

Barangaroo Review

Meredith Sussex AM & Shelley Penn

1 August 2011



Source: BDA

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Co-chairs
Barangaroo Review

1 August 2011

The Hon Brad Hazzard
Minister for Planning and Infrastructure
Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Minister,

Barangaroo Review

Please find herewith our report on the Barangaroo Review of planning processes and decision making in relation to such processes, as requested.

Yours faithfully,

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Co-chair

Shelley Penn
Co-chair, Architect FRAIA GAICD

This report was written by Meredith Sussex AM and Shelley Penn, and the views expressed herein belong to the authors.

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Executive Summary

'A rare chance to remake the city.....Examination of Barangaroo's plans suggest that the balance might be just about perfect....'

The Daily Telegraph editorial 4 June 2011

'Banality rules at Barangaroo.....The latest plan is distinguished by its banality – and vagueness....'

Sydney Morning Herald editorial 18 June 2010

Introduction

Planning for urban development inevitably involves the balancing of competing objectives. Rarely is everyone involved in a planning process completely happy. Indeed, the best outcome is frequently not the outcome which upsets the fewest people or which the majority of people can put up with. The concept of representative democracy is that we elect parliaments to make the rules about how competing objectives are balanced. The concept of a civil society is that these rules are applied fairly, and that those affected by decisions are provided with information about the competing objectives, have an opportunity to put forward their views, and have their views considered in determining the outcome.

Background to this Review.

This review was announced by the Minister for Planning in May 2011 following a mediation chaired by him between Lend Lease and the Australians for Sustainable Development, the community group which had commenced proceedings in the Land and Environment Court, challenging issues in relation to Barangaroo. The Terms of Reference were developed after input from the parties and the reviewers were appointed on 2 June 2011.

In formally announcing the Review Mr Hazzard said "...Barangaroo is far too important to allow there to be any doubt about the integrity of the processes... I emphasize that this Review will be short and sharp. It will be transparent; it will be conducted by two reviewers independent of the processes around Barangaroo. Our intention is that it will be complete within eight weeks. Barangaroo is a great opportunity. It will be an exciting journey, and this review should ensure that there is absolute confidence in the way Barangaroo goes forward."

This Review is not about compliance with planning law: we are not lawyers. And the Review is not an Audit: the Auditor General has recently completed an audit on some of the issues we have been asked to review. The Review is a look at the reasonableness of the process that led us to where we are today in the planning for Barangaroo, in order that others, including the Government and Lend Lease, can make an assessment about the reasonableness of the outcome proposed at Barangaroo.

With the agreement of the Government, we have taken a broad view of the Terms of Reference. We concluded as we listened to the proponents and the opponents of the plans, that we could not look at the process for the fourth Modification of the Barangaroo Concept Plan without looking at the Concept Plan itself and the first three Modifications. Further, our examination of the Concept Plan and the planning for transport for the site, as well as the location of the Home Port Cruise Terminal, required us to have a look at the terms of the original design competition and its outcomes.

Barangaroo – the Current Situation

All the advice provided to this Review is that Lend Lease has a binding contract with the Barangaroo Delivery Authority, which is ‘for the purposes of any Act, a NSW Government agency’ (Clause 7, BDA ACT).

Furthermore, our investigations have led us to the view that Lend Lease has a bankable land use zoning which allows the development of the southern part of the site in accordance with the plans approved under the *State Environmental Planning Policy (Major Development)* in December 2010, an approved Concept Plan for the whole of the South Barangaroo site and development approvals for the first stages of its proposal.

While the NSW Government could, subject to Parliament, legislate to alter the contract, limit the jurisdiction of the Supreme Court or act unilaterally to rezone the land, it is our view that such action would be at a high cost to the reputation of NSW as a place to do business. Given this situation, any significant changes to the plans at Barangaroo South should be considered on the basis that they will need to be negotiated with Lend Lease.

Fortunately, the conclusion of this Review is that many of the fundamentals of the plans for the site are well founded and the changes proposed by this Review, while significant, can be accommodated by Lend Lease and the Government. Lend Lease has demonstrated a willingness to show flexibility and has a well established reputation as a good corporate citizen.

The major issue for Lend Lease at present is the urgent need to proceed with the planning and development of the three commercial towers in order to confirm investor confidence in the project and to provide assurance to future tenants. In this, Lend Lease’s interests coincide with the interests of the Government, which wants to assure the world community that Sydney is open for business, and more importantly, with the interests of the people of Sydney, since the city will receive a significant economic fillip from the largest investment in the CBD for years. The conclusion of this Review is that, subject to the recommendations of the Review, and proper planning process, there is no reason why the planning and development of the commercial towers should not proceed, consistent with market expectations.

In relation to Barangaroo Central and the Headland Park, and a range of offsite issues, the Government has more, but not unlimited opportunity, to directly influence the future of the site.

Conclusions and Recommendations of this Review

Early Planning pp.12-20

- The Outcome of the Design Competition for Barangaroo in 2006 was an amalgam of the scheme developed by Hill Thalys Architecture and Urban Projects, Paul Berkemeier and Jane Irwin Landscape Architecture (HTBI) and significant elements of the Highly Commended design by Richard Rogers Partnership and co.
- The specification of the requirements of the Design Competition for Barangaroo and the competition itself were soundly managed and the current plans a recognizable interpretation of the Government's requirements and the jury recommendations.
- The Department of Planning's assessments of the Barangaroo Concept Plan and its Modifications appear to have been adequate, and formal community comment was sought and considered on four occasions during the process.
- Modification 2, which was approved in February 2009, and increased the approved Gross Floor Area (GFA) on the site by 30%, was supported by the independent Planning Assessment Commission. This was the proposal on which the commercial procurement was based.

Appointment of Lend Lease and Modification 4 pp.21-53

- The procurement approach adopted by the Government was consistent with generally accepted practice, and had more emphasis on good design as a selection criterion than is usual in other jurisdictions.
- The Lend Lease non-conforming bid was supported as the best proposal in the commercial procurement process by the overwhelming majority of the design experts involved.
- The basis of the financial modeling for the development has been affirmed by the NSW Auditor General in his recent Review.
- The probity advisor and auditor have advised that there were no significant probity issues in the selection process which led to Lend Lease's appointment as preferred developer.
- It was appropriate that Lend Lease bore the planning risk for their non conforming bid, and that they were obliged to build the 'base case' scheme if planning approval was not obtained.
- Lend Lease engaged in a thorough consultation process in advance of their formal submission with the aim of refining their scheme and reducing their planning risk by seeking and responding to the issues raised through pre-lodgement consultation.
- Modification 4 to the Barangaroo Concept Plan involved an increase of only 8.5% of GFA and a 10.7% decrease in commercial GFA compared to the previously Planning Assessment Commission assessed Concept Plan (Modification2).
- In most respects, this Review is satisfied that the Department of Planning appears to have given the assessment of Modification 4 of the Concept Plan due consideration and to have made informed and reasonable judgements about what it considered acceptable.
- Given that the ICAC Report which was released on 13 December 2010 recommended a significant curtailing of the Minister for Planning's discretion in relation to Part 3A of the

Environmental Planning and Assessment Act 1979, it is unfortunate that the Modification 4 to the Barangaroo Concept Plan (approved on 16 December 2010) was not referred to the Planning Assessment Commission to provide independent consideration of the proposal.

- While the processes which approved the Hotel over the Harbour were apparently consistent with planning law, it is the view of this Review that the use of these processes in this case was not good public policy, and, as a result, it is our recommendation that the decision to locate the hotel over the Harbour should be reviewed by negotiation with Lend Lease
- The interrelationship between the statutory planning process and the commercial procurement process was not well understood in the community, and the changes in the design which came out of the commercial process were seen by some as an arbitrary overturning of an earlier 'agreed' outcome.

Land Use Mix, Scale/Density, CBD pp.42-53

- The land use mix proposed at Barangaroo is consistent with the strategic directions of the then NSW Government and the Sydney City Council, responsive to the direct requirements laid down in the competition brief and the jury outcomes and focused on delivering on two of the most pressing needs in the Sydney CBD – commercial office space for the critical and growing finance and insurance sector, and new hotel accommodation.
- The Review has concluded that there should be more effort to provide affordable housing for key workers at Barangaroo.
- This Review is satisfied that the proposed density and scale appear to have been properly considered in the Planning Approval, however the public needs to be reassured that these can and will be adequately addressed through good design.

Design Excellence pp.54-58

- There has been a lack of an independent, expert 'good design' advocate supporting government in the process, or at least the perception of this lack. The NSW Government may wish to consider a realignment of the position of the NSW Government Architect to prioritise the advocacy and advisory roles, as separate from its public works office, as it does in other Australian jurisdictions. The South Australian Integrated Design Commission is an interesting model.
- The community is still concerned about the 'visual bulk' of the towers, which rely on good design and the planning provisions to be successful. It is therefore suggested that a 'snapshot' design review be undertaken to assess and advise on the quality of forthcoming proposals and to reassure the community. This review should:
 - Involve a specially constituted Design Review Panel, consistent with the planning provisions, of 3 members comprised of appropriately qualified design professionals and chaired by a registered architect;
 - Be coordinated by the Department of Planning, and facilitated by the BDA;
 - Be informed by a site inspection, and presentations by the various design teams, and conducted over the course of around 2 days;
 - Provide written advice directly to the Lend Lease and BDA design teams through the BDA, within a week of the presentations;
 - Report directly to the Minister for Planning through the Director General;
 - Address, *within the parameters of the Approved Concept Plan, and the Project Approvals:*

- Articulation and modulation of the commercial buildings C3 and C5;
 - The integration of the towers with the podia;
 - The public domain at Barangaroo South, including microclimate impacts;
 - Any other aspects of the design that Lend Lease may seek guidance on.
- Given the importance of Design Excellence as a mechanism to support the planning process, the complexity and enormous potential offered by the site and the team of world class people working on Barangaroo, this Review recommends the establishment of a Design Leadership role within the BDA. This role should be a Director or senior executive who reports directly to the CEO and Board, and who is supported to play a pivotal role in the delivery of design excellence at Barangaroo.
 - The existing Design Excellence Review Panel has contributed to the positive directions in the design outcomes at Barangaroo. It is the view of this Review, however, that the DERP needs to be reconstituted with a clearer governance structure, new Terms of Reference, clear protocols and procedures, and better management of conflicts of duty. These changes will strengthen its role in providing expert, independent advice to the planning and design process.
 - In addition, there is a major issue in relation to public communication in relation to design. The quality of the design work underway is something to crow about, but it is difficult for the community to support it if they don't know what is going on, or if the professionals appear to be in conflict with each other. The BDA needs to develop a new communication strategy focussed on ensuring accurate information about design issues is easily available.
 - The demonstrable commitment to sustainability should continue to be supported.

Transport pp.59-65

- The Sydney CBD and its surrounds are significantly constrained in relation to access by all modes of transport. Traffic congestion, public transport overcrowding and safe transit for cyclists and walkers have all been the subject of recent public concern. In addition, access to and from the Barangaroo site itself is limited by topography, existing road infrastructure and by traffic management measures which address existing CBD congestion. For these reasons, transport planning for the Barangaroo development has been a major issue from the very outset of planning for the site.
- Transport planning for the site has included consideration of the road network, parking, bus services, light rail, ferry services, pedestrian links, cycling and CBD rail capacity. The previous government made the following specific commitments in relation to Barangaroo:
 - *“The design and delivery of the pedestrian tunnel to Wynyard are to be undertaken by the NSW Government”*
 - *“The achievement of the mode share target for the journey to work by rail to Barangaroo will be supported by the North West Metro...The North West Metro is a NSW Government project and delivery and funding are not matters for the Barangaroo Stage 1 RFDP”*
 - *“Barangaroo will receive upgraded bus levels, including direct services to support the achievement of the mode share target... There will be increases in bus operating costs arising from the extension of services on the 422-428 and 373- 377 routes which will be met by the State Government”*
- The change of government and the subsequent review of the commitments in the Metropolitan Transport Plan have had significant implications for transport planning at Barangaroo. Funding for the pedestrian link from Barangaroo to Wynyard needs to be reconfirmed as a matter of

urgency. In relation to the other transport issues at Barangaroo, this Review supports the recommendations in relation to transport in the recent Auditor General's report ie.

