



---

**COVERING NOTE TO LPP06 REPORT OF CHRISTOPHER ROSS, CONSULTANT PLANNER  
DATED 19 NOVEMBER 2024**

**SUBJECT:** 301/182 KURRABA ROAD, KURRABA POINT  
**APPLICATION NO.** D138/24  
**AUTHOR:** ISOBELLA LUCIC, A/MANAGER DEVELOPMENT SERVICES  
**DATE:** 26 NOVEMBER 2024

---

**EXECUTIVE SUMMARY**

This application under section 4.12 of the *Environmental Planning and Assessment Act 1979* (EPA Act) seeks to gain consent to install an operable vergola within the existing framed structure above the rear balcony of Unit 301, 182 Kurraba Road.

**The application is reported to the North Sydney Local Planning Panel for determination as the application is seeking a variation to a development standard by more than 10%.**

It is noted that the subject vergola was refused consent under previous modification applications to consent No. DA 333/19/2 - approved by the North Sydney Local Planning Panel (NSLPP), and again refused under a subsequent modification to consent No. DA 333/19/4, approved through consent orders by the Land and Environment Court New South Wales (L&E Court), however, the framing/roof was shown on the approved plans of both consents.

Further, to the nature of the changes sought, and the previous consent authority being the Land and Environment Court (LEC), noting that the NSLPP previously refused the application, it was deemed appropriate to re-refer the current development application to the NSLEPP for determination.

Council's notification of the proposal has attracted four (4) unique submissions raising concerns about overshadowing, view loss and visual and acoustic privacy, excessive bulk/height/scale, erroneous information, and existing roof form approvals.

The assessment undertaken by Council's Consultant Planner has considered the concerns raised, as well as the proposed works against Council's planning requirements, and a request for a variation to the height of buildings control.

The proposed development breaches the maximum permitted building height of 12m by 3.3m or 27.49%. The applicant's submission has been considered with reference to the Land and Environment Court's decision in *Wehbe v Pittwater Council [2007] NSWLEC 827* in order to justify the proposed variation. The attached assessment report has concluded that the applicant's Clause 4.6 variation request is considered to be satisfactory given the site circumstances as the variation has been adequately justified, is relatively minor, proposes no new bulk, height, or building scale, and would result in no significant environmental impacts.

**Endorsed by**

**Neal McCarry  
A/DIRECTOR PLANNING & ENVIRONMENT**

**ASSESSMENT REPORT****Attachments:**

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

**ADDRESS/WARD:** Unit 301, 182 Kurraba Road, Kurraba Point, NSW, 2089  
Lot: 4 SP: 101673

**APPLICATION NO:** DA/138/2024

**PROPOSAL:** Installation of a Vergola on the Rear Balcony

**PLANS REF:**

Plan No.	Rev	Description	Prepared by	Dated
DA_000_01	00	Site Plan / Site Analysis Plan	Daniel Younan & Ass.	04/06/2024
DA_100_00	00	Proposed Level 2 Floor Plan	Daniel Younan & Ass.	04/06/2024
DA_100_10	00	Proposed Roof Floor Plan	Daniel Younan & Ass.	04/06/2024
DA_200_00	00	Proposed South Elevation	Daniel Younan & Ass.	04/06/2024
DA_200_01	00	Proposed North Elevation	Daniel Younan & Ass.	04/06/2024
DA_200_02	00	Proposed East Elevation	Daniel Younan & Ass.	04/06/2024
DA_200_03	00	Proposed West Elevation	Daniel Younan & Ass.	04/06/2024
DA_300_00	00	Section A-A	Daniel Younan & Ass.	04/06/2024

**OWNER:** John and Ruth Diddams

**APPLICANT:** The trustee for The Think Planners Unit Trust

**AUTHOR:** Report of Christopher Ross, Consultant Planner – (on behalf of North Sydney)

**DATE OF REPORT:** 19 November 2024

**DATE LODGED:** 16 July 2024

**DATE AMENDED:** Nil

**SUMMARY**

**ISSUES:** Breach of height control, bulk and scale of building, impact on views

**SUBMISSIONS:** Five (5), Four (4) Unique

**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

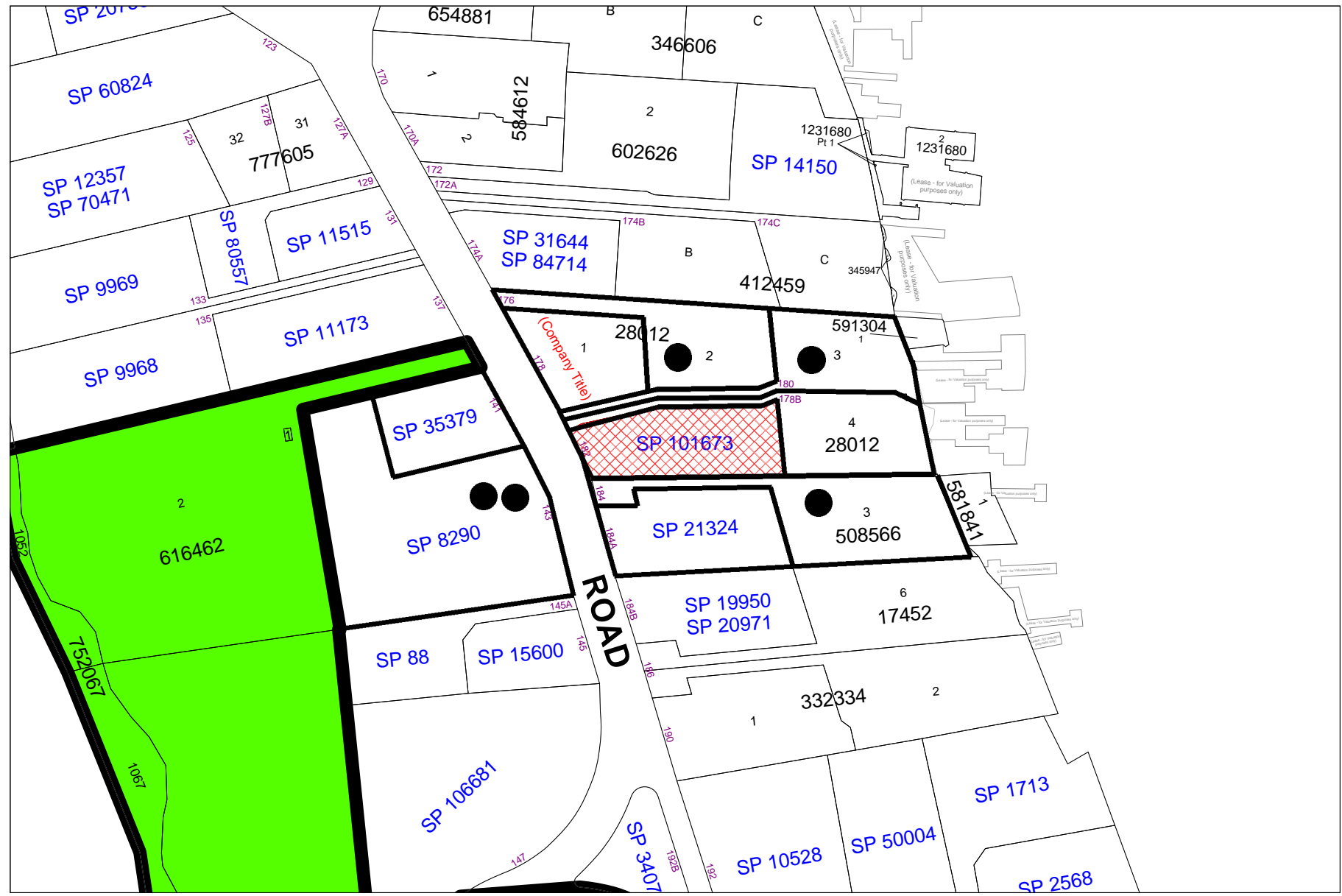
This application under section 4.12 of the *Environmental Planning and Assessment Act 1979* (EPA Act) seeks to gain consent to install an operable vergola within the existing framed structure above the rear balcony of Unit 301, 182 Kurraba Road.

It is noted that the subject vergola was refused consent under previous modification applications to consent No. DA 333/19/2 - approved by the North Sydney Local Planning Panel (NSLPP), and again refused under a subsequent modification to consent No. DA 333/19/4, approved through consent orders by the Land and Environment Court New South Wales (L&E Court), however, the framing/roof was shown on the approved plans of both consents.

Council's notification of the proposal has attracted four (4) unique submissions raising concerns about overshadowing, view loss and visual and acoustic privacy, excessive bulk/height/scale, erroneous information, and existing roof form approvals.

The assessment has considered the concerns raised, as well as the proposed works against Council's planning requirements. Whilst a variation to the height of buildings control is proposed, the variation has been adequately justified, is relatively minor, proposes no new bulk, height, or building scale, and would result in no significant environmental impacts. The variation is able to be supported in the circumstances of the site.

**LOCATION MAP**



□ Property/Applicant ● Submitters - Properties Notified

## DESCRIPTION OF PROPOSAL

The applicant is seeking development consent for works to the balcony area of the subject Unit, broadly described in the application documentation as the installation of a vergola on the rear balcony to Unit 301, and more specifically described as the addition of an operable roof enclosure within the existing concrete framed open roof of the balcony area to Unit 301, the uppermost unit of the development.

The term vergola is not defined within NSW Planning definitions, however, it is generally known as an operable roofing system over an outdoor area such as a balcony or patio. In the circumstances of the subject application, the vergola is proposed to be located within an existing frame structure above an existing outdoor balcony associated exclusively with unit 301 of the residential apartment building at 182 Kurraba Road. It is to be noted that the apartment, outdoor balcony, and structure within which the vergola is proposed to be installed are all existing, and the assessment considers the works as proposed and their impacts only.

## STATUTORY CONTROLS

- *North Sydney LEP 2013*
  - Zoning – R4 – High Density Residential
  - Height of Buildings – 12m
  - Item of Heritage – No
  - In Vicinity of Item of Heritage – Yes
  - Conservation Area – No
  - FSBL – No
  - S7.11 Contributions Plan
- *Environmental Planning and Assessment Act 1979*
- *SEPP (Biodiversity and Conservation) 2021*
- *SEPP (Housing) 2021*
- *SEPP (Resilience and Hazards) 2021*
- *SEPP (Sustainable Buildings) 2022*
- Local Development

## POLICY CONTROLS

- NSDCP 2013

## DESCRIPTION OF LOCALITY

The subject unit is located within a recently completed development on land at 182 Kurraba Road, Kurraba Point. The site is located on the eastern side of Kurraba Road, approximately 100m south of the junction with Shellcove Road. The site is an irregular shaped lot with a western frontage of 10.795m to Kurraba Road, a northern boundary of a combined 46.070m, a rear eastern boundary of 16.365m, and a southern boundary of 41.7m. The land has an area of 623.9m<sup>2</sup> and slopes from the front boundary to the rear boundary, with a fall of approximately 9m found over the length of the site. Refer to **Figure 1** for site aerial image.

Surrounding development consists of an eclectic mix of multi-storey residential flat buildings and two and three storey dwelling houses of various styles and sizes. To the north of the site at 178 Kurraba Road (street front) is a three storey, red brick residential flat building with a pitched tile roof, comprising 12 units. Also, on the northern side of the site on the opposite side of the driveway and right of way is 176 Kurraba Road, a two-storey rendered and painted dwelling house with a steeply pitched, slat clad roof. The house is listed as a heritage item (10668) of local significance.

To the south of the site at 184a Kurraba Road is a three storey flat building with a pair of double garages at the front with access off the right of way adjoining the southern boundary of the site. The ROW is also shared by a dwelling house to the southeast at 184 Kurraba Road. Opposite the site is a multi-storey residential flat building at 143 Kurraba Road.



**Figure 1 – Site Aerial Image (Site in Yellow)**

**RELEVANT HISTORY**

A search of Council’s records holds the following applications of relevance:

**Previous Applications on Site**

Date	Action
15 April 2020 DA/333/19/1	NSLPP approved Development Application 333/19 for substantial alterations and additions to residential flat building to create a part 5 storey building containing 4 x 3-bedroom units, 8 car stacker, and associated excavation and landscaping.
2 June 2021 DA/333/19/2	NSLPP approved a s.4.55 application to modify Consent No 333/19 with regard to internal changes including increase in building height by 350mm; change to privacy screens, increased sub floor storage.

12 October 2021 DA/333/19/3	A s.4.55 application to modify Consent No 333/19 was rejected by NSLPP for minor internal and external adjustments and corrections.
15 June 2022 DA/333/19/4	NSLPP refused a s.4.55 application to modify Consent No 333/19 to enable minor alterations to the approved development.
18 August 2022 DA/333/19/4	Appeal against the actual refusal of modification DA 333/19/4 lodged.
14 September 2023	Appeal determined by way of Consent Orders.

### Current application

Date	Action
16 July 2024 DA/138/2024	New Development Application lodged under s4.12 of the EP&A Act seeking consent for Installation of a Vergola on the rear balcony of Unit 301, 182 Kurraba Road, Kurraba Point.

### REFERRALS

### BUILDING

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

### ENVIRONMENTAL HEALTH

N/A - Works proposed to external portion of approved development.

### HERITAGE

Council's Heritage Officer reviewed the application and noted *"The proposed new vergola to the penthouse balcony on unit 301 is considered to be acceptable in that there will be very little additional perceived bulk added to the apartment building as the existing frame and privacy screen already define the form of the building. The impact to the heritage significance of 176 Kurraba Rd is therefore considered to be very low. Clause 5.10 of NSLEP 2013 and Part B Section 13.4 of NSDCP 2013 are considered to be satisfied"*.

No heritage conditions are required.

### ENGINEERING/TRAFFIC

N/A - Works proposed to external portion of approved development, to be fitted within previously constructed elements of the building.

### **ENGINEERING/GEOTECHNICAL**

N/A - Works proposed to external portion of approved development, to be fitted within previously constructed elements of the building.

### **ENGINEERING/STORMWATER DRAINAGE**

N/A - Works proposed to external portion of approved development, to be fitted within previously constructed elements of the building. Drainage to be directed to existing systems, no greater impact considered likely.

### **LANDSCAPING**

N/A - Works proposed to external portion of approved development, to be fitted within previously constructed elements of the building and making no impact to landscaped areas of the development.

### **EXTERNAL REFERRALS**

N/A

### **SUBMISSIONS**

The application has been notified in accordance with Council's Community Consultation Plan with adjoining properties notified between 02 August 2024 and 16 August 2024. In response to the notification, the proposal has attracted four (4) unique submissions raising concerns about overshadowing, view loss and visual and acoustic privacy, excessive bulk/height/scale, erroneous information, and existing roof form approvals.

