

28 June 2016

## Determination Report

### Determination of Section 75W Modification Application for the Barangaroo Concept Plan, Hickson Road, Barangaroo (MP06\_0162 MOD 8)

## 1. BACKGROUND

Barangaroo has a site area of approximately 22 hectares located prominently within the north-western edge of the Sydney CBD with a significant harbour foreshore frontage. Barangaroo has been divided into three distinct redevelopment areas comprised of Headland Park, Barangaroo Central and Barangaroo South (refer to **Figure 1**).

The entire Barangaroo site is of particular significance to the city of Sydney due to its historical, cultural and geographical importance. The site presents one of the last opportunities along the Sydney Harbour foreshore for CBD development (built and natural) for future generations to enjoy.

**Figure 1** – Approved Barangaroo Site Plan



### 1.1 Application

Lend Lease (the Proponent) has submitted an application under section 75W of the *Environmental and Planning Assessment Act 1979* (EP&A Act) seeking to modify the Barangaroo Concept Plan relating to the built form and urban design outcomes on the site.

As lodged Modification 8 (MOD 8) applies to Barangaroo South that extends over development Blocks 1 to 4, Block X and Block Y. Barangaroo South is proposed to be a mixed use precinct consisting of a restricted gaming facility, residential apartments, hotel, shops, cafes, restaurants and cultural facilities.

Crown Sydney Property Pty Ltd has also submitted a State Significant Development application seeking approval for site remediation, excavation and construction, fit out and use of a 71 storey (RL 275 metre) building providing for a hotel, restricted gaming facility, residential and retail uses, basement

car parking and signage at Block Y within Barangaroo South. That application is also with the Commission for assessment and that determination report should be read in parallel with this report.

The Proponent is seeking to vary the Concept Plan by relocating the hotel from the water to the land, rearranging the development envelope, removing one proposed building completely and increasing the total floor area (refer to **Figure 2A & 2B**).

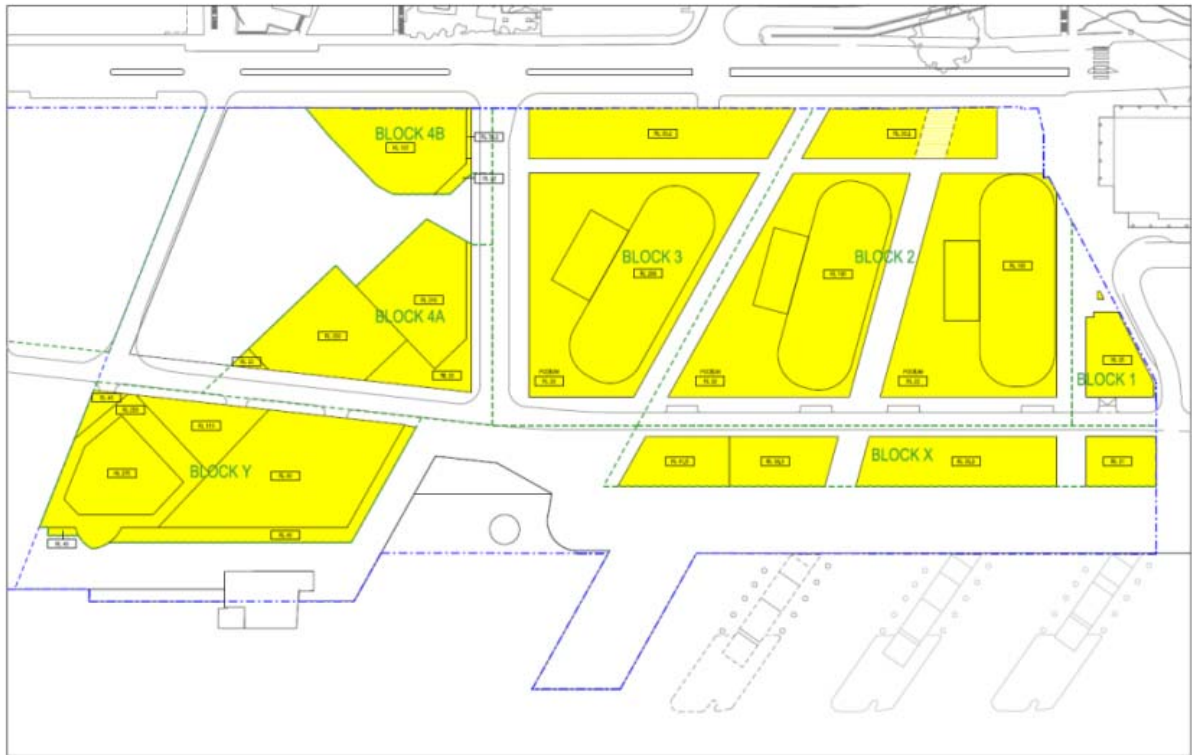
The key changes proposed in MOD 8 are summarised below:

- To increase the total maximum gross floor area at Barangaroo from 563,965 sqm to 605,911 sqm by adjusting the gross floor area allocated to Barangaroo South;
- To amend the maximum height limits of certain development blocks at Barangaroo South;
- To amend the Barangaroo South site boundary and urban structure;
- To amend the indicative layout and various land use distributions within Barangaroo South;
- To amend the location, design and size of the open space and public domain areas, including Watermans Cove and the foreshore promenade to the north of Watermans Cove;
- To increase the car parking to align with the proposed increases in gross floor area; and,
- To propose a new set of Design Guidelines to guide the future development within Barangaroo South.

**Figure 2A – MOD 6 Concept Plan**



**Figure 2B – Proposed MOD 8 Concept Plan**



**Figure 2C – Proposed MOD 8 Concept Plan**



## 1.2 Site history

A summary of key milestones is provided below:

- In 2003, the Premier announced that the stevedoring wharves at East Darling Harbour would be transformed into a new urban precinct.
- An international urban design competition for the Barangaroo site, that attracted 139 entries, was conducted in 2005.
- The Hill Thalys, Paul Berkemeier and Jane Irwin (HTBI) team competition winning scheme was announced in March 2006.
- The original Concept Plan was approved in February 2007.

- The initial Barangaroo Concept Plan split the site into three distinct areas, Headland Park, Barangaroo Central and Barangaroo South (**Figure 1**).
- Barangaroo Reserve and Central Barangaroo waterfront promenade was the first component to be developed and was opened to the public in 2015. The Headland Park is a six-hectare open space reserve.
- In late 2010, investigations and planning commenced on the development on Barangaroo South for it to become a precinct consisting of commercial office buildings, residential apartments, an international hotel, shops, cafes, restaurants and cultural facilities. In 2015 Tower Two was the first completed building, with Tower One and Tower Three well under construction.
- **Modification 1** approved minor typographical error amendments and clarified the Design Excellence requirements for the site.
- **Modification 2** approved a significant increase to the gross floor area from 399,800 to 519,800 sqm, with all additional floor space zoned commercial use.
- **Modification 3** involved changes to the Headland Park and Northern Cove area. It approved changes to the outline of the Headland Park to support a 'naturalised' form, an increase to the size of the northern cove, realignment of Globe Street (to support the park and cove changes), and works in relation to three heritage items, being the sandstone sea wall, the Sydney Ports Harbour Control Tower and the MSW&DB Sewage Pumping Station. This modification also deleted Block 8 and reduced the gross floor area by 18,800 sqm to 501,000 sqm.
- **Modification 4**, determined December 2010, followed the Government's acceptance of the Lend Lease proposal for Barangaroo South and represented the most significant modification to the Concept Plan at that time. Substantial changes were approved including:
  - Changes to block sizes and location;
  - Increases to building heights;
  - An increase in the gross floor area;
  - Enlargement of the Southern Cove (now Watermans Cove);
  - Changes in use to include residential and tourist uses;
  - Introduction of a pier into the harbour with a hotel on the pier;
  - Revisions to the built form controls and urban design principles;
  - Reduction in the width of the promenade.
- In 2011, Ms Meredith Sussex AM and Ms Shelley Penn, at the request of the Minister for Planning, reviewed the Barangaroo Concept Plan and assessed the changes made under Modification 4 (MOD 4). The review was "*satisfied that the Department of Planning appears to have given this assessment due consideration and to have made informed and reasonable judgement about what it considered acceptable*". The Sussex and Penn review made a number of key recommendations, including:
  - The placement of the hotel over the harbour is not considered to be good public policy and its location should be reviewed;
  - There should be more affordable housing for key workers;
  - Due to a lack of an independent, expert 'good design' advocate supporting the Government in the process, the NSW Government Architect should undertake an advocacy or advisory role; and,
  - As the community is still concerned about the 'visual bulk' of the towers, a 'snapshot' design review should be undertaken to assess and advise on the quality of forthcoming proposals and to reassure the community.
- The Barangaroo Delivery Authority appointed Design Advisers in November 2011 in response to the Sussex Penn review.
- Crown Limited made an unsolicited proposal for the development of a hotel and casino on the 6<sup>th</sup> September 2012. On the 25<sup>th</sup> October 2012, the then Premier announced approval of Stage 1 (the initial submission and strategic assessment) and further development of a detailed proposal to proceed.
- In 2013, the NSW Parliament legislated through amendment to the *Casino Control Act 1992* the redistribution of the area of B4 zoning (including Block Y) and the location of the restricted

gaming facility. In November 2013 the Crown Group Companies entered into a Framework Agreement with the NSW Government relating to the development of the Hotel Resort.

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

### 1.3 Commission's engagement

The Planning Assessment Commission was asked to determine or advise on two previous Barangaroo projects:

- Modification 2, determined February 2009, approved changes to increase the allowable commercial floor space for Blocks 2, 3, 4 and 5.
- Modification 6, determined March 2014, approved, with conditions, the realignment of roads and block boundaries; revision of the Urban Design Controls; amendments to the Built Form including the community gross floor area being excluded from the calculation of the building gross floor area and changes to the overall height; and parking rates.

