

REPORT ON PROCEEDINGS BEFORE

SELECT COMMITTEE ON BARANGAROO SIGHT LINES

BARANGAROO SIGHT LINES

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Tuesday 1 November 2022

The Committee met at 9:45.

PRESENT

The Hon. Mark Latham (Chair)

The Hon. Anthony D'Adam (Deputy Chair)

The Hon. Shayne Mallard

The Hon. Adam Searle

PRESENT VIA VIDEOCONFERENCE

The Hon. Lou Amato

Ms Cate Faehrmann

The CHAIR: Welcome to the first public hearing of the Select Committee on Barangaroo sight lines and related matters. Before I commence it is the custom of the Parliament to acknowledge the traditional inhabitants of this land, the Gadigal people of the Eora nation, and I do that with all due respect. I acknowledge as well other important contributors to the history of this site, those who constructed the Parliament House building, very often working in a dangerous industry, and the parliamentary staff over many decades who supported MPs and made our work and representative role possible. We acknowledge and thank them all.

Today the Committee will be hearing from Mr Karl Bitar, a former employee of Crown Resorts. We will also be hearing from the Heritage Council of NSW and representatives of The Langham Sydney. The Committee will hear from community groups, namely the Highgate Owners Corporation and the Millers Point Community Resident Action Group and also the local member of the Legislative Assembly, Mr Alex Greenwich. Before we commence, I make some brief comments about the procedures for today's hearing. We are being broadcast live via the Parliament's website. A transcript will be made available in the traditional way.

The Hon. ANTHONY D'ADAM: Point of order: Apparently the live stream is not up.

The CHAIR: I will pause while we wait for the live streaming. I was told we were on the website, but apparently not. We are live now. In accordance with the broadcasting guidelines the House has authorised the filming, broadcasting and photography of the Committee proceedings, which has now started. Any person filming or photographing proceedings must take responsibility for the proper use of that material. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. Witnesses should be careful in that regard. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. The House has a procedural fairness resolution that covers such matters.

If witnesses are not able to answer a question today and want more time, they can take it on notice and provide a written answer within 10 days. If witnesses wish to hand up documents, they can do so through the Committee staff and for witnesses appearing via Webex, by emailing them to the secretariat. To aid the audibility of this hearing I remind both Committee members and witnesses to speak into the microphones. Please turn off mobile phones. For those who are online, please mute your microphone when you are not speaking. Committee members on line should identify themselves when they ask questions. For those with hearing difficulties who are present in the room today, please note the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers.

KARL BITAR, Private citizen, before the Committee via videoconference, sworn and examined

The CHAIR: Karl, would you like to make a short opening statement?

KARL BITAR: Chair, it's not so much an opening statement, just a few quick remarks. Firstly, I would like to thank you and the Committee. While I don't have an opening statement, I would like to bring to the Committee's attention that I finished up officially with Crown at the end of last year, so any answers I give today are my own based on my own recollections of events. I do thank you and the Committee for the invitation to address you and I hope I can assist you with your inquiries.

The CHAIR: Thank you for your cooperation. We now go to questioning, starting with the Deputy Chair of the Committee, the Hon. Anthony D'Adam.

The Hon. ANTHONY D'ADAM: I start by asking you about the nature of your professional relationship with Crown. Could you describe the kind of work that you were performing for Crown?

KARL BITAR: Sure, Mr D'Adam. I joined Crown about 10 years ago and, as I mentioned, finished up at the end of last year. During that period overwhelmingly my role was essentially the head of corporate affairs, which is a broad role. It takes in stakeholder engagements, stakeholder relationships, corporate PR, corporate media, some of the functions in the CSR space, the corporate responsibility space, and also a lot of the work that the Crown Resorts Foundation did as well. That is sort of broadly speaking, Mr D'Adam.

The Hon. ANTHONY D'ADAM: This inquiry is focused on the issue of the sightlines around Crown Towers. Can you perhaps describe the involvement that you had in issues relating to that project?

KARL BITAR: Mr D'Adam, I wasn't involved actually in the negotiations. In my corporate affairs role I stayed across what was happening. I stayed informed of what was happening in case we got questions from media or internal questions from the organisation. The negotiations were conducted by the development team at Crown. Crown has got some specialist units, as do most major companies, and the development team were the ones who oversaw, managed and took full responsibility for the sightline negotiations, both the original sightline agreement that was reached and the negotiations with the BDA and Lendlease over that long period.

The Hon. ANTHONY D'ADAM: Who specifically was involved in that process?

KARL BITAR: The development team is quite a large team. The responsible person would have been Todd Nisbet. I think his title was senior vice-president of strategy and development. Todd was also, like me, probably with the firm for about over 10 years, but that was specifically his team that were responsible for the sightline negotiations.

The Hon. ANTHONY D'ADAM: Did you have any involvement in the political intersection around the sightlines negotiations?

KARL BITAR: No, no direct involvement at all in any of the negotiations. I had no qualifications to be involved in the negotiations. A lot of the negotiations were around the financial impact of losing sightlines; the legal avenues which were available to Crown and Lendlease should the negotiations break down. Mr D'Adam, my role really was just staying across where things were at. Obviously, because of my corporate affairs hat, my preference is always to try to find a solution. The negotiations were going on, I believe, for about two years. Towards the end of that process, when it looked like we weren't going to find a resolution, I did encourage people at the BDA to compromise. I really didn't want it to go legal; I don't think anyone at Crown wanted it to go legal. Our hope and the reason why the negotiations dragged on for so long was I think we all hoped that we would be able to find a solution, a win-win, that everyone could live with. In the end, unfortunately, we failed.

The Hon. ANTHONY D'ADAM: How did that encouragement manifest? Who did you speak to in the BDA?

KARL BITAR: Mr D'Adam, my relationship at the BDA was with Tim Robertson, I'm pretty sure his name was. I can't remember his exact title, but I had a number of discussions with him and meetings with him where I just urged him to compromise as much as possible to try to find a solution before this went legal.

The Hon. ANTHONY D'ADAM: You mentioned that the sightlines had significant value to Crown. How much exactly do you think access to the sightlines added to the value of the Crown project?

KARL BITAR: I'm sorry, Mr D'Adam, I can't say what that figure was. I know it was substantial. When you consider Crown was spending over \$2 billion building this resort, the reason—Crown and Lendlease felt like they had paid a substantial amount of money for the land and for the sightlines. It's part of the reason why they entered into the agreement with the BDA to try to protect those sightlines was because those sightlines were so

valuable. The reason the BDA, in my view—and in our view—agreed to come to that agreement with us is because they also acknowledged the importance of those sightlines to Lendlease and Crown. Crown, during this entire period, knew it was on very solid legal ground because of that agreement that it had in place. The reason the negotiations dragged on for so long was Crown and Lendlease, I believe, had very good intentions to try to find a solution that everyone could live with, and that unfortunately was not the case in the end.

The Hon. ANTHONY D'ADAM: There was a meeting on 19 February 2015 between the Premier and Mr Packer. Did you have any involvement in arranging that meeting?

KARL BITAR: I don't recall that, Mr D'Adam. I don't think I did. I can't say for sure because we are talking about something seven years ago, but I'm quite confident I didn't have anything to do with arranging that meeting.

The Hon. ANTHONY D'ADAM: Were you aware of the meeting occurring?

KARL BITAR: I would have been aware. I just don't recollect—I don't think I was involved. I'm pretty sure I wasn't involved with organising the meeting, and I don't remember the detail around it either.

The Hon. ANTHONY D'ADAM: Did you have any involvement, direct or indirectly, with Bay Warburton, the Premier's chief of staff at the time, in relation to the sightlines issue?

KARL BITAR: As far as I recall, I don't think I've ever spoken to Bay or had anything to do with him. I might've met him over the years at a function et cetera but not in his professional role.

The CHAIR: Mr Bitar, what's your best understanding and explanation of how the sightlines were sold twice: to Crown, Lendlease, and also to Grocon? How could such a shemozzle emerge? What happened at the Crown end? When were you first aware of the double sale of the sightlines?

KARL BITAR: Chair, I can't speak for the BDA and their role and the way they might've acted during this period. From Crown's perspective, the first I was aware was when they mentioned Grocon as, I think, the preferred bidder for Central. I can't remember the dates, again, just because I wasn't involved in the negotiations and I was just cc'd on emails, so forgive me if I get the dates slightly wrong. But if I recall, after Grocon was mentioned as the preferred bidder, Crown was presented with what they call envelopes for what the building heights might be on Central. That was probably the first I recall being fully aware that Crown and Lendlease's sightlines were at risk and that they had potentially sold those sightlines again to Grocon or the Grocon consortium.

The CHAIR: What's your best estimation of the date on that, the period that we're talking about?

KARL BITAR: Chair, I'd have to come back to you. I think it may have been mentioned in the—I know Crown didn't lodge a very detailed submission because they've changed owners and a lot of the executives have moved on, but when I looked at the Lendlease submission it did accord with my recollection. So I think I'd have to check the Lendlease submission to actually come back to you just about exactly what that date was.

The CHAIR: When Crown became aware of Grocon as the preferred bidder and what looked like was going to be the double sale of the sightlines, what was the reaction internally to that?

