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ECHO

1 May 2015

Attention: Sara Roach

Department of Planning & Infrastructure
23-33 Bridge Street,
SYDNEY NSW 2000

Dear Sir / Madam

Submission Regarding Barangaroo Concept Plan Modification No.8

Echo Entertainment Group Limited, as parent company for the operators of three Australian casino resorts in New South Wales and Queensland, responds to the invitation for submissions regarding the Barangaroo Concept Plan Modification No.8 by enclosing the following:

1. Legal Opinion prepared by Adrian Galasso of Senior Counsel and Clifford Ireland of Counsel; and
2. Town planning assessment prepared by Deborah Laidlaw of Laidlaw Mason Partners.

As a substantial player in Sydney's tourism and entertainment sector, a major employer and significant contributor to the vibrancy, prosperity and community of Sydney, Echo Entertainment is a strong supporter of new developments which enhance Sydney's offering to and positioning in the eyes of locals and visitors alike.

As a leading organisation in the Australian casino resort industry, Echo Entertainment also believes that the need for transparency is paramount so as to ensure public confidence is maintained in the providence applied to the State's prominent entertainment, tourist and infrastructure assets, and particularly those which specifically operate in the casino resort sector. Echo Entertainment therefore believes it is in the public interest, and the interests of the city and all the stakeholders, to ensure that the appropriate rigour and integrity is applied to the planning and development approval process for key infrastructure projects across New South Wales.

The enclosed advice and assessment raise matters which therefore should be fully considered and addressed, as would be the case in regard to any planning application.

Yours sincerely
Echo Entertainment Group Limited

Matt Bekier
CEO and Managing Director

Laidlaw Mason Partners

1 May 2015

Echo Entertainment Group Limited
80 Pyrmont Street
PYRMONT 2009

Attention: Mr Andrew Power, General Counsel

Dear Mr Power

Town planning review: Modification 8 to Barangaroo Concept Plan MP06_0162

I refer to your request to provide a review of proposed Modification 8 to Barangaroo Concept Plan MP06_0162 (**'Mod 8'**) and associated amendments to State Environmental Planning Policies applying to the Barangaroo precinct from a town planning perspective, with particular focus on what is proposed for revised Block Y (Hotel complex) and impacts and implications arising from same.

Relocation and revision to Hotel complex

The Environmental Assessment Report (**'EA'**) justification for the revisions incorporated in Mod 8 is, to a very large extent, reliant on the proposition that the Modification is merely responsive to the Review undertaken in May 2011 (**'Review'**) and its conclusion that 'it would be a significant demonstration of goodwill to relocate the hotel to elsewhere on the site'.

There are certain aspects of Mod 8 that are indeed responsive to the Review, however the scope of Mod 8 is much wider than that limited purpose. It also includes:

a) a significant reconfiguration of land use – of which the inclusion of a Casino forms a key component;

Deborah Laidlaw Consulting Pty Ltd ABN 44 067 573 862 TA Laidlaw Mason Partners
GPO Box 5288 Sydney 2001
Ph 0402 323 656
Em dlaidlaw@laidlawmason.com

b) an increase in GFA of 41,946 square metres or 8.3% of the approved maximum for Barangaroo South[1];
c) a very significant increase in maximum height to RL275 (meaning the Hotel complex, increased by some 100 metres, would become one of the tallest buildings in the CBD);
d) a significant reduction in the size and change to the location of the Southern Cove; and
e) redistribution of GFA across the development blocks,

all of which being subject to a revised and more flexible set of 'Barangaroo South Design Guidelines' these being intended to replace the approved 'Built Form Principles and Urban Design Controls' of the original Concept Plan.[2]

The matter of the substantially increased height of the Hotel complex tower is one of particular sensitivity from both urban design and environmental impact perspectives, as is the altered relationship with Globe Harbour and the potential additional impacts that flow from that.

It will be noted that while some part of this increased height arises as a response to the Review, a large part of it – associated with the inclusion of the Casino and residential apartments within the Hotel complex – does not.

The change proposed by Mod 8 relative to the original Concept Plan and even in relation to the current Modification 7 (**'Mod 7'**) Concept Plan is significant. This is underlined by the necessity for amendment to the urban design controls, the Major Development SEPP and the State and Regional Development SEPP. It is questionable as to whether it could be regarded as having 'limited environmental consequences' in the context of its capacity to be dealt with by way of a s75W modification.

There is likewise a question as to whether the reconfiguration and amendment to land use can be properly regarded as within the scope of a 'modification' and this is most directly relevant to the inclusion of the proposed Casino within the Hotel complex.

