



**NORTH SYDNEY LOCAL PLANNING PANEL (NSLPP)
MEETING HELD ON 13/07/2023
SECTION 4.55 (1A) APPLICATION REPORT**

Attachments:

1. Architectural Plans
2. Modification Statement
3. Original Report

ADDRESS/WARD: 50 Blues Point Road, McMahons Point

APPLICATION No: DA296/22/3

PROPOSAL: To modify a consent to delete Condition C1

PLANS REF: N/A

OWNER: P Redmond

APPLICANT: P Redmond

AUTHOR: Miguel Rivera, Senior Assessment Officer

DATE OF REPORT: 26 June 2023

DATE LODGED: 29 May 2023

AMENDED: N/A

RECOMMENDATION: Approval

EXECUTIVE SUMMARY

This application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* seeks to modify development consent (DA296/22) for alterations and additions to an existing semi-detached dwelling at No. 50 Blues Point Road, McMahan Point.

The application is reported to the North Sydney Local Planning Panel (NSLPP) because the proposed modification involves deleting a condition imposed by the Panel in accordance with the directions of the NSW Minister for Planning. Council's notification of the proposal has attracted no submissions during the notification period.

The proposed modification to delete Condition C1 has been assessed against Council's planning requirements. The proposed modification will result in development that is substantially and materially the same as approved by DA296/22 and is considered to demonstrate sufficient planning and design merit when assessed against relevant provisions and controls under environmental planning instruments (including the North Sydney Local Environmental Plan 2013).

Condition C1 reads as follows:

C1 Design Changes – Southern Wall

The new southern wall that is situated in the lower ground, ground and first floor levels of the dwelling must have a minimum setback from the side (southern) boundary to align with the setback of the existing southern wall.

(Reason: To mitigate the impact on the adjoining property and maintain the view corridor from the public domain to the water.)

Prior to the lodgement of the subject application, Council received adequate information and correspondence from the Applicant's Architect, who provided sufficient detail pertaining to the new southern wall forming part of the approved alterations and additions. It is noted that this wall replaces an existing wall (to be demolished) that has a nil setback to the southern side and features a stepped form and a setback from this boundary. Any additional wall is setback from the southern side boundary and the proportion that is on the boundary replaces the current wall. Accordingly, the deletion of the imposed condition and the progression of the approved development as per the current stamped plans will not diminish the intent of the condition. Council is of the view that the design, as approved and shown on the plans, will have a reasonable and acceptable extent of impacts on the neighbouring property and will maintain the view corridor from the public domain to the foreshore/water. In light of the above, the proposed modification is found to be acceptable and the application is recommended for approval.

LOCATION MAP

† Property/Applicant ● Submitters - Properties Notified

DESCRIPTION OF PROPOSAL

The proposal involves the modification of consent DA296/22 to delete Condition C1.

Condition C1 reads as follows:

C1 *Design Changes – Southern Wall*

The new southern wall that is situated in the lower ground, ground and first floor levels of the dwelling must have a minimum setback from the side (southern) boundary to align with the setback of the existing southern wall.

(Reason: To mitigate the impact on the adjoining property and maintain the view corridor from the public domain to the water.)

The intention of this condition is as stated in the above reason. Further review of the approved development and the current building footprint on the site in-combination with information provided by the Applicant's Architect confirms the following aspects:

- There is an existing parapet wall that steps along the southern boundary. Concealed behind this wall are skylights and windows (refer to Figures 1 to 3). The rationale for the new wall is to remediate the maintenance and leaking issues associated with the existing parapet wall.
- The only portion of the new/proposed southern wall with a nil setback will be above the existing parapet wall, and steps back from Ground to First Floor (refer to Figure 4). This is a minor portion of the proposed curved wall that eliminates the need for a roof between the existing parapet and the proposed infill of the light-well and thus, solves the leaking issues and maintenance of existing downpipes, glazing and skylights (refer to Figure 4).
- The proposed wall will be set behind or within the same setback as the existing parapet wall. As such, all existing view corridors will be maintained (refer to Figure 5).