KARL BITAR: Chair, Crown didn't have a view on who the actual developer would be on Central. The issue Crown had was, from the minute we sat down with Lendlease to talk about putting the hotel on Barangaroo South, Crown's firm understanding was that Barangaroo Central was going to be a low-rise development, and Lendlease had the exact same understanding, that would it be low-rise at Barangaroo Central. So Crown didn't necessarily have any issue with who the developer was on Central. The issue Crown had was with the fact that what was supposed to be a limited height, low-height development was now being proposed as a couple of very tall towers, right adjacent to the Lendlease and Crown buildings.

The CHAIR: What's the sequencing for that? Did the increase in the height come from the BDA making a determination that that would be desirable or did it come out of the Grocon bid to be the preferred developer and the BDA accepting the bid?

KARL BITAR: I'm just going to go off my recollection here—and again noting I was only across the detail at a very high level. From memory, after the Premier—I can't remember who the Premier was—announced the new metro station at Barangaroo, there was a change in the GFA for Barangaroo Central. I think the BDA had gone out to tenders before this, before the metro was announced. Then the metro was announced and our understanding was that, because of the cost of the metro, they now needed to put more high density on Barangaroo Central to offset the cost of the metro. So the BDA, I think, tore up or withdrew the original tender and put out a new tender with a much higher GFA on Barangaroo Central. That was a process that a number of consortia then bid—including Lendlease, I think, were one of the people who bid—but that was a much higher GFA than was ever envisaged on Barangaroo Central.

The CHAIR: Did Crown take it as a breach of faith that what it thought was a low-rise development at Central Barangaroo would become much higher because of the supposed necessity of having people living there to use the Metro? Ironically, today it is a hole in the ground, and Metro increasingly looks like a white elephant, given the circular nature of this fiasco. Did Crown take this as a breach of faith? What did Crown propose to do about it?

KARL BITAR: Yes. When the greater GFA was announced, Crown was just hopeful that would be done in a way—given the sightline agreement with the BDA and Lendlease, Crown knew it was on quite strong legal ground. I think everyone at Crown at the time was hopeful that the BDA would find a way to deal with that GFA in a way that did not impact Crown's sightlines and Lendlease's sightlines. Unfortunately, that wasn't the case. After Grocon was announced as a preferred bidder, at some point after that Crown and Lendlease were presented with a very different building envelope, and this envelope was going to severely impact both Lendlease's and Crown's sightlines. It was at that point that there was great disappointment at Crown, and it was at that point when we all got in a huddle and said, "Let's just see if we can make this work. Let's see if we can work with the BDA to find a solution." It was the start of a very long process, as I recall.

The CHAIR: Is that a credible sequence of events? I would have thought that once there is a higher development height at Central Barangaroo, the sightline agreement has been breached and become superfluous, in that you're south of Central Barangaroo and the harbour is north. At that point, the Crown and Lendlease interests have been negated, haven't they? The normal corporate reaction would be one of beyond disappointment—one of hostility.

KARL BITAR: As I mentioned, once we knew that our sightlines would be breached and impacted, that's when we were extremely disappointed. We were concerned when we heard about the greater GFA, but we reserved judgement because there are different ways you can build that GFA. As you know, the recent proposal shifted a lot of those building heights from south Barangaroo back towards the headland park. This is under this new proposal that was recently knocked on the head. There are ways to shift that GFA in a way that won't impact Lendlease and Crown sightlines.

The CHAIR: How was the matter resolved, ultimately, from the Crown and Lendlease perspective?

KARL BITAR: As I recall, we ended up going to court. Crown and Lendlease won the case in court. From there, there was a legal settlement with the Government, or with the BDA.

The CHAIR: What is your knowledge of that legal settlement?

KARL BITAR: I don't have any knowledge. I wasn't across the detail.

The CHAIR: You know there was some form of subsequent quasi out-of-court settlement. That's all you know of it?

KARL BITAR: I'm not across the detail. I can't rightly say what happened.

The CHAIR: Did it pay financial compensation?

KARL BITAR: Again, I'm not across the detail.

The CHAIR: You have got no knowledge other than that there was a settlement?

KARL BITAR: That's right.

Ms CATE FAEHRMANN: With regard to the settlement, that clearly means a financial settlement. You would think that between Crown, Lendlease and the Government it would be a substantial settlement, given the subject matter.

KARL BITAR: Sorry, Ms Faehrmann, I'm not in a position to answer that question because, as I said earlier, I wasn't across the details of the settlement. In all honesty, I'm better off not responding to that one.

Ms CATE FAEHRMANN: I just thought I would try my luck. I have another question. You were saying that there are ways to shift the GFA so that it won't impact Crown's and Lendlease's sightlines. Does that solution also remove the issue with the sightlines for the residents and the heritage impacts—the serious impact on sightlines across the whole area—or is it just basically the views from Crown and Lendlease? Do you know?

KARL BITAR: Yes. Our legal position related to this agreement that was done between Lendlease, the BDA and Crown only related to the sightlines as it impacted Crown and other Lendlease residential developments. To answer your question, no, it is not the broader definition of sightlines; it is just specific to those two companies.

Ms CATE FAEHRMANN: Thanks. That's it for me, Chair. My other questions have been answered.

The Hon. SHAYNE MALLARD: Mr Bitar, welcome to the inquiry. Were you at Crown when the original unsolicited proposal was for a casino tower in the harbour off Barangaroo, out in the middle of the water on an island?

KARL BITAR: No, I wasn't, Mr Mallard. I started at Crown in mid-2012 in my role, from memory.

The Hon. SHAYNE MALLARD: Whether or not you will have any knowledge of this then, there was a huge community backlash against that from the Lord Mayor down, and the O'Farrell Government scrapped that and pulled it back into Barangaroo. I guess that's where we are getting to this point of what rights the tower had when they had such high expectations and were led to believe they had some support for a casino out in the middle of the water, which was pulled back into the building site. Do you think some residual obligations came with that compromise from Crown to pull back onto the land mass? I know the community reported that withdrawal from the water.

KARL BITAR: Yes, Mr Mallard, I can't answer that because that shift did happen before my time at Crown. So that was before Crown entered into discussions with Lendlease about being the developer of that hotel. Lendlease had already negotiated—I think this was after the election—with the new State Government to move the location of that hotel. But, yes, I wasn't around at the time and not involved in that unfortunately so I can't answer that question.

The Hon. SHAYNE MALLARD: What interested me in this inquiry after reading all the submissions and after 12 years in local government with the City of Sydney—no doubt I will raise this again later today—I have never seen so-called sightlines quantified as an asset. Here it is being talked about as being sold twice, it is in submissions as being sold twice, and you referred to it. Was it identified as an asset in the actual contract, for example, "You own these sightlines"? As a councillor, you buy an apartment, you make sure you are aware of the zoning around you but you can never guarantee that that won't change. Many Land and Environment Court cases have not succeeded where people tried to fight because of other buildings going up. North Sydney is a good example of that. Was it quantified in a legal document and was it identified in a court case where they won against the Government—we talked about it a minute ago—that sightlines were a physical asset that was owned by Crown exclusively?

KARL BITAR: Yes, Mr Mallard. I don't have a legal background so I can't answer your question from a legal perspective. Again, understanding the sightlines issue at the high level that I understood it, Crown entered into this agreement with Lendlease and the BDA which would not necessarily guarantee their sightlines but guarantee good faith negotiations, and to consult Crown and Lendlease and get their agreement should those sightlines be impacted or changed. And that's where Crown and Lendlease were disappointed or they felt that they had been let down. That's where their strong legal argument came. In their view the BDA went off and unanimously conducted this tender process, had brought in this preferred bidder—again we are not across the details—but had obviously discussed with this preferred bidder particular heights for the building which would have impacted Crown and Lendlease's sightlines.

The Hon. SHAYNE MALLARD: This is a contract commercial legal case, not a Land and Environment Court case about sightlines, building mass or anything like that. I don't know what court it was in.

The CHAIR: The Supreme Court.

The Hon. SHAYNE MALLARD: The Supreme Court. It wasn't a planning issue; it was a contract issue about good faith negotiations.

KARL BITAR: That's right, Mr Mallard, as far as I'm aware.

The Hon. SHAYNE MALLARD: Mr D'Adam raised the issue of the 19 February meeting between the Premier and Mr Packer, which you don't have any recollection of being involved with. In the timeline that you have outlined that would seem to indicate that there was a point when there was an attempt to try to head off an expensive court case where this sort of deadlock had occurred. Would that be the case at that point? You said you'd spoken to Tim Robertson at the BDA and said, "You need to compromise," and you were trying to avoid—I think your word was—"legals". So at that point were you trying to break an impasse?

KARL BITAR: Mr Mallard, from memory—and I could be wrong about this—that meeting with the Premier that Mr D'Adam mentioned happened before any of the sightline issues became a problem. My recollection is that was prior to the sightlines problem emerging.

The Hon. SHAYNE MALLARD: So before the metro station announcement for the new building mass was proposed?

The Hon. ANTHONY D'ADAM: No, that's after.

KARL BITAR: I'm not sure about that. I think it was before the BDA, Lendlease and Crown started having issues, let's call it, or negotiations around the sightline clause.

