

**NSLPP MEETING HELD ON 04/10/23****Attachments:**

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Statement

ADDRESS: 601/20 Premier Street, Neutral Bay**APPLICATION No:** DA 195/23**PROPOSAL:** Installation of a louvered roof to an existing terrace of an apartment**PLANS REF:**

Plan No.	Rev No.	Description	Prepared by	Dated
1	-	Site Analysis/ Site Plan	Vergola Pty Ltd	05.05.23
2	-	Detail Plan & Western Elevation	Vergola Pty Ltd	05.05.23
3	-	Section 1 & Fixing Detail	Vergola Pty Ltd	05.05.23
4	-	Western Elevation	Vergola Pty Ltd	05.05.23
5	-	Northern Elevation	Vergola Pty Ltd	05.05.23
6	-	Southern Elevation	Vergola Pty Ltd	05.05.23

OWNER: Amanda Kim Revis & Donald Roy McNeill**APPLICANT:** Performance Building Consultants**AUTHOR:** Thomas Holman, Assessment Officer**DATE OF REPORT:** 31 August 2023**DATE LODGED:** 23 June 2023**RECOMMENDATION:** Approval

EXECUTIVE SUMMARY

This development application seeks consent for installation of a vergola (awning) to the existing balcony of a top floor apartment. The vergola roof will be an open form (unenclosed) structure that is operable and supported by metal posts affixed to the existing balcony balustrade. The vergola frame, posts and louvres are to be dark in colour "Colorbond Night Sky".

The development application is reported to the North Sydney Local Planning Panel for determination because the development application contravenes a development standard imposed by an environmental planning instrument by more than 10%, which requires determination by the Panel in accordance with the directions from the NSW Minister of Planning, Industry and Environment.

The proposed awning addition involves a non-compliance to the maximum height of buildings development standard (8.5m) under Clause 4.3 of NSLEP 2013 as the proposal features a building height of 15.5m above existing ground level. This represents a departure of 7m or 82.4% from the development standard. The application has been assessed against the relevant provisions and requirements of the relevant planning instruments including the North Sydney LEP 2013 and North Sydney DCP 2013. Consideration has also been given to the Clause 4.6 request for a variation to the height of buildings development standard as submitted by the applicant which was considered to be acceptable in the site circumstances.

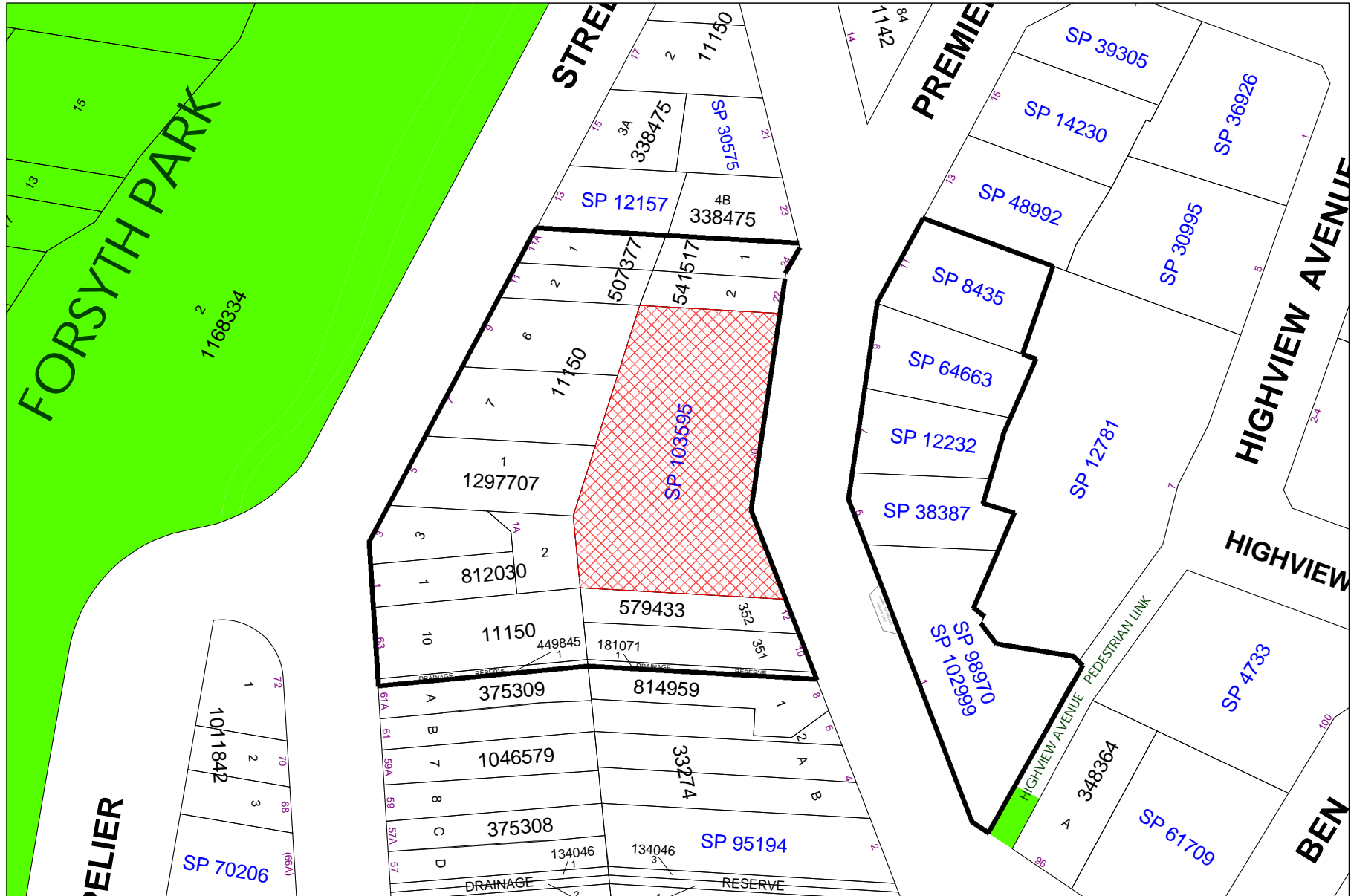
The awning will not have any adverse impacts on the character of the locality and will not have any detrimental impacts to the amenity of neighbouring properties in terms of view loss, overshadowing, and acoustic and visual privacy.

The proposed colour of the awning is supportable as it is considered complementary to the dark metal clad elevations of the building.

Where appropriate, conditions of consent are recommended requiring that the structural integrity of the building be maintained, the colours and materials be compatible with the site's surrounds and the adequate management of stormwater be integrated into the awning design.

Following this assessment, the development that application is considered to be reasonable in the circumstances and is recommended for **approval** subject to conditions.

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposed works comprise the installation of a vergola (awning) to the existing balcony of a top floor apartment of a residential flat building (RFB). The vergola roof will be operable and supported by metal posts affixed to the existing balcony balustrade. The vergola frame, posts and louvres are to be dark in colour “Colorbond Night Sky”.

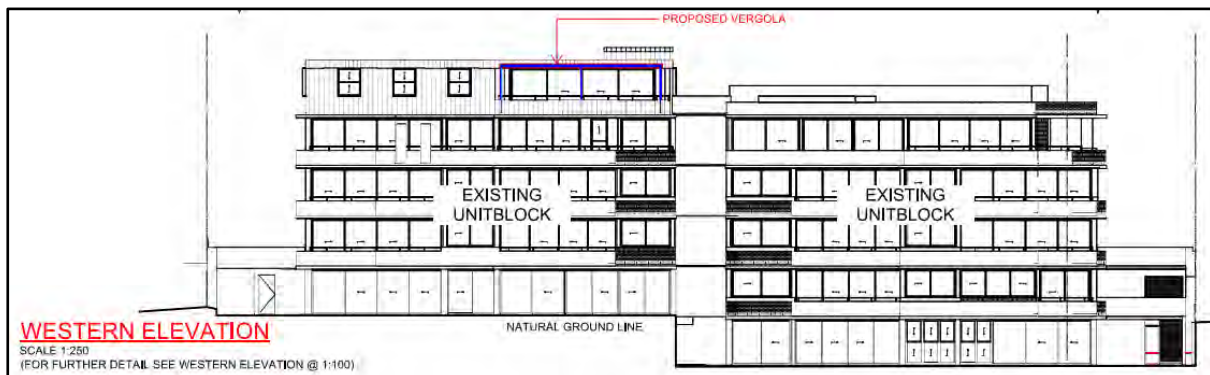
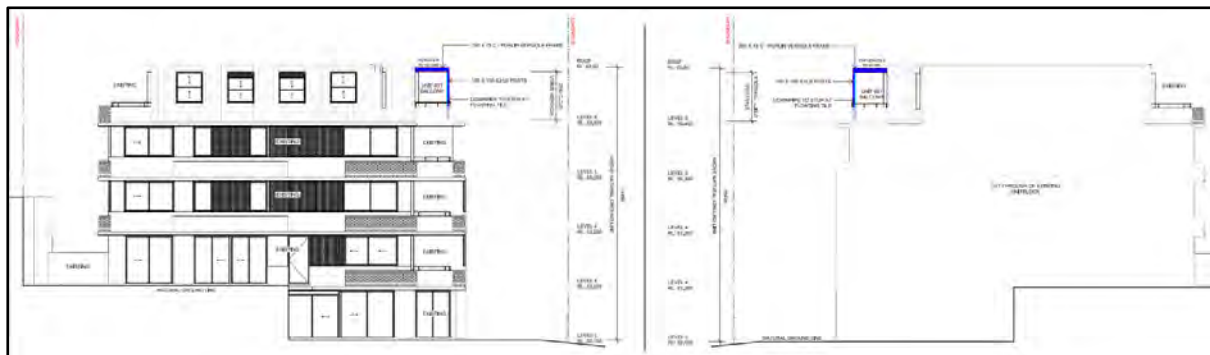


Figure 1 – Western Elevation, Sheet No. 2



Figures 2 & 3 – Northern Elevation, Sheet No. 5 & Southern Elevation, Sheet No. 6

Owners Consent – The development application includes consent from the Owners Strata Plan No 103595 and the seal of the owners is affixed to the Owners Consent Letter.

The Applicant provided documentation identifying that the cost of works for the proposed development is estimated to be \$54,700.00.

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – R2 Low Density Residential Zone
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No
- FSBL – No

Environmental Planning & Assessment Act 1979

Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 Vegetation in non rural areas
- Chapter 6 Water Catchments

SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Resilience and Hazards) 2021
- Chapter 4 Remediation of Land
SEPP 65 – Design Quality of Residential Apartment Development & ADG

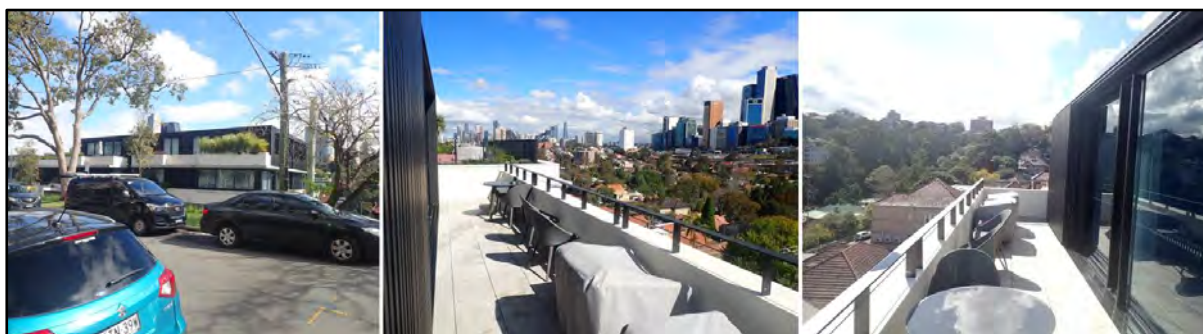
POLICY CONTROLS

North Sydney Development Control Plan 2013
North Sydney Local Infrastructure Contributions Plan 2020

DESCRIPTION OF LOCALITY

The apartment subject to the proposed vergola is legally described as Lot 14 in SP 103595 and is also commonly known as Unit 601, No. 20 Premier Street, Neutral Bay. The apartment is sited on the top floor of a 4-5-storey residential flat building, which was recently constructed and subject to consent by the Land and Environment Court (LEC) on 21 December 2018.

