
Sent: 31/10/2019 10:32:49 AM
Subject: DA 2019/1122 - 50 Condoover Street, North Balgowlah
Attachments: 50 Condoover Street 311019.pdf;

Good morning Council

Please find attached a Letter of Objection from No. 48 Condoover Street, North Balgowlah on behalf of the owners, Paul and Sandra Kaplan pertaining to DA 2019/1122.

Please confirm receipt of such.

If you have any queries do not hesitate to contact me in the first instance.

Kind regards
Tracy Davey (MTRP)
Town Planner

0408 678 878

Contact: Paul and Sandra Kaplan/Tracy Davey

Date: 31 October 2019

The General Manager
Northern Beaches Council
Village Park
1 Park Street
MONA VALE NSW 2013

Attention: Mr Kent Bull Assessment officer, Planning Division

Dear Sir,

Objection to DA 2019/1122 for proposed alterations and additions to an existing dwelling on Lot 4 in DP 30205 at 50 Condoover Street, North Balgowlah

I represent the owners of No. 48 Condoover Street, North Balgowlah, Paul and Sandra Kaplan. Their residence adjoins No.50 Condoover Street, North Balgowlah to the north as indicated in *Figure 1*.

We are writing in response to the Development Application (DA2019/1122), and I have been engaged to prepare a Letter of Objection to the Northern Beaches Council on their behalf.

Their site is severely impacted by the proposed alterations and additions in terms of the height, bulk and scale of the proposal resulting in a loss of privacy, overshadowing overlooking and loss of amenity. This impact of these issues will be discussed further in Section of 4 of this letter.

1. The Proposed Works

The proposed works at No. 50 Condoover Street are for alterations and additions to the existing dwelling, specifically the following new works are proposed:

Construction of the following:

- New double garage;
- New concrete driveway
- New pedestrian stairs to provide access to garage and site;
- New Living area
- New kitchen
- New media room
- Attached deck along the front elevation
- Internal alterations
- New deck to the north

- Inability to meet the Warringah Development Control Plan, 2011 Part D8 Privacy Objectives and Requirements; and
- Inability to meet the Warringah Development Control Plan, 2011, Part D9 Building Bulk Objectives and Requirements.

These matters are expanded on in Section 4 below.

