



**NSLPP MEETING HELD ON 06/09/23  
SECTION 4.55 (1a) APPLICATION REPORT**

**Attachments:**

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

**ADDRESS/WARD:** 30 Myrtle Street, North Sydney

**APPLICATION No:** DA279/21/2

**PROPOSAL:** To modify a consent to delete Condition C14(c) pertaining to the east-facing windows in the first floor master bedroom and to amend Condition C14(d) pertaining to the reduced balcony width, and extension of approved sliding doors, addition of two (2) skylights on the ground floor and deletion of window (W-03) in first floor bedroom

**PLANS REF:**

Plan No.	Issue	Title	Drawn by	Received
S4.55-01	A	Site Plan	M Halmos – Architect	4 Aug 2023
S4.55-05	A	Ground Floor Plan	M Halmos – Architect	17 May 2023
S4.55-06	B	First Floor Plan	M Halmos – Architect	17 May 2023
S4.55-07	A	Roof Plan	M Halmos – Architect	17 May 2023
S4.55-08	A	Sections S-01 and S-03	M Halmos – Architect	17 May 2023
S4.55-09	A	Section S-02	M Halmos – Architect	17 May 2023
S4.55-10	A	North and West Elevations	M Halmos – Architect	17 May 2023
S4.55-11	B	South and East Elevations	M Halmos – Architect	4 Aug 2023

**OWNER:** S Pohlen

**APPLICANT:** M Halmons

**AUTHOR:** Miguel Rivera, A/Team Leader (Assessments)

**DATE OF REPORT:** 9 August 2023

**DATE LODGED:** 1 June 2023

**AMENDED:** 4 August 2023

**RECOMMENDATION:** Approval

## EXECUTIVE SUMMARY

This application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* seeks to modify development consent (DA279/21) for alterations and additions to an existing semi-detached dwelling at No. 30 Myrtle Street, North Sydney.

**The application is reported to the North Sydney Local Planning Panel (NSLPP) because the proposed modification involves making changes to a conditional requirement imposed by the Panel in accordance with the directions of the NSW Minister for Planning. Council's notification of the proposal has attracted a single submission during the notification period. This submission raised privacy concerns associated with the first floor balcony.**

The proposed modification to delete Condition C14(c), amend Condition C14(d), facilitate the extension of the approved sliding doors and provision of two (2) new skylights on the ground floor, 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 DA279/21 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).

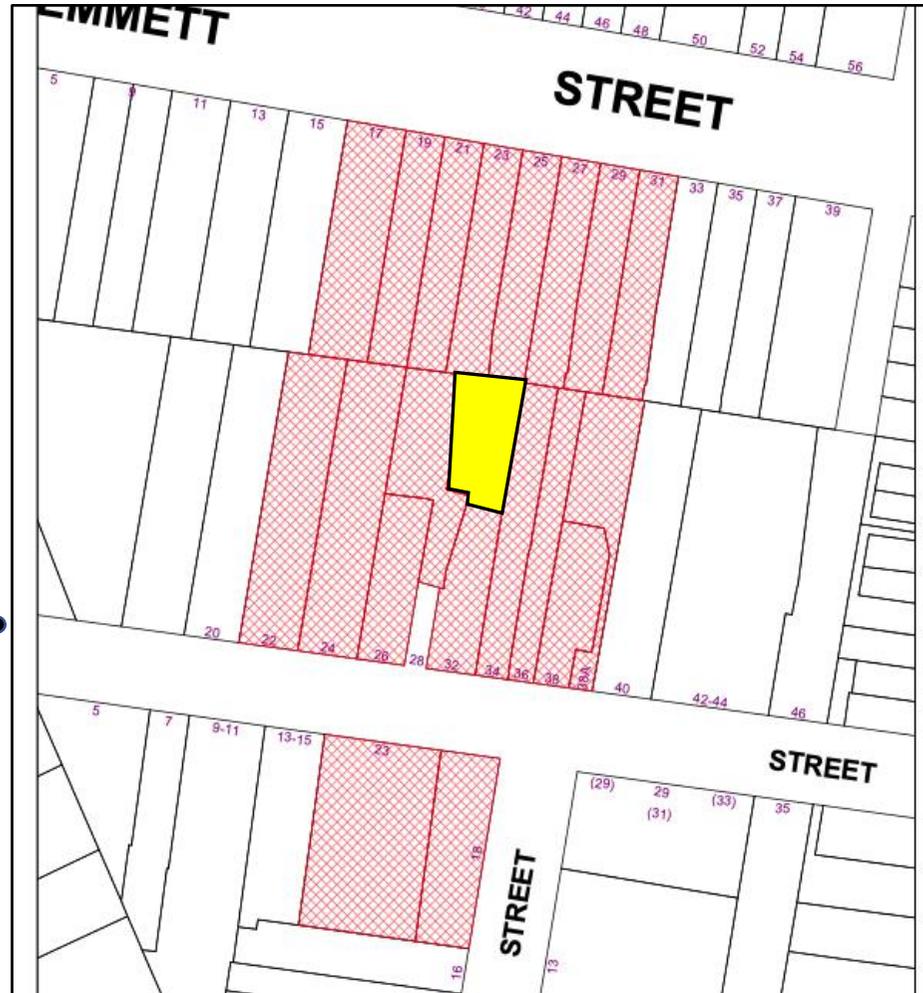
Of particular note are the specific changes to Condition C14, which relate to removing the requirement to have highlight windows along the eastern elevation of the first floor bedroom (as recommended by Council and endorsed by the NSLPP) and removing the requirement to limit the width of the balcony of the first floor bedroom (as created and imposed by the NSLPP). Both requirements intend on minimising privacy impacts and overlooking from the first floor bedroom and balcony. Council is satisfied that following a detailed review of potential impacts on surrounding and neighbouring properties, the proposed changes to Condition C14 are considered satisfactory and would result in an acceptable level of residential amenity and shared privacy that would be reasonably anticipated for in a highly urbanised residential area in which semi-detached and attached terrace housing and residential flat buildings commonly occur.

The proposed alterations to extend the glass sliding doors in the living space and the addition of two (2) new skylights in bedroom 3 in the ground floor will have negligible impacts on the streetscape character and quality of the conservation area and immediate locality as the subject site is situated well away from public domain including Myrtle Street. Consequently, these elements would not be highly visible.

