



NSLPP MEETING HELD ON 07/08/2024

Attachments:

1. Site Plan
2. Architectural Plans
3. Clause 4.6 Variation Request

ADDRESS: 10 Larkin Street, Waverton

APPLICATION NO: DA 45/24

PROPOSAL: Retractable awning structure

PLANS REF:

| Plan No. | Rev | Description | Prepared by | Dated |
|-----------------|------------|----------------------|--------------------|--------------|
| A-001 | B | Cover Sheet | RM Studio | 01.29.2024 |
| A-002 | B | Floor Plan – Level 2 | RM Studio | 01.29.2024 |
| A-003 | B | Floor Plan - Roof | RM Studio | 01.29.2024 |
| A-004 | B | Elevations | RM Studio | 01.29.2024 |
| A-005 | B | Section | RM Studio | 01.29.2024 |

OWNER: Inderjit Singh

APPLICANT: Chapman Planning Pty Ltd

AUTHOR: Report of Thomas Holman, Senior Assessment Officer

DATE OF REPORT: 14 June 2024

DATE LODGED: 20 March 2024

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This development application seeks consent for the erection of a retractable awning structure extending from the existing lift foyer. The development application is lodged concurrently with a Building Information Certificate (C3/2014 – BIC 26878) to address works erected on the site without consent inclusive of support posts associated with the proposed retractable awning structure, roof and doors to existing lift foyer.

The development application is reported to the North Sydney Local Planning Panel for determination because the proposed development contravenes a development standard imposed by an environmental planning instrument by more than 10% in accordance with the Ministers Direction “Local Planning Panel Direction – Development Applications” dated 30 June 2020, published to the NSW Planning Portal.

The proposed awning is 11.29m in height measured vertically from existing ground level and exceeds the development standard of 8.5m by 2.79m (32.8%).

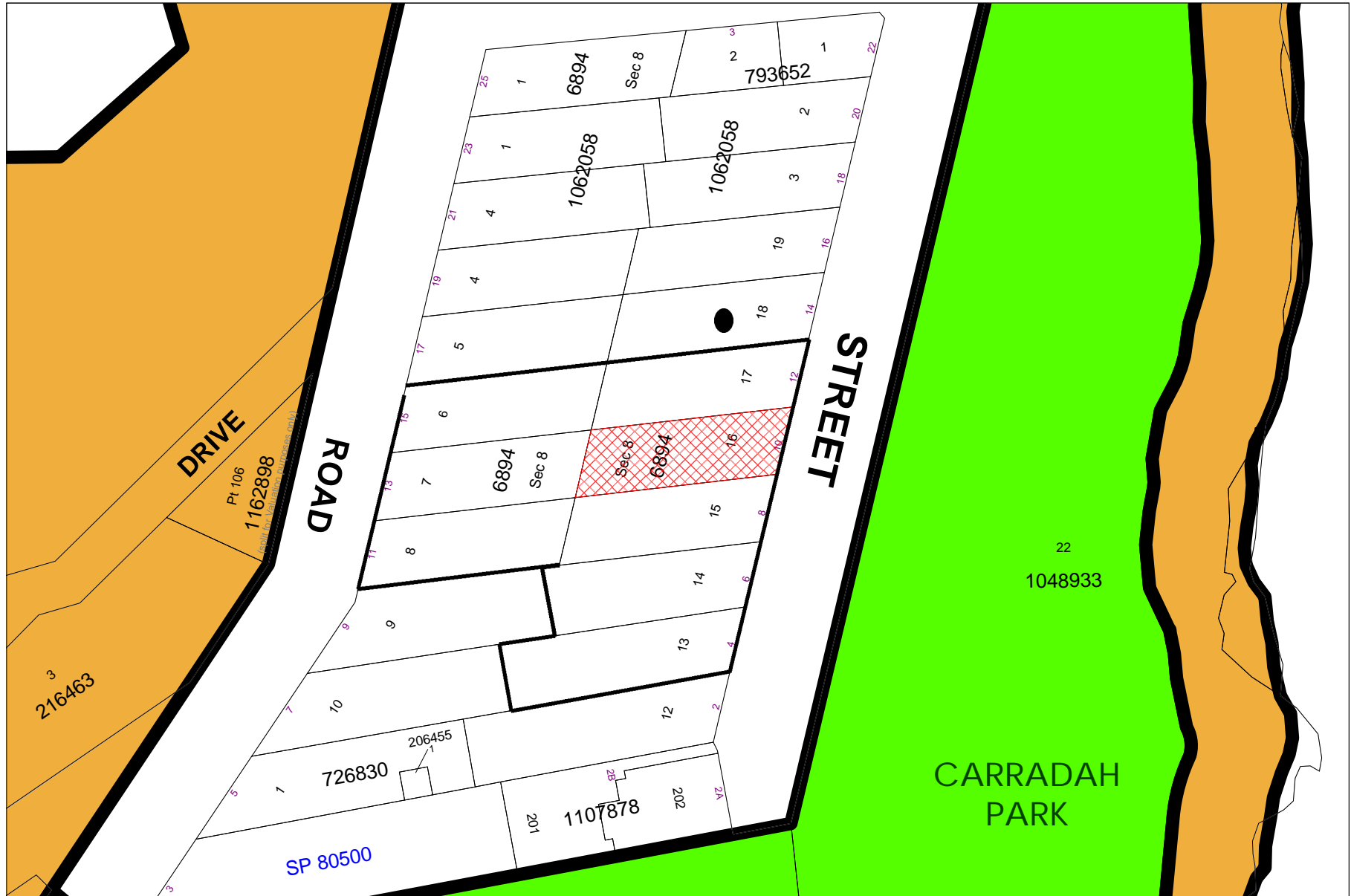
It is considered that there are sufficient environmental planning grounds in the circumstances of the case as outlined in the submitted written request seeking to justify the contravention of the development standard.

The retractable awning structure meets the zone objectives, the relevant height of building objectives and the development will have negligible amenity impacts. Further, the retractable awning will not add excessive bulk and scale to the existing building.

The subject application was notified to adjoining properties and the Waverton Precinct for 14 days where two submissions were received raising concerns with the exceedance in height which will result in an unwanted precedent contribute to an additional floor level and will have a detrimental visible impact. The submissions are addressed within the report and conditions are recommended to the retractable awning.

Following this assessment, the proposed development 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 applicant is seeking development consent for the erection of a retractable awning structure extending from the existing lift foyer. The development application is lodged concurrently with a Building Information Certificate (C3/2014 – BIC 26878) to address works erected on the site without consent inclusive of support posts associated with the proposed retractable awning structure, roof and doors to existing lift foyer.

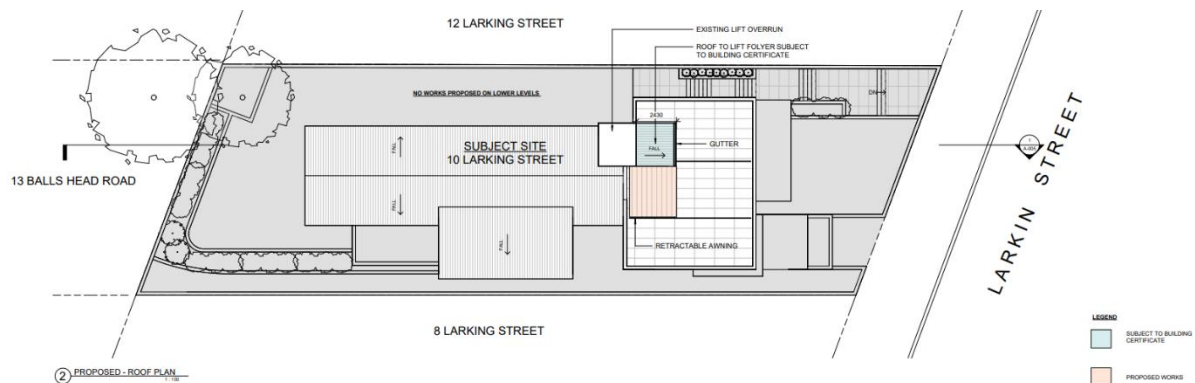


Figure 1 – Proposed Roof Plan, Sheet Number A-003 Rev B

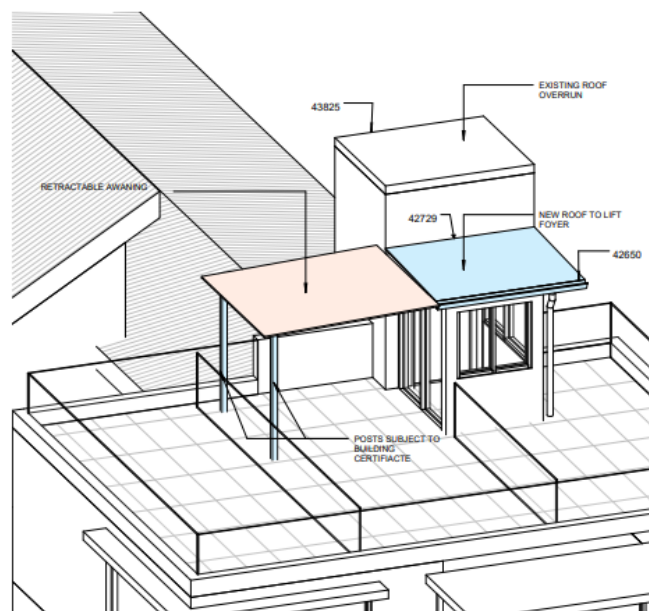


Figure 2 – Proposed 3D Roof Plan, Sheet Number A-005 Rev B

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – C4 Environmental Living
- Item of Heritage - No
- In Vicinity of Item of Heritage - No
- Conservation Area - No
- FSBL - No

Environmental Planning & Assessment Act 1979

SEPP (Biodiversity and Conservation) 2021

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

SEPP (Sustainable Buildings) 2022

SEPP (Resilience and Hazards) 2021

- Chapter 4 Remediation of Land

POLICY CONTROLS

NSDCP 2013

North Sydney Local Infrastructure Contributions Plan

DESCRIPTION OF LOCALITY

The site legal description is Lot 16 Sec 8 DP 6894 and is addressed 10 Larkin Street. It is an irregular shaped lot located on the western side of Larkin Street opposite Carradah Park and the northern portion of Berrys Bay. The site currently contains a three-storey contemporary dwelling house and the rooftop of the dwelling subject to this development application contains a rooftop terrace accessed via a lift overrun.

The subject site is zoned C4 Environmental Living and has a maximum permissible building height of 8.5m.