4. **Legislative Framework**

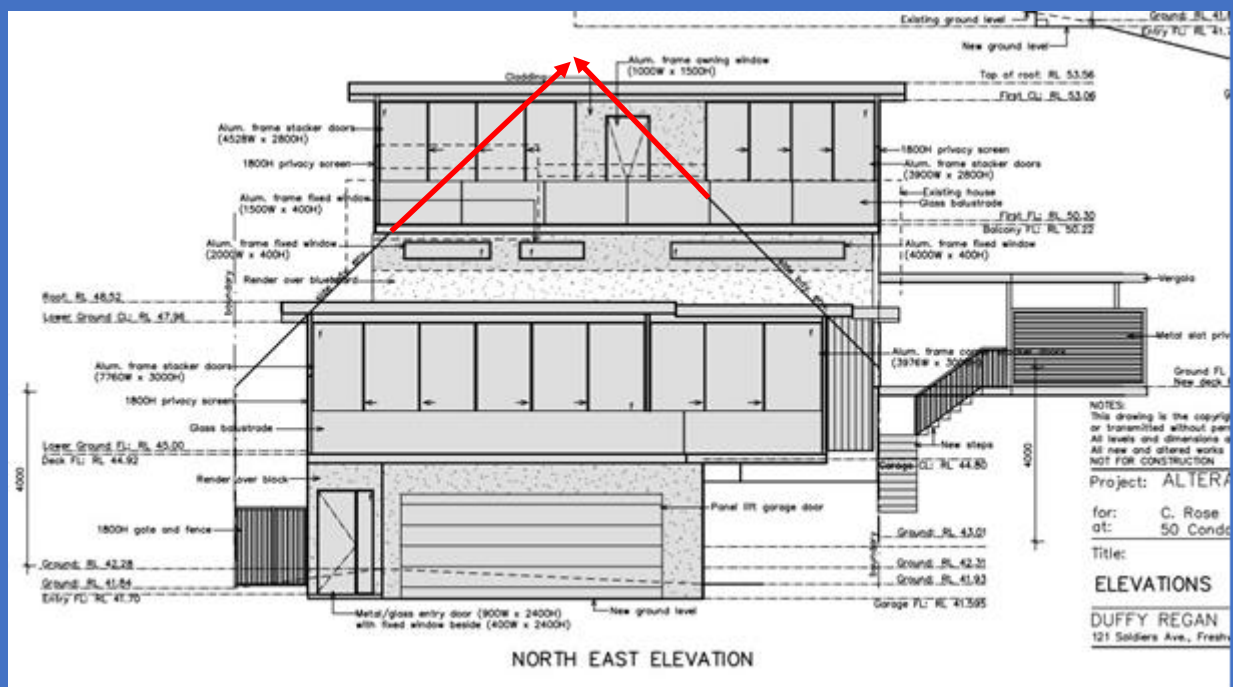
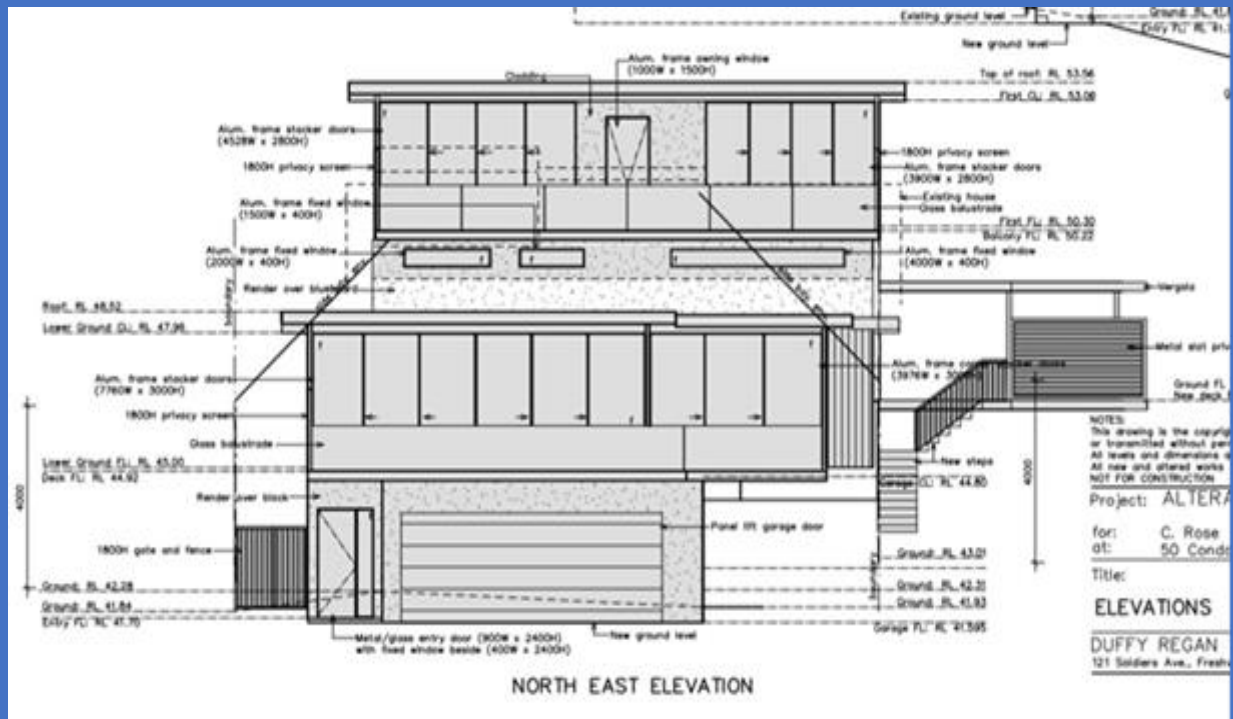
The above issues will be addressed within the context of the planning framework, being the Warringah Local Environmental Plan 2011(WLEP2011) and the Warringah Development Control Plan (WDCP2011) as outlined below.