Given the above considerations, Council is of the view that the proposed modification is acceptable and supportable, and accordingly, the application is recommended for approval.

**LOCATION MAP**

† Property/Applicant ● Submitters ☒ Properties Notified



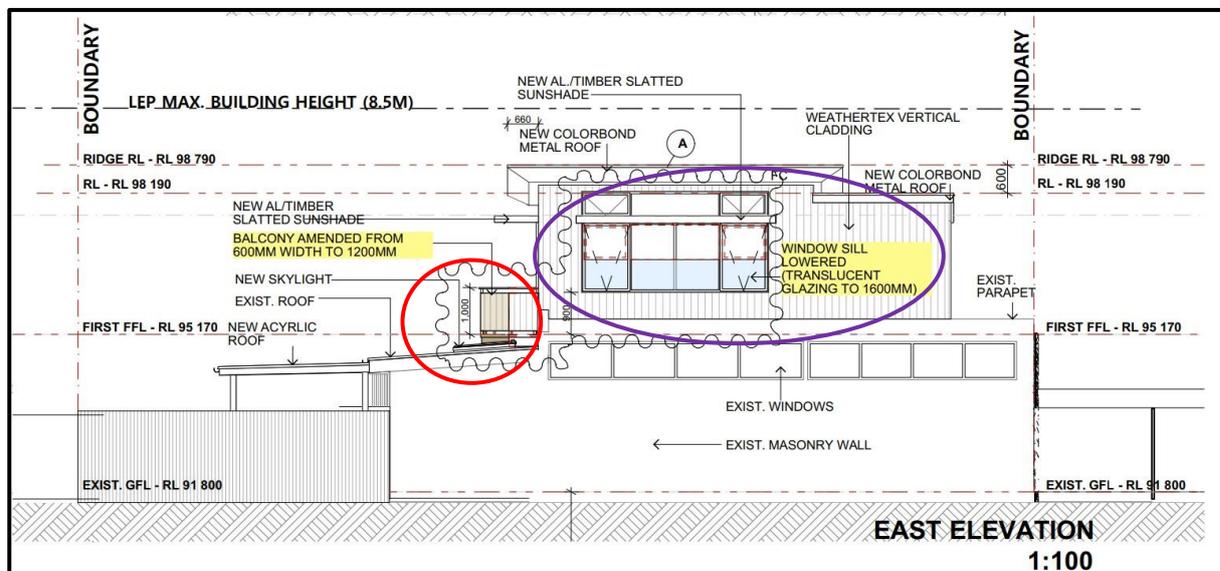
## DESCRIPTION OF PROPOSAL

The proposal involves the modification of consent DA279/21 comprising the following components:

- Deleting the requirement contained in Condition C14(c), which reads:

*Change the windows in the main bedroom east facing elevation to a highlight window with a minimum sill height of 1.6m above finished floor level.*

Council imposed this conditional requirement to minimise potential overlooking from the master bedroom. It is noted that this space will receive ample daylight and ventilation through windows and openings facing west and south. Modifying the elongated east-facing windows to highlight windows would not substantially affect the amenity of this space. Notwithstanding, the Applicant proposed to delete this requirement and instead, impose amendments to these windows to comprise frosted glass to 1.6m sill height (measured from the finished floor level) and that all openable window panels (on the eastern side) would be awning-style, with a restricted opening of 125mm (refer to Figure 1).



**Figure 1: Proposed east elevation showing changes to balcony (circled in red) and windows (circled in purple) in master bedroom (first floor)**

- Modifying the requirement contained in Condition C14(d), which reads:

*Modify the first floor bedroom balcony to have a depth of 600mm and balustrade with a solid form that is designed to reasonably maintain amenity for adjoining properties.*

It is noted that Council imposed a conditional requirement to have a solid form balustrade for the balcony in order to minimise potential overlooking from the master bedroom and balcony area. The NSLPP on 2 February 2022 amended this conditional requirement and imposed a further change to the balcony to reduce its width (depth) from 1.2m to 0.6m (600mm). The subject application seek approval to amend Condition C14(d) and delete the requirement imposed by the NSLPP that reduced the balcony depth (refer to Figures 1 and 2).

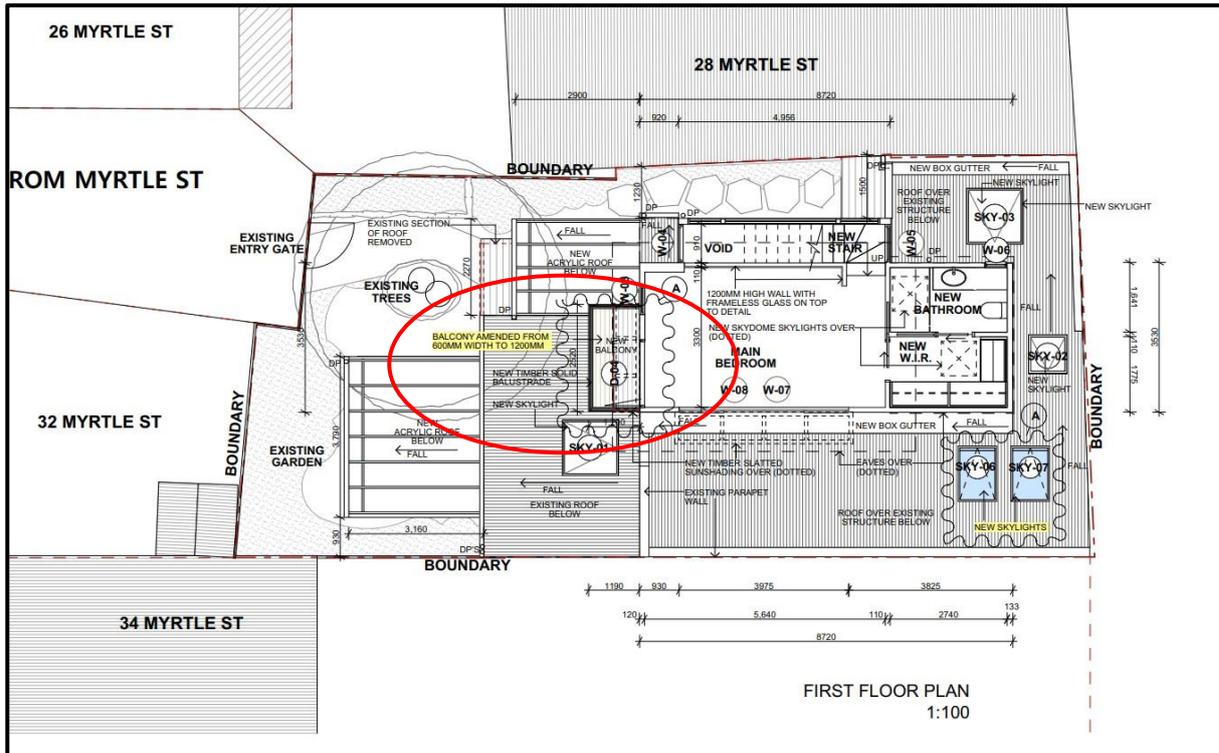


Figure 2: Proposed first floor plan showing balcony extending from 0.6m to 1.2m (in depth) (circled in red)

