HIGHGATE

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Response to the Legislative Council Select Committee Inquiry into Sight Lines at Barangaroo

This presentation addresses points (a), (d) and (f) of the Terms of Reference for the Select Committee.

While the current Infrastructure NSW application for development at Central Barangaroo is likely to be rejected by the Minister, the proposal brings to light the enormous risks to our heritage and the foundations for corruption inherent in the NSW planning processes. The Infrastructure NSW proposed development at Central Barangaroo acts as a prototype for corruption of the development processes for Central Barangaroo and beyond.

(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.*

Foundation for Corruption

Undue Influence:

- The 'unsolicited proposal' of the Crown Casino bypassed all planning processes (TOR (b)) shows a complete disregard for the people of NSW.

Serious Conflicts of Interest Undermine the Public Interest:

- Infrastructure NSW is a NSW Government agency.
- The Infrastructure NSW brief is: To provide 'independent and strategic advice to the NSW Government to make sure NSW gets the infrastructure it needs'.
- Infrastructure NSW is in partnership with the developers, Aqualand, and is therefore incapable of providing independent advice in the interests of the people of NSW.

Legal Exemptions for State Significant Developments (SSDs)

SSDs must 'consider' but *not* comply with:

- *Heritage Act 1977*
- *Local Government Plans 2012*

} These 'bind the Crown', but *not*

- The *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Biodiversity and Conservation SEPP 2021.*

Stripping oversight from the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*

Independent oversight, and all checks and balances have been stripped from the EP&A Act for SSDs:

- **2011:** Referral was automatically delegated to the Planning and Assessment Commission (PAC; predecessor of the Independent Planning Commission (IPC)) for applications and modifications when there were:
    - **25 or more submissions** by way of objection from members of the public, or
    - **less than 25 submissions** by way of objection from members of the public, but where a submission has been made by the **relevant council objecting to** the project, or
    - been the subject of a reportable political donation or
    - in circumstances where the Director General is of the view that the t the application should be determined by the PAC.
- **March 2020:** The Independent Planning Commission is to determine the Development Application if:
    - the **council of the area in which the development is to be carried out has objected** to the DA
    - there are at **least 50 objections** to the DA ...
- **Commencing March 2022**: ***All*** requirements to refer applications to the Independent Planning Commission were **removed** from the *EP&A Act 1979* with the determining authority remaining with the Minister for Planning alone.
- The requirement to refer applications to the IPC if more than 50 submissions are received or the local council objects was placed within the *State Environment Planning Policy (Planning Systems) 2021 (SEPP);*
- Despite around 850 submissions objecting to the Infrastructure NSW proposal, including the City of Sydney local council, the proposal was ***not*** referred to the IPC.
- The SEPP included a condition that removed the requirement for the Minister to refer to the IPC when more than 50 objections or an objection from the council were submitted if:

2.7 (2) The Minister may, if of the opinion that any State significant development is related to State significant infrastructure, declare, by Ministerial planning order, that the development is State significant infrastructure related development for the purposes of this section;

(5) However, this section does not apply to development the subject of a development application that was made before the commencement of this section if the Minister notified the Planning Assessment Commission in writing before that commencement that the Minister would determine the development application.

It is uncertain which of these clauses was used to enable the Minister to retain authority over the Infrastructure NSW development proposal. However, the 'commencement' of the application was prior to these conditions coming into being as it was claimed as a 'modification' under the obsolete 3A development pathway.

Manipulation of the planning process

The Infrastructure NSW proposal rested on an application for 'Modification 9' for Central Barangaroo under Section 75W of the *E P & A Act 1979*.

- Modification 9 was *withdrawn* when the PAC made it clear with their advice in 2016 that it was not likely to succeed.
- Submission under Section 75W of the 3A pathway is *invalid* because:
    - This pathway closed in March 2018;
    - Transitional arrangements for the pathway required all documentation to be submitted by September 2018;
    - Infrastructure NSW submitted their documentation in November 2021.
    - The Infrastructure NSW application was outdated as it was founded on the Director General's requirements that were issues in 2017, prior to the approval for Modification 8 with its accompanying conditions for Central Barangaroo.
    - The Infrastructure NSW application did not take account of the conditions laid down by the PAC under Modification 8 and sought to reverse these.

The Minister is capable of bypassing the current State Environment Planning Policy requirements for the Infrastructure NSW Central Barangaroo Modification 9 proposal as it was *invalidly* submitted under the repealed 3A pathway Section 75W application for modification.

All Power invested in one person:

- ***All*** authority for approval for the development of 'Modification 9' at Central Barangaroo rests with a single person: the Minister for Planning.
- There are ***no*** remaining legal constraints, regulations, or restrictions to ensure the interests of the public are independently evaluated for SSDs in NSW.

The lack of checks, balances, oversight, independent review, transparency, regulation and accountability does not meet public expectations and places Australia's heritage at serious risk.

The interests of the people of NSW and Australia have been undermined by poor governance decisions leaving the Barangaroo development and *all* other NSW Government developments, not just SSDs, at high risk of ongoing corruption.

(b) ***any potential biases resulting in the preferential treatment of the commercial interests of one party over the other:***

Bias Relating to Residential Sight Lines:

June 2016 saw conditions placed on development at Central Barangaroo limiting building heights, thereby ensuring view preservation (Modification 8). Purchasers of terraces in High and Kent Street and those in nearby apartment towers subsequently relied on these conditions when purchasing properties.

- Terraces sold by NSW Government specifically with water views, for example at the southern end:
    - 63 Kent Street in 2017;
    - 62-64A High Street in 2017;
    - 5-7 High Street in 2018.
- The NSW Government has contractual obligations to consult with Lendlease and the Crown over sight lines. When they failed to do so, they were challenged legally, and a deal was struck.
- The Land and Environment Court of New South Wales 2004 established a principle for view sharing for residents in their ruling in Tenacity Consulting v Warringah [2004] NSWLEC 140. This was confirmed in *Rose Bay Marina Pty Limited v Woollahra Municipal Council & Anr* [2013] NSWLEC 1046. Like the Lendlease/Crown agreement, consultation and assessment is required where residential sight lines are threatened by development.

- The requirement to consult with residents impacted by proposed infringement of views by new development was ignored by Infrastructure NSW and Aqualand.

These rights of residents were disregarded by Infrastructure NSW/Aqualand and remain a point of contention and risk where residents' rights are ignored because they do not have corporate assets to launch legal challenges.

(c) any other related matters:

Sight Lines:

Heritage Sight Lines:

- Belong to the people, as do the Harbour foreshores.

- Ensure Sydney is a unique city showcasing its history.

The Observatory & Observatory Hill

- Heritage value of special significance on Heritage Register.
- Protected under the Observatory Conservation Plan (2014).
- Required to operate as a functioning observatory for educational purposes.

Millers Point

- Heritage listed Conservation Area with specific restrictions on heights of adjoining built forms.
- High Street Cutting.
- 'The Hungry Mile'.

Darling Harbour & Pyrmont Park

- Panorama to bridge including Millers Point, Observatory and Observatory Park

All were destroyed under the Infrastructure NSW development proposal and development at Central Barangaroo remains at high risk.