



5 December 2022

The Hon. Mark Latham MLC  
Chair, Select Committee on Barangaroo sight lines  
NSW Parliament House  
6 Macquarie Street  
Sydney NSW 2000

Dear Mr Latham

**Grocon response to supplementary questions from the Select Committee on Barangaroo sight lines**

1. We refer to:
  - a. the email dated 23 November 2022 inviting the Grocon Group (**Grocon**) to respond to supplementary questions from the Select Committee on Barangaroo Sight Lines established on 10 August 2022 by the NSW Legislative Council to inquire into and report on the matters set out in the Terms of Reference (the **Committee**); and
  - b. Grocon's submissions to the Committee dated 10 October 2022 (**Submissions**).
2. Capitalised terms not defined in these supplementary submissions have the definitions given to them in the Submissions.

**Supplementary Question 1:** *Simon Draper has indicated Grocon never asked for the sightlines notice to be issued. Can you confirm if Grocon asked INSW or the BDA to issue the sight lines notice and if so on what date or dates was the request made?*

3. The submission of Mr Draper, the current Chief Executive Officer of INSW, that Grocon never asked for the Sight Lines Resolution Notice (**SLRN**) is incorrect. The SLRN was the instrument by which Grocon was to be informed of the development envelope for the Central Barangaroo development, and without it Grocon (and its consortium partners, financiers, and potential financiers) could not know what size and shape the project would be, and therefore could not know how profitable it would be. Of course Grocon asked the BDA and then INSW to issue the SLRN on hundreds of occasions,

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starting in 2016 following entry into the Conditional CENDA and continuing right through to September 2019.

4. Mr Draper's submission focused on the period following the Sight Lines Judgment on 14 December 2018. Between that date and Grocon's exit from the project on 26 September 2019, Grocon asked for the SLRN on at least the following occasions:
  - a. On 14 December 2018, after the judgment had been delivered, Mr Grollo spoke to Mr Van der Laan via phone. Mr Grollo said to him that Mr Grollo had thought of another path through the problem of the Sight Lines and its impact on the Central Barangaroo Development. Mr Grollo suggested to Mr Van der Laan that: *"INSW should just issue the sight lines notice to Grocon now for a 90 square metres scheme. That scheme is compliant with this judgment, and then if the BDA resolves the issues, or wins the appeal, we can add more on top and go higher"*. Mr Grollo recalls that Mr Van der Laan responded: *"I agree, speak to Ron. We're still on track to resolve this and issue the sight lines notice soon"*.
  - b. On 20 December 2018, Mr Grollo met with Mr Finlay at INSW's offices. Mr Grollo recalls that the focus of the discussion at the meeting was when INSW could issue the SLRN. Mr Grollo recalls that at this time Mr Grollo was pressing hard for the SLRN to be issued because, as described in the Submission, Oxford had expressed an intention to terminate the Implementation Agreement and call on the Oxford MaxCap Facility. Mr Grollo recalls that during the course of this meeting Mr Grollo emphasised repeatedly to Mr Finlay that, from his discussions with Mr Matheson at Oxford, they were looking for a quick outcome on the issuance of the SLRN and it needed to be issued to Grocon very soon. Mr Grollo recalls that in response Mr Finlay said words to the following effect: *"the notice will be issued soon but we are proposing to appeal the judgment. Let me speak to Dave [Dave Matheson] at Oxford"*.
  - c. On 27 February 2019, Mr Grollo had a meeting with Mr Van der Laan where Mr Grollo said words to the effect of: *"we need to get on with it. We are working on multiple schemes and none of this works without a sight lines resolution notice. Let's get over our egos and get on with the Judgment Compliant Scheme and move on"*. Mr Grollo recalls that Mr Van der Laan responded *"I agree. We are moving forward on this"*.
  - d. On 3 April 2019, Mr Grollo met with Mr Van der Laan at Grocon's office and said *"let's sign off on the judgment compliant scheme and issue the sight lines notice"*

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*immediately*". Mr Grollo recalls that, in response, Mr Van der Laan stated: "*I hope to understand where things are at in 6 weeks*".