On 29 March 2016 the Commission received a new request to advise the Minister for Planning on the appropriateness of the proposed *State Environmental Planning Policy (SEPP) Amendment (Barangaroo) 2016*. The SEPP amendment proposed to rezone parts of the Barangaroo site and water of Sydney Harbour and modify relevant development controls. The Commission provided its advice to the Minister on 1 June, 2016.

The Commissioners who advised on the SEPP are Ms Lynelle Briggs AO (chair), Ms Annabelle Pegrum AM and Mr John Hann.

The Commission's advice accepted that careful planning of Barangaroo South and Barangaroo Central has the potential to make this location a "must visit" place on the western edge of the harbour. The advice recognised that the location of Block Y and the restricted gaming facility was effectively legislatively settled by NSW Parliament when it amended the *Casino Control Act 1992* in 2013 and that



the Commission had no power to direct relocation or to change the associated legislation. Based on the limited scope on which the Commission could offer advice, the Commission recommended that:

- Hickson Park be extended and zoned RE1 to increase the amount of parkland;
- The access corridor to Hickson Park from Barangaroo Central be widened by 20 metres to 48 metres in a configuration that opens and assures views to the harbour, underpins the amenity of the park and provides greater pedestrian connectivity to the Central Barangaroo Foreshore Parklands;
- The boardwalk along the western perimeter of Block Y be widened and integrated to provide a 30 metre unencumbered promenade area (excluding licensed areas) to be zoned RE1;
- An increase in the percentage of key worker housing be secured through the Concept Plan Modification 8; and,
- Concept approval and/or development consent not be granted for development within Barangaroo Central resulting in additional overshadowing of Hickson Park between the hours of 12.00 and 14.00 on 21 June in any year.

**Figure 3** maps (in pink) the Commission’s recommended changes to Block 5, Hickson Park and the promenade now reflected in the June 2016 SEPP Amendment (Barangaroo):

**Figure 3:** SEPP Advice to the Minister



The Commission’s advice to the Minister noted that, with amendment, the adjusted SEPP mapping and draft instrument could be considered appropriate. The Minister provided the Barangaroo Development Authority an opportunity to comment on the Commission’s advice to the Minister. The Barangaroo Development Authority had a number of concerns with the Commission’s recommendations, arguing that they:

- Do not give adequate consideration to the extensive design excellence review reflected in the Central Barangaroo Master Plan and MOD 8;
- Pre-empt potential future changes to the Concept Plan for Central Barangaroo;
- Are inconsistent with the broader considerations of Government policy in relation to the development of Barangaroo and the decision to add a Metro station;
- Would likely have a material prejudicial impact on the still open public tender and financial implications for the State; and,

- Would inappropriately and unnecessarily favour the commercial interests of the developers of Barangaroo South.

The Commission provided supplementary advice to the Minister on 21 June 2016 refuting the Authority's response and confirmed its primary motivation to protect the public interest. The Commission provided further reasoning to support its proposed changes as recommended within the original advice.

The Minister accepted the Commission's advice and supplementary advice, and the SEPP amendment was subsequently gazetted on 28 June 2016.

## 2 DELEGATION TO THE COMMISSION

The MOD 8 proposal was referred to the Commission for determination under the Ministerial delegation dated 14 September 2011, as the City of Sydney Council and Leichhardt Council objected to the development and more than 25 objection submissions were received by the Department of Planning and Environment. The matter was received by the Commission on 29 March 2016.

The Commission panel appointed to determine the application is comprised of Ms Lynelle Briggs AO (chair), Ms Annabelle Pegrum AM and Mr John Hann.

In addition to the MOD 8 submission, the Commission has been also required to:

- advise the Minister on the proposed changes to *State Environmental Planning Policy State Significant Precincts 2005* ('SSP SEPP'), *State Environmental Planning Policy State and Regional Development 2011* ('S&R SEPP') and *Sydney Regional Environmental Plan Sydney Harbour Catchment 2005* ('SREP Sydney Harbour'); and,
- assess the development application for the Crown Sydney Hotel Modification on Block Y.

The Commission notes the concerns raised about whether the proposed modification can properly be made under section 75W of the EP&A Act. The Commission considers the proposed modification of the Barangaroo Concept Plan does not fundamentally change the essential nature of the Concept Plan in its current form. The Concept Plan, if modified, would provide the same mix of uses, continue to provide for open space, and have essentially the same division of precincts. In the Commission's view, the proposed changes are within the broad scope of section 75W as it applies to concept plans and may be considered under section 75W.

## 3 ENVIRONMENTAL ASSESSMENT

NSW Planning and Environment (the Department) assessed the modification application. In April 2015, as part of its assessment process, the Department established and commissioned the Barangaroo Design Advisory Panel to undertake an independent impartial expert urban design assessment of MOD 8. The Barangaroo Design Advisory Panel was made up of Ms Meredith Sussex AM, Ms Shelley Penn and NSW Government Architect Mr Peter Poulet. On 27 October 2015, the Barangaroo Design Advisory Panel made a submission to the Department assessing MOD 8 against the Urban Design Statement established at MOD 4, which required that "*future applications in Barangaroo South are to demonstrate consistency with the Built Form Principles and Urban Design Controls*". The Barangaroo Design Advisory Panel's assessment of MOD 8 made 20 recommendations, with the key recommendations being:

- Review the bulk and scale of the Block Y tower (both upper and lower elements and podium) to retain a single contiguous waterfront public domain;
- A need to ensure the interface between each tower achieves a high degree of public legibility, access and amenity;

- Reconsideration of the arrangement of Hickson Park to ensure a coherent relationship to the Central Parklands; and,
- The promenade west and south of Block Y be significantly more generous.

The Proponent did not agree with all of the Barangaroo Design Advisory Panel's findings nor its recommendations. Having considered the findings of the Barangaroo Design Advisory Panel and the Proponent's response, the Department initially recommended that the podium of Block Y should be further set back at its northern and southern ends. As a result the Proponent submitted a revised design solution that in their view reduced the perceived visual bulk of the Block Y podium, reconfigured Watermans Cove in order to improve the physical dimension of the promenade, and incorporated a chamfer to Block 5 (immediately to the north of Block Y).

The Secretary's Environmental Assessment Report has considered both the Barangaroo Design Advisory Panel's recommendations and the Proponent's response, along with other issues raised by the community and local and state government agencies. The report identifies the key environment issues for the Concept Plan modification to be:

- Density and land use;
- Built form and building envelope;
- Public domain/public open space;
- Amenity impacts; and,
- Traffic, car parking, access and public transport.

The Department concluded that *"the urban structure, building height, gross floor area and land mix components of MOD 8 are generally reasonable and acceptable"*. The Department recommended approval of the proposal, with a number of modifications to the Concept Plan to align with the Proponent's amended design to improve aspects of the public domain and the design of Block Y. In addition, the Department undertook an assessment of the gross floor area uplift, parking, Watermans Cove and the Design Guidelines. The Commission accepts the Department's assessment and recommendations for each of these matters.

## 4 MEETINGS AND SITE VISITS

### Department

The Commission received a briefing from the Department on 7 April 2016 (see **Appendix 1**). The Commission held additional meetings with the Department on 29 April 2016 and 18 May 2016. The key issues discussed were:

- Barangaroo Central development;
- Public domain including Hickson Park and the foreshore promenade;
- The chamfer proposed by the Barangaroo Delivery Authority to the Block 5 south west corner in Central Barangaroo;
- Pier/jetty and Watermans Cove;
- SEPP Amendment;
- Timeline and development staging;
- Porte cochere and pedestrian conflict;
- Roadways and vehicular access;
- Overshadowing;
- Key worker housing; and
- Any future Heliport.

Over the course of its determination the Commission requested and received additional information on a number of issues from the Department as summarised below:



- 7 April 2016 – Additional information was received regarding the breakdown of open space and public domain; details regarding the Barangaroo South Draft Design Guidelines and the key worker housing commitment.
- 24 May 2016 – Additional information was received regarding the Barangaroo Delivery Authority's agreements as part of the request for development bids for Barangaroo Central; removal of Barton Street; conversion of part of Barangaroo Avenue to a shared zone; advice on any constraints to extending the promenade; status of the pontoon; options available to restrict heliports; design excellence for any structures on the wharf; public space calculations; the development schedule; location of any significant infrastructure; and confirmation on land tenure/lease arrangements.

#### Government Architect

The Commission met with the Government Architect (independently of his role on the Barangaroo Design Advisory Panel) on 7 April 2016. The key issues discussed were design, view corridors, the promenade, roadways, signage and amenity. At the Commission's request, the Government Architect provided additional advice on 11 May 2016 regarding the potential of the site and buildings, including as an iconic development.

#### Proponent

The Commission undertook a site visit accompanied by the Proponent, the Barangaroo Delivery Authority and the Crown Sydney architect on 7 April 2016. The Commission met with the Proponent on 8 April 2016 and 21 April 2016. Crown Sydney Pty Ltd, the Barangaroo Delivery Authority a representative of its Design Advisory Panel and the Crown Sydney architect were also in attendance at the latter meetings.

The key issues discussed were:

- Public benefit;
- Crown Sydney Resort, Block Y site selection and associated legislated provisions;
- Block Y, the podium and ground floor access and use;
- Hotel location;
- Public domain including associated perceived privatisation issues and the promenade;
- Gross floor area adjustments;
- Permeability of the site and buildings;
- Traffic;
- Hickson Park;
- Wind and solar amenity;
- Design excellence;
- Key worker housing; and,
- Site specific issues.

The Proponent met with the Secretariat to the Commission on 16 June 2016 to provide additional detail on the breakdown and provision of key worker housing, as a basis for Commission deliberations on the matter. Members of Crown Sydney Pty Ltd and the Barangaroo Delivery Authority were also in attendance.

