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## **Bayside Planning Panel**

**10/10/2017**

Item No	5.3
Application Type	Development Application
Application Number	DA-2017/321
Lodgement Date	30 March 2017
Property	<b>18 Malua Street DOLLS POINT NSW 2219</b>
Owner	Mr C and Mrs P Christoforou
Applicant	Mr C Christoforou
Proposal	Alterations and additions to existing dwelling house comprising internal works, external render and construction of a lift structure to the rooftop terrace
No. of Submissions	Two (2) submissions
Cost of Development	\$41,000.00
Report by	Michael Maloof, Senior Development Assessment Planner

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## **Officer Recommendation**

- A. That the Bayside Planning Panel supports the variation to the Height development standard, as contained in Clause 4.3 - Height of Buildings within Rockdale LEP 2011, in accordance with the request under Clause 4.6 of RLEP 2011 submitted by the applicant.
  - B. That Development Application DA-2017/321 for alterations and additions to an existing dwelling house comprising internal works, external render and construction of a lift structure to the rooftop terrace be **APPROVED** pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
  - C. That the objectors be advised of the Bayside Planning Panel's decision.
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## **Attachments**

- 1 Planning Assessment Report
  - 2 Clause 4.6 Variation – Height control
  - 3 Proposed Site Plan and Elevations
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## Location Plan



# BAYSIDE COUNCIL

## Planning Assessment Report

### Application Details

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<b>Application Number:</b>	DA-2017/321
<b>Date of Receipt:</b>	30 March 2017
<b>Property:</b>	18 Malua Street, DOLLS POINT (Lot 19 DP 18987)
<b>Owner(s):</b>	Mr Chris Christoforou Mrs Photini-Sophia Christoforou
<b>Applicant:</b>	Mr Chris Christoforou
<b>Proposal:</b>	Alterations and additions to existing dwelling house comprising internal works, external render and construction of a lift structure to the rooftop terrace
<b>Recommendation:</b>	Approved
<b>No. of submissions:</b>	Two submissions received
<b>Author:</b>	Michael Maloof
<b>Date of Report:</b>	18 September 2017

### Key Issues

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The key issues related to this application are:

- Views
- Privacy

### Recommendation

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That this Development Application be **APPROVED** pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.

### Background

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#### History

The following applications have previously been considered by Council in relation to the subject site:

- DA-2003/712, Alterations and Additions (Incorporating Attic Space) To Existing Dwelling – Approved 29 July 2004
- DA-2016/218, Alterations and additions to existing dwelling including inground swimming pool, front fence, driveway and front and rear verandah – Approved 29 February 2016

## Proposal

Council is in receipt of a development application DA-2017/321 at 18 Malua Street Dolls Point, which seeks consent to carry out alterations and additions to the existing dwelling house comprising internal works, external render and construction of a roof top terrace.

The proposal consists of:

- Provision of an internal lift and store room located centrally with the existing dwelling house providing access to the existing roof top terrace (with a hole in the first floor slab);
- A housing over the lift with one enclosing wall and awning above for weather protection with two open sides on the roof top terrace; the wall is to include fixed panels being 2.4m high with clear glazing in between;
- Relocate the existing solar panel/water system on the existing roof top;
- Demolition of internal walls and reconstruction of internal walls on the ground and first floors for the lift housing;
- Retention of the existing external masonry stair case at the rear of the dwelling house providing alternate access to the roof top terrace;
- Modify the existing ground floor front veranda with a small bay window being cement render and painted finish with adjacent landscaping;
- Paint and render the front and rear elevations of the existing building matching the roof top terrace structure;
- Provide a new skylight over the existing staircase in the building to provide natural lighting to the dwelling house;
- Replace existing doors and window trim in the front and rear elevations on the ground floor; and
- Replace the existing walls around the external stair to the rear with colonial bars and translucent glass.

## Site location and context

The subject site is known as Lot 19 in DP 18987, at 18 Malua Street Dolls Point. The site is a rectangular shape with front and rear boundary widths of 13.105 metres. The side boundaries are 41.15m deep. The total site area is 539.27m sq.m. The topography of the site is such that it is relatively flat.

The subject site contains a two storey dwelling house with attached garage at the front of the dwelling and an in ground swimming pool under construction at the rear. The existing building on the site contains an existing roof top terrace which occupies the entire rectangular building with a metal balustrade on top of each external wall and contains a masonry external stair to the rear providing access to the roof top terrace. The site is located on the eastern side of Malua Street between Skinners Avenue and Russell Avenue. Adjoining development to the sides are a new two storey dwelling house to the south and two attached two storey villa dwellings to the north which front Skinners Avenue. Adjoining the site to the rear is a new two storey dwelling house currently under construction which fronts Skinners Avenue. Opposite the site along Malua Street are four storey residential flat buildings which overlook the subject site. There is a mix of one storey and two storey dwelling houses and three and four storey residential flat buildings within close proximity to the subject property. There are no trees to be removed from the site.

## Statutory Considerations

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## ***Environmental Planning and Assessment Act, 1979***

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

### **S.79C(1) - Matters for Consideration - General**

#### **S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

##### **Greater Metropolitan REP No. 2 – Georges River Catchment**

The proposal is consistent with Council's requirements for the disposal of stormwater in the catchment. Therefore, it is considered that the proposed development will not significantly impact upon the environment of the Georges River, either in a local or regional context, and that the development is not inconsistent with the general and specific aims, planning principles, planning considerations and policies and recommended strategies. The proposal is consistent with the aims and objectives of the Georges River Catchment Deemed (SEPP).

##### **Rockdale Local Environmental Plan 2011**

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
2.3 Zone R2 Low Density Residential	Yes	Yes - see discussion
4.3 Height of buildings	Yes - see discussion	No - see discussion
4.4 Floor space ratio - Residential zones	Yes - see discussion	No - see discussion
4.6 Exceptions to development standards	Yes - see discussion	Yes - see discussion
6.1 Acid Sulfate Soil - Class 3	Yes	Yes - see discussion
6.2 Earthworks	Yes	Yes - see discussion
6.6 Flood Planning Land	Yes - see discussion	Yes - see discussion
6.7 Stormwater		

##### **2.3 Zone R2 Low Density Residential**

The subject site is zoned R2 - Low Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as alterations and additions to an existing dwelling house which constitutes a permissible development only with development consent. The objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

The proposed development is consistent with the objectives of the zone.

