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**From:** Prue Rydstrand  
**Sent:** 14/08/2024 9:46:22 AM  
**To:** Council Northernbeaches Mailbox  
**Cc:** Chris Gough; Nic Sproats; Stephanie Willis; Stephanie Vatala  
**Subject:** TRIMMED: DA2022/0469 - LEC 2023/242901 objections  
**Attachments:** Submission\_-\_Rydstrand - NBC.pdf; Submission\_-\_Dentons\_Australia\_Limited.pdf;

Please ensure this is on the DA tracker.

Dear Council/LEC,

We wish to object to the “new” plans submitted by the developer. The plans are largely unchanged vs the previous iteration and remain significantly more non-compliant than those rejected by the Northern Beaches Planning Panel. Geotechnical aspects continue to be ignored in the “updated” Geotechnical report with respect to our shared boulder. The oversight of a key legal requirement in satisfying clause 7.7 begs the question of why we are even discussing these plans.

Please refer to: 1) our lawyer’s letter (Denton’s) submitted 1/08/2024, which details our Town Planner (Bob Chambers) and Geotechnical expert (Warwick Davies) unchanged positions on the inadequacy of key information and persistent, significant issues with the proposed development and the impact on our property and amenity. And 2) my earlier submission, which still holds. (attached).

We implore Council and the Court to reject this DA once and for all, it is grossly non-compliant and the Geotechnical aspects continue to overlook the implications of the development on our land. The process seems entirely flawed, we have asked for these details from day 1 and the Council continues to review and support not only a non-compliant, but an incomplete and inadequate DA proposal.

**Reiterating our request:**

We ask that the Council requires the Applicant to amend its proposal so that:

- There is compliance with the height control.
- The setback to my property is significantly increased – Mr Chambers has recommended a set-back of no less than the 4.4m (first floor) and 4.6m (second floor), which were provided in the prior scheme.
- The front setback in the south-western corner should be increased to at least 6.0m measured to the balcony line, so as to lessen the bulk and scale and ensure my northern outlook is not obscured.
- The large balcony off the main living area of Apartment 03 should be deleted and the windows in the southern façade fixed with opaque glass so as to mitigate against privacy impacts to my property.
- Further detailed information is provided on how the proposed excavation and removal of the boulder will impact my property and what measures will be implemented to protect my property.

Regards,

Prue Rydstrand (Direct Southern neighbour, 1100 Barrenjoey Road).

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**From:** Prue Rydstrand  
**Sent:** 12/04/2024 3:51:25 PM  
**To:** Therese Edwell; Chris Gough; Council Northernbeaches Mailbox  
**Cc:** Stephanie Vatala  
**Subject:** Re: Objection - [REDACTED] 1102  
Barrenjoey Road  
**Attachments:** Rydstrand 1102 objection.pdf;

Sorry didn't attach properly

Sent from my iPhone

> On 12 Apr 2024, at 3:49 pm, Prue Rydstrand [REDACTED] wrote:  
>  
> Hi Council, Chris and Therese, please find my personal objection. Stephanie Vatala will be providing the legal, town planner and geotechnical submissions ASAP today.  
> Please confirm receipt.  
> Regards,  
> Prue  
>

Dear Council,

I ask that you provide this submission to your experts and to the Court.

As the owner of the immediately adjoining residential property at 1100 Barrenjoey Road, Palm Beach, I write to convey my extreme disappointment that the amended plans provided by Council on 28 March 2024 are considered to be favourable by the Council's experts.

### **Increased Non-Compliance**

The proposal is by far the most non-compliant it has ever been in the various iterations of the design. Further, the amended plans completely fail to address the concerns raised by the Northern Beaches Planning Panel when the panel refused the original application. I set out below an extract of the proposal rejected by the NBPP and what is now proposed, for comparison. I also refer to and rely upon the matters set out in Mr Chambers' submission on my behalf.

