
From: Anna Williams
Sent: 18/07/2025 8:49:13 AM
To: Council Northernbeaches Mailbox; Brittany Harrison
Cc: Gerry Lenihan
Subject: TRIMMED: Submission objecting to DA2025/0167 45A Riviera Avenue Avalon Beach
Attachments: Submission 45A Riviera Avenue Avalon.pdf;

Good Morning Brittany,

Thankyou for your patience in allowing our submission on behalf Gerry and Felicity at 10 Capua Place.

Should you have any questions, please feel free to call to discuss.

Regards,

Anna Williams, Director
Blackwattle Planning

E: [REDACTED]

T: [REDACTED]

The CEO
Northern Beaches Council
council@northernbeaches.nsw.gov.au

Attention: Brittany Harrison
Brittany.Harrison@northernbeaches.nsw.gov.au

16 July 2025

Dear Madam,

RE: DA2025/0167 Alterations and additions to a dwelling house including a secondary dwelling and garage at 45A Riviera Avenue Avalon Beach

We are assisting the owners of No. 10 Capua Place Avalon Beach and raise concerns regarding the impact of the proposed development at 45A Riviera Avenue on its amenity. Thank you for the opportunity to respond to this matter.

Context

No. 10 Capua Place adjoins the subject site to the north west. It supports a dwelling over four levels with a north-east to south-west orientation. 45A Riviera Avenue has ground levels at the shared boundary that are at least 2m above the deck levels of 10 Capua Place. The existing deck on 45A Riviera Avenue, adjoining the shared boundary with 10 Capua Place, has an elevated level of RL69.25, which is nearly 4.5m above the deck at 10 Capua Place (RL 64.84). The proposed secondary dwelling is to be located generally in the location of the existing deck at 45A Riviera Avenue, setback only 1m from the boundary.

The deck at 10 Capua Place is the main private open space for this dwelling and includes expansive outdoor eating and entertaining areas, and bbq. This deck extends from the kitchen, which includes windows with direct viewing sightlines from the neighbouring existing deck at 45A Riviera.

Whilst there is some vegetation planted by the residents of 10 Capua Place near the boundary, the ground conditions are not conducive to a depth of planting that could provide privacy, and the height to which screening is required is impractical for both landscaping and any further structural screening.

Objections to the proposal

We have reviewed the Development Application documentation online and have undertaken a site visit at 10 Capua Place to understand the impacts upon our clients dwelling and primary open space areas.

If the secondary dwelling were to be approved as proposed in the current plans, there would be a significant loss of amenity for the residents of No. 10 Capua Place, particularly as it relates to privacy from proposed windows and a deck on the north west elevation. Additionally, we are concerned with the substantial visual impact of a building with a height of 7m above the deck level of 10 Capua Place located only 1m from the shared boundary.

These circumstances bring the development into non-compliance with Council's DCP controls, especially those relating to the building envelope control and privacy. Following our site visit to 10 Capua Place, it is clear there is not an ability for such breaches to meet the objectives of the controls, and any approval of the plans in their current form would in our view be entirely unreasonable.

We are also concerned regarding a number of matters relating to due process in the content of the application, including significant errors and omissions in the documentation relied upon by the applicant. A detailed analysis of these concerns are provided below.

Stormwater plans not consistent with recommendations of Geotechnical Report

Stormwater plans submitted late in the assessment process have clarified the method of stormwater disposal, being to OSD and then to a level spreader located less than 3m from the shared boundary with No. 10 Capua Place. We note that the very steep land in the location of the level spreader falls in the direction of the boundary with No. 10 Capua Place.

