



Land and Environment Court
New South Wales

Case Name:	186 OSHR BH Pty Ltd v Woollahra Municipal Council
Medium Neutral Citation:	[2023] NSWLEC 1755
Hearing Date(s):	Conciliation conference held on 24 November 2023
Date of Orders:	08 December 2023
Decision Date:	8 December 2023
Jurisdiction:	Class 1
Before:	Bish C
Decision:	<p>The Court orders:</p> <p>(1) The appeal is upheld.</p> <p>(2) Development Application DA592/2022, which seeks the demolition of existing structures, tree removal, and construction of a residential flat building with basement car parking, landscaping and a swimming pool on Strata Plan 11821, also known as 186-192 Old South Head Road, Bellevue Hill, is determined by the grant of consent, subject to the conditions in Annexure A.</p> <p>(3) The Applicant is to pay the Respondent's costs thrown away pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979 in the agreed sum of \$16,000 payable within 35 days from the date of the final orders.</p>
Catchwords:	DEVELOPMENT APPLICATION – residential flat building – breach in height and floor space ratio development standards – variation of development standards - conciliation conference – agreement between the parties – orders
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 4.47, 8.7, 8.15</p> <p>Environmental Planning and Assessment Regulation 2021, ss 23, 38</p>

Land and Environment Court Act 1979, s 34
State Environmental Planning Policy (Biodiversity and Conservation) 2021, Pt 6.2
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 4
State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.119, 2.122
State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development, cl 28, 30
Water Management Act 2000, s 90
Woollahra Local Environmental Plan 2014, cl 2.3, 4.3, 4.4, 4.6

Texts Cited: Apartment Design Guide 2015
Woollahra Development Control Plan 2015

Category: Principal judgment

Parties: 186 OSHR BH Pty Ltd (Applicant)
Woollahra Municipal Council (Respondent)

Representation: Counsel:
A Gadiel (Solicitor) (Applicant)
B Crapis (Solicitor) (Respondent)

Solicitors:
Mills Oakley (Applicant)
Lindsay Taylor Lawyers (Respondent)

File Number(s): 2023/78814

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal against the deemed refusal of Development Application DA592/2022 (the DA) by Woollahra Municipal Council (the Council), which as amended, seeks demolition of existing structures and construction of a residential flat building with basement car parking, landscaping and a swimming pool on Strata Plan 11821, also known as 186-192 Old South Head Road, Bellevue Hill (the site).

Background

- 2 The DA was lodged with Council on 22 December 2022. The original DA was notified to residents, with eight submissions received, and was referred to the relevant authorities, pursuant to s 4.47 of the *Environmental Planning and Assessment Act 1979* (EPA Act).
- 3 The Applicant appealed against the deemed refusal of the DA, pursuant to s 8.7(1) of the EPA Act.
- 4 Pursuant to s 34(1) of the *Land and Environment Court Act 1979* (the LEC Act), the Court arranged a conciliation conference, which at the parties' request, commenced without a site view and was held before me as Duty Commissioner.
- 5 Prior to the conciliation, the Council agreed for the Applicant to amend the plans and documents that support the DA, pursuant to s 38 of the Environmental Planning and Assessment Regulation 2021 (EPA Reg). The amended DA seeks:
 - (a) demolition of the existing multi-dwelling development;
 - (b) construction of three new residential flat buildings identified as Buildings A, B and C (Building A containing 14 units, Building B containing 17 units and Building C containing 5 units); and
 - (c) basement parking including 71 carparking spaces with 9 visitor spaces, landscaping and swimming pool.
- 6 Based on the amended application and the agreed conditions of consent, the parties reached an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The parties agree that the contentions of Council have been considered and are resolved. The issues raised by the objectors have also been considered in Council's merit assessment. The agreed position of the parties, as described in their jurisdictional assessment, is for the Court to grant consent to the amended Development Application DA592/2022, with conditions.
- 7 Pursuant to s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if it is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court making a determination under s 4.16 of the EPA Act and being satisfied,

pursuant to s 4.15, and other relevant jurisdictional requirements, to grant consent to DA592/2022, subject to conditions in Annexure A.

