
Sent: 16/11/2021 10:45:22 PM
Subject: DA/2021/1812 - 4 Munoorra Street, Seaforth - Submission
Attachments: Submission - 4 Munoorra Street, Seaforth.pdf;

Dear General Manager,

Please accept the attached submission on behalf of the owners of 50 Grandview Grove, Seaforth in response to DA/2021/1812 at 4 Munoorra Street, Seaforth.

Thank you.

Kind regards,
Emma Rogerson
Town Planner
Corona Projects

M: +61 468 535 194

W: <http://www.linkedin.com/in/ecarogerson/>

E: rogerson.eca@gmail.com



16 November 2021

The General Manager
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Dear Sir/Madam,

**Submission in regards to DA/2021/1812 Development Application (“the DA”)
4 Munoorra Street, Seaforth**

“Construction of a dwelling house.”

Corona Projects has been engaged by the property owners of 50 Grandview Grove, Seaforth to undertake an assessment of DA/2021/1812 and provide a submission to Council on their behalf. 50 Grandview Grove lies to the south of the development site, 4 Munoorra Street. This assessment is based on a review of the development application plans and documents available for inspection on Northern Beaches Council’s website and a site visit.



Figure 1 – Site Locality Map (NearMaps, 2021)



ABN: 33 122 390 023

Suite 106, L1, 35 Spring Street, Bondi Junction, 2022

PO Box 1749 Bondi Junction NSW 1355

Ph: 0419 438 956

Email: info@coronaprojects.com.au



Figure 2 – Development site viewed from street (Google Maps, 2020)

1. Introduction

The dwelling house proposal at 4 Munoorra Street, Seaforth raises considerable concerns regarding overshadowing, overlooking and visual bulk. Consequently, it will pose an unacceptable impact on the solar access, privacy and visual outlook for 50 Grandview Grove.

2. Solar Access and Overshadowing

At present the principal private open space of 50 Grandview Grove receives sunlight on the Winter Solstice due to its intentional northerly orientation.

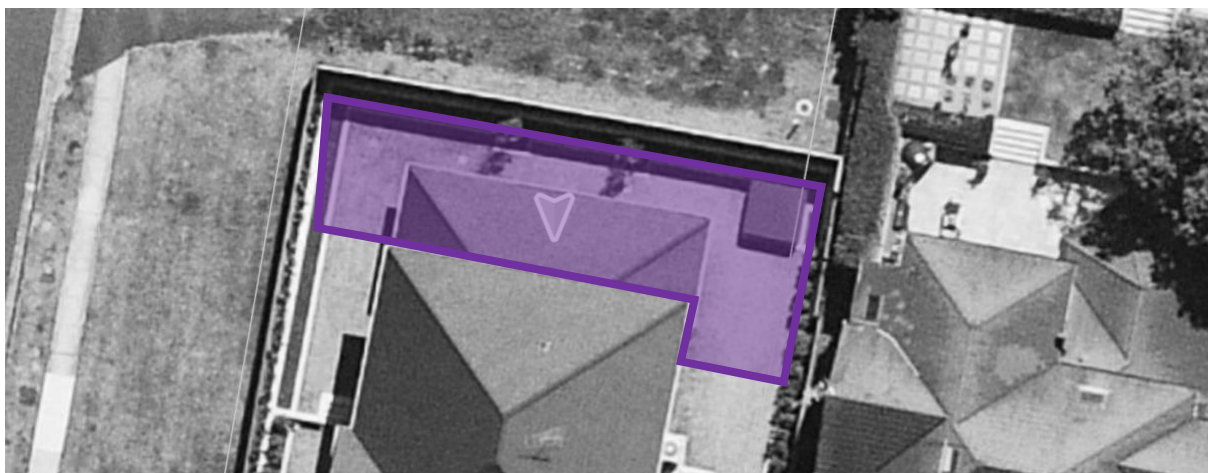


Figure 3 – Principal private open space of 50 Grandview Grove (Corona Projects, 2021)

