

Wollongong Local Planning Panel Assessment Report | 13 August 2020

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| WLPP No. | Item 1 |
| DA No. | DA-2020/605 |
| Proposal | Residential – new roof top pergola/awning to existing roof terrace |
| Property | 17 Kembla Street Wollongong |
| Applicant | ADM Architects |
| Responsible Team | Development Assessment and Certification – City Centre Team (NM) |

ASSESSMENT REPORT AND RECOMMENDATION

Executive Summary

Reason for consideration by Local Planning Panel - Determination

The proposal has been referred to Local Planning Panel for determination pursuant to clause 2.19(1)(a) of the Environmental Planning and Assessment Act 1979. The proposal is captured by Schedule 2, 3 of the Local Planning Panels Direction of 1 March 2018 as the Development Application contravenes a development standard imposed by an environmental planning instrument by more than 10%.

Proposal

The proposal seeks consent for the construction of a new pergola over part of an existing roof top terrace on an existing residential flat building. The terms pergola and awning refer to the same structure.

Permissibility

The proposed work will have no impact on the categorisation of the development as a residential flat building, which remains permissible.

Consultation

The proposal was notified in accordance with Council's Community Participation Plan 2019 between 1 July 2020 and 15 July 2020 and did not receive any submissions.

Main Issues

The main issues are the exceedance of maximum height limit.

RECOMMENDATION

It is recommended DA-2020/605 be approved subject to the conditions contained in Attachment 5.

1 APPLICATION OVERVIEW

1.1 PLANNING CONTROLS

The following planning controls apply to the development

State Environmental Planning Policies

- SEPP No 55 – Remediation of Land
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP No 65 – Design Quality of Residential Apartment Development

Local Environmental Plans

- Wollongong Local Environmental Plan (WLEP) 2009

Development Control Plans

- Wollongong Development Control Plan (WDCP) 2009

Other Policies/Regulations

- Wollongong Community Participation Plan 2019
- Wollongong City Wide Development Contributions Plan 2019

1.2 DETAILED DESCRIPTION OF PROPOSAL

The proposal comprised the construction of a pergola over part of the existing residential flat building roof top terrace.

The roof top terrace is allocated to Lot 18 within Strata Plan 93549. The awning matches the height of existing rooftop structures including existing awnings and lift overrun.

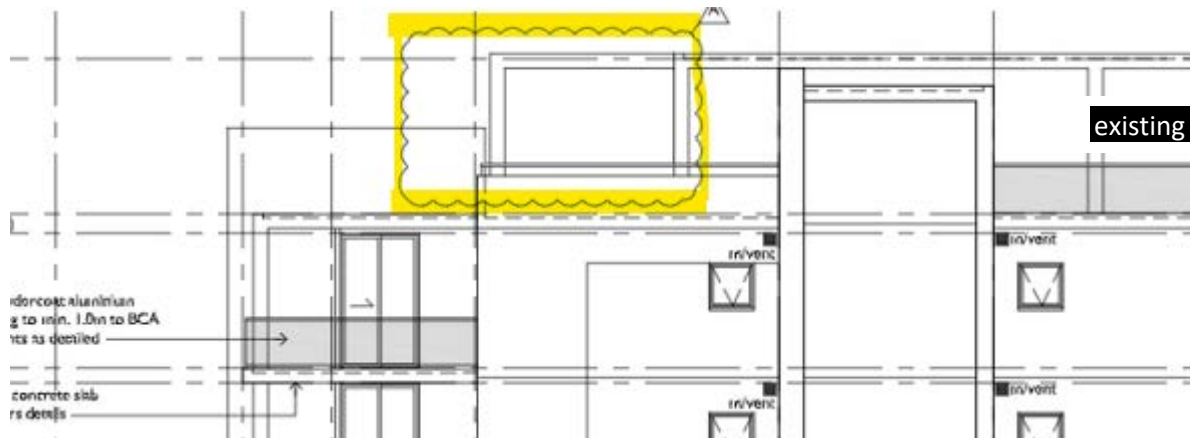


Figure 1: Extract from elevation plan showing extent of proposed awning adjacent to existing roof top structures and awnings

1.3 BACKGROUND

| Application | Description | Decision | Date |
|----------------|--|------------------|------------------|
| DA-2020/605 | Residential - new rooftop pergola to existing roof terrace | Under Assessment | |
| DA-2018/49 | Residential - installatno of louvres to western and southern side - Unit 12 | Approved | 30 January 2018 |
| DA-2017/1093 | Unit 16 - louvres to west and south side | Approved | 6 October 2017 |
| DA-2017/439 | Unit 10 - louvres to west and south side | Approved | 25 August 2017 |
| DA-2017/379 | Residential - louvres to fron and south side of unit 10 | Rejected | |
| PC-2016/647 | 19 Lot Strata plan | Approved | 27 May 2016 |
| DA-2016/443 | Subdivision - Strata title - 19 residential lots | Approved | 29 April 2016 |
| DA-2003/1680/F | Demolition of existing structures and construction of eight (8) storey residential unit building comprising nine (9) x two (2) bedroom units and ten (10) x three (3) bedroom units with basement parking for 31 vehicles. Modification F - modification to raise evels 700mm | Approved | 19 October 2011 |
| DA-2003/1680/E | Demolition of existing structures and construction of eight (8) storey residential unit building comprising 17 x 2 bedroom units and 1 x 3 bedroom units with basement parking for 29 vehicles. Modification E - modification to raise levels 700mm | Rejected | |
| DA-2003/1680/D | Demolition of existing structures and construction of eight (8) storey residential unit building comprising 17 x 2 bedroom units and 1 x 3 bedroom units with basement parking for 29 vehicles. Modification D - modification to raise levels 700mm | Rejected | |
| DA-2003/1680/C | Demolition of existing structures and construction of eight (8) storey residential unit building comprising 17 x 2 bedroom units and 1 x 3 bedroom units with basement parking for 29 vehicles. Modification C - various modifications | Approved | 14 February 2011 |
| DA-2003/1680/B | Demolition of existing structures and construction of eight (8) storey residential unit building comprising 17 x 2 bedroom units and 1 x 3 bedroom units with basement parking for 29 vehicles. Modification B - modification of development to 9 x 2 bedroom units and 10 x 3 bedroom units, additional basement level car ark, overall resident parking to change to 31 spaces, additional unit, internal floor changes and minor amendments to landscaping and facade | Approved | 15 October 2010 |

No pre-lodgement meeting was held for the proposal.

Customer service actions

There are no outstanding customer service requests of relevance to the development.

1.4 SITE DESCRIPTION

The site is located at 17 Kembla Street, Wollongong and the title reference is Lot 45 DP 1080717. The lot is rectangular in shape with an area of approximately 1457m². The site has a road frontage to Kembla Street to the west.

The site currently contains a recently constructed 8 storey residential flat building.

The site is surrounded by a mixture of housing styles, including a similar residential flat building to the south, and several small scale residential flat buildings and dwelling houses. The surrounding area appears to eb going through a period of transition as older housing stock is replaced by higher density housing styles.

There are no property constraints of relevance to the current application.

There are no restrictions on the title that relate to the proposed development.

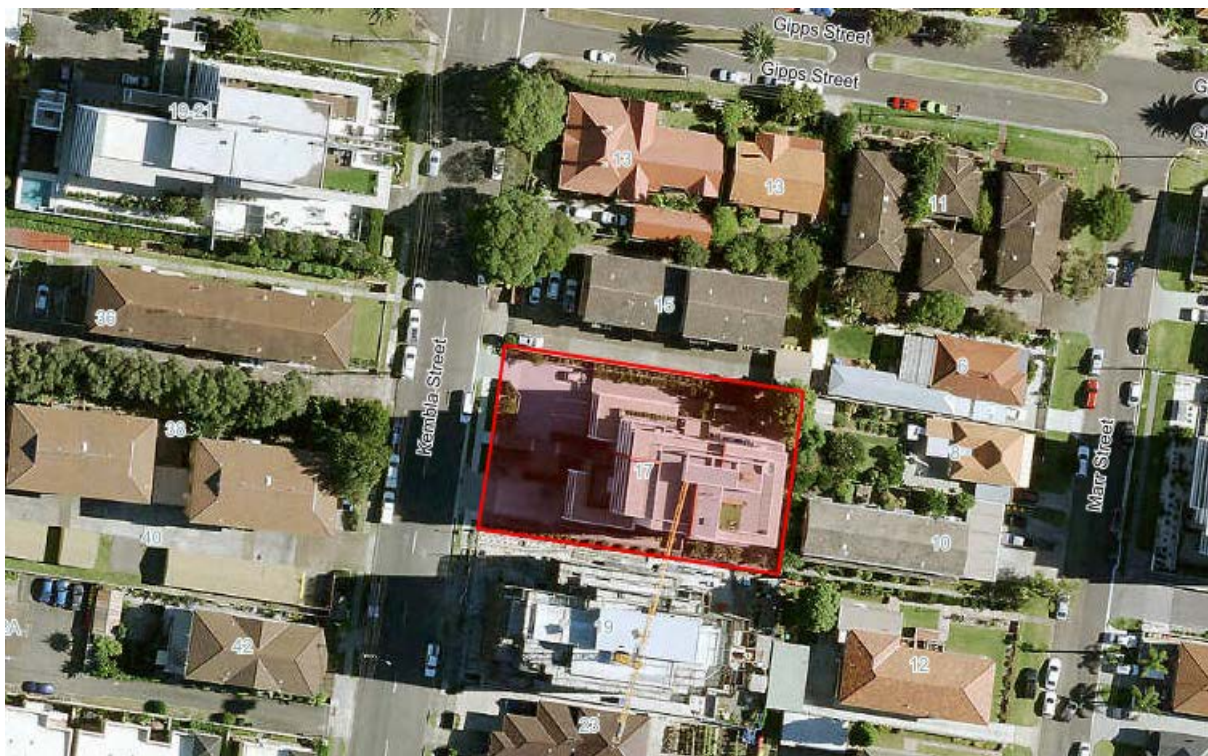


Figure 2: Aerial image showing site and surrounding development (2018)

Site photos are contained in Attachment 2.

