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Date: 13 May 2015



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Secretary
Department of Planning and Environment
GPO Box 39,
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Dear Ms McNally,

**RE: BARANGAROO CONCEPT PLAN MODIFICATION (MP06_0162 MOD 8) AND
PROPOSED STATE ENVIRONMENTAL PLANNING POLICY AMENDMENT
(BARANGAROO) 2015**

I am writing to advise you that Leichhardt Council considered an item in relation to the subject matter at its meeting on 12th May 2015. In doing so Council resolved to make a submission (copy Attached) addressing the following issues: -

- a) The incremental "creep" in the scope of the project that has occurred to date, which in total represent a 64% increase in floor area across the site
- b) The problematic nature of the governance of the approval process, in this case the State Government has a role both as a supporter of the project and the assessment authority
- c) The modifications failure to adequately address the Director-General's Requirements
- d) The style of development, that is both contrary to the design principles the underpinned the original Concept Plan and long standing practices in relation to the overall planning of the CBD
- e) The proposals failure to achieve any meaningful key worker housing outcomes
- f) The proposals failure to provide adequate justification for an additional hotel
- g) Modifications failure to include a detailed Social Impact Assessment for the proposed casino use and mixed development
- h) The modifications failure to provide an adequate assessment on the impact of the proposal on the setting and context of the World Heritage listed Sydney Opera House
- i) The process to date for approvals at Barangaroo, whilst complying with the requirements of the now repealed Part 3A of the EP&A Act, are considered unreasonable, not well understood by the community and not conducive to

meaningful future, detailed design consultation with the public. A fresh approval process should be initiated for the Barangaroo Site, a further incremental increase by way of modification should not be allowed.

If you require any further information please do not hesitate to contact Gibran Khouri, on 02 9367 9236.

Yours sincerely,



Peter Conroy

Director
Environmental & Community Management

Submission to
NSW Department of Planning & Environment

by
Leichhardt Council



Concept Plan Modification
MP06_0162 MOD 8



Barangaroo

Submission to
NSW Department of Planning Environment
in response to

Concept Plan Modification
MP06_0162 MOD 8



Barangaroo

prepared for
Leichhardt Council



prepared by



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1 executive summary

Leichhardt Council commissioned Willana Associates Pty Ltd (Willana) to provide a high-level, independent, appraisal of the MP06_0162 Concept Plan Mod 8, for the redevelopment of Barangaroo and prepare a submission to the NSW Department of Planning and Environment on their behalf. MP06_0162 Concept Plan Mod 8 relates to the area of Barangaroo known as Barangaroo South.

Leichhardt Councillor's acknowledge the significance of the Barangaroo Site to Sydney and to the State. It is because of the Site's significance that the planning and governance of the approval process must be transparent and it is imperative that these processes and resulting design outcomes are understood by the public of NSW.

Leichhardt Council does not support the proposed modification to the Barangaroo Concept Plan (MOD 8) for the following reasons:

- Significant departures from the 2007 Approved Concept Plan, so that the development is no longer “substantially the same development” as originally approved.

The gradual amendments to the Concept Plan, over the past eight (8) years means that the total development floor space, at Barangaroo, represents an overall increase in gross floor area (GFA) of 217,611m². The 2007 original Approved Concept Plan included a maximum GFA of 388,300m². Under Barangaroo Concept Plan MOD 8, the total GFA on the entire Barangaroo Site is proposed to be 605,911m². This represents a 64% increase in GFA across the Site, through modifications, rather than as a whole new approval process.

In addition, there has been an incremental “creep” in building height across the Site. The tallest building under the 2007 original Concept Plan (as approved) was 180m. The proposed Barangaroo Concept Plan MOD 8 includes a maximum building height of 275m.

The process of modifying Concept Plans under Section 75W of the Environmental Planning and Assessment Act 1979 (EP&A Act) has no rigour. There is no requirement to consider the cumulative impacts of the incremental increases. Each modification application has been compared to the previous modification, suggesting that the increases have not been particularly substantial, rather than a review of the overall increase, and the resulting impacts.

- The governance of the approval process is problematic. The State Government is the landowner and assessment authority. This brings significant risks, perceptions of bias and lack of independent scrutiny of the

planning process. There must be greater transparency and separation in the planning process for this significant site.