The RFB onsite presents as a 2-storey building to Premier Street and has sheet metal (vertical) cladding for the elevations and pale white brick balconies with planter boxes. The 5-storey form of the building is more evident from the rear where the topography of the land is substantially below that of the street.



Figures 4, 5 & 6 – Photo of the site from Premier Street (left) and photos of existing balcony of Unit 601 (middle and right)

The site is within an R2 Low Density Residential Zone with a maximum building height of 8.5m characterised by predominantly single or 2-storey dwelling houses or semi-detached dwellings; however, land opposite the site is zoned R4 High Density Residential and properties located opposite the site (to the east) mostly comprise of a combination of older style masonry RFBs apart from the more modern RFB on the corner of Premier Street and Ben Boyd Road (1-3 Premier Street).



Figures 7 & 8 – Land Zoning Map (left) and Height of Buildings Map (right)

RELEVANT HISTORY

Previous applications

<i>Date</i>	<i>Action</i>
<i>21/12/2018</i>	<i>Development Application No. 54/18 was lodged with Council on 02 March 2018. The applicant filed a Class 1 appeal against the deemed refusal of the DA on 3 May 2018.</i> <i>The LEC upheld the appeal on 21 December 2018 for the demolition of existing structures and the construction of a residential flat building with basement car parking at 14-20 Premier Street.</i>
<i>01/05/2019</i>	<i>Modification Application No. 54/18/2 proposed internal alterations and the conversion of four (4) storey units on Level 01 and Level 02 to five (5) single storey units over the two levels increasing the number of units from 24 to 25. The modification application was approved by NSLPP on 01 May 2019.</i>
<i>11/02/2020</i>	<i>Modification Application No. 54/18/3 proposed modifications to the basement levels and was approved under delegation on 11 February 2020.</i>
<i>01/04/2020</i>	<i>Modification Application No. 54/18/4 was submitted to Council to delete Condition B1 – Affordable Rental Housing Resident Relocation Plan of the original consent. Council granted consent for deletion of this condition on 01 April 2020.</i>
<i>31/03/2021</i>	<i>Modification Application No. 54/18/5 was submitted to Council to reconfigure the unit mix and amalgamation of some units reducing the approved unit mix from 25 to 22 units. Council granted consent for the modifications on 31 March 2021.</i>

Current Application

<i>Date</i>	<i>Action</i>
<i>23/06/2023</i>	<i>Development Application No. 195/23 was lodged proposing an awning with louvred roof to a rear fifth storey balcony for Unit 601, 20 Premier Street.</i>
<i>21/07/2023</i>	<i>Development Application No. 195/23 was notified to the Neutral Precinct and adjoining properties between 07 July and 21 July 2023.</i>
<i>16/08/2023</i>	<i>A site visit was completed by the assessment officer.</i>

INTERNAL REFERRALS

ENGINEERING

Council's Development Engineer raised no objections to the proposed development and recommended no site specific conditions of consent required.

SUBMISSIONS

Council notified adjoining properties and the Neutral Precinct of the proposed development seeking comment between 07 July 2023 and 21 July 2023. Council received no submissions following notification of the development application.

CONSIDERATION

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

Environmental Planning and Assessment Act 1979 (as amended) Environmental Planning and Assessment Regulation 2021

SEPP (Biodiversity and Conservation) 2021

- Chapter 2 Vegetation in non-rural areas

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 of Council. The Policy confers the ability for Council to declare vegetation that consent is required in a Development Control Plan. Section 16 of Part B in NSDCP 2013 specifies declared trees for the purpose of the SEPP which includes trees over 5m in height or canopy. The proposed development involves works within an existing balcony that do not impact any protected trees or vegetation.

SEPP (Biodiversity & Conservation) 2021

- Chapter 6 Water Catchments

Having regard to Chapter 6 of the SEPP (Biodiversity and Conservation) 2021 the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given the site's inland location. The proposed development would not adversely affect the quantity or quality of water entering Sydney Harbour, being a regulated catchment for the purpose of Section 6.6 of the Policy. The application satisfies the requirements of the Policy.

SEPP (Resilience and Hazards) 2021

- Chapter 4 Remediation of Land

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 remediations measures required. Council's records indicate that the site has historically been used for residential development and has been subject to recent redevelopment retaining the RFB use of the site. Therefore, the site is unlikely to contain any contamination. 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.

SEPP (Building Sustainability Index: BASIX) 2004

The SEPP does not apply because the development is considered BASIX excluded development whereby it is the alteration of a building resulting in a space that cannot be fully enclosed and permits the free and uncontrolled flow of air. The development is BASIX excluded development pursuant to the definition in Schedule 7 'Dictionary' of the Environmental Planning and Assessment Regulation 2021.

SEPP 65 – Design Quality of Residential Apartment Development

This Policy does not apply given that the proposed development does not meet the criteria in Section 4 of the SEPP, specifically subsection (1)(a)(ii) as the proposed works do not comprise of substantial redevelopment or the substantial refurbishment of an existing RFB.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The proposed works can be defined as alterations and additions to a residential flat building. A residential flat building is prohibited in the R2 Low Density Residential zone. The proposal; however, benefits from existing use rights under Section 4.65 – 4.67 of the Environmental Planning and Assessment Act 1979 (as amended).

Below is consideration of Cl 4.65 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) confirming that there is sufficient evidence that development consent was granted for the current use of the site as a residential flat building before amendment 35 of NSLEP 2013 on 19 May 2023 which amended NSLEP 2013 prohibiting residential flat buildings in the R3 Zone.

Section 4.65 – Definition of “Existing Use”

The existing site comprises a recently constructed RFB subject to Development Application No. 54/18 (LEC Determination No. 2018/139634). Existing use rights for the recent approval and construction of the residential flat building apply and it was agreed during the conciliation conference as a consequence of the occupation of the site by four (4) prior residential flat buildings (refer to paragraph 5 of the LEC judgement ‘*Case Name Aidop No. 2 Pty Ltd v North Sydney Council*’).

Section 4.66 of the Act - Continuance of and limitations on existing use

The development application seeks to rely upon the established existing use rights as defined in Section 4.66 of the Act to continue the use of the site as a residential flat building.

Section 4.66 of the Act outlines the provisions relating to the continuance of and limitation on, existing use. The site has continually been used as a residential flat building without abandonment as described in sub-section 4.66(3). The most recent development application DA 54/18 court determination confirmed the demolition of structures and the construction of a residential flat building.

The regulations make provisions for the nature of development that can be undertaken with respect to developments that maintain existing use rights.

Clauses 165-166 of the *Environmental Planning & Assessment Regulation 2021* (The regulations)

Clauses 165-166 of the Regulation are also relevant to the proposed development because these clauses set out the nature of development allowed under existing uses, the matters for consideration for enlargement, expansion or intensification of existing uses and the consent requirements for an existing use.

The alterations and additions would be constructed on the land to which the existing use is carried out. The proposed development is therefore considered to engage Clauses 165-166 of the Regulation which allows an existing use to; *be enlarged, expanded or intensified, or be altered or extended, or be rebuilt.*

Land and Environment Court Planning Principle – “Existing Use Assessment” and further case law.

The application relies on existing use rights and a merit assessment is to be made based on the planning principles which were stated by Senior Commissioner Roseth in *Fodor Investments v Hornsby Shire Council (2005)*. In *Stromness Pty Ltd v Woollahra Municipal Council (2006) NSWLEC 587* the planning principles were considered and confirmed by Justice Pain.

In addition, reference is to be made to a recent L & E Court judgment *Made Property Group Pty Limited v North Sydney Council [2020] NSWLEC 1332* for a residential flat building on land zoned R3.

This judgment concluded that whilst a development is entitled to existing use rights, the consent authority should undertake an assessment of the proposed development in line with the requirements of s 4.15 of the Act, including that in s 4.15(1)(a)(i) which requires an assessment against the provisions of any environmental planning instrument, such as the LEP. In addition, it was also concluded that the proposed development be assessed against the relevant DCP provisions. Therefore, any future development on the subject site must have regard to the relevant planning standards and controls as contained in the LEP and DCP including the submission of a written Clause 4.6 variation should there be a breach of LEP development standard.

(a) Principle 1 - How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

With respect to the first principle, *Fodor* establishes that:

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.

The proposed development is assessed against the relevant planning controls relating to height, site coverage and setbacks that apply to a dwelling house, semi-detached dwelling or attached dual occupancy which is permissible on the surrounding sites. The works subject to this development application are considered reasonable retaining the existing bulk and scale of the building.

(b) Principle 2 - What is the relevance of the building in which the existing use takes place?

With respect to the second principle, *Fodor* establishes that:

Where the change of use is proposed within an existing building, the bulk and scale of the building are likely to be deemed acceptable, even if the building is out of scale with its surrounding, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

The proposed alterations and additions would not result in a change of use of the building. The proposed works do not entail demolition of the residential flat building.

(c) Principle 3 - What are the impacts on adjoining land?

With respect to the third principle, *Fodor* establishes that:

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

The development would not result in any material adverse impact to adjoining properties such as impacts to views or privacy or solar access. The development has been assessed under the same scrutiny as a permitted use within the zone.

(d) Principle 4 - What is the internal amenity?

With respect to the fourth principle, *Fodor* establishes that:

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

The proposed alterations and additions result in improved functionality of the existing private open space of Unit 601 by providing weather protection. The proposal will not result in substantial changes to the existing internal amenity of the unit and will not compromise the amenity of other units within the RFB or other neighbouring properties. As such, the proposal would provide adequate levels of internal amenity, consistent with the high levels of residential amenity expectant for low density development within the zone.

2. Objectives of the zone

The objectives for a R2 Low Density Residential Zone are stated below:

- 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 proposal is consistent with the relevant objectives of the zone, as it involves works to the existing RFB, which serves the housing needs of the occupants and does not compromise the amenity of adjoining properties or the surrounding area. The development does not impact on neighbouring amenity as it would not affect existing views, nor the privacy of adjoining properties and immaterial additional overshadowing is caused by the proposed awning.

Part 4 – Principal Development Standards

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 2,175m ²	Proposed	Control	Complies
Clause 4.3 – Heights of Building	15.5m	8.5m	NO Variation of 7m (82.4%)

3. Height of Building

The proposed awning has a maximum height of 15.5m, which does not comply with the permissible height limit of 8.5m contrary to Clause 4.3 in NSLEP 2013, being a variation of 7m (82.4%). The annotated section below highlights the non-compliance with the height limit.

