

INQUIRY INTO BARANGAROO SIGHT LINES

Organisation: Millers Point Community Resident Action Group
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SUBMISSION TO THE SELECT COMMITTEE ON BARANGAROO SIGHT LINES



THE MILLERS POINT COMMUNITY RESIDENT ACTION GROUP (MPCRAG)

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Millers Point Community Resident Action Group

The Millers Point Community Resident Action Group (MPRAG) thanks the Honourable Mark Latham for bringing the serious concerns of the public regarding the development processes undertaken at Barangaroo to the attention of the New South Wales (NSW) Legislative Council for review. We are pleased to make this submission to assist the Select Committee in this important work undertaken on behalf of the people of NSW.

While the Terms of Reference of the Select Committee Review focuses primarily on the sight line disputes, decisions and the integrity of decision makers involved in the development of the Barangaroo precinct to date, it also includes inquiry into and reporting on *'measures necessary to ensure the integrity of the Barangaroo redevelopment project and similar projects in the future.'*

The integrity of the Barangaroo redevelopment is now at a critical point with a development proposal, submitted by Infrastructure NSW, under consideration for Central Barangaroo that is beset by the same integrity issues that have led to this inquiry. If approved, this proposal would have devastating consequences for the publicly owned Sydney Harbour foreshores, Australia's heritage areas, and the public interest.

Central Barangaroo is of particular significance in the Barangaroo development as it abuts and highlights the Millers Point Conservation Area and its High Street cutting, and the Sydney Observatory, and Observatory Hill Park; each of exceptional significance to the heritage of NSW and Australia. An outstanding opportunity for optimisation of these special heritage harbourside elements exists in the development of the critical Central Barangaroo precinct for the benefit of all Australians, our international standing, and the further beautification of Sydney harbour.

However, the proposed Infrastructure NSW development for the Central Barangaroo site would destroy these protected displays of Australia's early colonial settlement, their historical connections to the waters of Sydney Harbour, and the city's maritime history. The sight lines to these heritage aspects, which are protected under the Concept Plan for Barangaroo, would be irrevocably destroyed or obliterated.

The re-selling of private sight lines, first attempted by the Barangaroo Delivery Authority (BDA) at Barangaroo South, is again being planned for Central Barangaroo by Infrastructure NSW in partnership with their chosen developer, Aqualand. Such duplicate sales at Central Barangaroo, if permitted, would impact not large conglomerates and developers as at Barangaroo South, but ordinary citizens and companies (The Langham) that do not necessarily have the legal resources to defend their rights through the courts.

The potential for the destruction and duplicate sales of sight lines at Central Barangaroo is made possible by:

- The systematic stripping of safeguards of the public interest, heritage protections, and checks, balances within the planning process for State Significant Developments (SSDs) in NSW that place full unfettered authority in the hands of an individual Minister.
- The lodgement of the Infrastructure NSW application for modification of the Concept Plan under an invalid superseded pathway that has long closed.
- Non-compliance of the Infrastructure NSW proposal with the now outdated Director-General's (2014) requirement for assessment of cumulative impacts of the Barangaroo development on which the application for Modification 9 rests.
- Deception, misrepresentation, disinformation, and the minimisation of impacts on heritage listed items, areas, and site lines throughout the Infrastructure NSW proposal for the Central Barangaroo development.

These elements provide a framework for the potential destruction of Australia's unique colonial heritage aspects to benefit private developers and the interests of the current NSW Government, with poor outcomes for the public. This inquiry has the potential to stop this devastation.

The MPCRAG requests that the Review into Sight Lines at Barangaroo extend to a review of the Infrastructure NSW proposal and include all changes to legislation, planning policies, and safeguards of the public interest that have been corrupted throughout the Barangaroo development and which now put the future of Australia's heritage aspects of special significance at risk of destruction at Central Barangaroo.

We request that an order be issued to prevent approval of the Infrastructure NSW (2021) development proposal for Central Barangaroo until the conclusion of this review.

We acknowledge and pay our respects to the traditional custodians of the lands and waters of Barangaroo, the Cadigal people of the Eora nation, and all Aboriginal elders, past, present and emerging.

State and Nationally Significant Heritage Aspects at Risk under the Infrastructure NSW (2021) Development Proposal

Key aspects that display Australia's colonial history and its connections to Sydney Harbour are focused at Central Barangaroo. These aspects are protected under the Concept Plan for the Barangaroo development but are under serious threat of destruction should the proposal for development submitted by Infrastructure NSW (2021) be approved. The proposal will be under consideration by the Minister for Planning, who is the sole arbiter of this potential destruction, and unencumbered by any checks or balances that ensure the value of Australia's heritage is retained and the interests of the public are weighed against the private interests of developers.

Three key areas at risk are the Millers Point Conservation Area, including the High Street cutting with its tiara of terraces in High and Kent Streets, the Sydney Observatory, and Observatory Park. All have highly significant heritage value, both in their aspects, but also in their connections to Sydney's maritime history.

Millers Point Heritage Conservation Area

The Millers Point Conservation Area, shown in Figure 1, was listed on the Heritage Register of NSW on 02.04.1999. The Millers Point Heritage Conservation Area is described as,

an intact residential and maritime precinct of outstanding State and national significance. It contains buildings and civic spaces dating from the 1830s and is an important example of nineteenth and early twentieth century adaptation of the landscape. The precinct has changed little since the 1930s...

The relative intactness (or interpretation in cases of redevelopment) of the area is representative of measures taken to protect the heritage values of individual buildings and the precinct as a whole since the 1950s by the local community and Heritage/Historic Groups. This led to the listing of Millers Point Heritage Conservation Area and individual listings for items in the area.

(Department of Premier and Cabinet: Heritage NSW, 2021).

This important heritage area abuts Central Barangaroo, offering opportunities for a sensitive development to highlight this remaining residential and maritime precinct. To enhance this precinct would add value to and foster the uniqueness of the Sydney Harbour foreshores bringing enormous benefit to the public and the nation.

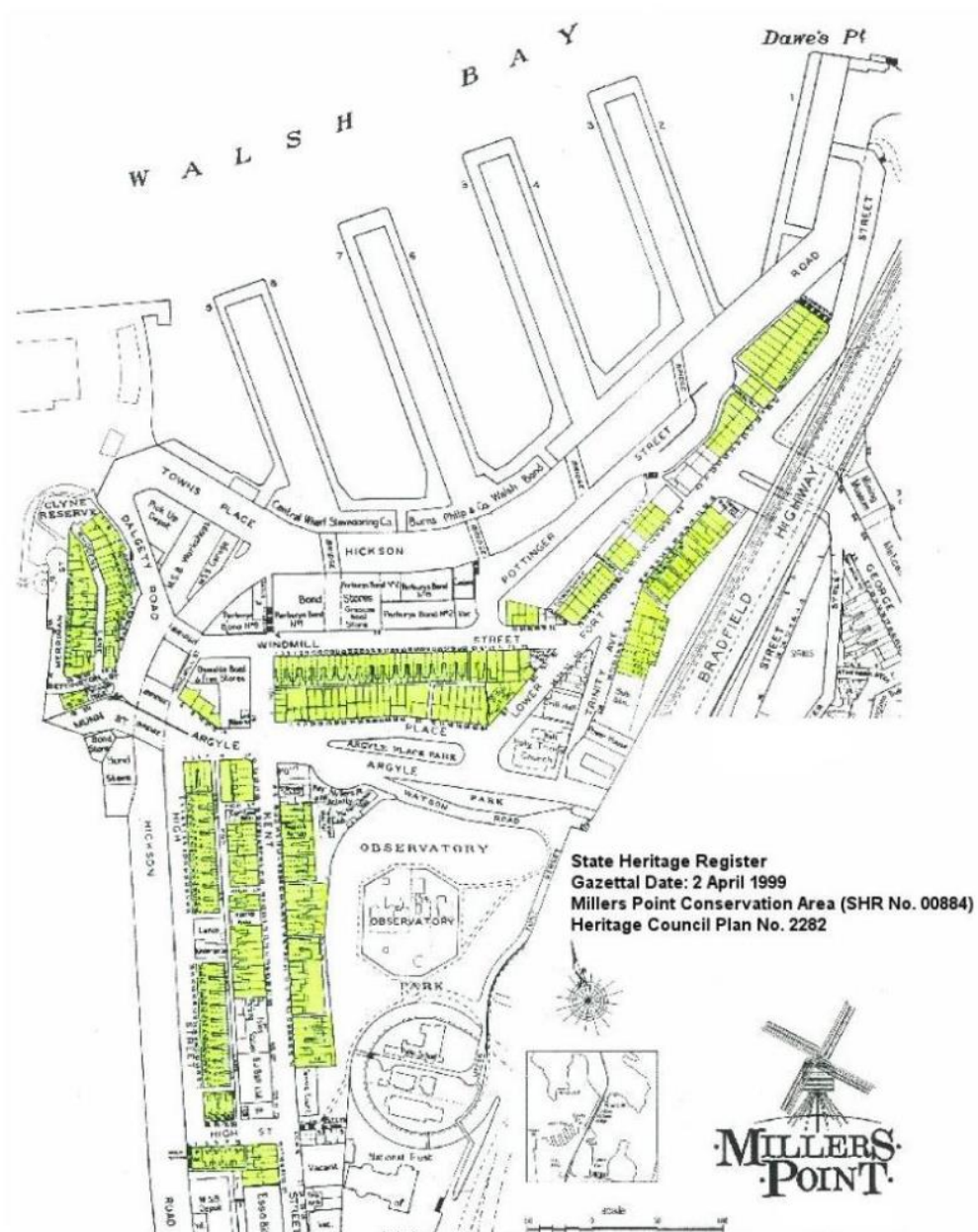


FIGURE 1 MILLERS POINT CONSERVATION AREA, STATE HERITAGE REGISTER

Of particular importance are the historical maritime connections Millers Point has to the water of the Harbour and the High Street terraces, built for port workers. The Statement of Significance on the Heritage Register points out:

The Millers Point area is of State and National Significance as a rare urban residential area remnant of early port of Sydney dating from the early 1800s which remains relatively unchanged since the 1930s; exhibits a range of fine buildings and spaces from the 1830s-1920s with high individual integrity, important collection of Government housing (built for port workers) and community maritime associations from European settlement to 20th century. The area has changed little since the 1930s, the high degree of integrity and authenticity area and of individual buildings... is an important example of nineteenth and early twentieth century adaptation of the landscape...

The area contains numerous original and characterful views to and from the harbour that are formed by a combination of dramatic topography and long physical evolution. It is the extent, the expansiveness, the change of view of individual buildings as the viewer moves around the water that gives the place distinction and significance. The variety, complexity and scale of views from the wharfs (sic), observatory hill (sic), from roadways, edges of escarpments and walls are significant in defining the character of the area. The area is significant, as aside from the southern edge of the precinct, it is not overpowered by city scale development. The area contains numerous streets and lanes of historical and aesthetic significance. The area contains numerous features such as steps, fences, rock cuttings of historical and aesthetic interest.

The natural rocky terrain, despite much alteration, remains the dominant physical element in this significant urban cultural landscape in which land and water, nature and culture are intimately connected historically, socially, visually and functionally.

(Department of Premier and Cabinet: Heritage NSW, 2021).

The Statement of Significance goes on to sum up the historical importance of the site,

The whole place remains a living cultural landscape greatly valued by both its local residents and the people of New South Wales.

(Department of Premier and Cabinet: Heritage NSW, 2021).

The High Street cutting

Within the curtilage of the Millers Point Conservation Area, and covered by legal heritage protections offered by listing on the State Heritage Register (now overridden for State Significant Developments), lies the High Street cutting¹. Running for 300m along the eastern side of Hickson Road, from the Munn Street overbridge to the High Street Steps that form a continuous link to the Harbour from the Agar Steps; cutting into the bedrock of the natural sandstone above; creating a retaining wall supporting High Street, Millers Point that rises approximately 18 metres at Millers Point (Barangaroo Delivery Authority, 2014); the High Street cutting forms the boundary between Central Barangaroo and Millers Point.

It is this particular aspect that the Millers Point Heritage Conservation Area lists on the Register as,

The natural rocky terrain, despite much alteration, remains the dominant physical element in this significant urban cultural landscape in which land and water, nature and culture are intimately connected historically, socially, visually and functionally.

¹ Brief histories of the history of the High Street cutting and the Hickson Road 'Hungry Mile' are available within Besix Watpac, 2021; AMBS Ecology & Heritage, 2017; Tanner, Denton & Kibble, 2016; City Plan Heritage, 2006.

(Department of Premier and Cabinet: Heritage NSW, 2021).



FIGURE 2 THE HIGH STREET CUTTING AS CURRENTLY DISPLAYED FROM PEACOCK PARK, BALMAIN

The High Street cutting provides a significant, dramatic, dominant, and relatively intact historical and physical boundary between Hickson Road and Central Barangaroo, and uniquely defines the character of this boundary. The wall of the cutting itself is considered '*contributory to the significance of the Millers Point & Dawes Point Village Precinct*' (AMBS Ecology & Heritage, 2017, p. 5),

The High Street cutting and retaining wall has been identified as having historic, aesthetic and social significance; however, it is arguable that the cutting and retaining wall has technical value for the achievement of its construction by the Sydney Harbour Trust

(AMBS Ecology & Heritage, 2017, p. 29).

The Terraces of High Street and Kent Streets

The State Heritage Register 'lists items of particular importance to the people of NSW' (NSW Government, Department of Premier and Cabinet, 2021a). Blocks of terrace houses of Millers Point in Kent and High Streets are listed on this register of protected items, as shown in Figure 3.

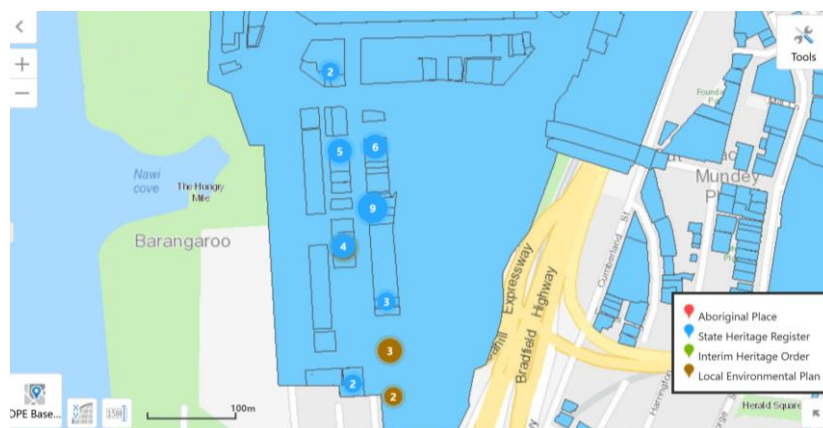


FIGURE 3 SCREENSHOT OF NSW STATE HERITAGE REGISTER IDENTIFYING BLOCKS OF LISTED TERRACES (NSW GOVERNMENT, (DEPARTMENT OF PREMIER AND CABINET: HERITAGE NSW, 2021).

Listed items '*are historical records, that are important as tangible expressions of Australian identity and experience*' (NSW Heritage Office, 2002, p. 15). Conservation of listed items is taken seriously, and detailed guidance is provided to retain and maintain these properties to preserve them for the enjoyment of all Australians. Hence the requirement to maintain views to and from these terraces is central to the

Concept Plan (City Plan Heritage, 2006) and restated as conditions of consent throughout the series of modifications of the development of Barangaroo South. The terraces identified on the State Heritage Register are parts of integrated terrace rows, each dependent on its neighbour.

The Sydney Observatory and Observatory Hill

The *Sydney Observatory* was listed on the New South Wales State Heritage Register in 20.10.2005 and is described as,

The Observatory is of exceptional significance in terms of European culture. Its dominant location beside and above the port town and, later, City of Sydney made it the site for a range of changing uses, all of which were important to, and reflected, stages in the development of the colony...

An excellent example of a Colonial building erected for scientific purposes and continuing to perform its function at the present time. The structure makes an imposing composition atop the historic hill originally known as Flagstaff Hill and occupies the historic Fort Phillip site (1804-45).

(Department of Premier and Cabinet: Heritage NSW, 2021)

The Sydney Observatory 'Group' that included the Sydney Observatory itself and accompanying buildings and grounds, including Observatory Hill, was listed on the New South Wales State Heritage Register on the 14.12.2012. *Observatory Hill* is described as being

of outstanding historical significance and a major component of the Observatory Hill precinct. The park commands panoramic views to the north, west and south...

*The elevation of the site, with its harbour and city views and vistas framed by mature Moreton Bay fig (*Ficus macrophylla*) trees of the surrounding park, make it one of the most pleasant and spectacular locations in Sydney.*

(Department of Premier and Cabinet: Heritage NSW, 2021).

The Conservation Plan for the Sydney Observatory (Kerr in 2014) states, '*The construction of the Observatory ensured that the surrounding views and visual alignments had to remain open*' (Kerr, 2014, p. 70). These sight lines have remained protected for 150 years. While the Observatory no longer functions as an astronomical observatory, having been converted into a museum in 1982,

The observatory is still an observatory, although after nearly a century and a half of use its role is now that of an educational rather than an exploratory scientific facility. However, it is still important that it continue to be able to demonstrate its traditional function to visitors – of which there are over 100,000 [as of 2014] each year.

(Kerr, 2014, p. 53).

Policy 16.1 of the Conservation Plan for the Sydney Observatory is explicit:

*The prime consideration in determining uses for the place should be that **it continues to be capable of functioning as an observatory** [emphasis added] with the necessary facilities and that no improvements, adaptations, **developments or uncontrolled commercial programs interfere with that capacity** [emphasis added] (Kerr, 2014, p. 53).*

The Conservation Plan for the Sydney Observatory (Conservation Plan, Kerr, 2014) lays out a series of policies to protect, retain, and reinforce its significance. Policy 5.2 clarifies, '*Features or treatments that*

obscure understanding of the function or appreciation of the distinctive character of spaces of exceptional significance are unacceptable’ (Kerr, 2014, p. 46).