- The Proponent's Environmental Assessment report (EAR) fails to adequately justify the proposal as prescribed by the Director-General's Requirements.
- The proposal ignores the CBD's morphology. Leichhardt Council support's the City of Sydney's response to the Sussex Penn review (City of Sydney, 'Submission to Independent Review into Barangaroo 20 June 2011'). The City of Sydney's position is that *"...twenty years of Sydney planning have centred on the principle of preserving a lower scale transition from the taller CBD buildings to the water's edge."*
- The proposal fails to achieve any meaningful key worker housing outcomes. A **target** of 2.3% of residential gross floor area for key worker housing falls well short of affordable housing targets in surrounding local government authorities, including Leichhardt Council's policy to achieve 10% affordable housing for major developments. The Proponent is requesting an increase in GFA across Barangaroo South, with no commitment to increase the percentage of key worker housing. This is an unacceptable outcome for the future community of the precinct.
- The proposal does not include a detailed Social Impact Assessment for the proposed casino use and mixed development. The social consequences of a mixed use proposal, including residential accommodation, commercial and retail premises and a casino should be considered at the Concept Plan stage of the development, as would be a requirement for a Planning Proposal to rezone a site that includes a casino use, under Section 55 of the EP&A Act.

The State Government must consider the relationship of these elements to each other and, of even more consequence, the negative effects on the local area.
- The original Concept Plan was approved in February 2007. In June 2007, the Sydney Opera House was included on the UNESCO World Heritage List under the World Heritage Convention. The Proponent's Barangaroo Concept Plan MOD 8 does not provide an assessment on the impact of the proposal on the setting and context of the Sydney Opera House and therefore cannot be supported.

The process to date for approvals at Barangaroo, while complying with the requirements of the now repealed Part 3A of the EP&A Act, are considered unreasonable, not well understood by the community and not conducive to meaningful future, detailed design consultation with the public. As a result, a new approval process, not further incremental increases by way of modifications, should be undertaken for the Barangaroo Site. Council seeks the support of the NSW Department of Planning and Environment in pursuing this line of action.

2 introduction

The original Concept Approval for Barangaroo, MP06_0162 Concept Plan Mod 8, was granted by the NSW Minister for Planning in May 2007. Since this time, the Concept Plan has been modified numerous times under Section 75W of the EP&A Act. Modification 4, approved on 16 December 2010, included the redistribution of built form and GFA and a Landmark Hotel building on a pier projecting into the Harbour. As a result of significant community concern about Part 3A Applications, at that time, in May 2011, the Minister for Planning announced a 'Short Sharp Review' of the Barangaroo development. The Sussex Penn Review (The Review) was published on 1 August 2011 including the recommendation *'that it would be a significant demonstration of goodwill to relocate the hotel to elsewhere on the site'*.

In response to the above finding, the Proponent has substantially modified the Concept Plan (MP06_0162 Concept Plan Mod 8) which broadly proposes:

- Relocation of the landmark hotel building from extending over the harbour onto land within the Site and the inclusion of the potential use of a gaming facility in part of the hotel.
- Substantial increase the maximum GFA on the Site.
- Substantial increase the maximum building height at the Site.

The Proponent's MP06_0162 Concept Plan Mod 8 represents a significant departure from the aims, objectives and principles of the Original 2007 Concept Plan approval and also a departure from the aims, objectives and principles of subsequent modifications.

3 the issues

3.1.1 Concept plan modification process

The proposal is Modification No 8 to the original (February 2007) Concept Plan (MP06_0162). The Environmental Assessment Report (EAR), for this Modification Number 8, was submitted to the Minister for Planning pursuant to clause 3C(1) of Schedule 6A to the EP&A Act, that provides for the continued application of the provisions of the now repealed Section 75W of Part 3A of the EP&A Act for the purposes of the modification to the Concept Plan.

There are no limits or “tests” that apply to the Minister’s ability to approve a modification to a Concept Plan under the now repealed Section 75W of the EP&A Act. The consequence of this is that once a Concept Plan has been approved, it can be (and in the case of the subject site, has been) modified extensively over time. The resulting Concept Plan bears little resemblance to the original approval, without the need to test the cumulative impact of the modifications.

This method of incremental increases to the bulk and scale of development at the Site, means that the public may not be aware of the actual overall increases to the scale of the development, bringing into question the transparency of the planning process for this State Significant Site. In this regard, the proponent only compares the proposed GFA and height increases under the current modification (MOD 8) to the most recent approved modification (MOD 7), rather than the actual original 2007 Concept Plan approval.

Table 1 below provides a summary of the GFA modifications as approved since 2007 as compared to the proposed GFA under the current modification request (MOD 8). Table 1 has been prepared in the apparent absence of a comprehensive comparison GFA table, prepared or published by others. A table, such as Table 1, would be a very useful document to aid the public in their understanding of the scale of modifications to Barangaroo, since 2007. Such a table, if produced by the Government, would assist with the transparency of the Planning Processes at the Site.

The EP&A Act contemplates modifications of Development Consents through the application of s.96 (Part 4) of the Act. Compared to the process for modifying Concept Plan approvals under Section 75W of Part 3A of the EP&A Act, the s.96 modification process is a very different and far more rigorous process that is imposed on modification applications lodged under Part 4 of the EP&A Act. In the application of s.96 assessments, the consent authority must ensure that the proposed development remains “substantially the same” as the original approved development. This protects the public interest by ensuring there is no incremental “creep” of development (for example through increased GFA or height), without undertaking the appropriate assessment of environmental impacts. If the proposal is not substantially the same, a new development application is required.

