

REPORT ON PROCEEDINGS BEFORE

SELECT COMMITTEE ON BARANGAROO SIGHT LINES

INQUIRY INTO BARANGAROO SIGHT LINES

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Friday 11 November 2022

The Committee met at 9:00.

PRESENT

The Hon. Mark Latham (Chair)

The Hon. Lou Amato
The Hon. Anthony D'Adam (Deputy Chair)
The Hon. Shayne Mallard
The Hon. Chris Rath
The Hon. Adam Searle

The CHAIR: I declare open the second hearing of the inquiry into the Barangaroo sight lines. Welcome to our public hearing today. Before I commence, it's the custom of this Parliament to acknowledge the traditional inhabitants of this land, the Gadigal people of the Eora nation. I do that with all due respect, as well as acknowledge other important contributors to the history of this site, including those who constructed Parliament House and, more recently, the parliamentary staff who have, over many decades, supported MPs and made our work and representative role possible. We acknowledge and thank them all. Today we'll be hearing from Mr Michael Baird, the former Premier, and Mr Bay Warburton, his chief staff. We'll also hear from Tim Reardon, the former Secretary of DPC, and Mike Pratt, the former Secretary to the Treasury. The Committee will hear from representatives of Lendlease and Grocon as well as Simon Draper, Chief Executive of Infrastructure NSW, and a former Infrastructure NSW employee. Finally, we'll hear from Mark Arbib, a former executive at Consolidated Press Holdings.

Before we commence, I will make some brief comments about the procedures for today's hearing. We're being broadcast live on the Parliament's website. A transcript will be available on the website once it has been prepared by Hansard in the usual fashion. In accordance with the broadcasting guidelines, the House has authorised the filming, broadcasting and photography of committee proceedings by representatives of the media. Any person filming or photographing proceedings must take responsibility for the proper use of that material. This is detailed in the broadcasting resolution, a copy of which is available from the secretariat. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing, so you need to 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. We do have a procedural fairness resolution of our House from 2018 that applies in that regard.

If witnesses are unable to answer a question today and want more time to respond, they can take it on notice. Written answers to questions taken on notice are to be provided within 10 days. If witnesses wish to hand up documents, they should do so through Committee staff or by email if they are on Webex. For the audibility of today's hearing, I remind both Committee members and witnesses to speak into the microphones. For witnesses appearing remotely, please ensure your microphone is muted. We have a number of witnesses appearing in person today and one via videoconference later in the day. 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. Finally, everyone should turn their mobile phones to silent for the duration of the hearing.

Mr TOM MACKELLAR, Managing Director, Development Australia, Lendlease Group, sworn and examined

The CHAIR: I welcome our first witness. Would you like to make a short statement?

TOM MACKELLAR: Thank you, Chair, for the invitation to Lendlease to join today's session before the select Committee. My name is Tom Mackellar and I'm the managing director for Lendlease's development business in Australia. I want to start by acknowledge the Gadigal people, the traditional owners of land on which we meet today, and pay my respects to their Elders past, present and emerging. First of all, I'd like to say that Lendlease is enormously proud of the world-class development that has been accomplished and continues in Barangaroo South. Representatives from governments and cities around the world routinely tour the precinct to see what has been achieved.

As experience shows, all large-scale, long-dated and ambitious urban regeneration projects in global cities are difficult, complex and involve working with multiple stakeholders. Barangaroo South has been no exception in this regard, but Lendlease's assessment is that the broader Sydney community now loves Barangaroo and it does so for a host of compelling reasons. For many, it is the cafes, restaurants, waterfront walks and open spaces that already form an integral part of Sydney's cultural and social life. As we all know, the site was locked from the public for generations. Today more than 50 per cent of the 7½-hectare site is dedicated to open space and 100 per cent of the foreshore between Walsh Bay and Darling Harbour is fully accessible to pedestrians and cyclists. In addition, Barangaroo South has become a popular and major centre for employment in Sydney and a hub for some of the biggest companies in Australia.

In a world where one of the great challenges of our age will be how we tackle climate change, Barangaroo South is Australia's first carbon-neutral precinct. Through clever design, the basement underneath the three office towers includes a district-cooling plant that saves approximately 40 Olympic-sized swimming pools of water every year, and a waste management system that diverts more than 80 per cent of waste from landfill. Solar panels saturate all of the buildings, providing green energy for the entire precinct. Thank you again for the invitation to Lendlease to participate in today's session. I look forward to assisting the Committee today.

The Hon. ANTHONY D'ADAM: Thank you, Mr Mackellar, for your attendance today. I believe you've been provided with a document, the deed of sightlines resolution. Is that correct?

TOM MACKELLAR: That is correct.

The Hon. ANTHONY D'ADAM: Are you familiar with this document?

TOM MACKELLAR: I have seen this document, yes.

The Hon. ANTHONY D'ADAM: Have you been briefed about the contents of the document?

TOM MACKELLAR: I have been briefed, yes.

The Hon. ANTHONY D'ADAM: I want you to turn to clause 3.2 of the deed.

The CHAIR: On page 8, is it?

The Hon. ANTHONY D'ADAM: Page 8, yes.

TOM MACKELLAR: Yes.

The Hon. ANTHONY D'ADAM: I want you to explain to me what this content modification, particularly 3.2 (a), relates to. Can you explain what the material consequences of that arrangement were for Lendlease?

TOM MACKELLAR: Yes, maybe, if I start a little bit back in this document. Essentially, through the sightlines resolution, two things were trying to be achieved. Essentially, Lendlease had been delayed, due to the dispute regarding sightlines, by a number of years. We were also looking to assist in Central Barangaroo proceeding as a development. In the document, it provides additional height for Central Barangaroo and parameters around that, which block views for Lendlease in certain areas. The response to those two areas that I addressed were a delay to certain payments that Lendlease had to make and also granting Lendlease additional area to develop on Barangaroo South. My understanding—I'm not a lawyer—is that this clause 3 (a) is referring to that additional floor space that was granted.

The Hon. ANTHONY D'ADAM: How much additional floor space was it?

TOM MACKELLAR: My understanding is it's 8,000 square metres.

The Hon. ANTHONY D'ADAM: That was on block 4, which is, as I understand, the Renzo Piano buildings. Is that correct?

TOM MACKELLAR: Correct. The area was to be allocated on the remaining part of Barangaroo South, which was the three residential towers. The area was spread across two of those three buildings.

The Hon. ANTHONY D'ADAM: The additional floor space was additional height, effectively, wasn't it?

TOM MACKELLAR: In part, it was additional height; in part, it was additional width as well, on one of the smaller towers.

The Hon. ANTHONY D'ADAM: What was the value per square metre of that additional floor space to Lendlease?

TOM MACKELLAR: We didn't ascribe a particular value to that additional floor space. We looked at the overall settlement that was resolved in this document holistically; we didn't break down the component parts. Essentially, we were looking at the overall picture, again going back to solve for the delays that we were caused and the value that was lost through granting additional height on Barangaroo Central.

The Hon. SHAYNE MALLARD: Effectively, it's compensation in the deed for the delay and possible sightline intrusion.

TOM MACKELLAR: Correct.

The Hon. ANTHONY D'ADAM: Surely, Mr Mackellar, as a commercial operation, you must know the value of the various components of the deed. You must know how much that was worth to Lendlease, that additional 8,000 square metres.

TOM MACKELLAR: I wasn't part of the negotiations at that specific time. However, what I can say is it is commercially sensitive to us, the value of all the elements of Barangaroo. But I will say this was a holistic settlement from our perspective.

The Hon. ANTHONY D'ADAM: Mr Mackellar, I'm going to press you on this because you clearly know what the square-metre value of that 8,000 was. You must know that.

TOM MACKELLAR: I do not know the exact amount for those components as we looked at it—

The Hon. ANTHONY D'ADAM: You're open to take the question on notice and provide an answer.

TOM MACKELLAR: I'm happy to take it on notice.

The Hon. ADAM SEARLE: Mr Mackellar, you're not a lawyer, but you are a senior executive with Lendlease. You're obviously a commercial operator. You must know what the value of 8,000 square metres additional, in that part of Sydney, is to your company. You must know that. Whether you're prepared to tell us or not, you must know that.

TOM MACKELLAR: It is commercially sensitive to Lendlease and, yes, we can determine that value.

The Hon. ADAM SEARLE: Okay, let's just jump the shark here.

The CHAIR: Mr Mackellar, you've been sworn in under the Parliamentary Evidence Act. You have an obligation. This is not optional. You have an obligation to answer questions truthfully and directly. If you know the answer to this question, I'd very much urge you to give it to the Committee.

TOM MACKELLAR: I'm happy to take it on notice.

The Hon. ANTHONY D'ADAM: It's been suggested, in another submission, that the value of this additional 8,000 is in the realm of \$300 million or thereabouts. Perhaps even more—\$400 million. Is that the ballpark?

TOM MACKELLAR: I'm not sure where the value of \$300 million has come from. I will say that, for any additional floor space that is created, there are costs in developing that floor space. It's not appropriate to just put an end value on that additional floor space. There are costs of developing it, and those costs are significant that go with it. We'll take the question on notice about the value.

The Hon. ANTHONY D'ADAM: I might take you then to clause 7.11 on page 20, which appears to be a compensation arrangement in the event that the additional floor space doesn't eventuate. That values the floor space at \$10,000 per square metre. Is it fair to say that the value of the floor space is far in excess of that?

TOM MACKELLAR: This mechanism, in particular, is designed to calibrate if additional floor space is not granted, and there is a number attributed to that. My understanding is that that number is part of the overall settlement, again, and is there to adjust if that floor space is not there. So it applies a value.

The Hon. ANTHONY D'ADAM: Can I take you to page 15 of the deed, clause 5.3, particularly 5.3 (a). I wonder if you might be able to give us your understanding of the impact of this clause. Clause 5.3 (a) seems to suggest that Infrastructure NSW, effectively, is taking on all the risk in relation to potential damages arising from a third-party action and therefore is effectively indemnifying Crown and Lendlease—Millers Point—in the event of that third-party action. Is that your understanding of what you agreed to?

TOM MACKELLAR: My understanding of this clause is that there are two parts to it. There is the risk of consent of Central Barangaroo, which has nothing to do with us as parties to this document because we're not the developers of Central Barangaroo, and it has the reference to the additional area on Barangaroo South, and Infrastructure NSW or the BDA are the proponent for planning purposes, so essentially they will be putting forward the planning submission. I believe that's what that clause is designed to do. That's my understanding.

The Hon. ADAM SEARLE: To be clear, if we look at clause 4, clause 5.3, clause 7.11 and other parts, it seems to me that this settlement contains, essentially, a promise by an agency of the State to give your company planning approvals—guarantees of additional floor space and compensation if that is not forthcoming—entirely outside any kind of planning process. Is that a reasonable characterisation of this settlement?

TOM MACKELLAR: No, that wouldn't be my characterisation.

The Hon. ADAM SEARLE: How would you characterise it, Mr Mackellar?

TOM MACKELLAR: Maybe if I start where this journey began—we won the project through a competitive tender process in 2009, which granted us development rights. At the time, Barangaroo central was to be a low-rise development that would enable views from various aspects for the building. We calculated the value we could pay to government on the basis of those representations. Fast-forward a few years, we were asked to move a hotel from the water onto land. That had impacts on views.

In 2015 we had a number of items that were either in dispute or attempting to be resolved between Lendlease and the Barangaroo Delivery Authority. Through that settlement, we determined a value of that settlement. The value of that settlement relied on maintaining views to the Sydney Harbour Bridge and the Sydney Opera House. That was where the origins of the sightline clauses were first introduced, because the value of our settlement at the time assumed those views were available to us. Fast-forward to this point, we were delayed for various reasons for a number of years.

The Hon. ADAM SEARLE: I've read your submission.

TOM MACKELLAR: That did not give us that certainty. This document aims to do two things. It aims to compensate Lendlease for those delays—

The Hon. ADAM SEARLE: That would be very easy just to give you a sum of money.

The Hon. SHAYNE MALLARD: That was an option, wasn't it? It was either this deed or money.

The Hon. ADAM SEARLE: I will come to that.

TOM MACKELLAR: If I can finish, sorry.

The Hon. ADAM SEARLE: Stop interrupting, Shayne!

TOM MACKELLAR: The second part was to enable certainty for the Barangaroo Delivery Authority on what development could continue on Barangaroo central, and enable additional height to do that. That had a detrimental effect to Lendlease. This document is designed to provide certainty for both parties to enable them to move forward with the development. The planning process for this project has always been extremely robust and goes through proper process. All this document is doing is ensuring that the parties submit the planning proposals in due time and that those planning proposals go through the course. It has mechanisms if there are delays to that process or if that process doesn't go as we assume.

The Hon. ADAM SEARLE: Sure. But I am a lawyer and I have had a look at this. I see from your perspective that this agreement might have those characteristics, but it also contains a promise by an agency of the State to procure certain planning approvals for your benefit. How such a promise could be made by a government agency, without going through planning processes in public, just strikes me as extraordinary. From your knowledge, is this kind of settlement regular?

TOM MACKELLAR: Again, I don't agree with that interpretation.

The Hon. ADAM SEARLE: No, but I'm putting it to you, in all fairness, that that is how I see it.

TOM MACKELLAR: Lendlease has made very significant payments for the rights to develop this site. The landowner is the Barangaroo Delivery Authority.

The Hon. ADAM SEARLE: Yes, on behalf of the State of New South Wales.

TOM MACKELLAR: Yes, on behalf of the State of New South Wales. Therefore, they are the proponent for planning purposes. As the developer, we are relying on them to make planning submissions and we have made very substantial financial contributions in order for them to enable development on the site. If we didn't have these rights that ensured that they submitted planning approvals, our site would not be worth what we have paid. Once it is submitted, it then goes through proper planning processes with the Department of Planning and Environment.

The Hon. ADAM SEARLE: Which is also the State of New South Wales.

The CHAIR: Mr Mackellar—

The Hon. ADAM SEARLE: Sorry, Chair. The State of New South Wales is saying, "We promise you we're going to make these planning submissions," and then another part of the State of New South Wales—an executive agency of the government—is going to assess those plans. To the local residents and to the casual observer, this does seem a little bit cosy, doesn't it, Mr Mackellar?

TOM MACKELLAR: No. That's a normal process for a major State-based project, and we have the same experience.

The CHAIR: I wouldn't have thought so.

The Hon. ADAM SEARLE: But this is using a lot of very expensive public land.

The CHAIR: That is a separate question we can interrogate with government officials. Mr Mackellar, in the formulation of the deed, who proposed this particular solution?

TOM MACKELLAR: I was not part of the negotiations. I was actually based in our European business for the few years while this was being prepared. I understand there were trade-offs from both sides in formulating this agreement.

The CHAIR: In your understanding have you got any knowledge of who proposed the formula that we're looking at where, instead of a payout, because the Government's siting a metro at Barangaroo your company gets these development bonuses?

TOM MACKELLAR: As I said, Lendlease secured the project as part of a competitive tender process. In that, we valued the views that were available to us in 2009. This document is to deal with changes that were made through the development period.

The Hon. ANTHONY D'ADAM: But Mr Mackellar, this deed preserves the sightlines. It preserves them.

TOM MACKELLAR: Correct.

The Hon. ANTHONY D'ADAM: You don't lose anything.

The Hon. SHAYNE MALLARD: They lost two years.

The Hon. ANTHONY D'ADAM: I'm not exactly sure—no, they didn't lose anything.

The Hon. SHAYNE MALLARD: They lost two years in negotiation.

The Hon. ADAM SEARLE: Mr Chair—

The CHAIR: Order! Allow Mr D'Adam to ask his questions.

The Hon. SHAYNE MALLARD: I'm not allowed to ask questions, it seems.

The Hon. ADAM SEARLE: You can, but—

The CHAIR: You will be in the next round of questions. Mr D'Adam has the floor right now. It's not your role to comment on the questions.

The Hon. ANTHONY D'ADAM: Whether or not the sightlines were preserved didn't affect your capacity to continue developing south Barangaroo.

TOM MACKELLAR: Sorry, yes, it had a material impact on us.

The Hon. ANTHONY D'ADAM: How did it do that?

TOM MACKELLAR: We have made payments for the site. In order to progress with the site, we needed to sell apartments. We can't make representations to buyers of those apartments of what their views might be from those apartments if we don't have certainty over that. We could not commence sales of our project until we had certainty over sightlines. We were delayed for a number of years as a result of the dispute regarding sightlines.

The CHAIR: On that earlier matter could you take on notice, on behalf of Lendlease, an answer from the corporation as to who, in the formulation of the deed, proposed the settlement that the metro would mean these development bonuses for the company? Was that something the company initiated or was it initiated by government? That's all I'm asking.

TOM MACKELLAR: We can take the question on notice.

The CHAIR: Thank you very much. Mr Mallard?

The Hon. SHAYNE MALLARD: Thank you for your submission. This deed—we will step one step back. Two years of negotiations with Barangaroo development authority on your behalf and Crown failed to resolve the issue around sightlines and the revised project for the central, right? You went to the Supreme Court, you won the case and then the appeal, which BDA was going to lodge, was aborted because you settled on this deed. That's correct?

TOM MACKELLAR: Correct.

The Hon. SHAYNE MALLARD: That's my interpretation of the submissions. Either the taxpayers were up to write out a very big cheque or go to court again, or have a deed like this, which gives you increased certainty and increased development, which is compensation for the two years plus the court case, having lost the court case.

TOM MACKELLAR: Correct.

The Hon. SHAYNE MALLARD: That's not uncommon, to have a deed as a settlement between developers—

TOM MACKELLAR: No, it's not uncommon.

The Hon. SHAYNE MALLARD: —in the industry. Would you see that as good value for the taxpayer? I'm going to preface that by saying you're taking additional risk. You get more floor space but you've got risk in terms of developing it and marketing it, and it has a flow-on effect to the economy in Barangaroo. Do you see that as a good outcome for the taxpayers of New South Wales, having lost the court case?

TOM MACKELLAR: I think this document provides a trade-off for both sides. There are pros and cons for both parties involved in this document.

The Hon. SHAYNE MALLARD: I note in your submission—I'm not surprised to read it; it's very different to the submission from someone else who's coming in later today—that you state:

15. In light of the above, Lendlease does not consider itself to have been the subject of any inappropriate biases resulting in preferential treatment of its commercial interests ...

Do you want to expand on that statement? That's fundamental to our terms of reference.

TOM MACKELLAR: I'll just start again. In 2009 we went through a very rigorous selection process where multiple developers put proposals forward for Barangaroo South. The journey throughout from 2009 to today has always been a very robust arms-length negotiation between the parties. You can see that evidenced by the long delays in resolving issues.

The Hon. SHAYNE MALLARD: The size of this document.

TOM MACKELLAR: Unfortunately we've had to have two court cases throughout the journey of the project, but at all times the relationship with the BDA, the New South Wales Government has been at arm's length and has been professional and proper.

The Hon. SHAYNE MALLARD: Reading Grocon's submission, it appears to have been outmanoeuvred in terms of its development prospects, with its investment partner seemingly being able to get around it to get the rights. Did Lendlease have any engagement with that process?

TOM MACKELLAR: No, we're not engaged in that process.

The Hon. SHAYNE MALLARD: Not engaged at all?

TOM MACKELLAR: No.

The CHAIR: But just on your claim that you haven't been the subject of any form of biases from government, Mr Mackellar, you must surely acknowledge that Lendlease has received a massively more favourable outcome than Grocon.

TOM MACKELLAR: I can't comment on the outcome for Grocon; I'm not party to their transaction.

The CHAIR: Do you have any explanation for why Grocon didn't receive a deed like this in a settlement?

TOM MACKELLAR: I'm not party to that; all I can say is Lendlease is very proud of what it has achieved at Barangaroo South. It's been a very hard, long project—a lot of complexity—but we're very proud of what we've achieved.

The CHAIR: Do you have any knowledge of the way in which Grocon was manipulated out of the project? There was a three-year delay on delivering the sightlines. As soon as Grocon was manipulated out, the sightlines were given to Aqualand and Oxford.

TOM MACKELLAR: No, I have no knowledge of that.

The CHAIR: But if that was true, it shows that your company has received a much more favourable outcome than Grocon, hasn't it?

TOM MACKELLAR: As I said, Lendlease were granted development rights in 2009 on the basis of a number of assumptions. We resolved a number of matters in 2015 as part of a settlement deed. In that deed we assumed we had sightlines from the Sydney Harbour Bridge to the Opera House. We paid a considerable sum at that time as part of that settlement, and that was on the basis that we had those sightlines. Unfortunately, we then fell into dispute again around the sightlines, leading to the settlement in 2019. That caused us material delays and we, through this deed of sightline resolution, reached an agreement with the New South Wales Government on how to proceed with the project.

The CHAIR: In your work, have you had contact with Mr Tim Robertson from Infrastructure NSW?

TOM MACKELLAR: I have not.

The Hon. ADAM SEARLE: Under the deed, what do you understand to be the consequences if those additional planning approvals, giving you the extra density and such, were not obtained?

TOM MACKELLAR: My understanding is the document provides mechanisms by which, if the area is not approved or if it's not approved by a certain time frame, there are adjustment mechanisms within the document to take that into account.

The Hon. ANTHONY D'ADAM: At a minimum, though, the value of that is \$80 million, isn't it? The adjustments ultimately give you \$80 million, and that's the minimum you walk away with. But if you get the floor space then you get a whole lot more than \$80 million, don't you?

TOM MACKELLAR: My understanding of the mechanisms is that, yes, if those planning approvals for that additional floor space are not obtained then there are adjustments to payments in the order of \$80 million. The value of that space, as I've said, we'll take on notice.

The Hon. ANTHONY D'ADAM: Can I ask you about the value of some of the other provisions? One of the arrangements that was in the PDA was a provision for key worker housing in the deed. You negotiate the—

The CHAIR: Can you take us to that clause, just to assist the Committee?

The Hon. ANTHONY D'ADAM: Sorry, this is clause 8 on page 22. How much was the discounting of the key worker housing requirements in the PDA, that are contained in the deed, worth to Lendlease?

TOM MACKELLAR: There was no discounting of the key worker housing. Lendlease had made a commitment as part of its original submission to provide key worker housing within the project. Lendlease is currently delivering on that obligation. We're delivering 50 key worker units within the project at this point in time. This was really about Lendlease delivering on its obligations to deliver key worker housing, which we're proudly doing at the moment.

The Hon. ANTHONY D'ADAM: Why does clause 8 (a) (ii) provide for 0.7 per cent of the key worker housing to be provided at some other location, not at Barangaroo?

TOM MACKELLAR: This is to ensure—and, again, this is my understanding of the document—that we deliver on our obligations to provide key worker housing, whether that be onsite or offsite. I can confirm that we are providing the key worker housing onsite currently.

The Hon. ANTHONY D'ADAM: All 3 per cent?

TOM MACKELLAR: I think the number is approximately 2.7.

The Hon. ANTHONY D'ADAM: Yes, but the original PDA had 3 per cent provided at Barangaroo. Isn't that correct?

TOM MACKELLAR: My understanding is we're providing what we agreed to in the original agreement.

The CHAIR: Can you check that on notice, please, Mr Mackellar?

TOM MACKELLAR: We can take that on notice.

The CHAIR: Thank you.

The Hon. ANTHONY D'ADAM: Taking you to clause 12 on page 25, this is about retail leases and the licensing fees. This is another concession to Lendlease. How much was that worth?

TOM MACKELLAR: I don't have the specific breakdown of the value of that.

The Hon. ANTHONY D'ADAM: Can you take that on notice?

TOM MACKELLAR: As I've said, it was part of an overall settlement around the number of items.

The CHAIR: Sure. If you're able to give us details on notice, that greatly assists the Committee. Thank you.

TOM MACKELLAR: Yes, thank you.

The Hon. ANTHONY D'ADAM: Can I ask you about clause 11, just on the same page, which is a readjustment of the milestones? As I understand it, there were penalty clauses in the original agreement and the adjustment of these milestones effectively meant that those penalty clauses didn't kick in. How much is that worth to Lendlease, that discounting or, effectively, the waiving of the penalty clauses for the milestones not being achieved?

TOM MACKELLAR: Lendlease was significantly delayed in the development of the project as a result of the dispute regarding the sightline clauses. My understanding of clause 11 is that it is designed to accommodate the delay to the program for the development—that Lendlease gained no benefit from this. It was merely a contractual adjustment.

The Hon. ANTHONY D'ADAM: Obviously, your claim is that it offsets against the loss of time, but there must have been a value assigned to that particular clause.

TOM MACKELLAR: I think—

The Hon. ANTHONY D'ADAM: What was that value? I'm happy for you to take that on notice as well.

TOM MACKELLAR: I'm happy to take that on notice.

The Hon. ANTHONY D'ADAM: The cumulative penalties for not adjusting the milestones must have had a dollar value. That's correct, isn't it?

TOM MACKELLAR: Really, the adjustment is to deal with the delays that were caused to Lendlease as developer.

The Hon. ANTHONY D'ADAM: I understand that, Mr Mackellar. The question is how much was it worth.

TOM MACKELLAR: I'll take that on notice.

The Hon. SHAYNE MALLARD: As another question to balance that, was there a calculation done at Lendlease, at some point, of the actual cost involved? You would have gone into these negotiations with a figure that "This has cost us this much money." There's a threshold when you went to court, where you said, "Enough's enough"—the delays, the inability to market the apartments because there was no certainty about the sightlines. You must have quantified the holding costs, the capital costs—you must have quantified the cost when you sat down at the table with the lawyers opposite BDA to negotiate this outcome. I'm wondering if you could perhaps indicate to us, on notice, what your organisation quantified as the cost of that two-year delay. Since we are hearing about what was the compensation worth, I think we should see both sides of that discussion.

TOM MACKELLAR: Yes. I'm happy to take that on notice. As I said, the delays were significant—

The Hon. SHAYNE MALLARD: And commercially sensitive.

TOM MACKELLAR: —and the numbers are commercially sensitive.

The Hon. ANTHONY D'ADAM: Can I clarify something about the litigation that gave rise to the settlement? As I understand it, Lendlease had won in the first instance. The Government had initiated an appeal and this was to settle the Government's appeal, basically—to have the Government withdraw its appeal on the original decision. Was there a counterclaim? If you'd won in the first instance, there would have been some

assessment of damages and there would have been payments. What was the quantity of the damages that had been either assigned or were being sought by Lendlease?

TOM MACKELLAR: To my understanding of the hearing, it was that it sought a declaration of the interpretation of the clause. It did not seek damages at that point in time, but it did note that there were damages in the claim. Then, following the judgement that was handed down, we sought to negotiate with the BDA an appropriate amount following that period.

The Hon. ANTHONY D'ADAM: What was that claim? What was your initial—

TOM MACKELLAR: I don't have that to hand.

The Hon. ANTHONY D'ADAM: You can take that on notice, if you like.

TOM MACKELLAR: I'll take that on notice.

The Hon. ANTHONY D'ADAM: Okay. Thank you.

The CHAIR: Thank you. Are there any other questions from Committee members?

The Hon. ANTHONY D'ADAM: Actually, I do have a further question about clause 9 on page 24, which is the public benefit and community use. Can you explain the nature of what clause (9) actually seeks to achieve? A raw reading of this is that if there are additional public benefit requirements that were contained in the PDA, those costs were going to be borne by Infrastructure NSW and not by Lendlease?

TOM MACKELLAR: My understanding is that, as with all developments, the developer needs to provide infrastructure and community uses as a contribution towards the development, along with land payments and other contributions. When we make our assessment of how much we can afford to pay the government, we make an assumption about the amount of the infrastructure and community uses. What this clause is essentially doing is saying that we have assumed a certain amount, and if that amount is different, there is an adjustment mechanism because we are providing that public benefit.

The Hon. ANTHONY D'ADAM: What was the value that was assigned for that?

TOM MACKELLAR: Again, I'm happy to take that question on notice.

