



Minister for Transport; Planning

Our ref: 72-17490
Your ref: Petition No 100



Hon Matthew Swinbourn MLC
Chair, Legislative Council Committee Office
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Hon Matthew Swinbourn MLC

PETITION NO 100 3 OCEANS DEVELOPMENT SCARBOROUGH

Thank you for your correspondence dated 14 February 2019 regarding Petition No 100 – 3 Oceans Development Scarborough.

The long-term vision included within the Metropolitan Redevelopment Authority's (MRA) Scarborough Master Plan is to create a contemporary beach destination for a growing residential community, workers and visitors, befitting its role as a key tourist destination for the state. The Master Plan is a high-level non-statutory document that guided preparation of the planning framework for the Scarborough Redevelopment Area (Redevelopment Area).

The planning framework for the Redevelopment Area, including the Scarborough Redevelopment Scheme (Scheme), Design Guidelines and Development Policies, sets out the way in which development applications are to be assessed, including when an application is deemed complete. In this regard, while the 3 Oceans development application varied the Design Guidelines, it included information necessary to be deemed a complete application under clause 5.11 of the Scheme and therefore was required to be assessed in accordance with Part D of the Scheme.

The Scheme and Design Guidelines provide the MRA the ability to consider development proposals that seek variations to development controls, including height. Where variations are proposed, the MRA is required to be satisfied that the alternative outcome is consistent with the requirements of orderly and proper planning, the vision and intent for the Redevelopment Area, that the development achieves design excellence and delivers wider community benefits. In addition, where substantial variations are proposed, the MRA is required to consult with the local community.

In accordance with clause 5.14 of the Scheme, the original and revised development proposals were advertised to local residents, by letter and notice on site, more broadly in the Stirling Times and West Australian newspapers, as well as the MRA website. The proposal was also subject to referral to relevant stakeholders including, but not

limited to, the City of Stirling, Main Roads Western Australia and the Department of Communities.

In accordance with clause 5.15 of the Scheme, and given the quality of the design was a fundamental aspect of the original refusal of the application, a Design Mediation Panel (DMP), comprising of eminent West Australian and National architects, provided advice to the MRA Board on design related matters when reviewing the revised proposal.

The DMP Report was attached to the report presented to the Scarborough Land Redevelopment Committee (LRC), which published on the MRA website. The DMP was satisfied that the development demonstrated design excellence as defined within the MRA's Scarborough Design Guidelines and based on the State Government Architect's *Better Places and Spaces Policy 2013* 'Principles of Good Design'.

The LRC and the MRA Board considered all submissions received from stakeholders, the community (accurate summaries of which were attached to the planning report), and the DMP's advice and ultimately were satisfied that the development proposal was:

- consistent with the vision and intent of the Redevelopment Area, noting that the vision for Scarborough identified within the Redevelopment Scheme relates to mix of uses, including high density residential and tourism, as well as the provision of amenities for the area, rather than building form or height;
- achieved design excellence, noting that conditions of approval would require design quality to be preserved through design development; and
- provided a range of benefits to the area that warranted approval for the variations sought. This included provision of diverse residential accommodation, a hotel, public car parking, affordable housing consistent with the Department of Communities expectations, public art and the ability to achieve a five Star Green Star rating.

Furthermore, given the proposed yield of the development and car parking provision was reduced to be within the requirements of the Design Guidelines, approval for the development was granted subject to conditions requiring an Integrated Transport Strategy. The Strategy was to be prepared in consultation with transport agencies and necessary road works required for the development to operate safely were to be implemented at the applicant's cost.

A condition was also applied to the approval requiring a development contribution to be made to the MRA in accordance with the Scarborough Development Contribution Plan (DCP). Cost contributions are calculated under the DCP in accordance with the base height of development permitted under the Design Guidelines as the works accounted for within the DCP relate to the benefit and demand identified at the time of approval of the planning framework. As noted by the application of a condition for an Integrated Transport Strategy, any additional demand the approved 3 Oceans development places on the local area will need to be managed and cost borne by the developer.

In relation to the process for review of the decision, the applicant exercised their right to have the original decision reviewed by the State Administrative Tribunal (SAT) under section 69 of the *Metropolitan Redevelopment Authority Act 2011* (MRA Act). The SAT adjourned the formal process for review following agreement by the parties to enter into “informal” mediation, with the Director General of the Department of Planning, Lands and Heritage facilitating the process. The parties felt that the complexity of the issues, particularly around design quality, would be able to be better interrogated in this format, albeit with any outcome of the discussions still required to follow and satisfy SAT requirements. In this regard, at the conclusion of the mediation process, the SAT made orders to invite the MRA to reconsider its original decision for refusal.

In relation to the integrity of the planning system and conflict of interest of the LRC and Board, section 77 of the MRA Act prescribes how the MRA Board is constituted. Section 77(1)(c) provides that five of the seven members are to be persons who in the opinion of the Minister have a relevant qualification. A relevant qualification for this purpose is knowledge of and experience in one or more of the fields of urban planning, business management, property development, financial management, engineering, transport, housing, tourism development, planning law or community affairs. Given the qualification requirement, a Board member’s participation in industry activities and associated organisations is characteristic of professional life. The same experience is required for the members of the LRC.

The Board has given consideration to the issues that may arise from Board members being associated with industry bodies such as the Urban Development Industry of Australia and the Property Council and considers that membership of itself should not constitute a conflict of interest except where a commercial advantage is obtained. It is noted that:

- the MRA Act requires a member to have a relevant qualification drawn from industry;
- participation in industry activities and associated organisations is characteristic of professional life and in some cases may also constitute a requirement in terms of professional accreditation, continuing professional development or similar;
- the MRA from time to time, participates in the sponsorship of industry bodies and events and is an institutional member of some of these organisations;
- employers or entities associated with individual members also routinely participate in the activities of relevant associations, including sponsorship and membership arrangements; and
- industry and professional bodies also have a legitimate advocacy role, and from time to time may present their views on matters of policy to Government and the broader community.

When a member is appointed to the MRA Board the member is required to complete a standing declaration. This declaration covers a broad range of declarations that could impact the decision making of a Board member. In order to ensure that Board members are continuously reviewing their standing declarations for currency and in relation to the items presented for consideration, the standing declarations of all members are noted in each agenda and reviewed prior to the consideration of Board papers.

Individual membership of a professional and/or industry association for transparency purposes, are a matter for a standing declaration and membership of a professional and/or industry associations should not exclude an individual member from participating fully in the governance of the MRA and participation in Board deliberations.

Overall, while there will always be differing views on a development of this nature, I am comfortable the MRA conducted a rigorous and proper process that upheld the fundamentals of the planning system and importantly, gave due regard to the community's concerns.

Yours sincerely

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke, positioned above the typed name.

**HON RITA SAFFIOTI MLA
MINISTER FOR PLANNING**

19 MAR 2019