

Commentary

Young Builders vs. University of Delhi: A case study of the priority to environment protection in New Delhi by the National Green Tribunal.

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This is a brief commentary on the verdict given by the National Green Tribunal in the matter of construction of a high rise residential complex where the appellant was University of Delhi and the respondent was Young Builders, a construction company. The commentary presents the proceedings of the case in a simplified manner along with some remarks on the decision made by the National Green Tribunal. The question at the heart of the matter is whether the development of housing was in line with the environmental law and jurisprudence in India. The National Green Tribunal questioned the environmental clearance given by the competent government agencies and provided a fresh assessment and ordered for the discontinuation of the project. The Tribunal highlighted the impact on the various points related to the environment by the project. The issues dealt with include underestimation of water requirement for construction and operation, air quality impact of the project, noise pollution due to the project, proximity to eco-sensitive area, and traffic congestion issues among others. The stand of the Tribunal is in favour of environmental protection, and it has played this crucial role successfully in light of the questions raised by the executive wing of the government in giving environment clearances to the project. There is scope for further policy discussion on these issues as a balance needs to be created between housing people and developing the city and preventing damage to the environment as mandated by law.

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In India, the concept of environmental impact assessment was first used in river valley projects in 1978. Later, other developmental parts were included in the Environmental Impact Assessment or EIA legislation. EIA is covered by the Environment (Protection) Act of 1986's Notification on Environmental Impact Assessment (EIA) of Developmental Projects of 1994 ^[1]. The National Green Tribunal was established to implement the international obligations undertaken by India as a signatory at the United Nations Conference on Environment

and Development in Rio de Janeiro in 1992 ^[2]. More than 30 different project types currently require EIA, and these projects only receive Environmental Clearance (EC) if the EIA standards have been met. The steps in this assessment is given in Figure 1. EIA is a participatory, integrated, consultative, and transparent mechanism to anticipate the environmental and social implications of a developmental project.

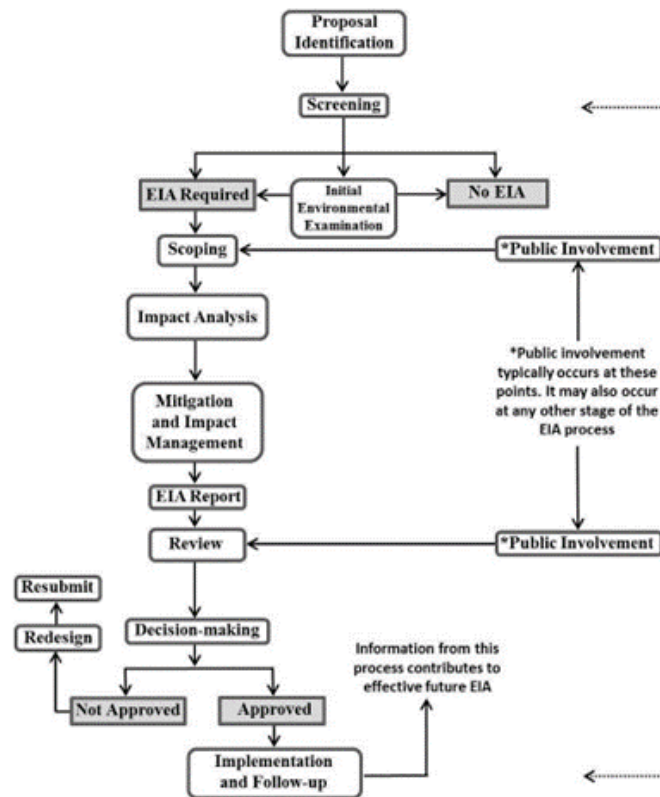


Figure 1: EIA Process Flowchart, Source: United Nations Environment Program (UNEP), 2002^[3]

This commentary has a detailed discussion of the environmental clearance provided to a housing project in Delhi and how it was held to be not in favour of the environment as mandated by law by the National Green Tribunal. The paper reports on the identified parameters (such as soil, water, air and others) to be examined on the basis of Environmental Impact Assessment (EIA). The paper largely focuses on appeal no. 17/2021^[4] filed by the University of Delhi under Section 16 (h) of the National Green Tribunal Act, 2010, challenging the Environmental Clearance issued on 21.05.2021 by the Ministry of Environment and Forest & Climate Change (MoEF&CC) in favor of Project Proponent (PP) Young Builder Private Limited. In this, the University of Delhi filed an Appeal against 11 respondents, including the Ministry of Environment and Forest & Climate Change (MoEF&CC), Delhi Metro Rail Corporation (DMRC), Delhi Development Authority (DDA), Central Pollution

Control Board (CPCB), Delhi Pollution Control Committee (DPCC), Chief Conservator of Forests, Delhi Urban Arts Commission (DUAC), Delhi Jal Board (DJB), Ministry of Defence (MoD), Delhi Fire Service and M/s. Young Builders Private Limited (YBPL).

The Appeal was filed against the alleged wrongful approval of EC to the project proponent for the plot (20,000 sqm/ 2 ha), which is a part of 3.05 hectares of land acquired by Delhi Metro Rail Corporation Limited (DMRC) from the Ministry of Defense under an award in 2001. DMRC was mandated to generate resources through property development on surplus land available after the construction of the metro station. DMRC requested a change in land use from 'Public & Semi-Public' to 'Residential' through Delhi Development Authority vide notification dated 23.09.2005. A Request for Proposal (RFP) was issued by DMRC in 2008 for property development group housing on the stated surplus land of 2.0 hectares through invited bids and conducted an auction on 28.07.2008. The development rights were awarded to the highest bidder that is M/s Young Builders Pvt. Ltd by the DMRC on 13.08.2008.

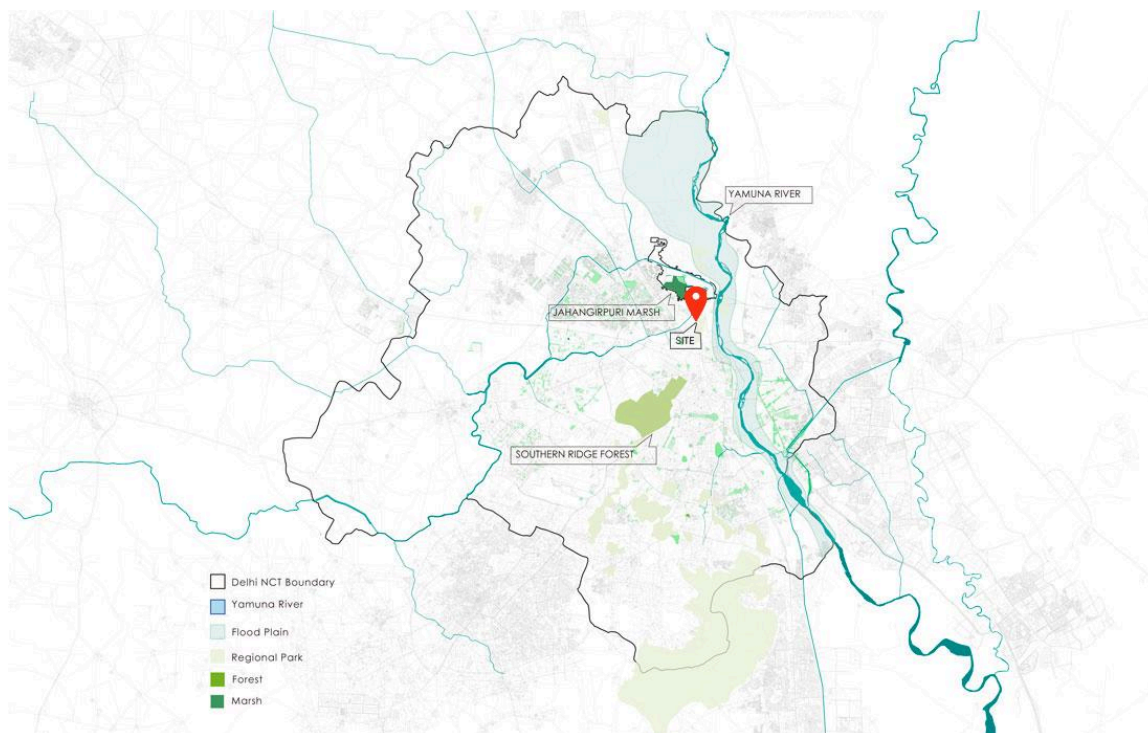


Figure 2: Site location marked in the map of Delhi (Source: Base map from Yamuna River Project (Alday and Gupta, 2018)^{[2][6]}