1.5 SUBMISSIONS

The application was notified in accordance with Council's Community Participation Plan 2019. No submissions were received following the notification.



Figure 3: Notification map

1.6 CONSULTATION

1.6.1 INTERNAL CONSULTATION

None required.

1.6.2 EXTERNAL CONSULTATION

None required.

2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

2.1 SECTION 4.15(1)(A)(1) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

Site contamination was addressed as part of the original development application. No further concerns are raised as part of this development application, considering its limited scope.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

The proposed development consists of the construction of an outdoor pergola over a portion of the existing rooftop terrace. The proposal is considered to be an awning, and is therefore BASIX excluded development, and is not subject to the requirements of this SEPP.

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (COASTAL MANAGEMENT) 2018

The site is identified as within the Coastal Use Area.

Clause 14 Development on Land within the Coastal Use Area

The application is located on the roof top of an existing building and is not expected to have any impact on the coastal use area.

Clause 15 Development in coastal zone generally – demolition not to increase risk of coastal hazards

The proposed development is not expected to have an impact on coastal hazards on the subject lot or on surrounding lots.

Clause 16 Development in coastal zone generally – coastal management programs to be considered

The proposal does not raise any issues as per the matters for consideration in the relevant Wollongong Coastal Zone Management Plan.

2.1.4 STATE ENVIRONMENTAL PLANNING POLICY NO 65 – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

In accordance with Clause 4 of this SEPP, this policy is applicable to development that involves the substantial redevelopment or the substantial refurbishment of an existing residential flat building containing three or more stories.

The proposed roof top awning is not considered to be ‘substantial redevelopment or refurbishment’ and the SEPP does not apply to the development.

2.1.5 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 1.4 Definitions

The proposed construction of an awning has no impact on the existing categorisation of the development, being a residential flat building as defined below:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned R1 General Residential.



Figure 3: WLEP 2009 zoning map

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal is satisfactory with regard to the above objectives.

The land use table permits the following uses in the zone.

Permitted with consent

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental facilities; Exhibition homes; Group homes; Hostels; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Recreation areas; **Residential flat buildings**; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shop top housing; Signage; Tank-based aquaculture*

The existing residential flat building is permissible in the zone. The current proposal has no impact on the development categorisation. The awning is ancillary to the approved use.

Part 4 Principal development standards

Clause 4.3 Height of buildings

According to the approved building plans (DA-2003/1680/F), the existing building has an approved height of 29.32m, which exceeds the maximum of 24m permitted for the site.

The proposed awning will be constructed to the same height as the existing awning located on the roof of the building. No change to the total height of the building is proposed as part of this development, being 29.32m.

The awning is being constructed above the height of 24m, which is inconsistent with the requirements of this Clause. The development involves a development standard departure of 5.32m, which is 22%.

Clause 4.4 Floor space ratio

The proposal does not comprise any additional gross floor area.

Clause 4.6 Exceptions to development standards

As the application proposes a development departure from Clause 4.3, an assessment in accordance with the requirements of Clause 4.6 is required.

The applicant has submitted a Clause 4.6 variation request dated 17 June 2020, which is contained in Attachment 3.

| WLEP 2009 clause 4.6 proposed development departure assessment | |
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| Development departure | Clause 4.3 Height of Buildings – 29.32m proposed where 24m is permitted. |
| Is the planning control in question a development standard | Yes |
| 4.6 (3) Written request submitted by applicant contains a justification: | |
| that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and | Yes – the applicant submits that compliance with the development standard are unreasonable and unnecessary in the circumstances of the case. A justification statement is contained in Attachment 3. |
| that there are sufficient environmental planning grounds to justify contravening the development standard. | Yes |
| 4.6 (4) (a) Consent authority is satisfied that: | |
| the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and | <p>The applicant has provided a Clause 4.6 variation request, which justifies the height exceedance.</p> <p>The applicants request is based on the rationale that the proposed pergola adjoins other existing approved roof top structures including similar pergolas, which will not result in any significant additional impact compared to the approved development.</p> <p>The applicant submits that the construction of the pergola will not result in any increased overlooking as, it is providing shelter over an existing and approved roof top terrace.</p> <p>The applicant's submissions is considered to satisfactorily address the matters required to be demonstrated under Subclause 3.</p> |
| the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and | <p>There is considered to be a public benefit in applying flexibility to the standard in this circumstance.</p> <p>The proposed awning does not increase the building height and is located at the same height and within the same group of rooftop structures as the existing lift shaft and awnings located on the roof.</p> <p>The awning is not expected to create privacy or overshadowing impacts on neighbouring properties. The proposal is BASIX excluded development. Compliance with the BCA will however be required. Construction of the awning allocated entirely within Lot 18 will not adversely affect any other residents or common</p> |

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| | <p>property. The proposed building height was approved by DA-2003/1680/F.</p> <p>The objectives of Clause 4.3 building height standard are:</p> <p><i>(1) The objectives of this Clause are as follows –</i></p> <p><i>(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved</i></p> <p><i>(b) to permit building heights that encourage high quality urban form</i></p> <p><i>(c) To ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight</i></p> <p>The proposal does not result in an increase in gross floor area and aims to provide shelter to an existing outdoor area.</p> <p>The construction of the awning would not unreasonably affect views through the site from neighbouring properties. The awning adjoins existing roof top structures and will be viewed as a cohesive unit when viewed from the street. The design and height of the structure is consistent with the existing structures on the roof and is unlikely to be specifically distinguished from adjoining structures or cause an additional impact.</p> <p>Existing awnings are located on the roof, over parts of the outdoor terrace occupied by the neighbouring unit. These structures were approved at the same height as part of the original development application.</p> <p>Compliance with the 24m height standard is unreasonable in the circumstances and there are sufficient environmental planning grounds specific to the site to justify contravening the development standard in the circumstances.</p> |
| the concurrence of the Secretary has been obtained. | Local Planning Panel can assume the Secretary's concurrence as the consent authority. |

Part 7 Local provisions – general

Clause 7.1 Public Utility Infrastructure

The building is already serviced. The structure is unlikely to result in additional infrastructure being required.

Clause 7.18 Design excellence in Wollongong City Centre and at key sites

The proposal is considered to be consistent with the provisions for design excellence as follows:

- The site is suitable for the development
- The proposed structure is compatible with the existing building and the surrounding development
- The proposal is unlikely to result in adverse environmental impacts.
- The proposal is not expected to impact the public domain.

Part 8 Local provisions—Wollongong city centre

Clause 8.1 Objectives for development in Wollongong city centre

The development is consistent with the Wollongong City Centre objectives.

2.2 SECTION 4.15(1)(A)(II) ANY PROPOSED INSTRUMENT

None applicable.

2.3 SECTION 4.15(1)(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

A detailed discussion in accordance with the WDCP 2009 is contained in Attachment 4. The proposal is generally satisfactory regarding the controls and objectives of the DCP.

2.3.2 WOLLONGONG CITY WIDE DEVELOPMENT CONTRIBUTIONS PLAN 2019

The estimated cost of works is \$10,000 and a levy is not applicable under this plan.

2.4 SECTION 4.15(1)(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S7.4 which affect the development.

2.5 SECTION 4.15(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

NA

93 Fire safety and other considerations

NA – no change of use proposed.

94 Consent authority may require buildings to be upgraded

NA – development does not constitute more than 50% of building.

2.6 SECTION 4.15(1)(B) THE LIKELY IMPACTS OF DEVELOPMENT

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| <u>Access, Transport and Traffic:</u> |
| The proposal will have no impact on transport, access or traffic. |
| <u>Public Domain:</u> |
| As discussed, the proposed awning will not be highly visible from the public domain. |
| <u>Utilities:</u> |
| The proposal is not envisaged to place an unreasonable demand on utilities. |
| <u>Heritage:</u> |
| No heritage items will be impacted by the proposal. There are no heritage items within vicinity of the site. |
| <u>Other land resources:</u> |
| The proposal is considered to contribute to orderly development of the site and is not envisaged to |

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| impact upon any valuable land resources. |
| <u>Water:</u> The proposal is not envisaged to have unreasonable water consumption. |
| <u>Soils:</u> No earthworks proposed. |
| <u>Air and Microclimate:</u> The proposal is not expected to have any negative impact on air or microclimate. |
| <u>Flora and Fauna:</u> No vegetation of landscaped areas is impacted by the proposal. |
| <u>Waste:</u> A condition is proposed that an appropriate receptacle be in place for any waste generated during the construction. |
| <u>Energy:</u> The proposal is not envisaged to have unreasonable energy consumption. |
| <u>Noise and vibration:</u> A condition is proposed that nuisance be minimised during any construction, demolition, or works. |
| <u>Natural hazards:</u> The proposal is not expected to impact or be impacted by any natural hazards. |
| <u>Technological hazards:</u> No concerns are raised regarding technological hazards. |
| <u>Safety, Security and Crime Prevention:</u> The proposed development will not impact any CPTED principles. |
| <u>Social Impact:</u> The application is not expected to result in any significant social impacts on surrounding residents or businesses. |
| <u>Economic Impact:</u> The proposal is not expected to create any negative economic impact. |
| <u>Site Design and Internal Design:</u> A condition is proposed that all works are to be in compliance with the Building Code of Australia. As discussed, the non-compliant height is considered acceptable in this circumstance. |
| <u>Construction:</u> Conditions of consent are recommended relating to construction impacts such as hours of work, works in the road reserve. |
| <u>Cumulative Impacts:</u> The proposal is not expected to have any negative cumulative impacts. |

2.7 SECTION 4.15(1)(C) THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

Does the proposal fit in the locality?