A total of five (5) submissions to the proposal were received, though two each were received from same households and hold broadly the same content.

The issues raised in the submissions are summarised below and addressed later in this report. The following is a summary of issues raised in the submissions:

#### **Basis of Submissions**

- Solar access to adjoining dwellings.
- Unacceptable view loss and adverse impacts on visual and acoustic privacy."[Insert Main issues]"
- The proposal breaches height and setback controls and compounds substantial existing breaches of development controls over massing and scale.
- Insufficient and erroneous information has been presented in support of the application.
- The proposed vergola, including its surrounding frame and associated structure, was previously rejected by the North Sydney Planning Panel (NSLPP) as Condition A4 to Development Consent DA 333/19/2 for reasons of "unacceptable breach of height control, bulk and scale of building, impact on views."

### **CONSIDERATION**

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



- **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 works relate wholly to minor infill of an existing element of a constructed building. 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 (Housing) 2021**
  - **Chapter 4 Design of Residential Apartment Development**

The proposal is for minor additions to an existing approved and constructed unit within a residential apartment development.

Per Clause 144(3)(a),

*This chapter applies to development only if—*

- (a) *the development consists of—*
  - (i) *the erection of a new building, or*
  - (ii) *the substantial redevelopment or substantial refurbishment of an existing building, or*
  - (iii) *the conversion of an existing building, and*
- (b) *the building is at least 3 storeys, not including underground car parking storeys, and*
- (c) *the building contains at least 4 dwellings.*

As the works relate only to the installation of an operational vergola roof covering to be set within an existing concrete frame structure, plus minor drainage elements, Chapter 4 of SEPP Housing does not apply to the development. Consequentially, the consideration of the Apartment Design Guide is similarly excluded from the assessment of the works proposed.

- **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.

The subject site has recently undergone substantial redevelopment for residential purposes and no contamination was noted during the assessment or subsequent construction of the development. Given the proposed works are to be located wholly within the confines of previously constructed elements of the building, it is unlikely that any contamination will be encountered. The subject site is therefore considered suitable for the proposed use.

### **SEPP (Sustainable Buildings) 2022**

The works proposed are defined as being BASIX excluded development per Schedule 7 of the *Environmental Planning and Assessment Regulations 2021* on account of the vergola being defined as development that involves the alteration of a building resulting in a space that cannot be fully enclosed, other than a space that can be fully enclosed but for a vent needed for the safe operation of a gas appliance.

No BASIX Certificate is required.

## **NORTH SYDNEY LOCAL ENVIRONMENT PLAN 2013**

### ***Aims of Plan***

The development application has been assessed against the aims of the North Sydney Local Environmental Plan 2013 and is considered to be satisfactory with respect to the relevant aims of the Plan, noting that the assessment has been completed and that the proposed works are unlikely to adversely affect residential amenity of nearby dwellings in terms of visual and acoustic privacy, solar access and view sharing.

### ***Permissibility***

The site is zoned R4 High Density Residential zone under the provisions of the *North Sydney Local Environmental Plan 2013 (NSLEP 2013)*. Development for the purposes of alterations to a residential flat building is permissible with the consent of the Council.

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

The objectives for a the R4 High Density Residential zone are stated below:

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

The proposal meets the objectives of the zone by incorporating a shade bearing structure within the existing built form of the apartment, resulting in an outdoor space capable of year-round use, increasing the amenity of the apartment significantly over the current situation where the balcony is uncovered and open to the elements.

### ***Principal Development Standards***

The proposal has been assessed against the principal development standards applicable to the development under *NSLEP 2013* as follows:

### ***Compliance Table –***

<b>North Sydney Local Environmental Plan 2013</b>			
<b>Site Area – 623.9m<sup>2</sup></b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
Clause 4.3 – Heights of Building	12m	15.3m	No
Clause 4.4 – Floor Space Ratio use 4.4	No change	N/A	N/A

**a) Clause 4.3 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.

The proposed works would have a height of 15.3m that fails to comply with the permissible height limit of 12m in accordance with clause 4.3 in *NSLEP 2013*.

Notwithstanding the numerical noncompliance, the proposed built form would be contained wholly within an existing frame structure, approved and subsequently constructed under DA 333/19/2 and DA 333/19/4.

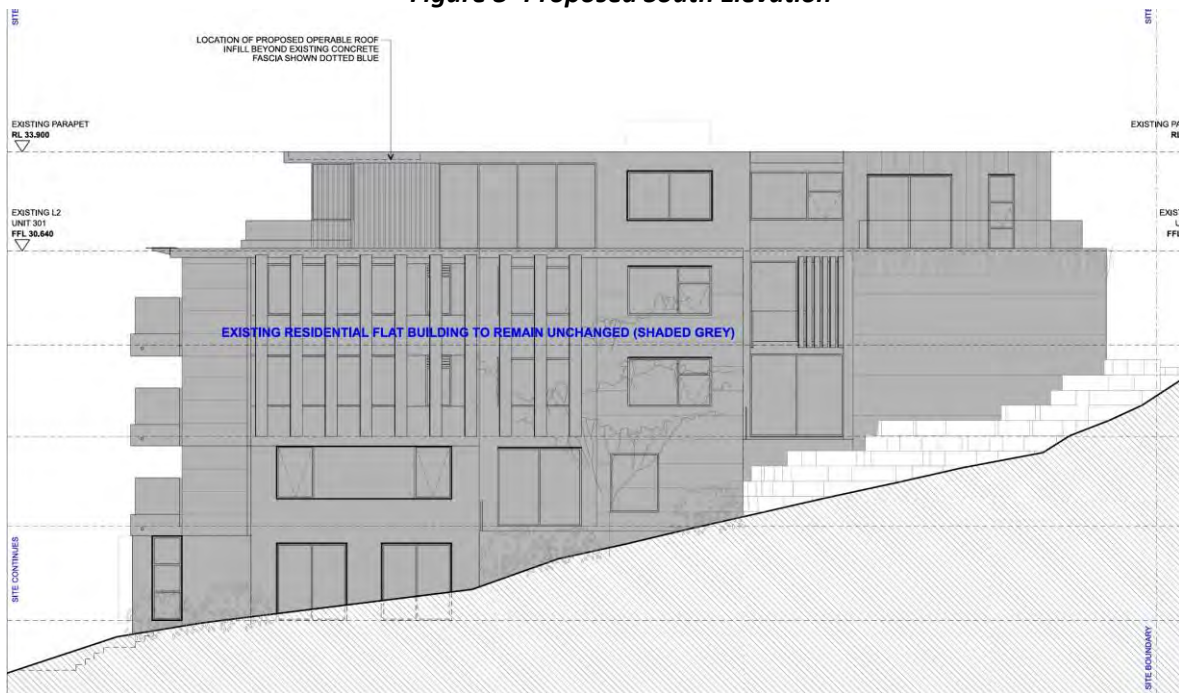
As seen within the elevations at **Figures 2, 3, and 4**, the vergola is to be affixed at a lower height than the frame within which it is proposed to be fitted, and does not further exceed the height of the building as built.



**Figure 2 – Proposed East Elevation**



**Figure 3 -Proposed South Elevation**



**Figure 4 – Proposed North Elevation**

The applicant has provided a Clause 4.6 exception to development standards written request that details the applicant's assertion that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the application. Further assessment is provided under the relevant heading.

**b) Clause 4.4 Floor Space Ratio**

The subject site is not mapped as having a maximum floor space ratio.

**c) Clause 4.6 Exceptions to Development Standards**

The applicant has provided a Clause 4.6 exception to development standards written request that details the reasons why compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the application.

The Clause 4.6 request assesses the proposed development in terms of consistency against the objectives of Clause 4.3 Height of buildings of *NSLEP 2013*, and further justifies the departure from the relevant numerical control through assessment of the environmental planning grounds deemed sufficient to justify the departure from the control.

The objectives of the height of building control as stated within Clause 4.3 of *NSLEP 2013* are:

- (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 applicants written request to vary the stated height of building applicable to the site addresses the objectives as follows:

*The proposal remains consistent with the objectives based on the following:*

- In relation to objective (a) the building footprint and floor level is not altered by the infill Vergola. The existing building steps down the sloping site and the introduction of a Vergola to the portion of the rear balcony on level 5 of the building does not alter this.*
- In relation to objective (b) views from adjoining properties to the harbour were considered as part of the assessment of the Development Application for the construction of the residential flat building. The introduction of a vergola that is below the highest point of the approved building will not unacceptably reduce views towards Sydney Harbour.*
- In relation to objective (c) and having regards to the location of the vergola, it will not unacceptably increase overshadowing of adjoining properties, given the shadow already cast by the building;*
- In relation to objective (d) the introduction of a Vergola to the existing rear balcony, will not lead to a reduction in privacy of neighbouring properties.*
- In relation to objective (e) the minor increase in scale will not be discernable when viewed from adjoining properties, particularly noting that there will only be limited views to the vergola from properties to the rear;*
- In relation to objective (f) the proposed breach will not result in a noticeable increase in the bulk and scale of the unit, but rather provide weather protection for the residents; and*

- *It is noted that given the R4 high density zoning of the site that objective (g) is not applicable.*

The applicant proposes that there are sufficient environmental planning grounds to justify the variation to the height development standard as follows:

- *The site contains a 5 storey residential flat building, parts of which exceed the 12m height limit. The approved building contains a frame above unit 301 that also exceeds the 12m height limit. The infilling of this area will provide appropriate wet weather protection and sun protection to allow the existing outdoor space to be more appropriately utilised throughout the year and improve the amenity for the existing residents;*
- *The overall height of the development presents as a compatible form of development to the existing built form in the locality.*
- *The proportion of the building that protrudes above the 12m height limit contains no floor space, reinforcing that the breach to the height standard does not result in the development representing an overdevelopment of the site but rather a suitable contextual response to the locational characteristics on the site;*
- *The additional height does not generate any additional amenity impacts given the location of the site and the surrounding site context.*
- *The additional height supports the provision of appropriate covered private open space that will provide improved amenity for residents and visitors.*
- *The proposal has been carefully designed to ensure that no adverse visual or acoustic amenity impacts will be created by the proposed Vergola;*
- *The proposed articulation of the built form will ensure that the additional building height will not be discernably noticeable from street level;*
- *The building is compatible with the desired future character of the area in terms of the building presentation to the street, the materials, and the relationship to surrounding properties.*

On review, the development remains consistent with the objectives of the control, and despite the numerical variation, compliance with the development standard is considered unreasonable or unnecessary in the circumstances of the application noting that no an additional breach of the height limit is proposed, and that the variation is relatively minor and would result in no significant environmental impacts.

The applicant is therefore considered to have adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

**d) Clause 5.10 Heritage Conservation**

The subject site is not mapped as a heritage item, nor is the site located within a mapped heritage conservation area. An adjacent dwelling to the north is identified as an item of local heritage (10668), though the minor works proposed are not likely to impact upon the dwelling in any manner.

**e) Clause 6.9 Limited Development on Foreshore Area**

The subject site is not identified as being within the foreshore area. No consideration of this Clause is required.

f) **Clause 6.10 Earthworks**

No earthworks are required to facilitate the development proposed.

**NORTH SYDNEY DEVELOPMENT CONTROL PLAN (NSDCP) 2013**

The North Sydney Development Control Plan applies to the site and review of the relevant sections for the purposes of assessing the suitability of the proposed development and any adverse impacts to adjoining development has been carried out below:


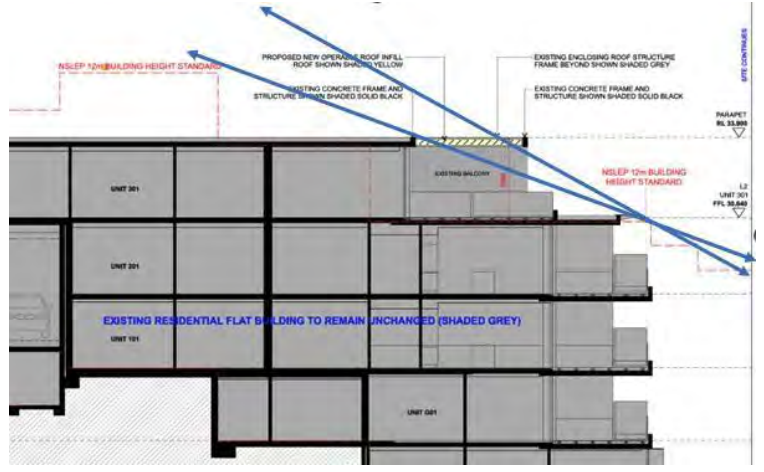
**Compliance Table – Residential Development**

<b>Part B Section 1- Residential Development</b>		
	<i>complies</i>	<i>Comments</i>
<b>1.3 Environmental Criteria</b>		
<b>1.3.6 Views</b>	Yes	<p>The proposed vergola is to be installed within an existing frame over the rear, east facing balcony of Unit 301.</p> <p>The vergola is to be located in a position whereby any possible views obtained presently that could be affected would be obscured by framing and approved (but to be installed) 800mm opaque glazed awning located along the eastern edge of the balcony – providing shelter to the rear balcony of Unit 201 located directly below.</p> <p>Noting the existing frame over the rear balcony, and the approved and yet to be installed 800mm awning, the opportunity for views through the available gap and over the balcony is substantially limited.</p> <p>An objection was received that cited view impacts from a resident within the residential flat building adjacent the site to the west, and an assessment of the impacts of the development on the views of this unit have been considered with mind of the Land and Environment Court’s Planning Principles for view sharing established in <i>Tenacity Consulting v Warringah Council</i> [2004] NSWLEC 140. The following assessment is made:</p> <ol style="list-style-type: none"> <li>What are the views to be affected?                      The views potentially affected are partial, obtained wholly over and through the subject site, and whilst not clearly defined within objections, appear to be of a glimpse of the waters of the harbour and toward Cremorne Point.</li> <li>What part of the property are the views obtained from?                      Views appear to be from a bedroom and bathroom within the unit of the objector. Floor plans and real estate sales images show that the unit potentially affected by view loss is oriented to hold views over the harbour to the southeast, from an existing outdoor balcony area, and has the living room facing south, away from the subject site. These views will not be impacted. Refer to <b>Figure 5 and 6</b> for real estate sales image of views and floor plan showing the unit bearing. Refer to <b>Figure 7</b> for aerial image showing angle of view from the objector unit.</li> <li>What is the extent of the impact on the whole property?                      The impact is negligible when considered against the available views toward the harbour and surrounding headlands that will remain unaffected by the proposed development. For views to be affected by the proposed vergola installation, the resident must be within their bedroom or bathroom and look deliberately toward and through existing built form or over the subject site. As indicated in <b>Figure 8</b> The angle of opportunity to view through the site is limited.</li> <li>What is the reasonableness of the proposal that is bringing about the impact?                      The proposed works are considered a reasonable outcome for the subject site, with the balcony and roof framing already approved and constructed. The inclusion of the proposed operable vergola roof will allow for year and season round use of the balcony. At present the occupants use a large collapsible umbrella for shade and weather protection, which is considered a suboptimal outcome for the site in terms of amenity and safety.</li> </ol>