Policy 32.5 states,

Views from the path around the observatory complex down the slopes of Observatory Hill to The Rocks and the waters of the harbour should suffer no further encroachment (Kerr, 2014, p. 71).

Like the firing of the cannon at Fort Denison, the dropping of the time ball (originally at 12.00pm, but now at 1.00pm) remains a daily reminder of Australia’s maritime history. Visual access to this traditional event for the public from the harbour foreshores to the north, east, and west remains essential. The Observatory sight lines have been impacted by the Barangaroo South development (Tanner, Denton & Kibble, 2016, p. 32). No further impacts can be accommodated.

The Infrastructure NSW proposal is supported by a heritage assessment undertaken by GML Heritage (GML Heritage Pty Ltd, 2021) that details these heritage aspects and their value. Despite the accepted protection of the Sydney Observatory sight lines, GML Heritage dismisses the destruction of these aspects that would occur under the Infrastructure NSW development as proposed.

The Dismantling of Heritage Protections within the Planning Process for State Significant Developments (SSDs)

Concentration of Approval Power into the Hands of an Individual Minister

In 2022, the final checks and balances that ensured that Australia’s heritage was protected in NSW and the interests of the public were adequately weighted in the determination of applications for development of State Significant Developments (SSDs), such as Barangaroo, were removed from the *Environmental Planning and Assessment Act 1979 (EP&A Act 1979)*. The determination for proposed development now rests entirely and unfettered with a single politician, the Minister for Planning. This enables the proposed continuance of overdevelopment seen at Barangaroo South into Central Barangaroo that would potentially and irrevocably destroy sight lines protected under the Heritage Act and the Concept Plan.

Prior to 2022, the *EP&A Act 1979* required the Minister for Planning to send a proposed development application to the Independent Planning Commission (IPC) for determination if:

1. There were more than 50 objections to the development proposal, or
2. The local council lodged an objection to the proposal.

Loss of the requirement for individual assessment of planning decisions for SSDs

With the removal of this statutory gateway for a required independent assessment of a planning application for an SSD, planning decisions for SSDs fell entirely to the Minister for Planning and were unconstrained. The planned destruction of heritage sight lines at Central Barangaroo, proposed by Infrastructure NSW, is now in the hands of the Minister for Planning who is capable of giving approval despite the overwhelming objections of the public and organisations that specialise in Australia’s heritage.

Overwhelming objection to the Central Barangaroo development proposed by Infrastructure NSW

There have been more than 862 submissions made in response to the exhibition of the Infrastructure NSW proposal for Central Barangaroo; 851 were objections to the proposal; seven were comments about aspects of the proposal, only one of which could be conceived of as positive; and four were in support of the proposal. One of the four in support was from a Queensland resident and simply stated, ‘all good’!

The local council of the City of Sydney has requested that the proposal be sent by the Minister for Planning to the IPC for determination. There is no longer an obligation for the Minister to do so.

Despite the overwhelming negative and deeply concerned response from the public and multiple authorities, including from such entities as the National Trust of Australia, the Environment Protection Authority, the Powerhouse Museum, Friends of Sydney Harbour Inc., Urban Taskforce Australia (representing property developers), and the winning architects of the Concept Plan, Hill Thalys Architecture and Urban Projects, the potential remains for a single Minister to approve the project with no recourse. This is an unacceptable risk when items and areas of special heritage significance are involved.

The removal of these gateways to an independent determination of development proposals for SSDs from the EP&A Act 1979 has concentrated all power to determine the outcome of an application for SSDs in the hands of a single unfettered politician, the Minister for Planning.

State Environment Planning Policies (SEPPs)

Under the *EP&A Act 1979*, *State Environment Planning Policies (SEPPs)* are created to regulate planning. This is problematic, as the 'practical effect of a SEPP is often to take power away from local councils in order to prohibit certain types of development in an area or to allow certain types of development even where local controls prohibit it' (Environmental Defenders Office, 2012). This outcome has been evident throughout the Barangaroo development, during which time SEPPs were constantly changed to accommodate increases in gross floor area (GFA), building heights, and number for the benefit of private developers.

Prior to the invention of SEPPs the Sydney Local Environmental Plan 2005 ensured design excellence through appropriate protections and management of:

- i. *the suitability of the land for development,*
- ii. *existing and proposed uses and use mix,*
- iii. *heritage issues and streetscape constraints,*
- iv. *the location of any tower proposed, having regard to the need to achieve an acceptable relationship with the other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*
- v. *bulk, massing and modulation of buildings,*
- vi. *street frontage heights,*
- vii. *environmental impacts such as sustainable design, overshadowing, visual and acoustic privacy, wind and reflectivity,*
- viii. *the achievement of the principles of ecologically sustainable development,*
- ix. *pedestrian, cycle, vehicular and service access and circulation requirements including the permeability of any pedestrian network,*
- x. *impact on, and any proposed improvements to, the public domain,*
- xi. *impact on any special character area,*
- xii. *appropriate ground level public domain interfaces,*
- xiii. *excellence and integration of landscape design.*

This Plan was under the authority of the City of Sydney council for the Barangaroo development, however, the SEPP (Major Projects) 2005 removed the City of Sydney from consideration for SSDs, thus removing its protections for development within Sydney and along the Harbour foreshores.

The SEPP (Major Projects) 2005 *does* include key planning controls for Barangaroo that stipulated maximum building heights and GFA for each block across the site. As can be seen in Table 1, the

established dimensions have exploded out of all proportion. This has been made possible by repeated amendments to the SEPP.

TABLE 1 BLOCK MAXIMUM HEIGHTS AND GFA ESTABLISHED UNDER THE SEPP (MAJOR PROJECTS) 2005.

	Block 1	Block 2	Block 3	Block 4	Block 5	Block 6	Block 7	Block 8
<i>Established Maximum Height (RL)</i>	62	180	112	100	34	29	35	32
<i>Current Maximum Height (RL)</i>	25	180	209	250 Block 4A* 107 Block X* 42 Block Y* 275	34	29	35	-
<i>Established Maximum GFA (m²)</i>	11,800	180,000	56,000	74,500	29,200	3,000	28,000	5,800
<i>Current Maximum GFA (m²)</i>					29,688	3,000	15,000	-

*Additional blocks added

Building heights across the Barangaroo development remained constant until Modification 4 which saw the creation of new building blocks (Blocks 4A, X and Y), changes to land use, further increases to GFA, and increases in maximum permissible heights across the site. The maximum building heights of the blocks at Central Barangaroo, however, have remained unchanged and reiterated as conditions of consent for approval of the increases at Barangaroo South.

The development at Central Barangaroo is governed by Amendment 18 of the SEPP (Major Projects) 2005. Clauses 17 and 18 have bearing on the Infrastructure NSW proposal. Clause 17 of the SEPP (Major Projects) 2005 (Amendment 18) embedded the height controls of the Concept Plan for the Barangaroo development. It states,

The height of any building on any block of land on the Barangaroo site is not to exceed the height for development on that block, expressed as Reduced Level (RL), as shown on the Building Height Map².

² The Building Height Map refers to that of the Concept Plan

Clause 18 (Schedule 3, Part 12) of the SEPP (Major Projects) 2005 (Amendment 18) does not allow the removal of the GFAs established under the Concept Plan for Central Barangaroo states, but does allow an increase in GFA on Blocks 2, 3 and 4:

Gross floor area restrictions

(1) The total gross floor area of all buildings on any block of land on the Barangaroo site is not to exceed the gross floor area shown for that block on the Gross Floor Area Map³.

(2) Despite subclause (1), the total gross floor area of all buildings on a block of land numbered “2”, “3” or “4” may exceed the gross floor area shown for that block on the Gross Floor Area Map if the total gross floor area of all buildings on those 3 blocks combined does not exceed 310,500 square metres (being the sum of the gross floor areas shown for those blocks on that map).

Sydney Harbour Foreshore Authority, 2008, p. 24

While Clause 18 of the SEPP (Major Projects) 2005 permitted the increase from the original approved 388,300m² to **602,354m²** at Barangaroo South, the Infrastructure NSW proposed increases in GFA for Central Barangaroo are *not* permitted under Clause 18. The blocks of Central Barangaroo (Blocks 5, 6, and 7) are *not* included in this Clause and their GFAs are protected under the Concept Plan and under all subsequent conditions of approval for modifications undertaken at Barangaroo South.

Furthermore, the GFA of Central Barangaroo has been *decreased* through the *removal* of Block 8, a reduction in all aspects of Block 7 to accommodate Nawi Cove, and the *reduction* in the size and setback for Block 5 in partial compensation for the intrusion of the Crown building into prime public Harbour foreshore parkland under Modification 8. The Infrastructure NSW proposal for Central Barangaroo reinstates and increases these GFAs, despite their prior reallocation to Barangaroo South.

These restrictions under Clauses 17 and 18 do not permit the excess development at Central Barangaroo as proposed by Infrastructure NSW. This has led the proponent to include a request for a *further* Amendment of the SEPP to allow destructive increases in building heights and massive increases in GFA.

Approval of SEPPs is in the hands of the Minister for Planning alone. Again, a single Minister has the power to remove key building principles and design controls of the Concept Plan that provide heritage protections and have been repeatedly imposed as conditions of consent for prior development at Barangaroo by amending the applicable SEPP. This is unacceptable.

The erosion of proper governance in the planning process for SSDs in NSW is quite evident in the over development of Barangaroo South and the machinations that is the object of this current review. These machinations continue and have now come to a critical point with proposed application for the extremely sensitive development of Central Barangaroo, due to the potential loss of key heritage aspects, views, vistas and their connections.

Loss of legal heritage protections for SSDs

SSDs are also exempt from the *Heritage Act 1977* and *Local Government Plans 2012*. These are the instruments by which items, conservation areas, or aspects of historical significance in NSW are protected in the interests of the public and the nation. This legislation ‘binds the Crown’, meaning that the Australian Executive (Cabinet and Ministry) of the Federal Government is subject to these NSW laws, yet they no longer bind the NSW Government when applied to SSDs. These instruments do not need to be followed by the NSW Government, merely ‘considered’.

³ The Gross Floor Area Map refers to that of the Concept Plan.

The removal of responsibility for heritage items under the legal protections afforded by the Heritage Act 1977 and Local Government Plans 2012 gives the Minister for Planning sole power to destroy Australia's unique heritage items and aspects without recourse.

The systematic dismantling of protections under the NSW Government planning laws, processes and their oversight now enable a single person (the Minister for Planning) to irrevocably destroy the integrity and value of historical aspects of State and National significance on prized publicly owned Harbour foreshores in the interests of private developers, without regard for the interests of the public.

Remaining Protections for the Heritage of the Sydney Harbour Foreshores

Heritage Protections under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and the Biodiversity and Conservation SEPP

Two of the few remaining heritage protections for SSDs undertaken on the Sydney Harbour foreshores are the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*, and the *Biodiversity and Conservation SEPP 2021*. Both aim to ensure that.

Sydney Harbour is to be recognised as a public resource, owned by the public, to be protected for the public good, and

the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores.

The *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*, however, has the specific objective to,

to conserve the heritage significance of existing significant fabric, relics, settings and views associated with the heritage significance of heritage items' Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Under this Plan,

Before granting development consent to development in the vicinity of a heritage item, the consent authority must assess the impact of the proposed development on the heritage significance of the heritage item.

This clause extends to development:

- (a) that may have an impact on the setting of a heritage item, for example, by affecting a significant view to or from the item or by overshadowing, or*
- (b) that may undermine or otherwise cause physical damage to a heritage item, or*
- (c) that will otherwise have any adverse impact on the heritage significance of a heritage item.*

These protections are, however, weak as they only need to be considered and do not preclude development where the determining authority (a single politician) deems the impacts on heritage aspects to be acceptable. The impacts of the Infrastructure NSW proposed development at Central Barangaroo are absolutely unacceptable.

Heritage Protections under the Concept Plan (2006)

The City Plan Heritage (2006, p 48-49) report explicitly stated, '*The strategy for EDH [East Darling Harbour i.e. the Concept Plan] is based on protecting and enhancing the surrounding townscape and views'*

(NSW Government, 2006, p. 53). This report identifies vistas, views, and panoramas to be protected in the Barangaroo development. These are shown in Figure 4:

- Retain views to Observatory Hill Park from public spaces on opposite foreshores;
 - Retain the panorama from Pyrmont Park around to the Harbour Bridge as seen from Observatory Park;
 - Provide adequate view corridors over and between new built forms to maintain the key attributes of views from Millers Point. The key attributes to be retained include:
 - 1) views to significant tracts of the water,
 - 2) the junction of Darling Harbour and the Harbour proper,
 - 3) the opposite foreshores,
 - 4) panoramic qualities of existing views and,
 - 5) the most distinctive views to landmark structures;
 - Retain the ability to appreciate Millers Point headland from public spaces on opposite foreshores;
 - Retain the ability to appreciate the roofscape of terrace houses throughout Millers Point from public spaces on opposite foreshores
- (City Plan Heritage, 2006, p. 49).

FIGURE 4 PROTECTED VIEWS, PANORAMAS, AND VISTAS FROM SPECIFIC VIEWPOINTS AROUND THE HARBOUR UNDER THE CONCEPT PLAN

The Infrastructure NSW proposal demolishes the views, panoramas, and vistas that are protected under the Concept Plan.

Invalid 'Modification' Application under the EP & A ACT, 1979.

Infrastructure NSW has applied for a modification to the Concept Plan under the *EPA&A Act, 1979* to be assessed under Section 75W. They claim this is a legitimate request under clause 3C(1), and subject to clause 3BA of the STOP Regulation, 'as the request to modify was lodged prior to the 1 March 2018 cut-off date' for a transitional Section 75W (S75W) project under the *EP&A Act 1979*.

However, the previous request to modify the Concept Plan was submitted as a *preliminary* application for the purpose of ultimately making an application for a Modification 9. This preliminary application was withdrawn.

The notice of withdrawal of the preliminary Modification 9 application was displayed on both the IPC⁴ (see Figure 5) and the Major Projects, Department of Planning websites of the NSW Government until early 2022 when the current application was released for exhibition.

⁴ <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2016/03/mod-8-barangarooconcept-plan/determination/barangarooconceptplanmod8reportpdf.pdf>
(Screen shot shown here)

- gaming facility. In November 2013 the Crown Group Companies entered into a Framework Agreement with the NSW Government relating to the development of the Hotel Resort.
- **Modification 5** was withdrawn.
 - **Modification 6**, determined March 2014, approved changes to the boundaries of Blocks 3, 4A and 4B and the realignment of Globe Street.
 - **Modification 7**, determined November 2015, approved the use of a concrete batching plant on the site, but in all other respects matches the Modification 6 Concept Plan.
 - **Modification 8.**
 - In April 2015, the Barangaroo Design Advisory Panel (comprised of Ms Meredith Sussex AM, Ms Shelley Penn and NSW Government Architect Mr Peter Poulet) was established and commissioned by NSW Planning and Environment to undertake an independent impartial expert urban design assessment of MOD 8. The Barangaroo Design Advisory Panel was in broad support of the proposal but recommended changes to Block Y and the waterfront promenade and reconsideration of the connectivity between Hickson Park and Central Parklands.
 - In November 2015, the Barangaroo Delivery Authority published a response to the Barangaroo Design Advisory Panel's assessment of MOD 8. The Barangaroo Delivery Authority sought advice from a specialist group of highly qualified and eminent design practitioners. The Design Barangaroo Development Authority and their independent Design Advisors, supported 11 out of the 18 recommendations in the Design Advisory Panel report. The Proponent adopted several recommendations within MOD 8 based on the Barangaroo Design Advisory Panel's findings.
 - **Modification 9**, regarding Barangaroo Central, was withdrawn.
 - **The tender process for Barangaroo Central** is nearing completion. Barangaroo Central is the final stage to be developed across the whole Barangaroo district. Barangaroo Central will combine civic and cultural attractions with recreational, residential, retail and commercial uses as well as a harbour front public domain. The Barangaroo Sydney Metro Station is also planned to be located at Barangaroo Central.

FIGURE 5 SCREEN SHOT OF WEBSITE OF INDEPENDENT PLANNING COMMISSION STATING THAT MODIFICATION 9 HAD BEEN WITHDRAWN 2016 – 2022

The preliminary application for Modification 9 was withdrawn in 2016, and thereby nullified.

Transitional arrangements for consideration under Section 75W

Under the transition arrangements of Section 75W for a Part 3A pathway, 'People who made modification applications before the transitional arrangements closed (1 March 2018), had **until 1 September 2018 to lodge their environmental assessment documentation** [emphasis added] so the modification can still be determined under the Part 3A transitional provisions' (NSW Government, Department of Planning and Environment, 2022).

No application for Modification 9 was lodged until the current Infrastructure NSW proposal was submitted in December 2021. This was clearly stated on the website of the IPC, as shown in Figure 6, until the lodgement of the current proposal by Infrastructure NSW in December 2021.

MP 06_0162 MOD 7

On 11 April 2014, the then Minister for Planning and Infrastructure approved a seventh modification to the Concept Plan to allow the construction, operation and maintenance of a concrete batching plant to supply concrete for the construction of future development under this Concept Plan at Barangaroo South.