Figure 3 – Aerial Map of the subject site and immediate surrounds

RELEVANT HISTORY

Previous applications

| Date | Action |
|------------|---|
| 18/08/2023 | Development Application No. 225/23 proposing an awning was withdrawn on 18 August 2023. The application was withdrawn following a preliminary assessment of the development confirming the awning was erected on the rooftop between 9 January 2023 and 26 March 2023. The Assessment Officer confirmed consent cannot be granted for works which have already occurred and subsequently the application was withdrawn. |

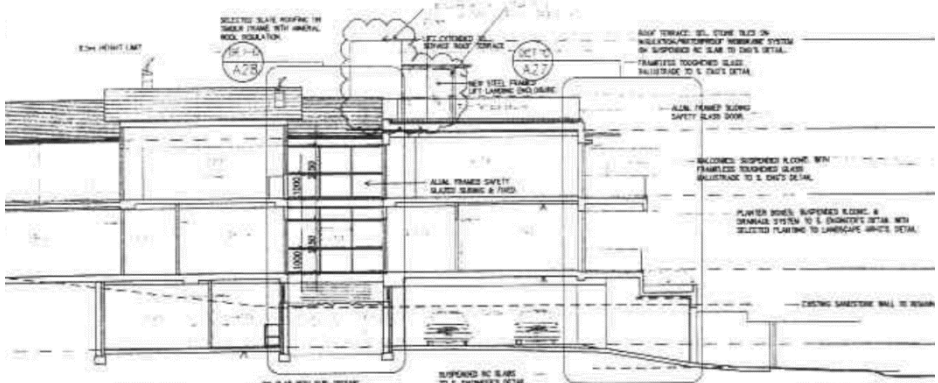
| | |
|------------|---|
| | A Notice of Intention to Issue a Development Control Order under Part 9, Division 9.3, Section 9.34 of the <i>Environmental Planning and Assessment Act 1979</i> was issued to the owner of 10 Larkin Street on 7 September 2023. |
| 13/04/2004 | Development Application No. 414/03 was approved for the demolition of an existing building and construction of a multi storey dwelling with basement car parking. |
| 16/08/2004 | Modification Application No. 414/03/2 was approved for various internal alterations and amendments to fenestration. |
| 14/11/2005 | Modification Application No. 414/03/3 was deferred by Council in its meeting on 7 November 2005 and the Applicant was requested to lodge amended plans addressing the following issues and concerns: (i) Additional massing on roof. (ii) Provide stair and lift chair to the roof instead of lift structure on roof. |
| 27/03/2006 | Modification Application No. 414/03/4 was approved by Council for the extension of the approved passenger lift to service the roof terrace and erection of a covered and enclosed lift landing at the roof terrace level.  |

Figure 4 – Section detailing the lift overrun and covered/enclosed lift landing

Current Application

The Development Application No. 45/24 has been lodged concurrently with Building Information Certificate No. C3/2024, BIC – 26878. The BIC cannot be finalised until determination of DA No. 45/24 and the BIC may need amending to reflect any changes subject to the DA.

| Date | Action |
|------------|---|
| 20/03/2024 | Development Application No. 45/24 was lodged on 20 March 2024 for a retractable awning structure. |
| 19/04/2024 | The application was notified to adjoining properties and the Waverton Precinct. |
| 12/06/2024 | A site visit was completed by the Assessment Officer. |

INTERNAL REFERRALS

No internal referrals were completed because the scope of the work did not require a referral, for instance the site is not heritage affected and no impact on landscaping was proposed. Compliance was informed of the development given a Notice of Intention to Issue a Development Order for the removal of the unauthorized awning and two support posts had been issued by Council dated 07 September 2023.

As noted in the relevant history of this assessment, there is a current Building Information Certificate application to regularize the works undertaken without consent.

SUBMISSIONS

The application has been notified in accordance with Council's Community Consultation Plan with adjoining properties and the Waverton Precinct notified between 05 April to 19 April 2024. In response to the notification Council received a total of two (2) submissions to the proposal.

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

Basis of Submissions

- The structure breaches the height of building and site density requirements of the LEP and DCP.
- The concession by Council to allow lift access was not a precedent for substantial change to the built structure associated with the roof terrace.
- The retractable awning will effectively add another floor to the building.
- There is no guarantee that the awning will not remain permanently extended and, so will further contribute to the detrimental effect that the existing elevator shaft has on the sensitive and widely visible harbourside site.

CONSIDERATION

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

Environmental Planning and Assessment Act 1979 (as amended)

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 does not seek to remove or impact any protected trees.

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 as such is unlikely to contain any contamination. Furthermore, the proposed works do not require any excavation and would not disturb soil. The subject site is therefore considered suitable for the proposed use given that contamination is unlikely.

SEPP (Sustainable Buildings) 2022

A BASIX Certificate is not required because the retractable awning is not considered a BASIX applicable development, but is BASIX excluded development pursuant to the definition in Schedule 7 of the E P & A Regs 2021.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

1. Permissibility

The site is zoned C4 Environmental Living under the provisions of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). Development for the purposes of alterations and additions to a dwelling house is permissible with the consent of Council.

2. Objectives of the zone

The objectives for a C4 Environmental Living Zone are stated below:

- *To provide for low-impact residential development in areas with special ecological, Scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed retractable awning is an ancillary development to the existing dwelling and is considered a low impact form of development not affecting the ecological, scientific or aesthetic values of the C4 Environmental Living Zone. The retractable awning provides additional residential amenity and weather protection to occupants of the dwelling and users of the existing rooftop terrace while not adversely affecting surrounding residential amenity.

Part 4 – Principal Development Standards

| North Sydney Local Environmental Plan 2013 | | | |
|--|----------|---------|----------|
| Site Area – 602.3m ² | Proposed | Control | Complies |
| Clause 4.3 – Heights of Building | 11.29m | 8.5m | NO |

3. Height of Building

The following objectives for the permissible height limit are stated below:

- (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 C4 Environmental Living.

The proposed awning has a maximum height of 11.29m, which does not comply with the permissible height limit of 8.5m contrary to Clause 4.3 in NSLEP 2013, being a variation of 2.79m (32.8%). The annotated elevation below highlights the non-compliance with the height limit.

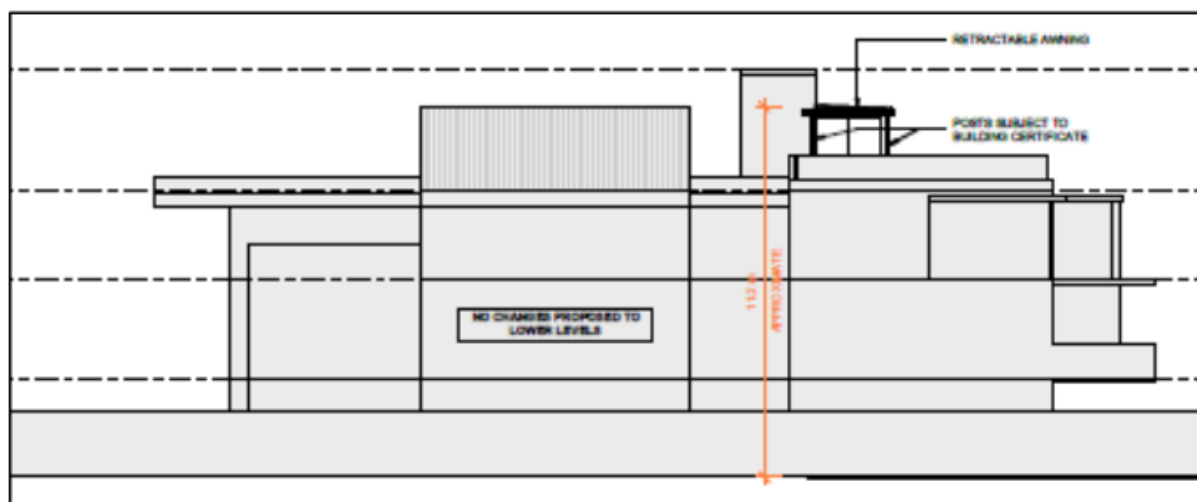


Figure 5 – Annotated Elevation: RM Studio

A written request to justify a contravention of the development standard for height has been submitted 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 dwelling house, and the works propose a retractable awning to an existing lift foyer.

The proposal will have no impact on the existing topography of the site given that the works involve alterations to an existing rooftop terrace only. As such, this objective has been achieved by the proposal as there is no alteration to the existing ground landform.

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

The retractable awning will have no impact on views noting no views are obtained over the subject site from adjoining dwellings and no views of the foreshore from the public domain or views to Sydney Harbour will be impeded due to the isolated location of the awning on the rooftop of the existing dwelling.

Below are photographs of the existing roof top subject to installation of an awning confirming the isolated location of the roof not having an impact on views of surrounding properties.



Figures 6, 7 & 8 – Photo of rooftop subject to the retractable awning

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 retractable awning would have no impact on solar access to existing adjoining properties, public reserves or the street. Any shadow cast would fall entirely within the shadow cast from the existing dwelling.

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

The proposed retractable awning will have a neutral impact on the existing privacy of adjoining properties. No discernible additional impacts are anticipated given that the dimensions of the existing roof top terrace will remain unaltered. Further to this, a site visit confirmed that the current views from the roof terrace of 10 Larkin Street will have no direct or close views to windows, balconies or private open spaces of adjoining dwellings. The primary views from the roof terrace comprise of views of the Harbour. This objective has been achieved by the proposal.



Figure 9 – Photo from the roof terrace and the Harbour

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

The site is located in land zoned C4 Environmental Living and is not located at a zone boundary. The proposed works involve a new retractable awning installed within a roof terrace of an existing dwelling house, which would have limited perceptible 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 C4 Environmental Living zone. 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 retractable awning will appear as a lightweight structure not contributing significantly to additional scale and density of the dwelling. The awning will be open on all sides, not appearing as a bulky addition. The proposal will be situated within an existing roof terrace centrally sited and will not be highly visible from public domain as detailed in Figures 10 – 14 below. The minimal presentation and design of the proposal are such that it would generally retain the scale and density of the current dwelling and will unlikely result in adverse impacts on the established character of the surrounding area. This objective has been achieved by the proposal.



Figure 10 – Photo opposite 10 Larkin Street – existing awning structure not visible



Figure 11 – Photo opposite 8 Larkin Street – existing upper elements of awning structure visible



Figure 12 – Photo opposite 4 Larkin Street – awning structure increasingly visible



Figure 13 – Photo opposite 14 Larkin Street – top of awning structure partially visible

(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 a 2-3 storey building to Larkin Street and the proposed awning due to its open and lightweight design would not add substantial built form to the rooftop maintaining the 2-3 storey built form and presentation of the building visible from Larkin 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 is 11.29m in height measured vertically from existing ground level and exceeds the development standard of 8.5m by 2.79m (32.8%). There is no material increase in the height of the building noting the adjoining lift service.

The environmental grounds in support of the height variation prepared by Chapman Planning Pty Ltd 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. Furthermore, the written request justifies the contravention of the development standard noting that the retractable awning is below the maximum height of the building being the lift overrun and will not add excessive 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 Development Control plan applies to the site so an assessment has been carried out below:

Compliance Table – Residential Development

The Development Control Plan applies to the site, so an assessment has been carried out below. Due to the specific scope of works proposed primarily to the rooftop of the dwelling and noting limited environmental impact as detailed in the Clause 4.6 assessment, consideration is provided below of the criteria within Section 1 – Residential Development of the NSDCP 2013 where relevant.