The proposal is considered appropriate regarding the zoning of the site and is not expected to have any negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal.

2.8 SECTION 4.15(1)(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

See Section 1.5 of this report.

2.9 SECTION 4.15(1)(E) THE PUBLIC INTEREST

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. It is considered appropriate with consideration to the zoning and the character of the area and is therefore considered to be in the public interest.

3 CONCLUSION

This application has been assessed having regard to the Heads of Consideration under Section S4.15(1) of the Environmental Planning and Assessment Act 1979. The proposed development is permissible with consent and has regard to the objectives of the zone and is consistent with the applicable provisions of the relevant planning instruments including Wollongong LEP 2009, relevant state policies, Council DCPs, Codes and Policies. The design of the development is appropriate regarding the controls outlined in these instruments.

The height of the pergola is greater than that specified in WLEP 2009 for residential flat buildings. The applicant has followed the process set out in clause 4.6 of WLEP 2009 and adequately justified the development standard departure. The proposal does not involve variations to under WDCP2009 and no submissions were received.

It is considered that the proposed development has otherwise been designed appropriately given the nature and characteristics of the site and is unlikely to result in significant adverse impacts on the character or amenity of the surrounding area.

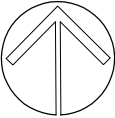
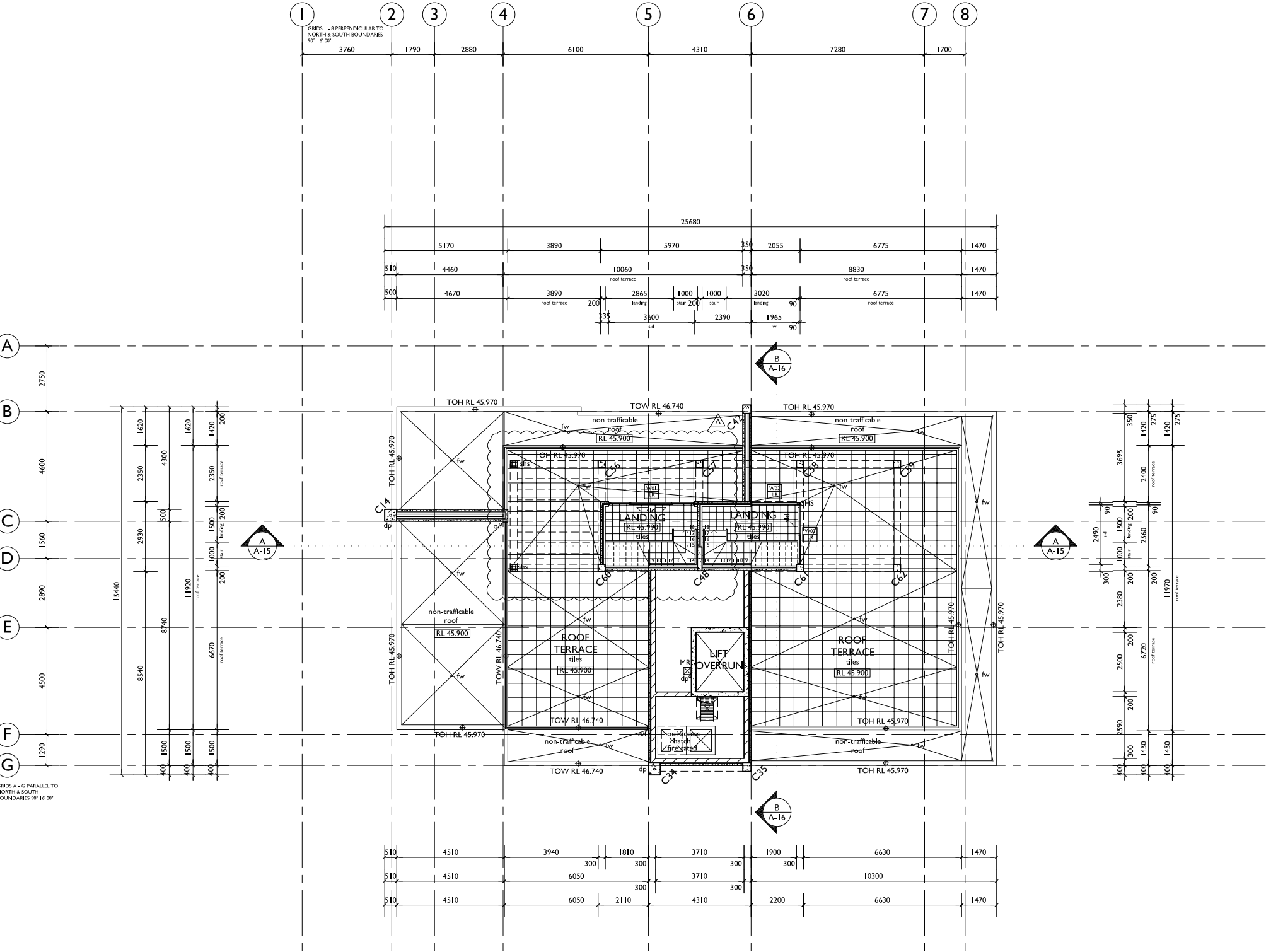
4 RECOMMENDATION

It is recommended that the development application be approved subject to the recommended conditions of consent contained within Attachment 5.

5 ATTACHMENTS

- 1 Plans
- 2 Site Photos
- 3 Clause 4.6 Variation Request submission
- 4 DCP Compliance assessment
- 5 Recommended conditions of consent

Attachment 1 - Plans



LOWER ROOF PLAN

NOTE : REFER TO A00 FOR ARCHITECTURAL SPECIFICATION OF WORKS AND BCA NOTES PRIOR & DURING CONSTRUCTION

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a NOMINATED ARCHITECT - The nominated Architect for ADM Projects (Australia) Pty Ltd T/A ADM Architects is Angelo Di Martino ARB No.7608

| ISSUE | DATE | DESCRIPTION |
|-------|----------|-----------------------------------|
| A | 27.11.19 | ISSUE FOR DEVELOPMENT APPLICATION |