The site falls in Zone-C (Civil Lines)^[2], as marked in figure 2, comprising the sub-zone Delhi University Area which has several old historic buildings, colleges, and Viceroy's lodges of the colonial period. The project site is

connected to the Vishwavidyalaya – Kingsway Camp Road (Mall Road), bus stands, and the yellow line Vishwavidyalaya Metro Station. The site is surrounded by institutional buildings, including Kamala Ridge, Najafgarh Drain, and Yamuna Rivers, as depicted in figure 3. The satellite image is shown in figure 4.

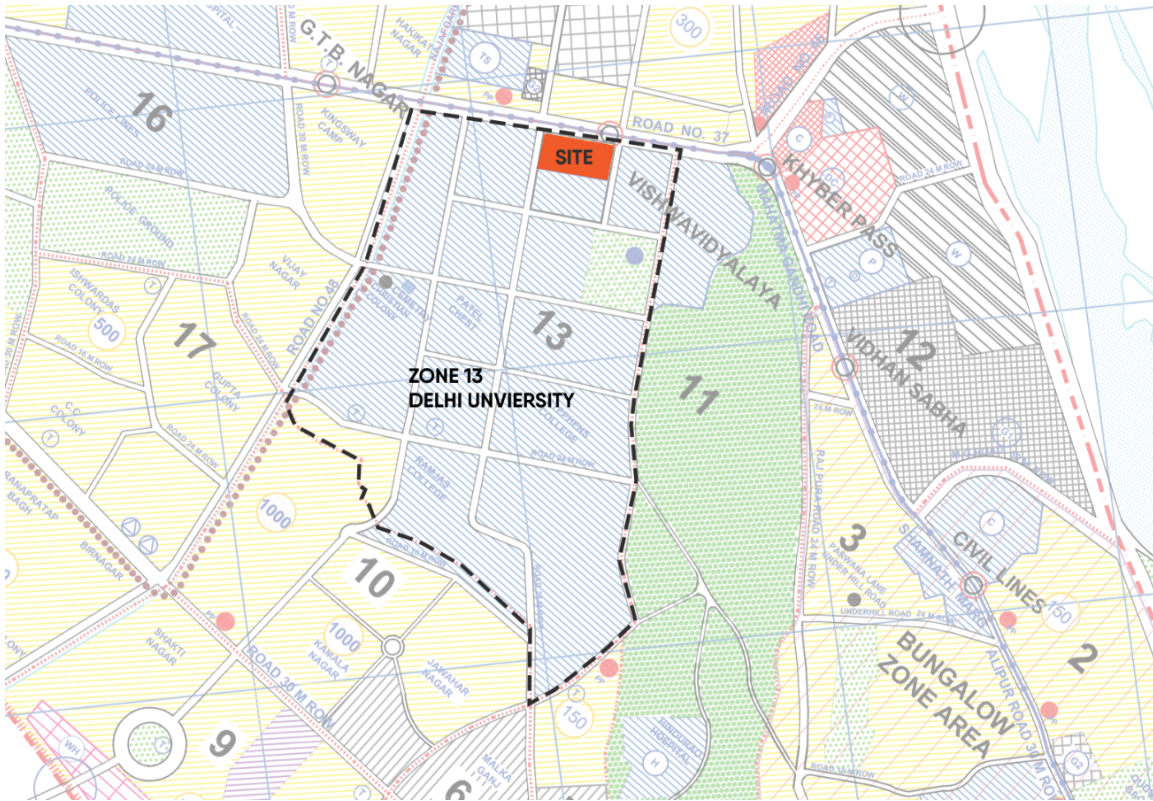


Figure 3: Site location marked in the Zonal map of Delhi (Source: DDA; Marked by the authors)

The zonal map clearly displays that the site falls zone-13, Delhi University but has residential land use as per the notification. The project details of the 2 hectares site are as in table 1.

S.No.	Headings	Specifications
1	Site Area	2 hectares (20,000 Sqm)
2	Permissible FAR	200
3	Total Built up	1,37,879.64 sqm
4	Height of the buildings	145.3 m
5	No. of floors	43
6	No of dwellings	446
7	No. of basements	2
8	Distance from Ridge and Yamuna River	Five hundred meters and 1800 meters resp.

Table 1: Project details of the group housing by YBPL (Source: Appeal 17/2021)



Figure 4: Site location marked in the map of site context (Source: Authors using the base map from Google Earth)

As the project's site was highlighted as one of the issues hence, it becomes significant to understand the various events which occurred throughout the timeline of the said project and its site, which covers the case from its

change of land use, transfer of land, and multiple environmental clearances to its final verdict as shown in figure 5.

As per the Phase- plan of the yellow metro line Delhi Metro Rail Corporation (DMRC) had kept 30,500 sq. meters of land for parking as Vishwa-Vidyalaya Metro Station was supposed to be the terminal station for the yellow line. But, in 2006, Phase II was envisioned, and the terminal station was extended to Jahangirpuri; thus, the requirement for parking space was reduced, and surplus land was issued for change in land use from 'Public and Semi-Public facility' to 'Group Housing.'