The CHAIR: If there are no other questions, I thank you for your appearance, Mr Mackellar. There are a number of matters you have taken on notice. If you can assist the Committee with the answers within the appropriate time frame, that would be very much appreciated. Thanks again for appearing.

(The witness withdrew.)

Mr DANIEL GROLLO, Chief Executive Officer, Grocon, affirmed and examined

The CHAIR: Thank you, Mr Grollo, for appearing today at our hearing. I assume you heard the earlier evidence from Lendlease and the discussion about the deed.

DANIEL GROLLO: I didn't actually hear the evidence, Chair. I was sitting outside in the waiting room.

The CHAIR: Okay. We'll come to that, I'm sure. It's available to you, Mr Grollo, to make a short opening statement to the Committee before we go to questions and answers.

DANIEL GROLLO: Thank you, Chair. Ladies and gentlemen, thank you for the opportunity to share with you Grocon's experience at Central Barangaroo. As the select committee is aware, Grocon commenced proceedings against INSW in 2020 due to what has occurred at Central Barangaroo, and those proceedings are ongoing. This means there are limits on what I can say. However, much of what has occurred at the Government and INSW's doing is in the public domain. And what I propose to set out today for you all is an overview of the key events from my own personal experience as CEO.

The CHAIR: I'm sorry, Mr Grollo. It needs to be a short opening statement. We have your submission, which is very comprehensive. We normally look for an opening statement of two or three minutes.

DANIEL GROLLO: It shouldn't be too much longer than that, Chair.

The CHAIR: Okay, thank you. I was just checking.

DANIEL GROLLO: If this inquiry gets to the truth of what happened at Central Barangaroo, it will be obvious to all that the Government has been driven by greed and has made Grocon bear the risk and consequences of its perverse strategy to sell sightlines twice and then, when challenged, kowtow to Lendlease and Crown. Businesses rely on the Government being a reliable contractual counterparty. The Government and its agencies involved in this were the opposite. I have been consistently disappointed by behaviour that is completely incomprehensible from a government body. They adopted unreasonable positions, caused extensive delay, were not transparent and then when they settled with Crown and Lendlease, they kept the terms secret and deliberately forced Grocon out of the Central Barangaroo development. The seniority of government officers involved is mind-boggling. These were not the actions of a couple of excited public servants. The decisions were made at the highest levels, involving Cabinet Ministers of this Government and the current head of Infrastructure NSW.

Grocon was incredibly proud and excited to have been awarded the opportunity to build Central Barangaroo. We all understood what a privilege it was to be able to put the Grocon name on the last jewel in the crown of Sydney Harbour. We wanted to build a precinct that would take its place on the global stage like the Hudson Yards in New York city and Canary Wharf in London. The development agreement signed by the BDA in December 2016 said that the BDA would issue a sightlines notice to Grocon when its negotiations with Crown and Lendlease over the sightlines were resolved.

The sightlines notice would confirm the gross floor area and building heights for the development and this would also determine the amount payable by Grocon for the development rights. You do not have to know anything about property development to understand how important this document was to the project. Grocon was never issued the sightlines notice—ever. Grocon asked repeatedly in writing and verbally over the course of four years for the sightlines notice to be issued. We got lots of promises, including from the CEO of the BDA and the Deputy Secretary to the Department of Premier and Cabinet. Each assured me personally that the sightlines resolution notice would be issued, but it never was.

In June 2018, following an international tender, Grocon identified Oxford as an office investor joining the Grocon consortium, this agreement required the sightlines resolution notice to conclude the monetisation event. Then in December 2018 the BDA lost its sightlines case with Crown and LendLease. Grocon was due to lose its investor in the office component of Central Barangaroo due to the extensive delays. To help, Grocon offered the BDA the opportunity to issue a sightlines notice for just 90,000 metres of gross floor area. The BDA did not respond to this offer. Instead, in April of 2019 DPC put a broom through BDA removing the CEO and the most senior adviser to the CEO, and the BDA ceased to exist, merging into Infrastructure NSW.

On 19 August 2019 INSW settled the sightlines dispute with Crown and Lend Lease. INSW was contractually required to issue the sightlines notice to Grocon then. It chose not to. In September 2019, after INSW had not issued the sightlines notice, Grocon was forced to exit the development at Central Barangaroo and sold its rights to Aqualand for half the price that had been offered 12 months before. INSW secretly issued the sightlines notice to Aqualand—the very day after we were forced out. This secret was hidden from us and the public until 18 months later when Grocon obtained the notice through the Supreme Court. INSW deliberately withheld the

sightlines notice from Grocon following settlement of the litigation with Crown and Lendlease. Without the sightlines notice, Grocon could not monetise its largest and most valued asset.

I was left with left with no option. In 2021 Grocon was put into voluntary administration to protect Grocon's creditors. The approved deed of company arrangement provides for them to get paid in full before Grocon sees a dollar. I am here today to fight for the recovery of funds owed to Grocon's creditors. Ultimately, the Government's conduct on the Central Barangaroo project has destroyed Grocon. The treatment NSW inflicted on Grocon is unconscionable. Three generations of operating as a respected and admired family company, a proud legacy of skyline buildings in Sydney, Melbourne and Brisbane, irrevocably tarnished by the unconscionable conduct of this Government. Thank you.

The CHAIR: To me the central question is why? Why did the Government act in this way?

DANIEL GROULLO: It's not clear to me the motivation other than a general position of greed to hang onto the original dollars that were paid by Grocon in 2016. It was a considerable sum and I think they thought this was the path that would give them the greatest outcome.

The CHAIR: What was that greed for people like Tim Robertson of Infrastructure NSW? It is not his money; it is public money that we're talking about on the Government State budget. For example, I've got here a WhatsApp message from Mr Robertson to a number of his colleagues on 10 May 2019, where he says, "Spoke to Greg Miles. Said we were moving ahead on getting approval for negotiating terms for sightlines. Wouldn't be waiting for central transaction before talking to Crown and Lendlease". So they were in the loop. He also said, "We won't be negotiating forever. Target a resolution within a few weeks. Don't let that get resolved before your issues with John because we will all be forced to give a 1.10 notice to Daniel"—yourself, and that's the sightlines notice—"and then we will all be fucked." Why would Mr Robertson use such language in describing the impact on him and his colleagues if they gave you the sightline notice that you say they were legally obliged to give you?

DANIEL GROULLO: I guess you're asking me to speculate on why that is. I can't be clear on what—

The CHAIR: You were negotiating with Mr Robertson and others, weren't you? You must have had some sense of what they were up to.

DANIEL GROULLO: My sense of what has occurred in hindsight, looking back on this, is that at some point around early of 2019 the decision was made that Grocon was expendable and they should be taken out—

The CHAIR: Why do you think they made that decision? It's very blunt, crude language to say, "We'll all be fucked", if you get fair and reasonable treatment. What was it that worried the likes of Mr Robertson about giving you the same type of treatment that they granted to Lendlease, which we found out in this *Deed of Sight Lines Resolution* was effectively a series of development bonuses for doing nothing?

DANIEL GROULLO: I can't answer the question, Chairman. That's the problem.

The CHAIR: Were you constantly kept in the dark? You had no inkling at any time that they were doing you over to manipulate you out of the project in favour of Aqualand?

DANIEL GROULLO: We were certainly kept in the dark right up until 18 months after the transaction. It was the only time that we knew that the 1.10 notice had been issued, and the only we got it was by going to the court.

The CHAIR: The day after you left, Aqualand come in and they get the sightlines notice. It was a complete shock to you that it was granted just one day after your departure?

DANIEL GROULLO: Yes, but I only found out that 18 months afterwards. It was hidden from us for 18 months, and the only way we got it was through our proceedings in the Supreme Court.

The CHAIR: What's your best theory on why the Government has acted this way?

DANIEL GROULLO: Someone has made a decision in early 2019 or late 2018 that Grocon was to be removed from the development.

The CHAIR: In your negotiations about your position, did you have meetings with Government Ministers at any time?

DANIEL GROULLO: Not with Government Ministers but government officers, yes.

The CHAIR: Officers outside of Infrastructure NSW or the delivery authority?

DANIEL GROULLO: In 2018 I met with Mr Tim Reardon, Secretary of the Department of Premier and Cabinet. At that time I met him because I wanted assurance that the sightlines resolution notice was coming, because that was critical—I think it was in about March of 2018.

The CHAIR: He was a board member of Infrastructure NSW—

DANIEL GROULLO: He is—

The CHAIR: —by virtue of being the DPC secretary.

DANIEL GROULLO: That's correct. I needed the sightline resolution notice by June so that I could conclude the Oxford transaction. In that meeting, he assured me that I would have the sightline resolution notice in June of 2018.

The CHAIR: Did he ever explain why it wasn't delivered?

DANIEL GROULLO: No.

The CHAIR: Do you believe he was manipulating you and keeping you deliberately in the dark at that time? He was a board member. He must have known what was going on.

DANIEL GROULLO: At that time he certainly misled me. He told me something that never occurred. In doing that, I signed a \$150 million contract with an international organisation to have them come into the consortium, and the Government never delivered the sightlines.

The CHAIR: So other than direct officials at Infrastructure NSW, you had a meeting with a board member, Mr Reardon. Any other board members?

DANIEL GROULLO: No, not at Infrastructure NSW.

The CHAIR: Anyone else around the Government? Someone's chief of staff or advisers to Ministers?

DANIEL GROULLO: No.

The CHAIR: So outside of Infrastructure NSW officials, you just had the one meeting with Mr Reardon, a board member?

DANIEL GROULLO: I also met with Mr Draper when Mr Draper was acting in the position of Acting Secretary of the Department of Premier and Cabinet.

The CHAIR: When was that meeting?

DANIEL GROULLO: That preceded—that was earlier, I think, in late 2017 or early 2018.

The CHAIR: What transpired at that meeting?

DANIEL GROULLO: That was more just a meeting to meet and say hello. Barangaroo was a big project, and it was more just really a meeting to say hello.

The CHAIR: You never followed up with Mr Draper to say why the delay with the sightlines resolution for Grocon?

DANIEL GROULLO: I followed up with Mr Draper on a number of occasions once INSW took over BDA in 2019 but I got no replies.

The CHAIR: No replies? You had sent him an email and there was never even an acknowledgement of the email?

DANIEL GROULLO: I sent SMSs because he had previously sent me an SMS to say, "Look, this has happened. Nothing changes," which I appreciated. But then after that, I never got an answer to any of the texts I sent.

The CHAIR: After that meeting you described with Mr Reardon where you received the promise, what sort of follow-up did you have to say, "Hey, where is the delivery of the promise"?

DANIEL GROULLO: I was following up indirectly through the officers of the BDA. We talk about in our submission that we had constant assurances that the sightlines resolution was coming tomorrow, next week, next month. It was coming. And it never did.

The CHAIR: You never had any other contact with Mr Reardon other than that meeting that you've described to us—the follow-up was primarily through the likes of Mr Robertson?

DANIEL GROULLO: Mr Robertson, Mr van der Laan and Mr Finlay, who were all officers of the BDA.

The CHAIR: And they just gave you, what, a non-stop series of assurances? It's like Christmas; it's coming. And it never did.

DANIEL GROULLO: That's correct.

The Hon. ANTHONY D'ADAM: Thank you, Mr Grollo. Had the sightlines resolution notice been issued in June as you'd asked, what would have happened?

DANIEL GROULLO: We would've closed the Oxford deal and construction would've commenced. If for some reason we couldn't close the Oxford deal, the sightline resolution notice was another way of remarketing the property that would've allowed us to monetise the event. In the SMS that was quoted by the Chair, that's what Robertson was concerned about. Robertson knew that, armed with what he described as the 1.10 notice, Grocon would arrange, control and complete Barangaroo.

The CHAIR: Why would he think that was a bad thing? It's a hole in the ground down there. It's an urban planning disgrace. Why would he think it's a bad thing that a developer had legitimate consent, had a sightlines resolution, and got on with the development?

DANIEL GROULLO: It's why my despair with the behaviour of—

The CHAIR: Okay. We'll have to ask him later.

The Hon. ANTHONY D'ADAM: Whose interests were harmed by you just completing the project? I don't understand. Obviously Aqualand was a beneficiary of the bargain basement sale that was forced on Grocon. Do you think that was the driver—that ultimately the Infrastructure NSW officials had a preference for Aqualand delivering the project?

DANIEL GROULLO: After the sightline decision in December 2018, it was clear that, unless the Government appealed, the development was going to be much smaller. We had paid for a 120,000-metre scheme, and the sightline complaint scheme, as we termed it, was only a 90,000-square metre scheme. If the Government was going to give away its appeal rights and only go with 90,000 metres, there wasn't much room for both Grocon and Aqualand in the one development. What happens from late 2018 and early 2019 is that, clearly, the Government takes a position to favour Aqualand in its decision-making.

The Hon. ANTHONY D'ADAM: Why do you think that was?

DANIEL GROULLO: I can't understand what—

The Hon. ANTHONY D'ADAM: Was there any kind of public benefit in favouring Aqualand over Grocon in terms of the cut of the floor space in the reduced-scale development?

DANIEL GROULLO: There's no legal right to favour Aqualand. Aqualand wasn't a party to the agreement with the Government. The agreement, or the CENDA—the development agreement that covered Central Barangaroo—was an agreement between Grocon and BDA/INSW. Aqualand wasn't there. For the State to favour Aqualand—again, it is very hard to find an answer as to what the motivation was.

The CHAIR: Just to tease this out further, I'm referring here to a briefing note written by Tim Robertson, Philip Paris and Brad Kelman—a memo, if you like—to Simon Draper and Tim Reardon, dated 23 August 2019. It's also marked in the attachment "Cabinet in confidence - moving ahead with Central Barangaroo". The key phrase here is that "the project team considers that the best opportunity for the Central Barangaroo project to progress in a manner that is consistent with the sender, and minimises ongoing risk to Infrastructure NSW, is for the transfer of development rights from Grocon to Aqualand." Why would they say that? What was the greater risk that you posed to Infrastructure NSW than Aqualand?

DANIEL GROULLO: I think where the Government will focus is that, at the time, they would say, I suspect, that Grocon's financial stability was weaker than Aqualand's. We don't agree with that point of view because, at the same time, within the same month, Grocon was awarded the over-station developments at Pitt Street Metro—Pitt Street north and Pitt Street south. We were able to monetise those development rights. Metro did what they said they were going to do, and we monetised.

The CHAIR: What special knowledge did they have of your financial position to conclude that you're some ongoing risk to Infrastructure NSW and the extraordinary unprecedented action of a government agency seeking, through manipulation, to transfer the development rights from your company to another?

DANIEL GROULLO: I don't believe they had any legitimate rights.

The CHAIR: They had no access to your finances? This was speculation?

DANIEL GROULLO: It was speculation from the press.

The CHAIR: In the extensive experience of your company—I know the work you've done in Melbourne, most particularly, where it's obviously been a stand-out in that State—have you ever heard of a government agency acting in this fashion to transfer development rights from one company to another?

DANIEL GROLO: No. In 35 years of experience in Melbourne, Sydney and Brisbane, I've never seen this.

The Hon. SHAYNE MALLARD: Mr Grollo, can you outline the consortium that you put together for the project?

DANIEL GROLO: Grocon led a consortium. We found the investor to undertake the residential, we found an investor to undertake the retail development, and ultimately we found an investor to undertake the commercial office development. Grocon acted as the agent and development manager above.

The Hon. SHAYNE MALLARD: Can you name each of those entities?

DANIEL GROLO: Yes. The residential investor was Aqualand, the retail investor was Scentre, or Westfield, and the office investor was Oxford.

The Hon. SHAYNE MALLARD: Who was financing the project?

DANIEL GROLO: Each investor would finance their piece.

The Hon. SHAYNE MALLARD: You talk about a large up-front payment being made. I think the figure was \$400 million.

DANIEL GROLO: It was \$422 million.

The Hon. SHAYNE MALLARD: Which one of the entities made that payment?

DANIEL GROLO: Grocon made that payment.

The Hon. SHAYNE MALLARD: Not Aqualand?

DANIEL GROLO: No. Grocon sold Aqualand the residential rights and then the payment went to Grocon and to the Government.

The Hon. SHAYNE MALLARD: You're in court at the moment. From reading your submission and others, you've been in court for 2½ years? Is that right?

DANIEL GROLO: Yes. I think it's almost three.

The Hon. SHAYNE MALLARD: I'm not a lawyer; I don't pretend to be one. That's a long time in court. Why is it dragging on so long? Is it because it's so complex?

DANIEL GROLO: I need to be measured in my response.

The Hon. SHAYNE MALLARD: Yes, I find it very awkward that we're even having this hearing while you're in court, actually, but go on.

DANIEL GROLO: I can only say it's not my wish. I wish for myself and for Grocon creditors the fastest possible resolution to this matter.

The Hon. SHAYNE MALLARD: Who are the other parties?

DANIEL GROLO: It is INSW.

The Hon. SHAYNE MALLARD: Infrastructure NSW. It replaced the BDA?

DANIEL GROLO: Correct.

The Hon. SHAYNE MALLARD: Picking up on the idea of insolvency, I turn to the Financial Review article of 9 April 2021 "The rise and fall of Grocon"—you'd be familiar with it—which states:

Once a multibillion-dollar empire, a report by administrators KordaMentha showed Grocon had probably been insolvent since February 2019 at the time it began investigating protections available under the Safe Harbour Act.

In February 2019 you were still the developer. Aqualand hadn't been negotiated into the mix to take over. You were still the developer of Barangaroo. What would have been the implications had you gone into insolvency, as the developer of Barangaroo?

DANIEL GROLO: I don't think we would have gone into insolvency had we been issued the 1.10 notice. The fact that the 1.10 notice was promised for two years before that date and not issued was the key issue of Grocon's financial difficulties, and that was commented on by the administrator.

The CHAIR: What was its commercial value to you?

DANIEL GROLO: More than \$150 million.

The Hon. SHAYNE MALLARD: Earlier you said to the Chair that there was speculation in the media. Was there speculation at this time that there was some trouble?

DANIEL GROLO: There was speculation, yes. The speculation, again, was because we were being delayed by NSW and the issuing of the 1.10 notice.

The Hon. SHAYNE MALLARD: Is it unusual for your consortium partner to go behind your back and take over the project? I sense it happens elsewhere in smaller, suburban-type developments.

DANIEL GROLO: Not in 35 years have I seen this.

The Hon. SHAYNE MALLARD: It hasn't happened? I think we've tried to get them and not been able to find them, haven't we?

The CHAIR: Who's that, sorry?

The Hon. SHAYNE MALLARD: Aqualand.

The CHAIR: No, we're still working on that.

The Hon. SHAYNE MALLARD: They would have been aware of your difficulties?

DANIEL GROLO: Yes.

The Hon. SHAYNE MALLARD: Would that have been a motivation for them to have gone behind your back to say, "Look, we can do this. We can de-risk it"? Is that the sort of thing that might have happened?

DANIEL GROLO: That would be speculating, so I can't be certain, but that may have happened.

The Hon. SHAYNE MALLARD: Which would be attractive to BDA, having the main developer—I'm just hypothecating here—in trouble, which would have been a big problem for the site. That white knight coming around from the consortium would have been attractive to BDA, I would imagine?

DANIEL GROLO: Possibly, but they had contractual obligations. The CENDA was signed in 2016. In 2017, when the CENDA went firm, under the contract they were supposed to use best endeavours to deliver it in the first quarter of 2018.

The Hon. ANTHONY D'ADAM: Can I just ask you about that?

The Hon. SHAYNE MALLARD: I just want to talk about the sightlines.

The Hon. ANTHONY D'ADAM: Sorry, can I ask a question about the CENDA?

The Hon. SHAYNE MALLARD: No. I let you go on uninterrupted.

The CHAIR: One more to Mr Mallard.

The Hon. SHAYNE MALLARD: I want to go to the sightlines. I wanted to talk about some of the things you raised, but I stayed quiet. You said in the media and in your submission that you were misled about the sightlines. But I understand—and you can correct me if I'm wrong—that the obligation to negotiate sightlines with Crown and Lendlease for Central Barangaroo was in the tender documents when they were distributed to all the companies who were looking to tender for Central Barangaroo. There was an indication in there that there would have to be negotiation around sightlines.

DANIEL GROLO: A mere indication. The actual details of what existed between Crown and Lendlease and Infrastructure NSW in terms of the obligations around sightlines were never made clear.

The Hon. SHAYNE MALLARD: It might be suggested that because of the subsequent court case that the Government lost, they didn't quite understand how embedded those requirements were too. Would you not think that might be the case?

DANIEL GROLO: Well, I think—

The Hon. SHAYNE MALLARD: Being that that went to court?

DANIEL GROULLO: The difficulty for me is that I think that the court case found that, effectively, the sightlines clause, as was drafted between Crown, Lendlease and the State, gave Crown and Lendlease a seat at the negotiating table with BDA, the BDA's process on Central Barangaroo. I just don't understand the whole Central Barangaroo process if, in fact, that was the case, if they knew.

The Hon. SHAYNE MALLARD: One last question. In evidence you gave to the Chair, he asked you to try to ascertain what high levels of government you had been engaged with around this time. Because in your opening statement, from memory, you said that the highest levels of government have conspired against your company, and that is pretty much what you said in the media as well. But you've ruled out that there was any engagement directly with you with Ministers or even chiefs of staff, but departmental heads you dealt with—the head of Premier and Cabinet and—

DANIEL GROULLO: I think the question the Chair asked was about my personal communications.

The Hon. SHAYNE MALLARD: Yes.

DANIEL GROULLO: There are numerous other communications in and around Central Barangaroo by senior members of Government.

The Hon. SHAYNE MALLARD: Would you want to provide evidence of that?

DANIEL GROULLO: I'd have to say that I'd get confused at that point because that evidence is part of a court case, so if I share that evidence I think I might be going a bit beyond where I am permitted to go.

The CHAIR: I was asking you if you as the head of your company—

DANIEL GROULLO: Correct.

The CHAIR: —had lobbied the Premier, the planning Minister or any other senior members of Cabinet and you said no. It seems that the highest level of your own representations was to Mr Reardon, the Secretary of the Department of Premier and Cabinet. But then you mentioned other representations—from management in your company to Government? What nature were they?

DANIEL GROULLO: An example, Chair, was that the CENDA, we signed that up in 2017, the development agreement, required the sign-off of the Premier. We didn't have a contract until the Premier signed it.

The CHAIR: We don't regard that as a representation as such. That's like lobbying, I suppose. That's what I'm referring to. They are legal processes that government goes through.

The Hon. ANTHONY D'ADAM: Just coming back to that issue around the CENDA. It was initially signed on a conditional basis, that condition precedent. That was never resolved. So why was it that BDA or Infrastructure NSW then agreed to sign the final CENDA where that condition was no longer a component of the agreement?

DANIEL GROULLO: It's a hard question to answer. The sightline resolution notice was supposed to be ready in 2016 when the first CENDA was signed. As you've described, it was the only open issue in the agreement. By 2017 we signed again. It was still open and it remained open all the way to the end.

The Hon. ANTHONY D'ADAM: Were they required to move to formalise the CENDA in 2017? Was there a time frame in terms of that condition precedent lapsing that meant that the Government effectively had no choice but to enter into the CENDA?

DANIEL GROULLO: They thought, as we were negotiating the CENDA in 2017, that they'd have the sightlines resolution notice ready for November. It only turned conditional again with a week to go before signing. With a week to go before signing that final contract, they came out and said, "We don't think we're going to be able to have the sightline resolution notice ready for you."

The Hon. ANTHONY D'ADAM: But they signed anyway.

DANIEL GROULLO: They signed anyway. And, in that, they give an undertaking to use their best endeavours to get us the sightline resolution by March the following year.

The Hon. ANTHONY D'ADAM: Once they'd signed, they were bound to provide the sightlines resolution notice. That was the sort of critical juncture, wasn't it, in terms of what the Government had to do in terms of getting out of the kind of bind that's been created by the sightlines commitments that have been made to Crown and Lendlease. At that point, they could have chosen not to sign the final CENDA. Is that correct?

DANIEL GROULLO: Correct.

The Hon. ANTHONY D'ADAM: Clearly, there was this bind. Was there ever a point in time where there was a discussion about trying to bring all the parties together and make some kind of grand bargain that involved Grocon or try and achieve some grand bargain with Grocon sidelined? Do you have any insight into whether there was some attempt to try and bring everyone together, try and get a resolution to all the outstanding issues?

DANIEL GROLLO: In late 2018 there was a period described as "grand bargain", where we sat with Lendlease, Aqualand and all consortium parties to see if we could collectively find a way through the deadlock that was sightlines, but that was ultimately inconclusive.

The Hon. ANTHONY D'ADAM: You needed the sightlines resolution by June 2019. Now that you've seen the envelope that's an appendix to the deed, would you have been able to make money had that sightlines resolution notice been issued to you within those constraints that you now know applied?

DANIEL GROLLO: Yes.

The Hon. ANTHONY D'ADAM: You didn't get it in June 2019. They signed the deed of sightlines resolution on 19 August. If they'd given you the sightlines resolution the day after, like they did to Aqualand, once you'd sold your development rights—so if they'd acted in August 2019—what would have been the consequences for Grocon?

DANIEL GROLLO: I believe we would have been able to develop the project and successfully move forward.

The Hon. ANTHONY D'ADAM: Even at that later stage, you still think you would have been able to proceed to deliver the project.

DANIEL GROLLO: Yes.

The Hon. ANTHONY D'ADAM: Can I ask about the suggestions that have been made about Mr Robertson. Obviously, there's a range of text messages or WhatsApp messages that are contained in your submission. You also make an imputation about Mr Robertson, I believe, in terms of him ceasing work with Infrastructure NSW and then entering into some kind of employment or contractual arrangement with Aqualand sometime later. Can you perhaps elaborate on whether you think there were improper motives operating in relation to Mr Robertson and his relationship with Aqualand?

DANIEL GROLLO: I have no evidence to that effect, other than to say it's highly unusual, in my experience, to have seen someone go from one side immediately to the other side of the same transaction.

The Hon. ANTHONY D'ADAM: How much discretion do you think Mr Robertson had in terms of the timing of the issuing of the sightlines resolution notice? Do you think that was a decision that he could materially impact at an individual level? Or do you think he was wholly operating under instructions from others?

DANIEL GROLLO: I think he was operating on instructions.

The CHAIR: Just on this point, Mr Grollo, your submission, at the bottom of page 19, says that Grocon understands that Robertson Advisory—this is the consultancy that Mr Robertson has established in late November 2019, having ceased his employment with INSW. You understand that he was engaged directly or indirectly by Aqualand to provide consulting services. Is there documentary evidence of this? Or is it something you've heard from someone?

DANIEL GROLLO: It's known in the marketplace. I know in the marketplace that that is, in fact, the case.

The CHAIR: Known by whom?

DANIEL GROLLO: General professionals in the marketplace.

The CHAIR: But you've got no document that points to an engagement. When you say it's direct or indirect, what do you think was the nature of the engagement? He was on a retainer with them or he did a specific job for Aqualand at the end of 2019?

DANIEL GROLLO: I can't answer that question, Chair.

The Hon. SHAYNE MALLARD: Is that because of the court case?

DANIEL GROLLO: Because of the court case.

The CHAIR: We will obviously put it to Mr Robertson and we have a procedural fairness process where he gets the right of reply, if you like.

The Hon. ANTHONY D'ADAM: Can I ask you about the interaction with Oxford? That was a critical arrangement that ultimately forced Grocon into administration. Is that a correct characterisation, that ultimately the Oxford deal falling over was the principal trigger in terms of the failure of Grocon?

DANIEL GROLLO: No, the principal trigger was not receiving the 1.10 notice and having to sell short our development rights.

The Hon. ANTHONY D'ADAM: In your submission you suggest that Oxford was working behind the scenes and trying to use the leverage that it had over Grocon to obtain a release from future litigation. How do you know that?

DANIEL GROLLO: There was a period during this period where Oxford were communicating directly with us via text messages, speaking and email.