- *'Coordinated action is required to ensure that transport plans are put in place in time to meet the needs of Barangaroo commuters. The Department of Transport needs to provide full and frank advice on the implications of any delay or change of plan' and*
 - *'The Department of Transport's advice on how changing transport priorities may affect Barangaroo should include an assessment of options in terms of risks and consequences, including potential financial and economic impacts of decisions.'*
- The Government will also need to consider the extent to which the previous government's commitments in relation to transport give rise to binding legal obligations.

Headland Park pp.66-70

- In relation to the Headland Park, it is acknowledged that the jury recommendations represented a fundamental shift in the philosophical design approach to the site from that proposed in the HTBI scheme. The recommendations rendered the headland with a 'natural' form and expression and as a predominantly green space, which has now been developed as a contemporary symbol of 'Country'. This is opposed to the HTBI headland park which drew on and adapted the existing concrete hardstand to create a park more obviously 'designed' and adapted from its extant form. These recommendations also defined the site as three precincts rather than treating it as a single continuous space with gradual transition from 'form' to 'space'. The difference between the two approaches is not a question of absolutes – neither is 'right' or 'wrong'. The two approaches are both valid, but the current design resulted from the competition outcome and has gone through what appears to have been a properly and competently considered planning process.
- The original design competition launched by then Premier Bob Carr suggested the development leave some room for others to grow this area later. The provision for a cultural facility in the headland and its integration with the park seems a good opportunity to do just that.

Cruise Terminal and White Bay pp.71-77

- This review has considered the planning approval processes and the decision making in relation to these processes relevant to the relocation of the Cruise Terminal to White Bay. We have concluded that, based on the characteristics of a Home Port Cruise Terminal provided to the Review by Carnival Australia, a Cruise Terminal is not a compatible use with the mixed use development planned for Barangaroo.
- The conclusion of the Review is that the community planning process in relation to the move of the terminal to White Bay has not been adequate. It is our suggestion that the function centre proposal be reconsidered and the non cruise ship uses of the Terminal should be determined by the Council in consultation with local residents. Council management is an option. Further, it is our view that foreshore access and landscaping should be planned in conjunction with the Council and local residents, and that the area has capacity for the development of good quality public open space.
- At the same time, it is our view that the traffic issues need to be addressed by the timing of cruise ship traffic generators outside peak hours. Given that the building of the terminal is being paid for by the Barangaroo development not the Port, there may be the capacity to negotiate the times of traffic generation with the Cruise industry as a trade off for lower fees.

- While this Review clearly agrees that Barangaroo is not a good location for a Home Port Cruise Terminal, we are convinced by the argument that the deep water berthing adjacent to Central Barangaroo should be retained so as not to close off options for future alternative uses.

Contamination pp.78-80

- This Review is convinced that those responsible for the development of the site intend to remediate the site safely and in accordance with best practice. It is therefore inexplicable to us that the Department of Planning and the former Minister for Planning should have approved work on the site without the completion of processes required by *SEPP No 55- Remediation of Land*. Even in the context of a genuine belief that the provisions did not apply, the failure to carry out the full spirit of the processes required by the SEPP demonstrates a hubris which is a concern in an issue of such public sensitivity.
- Community confidence in the remediation of Barangaroo now needs to be restored. This Review therefore recommends that the Barangaroo Delivery Authority be required to fund a peer review of the site remediation plans by another independent accredited Contaminated Sites Auditor selected by and reporting to a Panel chaired by the Office of Environment and Heritage, and including a nominee of the City of Sydney, a nominee of the Australians for Sustainable Development and the Barangaroo Development Authority and Lend Lease. This Review does not believe that it is necessary to defer the works for the Basement Car Park or the Headland Park until the peer review is completed, but the urgency of these works will mean that the peer review should be conducted as a matter of priority. This Review is confident that, given the commitment of Lend Lease and the Barangaroo Delivery Authority to best practice in remediation, both organisations will welcome any suggested improvements which arise from the peer review.

Public Domain p.82

- In relation to the public domain across the site, the new Design Excellence Review Panel should contribute to review and guidance of the Public Domain Guidelines, which are in development. As soon as possible, following consultation and finalisation, these should be made publicly available and adapted to form a coherent, accurate and legible vision for the whole of the site.
- Barangaroo Central has had less design attention than Barangaroo South and the Headland Park and is not part of the commercial contract with Lend Lease. The planning for Barangaroo Central provides the opportunity for the O'Farrell Government to engage with the community in the planning of this area, knowing the land use mix across the rest of Barangaroo has been developed to respond to the most obvious needs for the Sydney CBD. The potential is for a stunning public park with great architecture, exceptional public art and active, cultural or performance spaces which support the diverse population. There is scope for a visionary approach to curating grand scale public art in Barangaroo Central, which could distinguish this site and contribute to the cultural credentials of Sydney and Barangaroo.

Governance pp.83-84

- When things go wrong in a company or a project, it is always salutary to look at governance. This Review has not found major breaches of process in relation to the planning and implementation of the Barangaroo development, other than those which are already in the public arena (like the application of SEPP No 55). The Review has found, however, a raft of small and large mistakes and mishandlings, which taken together, have created an air of crisis around the development. From a governance point of view, the responsibility for many of the mistakes and mishandlings, which are detailed in the substance of the report, can be laid at the door of the previous Government. But there are other issues which need attention.

- Firstly, this Review has been consistently advised that consultation about the project has been more a selling of a decision than a genuine effort at community engagement to improve the outcome, and that there is a lack of transparency in relation to the project. Perceptions about the adequacy of consultation and transparency are often influenced by the extent to which the commentator likes the outcome, but these comments have been made widely enough for this Review to conclude that the Barangaroo Delivery Authority and Lend Lease need to upgrade their approach to consultation, communication and transparency. These are a core skills and perspectives for the 21st century - as important to governance as financial management.
- Secondly, and in a related matter, it is simply not possible to deliver a large, complex and precinct wide project in the CBD of Sydney without an effective, respectful relationship with the City of Sydney. The City has been involved in the planning for the site since the inception of the project, but trust seems to have broken down on both sides, and efforts need to be redoubled to restore this trust. A joint planning committee between the Barangaroo Delivery Authority and the City of Sydney to advise the Board and the Council on the future planning for the site is one option.
- Thirdly, the project has been bedeviled by perceived conflicts of interest. It has been put to us that Government itself has a conflict of interest in approving a development while financially benefiting from it. While this is technically true, it is a conflict embedded in the nature of executive government and is monitored at the ballot box. The Westminster concept is that these conflicts are managed by a robust Cabinet process where different interests are championed by different Ministers. Given this, the Government may wish to consider a separation of the role of Minister for Planning and Minister responsible for Barangaroo.
- It has also been put to us that there are intertwined interests between a number of the players and Lend Lease. We have been advised by the probity adviser and auditor in relation to the selection of Lend Lease as the preferred developer that the process was well handled, that there was no evidence of improper influence, and that the under bidder was satisfied with the process.
- Finally, in relation to the Barangaroo Delivery Authority Board, the indications are that the Board has managed its financial and commercial responsibilities well to date. As noted above, however, the Board has been less effective in managing the critical community relations issues associated with the project, to the extent that aspects of the project have been called into question. While it is not fair to hold the Board entirely responsible for the concerns about the planning for Barangaroo, the interests of the project suggest a rethink about the balance of membership of the Board and its public face.

Terms of Reference

Undertake a review in relation to Barangaroo of the compliance with the planning approval processes (and decision making in relation to such processes) relevant to:

1. the Concept Plan approval MP06_0162 (Modification 4) including in relation to land use mix, scale/density and relationship to the Sydney Central Business District.
2. the adequacy of planned transport arrangements to meet the demand generated by the site at full development;
3. the proposed Headland Park; and
4. the relocation of the Cruise Terminal to White Bay.

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1. The Site and Genesis of the Concept Plan

Barangaroo, formerly known as 'East Darling Harbour', is a 22 hectare site with a 1.4 kilometre harbour foreshore frontage located on the north western edge of the Sydney Central Business District. The site is bounded by Sydney Harbour foreshore to the west and north, the historic precincts of Miller's Point, The Rocks and Sydney Harbour Bridge approach to the east, and Darling Harbour to the south. East Darling Harbour (formerly wharves 3 to 8) has formed part of Sydney's working port for much of the 19th and 20th centuries and has also housed some important industrial uses.

On 5 October 2003, the NSW State Government announced the Ports Growth Plan, and at the same time, Patrick announced that they would depart East Darling Harbour by 2006, taking their stevedoring operations from that site to Port Kembla.

In 2004 the East Darling Harbour Taskforce was established to oversee masterplanning for future use of the site. It prepared project planning and design 'principles' for Government endorsement, which informed the Sydney Harbour Foreshore Authority's (SHFA) Design Competition brief announced on 12 May 2005.

The Competition

A two-stage ideas competition was a reasonable way to commence a masterplanning process for such a significant site. It was clear from the competition brief that it was to be a starting point and that the design would then go through an iterative process to develop an appropriate scheme for planning approval and implementation. It signalled strongly that a high quality outcome was expected for the site, and it allowed a very broad range of local and international teams to 'have a go' through the 1st stage (anonymous entry) process. The process also provided for the proper acknowledgement of work done, awarding \$50,000 to each of the five finalists selected from the 137 Stage One entries; and a further \$100,000 to these five on their acceptance of the challenge to proceed with more developed proposals in Stage Two, which commenced in December 2005. The winner of Stage Two was paid a further \$100,000.

The competition objectives seemed clear and its terms were fairly standard. In his foreword, the then Premier Bob Carr advised the competition sought "...ideas and concepts that will underpin the transformation of the... site." (*East Darling Harbour Urban Design Competition Brief 2005*).

The competition was intended to "...stimulate imaginative urban design proposals..." (*Ibid*, p.16),

and the brief also identified Sydney CBD as the "...primary economic centre and main headquarters for corporations..." and required entries to "...allow commercial growth opportunities for the Central Sydney Business District." (*Ibid*, p.18).

It provided guidance and requirements on a mix of uses, floor areas and heights, including "...commercial office buildings with large floor plates (greater than 1600sqm)." (*Ibid*) and noted that "...It is anticipated that the planning controls existing on the site may change as a result of the competition." (*Ibid*, p.22).

The brief also outlined some of the fundamental preconditions for the development which have shaped both the design outcomes and the financial arrangements for the site. All proposals for the site were required to provide a minimum of 50% new foreshore parkland, incorporate the Foreshore Walkway along the Harbour shoreline, physically reconnect to its surrounds, retain its function as a harbour passenger port, provide appropriate scale of built form consistent with its surrounds, with Harbour planning policy and with sensitivity to its foreshore location, interpret the site's historical development, and, importantly, be self funding.

The competition brief did not seek analysis of viability or consideration of development procurement models, but focussed on urban design concepts and options for the site.