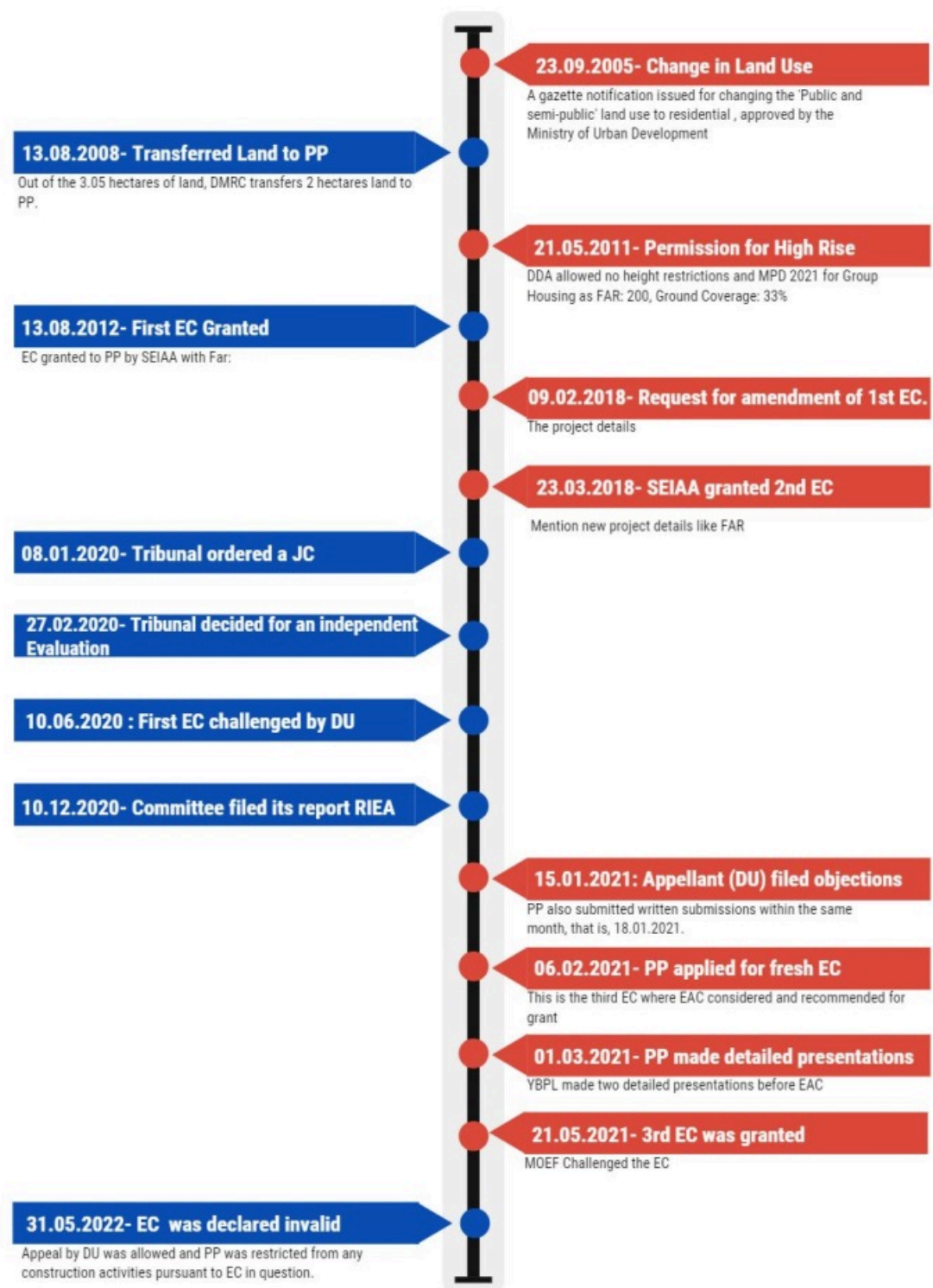


Figure 5: Timeline of the project (Source: Authors based on Appeal No. 17/2021)

In August of 2008, 2 hectares of the 3.05 hectares of land owned by DMRC was handed over to the PP through a bidding process. Subsequently, DDA issued a communication stating that norms of residential group housing as

given in MPD-2021 shall apply to the site restricting the height factor as per recommendations by the authority to 8 storeys changed by a resolution on 12.05.2011. As per the resolution in 2011, the project proponent was given authority to develop the 2-hectare plot, which was to be considered a separate entity, and to implement the development control norms of Group Housing with no height restrictions.

The first application for EC was submitted by PP on 21.08.2009 to SEIAA (State Environment Impact Assessment Authority) Delhi with a built-up area of 70,265.95 sq.m, the permissible height of the building 117 m, and the total number of dwelling units as 324. SEAC considered the proposal in the meetings held on multiple dates, and approval was provided on 20.07.2012 for the grant of prior EC. In February 2018, PP submitted Form I, IA, and conceptual plan with the request for amendment in the first EC, and the request for the second EC was submitted with an increased new built-up area of 1,17,733.81 sq.m. building height increased to 139.6 m, and the dwelling units were also increased to 410. Within the same year, 2018, SEIAA Delhi allowed the withdrawal of the first EC and granted a fresh EC to the project proponent. In 2021, a new application for EC was submitted, and EC was granted within less than three and a half months, where the proposed built-up increased to 1,37,879.64 sq.m. and dwelling units increased to 446 flats. As shown in Table 2, when compared with the first EC, the third EC disclosed the increment in the built-up area to be almost twice. Delhi University (DU) filed objections to halt the proposed project within the same year. The EC was declared invalid by the National Green Tribunal in 2022 as issues Appealed by the appellant were found to favour the appellant and against PP under the context of 'false information and lack of application of mind by the authorities SEIAA/ MoEF &CC'.

S.No.	Sub Heads	First Environment Clearance	Second Environment Clearance	Third Environment Clearance
1	Date	13.08.2012	23.03.2018	21.05.2021
2	Total Plot Area	20000	20000	20000
3	Cost (in crores)	321	257.28	-
4	Total Built-up Area	70,265.95	1,17,733.81	1,37,879.64
5	No of floors	S+G+35	S+G+37	S+G+41
6	Total Parking Required	922 ECS	854 ECS	
7	Height of the building	117	139.6	145.3
8	Total of Dwelling Units	324	410	446

Table 2: Comparison of three ECs submitted by Young Builders Pvt. Limited (Source: Data based on Judgment in Appeal No. 17/2021)

The University of Delhi, raising issues on this matter, challenged the first EC dated 13.08.2012 in Appeal No. 112/2018 on grounds such as suppression of material facts, non-consideration of relevant environmental aspects regarding ambient air quality, noise, air pollution, water requirement, and environmental concerns as shown in figure 6.

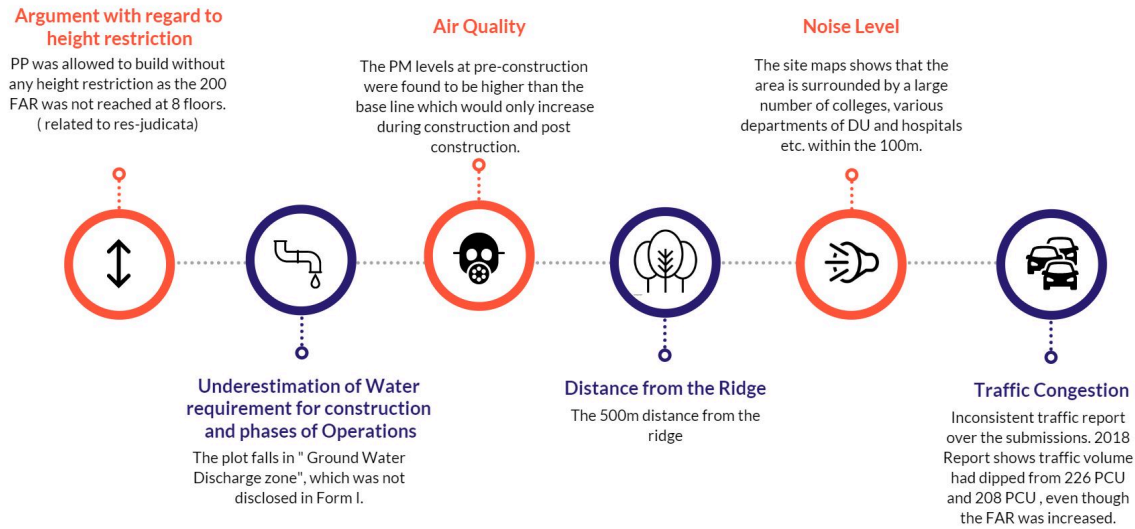


Figure 6: Issues listed by the Appellant, Source: Authors based on the Appeal Np. 17/2021

As per figure 2, the site falls in the sub-zone of Delhi University, where the Master Plan of Delhi 2021 highlights the restriction on the construction of tall buildings. Though the maximum permissible height is not specified in the Master plan, PP argued that the objection cannot be permitted since it was already decided in WP(C) No. 2743/2012, which was dismissed on 17.12.2019^[8].