The Hon. ANTHONY D'ADAM: Oxford stepped in and took over a loan, so that's what ultimately gave it the leverage in this situation. Why did you elect to have Oxford take that step into the loan and take on the liability? What was the motivation? Were there other options in relation to that transaction?

DANIEL GROLLO: In June 2018, when the sightline resolution wasn't issued, we had to re-engineer the transaction with Oxford and it took on a debt-like profile as opposed to an equity profile, which is what we were planning. The plan always was that, at some point, post June 2018, INSW would issue the 1.10 notice and that would convert that debt position into an equity position. Of course, that never occurred.

The Hon. ANTHONY D'ADAM: Why did Infrastructure NSW issue the comfort letter to Oxford?

DANIEL GROLLO: Because they also saw value in having Oxford in the consortium mix of Central Barangaroo. Oxford's a very well-known development company globally, and it was a good thing for Sydney to have such a high-profile project with such a high-profile investor. The comfort letter was issued to Oxford—actually, the comfort letter was issued to Grocon for the benefit of Oxford by INSW in order to keep Oxford at the table.

The Hon. SHAYNE MALLARD: Can you explain the benefit of a comfort letter in this situation?

DANIEL GROLLO: The comfort letter was a letter issued by INSW to Grocon to give us the comfort that they would not allow a planning permit that did not have a commercial office building of at least, I think, 54,000 square metres, which basically gave Oxford the comfort that there was going to be an office building. Come what may, after the planning process, there would be an office building at Central Barangaroo that they could invest in. It was really a substitute to the 1.10 notice because INSW were struggling to issue the 1.10 notice.

The Hon. ADAM SEARLE: The sightlines notice that you say the Government was obliged to issue to you and didn't, what would be the consequence of that for your company had it been issued? What benefit would it have conferred upon you that you didn't get, in a practical way?

DANIEL GROLLO: It would have given us certainty as to the last piece—the commercial office piece, which is what Grocon made its money on. We monetised that by finding an investor, and that made us a profit and ensured our financial viability.

The Hon. ADAM SEARLE: Is it fair to say that the failure of the Government to issue the notices it was bound to do ensured your financial difficulties?

DANIEL GROLLO: It was ultimately the demise, correct.

The Hon. ADAM SEARLE: That was the pivotal one. If the Government had done what it was bound to do, your contention is that that would have assured the financial viability of your involvement in that project and, ultimately, would have avoided your company going into administration. Is that your proposition?

DANIEL GROLLO: That is correct.

The Hon. ADAM SEARLE: The Government was obliged to do that, but it didn't follow through.

DANIEL GROLLO: Correct. They had four years to do it and didn't follow through.

The Hon. ADAM SEARLE: And that's still a matter of legal controversy between you and the Government?

DANIEL GROLLO: Correct.

The Hon. ADAM SEARLE: Okay. You've seen the *Deed of Sightlines Resolution* document?

DANIEL GROLLO: Yes.

The Hon. ADAM SEARLE: I'm not an expert in this field of law, but I have had a look at it. It seems to me to involve a settlement between commercial parties whereby the Government party essentially is undertaking to procure significant planning approvals for the benefit of the other parties outside any kind of planning process. If it doesn't do so, there are certain consequences for the Government party, including financial consequences of a significant amount of money. Is that a reasonable reading of this document?

DANIEL GROLO: I think that's a reasonable reading of part of the document. There are other parts, but I think that's the main thrust.

The Hon. ADAM SEARLE: What would you regard as the other parts of interest?

The CHAIR: Adam, could you just come closer to the microphone?

The Hon. ADAM SEARLE: What are the other parts of interest in the document, from your perspective?

DANIEL GROLO: There is 5.3, the indemnity.

The Hon. ADAM SEARLE: That's right. That is, if you were to proceed against Lendlease, the Government's effectively indemnifying Lendlease?

DANIEL GROLO: Correct. And then there's clauses 13, 14 and 15, where rights by the Government are given away and value flows to the other side.

The Hon. ADAM SEARLE: Clause 12, retail public demand licensed areas—these are quite valuable areas of public space, is that correct?

DANIEL GROLO: I couldn't attest to the value of them. I suspect so but I can't be certain.

The Hon. ADAM SEARLE: But given where the land is located in the centre of Sydney, it's a commonsense proposition that it would be significantly valuable.

DANIEL GROLO: I think that's correct.

The Hon. ADAM SEARLE: In a commercial sense. Those are my questions, Mr Chair.

The CHAIR: Any other questions from Committee members?

The Hon. ANTHONY D'ADAM: There is a sort of a counterproposal, and I want to put this to you, which is that, accepting the Supreme Court decision, the Government couldn't have issued the sightlines notice because it had to get agreement from Crown, Lendlease. They were in negotiations with them and they didn't actually resolve that until August 2019. The earliest really, from the Government's contention, given that they'd lost the case, the earliest they could actually have an agreed envelope and therefore issue a sightlines notice was that date after the sightlines resolution deed was signed. Is that a fair assessment?

DANIEL GROLO: No, I would say that INSW was free to agree terms and conditions with Crown, Lendlease anytime from 2016 on. The reason they couldn't was because they were putting their own commercial interests ahead of the projects progressing.

The CHAIR: Any other questions? If not, Mr Grollo, I thank you for your attendance today. I don't believe you've taken anything on notice there. We appreciate your participation in this inquiry, and very much the evidence you have given today and also the submission that was made. Thank you.

DANIEL GROLO: Thank you.

The CHAIR: The Committee can now adjourn for morning tea. We were scheduled to come back at 10.45 a.m., which is some 25 minutes away. We might try and come back at 10.40 a.m. with our next witnesses, Mr Reardon and Mr Pratt. We will have a 20-minute morning tea break. Thanks, everyone.

(The witness withdrew.)

(Short adjournment)

Mr TIM REARDON, Private Citizen, sworn and examined

Mr MICHAEL PRATT, Private Citizen, sworn and examined

The CHAIR: Welcome back to upper House Committee deliberations Tim Reardon, former Secretary of the Department of Premier and Cabinet, and Mike Pratt, former Secretary of the NSW Treasury—no strangers to our committees system. We thank you very much for your participation today. It's available to either of you or both of you to make a short opening statement if you so desire.

TIM REARDON: I will, actually.

The CHAIR: Thank you, Mr Reardon. We'll start with you, and then Mr Pratt if he wishes.

TIM REARDON: I'm here as a private citizen but I'd like to declare former roles, just so we're clear. I'm formerly the Secretary of the New South Wales Department of Premier and Cabinet. During that period when I was the secretary in the cluster of Premier and Cabinet, I had various agencies reporting into that cluster. One of those was the Barangaroo Delivery Authority; one of those was Infrastructure NSW and the various functions they had and how they changed over time. I also had the Arts and Culture groups within that cluster as well, so adjacencies for Barangaroo for the deliberations today included such things as the Walsh Bay refurbishment and consideration of the Cutaway at the northern end of Barangaroo, amongst other things.

I was also a board member of Infrastructure NSW for a considerable period of time as Premier and Cabinet secretary. I was an observer on that board as Secretary of Transport for NSW. As former Secretary of Transport for NSW in the area of Barangaroo, I was involved in delivery of the Barangaroo ferry wharves and involved in the delivery of CBD and South East Light Rail, which then connected to the Wynyard station upgrade, the developments above Wynyard station and Wynyard Walk, all of which were delivered to facilitate the improvements that were made to Barangaroo. In much former lives, I've been involved in Sydney Ports Corporation way back when it was actually a working port. I remember when it clocked over its one millionth TEU—its one millionth container—I think back in the year 2000, and subsequently watched and observed it change over that period considerably.

As former Secretary of Transport for NSW, in my period Sydney Metro City & Southwest was developed, announced and in construction—which meant a Barangaroo station for Sydney Metro, which is in development and build right at this point in time. Sydney Metro West, in both former roles, was a part of my deliberations and in its development. Finally, I'm a former member of the Greater Cities Commission on its board as well, where various matters such as precinct development came under its guise. I now work in Barangaroo as well, and I just thought I'd declare those things as an opening statement, Chair.

The CHAIR: Thank you very much, Mr Reardon. We thank you for your service to the State of New South Wales. Mr Pratt?

MICHAEL PRATT: Thank you, Chair. I have no opening statement.

The Hon. ANTHONY D'ADAM: Have either of you been able to listen to the earlier evidence today?

TIM REARDON: No.

The Hon. ANTHONY D'ADAM: You should have the deed of sightlines resolution before you. Are you both aware of this document?

MICHAEL PRATT: I'm not aware, no.

TIM REARDON: I'm aware of documentation, but whether I know that one or not—you've just placed it in front of us, and I haven't had a chance to look at it.

The Hon. ANTHONY D'ADAM: I might start with you, Mr Pratt. We've heard earlier evidence that suggests that Lendlease and Crown got a pretty good deal when this deal was signed off. I wanted to ask you about the role that you had in relation to assessing the impact of this deal for the taxpayer of New South Wales. What role did Treasury have in the deal on sightlines resolution?

MICHAEL PRATT: Look, I don't recall. I certainly personally had no direct role that I can recall in this whole matter. In fact, I was somewhat surprised to be invited to the Committee. I'm here because I will definitely help you if I can; that's why I'm here. But this was really run out of DPC, as Mr Reardon's covered, and also Infrastructure NSW who took the running on this. I do recall at some point something did come to ERC but I can't recall the detail, I'm sorry. I've not had any direct involvement personally. Now, to your question directly, I would have thought Treasury would have had some role in assessing the issues, but I really can't recall the detail, I'm sorry.

The Hon. ANTHONY D'ADAM: So you've got no recollection of this. It's a major controversy. It's liabilities for the State, potentially in the hundreds of millions of dollars to Treasury. You have no recollection of that?

MICHAEL PRATT: Well, I've indicated that Treasury were no doubt engaged at some point but me personally, you know, there are many liabilities on the State. There were as many uses of my time and pressures at the time—COVID and so on—going on, so some of these things were delegated. As I've said, I had no direct involvement I can recall.

The Hon. ANTHONY D'ADAM: So no conversations in relation to the issue of the problems around sightlines in Barangaroo that you can recall?

MICHAEL PRATT: Oh, Mr Reardon might've said to me at some stage, "I'm having these challenges", et cetera, but as I've said, if I could help you I would, but I've had no direct engagement that I can recall.

The Hon. ANTHONY D'ADAM: But it is your evidence that Treasury would have had a role in assessing the implications of the deal that was ultimately arrived at?

MICHAEL PRATT: Well, my evidence is I would think Treasury had a role. I can't absolutely say that they did. But to your point, given the liability here on the table, these are the sorts of things that Treasury would get engaged in. So I suspect they would, but I'm not able to commit to you directly that that was the case.

The Hon. ANTHONY D'ADAM: Okay. I might move to Mr Reardon then and ask you about the process of assessing the impact of this deal, the financial impact for the taxpayer of New South Wales. What role did you play?

TIM REARDON: Sure. In my opening statement I gave some roles, but probably just a bit more detail: In late 2017, just coming up to five years ago, the Barangaroo Delivery Authority was in charge of the development of Barangaroo itself. Those functions were transferred to Infrastructure NSW, from memory, by the Government in about April 2019 and I think they were formally handed legally to Infrastructure NSW, I think, on 1 July 2019 as part of a significant machinery-of-government change after the 2019 State general election. So since that time Infrastructure NSW had taken on functions, asset liabilities, of both Barangaroo Delivery Authority and, if I recall at the time, we also abolished UrbanGrowth, and those functions, assets and liabilities transferred to Infrastructure NSW there or at a later date and vested in the Infrastructure NSW. Since that time that organisation has been in charge of resolving the developments in Barangaroo.

The Hon. ANTHONY D'ADAM: Yes. I'm more interested in your specific personal involvement. Did you have any conversations with Mr Draper prior to Infrastructure NSW signing this deed?

TIM REARDON: Yes, I'm sure I would have. I don't remember the details of it but, absolutely, Mr Draper, as Chief Executive of Infrastructure NSW, he and I spoke about many things very frequently, including this matter.

The Hon. ANTHONY D'ADAM: Can I ask about any advice that you may have received around the financial impact of this deed? Was it advice that you received through Mr Draper?

TIM REARDON: I'd just set aside the deed because you've just placed the deed in front of us. I won't have time to go through it, so—

The Hon. ANTHONY D'ADAM: But you are aware of the deal, Mr Reardon.

TIM REARDON: I'm aware of the deal but the instrument, no, and you're asking me something from several—a fair while back and I'm not—I'm aware of the deal, absolutely, and I can go to that if you wish.

The Hon. ANTHONY D'ADAM: Sure.

TIM REARDON: When Infrastructure NSW took over the functions of BDA—the Barangaroo Delivery Authority—they then became charged with resolving any matters that it had on its books, and one of those matters was the resolution of how Central Barangaroo would be developed. That revolved around sightlines. Two other developments within the vicinity had a claim for those development rights, and had developed, and had a view on what the sightlines were. Central Barangaroo development had a view on sightlines as well, and they were in conflict. INSW set about trying to resolve those. The matter had been considered in court. There was an outcome of that matter in court, and then INSW set about trying to resolve the matter and did so.

The Hon. ANTHONY D'ADAM: Why was the decision made not to proceed with appeal? Why was there a preference for settlement as opposed to trying your arm in the appeal process?

TIM REARDON: I don't recall. Mr Draper would have described to me the deliberation and thinking about that, but I don't recall. I don't have a memory of exactly why. One consideration was no doubt the fact that the State had been to court with two other parties and had not been successful in that court action and, therefore, that would have been an input into why they sought to settle.

The Hon. ANTHONY D'ADAM: So you've got no direct evidence in relation to the specific reasons or the specific considerations.

TIM REARDON: No, not on that matter. I understand the question you're asking me and the period but, no, I don't. I don't have any documentation here today to provide me any prompts on that, so no.

The CHAIR: Sorry to interject, but I should have mentioned earlier on that today is Remembrance Day. We're expecting at the eleventh hour that there will be an announcement over the PA where we observe the minute's silence. I just let the Committee and the witnesses know.

TIM REARDON: Very pleased to and completely understood.

The Hon. ANTHONY D'ADAM: Mr Reardon, can I ask you about your role in the question of the issuing of the sightlines resolution notice. Did you have any role in the decision about when the sightlines resolution notice would be issued?

TIM REARDON: I don't even know what this sightlines resolution notice is. What instrument are you referring to? What date might it have? I might be able to provide some response.

The Hon. ANTHONY D'ADAM: The sightlines resolution notice was issued in September, I believe it was—27 September 2019. This is effectively the green light issued to the holder of the development rights to proceed to prepare an application.

The Hon. SHAYNE MALLARD: After the August deed.

The Hon. ANTHONY D'ADAM: After the August deed, yes. Then the sightlines resolution notice was issued on 27 September. You played no role in that at all, Mr Reardon. Is that your evidence?

TIM REARDON: As the former Secretary of Premier and Cabinet, I would have been briefed by the Chief Executive of Infrastructure NSW of the process he may have been undertaking, but nothing further than that. As a former board member of Infrastructure NSW, I believe, from memory, that the chief executive kept the board updated on the functional changes and the machinery of government changes of the Barangaroo Delivery Authority and UrbanGrowth functions coming into INSW. But I don't believe, because it was an advisory board in nature, that there were too many more briefings on this specific matter, from memory.

The Hon. ANTHONY D'ADAM: There's a court action underway initiated by Grocon. You're aware of that?

TIM REARDON: I am aware of that.

The Hon. ANTHONY D'ADAM: Mr van der Laan, the former CEO of the Barangaroo Delivery Authority, has submitted an affidavit in those proceedings. You're aware of that as well, aren't you?

TIM REARDON: Not of that, no. Not of the detail you have just said.

The Hon. ANTHONY D'ADAM: You're not aware of it?

TIM REARDON: No.

The Hon. ANTHONY D'ADAM: It makes certain imputations about you, Mr Reardon. You're not aware of that?

TIM REARDON: It may well do. No, I'm not.

The Hon. ANTHONY D'ADAM: So it's your evidence that you've had no specific or direct role in the sightlines resolution notice being issued?

TIM REARDON: No, that's not what I said. You asked me about what specific role I had in a notice between the periods of, I think, August and September 2019. I would have been briefed by the Chief Executive of Infrastructure NSW throughout that period.

The Hon. ANTHONY D'ADAM: But you have no specifics. Do you keep a diary, Mr Reardon? Do you have any diary records?

TIM REARDON: Not of these matters. I'm no longer in government. You have come here. I wrote when I responded to the invitation here that we were going to rely on memory as best we can. We don't have any

documentation. You have documentation, and you can ask me anything you wish to on any particular topic around here and you expect me to give you an answer. I'm giving you my factual answer.

The Hon. ANTHONY D'ADAM: I am happy for you to take question on notice if you have documentation—

TIM REARDON: I am not going to take a question on notice because I won't have any further detail to go and get more documentation to give you.

The Hon. ANTHONY D'ADAM: Mr Reardon, were there any specific discussions about the Barangaroo sightlines issue between yourself and the Premier? Did you have any conversations with the Premier about this issue?

TIM REARDON: There would have been in terms of briefings. As Mr Pratt recalled as well, I think there was one Expenditure Review Committee of Cabinet where the matter would have been considered in terms of getting a position clear. So that would have been certainly a discussion that would have been had.

The Hon. ANTHONY D'ADAM: So there was an ERC discussion is your understanding around the overall question about the resolution of the issues and the implications?

TIM REARDON: I think it was even broader than that—just about an update—because I would have taken over as Premier and Cabinet secretary, who was part of the cluster, and therefore to be clear on what the position was around a matter that seemed to have frustrated all the parties and had been going on for some considerable period of time, which I'm sure you're well aware. To try and bring that to a position, you normally look for some perimeters to try and resolve the matter. I'm talking about a period pre-2019 election—would have been when that was.

The Hon. ANTHONY D'ADAM: Do you know Mr Warwick Smith?

TIM REARDON: Yes, I do.

The Hon. ANTHONY D'ADAM: Have you ever met with Mr Warwick Smith in relation to the question of Barangaroo?

TIM REARDON: Yes. I've met with stakeholders—all the stakeholders within the vicinity. Particularly during my start-up as secretary of New South Wales Premier and Cabinet, I wanted to get a position clear from any cluster agency that I had. In this cluster agency, for Barangaroo Delivery Authority, it had—

Proceedings interrupted.

[A moment of silence observed for Remembrance Day.]

The CHAIR: Mr Reardon, you were mid answer.

TIM REARDON: Is it possible to get the last sentence off the transcript?

The Hon. ANTHONY D'ADAM: My question was about meetings with Warwick Smith in relation to—

TIM REARDON: No, I got yours. My response—but it's fine. I'll continue on.

The CHAIR: You were saying you had lots of meetings with stakeholders.

TIM REARDON: I know what I said, I just wanted to be clear for continuity, but that's fine. I did meet with the stakeholders within the Barangaroo Delivery Authority's remit, which are the developments that are there now. I met with the CEO of Barangaroo Delivery Authority and the Chair of the Barangaroo Delivery Authority to understand what the picture was down there. The BDA clearly were in negotiations with parties throughout that period. Certainly, as the Premier and Cabinet secretary, I wanted to understand what was going on there.

The Hon. ANTHONY D'ADAM: How frequently did you meet with Mr Smith on this issue?

TIM REARDON: Not frequently at all.

The Hon. ANTHONY D'ADAM: How many times?

TIM REARDON: I don't know, actually. It may have been more than once. But I would have met with each of the parties during that period to understand what the position was so we could collect a position to put to government to understand how we could forward Central Barangaroo because, as I said before, it had been a process that appeared to be frustrated for some considerable period of time. I was simply trying to assist with getting a position that we could take and, therefore, BDA had the imprimatur to actually try and negotiate an outcome. They sought to do that, I think, during 2018; I can't remember when the court proceedings were. We were unsuccessful in those proceedings, as you'd be aware, and the matter was settled in August-September 2019.

The Hon. ANTHONY D'ADAM: Was there ever a meeting with Warwick Smith and the Premier that you were in attendance at?

TIM REARDON: There would have been a meeting on other matters that I can recall because he had a trade role within the New South Wales Government, but I cannot remember on the specific matter, no.

The Hon. ANTHONY D'ADAM: You don't think that this matter ever came up in a meeting with you and the Premier and Warwick Smith?

TIM REARDON: I can't remember. I cannot recall.

The Hon. ANTHONY D'ADAM: You can't recall?

TIM REARDON: No, not that.

The Hon. ANTHONY D'ADAM: No recollection. It was suggested in earlier evidence by Mr Grollo that Mr Tim Robertson—are you aware of Tim Robertson? Do you know him?

TIM REARDON: Working where?

The Hon. ANTHONY D'ADAM: At Infrastructure NSW.

TIM REARDON: A former BDA—

The Hon. ANTHONY D'ADAM: An Infrastructure NSW employee.

TIM REARDON: But before that he was with the Barangaroo Delivery Authority?

The Hon. ANTHONY D'ADAM: I believe so, yes.

TIM REARDON: Yes, that's correct. I do know him.

The Hon. ANTHONY D'ADAM: It was suggested by Mr Grollo that Mr Robertson was acting under your instructions in relation to the delay of the sightlines notice. That's not correct? Is that your evidence?

TIM REARDON: Is that a statement or a question?

The Hon. ANTHONY D'ADAM: My question is this: Do you reject the assertion that Mr Robertson was acting on instructions from you in relation to the sightlines notice?

TIM REARDON: Yes, I would reject that. In terms of probity confidentiality in the process to resolve something, BDA had accountability to get on and do their job. I don't accept any third party explaining to me how to go about that job.

The Hon. ANTHONY D'ADAM: Did you ever meet with Oxford Properties or representatives of Oxford Properties?

TIM REARDON: Not that I can recall. I don't think so.

The Hon. ANTHONY D'ADAM: No?

TIM REARDON: Not that I can recall, unless Oxford Properties—

The Hon. ANTHONY D'ADAM: Any interactions at all?

TIM REARDON: No. I think the only time that they came up—they were involved in the financing, from memory. They were going to play a role, but I don't recall meeting them at all.

The Hon. SHAYNE MALLARD: Thank you, gentlemen, for coming in as private citizens today. Mr Reardon probably would be the one to answer this, although Mr Pratt may be able to. You know the old dashboard-type progress summary you get on all these very high-risk projects and infrastructure the Government gets. Obviously, the two-year delay with the negotiations that failed with Crown and Lendlease regarding sightlines, which wound up in court, would have been an orange light. Was there an orange light or red light concern around the financial viability of Grocon, given that in early 2019 there were media reports—the Financial Review and others—that they were in financial trouble and at that point they were the developer for Barangaroo central?

TIM REARDON: I'll try to respond as best I can. If you mean traffic light dashboards on major projects within the New South Wales Government—I'm assuming that's what you mean?

The Hon. SHAYNE MALLARD: I'm using it as an analogy. Was that raised as a risk for the Barangaroo project? We already had a two-year delay with the Central because of the failed negotiations over sightlines with

BDA, and it went to court. At the same time, parallel to this, the media reported that Grocon was in financial trouble. Was that an issue that was raised or made aware to your level of government as a liability?

TIM REARDON: It may have been, but I wouldn't know the detail, quite frankly. BDA are accountable for dealing with the parties—Barangaroo South, Barangaroo central and Barangaroo North. They may have, but it's a matter of detail where, if you think about the infrastructure program at \$110 billion over the four-year forward estimates, that is a lot of projects, a lot of contractors and a lot of financiers involved in delivering that. One or more of them may have issue from time to time, but I wouldn't have the detail.

The Hon. SHAYNE MALLARD: One falling over can crack quite a headache for years in a totally isolated site.

TIM REARDON: That has occurred.

The Hon. SHAYNE MALLARD: Yes, I know.

TIM REARDON: I don't mean on this. I mean that has occurred over a period of time. Absolutely.

The Hon. SHAYNE MALLARD: Would the BDA board or the CEO of BDA be concerned around that issue in terms of that potential liability and a further great delay to the project and try to resolve it?

TIM REARDON: I expect so, yes. In terms of all assets and liabilities for the site—whether it was anything like the developers, the metro station build, the interface with Barangaroo central, contamination, the visitation to the north and managing things like New Year's Eve—in the normal course of a board and a CEO, they would be concerned about the matters you raise.

The Hon. SHAYNE MALLARD: Obviously, we accept the verdict of the Supreme Court that the BDA failed to negotiate with the parties about sightlines; that's the pivotal point of the court case against the Government. So you've got a court case against the Government, and the parties can either go to appeal—as I think you've said, you probably had advice that an appeal wasn't very likely to be successful—

TIM REARDON: No, I didn't say that. I don't know.

The Hon. SHAYNE MALLARD: You had some advice.

TIM REARDON: It obviously did not go to appeal. There would've been a deliberation at the time.

The Hon. SHAYNE MALLARD: You can make a presumption that it was either not going to be successful or it was going to prolong the delay in the project by another couple of years. They could be the options there. So they sat down to negotiate, and you've got the deed. Would the Government have assessed—this is Treasury, probably—the liability of that judgement against the BDA by the court fiscally and then sat down to negotiate?

TIM REARDON: By the time the functions transitioned to Infrastructure NSW, then Infrastructure NSW would've been charged with doing things such as due diligence—along those lines. Treasury's involvement would be a question for the CEO of INSW because Mr Pratt has indicated he can't recall, and I actually can't either. You would expect that that would've been a consideration.

The Hon. SHAYNE MALLARD: Just on your role in the issue of the metro—one of my favourite projects—at what point did the Government decide to route the metro via Barangaroo and put a station there? There was an initial tender that was cancelled for Central Barangaroo. Then, once a metro station was decided to be put there, that tender was cancelled. It was advanced, but it was cancelled. Then a new one was started, which Grocon and their consortium acquired. Do you remember when that was?

TIM REARDON: You're testing my memory, but I'll try my best. Sydney Metro City & Southwest was, I think, a 2015 election commitment, with asset recycling dollars—

The Hon. SHAYNE MALLARD: Poles and wires, yes.

TIM REARDON: —as a contribution. I think I remember a number of funding out of poles and wires recycling that was to go towards it, but I'm not sure if that's public, so I won't say it out loud. The Government announced in late 2015 that city and south-west was a project and that it would proceed. From memory, Barangaroo, I'm not sure if it did have a station location at that point in time. I think Waterloo and the University of Sydney were options for an internal bidding process to determine the latter. I remember that process fairly well because I was directly engaged. Waterloo ended up being the preferred site, as a major uplift in that part of the city. Barangaroo, during that period, was nominated to have a station as well. I can't recall any further detail than that, but it was certainly a more individual decision than the overall because, as I said, Barangaroo and Waterloo were not confirmed at that point in time.

The CHAIR: Which individual was the main driver of the Barangaroo metro station decision? Was it advice that came from Transport? Was there ministerial enthusiasm of a certain kind to do Barangaroo?

TIM REARDON: I genuinely can't remember. I know it was more standalone, but I can't remember. To be frank with you, at that point in time we were delivering WestConnex one, two and three. We were delivering NorthConnex, CBD light rail, Newcastle light rail and Parramatta light rail. I could go on. This is one specific amendment—a big amendment, but an amendment to one project. I can't recall. I just know it was more of an individual decision, like Waterloo and the University of Sydney was.

The CHAIR: Can you recall the context of the debate around "Yes, we'll put a metro there. We're going to need greater housing density. We need more people there to justify the expenditure on the metro station"?

TIM REARDON: No, I can't remember that debate.

The CHAIR: Were those considerations concurrent? Did the population issues come after the decision to site?

TIM REARDON: You've got me on too much detail. I genuinely can't remember. All I could say to you is that I was more interested, with the head of Sydney Metro at the time, about the interface to make sure that we had the engineering and the planning right. We were down at that level.

The CHAIR: Can you recall any discussion that a population increase would then trigger a sightline dispute?

TIM REARDON: No, I can't.