The Hon. SHAYNE MALLARD: You are very well connected to the Labor Party. All the Labor Party members on this Committee have declared an interest in or a knowledge of you in the past. Were you involved in any negotiations or discussions with the Opposition—being that we came into government in 2011—during this time in regard to the problem with the BDA and the higher mass and the problems that it's creating for Crown and the issue that would inevitably wind up in court and become quite a political issue—and here it is today still, many years later? You were, in your role, a government affairs-type tsar for Crown, for want of a better word. Were you involved in discussions or briefings with the Labor Opposition over that time?

KARL BITAR: Not that I recall, Mr Mallard. I really intentionally tried to stay clear of the sightlines issue only because it was being run by the development team. As I mentioned earlier, I was aware of it. Also, during this two-year period where this was happening, Crown had unfortunately had 19 staff arrested in China during this period. One of my key roles was to get over there and assist them to get out of detention as soon as possible. For a big chunk of that period when the negotiations were happening, I was based overseas.

The Hon. ANTHONY D'ADAM: Mr Bitar, you referred to Crown having a strong legal position in relation to the sightlines issue. I understand that part of the sightline agreement that existed was that there was an obligation on Crown and Lendlease to optimise the commercial development at Central Barangaroo. What was your understanding of the nature of that obligation?

KARL BITAR: Mr D'Adam, again, I wasn't across the detail of what Crown's understanding was of that obligation, only because I wasn't involved in discussions around that agreement or the outcome of that agreement. I wouldn't be doing the right thing to actually be guessing what that might have been.

The Hon. ANTHONY D'ADAM: But you said earlier that you thought Crown had a strong legal position. You must have appraised yourself of the legal position if you were providing that advice.

KARL BITAR: Yes, I did understand that Crown had a very strong legal position based on its tripartite or three-way agreement, which meant sightlines should be protected. So you are raising the issue now of maximising—

The Hon. ANTHONY D'ADAM: Commercial opportunities, commercial development at Central.

KARL BITAR: Yes. That's not inconsistent with Crown and Lendlease wanting to protect its sightlines. I think the BDA wanted to maximise their commercial space at Barangaroo Central. That was no issue for Crown or Lendlease. The issue for Crown and Lendlease all along was its vista view between the Harbour Bridge and the Opera House.

The Hon. ANTHONY D'ADAM: Was it your understanding of the agreement that effectively it meant that Crown and Lendlease had a veto over the proposals that were being advanced in Central Barangaroo?

KARL BITAR: If those proposals impacted Crown and Lendlease's sightlines, I believe that was the case.

The Hon. ANTHONY D'ADAM: That they could stop any proposal? That the obligation wasn't just to negotiate in good faith but, ultimately, if Crown and Lendlease believed that their commercial interests were harmed by an intrusion on the sightlines, then they could say no to any proposal of that nature?

KARL BITAR: Yes. Mr D'Adam, from my high-level understanding, I believe that was the case. But, again, I'm not a lawyer, so I can't sort of say that and be 100 per cent sure. But that was my understanding.

The Hon. ANTHONY D'ADAM: Did you advise James Packer not to engage in legal action on this issue?

KARL BITAR: No. My preference was for the BDA to compromise so that we could find a solution. My preference right along was for everyone to find a solution. I don't think anyone goes into legal action against the Government or a government authority lightly. My preference all along was that the BDA would compromise enough for Lendlease and Crown to be sort of satisfied. We didn't get there in the end.

The Hon. ANTHONY D'ADAM: Did you have specific conversations with James Packer about this issue?

KARL BITAR: I would have over the two-year period, Mr D'Adam, but I can't recall the detail of those.

The CHAIR: Thanks, Mr Bitar. Our time has expired. I suppose today Crown has great sightlines, given that there is nothing built at Central Barangaroo, and that tower—they've got great views of the harbour and a big

hole in the ground. But we thank you for your participation today and the information you have provided. I don't think there were any questions taken on notice. We will move on to our next panel.

KARL BITAR: Thank you, Chair. Thank you to the Committee.

The CHAIR: All the best.

(The witness withdrew.)

Mr HAROLD KERR, Chair, Highgate Owners Corporation, affirmed and examined

Dr JUDY HYDE, Submissions Officer, Highgate Owners Corporation, affirmed and examined

Mr FRANK HOWARTH, Chair, Heritage Council of NSW, affirmed and examined

Ms LUCY LANGLEY, Associate, GYDE Consulting, The Langham, Sydney, affirmed and examined

Ms NELL O'BRIEN, Project Planner, GYDE Consulting, The Langham, Sydney, affirmed and examined

The CHAIR: Now we have representatives from the Heritage Council, The Langham, Sydney, and Highgate. Thank you very much. You have made extensive submissions. Would anyone like to make a short opening statement?

LUCY LANGLEY: I have a short opening statement. Good morning to the honourable members of this Committee. Unfortunately, Shane Jolly, the general manager of The Langham, Sydney, is unable to attend today, so has asked me to appear on The Langham's behalf. As I'm sure the Committee is aware, The Langham is a significant property for Sydney. It is the city's only boutique hotel with less than 100 rooms, internationally branded five-star property within the Millers Point area, and therefore a key stakeholder.

Our submission to the Select Committee was prepared predominantly in response to the recent Modification 9 application to the Barangaroo Concept Plan, which I'm sure the Committee will be aware has been recently rejected by the New South Wales Minister for Planning. In that regard, our submission and any evidence that we are able to provide will predominantly relate to term of reference (e) of this Committee.

Our client would like to advocate the need for any future application or modification of the Barangaroo Concept Plan to follow due process and ensure the integrity of Barangaroo's redevelopment project. Any application should be in accordance with the public expectation of the resulting redevelopment of the precinct. We believe that a number of items raised in our submission to Modification 9 should be considered by the select committee. Modification 9 was allowed to progress to a developed stage despite gross inconsistencies with the commitments, planning principles and guidelines contained in the approved concept plan, especially those relating to views and heritage protection. This is especially important because the concept plan is a high-profile planning instrument based on substantial work, including the results of an international design competition.

There are five lessons to be learned from the Modification 9 application. Any future changes to the approved Barangaroo development should ensure that the immunity and heritage value of Millers Point Observatory Hill precinct should be protected, and important views retained. Any proposal should adopt best practice urban design and be designed to preserve public open space. It should appropriately use the modification pathway, ensuring any modifications and its impacts are assessed appropriately and correctly against the overarching concept plan and the development principles and statement of commitments. It should ensure that the overall result of any modification is within the public interest and does not diminish the public trust in the approval and the planning framework. Future delivery of the Barangaroo project must ensure that due process is maintained at all stages of the development.

In conclusion, The Langham wishes to see the integrity of the proposed development under the concept plan and the associated view sharing and sightlines maintained. It is important that any future application in relation to Central Barangaroo maintains the established views to and from Millers Point and Observatory Hill. Any impact on these should be transparently documented and assessed in future application documentation and its subsequent assessment. On behalf of The Langham, I would like to thank the Committee for the opportunity to speak today. I'm happy to assist the Committee if they have any questions on our substantive submission.

FRANK HOWARTH: The question of sightlines has been a big one for the Heritage Council recently. For people who have trouble with the concept of protecting sightlines, I tend to ask them which views of and from the Opera House they would be happy to lose—in fact, that is part of the concern here—or of the Harbour Bridge. Those ones are obvious, but we at the Heritage Council are currently facing that question with Observatory Hill, Millers Point—hence the inquiry now—and also the Central Station Clock Tower, which is subject to development, which will change sightlines as well.

The same issue arises more subtly with early homesteads in western Sydney in the Mulgoa Valley, for instance, as urban development grows, with vistas that arguably should be protected there. The problem we have is about which views to and from places we want to protect and preserve. This includes pre-colonisation views and vistas significant to Aboriginal people, as well as the contemporary views and vistas. Once identified, how would we protect those views? The issue is clearly identified in the City of Sydney Central Sydney Planning Strategy 2016-2036, but a mechanism in that plan seems to be lacking.

We can learn from places like London, which has a comprehensive view management framework which has strong planning controls backing it up. It's my view that we need something like that in Sydney. The Heritage Act itself does not have a protection mechanism for sightlines, so we will need to use planning instruments. There are usable powers in LEPs, development control plans and potentially a specific SEPP, if need be. The Heritage Council has commenced a project to investigate how we better identify and protect sightlines while still enabling the ongoing development of a vibrant Sydney and other parts of New South Wales. We welcome the findings and recommendations of this Committee as an input to that study. Thank you, Chair.

The CHAIR: Do the representatives from Highgate wish to make an opening statement? Mr Kerr?

HAROLD KERR: If I may, Chair, yes. First of all, we, of course, have already made a fairly substantial submission to the Committee. Since that time, more has emerged. If it's possible, we would like to present some further papers expanding upon that.

The CHAIR: Yes, we can table those.

HAROLD KERR: Also, if possible, after I have just said a couple of words, if Dr Hyde could just lead on a few of the major points that have come out of that update.

The CHAIR: As briefly as possible because we like to have as many questions as possible as well and, having made a lengthy submission, if you can just offer a summary of the argument. Thank you.

