful design could reduce the potential impact any further.

In summary, the potential impact is considered to be reasonable in the circumstances. The extent of the view impacted, or the nature of this view, is not considered to be sufficient to outweigh any concern arising from the non-compliance with the height of buildings development standard addressed above in response to the submitted written request made pursuant to clause 4.6 in NSLEP 2013. Furthermore, the quality and expanse of the retained water views and bushland significantly outweighs any potential impact and is consistent with the view sharing principles when the impact is considered from the whole of the property.

		 <p><b>Figure 24. NSDCP 2013 Bushland buffer map</b></p> <p>The subject site is located in bushland buffer zone B, being within 100m of the nearby C2 Environmental Conservation zoned bushland. The proposed works do not include the removal of or have an impact on any trees and are largely consistent with the existing urban form. The proposed development therefore would not adversely impact the bushland character of the bushland buffer area.</p>
<p><b>Solar access</b></p>	<p>Yes</p>	<p>The subject site is orientated east-west and the proposed additions would result in negligible additional overshadowing to the adjoining property to the south. The subject site is located at a significantly lower level than the principle private open space or living areas of the adjoining dwelling house to the south (No. 3 East Avenue) and the additions are well set back from the boundary.</p> <p>As a result, the additional overshadowing is considered minimal, impacting only the lower garden area of the adjoining property and a north-eastern facing lower ground floor level window below a deck. The overshadowing is greatest at 9am (refer to <b>Figures 25 &amp; 26 below</b>) in mid-winter and improves throughout the day, however, the overshadowing is not considered to materially impact the amenity of the adjoining dwelling house and the existing uninterrupted solar access to the principle private open space and living areas is retained.</p>  <p><b>Figure 25 &amp; 26. 3D and Plan Shadow Diagrams at 9am in winter</b></p>
<p><b>Acoustic privacy</b></p>	<p>Yes</p>	<p>The proposed addition contains a bedroom, bathroom and study nook primarily within a roof addition. The proposed windows are relatively small and are well set back from the boundaries. The use of these rooms is not considered to result in any acoustic impacts above those anticipated from development within a low-density residential environment.</p>
<p><b>Visual privacy</b></p>	<p>Acceptable</p>	<p>The proposed addition would not materially impact the privacy of the surrounding properties. The proposed windows are relatively small in size and are well set back from the boundaries.</p>

		<p><b>North – No. 7 East Avenue</b>                  The existing building is located at a higher level than the adjoining property to the north given the fall of the land along East Avenue. The proposed windows within the northern elevation of the roof level addition are for the proposed bedroom and bathroom and would have an outlook over the adjoining roof form. The windows are set back from the gutter line of the level below limiting any overlooking to the windows within the southern elevation of the adjoining building.</p> <p><b>South – No. 3 East Avenue</b>                  The existing building is located at a lower level than the adjoining property to the south given the fall of the land along East Avenue. The proposed windows within the southern elevation of the roof level addition are for the proposed bedroom and staircase and are relatively small in size. Given that the sill height of the proposed windows align with the adjoining balcony (refer to <b>figure 26</b> below), being the primary private open space for the adjoining property, it is considered that these windows should have a privacy treatment to ensure mutual privacy is maintained for each property. Refer to <b>Condition C74</b> which requires windows W.04 and W.03 to be fitted with obscure glazing.</p>  <p style="text-align: center;"><b>Figure 26. Excerpt from Section A</b></p> <p>The removal of two existing windows on the first-floor level of the building where the proposed staircase is located would improve the privacy between the dwellings.</p> <p>The proposed windows within the front and rear elevations are satisfactorily set back from any surrounding property and would not impact the privacy of adjoining properties.</p>
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<b>1.4 Quality Built Form</b>																										
<b>Siting</b>	Yes	There is no change to the existing siting of the building. The subdivision pattern is rectilinear, and the siting of development is reasonably consistent with the exception of the adjoining dwelling to the south which is orientated towards the northeast whereas the front of the lot is to the east.																								
<b>Front Setback</b>	Yes	There is no change to the existing front building line, which is consistent with the adjoining buildings to the north, and the proposed roof level addition is set back towards the rear of the building.																								
<b>Setbacks (Side and Rear)</b>	Yes	<p>The proposed setbacks are assessed against the provisions in Section 1.4.6 of Part B in NSDCP 2013 in the table below.</p> <table border="1" data-bbox="730 1617 1404 1832"> <thead> <tr> <th>Side</th> <th>Control</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td rowspan="3">North</td> <td>Ground Floor – 0.9m</td> <td>1.4m</td> <td>Yes</td> </tr> <tr> <td>First Floor – 1.5m</td> <td>1.4m</td> <td>No, unchanged</td> </tr> <tr> <td>Second Floor – 2.5m</td> <td>3.1-3.7m</td> <td>Yes</td> </tr> <tr> <td rowspan="3">South</td> <td>Ground Floor – 0.9m</td> <td>3.0-3.8m</td> <td>Yes</td> </tr> <tr> <td>First Floor – 1.5m</td> <td>3.0-3.8m</td> <td>Yes</td> </tr> <tr> <td>Second Floor – 2.5m</td> <td>4.3-6.2m</td> <td>Yes</td> </tr> </tbody> </table> <p>The proposed additions comply with, and exceed, the relevant side setback requirements for second floor additions.</p> <p>The proposed additions are set back 8m from the rear boundary which is greater than the levels below and the prevailing rear building line.</p>	Side	Control	Proposed	Compliance	North	Ground Floor – 0.9m	1.4m	Yes	First Floor – 1.5m	1.4m	No, unchanged	Second Floor – 2.5m	3.1-3.7m	Yes	South	Ground Floor – 0.9m	3.0-3.8m	Yes	First Floor – 1.5m	3.0-3.8m	Yes	Second Floor – 2.5m	4.3-6.2m	Yes
Side	Control	Proposed	Compliance																							
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	First Floor – 1.5m	3.0-3.8m	Yes																							
	Second Floor – 2.5m	4.3-6.2m	Yes																							
<b>Front fences</b>	Yes	There are no changes proposed to the existing fencing.																								
<b>Form, massing and scale</b>	Yes	The proposed development does not strictly comply with the maximum permitted building height in Clause 4.3 in NSLEP 2013 also required by the DCP. However, the written request adequately demonstrated that the height non-compliance was acceptable in the site circumstances.																								

		<p>The character statement does not establish a characteristic built form with respect to the number of storeys. The proposed roof level addition is largely contained within an altered roof form. The existing two-storey scale of the building is largely maintained as a result, although the building may be perceived as three storeys, albeit with the upper most level being much smaller than the levels below, recessed from the edges of the building, and being largely obscured by the proposed roof form.</p> <p>The internal floor to ceiling height of 2.2m is sufficient for the use of the rooms being a bedroom and a bathroom. The NCC permits a minimum ceiling height of 2.2m for attic levels.</p>																									
<b>Built form character</b>	Yes	<p>The existing building and the surrounding buildings that front the unmade portion of the East Avenue Road reserve have a reasonably consistent character, being of a similar period of development. The buildings are generally two storey brick buildings with pitched tiled roofs, with each building containing two or three dwellings. Some of the brick detailing at the front of the building is also evident amongst others in the group.</p> <p>Where a building is located within a group of uniform building, additions should not be visible, or where they are, should be sympathetic to the character of the building.</p> <p>The proposed additions would maintain the existing character of the building, such that the additions would not be incompatible with the existing character of the ground of buildings. The re-pitching of the existing roof would alter the roof form, however, the pitched roof character is maintained albeit with a more complex central gabled element and dormer window elements. The level of consistency achieved is considered acceptable given the otherwise mixed character of the broader area. The site is not identified as a heritage item or located within a conservation area and therefore a degree of difference for additions is considered reasonable.</p>																									
<b>Dwelling entry</b>	Yes	There are no changes proposed to the existing building entry located along the southern side of the building.																									
<b>Roofs</b>	Yes	The existing and surrounding roof typology is generally low pitched. The proposed pitched roof form is more complex given the central roof element and the dormer windows however is not apathetic to the surrounding roof character.																									
<b>Colours and materials</b>	Yes	The proposed use of materials and finishes is considered acceptable within the area given the mixed typology of development. The substitution of the existing tiled roof with a sheet metal roof assists in lowering the roof profile and reducing the overall height of the building and is acceptable in the site context.																									
<b>1.5 Quality urban environment</b>																											
<b>Safety and security</b>	Yes	The proposed development would not detract from the existing safety and security of the building.																									
<b>Car parking rates - Section 10.2.1</b>	Acceptable	The existing building does not have any on-site parking given the subject site does not adjoin a road. The parking rates in section 10.2 of Part B in NSDCP 2013 are a maximum only and not a requirement. The proposed increase in the size of the dwelling from two to three bedrooms would increase the maximum number of parking spaces from one to two, however, does not require the provision of parking for the reasons stated above.																									
<b>Location of car parking and Vehicle Access</b>	N/A	The existing building does not have any on-site parking given the subject site does not adjoin a road.																									
<b>Site Coverage, Unbuilt Area and Landscaped Area</b>	Yes	<p>The site has an area of 330sqm. The relevant site coverage, unbuilt upon area and landscape area provisions for dual occupancies in the R2 Low Density Residential zone are assessed in the table below.</p> <table border="1" data-bbox="767 1868 1366 2063"> <thead> <tr> <th></th> <th>Existing</th> <th>Proposed</th> <th>Compliance</th> </tr> </thead> <tbody> <tr> <td><b>Site Coverage</b></td> <td>120.58sqm</td> <td></td> <td rowspan="2">Yes, unchanged</td> </tr> <tr> <td>45%</td> <td>36.5%</td> <td></td> </tr> <tr> <td><b>Unbuilt-upon Area</b></td> <td>74.12sqm</td> <td></td> <td rowspan="2">No, unchanged</td> </tr> <tr> <td>15%</td> <td>22.5%</td> <td></td> </tr> <tr> <td><b>Landscape Area</b></td> <td>135.3sqm</td> <td></td> <td rowspan="2">Yes, unchanged</td> </tr> <tr> <td>40%</td> <td>41%</td> <td></td> </tr> </tbody> </table>		Existing	Proposed	Compliance	<b>Site Coverage</b>	120.58sqm		Yes, unchanged	45%	36.5%		<b>Unbuilt-upon Area</b>	74.12sqm		No, unchanged	15%	22.5%		<b>Landscape Area</b>	135.3sqm		Yes, unchanged	40%	41%	
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		The existing site coverage is significantly below the maximum permitted site coverage for dual occupancies. The existing unbuilt upon area exceeds the maximum permitted, however, does not result in a non-compliance with the minimum required landscaped area and therefore the proposed development is consistent with the objectives of the site coverage and landscaped area controls.
<b>Front gardens</b>	Yes	There are no changes proposed to the existing front garden which is predominantly landscaped.
<b>Garbage storage</b>	Yes	Provision is made to store garbage bins within the side setback area behind the front building line out of sight from the public domain.
<b>1.6 Efficient use of resources</b>		
<b>BASIX</b>	Yes	A valid BASIX Certificate has been submitted.

### Part C - Section 4 – Cammeray Planning Area Character Statement

The subject site is located within the Cammeray Neighbourhood of the Cammeray Planning Area. The character statement identified the significant elements of the area including the characteristic topography of the land sloping towards the Harbour and identifies the bushland character of the area, including the bushland surrounding Tunks Park.

The desired built form controls identify the characteristic siting of development which seeks to provide adequate separation to bushland and foreshore area, and to retain views, particularly water views from neighbouring properties and the public domain.

The value of the views towards the bushland on the opposite side of Tunks Park is identified, however, when assessed with respect to the planning principle for view sharing and relevant DCP provisions, the proposed development is considered to reasonably retain the existing views of bushland and has no impact to water views.

### SECTION 7.12 CONTRIBUTIONS

The proposed development would not increase the number of dwellings on the site and therefore a contribution levied under section 7.11 the Act is not required in accordance with Council's Infrastructure Contributions Plan. Instead, a contribution is required to be levied under Section 7.12 of the Act. The contribution is equal to 1% of the estimated building cost which was identified as \$150,000 in the submitted cost summary report. The total contribution payable is \$1,500.

Condition C12 is recommended requiring the payment to be made prior to the issue of the construction certificate.

### ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes

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4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Carparking provision	Yes
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(1) considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

### SUBMITTERS CONCERNS

The development application was notified in accordance with Council's Community Engagement Protocol from 23 September 2022 until 7 October 2022. Three submissions objecting to the proposed development were received by Council.

Amended plans were received on 23 January 2023 which amended the originally proposed third storey addition to a more room in the roof style addition with dormer windows to reduce its bulk and scale. The overall height of the building was also reduced by approximately 750mm and the internal floor area was reduced by around 35%.

The amended plans were renotified in accordance with Council's Community Engagement Protocol from 3 February 2023 until 17 February 2023. Two further submissions objecting to the proposed development were received by Council.

The issues raised in the objections to both the original and amended schemes remain relevant matters for consideration and are addressed:

- *The proposed development would not comply with the maximum permitted height of buildings development standard in clause 4.3 in NSLEP 2013.*
- *The written request made pursuant to clause 4.6 in NSLEP 2013 for an exemption to the height of buildings development standard is inadequate to justify the proposed variation.*

The application is supported by a written request to vary the height of buildings development standard (**Attachment 3**) which is considered to address the relevant matters in clause 4.6 in NSLEP 2013. The variation is in part caused by the historical excavation of the site. The proposed additions are largely contained within a pitched roof form and the proposed building would be consistent with the built form and the scale of other buildings within the wider character of the area. The potential amenity impacts caused by the variation have also been addressed and are considered reasonable in the circumstances.

- *The proposed additions should be categorised as a third storey or second floor addition. References within the submitted SEE and Clause 4.6 written request identifying the addition as a first floor addition, or the like, are misleading.*

The amended written request and SEE have corrected these misdescriptions and are considered to adequately reflect the proposed works.

- *The proposed three storey scale of the building is inconsistent with the surrounding established context.*

The amended development substantially contains the proposed second floor addition within the roof form and would no longer present as a clear third storey element. Nevertheless, the proposed building would retain a generally two storey presentation with a roof addition, notwithstanding this technically being a third level. There are a number of examples of three storey buildings in the immediate vicinity of the site.

- *The submitted SEE, View Loss Assessment and Clause 4.6 written request include misleading or incorrect statements. The existing basement laundry area has been omitted from the submitted plans.*

The amended documentation has addressed the existing lower ground floor laundry and subfloor area. The calculation of the proposed building height is considered to be accurate.

- *Reliance of other exceptions to the building height that have been approved within the surrounding area should not be utilised as precedent to justify the proposed addition.*

The amended written request has satisfactorily demonstrated that the proposed variation to the height of buildings development standard is acceptable having regard to the context and constraints of the site and does not solely rely on an assessment of other non-compliant buildings.

- *The proposed development is inconsistent with the objectives of the R2 Low Density Residential zone.*

The proposed amended development is considered to reasonably achieve the objectives of the zone as addressed earlier in this report.

- *The proposed additions would adversely impact the existing bushland views enjoyed from the ground floor level kitchen, living area and private open space of the adjoining property over the subject site. The potential impact has not been modelled or identified and the applicant has not visited the affected property.*

The potential view impact has been assessed in detail earlier in this report both in relation to the written request to vary the height of buildings development standard and the DCP provisions, however, when viewed in its context, the proposed development would not unreasonably detract from the views enjoyed from the adjoining property to the south (No. 3 East Avenue). The quantity and quality of views retained are substantial when considered in the context of the whole property, including from primary living areas and open space.

- *The references to the proposed addition providing a flood refuge are of no relevance to the subject application given that the area is not flood affected.*

This assertion is not relied upon to justify the variation to the height of buildings development standard.

- *The proposed additions would benefit the subject dwelling whilst being to the detriment of surrounding properties.*

The potential impact to the surrounding properties has been considered in detail in this report and in considered reasonable in the site circumstances.

- *The proposed development would have a major impact on the natural environment.*

The proposed works are contained within the existing building footprint and would not physically impact the natural environment or detract from the scenic quality of the bushland buffer area.

- *The proposed development is not in the public interest.*

There are no matters raised in which approval of the application would not be in the public interest.

#### **SITE SUITABILITY**

The subject site contains an existing dual occupancy. The proposed development is permitted in the zone and have adequate regard to the site context and constraints.

#### **PUBLIC INTEREST**

There are no matters raised in which approval of the application would not be in the public interest.

#### **HOW THE COMMUNITY VIEWS WERE TAKEN INTO CONSIDERATION**

The application, and subsequent amended application was notified in accordance with Council Community Engagement Protocol from 23 September 2022 until 7 October 2022. The application was substantially amended on 23 January 2023, in part to address the issues raised in the submissions received.

The amendments changed the proposed addition from an additional storey with a pitched roof into a more room in the roof style addition and reduced the internal floor area. The amended application was renotified in accordance with Council Community Engagement Protocol from 3 February 2023 until 17 February 2023. The issues raised in subsequent submissions have been address throughout the assessment report and a copy of all submission are provided in full to the Panel for considerations.

#### **CONCLUSION + REASONS**

After a detailed assessment of the application, it was found that the matters for consideration as outlined in section 4.15(1) of the Act have been satisfied. The proposed development is permissible in the R2 Low Density Residential zone and would improve the amenity of the existing dwelling.

The proposed alterations and additions are consistent with the provisions of clause 6.6 *Dual Occupancies* in NSLEP 2013, where the development standard in sub-clause 6.6(1)(c) for minimum lot size for dual occupancies applied flexibly pursuant to clause 4.6 in NSLEP 2013. The application is supported by a written request to vary the development standard which is considered satisfactory and worthy of support.

The existing dual occupancy is located on an undersized lot, however, the development, including the proposed additions, is not considered to be an overdevelopment of the lot and reasonable amenity its achieved or maintained for each dwelling that comprises the dual occupancy. The proposed building is also considered to be compatible with the surrounding low density residential context.



The proposed development exceeds the maximum permitted building height development standard by 1.3m or 15.3% for the northwestern dormer, with the ridgeline, being the highest point of the proposed additions resulting in a variation of 1.0m or 11.7%. The variation is supported by a written request to vary the development standard pursuant to clause 4.6 in NSLEP 2013. The written request demonstrates that strict compliance with the development standard is both unreasonable and unnecessary because the proposed development would be consistent with the objectives of the height of buildings development standard, and there are sufficient environmental planning grounds to justify the variation in the circumstances. The proposed development would be in the public interest because it is consistent with the objectives of the zone and the standard to be varied.

The proposed development would improve the amenity of the existing dwelling by providing an additional bedroom predominantly within the roof form. There is no increase in the overall building footprint and the appearance of the building is satisfactorily retained where visible within the public domain.

The proposed development would not have an unreasonable impact on the amenity of the surrounding properties with regards to the retention of views, privacy and solar access. The potential impact to the existing verdant outlook from the adjoining property to the south is not unreasonable having regard to the extent of the view impact and the quality of the unaffected views and the reasonableness of the proposal, even with consideration of the height non-compliance.

The application was notified in accordance with Council's Community Engagement Protocol and was significantly amended in response to issues raised in submissions. The issues raised in the subsequent submissions have been addressed in detail in this report.

On balance, the application is considered reasonable and is recommended for approval.

## **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, as the consent authority, assume the concurrence of the Secretary, Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 and 6.6(1)(C) in NSLEP 2013 to grant consent to Development Application No. 269/2022 for a roof addition to an existing dwelling within a two storey attached dual occupancy to construct an additional bedroom with an ensuite on land at No 5 East Avenue, Cammeray subject to the following site specific and attached standard conditions.

### **Privacy Measures**

C11 The following privacy measures are to be provided:

- (a) Windows W.03 and W.04 on the southern elevation of the second floor level (drawing reference A1.11-4) should be fitted with obscure or frosted glazing and the opening aperture is to be limited to 100mm to still allow ventilation whilst retaining privacy between the subject dwelling and the adjoining property to the south.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain privacy between the subject dwelling and No. 3 East Avenue)

**MICHAEL STEPHENS**  
**SENIOR ASSESSMENT OFFICER**

**ROBYN PEARSON**  
**TEAM LEADER ASSESSMENTS**

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**STEPHEN BEATTIE**  
**MANAGER DEVELOPMENT SERVICES**

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**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**UNIT 2, 5 EAST AVENUE, CAMMERAY**  
**DEVELOPMENT APPLICATION NO. 269/22**

**A. Conditions that Identify Approved Plans**

**Development in Accordance with Plans/Documentation**

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Issue	Description	Prepared by	Dated
A1.10	5	Level 2 Plan	Dieppe Design	16/01/2023
A1.11	4	Level 3 Plan - Attic		16/01/2023
A1.12	5	Roof Plan		16/01/2023
A2.01	5	Elevations		16/01/2023
A3.01	4	Sections A & B		16/01/2023

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**Plans on Site**

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

**No Demolition of Extra Fabric**

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

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**External Finishes and Materials**

- A4. External finishes and materials must be in accordance with the submitted schedule referenced A0.04-3, prepared by Dieppe Design and dated 16 January 2023 unless otherwise modified by Council in writing.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)*****Construction Management Plan**

- C1. A Construction Management Plan is to be prepared and submitted to the certifying authority which specifies that all construction access is to be from East Avenue to the south. The construction management plan is to be complied with at all times during construction including the delivery of equipment and materials.

(Reason: To minimise potential impact to the vegetation and trees within the East Avenue Road reserve between East Avenue and Rowlison Parade)

**Dilapidation Report Damage to Public Infrastructure**

- C2. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

**Structural Adequacy of Existing Building**

- C3. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

**Waste Management Plan**

- C4. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
  - b) The design of the on-site waste storage and recycling area; and
  - c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

**Work Zone**

- C5. If a Work Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. A Work Zone permit is required to be issued by the Council prior to the issue of any Construction Certificate.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Work Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Work Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

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Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

**Stormwater Disposal**

- C6. Stormwater runoff generated by the approved development must be conveyed by gravity to the existing site stormwater drainage disposal system. A licensed tradesman shall install plumbing components to achieve this requirement in accordance with the BCA and current plumbing standards and guidelines. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure appropriate provision for disposal and stormwater management arising from the development)

**Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement**

- C7. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$2,500.00 to be held by Council for the payment of cost for any/all of the following:
- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
  - b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent.
  - c) remedying any defects in any such public work that arise within six months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

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The security will be refundable following the expiration of six months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

**Tree Bond for Public Trees**

- C8. Prior to the issue of any construction certificate, security in the sum of \$20,000.00 must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

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**Schedule**

<b>Tree</b>	<b>Location</b>	<b>Bond</b>
All trees and vegetation on public land	Within the East Avenue Road Reserve between the northern termination of East Avenue and the northern boundary of No. 5 East Avenue.	\$20,000

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

**Protection of Trees**

- C9. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

<b>Tree</b>	<b>Location</b>	<b>Height</b>
All trees and vegetation on public land	Within the East Avenue Road Reserve between the northern termination of East Avenue and the northern boundary of No. 5 East Avenue.	Varies
All trees	No. 5 East Avenue (subject site)	Varies

No canopy pruning is permitted without the written consent out Council's Landscape Development Officer.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

**Asbestos Material Survey**

- C10. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:



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- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Certifying Authority as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

**Privacy**

C11. The following privacy devices are to be provided:

- a) Windows W.03 and W.04 on the southern elevation of the second floor level (drawing reference A1.11-4) should be fitted with obscure or frosted glazing and the opening aperture is to be limited to 100mm to still allow ventilation whilst retaining privacy between the subject dwelling and the adjoining property to the south.

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain privacy between the subject dwelling and No. 3 East Avenue)

**Section 7.12 Contributions**

C12. A monetary contribution pursuant to the provisions of Section 7.12 of the Environmental Planning and Assessment Act 1979 is to be paid to Council, in accordance with the North Sydney Council's Contribution Plan, to provide for local infrastructure improvements.

Based on the cost of development at the date of determination, the total contribution payable to Council is 1,500.00

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**Indexation**

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

**Timing of Payment**

The contribution must be paid to Council prior to issue of any Construction Certificate for any work approved by this consent.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

**Security Deposit/Guarantee Schedule**

C13. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

<b>Security Deposit/Guarantee</b>	<b>Amount (\$)</b>
Street Tree Bond (on Council Property)	\$1,500.00
Footpath Damage Bond	\$20,000.00
<b>TOTAL BONDS</b>	<b>\$21,500.00</b>

Note: The following fees applicable

<b>Fees</b>	
Section 7.12 Contributions	\$1,500.00
<b>TOTAL FEES</b>	<b>\$1,500.00</b>

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

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**BASIX Certificate**

C14. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. A472050\_03, dated 16 January 2023 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

**D. Prior to the Commencement of any Works (and continuing where indicated)**

**Protection of Trees**

D1. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites).

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

**Temporary Fences and Tree Protection**

D2. All protected trees on-site that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builders' waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), not less than the distance shown in the schedule hereunder, must be installed to the satisfaction of the Certifying Authority prior to demolition or commencement of any works and must be maintained for the duration of the works:

**Schedule**

Tree	Location	Protection
All trees and vegetation on public land	Within the East Avenue Road Reserve between the northern termination of East Avenue and the northern boundary of No. 5 East Avenue.	1.8m high steel mesh tree protection fencing

(Reason: To protect the trees to be retained on the site during construction works)

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**Public Liability Insurance - Works on Public Land**

- D3. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

**Commencement of Works' Notice**

- D4. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

**E. *During Demolition and Building Work*****Construction Access**

- E1. All construction access is to be in accordance with the Construction Management Plan prepared in accordance with **Condition C1** with no construction access permitted from Rowlison Parade. The storage of materials or equipment within the road reserve is prohibited.

(Reason: To minimise potential

**Parking Restrictions**

- E2. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

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**Road Reserve Safety**

- E3. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

**Temporary Disposal of Stormwater Runoff**

- E4. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

**Removal of Extra Fabric**

- E5. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

**Dust Emission and Air Quality**

- E6. The following must be complied with at all times:

(a) Materials must not be burnt on the site.

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- (b) Vehicles entering and leaving the site with soil or fill material must be covered.
- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

**Noise and Vibration**

- E7. The works must be undertaken in accordance with the "Interim Construction Noise Guideline," published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

**No Work on Public Open Space**

- E8. No work can be undertaken within adjoining public lands (i.e., Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of public land)

**Applicant's Cost of Work on Council Property**

- E9. The Applicant must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

**No Removal of Trees on Public Property**

- E10. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

**UNIT 2, 5 EAST AVENUE, CAMMERAY  
DEVELOPMENT APPLICATION NO. 269/22**

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**Protection of Trees**

- E11. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

- a. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
- b. An application to modify this consent pursuant to Section 4.55 of *the Environmental Planning and Assessment Act 1979* will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

**Special Permits**

- E12. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

**UNIT 2, 5 EAST AVENUE, CAMMERAY  
DEVELOPMENT APPLICATION NO. 269/22**

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**2) Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

**3) Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

**4) Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

**Construction Hours**

E13. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Location	Standard Construction Hours	
	Day	Hours
All Other Zones	Monday - Friday	7.00 am - 5.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.



**UNIT 2, 5 EAST AVENUE, CAMMERAY  
DEVELOPMENT APPLICATION NO. 269/22**

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In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

**Site Amenities and Facilities**

- E14. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

(Reason: To ensure the health and safety of the community and workers on the site)

**Health and Safety**

- E15. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au).

(Reason: To ensure the health and safety of the community and workers on the site)

**Prohibition on Use of Pavements**

- E16. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

**Plant and Equipment Kept Within Site**

- E17. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

**UNIT 2, 5 EAST AVENUE, CAMMERAY  
DEVELOPMENT APPLICATION NO. 269/22**

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Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To ensure public safety and amenity on public land)

**Waste Disposal**

E18. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

**Asbestos Removal**

E19. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

**F. *Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation***

**National Construction Code**

F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

**Home Building Act**

F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:

a) in the case of work for which a principal contractor is required to be appointed:

**UNIT 2, 5 EAST AVENUE, CAMMERAY  
DEVELOPMENT APPLICATION NO. 269/22**

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- i) the name and licence number of the principal contractor, and
  - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
- (b) in the case of work to be done by an owner-builder:
  - (i) the name of the owner-builder, and
  - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this conditions is out of date, work must cease and no further work may be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

**Appointment of a Principal Certifying Authority (PCA)**

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

**Construction Certificate**

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

**UNIT 2, 5 EAST AVENUE, CAMMERAY  
DEVELOPMENT APPLICATION NO. 269/22**Page 18 of 20

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**Occupation Certificate**

- F5. A person must not commence occupation or use of the whole or any part of a new building (*new building* includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

**Mandatory Critical Stage Inspections**

- F6. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

**Demolition**

- F7. Demolition work must be undertaken in accordance with the provisions of AS2601-Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

**Protection of Public Places**

- F8. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

**UNIT 2, 5 EAST AVENUE, CAMMERAY  
DEVELOPMENT APPLICATION NO. 269/22**

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Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

**Site Sign**

- F9. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
  - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

**G. Prior to the Issue of an Occupation Certificate**

**Infrastructure Repair and Completion of Works**

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
  - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of public assets)

**UNIT 2, 5 EAST AVENUE, CAMMERAY  
DEVELOPMENT APPLICATION NO. 269/22**

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**Damage to Adjoining Properties**

- G2. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

**BASIX Completion Certificate**

- G3. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate, the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

**Certification of Tree Condition**

- G4. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Certifying Authority, describing the health of the tree(s) specifically nominated below:

Tree	Location	Height
All trees and vegetation on public land	Within the East Avenue Road Reserve between the northern termination of East Avenue and the northern boundary of No. 5 East Avenue.	Varies
All trees	No. 5 East Avenue (subject site)	Varies

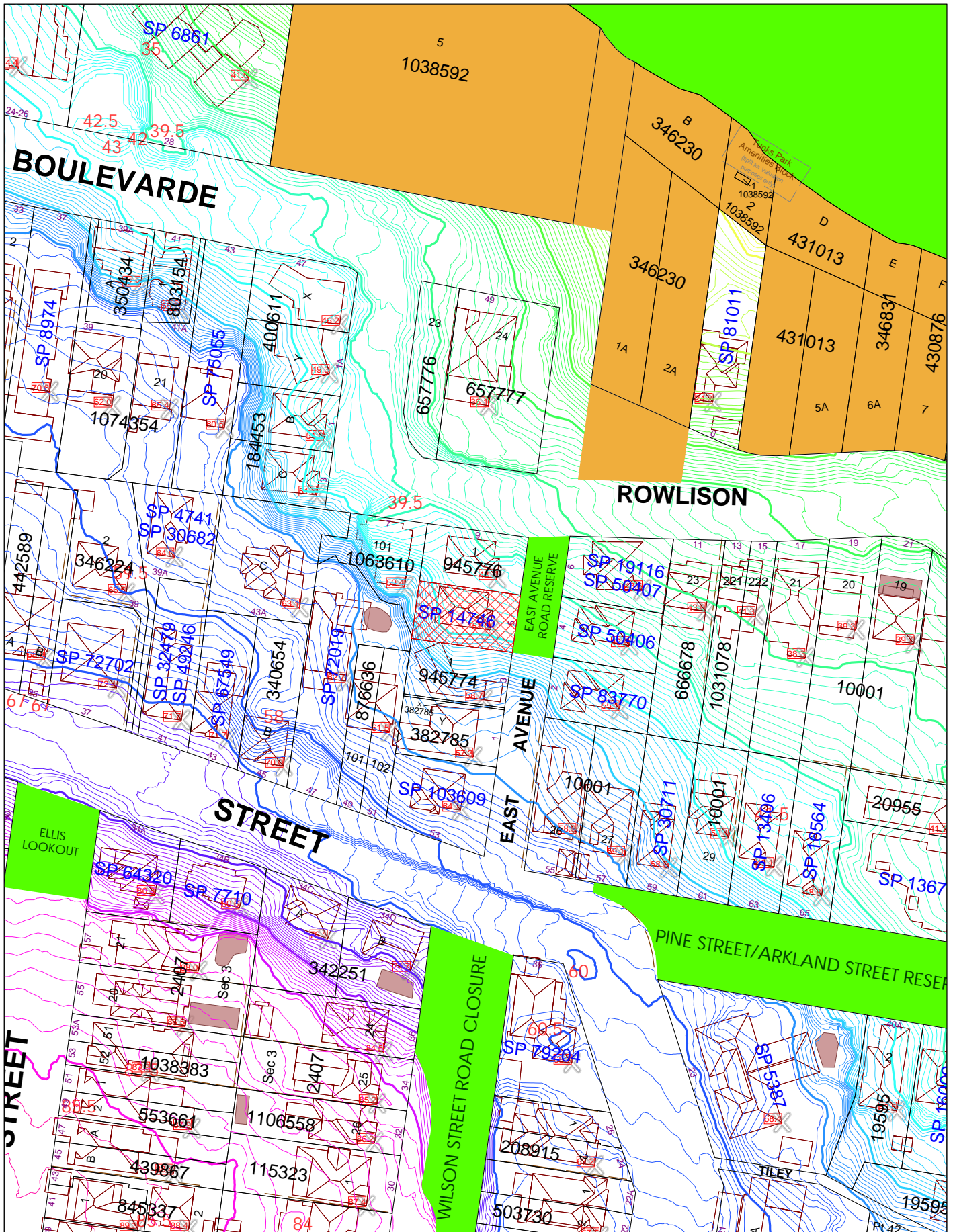
The report must detail the condition and health of the nominated tree(s) upon completion of the works and shall certify that the tree(s) has/have not been significantly damaged during the works on the site and has/have reasonable prospects for survival.

(Reason: To ensure compliance with the terms of this consent)

**Compliance with Certain Conditions**

- G5. Prior to the issue of any Occupation Certificate, Condition C11 must be certified as having been implemented on site and complied with.

(Reason: To ensure the development is completed in accordance with the requirements of this consent)



**North Sydney Council**

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Further details can be obtained by calling (02) 9936 8100 or e-mail [mapping@northsydney.nsw.gov.au](mailto:mapping@northsydney.nsw.gov.au).

# 5 EAST AVENUE CAMMERAY, NSW 2062 LOT CP SP14746 ARCHITECTURAL DRAWINGS

## FOR ALTERATIONS & ADDITIONS

DRAWING LIST1

DWG #	REV	DRAWING TITLE
A0.01	5	COVER PAGE
A0.02	2	BASIX CERTIFICATE
A0.03	3	HEIGHT CONTROL - VIEW LOSS
A0.04	3	MATERIALS & FINISHES
A0.10	5	SITE / STORMWATER MANAGEMENT PLAN
A0.21	2	EXTG FLOOR & DEMOLITION PLAN
A1.10	5	LEVEL 2 - UNIT 2 LOWER LEVEL
A1.11	4	LEVEL 3 - UNIT 2 ATTIC
A1.12	5	ROOF PLAN
A2.01	5	ELEVATIONS
A3.01	4	SECTION 01
A4.02	2	SHADOW DIAGRAMS MARCH
A4.03	2	SHADOW DIAGRAMS JUNE
A4.04	2	SHADOW DIAGRAMS SEPTEMBER
A4.05	1	SHADOW DIAGRAMS MARCH .2
A4.06	1	SHADOW DIAGRAMS MARCH .2
A4.07	1	SHADOW DIAGRAMS JUNE
A4.08	1	SHADOW DIAGRAMS JUNE .2
A7.01	2	NOTIFICATION PLANS



1 | PERSPECTIVE EAST  
@ A3



2 | PERSPECTIVE VIEW 01  
@ A3



**DEVELOPMENT APPLICATION**

5	2023.01.16	AMENDED DA LODGEMENT
4	2022.12.14	DESIGN DEVELOPMENT
3	2022.11.29	DRAFT FOR REVIEW
2	2022.11.25	COUNCIL AMENDMENTS
1	2022.09.05	DA ISSUE
REV	DATE	AMENDMENT



ARCHITECTURE - INTERIORS - PASSIVHAUS

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NOMINATED ARCHITECT - EDWARD DIEPPE - RAIA - NSW ARB: 10148

**A0.01 - 5**

PROJECT:  
**5 EAST AVE, CAMMERAY**

CLIENT:  
**JAMES & JEN DIMIC**

DRAWING TITLE:  
**COVER PAGE**

ISSUE DATE:  
**2023.01.16**

SCALE @A1:  
**2021**

PROJECT NO.:

dieppe





# BASIX Certificate

Building Sustainability Index www.basix.nsw.gov.au

## Alterations and Additions

Certificate number: A472050\_03

This certificate confirms that the proposed development will meet the NSW government's requirements for sustainability, if it is built in accordance with the commitments set out below. Terms used in this certificate, or in the commitments, have the meaning given by the document entitled "BASIX Alterations and Additions Definitions" dated 06/10/2017 published by the Department. This document is available at www.basix.nsw.gov.au

Secretary  
Date of issue: Monday, 16 January 2023  
To be valid, this certificate must be lodged within 3 months of the date of issue.



Description of project

<b>Project address</b>	
Project name	Unit 2 / 5 East Avenue_03
Street address	5 East Avenue Cammeray 2062
Local Government Area	North Sydney Council
Plan type and number	Strata Plan 14746
Lot number	CP
Section number	
<b>Project type</b>	
Dwelling type	Unit
Type of alteration and addition	My renovation work is valued at \$50,000 or more.