The CHAIR: So we would have to call for documents inside government to try to pin down the detail on that? It's sort of like a domino effect, isn't it? You site the station, there's the population, the sightlines and the problems that have followed with the hole in the ground and the problems at Central Barangaroo. The dominoes fell, but it started with the siting of the metro. Can you remember any discussions?

TIM REARDON: No, I'd more sort of say about—there's a precinct there and if the precinct has the level of density and development that it has, I don't think just Central Barangaroo would be the driver.

The CHAIR: But someone changed that, didn't they?

TIM REARDON: Sorry, I don't understand. Could I just finish that answer? It's like Waterloo, its precinct or any of the stations on metro west. They are a significant item to place. But it wouldn't be one driver, whether it was residential or commercial; it would be a combination of them. For what is in Barangaroo—my terminology, but these things demand a mass-transit solution there. I wouldn't say it was just one building that was going to drive that decision.

The CHAIR: What you're saying is it was an implicit Government policy that the siting of a metro station meant increased densities in the surrounding districts in population, commercial use.

TIM REARDON: No, but normally one does link with the other because if you think of the north-west metro, for example, the development around some of those stations is quite different. There are about 47 metro stations, either in delivery or in operations now, and each one of them will have quite a significant precinct and personality around it.

The Hon. ADAM SEARLE: Thank you, gentlemen, for coming along today. I appreciate you don't have detailed knowledge of the deed of sightlines resolution document. The document was signed on behalf of Infrastructure NSW by Mr Draper. I think the witness is Mr Robertson. Just at a structural level, I'd be interested to know what kind of approvals process, if any, the head of Infrastructure NSW would have had to have gone through with any central agency, whether it's Treasury or DPC, in order to settle litigation of this magnitude, which, I think, Grocon's submission suggests could be of the value of something like \$300 million worth. What sort of processes would be gone through?

TIM REARDON: The Barangaroo Delivery Authority and UrbanGrowth and their functions being placed within Infrastructure NSW—Infrastructure NSW operates under the Infrastructure NSW Act so the BDA functions would similarly follow into Infrastructure NSW. So whatever delegations there were for board and for chief executive would have been considered at that time. But in most of these things you seek the approvals of a significant item through a Cabinet infrastructure committee or an expenditure review committee. I can't recall detail on this. The briefing to the secretary of Premier and Cabinet through that structure would have occurred. I recall that occurring. I don't recall the detail, as I've said previously, and I don't recall ERC. It's just a long time ago, that's all.

The Hon. ADAM SEARLE: I get that. Again, I'm just trying to understand—

TIM REARDON: To be specific, it depends on the imprimatur of the BDA establishment for their delegations at the time and what they may have gone to Cabinet with over a period of time to give them imprimatur.

The Hon. ADAM SEARLE: I think you said that the Infrastructure NSW board was advisory. Is that correct?

TIM REARDON: That is correct.

The Hon. ADAM SEARLE: So it didn't have decision-making authority. It just provided advice to the chief executive?

TIM REARDON: It is an adviser on the State Infrastructure Strategy, the oversight of the infrastructure pipeline and any matter that the Government might ask them to look at.

The Hon. ADAM SEARLE: Without being able to recall the details, do you recall whether the chief executive provided details about the litigation or the proposed settlement before it was entered into?

TIM REARDON: To the Infrastructure NSW board?

The Hon. ADAM SEARLE: Yes.

TIM REARDON: Sorry, I covered off that previously. No, I don't think so. I think it was more he may have said the functions are coming in, there are assets and liabilities, there are matters at hand and wouldn't have gone into detail because it was advisory in nature. That's been the case for a long period of time with that INSW board.

The Hon. ADAM SEARLE: Would it be a reasonable assumption that this body involved in litigation involving this sort of very important part of Sydney, or this significantly valuable part of Sydney—if a settlement proposal was being developed or was reached, then it would be a reasonable assumption for that to have worked its way through Government, for Treasury maybe to have been involved in some kind of assessment about whether this was a good, bad or indifferent proposition and to provide advice going into a Cabinet infrastructure deliberation or at least a decision by the Premier and Treasurer of the day. Would at least one of those processes have been necessary?

MICHAEL PRATT: Mr Searle, I agree with the proposition. I think the quantum that we're talking about—as Secretary of Treasury, I would normally expect that we would've had involvement.

The Hon. ADAM SEARLE: And it would be unusual if you didn't.

MICHAEL PRATT: Absolutely.

The Hon. ADAM SEARLE: If someone was reaching a settlement worth, arguably, hundreds of millions of dollars.

MICHAEL PRATT: Not always the case, I might add, but Treasury was not always welcome, as you can understand.

The Hon. ADAM SEARLE: I have had some experience of that.

MICHAEL PRATT: But the numbers you're talking about, that would have been my expectation.

The Hon. ANTHONY D'ADAM: Can I just clarify? It is your evidence, though, that you've got no recollection of this deal ever going to ERC?

MICHAEL PRATT: To the earlier question you asked me, that's correct. But, as Mr Reardon has indicated, I do remember something going to ERC. That may well have been along the lines of what you're proposing because, at those sorts of numbers, this would have been an ERC review.

The Hon. ADAM SEARLE: And certainly it was a very prominent matter of public interest.

MICHAEL PRATT: Yes.

The Hon. ADAM SEARLE: If it didn't go to ERC, how else would this have been decided within government? Would it have required the sign-off of both the Premier and Treasurer of the day before Infrastructure NSW could embark upon the settlement?

MICHAEL PRATT: I would have thought so. If ERC is not getting line of sight of it, that would be the case. Then I would expect that they would brief ERC that they had executed accordingly.

The Hon. ADAM SEARLE: But, again, to be fair to both of you, you don't have any specific recollection about this matter, other than what you've already said?

MICHAEL PRATT: I don't, I'm sorry, Mr Searle.

TIM REARDON: Apart from verbal briefing probably from the CEO. I just can't remember at that time. But to your point about the Premier and Treasurer, they would normally consider those things in an ERC setting more than—you know, it's a financial matter.

The CHAIR: So you're saying you expect it would've gone to ERC but you've got no clear recollection if it did?

TIM REARDON: I just don't know.

The CHAIR: I understand it did go to ERC on more than one occasion. Does that prompt your memory?

TIM REARDON: No. What prompted me is something prior. Back in 2018, as I indicated, understanding the position and doing the due diligence of what was happening in Barangaroo when I first took over as secretary, I recall at that time taking a status update for ERC about what was happening across the board with Barangaroo. Just to that point, I wouldn't communicate about what was in that submission, but it would have been broader than just probably Barangaroo Central. So what went into that and the imprimatur that may have been within that, I can't recall.

The Hon. ADAM SEARLE: The settlement, the deed of sightlines resolution, appears to me to involve an agreement involving Infrastructure NSW where, essentially, it's been agreed by this government body to confer on the other commercial parties a benefit by way of a significantly intensified development opportunity at Barangaroo outside any planning processes. It is almost like, to settle the commercial matters, the government body is promising an extra 8,000 square metres of development potential. Grocon has valued that at \$300 million. There is a liquidated damages clause there worth at least \$80 million in there.

The Hon. SHAYNE MALLARD: They have taken that on notice.

The CHAIR: Order!

The Hon. ADAM SEARLE: I will come to that.

The CHAIR: Let Mr Searle ask his question.

The Hon. ADAM SEARLE: Grocon has asserted that. Lendlease has taken it on notice. But there is certainly a liquidated damages clause worth at least \$80 million in there. In your time in government, does that kind of settlement seem unusual—to, in a settlement deed, attempt or purport to confer a development outcome for any commercial party?

TIM REARDON: Could you clarify what part of Barangaroo you are speaking about?

The Hon. ANTHONY D'ADAM: South Barangaroo.

The Hon. ADAM SEARLE: South Barangaroo.

TIM REARDON: And conferring a development right on one of the parties in South Barangaroo?

The Hon. ANTHONY D'ADAM: Lendlease.

The Hon. ADAM SEARLE: Lendlease, in particular.

TIM REARDON: I recall that discussion with the CEO of Infrastructure NSW. I understood that was clearly subject to planning approval.

The Hon. ADAM SEARLE: Planning approval where the Government itself, in another body, assesses the matter. So the Government, in the form of the Barangaroo Delivery Authority or Infrastructure NSW, is the proponent and then the Government, in the form of the planning department, is also the assessor.

The Hon. SHAYNE MALLARD: No guarantees.

The Hon. ADAM SEARLE: No guarantees. I understand that, and it was not the decision-maker.

TIM REARDON: That would be the same process with hundreds of transport projects, cultural institutions, stadia—you name it—where government agencies are seeking approval from the planning department.

The Hon. ADAM SEARLE: But that's the case, isn't it?

The Hon. ANTHONY D'ADAM: The Minister is the final consent, isn't it, in that process? It's a State significant development.

TIM REARDON: Yes, I think that is the case. But my point being that the planning department has to deal with multiple government agencies seeking to develop a whole range of proposals.

The Hon. ANTHONY D'ADAM: But the Minister, if it'd gone to Cabinet, would've then been bound by the Cabinet decision, wouldn't they? Isn't there a conflict there?

TIM REARDON: I actually don't understand your question.

The Hon. ANTHONY D'ADAM: The Minister who makes the planning decision sits in the Cabinet that hears the recommendation in terms of the approval of the settlement. They've made a decision—

TIM REARDON: If Ministers have to recuse themselves from a decision, then, it's been my experience over a long period of time, that that's what they do.

The Hon. ADAM SEARLE: But you're right. The development outcomes that are promised in the deed are, of course, subject to planning approval. But if they're not delivered, there's a financial penalty in the arrangement, as I understand, which is my reading of the deed. Is that kind of settlement in commercial matters involving government agencies involved in this kind of work? Is that a usual kind of settlement, where promises of development outcome are offered?

TIM REARDON: It might not be usual. But there are plenty of financial-structuring deals done over a long period of time where there are unusual arrangements to try and get a resolution. Yes, they have to accord with probity, confidentiality and processes of government. But if they're slightly unusual and innovation involved, then that's what they are.

The CHAIR: Mr Reardon, we had evidence from Daniel Grollo earlier in the day. Around 2017 he had a meeting with you? Do you recall that, about the sightlines being issued?

TIM REARDON: I think I met with Mr Grollo once, from memory.

The CHAIR: Yes. He said that you promised that the sightline would be issued and failed to deliver on that promise and subsequently the company had to sell out to Aqualand. Do you recall that?

TIM REARDON: I reject everything you just said in terms of another party telling me.

The CHAIR: You made no such promise.

TIM REARDON: No. I cannot make any such promise. I would seek to consult with the stakeholders and the parties to try and get a position clear, where people could negotiate in good faith. I think that was the terminology that was used in various agreements between the parties. All parties were frustrated. I would do my best, like with anything else in government, to seek to get positions clear and, within the processes of government, to actually settle something so we could get on with delivery of the development.

The CHAIR: You say you would do that, but what did you do at the meeting with Mr Grollo that you recall?

TIM REARDON: I think I basically just outlined what I would've said to him.

The CHAIR: No. This is not a committee process asking witnesses what they would do hypothetically. We're after the evidence of what did you do.

The Hon. ADAM SEARLE: If you can recall.

The CHAIR: You've got a recollection of the meeting with Mr Grollo. I'm asking you what do you remember of that meeting, any promise that was made and discussions that were had.

TIM REARDON: There was no promise made. I can tell you that, just from my integrity, thank you, Chair. But in terms of what I outlined, it would've been along those lines, which would've been the same thing I would've discussed with other stakeholders. All of those stakeholders had competing views and very contested views of what you are dealing with here. But I would've basically told them to try to resolve the process through the arrangements they had in place already. There was no going outside those processes. Ultimately, that ended up in a court proceeding. The State was not successful in that court proceeding. Ultimately it was settled.

The CHAIR: Was the board of Infrastructure NSW at any stage briefed by Mr Draper or Mr Robertson along the lines of "Our strategy here is to get rid of Grocon and bring in Aqualand and to engineer the process accordingly"?

TIM REARDON: Absolutely not. I just know that Mr Draper would not have done that. He has a great deal of integrity and accountability. But I would say that—I think I've said it twice already—the board of INSW, from recollection, would've been briefed in the round that the functions, accountabilities, assets and liabilities of both UrbanGrowth and Barangaroo Delivery Authority were now under the charge of Infrastructure NSW and there were matters to be dealt with. But they would not have gone into any more detail, because it's an advisory board in nature.

The CHAIR: Do you recall receiving a briefing note from Tim Robertson, Phil Paris and Brad Kelman, dated 23 August 2019, to you and Simon Draper, that read, in part, that the project team considers that the best opportunity for the Central Barangaroo project to progress in a manner that's consistent with the CENDA and minimises ongoing risk to Infrastructure NSW is for the transfer of development rights from Grocon to Aqualand?

TIM REARDON: No. I don't remember a briefing.

The CHAIR: You don't recall? But you were saying earlier on that as a matter of integrity this sort of thing wouldn't happen, where the Government's trying to manipulate commercial outcomes?

TIM REARDON: No. You've got something in front of you, I don't know what document. I told you I came here today—

The CHAIR: It's a briefing note to you as the secretary of DPC and as an Infrastructure board member—

TIM REARDON: Plenty of briefing notes came in my direction. Plenty of Cabinet submissions came in my direction, thousands of them.

The CHAIR: This is a matter of just three years ago. You've got no recollection of it.

TIM REARDON: Three years ago. That's 1,000 days. No, I do not.

The Hon. ANTHONY D'ADAM: Did you have any discussions with the Premier about the prospect of Grocon falling over and Aqualand stepping in?

TIM REARDON: No, it would have been—

The Hon. ANTHONY D'ADAM: You never spoke to the Premier about this and never raised the issue?

TIM REARDON: No, I don't believe so. Infrastructure NSW took over the functions from BDA. BDA were doing their job in 2018 with accountability. That transferred, I think, on 2 April 2019, from memory, because that's when machinery of government changes occurred. INSW would have taken over formally on 1 July 2019. Largely, the CEO of Infrastructure NSW would have kept me informed but would have been getting on with it.

The Hon. ANTHONY D'ADAM: Was it your advice to abolish the BDA?

TIM REARDON: Yes, it was. Government ultimately makes the decisions on these things. But, certainly, in terms of the changes that I thought were necessary for efficiency and streamlining across government, I had a view on it, absolutely.

The Hon. ANTHONY D'ADAM: Is that because you had lost confidence in Mr van der Laan?

TIM REARDON: No. I mentioned previously that UrbanGrowth and Barangaroo Delivery Authority both were abolished at that time just within Premier and Cabinet through delivery. If you go through the record across the Government, there were eight clusters established—Premier and Cabinet; Treasury; Transport; Health; Education; Stronger Communities; Planning, Industry and Environment, at the time; and Customer Service. There were significant changes and there were significant moves of agencies, and some were abolished.

The Hon. ANTHONY D'ADAM: So it's your evidence that you had full confidence in Mr van der Laan and he was doing a fine job?

TIM REARDON: I didn't say whether I did or didn't, and I won't. I don't want to comment on an individual. Basically, I wanted more streamlining of agency arrangements. Some of the precinct arrangements that UrbanGrowth and the Barangaroo Delivery Authority were dealing with—I felt like there was an opportunity to more streamline those, and they were provided into Infrastructure NSW to continue with that work.

The Hon. ANTHONY D'ADAM: Are you presently involved in any construction projects in Barangaroo in your current role? Is it the case that you work for Deloitte? Is that right?

TIM REARDON: No, I do not work for Deloitte.

The Hon. ANTHONY D'ADAM: Perhaps you could elaborate on your current role and whether you have any involvement in—

TIM REARDON: I have declared that I work at Barangaroo. I don't believe I'm working on anything at Barangaroo. I have indicated before—Wynyard Walk, Wynyard station, Barangaroo ferry wharves, the Cutaway and the Walsh Bay upgrade. I have tried to be very clear about what I've been involved in in Sydney Metro City and Southwest and CBD light rail, of course. I could list a whole range of other projects, but I think they are broader outside of that area. I think I tried to declare all of those up-front to you.

The CHAIR: We will draw the session to a close. I thank Mr Pratt and Mr Reardon. It was great to see you again. Thank you for your assistance with and participation in the Committee. We wish you all the best for the future.

(The witnesses withdrew.)

Mr MIKE BAIRD, Former Premier of New South Wales, sworn and examined

Mr BAY Warburton, Former Chief of Staff to Mr Mike Baird, sworn and examined

The CHAIR: We welcome back to the New South Wales Parliament Mike Baird, the former Premier, and his former chief of staff, Bay Warburton, to assist our inquiry. You are no strangers to this place. You would have been through the griller of upper House budget estimates and the like. We are nowhere near as prying and unfriendly as some of those characters in years gone by. We thank you for attending today. Would either of you like to make a short opening statement to outline your position or go straight to Q and A?

MIKE BAIRD: No, straight to questions, Mark.

The Hon. ANTHONY D'ADAM: I want to ask Mr Warburton, perhaps, about the context of the arrangements that led to the meeting that occurred between Mr Packer and Mr Baird. There's an email exchange that suggests that you were involved in negotiating preliminary arrangements in preparation for that meeting when the sightlines question was discussed. Could you elaborate on your role in that preliminary negotiation?

The CHAIR: Have you got a date for the meeting to assist the Committee?

The Hon. ANTHONY D'ADAM: Sorry, this is a meeting that occurred on 19 February, I believe, of 2015.

BAY Warburton: Right. As part of my general role as chief of staff, I coordinate with the office and with various visitors who are coming to see the Premier. I'd work through the logistics of those and coordinate those as part of my job.

The Hon. ANTHONY D'ADAM: Alright. Maybe I'll ask Mr Baird about the meeting. The meeting occurred, yes?

MIKE BAIRD: It did, yes.

The Hon. ANTHONY D'ADAM: And the sightlines issue was on the agenda for discussion, wasn't it?

MIKE BAIRD: Well, I'm obviously not going to go into the details of that meeting, but I can give you a broad sentiment, which should assist the Committee. The meeting was reasonably cordial—that would be the description. There was angst but it was about the time lines. There was limited discussion, that I can recall, specifically about the sightlines. There was angst about the time it had taken government to address a range of issues. I understood that. It is a significant project. There had been a significant amount of time taken. That really was the key sentiment of the meeting.

The Hon. ANTHONY D'ADAM: The issue of the sightlines got resolved soon after, I believe, in May. There was an amendment made to the PDA that inserted the specific sightlines provisions. Is it fair to say that, out of that meeting, you reached agreement with Packer over the sightlines?

MIKE BAIRD: No. The process is pretty simple here, Mr Deputy Chair. I will give you the context. I'm not a planning expert. I'm not a legal expert. I would take advice from DPC in relation to both those matters. As I considered those briefs and recommendations that were brought forward, there are three considerations. There is consideration one, of public interest; there is a consideration of State interest; and there's a consideration of the proponents. In that context, there are three competing interests. You obviously have to weigh that up, but you weigh that up on the advice that you're given. But there were no explicit guarantees on sightlines.

The Hon. ANTHONY D'ADAM: There must have been some agreement reached because in May the relevant authority agreed with Crown-Lendlease on sightlines clauses. You must have signed off on that sometime between that meeting in February and the decision in May.

MIKE BAIRD: But you will see that the clauses did not give an explicit guarantee of sightlines, did they?

The Hon. ANTHONY D'ADAM: Interestingly, in the preliminary discussion that Mr Warburton was part of, there is a set of words that was put forward.

MIKE BAIRD: And what did those words say?

The Hon. ANTHONY D'ADAM: The words are slightly different to the words that ultimately ended up in the contracts. I'm interested in understanding how the wording changed to a point where—

MIKE BAIRD: Well, give me what the wording is.

The Hon. ANTHONY D'ADAM: —effectively, Crown and Lendlease—

The CHAIR: It would assist the Committee if you can give us the words from the Warburton document and then the words that were subsequently adopted.

The Hon. ANTHONY D'ADAM: The Warburton document suggests:

2. BDA acknowledges that retention of sight lines across Central Barangaroo from the Harbour Bridge to the Sydney Opera House and including the Harbour Bridge and Sydney Opera House is of critical importance for Crown and Lend Lease.
3. Prior to seeking any amendment to the currently approved Master Plan for Central Barangaroo, BDA will discuss and negotiate in good faith with Crown and Lend Lease equally, to agree a Master Plan which provides Crown and Lend Lease with sight lines across Central Barangaroo while at the same time optimising the development opportunities for Central Barangaroo.

The final wording is:

- (c) Prior to considering or approving any application which provides for development different to that provided for in the Concept Plan Approval ... as it relates (in part or in whole) to Central Barangaroo, the Authority will discuss and negotiate in good faith—

with Lendlease and Crown—

equally to agree any changes to that application so as to retain the sight lines ... while at the same time optimising the development opportunities ...

Clearly the wording was strengthened in favour of the interests of Lendlease and Crown. What I'm trying to understand is why that decision was made.

MIKE BAIRD: They wanted an unequivocal approach to all sightlines, which wasn't given. Yes, to negotiate in good faith was exactly right. If you reflect on it, as I said, you have public interests, you've got State interests and you have their interests. They do have interests, because clearly they are adjoining a significant development. They'd been anchor tenants for Barangaroo, so they obviously have interests, but there was no unequivocal guarantee on sightlines. The intent was to negotiate in good faith, and that—

The Hon. ANTHONY D'ADAM: So what did New South Wales get from the deal? That's what I don't understand: Why did we give the sightlines away?

MIKE BAIRD: We didn't, and you're making up words. That's not the fact. I can assure you as part of that, Mr Deputy Chair, your—

The Hon. ANTHONY D'ADAM: The Supreme Court just—

The CHAIR: We'll let the witness finish, please.

MIKE BAIRD: I think, Deputy Chair, in terms of before, during and after, for Crown and Lendlease I was not on the Christmas card list, I guarantee you. I tried to balance, across all those parameters, the right decision. You could have the view that the ultimate decision wasn't right, and I know that there were court proceedings around it. If you listen to the words, you can understand that you negotiate in good faith. How does that look? That is something for others to deal with. I can tell you, in our stewardship, it was trying to balance those three. There was no explicit undertaking given in relation to sightlines. We would negotiate in good faith, taking into account the public interests, the State interests and their interests.

The Hon. ANTHONY D'ADAM: It's clear that the Supreme Court disagrees, so is it your evidence that you were poorly advised?

MIKE BAIRD: I mean, I can't—

The Hon. ANTHONY D'ADAM: At the end of the day, it was a costly decision, wasn't it?

MIKE BAIRD: I can't attest to that. What I can't attest to either is the negotiations that took place subsequent to us. I don't know what negotiations were taken in good faith; that wasn't something I did. I tell you at the outset that was the way it was balanced. You tell me if you think it's unreasonable to balance those three things—that is, public interests, State interests and those of the proponents, which obviously have some rights and some considerations, being right next to the development. They didn't get unfettered access to sightlines. It was not given. What was given was that we'd negotiate in good faith. Were they happy with that? Absolutely not, and that's what I'm saying. They weren't happy; Lendlease wasn't happy. But I've got to balance those things, and that was the position that was on the advice I'd got, both in terms of planning advice and legal advice. That's what I had taken.

The Hon. ADAM SEARLE: Just on that, the Deed of Sight Lines Resolution may not give unfettered access, but it does purport to confer upon Lendlease significant additional development opportunity. That is, Infrastructure NSW commits to making a planning application to try to deliver an extra 8,000 square metres,

which Grocon alleges was worth \$300 million. We've asked Lendlease for its valuation, and it has taken that on notice. But on any analysis, it's of very significant financial benefit to Lendlease to have extracted that settlement from Infrastructure NSW. If that is not delivered then there are financial penalties, which of course would be paid for by the State. In relation to the Deed of Sight Lines Resolution—and bearing in mind your evidence about balancing out the different interests, including the State interests—what exactly did the State get out of that settlement?

MIKE BAIRD: Ultimately—you can't just take a single point in time; you need to look at it through the continuum, so you go from the beginning to the end. By the way, it's good to see you again, Adam. I've missed this.

The Hon. ADAM SEARLE: Well, we can do this for some time.

The Hon. SHAYNE MALLARD: It's his valedictory appearance.

MIKE BAIRD: Oh, it is, is it?

The Hon. SHAYNE MALLARD: Yes.

The Hon. ADAM SEARLE: Let's not distract the witness from answering the question.

MIKE BAIRD: Thank you for the opportunity to share that. But if you follow through the process, the Barangaroo station came in and there is significant retail space. I can't remember the exact numbers; I think it was almost tripled in terms of what was going to be required on that site. That undoubtedly was going to have an impact in relation to the proponents of the site. In terms of the development of how much space they got and what sightlines, it was to negotiate in good faith. These are dynamic processes. It's not a point-in-time opportunity; you need to consider the thing from beginning to end.

The Hon. ADAM SEARLE: Except the point in time is the settlement of this litigation embodied in the deed. Having read the deed, I can see what Lendlease and Crown get out of it but I'm not seeing what New South Wales gets out of it or what even the State Government gets out of it. Now, presumably Infrastructure NSW would have had to have taken this proposed settlement at least to the Premier and the Treasurer of the day, if not to the Cabinet infrastructure committee, so presumably there had to be some evaluation of the benefit to the State or the potential cost if the settlement wasn't reached.

MIKE BAIRD: No, no—of course.

The Hon. ADAM SEARLE: Do you have a recollection of what those competing interests were? What did the State get out of it?

MIKE BAIRD: I can't really—I mean, there was always numbers involved in the sense that the financial implications across the various—there was obviously significant upsides with Barangaroo metro coming on, which there should be as part of it. In terms of this deed, I would have to go back to the advice that I was given. Adam, I would be given the advice from Premier's and they would take into account planning and they would negotiate with Treasury in terms of the appropriate numbers and finances that were part of that.

The Hon. ADAM SEARLE: The difficulty we've got here, Mr Baird, is that we've had Mr Pratt and we've had Mr Reardon here and they weren't able to enlighten us with any detail—

MIKE BAIRD: I don't think they were in the roles, were they?

The Hon. ANTHONY D'ADAM: No, not at this stage. This is earlier.

The Hon. ADAM SEARLE: But even subsequently, they weren't able to. Do you have any clear recollection of these matters, or is your recollection only generalised?

MIKE BAIRD: My recollection is twofold. There was absolutely no explicit undertaking given on the sightlines—

The Hon. ADAM SEARLE: Okay, but what—

MIKE BAIRD: No, let me finish, Adam. I mean, you've asked me, and it's incredibly important. That's what they wanted. Both proponents wanted that. I refused to give it because the advice argued that's something you can't give because we need to negotiate on the basis of public interest, State interest in the overall platform and in the interests of the overall development.

The Hon. ANTHONY D'ADAM: But you signed off on the wording, Mr Baird, and ultimately it was a dud. You made a mistake—a costly mistake for the taxpayer.

MIKE BAIRD: No, incorrect, because it was to negotiate in good faith and I was not part of that negotiation. I can't tell you how that took place.

The Hon. ANTHONY D'ADAM: But the consequences of that arise from the decision that you made—

MIKE BAIRD: No, incorrect. Incorrect.

The Hon. ANTHONY D'ADAM: —to have this ambiguous wording rather than a clear statement that the sightlines weren't guaranteed.

MIKE BAIRD: You know, I don't know whether you're a lawyer. I'm not a lawyer. You would rely on the words that you're given on the basis of advice. The intent, I can give you: no explicit sightlines, and we would negotiate in good faith on the basis of public interest and State interest and also their interest as an adjoining—so whether those words were clear enough to that sentiment, well, that's really a matter for the advice and the lawyers involved.

The Hon. ANTHONY D'ADAM: Mr Baird, can I ask you also about the height of the Crown Barangaroo tower? How did it go from being agreed that it was going to be 170 metres to 272 metres? Was that a decision that you made?

MIKE BAIRD: Not that I'm aware of.