- Extend the approved sliding doors D-01 and D-02 to the corner, within the living room (refer to Figures 3, 4 and 6).



Figure 3: Approved south elevation – additional sliding door incorporated in area (circled in green)

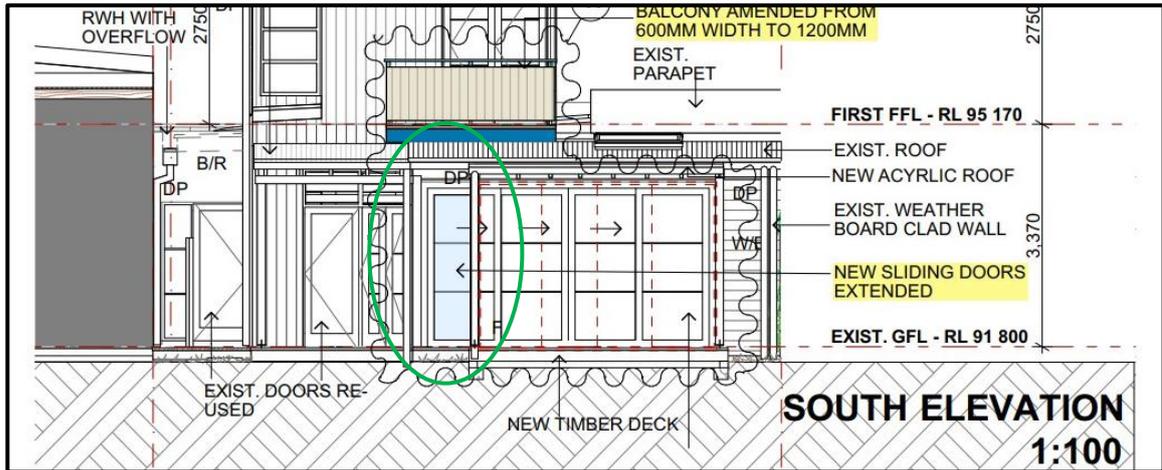


Figure 4: Proposed south elevation – additional sliding door incorporated in area (circled in green)

- Installation of two (2) skylights above the approved bedroom 3/study (refer to Figures 5 and 6).

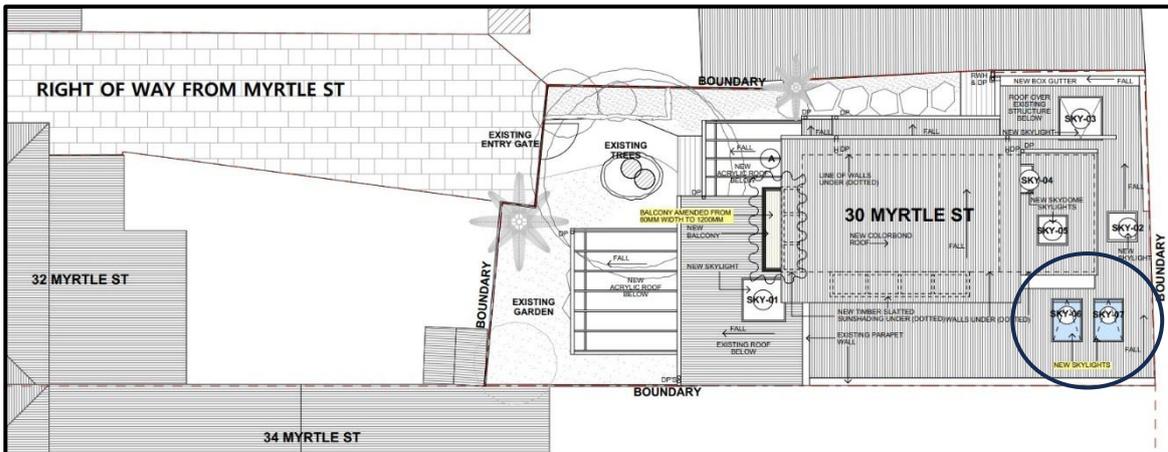


Figure 5: Site plan showing new skylights (circled in dark blue)