As relevant, the Concept Approval to Mod 7 contemplates the following range of land uses:

> A mixed use development involving a maximum of 563,965 gross floor area (GFA), comprised of:
> a) a maximum of 128,763 sqm and a minimum of 84,595 sqm residential GFA;
> b) a maximum of 50,000sqm GFA for tourist uses
> c) a maximum of 39,000sqm GFA for retail uses
> d) a maximum of 4,500sqm GFA for active in the Public Recreation zone (3,000 sqm of which will be in Barangaroo South); and
> e) a minimum of 12,000sqm GFA for community use.

[1] P27EA . The figures provided are subject to various interpretations within the document depending on the treatment of the 'additional uses'.
[2] P34EA

'Tourist uses' is not a defined use under the Standard Instrument, the definitions of which are called up by SEPP Major Development Part 12[3] with the closest defined term being 'tourist and visitor accommodation', this being a building or place that provides temporary or short-term accommodation of various descriptions. JBA, as authors of the EA, assume that same ambit (see footnote page 7 of EA) and since a Casino is clearly not any form of 'temporary or short-term accommodation' consider it necessary '*to clarify the range of uses included within each category and categorise ambiguous uses to avoid future confusion*'.

I comment that a 'Gaming Facility' is an incongruous addition to a list otherwise entirely comprised of tourist accommodation and it has impacts, in particular social as well as economic impacts, that are quite unique, potentially significant from an environmental assessment perspective and readily distinguishable from those impacts associated with 'tourist accommodation'.

This goes, again, to the question of whether the scope of what is proposed, namely a retrospective revision to the defined and approved range of land uses, is in the nature of a reasonable and allowable modification within the scope of s75W.

Ambiguity as to what is proposed and its impacts

I have found difficulty in understanding from the EA what the proposed Casino / VIP Gaming component entails. There is no explanation of the floor area to be allocated to this land use (even broadly by way of a minimum/maximum range) nor is there any expansion on the specifics of that land use activity, which is variously referred to as a 'VIP Gaming facility' or alternatively, simply as a 'Casino'.

Although the EA refers to earlier agreements and assessments undertaken by others, including assessments applicable under alternate legislation, this represents a significant omission: the EA must perform as a 'stand-alone' document for the purposes of assessment governed by the *Environmental Planning and Assessment Act*. The failure to adequately describe a fundamental land use component is particularly critical where the use concerned has an obvious public interest perspective and the potential for significant social as well as economic impact.

Going behind the EA to explore what might be contemplated, I note that the Restricted Gaming Licence (**'Licence'**) limits total floor area to 20,000 square metres or 20% of the total gross floor area of the Hotel Resort building. That might be more modest than, for example, Crown Melbourne, but in land use planning terms it is nevertheless a significant floor area and underlines the necessity for a comprehensive evaluation of its operation and impacts as part of the EA for Mod 8.

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[3] (2) A word or expression used in this Part has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* (as in force immediately before the commencement of the *Standard Instrument (Local Environmental Plans) Amendment Order 2011*) unless it is otherwise defined in this Part.

I note the Licence excludes poker machines but specifically includes the operation of traditional table games, semi-automated table games and fully automated table games with the minimum bet authorised of twenty dollars and with no minimum for any game other than baccarat, blackjack or roulette. I comment that dollar sums of $20/bet and potentially lower for some games would arguably be consistent with a Casino within the financial reach of the wider public - as opposed to the alternative profile of the sophisticated / VIP / high net worth client. I note that there is intended to be restrictions on access, such as to hotel guests and by a membership system, however that would not preclude a member of the wider public applying and – subject to conditions being met – obtaining membership, or being invited as one of a number of guests permitted for each member, and thereby gaining access to the facility.

One might expect that a truly exclusive facility targeted at high net worth individuals would have a markedly different socio-economic impact from one targeted towards, or – subject to certain limitations - accessible by, the wider public.

That is not to say that one, or the other, or both, might not be appropriate on the Barangaroo site, but on any reasonable view, the question of appropriateness of land use cannot be determined without a clear and transparent description within the EA of what is contemplated and an assessment of the social and economic impacts that flow.

The two page evaluation of social cost/benefit and economic analysis within the EA is deficient in both regards. Mostly it is concerned with generic economic benefits or consequences of the Modification at large.

The ambiguity concerning the proposed Casino's target market and the absence of any meaningful social or economic impact assessment is unusual. It is placed in the context of a request by JBA for Director General's requirements ('DGRs') that made no specific mention of a Casino being introduced to the Barangaroo site under Mod 8 and a response by way of DGRs that did refer to the Casino (unprompted by the request, it appears) but only in the context of its requirements for traffic impact assessment.