**Part B Section 1- Residential Development**

	<i>complies</i>	<i>Comments</i>
		<div data-bbox="660 344 1426 976" data-label="Image"> </div> <p data-bbox="641 1012 1445 1043"><i>Figure 5 – Images of View from Adjacent Unit. Subject Site Off Screen to the Left</i></p> <div data-bbox="730 1111 1279 1872" data-label="Diagram"> </div> <p data-bbox="647 1904 1439 1962"><i>Figure 6 – Floor Plan of Unit Potentially Affected – Note North Point and Living Room Location</i></p>



<b>Part B Section 1- Residential Development</b>		
	<i>complies</i>	<i>Comments</i>
		 <p style="text-align: center;"><b>Figure 7 – Angles of Views Indicated by Blue Line</b></p>  <p style="text-align: center;"><b>Figure 8 – Angles of Views Available Through Existing Built Form</b></p>
<b>1.3.7 Solar Access</b>	Yes	<p>The proposed installation of an operable vergola within the existing frame above the rear balcony of Unit 301, located to the northeastern corner of the uppermost floor of the residential flat building within which the unit is sited, is unlikely to cause any solar loss to any surrounding dwelling.</p> <p>As shown on the supplied site analysis plan (DA_000_01), there would be only minor glimpses of light able to pass through the opening where the vergola is proposed to be installed to any other dwelling at any time of the year.</p> <p>The existing residential flat building and approved but to be constructed awning over the eastern balcony of unit 201 would result in there being no noticeable additional shadowing of properties external to the subject site should the vergola be installed and closed.</p> <p>In particular, the solar access maintained to internal living areas and private open space of the surrounding properties is considered to be reasonable, and having regard for the highly density urban character of the locality, the orientation of allotments, the fall of land, the size and location of the adjoining private open space, along with the configuration of existing adjoining buildings and existing shadow profiles, the proposed works are considered reasonable and unlikely to cause detrimental impact to any land in terms of solar access.</p> <p>The proposed development would not likely result in a net reduction of solar access at any time to any adjacent dwelling, and the design is considered to be a reasonable response to site constraints.</p>

<b>1.3.8 Acoustic Privacy</b>	Yes	No change to the existing acoustic privacy between the subject unit and surrounding development is expected to result from the proposed works. Any minor additional noise created by the use of the balcony with the vergola closed would be directed east, over adjoining development, and toward the harbour where there is passive noise. No additional noise is likely to be directed north and down to adjoining dwellings.
<b>1.3.10 Visual Privacy</b>	Yes	No additional windows or balconies are proposed, and no deletion of privacy screens is required to facilitate the development.  Existing levels of visual privacy are expected to remain between the subject unit and surrounding development.
<b>1.4 Quality built form</b>		
<b>1.4.1 Context</b>	Yes	The proposal is compatible with the context of the site and existing characteristics of the wider area, noting the minor works are located at the rear of the residential flat building, within an existing frame and not readily visible from the public domain.
<b>1.4.5 Siting</b>	Yes	No change to the approved and constructed orientation or siting of the building would occur as a result of the proposed works.
<b>1.4.6 Setback – Side</b>	Yes	The proposed development, being the infill construction of an operable vergola roof to an existing frame above the rear open balcony of Unit 301 will not alter the existing side setbacks of the building.  Whilst not numerically compliant with the control, no manifest change to the building will be perceived from any surrounding development or area of the public domain.  No change to the front, side, or rear setback of the residential flat building or Unit 301 is proposed.
<b>1.4.7 Form Massing Scale</b>	Yes	The height, form, scale and bulk of the existing building will not be substantially altered by the proposed infill vergola, located within an existing frame above the open balcony of Unit 301.  No manifest change to the appearance of the building is expected to occur as a result of the proposed works.
<b>1.4.8 Built Form Character</b>	Yes	The resulting development is generally in keeping with the built form character of the area.
<b>1.4.9 Dwelling Entry</b>	Yes	No change to the building entry is proposed.
<b>1.4.10 Roofs</b>	Yes	The proposed operable vergola roof is to be installed within an existing frame and at a height lower than the surrounding existing roof. The vergola will be unseen from the public domain, and is unlikely to cause the roof to be uncharacteristic when considered against the varied roof forms found in the immediate locality.
<b>1.4.12 Colours and Materials</b>	Yes	No change to the colours or materiality of the residential flat building within which the subject unit is found is proposed. The building will appear the same as is currently seen at the completion of the development.
<b>1.4.13 Balconies – Apartments</b>	Yes	The proposed installation of an operable vergola roof over the existing open balcony will result in the existing space being more functional and useable. The balcony is incorporated to the overall building design and will remain predominately open, with no walls proposed or existing along the majority of the northern elevation, and the entire eastern elevation.
<b>1.5 Quality Urban Environment</b>		
<b>1.5.1 High Quality Residential Accommodation</b>	Yes	Internal amenity of the subject unit and others within the building will not be impacted by the works proposed which are located entirely within an existing frame structure above an external balcony.
<b>1.5.2 Lightwells &amp; Ventilation</b>	Yes	The proposed works will not affect the existing levels of solar access and ventilation to the subject unit and others within the building.
<b>1.5.3 Safety and Security</b>	Yes	No change to the existing pedestrian or vehicular entry is proposed. Works relate wholly to the balcony area of Unit 301 and in no manner alter the existing site conditions of any access point of the building.

<b>Part B Section 1- Residential Development</b>		
	<b><i>complies</i></b>	<b><i>Comments</i></b>
<b>1.5.4 Vehicle Access and Parking</b>	Yes	No change to the existing vehicular access and parking is proposed.
<b>1.5.5 Site Coverage</b>	Yes	No change to the site coverage of the approved residential flat building would result from the proposed addition of a vergola to the open balcony of the subject unit.  The proposed operable roof is not permanently closed, and the balcony remains open to the two sides that it is presently open.
<b>1.5.6 Landscape Area</b>	Yes	The proposed development would not alter the site's performance with regard to un-built upon area as works are wholly within the existing building footprint.
<b>1.5.7 Landscaping</b>	Yes	The proposed development would not alter the landscaping of the site as works are wholly within the existing building footprint.
<b>1.5.9 Private and Communal Open Space</b>	Yes	No change to the available private and communal open space of the residential flat building would result from the works proposed.  The useability of the existing private open space of Unit 301 would be enhanced significantly by the inclusion of the operable vergola proposed, with year and season round use presently limited due to the open nature of the balcony.
<b>1.6 Efficient Use of Resources</b>		
<b>1.6.2 Passive Solar Design</b>	Yes	No change to the site layout or building orientation is proposed. The inclusion of an operable roof over the existing rear balcony will assist in the passive cooling of the unit during the summer months as additional shading can be maintained over the east facing living room windows.
<b>1.6.8 Stormwater Management</b>	Yes	No change to the site stormwater management is to occur as a result of the proposed works. The vergola is to have a downpipe to shift captured water to the existing rooftop drainage system.

## **CHARACTER STATEMENTS – PART C**

### ***Relevant Planning Area (Section 6.1) South Cremorne Planning Area – Kurraba Point South Neighbourhood***

The application has been assessed against the relevant controls in the Character Statements in Part C in NSDCP 2013 and found to remain compliant with the overall desired built form and development typology expected within the area.

## **LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN**

The proposal is not subject to Local Infrastructure Contributions in accordance with the North Sydney Local Infrastructure Contributions Plan (as amended) as the proposal includes only works to install an operable vergola to an existing rear balcony, with the stated cost of works being \$24,200.00. The costs indicated are lower than the threshold where contributions become applicable.

## **ALL LIKELY IMPACTS OF THE DEVELOPMENT**

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

<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
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 4.15 considerations of <i>Environmental Planning and Assessment (Amendment) Act 1979</i>	Yes

#### **PUBLIC INTEREST**

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

#### **SUITABILITY OF THE SITE**

The proposal is to be installed within an existing built element of an existing residential flat building located within a R4 High Density Residential zone where residential flat buildings 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.

#### **SUBMITTERS CONCERNS**

The concerns raised during the notification of the application have been reviewed and addressed in detail under the relevant headings above. The proposed development largely complies with the relevant planning controls and guidelines, and the assessment has determined that concerns raised in the submissions have generally been addressed. Additional detail, where relevant, is held below:

- ***The increased overshadow to adjoining properties***

**Response:** The overshadowing impacts of the development are addressed in detail above. The proposed additions comply with the solar access requirements of Council's DCP as noted and any additional solar impact that would result from the proposed operable vergola would be minor and inconsequential, with the existing built form effectively self-shading the areas off site where the vergola would otherwise potentially cast a shadow.

Noting that private open space and solar access to living areas of adjoining development would remain at or close to present levels, the proposed development is considered acceptable in terms of solar impacts.

- **Potential Impact on views**

**Response:** A detailed assessment of views has been conducted and the proposed development considered to be consistent with view sharing principles expressed in the LEP Aims and Zone Objectives. Council is satisfied that a proposed design is a reasonable response to site constraints, and the development achieves the relevant objectives for height and building setbacks. View impacts are therefore regarded as acceptable.

Refer to **Figure 9** for photograph from the applicant rear balcony looking east over the adjoining dwellings, and showing the semi-installed awning over Unit 201 rear balcony. Once the installation of the pictured awning is complete, any potential view loss that may be caused by the vergola would be negligible, noting the angle of views through the balcony area and over the awning being obscure enough that the view would be mostly unobtainable. Refer also to **Figure 8** for angles of view through the site.



**Figure 9 – View East from Subject Balcony**

- **Concerns in relation to scale of the proposal in terms of LEP numerical breaches**

**Response:** The proposed development has been assessed in accordance with the EP&A Act, EP&A regulations, *NSLEP 2013*, and relevant policies, and found to be suitable for the site.

Numerical noncompliance with the relevant height of building control has been assessed and it has been determined that there are sufficient environmental planning grounds to justify the contravention of the development standard

- **Insufficient and erroneous information has been presented in support of the application.**

**Response:** The supporting documentation has been reviewed and found to be sufficient for the purposes of assessment. No erroneous information was found within the documentation package.

- **The proposed vergola, including its surrounding frame and associated structure, was previously rejected by the North Sydney Planning Panel (NSLPP)**

**Response:** The vergola subject to this assessment is considered only in its current proposed form, being that the vergola unit is to be installed within an existing frame, itself indicated on previous approved plans relating to the residential flat building.

It is noted that the subject vergola was refused consent under previous modification applications to consent No. DA 333/19/2 - approved by the North Sydney Local Planning Panel (NSLPP), and again refused under a subsequent modification to consent No. DA 333/19/4, approved through consent orders by the Land and Environment Court New South Wales (L&E Court).

**Condition A4 of DA 333/19/2 states:**

- *A4. The vergola over the level 2 balcony in the north eastern corner of the building shall be deleted from the approved plans.*

*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: Unacceptable breach of height control, bulk and scale of building, impact on views)*

An extract of the plans approved under DA 333/19/2 is provided at **figure 10**. It is noted that the plan labels the vergola as the internal element within the framing.

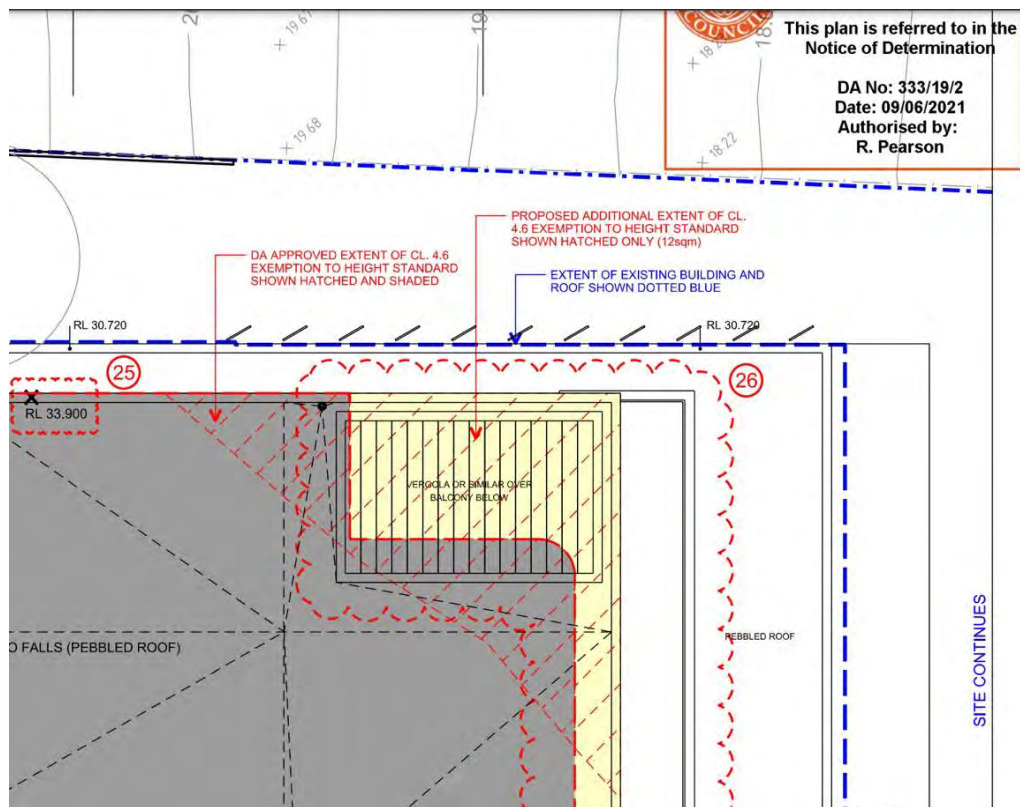


Figure 10 – Extract of Approved Plan DA\_100\_50 Rev. 05 per DA 333/19/2

**Condition 2 of DA 333/19/4 states:**

- Delete the heading to Condition A4 and replace with the following:

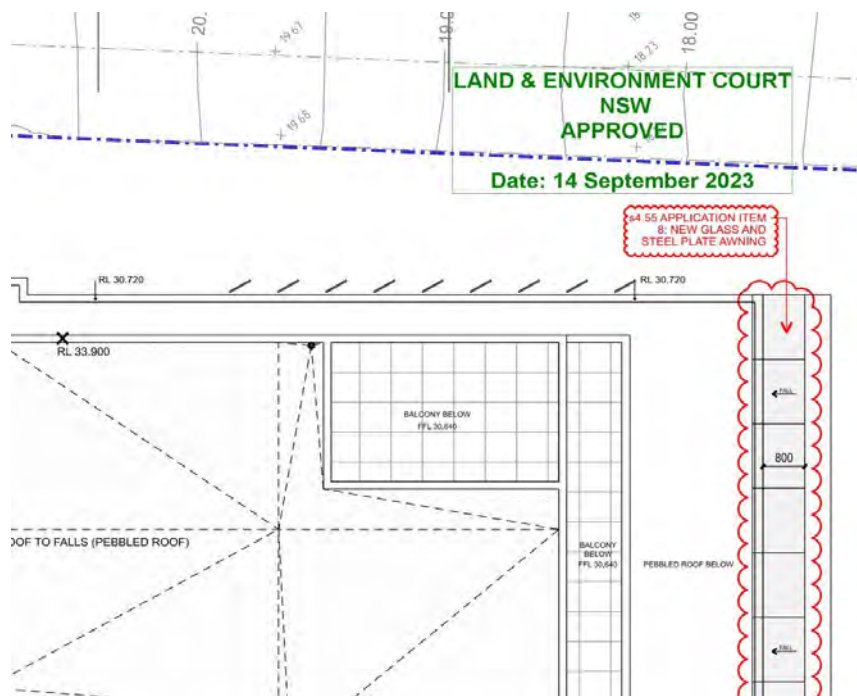
*"Level 1 Roof Overhang and Level 2 Vergola*

- A4
- The vergola over the level 2 balcony in the north eastern corner of the building shall be deleted from the approved plans*
  - The proposed 1.6m roof overhang over the level 1 rear balcony on the eastern side of the building shall be deleted from the plans and replaced by the 800mm glass and steel plate awning as documented in Drawing No. DA-600-09 Revision 02, dated 10/02/2023.*

*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; Unacceptable breach of height control, bulk and scale of building, impact on views*

An extract of the plans approved under DA 333/19/4 is provided at **figure 11**. It is noted that the plan has removed the infill vergola and reduced the 1.6m overhand to 0.8m in accordance with the wording of the condition. Again, the framing is retained and is an assumed approved structure per the consent issued in relation to DA 333/19/2. This appears to be supported by the consent issued for DA 333/19/4.



**Figure 11 – Extract of Approved Plan DA\_100\_50 Rev. 13 per DA 333/19/4**

On review of both mentioned modifications, the framing to which the vergola subject to this application is proposed to be fitted within was shown as a roof element and subsequently approved on the plan sets. Refer **Figure 12** for photograph of existing balcony and roof frame.

The subject application proposes no manifest change to the constructed built form, and is considered reasonable in the circumstance.



**Figure 12 – View of Subject Balcony and Roof Form.**



## CONCLUSION AND REASONS

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

From the reasons listed above, the proposal is unlikely to cause adverse material impacts to adjoining properties. The proposed works to the presently open roof of the rear balcony to Unit 301 of 182 Kurraba Road will maintain the amenity of the adjoining dwellings via site specific conditions.

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)

- A. **THAT** the North Sydney Local Planning Panel exercising the functions of Council as the consent authority, assume the concurrence of the Secretary of the Department of Planning, Housing and Infrastructure and invoke the provisions of Clause 4.6 in *NSLEP 2013* with regards to non-compliance with Clause 4.3 of *NSLEP 2013* and grant consent as the variations sought are considered to be well founded and in the public interest as there will not be any direct or adverse environmental impacts generated by the variation sought.
  
- B. **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 **grant consent** to Development Application No. 138/24 for Installation of a Vergola on the Rear Balcony on land at Unit 301, 182 Kurraba Road, Kurraba Point subject to the attached Standard conditions:-

Christopher Ross  
Consultant Planner

**NORTH SYDNEY COUNCIL**  
**CONDITIONS OF DEVELOPMENT APPROVAL**  
**UNIT 301, 182 KURRABA ROAD, KURRABA POINT**  
**DEVELOPMENT APPLICATION NO. 138/24**

**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.	Rev	Description	Prepared by	Dated
DA_000_01	00	Site Plan / Site Analysis Plan	Daniel Younan & Ass.	04/06/2024
DA_100_00	00	Proposed Level 2 Floor Plan	Daniel Younan & Ass.	04/06/2024
DA_100_10	00	Proposed Roof Floor Plan	Daniel Younan & Ass.	04/06/2024
DA_200_00	00	Proposed South Elevation	Daniel Younan & Ass.	04/06/2024
DA_200_01	00	Proposed North Elevation	Daniel Younan & Ass.	04/06/2024
DA_200_02	00	Proposed East Elevation	Daniel Younan & Ass.	04/06/2024
DA_200_03	00	Proposed West Elevation	Daniel Younan & Ass.	04/06/2024
DA_300_00	00	Section A-A	Daniel Younan & Ass.	04/06/2024

(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)

**UNIT 301, 182 KURRABA ROAD, KURRABA POINT  
DEVELOPMENT APPLICATION NO. 138/24**

Page 2 of 7

**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)*****Structural Adequacy of Existing Building**

- C1. 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)

**Waste Management Plan**

- C2. 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**

- C3. 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)

**E. During Demolition and Building Work**

**Temporary Disposal of Stormwater Runoff**

- E1. 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)

**Construction Hours (Commercial Core and Mixed-use Zones)**

- E2. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

<b>Standard Construction Hours</b>		
<b>Location</b>	<b>Day</b>	<b>Hours</b>
<b>All Zones</b>	Monday - Friday	7.00am - 7.00pm
	Saturday	8.00am - 1.00pm
	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 & Enforcement Policy.

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

**Site Amenities and Facilities**

- E3. 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.

**UNIT 301, 182 KURRABA ROAD, KURRABA POINT  
DEVELOPMENT APPLICATION NO. 138/24**

Page 4 of 7

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

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

**Health and Safety**

- E4. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number for enquiries.

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

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

**Plant and Equipment Kept Within Site**

- E5. 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](http://www.northsydney.nsw.gov.au).

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

**Waste Disposal**

- E6. 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)

**Service Adjustments**

- E7. The adjustment or inclusion of any new utility service or facilities must be carried out by an appropriately contractor in accordance with the requirements of the relevant utility authority.

**UNIT 301, 182 KURRABA ROAD, KURRABA POINT  
DEVELOPMENT APPLICATION NO. 138/24**

Page 5 of 7

These works shall be at no cost to Council. It is the Applicant's responsibility to contact the relevant utility authorities to ascertain the impacts of the proposal upon utility services prior to the commencement of any work, including demolition (including water, phone, gas and the like).

Council accepts no responsibility for any impact on or influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

**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.

**UNIT 301, 182 KURRABA ROAD, KURRABA POINT  
DEVELOPMENT APPLICATION NO. 138/24**

Page 6 of 7

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 Certifying Authority (PCA)**

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

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)

**UNIT 301, 182 KURRABA ROAD, KURRABA POINT  
DEVELOPMENT APPLICATION NO. 138/24**

Page 7 of 7

**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
  - 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.

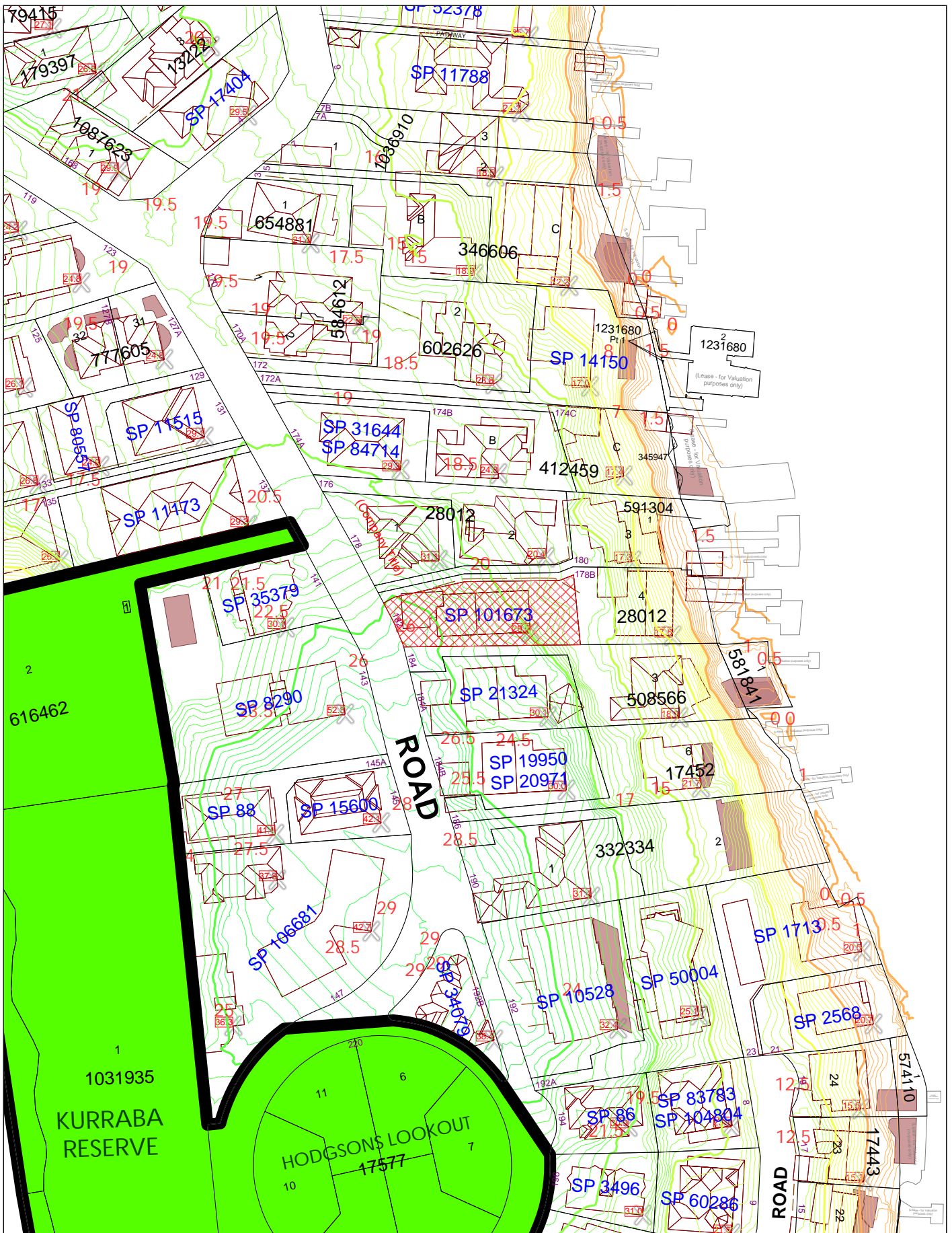
(Reason: Maintain quality of Public assets)

**Utility Services**

- G2. 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**

Copyright © North Sydney Council - No part of this map may be reproduced without permission. Commercial decisions should not be made based on information contained in this map without first checking details held by the responsible Government authority.

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

Scale: 1:1200 approx.



# PROPOSED NEW OPERABLE ROOF TO EXISTING RESIDENTIAL FLAT BUILDING

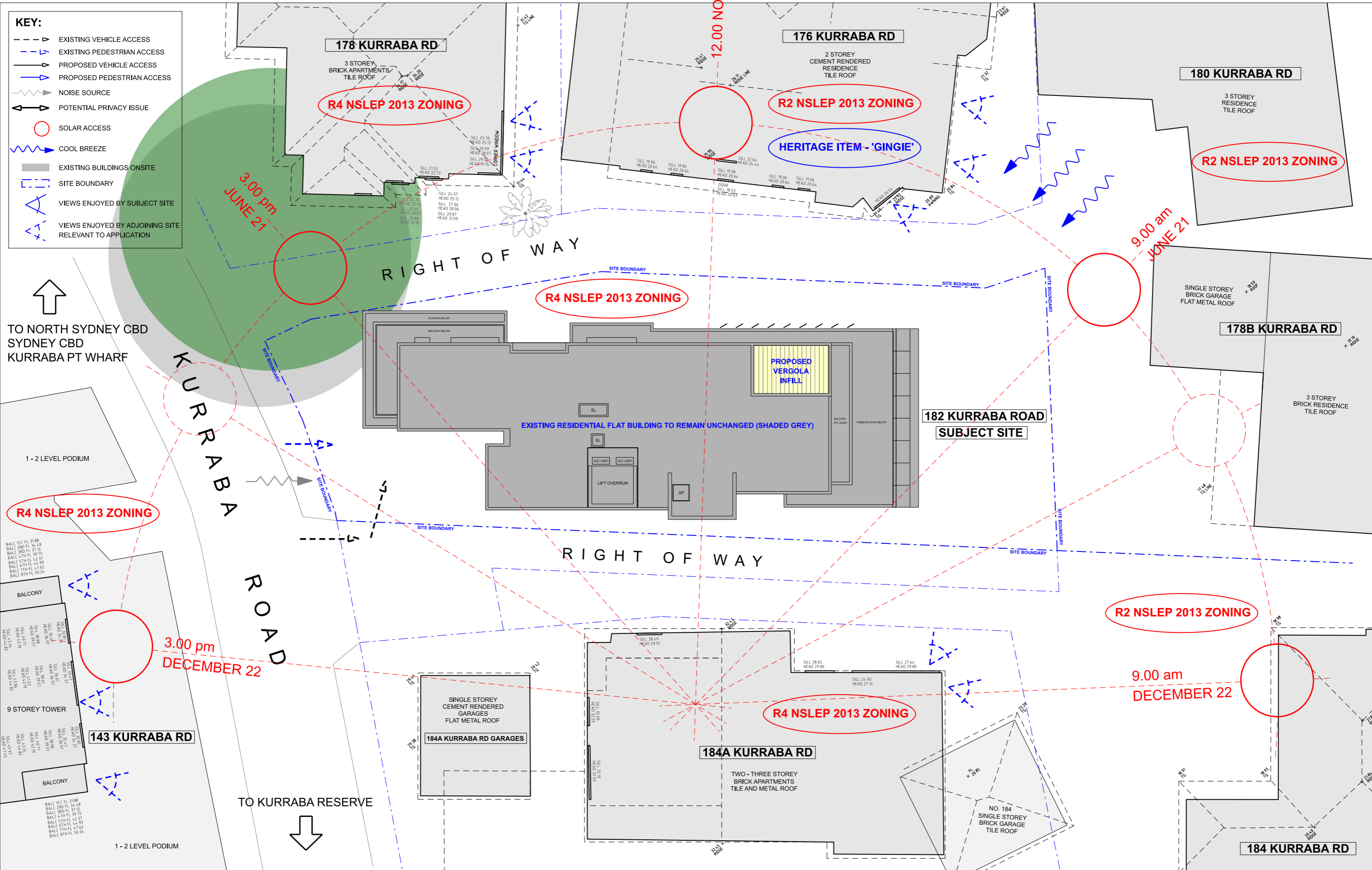
## LOT 4 (UNIT 301), 182 KURRABA ROAD, KURRABA POINT, NSW, 2089 (SP 101673)