HAROLD KERR: I'll go past the arguments, then, because they will all come out, no doubt, during questions and in what Dr Hyde is going to say. I'd just like to pick up on some words that you said a little bit earlier on. You stated that thus far nothing has been built on Barangaroo central. I believe our position would be that that should be the status quo, other than an extension of parkland from Headland Park. We believe that extending the park would be justifiable on many grounds. It certainly would be the best possible outcome for sightlines from Observatory Hill. I understand that is the core point of the inquiry. It certainly would also be the best for posterity and best in the people's long-term interests for many generations to come. When I said I believe it's justifiable, Barangaroo has already exceeded its original proposed GFA by some proposed 55 per cent. It started at 388,000 square metres. It now stands at 602,000, plus a few. Commerce has been really well served up until now and we would put it that it is now the people's turn. Thank you.

JUDY HYDE: Obviously there's the issue of the heritage sightlines that we are very concerned about but also residential sightlines. Residents have bought terraces along the High Street cutting and also in apartment buildings, based on the conditions that were laid down after Modification 9 when the Crown was moved onto the parklands, and these allowed for views that they knew would be protected under those conditions, which are now looking to be quite at risk. But the other major concern that we have is that the Infrastructure NSW proposal that has recently been submitted—and looks like it might be rejected by the Minister—is actually part of a trajectory that has removed and stripped all checks and balances from the EP&A Act and has shown that a serious conflict of interest undermines the public's interest. The legal exemptions for State significant developments also undermine the public's interests, and we are concerned about the fact that that proposal actually bypassed a lot of the development processes and left the whole proposal in the hands of one person, and that was the Minister. That was undertaken by manipulation of the planning process, so we are very concerned about the planning process itself and how that has been corrupted throughout the process of development at Barangaroo. Thank you.

The Hon. ANTHONY D'ADAM: Thank you all for your attendance today. I suppose the fundamental problem here is that the development rights have already been sold to Aqualand. How do we unscramble that egg, given that they have an expectation that they will be able to develop Central Barangaroo, with 144,000 square metres of floor space? How do we step back from that? What's the mechanism for us reversing out of that commitment that has been made by the State?

HAROLD KERR: I can't offer a mechanism, but might I suggest that Aqualand's desire to go ahead would be totally determined upon the envelope that they were committed to build to, and that is within the Government's offering.

JUDY HYDE: Mr D'Adam, under Modification 8—and Modification 9 was put in initially alongside that—the Planning Assessment Commission, which was a precursor of the IPC, the Independent Planning Commission, actually made statements. It said that that amount of development would not be permitted or was not likely to be permitted at Central Barangaroo. That led to the initial proposal for Modification 9 being withdrawn. Now, I don't know what has happened in the meantime but Aqualand now believes that they have permission to present a development of that size. But that is certainly not in the documentation that's available online about the development.

The Hon. ANTHONY D'ADAM: Mr Howarth, I was very interested in your suggestion around some form of modification, I think, you are suggesting to the Heritage Act that allows for the preservation of sightlines or the treatment of sightlines as a heritage item. Can you perhaps elaborate on that and how that might actually work in practice?

FRANK HOWARTH: There are two dimensions to that. The Act certainly has no provisions at the moment that would protect sightlines, but it is the council's view that there are adequate mechanisms in the planning law that could, and indeed I think one is used to protect a certain sightline on Martin Place. So that has been done, albeit in a fairly restrained fashion. We are looking at a new Heritage Act now for, I think, next year sometime to be introduced. One of the reasons we are conducting a study at the moment, working with the city and Planning and the Greater Sydney Commission, is to see if there should be things that should be included in the Heritage Act review as a result of that, or whether things are still better dealt with under the planning legislation at the moment. Certainly the London View Management Framework is dealt with entirely under planning legislation there. It is our view there are adequate powers under the planning Act at the moment to recognise sightlines to and from significant places.

The Hon. ANTHONY D'ADAM: How would that intersect with a State-significant development concept? Would it be better to have a mechanism entrenched in the Heritage Act that would therefore afford greater protection of sightlines, or do you think that the State-significant development concept would still allow for the preservation of heritage sightlines under the existing framework?

FRANK HOWARTH: The State-significant development automatically turns off the Heritage Act and a number of other Acts at the moment, as you would presumably be aware. The impact of planning legislation on State-significant developments is less clear to me. There still needs to be a building envelope that needs to be determined. That's what's going on at Central station itself and North Eveleigh at the moment. My feeling is it is probably better to deal with the issue under planning, rather than risk the SSD and SSI provisions simply turning off the Heritage Act. I think planning legislation is going to be a better answer.

The Hon. ANTHONY D'ADAM: But either way, the State-significant development would not afford the protections that you are looking for. So in the case of Barangaroo, we still would not have an adequate answer in terms of protecting those heritage sightlines, say, from Observatory Hill.

FRANK HOWARTH: You'd still need a planning envelope approval, is my understanding. In that process, whether it cites "State-significant" or not, I think it's fair to say that sightlines should and would be, and in fact I think the Minister's current decisions were taken into account.

The Hon. ANTHONY D'ADAM: I might raise one other issue before handing over to the other Committee members. One of the things that I am grappling with is the conflicted role of Infrastructure NSW in this process. How could we change the way Infrastructure NSW operates. Obviously, it has a mandate to try to deliver the redevelopment of Barangaroo at the lowest possible cost. That means that it is looking to maximise the commercial opportunities to cover the costs of the metro station, for example. That seems to create an inherent conflict when it is trying to also balance that against the issues like heritage. How do we reconcile those two conflicting tendencies within the structure of Infrastructure NSW?

FRANK HOWARTH: This problem exists not just with Infrastructure NSW but also with TAHE, the Transport Asset Holding Entity, and Transport for NSW, who are in the same situation. That is what is happening at North Eveleigh and to some extent Central station, where there is a mandate to maximise economic return from those entities through development of the site. Infrastructure NSW is in the same place. I wonder whether—pure speculation on my part—a better role for the Greater Cities Commission in this is setting in place some more global controls that perhaps limit the ability of some of the other entities like Infrastructure NSW to move excessively. But I don't have a direct answer to that, I'm afraid.

Ms CATE FAEHRMANN: Thank you for appearing today. This is a general question, really, just about the importance of heritage and the important heritage elements that all of your submissions highlighted. Just to get it on the record for this hearing, the reason that I think Sydney is such a beautiful city is that important heritage elements have been protected for so long, like some of the photos of the heritage landscape of Millers Point and, obviously, Observatory Hill, and you demonstrated that so beautifully in your submissions. What we are grappling with here is that we are just not placing value on heritage for the Sydney CBD—the Sydney Harbour, in particular—but it's a massive drawcard for tourists. It's why, as I said, Sydney is known to be such a beautiful city and one of the most beautiful in the world. It's not just the harbour; it's the way we have protected the heritage, particularly around that area. I assume some of you will want to comment on that.

JUDY HYDE: It's the uniqueness. We don't want Sydney to turn into Dubai. It's those unique features that you've just mentioned that actually make Sydney what it is along the harbour foreshores. It's the unique

combination of those two things. And they belong to the people, not to the developers and not to the Government. They belong to us.

The CHAIR: Mr Howarth, can I ask your view at the Heritage Council of the overall development? This is within the Committee's remit. My interpretation is that Barangaroo is the classic example of the failure of grandiose master planning in Sydney. How much better would it have been to have general principles and development guidelines about natural and built heritage, and the sightlines that come with it? Ultimately, you would have wrapped around the headland with a park that gave public access the whole way through, instead of the shemozzle we have now of a park that I find soulless, harsh and cold in what potential use it might have. Then, as you wrap around the headland heading south, you go past the hoardings protecting the dreadful hole in the ground, and then you go to the great silver phallic symbol and lose your harbour, parkland and natural access.

This whole thing has been a debacle from the very beginning, hasn't it? And the delusion of someone like Paul Keating in thinking that he, coming out of the suburbs of Bankstown, had some master plan that was ever going to be feasible as opposed to what you would think would be a better planning principle of the heritage, natural and built principles, which I mentioned earlier on, with continuous parkland wrapping around the foreshore. On top of that, I subscribe to the Jane Jacobs view of urban planning that it needs to evolve as random, disaggregated, livable and usable as commercial decisions might emerge. Wouldn't that have been a much better process than what we have landed at?

FRANK HOWARTH: Chair, at the terrible risk of getting my head bitten off by Paul Keating, I'm not going to provide a particular view.

The CHAIR: Well, given what I have said you can just follow in my slipstream.

FRANK HOWARTH: A personal view is that, from a heritage perspective, I think there are a number of us who would consider that the Hungry Mile, the heritage of the Docklands there, was not adequately recognised in the developments. If you look at the contrast of what I think is extremely good development around Walsh Bay and the preservation of the Finger Wharf—which, incidentally, I believe Mr Keating wanted demolished—at Woolloomooloo Bay, perhaps things could have been done significantly differently.

The other more general concern that the Heritage Council has about the development is the incrementalism of it. This increasing floor space, this increasing building heights—a gradual eating away of the heritage values through vistas. We completely lost most of the heritage values of the Hungry Mile in the original development, anyway. But this ongoing incremental increase of building heights, floor spaces et cetera is causing a huge risk to the heritage values of Millers Point. The council has already said in our submission that the connection between what were originally waterside workers' cottages along the lower levels of Millers Point and the docks down there have been largely lost to a fair extent and risk further loss through the increase of building heights.