Environmental Criteria (Section 1.3)

The proposed works being provision of a retractable awning maintains the amenity of surrounding properties having no substantial additional bulk and scale which could affect neighbouring views, impact upon solar access (within the shadows cast from the existing dwelling) or cause an unreasonable loss of visual privacy to the residents of adjoining properties. Further the works concern an existing roof terrace for the dwelling having no impact on the topography of the site, landscaping or bushland in proximity of the site.

The retractable awning would not intensify the use of the existing roof terrace and it is understood its function is to assist with weather protection to the lift foyer in poor weather events therefore the acoustic amenity of adjoining properties is not unduly affected.

The development is considered to maintain a high amenity for surrounding residents satisfying the Environmental Criteria in Section 1.3 of NSDCP 2013.

Quality Built Form (Section 1.4)

The works would retain the existing siting, setbacks and form, massing and scale of the dwelling and generally retain the existing built form character. The retractable awning would be no higher than the lift foyer and below the height of the lift overrun. No alterations are proposed to the roof form or the front elevation of the dwelling, and the existing materials and finishes will remain, and no alterations are proposed to the front fence.

Quality Urban Environment (Section 1.5)

No vehicular access is proposed, and no changes are sought to the existing pedestrian entry. The existing site coverage will remain unchanged as well as the existing landscaped area and un-built upon area with no alterations proposed to the existing landscaped front and rear garden.

Efficient Use of Resources (Section 1.6)

A BASIX Certificate is not required because the retractable awning is not considered a BASIX development, but BASIX excluded development pursuant to the definition in Schedule 7 of the E P & A Regs 2021.

CHARACTER STATEMENTS – PART C

Waverton / Wollstonecraft Planning Area (Waverton Neighbourhood)

The application has been assessed against the relevant controls in the Character Statement for the Waverton Neighbourhood in Part C of NSDCP 2013. The development maintains the significant of the neighbourhood maintaining the residential land use, not impacting upon topography and views and not impacting upon surrounding natural features of significance. The residential dwelling and its density will remain compatible with the desired future character and built form of the 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: | \$6,600.00 |
| (payment amount subject to indexing at time of payment) | Contribution: | \$ Nil. |

The cost of development stipulated on the application form is \$6,600.00. 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 | Yes |
| 6. Loading and Servicing facilities | Yes |
| 7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |
| 8. Site Management Issues | Yes |
| 9. All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979 | Yes |

SUBMITTERS CONCERNS

The concerns raised during the notification of the application have been reviewed and addressed in detail under the relevant headings below.

- ***The structure breaches the height of building and site density requirements of the LEP and DCP.***

Response: The awning structure height exceedance has been considered and compliance with the development standard in the LEP is considered unnecessary and there are sufficient environmental planning grounds to justify the contravention. The development has been considered against DCP controls and found to comply with applicable controls.

- ***The concession by Council to allow lift access was not a precedent for substantial change to the built structure associated with the roof terrace.***

Response: Every development application should be considered on its merits and the retractable awning is a structure that is not a dominant addition on the roof terrace and is supportable following an assessment against applicable planning controls.

- ***The retractable awning will effectively add another floor to the building.***

Response: The retractable awning is designed to be a lightweight structure providing additional weather protection not adding an additional floor to the building. There is no functional occupiable floor area (in terms of new living spaces) generated by the development.

- ***There is no guarantee that the awning will not remain permanently extended and, so will further contribute to the detrimental effect that the existing elevator shaft has on the sensitive and widely visible harbourside site.***

A condition of consent can be recommended requiring the roof of the awning to be of a fabric construction and able to be retractable and not a fixed roof feature to ensure it is a lightweight structure as detailed within the application. A further condition should be imposed ensuring that the awning if approved is not enclosed which would result in unacceptable bulk and greater impact.

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 C4 Environmental Living Zone where dwelling houses are a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Waverton Precinct for 14 days where a number of issues were raised that have been addressed in this report where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and the character of the streetscape.

RETROSPECTIVE APPROVAL OF SUPPORT STRUCTURE

A Building Information Certificate C3/2024 has been submitted and is to be determined concurrently with the Development Application No. 45/2024. The scope of unauthorised work subject to the BIC is annotated in the submitted architectural plans and this application concerns the proposed use of the structure and the proposed addition of a retractable awning. No approval is given or implied for any works completed to date which is subject to a building information certificate application.

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 proposed awning is 11.29m in height measured vertically from existing ground level and exceeds the development standard of 8.5m by 2.79m (32.8%).

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.

There are sufficient environmental grounds in support of the height variation. The retractable awning structure meets the zone objectives, the relevant height of building objectives and the development will have negligible amenity impacts. Further, retractable awning will not add any notable bulk and scale to the existing building.

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.

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, Industry, and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 regarding the non-compliance with Clause 4.3 and grant consent to Development Application No. 45/2024 for a retractable awning structure on land at 10 Larkin Street, Waverton subject to the following site specific and attached standard conditions of consent.

Terms of Consent

- A4. Approval is granted for the use of the awning structure and proposed works stipulated in Condition A1 of this consent. No approval is given or implied for any works undertaken prior to the date of determination of this consent associated with the use of the awning structure. The consent holder may consider the lodgement of a building information certificate application to regularise any such works.

The retractable awning is to be a Markilux Pergola 110/210 tracfix awning system which is not fixed and the colour of the awning shall be neutral as stipulated in the submitted Statement of Environmental Effects dated 20 February 2024 prepared by Chapman Planning.

(Reason: To ensure the terms of consent are clear)

Retractable Awning

- A5. When the roof terrace area is not in use, the retractable awning is to be returned to its furled or unopened state. No consent is given for the retractable awning to be left permanently in its opened or unfurled state. The elevations of the awning structure shall remain open and not enclosed.

(Reason: To ensure the terms of consent are clear)

Structural Adequacy

- A6. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the additional loads imposed on it from the rooftop awning shall be submitted to Council prior to the installation of the proposed awning retractable structure.

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

Thomas Holman
SENIOR ASSESSMENT OFFICER

Kim Rothe
A/TEAM LEADER

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES

NORTH SYDNEY COUNCIL
CONDITIONS OF DEVELOPMENT APPROVAL
10 LARKIN STREET, WAVERTON
DEVELOPMENT APPLICATION NO. 45/24

A. Conditions that Identify Approved Plans

- 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. | Rev | Description | Prepared by | Dated |
|----------|-----|----------------------|-------------|------------|
| A-001 | B | Cover Sheet | RM Studio | 01.29.2024 |
| A-002 | B | Floor Plan – Level 2 | RM Studio | 01.29.2024 |
| A-003 | B | Floor Plan - Roof | RM Studio | 01.29.2024 |
| A-004 | B | Elevations | RM Studio | 01.29.2024 |
| A-005 | B | Section | RM Studio | 01.29.2024 |

(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)

Terms of Consent

- A4. Approval is granted for the use of the awning structure and proposed works stipulated in Condition A1 of this consent. No approval is given or implied for any works undertaken prior to the date of determination of this consent associated with the use of the awning structure. The consent holder may consider the lodgement of a building information certificate application to regularise any such works.

The retractable awning is to be a Markilux Pergola 110/210 tracfix awning system which is not fixed and the colour of the awning shall be neutral as stipulated in the submitted Statement of Environmental Effects dated 20 February 2024 prepared by Chapman Planning.

(Reason: To ensure the terms of consent are clear)

Retractable Awning

- A5. When the roof terrace area is not in use, the retractable awning is to be returned to its furled or unopened state. No consent is given for the retractable awning to be left permanently in its opened or unfurled state. The elevations of the awning structure shall remain open and not enclosed.

(Reason: To ensure the terms of consent are clear)

Structural Adequacy

- A6. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of the property and its ability to withstand the additional loads imposed on it from the rooftop awning shall be submitted to Council prior to the installation of the proposed awning retractable structure.

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

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

- D1. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

E. During Demolition and Building Work**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)

Removal of Extra Fabric

- E3. 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)

**10 LARKIN STREET, WAVERTON
DEVELOPMENT APPLICATION NO. 45/24**Page 4 of 9

Dust Emission and Air Quality

E4. 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

E5. 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

E6. 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

E7. The Developer 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)

**10 LARKIN STREET, WAVERTON
DEVELOPMENT APPLICATION NO. 45/24**

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No Removal of Trees on Public Property

- E8. 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

- E9. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

| Standard Construction Hours | | |
|--|------------------------|-------------------|
| Location | Day | Hours |
| All zones (Excl. E2 Commercial Centre MU1 Mixed-use | 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, the EPA Noise Policy for Industry 2017 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)

Site Amenities and Facilities

- E10. 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)

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DEVELOPMENT APPLICATION NO. 45/24**

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Health and Safety

- E11. 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

- E12. 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

- E13. 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

- E14. 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)

Demolition

- F6. 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

- F7. 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

**10 LARKIN STREET, WAVERTON
DEVELOPMENT APPLICATION NO. 45/24**

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- c) showing the name, address and telephone number of the Principal Certifier for the work.
- 2) Any such sign must be maintained while to 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) to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

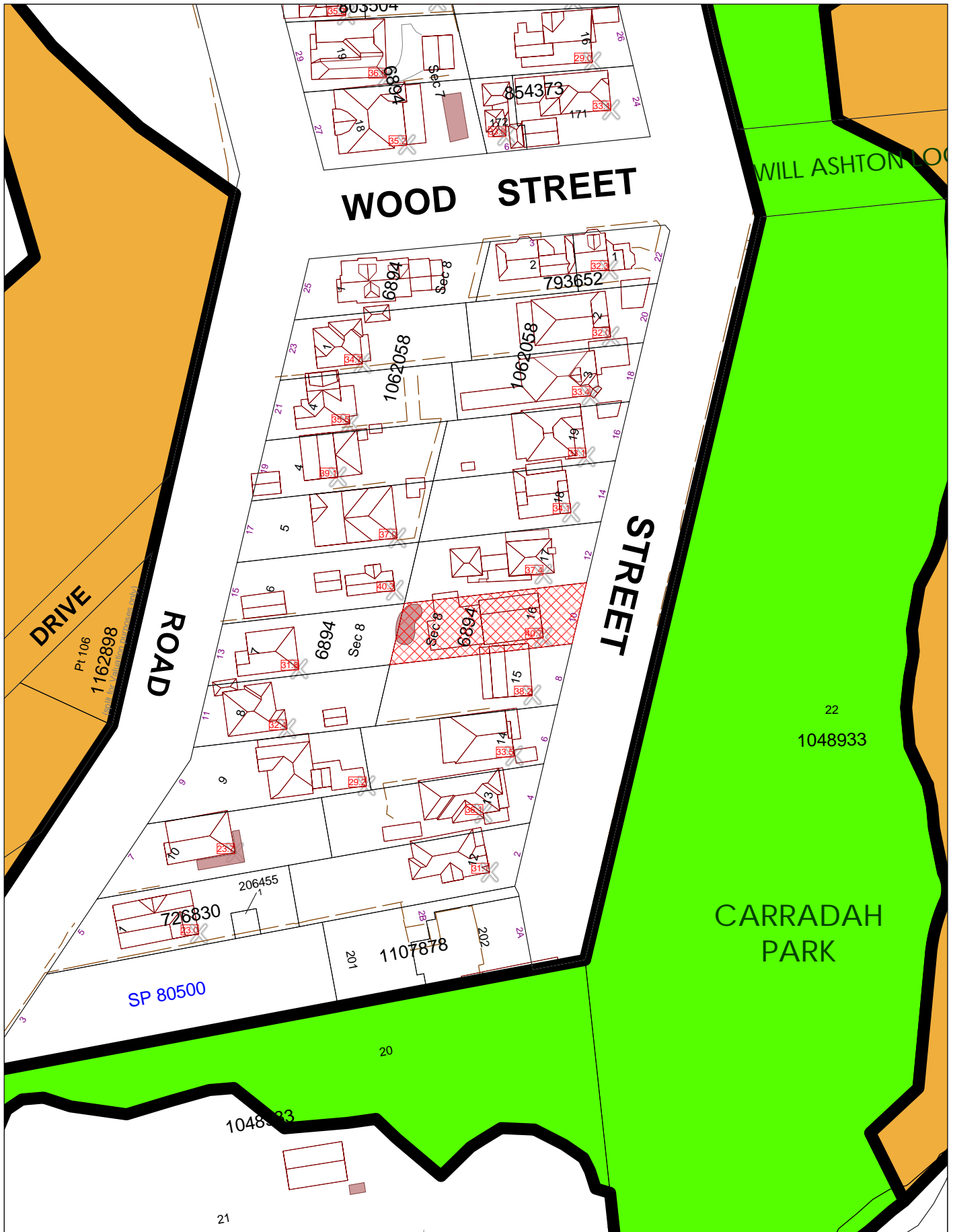
to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of Public assets)