<b>Certificate Prepared by</b> (please complete before submitting to Council or PCA)	
Name / Company Name	Dieppe Design
ABN (if applicable)	11167841125

BASIX Certificate number: A472050\_03

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Glazing requirements							Show on DA Plans	Show on CC/CDC Plans & Specs	Certifier Check
<b>Windows and glazed doors</b>							✓	✓	✓
<p>The applicant must install the windows, glazed doors and shading devices, in accordance with the specifications listed in the table below. Relevant overshadowing specifications must be satisfied for each window and glazed door.</p> <p>The following requirements must also be satisfied in relation to each window and glazed door:</p> <p>Each window or glazed door with improved frames, or pyrolytic low-e glass, or clear/air gap/clear glazing, or low-e/air gap/clear glazing must have a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that listed in the table below. Total system U-values and SHGCs must be calculated in accordance with National Fenestration Rating Council (NFRC) conditions. The description is provided for information only. Alternative systems with complying U-value and SHGC may be substituted.</p>									
Windows and glazed doors glazing requirements									
Window / door no.	Orientation	Area of glass inc. frame (m <sup>2</sup> )	Overhead shading Height (m)	Distance (m)	Shading device	Frame and glass type			
W 01	N	1.15	0	0	none	timber or uPVC, single Lo-Tsol low-e, (U-value: 3.7, SHGC: 0.36)			
W 02	E	1.15	0	0	none	timber or uPVC, single Lo-Tsol low-e, (U-value: 3.7, SHGC: 0.36)			
W 03	S	1.26	0	0	none	timber or uPVC, single Lo-Tsol low-e, (U-value: 3.7, SHGC: 0.36)			
W 04	S	1.93	0	0	none	timber or uPVC, single Lo-Tsol low-e, (U-value: 3.7, SHGC: 0.36)			
W 05	W	1.15	0	0	none	timber or uPVC, single Lo-Tsol low-e, (U-value: 3.7, SHGC: 0.36)			
W 06	N	1.15	0	0	none	timber or uPVC, single Lo-Tsol low-e, (U-value: 3.7, SHGC: 0.36)			

Planning, Industry & Environment

Building Sustainability Index www.basix.nsw.gov.au

BASIX Certificate number: A472050\_03

page 2 / 5

Fixtures and systems				Show on DA Plans	Show on CC/CDC Plans & Specs	Certifier Check
<b>Lighting</b>					✓	✓
The applicant must ensure a minimum of 40% of new or altered light fixtures are fitted with fluorescent, compact fluorescent, or light-emitting-diode (LED) lamps.					✓	✓
<b>Fixtures</b>					✓	✓
The applicant must ensure new or altered showerheads have a flow rate no greater than 9 litres per minute or a 3 star water rating.					✓	✓
The applicant must ensure new or altered toilets have a flow rate no greater than 4 litres per average flush or a minimum 3 star water rating.					✓	✓
The applicant must ensure new or altered taps have a flow rate no greater than 9 litres per minute or minimum 3 star water rating.					✓	✓

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Building Sustainability Index www.basix.nsw.gov.au

BASIX Certificate number: A472050\_03

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Construction			Show on DA Plans	Show on CC/CDC Plans & Specs	Certifier Check
<b>Insulation requirements</b>				✓	✓
The applicant must construct the new or altered construction (floor(s), walls, and ceilings/roofs) in accordance with the specifications listed in the table below, except that a) additional insulation is not required where the area of new construction is less than 2m <sup>2</sup> , b) insulation specified is not required for parts of altered construction where insulation already exists.				✓	✓
Construction	Additional insulation required (R-value)	Other specifications			
floor above existing dwelling or building	nil				
external wall: framed (weatherboard, fibro, metal clad)	R1.30 (or R1.70 including construction)				
raked ceiling, pitched/skillion roof: framed	ceiling: R0.74 (up), roof: foil backed blanket (100 mm)	medium (solar absorptance 0.475 - 0.70)			

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Building Sustainability Index www.basix.nsw.gov.au

BASIX Certificate number: A472050\_03

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Legend	
In these commitments, "applicant" means the person carrying out the development.	
Commitments identified with a "✓" in the "Show on DA plans" column must be shown on the plans accompanying the development application for the proposed development (if a development application is to be lodged for the proposed development).	
Commitments identified with a "✓" in the "Show on CC/CDC plans & specs" column must be shown in the plans and specifications accompanying the application for a construction certificate / complying development certificate for the proposed development.	
Commitments identified with a "✓" in the "Certifier check" column must be certified by a certifying authority as having been fulfilled, before a final occupation certificate for the development may be issued.	

Planning, Industry & Environment

Building Sustainability Index www.basix.nsw.gov.au

### DEVELOPMENT APPLICATION

REV	DATE	AMENDMENT
2	2023.01.16	AMENDED DA LODGEMENT
1	2022.07.05	DESIGN DEVELOPMENT



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### A0.02 - 2

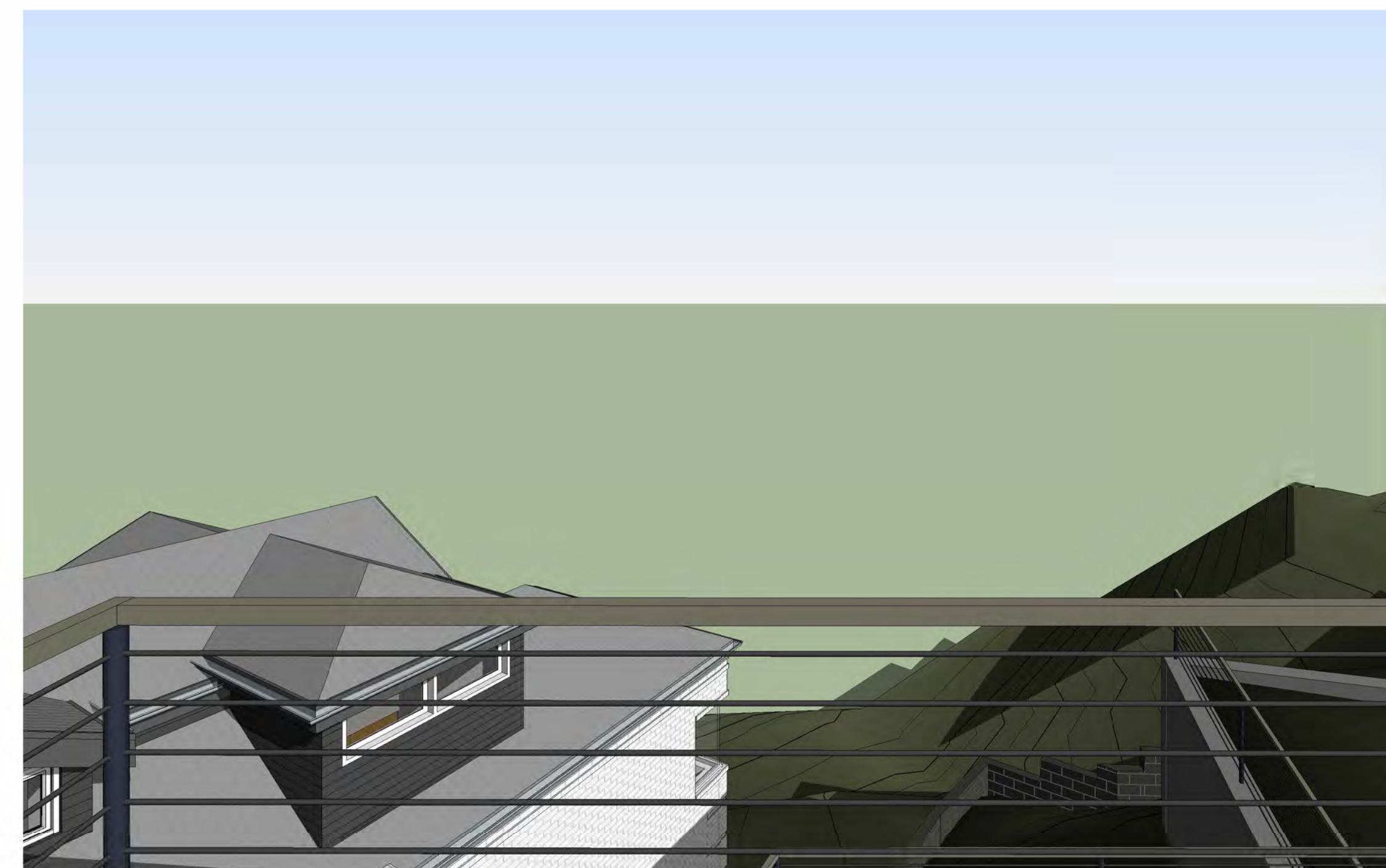
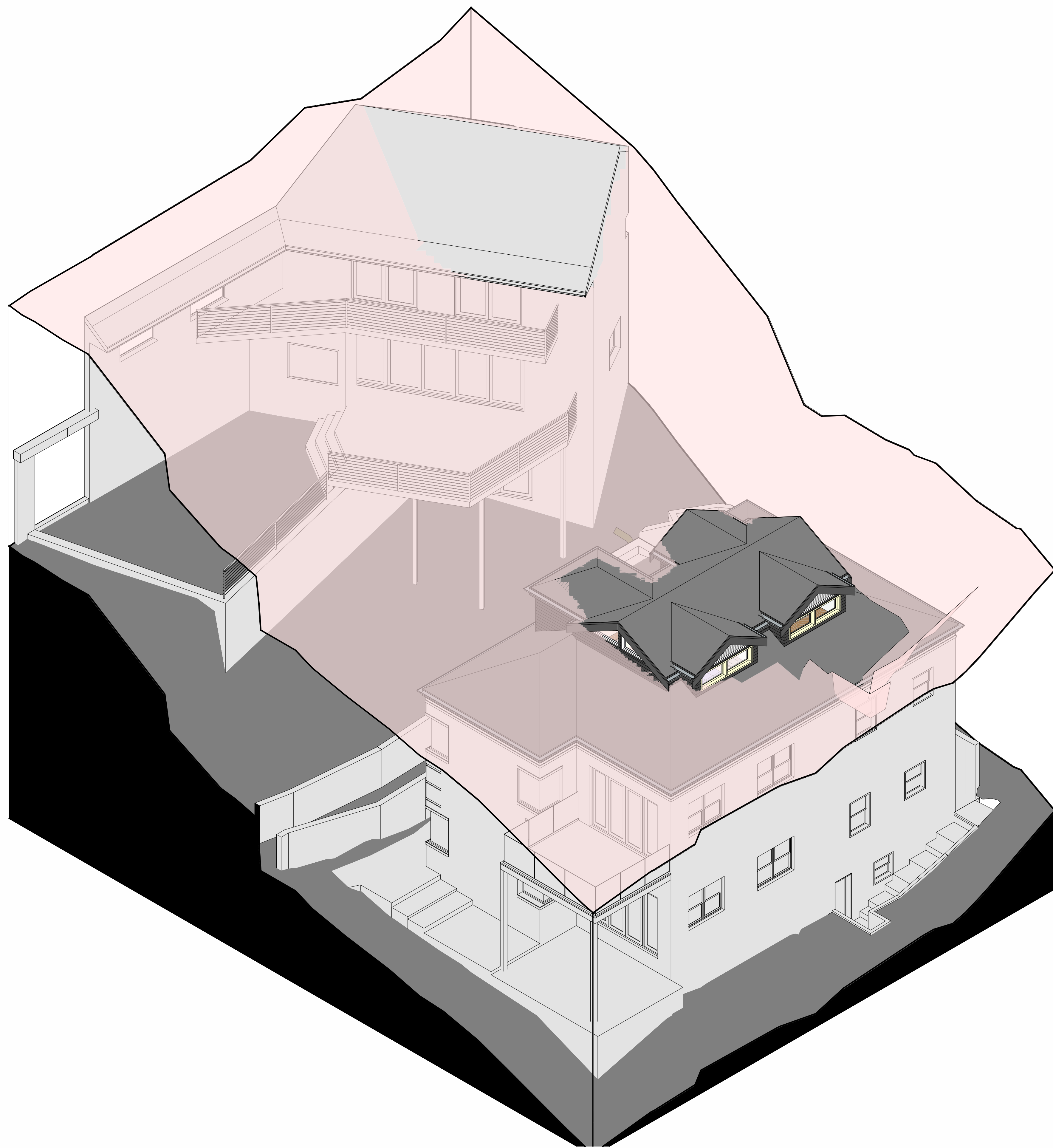
PROJECT: 5 EAST AVE, CAMMERAY  
CLIENT: JAMES & JEN DIMIC

DRAWING TITLE: BASIX CERTIFICATE

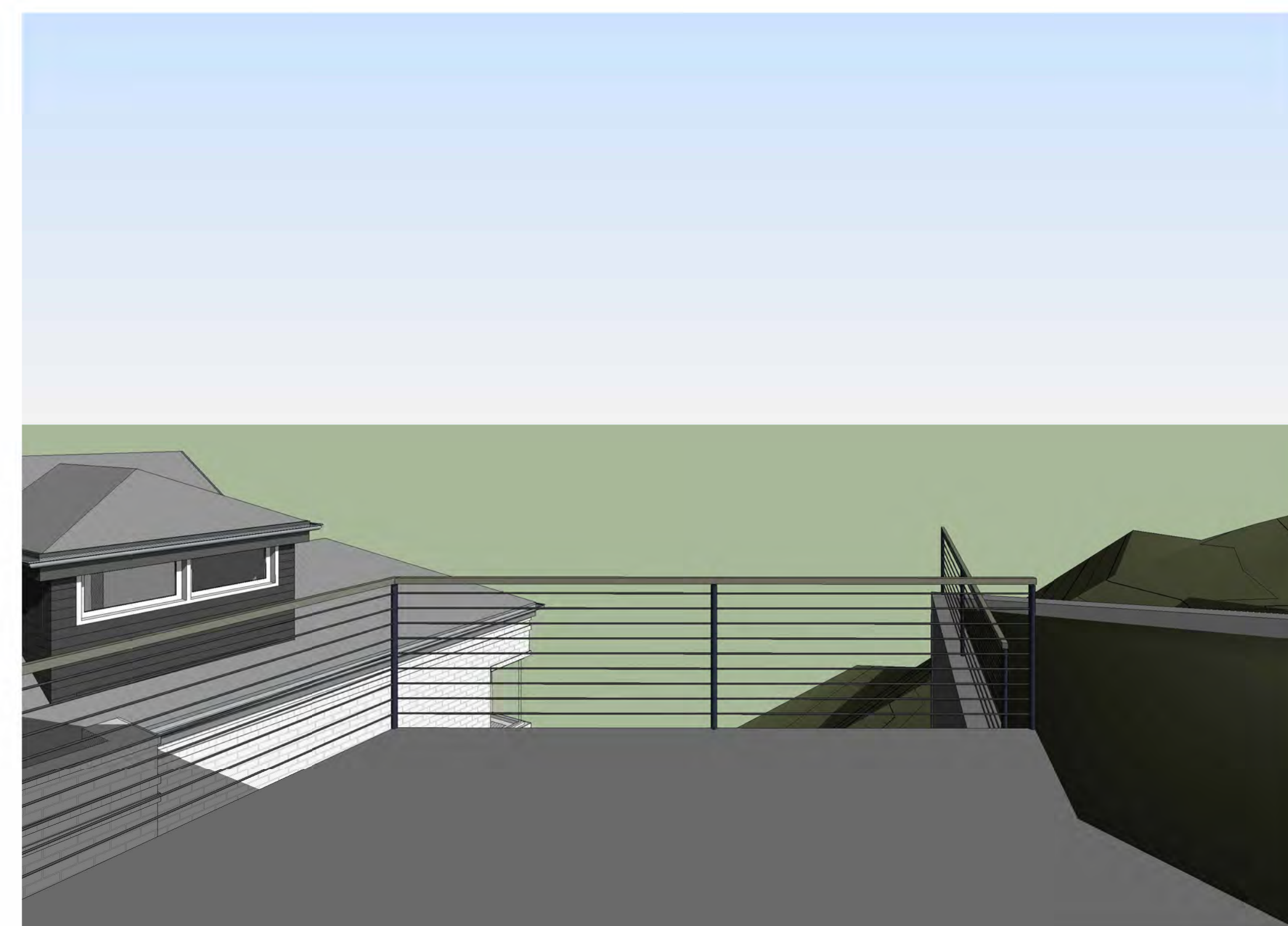
ISSUE DATE: 2023.01.16 SCALE @A1: AS INDICATED PROJECT NO.: 2021

dieppe





A | VIEW FROM NEIGHBOURS BALCONY  
@ A3



B | VIEW FROM NEIGHBOURS DECK  
@ A3

1 | 3D - HEIGHT CONTROL  
@ A3

DEVELOPMENT APPLICATION		
REV	DATE	AMENDMENT
3	2023.01.16	AMENDED DA LODGEMENT
2	2022.12.14	DESIGN DEVELOPMENT
1	2022.11.29	DRAFT FOR REVIEW

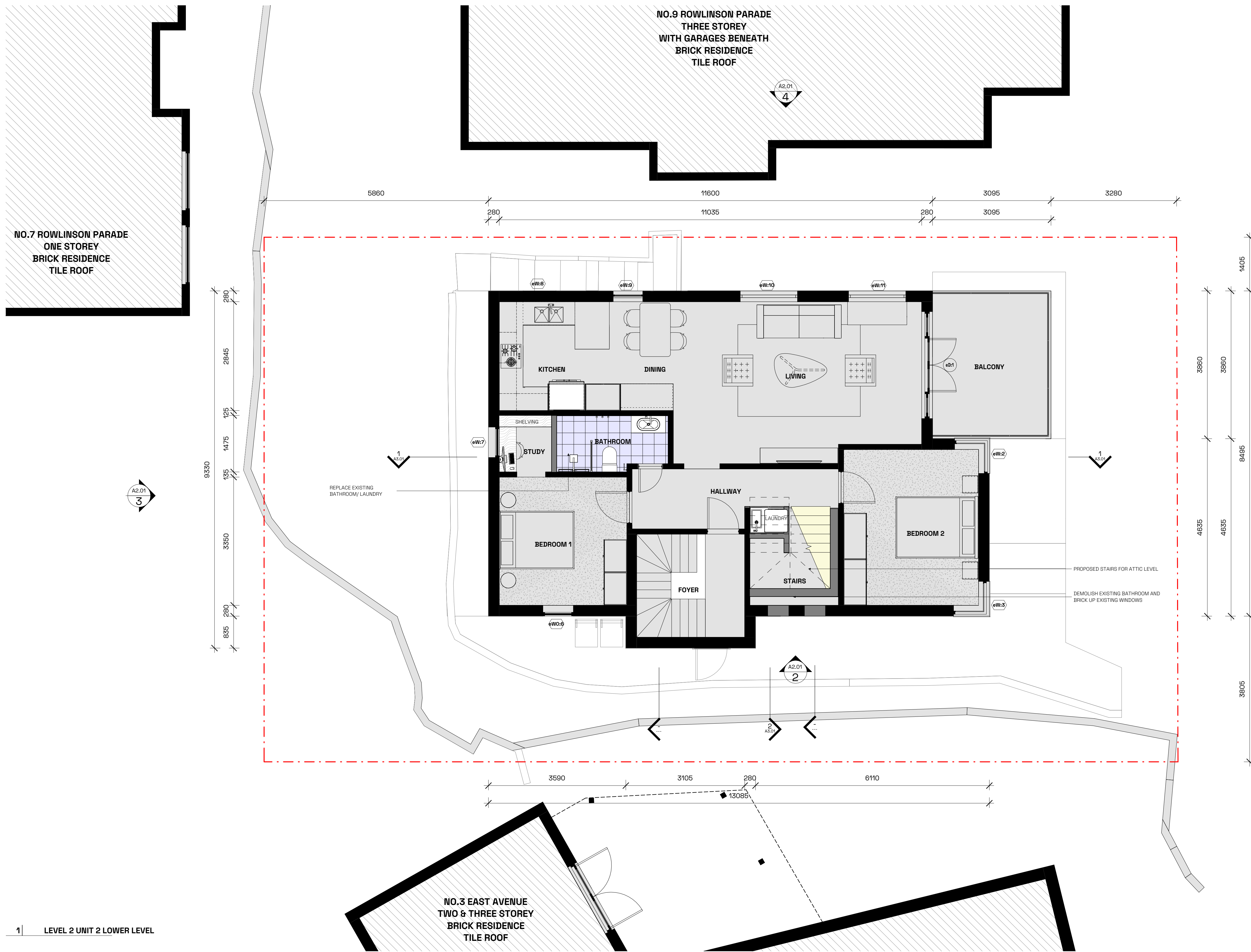


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**A0.03 - 3**  
 PROJECT: 5 EAST AVE, CAMMERAY  
 CLIENT: JAMES & JEN DIMIC  
 DRAWING TITLE: HEIGHT CONTROL + VIEW LOSS  
 ISSUE DATE: 2023.01.16 SCALE @A4: PROJECT NO.: 2021

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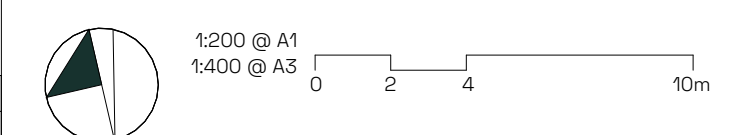




1 | LEVEL 2 UNIT 2 LOWER LEVEL

DEVELOPMENT APPLICATION

5	2023.01.16	AMENDED DA LODGEMENT
4	2022.12.14	DESIGN DEVELOPMENT
3	2022.11.29	DRAFT FOR REVIEW
2	2022.11.25	COUNCIL AMENDMENTS
1	2022.09.05	DA ISSUE
REV	DATE	AMENDMENT

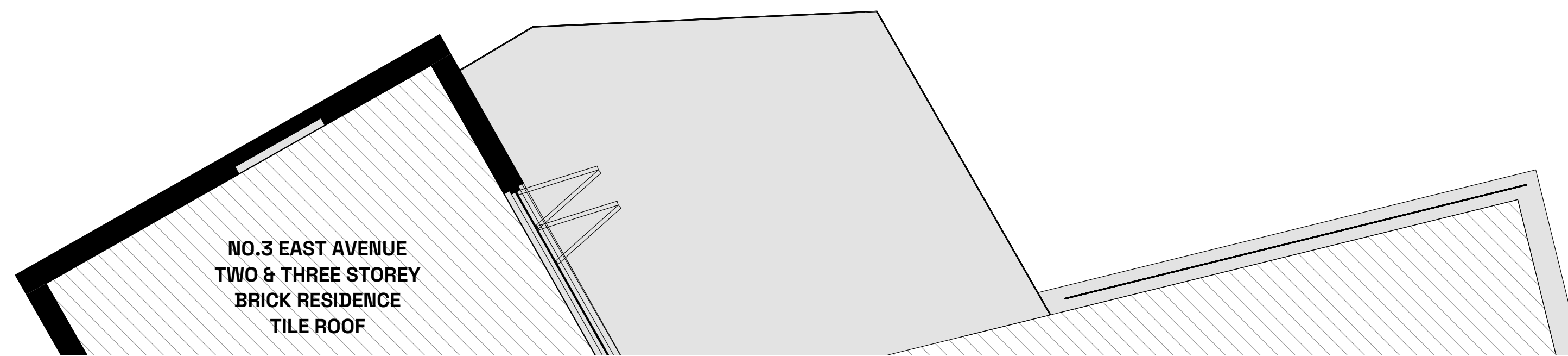
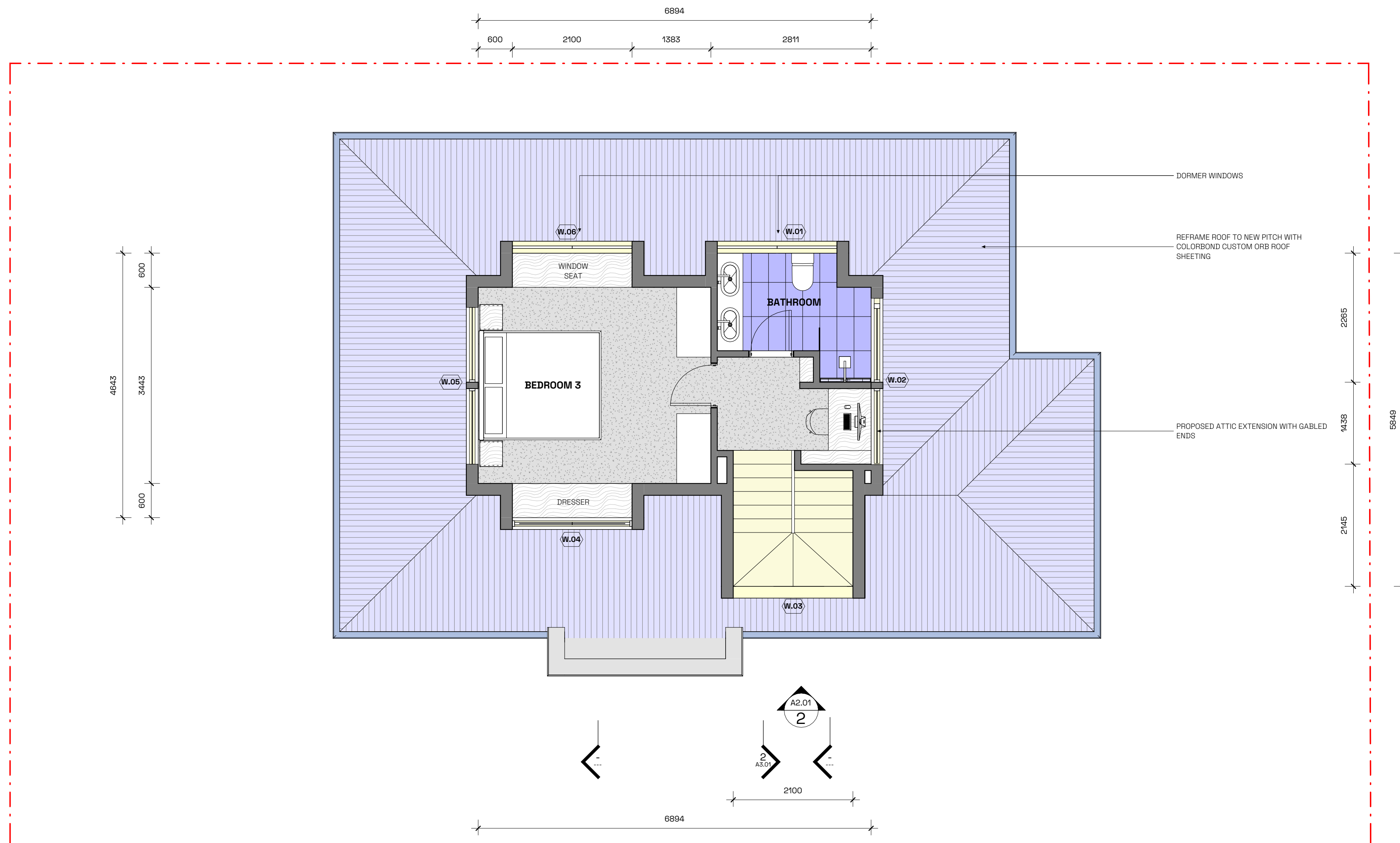
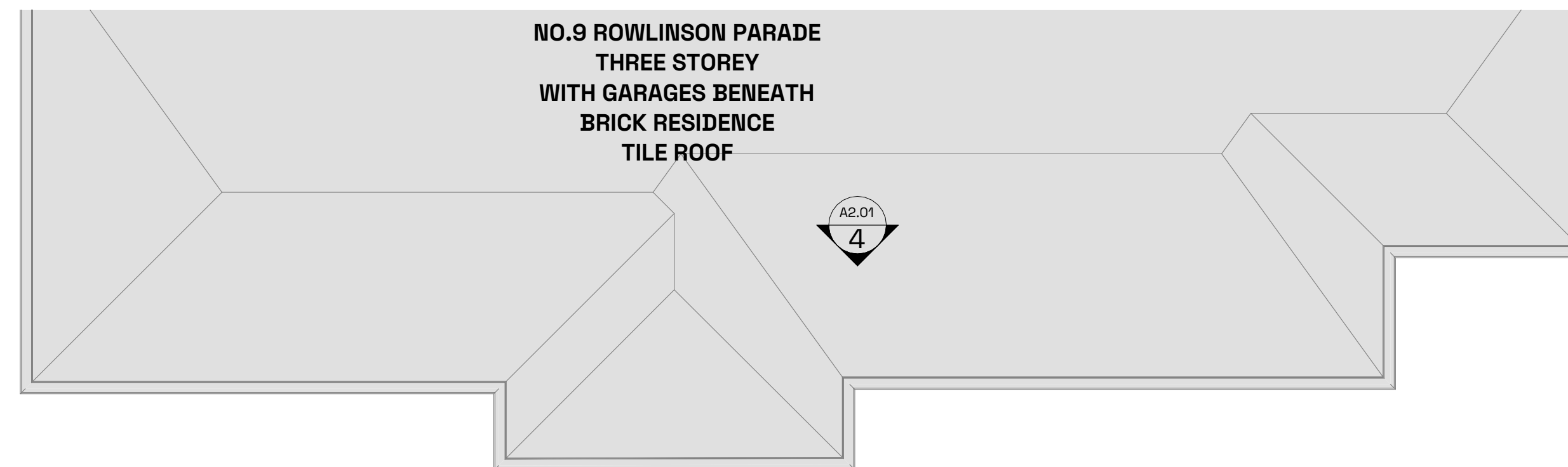
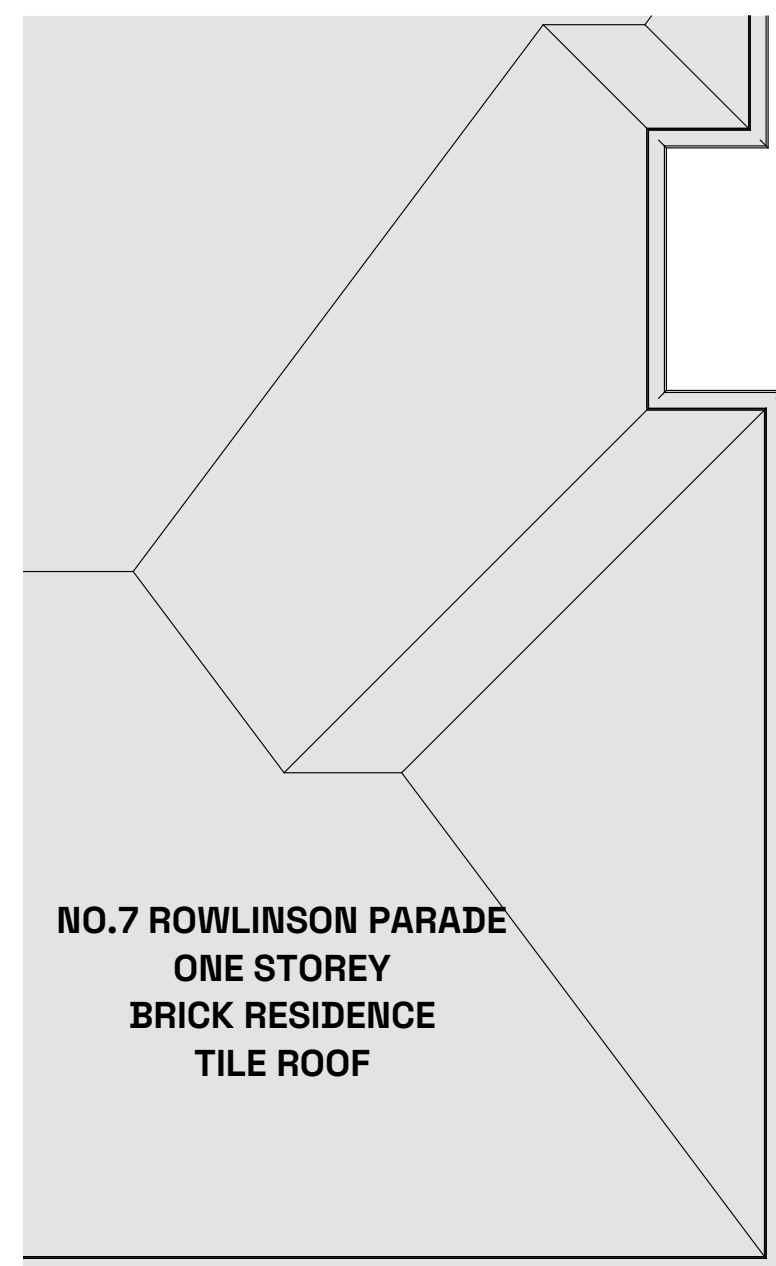


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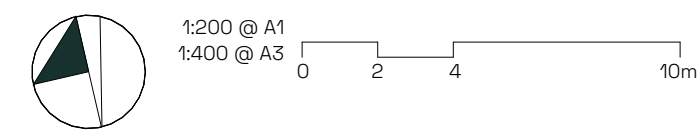
**A1.10 - 5**  
 PROJECT: 5 EAST AVE, CAMMERAY  
 CLIENT: JAMES & JEN DIMIC  
 DRAWING TITLE: LEVEL 2 - UNIT 2 LOWER LEVEL  
 ISSUE DATE: 2023.01.16 SCALE @A1: 1:50 PROJECT NO.: 2021