MP 06_0162 MOD 9

On 15 April 2014, the then Executive Director, Development Assessment Systems & Approvals, as delegate of the Director-General, issued modified Director-General's environmental assessment requirements for the preparation of a section 75W application (MOD 9) which proposes to modify the Barangaroo Concept Plan approval (MP 06_0162) as it relates to Barangaroo Central and the Headland Park. Specifically, MOD 9 includes increases in GFA, the redistribution of GFA and land uses across the development blocks, modification to the development blocks and building envelopes, and a redistribution of public domain areas.

MOD 9 has not yet been lodged with the Department.

FIGURE 6 SCREEN SHOT OF THE INDEPENDENT PLANNING COMMISSION STATING NO APPLICATION HAD BEEN RECEIVED FOR MODIFICATION 9 DISPLAYED 2016-2022

No application for Modification 9 was submitted at any time prior to 2021, by which time the transitional arrangement for assessment under the Part 3A Section 75W planning pathway had closed.

Moreover, the current application rests on the Director-General's recommendations provided in 2014 (Director-General, 2014). These are outdated as Modifications 8 – 11 have subsequently been approved with conditions that impact the current Modification 9. Hence, the Director-General's 2014 recommendations have been superseded and are no longer valid for a 2021 application.

Additionally, the current proposal also differs substantially from the withdrawn preliminary application. The Infrastructure NSW proposal is an entirely new application and cannot be assessed under the repealed Section 75W of the *EP & A Act, 1979* or under the current Section 4.33 of the *Act* as it substantially differs from the Concept Plan.

The 2014 submitted preliminary proposal was not considered; it was withdrawn, and thereby nullified. The transition arrangements for lodgement of an environmental assessment under the Part 3A Section 75W planning pathway had closed on the 1st September 2018.

The Infrastructure NSW (2021) application for a modification to be assessed under the Part 3A Section 75W planning pathway is invalid.

The Withdrawn Preliminary Modification 9 Application: The Master Plan for Central Barangaroo 2014

The Infrastructure NSW proposal claims the current application for Modification is 'substantially the same project' as the 'Central Barangaroo Master Plan' (Barangaroo Delivery Authority, 2014). This is false. It is impossible to accommodate the proposed increased GFA within the Concept Plan without bulking up, and increasing the heights of buildings, while destroying the Concept Plan Principles. The Infrastructure NSW proposal does just that, thereby negating the Concept Plan.

Without the accompanying documentation of a completed application, it is difficult to accurately determine the building heights, density, massing, envelopes, articulation, footprints, GFA, and zoning that would enable a detailed comparison between the withdrawn preliminary 2014 Modification 9 application and the current proposal. A request under the Government Information (Public Access) Act 2009 (NSW) (*GIPA Act*) for this documentation was refused in March 2022. However, from the depictions within the Master Plan report, these all substantially increase.

The Preliminary and Environmental Assessment Report and Request for the Director-General's Requirements (Barangaroo Delivery Authority, 2014), for Modification 9's Master Plan sought approval under Section 75W of the *EP&A Act* to modify the Approved Concept Plan for Central Barangaroo to:

- Increase the GFA to *120,000m² of gross floor area*;
- Increase the total gross floor area within envelopes and footprints;
- Modification to the building envelopes for Block 5, 6 and 7 and flexibility in the delineation of blocks and distribution of gross floor area across the blocks;

(Barangaroo Delivery Authority, 2014)

The report of the Barangaroo Delivery Authority incorrectly claims,

- The proposed gross floor area *is generally consistent with the existing development zone footprints and height controls*' [emphasis added]. It is consistent with the core principles for the development previously approved.
- It will provide additional density to create a vibrant rich precinct which can be achieved whilst *primarily remaining within the development envelopes already approved for the site* [emphasis added].

(Barangaroo Delivery Authority, 2014, p. 12).

These claims are completely false. The massive changes proposed are summarised in Table 2 below.

TABLE 2 APPROVED BUILDING GFAS AND HEIGHTS COMPARED WITH THOSE PROPOSED IN THE MASTER PLAN (BARANGAROO DELIVERY AUTHORITY, 2014, PP. 13, 14)

	Approved GFA (sqm)	Master Plan GFA (sqm)	Approved Height (Max AHD)	Master Plan Height (Max AHD)
Block 5	29,688	40,000	RL 34	RL 34
Block 6	3,000	35,000	RL 29	RL 34 (part) and RL 39 (north part of site)
Block 7	15,000	45,000	RL 35	RL 35
Total	47,688	120,000		

Despite the carefully angled ‘artist impressions’ that clearly misrepresent the true dimensions and impacts of these vast increases in GFA and heights over the Concept Plan, it is clear the ‘Master Plan’ was not compliant with the Principles of Concept Plan, nor was it compliant with the specifications for Block 5 that were conditions of consent for Modification 8. Furthermore, this ‘Master Plan’ disregarded the reduction in GFA to 15,000m² for Block 7 that was a condition of consent for Modification 3 at the time this preliminary application was submitted. These conditions have been reinforced throughout subsequent modification approvals.

The Principles of the Concept Plan were disregarded: buildings did not provide the ‘slender’, ‘open’ ‘silhouettes’ that sloped downwards towards the water; the dense buildings with large footprints did not include open spaces within Blocks nor intersecting laneways lined by lower development; and they did not provide variable heights according to the Concept Plan to provide required viewpoints to and from the High Street cutting and their crowning terraces. The prohibition against a building ‘filling the whole of the urban design envelope’ and the percentage of maximum height restriction for each Block had been disregarded (NSW Government, 2006, pp. 130,132, 134).

This preliminary Modification 9 (2014) proposal mentioned the Concept Plan’s principle of tapering to the north, without the explicit height limits that accompanied this concept for Central Barangaroo. However, it underlined the importance of the ‘Highgate line’:

The Central Barangaroo precinct should step down in height from the south to the north. Taller buildings should be in block 5, respecting the Highgate Line, lowest buildings in block 7

(Barangaroo Delivery Authority, 2014, p. 21).

Yet, the proposed buildings did not taper to towards the north, nor did they follow the principles of the Concept Plan with all buildings stepping down to the west. Block 7 did not reflect V-shaped landform of High Street, as required by the Concept Plan.

The withdrawn preliminary application for Modification 9 did not approximate, nor reflect in any way, the Concept Plan in terms of its built form principles, including the indicative building heights and shapes of Blocks 5, 6, and 7.

The current 2021 proposed Modification 9 completely destroys all relationship to the Concept Plan and disregards the 'Highgate Line'. Both are displaced by the Block 7 RL of 73.7m tower and height increases across Blocks 5 and 6.

These aspects of the proposal demolish heritage protections under the Concept Plan that the preliminary proposal of 2014 acknowledged, although that proposal did not comply with these, as the heights of all blocks impacted the High Street cutting aspects and the visual connections of Millers Point to the Harbour.

The Failure of the Central Barangaroo Master Plan

The only time the Barangaroo development has been subjected to independent review and determination is when the application for Modification 8 was referred to the Planning Assessment Commission (PAC), the predecessor of the Independent Planning Commission (IPC). This was a requirement in 2015 under the *EP&A Act 1979* where there were more than 50 unique objections lodged against a proposal. Over 1,000 unique objections were lodged against Modification 8. The PAC therefore made the determination of approval for Modification 8 with its attendant commitments.

The preliminary Master Plan (Modification 9) for Central Barangaroo was submitted in 2014. The completed application for Modification 8 was submitted in 2015. Applications for Modifications 8 and 9 were intertwined and went as far as to use the photomontage from the preliminary Modification 9 application as the lead illustration for the Application for Modification 8.

In a presumptive move, prior to the release of Approval for Modification 8 (28th June 2016), the Barangaroo Delivery Authority released tender documents based on its Master Plan (the preliminary Modification 9 application) for Central Barangaroo (Barangaroo Delivery Authority, 2015). The bid document did not incorporate the subsequent conditions of consent for Modification 8, as approval for this modification was pending at the time.

The bid document for the Central Barangaroo development (Barangaroo Delivery Authority, 2015) was released for tender on the unfounded assumption that both Modifications 8 and 9 would receive full development approval, providing a massive increase (up to 150,000m²) in the GFAs of Blocks 5, 6 & 7 in Central Barangaroo. Such an increase could only be achieved through bulky, unarticulated, massed, unitary blocks, as proposed in the preliminary Modification 9 proposal, that also proposed a huge increase in height for Block 6, and all the three blocks completely filling the maximum height envelopes. This would have entirely negated the Concept Plan for Central Barangaroo.

This pre-emptory and presumptive approach by the Barangaroo Delivery Authority was strongly criticised by the PAC. On June 1st 2016, the Commission warned, '*there is no current planning Approval for more than 59,225m² on Barangaroo Central... any of the amendments proposed by this advice must not assume GFA of 120,000-150,000 is either likely or appropriate*' (NSW Planning Assessment Commission, 2016a, p. 7).

It is important to note that this advice from the PAC preceded the Approval for Modification 8 (released on 28th June 2016). Subsequently, approval for Modification 8 made the sought development at Barangaroo South conditional on a *reduction* in GFA, footprint, and height of Block 5, thereby *reducing* the overall GFA for Central Barangaroo from 59,225m² to **47,688m²**. The approval also restated limits on

heights, GFA, and use for each of the Central Barangaroo Blocks (as described above) as commitments for future development at Central Barangaroo.

The PAC's warning was reiterated on 28th June 2016 within supplementary advice given in response to the Barangaroo Delivery Authority's objections to their initial advice. This was while the tender process, based on the assumed approval of both Modifications 8 and 9, was in progress:

It is important to recognise that under the approved Concept Plan for Barangaroo Central the gross floor area allowance is just 59,225m². Paradoxically, the Authority suggests its Master Plan process [Modification 9] resulted in a recommendation that the gross floor area for Central Barangaroo should be increased to a maximum of 120,000m² (i.e. be doubled), yet it goes on to confirm tenders have been invited to explore up to a maximum of 150,000m² (i.e. 2½ times the original area proposed for development

(NSW Planning Assessment Commission, 2016b, p. 4).

The PAC placed the risk arising from the premature tender process squarely on the Barangaroo Delivery Authority in undertaking the tender process prior to the release of the conditions of consent for Approval of Modification 8 to the Concept Plan.

There is every indication is that the PAC would not have approved the preliminary Modification 9; the current Infrastructure NSW Modification 9 proposal amplifies the reasons to reject the proposal.

Following the advice and determination report from the PAC, and with the release of commitments for Approval of Modification 8, that imposed strict building limits and ensured retention of heritage views, aspects and connections to the Harbour, the Barangaroo Delivery Authority withdrew the Application for Modification 9, thus negating the application.

The Barangaroo Delivery Authority and Sight Line Dispute

The 2015 bid document for Central Barangaroo claims, 'The [unapproved] master plan [rather than the Concept Plan] sets the principles for development' (Barangaroo Delivery Authority, 2015, p. 5). This grandiose claim is blatantly false.

The Supreme Court made it clear in its 2018 findings in the sight line dispute between LendLease and Crown that, 'neither the [Barangaroo Delivery] Authority nor its predecessor the SHFA had any power to grant planning approvals. Neither was a consent authority' (63, Crown Sydney Property v Barangaroo Delivery Authority; Lendlease (Millers Point) v Barangaroo Delivery Authority [2018] NSWSC 1931). Regardless, the Barangaroo Development Authority acted on the assumption that the unapproved preliminary Central Barangaroo Master Plan would be the basis for development within Central Barangaroo.

In July 2019, the Barangaroo Delivery Authority was abolished. Its functions were transferred to Infrastructure NSW, supposedly an 'independent' body reporting to the State Premier (Barangaroo Act 2009 No 25). The dissolution of the Barangaroo Delivery Authority and Urban Growth NSW occurred amidst soaring debt, mishandling, renegeing on requirements, and incompetence that are elucidated by MacDonald (Macdonald, 2019).

Harris describes the evolution of delivery authorities,

As delivery authorities are there to develop, they start acting like developers and increasingly focus on profitability. While making more money for the Government could be argued to be in the public

⁵ <https://www.infrastructure.nsw.gov.au/news/2019/july/01/machinery-of-Government-changes/>

interest, the pursuit of profit over other goals undermines not only the early project principles but the ability to realise more strategic and demonstrable public benefit related to the project and its role in the city. These patterns compound with the lack of accountable and transparent targets and monitoring frameworks related to the early principles (Harris, 2018, p. 128).

The current Infrastructure NSW proposal demonstrates that nothing has changed. Infrastructure NSW has had more than six years to provide a proposal that conforms with the commitments for the Central Barangaroo development. That they have failed to do so can only be seen as utter contempt for the PAC, the planning process, and the people of NSW. The application to dismiss the commitments undertaken to allow the massive increases in development at Barangaroo South, reflects extremely poorly on the development process of the NSW Government.

Comparison of the Concept Plan Variation of Building Heights, Articulation and Scale with the Infrastructure NSW proposed development

The current Infrastructure NSW (2021) application for Modification 9 of the Concept Plan further amplifies the problems identified by the PAC for its precursor, the preliminary, withdrawn Modification 9 'Master Plan'. It also bears even less resemblance to the Concept Plan for Central Barangaroo. Strong independent advice provided by the PAC, particularly for Block 5 is completely ignored in the current application.

Block 5 design requirements, design principles, and development controls under the Concept Plan

Block 5 is the southernmost Block at Central Barangaroo. Like the Blocks of Barangaroo South, it is zoned for 'mixed business' that can include commercial space. Being zoned as 'mixed development' Block 5 is subject to different principles, controls, and design requirements to Blocks 6 and 7.

Under the Concept Plan Block 5 was to ensure view corridors at High Street, 'and to open up north-west and west views from Kent Street buildings and public domain' (NSW Government, 2006, p. 130). Block 5 is permitted only a proportion of the building envelope to reach the maximum height, as shown in Figure 7, with a 10m low scale valley (converted to a lane under the approval for Modification 3) dissecting the block.

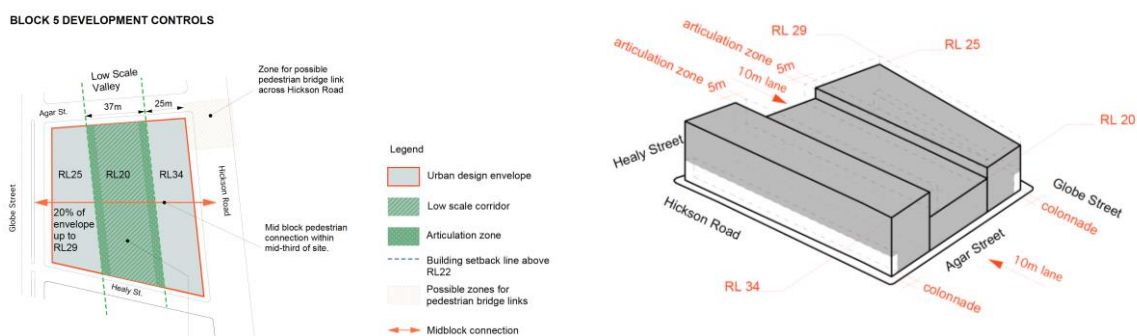


FIGURE 7 DEVELOPMENT CONTROLS FOR BLOCK 5 (NSW GOVERNMENT, 2006, PP. 130, 131)

In line with the principles and design of the Concept Plan, Block 5 slopes downwards towards the north to preserve the vista from Gas Lane. The greatest height was along Hickson Road at an RL of 34 metres.

Reduction of Block 5 under Modification 8

Under the commitments for approval of Modification 8, the footprint of Block 5 was *reduced and the boundary was realigned* (NSW Government, Department of Planning and Environment, 2016), while being required to remain entirely '*within the B4 [mixed use] zone (i.e. reduced from 8,600m²)*'.

The PAC determination rejected the Modification 8 application for a proposed 25m corridor between Block Y (the Crown building) and Block 5 as not sufficient and '*amended the terms of the Concept Plan Approval ... to include a 48 metre separation distance between Block Y to Block 5*' (Planning and Assessment Commission, 2016b), as depicted below in Figure 8.



FIGURE 8 REDUCTION OF BLOCK 5 (WITH THE REMOVED SECTION IN DARK PINK), HICKSON PARK, AND THE PROMENADE NOW REFLECTED IN SEPP 2016 AMENDMENT (BARANGAROO) (PLANNING AND ASSESSMENT COMMISSION, 2016C, P. 6)

The Approval for Modification 8 (NSW Government, Department of Planning and Environment, 2016) ensured the following changes to Block 5:

- The GFA of Block 5 was reduced from 41,225m² to **29,688m²**. This brought the total GFA for Central Barangaroo to 47,688m² (NSW Government, Department of Planning and Environment, 2016).
- The residential allocation is not to exceed 15,000m².
- The height is not to exceed 34m.
- 'The footprint and building envelope of Block 5 is to be *reduced* to remain within the B4 [mixed use] zoned land (NSW Government, Department of Planning, Industry and Environment, 2020). Note that the 'mixed use' zone extends south from Agar Street.
- View corridors were to be provided from Hickson Road to the Harbour.
- Future above ground buildings in Block 5 are required to '*demonstrate that views will be retained from Millers Point and Observatory Hill to the western part of Sydney Harbour*' (NSW Government, Department of Planning, Industry and Environment, 2020).
- Block 5 is not to overshadow Hickson Park.

These remain the current statutory requirements under the Concept Plan.

Block 5 design under the Infrastructure NSW proposal

The Infrastructure NSW application for development proposes ‘to realign the northern boundary of Hickson Park close to its original location prior to MOD 8. Crucially, reinstatement of the Block 5 boundary to be more in line with the pre-MOD 8 arrangement will not compromise the achievement of these principles.

(Urbis, 2021, p. 41).

This is a deception. The Infrastructure NSW is not simply ‘realigning’ the northern boundary but is attempting to reinstate the entirety of Block 5 that was removed in the approval of Modification 8 to offset, to some extent, the incursion of the privately owned Crown and Sydney Harbour One buildings into publicly owned prime Harbour foreshore parklands. This exemplifies the lack of integrity associated with the Barangaroo project.

