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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

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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

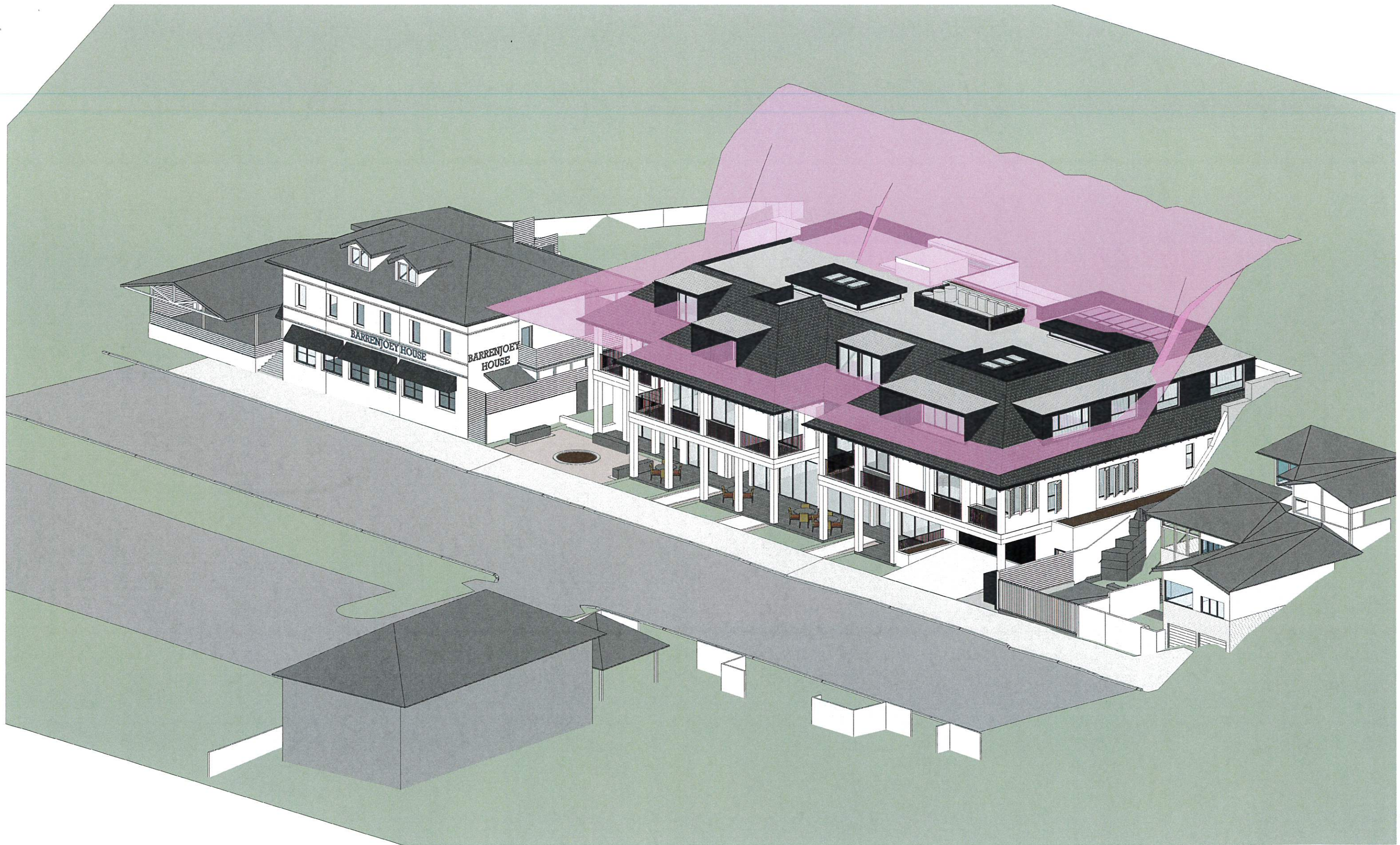


Stephanie Willis  
**Senior Associate**  
Dentons Australia

Enc.