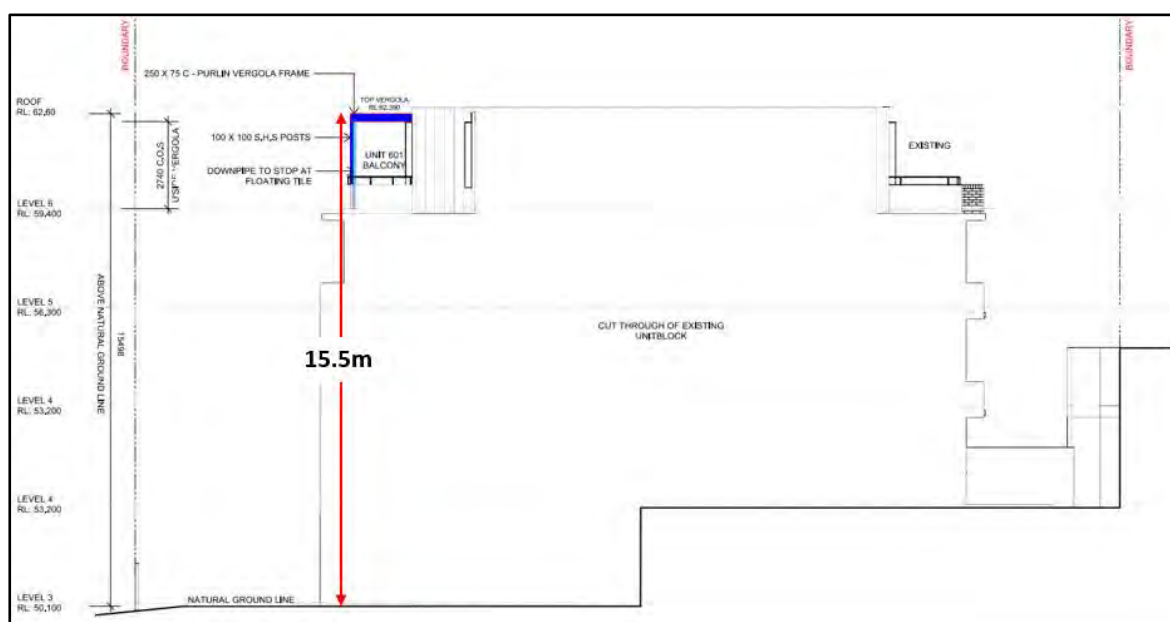


Figure 9 – Annotated Southern Elevation detailing height of awning above existing ground level

A written request to justify a contravention of the development standard for height has been submitted (**ATT_3**) and is considered below.

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

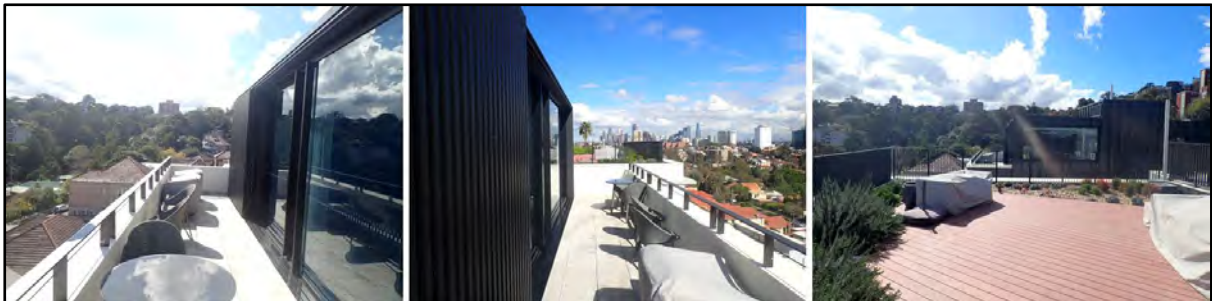
(1)(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

The subject site contains an existing RFB and the works propose an awning to a rear balcony of Unit 601, which is located on the fifth floor of the RFB.

The proposal will have no impact on the existing topography of the site given that the works involve alterations to an existing balcony only. As such, this objective has been achieved by the proposal.

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

The proposed awning would retain the existing maximum height of the building with no noticeable increase in bulk from Premier Street as the respective balcony space is situated to the rear of the RFB. The awning would not substantially affect the bulk and massing of the residential flat building, ensuring that any existing views and vistas from surrounding properties are retained. Below are photographs of the existing balcony subject to installation of an awning confirming the isolated location of the balcony not having an impact on views of surrounding properties.



Figures 10, 11 & 12 – Photo of balconies confirming its isolation from surrounding properties*

*Note – the photo (in Figure 12) is taken from the roof garden of Unit 601. The roof garden is identified in the approved Plan of Subdivision of Lot 100 DP 1263318 not as common property but the roof garden for sole use by apartment 14 also known as Unit 601.

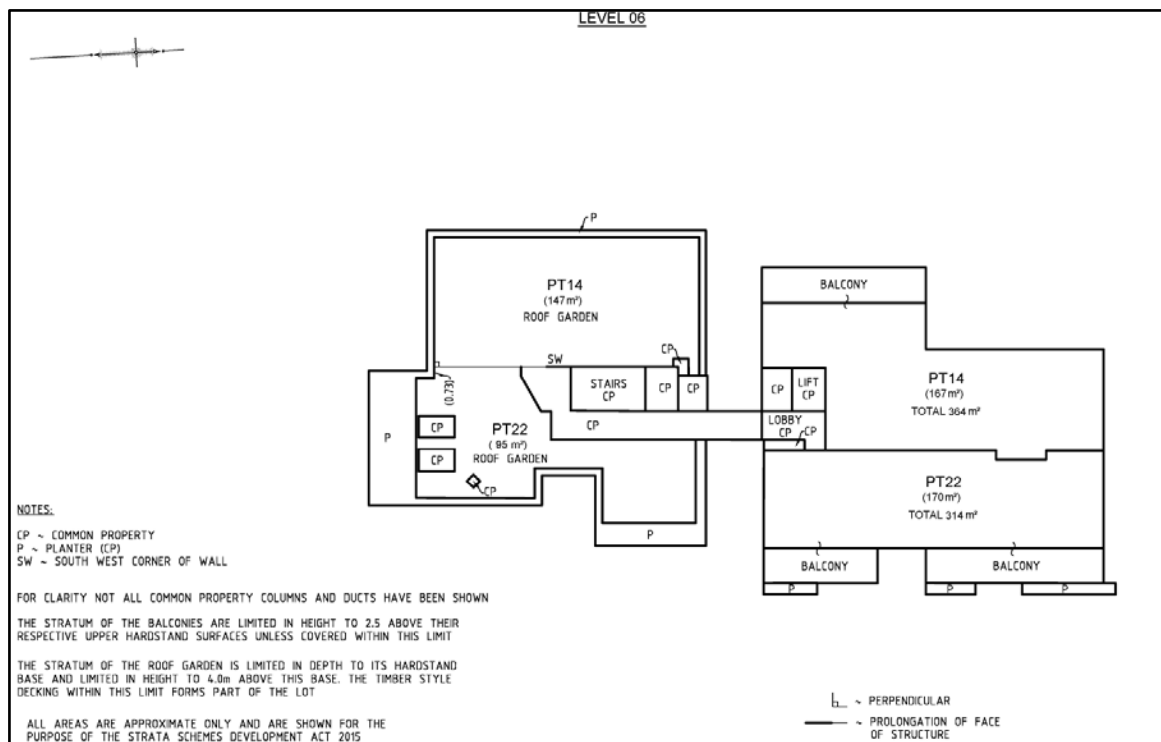


Figure 13 – Level 06 Plan of Subdivision of Lot 100 DP 1263318

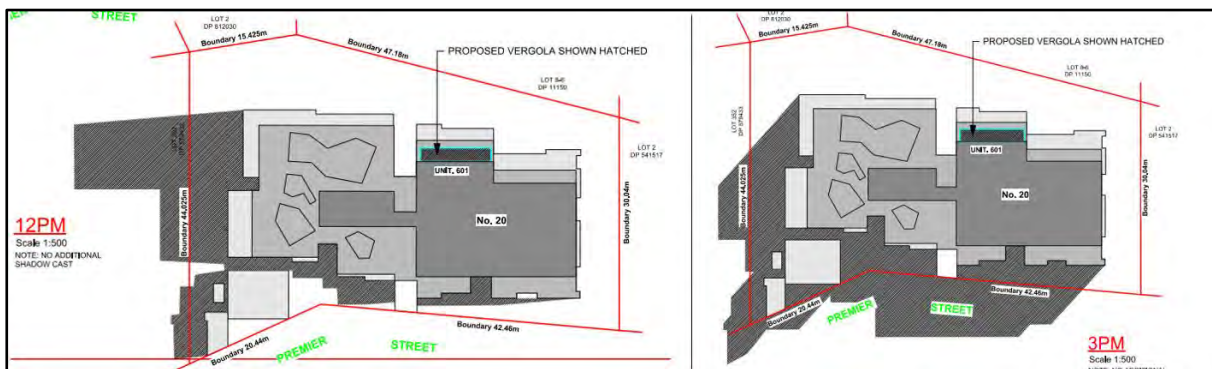
In light of the above considerations, this objective has been achieved by the proposal.

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

The proposed awning would have a minor additional shadow impact which is likely to have an immaterial impact affecting the roofs of properties No.'s 1 & 3 Montpellier Street at 9am in midwinter. Due to the east – west orientation of No. 20 Premier Street no additional shadows will be cast at midday or 3pm in mid-winter with any additional shadows being cast over the existing building only. Consequently, the development maintains the existing solar access afforded to surrounding dwellings and the street in accordance with the objective.



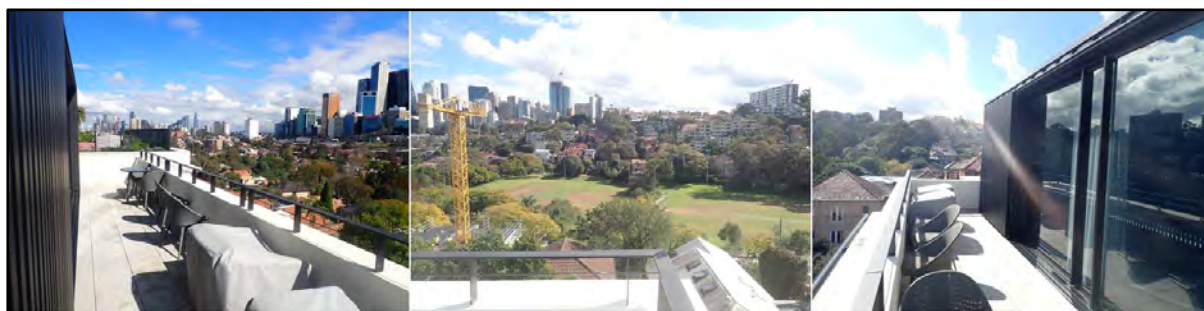
Figures 14 & 15 – 9am mid-winter shadow diagram and aerial photo of site bordered in red and properties affected at 9am bordered in yellow



Figures 16 & 17 – 12pm mid-winter shadow diagram and 3pm mid-winter shadow diagram

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

The proposed awning with louvred roof and metal posts will have a neutral impact on the existing privacy of adjoining properties. No discernible additional impacts are anticipated given that the dimensions of the balcony space of Unit 601 are unaltered. It is acknowledged that the provision of an awning may result in increased use of the balcony space; however, any potential impacts associated with this are considered reasonable and acceptable given the site context and setting within a residential area comprising a mixture of dwelling houses and multi-storey RFB's. Further to this, a site visit confirmed that the current views from the balcony of Unit 601 have no direct or close views to windows, balconies or private open spaces of adjoining dwellings. The primary views from this balcony primarily comprise of distant views of the Sydney CBD/North Sydney CBD and Forsyth Park. This objective has been achieved by the proposal.



Figures 18, 19 & 20 – Photos from various points of the balcony subject to the proposed awning

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

The site is located in land zoned R2 Low Density Residential and is opposite land zoned R4 High Density Residential to the east. The proposed works involve a new awning installed within a balcony of an existing residential flat building, which would have limited changes to the overall bulk, scale, form and presentation of the building. As such, the proposal is able to maintain a development as approved, with a built form that is commensurate with its surrounds, including properties located within the R2 Low Density Residential zone. The proposed development will not result in additional massing and density and will deliver a built form that demonstrates compatibility with the prevailing streetscape and development pattern of the immediate locality. This objective has been achieved by the proposal.

