

# Statement of Environmental Effects

Modifications to DA2020/1599

Alterations and Additions to Multi Dwelling Housing Development

3/7 Stuart Street

Collaroy

EVOLUTION PLANNING





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Alterations and Additions to  
Multi Dwelling Housing Development  
3/7 Stuart Street  
Collaroy

**Prepared for:**

Mr. J. v Raad

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# 1 Introduction

This Statement of Environmental Effects (SEE) accompanies an application to Modify DA2020/1599, made in accordance with Section 4.55(2) of the Environmental Planning and Assessment Act 1979, (the Act) for alterations and additions to Unit 3 of a multi-dwelling housing development at 7 Stuart Street, Collaroy.

The approved development, (DA2020/1599), determined by Council on 27/1/21, is described on the consent as:

*“Alterations and Additions to Unit 3 within an existing multi-dwelling housing development”*

The approved development allowed for:

- an addition to the east side of the existing town house at ground floor level only into an existing paved private courtyard area;
- a new deck area at the rear into a largely hard paved private open space area; and,
- new French doors leading onto the new rear deck area.

The proposed modifications include:

- Single window on east elevation to be replaced with a double window;
- Extension of the approved deck over an existing hardstand area;
- Modifications to the window on the west elevation;

The principal environmental planning instrument affecting the land is Warringah LEP 2011, under which the land is zoned R3 Medium Density Residential. The proposed development is permitted with consent.

This SEE has been prepared in accordance with Section 4.15 of the Act, and should be read in conjunction with the following supporting material accompanying the application:

- Architectural Drawings, prepared by Renee Blyth;
- Site Survey, prepared by Adam Clerke Surveyors;
- BASIX Certificate, prepared by Renee Blyth;

## 2 Site

The site, 7 Stuart Street, Collaroy, has a legal description of SP22558. The part of the site which this DA relates is described as Pt. 3. It is rectangular in shape and has an area of ~888.7sq.m.

The existing development comprises three, one and two storey town houses, best described as a “*multi dwelling housing*” development. The proposed development relates to the Unit 3 located at the rear of the development.

The site is located on the north side of Stuart Street where the built form and land use character is best described as 3 storey, medium density residential uses.

Refer to the accompanying Survey Plan, Location Plans and photographs below.