Jurisdictional prerequisites

- 8 The proposed basement of the building will potentially intercept groundwater and require dewatering, engaging the *Water Management Act 2000* (WMA Act). The DA is supported by the Response to SOFC – Geotechnical, prepared by CEC Geotechnical, dated 2 August 2023, that assesses potential seepage into the basement. Pursuant to s 90 of the WMA Act, an approval to discharge water is required, as described in the conditions of consent. WaterNSW has provided general terms of approval that relate to the proposed development, which are included in the conditions of consent.
- 9 Section 4.15(1) of the EPA Act establishes the matters to be considered in determining a development application. The following jurisdictional requirements have been specifically considered and are addressed:
 - (1) Woollahra Local Environmental Plan 2014 (WLEP):
 - (a) Pursuant to cl 2.3 of the WLEP, the proposed residential development is situated over land zoned R3 Medium Density Residential. The proposed development, as described to the Court, is permissible with consent. The amended DA addresses all the relevant objectives, aims, standards and requirements of the WLEP, except for a breach in the cl 4.3 height and cl 4.4 floor space ratio (FSR) development standards, that requires a cl 4.6 request for variation to be sought.
 - (b) The development standard described in cl 4.3 of the WLEP requires a maximum height of 11 m. The DA proposes a maximum height of 14.17 m, representing an exceedance of up to 5%.
 - (c) The FSR development standard described in cl 4.4 of the WLEP requires the FSR to not exceed 1.3:1. The proposed development proposes a maximum FSR of 1.32:1 m, representing an exceedance of 1.6%.
 - (d) The application relies on cl 4.6 written requests to vary the height and FSR development standards, pursuant to cl 4.6 of the WLEP.
 - (e) The height breach relates to balustrading and a portion of the roof form on the proposed building. The cl 4.6 written request provided to the Court explains that the portion of the building resulting in the non-compliance in the height standard does not result in a development that is incompatible with the desired,

future character of the surrounding area or results in adverse amenity, including solar access. The elements of the proposed development that result in the non-compliance will not perceptibly change the presentation of the proposed building to the streetscape or result in adverse bulk and scale impacts to adjoining developments. According to the cl 4.6 written request, the proposed development is consistent with the zone objectives and relevant development standard.

- (f) The Court must be satisfied to grant consent to the application that the cl 4.6 request to vary the standard is appropriately addressed, pursuant to the requirements set out in cl 4.6 of the WLEP. Having reviewed the cl 4.6 written request and evidence before the Court, I am satisfied that the written request for variation of the height standard describes sufficient environmental planning grounds to justify the non-compliance, and that strict compliance of the standard would be both unreasonable and unnecessary. The proposed development, as described to the Court, is consistent with the objectives of the zone (R3) described in cl 2.3 and cl 4.3 height standard of the WLEP. The breach in the height standard will not cause undue concern to (existing and future) surrounding residents, the streetscape, or those utilising the site. The relevant concerns raised by residents have been considered in the design of the dwelling. The proposed development is in the public interest. I accept that there is no significant consequence to State or Regional environmental planning matters as a result of varying the development standard in this instance, and that there is no public benefit to maintaining the height standard for the proposed development.
- (g) The cl 4.6 written request provided to the Court explains that the non-compliance in the FSR standard does not result in a development that is incompatible with the character of the surrounding area or results in adverse amenity, including solar access or views. The elements of the proposed development that result in the non-compliance will not perceptibly change the presentation of the proposed building to the streetscape or result in adverse bulk and scale impacts to adjoining developments. According to the cl 4.6 written request, the proposed development is consistent with the zone objectives and relevant development standard.
- (h) Having reviewed the cl 4.6 written request and evidence before the Court, I am satisfied that the written request for variation of the FSR standard describes sufficient environmental planning grounds to justify the non-compliance, and that strict compliance of the standard would be both unreasonable and unnecessary. The proposed development, as described to the Court, is consistent with the objectives of the zone (R3) described in cl 2.3 and cl 4.4 height standard of the WLEP. The breach in the FSR

standard will not cause undue concern to (existing and future) surrounding residents, the streetscape, or those utilising the site. The relevant concerns raised by residents have been considered in the design of the dwelling. The proposed development is in the public interest. I accept that there is no significant consequence to State or Regional environmental planning matters as a result of varying the development standard in this instance, and that there is no public benefit to maintaining the FSR standard for the proposed development.