The Infrastructure NSW proposal falsely claims this ‘reinstatement’ of the Block 5 boundary would result in an improvement of the ‘transition, identity and character of Hickson Park to Harbour Park’ (Urbis, 2021, p. 13). This statement is clearly designed deceive.

The proposal put forward by Infrastructure NSW is not, in fact, for a simple ‘realignment’ of the boundary of Block 5, it is for a complete reinstatement of the entire block that was removed under Modification 8 to compensate and offset for the movement of the privately owned Crown building onto public foreshore parkland.

Along with the proposal to make permanent the temporary service road of Barton Street, the intrusion of ‘Barton Plaza’ into Hickson Park, and the full reinstatement of Block 5, Hickson Park would be cut off from the Parklands and the water, turning it into an enclosed forecourt for the Casino, with no appeal for public use. This proposal was rejected by the PAC under Modification 8.

The Infrastructure NSW proposal goes even further than to simply reinstate the reductions made under Modification by the PAC determination; they *increase* them and entirely *change the configuration* of Block 5 beyond recognition, as seen in Figure 9. This is worse than the proposal that was rejected in Modification 8 in 2016.

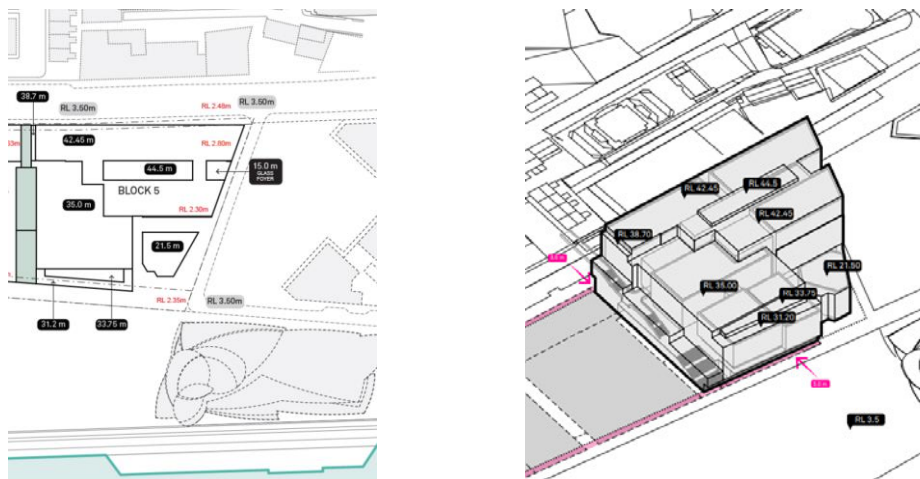


FIGURE 9 DEPICTIONS OF THE MASS AND BULK OF THE PROPOSED REINSTATED BLOCK 5 (HASSELL, 2021, P. 186)

The Infrastructure NSW proposal is a much worse prospect for Hickson Park than that rejected by the PAC in 2016 under Modification 8, as it seeks to remove the setbacks and separations imposed to connect

Hickson Park to the Playfields and the Harbour as partial compensation for the movement of the privately owned Crown building onto publicly owned Harbour parkland and enclose the park with buildings that are increased in the height (to 44.5m), bulk and mass, while adding an unspecified increase in GFA.

Dismissal and Rejection of the Independent Advice of the PAC

Infrastructure NSW seeks to dismiss the concerns and considerations raised by the PAC for Block 5 and Hickson Park in response to the application for Modification 8. These restrictions are to mitigate to some extent the encroachment of the Crown into the foreshore parkland of the Concept Plan and the massive increase in height of One Sydney Harbour. To do so Infrastructure NSW makes the following statements about the PAC and the PAC determination:

At the time of this determination, the PAC did not have any detail or knowledge of the vision or intent of Central Barangaroo, and thus was unaware of the significant implications of this decision on future development of the precinct. This determination was largely based on a number of principles pertaining to solar access, key views, building separation and public accessibility.

(Urbis, 2021, p. 41).

This misrepresents the PAC's position. In their determination report, the PAC clearly stated:

The Commission appreciates that the changes to Block 5 will put some pressure on the gross floor area potential of Barangaroo Central, however the Commission strongly believes the changes represent significant enhancements to the public domain that will rebalance the public and private benefits to be derived from the proposal, as espoused by the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, principle 2(b) which specifies that '... the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshore'. In this regard, the Commission noted a number of submissions raised concern that Hickson Park was an inferior compromise; a result of the relocation of Block Y [the Crown] to a prime foreshore location and was a planning afterthought. The Commission is now satisfied its modifications to the Concept Plan will mitigate these concerns and protect the quality and green space; connectivity to the foreshore and CBD; and use of Hickson Park as a valuable urban park.

(Planning and Assessment Commission, 2016c, p. 30).

In the supplementary advice to the Minister dated 21st June 2016, the PAC also stated,

The Commission has always acknowledged that to reduce the size of Block 5 would have implications at the margin for the potential development revenue returned to the Government, The Commission does not demure from this.

(NSW Planning Assessment Commission, 2016b, p. 2).

The PAC went on to say that the required changes to Hickson Park represent but 0.8% of the non-developmental area, in comparison with a 56% increase in developmental GFA on the overall site, due to Modification 8. The PAC considered this a small and necessary addition to the public domain.

The PAC also rejected the proposal of the Barangaroo Delivery Authority to defer the decision regarding the amenity of Hickson Park to a later date, stating that this '*does not provide sufficient certainty in our view*' (NSW Planning Assessment Commission, 2016b, p. 5). Clearly, the PAC was prescient!

The PAC commented on the perception of the motivation of the Barangaroo Delivery Authority behind their proposal and subsequent argument with the PAC's decision,

Indeed, those with a less balanced outlook than the Commission would be minded to conclude that the Authority's suggested approach was at odds with public benefit outside the pursuit of economic returns.

Without the certainty that the public good is able to be properly balanced against private benefits of developing the site, the impacts of the proposals currently before the Commission would not be approvable.

(NSW Planning Assessment Commission, 2016b, p. 6).

This comment is even more robustly applicable to the motivations of Infrastructure NSW. The Infrastructure NSW proposal attempts to further minimize the concerns of the PAC and undermine the conditions imposed that mitigate for the public good regarding Hickson Park via the reduction of Block 5.

The PAC's statement in relation to Modification 8 was a powerful indication of their assessment. Infrastructure NSW has had more than 7 years to incorporate the PAC's assessment and determination, based on which Modification 8 was granted approval, into their proposal; instead, they have dismissed and disregarded it.

The pretence put forward in the Infrastructure NSW proposal documents that Modification 8 simply 'changed the northern boundary' (Urbis, 2021, p. 163) and that 'reinstatement of the Block 5 boundary to be more in line with the pre-MOD 8 arrangement will continue to achieve the principles set by the PAC' (Urbis, 2021, p. 167) is dishonest and utterly deplorable from a Government agency that is required to work in the best interests of the public.

Furthermore, in claiming that the primary concerns of the PAC were 'solar access, key views, building separation and public accessibility' (GML Heritage Pty Ltd, 2021, p. 12), the Infrastructure NSW proposal diminishes and negates the real concerns of the PAC. These were described in advice on 1st June 2016 as,

Key risks to the success of Hickson Park derive from its land-locked location; lack of legible connections to the foreshore; relationship to the proposed buildings on Block 4 and Block Y; and uncertainty around the future scale of the adjoining blocks within Barangaroo Central (in particular Block 5).

(NSW Planning Assessment Commission, 2016a, p. 5).

In its advice to the Minister for Planning (NSW Planning Assessment Commission, 2016a), the PAC made their concerns about the Modification 8 proposal noticeably clear. The PAC expressed concern about 'the quality, connectivity and amenity of the proposed Hickson Park' and 'public views and access to and along the harbour'. In terms of land use allocation, the proposed outcome represented an extremely poor trade.

The concerns of the PAC regarding 'the quality, connectivity and amenity of the proposed Hickson Park' and 'public views and access to and along the harbour' apply equally to what is now essentially a resubmission of the Modification 8 proposal with worsened prospects by Infrastructure NSW:

The Commission is of the view that the planning of Block Y [the Crown building] as proposed will impinge on foreshore open space, interrupt the continuity of the foreshore parkland and detract from the public experience of the harbour. In exchange for the development of Block Y, the current proposal offers up the new Hickson Park—a handkerchief style city park above basement parking land-locked to the east 'behind' the Block Y built form, and overshadowed for much of the day ...

As proposed, Hickson Park will be almost fully enclosed to the north and west by Block 5 (part of Barangaroo Central) and Block Y respectively. To the south and east, the open space will be further enclosed by the building developments on Blocks 4A and 4B of Barangaroo South. In particular, the

proposed revisions to Blocks Y, 4A, 4B and R5 (modified footprints and increases to height and GFA) will dominate and compromise the potential use and amenity of the open space.

(NSW Planning Assessment Commission, 2016a, p. 3).

The PAC agreed with the Barangaroo Design Excellence Advisory Panel (BDAP), citing:

A clear, visual, spatial and physical connection between Hickson Park and the waterfront is essential to maximise amenity and safety in the park and to ensure that it is legible as public space, not as space intended for the use of the apartments adjacent.

(NSW Planning Assessment Commission, 2016a, p. 4).

In agreement with the BDAP, the PAC considers,

that Hickson Park has the potential to connect the city to the harbour in a direct and compelling way and to diversify the experience and use of Barangaroo's public open spaces. However, in the Commission's view the current proposal falls well short of such aspirations. In terms of land use allocation the proposed outcome represents a very poor trade. Approximately 7,500m² of significant foreshore parkland is subsumed by Block Y. This lost foreshore parkland is exchanged for a similar sized but inferior space—an enclosed, overshadowed and overlooked city park with limited glimpses to the harbour, poor pedestrian connectivity and legibility to the foreshore, further conflicted by Crown Sydney's proposed port cochere.

(NSW Planning Assessment Commission, 2016a, p. 4).

The PAC advice on 1st June 2016, states,

Development of Barangaroo Central must reinforce, not jeopardise, the improved outcomes for Hickson Park. Development height limits on Block 5 should not be increased in any way that creates any additional impact on the park space beyond that created by current approved height limits (as modified by the Block 5 footprint change outlined above). This requirement will assure the success of the park and maintain an appropriate balance of public benefit within the precinct.

Similarly, future development at Barangaroo Central must not further reduce the area of foreshore open space. The Commission considers the significant increase in GFA at Barangaroo combined with any reductions to foreshore open space should not be permitted to put added pressure on the role of the remaining foreshore open space area.

(NSW Planning Assessment Commission, 2016a, p. 5).

The PAC concludes,

In summary, the Commission considers that increasing the size of Hickson Park, extending the park and access corridor to 48 metres between Block Y and the built form of Block 5, and ensuring a 30 metre public domain to the west of Block Y will deliver much greater public benefit from the development, consistent with Sydney Harbour Catchment REP 2005 Principle 2 (b). It will also ensure that the great visible benefits of this harbour side site are delivered in a way that highlights the significance and elegance of the proposed landmark building on Block Y.

(NSW Planning Assessment Commission, 2016a, p. 6).

The Barangaroo Delivery Authority challenged the PAC advice, leading to the PAC providing the Minister with further supplementary advice on 21st June 2016, stressing,

It is important to understand that the Commission's advice to you is motivated by a clear desire to protect the public interest, recognising that the community will lose a large area of prime foreshore park as a consequence of legislation regarding the location of the restricted gaming facility on Block Y [the Crown], while the developers of Barangaroo South will receive significantly increased gross floor area as a result of this SEPP.

(NSW Planning Assessment Commission, 2016b, p. 2).

The PAC states that the response of the Barangaroo Delivery Authority 'has sought only to address the size and overshadowing elements of the Commission's concerns, and not the quality of the park' (NSW Planning Assessment Commission, 2016b, p. 2) and had ignored the broader concerns raised. This is true again of the Infrastructure NSW proposal that limits the PAC concerns to 'solar access, key views, building separation and public accessibility' (GML Heritage Pty Ltd, 2021, p. 12).

The advice of the PAC (2016a and 2016b) has been removed from the Major Projects Planning Portal website⁶, reducing information available to the public about the planning process. This can only be perceived as deceitful.

It may be that those preparing documents for Infrastructure NSW, and the agency itself, have not read the advice of the PAC. If this is the case, they are negligent, derelict in their duty, and incompetent. If the PAC advice has been read and the attempts to ignore, diminish, and deflect from this advice drives statements in the documents, then they are false and manipulative. Either way, the misrepresentation of the facts by Infrastructure NSW regarding the PAC advice and recommendations is inexcusable.

Infrastructure NSW is accountable to the NSW Government and the public. The attempts to mislead, ignore, minimise, and diminish the advice of the PAC in relation to Block 5 and Hickson Park while prioritising private and short-term economic interests over the public interest is inexcusable.

The increase in size of Block 5, the proposed permanence of Barton Street, and intrusion of Barton Plaza into Hickson Park to again enclose Hickson Park would have significant impacts, not only on the amenity of Hickson Park itself, but also on the vistas from Gas Lane and High Street as will be demonstrated below. Furthermore, indicative plans for Barton Plaza and the delivery of a pedestrian connection across Hickson Road from High Street/Millers Point to Central Barangaroo run the risk of further damage to the Gas Lane vista and High Street vistas, as shown below.

The Government and developers have already reaped the benefits of massive increases in GFA in the Barangaroo South development. Infrastructure NSW now seeks to increase these monetary benefits further at the expense of the heritage views portrayed at Central Barangaroo using a proposal that has more profound consequences for Hickson Park than that rejected by the PAC under Modification 8.

Block 6 design requirements, design principles, and development controls under the Concept Plan

Under the Concept Plan, Block 6 is permitted a footprint area of 1,855m² (82m x 22m). A minimum of 40% of the Block 6 envelope is to be public domain and not fully enclosed (NSW Government, 2006, p. 133). The height of Block 6 is permitted to be up to an RL of 29m for only 15% of the Block at the south-west corner, sloping to an RL of 22m along Little Clyde Street and along Hickson Road, as can be seen in Figure 10.

⁶ http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=6124

BLOCK 6 DEVELOPMENT CONTROLS

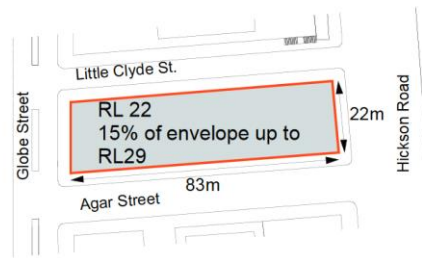


FIGURE 10 BLOCK 6 HEIGHT LIMITS

The Concept Plan offered four possibilities for the planned development of Block 6, shown in



FIGURE 11 FOUR CONCEPT PLAN OPTIONS FOR THE DESIGN OF BLOCK 6 (CITY PLAN HERITAGE, 2006, P. 132)

Together, the narrow dimension of Block 6, with its restriction of a 15% maximum RL of 29m to the south, is lower relative to both of the height controls for Block 5, (maximum of RL of 34m), and Block 7 (maximum RL of 35) under the Concept Plan. This sizing, sitting in open space and separated from Blocks 5 and 7 by wide laneways, retains an intact view from High Street to the water virtually unimpeded. It also offers permeability and a connection to Millers Point via a potential low roof-top walkway that slopes towards the water, allowing the retention of a clear, direct connection to the water.

Block 6 design under the Infrastructure NSW proposal

In contrast to the Concept Plan's design principles and controls, the Infrastructure NSW proposed development of Block 6 is large, bulky, and with massed density, see Figure 12. The height is increased from a maximum of 15% of the block being an RL of **29m** to the entire block the bulk of the block being **36m**, with **38.7m** along Hickson Road, and with no slope downwards to the north. The block expands out to fill the envelope, leaving only narrow dividing lanes separating it from Blocks 5 and 7.

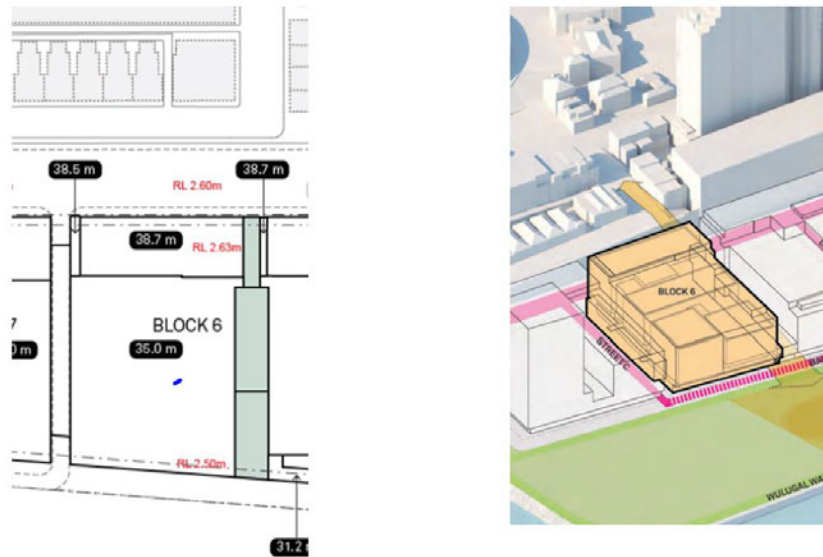


FIGURE 12 BLOCK 6 AS PROPOSED BY INFRASTRUCTURE NSW

The proposed Block 6 under the Infrastructure NSW ‘modification’ is at least three times the size of Block 6 under the Concept Plan and has completely discarded the narrowness, lightness, and small scale of the Concept Plan. The block has extended across the northern lane and extrudes into the southern lane. Further enclosing and overshadowing the lanes are cantilevered elements, reducing their little remaining openness. This is clearly intended to accommodate a massive unspecified GFA for this block that is allocated to only community space in the Concept Plan.