A jury, whose composition was largely the same across the two stages, assessed the submissions. The size of the jury and the choice of jurors emphasised representation of key government stakeholders, rather than focussing on a predominance of individuals with urban and architectural design review expertise. This emphasis might partly account for the approach taken at the Stage One assessment, where, after evaluating 137 submissions, the jury short-listed five schemes that offered five different conceptual approaches to the site and its development, rather than selecting the five 'best' schemes. Although it is usual and appropriate to have expert representation to bring insights on relevant issues to the evaluation process, best practice for a *design* competition would typically require the majority of jurors to have had professional design quality expertise.

- The Stage One Jury included:
 - Chris Johnson, Executive Director of Urban Renewal, DoP (Jury Chair)
 - Gary Pratley, Deputy Director, Major Projects, Department of Infrastructure, Planning and Natural Resources
 - Philippe Robert, Principal of Riechen et Robert, Paris
 - Prof Edward Blakely, Chair of Urban and Regional Planning, University of Sydney
 - Neil Bird, Deputy Chairman of Landcom Corporation
 - Dr Deborah Dearing, President of the NSW Chapter of the RAIA
 - Michael Coutts-Trotter, DG NSW Department of Commerce
 - Peter Joseph, Chairman of St Vincent's Hospital Sydney and St James Ethics Centre
 - Jack Munday, Former Chair of the Historic Houses Trust
 - Dr Tim Entwisle, Executive Director Botanic Gardens Trust

- The Stage Two Jury included:
 - Chris Johnson (Jury Chair)
 - The Hon Paul Keating
 - Philippe Robert
 - Professor Edward Blakely
 - Neil Bird
 - Dr Deborah Dearing
 - Helen Lochhead, Executive Director, Sustainability, SOPA (delegate of Mr Coutts-Trotter)
 - Jack Munday
 - Dr Tim Entwisle

On 27 March 2006, the Competition Outcome was announced. The winning scheme was by Hill Thalys Architecture + Urban Projects, Paul Berkemeier and Jane Irwin Landscape Architecture (HTBI) and it was accompanied by a number of recommended design changes.

This Review has been advised by the probity advisor and auditor who oversaw the competition, including attending jury deliberations, that they were satisfied it was a fair, very robust and proper process.

The jury report indicated that the five proposals suggested several approaches to the site that were supported in different ways, and the report praised the winning design while at the same time commenting that the final outcome would benefit from amendment to draw on aspects of the *Highly Commended* scheme by Richard Rogers Partnership, Lippmann Associates, Martha Schwartz Partners and Lend Lease Developments.

What has become clear to this Review is that there was no clear, 'stand out' winner; that the jury was torn; and that the highly debated but ultimately consensus position was to draw together the

HTBI design and distinctive elements of the Highly Commended scheme. This was the Competition Outcome.

The jury report stated:

“The Jury has unanimously selected the proposal by Hill Thalys Architecture + Urban Projects, Paul Berkemeier Architects and Jane Irwin Landscape Architecture as the winner of the East Darling Harbour Urban Design Competition...

...and:

“In developing the scheme beyond its current concept the Jury recommends that the following elements be integrated in the next phase of the project:

*A natural headland form which touches the water at the northern end of the site
A large northern cove located directly behind the headland to further define the headland
A larger intervention of the southern cove, located north of Napoleon Street.”
(East Darling Harbour Urban Design Competition Stage 2 Jury Report, March 2006, p.6)*

In specific commentary on the HTBI scheme, the jury report said:

“The Jury suggested that the submission would have benefited from development in the following areas:

- o Refinement of the functionality and character of Globe St, particularly in its relationship to Hickson Road*
- o Refinement of the southern urban quarter to address the need to develop an identifiable and vibrant precinct connecting to the CBD*
- o Investigating the potential for a natural headland form which touches the water at the northern end of the site*
- o Investigating the potential for a large northern cove located directly behind the headland to further define the headland*
- o Investigating the potential for a larger intervention of the southern cove, located north of Napoleon Street” (Ibid p.14)*

The nature of these recommended changes was such that their inclusion would alter the philosophical approach and the conceptual *design* basis of the plan by:

- incorporating two larger coves which would effectively define the site as three precincts, rather than as a continuous site modulated by a sequence of changing design events and environments, as suggested in the HTBI scheme; and
- rendering the headland with a ‘natural’ form and expression and as a predominantly green space, as opposed to a headland park which drew on and adapted the existing concrete hardstand to create a park more obviously ‘designed’ and translated from its extant form, as was proposed by HTBI.

The design proposed a mixed-use development of commercial, residential, tourist, retail and community uses. It had a clear street layout and structure, which provided a strong delineation of public versus private demarcated by Globe Street, which also defined development envelopes to the east and public open space to the west, (the latter comprising 50% of the site, excluding streets, lanes and space within the development blocks). The public open space component suggested a range of formal and informal spaces serving separate recreational functions, as a sequence unfolding along the length of the site and culminating in a headland park. Gross Floor

Area (GFA) was distributed across building envelopes which were evenly graded from higher at the south to lower at the northern central area. It included a public foreshore promenade, partial new shoreline to the harbour and limited alteration of the existing sea walls. The submission suggested a number of options for GFA, including a 500,000sqm GFA scenario, noting “...Additional public benefits may justify further development opportunities on the site... yielding over 500,000sqm.” (HTBI Competition Submission 70178, p.27).

The HTBI team have confirmed to this Review their assertion that over 500,000sqm commercial GFA would be acceptable on the site, however they have also reiterated their belief that this would only be acceptable if accompanied by additional public benefits, and they advocate a different distribution across the site than is proposed in the Concept Plan (Modification 4).

Despite the clarity of the jury report, other communications about the competition outcomes may have contributed to false expectations as to the nature of the competition and the status of the winning entry. Politicians typically like to talk up and emphasize good news stories and this was one! From an impressive international field, a small local team had emerged as the winner.

Preparation for Planning Approval

In the meantime, SHFA was preparing for the Planning Approvals process. On 24 February 2006 SHFA requested that the East Darling Harbour site be included as a State Significant Site under Schedule 3 of the *Major Projects SEPP*, and that the Minister for Planning declare the development proposal envisaged through the competition process as development of a kind described in Schedule 2 of the *Major Projects SEPP*. At the same time, a request was made for the Minister to authorise SHFA to submit a Concept Plan, and to instruct the Director General to issue *Director General's Requirements (DGRs)* for the development.

On 22 March 2006, the Minister so declared and authorised. The effect of this was that Part 3A of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* applied, and the Minister became the approval authority for planning and development of the site.

Amendments and development by SHFA pre-lodgement

Following the competition, SHFA set about working up the development proposal to a level adequate to make a submission for Planning assessment under Part 3A. During this time, the Department of Planning was preparing its DGRs through consultation with key public agencies and the City of Sydney Council.

SHFA engaged a number of consultants and worked in-house, using the HTBI scheme as the base design and amending it to start to address the jury comments while also looking at other issues, such as viability, and an increase in GFA. The HTBI design team was engaged in July 2006 to develop the design, and continued to work with SHFA for some months. They were asked to amend the scheme to accommodate the elements and changes articulated by the jury – a difficult task given HTBI were wedded to their carefully considered concept for the site's development, and the recommended changes represented a fundamentally different conceptual design approach to the site. Although HTBI did investigate amendments to the shoreline at SHFA's request, these did not satisfy the jury recommendations and SHFA's requirements.

The HTBI team and SHFA parted ways in September 2006, rather than continue in what must have been an untenable situation. As professionals of integrity, it was the right thing to do, as they could not respond adequately to their client's requirements without compromising their own principles. But at the same time, it is clear that if SHFA had disregarded the jury's explicit recommendations, they would have been subverting the Competition Outcome and the process. In this regard, it was reasonable and proper for SHFA to proceed with the jury's recommendations on how the design should develop, and it would have been improper to disregard the jury's recommendations if that was what was necessary to retain the design team. HTBI were appropriately paid for their work, and SHFA continued with its task.

2. The Concept Plan and Modifications 1-3

The Concept Plan Application was lodged with the Department of Planning on 13 October 2006. It was a proposal based on the HTBI scheme with amendments deriving from the jury recommendations but not yet developed to fully reflect the Competition Outcome. The proposal included a partially enlarged northern cove and a somewhat more defined headland.

It was approved on 9 February 2007, after a statutory process that appears to have been adequate, and which included the required public consultation, with 91 submissions received (11 from public agencies).

The Approved plan included

- Total GFA of 399,800sqm comprising:
 - 388, 300sqm Mixed Use;
 - 8,500sqm for a passenger terminal;
 - 3,000sqm for Active uses within the Public Recreation Zone
- Approximately 11 hectares new public open space, including a 1.4km foreshore promenade
- Built form design principles, maximum heights and maximum GFA for each block
- Public domain concept including locations of development blocks, parks, streets and pedestrian connections
- Alterations to the existing sea walls and partial new shoreline
- Retention of the Sydney Ports Corporation Port Safety and Harbour Control Tower Operations on the site, including employee parking

The Approval also stipulated required modifications to the Concept Plan including design modifications to be made as the project developed, in response to the Department of Planning's consideration that *"...the concept plan still does not satisfactorily address the jury's recommendations"* (p.17, DG's EAR February 2007).

These were articulated in Schedule 2, clauses B1, B2, B3 and C1 of the Concept Plan Approval and required:

- Reasonably detailed design requirements for the northern headland, identifying six key objectives including *"...a headland at the northern end of the site with a naturalised shape and form including a build up of height..."* (Schedule 2, Part B, (B1)(2)(a))
- Requirements for the northern cove including *"...an enlargement of the water intrusion"* and *"...a greater naturalised shape, form and edges including treatment surrounding the cove."* (Schedule 2, Part B, (B2)(2)(a) and (b))
- Requirements for the Southern cove and recognition that this would require reconfiguration of the blocks and associated GFA, including *"...an enlargement of the water intrusion including a component east of 'Globe Street.'" (Schedule 2, Part B, (B3)(2)(a))*
- Future accommodation of redistribution of GFA within Blocks 2, 3 and 4 *"...that is displaced by any encroachment of the enlarged southern cove identified in modification B3."*

These requirements derived directly from the Competition Outcome, and foreshadowed the changes that would be seen in Modifications 2 and 3 and, to some extent, Modification 4 (larger southern cove). They preceded Modification 4 by more than three years.

On the other hand, there was a more subtle 'difference' between the Competition Outcome and the Concept Plan in the 'loosening up' of the plan's detail. In assessing the proposed Barangaroo Concept Plan, the DG recommended that the building envelopes *not* be approved as they had not yet been adequately considered and there were concerns about the outcomes they represented. In the context of Part 3A, which is about masterplanning, it was also unnecessary to define each building. The Director General's recommendation was that it would be better to approve envelopes for development blocks rather than for buildings, and to define a process to ensure each project

application to follow would deliver appropriate outcomes, through the evolution of more detailed designs, and through the consultation and assessment required at each Project Application. The mechanism proposed and adopted was the Design Excellence process, which also incorporated a number of key suggestions from the City of Sydney aimed at ensuring high quality diversity in the project architecture, including a requirement for design competitions for each building over a given size.

By defining envelopes for development blocks not for buildings, and with lack of clarity about what the buildings might be, it allowed the approved envelopes to accommodate the maximum GFA, but it also limited the scope to assess environmental impacts, as it was unclear what the actual built form outcomes would be. This was perhaps exacerbated by the fact that the block envelopes were generous in relation to GFA. Impacts such as street scale and quality, overshadowing and wind effects were to be assessed under each project application as the scheme developed in detail. This was appropriate at masterplan level, and a considered recommendation of the Director General to *protect* the quality of the outcome, but for the engaged community, it appeared to result in a Concept Plan which was vague in comparison with the competition design submissions (which offered tangible three dimensional visions of built form) and which was difficult to understand in detail.