- (i) I am satisfied that the requirements of cl 4.6 of the WLEP have been addressed, and that a variation in the cl 4.3 and 4.4 of the WLEP height and FSR development standards, respectively, should be granted.
- (2) State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65):
- (a) The DA proposes development for residential apartments, that engages consideration of the relevant provisions of SEPP 65.
 - (b) Pursuant to cl 28(2)(a) of SEPP 65, the DA was not submitted for the advice of a design review panel.
 - (c) Pursuant to cl 28(2)(b) of SEPP 65, the DA relies on a SEPP 65 Design Verification Statement, prepared by CD Architects, dated 12 December 2022, and the Design Principles Assessment, prepared by CD Architects, dated 28 November 2023. The design quality principles established in SEPP 65 are stated to have been considered and are addressed by the amended design.
 - (d) Pursuant to cl 28(2)(c) of SEPP 65, the compliance table considers the requirements described in the Apartment Design Guide 2015. The relevant considerations are deemed to comply.
 - (e) Pursuant to cl 30(2)(a) of the SEPP 65, the proposed development has had regard and demonstrates design quality principles.
- (3) State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Infrastructure):
- (a) The site has frontage to Old South Head Road, a classified road, engaging s 2.119 of the SEPP Infrastructure. The DA is considered a traffic generating development, also engaging s 2.122.
 - (b) The DA is supported by a Traffic and Environmental Noise Assessment, prepared by Acoustic Noise and Vibration Solutions P/L, dated 14 November 2022.
 - (c) The DA was referred to Transport for NSW, and the general terms of approval issued are considered in the amendments to the development and described in the conditions of consent.

- (4) State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP Biodiversity):
 - (a) The site is located within the Sydney Harbour catchment, engaging Pt 6.2 of the SEPP Biodiversity.
 - (b) The DA is supported by a Statement of Environmental Effects, prepared by GSA Planning, dated December 2022, and a letter on stormwater management, prepared by Civil and Stormwater Engineering Services, dated 27 July 2023. There is no assessed adverse environmental impact to the catchment resulting from the proposed development.
 - (5) State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience):
 - (a) Pursuant to Ch 4 of the SEPP Resilience, the contamination status of the site must be considered, prior to grant of consent. Based on the existing use of the site as residential and documents that support the DA, the Council has appropriately considered that the site is not contaminated, which together with the agreed conditions of consent to address any unexpected finds, satisfy the relevant requirements of s 4.6 of the SEPP Resilience.
 - (b) The DA is supported by a Preliminary Site Investigation, prepared by GEC Geotechnical, dated 10 November 2023.
 - (6) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004:
 - (a) A BASIX Certificate (1359008M_02), issued on 25 August 2023 is relevant to the proposed development, as amended, and is identified in the conditions of consent.
 - (7) Woollahra Development Control Plan 2015 (WDCP):
 - (a) The original DA was publicly notified in accordance with the WDCP, with eight submissions received. The relevant requirements of the WDCP have been considered in Council's merit assessment and are generally complied with, based on the amended plans and supporting documents to the amended DA, and as described in the agreed conditions of consent.
- 10 Pursuant to s 23 of the EPA Reg, the application has satisfied the Court with the provision of consent from relevant landowner.

Grant of consent

- 11 Based on the amended plans and supporting documents to the DA, the parties explained to the Court that there are no jurisdictional impediments to the making of the agreement or for the Court in making the orders, as sought.