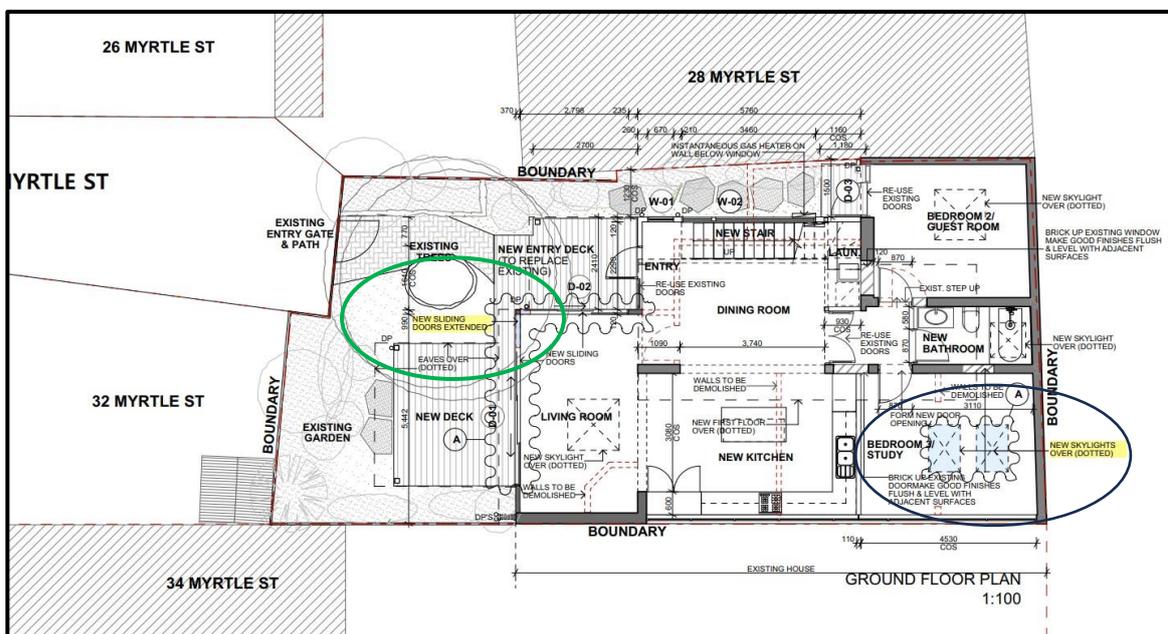


Figure 6: Ground floor plan showing additional sliding door (circled in green) and new skylights (circled in dark blue)

- Deletion of small south-facing window (reference W-03) and re-location of balcony doors (reference D-04) in master bedroom (first floor) (refer to Figure 7).

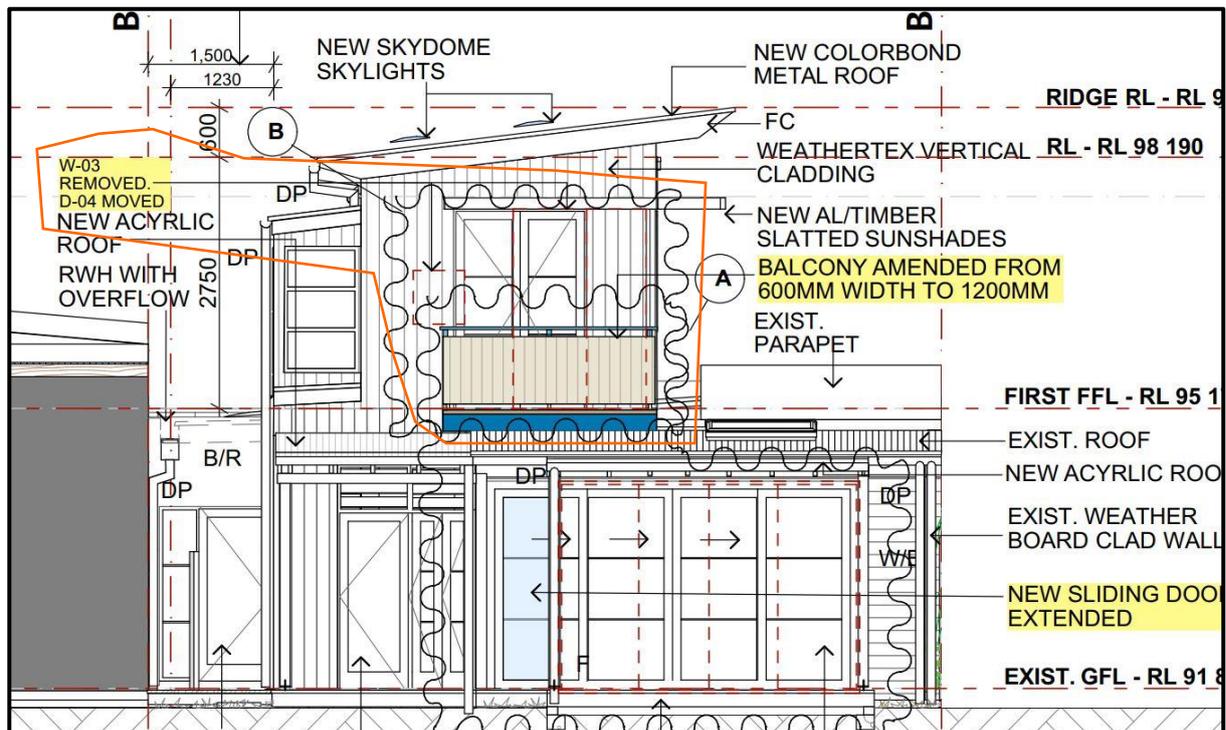


Figure 7: South elevation showing deletion of window and relocated balcony door (outlined in orange)

## 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 – R2 – Low Density Residential
- Clause 5.10 – Heritage conservation:
  - Item of heritage – No
  - In vicinity of heritage item – No
  - Conservation area – Yes, neutral item within the Holtermann Estate C Conservation Area (CA09)
- Clause 6.9 – Limited development in foreshore area – Not applicable
- Clause 6.10 – Earthworks – Not applicable

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)

