



Land and Environment Court
New South Wales

Case Name: DA No. 10 Pty Ltd ATF DA No. 10 Unit Trust v Mosman Municipal Council

Medium Neutral Citation: [2025] NSWLEC 1320

Hearing Date(s): Conciliation Conference 13 March 2025

Date of Orders: 08 May 2025

Decision Date: 8 May 2025

Jurisdiction: Class 1

Before: Targett C

Decision: The Court orders that:

- (1) The Applicant shall pay the Respondent's costs thrown away as a result of the amendment of the development application in the agreed sum of \$25,000 within 14 days of the date of these orders, pursuant to s 8.15(3) of the Environmental Planning and Assessment Act 1979.
- (2) The Applicant's written request made pursuant to cl 4.6 of the Mosman Local Environmental Plan 2012 to vary the development standard for the building height control within cl 4.3 thereof, prepared by Planning & Co, is upheld.
- (3) The Applicant's written request made pursuant to cl 4.6 of the Mosman Local Environmental Plan 2012 to vary the development standard for landscaping within s 19(2) of the State Environmental Planning Policy (Housing) 2021 thereof, prepared by Planning & Co, is upheld.
- (4) The appeal is upheld.
- (5) Development Consent is granted to Development Application No. 8.2024.144.1 (as amended) for the demolition of existing structures and construction of a six-storey mixed use development and basement

parking, at 696, 700 and 706 Military Road, Mosman NSW 2088, legally known as Lot 1 DP 523272, SP 73142, and Lot 1 DP 512615, subject to the conditions in Annexure A.

Catchwords: APPEAL – Development application – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 8.7, 8.10, 8.11, 8.15
Land and Environment Court Act 1979, ss 17, 34

Environmental Planning and Assessment Regulation 2021, s 38
Mosman Development Control Plan 2012
Mosman Local Environmental Plan 2012, cll 4.3, 4.4, 4.4B, 4.6, 5.10, 6.7
State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 6, Div 2, Pt 6.2, ss 6.6, 6.7
Environmental Planning and Assessment Act 1979, ss 4.15, 8.7, 8.10, 8.11
State Environmental Planning Policy (Housing) 2021, ss 15C, 16, 19, 20, 21, 145, 147
State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6
State Environmental Planning Policy (Sustainable Buildings) 2022
State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.119, 2.120

Category: Principal judgment

Parties: DA No. 10 Pty Ltd ATF DA No. 10 Unit Trust (Applicant)
Mosman Municipal Council (Respondent)

Representation: Counsel:
A Galasso (Applicant)
R McCulloch (Solicitor) (Respondent)

Solicitors:
Mills Oakley (Applicant)
Pikes & Verekers Lawyers (Respondent)

File Number(s): 2024/364490

Publication Restriction: Nil

JUDGMENT

COMMISSIONER:

Background

- 1 This is a Class 1 Development Appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) by the applicant against the respondent's deemed refusal of the applicant's development application (No 8.2024.144.1) (Development Application). The Development Application sought consent for the demolition of existing structures and construction of a six-storey mixed use development comprising five commercial premises, 27 dwellings (including eight affordable housing dwellings) and basement parking on land identified as Lot 1 in Deposited Plan 523272, Strata Plan 73142 and Lot 1 in Deposited Plan 512615, known as 696, 700 and 706 Military Road, Mosman, respectively (Subject Land).
- 2 The Court has power to dispose of these proceedings under its Class 1 jurisdiction pursuant to s 17(d) of the *Land and Environment Court Act 1979* (LEC Act).

The Development Application

- 3 The Development Application was lodged with the respondent on 22 August 2024.
- 4 The Development Application was publicly notified between 9 and 25 September 2024. Five submissions were received objecting to the proposed development and one submission was received in support.
- 5 On 2 October 2024, the proceedings were commenced in relation to the deemed refusal of the Development Application, being within the appeal period prescribed by ss 8.10 and 8.11 of the EPA Act.
- 6 The Court arranged a conciliation conference under s 34 of the LEC Act between the parties, which was held on 13 March 2025 and adjourned on one occasion. I presided over the conciliation conference.