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

The proposed awning will be an open form (unenclosed), lightweight structure, entirely constructed of metal, with a simple design comprising of a frame, supporting posts and operable louvered roof. The proposal will be situated within an existing rear balcony and will not be highly visible from public domain. The minimal presentation and design of the proposal are such that it would generally retain the scale and density of the current RFB and will unlikely result in impacts on the character of the surrounding area. This objective has been achieved by the proposal.

(1)(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential Zone, Zone R3 Medium Density Residential and Zone C4 Environmental Living.

The existing building presents as two (2) storeys to Premier Street and the proposed awning, being located to the rear, would not alter the 2-storey built form and presentation of the building visible from Premier Street. This objective has been achieved by the proposal.

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

It is considered that there are sufficient environmental planning grounds in the circumstances of the case as outlined in the submitted written request seeking to justify the contravention of the development standard.

The proposed awning as shown within **Figure 9** is 15.5m in height measured vertically from existing ground level and exceeds the development standard of 8.5m by 7m (82.4%).

The environmental grounds in support of the height variation prepared by Performance Building Consultants states that the development meets the relevant zone objectives, the development meets the relevant height of building objectives, and the development has negligible amenity impacts and no adverse impact on the public domain. Furthermore, the written request justifies the contravention of the development standard noting that the height of the main roof ridge of the RFB will remain and will not add excess bulk and scale to the existing building.

Whether the proposed development will be in the public interest?

The proposed development would be in the public interest as it is consistent with the objectives of the zone and the objectives of the development standard as discussed above.

Concluding Remarks

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, therefore, considered to be in the public interest. It is recommended that the variation be supported in the site context.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1 - Residential Development		
	<i>Complies</i>	<i>Comments</i>
1.3 Environmental Criteria		
1.3.1 Topography	N/A	The works involve alterations and additions to a fifth storey apartment not requiring any excavation or site disturbance to the existing ground level.
1.3.2 Bushland	N/A	The site is in proximity of bushland (within 300m) located in a Buffer Area B. However, the works affect an existing balcony only having no impact on landscaping therefore consideration of provisions in Part B: Section 15 – Bushland of the DCP is not required.
1.3.3 Bush Fire Prone Land	N/A	The site is not designated as bush fire prone land.
1.3.4 Foreshore Frontage	N/A	The site is not adjacent to the foreshore.
1.3.6 Views	Yes	The proposed development retains views from adjoining properties, with the proposed works comprising the installation of an awning to an existing balcony. The awning is designed with minimal solidity comprising of a metal frame, operable louvres for the roof and metal posts. The minimal bulk of the of the awning plus the isolated location of the balcony would not detract from views from surrounding properties. The proposed addition will maintain access to views for adjoining properties in accordance with Objective O2 of Section 1.3.6 <i>Views</i> of Part B in NSDCP 2013.
1.3.7 Solar Access	Yes	The proposed awning would have a minor additional shadow impact which is likely to have an immaterial impact affecting the roofs of properties 1 & 3 Montpellier Street at 9am in midwinter. Due to the east – west orientation of 20 Premier Street no additional shadows will be cast at midday or 3pm in mid-winter with any additional shadows being cast over the existing building only.

		Consequently, the development maintains the existing solar access afforded to surrounding dwellings retaining reasonable solar access in accordance with Objective O1, of Section 1.3.7 <i>Solar Access</i> of Part B in NSDCP 2013.
1.3.8 Acoustic Privacy	Yes	The awning provides additional shade and weather protection throughout the year increasing the potential use of the outdoor space. However, the size of the outdoor terrace will remain, and the terrace is in an isolated location not immediately adjoining windows of adjoining apartments therefore the addition of an awning is considered to retain reasonable acoustic privacy for residents of adjoining apartments meeting Objective O1, s1.3.8 of NSDCP 2013.
1.3.9 Vibration	Yes	The site is not adjacent to a road with an annual average daily traffic volume of more than 20,000 vehicles therefore consideration of the likely impact of a road noise or vibration is not required pursuant to Cl. 2.120 'Impact of road noise or vibration on non-road development' in the State Environmental Planning Policy (Transport and Infrastructure) 2021.
1.3.10 Visual Privacy	Yes	The proposed awning with louvred roof and metal posts will have a neutral impact on existing privacy of adjoining properties having no discernible additional impact. The site visit confirmed views from the existing balcony have no direct or close views to windows, balconies or private open space of adjoining dwellings with views from the apartment primarily comprising of distant views of City of Sydney CBD/North Sydney CBD and Forsyth Park. The awning will retain a reasonable level of visual privacy to residents of adjoining properties in accordance with Objective O1, s1.3.10 of NSDCP 2013.
1.4 Quality built form		
1.4.1 Context	Yes	The proposed awning is designed with an operable louvre roof supported by a metal frame and metal posts. The elevations of the awning would remain open, and the awning would be contained within the existing balcony having a minimal visual impact on its surrounds. The design of the awning is considered appropriate contextually having a minimal visual impact to the streetscape and public places.
1.4.2 Subdivision Pattern	Yes	The proposed work would not alter the existing lot size, shape or orientation of the site.
1.4.3 Streetscape	Yes	No works are proposed within the road reserve and the apartment is located on the fifth floor of a residential flat building. Due to the scale of the works proposed and the unlikely impact on the streetscape during the course of works to construct an awning no condition requiring a dilapidation report of public infrastructure (refer to C1 Dilapidation Report Damage to Public Infrastructure), bond for damage and completion of infrastructure works (refer to C41 Bond for Damage and Completion of Infrastructure Works) or tree bond is necessary for the protection of street trees (C44 Tree Bond for Public trees).
1.4.5 / 1.4.6 Siting & Setbacks	Yes	The proposed awning over an existing fifth level terrace would have no impact on the siting or setbacks of the existing residential flat building.
1.4.7 Form Massing Scale	Yes	The awning addition to the apartment balcony is considered to be acceptable and in keeping with the form, massing and scale of the existing development. Furthermore, the proposed works are set below the maximum height of the main building roof and to the rear not visible from the street.

<p>1.4.8 Built Form Character</p>	<p>Yes</p>	<p>The residential flat building is reliant on existing use rights noting residential flat buildings are prohibited in the R2 Low Density Residential Zone. Below is consideration of the criteria stipulated in Provision P4, s1.4.8 of NSDCP 2013 for properties reliant on existing use rights.</p> <ul style="list-style-type: none"> (a) The proposed awning would not result in a material loss of view from other properties or public places as previously addressed against Section 1.3.6 'Views' of the NSDCP 2013. (b) The proposed awning would not result in a material overshadowing of other properties or public places as previously addressed against Section 1.3.7 'Solar access' of the NSDCP 2013. (c) The proposed awning would not result in a material loss of privacy to other properties as previously addressed against Section 1.3.10 'Visual Privacy' of NSDCP 2013. (d) The awning is designed to be a height lower than the maximum height of the existing building. (e) The proposed development application affects the existing building footprint having no impact to the existing landscaped areas of the site. (f) The works would have no increase in site coverage. <p>The proposed works are supportable compliant with the criteria stipulated in Provision P4, s1.4.8 of NSDCP 2013.</p>
<p>1.4.10 Roofs</p>	<p>N/A</p>	<p>The awning to the balcony of Unit 601, 20 Premier Street will have no impact on the existing roof form of the building.</p>
<p>1.4.12 Colours and Materials</p>	<p>Yes</p>	<p>A materials and finishes legend are provided in the Detail Plan and Western Elevation (Sheet No. 2). The awning frame, posts and louvres are to be metal with a dark colour "Night Sky". The colour is supported compatible with the dark metal cladding of the RFB.</p> <p>A standard condition of consent is recommended requiring a schedule of colours and finishes must be submitted to the Certifying Authority for approval prior to issue of any Construction Certificate (C5 External Colours and Finishes).</p>
<p>1.4.13 Balconies – Apartments</p>	<p>Yes</p>	<p>No alterations are proposed to the size of the balcony which is approximately 20m² greater than the minimum 8m³ stipulated in Provision P1, s1.4.13 of the NSDCP 2013.</p> <p>The proposed awning with operable louvres comprises open elevations and the balcony will remain unenclosed complying with Provision P7, s1.4.13 of the NSDCP 2013.</p>

1.5 Quality Urban Environment		
1.5.4 Vehicle Access and Parking	Yes	No alterations are proposed to on-site car parking provision.
1.5.5 Site Coverage 1.5.6 Landscape Area (min) & Un-built upon area (max)	Yes	The proposed works affect an existing apartment and associated outdoor terrace not altering the existing developments site coverage, landscaped area or un-built upon area. The works would have an insignificant impact on the density of the site and no loss of existing landscaping therefore satisfying applicable Objectives in s1.5.5 and s1.5.6 of the NSDCP 2013.
1.5.10 Private and Communal Open Space	Yes	The balcony would remain providing private open space to the residents of Unit 601 and the size of the balcony (20m ²) is greater than the minimum 12m ² stipulated in Table B-1.8 and directly accessible from a main living area generally compliant with the objectives and provisions in s1.5.9 of NSDCP 2013.
1.6 Efficient Use of Resources		
1.6.1 Energy Efficiency	N/A	A valid BASIX Certification is not required to be submitted as part of the development application documentation.

Part C of the NSDCP 2013: Character Statements

Section 7 – Neutral Bay Planning Area

Section 7.2 – Neutral Neighbourhood

The application has been assessed against the relevant controls in the Character Statements in Part C in NSDCP 2013 and is supportable because the use of the site will remain as a residential flat building and the works only affect the fifth floor unit of the building ensuring that the topography of the land remains. The nature of works involving a new awning within the rear balcony of Unit 601, ensures that the development will not be highly visible nor dominating when viewed from public domain and has limited presentation and contribution to the streetscape, particularly in comparison to the existing RFB. As such, it is considered that the proposed development will not be contrary to the requirements under Section 7.2. The proposed development is considered satisfactory in accordance with the desired future character and built form of the Neutral Neighbourhood.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The proposal is subject to Local Infrastructure Contributions in accordance with the North Sydney Local Infrastructure Contributions Plan (as amended). The required contribution has been calculated in accordance with the applicable contribution rates as follows

Applicable Contribution Type		
S7.12 contribution detail	Development cost:	\$ 54,700.00
(payment amount subject to indexing at time of payment)	Contribution:	No contribution payable.

The cost of development stipulated on the application form is \$54,700.00. Development with a cost of \$100,000 or less is exempt from contributions pursuant to paragraph 1.3.2 of the Contributions Plan.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

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

SUBMITTERS CONCERNS

The application was notified to adjoining properties and the Neutral Precinct on 07 July to 21 July 2023. Following notification, no submissions were received concerning the proposed development.

PUBLIC INTEREST

The proposal is considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal would be located in a R2 Low Density Residential Zone where residential flat buildings are a prohibited form of development. Nevertheless, the site benefits from existing use rights and the proposed works are considered to be suitable for the site and surrounds having regard to the merits of the proposal as described in the above report.

CONCLUSION

The development application has been assessed against the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and generally found to be satisfactory.

The new awning comprising of an operable louvre roof, supported by a metal frame and metal posts, therefore constitutes a lightweight structure that is not regarded as a bulky or dominant addition detracting from the built form character of the existing residential flat building.

Consideration has been given to the written request made by the applicant pursuant to clause 4.6 seeking a variation to the height of buildings development standard clause 4.3 of the NSLEP 2013. The written request made by the applicant for the awning is considered well founded demonstrating the variation to the building height development standard is justifiable not having an adverse impact on the character of the locality and not having a detrimental impact to the amenity of neighbouring properties in terms of view loss, overshadowing and loss of privacy.