- e. Shortly after this, in or around April 2019, Mr Grollo had a phone call with Mr Finlay. Mr Grollo recalls that during that call they discussed the departure of Mr Van der Laan and that Mr Finlay said: "*it will be business as usual until the transition on 30 June [2019]*" and that "*it's a two stage process. Once the appeal is dealt with then the sight lines notice can be issued*". Mr Grollo understood this to mean that the SLRN would be issued as soon as the appeal in the Sight Lines Proceedings had been determined or otherwise resolved.
- f. On 7 May 2019, Mr Grollo met with Mr Robertson and said "*where is our sight lines notice?*". Mr Grollo recalls that Mr Robertson responded "*the BDA have a 2-4 week window and then it will be issued*".
- g. On 9 May 2019, Mr Grollo met with Mr Robertson of INSW at Grocon's offices. Mr Grollo recalls asking Mr Robertson for the SLRN, and Mr Robertson saying "*I'm off to Crown and Lendlease as soon as possible*". Mr Grollo understood this to mean that Mr Robertson was trying to get the Judgment Compliant Scheme approved up by Crown and Lendlease such that the SLRN could be issued.
- h. On 10 May 2019, Mr Grollo had a call with Mr Robertson where he provided an update on the Judgment Compliant Scheme. Mr Grollo recalls that Mr Robertson said that Lendlease and Crown had been shown the scheme and said words to the effect of: "*Crown was aggressive, but Lendlease conciliatory, but we should expect a response in the next week or two and then we will be able to close this off. We are working on 19 August 2019 to issue the sight lines notice*". Mr Grollo understood from this meeting that Mr Robertson was saying that the SLRN would be issued by INSW to Grocon by 19 August 2019.
- i. On 21 May 2019, Mr Grollo met with Mr Robertson of INSW. During this meeting Mr Robertson said words to the effect of "*we are working to August 2019 for issuing the sight lines notice*". Mr Grollo understood from this meeting that Mr Robertson was saying that the SLRN would be issued by INSW to Grocon in August 2019.
- j. On 19 July 2019 at 3:30pm, Mr Grollo had a call with Mr Robertson at INSW's office. Mr Grollo recalls that Mr Robertson stated "*the target date to issue the sight lines notice is 19 August [2019]*". Mr Grollo understood from this meeting that Mr

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Robertson was confirming what he had said on 10 May 2019, that the SLRN would be issued by INSW to Grocon by 19 August 2019 – meaning that INSW expected to resolve the proceedings by agreement.

- k. On 22 August 2019, Mr Grollo exchanged text messages with Mr Robertson seeking an update on the progress of INSW’s position on the SLRN. Mr Grollo stated “*Tim, any news?*”. On that same day, Mr Robertson replied that he was waiting on advice from Mr Simon Draper (Chief Executive Officer of INSW), who was now responsible for managing the BD Development in place of Mr Van der Laan, and expected to be in a position to provide a response on Sight Lines “*early next week*”. In reply to this message, Mr Grollo wrote to Mr Robertson “*We have been extremely patient over the journey. I hope we are not waiting for something that doesn’t progress the project forward one way or the other*”. Given the Sight Lines Proceedings had settled, and a Judgment Compliant Scheme had been developed by Grocon, Mr Grollo could not see any reason why INSW would be prevented from issuing the SLRN. As the issuance of the SLRN would finally provide Grocon with a bankable asset – capable of supporting refinance or a sale of Grocon’s interest in CB Development – its issue was now of critical importance.
  - l. On 26 August 2019, Mr Grollo sent another text message to Mr Robertson requesting an update on whether he had received a response from Simon Draper or from DPC. In response to this message, Mr Robertson replied stating “*No news from DPC yet I’m afraid. I would expect tomorrow cob*”.
5. Grocon is restrained from referring to documents produced by INSW or in subpoena in the current Supreme Court proceedings. However, Grocon considers that INSW’s own evidence makes it clear that Grocon was still requesting the SLRN throughout 2019 and right up until the Aqualand transaction became binding in September 2019. One example which has been made public by the Committee is the briefing note to the DPC prepared by Mr Timothy Robertson of INSW dated August 2019, which refers to the options available to the government, first among which is to issue the SLRN to Grocon. There is no reason that would be included as an option if Grocon had not been asking for the SLRN at that time.
  6. In any event, even if Mr Draper was correct in stating that Grocon had not asked for an SLRN (which he is not) that does not cure the fact that the BDA and INSW had a contractual obligation to issue the SLRN to Grocon once the Sight Lines Negotiations were resolved and concluded. INSW knew that they had this obligation as evinced by

the Whatsapp message from Mr Robertson where he said on 10 May 2019 that if the Sight Lines negotiations were resolved before the Aqualand sale completed “we’ll be forced to give a 1.10 sightlines notice to Daniel Grollo and then we’ll all be fucked.” The Sight Lines Negotiations concluded from at least 19 August 2019 and INSW did not issue the SLRN.