- 7 During the conciliation process, the parties reached agreement under s 34(3) of the LEC Act as to the terms of a decision in the proceedings that would be acceptable to the parties. A signed s 34 agreement was provided to the Court on 10 April 2025 following the applicant agreeing to amend the Development Application. The signed s 34 agreement is supported by an agreed jurisdictional statement. The agreed amendments to the Development Application relevantly include:
- (1) a cl 4.6 variation request in relation to landscaped area prepared by Planning & Co dated 20 March 2025 (Landscaped Area Request);
 - (2) an updated cl 4.6 request relating to height, prepared by Planning & Co dated 6 March 2025 (Height Request);
 - (3) updated Preliminary Geotechnical Investigation prepared by Green Geotechnics dated 7 March 2025 (Geotechnical Report);
 - (4) a Detailed Site Investigation prepared by EDP dated 17 February 2025 (DSI);
 - (5) Memorandum regarding heritage prepared by GBA Heritage, dated 10 March 2025 (Heritage Memo);
 - (6) Letter addressing the respondent's contentions relating to stormwater, prepared by Enscape Studio, dated 20 March 2025 (Stormwater Letter);
 - (7) Visual Impact Renderings prepared by Virtual Ideas dated 18 February 2025 (Visual Impact Renderings);
 - (8) updated Traffic Impact Assessment prepared by Traffix, dated March 2025 (Traffic Impact Assessment);
 - (9) Additional Views prepared by DKO Architects, dated March 2025;
 - (10) updated Waste Management Plan prepared by Ratio, dated 11 March 2025;
 - (11) updated BASIX Certificate and NatHERS Certificate; and
 - (12) updated architectural and landscape plans, (Amended Development Application).
- 8 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions.

Jurisdictional considerations

- 9 As the presiding Commissioner, I am satisfied that the decision is one that the Court can make in the proper exercise of its functions (this being the test

applied by s 34(3) of the LEC Act). I form this state of satisfaction for the reasons that follow.

Owners consent

- 10 The applicant is the registered proprietor of the Subject Land and owners consent was provided to the Development Application when it was lodged with the respondent (see Class 1 Application, tab 1).

State Environmental Planning Policy (Resilience and Hazards) 2021

- 11 Section 4.6(1) of *State Environmental Planning Policy (Resilience and Hazards) 2021* (RH SEPP) provides that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

- 12 The Development Application is accompanied by a Preliminary Site Investigation prepared by CHEC dated April 2024 (PSI). The PSI concludes that although the Subject Land may have been used for auto mechanical repairs and/or fuel dispensing prior to the 2000s, there is a “very low risk of contamination”. The PSI recommends that an unexpected finds protocol be implemented during construction. The parties agree that these findings (and proposed Agreed Conditions) are sufficient for the purposes of s 4.6 of the RH SEPP. I further note that the Amended Development Application includes a DSI, which considered the results of seven boreholes and two groundwater wells to conclude that the Subject Land was suitable for its intended use subject to the implementation of an unexpected finds protocol and groundwater being suitably managed during excavation works.
- 13 Having regard to the PSI, DSI and Agreed Conditions (see conditions 71, 72 and 73), I am satisfied that s 4.6 of the RH SEPP has been satisfied.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- 14 Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP) applies to the Amended Development Application because the Subject Land is located within the Sydney Harbour Catchment. Division 2 in Pt 6.2 sets out general controls applying to development in a regulated catchment.
- 15 Section 6.6 of the BC SEPP relating to water quality and quantity, requires a consent authority to consider the matters listed in s 6.6(1) and to not grant development consent unless the consent authority is satisfied of the matters listed in s 6.6(2). The parties agree, and I accept, that the matters listed in s 6.6(1) and s 6.6(2) have been considered and satisfied having regard to the stormwater design proposed for the development (see the Stormwater Management Plan and Stormwater Plans prepared by Enscape Studio dated 16 July 2024 (Stormwater Documents)).
- 16 Section 6.7 of the BC SEPP relating to aquatic ecology, requires a consent authority to consider the matters listed in s 6.7(1) and to be satisfied of the matters listed in s 6.7(2). The parties agree, and I accept that the matters have been considered and satisfied, as relevant, having regard to the stormwater design proposed for the development (see the Stormwater Documents).

State Environmental Planning Policy (Sustainable Buildings) 2022

- 17 The Amended Development Application is accompanied by BASIX Certificate (Certificate No. 1756536M_02) in compliance with the relevant requirements under the State Environmental Planning Policy (Sustainable Buildings) 2022.