#### Barangaroo Delivery Authority

In addition to the meetings with the Proponent above, the Commission met with Barangaroo Delivery Authority independently on 21 April 2016. The Commission raised particular concerns about the proposed Hickson Park, including its size, connectivity to the foreshore public realm and amenity, given the likely overshadowing from Block 5. The Commission sought clarification regarding the licensed areas and the Barangaroo Delivery Authority's consideration of any associated privatisation of the public realm. The Commission also noted that the trend of increased heights and densities across the site appears likely to continue, given the Modification 9 application that was made (then withdrawn),

and public statements about gross floor area increases in relation to the invitation to tender, including the potential metro station, for the development of Central Barangaroo.

Another meeting was held on 6 May 2016 where the Barangaroo Delivery Authority responded to these concerns and provided further information regarding the potential overshadowing impacts to Hickson Park. The Authority agreed to controls being included in the Concept Plan to set minimum solar access requirements for Hickson Park. Other issues discussed included:

- Proposed chamfer of the south west corner of Block 5;
- The road network;
- Barangaroo South;
- The promenade; and,
- Branding.

At the Commission's request, the Barangaroo Delivery Authority provided additional information on 13 May 2016 related to public open space; Hickson Park; refinement of Block 5 Concept Plan development envelopes; extension of the promenade; 'ownership' of Block Y; the request for development bids for Central Barangaroo; and key dates regarding the selection of the site for the relocation of the hotel.

#### Council

The Commission met with the City of Sydney and Leichhardt Council in separate meetings on 7 April 2016.

Leichhardt Council raised concerns regarding the social impact assessment, affordable housing, design, Section 75W variations since the original Concept Plan and noise. The City of Sydney raised concerns regarding due process for the Barangaroo development, the hotel relocation, public benefit, affordable housing, various modifications and significant gross floor area increases, the design and the assessment.

City of Sydney provided a submission on 28 April 2016 regarding the legality of using Section 75W; the Sussex Penn Review; the location of Crown Sydney on the foreshore; the evaluation of key public interests; consistency with previous Planning Assessment Commission advice and decisions; use of the pier for cultural facilities; and affordable housing.

Further correspondence was received on 20 May 2016 related to concerns regarding future development within Barangaroo Central.

#### Public meeting

On 28 April 2016 the Commission held a public meeting during which 25 speakers presented to the Commissioners and a number of written comments were submitted at or following the meeting.

Speakers are listed in **Appendix 2**. Issues raised at the public meeting and the key points from the written submissions are summarised in **Appendix 3**. Particular concerns related to the loss of public open space and privatisation of public land; the proposed built form on Block Y and references to its iconic status; cumulative development across the site with successive modifications; the increasing development densities proposed to be accommodated on the site; the uses proposed, including gaming and the potential for the pier to include a heliport. Others supported the changes sought noting consistency with the original intent and vision for the site, the growth and development of the city and its national and international status (especially in tourism), and associated employment and training opportunities.

## 5 COMMISSION'S CONSIDERATION

Having considered the information available to it, including issues raised by councils and the community, the Commission identified the following issues for further consideration:

- Built form, site selection and building footprint;
- Public open space;
- Key worker housing;
- Amenity; and,
- Traffic and roads.

### 5.1 Built form, site selection and building footprint

The Proponent's proposed Concept Plan, identified under MOD 8, will see a substantial rearrangement of building envelopes within Barangaroo South in line with the SEPP amendment sought and recently made.

The Secretary's Environmental Assessment Report evaluation of density stated that *"the site is well suited to a high density environment and is strategically placed to take advantage of its CBD location"*. The Department's assessment identifies that the overall gross floor area increase of the proposal, from the currently approved MOD 4, would be about 7.5%. The Department's assessment took into consideration the changes relevant to the entire Barangaroo site, not only those relevant to MOD 8 (Blocks 4A, 4B, 4C, X and Y).

The Commission notes that the changes relevant to MOD 8 increase the gross floor area within Barangaroo South substantially from 128,958 sqm to 202,545 sqm which equates to an increase of some 57%. MOD 8 includes a substantial increase in the gross floor area of residential apartments within Blocks 4A, 4B and Y. Block Y also includes a substantial increase in gross floor area for tourism. The Proponent indicated that this increase will help to cover the initial outlay of essential onsite infrastructure and remediation construction costs and that they are removing an entire building envelope (Block 4C). Regardless of this, the Commission's view is that the overall total gross floor area and development opportunity has increased significantly within the MOD 8 development area.

#### 5.1.1 Site selection and Block Y

The Barangaroo precinct has undergone substantial planning control and built form changes since 2006 when the original competition vision was established. It is important to ensure that each stage of the development brings an appropriate balance between the public interest/benefit and development interests so that community confidence is retained in the outcomes.

The movement of Block Y from over the water to the land and the introduction of built form on the western foreshore edge responds to the findings and adopted recommendation of the 2011 Sussex and Penn review that approval of the 'hotel over the harbour' *"had the effect of undermining confidence in a variety of related laws and decisions..."* and *"it would be a significant demonstration of goodwill to relocate the hotel to elsewhere on the site"*.

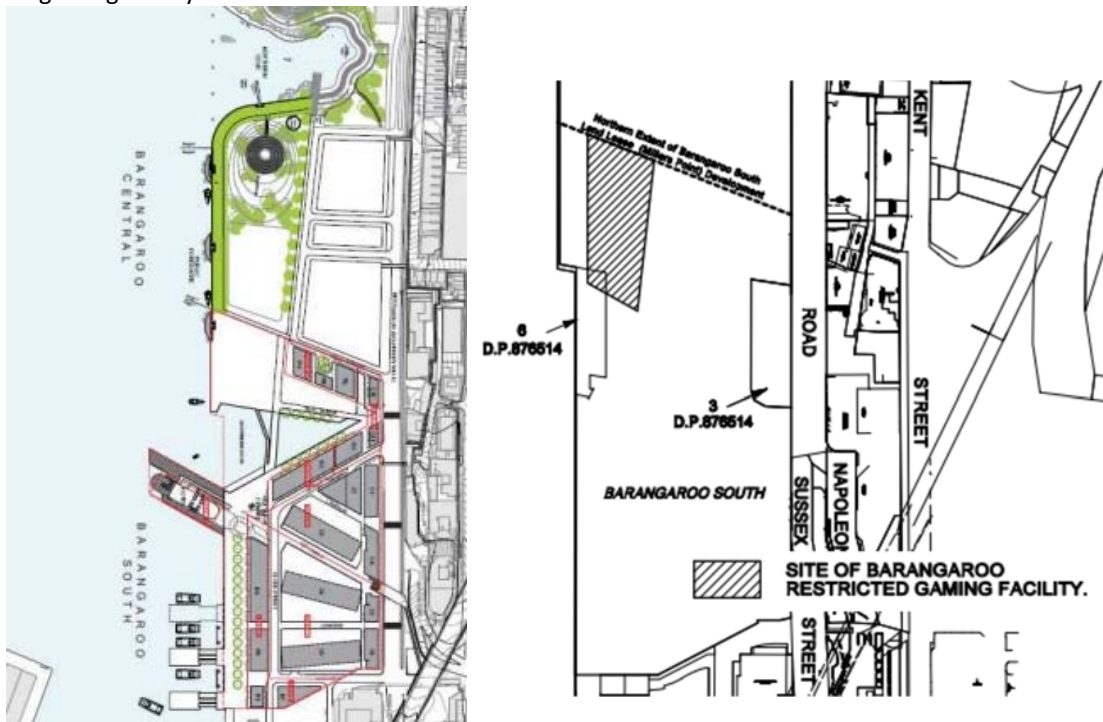
However, the separate decisions of the NSW Parliament to site the hotel on public foreshore parkland and of BDA/Lend Lease/Crown to propose a significantly larger development for the Block Y built form that incorporates a restricted gaming facility and residential uses in addition to the hotel, has been confronting for the community and brings with it additional challenges.

A number of submissions strongly objected to the location of the proposed restricted gaming facility, preferring that the Barangaroo South foreshore park be retained and the Crown Sydney built form

(proposed to accommodate the casino, hotel, residential tower and associated uses) be relocated further east, fronting onto Hickson Road. The Highgate Owners Corporation questioned “*why should the proposed Packer complex be located outside the development zone when alternate sites are available within the zone*”. The City of Sydney argued for the maintenance of the foreshore park in its entirety and for the reduction in the size and scale of Crown Sydney, and many others objected to the changes the Barangaroo South development is making to the Sydney skyline, sight lines and views, especially from the Opera House, Observatory Hill and Balmain.

The Commission has a great deal of sympathy for these views. However, it is important to understand that the NSW Parliament effectively settled the issue about the location of Crown Sydney (which forms part of SSD 6957) when it legislated for the restricted gaming facility’s new location on the foreshore on Block Y in 2013. The redistribution of the area of B4 zoning that includes Block Y is entirely consistent with Schedule 1 of the *Casino Control Amendment (Barangaroo Restricted Gaming Facility) Act 2013* (which amended the *Casino Control Act 1992*). As mapped in that amendment by the NSW Parliament (see **Figure 4** below), the Barangaroo restricted gaming facility is to be sited on Block Y on land that had previously been approved as a major component of foreshore public parkland.

**Figure 4:** Left, approved MOD 4 (2011). Right, *Casino Control Act 2013* amendment approving a location for a restricted gaming facility.



In summary, the proposed redistribution of built form along the western foreshore edge is consistent with the *Casino Control Act 1992*. The Commission has no power to direct relocation of the restricted gaming facility or to change the associated legislation. It accepts that the licence for the restricted gaming facility will remain in the location currently mapped. The Commission acknowledges that it also has no authority to alter the agreement between Crown Group Companies and the NSW Government.