The proposed Block 6 bears no resemblance to the Concept Plan and, along with the changes proposed for Block 5, has appalling impacts on the view from the northern end of High Street opposite the Agar Steps. These impacts will be shown below.

Block 7 design requirements, design principles, and development controls under the Concept Plan

It is notable that the design principles and controls laid out for Block 7 in the Concept Plan specifically state their purpose to ‘retain and focus views to and from Observatory Hill’ (NSW Government, 2006, p. 134). This requirement remains in force.

The design of Block 7 is extremely sensitive as it sits between the High Street cutting and the water and fronts Nawli Cove. Since it is adjacent to protected heritage views, Block 7 has stricter controls under the Concept Plan Built Form Principles, which are more complex. This is to ensure that the buildings allow visual access to appreciate the V-shaped landform of the High Street cutting and provide intermittent views to and from High Street and Kent Street. Heritage views are retained, as are the views to and from the High and Kent Street terraces.

Block 7 was dramatically modified in Modification 3 to allow the incursion of Nawli Cove into the foreshore. The northern ‘wing’ and half of the centre building were removed entirely to **reduce the footprint** from 11,922m² to 5,960m². This is shown in Figure 13 that indicates the line from which the northern part of Block 7 is removed.

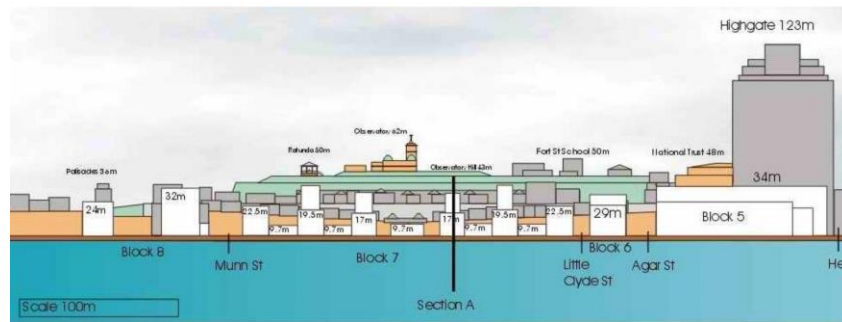


FIGURE 13 INDICATIVE BUILT FORM OF THE CONCEPT PLAN FOR CENTRAL BARANGAROO INDICATING AT SECTION A THE POINT FROM WHERE ALL BLOCK 7 BUILDING TO THE NORTH IS REMOVED UNDER MODIFICATION 3

Under Modification 3 the GFA of Block 7 was **decreased** from 28,000m² to **15,000m²** with 14,000m² permitted for residential development (MG Planning, September 2009), leaving **1000m²** available for retail. The design principles for Block 7 Concept Plan were reduced as per Figure 14 and remain the statutory Concept Plan for Block 7.

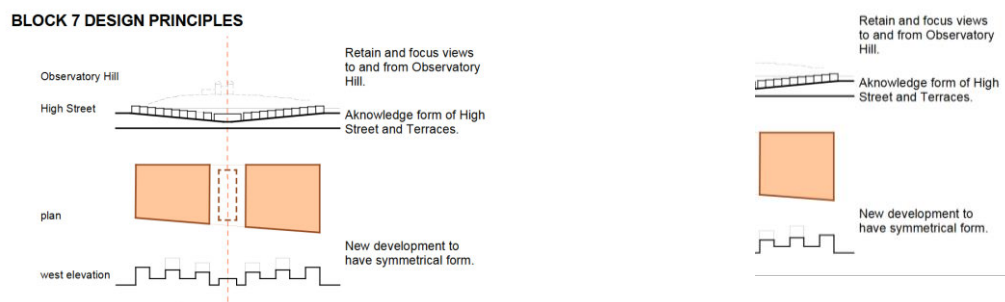


FIGURE 14 REDUCTION OF BLOCK 7 FROM CONCEPT PLAN (NSW GOVERNMENT, 2006, P. 134) TO MODIFICATION 3

Under the Concept Plan, Block 7 narrows from 73.8m (east to west) along the south to 67.5m along the new northern side, as can be seen in Figure 15.

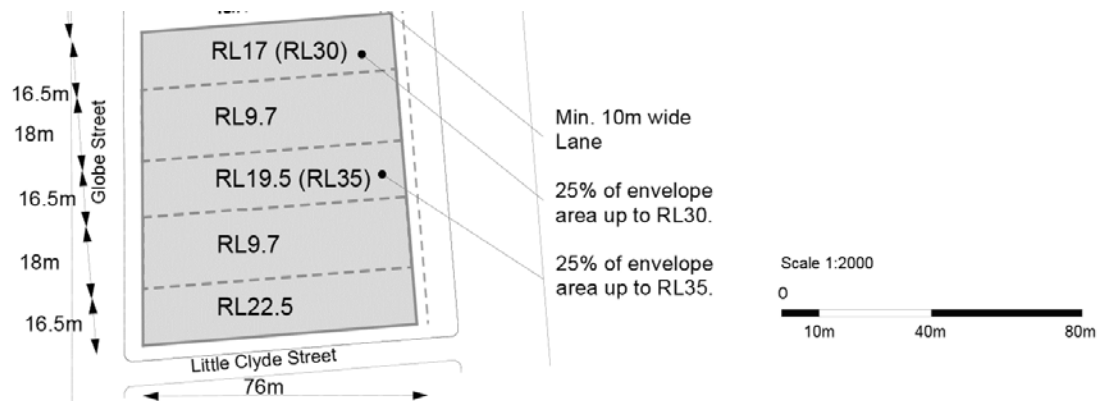


FIGURE 15 BLOCK 7 MODIFIED FOOTPRINT DESIGN CONTROLS

The remaining southern ‘wing’ of Block 7 is divided into five sections. Three small, narrow towers, each 16.5m wide from east to west are separated by 18m wide podiums with RLs of 9.9 metres. The central tower is permitted to reach a height of up to RL 35m (25% of the envelope); with the southern tower permitted to reach a height of up to an RL of 22.5m (25% of the envelope), and the northern tower permitted to reach an RL of 30m, see Figure 16.

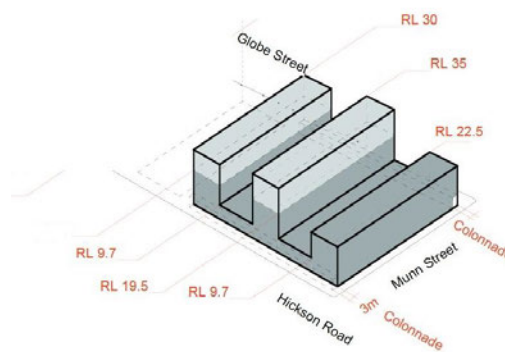


FIGURE 16 BLOCK 7 MODIFIED HEIGHT DEVELOPMENT CONTROLS

Proposed reduction in height for Block 7 under Modification 8

In developing Block 7 post Modification 3 the Conybeare Morrison report, one of the reports on which the commitments of Modification 8 (NSW Government, Department of Planning and Environment, 2016) rest states,

*The reconfiguration of Block 7 requires that it addresses Northern Cove and Headland Park with a street wall. **Block 7 height restrictions of 4 storeys [emphasis added]** and its new identity as a ‘facing façade’ require a virtually continuous street wall building addressing parklands, the cove and Hickson Road. Some building articulation, allowing views into interior areas of the block, would capitalise the building’s unique position. Definition and articulation of building mass should be included in the design resolution as this building will dominate the cove precinct.*

(Conybeare Morrison, 2009, p. 24).

Commitment 125 for Modification 8 explicitly states:

To be demonstrated as part of any project application which relates to the Headland Park and surrounds:

The future detailed design of the Headland Park including the northern cove, Globe Street and adjacent Block 7 is to be prepared in accordance with the Headland Park Urban Design Framework and Preferred Project Parkland Objectives detailed in the "Barangaroo Headland Parklands Urban Design Report" prepared by Conybeare Morrison (August 2009).

(NSW Government, Department of Planning and Environment, 2016).

The Conybeare Morrison (2009) report recommends a Block 7 is restricted to four stories in height and remains to be resolved.

The Infrastructure NSW proposal for Block 7

Rather than *reduce* the height of Block 7, as required by Commitment 125 for approval of Modification 8, the Infrastructure NSW proposal almost *doubles* its maximum height (from 35m to 73.7m). In complete disregard of the Concept Plan for Central Barangaroo, with its attendant heritage restrictions and residential/community zoning, Infrastructure NSW makes a comparison against the vastly different mixed zone of Barangaroo South, claiming this increase is 'very minor in comparison to the approved and largely constructed height of built form in Barangaroo South including Block Y...' (Urbis, December 2021, p. 117). Such a comparison is appalling! The zoning of Barangaroo South and Central Barangaroo differ, as do the built form principles and controls to create a precinct at Central Barangaroo that is *different in scale and purpose* to Barangaroo South, and to ensure heritage protections and their visual connections to the Harbour.

The dismissal of the key objectives of the approved Concept Plan for Central Barangaroo and the protected heritage views increases the perceived corruption associated with the Barangaroo South development. Infrastructure NSW is perceived as deliberately misleading and manipulative. The comparison made with Barangaroo South is unworthy of a NSW Government agency entrusted to represent and act in the best interests of the public.

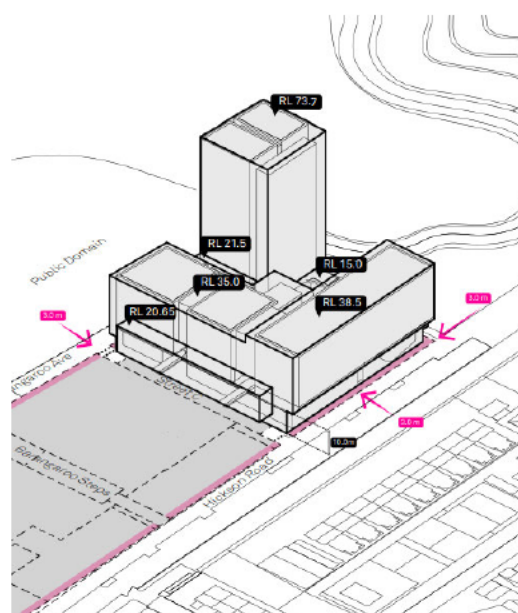
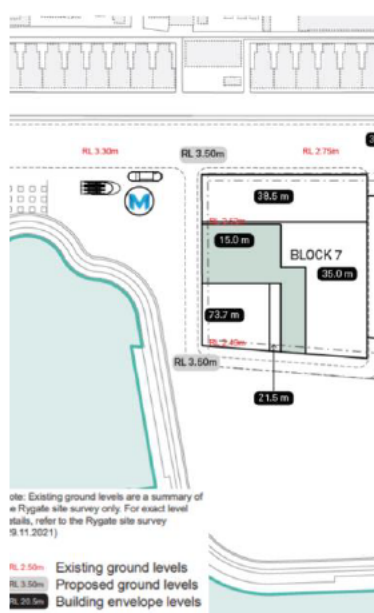


FIGURE 17 PROPOSED BULK AND SCALE FOR BLOCK 7 (HASSELL, 2021, P. 196)

Under the Infrastructure NSW proposal, Block 7 becomes a monstrosity. The block consists of massed buildings with seemingly no separation between them and no internal open spaces as required under the Concept Plan. Heights vary from an RL of 73.7 (as opposed to an RL of 35 for a maximum of 25% of the Block 7 building envelope) to a narrow strip of RL 20.65 enclosing the laneway between Blocks 6 and 7.

The bisection of the High Street cutting by Block 7 obliterates the views to and from the Kent and High Street terraces at the southern side and to the north from all harbour viewpoints other than the opposite foreshore. The northern terraces are dominated, diminished, and enclosed under the Infrastructure NSW proposal that destroys the heritage value and integrity of the High Street cutting and the historical maritime connections of Millers Point to the Harbour.

Gone are the narrow low towers divided by 18m podiums to provide view corridors to the heritage views that ensure Millers Point's historical connections to the Harbour and display of the High Street cutting. The resultant dense, massive, bulky, heavy block, positioned up against Block 6, overwhelms the space. This is in complete opposition to the Concept Plan.

The Infrastructure NSW proposal is an appalling travesty of the original design

Devastating impacts of the Infrastructure NSW proposal on Heritage Sight Lines in Contrast to the Concept Plan

Central Barangaroo contains three building blocks: Blocks 5, 6 and 7. Block 8 and part of Block 7 were removed in Modification 3 to allow the incursion of Nawi Cove into the Harbour foreshores. Block 5 was reduced in Modification 8 to provide some minimal compensation for the movement of the privately owned Crown to the public parklands of the Sydney Harbour foreshore and the increase in height of One Sydney Harbour from 41.5m to 250m through Modification 8.

The Concept Plan, including these modifications, remains the statutory instrument for the development at Central Barangaroo. Throughout the Barangaroo South development the conditions for consent for modifications repeatedly reiterated the heritage protections of the Concept Plan. The Infrastructure NSW (2021) proposed development ignores these commitments and would destroy these protected heritage aspects.

Loss of Unique Panoramas Protected under the Concept Plan

The loss of views protected under the Concept Plan extends to panoramas, such as from Pyrmont Park and Darling Harbour that are required to be retained. Figure 18 shows the loss of iconic Harbor Bridge views, and the compounding the loss of protected views from Darling Harbour to Millers Point, the Sydney Observatory, and Observatory Park from Darling Harbour.



FIGURE 18 THE CURRENT VIEW FROM DARLING HARBOUR IN CONTRAST TO THE VIEW IMPACTED BY THE INFRASTRUCTURE NSW PROPOSAL

Such losses remove the unique, quintessential nature of Sydney Harbour from important viewpoints, such as Darling Harbour, which would lose all connection to the historical and iconic aspects of Sydney Harbour. Such an outcome reduces our unique national heritage and turns the western foreshores of Sydney Harbour into a generic harbour with no connection to its unique history.

Loss of Heritage Aspects and Harbour Connections

The GML Heritage Assessment states,

Additional height for Blocks 5, 6 and 7 will have some minor additional heritage impacts on panoramic views to and from the western slopes of the Millers Point and Dawes Point Village Precinct and harbour locations to the west. However, the main visual impact would primarily result from the proposed corner tower element of Block 7 (73.7 RL), which is taller than the Observatory domes (54 RL). Otherwise, heritage impacts are generally consistent with the approved Concept Plan. There are no heritage items in Central Barangaroo. There are no identified impacts on the Walsh Bay Wharves Precinct.

(GML Heritage Pty Ltd, 2021, p. 3)

The Urbis report also considers heritage impacts of the Infrastructure NSW proposal for increases in Blocks 5, 6 and 7 and the 'realignment' of Block 5 to be minimal in comparison to the Concept Plan, which they claim causes the adverse impacts on heritage aspects and connections to the Harbour:

However, it is noted for some of these items, this impact results from the approved Concept Plan and MOD 9 will not cause additional adverse impact. It is also noted the realignment of block boundaries and distribution of building height across the three development blocks will create shared east-west public views and reinstate historical connections between the Millers Point and Dawes Point Conservation Areas and the harbour foreshore.

(Urbis, 2021, p. 18).

These statements are completely false. The impacts of the Infrastructure NSW proposal would ruin heritage aspects, ruin east-west public and private views, and destroy historical connections to the Harbour foreshore and their maritime history, while the Concept Plan would preserve them.

Impacts of Increased Height and Bulk of Blocks 5 and 6 on Heritage Aspects

A condition of approval for Modification 8, determined independently by the PAC, was that future development of Block 5 would not impact on key view lines from the Millers Point and Observatory Hill. No such constraint could be applied to Blocks 6 and 7, as these were outside the scope of Modification 8.

The proposed increases in heights and bulk of Blocks 5 and 6 under the Infrastructure NSW application would have devastating impacts on the historical connections of Millers Point to the Harbour along High Street, particularly from opposite the Argyle Steps. The vista under the Concept Plan (shown in Figure 19) retains the connection between Millers Point and its maritime history via the water of the Harbour at the Agar Steps.

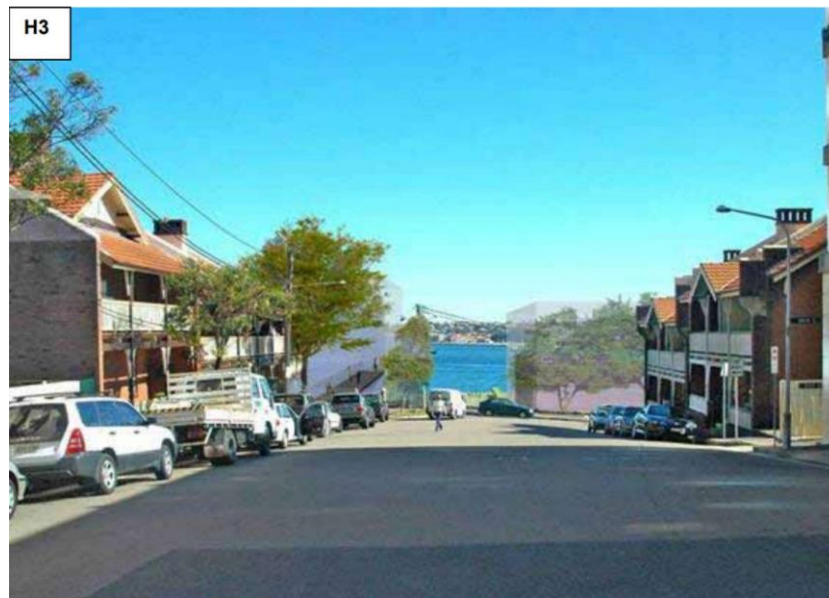


FIGURE 19 IMPACT OF HEIGHTS OF BLOCKS 5 AND 6 OPPOSITE THE AGAR STEPS AS PER THE CONCEPT PLAN (CITY PLAN HERITAGE, 2006)

The Infrastructure NSW proposal would eliminate this vista with its historic connections, as shown in Figure 20, which is presented as an ‘improvement’ to the Concept Plan.