### DEVELOPMENT APPLICATION

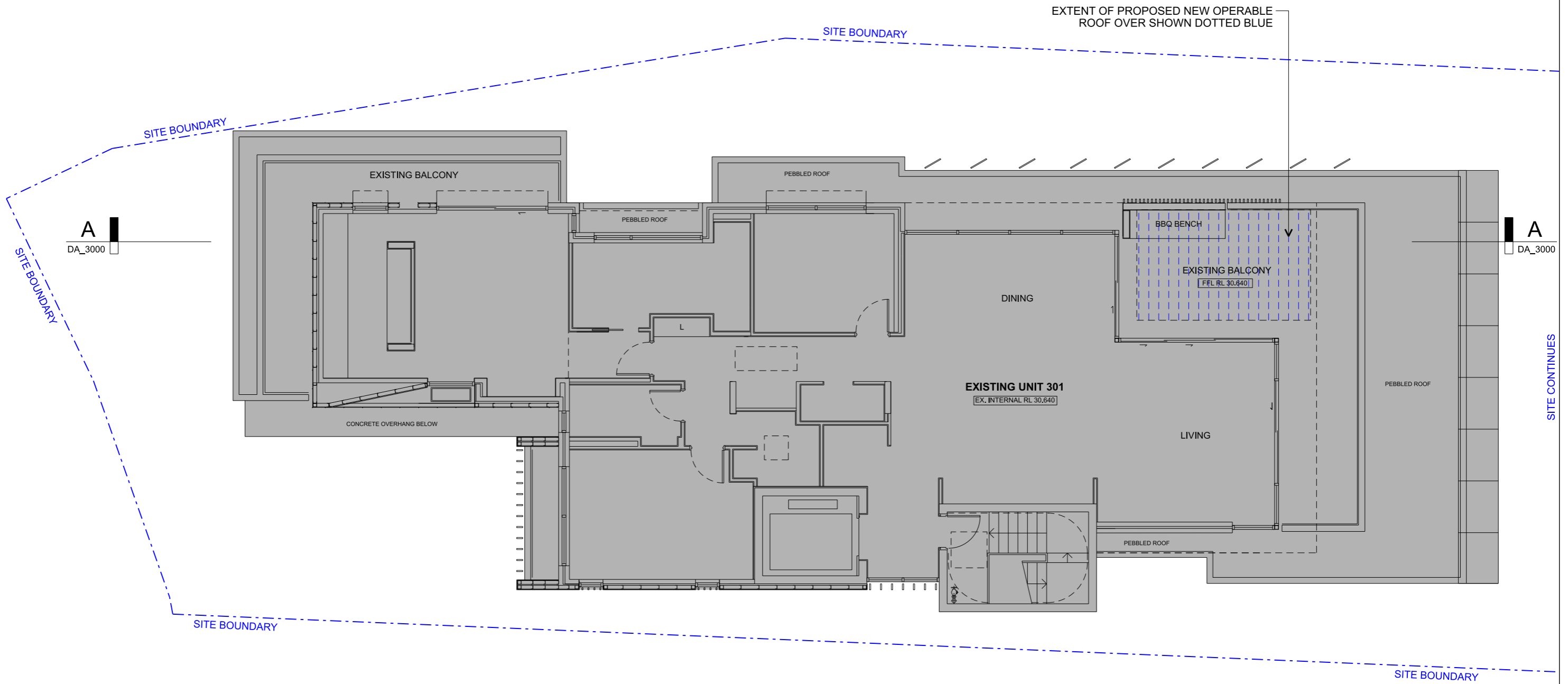
#### DRAWING LIST

DA_000_00	COVER SHEET
DA_000_05	SITE PLAN / SITE ANALYSIS PLAN
DA_100_00	PROPOSED LEVEL 2 FLOOR PLAN
DA_100_10	PROPOSED ROOF PLAN
DA_200_00	PROPOSED SOUTH ELEVATION
DA_200_01	PROPOSED NORTH ELEVATION
DA_200_02	PROPOSED EAST ELEVATION
DA_200_03	PROPOSED WEST ELEVATION
DA_300_00	SECTION A - A

<p><b>DRAWING NOTES:</b></p> <p>Do not scale off drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author and must not be retained, copied or used without the written consent of DANIEL YOUNAN &amp; ASSOCIATES PTY. LTD.</p> <p><b>PRELIMINARY</b> NOT FOR CONSTRUCTION</p>	<table border="1"> <thead> <tr> <th>REVISION</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>00</td> <td>04.06.24</td> <td>DEVELOPMENT APPLICATION</td> </tr> </tbody> </table>	REVISION	DATE	DESCRIPTION	00	04.06.24	DEVELOPMENT APPLICATION	<p>LEGEND</p>	<p>DANIEL YOUNAN &amp; ASSOCIATES</p> <p>pa box 32, northbridge, nsw, 1560            ph: +61 404 071 186            e: daniel@dy-associates.com www.dy-associates.com            acn: 168 655 249 abn: 13 935 429 944            nominated architect: daniel younan nsw arb 9215</p>	<p>TRUE NORTH</p>	<p>CLIENT JOHN DIDDAMS</p>	<p>DRAWING TITLE COVER SHEET</p>
	REVISION	DATE	DESCRIPTION									
	00	04.06.24	DEVELOPMENT APPLICATION									
<p>PROJECT NEW OPERABLE ROOF TO LOT 4 BALCONY OF EXISTING RESIDENTIAL FLAT BUILDING BEING SP 101673 LOT 4, 182 KURRABA ROAD, KURRABA POINT, NSW, 2089</p>	<p>SCALE NTS</p>	<p>DRAWN DY</p>										
<p>PROJECT NO. 2408</p>	<p>DRAWING NO. DA_000_00</p>	<p>REVISION 00</p>										



<p><b>DRAWING NOTES:</b></p> <p>Do not scale off drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author and must not be retained, copied or used without the written consent of DANIEL YOUNAN &amp; ASSOCIATES PTY. LTD.</p> <p><b>PRELIMINARY</b> NOT FOR CONSTRUCTION</p>	<p>REVISION 00</p> <p>DATE 04.06.24</p> <p>DESCRIPTION DEVELOPMENT APPLICATION</p>	<p><b>LEGEND</b></p> <ul style="list-style-type: none"> <li>EXISTING BUILDING (NO CHANGE PROPOSED)</li> <li>PROPOSED STRUCTURE FORMING PART OF THIS APPLICATION</li> </ul>	<p><b>DANIEL YOUNAN &amp; ASSOCIATES</b></p> <p>po box 32, northbridge, nsw, 1560                  ph: +61 404 071 186                  e: daniel@dya-associates.com www.dya-associates.com                  acn: 168 655 249 abn: 13 935 429 944                  nominated architect: daniel younan nsw arb 9215</p>	<p><b>TRUE NORTH</b></p>	<p><b>CLIENT</b></p> <p>JOHN DIDDAMS</p> <p><b>PROJECT</b></p> <p>NEW OPERABLE ROOF TO LOT 4 BALCONY OF EXISTING RESIDENTIAL FLAT BUILDING BEING SP 101673                  LOT 4, 182 KURRABA ROAD, KURRABA POINT, NSW, 2089</p>	<p><b>DRAWING TITLE</b></p> <p>SITE PLAN / SITE ANALYSIS PLAN</p> <p><b>SCALE</b> 1:200 @ A3</p> <p>0 1 2 3 4 6m</p> <p><b>PROJECT NO.</b> 2408</p> <p><b>DRAWING NO.</b> DA_000_01</p> <p><b>REVISION</b> 00</p> <p><b>DRAWN</b> DY</p>
--	--	--	--	--------------------------	---	--



**DRAWING NOTES:**  
 Do not scale off drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author and must not be retained, copied or used without the written consent of DANIEL YOUNAN & ASSOCIATES PTY. LTD.

**PRELIMINARY**  
 NOT FOR CONSTRUCTION

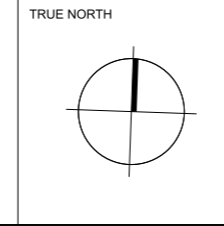
REVISION	DATE	DESCRIPTION
00	04.06.24	DEVELOPMENT APPLICATION

**LEGEND**

	EXISTING BUILDING (NO CHANGE PROPOSED)
	PROPOSED STRUCTURE FORMING PART OF THIS APPLICATION

**DANIEL YOUNAN & ASSOCIATES**

pa box 32, northbridge, nsw, 1560  
 ph: +61 404 071 186  
 e: daniel@dya-associates.com www.dya-associates.com  
 acn: 168 655 249 abn: 13 935 429 944  
 nominated architect: daniel younan nsw arb 9215



**CLIENT**  
 JOHN DIDDAMS

**PROJECT**  
 NEW OPERABLE ROOF TO LOT 4 BALCONY OF EXISTING RESIDENTIAL FLAT BUILDING BEING SP 101673  
 LOT 4, 182 KURRABA ROAD, KURRABA POINT, NSW, 2089

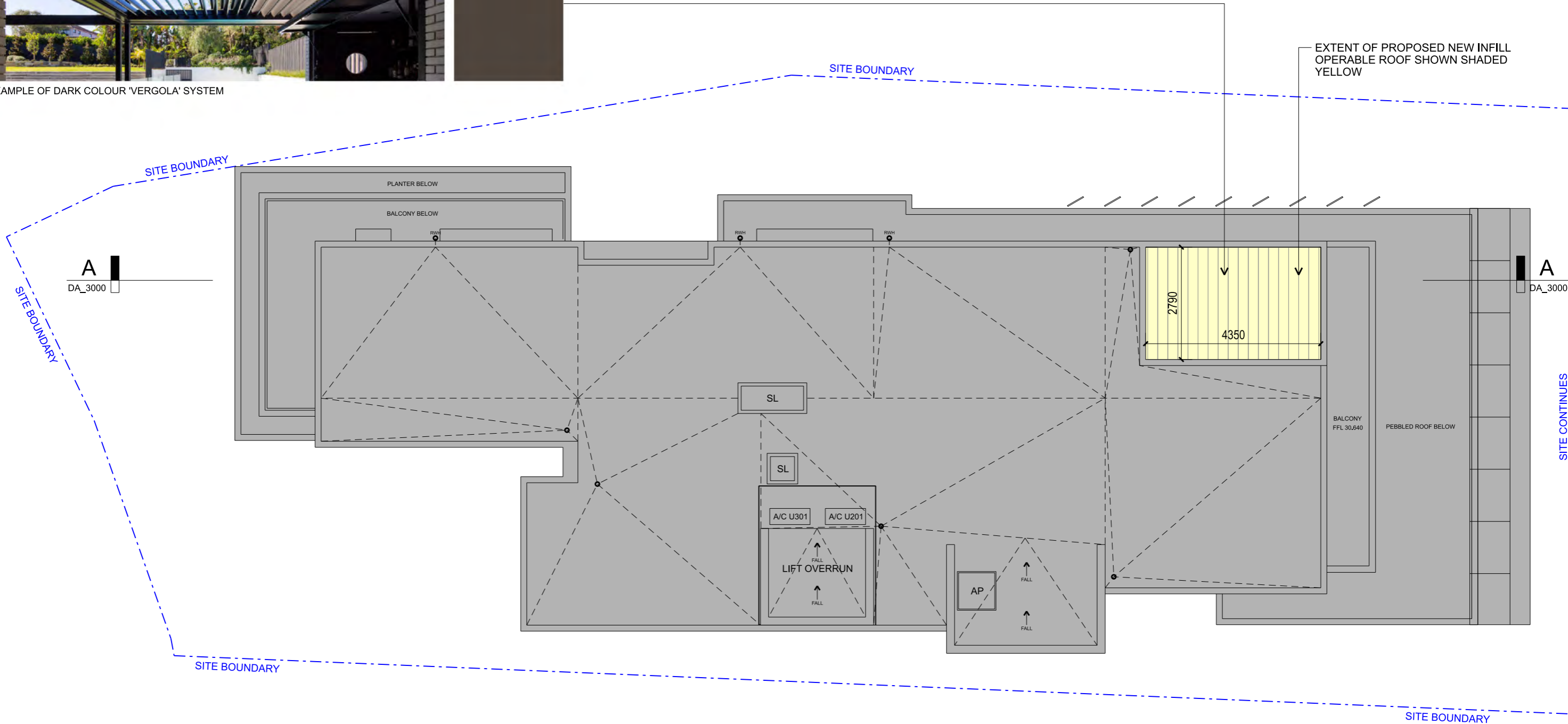
<b>DRAWING TITLE</b> PROPOSED LEVEL 2 FLOOR PLAN		
<b>SCALE</b> 1:100 @ A3 0 0.5 1 1.5 2 3m	<b>DRAWN</b> DY	<b>REVISION</b> 00
<b>PROJECT NO.</b> 2408	<b>DRAWING NO.</b> DA_100_00	

EXTERNAL FINISHES SCHEDULE



EXAMPLE OF DARK COLOUR 'VERGOLA' SYSTEM

DULUX POWDERCOAT  
COLOUR: 'ELECTRO DARK BRONZE'



EXTENT OF PROPOSED NEW INFILL  
OPERABLE ROOF SHOWN SHADED  
YELLOW

SITE BOUNDARY

SITE BOUNDARY

SITE BOUNDARY

SITE BOUNDARY

SITE CONTINUES

**DRAWING NOTES:**  
Do not scale off drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author and must not be retained, copied or used without the written consent of DANIEL YOUNAN & ASSOCIATES PTY. LTD.