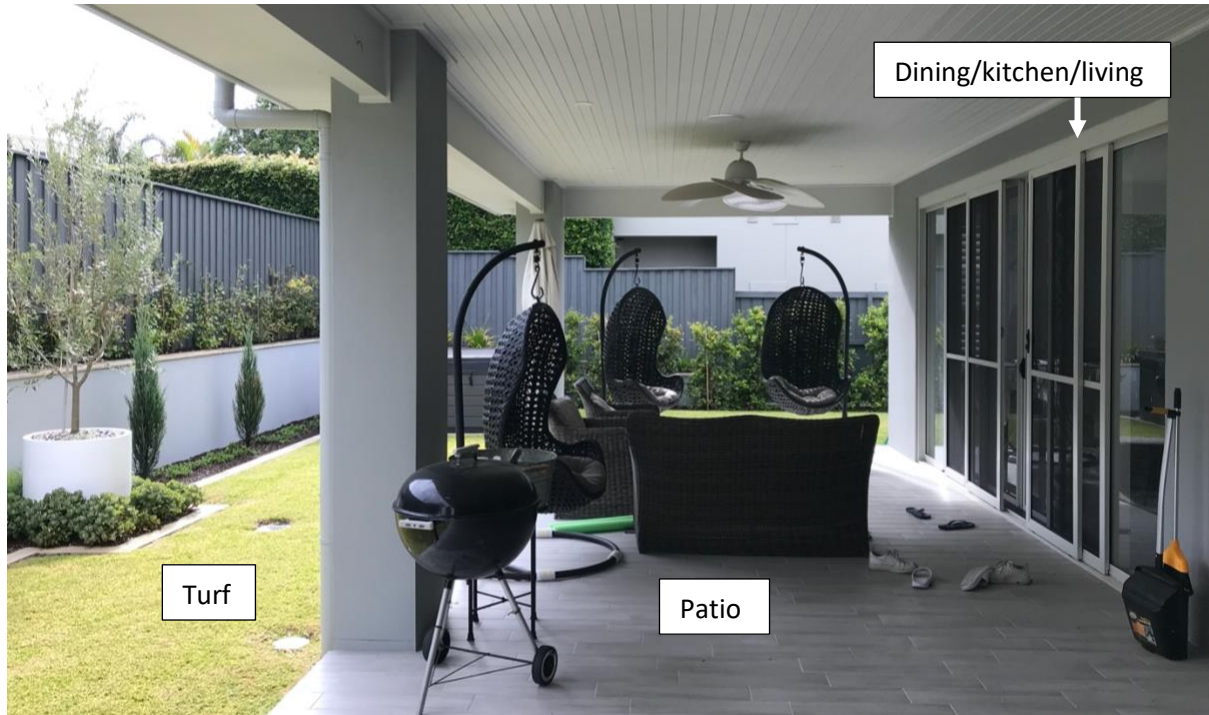


Figure 4 – Principal private open space of 50 Grandview Grove (Corona Projects, 2021)



Figure 5 – Principal private open space of 50 Grandview Grove (Corona Projects, 2021)



The shadow diagrams prepared by the applicant for this Development Application do not allow for a proper assessment of the proposed solar impact as information is missing. The diagrams do not consider the loss of sunlight on the garden, patio, lounge and dining room of 50 Grandview Grove due to the height of the proposed dwelling. They do not show a typical “before” and “after” proposal comparison. The diagrams also ignore the consideration of solar access to north-facing kitchen/dining/living room windows of 50 Grandview Grove



Figure 6 – Shadow diagrams submitted by applicant (KJR, 2021)

Despite the above, with the limited modelling available it can still be determined that the works proposed under DA/2021/1812 will substantially decrease the amount of sunlight received by the rear garden and patio of 50 Grandview Grove during Winter months beyond a reasonable degree. This will result in a non-compliance with the applicable solar access objectives and controls under Part 3.4.1 of the Manly Development Control Plan (MDCP) 2013 which requires development to:



ABN: 33 122 390 023

Suite 106, L1, 35 Spring Street, Bondi Junction, 2022

PO Box 1749 Bondi Junction NSW 1355

Ph: 0419 438 956

Email: info@coronaprojects.com.au

Objective 1)	To provide equitable access to light and sunshine.
Objective 2)	To allow adequate sunlight to penetrate: <ul style="list-style-type: none">• private open spaces within the development site; and• private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.
Objective 3)	To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by: <ul style="list-style-type: none">• encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and• maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.