##### **4.3 Height of buildings**

The height of the proposed building is 10.17m (RL 12.57 - NGL RL 2.4m) which exceeds the maximum 8.5m height permitted in Clause 4.3 (Height of buildings) of RLEP 2011. This represents a variation of 1.67m or 19.7%. This represents a significant variation however, this is addressed in more detail in section 4.6 of this report.

#### 4.4 Floor space ratio - Residential zones

The gross floor area (GFA) of the existing dwelling house has been calculated as 381m<sup>2</sup> over a site area of 539.27m<sup>2</sup>. The existing dwelling house therefore has a floor space ratio of 0.7:1 which exceeds Council's maximum FSR of 0.5:1 as shown on the Floor Space Ratio map.

The proposal will include the conversion of existing floor space from a laundry (5m<sup>2</sup>) on the ground floor and walk in wardrobe (2.57m<sup>2</sup>) on the first floor to a lift well to provide access to the existing roof top terrace. The proposal includes a small extension to the front sitting room over the existing balcony (5.32m<sup>2</sup>) and will therefore reduce the floor space ratio (FSR) for the building by 2.25m<sup>2</sup> (7.57m<sup>2</sup> - 5.32m<sup>2</sup>) and therefore does not result in any increase in floor space ratio (FSR) on the site. As such, the proposal is not unreasonable and complies with the objectives of the floor space ratio control outlined in Council's RLEP 2011. The proposed reduction in floor space on the site brings the existing situation closer to numerical compliance and is not unreasonable in respect to the bulk and scale of the building given the shelter on the roof top terrace will be an open structure and will not be visible from the street level. The shelter is primarily to provide weather protection for the lift well and is not excessive in size and dimension. In this regard, the proposal is not unreasonable in respect to the floor space ratio control.

The proposal will result in a density that is in accordance with the desired future character of Rockdale, will have minimal adverse environmental effects on the use or enjoyment of adjoining properties, and will maintain an appropriate visual relationship between new development and the existing character of the area.

Accordingly, the proposed FSR for the development meets the objectives and satisfies the maximum FSR permitted by Clause 4.4 in RLEP 2011.

#### 4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

- (3)(a) that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and*
- (3)(b) that there are sufficient environmental planning grounds to justify the variation.*

In considering the applicant's submission, the consent authority must be satisfied that:

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

*5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and*

*5(b) the public benefit of maintaining the development standard.*

## Development Standard to be varied

The applicant has sought to vary clause 4.3 (2) of the Rockdale LEP 2011 which relates to the maximum height of the proposed dwelling house development which is limited to 8.5m. The proposal will have a maximum height of up to 10.17m which exceeds the maximum permitted by 1.67m (or 19.7%).

Clause 4.3 (2) of the RLEP 2011 states:

*(2) 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 objectives of this clause are as follows:

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

## Justification of the Variation

The applicant has submitted a detailed justification to the proposed variation to the height standard. It is stated that the proposed variation:

- The roof top terrace structure and associated housing is required to weather protect the lift and compliance with the building height control would be unreasonable as it would not allow roof top terrace access
- The lightweight open frame structure with flat roof is centrally located and limited to 5.5m x 5.5m to minimise visual impact from the street and reduce bulk and overshadowing impacts
- The structure has a height of 2.7m to comply with Council's DCP in respect to minimum floor to ceiling heights and the height breach is minor being a maximum of 1.67m above the maximum height control
- The proposal is consistent with the objectives of the height control
- The loss of views is minimised in the design of the structure and directly behind the new two storey residence which has a roof top terrace structure at 3 Skinners Avenue
- The lift is required as one owner has a leg impairment and several owners are aged with difficulty using the stairs
- A variation to the height control is not excluded from the operation of clause 4.6 of the RLEP 2011
- A precedent has already been set in the locality with many roof top terraces having similar and larger structures which are clearly visible from the subject site

## Council Comments:

The proposed height will have minimal adverse impact in terms of building dominance, solar access, light and air, and therefore the proposed height of 10.17m satisfies the relevant objectives of Clause 4.3 in RLEP 2011. Council has previously varied the height control in the case of a roof top terrace with

an entry structure over the stairs. The applicant's submission is supported in the context of the variation under clause 4.6 for the reasons outlined above. Strict compliance with the development standard relating to maximum permissible height of building is considered unreasonable and unnecessary in this instance. The proposed variation is not visually discernible from the street and a precedent for such structures has already been set within the locality. Further, the proposal is consistent with the objectives of the R2 Low Density zone and height control (clause 4.3) under the RLEP 2011. Accordingly, the proposal is acceptable in respect to the resulting height on the site.

#### 6.1 Acid Sulfate Soil - Class 3

Acid Sulfate Soils (ASS) – Class 3 affects the property. Development Consent is not required as the proposed works involve the disturbance of less than 1 tonne of soil and the works are not likely to lower the watertable.

#### 6.2 Earthworks

The proposal does not involve any extensive excavation within the site. In this regard, the proposal is not likely to result in any adverse amenity impact in respect to earthworks.

Accordingly, earthworks have been considered in the assessment of this proposal and the application meets the objectives of this clause.

#### 6.6 Flood Planning Land

The site is affected by flooding however, the proposed works relate to the ground floor alterations and additions over the existing slab and a structure on the roof top terrace. Discussions with Council's Development Engineer have confirmed that the flood level is at RL 2.0 while the existing ground floor of the dwelling is at RL 2.99. As such, the proposed works to the front balcony is well above the probable maximum flood level (PMF) and accordingly, the proposal is acceptable as it will not alter the flooding characteristics of the site. The proposal will not alter the existing driveway crossing, habitable floor levels or any other component affecting the flooding of the site. In this regard, the proposal is satisfactory in regards to flooding.

### **S.79C(1)(a)(ii) - Provisions of any Draft EPI's**

No relevant proposed instruments are applicable to this proposal.