The proposed colour of the awning is considered supportable as it complements the dark metal clad elevations of the building.

Should the application be supported, appropriate conditions of consent are recommended that require the structural integrity of the building to be maintained, the colours and materials demonstrate compatibility with the surrounding area and the appropriate management of stormwater is facilitated.

Having regard to the provisions of Section 4.15 (1) of the *Environmental Planning & Assessment Act 1979*, the proposed development will not result in any unreasonable amenity or environmental impacts. The application is considered satisfactory and is recommended for approval.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Neutral Precinct for 14 days and following notification no submissions were received. Nonetheless, where appropriate, conditions of consent have been recommended to maintain the amenity of adjoining properties and the character of the streetscape.

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, assume the concurrence of the Secretary of The Department of Planning and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Clause 4.3 and grant consent to Development Application No. 195/2023 for installation of a louvered roof (awning) to an existing terrace of an apartment on land at Unit 601, 20 Premier Street subject to the site specific and standard conditions.

Thomas Holman
ASSESSMENT OFFICER

MIGUEL RIVERA
A/TEAM LEADER (ASSESSMENTS)

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
601/20 PREMIER STREET, NEUTRAL BAY
DEVELOPMENT APPLICATION NO. 195/23

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 endorsed with Council's approval stamp and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Issue	Title	Drawn by	Received
1	05 May 2023	Site & Site Analysis Plan	Vergola Pty Ltd	14 June 2023
2	05 May 2023	Detail Plan & Western Elevation	Vergola Pty Ltd	14 June 2023
3	05 May 2023	Section 1 & Fixing Detail	Vergola Pty Ltd	14 June 2023
4	05 May 2023	Western Elevation	Vergola Pty Ltd	14 June 2023
5	05 May 2023	Northern Elevation	Vergola Pty Ltd	14 June 2023
6	05 May 2023	Southern Elevation (Internal)	Vergola Pty Ltd	14 June 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 plans endorsed with Council's approval stamp, 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 Certifier.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the Principal Certifier 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)

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)***Dilapidation Survey Private Property (Neighbouring Buildings)**

- C1. A photographic survey and dilapidation report of adjoining properties (Unit below the proposed works to the terrace of Unit 601, 20 Premier Street) detailing the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The survey and report are to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Certifying Authority, prior to the issue of any Construction Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the photographic survey and dilapidation report is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

Structural Adequacy of Existing Building

- C2. 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 Principal Certifier 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)

Sediment Control

- C3. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th Edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

A Erosion and Sediment Control Plan must be prepared and submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate and prior to any works commencing. The Erosion and Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during construction.

All works must be undertaken in accordance with the approved Sediment Control plan.

The Principal Certifier 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 protect the environment from the effects of sedimentation and erosion from development sites)

Waste Management Plan

- C4. A Waste Management Plan is to be submitted for approval by the Principal Certifier 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)

External Colours and Finishes

- C5. The external colours and finishes shall match those as existing and/ or be compatible with surrounding development. A schedule of external colours and finishes must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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 that the completed colours and finishes of the works are compatible with surrounding development)

Awning Roofing Materials – Reflectivity

- C6. The material for the awning roof (frame and louvres) must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roof material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. 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 that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

Work Zone

- C7. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of any Construction Certificate.

Note: For major development an application for work zone permit must be considered by the North Sydney Local Traffic Committee.

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. Works 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 Works 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 Principal Certifier to enable issue of the Construction Certificate.

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

- C8. 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 NCC and current plumbing standards and guidelines. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier 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)

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

Public Liability Insurance – Works on Public Land

- D1. 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

- D2. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least 2 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**Parking Restrictions**

- E1. 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)

Road Reserve Safety

- E2. 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

- E3. 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 Principal Certifier.

(Reason: Stormwater control during construction)

Removal of Extra Fabric

- E4. 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

- E5. The following must be complied with at all times:
- (a) Materials must not be burnt on the site.
 - (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

- E6. 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

- E7. 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)

Developer's Cost of Work on Council Property

- E8. The applicant or the person, company or other entity that is acting upon this consent, 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

- E9. 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)

Construction Hours

- E10. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
R2 Low Density Residential	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.

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)

Installation and Maintenance of Sediment Control

- E11. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the Construction Certificate.

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Erosion and sediment measures must be maintained in accordance with the publication Managing Urban Stormwater: Soils and Construction (4th Edition, Landcom, 2004), commonly referred to as the "Blue Book" and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Sediment and Erosion Control Signage

E12. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Site Amenities and Facilities

E13. 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 work-place determines the type of amenities required.

Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au

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

Health and Safety

E14. 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.

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

Prohibition on Use of Pavements

- E15. 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

- E16. 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.

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.

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

Waste Disposal

- E17. 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)

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 Certifier 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:
- 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 condition is out of date, work must cease, and no further work may be carried out unless the Principal Certifier 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 Principal Certifier (PC)

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifier 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)

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 Certifier appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Commencement of Works' Notice

- F6. 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 the erection of the building.

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

Demolition

- F7. 1) 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)

Site Sign

- F8. 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 Certifier 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. Council's development engineer must be contacted to arrange inspections of the completed works in the Public Domain.

(Reason: Maintain quality of Public assets)

Damage to Adjoining Properties

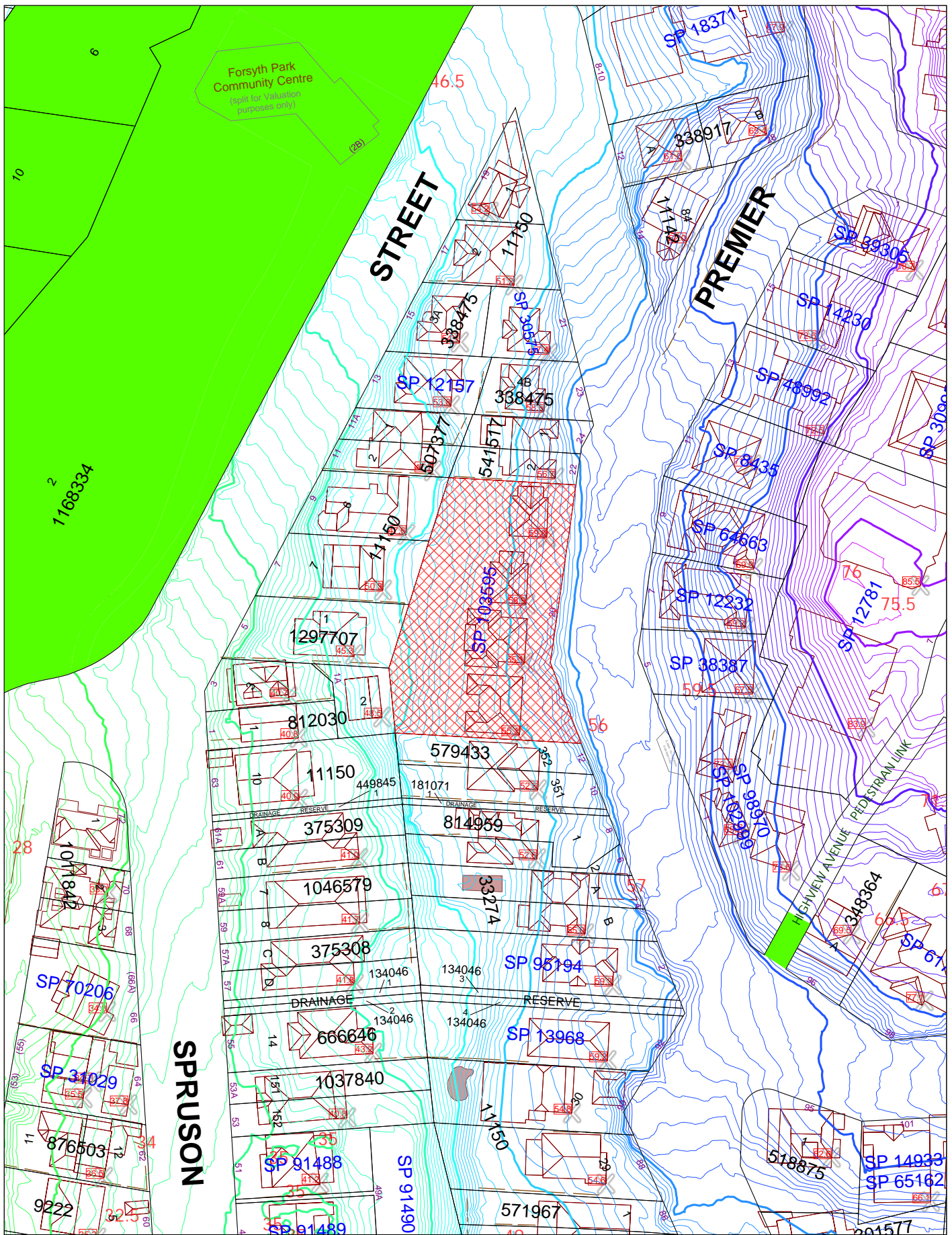
- G2. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

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

Utility Services

- G3. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

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

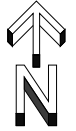


North Sydney Council

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

Scale: 1:1200 approx.

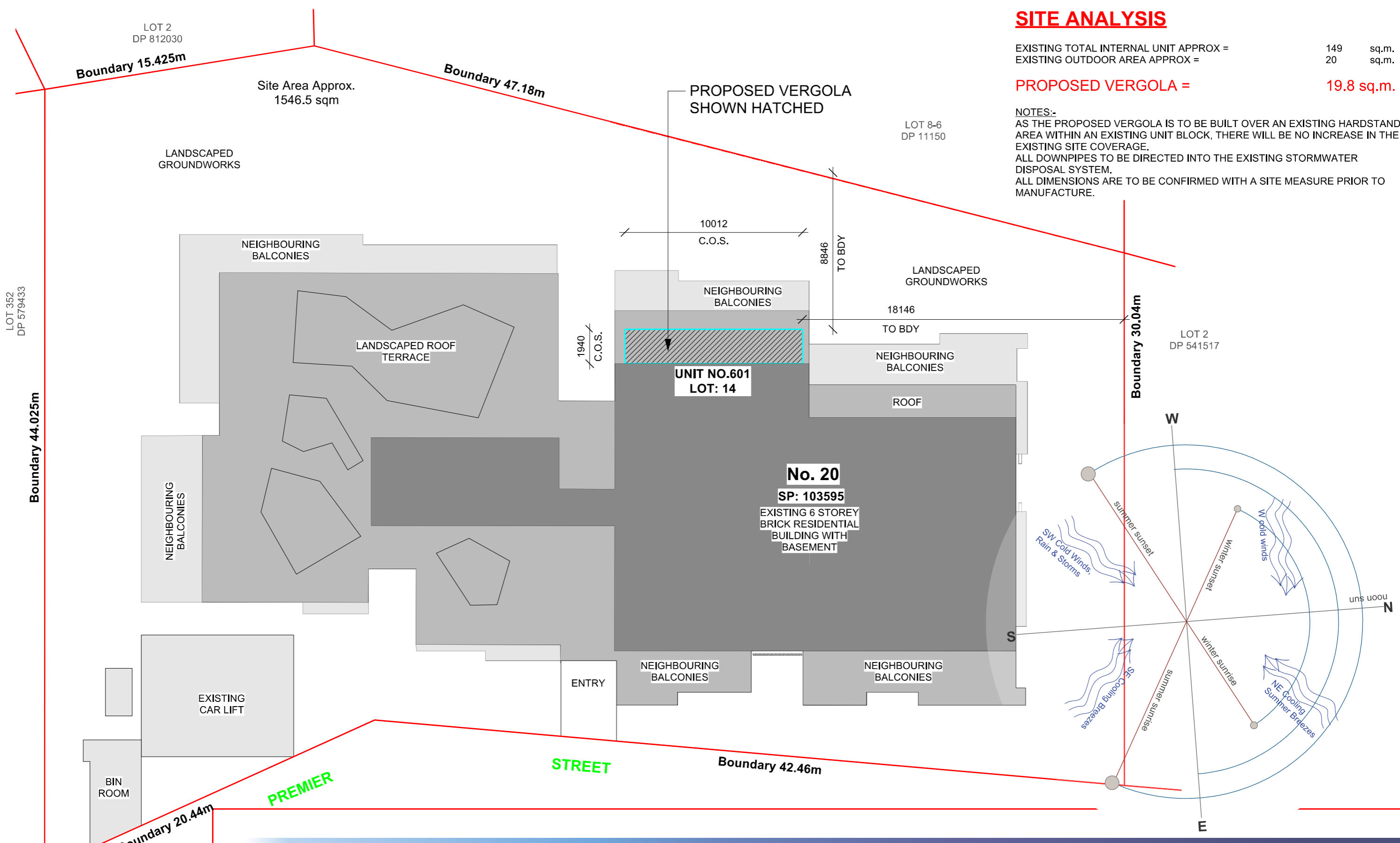


SITE ANALYSIS

EXISTING TOTAL INTERNAL UNIT APPROX = 149 sq.m.
 EXISTING OUTDOOR AREA APPROX = 20 sq.m.