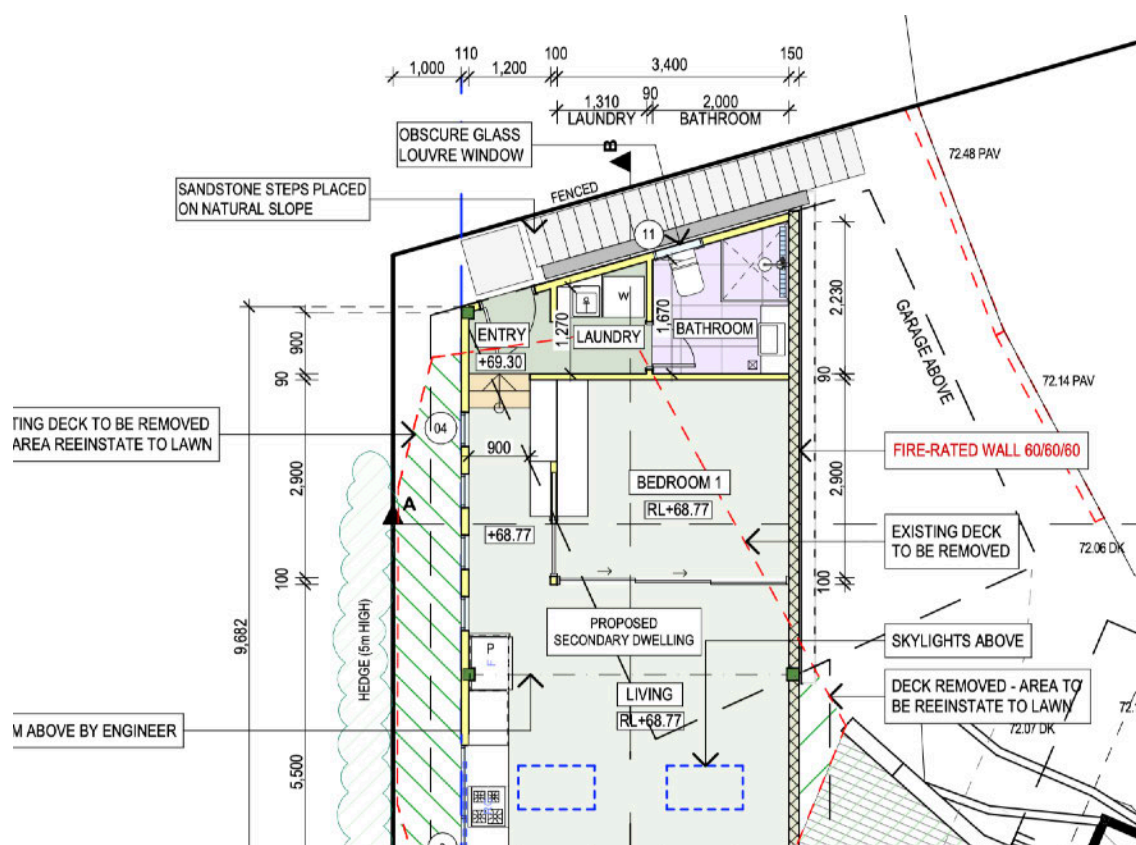
The Geotechnical report supporting the application dated August 2024 prepared by Ascent Geo appears to be the only geotechnical information provided by the applicant to date. This report has specific requirements relating to stormwater disposal on 45A Riviera Avenue, that include the following (our emphasis added):

*The effective management of ground and surface water on site **may be the most important factor in the long-term performance of built structures**, and the stability of the block more generally. It is essential that gutters, downpipes, drains, pipes and connections are appropriately sized, functioning effectively, and discharging appropriately via non-erosive discharge.*

All stormwater collected from hard surfaces is to be collected and piped directly to the council stormwater network through any storage tanks or onsite detention that may be required by the regulating authorities, and in accordance with all relevant Australian Standards and the detailed stormwater management plan by others. Saturation of soils is one of the key triggers for many landslide events and a significant factor in destabilisation of structures over time. As such, the review and design of stormwater systems must consider climate change and the increased potential for periods of concentrated heavy rainfall

The stormwater plans and report provided by the applicant dated June 2025 are clearly not consistent with the recommendations of the Geotechnical Engineering report for the site and development. The above text is taken from Table 6 of the Geotechnical report. In their assessment of the stormwater disposal plan and report provided by the applicant, the Council's engineer has required that the recommendations of Table 6 be complied with, despite these being inconsistent with the plans.

