

## Select Committee on Barangaroo Sight Lines

Lendlease Group responses to questions taken on notice and supplementary questions issued by the Select Committee on Barangaroo Sight Lines

**1. What was the value to Lendlease of the additional 8000 square metres in GFA provided for in the Modification Application described in cl 3 of the Deed of Sight Lines Resolution?<sup>1</sup> What was the value of the additional floorspace given to Lendlease in the sight lines deed deal with INSW?<sup>2</sup>**

1.1 **Commercial-in-confidence** – Lendlease did not undertake a formal valuation of the additional 8000sqm. For the purposes of assessing the settlement agreement which became the Deed of Sight Lines Resolution, Lendlease allocated a qualified working estimate, taking into account costs and expenses, of approximately \$95 million. The additional GFA carried significant planning approval and development risk for Lendlease and was part of a broader settlement package between Lendlease and INSW that included terms which operated in favour of the Government/BDA/INSW such as: (1) Lendlease agreeing to a development envelope with increased height over Central Barangaroo; and (2) Lendlease providing a release in favour of the BDA/INSW in respect of Lendlease’s substantial damages claim.

**2. Who in the formulation of the deed, proposed the settlement that the metro station would mean these development bonuses for the company?<sup>3</sup>**

2.1 Lendlease rejects the characterisation that it received a “development bonus” as a result of settlement discussions. As explained in the evidence given by Lendlease at the hearing on 11 November 2022, the Deed of Sight Lines Resolution was a commercial compromise on both sides, and this included terms that operated in favour of the Government/BDA/INSW such as: (1) agreement to a development envelope for Barangaroo Central, which contained increased height above the sightlines in the Concept Plan which were the subject of the Sight Lines provisions in cl 2.5 of the PDA; and (2) a release in favour of the BDA/INSW in respect of Lendlease’s damages claim.

2.2 It is Lendlease’s understanding that the metro station was a matter proposed by the NSW Government or the BDA/INSW and the resultant proposal for increased height over Central Barangaroo compared to the Concept Plan emanated from the BDA/INSW. The proposal for additional GFA on Barangaroo South was provided by Lendlease in response to a request from INSW that Lendlease indicate what non-financial compensation solutions might be acceptable to compensate it for agreeing to increased height over Central Barangaroo that INSW wanted and for Lendlease’s damages claim in relation to the breaches by the BDA/INSW of the Sightlines clauses over several years.

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<sup>1</sup> Select Committee on Barangaroo Sight Lines, *Inquiry into Barangaroo Sight Lines*, Uncorrected Transcript p 3.

<sup>2</sup> Supplementary questions issued by the Select Committee on Barangaroo Sight Lines, 23 November 2022.

<sup>3</sup> Select Committee on Barangaroo Sight Lines, *Inquiry into Barangaroo Sight Lines*, Uncorrected Transcript p 5-6.

**3. Did the original PDA provide that key working housing comprising 3% of the residential Developable GFA be provided onsite?<sup>4</sup> How much was the discounting of the key worker housing requirements in the PDA, that are contained in the deed, worth to Lendlease?<sup>5</sup>**

- 3.1 The Deed of Sightlines Resolution did not lead to any discounting of key worker housing (**KWH**) obligations. To the contrary, the Deed of Sightlines Resolution simply maintained the existing KWH obligations and extended them to the additional 8000 sqm of GFA received under the Deed of Sightlines Resolution.
- 3.2 The key worker obligations in the PDA (prior to the approval of Mod 8 of the Barangaroo Concept Plan was to provide KWH) equalled 2.3% of the residential Developable GFA.
- 3.3 Following the approval of Mod 8 in June 2016, the obligations in respect of KWH were increased to provide 2.3% 'on site' within Barangaroo South and to provide a further 0.7% 'off-site', within 5km of the site or elsewhere within the City of Sydney Local Government Area.
- 3.4 Lendlease is complying with its obligations in respect of both the 'onsite' and 'off-site' KWH as set out in the PDA and the Concept Plan. The 2.3% 'on-site' KWH is being delivered in the form of 50 apartments in Building R5 at Barangaroo South. These apartments are currently under construction and have all been acquired by a Community Housing Provider.
- 3.5 Similarly, the 0.7% 'off-site' component has been satisfied by Lendlease making payment of approximately \$7 million to a Community Housing Provider in respect of the delivery of 'off-site' KWH, and that community housing provider has built and delivered that housing.