1 | LEVEL 3 ATTIC

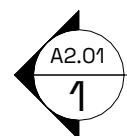
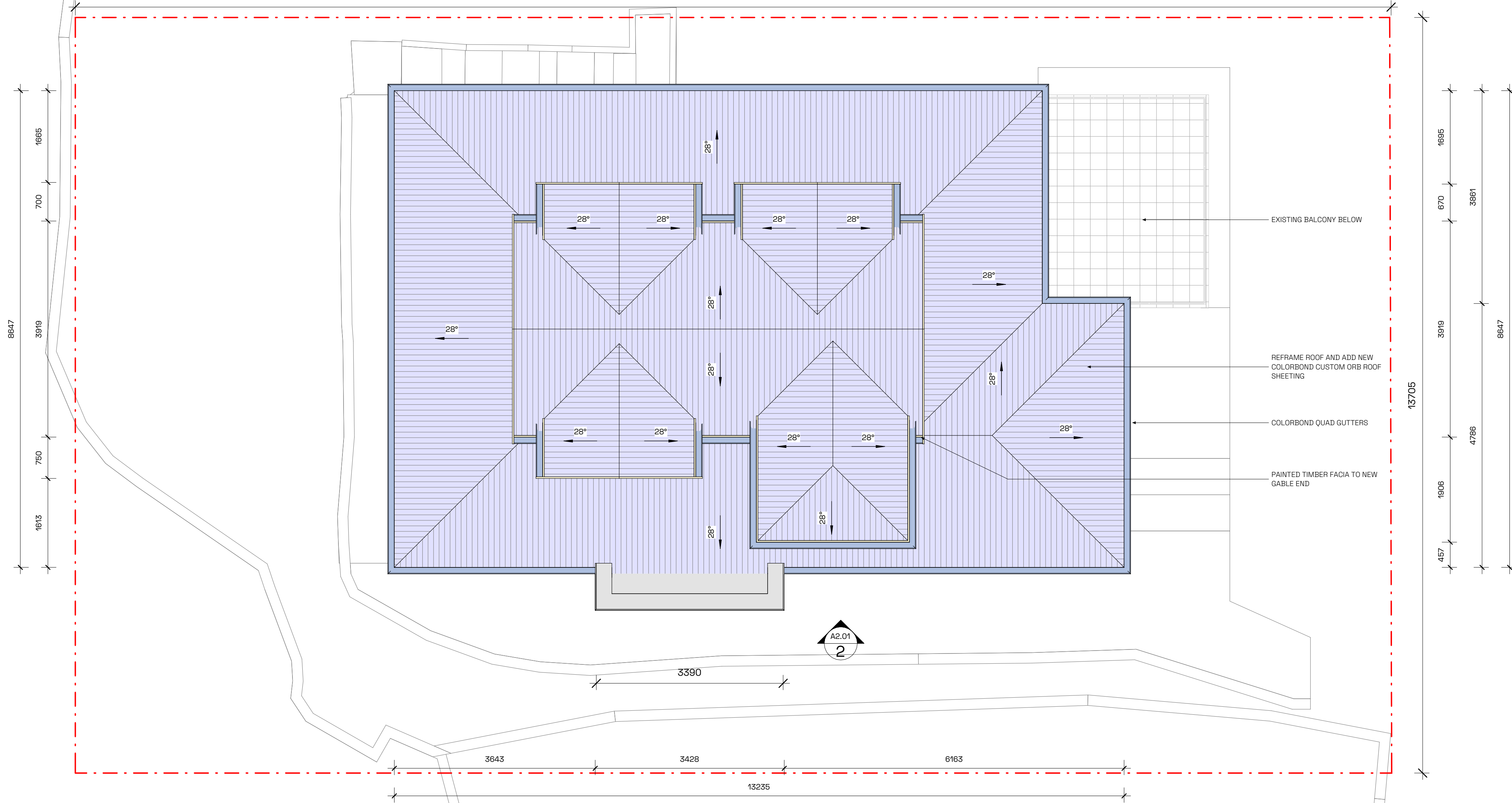
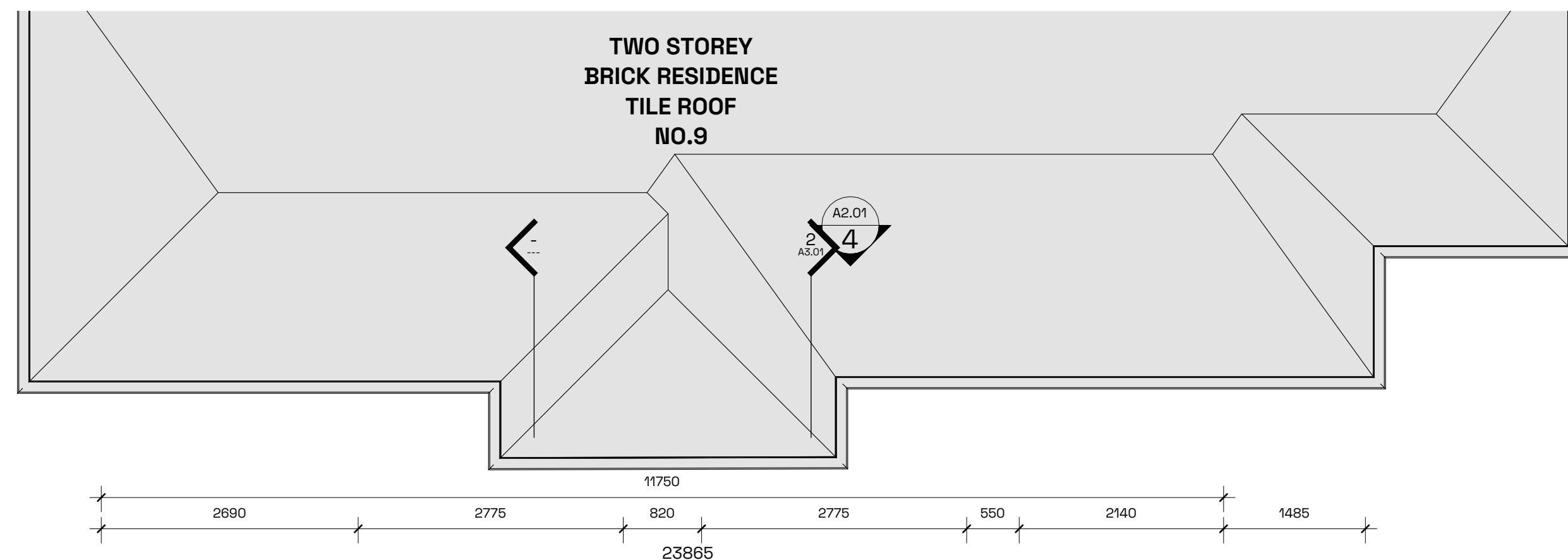
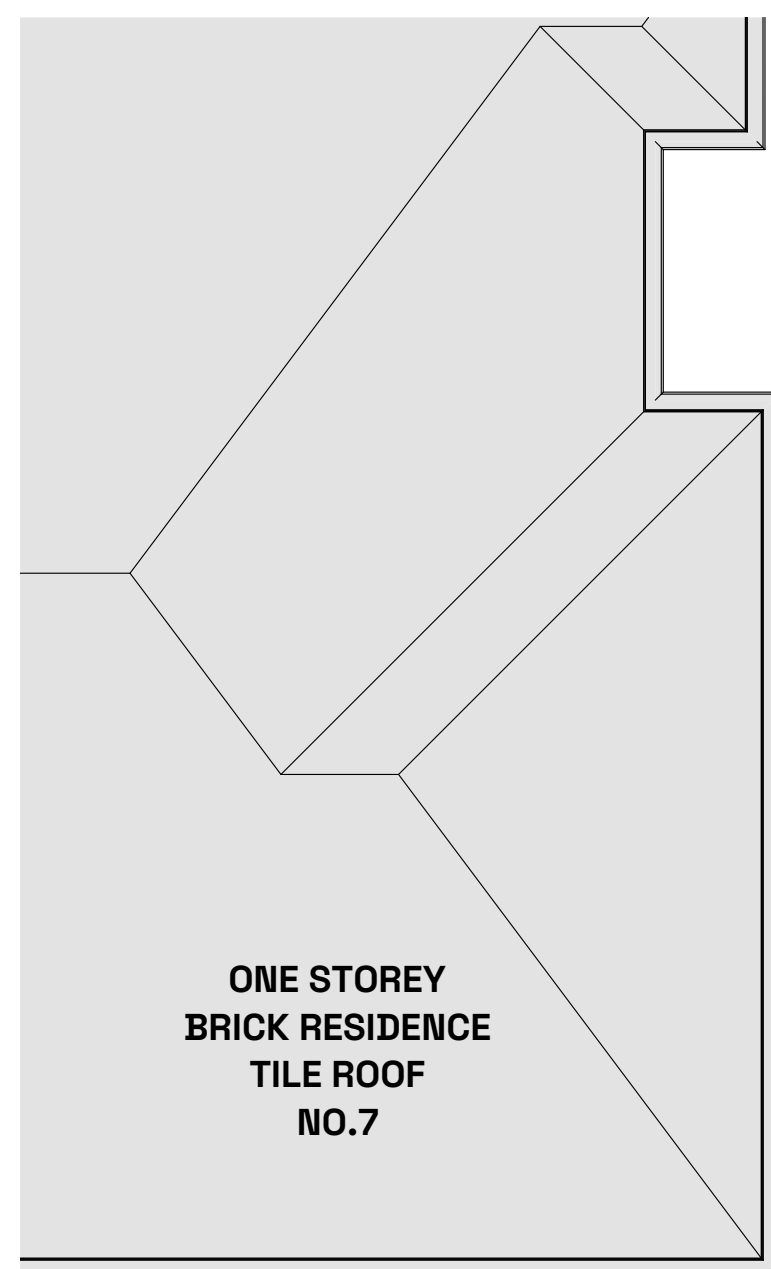
DEVELOPMENT APPLICATION		
REV	DATE	AMENDMENT
4	2023.01.16	AMENDED DA LODGEMENT
3	2022.11.28	DRAFT FOR REVIEW
2	2022.11.25	COUNCIL AMENDMENTS
1	2022.09.05	DA ISSUE



ARCHITECTURE - INTERIORS - PASSIVHAUS  
 NOTES: DO NOT SCALE FROM DRAWINGS VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING WORK.  
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 NOMINATED ARCHITECT - EDWARD DIEPPE - RAIA - NSW ARB: 10148

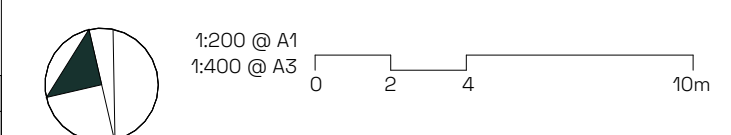
**A1.11 - 4**  
 PROJECT:  
**5 EAST AVE, CAMMERAY**  
 CLIENT:  
**JAMES & JEN DIMIC**  
 DRAWING TITLE:  
**LEVEL 3 - UNIT 2 ATTIC**  
 ISSUE DATE: 2023.01.16 SCALE @A1: 1:50 PROJECT NO.: 2021





1 | ROOF PLAN

DEVELOPMENT APPLICATION		
5	2023.01.16	AMENDED DA LODGEMENT
4	2022.12.14	DESIGN DEVELOPMENT
3	2022.11.28	DRAFT FOR REVIEW
2	2022.11.25	COUNCIL AMENDMENTS
1	2022.09.05	DA ISSUE
REV	DATE	AMENDMENT



ARCHITECTURE - INTERIORS - PASSIVHAUS

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 NOMINATED ARCHITECT - EDWARD DIEPPE - RAIA - NSW ARB: 10148

**A1.12 - 5**

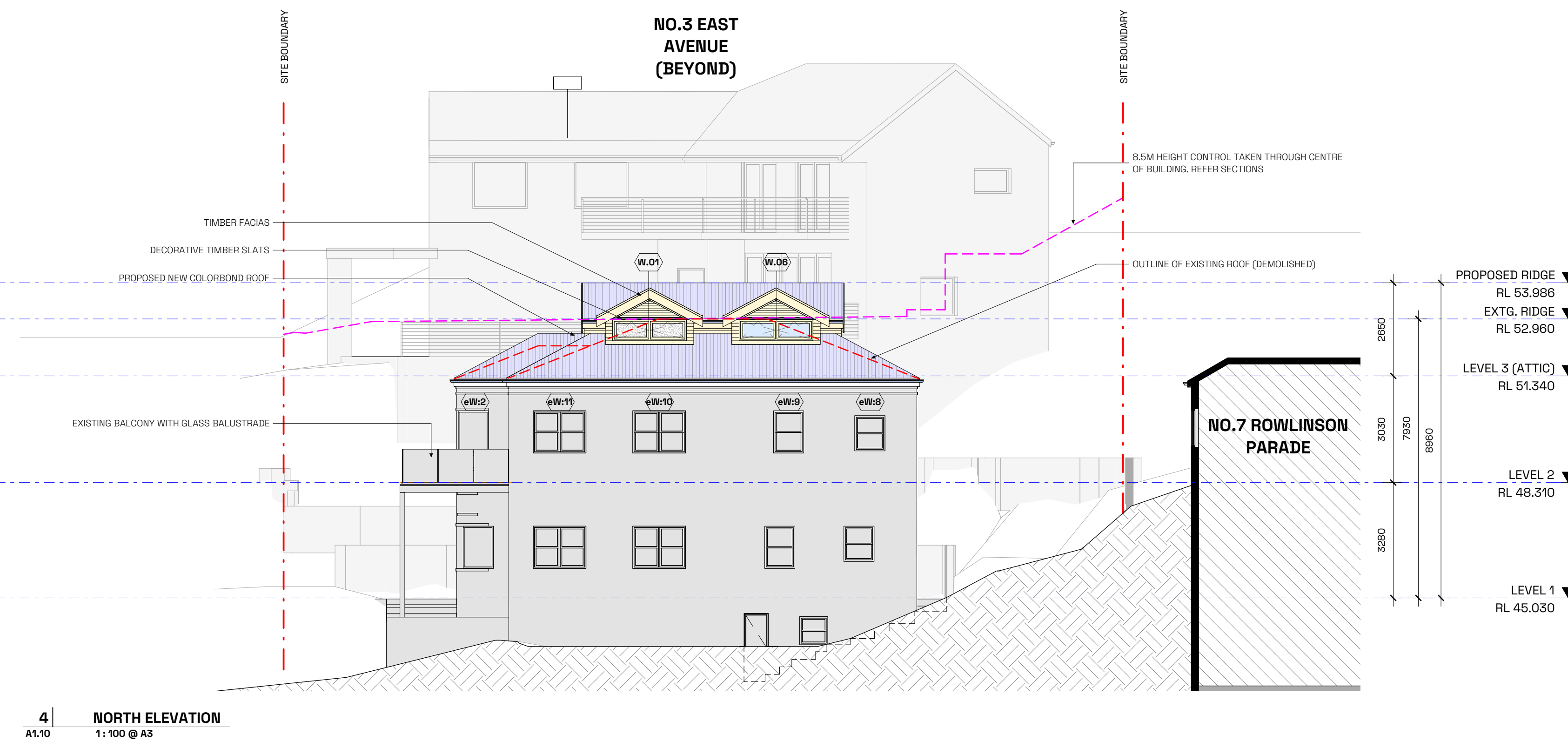
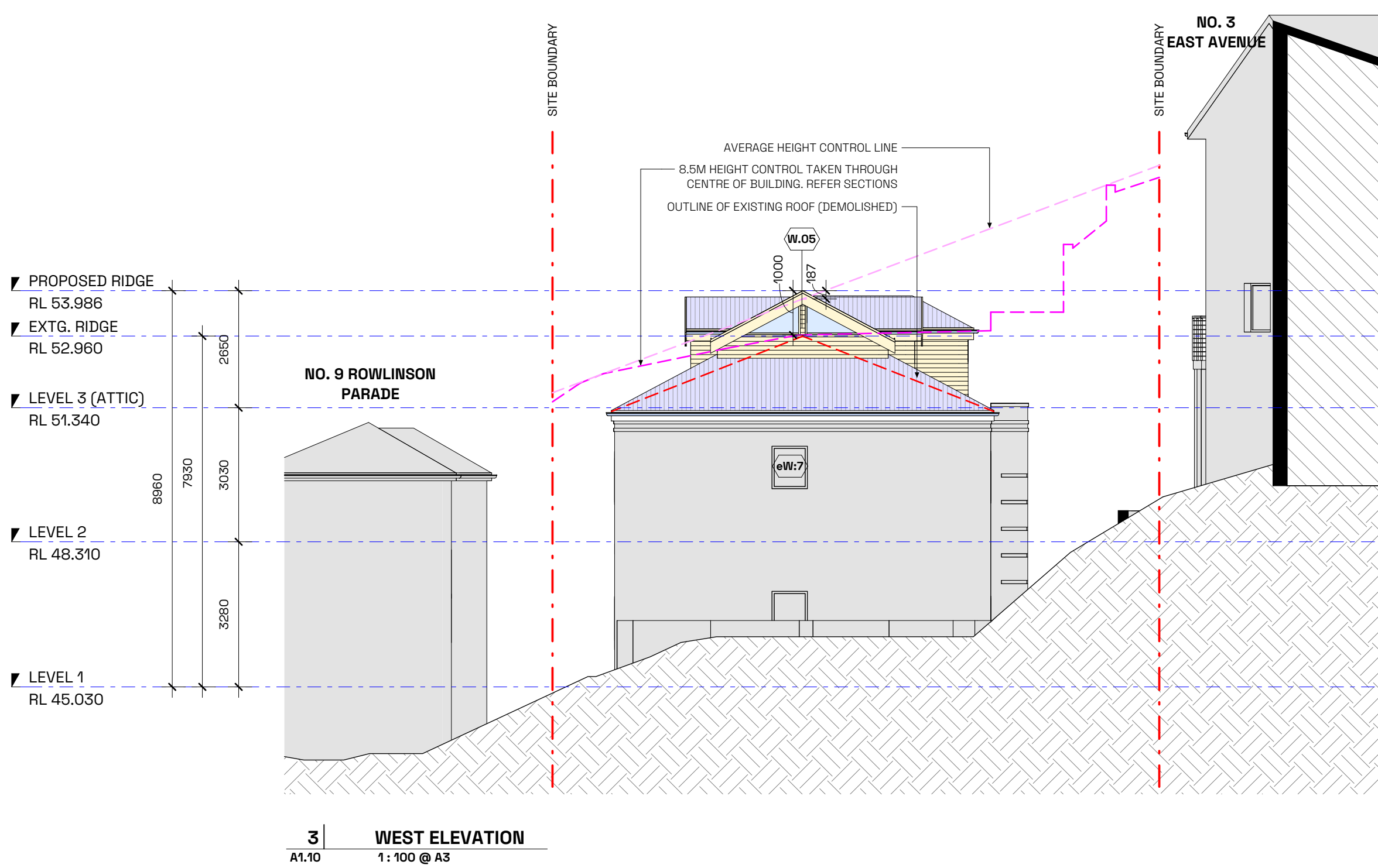
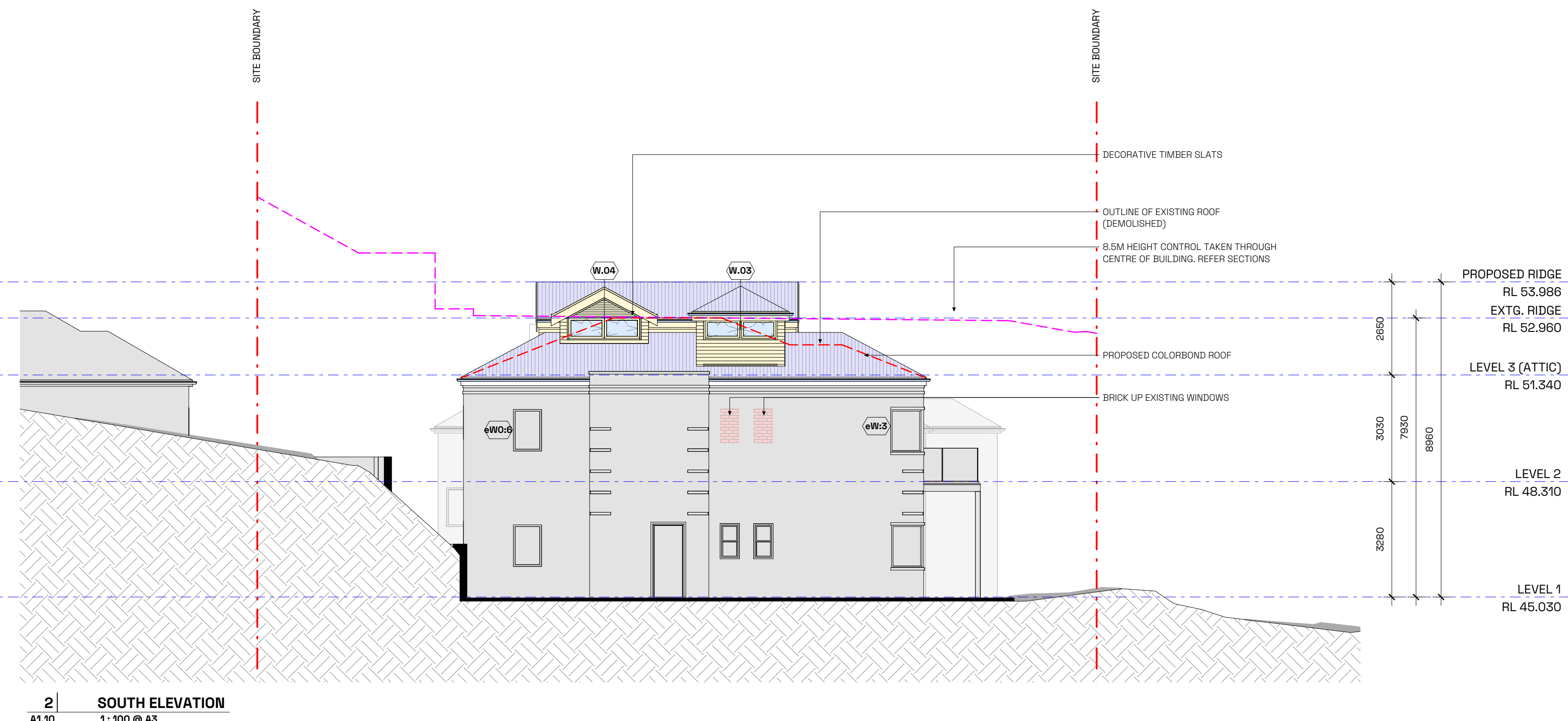
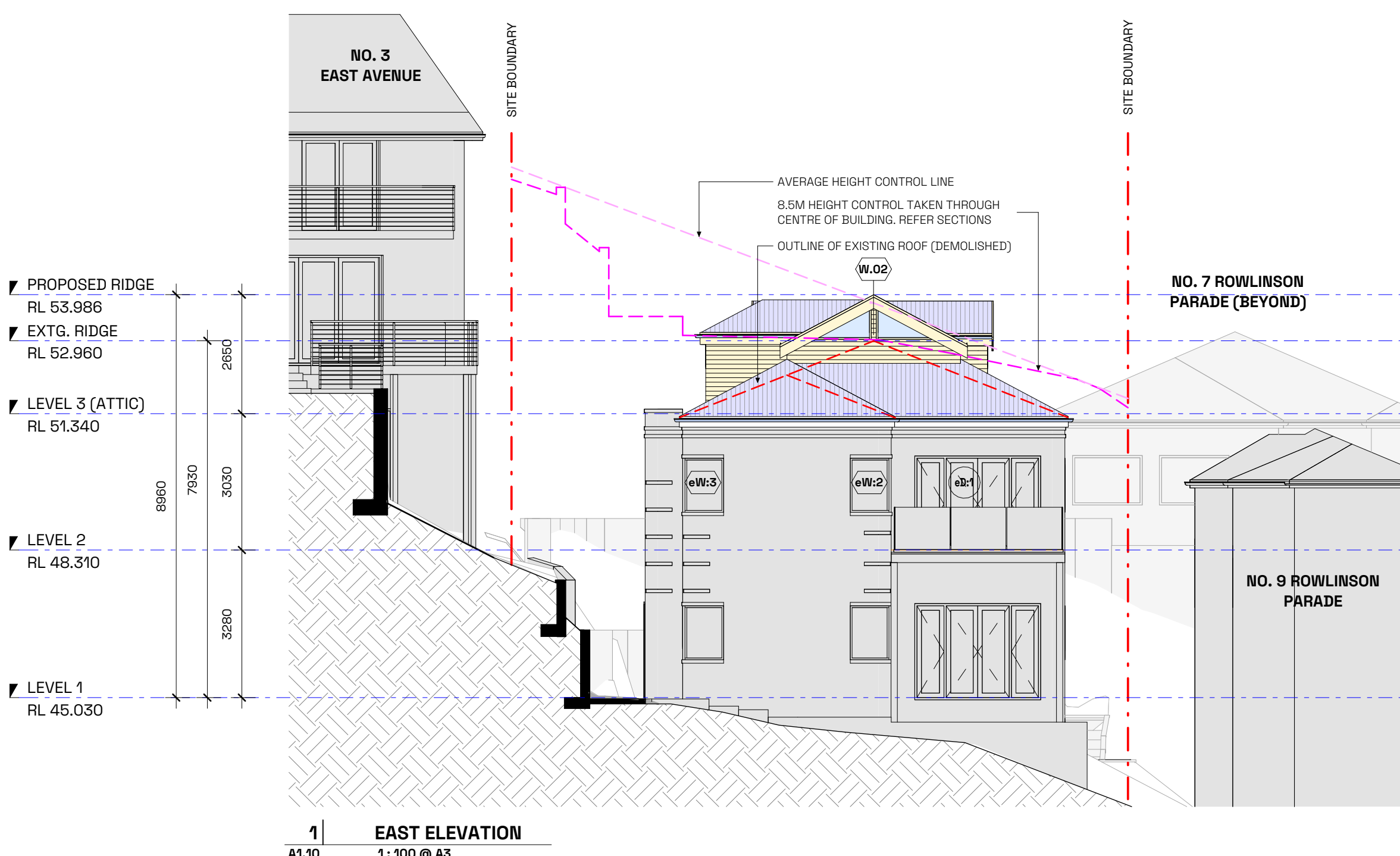
PROJECT:  
5 EAST AVE, CAMMERAY

CLIENT:  
JAMES & JEN DIMIC

DRAWING TITLE:  
ROOF PLAN

ISSUE DATE: 2023.01.16    SCALE @A1: 1:50    PROJECT NO.: 2021





DEVELOPMENT APPLICATION		
REV	DATE	AMENDMENT
5	2023.01.16	AMENDED DA LODGEMENT
4	2022.12.14	DESIGN DEVELOPMENT
3	2022.11.29	DRAFT FOR REVIEW
2	2022.11.25	COUNCIL AMENDMENTS
1	2022.09.05	DA ISSUE

1:200 @ A1  
1:400 @ A3

0 2 4 10m

**ARCHITECTURE - INTERIORS - PASSIVHAUS**

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NOMINATED ARCHITECT - EDWARD DIEPPE - RAIA - NSW ARB: 10148

- LEGEND**
- REFER KEYNOTE INDEX DWG. A0.02 FOR KEYNOTES (XXXX)
- (XXXX) ELEMENT KEYNOTE
  - (XXXX) MATERIAL KEYNOTE
  - (101) WINDOW TAG
  - (D11) EXTERNAL DOOR TAG

- MATERIALS LEGEND**
- BRICK - PALE RED
  - FIBRE CEMENT SHEETS/CEMENT RENDER - PALE GREEN
  - TILES - PALE PURPLE
  - GLASS - PALE BLUE
  - TIMBER - PALE YELLOW
  - ROOF TILES - PALE ORANGE
  - SANDSTONE - PALE BROWN
  - STEEL & GALVANISED IRON - DARK BLUE

**A2.01 - 5**

PROJECT: 5 EAST AVE, CAMMERAY

CLIENT: JAMES & JEN DIMIC

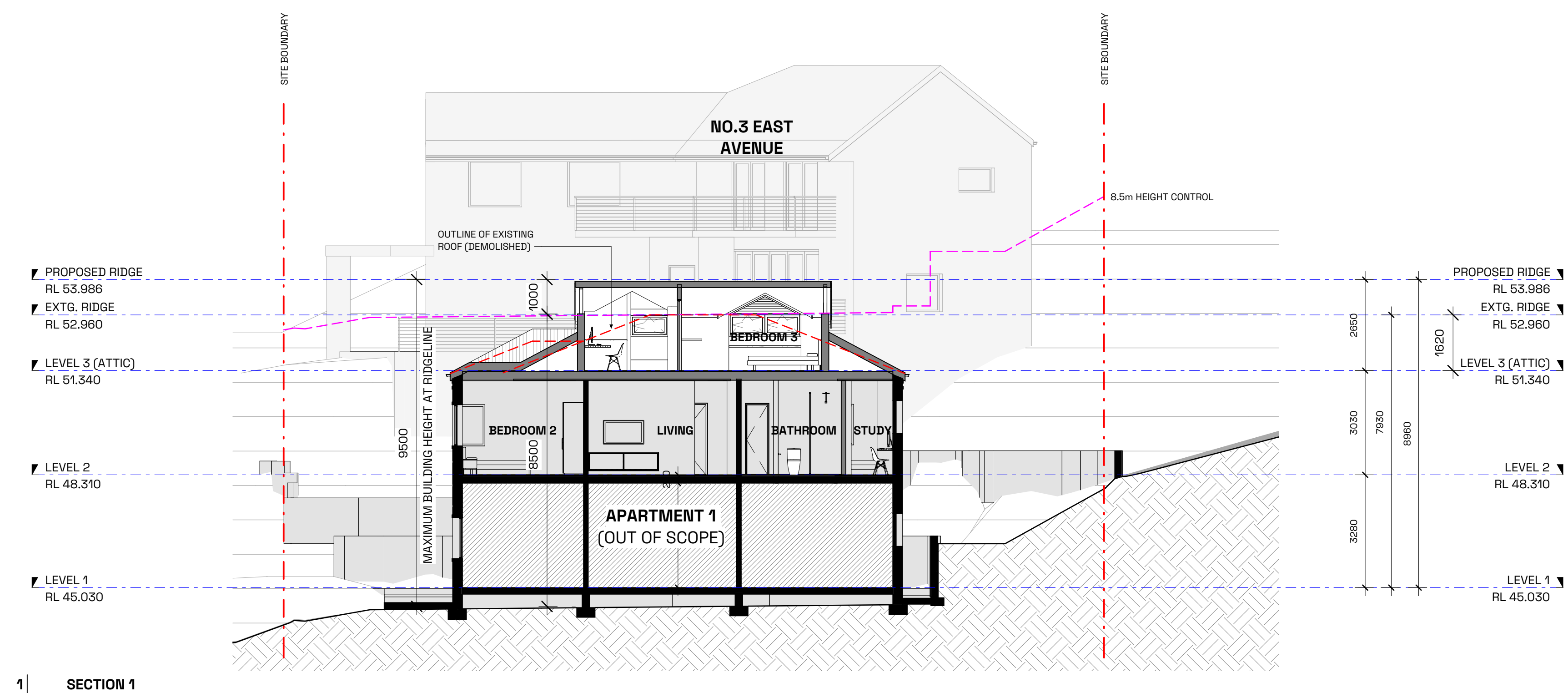
DRAWING TITLE: ELEVATIONS

ISSUE DATE: 2023.01.16

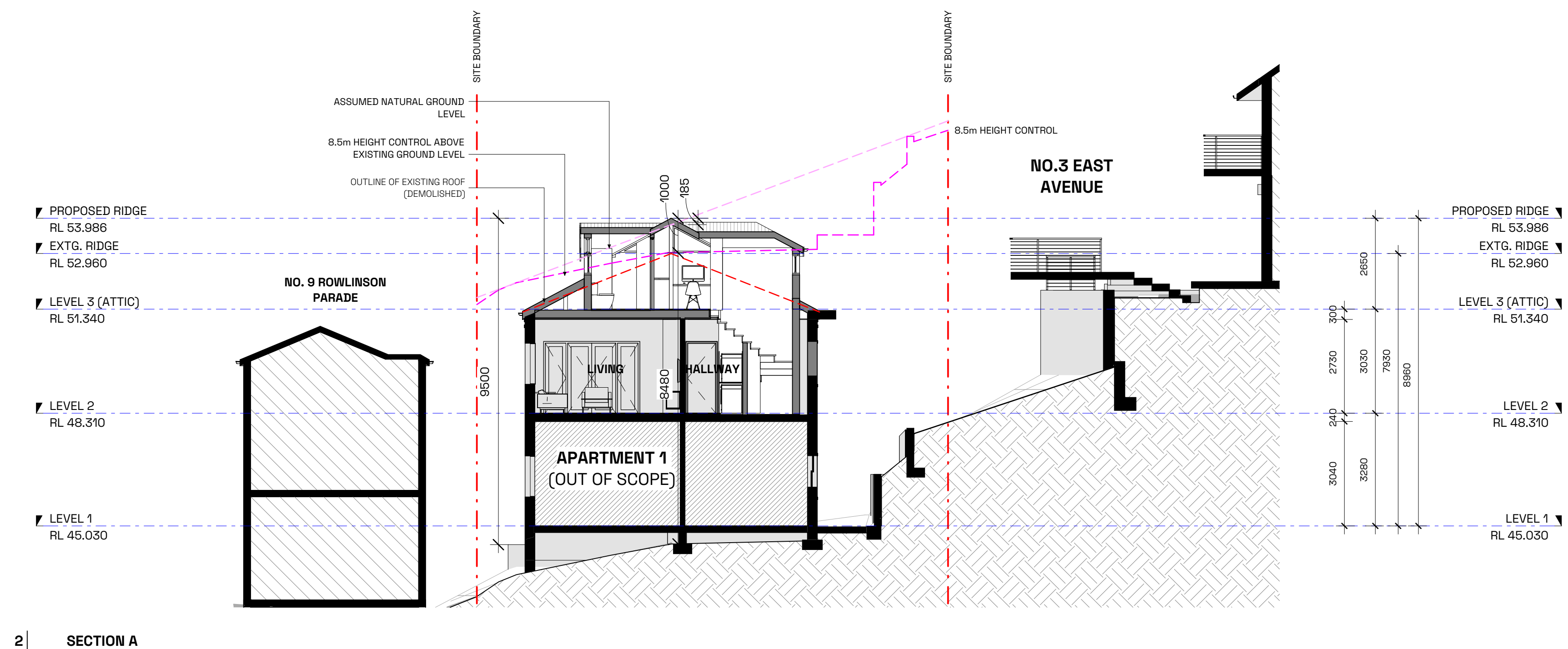
SCALE @A1: AS INDICATED

PROJECT NO.: 2021





1 | SECTION 1



2 | SECTION A

DEVELOPMENT APPLICATION		
REV	DATE	AMENDMENT
4	2023.01.16	AMENDED DA LODGEMENT
3	2022.12.14	DESIGN DEVELOPMENT
2	2022.11.29	DRAFT FOR REVIEW
1	2022.09.05	DA ISSUE

1:200 @ A1  
1:400 @ A3  
0 2 4 10m

ARCHITECTURE - INTERIORS - PASSIVHAUS

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NOMINATED ARCHITECT - EDWARD DIEPPE - RAA - NSW ARB: 10148

- LEGEND
- REFER KEYNOTE INDEX DWG. A0.02 FOR KEYNOTES
- (XXXX) ELEMENT KEYNOTE
  - (XXXX) MATERIAL KEYNOTE
  - (1.01) WINDOW TAG
  - (D11) EXTERNAL DOOR TAG

A3.01 - 4

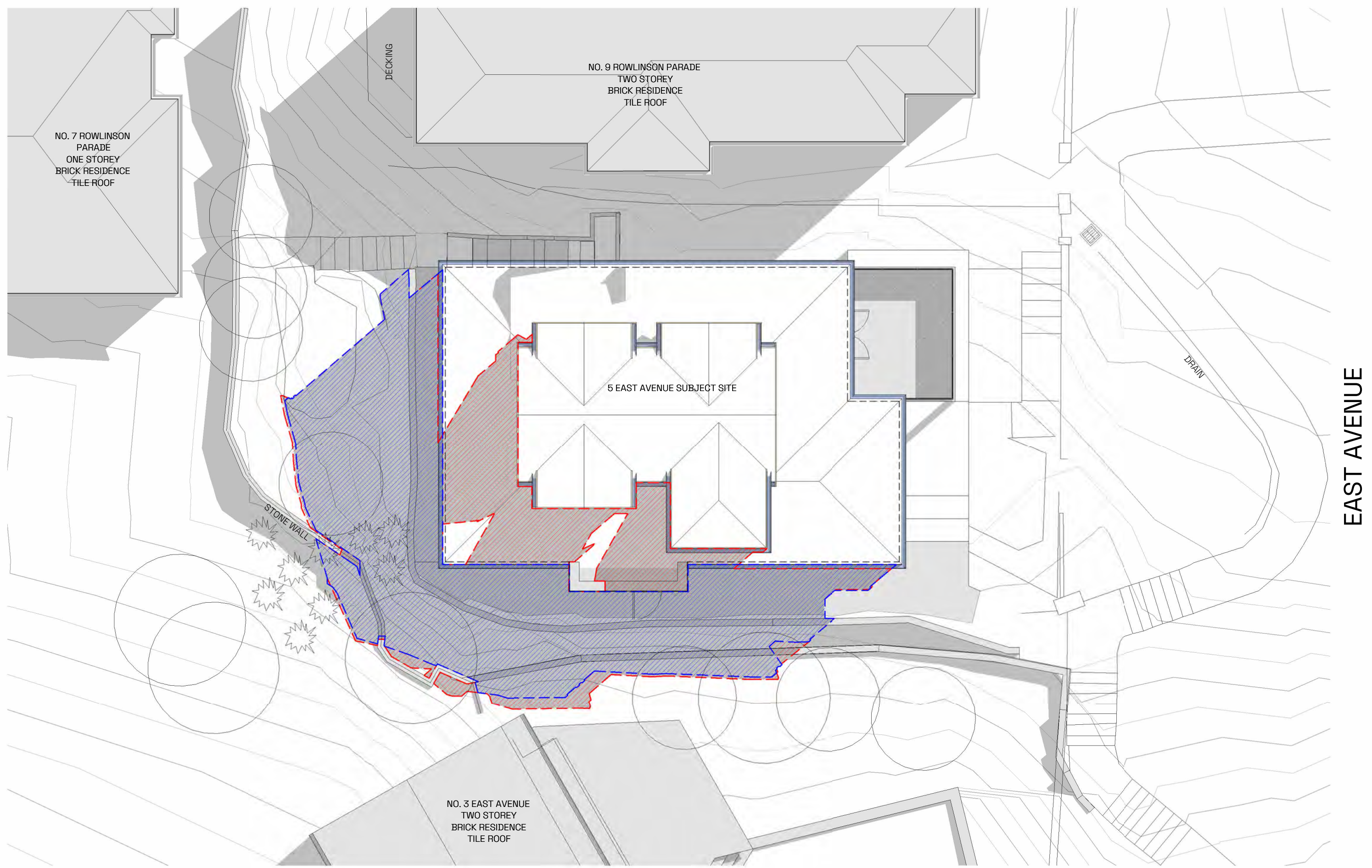
PROJECT: 5 EAST AVE, CAMMERAY

CLIENT: JAMES & JEN DIMIC

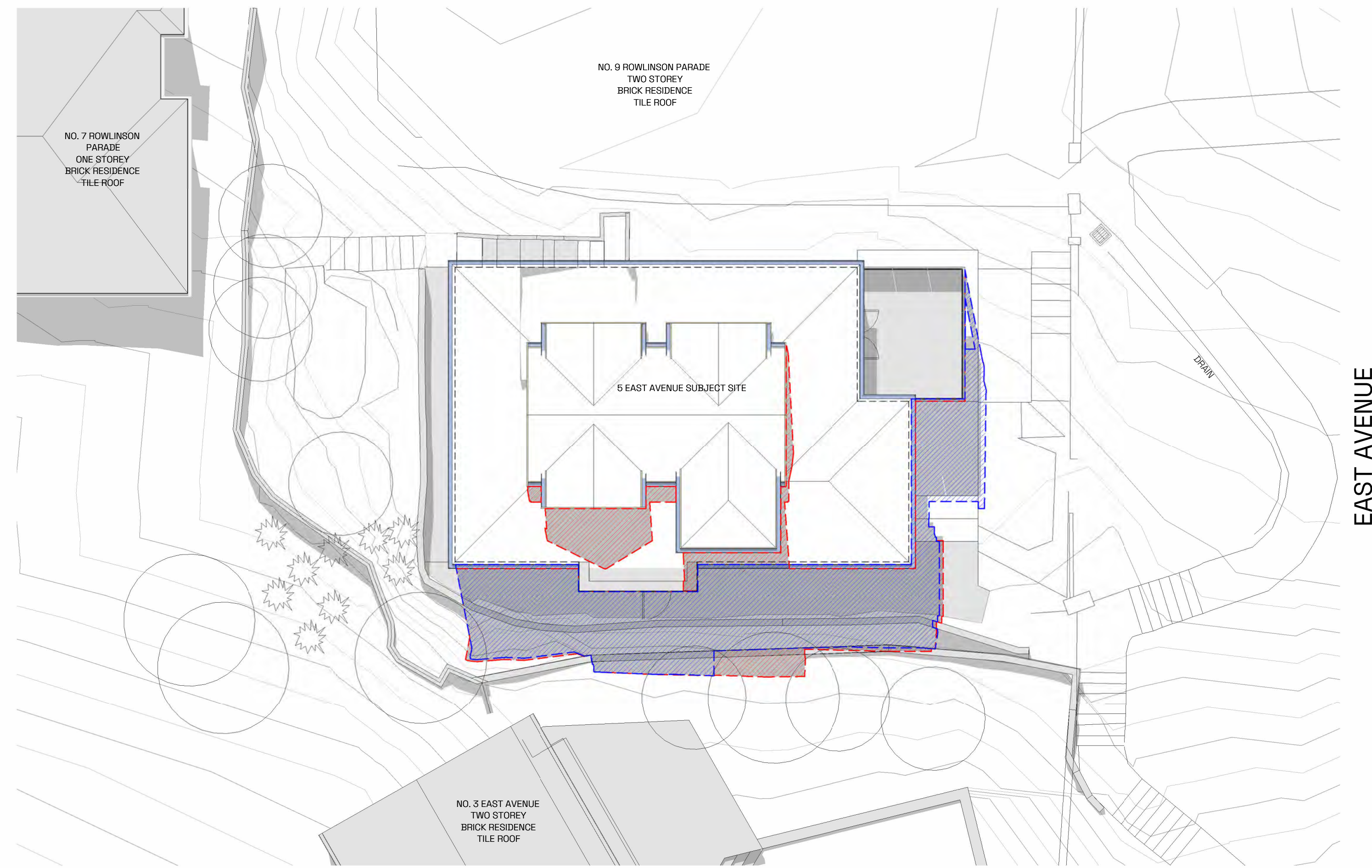
DRAWING TITLE: SECTION 01

ISSUE DATE: 2023.01.16 SCALE @A1: AS INDICATED PROJECT NO.: 2021

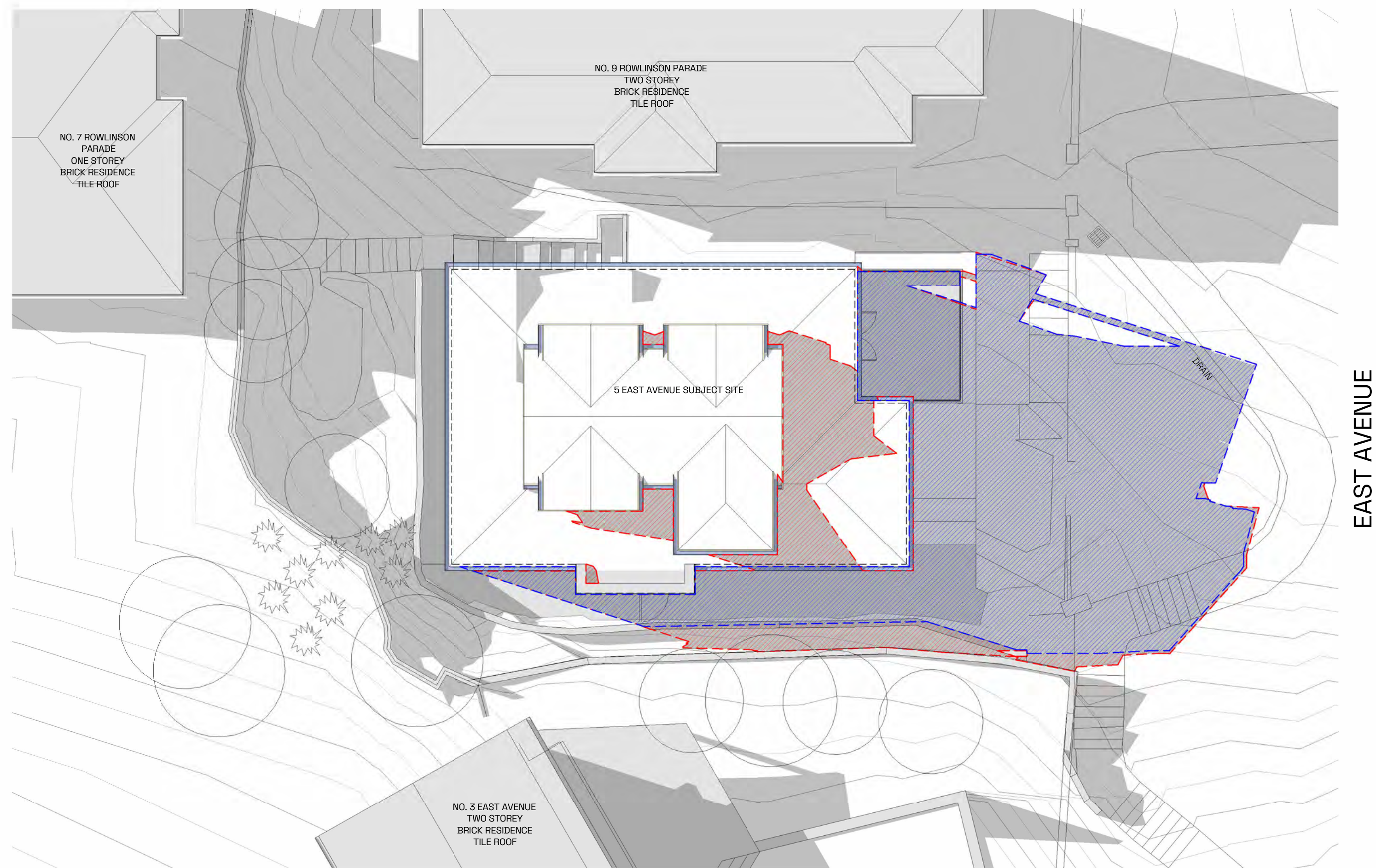




1 | 9AM 21ST MARCH

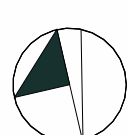
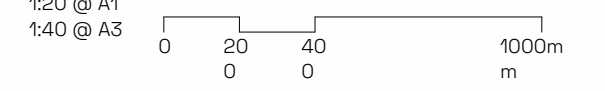


