



LEGISLATIVE COUNCIL

SELECT COMMITTEE ON BARANGAROO SIGHT LINES

Barangaroo sight lines

February 2023



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Select Committee on Barangaroo sight lines

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Barangaroo sight lines

“February 2023”.

Chair: Hon Mark Latham, MLC



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Terms of reference

1. That a select committee be established to inquire into and report on Barangaroo sight lines.
2. That the select committee inquire into and report on:
 - (a) any actual or perceived biases of the following parties involved in negotiations between the NSW Government, Lendlease, and Crown concerning Barangaroo sight lines:
 - (i) the Office of the Premier,
 - (ii) the offices of all responsible government ministers,
 - (iii) the Chief Executive and Board of Infrastructure NSW,
 - (iv) the Chief Executive and Board of the Barangaroo Delivery Authority,
 - (v) any other person engaged in the negotiations on behalf of the NSW Government,
 - (b) the probity of negotiations between the NSW Government, Lendlease, and Crown concerning the Barangaroo sight lines,
 - (c) the integrity, efficacy and value for money of ‘unsolicited proposals’, including the ‘unsolicited proposal’ initiated by Crown Resorts Limited in relation to the Barangaroo development project,
 - (d) any potential biases resulting in the preferential treatment of the commercial interests of one party over the other,
 - (e) measures necessary to ensure the integrity of the Barangaroo redevelopment project and similar projects in the future, and
 - (f) any other related matters.
3. That the committee report by 17 February 2023.¹

The terms of reference for the inquiry were referred by the Legislative Council on 10 August 2022.²

¹ The original reporting date was 20 December 2022. (*Minutes*, NSW Legislative Council, 10 August 2022, pp 3568-3570). The reporting date was later extended to 17 February 2023. (*Minutes*, NSW Legislative Council, 16 November 2022, p 3900).

² *Minutes*, NSW Legislative Council, 10 August 2022, pp 3568-3570.

Committee details

Committee members

The Hon Mark Latham MLC	Pauline Hanson's One Nation	<i>Chair</i>
The Hon Anthony D'Adam MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Lou Amato MLC	Liberal Party	
Ms Cate Faehrmann MLC	The Greens	
The Hon Shayne Mallard MLC	Liberal Party	
The Hon Chris Rath MLC	Liberal Party	
The Hon Adam Searle MLC	Australian Labor Party	

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Chair's foreword

This report on the troubled Barangaroo development is yet another lesson for the NSW Government on the folly of picking winners and pursuing excessive intervention and manipulation of commercial decisions.

The role of government in a market economy should be to improve the business environment through increased productivity, lower input costs and less regulation.

This is especially true in the town planning of major development projects like Barangaroo. Government needs to ensure it keeps separate its development consent functions from its role in promoting investment and settling legal disputes.

Each of these fundamentals of governance were ignored at Central Barangaroo.

No one in government foresaw the problems that would flow from the siting of a Metro station and need for increased population densities in the precinct. The double sale of sightlines to the harbour triggered commercial legal disputes that are still running.

Jane Jacobs in her classic book, *The Death and Life of Great American Cities* (1961), was right in saying that vibrant urban communities develop organically, with a mix of uses and the unfettered spontaneity of civil society. By comparison, state masterplanned developments can be sterile and dysfunctional, which sadly, has emerged as the fate of Barangaroo.

It was touted as a world-leader in urban renewal but this claim now looks ridiculous. The huge, hoarded-off hole in the ground at Central Barangaroo has broken the continuity of the southern (commercial) and northern (parklands) parts of the development. It looks terrible and is terrible for the people of Sydney.

The construction of a Metro station has in some part been a waste of money, as this expensive transport facility is only going to serve a fraction of its intended commuter population.

This is the parable of the hole in the ground. And unfortunately, the more mistakes government has made, the more it has dug itself deeper into an urban development mess.

This report is particularly critical of the process by which Grocon was manipulated out of Central Barangaroo, as a consequence of the sightlines dispute. Infrastructure NSW tried to pick a winner in Aqualand, but this has backfired with its failed development application and the resulting Central Barangaroo pit.

Never has a cliché held truer: When you've dug yourself into a hole, the first rule is: Stop digging.

Far from an international model for successful urban renewal, Barangaroo has become a sad lesson in how not to do things.

This report and its recommendations stand as an instruction for future governments in mistakes to avoid.

I thank the Committee members, witnesses, interested parties and particularly, the Legislative Council Committee Secretariat for their contributions. We have produced a report in brisk time at a time when many MPs are out electioneering.

We all agree: for future projects of this kind, NSW must do better.



The Hon Mark Latham MLC
Committee Chair

Findings

- Finding 1** **23**
 That former Premier Mr Mike Baird did not exercise due diligence when negotiating what contractual rights Crown and Lendlease would have to the Barangaroo sight lines and that the lack of clarity and certainty in these contractual provisions was a key factor in the lengthy litigation between the Barangaroo Development Authority, Crown and Lendlease.
- Finding 2** **24**
 That Infrastructure NSW had failed to anticipate the significant ramifications of undertaking a reconceptualisation of Central Barangaroo in 2015, including the decision to locate a Sydney Metro station in the precinct.
- Finding 3** **24**
 That the NSW Government exposed itself to a potential conflict of interest when it committed to providing development bonuses to Lendlease as a means of settling the sight lines dispute, despite being the consent authority over development applications that would seek to actualise these commitments.
- Finding 4** **25**
 That Infrastructure NSW did not adequately consider nor appropriately address the significant impact of the sight lines dispute with Lendlease and Crown on the Central Barangaroo development.
- Finding 5** **26**
 That Infrastructure NSW treated Grocon unfairly and was not transparent and forthcoming in providing information to Grocon, particularly about the sight lines resolution.
- Finding 6** **26**
 That the dispute between Grocon and Infrastructure NSW demonstrates the failure of an overly interventionist approach by government to commercial dealings.
- Finding 7** **26**
 That:
- Infrastructure NSW facilitated the entrance of Aqualand into the development of Central Barangaroo at the expense of Grocon
 - the interventionist approach taken by Infrastructure NSW in the development of Central Barangaroo has been unsuccessful given the ongoing legal action being taken against it and the lack of any significant development progress in the precinct.
- Finding 8** **27**
 That the commercial relationship between former Infrastructure NSW executive, Mr Tim Robertson, and Aqualand gives rise to the appearance of a conflict of interest, whether real or perceived.
- Finding 9** **34**
 That the Barangaroo sight lines have significant cultural and heritage value which must be preserved and protected.

Finding 10

35

That Modification 9 proposes an unacceptable increase in the height and development footprint of developments within Central Barangaroo, adversely impacting on the Barangaroo sight lines and the public amenity of precinct.

Recommendations

- Recommendation 1** **24**
That the NSW Government engage in resolution processes for development disputes that seek to arrive at a transparent package of financial compensation rather than development bonuses.
- Recommendation 2** **27**
That the NSW Government review any guidelines governing post-separation employment for senior public servants to ensure that any conflicts of interest, whether real or perceived, are appropriately managed.
- Recommendation 3** **34**
That the NSW Government, in consultation with the Heritage Council of NSW, develop a view management strategy that effectively identifies and preserves sight lines in the Millers and Dawes Point precincts that are of significant cultural or heritage value to New South Wales, and ensures that these views are considered in the context of any major redevelopment project.
- Recommendation 4** **35**
That the NSW Government reject Modification 9 and ensure that the redevelopment of Central Barangaroo remains small in scope so as not to cause significant obstructions to the Barangaroo sight lines.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 10 August 2022.

The committee received 16 submissions.

The committee held three public hearings: two at Parliament House in Sydney and one in the State Library in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Procedural issues

During the inquiry, the *sub judice* convention emerged as a procedural issue. This is the practice whereby members of Parliament refrain from making reference in committee or House proceedings to matters before the courts where this could prejudice court proceedings or harm specific individuals. While the convention in no way obligates a committee to forego its right to inquire into a matter, committees are generally sensitive to matters that are *sub judice*.³ *Odgers Australian Senate Practice* outlines that, in applying the convention, a committee should consider the danger of prejudicing proceedings, weighed against the public interest in the matters being aired.⁴

From the outset, the committee was aware that the inquiry terms of reference dealt with matters relevant to the ongoing litigation in the Supreme Court of NSW between Grocon and Infrastructure NSW. Grocon initiated these proceedings against Infrastructure NSW in February 2020, and at the time of writing, these proceedings are still awaiting trial. The litigation deals with claims Grocon have made against Infrastructure NSW with respect to Grocon's involvement with the Central Barangaroo development and its current financial position. Infrastructure NSW deny all claims being made by Grocon as part of this litigation.

When considering its responsibilities under the *sub judice* convention, the committee looked to a number of guiding principles relevant to determining when the convention may apply. These include an assessment of whether there is a real danger that discussion of the relevant matters will prejudice legal proceedings, the weighing of the danger of prejudice against the public interest, and whether the matter is before a judge or a jury, or is a criminal or civil proceeding.

In this instance, the committee proceeded to call for and received evidence from a number of witnesses closely related to the case.

In its questioning of witnesses, and its documenting of the evidence and drawing of conclusions in this report, the committee is satisfied that it has navigated an appropriate path between respect for the legal process still underway and the imperatives for transparency and accountability.

³ S Frappell and D Blunt, *New South Wales Legislative Council Practice*, Second Edition, Federation Press (2021) p 770.

⁴ *Odgers Australian Senate Practice*, 14th Edition, p 262, cited in Frappell and Blunt, p 471.

Chapter 1 Background and timeline

This chapter sets out the background to the Barangaroo redevelopment project and a chronology of events relevant to the inquiry. In particular, the timeline provides an overview of the involvement of Lendlease and Crown in the development of Barangaroo South, and the role of Grocon in the development of Central Barangaroo. The timeline also outlines Infrastructure NSW's dispute with Lendlease and Crown, as well as Grocon's eventual exit from the Central Barangaroo project.

Background to the Barangaroo redevelopment

- 1.1 During the late 1800s and early 1900s, the East Darling Harbour area in Sydney, including Barangaroo, operated as a commercial shipping activity hub. The area was characterised by a significant number of wharves, docks and shipyards.⁵
- 1.2 However, due to a number of factors, commercial shipping in Darling Harbour, and Sydney Harbour more generally, decreased from the 1950s and ultimately ceased by the 1960s. These factors included the increasing size of commercial ships which no longer fit the Darling Harbour wharves, the more frequent use of shipping containers and the development of port facilities in Port Botany, Port Kembla and Newcastle.⁶
- 1.3 The concept for the redevelopment of Barangaroo was first announced by the NSW Government in 2003, when East Darling Harbour was described as the site of 'Australia's most important waterfront renewal project in decades'.⁷ This would include the development of a '22ha [hectare] waterfront precinct'.⁸
- 1.4 The area was split into three development zones for the purposes of the project: Barangaroo South, Barangaroo Reserve and Central Barangaroo.⁹ The following map provided by Lendlease depicts these development zones.

⁵ NSW Government, Building Barangaroo, <https://www.barangaroo.com/building-barangaroo>, accessed 23 January 2023.

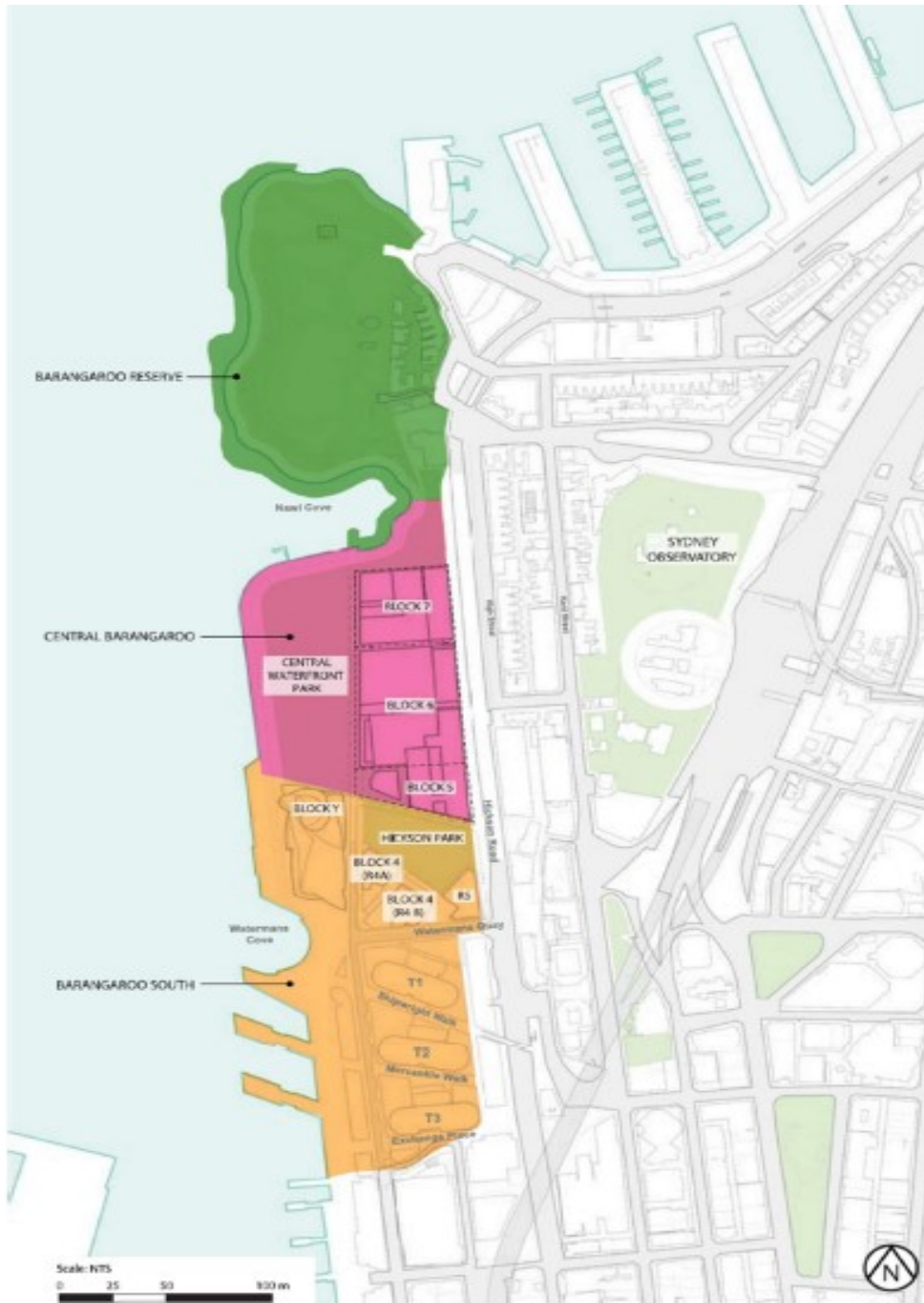
⁶ NSW Government, Building Barangaroo, <https://www.barangaroo.com/building-barangaroo>, accessed 23 January 2023.

⁷ NSW Government, Building Barangaroo, <https://www.barangaroo.com/building-barangaroo>, accessed 23 January 2023.

⁸ NSW Government, Building Barangaroo, <https://www.barangaroo.com/building-barangaroo>, accessed 23 January 2023.

⁹ Submission 14, Infrastructure NSW, p 1.

Figure 1 Map of the Barangaroo development zones



Submission 9, Lendlease, Attachment 1, p 1.

1.5 When describing the intention of the Barangaroo redevelopment, the Government states that: 'Barangaroo's development represents a new era of community-friendly 'placemaking', a process that puts the community at the heart of planning and development decisions'.¹⁰

¹⁰ NSW Government, Building Barangaroo, <https://www.barangaroo.com/building-barangaroo>, accessed 23 January 2023.