The Commission has not relied solely on the Casino Control Act 1992 provisions as justification for the proposed concept plan modifications. The Commission has separately had regard for the merit of the proposed redistribution of built form and public domain as part of its determination. In doing so the Commission has considered the Department’s Assessment, relevant comments made by third parties as well as its own deliberations relating to the balance between the impacts and benefits of the proposal.

Improvements to the concept plan modification that was referred to the Commission have been required in order to appropriately balance the benefits and impacts of the proposal. The Commission's determination has been reached having had regard to the relevant considerations under the *Environmental Planning and Assessment Act 1979*, in particular the public interest.

The Department's assessment raised a number of concerns over the consequences of the size and bulk associated with the new podium's location. As a result, the Department originally recommended that the podium should be reduced by 12 metres in the north and 8 metres in the south. In response, the Proponent submitted amended indicative plans which proposed design changes for the podium and surroundings that included a 7 metre recess in the western podium façade in order to articulate the podium and reduce its perceived length. As indicated in the Department's final report, the changes will result in the *"podium façade... broken up into three elements with a maximum unbroken horizontal dimension of 45 metres"*.

Many in the community raised concerns at the public meeting regarding the proposed increase in building height of Block Y from RL 170 to RL 275. Concerns included that:

- the height of the building would be excessive (nominating that only the lightning rod on Centrepoint Tower is higher);
- the tower would change the paradigm for built form on Barangaroo in its current location; and
- that it would create a skyline that was contrary to that which was approved in the initial Concept Plan.

The Barangaroo Design Advisory Panel did not raise specific concerns about height, but recommended reduction of the podium footprint to retain a single and continuous waterfront public domain; and a review of the bulk and scale of the Block Y tower to reduce visual bulk and overshadowing impacts, refine proportions and ensure that the building (tower and podium) be read as single integrated object in an urban landscape setting. The Department has recommended that any detailed design of the built form should include treatment of the façade to mitigate the visual perception of bulk. The Commission supports the Department's response, noting that the height, bulk and scale would be further assessed in the context of the SEPP for Barangaroo South and in the parallel application for the Crown Sydney Hotel Resort development proposal for this block.

### **5.1.2 Blocks 4A and 4B**

As a result of the Block Y relocation from the pier, MOD 8 proposes to reconfigure Blocks 4A, 4B and 4C. The Proponent's proposed relocation of Block Y results in the entire removal of Block 4C and includes changes to the gross floor area and height of Blocks 4A and 4B.

The Barangaroo Design Advisory Panel did not raise concerns about Blocks 4A and 4B but recommended both *"tower and podium achieve a high degree of public legibility, access and amenity with the public domain"*. The Department's report identified that the proposed modifications to Blocks 4A and 4B were acceptable as they are located primarily at the edge of the CBD and would not appear out of context within the cityscape.

The Commission is satisfied that the height and footprint of the proposed Blocks 4A and 4B are consistent with the surrounding buildings. However, the Commission is concerned that in design development special attention be given to the context, particularly the interface with Hickson Park and pedestrian permeability to the foreshore, and to the achievement of design excellence. It will be important that the built form provides activation of lower floors that is integrated with the public realm, and supports positive visual and pedestrian connections and legible wayfinding between the foreshore and the CBD. To ensure the ground floor activation of Blocks 4A and 4B, the Commission adopts the following amendment to the future environmental assessment requirements:

C7. *Pedestrian Linkages, Activation of Streets and Public Domain*

In developing detailed plans for the development blocks, “internal” or “through-site” links and internal public domain activity should not occur at the expense of achieving primacy in pedestrian activity and use, as well as the built form objectives for Hickson Road ~~and Globe Street~~ and public streets

***In addition, future applications shall comply with the following***

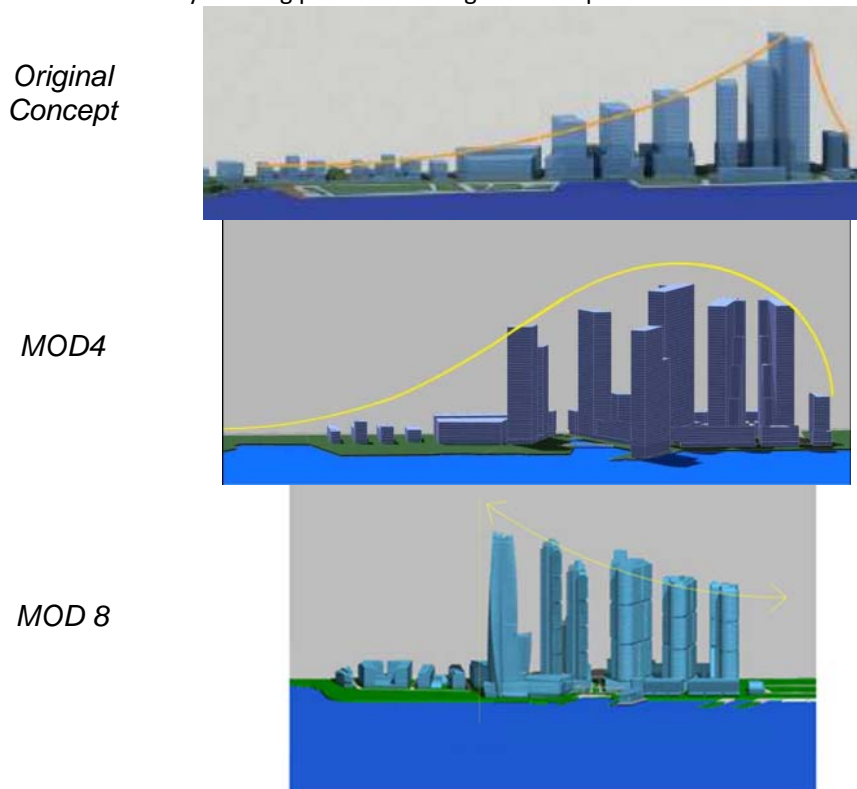
- (a) ...
- (b) generous through-site links and activation to promote visual and physical permeability through or between the podium/s of the residential buildings within Blocks 4A and 4B connecting Hickson Park to Watermans Cove; and
- (c) future applications shall maximise active interfaces of buildings to streets, through site connections and public open space to encourage diversity and public access.

The Commission recognises that the Proponent would receive substantial value uplift from this modification to Blocks 4A, 4B and Y. To restore the balance between public and private interest, the Commission has made a number of changes, particularly to the public open space and key worker housing provisions, described elsewhere in this report.

#### 5.1.4 Building profile

Concerns were raised by the City of Sydney Council and in public submissions about the impact of the proposed building footprints and heights on the Sydney skyline. Council observed that *“the scale will redefine the postcard image of Sydney and Darling Harbour”*. Other comments highlighted the potential negative impact on views and vistas to and from iconic and sensitive locations around the harbour notably the Opera House, Observatory Hill and the Sydney Harbour Bridge. The Commission’s attention was drawn to the successive changes to the Barangaroo height and city skyline profiles, as shown in **figure 5**.

**Figure 5:** Variance in city building profile from original concept to MOD 8





It was suggested that the proposed significant height changes to the northern part of Barangaroo South would result in some buildings obstructing or detracting from iconic views, including the forecourt of the Sydney Opera House. The Barangaroo Design Advisory Panel makes reference to the importance of the Sydney Harbour skyline and the associated need for a redesign of the tower and podium (albeit not necessarily to its height) *“given the high visibility of the building, its prominence and its impact on iconic Sydney views”*. The Commission agrees with the sentiment of the Barangaroo Design Advisory Panel that the design of the proposed building on Block Y is of paramount importance as it would become a focal point in the Sydney skyline.

The Commission has reviewed the Department’s visual assessment and the associated submissions on this issue. The Commission notes that applications for buildings in these locations would need to take into consideration the issues nominated by the Barangaroo Design Advisory Panel to ensure that the design is of “excellence”. With the requirement for design excellence, and further assessment in place within the parallel Block Y SSD application, the Commission is satisfied that a suitable design outcome can be achieved within the building envelopes sought. The Commission also considers that the improvements to Hickson Park achieved in the SEPP serve to establish a more appropriate setting for a tower of this mass and scale.

The Commission also heard concerns about the potential for further height modifications to be sought within Barangaroo Central compounding perceived negative impacts on the skyline and harbour views. The Commission acknowledges these concerns, noting that incremental height modifications since the initial Concept Plan have altered the profile of the Barangaroo skyline and foreground to the CBD. The Commission considers that the height of development on Block Y should ‘book end’ the high rise development in Barangaroo. As a consequence Barangaroo Central must maintain a building height that is consistent with the built form within the Concept Plan and sympathetic to the height of development and views at Millers Point and Observatory Hill (refer to section 5.4.1)

#### **5.1.5 Block changes as a result of the SEPP amendments**

The Commission provided advice and supplementary advice to the Minister on proposed changes to the SEPP that recommended realignment of Hickson Park (and an RE1 zoning) with associated changes to Block 5 in Barangaroo Central and changes to the foreshore promenade. The Minister has agreed with the Commission’s recommendations. Based on the changes made by the Minister, the Commission has amended a number of conditions within the consent to reflect the new SEPP mapping. These amendments are considered to be that of an administrative nature reflecting movements of zone boundaries. The following conditions were amended: A2, B3(2), B4(2) and C1.

#### **5.1.6 Pier**

The Pier will provide a unique location over the water and also includes an opportunity for a community facility to be provided within the largely commercial Barangaroo South precinct.

##### Use

The proposed amendment to the Concept Plan removes the previously approved built form (Block Y Hotel, gross floor area of 33,000 sqm) within the pier and replaces it with an RE1 (Public Recreation) zoned area with a maximum gross floor area of 3,500 sqm. The Department’s assessment indicated that the intention of the gross floor area for the pier is to *“accommodate a new building containing community and retail land uses”*. The Commission heard concerns from City of Sydney that no built form should be allowed to protrude into the harbour and stated *“if there is to be a pier, it should have no gross floor area allocated to it - it should be a people’s pier without building”*.