2 | 12PM 21ST MARCH





3 | 3PM 21ST MARCH

DEVELOPMENT APPLICATION		
REV	DATE	AMENDMENT
2	2023.01.16	AMENDED DA LODGEMENT
1	2022.09.05	DA ISSUE


 1:20 @ A1  
 1:40 @ A3  


**ARCHITECTURE - INTERIORS - PASSIVHAUS**  
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**SHADOW DIAGRAM LEGEND**

-  EXISTING SHADOWS CAST
-  PROPOSED SHADOWS CAST

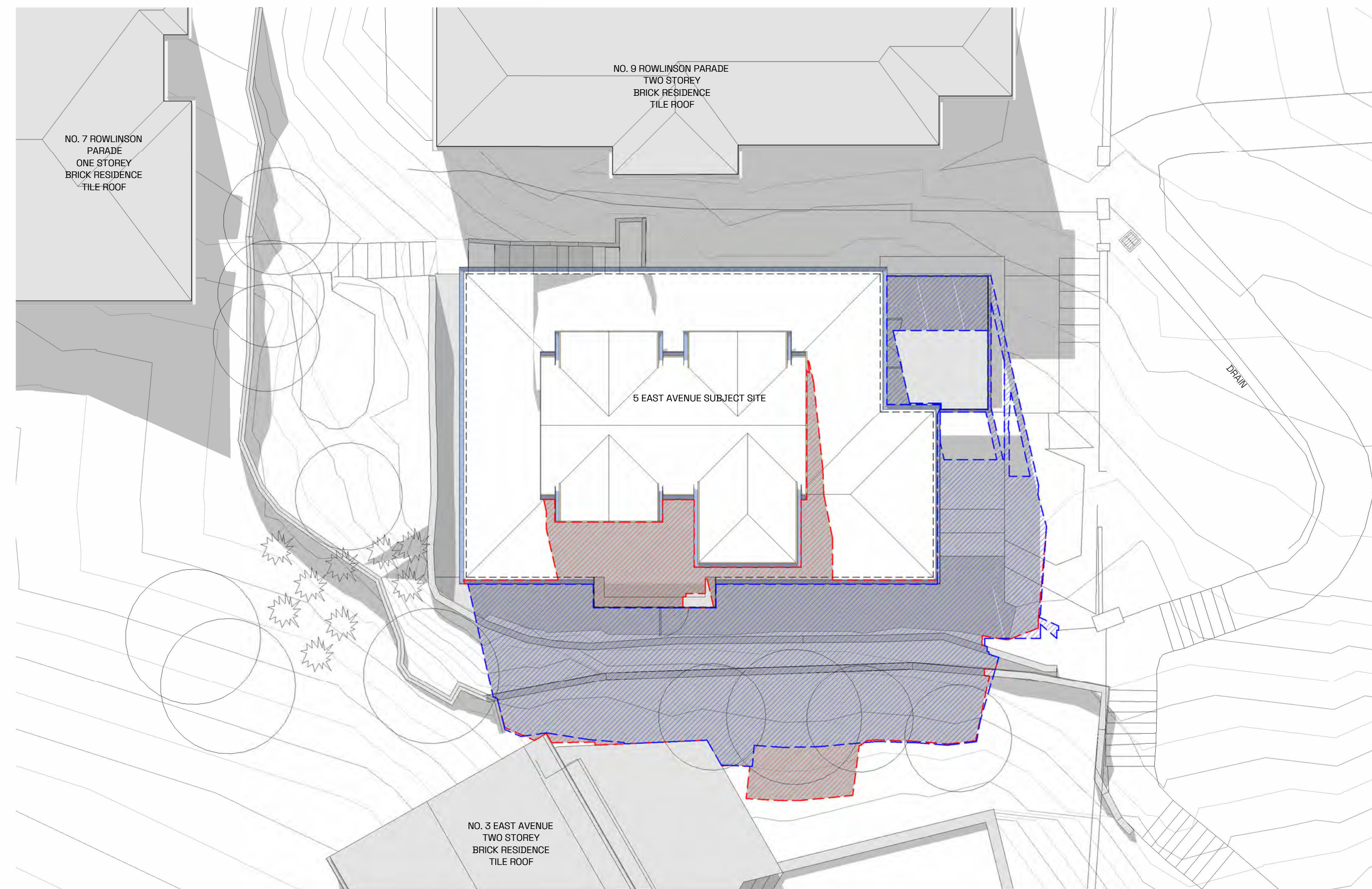
**A4.02 - 2**  
 PROJECT:  
**5 EAST AVE, CAMMERAY**  
 CLIENT:  
**JAMES & JEN DIMIC**  
 DRAWING TITLE:  
**SHADOW DIAGRAMS MARCH**  
 ISSUE DATE: 2023.01.16 SCALE @A1: AS INDICATED PROJECT NO.: 2021







1 | 9AM 21ST JUNE



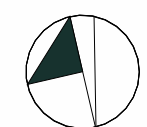
2 | 12PM 21ST JUNE



3 | 3PM 21ST JUNE

**DEVELOPMENT APPLICATION**

REV	DATE	AMENDMENT
2	2023.01.16	AMENDED DA LODGEMENT
1	2022.09.05	DA ISSUE



1:200 @ A1  
1:400 @ A3  
0 2 4 10m

**ARCHITECTURE - INTERIORS - PASSIVHAUS**  
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 NOMINATED ARCHITECT - EDWARD DIEPPE - RAIA - NSW ARB: 10148

**SHADOW DIAGRAM LEGEND**

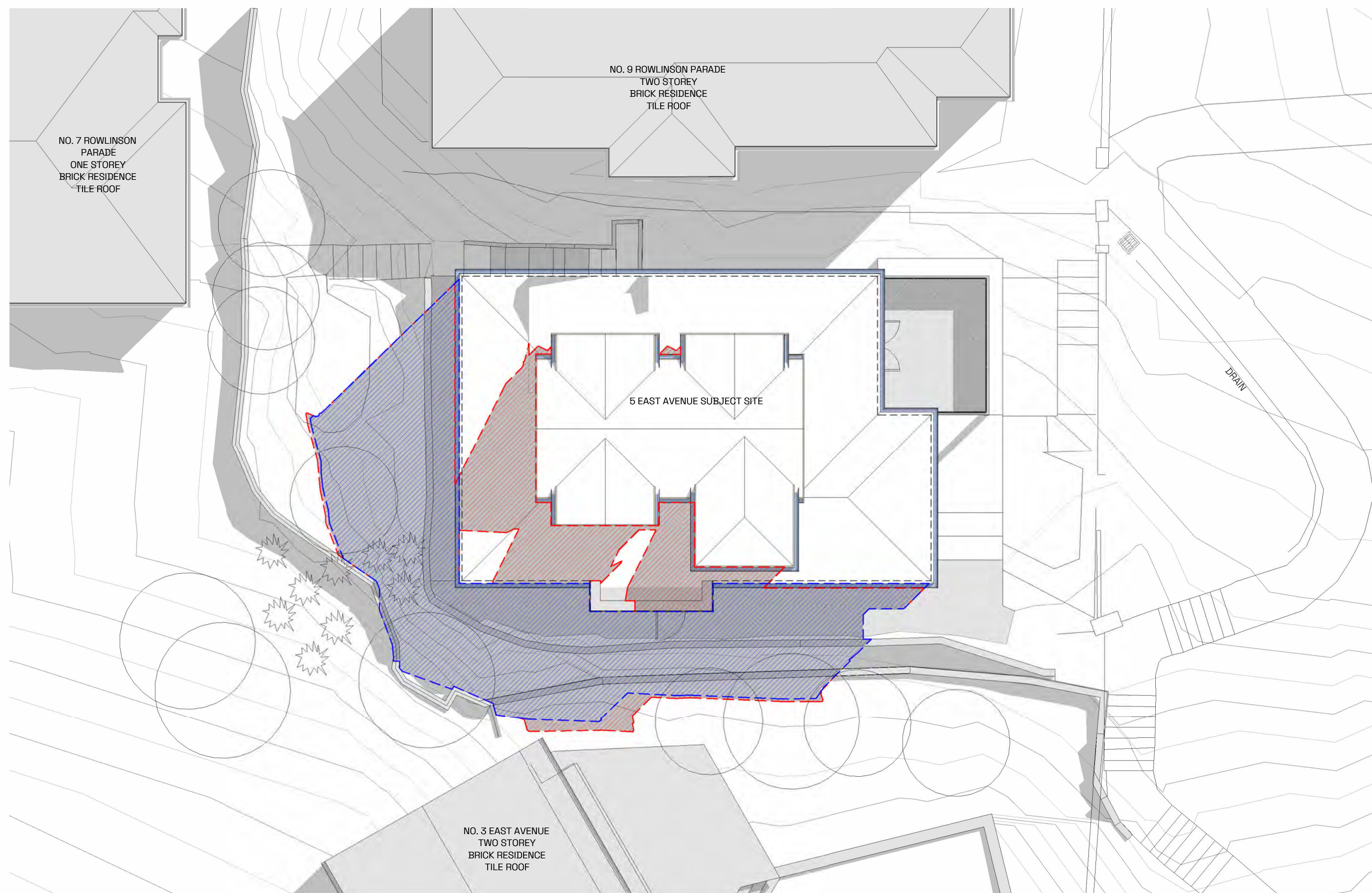
- EXISTING SHADOWS CAST
- PROPOSED SHADOWS CAST

**A4.03 - 2**

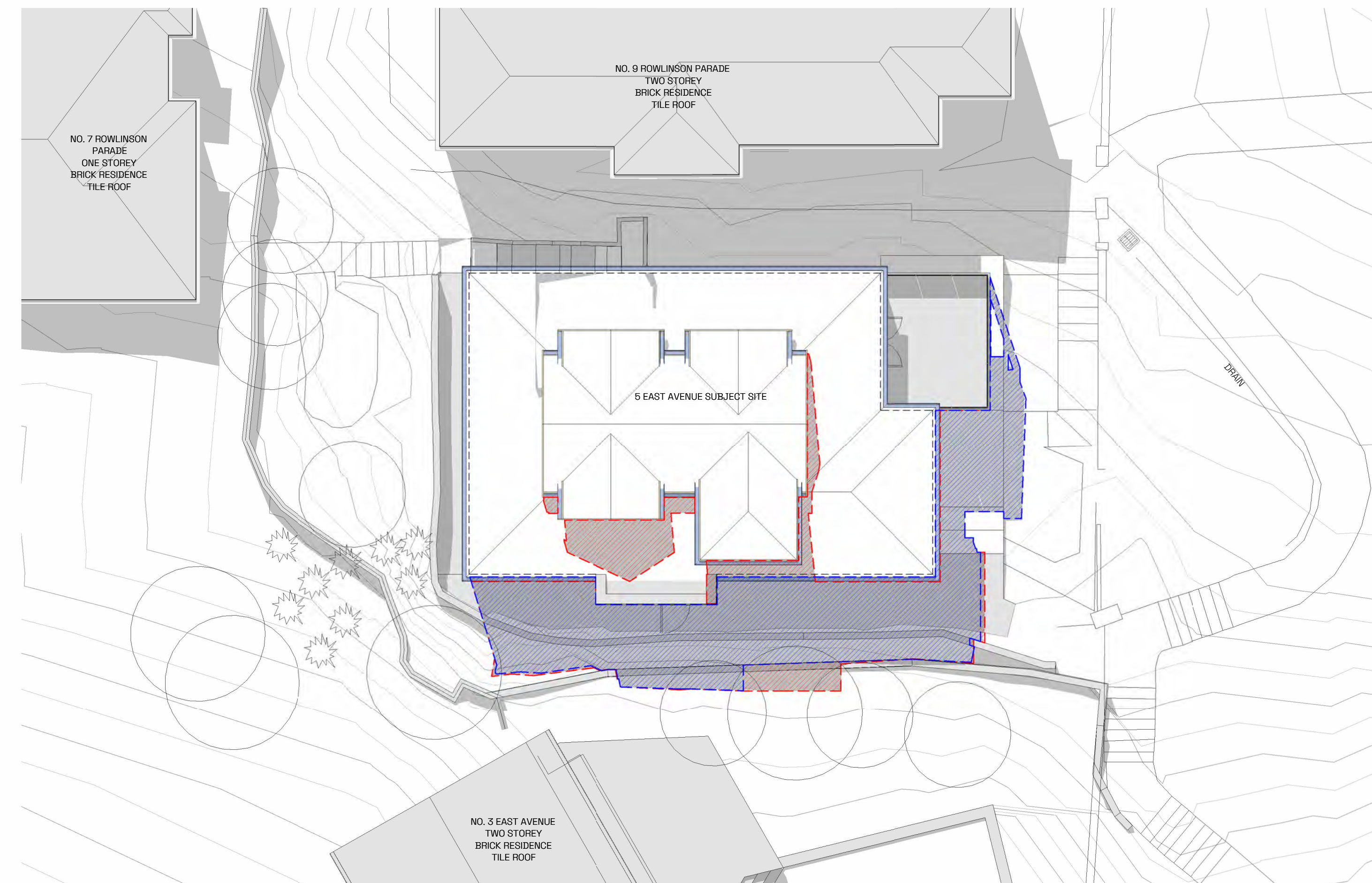
PROJECT:  
**5 EAST AVE, CAMMERAY**  
 CLIENT:  
**JAMES & JEN DIMIC**  
 DRAWING TITLE:  
**SHADOW DIAGRAMS JUNE**  
 ISSUE DATE: 2023.01.16 SCALE @A1: AS INDICATED PROJECT NO.: 2021

dieppe.

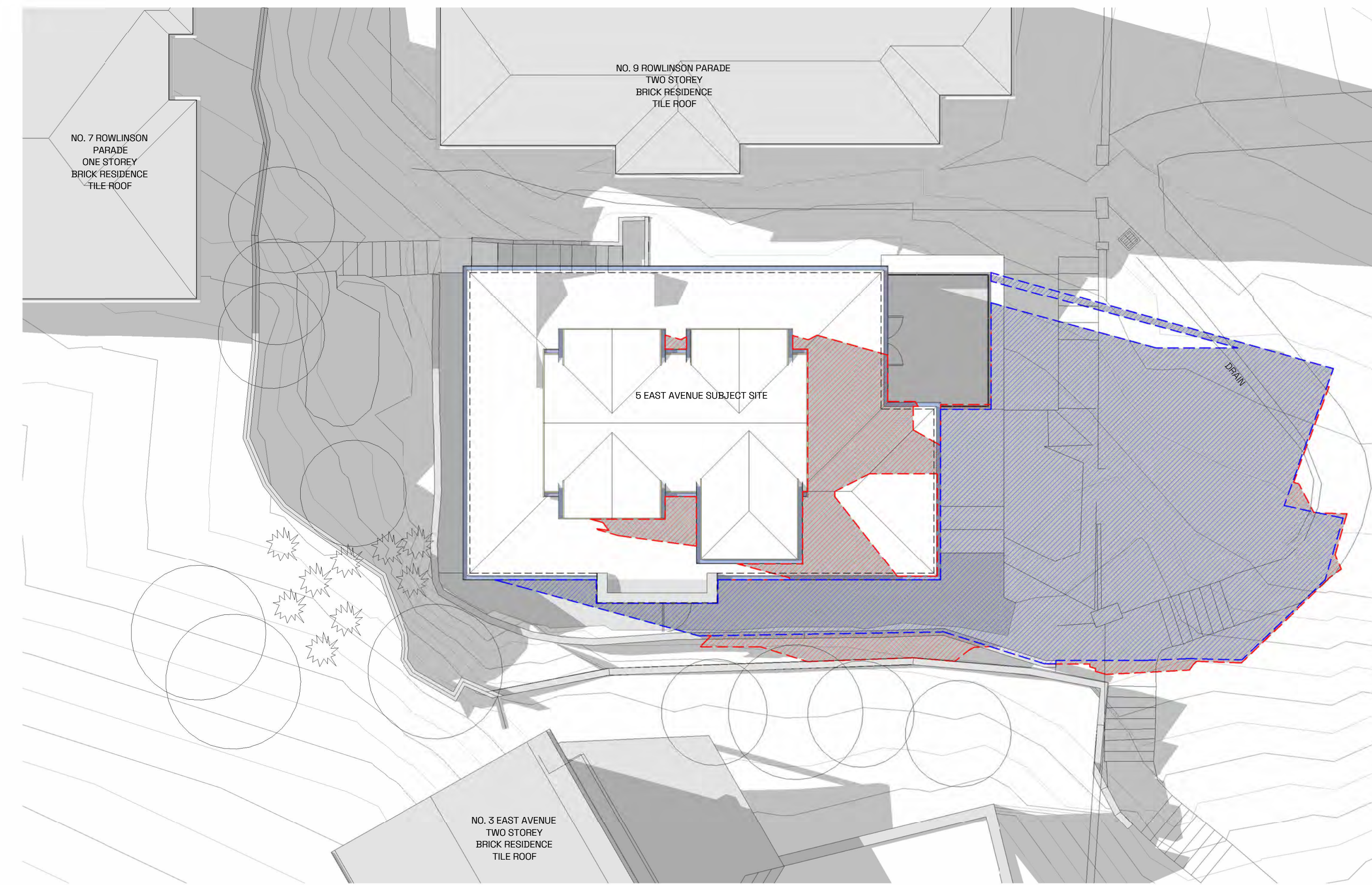




1 | 9AM SEPTEMBER

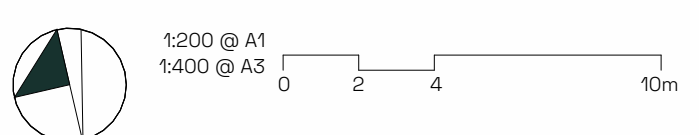


2 | 12PM 21ST SEPTEMBER



3 | 3PM 21ST SEPTEMBER

DEVELOPMENT APPLICATION		
REV	DATE	AMENDMENT
2	2023.01.16	AMENDED DA LODGEMENT
1	2022.09.05	DA ISSUE

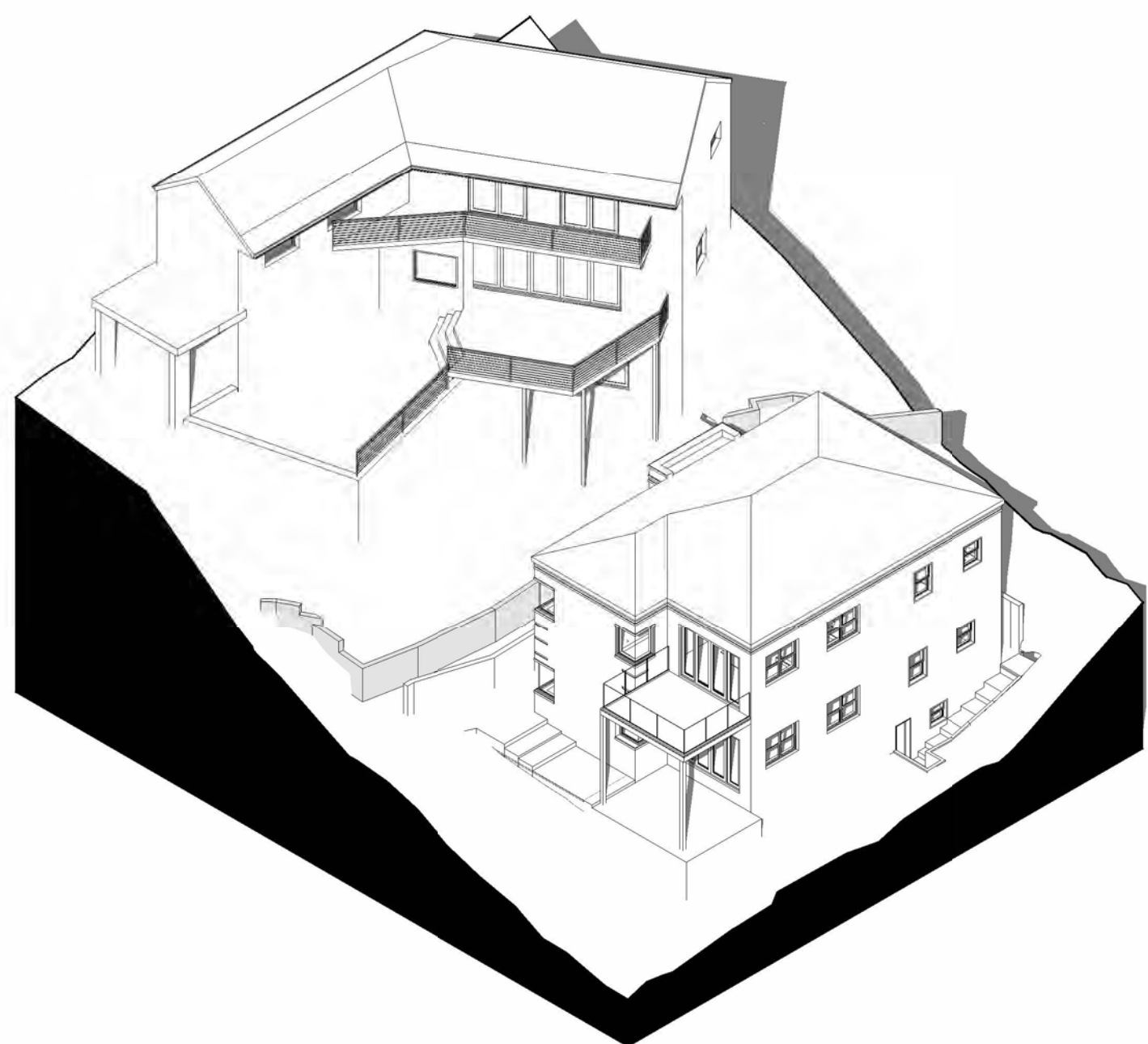


ARCHITECTURE - INTERIORS - PASSIVHAUS  
 NOTES: DO NOT SCALE FROM DRAWINGS VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING WORK.  
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 NOMINATED ARCHITECT - EDWARD DIEPPE - RAIA - NSW ARB: 10148

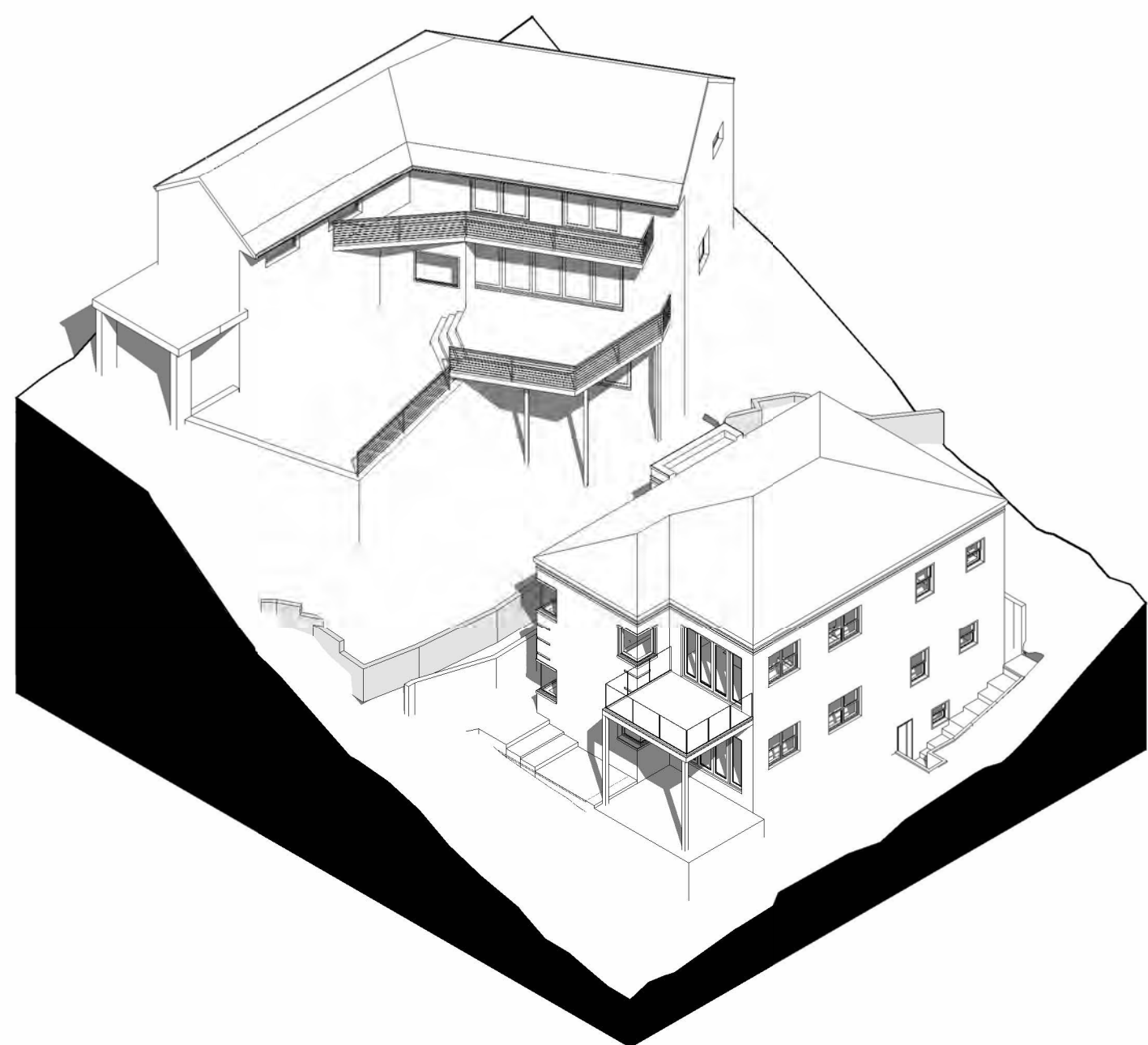
**SHADOW DIAGRAM LEGEND**  
 EXISTING SHADOWS CAST  
 PROPOSED SHADOWS CAST

**A4.04 - 2**  
 PROJECT: 5 EAST AVE, CAMMERAY  
 CLIENT: JAMES & JEN DIMIC  
 DRAWING TITLE: SHADOW DIAGRAMS SEPTEMBER  
 ISSUE DATE: 2023.01.16 SCALE @A1: AS INDICATED PROJECT NO.: 2021

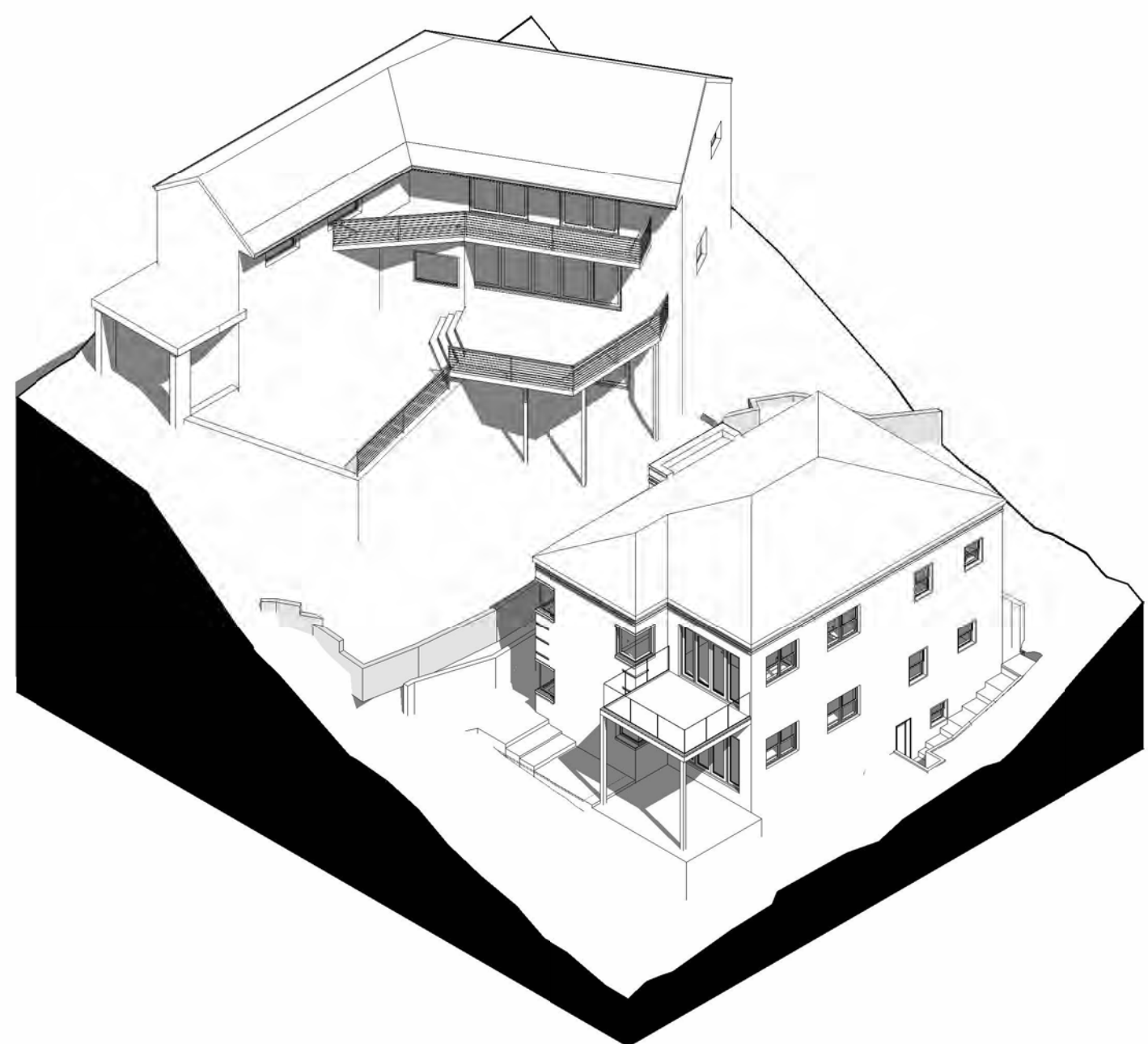




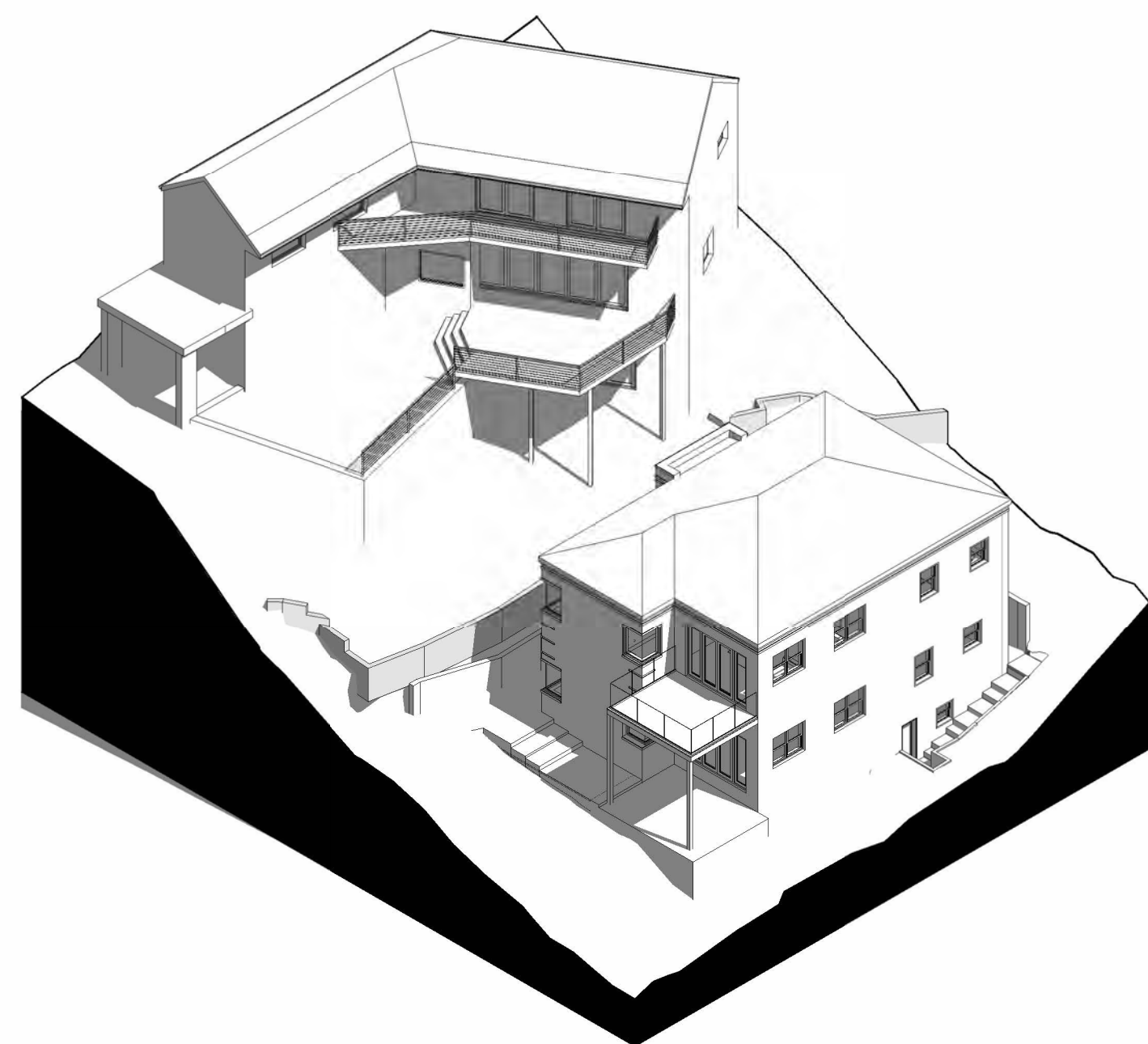
1 | SHADOW ANALYSIS MARCH 21ST 9AM - EXISTING