The net effect is that one of the most obvious environmental impacts of the proposed modification has not been adequately identified nor, in my opinion, satisfactorily addressed.

<u>Deferment of social impact assessment</u>

Section 9.11 of the EA, being the two page section comprising the social impact assessment, concludes that assurance can be drawn from the conclusions of the Assessment report for the unsolicited proposal – those conclusions being recorded in only a cursory manner and in any event, heavily qualified - and otherwise by reliance on the fact that further assessment will be required when a State Significant development application is submitted. That latter approach is akin to letting the 'tail wag the dog' and raises the implausible prospect of the deferred social planning assessment finding the inclusion of a Casino 'inappropriate' when

the Concept Plan with which it is required to be consistent has signed off that same land use component as being, in principle, 'appropriate'.

A proposal to include a Casino / Gaming facility - of any sort - is a significant land use activity in its own right and it represents a significant revision to the Concept Plan. It has potential impacts that are quite distinct from those of the other 'tourist' accommodation uses with which it has been generically grouped, particularly in relation but not limited to, social and economic impact.

The determination of appropriateness of the land use should, in turn, be regarded as falling squarely within the domain of the Concept Plan and Mod 8, as opposed to the EA's unsatisfactory approach of relegating this as a matter merely of detailed planning to be undertaken at a later date. That is an approach generally regarded as unacceptable from a town planning perspective.

Environmental impacts – traffic and parking

I note the traffic and parking assessment by Arup fails to identify the Casino as a separate land use, preferring to group it simply as part of the Hotel complex, and while that approach is consistent with the EA it is, for the reasons earlier outlined, unsatisfactory. It is an approach that renders the environmental impacts of the Casino opaque and effectively overlooks them within the Mod 8 assessment process.

There is potentially a very significant difference, both in terms of quantum of impact and characteristics of impact between 20,000 square metres of floor area allocated to 'tourist accommodation' and 20,000 square metres allocated to a Casino. Likewise, one would assume, there is a significant difference between a truly 'exclusive' Casino occupying 2,000 square metres and one occupying 20,000 square metres. The Arup report, conversely, has simply assumed the complex will be smaller than Crown Melbourne, but with no clarification as to 'how much smaller'. In failing to identify what floor space it has assumed for the Casino, the Arup report precludes any understanding of whether its subsequent conclusions as to impact are reasonable and reliable.

Concluding comment

The matters of key concern identified in this review are:

- The request for DGRs did not identify the Casino as a proposed new land use under Mod 8 and reflective of this, the DGRs issued do not refer to the Casino other than in respect of traffic/parking impact assessment. The omission of any reference to this land use in the request for DGRs is a fundamental flaw.

- The EA and its supporting documents – including the Arup Traffic and Parking report - do not identify the precise operational characteristics of the Casino or its scale by way of GFA. In terms of key impacts one might normally expect such a land use to give rise to it defers, in significant respects, to prior agreements, assessments

undertaken by others (in assessment contexts not falling under the Environmental Planning regime), or alternatively future assessments to be undertaken at the detailed planning stage. The investigation of traffic and parking impact is reliant on assumptions that are not satisfactorily explained, and the social and economic impact assessment could best be described as cursory. That is not to say that the proposal for inclusion of a Casino or larger Hotel complex is acceptable or unacceptable, but simply but that the information to determine that question is lacking.

- On any reasonable view, the potential impacts of a Gaming Facility are such as to warrant full and transparent investigation in the context of the Concept Plan and cannot simply be deferred as a matter of 'detail'. The EA must be able to be understood as an independent, objective stand-alone planning document, and it must clearly explain what is proposed and its impacts.

- The modifications sought, individually and cumulatively in Mod 8 are significant, including necessity for amendment to the urban design controls, the Major Development SEPP and the State and Regional Development SEPP as well the alteration to the approved 'Tourist use' definition so as to add, retrospectively, 'Gaming Facility' to the list of approved 'accommodation' uses. It is thus questionable as to whether Mod 8 could be regarded as having 'limited environmental consequences' to the extent that could have bearing on its capacity to be dealt with by way of a s75W modification.

I note that this letter may be used in support of submissions made by Echo Entertainment Group Limited and confirm I have no objection to that course of action.

Yours sincerely,

M. Deborah Laidlaw

ECHO ENTERTAINMENT GROUP LIMITED – BARANGAROO CONCEPT PLAN MODIFICATION NO.8

MEMORANDUM OF OPINION

1. We act for Echo Entertainment Group Limited (**Echo**) the parent company of The Star Pty Limited. We are asked to consider the legal aspects of the proposed Concept Modification Plan 8 (**Mod 8**) to the Barangaroo Concept Plan.