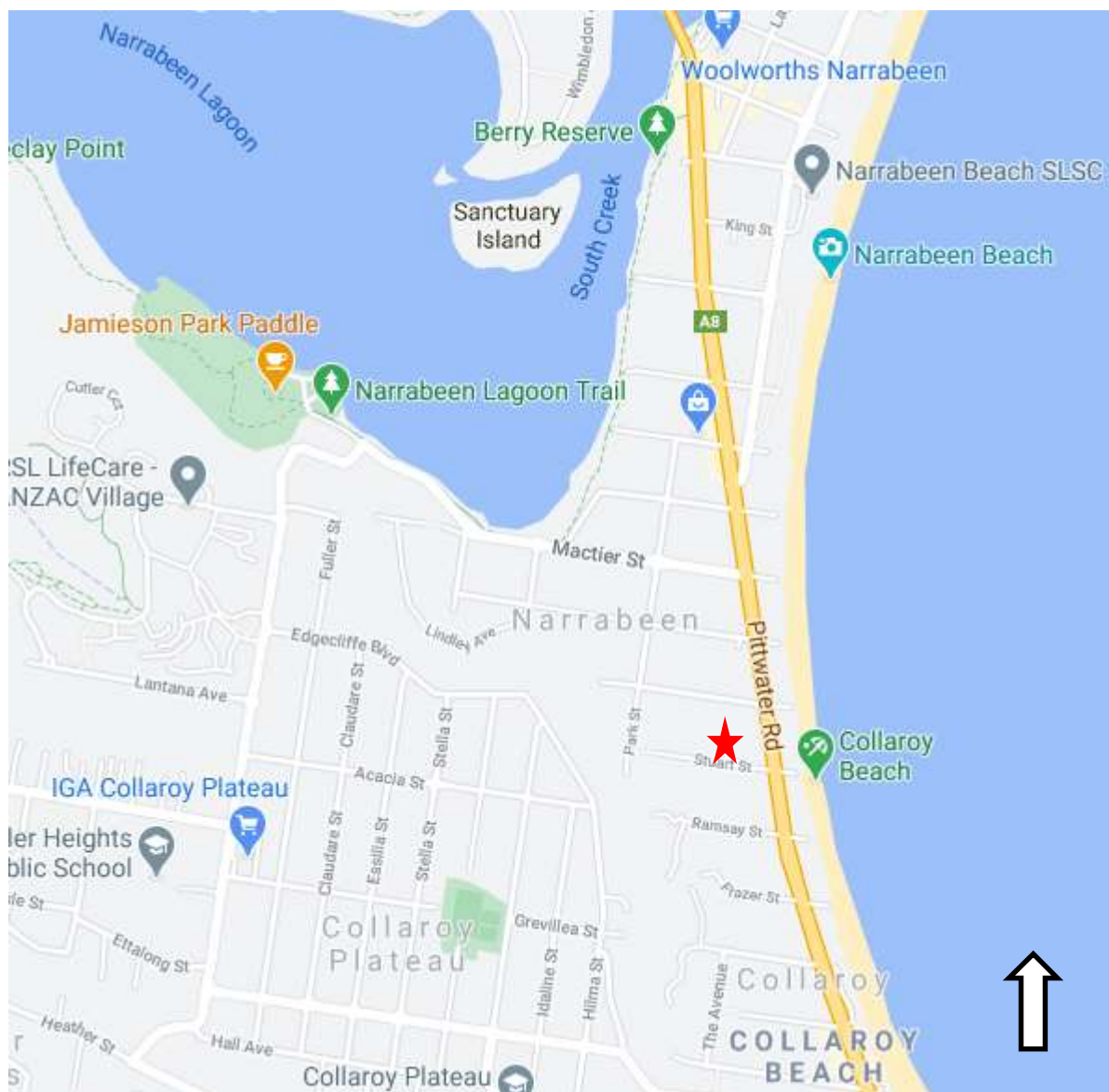


Figure 1: Site Location Plan (Indicative)





Figure 2: Aerial Plan



Figure 3: Extract survey Pt. 3 Lot SP.22558





Figure 4: Street view 7 Stuart Street



Figure 5: Area at east side of building where approved extension is located





Figure 6: Open space at rear facing west





Figure 7: Boundary fence interface at northern boundary showing carports immediately to north of subject rear open space area.



Figure 8: Hardstand/driveway area to the immediate east of the location of the approved addition  
The site is not bushfire prone, prone to flooding; nor is it located in a heritage conservation area or listed as an item of heritage significance.

## 2.1 Approved Development

The approved development, (DA2020/1599), determined by Council on 27/1/21, is described on the consent as:

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The approved development allowed for:

- an addition to the east side of the existing town house at ground floor level only into an existing paved private courtyard area;
- a new deck area at the rear into a largely hard paved private open space area; and,
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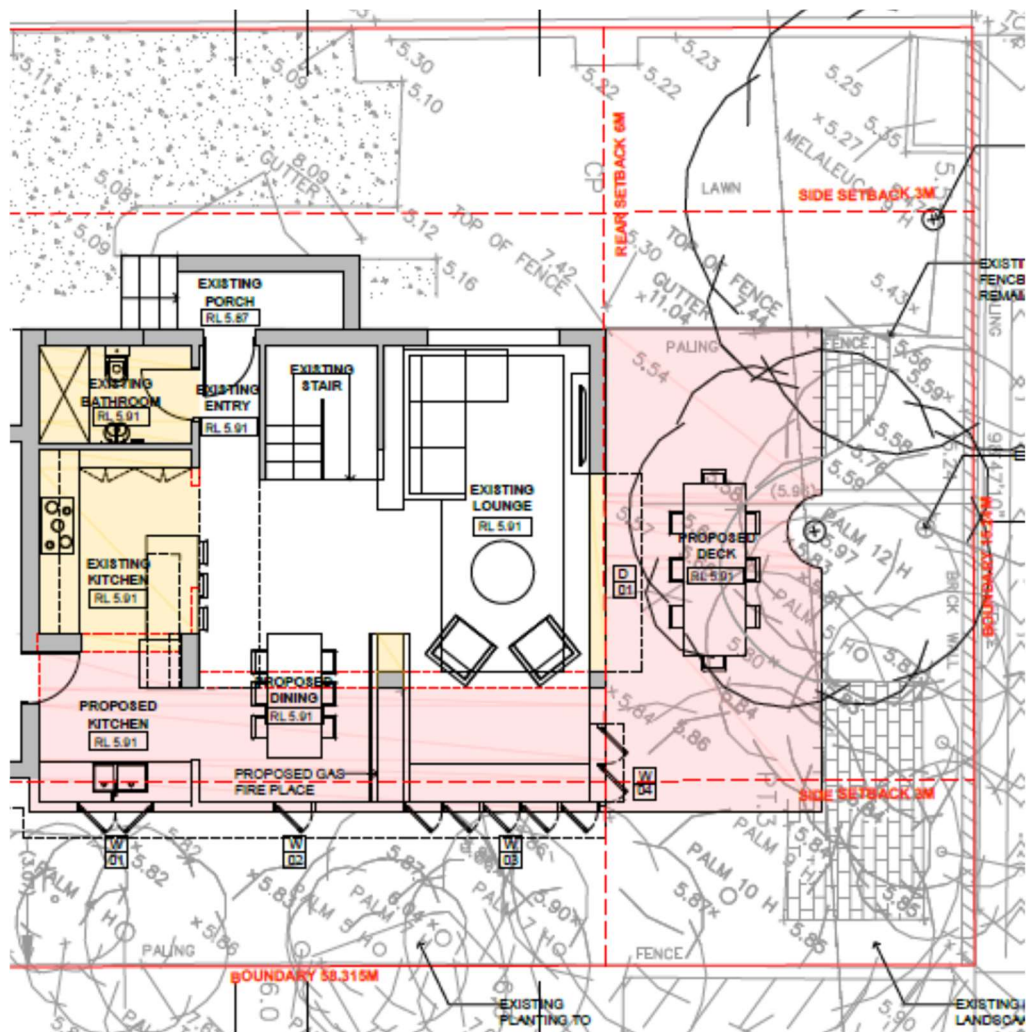


Figure 9: Extract approved ground floor plan





### 3 Proposal

Development consent is sought for the following modifications:

- Single window on the east elevation to be replaced with a double window;
- Extension of the deck over an existing hardstand area;
- Modifications to the window on the west elevation;

Refer to the extracts below from the submitted drawings.