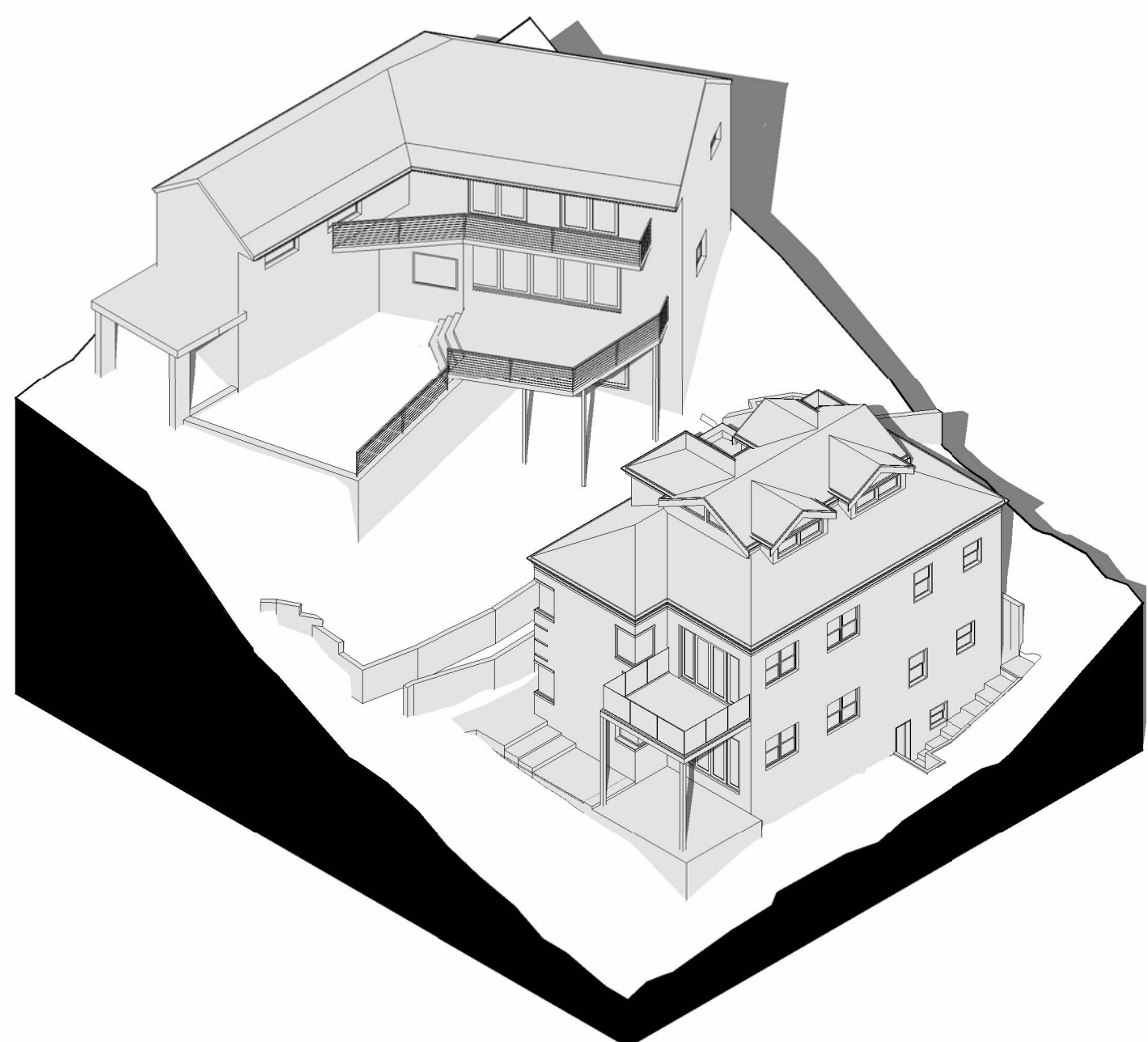
2 | SHADOW ANALYSIS MARCH 21ST 10AM - EXISTING



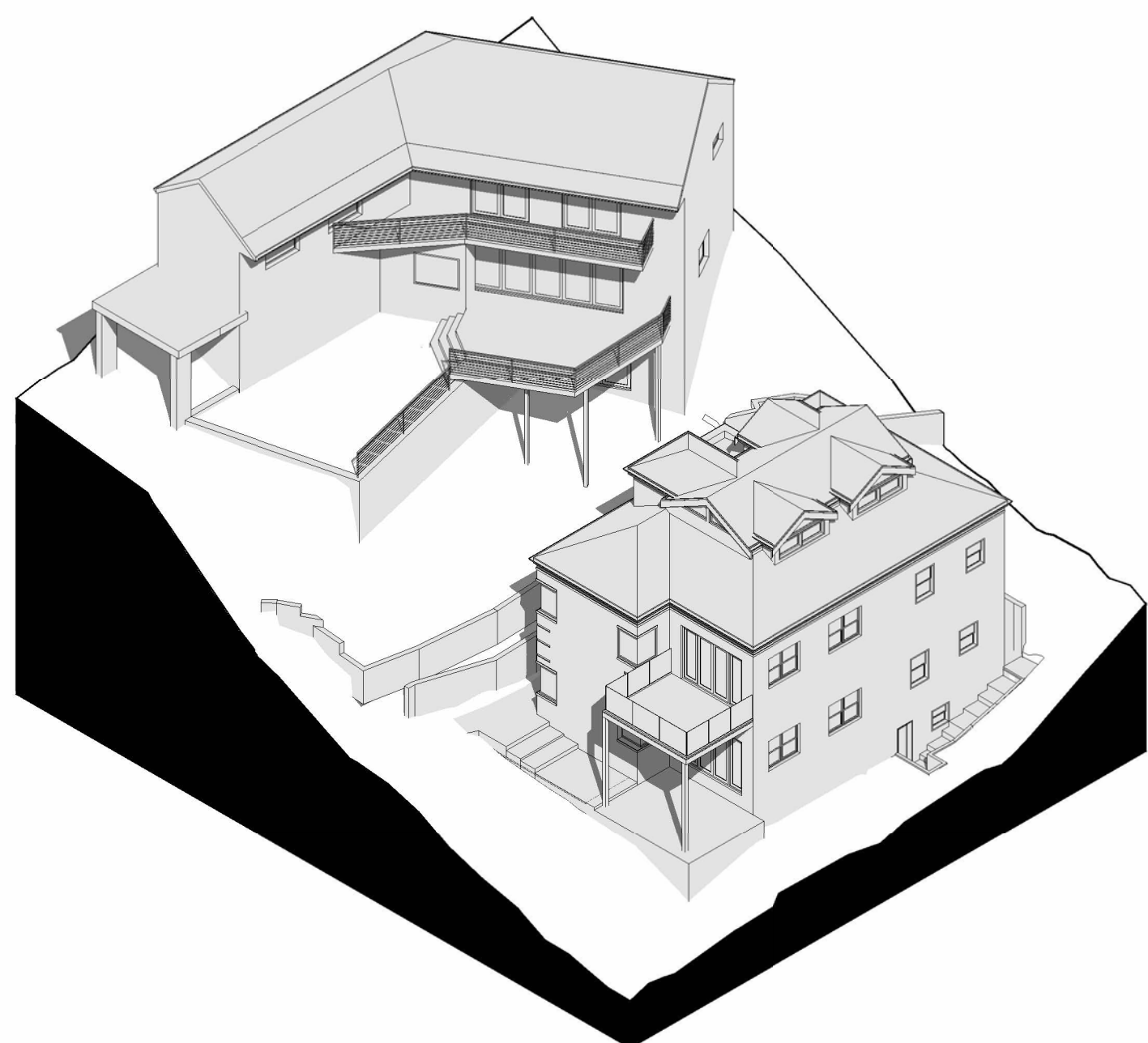
3 | SHADOW ANALYSIS MARCH 21ST 11AM - EXISTING



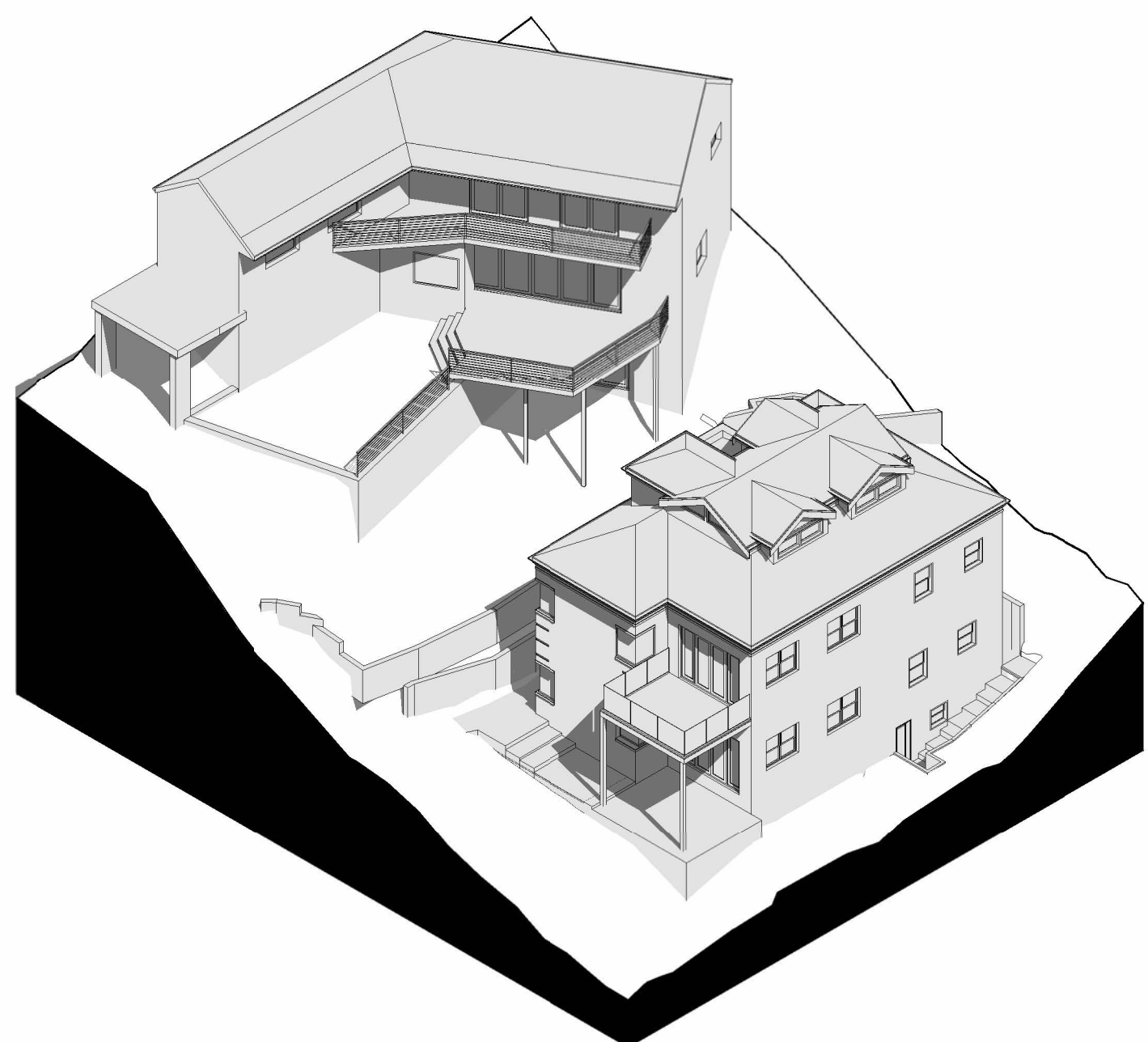
4 | SHADOW ANALYSIS MARCH 21ST 12PM - EXISTING



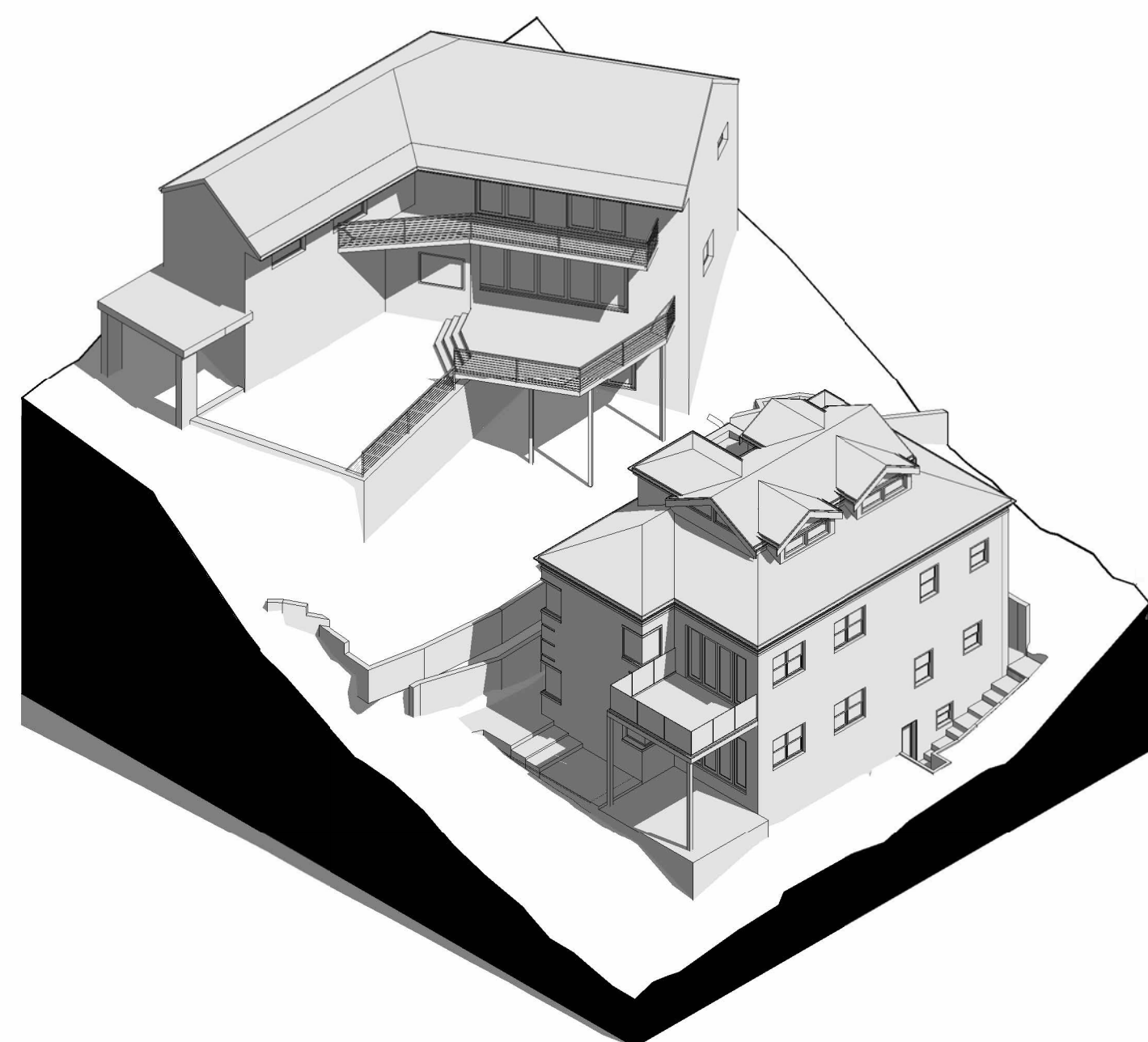
5 | SHADOW ANALYSIS MARCH 21ST 9AM - PROPOSED



6 | SHADOW ANALYSIS MARCH 21ST 10AM - PROPOSED



7 | SHADOW ANALYSIS MARCH 21ST 11AM - PROPOSED



8 | SHADOW ANALYSIS MARCH 21ST 12PM - PROPOSED

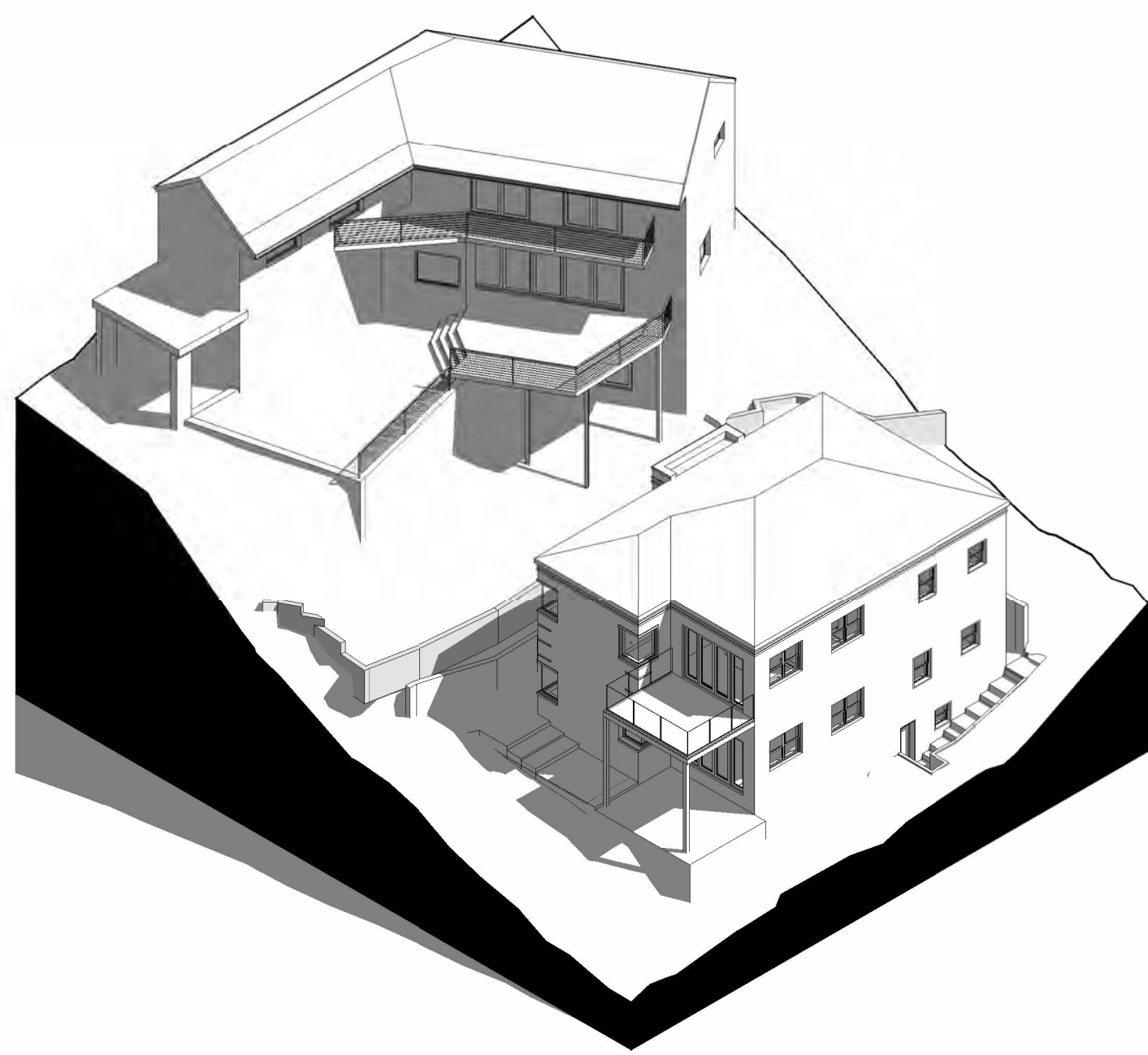
DEVELOPMENT APPLICATION		
REV	DATE	AMENDMENT
1	2023.01.16	AMENDED DA LODGEMENT



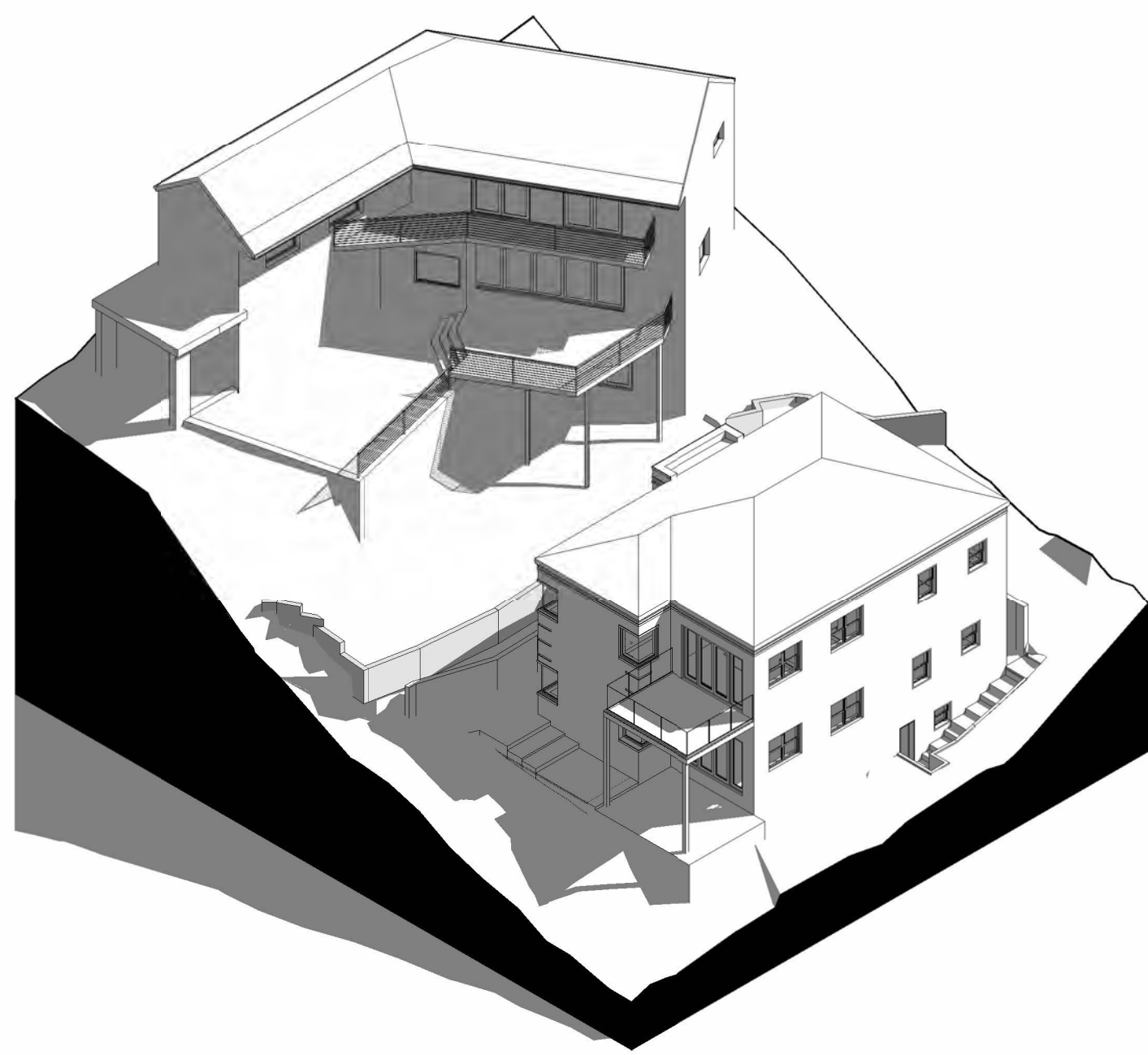
ARCHITECTURE - INTERIORS - PASSIVHAUS  
NOTES: DO NOT SCALE FROM DRAWINGS VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING WORK.  
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 NOMINATED ARCHITECT - EDWARD DIEPPE - RAIA - NSW ARB: 10148

**A4.05 - 1**  
 PROJECT: 5 EAST AVE, CAMMERAY  
 CLIENT: JAMES & JEN DIMIC  
 DRAWING TITLE: SHADOW DIAGRAMS MARCH  
 ISSUE DATE: 2023.01.16 SCALE @A4: AS INDICATED PROJECT NO.: 2021

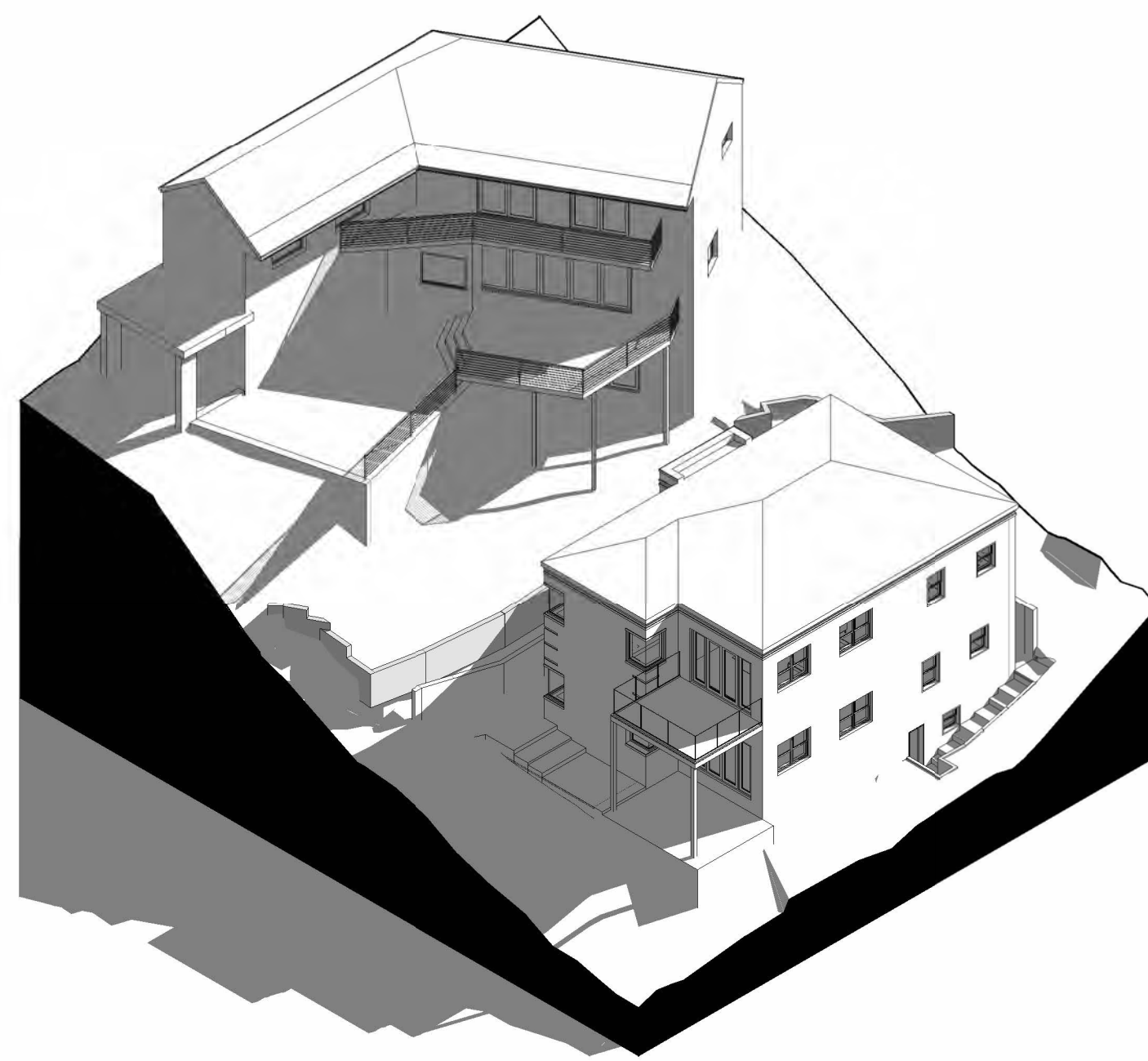




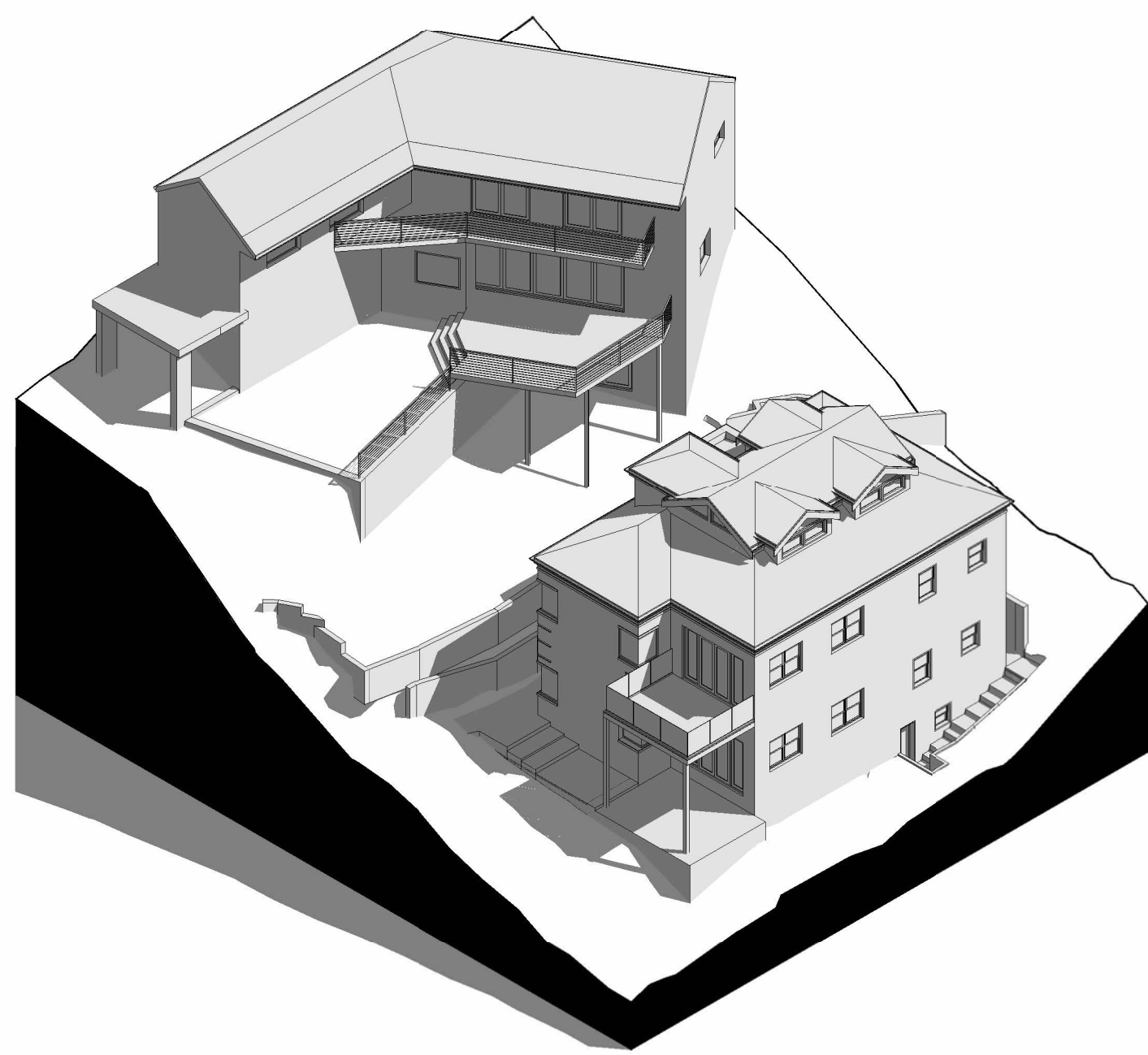
1 | SHADOW ANALYSIS MARCH 21ST 1PM - EXISTING



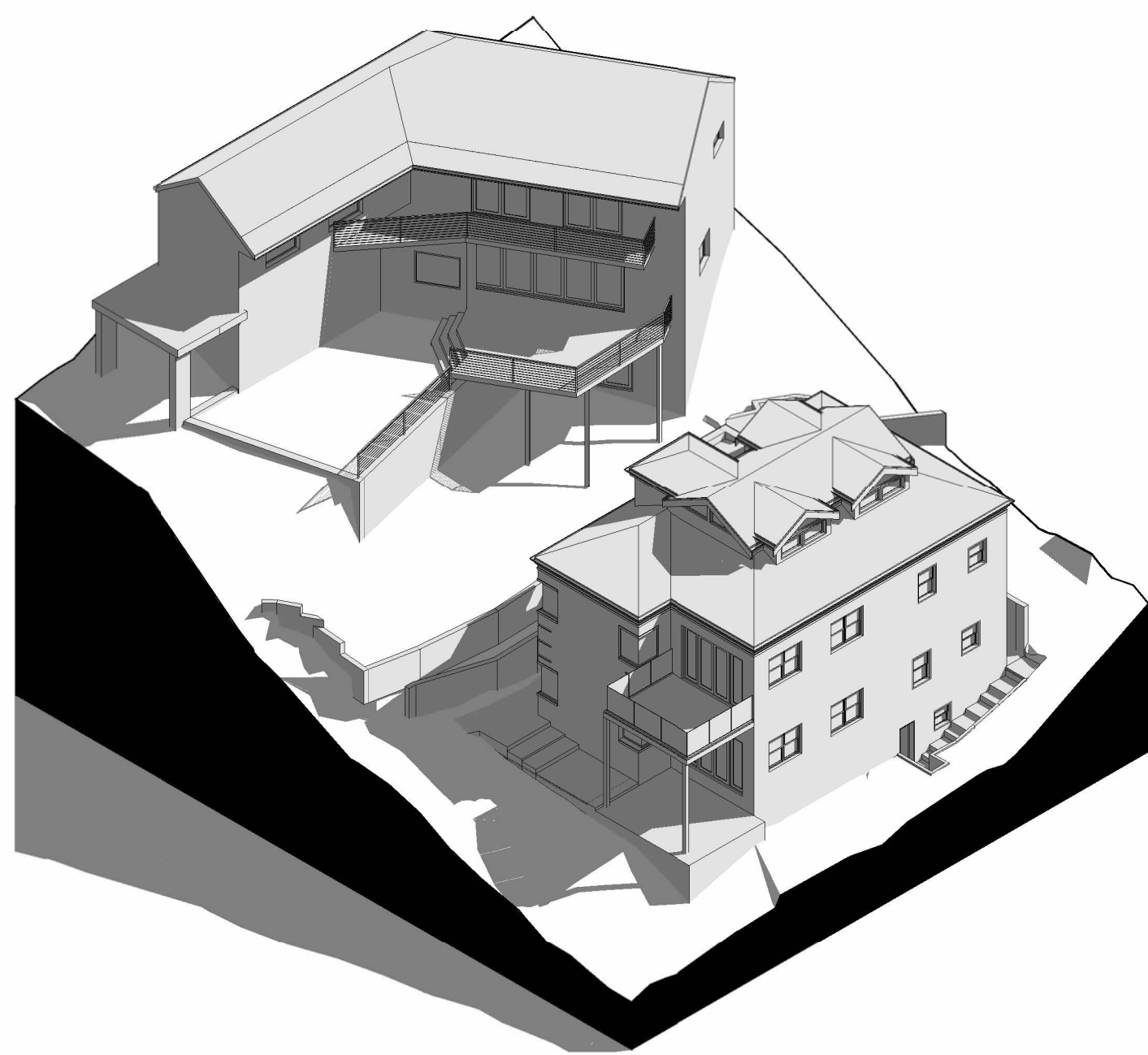
2 | SHADOW ANALYSIS MARCH 21ST 2PM - EXISTING