### **S79C(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

#### **Rockdale Development Control Plan 2011**

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.1.1 Views and Vista	Yes - see discussion	Yes - see discussion
4.1.3 Water Management	Yes	Yes - see discussion
4.2 Streetscape and Site Context - General	Yes	Yes - see discussion
4.3.2 Private Open Space - Low density residential	Yes	Yes - see discussion
4.4.2 Solar Access - Low and medium density residential	Yes - see discussion	No - see discussion
4.4.5 Visual privacy	Yes	Yes - see discussion

<b>Relevant clauses</b>	<b>Compliance with objectives</b>	<b>Compliance with standard/provision</b>
4.4.5 Acoustic privacy	Yes	Yes - see discussion
4.6 Parking Provisions - Alterations and additions	Yes	Yes - see discussion
5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings	Yes	Yes - see discussion

#### 4.1.1 Views and Vista

The subject site contains an existing roof top terrace occupying the full building footprint with a metal balustrade above the external walls. The terrace is accessed via an external stair case at the rear of the dwelling house from the ground floor. The proposed lift access and housing over the store room with small sheltered area measuring 5.5m square will include side walls on the north and southern sides with no walls on the east and western sides being an open structure. This allows views through the structure to the east out over Botany Bay whilst creating some protection for the roof access from northern and southern breezes. The subject site contains a view corridor to the east, north east and south east comprising the skyline and Botany Bay which is punctured by other roof tops and roof top terrace structures on neighbouring dwelling houses located along Skinners Avenue and Carruthers Drive.

A precedent to the height control has previously been set in the locality with many dwelling houses having approved roof top terraces that contain a structure above the stairs which interrupt views to the east. The current proposal includes a structure comprising a lift and storeroom with the remainder of the roof top terrace allowing views to the east. However, the open roof structure is larger than the lift access and store room adjacent to it. In this regard, the proposed roof structure shall be reduced being limited to the lift well and adjacent store room and will not have a detrimental impact on the existing views allowing a large proportion of the views to remain to the east. This has been addressed through the imposition of a condition of development consent.

The proposed structure will be in line with the recently constructed roof top terrace structure on the dwelling house that adjoins the site to the rear which fronts 3 Skinners Avenue and is not unlike the roof top terrace structure on the dwelling house at No. 7 Skinners Avenue. In this regard, a site inspection has confirmed that the existing views from the residential flat building opposite on the western side of Malua Street (Nos. 15-17) will not be unreasonably affected and the upper level residential units will largely retain existing views out to the north east and south east across the site. Similarly, the residential flat building located at 19-21 Malua Street has views out to the north east which are currently affected by the existing roof top terrace at No. 6 Skinners Avenue. As the proposed roof top terrace structure is in line with No. 6 Skinners Avenue, the proposal is not likely to result in any unreasonable or significant view loss from the property at Nos. 19-21 Malua Street.

The proposal does not involve any changes to the existing metal balustrade around the side and rear of the existing roof top terrace. However, the proposal will include cladding attached to the balustrade in the front elevation to match the changes to the front facade. This will result in a small reduction in the existing views out across and over the site but is like other recently constructed developments which contain a solid balustrade that reduce views to the east. In this regard, the proposal affects only a small angle of the view corridor to the east and is not unreasonable in respect to view impacts given it will retain a large proportion of views out across the site. The proposal therefore has regard for the planning principal espoused by the Land and Environment Court in respect to "view sharing" and ensuring that existing views are not detrimentally affected. As the proposal will be reduced in size and

include the lift well and store room only, the proposal is acceptable in respect to views.

#### 4.1.3 Water Management

The roofwater and runoff from the existing roof top terrace is currently directed to an on site detention tank. The proposal will occupy part of the existing roof top terrace and therefore the likely level of stormwater collected is to remain the same. The proposed stormwater collected on the housing over the lift access will be connected to the existing on site stormwater system. Accordingly, the proposal is acceptable in respect to water management.

#### 4.2 Streetscape and Site Context - General

The proposal is located in an R2 Low Density Residential Zone. The immediate context is relatively low to medium scale consisting of two storey dwelling houses and three storey residential flat buildings. However, the area is undergoing change, as reflected in a number of new two storey dwelling houses and dual occupancy developments. The proposed building works are consistent with the desired and future character of the area in terms of height, bulk and scale, and is generally appropriate in this context.

The proposed front setback of the ground floor enclosure is consistent with the variable setbacks of surrounding two storey buildings and in this regard the existing dwelling house will largely retain the same front setback and the existing residential streetscape will be retained and complemented.

The proposed changes to the front and rear elevations will change the dwelling house from brick face to rendered and painted which is not unlike other more recently constructed buildings in the street. In this regard, the proposed development includes appropriate use of articulation and modulation to the front and rear facades and is not likely to dominate the street or challenge the existing building fabric within Malua Street. The dwelling house contains sufficient elements including balconies, pedestrian entry at ground level, upper level voids and a range of materials which adds visual interest to the facades.

The design of the front and rear elevations will be in keeping with other more recently construction dwellings in the street and contains materials, colours and finishes to provide for a modern contemporary building. The proposed development will have a front door and living room window addressing the street, with the building's frontage and entry point being readily apparent from the street

The proposed development has been designed with a front balcony and living room windows that will provide casual surveillance of the street. Further, the proposed fences, landscaping, and other features have been sited so as to provide clearly defined public, semi public and private spaces. Accordingly, the proposal is acceptable in respect to streetscape and complies with Council's requirements in this regard.

#### 4.3.2 Private Open Space - Low density residential

The proposal will retain adequate landscaping at natural ground with capability to contain storm water runoff. The proposal will improve access to the roof top terrace making it more usable and accessible to the occupants of the dwelling house. As such, private open spaces are usable, accessible, clearly defined and will meet occupants requirements of privacy, solar access, outdoor activities and landscaping.

#### 4.4.2 Solar Access - Low and medium density residential

The adjoining dwelling to the south at No. 20 Malua Street is situated on a property that has an east-

west orientation and contains a recently constructed two storey dwelling house with detached cabana and swimming pool in the rear yard. The applicant has submitted shadow diagrams for 9 a.m., 12 p.m. and 3 p.m. on June 21. The shadow diagrams show that the existing two storey dwelling house on the subject site already overshadows the new dwelling house at No. 20 Malua Street being the adjoining property to the south. In this regard, the dwelling house on the subject site has existed for over four decades with a roof top terrace. The proposed roof top terrace structure will result in additional overshadowing, however, this will be limited to a depth of 0.6m and for a length of shadow being 5m.

This small increase in overshadowing is considered minor and not likely to detract from the residential amenity of the dwelling house on the adjoining property to the south.