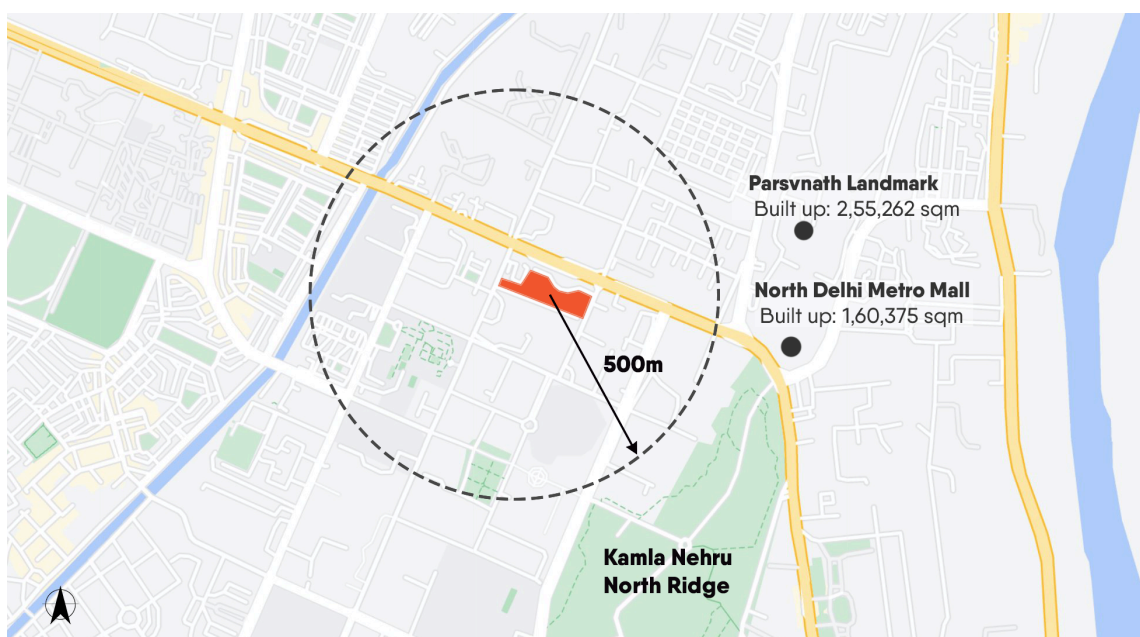


Figure 7: Site distance from the ridge, Source: Authors based on the base map by Google Maps

Figure 7 shows that the site is indeed 500 m away from the ridge, and PP argued that there is no legal restriction on developing the project in question. Tribunal highlighted the matter of Ashok Tanwar Vs. Union of India W.P. (C) 3339/2011 & CM No. 12417/2011 which held the importance for the management and protection of the geological/morphological Ridge. However, it was stated that though the project was not precisely in the Ridge area, it is part of the geologically extended Ridge area. And therefore, the permission of the Ridge Management Board (RMB), Supreme Court through CEC or any other competent authority is required before carrying out any construction in such an area.

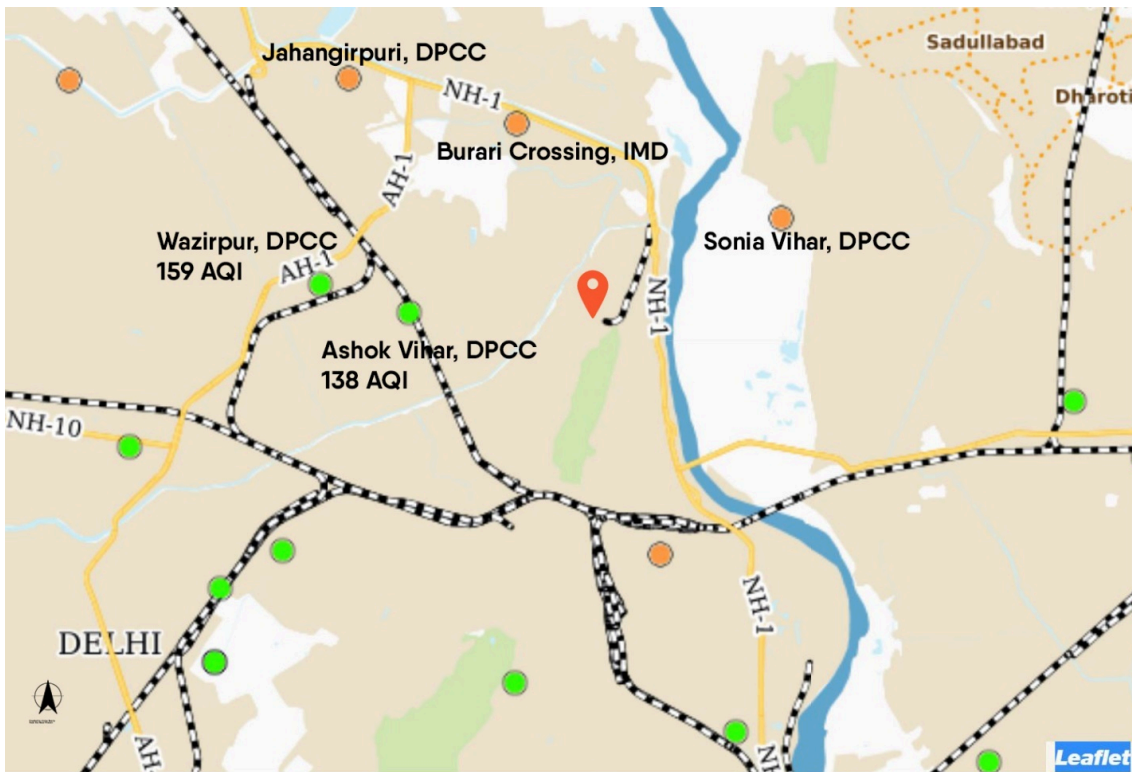


Figure 8: Air Quality at centres close to the site, Source: CPCB on 20.09.2022 (4:00 pm) Burari Crossing, Sonia Vihar, and Jahangirpuri didn't display readings due to insufficient data.

The area's carrying capacity, in particular the Advanced Air Quality (AAQ), which exceeded established national standards, was stated to have neither been acknowledged nor taken into account. Poor air quality can be observed in centres, as shown in Figure 8. However, the three closest centres fail to show readings due to insufficient data, Ashok Vihar and Wazirpur display readings, which fall in the unhealthy category.

The area in question was not considered a silent zone though the site is close to an education hub, as shown in figure 9. The statement PP responded that there would only be a marginal increase in ambient noise due to traffic movement within the project area. PP also assured that the traffic movement would be limited to the daytime of the construction phase.

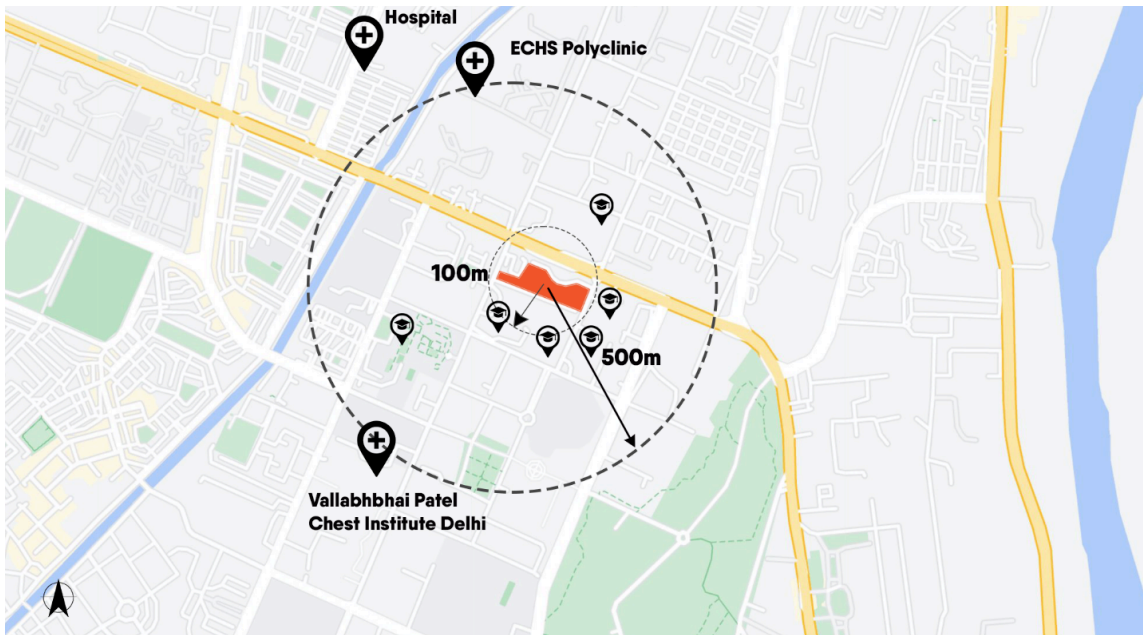


Figure 9: Site context with nearby roads, Source: Authors based on the base map by Google Maps

The traffic analysis report of 2018 was relied upon by the Environmental Assessment Committee (EAC) through a grant of EC that was considered in 2021. The site faces Mall Road and Chhatra Road, which is observed to have high traffic flux, which was stated to not be considered in the study, as shown in Figure 10.