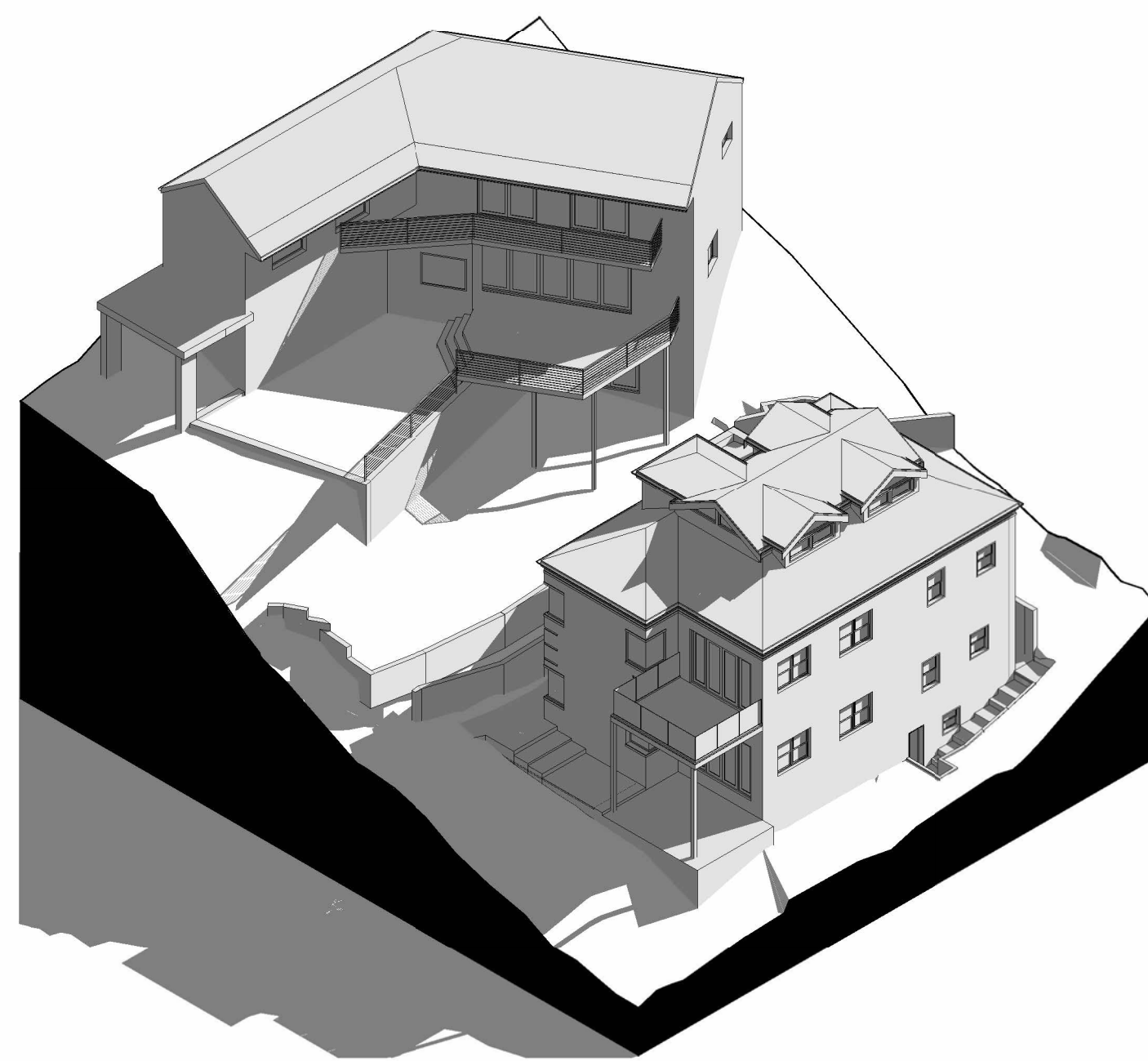
3 | SHADOW ANALYSIS MARCH 21ST 3PM - EXISTING



4 | SHADOW ANALYSIS MARCH 21ST 1PM - PROPOSED



5 | SHADOW ANALYSIS MARCH 21ST 2PM - PROPOSED



6 | SHADOW ANALYSIS MARCH 21ST 3PM - PROPOSED

DEVELOPMENT APPLICATION

REV	DATE	AMENDMENT
1	2023.01.16	AMENDED DA LODGEMENT



ARCHITECTURE - INTERIORS - PASSIVHAUS

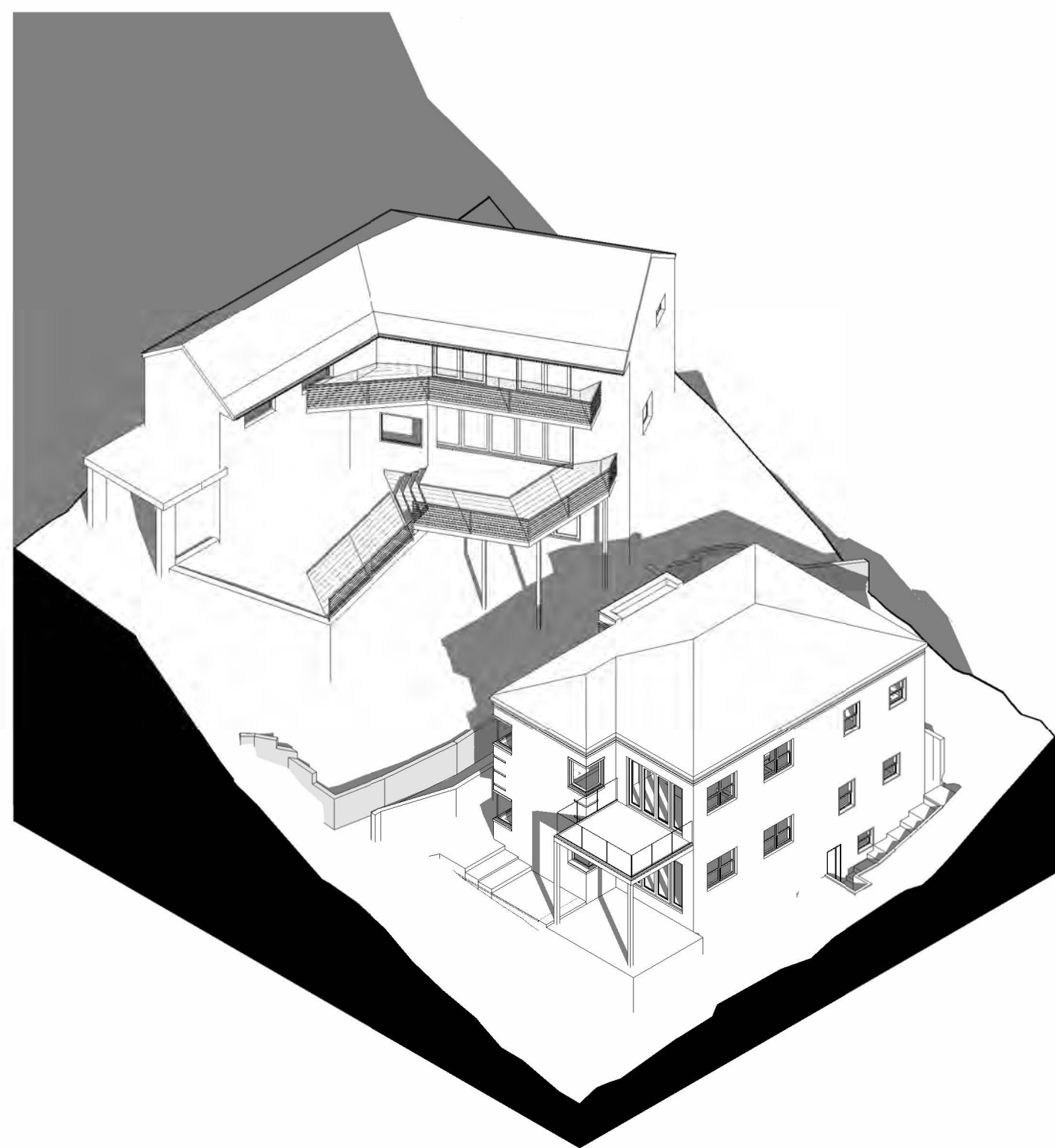
NOTES: DO NOT SCALE FROM DRAWINGS VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING WORK.  
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NOMINATED ARCHITECT - EDWARD DIEPPE - RAA - NSW ARB: 10148

A4.06 - 1

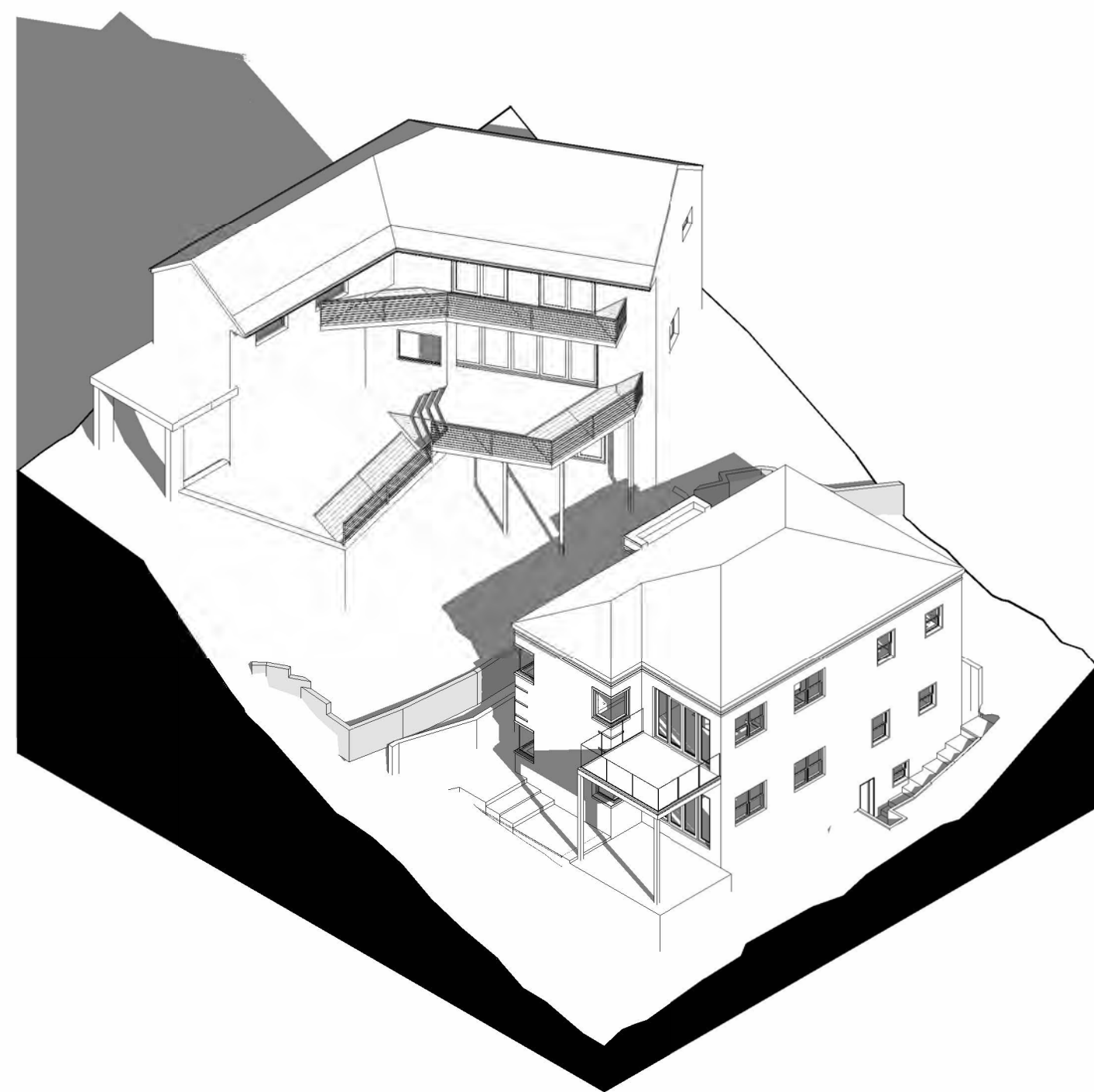
PROJECT:  
5 EAST AVE, CAMMERAY  
CLIENT:  
JAMES & JEN DIMIC  
DRAWING TITLE:  
SHADOW DIAGRAMS MARCH .2  
ISSUE DATE: 2023.01.16  
SCALE @A1:  
PROJECT NO.: 2021

dieppe

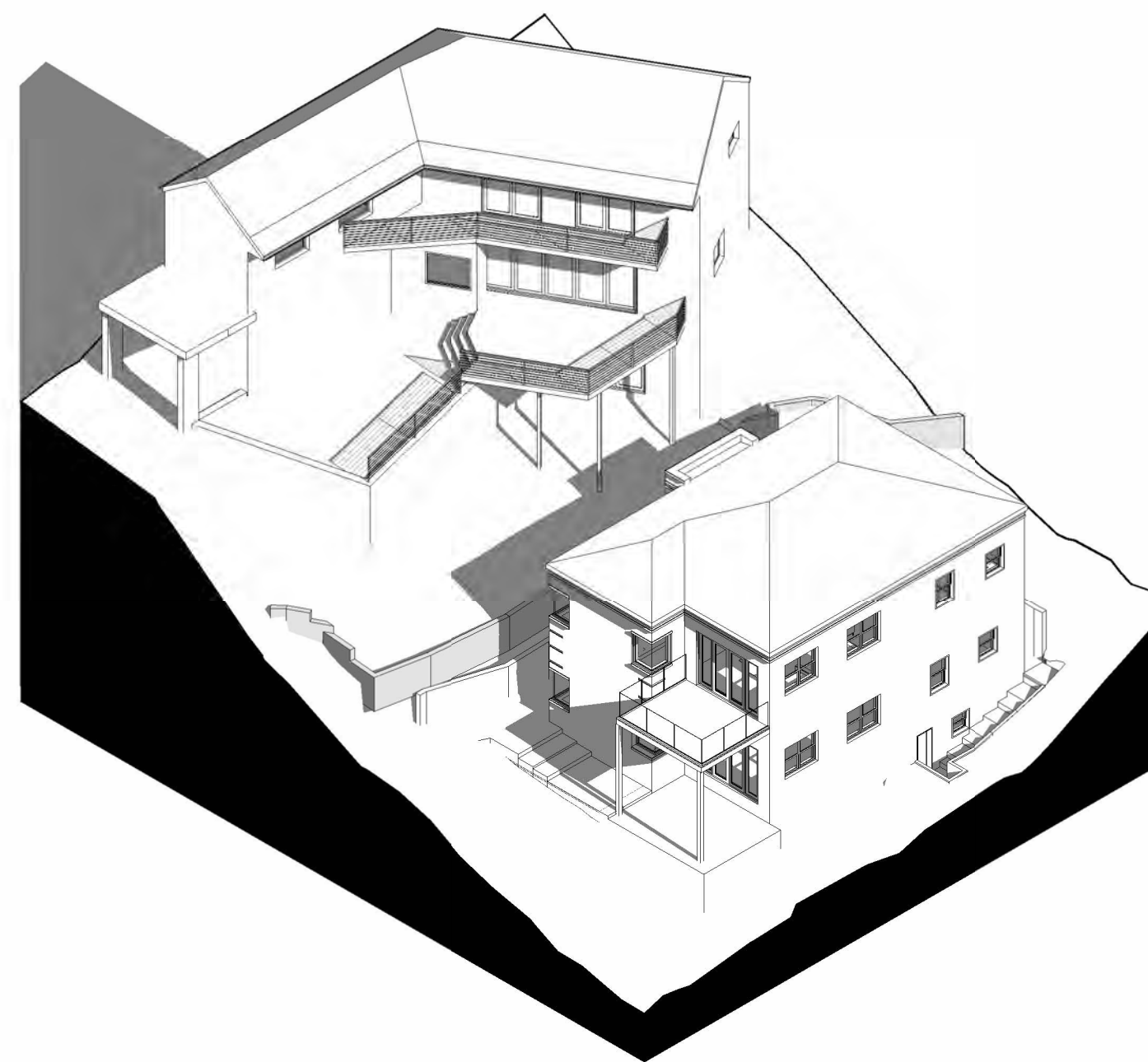




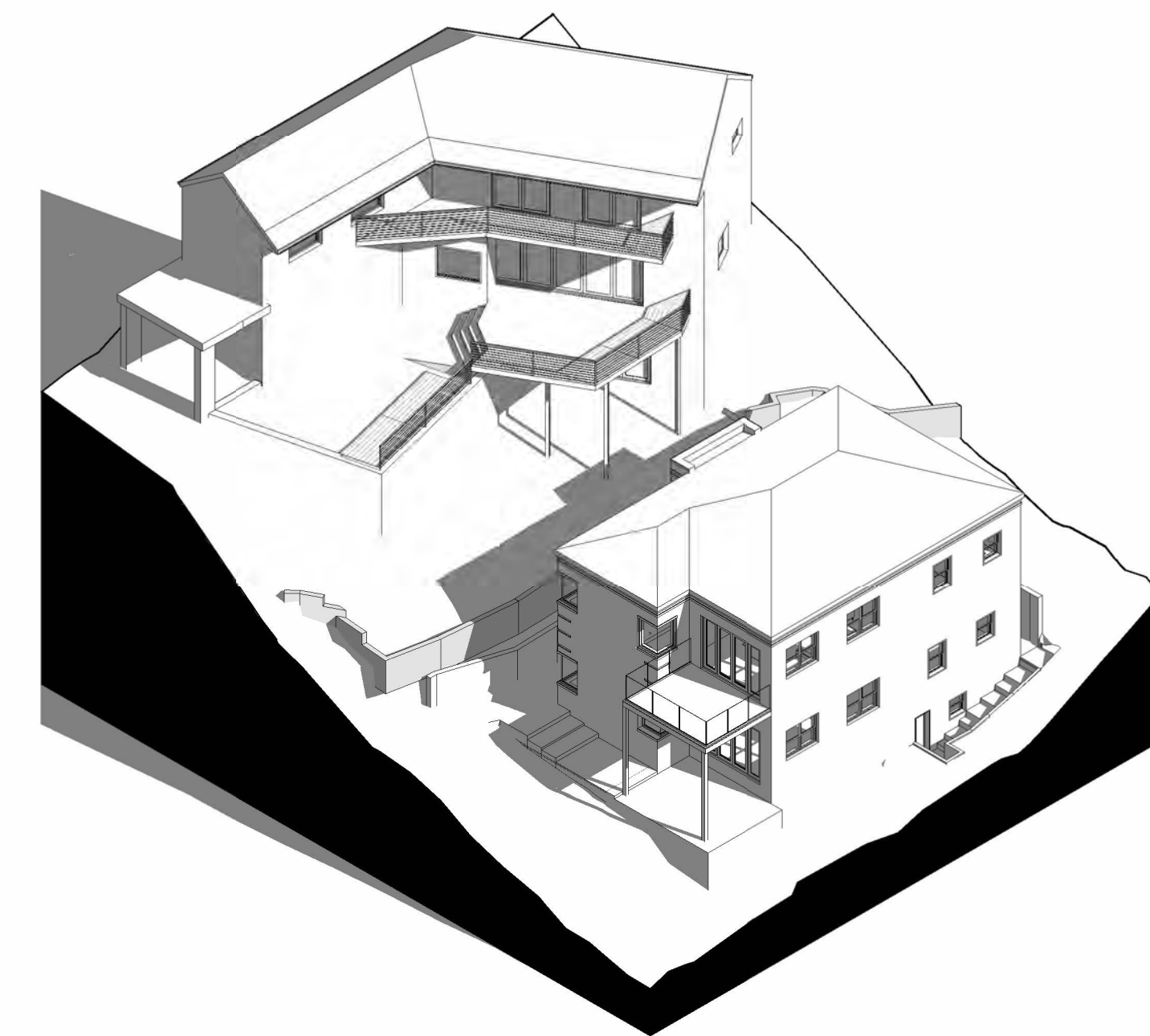
1 | SHADOW ANALYSIS JUNE 21ST 9AM - EXISTING



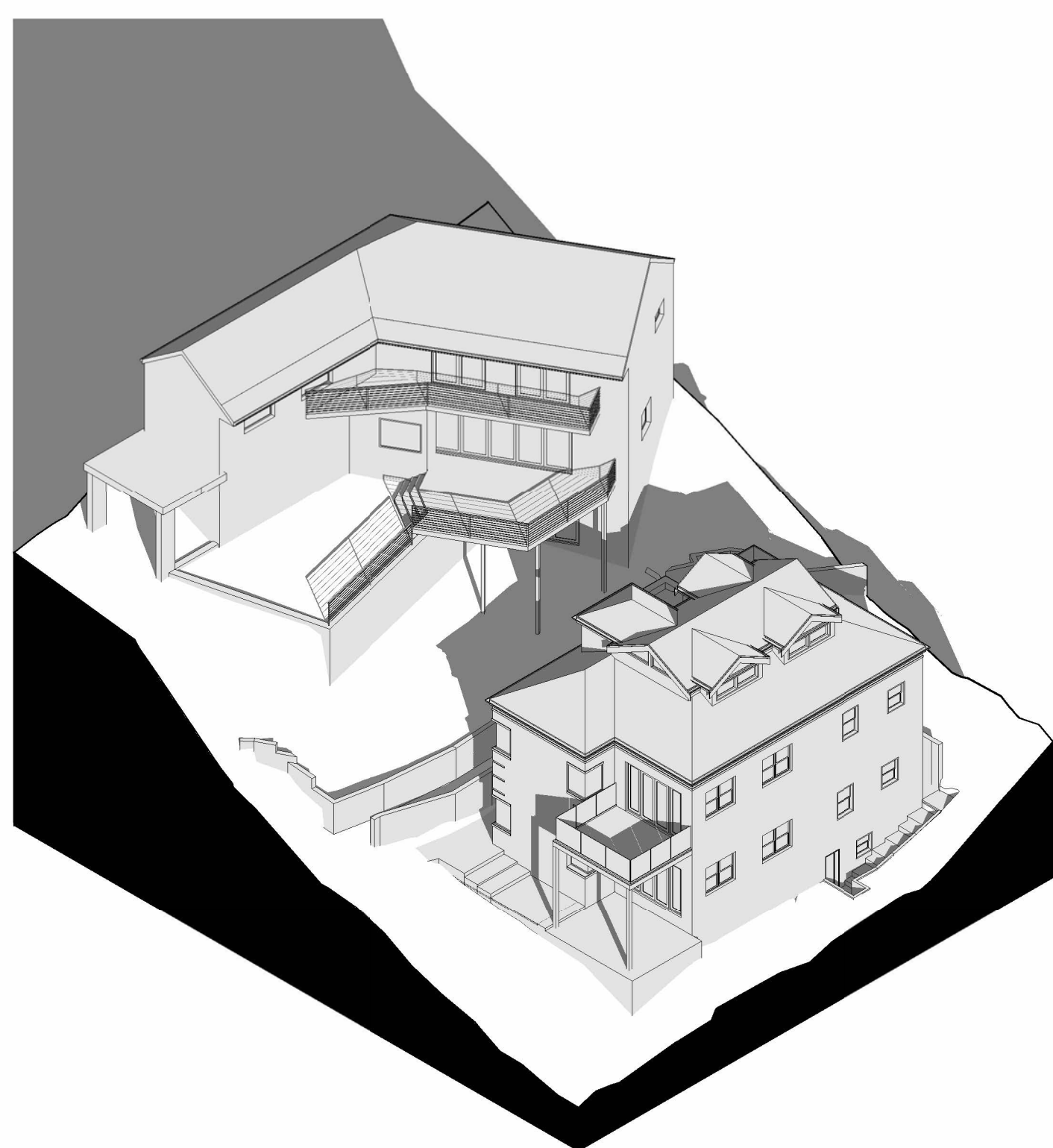
2 | SHADOW ANALYSIS JUNE 21ST 10AM - EXISTING



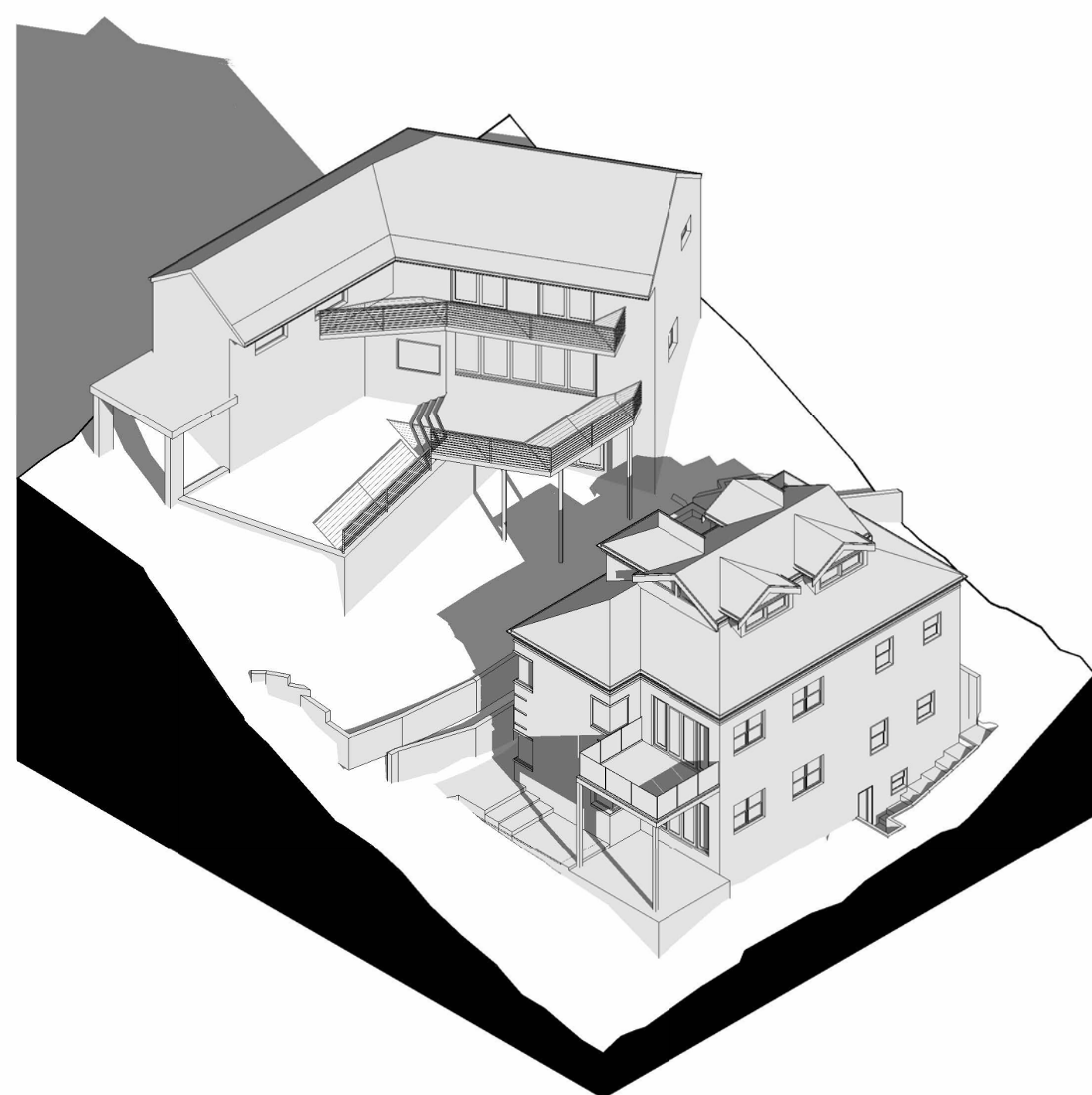
3 | SHADOW ANALYSIS JUNE 21ST 11AM - EXISTING



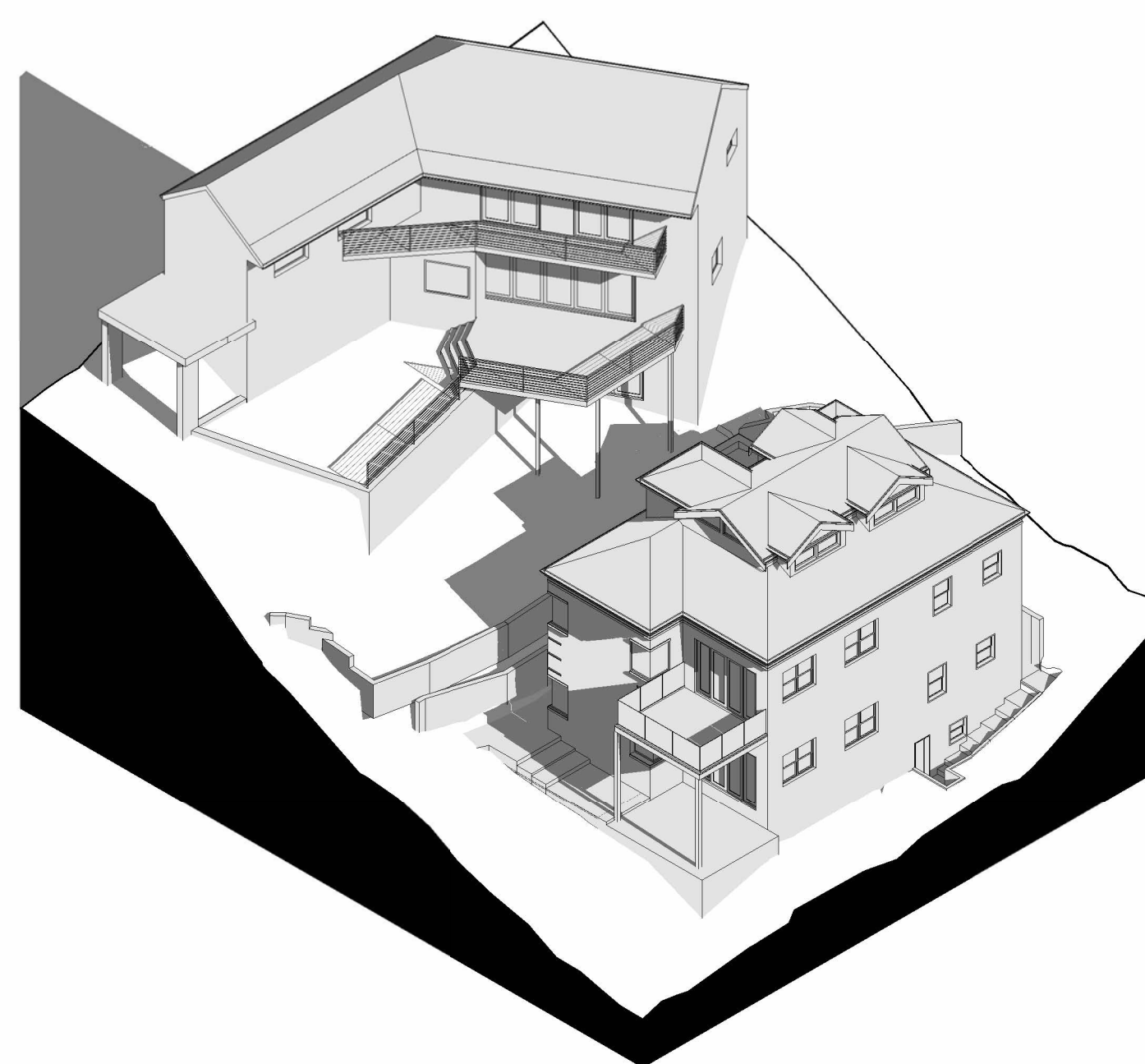
4 | SHADOW ANALYSIS JUNE 21ST 12PM - EXISTING



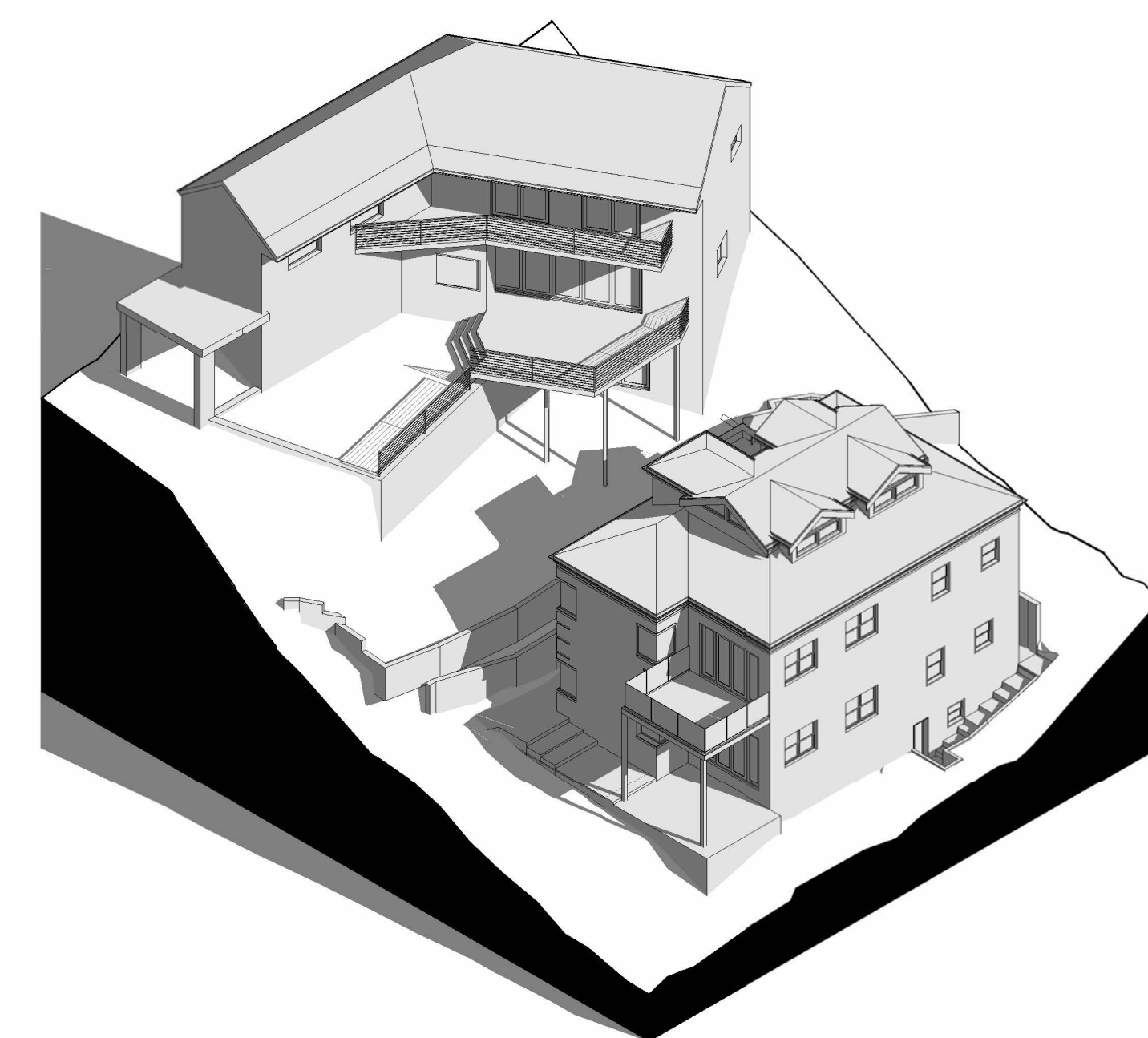
5 | SHADOW ANALYSIS JUNE 21ST 9AM - PROPOSED