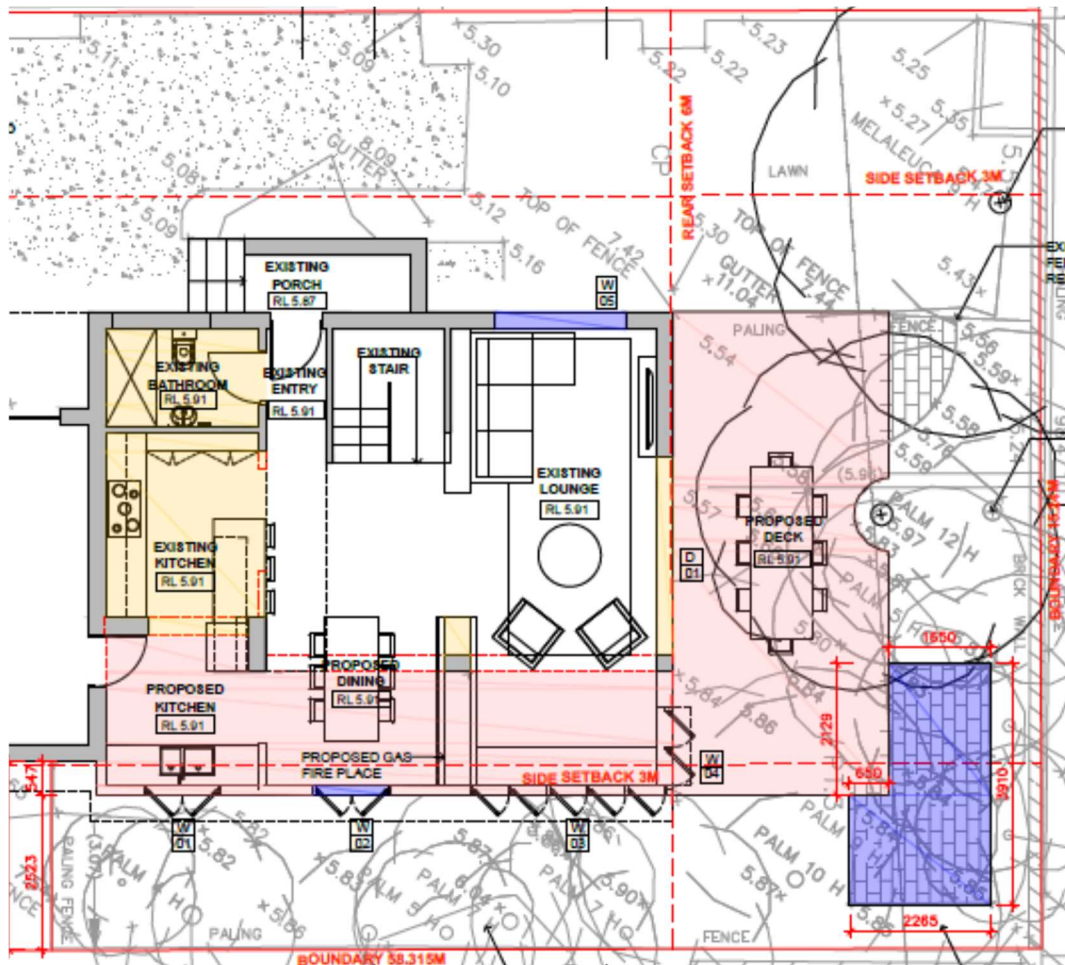


Figure 10: Extract proposed modified ground floor plan

## 4 Statutory Assessment

### 4.1 Environmental Planning and Assessment Act 1979

The proposed development does not constitute designated or integrated development.

This application to modify the consent is made pursuant to Section 4.55(2) of the Act and is assessed under s.4.15 as relevant to the proposed modifications.

Before the grant of consent under this Part, the relevant authority must be satisfied that the development, as modified, is substantially the same as that originally approved. Other matters relate to notification, which Council will administer accordingly.

There has been a number of past judgements by the NSW Land and Environment Court which provide guidance as to the question of whether the development, as modified, is substantially the same as that originally approved.

In *Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280 at [54] to [56], [61] and at [62] and [64] (in part) Bignold J found:

*54. The relevant satisfaction required by s 96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.*

*55. The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.*

*56. The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted) [emphasis added].*

*61. Because the requirement of s 96(2)(a) calls for an ultimate factual finding on the primary facts of the case, only illustrative assistance is to be gained from consideration of other cases involving their own factual findings on the relevant satisfaction required by s 92(2)(a)(or its antecedent, s 102(1)(a)).*

*62. Reference to those cases indicates that environmental impacts of proposed modifications are relevant to the ultimate factual finding...*

*64. Although it is well established that the comparative task required to be undertaken to satisfy the requirement of s 96(2)(a) involves a comparison of the whole of the developments being compared, that fact does not eclipse or cause to be eclipsed a particular feature of the development, particularly if that feature is found to be important, material or essential....*

The "Moto Projects" judgement finds that any modified development must not only be "essentially and materially" the same physically, but also in terms of qualitative comparisons and the context within the development was first approved.

The proposed development, as modified, is considered to be substantially the same as that originally approved, for the following reasons:

- The description of the proposed modified development does not change;
- There are no proposed changes to the building envelope;
- The proposed modifications relate only to already approved elements and the extension to the deck is over an existing hardstand area thereby not changing the quantity of landscaped area on the site;
- The proposed modified development does not introduce any new impacts or any significant additional impacts on neighbouring properties;
- There is no significant difference in the context within which this application is made and the context within which the determination of the DA was made.

## 4.2 Relevant Environmental Planning Instruments and Planning Policies

The following Environmental Planning Instruments and Planning Policies have been considered as part of this assessment:

- Warringah Local Environmental Plan 2011;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy No. 55: Remediation of Land;
- Warringah Development Control Plan 2011.