The development has sought to minimise the adverse impact on the adjoining property, by the small dimensions of the roof top terrace structure. In this regard, the existing and proposed overshadowing of the adjoining property is inevitable due to its east-west orientation. The proposed roof top terrace structure observes the minimum side setbacks under Council's DCP and does not include any solid balustrade around the existing roof top terrace.

It should be noted that the residential subdivision pattern in the street is such that each of the allotments exhibit a predominantly east-west orientation and in this regard the provision of solar access to adjoining residential buildings directly to the south of each allotment is difficult to achieve.

Therefore, the development, which seeks to vary from the minimum standards of RDCP 2011, has demonstrated that the site constraints and orientation prohibit the achievement of these standards.

Accordingly, the proposal is not unreasonable in respect to overshadowing and is consistent with the objectives of this clause.

#### 4.4.5 Visual privacy

The proposed enclosure of the external stair at the rear has been designed and sited to minimise the overlooking of adjoining properties, incorporating translucent glazing adjacent to the side and rear boundary of the site. The proposal will allow the continued use of the existing roof top terrace with increased access via the lift.

The roof top terrace has existed for several decades with little or no complaints from the adjoining property owners and the current proposal is not likely to alter this situation. The proposed lift access to the roof top terrace is not likely to intensify the use of the terrace given the small dimension of the lift (1.4m x 1.4m) and that it will be used by the elderly occupants of the dwelling house. The proposal will improve access to the roof top terrace, however, the proposed roof top terrace housing is larger than the area of the lift well and adjacent store room. In this regard, a reduction in the size of the open structure adjacent to the lift and store room will reduce the area in breach of the height control, minimise impacts on the site and adjoining properties and retain existing views out over the site. As such, a condition shall be imposed reducing the size of the canopy on the existing roof top terrace.

Based on the above the proposal is not likely to result in any greater adverse amenity impact than the previous approval on the site. Accordingly, the proposed development provides a reasonable level of visual privacy between the adjoining properties and is acceptable in this regard.

#### 4.4.5 Acoustic privacy

There will be minimal adverse impact on the acoustic privacy of adjoining and surrounding properties as the proposal will merely improve access to the existing roof top terrace and will include translucent glazing over the rear stair which currently has no external privacy screens. The improved access to the

roof top terrace is not likely to result in any increase in noise emissions rather it will assist in allowing the continued access for the occupants of the site. Accordingly, regard has been given to the location and design of the roof top terrace structure and ancillary works in relation to privacy and to minimise noise intrusion on the amenity of the adjoining properties.

#### 4.6 Parking Provisions - Alterations and additions

The proposed alterations and additions to the existing dwelling house on the site will not increase the demand for on site car parking on the site. The dwelling house currently contains 2 on site car parking spaces and complies with the minimum parking requirements under Council's DCP 2011. Accordingly, the proposal complies with Council's requirements and is acceptable in respect to parking.

#### 5.1 Storey Height and Setbacks - Dwelling house and Attached Dwellings

The proposal will include a new curved wall within the balcony on the ground floor which will not alter the existing front setback of the existing dwelling house. In this regard, the dwelling house will retain the existing 6.155m front setback which is consistent with the prevailing street setback, and accordingly, compliant with DCP2011.

Council's DCP 2011 requires a 0.9m side and 3m rear setback to the ground floor of the dwelling house. The proposal involves the removal of the brick and re-enclosing of the external stairs at the rear. This enclosure will retain the 1m side setback and 5.8m setback to the rear boundary and therefore the proposal is consistent with setback requirements.

Further, the proposal is not considered to adversely impact upon the adjoining dwelling by way of overshadowing and overlooking, and will not significantly reduce the solar access, light and air received by the adjoining dwelling. Therefore, the proposed setbacks are consistent with the objectives of this control.

### **S.79C(1)(a)(iv) - Provisions of regulations**

Clauses 92-94 of the Regulations outline the matters to be considered in the assessment of a development application. Clause 92 requires the consent authority to consider the provisions of *AS 2601:1991 - Demolition of Structures* when demolition of a building is involved. In this regard a condition of consent is proposed to ensure compliance with the standard.

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

### **S.79C(1)(b) - Likely Impacts of Development**

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows:

#### **Natural Hazards**

The property is affected by flooding however, the proposed building works are not low enough on the site to cause any adverse impact on the direction of flood waters onto the existing dwelling house or adjoining properties.

#### **Construction**



The residential building works are to be constructed in masonry, timber studs, glazing and timber openings. There are no specific issues relating to the BCA in the proposed design. Site and safety measures to be implemented in accordance with conditions of consent and Workcover Authority guidelines/requirements.

## **General**

The proposed building works have been assessed against the relevant DCP and found to comply. Appropriate conditions of consent will be included in the consent in relation to lighting, materials and finishes.

### **S.79C(1)(c) - Suitability of the site**

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

### **S.79C(1)(d) - Public submissions**

The development has been notified in accordance with the provisions of Rockdale DCP 2011 and two submissions have been received in respect to the proposal. The issues raised in the submission are discussed below:

Issue 1: Excessive height of 12.5m, inconsistent with streetscape comprising 2 storey dwelling houses  
Comment: The proposal will include a housing over the lift having a height of 10.17m (RL 12.57 - NGL RL 2.4m) not 12.5m. This represents a variation of 1.67m which will be located in the centre of the dwelling house and only partially visible from the residential flat buildings opposite the site. The existing street contains several dwelling houses with larger roof top terrace structures and therefore a precedent has already been set for this street. This has been discussed in more detail previously in this report (please refer to the clause 4.6 variation earlier in this report).

Issue 2: Impact on and reduction of existing views  
Comment: This has been addressed previously in this report (please refer to section 4.1.1 of this report).

Issue 3: The scheme will set a precedent for the area  
Comment: A precedent has already been set with numerous previous approvals for roof top terrace structures within the locality. This has been addressed previously in this report.

Issue 4: The new pool pump is to be sound proofed and enclosed  
Comment: The pool and associated pump works do not form part of the current application. These were previously considered under DA-2016/218 which was approved on 29 February 2016.

Issue 5: Construction works to be carried out in a clean manner with no concrete falling over my fence  
Comment: The site will be managed by the licensed builder who is responsible for any building materials that fall over the fence onto the adjoining property. The registered builder working on the site is to use appropriate construction methods to ensure that the proposed development does not result in any damage to the dwellings on the adjoining properties. In this regard, mismanagement of the site

would be a civil matter between adjoining property owners.