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)



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.



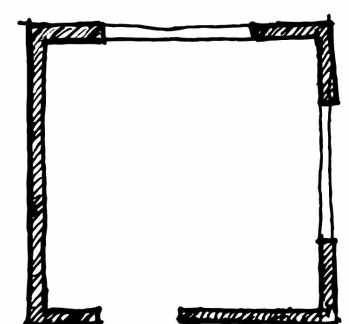
BUILDING CERTIFICATE & DA

10 LARKIN STREET, WAVERTON

SUBJECT SITE



SITE LOCATION PLAN
NTS



RM Studio

e:info@rmstudio.com
p:0404 957 701

| No. | Description | Date |
|-----|------------------|------------|
| 1 | Issue for review | 23.02.2022 |
| A | ISSUE FOR CDC | 07.03.2022 |
| B | Issue for review | 01.29.2024 |

NOT FOR CONSTRUCTION

Address : 10 LARKIN STREET, WAVERTON

Client : Inderjit Singh
Project : SIN2202

Sheet Name:

COVER SHEET

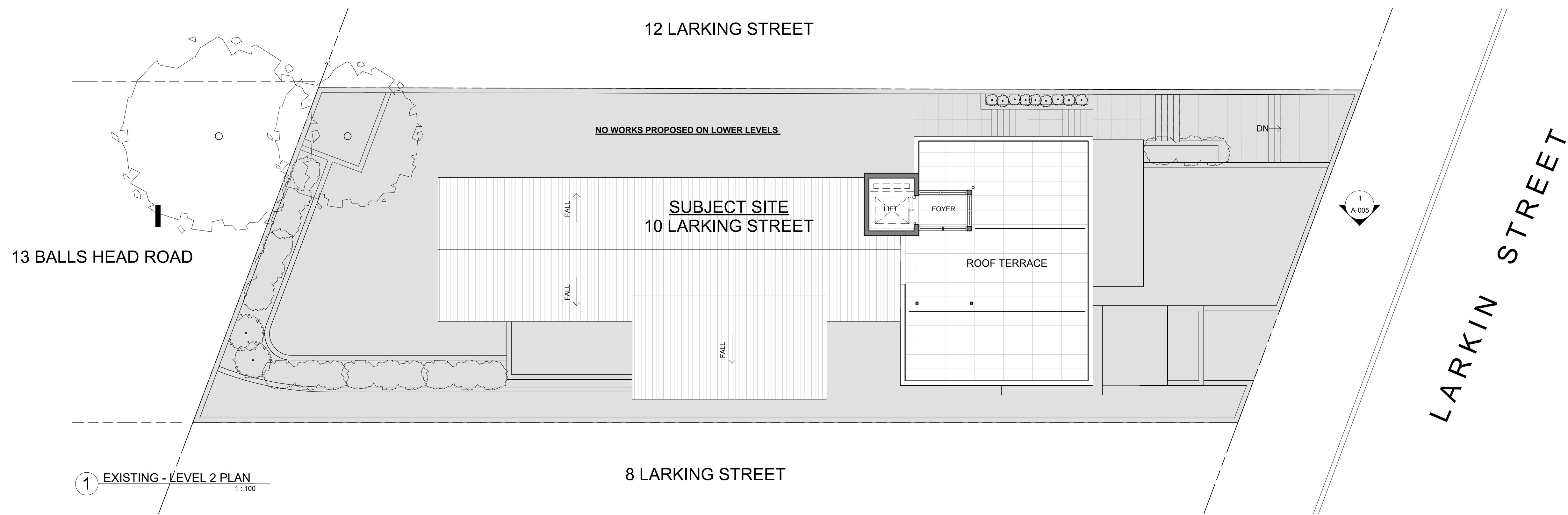
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A-001

Revision:

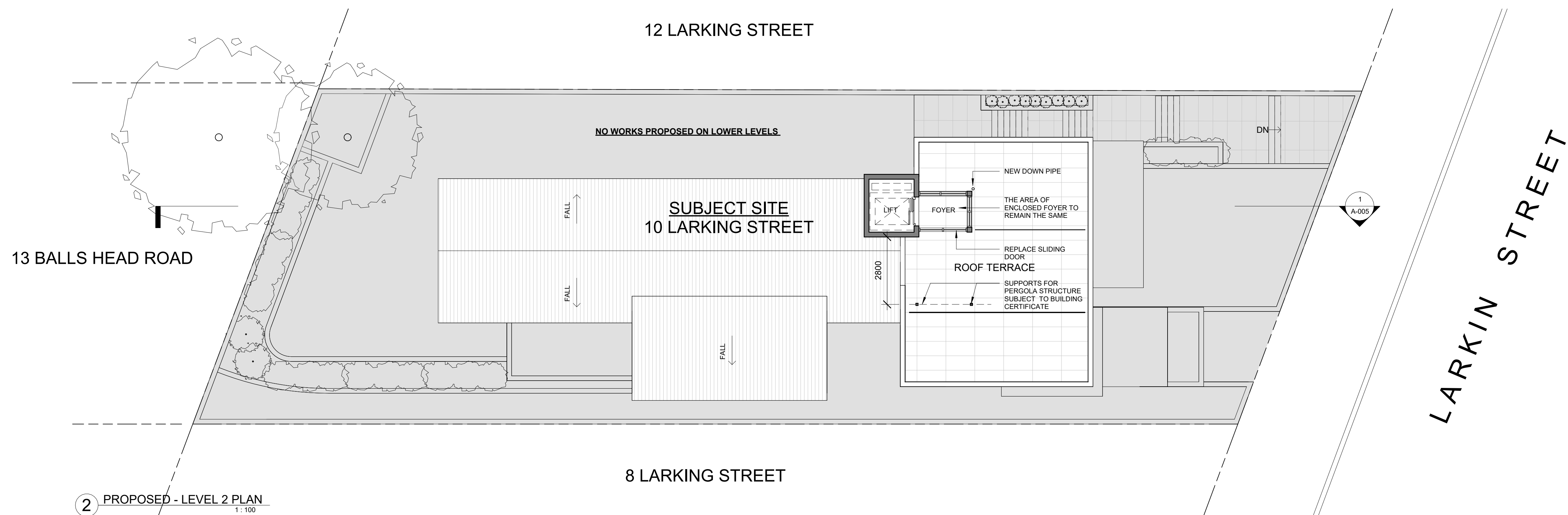
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Date 01.29.2024



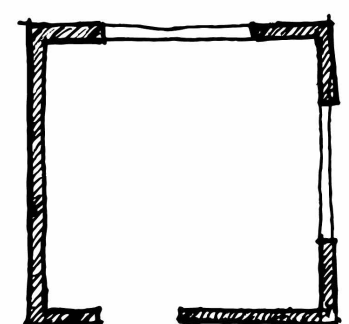
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1:100



2 PROPOSED - LEVEL 2 PLAN
1:100

LEGEND

- SUBJECT TO BUILDING CERTIFICATE
- PROPOSED WORKS



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| No. | Description | Date |
|-----|------------------|------------|
| 1 | Issue for review | 23.02.2022 |
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| B | Issue for review | 01.29.2024 |

NOT FOR CONSTRUCTION

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Client : Inderjit Singh
Project : SIN2202

Sheet Name:

FLOOR PLAN - LEVEL 2

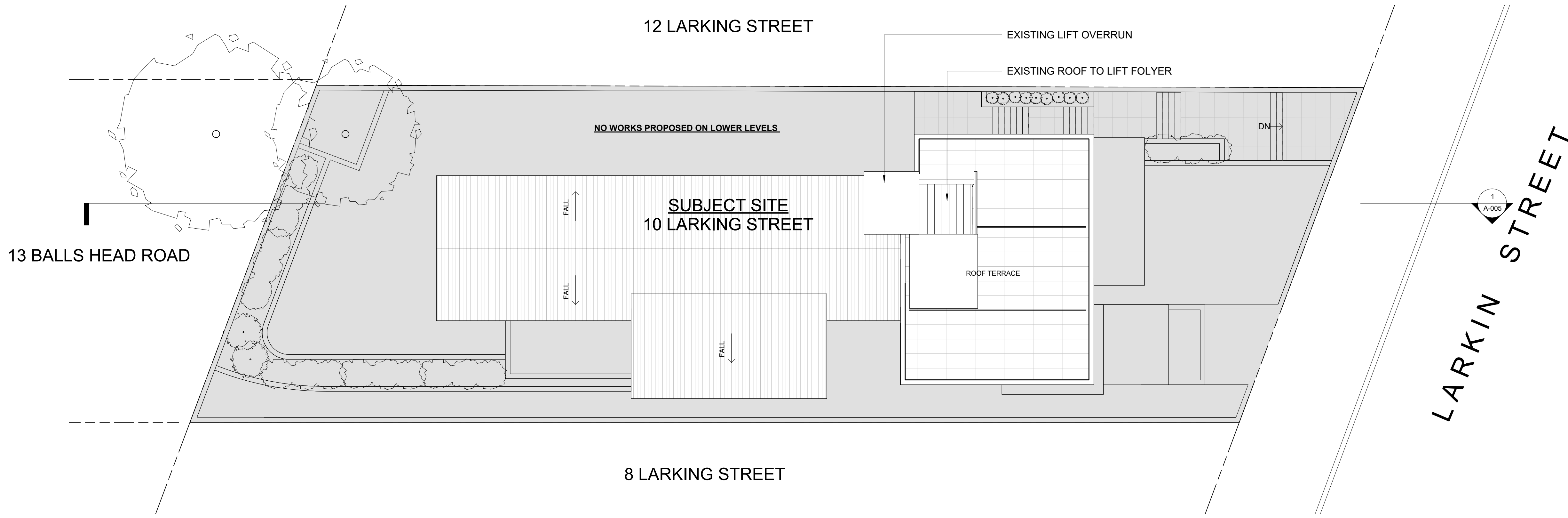
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Revision:

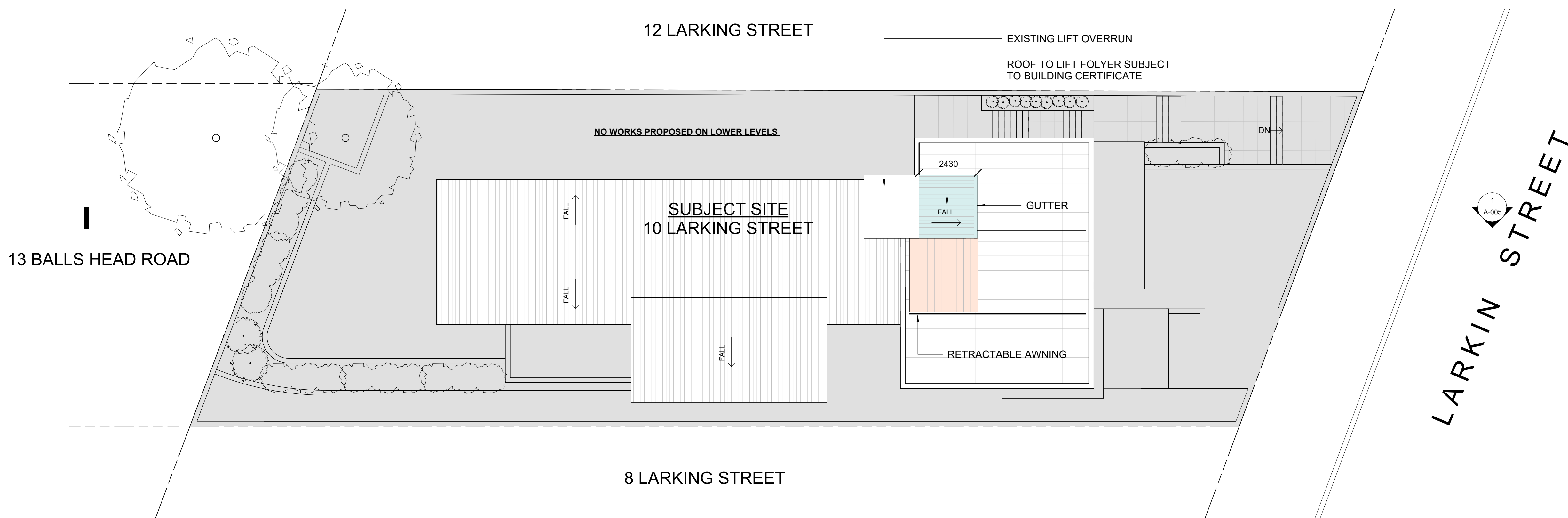
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As indicated @
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Date **01.29.2024**



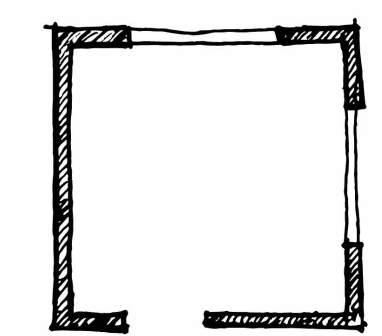
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2 PROPOSED - ROOF PLAN
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LEGEND

- SUBJECT TO BUILDING CERTIFICATE
- PROPOSED WORKS



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| B | Issue for review | 01.29.2024 |

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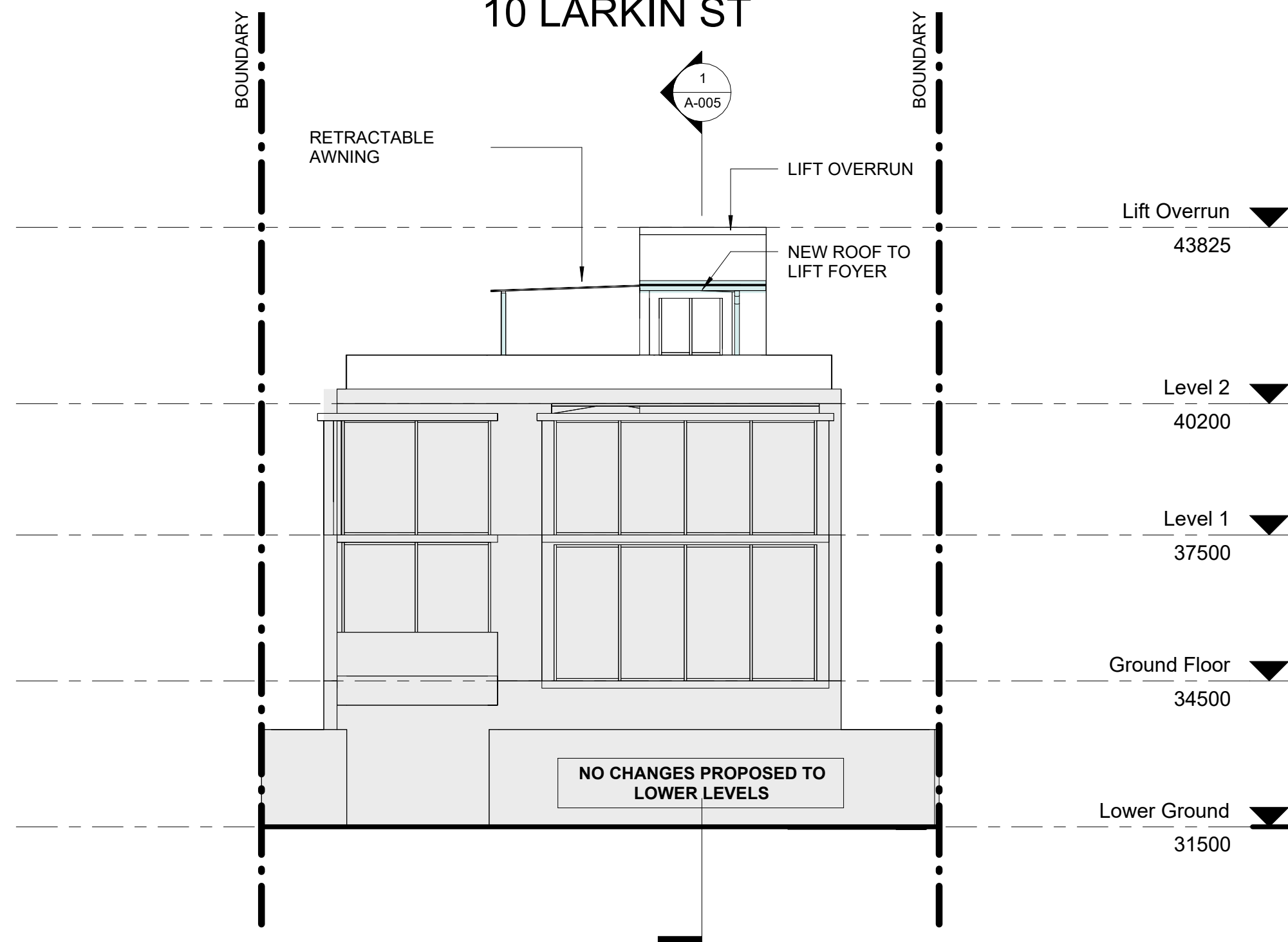
Client : Inderjit Singh
Project : SIN2202

Sheet Name:
FLOOR PLAN - ROOF

Sheet Number : **A-003** Revision: **B**

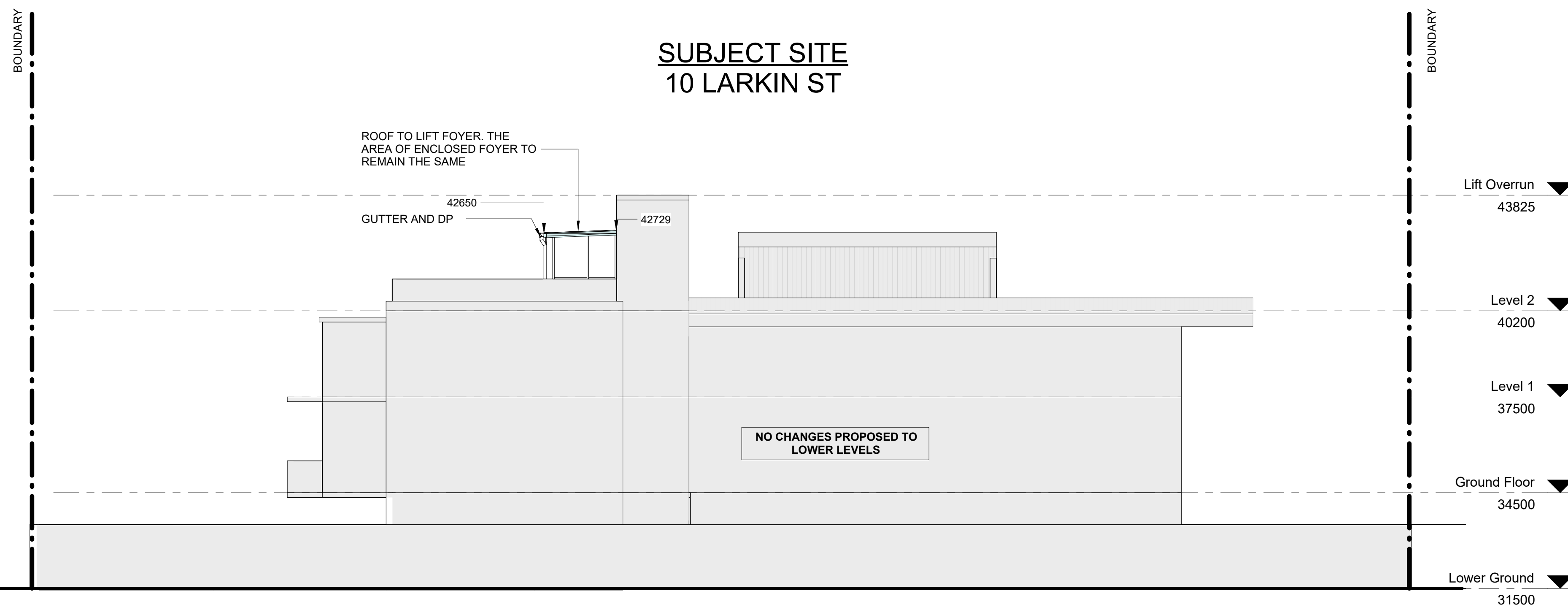
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**SUBJECT SITE
10 LARKIN ST**