- 12 The Council has undertaken the appropriate merit assessment of the proposed development. The Court is advised that the issues raised in contention have been addressed by the amendments made to the application.
- 13 I am satisfied, based on the evidence before me, that there are no jurisdictional impediments to this agreement and that Development Application DA592/2022 can be granted consent.
- 14 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 15 The Court notes that:
- (1) Woollahra Municipal Council, as the relevant consent authority, has agreed, under section 38 of the Environmental Planning and Assessment Regulation 2021, to the Applicant amending Development Application DA592/2022 as follows:

Tab	Document			Date
1.	Amended architectural plans prepared by CDA architects (Rev D)			<i>Individually as dated below</i>
	<i>Drawing No.</i>	<i>Title</i>	<i>Rev</i>	<i>Date</i>
	DA1001	Cover Sheet	D	16 August 2023
	DA1002	Compliance Table	D	16 August 2023
	DA1003	Unit Schedule	D	16 August 2023
	DA1004	BASIX	B	16 August

		Commitment		2023
	DA1005	Site Plan	D	16 August 2023
	DA1007	Demolition Plan	D	16 August 2023
	DA1102	Ground Floor Plan	D	16 August 2023
	DA1103	Level 01 Floor Plan	D	16 August 2023
	DA1104	Level 02 Floor Plan	D	16 August 2023
	DA1105	Level 03 Floor Plan	D	16 August 2023
	DA1106	Level 04 Floor Plan	D	16 August 2023
	DA1107	Level 05 Floor Plan	D	16 August 2023
	DA1108	Level 06 Plan	D	16 August 2023
	DA1109	Roof Level Building C Floor Plan	D	16 August 2023
	DA2001	Building Elevations	D	16 August 2023

	DA2002	Building Elevations	D	16 August 2023
	DA2011	Building A South Elevation	D	16 August 2023
	DA2012	Building A West Elevation	D	16 August 2023
	DA2013	Building A North Elevation	D	16 August 2023
	DA2014	Building A East Elevation	D	16 August 2023
	DA2021	Building B South Elevation	D	16 August 2023
	DA2022	Building B West Elevation	C	28 July 2023
	DA2023	Building B North Elevation	C	28 July 2023
	DA2024	Building B East Elevation	D	16 August 2023
	DA2031	Building C South Elevation	D	16 August 2023
	DA2032	Building C West Elevation	D	16 August 2023
	DA2033	Building C North Elevation	D	16 August 2023

	DA2034	Building C East Elevation	C	28 July 2023
	DA3001	Building Sections	D	16 August 2023
	DA3002	Landscape Section	D	16 August 2023
	DA3011	Building A Sub-Level Section	D	16 August 2023
	DA3032	Ramp Section	C	28 July 2023
	DA3101	Building Detail Section	C	28 July 2023
	DA5001	Pre + Post Adaptable Unit Layout	D	16 August 2023
	DA5002	Pre + Post Adaptable Unit Layout	C	28 July 2023
	DA5003	Pre + Post Adaptable Unit Layout	C	28 July 2023
	DA5004	Pre + Post Adaptable Unit Layout	B	28 July 2023
	DA6001	Shadow	D	16 August

		Diagrams		2023
	DA6021	Solar Study - 21 June 9.00am	D	16 August 2023
	DA6022	Solar Study - 21 June 10.00am	D	16 August 2023
	DA6023	Solar Study - 21 June 11.00am	D	16 August 2023
	DA6024	Solar Study - 21 June 12.00pm	D	16 August 2023
	DA6025	Solar Study - 21 June 1.00pm	D	16 August 2023
	DA6026	Solar Study - 21 June 2.00pm	D	16 August 2023
	DA6027	Solar Study - 21 June 3.00pm	D	16 August 2023
	DA6028	Solar Study Table	D	16 August 2023
	DA6031	COS Solar Study - 9.00am	B	28 July 2023

	DA6032	COS Solar Study - 10.00am	B	28 July 2023
	DA6033	COS Solar Study - 11.00am	B	28 July 2023
	DA6041	Unit AG01 Solar Study	B	28 July 2023
	DA6043	Unit A101 Solar Study	B	28 July 2023
	DA6044	Unit A103 Solar Study	B	28 July 2023
	DA6045	Unit A201 Solar Study	C	16 August 2023
	DA6046	Unit A202 Solar Study	B	28 July 2023
	DA6047	Unit A203 Solar Study	B	28 July 2023
	DA6048	Unit A301 Solar Study	C	16 August 2023
	DA6049	Unit A302 Solar Study	B	28 July 2023
	DA6050	Unit A303 Solar Study	B	28 July 2023