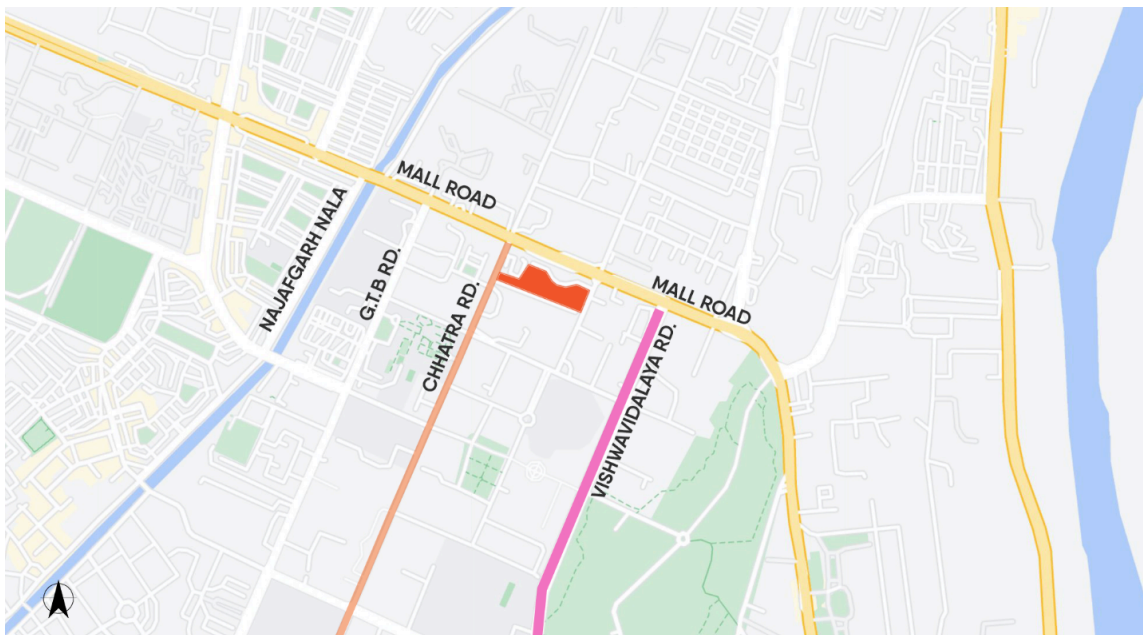


Figure 10: Site context with nearby roads, Source: Authors based on the base map by Google Maps

The appellant University of Delhi, claimed that PP did not clarify the use of groundwater concerning the scarcity of groundwater. No study was found on the area's carrying capacity study about available resources as per the direction of the Tribunal. PP responded that they have signed a No Objection Certificate (NOC) and would not use groundwater for their project. The site falls in Groundwater Discharge Zone, which PP had failed to disclose in Form I.

Along with the six main issues, DU also highlighted other issues which the tribunal carefully assessed to evaluate the approval of EC by the MoEF. Table 3 focuses on the pointwise issues highlighted in the first Appeal, the response by the project proponent, and the final verdict of the tribunal based on their study.

S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict	Remarks
1	Term of References (ToR) was not provided as per EIA 2006 as amended by notification dated 17.02.2020	The built-up area of the project is 1,37,879.64 sqm. And falls under item 8(a) of the schedule to EIA 2006 under Category B2.	-	As per the notification dated 17.02.2020 EIA 2006, the projects under Category A or B1 require preparation of ToR. However, as the project falls under category B2, it doesn't require EIA and can directly be taken for appraisal.
2	EAC wrongly made the observation that Appeal no. 112/2018 was dismissed.	A complete reading of the EC shows that it refers to the dismissal of the Appeal as infructuous and not on merits.	The procedure, along with the result, is tainted by its very nature when the SEAC does not provide a compelling justification for its recommendation of the grant of EC.	-
3	Suggestions made by the independent Committee constituted by the Tribunal vide order dated 27.02.2020 of creating a limitation on the basement to one due to the impact on the natural flow of groundwater not being considered.	The suggestion was never put when PP presented before the committee.	The plot falls in the Groundwater Discharge Zone, which was not disclosed in form I. SEAC/MoEF showed a total non-application of mind and a mechanical exercise of the grant of EC.	Being on a groundwater discharge zone, any dewatering for a particular duration would directly impact the hydrology surrounding the adjacent sites, which cannot be overlooked.
4	Office Memorandum dated 23.05.2019 issued by MoEF&CC (IA Division) under Tribunal's order passed in OA 176/2015 was not considered.	The Tribunal cannot examine issues unrelated to the environment since NGT is not a plenary body with inherent powers to	Tribunal doesn't have the jurisdiction to look into land use; hence, the issue of restriction of height and permissible FAR in the light of MPD-2021 as permitted by	The sub-zone 13, within which the site falls, is a draft yet to be approved. The court relied on its judgment in Adil Singh vs. UoI and Ors., WP(C) No.

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		address concerns of residuary character.	DDA is neither being examined nor can be discussed.	2948 of 2007, which stated that a portion of the acquired land, if left unused after achieving the public purpose, can be used for another purpose than it was acquired.
5	The fire safety aspect was not adequately considered.	Delhi Fire Service has accorded fresh approval for the project on 12.07.2021.	Tower-specific analysis conducted in 2018 couldn't have been relevant for the project as the built-up area was almost 25 percent higher than the proposal submitted on 15.02.2021, much more than in 2018.	
6	The particular capacity of the fire department to deal with fire incidents in high-rise buildings in the light of observations made by Delhi High Court in the order dated 20.01.2016 W.P. No. 1476/2014, Vikas Singh vs. Lt. Governor & Others	Invalid as the project is not located inside a congested residential colony.	After studying factors such as fire incidences, environmental dimension, energy and carbon emission, bird collision, and waste management, which directly impact the sustainable development and precautionary principles of the Right to Life under section 20 of NGT Act, 2010, such unsustainable megaprojects cannot permit any further load.	There have been many instances of high-rise buildings with adequate fire safety measures. This issue can be mitigated by using reliable fire safety measures.
7	K.S. Rao's report about the area's seismicity was not given due attention.	The site falls in a high seismic risk zone, zone IV. Accordingly, guidelines for safety		The area under study falls in Zone-IV (according to the Indian Standard Seismic Zoning Map), a

S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict	Remarks
		have been provided by NBC and IS codes.		high seismic risk. Therefore, a suitable design will be made to mitigate the seismic impacts as per the IS 1893: 2016, IS-1670:2017, and IS-456:2002.
8	Several material facts were concealed/withheld/ falsely stated by PP.	PP has denied the objection, and the ground has been taken with vague allegations.	From the points highlighted, it can be concluded that the project's requirements increased drastically from the first EC to its final EC submitted in February 2021. Hence, prior studies wouldn't have sufficient data for all the ECs as the duration spanned from 21.08.2009 to February 2018 and 06.02.2021.	False information affects the assessment of the project and, ultimately, its impact on the environment. Hence, such acts cannot be overlooked.
9	Dissent of two members of SEAC who earlier apprised EC had dated 23.03.2018 has not been considered.	Once the appraisal reports have been considered, it cannot be said that dissenting opinions expressed by minority members should have been paid more attention to or discussed in detail.	-	As per EIA notification 2006, the verdict should be unanimous in case a majority takes a decision; the details of views, for and against it, shall be clearly recorded in the minutes and copy thereof sent to MoEF.
10	Impact on population density not given due attention.	The project provides resources and space for up to 2302 persons in compliance with NBC norms. Furthermore, it	The Timarpur ward is expected to see a 14% increase in population density or 6777 people per square kilometer. It is	The poor carrying capacity of the city requires proper research and its impact on the environment to

