
Sent: 27/05/2021 12:14:32 PM
Subject: DA/2021/0570: 3 Melaleuca Street, Newport - Objection Letter
Attachments: Objection Letter - 3 Melaleuca Street, Newport.pdf;

Dear Sir/Madam,

Please accept the attached letter as a formal objection submission for DA/2021/0570 concerning 3 Melaleuca Street, Newport on behalf of the owners of 5 Melaleuca Street, Newport.

Please do not hesitate to be in touch if you had any further questions.

Kind regards,

Eleni Emvalomas

BAE (USYD)

Town Planner & Project Manager

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建筑设计, 开发, 施工, 成本管理, 项目咨询





22 May 2021

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

Dear Sir/Madam,

**Submission in regards to DA/2021/0570 Development Application (“the DA”)
3 Melaleuca Street, Newport**

“Alterations and additions to a dwelling house.”

Corona Projects have been engaged by the property owner of 5 Melaleuca Street, Newport to undertake an assessment of DA/2021/0570 and provide a submission to Council on her behalf. 5 Melaleuca Street adjoins the development site to the south. 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 (Google Maps, 2020)



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

1. Introduction

The dwelling house alterations and additions proposal at 3 Melaleuca Street raises considerable concerns regarding overshadowing, overlooking, visual bulk and overall planning control non-compliances. Consequently, it will pose an unacceptable impact on the privacy, solar access and general outlook of 5 Melaleuca Street, and the character of the locality.

Inconsistencies which may impact on the assessment of the application include the discontinued building outline of 3 Melaleuca Street to the east.

2. Solar Access and Overshadowing

At present the principal private open space, comprising of garden and verandah space of 5 Melaleuca Street receives minimal sunlight on the Winter Solstice.



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Figure 3 – Principal private open space of 5 Melaleuca Street (Corona Projects, 2021)

The works proposed under DA/2021/0570 will further reduce the amount of sunlight received by this space, resulting in a non-compliance with the applicable solar access controls under Part C1.4 of the Pittwater 21 Development Control Plan 2014 which requires:

“The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.”

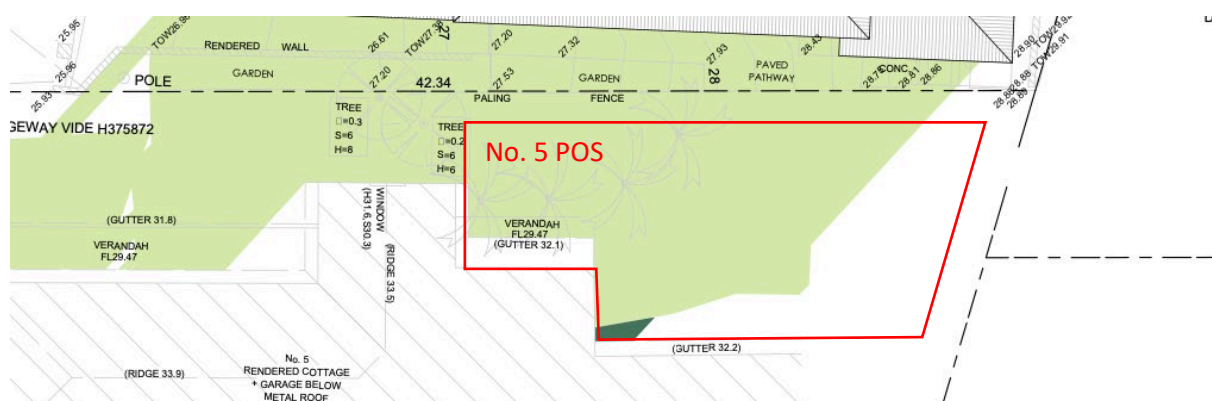


Figure 4 – 9am shadow diagram with additional shadow in dark green (Amores 2021)