	DA6051	Unit A401 Solar Study	C	16 August 2023
	DA6052	Unit A402 Solar Study	B	28 July 2023
	DA6061	Unit B104 Solar Study	B	28 July 2023
	DA6062	Unit B204 Solar Study	B	28 July 2023
	DA6063	Unit B205 & 305 Solar Study	B	28 July 2023
	DA6064	Unit B206 Solar Study	B	28 July 2023
	DA6065	Unit B207 Solar Study	B	28 July 2023
	DA6066	Unit B304 Solar Study	B	28 July 2023
	DA6067	Unit B306 Solar Study	B	28 July 2023
	DA6068	Unit B307 Solar Study	B	28 July 2023
	DA6069	Unit B403 Solar Study	B	28 July 2023
	DA6070	Unit B404 Solar	B	28 July

		Study		2023
	DA6071	Unit B405 Solar Study	B	28 July 2023
	DA6072	Unit B406 Solar Study	B	28 July 2023
	DA6073	Unit B501 Solar Study	B	28 July 2023
	DA6074	Unit B502 Solar Study	B	28 July 2023
	DA6081	Unit C308 Solar Study	B	28 July 2023
	DA6082	Unit C309 Solar Study	B	28 July 2023
	DA6083	Unit C407 Solar Study	B	28 July 2023
	DA66084	Unit C408 Solar Study	B	28 July 2023
	DA6085	Unit C503 Solar Study	B	28 July 2023
	DA6086	Unit C503 Solar Study	B	28 July 2023
	DA7001	GFA Calculation	D	16 August 2023
	DA7002	GFA	D	16 August

		Calculation		2023
	DA7003	GFA Calculation	D	16 August 2023
	DA7004	GFA Calculation	D	16 August 2023
	DA7011	Solar Access Plan	D	16 August 2023
	DA7021	Ventilation Diagrams	D	16 August 2023
	DA7031	Streetscape 3D View	D	16 August 2023
	DA7032	Streetscape 3D View	D	16 August 2023
	DA7033	Streetscape 3D View	D	16 August 2023
	DA7034	Rear 3D View	C	28 July 2023
	DA7037	DSZ - ADG Calculation (7%)	C	28 July 2023
	DA7039	DSZ - DCP Calculation	B	28 July 2023
	DA7040	Communal Open Space	D	16 August 2023

		Diagram		
	DA7041	Finishes Schedule	D	16 August 2023
	DA7051	LEP Height Blanket	D	16 August 2023
	DA7052	LEP Height Blanket	D	16 August 2023
	DA7053	LEP Height Blanket	D	16 August 2023
	DA7054	LEP Height Blanket	D	16 August 2023
	DA7061	Front Setback	A	16 December 2022
	DA7062	Rear Setback	A	16 December 2022
	DA7071	Cut & Fill Diagram - Sheet 1	D	16 August 2023
	DA7072	Cut & Fill Diagram - Sheet 2	D	16 August 2023
	DA7073	Cut & Fill Diagram -	D	16 August 2023

		Sheet 3		
	DA7074	Cut & Fill Diagram - Sheet 4	D	16 August 2023
	DA7075	Cut & Fill Diagram - Sheet 5	D	16 August 2023
	DA7076	Cut & Fill Diagram - Sheet 6	D	16 August 2023
	DA7081	Privacy Diagrams	C	28 July 2023
	DA7082	Wayfinding Diagram	C	16 August 2023
	DA7091	Car Space & Condenser Layout	B	28 July 2023
2.	Landscape drawings prepared by Myles Baldwin Design (Rev D)			<i>Individually as dated below</i>
	<i>Drawing No.</i>	<i>Title</i>	<i>Rev</i>	<i>Date</i>
	697_DA_01	Cover Page	D	24 August 2023
	697_DA_02	Plant Schedule	D	24 August