To remind the Council, the NBPP requested the following changes to the original design (amongst others):

- *Amended plans that reduce the overall height, bulk and scale including removal of the mansard roof to reduce the massing created by the proposed roof form. Consideration should be given to materiality, upper level set back and the form of the roof to achieve a upper level which is more recessive and an overall compatible development with surrounding development particularly Barrenjoey House.*

### **A: Plans rejected by the NBPP after factoring in the above request (among others) 30% height non compliance**



**B: Plans as Council recommended for Approval to NBPP – 36% height noncompliance**



**C: Plans currently proposed – 30% height non compliance**



The current amended plans are very similar to those rejected by the NBPP. Importantly, there has been NO height reduction and the issue of bulk and scale has been made worse by the current plans. There is no obvious consideration of materiality, no upper level set back that is recessive. Instead, the bottom 2 levels have actually been brought forward and the development is more non-compliant overall with no setbacks.

To remind the Council, the NBPP refused the application for the following reasons:

*o The clause 4.6 written request does not adequately address the provisions of clause 4.6(3) to demonstrate that compliance with the Building Height development standard under clause 4.3 of Pittwater Local Environmental Plan 2014 is unreasonable or unnecessary in the circumstances of the case or that there are sufficient environmental planning grounds to deviate from the standard.*

- o The proposal has not demonstrated that the development is compatible with desired future character of the zone and Palm Beach locality.*
- o The proposed development exhibits unreasonable height, bulk and scale that would dominate the streetscape and in particular heritage listed Barrenjoey House.*
- o Insufficient information submitted to satisfactorily demonstrate compliance with clause 7.7 of the LEP in relation to geotechnical impacts.*

I struggle to see how the new plans have addressed the issues raised by the NBPP. I can only conclude that the Council is overlooking the concerns raised by the NBPP and seeking to reach agreement with the developer because it does not wish the developer to pursue the existing approval. With respect, that is not a proper basis for agreeing to the current design.

### **Failure to address clause 7.7 of the Pittwater LEP**

Even more concerning is the fact that the Applicant has failed to address clause 7.7 of the Pittwater LEP and there are serious geotechnical risk to my property as detailed in Mr Davies' submission lodged on my behalf.

### **Summary of my concerns**

In summary, my concerns are as follows:

- o **The amended design is non-compliant** with the height control (30% exceedance) and setback controls, resulting in a bulkier building closer to my boundary which is completely out of context with the my property and Barrenjoey House. **This will result in adverse privacy impacts (both visual and acoustic), potential additional overshadowing (I refer to Mr Chambers' comments that this does not appear to have been properly modelled), and obscuring of my northern outlook.**
- o **View losses over Pittwater Park, the heritage listed Norfolk Pines and the ferry wharf** vs prior designs which had a view corridor due to the previous more compliant setbacks.
- o **Significant shadowing issues which are conveniently not detailed**, the design hems my property in and towers over it.
- o **Development Neighbours now have a line of sight directly into our backyard spa** through different viewpoints via the louvres, and it's unacceptable.
- o The landscaping along the boundary with my property appears to have been deleted, resulting in a hard boundary interface with the proposed development rather than what should be a soft landscaped interface, given the zoning of my property and the proximity of the proposed development.

- **The potential damage to my property arising from excavation of some 12.5m along my boundary and removal of the large boulder which straddles the boundary with my property.** No information has been provided on how the excavation will be carried out so as to mitigate adverse impacts on my property. This is despite this issue having been raised several times by me, my geotechnical engineer and my lawyer. Given the development site is identified as being a geotechnical hazard under the Council's LEP, I am at a loss to understand how the Council and the Court can approve the amended design. It would be a gross breach of Council's obligations, in my view, for Council to agree to an approval being granted without proper information being provided so that the risks of the proposed excavation and removal of the boulder, including measures to mitigate the risks on my property, can be properly considered and assessed. Indeed, I have been advised that the Court has no power to approve the application in the absence of this information.
- **No consideration has been given AT ALL by the Applicant to the impact of the proposed excavation on the Sydney Water sewer pipe and storage asset which sits on my land** and runs along the boundary with no. 1102, located approximately 50cm to 1m from the boundary with 1102. This pipe and asset, provides connection to the sewer main on Barrenjoey Road for the properties uphill.