Issue 6: The replacement window on the back external stairs should be dark glass to ensure my privacy - the wall was removed 5 months ago

Comment: The proposal will include the replacement walls around the external stair to the rear which include colonial bars with translucent glazing in between. As such, the proposal will retain adequate privacy between adjacent dwellings and is acceptable in this regard.

### **S.79C(1)(e) - Public interest**

The proposed development is considered satisfactory having regard to the objectives and requirements of Rockdale Local Environmental Plan 2011 and Development Control Plan 2011. Impacts on adjoining properties have been considered and addressed. As such it is considered that the proposed development is in the public interest.

### **S94A Fixed development consent levies**

Section 94A of the Environmental Planning and assessment Act 1979 (as amended) applies to the proposal. In this regard, a standard condition of development consent has not been imposed in respect to a levy applied under this section as the cost of works is less than the threshold under the Environmental Planning and Assessment Act 1979 (as amended).

### ***Civil Aviation Act, 1988***

The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the *Civil Aviation Act, 1988*.

### **Civil Aviation (Building Control) Regulations 1988**

The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

#### Section 6 Prohibition of the construction of buildings of more than 150 feet in height in certain areas

The proposed development is affected by the 45.72m Building Height Civil Aviation Regulations, however the proposed building height at 10.17m will have minimal impact upon the height requirement in the regulations.

## **Schedule 1 - Draft Conditions of consent**

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### **General Conditions**

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. The development must be implemented substantially in accordance with the plans listed below, the application form and on any supporting information received with the application, except as may be amended in red on the attached plans and by the

following conditions.

Plan/Dwg No.	Drawn by	Dated	Received by Council
Architectural plans, Roof Terrace and First Floor, Drawing No. CHR-015, Sheet No. A-01, Issue A,	Ted Olymbios	19/10/15	30/03/17
Architectural plans, Internal and External Modifications, Drawing No. CHR-015, Sheet No. A-02, Issue A,	Ted Olymbios	17/01/17	30/03/17

3. All new building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).
4. **A Construction Certificate must be obtained from Council or an Accredited Certifier prior to any building work commencing.**
5. Further alterations and/or additions to the subject building shall not be undertaken without first obtaining approval. This includes the fitting of any form of doors and/or walls.
6. The covered area to the roof top terrace shall be limited to the lift access and storeroom. No other permanent structures or roof covering are permitted on the rooftop.
7. This approval is not to be construed as permission to erect any structure on or near a boundary contrary to the provisions of the Dividing Fences Act.

### Development specific conditions

The following conditions are specific to the Development Application proposal.

8. The visible light reflectivity from building materials used on the façade of the building including the front balcony enclosure and the enclosure of the external stairs at the rear shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A statement demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for the relevant stage of works.
9. All existing and proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.
10. Colours and textures of materials used in the roof top terrace and ground floor building works shall be compatible with the existing building.

### Prior to issue of the construction certificate

The following conditions must be completed prior to the issue of the Construction Certificate.

11. The following fees shall be paid to Council prior to the issue of a Construction Certificate. If payment is made after the end of the financial year, the amount shall be adjusted in accordance with Council's adopted fees and charges.
  - i. A Footpath Reserve Restoration Deposit of \$1,670.00. This is to cover repair of any damages, or other works to be done by Council. This includes construction, removal, or repair as required to: kerb and guttering, existing or new driveways; paved areas and concrete footpaths. The deposit may be lodged with Council in the form of a Bank Guarantee (Any proposed Bank Guarantee must not have an expiry date). The deposit will not be returned by Council until works are completed and all damage is restored and all specified works are completed by Council.
  - ii. An environmental enforcement fee of 0.25% of the cost of the works.
  - iii. A Soil and Water Management Sign of \$18.00.
12. For work costing \$25,000 or more, a Long Service Leave Levy shall be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.
13. A certificate from a practising Structural Engineer shall be submitted prior to the issue of the construction certificate confirming that the existing building elements are structurally adequate to support all proposed additional loads.
14. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance or owner builder's permit in force in accordance with Part 6 of that Act, that such a contract or permit is in place.
15. Prior to the issue of the Construction Certificate, drainage design plans for the management of stormwater from the roof top terrace and details of the existing stormwater drainage system are to be submitted to the Principal Certifying Authority (or Council) for assessment and approval prior to the release of the Construction Certificate. Details of the drainage of the roof top terrace are to be submitted in the form of plans and information with the Construction Certificate.

### **Prior to commencement of works**

The following conditions must be completed prior to the commencement of works.

16. A sign must be erected at the front boundary of the property clearly indicating the Development Approval Number, description of work, builder's name, licence number and house number before commencement of work. If owner/builder, the Owner/Builder Permit Number must be displayed.
17. The site shall be secured by a 1800 mm (minimum) high temporary fence for the duration of the work. Gates shall be provided at the opening points.

### **During demolition / excavation / construction**

The following conditions must be complied with during demolition, excavation and or construction.

18. A copy of the Construction Certificate and the approved plans and specifications must be kept on the site at all times and be available to Council officers upon request.
19. Hours of construction shall be confined to between 7 am and 6.30 pm Mondays to Fridays, inclusive, and between 8 am and 3.30 pm Saturdays with no work being

carried out on Sundays and all public holidays.

20. Demolition operations shall not be conducted on the roadway or public footway or any other locations, which could lead to the discharge of materials into the stormwater drainage system.
21. All waste generated on site shall be disposed of in accordance with the submitted Waste Management Plan.
22. A Registered Surveyor's check survey certificate or compliance certificate shall be forwarded to the certifying authority detailing compliance with Council's approval at the following stage/s of construction:
  - i. Prior to construction of the ground floor and roof top terrace structure, building and boundary setbacks and verifying that the building works are to be constructed in the correct and approved locations.
  - ii. Prior to fixing of roof elements on the roof top terrace, wall and gutter setbacks are not less than that approved to the edges of the existing building and that the building has been constructed in the approved location.
  - iii. On completion of the building works showing the area of the ground floor works, the position of the curved opening and boundary setbacks and verifying that the building extension has been constructed in the approved location.
23. All demolition work shall be carried out in accordance with AS2601 – 2001: The Demolition of Structures and with the requirements of the WorkCover Authority of NSW.
24. The following conditions are necessary to ensure minimal impacts during construction:
  - i. Building, demolition and construction works not to cause stormwater pollution and being carried out in accordance with Section 2.8 of Council's Stormwater Pollution Control Code 1993. Pollutants such as concrete slurry, clay and soil shall not be washed from vehicles onto roadways, footways or into the stormwater system. Drains, gutters, roadways and access ways shall be maintained free of sediment. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.
  - ii. Stormwater from roof areas shall be linked via a temporary downpipe to an approved stormwater disposal system immediately after completion of the roof area.
  - iii. All disturbed areas shall be stabilised against erosion within 14 days of completion, and prior to removal of sediment controls.
  - iv. Building and demolition operations such as brickcutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
  - v. Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted. In addition stockpiles of topsoil, sand, aggregate, soil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.
  - vi. Wind blown dust from stockpile and construction activities shall be minimised by one or more of the following methods:
    - a) spraying water in dry windy weather
    - b) cover stockpiles

