



SUNSETS NOT SKYSCRAPERS

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Submission to the Legislative Council Standing committee on Environment and Public Affairs - Petition presented by Hon Alison Xamon MLC on 5 December 2018 requesting the Legislative Council to recommend that the Minister for Planning direct the MRA Board to adhere to the Scarborough Planning Framework in relation to the MRA approval of the 3 Oceans development. The Petition was submitted by Kieran Kelly on behalf of Sunsets Not Skyscrapers.

In addition to the above, we draw the Committee's attention to anomalies in the planning approval process and non-compliance with the MRA Act. We submit that these anomalies warrant the attention of the Corruption and Crime Commission to investigate if breaches of Ministerial and/or MRA authority, and an abuse of "discretionary powers", have occurred in the MRA Board's 26 June 2018 reversal of the previous MRA Board's 7 December 2017 rejection of the 3 Oceans Property's tower development at 10 Scarborough Beach Road, Scarborough.

MRA Act - potential non-compliance

Clause 49 - Deciding development application

Given the substantial variation from the Scarborough Design Guidelines and Height Controls of the development (towers of 43 and 33 storeys, as opposed to the 12 storey limit) and bulk (45m high podium, as opposed to 30m) the MRA has used its discretionary power to approve a building which far exceeds community expectations about the scale of development as outlined in the 2016 Scarborough Planning Framework. For a building of this scale to be approved, the Minister should have sought to amend the approved scheme prior to approval, to test the community's willingness to accept the variation to the Scarborough Planning Framework, Design Guidelines and Height Controls. The MRA Board exercised its discretionary powers in granting the proposal because the developer had met its criteria for "design excellence", whilst only meeting the minimum requirements for public parking, green star rating, public space, and falling below the threshold for affordable housing.

Clause 66 - Deciding the development application - subsections (d) (e)

"The authority must have regard to the following: (d) the requirements of orderly and proper planning"

The scale and bulk of the building and its location on the corner of one of the State's busiest road intersections was approved even with the City of Stirling Officers Report rejecting the proposal due to the "traffic chaos" that would be created by the additional vehicle movements of residents and visitors to the building - reported as over 4000 movements per day. Other developments on Filburn Street will compound this issue with traffic forced to drive 6 km through local roads to get to arterial roads. The approval of this building is a case of developer-led planning not strategically-led planning with significant negative outcomes for local traffic and pedestrian movements and beach access.

(e) the desired amenity of the redevelopment area in which the development is proposed.

The MRA Board Minutes of June 2018 state that the proposal was in keeping with the Vision for Scarborough. The MRA is required to make decisions based, not only on the overall vision of a locality under its control, but also the Objectives of that strategic plan. The height, bulk and positioning of the proposal fails to meet the objectives in relation to: sense of place; enhanced connectivity; social inclusion; and environmental integrity. The intent of the "Height and Skyline" in the MRA Planning Framework is to ... "work towards a more harmonious relationship between built and natural form at Scarborough Beach" the development as approved is the antithesis of this intent and will have a negative impact on the amenity of the locality.

Clause 69 - Review of the Authorities decision by SAT

When the project was rejected by the previous MRA Board in 7 December 2017, the developer lodged an appeal with the State Administrative Tribunal. It was reported that the Minister for Planning met with the developer on 14 December 2017. On 4 January 2018 with the new MRA Board in place, the Minister announced that her Director of Planning would oversee an "informal mediation" between the developer and the MRA. When asked why this extraordinary step was taken, we were told that the Minister wanted to expedite the process. While SAT invariably invites the parties to enter mediation, it would have used one of its own independent mediators, not the Director General of Planning who is directly answerable to the Minister. The Independent Design Mediation Group was formed and consisted of Peter Mould, Former NSW Government Architect; Bill Hames of Hames Sharley Architects; Fred Chaney of Chaney Architecture. To our knowledge there were no Selection Criteria for the members of this panel, no Terms of Reference for this group, no minutes of their meetings with the MRA and the developer, and no record of outcome has been made publicly available despite our group's requests for this information. This process raises a multitude of questions, including why was the State Architect not included on this panel? The decision by the Minister effectively to "control" this process can only be seen as the creation of a mechanism to allow the MRA Board endorse the Minister and Premier's publicly stated preference and approve the project, by reversing the decision of the previous MRA board, just 6 months previously, to reject the proposed tower development.