The CHAIR: Do you agree that anyone now celebrating what is Barangaroo is delusional and hasn't visited the site? The feeling you get down there is you can only ever be a temporary visitor and no-one really belongs. There is no sense of belonging in anything they've done down there, whether it's the tower, the hole in the ground or the cold, strange park.

FRANK HOWARTH: Chair, I'm not going to express a view except to urge people to go and get that very experience you outlined, by walking around.

The CHAIR: That's good advice. Mr Searle.

The Hon. ADAM SEARLE: Thanks, Chair. My question is to the Highgate Owners Corporation. I just wanted to unpack one of the things you raise in your submission, which was not only does the redevelopment proposal threaten the sightlines of residents who have bought properties; I think the implication of your submission was that they had bought those properties in reliance on commitments given by the New South Wales Government.

JUDY HYDE: Yes. That's right.

The Hon. ADAM SEARLE: From my rudimentary knowledge of planning law, there's no property in a view. At least that has been the traditional view of the Land and Environment Court and other superior courts. Can you just step us through what you regard as the various commitments given by the State Government and where and how that has operated to the detriment of people who've put their hard-earned into these properties.

JUDY HYDE: When the Crown was moved onto public foreshore parkland, commitments were made, around Central Barangaroo, that were entered into by the Government. These limited the heights and the density of Central Barangaroo buildings. It was that that they relied on. But there are—

The Hon. ADAM SEARLE: Where were those commitments given?

JUDY HYDE: They were in the approval commitment. To get the approval to move the Crown, they had to enter into commitments which covered Central Barangaroo and kept the heights low and the density low. There were specific heights and densities that were stipulated in those commitments that the Government entered into, that residents relied on in their purchasing. However, there are also two local government laws, or there's a law that's been passed. The other thing about that is that the terraces were actually sold by the Government from 2016 onwards, when those commitments were made, with the views. They're sold by the Government, with the views, backed up by these commitments. That's the first thing.

The second thing is that the Land and Environment Court of New South Wales established a principle for view sharing in their ruling in *Tenacity Consulting v Warringah*, in 2004. They laid out four steps that developers have to enter into to negotiate, just as they did with Lendlease and with the Crown, with residents, where their views are being impacted. They put additional value on the views where they meet the water, where they take in icons, all the things that are relevant for Millers Point. This was then further supported by *Rose Bay Marina Pty Limited v Woollahra Municipal Council*. That was the Land and Environment Court that established that requirement.

LUCY LANGLEY: Could I just add to that one in terms of the statements of commitment? In the concept approval—I'm paraphrasing here slightly—commitment 38 was to retain views to Observatory Hill; 39, to the view corridors over and between the new built form at Central Barangaroo and retain the ability to appreciate Millers Point and the roofscape. It's important that, going forward, those are enforced and the commitments are retained.

The Hon. ADAM SEARLE: Thank you for that. If anything else occurs to you, subject to the will of the Committee, feel free to provide any further detail on notice.

The Hon. SHAYNE MALLARD: Good morning, everybody. Welcome along. Thank you for your submissions. Mr Howarth, I particularly thank you for yours and the work that you do in the heritage area. We've come across each other before. I think that the proposal to do some serious work around quantifying and protecting heritage views is needed. I raised with Mr Bitar the transitory nature of views. The issue about view sharing was raised just then. It doesn't mean that your view is protected; it might mean that you'll get half of your view after the neighbour builds an apartment block. I have been involved in a lot of that as a councillor. That is the first point I want to make, Mr Howarth. There are critical views that aren't yet identified but you've articulated—the conservatory tower and, obviously, the Opera House and the Harbour Bridge. You go on Facebook and there are "now" and "then" photos, which I find fascinating. The views change massively all the time. Views have a transitory nature in a growing city, particularly a young city. Would you agree with that?

FRANK HOWARTH: Yes. But as London has shown, if you identify the key views early enough, they can be identified and protected. That's the key point. I was lucky enough to be in London earlier this year and get a tour of the King's Cross station redevelopment. It's a huge area. Without any prompting from me, the development manager was pointing out the view corridors to the tower of St Paul's that they have to preserve and how they juggle buildings and certain things because of that. If those things are identified early enough and known, then they don't have to be as transitory but still can enable a vibrant developing city. Auckland, from my colleagues across the waters, is an example of not quite getting it right. Auckland has had very little control around heritage and, certainly, around sightlines. They now deeply regret that, I think.

The Hon. SHAYNE MALLARD: That's why I deliberately used the words "young city". London and St Paul's—it's clearly an ancient city. I'm reminded of Copenhagen. When I went to Copenhagen, I was told that the planning principle in Copenhagen originally was that no building could be above the height of the church steeples in the town centre. I have always thought that the developers would just increase the height of the steeples with the churches in Sydney, being the nature of churches and the developers. There is Canary Wharf in London. I always thought Barangaroo was potentially our Canary Wharf. It is pretty soulless at night, but it is an incredible part of the city. Barangaroo is performing as that commercial, banking and finance hub of the city. Being a young city, constrained by the site, that was one of the big issues why we developed Barangaroo. Woolloomooloo was ruled out. It is now pushing further south. Do you see that we've got growing pains and that's why we're at that situation?

FRANK HOWARTH: Yes. We aren't in the "luxury", in inverted commas, of London or Paris. Paris just said, "Put it all over there," and then Baron Haussmann bulldozed half of Paris to build the grand avenues. I strongly support what you're saying, but that is not incompatible with identifying key sightlines first. In my view, say, with Barangaroo, it would have said that the developments at the southern end—putting aside the question of whether there was design excellence and whether it has created a soulless precinct or not—were perhaps more or less problematic than the developments as you move further north because of the significance of Observatory Hill, the fact that the one o'clock ball still drops and was meant to be seen from every ship on the harbour, and the

pre-contact importance of sightlines across the harbour. Picking up on an earlier comment made, we are so lucky that Sydney has so many green headlands. We're in the process of listing or recommending to list Badangi, which is Balls Head and its precinct, as well.

More to your point, I don't see the identification of view corridors to and from for a growing city as a problem. I think it's an enabler as much as anything else. It gives certainty. It avoids courts making the law as they go through. The Central Sydney planning strategy, if you look through that, has got a number of identified view corridors. Central station is a very interesting test at the moment because of the Tech Central development. We have said yes to the western gateway buildings—the Atlassian, Toga and Dexus Frasers buildings on the western side—which is subject to an SSI. The Government has made a clear decision to do that. We're not going to argue against that. We will work with the developers, as we have done fairly extensively, to shore up, protect, demonstrate heritage values in the parcels system that was on that side of the station.

Current proposals to build over the country platforms, the Heritage Council is very concerned about. Apart from anything else, it will lose another large chunk of view corridor to the clock tower, which was meant to be seen very widely across the city. Now, it's true that a number of the streets, George Street, Pitt Street et cetera, were aimed—the clock tower was built at the axis of those streets and there was an intention to retain those view corridors along the streets. It is also arguable the clock tower should be able to be seen from Redfern and further south. And there's a risk of the buildings—apart from any other consideration of whether it's appropriate to build over the country platforms, those sightlines are going to be lost as well. Had that been pre-identified, it may well have given Transport for NSW and TAHE greater certainty about what they could put forward.

The Hon. SHAYNE MALLARD: So you have your heritage view corridors to the clock tower, for example, to Observatory Hill—those elements of it that make any city respect its past. But to the other people on the panel there, your situation is—back to the Land and Environment Court—the view-sharing issue. When you buy property—I have an issue with mine at the moment where the neighbour is building a house next door which surprised me that they could do it. So, you know, there are compromises in terms of your rights as a landowner. I just know from my days as a councillor that in the Land and Environment Court, other than those rulings that Dr Hyde raised, you don't have a right to a view. And then it comes to the position of view sharing. Is that the situation you are at? It looks to me, according to your submission, that you are losing your whole view on what appears to be a rejected proposal by the Minister to pretty much go back to the drawing board on it. I can't remember if it is Modification 8 or Modification 9.

JUDY HYDE: Modification 9.

The Hon. SHAYNE MALLARD: Thank you. Are you prepared to look at a compromise in terms of your legal rights?

HAROLD KERR: Mr Mallard, if I may, your concentration then was entirely on private views.

The Hon. SHAYNE MALLARD: Yes.

HAROLD KERR: I would like to put it that it's Highgate's position that we are not looking at Highgate's views alone, and we have history on that. As a matter of fact, it ties back initially to the Heritage Office, and that happened to have been in 2003. The then deputy director of the Heritage Office, one Reece McDougall, approached us and asked us whether we would be interested in promoting, organising, the listing of Millers Point as a single entity on the State Heritage register. At the time it was a whole series—I think it was 113 individual things, and locations such as Observatory Hill were not listed. Highgate did pick that up. As a community thing and community funded, we saw it through, and the listing took place. Highgate didn't do that for its views, or for the views of individuals; it did it because of Millers Point and the value of that entire precinct.

I'd like to put it very strongly that whatever we're putting forward now goes down very similar lines. As far as sightlines are concerned, we also followed up in 2013 with Skidmore, Owings and Merrill. We had dealings then with one Philip Enquist while he was in Australia, prior to the master plan being put together, and then further communications back with him in Chicago—again, pushing one thing, and that was sightlines to and from Observatory Hill. And they were maintained by the master plan that was put forward at the time. Please do take it on a broader perspective than just private views. It goes beyond that. We're really interested in the people's views. We're not going to be around all that much longer, but those views will be. There will be more people and they should be maintained.