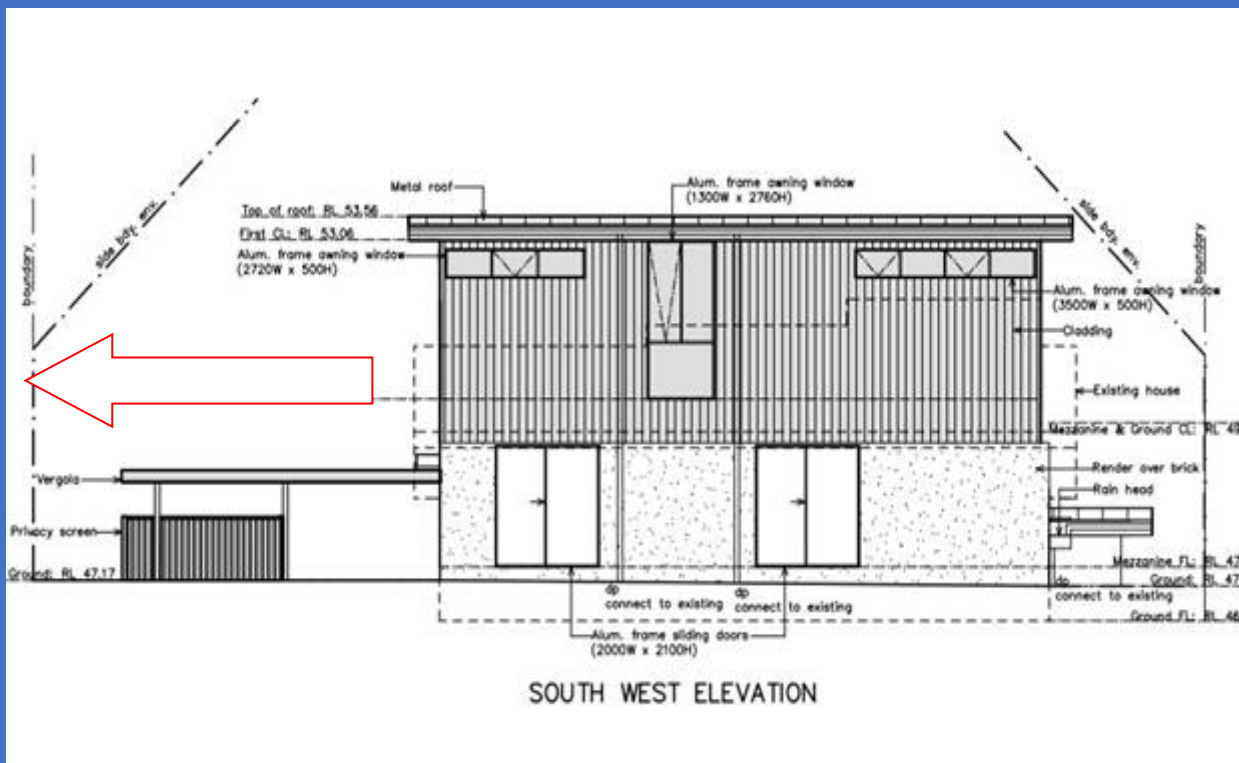
Table 4.1 Warringah LEP, 2011

<i>Warringah Local Environmental Plan 2011</i>	Commentary	Compliance
<i>Objectives (d) in relation to residential development</i> <ul style="list-style-type: none"> ▪ <i>Protect and enhance the residential use and amenity of existing residential</i> ▪ <i>Promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and</i> ▪ <i>increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah</i> 	<p>The proposed alterations and additions are not compatible with the neighbouring development as it is unable to protect and enhance the amenity of the existing residential area and is incompatible in terms of bulk and scale as they negatively impact the residential amenity currently enjoyed by No.50 Condoover Street.</p>	<p>No (Partial)</p>