FIGURE 20 DEPICTIONS FROM HIGH STREET SHOWING PROPOSED ‘MODIFICATIONS’ UNDER THE INFRASTRUCTURE NSW PROPOSAL (AECOM, 2021, P. 49)

Nevertheless, the GML Heritage assessment concludes,

Adverse heritage impacts are mitigated to some degree by the provision of some additional connections through Central Barangaroo and view corridors to the harbour foreshore through Blocks 5, 6 and 7. The proposed pedestrian link created by Barangaroo Steps and High Street Connection would enhance the existing historical connections from Millers Point and Dawes Point to Sydney Harbour. This involves a bridge over Hickson Road making a high-level connection to High Street, which will require further heritage guidance to minimise impacts on the related heritage items in the vicinity: the Hickson Road Wall, and the 'Palisade Fence and High Steps.

(GML Heritage Pty Ltd, 2021, p. iii).

This manipulation of the truth is readily shown to be false. That such an obviously misleading assessment is provided in a government report is unconscionable and of critical concern.

Figure 21 and Figure 22 provide greater detail of the impacts of this destructive proposal as illustrated in the Hassell (2021) report that supports the Infrastructure NSW proposal. They depict the view from the top of the High Street cutting in line with the Agar Steps with and without a proposed pedestrian walkway that has been reduced to a miserable sliver of an enclosed vista.



FIGURE 21 PROPOSED PEDESTRIAN WALKWAY FROM HIGH STREET OPPOSITE THE AGAR STEPS (HASSELL, 2021, P. 83)



FIGURE 22 PROPOSED VISTA FROM OPPOSITE THE AGAR STEPS WITHOUT THE PEDESTRIAN WALKWAY (HASSELL, 2021, P. 83).

Where the Concept Plan maintains the historical connections (Figure 19) between Millers Point and the Harbour at the High Street cutting opposite the Agar Steps, the Infrastructure NSW proposed development would destroy them. Furthermore, shared east-west public views are also ruined by the increased height and bulk of Block 7, as are the historical connections to the Harbour. Block 7 also acts to impede the sight lines of the Sydney Observatory.

Impacts of Increased Height and Bulk of Block 7 on Heritage Aspects

In a rare moment of minimal honesty, the Infrastructure NSW proposal acknowledges, *'the proposed height increase of the Block 7 tower disrupts some continuity of harbour and horizon views.'* However, this is then minimised and undermined through the false statement, *'generally there is sufficient context either side of the tower form to maintain visual continuity of harbour and horizon views'* (Urbis, December 2021, p. 17). This is quite evidently wrong.

The increased heights, bulk and massing of Block 7, with its massive 'punched up' tower completely destroy the continuity, integrity, and visual connections to the water of Sydney Harbour for the Sydney Observatory, Observatory Park, Millers Point and the High Street cutting, as shown in Figure 23.



FIGURE 23 PERSPECTIVES FROM THE OPPOSITE PUBLIC FORESHORE TOWARDS OBSERVATORY HILL PARK CURRENTLY AND UNDER THE INFRASTRUCTURE NSW PROPOSAL

The Infrastructure NSW proposal for Block 7 is directly opposed to the Concept Plan with its key aim to *'retain and focus views to and from Observatory Hill'* (NSW Government, 2006, p. 134) through the narrow presentation of slim towers, separated by 18m wide low podiums of RL 9.7m in height.

The Block 7 tower blots out the Observatory, bisects Observatory Hill, and obliterates the southern wing of the High Street cutting, while destroying its continuity and drastically reducing its heritage and visual

value. It presents only a modicum of the view protected under the Concept Plan, and this is enclosed by the bulk of the tower.

The slender low towers of Block 7 of the Concept Plan, with their wide, view corridors protecting heritage aspects and connections to the water, and internal courtyards are discarded by the Infrastructure NSW proposal. The oversized 73.7m residential tower, and its associated buildings, with increased height, mass and bulk, interrupt and block the smooth transition from the Headland Park, overpowering the parklands and Nawi Cove, while reducing the value of key heritage aspects.

Impacts of Increased Height and Bulk of Block 7 on Sight Lines of the Sydney Observatory

The Powerhouse Museum operates the Sydney Observatory as an active museum and education facility. In its submission in response to the exhibition of the proposed Infrastructure NSW Modification 9, the Powerhouse raises significant concerns about the proposed increase in the height of Block 7 from an RL of 35m to an RL of 73.7m.

The GML Heritage Assessment states,

MOD 9 will involve some additional adverse impacts (beyond those approved under MOD 10) on the view sheds to and from the Sydney Observatory site generally, the Sydney Observatory west wing and its north dome, and the Time Ball Tower from the harbour and public harbour headlands, depending on the viewpoint. The most impacted viewpoints, as established in the 2008 HIS, will be to/from the west and southwest ie Pyrmont and Balmain.

(GML Heritage Pty Ltd, 2021, p. 123).

The Powerhouse responds,

The extent of the proposed tower within Block 7 will detrimentally impact views both to and from Sydney Observatory. This impact has been assessed as high-moderate within the View and Visual Impact Assessment (Appendix F).

(Powerhouse Museum, 2022, p. 2).

The Powerhouse was extremely critical of the Sky View Assessment prepared by AECOM (2021) for the Infrastructure NSW proposal for modification of the Concept Plan, stating it had

been prepared in absence of any meaningful consultation with Sydney Observatory. Such consultation would have ensured incorrect assumptions made within the assessment could have been corrected prior to lodgement. These assumptions have led to an incorrect assessment of impacts not only within the Sky View Impact Assessment but also a number of other reports that rely on this assessment.

(Powerhouse Museum, 2022, p. 2)

Powerhouse was critical of the AECOM's (2021) assessment of the impacts of the Infrastructure NSW proposed development on the Sydney Observatory:

1. *The assessment incorrectly assumes a "lowest practical angle of viewing" (of 10-degrees altitude) from Sydney Observatory. **No such angle exists.** Sydney Observatory views celestial objects and events in all directions in the sky including down to the horizon at 0-degrees altitude...*
2. *The assessment incorrectly assumes all observations from Sydney Observatory are made by telescope from only the North and South Domes. In fact, the sky is viewed by telescope, binoculars and the naked eye from all three domes (North, South & East), from windows and from the grounds throughout the site...*
3. *The assessment fails to acknowledge the heritage significance of views to and from Sydney Observatory, to the harbor, to surveying stations and to the horizon. It fails to acknowledge the*

important connection the Observatory has with the broader cultural and scientific context of the western horizon as the location where celestial objects depart from view after their daily passage across the sky. In particular, sunset on the western horizon each day is the prelude to darkness and a night of astronomical viewing. Also, observing the steady sweep of sunset back and forth along the western horizon during the year has always marked the progression of the calendar and the passing of the seasons, and continues to do so.

4. *Although illumination control measures are proposed for the Central Barangaroo site the light produced by this development will only increase the loss of sky view experienced by Sydney Observatory over and above that already existing and approved as part of the Barangaroo development.*

(Powerhouse Museum Attachment A, 2022)

The Powerhouse submission also rejects the assessment of heritage impacts on the Sydney Observatory undertaken by GML Heritage (2021) that is based on the flawed, inaccurate AECOM (2021) Sky View Assessment, and refutes the GML Heritage claim that there will be little or no adverse impact to Sydney Observatory for its continued historical use.

Powerhouse points out that the Director-General's Requirements include a required assessment of the *cumulative impacts* of modifications to the Concept Plan (Director-General, 2014), which the Infrastructure NSW proposal does not assess in relation to the Sydney Observatory. Powerhouse states,

The approval of Crown Sydney and the residential towers R4A/R4B/RS (One Sydney Harbour) at Barangaroo generated significant impact to Sydney Observatory in relation to sky view loss and heritage views to and from the Observatory. The proposed Mod 9 does not assess the cumulative impacts of the tower within Block 7 together with that of Crown Sydney and One Sydney Harbour. As such it is considered that the assessed impacts of Mod 9 on Sydney Observatory are underestimated as they have not considered the totality of impacts on the Observatory of the Barangaroo development.

(Powerhouse Museum, 2022, p. 3).

Powerhouse undertook its own detailed assessment of the impacts of Block 7 on the Sydney Observatory and reached the opposite conclusion to AECOM and GML Heritage, i.e. that there are significant and unacceptable impacts of the proposed development on the Sydney Observatory. In an attached letter submitted by Powerhouse in response to Modification 9, Dr Nick Lomb FASA FRNSW FRSA, one of Australia's leading astronomers, concludes,

a building jutting above the western horizon would be most a most unfortunate detriment to the service that Sydney Observatory provides to its large numbers of public visitors, including adults, school groups, locals and tourists, during the day or at night. Dr Nick Lomb FASA FRNSW FRSA.

Impacts of Increased Height and Bulk of Blocks 5, 6 and 7 on Sight Lines of Observatory Park

GML Heritage acknowledges,

There will be some additional adverse impact on the panoramic view shed to and from the central and western parts of Observatory Park through the additional heights proposed under MOD 9, particularly as a result of the height of the Block 7 tower. The additional height of Block 7 will impact on the southwest section of panoramic views to the harbour and horizon.

(GML Heritage Pty Ltd, 2021, p. 122)



FIGURE 24 DEMONSTRATING THE LOSS OF VIEWS TO AND FROM OBSERVATORY HILL PARK PROTECTED UNDER THE CONCEPT PLAN

Figure 24 demonstrates the disconnection of Observatory Hill Park from the waters of the of Sydney Harbour to the west and its enclosure by the bulk, mass and height of Block 7 under the Infrastructure NSW proposal. Figure 24 also shows the erasure of views to and from the terraces of Kent Street that are protected under the Concept Plan.

In blocking visual continuity from Observatory Park to the water and cutting the terraces of High and Kent Streets off from visual access to and from the water and opposite foreshores, the beauty and value of Sydney Harbour itself is seriously diminished.

Impacts of Increased Height and Bulk of Blocks 5, 6 and 7 on Sight Lines of the High and Kent Street Terraces

The GML Heritage assessment of the impact of the Infrastructure NSW proposed increases in height, mass and bulk of Blocks 5, 6, and 7 is, *The loss of views and vistas to and from High Street, its terraces, and the pedestrian High Steps will not be further impacted through the increased heights proposed in MOD 9.*

(GML Heritage Pty Ltd, 2021, p. 120)

This has been shown above to be false and the Langham submission to the NSW Department of Planning in response to the Infrastructure NSW Modification 9 proposal further visually unmasks this statement. The Langham sits at atop the southern wing of the High Street cutting, with terraces of Kent Street to the north and south, and those of High Street below. A major impact of the Infrastructure NSW proposal lands on both the Langham and the terraces of High and Kent Streets.

The indicative view of the Concept Plan from the Langham (Figure 25) shows the impact of the Concept Plan on the view from level 2 of the Langham. This is contrasted to the Infrastructure NSW proposal shown in Figure 26. These impacts also particularly relate to the views of the adjacent Kent Street terraces.



FIGURE 25 INDICATIVE VIEW FROM LEVEL 2 OF THE LANGHAM UNDER THE CONCEPT PLAN (GYDE CONSULTING, 2022, P. 22)

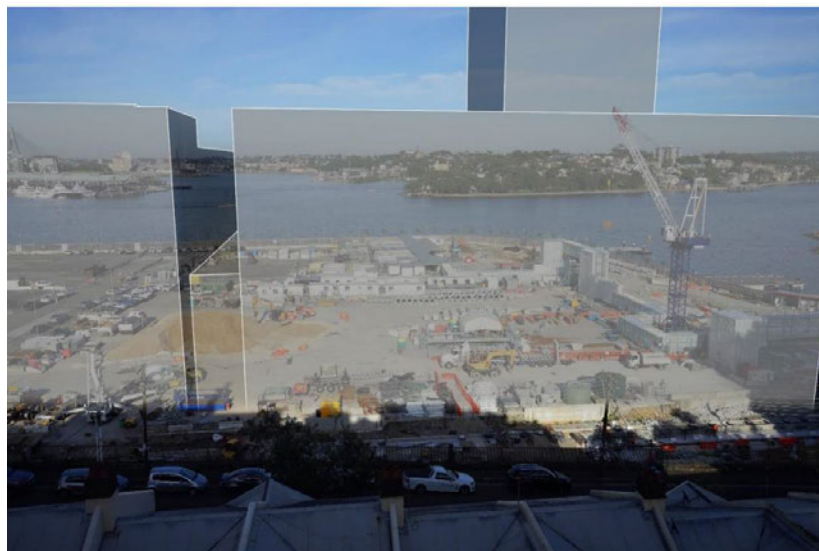


FIGURE 26 THE IMPACT OF THE INFRASTRUCTURE NSW PROPOSAL ON THE VIEW FROM THE LANGHAM OVER THE HIGH STREET TERRACES (GYDE CONSULTING, 2022, P. 32)

The sight lines to and from the High and Kent Street terraces, protected under the Concept Plan, are destroyed under the Infrastructure NSW proposal due to the proposed increases in height and bulk of all three blocks of Central Barangaroo.

The Infrastructure NSW proposal for Blocks 5, 6 and 7 use the Concept Plan to vault off with increases in building height, mass and bulk; the results of which destroy heritage views with their visual connections Millers Point and the High Street cutting to the water of Sydney Harbour, the sight lines of the Sydney Observatory and Observatory Park, destroying their continuity and decimating their value.

It can be readily seen that the ‘*the realignment of block boundaries [as applied to Block 5] and distribution of building height across the three development blocks*’ of the Infrastructure NSW development proposal

does not ‘create shared east-west public views and reinstate historical connections between the Millers Point and Dawes Point Conservation Areas and the harbour foreshore’, it destroys them.

Re-sale of Sight Lines

The proposed re-sale of views that were sold to residents of the terraces of High and Kent Streets since 2016 under the Infrastructure NSW application continues the corruption of the planning processes and dishonesty of the NSW Government in approving such dishonesty and inflicting the consequences on NSW residents.

Sight lines to and from the Terraces of Kent and High Streets

The Infrastructure NSW proposal includes *re-sale of existing sight lines and views advertised and sold to residents of the terraces of High and Kent Streets since 2016* that are protected commitments undertaken for approval of Modification 8. Those whose views are not re-sold are severely impacted by the Infrastructure NSW proposed development in that their views become an enclosed vista dominated by Block 7.

The terraces of High and Kent Streets were sold from 2016 under the conditions of consent for Modifications 8 and 11 that continue as the statutory requirements for the Central Barangaroo development. These preserved the Concept Plan and provided view sharing for residents. The NSW Government is now attempting to re-sell views they previously sold to residents under the conditions that guaranteed their retention.

From 2014 – 2018 the NSW Government sold terraces in High and Kent Streets that had been used for social housing, raising over \$608 million from the 189 properties sold (Burke, 2018). Many of these terraces and High Street apartment blocks were explicitly advertised and sold, on behalf of the NSW Government, with water views over Barangaroo. For example,

- 63 Kent Street was sold by the NSW Government in 2017⁷ ‘Featuring views over Barangaroo to the western harbour’;
- 74-80A High Street sold by the NSW Government in 2017⁸ with ‘panoramic views across Barangaroo, Balmain, and Darling Harbour’;
- 62-64A High Street was sold by the NSW Government in 2017 with ‘evolving water views’⁹;
- 5-7 High Street sold in 2018¹⁰ by the NSW Government with ‘views [that] span from Barangaroo to Balmain’ and ‘Deep north facing verandahs (sic) on upper and lower levels with water views.’

This latter block is part of 3 - 9 High Street that was specifically identified as of historical significance by Tanner, Kibble, and Denton (2016) in their Statement of Heritage Impact.

The Approval for Modification 8 was handed down in June 2016. The conditions of consent ensured the specified views to and from the terraces would be preserved in the Central Barangaroo development (NSW Government, Department of Planning and Environment, 2016).

⁷ Advertising for 63 Kent Street Millers Point. <https://www.realestate.com.au/sold/property-house-nsw-millers+point-126314086>

⁸ Advertising for 74-80A High Street Millers Point. <https://www.realestate.com.au/sold/property-unitblock-nsw-millers+point-126919818>

⁹ Advertising for 62-64A High Street Millers Point. <https://www.realestate.com.au/sold/property-unitblock-nsw-millers+point-126476474>

¹⁰ Advertising for 5-7 High Street Millers Point. <https://www.realestate.com.au/sold/property-unitblock-nsw-millers+point-128116818>

Purchasers bought these properties in good faith that the Government was selling the views, As advertised, with the properties; they expected that the views would be retained with the Central Barangaroo development.

Purchasers did not have their sight lines contracted in legal terms, as did Crown and Lendlease, nevertheless, the contract is inherent in the advertising terms of the sale. The same sight line conditions would be expected to apply to the sale of the terraces as with the Crown and other affected Barangaroo buildings:

1. They similarly optimised sales for the Government;
2. In advertising the views, the Government recognised that retention of sight lines would be of critical importance to purchasers;
3. No negotiation in good faith has taken place with purchasers to agree to 'changes that would retain the sight lines while at the same time optimising development opportunities' (7 (3) *Crown Sydney Property v Barangaroo Delivery Authority; Lendlease (Millers Point) v Barangaroo Delivery Authority* [2018] NSWSC 1931).