The Hon. SHAYNE MALLARD: The last point I want to make is obviously the trigger for the change in the floor space on Central Barangaroo was the decision to put the metro rail there. I applaud that decision. I'm a big public transport advocate. Barangaroo, until that decision was announced, was very isolated from public transport. They built a very expensive pedestrian connection from Wynyard down there, the Wynyard Walk. It cost \$30 million or something, or maybe it was much more than that. That is the only connection for public

transport. Once that's functional, and it will be functional—the unions let us do it—it will service that workforce. Do you not see the need for the greater good, the broader good—the city's good, the State's good, the economy's good—to make public transport viable where it's located? We do not have the luxury of being able to just build a train line and pay it off in the next 50 years or 100 years. The metro station is a real opportunity to make Barangaroo work much better, and also the Walsh Bay theatre precinct, because it will feed to there. Do you not see that there's a greater good at play as well?

JUDY HYDE: Certainly there is, but it depends on what you consider the greater good. Is it more commercial property, which we don't need. Is it more high-rise—

The Hon. SHAYNE MALLARD: We do need more commercial property.

JUDY HYDE: With the change in working conditions over COVID, people are not wanting to come back to the offices. They are coming back part-time, if they come back at all. We don't need more commercial down there blocking out our heritage, which makes us unique. The metro there is not going to bring many people from very far because it doesn't come from very far. It can bring people in to the workforce at south Barangaroo. It can bring them into the city.

The Hon. SHAYNE MALLARD: It is going to come from Bankstown and go to Kellyville. It is going to be quite a significant piece of transport.

JUDY HYDE: It will come into the city and it will come to Barangaroo South.

The Hon. SHAYNE MALLARD: Central.

JUDY HYDE: But the Wynyard connection is far more important and it works very well. What would be attractive down there, as Harold has said, is a parkland where people can actually use it and come in at weekends. Have you ever been there of a night at weekends? It is a ghost town. There's nothing open. On Sundays there's hardly anything open except for the eat street along the front, and you need your credit card to be really topped up to be able to go and eat down there. What we need is smaller things for everybody to use at Central Barangaroo, something that brings people down to play, to enjoy our heritage sightlines and to enjoy our harbour. We haven't got that.

The Hon. SHAYNE MALLARD: I could talk about that for ages.

The CHAIR: We could, but that is a very accurate note on which to end this panel. One last question from Ms Faehrmann.

Ms CATE FAEHRMANN: Given the time available, I wanted to check with The Langham witnesses: Are you worried that the wealth and power of Crown and Lendlease might ensure, for example, that their sightlines are retained and that you will lose yours? I note the comment earlier in relation to sightlines for the community and the public, not just for those big corporations that have managed to buy and pay for their sightlines. Is that what's playing out here for you?

LUCY LANGLEY: Yes. In terms of The Langham's interest, the current ownership acquired the hotel in 2012, so the Barangaroo concept was already on its way and approved. It's really, for The Langham, about ensuring that that baseline and those commitments that were made in the original concept plan in terms of heights and view sharing and sightlines are retained, and that low-density level of development is retained in the Central Barangaroo area and that the interests of a developer aren't put before retaining those commitments.

The CHAIR: We are out of time. Thanks to the participants on the panel. It has been excellent.

(The witnesses withdrew.)

(Short adjournment)

Mr ALEX GREENWICH, MP, Member for Sydney, before the Committee

Mr BERNARD KELLY, President, Millers Point Community Resident Action Group, affirmed and examined

Mr JOHN McINERNEY, Member of Executive Committee, Millers Point Community Resident Action Group, affirmed and examined

The CHAIR: We will start the panel. Thanks, everyone, for your participation. Would one of the three of you like to make a short opening statement, before we go to questions?

BERNARD KELLY: Yes, if I could.

The Hon. SHAYNE MALLARD: Mr Chair, I might just declare I didn't realise John McInerney was the John McInerney I served with on council and on the Central Sydney Planning Committee, and whose wedding I went to. I want to declare that.

The CHAIR: Okay. If you went to the wedding, that's definitely a conflict of interest.

The Hon. SHAYNE MALLARD: At Observatory Hill.

The CHAIR: That's a full declaration, now.

JOHN McINERNEY: I must declare, I went to Shayne's wedding as well.

The Hon. SHAYNE MALLARD: You did, indeed. There we go. We will have lunch after this.

The CHAIR: At least you got an invite. Alex?

Mr ALEX GREENWICH: Sydney is blessed to have a harbour of unmatched beauty. It is a defining feature of the city, that belongs to all Sydneysiders. Urban renewal projects on the harbour should create magnificent places that can be enjoyed by all, but 15 years of planning at Barangaroo has focused on little more than squeezing as much development onto the land as possible, at the expense of creating a world-class harbour precinct. Approvals so far have almost doubled the floor space on the land since the initial concept plan. Contrary to good planning principles, towers at Barangaroo South have been built adjacent to the waterfront, making it narrow, shady and windswept. The promised Harbour Park was relocated to an area behind the towers to make way for a casino. The casino tower blocked views of important constellations from Observatory Hill.

Modification 9 represents another extension of the poor planning processes that have failed this iconic site. If approved, floor space area would swell up to another 144,355 square metres. Another tower would be built on the waterfront and the UNESCO-recognised Observatory Hill would lose more sky views. Heritage links to the water at Observatory Hill, the park and the Millers Point Conservation Area would be severed. Darling Harbour and Pyrmont would lose key views of Sydney Harbour Bridge and Observatory Hill. Relocated Hickson Park would lose significant sun access and grass areas, despite promises to protect these when the park was relocated.

But it is not too late to prevent the harm of Modification 9. It hasn't been approved and the planning Minister has asked Infrastructure NSW to revise the proposal, citing concerns about views to and from Observatory Hill and Millers Point, the shadowing of Harbour Park, and impacts on Hickson Park. That is why I am here today with residents from Millers Point. I hope that the Parliament, through this inquiry, can acknowledge that Modification 9 is a bad plan for Sydney and recommend a way forward for Central Barangaroo that will protect the sightlines between the water from Observatory Hill, Observatory Hill Park, Millers Point and across the harbour. It can potentially consider handing this land back to the public for public open space and a parkland, given the gross development that has already occurred at Barangaroo South, or at least returning to the approved concept plan.

The CHAIR: Thank you very much. Mr Kelly, you wanted to add to those comments?

BERNARD KELLY: Yes, thank you. The New South Wales Government mistook its sightlines deal with Crown and Lendlease for a planning instrument. As a consequence, the sightlines deal caused the abomination that is known as Modification 9. This sightlines deal created the fevered desire to maximise the development of Central Barangaroo for Aqualand's benefit, and not to optimise it for the benefit of the New South Wales public—the owners of the land on which Central Barangaroo sits.

This crass overdevelopment of public land was premised on the basis that we must occupy every square inch with saleable real estate. From pinching part of Hickson Park, previously approved by the Independent Planning Commission, to the three-metre overhang on the wall of buildings along Hickson Road, and to that abomination of a tower, Central Barangaroo's version of Packer's Pecker. It would rightly be ridiculed, along with its twin at Blues Point, for the rest of its existence. Then there was the fiction that MOD 9 was merely an

incremental increase in building heights and density, when for two of the three blocks—blocks five and six—it was a 24 per cent and a 33 per cent increase in height from the approved concept plan.

MOD 9 was a complete abrogation of the heritage and cultural responsibilities of Infrastructure NSW towards Millers Point, Sydney Harbour, and Observatory Hill. This was in stark contrast to the \$1 billion property play just across the road: the one where the New South Wales Government was also the vendor, who put highly restrictive conditions on the purchasers, particularly around heritage issues. I speak, of course, about the New South Wales Government sale of terrace houses in Millers Point between 2014 and 2019. Over \$1 billion was spent by private individuals in purchasing those properties, the stamp duty that went with them, restoring them due to the neglect of past government inaction and then undertaking the renovation necessary to achieve appropriate residential amenity. The contrast between what the private owners in Millers Point endured and the "get out of jail free" card given to Aqualand is enormous.

What happens now to Central Barangaroo? The New South Wales Government's own agencies, from the Heritage Council to the Government architect to the planning department, have been clear. The New South Wales Government must abide by its own rules; stop misusing redundant planning legislation to sneak through monumental changes under the cover of a modification process; have the actual developer be the applicant, not the patsy government agency; and stop the secrecy. For three years this plan for MOD 9 was known to the insiders, but not to the New South Wales public. We came last in the pecking order. We got 28 days to digest 2,000 pages of so-called "expert reports". Guns for hire, a complete sham. But people power came to the fore. Over 850 submissions to the MOD 9 proposal objected to it and over 8,000 people signed the Don't Block The Rocks petition objecting to MOD 9. This was a proposal that was utterly rejected by the people of New South Wales.

There has been much made of the new metro station at Barangaroo, that somehow it must be paid for with the development at Central Barangaroo. This is a complete furphy. As we understand it, the route of the metro line—from North Sydney through Barangaroo and into the CBD—was the optimal route for engineering and construction purposes. This metro station will be servicing three large office buildings merely 500 metres away at Barangaroo South. There are five high-rise apartment buildings, with thousands of residents, in a similar distance in Kent Street. Sydney's main arts precinct, at Walsh Bay, for which the Government has just spent several hundred million dollars, is literally just around the corner. What should be one of Sydney's major tourist destinations is literally across the road in Millers Point. There is a new and thriving residential community ready and willing to protect the heritage of our great city from bad development. The Barangaroo metro station has paid for itself.