Background

2. On 22 March 2006, the Minister for Planning formed the opinion, pursuant to clause 6 of *State Environmental Planning Policy (Major Development)* 2005, that redevelopment of the Barangaroo Site was a major project for the purposes of Part 3A.

3. An eventual consequence of that decision was the initial approval of the Concept Plan by the Minister for Planning (then Mr Frank Sartor) on 9 February 2007. It provided, *inter alia*, for a mixed use development on the Barangaroo site involving a maximum of 388,300 m^2 gross floor area (**GFA**), the construction of a large Southern Cove inlet in the south of the site and car parking at the rate of 1 space per 600 square metre GFA and 1 space per every 2 one bedroom/bedsitter units, 1.2 spaces for 2 bedroom units and 2 spaces for 3 bedroom units. The Concept Plan provided for maximum residential floor space of 97,075 m^2.

4. The Concept Plan has been through a number of modifications.

5. Upon the repeal of Part 3A, the project the subject of the Concept Plan became a Transitional Part 3A Project pursuant to clause 2 of Schedule 6A of the *Environmental Planning and Assessment Act* 1979 (**EP & A Act**). Clause 2(5) of Schedule 6A provides that the project as varied remains a Transitional Part 3A Project.

6. Clause 3C of Schedule 6A provides that s75W continues to apply to modification of a Concept Plan before or after the repeal of Part 3A and whether the project the subject of the Concept Plan remains a Transitional Part 3A Project or not.

7. The process for effecting a modification includes, inter alia, a requirement to obtain environmental assessment requirements (**EARs**) as set out in s75W(3):

> (3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

8. On 17 March 2014 JBA, acting for Lend Lease, sought amended EARs for a further modification of the Concept Plan (being Modification 8).

9. EARs for Mod 8 were issued on 15 April 2014. The request for EARs did not specifically mention the proposed Casino in the Landmark Building, although the revised EARs, supplied in response do (possibly somewhat curiously, and only then in relation to parking) at item 8 and require the EA to *"[o]utline late night transport provision to support the hotel and casino"*.

10. Mod 8 is currently before the Minister for Planning. Submissions may be made until 1 May 2015. These will then be considered by the Department of Planning and either a decision made with respect to the modification, or the matter will be referred to a Planning Assessment Commission (**PAC**) Inquiry or Review for further consideration.

Opinion on Legal Aspects

11. It is to be noted, firstly, that unlike certain other categories of development encapsulated by the EP&A Act, there is no merits appeal conferred on an objector against a decision with respect to Mod 8.

12. That notwithstanding, the s75W modification to grant Mod 8, if granted, would be open to judicial review proceedings in Class 4 of the Land and Environment Court's jurisdiction. Such proceedings are limited to legal grounds, and there is a 3 month

limitation period on such challenges, except in the case of claims of jurisdictional error.

13. Some legal aspects as related to Mod 8 are discussed below.

Issue 1 – Whether the modification is contrary to s75W as there are not limited environmental impacts in addition to those already assessed

14. Section 75W provides a broad power to modify that may be described as being relatively unconstrained.

15. In *Barrick v Williams* (2009) 74 NSWLR 733, Basten JA said at [53] that the precise scope of s75W and what was a modification of an approval or not was not intended by Parliament to be the subject of conclusive determination only by a Court. (McColl JA agreed on this point, Sackville AJA preferring not to express a view).

16. However, and that notwithstanding, Basten JA went on to explain at [53] that it is likely that a modification was something intended to have limited environmental consequences beyond those which have been the subject of the assessment.

17. This analysis of s75W by Basten JA in *Barrick* gives rise to the first issue, whether it can be said that the environmental consequences of Mod 8, in various respects, are not "limited" as compared to the Concept Plan either as most recently modified by way of Mod 7, or (as being even more potentially problematic) as compared to the original Concept Plan, as discussed in Issue 2, below.

18. The Environmental Assessment for Mod 8 dated March 2015 provides that it involves *inter alia* GFA being increased from 563,965 m^2 to 605,911 m^2, the amendment of the size and location of the Southern Cove, the redistribution of the GFA across development blocks 1-3, 4A to C and X and Y, an increase in the height of buildings within modified Block 4, and the relocated Block Y (for example on Blocks 4A to 4C an increase in GFA of 29,087 square metres and on Block Y an increase of 44,500 square metres is envisaged). On Block 4A an increase in the height of 208.5 metres and on Block Y an increase in height of 105 metres above the existing approved maximum RL is proposed.