The Commission noted that the RE1 zone allows for a variety of uses such as function centres, food and drink premises and charter and tourism boating facilities. The Commission supports the use of the

pier as a recreational area or for publicly accessible community or cultural use. However, the Commission has concerns about the breadth of permissible uses under the RE1 zoning. As such the Commission requested that the Department clarify the permissible uses that could be allowed within any building proposed on the pier.

The Department advised that the recommended approval for the pier building would allow *“for a range of uses on the pier although it does not expressly state that these uses be accessible to the general public nor state a preferred land use”*. The Department accepted the Commission’s concerns that the use of the pier could become privatised and accordingly proposed that future environmental assessment be required specifying that any structure on the pier was to be for a community use. The Concept Plan includes provisions which require a minimum of 12,000 sqm of the gross floor area to be developed for ‘community uses’. The Commission noted that the definition of a ‘community use’ is relatively broad and considers that ‘community facility’ as defined in the *Standard Instrument Principle Environmental Plan* more accurately describes the types of uses that would be appropriate on the pier. The definition is:

**community facility** means a building or place:

- (a) owned or controlled by a public authority or non-profit community organisation, and
- (b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

The Commission is satisfied this appropriately defines suitable uses for any proposed development on the pier, and has adopted this definition in the requirements for the site.

**C10 Public Pier and Future Building**

- c) *The dominant use of the pier and any future structure on the pier is to be for community facility/ies in accordance with Modification B7. Any other uses proposed on the pier must demonstrate that they are complementary and ancillary to community facilities*

**B7 Community Uses**

- (1) *At least 3,000sqm of approved community uses shall be located within Barangaroo South, of which up to a maximum of 2,000sqm of community **facilities** GFA may be located on a public pier...*

The Commission is of the view there are some substantial public benefits associated with potential uses on this highly significant site on the foreshore of Sydney harbour and has adopted the above condition to ensure any future development is a true community use.

**Structure**

The Commission notes that any structure located on the pier would be highly visible and critical to the presentation of the Barangaroo precinct and of the foreshore. As such the Commission has added a condition for a design competition to be used in any development on the pier as a suitable mechanism to achieve design excellence.

With the inclusion of this condition, the Commission is satisfied that the building on the pier should achieve design excellence and will accommodate a true community use.

## 5.2 Public open space

The arrangement of public space within the Barangaroo precinct has been amended significantly under MOD 8 as a direct result of the previously approved hotel being moved from the water to land. As noted in section 5.1.1, building envelopes have been modified as a result of this change with the 'hotel' moved to an area previously dedicated as RE1 zoned foreshore parkland. This modification would have resulted in a reduction of open space on the foreshore promenade and the creation of an inner city park, Hickson Park, bounded by Hickson Road and the Blocks 5, Y, 4A and 4B.

A number of concerns were raised at the public meeting in regards to this 'swap' of public open space as a result of relocating the hotel from over the water onto the land and with a much larger hotel, apartment and restricted gaming facility. The Millers Point, Dawes Point, the Rocks and Walsh Bay Resident Action Group stated *"the proposal was turning what was meant to be a people's park into a landscape frontage for the building"*. Other comments referred to the park as 'left over' space that was simply a foreground to the building surrounding it.

The Commission recently provided advice to the Minister on the configuration of the envelopes for RE1 (Public Recreation) and B4 (Mixed Use) zones. The Commission recommended amendments to create a visible, wider and more accessible opening to the proposed Hickson Park through to the foreshore promenade and an increase in the size of Hickson Park through the reduction of the B4 zoned envelope within Barangaroo Central. The Minister accepted the Commission's advice, and this recommendation is reflected within **Figure 7** and **Figure 8** and through conditions outlined in section 5.2.2 Connectivity.

### 5.2.1 Quantum of open space

A key commitment in the development of Barangaroo has always been to ensure at least 50% of the site is made available as public open space. Since the original Concept Plan was approved in 2007, it has been a requirement that the Barangaroo precinct provides approximately 11 hectares of new public open space/public domain which has the consequence of achieving approximately 50% public open space on the site.

The Commission heard a number of concerns at the public meeting regarding the quantum of public open space now being provided in this eighth modification to the Concept Plan. These included concerns about the mechanisms used to calculate the public open space and in particular suggestions that the definition for the public domain had been amended over time to 'boost' the open space figures. It was suggested that streets and footpaths had been included in the public domain calculations.

The Commission requested both Barangaroo Delivery Authority and the Department provide additional information regarding the calculation of public open space. Both agencies confirmed that over 50% of the site would be retained as public open space. The Department provided figures which illustrated the breakdown of public space and stated *"approximately 51.6% (10.8 hectares) of the Barangaroo site will be public open space"* – refer **Table 6**:

**Table 6** Public Open Space Breakdown

AREAS TABLE - July 2015					
Element	Barangaroo South Area (Ha)	Central Barangaroo Area (Ha)	Barangaroo Point Area (Ha)	Total Area (Ha)	%
Public Open Space (Public Recreation Zone park, promenade, pier)	2.27	2.80	5.74	10.81	51.6%
Promenade Extension (Clip-on)	0.14	-	-	0.14	0.7%
Streets, Footpaths and Laneways	1.60	0.79	0.00	2.39	11.4%
Water	0.16	0.00	2.27	2.43	11.6%
Building Area	3.52	1.66	0.00	5.18	24.7%
TOTAL	7.68	5.25	8.01	20.94	100%

Notes:  
Areas are subject to change through design and planning.  
Areas exclude Moores Wharf, Munn Street Reserve and Bond Store

As demonstrated in the above table, the Proponent has not included streets and footpaths in its calculations of the ratio of public open space (51.6%). The Commission is satisfied that the quantum of open space delivers more than the required 50% of open space.

Nevertheless, the Commission supports the community's concerns over the quantum of open space and their requests for additional public open space, particularly given associated substantial increases in gross floor area. The Commission was somewhat constrained in the scope of its recent advice to the Minister (due to legislation governing the location of Block Y), but its recommendations included reconfiguration of the Barangaroo Central Block 5 alignment, resulting in a large increase to Hickson Park's area—of some 3000 sqm.

Within its advice to the Minister, the Commission also recommended conditions for Hickson Park related to overshadowing and amenity, and a westerly extension of 9 to 14 metres to the promenade.

As a result the Commission has provided a sizeable and high quality portion of open space, in excess the 50% quota, within Barangaroo for all of the community to enjoy.

### **5.2.2 Quality and amenity**

Concerns were raised at the public meeting as to the quality of the proposed Hickson Park typified in one comment that *"it appears to be the space left over between buildings rather than a designated public space"*. The MOD 8 application proposed to change the configuration of public open space from an area previously designated as foreshore park to an 'inner city' park. The Commission notes the advice from the Barangaroo Design Advisory Panel that *"any assessment of built form and public domain must place at its centre the notion of public benefit – that for a development to be viable it must provide a net improvement in the lives of the people it affects"*.

The Commission has examined what it considers are the most critical components in making Hickson Park a desirable open space that would compensate to a significant degree for the change from the foreshore parkland location and perhaps even improve the public domain outcome for the site.

In its advice to the Minister, the Commission considered that the proposed location and size of Hickson Park was a consequence of the siting of Block Y, rather than a strategic allocation of public open space. As a result, Hickson Park would have been little more than a handkerchief style city park with potentially poor public amenity, given the combination of its positioning above basement parking; land-locked location between Block Y, Block 4A and Block 4B built form; isolation from the foreshore; and potential overshadowing for much of the day.

The Commission explored this issue in detail, including through discussions with the Barangaroo Delivery Authority, and drew upon recommendations of the Barangaroo Design Advisory Panel. Ultimately, it considered that Hickson Park (as reconfigured in the amended SEPP 2016) has the potential to be a high quality open space, provided that suitable amendments and controls are imposed to protect the park from significant overshadowing, and to ensure it remains connected both visually and with activation and permeability through to the foreshore parkland in Barangaroo Central. These controls have been provided for in the approved conditions.

#### Connectivity

The Commission considers that for Hickson Park to be a successful space it must have clear connectivity through to the foreshore, and associated parkland and promenade. The Commission's advice to the Minister on the proposed SEPP amendments made recommendations on the distribution of RE1 zoning across the site. As a result of this advice, Hickson Park was made larger. It now incorporates Barton Street, proposed previously to be used as a temporary construction road and then returned to open space upon completion of construction works for Block Y. Part of Block 5 in Barangaroo Central has also been incorporated into Hickson Park, with the view corridor and

separation distance between Block Y and Block 5 increased from 28 metres to 48 metres. In the Commission's view this greatly improves the connection between Hickson Park and the foreshore parkland and addresses one of the key concerns for Hickson Park of the Barangaroo Design Advisory Panel "to provide a strong and coherent relationship to the Central Parklands".

The Commission is confident that the new 48 metre wide separation between Block 5 in Barangaroo Central and Block Y allows for a quality open space which visually and physically connects the park and the foreshore. As a consequence the Commission has also amended the terms of the Concept Plan approval to reflect the adjustment in the footprint and gross floor area on Block 5 made in the SEPP amendment. This will ensure the amendment to the SEPP aligns with the Concept Plan, including the 48 metre separation distance between Block Y to Block 5.

The Commission expects that connectivity to Hickson Park and the foreshore promenade around Watermans Cove will also be supported in the design of the building ground levels on Block Y and Block 4A. This is essential to ensure that pedestrians using the foreshore promenade are able to access Hickson Park with active, legible and easily navigated connections through and around the base of the buildings. Future assessment requirements have been added accordingly, as noted in section 5.1.2.