c) fabric fences

- vii. Access to the site shall be restricted to no more than two 3m driveways. Council's footpath shall be protected at all times. Within the site, provision of a minimum of 100mm coarse crushed rock is to be provided for a minimum length of 2 metres to remove mud from the tyres of construction vehicles.

An all weather drive system or a vehicle wheel wash, cattle grid, wheel shaker or other appropriate device, shall be installed prior to commencement of any site works or activities, to prevent mud and dirt leaving the site and being deposited on the street. Vehicular access is to be controlled so as to prevent tracking of sediment onto adjoining roadways, particularly during wet weather or when the site is muddy. Where any sediment is deposited on roadways it is to be removed by means other than washing and disposed of appropriately.

In addition builders / demolishers are required to erect a 1.5m high fence along the whole of the street alignment other than at the two openings. Such protection work, including fences, is to be constructed, positioned and maintained in a safe condition to the satisfaction of the Principal Certifying Authority, prior to the demolition of the existing structures and commencement of building operations.

- viii. Any noise generated during construction of the development shall not exceed limits specified in any relevant noise management policy prepared pursuant to the Protection of the Environment Operations Act, 1997 or exceed approved noise limits for the site.

### **Prior to issue of occupation certificate or commencement of use**

The following conditions must be complied with prior to issue of the Occupation Certificate or Commencement of Use.

25. An Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of the building.
26. Where Council's park/reserve is damaged as a result of building work or vehicular building traffic, this area shall be restored by Council at the applicant's expense. Repairs shall be completed prior to the issue of the Occupation Certificate.
27. All excess excavated material, demolition material, vegetative matter and builder's rubbish shall be removed to the Waste Disposal Depot or the Regional Tip prior to final inspection.  
Note: Burning on site is prohibited.
28. Prior to issue of any Occupation Certificate a registered plumber or other suitably qualified professional is to check the existing stormwater system for the building and shall provide a certificate stating that the system is in a satisfactory and is in good working condition. If the existing system, or (any element of the system), cannot be certified as being satisfactory and in good working condition then the substandard section of the existing system is to be renewed.

Where a Private Certifier issues an Occupation Certificate the Certificate mentioned in the above paragraph must be provided to Council.

## Development consent advice

- a. If Council is appointed as the Principal Certifying Authority (PCA), a fee shall be paid before a Construction Certificate is issued. If the fee is paid after the end of the financial year, it will be adjusted in accordance with Council's adopted fees and charges. The fees charged encompass all matters related to ensuring that the proposed development is carried out in accordance with the approved plans and any post inspection issues that may arise.
- b. All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- c. In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 2, the conditions of this approval prevail.

Ted Olymbios  
Suite 1, Level 2  
114 Pyrmont Bridge Road  
Annandale NSW 2038  
Email: -  
[tedolymbios1953@gmail.com](mailto:tedolymbios1953@gmail.com)  
Mobile No.: - 0402259920

4<sup>th</sup> May 2017

**Attention: - Michael Maloof - Senior Development Assessment Planner (Bayside Council)**

**VARIATION TO HEIGHT OF BUILDING –  
CLAUSE 4.6 OF THE RLEP: - EXCEPTION TO DEVELOPMENT STANDARDS WITHIN  
ROCKDALE LOCAL ENVIRONMENTAL PLAN 2011**

**Re. Subject: - DA-2017/321 - 18 Malua Street, Dolls Point NSW 2219**

**PREAMBLE**

The following justification has been prepared for the height variation to the existing two-storey brick house and approved trafficable concrete flat roof terrace (Application No: 697/81 – Dated 24/09/1981). A minor addition, of a sheltered new lift has been proposed.

The roof and associated roof framing has been included to weather protect the lift. Suitable bunds and floor wastes shall be appropriately installed to divert water from entering the lift shaft.

This proposed 5.5m x 5.5m lightweight open framed structure is centrally located on the existing approved roof terrace. It is intended that the shelter be setback 2.75m from the northern and southern sides of the building and then a further 1.05m to the boundaries. Similarly, the proposed shelter is to be setback 19.48m from the front boundary and 16.17m from the rear boundary, well away from neighbours. This will significantly minimise the visual impact to the direct neighbours.

The covered proportion of the lift/shelter with regard to the roof terrace of 292.90 sqm area is 30.25sqm and therefore 0.103: 1 of non-habitable open roof space. The impact to the streetscape and neighbourhood would be negligible, especially when viewed from street and ground level.

There is negligible change to existing views. If anything, the newly built two-storey residence at 3 Skinners Avenue, Dolls Point has now closed off the once small opening view of the bay, facing east. Having said that, nobody has exclusive rights to views

**ROCKDALE LOCAL ENVIRONMENTAL PLAN 2001 – PART4 – CLAUSE 4.6  
EXCEPTIONS TO DEVELOPMENT STANDARDS**

*The objectives of this clause are:*

- (a) To provide 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 certain circumstances.*



The intent of this minor inclusion of the lift and its protective roof covering is **not** to increase habitable floor space to the existing roof terrace, but rather to prevent rainwater and any cross flow of water from entering the lift shaft, and what might otherwise be an exposed lift to the elements. Furthermore, full infill panels of glass louvred windows on the southern side of the shelter have been incorporated to weather protect from driving wind and rain. Generally the bad weather comes from the south.

