

**Original signed by Robyn Pearson on 14/11/2019**  
**Date determined: 11/11/2019**  
**Date operates: 14/11/2019**  
**Date lapses: 14/11/2024**

Vadim Safaniev  
403/143-151 Military Road  
NEUTRAL BAY NSW 2089

D275/19  
RP (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED**  
**NOTICE OF DETERMINATION – Approval**

---

**Development Application Number:** 275/19

---

**Land to which this applies:** 403/143-151 Military Road, Neutral Bay  
Lot No.: 24, SP: 77880

---

**Applicant:** Vadim Safaniev

---

**Proposal:** Use of an existing structure as a pergola

---

**Determination of Development Application:** Subject to the provisions of Section 4.17 of the Environmental Planning and Assessment Act 1979, approval has been granted subject to conditions in the notice of determination.

---

**Date of Determination:** 11 November 2019

---

**Reason for approval:**

In accordance with Section 4.2 of the EPA Act 1979, alterations and additions to a mixed-use building in a B4 Mixed Use Zone require development consent prior to construction. Consequently, Council is unable to grant retrospective consent for the pergola. However, pursuant to Section 4.69 of the EPA Act 1979, Council may grant development consent for the use of an unlawful structure provided the merits of the structure are acceptable in the site circumstances. The applicant is also seeking a Building Information Certificate for the pergola.

The use of the pergola has been assessed against the provisions within NSDCP 2013 and generally found to be acceptable. As a result, it is considered that neither the structure nor the proposed use would have a material impact on the residential amenity of surrounding properties and the structure is sympathetic to the existing building.

---

---

**Consent to operate from:** 14 November 2019

---

**Consent will lapse on:** 14 November 2024

---

**Period of Consent**

Subject to Section 4.20 of the Act, this consent becomes effective and operates from the date listed above. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To activate this consent, works must physically commence onsite by 14 November 2024.

---

**How community views were taken into account:**

The development application was notified in accordance with Council's notification policy. The proposal received two submissions from the same submitter, that raised an objection to the potential for the loss of natural light and its unauthorised status. However, the amenity impacts of the existing pergola are considered minimal and the proposed use is an acceptable outcome in the site circumstances, subject to appropriate conditions.

---

**Review of determination and right of appeal:**

Within 6 months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

---

Plans endorsed by the consent authority – please refer to condition A1.

**Endorsed for and on behalf of North Sydney Council**

---

DATE

---

Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER ASSESSMENTS**

---

**(i) Conditions**

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of the Environmental Planning & Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning & Assessment Regulation 2000 (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to Section 4.17 of the Act.

**(ii) Definitions**

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act* 1987 as in force at the date of consent.

***Applicant*** means the applicant for this consent.

***Approved Plans*** means the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

***AS*** or ***AS/NZS*** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

***NCC*** means the National Construction Code as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

***Council*** means North Sydney Council.

***Court*** means the Land and Environment Court.

***Local Native Plants*** means species of native plant endemic to North Sydney LGA.

***Stormwater Drainage System*** means all works, facilities and documentation relating to:

- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

***Owner*** means the owner of the *site* and successors in title to the *site*.

***Owner Builder*** has the same meaning as in the *Home Building Act* 1989.

***Principal Certifier*** for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6 (1) or for the subdivision work under section 6.12 (1).

*Principal Contractor* for building work means the person responsible for the overall coordination and control of the carrying out of the building work.

Note: If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the *Home Building Act 1989*.

*Professional Engineer* has the same meaning as in the *NCC*.

*Public Place* has the same meaning as in the *Local Government Act 1993*.

*Road* has the same meaning as in the *Roads Act 1993*.

*SEE* means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

*Site* means the land being developed subject to this consent.

*NSLEP 2013* means *North Sydney Local Environmental Plan 2013*

*NSDCP 2013* means *North Sydney Development Control Plan 2013*

*Work* for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of any waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: **Interpretation of Conditions** – Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

**INDEX OF CONDITIONS**

	<b>Page No.</b>
<b>A.     <i>Conditions that Identify Approved Plans</i></b>	
A1.    Terms of the Consent	6
<b>I.     <i>On-Going / Operational Conditions</i></b>	
I1.    Noise Impact	6
I2.    Roof Top Lighting	6

**A. *Conditions that Identify Approved Plans***

**Terms of the Consent**

- A1. Approval is granted for the use of the pergola and associated seating located on the roof terrace of the subject property as shown on drawings numbered DA01 and DA02, dated 2 August 2019, drawn by VLP Design Pty Ltd, and received by Council on 11 September 2019: No approval is given or implied in this consent for the building works of the subject pergola and/or other works, both internal and external, within the subject property.

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

**I. *On-Going / Operational Conditions***

**Noise Impact**

- I1. The on-going use of the pergola approved under this consent must not create unreasonable noise impacts for adjoining properties.

(Reason: To ensure residential premises are not affected by inappropriate or excessive noise)

**Roof Top Lighting**

- I2. Lighting on rooftop level must not be illuminated between 11.00pm and 7.00am the following day. The design and placement of the lighting must:

- (a) be directed away from any residential dwelling;
- (b) not create a nuisance or negatively affect the amenity of the surrounding neighbourhood; and
- (c) comply with AS4282-1997 control of obtrusive effects of outdoor lighting.

(Reason: To ensure residential premises are not affected by inappropriate or excessive illumination)