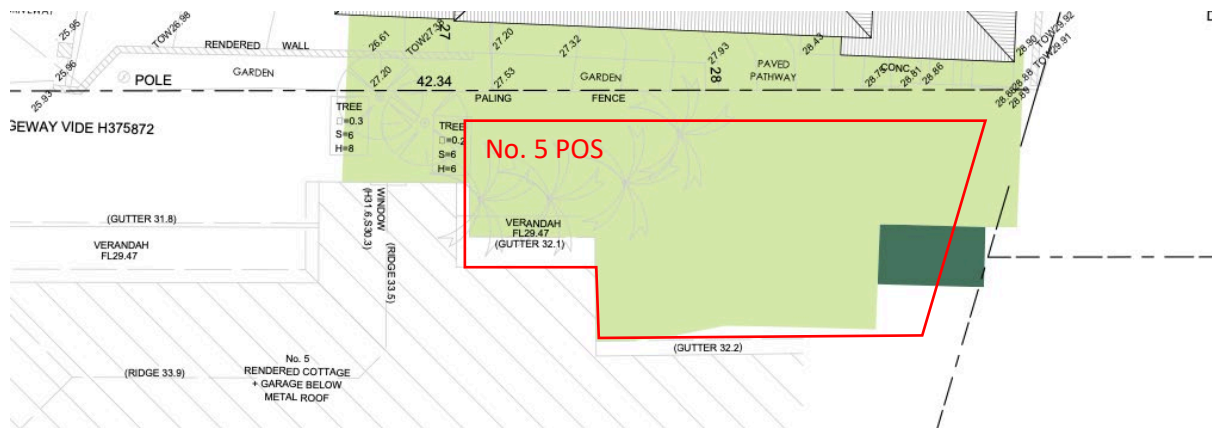


Figure 5 – 12noon shadow diagram with additional shadow in dark green (Amores 2021)

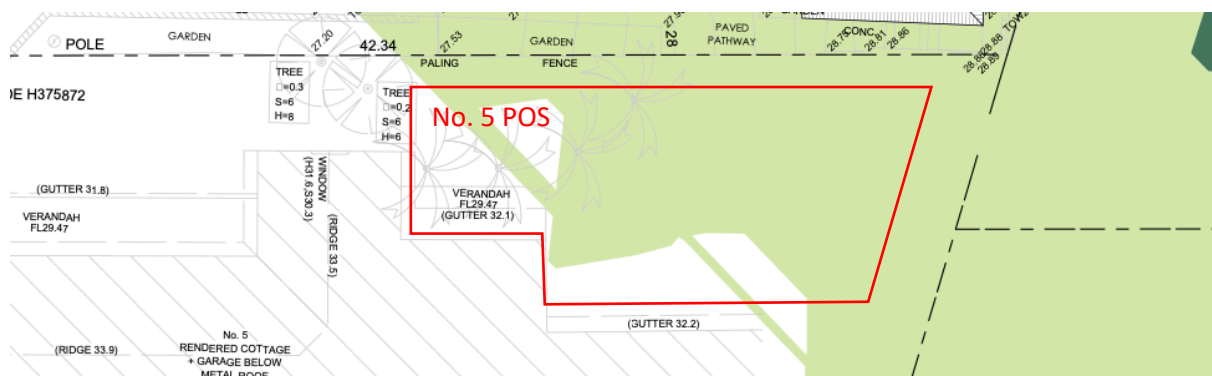


Figure 6 – 3pm shadow diagram with additional shadow in dark green (Amores 2021)

Even if the proposal did comply numerically with PDGP 21 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/2021/0570 is a direct result of “poor design” given the ability for a development to occur within the existing building envelope, without the need for an additional storey that risks the amenity of the surrounding neighbours. Furthermore, the rear garden and verandah space of 5 Melaleuca Street which is being overshadowed is the only private open space area for the site, and its 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/2021/0570 on the rear garden and verandah of 5 Melaleuca Street As highlighted within figures 4, 5 and 6, the proposal will block additional remaining sunlight during most hours of the day in June, as show in **dark green**. This will have a detrimental impact on the current and future residents.