The architectural plans, read together with survey information suggest that excavation of up to 3m may be likely at the north eastern corner of the proposed bathroom for the secondary dwelling. Drawing No. DA.03 shows the proposed bathroom and bedroom extending beyond the line of the existing deck to be demolished. An excerpt of the plan is provided below:



Source: JJ Drafting

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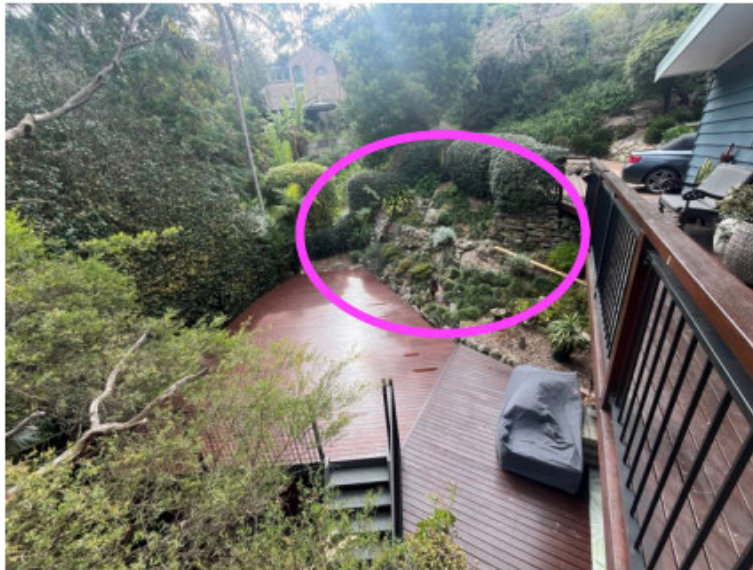


Photo 3: Timber deck & general area of the proposed works

Figure 2: A photo of the existing deck taken from the geotechnical report prepared by Ascent Geo. The pink circle indicates the area of likely substantial excavation to construct the bathroom for the secondary dwelling

Source: Ascent Geo **Annotation (pink):** Blackwattle Planning

The report currently states at page 9 that:

The proposed excavations are limited to those required for new footings.

And at page 11 that :

The proposed excavations are limited to those required for new footings, as such, no significant excavation support is anticipated.

We are concerned that the likely retaining walls required for the excavated northern end of the secondary dwelling are not adequately addressed in the geotechnical assessment and request that this aspect of the development be reviewed and recommendations provided.

Inadequate Plans and Survey

We note that the architectural plans, survey plan, and other supporting documentation make no reference and provide no information whatsoever regarding the site conditions, levels, or structures at No. 10 Capua Place. The only exception to this is the architectural plans indicating a hedge 5m high planted on 10 Capua Place. This is entirely inaccurate - there is no hedge whatsoever and the sparse vegetation that exists readily affords direct lines of sight from the existing deck at 45A Riviera Avenue into the private open space and kitchen of 10 Capua Place.

The extent to which a proper assessment of many aspects of this development can take place without critical information relating to No. 10 Capua Place is at best questionable. We think that the absence of such information may, if the application were to be determined for approval, leave the development consent (and the Consent Authority) exposed to procedural challenge.

At a practical level, we are advised that no physical or visual inspection of 10 Capua Place has been undertaken by Council Officers undertaking assessment roles for this application. Access to that part of the site impacted by the proposed development is not available without being facilitated by the owners of 10 Capua Place and no such requests of the owners have been made.

In the absence of any information on the plans and survey relating to 10 Capua Place, and noting that no physical or visual inspection has been undertaken to our client's property, we do not accept that Council is currently in a position to properly assess the impacts of the development on the adjoining land.

We recommend that Council act urgently to rectify this situation by requiring both the survey and the architectural plans to be amended to include the accurate levels and location of structures on 10 Capua Place, and that the relevant Council officers make arrangements with the owners of 10 Capua Place for a site inspection.