**4. How much was cl 12 in the Deed of Sight Lines Resolution on retail leases and licensing fees worth to Lendlease?<sup>6</sup>**

- 4.1 **Commercial-in-confidence** - As a working estimate for the purposes of assessing the settlement agreement, which became the Deed of Sight Lines Resolution, Lendlease valued the concessions under cl 12 concerning licensing fees for certain public domain area as worth approximately \$10 million.
- 4.2 Lendlease received the concessions in relation to these licence fees in exchange for agreeing to allow INSW to register an easement for public access within these areas.

**5. How much was cl 11 in the Deed of Sight Lines Resolution on an readjustment of milestones in the Project Development Agreement worth to Lendlease?<sup>7</sup>**

- 5.1 Lendlease did not undertake a formal valuation of this item.

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<sup>4</sup> Select Committee on Barangaroo Sight Lines, *Inquiry into Barangaroo Sight Lines*, Uncorrected Transcript p 7

<sup>5</sup> Select Committee on Barangaroo Sight Lines, *Inquiry into Barangaroo Sight Lines*, Uncorrected Transcript p 7-8.

<sup>6</sup> Select Committee on Barangaroo Sight Lines, *Inquiry into Barangaroo Sight Lines*, Uncorrected Transcript p 8.

<sup>7</sup> Select Committee on Barangaroo Sight Lines, *Inquiry into Barangaroo Sight Lines*, Uncorrected Transcript p 8.

**6. Could Lendlease indicate what it quantified the cost of the two-year delay as?<sup>8</sup>**

6.1 **Commercial-in-confidence** - Lendlease did not undertake a formal valuation of this item. As a working estimate for the purposes of assessing the settlement agreement which became the Deed of Sight Lines Resolution, Lendlease valued the cost of the 2 year delay as \$55 million. It should be noted that delay costs were only one component of Lendlease's damages claim.

**7. What was the quantity of the damages that had been assigned or were being sought by Lendlease in the sightlines litigation?<sup>9</sup>**

7.1 The overall quantum of damages that Lendlease proposed to claim against the BDA/INSW had not been formally quantified at the time of entry into the Deed of Sight Lines Resolution.

7.2 Quantification of the damages claim was a large and complicated exercise, which would have required input from multiple expert witnesses. It is reasonable to expect the damages ultimately claimed if the need had arisen would have been very substantial.

**8. What was the value assigned to cl 9 of the Deed of Sight Lines Resolution on public benefit and community use?<sup>10</sup>**

8.1 Lendlease did not undertake a formal valuation of this item or assign any particular value to the obligations in cl 9 of the Deed of Sight Lines Resolution concerning public benefit and community use for the purposes of the settlement.

8.2 The purpose of this term was to accommodate some of the uncertainties associated with realising the value in the Potential Additional GFA (Block 4).

8.3 Specifically, cl 9 provided that if the planning approval associated with the Potential Additional GFA (Block 4) imposed a condition that increased the public benefit, infrastructure or community use requirements for Barangaroo South, then any additional costs associated with fulfilling those additional requirements would be borne by INSW.

8.4 Ultimately, no such condition was imposed and accordingly INSW did not bear any costs pursuant to cl 9 of the Deed of Sight Lines Resolution.

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<sup>8</sup> Select Committee on Barangaroo Sight Lines, *Inquiry into Barangaroo Sight Lines*, Uncorrected Transcript p 8.

<sup>9</sup> Select Committee on Barangaroo Sight Lines, *Inquiry into Barangaroo Sight Lines*, Uncorrected Transcript p 8-9.

<sup>10</sup> Select Committee on Barangaroo Sight Lines, *Inquiry into Barangaroo Sight Lines*, Uncorrected Transcript p 9.