It can therefore be reasonably concluded that DA/2021/0570 will impose an unjustified overshadowing impact on the rear garden of 5 Melaleuca Street that cannot be supported, in accordance with an assessment against the PLEP 21 and the findings under *The Benevolent Society v Waverley Council (2010) NSWLEC 1082* and *Parsonage v Ku-ring-gai (2004) NSWLEC 347*. A reduction in scale, as detailed in Part 7 of this letter will assist to protect the solar access for 5 Melaleuca Street whilst still allowing 3 Melaleuca Street to increase their residential amenity.

3. Visual Privacy and Overlooking

Windows along the southern elevation proposed under DA/2021/0570 will allow for direct, unobstructed and close views into the principle private open space, and habitable areas of 5 Melaleuca Street. Figure 7 shows the expected views from the proposed Bedroom 3 south-facing window (labelled ‘W3’), straight into the living spaces and bedroom of the single dwelling at 5 Melaleuca Street resulting in a substantial and unacceptable visual privacy breach.

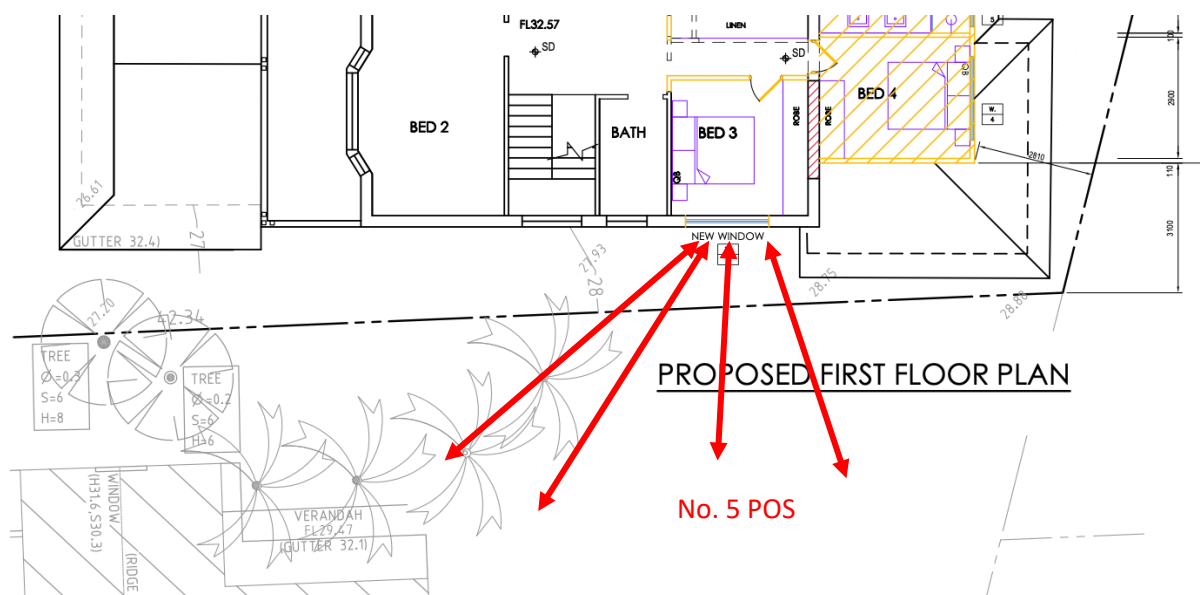


Figure 7 – Overlooking Diagram (Corona Projects, 2021)

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 both contain single dwelling houses, it remains a reasonable expectation that the house and POS and primary living spaces of No. 5 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/2021/0570 should improve the physical separation between the position of overlooking (first floor windows) and the rear garden and living spaces of 5 Melaleuca. The removal of the upper floor extension, or any new southerly windows can assist to 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	The rear garden and verandah area of 5 Melaleuca Street is the only portion of high quality POS that the entire



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.	site has, and as such the overlooking from the proposed new first floor windows 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 which does not sacrifice the amenity of 3 Melaleuca Street and protects that of 5 Melaleuca Street as suggested in part 7 of this report, can be very reasonably achieved.
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 area of rear garden and verandah that adjoins the living room of 5 Melaleuca Street is the area that is subjected most to overlooking from the proposed upper floor south-facing window.
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/2021/0570.
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.	
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 of the area and in doing so, retain visual and acoustic privacy.