19. Furthermore, and/or in particular:

a. The landmark hotel building is to be increased from 168 metres to RL 275 and its GFA increased by 44,500 m^2.

b. The EA at page 22 notes that Crown Resorts has secured a restricted gaming licence from the NSW Independent Liquor and Gaming Authority and is currently negotiating an agreement with the Barangaroo Development Authority and Lend Lease for it to build the landmark hotel building. The significantly changed design in plan of Mod 8 as compared to the existing Mod 7 is shown on page 25-26 of the EA.

c. Page 29 notes that as result of the proposed Mod 8 GFA for the whole Barangaroo Site will increase by 41,946 m^2, an overall increase of 7.4%.

d. Page 38 notes that the Southern Cove also known as Globe Harbour will be significantly reduced as a result of the proposed Mod 8.

e. Page 61 of the EA indicates that Mod 8 increased the residential GFA by up to 54% on the approved amount and in Barangaroo South 28% of the GFA will consist of residential GFA.

f. The assessment of car parking provision appears to be general and there may be inadequate car parking provided: see page 80 of the EA, where the following comment appears:

> *"Due to the unique nature of the expected operations within the landmark hotel building, standard parking rates have not been identified, rather an indicative number of car spaces reflective of other similar operations has been adopted, as detailed below."*

This, and the analysis that follows, suggests a shortfall in on-site parking provision which may be said to have been insufficiently addressed.

20. Arguably, some, if not all of these changes (particularly when considered together), are not changes of limited environmental impact compared to what has been

environmentally assessed, and hence may be said to be outside the compass of the modification power addressed in *Barrick.*

Issue 2 – EA and Mod 8 process flawed without a comparison with the original Concept Plan (the "creep factor" argument).

21. There is also a related issue of whether, because the "Minister's approval" in s75W is defined as being the "approval of a Project under this Part", whereas the result of s75W (see s75W(4)) is a "modification" of such an approval, each s75W modification must be assessed as against the original approval, in this case the original Concept Plan (rather than against it as modified by all prior modifications).

22. This argument is supported by the absence of any provision in Part 3A that defines a "Minister's approval" to be an approval as modified under s75W. Such a provision has historically existed in other provisions of the EP&A Act, such as s102(4) (and now is in s96(4)). This is an important factor to note as a "creep factor" argument (that under the original drafting of s102 assessment of a modification required comparison with the original consent as granted) was rejected by the Court of Appeal in *North Sydney v Michael Standley & Associates* (1998) 43 NSWLR 468 in part by reason of the existence of such a definition in s102(4). This difficulty for the "creep factor" argument does not arise as readily on the words of s75W, which do not expressly define a Minister's approval to be an approval as modified.

23. When compared with the original Concept Plan, the extent of the modification and environmental impacts are undoubtedly materially greater than if the Minister's approval with previous modifications is used as the comparator: but one example is that the GFA originally approved was 388,300m^2, and is proposed to become 605,911m^2, a 56% increase.

Issue 3 – Prejudgment

24. The EA at page 22 notes that Crown Resorts has secured a restricted gaming licence from the NSW Independent Liquor and Gaming Authority and is "currently negotiating an agreement with BDA and Lend Lease for it to build the landmark hotel building… ".

25. We understand that there is also a private agreement between the NSW Government and Crown Resorts, which has not been publicly disclosed, to allow Crown Resorts to establish its Casino facility at Barangaroo. We have not seen that private agreement, and our views on this issue may change once we review the contents of that agreement, although the mere existence of such a private agreement allows us to make the observations below. We also understand that the agreement arose from an unsolicited proposal from Crown, which has received favourable response by the State Government.

26. In our opinion, it is arguable that a fair minded lay observer, having knowledge of these material objective facts, might reasonably apprehend that the Minister might not bring an impartial and unprejudiced mind to the determination of the s75W modification: see *Gwandalan Summerland Pt v Minister for Planning* (2009) 168 LGRA 269 especially at [115] and following per Lloyd J.

27. In identifying this issue we are conscious that there may be matters of State significance identified as relevant to s75W as identified by Basten JA in *Barrick* at [53]. However, the tension remains that such private understandings can nonetheless give rise to a prejudgment issue, even though there may be a broader State component to the decision.

Issue 4 – The need to comply with s75F(4) and consult with relevant public authorities in preparing EARs

28. While there are no specific mandatory relevant considerations for either the s75W approval or the issue of varied EARs, there is, as set out above, the requirement to obtain EARs.

