

Memo

Department

To: Northern Beaches Local Planning Panel – 4 October 2023

Cc: Peter Robinson – Executive Manager Development Assessment

From: Alex Keller – Principal Planner

Date: 4 October 2023

Subject: ITEM 5.1 DA2022/0646 – Demolition works and construction of a residential flat building at 120 - 124 Queenscliff Road Queenscliff

Record Number: 2023/641058

PURPOSE

To provide assessment response to assist the Panel on matters raised regarding:

1. Submissions / submitter list
2. View assessment and solar access
3. Existing use rights (relevant NSW LEC Judgements)

DETAILS

1. Submitter list

Submissions from, or on behalf of, No.120 Queenscliff Road have been received from 3 sources.

1. Planning Progress (on behalf of the owners of No.120 Queenscliff Road)
2. Ms Vikman (registered owner, 120 Queenscliff Road)
3. Mr Friberg (occupant 120 Queenscliff Road)

Contact was made with the owner/occupier in order to visit the site to undertake an assessment of their concerns relating to view loss, solar and privacy issues.

It is acknowledged that the owners name, Ms Vickman, does not appear in the assessment report in the submitter list table nor the issue of view impacts contained in submission summary. The submission was registered however as a result of a software system error at the time of receipt, the name did not appear in the report. In preparing the assessment all submissions are individually reviewed and read in order to address the related planning controls or formulate appropriate conditions.

2. Submissions (including views and solar access concerns)

All submissions were addressed in detail as part of the assessment under the relevant clauses of the DCP. All submissions were sent to the Panel as part of the agenda documentation.

The applicant submitted revised solar access diagrams to assist in addressing matters of concern conveyed by the owners of No.120 Queenscliff Road and were addressed in the assessment report.

Views are not listed in the submission issues list (1-18), however issues of view sharing from surrounding private property are addressed in detail under the heading *D7 Views* within the assessment report. This assessment specifically addresses views from No 120 Queenscliff Road (includes photos taken from this address) as well as broader views in context of surrounding development.

3. Existing Use Rights

Recent cases of *Saffioti v Kiama Municipal Council [2019] NSWLEC* and *Made property Group Pty Ltd v North Sydney Council [2020] NSWLEC* are not directly referred to in the Assessment report. However, in considering *Fodor Investments v Hornsby Shire Council [2005] NSWLEC* the assessment report has made regard to numerical controls applying to the land and relevance of compliance.

The built form controls, including the use of Clause 4.6 are considered relevant to achieving the applicable control objectives / appropriate outcomes (similar to the approach in *Saffioti* and *Made property Group*. Numerical controls are applied in context to their appropriate use given the *Low Density Residential Zone* and *Medium Density Residential* style use proposed. (For example, a 0.9m ground floor setback being the applicable control for the zone is not appropriate for a flat building that would commonly have a 4.5m setback side setback at ground floor.)

CONCLUSION

The Panel have regard to:

All submissions received by council have been read and are reviewed and considered during the assessment period.

Issues raised in submissions are summarised as part of the assessment process, although it is acknowledged that view loss was not in the summary of submission issues but was specifically addressed in the DCP considerations in the assessment report.

Existing use rights are considered and the assessment applied the *NSW LEC Planning Principle* however the assessment still addresses the proposal against the numerical controls, including "clause 4.6", which is in line with later caselaw. This may be given appropriate weight applicable to the circumstances of the case under existing use situations.

RECOMMENDATION

Given the above explanation, no change is required to the recommendation contained in the assessment report.