				2023
	697_DA_03	Softworks Zoning	D	24 August 2023
	697_DA_04	Existing Tree Plan	D	24 August 2023
	697_DA_05	Existing Tree Report	D	24 August 2023
	697_DA_06	Tree Masterplan	D	24 August 2023
	697_DA_10	Landscape Plan Ground Floor	D	24 August 2023
	697_DA_11	Landscape Plan Level 01	D	24 August 2023
	697_DA_11	Landscape Plan Level 01	D	24 August 2023
	697_DA_12	Landscape Plan Level 02 A	D	24 August 2023
	697_DA_13	Landscape Plan Level 02 B	D	24 August 2023
	697_DA_14	Landscape Plan Level 03 A	D	24 August 2023
	697_DA_15	Landscape Plan Level 03 B	D	24 August 2023

	697_DA_16	Landscape Plan Level 04	D	24 August 2023
	697_DA_17	Landscape Plan Level 05	D	24 August 2023
	697_DA_18	Landscape Plan Level 06	D	24 August 2023
	697_DA_45	Typical Details	D	24 August 2023
	697_DA_70	General Specification	D	24 August 2023
3.	Landscape statement prepared by Myles Baldwin Design			28 August 2023
4.	Site analysis prepared by CDA architects (Rev D)			<i>Individually as dated below</i>
	<i>Drawing No.</i>	<i>Title</i>	<i>Rev</i>	<i>Date</i>
	DA1011	Site Analysis - Transport, Amenity & Network Analysis	A	16 December 2022
	DA1012	Site Analysis Plan	B	28 July 2023
	DA1013	Site Analysis –	B	28 July

		Built Form		2023
	DA1014	Site Analysis – Isometric Views	C	28 July 2023
	DA1014.1	Isometric Views	A	28 July 2023
	DA1015	Residential Flat Building	A	16 December 2022
	DA1016	Site Analysis - Opportunities & Constraints	A	16 December 2022
	DA1017	Site Analysis - Existing Public Stairway Analysis	A	16 December 2022
	DA1018	Site Analysis - Proposed Public Stairway Analysis	A	16 December 2022
5.	Structural drawings prepared by Capital Engineering Consulting			4 July 2023
	<i>Drawing No.</i>	<i>Title</i>	<i>Rev</i>	<i>Date</i>
	S0000	Cover Sheet	B	20 July 2023

	S0101	Shoring And Bulk Excavation Plan	C	20 July 2023
	S0105	Shoring Wall Elevations - Sheet 1	C	20 July 2023
	S0106	Shoring Wall Elevations - Sheet 2	B	20 July 2023
	S0110	Shoring Sections - Sheet 1	B	20 July 2023
	S0111	Shoring Sections - Sheet 2	B	20 July 2023
	S0120	Shoring Wall Details - Sheet 1	B	20 July 2023
6.	Stormwater concept plans prepared by C & S Engineering Services Pty Ltd (Rev C)			<i>Individually as dated below</i>
	<i>Drawing No.</i>	<i>Title</i>	<i>Rev</i>	<i>Date</i>
	000	Cover Sheet Plan	C	27 July 2023

	101	Stormwater Concept Plan Basement Sub Level Sheet 1 of 2	G	23 August 2023
	102	Stormwater Concept Plan Basement Sub Level Sheet 1 of 2	B	27 July 2023
	103	Stormwater Concept Plan Ground Level	E	23 August 2023
	104	Stormwater Concept Plan Level 1	E	23 August 2023
	107	On-Site Detention Details and Calculation Sheet 1 Of 2	C	27 July 2023
	107.1	On-Site Detention Details and Calculation Sheet 2 Of 2	B	27 July 2023
	108	Catchment Plan and Music	B	27 July 2023

		Results		
	109	Sediment & Erosion Control Plan & Details	A	21 November 2022
	110	Miscellaneous Details Sheet	B	27 July 2023
	111	Upstream Catchment Plan Contours Mapping	C	23 August 2023
	112	OSD Catchment Plan And Drains Results	A	27 July 2023
7.	Stormwater design statement prepared by C & S Engineering Services Pty Ltd			28 August 2023
8.	Stormwater drawing issue register prepared by C & S Engineering Services Pty Ltd			-
9.	Survey plan prepared by Geometra Consulting			21 September 2022
10.	Traffic letter prepared by CJP Consulting engineers			24 August 2023
11.	Traffic without prejudice letter prepared by CJP Consulting engineers			19 September 2023