29. Whilst not contained in s.75W itself, it is arguable that the requirement to consult with public authorities as part of the issuing of the EARs as it applies in relation to the issue of the varied EARs under s75F(4) applies to the issue of EARs more generally, and thus to those issued under s75W. Section 75F(4) provides:

> (4) In preparing the environmental assessment requirements, the Director-General is to consult relevant public authorities and have regard to the need for the requirements to assess any key issues raised by those public authorities.

30. In this respect there does not seem to be any reason to construe the scheme of Part 3A as not requiring such consultation for a s75W modification, unless the notion of a modification is a constrained one, in which case the matters we raise in Issue 1 above are reinforced.

31. The extent of consultation with relevant public authorities is unknown, but the EARs suggests that there may have been no consultation with public authorities such as the Independent Liquor and Gaming Authority, Office of Liquor and Gaming, the Department of Health and the Department of Community Services, public authorities that are arguably relevant in relation to a proposal for a Casino. The EARs for example, only reference the City of Sydney, EPA and Sydney Airport; but those other authorities would clearly in our view be relevant to a modification which relates to matters with which they are concerned, and which are necessarily related to Mod 8.

Issue 5 – The need to consider future environmental impacts of Mod 8

32. The process followed here has generally been to split the overall development proposal as between a Concept Plan and later multiple SSDAs, the intention being to undertake that assessment once the modification is approved. (Consistent with this, the planning advice with which we have been provided suggests that the assessment of the environmental impacts of the proposed Casino development in the EA is limited).

33. This approach may be said to not only dictate a result in relation to those future development applications (such as the Crown Resorts SSDA here), but also that the separation of the proposal into piecemeal sections might suggest a failure to assess relevant environmental impacts.

34. The dilemma for a planning authority confronted with what is plainly a larger overall project that has been artificially divided up to avoid proper environmental assessment

was recognised by Stephen J in *Pioneer Concrete v Brisbane City Council* (1979-1980) 145 CLR 485 at 504.

35. This issue is also related to an issue concerned with the failure of the EARs and Mod 8 EA to address social and other environmental impacts which are necessarily relevant to a Casino development, and which, for example, are specifically mentioned in the SSDA request for DGRs dated 5 March 2015 for the Crown Sydney Hotel Resort: *Hoxton Park Residents Action Group Inc v Liverpool City Council* [2011] NSWCA 349.

36. The *Hoxton Park* analysis explains that impacts that may be considered in relation to a separate, subsequent, development application are nevertheless environmental impacts of the particular project or development under assessment: see [57] *per* Basten JA.

37. The Court of Appeal's decision in *Weal v Bathurst* (2000) 111 LGERA 181 also cautions as to the impermissibility of deferring consideration of environmental impacts by way of conditions to later assessment and reporting – such impacts should be assessed at the time of decision.

38. These arguments of course need to be qualified by the observation that a concept plan approved under s75O is necessarily and intended to be more general and broad brush than a project approval or DA. However, in our opinion the fundamental aspects of the above decisions remain relevant to the modification.

Issue 6 – Departure from design excellence condition of Mod 7

39. Clause C2(5) of the existing Mod 7 Concept Plan provides as follows:

> *"(5) The design review panel shall also be utilised for any significant changes to the Concept Plan, as determined by the Director General."*

40. Clause C2(2) provides that the Proponent shall hold a design excellence competition for all development involving erection of a new building which will have height greater than RL 57 and erection of a new building on a site greater than 1,500 square metres.

41. There is the ability in condition C2 for the Director General (or Secretary) to waive the requirement for a design excellence competition. To do this, the Director General must be satisfied that the particular building (or significant change) is one for which an architectural design competition is not required because of the excellence of the proposed design, that the architect responsible for the proposed design has an outstanding reputation, and also that necessary arrangements have been made to ensure that the proposed design is carried through to the completion of the development concerned.

42. However, it is the Minister who exercises the s75W power to modify a project approval, not the Director-General (or Secretary). There is the potential for legal error (a failure to consider a mandatory relevant consideration, or even perhaps *Wednesbury* unreasonableness) if the Minister approves the s75W without having before him a waiver of this design excellence competition requirement for Mod 8. At the very least there needs to be advertence and real consideration of this requirement as it is a part of the Concept Plan that is being modified.

43. It is not known whether there has been a further design excellence competition or decision of the design review panel in relation to Mod 8 or the significant buildings above RL57 (in particular the landmark tower on Block Y) proposed as part of Mod 8. There is no mention of such a new design excellence competition in the revised EARs or the Mod 8 EA.