### 4.2.1 Warringah Local Environmental Plan 2011

#### 4.2.1.1 Permissibility and Zone Objectives

The principal environmental planning instrument affecting the land is Warringah LEP 2011, under which the land is zoned R3 Medium Density Residential.

The existing development is best described as “*multi dwelling housing*” meaning:

*“3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.”*

No change of use is proposed and the proposed development involves alterations and additions to a permitted use in the R3 zone. The proposed development is therefore permitted with consent.

The objectives of the R3 zone are:

- *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 ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces*

The proposed development is consistent with the related zone objectives for the following reasons:

- The proposed works meet the housing needs of the community by increasing the area of the internal principal living space and by providing a more amenable and convenient area of private open space;
- The proposed works do not diminish the landscaped character of the site or locality since the proposed addition to the approved deck is over an existing paved area and no additional impacts are anticipated on any trees.

#### 4.2.1.2 Acid Sulphate Soils

The site is located within land classified as Category 4 Acid Sulphate Soils. Consent is required for works within such land, and further investigation is required in this respect where, works more than 2 metres below the natural ground surface or works by which the water table is likely to be lowered more than 2 metres below the natural ground surface are proposed.

The proposed works do not involve excavation in excess of 2m and will not disturb the water table and therefore no further investigation is required in this respect.

#### 4.2.1.3 Height

A development standard related to building height of 11m applies to the land.

The approved addition has a maximum height of 4.15m and no changes are proposed the height of the addition.

#### 4.2.1.4 Earthworks

The proposed development involves only minor soil disturbance associated with the footings and piers for the proposed deck addition. No significant adverse impacts are anticipated on neighbouring properties or the wider environment will be introduced as a result of excavation.

#### 4.2.1.5 Development on sloping land

The land is identified on land with a slope of less than 5°. Due to the nature of the proposed works and the topographical characteristics of the site, no significant risk to life or property is anticipated with respect to potential landslip.

The proposed development is considered to satisfy the related provisions of Warringah LEP 2011.

### 4.2.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application is accompanied by a BASIX certificate in accordance with the Regulation.



#### 4.2.3 State Environmental Planning Policy No. 55: Remediation of Land;

The subject site has historically been used for residential purposes and has not been known to have hosted any potentially contaminating activities nor has it been declared a significantly contaminated site.

No change of use is proposed and no significant earthworks are proposed. It is therefore considered that consent may be granted in accordance with Clause 7 of the SEPP.

#### 4.2.4 Warringah Development Control Plan 2011

The related guidelines under Warringah DCP 2011 are addressed below:

| DCP                 | Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Compliance   |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Landscaping 50%     | <p><i>“landscaped area” means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.”</i></p> <p>The proposed extension to the approved deck does not result in a change to the approved quantity of landscaped area since it is located over an existing hardstand area.</p>                                                                                                                                                    | ✓            |
| Rear setback – 6m   | <p>The approved development involves a breach to the guideline related to the rear setback.</p> <p>The proposed modified development further breaches the rear setback guideline given the proposed deck extension extends closer to the rear boundary.</p> <p>The proposed deck is setback ~1m from the rear boundary.</p> <p>Refer to Section 4.2.4.1 below where the proposed rear setback is assessed against the objectives of the guideline in accordance with s.4.15(3A)(b) of the Act.</p>      | Satisfactory |
| Side setback – 4.5m | <p>The approved development involves a breach to the guideline related to the side setback.</p> <p>The proposed modified development further breaches the side setback guideline given the proposed deck extension extends closer to the side boundary.</p> <p>The proposed deck is setback ~1m from the east side boundary.</p> <p>Refer to Section 4.2.4.1 below where the proposed side setback is assessed against the objectives of the guideline in accordance with s.4.15(3A)(b) of the Act.</p> | Satisfactory |
| Private Open Space  | 59sq.m                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | ✓            |
| 10sq.m              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |              |

#### 4.2.4.1 DCP Variations

Division 3.6 of the Environmental Planning and Assessment Act 1979 recognises the flexibility with which DCPs should be applied and legislates that:

- the provisions of DCPs are non-statutory;
- that the provision of the DCP should facilitate the achievement of the zone objectives; and,
- that where numeric compliance is not met then alternative design solutions should be considered on the basis of consideration against the objectives of the particular guideline and the DCP be applied with flexibility.