Under Section 75W of the EP&A Act, there have been seven (7) modification applications approved to MP06_0162 – Barangaroo Concept Plan. The current application (MOD 8) is under assessment, and the Director-General's Requirements for Modification 9 (MOD 9) relating to Central Barangaroo have been issued.

Table 1| Comparison of GFA at Barangaroo between original 2007 Concept Plan approval and current Modification 8

Component Uses	Concept Plan as approved (Feb 2007) (sqm)	Concept Plan as approved by MOD 2 (Feb 2009) (sqm)	Concept Plan as approved by MOD 4 (Dec 2010) (sqm)	Concept Plan as proposed by MOD 8 (sqm)	Change (sqm) between 2007 approval and MOD 8
Residential (max)	100,000	83,575	128,763	183,028	83,028
Tourist (max)	30,800 (min)	50,000	50,000	76,000	45,200
Retail (max)	39,000	39,000	39,000	34,000	-5,000
Community (min)	2,000(min)	2,000(min)	12,000 (min)	12,000	10,000
Passenger Terminal (Max)	8,500	8,500	0	0	-8500
“Active Uses” in Public Recreation Zone (max)	3,000	3,000	4,500	5,000	2,000
Commercial (difference of above)	205,000	314,925	329,702	295,883	90,883
TOTAL	388,300	501,000	563,965	605,911	217,611

* The figures provided in Table 1 above have been sourced from a review of previous Concept Plans and Concept Plan Modification EARs and the Director-General's EARs, for Barangaroo, in the apparent absence a comprehensive GFA table.

The increase in GFA from the original approved Concept Plan in February 2007, to the current proposed modification (MOD 8) is 217,611m², representing a 56% increase in GFA. The maximum height of the original approved Concept Plan (Feb 2007) was 180m. Under Concept Plan (MOD 8), the maximum building height proposed is 275m. The proposal is not substantially the same as the original approved Concept Plan in 2007. The proponent has used the Concept Plan modification processed (under the now repealed Section 75W of the EP&A Act,) in order to achieve a much larger development than was originally envisaged for the Site.

It is noted that the EAR submitted with MOD 8 only compares the proposed GFA and height increases to the current approved indicative design under MOD 4, rather than providing the whole picture and comparing the proposed increases with the original 2007 approved Concept Plan.

Under the conventional planning processes applying to Part 4 applications, the proponent must justify any departures of development standards through a Clause 4.6 variation request, or a State Environmental Planning Policy No. 1 Objection (SEPP 1). The tests for a Clause 4.6 variation request (or SEPP 1 Objection) is for the proponent to justify that compliance is unreasonable and unnecessary. This test is usually achieved through an assessment of whether the variation to the standard means that the proposal can still achieve the objectives of the zone and the development standard for which an exemption is sought and whether there are any sufficient environmental planning grounds to support the variation.

There is no such requirement for the proponent to justify the proposed variations to the original 2007 approved Concept Plan under Section 75W of the EP&A Act. MOD 8 is a result of an agreement by the Proponent to relocate the proposed hotel/casino building from extending into the Harbour, back onto land within the Site. The EAR does not justify why the revised mixed uses cannot be accommodated within the approved GFA, through redistribution of building envelopes, rather than just increasing the height and GFA.

As part of the justification for the increases in height and GFA, the EAR includes:

The proposed additional GFA for the hotel, and associated height increase will provide for the establishment of a building of landmark status. Having been relocated back on to land from out over the Harbour, these height and GFA increases are necessary to establish the building's landmark status and enable its function as a world class six star hotel. The proposed increase in GFA that is attributable to the landmark hotel site responds directly to the ambition of the new Crown Hotel proposal to be a world class resort.¹

¹ JBA (March 2015) Environmental Assessment Report – Barangaroo South Concept Plan (Mod 8) and SEPP/SREP Amendments (page 28)

The EAR also includes 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 Delivery Authority and Lend Lease for it to build the landmark hotel building and operate an iconic, world class, luxury six-star hotel resort, which incorporates VIP gaming facilities².

Leichhardt Council is particularly concerned that one of the cited justifications for the increase in GFA is that it is in response to the Crown Hotel brief. This is not a valid planning justification and therefore fails to satisfy the Director-General's Environmental Assessment Requirements. Council's concern regarding the influence of Crown Resorts on the scale of the "landmark hotel" is consistent with the recent article in the Sydney Morning Herald, by Michael Pascoe (1 May 2015).

In addition, increased height and GFA alone will not necessarily result in an "iconic", landmark building. It may be a landmark, because it is tall and can be seen from many vantage points, but "iconic" status comes from uniqueness of design, rather than just relying on being taller than everything else around. Leichhardt Council is of the opinion that the justification for the proposed height and GFA in order to establish a building of landmark status, is again, not a valid planning justification.