State Environmental Planning Policy (Housing) 2021

- 18 The parties agree that State Environmental Planning Policy (Housing) 2021 (Housing SEPP) applies to the Amended Development Application as the proposed development meets the requirements of s 15C of the Housing SEPP. This is because the Amended Development Application is permissible with consent under the Mosman Local Environmental Plan 2012 (MLEP) (being characterised as “shop-top housing”), provides more than 10% gross floor area as affordable housing, and is carried out within an accessible area.

- 19 The Amended Development Application seeks the benefit of a floor space ratio (FSR) bonus under s 16 of the Housing SEPP which relevantly provides:

(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).

(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows -

Affordable housing component = additional floor space ratio (as a percentage) (divided by) 2

- 20 The parties agree and I accept that, applying the bonus FSR of 30%, a maximum FSR of 3.9:1 would be permitted at the Subject Land, if 752.31m² (15%) of the FSR would be dedicated to affordable rental housing for a period of 15 years. The Amended Development Application proposes 772.19m² (or 15.4%) of affordable housing (FSR) in accordance with s 16 of the Housing SEPP. Therefore, the Amended Development application qualifies for the “bonus” incentive under the Housing SEPP and the FSR bonus is enlivened.

- 21 The Amended Development Application also seeks the benefit of a height bonus under s 16(3) of the Housing SEPP which relevantly provides:

If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

- 22 The parties agree, and I accept that, the applicable maximum height for the development is 19.5m (being 15m under the MLEP plus 30%). Therefore, the Amended Development Application qualifies for the “bonus” incentive under the Housing SEPP and the height bonus is enlivened.

- 23 Pursuant to s 19(2)(b) of the Housing SEPP, a non-discretionary minimum landscaped area development standard of 30% of the site area applies to the Subject Land (Landscaped Area Standard). The Amended Development Application seeks to build over the entire site area, with basements to all frontages and therefore provides no landscaped area under the definition in the Housing SEPP. As such, the Amended Development Application seeks to vary

the Landscaped Area Standard and is supported by the Landscaped Area Request.

24 The Landscaped Area Request provides a detailed assessment of the Amended Development Application's compliance with the matters raised in cl 4.6(3) of the MLEP and concludes that:

- (1) Compliance with the Landscaped Area Standard is unreasonable or unnecessary in the circumstances because:
 - (a) the Amended Development Application incorporates communal open space at the rooftop level (including landscaping, shade structures, seating and plantings); and
 - (b) the objectives of the Landscaped Area Standard are achieved through alternative means including green roof elements, planters and deep soil zones.
- (2) There are sufficient environmental planning grounds to justify the contravention because:
 - (a) the Subject Land is located in an urbanised context where full site coverage by basement is common and expected for development of this type;
 - (b) the proposal offers a strong built form outcome and integrates well into the evolving character of the area; and
 - (c) landscaping outcomes are achieved through rooftop communal open space where possible.

25 In respect of the Landscaped Area Request, I am satisfied that the applicant has demonstrated that compliance with the Landscaped Area Standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the Landscaped Area Standard in accordance with the requirements under cl 4.6(3) of the MLEP.

26 Section 20(3)(a) of the Housing SEPP relevantly provides that consent must not be granted to development to which Div 1 applies unless the consent authority has considered whether the design of the residential development is compatible with the desirable elements of the character of the local area. The parties agree that the proposed development is so compatible (see Design and SEPP Report prepared by DKO Architecture, dated July 2024 (Design and SEPP Report)).

- 27 Section 21 of the Housing SEPP relevantly requires the consent authority to be satisfied that the affordable housing component of the development will be used for affordable housing for at least 15 years following the issue of an occupation certificate and that the affordable housing component will be managed by a registered community housing provider.
- 28 Condition 100 of the Agreed Conditions adequately addresses s 21 of the Housing SEPP. In determining the Amended Development Application, I am satisfied of the matters set out in s 21 of the Housing SEPP, having regard to condition 100 of the Agreed Conditions.
- 29 Section 145(2) of the Housing SEPP requires the consent authority to refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development. The parties confirm that a design review panel does not exist in the Mosman Local Government Area.
- 30 Section 147 of the Housing SEPP requires the consent authority to have considered the matters listed in s 147(1) of the Housing SEPP (which includes the Apartment Design Guide (ADG)) before granting consent.
- 31 The parties agree, and I accept, that the Design Verification Statement contained within the Design and SEPP Report addresses the requirements of s 147(1) of the Housing SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