**I am also concerned that the developer keeps suggesting (and Council appears to have accepted) that the current approval will be continued with if this new DA is not approved.** The Council and the Court must assess the current application on its own merits, not having regard to the existing approval. Whether or not the developer proceeds with the existing approval is a matter for the developer. I draw the Council's and Court's attention to the decision in *Forest Apartments Pty Ltd v Northern Beaches Council [2023] NSWLEC 1042* for a shop top housing development at 1105 Barrenjoey Road which was refused because of the gross exceedance of the height control (amongst other reasons). It seems to me the only difference in that case was that there was no pre-existing approval. Council's position should be consistent and not informed by whether or not there is an existing approval. Presumably the fact the Applicant has sought consent for a new application means it does not believe the existing approval is appropriate or capable of being built.

### **My Request**

I ask that the Council requires the Applicant to amend its proposal so that:

- There is compliance with the height control.
- The setback to my property is significantly increased – Mr Chambers has recommended a set-back of no less than the 4.4m (first floor) and 4.6m (second floor), which were provided in the prior scheme.

- The front setback in the south-western corner should be increased to at least 6.0m measured to the balcony line, so as to lessen the bulk and scale and ensure my northern outlook is not obscured.
- The large balcony off the main living area of Apartment 03 should be deleted and the windows in the southern façade fixed with opaque glass so as to mitigate against privacy impacts to my property.
- Further detailed information is provided on how the proposed excavation and removal of the boulder will impact my property and what measures will be implemented to protect my property.

Direct Southern Neighbour, Prue Rydstrand 1100 Barrenjoey Road Palm Beach



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**From:** Willis, Stephanie  
**Sent:** 1/08/2024 3:04:54 PM  
**To:** Council Northernbeaches Mailbox  
**Cc:** Chris Gough; Therese Edwell; Vatala, Stephanie  
**Subject:** TRIMMED: Objection - DA2022/0469 - Land and Environment Court Proceedings No. 2023/242901 [DENTONS-Documents.FID10661516]  
**Attachments:** 109663987\_1\_Dentons submission to Council on July amendments - 1 August 2024.PDF;


Dear Council,

Please see our **attached** submission in the above matter.

Kind regards,

Stephanie

Stephanie Willis  
Senior Associate

  
Dentons Australia Limited | [Sydney](#)

 DENTONS

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1 August 2024

Development Assessment  
Northern Beaches Council

By email [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Copy to Chris Gough, Storey & Gough Lawyers

Our ref: SSV/42025415

Dear Sir/ Madam

**Northern Beaches Council ats Asia Digital Investments Pty Ltd**  
**Land and Environment Court Proceedings No. 2023/242901**  
**Development Application: DA2022/0469**  
**Property: 1102 Barrenjoey Road, Palm Beach**

### Introduction

1. We refer to the above proceedings and write with respect to the amended plans and documents contained within Exhibit EJC-1. We understand that the applicant was granted leave to rely on these amended plans and documents on 12 July 2024 (**July Amendments**).
2. As you know, we act for the registered proprietor of the immediately adjoining residential property at 1100 Barrenjoey Road, Palm Beach, Ms Prudence Rydstrand (**our client**).
3. We refer to the previous submissions lodged by or on behalf of our client raising serious concerns with the development application the subject of the proceedings. In particular, we refer to our most recent submission dated 12 April 2024 prepared in response to amended plans and documents provided to us by Council in March 2024 (**April Submission**). We note that this submission enclosed submissions prepared by Robert Chambers, town planning expert, and Warwick Davies, geotechnical engineer, also dated April 2024.
4. For the reasons set out below, the July Amendments do not address the serious concerns raised in our April Submission or the accompanying submissions prepared by Mr Chambers and Mr Davies.