Figure 1: Existing southern elevation of subject dwelling with portion of new southern wall (shaded in blue) that will be close to the boundary and behind the current parapet wall



Figure 2: Existing southern elevation of subject dwelling with portion of new southern wall (shaded in blue) that will be close to the boundary and behind the current parapet wall



Figure 3: Western view of existing southern portion of subject dwelling with approved in-fill shaded in blue

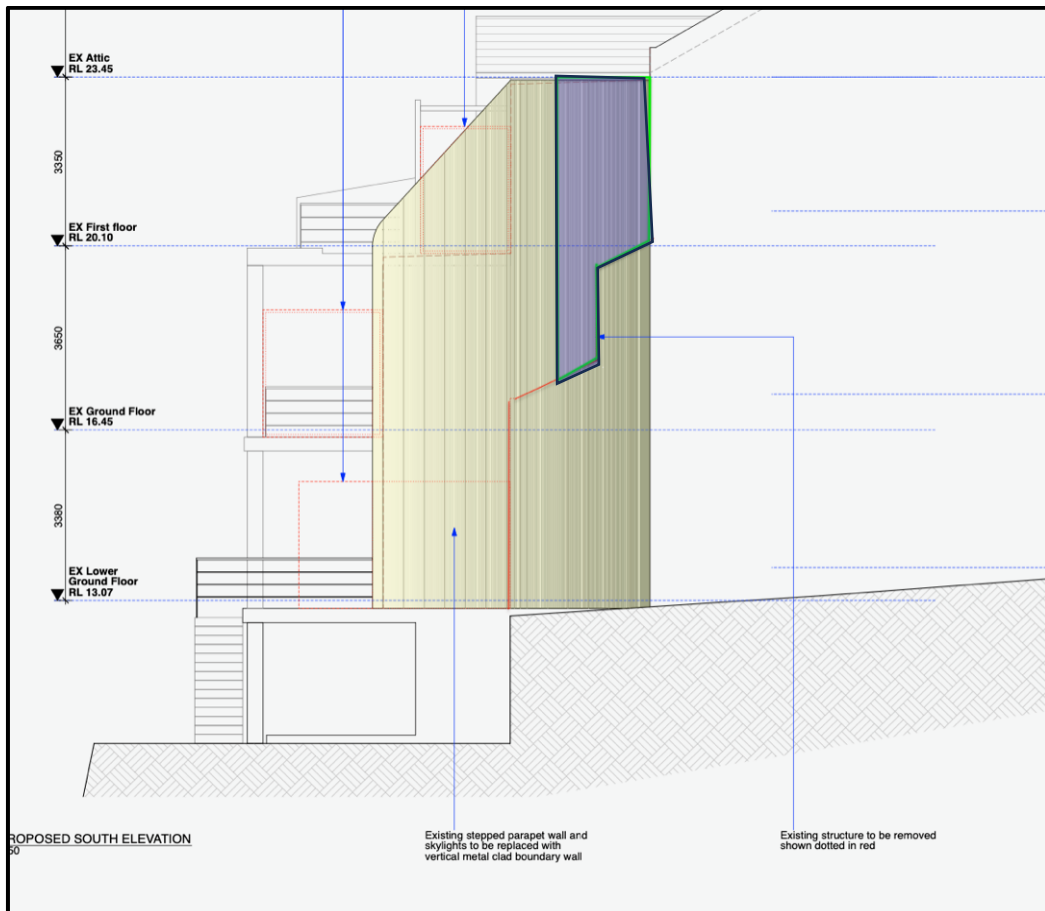


Figure 4: South elevation showing portion of the new/proposed southern wall with a nil setback (shaded in blue)