94 Kembla St, Wollongong NSW 2500 PO Box 3061 Wollongong
ph: 02 4228 6400 fax: 02 4228 6455 www.admarchitects.com.au

Project
NEW ROOFTOP PERGOLA TO EXISTING ROOF TERRACE

At
LOTS 4 & 5 SECTION B
No.17 & 17A KEMBLA STREET
WOLLONGONG

For
M & J DREIZI DEVELOPMENTS

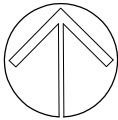
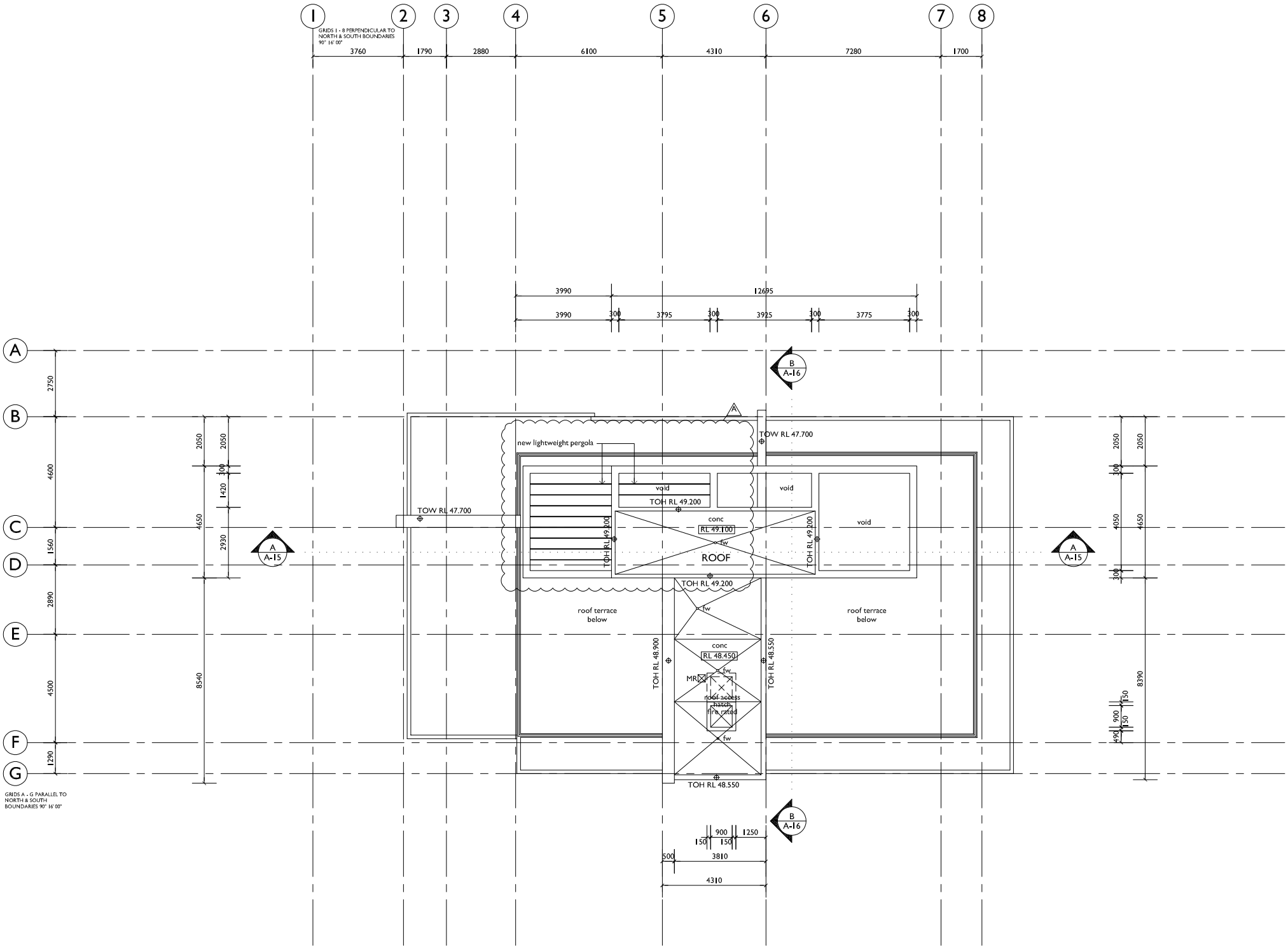
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DEVELOPMENT APPLICATION
LOWER ROOF PLAN

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| Project No. 2010-15 | Drawing No. A-09 | Issue A |
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UPPER ROOF PLAN

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At
LOTS 4 & 5 SECTION B
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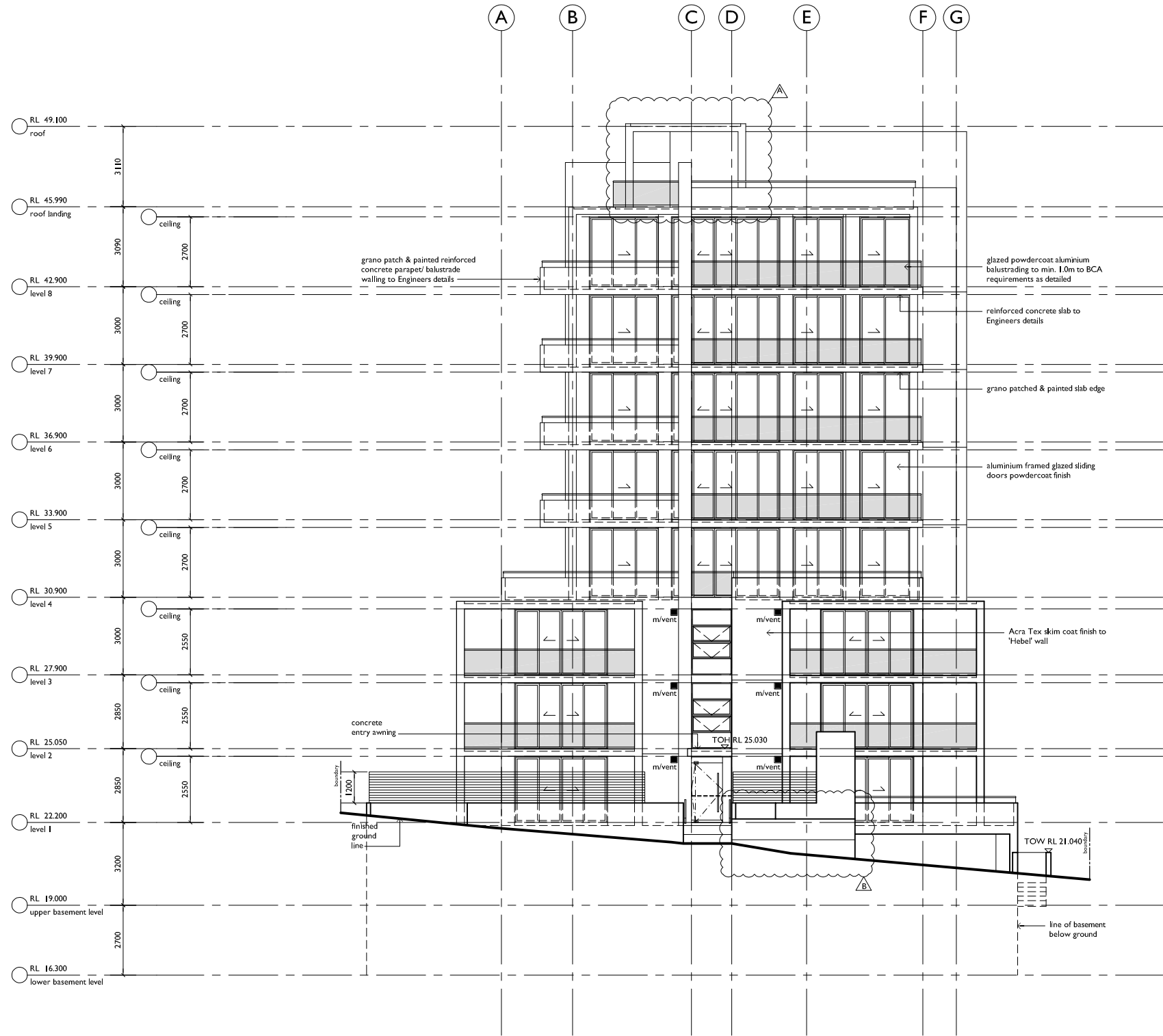
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WEST ELEVATION

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TERRACE

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No.17 & 17A KEMBLA STREET
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M & J DREIZI DEVELOPMENTS

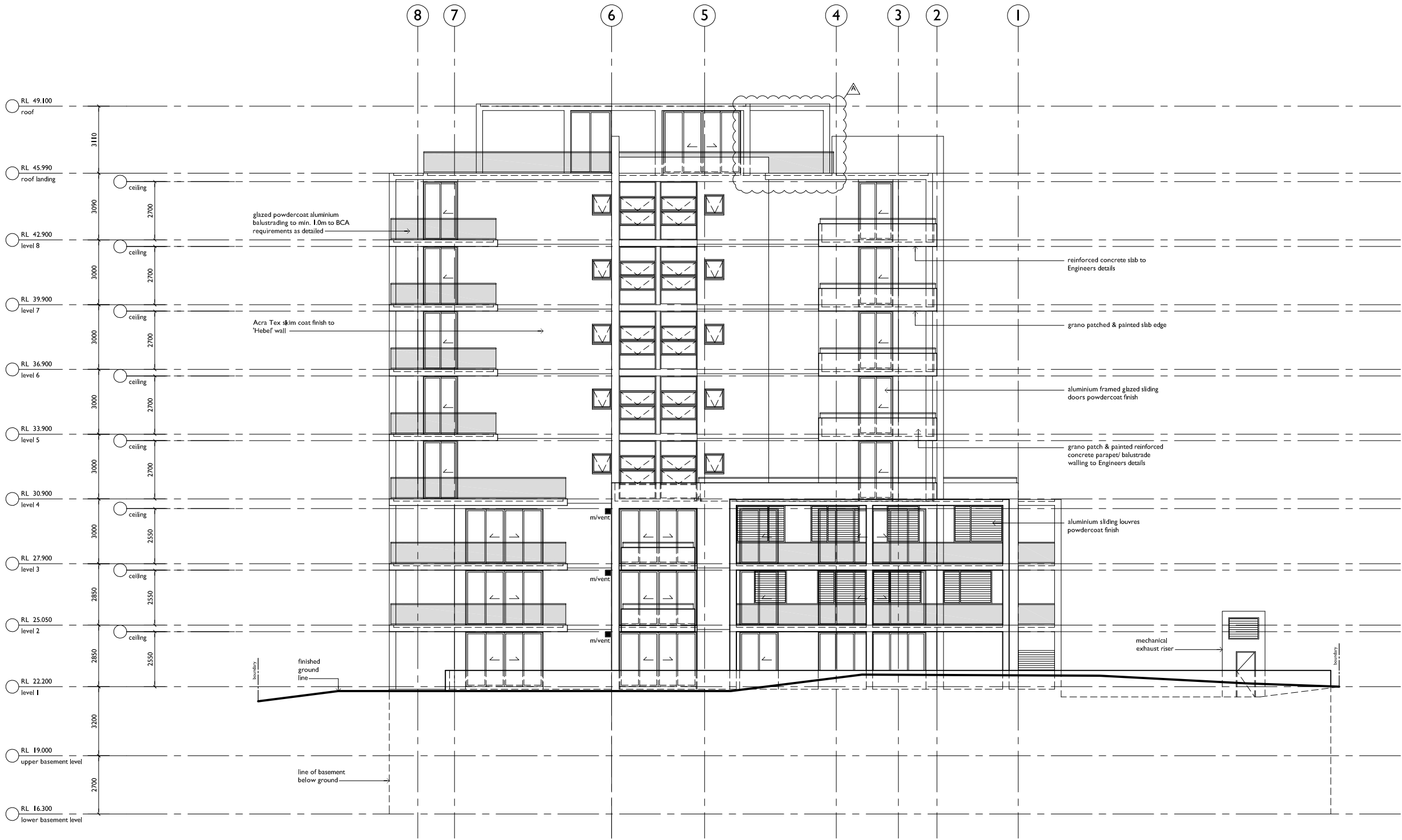
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WEST ELEVATION