The Hon. ANTHONY D'ADAM: Were you ever involved in any discussions with Packer or Crown in relation to the height?

MIKE BAIRD: Certainly not that I'm aware of.

The Hon. ANTHONY D'ADAM: The additional height that was conferred—millions of dollars worth of value given to Crown—that wasn't something that you were consulted on?

MIKE BAIRD: As I said, I think you need to understand, Deputy Chair, before, during and after I was not on the Christmas card list of Crown or Lendlease and that's part of the role. In terms of the individual allocations and how it came out in the overall redevelopment of that precinct, that had some way to go.

The Hon. ANTHONY D'ADAM: Surely, this was an issue that you, as Premier, would have had a say on. It's millions of dollars worth of value being conferred on a private interest.

MIKE BAIRD: Through part 3A and where it reported, when that decision was made, how that was made, I'm not clear.

The Hon. ANTHONY D'ADAM: You have got no recollection of that at all?

MIKE BAIRD: It's not clear.

The Hon. SHAYNE MALLARD: Mr Baird, one of our terms of reference is regarding any potential bias resulting in the preferential treatment of the commercial interests of one party over the other. This goes to your colourful point that you weren't on the Christmas card list. Mr Grollo suggested this morning—he didn't say the Premier—that Ministers at the highest levels of government had been involved in a conspiracy against his company.

The CHAIR: No. He didn't say "conspiracy", in all fairness, and he went specifically to Mr—

The Hon. SHAYNE MALLARD: He did say Ministers. We can check the *Hansard*.

The Hon. ADAM SEARLE: Let's not debate amongst ourselves. Let's just ask the witness the question.

The Hon. SHAYNE MALLARD: The point being that he has suggested that the highest levels of government—what I am getting at here is that, across the board, it has been open and fair and transparent. You would put that. You probably weren't on Grocon's Christmas card list either, I imagine.

MIKE BAIRD: I can't remember an interaction with him. Again, individual developers will have their interests. I've got to balance other interests. It's part of the job.

The CHAIR: It's a lonely job getting no Christmas cards as Premier.

MIKE BAIRD: That is probably true.

The Hon. SHAYNE MALLARD: The two years of trying to negotiate in good faith by the Barangaroo Delivery Authority with Lendlease and Crown on that clause—

MIKE BAIRD: Subsequent.

The Hon. SHAYNE MALLARD: The Supreme Court took that clause and said, "You didn't do it." That's when the Government had an adverse finding in the Supreme Court. And then that led to this deed of arrangement to find a recovery position for the taxpayer. That's how you would see it?

MIKE BAIRD: Yes.

The CHAIR: Mr Baird, you did have Tim Robertson working for you at one time. Is that right?

MIKE BAIRD: I did, yes.

The CHAIR: What was his role?

MIKE BAIRD: He was a policy adviser, predominantly on planning.

The CHAIR: Approximately when did he leave your office?

MIKE BAIRD: I think when I left.

BAY Warburton: Mid-2016, I think.

The CHAIR: Mid-2016—so some seven or eight months before you left the Parliament.

The Hon. ANTHONY D'ADAM: How did he come to be in your office?

The Hon. SHAYNE MALLARD: How many policy advisers have you had?

The Hon. ANTHONY D'ADAM: Maybe Mr Warburton can—where did you find him?

BAY Warburton: He was a senior adviser to Minister Hazzard when Minister Hazzard was the Minister for planning, and he was an expert in his field.

The CHAIR: In that interim period we're talking about, did he keep you up to date with the question of the sightlines dispute at Barangaroo, given that he'd moved on to Infrastructure NSW?

MIKE BAIRD: Not that I can recall, no.

The CHAIR: Not that you recall. Even after you'd left the Parliament, would you have a discussion with him about how he was handling the competing interests of Lendlease and Grocon?

MIKE BAIRD: No. I think when you have left Parliament, you have left.

The CHAIR: You leave.

MIKE BAIRD: Although, I do find myself back here.

The CHAIR: Do you get Christmas cards when you leave?

MIKE BAIRD: Probably a few more. I've seen something—around Tim, can I say that he was someone who worked incredibly hard. I viewed he had high integrity and is a good, good person. I don't know exactly what you're going to be questioning on but—

The CHAIR: He's coming later on.

MIKE BAIRD: I do want to put that on record—that he is someone that I think served his State well.

The CHAIR: One thing that Mr Reardon could recall earlier on was the specific nature of the commitment at the 2015 election to run the metro across the harbour heading south and the plan now to join up at Sydenham. He then said it was an individual decision, separate to that general routing of the metro, to allocate the Barangaroo metro station. What's your recollection of how we arrived at a metro station at Barangaroo?

MIKE BAIRD: Similarly, there were a range of options. Unless I'm incorrect, I don't think the specific route was guaranteed before the election. I think we said—

The CHAIR: There would have been some indicative routes.

MIKE BAIRD: Yes.

The CHAIR: A general proposal.

MIKE BAIRD: It could have been. But I said that we would do the work. So we had to work out the best point. The intuitive sense that I would add is Barangaroo made sense, given the development and the office space that was coming, to include it. But it would have been the appropriate work done by Transport and Planning to make those assessments and bring the recommendations—

The CHAIR: In your memory, it was the work of officials, not a Minister deciding. This was an individual decision that that was the best way to go.

MIKE BAIRD: Absolutely. That would have gone to Cabinet on the back of appropriate Cabinet minutes and all the documents and briefings that went with that.

The CHAIR: Where did the decision come from, according to your recollection, to increase the population density in response to the metro decision at Barangaroo?

MIKE BAIRD: Again, there's undoubtedly a significant benefit, financial and otherwise, that would go to the proponents in relation to that. How do you get a contribution towards that, both in terms of the existing and the overall development? The increase in space was—effectively, if you think of the three measures we're thinking of—right in the State interest in terms of getting a return on the investment. As you know, public transport—

The CHAIR: In your recollection, these were general policy consequences: If you put a metro in, you're after increased population density, no matter where you have the metro. Was consideration given to the fact that there were some existing sightlines in place, and this would trigger the sightline dispute that has led to the calamity we have today?

MIKE BAIRD: No.

The Hon. ANTHONY D'ADAM: It didn't occur to you. How could it not occur to you?

The CHAIR: No-one said, "We're going to upset the apple cart here on sightlines and it could lead to legal action, it could lead to Grocon dropping out and the hole in the ground that we have"?

MIKE BAIRD: No.

The Hon. SHAYNE MALLARD: It triggered that clause.

The CHAIR: I'm asking the questions. Shayne, when you're the former Premier you can answer the questions. Until that time—

MIKE BAIRD: He'd be a good Premier, Shayne Mallard.

The CHAIR: Well, you've been away for a while. No-one gave consideration to triggering a sightline dispute that's led to the problems that we have today—the hole in the ground?

MIKE BAIRD: Again, in terms of the thrust of where you're saying the challenge is, negotiating in good faith with all parties, that's where the challenge is.

The Hon. ANTHONY D'ADAM: And agree.

MIKE BAIRD: Ultimately there is a benefit that comes to those proponents.

The CHAIR: I know that. But it is your evidence no-one gave consideration to the possibility of a sightline dispute?

MIKE BAIRD: No, it would go into the overall negotiation, as part of negotiating in good faith.

The Hon. ANTHONY D'ADAM: Surely you are double dealing aren't you, Mr Baird? You've said we are going to keep the sightlines but then you increase the floor space in Central Barangaroo, knowing that it is going to impede sightlines. How can you reconcile that?

MIKE BAIRD: Deputy Chair, funnily enough, there is a general belief I have that people will negotiate in good faith across broader parameters. There is nothing in question. Yes, there is benefit to the proponents of those who are seeking sightlines because there is a metro that comes. With that metro, in terms of the State interest, coming back to the middle, there needs to be an additional financial contribution and appropriate density to justify that investment.

The CHAIR: But that's not how the company saw it. They took the increased population, put that in their pocket and then said, "We'll have some money for sightlines too."

MIKE BAIRD: That probably gives you a sense of why I wasn't on their Christmas card list.

The CHAIR: Maybe you should have been.

The Hon. ANTHONY D'ADAM: They came out ahead.

The CHAIR: They sort of double dipped because no-one thought of the sightline problem. If that's your evidence, that's the way it is. Mr Warburton, have you got any recollection of anyone raising the sightline problem?

BAY WARBURTON: No, exactly as the former Premier said.

The Hon. ANTHONY D'ADAM: Can I ask, Mr Warburton, there is an email that's after the meeting with Mr Packer where there's effectively a discussion with David Tow about the proposed wording, the settled wording, and you reply to Mr Tow by saying:

Due to various issues today, the Premier has not been able to see it, However, I am confident that these words would be approved by him, having reviewed them myself.

Is it the case that the Premier at the time, Mr Baird, never actually saw the final wording—that it was all done on your sign-off?

BAY WARBURTON: What was the date of the email?

The Hon. ANTHONY D'ADAM: It's 25 February.

BAY WARBURTON: That's a pretty busy time for the Government at that stage. We were a month out from an election. The Premier was engaged in a range of different things. We had just come out of a meeting where he had made his position explicitly clear: There was no guarantee on sightlines. We then worked away with the department, as I recall it, and those words reflected that intention from the Premier.

The Hon. ANTHONY D'ADAM: It was flawed wording ultimately and it's your evidence that the Premier never saw the final wording, is that the case? That was the sign-off that was required—just on your authority with multimillion-dollar consequences?

BAY WARBURTON: In terms of allowing the BDA to go away and do negotiations, which then would have resulted in a final agreement, that was needed to get those negotiations underway.

The Hon. ANTHONY D'ADAM: So it is your evidence that the Premier never—

BAY WARBURTON: I couldn't say—sorry?

The Hon. ANTHONY D'ADAM: It is your evidence the Premier never saw the final wording?

BAY WARBURTON: Not my evidence, no. I can't say what happened subsequent to that but, in order to get the negotiations underway after the meeting, we needed to get things going.

MIKE BAIRD: And the sentiments were very clear.

The Hon. ANTHONY D'ADAM: Sorry, Mr Baird, could you repeat that?

MIKE BAIRD: The sentiments were very clear.

The Hon. ANTHONY D'ADAM: The sentiments?

MIKE BAIRD: Yes.

The Hon. ANTHONY D'ADAM: But it's your recollection, Mr Baird, that after that 25 February email you did see further wording and signed those off.

MIKE BAIRD: Obviously there's a document that's signed.

The Hon. ANTHONY D'ADAM: So you sign off on the final wording. That's your evidence, is it?

MIKE BAIRD: That's my understanding.

The CHAIR: Did you have other meetings as Premier that were set up in this fashion? I read the documents and I thought this is sort of like a Brezhnev-Nixon détente meeting where Henry Kissinger has set out—

MIKE BAIRD: You've got a colourful turn of phrase, I'll give you that, Mark.

The Hon. ADAM SEARLE: He sure does.

The CHAIR: It did remind me of that. Mr Warburton undoubtedly is very thorough, but did you have other meetings where you set it up with this level of detail—where it was just a matter of you have a cup of tea with Mr Packer and rubberstamp the wording that was predetermined?

MIKE BAIRD: That's not what happened, and you know that's not what happened.

The CHAIR: That's what the documents look like.

MIKE BAIRD: The evidence I have just given has covered that is exactly not what happened. So don't try to put those words on it. As Premier, I made the decision that we should disclose Minister's diaries. That

disclosure was to put some accountability on government to enable the processes that govern this sort of inquiry to actually ask those sort of questions. I think to say that I was there trying to have meetings behind closed doors, I tried to do the opposite. I tried to shine a light on these sort of meetings because if you go through the history of New South Wales there's a lot of those sort of meetings that have taken place. My thought, as one of the things, hopefully, while I had the opportunity and privilege to be Premier of this State, that would be something that would be helpful. You can see all the meetings—

The CHAIR: Thanks for that. Did you have in mind the initial problem with the unsolicited proposal and the meeting between Packer and Barry O'Farrell in overcoming that type of secrecy?

MIKE BAIRD: I don't know about that meeting.

The CHAIR: You must know about that meeting.

MIKE BAIRD: Well, I don't know about that meeting.

The Hon. ANTHONY D'ADAM: Can I ask about the discussions around the metro station? There was not a public announcement around the siting of the metro station at Barangaroo until June 2015. That's your recollection, isn't it? The announcement was made in June 2015.

MIKE BAIRD: I remember we announced the metro—

The Hon. ANTHONY D'ADAM: Is it appropriate that you were raising the issue about there being a metro station with Mr Packer? That's commercially sensitive information that has a material benefit.

MIKE BAIRD: Who said that I was raising—

The Hon. ANTHONY D'ADAM: It's clear in the correspondence between Mr Warburton—

The CHAIR: It's in the meeting preamble.

MIKE BAIRD: Hang on, Deputy Chair. I don't know exactly what you're alluding to. In terms of the concept of a Barangaroo station, there was thought that we had to win an election, because if we didn't win the election, there was no metro. The work wasn't—

The CHAIR: You win the election and it's announced in June 2015. Why did Mr Packer get advance notice of the station infrastructure decision?

MIKE BAIRD: I'm not sure of the timings.

The Hon. ANTHONY D'ADAM: Well, he did. It's quite clear. David Tow sends an email to your chief of staff, Mr Warburton, on 18 February. He says, speaking about Mr Packer:

He may ask for "unimpeded views" across central, but also understands that a metro station that activates the precinct is very good for Crown.

That went to your chief of staff.

The Hon. ADAM SEARLE: In February.

The Hon. ANTHONY D'ADAM: In February 2015.

The Hon. SHAYNE MALLARD: Plenty of public speculation.

MIKE BAIRD: Picking up—

The Hon. ANTHONY D'ADAM: In June, you make a public announcement.

MIKE BAIRD: Obviously, putting a metro in is going to benefit proponents who are already there, but at the same time you would have seen there was an increase in the retail space, so the overall square metreage. That goes back to negotiating in good faith. So, yes, there's a benefit that comes with the metro, but, by the way, we are increasing the square metreage on the overall proposal. So surely—

The CHAIR: It's like winning lotto. It's certainly deserving of a Christmas card that you made that decision for Packer's interests.

The Hon. ADAM SEARLE: Given that the public announcement wasn't made till June and Mr Packer seemed to know in February, was everyone with a commercial interest in this proceeding informed of the potential for a metro?

MIKE BAIRD: You would have to check with government on where and when. I can just give you the overall that there is a deep sense, yes, the metro came on the back of the election win and the work was done on

the site, negotiating in good faith—because, yes, they got a benefit; no doubt about it. How that played out in terms of the subsequent two years of negotiation, I mean, obviously—

The Hon. ANTHONY D'ADAM: It's a pretty favourable tip-off for Mr Packer, though, isn't it?

MIKE BAIRD: I think that's your words.

The Hon. ANTHONY D'ADAM: You don't accept that he could monetise that information?

MIKE BAIRD: I can assure you, Deputy Chair, that, in relation to Crown and the principals, I was not someone that they enjoyed dealing with.

The Hon. CHRIS RATH: This is a slightly different line of questioning. One of the points of the terms of reference is the integrity, efficacy and value for money of unsolicited proposals. I was wondering if you could comment about unsolicited proposals during your time in government and the benefits of those, or whether we should continue with such unsolicited proposals in the future.

MIKE BAIRD: I think, Chris, there are significant benefits. Transparency is important. The way you negotiate is important. But, using an example like the NorthConnex, the unsolicited proposal that came in—we put through Infrastructure NSW the infrastructure priorities of the State. The sense of that was to have a capacity for infrastructure determined by the economic benefit. Private sector and others had a sense on what was coming when, so it created a pipeline. What that did, the unsolicited proposal, the proponent had an opportunity to bring that project forward. It might have been another five to 10 years before we even got around to commencing it or considering it. Through the unsolicited proposal process, it was an opportunity to bring forward a significant piece of infrastructure to the community. It's obviously not a usual process. But if there is significant merit balancing the public interest, it definitely should continue, would be my view.

The Hon. ANTHONY D'ADAM: I just wanted to understand the leverage that Crown had that meant that the Government felt that it even had to negotiate on the sightlines question. Why did the Government not just say, "No, we're not going to guarantee your sightlines"?

MIKE BAIRD: There's a general planning principle that you take into account your neighbours. As part of that, you negotiate on views and other things.

The Hon. ANTHONY D'ADAM: Sure. But you don't need a contractual arrangement for that.

MIKE BAIRD: That's a general planning principle. Again, I'm not a planning expert, but I would've gotten advice in relation to the way to deal with that, both on a planning basis and on a legal basis.

The Hon. ANTHONY D'ADAM: But why? My question really goes to why the Government felt it needed to even be in negotiations on this question of sightlines. I don't understand—

MIKE BAIRD: There's two parts—

The Hon. ANTHONY D'ADAM: —whether the Government feared some consequence from Crown or whether we thought we were getting something for it.

The Hon. SHAYNE MALLARD: A billion-dollar building.

MIKE BAIRD: I don't think I can be clearer: There was no explicit undertaking given. We said we would negotiate, as you would. If someone was building next to your house and they were going to impact your view, wouldn't you try to negotiate in good faith and on planning principles? That's what should've taken place.

The Hon. ANTHONY D'ADAM: Sure. You'd give some broad undertakings, but not sign a contract to the effect.

The CHAIR: What house did government have down there?

MIKE BAIRD: Sorry?

The CHAIR: What house did the State Government have down there?

MIKE BAIRD: What house?

The CHAIR: These are commercial entities building buildings down there, development.

MIKE BAIRD: Barangaroo was obviously in the remit of government, and then it was rolled out.

The CHAIR: We have a planning authority, but there was no government asset down there as such.

MIKE BAIRD: No, the planning authority, which is obviously a part of the Government.

The CHAIR: Do you recall advice from any planning authority—the BDA or the planning department—about the necessity for sightline negotiation?

MIKE BAIRD: I can assure you I relied heavily on their advice.

The CHAIR: Whatever happened, you were following advice?

MIKE BAIRD: Yes.

The CHAIR: That was your approach in a matter like this, rigidly?

MIKE BAIRD: Yes. Of course, it would be, Mark.

The Hon. ANTHONY D'ADAM: We give them an extra 100 metres of height. We give them unimpeded sightlines in a contractually binding arrangement. I'm not clear what we get as the public, as the taxpayer of New South Wales.

The CHAIR: I suppose you walk down there, you see the tower—

The Hon. ANTHONY D'ADAM: What did we get?

The CHAIR: —you see the hole in the ground and the park. That's what we got.

The Hon. ANTHONY D'ADAM: Surely you've got an answer for that. What did we get in exchange for all of these concessions and these multimillion dollars' worth of value conferred on Crown and Lendlease?

MIKE BAIRD: Deputy Chair, this is a long-running planning process. It went all the way back to the former Labor Government—across multiple governments. For the period I had, I have told you what I did. That was to try to balance the three interests on the basis of the advice I got. There was no—

The Hon. ADAM SEARLE: But you haven't been able to identify the public interest that we gained.

MIKE BAIRD: Sorry?

The Hon. ADAM SEARLE: You haven't been able to identify what benefit the public got.

MIKE BAIRD: The long-term financial contribution. There's a negotiation in relation to financial contribution from all parties towards the overall site. There was a financial proposal as part of it. I'm sure you've seen those details.

The Hon. ANTHONY D'ADAM: How much was it worth? How much was that additional height—

MIKE BAIRD: You'll have to—

The CHAIR: You'll have to search the documents.

MIKE BAIRD: Yes.

The CHAIR: Any other questions? I might have the last one. It is more of a curiosity. How much haranguing did you get from Paul Keating about the design down there?

MIKE BAIRD: I don't recall any. He had a lot of views.

The CHAIR: He is pretty good mates with one of your most immediate successors today.

MIKE BAIRD: I have got a lot of time for Paul Keating. I do. I think it's a great testament to him, what is down there in terms of Barangaroo. He protected that headland. I think that's a great legacy to the country, actually. I'm not sure where he's involved—

The Hon. SHAYNE MALLARD: The Chair doesn't agree.

MIKE BAIRD: Certainly, from my perspective, I think we owe him a gratitude.

The CHAIR: You thought he played a positive role?

MIKE BAIRD: I really do.

The CHAIR: Thank you.

The Hon. ANTHONY D'ADAM: Have you ever stayed at Crown tower and enjoyed the sightlines?

The Hon. SHAYNE MALLARD: What's the relevancy of that question?

The CHAIR: Why don't we have a site inspection down there one night? No, we're starting to drift into—

MIKE BAIRD: Deputy Chair, the answer is no.

The CHAIR: We're drifting into matters not relevant to the Committee. We thank Mr Warburton and Mr Baird for their evidence and time today. Thank you very much for coming back here. It's good to see you again. We wish you all the best going forward and hope you get a few more Christmas cards. You might get one from us. We're feeling sorry for you. Have a great Christmas and New Year. All the best, thank you.

MIKE BAIRD: Thanks very much.

The CHAIR: We'll adjourn now for a lunch break that will run through to 1.45 p.m.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr TIM ROBERTSON, Private Citizen, sworn and examined

The CHAIR: We will resume our hearing of the Barangaroo sightlines inquiry. I welcome Mr Tim Robertson, the former executive director, strategy and operations, at the BDA and Infrastructure NSW.

TIM ROBERTSON: I am pleased to appear to assist the committee's inquiry and happy to answer your questions. I was an employee of the Barangaroo Delivery Authority and then Infrastructure NSW from the start of 2017 to 30 November 2019. I'm no longer an employee of the New South Wales Government and have not been since 2019. As I mentioned, I'm appearing today as a private citizen. The committee should also be aware that I am also a witness in the Supreme Court proceedings currently on foot between Grocon and Infrastructure NSW and the committee's terms of reference overlap with the topics on which I'll be giving evidence in the court proceedings. I am happy to take your questions.

The CHAIR: I don't know if you saw the evidence from Daniel Grollo earlier in the day.

TIM ROBERTSON: I caught some of it, yes.

The CHAIR: We will give you an opportunity to respond because his evidence, supported by some of the WhatsApp messages that have been furnished, seem to indicate that you played a role in ensuring that his company was out and Aqualand was in and that the sightlines process was manipulated to that effect. Your response?

TIM ROBERTSON: I'm not sure I'd agree with that characterisation, Mr Latham. Grocon and its parties entered into a binding transaction on which, ultimately, the Government was only asked to indicate whether or not it would enforce the reliance on parent company guarantors. The decision was not to enforce those guarantors, and the transaction took place.

The CHAIR: Why did it take so long for the issuing of the sightlines, which then occurred one day after Grocon handed over to Aqualand?

TIM ROBERTSON: It's a complex process. The Government entered into the sightline contracts with Crown and Lendlease. We had legal advice from Allan Myers, AC, KC, that our obligation was to negotiate in good faith with Crown and Lendlease. Those negotiations took place over a number of years. Ultimately the court found, in fact, that our obligations were different to those which we previously understood. Following that court case, we entered into settlement negotiations with Crown and Lendlease. The outcome of those negotiations was the sightlines resolution notice, which was given to the central developer in September, I think it was.

The CHAIR: But why did that take three years to get resolved and then occur only a day after? Surely it's more than coincidence that it occurred a day after the transfer from Grocon to Aqualand.

TIM ROBERTSON: It was a complex negotiation. We had a legal position, as I said, which was supported by one of the finest legal minds in the country. It was not Dennis Denuto. Allan Myers, AC, KC, is one of Australia's pre-eminent barristers. He gave us consistent advice over a number of years about what our obligations were. Ultimately the court found differently and we secured a settlement with Crown and Lendlease. That settlement, I think, was secured around 19 August. At that time, Grocon, Oxford and Aqualand were commercial parties bound to transact to transfer the commercial development rights from Grocon to Aqualand. So it wasn't the Government's decision on who should be the developer; those commercial parties had resolved that between themselves.

The CHAIR: Grocon will say they had to because they were going broke.

The Hon. ANTHONY D'ADAM: That wasn't the time frame, was it, Mr Robertson? At 19 August, Grocon hadn't actually entered into the final arrangement to transfer to Aqualand. They may have been in discussions but they hadn't actually executed that.

TIM ROBERTSON: The evidence that I've seen, and certainly the discussions we had with Grocon and Oxford and Aqualand at the time, is that on 25 July they were bound to transact for the transfer of the development rights. Mr Grollo wrote to me on 23 July and asked what our conditions were for that transaction. We outlined those conditions. I know he's presented a view that these things were happening behind his back, but he had written to me asking what the terms were for the transaction, so they were hardly an unknown party to that transaction.

The Hon. ANTHONY D'ADAM: Your understanding is that Grocon was in a binding contractual arrangement to transfer the development rights from Grocon to Aqualand at the time that the deed of sightlines resolution was executed.

TIM ROBERTSON: Correct.

The CHAIR: The Committee has become aware of a WhatsApp message that you sent to Paris, Pauley, Kelman and McCracken on 10 May 2019 that reads as follows, "Spoke to Greg Miles. Said we were moving ahead on getting approval for negotiating terms for sightlines. Wouldn't be waiting for Central transaction before talking to Crown and Lendlease. Said we won't be negotiating forever. Target a resolution within a few weeks. Said don't let that get resolved before your issues with John because we'll be forced to give a 1.10 sightlines notice to Daniel Grollo and then we'll all be fucked." Why did you write that giving the notice to Grollo would result in the f-u-c-k-e-d outcome?

TIM ROBERTSON: Because, as at May 2019, our understanding was that those parties, particularly Grocon and Aqualand, were bound to transact. That was the proposal that was brought to us by Grocon and Aqualand in February, and that transaction was still on foot. Had we resolved the sightline negotiations and issued the sightline resolution notice at a time when those parties were in the midst of a transaction, and we understood Grocon to either be in severe financial difficulty, if not fully insolvent at the time and—

The CHAIR: How did you understand that?

TIM ROBERTSON: Because they came to us to seek our agreement to sell the development rights for Barangaroo, and they had creditors with whom we had a contractual relationship who, from 13 January 2019, were saying, "Either there is an orderly path out of Barangaroo for us"—this is Oxford Properties—"or we'll call on our debt that we have with Mr Grollo and we'll bankrupt him."

The CHAIR: Grollo earlier today said that issuing of the 1.10 notice—the sightlines—would have provided, I think, a \$150 million benefit to his company and saved them financially. So how would that then result in "We'll all be fucked"?

TIM ROBERTSON: He was in a transaction at the time, so it's a hypothetical scenario—what he thinks he might have been able to get for it—but, at the time, he had asked for our approval to transact to transfer those development rights. There was Oxford as a creditor. We were also aware of GPT and Dexus as creditor—all of whom, if they had called those debts, would have triggered an insolvency event with Grocon. This would have led to a default in the developer, a collapse in the project and the exit of Grocon for no consideration. So our focus at the time was trying to manage and stabilise the consortium in a way that allowed the project to move forward, and, under the proposal that was put to us by Grocon and Aqualand, allowed for the consideration of \$75 million to go to Grocon so they didn't walk out of the project empty handed, which would have been the case had Oxford called on their debt at any time from January right through to September.

The Hon. ANTHONY D'ADAM: That figure might have been double that if you'd issued the sightlines notice immediately after the deed of sightlines resolution was entered into.

TIM ROBERTSON: Why is that, Mr D'Adam? Why would it have been double?

The Hon. ANTHONY D'ADAM: Because he would have had some certainty about the development envelope and that had tangible value in the transaction.

TIM ROBERTSON: But at that time he was bound to transact. So there are hypotheticals of what he may or may not have been able to get from the market for that sightline.

The Hon. ANTHONY D'ADAM: How do you know that he was bound to transact?

TIM ROBERTSON: Because he had told us. What more evidence would you want?

The Hon. ANTHONY D'ADAM: But how can you be certain that there was a contractual arrangement?

TIM ROBERTSON: We had a letter from Oxford Properties, who was a party to the transaction, which was copied to Grocon's general counsel saying, "We are seeking your agreement to not enforce the reliance on guarantors, so this transaction can take place." That reflects the discussion I had with Mr Grollo two days earlier when he asked me specifically to outline our conditions to allow that transaction to take place.