S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict	Remarks
		is essential to remember that under current nuclear family circumstances, the number of people living in the household would be lower than the predicted maximum.	statistically significant and likely to result in degradation in the present conditions.	identify measures to mitigate them.
11	Consent to establish was not obtained.	<p>The objection was raised and relied on a Delhi High Court judgment dated 23.01.2012, where residential apartment/unit structures would be exempt from the Water Act.</p> <p>For the air act and residential complexes, no permission is required to either establish or operate.</p>	<p>There was no irregularity found in the auction conducted by DMRC. PP failed to disclose construction in Form I on about 100 sq.m of the land in question, which is stated to be a temporary service structure and liable to be removed after completion of the project.</p>	<p>As per EIA Notification, 2006, the commencement of construction work, either wholly or phase-wise, cannot be undertaken without prior Environmental Clearance. But it should be noted that EC is not the same as consent to establish and operate. It is only limited to Water and Air Act.</p>
12	No heed was given to the privacy of women students residing in adjacent areas.	<p>PP has relied on the earlier judgment of the Delhi High Court and Supreme Court and said that the issue could not be reopened. No obstruction of view or scenic beauty is anticipated.</p>		<p>As per EIA 2006 notification, public consultation is not mandatory for item 8.</p>

Table 3: Evaluation of the issues concerning the Appeal made by the appellant, first response by PP, final verdict by NGT, and the authors' remarks.

Final Verdict by the tribunal on the issues as discussed in Figure 6, is detailed and multifold. The tribunal stated that issues related to the environment, based on an order passed under EP Act, 1986, cannot be said to be barred by the principle of *res-judicata*. As per Section 11 of Act 5 of 1908, *res judicata* follows the principle which prevents the same case from being litigated twice between two or more parties already decided by the court. The doctrine of *Res Judicata* is applied by the court where issues directly and substantially involved between the same parties in the prior and current lawsuits. However, the Appeal focuses on different aspects of the environment, which are determined by the FAR and height of the buildings. Therefore, from table 3, it has been established that reference to earlier studies/reports in the context of 02/2021 was illegal, unfair, and impertinent. Hence, it was found that PP submitted wrong information and withheld relevant information resulting in the determination of the issue regarding the environment against PP.

The issues related to site, transportation, waste management, noise and vegetation have been dealt with in detail in Table 4. This is followed by water quality in Table 5 and Air Quality in Table 6. The tables are self-explanatory in nature.

SITE				
S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict	Remarks
1	The site in question falls under sub-zone C-13 (University Area), where tall buildings are restricted under MPD 2021 and the Zonal Development Plan (from now on referred to as 'ZDP') of Zone C.	This cannot be permitted since it was already decided in WP(C) No. 2743/2012	PP rightly mentioned that the case falls under res-judicata, but since it forms the base of the Appeal hence, it cannot be accepted. The tribunal agreed with the appellant's argument that EAC/MoEF failed to apply their minds in this situation.	The permission for high rises shouldn't have been allowed. Even if allowed, height should have been restricted as per Fire safety norms.
2	Department of Health, Education and Land, Government of India, through its letter dated 25.10.1943 issued by the Joint Secretary, has said that no unseemly buildings shall be erected in the neighborhood of Delhi University and the regulatory body should consult the University of Delhi before building plans are approved. Still, no heed was paid to the said direction.	This issue can't be permitted since already been decided in WP(C) No. 2743/2012		As per EIA Notification 2006, all building or construction projects or Area Development projects (which do not contain any category 'A' projects and activities) and Townships (items 8(a) and 8(b) in the schedule to the notification) are not required to undertake Public Consultation.
3	The soil investigation report of 2018 was considered for the project in 2021.	For the EAC, the subsequent soil analysis was conducted on 21.12.2020 by M/s Ind Research and Development House Pvt. Ltd., recognized as NABL	There was concealment of information as PP mentioned the project as 'New' and failed to clarify that it had submitted applications for prior EC twice. Pre-	As the size of the project increased from the application of its first EC in 2009 to its third EC in 2018, therefore the report could not have been relevant for the project.

SITE				
S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict	Remarks
		Accredited Laboratory by MoEF&CC, and has been considered.	construction and geotechnical investigations were done in 2009, and further subsequent tower-specific analysis was done in 2018. As per the report, the site is suitable for the proposed construction.	
TRANSPORTATION				
1	The problem of traffic congestion has not been considered.	<p>The PP mentioned calculations regarding volume by a capacity ratio</p> <p>Width of :</p> <p>Cavalry Road: 24 m</p> <p>Chhatra Marg: 18 m</p> <p>The PP stated that substantial personal trips would be made by Delhi Metro, mainly due to Project's proximity to the Vishwavidyalaya Metro Station, within walking distance. The estimated v/c ratio of 0.85 would not create congested conditions on Cavalry Lane.</p>	<p>Based on the information supplemented by the PP, there is no carrying capacity assessment to sustain the project in question. The clearance is based on the non-application of mind, which vitiates EC.</p>	The edges of the site face two main roads where the traffic flux is very high due to the institutional nature of the land use.

SITE				
S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict	Remarks
2	The traffic analysis report of 2018 was relied on by EAC through the grant of EC and was considered in 2021; old data was relied on, which was impermissible.	Denies this objection by stating that EAC has considered updated facts and figures, not the 2011 report.	The EAC/MoEF fails to examine the movement of commercial vehicles transporting the raw materials to the site. The movement is bound to increase levels of SO ₂ , NO ₂ , and CO.	It has been established that the air quality of the context is extremely poor, and any extra load will hamper the environment further.
3	Committee constituted by Lt. General gave an adverse report on traffic load and ambience of the University but has not been given due weight, particularly dissenting views recorded by one of the members.	Objection denied by PP, stating that this is already covered by the judgment of Delhi High Court and Supreme Court.	The effect on air quality both during and after construction is not acknowledged. The entire information lacks specific details.	The poor air quality of the capital cannot be ignored.
WASTE MANAGEMENT				
1	No specific procedures were mentioned or taken into consideration for waste management.	Denying this objection, construction and demolition waste generated from the project site is expected to be 6900 T in three years. Operation phase: The solid waste generated will be about 1.4 TPD which will be segregated into biodegradable (0.85 TPD) and non-biodegradable (0.55 TPD). The non-	The comparison between ECs displayed an increase of 336 kg of solid waste. About 840 kg/day of total solid waste will be generated from the complex. Tall buildings generate large volumes of waste as they house a larger population, and waste management becomes challenging.	High rises in India and abroad have proved to be structurally stable and having proper waste management. Waste Management requires an integrated city approach. But such projects must have captive waste management, as per the Air Pollution Policy of Delhi.