From a proponent perspective, at a stage of the project when viability and procurement models were not yet clear, it was appropriate to build in some latitude, and Part 3A allowed this. It is also usual and desirable to have some 'room to move' between GFA and building envelope at the Concept Plan or Masterplan stage before a design is resolved, to allow for formal development and architectural articulation.

The 'loosening up' described above did not preclude a high quality outcome but it relied on:

- A degree of certainty about the extent of the public domain, confirmed public benefits and a clear strategic framework for the site
- Fulsome assessment of individual project applications within the Concept Plan as the development unfolded, including consultation to enable informed responses and improvements through that consultative process
- Design excellence processes enshrined in the planning approval and executed with rigour and transparency
- High quality, relevant implementation plans and strategies delivered at the appropriate times to inform the greater development
- A coherent, complete and well considered Statement of Commitments
- Careful and considered enforcement of the above.

A further need was a strong and open communication strategy to ensure the broader community could understand the relationship between the competition outcome, the Concept Plan, the planning process and the options that government might consider to realise the project.

During this period, in November 2006, the East Darling Harbour Taskforce was reconstituted as the Barangaroo Taskforce, to provide on-going advice to government about the project status, and to ensure its co-ordinated delivery. Around a year later, the Taskforce was re-established as the Barangaroo Steering Committee.

Modification 1

On 9 August 2007, an application to modify the Minister's Approval for the Barangaroo Concept Plan was submitted to the Department of Planning, by SHFA.

This Modification was required to

1. Correct four minor typographical errors in the original Concept Plan Approval

2. Clarify the Design Excellence requirements to align them with the provisions of the *SEPP (MD) 2005 – Barangaroo*.

The changes to the Design Excellence provisions involved addition of clause (7), in Schedule 2, Part C (C2). This additional clause provides a waiver allowing the DG to relinquish the requirement for a design competition if satisfied the proposal demonstrates design excellence, as defined within the clause. Refer Section 5.0 of this report for the Design Excellence provisions.

Modification 1 was approved on 25 September 2007.

Modification 2 – Commercial GFA at South Barangaroo

In the period following approval of the Concept Plan, SHFA continued to work on the development proposal. At this time, in a period of prosperity in the late 2007s and early 2008, government's understanding of issues relating to commercial floor space grew, with strong advocacy from the property industry as to global developments. The key issues were

- the tangible need for large quanta of commercial floor space to accommodate big corporations, and the physical constraints of Sydney's CBD in terms of its potential to expand; and
- the demand for large commercial floor plates above 2000sqm net floor area to meet the needs of the big financial services organisations that Sydney needed to house, if it was to hold on to its role as the Australian centre for the financial services industry. There is very limited scope to accommodate floor plates of this size within the existing CBD.

These issues were not new to the project, and the potential for Barangaroo to significantly contribute to Sydney's CBD as a "...primary economic centre" had been indicated in the 2005 competition brief. However the knowledge and understanding of what this meant for the NSW economy, and the research supporting the quantum of GFA and the magnitude of floor plate sizes was crystallizing. At a Financial Services Hub Summit in Sydney on 31 July 2008, then Premier lemma noted the vision of making the commercial development at Barangaroo a major Financial Services Precinct, with "...floor plate sizes and total commercially zoned space... tailored to the needs of the Financial Services sector."

During this period there was considerable work under way on the financial implications of the 'no cost to Government' commitment which had been made by Premier Carr in relation to Barangaroo in mid 2005. Given that the shape of the development had not been determined at that time, this commitment was clearly made without a detailed understanding of the costs and potential revenues associated with the development. This Review has been advised by the former Coordinator General of Infrastructure and Chair of the Taskforce which considered these issues that the recommendation to increase the commercial floor space in the development was made after considering the potential revenue of the Concept Plan proposal and the costs of remediation of the site, acquisition costs, the cost of the pedestrian link to the proposed Metro station and the cost of public domain development.

On 25 June 2008, SHFA lodged an application for approval of a second Modification to the Concept Plan. This was the first substantial change proposed in relation to the Concept Plan, seeking a total increase of GFA by 120,000sqm from 399,800sqm to 519,800sqm (representing a 30% increase) to accommodate additional commercial floor space. The proposed additional floor space was all for commercial office space, and was a direct response to government's recognition of the need for larger floor plates and a higher commercial yield at Barangaroo. The proposed modifications were focussed on Blocks 2, 3, 4 and 5 in the southern part of the site and *maintained the approved development block envelopes*. It required a change to the *SEPP (Major Projects) 2005* to permit the increase in GFA.

After consultation and assessment, the Director General recommended a number of changes to the proposal to increase the built form controls to address concerns about the relationship of built

form to the street edges and the height of podia which would need to mitigate the scale of commercial buildings in relation to the public domain. These also aimed to limit overshadowing impacts, view sharing, visual bulk and ground floor activation. In relation to the potential for visual bulk to be an issue given the large floor plates, the DG considered the bulk and scale could be suitably mitigated through the design excellence provisions.

In addition, the Director General recognised the nexus between increased GFA and commuter transport needs, and recommended that details of the proposed improved pedestrian link between Wynyard Station and Barangaroo be required with the first Project Application for blocks 2, 3, 4 or 5, and be completed prior to any occupation of those blocks.

Involvement of the Planning Assessment Commission

In consideration of the proposed significant increase in GFA, the then Minister for Planning Kristina Keneally decided to refer the Director General's report to the independent Planning Assessment Commission (PAC), for assessment, and did so on 23 January 2009. This was a significant step as it added a further, expert assessment of the proposal, and contributed to the robustness of the assessment process.

The PAC found that the Director General's report was reasonable; and it made some important observations, several focussed on the transport provisions, which at that stage included the CBD Metro project.

In relation to the proposed additional 120,000sqm commercial floor space, the PAC stated *"...While the proposed increase in GFA is very significant, the Commission considers the increase is an appropriate response to the strategic importance of the Barangaroo development to the future of Sydney."* (NSW PAC advice dated 6 February 2009)

In its conclusion the PAC stated *"The Commission considers the DG's report provides a comprehensive assessment of key issues and the recommendation is reasonable given the importance of providing for the expansion of Sydney CBD with a site which will allow large commercial floorplates to be developed. The Commission also notes that a considerable amount of work will be required and must be continued on the design of individual buildings at the project application stage that meets the design principles."*(Ibid)

After approximately eight months in consultation and assessment including the statutory 30 day public notice, Modification 2 was approved on 16 February 2009.

Modification 3 – Headland Park and Northern Cove

Meanwhile, Modification 3 was underway, having been lodged on 16 January 2009. Whereas Modification 2 had addressed the need for higher commercial yield and larger floor plates at Barangaroo South, Modification 3 was focussed on bringing the Concept Plan closer to the outcome envisaged by the Competition Jury's recommendations and *required* by the 2007 Concept Plan Approval, including:

- *"...a headland at the northern end of the site with a naturalised shape and form including a build up of height..."* (Schedule 2, Part B, (B1)(2)(a)), and
- Requirements for the northern cove including *"...an enlargement of the water intrusion"* and *"...a greater naturalised shape, form and edges including treatment surrounding the cove."* (Schedule 2, Part B (B2)(2)(a) and (b)).

It also:

- sought to change the alignment of Globe Street such that it was truncated at the northern cove, with a turn to connect it to Hickson Road
- required the removal of Block 8 and part Block 7, reducing the total GFA by 18,800sqm, and

- proposed work in relation to three locally significant heritage items, being the sandstone sea wall, the Sydney Ports Harbour Control Tower and the MSW&DB Sewage Pumping Station.

Modification 3 did not involve any increase to the total GFA, rather a *decrease* by 18,800sqm. It did not involve any changes at Barangaroo South.

Following the statutory 30 days public notice, the consultation process yielded 29 submissions, including 10 from public authorities, and after an assessment process over ten months, the Preferred Project Report (submitted 7 September 2009) was approved on 11 November 2009 Approval. The statutory planning process appears to have been adequate.

The Headland Park is discussed in some detail at Section 7.0 of this report.

The Concept Plan Modifications over time have been seen by some as a series of on-going, incremental and unwarranted perversions of the design Competition Outcome. This Review is satisfied that Modification 1 was minor and not relevant to this debate, that Modifications 2 and 3 flowed directly from, and were the logical next steps toward fulfilling the Competition Outcome and the government's objectives in relation to the site.

3. Commercial procurement process – Barangaroo South

The commercial procurement process for Barangaroo South was separate from the Planning Approvals process, and its genesis was in the 2007 establishment of a Delivery Strategy Advisory group appointed by the Minister for Planning to look at a range of procurement methods for the development parcels of Barangaroo. Planning processes were running in parallel with the commercial process, and bidders were advised about the proposed Modification 2, but were told not to assume the additional GFA would be approved. As the commercial bid process unfolded, it was informed by Modifications 2 and 3 to the Concept Plan as they progressed. The outcome of the commercial procurement led to the requirement and lodgement of the fourth request for Modification to the Concept Plan.

It should be noted that the commercial process related only to approximately one third of the site, (7.5Ha), being the southern portion including the Southern Cove and part of the land just north of that cove (shown in red below). Other parts of the Barangaroo development are to be procured through separate processes, under management of the Barangaroo Delivery Authority.



source: BDA

The commercial procurement included an Expressions of Interest (EOI) phase, inviting any interested parties to put forward proposals; and a Request for Detailed Proposals (RFDP) which invited three bidders to proceed with more detailed offers. The EOI process opened on 17 April 2008, based on the Concept Plan Approval (Modification 1). The EOI brief noted the Concept Plan would require modification in accordance with the competition jury requirements, and anticipated Modification 3, stating:

“The Concept Plan Approval Documentation outlines further modifications that will be required to the Concept Plan Approval prior to or concurrently with the lodgement of the first project application for major Public Domain works. These include the further design of:

- *the Headland Park;*
- *the Northern Cove to enlarge the water body and achieve a more naturalised shape; and*
- *the Southern Cove to enlarge and activate the cove edge, celebrate the role of water in the landscape and achieve pedestrian linkages along the foreshore and to Hickson Road.” (Barangaroo Call for Expressions of Interest, Stage One, p.15)*

It also foreshadowed the Modification 2 submission, stating:

“To enhance the growth and availability of commercial floor space in the CBD and to augment Sydney’s CBD as a premier commercial centre in the Asia-Pacific Region, the Foreshore Authority is presently considering the possibility of increasing the commercial floor space which can be developed at Barangaroo. This would involve seeking an amendment to the current Concept Plan Approval. It is estimated an additional 50,000 - 120,000 sqm of GFA may be achieved within the currently approved envelopes. The Foreshore Authority may as part of the RFDP Process consider proposals that contemplate increased commercial floor space outside the envelopes approved by the current Concept Plan Approval.” (Ibid, p.19)

The EOI criteria evaluated five key aspects of offers including Capability, Financial Capacity, Economics, Design Excellence and Sustainability. This phase closed on 6 June 2008 with submissions received by SHFA.

On 25 September 2008, after evaluation of the EOI submissions, three private sector bidders were asked to submit Detailed Proposals:

- Brookfield Multiplex Developments Australia Pty Ltd (Brookfield Multiplex);
- Leighton Properties Pty Ltd, Mirvac Projects Pty Ltd and Macquarie Capital Group Limited; and
- Lend Lease Development Pty Limited (Lend Lease)

While bidders worked on their proposals, SHFA was continuing to develop the planning parameters and seeking approvals for the Concept Plan Modification 2 (submitted June 2008) and Modification 3 (submitted January 2009).