Leichhardt Council recommends that a new approval process, not further incremental increases by way of modifications, should be undertaken for the Barangaroo Site in order for the State government to holistically assess the environmental impacts of the proposal, and to ensure the best outcome for residents and visitors to NSW.

3.1.2 Governance

Leichhardt Council raises concerns with regards to the transparency of the process as the State government is both the land owner and assessment authority for Barangaroo. The typical practice for local government authorities in NSW, where there is a potential conflict of interest, such as circumstances when the local authority is the land owner/ developer, independent consultants are commissioned. This reduces the risk of perceptions of bias and lack of independent scrutiny of the development assessment process.

Consistent with this approach, Leichhardt Council recommends that the State Government engage an independent body of experts to determine MOD 8 Concept Plan. The State Government initiated the Central Sydney Planning Committee (CSPC) to determine major development applications in the City of Sydney Local Government Area, with an estimated cost of greater than \$50 million.

² JBA (March 2015) Environmental Assessment Report – Barangaroo South Concept Plan (Mod 8) and SEPP/SREP Amendments (page 22)

In order to better manage the issue of governance (both real and perceived), the State Government could refer Concept Plan modifications at Barangaroo to the CSPC for determination.

The EAR lodged in support of MOD 8 includes an artist's impression of the "landmark Hotel building" (refer to Figure 5 of the EAR report, prepared by JBA, March 2015). This image is also used on the front page of the EAR and on the Barangaroo Delivery Authority's web page, and has been republished by a number of media outlets.

This image is merely an artist's impression and has not been approved through the development application process. The ongoing use of this image, particularly by the State Government, gives the impression that the building has been approved. As a consequence, the public may be less inclined to be engaged at the public notification phase of any future development applications because of the perception that the building has been approved. The result could be a significantly reduced public engagement than would otherwise occur. It is not within the public's interest for the State Government to promote the artist's impression of the hotel/casino building.

3.1.3 City Morphology

The Director-General's Environmental Assessment Report (December 2010) (DG's EAR) in relation to Modification Request Barangaroo Concept Plan (MOD 4), which included the landmark hotel on the pier in the Harbour, undertook an assessment of the proposed (MOD 4) building heights in relation to the CBD skyline. Section 5.3.2.1.2 Building Heights of the DG's EAR included:

In addition to increases in the proposed GFA, the proposal involves increases in the proposed maximum heights within Barangaroo South. In terms of the approach taken by the Proponent, the following objectives were cited in the EA:

- a) *Tall buildings to maximise solar penetration;*
- b) *Buildings no taller than the CBD skyline;*
- c) *A mix of low rise buildings and podiums to moderate the scale of taller buildings; and*
- d) *A scale comparable to other "world class cities".³*

The DG's EAR included that height was the most common issue raised in objections to the MOD 4. Importantly, the DG's EAR considered that the Proponent's 4 aims (cited above) was considered appropriate – including point b) above - *Buildings no taller than the CBD skyline*.

³ NSW Government Department of Planning (December 2010) Director-General's Assessment Report MOD 4 (p.45)

The December 2010 DG's EAR compared the approved heights at Barangaroo (under Concept Plan approval MOD 2) with the MOD 4 proposal, as illustrated in Figure 1 below, which is an extract of Figure 27 from the DG's EAR (December 2010) – Indicative Height Comparison and Distribution cross the site). The DG's EAR also looked at the “fanning” of building heights from the CBD core to its edges.