To support the 48 metre width between Block 5 and Block Y, the Commission recognises the importance of maintaining view lines from Hickson Park to the foreshore and Sydney Harbour. The provision of unobstructed public space between Hickson Park and Central Barangaroo, through the 48 metre wide view and access corridor, will reduce significantly the confinement of the park and dominance of any high rise towers; providing more open space for everyone. To preserve the corridor, the Commission has amended the condition relating to Block 5:

- |    |     |  |
|----|-----|--|
| B3 | (1) | Hickson Park is:   |
|    | (a) | ...  |
|    | (b) | to provide view corridors from Hickson Road to the harbour |
|    | (c) | ...  |
|    | (d) | ...  |
|    | (e) | ...  |

The condition will ensure development does not intrude into this view corridor. Connectivity between Hickson Park and the foreshore is further encouraged through conditions supporting the conversion of Barangaroo Avenue into a shared zone and the removal of Barton Street, as discussed within sections 5.4.1 and 5.4.2 of this report.

#### Green space

The proponent has not been required to detail the landscaping requirements for Hickson Park under MOD 8. A number of submissions raised concerns that the new location of Hickson Park, away from the foreshore, could result in a dark, cold and uninviting space. The Commission recognises that landscape design development will ultimately define the character and amenity of the Hickson Park. To ensure an inviting green space will be fundamental to the design, the Commission has added a requirement that:

- |    |     |   |
|----|-----|---|
| B3 | (1) | Hickson Park is:  |
|    | (a) | ...   |
|    | (b) | ...   |
|    | (c) | ...   |
|    | (d) | ...   |
|    | (e) | to be primarily composed of soft landscaping, including extensive areas of grass. |

### Deep soil planting

The Commission heard concerns at the public meeting that the proposed reconfiguration of public open space has resulted in a park being located above basement car parking, which in turn would limit the opportunity for deep soil planting. The Commission considers that for Hickson Park to be a useable and desirable space for the community, a variety of tree sizes need to be accommodated.

The Commission undertook a review of a number of development control plans across the Sydney metropolitan area and found that there was not a consistent approach to the depth of soil needed to accommodate 'deep soil' planting. One council recommended that soil depths of 1 metre or less could not be counted towards deep soil requirements, whereas another recommended at least 3 metres of soil should be provided over areas such as basement car parking. In addition to the depth of soil, the Commission understands that the extent of deep soil planting is also important. For example, the Department's Apartment Design Guide includes area requirements for apartments over 1500 sqm that suggest 15% of the site should accommodate deep soil planting. In the absence of consistent guidelines, the Commission has included a condition that requires a detailed landscaping strategy be prepared that accommodates sufficient deep soil planting area to 'sustain large trees' to be endorsed by the Department's Secretary prior to commencement of the buildings aligning Hickson Park.

- B3      (1) Hickson Park is:
- (a)      ...
  - (b)      ...
  - (c)      to support large mature trees, including with the provision of at least 2,000 sqm of deep soil with a depth of at least 3m; and,
  - (d)      ...
  - (e)

### Park overshadowing

The potential for overshadowing of the Park from both Block Y (the proposed Crown Sydney building) and Block 5 (located adjacent to the park and forming part of Barangaroo Central) was also raised as a significant concern in a number of comments to the Commission.

The Commission accepts the Department's assessment that *"the Proponent's shadow diagrams demonstrate that Hickson Park will receive reasonable amounts of solar access during the late morning (i.e. from 11am), lunchtime and early afternoon (i.e. up to around 3pm)"*. The Commission also accepts the Proponent's argument that a shaded area would be welcomed in summer due to the exposed nature of the foreshore.

In response to a request from the Commission, the Barangaroo Delivery Authority provided further information on the potential for overshadowing of Hickson Park and confirmed that they *"would be prepared to consent to (a) condition"* related to limiting additional overshadowing of Hickson Park *"subject to being satisfied with their terms"*. The Commission has subsequently adopted the following condition to ensure no further shadowing beyond that cast by the approved Block 5 building envelope, between the hours of 12 and 2 pm during the winter solstice on 21 June.

- B3      Block 5
- (1)      the footprint and building envelope of Block 5 is to be reduced to remain within the B4 zoned land. Future above ground buildings in Block 5:
    - (a)      are to minimise overshadowing of Hickson Park, ensuring no more than an average of 2,500sqm of Hickson Park is overshadowed by built form between the hours of 12:00 and 14:00 on the 21 June each year.



The Commission's advice to the Minister on the SEPP amendment also noted concerns about solar access and overshadowing of Hickson Park. As noted previously, as part of its advice, the Commission recommended a reduction in the footprint of Block 5. The change made to the Block 5 building envelope within Barangaroo Central is sympathetic to limiting overshadowing. Combined with the inclusion of overshadowing restrictions in the Concept Plan, the Commission is satisfied that solar access provisions to Hickson Park are appropriate and acceptable.

#### Block 5's interaction with Hickson Park

As the built form of Barangaroo Central is still uncertain, the Commission is keen to ensure that Block 5 and Hickson Park are integrated and cohesive in character. The original SEPP proposal provided to the Commission for consideration, nominated a chamfer to the south west corner of Block 5 with associated illustrations that suggested that there could be buildings extending (at upper levels) into the corridor between Blocks 5 and Y. Even with the increases in the corridor achieved in the SEPP, the Commission is concerned that any building along the southern edge of Block 5 must be complementary to Hickson Park. The future planning process will decide appropriate built form of design excellence.

The changes to the Hickson Park are shown in **Figure 7** below.

**Figure 7:** Hickson Park (hatched).



### **5.2.3 Waterfront promenade**

The Commission has heard concerns about the privatisation of public space in relation to the proposed 30 metre wide foreshore promenade. The Barangaroo Design Advisory Panel also commented on this matter. This Concept Plan is unique in that the development application for Block Y has been submitted to the Commission in parallel for determination, which provides further insight into the design than would be the norm. Given the importance of the promenade to the overall success of the public domain, the Commission has in this instance used details from the Block Y development application to appraise the acceptability of the waterfront promenade.

The 30 metre wide promenade is included in the overall public open space calculations. The plans submitted for Block Y indicate that the foreshore area west of Block Y would have 9 metres of the 30 metre promenade dedicated to licenced areas (to activate the foreshore consistent in use with other parts of Barangaroo). Effectively, this 9 metre area would be accessible only by the paying public (with limited exceptions for building entry points). The Commission understands the licensed area will remain under the control of the Barangaroo Delivery Authority and can be returned to public use at their discretion, but cannot be satisfied that this option would be exercised in the future.

The Commission is of the view that the design and nature of the Crown Sydney licensed areas is not equal to those in other parts of Barangaroo. The location of Block Y, the scale of its proposed

development and the design of the licensed area canopy reinforces a perception of public over private realm. The Commission has addressed this concern in the SEPP amendment process through the mapping of a 9 to 14 metre extension of the foreshore promenade over the water. This extension ensures that the full 30 metre foreshore promenade is provided along the western edge of Block Y and offsets the 9 metre licensed area that is proposed to adjoin Block Y. Because the western extension of the promenade did not form part on the original Concept Plan proposal, staging requirements have been added to the conditions to ensure that it is constructed, landscaped and publicly available prior to occupation of Block Y:

**B12 Staging**

Prior to the issue of any occupation certificate within Blocks 4A, 4B or Y, the foreshore promenade (to the full extent mapping in the SEPP Amendment), pier, Watermans Cove and Hickson Park (other than the temporary construction road corridor on the alignment of the former Barton St) shall be constructed, landscaped and publicly accessible.

The timing for the replacement of Barton St, in accordance with B3(5), is to be agreed with the Secretary.

The Commission has also recognised the importance of the 30 metre wide foreshore promenade being read as public open space rather than as a forecourt to the Block Y development and supports the recommendations of the Barangaroo Design Advisory Panel on this issue. The Commission encourages the space to be used as a destination for the public to dwell and enjoy the natural amenity of Sydney Harbour as well as a promenade. To ensure the space is adequately landscaped, the following condition is adopted:

**B3 Foreshore Promenade in the vicinity of Block Y**

- (6) The foreshore promenade along the western side of Block Y shall be designed, constructed and landscaped:
  - (a) to its western most extent, as mapped in the SEPP Amendment made on 28 June 2016;
  - (b) to read as public open space; and,
  - (c) to include mature tree plantings and other soft landscaping elements and places to stop and sit.

The Commission is satisfied that through the additional 9 to 14 metre western extension of the foreshore promenade, it will be a generous and attractive open public space within the Barangaroo precinct and for the general community.

The changes to the foreshore promenade are shown in **Figure 8** below.

**Figure 8:** Foreshore promenade expansion (pink).



### 5.3 Key worker housing

The existing Concept Plan approval includes commitments for key worker housing to be provided as part of Barangaroo South. Key worker housing is defined in the Housing Strategy and was proposed to be provided as 2.3% of the residential gross floor area in Barangaroo South. Both the City of Sydney and Leichhardt Municipal Councils raised concerns about the level of affordable housing proposed to be provided, suggesting 10 to 20% should be provided, given the project is a redevelopment on public land.

In considering this issue, the Commission also noted that the 2011 Sussex and Penn Review recommended the key worker housing provision should be doubled and that the Government subsequently agreed to explore options for affordable housing to increase. The Commission wrote to the Proponent and the Barangaroo Development Authority, for clarification on the delivery of key worker housing, including their reasons for not adopting the Sussex and Penn recommendation with regard to Barangaroo South.

The Proponent provided a revised response on the 16 June 2016 describing their consideration of the current market model/s and offering additional key worker housing associated with the Barangaroo South development. The Proponent noted that they are already committed to providing more than \$470m through site remediation, art, and development of the public domain and that, in their view, the development of the associated public domain would deliver considerable community benefit. The Proponent also acknowledged the contributions being made through design and construction cost for developer contributions (1%) and art levies (1%). The Proponent indicated agreement to an increase in key worker housing from 2.3% to 3.0% of the residential gross floor area.

Several options were explored as to how this additional housing could be provided including onsite and offsite options. The offsite provision was based on modelled assumptions around the Proponent's construction costs and the offer that an affordable housing provider might make.