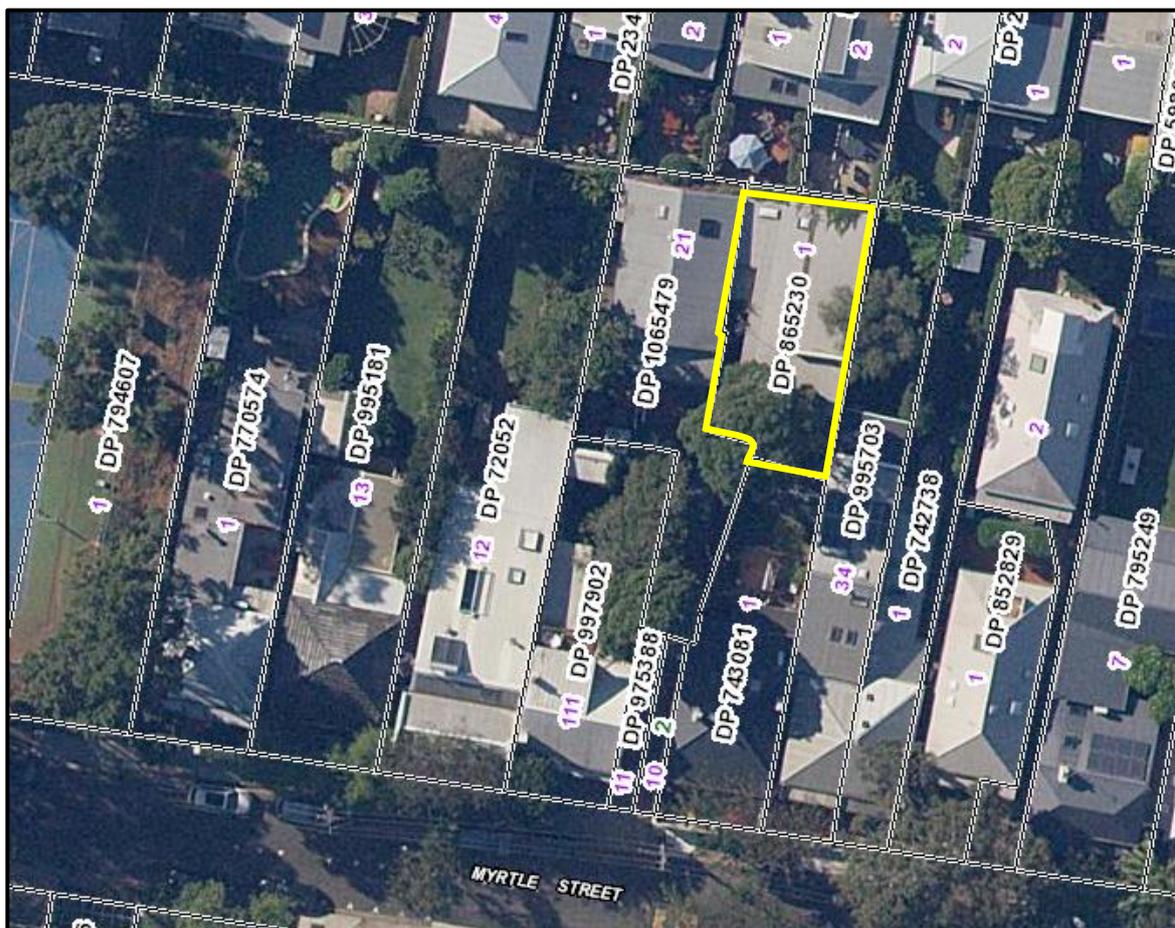
## DESCRIPTION OF LOCALITY

The subject site is commonly identified as No.30 Myrtle Street, North Sydney, and is legally described as Lot 1 in DP 865230. It is an irregular shaped, internal allotment, located on the northern side of Myrtle Street (refer to Figure 8). The site is currently under construction with the approved demolition works to the semi-attached dwelling having commenced (refer to Figures 9 to 12).

The design of the existing dwelling and its siting are unusual in immediate locality and conservation area, which generally comprise street-front lots with pitched roof cottages addressing the street and private open spaces situated at the rear. The only premises that has the same characteristic is the adjoining lot and semi-detached residence at No. 28 Myrtle Street. The site does not have vehicular access or off-street parking; however, pedestrian access off Myrtle Street is via a right of way carriageway easement through Lots 10 and 11 in DP 975388 and No. 28 Myrtle Street. The site has a south-north orientation.

The site, being an internal lot, is adjoined by several residences including:

- Front/south-adjoining: No. 32 Myrtle Street (semi-detached dwelling);
- Rear/north-adjoining: No. 23 and 25 Emmett Street (semi-detached dwellings);
- East-adjoining: No. 34 Myrtle Street (semi-detached dwelling); and
- West-adjoining: No. 28 Myrtle Street (semi-detached dwelling).



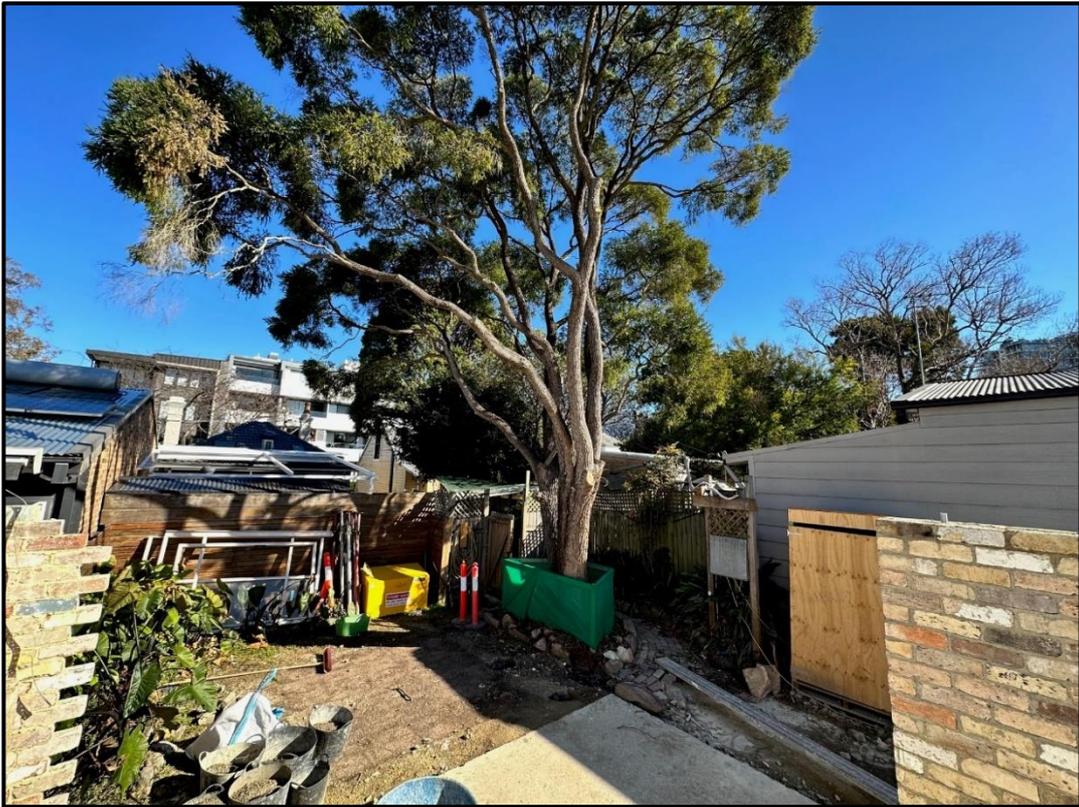
**Figure 8: Aerial Photo showing subject site (outlined in yellow) and surrounding properties  
(Source: SIX Maps)**



**Figure 9: View of the site – to the northern boundary**



**Figure 10: Existing area for bedroom 3/study – new skylights to be installed in this space**



**Figure 11: South-western view within subject site – towards No. 32 Myrtle Street**



**Figure 12: Elevated view – towards east-adjacent neighbour at No. 34 Myrtle Street**

## RELEVANT HISTORY

### Previous Applications – subject site

#### **DA279/21**

On 2 February 2022, the NSLPP granted consent for development application DA279/21. This application sought approval for alterations and additions to an existing semi-detached dwelling including first floor addition with balcony.