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| Project No. 2010-15 | Drawing No. A-11 | Issue A |
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| A | 27.11.19 | ISSUE FOR DEVELOPMENT APPLICATION |



Project
NEW ROOFTOP PERGOLA TO EXISTING ROOF TERRACE

At
LOTS 4 & 5 SECTION B
No.17 & 17A KEMBLA STREET
WOLLONGONG
For

M & J DREIZI DEVELOPMENTS

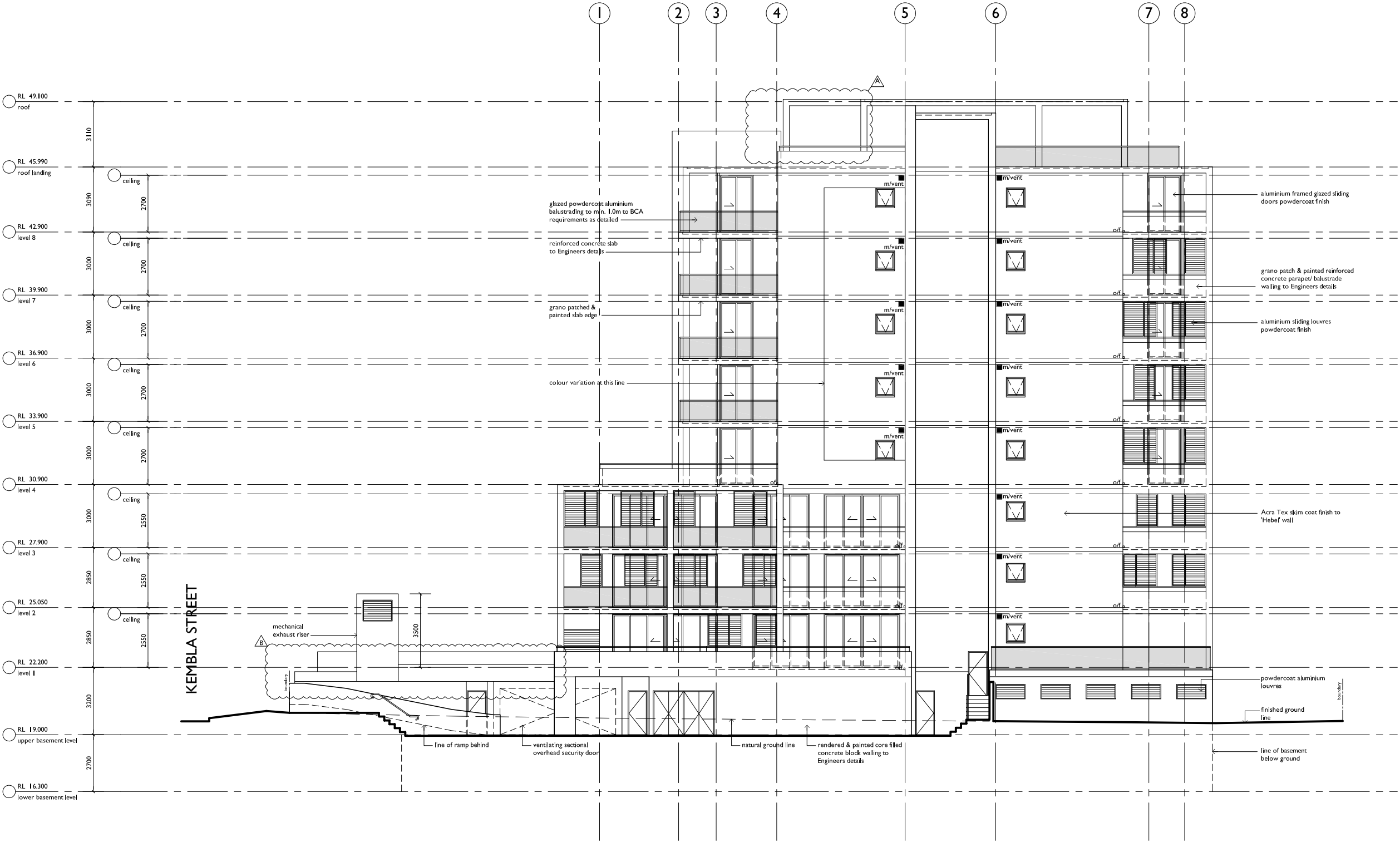
Title
DEVELOPMENT APPLICATION
NORTH ELEVATION

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| Scale 1:100@A1 1:200@A3 | Date NOVEMBER 2019 |
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| Project No. 2010-15 | Drawing No. A-12 | Issue A |
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SOUTH SECTIONAL ELEVATION

NOTE : REFER TO A00 FOR ARCHITECTURAL SPECIFICATION OF WORKS AND BCA NOTES PRIOR & DURING CONSTRUCTION

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a NOMINATED ARCHITECT - The nominated Architect for ADM Projects (Australia) Pty Ltd T/As ADM Architects is Angelo Di Martino ARB No.7608

| ISSUE | DATE | DESCRIPTION |
|-------|----------|-----------------------------------|
| A | 27.11.19 | ISSUE FOR DEVELOPMENT APPLICATION |



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SOUTH SECTIONAL ELEVATION

| | |
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| Scale 1:100@A1 1:200@A3 | Date NOVEMBER 2019 |
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| Drawn DP/SI | Checked ADM |
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| Project No. 2010-15 | Drawing No. A-14 | Issue B |
|------------------------|---------------------|------------|

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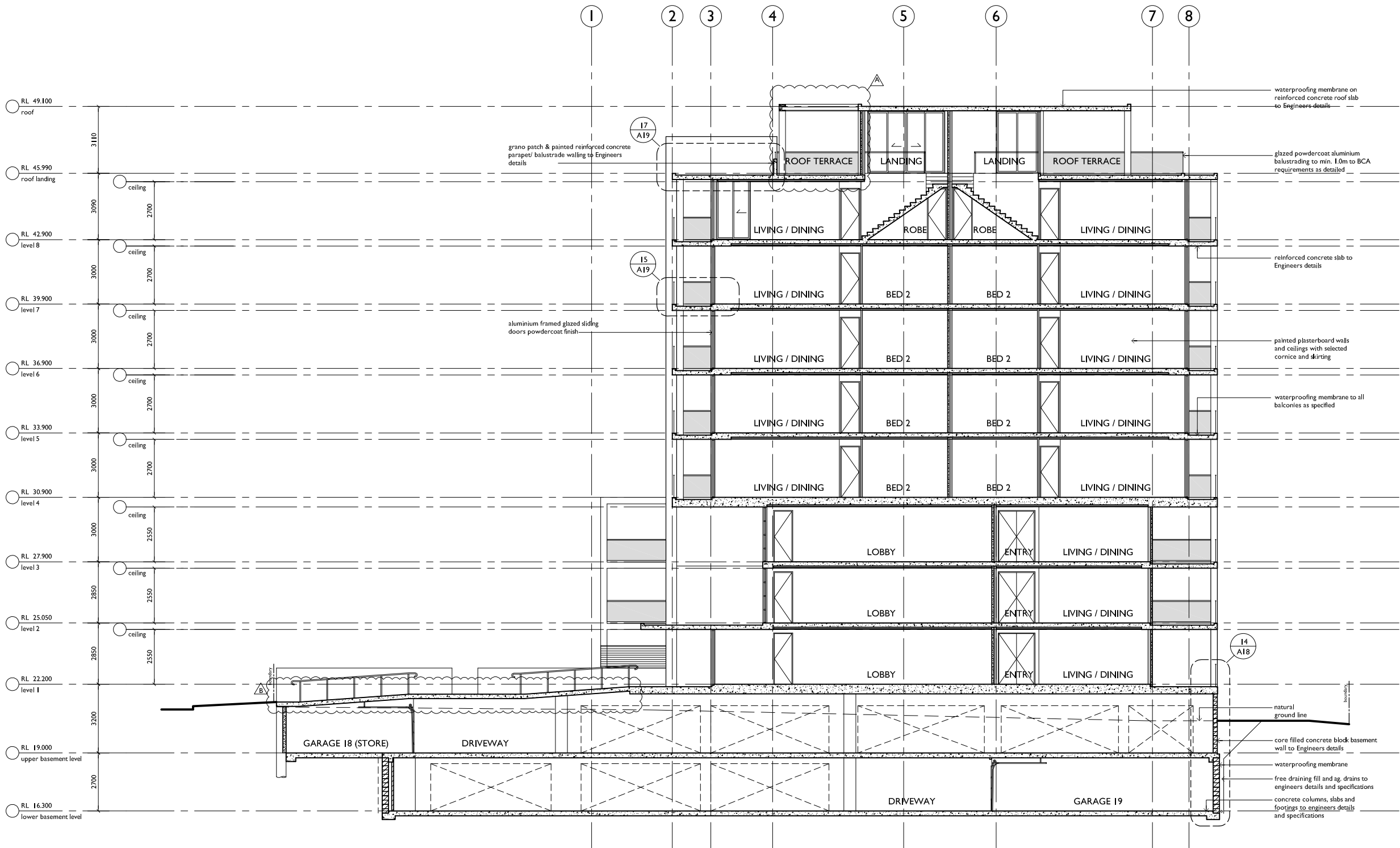
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SECTION A-A