Government was also preparing for the delivery of the Barangaroo development as a whole. SHFA launched the EOI for the Headland Park and Public Domain in October 2008 as a distinct process from the commercial bids already underway. Government also established the Barangaroo Delivery Authority (BDA), announcing it on 7 November 2008, with the BDA Act commencing in March 2009.

The detailed commercial proposals for Barangaroo South were submitted to the BDA on 31 March 2009. These were evaluated over 4.5 months and on 14 August 2009 two bidders were asked to enter into the ‘Final Phase RFDP process’:

- Brookfield Multiplex; and
- Lend Lease

This process involved interactive engagement with both bidders with the intention of enhancing and improving both offers to suit the requirements and objectives of the State. This is now common practice for large government tenders. It requires careful oversight by probity advisors to protect the commercial information, IP and integrity of all parties, and this Review understands such oversight was properly provided.

Both the EOI and RFDP required proponents to submit at least one conforming (‘Base Design Scheme’) proposal, and also invited ‘non-conforming’ proposals. Bidders were also asked to nominate their ‘Preferred Design Scheme’, whether that be the conforming or non-conforming proposal. This is a common method used by governments for seeking innovation from the market (be it financial or design innovation or both), through the non-conforming scheme option, while clearly communicating and protecting the minimum public benefit outcomes and requirements for the State through the conforming scheme or ‘base design’ requirement.

The government’s work leading up to the commercial bid process was partly about getting to a point where there was a reasonably well defined scheme that satisfied the public objectives as

identified by government, that had obtained planning approval. It is common for government to ensure the 'base design' has attained Planning Approval as this reduces the risk for government (by confirming the public benefit objectives and needs can be met within the State's planning framework) and for market bidders, (by providing them with planning certainty). Where the option of submitting a non-conforming bid is invited in a commercial bid process, it is typically adopted entirely at the developer's discretion and risk (as was the case here). This means the considerable cost of developing a design proposal which is non-conforming, and the risk that Planning Approval is not assured (should the non-conforming proposal be accepted) are costs the bidder takes on at their own risk.

The following extract from the RFDP Final Phase documentation makes it clear that there was to be no assumption that any proposed changes to the Approved Concept Plan would be approved:

"Where the Preferred Design Scheme is different to the Base Design Scheme, the Further Offer must be structured on the basis that the Preferred Design Scheme will be implemented if appropriate modifications to the Concept Plan Approval are approved by the Minister. If this approval is not given, the Base Design Scheme will be implemented. Each Nominated Proponent must ensure that its Project Documentation appropriately addresses the circumstances in which the Base Design Scheme will be implemented and the consequences of that implementation." (Barangaroo Project - Stage 1 Final Phase RFDP Addendum No.2, 22 October 2009, p.1)

On 9 November 2009 the Final Phase RFDP bids closed after interactive engagement with both bidders. The evaluation team was in a position to make a recommendation to the Executive Panel and BDA board quite quickly as the interactive work had meant they were aware of refinements to the offers as they evolved.

The bid evaluation process employed a commonly used evaluation structure and a team of sixty expert advisors. A Technical Panel was established to assess offers against each criterion, and each of these reported to an Advisory Panel (again, one for each criterion), which in turn reported to the Evaluation Panel. The Evaluation was also informed by reports from the Design Excellence Review Panel (DERP), which was appointed by the Minister for Planning in May 2009 and administered through the BDA to review and advise on the Barangaroo precinct.

The evaluation criteria used for the Detailed Proposals, and the weightings applied in respect of the assessment, evaluation and scoring of the Further Offers, were:

- Capability 5%
- Design 35%
- Financial Return and Risk 35%
- Marketing and Promotions 5%
- Sustainability 10%
- Delivery and Planning 10%

The emphasis on design quality and sustainability (45% in combination) are regarded by this Review as 'best practice' from a good design perspective. Traditionally, weightings on financial aspects have far outweighed design criteria, representing a misunderstanding of the importance of high quality design and innovation in their contribution to overall public benefits and economic outcomes, and frequently resulting in acceptance of bids on financial grounds to the detriment of good design.

This Review has been advised the Lend Lease offer was clearly the best for government and the public outcome against the criteria. Both the Design Technical Panel and Design Excellence Review Panel have advised this Review that the Lend Lease non-conforming offer was the best proposal from a design perspective. Other key strengths were a comprehensive series of 'ground breaking' sustainability initiatives; the financial offer which confirmed the required cost-neutral

outcome for the state while also including a defined profit sharing regime where government shares in revenue once profit hits an agreed level; and delivery of key public infrastructure including remediation.

On 20 December 2009, Lend Lease's non-conforming offer was selected for the development of Barangaroo Stage One (Barangaroo South), and on 5 March 2010 a Conditional Contract was signed between the government (via the Barangaroo Delivery Authority) and Lend Lease, with conditions being seventeen '*Issues of Principle*', requiring refinement of the design. These were focussed on public domain improvements and provision of certainty in relation to public domain environmental impacts such as overshadowing, wind, activation and vibrancy at the ground plane. On-going negotiation continued in order to address the *Issues of Principle*.

The Design Excellence Review Panel reviewed the developing proposal several times during this period after Lend Lease had been selected, and on 9 June it confirmed in writing that the *17 Issues of Principle* had "...been resolved satisfactorily at the Concept Plan level"

In doing so, the Panel acknowledged that "...the Barangaroo South project is at the masterplan stage Concept plan (amendment) stage within the NSW Planning system," ...stating "...This is a broad level of detail that is refined by later Project Plan submissions that develop the architectural detail." (DERP Report 9 June 2010).

In confirming its support, the DERP also noted there was more to be done to further improve the proposed outcome at the Project Application stage.

This position was echoed by the Barangaroo Delivery Authority's Design Advisory Panel, which comprised Richard Nugent, Karl Fender, Keith Cottier and also Michael Harrison of the City of Sydney Council. In their report of 11 June 2010, they wrote "...The revised scheme... addresses the '*Design - Issues of Principle*' very well as a masterplan...", and "*The key issues going forward can all be addressed at the detailed design and project application stages.*" (Design Advisor Report 11 June 2010).

On 16 June, Lend Lease submitted its refined scheme to satisfy the contract conditions. This was accepted and the Project Development Agreement came into effect on 22 June 2010.

Comment

Despite very clear evidence to the contrary, there is a level of distrust for some in the community who feel that the acceptance of the Lend Lease offer was somehow a *fait accompli*. It has been suggested to this Review that the process was improper and the outcome pre-ordained.

The Probity Advisor and Auditor have advised this Review that they were in attendance throughout the whole of the EOI, RFDP and RFDP (Final Phase) processes. Parties were advised of their involvement and their contact details were publicly available to ensure they could be contacted at any time by anyone wishing to raise a concern. An example from the Final Phase RFDP states that

"All meetings held as part of the Final Phase Process will be conducted in the presence of the Probity Auditor and any issues of a probity nature arising as a result of discussions during the Final Phase Process may be raised directly with the Probity Auditor."

(Barangaroo Project - Stage 1, Final Phase RFDP, p.6)

The probity auditor has advised this Review that there were no restrictions on the probity audit reports, indicating there were no probity breaches. We note the probity auditor also attended the post-bid de-brief with the unsuccessful bidder, and advised that the representatives of Brookfield Multiplex were complimentary about the bid process. Given the very high cost of the bid process for major developments such as this, and the undoubted disappointment at being unsuccessful, it is difficult to see how Brookfield Multiplex would express satisfaction with the process if it had not

been transparently impartial and properly conducted.

This Review is satisfied that Lend Lease won the bid 'fair and square'.

Relationship to Planning Process

As noted above, the commercial bid process was separate from the Planning process. The initial commercial bid EOI went out under Concept Plan 2007 (Modification 1), but it foreshadowed GFA increases within the approved building envelopes, offering no guarantee that these would be approved. Modification 2 and 3 ran in parallel with the bid process, and bidders were informed of these as they progressed. Modification 2 was approved in February 2009, in advance of the RFDP Final Phase. Modification 3 was lodged January 2009, and approved November 2009, and did not involve changes to Barangaroo South.

RFDP Final Phase bids were evaluated during the period from mid-August to December 2009. The Final Phase RFDP was evaluated 'under' Modification 3, noting that bidders had been invited to submit non-conforming bids which could propose to vary the design scheme, but allocating all risk for proposals that did not comply with the Approved Concept Plan (Mod 3) with the developer. The acceptance of the Lend Lease non-conforming bid then required Lend Lease to go through the planning process to seek approval for their Preferred Scheme. This was submitted as Modification 4, and a version of this, substantially amended over an 11 month consultation and assessment period, became the currently approved Concept Plan (Modification 4). At the same time, Lend Lease sought and ultimately attained the necessary approval for a change to the SEPP (MD) 2005 to allow for a tourist use (hotel) over the harbour and pedestrian bridges over Hickson Road and to change the allowable gross floor area allocations and maximum heights in the different sections of the site.

Procurement Approach

There are many views as to the 'right' approach to procurement, in terms of the financial and risk implications and in terms of their varying influence on the quality of built outcomes. In the case of Barangaroo, the process of considering what would be the best approach commenced in the framework of then Premier Carr's announcement that the site would be developed at no cost to government.

The establishment of a Delivery Strategy Advisory Group in 2007 by the Minister for Planning began the formal investigation of a range of procurement methods for the development parcels of Barangaroo. A report was prepared for the Minister recommending a preferred option of staged development through 99 year leases within the commercial precinct to fund the Headland Park and other infrastructure. In November 2007 a Treasury Gateway Review recommended approval of the business case, finding the preferred option to deliver greater benefits but noting areas for further consideration. The procurement approach was refined, with expert input and independent review along the way, culminating in the Development Agreement that is currently in place.

The financial agreement provides that *"...Barangaroo public domain and infrastructure will be funded from developer contributions over the life of the project but will require Treasury Corporation loan facilities to meet expenditures in advance of receiving fixed and value-sharing payments from the developer."* (BDA submission p.70)

In his June 2011 'Performance Audit of Government expenditure and transport planning in relation to implementing Barangaroo' (p.14), the Auditor General notes that

"...The vast majority of the (Barangaroo Delivery) Authority's revenue is from developer contributions, comprising fixed and value sharing payments... modelled on the anticipated premises' land value of Barangaroo South."

...and describes the value sharing agreement as follows:

“...The calculation of value sharing payments is detailed in the Agreement with Lend Lease. The (Barangaroo Delivery) Authority will share with the developer 50:50 the buildings’ land value after all fixed payment have been deducted. The land value is a component of each building’s Market value determined by accredited valuers on or near its completion. Payments are forecast to commence after 31 March 2018 when the last fixed payment has been made.

“The use of value sharing payments is a common industry practice for large construction projects. They provide an incentive for the developer to construct on time and maximise returns on the lease of buildings.”

In relation to the quality of built outcome that may result from the Barangaroo Development Agreement, it has been put to this Review that a better urban design outcome would result from the ‘creation of an armature for development over time’, whereby Government would establish the public realm – streets and lanes and so on - and then permit or procure development block by block to support the public domain as primary and to deliver diversity through more organic growth.

This is set against the methodology that was adopted, whereby leasehold of the development blocks at Barangaroo South rests with a single developer for their design and delivery concurrent with establishment of the associated public realm spaces (streets, lanes and so on).

It is noted that Lend Lease is the developer for approximately one third of the site, not the whole of the site, and the bulk of the public domain and development blocks at Barangaroo Central are not within their agreement but are for the Government to deliver/facilitate. The Headland Park design has been procured by government and is currently in development. Its delivery will be facilitated by the BDA.