### Response to July Amendments

5. There are no substantive changes in the July Amendments which result in any change to the matters set out in our April Submission and the accompanying submissions prepared by Mr Chambers and Mr Davies.

*Town planning issues*

6. Firstly, insofar as the relationship of the proposed development to our client's property at 1100 Barrenjoey Road is concerned, there is no material difference between the amended set of plans (Revision D) and the prior set of plans (Revision C). This is best demonstrated by the "Massing Height Control" plans included in **Annexure A** to this letter, which show that the massing of the proposed building remains the same.
7. Accordingly, the matters raised in our April Submission and the accompanying submission prepared by Mr Chambers remain unchanged as follows:
  - a. The side setback from our client's property remains unchanged from the prior amendment and is inadequate. The side setback is less than what was originally proposed and less than what is required under both the Apartment Design Guide and Council's Development Control Plan;
  - b. The front setback at the site's south-western corner remains unchanged from the prior amendment, is less than what was originally proposed and is also inadequate;
  - c. The privacy impacts of the proposed development on our client's property remain unchanged, are worse than the impacts from the development as originally proposed, and are unacceptable;
  - d. The height of the proposed development remains unchanged from the prior amendment and is non-compliant. The height remains non-compliant with the objective of zone E1 Local Centre *"[t]o create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment"*. While the 4.6 request has been updated, it remains inadequate and does not provide sufficient environmental planning grounds to justify the breach of the height standard, for the reasons provided in our April Submission;
  - e. The amended plans continue to show a proposed retaining wall on the boundary of our client's property, which has been further amended. No information is provided as to how this wall is proposed to be supported. If rock anchors or other supports are required to extend into the boundary of our client's boundary, owner's consent would be required;
  - f. The amendment documentation does not provide any information to explain the inconsistency in the shadow affection of our client's property shown in the amended plans as compared to the original plans (see the last paragraph on page 2 of Mr Chamber's April submission). Further information is needed so that the shadow affection can be verified;
  - g. The amended documentation also does not provide any information to explain the inconsistency between the levels of our client's property shown on the amended plans as compared to the original plans (see Section 6 of Mr Chamber's April submission). Further information is required such that the depiction of our client's property can be verified; and
  - h. Finally, the geotechnical impacts of the proposed development on our client's property discussed in Mr Chambers' submission remain unchanged, since there is no change to the side setback and the location and extent of excavation on the southern boundary.

*Geotechnical issues*

8. Secondly, the most recent geotechnical report prepared by JK Geotechnics (**JK**) dated 21 June 2024 only addresses the results of a numerical analysis JK have carried out for engineering design purposes. Appendix A1 of JK's June 2024 report incorporates, in its entirety, the earlier JK report, which was the subject of our April Submission and the accompanying submission prepared, at that time, by Mr Davies. There is no further information in JK's new report which responds in any substantive way to the matters raised in those submissions.
9. Therefore, the matters raised in our April Submission and the accompanying submission prepared by Mr Davies remain unchanged as follows:
  - a. JK's analysis presented in their new report ignores the presence of the boulder stack which extends into our client's property. Only one reference to the boulder is made (in the third paragraph in the introduction of the report): "*... where sandstone boulders are present along the southern site boundary, these will be trimmed back to the extent that they protrude into the building footprint*". As such, the serious concerns raised by Mr Davies in his April 2024 submission and his earlier submissions regarding the geotechnical risks arising from excavation of this boulder stack remain unchanged;
  - b. There is no change to the proposed excavation to a maximum depth of approximately 12.5 metres at the southern boundary, which adjoins our client's property. As such, the serious concerns raised by Mr Davies in his April 2024 submission regarding the extent of this excavation and associated geotechnical risks remain unchanged;
  - c. Since JK's earlier report has not been updated, the deficiencies with that report, including factual errors and inconsistencies discussed in Mr Davies' submission, and which render the report unreliable, have not been addressed;
  - d. For the above reasons, Council and the Court on appeal cannot be satisfied of the matters in clause 7.7 of the *Pittwater Local Environment Plan 2014*, including that the proposed development takes into account all geotechnical risks, by reference to the proposed design and construction methods, waste water management, stormwater and drainage impacts and proposed measures to avoid, minimise or mitigate the impacts, as discussed in our April Submission; and
  - e. Finally, JK's new report does not contain any risk assessment of the Sydney Water sewer line asset located on our client's property and which serves surrounding properties. As such, the comments in our April Submission and Mr Davies' accompanying submission prepared at that time regarding this asset, including Mr Davies' comment that this amounts to a "gross omission" remain unchanged.