Section 3.42 of the Act contains provisions related to purpose and status of DCPs as follows:

- (1) ***The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:***
- (a) ***giving effect to the aims of any environmental planning instrument that applies to the development,***
- (b) ***facilitating development that is permissible under any such instrument,***
- (c) ***achieving the objectives of land zones under any such instrument.***

***The provisions of a development control plan made for that purpose are not statutory requirements.***

***[emphasis added]***

Section 4.15 of the Act “Evaluation” at subclause (3A)(b) states:

- (b) *if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development*

We therefore request that where the proposed development does strictly satisfy the numeric provisions of the DCP that it be applied, as legislated under the Act, with flexibility, subject to the satisfaction of the related objectives.

#### **Rear Setback**

The objectives of the rear setback guideline are addressed as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment: The quantity of deep soil area does not change.

- *To create a sense of openness in rear yards.*

Comment: The proposed deck extension is located over an existing hardstand area and therefore no change is introduced in terms of the “openness” in the rear yard.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment: No privacy impacts will be introduced as result of the proposed modifications for the following reasons:

- The proposed deck extension, which is located in proximity to the existing ground level, is over an existing area of hardstand open space where the occupants can sit or stand;
- Between the proposed deck extension and the building to the north there is 1m of landscaping; a 1.8m high boundary fence; a carport and driveway (on the neighbouring site).



Figure 11: Carports to rear of site

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment: There will be no significant change to the existing visual continuity and pattern of buildings, rear gardens and landscape elements.

- *To provide opportunities to maintain privacy between dwellings.*

Comment: Refer to comments above

The proposed rear setback is considered to satisfy the objectives of the guideline and in accordance with s.4.15(3A)(b) of the Act the proposal is considered to be satisfactory in this respect despite numeric non-compliance with the guideline.

### **Side Setback**

The objectives of the side setback guideline are addressed as follows:

- *To provide opportunities for deep soil landscape areas.*

Comment: The quantity of deep soil area does not change as a result of the proposed modifications.

- *To ensure that development does not become visually dominant.*

Comment: The proposed modifications do not introduce any building elements with any visible bulk.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment: Refer to comments above.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment: The proposed changes to the side facing windows do not result in any additional significant privacy related impacts.

The approved/modified east facing windows are at ground level and have sightlines to the boundary fence. At the other side of the fence there is a hardstand driveway area.



Figure 12: Parking and driveway at east of proposed addition.

The proposed deck extension, which is located in proximity to the existing ground level, is over an existing area of hardstand open space

- *To provide opportunities to maintain privacy between dwellings.*

Comment: Refer to comments above.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment: No views will be hindered as a result of the non-compliance



The proposed side setback is considered to satisfy the objectives of the guideline and in accordance with s.4.15(3A)(b) of the Act the proposal is considered to be satisfactory in this respect despite numeric non-compliance with the guideline.

### 4.3 Likely Impacts

The proposed modified development is not considered to introduce any significant adverse amenity-related, biophysical, social or economic impacts on neighbouring properties or the environment.

### 4.4 Suitability of the site

There are no natural or man-made site affectations that would hinder the proposed development. The site is considered to be suited for its continued use as housing.

### 4.5 Public Interest

No significant matters of public interest arise as a result of the proposed development.

## 5 Conclusion

The proposed modified development is considered to be substantially the same as that originally approved and has been assessed against Section 4.15 of the Environmental Planning and Assessment Act 1979 as satisfactory.

The proposed modified development is considered to be suited to the site and will not result in any significant adverse impacts on neighbouring properties or the environment.

The proposed modified development complies with all relevant State Environmental Planning Policies and fully satisfies LEP 2011 and the DCP 2011, except for strict numeric compliance with guidelines related to rear and side setbacks.

These numeric variations to the guidelines are fully justified on the basis that the proposed development will fully support the objectives of the DCP related to side and rear setbacks.

It is therefore recommended that the application be approved.