The Commission explored the merits of retaining the key worker housing onsite versus the option of providing a greater gross floor area and number of units of key worker housing offsite having regard to the Proponent's modelling that more than double the number of units could be achieved if all 3.0% was located offsite. However, the Commission is of the view that, given the nature of the commercial and tourism operations within the development, it can reasonably be anticipated that a significant number of employees would be required on site. The Commission determined that the original 2.3% of the key worker housing (or 39 units of an average size of 85.5 sqm) should be retained within Barangaroo South.

Based on the figures provided by the Proponent, the Commission has accepted the Proponent's offer for the additional 0.7% (or 25 units of an average size of 69.6 sqm) to be provided offsite provided that it is within the City of Sydney LGA, or within 5km of Barangaroo South. This will deliver positive yield (approximately 25 extra units rather than the 11 to 12 units that could be achieved on site) in proximity of the development.

The Commission considers that this mix of on-site and offsite key worker housing will also ensure that Barangaroo remains socially inclusive and has access to a viable employment base. The Commission's position is reflected through the following condition:

**B11 Key Worker Housing**

Key worker housing for Barangaroo South shall be provided generally in accordance with Statement of Commitment 34 and comprise at least:

- (a) 2.3% of residential GFA on site, within Barangaroo South; and

- (b) at least an additional 0.7% of the residential GFA on Barangaroo South, or its equivalent development value (but comprising at least a minimum of 1,740sqm of residential GFA) to be provided:
  - i. offsite, but within 5 km of the site, or elsewhere within the City of Sydney LGA;
  - ii. as a mix of unit sizes, including at least 40% of the GFA allocated to dwellings comprising 2 or more bedrooms;
  - iii. prior to the issue of any occupation certificate for Blocks 4A, 4B or Y.

The Commission recognises that the decision of settling upon 2.3% onsite and 0.7% offsite provision of key worker housing is made in absence of a clear policy position on affordable housing. There is no definitive State or Federal policy in this area beyond seeking to increase affordable housing, of which key worker housing is one sub-set. While the City of Sydney is targeting 7.5% of housing stock for affordable housing by 2030, this position is not underpinned by uniform policy across the City of Sydney LGA and does not reflect the reality that affordable housing is now very limited in many parts of metropolitan Sydney.

The Commission is satisfied that in this case, the key worker housing provided under the Proponent's proposal will go some way towards offsetting the increased local demand for affordable housing, and increase in tourism related jobs within the vicinity of the development. Notwithstanding this, the details of the current key worker housing commitment put forward by the Proponent, and of the various other development contributions provided, are of complex and varying merit, and perhaps unnecessarily so. In this regard, the Commission would welcome some wider policy work on affordable housing issues.

## **5.4 Amenity**

The Commission heard members of the public's concerns regarding the proposed density of the building envelopes and the impact this may have in terms of visual impacts and overshadowing.

### **5.4.1 Impacts on views**

The Commission heard a number of concerns regarding the potential for view loss, including from existing residential blocks, the loss of the view corridor for Gas Lane and the impact of night sky view loss to the operation of the Sydney Observatory.

#### Residential

Concern was raised by residents at nearby Stamford on Kent regarding the potential impact the modification would have on views. The Commission appreciates these concerns but accepts the Department's assessment that, although the view lines are altered, the change in building blocks *"increases the oblique view, improving the outlook for residents"*.

The Department acknowledges the potential for view loss from four nearby residential blocks including Highgate; Georgia; Stamford Marquee and Stamford on Kent. The Commission is satisfied with the Department's visual assessment of the Proponent's implications on visual impacts concluded, *"that the results are largely unchanged from MOD 4 and the proposed modification application continues to promote view sharing"*. The Commission acknowledges that view loss would occur as a result of the Barangaroo development, however, accepts the Department's assessment that the proposed view loss under MOD 8 is not significantly greater than what was previously approved.

The Commission recognises the importance of the view lines from Hickson Park to Barangaroo Central and Sydney Harbour. The amenity created through the view lines will help to create a place that the community can enjoy. The recommendations made within the SEPP advice and the conditions within

5.2 Public Open Space will help to improve view lines throughout Hickson Park and towards Barangaroo Central.

The Commission sympathises with residents of the nearby residential blocks and understands that each change in the Barangaroo Concept Plan has a potential impact on their views that they have little or no control over, having bought their homes in good faith. The Commission considers that the Barangaroo development has now reached the point where further impacts on views beyond MOD8 need to be minimised. The Commission adopts the following condition to ensure that future development of Block 5 does not impact on key view lines from the Millers Point and Observatory Hill region:

- C1 Future Building/s on Block 5
- Any future development application/s within Block 5 is to satisfy the following:
- (a) demonstrate that views will be retained:
    - (i) from Millers Point and Observatory Hill to the western part of Sydney Harbour; and,
    - (ii) from Block Y to the Sydney Harbour Bridge and the Opera House; and,
  - (b) be supported by shadow diagrams demonstrating compliance with the overshadowing limits specified in B3 (1) d) and B3 (2).

#### Gas Lane

Concerns were raised regarding the bulk of the podium, in particular the height and the impact this would have on view corridors along Gas Lane. The Proponent's visual assessment, acknowledged the impact noting, *"the approved Concept Plan MOD 6 development establishes an envelope that terminated the Gas Lane view corridor. Similarly, the proposed MOD 8 envelope will terminate the Gas Lane view corridor"*. **Figure 9** below demonstrates the previously approved building envelope, with indicative design as compared the proposed MOD 8 visual assessment with indicative design.

**Figure 9** Visual Assessment of Gas Lane comparing approved MOD 6 left with proposed MOD 8 right



The Commission acknowledges that the view impact for the Gas Lane corridor is significant, however concedes that this view corridor was lost during the previous assessment of MOD 6 and as such this impact has already been acknowledged and accepted by the determining authority.

### Sydney Observatory

The Commission notes the concerns regarding the impact of the proposed change in density and height and the impact that this may have on the operations of the Sydney Observatory. One comment from the Highgate Owners Corporation stated “*MOD 8 also fails the test with its diminution of Observatory Park sightlines. These have been preserved for 200 years and are part of Sydney’s heritage*”. **Figure 10** below illustrates the location of the Observatory in relation to the development site.

**Figure 10** Sydney Observatory Location in relation to Barangaroo Precinct



Figure 1: Indicative Site Boundary for Barangaroo South (existing), and Sydney Observatory Location

The Department undertook an assessment of the potential impact to the Observatory’s operations and concluded “*that the obstruction of a number of constellation viewable from Sydney Observatory for a portion of the year is acceptable*”. The Department accepted the Proponent’s argument that the Sydney Observatory had shifted in its primary purpose from being a scientific centre to being one for recreation and education. The Commission supports the Department’s recommended condition which requires a Lighting and Light Spill Strategy for any future application to ensure light spill is contained in the most efficient manner. The Commission supports the following condition:

**C13 Lighting Strategy**

A Preliminary Lighting Strategy is to be submitted for all future development applications for above ground works. The Strategy is to:

- (a) be prepared in consultation with the Sydney Observatory;
- (b) include, but not limited to, an assessment of the potential impact on the Sydney Observatory; and,
- (c) is to recommend relevant mitigation measures to be adopted, to minimise any adverse lighting impacts to neighbouring properties.

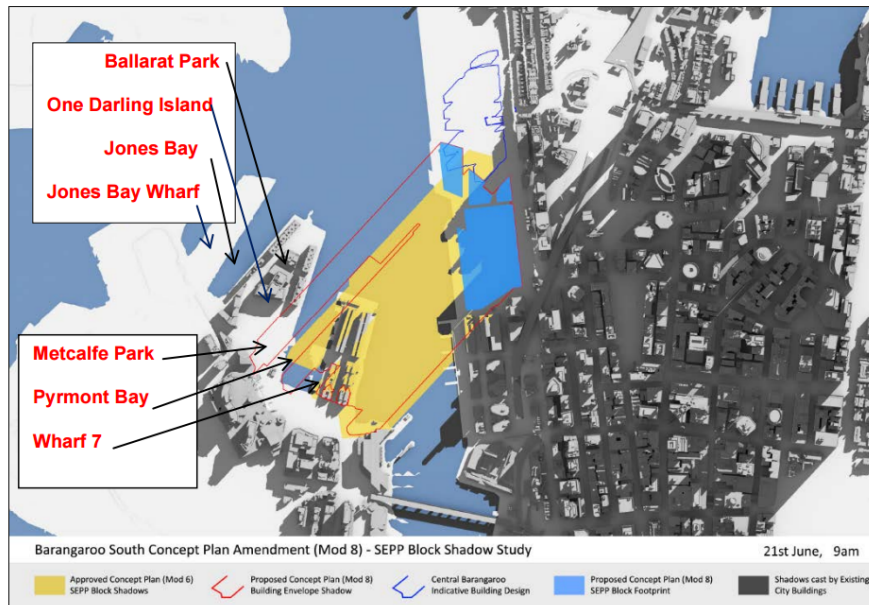
The Commission also appreciated that Sydney Observatory could benefit from a mutually agreed marketing and access relationship with Crown Resort and from improved connections generally between the Observatory and the Barangaroo precinct. The Commission acknowledges that further conditions to this end supporting the operations of Sydney Observatory are outlined within the accompanied State Significant Development Application for Crown Sydney.



### 5.4.2 Development overshadowing

Concerns were raised about overshadowing both within the Barangaroo precinct and areas outside of the precinct, such as the harbour and parts of Pyrmont. The Department has assessed the change to the overshadowing impact, highlighted in **Figure 11**, which shows the difference in overshadowing between MOD 6 and MOD 8 during the most adversely impacted period, 9am 21 June (winter solstice).