Terraces of High and Kent Street have been sold, by both the NSW Government and privately, with water views. Purchasers rely on the integrity of the Government to honour its commitments in the retention of views from their properties. These commitments were undertaken by the NSW Government and developers in exchange for massive increases in GFA under Modification 8, including the relocation of, and increase in size of, the Crown building. The Infrastructure NSW proposal to renege on these commitments is deplorable and constitutes 'double dipping', just as with the sight lines of the Crown that have been in dispute.

Cumulative Impacts on Heritage and Residents' Sight Lines

The Director-General's requirements include an assessment of the cumulative impacts of the Barangaroo development. The Infrastructure NSW proposal has undertaken no assessment of the cumulative impacts of the development, other than for traffic and construction issues.

The Infrastructure NSW proposal does not meet the requirements of the Director-General (2014) in assessment of the cumulative impacts of the Barangaroo development on heritage sight lines and views of residents.

This is despite the PAC raising concerns about the impacts on views of the Langham and residents of the Kent Street towers: Highgate, The Georgia, Stamford Marquee and Stamford on Kent (Planning and Assessment Commission, 2016c) when determining the outcome of Modification 8.

View sharing under the Concept Plan

The Concept Plan recognised the potential impacts of the development of Barangaroo on nearby residents stating, '*Retention of public views to the harbour is also of importance, particularly to local stakeholders*' (NSW Government 2006b p. 156). The award winning architects of the Concept Plan state,

Opposite High Street, the buildings are lower again to respect the unique urban form, and frame the axial perspective of the Observatory, framed by the majestic figs on the hill.

(Hill Thalys Architects, 2006, p. 22).

The Concept Plan provides view corridors created by wide low podiums and lanes; slender buildings sloping to the water and, in the case of Blocks 5 and 6, to the north; maximum heights with a restricted percentage of each block permitted to reach the maximum height (15% for Block 6 and 25% for Block 7); an 8-storey limit on buildings along Hickson Road for Block 5 and reducing for Blocks 6 and 7; and 40% of Block 6 to be public domain and not fully enclosed.

The view corridors of the Concept Plan are shown in Figure 27.

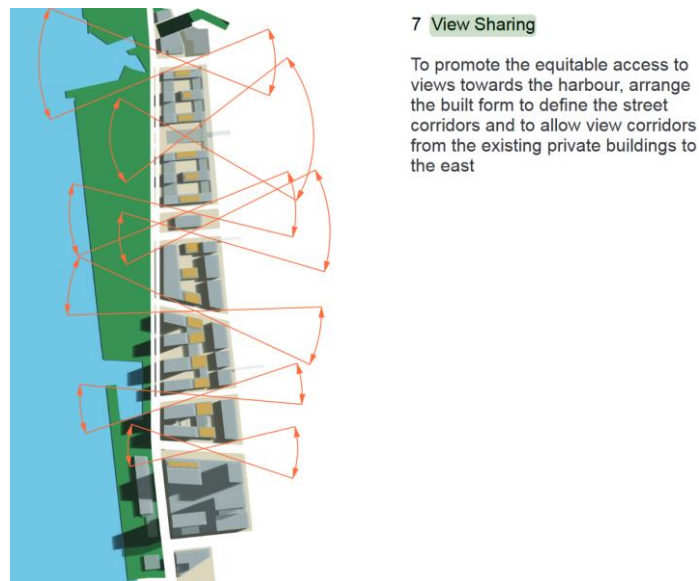


FIGURE 27 BUILT FORM PRINCIPLE 7 (NSW GOVERNMENT, 2006, P. 115)

The Infrastructure NSW (2021) proposal removes all of these elements, creating a solid wall of buildings along Hickson Road and around to Nawi Cove. These block the views not only from the terraces of High and Kent Streets, but also the Langham and residents of the Kent Street towers.

The Langham

In 1993 the Langham (previously the Observatory Hotel) was restricted to a height of four storeys due to action taken by the National Trust (National Trust NSW, 2021) to ensure the views to and from Observatory Hill Park are protected. Should this protection be removed, the owners of the Langham Hotel would have the right to dismiss the position that these views are significant and need to be retained. This outcome would have serious impacts on the Millers Point Conservation Area should the Langham Hotel be redeveloped without these constraints.

During the implementation of the Barangaroo development it was understood that *‘The impact the current modification may have on views is a key issue for consideration (potential impacts to the Highgate, Stamford Marque, Stamford on Kent, Bond Apartments and the Historic Millers Point Precinct)’* (Director-General, 2008). This was accepted by residents as the Concept Plan moderated these impacts through its building principles and controls for the built forms of Blocks 5, 6, and 7 at Central Barangaroo.

In considering the Modification 8 Application, the PAC sympathised with residents of the nearby residential blocks, acknowledging that each modification to the Concept Plan had potential view impacts for residents, over which they have little control, having bought their properties in good faith. The PAC made a further forward reaching statement:

The PAC considers that the Barangaroo development has now reached the point where further impacts on views beyond MOD8 need to be minimised

(Planning and Assessment Commission, 2016c, p. 25).

Cumulative Impacts on View Sharing

The Concept Plan acknowledges that views to the south-west from residential apartment buildings Highgate, The Observatory Tower, The Georgia, Stamford Marque and Stamford on Kent would be strongly impacted by the development at Barangaroo South, where the tallest building was to be 100m, as shown in Figure 28. . This was accepted by residents of the buildings overlooking Barangaroo because of the protections afforded in the Concept Plan for heritage aspects at Central Barangaroo.



FIGURE 28 BARANGAROO SOUTH BUILT FORM OF THE CONCEPT PLAN (HILL THALIS ARCHITECTS, 2006, P. 12)

To mitigate these impacts the Concept Plan built form principles, design guidelines and controls to ensure realisation of its principle of view sharing.

Prior to the development at Barangaroo South, on a clear day, residents of the southeast corner of Highgate could see to the airport, as shown in Figure 29. This open view was entirely unrestricted.



FIGURE 29 PRE-DEVELOPMENT VIEWS OF DARLING HARBOUR FROM MID-LEVEL NORTH WESTERN CORNER OF HIGHGATE

The prized view to the south has been ruined with the increases in building heights at Barangaroo South and the movement of the Crown building into the parklands at the Harbour's edge. Figure 30 shows the current view from the same northwest corner of Highgate and the eradication of this view by two towers (the Crown and Sydney Harbour One). The Crown was not included in the Concept Plan, but subsequently added into the foreshore parklands.



FIGURE 30 CURRENT VIEW FROM MID-LEVEL NORTHWEST CORNER OF HIGHGATE

The massive increases in building heights, bulk and position of buildings at Barangaroo South have had devastating impacts on not only the views for nearby residents of apartment buildings, but also their privacy and living conditions. These impacts go well beyond 'amenity'.

The PAC recognised the public's concerns about the height creep of buildings at Barangaroo South and their alteration of the Barangaroo skyline throughout the Barangaroo Project's development. The PAC also acknowledged the impact on nearby residents, making it clear,

the height of development on Block Y [Crown building] should 'book end' the high rise development in Barangaroo. As a consequence Barangaroo Central must maintain a building height that is consistent with the built form within the Concept Plan and sympathetic to the height of development and views at Millers Point and Observatory Hill'

(NSW Planning Assessment Commission, 2016c, p. 15).

Planning Principles for Views, View sharing and Outlook

It has been a long-standing strategic position of the City of Sydney that views, and view sharing, is a matter of specific and particular importance with respect to the potential impact of development on key views and vistas that are available at the street level and generally from within the public domain.

Central Sydney Development Control Plan 1996 (DCP 1996) acknowledges (refer Section 2.8) that:

- *It is important that views to Sydney Harbour and parks be maintained from as many points as possible at street level.*
- *In the redevelopment of some sites consideration should be given to opening up new significant views.*
- *Vistas are views along streets that are terminated by buildings and can be enhanced with sensitive design of the visually prominent buildings that terminate them.*
- *The siting and design of new buildings should maintain existing vistas along streets to places of architectural, landscape, or cultural significance.*

(JBA Planning, 2007, p. 1 Appendix B)

Legal precedents

The Land and Environment Court of New South Wales 2004 established a principle for view sharing in their ruling in *Tenacity Consulting v Warringah [2004] NSWLEC 140*. This ruling provided guidelines for consideration of the impact of a proposed development on views from private properties:

The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable).

To decide whether or not view sharing is reasonable a four-step assessment process was laid by the down ruling requiring: *assessment of views to be affected (stating the value of water views and iconic views);*

- consideration of the part of the property the views are obtained (living areas being more significant than other parts of a dwelling);*
- the extent of the impact (again views from living rooms are more valuable); and*
- the compliance of the development with planning controls ('Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable').*

The 'view sharing' principle was confirmed with *Rose Bay Marina Pty Limited v Woollahra Municipal Council & Anr [2013] NSWLEC 1046*, again by the Land and Environment Court. It is worth noting that a development proposal under the Concept Plan can be referred to the Land and Environment Court for judicial review if required.

The Unscrupulous Infrastructure NSW Development Application for Modification of the Concept Plan for Central Barangaroo

Serious Conflicts of Interest in the Planning Process for Central Barangaroo

The development proposal for Central Barangaroo is seriously compromised by conflicts of interest that undermine the interests of the public. The application for modification of the Concept Plan was submitted by Infrastructure NSW (Urbis, 2021), yet Infrastructure NSW is an agency of the NSW Government that was established to replace the failed, corrupted Barangaroo Delivery Authority in July 2011. Its role is to provide ‘*independent and strategic*’ advice to assist the NSW Government in identifying and prioritising the delivery of critical public infrastructure across NSW and ‘*independent oversight of NSW’s infrastructure program*’¹¹.

The development proposal for Central Barangaroo was devised in a partnership of Infrastructure NSW and the developer, chosen by the NSW Government, Aqualand. It is not possible for Infrastructure NSW to independently oversight its own application when it is a proponent in partnership with the developer. This constitutes a serious conflict of interest.

A partnership in an application for a proposed development between a developer (Aqualand) and the agency of the NSW Government that exists to provide independent oversight of proposals in the planning process (Infrastructure NSW) to the Minister for Planning is a perverse and severe conflict of interest.

Assumption of Ownership Rights over the Central Barangaroo Site by Infrastructure NSW

The Infrastructure NSW development proposal for Central Barangaroo makes the claim,

The Central Barangaroo site is owned by the NSW State Government through Infrastructure NSW. Arrangements for the future ownership of the Central Barangaroo site are administered through the Project Development Agreement established for the site between the Central Barangaroo Developer and Infrastructure NSW (Urbis, 2021, p. 60).

This statement negates public ownership of the Sydney Harbour foreshores and portends the ‘*future ownership*’ of publicly owned land by the developer, Aqualand; the partner of Infrastructure NSW in the Central Barangaroo development. This is in contradiction to the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* and the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*.

Sydney Harbour Foreshores Owned by the Public

Both the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* and the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* share the aims:

- (a) to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected, enhanced and maintained*
 - (i) as an outstanding natural asset, and*
 - (ii) as a public asset of national and heritage significance, for existing and future generations.*

Regional Environmental Plan (Sydney Harbour Catchment) 2005.

To achieve these aims, they adopt the following principles:

¹¹ <https://www.infrastructure.nsw.gov.au/>.

- (a) Sydney Harbour is to be recognised as a public resource, **owned by the public**, to be protected for the public good,*
- (b) the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores,*
- (c) protection of the natural assets of Sydney Harbour has precedence over all other interests.*

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

The Sydney Harbour foreshores, including those at Barangaroo, are owned by the public. The NSW Government is the custodian or manager of these foreshores and is required to act in the public interests that have priority over the interests of private developers. The transfer of 'ownership' of the Central Barangaroo precinct by Infrastructure NSW from the public is not permitted; the land may only be leased to private interests.

*The NSW Government does **not** own the Sydney Harbour Foreshores through Infrastructure NSW; they belong to the public of NSW. The NSW Government is the **custodian** or **manager** of these public resources and is required to act in the public interest to ensure that the public good has priority over private good.*

The claim that the 'Project Development Agreement established for the site between the Central Barangaroo Developer and Infrastructure NSW' allows for a change in the 'future ownership' of this prized Harbour foreshore precinct is of serious concern.

Management of the Sydney Harbour Foreshores for the Public Good

The *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* 2005 and the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* place the emphasis on the public good over private good. In submitting the proposal for the Central Barangaroo development on behalf of a partnership with the developer, Infrastructure NSW shares their private interests and is incapable of acting to place the interests over the private good of themselves and their partnership.

The proposed re-zoning of Central Barangaroo from a relatively small, community based residential and community precinct to a large, primarily commercial and retail precinct under the Infrastructure NSW proposal, with a reduced residential allocation and the movement of community space to The Cutting at Headland Park, benefits the private developers, with a short-term gain for the NSW Government, and would come at a huge cost to the public and the nation through loss of prime heritage aspects and the uniqueness of the Sydney Harbour foreshores.

Infrastructure is not an independent authority in the planning process to ensure the interests of the public are fully considered. Its interests lie with those of its partner, the private developer, Aqualand.

Benefit to the Developer; Against the Public Interest

The Infrastructure NSW proposal claims,

Overall, the view impacts resulting from MOD 9 (predominantly Block 7) in comparison to the approved Concept Plan, are considered acceptable in the context of the public benefits and community uses provided, as well as the need to capitalise on the introduction of Barangaroo Station in order to maximise public transport patronage and contribute to achieving strategic objectives including delivering a 30-minute city.

(Urbis, 2021, p. 18)

This statement makes clear that Infrastructure NSW and its partner, Aqualand, have no regard or respect for Australia's heritage views or the beauty, uniqueness, and visual amenity of the Sydney Harbour foreshores. In the view of Infrastructure NSW, the 'public benefit' of this proposal lies entirely within the supposed economic benefits provided by expanding the dense, massed buildings of excessive height into

Central Barangaroo from Barangaroo South with re-zoning to a retail/commercial precinct at the expense of a residential/community precinct.

The only benefit in the Infrastructure NSW proposal is to the developer. It is not in the public interest.

Australia is currently amidst two crises: housing and workforce shortages. The Infrastructure NSW proposal does nothing to alleviate the housing crisis, providing no social housing, and a *reduced* contribution of the 1% of development to off-site housing elsewhere, and exacerbates the workforce shortage with its massive expansion of commercial and retail space.

Infrastructure NSW specifically states that the purpose of the increases in height, massing, and density of the blocks at Central Barangaroo is to ‘*increase the number of people living and working within close proximity to the Barangaroo Station*’ (Urbis, 2021, p. 104). This is nonsense.

In contrast to the Concept Plan, there is a *reduction* in those living in the Central Barangaroo precinct under the Infrastructure NSW proposal. Hence, the proposal would *reduce* the *delivery of a 30-minute city* in comparison to the Concept Plan.

There is already a large pool of workers that will be able to access workplaces via Barangaroo Station as this site is on the doorstep of Barangaroo South and the city itself. Concurrently, there is a markedly *reduced* need for commercial space in the city due to COVID changing working conditions to incorporate working from home as a permanent fixture; retail workers are in extremely short supply; while the building industry is beset with companies struggling to continue to operate due to workforce shortages. These are economic realities besetting all developed countries and will be exacerbated by the development of another major commercial/retail precinct. The proposal would place downward pressure on the economy through worsening employment and housing shortages.

NSW’s current economic crises of housing and worker shortages would be exacerbated by the Infrastructure NSW proposal, and interests of the public would be annihilated by the loss of important heritage aspects. The proposal is in the very worst interests of the public with benefits to the developer.

The protections afforded to the public by the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and the State Environmental Planning Policy (Biodiversity and Conservation) 2021 are under serious threat should the Infrastructure NSW proposal for the Central Barangaroo development be approved.

Misrepresentation of the Building Envelopes of the Concept Plan

The graphics provided by Hassell (2021), the visual analysis and photomontages provided by AECOM (2021), and the heritage impact statement provided by GML Heritage (2021), all with the approval of Infrastructure NSW via the Urbis (2021) report, purposefully misrepresent the Concept Plan and the impacts of the proposed development on heritage aspects. This is undertaken to support the *false* Infrastructure NSW claim that,

The proposed amendment to the building height of Blocks 5, 6 and 7 [of Central Barangaroo] will have some level of impact on views, setting, and sense of enclosure of State and local heritage items within the Barangaroo precinct and in proximity to the site, and conservation areas located to the east and north-east to the site. However, it is noted for some of these items, this impact results from the approved Concept Plan and MOD 9 will not cause additional adverse impact. It is also noted the realignment of block boundaries and distribution of building height across the three development blocks will create shared east-west public views and reinstate historical connections between the Millers Point and Dawes Point Conservation Areas and the harbour foreshore.

(Urbis, 2021, p. 18).

In fact, the proposed ‘*amendment to the building heights of Blocks 5, 6 and 7*’ will have **massive** impacts on views, setting, and sense of enclosure of State and local heritage items within the Barangaroo precinct and in proximity to the site, and conservation areas located to the east and north-east to the site. The Infrastructure NSW claim that *for some of these items, this impact results from the approved Concept Plan and MOD 9 will not cause additional adverse impact* is a complete falsehood.

Furthermore, ‘*the realignment of block boundaries and distribution of building height across the three development blocks will create shared east-west public views and reinstate historical connections between the Millers Point and Dawes Point Conservation Areas and the harbour foreshore*’ is a complete falsification of the reality, as has been shown above.

Such disinformation is the currency of the reports on which the Infrastructure NSW proposal for Central Barangaroo rests. Only a few examples are provided within this submission.