NOTE : REFER TO A00 FOR ARCHITECTURAL SPECIFICATION OF WORKS AND BCA NOTES PRIOR & DURING CONSTRUCTION



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Title
DEVELOPMENT APPLICATION
SECTION A-A

Scale
1:100@A1
1:200@A3

Date
NOVEMBER 2019

Drawn
DP/Sl

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ADM

Project No.
2010-15

Drawing No.
A-15

Issue
A

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Attachment 2: Site Photos

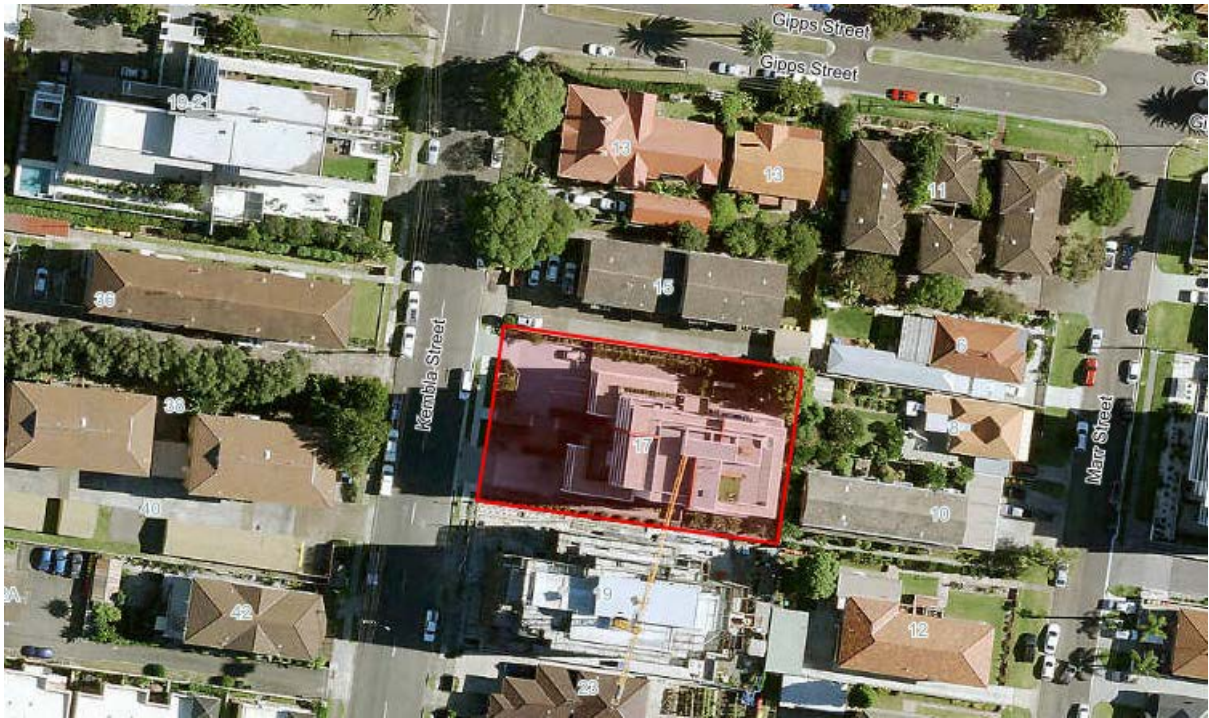


Figure 1: Aerial image of site and surrounding area



Figure 2: Site viewed from Kembla Street (across road)



Figure 3: Site viewed from Kembla Street showing existing rooftop structures (from north-west)

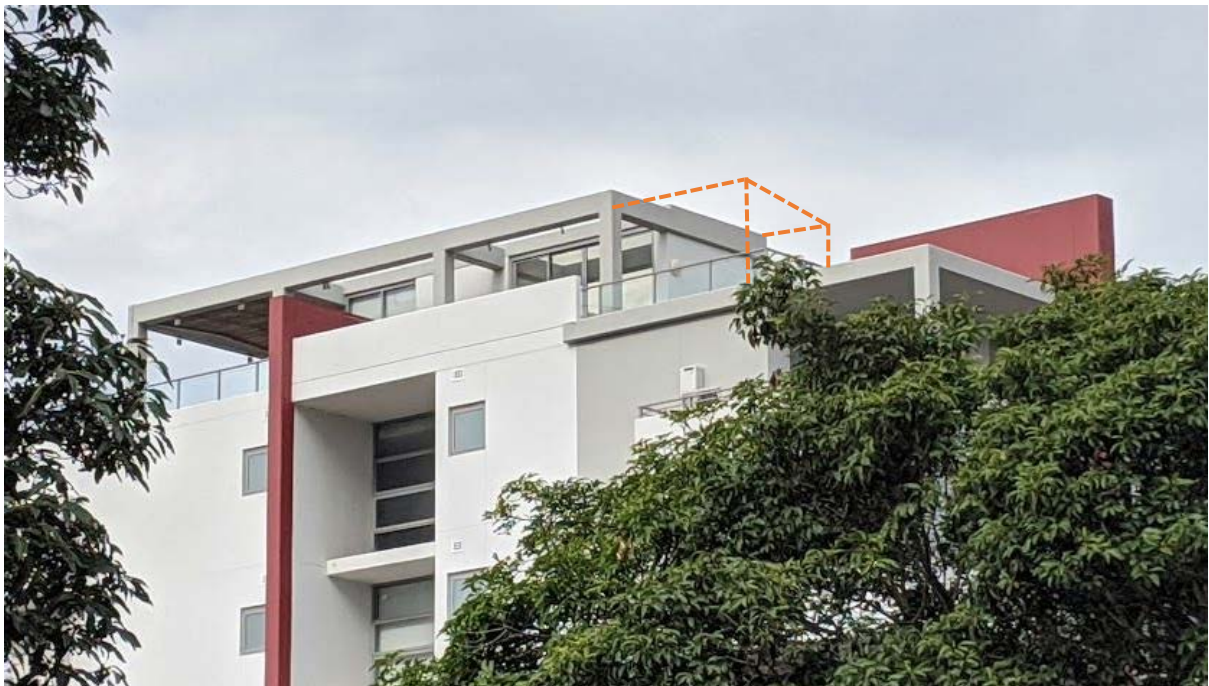


Figure 4: Zoomed in image of building rooftop (from north-west) showing approximation of proposed structure



Figure 5: Site from Kembla Street (south-west)



Figure 6: Zoomed in image of rooftop (from south-west)



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17 June 2020

Clause 4.6 'Exceptions to Development Standards'
Variation Statement – Clause 4.3(2) Height of Buildings
Rooftop Pergola to Existing Roof Terrace on
Residential Flat Building at 17 and 17A Kembla Street, Wollongong
(Lot 1 DP 434080, Lot 2 DP 505162 and Lot 3 DP 1159710)

TCG Planning has been engaged by ADM Architects to prepare a Clause 4.6 Exceptions to Development Standards Report to accompany a Development Application for a proposed pergola located on the rooftop of an existing residential flat building at No. 17-17A Kembla Street, Wollongong. TCG understands that a development application for the rooftop pergola was recently intended to be submitted by ADM Architects, however Council has advised that: *"The building height was approved under a modification to RL 29.32m which exceeds the maximum 24m height permitted for the site. The proposed pergola would also exceed the building height and the SEE does not contain a Clause 4.6 submission."*

A formal Clause 4.6 Exceptions to Development Standards Report is attached to this correspondence (**Attachment 1**) and accompanies a Statement of Environmental Effects prepared by ADM Architects.

Please do not hesitate to contact the applicant in the first instance, or the undersigned if further clarification is sought.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Elaine Treglown', with a long, horizontal flourish extending to the right.

Elaine Treglown,
Director
TCG Planning

Clause 4.6 'Exceptions to Development Standards' Statement

1 Introduction

Clause 4.6 'Exceptions to Development Standards' of Wollongong Local Environmental Plan 2009 provides the ability to contravene a development standard with approval of the consent authority and concurrence by the Director-General. A development standard is defined by the Environmental Planning and Assessment Act, 1979 as:

"Provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development".

The objectives of Clause 4.6 are as follows:

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

This statement is therefore provided to justify variation to Clause 4.3 'Height of Buildings' in accordance with Clause 4.6 of that Plan, as the application of this requirement is considered unreasonable or unnecessary for this particular development.

2 Description of Development

The development application seeks approval for a rooftop pergola located in the north-western position of the roof top of the building, above Unit 18, as detailed in the 'Roof', 'Elevations' and 'Sections' plans prepared by ADM Architects (dated November 2019). The rooftop of the building is allocated into 2 separate strata spaces which belong to the residential units at Level 8 below. The pergola is sited to the west of the existing landing, stairs and lift and provides for an extension of the existing approved pergola at this level. The pergola is a lightweight structure which is constructed of powder coated structural aluminium or steel, with posts clad the same as the adjacent columns and colours which match the adjoining roof structures.