- 1.6 The Barangaroo Concept Plan, approved in February 2007, has governed development at Barangaroo to date. The Concept Plan 'prescribes the extent and nature of all development works in the area, including the permissible building envelopes and heights, and floor space'.¹¹
- 1.7 There have been a number of modifications made to the initial Concept Plan under the *Environmental Planning and Assessment Act 1979*. Each modification is commonly referred to as a numbered 'Mod.', namely, Mod 1, Mod 2 and so on.¹²
- 1.8 The redevelopment was initially managed by the Sydney Harbour Foreshore Authority, however, this responsibility was transferred to the Barangaroo Delivery Authority (BDA) following its establishment upon the commencement of the *Barangaroo Delivery Authority Act 2009 No 2*.¹³
- 1.9 However, on 1 July 2019, the Barangaroo Delivery Authority was dissolved. Its 'assets, rights and liabilities' were transferred to Infrastructure NSW under the *Barangaroo Act 2009*. Infrastructure NSW remain the government agency responsible for the Barangaroo redevelopment.¹⁴

Timeline of events

- 1.10 There are a number of key events pertinent to the issues raised in this inquiry. This section establishes a timeline as relevant to various aspects of the planning and development of the Barangaroo precinct. This includes planning decisions regarding the Barangaroo South and Central Barangaroo development as well as the events leading up to the 'sight lines' dispute between Infrastructure NSW and Lendlease and Crown. Additionally, the timeline sets out matters relevant to the involvement of Grocon in the Central Barangaroo development, Grocon's exit from the development and the ongoing litigation between Infrastructure NSW and Grocon.

Development of Barangaroo South and the involvement of Lendlease and Crown

- 1.11 In **December 2009**, Lendlease was appointed as the developer for Barangaroo South following a competitive public tender process. Lendlease entered into the Project Development Agreement (PDA) in **March 2010**, which set out the details of the proposed development.¹⁵
- 1.12 Lendlease told the committee that the Barangaroo Concept Plan has consistently established that Central Barangaroo would be a location for 'low-rise development' and Barangaroo South would be characterized by 'substantially higher development'. Further, it explained that the development at Barangaroo South was originally proposed to include 'office towers, high rise residential towers, a high-rise luxury hotel building and public open space'.¹⁶

¹¹ Submission 14, Infrastructure NSW, p 1.

¹² Submission 14, Infrastructure NSW, p 1.

¹³ Submission 14, Infrastructure NSW, p 1.

¹⁴ Submission 14, Infrastructure NSW, p 1.

¹⁵ Submission 9, Lendlease Group, p 1.

¹⁶ Submission 9, Lendlease Group, p 1.

- 1.13** Lendlease explained that, in **2011**, the NSW Government undertook a review which resulted in changes to the project plan and transport services at Barangaroo. Due to these changes, Lendlease modified its proposal set out in the PDA. This change included the relocation of a proposed high-rise hotel and apartment buildings 'from a pier over the water to another location within Barangaroo South'. Subsequent to this change, Lendlease agreed for the hotel and apartment buildings to be 'developed and operated as an integrated casino and hotel by Crown Sydney Property Pty Ltd (Crown).¹⁷
- 1.14** Additionally, Lendlease told the committee that a result of these changes was that the views to the north-west from the residential towers were impeded, thereby making the views to the north-east 'significantly more important'.¹⁸ Further, Lendlease explained that the harbour views, including views of the Sydney Harbour Bridge and the Opera House from the residential towers, were specifically referred to in the approved Barangaroo South Master Plan and were of clear commercial significance to Lendlease's decision to invest in the development.¹⁹
- 1.15** Commonly referred to as the Barangaroo 'sight lines', these views span across Central Barangaroo from the now erected Crown Hotel Resort and Lendlease's One Sydney Harbour residential towers, currently under construction'.²⁰
- 1.16** In **May 2015**, the provisions in their respective development agreements giving Crown and Lendlease contractual rights in relation to the sight lines came into existence. The rights of Lendlease are contained in the Barangaroo South Project Development Agreement and the rights of Crown are contained in the Crown Development Agreement.²¹
- 1.17** These sight lines provisions were introduced as 'part of a resolution of various issues' between the Barangaroo Development Authority (BDA) and Lendlease with regard to the development of Barangaroo South. The contractual rights, which are 'practically identical', provide that:

Prior to considering or approving any application which provides for development different to that provided for in the Concept Plan Approval ... as it relates (in part or in whole) to Central Barangaroo, the [Barangaroo Delivery Authority] will discuss and negotiate in good faith with [Lendlease and Crown] equally to agree any changes to that application so as to retain the sight lines ... while at the same time optimising development opportunities.²²

Development of Central Barangaroo and the involvement of Grocon

- 1.18** In **April 2014**, the BDA began a tender process to identify a developer for Central Barangaroo.
- 1.19** However, in **June 2015**, the NSW Government announced that a Sydney Metro station would be constructed at Barangaroo. This announcement had the effect of altering the scope and scale

¹⁷ Submission 9, Lendlease Group, p 1.

¹⁸ Submission 9, Lendlease Group, p 1.

¹⁹ Submission 20, Lendlease Group, p 2.

²⁰ Submission 14, Infrastructure NSW, p 1.

²¹ Submission 14, Infrastructure NSW, p 1.

²² Submission 14, Infrastructure NSW, p 2.

of development at Central Barangaroo, and therefore, the initial tender process was terminated.²³

- 1.20** A new tender process for the development of Central Barangaroo commenced in **December 2015**.²⁴
- 1.21** Infrastructure NSW told the committee that during this tender process, tenderers were advised that the BDA had obligations to consult with both Lendlease and Crown regarding any impact on the sight lines that might occur as a result of development at Central Barangaroo. It also stated that tenderers were told that the successful tenderer's development proposal would be 'refined following consultation by the [BDA] with Lendlease and Crown in relation to sight lines that may be affected by development at Central Barangaroo'.²⁵
- 1.22** In **June 2016**, Grocon was selected as the preferred tenderer for the Central Barangaroo development. In its submission, Infrastructure NSW stated that this bid proposed a development with more above-ground developable gross floor area and higher building limits than were permitted in the Concept Plan Approval.²⁶
- 1.23** The committee heard evidence from Grocon that conflicted with what Infrastructure NSW said tenderers were told about the obligations the BDA had to Lendlease and Crown in terms of the sightlines. This issue will be explored in greater detail in chapter 2.²⁷
- 1.24** Following the selection of Grocon as the successful bidder, the BDA and Grocon (as developer) entered into a conditional development agreement in **December 2016**. This agreement was known as the Central Barangaroo Development Agreement (CENDA). This agreement was placed in escrow, meaning it would not be fully binding until certain obligations were met and approvals occurred, including Ministerial consent.²⁸
- 1.25** Infrastructure NSW told the committee that at this stage, the CENDA was conditional. Grocon's development rights only became effective upon the resolution of the BDA's sight lines negotiations with Crown and Lendlease. Further, it was noted that if this condition was not satisfied or waived by the 'Condition Target Date', the BDA had a 'right to terminate the conditional CENDA by notice in writing'.²⁹
- 1.26** During the escrow period, Grocon and the BDA negotiated amendments to the conditional CENDA. The amended CENDA set out that if the sight lines negotiations had not concluded by the Condition Target Date, the 'developer would design and carry out the development within the parameters of Mod 6'. Infrastructure NSW stated that the building heights in Mod 6 did not impact on the sight lines.³⁰

²³ Submission 14, Infrastructure NSW, p 3.

²⁴ Submission 14, Infrastructure NSW, p 3.

²⁵ Submission 14, Infrastructure NSW, p 3.

²⁶ Submission 14, Infrastructure NSW, p 3.

²⁷ Submission 10, Grocon, p 10.

²⁸ Submission 14, Infrastructure NSW, p 3.

²⁹ Submission 14, Infrastructure NSW, p 4.

³⁰ Submission 14, Infrastructure NSW, p 4.

1.27 On **17 November 2017**, the escrow period concluded and the CENDA, as amended, came into effect.³¹

Sight lines negotiations between the Barangaroo Delivery Authority, Lendlease and Crown

1.28 Shortly after the **May 2015** sight lines provisions were finalised giving Lendlease and Crown contractual rights, Lendlease observed changes being made to the planning of Central Barangaroo, including proposals to increase building height limits, which would impact the views from Lendlease's residential towers. Lendlease told the committee that it had serious concerns about these changes and were of the view that they were not consistent with the sight lines clauses in Lendlease's and Crown's relevant development agreements.³²

1.29 In **March 2016**, negotiations regarding the sightlines commenced between the BDA, Lendlease and Crown. These negotiations continued through **2017 and 2018**. These negotiations involved discussion around the 'envelopes' of any development of Blocks 5, 6 and 7 in Central Barangaroo. The envelopes refer to the maximum outer boundaries, including building heights, of any relevant development in these blocks.³³

1.30 However, by **August 2018**, the BDA and Lendlease and Crown remained in dispute regarding the BDA's contractual obligations in the sight lines negotiations, and Lendlease and Crown commenced proceedings against the BDA in the Supreme Court of New South Wales.³⁴

1.31 In **December 2018**, the Supreme Court found that the BDA 'had breached its contractual obligations to Lendlease and Crown in relation to the sight lines'. The Court found that this was due to the fact the BDA had 'considered Grocon's bid without first engaging in discussions and negotiations with Lendlease and Crown to agree [to] changes to that bid so as to retain the sight lines'.³⁵

1.32 The BDA filed an application for leave to appeal the judgment in **February 2019**. The hearing for this appeal was listed for **August 2019**.³⁶

1.33 During **2019**, the BDA, Crown and Lendlease continued negotiations regarding the height of any development at Central Barangaroo in the effort to determine if any resolution to the dispute could be reached.³⁷

1.34 Notably, from **1 July 2019**, the BDA was dissolved, with all assets, rights and liabilities being transferred to Infrastructure NSW.³⁸

³¹ Submission 14, Infrastructure NSW, p 4.

³² Submission 14, Infrastructure NSW, pp 3-4.

³³ Submission 14, Infrastructure NSW, p 4.

³⁴ Submission 14, Infrastructure NSW, p 4.

³⁵ Submission 14, Infrastructure NSW, pp 4-5.

³⁶ Submission 14, Infrastructure NSW, p 5.

³⁷ Submission 14, Infrastructure NSW, p 5.

³⁸ Submission 14, Infrastructure NSW, p 5.

1.35 On **19 August 2019**, prior to the hearing of the appeal, Infrastructure NSW, Lendlease and Crown reached a settlement and entered into a settlement deed. This deed was entitled the Deed of Sight Lines Resolution, which included an 'agreed envelope for development at Central Barangaroo'. This therefore concluded the sight lines negotiations.³⁹

Grocon's position during the sight lines negotiations

1.36 Grocon told the committee that between **March 2016 and mid-2019**, Grocon took a number of steps regarding the Central Barangaroo development based on representations made by the BDA. This included:

- the preparation of 'dozens' of schemes for the Central Barangaroo development which were provided to Lendlease and Crown for their feedback and approval
- entering into contracts with its initial consortium partners, Aqualand and Scentre, that established an agreement for Aqualand to develop the residential component of the Central Barangaroo development, and for Scentre to develop the retail component
- entering into an agreement with OMERS Asia Pty Ltd, otherwise known as Oxford Properties, whereby Oxford agreed to 'pay Grocon over \$140 million for the purchase of the office development rights complement of Blocks 5 and 6 of Central Barangaroo', as well [as] a further agreement with Oxford whereby it agreed to form a 'joint venture for the entire Central Barangaroo development'.⁴⁰

1.37 This agreement between Grocon and Oxford, known as the Oxford Transaction, was conditional on the Sight Lines Resolution Notice being issued. Grocon told the committee that \$116 million (plus fees) of the total \$140 million purchase cost was due to be paid from Oxford to Grocon on financial close of the agreement.⁴¹

1.38 Grocon told the committee that alongside the above agreements with Oxford, the BDA had provided a 'binding letter of comfort' to Grocon to provide to Oxford in **August 2018**. This Comfort Letter involved the BDA undertaking 'not to approve, lodge or permit the lodgment of any planning application for the Central Barangaroo development which had less than 59,692 square meters of Gross Floor Area (GFA) available for use as offices'. This was in the context of the resolution of the sight lines negotiations, or any other agreements.⁴²

1.39 Grocon told that committee that during **2017 and 2018**, the delay in the commencement of the Central Barangaroo development because of the sight lines negotiations had a significant impact on Grocon's cash flow. Further, Grocon asserted that the 2018 Supreme Court judgement regarding the sight lines negotiations resulted in significantly limiting the scope of the development Grocon had planned on undertaking.⁴³

³⁹ Submission 14, Infrastructure NSW, p 5.

⁴⁰ Submission 10, Grocon, p 12.

⁴¹ Submission 10, Grocon pp 12-13.

⁴² Submission 10, Grocon p 13.

⁴³ Submission 10, Grocon p 13.

Exit of Grocon and current status of Central Barangaroo

- 1.40** The committee heard conflicting evidence regarding the circumstances of the events leading up to the exit of Grocon from the Central Barangaroo development. This evidence will be explored in further detail in chapter 2.
- 1.41** It is not disputed, however, that the sale of Grocon's Central Barangaroo development rights to Aqualand was finalised on **26 September 2019**.⁴⁴ Since then, Aqualand has been the developer of Central Barangaroo.
- 1.42** On **27 September 2019**, a notice was issued to Aqualand under the CENDA regarding the resolution of the sight lines negotiations. As part of this notice, Infrastructure NSW provided Aqualand with the agreed envelope for development at Central Barangaroo.⁴⁵ This notice triggered Aqualand's obligation as the new developer to re-design the project to 'fit within the agreed development envelope'.⁴⁶
- 1.43** In **2019**, an application to amend the Barangaroo Concept Plan, known as Modification 9, was lodged with the Department of Planning and Environment for approval. Modification 9 seeks to amend the 'permissible development envelopes' of Blocks 5, 6 and 7 in Central Barangaroo in order to facilitate Aqualand's proposed development. Modification 9 would have the effect of setting the maximum development height for Central Barangaroo to the height agreed to by Lendlease and Crown as part of the resolution of the sight lines negotiation.⁴⁷
- 1.44** This modification was subject to intense criticism from a number of stakeholders. This critique will be explored in further detail in chapter 3.
- 1.45** In **October 2022**, media reports indicated that the Minister for Planning, the Hon Anthony Roberts MP, would reject the proposed modification for increased building heights at Central Barangaroo. This would have the effect of requiring Aqualand to significantly alter the current proposal in order for it to be approved. These media reports stated that Aqualand representatives indicated they were willing to work with government to find a suitable way forward to deliver the development at Central Barangaroo.⁴⁸

Current litigation between Grocon and Infrastructure NSW

- 1.46** In **February 2020**, Grocon commenced proceedings against Infrastructure NSW in the Supreme Court of New South Wales regarding the Central Barangaroo development. At the time of writing, these proceedings are still awaiting trial.⁴⁹

⁴⁴ Submission 14, Infrastructure NSW, p 6.

⁴⁵ Submission 14, Infrastructure NSW, p 6.

⁴⁶ Submission 14, Infrastructure NSW, p 6.

⁴⁷ Submission 14, Infrastructure NSW, p 6.

⁴⁸ Sydney Morning Herald, *Planning minister kills proposal for new tower at Barangaroo's missing link*, Michael Koziol, 8 October 2022.

⁴⁹ Submission 10, Grocon, p 20.