The initial owner's brief for including a lift to the overall internal refurbishment was due to the continuing physical leg impairment to the aging owner ((70), who finds it evermore compelling to use a lift for his daily essential activities to do normal chores from each floor, including access to the existing roof terrace. Family (mother, 91, and mother-in-law, 85 who find extreme difficulty to climb any stairs) would also benefit from this convenience.

Predominantly, the lift will aid everyone to transport goods and people in comfort to each level (from inside of the garage, up to all floors including the roof terrace), rather than take the two disjointed staircases. The main internal staircase gives access from ground floor to first floor only. The other tiled concrete staircase is externally located from the existing ground floor and first floor rear verandahs up to the existing roof terrace that are exposed to weather. It is beneficial to establish this direct aid facility under full cover.

We request that Council give positive consideration to permit the lift as per the above mentioned reasoning and consequently accept justification for exceeding the height limitation of 8.5m from natural ground level. A flat metal roof has been purposefully selected to keep the height to a minimum. The top of parapet height for the shelter is anticipated to be at AHD RL12.57. The permitted maximum height as measured from the existing ground level from the western side of the shelter is at AHD RL10.78. This aligns with the existing roof terrace balustrade height surround of the roof terrace. The height difference is 1.79m (refer to drawing A-02). The height variation is smaller towards the eastern end of the shelter.

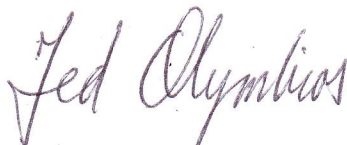
The extent of the variation is considered to be negligible given that the remainder of the roof terrace complies with prescribed height limit. Despite improving the architectural articulation to the front façade of the house by fixing solid infill panels to the height of the existing roof balustrade, it is important to note that visually in context to the building, the height variation does not impact to the streetscape because it is well setback from front façade.

## CONCLUSION

As previously discussed the proposal seeks a variation to the maximum height limit of 10.29m (being 1.79m above the permissible height) that is considered a minor variation in context to its location to impact and influence on the neighbours. The proposal satisfies the intent of the zone objectives and underlying built form controls (previous building approval, Application No: 697/81 – Dated 24/09/1981) results in improved access within the subject site and does not result in any adverse material planning impacts to adjoining properties, surrounding area or locality. In this regard, we ask for consideration to support the proposed variation.

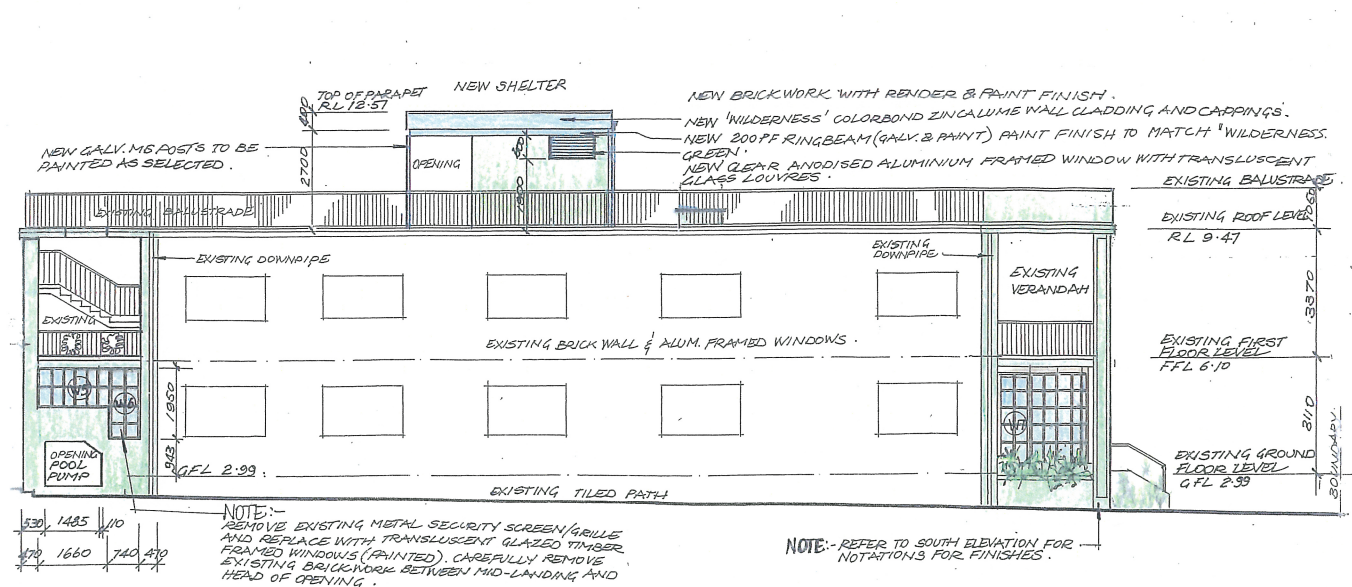
There are several examples within the near vicinity that may serve as precedence. Please find attached photos. Also, find as requested for your information, photos of existing roof terrace.