In relation to sunlight to private open space of adjacent properties:

- New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or
- Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.

Figure 7 – Excerpts from Part 3.4.1 of the MDCP 2013

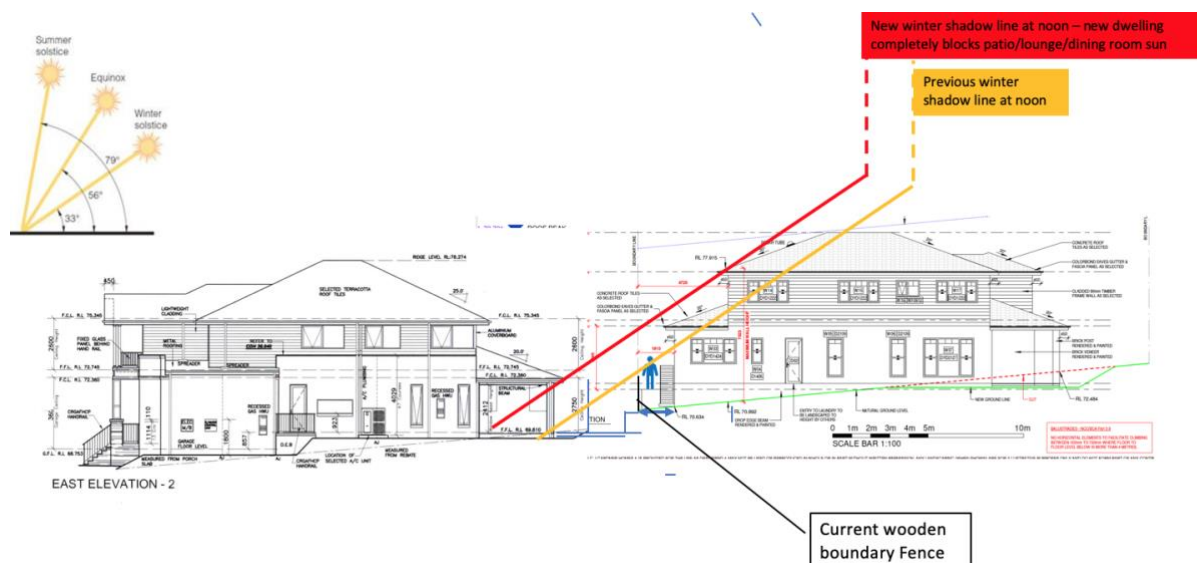


Figure 8 – Estimated loss of solar access due to height and proximity of proposed dwelling

Even if the proposal did comply numerically with MDCP 2013 solar access controls, “reasonable sunlight” should be subject to consideration against planning principles established in *The Benevolent Society v Waverley Council* (2010) NSWLEC 1082 and *Parsonage v Ku-ring-gai* (2004) NSWLEC 347.

Senior Commissioner Moore established the planning principles to properly assess the impact of solar access to open space in *The Benevolent Society v Waverley Council* (2010) NSWLEC 1082 as it is concluded that

“overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guideline” and,



“for private open space to be assessed as receiving adequate sunlight, regard should be had to the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space.”

The overshadowing by DA/2021/1812 is a direct result of “poor design” given the ability for a development to occur with a slightly reconfigured scheme that does not sacrifice the solar access for its southerly neighbour. Furthermore, the rear garden and patio space of 50 Grandview Grove which is being overshadowed is the only private open space area for the site, and is located directly accessible from the primary living areas of the dwelling, rendering the area frequently used and important for the current and future residents.

In addition, Senior Commissioner Roseth concludes in *Parsonage v Ku-ring-gai (2004) NSWLEC 347* that numerical guidelines should be applied with a great deal of judgement with the following example provided:

“Consider a dwelling that now receives sunlight all day. Taking away that sunlight from 9am till noon would satisfy most guidelines; and yet the occupants of such a dwelling are likely to perceive it as a devastating impact on their dwelling’s amenity”

The above example is identical to the circumstances imposed by DA/2021/1812 on the rear garden and patio of 50 Grandview Grove. The proposal is expected to block most significant sunlight during most hours of the day in June.

The current rear garden and patio of 50 Grandview Grove is subject to some shadows during the Winter Solstice from the existing boundary fencing highlighted in figure 5. This extent of existing overshadowing during Winter months renders the remaining portions of sunlight received even more critical to ensuring that the site actually has solar amenity for its residents.