3 Variation to Clause 4.3 Height of Buildings

Background

Subclause 4.3(2) 'Height of buildings' states that *"The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map."* The Height of Buildings Map stipulates a building height of 24m for the subject site. 'Building height (or height of building)' means *"the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

The original Development Consent DA-2003/1680, which was issued on 4 April 2004, granted approval for the development of a residential flat building at 17-17A Kembla Street. The approved development is described as *"demolition of existing structures and construction of an 8 storey residential unit building comprising 17 x 2 bedroom units & 1 x 3 bedroom unit with basement parking for 29 vehicles"*. DA-2003/1680 endorsed variation to the permitted 24 m height, to allow a maximum building height of 28.62m.

The development consent has been subject to a number of development modifications (refer **Table 1**), the most recent being DA-2003/1680/F, which was approved on 19 October 2011. The modified building, as constructed, comprises “an eight (8) storey building comprising nine (9) x two (2) bedroom units and ten (10) x three bedroom units with basement parking for 31 vehicles Modification F – modification to raise levels 700mm”. This modification endorsed a variation to the permissible 24m building height, to allow for a maximum building height of 29.32m (as referenced in the Exception to Development Standard Report, Ref:11296 prepared by JBA Planning, June 2011).

| Table 1: Development approvals and modifications relating to DA-2003/1680 (as available from Council's online DA records) | |
|--|--|
| Development Consent | Development Description |
| DA-2003/1680 | Demolition of existing structures and construction of an 8 storey residential unit building comprising 17 x 2 bedroom units & 1 x 3 bedroom unit with basement parking for 29 vehicles |
| DA-2003/1680/B | Demolition of existing structures and construction of an 8 storey residential unit building comprising 17 x 2 bedroom units & 1 x 3 bedroom unit with basement parking for 29 vehicles Modification B - modification of development to 9 x 2 bedroom units and 10 x 3 bedroom units, additional basement level car park, overall resident parking to change to 31 spaces, additional unit, internal floor changes and minor amendments to landscaping and façade |
| DA-2003/1680/C | Demolition of existing structures and construction of an 8 storey residential unit building comprising 17 x 2 bedroom units & 1 x 3 bedroom unit with basement parking for 29 vehicles Modification C - various modifications |
| DA-2003/1680/F | Demolition of existing structures and construction of an eight (8) storey residential unit building comprising nine (9) x two (2) bedroom units and ten (10) x three (3) bedroom units with basement parking for 31 vehicles Modification F - modification to raise levels 700mm |

Extent of Variation Sought

The current development application seeks approval for a maximum building height of 29.32 m, which exceeds the permissible building height specified in subclause 4.3(2) 'Height of buildings' of WLEP 2009 by 5.32m.

Variation Request

| Table 2: Compliance with WLEP 2009 - Contravention of Clause 4.3 Building Height | |
|---|--|
| Clause 4.6 Exceptions to Development Standards | Response/Justification |
| <p>(1) Objectives</p> <p>a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and</p> <p>b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p> | <p>Flexibility is sought for the application of the height control contained in clause 4.3 of WLEP 2009. The particular circumstances for this are as follows:</p> <ul style="list-style-type: none"> ▪ The rooftop pergola is in line with the existing approved maximum building height of 29.32m and does not exceed the finished building height. This building height was approved pursuant to DA 2003/1680/F. Figure 1 is an excerpt from the Sections diagram (Dwg. A15) prepared by ADM Architects which demonstrates that the pergola sits in line with the existing pergola and rooftop structures. ▪ The pergola will be located within the existing approved building footprint and around the existing roof structures and awnings. The pergola therefore will have no greater visual impact than that of the existing approved pergola and rooftop structures, as shown in Figure 2. ▪ The pergola is situated in the southwestern corner of the building, providing seamless integration from the existing concrete roof and the existing approved pergola (located in the western and northern areas of the rooftop). The colours and materials match the adjoining roof structures, as also shown in Figure 2. |

Table 2: Compliance with WLEP 2009 - Contravention of Clause 4.3 Building Height

| <p>Clause 4.6 Exceptions to Development Standards</p> | <p>Response/Justification</p> |
|---|---|
| | <div data-bbox="703 309 1433 813" data-label="Image"> </div> <div data-bbox="683 844 1382 925" data-label="Caption"> <p>Figure 1: Excerpt from 'Sections' diagram (dwg. A-15) prepared by ADM Architects, that shows that the roof pergola is in line with the existing pergola and rooftop structures.</p> </div> <div data-bbox="807 981 1327 1444" data-label="Image"> </div> <div data-bbox="683 1464 1426 1545" data-label="Caption"> <p>Figure 2: View of the roof of the building from Gipps Street to the south, showing the existing rooftop structures, which will allow for continuation with the proposed pergola (Source: Google Streetview).</p> </div> <div data-bbox="662 1588 1452 1722" data-label="List-Group"> <ul style="list-style-type: none"> ▪ The pergola will not result in increased overlooking of adjacent properties as it will merely provide a roof over an existing approved roof terrace of Unit 18. In addition, the pergola provides additional sun protection to a roof area. The pergola therefore provides an increased level of amenity for residents of Unit 18. </div> <div data-bbox="662 1744 748 1774" data-label="Section-Header"> <p>Justified</p> </div> |
| <p>(3) Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</p> | <p>(3) This table comprises the written request seeking to justify the contravention of the height development standard.</p> <p>(a) Compliance with the applicable 24m height standard is considered to be unreasonable and unnecessary in the circumstances of the case having regard to the following:</p> <p><i>In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, Commissioner</i></p> |

Table 2: Compliance with WLEP 2009 - Contravention of Clause 4.3 Building Height

| Clause 4.6 Exceptions to Development Standards | Response/Justification |
|---|---|
| <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> | <p>Person determined that it is necessary for applicants to show sufficient grounds <u>particular to the development</u> in a Clause 4.6 objection.</p> <p>In the case of the subject development, the positioning of structures on the rooftop and the approved height of the building suggest that the proposed pergola warrants individual consideration with respect to overall height. The proposed pergola will sit within a 'cluster' of structures on the rooftop which comprise the existing pergola (in the west and north), lift overruns, stairs and the landings leading to the roof terraces. The proposed pergola does not result in the creation of an additional private open space area but merely increases the usability of the approved space, by providing further sun protection.</p> <p>The proposed pergola, whilst exceeding the permitted 24m height limit, does not further increase the height beyond the 29.32m height approved pursuant to DA 2003/1680/F. The proposed pergola provides for an extension of the existing roof line and pergola on the roof and provides a more balanced approach to the roof structure. In addition, the extended pergola will have minimal visual impact when viewed from the south and west and will not be visibly apparent when viewed from the Kembla Street frontage of the site, due to its positioning towards the rear of the building.</p> <p>Provided and Justified</p> |
| <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p> | <p>The development does not result in contravention of any additional standards contained in the following documents and is therefore considered to be satisfactory having regard to environmental planning grounds, including:</p> <ul style="list-style-type: none"> Other provisions of the WLEP 2009; Provisions of the SEPP 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide; The relevant Chapters of WDCP 2009; <p>In addition, the accompanying plans (and Figure 2) illustrate that the increased height provides an acceptable outcome and does not result in any greater impact in terms of visual impact, disruption of views, loss of privacy or any other adverse impacts <u>than if the maximum allowable height (24m) was met</u>.</p> <p>Justified</p> |
| <p>(4) Consent must not be granted for development that contravenes a development standard unless: (a) the consent authority is satisfied that:</p> | |
| <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> | <p>This Variation statement provides a discussion in support of the justification for varying the development standards as indicated in (3) above. In our opinion, there is sufficient justification provided to support a variation to the building height requirements.</p> <p>Satisfied</p> |
| <p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p> <p>Wollongong LEP 2009: Objectives of the Standard (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,</p> | <p>Despite the exceedance of the allowable 24m height, the proposed rooftop pergola is in the public interest as it meets the objectives of the height development standard as:</p> <ul style="list-style-type: none"> The development is consistent in design and character of the apartment buildings to the immediate south and north-west; All surrounding buildings continue to have maintain a comparable level of views and receive exposure to sunlight. The development will be constructed of colours, materials, and finishes that are consistent with those of the approved building and which are appropriate for its setting. <p>The height of the development, with the inclusion of the pergola, will also not hinder the level of achievement of the development with the R1 General Residential zone objectives: the development is of a form</p> |