Zone R2 Objectives		
<p>The site and surrounding area is zoned R2 Residential</p> <p>Objectives of Zone</p> <ul style="list-style-type: none"> ▪ <i>To provide for the housing needs of the community within a low-density residential environment.</i> ▪ <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> ▪ <i>To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah</i> 	<p>The proposed alterations and additions are not able to maintain the low-density residential environments and landscaped setting of the local environment as a substantial portion of No. 50 Condoover will be covered with build form, reducing the existing natural environment and Landscape setting of the area.</p>	<p>No (Partial)</p>
Clause 4.3 Height		
<p>1) <i>The objectives of this clause are as follows:</i></p> <ul style="list-style-type: none"> ▪ <i>(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i> ▪ <i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</i> ▪ <i>(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</i> ▪ <i>(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities</i> 	<p>8.5m is permitted and 8.9m proposed</p> <p>The proposed alterations and additions are an overdevelopment of the site resulting in a large imposing mass of building on the southern side of the site. The proposed development is unable to meet Objective b) as the visual impact is not minimised as viewed from No.50 Condoover Street.</p> <p>Rather, it negatively and detrimentally impacts on No. 50 Condoover in terms of view loss, loss of privacy and overshadowing.</p>	<p>No.</p> <p>There is insufficient justification for this departure from the legal requirement.</p>

Warringah DCP applicable requirements	Response	Consistency Yes / No
B3 Side Boundary Envelope		
<p><i>Applies to Land</i> <i>This control applies to land shown coloured on the DCP Map Side Boundary Envelopes.</i> <i>Objectives</i></p> <ul style="list-style-type: none"> • <i>To ensure that development does not become visually dominant by virtue of its height and bulk.</i> • <i>To ensure adequate light, solar access and privacy by providing spatial separation between buildings.</i> • <i>To ensure that development responds to the topography of the site</i> 	<p>The proposed development at No. 50 Condover Street does not meet this requirement as the rear extension is a dominant cubist structure which imposes onto the streetscape.</p> <p>While it is acknowledged that a setback has been provided, the bulk of the development is such that adequate light, solar access and privacy is reduced to No.48 Condover.</p> <p>It would be prudent for a more detailed building envelope to be provided to ensure compliance with this primary control pertaining to the bulk, as the topography slopes from the front to the rear of the site.</p>	No
<p>Requirements</p> <p><i>1. Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of:</i></p> <ul style="list-style-type: none"> • <i>4 metres, or</i> • <i>5 metres as identified on the map</i> 	<p>The 4m control applies to this site and on the information provided it does not meet the stated objectives. There appears to be opportunity to relocate the building further north to ensure the bulk of the building sits within the envelope. Refer to the south west elevation.</p>	No





Warringah DCP applicable requirements	Response	Consistency Yes / No
D6 Access to Sunlight Applies to Land		
<p>Objectives</p> <p><i>This control applies to land to which Warringah LEP 2011 applies.</i></p> <p><i>Objectives</i></p> <ul style="list-style-type: none"> <i>• To ensure that reasonable access to sunlight is maintained.</i> <i>• To encourage innovative design solutions to improve the urban environment and public open space.</i> <i>• To promote passive solar design and the use of solar energy</i> 	<p>Reasonable access to sunlight is not maintained to only private open space to the rear of the dwelling at No. 48 Condover Street.</p> <p>A different design would potentially reduce the overall impact on the urban environment.</p>	
<p>Requirements</p> <p><i>1. Development should avoid unreasonable overshadowing any public open space.</i></p> <p><i>2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21</i></p>	<p>At 9.00 am – 48 Condover has access to sunlight into its useable private open, although no % details provided.</p> <p>At 12.00 pm – 48 Condover is compromised in terms of overshadowing to its useable private open space. No % details provided.</p> <p>At 3.00pm – 48 Condover is severely overshadowed in terms of its useable private space. No % details provided.</p> <p>It is noted that the N point is at a different angle on the overshadowing diagrams to the Survey and Site Plan and the percentage of overshadowing is not provided.</p>	

D7 Views

Objectives

- *To allow for the reasonable sharing of views.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure existing canopy trees have priority over views*

Northerly aspect views from No.48 Condover Street have been completely removed.