6 | SHADOW ANALYSIS JUNE 21ST 10AM - PROPOSED



7 | SHADOW ANALYSIS JUNE 21ST 11AM - PROPOSED



8 | SHADOW ANALYSIS JUNE 21ST 12PM - PROPOSED

DEVELOPMENT APPLICATION

REV	DATE	AMENDMENT
1	2023.01.16	AMENDED DA LODGEMENT



ARCHITECTURE - INTERIORS - PASSIVHAUS

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NOMINATED ARCHITECT - EDWARD DIEPPE - RAIA - NSW ARB: 10148

A4.07 - 1

PROJECT: 5 EAST AVE, CAMMERAY

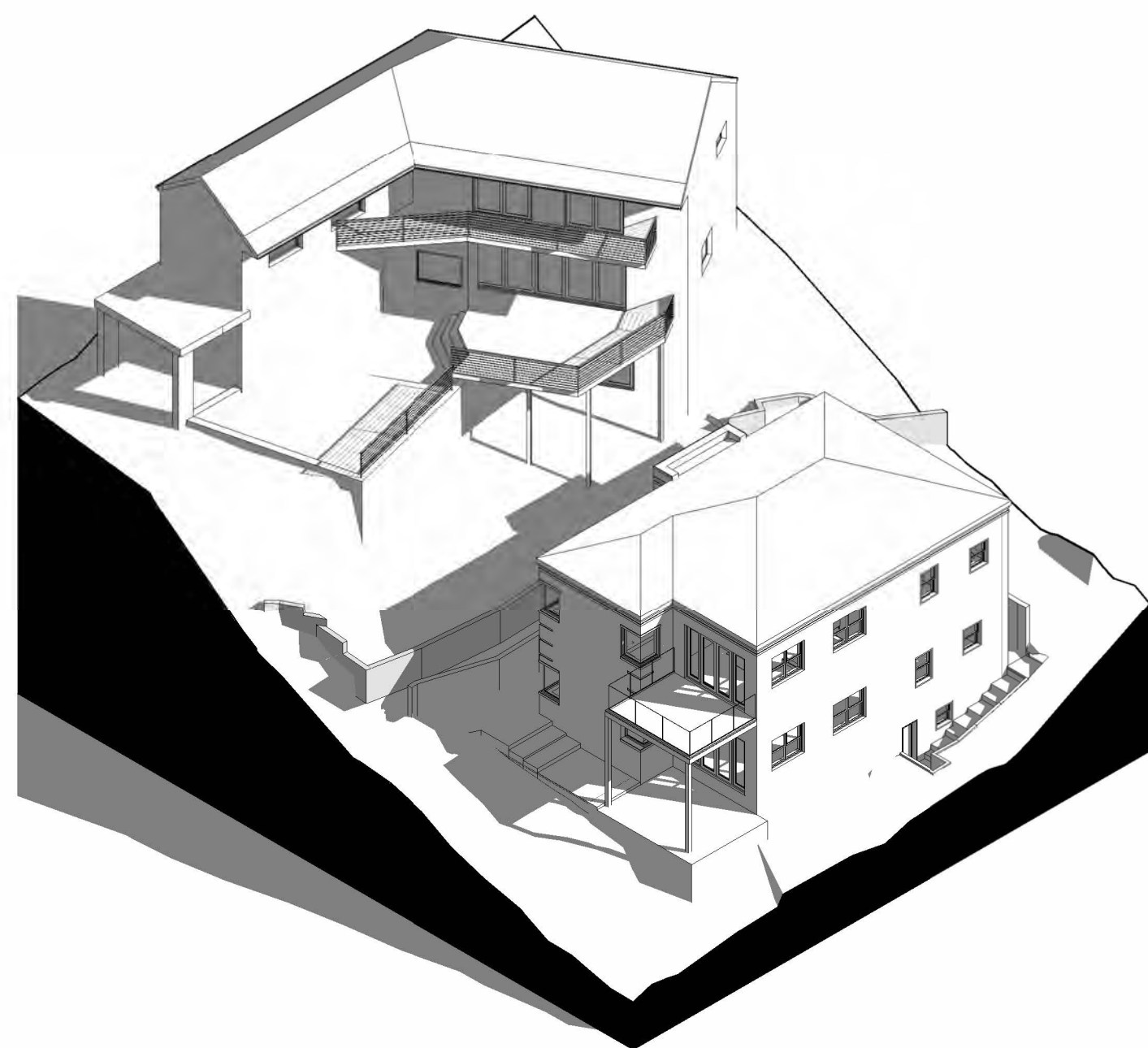
CLIENT: JAMES & JEN DIMIC

DRAWING TITLE: SHADOW DIAGRAMS JUNE

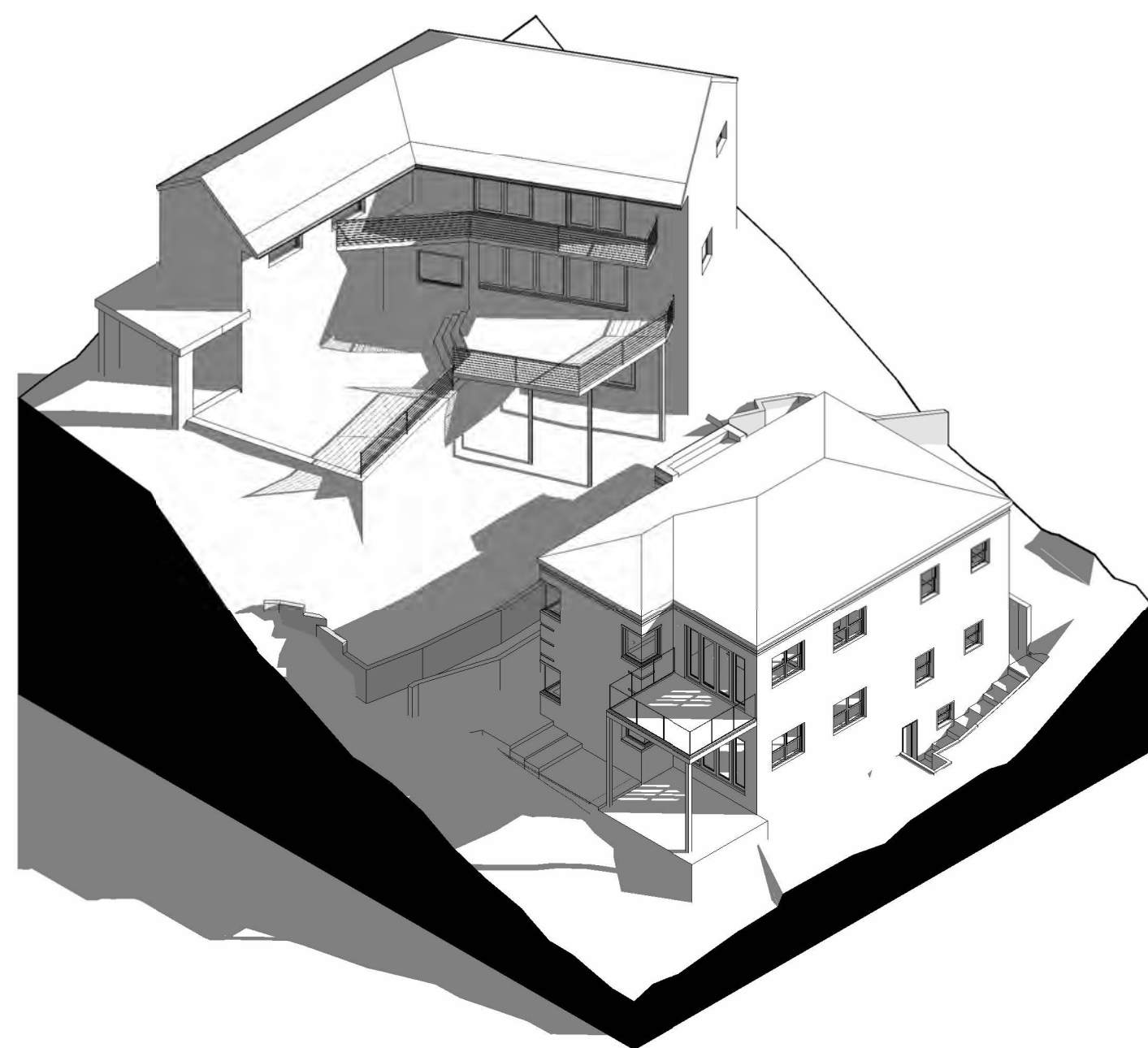
ISSUE DATE: 2023.01.16 SCALE @A4: AS INDICATED PROJECT NO.: 2021

dieppe

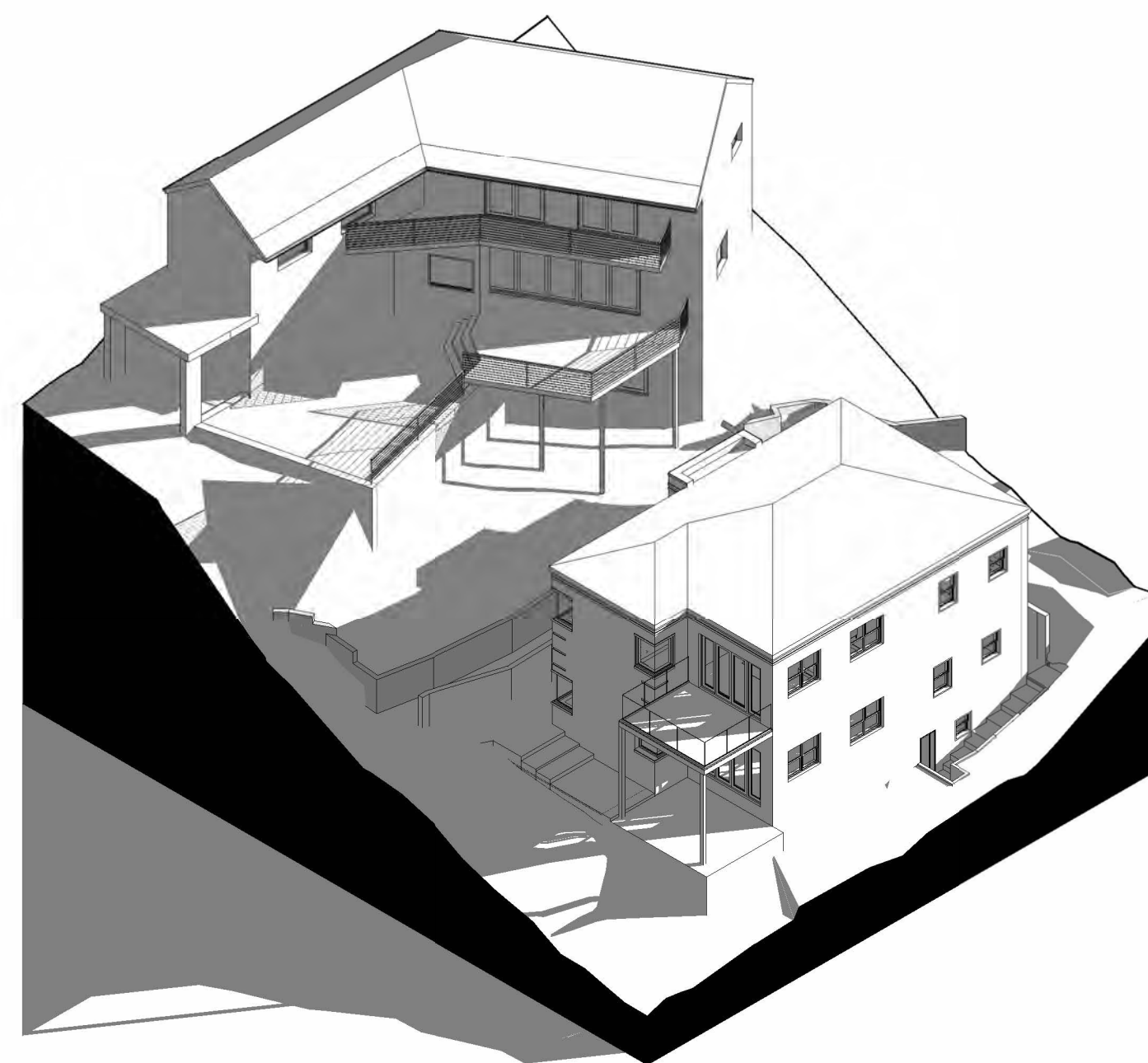




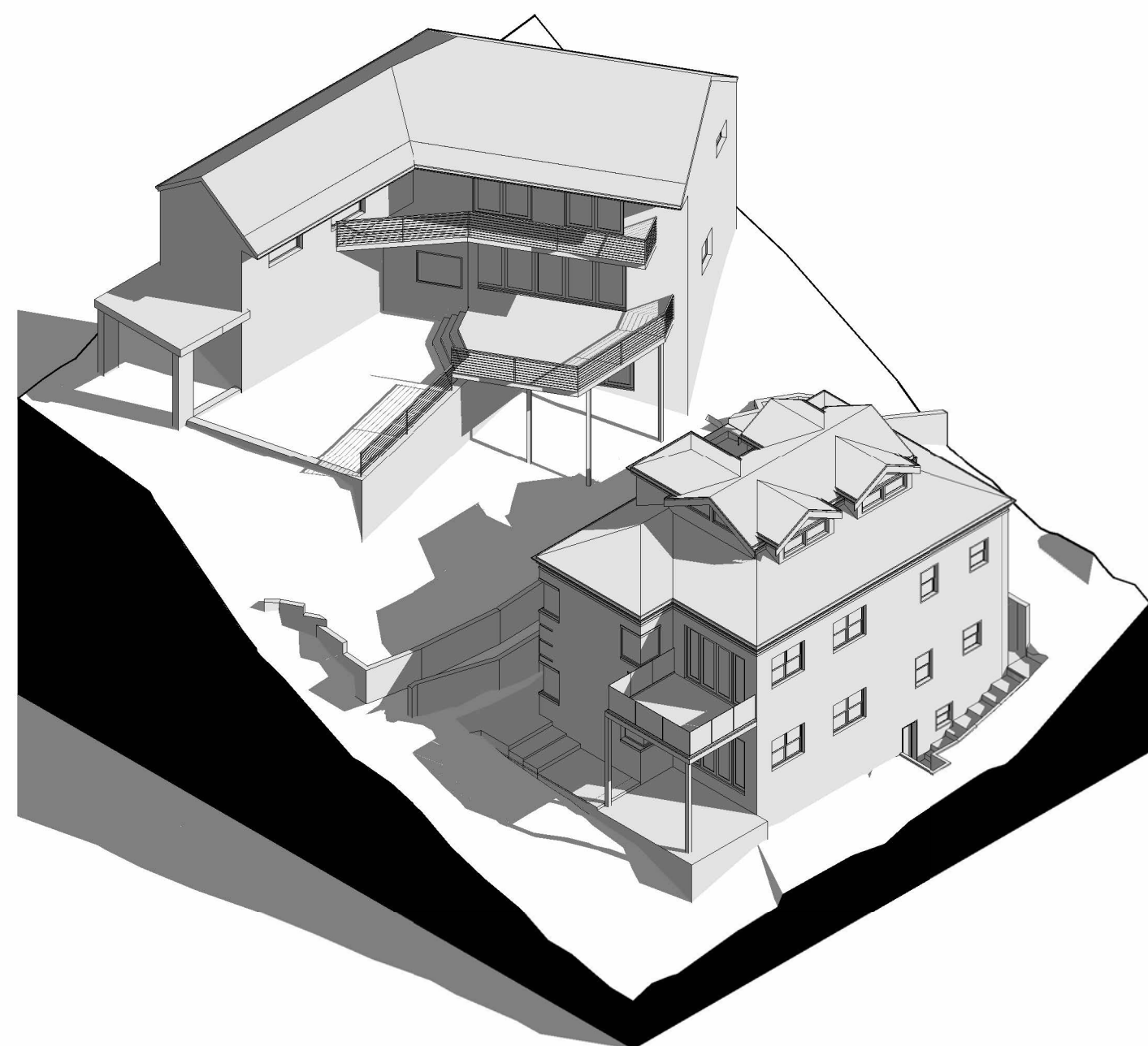
1 | SHADOW ANALYSIS JUNE 21ST 1PM - EXISTING



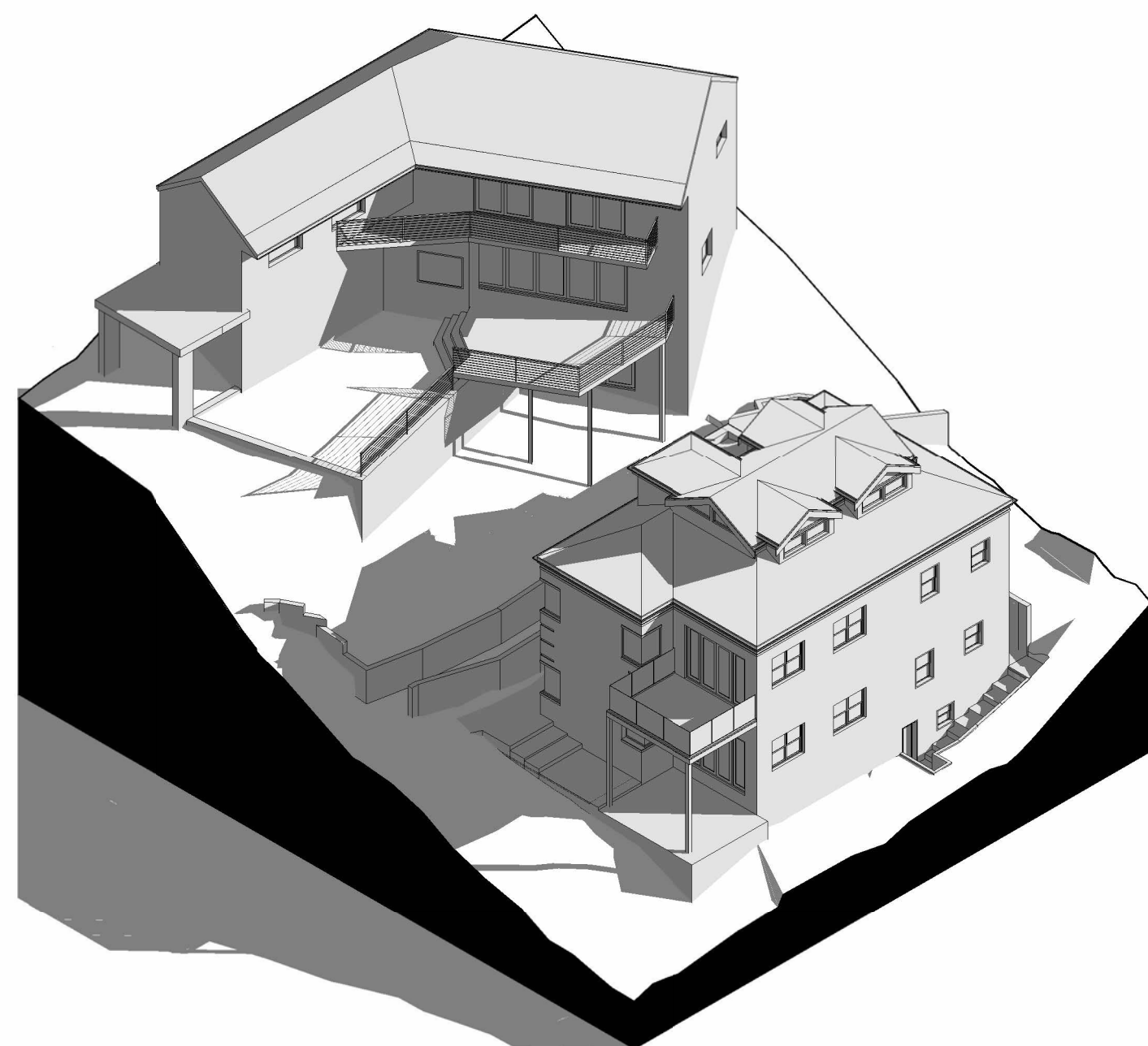
2 | SHADOW ANALYSIS JUNE 21ST 2PM - EXISTING



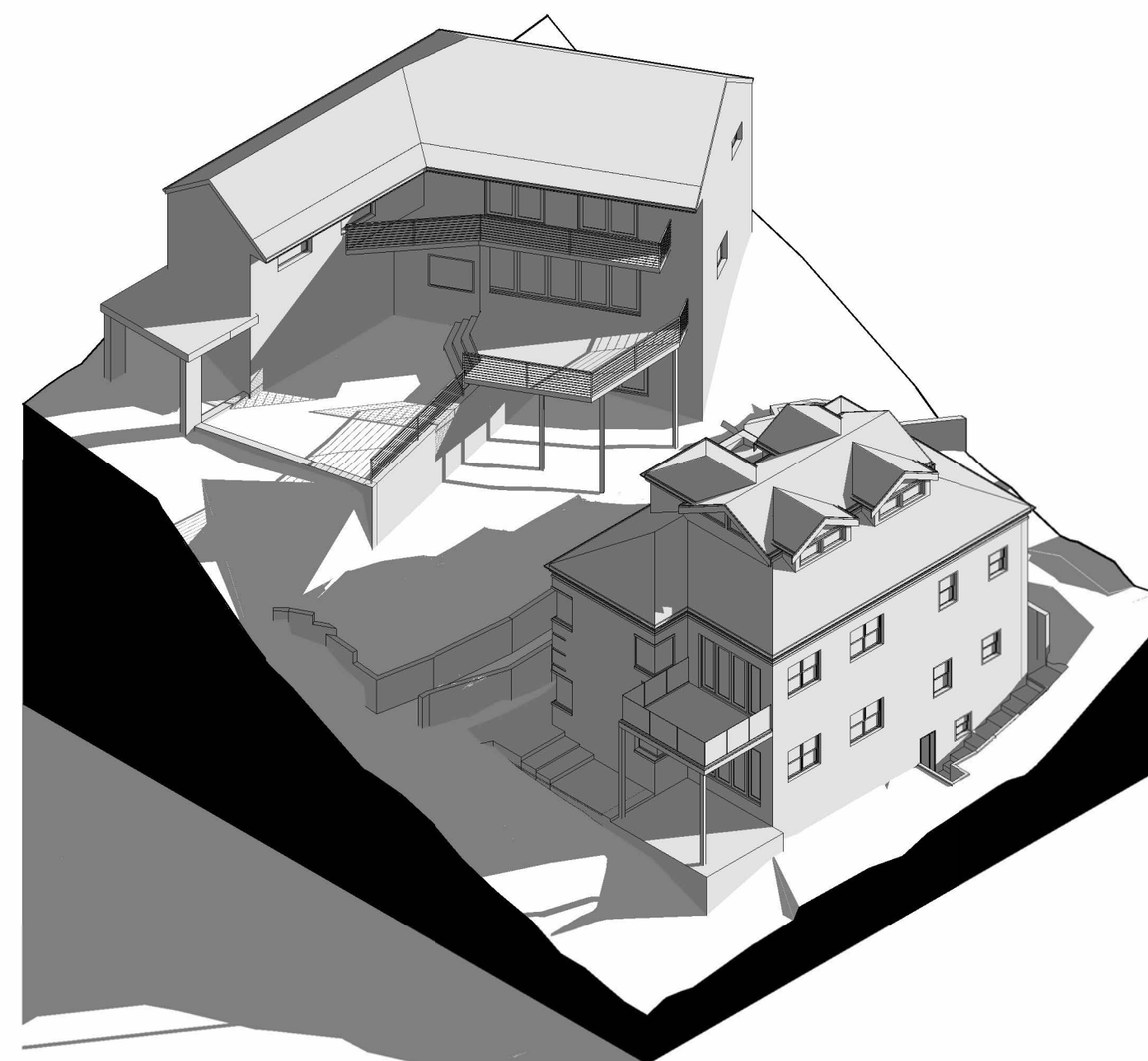
3 | SHADOW ANALYSIS JUNE 21ST 3PM - EXISTING



4 | SHADOW ANALYSIS JUNE 21ST 1PM - PROPOSED



5 | SHADOW ANALYSIS JUNE 21ST 2PM - PROPOSED



6 | SHADOW ANALYSIS JUNE 21ST 3PM - PROPOSED

DEVELOPMENT APPLICATION

REV	DATE	AMENDMENT
1	2023.01.16	AMENDED DA LODGEMENT



ARCHITECTURE - INTERIORS - PASSIVHAUS

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A4.08 - 1

PROJECT: 5 EAST AVE, CAMMERAY

CLIENT: JAMES & JEN DIMIC

DRAWING TITLE: SHADOW DIAGRAMS JUNE .2

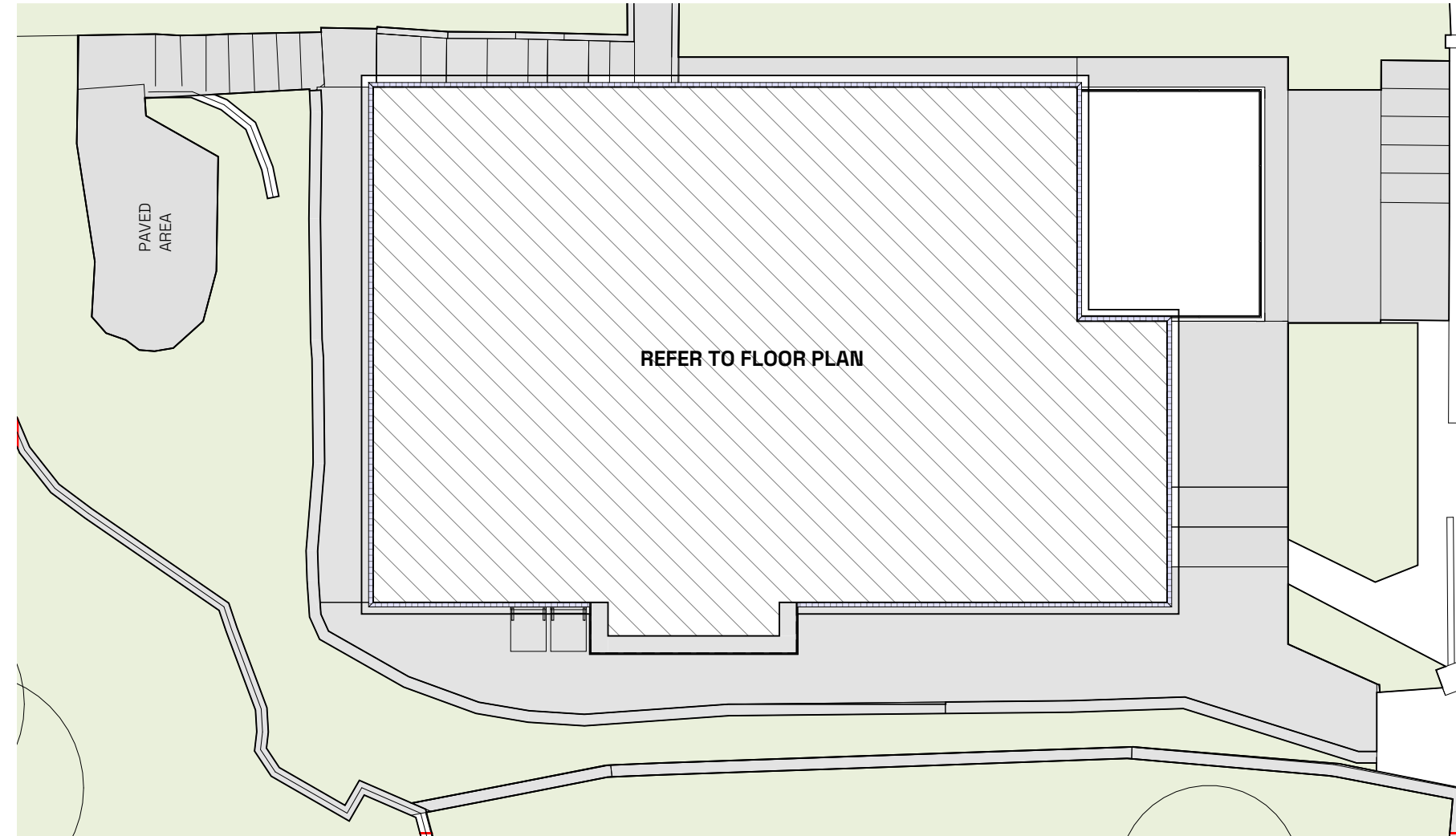
ISSUE DATE: 2023.01.16

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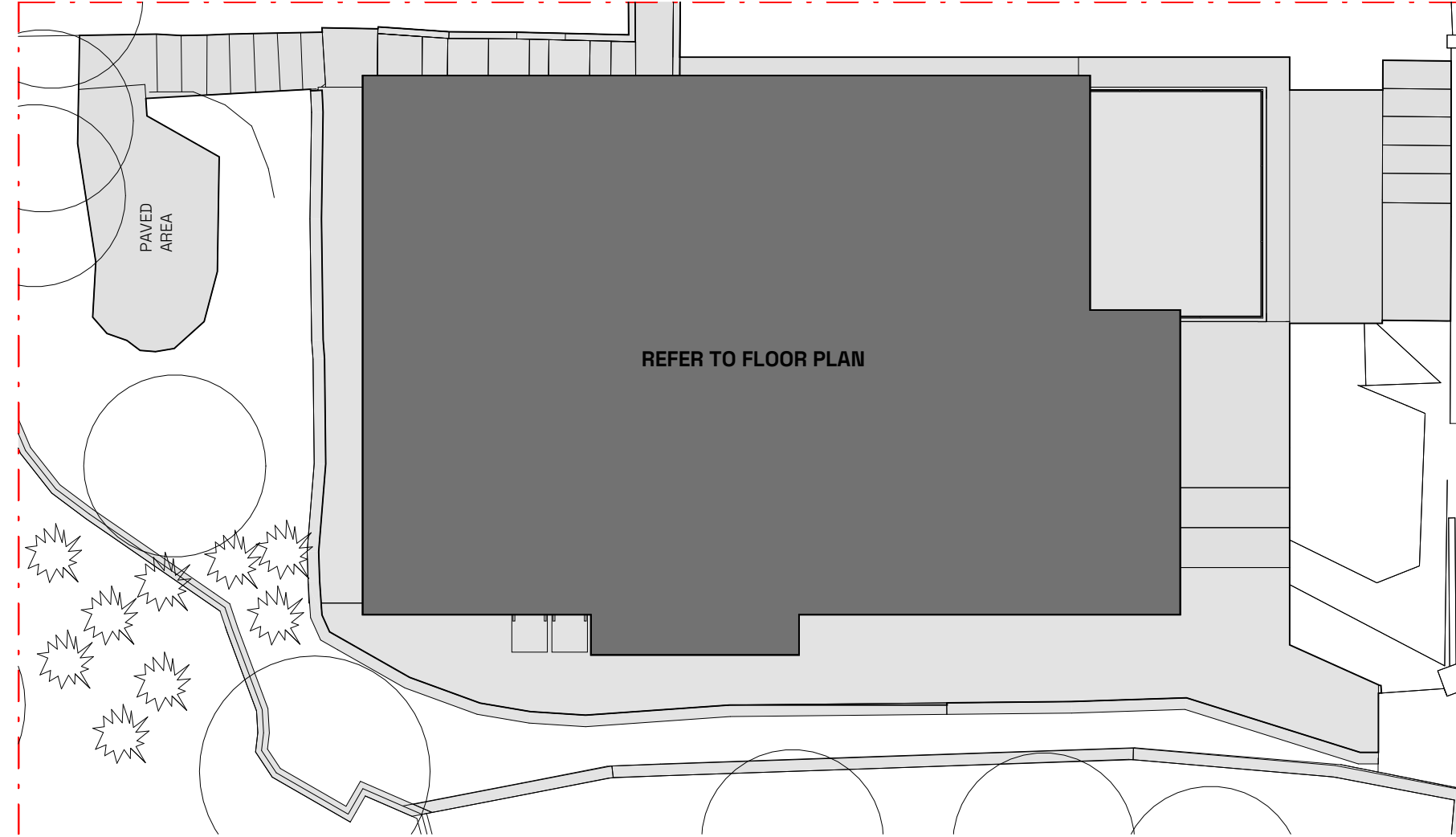
PROJECT NO.: 2021

dieppe





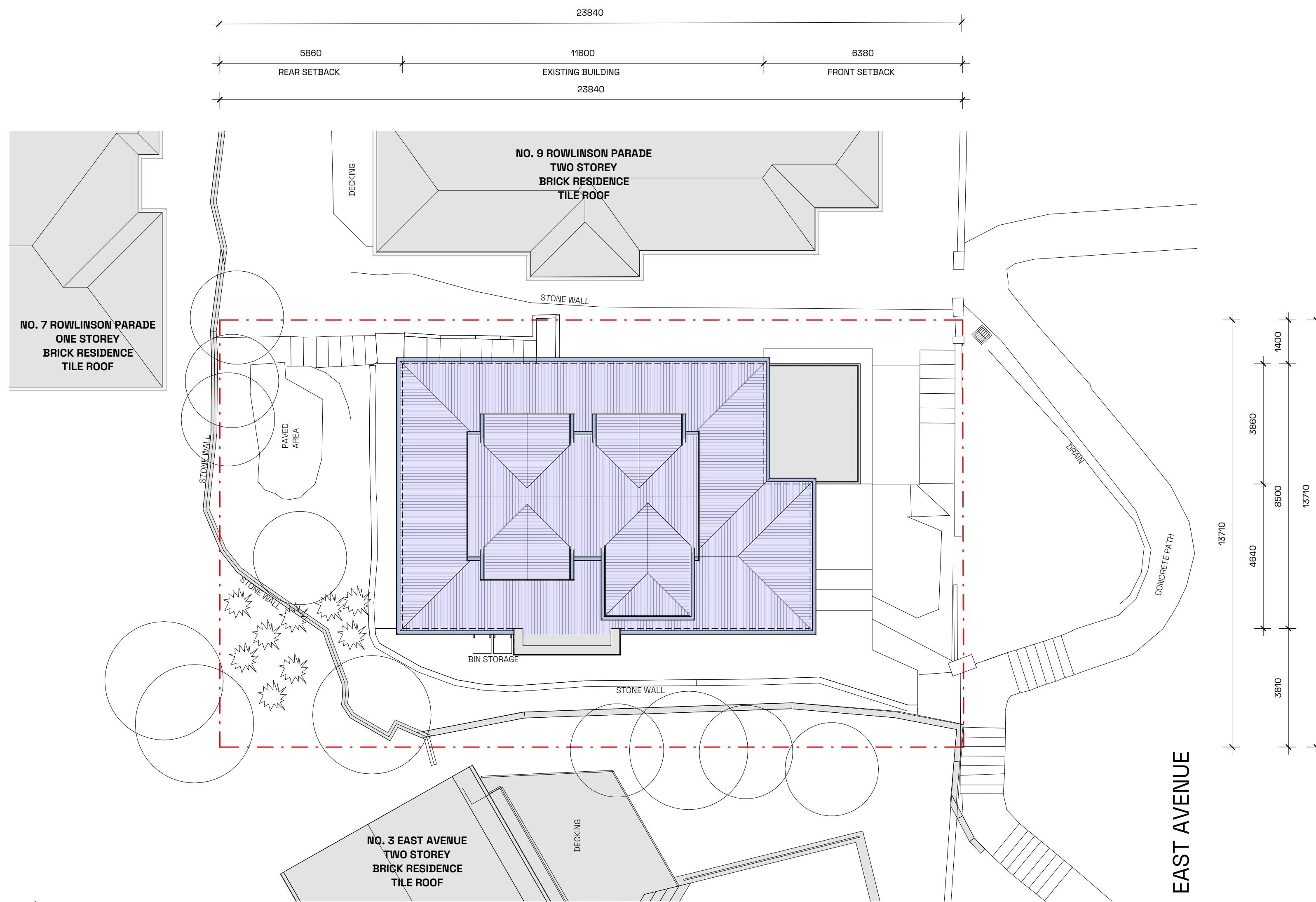
2 | LANDSCAPE AREA CALCULATION PLANS



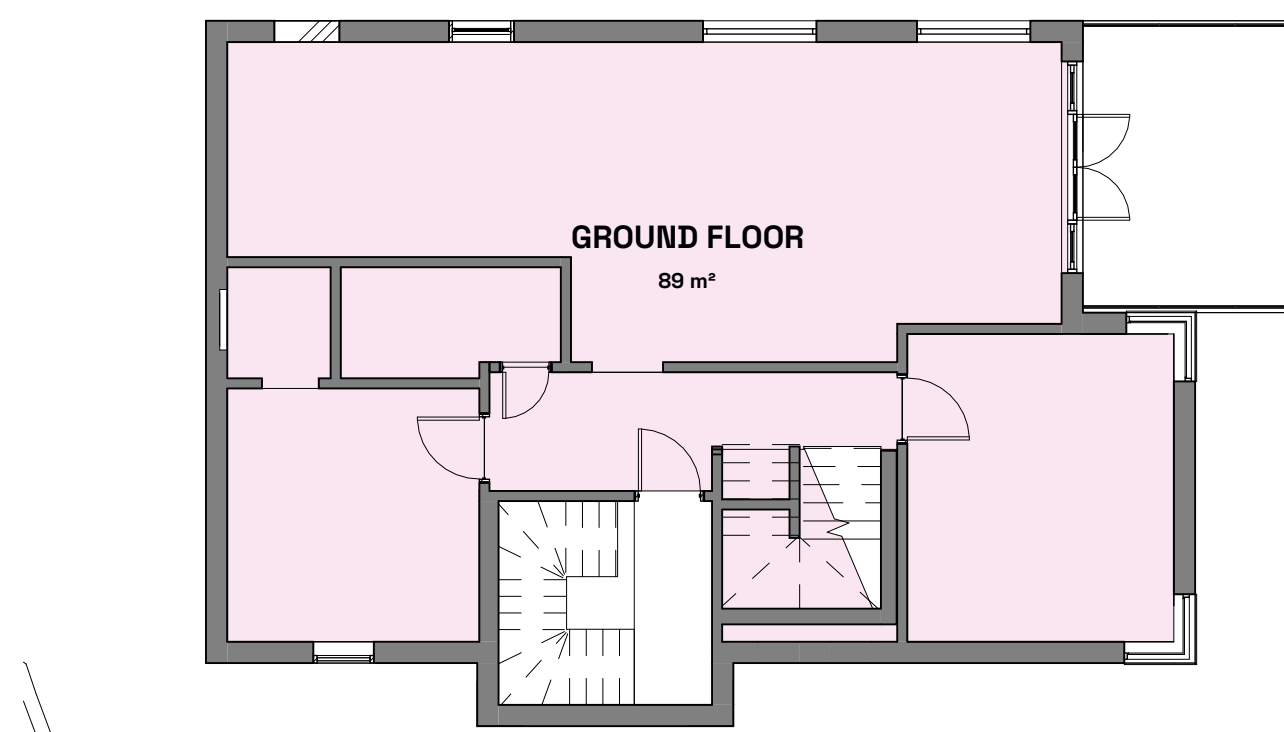
3 | SITE COVERAGE & UNBUILT UPON AREA PLAN

PROJECT STATISTICS (NORTH SYDNEY DCP)

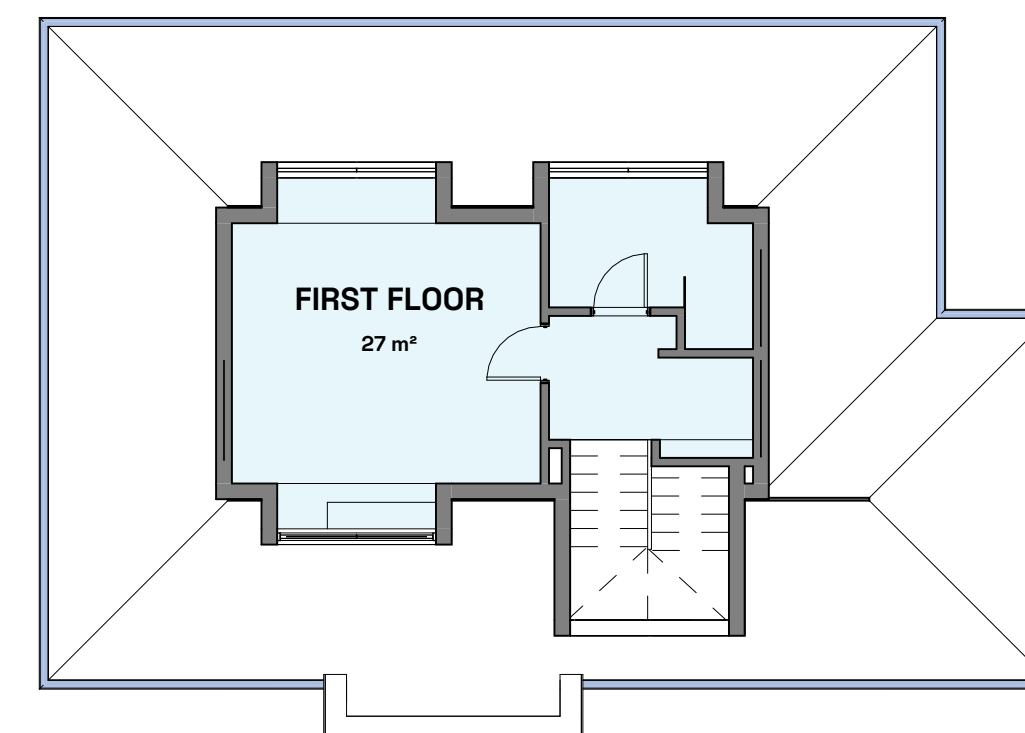
LOT CP SP14746 SITE AREA 327.3M <sup>2</sup>		STANDARD:	PROPOSED:	COMPLIANCE:
NORTH SYDNEY LEP 2013				
ZONE	R2 - LOW DENSITY RESIDENTIAL	ALTERNATIONS AND ADDITIONS TO A DUAL OCCUPANCY (ATTACHED)		PERMITTED WITH CONSENT
MINIMUM LOT SIZE	450M <sup>2</sup>	327.3M <sup>2</sup>		NO CHANGE TO EXISTING.
BUILDING HEIGHT CONTROL	8.5M	9.7M		NO - CL 4.8 PROVIDED.
FLOOR SPACE RATIO (FSR)	NOT IDENTIFIED			N/A
HERITAGE	NOT IDENTIFIED			NOT A HERITAGE ITEM OR IN A HERITAGE CONSERVATION AREA
FLOOD	IDENTIFIED ON PROBABLE MAXIMUM FLOOD LEVEL			YES
NORTH SYDNEY DCP 2015				
SOLAR ACCESS	3 HOURS SUNLIGHT TO SOLAR PANELS, MAIN LIVING ROOM WINDOWS AND PRIVATE OPEN SPACE, ON THE SUBJECT SITE AND ADJOINING RESIDENTIAL PROPERTIES BETWEEN 9AM AND 3PM ON JUNE 21.	SEE ASSESSMENT ABOVE		YES
FRONT SETBACK	CONSISTENT WITH OR AVERAGE OF ADJOINING PROPERTIES	GROUND FLOOR - 3.3M TO BALCONY & 4.9M TO DWELLING FIRST FLOOR - 6.5M TO BALCONY & 7.4M TO DWELLING		LEVEL 2 - YES - NO CHANGE TO EXISTING LEVEL 3 - YES
SIDE SETBACK	R2 ZONE 900MM (FIRST STOREY UP TO 4M) 1.5M (SECOND STOREY UP TO 7M) 2.5M (THIRD STOREY GREATER THAN 7M)	N/A (UNIT 1) 1.4M (NORTH) 3M (SOUTH) 2.5M (NORTH) 4.7M (SOUTH)		N/A NO CHANGE TO EXISTING YES YES
REAR BOUNDARY SETBACKS	CONSISTENT WITH ADJOINING PROPERTIES	GROUND FLOOR - 5.8M FIRST FLOOR - 8.4M		LEVEL 1 - YES LEVEL 2 - YES
FLOOR TO CEILING HEIGHT	2.7M	2.7M		YES
ROOF PITCH	25 TO 38	28		YES
SITE COVERAGE	45% (147.29M <sup>2</sup> FOR THE SITE AREA OF 327.3M <sup>2</sup> )	116M <sup>2</sup> OR 35%		YES
REAR BOUNDARY SETBACKS	CONSISTENT WITH ADJOINING PROPERTIES	AS EXISTING		YES - NO CHANGE TO EXISTING
LANDSCAPE AREA	MINIMUM 40% (130.92M <sup>2</sup> FOR THE SITE AREA OF 327.3M <sup>2</sup> )	150.4M <sup>2</sup> OR 40%		YES
UNBUILT UPON AREA (MAX)	MAXIMUM 16% (49.01M <sup>2</sup> FOR THE SITE AREA OF 327.3M <sup>2</sup> )	80M <sup>2</sup> OR 24%		YES



1 | SITE PLAN



4 | LEVEL 2



5 | LEVEL 3 (ATTIC)

STORMWATER & SEWER

THE PROPOSED DEVELOPMENT WILL CONNECT TO THE EXISTING GRAVITY STORM WATER SYSTEM. GUTTERS FOR ROOF COLLECTED RAINWATER AND RUNOFF. THE SYSTEM CONSISTS OF DOWNPIPES, PITS AND PIPES, WHICH ARE IN GOOD WORKING ORDER AND COMPLY WITH THE COUNCILS RULES AND REGULATIONS.