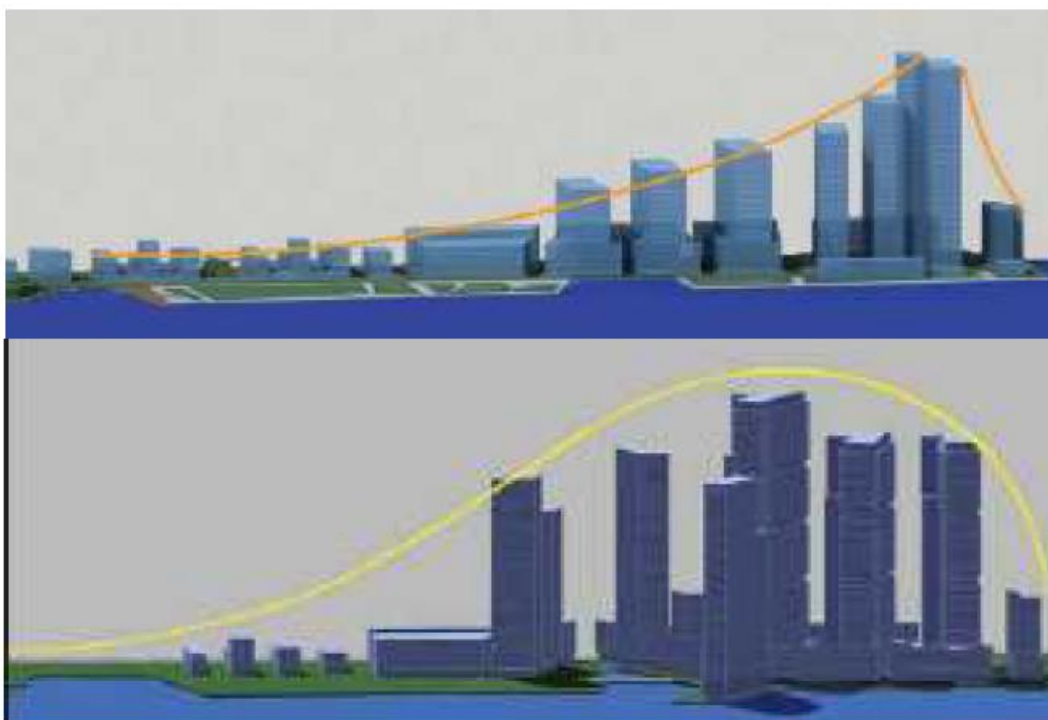


Figure 1 | Extract of Figure 27 from the DG's EAR (December 2010) – Indicative Height Comparison and Distribution cross the site

In addition, the DG's EAR report compared the proposed MOD 4 with that of existing Sydney CBD buildings (Figure 2 – an extract of Figure 28 from the DG's EAR (December 2010) – Height Comparison with the Sydney CBD).

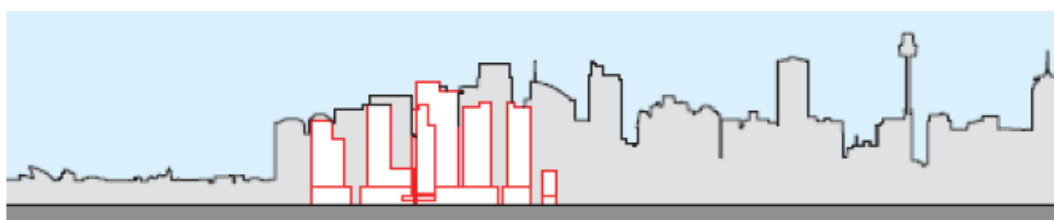


Figure 2| Extract of Figure 28 from the DG's EAR (December 2010) –Height Comparison with the Sydney CBD

The DG's EAR concluded that the MOD 4 height was acceptable as the building heights were comparable to buildings within the CBD and less than the maximum building height allowed by the City in the CBD Core.

The Proponent has not provided an adequate planning justification as to why the original cited objectives in relation to the GFA and height should be abandoned, nor why should the established structure of the City, including the “fanning” principles from the City Core to its edges be ignored.

Leichhardt Council consider that the important transition in heights from north to south, that was fundamental to the original Concept Approvals at the Site, and while diminished by MOD 4, was still evident, but has been completely eroded by the current proposal (MOD 8), as illustrated in Figure 3 below.