The Concept Plan building envelopes

One of the primary means of misleading the Minister for Planning and the public prevalent throughout the reports of the application submitted by Infrastructure NSW is the distortion of photomontages and false depictions of the indicative built forms of the Concept Plan. These purposely falsify the representations of Concept Plan and minimise the impacts of the Infrastructure NSW proposal.

The Concept Plan provides for intermittent, low rise, slender, light buildings, separated by low, wide podiums and wide laneways, as shown in Figure 31. Blocks 5 and 6 slope to the north and towards the water. These built principles reflect the leading Principles of the Concept Plan, their accompanying design principles, and development controls. Note that this original depiction does not show the reductions in Blocks 5 and 7 as described above.

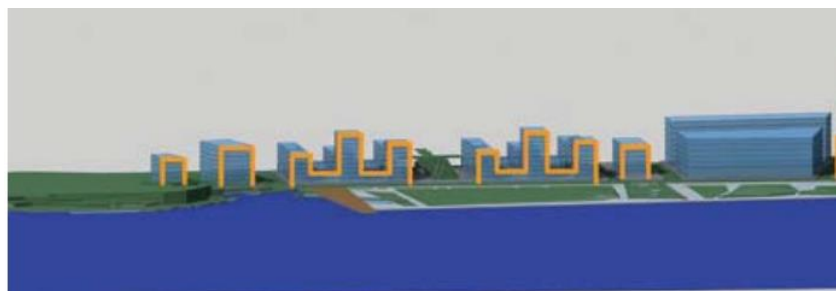


FIGURE 31 DEPICTION OF THE CONCEPT PLAN BUILT FORM WITH ARTICULATION AND VARIATIONS AS PROPOSED (SYDNEY FORESHORE AUTHORITY, OCTOBER, 2008, P. 55)

The building envelopes of the Concept Plan provided by Infrastructure NSW

Infrastructure NSW demonstrates a complete disregard for the reality of the Concept Plan and a contempt for Australia’s unique, significant heritage aspects around which the Concept Plan for Central Barangaroo was developed. The Infrastructure NSW depictions of the building envelopes of the Concept Plan for the Central Barangaroo Blocks 5, 6 and 7 are based on misrepresentations of the Concept Plan as a point of comparison. This is shown in Figure 32.

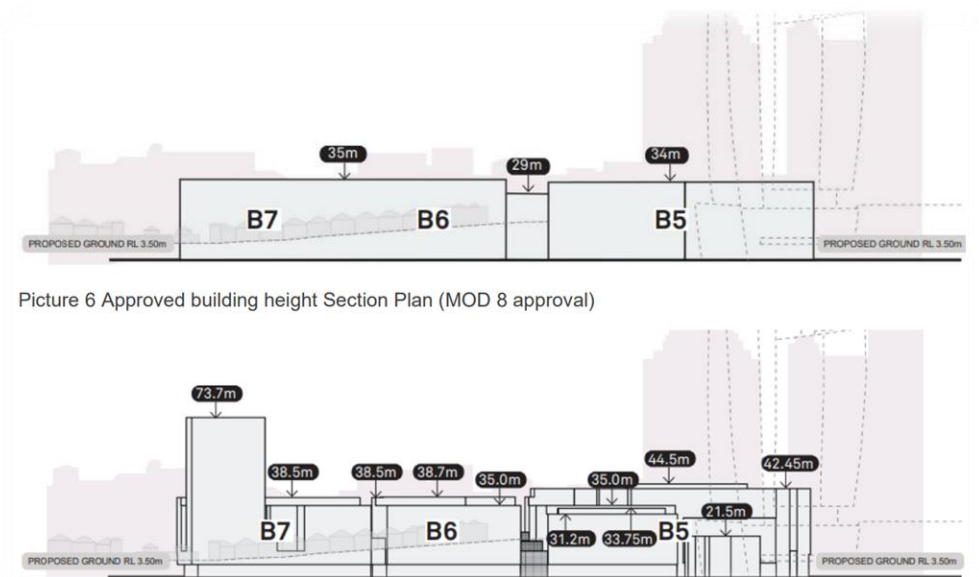


FIGURE 32 COMPARISON OF BUILDING ARTICULATION, VARIATION AND MODULATION PROVIDED BY INFRASTRUCTURE NSW (URBIS, 2021, P. 84)

Blocks 5, 6, and 7 of the Concept Plan are misrepresented as single massed, bulky blocks, completely filling the maximum height building envelopes. This is completely in opposition to the reality of the Concept Plan. Furthermore, Block 7 is blown out beyond all recognition of the Concept Plan and its subsequent modifications, while Block 5 is not shown with the required reduction that allowed for approval for Modification 8, which is the current statutory authority for the Concept Plan.

The misrepresentation of the building envelopes of the Concept Plan are, in fact, in opposition to the reality and can only be conceived as deliberate misinformation aimed to deceive.

The application reports for the Infrastructure NSW proposal all utilise this falsification of massed, bulky blocks filling the maximum volume of the envelopes for depictions of the Concept Plan to provide comparisons for the proposal submitted by Infrastructure NSW. As all reports that form the foundation of the proposal are based on this falsehood the Infrastructure NSW proposal should hold no weight in a planning process as it lacks integrity.

To 'remedy' their own false claim that the Concept Plan does not provide modulation and variation of building form, Infrastructure NSW proposes to,

Impose varied maximum height limits across Block 5, 6 and 7 to reflect the proposed Central Barangaroo Building Envelope Plan, resulting in improved modulation of the built form and providing the opportunity to create a more visually interesting and varied built form outcome.

(Urbis, 2021, p. 15).

It is claimed that this will 'Ensure the height of buildings in Central Barangaroo are more varied than those under the approved Concept Plan to enable better articulation in built form and massing at an appropriate scale' (Urbis, 2021, p. 83). This is clearly false and deceptive, as Figure 33 clearly demonstrates in direct comparison to Figure 31 vs. Figure 33.

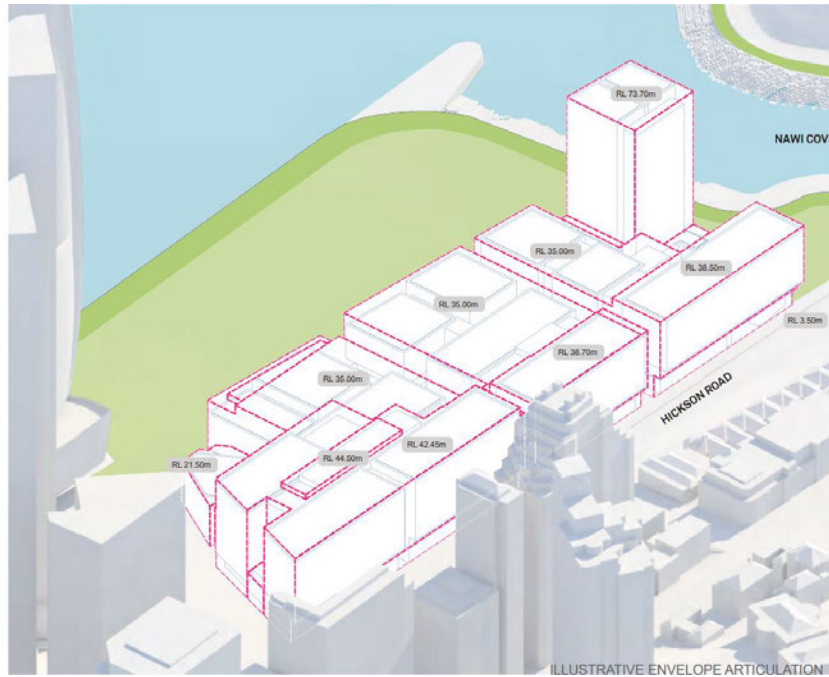


FIGURE 33 ILLUSTRATIVE DESIGN OF THE 'ARTICULATION' AND 'VARIATION' OF BLOCKS 5, 6 AND 7 UNDER THE INFRASTRUCTURE NSW PROPOSAL (HASSELL, 2021, P. 181).

While Figure 33 supposedly represents the maximum envelopes under the Infrastructure NSW proposal, it cannot be trusted that these will not be vaulted off in future development proposals for the site. Such an outcome would be in keeping with the thrust of the current proposal with its misrepresentations and distortion of facts.

Building envelopes of the Concept Plan are misrepresented throughout the reports for the Infrastructure NSW development proposal for Central Barangaroo.

Misrepresentations of the Concept Plan building envelopes for Blocks 5 and 6

To minimise the impacts of the Infrastructure NSW proposal in comparison to the Concept Plan, the AECOM (2021) report of Visual Impacts provides highly deceptive misrepresentations of Concept Plan's indicative built forms. One such example in the representations of the building envelopes for Blocks 5 and 6 in relation to the vista from the southern end of High Street taken at the bottom of the Agar Steps towards the west. Figure 34 shows the indicative form provided by the Concept Plan itself, in comparison to its false depiction in the Infrastructure NSW proposal.



FIGURE 34 THE INDICATIVE BUILT FORM OF BLOCKS 5 AND 6 PROVIDED UNDER THE CONCEPT PLAN (ABOVE) VS. THE MISREPRESENTATION OF THE CONCEPT PLAN UNDER THE INFRASTRUCTURE NSW PROPOSAL (BELOW)

Given that the actual Concept Plan indicative block envelopes of this vista (depicted above) is freely available at http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=207 this misrepresentation is unconscionable. Sadly, the Infrastructure NSW proposal is replete with such distorted examples.

Distortions of the Infrastructure NSW Proposed Building Impacts for Block 7

Another method used to present minimised impacts of proposed 'modifications' to the Concept Plan that has been used throughout the development at Barangaroo is to provide elongated perspectives that distance and distort the real impacts. One such example is the continuing distortion of the impacts of developments on the vista from Gas Lane that was protected under the Concept Plan.

Infrastructure NSW proposes the photomontage of the impact of the Concept Plan for the vista of Gas Lane with the inclusion of the Crown and clearly showing Block 5 intruding into the remaining sliver of space. Under the Concept Plan Block 5 sloped away from Gas Lane to the north and this slope was further amplified under Modification 8, which is the current version of the Concept Plan.



FIGURE 35 FALSE DEPICTION OF THE GAS LANE VISTA UNDER THE CONCEPT PLAN

The current reality of the Gas Lane vista is shown in Figure 36:



FIGURE 36 VISUAL ASSESSMENT OF GAS LANE FOR PROPOSED MODIFICATION 8 (PLANNING AND ASSESSMENT COMMISSION, 2016C, P. 25 VS. ITS UGLY ENGULFING REALITY WITHOUT THE MANUFACTURED DISTORTIONS OF THE PROPOSAL

Distortions of the Infrastructure NSW Proposed Building Impacts for Block 7

Yet another means of distortion used for images in the Infrastructure NSW reports is presenting images from perspectives that do not exist for humans in reality, are not accessible by any human, do not relate to human scale and are distorted to reduce the impact. This is used to minimise size and bulk of proposed buildings. For example, in Figure 37 the actual size and bulk of Block 7 and its domination of Nawi Cove is minimised by an elongated view from a non-existent viewpoint.



FIGURE 37 BLOCK 7 AS SEEN FROM A NON-EXISTENT HUMAN VIEWPOINT, THEREBY WITH A DIMINISHED PERSPECTIVE (HASSELL, 2021, P. 322)

Pictorial depictions of built forms provided by Infrastructure NSW are distorted and deceptive. They cannot be used to effectively assess the delivered reality or their impacts. This misrepresentation of projected outcomes has been rife throughout the Barangaroo development.

The indicative built forms of the Concept Plan is repeatedly and systematically misrepresented in all reports of the Infrastructure NSW proposal.

Infrastructure NSW Proposition to Renege on Commitments

Because the Infrastructure NSW proposal is in most aspects in complete opposition to the Concept Plan, the Statement of Commitments for Modification 8, the Instrument of Approval, and the SEPP, Infrastructure NSW proposes to default on their commitments, replace the Concept Plan with its own Urban Design Guidelines and Design, and adapt the SEPP to allow the proposal. This is unconscionable.

The public expects Government departments and agencies to act with honesty and integrity. This includes abiding by commitments undertaken. The commitments made that allowed massive increases in building heights and GFAs at Barangaroo South and the injection of the Crown building onto prized public foreshores were entered into by the Government and developers. Infrastructure NSW has now made clear it intends the project at Central Barangaroo to renege on these commitments undertaken. It proposes to,

Delete the Statement of Commitments in its entirety and replace with the MOD 9 Statement of Commitments provided at Appendix A (Urbis, December 2021).

This is a shocking travesty of governance and integrity! That a NSW Government entity makes such a submission to public and the Minister is an appalling breach of faith.

If the NSW Government permits developers to renege on the commitments already undertaken for the development at Central Barangaroo, the NSW Government can no longer be trusted to govern. Such a move would create a crisis in public confidence and portend the collapse of a rule-based society led by Government dishonesty in its dealings with developers when they are the antithesis of the public interest.

Collapse of Public Confidence

Public confidence in the planning processes of the NSW State Government has plummeted with each increase in height, bulk, and number of buildings at Barangaroo South, and particularly with the intrusion of the massive Crown building into prime public foreshore parkland.

The interests of developers and politicians have overridden the wishes of the public and the public interest. The Infrastructure NSW proposal destroys any little remaining hope that might have remained in the NSW Government having the public's interests, not the interests of private developers, or the short-term interests of the State coffers, at the heart of development on public land.

Harris provides an incisive account of the history of the Barangaroo development to date, that has led to 'widespread disillusionment and mistrust of the project's planning and political processes' (Reinmuth, 2012, cited in Harris, p. 115). The account provided by Harris is a scathing indictment of those with power in the planning and delivery of the Barangaroo project. He describes:

A steady stream of high-profile conflicts has punctuated the planning and delivery process. In 2010 Clover Moore resigned from the Barangaroo Development Authority claiming the public were being "railroaded" with persistent breaches of transparency and poor public consultation (Spencer, 2010, cited in Harris p. 116).

Put succinctly:

Barangaroo has been a highly controversial megaproject. This public controversy starts an international development company who wins the tender for the project, forms a partnership with Government and then later takes the same Government partner to court, a confrontational ex-prime minister of Australia with a single-minded vision, a popular Sydney mayor who resigns from the project delivery authority board in protest, a billionaire casino owner and developer and a host of famous international architects.

(Harris, 2018).

This was while the Government allowed Crown Resorts a gaming license, only to lead to the finding that Crown Resorts was *not suitable to hold* a gambling license by the New South Wales gaming regulator (Newsdesk, 2021).

Harris identifies the five globally consistent criticisms of mixed-use megaprojects, as per the Barangaroo development:

1. introverted governance models that circumvent local planning frameworks, traditional channels of democratic participation and accountability;
2. global economic positioning and marketing towards a mobile elite prevailing over the concern of local issues;
3. physically and socially self-contained, isolated and disconnected from the context of the host city;

4. similar urban form regardless of the host city that encapsulates a narrow definition of urban life and culture;
5. minimal commitment to public benefit or socially just policies arising from a primary focus on profitability

(Harris, 2018, p. 114).

These criticisms apply to the Barangaroo development as a whole, but also specifically to the Infrastructure NSW proposal for Central Barangaroo.

Harris focusses on the 'scale creep' of the project and the casino as two 'dominant controversies'. The Crown building is built, but the 'scale creep' now threatens the heritage aspects associated with and focussed at Central Barangaroo.

Harris questions whether the early optimistic start of Barangaroo was 'a "bait and switch" strategy where the public is promised one thing, only to be delivered something else'; 'or was there genuine intent to achieve the things that have not been achieved?' (Harris, 2018, p. 127).

Harris states,

After conducting the largest global survey on megaprojects to date, Flyvbjerg (2005: 18) was left with no doubt the Barangaroo development fit the "Machiavellian formula for project approval, even if it means misleading parliaments, the public and the media about the costs and benefits of projects" (Harris, 2018, pp. 127-128).

However, Harris modifies this assessment in likening the process to 'an accumulative erosion than a deliberate pre-planned strategy (Mould, 2017). They begin with good and strong ambitions with a mandate clearly in the public interest before two eroding processes begin to happen' (Harris, 2018, p. 128). The development proposal for Central Barangaroo submitted by Infrastructure NSW goes well beyond this into the pre-planned removal of all checks and balances for the planning process and the Machiavellian realm of disinformation and contempt for the impacts of the proposed development on Australia's significant heritage items and aspects, along with the people who seek to protect these for future generations.

An independent Infrastructure NSW was intended to renew public confidence in the Barangaroo project. However, the fact that Infrastructure NSW has submitted this proposal conveys the lack of any independence of this relative newcomer to the Barangaroo planning disaster. It appears that the problems experienced throughout the development are set to continue, with the owners of the land on which it sits, the public of NSW, the losers. The confidence of the public in the NSW Government itself is at stake in the decisions made regarding this dreadful proposal.

The proposal is nothing short of heritage vandalism. That an agency of a Government elected to represent and promote the public good for the people of NSW, and the country as a whole, is so ready to desecrate Australia's unique and irreplaceable heritage for short-term monetary gain and the benefit of developers is appalling. It is clearly time for the commercial arm of Infrastructure NSW to follow its predecessor, the Barangaroo Delivery Authority, and be dissolved. This organisation clearly does not represent the interests of Australia.

The planning processes and development of Barangaroo have caused deep distrust in successive State Governments and shattered the confidence of the public in Government processes and priorities. The Infrastructure NSW proposal continues to demolish public confidence through its disinformation, deception, and disregard for the commitments undertaken to allow the modifications already made to Barangaroo South.

We request that this Inquiry be extended and amplified to examine the corruption of the planning processes that have taken place throughout the entire Barangaroo development and now threaten heritage aspects of special significance to the nation while cutting them off from their historical connections to the Harbour, entirely for the benefit of private developers with no benefit to the public of NSW.

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