Millers Point is Sydney's oldest residential suburb. It deserves more respect than what the New South Wales Government and the MOD 9 proposal had in store. It deserves the respect that we, the owners of our terrace homes, have given Sydney's built heritage through our restoration process. It deserves the respect that will enable future generations to visit and understand a key part of Sydney's early colonial history. It is a respect the Government couldn't give, but it is certainly something the Government could learn. Thank you.

Ms CATE FAEHRMANN: Thank you for those opening statements. They were very strong and scathing with regard to what has happened to date and where we are at now. This is a broad question. It seems, Mr Kelly, from your opening statement, that our planning laws have become a joke, haven't they? They don't seem to protect anything anymore. If we can't protect Sydney's wonderful heritage—our unique heritage—and if we can't protect our harbour and beautiful public harbour foreshore, I don't know what the planning laws are there to protect. What's your view on that?

BERNARD KELLY: Yes, Ms Faehrmann, that is certainly a core concern of the Millers Point community. The planning pathway that MOD 9 took was redundant and should have been put in the bin years ago. The State significant development process has the legal ability to ignore heritage issues. You cannot ignore the heritage conservation precinct of Millers Point and Dawes Point as it's right next door to this development. It is clearly nonsense to suggest that the Government expects other people to abide by its rules but it doesn't have to abide by its own rules.

Mr ALEX GREENWICH: If I can just jump in there, it would be great if there were planning laws that applied to Barangaroo. It is essentially the wild west of planning in New South Wales, through unsolicited proposals, State significant proposals and the ridiculous amount of modifications that we're dealing with. Clearly, there is a need for some planning laws and some restrictions. But they have just not been applied because of the very clever pathways the developers, with the support of Government, have been able to find ways through.

Ms CATE FAEHRMANN: Yes, that's basically the erosion of planning laws over the last decade or even more. Several of our previous witnesses raised that issue in their submissions. It has meant that the planning Minister in some ways has become the sole decision-maker. Can I check then, with Infrastructure NSW being instructed by the planning Minister to have another look in terms of the height particularly, are you hopeful of

what that is going to bring? Are you aware of whether the planning Minister is saying, "Stick to the original Barangaroo concept plan," or what type of instructions the planning Minister would have given back to Infrastructure NSW after the public pressure on this issue in recent weeks?

JOHN McINERNEY: If I could answer, I don't believe that we are aware of what might happen. In our submission, of course, we refer to the approved concept plan, which is in fact the only legal control over Central Barangaroo. And in my submission I argue that at the very least we should revert back to that approved concept plan, which had been in force for many years and in a way was accepted by the Millers Point community. It's the, as it were, corruption of that approved concept plan that has now led to this situation.

Ms CATE FAEHRMANN: We haven't been able to—because of the time really—hear from experts in astronomy about why Sydney Observatory has a conservation plan and why it's UNESCO listed. I was hoping we could get some of that on the record. Mr Greenwich, did you want to start off with that?

Mr ALEX GREENWICH: Yes, absolutely. I referenced these things in my opening remarks and I'm sure Bernard and John will add to it. What I would say here is that Observatory Hill is not only heritage listed in Australia but it is included on the UNESCO portal for astronomical heritage. The poor placement of the Crown tower has already blocked views of important constellations from August to October, and so-called marginal reductions in sky views add to the cumulative erosion of Observatory Hill. Furthermore, the claim that the view losses that are limited to below 10 degrees above the horizon are only marginal are false. Many important astronomical views occur at angles below 10 degrees, including setting views of the sun, moon, planets and comets. The tower would destroy these views forever.

Outdoor viewing locations at Observatory Hill and the Stargazer Lawn currently attract educational seminars associated with the observatory throughout the year, including events held by the Sydney City Skywatchers. These astronomical events, where participants bring their own telescopes and binoculars or use their naked eye, have vital science and technology education roles—roles which the proponent has shown a worrying lack of respect for. When it comes to this, we're talking about our harbourfront. We should be shooting for the stars, not blocking the stars, when it comes to delivering within the concept plan for this part of Barangaroo.

BERNARD KELLY: I have two comments, if I may. Firstly, this would be the last prime pocket of harbourside land to be developed in Sydney. Unless the Department of Defence gives up Garden Island, which I don't think anyone is going to see in our lifetimes, this is the last pocket of prime harbourside land in Sydney. For a city that has immense pride in its beautiful natural harbour, to do what was being proposed was just outrageous. The second thing I would say, Ms Faehrmann, is in relation to the heritage aspect of Millers Point. Millers Point was, as a precinct, conservation listed in the early 2000s, and in fact John probably knows more about that than I do.

The Millers Point and Dawes Point heritage conservation area was gazetted effectively in the early 2000s and, therefore, for the last 20 years has been recognised officially as one of the most important intact heritage precincts in Australia, let alone in Sydney. The benefit of government ownership for 120 years—if that could be called a benefit—is that the precinct actually did remain pretty much unchanged apart from the complete lack of upkeep of the buildings. It did remain unchanged and therefore the heritage components of the terrace homes, the pubs and all that sort of thing are as intact as they are for any other precinct you would find in Australia.

JOHN McINERNEY: I really don't have anything else to add to that, but I'm happy to put my submission if that's agreeable to the Chair.

The CHAIR: Yes.

JOHN McINERNEY: The sightlines issue emerged when Lendlease and Crown became aware of early proposals for Central Barangaroo. These early proposals by Grocon would have blocked views from the casino and hotel and quite rightly were objected to by Crown and Lendlease. If the sightlines case had been lost, we believe an even more overpowering proposal than the current MOD 9 would in fact have been ushered through by the Government. So in that sense we were and are supporters of the sightlines that had been finally agreed to. The Barangaroo Development Authority began this abortive process by giving the successful developer the option to conform with the approved concept plan or submit an expanded unsolicited planning proposal with an implied approval by the department of planning.

This technique had been used successfully by the Barangaroo Delivery Authority in several other cases before MOD 9 came along. But in Central Barangaroo's case it was stopped by the Crown-Lendlease objection. To recover some of their lost floor space, Aqualand, the current owner of, as it were, the development rights, then attempted to squeeze the maximum development on the site allowed by the sightlines—in a sense by the sightlines restricting the central area heights to maximise the space available to them by squeezing down on the middle in a

sense popped up by the site. So we then had the tower and the extension into the open space—all of it caused by the central reduction of the sightlines.

The CHAIR: Mr McInerney, this is the equivalent of your opening submission, is it, that you're now reading out?

JOHN McINERNEY: Yes, it is. I'm sorry. I thought you were—

The CHAIR: No, we're trying to get answers to the questions. Aren't these matters raised in your submission?

JOHN McINERNEY: They are raised as well.

The CHAIR: Okay, we need to move on. I'm sorry. We've only got limited time. Mr Mallard?

The Hon. SHAYNE MALLARD: I found it very interesting.

The CHAIR: If you've got a written statement, maybe you can table that for our benefit.

The Hon. SHAYNE MALLARD: Can you table that?

JOHN McINERNEY: Yes, I could table this.

The Hon. SHAYNE MALLARD: Thank you for coming along today. This never-ending saga goes back to the early 2000s. John, I've been having flashbacks while you've been sitting there of you and I addressing a rally down at Observatory Park—it may have actually been on Barangaroo on the concrete slab—opposing a casino which was going to be out on a man-made island off the water there.

JOHN McINERNEY: Yes.

The Hon. SHAYNE MALLARD: From memory, my party wasn't in government yet. It must have been before 2011, so 2010 or 2009, or something like that. We fought that. When Barry O'Farrell came in, that was scrapped but moved in, which gives rise to the issues today. The other thing we fought for was—

The CHAIR: You'll need a question, please.

The Hon. SHAYNE MALLARD: I'm getting there. You allowed Cate to talk for quite a long time.

The CHAIR: I think you're reliving that wedding dialogue.

The Hon. SHAYNE MALLARD: Well, it's important to have some historical context since I was there. The other issue that we fought for was to not have one developer do the whole thing so it turned into one monolith of buildings—and had it broken up. I've always viewed it as a Canary Wharf type development that the State had to take control of and deliver. Do you agree that it was an opportunity for Sydney to grow its commercial capacity that it didn't have?

JOHN McINERNEY: Yes, it was and it has been. In fact, the growth in the commercial capacity of the city subject to the impact of COVID was certainly justified at the time. One might argue separately now, or differently, as a result of a whole series of things that have happened over the last few years, but at that time the expansion of the office area in the city was justified, yes.

The Hon. SHAYNE MALLARD: It was constrained by Central and Woolloomooloo and that was the only way to go.

JOHN McINERNEY: Yes.

BERNARD KELLY: Although, if I might say, Mr Mallard, the current metro stations being developed in the CBD—because I think we should emphasise that Millers Point and Barangaroo are not the CBD. In fact, the article in today's Herald about the Hunter Street station, where we are seeing two by 50-storey commercial developments, that's where major office development should reside.