- 1.47** The claims Grocon are making against Infrastructure NSW include, but are not limited to, the following:
- that Grocon lodged a bid for the Central Barangaroo development based on misleading and deceptive conduct on the part of Infrastructure NSW
 - that Infrastructure NSW were not forthcoming regarding their sight lines obligations to Lendlease and Crown
 - that Infrastructure NSW were not forthcoming and transparent regarding the progress of the sight lines negotiations, and the sight lines resolution once it had been reached
 - that Grocon were forced out of the development and into a 'severe and unrecoverable financial position' due significantly to the conduct of Infrastructure NSW.⁵⁰
- 1.48** In sum, Grocon argues that 'the BDA/INSW demonstrated a sustained absence of good faith, transparency and fairness towards Grocon throughout the entire tender, negotiation and development process'.⁵¹
- 1.49** All claims being made by Grocon as part of this litigation are denied by Infrastructure NSW.⁵²

⁵⁰ Submission 10, Grocon, p 1, Submission 14.

⁵¹ Submission 10, Grocon, p 2.

⁵² Submission 14, Infrastructure NSW, p 7.

Chapter 2 Issues relating to the disputes arising from negotiations over the Barangaroo sight lines

This chapter outlines various issues raised during the inquiry with respect to the negotiations concerning the Barangaroo sight lines. Discussed within the context of key disputes arising out of the development at Barangaroo South and Central Barangaroo, the chapter begins with an examination of the dispute between Infrastructure NSW, Lendlease and Crown regarding the sight lines and the ensuing negotiations and resolution. The chapter then considers the impact of these negotiations on Grocon, the initial developer of Central Barangaroo. This includes a detailed examination of the opposing perspectives of Grocon and Infrastructure NSW in the ongoing dispute over the exit of Grocon from the Central Barangaroo development.

Dispute between Lendlease and Crown, and Infrastructure NSW

- 2.1** As referred to in chapter 1, Lendlease was appointed developer for Barangaroo South in December 2009. In 2011, Lendlease agreed for the high-rise hotel proposed for Barangaroo South to be developed and operated as a casino and hotel by Crown Sydney Property Pty Ltd (Crown).
- 2.2** This section discusses the dispute between Infrastructure NSW (and prior to July 2019, the Barangaroo Delivery Authority) and Crown and Lendlease regarding the sight lines from its developments in Barangaroo South.

Preserving the Barangaroo sight lines

- 2.3** According to Lendlease, the sight lines from the high-rise residential towers and high-rise hotel across Central Barangaroo, which include a view of the Sydney Harbour Bridge and Sydney Opera House, have always been a critical part of the Barangaroo South project. Specifically, Lendlease told the committee that 'the preservation of the sightlines of these structures is of obvious commercial significance to Lendlease's investment in Barangaroo South (as it is for Crown in respect of the preservation of its sightlines from its casino/hotel)'.⁵³
- 2.4** As noted in chapter 1, following the call for expressions of interest for the development of Central Barangaroo in 2014, two agreements were developed between the Barangaroo Delivery Authority (BDA) and Crown, and the BDA and Lendlease, which gave Crown and Lendlease contractual rights in relation to the sight lines. These agreements, which came into effect in May 2015, are the Barangaroo South Project Development Agreement and the Crown Development Agreement.⁵⁴

⁵³ Submission 9, Lendlease Group, p 1.

⁵⁴ Submission 14, Infrastructure NSW, p 1.

- 2.5 Lendlease advised the committee that the 'sightlines expressly protected by the relevant clauses relate to the specific "sight lines across Central Barangaroo from the Harbour Bridge to the Sydney Opera House" from residential towers being constructed by Lendlease...and another tower (the Hotel) now constructed by Crown on Barangaroo South'.⁵⁵
- 2.6 Notably, the committee heard evidence regarding former Premier Mike Baird's involvement in the negotiations with Crown and Lendlease in the period leading up to May 2015, when the provisions in Crown and Lendlease's development agreements giving them contractual rights to the sight lines came into existence.⁵⁶
- 2.7 Mr Baird told the committee that he met with Mr James Packer, then Executive Chairman of Crown Resorts, in February 2015. Mr Baird explained that the key issue discussed during this meeting was the delays in the progress of the Barangaroo South project. When asked if the issue of Crown and Lendlease's rights to the sight lines was addressed, he said that there was 'limited discussion' about this.⁵⁷
- 2.8 When characterising what was ultimately agreed to in the relevant development agreements in May 2015, Mr Baird stated that while Crown and Lendlease sought to have 'unequivocal approach to all sightlines'⁵⁸, this was not what was agreed to. He claimed that the wording contained in the agreements did not give an 'explicit undertaking ... to the sightlines'⁵⁹, and instead, committed the parties to negotiate in good faith and attempt to balance the public interests, the State interests and the interests of Crown and Lendlease.⁶⁰

The reconceptualisation of Central Barangaroo

- 2.9 The committee heard that shortly after finalising the agreements which gave contractual rights to Lendlease and Crown, certain developments in the planning for Central Barangaroo became cause for concern for Lendlease.
- 2.10 Lendlease gave evidence that Central Barangaroo 'underwent a wholesale re-conceptualisation of the scale of development'. This included proposals to significantly increase the height limits of development in Central Barangaroo, which would have an adverse impact on the views from the Lendlease residential towers. Lendlease argued that this was in direct contradiction to the clauses included in the relevant agreements with the BDA over the sight lines.⁶¹
- 2.11 Specifically, Lendlease referred to the following events which it asserted substantially changed the initial development concept for Central Barangaroo, and would ultimately impact on the sight lines:

⁵⁵ Submission 9, Lendlease Group, p 3.

⁵⁶ Submission 14, Infrastructure NSW, p 1.

⁵⁷ Evidence, Mr Mike Baird, Former Premier of NSW, 11 November 2022, p 32.

⁵⁸ Evidence, Mr Baird, 11 November 2022, p 33.

⁵⁹ Evidence, Mr Baird, 11 November 2022, p 33.

⁶⁰ Evidence, Mr Baird, 11 November 2022, p 35.

⁶¹ Submission 9, Lendlease Group, p 4.

- the June 2015 announcement by the NSW Government that there would be a Sydney Metro Station at Barangaroo, and the subsequent termination of the initial Central Barangaroo tender process to determine the developer
- the announcement of a new tender process for Central Barangaroo in November 2015 which would consider proposals for larger developments than was previously understood by Lendlease, and did not include any reference to height limits
- the revision of the Central Barangaroo Master Plan in 2015 which removed reference to the maintenance of existing height limits as a 'core principle', and which 'invited development proposals that substantially exceeded heights in the Concept Plan'.⁶²

2.12 Lendlease maintained that these events 'did not accord with the BDA's legal obligations under the Sightlines clauses' in the relevant agreements. Indeed, Lendlease advised that the proposed height limits surrounding its towers increased in some areas by a multiple of seven, and in others by a multiple of four.⁶³

Court proceedings and the Deed of Sightlines Resolution

2.13 Despite attempts to negotiate, Lendlease argued that it 'became necessary to commence legal proceedings in August 2017 to obtain a court ruling in relation to the operation of the Sightlines clauses' in the Barangaroo South Project Development Agreement. Crown similarly commenced proceedings against the BDA with respect to the sightlines as captured in the Crown Development Agreement.⁶⁴

2.14 As outlined in chapter 1, the Supreme Court ultimately ruled in favor of Lendlease and Crown, determining that the BDA had breached its contractual obligations.

2.15 Following this determination, negotiations resumed between the BDA, and subsequently, Infrastructure NSW, and Lendlease and Crown over the height of any development at Central Barangaroo. These negotiations were later settled by agreement of the parties, as set out in the Deed of Sightlines Resolution. Executed on 18 August 2019, the deed effectively secured an agreement between Infrastructure NSW and Lendlease and Crown over the development envelope at Central Barangaroo.⁶⁵

2.16 The Deed of Sightlines Resolutions included a number of commitments from both Lendlease and Infrastructure NSW. This included the granting of an additional 8,000 square metres of development floor space to Lendlease. Mr Tom Mackellar, Managing Director, Development Australia, Lendlease, told the committee that this was in part compensation for the development delays and subsequent losses to Lendlease.⁶⁶

⁶² Submission 9, Lendlease Group, p 4.

⁶³ Submission 9, Lendlease Group, p 4.

⁶⁴ Submission 9, Lendlease Group, pp 4-5.

⁶⁵ Submission 9, Lendlease Group, p 13.

⁶⁶ Evidence, Mr Tom Mackellar, Managing Director, Development Australia, Lendlease Group, 11 November 2022, p 3.

- 2.17** Mr Mackellar further explained to the committee that there were 'trade-offs from both sides in formulating the agreement'⁶⁷, and summarised the document as being 'designed to provide certainty for both parties and enable them to move forward with the development'.⁶⁸
- 2.18** According to Mr Simon Draper, Chief Executive Officer, Infrastructure NSW, the agreement reached in the Deed of Sightlines Resolution avoided a potentially costly damages claim against Infrastructure NSW from Lendlease and Crown. Mr Draper asserted that this damages claim could have been in the 'hundreds of millions of dollars', and that by resolving the dispute, Infrastructure NSW had not only avoided this potential cost but created certainty around the commercial development envelope.⁶⁹ As Mr Draper said:
- Our view is that we came away with a deal which was significantly better than some of the potential outcomes should Crown and Lendlease proceed with that litigation and significantly better than Lendlease sought from us when we first started negotiations – in the order of tens or hundreds of millions of dollars better'.⁷⁰
- 2.19** The Deed of Sightlines Resolution had not been made publicly available until 10 November 2022, and then tabled as part of this inquiry on 11 November 2022.⁷¹

Dispute between Grocon and Infrastructure NSW

- 2.20** As outlined in chapter 1, Grocon was selected in 2016 as the successful bidder to develop Central Barangaroo. In December 2016, Grocon and the Barangaroo Development Authority (BDA) entered into a conditional development agreement known as the Central Barangaroo Development Agreement (CENDA).⁷²
- 2.21** The circumstances of the tender process, the obligations of Infrastructure NSW, and the information provided to Grocon during negotiations were issues raised and contested during the inquiry, and are the basis of the ongoing dispute between Grocon and Infrastructure NSW over the Barangaroo sight lines and Grocon's eventual exit from the Central Barangaroo development. Given the committee heard directly conflicting evidence from Grocon and Infrastructure NSW, both perspectives are considered in turn below.

Grocon's perspective

- 2.22** During the inquiry, Grocon made a number of claims and allegations regarding the conduct of the BDA and, after July 2019, Infrastructure NSW, in the context of the Central Barangaroo development. In sum, Grocon argued that Infrastructure NSW effectively sold the Barangaroo sight lines twice – once to Lendlease and Crown as part of the Barangaroo South development and once to Grocon as part of the Central Barangaroo development.

⁶⁷ Evidence, Mr Mackellar, 11 November 2022, p 5.

⁶⁸ Evidence, Mr Mackellar, 11 November 2022, p 4.

⁶⁹ Evidence, Mr Simon Draper, CEO, Infrastructure NSW, 11 November 2022, pp 64-65.

⁷⁰ Evidence, Mr Draper, 11 November 2022, p 61.

⁷¹ The Deed of Sightlines Resolution was the subject of a disputed claim of privilege. However, the Independent Legal Arbiter found it to not be privileged, and it was therefore available to be public.

⁷² Submission 14, Infrastructure NSW, p 3.

2.23 Grocon contended that once this realisation became clear and was challenged, Infrastructure NSW unfairly favoured Lendlease and Crown, and behaved in such a way that resulted in Grocon being forced out of the development.⁷³

Misrepresentations during the tender process

2.24 Grocon asserted that during the tender process, the BDA made 'ongoing misrepresentations' which influenced Grocon's decision to participate. These include:

- the BDA assuring Grocon that it only had a 'general obligation' to negotiate with Lendlease and Crown with regard to its rights to the sight lines
- the BDA explaining that it was not obliged to accept any position by Crown and Lendlease during the process, and was able to terminate the 'consultation process if agreement could not be reached'
- being told by the BDA that the Central Barangaroo development would have a specific gross floor area, including a high-rise tower on Block 5 of the Central Barangaroo precinct, as depicted in Figure 1 in chapter 1.⁷⁴

2.25 While this evidence is disputed by Infrastructure NSW, Grocon insisted that these misrepresentations amounted to a failure by Infrastructure NSW to adequately disclose its obligations to Crown and Lendlease and created a false understanding of what Grocon could expect from the Central Barangaroo development process.⁷⁵

2.26 Grocon told the committee that the CENDA it entered into with the BDA, and later Infrastructure NSW, provided for a development that would have necessarily interfered with the sightlines that the BDA had already committed to ensuring for Lendlease and Crown in the relevant development agreements for Barangaroo South.⁷⁶

Lack of transparency and failure to issue the Sight Lines Resolution Notice

2.27 Further, Grocon asserted that Infrastructure NSW was not transparent about its ongoing sight lines dispute with Crown and Lendlease, the consequence of which, Grocon maintained, ultimately forced it out of the development.⁷⁷

2.28 Grocon gave evidence that the CENDA required the BDA to issue a Sight Lines Resolution Notice (otherwise known as a 1.10 notice) to Grocon, which would indicate that negotiations between the BDA, Lendlease and Crown over the sight lines had concluded and details of the development envelope were agreed. Grocon explained that without this sight lines notice, development could not proceed.⁷⁸

⁷³ Evidence, Mr Daniel Grollo, CEO, Grocon, 11 November 2022, p 10.

⁷⁴ Submission 10, Grocon, p 10.

⁷⁵ Submission 10, Grocon, p 10.

⁷⁶ Submission 10, Grocon, p 3.

⁷⁷ Submission 10, Grocon, pp 3-4.

⁷⁸ Submission 10, Grocon, p 3.

2.29 The committee heard from Grocon that during 2017 and 2018 it had received assurances from Infrastructure NSW that the notice would be issued 'imminently'. As Mr Daniel Grollo, CEO, Grocon, stated:

We got lots of promises, including from the CEO of the BDA and the Deputy Secretary to the Department of Premier and Cabinet. Each assured me personally that the sightlines resolution notice would be issued, but it never was.⁷⁹

2.30 Grocon informed that it made financial commitments based on this assumption. As outlined in chapter 1, Grocon had entered into an agreement in which Oxford Properties would purchase the office development rights component of Blocks 5 and 6 of Central Barangaroo for over \$140 million.⁸⁰ Grocon expected to receive \$116 million plus fees upon financial close of this agreement, which was conditional on the issuing of the sight lines notice. Grocon advised that it had 'heavily depended' on the revenue arising from Oxford, noting that the delays to the development as well as the significant expenditure on the bid and project had caused its cashflow to become 'problematic'.⁸¹

2.31 In the end, despite believing that Infrastructure NSW was obligated under the CENDA and that the sight lines notice was indeed imminent, Grocon asserted that Infrastructure NSW instead withheld the sight lines notice from Grocon after it had been finalised on 18 August 2019.

2.32 Grocon reflected on the implications of this, telling the committee that, had Grocon been issued with the notice as expected, it not only would have 'provided certainty as to the size and shape of the development' but it would have 'dramatically increased the value of its development rights'.⁸² Indeed, Mr Grollo argued that if Grocon had received the notice in June 2019, construction at Central Barangaroo would have certainly commenced or alternatively provided an opportunity to remarket the property if required:

We would've closed the Oxford deal and construction would've commenced. If for some reason we couldn't close the Oxford deal, the sightline resolution notice was another way of remarketing the property that would've allowed us to monetise the event. [INSW] knew that, armed with... the 1.10 notice, Grocon would arrange, control and complete Barangaroo.⁸³

Efforts to push Grocon out of the development

2.33 According to the Mr Grollo, the sight lines notice was 'hidden' from Grocon due to a decision made within government to remove Grocon from the Central Barangaroo development. Mr Grollo claimed that as time passed, senior executives from Infrastructure NSW actively misled him and acted with a 'complete absence of good faith and cooperation' in an effort to force Grocon out of the development.⁸⁴

⁷⁹ Evidence, Mr Grollo, 11 November 2022, p 11.