- 32 Section 2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (TISEPP) applies to the proposed development as the Subject Land has a frontage to a classified road (Military Road).
- 33 Section 2.119 of the TISEPP provides that a consent authority must not grant consent to development on land to which the clause applies unless it is satisfied of the matters listed in s 2.119(2).
- 34 The parties agree, and I accept, that the matters listed in s 2.119(2) are satisfied, and the efficiency and ongoing operation of Military Road will not be adversely affected by the proposal, on the basis that the Amended Development Application:

- (1) proposes vehicular access to the Subject Land via Horsnell Lane, being a local access road; and
 - (2) is supported by the Traffic Impact Assessment which raises no concerns with the safety or efficiency of the proposed access arrangement.
- 35 Section 2.120 of the TISEPP relevantly provides that a consent authority must take into consideration relevant guidelines under s 2.120(2) and be satisfied of the matters specified in s 2.120(3) before granting consent. The parties agree, and I accept, that the Acoustic Assessment prepared by Renzo Tonin dated 22 July 2024 considers the relevant guidelines and addresses the requirements of s 2.120(3) by providing recommendations which will ensure compliance with the noise criteria set out in that section (see also condition 1 of the Agreed Conditions requiring compliance with the Acoustic Report).

Mosman Local Environmental Plan 2012

- 36 The Subject Land is zoned E1 Local Centre under the MLEP. Accordingly, shop top housing is permitted with consent in the E1 zone. I have had regard to the zone objectives which are extracted below:
- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.
 - To encourage investment in local commercial development that generates employment opportunities and economic growth.
 - To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
 - To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
 - To enhance the viability, vitality and amenity of the local centres.
 - To maintain active uses at street level, with a predominance of retail use.
 - To allow the amalgamation and redevelopment of land in Spit Junction.
 - To minimise the effect of business uses on the amenity of adjacent residential areas having regard to building design, operation and activities, traffic generation and the car parking capacity of local roads.
 - To ensure the facades of new buildings in Mosman Junction are in keeping with the proportions of surrounding traditional shop fronts.
 - To maintain the local character and enhance the village atmosphere of Mosman Junction by limiting the height, bulk and scale of buildings.

- To encourage development that is compatible with the centre's position on the hierarchy of centres.
- 37 The parties agree, and I accept, that the Amended Development Application is consistent with the objectives of the E1 zone.
- 38 Pursuant to cl 4.3 of the MLEP relating to height of buildings and noting the height bonus established at [22] above, a maximum height development standard of 19.5m applies to the Subject Land (Height Standard). The Amended Development Application proposes a height exceedance of 4.25m or 22.3%. As such, the Amended Development Application seeks to vary the Height Standard and is supported by the Height Request.
- 39 The Height Request provides a detailed assessment of the Amended Development Application's compliance with the matters raised in cl 4.6(3) of the MLEP and concludes that:
- (1) Compliance with the Height Standard is unreasonable or unnecessary in the circumstances because:
 - (a) The Amended Development Application achieves the objectives of the Height Standard set out in cl 4.3 of the MLEP, despite the numerical non-compliance. The variation is minor and relates solely to a small portion of the lift overrun, which will not result in any unreasonable impacts in terms of overshadowing, view loss, visual bulk, or privacy.
 - (b) Strict compliance with the standard would hinder the provision of vertical access throughout the building, particularly to the rooftop communal open space, which contributes to residential amenity and design excellence.
 - (c) The Amended Development Application demonstrates design excellence as it aligns with the strategic intent of the Subject Land and locality, despite the minor breach of the height limit.
 - (2) There are sufficient environmental planning grounds to justify the contravention because:
 - (a) The non-compliance arises from a necessary feature, being the lift overrun, which is required to facilitate access and meet Building Code of Australia requirements. The environmental planning benefit of enabling accessible communal open space for future residents outweighs the minor numerical exceedance.
 - (b) The Amended Development Application will not create any adverse environmental impacts in relation to overshadowing, privacy, views, or visual bulk and maintains the existing character of the area.

- (c) The height exceedance does not compromise the future desired character of the area, and the proposal contributes positively to the streetscape, public domain, and housing supply objectives, in accordance with broader planning strategies.