**Conclusion**

10. For the above reasons, the July Amendments do not change our position that the development application should be refused.

Yours sincerely



Stephanie Willis  
**Senior Associate**  
Dentons Australia

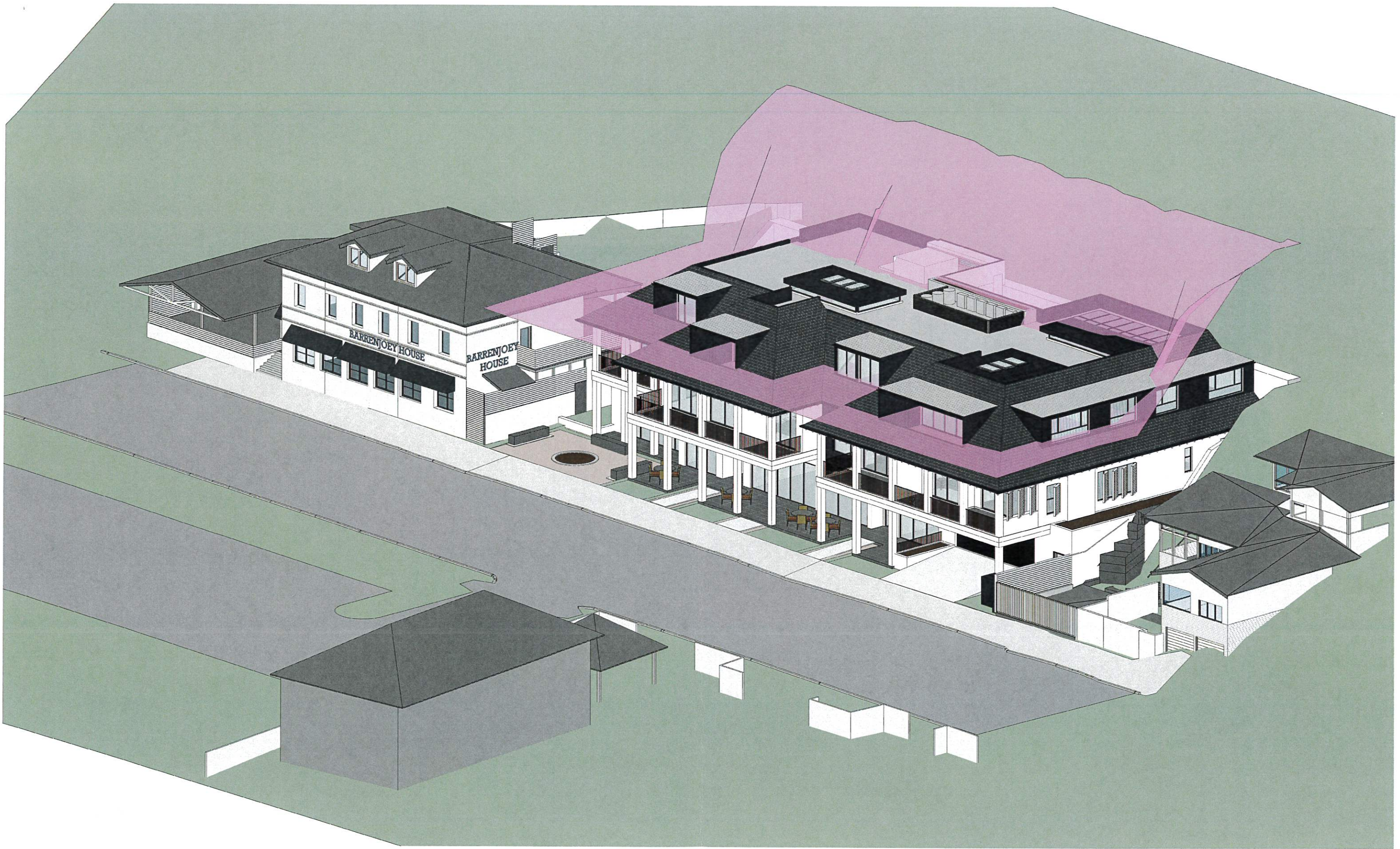
Enc.