⁸⁰ Submission 10, Grocon, p 14.

⁸¹ Submission 10, Grocon, pp 12-14.

⁸² Submission 10, Grocon, p 3.

⁸³ Evidence, Mr Grollo, 11 November 2022, p 13.

⁸⁴ Evidence, Mr Grollo, 11 November 2022, pp 10-13.

2.34 For example, Mr Grollo alleged that Mr Tim Robertson, then Executive Director, Infrastructure NSW, made false representations to him regarding the sight lines negotiation process and was 'deliberately withholding information' about how matters were genuinely progressing. According to Mr Grollo, Mr Robertson had delayed the issuing of the sight lines notice because the notice would have conferred a benefit to Grocon, and this was not conducive to the overarching aim of removing Grocon from the Central Barangaroo development.⁸⁵

2.35 Grocon claimed that the lack of transparency and failure to provide the sight lines notice exemplified being 'misled' by the conduct of Infrastructure NSW. It was this conduct that Grocon have maintained forced it out of the development and ultimately into voluntary administration.⁸⁶

Grocon's exit from the development and sale of development rights to Aqualand

2.36 As the Sight Lines Resolution Notice was never issued to Grocon, there was a lack of certainty regarding the development envelope for Central Barangaroo and Grocon was unable to finalise the transaction with Oxford Properties. Without the revenue it had expected from this transaction, Grocon was eventually forced to sell its development rights to its consortium partner Aqualand on 26 September 2019 for \$73 million (after fees) – a 'substantially undervalued price' – and enter into voluntary administration.⁸⁷

2.37 Grocon alleged that ultimately, Infrastructure NSW's conduct caused or materially contributed to its financial issues which would have been avoided if it had been in receipt of the sight lines notice.⁸⁸

2.38 Grocon told the committee that Infrastructure NSW showed a 'clear preference' for Aqualand and acted in a way that unfairly favoured the commercial interests of Aqualand 'at the expense of Grocon'.⁸⁹ Mr Grollo believed that Grocon was, in the eyes of Infrastructure NSW, 'expendable and they should be taken out'.⁹⁰

2.39 To demonstrate this, Grocon pointed to the failure to issue the sight lines notice before the sale of its development interests to Aqualand.⁹¹

2.40 Moreover, according to Grocon, from around mid-2019 and 'unbeknownst to Grocon', the BDA (later Infrastructure NSW), Aqualand and Oxford 'orchestrated an arrangement' that would result in Grocon exiting the development. Grocon believed this was primarily carried out by the withholding of the sight lines notice until such time Grocon was forced to sell to Aqualand.⁹²

⁸⁵ Submission 10, Grocon, pp 16-18.

⁸⁶ Submission 10, Grocon, pp 21-22.

⁸⁷ Submission 10, Grocon, pp 3-4 and p 15.

⁸⁸ Correspondence from Mr Daniel Grollo, CEO, Grocon, to Chair, 19 December 2022.

⁸⁹ Submission 10, Grocon, p 21

⁹⁰ Evidence, Mr Grollo, 11 November 2022, p 11.

⁹¹ Submission 10, Grocon, p 21.

⁹² Submission 10, Grocon, p 14.

- 2.41** In support of this view, Grocon drew attention to the fact that Aqualand was issued with the sight lines notice on 27 September 2019 – the day after the sale of Grocon's development rights to Aqualand had been finalised. Grocon told the committee that it did not become aware of this fact for 18 months and only when it was revealed through its Supreme Court proceedings. Mr Grollo characterised the provision of the sight lines notice to Aqualand at this time as a 'secret' being hidden from Grocon by Infrastructure NSW.⁹³
- 2.42** Further, Grocon told the committee that Infrastructure NSW had been engaged in negotiations with Aqualand regarding the development prior to the sale, despite not having a direct contractual relationship with Aqualand at the time. It argued that this effectively rendered 'Grocon a bystander in relation to the future of its development rights'.⁹⁴
- 2.43** In evidence to the committee, Grocon referred to communications, namely WhatsApp messages, between Mr Robertson and employees of Aqualand and Oxford. It was argued that these communications discussing the ongoing negotiations between Infrastructure NSW and Lendlease and Crown regarding the sight lines, as well as the potential sale of Grocon's development rights to Aqualand, showed Infrastructure NSW taking active steps to ensure Grocon would have to exit the Central Barangaroo development.⁹⁵
- 2.44** Specifically, the committee heard evidence regarding WhatsApp messages that stressed the importance of finalising the sale of Grocon's development rights to Aqualand before the sight lines negotiations between Infrastructure NSW, Lendlease and Crown had concluded, and a resolution notice would have had to have been produced.⁹⁶
- 2.45** Grocon argued that this substantiated its claims that Infrastructure NSW sought to withhold the notice in order to ensure Grocon sold their stake at a lower cost than would have been possible if the resolution had been issued. It stated that if the sight lines notice had been produced during this time, Grocon may have resisted in selling its rights to Aqualand or insisted on a 'higher price due to the certainty as to the envelope and timeline for the development'.⁹⁷
- 2.46** When asked what he believed motivated Infrastructure NSW's perceived bias towards Aqualand and its commercial interests, Mr Grollo told the committee that he could not be clear on what was the cause of these decisions.⁹⁸ However, reflections were made in Grocon's submission on the personal relationship between the then Premier, the Hon Gladys Berejiklian MP and the Chairman of Aqualand, the Hon Warwick Smith AO.⁹⁹
- 2.47** During the inquiry, Grocon also questioned Mr Robertson's departure from Infrastructure NSW in November 2019 and subsequent professional relationship with Aqualand through his consultancy business.¹⁰⁰

⁹³ Evidence, Mr Grollo, 11 November 2022, p 10.

⁹⁴ Submission 10, Grocon, p 16.

⁹⁵ Submission 10, Grocon, pp 16-18.

⁹⁶ Submission 10, Grocon, pp 15-16.

⁹⁷ Submission 10, Grocon, p 15-16.

⁹⁸ Evidence, Mr Grollo, 11 November 2022, p 11.

⁹⁹ Submission 10, Grocon, p 21.

¹⁰⁰ Submission 10, Grocon, pp 19-21.

- 2.48 To this, Mr Robertson confirmed to the committee that his business had provided consulting services to Aqualand from approximately March 2020. Additionally, Mr Robertson explained that he had advised Mr Draper of this arrangement and that Mr Draper 'did not see that there was any conflict' in Aqualand entering into a contract with Mr Robertson's business.¹⁰¹
- 2.49 For Grocon, all of this points to Infrastructure NSW having had a preference for Aqualand to be the developer of Central Barangaroo and having taken steps to ensure this occurred. It is this claim that has formed the basis of Grocon's ongoing efforts to seek compensation for its loss of opportunity in the Central Barangaroo development and its subsequent financial impact.¹⁰²

Infrastructure NSW's perspective

- 2.50 In response to Grocon, Infrastructure NSW shared with the committee its perspective on the various issues raised in relation to its ongoing dispute with Grocon. Essentially, Infrastructure NSW rejected the claims made by Grocon regarding misleading and deceptive conduct during the tender and development process. Further, Infrastructure NSW denied the claims that it was obligated to issue the sight lines notice to Grocon and disputed the assertion that Grocon suffered any financial loss because of its conduct. Rather, Infrastructure NSW argued that the Central Barangaroo development was not the cause of Grocon's financial issues and that Grocon had significant financial liabilities dating back to mid-2017.

Obligations around the issue of the Sight Lines Resolution Notice

- 2.51 While Grocon maintained that Infrastructure NSW had an obligation under the Central Barangaroo Development Agreement (CENDA) to provide the sight lines notice as soon as it was finalised, Infrastructure NSW disputed this, telling the committee that it did not have any such obligation to provide the sight lines notice to Grocon in August 2019, prior to Grocon's exit, or at all.
- 2.52 Further, Infrastructure NSW argued that no notice could have been issued before the resolution of the negotiations with Lendlease and Crown had concluded. Infrastructure NSW contended that by the time these negotiations had concluded, Grocon was not asking to be provided with the sight lines notice, but was rather asking Infrastructure NSW for assistance in selling its development rights to Aqualand.¹⁰³
- 2.53 The committee heard from Mr Simon Draper, CEO, Infrastructure NSW, who gave evidence that the CENDA 'expressly allowed for negotiations with Lendlease and Crown to take until January 2020, and the negotiations were resolved within that time frame'.¹⁰⁴
- 2.54 With respect to Grocon's concerns that the sight lines notice was issued to Aqualand the day after the sale of Grocon's development rights, Mr Draper told the committee that, while Infrastructure NSW had no obligation to issue the notice to Grocon or Aqualand, it deemed it

¹⁰¹ Evidence, Mr Tim Robertson, Former Executive Director, Infrastructure NSW, 11 November 2022, p 48.

¹⁰² Submission 10, Grocon, p 3 and p 19-20.

¹⁰³ Evidence, Mr Simon Draper, CEO, Infrastructure NSW, 11 November 2022, p 56.

¹⁰⁴ Evidence, Mr Simon Draper, CEO, Infrastructure NSW, 11 November 2022, p 56.

worthwhile to do so at that point because it became 'productive' for the notice to be provided to a developer who is 'capable of undertaking those expenditures'.¹⁰⁵

- 2.55 Further, it was described as a 'discretionary decision' to provide the notice to Aqualand at a time when it 'could have done something with it and had the financial capability and will to proceed with the development'.¹⁰⁶

Grocon's financial position

- 2.56 Following on, Infrastructure NSW rejected the argument made by Grocon that if it had been in receipt of the sight lines notice, Grocon would have remained financially solvent and able to successfully commence development at Central Barangaroo. Infrastructure NSW asserted that Grocon's financial position would not have supported the development and that is why Grocon was seeking to exit.¹⁰⁷

- 2.57 According to Mr Draper, the sight lines notice would have necessitated immediate obligations which he did not believe Grocon was capable of meeting based on its financial position:

A sightlines notice, when issued, is not a gift to a developer. It imposed immediate obligations on the developer to incur additional costs within defined time frames—something which Grocon was in no position to do because of its financial situation.¹⁰⁸

- 2.58 Infrastructure NSW argued that from early 2019 onwards, Grocon was attempting to sell its development rights to Aqualand in large part due to its poor financial standing. Infrastructure NSW claimed that the sale of the rights was initiated by Grocon, and Infrastructure NSW merely took steps to assist the transaction. Further, Infrastructure NSW claimed that Grocon had likely been insolvent for over 18 months prior to its exit from Central Barangaroo.¹⁰⁹

- 2.59 Infrastructure NSW contested Grocon's evidence that its exit from the Central Barangaroo development was responsible for its financial issues. Infrastructure NSW told the committee that instead Grocon's departure, through the sale of its development rights to Aqualand, was a decision initiated by Grocon. Infrastructure NSW rejected the claim that it took steps to ensure Grocon sold its rights for a discounted price resulting in Grocon's financial position becoming unrecoverable.¹¹⁰

- 2.60 Further, Infrastructure NSW maintained that Grocon was already experiencing financial difficulty and it was these pre-existing issues that motivated Grocon's departure from the development and ultimately caused its voluntary administration. The committee heard that the administrators appointed by Grocon in November 2020 found that Grocon was 'unable to pay its debts and had likely been insolvent for over 18 months – well before its exit from Central Barangaroo'.¹¹¹

¹⁰⁵ Evidence, Mr Draper, 11 November 2022, p 58.

¹⁰⁶ Evidence, Mr Draper, 11 November 2022, p 57.

¹⁰⁷ Evidence, Mr Draper, 11 November 2022, p 56.

¹⁰⁸ Evidence, Mr Draper, 11 November 2022, p 56.

¹⁰⁹ Evidence, Mr Draper, 11 November 2022, p 56.

¹¹⁰ Evidence, Mr Robertson, 11 November 2022, p 48, Evidence, Mr Draper, 11 November 2022, p 57.

¹¹¹ Evidence, Mr Draper, 11 November 2022, pp 56-57.

- 2.61** The committee also heard from Infrastructure NSW that in 2020, the Supreme Court noted the existence of 'liabilities unrelated to Central Barangaroo and that Grocon's financial difficulties dated back to as early as mid-2017'.¹¹²
- 2.62** Additionally, Infrastructure NSW stated that 'Grocon was unable to convince the court that the Central Barangaroo project materially contributed to its financial issues'. Rather, it was determined during a costs application in the Supreme Court in 2020, that Grocon actually profited from its involvement in Central Barangaroo.¹¹³
- The sale of Grocon's development rights to Aqualand*
- 2.63** Infrastructure NSW strongly disputed claims made by Grocon that it forced Grocon out of the development due to a preference for Aqualand to become the primary developer. Infrastructure NSW argued that it behaved in a 'commercially neutral' way, and maintained that Grocon was seeking to exit the development due to its financial position.¹¹⁴
- 2.64** Infrastructure NSW told the committee that in early 2019, Grocon proposed to transfer its interests as a developer to Aqualand. However, this transaction was not finalised as Scentre, Grocon's consortium partner engaged to deliver the retail space in Central Barangaroo, did not consent to the transaction.¹¹⁵
- 2.65** Infrastructure NSW asserted that following the failure of this transaction, Grocon entered into a further transaction in July 2019 to sell its development rights to Aqualand. Infrastructure NSW advised that this was reported in the Australian Financial Review on 25 July 2019.¹¹⁶
- 2.66** In evidence to the committee, Infrastructure NSW declared that it was helpful and supportive to Grocon, referring to Grocon's request for Infrastructure NSW to provide a waiver letter as part of the July 2019 Aqualand transaction. Infrastructure NSW stated that this letter would have the effect of protecting Aqualand, as the purchaser of the development rights, from the consequences of a possible default under the CENDA.¹¹⁷ As stated by Mr Draper: 'I don't think the BDA prior to my time or Infrastructure NSW during the time I was there could've been any more helpful to Grocon'.¹¹⁸
- 2.67** The committee heard that the sale of Grocon's development rights to Aqualand was its third attempt to sell its development rights and was 'in the context of its well-publicised financial difficulties on other projects'. Infrastructure NSW told the committee that this sale was 'initiated and pursued by Grocon', and vehemently rejected the claim Infrastructure NSW had arranged a concerted effort to force Grocon out of the development.¹¹⁹

¹¹² Evidence, Mr Draper, 11 November 2022, p 56.

¹¹³ Evidence, Mr Draper, 11 November 2022, p 56.

¹¹⁴ Evidence, Mr Draper, 11 November 2022, p 58.

¹¹⁵ Submission 14, Infrastructure NSW, p 5.

¹¹⁶ Submission 14, Infrastructure NSW, p 5.

¹¹⁷ Submission 14, Infrastructure NSW, pp 5-6.

¹¹⁸ Evidence, Mr Draper, 11 November 2022, p 58.

¹¹⁹ Evidence, Mr Draper, 11 November 2022, p 58.