MRA Board of Management

The current MRA Board was appointed by the Minister for Planning on 1 January 2018. Six new members were appointed, three of whom have recent and ongoing industry links which create the perception or reality of a conflict of interest when considering this project. Kylee Schoonens was a Property Council WA Councillor and remains a member. 3 Oceans Property is a member of the Property Council. The Property Council was a vocal critic of the MRA Board's decision to reject the tower development in 2017 and remained a supporter of the development during the 2018 public submission process. Jane Bennett was the Vice President of the Urban Development Institute of WA (UDIA WA) of which 3 Oceans is a member. The UDIWA was, and remains, a vocal supporter of the 3 Oceans development. Ms Bennett has taken leave of absence from her role with the UDIWA but retains her membership. Paul Lakey, the only member from the previous MRA Board on the current board, is a former President of the Urban Development Institute of Australia. Both the UDIA(WA) and the Property Council's stated visions are to "champion the interests", and "work on behalf" of their member companies. None of the three MRA Board Members disclosed an interest or abstained from voting when the revised 3 Oceans towers proposal was discussed and decided at the Board Meeting 26 June.

Scarborough Land Redevelopment Committee

The SLRC invited public deputations about the proposal and reported these back to the MRA Board. 24 people (some of whom were representing local community groups) made 5 minute presentations recommending rejection of the proposal. A petition was presented to the MRA Board with 1400 signatures, the majority of which were from people living in Scarborough and surrounding suburbs. There were 5 deputations in support of the project. We were advised that the SLRC did not record the presentations and no minutes were taken. The SLRC comprises of 4 members, including the Chair, MRA Board Member, Kylee Schoonens. The independence of the SLRC is compromised by Ms Schoonens's position on that Committee.

Public Opinion

The MRA June 2018 minutes record that the Executive Director of Planning provided a summary of submissions for and against the revised development which had been presented to the SLRC. He reported that 55% of people living "closest" to the development or having a business in the area were in support of it. We dispute this figure and have requested a copy of the Executive Director's report summarising the submissions and are awaiting a response. We are aware that of 945 submissions received from people living in the City of Stirling, 563 did not support the tower development (60%). We are also concerned at the quality of the submissions supporting the development as we are aware of signatures being collected at the beach and on building sites, whereas we are confident that submissions opposed were largely individually written. We are concerned that the SLRC and the MRA Board may have made decisions based on an inaccurate public submission report. We note that the MRA is unusual in not publishing public submissions and that this is contrary to its claims of openness and transparency.

Developer Contribution Levy

The MRA decided to apply the Developer Contribution Levy for the 3 Oceans 43 and 33 storey towers to 12 storeys - the maximum height allowed without the exercise of discretion under the Scarborough Redevelopment Plan. In the MRA's approval decision of June 2018, they claim that the development exceeds the "approved gross floor level" by 7% (this assumes a development of 4 towers all at the bonus height of 18 storeys would be approved). Why did the MRA not charge the developer for at least 18 storeys (12 + bonus 6) or the additional 7%? Why was the developer contribution levy not charged for 43 + 33 storeys (76 in total)? The developer has been given significant bonuses with the granting of questionable "design excellence and community benefits", plus this substantial discount in the Developer Contribution Levy.

Affordable and Diverse Housing - MRA Development Policy 9

The policy requires that a range of one, two, and three unit dwelling types be provided, and that these are integrated and dispersed throughout the development. The MRA approved the 3 Oceans development with studio and one-bedroom apartments on levels 6 to 9. Sunsets Not Skyscrapers wrote to the Minister for Housing about this discrepancy. He advised us that the larger (and presumably higher units) "would not deliver ongoing affordable outcomes." The developer bonuses that come with granting "design excellence" should also be reflected in the community benefits, including adherence to this policy.

Political Donations

We note that in 2016-17 3 Oceans provided the Labor Party with a donation of \$25,000 and the Liberal Party with a donation of \$15 000. The West Australian (1 Jan 2019) reported a donation of \$27,500 to the Labor Leadership Forum from 3 Oceans Property. While political donations are legal, it does create a disparity with those with money having the capacity to gain greater access to Ministers. 3 Oceans also provided numerous \$3000 community grants to organisations in the Scarborough area, in an effort to gain support for the project from key groups and associations. The Premier and Minister for Planning's vocal support for the proposal in 2017 and 2018, during the MRA's public submission process, led to the public perception that the MRA had no choice but to approve the project. The Minister's intervention to create an "Independent Informal Mediation Panel" and by-pass the SAT process further called into question the integrity of the MRA's capacity to make an independent decision when confronted with such overt political intervention.

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