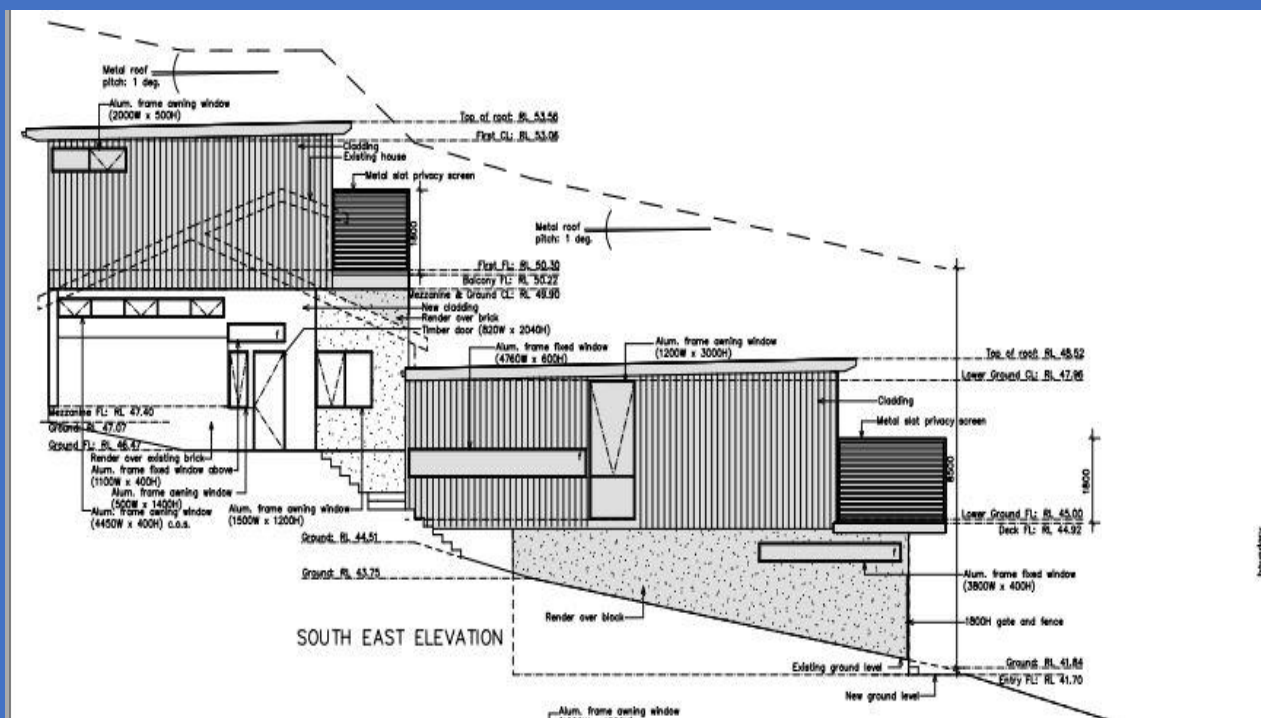
Requirements

Development shall provide for the reasonable sharing of views

No sharing of views has been provided. The current bulk and scale of the design negates any opportunity for view sharing.



South East Elevation – View from No. 48 Condover Street –



South East Elevation – View from No. 48 Condoover Street – Proposed.



Existing northerly views from No. 48 Condoover Street across No.50 Condoover Street will be completely removed and replaced with built form.

D8 Privacy

Objectives

To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.

To encourage innovative design solutions to improve the urban environment.

To provide personal and property security for occupants and visitors.

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The siting and design of the proposed development has resulted in a substantial loss of visual and acoustic privacy for No. 48 Condover Street.