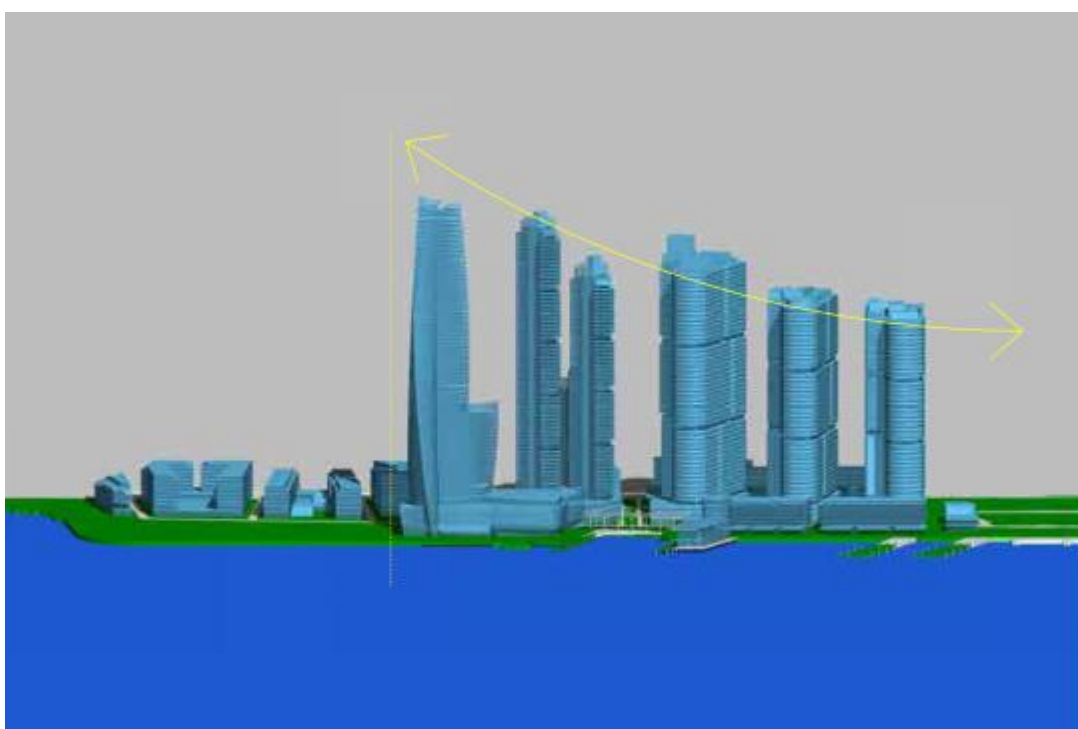


Figure 3| Extract of Figure 19 from JBA EAR (15 March 2015) – Transition of heights through Barangaroo South

If approved, MOD 8 will result in buildings at Barangaroo that are taller than the CBD skyline and therefore inconsistent with the original height objectives for the Site, which was considered by in the Director-General's Report, as appropriate.

Table 2 below provides a comparison of building heights at Baranagroo South from the 2009 MOD 2 Concept Approval compared to the current proposal MOD 8.

The proposal ignores the CBD's morphology. Leichhardt Council support's the City of Sydney's response to the Sussex Penn review (City of Sydney, 'Submission to Independent Review into Barangaroo 20 June 2011'). The City of Sydney's position is that *"...twenty years of Sydney planning have centred on the principle of preserving a lower scale transition from the taller CBD buildings to the water's edge."*

The Proponent's justification to ignore the City's morphology in order to achieve the objectives of the Crown Hotel's brief and to achieve a landmark building are not sound planning reasons to so drastically change the visual impact of the City's skyline.

Table 2| Comparison of Building Height at Barangaroo between Concept Plan approval (MOD 2) and current proposed Modification 8 (MOD 8)

Block	Concept Plan as approved by MOD 2 (Feb 2009)	Concept Plan as approved by MOD 4 (Dec 2010)	Concept Plan as proposed by MOD 8	Change (m) between MOD 2 (Feb 2009) approval and Proposed MOD 8
1	62m	80m	25m	- 37m
2	180m	180m	180m	0m
3	112m	209m	209m	+97m
4	100m	41.5 – 175m	250m	+150m
X	0	41.5m	41.5m	+41.5m
Y	0	170m	275m	+275m

3.1.4 Key Worker housing commitment

The Sussex Penn Review (August 2011) included:

*The Review has concluded that there should be more effort to provide affordable housing for key workers at Barangaroo.*⁴

And under the section of The Review titled Affordable Housing:

*Of more concern than the overall level of housing is its lack of diversity. Only 2.3% of the proposed stock is classified as affordable. The City of Sydney is aiming for 7.5% by 2030. Given that Miller's Point has a substantial amount of social housing close by, this is not necessarily a high propriety on the site. But housing for key workers is a priority and the Barangaroo Delivery Authority should be asked to examine the opportunities for doubling the amount of affordable housing on the site.*⁵

⁴ Meredith Sussex AM & Shelley Penn (1 August 2011), Barangaroo Review (p. 5)

⁵ Meredith Sussex AM & Shelley Penn (1 August 2011), Barangaroo Review (p. 45)

The Proponent's EAR for MOD 8 includes that:

The proposed modifications will not affect the mix of housing types and tenures provided in Barangaroo South. The existing commitment, of a total of 2.3% of all housing to be provided as Key Worker housing, will remain.

Despite the Sussex Penn Review recommendations, there is no additional commitment by the Proponent regarding key worker housing. As a ratio, the actual Key Worker housing commitment has reduced. The original commitment was based on a maximum 100,000m² residential GFA at the Site, under the original 2007 approved Concept Plan. The maximum residential GFA under MOD 8 is now proposed to be 183,028m² (across the whole Barangaroo Site and 154,000m² for Barangaroo South). This represents an 83% increase in residential GFA across the whole site. As a result, it would be equitable, as a minimum, to increase the Key Worker housing commitment by 83%, i.e., increase the Key Worker housing at the Site to at least 4.2% of all housing to be provided.

It is noted that the Proponent's EAR statement that *the existing commitment, of a total of 2.3% of all housing to be provided as Key Worker housing, will remain*, is misleading. There is no commitment for a total of 2.3% of all housing to be provided as Key Worker housing. The Proposed Amendments to the Statement of Commitments to the EAR for MOD 8 to the Concept Plan (Appendix X of the Proponent's EAR), includes Commitment No. 34:

Within Barangaroo South up to 2.3% of all approved residential GFA will be provided as key worker housing.