In accordance with *Meriton v Sydney City Council [2004] NSWLEC 313*, more skilful design including containing changes within the existing building envelope would assist to reasonably mitigate overlooking concerns between the two properties.



4. Visual Bulk and ‘Sense of Enclosure’

DA/2021/0570 will appear bulky and obtrusive from the primary private open space of 5 Melaleuca Street. The extent of extrusion will provide the current and future residents of 5 Melaleuca Street with a feeling of enclosure.

5. Overdevelopment

Detached dwelling houses in Newport typically house families with children or couples whose children have moved out. In accordance with the 2016 ABS Census, the average number of children per family is 1.9, with an average number of 2.7 persons per household.

Considering these statistics, the construction of a 5-bedroom dwelling of this scale is considered a major overdevelopment for an area where the average number of inhabitants is 2.7.

The recommendations provided in Part 7 of this letter are considered to result in a substantially better outcome, as every single issue outlined in this letter is overcome and the site can still provide for a high quality, functional family dwelling.

6. Stormwater

At present, water travelling from east to west along the shared border of 3 and 5 Melaleuca Street poses a flooding issue towards the Melaleuca Street frontage. The addition of a secondary dwelling at 18A Lovering Place, Newport (the easterly neighbour to No. 3 Melaleuca) has worsened this problem with reports of the garage of 3 Melaleuca experiencing flooding.

DA/2021/0570 shows major plumbing works involving several bathrooms, kitchen and laundry on the southern side of the dwelling. The review, assessment and certification by a suitably qualified hydraulic and stormwater engineer should be engaged at this stage to review the plans and existing site, to ensure that further water issues are not created.

7. Recommendations

A more skilful design by way of containing works within the existing building envelope, or reconfiguring the upper floor extension can allow both 3 and 5 Melaleuca Street to improve and/or retain their amenity respectively. Actions a – c provides a suitable scheme which solves all concerns raised within this letter and allow for alterations and additions at 3 Melaleuca Street.

- a) **Action:** Contain the changes to the existing building envelope, or increase the southern setback of the new extension to the point where no overshadowing of the POS at 5 Melaleuca is imposed.
Outcome: This results in no additional overshadowing of the POS at 5 Melaleuca Street.
- b) **Action:** Apply a minimum sill height of 1.7m, or delete the new window ‘W3’ of Bedroom 3.



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Outcome: This will prevent additional overlooking from the bedroom to the POS, living rooms and bedroom of No. 5 Melaleuca.

- c) **Action:** Engage a suitably qualified hydraulic and stormwater engineer to assess water impacts at DA stage.

Outcome: This will reduce the risk of additional water issues for both 3 and 5 Melaleuca.

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 solar access, privacy and overall amenity of 5 Melaleuca Street. A development of this form cannot be supported on this site. It is therefore requested that the proposed development in its current form be refused. Any future development on the site should ensure compatibility with the local area and address the issues raised in this submission.

The owner of 5 Melaleuca Street invites Council to conduct a site inspection on her property to best understand the perspective of the discussed concerns. As the owner has been in hospital on an extended stay during the course of this DA, please contact Corona Projects on 0419 438 956 to arrange for a site inspection.

Kind regards,

Emma Rogerson

Master of Urbanism (Urban and Regional Planning) (USYD)

Bachelor of Architecture and Environments (USYD)

Town Planner