12.	Response to council's excavation comments prepared by GSA Planning	28 August 2023
13.	BASIX stamped amended architectural plans prepared by CDA architects (Rev D)	25 August 2023
14.	BASIX certificate (certificate no. 1359008M_02)	25 August 2023
15.	NatHERS certificate no. 0008325440	25 August 2023
16.	Clause 4.6 Request – Floor Space Ratio (FSR) prepared by GSA Planning	September 2023
17.	Clause 4.6 Request – Height prepared by GSA Planning	September 2023
18.	Amended waste management plan prepared by Dickens Solutions Pty Ltd	June 2023
19.	Environmental response to statement of facts and contentions prepared by CEC Geotechnical	20 July 2023
20.	Preliminary site investigation report prepared by CEC Geotechnical	8 June 2023
21.	Shoring design report prepared by Capital Engineering Consultants	24 July 2023
22.	Letter prepared by AA Power Engineering in relation to substation location	1 August 2023
23.	Response to SOFAC - geotechnical report	2 August

	prepared by CEC Geotechnical (the geotechnical response to SOFAC) comprising:	2023
24.	Risk assessment description (<i>Appendix A of the geotechnical response to SOFAC</i>)	2 August 2023
25.	Shoring drawing and settlement calculation (<i>Appendix B of the geotechnical response to SOFAC</i>)	20 July 2023
26.	Hydrogeological assessment and dewatering management plan (<i>Appendix C of the geotechnical response to SOFAC</i>) comprising:	20 July 2023
	<p>(i) Geotechnical investigation report prepared by CEC Geotechnical (<i>Appendix A of the hydrogeological assessment and dewatering management plan</i>) comprising:</p> <ul style="list-style-type: none"> a. Site plan with borehole locations dated 11 November 2022 (Appendix A) b. Borehole logs and DCP Test Results dated 11 November 2022 (Appendix B) c. Point load test results dated 21 November 2022 (Appendix C) d. Laboratory test results dated 15 November 2022 (Appendix D) e. Site classification general information (Appendix E) 	20 July 2023
	(ii) Additional information for ground water level monitoring report (<i>Appendix B of the hydrogeological assessment and dewatering</i>	20 July 2023

	<i>management plan)</i>	
	<p>(iii) Dewatering management plan (Appendix C of the hydrogeological assessment and dewatering management plan) comprising:</p> <p>a. Site plan showing potential discharge point (stormwater pits) dated 20 July 2023 (Appendix A)</p> <p>b. Laboratory test results dated 6 March 2023 (Appendix B)</p> <p>c. WaterNSW groundwater guidelines (Appendix C)</p>	20 July 2023
27.	Arboricultural assessment/tree root mapping report prepared by TALC	12 September 2023
28.	Arboricultural impact assessment prepared by TALC	12 September 2023
29.	Owners consent letters	23 September 2022 20 September 2023
30.	Statement of compliance access for people with a disability prepared by Accessible Building Solutions	20 October 2023
31.	Response letter prepared by C & S	27 July

	Engineering Services	2023
32.	Design verification statement prepared by CDA Architects	28 November 2023

- (2) The Applicant has filed the amendments to the Development Application DA592/2022 with the Court on 24 November 2023 and 29 November 2023.

16 The Court orders that:

- (1) The appeal is upheld.
- (2) Development Application DA592/2022, which seeks the demolition of existing structures, tree removal, and construction of a residential flat building with basement car parking, landscaping and a swimming pool on Strata Plan 11821, also known as 186-192 Old South Head Road, Bellevue Hill, is determined by the grant of consent, subject to the conditions in Annexure A.
- (3) The Applicant is to pay the Respondent's costs thrown away pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* in the agreed sum of \$16,000 payable within 35 days from the date of the final orders.

Sarah Bish

Commissioner of the Court

23.78814 Annexure A

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