PROPOSED VERGOLA = 19.8 sq.m.

NOTES:-
 AS THE PROPOSED VERGOLA IS TO BE BUILT OVER AN EXISTING HARDSTAND AREA WITHIN AN EXISTING UNIT BLOCK, THERE WILL BE NO INCREASE IN THE EXISTING SITE COVERAGE.
 ALL DOWNPIPES TO BE DIRECTED INTO THE EXISTING STORMWATER DISPOSAL SYSTEM.
 ALL DIMENSIONS ARE TO BE CONFIRMED WITH A SITE MEASURE PRIOR TO MANUFACTURE.



EXISTING SITE PLAN

Scale 1:200

ALL MEASUREMENTS TO BE VERIFIED AT C/M

GENERAL NOTES
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 Locate and protect all services prior to construction.



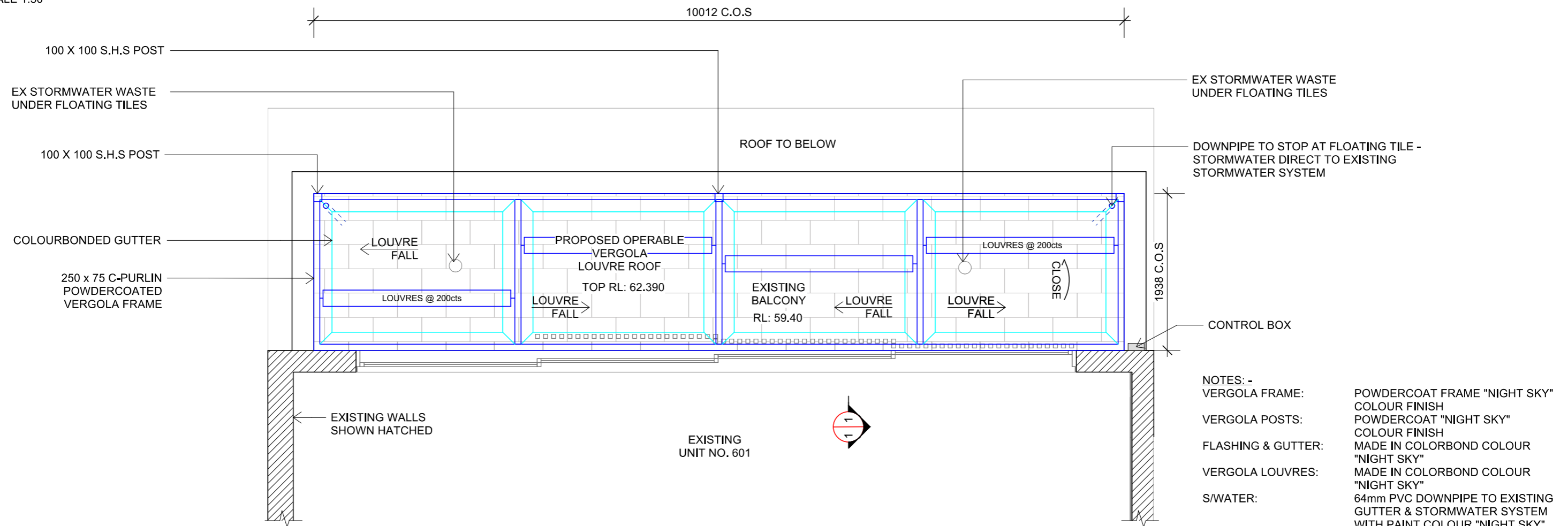
7 TEPKO ROAD TERREY HILLS NSW 2084
 TEL: (02) 9450 3300
 FAX: (02) 9450 3333

Project:
PROPOSED VERGOLA LOUVERED ROOF SYSTEM AT EXISTING UNITBLOCK
 Client:
DON & AMANDA MCNEIL
 Address:
UNIT 601 - NO. 20 PREMIER STREET NEUTRAL BAY - NSW - 2089

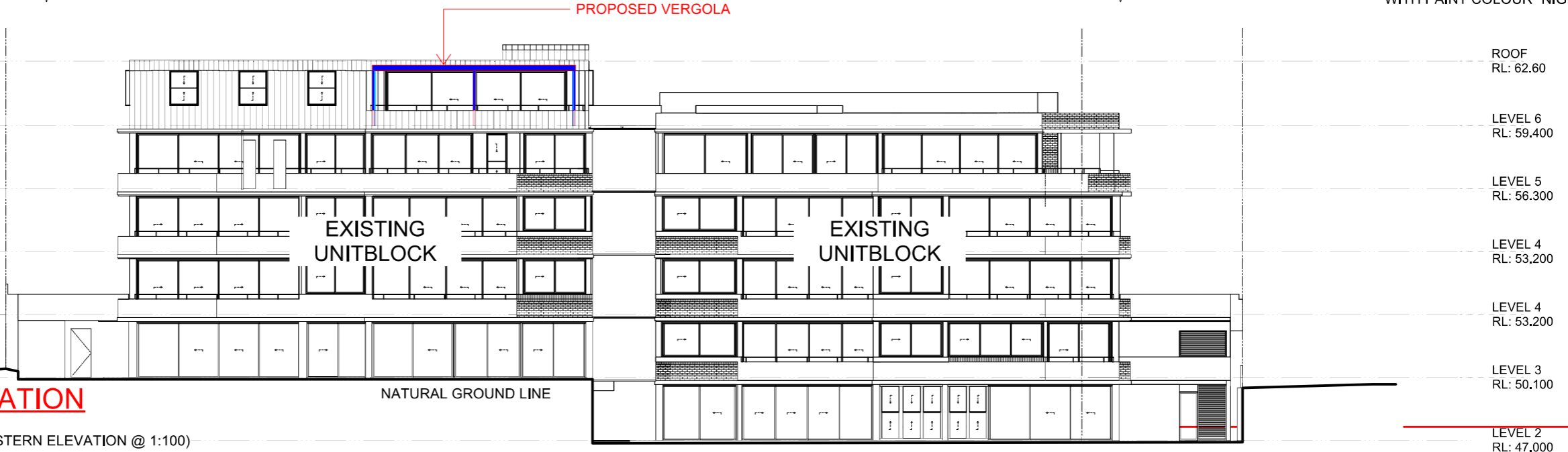
DATE DRAFTED	AMENDED DATE
05-05-23	A -
SALES REP.	B -
B.P.	C -
DRAWN	SHEET No.
JGW	1 OF 7
DRAWING No.	DATE SIGNED
19165	
SCALE.	AS NOTED @ A3
CLIENT'S SIGNATURE	

VERGOLA DETAIL PLAN

SCALE 1:50



- NOTES:-**
- VERGOLA FRAME: POWDERCOAT FRAME "NIGHT SKY" COLOUR FINISH
 - VERGOLA POSTS: POWDERCOAT "NIGHT SKY" COLOUR FINISH
 - FLASHING & GUTTER: MADE IN COLORBOND COLOUR "NIGHT SKY"
 - VERGOLA LOUVRES: MADE IN COLORBOND COLOUR "NIGHT SKY"
 - S/WATER: 64mm PVC DOWNPIPE TO EXISTING GUTTER & STORMWATER SYSTEM WITH PAINT COLOUR "NIGHT SKY"



WESTERN ELEVATION

SCALE 1:250
(FOR FURTHER DETAIL SEE WESTERN ELEVATION @ 1:100)

LEGEND:

	METAL-STEEL FRAME "VERGOLA" - PAINTED -
	METAL DOWNPIPE/ GUTTERS - PAINTED



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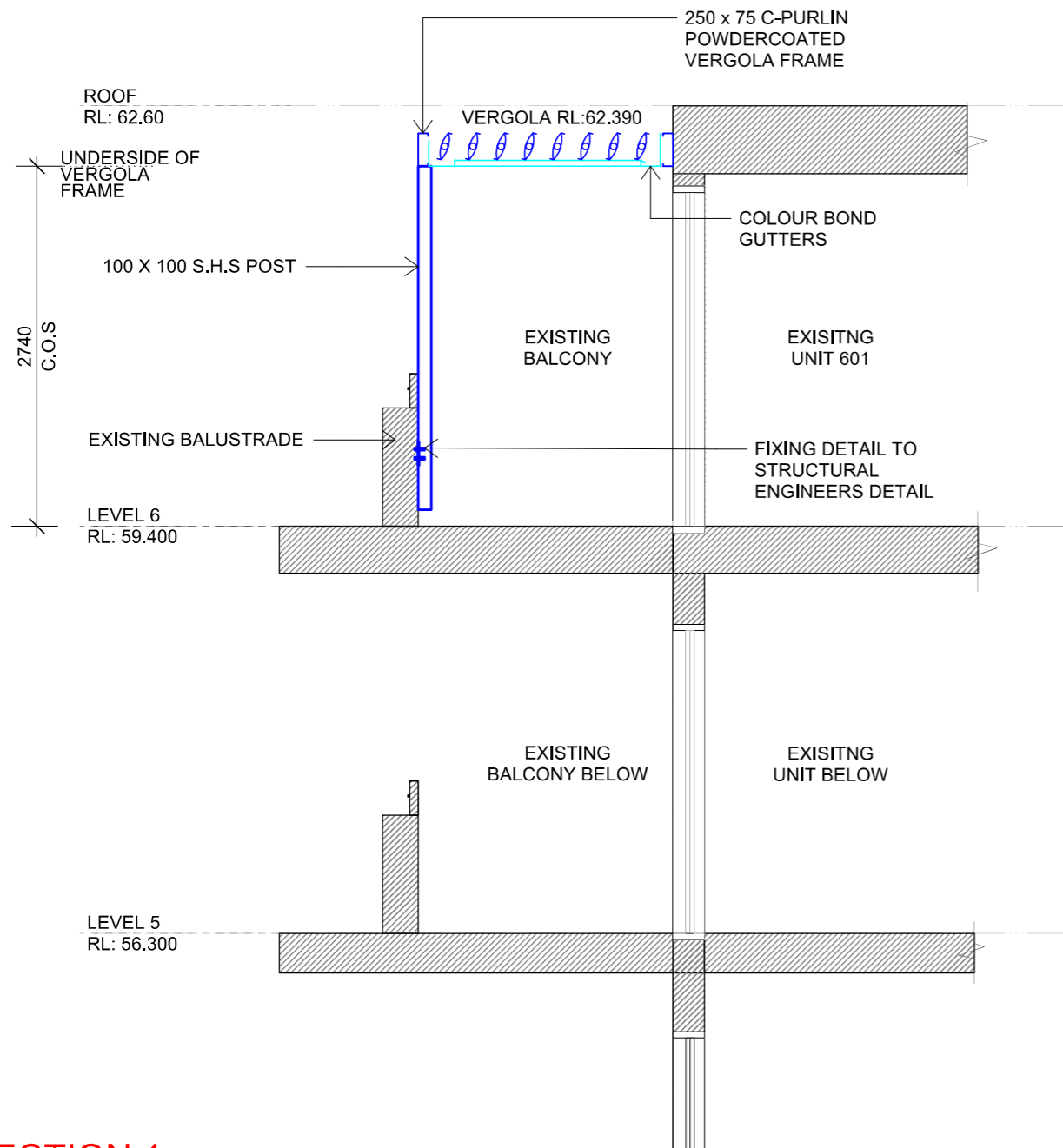
7 TEPKO ROAD TERREY HILLS NSW 2084
TEL: (02) 9450 3300
FAX: (02) 9450 3333