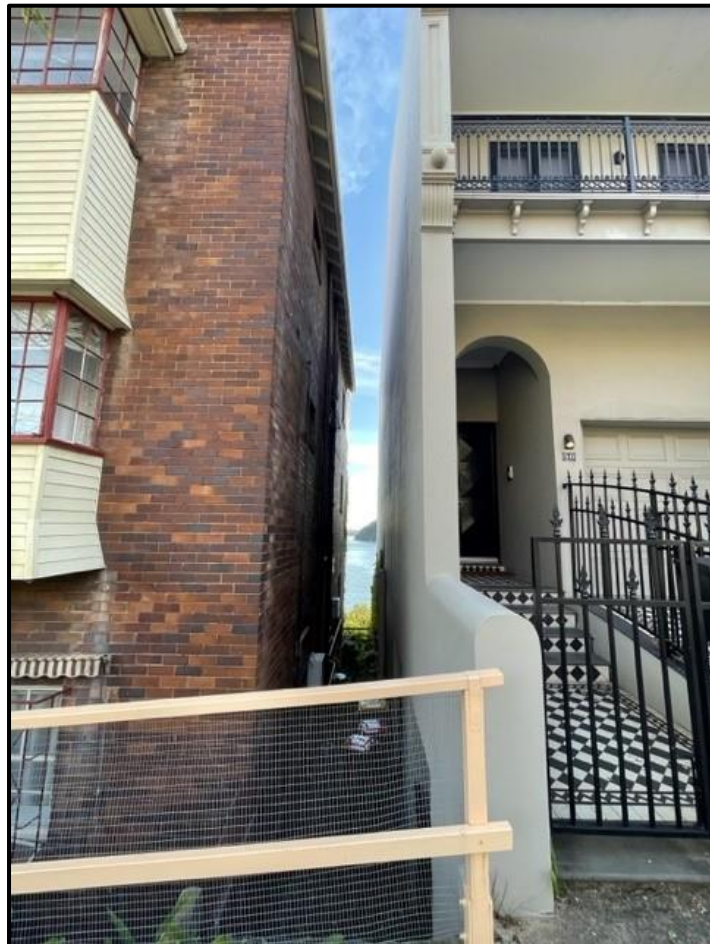


Figure 5: Existing view corridor (towards foreshore) and gap between buildings at No. 50 and 46 Blues Point Road

STATUTORY CONTROLS

Environmental Planning and Assessment Act 1979 (as amended)
Environmental Planning and Assessment Regulation 2021

North Sydney Local Environmental Plan 2013 (NSLEP 2013):

- Zoning – R3 – Medium Density Residential
- Clause 5.10 – Heritage conservation:
 - Item of heritage – No
 - In vicinity of heritage item – No
 - Conservation area – Yes, neutral item within McMahons Point South Conservation Area (CA14)
- Clause 6.9 – Limited development in foreshore area – Yes, complies – all works are within the dwelling footprint and are outside foreshore area and behind the foreshore building line (refer to Figure 10).
- Clause 6.10 – Earthworks – Yes, minor works for footings of extension.

State and regional environmental planning policies:

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Building Sustainability Index: BASIX) 2004

POLICY CONTROLS

North Sydney Local Infrastructure Contributions Plan 2020
North Sydney Development Control Plan 2013 (NSDCP 2013)

DESCRIPTION OF LOCALITY

The subject site identified as No. 50 Blues Point Road, McMahons Point, and is legally known as Lot 2 in DP 748831. The site is an irregular-shaped, narrow and elongated allotment with a splayed rear boundary, is located on the western side of Blues Point Road, and comprises a total area of 281.6m² (Refer to Figure 6).