**Annexure A – Massing Height Control Plans**





**NOTE**  
All existing & 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.

**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, r.c. 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 AS 1720 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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D	AMENDED DRAWINGS - S34 CONFERENCE	18/06/2024	DM
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
PROPOSED SHOP TOP HOUSING DEVELOPMENT	MASSING HEIGHT CONTROL

**Innovate**  
Suite 30, 32 Frederick Street  
Oxley NSW 2023  
PO BOX 214 Oxley NSW

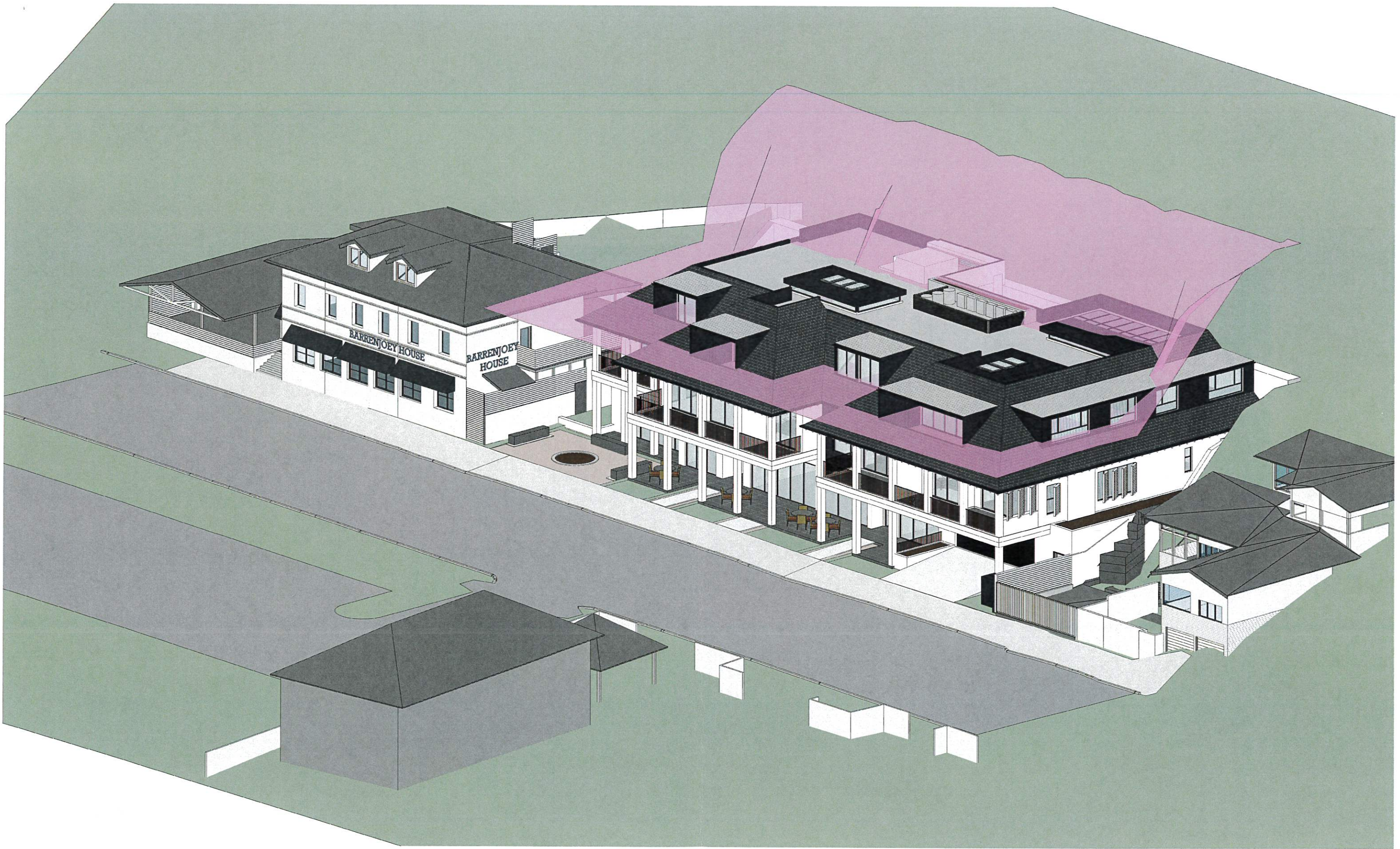
02 9585 1855  
02 9585 1844  
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REGISTERED ARCHITECTS  
Incorporated Architects  
Cameron Jones  
7143

**Architects**

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GJ	D	
FEB 2024		
2926	DA.02a	PALM BEACH AMENDED DRAWINGS   S34 CONFERENCE





**NOTE**

All existing & 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.

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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> <b>Architects</b>	 DM GJ FEB 2024 2926	NTS@A1 C DA.02a	PALM BEACH - AMENDED DRAWINGS   S34 CONFERENCE
PROPOSED SHOP TOP HOUSING DEVELOPMENT	MASSING HEIGHT CONTROL				