Issue 7 – Compliance with C3A of Mod 7 in the absence of a transport access and management plan

44. Condition C3A of Modification 7 required a traffic impact assessment, being an updated transport management and access plan, to be lodged "within three months of the determination of this Modification 6 …". We are instructed that this has not been done, and there is no updated transport management and access plan.

45. There is an argument that approval of Mod 8 without the traffic impact assessment required by the previous Mod 7 being before the Minister is potentially unsound. The argument might be made that it would constitute a failure to take a relevant matter into account, or it is manifestly unreasonable, to approve the new Mod 8 Concept Plan

significantly increasing car parking requirements in the absence of that plan being approved.

46. We understand that there is a detailed traffic and parking assessment accompanying Mod 8 (although as set out in [19](f) above there is an apparent shortfall in the provision of on site parking), and the question is then whether this is sufficient to comply with Condition C3A (which requires an updated transport management and access plan, something different). Any material disparity between the requirements of C3A and what has been provided in the EA, would arguably reinforce rather than resolve the issue.

47. Finally, we note that it may be said that there will be further assessment of car parking in the particular SSDAs that will underlie and follow the approval of the Concept Plan. However, this observation is somewhat tempered by what we have raised in our earlier issue – being future contemplated assessment material, it is *ex hypothesi* not available to be considered as part of this modification proposal.

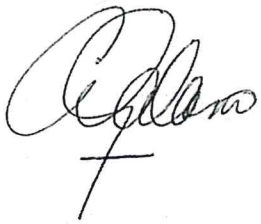
Summary

48. In our opinion, for the reasons set out above, there are real and identifiable issues (legally) of relevance to the consideration and approval of Mod 8.

49. We recognise of course that there are steps which the Minister could take in order to address some of the issues identified in this Memorandum. First, a PAC inquiry could be held with terms of reference sufficient to address the prejudgment issue. Second, all environmental impacts of the proposal would need to be assessed as part of the Mod 8 application and assessment process and not impermissibly deferred. This would, in our opinion, require preparation of additional material such a Social Impact Assessment, probably best after public consultation in relation to the social impacts of the new Casino proposal. Furthermore, the Mod 7 requirement for an updated Transport Management and Access Plan should also be addressed.

50. Other aspects of the issues raised above are, in our opinion, less amenable to any readily identifiable potential cure especially to the extent that they go to the scope of the s75W modification power.

1 May 2015



Adrian Galasso SC

7 Wentworth Selborne

Clifford Ireland

13 Wentworth/ Selborne Chambers

Tourism & Transport Forum (TTF)
A Division of Advocacy Services Australia Ltd | ABN 54 050 036 041
8th Floor | 8-10 Loftus Street | Sydney NSW 2000
PO Box R1804 | Royal Exchange NSW 1225
T +61 2 9240 2000 | F +61 2 9240 2020
E contact@ttf.org.au | www.ttf.org.au

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TTF AUSTRALIA
Tourism & Transport Forum

30 April 2015

Ms Sara Roach
Department of Planning
BY EMAIL: sara.roach@planning.nsw.gov.au

Dear Ms Roach

Submission to MOD 8

I write in support of the current proposal to modify the Barangaroo concept plan (MOD 8).

Tourism & Transport Forum (TTF) is the peak industry group for the Australian tourism, transport and aviation sectors. A national, member-funded CEO forum, TTF advocates the public policy interests of leading corporations and institutions in these sectors.

Barangaroo is the largest and most important Sydney CBD development this decade. The tourism industry strongly supports the development of Barangaroo as an employment and entertainment precinct. It will, generate thousands of jobs in the visitor economy, play a key role in shaping the future of the city's landscape and has the potential to become a world-leading visitor destination in its own right.

The MOD 8 proposal ensures that the Barangaroo precinct will be able to accommodate the construction of an iconic hotel and integrated resort while maintaining the publicly-usable space that covers more than half of the site. Achieving this balance is key to creating a high-quality cultural and entertainment hub. Proceeding with these modifications to the original concept plan will deliver a positive outcome for the liveability of Sydney but also to the city's appeal to domestic and international visitors.

If you require any further information, please do not hesitate to contact me.

Yours sincerely

Margy Osmond
Chief Executive Officer

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NATIONAL TRUST

Upper Fort Street, Observatory Hill
Millers Point, NSW 2000
GPO BOX 518
Sydney NSW 2001
T +61 2 9258 0123 F +61 2 9251 1110
www.nationaltrust.org.au/NSW

1 May 2015

Mr Ben Lusher
Acting Director
Key Site Assessments
Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr Lusher,

Thank you for your letter of 18 March, 2015 seeking comment from the National Trust in regard to the Exhibition of Modification Request for the Barangaroo Concept Plan (MP06_0162 MOD 8) and proposed State Environmental Planning Policy Amendment (Barangaroo) 2015.