- 40 In respect of the Height Request, I am satisfied that the applicant has demonstrated that compliance with the Height Standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the Height Standard in accordance with the requirements under cl 4.6(3) of the MLEP.
- 41 Pursuant to cl 4.4 of the MLEP relating to floor space ratio (FSR), a maximum FSR development standard applies to the Subject Land. Pursuant to cl 4.4B relating to Area 2 (Spit Junction) – floor space ratio incentives, the parties agree that the base FSR for the Subject Land is 3:1. However, noting the FSR bonus established at [20] above, a maximum FSR standard of 3.9:1 applies to the Subject Land (FSR Standard). The parties agree, and I accept, that the Amended Development Application does not exceed the FSR Standard.
- 42 Clause 5.10 of the MLEP relating to heritage conservation applies to the Amended Development Application as the Subject Land is located within the Military Road Heritage Conservation Area. Pursuant to cl 5.10(4), development consent must not be granted to development unless the consent authority has considered the effect of the proposed development on the heritage significance of the area concerned. The parties agree, and I accept, that the impact of the proposed development has been considered in accordance with cl 5.10(4) having regard to the Heritage Impact Statement prepared by GBA Heritage dated July 2024 which confirms that:
- (1) no buildings on the Subject Land are listed as items of heritage significance;
 - (2) other listed heritage items in the wider locality are separated from the Subject Land by the intervening distance and have no direct visual connection to the Subject Land;
 - (3) the Amended Development Application has been designed in keeping with the character of the streetscape and the heritage items in the vicinity; and
 - (4) the significance of adjoining contributory and heritage items and their ability to contribute to the streetscape and the conservation area will be retained.

- 43 Pursuant to cl 6.7 of the MLEP relating to earthworks, the consent authority must consider the matters specified in cl 6.7(3) when deciding whether to grant consent for earthworks. The parties agree, and I accept, that the Geotechnical Report considers the matters listed in cl 6.7(3) and there is no impediment to the grant of development consent.

Mosman Development Control Plan 2012

- 44 The parties agree, and I accept, that the Amended Development Application has considered and addressed the relevant provisions of the Mosman Development Control Plan 2012.

Remaining matters under s 4.15(1) of the EPA Act

- 45 The matters set out in s 4.15(1), subss (b), (c) and (e) of the EPA Act are addressed in the Statement of Environmental Effects prepared by Planning & Co dated 26 July 2024 (see pp 43-44).
- 46 As set out at [4] above, for the purposes of s 4.15(d) of the EPA Act, the Development Application was publicly notified between 9 and 25 September 2024. Five submissions were received objecting to the proposed development and one submission was received in support. In addition, the Court heard from four residents at the site view associated with the conciliation conference raising concerns including building height, traffic and parking impacts, excavation and construction impacts, and noise.
- 47 I am satisfied that the written and oral submissions received have been taken into consideration in the assessment and determination of the Amended Development Application.

Conclusion

- 48 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.
- 49 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.

- 50 The Court notes that the respondent, as the relevant consent authority, has approved under s 38(1) of the Environmental Planning and Assessment Regulation 2021, the applicant amending Development Application No. 8.2024.144.1 to include the following documents:

TAB	DOCUMENT	DATE
1	Clause 4.6 Variation to Development Standard - Landscaped Area prepared by Planning & Co	20 March 2025
2	Clause 4.6 Variation to Development Standard – Height of Buildings prepared by Planning & Co	6 March 2025
3	Preliminary Site Investigation prepared by Green Geotechnics	7 March 2025
4	Detailed Geotechnical Investigation prepared by EDP	17 February 2025
5	Heritage Memo prepared by GBA Heritage	10 March 2025
6	Letter in relation to Stormwater Management prepared by Enscape Studios	20 March 2025
7	Visual Impact Rendering and Methodology Report prepared by Virtual Ideas	18 February 2025
8	Traffic Impact Assessment prepared by Traffix	6 March 2025
9	Additional Views prepared by DKO Architecture	March 2025