Comment

Government is always required to balance available funds against competing public needs. In the light of the need for more obvious social infrastructure and services in areas such as health, education and transport, investment in public open space tends to be harder to justify as a priority around the cabinet table. This is not necessarily good or right but it is a fact. A growing understanding of the social and economic value of a well design public realm is emerging in a tough economic context. Governments in Australia are increasingly looking to the private sector to assist in funding major public infrastructure, and to leverage public space benefits through these partnerships. The decision to seek tenders from developers under the model adopted at Barangaroo is not at all unusual.

It is also fair to say that historically, from a design perspective, organic growth has more consistently led to more vibrant, diverse and engaging urban environments, but this is not to say the single developer model can’t achieve such an outcome nor that it does not have public realm benefits of its own. Government is inherently risk averse. While design diversity, and diverse use and tenancy mixes are essential to develop an authentic, meaningful and inclusive community and a resonant sense of place, the benefits that a single developer can deliver include efficiencies and coordinated integration of services and essential infrastructure, and certainty about aspects such as the design and construction quality of the outcome. In addition, the single developer model can deliver sustainability initiatives that only work when integrated across a large scale. There is also a reduced internal cost to government processes, and a more contained risk profile for government (and therefore, for the public), than would be the case where the managing of numerous smaller tenders and/or contracts is required.

As always though, the process is critical. In order to protect and facilitate the desired public realm outcomes, it is crucial that the process supports these objectives. Again, the Design Excellence process embedded in the Planning Approvals and the Development Agreement is relied upon, and

must therefore be executed with rigour and transparency. It is also necessary that the tenancy mix and use mix support diversity in the community and meet a range of community needs. The land use/mix proposal at Barangaroo is discussed at Section 4.4 of this report.

4. Modification 4

4.1 Mod 4 - Proposal for South Barangaroo

Subsequent to government's acceptance of the Lend Lease proposal in December 2009, the proponent was required to seek a modification to the Concept Plan to facilitate development of a number of elements of their scheme, particularly the redistribution of built form and GFA, which differed from the Approved Concept Plan (Modification 3) and the Major Development SEPP.

The 'stand out' differences at this stage were the proposed 'iconic' hotel on a pier projecting into the harbour, the absence of a cruise passenger terminal, an enlarged southern cove, taller commercial buildings and a change to the street pattern on Barangaroo South.

It is noted that government had announced the permanent relocation of the cruise passenger terminal to White Bay on 20 December 2008, however this was the first Modification which sought to make its removal tangible in the Planning Instrument terms. The process leading to this and issues surrounding it are discussed at Section 8.0 of this report.

Having been advised of their success, Lend Lease commenced the Modification 4 process by seeking Department of Planning advice as to the required planning approvals process in January 2010. On 19 February 2010 Lend Lease lodged their Preliminary Environmental Assessment Report (PEAR), and commenced a pre-lodgement consultation process with government agencies, the City of Sydney and the broader community. Lend Lease ran a consultation process from February to July 2010, which resulted in a number of substantial changes to their bid-winning scheme. During this time, and as described above, their design also underwent review by the Design Excellence Review Panel and the Design Advisory Panel, and received the benefit of expert design advice from eminent individuals like Jan Gehl.

Key changes in response to this first round of pre-lodgement consultation and comments from the design review process were substantial and included:

- Reduction in pier size from 150m to 85m long;
- Reduction in hotel length from 90m to 50m;
- Reduction in hotel height from 213m to 159m;
- Commitment to no permanent residential floor space within the hotel;
- Reduction in number of commercial towers from four to three;
- Reduction to building heights to Block 1, building C5 in Block 2,
- Amendments to heights in various blocks to comply with the then Approved Concept Plan (Modification 3)
- Realignment of towers to maintain the Margaret Street West view corridor
- Introduction of low scale buildings along the promenade to mitigate wind impacts and modulate the scale of the towers, and additional residential GFA to activate the promenade;
- Alterations to streets and laneways to improve permeability;
- A new civic plaza at the southern cove waterfront;
- Additional community space

Further consultation followed and more design changes were made in response to issues raised, including an increase in the height of the hotel by 11.3m (accompanied by a decrease in hotel GFA); and an increase in the height of commercial tower C3 by 9m, both to assist in achieving more slender forms and to assist in reducing visual bulk. At this stage, the Director General issued his DGRs, and on 30 July 2010, Lend Lease lodged their application for the proposed Modification 4 to the Concept Plan and to the Major Development SEPP.

It is the opinion of this Review that Lend Lease engaged in a thorough consultation process in advance of their formal submission with the aim of refining their scheme and reducing their planning risk by seeking and responding to the issues raised through pre-lodgement consultation.

The formal lodgement was followed by the required statutory consultation process. 234 submissions were received, of which 224 were public submissions and the other 10 were from government agencies. Key issues raised included:

- hotel over the water
- visual bulk and scale of buildings
- overshadowing
- view loss
- transport.

Submissions were considered and the proposal was assessed by the Department of Planning. Lend Lease responded to each submission and made further amendments to their scheme in response to the submissions. In addition, the Director General required a number of changes which were incorporated prior to Lend Lease’s submission of their Preferred Project Report (PPR) on 12 November 2010. Altogether, these amendments included a number of detailed revisions to:

- Built form principles and urban design controls relating to
 - the commercial towers;
 - separation of forms to assist solar access and view sharing;
 - street proportions and qualities;
- Amendments to the streets and lanes to improve pedestrians networks, and to clarify vehicular and pedestrian relationships.

The PPR was then assessed by the Director General, and a recommendation was made to approve the proposal. The Minister approved the Concept Plan (Modification 4) on 16 December 2010.

This Modification was focussed on Barangaroo South and did not propose any changes to Barangaroo Central nor to the Headland Park. The Approved Concept Plan (Modification 4) includes the introduction of a tourist use over the harbour (relocation of the proposed hotel to that site, as part of a reallocation partly to accommodate the larger southern cove) and an increase of total GFA to 563,965sqm (this is a 12.6% increase in total GFA over Modification 3 (501,000sqm), but it represents only an 8.5% increase in total GFA over Modification 2 (519,800sqm), which had been independently assessed by the Planning Assessment Commission.)

	Mixed Use Zone Total	Cruise terminal (within RE1 Zone)	Active Uses (within RE1 Zone)	Additional Community Uses (within RE1 and mixed use)	TOTAL
Concept Plan	388,300	8,500	3,000		399,800
Mod 2	508,300	8,500	3,000		519,800
Mod 3	489,500	8,500	3,000		501,000
Mod 4	549,465	-	4,500	10,000	563,965

If we assume commercial floor space is maximised within the approved GFA ranges for each use, (by minimising other uses as the GFA allowances apply to each block), then the commercial GFA in the Concept Plan (Modification 4) Approval represents a 10.7% DECREASE compared to Modification 2.

Mixed Use GFA utilising minimum figures for other uses therefore maximising commercial						
	Commercial	Tourist	Residential	Retail	Community	Mixed Use Zone Total
Concept Plan	279,000	30,800	60,000	16,500	2,000	388,300
Mod 2	399,000	30,800	60,000	16,500	2,000	508,300
Mod 3	392,500	25,000	53,500	16,500	2,000	489,500
Mod 4	356,425	33,000	122,263	35,777	2,000	549,465

Breakdown provided by BDA

The Approval includes:

- An increase of GFA in the Barangaroo South Mixed Use Precinct from 430,275sqm to 490,240sqm being an additional 59,965sqm GFA within Blocks 1-4, X and Y.
- An increase in Community Uses GFA to total 10,000sqm in Barangaroo South comprising:
 - Reallocation of the previously approved 8,500sqm of passenger terminal;
 - An additional 1500sqm;
- An increase in Active Uses GFA by 1500sqm to a total of 3,000sqm in Barangaroo South, (and to a maximum 4,500sqm across the site);
- Enlargement of the Southern Cove;
- A reconfiguration of Blocks 1-4, including the breaking of Block 4 into three separate blocks (4A, 4B and 4C) flanking the Southern Cove;
- Reconfiguration of the waterfront public promenade;
- An increase in maximum building heights including:
 - Block 1 – increased by 20m to RL80
 - Block 3 - increased by 97m to RL209
 - Block 4 – increased by 75m to RL175
- Establishment of two new development blocks being:
 - Block X – new predominantly residential block parallel to the promenade between Block 2 and Globe Street;
 - Block Y – relocated hotel;
- Enlargement of Concept Plan area into Sydney Harbour to accommodate the landmark building and pier (Block Y);
- Redistribution of land use mix and reconfiguration of public promenade, resulting in a reduction in width of the promenade from a minimum of 60m to 27m;
- Revisions to built form controls and urban design principles; and
- Provision of a cultural centre.

In most respects, this Review is satisfied that the Department of Planning appears to have given this assessment due consideration and to have made informed and reasonable judgements about what it considered acceptable. However there are some matters to note about the assessment process, and one matter of particular concern is the hotel, which is discussed in detail in the next part of this report.



HTBI Competition Design



Concept Plan 2007



Modification 3 (Headland & Northern Cove only)



Modification 4

Planning Assessment Commission Referral

This Review understands the Minister for Planning did not refer the Modification 4 proposal to the Planning Assessment Commission (PAC) because, in the absence of other triggers that would require a referral to the PAC, the changes brought by the Modification were not substantial enough to require independent assessment. This appears to have focussed on the GFA changes which involved a relatively small overall increase, in the order of 8.5% total GFA increase, when compared to the previously PAC assessed Concept Plan (Modification 2), or 12.6% compared to Modification 3.

At the time Modification 4 was under consideration, there was significant community concern about Part 3A in general, which was crystallised by the findings of the *Independent Commission Against Corruption (ICAC) report on 'The Exercise of Discretion under Part A of the Environmental Planning and Assessment Act 1979 and the State Environmental Planning Policy (Major Development) 2005'*, delivered on 13 December 2010. This report recommended a significant curtailing of the Minister's discretion under Part 3A on the basis of the perceived and actual corruption risk involved in that discretion. The Minister's approval of Modification 4 was granted only three days later. While we accept that most of the work on the Director General's recommendation on Modification 4 would have preceded completion of the ICAC report, the Department of Planning was working with ICAC as a member of the taskforce set up to undertake the examination of Part 3A and the SEPP (MD), and should have been aware of the general drift of the ICAC findings. Given the proposal being assessed concurrently with Modification 4 for a change to the SEPP (MD) relating to the projection into the Harbour and changes to Hickson Road, and in the context that the process leading to Modification 4 had included the referral of Modification 2 to the PAC, this Review suggests it would have been prudent, and good public policy, to refer Modification 4 to the PAC for independent assessment. If the PAC had supported the Director General's recommendation, this would have provided an important level of robustness to the assessment, and further reassurance to the broader community about the merits of what was proposed. If the PAC had not supported the recommendation, it would have provided a good basis for reconsideration of any issues.

Planning Mechanisms within the Concept Plan

The Concept Plan is a masterplanning approval and is necessarily 'loose' in its definition of built outcomes. In order to protect the adequacy and quality of the final outcome in Statutory Planning terms, the Concept Plan Approval and its Modifications rely on a number of important mechanisms. These mechanisms are fundamental aspects of the approval, but may not be well understood by the broader community, resulting in uncertainty about what is proposed in the Concept Plan.

The *Statement of Commitments* is a crucial document which "...prevails to the extent of any inconsistency in the plans and documentation..." contained in the approval. The *Statement of Commitments* includes numerous detailed requirements to be fulfilled in the final outcome and as the individual Project Applications are submitted. Many of these commitments require Implementation Plans or Strategies to address aspects of the proposed development. Each of these Plans or Strategies is prepared by a dedicated Technical Working Group (TWG), which reports to the Barangaroo Planning Reference Group (BPRG). The BPRG is chaired by the Department of Planning and includes relevant government agencies and public authorities. The BPRG determines the membership of each Technical Working Group, but the Department of Planning is excluded from TWG membership.