- 2.68** Evidence was also received from Mr Tim Robertson, former Executive Director, Infrastructure NSW, responding to allegations made by Mr Grollo regarding his conduct when Grocon's development rights were being sold to Aqualand. As noted earlier, Mr Grollo alleged that Mr Robertson engaged in dishonest conduct as part of a broader effort to force Grocon out of the development. However, Mr Robertson emphatically denied these allegations and insisted that the sale transaction was initiated by Grocon. Further, Mr Robertson maintained that the claims the transaction had occurred behind Mr Grollo's back are false.¹²⁰
- 2.69** Mr Robertson told the committee that there was no broader strategy on the part of Infrastructure NSW to force Grocon out of the development and bring Aqualand in. Rather, Infrastructure NSW provided support to Grocon in its efforts to sell its development rights. Mr Robertson explained that the decision to undertake this sale was entirely a commercial transaction between two parties, being Grocon and Aqualand.¹²¹
- 2.70** Further, Mr Robertson told the committee that Infrastructure NSW was only involved to the extent of establishing what conditions it would enforce for this transaction, in particular, if Infrastructure NSW would enforce the reliance on parent company guarantors if Aqualand were to purchase the development rights from Grocon.¹²²
- 2.71** Additionally, Mr Robertson argued that when Grocon was seeking to finalise the sale of the development rights to Aqualand, there was an ongoing risk that a number of Grocon's creditors, including Oxford Properties, could enforce its debts and trigger an insolvency event for Grocon. This would have 'led to a default in the developer, a collapse in the project and the exit of Grocon for no consideration'.¹²³ Seeking to avoid this outcome, Mr Robertson expressed the position and actions of Infrastructure NSW during this period:
- ...our focus at the time was trying to manage and stabilise the consortium in a way that allowed the project to move forward, and, under the proposal that was put to us by Grocon and Aqualand, allowed for the consideration of \$75 million to go to Grocon so it didn't walk out of the project empty handed, which would have been the case had Oxford called on their debt at any time from January right through to September.¹²⁴
- 2.72** Mr Robertson characterised the conduct of Infrastructure NSW at that time as an effort to maintain and ensure the public interest of the Central Barangaroo development proceeding. He stated that Infrastructure NSW did this by approving the Grocon initiated sale of its development rights to Aqualand, waiving its reliance on parent company guarantors and ensuring that the development could proceed with a partner that was able to support it.¹²⁵

¹²⁰ Evidence, Mr Robertson, 11 November 2022, pp 43-44.

¹²¹ Evidence, Mr Robertson, 11 November 2022, pp 45-46.

¹²² Evidence, Mr Robertson, 11 November 2022, pp 43-44.

¹²³ Evidence, Mr Robertson, 11 November 2022, p 44.

¹²⁴ Evidence, Mr Robertson, 11 November 2022, p 44.

¹²⁵ Evidence, Mr Robertson, 11 November 2022, pp 42-44.

Committee comment

- 2.73** The development of the Barangaroo precinct has been many, many years in the making, with negotiations over the sight lines from this significant site featuring heavily in its slow and troubled progress. This inquiry has served to highlight the spectacle of these negotiations over the Barangaroo sight lines and the government's hand at them.
- 2.74** For example, the committee is of the view that former Premier Mr Mike Baird did not exercise due diligence when negotiating what contractual rights Crown and Lendlease would have to the Barangaroo sight lines. Mr Baird met with Mr Packer in January 2015, three months prior to when the provisions in the development agreements giving Crown and Lendlease contractual rights to the sight lines came into existence.
- 2.75** The lack of clarity and certainty in these provisions was a key factor in the lengthy litigation between the Barangaroo Development Authority (BDA), Crown and Lendlease. This litigation ultimately resulted in the Supreme Court finding that the BDA had breached its contractual obligations regarding the sight lines, as well as having a subsequent impact on the status and progress of the Central Barangaroo development.

Finding 1

That former Premier Mr Mike Baird did not exercise due diligence when negotiating what contractual rights Crown and Lendlease would have to the Barangaroo sight lines and that the lack of clarity and certainty in these contractual provisions was a key factor in the lengthy litigation between the Barangaroo Development Authority, Crown and Lendlease.

- 2.76** It is also clear to the committee from the evidence received that Infrastructure NSW, and previously the BDA, did not adequately consider the significant consequences that would arise from a wholesale reconceptualisation of Central Barangaroo. Specifically, the government had failed to anticipate the full extent of impact on the precinct, and in particular, on Barangaroo South, when it was announced that a Sydney Metro station would be located at Barangaroo.
- 2.77** In the committee's view, it is this failure to account for the consequences on the rights of Lendlease and Crown to the sight lines, as per its respective agreements with the BDA, that has led to a number of ongoing issues for the government. In particular, it was the lack of consideration for how Grocon's proposed Central Barangaroo development would interfere with Lendlease and Crown's rights to the sight lines that led to the 2018 Supreme Court proceedings which ultimately resulted in a ruling that the BDA had indeed breached its contractual obligations to Lendlease and Crown.

Finding 2

That Infrastructure NSW had failed to anticipate the significant ramifications of undertaking a reconceptualisation of Central Barangaroo in 2015, including the decision to locate a Sydney Metro station in the precinct.

- 2.78** The committee is also deeply troubled by the evidence it received in relation to the Deed of Sight Lines Resolution. This agreement, which was not in the public domain until November 2022 despite being made in August 2019, effectively represents a secret settlement between Infrastructure NSW, Lendlease and Crown over the sight lines. The lack of transparency by the government in arriving at this resolution is highly concerning. The committee is also not convinced by evidence that it was necessary to reach such an agreement to avoid a costly damages claim. Rather, the committee is of the belief that a transparent package of financial compensation would have been more appropriate for Infrastructure NSW to agree to.
- 2.79** Moreover, the committee is disturbed by the various development bonuses that were provided to Lendlease as part of the sight lines resolution. One such bonus includes an additional 8,000 square metres of development floor space granted to Lendlease by Infrastructure NSW. Not only were these bonuses agreed to in a private negotiations process, but they were done so at the expense of potentially exposing the NSW Government to a conflict of interest.
- 2.80** In this context, the NSW Government has effectively made development commitments to Lendlease on the one hand, and on the other, serves as the consent authority assessing the development applications made by Lendlease seeking to actualise the relevant commitments. On its face, this arrangement raises serious concerns about the ability of these developments to be assessed by the consent authority in an independent and appropriate manner.
- 2.81** With lessons learned, the committee believes that the approach taken in the dispute between Lendlease and Crown, and Infrastructure NSW should be avoided in future. Instead attempts should be made to resolve similar issues through a transparent package of financial compensation.
-

Finding 3

That the NSW Government exposed itself to a potential conflict of interest when it committed to providing development bonuses to Lendlease as a means of settling the sight lines dispute, despite being the consent authority over development applications that would seek to actualise these commitments.

Recommendation 1

That the NSW Government engage in resolution processes for development disputes that seek to arrive at a transparent package of financial compensation rather than development bonuses.

- 2.82 With respect to the redevelopment of Central Barangaroo, the committee acknowledges the breadth of evidence received particularly in relation to the dispute between Grocon and Infrastructure NSW. The committee recognises this evidence is contested and has drawn its conclusions based on consideration of the arguments put before us.
- 2.83 It must be said that the current status of the Central Barangaroo development presents a disappointing outcome for the community. As it stands, the development is comprised largely of a hole in the ground, with the overarching vision of the Barangaroo redevelopment and its public utility yet to be realised – and perhaps not for many years to come.
- 2.84 To the committee, the ongoing litigation between Grocon and Infrastructure NSW is an unfortunate reflection of the problems that appear to have riddled the Barangaroo redevelopment from the outset. Changing goal posts during the redevelopment meant that a reconceptualised Central Barangaroo had far reaching consequences for both the developers of Barangaroo South and Central Barangaroo which the government had failed to consider.
- 2.85 The committee is of the view that the sight lines had effectively been guaranteed to both Lendlease and Crown, and again later to Grocon and subsequently Aqualand. It is this issue that triggered the initial sight lines dispute between Infrastructure NSW and Lendlease and Crown, and has continued to impact the development at Central Barangaroo.
- 2.86 The committee therefore considers that Infrastructure NSW did not adequately consider nor appropriately address the significant impact of the sight lines dispute with Lendlease and Crown on the Central Barangaroo development.

Finding 4

That Infrastructure NSW did not adequately consider nor appropriately address the significant impact of the sight lines dispute with Lendlease and Crown on the Central Barangaroo development.

- 2.87 The committee acknowledges the perspectives of both Grocon and Infrastructure NSW as presented during the inquiry. While the committee is not convinced that there was a personal vendetta to push Grocon out of the Central Barangaroo development, it is of the view that Infrastructure NSW took an overly interventionist approach to bring Aqualand into the development.
- 2.88 The committee also believes that Grocon was treated unfairly by Infrastructure NSW. Infrastructure NSW was not transparent and forthcoming in providing information to Grocon about the sight lines resolution.
- 2.89 Indeed, the evidence suggests that Grocon's expectations were consistently raised to anticipate the sight lines resolution notice. This notice would give Grocon certainty in terms of the development envelope and how it could proceed. However, the sight lines resolution never came and Grocon was placed in an untenable position.

- 2.90** The notice was issued instead to Aqualand the very day after Grocon sold its development rights. Whether intended or not, one might argue that this action at the very least suggests some favour towards Aqualand.
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Finding 5

That Infrastructure NSW treated Grocon unfairly and was not transparent and forthcoming in providing information to Grocon, particularly about the sight lines resolution.

- 2.91** The committee was also troubled by the evidence that Infrastructure NSW executives were negotiating with representatives of Aqualand and Oxford at a time when it had no contractual relationship with either entity. It does appear to the committee that Grocon was kept in the dark during this period and was unaware of the extent to which Infrastructure NSW had become involved in Aqualand's acquisition of Grocon's development rights.
- 2.92** To the committee, what all of these events demonstrate is a classic case of the government's folly in not staying at an arms-length from these kinds of negotiations. It is critical that the government of the day remains commercially neutral, and not take an overly interventionist approach, as has clearly been the case here.
-

Finding 6

That the dispute between Grocon and Infrastructure NSW demonstrates the failure of an overly interventionist approach by government to commercial dealings.

- 2.93** Based on the evidence to this inquiry, it appears to the committee that Infrastructure NSW had decided on a winner – Aqualand – and facilitated its entrance into the development at the expense of Grocon. Notably, the committee does not consider this strategy to have been particularly successful, given that Infrastructure NSW is currently subject to a compensation claim brought by Grocon, and there remains no significant progress at Central Barangaroo.
-

Finding 7

That:

- Infrastructure NSW facilitated the entrance of Aqualand into the development of Central Barangaroo at the expense of Grocon
 - the interventionist approach taken by Infrastructure NSW in the development of Central Barangaroo has been unsuccessful given the ongoing legal action being taken against it and the lack of any significant development progress in the precinct.
-

- 2.94** Separately, the committee expresses serious concerns over evidence that a consulting business established by former Infrastructure NSW executive, Mr Tim Robertson, after he left Infrastructure NSW, was engaged by Aqualand on a contractual basis in 2020. The committee considers this commercial relationship to give rise to a perception of potential conflict of
-

interest, particularly in the context of what appears to be preferential treatment of Aqualand in the development of Central Barangaroo.

- 2.95** This conduct raises potential probity concerns regarding senior public servants going on to have a commercial relationship with entities they dealt with when working for the NSW Government. The committee therefore recommends that any guidelines governing post-separation employment for senior public servants be reviewed with a view to ensuring these kinds of real or perceived conflicts are appropriately managed.

Finding 8

That the commercial relationship between former Infrastructure NSW executive, Mr Tim Robertson, and Aqualand gives rise to the appearance of a conflict of interest, whether real or perceived.

Recommendation 2

That the NSW Government review any guidelines governing post-separation employment for senior public servants to ensure that any conflicts of interest, whether real or perceived, are appropriately managed.

Chapter 3 Heritage and community concerns regarding the Barangaroo sight lines

This chapter sets out issues relating to the heritage value of the Barangaroo sight lines, and the impact the Barangaroo redevelopment has had on these sight lines. Further, this chapter examines how the most recent development proposal at Central Barangaroo, known as Modification 9, would impact the sight lines and refers to the significant community concern regarding the scope of this proposed development.

Heritage concerns regarding the Barangaroo sight lines

- 3.1** This section outlines the evidence received regarding the general heritage value of the Barangaroo sight lines and the importance of considering the preservation of views like these in the context of any future development. It then considers the various concerns raised by stakeholders over the potential heritage impact of the Central Barangaroo development, as well as possible reform to protect the heritage value of the sight lines moving forward.

The significance of sight lines to the heritage value of Barangaroo

- 3.2** In its submission to the inquiry, the Heritage Council of NSW explained why sight lines and 'historic views' more generally are an important part of the heritage value in a city. The Heritage Council said that sight lines are often 'integral to the understanding and appreciation' of heritage locations, especially considering that these heritage locations or items are often 'deliberately designed and strategically located to be seen from important public places'.¹²⁶
- 3.3** The Heritage Council went on to explain this significance in the context of Barangaroo, noting that there are a number of heritage sites in the surrounding area that are 'intrinsicly linked to harbour sight lines'. These sites include the State heritage listed Warehouses, Millers Point, Dawes Point Village Precinct and the Sydney Observatory.¹²⁷
- 3.4** When describing the heritage value of the Millers Point and Dawes Point Precinct, it was noted that these areas are a 'rare maritime harbourside precinct'. Further, it was explained that this area represents the historically significant connection between Millers Point and the waterfront. When summarising this connection and reflecting on the significance of Millers Point, the Heritage Council said that:

Its rows of terrace houses, specifically constructed for its dockside workers, laneways, and streets, have retained the ability to demonstrate that way of life through both its physical and visual connection to the harbour.¹²⁸

- 3.5** Additionally, the heritage significance of Observatory Hill was emphasised to the committee, with the Heritage Council explaining its importance to First Nations pre-settlement, early colonists and modern-Sydney. It was also noted that the Sydney Observatory is an example of

¹²⁶ Submission 3, Heritage Council of NSW, pp 1-2.

¹²⁷ Submission 3, Heritage Council of NSW, p 2.

¹²⁸ Submission 3, Heritage Council of NSW, p 2.

a 'purpose-built' observatory structure which ensures the views of Observatory Hill can be enjoyed and maximised by the public.¹²⁹

- 3.6** The significant heritage value of these areas was reiterated by the Millers Point Resident Action Group, who stressed that the preservation of the sight lines and the community's ability to enjoy these views is of significant public interest. They explained that the views of Sydney Harbour are central to the heritage value of these locations and should be actively protected.¹³⁰
- 3.7** The committee heard about the 'uniqueness' of the Sydney harbour foreshore, with stakeholders referring to the harbour views as well as the other heritage elements, including the terrace houses at Millers Point.¹³¹
- 3.8** Stakeholders also drew the committee's attention to the fact that the heritage value of the area, of which the sight lines are an integral part, is important to Sydney's standing as an international destination for tourists. They referred to the many visitors that attend Sydney Observatory, as well as other destinations in the Millers Point and Observatory Hill area, to enjoy the views and the related history of the precinct.¹³²

Concerns over the impact of the Barangaroo redevelopment

- 3.9** Additionally, the committee heard from some stakeholders who expressed significant concern that the heritage value of the sight lines has been disregarded during the Barangaroo redevelopment project.
- 3.10** Mr Frank Howarth AM PSM, Chair of the Heritage Council, raised particular concerns about the 'incrementalism' of the Barangaroo redevelopment. Mr Howarth explained that the increasing floor space and height limit requirements for the development had led to a 'gradual eating away of the heritage values through vistas'.¹³³
- 3.11** Specifically, Mr Howarth referred to the lost heritage value of 'Hungry Mile', which was the historical name given to the docklands area in Darling Harbour East by harbourside workers. Mr Howarth told the committee that the heritage value of the docklands in that area had already been lost as part of the original Barangaroo development and that their value was not adequately recognised or protected during development.¹³⁴
- 3.12** The committee also heard from the Member for Sydney, Mr Alex Greenwich MP, who stated that the Crown Tower at Barangaroo South has now blocked the view of important constellations from Observatory Hill.¹³⁵

¹²⁹ Submission 3, Heritage Council of NSW, p 2.

¹³⁰ Submission 5, Millers Point Community Resident Action Group, p 1.

¹³¹ Evidence, Dr Judy Hyde, Submissions Officer, Highgate Owners Corporation, 1 November 2022, p 11.

¹³² Submission 4, Highgate Owners Corporation, p 20, Submission 5, Millers Point Community Resident Action Group, p 37.