A different design solution, based on the siting of the building could significantly reduce the impact.

No

Requirements

1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.

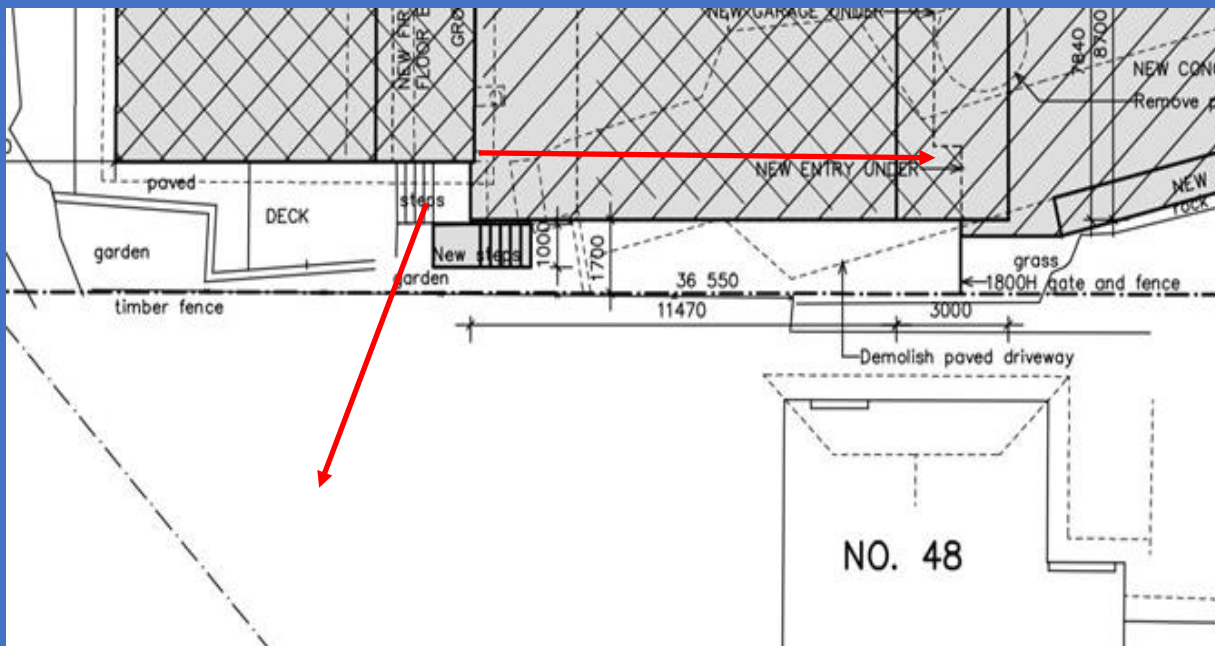
3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.

4. The windows of one dwelling are to be located so they do not provide direct or close views (i.e. from less than 9 metres away) into the windows of other dwellings.

The primary outdoor entertaining area of No. 48 Condover Street will be overlooked by the provision of full-length windows, doors and access stairs.

While visual privacy screens have been provided, they do not account for the acoustic impact that will be generated.

The red horizontal arrow identifies the current set back and it is recommended that this set be retained, particularly at the second level in order to reduce overlooking and allow more sunlight into the rear of No.48 Condover.



D9 Building Bulk

Objectives

To encourage good design and innovative architecture to improve the urban environment.

- To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Side and rear setbacks are to be progressively increased as wall height increases.

2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.

3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:

8. Articulate walls to reduce building mas

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The proposed development does not improve the urban environment rather it has a detrimental impact in terms of the location of the sheer bulk of the scale of the proposal adjoining No. 48 Condoover Street.

The proposal would benefit from the articulation of the walls to provide visual relief

Side setbacks have not been progressively set back. This would be a useful strategy to provide visual relief.

No

A review of Councils controls and guidelines indicates that the proposed alterations and additions are inappropriate in terms of bulk and scale for the locality and is not compatible with the surrounding residential built form resulting in unacceptable amenity impacts. Modifications to the existing design would ensure a more equitable outcome for all parties.