THERE IS NO EXCAVATION AS A RESULT OF THE DEVELOPMENT OUTSIDE THE BUILDING FOOTPRINT.

THE EXISTING SEWER CONNECTION WILL REMAIN UNALTERED.

WASTE MANAGEMENT

NO CHANGES TO THE CURRENT BIN STORAGE & WASTE COLLECTION IS PROPOSED. IT REMAINS THE RESPONSIBILITY OF THE RESIDENTS TO TAKE THE BINS TO EAST AVENUE FOR COLLECTION.

FOR CONSTRUCTION WASTE MANAGEMENT, REFER TO THE WASTE MANAGEMENT PLAN.

AREA CALCULATIONS

LANDSCAPE AREA - 130.4m<sup>2</sup>

UNBUILT UPON AREA - 80m<sup>2</sup>

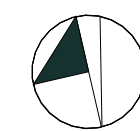
SITE COVERAGE - 116m<sup>2</sup>

SITE PLAN LEGEND

- EXISTING TREE TO BE RETAINED - REFER TO ARBORIST REPORT
- EXISTING BUILDING REMAINING IN USE
- EXISTING BUILDING TO BE DEMOLISHED
- SITE BOUNDARY

DEVELOPMENT APPLICATION

REV	DATE	AMENDMENT
5	2023.01.16	AMENDED DA LODGEMENT
4	2022.12.14	DESIGN DEVELOPMENT
3	2022.11.28	DRAFT FOR REVIEW
2	2022.11.25	COUNCIL AMENDMENTS
1	2022.09.05	DA ISSUE



ARCHITECTURE - INTERIORS - PASSIVHAUS

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LEGEND

- REFER KEYNOTE INDEX DWG. A0.02 FOR KEYNOTES
- (XXXX) ELEMENT KEYNOTE
- (XXXX) MATERIAL KEYNOTE
- (101) WINDOW TAG
- (D11) EXTERNAL DOOR TAG

MATERIALS LEGEND

- BRICK - PALE RED
- FIBRE CEMENT SHEETS/CEMENT RENDER - PALE GREEN
- TILES - PALE PURPLE
- GLASS - PALE BLUE
- TIMBER - PALE YELLOW
- ROOFTILES - PALE ORANGE
- SANDSTONE - PALE BROWN
- STEEL & GALVANISED IRON - DARK BLUE

A0.10 - 5

PROJECT: 5 EAST AVE, CAMMERAY

CLIENT: JAMES & JEN DIMIC

DRAWING TITLE: SITE / STORMWATER MANAGEMENT PLAN

ISSUE DATE: 2023.01.16 SCALE: A1: AS INDICATED PROJECT NO.: 2021

dieppe.



## Clause 4.6 Exceptions to Development Standards (Height of Buildings)

### 2/5 East Avenue Cammeray

#### 1. Introduction

Clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*





The aims and objectives of North Sydney LEP 2013 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.*

Under Clause 4.6(3) and (4) of the NSLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

*(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4)(a)(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 proposed to be carried out,*

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.



## 2. Environmental Planning Instrument Details (North Sydney LEP 2013)

### 2.1 What is the name of the environmental planning instrument that applies to the land?

North Sydney Local Environmental Plan 2013

### 2.2 What is the zoning of the land?

R2 Low Density Residential

### 2.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for low density housing, including dual occupancies, 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.*

### 2.4 What is the development standard being varied?

Cl 4.3 - Height of Buildings

### 2.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 4.3 of the North Sydney Local Environmental Plan 2013

### 2.6 What are the objectives of the development standard?

(1) *The objectives of this clause 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,*

*(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.*

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

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

**2.8 What is proposed numeric value of the development standard in your development application?**

The development proposes a maximum height of 9.8m

**2.9 What is the percentage variation?**

The percentage variation between the proposal and the environmental planning instrument is 15% or 1.3 metres.



### 3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

#### 3.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

#### 3.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:



1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each, but it is not essential.

### **3.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7**

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

### **3.4 Zhang v City of Ryde**

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone



objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

### **3.5 Action Pty Ltd v Woollahra Municipal Council [2018]**

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.



## 4. Consideration

The following section addresses the provisions of clause 4.6 of the NSLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

**Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?**

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

### 4.1 Five (5) Part Test - *Wehbe v Pittwater*

1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

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

### Comment

Consistent. The development proposes alterations and additions to a maximum height of 9.8 metres.

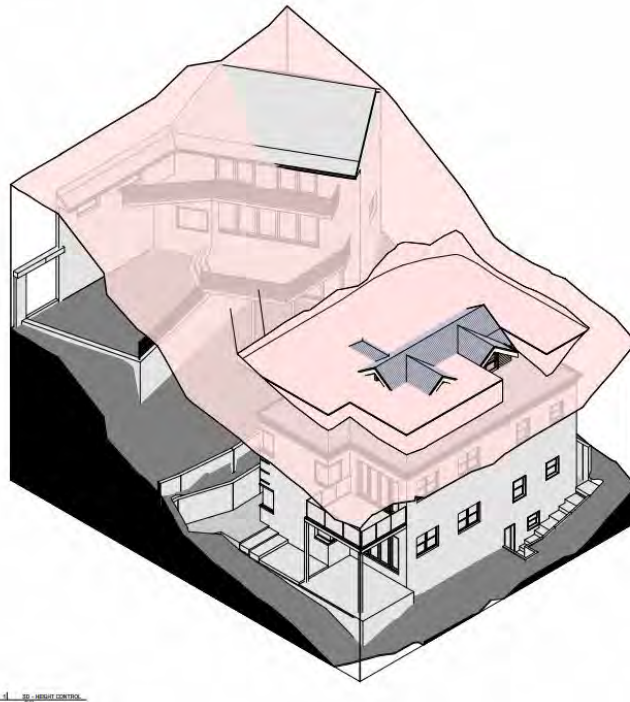
The development will not alter the existing landform or slope of the site, as all works are located within the existing building footprint. The resulting dual occupancy dwelling is of a similar or lesser scale than the neighbouring dwellings and remains consistent with the locality.

The site accommodates the existing structure because of the steep fall in the land from the formed portion of East Avenue, through the pedestrian walkway, and down to Rowllison Parade. The dual occupancy sits well below dwellings to the south and west because the site is heavily stepped and excavated. The additional height proposed is minimised with the provision of additional floor space within a roof form, allowing the building to present largely the same massing as existing.

The breaching element is centrally located on the roof form and will therefore be difficult to view from properties down hill, or from the adjoining pedestrian public domain. Dormers are



proposed which assist in breaking up the roof form as viewed from uphill neighbours. The slope of the land, proposed modulated roof form, and minimal impacts on neighbours are evident from the below 3D image, which demonstrates a favourable outcome, including when compared to No. 3 East Avenue located adjoining and above the site.:



**Figure 1:** The existing Dual Occupancy responds to the steep topography by its significantly excavated levels. The proposed modulated roof form avoids impacts by minimising additional scale as viewed from more elevated properties. Being centrally located on the roof, its visibility to pedestrians in East Avenue is reduced. **Source:** Dieppe Design

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

#### Comment

The subject site and surrounding properties enjoy bushland views across Tunks Park to the north and water views to the north east. A view loss assessment is provided (Appendix 1, as amended to address amended plans) with this application which concludes the development





will result in negligible view loss. In summary, the negligible loss of bushland outlook from No. 3 East Avenue is reasonable notwithstanding the height breach because:

- The views are over a side boundary and through the central part of the development footprint available on No. 5 East Avenue, and is therefore difficult to protect; and
- The views are experienced from the ground floor level and open space area, which is significantly more vulnerable to impacts; and,
- The view is not considered a high value view as outlined in the Furlong decision, noting that it does not involve impact upon the available water view and is unlikely to impact the ridgeline; and,
- The views affected are replicated in other areas on the site, namely the upper level deck from which the bushland is wholly unaffected.

Given the principles of view sharing outlined in the view loss assessment it is considered this objective is met, despite the numerical variation.

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

#### Comment

The proposed variation to height does not result in any unreasonable solar access impacts to adjoining dwellings. The following observations are made of the 21 June shadow diagrams included with this application:

**9am** – The development will result in a minor increase in shadowing to the lower areas of the terraced northern yard of No. 3 East Avenue and across the existing roof of the subject site.

**12pm** – The development will result in a minor increase in shadowing to the lower areas of the terraced northern side yard at No. 3 East Avenue and across the existing roof of the subject site.

**3pm** – The development will result in a minor increase in shadowing to the lower areas of the terraced northern yard at No. 3 East Avenue and across a portion of the existing roof of the subject site. The majority of the existing and new shadows at 3pm will fall on the East Avenue road reserve.



The upper levels of private open space at No. 3 East Avenue will remain largely unaffected by shadow noting that the subject site sits significantly lower than the ground floor of No. 3 East Avenue. These upper terraced areas are directly accessed from the dwelling and form the primary open space for No. 3 East Avenue. It is concluded that No. 3 East Avenue will retain compliant solar access at 9am, 12pm and 3pm.

The common private open space area on the site (for both Units 1 and 2/5 East Avenue will not be affected by any additional shadow as a result of the proposed additions. The private open space (balcony) of will not experience any additional shadow as a result of the proposed addition.

The East Avenue road reserve pedestrian environment will retain reasonable access to sunlight being unaffected for the whole of the morning period and into early afternoon.

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

Comment

Privacy will be retained for neighbours with existing minimum setbacks retained and no direct overlooking into any key living areas. Level 1 and 2 generally retain the existing window locations and balcony, which are visually separated from neighbouring dwellings by site landscaping. Two windows are removed from the south elevation of level 2, thereby increasing privacy for the neighbour to the south.

A number of visual privacy measures have been incorporated into the new first floor including offset windows, orienting glazing to the front and rear of the lot, high sill heights, and privacy glazing.

The proposed alterations and additions will not result in noise levels inappropriate to the residential area.

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

Comment

The proposed alterations and additions are of a consistent or lesser scale than neighbouring dwellings. The eastern boundary of the site adjoins land zoned RE1 Zone, which is the East Avenue Road Reserve. The road reserve is not developed except for pedestrian access and gardens. The proposed additional floor space at 5 East Avenue will have no adverse impact upon the RE1 Zoned land, as it is contained within a roof space which is centrally located in the building footprint of the existing building. In light of this, and the heavily vegetated road

reserve, visual impact resulting from the additional roof form is negligible as viewed from the RE1 Zoned land.



Figure 4: The existing dual occupancy as viewed from the adjoining RE1 zoned land, from where the new roof form and floor space will not be viewable.

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

#### Comment

The proposed development will result in a dual occupancy dwelling which is of a compatible scale with surrounding properties. The alterations and additions are well located, within the existing building footprint and within the new amended roof form, and remain compatible with the character of the area. The new roof form has a pitch and level of modulation which is consistent with the character of roof forms in the immediate vicinity.

The proposed alterations and additions are of a consistent or lesser scale than neighbouring dwellings. No change is proposed to the existing residential land use. The bulk and scale of surrounding development has been reviewed and indicates that the proposed Dual Occupancy and its additional floor space are easily characteristic of development in the immediate vicinity and further afield.



A good demonstration of the compatible scale and massing of the proposed dual occupancy building compared to the immediate surrounding development is shown in the 3D imagery prepared below:



**Figure 5:** The proposed additions to No. 5 East Avenue sit comfortably within the scale of adjoining development.

**Source:** Dieppe Design

In addition, a review of existing development in the locality generally indicates that single dwellings with substantially more height and bulk have been approved in the R2 Low density Residential Zone. These dwellings are recorded in the following photographic review of the nearby area:



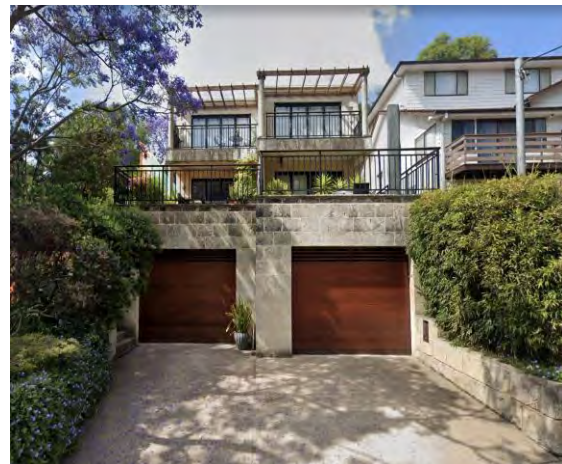
***No. 3 East Ave – part 3 storeys***



***1 Rowlinson Pde – presents 3 storeys***



***No. 7 Rowlinson Pde– 3 storeys***



***No. 15 Rowlinson Pde – 3 storeys***

**Figure 6:** Above are examples of 3 storey development with non-compliant height and demonstrating the prevailing character of large scale dwellings in the immediate vicinity of the site.



***(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.***

Comment

The development retains a presentation of a 2 level dual occupancy building, extending the attic space to create a master bedroom. The scale proposed is consistent with or lesser than surrounding properties, which are characterised by 2 and 3 storey dwellings, set within landscaped grounds. See above for examples.

***2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

***3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

***4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

***5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

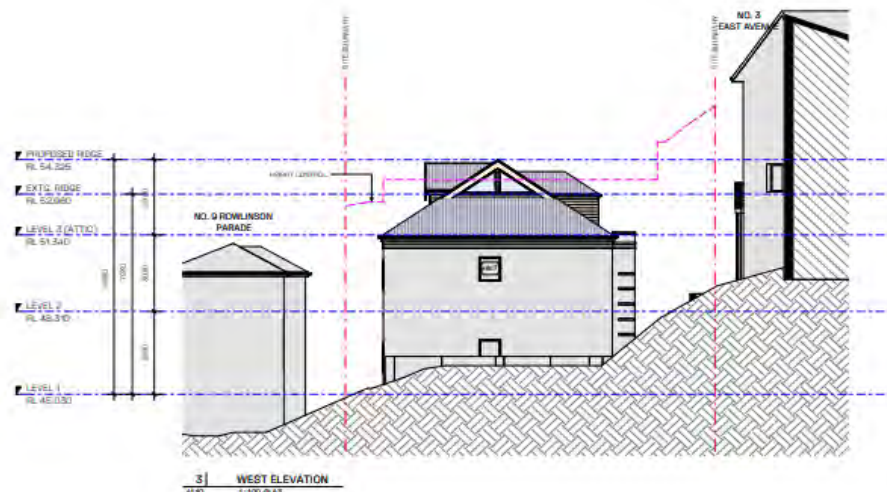
Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

#### 4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

##### Detail of Variation

- The proposed variation between the proposal and the building height control is 15% or 1.3 metres. The subject site has an existing compliant building height of 8.5m.
- The site slopes extensively which has resulted in significant excavation and level change as dwellings are sited down the hill towards Rowlinson Pde. Consistent with the decision in *Merman Investments v Mosman* the height breach occurs as a result of height measured from an excavated ground level whereas when measured from natural ground level, the height of the new roof form would be compliant.
- The roof form maintains the rhythm of stepping structure up the site and is not out of proportion with adjoining development. If anything, the existing structure at No. 3 East Avenue presents a substantially greater scale, as demonstrated in the below elevational drawing.



**Figure 7:** The proposed additions fit comfortably with the stepped character of development in East Avenue, and are not excessive despite the substantial scale of No. 3 East Avenue. **Source:** Dieppe Design



- The location of the site, below the road reserve, means it is not easily visible from the street or neighbours to the south and west. The apparent bulk through the variation is reasonable given its containment within the pitched roof form and not to the detriment of the apparent scale of the dwelling from any point satisfying Cl1.3(g).
- The small variation does not result in inappropriate bulk or scale and remains consistent with the existing dwelling, satisfying Cl1.3(g).

### **Neighbour Amenity**

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The proposed bulk and scale remains compatible with neighbouring properties,
- Compliance with the height control would not result in a building which has a significantly lesser bulk, noting that the minimal additional height now presents as being within a roof space. A numerically compliant building height would have no substantial benefit to neighbours, accordingly compliance with the development standard in this instance is unreasonable.
- Solar access impacts as a result of the small height variation are negligible. Solar access on the neighbouring sites is compliant as is detailed in the accompanying solar access diagrams. Accordingly, compliance with the development standard based on this would be unreasonable.
- The minor height variation has no impact on privacy for neighbours, and privacy is increased to the southern neighbour by virtue of the removal of existing windows at level 2. Accordingly, the variation is reasonable in the circumstances of the case.

### **Site Constraints**

- The design with a variation to the height, results from building within an existing built form within the constraints of the existing site slope and it would be unreasonable to require compliance with the development standard, when the variation allows for the orderly and economic use of the site and allows for an ecologically sustainable development revitalising an existing underdeveloped site satisfying Cl1.3(g) and (f).
- The ability of the design to contain the minimal additional height within a pitched roof compatible with those elsewhere in the locality demonstrates the ability of the proposal to be achieved within the constraints of the existing site and integrated into the existing building.





### **Design and Streetscape Appeal**

- Strict numerical compliance with the height control would not result in a better urban design outcome. The scale of the dwelling is consistent with the architectural character of the locality and will result in the appealing redevelopment of this property. Compliance with the development standard based on this would be unreasonable.
- The proposed development will not present with excessive bulk from the public domain with surrounding dwellings presenting with a consistent form and scale, satisfying Cl1.3(g). The streetscape appeal is unaffected by the variation to the height standard, and it would be unreasonable to require compliance with development standard based on this.

### **Consistent with Zone Objectives**

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone, ensuring that appropriate and reasonable housing suitable for the local community is proposed. Compliance with the development standard based on this would be unreasonable.

### **Natural Environment**

- The height variation has no impact on the natural environment. The variation sits within the attic level and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the varied height satisfying Cl1.3(b). The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis.

### **Environmentally Sustainable Development**

- The proposal represents an environmentally sustainable design allowing for extension of the life of an existing dual occupancy dwelling satisfying Cl1.3(f). Compliance with the development standard based on this would be unreasonable.

### **Social and economic welfare**

- The variation to the height as detailed above will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.



- The variation to the height as detailed above will have no economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

### **Appropriate Environmental Planning Outcome**

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard as is detailed earlier in the report.
- The variation does not result in a roof form or height beyond that which is found in the immediate context, including the immediately neighbouring sites. The variation will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c). Compliance with the development standard based on this would be unreasonable.

The discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

### **4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.**

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

#### **Zone – R2 Low Density Residential**

##### **Objectives of zone**

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

Consistent. The proposal is for alterations and additions to an existing dual occupancy dwelling and will provide an additional bedroom for the residents.

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



Consistent. The proposal is for alterations and additions to an existing dual occupancy dwelling.

- *To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*

Consistent. The proposal is for alterations and additions to an existing dual occupancy dwelling and will not compromise the amenity of the surrounding area being compliant with measures such as site coverage, landscaping, unbuilt area and solar access.

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

Consistent. The development provides a high level of residential amenity for the site whilst also being appropriate with regard to impacts on neighbouring sites with regard to views, privacy, solar access and general amenity.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it is of a consistent or lesser scale than neighbouring and surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

**Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,**

The non-compliance will not raise any matter of State or Regional Significance.

**Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

**Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**

**How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.**

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act



- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the 8.5 metre height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

## **Conclusion**

The proposed development is for alterations and additions to an existing dual occupancy dwelling on land zoned R2 – Low Density Residential.

As stated above the proposed non-compliance is 13.m or 15% and does not result in any unreasonable impacts. The existing building has a compliant building height of 8.5metres and the resulting development does not present with excessive bulk as the part of the building that breaches the standard is the upper portion of the pitched roof form and dormers.



There will not be any unreasonable view loss or solar access impacts and amenity is retained for all neighbours.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation of which have been reasonably satisfied under the provisions of Clause 4.6.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the height variation.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.

## Clause 4.6 Exceptions to Development Standards (Clause 6.6 Dual Occupancies)

### 2/5 East Avenue Cammeray

#### 1. Introduction

Clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*



The aims and objectives of North Sydney LEP 2013 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.*

Under Clause 4.6(3) and (4) of the NSLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

*(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4)(a)(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 proposed to be carried out,*

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.



## 2. Environmental Planning Instrument Details (North Sydney LEP 2013)

### 2.1 What is the name of the environmental planning instrument that applies to the land?

North Sydney Local Environmental Plan 2013

### 2.2 What is the zoning of the land?

R2 Low Density Residential

### 2.3 What are the objectives of the zone?

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for low density housing, including dual occupancies, 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.*

### 2.4 What is the development standard being varied?

Cl 6.6(1)(c) – Dual Occupancies. The area of the lot on which the dual occupancy is to be situated is at least 450sqm.

### 2.5 Under what clause is the development standard listed in the environmental planning instrument?

Cl 6.6(1)(c) of the North Sydney Local Environmental Plan 2013

### 2.6 What are the objectives of the development standard?

There are no stated objectives for the Dual Occupancy Lot Size development standard. When read in its context, it is reasonable to interpret the objective of the Clause *is to ensure that Dual Occupancies are designed such that they*

- *appear as a consolidated footprint and single dwelling; and,*
- *provide adequate curtilage and setbacks to neighbouring dwellings.*

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

The numeric value of the Dual Occupancy development standard applicable to the subject site is a minimum area of the lot of 450sqm.





**2.8 What is proposed numeric value of the development standard in your development application?**

The site has an area of 327.3sqm.

**2.9 What is the percentage variation?**

The percentage variation between the proposal and the environmental planning instrument is 27% or 122.7sqm.



### 3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

#### 3.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

#### 3.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:



1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each, but it is not essential.

### **3.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7**

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

### **3.4 Zhang v City of Ryde**

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone



objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

### **3.5 Action Pty Ltd v Woollahra Municipal Council [2018]**

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.



## 4. Consideration

The following section addresses the provisions of clause 4.6 of the NSLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

**Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?**

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

### 4.1 Five (5) Part Test - *Wehbe v Pittwater*

#### 1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

There are no stated objectives of the standard. From a reading of the Clause in its context, the objectives of the standard are therefore interpreted to be:

*to ensure that Dual Occupancies are designed and sited such that they:*

- *appear as a consolidated footprint and single dwelling; and,*
- *provide adequate curtilage and setbacks to neighbouring dwellings.*

### Comment

Notwithstanding its noncompliant lot size, the lot at 5 East Avenue already contains a Dual Occupancy, erected prior to the LEP Clause applying. The existing dual occupancy provides appropriate setbacks and private open space, and additions proposed do not extend the footprint of the existing structure on the land.

Notwithstanding the variation to the lot size, the development is able to comply with and exceed the requirements for site coverage, landscaping and open space. Appropriate proportions of built to unbuilt upon area, and landscaping, are achieved on the site.

The design of the proposed additions to Unit 2 are largely within a roof space, ensuring that the overall envelope of the structure offers minimal change or additional impact. Setbacks to the



existing building will be largely retained in the new proposal. The dual occupancy as proposed will continue to present as a single two storey structure, with attic space.

**2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

**3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

**4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

**5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the Dual Occupancy Development Standard pursuant to the First Way outlined in Wehbe.

Thus, it is considered that compliance with Clause 4.6(3)(a) is satisfied.

**4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

There are sufficient environmental planning grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*.

In particular:

**Existing Dual Occupancy**



- The circumstances of the case are that the Dual Occupancy already exists on the site, which is significantly smaller than the minimum lot size. The additions are proposed almost entirely within the existing building footprint and have been designed to be contained within a new roof form, which minimises any additional bulk and ensures the existing character of the dwelling in its context is retained.

### Neighbour Amenity

Fulfillment of each of the criteria below demonstrates a development satisfying Cl1.3(g).

- The proposed bulk and scale remains compatible with neighbouring properties. This is well demonstrated by the below 3D diagram which depicts the Dual Occupancy building sited below the single dwelling at No. 3 East Avenue. The Dual Occupancy as proposed maintains a lesser scale and presentation than No. 3 East Avenue:



Figure 1: The existing Dual Occupancy as proposed sits below and is consistent with the scale of No. 3 East Avenue adjoining.

- Compliance with the minimum lot size is not possible. No FSR controls apply to the site, and the height of the proposed additions are reasonable given the slope and cross fall of the land.
- As the building is existing and the additional floor space is contained within the footprint and largely within a roof space, access to sunlight is compliant and retained for adjoining neighbours and for the Dual Occupancy itself.



- The lot size variation has no impact on amenity for neighbours as the spatial separation of the structure with its neighbours is as existing. Privacy for neighbours is enhanced from existing within the removal of two windows on level 2, and new windows within the attic floor space are of limited size and with high sill levels.

### **Site Constraints**

- The existence of the Dual Occupancy on the 327.3sqm site is an historical fact and there is no ability to avoid the variation. The proposed additional floorspace responds appropriately to its context by limiting its size to within the existing building footprint and within a new roof space that is consistent with others in the locality.

### **Design and Streetscape Appeal**

- The scale of the dwelling is consistent with the architectural character of the locality and will result in the appealing redevelopment of this property.
- The proposed development will not present with excessive bulk from the public domain with surrounding dwellings presenting a consistent form and scale, satisfying Cl1.3(g). The below 3D modelling demonstrates that the proposed additions are of a similar scale and massing than the single dwellings that surround it.





Figure 2: The proposed additions to the existing dwelling remain consistent with the scale and massing of surrounding single dwellings.

### Consistent with Zone Objectives

- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone, ensuring that appropriate and reasonable housing suitable for the local community is proposed.

### Natural Environment

- The lot size variation has no impact on the natural environment. The additions are within a new attic level and existing building footprint and will not result in any impact to the existing natural components of the site or neighbourhood. No landscape area is lost or impacted through the proposal.

### Environmentally Sustainable Development

- The proposal represents an environmentally sustainable design allowing for extension of the life of an existing dual occupancy dwelling satisfying Cl1.3(f).



### **Social and economic welfare**

- The lot size variation will have no social impacts for the site or local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.
- The variation to the minimum lot size will have no adverse economic impacts for the site or the local area satisfying Cl1.3(b) and accordingly refusal of the development based on this reason would be unreasonable.

### **Appropriate Environmental Planning Outcome**

- The development proposed is not an overdevelopment of the site and satisfies the objectives of the zone and the development standard.
- The variation does not result in built form that exceeds that which is found in the immediate context, including the immediately neighbouring sites. The development will be compatible within the context in which it sits and is reasonable in the circumstances of the case satisfying Cl1.3(c).

The discussion above reflects the unique circumstances for the subject site and proposed development, including an assurance of reasonable bulk and scale and retention of amenity.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the variation to lot size.

### **4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.**

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

#### **Zone – R2 Low Density Residential**

##### **Objectives of zone**

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



Consistent. The proposal is for alterations and additions to an existing dual occupancy dwelling and will provide an additional bedroom for the residents.

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

Consistent. The proposal is for alterations and additions to an existing dual occupancy dwelling and does not preclude or conflict with other uses for the day to day needs of residents.

- *To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*

Consistent. The proposal is for alterations and additions to an existing dual occupancy dwelling and will not compromise the amenity of the surrounding area being compliant with measures such as site coverage, landscaping, unbuilt area and solar access.

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

Consistent. The development provides a high level of residential amenity for the site whilst also being appropriate with regard to impacts on neighbouring sites with regard to views, privacy, solar access and general amenity.

Despite the proposal seeking an exception to the lot size clause, the bulk and scale of the building will have minimal effects as it is of a consistent or lesser scale than neighbouring and surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard and objectives for development within the zone.

**Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,**

The non-compliance will not raise any matter of State or Regional Significance.

**Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

**Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**



**How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.**

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the lot size standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

In particular, to deny the development based on non-compliant lot size would deny the site the benefits of the good design and increased amenity that comes from the proposed additional floor space. As the resulting building is found to be consistent with the surrounding dwellings, and not impacting upon views, solar access, and privacy of neighbours, it is considered that a refusal of the proposal would hinder the attainment of the objects of the Act.



## Conclusion

The proposed development is for alterations and additions to an existing dual occupancy dwelling on land zoned R2 – Low Density Residential.

As stated above the proposed non-compliance will not result in any unreasonable impacts. The existing building has a lot size of 327.3sqm which cannot be altered. As the resulting development does not present with excessive bulk or impacts to neighbours, refusal on these grounds would be unreasonable.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed additions are consistent with the implied objectives of the control despite the numerical variation.

The statement sufficiently demonstrates that compliance with the development standard is both unreasonable and unnecessary in this instance. It is also not possible.

The sufficient environmental planning grounds stipulated within this request, demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the variation.

The proposed development satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 6.6, and therefore the merits of the proposal are considered to be worthy of support.

## Appendix 1 – View Loss Analysis

*Tenacity Consulting v Warringah Council (2004) NSWLEC 140. The Planning Principle established a four-step process for considering the impact of a development on views.*

**Step 1. An assessment of the value of views to be affected by reference to their nature, extent and completeness.**

The views subject to this assessment are bushland views from No. 3 East Avenue towards Tunks Park to the north.



**Figure 1: Aerial Image of the subject site and views subject to this assessment**



***Step 2. A consideration of how views are obtained and what part of the property the views are obtained from.***

Access to individual properties was not possible, however through observations from the road reserve we can identify that bushland views are obtained from the private open space and lower level of No. 3 East Avenue, across the subject site.



**Figure 2: Views from No. 3 East Avenue, across the subject site, towards Tunks park to the north.**

From a level similar to the grassed open space area at No. 3 East Avenue (Figure 3), it is apparent that the north east oriented views of Tunks Park and Middle Harbour will be retained. Looking perpendicular to the side boundary, the proposed roofline of No. 5 East Avenue will be visible, as is the existing roofline.

Mature vegetation located primarily on No. 3 East Avenue interrupts views across the rooftop of the subject site to the ridgeline opposite, as is visible in the Figure 3, and noted on the survey plan. Notwithstanding this, and in the absence of the vegetation, we estimate that the proposed roofline would still not interrupt the ridgeline, from a standing position.



**Figure 3:** Photo taken from the adjoining road reserve at a similar level to the ground level deck and open space areas at No. 3 East Avenue. The photo shows the 8-9m vegetation on No. 3 East Avenue adjoining the shared boundary, and that the ridgeline will be unaffected by the proposed roof at No. 5 East Avenue. The photo also demonstrates the north-eastern orientation of No. 3 East Avenue, and that any bushland view perpendicular to the side shared boundary will be retained from the upper level of No. 3 East Avenue.





In addition, water views are obtained from the terrace, living room, dining room, master bedroom and balcony of 2/47 Pine Street and the deck, living room, dining room and bedroom 2 and 3 of 1/47 Pine Street. As indicated below, these views are retained.



Figure 4: Views from No. 1/47 Pine Street, across the subject site, towards Middle Harbour to the east.  
<https://www.realestate.com.au/property/unit-1-47-pine-st-cammeray-nsw-2062>

***Step 3. A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible, minor, moderate, severe or devastating.***

As a result of a site visit and visual assessment illustrated in Figures above, it is considered the proposed development will have a negligible impact on a small portion of bushland views from 3 East Avenue and no impact on water views from either 3 East Avenue or 47 Pine Street. This is concluded noting particularly that the extent of views retained at both properties is substantial.



In the case of impacts upon No. 3 East Avenue, we apply the principle outlined in *Furlong v Northern Beaches Council* relating to views across a side boundary. In particular, we note that any view loss across a side boundary in this case (albeit very minor) is from the ground level of No. 3 East Avenue, which is significantly more vulnerable to impact, and that analysis of view loss should consider circumstances where that same view is available at other vantage points on a site (ie, consider the whole view available). In this case, the upper level of No. 3 East Avenue will be completely unaffected.

In summary, the negligible impact on the bushland view currently available from No. 3 East Avenue is:

- Over a side boundary and through the central part of the development footprint available on No. 5 East Avenue, and is therefore difficult to protect; and
- Is experienced from the ground floor level and open space area, which is significantly more vulnerable to impacts; and,
- Is not considered a *high value* view as outlined in the *Furlong* decision, noting that it does not involve impact upon the available water view and is unlikely to impact the ridgeline; and,
- Is replicated in other areas on the site, namely the upper level deck from which the bushland is wholly unaffected.

***Step 4. An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. 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.***

It is concluded that there will be a negligible and reasonable impact to a very small portion of bushland views from No. 3 East Avenue, with the majority of views retained.

For the reasons outlined above any negligible loss is considered reasonable.

The proposed roof space design represents a skillful design response to the issues raised by neighbours and Council. The amendments made to the design through the assessment process have demonstrated a willingness by the applicant to find an



appropriate balance between the development potential of the site and minimising impacts upon neighbours.

The proposed development, in its current form, is considered reasonable and appropriate for the subject site.