The BPRG's Terms of Reference are to:

- *Ensure a cooperative, coordinated and timely planning approvals process*
- *Provide strategic direction and program for the planning approval process*
- *Ensure timely and coordinated agency input into the key steps in the planning process*
- *Provide high level expert advice and resolve issues throughout the planning approval process*

- Establish TWGs to oversee preparation of implementation plans
- Receive implementation plans prior to lodgement of relevant project applications
(Issued by the Department of Planning, March 2010).

The Implementation Plans are the responsibility of the Proponent to coordinate and deliver, and they are typically required to be submitted to the BPRG prior to relevant Project Applications. If a Plan or Strategy is found to be inadequate by the BPRG, the Technical Working Group is required to revise it. Once it has been endorsed, the final report is made publicly available and it informs the Director General's assessment of relevant applications. Examples of Plans or Strategies required under the *Statement of Commitments* include the *Design Excellence Strategy* and the *Transport Management and Access Plan (TMAP)*, which are discussed respectively at Section 5.0 and Section 6.0 of this report. Membership of the Technical Working Groups for the nine key Implementation Plans is included at Appendix 2 to this report.

In addition to the requirements of the *Statement of Commitments*, the Design Excellence provisions contained in Schedule 2, Part 2 (2C) of the Instrument of Approval and in the SEPP (MD) are important as a key mechanism to assist in achieving high quality design, as discussed in Section 5.0 of this report.

Given the importance of these mechanisms in the context of the Concept Plan, it might assist, in terms of good public policy, if each of these was required to be completed to the satisfaction of the consent authority, rather than relying only on endorsement of the BPRG.

Current Statutory Planning status

The *SEPP (MD) Amendment (Barangaroo) 2010* is law. It includes associated maps which identify the tourist use and public recreation zones over the harbour.

The Concept Plan (Modification 4) is the current, approved concept plan, which is consistent with the SEPP (MD) Amendment (Barangaroo) 2010.

A number of development applications related to the site and under the concept plan have been lodged, some of them approved. In addition to the Concept Plan and its Modifications, the relevant applications under the concept plan include (with status according to the NSW Department of Planning website) at the time of writing are:

- Bulk Excavation & Basement car-parking (**approved**)
- Bulk Excavation & Basement car-parking MOD 1 (**approved**)
- Bulk Excavation & Basement car-parking MOD 2 (in assessment)
- Demolition & site establishment works (on hold)
- SISCO and SEPR Pilot Trial (**approved**)
- Commercial building C1 (DGRS issued)
- Commercial building C2 (DGRS issued)
- Commercial building C4 (**approved**)
- Commercial building C5 (DGRS issued)
- Commercial building C6 (DGRS issued)
- R8 & R9 Residential Buildings (DGRs issued)
- Remediation and land forming works - DECCW declared area (DGRS issued)
- Headland Park and Northern Cove - early works (**approved**)
- Headland Park and Northern Cove - main works (**approved**)
- Headland Park and Northern Cove - main works MOD 1 (Assessment)

In addition, a Modification 5 application to the Concept Plan was submitted, and has been withdrawn. No details are available on the Department of Planning website.

4.2 Mod 4 - Hotel over the Harbour

The East Darling Harbour Design Competition in 2005 originally envisaged “...hotel uses on the site...(to) include a 5 star or 3 star hotel or serviced apartments up to approximately 50,000 sq m GFA.”

The Concept Plan approved in February 2007, included a maximum of 50,000 sqm of GFA for tourist uses including no more than 12,500 sqm in serviced apartments in single ownership. At that stage the Plan notionally included a hotel of 30,800 sqm to the west of the intersection of Hickson/Sussex Street and Napoleon Street in block 2, with a height limit of 180RL.

The Concept Plan approval sought to limit the GFA for tourist uses, on the basis that the most important use of the mixed use land was commercial office space. This Review has received submissions that the occupancy rate of Sydney’s hotels is now running at 87%, and that additional 5 or more star accommodation is critical to the future of both the tourist industry and business development in Sydney.

On 12 October 2007, Barangaroo was rezoned in accordance with the Concept Plan to part RE 1 and part B4 mixed use under Schedule 3 of the *State Environmental Planning Policy (Major Development) 2005*.

This Concept Plan and zoning were the basis of the call for Expressions of Interest for a proponent to develop the southern end of the site and the subsequent Request for Detailed Proposals. As described above, proponents submitted conforming bids, but were also offered the option of submitting alternative proposals, or non-conforming bids. Shortlisted proponents submitted non conforming bids on the basis that the risk of not achieving planning approval for the new development proposals would be borne by the proponent and that if planning approval was not obtained, then the proponent was required to revert to the delivery of the modified concept plan. This arrangement is consistent with normal practice in building projects of this type, and is designed to ensure that the proponents can offer innovative, creative and cost effective approaches to the proposed development.

It is fair to say, however, that it is not a process well understood by the community. For those who have invested energy in the planning process, and who are not involved in the probity constrained secrecy of the selection of the preferred developer, the process can look and feel like an ambush. As outlined above, it is the view of this Review that the decision to select Lend Lease’s non conforming bid with the hotel in the Harbour, was consistent with good commercial practice and probity guidelines - but it looked and felt like an ambush to a number of those who had invested in the process leading up to the Concept Plan.

Lend Lease’s non conforming bid was selected as the preferred scheme in December 2009. In the first half of 2010, Lend Lease then undertook a variety of public consultation processes and further design work which led to a number of changes to their Scheme. While attitude monitoring showed that most Sydneysiders supported the proposal, there was a coalition of strong opponents to a variety of the new elements of the Scheme – particularly the location of the hotel on a pier in the Harbour. It is worth re-emphasising here that the Harbour location was new in the planning for Barangaroo. It was not part of any shortlisted competition proposal, and was therefore not part of the original Concept Plan consideration nor the Planning Assessment Commission’s advice on Modification 2 of the Concept Plan.

Planning Approval of the ‘Hotel in the Harbour’

In August 2010, Lend Lease submitted an application for Concept Plan modification and request for amendment of the *State Environmental Planning Policy (Major Development)* to support their preferred Scheme. These applications involved a hotel on a pier at the southern end of the

Southern Cove, with a GFA of 33,000sqm and a height of 170m. It was proposed to be a landmark building of great architectural significance.

When the proposal was put forward by Lend Lease, the pier was not part of the site and the proposed use over the water was prohibited under the *State Environmental Planning Policy (Sydney Harbour Catchment Regional Environment Plan)*.

The statutory planning of the site, and the hotel in particular, is determined by a complex interaction between Part 3 and Part 3A of the *Environment Protection and Assessment Act 1979*, the *State Environmental Planning Policy (Major Development)* and the *Environment Protection and Assessment Regulations 2000*.

Part 3A of the Act (now repealed) provided that the Minister by Order published in the Gazette, or a SEPP could declare a project to be a development “...of State or regional environmental planning significance”.

Once declared, planning approvals were dealt with under the provisions of this section of the Act. These provisions:

- Streamlined the application and assessment process;
- Removed the application of environmental planning instruments (other than State Environmental Planning Policies);
- Removed third party merit appeals other than for proponents in limited circumstances;
- Removed the requirement in relation to an approved project, for authorizations under a number of Acts;
- Required agencies to issue certain otherwise discretionary permissions related to an approval (including the issue of an environment protection licence);
- Allowed wide Ministerial discretion in approving modifications to approvals under the Part.

The operation of Part 3A was constrained by the provisions of 8N of the Regulations which provide that if a “...project, or part of a project” is “...located in an environmentally sensitive area of State significance” (including coastal waters) and would normally be prohibited, then the Minister could not approve a Concept Plan for the project or the project itself. Thus, if the hotel in the Harbour had been part of the original Concept Plan in 2007, the Minister could not have approved it, because the waters of Darling Harbour were an “...environmentally sensitive area of State significance” and the use as a hotel was prohibited by the relevant State Environmental Planning Policy (Sydney Harbour Catchment Regional Environment Plan – a deemed SEPP).

The hotel could be, and was, approved in 2010, however, because all of these provisions could, and have been, overridden by an amendment to the *State Environmental Planning Policy (Major Development)* which could be, and was approved by the Governor in Council on the recommendation of the Minister. The provisions of the *State Environmental Planning Policy (Major Development)* are that the Minister can decide, even without any process (cl 8(6)), to include any area within the provision of that SEPP.

There is little doubt that so long as these processes were followed competently, and it seems that they were, the approval of the hotel in the harbour was consistent with the planning law in place at the time.

There is a long standing notion that if something can be done legally, then parliament intended that it be done. Frankly, in these circumstances, that seems unlikely. It is difficult to believe that parliament intended that the Minister should be able to approve by Executive Order, a project which was prohibited by State Planning Policy and by Regulations applying to the Part of the Planning Act designed to facilitate State significant projects.

We have heard arguments that the project needs a landmark building, that it will be an exceptional work of architecture procured through a design competition, that Sydney needs a new international icon and that the seabed under the pier is more than compensated for by the expansion of the Harbour through the two coves. These may be valid points. There are arguments both ways as to the merits of a hotel over the harbour, but a finding on merit is beyond the scope of this Review.

All the advice provided to this Review is that the Minister was legally entitled to support the approval, by Executive Order, of a private sector development effectively involving reclamation of the Harbour, despite the fact that this development was prohibited both by State Planning Policy and by the legislation designed to facilitate state significant developments, and despite what we are advised was a longstanding bi partisan opposition to such development.

In this case, it is the view of this Review that given the nature of the prohibitions overridden, the Minister's actions had the effect of undermining confidence in a variety of related laws and decisions, and was therefore not good public policy.

While Lend Lease has zoning and Concept Plan approval for the hotel in the harbour, this Review suggests that it would be a significant demonstration of goodwill to relocate the hotel to elsewhere on the site. At the very least, we believe that Lend Lease and the Government should agree to abide by the outcome of a specially constituted Design Review Panel which should be asked to review the merit of the location of the hotel with a publicly accessible process as if the rezoning had not occurred.

4.3 Mod 4 - 'Design Changes'

It has been suggested that the Approved Concept Plan (Modification 4) provides for an outcome that is fundamentally different from the Competition Outcome. It has been put that each Modification involved incremental, insidious and unjustified change, and that the differences between the Hill Thalys Berkemeier Irwin (HTBI) competition design and the Approved Concept Plan are an indication that the process has been subverted. The implication that follows is that the Approved Concept Plan is therefore invalid.

There are several points to make in regard to this position.

The Competition Outcome

Design is a necessarily iterative process. From the earliest concepts through to construction detail, the design of any given project involves continual review and development. The projects that don't go through this iterative review, involving change and development, rarely provide high quality outcomes. The HTBI competition scheme provided an approach to the site which would support and provide the basis for further design and future development.

The original competition sought *"...ideas and concepts that will underpin the transformation of this spectacular site."* (*Premier's Message, East Darling Harbour Urban Design Competition 2005, p.1*) and stated that *"...The winning entrant may be engaged by the State Government of NSW (or one of its agencies) to assist in developing its competition proposal into appropriate planning mechanisms to guide the future development of the site."* (*East Darling Harbour Urban Design Competition 2005, p.4*)

It also said *"...Engagement of the Finalists and/or Winners to undertake further commissions beyond the Competition period shall be negotiated... on such terms and for such fees as may be agreed."*

And that the State *"...reserves the right not to engage any of the Finalists or the Winner in any subsequent development of the site."* (*Ibid, pp.24-25*)

Lastly, the brief required all entrants to grant to the State *"...a freely transferable, sub-licensable and irrevocable license to use, adapt and modify the works contained in the Stage Two proposals..."* (*Ibid*)

It has been noted above that there is a significant philosophical and conceptual *design* difference between the HTBI competition scheme and the Approved Concept Plan (Modification 4). This is arguable, but there is far less difference between the *Competition Outcome* and the Approved Concept Plan.