**PRELIMINARY**  
NOT FOR CONSTRUCTION

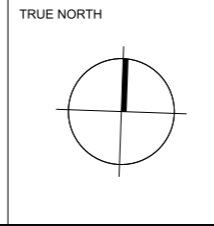
REVISION	DATE	DESCRIPTION
00	04.06.24	DEVELOPMENT APPLICATION

**LEGEND**

- EXISTING BUILDING (NO CHANGE PROPOSED)
- PROPOSED STRUCTURE FORMING PART OF THIS APPLICATION

**DANIEL YOUNAN & ASSOCIATES**

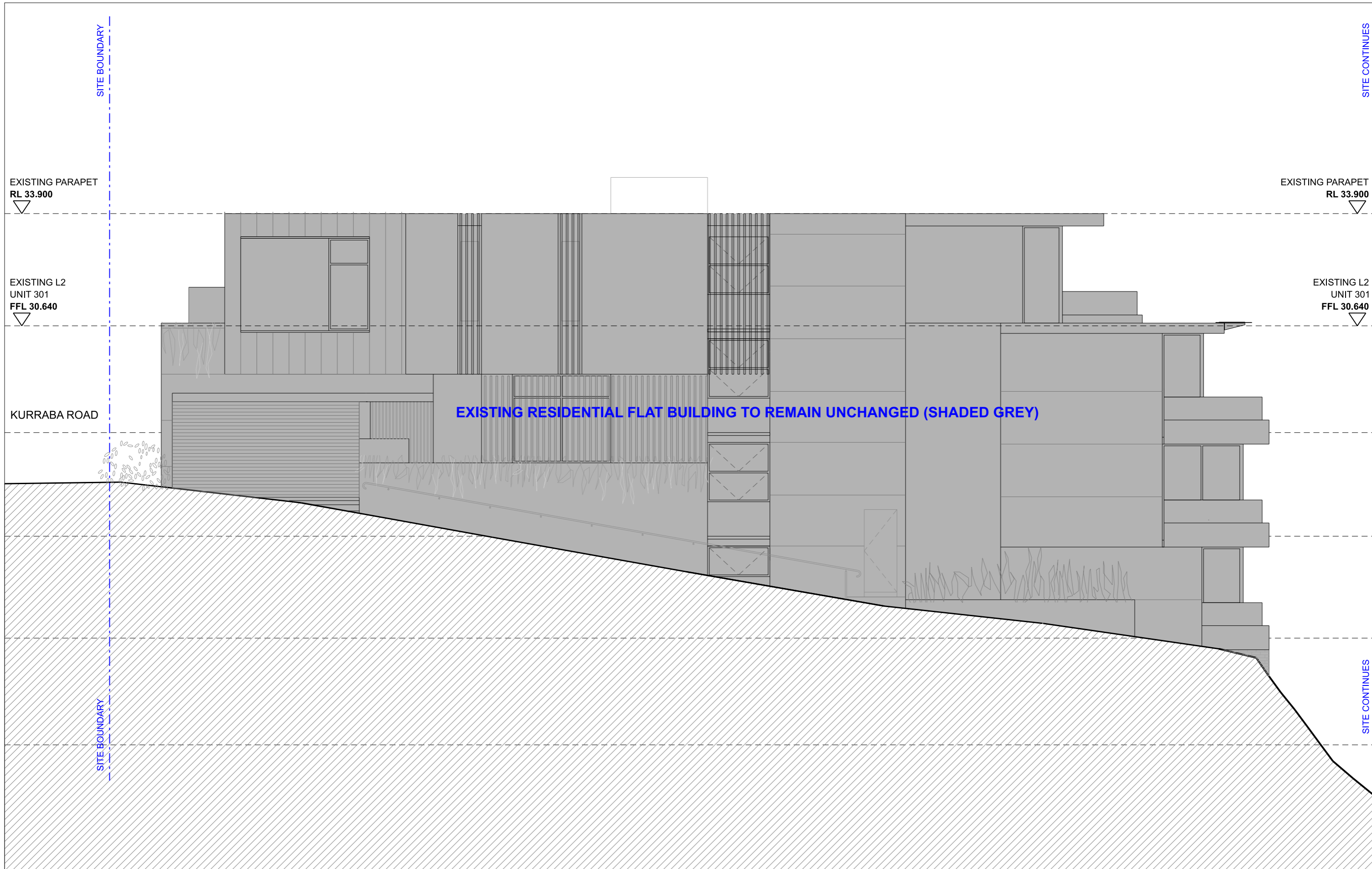
po box 32, northbridge, nsw, 1560  
ph: +61 404 071 186  
e: daniel@dy-associates.com www.dy-associates.com  
acn: 168 655 249 abn: 13 935 429 944  
nominated architect: daniel younan nsw arb 9215



**CLIENT**  
JOHN DIDDAMS

**PROJECT**  
NEW OPERABLE ROOF TO LOT 4 BALCONY OF EXISTING RESIDENTIAL FLAT BUILDING BEING SP 101673  
LOT 4, 182 KURRABA ROAD, KURRABA POINT, NSW, 2089

<b>DRAWING TITLE</b> PROPOSED ROOF FLOOR PLAN		
SCALE	1:100 @ A3	DRAWN
		DY
PROJECT NO.	DRAWING NO.	REVISION
2408	DA_100_10	00



**DRAWING NOTES:**  
 Do not scale off drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author and must not be retained, copied or used without the written consent of DANIEL YOUNAN & ASSOCIATES PTY. LTD.

**PRELIMINARY**  
 NOT FOR CONSTRUCTION

REVISION	DATE	DESCRIPTION
00	04.06.24	DEVELOPMENT APPLICATION

**LEGEND**

- EXISTING BUILDING (NO CHANGE PROPOSED)
- PROPOSED STRUCTURE FORMING PART OF THIS APPLICATION

**DANIEL YOUNAN & ASSOCIATES**

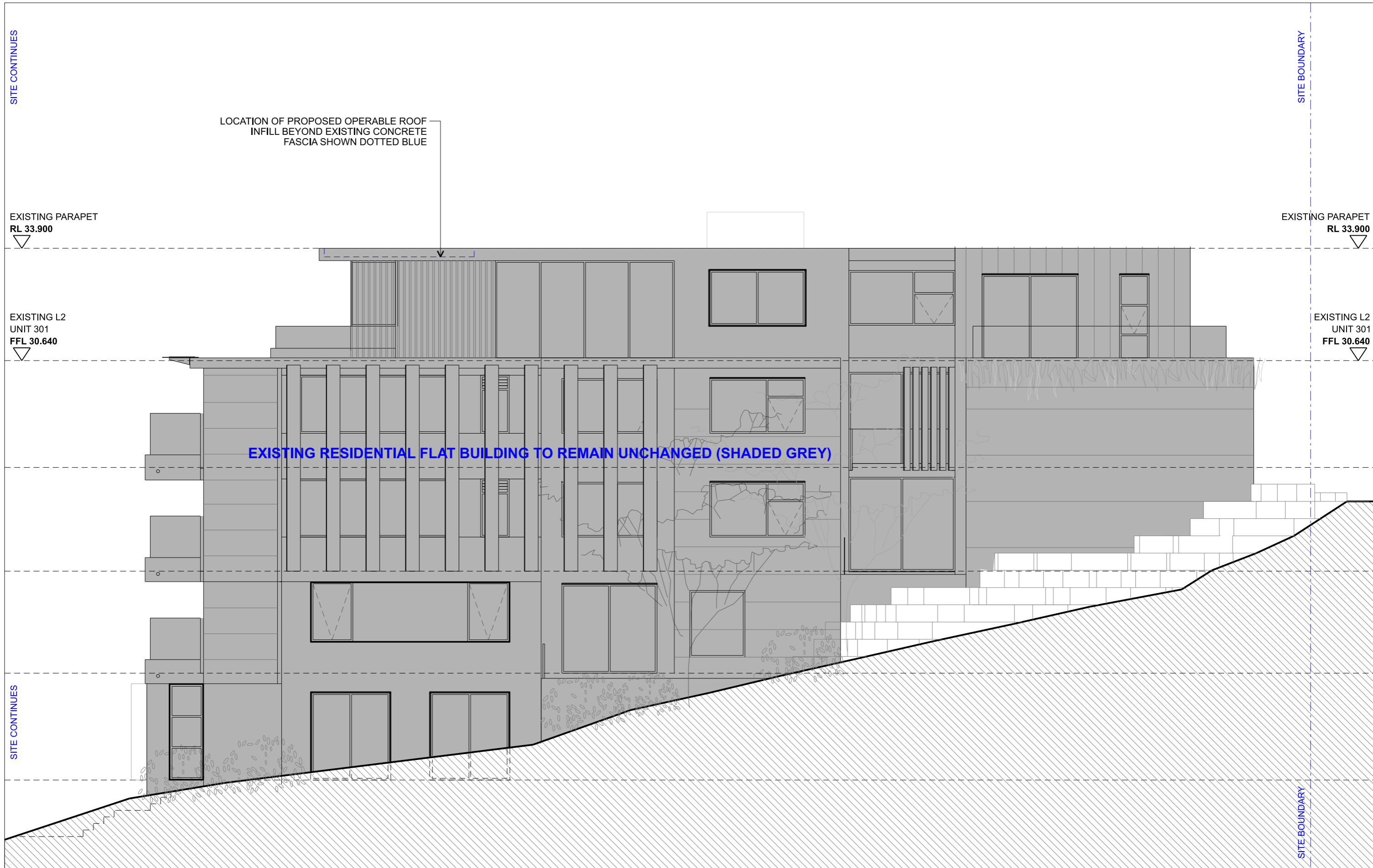
po box 32, northbridge, nsw, 1560  
 ph: +61 404 071 186  
 e: daniel@dy-associates.com www.dy-associates.com  
 acn: 168 655 249 abn: 13 935 429 944  
 nominated architect: daniel younan nsw arb 9215

TRUE NORTH

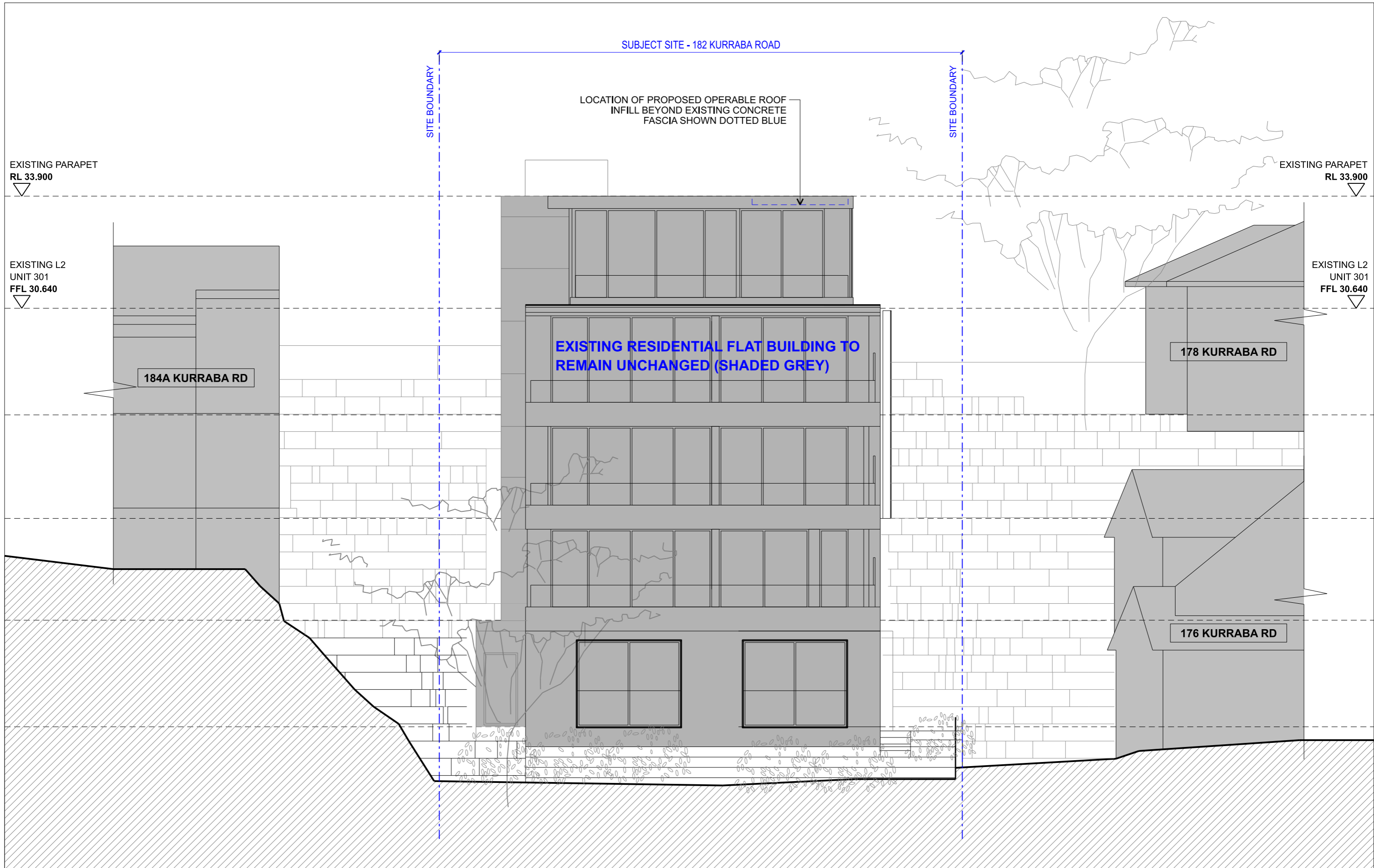
**CLIENT**  
 JOHN DIDDAMS

**PROJECT**  
 NEW OPERABLE ROOF TO LOT 4 BALCONY OF EXISTING RESIDENTIAL FLAT BUILDING BEING SP 101673  
 LOT 4, 182 KURRABA ROAD, KURRABA POINT, NSW, 2089

<b>DRAWING TITLE</b> PROPOSED SOUTH ELEVATION		
SCALE	1:100 @ A3	DRAWN
		DY
PROJECT NO.	DRAWING NO.	REVISION
2408	DA_200_00	00