¹³³ Evidence, Mr Frank Howarth AM PSM, Chair, Heritage Council of NSW, 1 November 2022, p 11.

¹³⁴ Evidence, Mr Howarth AM PSM, 1 November 2022, p 11.

¹³⁵ Evidence, Mr Alex Greenwich MP, Member for Sydney, 1 November 2022, p 15.

- 3.13 Stakeholders pointed to this loss of heritage value from the existing developments in Barangaroo as evidence of the need to ensure that any future development at Central Barangaroo does not have the same impact.¹³⁶

Potential reform to protect the heritage value of sight lines

- 3.14 As noted above, the committee heard evidence regarding the important connection between the heritage value of a city and its sight lines, with some stakeholders arguing that the heritage value of the Sydney Harbour sight lines has not been sufficiently protected during the Barangaroo redevelopment process.
- 3.15 To address these concerns, the committee heard evidence from the Heritage Council about mechanisms available to the NSW Government that would better protect sight lines in the context of any future development and ensure that their heritage value is maintained.¹³⁷
- 3.16 In its submission, the Heritage Council stated that it has been actively considering the 'need to document and provide guidance to help safeguard strategic views in Sydney'. This would include the identification of significant views, as well as the development of guidelines and key principles which would seek to 'help protect and strengthen those views'.¹³⁸
- 3.17 The Heritage Council referred to the *London Plan*, which is a spatial development strategy that sets out how important views in London will be strengthened and protected. The plan is supported by the *London View Management Framework*, which provides 'detailed advice on specific views with the intention of helping preserve London's character and built heritage'.¹³⁹
- 3.18 Mr Howarth told the committee that this approach of identifying key views and developing principals to ensure they are protected may be an effective means of enabling a 'vibrant developing city', while also ensuring the heritage value of sight lines are not diminished.¹⁴⁰
- 3.19 In terms of how this could be done, Mr Howarth recommended building a view management framework, including supporting planning controls in planning instruments themselves. He explained that embedding these principles in existing planning controls and legislation, rather than the *Heritage Act 1977*, may be a 'better answer' for implementing a view management framework.¹⁴¹
- 3.20 Mr Howarth told the committee that there are already adequate powers in the *Environmental Planning and Assessment Act 1979* to protect sight lines and noted that this is how the London View Management Framework has been established.¹⁴²

¹³⁶ Evidence, Mr Greenwich MP, 1 November 2022, p 15, Submission 5, Millers Point Community Resident Action Group, p 15.

¹³⁷ Submission 3, Heritage Council of NSW, p 3.

¹³⁸ Submission 3, Heritage Council of NSW, p 3.

¹³⁹ Submission 3, Heritage Council of NSW, p 3.

¹⁴⁰ Evidence, Mr Howarth AM PSM, 1 November 2022, p 12.

¹⁴¹ Evidence, Mr Howarth AM PSM, 1 November 2022, p 10.

¹⁴² Evidence, Mr Howarth AM PSM, 1 November 2022, p 10.

Impact of proposed Modification 9

3.21 As discussed in chapter 1, an application to amend the Barangaroo Concept Plan, known as Modification 9 (Mod 9), was lodged with the Department of Planning and Environment for approval in 2019.¹⁴³ This section outlines the nature of the proposed modification, concerns raised by the community in response and the current status of the application.

Modification 9

3.22 According to Infrastructure NSW, Mod 9 seeks to amend the 'permissible development envelopes' of Blocks 5, 6 and 7 in Central Barangaroo in order to facilitate the development proposed by the Central Barangaroo developer, Aqualand.¹⁴⁴

3.23 When describing what Mod 9 would involve, the Member for Sydney, Mr Alex Greenwich MP, explained that it initially proposed an additional 144,355 square metres of floor space area. It would also involve another tower being built on the waterfront which would obstruct the views from Observatory Hill and Millers Point.¹⁴⁵

3.24 Further, Mr Bernard Kelly, President, Millers Point Community Resident Action Group, reported that while Mod 9 had been framed by Infrastructure NSW as an 'incremental increase in building heights and density', it in fact represents a 24 percent increase in floor space for Block 5 and a 33 per cent increase in floor space for Block 6.¹⁴⁶

Community concerns over the scope of the modification

3.25 The committee heard from a number of stakeholders who strongly criticised the proposals contained in Mod 9.¹⁴⁷ For example, Mr Kelly described Mod 9 as a 'complete abrogation of the heritage and cultural responsibilities of Infrastructure NSW towards Millers Point, Sydney Harbour and Observatory Hill'.¹⁴⁸

3.26 This argument was reiterated by Mr Greenwich MP, who told the committee that 'Modification 9 shows utter disregard for our iconic harbour, the heritage neighborhood, astronomy, public green open space and good planning principles'.¹⁴⁹

3.27 City of Sydney and Lord Mayor Clover Moore also shared in the opposition to Mod 9. In her submission, the Lord Mayor outlined a number of concerns that had been identified through a review undertaken by the Council and via community feedback. These concerns included:

¹⁴³ Submission 14, Infrastructure NSW, p 6.

¹⁴⁴ Submission 14, Infrastructure NSW, p 6.

¹⁴⁵ Evidence, Mr Greenwich MP, 1 November 2022, p 15

¹⁴⁶ Evidence, Mr Bernard Kelly, President, Millers Point Community Resident Action Group, 1 November 2022, p 16.

¹⁴⁷ Submission 11, Cllr Clover Moore, the Lord Mayor of Sydney, p 2, Submission 15, Mr Alex Greenwich MP, Member for Sydney, p 1, Submission 5, Highgate Owners Corporation, p 1.

¹⁴⁸ Evidence, Mr Kelly, 1 November 2022, p 16.

¹⁴⁹ Submission 15, Mr Alex Greenwich MP, p 1.

- 'Unacceptable view impacts to and from Millers Point and Observatory Hill heritage sites
- Increased height, scale and residential floor space
- The reduction and overshadowing of Hickson Park
- Conservation of Hickson Road wall and steps
- The quality, location and amenity of the proposed public open spaces'.¹⁵⁰

3.28 Additionally, the Lord Mayor stressed that a number of significant sight lines and important views would be eroded as a result of this modification, including views between:

- 'Observatory Hill Park and Sydney Harbour
- The heritage Millers Point Conservation Area and Sydney Harbour
- Darling Harbour and Observatory Hill
- Darling Harbour and the Sydney Harbour Bridge
- Pyrmont and Observatory Hill
- Pyrmont and the Sydney Harbour Bridge
- Observatory Hill and the sky
- The Stargazer Lawn and the sky
- Wulgul Walk and the city skyline'.¹⁵¹

3.29 Stakeholders argued that Mod 9 should not go ahead, and any development at Central Barangaroo should be required to uphold the heritage value of the area and provide significant public amenity.¹⁵²

Current status of Modification 9

3.30 As noted in chapter 1, media reports in October 2022 indicated that that the Minister for Planning, the Hon Anthony Roberts MP, would reject Modification 9. This would have the effect of requiring Aqualand to significantly alter the current proposal in order for it to be approved.¹⁵³

¹⁵⁰ Submission 11, Cllr Clover Moore, the Lord Mayor of Sydney, p 2.

¹⁵¹ Submission 11, Cllr Clover Moore, the Lord Mayor of Sydney, p 2.

¹⁵² Submission 11, Cllr Clover Moore, the Lord Mayor of Sydney, p 2, Submission 15, Mr Alex Greenwich MP, p 1.

¹⁵³ Sydney Morning Herald, *Planning minister kills proposal for new tower at Barangaroo's missing link*, Michael Koziol, 8 October 2022.

3.31 The media reports quoted Minister Roberts as stating:

I would expect any proposal on a scale such as this, potentially impacting public space, to provide substantial social, economic and environmental benefits to offset the loss to the community...Right now, I believe this proposal cannot achieve those benefits.¹⁵⁴

3.32 In response to this reporting, a representative of Aqualand was quoted as saying that: 'We look forward to working with the government to find the most appropriate way forward to deliver an outstanding outcome for Central Barangaroo'.¹⁵⁵**Committee comment****3.33** It is clear to the committee that the Barangaroo sight lines hold significant cultural and heritage value. The sightlines are an important part of Sydney's unique foreshore and are inherently connected to the harbour's history. Moreover, the sightlines have significant public amenity, and efforts should be taken to protect and preserve these sightlines for the community to enjoy.**3.34** More broadly, the committee is supportive of the Heritage Council's proposal that a view management framework be developed to better identify and protect significant sight lines in New South Wales. The committee therefore recommends that the NSW Government, in consultation with the Heritage Council of NSW, develop a view management strategy that effectively identifies and preserves sight lines in the Millers and Dawes Point precincts that are of significant cultural or heritage value to New South Wales, and ensures that these views are considered in the context of any major redevelopment project.

Finding 9

That the Barangaroo sight lines have significant cultural and heritage value which must be preserved and protected.

Recommendation 3

That the NSW Government, in consultation with the Heritage Council of NSW, develop a view management strategy that effectively identifies and preserves sight lines in the Millers and Dawes Point precincts that are of significant cultural or heritage value to New South Wales, and ensures that these views are considered in the context of any major redevelopment project.

3.35 With regard to Modification 9, the committee shares the view that the proposed modification poses a significant and unacceptable risk to the heritage and cultural value of the Barangaroo sight lines due its size and scope. To this end, the committee recommends that the NSW

¹⁵⁴ Sydney Morning Herald, *Planning minister kills proposal for new tower at Barangaroo's missing link*, Michael Koziol, 8 October 2022.

¹⁵⁵ Sydney Morning Herald, *Planning minister kills proposal for new tower at Barangaroo's missing link*, Michael Koziol, 8 October 2022.

Government reject Modification 9. The committee is supportive of the Minister's reflections that such a development could not provide the range of benefits expected by the community.

- 3.36** However, the committee also notes with concern the fact that, at the time of writing, there has been no clear indication of what the Central Barangaroo development will involve. This committee considers this a reflection of the government's failure to bring to life the public amenity that was envisioned for Central Barangaroo and the Barangaroo redevelopment more broadly.

Finding 10

That Modification 9 proposes an unacceptable increase in the height and development footprint of developments within Central Barangaroo, adversely impacting on the Barangaroo sight lines and the public amenity of precinct.

Recommendation 4

That the NSW Government reject Modification 9 and ensure that the redevelopment of Central Barangaroo remains small in scope so as not to cause significant obstructions to the Barangaroo sight lines.

Appendix 1 Submissions

No.	Author
1	Name suppressed
2	Name suppressed
3	Heritage Council of NSW
4	Highgate Owners Corporation SP49822
5	Millers Point Community Resident Action Group
6	Mr Martin Barkl
7	Ms Linda Bergin OAM
8	The Langham, Sydney
9	Lendlease Group
10	Grocon
11	Clover Moore
12	Friends of Sydney Harbour (FOSH)
13	Crown Sydney
14	Infrastructure NSW
15	Mr Alex Greenwich
16	Ms Christina Ritchie

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Tuesday 1 November 2022 Macquarie Room Parliament House, Sydney	Mr Karl Bitar	Private individual
	Mr Frank Howarth AM PSM	Chair, Heritage Council of NSW
	Ms Lucy Langley	Associate (GYDE Consulting), The Langham Sydney
	Ms Nell O'Brien	Project Planner (GYDE Consulting), The Langham Sydney
	Mr Harold Kerr	Chair, Highgate Owners Corporation
	Mr Bernard Kelly	President, Millers Point Community Resident Action Group
	Mr John McNerney	Member of Executive Committee, Millers Point Community Resident Action Group
	Mr Alex Greenwich MP	Member for Sydney
Friday 11 November 2022 Macquarie Room Parliament House, Sydney	Mr Tom Mackellar	Managing Director, Development Australia, Lendlease Group
	Mr Daniel Grollo	Chief Executive Officer, Grocon
	Mr Tim Reardon	Former Secretary, Department of Premier and Cabinet
	Mr Michael Pratt	Former Secretary, NSW Treasury
	Mr Mike Baird	Former Premier of NSW
	Mr Bay Warburton	Former Chief of Staff to Mr Mike Baird
	Mr Tim Robertson	Former Executive Director, Strategy and Operations, Barangaroo Delivery Authority/ Infrastructure NSW
	Mr Simon Draper	Chief Executive, Barangaroo Delivery Authority/ Infrastructure NSW
	Mr Mark Arbib	Former Executive, Consolidated Press Holdings Pty Ltd
Thursday 1 December 2022 Dixson Room NSW State Library, Sydney	The Hon. Warwick Smith AO	Non-executive Chairman of AL Capital and Aqualand Australia

Appendix 3 Minutes

Minutes no. 1

Wednesday 31 August 2022

Select Committee on Barangaroo Sight Lines

Room 1136, Parliament House at 1.34 pm

1. Members present

Mr Latham, *Chair* (via videoconference)

Mr D'Adam, *Deputy Chair* (via videoconference)

Mr Amato

Ms Faehrmann

Mr Rath

Mr Searle

2. Apologies

Mr Mallard

3. Tabling of resolution establishing the committee

The committee noted the following resolution of the House establishing the committee, which reads as follows:

- (1) That a select committee be established to inquire into and report on Barangaroo sight lines.
- (2) That the select committee inquire into and report on:
 - a. any actual or perceived biases of the following parties involved in negotiations between the NSW Government, Lendlease, and Crown concerning Barangaroo sight lines:
 - i. the Office of the Premier,
 - ii. the offices of all responsible government ministers,
 - iii. the Chief Executive and Board of Infrastructure NSW,
 - iv. the Chief Executive and Board of the Barangaroo Delivery Authority,
 - v. any other person engaged in the negotiations on behalf of the NSW Government,
 - b. the probity of negotiations between the NSW Government, Lendlease, and Crown concerning the Barangaroo Sight Lines,
 - c. the integrity, efficacy and value for money of 'unsolicited proposals', including the 'unsolicited proposal' initiated by Crown Resorts Limited in relation to the Barangaroo development project,
 - d. any potential biases resulting in the preferential treatment of the commercial interests of one party over the other,
 - e. measures necessary to ensure the integrity of the Barangaroo Redevelopment project and similar projects in the future, and
 - f. any other related matter.
- (3) That the committee report by 20 December 2022.
- (4) That, notwithstanding anything to the contrary in the standing orders, the committee consist of seven members comprising:
 - a. three government members,
 - b. two opposition members, including Mr D'Adam, and
 - c. two crossbench members, including Mr Latham.
- (5) That the Chair of the committee be Mr Latham and the Deputy Chair be Mr D'Adam.
- (6) That, unless the committee decides otherwise:
 - a. submissions to the inquiry are to be published, subject to the Committee Clerk checking for

confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,

- b. the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
- c. the sequence of questions to be asked at hearings is to alternate between government, opposition and crossbench members, in order determined by the committee, with equal time allocated to each,
- d. transcripts of evidence taken at public hearings are to be published,
- e. supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness, and
- f. answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

4. Conduct of proceedings – media

Resolved, on the motion of Ms Faehrmann: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- the committee adopt the interim guidelines on the use of social media and electronic devices for committee proceedings, as developed by the Chair's Committee in May 2013 (attached)
- media statements on behalf of the committee be made only by the Chair.

5. Conduct of the inquiry into Barangaroo sight lines

5.1 Proposed timeline

Resolved, on the motion of Mr Searle: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close – Sunday 9 October 2022
- First hearing – Tuesday 1 November 2022
- Second hearing – Friday 11 November 2022
- Report deliberative – Friday 9 December 2022
- Table report – Friday 16 December 2022.

Resolved, on the motion of Mr Searle: That the closing date for submissions be 9 October 2022.