Firstly, the Trust notes that the Heritage Map (Sheet HER 001) currently includes only one Heritage Item – The Dalgety's Bond Store Group. In fact there are six Heritage Items that are sited within the Subject Land: -

1. The Sydney Harbour Maritime Control Tower – originally listed on NSW Ports Section 170 Heritage Register – Nominated for listing on the State Heritage Register and recommended by the Heritage Council for listing on the State Heritage Register.
2. Dalgety's Bond Store Group
3. Sewage Pumping Station No 14 (surface structure relocated, subsurface structure buried) (State Heritage Register Listed)
4. 19th Century Sandstone Sea Wall.
5. Moore's Wharf & Stores Building, Town's Place & Dalgety Road
6. Western edge of the State Heritage Register listed Millers Point & Dawes Point Village Precinct.

The Statement of Heritage Impact prepared by TKD architects states "there are no listed heritage items on the development site." This is clearly incorrect.

The views to the south-west from Observatory Hill Park will, in the Trust's view, be significantly adversely affected by the development which will be facilitated by the Concept Plan modification. Figure 42 in the Statement of Heritage Impact does not even indicate the full height of the proposed hotel tower.

The Statement of Heritage Impact does not give a "statement of heritage impact" of the tower development on the views south-west from Observatory Hill Park but merely indicates that the trees and topography of Observatory Hill Park will assist in lessening impacts of the Concept Plan on the views. Whether that lessening of the impacts be by 1% or 2% or 50%, is not assessed.

The National Trust shares the concerns expressed by the Sydney Observatory regarding the impacts of the proposed new buildings on their highly active astronomy program which attracts over 180,000 visitors annually.

The view of several important night sky objects will be obstructed by the proposed new buildings at certain times of the year:

- The Southern Cross
- The Pointers
- The Jewel Box Cluster (open star cluster)
- Centauri (globular star cluster)

The Sydney Observatory Sky View Impact Assessment does not attempt to rebut these impacts but tries to argue that there is more sky left to view and that on rainy nights there is no viewing possible anyway.

The National Trust has already made its views known to the Department about the seemingly endless modifications that keep flowing with developments such as Barangaroo, each increasing the development density and height and which confirm the inherent defects in the current planning system.

Rather than gradually stepping down in height as it approaches historic Millers Point, the new Barangaroo Concept Plan Modification seeks to achieve the opposite and grows from 180 metres at the southern end to 275 metres at the northern end. This is put forward with meaningless arguments such as "bookending" or creating a "landmark".

True landmarks such as the Sydney Opera House, or hotels such as the Savoy in London or Raffles in Singapore, achieve this status through their excellence in design and illustrious history. Height per se is not the yardstick.

The Trust would be pleased to discuss with the Department a Concept Plan Modification which would achieve much greater community benefits through better protecting the unique heritage of Millers Point, East Darling Harbour and Sydney Harbour.

Yours sincerely

Graham Quint
Director - Advocacy

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Bravo Michael Pascoe! At last printed exposure of the Crown ruse...Sean Nicholls and other journos tried..many lovers of Sydney tried, but the people were silenced and ignored- no consultation, no transparency.
Our Premier, Planning Minister, Lend Lease and the BDA have a responsibility to the people of NSW and the residents of this great City to radically scale down the vastly over-bulked Crown proposal of a luxury Hotel (a comparatively small part of the complex), VIP Casino, and three mega storey towers of mainly $$million++ apartments (added later to partially 'justify' the expense of the Hotel/Casino). Application #MP06_0162 Mod 8 proposes a further massive blowout of the Crown project...'feebly justified' by the removal of the Hotel from the over-the-water-location. This argument of entitlement is unacceptable. Crown asks for a huge increase in floor space, a vast increase in height for the three towers and hundreds more car spaces. This proposal greatly diminishes the public domain, dominates our iconic Harbourscape, and critically compromises the integrity and amenity of this unique area. Buildings can stand for 100++ years so we must get this right!
This mega development may also prove costly. The Murray Committee reported the benefits to NSW , but reputable financial sources said this project could cost the taxpayers many millions of dollars. Was this fully studied/ investigated? Profit for the few?
No to MOD 8!! Refocus on project and purpose and proportion that will ensure an outstanding Barangaroo for all people that reflects the excellence of our great City.