**Figure 11:** MOD 8 and MOD 6 overshadowing comparison at 9am 21 June (MOD 6 is yellow, MOD 8 is red line)



The Commission notes that the proposed building envelope changes for MOD 8 would in some cases increase the level of overshadowing, in particular for Metcalfe Park. The Department notes that the *"overshadowing to the west is substantially retracted to the east by 10am at all times, by which time the shadow cast falls only over the waterway of Darling Harbour"*. The Commission acknowledges that the proposed changes in density across the site would increase overshadowing impacts however, the Commission notes that sunlight would not be impeded for the duration of the day.

Concerns were raised in relation to overshadowing within the Barangaroo precinct in particular to Hickson Park, the promenade and Watermans Cove. As described in section 5.2.2, the potential for overshadowing to Hickson Park has been addressed through amendments to the adjoining development capabilities of Barangaroo Central. The Commission does however, note that the proposed changes to Barangaroo Central would not aid in reducing overshadowing to the promenade and Watermans Cove. However, the Commission agrees with the Department's conclusion that *"it would be unreasonable to require full solar access to all areas of the public domain particularly during the morning and peak lunchtime periods, given the site's orientation"*.

The Commission acknowledges that some overshadowing would be increased as a result of the changes proposed in MOD 8, however the Commission accepts the Department's assessment and considers the impacts to be acceptable.

### 5.4.3 Wind

As part of its submission, the Proponent prepared a Wind Impact Assessment which analyses the existing wind climatology and tested wind impacts resulting from the modified Concept Plan. The Department's assessment of the Proponent's submission identified that further investigation to determine how wind impacts can be reduced and mitigated is required. The Department subsequently recommended that future environmental assessments require development applications to include wind mitigation measures into the design of buildings and the surrounding public domain. The

Commission supports the Department's wind assessment and agrees with the recommendation to ensure future development applications encapsulate wind mitigation measures.

## **5.4 Traffic and roads**

Concerns were raised with the Commission regarding the integration and connectivity of Hickson Park to the foreshore and of the potential for pedestrian and vehicle conflicts. Concerns focused on the movement of people from the north western corner of Hickson Park, across Barton Road, into Central Barangaroo and towards Headland Park. The Barangaroo Design Advisory Panel also supported reconsideration of the Hickson Park traffic and pedestrian movement arrangements to ensure a strong and coherent relationship to the foreshore parklands.

### **5.4.1 Barton street**

In line with the community concerns and the Barangaroo Design Advisory Panel's recommendation, the Commission evaluated the role of Barton Street within the Concept Plan. The Commission sought additional advice from the Department as to vehicular reliance on Barton Street, and changes that could be made to the Concept Plan to improve pedestrian integration from Hickson Park to Central Barangaroo.

The Commission met with the Department to discuss options to enhance the quality of open space at Hickson Park and potential solutions to improve pedestrian connectivity and to ensure safe pedestrian access. The Department advised that once construction of Block Y was completed, Barton Street would no longer be required for vehicle movements. To improve pedestrian permeability from Hickson Park to Central Barangaroo, the Commission adopted a new condition that Barton Street be removed and integrated into Hickson Park once construction of Block Y is completed.

- B3 Barton Street  
*(5) Barton Street is approved as a temporary access road only and is subject to the future environmental assessment requirements in C8. Following the completion of the development on Block Y and the construction of Barangaroo Avenue, Barton Street shall be designed and returned as parkland and integrated to form part of Hickson Park. Any future application in respect of Hickson Park shall ensure the design, construction and use of this area is public open space and parkland..*
- C3 Transport and Pedestrian Management
- C3C *(c) The construction of Barton Street as a temporary access road only for the construction of Block Y and the implications for the road network in Barangaroo; and,*

The Commission adopts the above condition to ensure that after construction of Block Y, Barton Street is reclaimed in a way that is sympathetic to Hickson Park and conducive to safe pedestrian access. Reclamation of Barton Street, combined with the proposed condition to reduce Block 5 will greatly improve the connectivity of Hickson Park to the foreshore and the value of the public open space.

### **5.4.2 Shared zone**

The community raised concerns about accessing Hickson Park from the proposed open space in Barangaroo Central. In response, the Commission sought further advice from the Department on the feasibility of conditioning the application to partially transform Barangaroo Avenue into a shared zone from the northern exit of the porte cochere on Block Y to the northern corner of Block 5.

The Department advised that the conversion of part of Barangaroo Avenue to a shared zone would have some impacts on traffic volumes and the capacity and functionality of the avenue but acknowledged that the future design of Barangaroo Avenue could *"minimise the potential for vehicle*

and pedestrian conflict, and [Barangaroo Avenue] be designed and appropriately treated to improve road and pedestrian safety". The Department recommended that if Barangaroo Avenue is to be converted into a shared zone, further consultation should be undertaken with RMS and TfNSW as part of the final design resolution. The Commission supports the Department's response and has adopted the following condition.

- C8** Road design in vicinity of Block Y  
The future design of Barangaroo Avenue shall:
- (a) provide for a shared zone between the northern exit of the porte cochere on Block Y to the north-western corner of Block 5;
  - (b) minimise the road surface area, to promote pedestrian access and safety; and,
  - (c) shall comply with Transport for NSW guidelines on shared zones and RMS specifications to minimise the potential for vehicular and pedestrian conflict and improve the amenity and quality of the streetscape.

Any future application for the shared zone section of Barangaroo Avenue shall also be accompanied by a Road Safety Audit.

- C3C** The Proponent is to undertake further consultation with the RMS and TfNSW regarding the following:
- (a) ...
  - (b) coach set-down provisions within the Barangaroo Precinct, ensuring there are no laybys on Barangaroo Avenue;
  - (c) ...
  - (d) the conversion of Barangaroo Avenue from the northern exit of the porte cochere on Block Y to the north-western corner of Block 5 to a shared zone.

The Commission has underlying concerns regarding pedestrian safety due to the potential intensification of traffic movements aligning with pedestrian movements within the shared zone notably proposal for metro access. Providing generous and accessible pedestrian pathways away from conflicts with the Block Y porte cochere should be a priority for future development of Block 5. The Commission adopts the following condition for development that would define future pedestrian movements within the Block 5 and Block Y vicinity:

- C15** Metro access points and transport interchanges

The Proponent shall ensure that any future development applications involving the installation of access points for the metro station, or any other subterranean pedestrian routes shall ensure these access points (and any associated transport interchanges) are positioned to avoid safety conflict with shared zones and to minimise high pedestrian traffic volumes in areas designated for soft landscaping.

#### **5.4.3 Parking**

A public submission raised the concern that *"the modification proposes to remove most kerbside parking, including that on Hickson Road from 275 spots to just 40 spots"*. The Commission notes that TfNSW did not raise any concerns regarding the loss of on-street parking as there was sufficient off-site parking within the vicinity to cover any short-falls. The Commission understands that TfNSW has no outstanding concerns and is satisfied with the amendments to kerbside parking. Further evaluation of car parking requirements for each building will be undertaken within the assessment process.

## 5.5 Other issues

### 5.5.1 Heliport

Concerns were raised within submissions that a heliport may be constructed on the site, Friends of Sydney Harbour stated a *“concern for the potential siting of a heliport given the developer’s stated intention to accommodate high rollers”*. In response the Proponent stated *“the proposed Modification Application does not include any floating heliport or land-based heliport. There is no intention to provide a floating or land-based heliport”*. The Commission does not support a heliport and to ensure public confidence that one will not be developed, has added the following condition under the terms of approval in Schedule 2, Part A.

- (7) No approval is granted or implied for the future use of a heliport and/or a helipad.

## 6 COMMISSION’S DETERMINATION

The Commission has heard a wide range of views and opinions on MOD 8 to the Barangaroo Concept Plan. The Commission has considered carefully all the information available to it, including the Secretary’s Assessment Report, written submissions, presentations made to the Commission at the public meeting, information provided at and subsequent to meetings with the Proponent, the Department, Barangaroo Delivery Authority and both City of Sydney and Leichhardt Council.

The Barangaroo precinct has undergone substantial planning control and built form changes since 2006 when the original competition vision was established. Modification 8 to the Barangaroo Concept Plan reflects the evolution of a large redevelopment site being delivered over an extended period of time. A number of submissions raised strong objections; preferring that the Barangaroo South foreshore park be retained and the Block Y built form be relocated further east, adjoining Hickson Road.

The Commission has not relied solely on the Casino Control Act 1992 provisions as justification for the proposed concept plan modifications. The Commission has separately had regard for the merit of the proposed redistribution of built form and public domain as part of its determination.

The Modification 8 proposal delivers a significant uplift in gross floor area above the original February 2007 concept plan. The significant uplift justifies a commensurate response in public benefits across a range of matters not only to be realised through offsite measures and economic contributions. As such, the Commission has modified the Concept Plan to reflect the recent amendments to the SEPP. This included reduction in the development area of Block 5 and an increase in public open space.


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

The Commission also heard concerns about the quantum of key worker housing to be provided on the site. After considerable further information being provided on this issue, the Proponent made a revised offer to provide the equivalent of an additional 0.7% contribution of the residential gross floor area within Barangaroo South, to be provided at an offsite location (where it will achieve a higher unit return). Combined with the 2.3% of onsite gross floor area to be provided as key worker housing, and in the absence of any formal Government policy on this issue, the Commission has accepted that the additional key worker housing be provided offsite, conditional on it being within 5km of Barangaroo or within the City of Sydney LGA.

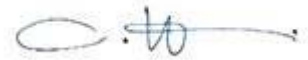
After careful consideration of a wide range of issues, as discussed in this report, the Commission is now satisfied that this Proposal can proceed. The Commission has approved the modification subject to the amendments described in this report that also reflect gazetted changes to the SEPP.



Ms Lynelle Briggs AO  
**Commission Member (Chair)**



Ms Annabelle Pegrum AM  
**Commission Member**



Mr John Hann  
**Commission Member**