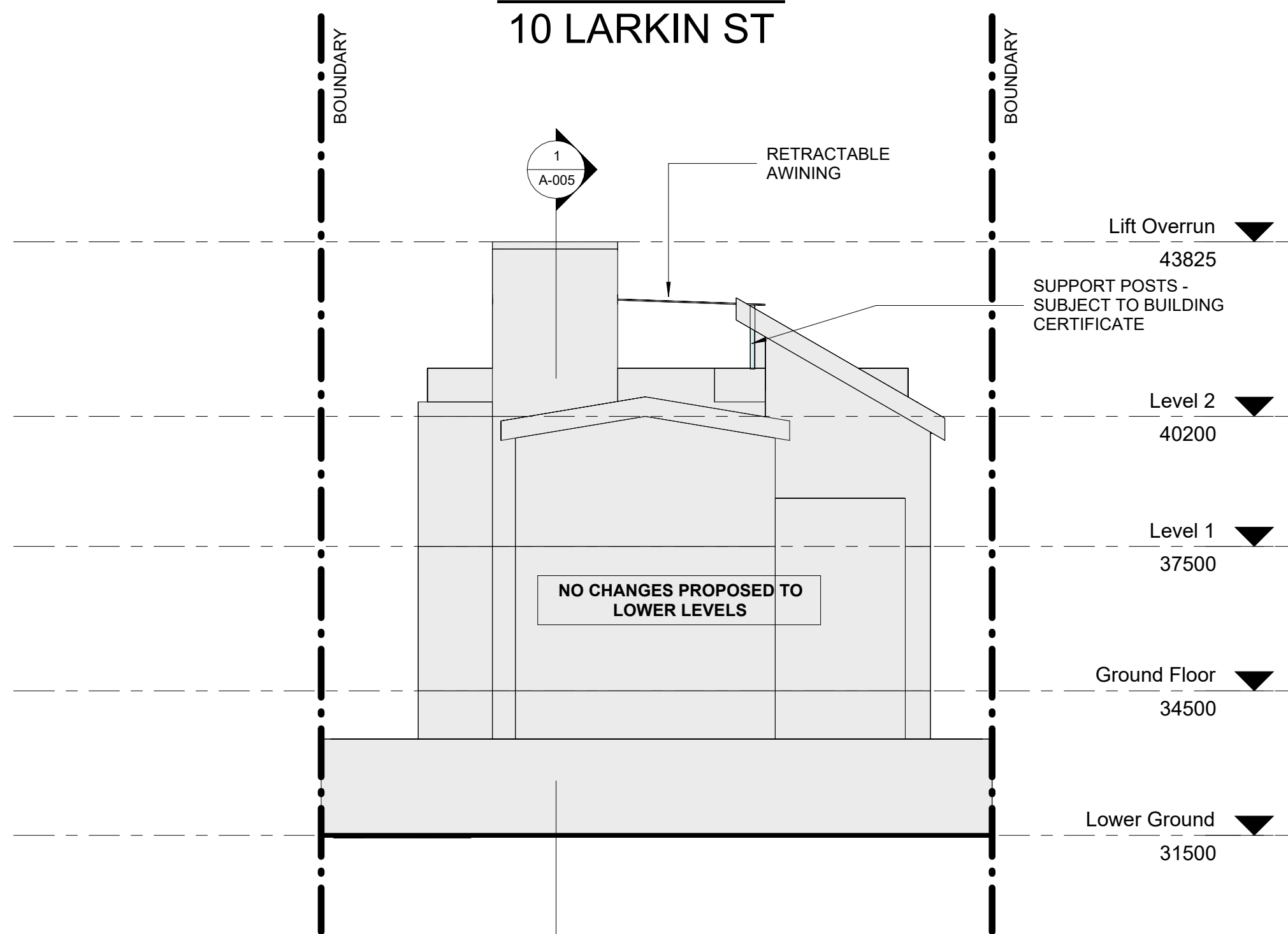
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**SUBJECT SITE
10 LARKIN ST**



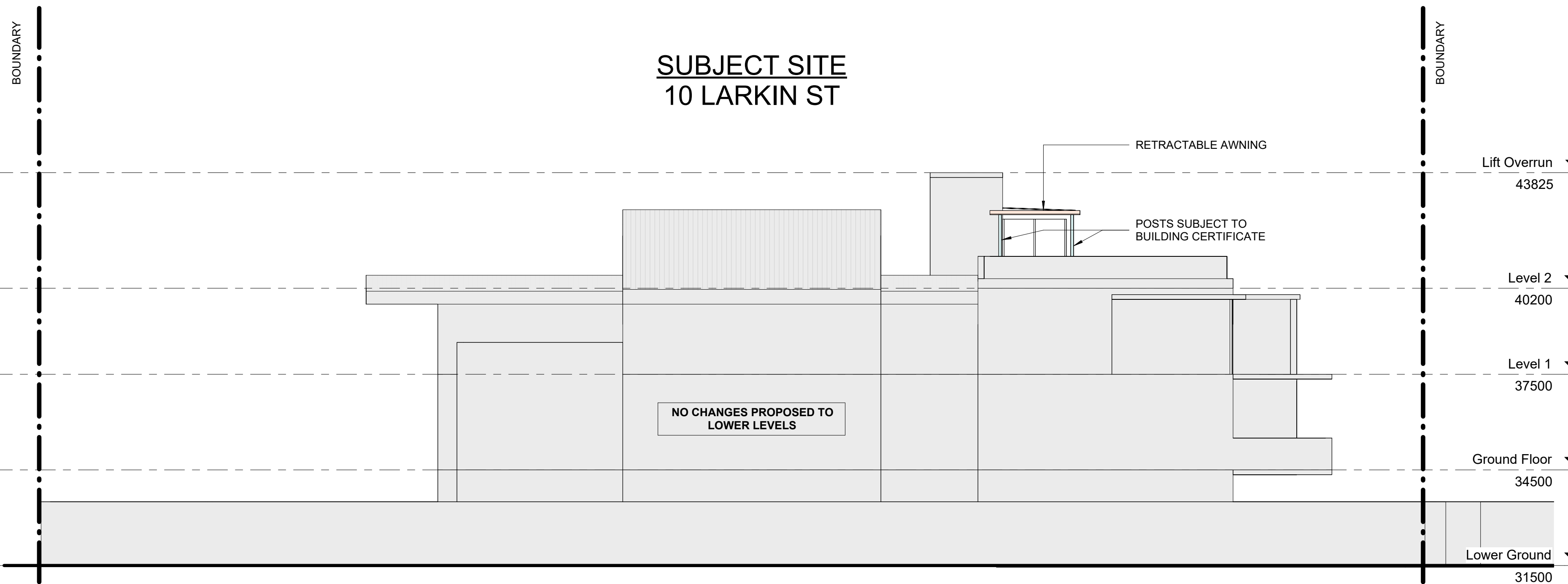
2 NORTH ELEVATION 1:100

**SUBJECT SITE
10 LARKIN ST**



4 WEST ELEVATION 1:100

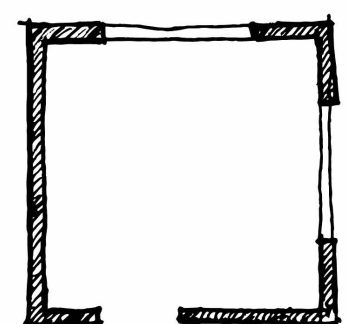
**SUBJECT SITE
10 LARKIN ST**



3 SOUTH ELEVATION 1:100

LEGEND

- SUBJECT TO BUILDING CERTIFICATE
- PROPOSED WORKS



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|-----|------------------|------------|
| A | ISSUE FOR CDC | 07.03.2022 |
| B | Issue for review | 01.29.2024 |

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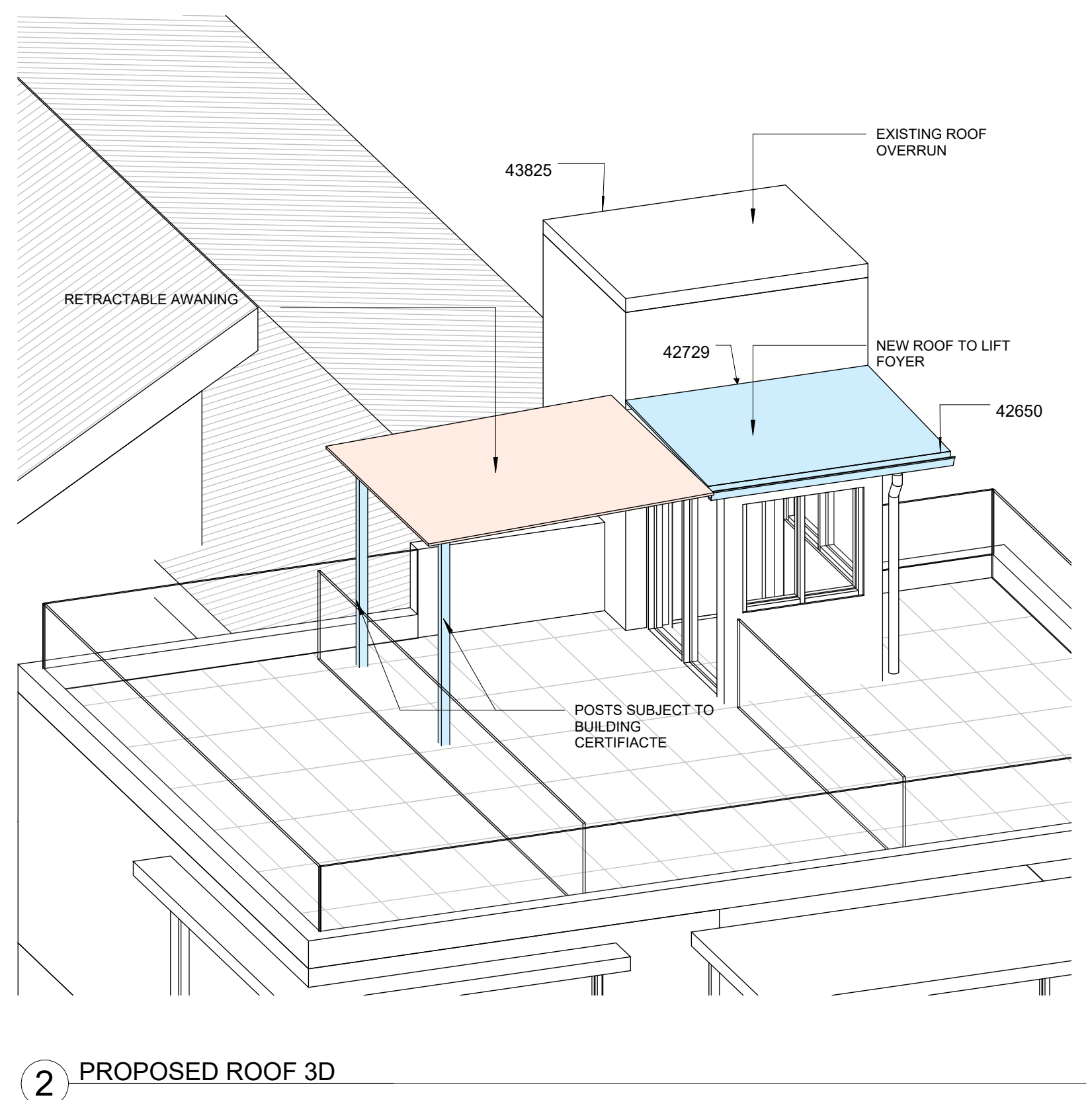
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Client : Inderjit Singh
Project : SIN2202