Council imposed a conditional requirement to have a solid form balustrade for the balcony in order to minimise potential overlooking from the master bedroom and balcony area – refer to Condition C14(d). In determining the application the NSLPP made amendments to this conditional requirement to further minimise privacy impacts and usability of the balcony by reducing the balcony width (depth) from 1.2m to 0.6m (600mm). The Panel's reason for the imposed condition was as follows:

*To ensure an adequate level of amenity and privacy is provided to adjoining properties.*

### Current application

Date	Action
1 June 2023	The subject modification application was lodged with Council.
16 June 2023	The application was notified in accordance with Council's Community Participation Plan. The notification period ended on 30 June 2023. One submission was received during this time.
26 July 2023	A site inspection was undertaken by Council's Assessing Officer.
3 August 2023	Correspondence was sent to the Applicant via the Planning Portal seeking clarification on the removal of window (W-03) in the first floor bedroom shown on the elevations but not on the floor plans.
4 August 2023	A revised set of plans was provided via the Planning Portal to remove the inconsistency and to confirm the intended removal of window (W-03) and relocation of balcony doors (D-04).
4 August 2023	A site inspection at the objector's premises was undertaken by Council staff.

## REFERRALS

No referrals to any internal and external specialists were required.

## SUBMISSIONS

The application was notified to adjoining properties in accordance with Council's Community Participation Plan between 16 and 30 June 2023. A single submission was received during this period. The key issues raised in this submission was as follows:

- Tree pruning
- Privacy impacts – first floor balcony

The above issues have been reviewed and addressed in later sections of this report.

## **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:

### **2) 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 amendments to certain requirements in Condition C14 and provision of minor elements to the approved dwelling alterations and additions that encompass an additional panel to extend the glass sliding doors in the living room (ground floor) and new skylights in bedroom 3/study (ground floor). As a consequence of the subject site being an internal lot and given the nature and location of these changes, the proposal will not be visible from public domain and will not result in any additional impacts including those relating to amenity, view loss, overshadowing and traffic, compared to the approved development. A detailed discussion on privacy impacts resulting from the proposed modification is provided in the DCP Assessment section below. This discussion, in-combination with site inspections undertaken at the premises and at the objecting property, confirm that any privacy impacts associated with the increased balcony width (from 0.6m to 1.2m) and the modified east-facing windows, are considered reasonable and acceptable. 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. One (1) submission was received during the notification period.

**(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). Any issues raised in the received submission/s have been considered and addressed in this report.

**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 (DA279/21) were as follows:

**Panel Reason:**

*The Panel considers that given the location of the two-storey element of the rear dwelling that is relatively close to adjoining boundaries, it is important that the heritage character and the amenity of the adjoining properties are not impacted by the two-storey addition in this location. The Panel recognises that the development is not visible from the public domain but will be visible within the conservation area.*

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. It is noted that the setbacks, siting and orientation of the approved development remain unchanged except for the articulation of the first floor balcony, which is proposed to protrude an additional 0.6m. Notwithstanding this change, the site being an internal allotment and the existence of a canopy tree in front of the balcony, as well as the occurrence of buildings surrounding the site, would ensure that this change will not be highly discernible from public domain.

The proposed modification does not result in any dramatic changes to the approved development and its response to the site's setting and context within 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 R2 – Low 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 R2 – Low Density Residential zone.

### **Objectives of the zone**

The objectives of the R2 – Low Density Residential zone are stated below:

- *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 encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a 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 R2 – Low 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.

## 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 – 175.4m <sup>2</sup>	Approved	Proposed	Control	Complies
Clause 4.1 – Subdivision lot size	No change.	No change.	Min. 230m <sup>2</sup>	N/A No subdivision is proposed.
Clause 4.3 – Height of buildings	7.3m	No change.	Max. 8.5m	Yes

### Clause 4.3 – Height of Buildings

The proposed modification involves no changes to the approved height of the development.

## Part 5 – Miscellaneous Provisions

### Clause 5.10 – Heritage Conservation

The subject site is a neutral item within the Holtermann Estate Conservation Area (CA09), which are listed under Schedule 5 of the NSLEP 2013. The following planning objectives apply to the proposed development:

- (a) to conserve the environmental heritage of North Sydney,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) 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:

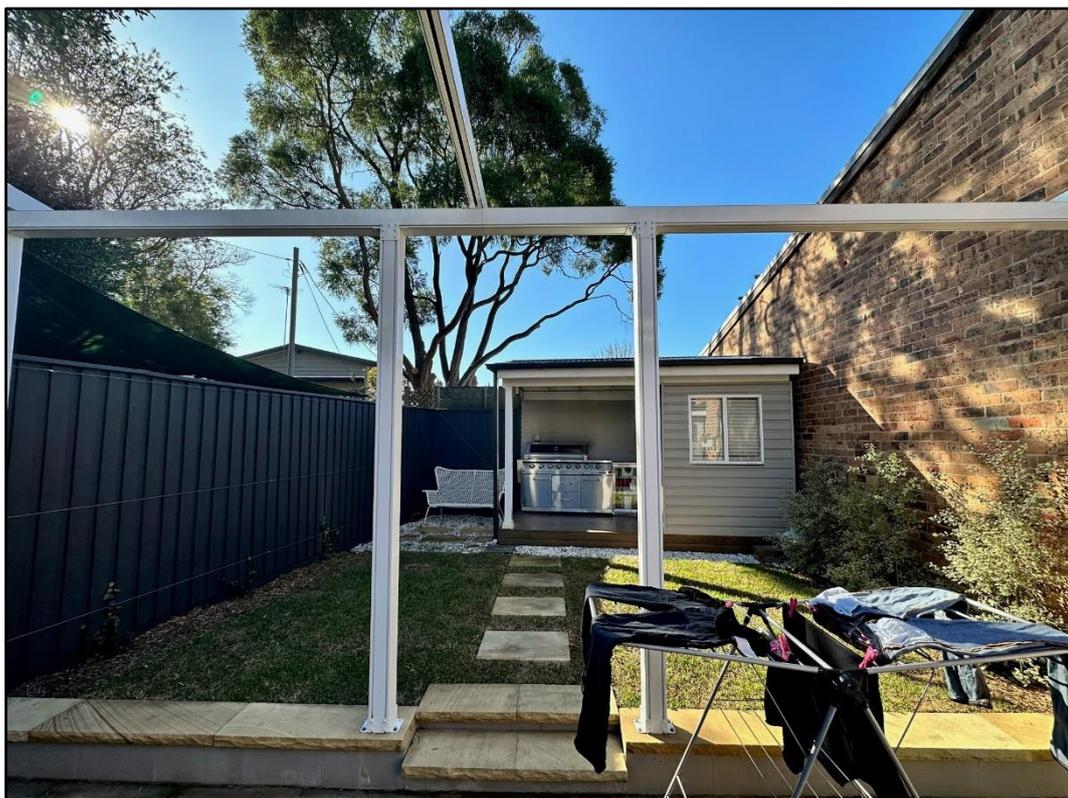
**Part B, Section 1: Residential Development**