SITE				
S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict	Remarks
		biodegradable wastes will be disposed of through North DMC, and the biodegradable scraps will be composted in an on-site composting unit.		
NOISE				
1	The area in question was not considered a silent zone though the site is an education hub.	PP has relied on the Government of NCT Delhi Notification No. F-12 (1) N.P./Env/2005/ 32 declares an area of 100 m around all educational institutions having more than one thousand students.	The nearest hospital to the project site is Patel Chest Hospital, located at an aerial distance of around 600 m. Still, the site map shows that the area is surrounded by a large number of colleges, various departments of DU, and hospitals.	School of Open Learning is adjacent to the site, with a regular and high flux of students, teachers, and staff. This cannot be ignored.
VEGETATION				
1	The impact on the northern ridge was not considered.	Northern Ridge is about 500 meters from the project site. Hence, it is not required to study the impact of the project on the ridge.	Clearance of the Ridge Management Board is required as the site is in a groundwater discharge zone and forms a path for the recharge of the ridge.	The site is 600 m as per Google Maps. Kamala Nehru Ridge is not under the 10 km boundary of Protected Areas notified under the Wildlife Protection Act, 1972, and Critically Polluted areas as identified by the Central Pollution Control Board from time to time: Delhi Najafgarh Drain Basin,

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				Wazirpur, Naraina, Anand Parbat, and Okhla as per 2019 DPCC Report. (Only one protected area in Delhi: Asola Bhatti Wildlife Sanctuary.)
2	Cutting off trees is erroneous/misleading/suspicious.	Permission was granted to cut 156 trees and ensure compensatory plantation of 1560 saplings (ten times), where half were to be planted by the Department of Forest and Wildlife while the remaining half were to be planted by PP.	PP has failed to provide correct information and submitted wrong information that no clearance of vegetation was required,	As per regulations, tree cutting is not allowed without any prior clearance. If allowed, certain procedures have to be followed, like transporting the trees or planting new trees.
4	The possibility that the region is inside a critically contaminated area or, at the very least adjacent to one is not considered.	PP has denied this objection stating that the project site area is not located in a critically polluted area, and EAC has observed this in the meeting dated 01.03.2021.	Form I and Form IA do not mention the project's closeness to the Najafgarh drain, which is highly polluted, and no mention has been made as the area is semi-critical as per the Dynamic Ground Water Study 2017.	The site resides only 600 m away from the critically polluted Najafgarh Drain Basin area identified by the Central Pollution Control Board (CPCB). The location ought to have been classified as a Category A project under the EIA Notification of 2006, necessitating a scoping and terms of

SITE				
S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict	Remarks
				reference review by the Central Government.

Table 4: Compilation of issues concerning the site, transportation, waste management, noise, and vegetation with responses from the PP and the tribunal.

WATER			
S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict by the National Green Tribunal
1	The amount of water needed during the construction and operation phases is underestimated.	<p>PP stated before EAC that during the construction phase, the water requirement would be about 280 million liters, i.e., 2KL/sqm of the built-up area, and treated waters will be fulfilled through tankers supplied by Delhi Jal Board.</p> <p>During the operation stage: The total quantity of water requirement would be about 222 KLD, out of which 158 KLD of fresh water will be met by the supply of DJB, while 64 KLD water will be recycled water as treated in the situ STP of the project.</p>	No material has been placed before the tribunal to showcase that DJB has a requisite quantity of treated wastewater to supply to PP.
2	PP provided no clarity on groundwater use, yet EC was granted without considering this aspect.	PP expressed that it will not use groundwater during construction, which was also made clear to EAC.	<p>PP admitted that dewatering would temporarily impact the groundwater level, which would find its course, which was not mentioned in Form I, IA, and Conceptual Plan.</p> <p>Hence the project will impact the groundwater flow as construction is cutting across the groundwater stream, which might severely impact the population residing in the area.</p>
3	The status of the area concerning scarcity of groundwater and its effect on the northern ridge was not considered.	The issue is without merit because Northern Ridge is about 500 meters from the project site, and PP would not utilize any groundwater.	North Delhi, where the site falls, is a groundwater-stressed area admitted by PP and is in the semi-critical category.
4	The carrying capacity study of the area concerning available water	There will be no groundwater extraction during the construction and occupancy phase of the project.	It is understood that no groundwater will be extracted during the construction & occupancy phase of the project. The water will be met

WATER			
S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict by the National Green Tribunal
	resources was not conducted per the Tribunal's direction.	Further, a 0.003% increase in water requirement in the grid is anticipated.	through private tankers and during occupancy by Delhi Jal Board, for which necessary permissions have been obtained. Further, a 0.003% increase in water requirement in the grid is anticipated.

Table 5: Compilation of water management issues with responses from the PP and the tribunal. (Source: Author based on the Appeal)

Response by Project Proponent on the water issue was that the project has been planned to collect the entire wastewater (sewage) generated from every dwelling unit and community block. The water consumption by the project is displayed in figure 11. The whole wastewater of 175 kld will be channelized to the proposed consumption of 210 kld. The proposed STP follows MBR technology with treatment up to the tertiary level with ultra-filtration. 64 kld treated wastewater will be recycled within the project site for flushing and landscaping. Balance 96 kld treated wastewater will be disposed of in the JDB sewer line. The area demarcated for STP is 150 sqm.

The tribunal's stand is that although the PP shows the detail of water consumption, the impact of the change of hydrology of the watercourse of groundwater hasn't been mentioned in the Conceptual Plan nor any other document, and the discussion on the same was not found in the record of EAC or MoEF&CC. The lack of examination of the project's impact on the environment by SEAC/MoEF was noted and showed a total non-application of mind and a mechanical exercise of the grant of EC.

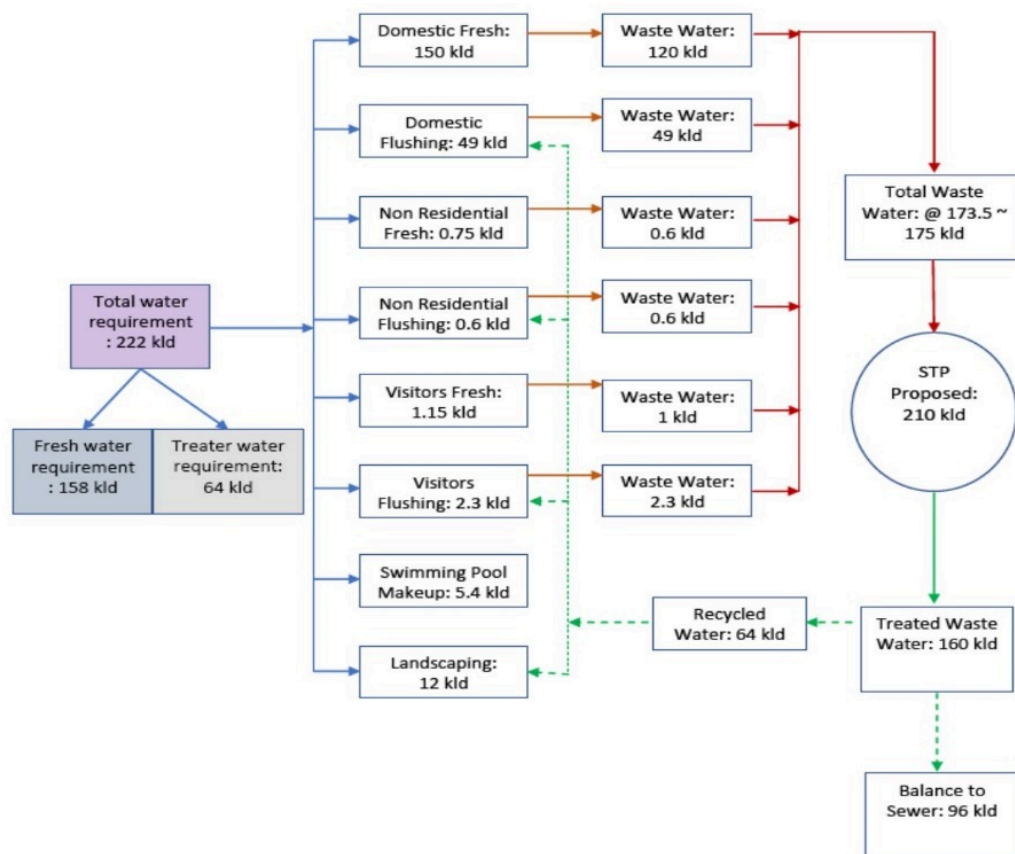


Figure 11: Water consumption by PP, Source: Environment Clearance for Proposed Group Housing 2021

AIR				
S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict	Remarks
1	No consideration was provided to the Carrying Capacity of the area, particularly AAQ being beyond prescribed national standards.	PM10 and PM2.5 exceed the permissible limit. As the study was done during the month of December 2020. It is found that generally that the PM10 and PM2.5 level in the region of Delhi and NCR is more than the permissible limit and also the maximum during the month of December and January,	Data given by PP shows that air quality norms exceeded at the location in question, and the situation is further deteriorating. In the present case, there is no carrying capacity regarding air quality to sustain the project.	Various mitigation plans have been adopted to improve the city's air quality, but the improvements have been meagre. Hence, allowing such a project with its highly built-up area requiring material transportation will harm the environment.