The CHAIR: Why did David Matheson, in this WhatsApp exchange with you, write to you on 8 August 2019, "At some point you"—Mr Robertson—"should speak to Daniel again either to negotiate the release so it's acceptable to both sides or disavow Daniel of the notion that you are supportive of Grocon remaining in the project"?

TIM ROBERTSON: They are Mr Matheson's words, not mine.

The CHAIR: But this is part of a lengthy WhatsApp exchange with you, where any objective person would say you're working with Matheson to get Grocon out without actually telling Grocon that.

TIM ROBERTSON: I'm not sure I agree with the characterisation that you've put forward. What I was doing was consulting with Oxford, as our contractual partner in the development, who held the capacity to send Grocon under at any point. So it was important that we were consulting with them on an ongoing basis.

The Hon. ANTHONY D'ADAM: How was it a contractual partner? Wasn't the contract with Grocon?

TIM ROBERTSON: No, we had a contractual relationship with Oxford through the Oxford comfort letter.

The Hon. ANTHONY D'ADAM: But the comfort letter was provided to Grocon, wasn't it?

TIM ROBERTSON: For the benefit of Oxford.

The Hon. ANTHONY D'ADAM: For the benefit, but the contractual relationship wasn't with INSW. It was with Grocon.

TIM ROBERTSON: I dispute that. But it was important for us to consult with Oxford. Indeed, we were consulting with Oxford because we were encouraged to do so by Grocon, from about July or August 2018, on a regular basis.

The CHAIR: But you were doing more than consulting with anyone. Here's a WhatsApp message to Matheson and Gawain Smart on 19 August 2019, "Hi Gawain and David, I spoke with Daniel this morning and told him we'd be in touch re next steps. I'm hesitant to give him the 1.10 notice knowing what he may do with it and it may just further complicate the project. I'm putting the strategy to Simon"—I assume that's Simon Draper—"tomorrow morning to move things forward." So you were deliberately withholding the 1.10 notice because you thought if it was handed over to Grocon it would further complicate the project and, according to your earlier email in May 2019, "We'll all be fucked." Isn't this just a deliberate attempt to meddle in the commercial aspects of the project and for you to engineer an outcome that was favourable to Aqualand and Oxford, and disadvantaging Grocon?

TIM ROBERTSON: No, not at all, Mr Latham. To repeat—

The CHAIR: Why was the project further complicated if Daniel got his 1.10 notice, according to this WhatsApp message?

TIM ROBERTSON: To repeat, Aqualand, Grocon and Oxford have entered into a binding agreement to transact for the central development rights. That's a matter of fact. Whether you want to contest it or not is up to you. Our view was that it was in the public interest for that transaction either to fall over or to be fully executed. As at August, our understanding was that transaction was taking place. We had been asked by Grocon and indeed by Oxford whether we would enforce a reliance on parent company guarantors because, in the event that Aqualand stepped in as the developer, we retained the benefit of the parent company guarantor, which was a Grocon guarantor. In the event that that parent company guarantor defaulted, for whatever reason, it would bring down the whole development. So it was important for us to resolve that question. It was important for the commercial parties to resolve that question. And that's what was happening from July through to September.

The CHAIR: At what point did you tell Mr Grollo that he wouldn't get his 1.10 notice?

TIM ROBERTSON: I don't believe I said that to him at all.

The CHAIR: You didn't, but you've told everyone else, "He's never going to get it," for the reasons that it complicates the project or it fucks you all.

TIM ROBERTSON: To be clear—

The CHAIR: Why weren't you up-front with him? Why are you playing this game, as a government official, with these competing commercial interests?

TIM ROBERTSON: Because the expectation of us was to act commercially and in the public interest, and we were doing that on an exclusive and unequivocal basis.

The CHAIR: How did you define the public interest in this case?

TIM ROBERTSON: Moving forward with the project, with Central Barangaroo, with a development partner that was capitalised and able to take the project forward and wasn't effectively a mess within the consortium, which was the status as at August 2019.

The Hon. ANTHONY D'ADAM: Mr Robertson, if it was, as you say, that Grocon was bound to transact the transfer, what harm would have been done if the sightlines resolution notice had been issued earlier? What harm would have been done?

TIM ROBERTSON: There was no contractual obligation on the Government to issue the sightline notice within a specific period of time.

The Hon. ANTHONY D'ADAM: No, but you made a—

TIM ROBERTSON: But that's the point, isn't it? Right? There was a transaction on foot to transfer the development rights. There was no contractual obligation on us to issue the sightlines notice. Doesn't it follow that a sensible thing to do would be to let that transaction be executed?

The Hon. ANTHONY D'ADAM: Why?

TIM ROBERTSON: Because why would you give a sightlines notice to a party who's transacting to leave the project?

The Hon. ANTHONY D'ADAM: They did have a contractual right to that sightlines notice, didn't they, under the CENDA?

TIM ROBERTSON: No. There's a 1.10 notice. There is no contractual obligation on the Government to issue that notice within a specific period of time, nor is there an obligation to issue that 1.10 notice, ultimately.

The Hon. ANTHONY D'ADAM: The problem, I think, with your evidence, Mr Robertson, is that the delay and manipulation does confer a substantial financial benefit on Aqualand. Do you accept that?

TIM ROBERTSON: No.

The Hon. ANTHONY D'ADAM: You don't think Aqualand had a substantial benefit as a consequence of the delay, that the price that ultimately was paid by Aqualand to Grocon was substantially less than had Grocon had the sightlines notice at the time of the transaction being effected?

TIM ROBERTSON: No. I don't accept that characterisation. The benefit that flows to Aqualand was the commercial deal it did with Grocon and Oxford.

The Hon. ANTHONY D'ADAM: But there was transfer of—what was it?— \$75 million, I think, from Aqualand to Grocon for the development rights, wasn't there?

TIM ROBERTSON: Correct.

The Hon. ANTHONY D'ADAM: Is that the figure?

TIM ROBERTSON: Correct. That's my understanding.

The Hon. ANTHONY D'ADAM: Surely, that price is affected by whether the sightlines resolution notice is available. It must've been.

TIM ROBERTSON: No. I don't accept that.

The Hon. ANTHONY D'ADAM: You don't think so. Why don't you think that?

TIM ROBERTSON: No. I just said I don't accept that.

The Hon. ANTHONY D'ADAM: Why not?

TIM ROBERTSON: Because the development rights—

The Hon. ANTHONY D'ADAM: The price had already been set. Is that what you're saying?

TIM ROBERTSON: The development rights at that time were transacted in a way that none of the parties had full knowledge of what the agreement was with Crown and Lendlease, specifically the envelope that was agreed. So this idea that there was this hypothetical bounty to be found when we issued the sightline resolution notice—the sightline resolution notice of itself doesn't contain value. It's not a planning approval. It articulates an envelope under which a development must be developed and pursued through a planning application.

The Hon. ANTHONY D'ADAM: If it had no value, Mr Robertson, why didn't you just issue it when it was first possible to issue it?

TIM ROBERTSON: Because they were in the midst of a commercial transaction. Why would you issue a notice to a party where there is no contractual obligation on the Government to do so, when those commercial parties are in—I'm not sure how that serves the public interest in the slightest.

The Hon. ANTHONY D'ADAM: It looks pretty unorthodox to sit on information that should be available to a party, that they have a contractual right to—

TIM ROBERTSON: I disagree. Where is the contractual right?

The Hon. ANTHONY D'ADAM: Whether they have a contractual right to at a specific time—

TIM ROBERTSON: Where is the contractual right to the 1.10 notice? It doesn't exist.

The Hon. ANTHONY D'ADAM: The CENDA requires—

TIM ROBERTSON: It doesn't exist. Where in the CENDA? It doesn't exist. It doesn't exist.

The Hon. ANTHONY D'ADAM: Then where does the obligation to issue a 1.10 notice come from?

TIM ROBERTSON: It's within the CENDA, but there is no obligation on the Government to issue it. We can not issue that 1.10 notice, and we can go to—I think it was January 2020—and direct the central developer to develop the scheme under mod 6.

The Hon. ANTHONY D'ADAM: So there is a requirement, at some stage, to issue the notice.

TIM ROBERTSON: No, there's not.

The Hon. ANTHONY D'ADAM: It's just the timing is at the discretion of the Government. Isn't that—

TIM ROBERTSON: No, there's not. I'm open for you to tell me where in the contract that obligation exists.

The Hon. ANTHONY D'ADAM: You just told me on evidence.

TIM ROBERTSON: I said that the Government doesn't need to issue the 1.10 notice and then, in January 2020, we direct the developer to develop the scheme under mod 6. That's the CENDA.

The Hon. ANTHONY D'ADAM: Mr Robertson, can I ask you about your CV.

TIM ROBERTSON: Sure.

The Hon. ANTHONY D'ADAM: You started initially as a ministerial adviser for Minister Hazzard, when he was the planning Minister. Is that correct?

TIM ROBERTSON: I started as a planning cadet at a council in 2002.

The Hon. ANTHONY D'ADAM: When did you go and work for Minister Hazzard?

TIM ROBERTSON: In 2011.

The Hon. ANTHONY D'ADAM: From Minister Hazzard's office, you then ended up in Premier Baird's office. Is that right?

TIM ROBERTSON: That's correct.

The Hon. ANTHONY D'ADAM: Then you went to DPC?

TIM ROBERTSON: No—to the BDA in 2017.

The Hon. ANTHONY D'ADAM: From the BDA, when you transitioned to Infrastructure NSW, you remained there?

TIM ROBERTSON: Correct.

The Hon. ANTHONY D'ADAM: Then you ceased work for Infrastructure NSW?

TIM ROBERTSON: Correct.

The Hon. ANTHONY D'ADAM: When was that?

TIM ROBERTSON: On 30 November 2019.

The Hon. ANTHONY D'ADAM: Then where did you go?

TIM ROBERTSON: I had a long holiday and then there was a global pandemic, and I started my own business around March 2020.

The Hon. ANTHONY D'ADAM: Did that business contract with Aqualand?

TIM ROBERTSON: It did.

The Hon. ANTHONY D'ADAM: Did that contractual arrangement involve the Barangaroo development?

TIM ROBERTSON: I'm not sure that that contractual arrangement falls within the terms of reference, Chair?

The Hon. ANTHONY D'ADAM: There's certainly a perceived problem here that you sat on critical information. You had an influence on an outcome that you say didn't favour Aqualand, but other witnesses suggest that it did commercially favour Aqualand. Then, within a short period of time, you ended up in a financial arrangement with Aqualand working on this issue. Do you not see that there's a problem with that?

TIM ROBERTSON: No. I finished up with Infrastructure NSW on 30 November. I had no contact with Aqualand prior to that period about a future role. I had a long holiday, I got engaged and then there was a collapse in the global share market and a pandemic from around February 2020. At that stage, I was unemployed. And then on or around the beginning of March, I spoke with Aqualand and we entered into a contract to provide consulting services. Before I signed that contract—

The CHAIR: Was that on a retainer or—

TIM ROBERTSON: Sorry, Mr Latham, I'll just finish that point. Before I entered into that contract, I consulted with the CEO of Infrastructure NSW and—

The CHAIR: That is Simon Draper?

TIM ROBERTSON: Correct.

The CHAIR: Who had authorised your actions in keeping Grollo in the dark and favouring Aqualand.

TIM ROBERTSON: I don't agree with that—

The CHAIR: You sought approval from him that it was alright to then take money from Aqualand. Is that what you are telling us?

TIM ROBERTSON: I don't agree with the characterisation of events.

The CHAIR: But that is what you are saying.

TIM ROBERTSON: What I did is I spoke to Mr Draper in March 2020.

The CHAIR: What did you expect him to say? Let's guess—he approved the fact that you were going to consult for Aqualand.

TIM ROBERTSON: He didn't see that there was any conflict.

The CHAIR: No, of course he didn't. Let's just clarify this: You agree that there was a strategy to keep Grocon in the dark and not tell them that they would never get their sightlines?

TIM ROBERTSON: No. Our focus was exclusively on the public interest and to take the project forward. Presented with the facts as they were in August, it was in the public interest to allow that transaction to take place.

The CHAIR: But this is you taking it upon yourself—and I assume Mr Draper, as your superior—to define the public interest around the commercial interests of Aqualand and against the commercial interests of Grocon. Who gave you that authority?

TIM ROBERTSON: Mr Latham, there were two separate transactions that were brought to government with Grocon as a party. Whether they did that because of their financial position is really a matter for them. But Grocon came to us on two occasions and said, "Can you consent to this transaction?" All we did in August and September was allow for that transaction to be completed.

The CHAIR: But at no time did you have any intention of telling Mr Grollo that he'd never get his sightlines?

TIM ROBERTSON: He was in the midst of a transaction. If that transaction had fallen over, the complexion would have been different.

The CHAIR: The day after Aqualand took over, they got the sightlines, yes?

TIM ROBERTSON: Correct.

The CHAIR: What's your role at Aqualand now? Are you on a retainer with them?

TIM ROBERTSON: I think that falls foul of the terms of reference of the Committee, Mr Chair.

The Hon. ANTHONY D'ADAM: We'll make a judgement about that. That's not your role as a witness.

The CHAIR: Part of the Committee's terms of reference is to explore conflicts of interests. We would like to know if you are on a retainer or if you do specific work for them.

TIM ROBERTSON: Sure. My agreement with Aqualand is subject to a non-disclosure agreement. I would like to consult with them and then take that on notice.

The Hon. ANTHONY D'ADAM: That doesn't apply here.

TIM ROBERTSON: I will take that question on notice and provide a written answer.

The Hon. CHRIS RATH: Point of order: The witness can take it on notice and answer the question as he sees fit.

The Hon. ANTHONY D'ADAM: He can take it on notice, but he can't claim the non-disclosure agreement. He is obliged to answer the questions.

TIM ROBERTSON: I am happy to take it on notice.

The CHAIR: Can I further ask, at all stages in this relationship with Grocon and Aqualand, this was with the approval of Mr Draper?

TIM ROBERTSON: Yes.

The CHAIR: To your knowledge, did it also go up to ministerial level to deploy this strategy?

TIM ROBERTSON: I'm not entirely certain, Mr Latham. Certainly, there were briefing notes and Cabinet submissions that naturally went to the Premier or to a Cabinet committee. But in terms of all the communications—

The Hon. ANTHONY D'ADAM: Did you meet with Mr Reardon on this issue?

TIM ROBERTSON: I seem to remember his name being on a couple of briefing notes and certainly the 23 August briefing note that you mentioned a couple of times. His name is on that one.

The Hon. ANTHONY D'ADAM: Did you meet with him?

TIM ROBERTSON: No, not with Infrastructure NSW but certainly with the Barangaroo Delivery Authority through 2018. But I don't recall meeting him in 2019.

The Hon. ANTHONY D'ADAM: So you had the impression that what you were doing had the approval of Mr Draper?

TIM ROBERTSON: Correct.

The CHAIR: And the Minister, Cabinet committees and the Premier?

TIM ROBERTSON: That was our working assumption, correct.

The CHAIR: And Mr Reardon? The senior levels of government were supportive of your strategy.

TIM ROBERTSON: Mr Latham, we developed briefing notes, provided briefing material. It wasn't my responsibility to brief either Mr Reardon or the relevant Ministers.

The CHAIR: But it was your impression, in acting this way, that you had the support of senior levels of government?

TIM ROBERTSON: Correct.

The Hon. ANTHONY D'ADAM: Were you operating under explicit instructions or did you have a high degree of discretion in terms of the strategy?

TIM ROBERTSON: In respect of which matters, Mr D'Adam?

The Hon. ANTHONY D'ADAM: In terms of the decision to hold the sightlines notice until after the transaction between Grocon and Aqualand was given effect to?

TIM ROBERTSON: Certainly there was a briefing note—and you've referenced it a couple of times—which characterises the transaction at that point in time. I'm not sure if it went to the Premier, but it certainly asks the Secretary of the Department of Premier and Cabinet to note that there was a transaction on foot and that we had been asked to confirm whether we'd be relying on the parent company guarantors. That was the operative question in terms of the consent that was required, but the other matters were simply for noting.

The CHAIR: The strategy to get Grocon out and Aqualand in, how do you think that is going today?

TIM ROBERTSON: Sorry, I don't understand your question.

The CHAIR: Well, you had a strategy; you defined it in the public interest—seemingly unilaterally with some support up the ladder—that it would be better for the people in New South Wales if Grocon went out and Aqualand went in. How do you explain the hole in the ground down there that has pretty well ruined the whole Barangaroo development?

TIM ROBERTSON: First of all, I don't agree with the way you've characterised the events. But as for Barangaroo, these are complex urban renewal projects—wickedly complex. Even on a global scale, Barangaroo is much more complex because effectively you're building on old marine land. There is a significant remediation task that's involved. There's a complex stakeholder and political overlay. But even with that considered, the project is going really well, and I think that these sorts of urban renewal—

The CHAIR: It's going really well? Have you been down there lately? I walked down there this morning—

TIM ROBERTSON: I'll just finish my answer, if you don't mind. These projects generally take 20 to 25 years. If you work back from 2004 to where we are now, it's not out of character with other large-scale complex urban renewal projects globally.

The CHAIR: So you've got no problem with the failure of the strategy to bring forward any development at Central Barangaroo and actually finish the thing, fill the hole in the ground, take down the hoardings and give it actual urban renewal as opposed to the appearance of a ghost town?

TIM ROBERTSON: I can't speak to what's happened within government since I left in 2019.

The CHAIR: You can't, but this is your strategy that you pursued—keeping Grollo in the dark, getting Grocon out, bringing Aqualand in. You're not taking any responsibility for what's down there today.

TIM ROBERTSON: You keep repeating those points. I don't accept the characterisation. But certainly there was a view in 2019 that, given those parties were bound to transact and had asked for our consent, I should say, whether or not we would enforce the waiver, there was a capacity to move the project forward once those matters had been resolved.

The CHAIR: Is Aqualand your only client for Robertson Advisory?

TIM ROBERTSON: No.

The CHAIR: How many other clients have you got?

TIM ROBERTSON: I'm not sure that that is within the terms of reference.

The CHAIR: Is it fair to say that Aqualand is your main source of income today?

TIM ROBERTSON: No.

The Hon. ANTHONY D'ADAM: You said that the strategy around withholding the sightlines notice—

TIM ROBERTSON: No, I didn't say anything about withholding the—they're your words, Mr D'Adam.

The CHAIR: They're your words in WhatsApp messages, time after time.

TIM ROBERTSON: No.

The Hon. ANTHONY D'ADAM: Okay, let me reframe it. The issue around the approach to the issuing of the 1.10 notice—the proposal to hold the 1.10 notice until after the transaction was effected—was contained in a briefing note that went to the Premier. Sorry, that is my first question: Did it go to the Premier?

TIM ROBERTSON: I can't recall, sorry.

The Hon. ANTHONY D'ADAM: Did it go to Mr Reardon?

TIM ROBERTSON: To my knowledge, yes.

The Hon. ANTHONY D'ADAM: So it was signed off by Mr Reardon?

TIM ROBERTSON: The three of us that wrote the document—

The Hon. ANTHONY D'ADAM: Surely you don't act until you have the sign-off, though?

TIM ROBERTSON: The three of us wrote the briefing note and signed it, and then it's taken out of my hands. But we were operating on the clear assumption that it had been signed, yes.

The Hon. ANTHONY D'ADAM: You were "operating on the clear assumption"? So you never actually got confirmation that the strategy was endorsed at a higher level?

TIM ROBERTSON: I actually don't remember the specifics, but certainly the CEO of Infrastructure NSW was made aware. I can't remember being specifically told that Mr Reardon had said yes or no, but we were operating on that basis.

The Hon. ADAM SEARLE: Is it fair to say that you proceeded on the assumption that it had been approved because the head of Infrastructure NSW didn't tell you any differently, given you don't have a clear recollection?

TIM ROBERTSON: I think that's fair.

The Hon. ANTHONY D'ADAM: So you were never operating on explicit instructions from Mr Reardon. You were providing advice up the chain, but nothing specific came down the chain from Mr Reardon to you to say, "This is how we should proceed".

TIM ROBERTSON: Mr D'Adam, it's important to unpack that briefing note in terms of what it actually asks consent for. I haven't seen the briefing note for a while. But, from memory, it asks the Government to note a number of factors, one of which is that the parties have entered into a transaction and are then bound to transact. From memory, it asks Mr Reardon and Mr Draper to confirm that the Government will issue a waiver on reliance on the guarantors. It's not asking for consent for a transaction. The only operative question is will the Government enforce the reliance on the guarantors.

The Hon. ANTHONY D'ADAM: Okay, so there was nothing specific about the 1.10 notice?

TIM ROBERTSON: Not from my recollection.

The Hon. ANTHONY D'ADAM: How did you arrive at the view that you had approval to not issue the 110 notice until after the transaction had been given effect to?

TIM ROBERTSON: From memory, the briefing note mentions that the sightline negotiations had been concluded on 19 August and that there was a very clear focus—

The Hon. ANTHONY D'ADAM: When exactly did the briefing go up, by the way?

TIM ROBERTSON: I think it was dated later September; I don't remember the specific date. It may have been the twentieth, twenty-second, twenty-third. It was post this—

The Hon. ANTHONY D'ADAM: So well after the deed had been executed.

TIM ROBERTSON: The deed was executed on 19 August, yes, so it was a couple of days after.

The Hon. ANTHONY D'ADAM: A couple of days—so in August, not September?

TIM ROBERTSON: Correct.

The Hon. ANTHONY D'ADAM: So you'd determined to pursue this strategy. You put forward this briefing note. It wasn't specific about authorising the approach in relation to the section 1.10 notice. You assumed that you had the discretion to do that. Mr Draper was aware?

TIM ROBERTSON: I just don't remember whether or not the briefing note contained a specific provision in relation to the 1.10 notice or whether that was the subject of a further briefing.

The Hon. ANTHONY D'ADAM: Did you have an explicit discussion with Mr Draper about the approach to the 110 notice?

TIM ROBERTSON: Yes.

The CHAIR: In terms of the public interest, your briefing note ends with the extraordinary statement that Grocon may bring a claim against Infrastructure NSW in relation to costs and damages, and the project team considers that providing an up-front commitment to a process of mediation or arbitration is not appropriate. Should Grocon later decide to bring a claim, the best approach can be considered in light of any claim presented. You were basically resigning yourself to the inevitability of Grocon suing Infrastructure NSW.

TIM ROBERTSON: They had threatened to do so, from memory, from the tail end of about 2018, and Daniel Grollo had explicitly said that he would bring a claim against the Government through 2019. It wasn't a surprise to anybody for that to be in the briefing note.

The CHAIR: How is that in the public interest?

TIM ROBERTSON: How is what in the public interest?

The CHAIR: Given what we know about the WhatsApp messages and the strategy to get Grocon out and bring in Aqualand, no-one would think it is a coincidence that Aqualand got the sightlines 24 hours later. You were conceding the inevitability that Grocon would sue Infrastructure NSW—effectively, the New South Wales taxpayer. While I'm not here to forecast the result of the case, you'd have to think they overwhelmingly have a good claim for taxpayers' money.

TIM ROBERTSON: I'm not going to comment on the court case.

The CHAIR: So you were happy to just leave that to the taxpayer?

TIM ROBERTSON: What I was doing was relaying statements by Mr Grollo that he would bring a claim, and he's done so.

The CHAIR: No, you're not saying that in this memo.

TIM ROBERTSON: Because at that time he hadn't brought a claim, Mr Latham.

The CHAIR: Yes, I know. But there's nothing in the memo that states, "Mr Grollo has threatened us". What you're saying is that it may happen and, should they decide later on, the best approach can be considered in light of any claim. Why wouldn't you seek mediation or arbitration to ease the burden on the taxpayer?

TIM ROBERTSON: I think that consideration was debated.

The CHAIR: Debated where?

TIM ROBERTSON: Within government.

The CHAIR: By whom?

TIM ROBERTSON: Within the Infrastructure NSW team.

The CHAIR: Right, so this was a strategy approved by Mr Draper?

TIM ROBERTSON: Correct.

The CHAIR: And Mr Reardon?

TIM ROBERTSON: Correct.

The CHAIR: We'd just roll the dice and whatever Grocon does, the taxpayer can fund the—

TIM ROBERTSON: Commercial parties bring litigation often. It's not uncommon in large, complex projects for there to be litigation.

The CHAIR: Do you look back on this as an absolute fiasco that will cost the taxpayer a lot?

TIM ROBERTSON: No.

The CHAIR: The Government decided to put the metro there, to increase the population densities and to spark and trigger the sightline dispute—and then to keep Grocon in the dark, transfer to Aqualand and just cop Aqualand's court action on the chin, knowing that you, Mr Draper and Mr Reardon don't fund it. The taxpayer will fund the liability. Meanwhile, Aqualand have sought an overdevelopment, rejected by the New South Wales Government, and the hole in the ground and the disgraceful state of Barangaroo today might stay there for another 10 years. Aren't you ashamed of what you've done?

TIM ROBERTSON: No.

The CHAIR: Are there any other questions?

The Hon. ANTHONY D'ADAM: Mr Robertson, what role did you play in the negotiations with the Crown and Lendlease around the sightlines resolutions deed?

TIM ROBERTSON: I was involved in the negotiations.

The Hon. ANTHONY D'ADAM: You were involved in the negotiations. What was the reasoning behind the agreement in relation to this 8,000 square metres of additional floor space?

TIM ROBERTSON: So the Committee's aware that Crown and Lendlease had won the primary case in relation to the sightlines.

The Hon. ANTHONY D'ADAM: Yes.

TIM ROBERTSON: And there was a decision from Government whether or not to appeal. It was a decision by Government to attempt to secure a settlement with Crown and Lendlease to avoid further litigation. As part of that, those negotiations, ultimately a resolution was agreed. Because Crown and Lendlease had won their primary case, if you weren't going to appeal that primary judgement, they may be entitled to bring a damages claim against the Government. Certainly, we were aware—

The Hon. ANTHONY D'ADAM: Had that been elaborated on? Had Crown put a position to Government prior to the consideration about the appeal—

TIM ROBERTSON: I can't remember if—

The Hon. ANTHONY D'ADAM: —in terms of the extent of the damages that they would receive?

TIM ROBERTSON: I can't remember formally whether there were representations to Government. Certainly, we were aware that Lendlease were exploring bringing a claim, but the focus—at that point in time I think these negotiations started in either April or May. The appeal was still on. It still remained open to the Government to pursue the appeal—I think in August the hearing was set down for—but there was a clear preference from Government to seek and secure a negotiated outcome.

The Hon. ANTHONY D'ADAM: Was that a decision of the Cabinet?

TIM ROBERTSON: I'm not sure.

The Hon. ANTHONY D'ADAM: How high did it go, do you—

TIM ROBERTSON: I'm not sure. I don't know.

The Hon. ANTHONY D'ADAM: Was there a process of assessing the value that was assigned to Crown and Lendlease in the deed? How was that quantified in terms of—

TIM ROBERTSON: So the process was it was a sort of intra-government committee that was established, which involved officers from Treasury, DPC, Infrastructure NSW to my recollection. That committee developed I suppose what you call negotiating parameters and modelled a range of those parameters, knowing what we knew about Crown and Lendlease and their commercial intentions. As at 2019, the Government, INSW and its predecessor organisation had been involved in these negotiations with Crown and Lendlease coming up on three years. So I think it is fair to say there was a reasonable level of knowledge about different sort of commercial drivers for the projects, and certainly when Lendlease had made representations that the sightlines—the delay brought by the sightline negotiations had caused them significant commercial harm, particularly in relation to the delay in the delivery of their residential towers. So we were certainly aware that there was the potential for Lendlease and Crown to bring damages claims against the Government.

The Hon. ANTHONY D'ADAM: How surprising—I mean, there's a range of concessions in the deed. They must've been costed by Treasury or Infrastructure NSW.

