

Attachment A

Objector's Email to Council

5 April 2024

City of Sydney Council/Local Planning Panel

By email: TWalters@cityofsydney.nsw.gov.au; secretariat@cityofsydney.nsw.gov.au

**D/2012/939/K – 100 Bayswater Road, Rushcutters Bay, NSW 2011
Representation to Local Planning Panel for 10 April 2024 Meeting**

Introduction

1. The Strata Committee of SP61325 (**Marina One**) represents the Owners Corporation of Marina One, which consists of 78 residential apartments in extremely close proximity to 100 Bayswater Road.
2. The Strata Committee makes the following further representations and comments in connection with the above s4.55(2) Modification Application lodged by 100 Bayswater Road Pty Ltd and the report and recommendations made by Council in the papers for the meeting of the Planning Panel on 10 April 2024.

No power to approve

3. The originally approved wintergardens were integral and fundamental to the design of the building at 100 Bayswater Road and its relationship to Marina One. In particular, application D/2012/939, which followed the refusal of D/2011/1018, made clear that "Significant attention has been paid to minimise the impact of the residential conversion upon Marina One Apartments. Of the proposed apartment window bays facing Marina One, 90% are bedrooms and there will be no balconies." (see Statement of Environmental Effects dated 19 June 2012, pp 19, 70). The absence of balconies (and terraces) was a fundamental element of the design which was intended to protect the amenity of Marina One. The deletion of the wintergardens and replacement of them with open terraces is akin to adding balconies where their absence was previously an important element. This changes the essence of the western elevation from one designed to have no open balconies or terraces off living rooms to one which now does. This changes a fundamental element of the structure as originally approved such that the development is not substantially the same as the original development for which consent was originally granted and so cannot be determined as a s4.55(2) modification (see *Powell v City of Sydney Council* [2012] NSWLEC 1212; *Geluk v Mosman Municipal Council* [2020] NSWLEC 1592).

Noise and Proximity to Marina One

4. In its report, Council relies on an acoustic report prepared by E-Lab Consulting (ELC), which identifies a predicted noise level up to 41 dB(A) at the most affected facade which they maintain is well below the maximum criterion noise level established under the acoustic model of 50 dB(A).
5. We challenge the predicted noise levels and the conclusion regarding criteria for maximum noise level for the following reasons:
 - a. The maximum noise level cited by ELC is not the appropriate criterion, because:

- Within their report, ELC present the criterion for assessment as 50 dB(A) at the balconies of Marina One, which the Council “considers satisfactory”. This nominated criterion is inconsistent with and contradictory to the criterion required in Condition 42 of the consent, which is the background noise level plus 5dB(A).
 - Paragraphs 12 and 13 of the report of Acoustic Dynamics dated 24 March 2024 attached to our prior submission (**AD report**) determined that the background noise levels at the facades and balconies of Marina One were expected to be anywhere between 35-38dB(A)¹ during the quietest period, and so a criterion of 40-43 dB(A) would be conservative and appropriate for the assessment of noise emission to the façade of 1A Clement Place, being the background noise level plus 5dB(A), as required in Condition 42 of the consent.
- b. Actual use of the terraces will not be limited to circumstances set out in the assumptions relied upon by ELC but should also consider alternative scenarios:
- ELC assumes those talking will be at normal speaking level (sound power level of 65dB(A), which would assume some level of control on use of music being played). Consideration should also be given to alternative scenarios where music is being played or if people on the terraces were influenced by alcohol, where a more appropriate assumption would be for people to be speaking with raised voices (a sound power level of 74 dB(A), 9 dB louder than “normal” speaking level).
 - Given the above discussion regarding inconsistent and inappropriately determined criterion, were people to speak with a raised voice, or play music at a volume louder than “background music”, the criterion determined under Condition 42 would quickly be exceeded and the noise would be deemed non-compliant.
 - ELC assumes 4 people per terrace, with only two talking at the same time which is inappropriate given the size of the apartments and the terraces. The terraces will constitute outdoor entertaining areas, where it is reasonable to assume additional guests, particularly in the case of parties, where a 1 person per square metre density would be appropriate, with half of those speaking at once (para 19 of the AD report). The level of noise emission would also quickly increase to non-compliant levels were there to be more than four people on a balcony, which is a more than reasonable assumption given the balconies range from 10 to 25 square metres, even if the density were considerably less than 1 person per square metre.
- c. When these reasonable and conservative assumptions are taken into account, the noise emissions from the use of the proposed terraces result in a significant exceedance of the correctly calculated noise emission criterion.

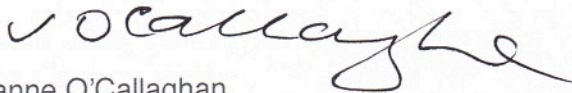
¹ This was derived from actual noise measurements taken by Acoustic Dynamics along the path which separates 100 Bayswater Road from Marina One, adjusted to account for the fact that the facades and internal walls of 100 Bayswater Road that normally shield Marina One from road traffic noise were no longer intact but will reinstated as the building is completed. The only other background noise levels available were in the ARUP report dated 14 June 2012 which had background noise monitoring data taken on a second floor balcony of 100 Bayswater Road that faces Clement Place, which is less protected than the impacted facades of Marina One along the path which separates the two buildings and is expected to experience a higher background noise environment than the impacted facades of Marina One (paras 10-13 of the AD report).

Conclusion

6. For the reasons outlined in this and our prior representation, as well as those in the numerous objections lodged to the Modification Application, the SC on behalf of the Owners Corporation urges the Planning Panel to refuse to determine the application on the basis that it does not have the power to approve it, or if that position is incorrect, to refuse the application on its merits.

Yours Faithfully,

Strata Committee Marina One, SP 61325
1A Clement Place, Rushcutters Bay, by

A handwritten signature in black ink, appearing to read 'J O'Callaghan', written in a cursive style.

Joanne O'Callaghan,
Chairperson and Secretary.