<b>North Sydney Development Control Plan 2013 – Part B Section 1- Residential Development</b>		
<b>Control</b>	<b>Compliance</b>	<b>Comments</b>
<b>1.3 Environmental criteria</b>		
<b>Topography</b>	Yes	The proposed modification is wholly contained within the approved development footprint and will not affect the topography of the site.
<b>Views</b>	Yes	The proposed modification will not result in substantial/adverse impacts of existing views and outlooks for adjoining neighbours.
<b>Solar access</b>	Yes	The proposed modification will not result in additional overshadowing of neighbouring properties. As with the approved development, the modification complies with the minimum three (3) hours of solar access provided to the living room windows and private open spaces of neighbouring properties during mid-winter.
<b>Visual privacy</b>	Yes	<p><u>Extension of sliding door</u>                      The proposed minor extension of the approved sliding doors in the living room is acceptable – involving only a single additional glass panel to provide improved daylight to this ground floor space. Any views to neighbours from the additional panel would be obscured by vegetation and fencing. As such, it is considered that the proposed extension of the sliding door will not result in unreasonable privacy impacts.</p> <p><u>Modification to Condition C14 – east-facing windows</u>                      As per the approved development, the windows on the eastern side have a generous setback of at least 3m from the eastern boundary. Council imposed a condition to ensure these windows are highlight windows. The Applicant’s proposal to provide frosted glazing up to 1.6m instead of highlight windows is considered an acceptable and appropriate alternative and enables sufficient privacy treatment that will result in reasonable visual privacy impacts. It is noted that the modification does not involve changes to the use of the first floor as a master bedroom with ensuite.</p> <p><u>Modification to Condition C14 – balcony</u>                      The south-facing first floor balcony is of a modest size (1.2m deep by 2.5m wide) and features generous setbacks from property boundaries – 2.9m (from western side boundary, 3.4m from the eastern side boundary and 6.7-7.9m from the northern (front) boundary (refer to Figure 13). It is further noted that the balcony is off a bedroom (a low activity space) and not a living room, and is primarily in shade. As such, this balcony will not be intensely utilized by future occupants. In addition, the existing tree (despite the current pruning of branches) and surrounding tall fencing within the site will obscure some views from the balcony. Given the above considerations, the proposal to increase the depth of this space from 0.6m to 1.2m will not likely result in significant privacy impacts. Any potential overlooking from this space, particularly from sitting positions, will be adequately minimised and mitigated through the solid form balustrades proposed.</p>





**Figure 14: Northern view of subject site from private open space of No. 32 Myrtle Street**



**Figure 15: Northern view of subject site from private open space of No. 32 Myrtle Street with an open vergola covering a portion of this space**



**Figure 16: View from the rear yard of No. 32 Myrtle Street of an existing balcony (north-facing) of No. No. 26 Myrtle Street**

**1.4 Quality built form**

<p><b>Context</b></p>	<p>Yes</p>	<p>The proposed development involves changes to a unique building that is uncharacteristic of the area and is situated within an internal lot, which is also unique to the streetscape.</p> <p>In general, the proposed development will result in a built form that expresses an appropriate aesthetic and presentation that is in context with the surrounding area.</p> <p>The site, being an internal lot, ensures that as the built form is largely not visible from public domain. It is noted that whilst first floor additions and dual level housing are not common in the vicinity – the proposed development will not detrimentally impact the streetscape given its unique location within an internal lot and surrounded by residences on all sides.</p>
<p><b>Setback – front</b></p>	<p>Yes</p>	<p>The proposed modification will retain the same front setback as the existing semi-detached dwelling (including the south-facing balcony) as originally endorsed by Council. The proposed change to allow the balcony depth to extend by 0.6m is considered acceptable given that the balcony is centrally located and adjacent to a canopy tree, the prevailing building line remains respected by the development, and the lot being an internal lot, ensures that this change will not be visible from public domain.</p>
<p><b>Setback – side</b></p>	<p>N/A Unchanged from approval</p>	

<b>Setbacks – rear</b>	N/A Unchanged from approval													
<b>Form, massing and scale</b>	Yes	The proposed form, density and scale of the proposed modification is near identical to the approved development. The minor changes will result in a development with a form, massing and scale that are sympathetic to the existing streetscape and conservation area.												
<b>Built form character</b>	Yes	See above.												
<b>Materials</b>	Yes	The proposed modification comprises materials that are suitable and reinforce the existing and desired character of the locality.												
<b>1.5 Quality urban environment</b>														
<b>Site Coverage</b> <b>Site area: 175.4m<sup>2</sup></b>  <b>Site coverage requirements for detached, attached or semi-detached dwellings:</b> <table border="1"> <thead> <tr> <th>Lot Size (m<sup>2</sup>)</th> <th>Site Coverage (max.)</th> </tr> </thead> <tbody> <tr> <td>0-229</td> <td>60%</td> </tr> <tr> <td>230-499</td> <td>50%</td> </tr> <tr> <td>500-749</td> <td>40%</td> </tr> <tr> <td>750-999</td> <td>35%</td> </tr> <tr> <td>1000+</td> <td>30%</td> </tr> </tbody> </table>	Lot Size (m <sup>2</sup> )	Site Coverage (max.)	0-229	60%	230-499	50%	500-749	40%	750-999	35%	1000+	30%	N/A Unchanged from approval	The proposed modification involves no changes to the site coverage, landscaped area and un-built upon area of the approved development.
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<b>Un-built upon area</b> <b>Site area: 175.4m<sup>2</sup></b>  <b>Un-built upon area requirements for detached, attached and semi-detached dwellings:</b> <table border="1"> <thead> <tr> <th>Lot Size (m<sup>2</sup>)</th> <th>Un-built upon area (max.)</th> </tr> </thead> <tbody> <tr> <td>0-229</td> <td>20%</td> </tr> <tr> <td>230-499</td> <td>20%</td> </tr> <tr> <td>500-749</td> <td>20%</td> </tr> <tr> <td>750-999</td> <td>25%</td> </tr> <tr> <td>1000+</td> <td>20%</td> </tr> </tbody> </table>	Lot Size (m <sup>2</sup> )	Un-built upon area (max.)	0-229	20%	230-499	20%	500-749	20%	750-999	25%	1000+	20%	N/A Unchanged from approval	The proposed modification involves no changes to the site coverage, landscaped area and un-built upon area of the approved development.
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0-229	20%													
230-499	20%													
500-749	20%													
750-999	25%													
1000+	20%													