Additionally, and noting the unusual circumstance of the exceptionally steep terrain and vastly different levels between the properties at close quarters, we recommend that Council require the applicant erect profiles of the western elevation of the proposed secondary dwelling such that the height and location of the structures can be properly assessed.

In requesting this, we note that utilising other technology for the assessment of the site remotely (such as street view, and aerial photography) is not available for this site due to the steep terrain and heavy canopy which renders it unable to be viewed on these platforms, as demonstrated below:



Figure 3: Aerial Photos are limited in use due to substantial canopy
Source: Six Maps

Pittwater 21 DCP

C1.5 Visual privacy

The commanding elevated position and close proximity of the proposed development to the boundary results in a substantial breach of both the numeric controls and objectives of the visual privacy control. Being only 1m from the boundary, the proposed windows and deck of the secondary dwelling are well within 9m of adjoining private open space areas and the kitchen windows of No. 10 Capua place. The policy provides the following:

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

The secondary dwelling cannot comply with these numerical requirements. Additionally, the objectives of the control cannot be met as follows:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

The proposed deck, accessed from the living area of the secondary dwelling and being its primary open space area, provides a direct sightline into the private open space and kitchen windows of No. 10 Capua Place. The addition of a screen on the western end of the proposed deck may alleviate the privacy issue from the deck, however this will raise a further bulk and scale issue due to the elevated nature of the deck (and any future screen), adding to the already adverse and unacceptable bulk and scale of the development at only 1m from the boundary.

A sense of territory and safety is provided for residents. (S)

The minimal setback, unscreened deck, and excessive windows in the western elevation of the proposed secondary dwelling result in a development that is overbearing and entirely compromising of the *sense of territory and safety* for occupants of 10 Capua Place.

In designing and assessing the proposed development, regard should be had to the very different levels of the adjoining land and the substantial adverse impact that arises when developments are proposed so close to boundaries under these circumstances.

We encourage the applicant to reconsider the design in light of this and for Council to examine this aspect of the development closely in their assessment. An adequate understanding of this impact can only be gained from visiting the site at 10 Capua Place.

The numerical requirements of the control require that the development be contained within a building envelope measuring 3.5m vertically from the side boundary and then at a 45 degree angle into the site.

In arriving at this conclusion we have utilised the levels on the applicants survey, which show the bottom of a stone retaining wall crossing the boundary at RL66.37. This level is the closest level to the boundary and aligns with the southern elevation of the secondary dwelling, perpendicular to the shared western boundary. See excerpt from survey below, with pink circle identifying boundary level:

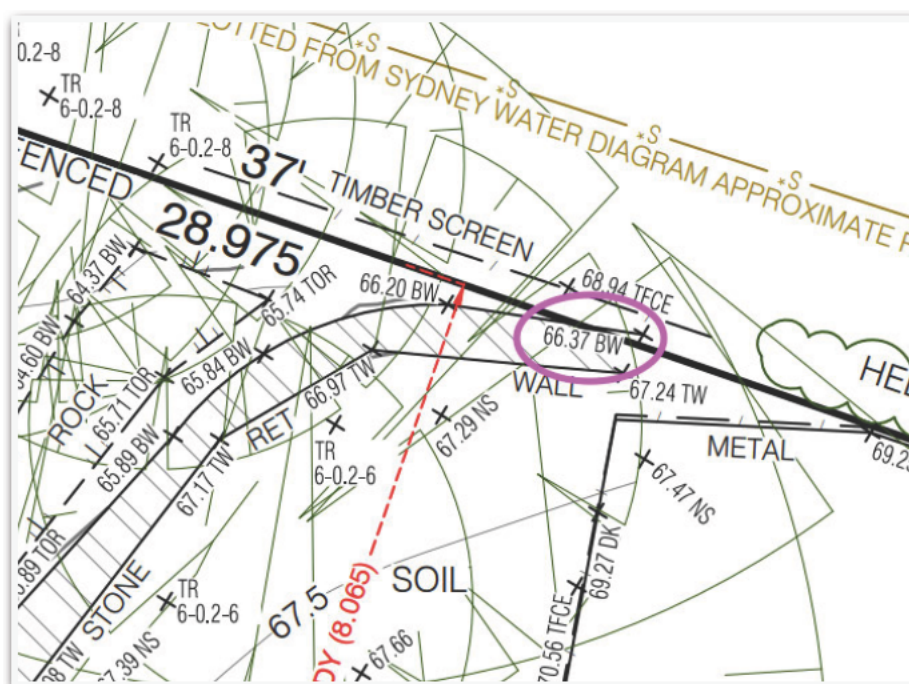


Figure 4: Excerpt from survey showing correct levels adjoining the boundary of RL 66.37 **Source:** CMS Surveyors
Annotation (pink): Blackwattle Planning

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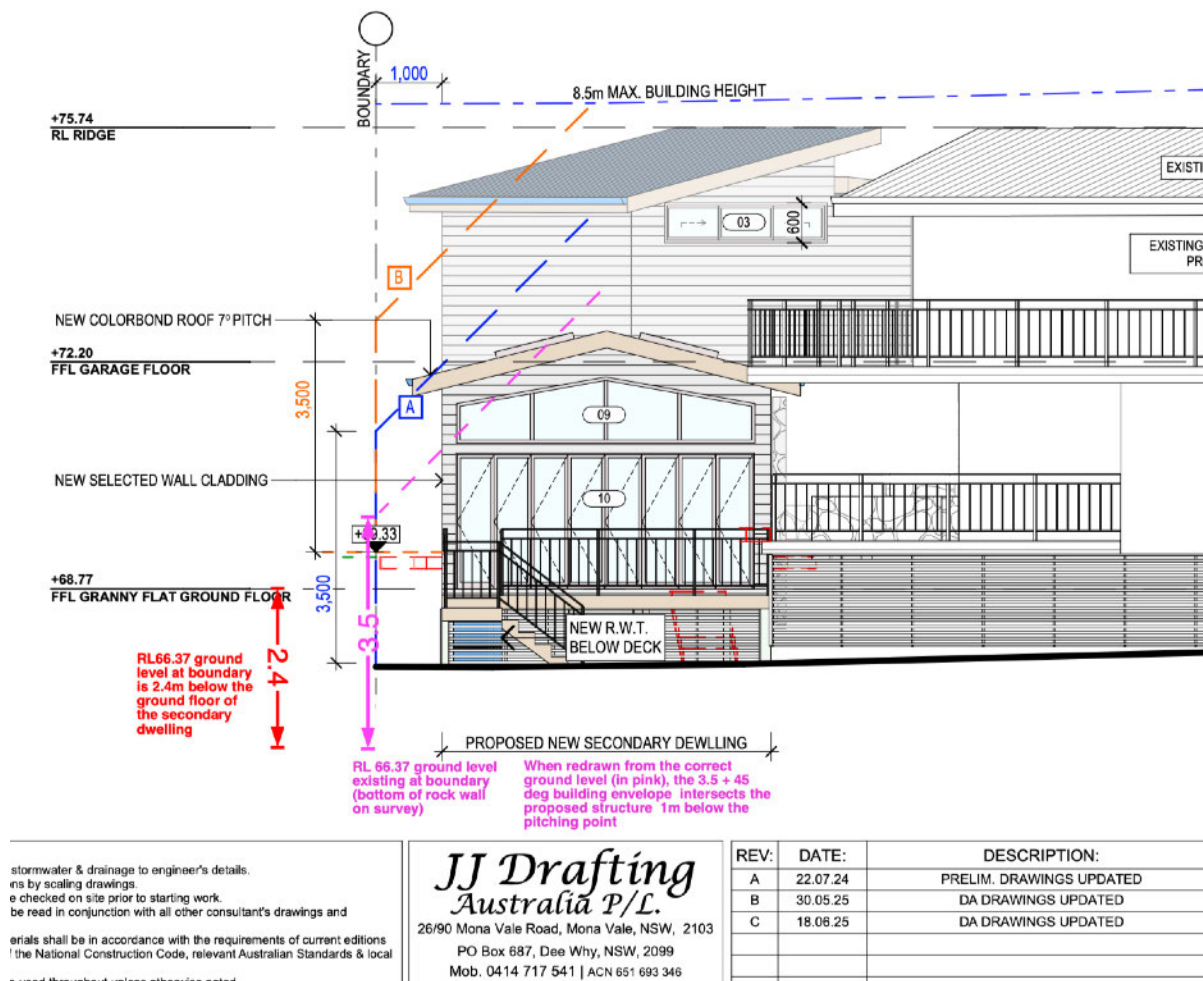