Table 2: Compliance with WLEP 2009 - Contravention of Clause 4.3 Building Height

| Clause 4.6 Exceptions to Development Standards | Response/Justification |
|--|--|
| <p>(b) <i>to permit building heights that encourage high quality urban form,</i> (c) <i>to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.</i></p> <p>The <u>objectives</u> of the R1 General Residential Zone:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community</i> • <i>To provide for a variety of housing types and densities.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i> | <p>appropriate for the emerging medium-to high density zoning as it is well sited on a large parcel of land that has taken into consideration the impacts of the surrounding low density development as well as the adjacent residential flat developments. Further, the pergola will improve the amenity for residents of the Unit 18 within the approved building.</p> <p>Justified</p> |
| <p>(c) <i>the concurrence of the Director-General has been obtained.</i></p> | <p>Council will need to consult with the Department of Planning and Infrastructure as to whether the concurrence of the DG can be assumed in accordance with Planning Circular PS 08-003-Variations to Development Standards (Department of Planning, May 2008).</p> <p>Addressed</p> |
| <p>(5) <i>In deciding whether to grant concurrence, the Director-General must consider:</i></p> | |
| <p>(a) <i>whether contravention of the development standard raises any matter of significance for State or regional environmental planning, &</i></p> | <p>The contravention of this development standard does not raise any matter of significance for state or regional environmental planning. Refer to further discussion below in this table.</p> <p>Addressed</p> |
| <p>(b) <i>the public benefit of maintaining the development standard, and</i></p> | <p>There is no public benefit by maintaining the development standard, as there are no identifiable adverse impacts to approval being granted to the submitted design. If the maximum allowable height of 24m were met, the amenity of residents within unit 18 would be detrimentally affected, with no measurable improved environmental outcome or public outcome benefit. The rooftop pergola provides sun protection to the roof area where none exists, thereby improving the amenity and usability of this POS for the occupants.</p> <p>Justified</p> |
| <p>(c) <i>any other matters required to be taken into consideration by the Director-General before granting concurrence.</i></p> | <p>It is considered that there are no environmental planning considerations that would hinder the Director-General from providing concurrence.</p> <p>Addressed</p> |

Conclusion: This Statement has addressed the provisions of Clause 4.6 of Wollongong LEP 2009 and demonstrates that the variation sought to the development standards of the LEP (Building Height) is justifiable and should be given concurrence to. It is emphasised that the maximum height of the pergola is in line with the existing building height and the pergola will be constructed of materials and colours that match the adjoining roof structures, including the existing pergola in the western and northern are of the rooftop. We therefore request that Council support variation to the 24m height control contained in clause 4.3 (2) – Building Height of WLEP 2009 to allow a maximum height of 29.32 m for the proposed pergola addition.

Attachment 4: Wollongong Development Control Plan 2009 Assessment

CHAPTER A2 – ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Development controls to improve the sustainability of development throughout Wollongong are integrated into the relevant chapters of this DCP.

The proposal is generally consistent with the principles of Ecologically Sustainable Development.

CHAPTER B1 – RESIDENTIAL DEVELOPMENT

6 Residential flat buildings

| Controls/objectives | Comment | Compliance |
|--|---|------------|
| <u>6.5 Built Form</u> | | |
| <ul style="list-style-type: none">New development must be in harmony with neighbouring buildings and the surrounding areaLift overruns should be obscured with other rooftop activities or features | <p>The proposed built form is consistent with the existing building and is unlikely to result in a significant visual impact from neighbouring sites.</p> <p>The awning adjoins the lift overrun may contribute to obscuring view of the structure.</p> | Yes |
| <u>6.6 Visual privacy</u> | | |
| <ul style="list-style-type: none">Maximise visual privacy to neighbouring sites | <p>The proposal will not result in increased visual impacts. The area is already established as a roof terrace, and the awning is designed to increase useability.</p> <p>Privacy impacts are not expected.</p> | Yes |
| <u>6.14 Private Open Space</u> | | |
| | <p>The awning is proposed on part of the POS area for unit 18.</p> | Yes |
| <u>6.18 Solar Access</u> | | |
| | <p>The awning will not result in any additional overshadowing to neighbouring sites or adjoining dwellings POS.</p> | Yes |

CHAPTER D13 – WOLLONGONG CITY CENTRE

5 Environmental management

| Objectives/controls | Comment | Compliance |
|---|--|------------|
| <u>5.2 Energy efficiency and conservation</u> | | |
| | <p>The proposed development is not expected to result in any significant increase in energy usage. The development is BASIX excluded development due to its minor scale.</p> | Yes |
| <u>5.6 Waste and recycling</u> | | |

| | | |
|--|---|-----|
| | Suitable conditions relating to waste generation during construction will be included on the consent. | Yes |
|--|---|-----|

6 Residential development standards

| <i>Objectives/controls</i> | <i>Comment</i> | <i>Compliance</i> |
|-------------------------------|---|-------------------|
| <u>6.8 Private open space</u> | The awning is proposed within the POS of Unit 18. No concerns are raised. | |
| <u>6.9 Overshadowing</u> | No additional overshadowing is expected as a result of the awning. | |

CHAPTER E6: LANDSCAPING

No impact on existing landscaped areas is proposed.

CHAPTER E7: WASTE MANAGEMENT

Suitable conditions relating to waste generation and management will be included on the consent.

CHAPTER E14: STORMWATER MANAGEMENT

A condition will be included to ensure stormwater will be disposed of to the existing approved drainage system.

Attachment 5: Recommended Conditions of Consent

Approved Plans and Specifications

- 1 The development shall be implemented substantially in accordance with the details and specifications set out on Project No 2010-15 Drawing A-09-A to A-12-A, A-14-B and A-15-A dated 27 November 2019 prepared by ADM Architects and any details on the application form, and with any supporting information received, except as amended by the conditions specified and imposed hereunder.

General Matters

- 2 **Building Work - Compliance with the Building Code of Australia**
All building work must be carried out in compliance with the provisions of the Building Code of Australia.
- 3 **Construction Certificate**
A Construction Certificate must be obtained from Council or an Accredited Certifier prior to work commencing.

A Construction Certificate certifies that the provisions of Clauses 139-148 of the Environmental Planning and Assessment Amendment Regulations, 2000 have been satisfied, including compliance with all relevant conditions of Development Consent and the Building Code of Australia.

Note: The Certifier must cause notice of its determination to be given to the consent authority, and to the council, by forwarding to it, within two (2) days after the date of the determination, the plans and documentation referred to in clause 142 (2) of the Environmental Planning and Assessment Regulation 2000.
- 4 **Occupation Certificate**
An Occupation Certificate must be issued by the Principal Certifier prior to occupation or use of the development. In issuing an Occupation Certificate, the Principal Certifier must be satisfied that the requirements of section 6.9 of the Environmental Planning and Assessment Act 1979, have been complied with as well as all of the conditions of the Development Consent.
- 5 **Awning to Match Existing**
The awning must match the existing rooftop structures in colour and design.

Prior to the Commencement of Works

- 6 **Appointment of Principal Certifier**
Prior to commencement of work, the person having the benefit of the Development Consent and a Construction Certificate must:
 - a Appoint a Principal Certifier (PC) and notify Council in writing of the appointment irrespective of whether Council or an accredited private certifier is appointed; and
 - b notify Council in writing of their intention to commence work (at least two days notice is required).
The Principal Certifier must determine when inspections and compliance certificates are required.
- 7 **Residential Building Work – Compliance with the Requirements of the Home Building Act 1989**
Building work involving residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates:
 - a in the case of work to be done by a licensee under that Act:
 - i has been informed in writing of the licensee's name, contractor license number and contact address details (in the case of building work undertaken by a contractor under the Home Building Act 1989); and

- ii is satisfied that the licensee has complied with the requirements of Part 6 of the Home Building Act 1989; or
- b in the case of work to be done by any other person:
 - i has been informed in writing of the persons name, contact address details and owner-builder permit number; and
 - ii has been given a declaration signed by the property owner(s) of the land that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of the Home Building Act 1989 and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

Note: A certificate issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that the specific person or licensed contractor is the holder of an insurance policy issued for the purposes of that Part of the Act is, for the purposes of this condition, sufficient evidence that the person has complied with the requirements of that Part of the Act.

8 **Sign – Supervisor Contact Details**

Before commencement of any work, a sign must be erected in a prominent, visible position:

- a stating that unauthorised entry to the work site is not permitted;
- b showing the name, address and telephone number of the Principal Certifier for the work; and
- c showing the name and address of the principal contractor in charge of the work site and a telephone number at which that person can be contacted at any time for business purposes.

This sign shall be maintained while the work is being carried out and removed upon the completion of the construction works.

9 **Temporary Toilet/Closet Facilities**

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided must be:

- a a standard flushing toilet; and
- b connected to either:
 - i the Sydney Water Corporation Ltd sewerage system or
 - ii an accredited sewage management facility or
 - iii an approved chemical closet.

The toilet facilities shall be provided on-site, prior to the commencement of any works.

10 **Enclosure of the Site**

The site must be enclosed with a suitable security fence to prohibit unauthorised access, to be approved by the Principal Certifier. No building work is to commence until the fence is erected.

During Demolition, Excavation or Construction

11 **Piping of Stormwater to Existing Stormwater Drainage System**

Stormwater for the development must be piped to Council's existing stormwater drainage system.

12 **Restricted Hours of Construction Work**

The developer must not carry out any work, other than emergency procedures, to control dust or sediment laden runoff outside the normal working hours, namely, 7.00 am to 5.00 pm, Monday to Saturday, without the prior written consent of the Principal Certifier and Council. No work is permitted on public holidays or Sundays.

Any request to vary these hours shall be submitted to the Council in writing detailing:

- a the variation in hours required (length of duration);

- b the reason for that variation (scope of works);
- c the type of work and machinery to be used;
- d method of neighbour notification;
- e supervisor contact number;
- f any proposed measures required to mitigate the impacts of the works.

Note: The developer is advised that other legislation may control the activities for which Council has granted consent, including but not limited to, the Protection of the Environment Operations Act 1997.

13

Provision of Waste Receptacle

The developer must provide an adequate receptacle to store all waste generated by the development, pending disposal. The receptacle must be regularly emptied and waste must not be allowed to lie or accumulate on the property other than in the receptacle. Consideration should be given to the source separation of recyclable and re-usable materials.