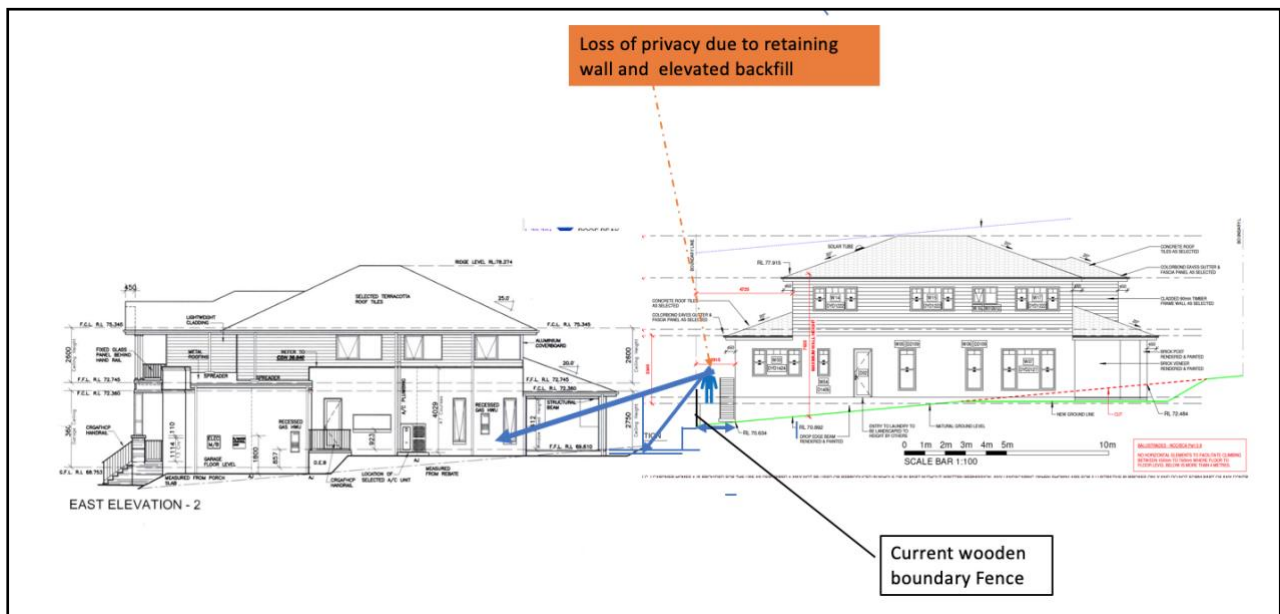
The overshadowing of the remaining areas of sunlight will have a detrimental impact on the current and future residents, and cannot be supported.

It can therefore be reasonably concluded that DA/2021/1812 will impose an unjustified overshadowing impact on the rear garden and patio of 50 Grandview Grove that cannot be supported, in accordance with an assessment against the MDCP 2013, and the findings under *The Benevolent Society v Waverley Council (2010) NSWLEC 1082* and *Parsonage v Ku-ring-gai (2004) NSWLEC 347*. A reconfigured design, as detailed in the Recommendations of this letter will assist to protect the solar access for 50 Grandview Grove, whilst still allowing 4 Munoorra Street to increase their residential amenity and develop.



3. Visual Privacy and Overlooking

Whilst the lack of proposed south-facing windows is appreciated by the owners of 50 Grandview Grove, the raised nature of a portion of the southerly setback proposed under DA/2021/1812 will allow for direct, unobstructed and close views into the principle private open space (rear garden, patio and spa), and primary habitable living areas (living, dining and kitchen spaces) of 50 Grandview Grove. Figures 9 and 12 show the expected views from the proposed raised setback created by way of proposed earth fill, straight into every shared living space of the single dwelling at 50 Grandview Grove, resulting in a substantial and unacceptable visual privacy breach.