5.2 Stakeholder list

Resolved, on the motion of Mr Searle: That the following stakeholders be invited to make written submissions and that members have 48 hours to make any further suggestions via email to the secretariat:

- Office of the Premier
- Minister for Infrastructure
- Department of Premier and Cabinet
- Infrastructure NSW/ Barangaroo Delivery Authority
 - Head of agency
 - Board
- Lendlease
- Crown Resorts
- Grocon
- Aqualand

- Oxford Properties
- Millers Point Residents Action Group
- Mr Alex Greenwich MP, Member for Sydney
- Relevant law firms – Clayton Utz
- Mr Mike Baird, former Premier
- Mr Barry O'Farrell, former Premier

5.3 Approach to submissions

Resolved, on the motion of Mr Searle: That, to enable significant efficiencies for members and the secretariat while maintaining the integrity of how submissions are treated, in the event that 200 or more individual submissions are received, the committee may adopt the following approach to processing short submissions:

- All submissions from individuals 250 words or less in length will:
 - have an individual submission number, and be published with the author's name or as name suppressed, or kept confidential, according to the author's request
 - be reviewed by the secretariat for adverse mention and sensitive/identifying information, in accordance with practice
 - be channelled into one single document to be published on the inquiry website
- All other submissions will be processed and published as normal.

6. Adjournment

The committee adjourned at 1.38 pm, *sine die*.

Laura Ismay

Committee Clerk

Minutes no. 2

Thursday 20 October 2022

Select Committee on Barangaroo sight lines

Room 1043, Parliament House, 2.33 pm

1. Members present

Mr Latham, *Chair* (from 2.35pm)

Mr D'Adam, *Deputy Chair*

Mr Amato

Ms Faehrmann

Mr Mallard

Mr Rath

Mr Searle

2. Previous minutes

In the absence of the Chair, the Deputy Chair took the chair for the purposes of the meeting.

Resolved, on the motion of Mr Searle: That draft minutes no. 1 be confirmed.

3. Submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 3 to 16.

Resolved, on the motion of Ms Faehrmann: That the committee keep the following information confidential, as per the request of the author: names and identifying information in submissions nos. 1 and 2.

4. Hearing witnesses

The Chair resumed chair of the meeting.

Resolved, on the motion of Mr D'Adam: That the following witnesses be invited to give evidence at the public hearing:

Tuesday 1 November

- Hon Barry O'Farrell, former Premier of New South Wales
- Mr James Packer, former executive chairman of Crown Resorts
- Mr Alan Jones, radio broadcaster
- Mr Mike Baird, former Premier of New South Wales
- Mr Bay Warburton, former Chief of Staff to Premier Mike Baird
- Heritage Council of NSW
- The Langham Sydney
- Highgate Owners Corporation
- Millers Point Community Resident Action Group,
- Cr Clover Moore, Lord Mayor of Sydney
- Mr Alex Greenwich, Member for Sydney
- Mr John Robertson
- Mr Karl Bitar
- Mr Mark Arbib
- Professor Philip Thalys, Hill Thalys Architecture
- Hon Paul Keating, former Prime Minister of Australia

Friday 11 November

- Lendlease Group
- Grocon
- Mr Warwick Smith, Executive Chairman, Aqualand
- Mr David Matheson, Oxford Properties
- Mr Wayne Smith, Oxford Properties
- Mr Philip Paris, former Executive Director, Development and Precincts (Barangaroo), Infrastructure NSW
- Mr Tim Reardon, former Secretary, Department of Premier and Cabinet
- Mr Craig Van der Laan, former Chief Executive, Barangaroo Delivery Authority/ Infrastructure NSW
- Mr Simon Draper, Chief Executive, Barangaroo Delivery Authority/ Infrastructure NSW
- Mr Tim Robertson, former Executive Director, Strategy and Operations, Barangaroo Delivery Authority/ Infrastructure NSW
- Mr Mike Pratt, former Secretary, NSW Treasury

The committee noted that the secretariat should liaise with:

- Mr D'Adam regarding witnesses involved in the unsolicited proposal for Central Barangaroo, for the first half of the first hearing day,
- Ms Faehrmann regarding community witnesses for the second half of the first hearing day, and
- the Chair regarding witnesses involved the various sight lines agreements, for the first hearing day.

5. Adjournment

The committee adjourned at 2.50 pm until Tuesday 1 November (first hearing).

Laura Ismay
Committee Clerk

Minutes no. 3

Tuesday 1 November 2022

Select Committee on Barangaroo sight lines

Macquarie Room, Parliament House, 9.32 am

1. Members presentMr Latham, *Chair* (until 11.37)Mr D'Adam, *Deputy Chair*

Mr Amato (by videoconference)

Ms Faehrmann (by videoconference)

Mr Mallard

Mr Searle

2. Apologies

Mr Rath

3. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 2 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 24 October 2022 – Email from Ms Annabel Andrews, Executive Assistant and Advisor to Mr Mike Baird, Chief Executive Officer, HammondCare, declining the committee's invitation for Mr Baird to give evidence at the public hearing on Tuesday 1 November
- 25 October 2022 – Email from Ms Danielle Walsh, Appointments Secretary, Office of the Lord Mayor, to the committee, declining the committee's invitation for the Lord Mayor to give evidence at the public hearing on Tuesday 1 November
- 26 October 2022 – Email from Ms Susan Grusovin, Office of Mr Paul Keating, to the committee, declining the committee's invitation to give evidence at the public hearing on Tuesday 1 November
- 26 October 2022 – Email from Mr Bay Warburton, General Manager, HammondCare At Home, to the secretariat, requesting further information regarding the invitation to give evidence at the public hearing on Tuesday 1 November
- 26 October 2022 – Email from Mr Nicholas Regener, Partner, Makinson d'Apice Lawyers, advising that he acts for Mr Mike Pratt and that Mr Pratt declines the invitation to appear at the public hearing on Friday 11 November 2022
- 27 October 2022 – Email exchange between secretariat and Mr Karl Bitar, regarding the issuance of a summons for his attendance at the public hearing on Tuesday 1 November 2022
- 27 October 2022 – Email from Mr Brad Kelman, General Counsel, Infrastructure NSW, to the committee, regarding the appearance of witnesses from Infrastructure NSW at the public hearing on Friday 11 November and the application of the sub judice convention
- 27 October 2022 – Letter from Ms Clover Moore, Lord Mayor of Sydney, to the Chair, providing further information to the committee on the inquiry
- 31 October 2022 – Email from Mr Phil Paris, Former Executive Director, Development and Precincts (Barangaroo), Infrastructure NSW declining the committee's invitation to give evidence at a public hearing on 11 November 2022
- 31 October 2022 – Email from Mr John Robertson declining the committee's invitation to give evidence at a public hearing on 1 November 2022
- 1 November 2022 – Email from Mr Tim Reardon declining the committee's invitation to give evidence at a public hearing on 11 November 2022.

5. Additional Oxford Property witness

Resolved, on the motion of Mr D'Adam: That Mr Gawain Smart, Chief Legal Counsel, Oxford Properties, be invited to appear at the public hearing on 11 November 2022.

6. Correspondence from Infrastructure NSW

The committee considered the correspondence from Infrastructure NSW regarding the invitation to Mr Simon Draper to appear at a public hearing on Friday 11 November 2022 and other matters.

The committee advised the secretariat to amend the hearing schedule to allow the former and current Infrastructure NSW witnesses to appear separately.

7. Summoning witnesses to appear at a future hearing

Resolved, on the motion of Mr D'Adam: That the committee re-issue the committee's invitation to the following witnesses to attend and give evidence at a hearing, noting the committee's power to issue a summons, and in the event they decline this second invitation, issue a summons under the authority of s 4(2) of the *Parliamentary Evidence Act 1901*, to attend and give evidence before the committee at the hearing on 11 November 2022 or a future date:

- Mr Mike Baird
- Mr Tim Reardon
- Mr Philip Paris.

Resolved, on the motion of Mr D'Adam: That, if the initial witness invitation is declined from Craig van der Laan and/or representatives of Lendlease, Aqualand and Oxford Properties for the hearing on 11 November:

- the invitation be re-issued, noting the committee's power to issue a summons, and
- in the event this second invitation is declined, a summons be issued under the authority of s 4(2) of the *Parliamentary Evidence Act 1901*, for witnesses to attend and give evidence before the committee at the hearing on 11 November 2022 or a future date.

8. Request for affidavit of Mr Daniel Grollo, Chief Executive Officer, Grocon

Resolved, on the motion of Mr D'Adam: That the committee request a copy of the affidavit of Mr Daniel Grollo, Chief Executive Officer, Grocon, as referred to in page 11 of the Grocon submission, on the basis that it will be kept confidential at this stage, although the committee reserve's its right to publish the document at a later stage if it wishes.

9. Answers to questions on notice:

Resolved, on the motion of Mr D'Adam: That witnesses appearing at the hearings on 1 November 2022 and 11 November 2022 have 10 days from the receipt of the transcript to return answers to questions on notice and supplementary questions.

10. Public hearing

Witnesses and members of the public were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Karl Bitar, Private individual.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Frank Howarth AM PSM, Chair, Heritage Council of NSW
- Ms Lucy Langley, Associate (GYDE Consulting), The Langham Sydney

- Ms Nell O'Brien, Project Planner (GYDE Consulting), The Langham Sydney
- Mr Harold Kerr, Chair, Highgate Owners Corporation
- Dr Judy Hyde, Submissions Officer, Highgate Owners Corporation.

Mr Kerr tendered the following document:

- Highgate Owners Corporation, Response to the Legislative Council Select Committee Inquiry into Sight Lines at Barangaroo.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Bernard Kelly, President, Millers Point Community Resident Action Group
- Mr John McInerney, Member of Executive Committee, Millers Point Community Resident Action Group
- Mr Alex Greenwich MP, Member for Sydney.

Mr McInerney tendered the following document:

- Copy of opening statement made by Mr John McInerney.

The Chair left the meeting.

The Deputy Chair took the position of Chair.

The evidence concluded and the witnesses withdrew.

The hearing concluded at 11.40 am.

11. **Tendered documents**

Resolved, on the motion of Mr Searle: That the committee accept and publish the following documents tendered during the public hearing:

- Highgate Owners Corporation, Response to the Legislative Council Select Committee Inquiry into Sight Lines at Barangaroo.
- Copy of opening statement made by Mr John McInerney (subject to Mr McInerney not having concerns about publication).

12. **Adjournment**

The committee adjourned at 11.43 am until Friday 11 November (second hearing).

Madeleine Dowd
Committee Clerk

Minutes no. 4

Friday 11 November 2022

Select Committee on Barangaroo sight lines

Macquarie Room, Parliament House, 8.48 am

1. **Members present**

Mr Latham, *Chair* (until 3.20 pm)

Mr D'Adam, *Deputy Chair*

Mr Amato (until 12.05 pm)

Mr Mallard (until 12.05 pm)

Mr Rath (from 11.24 am)

Mr Searle

2. Apologies

Ms Faehrmann

3. Previous minutes

Resolved, on the motion of Mr Searle: That draft minutes no. 3 be confirmed

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 1 November 2022 – Email from Jasmine Antonious, Director - Office of The Hon. Warwick Smith AO, to the secretariat, declining the invitation to appear at a hearing on 11 November 2022
- 4 November 2022 – Email from Mr Tim Robertson to the secretariat accepting the invitation to appear at a public hearing and noting that he is a witness in current legal proceedings in the NSW Supreme Court in *Grocon v INSW* which deals with a number of matters relevant to the committee's inquiry
- 4 November 2022 – Email from Mr Mike Baird to the Chair advising that he accepts the reissued invitation and will appear to give evidence on 11 November 2022
- 4 November 2022 – Email from Mr Tim Reardon to the secretariat advising that he accepts the reissued invitation and will appear to give evidence on 11 November 2022
- 4 November 2022 – Email from Jasmine Antonious, Director - Office of The Hon. Warwick Smith AO, to the secretariat, noting that Mr Smith is unavailable to appear on 11 November 2022, but will accept the invitation to appear at a later date
- 8 November 2022 - Email from Mr Nicholas Regener, Partner, Makinson d'Apice Lawyers, advising that he acts for Mr Mike Pratt and that Mr Pratt now accepts the invitation to appear at a public hearing on 11 November 2022
- 8 November 2022 – Email from Mr Phil Paris to the secretariat requesting that the committee reconsider the need for him to appear after hearing evidence from Mr Simon Draper and Mr Tim Robertson
- 8 November 2022 – Email from Mr David Matheson, Oxford Properties, to the secretariat declining the invitation to appear at a public hearing and noting the relevant confidentiality agreements he is subject to
- 10 November 2022 – Letter from Mr Daniel Grollo to the Chair in response to the committee's request for Mr Grollo to provide his affidavit filed in the current NSW Supreme Court proceedings.

Sent:

- 3 November 2022 – Chair to Mr Mike Baird reissuing an invitation to appear at a public hearing and noting the committee's power to issue a summons
- 3 November 2022 – Chair to Mr Phil Paris reissuing an invitation to appear at a public hearing and noting the committee's power to issue a summons
- 3 November 2022 – Chair to Mr Tim Reardon reissuing an invitation to appear at a public hearing and noting the committee's power to issue a summons
- 3 November 2022 – Chair to Mr Warwick Smith reissuing an invitation to appear at a public hearing and noting the committee's power to issue a summons
- 3 November 2022 – Chair to Mr Daniel Grollo requesting a copy of Mr Grollo's affidavit filed on 25 September 2020 as part of the proceedings brought by Grocon against Infrastructure NSW in the Supreme Court.

5. Tabled document – Deed of Sight Lines Resolution

Mr D'Adam tabled 'Deed of Sight Lines Resolution', dated 18 August 2019.

Resolved, on the motion of Mr Searle: That the committee accept and publish the 'Deed of Sight Lines Resolution', dated 18 August 2019.

6. Request for advice from the Clerk of the Parliaments

Resolved, on the motion of Mr Searle: That the committee seek written advice from the Clerk regarding an order for the production of a document under the *Parliamentary Evidence Act 1901* that has been filed as part of court proceedings currently on foot.

7. Further invitation to witnesses from Oxford Properties

The committee noted that Mr David Matheson and Mr Gawain Smart are based overseas and thus a summons could not be served to appear at the hearing.

Resolved, on the motion of Mr Searle: That the committee reissue invitations to Mr Matheson and Mr Smart noting that the committee seeks their appearance should they return to New South Wales.

8. Conduct of the public hearing

The committee agreed to amend the hearing schedule by:

- extending the lunch break by 15 minutes and scheduling Mr Robertson to appear at 1.45 pm
- removing the afternoon tea break
- concluding the hearing at 3.45 pm, prior to the appearance of Professor Philip Thalys.

9. Public hearing

Witnesses and members of the public were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Tom Mackellar, Managing Director, Development Australia, Lendlease Group.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Daniel Grollo, Chief Executive Officer, Grocon.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Tim Reardon, Former Secretary, Department of Premier and Cabinet
- Mr Michael Pratt, Former Secretary, NSW Treasury.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Mike Baird, Former Premier of NSW
- Mr Bay Warburton, Former Chief of Staff to Mr Mike Baird.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Tim Robertson, Former Executive Director, Strategy and Operations, Barangaroo Delivery Authority/ Infrastructure NSW.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Simon Draper, Chief Executive, Barangaroo Delivery Authority/ Infrastructure NSW.

Mr Draper tendered the following documents:

- Tender bundle including correspondence between Infrastructure NSW and Grocon.

The evidence concluded and the witness withdrew.

The Chair left the meeting.

The Deputy Chair took the position of Chair.

The following witness was sworn and examined:

- Mr Mark Arbib, Former Executive, Consolidated Press Holdings Pty Ltd.

The evidence concluded and the witness withdrew.

The hearing concluded at 3.41 pm

10. **Tendered documents**

Resolved, on the motion of Mr Rath: That the committee accept but defer consideration of the publication of the Tender bundle including correspondence between Infrastructure NSW and Grocon, tendered by Mr Draper, until the secretariat has reviewed the documents for confidentiality issues.