Figure 5: The applicants building envelope shown as measured well above the ground levels at the boundary. From RL 66.37, the envelope intersects the building 1m below the pitching point **Source:** JJ Drafting
Annotations (red and pink): Blackwattle Planning

Based on the above, Council should not rely upon the accuracy of the building envelope drawn on the submitted plans and we welcome Council's close examination of this issue. Upon a site inspection and a proper understanding of the location of the shared boundary, it is clear that the proposed secondary dwelling will tower above the private open space of No 10 Capua Place and result in a scale that is overbearing, enclosing of this space, and highly visually intrusive.

When considering the objectives of the control, it is clear that Council could not exercise its flexibility in this regard as the proposed secondary dwelling cannot satisfy these tests. An assessment against relevant objectives is provided below:

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

The proposed secondary dwelling does not respond to the obvious circumstance of massively differing ground levels either side of the shared boundary, and these spatial characteristics if appropriately considered would result in a substantially larger setback to the boundary for any structure.

The bulk and scale of the built form is minimised.

The building envelope non-compliance is substantial on the western elevation and the resulting scale of the building at a setback of only 1m results in a heavy visual impact (both bulk and scale) upon the primary open space and kitchen areas of the adjoining property.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

As discussed earlier, the combination of the substantially elevated position of No. 45A Riviera Avenue together with overlooking opportunities of windows and a balcony on the western elevation results in commanding and direct sightlines into the private open space and kitchen areas of 10 Capua Place, which is unacceptable.

D1.9 Side and Rear setbacks

The windows proposed on the western elevation are located within the 6.5m rear setback applying to the land. We have noted in earlier parts of this submission the actual and perceived privacy issues resulting from openings in the western elevation of the secondary dwelling, at only 1m from the boundary and given the commanding downward angle of viewing available into the private open space of 10 Capua Place.

We note that the rear setback control exists in part to control overlooking in rear yards, and to minimise bulk and scale impacts that will clearly be apparent in the proposed design. More than 6.5m of the western wall of the proposed secondary dwelling breaches this setback control, and we note again the privacy and bulk and scale impacts that arise. The objectives of this control are also not met by the development and the multiple breaches of these matters brings the design fundamentally into question.

Given the above analysis of considerations under Pittwater 21 DCP, we do not believe Council can reasonably exercise flexibility under Section 4.15 of the Act and approve the non-compliant secondary dwelling in its current form.

In summary, we agree with our clients concerns regarding the inadequate information provided within the application. There appears to be very likely adverse impacts associated with the construction of the secondary dwelling in the location currently proposed. We note that our clients raise no objection to the location of the proposed garage, noting its reasonable setback from the shared western boundary.

We are concerned that an approval of the secondary dwelling would be contrary to the objectives of Pittwater 21 DCP, especially as they relate to residential amenity, privacy and overlooking, and minimising bulk and scale.

We invite you to visit No. 10 Capua Place to inspect the likely impacts first hand and look forward to discussing the application with you.

Please feel free to contact us on [REDACTED] or at [REDACTED] should you require further information.

Regards,

Anna Williams,
Director

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