Project:
PROPOSED VERGOLA LOUVERED ROOF SYSTEM AT EXISTING UNITBLOCK

Client:
DON & AMANDA MCNEIL

Address:
UNIT 601 - NO. 20 PREMIER STREET NEUTRAL BAY - NSW - 2089

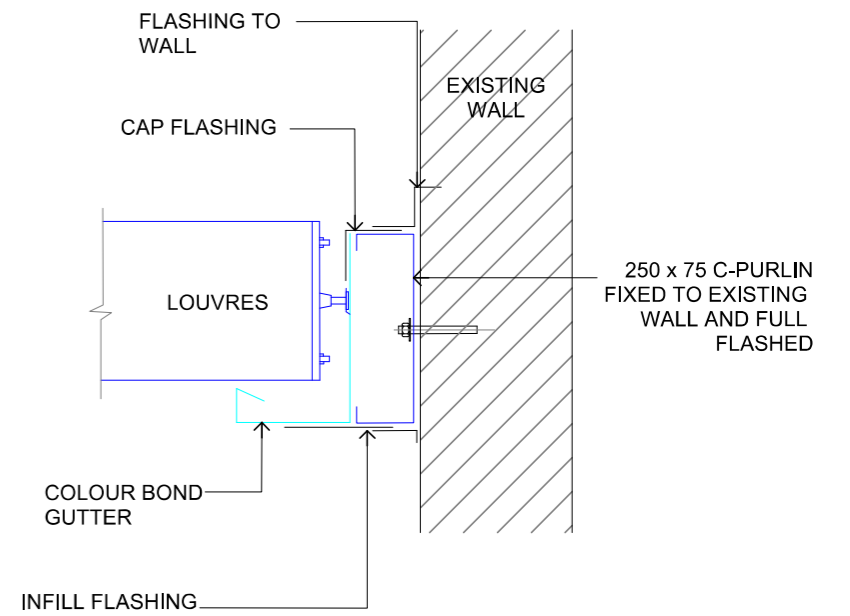
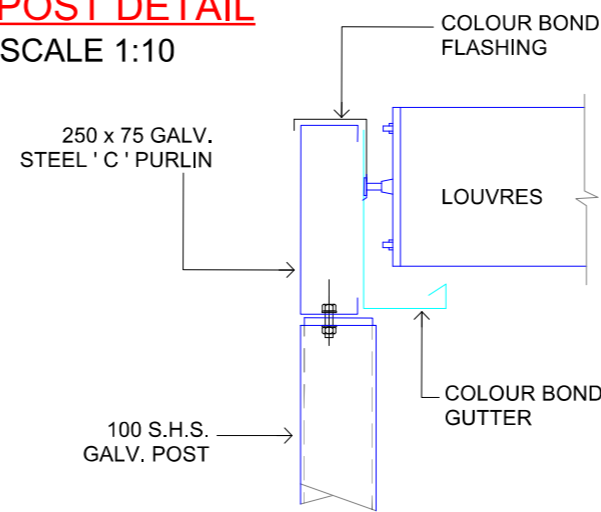
DATE DRAFTED	05-05-23	AMENDED DATE	A -
SALES REP.	B.P.		B -
			C -
DRAWN	JGW	SHEET No.	2 OF 7
DRAWING No.	19165	DATE SIGNED	
SCALE	AS NOTED @ A3		
CLIENT'S SIGNATURE			



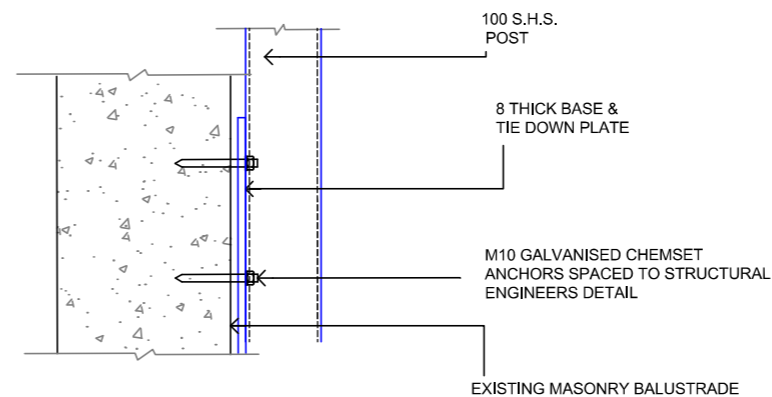
SECTION 1

SCALE 1:50

POST DETAIL
SCALE 1:10



FIXING DETAIL
SCALE 1:10



POST FIXING DETAIL #1

SCALE 1:10

LEGEND:

	METAL-STEEL FRAME / "VERGOLA" - PAINTED -
	METAL DOWNPIPE/ GUTTERS - PAINTED

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Project:

PROPOSED VERGOLA LOUVERED ROOF SYSTEM AT EXISTING UNITBLOCK

Client:

DON & AMANDA MCNEIL

Address:

UNIT 601 - NO. 20 PREMIER STREET NEUTRAL BAY - NSW - 2089

DATE DRAFTED	05-05-23	AMENDED DATE	A -
SALES REP.	B.P.		B -
			C -
DRAWN	JGW	SHEET No.	3 OF 7
DRAWING No.	19165	DATE SIGNED	
SCALE	AS NOTED @ A3		
CLIENT'S SIGNATURE			



WESTERN ELEVATION
SCALE 1:100

LEGEND:

	METAL-STEEL FRAME / "VERGOLA" - PAINTED -
	METAL DOWNPIPE/ GUTTERS - PAINTED

ALL MEASUREMENTS TO BE VERIFIED AT C/M

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 Client:
DON & AMANDA MCNEIL
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UNIT 601 - NO. 20 PREMIER STREET NEUTRAL BAY - NSW - 2089

DATE DRAFTED	05-05-23	AMENDED DATE	A -
SALES REP.	B.P.		B -
DRAWN	JGW	SHEET No.	4 OF 7
DRAWING No.	19165	DATE SIGNED	
SCALE	AS NOTED @ A3		
CLIENT'S SIGNATURE			



NORTHERN ELEVATION

SCALE 1:100

LEGEND:

	METAL-STEEL FRAME / "VERGOLA" - PAINTED -
	METAL DOWNPIPE/ GUTTERS - PAINTED

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VERGOLA
 (NSW) PTY. LTD.
 7 TEPKO ROAD TERREY HILLS NSW 2084
 TEL: (02) 9450 3300
 FAX: (02) 9450 3333

Project:

PROPOSED VERGOLA LOUVERED ROOF SYSTEM AT EXISTING UNITBLOCK

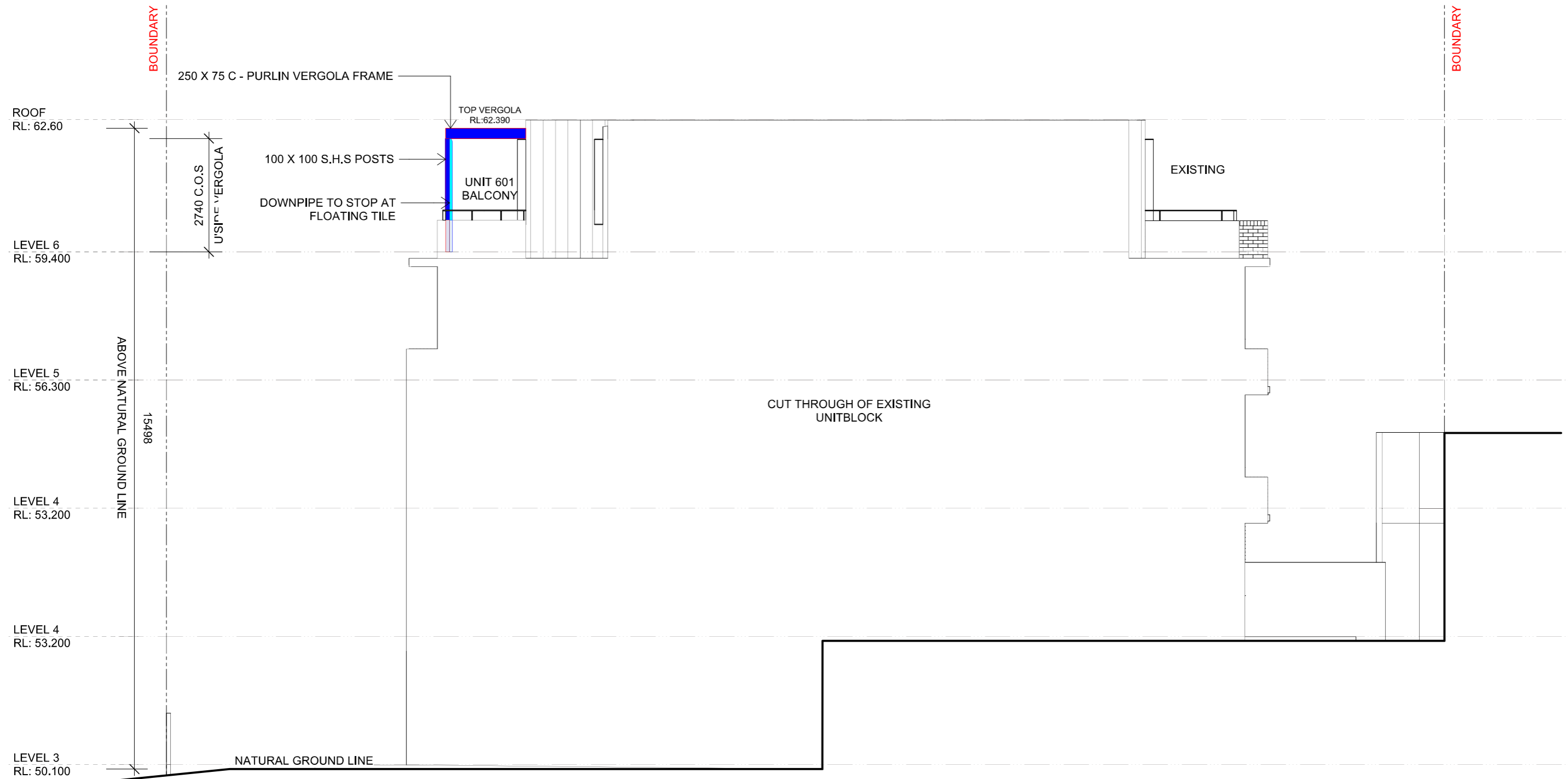
Client:

DON & AMANDA MCNEIL

Address:

UNIT 601 - NO. 20 PREMIER STREET NEUTRAL BAY - NSW - 2089

DATE DRAFTED	05-05-23	AMENDED DATE	A -
SALES REP.	B.P.		B -
DRAWN	JGW	SHEET No.	5 OF 7
DRAWING No.	19165	DATE SIGNED	
SCALE.	AS NOTED @ A3		
CLIENT'S SIGNATURE			



SOUTHERN ELEVATION (INTERNAL)
SCALE 1:100

LEGEND:

- METAL-STEEL FRAME / "VERGOLA" - PAINTED -
- METAL DOWNPIPE/ GUTTERS - PAINTED

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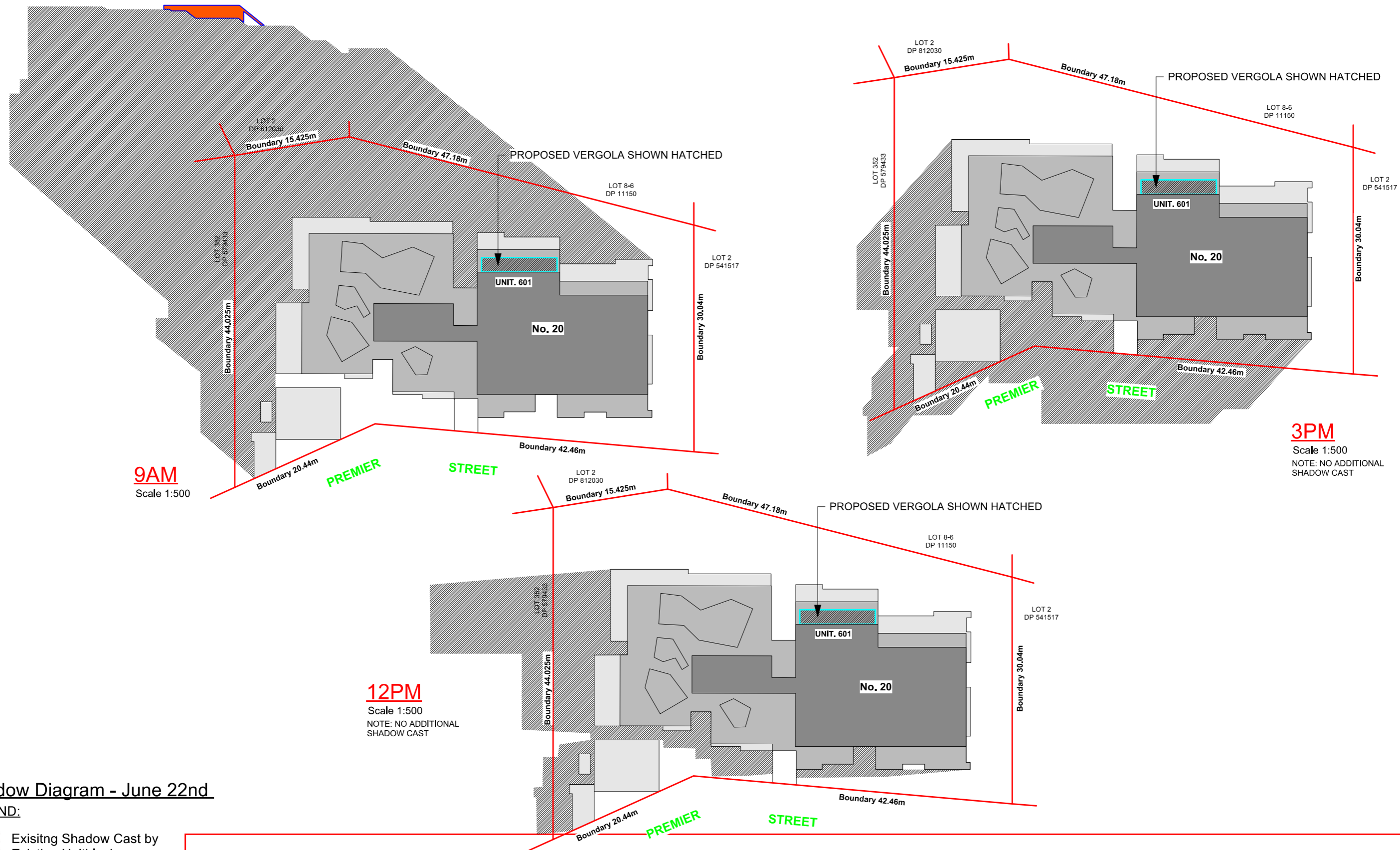
Client:

DON & AMANDA MCNEIL

Address:





UNIT 601 - NO. 20 PREMIER STREET NEUTRAL BAY - NSW - 2089

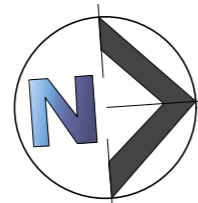
DATE DRAFTED	05-05-23	AMENDED DATE	A -
SALES REP.	B.P.		B -
			C -
DRAWN	JGW	SHEET No.	6 OF 7
DRAWING No.	19165	DATE SIGNED	
SCALE	AS NOTED @ A3		
CLIENTS SIGNATURE			



Shadow Diagram - June 22nd

LEGEND:

-  Existing Shadow Cast by Existing Unitblock
-  9am Additional Shadow cast by proposed Vergolas
-  12pm Additional Shadow cast by proposed Vergolas
-  3pm Additional Shadow cast by proposed Vergolas



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Project:

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Client:

DON & AMANDA MCNEIL

Address:

**UNIT 601 - NO. 20 PREMIER STREET
 NEUTRAL BAY - NSW - 2089**

DATE DRAFTED	05-05-23	AMENDED DATE	A -
SALES REP.	B.P.		B -
DRAWN	JGW	SHEET No.	7 OF 7
DRAWING No.	19165	DATE SIGNED	
SCALE	AS NOTED @ A3		
CLIENT'S SIGNATURE			

Application to Vary a Development Standard

Unit 601, 20 Premier Street, Neutral Bay

Introduction

Clause 4.6 of the North Sydney Local Environmental Plan allows for an exemption from the height control requirements when strict compliance would be unreasonable or unnecessary. In order to justify the exemption, I will address each of the subclauses 1, 2, and 3 and provide relevant case law where applicable.

Subclause 4.6(1): This subclause requires that the proposed development is consistent with the objectives of the height control in the local environmental plan. The primary objective of the height control is to ensure appropriate building heights that are compatible with the surrounding built environment, maintain the character of the area, and minimize overshadowing and visual impact.

In the case of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*, it was held that the objective of the height control is not to establish an absolute limit on building heights, but rather to ensure that the proposed development contributes positively to the desired character and amenity of the area. The case law demonstrates that the objective can still be achieved even if the proposed development exceeds the specified height limit, provided that it satisfies other relevant planning considerations.

Subclause 4.6(2): This subclause requires that a written request for the exemption is submitted, demonstrating that compliance with the height control is unreasonable or unnecessary in the circumstances of the case. Reasonableness can be established by showing that strict compliance would result in unreasonable development constraints or hardship, while unnecessary compliance can be demonstrated if the proposed development is consistent with the objectives of the height control.

In the case of *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386*, it was established that reasonableness can be established by considering factors such as topographical conditions, site constraints, unique circumstances, or where the proposed development aligns with broader strategic planning objectives. Furthermore, unnecessary compliance can be demonstrated if the proposed development offers significant planning benefits and is consistent with the desired character and amenity of the area.

Subclause 4.6(3): This subclause requires that the consent authority must be satisfied that the proposed development is in the public interest because it is consistent with the objectives of the height control and maintains the amenity of the area. The consent authority must consider the likely impacts of the proposed development, such as overshadowing, visual impact, and the overall character of the area.

In the case of *Pathburn v North Sydney [2005] NSWLEC 444*, it was established that the consent authority must carefully balance the public interest against the potential impacts of the proposed development. The case law demonstrates that the consent authority should consider the overall planning merits of the proposal and weigh them against any potential adverse impacts, ensuring that the proposal is not detrimental to the amenity of the area or the interests of the community.

By addressing these subclauses and presenting relevant case law, it is intended to demonstrate that the proposed development, despite exceeding the height control, satisfies the requirements for a Clause 4.6 exemption justification. The proposal aligns with the objectives of the height control, demonstrates that strict compliance would be unreasonable or unnecessary, and is in the public interest, maintaining the amenity of the area.

1. What is the name of the environmental instrument that applies to the land?

North Sydney LEP 2013

2. What is the zoning?

R2 Low Density Residential

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.

4. What is the development standard being varied?

Height of Buildings

5. Under what clause is the standard listed?

Clause 4.3

6. What are the objectives of the standard?

- (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.

7. What is the numeric value of the development standard in the environmental planning instrument?

8.5m

8. What is the proposed numeric value of the development standard in your development application?

15.4m

9. What is the percentage variation?

57.7%

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The proposed works are in the public's interest as they are consistent with the objectives of the standard. The proposed will have no impact on the height of the approved building and is compatible with the prevailing building height in the area and streetscape character. The proposed conforms to the topography of the sloping allotment with the roof form fitting well into the landscape, without adding excess bulk or scale to the building.

There is minimal impact in terms of view sharing from adjacent neighbours or public areas. The proposed alterations have minimal impact with regard to privacy and solar access enjoyed by the residents or adjacent properties and maintains adequate sunlight access to the building itself.

In terms of the zone objectives, the locality surrounding the site is displaying evidence of a renewal process, with medium to high density developments. The bulk and scale of the proposed development is generally consistent within the locality and is compatible with adjacent development. The proposed additions have been designed to meet the day to day needs of the residents and will provide an active use of the common open space of the strata unit.

The objectives of the Height of Buildings control remain relevant, and the proposed development is generally consistent with, or not antipathetic to, the objectives of the Height of Buildings control, notwithstanding the minor numerical variation.

11. How would strict compliance hinder the attainment of the objectives as specified in the Environmental Planning and Assessment Act?

Objectives 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 height control in this instance would hinder greatly the residents right to a high level of residential amenity and an active use of the open space of the strata unit. The proposed is of exceptional design and maintains the facility of the built location, while continuing to endorse positive economic use and development of the land. The proposal does not compromise the amenity of the surrounding area and will continue to protect the wellbeing of the occupants.

12. How are the objectives of the Act being met in this instance?

The proposed alterations and addition will provide amenity of the built environment. As a high-quality designed shade structure, it will deliver an orderly and economic use of the land and provides affordable housing.

13. Are sufficient environmental planning grounds to justify contravening the development standard?

The objectives of the standard and the zone have been achieved. The proposed will sit over existing and approved terrace areas and will add no increase to the height of the existing and approved building. The proposed is consistent with that of the existing building and will have no adverse effect to the solar access, streetscape or the distinctive character of the area.

As the height of the building remains the same as prior to the proposed alterations, together with the reasons set out above, it is considered that sufficient environmental planning grounds have been met to justify contravening the development standard in this instance.

14. Conclusion

Compliance with the Height of Buildings control is unreasonable and unnecessary in these particular circumstances, and there are sufficient environmental planning grounds to justify the proposed variation to the Height of Buildings control.

The proposed works will be in the public's interest as they are consistent with the objectives of the HOB standard and the objectives for development within the R2 Zone. It is considered that the development will not compromise the planning intent for the site or the character and amenity of the surrounding area.

The proposed will sit over existing and approved terrace areas and will add no increase to the height of the existing and approved building. In this instance, the proposal will not have detrimental amenity impacts on the adjacent allotments in regard to loss of solar access or views resulting from the non-compliance. The proposed is consistent with that of the existing building and will have no adverse effect to the streetscape or the distinctive character of the area.

This application has shown justification that the requirements as set out in the decision of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 have been met, to enable council to determine the application.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the NSLEP.