The Hon. SHAYNE MALLARD: And it has been isolated for that purpose for the whole planning history of Sydney, nearly. I have heard a delegation from another member of this panel that the planning system is in disarray. The planning system is quite strong, I would contend, outside of this special development case in terms of LEPs and council controls. Part 3A has been abolished. A Minister does not have the power in the local government area to take control of planning proposals, as a rule. But this one here is unique. I put it to you that that was required for the nature of the Canary Island type development. It had to have flexibility.

JOHN McINERNEY: Looking back, I can't really agree with you there, because the peculiarities of this particular process were such that modifications were approved and agreed to that were clearly not modifications in the original intention of that word. For example, the zoned area of open space, public open space, which was

then turned over to a 60-odd storey casino hotel, that was called Modification 8. It is so far from what a true modification was, and subsequently that whole modification process has been pulled back in the planning legislation. But at that time it was really an abuse of the planning scheme that the modification process was used to increase and to develop to such an extent.

In many ways I attribute the problem to the Barangaroo Delivery Authority. They seemed to be in search of increased money coming in from the sale of this land and the way to do that was to sell the land with these two conditions: one, that the applicant for the actual sale of the land had to comply with the planning controls, but also could put forward an unsolicited proposal on top of the original. At that time the unsolicited proposals were generally accepted to be the ones that would eventually be approved by the planning department. That whole process was corrupted by the desire of the Barangaroo Delivery Authority just to create more funds.

The Hon. SHAYNE MALLARD: I think I will get agreement from the three of you on this. John and I share a disappointment that the Hungry Mile heritage centre that was originally there was pretty much wiped out by the whole proposal from the beginning. I put it to you that those Millers Point terraces that overlook Barangaroo and Millers Point itself are probably the last clear connection between the history of Barangaroo, the Hungry Mile and the site, and that is really important to try to reinforce that connection.

JOHN McINERNEY: Yes, that's true.

The Hon. SHAYNE MALLARD: The sailors' terraces there.

JOHN McINERNEY: That linkage along High Street. Those terraces which were built as part of the Hungry Mile were built for the workers who worked on the wharves. They were built and populated by those workers as a direct action of government at the time. In some ways it is the last of the remaining elements of the Hungry Mile.

The Hon. SHAYNE MALLARD: It fits in with Frank Howarth's view, that the visual connection is so important.

JOHN McINERNEY: Yes.

BERNARD KELLY: And even the sandstone cutting, which is what High Street is, with the vee in the middle. In the middle of the vee is the KU Lance kindergarten, which is the oldest kindergarten in Sydney, at least—I wasn't going to get too carried away and say in Australia, but certainly the oldest kindergarten in Sydney, with its origins in the early 1900s. That building was going to be eclipsed, overlooked by what MOD 9 was all about.

Ms CATE FAEHRMANN: One of our terms of reference is looking at the measures necessary to ensure the integrity of what is left of the Barangaroo redevelopment project and similar projects in the future. Do you have recommendations for the Committee in that regard that you'd care to talk about?

BERNARD KELLY: I'm going to pass on that, Ms Faehrmann. I'm not a planning person.

JOHN McINERNEY: Can I say that the approved concept plan to me would be the obvious recommendation that has to be referred to. In other words, I'd recommend that the Committee say that the current application for MOD 9 should be refused by the Government. It's clearly inappropriate and not correct. The refusal may lead to a further consideration of the area to include more open space, which I think is needed in that general area and that's a matter that I think has been referred to by other—

The CHAIR: But haven't we got a scenario now where Aqualand has got the whip hand out of this whacky process? They're saying, having been refused for their bigger development, that they're happy to leave it as a hole in the ground, which the Government would look at, "Well, we're building at huge cost the metro station down there, and we need some people to use it." Hasn't the Government sort of painted itself into its own corner with Aqualand now having control, effectively, of the whole amenity and serviceability of Barangaroo?

BERNARD KELLY: It's hard to suggest who has the upper hand necessarily, Mr Chair. I think what would help for the New South Wales public to understand the future of Central Barangaroo is that all the documentation associated with contracts between the Government and Aqualand be revealed to the public—complete transparency for all that documentation; give it the sunlight that it requires. And then the open conversation can happen with the Government, with the public, with advocates for heritage and with Aqualand as the private developer. We're all on the same ballpark, we all know the same information and, therefore, we can all come to our own conclusions, but at the moment we are at a small disadvantage in that we don't have that level of information.

The CHAIR: I think Mr Searle has been working on that and related matters. Is that right?

The Hon. ADAM SEARLE: I think so.

The CHAIR: Yes.

The Hon. ANTHONY D'ADAM: I had a similar question to Ms Faehrmann, but I might start by asking about the original concept plan. That would mean a restoration to the 47,688 metre squared, is that correct, if we were to go back to the original concept plan?

BERNARD KELLY: That would be a fair assumption, sir. If you look at the original concept plan, it had heights in block seven of 35 metres, in block six of 29 metres and in block five of 34 metres but with far greater width between the buildings as opposed to what were effectively laneways in MOD 9. The option as to what then happens as to how much floor space those buildings contain versus how much would be open parkland—of course we have the guarantee that 50 per cent of the two hectares is open parkland. There is obviously a fair cohort out there who believe that perhaps that should be increased to 100 per cent. Similarly, there are people—

The Hon. ANTHONY D'ADAM: Is that your submission?

BERNARD KELLY: It's not my submission. The Millers Point community has a wide range of views on what could happen down at Central Barangaroo, but we were 100 per cent in unity in opposing MOD 9. It's fair to say we aren't architects and planners; we are mere residents. We don't have the capability. We can't pull together teams of planners and architects to suggest alternate schemes. That is not just our capability—

The CHAIR: Don't hold back. It hasn't stopped others.

BERNARD KELLY: Indeed. I'm trying to suggest that we recognise our limitations.

The CHAIR: If you perv on enough buildings in Condell Park, you'll work it all out eventually.

BERNARD KELLY: It's fair to say that, as we've said earlier, we bought into Millers Point knowing the approved concept plan was there and the heights of those buildings and, as I said, the widths between those buildings. We recognised that there was going to be the headland park. We recognised it was going to be 50 per cent in Central Barangaroo for open space. Anywhere between, as the Lord Mayor advocated in her article in the Herald the other day, a complete new open park and something which resembles the approved concept plan would be satisfactory to the residents of Millers Point.

The Hon. ANTHONY D'ADAM: Then my follow-up question is, is it your submission—Alex, feel free to put your view on this—that the State should buy back the relevant development rights to effectively get back to this 47,688 proposal around floor space, a GFA? The problem we have, and I put this to the previous panel, is: How do we unscramble the egg? The rights have been sold. I'm not sure entirely about the value, but Grocon says it paid half a billion for the rights. That doesn't account for the other investments that have been made in advancing the proposals. Obviously that would have to be compensated. Ultimately, if we're going to get back to that, there's a stakeholder in Aqualand who has outlaid significant amounts of money. Obviously the State would have to compensate Aqualand if it was going to return to the status quo before that transaction occurred. Is that your submission?

The CHAIR: You will have to excuse me. I need to leave early for a very important commitment in Heffron. I will hand over to the Deputy Chair.

JOHN McINERNEY: Further to that question, all of those rights that were acquired by both Aqualand and Grocon were all subject to planning approval. The contracts specifically said this can only be developed with planning approval. The operative point is, at this stage, there is no planning approval. The only planning approval we have is the adopted master plan or concept plan. Strictly speaking, if they build what is the adopted concept plan, theoretically, there is no compensation required.

The Hon. ANTHONY D'ADAM: That's just the risk of doing business, is it?

JOHN McINERNEY: That is, particularly if it's specified in the contract that it's subject to the planning approval.

Mr ALEX GREENWICH: To Bernard's point earlier, what we know is what the approved concept plan is—the envelope which was permitted for development. What we don't know is why we had such a grossly expanded proposal put forward by Aqualand, with the impression that this was something that would potentially get approved. What we need to know is what were the processes that gave Aqualand hope that it may be able to overdevelop this part of the world, a critical part of Sydney—so grossly over and above what the agreed concept plan was. There has been some sort of planning controls that have come into place. That has been limited to the interaction of the Minister. Obviously we welcome that he said to Aqualand, "Go back and deliver something within the envelope. If you can't, we'll take it from there."

In terms of what is the cost of doing business, it's quite clear. This is an important part of Sydney. There is an approved concept plan to develop within that envelope. The community has that clear expectation. If there were some other commitments made to Aqualand—that they could go over and above that—we need to understand what those were because this whole part of the world is riddled with all sorts of backroom deals, justifications for overdevelopment. If we have a look at the casino itself, we were told that Sydney needed a six-star hotel. Then we were told we need a six-star hotel. Then to make the six-star hotel viable, it needed to have a high-roller casino because Sydney really needed a high-roller casino. Then we were told, to justify that, we needed to have high-end residential as part of that complex. So we have this envelope constantly being pushed. When it comes to Modification 9, I know I have, I know the City of Sydney has and I know the local residents have had enough. That's why we're really pushing back on this one.

The Hon. ANTHONY D'ADAM: I thank the witnesses for their attendance today. That concludes our hearing for today. Thank you.

(The witnesses withdrew.)

The Committee adjourned at 11:40.