10	Waste Management Plan prepared by Ratio	11 March 2025
11	BASIX certificate no. 1756536M_02	1 April 2025
12	NatHERS Certificate No. GBLB1QHIAV	1 April 2025
13	<p>Architectural Plans (Upto Rev D) prepared by DKO Architecture</p> <ul style="list-style-type: none"> • DA000 - Cover Page (Rev D) • DA100 - Site Analysis (Rev C) • DA101 - Site Photos (Rev C) • DA102 - Demolition Plan (Rev C) • DA103 - Site Plan (Rev C) • DA200 - Basement 03 (Rev B) • DA201 - Basement 02 (Rev C) • DA202 - Basement 01 (Rev C) • DA203 - Basement Mezzanine (Rev D) • DA204 - Ground Floor Plan (Rev D) • DA205 - Level 1 Plan (Rev C) • DA206 - Level 2 Plan (Rev C) • DA207 - Level 3 Plan (Rev C) • DA208 - Level 4 Plan (Rev C) • DA209 - Level 5 Plan (Rev C) • DA210 - Roof (Rev C) 	Up to 8 April 2025

	<ul style="list-style-type: none">• DA300 - Elevations - Sheet 1 (Rev C)• DA301 - Elevations - Sheet 2 (Rev C)• DA302 - Elevations - Sheet 3 (Rev C)• DA303 - Elevations - Sheet 4 (Rev C)• DA304 - Elevations - Sheet 5 (Rev C)• DA305 - Elevations - Sheet 6 (Rev C)• DA306 - Elevations - Sheet 7 (Rev C)• DA307 - Elevations - Sheet 8 (Rev C)• DA308 - Materials Schedule (Rev C)• DA309 - Typical Section (Rev C)• DA310 - Typical Section (Rev C)• DA311 - Typical Section (Rev C)• DA312 - 3D Montage (Rev B)• DA313 - Detailed Section (Rev B)• DA314 - Detailed Section (Rev A)• DA315 - Detailed Section (Rev A)• DA400 - GFA Calculations (Rev D)• DA401 - Housing SEPP GFA Calculations (Rev D)• DA402 - Solar Access (Rev C)• DA403 - Cross Ventilation (Rev C)• DA404 - Landscaped Area (Rev C)• DA405 - Eye of the Sun (Rev C)• DA406 - Eye of the Sun (Rev C)	
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	<ul style="list-style-type: none"> • DA407 - Shadow Diagrams (Rev C) • DA408 - Shadow Diagrams (Rev C) • DA409 - Shadow Diagrams - Perspective (Rev C) • DA410 - Apartment Mix (Rev C) • DA411 - Livable Units (Rev C) • DA412 - Adaptable Units (Rev C) • DA413 - Adaptable Unit Layouts (Rev C) • DA414 - Adaptable Unit Layouts (Rev C) • DA415 - Adaptable Unit Layouts (Rev C) • DA416 - Adaptable Unit Layouts (Rev C) • DA417 - Height Plane Diagram (Rev B) • DA418 - Height Plane Diagram Basement (Rev C) • DA419 - Storage Calculations (Rev C) • DA500 - Notification Plans (Rev C) • DA501 - Notification Plans (Rev C) 	
14	<p>Landscape Plans (Rev 03) prepared by Wyer & Co</p> <ul style="list-style-type: none"> • DA_0 – Cover Page • DA_01 – Master Plan • DA_02 – First Floor • DA_03 – Second Floor • DA_04 – Third Floor • DA_05 – Fourth Floor 	5 March 2025

	• DA_06 – Fifth Floor	
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Orders

51 The Court orders that:

- (1) The Applicant shall pay the Respondent's costs thrown away as a result of the amendment of the development application in the agreed sum of \$25,000 within 14 days of the date of these orders, pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*.
- (2) The Applicant's written request made pursuant to cl 4.6 of the Mosman Local Environmental Plan 2012 to vary the development standard for the building height control within cl 4.3 thereof, prepared by Planning & Co, is upheld.
- (3) The Applicant's written request made pursuant to cl 4.6 of the Mosman Local Environmental Plan 2012 to vary the development standard for landscaping within s 19(2) of the State Environmental Planning Policy (Housing) 2021 thereof, prepared by Planning & Co, is upheld.
- (4) The appeal is upheld.
- (5) Development Consent is granted to Development Application No. 8.2024.144.1 (as amended) for the demolition of existing structures and construction of a six-storey mixed use development and basement parking, at 696, 700 and 706 Military Road, Mosman NSW 2088, legally known as Lot 1 DP 523272, SP 73142, and Lot 1 DP 512615, subject to the conditions in Annexure A.

N Targett

Commissioner of the Court

[Annexure A \(347 KB, pdf\)](#)

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