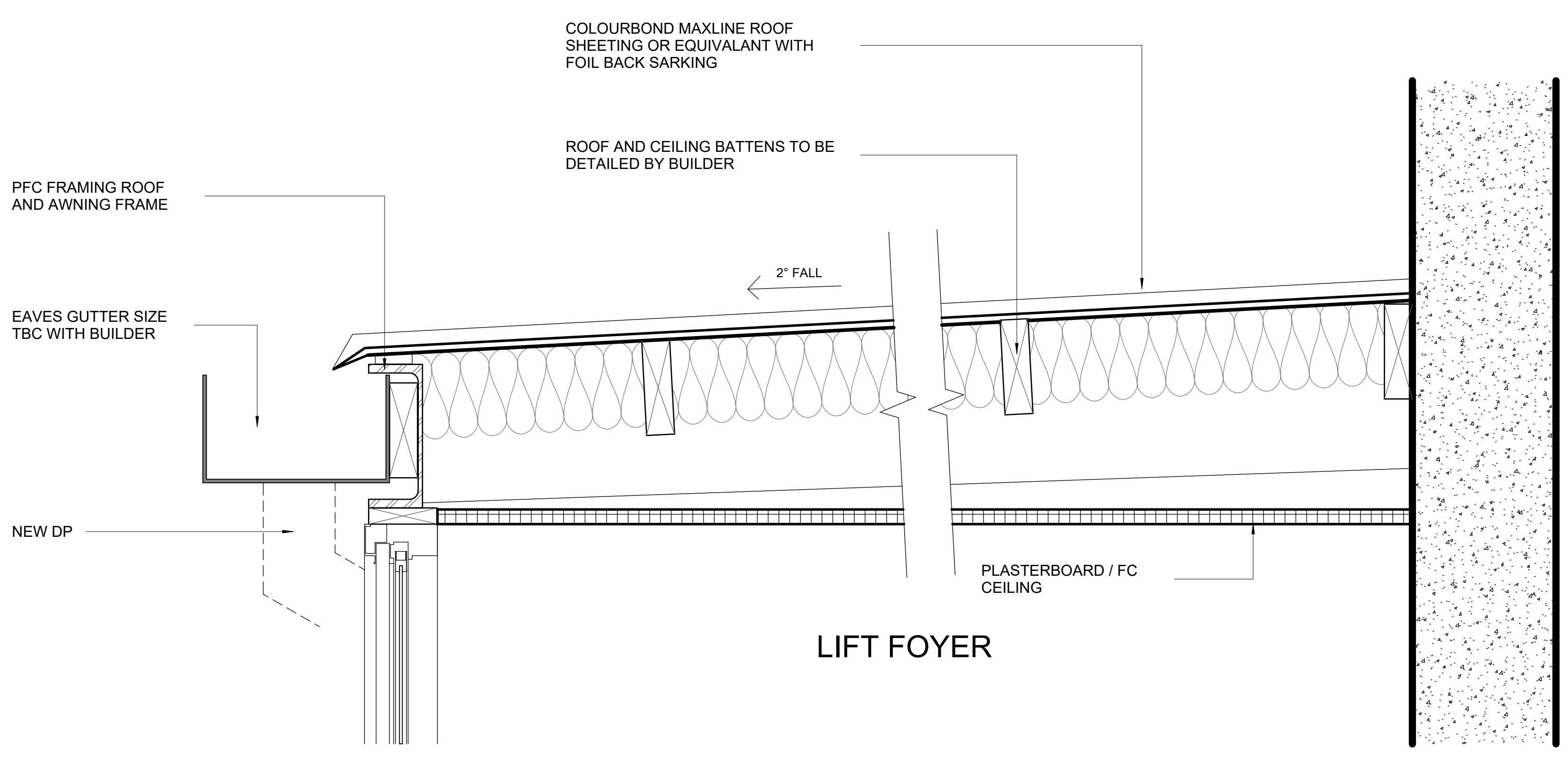
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ELEVATIONS

Sheet Number : **A-004** Revision: **B**

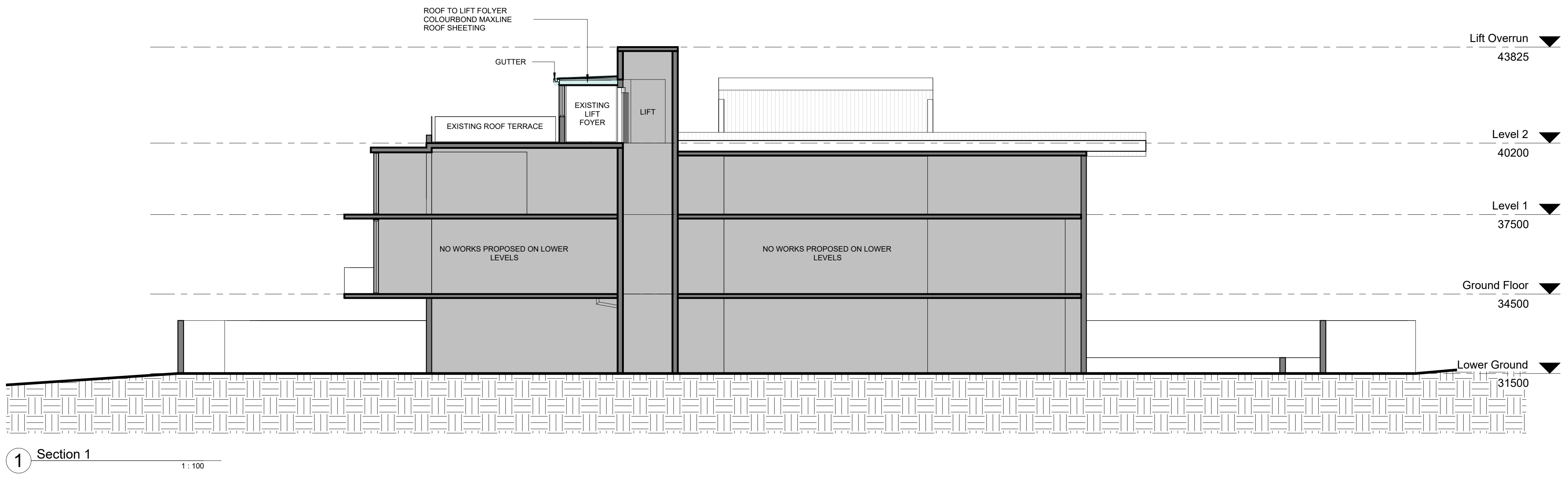
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2 PROPOSED ROOF 3D



3 SECTIONAL DETAIL 1:5

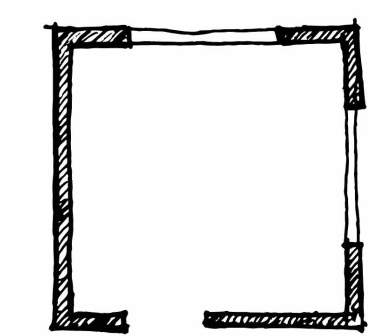


1 Section 1 1:100

LEGEND

SUBJECT TO BUILDING CERTIFICATE

PROPOSED WORKS



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| 1 | Issue for review | 23.02.2022 |
| A | ISSUE FOR CDC | 07.03.2022 |
| B | Issue for review | 01.29.2024 |

NOT FOR CONSTRUCTION

Address : 10 LARKIN STREET, WAVERTON

Client : Inderjit Singh
Project : SIN2202

Sheet Name:
SECTION

Sheet Number :
A-005

Revision:
B

Date **01.29.2024**

As indicated @
A1

Chapman Planning Pty Ltd

Suite 8/88 Mountain Street
ULTIMO NSW 2007

Phone: 9560 1718
www.chapmanplanning.com.au

20 February 2024

Clause 4.6 Variation to Development Standard

Property Description: 10 Larkin Street, Waverton

Development: Retractable awning structure to existing roof terrace

Development Standard: Height of Buildings

Introduction

This is a clause 4.6 written request to support the development application for installation of a retractable awning structure at 10 Larkin Street, Waverton. The application is lodged concurrently with a Building Information Certificate application to address works erected on the site without consent (support posts associated with the proposed retractable awning structure, roof and doors to existing lift foyer) while an existing unauthorised awning structure on the site is to be removed in response to a Council Development Control Order.

This clause 4.6 seeks a variation to the height of buildings development standard contained in clause 4.3(2) – Height of Buildings of the *North Sydney Local Environmental Plan 2013*.

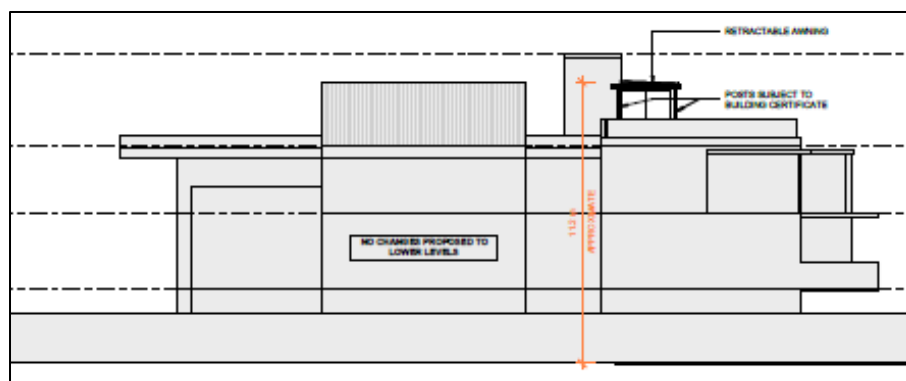
This application seeks development consent for:

- The erection of a retractable awning structure at the height of the existing lift foyer.

This clause 4.6 request seeks a variation to the 8.5m building height development standard contained in clause 4.3 – Height of Buildings of the *North Sydney Local Environmental Plan 2013*.

The subject site is identified on the Height of Buildings map within *LEP* as being subject to a maximum height of 8.5m. The proposed retractable awning structure have a maximum height of 11.29m.

The height variation is a technical breach resulting from the existing site circumstances, with the maximum height of the proposed retractable awning being below that of the existing structures at the roof level of the existing dwelling – lift overrun and lift foyer roof as depicted in the below section plan extract:



Source: RM Studio

Photograph 1 depicts the existing lift overrun, lift foyer and unauthorised awning on the site (awning structure to be removed in accordance with Council Order).