5. Planning Principles

5.1 Davies v Penrith City Council – Planning Principles pertaining to General Impact

Davies v Penrith City Council [2013] NSWLEC 1141. This judgement established revised planning principles pertaining to impact. The principles are outlined below.

- i. How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?*

The affected property being No. 48 Conover Street will experience a significant loss of privacy, sunlight, loss of visual and acoustic amenity.

- ii. How reasonable is the proposal causing the impact?*

The proposal is unreasonable and given the proximity of the south eastern wall and that the entire northern aspect of No.48 Conover rear yard is overlooked.

- iii. How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*

The impacted site loses significant amenity directly attributable to the proposed bulk and scale of the proposal

- iv. Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

Yes, the impact arises out of the proposed design and a different solution could potentially reduce the overall impact. For example, greater side setbacks, second floor setbacks, reduced height etc.

- v. Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?*

The proposal does not comply with the planning controls of height and the Building Envelope.

5.2 Veloshin v Randwick Council – Planning Principles Impacts of height, bulk and scale on Neighbouring Properties'

Veloshin v Randwick Council [2007] NSWLEC 428 at 32-33. This judgement established revised planning principles pertaining to 'Impact on neighbouring properties' and is addressed below.

- i. Are the impacts consistent with impacts that may be reasonably expected under the controls?*

The proposal is not consistent with the Building Envelope which is the primary control to manage bulk and scale.

- ii. How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?*

It is in excess of the height control.

- iii. Does the area have a predominant existing character and are the planning controls likely to maintain it?*

The area is a low impact residential area, the proposed development is out of character with the surrounding dwellings in terms of setbacks and proximity to neighbours.

iv. *Does the proposal fit into the existing character of the area?*

No, it is excessive for the locality, as it presents as a three-storey building.

v. *Is the proposal consistent with the bulk and character intended by the planning controls?*

No, as it exceeds the current Building Envelope.

vi. *Does the proposal look appropriate in its context?*

No, it is excessive in bulk and impact.

Note: the above questions are not exhaustive; other questions may also be asked.

6. Recommendations

It is acknowledged that the owners of No. 50 Condoval Street have the right to develop their site within the context of the planning framework and that the same controls and guidelines apply to all sites within the vicinity of No. 50 Condoval Street. It is also acknowledged that the site has an irregular shape, topography and existing setbacks. Notwithstanding the current proposal has a severely detrimental and irreversibly impact on No. 48 Condoval Street. It is therefore cordially requested that the following suggestions be considered, to ensure that the impact of the proposal is minimised.

1. More detailed information is to be provided pertaining to the existing Building Envelope. On the information provided there is an exceedance which significantly impacts on the bulk and scale of the development. This is the primary mechanism to control bulk and scale. No FSR requirement exist under the Warringah LEP, however the rule of thumb is 0.60 for residential areas and this should be also be considered in the assessment of the proposed development to ensure equity across the LGA.
2. Ensure height is in accordance with the WLEP, 2011.
3. Request detailed overshadowing diagrams which provide % of sunlight loss and which is based on a consistent north point. It is noted that the north point is at a different angle on the overshadowing diagrams as compared to the Survey and Site Plan.
4. Consider retaining the existing south east wall line to provide additional light and air flow.
5. Consider providing a progressive side setback on first floor level on the southern boundary to reduce the overall bulk of the proposed development
6. Provide greater articulation along the southern wall to compensate for complete view loss.
7. Consider breaking up the building into separate components with visual corridors to allow for sunlight and some northerly views.

8. Conclusion

Given the above concerns, we would be happy to meet with Council officers on site to illustrate our concerns at a mutually suitable time and explore alternative design solutions.

Should you have any queries, please contact the undersigned

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tracy Davey', written in a cursive style.

Tracy Davey (MTRP)
Town Planner

Email: tracydavey365@gmail.com.au

Paul and Sandra Kaplan
Owners No. 48 Condoover Street,
North Balgowlah