<b>1.6 Efficient Use of Resources</b>		
<b>Energy Efficiency</b>	Yes	The applicant has provided an updated BASIX Certificate in support of the proposed modification. The relevant condition can be modified to reflect the revised certificate.
<b>Passive Solar Design</b>	Yes	The development will perform adequately in this regard. The proposal provides additional skylights within bedroom 3/study, which is considered an approved outcome in terms of solar access and amenity.
<b>Natural Ventilation</b>	Yes	As per above, the proposed development facilitates additional openings that provide improved ventilation to the building.

## CHARACTER STATEMENTS – PART C

### **Section 3 – St Leonards/Crows Nest Planning Area**

#### **Section 3.6 – Holtermann Estate Conservation Area C**

The proposed modification will result in a development that aligns with the desired future character and built form of the Holtermann Estate Conservation Area C. As such, the relevant provisions under Section 3.6 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

## **SUBMITTERS CONCERNS**

The notification of the modification application resulted in a single submission from an adjoining neighbour. The relevant issues raised by this submitter has been addressed within this report. To provide further clarify, the following commentary relates to the issue raised in the submission:

- ***Tree pruning***

**Comment:** The consent for the development allows for some tree pruning to specific site trees (refer to Condition C13). No further pruning is proposed under the current application.

- ***Privacy impacts - first floor windows and balcony***

**Comment:** This issue has been assessed and addressed in the above DCP Assessment section of this report. Amended conditions are recommended to require screen planting to be established adjacent to the common boundary with No. 32 Myrtle Street to aid in screening views from the proposed first floor balcony. Together with the requirement for a solid balustrade, the screening is deemed sufficient to address privacy concerns.

## **CONCLUSION & REASONS**

The proposal involves the modification of a consent that involves deletion of Condition C14(c), amendment of Condition C14(d), a slight extension of approved sliding doors and the inclusion of two (2) skylights on the ground floor and deletion of a small south-facing window on the first floor. The Applicant provided sufficient information to demonstrate the merits of the proposed modification including an assessment of potential privacy impacts resulting from the increased balcony depth. Council is satisfied that the proposed modification will result in a development that generates minimal impacts on the environment and any surrounding/adjoining properties.

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:

- Amendments to Condition A1 to reflect the modification.
- Amendments to Condition C14 to reflect the modification.
- Amendments to Condition C18 to reflect the updated BASIX certificate.

## 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 DA279/21 dated 2 February 2023 in respect of a proposal for alterations and additions to an existing semi-detached dwelling at No. 30 Myrtle Street, North Sydney, 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 amend condition A1 of the consent so as to read as follows:**

### Development in Accordance with Plans/Documentation

A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Issue	Title	Drawn by	Received
S4.55-01	A	Site Plan	M Halmos – Architect	4 Aug 2023
S4.55-05	A	Ground Floor Plan	M Halmos – Architect	17 May 2023
S4.55-06	B	First Floor Plan	M Halmos – Architect	17 May 2023
S4.55-07	A	Roof Plan	M Halmos – Architect	17 May 2023
S4.55-08	A	Sections S-01 and S-03	M Halmos – Architect	17 May 2023
S4.55-09	A	Section S-02	M Halmos – Architect	17 May 2023
S4.55-10	A	North and West Elevations	M Halmos – Architect	17 May 2023
S4.55-11	B	South and East Elevations	M Halmos – Architect	4 Aug 2023

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**2. To amend condition C14 of the consent so as to read as follows:**

### Privacy Measures and Design Changes

C14. The following privacy devices are to be provided:

- a) Obscure glazing should be used and maintained for the stairwell to reduce the extent of clear glazing on this elevation.
- b) Obscure glazing should be used and maintained for the north-facing windows of the first floor.
- c) ~~Change the windows~~ **Windows** in the main bedroom **along the east facing elevation are to feature translucent glazing to a 1.6m height (measured above the finished floor level) and all operable window panels (on the eastern side) must be awning-style, with a restricted opening of 125mm.** ~~a highlight window with a minimum sill height of 1.6m above finished floor level.~~
- d) Modify the first floor bedroom balcony to have a ~~depth of 600mm and~~ **balustrades** ~~balustrade~~ with a solid form that is designed to reasonably maintain amenity for adjoining properties.
- e) To delete window W09 and replace with a window on the western elevation of the first floor bathroom and obscure glazing.

- f) **Install screen planting capable of attaining a minimum height of 3 metres, adjacent to the common boundary with No. 32 Myrtle Street. The screen planting shall be located immediately adjacent to the southern boundary of the site, north of No. 32 Myrtle Street and directly in front of the boundary fencing - as shown on the approved plans.**

Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure an adequate level of privacy is provided to adjoining properties)

**3. To amend Condition C18 of the consent so as to read as follows:**

**BASIX Certificate**

C18. Under clause 97A(3) of the Environmental Planning and Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. **A397548\_03** (~~A397548~~) for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

**MIGUEL RIVERA**  
**A/TEAM LEADER (ASSESSMENTS)**

**STEPHEN BEATTIE**  
**MANAGER DEVELOPMENT SERVICES**

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