Corona Projects

ABN: 33 122 390 023

Suite 106, L1, 35 Spring Street, Bondi Junction, 2022

PO Box 1749 Bondi Junction NSW 1355

Ph: 0419 438 956

Email: info@coronaprojects.com.au

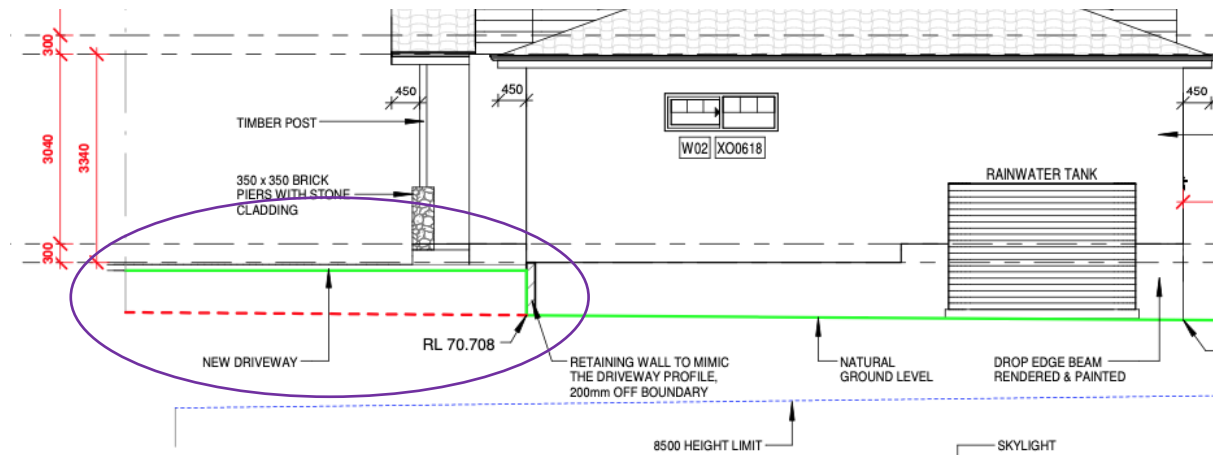


Figure 11 – Fill area of concern (southern elevation)



Figure 12 – Overlooking Diagram (Corona Projects, 2021)

The proposed overlooking is in conflict with the Part 3.4.2 of the MDCP 2013 which states that development must “*minimise loss of privacy to adjacent and nearby development by appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings*”

Furthermore, under *Meriton v Sydney City Council [2004] NSWLEC 313* SC Roseth concludes that;



*“Generalised numerical guidelines such as above [Council DCP Privacy controls], need to be applied with a great deal of judgment, taking into consideration **density, separation, use and design**”.*

Roseth states that the principles discussed below may be applied when assessing privacy:

Assessment Principle	Comment
1. Ease of Privacy Retainment The ease with which privacy can be protected is inversely proportional to the density of development. At low-densities there is a reasonable expectation that a dwelling and some of its private open space will remain private. At high-densities it is more difficult to protect privacy.	As the development site and the site subject to privacy loss will both contain single dwelling houses, it remains a reasonable expectation that the POS and primary living spaces of 50 Grandview Grove should retain its privacy.
2. Separation Privacy can be achieved by separation . The required distance depends upon density and whether windows are at the same level and directly facing each other. Privacy is hardest to achieve in developments that face each other at the same level. Even in high-density development it is unacceptable to have windows at the same level close to each other. Conversely, in a low-density area, the <i>objective</i> should be to achieve separation between windows that exceed the numerical standards above. (Objectives are, of course, not always achievable.)	DA/2021/1812 should improve the physical separation between the position of overlooking (raised earth level of 4 Munoorra Street) and the rear garden and living spaces of 50 Grandview Grove. The retention of existing external southern setback ground level can achieve this.
3. Use of Space The use of a space determines the importance of its privacy. Within a dwelling, the privacy of living areas, including kitchens, is more important than that of bedrooms. Conversely, overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time.	The north-facing rear garden, patio and internal living areas of 50 Grandview Grove are the only portion of high quality POS that the entire site has, and as such the overlooking from 4 Munoorra Street is unacceptable.
4. Poor Design Overlooking of neighbours that arises out of poor design is not acceptable. A poor design is demonstrated where an alternative design, that provides the same amenity to the applicant at no additional cost, has a reduced impact on privacy.	An alternative design can overcome the concerns raised within this letter.
5. Hierarchy of Space Where the whole or most of a private open space cannot be protected from overlooking, the part adjoining the living area of a dwelling should be given the highest level of protection.	The areas of Private Open Space directly adjoining the internal living room is the area subject to the proposed overlooking.