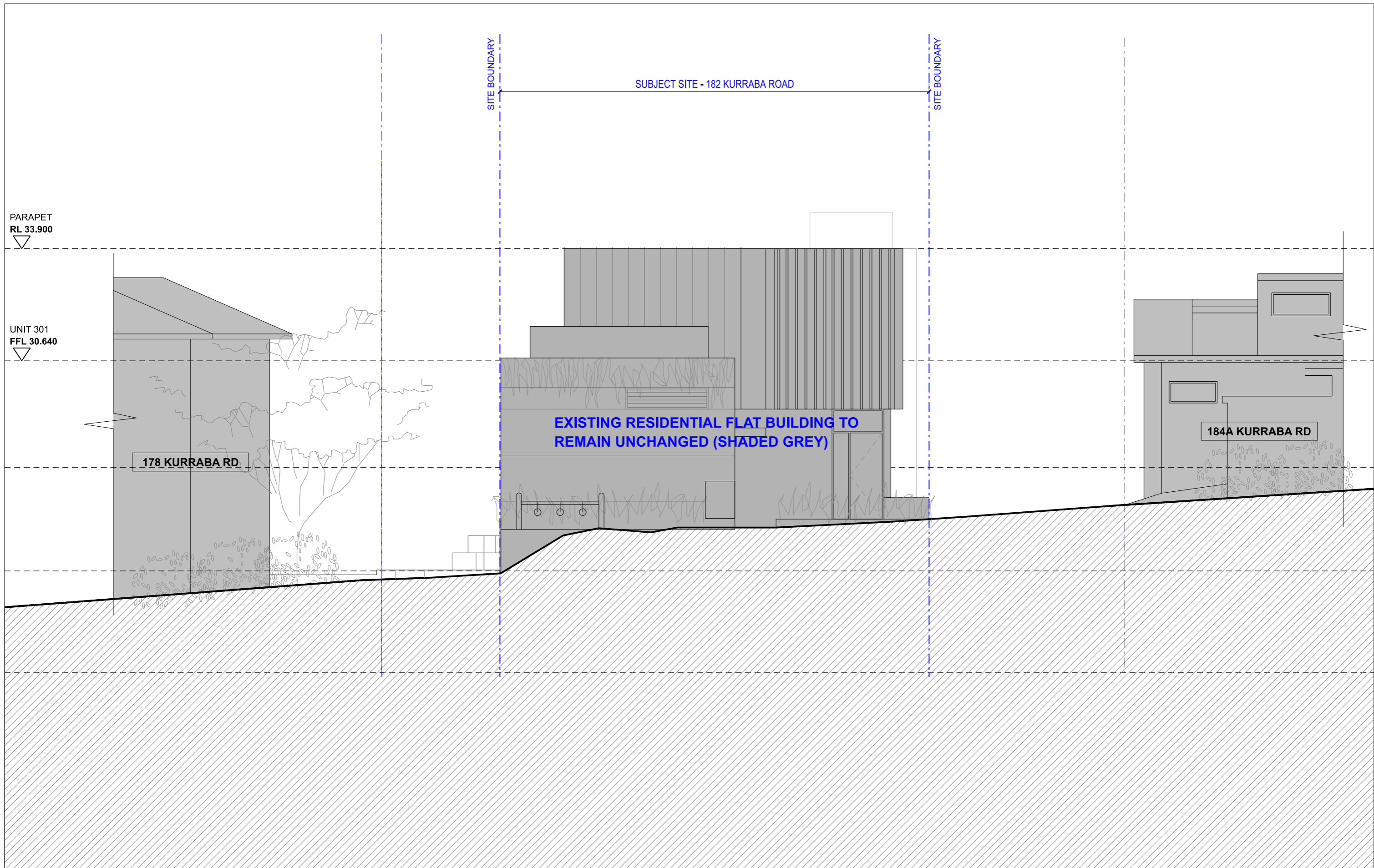


<p><b>DRAWING NOTES:</b> Do not scale off drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author and must not be retained, copied or used without the written consent of DANIEL YOUNAN &amp; ASSOCIATES PTY. LTD.</p> <p><b>PRELIMINARY</b> NOT FOR CONSTRUCTION</p>	<table border="1"> <thead> <tr> <th>REVISION</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>00</td> <td>04.06.24</td> <td>DEVELOPMENT APPLICATION</td> </tr> </tbody> </table>	REVISION	DATE	DESCRIPTION	00	04.06.24	DEVELOPMENT APPLICATION	<p><b>LEGEND</b></p> <ul style="list-style-type: none"> <li>EXISTING BUILDING (NO CHANGE PROPOSED)</li> <li>PROPOSED STRUCTURE FORMING PART OF THIS APPLICATION</li> </ul>	<p><b>DANIEL YOUNAN &amp; ASSOCIATES</b></p> <p>po box 32, northbridge, nsw, 1560                  ph: +61 404 071 186                  e: daniel@dy-associates.com www.dy-associates.com                  acn: 168 655 249 abn: 13 935 429 944                  nominated architect: daniel younan nsw arb 9215</p>	<p>TRUE NORTH</p>	<p>CLIENT <b>JOHN DIDDAMS</b></p>	<p>DRAWING TITLE <b>PROPOSED NORTH ELEVATION</b></p>
	REVISION	DATE	DESCRIPTION									
00	04.06.24	DEVELOPMENT APPLICATION										
<p>PROJECT <b>NEW OPERABLE ROOF TO LOT 4 BALCONY OF EXISTING RESIDENTIAL FLAT BUILDING BEING SP 101673</b>                  LOT 4, 182 KURRABA ROAD, KURRABA POINT, NSW, 2089</p>	<p>SCALE 1:100 @ A3                  0 0.5 1 1.5 2 3m</p>	<p>DRAWN <b>DY</b></p>										
<p>PROJECT NO. <b>2408</b></p>	<p>DRAWING NO. <b>DA_200_01</b></p>	<p>REVISION <b>00</b></p>										

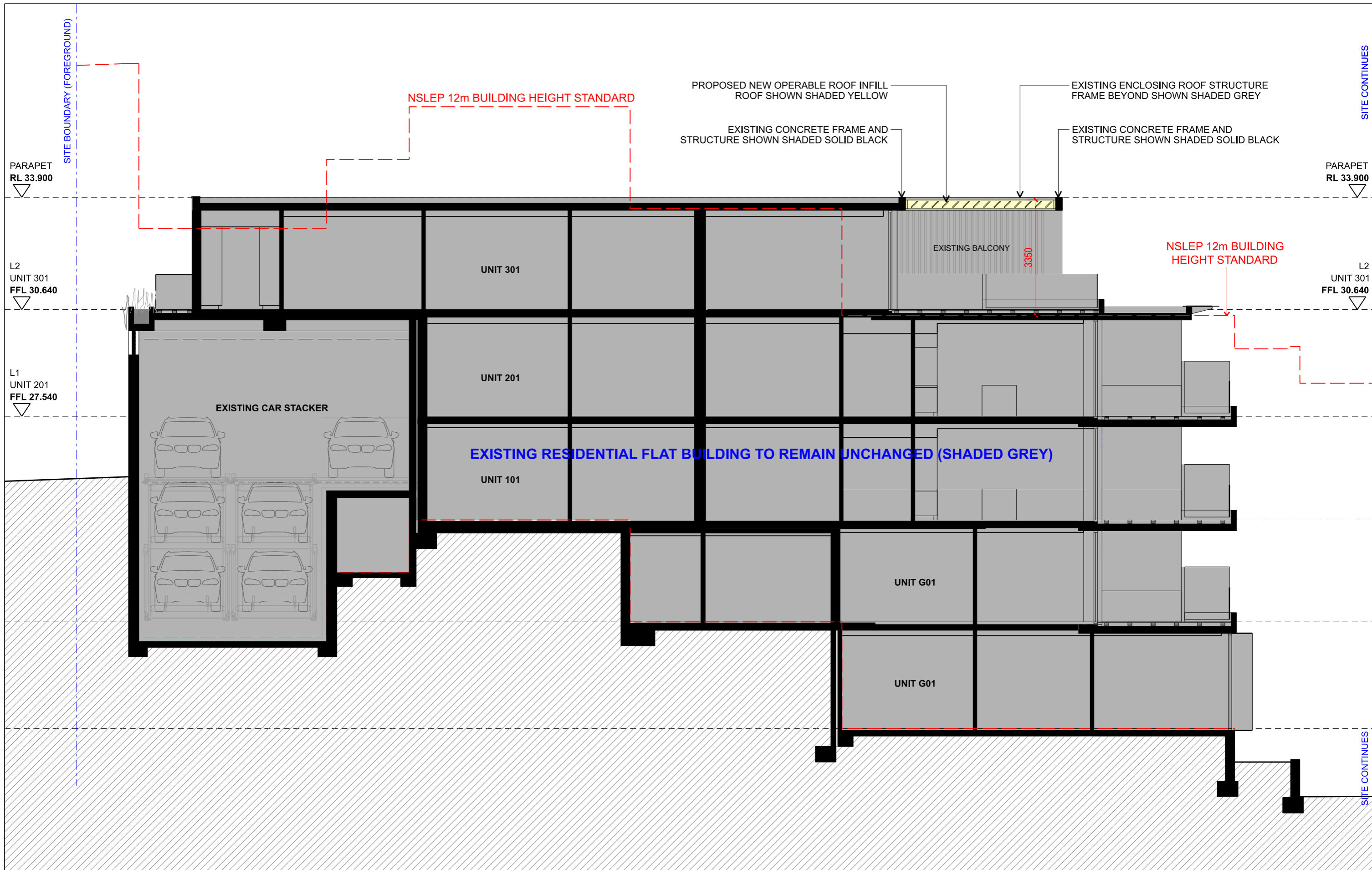


<p><b>DRAWING NOTES:</b> Do not scale off drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author and must not be retained, copied or used without the written consent of DANIEL YOUNAN &amp; ASSOCIATES PTY. LTD.</p> <p><b>PRELIMINARY</b> NOT FOR CONSTRUCTION</p>	<table border="1"> <thead> <tr> <th>REVISION</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>00</td> <td>04.06.24</td> <td>DEVELOPMENT APPLICATION</td> </tr> </tbody> </table>	REVISION	DATE	DESCRIPTION	00	04.06.24	DEVELOPMENT APPLICATION	<p><b>LEGEND</b></p> <ul style="list-style-type: none"> <li>EXISTING BUILDING (NO CHANGE PROPOSED)</li> <li>PROPOSED STRUCTURE FORMING PART OF THIS APPLICATION</li> </ul>	<p><b>DANIEL YOUNAN &amp; ASSOCIATES</b></p> <p>po box 32, northbridge, nsw, 1560                  ph: +61 404 071 186                  e: daniel@dy-associates.com www.dy-associates.com                  acn: 168 655 249 abn: 13 935 429 944                  nominated architect: daniel younan nsw arb 9215</p>	<p><b>TRUE NORTH</b></p>	<p><b>CLIENT</b> JOHN DIDDAMS</p>	<p><b>DRAWING TITLE</b> PROPOSED EAST ELEVATION</p>
	REVISION	DATE	DESCRIPTION									
00	04.06.24	DEVELOPMENT APPLICATION										
<p><b>PROJECT</b> NEW OPERABLE ROOF TO LOT 4 BALCONY OF EXISTING RESIDENTIAL FLAT BUILDING BEING SP 101673 LOT 4, 182 KURRABA ROAD, KURRABA POINT, NSW, 2089</p>	<p><b>SCALE</b> 1:100 @ A3 0 0.5 1 1.5 2 3m</p>	<p><b>DRAWN</b> DY</p>										
<p><b>PROJECT NO.</b> 2408</p>	<p><b>DRAWING NO.</b> DA_200_02</p>	<p><b>REVISION</b> 00</p>										





<p><b>DRAWING NOTES:</b> Do not scale off drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author and must not be retained, copied or used without the written consent of DANIEL YOUNAN &amp; ASSOCIATES PTY, LTD.</p> <p><b>PRELIMINARY</b> NOT FOR CONSTRUCTION</p>	<table border="1"> <thead> <tr> <th>REVISION</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>00</td> <td>04.06.24</td> <td>DEVELOPMENT APPLICATION</td> </tr> </tbody> </table>	REVISION	DATE	DESCRIPTION	00	04.06.24	DEVELOPMENT APPLICATION	<p><b>LEGEND</b></p> <ul style="list-style-type: none"> <li><span style="display: inline-block; width: 20px; height: 10px; background-color: grey; border: 1px solid black; margin-right: 5px;"></span> EXISTING BUILDING (NO CHANGE PROPOSED)</li> <li><span style="display: inline-block; width: 20px; height: 10px; background-color: yellow; border: 1px solid black; margin-right: 5px;"></span> PROPOSED STRUCTURE FORMING PART OF THIS APPLICATION</li> </ul>	<p><b>DANIEL YOUNAN &amp; ASSOCIATES</b></p> <p>po box 32, northbridge, nsw, 1560                  ph: +61 404 071 186                  e: daniel@dy-associates.com www.dy-associates.com                  acn: 168 655 249 abn: 13 935 429 944                  nominated architect: daniel younan nsw arb 9215</p>	<p>TRUE NORTH</p>	<p><b>CLIENT</b> JOHN DIDDAMS</p>	<p><b>DRAWING TITLE</b> PROPOSED WEST ELEVATION</p>
	REVISION	DATE	DESCRIPTION									
00	04.06.24	DEVELOPMENT APPLICATION										
<p><b>PROJECT</b> NEW OPERABLE ROOF TO LOT 4 BALCONY OF EXISTING RESIDENTIAL FLAT BUILDING BEING SP 101673 LOT 4, 182 KURRABA ROAD, KURRABA POINT, NSW, 2089</p>	<p><b>SCALE</b> 1:100 @ A3</p>	<p><b>DRAWN</b> DY</p>										
<p><b>PROJECT NO.</b> 2408</p>	<p><b>DRAWING NO.</b> DA_200_03</p>	<p><b>REVISION</b> 00</p>										



<p><b>DRAWING NOTES:</b> Do not scale off drawings. All dimensions to be checked on site before commencement of work. All discrepancies to be brought to the attention of the Architect. Larger scale drawings and written dimensions take preference. This drawing is copyright and the property of the author and must not be retained, copied or used without the written consent of DANIEL YOUNAN &amp; ASSOCIATES PTY. LTD.</p> <p><b>PRELIMINARY</b> NOT FOR CONSTRUCTION</p>	<table border="1"> <thead> <tr> <th>REVISION</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>00</td> <td>04.06.24</td> <td>DEVELOPMENT APPLICATION</td> </tr> </tbody> </table>	REVISION	DATE	DESCRIPTION	00	04.06.24	DEVELOPMENT APPLICATION	<p><b>LEGEND</b></p> <ul style="list-style-type: none"> <li>EXISTING BUILDING (NO CHANGE PROPOSED)</li> <li>PROPOSED STRUCTURE FORMING PART OF THIS APPLICATION</li> </ul>	<p><b>DANIEL YOUNAN &amp; ASSOCIATES</b></p> <p>po box 32, northbridge, nsw, 1560                  ph: +61 404 071 186                  e: daniel@dy-associates.com www.dy-associates.com                  acn: 168 655 249 abn: 13 935 429 944                  nominated architect: daniel younan nsw arb 9215</p>	<p>TRUE NORTH</p>	<p>CLIENT <b>JOHN DIDDAMS</b></p> <p>PROJECT NEW OPERABLE ROOF TO LOT 4 BALCONY OF EXISTING RESIDENTIAL FLAT BUILDING BEING SP 101673 LOT 4, 182 KURRABA ROAD, KURRABA POINT, NSW, 2089</p>	<p>DRAWING TITLE <b>SECTION A - A</b></p> <p>SCALE 1:100 @ A3                  0 0.5 1 1.5 2 3m</p> <table border="1"> <tr> <td>PROJECT NO. 2408</td> <td>DRAWING NO. DA_300_00</td> <td>DRAWN DY</td> </tr> <tr> <td colspan="2">REVISION 00</td> <td></td> </tr> </table>	PROJECT NO. 2408	DRAWING NO. DA_300_00	DRAWN DY	REVISION 00		
	REVISION	DATE	DESCRIPTION															
00	04.06.24	DEVELOPMENT APPLICATION																
PROJECT NO. 2408	DRAWING NO. DA_300_00	DRAWN DY																
REVISION 00																		
<p>Document Set ID: 10043624 Version: 1, Version Date: 18/06/2024</p>																		