TIM ROBERTSON: They were, yes. To my recollection, they were.

The Hon. ANTHONY D'ADAM: So, in terms of the concession on floor space, what value was assigned to that? Do you recall that?

TIM ROBERTSON: I don't know that there was necessarily a view taken as to commercial value to Lendlease. I think there may have been estimates provided but obviously there the value there is highly sensitive to what's happening in the residential market and timing, and so forth. But I think I've seen estimates put forward by Grocon that were around—

The Hon. ANTHONY D'ADAM: Three hundred million.

TIM ROBERTSON: —\$300 million. That is probably ballpark where that would have landed.

The Hon. ANTHONY D'ADAM: But the rest of the document is premised on a sort of \$80 million package, so—

TIM ROBERTSON: Yes. So the \$80 million is effectively a flaw on the settlement. So the \$300 million has been estimated in terms of the value of that share was at risk because you needed to go through an independent planning process to secure that 8,000.

The Hon. ANTHONY D'ADAM: Why not just cut the deal for \$80 million?

TIM ROBERTSON: Because the upside of the deal was for Lendlease more and I think there was a view that the value could be contained within the project rather than being a call on the budget that might have been mainly your capital that could have gone elsewhere—to hospitals, a school or wherever.

The Hon. ANTHONY D'ADAM: So rather than pay \$80 million out of the budget, you give Lendlease \$300 million. That's the calculation that was made by Treasury, was it?

TIM ROBERTSON: Well, we give them 8,000 square metres and the value that they accrue through the planning process, yes, goes to them. That's correct.

The CHAIR: Mr Robertson, in anticipating that Grocon would sue, what legal advice did you take as to the prospects of defending that action and defending the public interest and finances of the New South Wales taxpayer?

TIM ROBERTSON: That's a good question, Mr Latham. I think the first tentative claim came from Grocon late in 2018. From memory, there was advice on those prospects at that point.

The CHAIR: Where did that advice come from?

TIM ROBERTSON: It was from the Government's lawyers at the time.

The CHAIR: What did they say?

TIM ROBERTSON: I can't remember the specifics. As for 2019, I don't remember whether there was advice sought. It's highly likely that it was, but I don't remember specifically whether there was any advice as to prospects.

The CHAIR: At no stage did you have advice that you had a defensible position against the Grocon action that was inevitable.

TIM ROBERTSON: I can't recall specifically. It's highly likely that we did secure advice. I just can't remember.

The CHAIR: You can't point to any advice that your position was defensible in the courts.

TIM ROBERTSON: I just can't recall, I'm afraid.

The CHAIR: Shouldn't you be able to recall? Wouldn't you just, as part of your job, do the due diligence of getting advice as to whether or not the action is defensible. The taxpayer could be exposed massively. Isn't that something that would be factored into public interest considerations?

TIM ROBERTSON: It is greater than three years ago. So I don't remember all of the specifics. It does strike me that we may have secured advice.

The Hon. ANTHONY D'ADAM: Were you a senior executive at Infrastructure NSW?

TIM ROBERTSON: I was.

The Hon. ANTHONY D'ADAM: Was there not some restraint in your contract in relation to work after exiting Infrastructure NSW?

TIM ROBERTSON: I don't believe there was a specific constraint. That's why I consulted with Mr Draper before starting any consulting work with Aqualand.

The Hon. ANTHONY D'ADAM: Right, I see. So there was nothing in your contract that precluded you from going to work for one of the beneficiaries of the transaction?

TIM ROBERTSON: I can't recall.

The Hon. ANTHONY D'ADAM: Can I ask about your interactions with Warwick Smith? Did you interact with Warwick over the course of this?

TIM ROBERTSON: No. The only meeting I can remember being in with him was with the then chair of the BDA, Mr Terry Moran, AC. That would have been, I think, in the early part of 2019.

The Hon. ANTHONY D'ADAM: In the early part of 2019. Who was your contact point at Aqualand?

TIM ROBERTSON: Before 2018, it was Ray Karlake or the managing director, Mr Lin. And from about 2018, it was John Carfi, the CEO.

The Hon. ANTHONY D'ADAM: It has been suggested that contractual arrangements existed between Infrastructure NSW and Grocon and that any negotiations over the dimensions of those contractual relationships should have been channelled through Grocon. What do you say to that proposal? Obviously, these other players to which Grocon had, effectively, subcontracted the arrangements—

TIM ROBERTSON: Sure.

The Hon. ANTHONY D'ADAM: But they were the principal, and Infrastructure NSW had the contractual relationship with Grocon, not with these other parties.

TIM ROBERTSON: Infrastructure NSW has a contractual relationship with the other parties through the multiparty invested deed, or the MPID. So there is a contractual relationship.

The Hon. ANTHONY D'ADAM: So you say that gives you open slather to negotiate alternative arrangements that might be to the disadvantage of one of those contractual parties.

TIM ROBERTSON: That is not what I said.

The CHAIR: Any other questions to the witness? If not, thanks very much, Mr Robertson, for your participation. We'll write up our report accordingly and make recommendations. We thank you for your attendance.

(The witness withdrew.)

(Short adjournment)

Mr SIMON DRAPER, Chief Executive, Infrastructure NSW, affirmed and examined

The CHAIR: Do you wish to make a short opening statement?

SIMON DRAPER: Yes, I will. I will try to be brief. It is just over a page. It is not a repeat of our submission and it is on matters directly relevant to the questions you might want to be asking. Thank you for the opportunity to assist the Committee's inquiry. Infrastructure NSW has made submissions to the inquiry which are publicly available and which I will resist restating here. However, I do wish to mention briefly a small number of important matters. Infrastructure NSW's functions in relation to the Barangaroo precinct include the orderly and economic development of the precinct, including the public domain. In all dealings relevant to Barangaroo, Infrastructure NSW has focused on delivering value to New South Wales by progressing the development in accordance with government approvals and with the commercial agreements with our development partners, at all times managing public money as carefully as possible.

Two high-profile and relevant examples of this were the settlement of the sightlines issues at Barangaroo South with Lendlease and Crown, and our very limited role in relation to the exit of Grocon from the Central Barangaroo development. The settlement of the sightlines issues at Barangaroo South occurred in August 2019 in accordance with government approvals and was informed by detailed legal and accounting advice. The settlement achieved certainty in the context of a Supreme Court judgement against the Government for which a substantial potential damages liability had been assessed. It avoided large outright payments to Lendlease and Crown and made no promises as to planning decisions. These were for the Department of Planning or the Minister for Planning. The State did not sell sightlines to Grocon.

The tender process for Central Barangaroo revealed the sightlines clauses with Lendlease and Crown to all bidders. The Central Barangaroo Development Agreement included express acknowledgement by the developer of the sightlines clauses and contained extensive provisions to address the uncertainty created by those clauses, including rights retained by the Barangaroo Delivery Authority to require compliance with current planning controls at Central Barangaroo and provisions to adjust the development rights fee according to the development envelope ultimately achievable. Aqualand, not Grocon, funded the upfront payment of the development rights fee. Grocon's exit from the Central Barangaroo development in September 2019 was initiated and pursued by Grocon. The transaction was actually its third attempt to sell its development rights and was in the context of its well-publicised financial difficulties on other projects.

The transfer of development rights to Aqualand occurred under pre-agreed consortium arrangements, free of any bias. Infrastructure NSW in fact responded to requests from the parties, including Grocon, supported Grocon's proposal and took steps to assist it to complete the transaction. Infrastructure NSW was not obliged to give Grocon a sightlines resolution notice in August 2019 or at all. In any event, no such notice could have been issued before the actual resolution of the negotiations with Lendlease and Crown, and by that stage Grocon was not asking for a sightlines notice; it was asking for Infrastructure NSW's assistance to sell to Aqualand. There was no delay by the Government at any time. The Central Barangaroo development agreement expressly allowed for negotiations with Lendlease and Crown to take until January 2020, and the negotiations were resolved within that time frame. A sightlines notice, when issued, is not a gift to a developer. It imposed immediate obligations on the developer to incur additional costs within defined time frames—something which Grocon was in no position to do because of its financial situation.

In the context of a Supreme Court security for costs application in August 2020, it was revealed that Grocon actually profited from its involvement in Central Barangaroo, nearly doubling its investment in only a few years. Grocon does not claim loss at Central Barangaroo; it claims only that it could have made greater profits on a project that it wanted to exit. Grocon was unable to convince the court that the Central Barangaroo project materially contributed to its financial issues. The court noted the existence of liabilities unrelated to Central Barangaroo and that Grocon's financial difficulties dated back as early as mid-2017. Grocon subsequently appointed administrators to a large number of its companies in November 2020. The administrators found that Grocon was unable to pay its debts and had likely been insolvent for over 18 months—well before its exit from Central Barangaroo.

Finally, I wish to address two matters of procedure. Firstly, as the Committee is aware, Infrastructure NSW is presently involved in Supreme Court litigation with Grocon. I will, of course, seek to answer questions to the best of my ability, but if any question is directed to matters yet to be determined by the court, I may alert the member to that fact, so as to allow the member and the Committee to determine whether to press the question. Secondly, I commenced with Infrastructure NSW in April 2019, so my direct knowledge of events prior to that time is limited. I will seek to answer questions where I have direct knowledge or have sufficient information, but

there may be some matters within the Committee's terms of reference on which I cannot provide any information. I look forward to assisting with your questions.¹

The CHAIR: Thank you very much, Mr Draper. Could I start by asking do you agree with Mr Robertson's depiction that everything he did in this matter was with your consent and approval?

SIMON DRAPER: The decisions that were made were approved not only by me but by the New South Wales Cabinet, and all of the decisions made were done with that authority. Many of the matters which you've asked Mr Robertson about, I wasn't involved in; I wasn't party to some of those communications that you've asked him about. But all of the primary decisions—entering into the Deed of Sight Lines Resolution; allowing Grocon to complete the transaction, which it had initiated and supporting it to do so—yes, he did that with our approval.

The CHAIR: Who was the main Cabinet Minister that you reported to and sought these approvals?

SIMON DRAPER: Our Minister at the time was the Premier.

The CHAIR: You mentioned earlier on you're under no obligation to issue a sightline notice to Grocon. Why then did you issue it to Aqualand a day after Grocon got out?

SIMON DRAPER: We're under no obligation to issue it, but at a point at which it is productive to issue to a developer with responsibility and who is capable of undertaking those expenditures and that work that I described earlier, it was worthwhile doing so.

The CHAIR: So it became a discretionary decision to do it for Aqualand, but you made a discretionary decision that Grocon wasn't a suitable participant at the site?

SIMON DRAPER: No, it was a discretionary decision to do it at a time when a developer could have done something with it and had the financial capability and will to proceed with the development.

The CHAIR: Did you take any advice from financial advisers about this strategy that Grocon wasn't suitable because of its financial position but Aqualand was? How did you make that assessment?

SIMON DRAPER: There was no strategy, Mr Latham. There was no strategy at all in relation to Grocon's participation. At all times Infrastructure NSW was responding to requests by Grocon. This, as I say, was the third attempt on their part to exit with a profit from the development. Their first attempt was in late 2018. That did not proceed because it couldn't get agreement from one of its consortium partners. There was another attempt in February 2019, which ran through to about May 2019. Again, that fell over because they couldn't get the consent of one of their consortium partners. I should say the price that they had agreed to in that earlier transaction was the same as they received in September 2019. So the event that happened in between July and September 2019 was at Grocon's initiative and the other parties involved.

Infrastructure NSW had no role in that transaction other than a request that came to us on, I think, 25 July for us to provide a confirmation that we would not rely on a guarantor. That transaction could have proceeded without us, and they told us they could proceed without us, but they made that request. Ultimately, we granted that confirmation. There was no strategy that we had adopted to remove Grocon from the development.

The CHAIR: At each of these steps that you've described, did you brief the Premier, Gladys Berejiklian, on what you were doing?

SIMON DRAPER: Yes, we briefed the Premier. We briefed the Department of Premier and Cabinet and Treasury. We had a steering committee that oversaw the whole process, which involved both the Department of Premier and Cabinet and Treasury as well as ourselves.

The CHAIR: At any stage did the Premier raise concerns about what you were doing?

SIMON DRAPER: The Premier didn't raise concerns. We hadn't reached the final decision on whether to grant the confirmation that they sought. As I say, they could've proceeded with the transaction without us in any case. The Premier delegated the decision on whether to grant that confirmation to myself and the secretary of DPC, Tim Reardon.

The CHAIR: When did she do that?

¹ Mr Simon Draper provided a copy of his original opening statement to the committee on 1 December 2022, which is available [here](#).

SIMON DRAPER: I believe there was a memo that went to her in early August. I can check my records in a moment. I believe it was in early August. Following that briefing, the delegation was provided to us.

The CHAIR: If you can take that on notice and provide a copy of the note that went to the Premier seeking the delegation, that would be very helpful to the Committee. At no stage did the Premier say, "One of our basic propositions of good government in New South Wales is that we're commercially neutral. We don't pick winners. We don't get involved in commercial contests, deciding which company is better placed to fulfil the brief than any other. We let the market sort that out"? She didn't express any concern about picking winners?

SIMON DRAPER: Mr Latham, we were commercially neutral all through this. As I've told you, we responded to requests from the parties. I have to say, I don't think the BDA prior to my time or Infrastructure NSW during the time I was there could've been any more helpful to Grocon. They had sought the comfort letter in 2018, which you've discussed earlier today. That comfort letter was an act of discretion on the part of the BDA at the request of Grocon and Oxford. It was for the benefit of both of those parties. The BDA was under no obligation to do it, but they did it. They consented to the transaction that Grocon initiated in February 2019 and provided all of the necessary consents that were required to help Grocon get out of its dire financial situation. Then, in August 2019 we again agreed to something we had no obligation to do. We agreed to confirm that we wouldn't rely on that guarantor. I don't know how we could've been more helpful to them. If anything, I thought that perhaps when you started this, you were concerned that we had been biased in favour of Grocon, because they got a pretty good run.

The CHAIR: If you were commercially neutral, why did Mr Robertson, with a strategy that you've said was endorsed through the organisation, write in this WhatsApp message on 10 May 2019 that "if we're forced to give a 1.10 notice to Daniel, then we'll all be fucked"?

SIMON DRAPER: I have no idea. I've never seen that message. I wasn't a recipient, and I wasn't party to it. At that time—

The CHAIR: Does that sound commercially neutral to you?

SIMON DRAPER: Sorry, in May 2019 we weren't even aware of this transaction that you say we contrived. We weren't even aware that transaction existed. It was the previous transaction that was still on foot at that time. That was the transaction that Grocon and Aqualand had approached us about in February 2019. They had reached agreement and sought our consent to do that transaction. That was the transaction that was on foot in May 2019.

The CHAIR: Does that language sound commercially neutral to you?

SIMON DRAPER: I've never even seen that. I've only heard you read it out at these hearings. I would take on board any comments that Mr Robertson and the other parties to that exchange would have before I could draw a conclusion.

The Hon. ANTHONY D'ADAM: Does it concern you that one of your employees was corresponding with stakeholders using an encrypted application? Why were they doing that?

SIMON DRAPER: I didn't even know they were using an encrypted application.

The Hon. ANTHONY D'ADAM: Does it concern you that that was the case?

SIMON DRAPER: I don't know that that's even true.

The Hon. ANTHONY D'ADAM: It's quite clear. They're using WhatsApp.

The CHAIR: We've got it written on the back of these. The other side of the conversation was with Aqualand and Oxford to keep Grocon in the dark.

SIMON DRAPER: Is that what you describe as an encrypted—

The Hon. ADAM SEARLE: WhatsApp is known to be encrypted, yes.

SIMON DRAPER: I mean, I don't know if—

The Hon. CHRIS RATH: Using WhatsApp is a pretty routine form of communication. It's hardly bizarre.

SIMON DRAPER: It's not spook stuff, is it?

The CHAIR: I've got pages of them here, and the other side of the conversation was collaborating with Aqualand and Oxford against the interests of Grocon.

The Hon. CHRIS RATH: It's not the CIA.

The CHAIR: Is this how you'd normally do business?

The Hon. ANTHONY D'ADAM: Why don't you email and create a record?

SIMON DRAPER: To the Deputy Chair's question, I don't think I used WhatsApp myself at that time.

The Hon. ANTHONY D'ADAM: It's a bit unusual, isn't it?

SIMON DRAPER: But we don't use WhatsApp or Instagram messaging or Snapchat or TikTok to communicate commercially. We use legal correspondence and emails. That's the way I operate.

The Hon. ANTHONY D'ADAM: That's right. So it's odd, isn't it, that one of your employees would be engaging in those kinds of negotiations rather than using the standard forms of corresponding, which create records that are obviously available. They're using an encrypted application. Doesn't that concern you that that might be the motivation for using that way of communicating?

SIMON DRAPER: My own practice would be that for anything of any substance I would use formal correspondence, which would be by way of old-fashioned letters or emails, which are also recognised as an acceptable form of transaction. I understand that a number of those commercial parties—Mr Grollo, people from Oxford Properties and others—use those mediums. That's a matter for them, but it's not something I do.

The CHAIR: But your Mr Robertson did.

SIMON DRAPER: I understand that he did that with those parties, yes.

The CHAIR: Do you concede that people normally usually use encrypted messaging devices to maintain secrecy as to what's going on?

SIMON DRAPER: Again, I know nothing about encrypted messaging devices. I think most people commonly in the public, to whom we're all answerable, would understand that WhatsApp is a pretty common form of communication.

The Hon. ANTHONY D'ADAM: Not in terms of public administration, I wouldn't have thought, Mr Draper.

The CHAIR: Mr Draper, are you aware of any legal advice responding to Mr Robertson's stated acceptance that Grocon would sue New South Wales, as it is doing, and whether or not the action was defensible, before your organisation went down this path virtually inviting the legal action?

SIMON DRAPER: Chair, on that point, I might just question whether—you're asking me to express an opinion about the worthiness of—

The CHAIR: Not about what the advice said. But did you take advice?

SIMON DRAPER: If you're asking me—we do have legal advisers in relation—

The CHAIR: At any stage, did you think what you were doing was defensible?

SIMON DRAPER: Yes. So the answer is yes, we have legal advice in relation to the litigation we've got with Grocon.

The CHAIR: In picking a winner for Aqualand and Oxford—

SIMON DRAPER: No, we did not pick a winner. I reject that.

The CHAIR: In issuing the sightlines notice to Aqualand a day after it took over from Grocon, how do you now look at the scene at Barangaroo, with Central Barangaroo hoarded up, a massive hole in the ground, the taxpayer funding, a metro station that's not servicing anyone in particular, which may well stay like that for another decade?

SIMON DRAPER: That's not factually correct. South Barangaroo is largely complete. I know you don't like it, but there's a fantastic Reserve that most other people seem to really enjoy—a coastal Reserve with a natural landscape there. It's serviced by Aboriginal visitor guides, who take many groups around there, who all love it—school groups et cetera. The foreshore is continuous all the way from Darling Harbour right round to Walsh Bay. There's a metro station being built there. It's not unused. It's being constructed—that line is not finished until 2024—so you wouldn't expect to see anything there today, given that the whole development is premised on the idea of a metro station and that metro station isn't scheduled to be completed for another couple of years.

The Hon. ANTHONY D'ADAM: Mr Draper, you said earlier in your opening statement that all the decisions, including entering into the Deed of Sight Lines Resolution, went to ERC and were supported by legal and accounting advice. Is that right?

SIMON DRAPER: That's correct.

The Hon. ANTHONY D'ADAM: I'm not sure whether the witness has the *Deed of Sight Lines Resolution* before him.

SIMON DRAPER: I do have a copy here, thank you.

The Hon. ANTHONY D'ADAM: Can I ask you about clause 5.3 (a) on page 15, where it appears that Infrastructure NSW effectively indemnifies Crown and Lendlease in relation to "all risks of obtaining the consent of the Central Developer".

SIMON DRAPER: Yes.

The Hon. ANTHONY D'ADAM: So—

SIMON DRAPER: Go on.

The Hon. ANTHONY D'ADAM: Can I just clarify? When you obtained accounting advice in terms of the implications of entering into this deed, how much did you quantify that risk to be?

SIMON DRAPER: First of all, I'll just say that's not an indemnity. There is an indemnity further down, a very limited indemnity. I know that other parties have referred to us indemnifying Crown and Lendlease. That's actually 5.3 (c), which is an indemnity only in very conditional circumstances for legal costs and defending an action.

The Hon. ANTHONY D'ADAM: What is the work that 5.3 (a) does?

SIMON DRAPER: So 5.3 (a) means that it's at our risk that the Central developer both accepts and gets the consents they need. That's what that refers to. It's nothing to do with indemnifying anybody. I should say, to answer your question more fully, all of the downside risks were considered as part of the analysis that was presented to Cabinet.

The Hon. ANTHONY D'ADAM: Can you provide the accounting advice to this Committee?

SIMON DRAPER: All of that went to ERC in the first half of August 2019, so all of that is Cabinet in confidence.

The Hon. ADAM SEARLE: Did this deed itself go to Cabinet?

SIMON DRAPER: The deed did not but all the essential terms did, or we got approval for all of the essential terms of that deed.

The Hon. ANTHONY D'ADAM: Earlier I asked a question about the conflict that's generated by a Minister who sits in the Cabinet being the consent authority, but also signing up to endorsing an agreement that binds Infrastructure NSW in terms of submitting certain planning approvals that confer substantial benefits on Crown and Lendlease in terms of additional square metreage. Do you have any comments in relation to that issue?

SIMON DRAPER: Which Minister are you referring to?

The Hon. ANTHONY D'ADAM: The planning Minister.

SIMON DRAPER: The planning Minister is not a member of ERC, or wasn't at that time.

The Hon. ANTHONY D'ADAM: They're bound by Cabinet decisions, aren't they?

SIMON DRAPER: No. As a matter of fact, the convention is that planning Ministers are not bound by Cabinet decisions. The planning Minister must be free to make an assessment in their own right under the EP&A Act. So they are not bound by Cabinet decisions. We make thousands and thousands of decisions that go through Cabinet for Government to commit funds to things, many of which are subject to planning approvals under the State significant infrastructure or development regimes. None of those bind the planning Minister. If you are looking for an example where the planning Minister clearly feels unbound by those decisions, and certainly by these terms, you only have to look at his reaction to the application for Mod 9 that we have on foot where he has written to us as the applicant and said that he'd like us to revisit that proposal.

The Hon. ANTHONY D'ADAM: So is it your evidence then that you aren't able to provide the Committee with information about the costings of each of the commitments that are given to Crown and Lendlease in this deed?

SIMON DRAPER: I can try to provide it to you without providing all of the details that went to Cabinet. I can try to help the Committee as much as I can.

The Hon. ANTHONY D'ADAM: We asked Mr Robertson earlier about the quantification of the value of the additional 8,000 square metres of GFA for block 4, the Renzo Piano additional floors. What was your understanding of how much that was worth to Lendlease?

SIMON DRAPER: That's not something that was relevant to us. What we were analysing was what is the likely outcome or possible outcome should Lendlease and Crown's litigation proceed? You have to remember, everyone talks about the appeal that we had or were proposing to lodge, the reality was that Crown and Lendlease had litigation that is still on foot. They won the first round. They had already got the Supreme Court to agree that they had certain rights. The next stage of that litigation was for them to seek damages to be paid. Our benchmark was what might we be asked to pay in damages to Crown and Lendlease. The other benchmark, I suppose, is what they asked for. Our view is that we came away with a deal which was significantly better than some of the potential outcomes should Crown and Lendlease proceed with that litigation and significantly better than Lendlease sought from us when we first started negotiations—in the order of tens or hundreds of millions of dollars better.

The Hon. ANTHONY D'ADAM: Had you quantified that or had Crown and Lendlease indicated to you what they thought the damages were?

SIMON DRAPER: No, we didn't ask them. We didn't want to. Had we asked them, I don't think we would've liked the answer. We had our own analysis of what they might be. That was also provided to Cabinet. It was a very big number. I know the Committee inferred earlier today that we should've perhaps paid a big lump sum to Lendlease. Our objective was to not do that. Our objective was to avoid the taxpayer of New South Wales having to sign a big cheque to Lendlease or Crown, but rather to find things that were of value to them but didn't cost the State money.

The Hon. ANTHONY D'ADAM: So, rather than pay \$80 million, you gave them \$300 million worth of value.

SIMON DRAPER: That's incorrect. I don't know what you mean by that.

The Hon. ANTHONY D'ADAM: I'm assuming you've read the submissions. Mr Grollo suggests that the value of the 8,000 square metres is in the realm of \$300 million.

SIMON DRAPER: I'm not in the habit of relying on Mr Grollo's assessments on this or many other matters. I'm not being unkind to him. But he's a litigant in pursuit of public funds to which he's not entitled. He's going to make a case, whether it's in court or here or in the media, that suits his needs. I understand that. But I'm certainly not relying on his judgement about what it's worth. But, as I said, we never paid the \$80 million.

The Hon. ANTHONY D'ADAM: Surely, you made a judgement about how much it was worth.

SIMON DRAPER: We set up an arrangement in the deed of sightlines resolution, as you will see, where we only had to pay the \$80 million if we were unsuccessful in securing for Lendlease that additional 8,000 square metres of floor space. We took the judgement at the time that there was a pretty good chance that most people in the community would not have a problem with that extra floor space in that building. As it turns out, that was the case. When we went through the planning process, there were very, very few objections to that. I think it might even be only half a dozen or something of that order. I think we were right on that, and we avoided the people of New South Wales having to pay Lendlease \$80 million because of that clause.

The Hon. ANTHONY D'ADAM: Can I ask about some of the other concessions. What do you say was the value of the concession around the public domain licensing areas? On page 26 of the deed, clause 13 (a) seems to suggest that what was Crown land gets transferred to Crown Holdings as part of their long-term lease. So they then derive a long-term income stream from the subletting of the leases on that property. What was the value of that?

SIMON DRAPER: Very, very small. That was included in the assessment that we provided to Cabinet. But it was a very, very minor part of the benefits that were received by Crown and Lendlease. You have to remember that doesn't just come with those revenues, it also comes with the liabilities and expenses of managing those areas.

The Hon. ANTHONY D'ADAM: Can I ask about why you signed the unconditional CENDA.

SIMON DRAPER: I didn't.

The Hon. ANTHONY D'ADAM: Why Infrastructure NSW—or it's BDA at the time. Once the condition precedent hadn't been met, the organisation still entered into a binding contract that effectively implied that they were going to get the sightlines resolution notice and be able to develop, even though you were clearly still negotiating with Crown and Lendlease on this issue. Why did you sign it?

SIMON DRAPER: I'll take the "you" as a sort of more collective "you".

The Hon. ANTHONY D'ADAM: Yes. I'm talking about—

SIMON DRAPER: That's fine. It's a good question. I've asked that question myself. It turns out that this is another example of the BDA bending over backwards to assist Grocon. As I understand it, Grocon was unable to raise finance against its development rights at Central Barangaroo while their contract with the BDA was conditional. We didn't know. The parties may not have known at the time, but it turns out that Grocon was already in pretty dire financial straits, and they wanted to go and borrow some money. They borrowed money from an organisation called MaxCap at very, very high interest rates—not a lender of first resort, if I could put it that way. The only way they could do that was by securing that loan against their contract at Central Barangaroo. I guess there was no obligation on the BDA to do that at the time. But it's just another example of where the Government actually bent over backwards to assist Grocon to proceed with the development.

The Hon. ANTHONY D'ADAM: Just on that MaxCap issue, Oxford steps in to the MaxCap facility and then there are a series of exchanges that I believe involved Mr Robertson where there is an attempt to get MaxCap to use its leverage over Grocon to force them to enter into a waiver on their legal rights to sue Crown and Lendlease. Did you consent to that strategy?

SIMON DRAPER: Sorry, I don't know if you can point me to any documents or enlighten me more on those details. What time do you say that happened?

The Hon. ANTHONY D'ADAM: It's in the Grocon submission.