Source: Chapman Planning Pty Ltd

The maximum height to the proposed retractable awning is 11.29m, presenting a technical variation to the height control of 2.79m as a result of the excavated basement level on the site, noting the existing structures at the roof level of the dwelling present a variation to the 8.5m height control. The departure is a variation of 32.8% from the development standard of 8.5m.

The request to contravene the Height of Buildings development standard has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130
7. *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the development consistent with the objectives of the zone?
2. Is the proposed development consistent with the objectives of the development standard which is not met?
3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a))
4. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? (cl 4.6(3)(b))

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a), the variation to the height of buildings is acceptable in the circumstances of this case and compliance with the development standard is considered unnecessary because the proposed development is consistent with the objectives of the development standard, notwithstanding non-compliance with the standard.

• **Objectives of the Height of Buildings development standard**

The objectives of the development standard are at clause 4.3(1) of the *North Sydney LEP 2013* as follows:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*
- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

The proposed development meets the objectives of the standard based on the following assessment:

Objective (a) – The proposed development is for the erection of a retractable awning attached to the lift foyer at the roof of the existing dwelling. The proposed retractable awning is a lightweight open structure that, when retracted, is

imperceptible from the public domain adjacent to the existing structures at the rooftop level of the site.

The variation resulting from the proposed retractable awning is not antipathetic to this objective as the development is located at the existing rooftop terrace on the site, and does not alter the natural landform of the site. When extended, the awning will appear as an ancillary structure and will not result in significant additional bulk adjacent to the existing rooftop terrace, lift overrun, and lift foyer on the site.

Objective (b) – The new retractable awning will not impact upon any views enjoyed by adjoining properties or views of the foreshore from the public domain, noting the awning will be retracted when not in use. Adjoining properties will not be adversely impacted with respect to views when the awning is extended noting the rooftop terrace on the subject site is located above the adjoining dwellings to the north and south as depicted in the photographs below. No significant views are obtained over the subject site from adjoining dwellings or properties within the broader locality which would be obstructed by the proposed structure.



Photograph 1: View from the awning location – rooftop terrace to the west of the site



Photograph 2: View from the awning location – rooftop terrace to the south of the site



Photograph 3: View from the awning location – rooftop terrace to the north of the site

Objective (c) – The proposed development has no impact upon the solar access of existing dwellings, public reserves, street or potential future development. The proposed awning structure does not impact upon solar access when retracted. The awning when extended is located central to the subject site and any shadows cast by the awning or structural poles will fall entirely within the subject site. The proposal therefore will not result in any additional overshadowing impact upon surrounding properties.

Objective (d) – The development does not present any visual or acoustic privacy impacts upon the surrounding properties noting the proposal is for a retractable awning structure. The proposal does not intensify the use of the existing rooftop terrace on the site, but rather provides weather protection for the residents of the site when utilizing the terrace as a viewing platform in accordance with its intended purpose. No change is proposed to the existing approved scale of the rooftop terrace on the site.

Objective (e) – The subject site is not located at a zone boundary, noting the adjoining properties and Larkin Street are zoned *C4 Environmental Living*. The proposed awning is compatible with the form and scale of surrounding properties being a lightweight open structure that is located at the existing rooftop terrace on the site.

Objective (f) – The proposal does not impact upon the built form and scale of the existing dwelling on the site. The proposed awning will not significantly impact upon the appearance of the existing dwelling's rooftop terrace when viewed from the public domain when retracted, noting the support posts to be retained on the site will not be highly visible from Larkin Street or surrounding properties.

The retractable awning when extended at the rooftop level will appear as a lightweight structure that is ancillary to the existing lift foyer and rooftop terrace of the dwelling, and its materiality – matte finish aluminium and fabric awning cover will ensure the structure does not contribute any significant bulk and scale to the existing dwelling. The awning will be open to the sides and rear and as such does not present an overly bulky appearance at the upper level when viewed in its location adjacent to the existing lift overrun and lift foyer.

The development proposal is located within the *Waverton Neighbourhood* of the *Waverton/Wollstonecroft Planning Area* pursuant to Section 10.6 of the *North Sydney DCP 2013* which is characterised by contemporary 2-3 storey dwellings. The proposed awning will not substantially alter the character of the existing dwelling on the site. As such the proposed development is in accordance with the character statement for this locality.

Objective (g) – The proposal does not alter the existing built form of the dwelling on the subject site being a 2-3 storey dwelling with a basement carpark level. The retractable awning structure does not present additional built form at the rooftop level of the site when retracted, ensuring the existing built form is maintained. The extended awning is a lightweight structure adjoining the existing lift foyer at the roof level and due to its open construction does not alter the building envelope or external built form of the existing dwelling.

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827 the proposal meets the first test as the objectives of the development standard are achieved notwithstanding the noncompliance.

Furthermore, it is unnecessary to require compliance with the development standard due to the following reasons:

- The development proposal is in the public interest because it is consistent with the objectives of the applicable floor space ratio standard as detailed previously. Further the development is consistent with the objectives for development in the C4 Environmental Living zone as addressed within the below assessment:

| Objective | Consistency |
|--|--|
| <ul style="list-style-type: none"> • <i>To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.</i> | <p>The proposed retractable awning structure is a low-impact form of development at an existing rooftop terrace on the subject site, being a lightweight structure of aluminium and fabric materials that does not present an adverse impact upon the ecological, scientific, or aesthetic values of the surrounding locality. As detailed previously, the structure does not contravene the standards for development within the Foreshores and Waterways Area of the Sydney Harbour Catchment.</p> |
| <ul style="list-style-type: none"> • <i>To ensure that residential development does not have an adverse effect on those values.</i> | <p>The proposed development will not adversely impact upon the relevant environmental values of the surrounding locality, in particular the proposal will not impact upon the visual and scenic qualities of the foreshore and waterways area of the Sydney Harbour. The</p> |

| | |
|---|---|
| | retractable awning, when extended is of a light-weight appearance that does not contribute significant visual bulk and scale to the subject site when viewed from the public domain or surrounding waterways. |
| <ul style="list-style-type: none"> <i>To ensure that a high level of residential amenity is achieved and maintained.</i> | The proposal contributes to a high level of residential amenity for the existing dwelling on the site, providing weather protection for the rooftop terrace on the site which serves as a viewing platform for the residents of the subject site. |

- The public benefit of maintaining the development standard is not considered significant because the proposal is consistent with the objectives of the development standard contained in the *LEP* notwithstanding the numerical variation.
- The variation to the 8.5m height standard is a result of the existing excavated basement level on the subject site, with the existing structures at the rooftop terrace level being located above the height control when measured from the existing excavated ground level. It is unnecessary to require compliance with the height standard as the proposed works – retractable awning are located below the existing maximum building height on the site established by the existing lift overrun. The proposed awning is consistent with the existing height of the lift foyer at the rooftop level and does not result in an overall increase to the maximum building height of the dwelling.

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

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard because:

- The variation to the 8.5m height standard pursuant to the *North Sydney Local Environmental Plan 2013* is a result of the existing excavated ground level on the

site, and existing lift foyer and rooftop terrace on the site being above the 8.5m height control. In this instance, the variation results from the proposed awning being at an existing rooftop terrace above the height control. The structure does not contribute any significant additional height to the existing roof terrace when retracted. The awning when extended does not contribute any additional bulk and scale at the roof level when viewed from the public domain, being a lightweight fabric awning of open construction that is ancillary to the existing built form at the roof level.

- The proposed awning being located above the height standard will not be visually discernible as in breach of the control when retracted. Whilst extended, the structure being adjacent to an existing lift foyer will be viewed from the public domain as a lightweight structure and in this case, the dwelling's form and scale is not significantly altered by the proposal.
- Dickson C confirmed in *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* (Paragraph 78) that the avoidance of impacts is an environmental planning ground as it promotes 'good design and amenity of the built environment' being an objective of the EPA Act.

In this instance, the proposed variation to building height is the result of the awning being attached to the existing lift foyer at the rooftop level, and the proposal does not present any adverse environmental impacts with respect to visual/acoustic privacy, solar access, or view loss. The structure when retracted is imperceptible from the public domain or adjoining properties. The extended awning does not overshadow or present significant bulk and scale impacts upon the adjoining properties to the north and south, or the public domain.

- The variation in height is consistent with the following relevant aims of the *North Sydney LEP 2013* found at clause 1.2(2):
 - (2)(b)(i) The variation does not contribute significant additional bulk to the surrounding area with the resultant built form on the site unaltered by the proposal, noting the awning is a lightweight open structure that does not contribute to the building envelope of the existing dwelling.
 - (2)(b)(ii) The variation being within the C4 zone adjacent to the Berry's Bay foreshore does not adversely impact upon the visual qualities of Sydney Harbour noting the variation will not be highly perceptible from the waterway, when viewed adjacent to the existing lift overrun, lift foyer and rooftop terrace on the site.
 - (2)(c)(i) The development exceeds the height control as a result of the existing circumstances – rooftop being above 8.5m in height. The additional structure – retractable awning does not result in unreasonable amenity impacts to adjoining properties or the public domain with regard to overshadowing, privacy or view loss.
 - (2)(e)(i) The variation to the height proposed by the development does not impede on the natural landscape of the locality. The variation is a result of

site specific environmental constraints – existing excavated ground level and height of the existing rooftop terrace on the site.

- The variation in height is consistent with the following objects of the Environmental Planning and Assessment Act, 1979 as follows:
 - 1.3(c) – The proposal is an orderly and economic use of the site, as the development is for an awning attached to an existing lift foyer above the height control. The proposal does not significantly alter the existing built form on the site being for a lightweight open structure, and the variation does not detract from the desired future character of the locality or result in unreasonable amenity impacts,
 - 1.3(g) – The variation to the height control presents a good design outcome for the development, allowing for a retractable awning above an existing rooftop terrace – viewing platform that contributes to the residential amenity of the development.
 - 1.3(g) – The portion of the development exceeding the height control does not result in unreasonable amenity impacts to adjoining properties or the public domain with regard to overshadowing or loss of views.

Conclusion

The development proposal has a variation to the 8.5m building height control contained in Clause 4.3 of the *North Sydney LEP 2013*. The variation is the result of the proposed retractable awning being at the rooftop level of the existing dwelling being above the height control. The development does not seek to increase the maximum height of the existing dwelling with the awning structure located below the existing lift overrun and adjacent to the existing lift foyer.

The variation to the building height standard does not attempt to affect the planning outcome for the broader locality, rather the proposed variation and resultant development is consistent with the scale and form of development planned for the locality.

The retractable awning which varies the height control will not be visually dominant from the foreshore or adjoining properties, and the variation is a direct result of the site circumstances with the existing rooftop terrace being located above the height control. The proposal will not impact upon the public domain or adjoining properties and will not generate unreasonable view loss impacts.

In my opinion, the proposed development and associated variation to the height development standard is well founded as the proposal meets the objectives of the development standard and achieves an acceptable planning outcome for the subject site that is in the public interest. In accordance with the environmental planning grounds addressed in this clause 4.6 variation, the proposed development can be supported.

Chapman Planning Pty Ltd