11. **Additional hearing on 1 December 2022**

The committee noted that an additional hearing on 1 December 2022 has been confirmed, with Mr Warwick Smith AO being invited to appear. The committee also noted that the committee secretariat would continue attempting to issue an invitation to Mr Craig van der Laan to appear on 1 December 2022.

- Resolved, on the motion of Mr Searle: That the hearing on 1 December 2022 be held in person, subject to the availability of an offsite venue.
- Resolved, on the motion of Mr Rath: That members nominate additional witnesses to be invited to appear at the hearing on 1 December 2022 by 5.00 pm Monday 14 November 2022.
- Resolved, on the motion of Mr Searle: That the secretariat advise Mr Philip Paris that the committee requests his appearance as a witness on 1 December 2022.

12. **Extension of reporting date**

Resolved, on the motion of Mr Rath: That the Chair move a motion in the House seeking to extend the reporting date for this inquiry from 20 December 2022 to 17 February 2023.

13. **Adjournment**

The committee adjourned at 3.50 pm until Thursday 1 December (third hearing).

Madeleine Dowd
Committee Clerk

Minutes no. 5

Thursday 1 December 2022

Select Committee on Barangaroo sight lines

Dixson Room, NSW State Library, Sydney, 2.34 pm

1. **Members present**

Mr Latham, *Chair*

Mr D'Adam, *Deputy Chair*

Mr Amato (by videoconference)

Ms Faehrmann (by videoconference)

Mr Mallard (by videoconference)

Mr Rath
Mr Searle

2. Previous minutes

Resolved, on the motion of Mr Searle: That draft minutes no. 4 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 14 November 2022 – Email from Mr Craig van der Laan to the secretariat declining an invitation to appear at a public hearing on 1 December 2022
- 18 November 2022 - Email from Mr Craig van der Laan to the secretariat declining the re-issued invitation to appear at a public hearing on 1 December 2022
- 18 November 2022 – Letter from the Clerk to the Chair in response to the committee's request for advice regarding the production of Mr Grollo's affidavit
- 23 November 2022 – Email from Mr Mike Baird to the secretariat in response to supplementary questions
- 24 November 2022 – Email from Mr David Matheson, formerly of Oxford Properties, to the secretariat regarding the invitation to appear at a public hearing
- 29 November 2022 – Email from Mr Mike Baird to the secretariat clarifying evidence given at the public hearing on 11 November 2022.

Sent:

- 16 November 2022 – Chair to Mr Craig van der Laan reissuing an invitation to appear at a public hearing and noting the committee's power to issue a summons
- 23 November 2022 – Secretariat to Mr David Matheson, formerly of Oxford Properties, re-issuing the committee's invitation for Mr Matheson to appear at a public hearing.

4. Update on witness appearance

The committee noted an update provided by the secretariat regarding the appearance of Mr Craig van der Laan, Mr Phil Paris, Mr David Matheson and Mr Gawain Smart at a future hearing, and discussed the secretariat continuing to pursue Mr van der Laan and Mr Paris.

5. Advice from the Clerk regarding the production of Mr Grollo's affidavit

The committee noted the advice received from the Clerk on 18 November 2022 in response to a request from the committee regarding the production of Mr Grollo's affidavit.

6. Correspondence from Mr Mike Baird

Resolved, on the motion of Mr Searle: That the committee write to the Department of Premier and Cabinet regarding the supplementary question initially put to Mr Baird.

7. Tender bundle previously tabled by Mr Simon Draper

Resolved, on the motion of Mr D'Adam: That the committee accept and publish the tender bundle tabled by Mr Simon Draper at the public hearing on 11 November 2022.

8. Answers to questions on notice

Resolved, on the motion of Mr D'Adam: That witnesses appearing at the hearing on 1 December 2022, and at any future hearings, 10 days from the receipt of the transcript to return answers to questions on notice and supplementary questions.

9. Public hearing

Witnesses and members of the public were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- The Hon. Warwick Smith AO, Non-executive Chairman of AL Capital and Aqualand Australia.

The evidence concluded and the witness withdrew.

The hearing concluded at 3.18 pm

10. Adjournment

The committee adjourned at 3.19 pm, *sine die*.

Madeleine Dowd
Committee Clerk

Draft minutes no. 6

Monday 13 February 2023

Select Committee on Barangaroo sight lines

Jean Garling Room, NSW State Library, Sydney, 10.00 am

1. Members present

Mr Latham, *Chair* (by videoconference)
Mr D'Adam, *Deputy Chair*
Mr Barrett (substituting for Mr Mallard, by videoconference)
Ms Faehrmann (by videoconference)
Mr Fang (substituting for Mr Amato)
Mr Rath
Mr Searle (by videoconference)

2. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 5 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 1 December 2022 – Email from Mr Brad Kelman, General Counsel, Infrastructure NSW, to the secretariat providing post-hearing responses and requesting that Mr Simon Draper's opening statement be published on the committee webpage
- 8 December 2022 – Email from Ms Alexandra Swifte, Senior Legal Counsel, Lendlease, to the secretariat requesting that the post-hearing responses provided by Lendlease marked as 'commercial-in-confidence' be kept confidential to the committee
- 14 December 2022 – Email from Mr Craig van der Laan to the secretariat declining an invitation to appear at a public hearing
- 19 December 2022 – Correspondence from Mr Daniel Grollo, CEO, Grocon, to the Chair providing a supplementary submission on behalf of Grocon.

4. Answers to questions on notice and supplementary questions

Public answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice, answers to supplementary questions and additional information from Mr Simon Draper, CEO, Infrastructure NSW, received 2 December 2022
- answers to questions on notice from Mr Daniel Grollo, CEO, Grocon, received 5 December 2022
- answers to questions on notice and answers to supplementary questions from Mr Tom Mackellar, Managing Director, Lendlease, received 5 December 2022
- answers to questions on notice and answers to supplementary questions from Mr Tim Robertson, received 5 December 2022.

Request from Mr Tim Robertson for confidentiality

Resolved, on the motion of Mr D'Adam: That the committee keep confidential Mr Tim Robertson's responses to supplementary questions 1 and 2, as per Mr Robertson's request.

Request from Lendlease for confidentiality

Resolved, on the motion of Mr Searle: That the committee publish Lendlease's answers to questions on notice and supplementary questions in full, including the sections marked 'commercial-in-confidence'.

5. Transcript corrections and clarifications arising from hearing on 11 November 2022**Clarification request from Infrastructure NSW**

The committee noted that, as agreed via email on 6 December 2022, the opening statement of Mr Simon Draper, who appeared as a witness on 11 November 2022, was accepted as a transcript clarification. As per standard practice, the opening statement was published on the inquiry webpage and a footnote was added to the transcript with a hyperlink to the published document.

Correction request from Grocon

Resolved, on the motion of Mr D'Adam: That the committee accept the correction requested by Grocon on page 13 of the transcript of 11 November 2022, amending 'May 2018' to 'December 2018', and that the transcript be amended to reflect this correction.

6. Correspondence from Grocon

Resolved, on the motion of Ms Faehrmann: That the committee accept the additional correspondence provided by Grocon and publish it on the inquiry webpage.

7. Request for advice from the Crown Solicitor's Office

Resolved, on the motion of Mr D'Adam: That the committee request that the Clerk seek advice from the Crown Solicitor's Office on the mechanisms available to committees of the Legislative Council to obtain contact details, including an address, where a witness is not providing those details for the purposes of the serving of a summons under the *Parliamentary Evidence Act*.

The committee noted the following correspondence sent:

- 19 December 2022 – Letter from Clerk to Mr John McDonnell, Acting Crown Solicitor, seeking advice on behalf of the Select Committee on Barangaroo Sight Lines.

8. Consideration of Chair's draft report, including Procedural issues

The Chair submitted his draft report entitled 'Barangaroo sight lines', including the additional Procedural issues section, which, having been previously circulated, was taken as being read.

Mr D'Adam moved: That:

- a) That the following new paragraphs be inserted after paragraph 2.5:

'Notably, the committee heard evidence regarding former Premier Mike Baird's involvement in the negotiations with Crown and Lendlease in the period leading up to May 2015, when the provisions in Crown and Lendlease's development agreements giving them contractual rights to the sight lines came into existence. [FOOTNOTE: Submission 14, Infrastructure NSW, p 1.]

Mr Baird told the committee that he met with Mr James Packer, then Executive Chairman of Crown Resorts, in February 2015. Mr Baird explained that the key issue discussed during this meeting was the delays in the progress of the Barangaroo South project. When asked if the issue of Crown and Lendlease's rights to the sight lines was addressed, he said that there was 'limited discussion' about this. [FOOTNOTE: Evidence, Mr Mike Baird, Former Premier of NSW, 11 November 2022, p 32.]

When characterising what was ultimately agreed to in the relevant development agreements in May 2015, Mr Baird stated that while Crown and Lendlease sought to have 'unequivocal approach to all sightlines' [FOOTNOTE: Evidence, Mr Mike Baird, Former Premier of NSW, 11 November 2022, p 33.], this was not what was agreed to. He claimed that the wording contained in the agreements did not give an 'explicit undertaking ... to the sightlines', [FOOTNOTE: Evidence, Mr Mike Baird, Former Premier of NSW, 11 November 2022, p 33.] and instead, committed the parties to negotiate in good faith and attempt to balance the public interests, the State interests and the interests of Crown and Lendlease.' [FOOTNOTE: Evidence, Mr Mike Baird, Former Premier of NSW, 11 November 2022, p 35.]

- b) That the following new paragraphs be inserted after paragraph 2.70:

'For example, the committee is of the view that former Premier Mr Mike Baird did not exercise due diligence when negotiating what contractual rights Crown and Lendlease would have to the Barangaroo sight lines. Mr Baird met with Mr Packer in January 2015, three months prior to the provisions in the development agreements giving Crown and Lendlease contractual rights to the sight lines came into existence.

The lack of clarity and certainty in these provisions was a key factor in the lengthy litigation between the Barangaroo Development Authority (BDA), Crown and Lendlease. This litigation ultimately resulted in the Supreme Court finding that the BDA had breached its contractual obligations regarding the sight lines, as well as having a subsequent impact on the status and progress of the Central Barangaroo development.'

- c) That the following new finding be inserted after paragraph 2.70:

'Finding X

That former Premier Mr Mike Baird did not exercise due diligence when negotiating what contractual rights Crown and Lendlease would have to the Barangaroo sight lines and that the lack of clarity and certainty in these contractual provisions was a key factor in the lengthy litigation between the Barangaroo Development Authority (BDA), Crown and Lendlease.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Ms Faehrmann, Mr Latham, Mr Searle.

Noes: Mr Barrett, Mr Fang, Mr Rath.

Question resolved in the affirmative.

Resolved, on the motion of Mr Rath: That Finding 2 be amended by omitting 'That Infrastructure NSW exposed itself to a potential conflict of interest' and inserting instead 'That the NSW Government exposed itself to a potential conflict of interest'.

Mr Rath moved: That Recommendation 1 be omitted: 'That the NSW Government engage in resolution processes for development disputes that seek to arrive at a transparent package of financial compensation rather than development bonuses', and the following new recommendation be inserted instead:

'Recommendation 1

Review the NSW Government's dispute resolution framework to ensure it is fit-for-purpose for dealing with matters concerning compensation, whether financial or non-financial'.

Mr Searle left the meeting.

Question put.

The committee divided.

Ayes: Mr Barrett, Mr Fang, Mr Rath.

Noes: Mr D'Adam, Ms Faehrmann, Mr Latham.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Searle re-joined the meeting.

Mr Rath moved: That Finding 4 be omitted: 'That Infrastructure NSW treated Grocon unfairly and was not transparent and forthcoming in providing information to Grocon, particularly about the sight lines resolution.'

Question put.

The committee divided.

Ayes: Mr Barrett, Mr Fang, Mr Rath.

Noes: Mr D'Adam, Ms Faehrmann, Mr Latham, Mr Searle.

Question resolved in the negative.

Resolved, on the motion of Mr Rath: That Recommendation 2 be amended by omitting 'in Infrastructure NSW' after 'that the NSW Government review any guidelines governing post-separation employment for senior public servants'.

Mr Rath moved: That Recommendation 3 be amended by omitting 'sight lines that are of value to New South Wales' and inserting instead 'sight lines in the Millers and Dawes Point precincts that are of significant cultural or heritage value to New South Wales'.

Question put.

The committee divided.

Ayes: Mr Barrett, Mr Fang, Mr Latham, Mr Rath.

Noes: Mr D'Adam, Ms Faehrmann, Mr Searle.

Question resolved in the affirmative.

Mr Rath moved: That Recommendation 4 be omitted: 'That the NSW Government reject Modification 9 and ensure that the redevelopment of Central Barangaroo remains small in scope so as not to cause significant obstructions to the Barangaroo sight lines.'

Question put.

The committee divided.

Ayes: Mr Barrett, Mr Fang, Mr Rath.

Noes: Mr D'Adam, Ms Faehrmann, Mr Latham, Mr Searle.

Question resolved in the negative.

Mr D'Adam moved: That:

- The draft report, as amended, be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice, answers to supplementary questions and correspondence relating to the inquiry be tabled in the House with the report;

- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice, answers to supplementary questions and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The report be tabled out of session on Friday 17 February 2023;
- The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

Question put.

The committee divided.

Ayes: Mr D'Adam, Ms Faehrmann, Mr Latham, Mr Searle.

Noes: Mr Barrett, Mr Fang, Mr Rath.

Question resolved in the affirmative.

9. Circulation of advice from the Crown Solicitor's Office

Resolved, on the motion of Mr Searle: That when the advice requested from the Crown Solicitor's Office regarding mechanisms available to committees to obtain details of individuals for the purpose of issuing a summons is received, it be provided to the Presiding Officers of the Legislative Council, and chairs of all Legislative Council committees and joint statutory committees.

10. Adjournment

The committee adjourned at 10.31 am, *sine die*.

Madeleine Dowd
Committee Clerk

Appendix 4 Dissenting statements

Hon Chris Rath MLC, Liberal Party

The NSW Liberal and Nationals Government has delivered on the vision for Barangaroo.

From delivering the six-hectare Barangaroo Reserve and linking the entire precinct to the CBD via the Wynyard Walk, there has been over a decade of delivery for this incredible Sydney asset.

Only recently, the NSW Government opened the first new harbour side swimming destination in 50 years at Nawi Cove at the northern end of Barangaroo, and due to overwhelming popularity, we are investigating options for swimming at Marrinawi Cove further south.

In the future the new Sydney Metro will connect the precinct with Rouse Hill, Belmore, Epping and the new Victoria Cross Station in North Sydney – alongside a new 1.85 hectare park at Central Barangaroo and The Cutaway, one of Sydney’s premier event venues.

Sadly, the Committee’s report and recommendations fail to grasp either of the two salient issues raised during the committee hearings, namely the dispute with Grocon and the community’s concerns over views from Millers Point and surrounding landmarks.

This failure can be best understood through the juxtaposition of Chapter 3 against the rest of the report which, while covering important issues that are worthy of discussion, was not reflected nor even envisaged in the Terms of Reference.

This is evidenced by the Committee’s finding that “sight lines” have a cultural and heritage value and should be retained. This reflects a fundamental confusion on part of the inquiry in terms of what “sight lines” mean in the context of Barangaroo and the dispute with Grocon.

Further, the Committee supposedly found Infrastructure NSW treated Grocon unfairly, without any reference to a particular obligation or event. In conclusion, the report appears to have been selective in their assessment of the evidence provided to the committee and have made very serious allegations about the government to suit a political agenda.

Government members of the Select Committee reject the report into the Barangaroo Sight Lines as failing to take into consideration in its conclusions all of the evidence that was presented to the Committee.