6. Additional Solutions Apart from adequate separation, the most effective way to protect privacy is by the skewed arrangement of windows and the use of devices such as fixed louvres, high and/or deep sills and planter boxes. The use of obscure glass and privacy screens, while sometimes being the only solution, is less desirable.	No privacy screening devices have been implemented within DA/2021/1812, however, fixed screening is not welcome by the owners of 50 Grandview Grove as this will worsen their solar access. The retention of existing external southern setback ground level can achieve visual privacy between the properties.
7. Landscaping Landscaping should not be relied on as the sole protection against overlooking. While existing dense vegetation within a development is valuable, planting proposed in a landscaping plan should be given little weight.	Noted.
8. Change In areas undergoing change, the impact on what is likely to be built on adjoining sites, as well as the existing development, should be considered.	The area surrounding the development site is not undergoing considerable change. In fact, future development should retain the established character Seaforth and in doing so, retain visual and acoustic privacy.

In accordance with *Meriton v Sydney City Council [2004] NSWLEC 313*, a more compatible design would assist to reasonably mitigate overlooking concerns between the two properties. Without the changes proposed in the Recommendations of this letter, the development cannot be supported in its current form.

4. Visual Bulk and ‘Sense of Enclosure’

DA/2021/1812 will appear bulky and obtrusive from the primary living spaces of neighbouring sites. The non-compliant extent of extrusion will provide the current and future residents of 50 Grandview Grove with a feeling of enclosure from their primary habitable spaces, rear garden and patio principle private open spaces and upper floor south-facing lounge and bedroom.

5. Overdevelopment

Detached dwelling houses in Seaforth typically house families with children. In accordance with the 2016 ABS Census, the average number of children per family is 1.2, with an average number of 3.2 persons per household.



Considering these statistics, the construction of a dwelling house containing **5** bedroom, **5** living rooms (living room/lounge room/rumpus room/study/covered alfresco), and 5 bathrooms of this scale is considered an overdevelopment when it results in such adverse impacts for 50 Grandview Grove.

The Recommendations provided in this letter are considered to result in a better outcome, as every issue outlined in this letter is overcome and the site can still provide for a high quality, functional family dwelling.

6. Non-Compliance with Manly LEP and Manly DCP Planning Controls

The numerical non-compliances of the proposal with the applicable controls is not a concern for the residents of 50 Grandview Grove in principle, however, as the issues raised within this submission are a direct consequence of non-compliance with the following MLEP development standard and MDCP planning controls, their variance cannot be accepted.

Note: Even if the proposal were to numerically comply with the below controls, an increased southern first floor setback and reduced southern setback external ground level would still be required to produce a harmonious planning outcome.

6.1 Floor Space Ratio

Non-compliance - The proposal exceeds the maximum permissible Floor Space Ratio stipulated by the Manly Local Environmental Plan (MLEP 2013) by 4.7%. This variation cannot be accepted under the current proposal as it contributes to the bulk of the proposed dwelling which results in overshadowing and a sense of enclosure for 50 Grandview Grove.

6.2 Setbacks

Non-compliance - The proposal features a numerical non-compliant front, rear and southern side setback. Even if the proposal were to numerically comply with the required setbacks, greater ones are required given the conflicting orientation of the private open space of 50 Grandview Grove to the side boundary of 4 Munoorra Street.

6.3 Development on sloped sites

Non-compliance – Part 4.1.8 of the MDCP 2013 states that “the design of development must respond to the slope of the site, to minimise loss of views and amenity from public and private spaces. Developments on sloping sites must be designed to generally step with the topography of the site”.

Rather than stepping with the natural terrain, the proposal has relied on cut and fill to produce a flat site. This is unreasonable given the adverse amenity impacts that the raising of terrain along the southern boundary directly causes for 50 Grandview Grove.



7. Against the Public Interest

The MLEP and MDCP are considered to be contemporary documents, updated recently on 14 July 2021 (MLEP) and when housekeeping reviews are required (MDCP). As part of the planning policy process, changes to the LEP and DCP are placed on public exhibition prior to finalisation and gazettal, in order to ensure that the documents reflect the local communities sentiments. Therefore, any non-compliance with the LEP and DCP can be considered to be **directly against the public interest**.