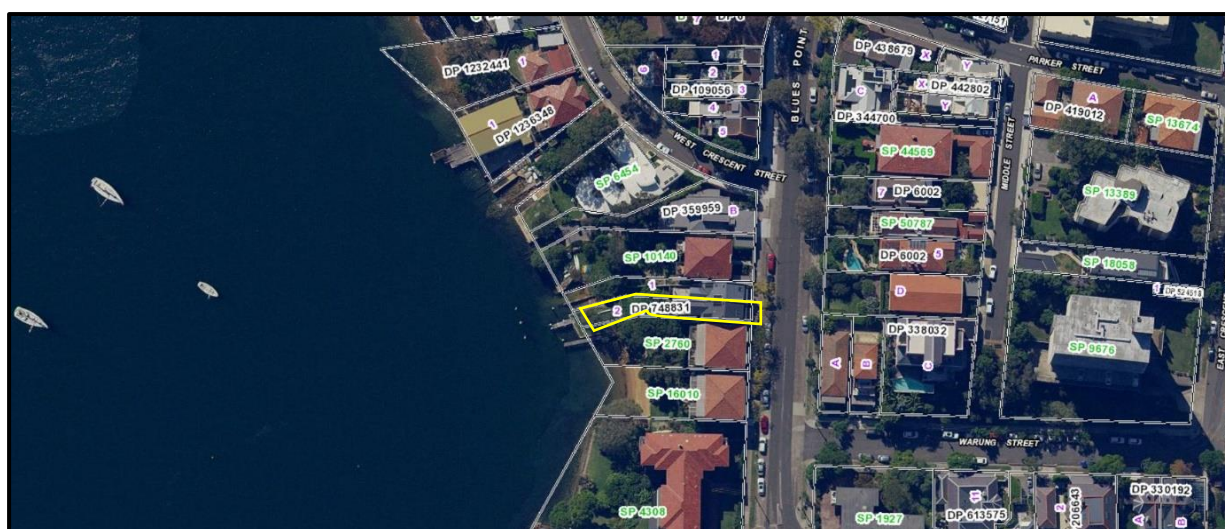


Figure 6: Aerial map showing subject site (outlined in yellow) and surrounding properties.
(Source: Spatial Information Exchange Maps)

The subject site is highly modified – with 4-storey semi-detached dwelling comprising much of the eastern portion and a shed, access stairs leading to private open space with lawn, and foreshore area occupying the steep western portion. The site currently has vehicular access off Blues Point Road and relatively steep and challenging topography, with a 14.66m fall from the front setback (Blues Point Road) to the rear boundary (foreshore).

RELEVANT HISTORY

Previous Applications – subject site

DA296/22

On 3 May 2023, the NSLPP granted consent for development application DA296/22. This application sought approval for alterations and additions to an existing semi-detached dwelling including two (2) new dormers and rear extension.

DA296/22/2

On 23 May 2023, Council rejected modification application DA296/22/2 as this application was incorrectly lodged as a Section 4.55(1) modification.

Current application

Date	Action
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29 May 2023	The subject modification application was lodged with Council.
9 June 2023	The application was notified in accordance with Council's Community Participation Plan. The notification period ended on 23 June 2023. No submissions were received during this time.

REFERRALS

No referrals to any internal and external specialists were required.

CONSIDERATION

Council is required to assess the Section 4.55 application under the *Environmental Planning and Assessment Act 1979* (as amended) having regard to the following matters:

Section 4.55

(1A) *Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—*

- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Comments are provided on the above matters in Section 4.55(1A) as follows:

- (a) *it is satisfied that the proposed modification is of minimal environmental impact.*

The proposed modification involves deletion of Condition C1. The proposed deletion will not be visible from public domain and will not result in any additional impacts including those relating to

amenity, overshadowing and traffic, compared to the approved development.

It is noted that the approved southern wall replaces an existing wall (to be demolished) that has a nil setback to the southern side and features a stepped form and a setback from this boundary. Any additional wall is setback from the southern side boundary and the proportion that is on the boundary replaces the current wall. Accordingly, the deletion of the imposed condition will not diminish the intent of the condition. The design, as approved and shown on the stamped plans, will have a reasonable and acceptable extent of impacts on the neighbouring property and will retain the gap between the buildings at No. 50 and 46 Blues Point Road. As such, the view corridor from the public domain to the foreshore/water will be maintained. In light of the above, the proposed modification will result in minimal environmental impacts and is found to be an acceptable outcome.

- (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).*

The nature and location of the proposed modification are such that the proposed modification will result in substantially the same development as the originally approved development. The proposed modification does not alter the approved use (as alterations and additions to a semi-detached dwelling).

- (c) *it has notified the application in accordance with—*
- (i) *the regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent.*

The application was notified in accordance with the North Sydney Community Participation Plan. No submissions were received during the notification period.

- (d) *(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

See above response to (c).

Pursuant to Section 4.55(3) in the *Environmental Planning and Assessment Act 1979* (as amended) the consent authority must also consider the relevant matters that need to be addressed under Section 4.15 (Evaluation) of the Act and the reasons given by the consent authority for the granting of the consent that is sought to be modified.