**Annexure A – Massing Height Control Plans**









**NOTE**  
All existing and overall dimensions are nominal & subject to verification on site, where any discrepancy occurs between new work & existing dimensions - existing dimensions/work should take preference where necessary - otherwise notify Innovate Architects Pty Ltd.  
Selected termite protection to be used on site in accordance with local council's requirements, B.C.A and all relevant Australian Standards.  
Smoke detectors to comply with requirements of specification e1.7 (NSW) fire and smoke alarms shall comply with AS 3786 and be connected to the main power supply.

**GENERAL NOTES**  
All work to be carried out in accordance with the Building Code of Australia, all Local and State Government Ordinances, relevant Australian Standards, Local Electricity and Water Authorities Regulations and all other relevant Authorities concerned.  
All structural work and site drainage to be subject to Engineer's details or certification where required by Council. This shall include i.e. slabs and footings, i.e. and steel beams and columns, wind bracing to AS 1170 and AS 4055, anchor rods or bolts, tie downs, fixings etc., driveway slabs and drainage to Council's satisfaction.  
All timbers to be in accordance with SAA Timber Structure Code AS1720 and SAA Timber Framing Code AS 1684. All work to be carried out in a professional and workmanship like manner according to the plans and specification.

**NOTE**  
Do not scale off the drawings unless otherwise stated and use figured dimensions in preference. All dimensions are to be checked and verified on site before the commencement of any work, all dimensions and levels are subject to final survey and set-out. No responsibility will be accepted by this firm for any variations in design, builder's method of construction or materials used, deviation from specification without permission or accepted work practices resulting in inferior construction. Locate and protect all services prior to construction.

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C	AMENDED DRAWINGS - S34 CONFERENCE	22/03/2024	DM
B	AMENDED DRAWINGS - S34 CONFERENCE	15/03/2024	DM
A	PRELIM-RE-ISSUE	MAR 2024	DM
ISSUE	AMENDMENT	DATE	INT

ASIA DIGITAL INVESTMENTS	1102 BARRENJOEY ROAD, PALM BEACH	<b>Innovate</b> <small>Suite 30, 32 Frederick Street Oxley NSW 2223</small> PO BOX 214 Oxley NSW <small>REGISTERED ARCHITECTS Nominated Architect Claremont Jones 7143</small> 2926 <b>Architects</b>								
PROPOSED SHOP TOP HOUSING DEVELOPMENT	MASSING HEIGHT CONTROL	<table><tr><td>DM</td><td>NTS@A1</td></tr><tr><td>GJ</td><td>C</td></tr><tr><td colspan="2">FEB 2024</td></tr><tr><td>2926</td><td>DA.02a</td></tr></table> <p>PALM BEACH - AMENDED DRAWINGS   S34 CONFERENCE</p>	DM	NTS@A1	GJ	C	FEB 2024		2926	DA.02a
DM	NTS@A1									
GJ	C									
FEB 2024										
2926	DA.02a									