

SELECT COMMITTEE INTO BARANGAROO SIGHTLINES

**Supplementary questions directed to Mr Simon Draper, Barangaroo Delivery Authority/
Infrastructure NSW**

1. In your evidence you said Grocon never asked for the sightlines notice, but Daniel Grollo has said Grocon did ask on multiple occasions. Can you confirm if you ever discussed issuing the sight lines notice with Daniel Grollo or a representative of Grocon?

SD: At no stage did I discuss the sight lines notice with Daniel Grollo or a representative of Grocon. I note that, in his evidence and responding to questions from the Chair about whether he had approached me about delays in the sight lines resolution, Mr Grollo said that he had sent me a number of SMS messages. For the absence of doubt, I never received an SMS message from Mr Grollo asking about the timetable for resolution of sight lines or seeking provision of a sight lines resolution notice.

2. What firm or firms provided advice to INSW and DPC to inform the decision making in relation to entering into the sight lines deed with Crown-Lendlease?

SD: Clayton Utz, Crown Solicitor's Office and Ernst & Young.

3. What was the nature of the advice provided to INSW?

SD: The advice is subject to legal professional privilege and/or Cabinet confidentiality. It was also detailed, so any response is by necessity a highly condensed summary. As a broad statement, and without prejudice to our rights to maintain privilege and/or confidentiality claims over the material, the advice:

- (a) included potential grounds of appeal of the sight lines judgement along with an assessment of the prospects of success of those grounds;**
- (b) addressed the implications of Crown and Lendlease having initiated their own cross-appeals of the first instance judgement; and**
- (c) identified a large potential exposure to Lendlease flowing from the sight lines judgement, where it had been found that the Barangaroo Delivery Authority had been in breach of the sight lines obligations since 2015.**

4. Can you provide a copy of the note provided to DPC which detailed the advice to the INSW/ BDA steering committee over the sight lines deed deal with Crown Lendlease?

SD: In the course of preparing a submission for the Premier to take to the Expenditure Review Committee of NSW Cabinet (ERC), analysis and advice were commissioned and provided to the Steering Committee comprising Infrastructure NSW, Department of Premier & Cabinet (DPC) and NSW Treasury. This occurred through meetings, email correspondence and discussions about the sight lines resolution. Both within the Steering Committee and at further senior levels of DPC and Treasury, options were examined, the major terms of the settlement proposed to be put to ERC were agreed and elements of the Deed of Sight Lines Resolution were subsequently agreed to be within the parameters set by the ERC. The ERC submission, and therefore associated documents, are subject to Cabinet confidentiality.

2.0_INSW Response to Supplementary Questions

5. Did INSW receive legal advice over the decision to withhold the issuing of the sight lines resolution notice to Grocon?

SD: The notice was not withheld from Grocon, nor was there a decision to withhold the notice. There was accordingly no legal advice on withholding the notice or on a decision to withhold the notice. As I stated during the hearing, Grocon had no need for the sight lines notice, had no rights to the sight lines notice and, in any case, did not ask for it.

- a. If so, who was consulted, what was the nature of that advice?

SD: Not applicable in the context of the answer above.

6. Why was Craig van der Laan sacked from the BDA?

SD: In April 2019 the NSW Government announced that, from 1 July 2019, the Barangaroo Delivery Authority would be abolished and its staff, functions, assets and liabilities transferred to Infrastructure NSW. A similar arrangement was determined for Urban Growth NSW. I was appointed to the role of Chief Executive Officer of Infrastructure NSW in April 2019.

In these circumstances, it was decided in consultation with the Secretary of DPC that Mr van der Laan's role – Chief Executive Officer of the Barangaroo Delivery Authority – was surplus to requirements and the role was made redundant. For context, numerous other duplicated roles, including the Chief Executive Officer of Urban Growth NSW, were made redundant in 2019 as part of the abolition of the BDA and Urban Growth NSW, with their staff, functions, assets and liabilities transferred to Infrastructure NSW.

7. What limitations apply to senior executives of INSW in relation to future employment with entities that have contractual relationships with INSW or entities that potentially are beneficiaries of decisions being made by INSW?

SD: Senior executives within Infrastructure NSW are engaged under the Model Contract in the Government Sector Employment (GSE) Rules. This form of Contract, read in conjunction with the GSE Act, GSE Regulation and GSE Rules, does not include "restraint" provisions restricting a senior executive's future employment (other than in relation to re-employment within the NSW Public Services following a termination with compensation).

The contract describes confidentiality requirements that affect conduct in future employment, as follows: "On termination of employment the Senior Executive will not disclose, without lawful authority, disclose or make use of any confidential or secret information acquired by the Senior Executive as a consequence of his or her employment".

Upon termination, Infrastructure NSW confirms in writing the enduring confidentiality undertakings. The employee cannot disclose, rely upon or use confidential information obtained during the course of their employment for purposes other than their work for Infrastructure NSW.