The reasons for originally granting consent for the approved development (DA47/20) were as follows:

The Panel considers on balance the addition of a dormer will provide internal amenity while not unreasonably impacting on the heritage conservation area for this neutral item that has been significantly altered.

The proposed modification retains the approved land use as a semi-detached residence and is of a

minor nature, such that compliance against the relevant provisions and controls under the NSLEP 2013 and NSDCP 2013 remain unchanged and any environmental impacts will be minor and identical to the approved development.

The proposed modification does not result in any changes to the approved dormers and will result in an appropriate response to the site constraints and setting within a foreshore environment and a conservation area.

Given the above considerations the above reasons for granting consent would remain satisfied if the modification was approved. As such, the provisions of Section 4.55(3) are satisfied by the subject modification.

MATTERS FOR CONSIDERATION UNDER SECTION 4.15 (Evaluation)

State Planning Policies (SEPP's)

The proposed modification will not result in any changes to the approved development such that compliance against the relevant provisions and controls under any SEPP's are altered. The proposed modification has been assessed with regard to the respective SEPP's and has been considered acceptable.

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

Aims of Plan

The proposal has been assessed against the aims of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) and is considered to be satisfactory with respect to the relevant aims of the Plan.

Permissibility

The site is zoned R3 – Medium Density Residential under the provisions of the North Sydney Local Environmental Plan 2013. Development for the purposes of alterations and additions to a *semi-detached dwelling* is permissible with the consent of Council in the R3 – Medium Density Residential zone.

Objectives of the zone

The objectives of the R3 – Low Density Residential zone are stated below:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*

- *To ensure that a high level of residential amenity is achieved and maintained.*

The proposed modification will result in a built form that is considered acceptable and contextually appropriate, with regard to the objectives of the R3 – Medium Density Residential Zone and the streetscape and setting of the site. The proposed modification is of a minor nature and will not result in a development that would unreasonably compromise the amenity of the surrounding area.

The proposal generally achieves compliance with applicable planning provisions and controls under Council policy and will result in the retention of medium density residential housing whilst improving the existing building with regard to additional functional areas and amenities for future occupants.

Principal Development Standards

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

Compliance Table

North Sydney Local Environmental Plan 2013				
Site Area – 281.6m ²	Approved	Proposed	Control	Complies
Clause 4.1 – Subdivision lot size	No change.	No change.	Min. 230m ²	N/A No subdivision is proposed.
Clause 4.3 – Height of buildings	Existing roof: 13.83m Front dormer: 12.48m Rear dormer: 12.98m	No change.	Max. 8.5m	No Proposed modification involves no changes to the approved height variation.

Clause 4.3 – Height of Buildings

The proposed modification involves no changes to the approved height variations of the development. As such it maintains these variations. The merits of the height departure have been presented and detailed in the NSLPP report for 5 May 2023.

Part 5 – Miscellaneous Provisions

Clause 5.10 – Heritage Conservation

The subject site is a neutral item and is within the McMahons Point South Conservation Area (CA14), which are listed under Schedule 5 of the NSLEP 2013. The following planning objectives apply to the proposed development:

- to conserve the environmental heritage of North Sydney,*
- to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- to conserve archaeological sites,*
- to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The proposed modification will result in a development that is acceptable and satisfies the heritage conservation provisions under Clause 5.10.

Part 6 – Additional Local Provisions

The proposed modification does not trigger any assessment against provisions under Part 6.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

The proposed modification has been assessed against the relevant objectives and controls under the NSDCP 2013. An assessment has been carried out below:

Part B, Section 1: Residential Development

North Sydney Development Control Plan 2013 Part B Section 1 – Residential Development		
Control	Compliance	Comments
1.2 Social amenity		
Maintaining residential accommodation	Yes	Retains existing semi-detached dwelling use.
1.3 Environmental criteria		
Views	Yes	The subject site and surrounds benefit from significant, important and iconic views of the foreshore and city skyline. The location and nature of the approved development are such that any views and vistas are not substantially impacted. A detailed assessment was provided to the NSLPP in the report for the meeting on 5 May 2023. It is noted that the Panel imposed Condition C1 to ensure the current view and outlook to the foreshore facilitated by the gap between the buildings at No. 50 and 46 Blues Point Road. The proposed deletion of this imposed condition will not result in significant view loss or impacts on outlook. The gap between the buildings will be retained should the deletion of this condition be supported.
Solar access	Yes	The performance of the approved development in terms of solar access and the potential overshadowing impacts on neighbouring properties were assessed as per the report for the meeting on May 2023. The proposed deletion of Condition C1 will not result in any substantial overshadowing impacts on adjoining properties.
1.4 Quality built form		
Context	Yes	The design, aesthetic, presentation and built form of the approved development are generally unchanged by the proposed modification to delete Condition C1. The proposal will result in a development that is appropriate and in context with the surrounding area and immediate streetscape.
Siting	Yes	The proposal will ensure the current front, rear and side setbacks of the existing semi-detached dwelling are retained. The additional step proposed for the southern wall is acceptable and

		will provide adequate visual break-up of new wall.
Setback – side	Yes	The proposed deletion of Condition C1 enables the approved development to be built in accordance with the design as illustrated in the approved plans. The side setbacks have been considered acceptable as these reflect the current development and are in-context with the immediate area and the side setbacks of current residences.
Form, massing and scale	Yes	The proposed modification will result in a form, density and scale that are comparable to surrounding properties and will therefore, not detract from the prevailing architectural language and streetscape character of the vicinity.
Built form character	Yes	As mentioned above, the proposed modification will result in a development that has massing, scale and design that are in keeping with the surrounding area.

CHARACTER STATEMENTS – PART C

Section 9 – Lavender Bay Planning Area

Section 9.8 – McMahons Point South Conservation Area

The proposed modification will result in a development that aligns with the desired future character and built form of the McMahons Point South Conservation Area. As such, the relevant provisions under Section 9.8 are considered to be satisfied by the proposal.

LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN

The subject modification application has been assessed against the North Sydney Local Infrastructure Contribution Plan 2020 and remains subject to the same payment of contributions towards the provision of local infrastructure as per the approved development. Therefore, any conditions in the current consent relating to payment of contributions are relevant and are recommended to be imposed and retained.

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	YES
2. Policy Controls	YES
3. Design in relation to existing building and natural environment	YES
4. Landscaping/Open Space Provision	YES
5. Traffic generation and Carparking provision	YES
6. Loading and Servicing facilities	YES
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	YES

8.	Site Management Issues	YES
9.	All relevant S4.15 considerations of <i>Environmental Planning and Assessment Act 1979</i>	YES

CONCLUSION & REASONS

The proposal involves the modification of a consent that only involves the deletion of Condition C1. The purpose of this deletion is to facilitate the construction of the approved works in accordance with the stamped plans and thus as originally submitted. The Applicant provided sufficient information to confirm that the removal of Condition C1 will result in a development that generates minimal impacts on adjoining properties and that maintains the view corridor from the public domain to the water. Council is satisfied that the deletion of Condition C1 will not diminish the intent and reasoning behind the imposed condition, as described in this report.

The merits of the proposed modification and an assessment of this modification against relevant provisions and controls under environmental planning instruments (including the NSLEP 2013) have been detailed throughout this report. In summary, the proposed modification is considered acceptable and supportable, satisfying the above requirements and the provisions under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Accordingly, it is recommended that the following amendments to the consent are supported and approved:

- Delete Condition C1.

RECOMMENDATION

PURSUANT TO SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

THAT the North Sydney Local Planning Panel exercising the functions of Council approve the modification of development consent DA296/22 dated 3 May 2023 in respect of a proposal for alterations and additions to an existing semi-detached dwelling at No. 50 Blues Point Road, McMahons Point under the provisions of Section 4.55 of the *Environmental Planning and Assessment Act 1979* only insofar as will provide for the following:

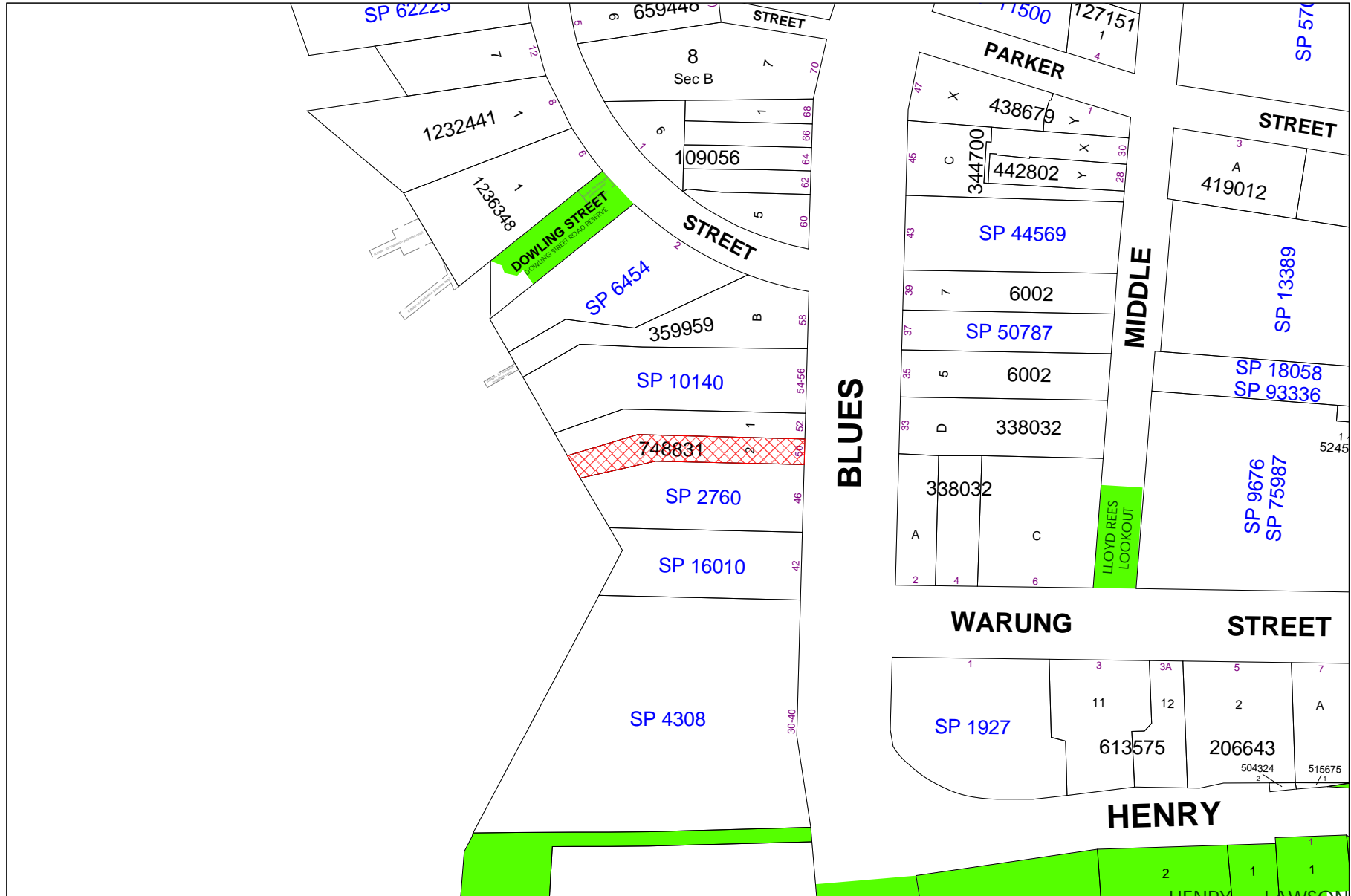
- 1. To delete Condition C1 – Design Changes – Southern Wall**

MIGUEL RIVERA
SENIOR ASSESSMENT OFFICER

DAVID HOY
TEAM LEADER (ASSESSMENTS)

STEPHEN BEATTIE
DEVELOPMENT SERVICES

LOCATION MAP



□ Property/Applicant ● Submitters - Properties Notified