The figure of 2.3% is a **target** figure. As a target, there is no onus on the Proponent to provide any Key Worker Housing. Even if the figure of 2.3% of the residential GFA was a minimum figure, this is considered to be grossly inadequate. Leichhardt Council's adopted policy on Affordable housing, under *the Leichhardt Affordable Housing Strategy (2011)* at Section 3.3.3 Developing Affordable Housing Policy, Clause 3.3.1, includes:

Action 1: Council to consider the provision of diverse, affordable and adaptable housing when land is rezoned and seek a minimum 10% affordable housing contribution for all new significant development projects, being: Government land, major developments (residential components) and significant rezoning (change in use to residential or an increase in residential density).

Affordable housing ensures that all persons within the community including nurses, police, school teachers, hospitality workers etc, can afford to be part of the community and contribute toward a socially, environmentally and economically sustainable and vibrant locality of Sydney City.

The proponent is requesting a substantial increase in GFA and height across the Site, but there are no apparent additional public benefit measures as a result of the increase in development at the Site. Leichhardt Council recommends that the proponent's commitment to Key Worker housing should be substantially increased, as recommended by the Sussex Penn Review.

Leichhardt Council recommends that at the very least, the State Government should require that the Key Worker housing commitment is a minimum percentage of all proposed residential GFA, rather than a maximum percentage, as currently written. The commitment as written means that the proponent could provide much less than the current promise of 2.3% of all residential GFA.

As outlined above, the Sussex Penn Review identified that *Given that Miller's Point has a substantial amount of social housing close by, this is not necessarily a high propriety on the site.*

The circumstances around public housing has now changed since the Sussex Penn Review was published (August 2011). In 2014, the NSW Government commenced the sale of government-owned properties (some 293 properties) at Millers Point and The Rocks. As a consequence, there will no longer be a *substantial amount of social housing close by* to the Barangaroo Site.

Leichhardt Council recommends that, as required by the Director-General's Environmental Assessment Requirements, the Proponent provides a detailed amended Housing Strategy in order to address the change to the amount of social housing in the vicinity of the Site and to justify its meagre offer in terms of key worker housing. Any increase in height and GFA at the Baranagroo site should only be supported on the basis of a commitment (i.e. not merely a target) by the Proponent to a meaningful contribution to key worker housing and affordable housing, in order to achieve residential diversity, which is necessary to ensure future vibrant, healthy communities at the Site

3.1.5 Social impact

Concept Plan (MOD 8) includes that:

A range of social benefits and disbenefits are anticipated in association with the proposed casino use that is intended to be included as a potential land use in the landmark hotel building. These benefits and disbenefits will be explored in detail within a Social Impact Assessment for any future application for a casino use at Barangaroo South.

The social consequences of a mixed use proposal, including residential accommodation, commercial and retail premises and a casino should be considered at the Concept Plan stage of the development, as would be a requirement for a Planning Proposal to rezone a site that includes a casino use, under Section 55 of the EP&A Act.

The Concept Plan does not consider, in any great detail, the relationship of these elements to each other and, of even more consequence, the negative effects on the local area. As a consequence, the Concept Plan cannot be supported with any certainty that any social negative impacts of the Casino can be adequately mitigated.

3.1.6 Visual impact on Sydney Opera House

The original Concept Plan was approved in February 2007. In June 2007, the Sydney Opera House was included on the UNESCO World Heritage List under the World Heritage Convention. The Convention sets out the duties of State Parties (Australia is a State Party to the Convention), in identifying potential sites and their role in protecting and preserving them. By signing the Convention, each country pledges to conserve, not only the World Heritage sites situated on its territory, but also to protect its national heritage.

In November 1997, the Council of Australian Governments (COAG) agreed in principle to the Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment. Subsequently, all heads of governments and the Australian Local Government Association signed the agreement.

In the agreement, the States and Territories and the Commonwealth agreed that reform in the following five areas was needed to develop a more effective framework for intergovernmental relations on the environment:

- *matters of National Environmental Significance;*
- *environmental assessment and approval processes;*
- *listing, protection and management of heritage places;*
- *compliance with State environmental and planning legislation; and*
- *better delivery of national environmental programmes.*

A number of key aspects of the Heads of Agreement have been implemented by the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Under the EPBC Act, a bi-lateral agreement for the protection of the Sydney Opera House has been signed between the Australian Government and the State of NSW. The Australian Government Department of Environment website includes that the Agreement aims to:

- *Protect the World Heritage and National Heritage values of the Sydney Opera House from unacceptable and unsustainable impacts*
- *Ensure an efficient, timely, and effective process for environmental assessment and approval of actions; and*
- *Minimise duplication of environmental assessment and approval processes relating to the protection of the World Heritage and National Heritage values of the Sydney Opera House.*

The proposed hotel/ casino building under MOD 8 has a maximum building height of 275m and as such, will be visible as a backdrop to the Opera House when viewed from the Harbour, east of the Opera House and from vantage points on the Harbour foreshore to the north east of the Opera House. The bulk, scale and height of buildings that form the backdrop to the Opera House, impact on the context and sense of place of the Opera House. It is imperative that the height of future buildings, that form the backdrop of the Opera House, which includes the proposed Barangaroo South development, are managed to protect the unique sense of place of the Opera House.