As such, the proposal under DA/2021/1812 in its current form is not in the public interest, and cannot reasonably be supported as the “public interest” is a key consideration that consent authorities such as Council must consider under Clause 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

8. Recommendations

A more skilful design by way of scheme reconfiguration can allow both 50 Grandview Grove and 4 Munoorra Street to retain and/or improve their amenity. Actions a – d provide a suitable scheme which solves all concerns raised within this letter and allow for a new dwelling house at 4 Munoorra Street, Seaforth.

- a) **Action:** Retain the existing ground level for the proposed driveway and southern external setback. Instead, step the design.
Outcome: This will protect the privacy of 50 Grandview Grove and reduce overshadowing.
- b) **Action:** Reduce the building height by reducing the floor to ceiling height of the ground floor to 3m, and the floor to ceiling height of the first floor to 2.4m.
Outcome: This will reduce overshadowing and visual bulk for 50 Grandview Grove.
- c) **Action:** Increase the upper floor southern setback to 11 metres.
Outcome: This will reduce visual bulk and overshadowing for 50 Grandview Grove as the shadows from the new upper floor will primarily fall on the roof of the proposed ground floor below rather than the rear garden and patio of 50 Grandview Grove.
- d) **Action:** Increase the ground floor southern setback to 3 metres.
Outcome: This will reduce the extent of shadow cast on the rear garden and patio of 50 Grandview Grove, and achieve numerical compliance with the side setback MDCP 2013 control.

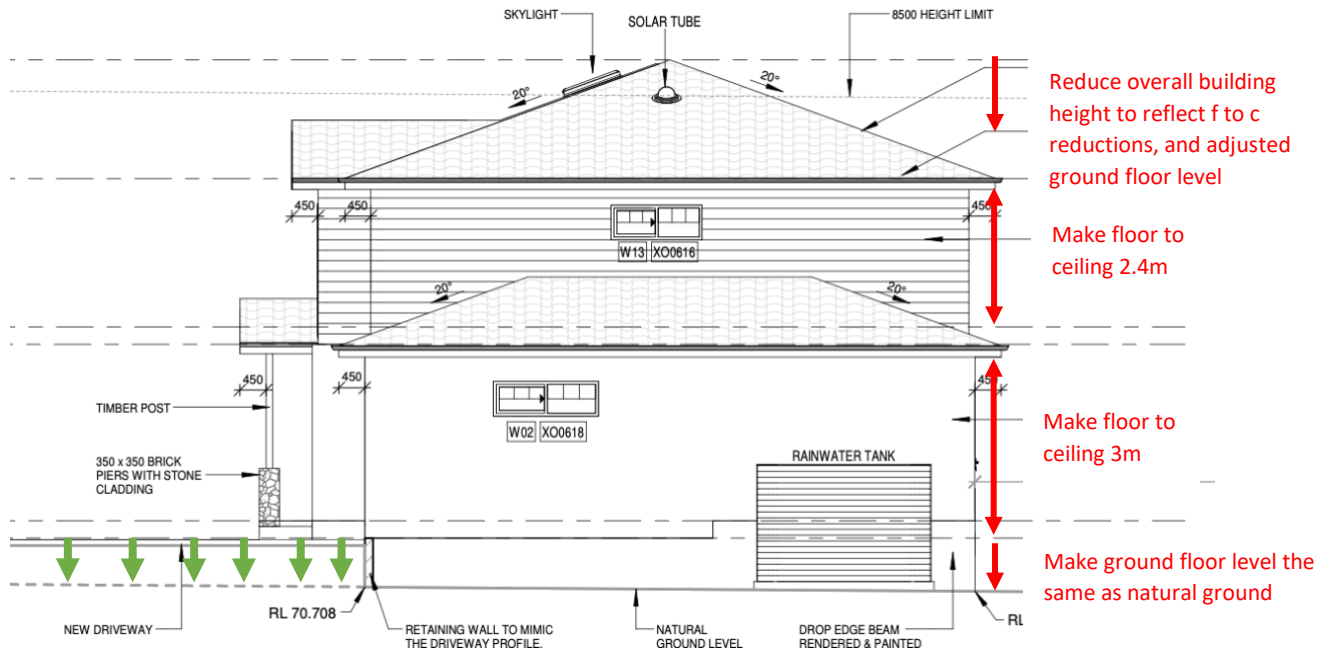


Figure 13 – Recommendations – southern elevation (Corona Projects, 2021)