**Supplementary Question 2:** *Grocon asserts it was damaged by the sight lines delay. What additional sale price would the Sight Lines notice potentially have commanded if Grocon were to be issued the notice prior to its sale of the development rights for Central Barangaroo to Aqualand?*

7. Grocon suffered loss and damage by reason of the BDA and INSW’s failure to issue the SLRN in breach of the CENDA. Grocon’s damage extends far beyond a decrease in the sale price for the Central Barangaroo development rights, although that metric forms the basis for Grocon’s damages claim against INSW.
8. INSW’s failure to issue the SLRN prevented Grocon from completing the sale of the office development rights to Oxford in 2018, depriving Grocon of in excess of \$140 million in revenue.
9. Then, following failure of the Oxford deal, Grocon intended to run another sale process seeking an office investor for the project but was prevented from doing so by INSW’s failure to issue the SLRN. Grocon believes that had the SLRN been issued to Grocon at some stage between the Sight Lines Judgment in December 2018 and 10 September 2019, when Grocon became bound to complete the sale of the Central Barangaroo Development rights to Aqualand, and that had it mandated the current Central Barangaroo development envelope, then Grocon could have run a second sale process and achieved a sale price for the office development rights of between \$213,758,097 and \$255,608,097, depending on the capitalisation rate applied to the profit share component.
10. In those circumstances, Grocon would also have continued to be entitled to revenue streams from Aqualand and Scentre under its sub-development agreements with those entities, being development management fees and construction margin. Those revenue streams would have been valued at between \$36.2 million and \$39.3 million, depending on the ultimate GFA for each component and the capitalisation rate. That revenue would have been earned over approximately five years following issuance of the SLRN.

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11. Therefore, had Grocon sold the entirety of its development rights upon issuance of the SLRN (which was not its preferred option at the time), it believes it could have achieved a sale price of between \$249,958,097 and \$294,908,097; more than double the \$73 million it received from Aqualand. It was for this reason that Grocon's preferred option was for INSW to issue the SLRN to Grocon so that Grocon could run a sale process for the office development rights and remain as developer under the CENDA, entitled to the ongoing development management fees and construction margins.
  12. Even Aqualand offered to purchase the development rights (without the SLRN) for \$150 million in the first half of 2018. Although that offer was made at a time when the BDA was maintaining its misrepresentations about the development ultimately being over 120,000 square metres of GFA, Grocon believes that the certainty provided by the SLRN would have caused Aqualand to increase, rather than decrease, its offer, notwithstanding the reduction in GFA.
  13. Grocon has suffered other loss as a consequence of not receiving the revenue it expected to receive in 2019, including:
    - a. Being forced to place the majority of its Group entities into administration, leaving only those entities required to pursue the litigation against INSW for the benefit of creditors;
    - b. Administration costs;
    - c. Bond calls, including the following:
      - i. AIG bond for \$10,614,745 in favour of Tianlong Ribbon Pty Ltd in relation to the Ribbon project which was called in two parts on 1 June 2021 and 22 June 2021, respectively;
      - ii. CGU bond for \$3,400,000 in favour of Impact Investment Group in relation to the Northumberland project which was called on 19 November 2020; and
      - iii. CGU bond for \$1,000,000 in favour of Impact Funds Management Pty Ltd in relation to the Northumberland project which was called on 19 November 2020;
    - d. Litigation funding costs; and
    - e. Legal fees for these and other legal proceedings brought by creditors that Grocon could have satisfied had it received the full value of the CB Development rights

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- f. In addition, Grocon was forced to exit from the Ribbon project at Darling Harbour and the Northumberland project at Collingwood in Melbourne, among other projects, and deprived of the opportunity to realise greater value from those projects and to continue seeking out and procuring development opportunities, as we had always done. INSW's misconduct effectively deprived Grocon of its future.
14. Grocon would be happy to provide any further assistance, information or documents that the Committee requests, subject to the restrictions associated with the Supreme Court proceedings.

Yours faithfully

**Daniel Grollo, CEO**

**Grocon Group**