SIMON DRAPER: I don't have that in front of me.

The Hon. ANTHONY D'ADAM: It's a response from Mr Smart from Oxford Property. He says:

One thing you might offer in your negotiations is a waiver and release that is contingent and only goes on foot if Grocon completes AQL. You could in theory sign that tomorrow given it won't be effective until the Aqualand deal closes.

He goes on:

You might also insist that the release get executed advance of any section 1.10 notice.

Infrastructure NSW in collaboration with—

SIMON DRAPER: Sorry, perhaps I can grab a copy of the submission and I can have a look at what you're describing. What paragraph?

The Hon. ANTHONY D'ADAM: This is on page 18 of the Grocon submission. It's paragraph 48 (k).

SIMON DRAPER: Just going back a few paragraphs, it looks like the dates that they're referring to are around August 2019. That was what I was trying to get to, to understand when this was actually happening. What is your question in relation to that?

The Hon. ANTHONY D'ADAM: Oxford are being brought in to try and use their leverage over Grocon to get them to, it appears, sign some kind of legal waiver to surrender their legal rights.

SIMON DRAPER: I wasn't involved in these communications, but I can try and help explain what I think might have been happening here. Grocon and its partners had contrived a way for Grocon to transfer its rights to Aqualand for a very large sum of money, without having to get the consent of other commercial parties. That's what they were up to. At some point, they realised they might need something from Infrastructure NSW. They wanted us to give a confirmation that we would not rely on a guarantor. We considered that request, but some of the things that—I think the waiver and the release that might be referred to here is that we said that there were two things we wanted in return for us providing that confirmation.

Frankly, they both go to the public interest and trying to protect public funds. Firstly, we wanted a release from what was called the Oxford comfort letter, which I know you discussed earlier today. We didn't want to be bound by that any longer. Secondly, if we could, we wanted a release from Grocon that they would not pursue any legal action, not that we thought they had any basis for doing so, but they were certainly reasonably liberal, as I understand it, with threatening to do so with various parties and had been in litigation with other parties unrelated to Barangaroo. We sought a release in relation to that as well. We didn't ultimately get that second release. They were all keen to close their transaction. They may have been making suggestions to INSW about how we might get some of those things that we were after in order to provide that confirmation letter. I reiterate and emphasise that we were responding to requests by the parties. I'm happy to tender documents to show you this. Every single piece of correspondence that we received or issued or that went between the parties on this, went to Grocon. They were in it up to their armpits, I have to say. The idea that they were not—that this was something that was a surprise to them or was forced upon them is preposterous.

The Hon. ANTHONY D'ADAM: Can I ask about Oxford? Was the reason why you were keen to withdraw the Oxford comfort letter because you'd overcommitted in terms of the floor space? You understood with the sightlines resolution deed that you were going to have to reduce the floor space in Central Barangaroo and you couldn't actually accommodate all the consortium partners and the commitments that had been made to the various carve-up of the floor space?

SIMON DRAPER: It wasn't anything as contrived or developed as that. It was simply that here was another constraint that was imposed upon the development of Central Barangaroo, a commercial constraint. We already had all of the PDA with Crown and Lendlease. We had the CENDA with the Central developer. We had the multi-party investor deed that Mr Robertson referred to earlier. We already had all these other constraints, and we had, of course, planning constraints, but they operate separately. We didn't need another letter out there that also imposed limitations on what may be done in the future at Central Barangaroo. We were keen for that to be removed.

The Hon. ANTHONY D'ADAM: I asked Mr Robertson earlier about his post-Infrastructure NSW financial arrangements with Aqualand. He suggested that he consulted you and that you green-lighted him pursuing those financial interests. Is that correct?

SIMON DRAPER: We had extended his time at INSW several times. He ended up leaving in November 2019. As I remember it, and I think he described it in his own evidence earlier today, he then took a long break. He went off on holidays, got engaged and a whole bunch of things. The next contact I had from him was in March 2020 when he asked if he could meet with me. At that point he said, "I've been asked to go and do some work", or he was proposing to do some work for Aqualand, and asked did we have a view on it. I took that away and we discussed that internally.

There are no restraints on public servants or, as far as I know, anybody that can be upheld. The main obligation that we reminded him of at the time is that he has an enduring responsibility around confidentiality. Other than that, we had no reason to ask him to not proceed with that, or any ability to stop him if he wanted to proceed with that. I guess by that point a lot of these issues that you have been asking about had all been resolved, in the sense that there was now a new consortium in place. We were very keen for the new consortium to have an ability to move on and progress with its proposals at Central Barangaroo.

The CHAIR: That was in March 2020, is that right?

SIMON DRAPER: March 2020, yes, well after he had left our employment and a very long time after all these other matters had been dealt with. We had no ability to stop him. We had no reason to stop him either because, as I said, we were quite keen for Aqualand to resource itself as well as possible. In fact, one of the obligations on those developers is to have a good resourcing plan with people who could help progress the development.

The CHAIR: But did you take any legal or ethical advice about this, or was this your own decision?

SIMON DRAPER: We discussed that internally with our General Counsel, probably our Head of Corporate Services and perhaps a few others. The only thing that came out of that was about Tim Robertson's enduring obligations as to confidentiality.

The CHAIR: Do you agree it's a bad look that the process that led to Aqualand getting their sightlines notice the day after Grocon exited, the fellow who arranged that effectively ended up taking money and working for Aqualand?

SIMON DRAPER: Chair, Grocon had no need of the sightlines notice. They never asked for the sightlines notice. They didn't pursue the sightlines notice until they were deep in litigation, a long time after they left. This idea that they were going to get the sightlines notice and sell their rights for a lot more money is just fanciful. The price that they got in the transaction that they engineered with other parties from July to September 2019 was the same price they'd agreed to earlier that year with Aqualand. They couldn't sell their rights for a large sum to someone else. The only way they could proceed with the sale was with the consent of the other consortium parties. Both of those other consortium parties had already in two cases refused to provide that consent. The idea that they were going to receive the sightlines notice and were going to make a motza out of it—even more than they already had with the nearly 100 per cent profit they made on their expenditure—is fanciful.

As to the mechanics of the issuing of the sightlines notice, I think Mr Robertson has given evidence on that earlier. For me, frankly, once the process of the deed of sightlines settlement had been finalised, and the question of whether we would provide this confirmation letter that Grocon and the other parties had sought, my attention moved away onto other things. At that time you might remember we had a big contract with Lendlease at the Sydney Football Stadium, and I was in the midst of terminating that contract. It was a very public and embarrassing

event for Lendlease—again, another example. The idea that we've got some sort of cosy relationship with Lendlease or Aqualand or somebody else is just demonstrably wrong.

The CHAIR: Right, and the answer to the question that I asked?

SIMON DRAPER: What was the—I thought I'd answered it. Do you want to repeat the question?

The CHAIR: I didn't ask about the football stadium; I asked about the ethical concern that the senior staff member Mr Robertson, who effectively tipped Aqualand into this Barangaroo development and issued the sightlines within 24 hours of them taking over from Grocon, is now working for them and taking money from the beneficiary—having been on an encrypted device and as thick as thieves with the people from Aqualand, almost to the point of chortling that Grocon don't know what's going on and you guys will be the beneficiary.

SIMON DRAPER: Your whole question relies on the idea that there was some contrived strategy by Infrastructure NSW.

The CHAIR: No, just the decent ethical standard that you might attend to.

SIMON DRAPER: No, that's exactly what you've said. You've characterised this as Tim Robertson having gone through a contrived process to exit Grocon in favour of Aqualand and then ending up working for Aqualand. That's totally made up.

The CHAIR: No, it's not. It's in the documentation. He wrote to you saying that was the objective.

SIMON DRAPER: No, I will table a number of documents which show the communications that were happening between Grocon—I'll just get my staff here to pull out some of the things that I'll table. On 24 July Mr Grollo personally pursued Tim Robertson, asking him, "What's happening with this transaction? Why isn't it proceeding? What are you needing?"

The CHAIR: I'm not asking about that. You're answering the wrong question.

SIMON DRAPER: I am answering your question, because your question is premised on the idea there's a strategy here that Mr Robertson contrived and then he ended up working for Aqualand. That's where you see the ethical problem. The truth is there was no strategy. There was nothing dishonest; we did not contrive this. This was an initiative of Grocon and its commercial parties.

The CHAIR: Mr Draper, given that you picked the wrong winner in Aqualand and Central Barangaroo might not be developed for a decade or more, and there's a disgraceful hoarding and hole in the ground down there, and your abandonment of ethical standards in this matter, are you a fit and proper person to be the head of Infrastructure NSW? Have you considered your resignation over this matter?

SIMON DRAPER: Obviously not, because we're quite proud of what we've done at Central Barangaroo.

The CHAIR: Really? Have you been there lately? It's a disgrace.

SIMON DRAPER: We're very proud of the fact that we've defended the public of New South Wales from large financial claims, first from Lendlease and Crown, then from Grocon. We've put ourselves in the position of having to defend those claims, and it's taken a lot of time and effort from staff. We're very proud of what's happening down at Central Barangaroo—the opening up of the foreshore, the development of the Reserve, the way that's operated, the popularity of that precinct. We're very happy with that. I go back to the point you said a moment ago. We had no role in picking Aqualand; Aqualand was picked by Grocon. Aqualand was picked out and partnered by Grocon. They brought Aqualand into this process and they precipitated the step-in of Aqualand in July through to September 2019, not us.

The Hon. ADAM SEARLE: In relation to the deed of sightlines resolution, it appears that INSW has agreed to do its best to procure additional development opportunities for the beneficiaries. Given your earlier evidence about how you saved taxpayers' money through this settlement, what exactly did the public get out of this settlement? I can see what Lendlease got out of it: It got an extra 8,000 square metres and a further financial advantage if INSW didn't comply with making the planning applications and delivering the additional development opportunity. But what did the public get out of this deal?

SIMON DRAPER: The public, I think—to answer that question properly you have to remember that we were dealing with the circumstances that we had. When I arrived in April 2019 Lendlease and Crown had a Supreme Court judgement in their favour, which was hurtling towards a damages claim.

The Hon. ADAM SEARLE: What was the rough quantum of that?

SIMON DRAPER: We don't know what they actually would have claimed—probably a lot more than we could ever have imagined—but we would have expected it to be in the hundreds and hundreds of millions of

dollars, or up to that amount; that we also got out of it certainty over the envelope that was commercially allowed at Central Barangaroo, which had been, as you have traversed many times during the course of these hearings, at large since the tender processes were run in 2015. There was no certainty around that envelope. When we signed that deal with Lendlease and Crown, we created certainty around the potential commercial envelope. The planning consents were always going to be the final decider and that process is still on foot, but we settled the commercial envelope, which had been at large by that point for over four years.

The Hon. ADAM SEARLE: Okay. Now, when you said the essential terms of the deal went to Cabinet, it went with legal and accounting advice. Can you tell us what legal advice did the Government receive about the case? Was there an evaluation of the risks and rewards of proceeding with the appeal—

SIMON DRAPER: Yes.

The Hon. ADAM SEARLE: —versus settlement.

SIMON DRAPER: Yes.

The Hon. ADAM SEARLE: Settlement according to these terms?

SIMON DRAPER: Yes. Yes, we did.

The Hon. ADAM SEARLE: Okay. Was that advice from the Crown Solicitor, the Solicitor General? Was it from private counsel through private law firms?

SIMON DRAPER: Yes. It was a number of parties but primarily from private counsel and there was advice from those who had run the case. Our view was that we didn't want—we wanted people who had fresh eyes to have a look at it. We got advice, I think it was from a senior counsel, and that advice was that we had reasonable prospects of some success in the appeal. Now you're a lawyer, not myself, Mr Searle. But, as you know, it wasn't good prospects or excellent prospects or strong prospects; it was reasonable prospects. So there was a pretty—even if you have strong prospects, as you know, you can lose one of these things. So there was a pretty good chance.

Now I should say when we presented this to Government, it wasn't like we were saying, "This is the only option." We were saying, "There are a couple of options here. One is to proceed with the appeal and the other option is to proceed with the settlement. If you want to proceed with the settlement, these are the terms on which Crown and Lendlease are prepared to settle." We didn't have to do that. There was a decision—that was an option that was open to Government to say, "No, we don't like those terms. Let's proceed with the appeal."

The Hon. ADAM SEARLE: Okay, but—

SIMON DRAPER: But we actually got—the decision of Government, through ERC, was to ask us to proceed with the settlement on the terms that had been presented.

The Hon. ADAM SEARLE: Okay. But, just to back up a moment, so you presented the two options to Government through the ERC process, but I assume there was a recommendation from you, as the chief executive, with what you thought was the prudent path forward. Is that correct, or was it just neutral: There's two options, choose your own adventure?

SIMON DRAPER: Well, the nature of Cabinet submissions is that they're not submissions by the Chief Executive of Infrastructure NSW.

The Hon. ADAM SEARLE: No. It's submitted by Ministers.

SIMON DRAPER: It's a Minister's submission. So the Minister's submission recommended proceeding to settlement but all the options were presented, including the financial valuations of different options.

The Hon. ADAM SEARLE: Okay, but the Minister received advice from you?

SIMON DRAPER: Yes, of course, and from the steering committee, which comprised the Department of Premier and Cabinet and Treasury.

The Hon. ADAM SEARLE: Okay. And the Minister at the time was the Premier?

SIMON DRAPER: Yes.

The Hon. ADAM SEARLE: But, getting through the formalities, your advice to the Premier, as the relevant Minister, was to, all things being equal, weighing up the advice, pursue the settlement—

SIMON DRAPER: Probably the more correct way to say that, Mr Searle, was that that was the advice of the steering committee comprising Infrastructure NSW, the Department of Premier and Cabinet, and Treasury. That was the group that signed off—

The Hon. ADAM SEARLE: Okay.

SIMON DRAPER: —a draft Cabinet submission for the Premier to approve.

The Hon. ADAM SEARLE: Okay. Do you recall who the individuals on that steering committee were? Who was the representative from Treasury?

SIMON DRAPER: There were two different representatives of Treasury because the first representative, I think, went on maternity leave part way through. That was Charlotte Alexander from Treasury, who was there at the beginning, and then Jenny Merkley was the representative from that time when Charlotte left, and from DPC it was Amy Brown, who was a deputy secretary, I think, at DPC at the time.

The Hon. ADAM SEARLE: Yes. And who was the representative from Planning?

SIMON DRAPER: There was no-one from Planning.

The Hon. ADAM SEARLE: There was no-one from Planning? Okay.

SIMON DRAPER: Planning was nowhere near this.

The Hon. ADAM SEARLE: Who were your representatives? You were one of them?

SIMON DRAPER: It was me, yes.

The Hon. ADAM SEARLE: It was just you?

SIMON DRAPER: We had structured it so that we had a negotiating group that worked with Crown and Lendlease, and that compromised Mr Robertson, Mr Paris and Tom Gellibrand. I think they were the three that were on that negotiating committee from our side. The other parties had their own representatives. Then we had a steering committee, and the negotiating group would bring proposals to the steering committee so there was a separation of thinking about those things, which is, I think, good practice. It was the steering committee that then considered what recommendations should be given to the Premier to take to Cabinet.

The Hon. ADAM SEARLE: I think you said Ms Brown at the time was dep sec at DPC.

SIMON DRAPER: I believe so, yes.

The Hon. ADAM SEARLE: What were the roles held by the Treasury representatives? Were they also at dep sec level or ED?

SIMON DRAPER: Probably ED, I think.

The Hon. ADAM SEARLE: You mentioned accounting advice. Can you tell us where that advice came from in terms of supporting the submission? Was it from one of the big four?

SIMON DRAPER: Yes, it was one of the big four.

The Hon. ADAM SEARLE: Which one?

SIMON DRAPER: I might take it on notice, Mr Searle.

The Hon. ADAM SEARLE: Take it on notice and come back to us.

The Hon. ANTHONY D'ADAM: We wrote to Mr Grollo in relation to his affidavit in the proceedings. He advised us by correspondence on 10 November that he'd sought advice from Infrastructure NSW about whether he was able to provide that. It's a request from the Committee. You'd be aware that as a Crown entity, you're obliged to assist the Committee in its deliberations. Why have you objected to the Committee being provided with that information?

SIMON DRAPER: I was only aware that we had objected after the fact. The way it has been explained to me is that those affidavits are prepared for the benefit of the court and only to be used for the purposes of those Supreme Court deliberations. For those reasons, the normal legal convention is that those affidavits are not bandied around, even to the parliamentary committees. Now, it's open to those parties to make their own decisions. We have taken a position that we respect the conventions of the court, and we wouldn't do such a thing ourselves.

The CHAIR: Thank you very much, Mr Draper, for your participation. We'll now go to our next witness, Mr Arbib. Mr D'Adam will chair the final session of today's hearing.

(The witness withdrew.)

Mr MARK ARBIB, Private Citizen, before the Committee via videoconference, affirmed and examined

The Hon. ANTHONY D'ADAM: Mr Arbib, it's open to you to make a short opening statement. Would you like to do that?

MARK ARBIB: Yes. Thank you to the Committee for the opportunity to appear by videoconference. I started work with Consolidated Press Holdings Pty Ltd in 2012, in July. I finished employment with Consolidated Press this year in June. So today I'm here as a private citizen. None of my views or information is represented by Consolidated Press or Crown or Mr Packer. I'm here as a private individual and happy to assist and answer any questions I can.

The Hon. CHRIS RATH: How did you come to the role? What was that role in July 2012 to June 2022?

MARK ARBIB: My role was Director of Strategy and Business Development, Consolidated Press Holdings, which was the family company for Mr Packer. The role varied across that period. Sometimes it was media and speech writing, could be policy, could be strategic advice, stakeholder relations, corporate social responsibility, philanthropy. I served on the Packer Family Foundation, and I should say that one tie I do have to Consolidated Press and Mr Packer is I still am a member of the Packer Family Foundation and sit on the board.

The Hon. CHRIS RATH: Mr Bitar, was he a direct employee of yours? Were you his manager?

MARK ARBIB: No.

The Hon. CHRIS RATH: He didn't have a direct line to you in the organisational structure?

MARK ARBIB: Mr Bitar no had no role whatsoever with Consolidated Press Holdings. He was employed by Crown Resorts.

The Hon. CHRIS RATH: What were the circumstances in you leaving employment with Consolidated Press?

MARK ARBIB: I'd been there a long time. It was 10 years in the role. And after the sale of Crown to the Blackstone entities, I think there was a shift in the way Mr Packer viewed his corporate structure and it was an opportunity for me to, I guess, look at other opportunities and also my role didn't exist in the full-time measure so I was made redundant.

The Hon. CHRIS RATH: In your role, was there an aspect of government relations in liaising with Ministers, shadow Ministers, members of Parliament, bureaucrats, regulators, that type of function?

MARK ARBIB: So more from my perspective, I dealt with strategy for Mr Packer and also for Crown in terms of those items you just mentioned.

The Hon. CHRIS RATH: Did you have a role in terms of meeting with or arranging meetings with political stakeholders, government stakeholders?

MARK ARBIB: Yes.

The Hon. CHRIS RATH: In terms of Barangaroo, in terms of Crown, was part of your role trying to gain bipartisan support for the project?

MARK ARBIB: Yes.

The Hon. CHRIS RATH: So you would have arranged meetings or had meetings with political and government stakeholders on both sides of the political divide, so with members of the Opposition at the time as well in New South Wales?

MARK ARBIB: Look, I thought a lot about it, because I expected this question, and I can only recall being in three meetings with elected representatives. One was Clover Moore when she was serving as the mayor of Sydney. The second was Fred Nile and the third was Luke Foley.

The Hon. CHRIS RATH: Do you remember what year or what time approximately was it with Luke Foley? Was he Leader of the Opposition at that time or maybe shadow Minister for Planning and Infrastructure?

The Hon. ADAM SEARLE: Leader of the Opposition in the upper House.

The Hon. ANTHONY D'ADAM: We had a disruption in the connection. Would you repeat what you just said Mr Arbib?

MARK ARBIB: That would have been very early in the piece. Mr Foley attended a meeting with myself and Mr Packer. That would have been early in the unsolicited proposal process.

The Hon. CHRIS RATH: So he was still in the upper House then, I think was the interjection from Mr Searle.

MARK ARBIB: He definitely was not the leader of the party.

The Hon. ADAM SEARLE: He was the planning shadow Minister.

The Hon. CHRIS RATH: Shadow planning and infrastructure, yes.

MARK ARBIB: But, as you know, Mr Packer was meeting with—he believed in this project, and he wanted to deliver an icon for Sydney. So he was meeting with anyone—anyone he could see, he would meet with them because he wanted to sell the vision.

The Hon. CHRIS RATH: In terms of the bipartisan support that was eventually attained for Crown at Barangaroo, do you agree that it would have been far more difficult for Crown had that bipartisan support not been given? With a lot of these big projects, it obviously makes it much harder to get popular support if one side of the political divide opposes it. That obviously was one of the functions of your previous role.

MARK ARBIB: Let me put it to you this way: Mr Packer said to me, "I'm about to invest \$2 billion into a project in Sydney. It's important that we have bipartisan support across the Parliament to make this happen." The economics around the project were always difficult, and it was risky for Mr Packer and Crown. So a \$2 billion project was a massive undertaking.

The Hon. CHRIS RATH: I don't know if you've had a chance to look at the witness list for today's hearing and the prior hearing. In terms of the Barangaroo Delivery Authority, Infrastructure NSW and New South Wales Government generally in terms of the public servants, were you involved with either arranging or attending meetings with any of those stakeholders?

MARK ARBIB: From the list of my recollection from today, the only person that I would have met was Tim Robertson. In terms of Mr Packer, I don't believe I was involved with any other of those individuals. Just to make the point, Crown had a strong development team, and they were undertaking all the discussions and the negotiations with the Barangaroo Development Authority, and they had the carriage at that company with it. So they would have been meeting, I expect, a large number of those individuals.

The Hon. CHRIS RATH: Did sightlines ever come up in any of those meetings that you had with Mr Foley, Clover Moore, Fred Nile or public servants?

MARK ARBIB: Certainly not with those three elected representatives, but it was an issue later in the piece with the Barangaroo Development Authority, and I attended a number of meetings where the Crown development team, the Barangaroo Development Authority and also Lendlease were trying to negotiate an outcome in relation to the sightlines.

The Hon. CHRIS RATH: Obviously, those sightlines had a significant value to Crown. Was there ever any figure that was discussed in terms of what potential value that did offer to Crown?

MARK ARBIB: Not that I can recall, no.

The Hon. CHRIS RATH: Did you help arrange the meeting between the then Premier Mike Baird and Mr Packer on 19 February 2015, or you were in attendance at that meeting?

MARK ARBIB: I was not in attendance, but my recollection is I had some involvement in setting up the meeting. I don't remember the details, but I do recall some sort of involvement. It might have been his EA or his assistant who made the call. I'm not sure.

The Hon. CHRIS RATH: Did the Barangaroo metro station ever come up as part of those discussions with the Government and the Opposition?

MARK ARBIB: Sorry, Mr Packer's meetings or meetings that I was involved in?

The Hon. CHRIS RATH: Either.

MARK ARBIB: I wasn't involved with any meetings with Mr Packer where that was raised. It was raised at meetings with the Barangaroo Development Authority, and my recollection is that it was one of the reasons why there was a change to the plans around central. There had been a change in the Government's policy, a new metro station was being put in place and that changed the whole make-up.

The Hon. CHRIS RATH: In terms of former Prime Minister Paul Keating—whom I'm a strong supporter of, and I think he was an excellent Prime Minister—and his role in Barangaroo, he was originally opposed to a lot of the aspects of the development and then became a strong vocal supporter later on. Were you part of any discussions with Mr Keating? Did you help arrange any meetings with Mr Keating on behalf of Mr Packer?

MARK ARBIB: No, I didn't.

The Hon. ANTHONY D'ADAM: Mr Arbib, you facilitated, or had some role in, the meeting on 19 February 2015 between Mr Packer and then Premier Baird. Arising out of that meeting was wording in relation to the sightlines clauses that were to be inserted in the PDA and CDA. Did you have any role following that meeting in terms of the negotiations around the sightlines clauses?

MARK ARBIB: Not in terms of that document, no.

The Hon. ANTHONY D'ADAM: Perhaps you could elaborate on what role you did play after that meeting in terms of the issue of sightlines and the resolution that was ultimately arrived at in August 2019 with the sightlines resolution deed? Could you elaborate on what role you were playing in that process?

MARK ARBIB: I had no formalised role at the Crown level, and I had no decision-making role. I want to make that point. Crown undertook its negotiations through the development team, but also with its legal team reporting back to the Crown Resorts board and the chief executive. My only involvement was that I attended a number of meetings where discussions took place with the BDA and with Lendlease. The times that I attended mostly were because Mr Bitar was attempting to—and he raised this in his evidence. In 2016 a number of Crown staff were arrested in China, and one of Karl's jobs was to travel to China and attempt to release those staff. When that happened, I stepped in and attended meetings for Karl. That was largely the work that I undertook.

The Hon. ANTHONY D'ADAM: In terms of the decision to litigate the sightlines issue, did you provide any strategic advice? Was that a decision that ultimately rested with Mr Packer himself or were other stakeholders within Crown part of that deliberation around the decision of whether to proceed or not?

MARK ARBIB: My recollection is that Mr Packer was not the chairperson at the time when the decision to litigate was taken. He may not have even been on the board. He took a break from the board of Crown Resorts. The ultimate decision would've been made by the chief executive and the board. Again, the advice to litigate, in my recollection, would've come from the development team and the legal team. There were negotiations that took place over many years to try to resolve it. All sides wanted to resolve it. But, unfortunately, that couldn't happen, and Crown made the decision that it had to take legal action along with Lendlease.

The Hon. ANTHONY D'ADAM: Were your interactions with Mr Tim Robertson in relation to trying to facilitate the settlement?

MARK ARBIB: Yes. Mr Robertson said to me that the BDA was very much trying to settle the matter with Crown and to move forward with all parties, and asked could I assist. My advice to anyone who asked me was that it would be better to try to resolve these issues than to go to court with the Government. That is just something that I believed. Crown's view—their legal advice, they believed, was extremely strong. While the Crown executives at the development level and the legal level attempted to compromise, at the same time they couldn't reach agreement with the BDA, which ultimately led to the court action.

The Hon. ANTHONY D'ADAM: I wanted to ask you about the process of how the height limits on the Crown tower went from, I think, 170 metres to 272 metres. Were you in any way involved in any discussions that led to that additional height being conferred on Crown for this project?

MARK ARBIB: Sorry, Deputy Chair, I had no involvement in it, nor do I have any information to add.

The Hon. CHRIS RATH: Was part of your role getting support from United Voice to support the Barangaroo project?

MARK ARBIB: The United Voice Union was a strong stakeholder in the discussions because they would be the union that represented the workers. One of the big drawcards for the project, and something that Mr Packer pushed strongly in all his meetings, was that close to 2,000 people would be employed. He also referred to projects that Crown had in other States such as their Indigenous employment program and a disability employment program. So we definitely tried to ensure that United Voice understood what Crown was bringing to Sydney in terms of jobs, corporate social responsibility, Indigenous employment.

The Hon. CHRIS RATH: Ultimately, they backed the project and were supportive because they could see the tangible benefits that it provided.

MARK ARBIB: Yes. Also, I think the other thing is that—my recollection is that United Voice was the union at Crown Melbourne and the union representing most of the workforce in Perth. They were the largest union at those two facilities, so they knew Crown well.

The Hon. ANTHONY D'ADAM: If there are no further questions, I thank you for attending the hearing. The Committee members may have additional questions for you after the hearing. The Committee has resolved that answers to those, along with answers to any questions taken on notice—I don't believe you took any on notice—be returned within 10 days. The secretariat will contact you in relation to those questions. Thank you for your attendance today. I believe that concludes today's hearing.

(The witness withdrew.)

The Committee adjourned at 15:40.