AIR				
S.No.	Issues Highlighted in the First Appeal No. 112/2018 by the Appellant	First Response by the Project Proponent	Final Verdict	Remarks
2	The impact of dust pollution and nearby hospitals, science labs, etc., was not considered.	<p>Denying the above objection, PP has said that during the construction phase, any disturbance through dust pollution will be mitigated by the use of windbreakers all along the project boundary, compact storage of loose soils, and C&D waste and water sprinkling on roads and vulnerable areas of the construction site will be carried out for dust suppression.</p> <p>Ready-mix concrete shall be used to a more significant extent to minimize dust emissions at the site.</p> <p>Vallabhbhai Patel Chest Institute is at an aerial distance of 460 meters.</p>	The absence of the Windrose diagram of air pollution is on record as it has not been conducted.	<p>The site is adjacent to the School of Open Learning, which has a regular flux of people from the metro station.</p> <p>The lack of a Windrose diagram restricts identifying the wind direction in which the dust would travel and impact the users.</p> <p>It should also be noted that the project in question is a high rise where the provisions of using windbreakers may not do much.</p>

Table 6: Compilation of issues concerning Air Quality with responses from the PP and the tribunal. (Source: Author based on the Appeal)

Response by Project Proponent on the Air Quality issue was that it blamed the cause of increased air pollution on the burning of *parali* or farm waste stubble in the regions of Punjab and Haryana. PP has also provided the ambient air quality at the project site and observed that SO₂, NO₂, and CO concentrations are within the prescribed limit. However, PM₁₀ and PM 2.5 exceeded the permissible limit, which is a typical scenario in Delhi.

The Tribunal on the Air Quality issue, questioned the reasoning behind asserting that the burning of *parali* in neighboring states is the reason behind air pollution in Delhi. It must examine whether there could have been South or North side wind, the velocity of wind, the capacity of the particles of the smoke to travel with air, and other relevant aspects which were not highlighted in the report. PP assured that they would not use groundwater and water tanks delivered from Delhi Jal Board (DJB) which would add to the air pollution in an already highly polluted area. There was no consideration given to the site's ambient air quality status for the project's sustenance in the proposal, which displays no due application of mind by EAC/MoEF&CC in granting EC.

In the Appeal by Delhi University, one of the significant points taken up by the tribunal is the focus on carrying capacity study. The carrying capacity of a location cannot be ignored as it affects the environment, which we are all part of. In one of the recent cases, the NGT fined a builder 15 crore for extending the buildings by extra floors in violation of the Environment Clearance, which caused extra pollution load on the environment.

The aim of the EIA is to scrutinize the constructional activities of new projects or expansions regarding their impacts to determine the feasibility of the project (Ministry of Environment, Forest and Climate Change, 2006). The intention of the EIA is not to stop development but to stop harmful environmental effects by evaluating the proposed project's impact in the present and future. India has taken a significant stance through the judiciary as in *Almitra H. Patel & Ors. vs. Union of India and Ors.*, a Public Interest Litigation (PIL) filed by Amrita Patel under Article 32 of the Constitution in which the petitioner sought immediate action regarding the treatment of solid waste or garbage in all the cities of India ^[9]. It was identified as a significant issue, and notices were issued to over 25 directions to all the states and UTs to strictly follow and implement the Solid Management Rules, 2016 ^[10]. It provides people access to a healthy environment (Ministry of Environment, Forest and Climate Change, 2006).

To conclude, the judgment passed by the National Green Tribunal on the Appeal made by Delhi University was found against the project proponent on account of all issues stated in the Appeal. The review of merits by the tribunal highlighted the lack of relevant information by the project proponent. The main issue surrounding the validity of the case was questioned as per *res-judicata*, where the subject matter of consideration regarding land and relaxation in height was decided in favor of the project proponent- as it did not include environmental issues. Even so, the issues related to the environment under the EP Act, 1986, may not be barred by the principle of *res-judicata*. It was discovered in this case that the project proponent supplemented false information on various accounts, such as not disclosing prior ECs before applying for the third EC and failing to provide information regarding the carrying capacity of the site. Based on the information provided by the PP and appellant, the tribunal concluded that EC was granted without application of mind, and the EC dated 21.05.2021 was quashed. The order passed by the National Green Tribunal is justified as the PP provided false/unclear

information on more than one issue, allowing the tribunal to revoke the EC. The tribunal rightfully decided in favour of the environment; however, the question arises whether all the developmental projects in Delhi should be brought to judicial scrutiny and halted as the carrying capacity of the city's resources has almost reached its limit in terms of air quality, water, traffic, and many others highlighted in the appeal. It is getting very apparent that the air and water are not without limitations, but, does this mean the city cannot allow any new projects due to its insufficient carrying capacity? How can a balance between development and environmental protection be created? Such issues being taken to courts but should this become a common occurrence? Should not the executive create accountable structures in the governance itself so that the builders build responsibly with full regard for the environment, and report everything transparently?

With rapid urbanization and migration to the capital, the city's housing needs are also expanding. With low unbuilt land parcels and higher requirements for shelters, the proposals for new high-rise projects in the capital are adding to the already low carrying capacity of the city. Various programs have been designed to improve the carrying capacity of the city, such as the Central Pollution Control Board's action plans for Delhi and NCR to mitigate air pollution. However, the results are in the process of being fully satisfactory. Alleged careless and thoughtless approvals of environmental clearance by various regulatory bodies have become a rising trend in present scenarios. This has disturbed the balance one needs to maintain between development and the environment. In such projects, public bodies, activists or non-governmental actors may be compelled to reach courts regarding the projects' detrimental impacts on the environment.

Our cities are developing, and the fact that Delhi is one of the most polluted countries in the world cannot be neglected, can development be restricted? A balance must be achieved with respect to the carrying capacity of the location and the need for housing the ever-burgeoning populace. Hence, in order to prioritize the environment, policies should be mandated and regulated to ensure sustainable development in our cities. For this, it becomes pertinent to design a framework that allows construction in harmony with the environment without jeopardizing development. Incentivizing and providing green financing to developers and builders to follow sustainable green development measures must be encouraged. With limited carrying capacity, it is crucial to mandate environmental clearance codes in the form of enforceable building by-laws to prevent the alleged irresponsible issuance of environmental certificates by the state and central officials. For the sake of environmental clearances, the project proponents must not directly appoint the environmental clearance appraisal team but must be done through a regulated central body which in turn appoints experts in the matter. In the long term, this will bring accountability in the process of environmental clearances in India. A balance should be maintained between development and the environment by advocating for policies and mandatory by-laws which can be devised to ensure sustainable development and to have accountability in the process so that the matters are responsibly handled by the executive without ever reaching courts of law.

Declarations:

The authors declare no conflict of interest. No specific funding was taken for this work.

While all care has been taken in maintaining the accuracy of facts, in case of any discrepancy, the error may be pointed out for correction with proof. The views are personal.

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