The Concept Plan (MOD 8) Heritage Report prepared by Tanner Kibble Denton Architects (Sept 2014), has negligible regard to the visual impact of the MOD 8 Concept Plan on the Sydney Opera House. The View and Visual Impact Analysis (February 2015), prepared by JBA lodged with MOD 8, includes an analysis of the view from the western forecourt of the Opera House, but does not take into account the impact of the proposal on the setting of the Opera House. The View and Visual Impact Analysis comments on the view from Cremorne Point and includes:

The effect of the new built form of Barangaroo from Cremorne Point is solely to complete the east-west silhouette of the CBD. The proposal will not impact upon any views to (or the quality of those views) the Opera House and Sydney Harbour Bridge, which sit in the foreground of these views.

Figures 1 and 2 above illustrate that previous Concept Plan Approvals for Barangaroo South tapered building heights, moving from the southern end to the northern end of the Site. The consequence of this and the Proponent's key objective that buildings were to *be no taller than the CBD skyline*, meant that the Barangaroo development would not have a significant visual impact as a backdrop to the Opera House. Figure 3 above, illustrates the proposed transitions of heights under proposed MOD 8. Figure 3 shows that the original design principle of tapering buildings to the northern end of Barangaroo South has been ignored. The consequence is that Barangaroo is likely to impact on the setting of the Opera House.

There is an onus on the State Government to protect the setting of the Opera House and contemplate the impacts of new buildings which change the backdrop to the Opera House. This onus is in accordance with the World Heritage Convention and the agreement between the Australian Government and the State of New South Wales under Section 45 of the EPBC Act *Relating to Actions Approved and Taken in Accordance with the Bilaterally Accredited Management Plan for the Sydney Opera House*.

In April 2014, the Victorian Government announced the implementation of permanent and mandatory planning controls to ensure the Melbourne Shrine of Remembrance is preserved for future generations through permanent height controls in areas to the west and south west of the Shrine. The planning controls are a result of an extensive review of existing planning controls and policy together with the technical analysis of building heights. The objective of the controls is to preserve the sense of place of the Shrine.

Leichhardt Council recommends that the NSW Government undertake a Planning Study to protect the significance and setting of the Sydney Opera House, similar to the Victorian Government's Planning Study to protect the visual setting of Melbourne's Shrine of Remembrance (which does not have World Heritage listing status). Such a study would ensure that the State Government is carrying out its responsibility under the *EPBC Act* bilateral agreement with the Australian Government.

4 conclusion

The proposed MP06_0162 Concept Plan Mod 8, for the redevelopment of Barangaroo, results in a dramatic change to the urban form for the area, without the requirement for a transparent planning approval process.

The proponent is seeking a substantial increase to GFA and height at the Site, without the need to undertake a thorough and considered justification for the departure from the Original Concept Plan, as approved in 2007, or even the most recent approved modified Concept Plans.

Leichhardt Council does not support the proposed modification to the Barangaroo Concept Plan (MOD 8) for the following reasons:

- Lack of transparency associated with the planning approval process through the proponent's ongoing and incremental modifications' to the approved 2007 Concept Plan under Section 75W of the EP&A Act. The Concept Plan (MOD 8) is not substantially the same development as originally approved.
- The governance of the approval process is problematic.
- The proponent does not justify why the revised mixed uses cannot be accommodated within the approved gross floor area, through redistribution of building envelopes, rather than just increasing the height and GFA at the Site.
- The proposal ignores the CBD's morphology.
- The Proponent's **target** offer of up to 2.3% Key Worker housing is inadequate and should not be supported.
- The proposal does not include a detailed Social Impact Assessment for the proposed casino use and mixed development. The social consequences of a mixed use proposal, including residential accommodation, commercial and retail premises and a casino should be considered at the Concept Plan stage of the development, as would be a requirement for a Planning Proposal to rezone a site that includes a casino use, under Section 55 of the EP&A Act.
- The proposed MP06_0162 Concept Plan Modification 8, does not include an assessment on the impact of the modified proposal on the World Heritage listed Sydney Opera House, in contravention of the UNESCO World Heritage Convention, and as a result cannot be supported until such an analysis is provided.

In order to protect the integrity of the planning process for the Site and achieve the highest and best outcomes for the people of NSW, a new approval process, not further incremental increases by way of modifications, should be undertaken for the Barangaroo Site. Council seeks the support of the NSW Department of Planning and Environment in pursuing this line of action.