# Height Departure

182 KURRABA ROAD, KURRABA POINT

JUNE 2024



**QUALITY ASSURANCE****PROJECT:** *Clause 4.6 Height - Residential Flat Building***ADDRESS:** *Unit 301/182 Kurraba Road, Kurraba Point***LOT/DP:** *Lot 4 in SP 101673***COUNCIL:** *North Sydney***AUTHOR:** *Think Planners Pty Ltd*

<b>Date</b>	<b>Purpose of Issue</b>	<b>Rev</b>	<b>Reviewed</b>	<b>Authorised</b>
12 June 2024	Co-Ordination	Draft	BD	BD
18 June2024	DA Submission	Final	BD	BD

# CONTENTS

<b><u>CLAUSE 4.6 HEIGHT DEPARTURE REQUEST</u></b>	<b>4</b>
BACKGROUND TO THE BREACH	4
<b><u>LAND AND ENVIRONMENT CASE LAW</u></b>	<b>6</b>
<b><u>ADDRESSING CLAUSE 4.6 PROVISIONS -HEIGHT</u></b>	<b>7</b>
CLAUSE 4.6(3)(A) - COMPLIANCE UNREASONABLE AND UNNECESSARY	7
CLAUSE 4.6(3)(B) - SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS	9
<b><u>CONCLUSION</u></b>	<b>10</b>

## CLAUSE 4.6 HEIGHT DEPARTURE REQUEST

### BACKGROUND TO THE BREACH

This Height Departure Request has been prepared in support of a Development Application that seeks approval for the installation of a Vergola of the rear balcony of unit 301 within an existing frame.

The site is an irregular mid block allotment with a frontage of 10.79m to Kurraba Road and a depth of between 41.7m and 46.0m resulting in a total site area of 623.9m<sup>2</sup>. The site contains a recently constructed-5 storey residential building.

The site is zoned R4 by North Sydney LEP 2013 and benefits from a mapped height limit of 12m. '*Residential flat buildings*' are permitted with consent within the R4 zone. It is noted that the Vergola encroaches upon the prescribed 12m height limit, as does the existing structure it will sit within.

A detailed discussion against the relevant provisions of Clause 4.6 is provided below with further discussion against the relevant case law 'tests' set down by the Land and Environment Court. As shown on the sections overleaf, the proposed development varies the height control with the Vergola exceeding the 12m height limit.

The proposal presents the following departures to the height controls:

Portion of Building	Height in metres	% departure
Existing Structure above vergola	15.5m	29.1%
Top of Vergola	15.35m	27.9%

It is noted that the height departure when the building was approved, to the top of the structure proposed to contain the Vergola, was 340mm. As a result of the constructed building excavating into the slope the extent of the departure to the existing structure has been increased from 340mm to 3.5m.

Figure 1 overleaf illustrates the proposed height departure for the installation of a vergola.

Figure 1: Section illustrating proposed Vergola (Source: Daniel Younan and Associates)

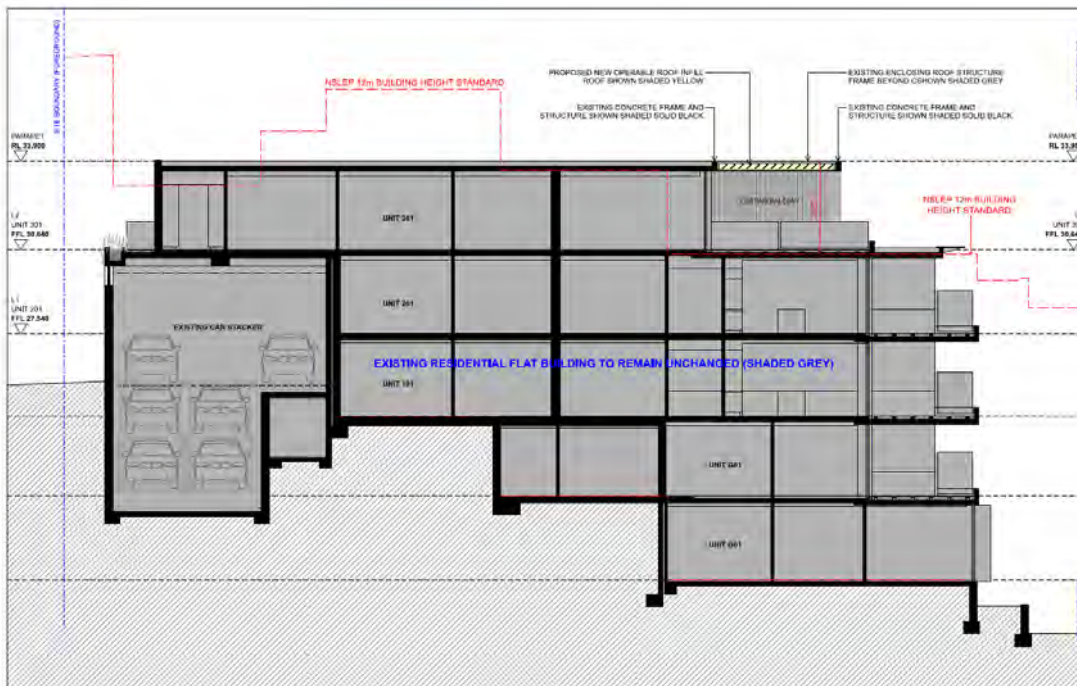
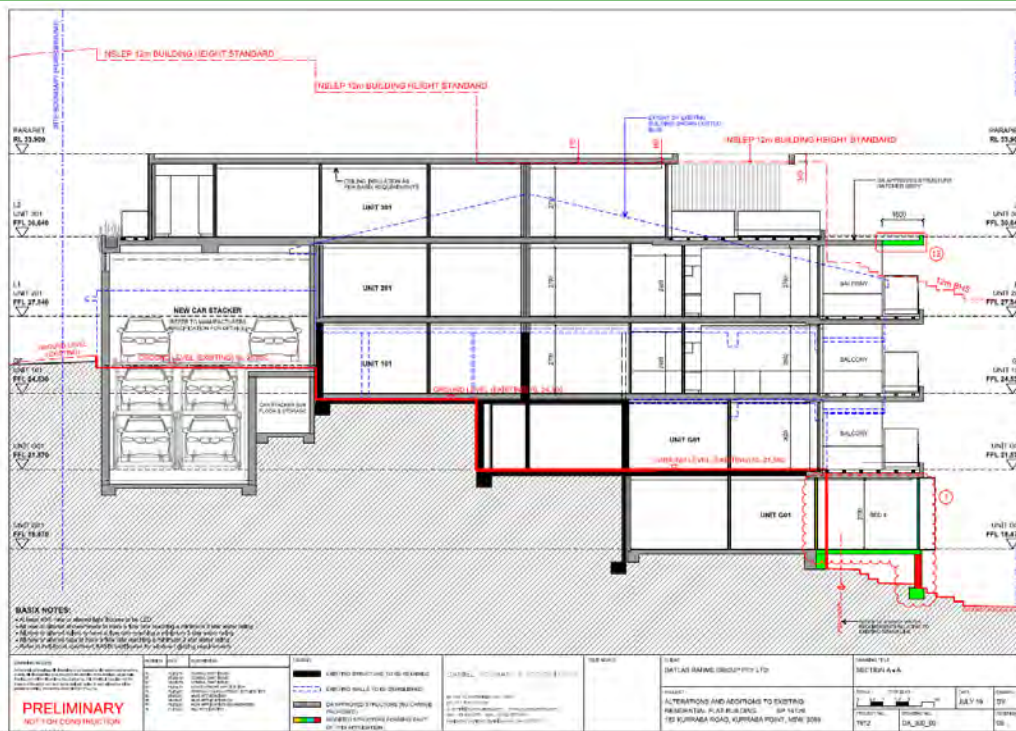


Figure 2: Section illustrating the height departure of the structure within which the vergola will sit at the time the apartment building was approved (Source: Daniel Younan and Associates)



Given the proposed height of the Vergola, the proposal is noncompliant with Clause 4.3 – height of buildings that stipulates that the height of a building is not to exceed 12m on the subject site.

## LAND AND ENVIRONMENT CASE LAW

The decision by Chief Judge Preston in a judgement dated 14 August 2018 in the matter of *Initial Action Pty Ltd v Woollahra Council* confirmed that the absence of impact was a suitable means of establishing grounds for a departure and also confirmed that there is no requirement for a development that breaches a numerical standard to achieve a 'better outcome'. However more recent developments in the law in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 have set out to confirm that the approach taken in *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 ('*Al Maha*') is also relevant. In simple terms, *Al Maha* requires that a Clause 4.6 departure will have only adequately addressed Clause 4.6(3) if the consent authority is satisfied the matters have been demonstrated in the Clause 4.6 request itself- rather than forming a view by the consent authority itself. This Clause 4.6 request demonstrates the matters in Clause 4.6 (3).

The key tests or requirements arising from relevant court judgements are that:

- The consent authority be satisfied the proposed development will be in the public interest because it is "consistent with" the objectives of the development standard and zone is not a requirement to "achieve" those objectives. It is a requirement that the development be compatible with the objectives, rather than having to 'achieve' the objectives.
- Establishing that 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe "test" 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in *Wehbe v Pittwater*.
- When pursuing a clause 4.6 variation request it is appropriate to demonstrate environmental planning grounds that support any variation; and

In relation to the current proposal the keys are:

- Demonstrating that compliance with the standard is unreasonable and unnecessary in the circumstances
- Demonstrating that the development has sufficient environmental planning controls to justify the departure.





This Clause 4.6 Variation request deals with the maximum building height matters in turn below.

## ADDRESSING CLAUSE 4.6 PROVISIONS -HEIGHT

Clause 4.6 of the North Sydney Local Environmental Plan 2013 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3 which provide:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that -*
- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
  - (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6 does not fetter the consent authority's discretion as to the numerical extent of the departure from the development standard. Each of the relevant provisions of Clause 4.6 are addressed in turn below.

### CLAUSE 4.6(3)(A) - COMPLIANCE UNREASONABLE AND UNNECESSARY

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as:

The underlying objectives of the control are satisfied, known as the first way in the decision of *Wehbe v Pittwater Council* (2007) 156 LGERA 446;

#### ***Underlying Objectives are Satisfied***

In *Wehbe v Pittwater* it was set out that compliance can be considered unreasonable or unnecessary where:

- (i) *The objectives of the standard are achieved notwithstanding non-compliance with the standard*

It is considered that this approach can be followed in this instance. The objectives of the building height development standard are stated as:

*(1) The objectives of this clause are as follows—*

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.*

The proposal remains consistent with the objectives based on the following:

- In relation to objective (a) the building footprint and floor level is not altered by the infill Vergola. The existing building steps down the sloping site and the introduction of a Vergola to the portion of the rear balcony on level 5 of the building does not alter this.
- In relation to objective (b) views from adjoining properties to the harbour were considered as part of the assessment of the Development Application for the construction of the residential flat building. The introduction of a vergola that is below the highest point of the approved building will not unacceptably reduce views towards Sydney Harbour.
- In relation to objective (c) and having regards to the location of the vergola, it will not unacceptably increase overshadowing of adjoining properties, given the shadow already cast by the building;
- In relation to objective (d) the introduction of a Vergola to the existing rear balcony, will not lead to a reduction in privacy of neighbouring properties.
- In relation to objective (e) the minor increase in scale will not be discernable when viewed from adjoining properties, particularly noting that there will only be limited views to the vergola from properties to the rear;
- In relation to objective (f) the proposed breach will not result in a noticeable increase in the bulk and scale of the unit, but rather provide weather protection for the residents; and
- It is noted that given the R4 high density zoning of the site that objective (g) is not applicable.



### CLAUSE 4.6(3)(B) - SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

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, being grounds that are specific to the site.

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

- The site contains a 5 storey residential flat building, parts of which exceed the 12m height limit. The approved building contains a frame above unit 301 that also exceeds the 12m height limit. The infilling of this area will provide appropriate wet weather protection and sun protection to allow the existing outdoor space to be more appropriately utilised throughout the year and improve the amenity for the existing residents;
- The overall height of the development presents as a compatible form of development to the existing built form in the locality.
- The proportion of the building that protrudes above the 12m height limit contains no floor space, reinforcing that the breach to the height standard does not result in the development representing an overdevelopment of the site but rather a suitable contextual response to the locational characteristics on the site;
- The additional height does not generate any additional amenity impacts given the location of the site and the surrounding site context.
- The additional height supports the provision of appropriate covered private open space that will provide improved amenity for residents and visitors.
- The proposal has been carefully designed to ensure that no adverse visual or acoustic amenity impacts will be created by the proposed Vergola;
- The proposed articulation of the built form will ensure that the additional building height will not be discernably noticeable from street level;
- The building is compatible with the desired future character of the area in terms of the building presentation to the street, the materials, and the relationship to surrounding properties.;

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

Therefore, the current proposal is a suitable outcome from an environmental planning perspective and demonstrates that there is merit in varying the height control to achieve a better design response on the site.

This breach also results in a better design outcome on the site and is consistent with the following Objectives of the Environmental Planning and Assessment Act 1979:

- (c) to promote the orderly and economic use and development of land,*
- (g) to promote good design and amenity of the built environment,*

The minor breach to the height standard also does not generate any adverse amenity impacts to adjoining properties with regard to visual privacy or overshadowing given the lot orientation, zoning and careful design of the development.

Therefore, the current proposal is a preferred outcome from an environmental planning perspective and demonstrates that there is merit in varying the height control on the site which demonstrates sufficient environmental planning grounds to support the departure.

## CONCLUSION

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.

Strict compliance with the prescriptive maximum height requirement is unreasonable and unnecessary in the context of the proposal and its circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development including the departure to the maximum height control.