Sincerely,

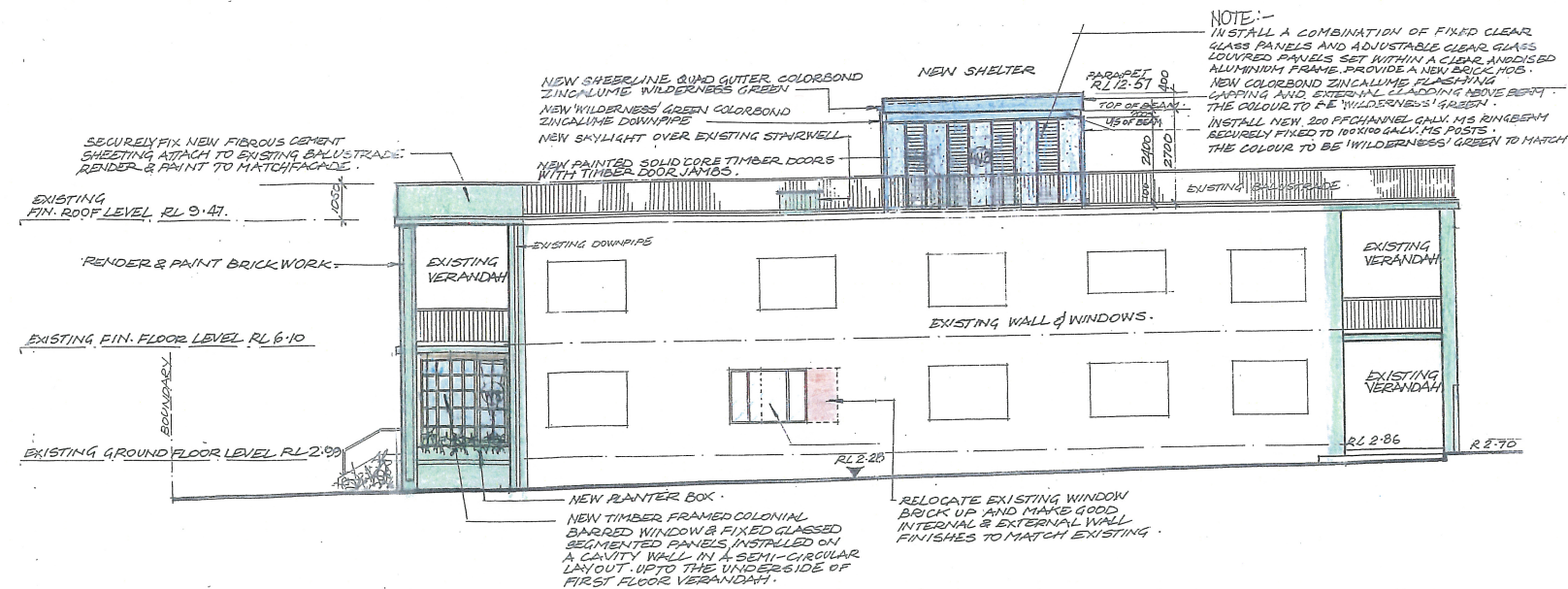


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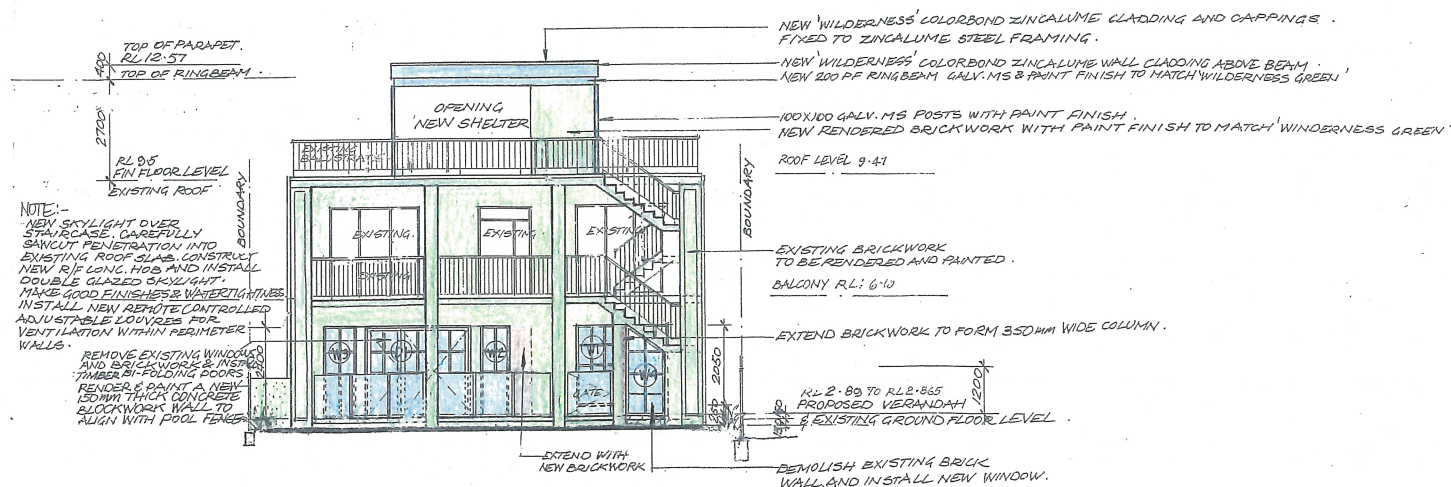




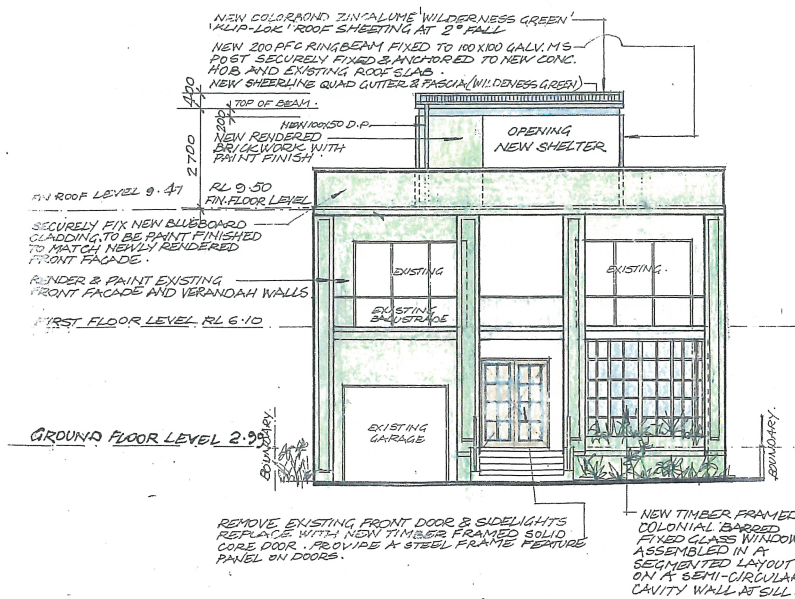
PROPOSED NORTH ELEVATION



PROPOSED SOUTH ELEVATION



PROPOSED EAST ELEVATION  
OF EXISTING HOUSE



PROPOSED WEST ELEVATION

ISSUE	DRAWING NUMBER	DESIGNED BY:-	SHEET NO	DATE	TED OLYMBIOS SUITE 1/12 114 PYRMONT BRIDGE ROAD, ANNANDALE NSW 2035 MOBILE:- 0402-259 920 ABN:- 638 728 33812	DRAWING:-  NOTIFICATION PLAN	CLIENT:- MR CHRIS & MRS PHOTINI CHRISTOFOROU  PROJECT AT:- 18 MALUA ST. DOLLS POINT NSW 2219
	CHR-015	CHECKED	DRAWN BY	SCALE			
				1:200			