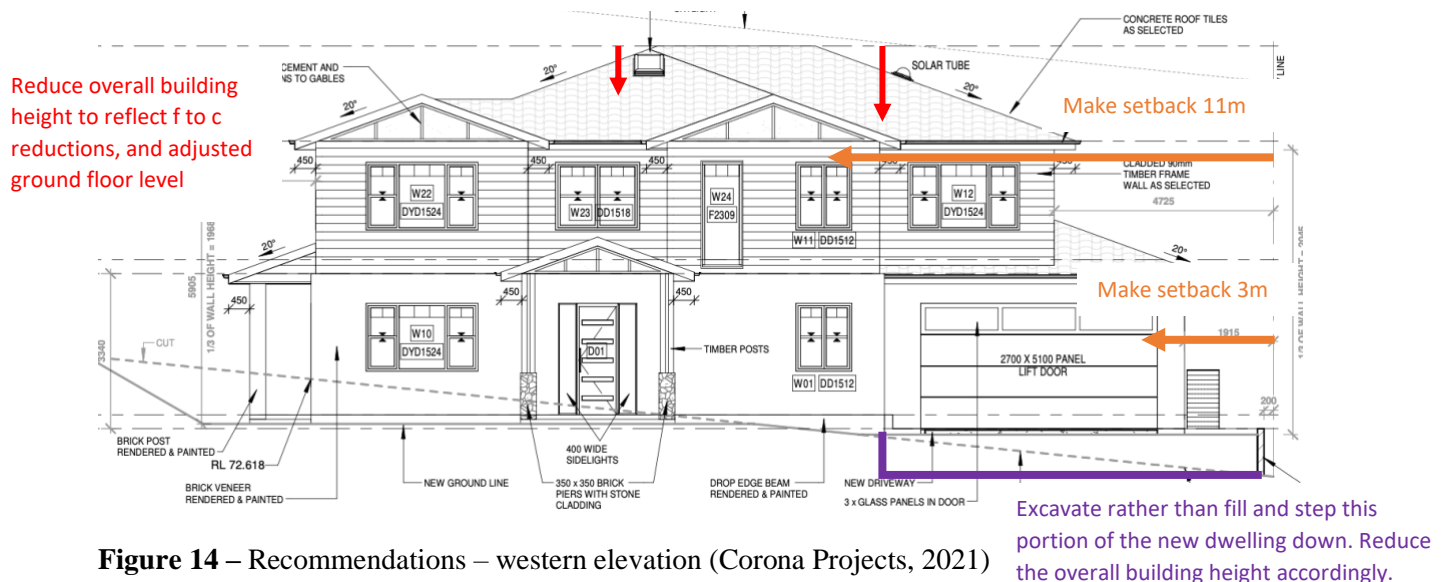


Figure 14 – Recommendations – western elevation (Corona Projects, 2021)

A 5-bedroom dwelling house can still be comfortably constructed at 4 Munoorra Street under the above actions, noting that a solution as simple as deleting the upper floor “bed 2”, “bed 3” and “bath”, and relocating these to where the upper floor “study” “walk in robe” and ground floor “rumpus” rooms are currently proposed can largely assist.



Conclusion

We have strong concerns about the proposed development and believe it cannot be supported in its current form. The development will have an adverse impact on the residential amenity of 50 Grandview Grove, Seaforth. A development of this configuration cannot be supported on this site. It is therefore requested that the proposed development in its current form be amended. Any future development on the site should ensure compatibility with the local area and address the issues raised in this submission.

The owners of 50 Grandview Grove invite Council to conduct a site inspection on their property to best understand the perspective of the discussed concerns. Please contact the owners of 50 Grandview Grove to arrange a visit.

Kind regards,

Emma Rogerson
Master of Urbanism (Urban and Regional Planning) (USYD)
Bachelor of Architecture and Environments (USYD)
Planning Institute of Australia (Assoc.)
Town Planner