The Competition Outcome consisted of the Jury recommendations appended to the HTBI competition scheme. The recommendations were unequivocal and significantly affected the HTBI conceptual design strategy by:

- incorporating two larger coves which would effectively define the site as three precincts, rather than as a continuous site modulated by a sequence of changing design events and environments, as suggested in the HTBI scheme; and
- rendering the headland with a 'natural' form and expression and as a predominantly green space, as opposed to a headland park which drew on and adapted the existing concrete hardstand to create a park more obviously 'designed' and translated from its extant form, as was proposed by HTBI.

It has been put to this Review that the jury determination was driven by a singular vision. We know this to be inaccurate, having spoken to a number of the jurors. As a large group of individuals perhaps more heavily weighted to representation of key stakeholders than toward design expertise, the jury was undecided. It reached consensus by accepting the HTBI scheme with recommendations. Like it or not, that was the jury decision. That is what all of the jurors signed off on, and that is what the competition process delivered. Once you accept the competition process, you should accept the jury's determination. Indeed, it would be a subversion of the process if the subsequent design changes *did not* follow the recommendations of the jury.

One of the key problems lies with the competition process. The Jury process was not ideal, but it probably never is. The lack of an overarching procurement strategy at the outset meant that the competition outcome was initially seen and sold as the 'vision' for Barangaroo, only to be altered through the later commercial procurement process. The communication surrounding the original competition gave rise to the expectation that the competition outcome was what would be built. The HTBI scheme was communicated through drawings and models which emblazon images in peoples' minds as to what the design 'is'. In that context, the jury recommendations, however clear in written form, appear to have barely registered in the public mind. And even if they did, in the excitement of the competition and its outcome, their meaning may have been lost.

As the design evolution entered the public consciousness through the Modifications, there was increasing vocal and not always appropriate public commentary from a number of prominent players. This, combined with a justified anxiety about Part 3A and public debate on the competency of the government of the day, contributed to the polarising of community concern about Barangaroo.

In addition, or perhaps partly as a consequence, there appears to be a significant level of misinformation about what is actually proposed in detail. Common issues that arose in submissions to this Review include:

- the proportion of public open space (which will be 51%, *excluding* streets, lanes and coves);
- design and cost details of the Headland Park including its form, expression, height, accessibility and its scope for occupation and activity (discussed in detail at Section 7.0 of this report)
- 'ownership' of the land at Barangaroo South (wholly owned by the NSW State government, with 99 year leasehold to Lend Lease for development blocks, but not streets and lanes).

The misinformation is the shared responsibility of government through the BDA whose role it is to effectively inform the public about Barangaroo, and of those who knowingly disseminate inaccurate information. However it is the BDA's task to tackle this to maximise opportunities for the broader community to understand precisely what is proposed. This must be done in an open, transparent way to communicate effectively and build the trust of the community about the information it provides.

The Commercial Procurement and Modification 4

It has been asserted that the commercial process was 'another design competition' which made the original design competition a waste of time. The suggestion is that the weighting of the 'design' criterion in the commercial bid was an invitation to submit completely new designs.

The process certainly did allow for different design schemes, however the basis for any design outcome was the Approved Concept Plan (Modification 3) at the time of the RFDP Final Phase. At their own risk, bidders could propose schemes which were utterly different, as long as they offered at least one scheme which complied with the Concept Plan and other requirements of Government. In fact none of the three bidders did offer schemes that were utterly different, but a number did offer 'non-conforming' schemes which were variants on the Concept Plan. The question is - was that invitation to vary the design through a non-conforming proposal 'wrong' or inappropriate?

It is usual for government competitive tendering processes involving design and construction to require 'base' schemes and to invite non-conforming offers. It is now relatively unusual, in the Australian context, for government as a client to define a design outcome for public infrastructure in real and substantial detail for a project of this scale. Most projects procured by government are done so through Design-and-Construct (D&C), Novation, Alliance Contracts or, more recently for very large projects, through Public Private Partnerships (PPP). Each of these requires definition of the project to some extent and all of them involve openness to allow bidders scope to innovate financially and/or in design. If the minimum public benefit objectives including design quality performance requirements are not articulated very clearly, all of these risk loss of design quality through the procurement process. It is a balance to find the right amount of project definition which still allows innovation, and most design professionals would agree the more definition the better to protect the quality of the outcome, on many levels. However, the common practice is to limit the definition of design detail to a 'conceptual' or 'schematic' stage before going to tender; or to invite non-conforming offers on a base scheme which has more detail; or both, with other variations. The point here is that if not ideal from a design perspective, this kind of approach is not unusual or improper, in terms of accepted procurement approaches to large construction projects in the government context.

In the case of Barangaroo, there was a substantial effort to protect the quality of the design outcomes through this process, by weighting the design criterion heavily in the commercial bid evaluation, and by integrating Design Excellence requirements within the SEPP (MD) and the Planning Approvals.

'Not a Radical Departure'

In relation to the Statutory Planning process, if we grant that the two design approaches to structuring and conceiving the site layout are fundamentally philosophically different, it is not clear that these differences would constitute a 'radical departure' in Statutory Planning terms. Indeed, given it did not fundamentally change the use mix, key connections, general proportion of public versus private space, and broad strategic allocations of use across the site (commercial predominant at the south, open space predominant at the north and western central), it is difficult to argue that Modification 4 is radically different from the 2007 Concept Plan.

The significant exceptions are the addition of the intrusion over the water and removal of the Home Port Passenger Terminal, which are discussed separately elsewhere in this report. It should be noted that the major departure from the original Concept Plan in terms of an increase in commercial GFA occurred at Modification 2, and was independently assessed and endorsed by the Planning Assessment Commission.

Advice in regard to the issue of 'radical departure' was specifically sought by Lend Lease from the Department of Planning prior to submitting their Environmental Assessment in mid 2010. The Department of Planning considered, and advised that it was a modification under section 75W of the *Environmental Planning and Assessment Act 1979* and 'not a radical departure' requiring a new Concept Plan. In considering this, the Department of Planning gave regard to the GFA increase as being within a reasonable range, noting the total GFA increase over the Modification 2 scheme (which had been referred to the PAC) was only 8.5%, or 12.6% over Modification 3.

In any event, the consultation and assessment process for the Modification 4 application was identical to the process that would have been undertaken had it been considered as a new Concept Plan, (with the exception of an initial declaration to signify commencement of the Concept Plan process).

So, what was the problem?

If the design changes embodied in Modifications 2 and 3 flowed from the competition, and if the procurement process that led to Modification 4 was reasonable and proper, what is the source of the community anxiety about design changes at Barangaroo?

Noting that not everyone is concerned about or opposed to the Approved Concept Plan, there is certainly a high level of concern from some, and this needs to be understood.

There are many people in the community who have been avid observers or participants engaged with the processes around Barangaroo, and who have dedicated enormous energy and substantial time to its analysis and advancement out of a passion for better public outcomes. Some of these people have contributed to submissions through their work and others have done so as concerned and responsible citizens. These efforts have, in many cases, spanned the many years from the design competition to the present day.

In the lead up to Modification 4, the changes made flowed directly from the Competition Outcome, and were provided for, articulated in and required by the very first Concept Plan approved in 2007. There was a fluid and on-going evolution of the Concept Plan, with information being made publicly available through the planning process throughout these Modifications to approval of Modification 3 in November 2009.

Meanwhile, the commercial bid process had commenced in April 2008. Far less information was available about the design developments occurring in this process, due to the necessary commercial-in-confidence and probity requirements surrounding this process over the 20 months to December 2009. At this point, a community who had closely followed the Statutory Planning process and thought Modification 3 was 'it', was surprised by the revelation, only one month later, of the Lend Lease scheme. This introduced wholly new elements (the hotel) and seemed to take for granted changes that may not have registered fully until removed from the drawings (permanent removal of cruise passenger terminal).

The fact that this scheme did not have planning approval was probably not comforting to those who felt the energy and time they had put in to the design competition and consultative processes to that point had been wasted. This probably felt like a breach of trust.

Notwithstanding the above, this sort of difficulty is not unusual and is not limited to NSW by any means. Within the constrained environment of government procurement, there is a fundamental complexity in balancing competing objectives, which reasonably apply on all sides... commercial in confidence versus transparency and meaningful communication; government's responsibility to define the best public benefit versus the potential to gain from industry and the market, or design quality in detail versus 'innovation'. This balancing is not intractable, but it requires careful calibration, the best expert advice, and a highly considered approach by government for all future projects of this scale and importance.

Of potential is a review of the role of the NSW Government Architect, to provide strategic guidance to government on these matters. There is scope to enhance the NSW Government Architect's function as a champion for design quality in the public realm and to provide expert strategic advice to government on procurement options. The NSW Government Architect's role in this capacity is hamstrung by his responsibility for management of a major public works office, and his position within government, which limits his ability to contribute to the whole of government agenda. Consideration should be given to reviewing this role to align with more recent incarnations around the nation, with particular attention drawn to the South Australian Integrated Design Commission, which is focussed on advocacy and advisory roles, and reports through the Department of Premier and Cabinet.

4.4 Mod 4 - Land use mix

Following the rezoning of Barangaroo by the Minister in December 2010, about 65% of the site including the Coves is zoned public recreation and 35% mixed use, including the hotel building envelope and Hickson Road. Within the mixed use zone there are seven blocks with defined maximum GFA. Six of these blocks have one nominated maximum Building Height within the block, and the seventh, which is the largest, is subdivided into five blocks, each with a different maximum Building Height.

Approximately 10.8 hectares or 51 % of the land is public domain, excluding streets and laneways and an additional 2.9 hectares or 14% of the declared site is an extension of Harbour waters into the Coves. The final built form land use mix across the site is still to be determined since the approval provides for maximum and/or minimum floor space allocations for some functions. Assuming an option which maximises commercial office space, the built form land use mix across the site is:

commercial	356,425 (63% of built form)
tourist	33,000 (6% of built form)
residential	122,263 (22% of built form)
retail	35,777 (6% of built form)
community and active	16,500 (3% of built form).

The site is divided into three precincts - the Headland Park, Central Barangaroo and Barangaroo South. Barangaroo South is made up of 490,240sqm GFA including commercial office space, a hotel (tourist use), residential, retail and active and community uses. Barangaroo Central has 59,225sqm of approved floor space which is zoned mixed use. Of this, a minimum of 22,500sqm is for residential development. Across the site, there is 14,500sqm approved for active and community uses in the area zoned public recreation.

Strategic Context of the Barangaroo Development

In 2005, the NSW Government released a new strategy for Metropolitan Sydney titled *A City of Cities – A Plan for Sydney’s Future*. This widely acclaimed strategy outlined a vision for Australia’s only global city. The vision was for a polycentric city, with five major centres within the metropolitan area. Two of the five centres, Sydney City and North Sydney were recognised as the ongoing Harbour centre of Global Sydney. “*They will continue to be the focus of world class business, tourism, cultural, health, education and entertainment activities.*” (p3). The Strategy set targets for the City of Sydney including the Central Business District of 58,000 new jobs and 55,000 new dwellings by 2031.

This Strategy was the context of the initial planning for Barangaroo.

The *City of Cities* was followed in 2008 by a draft sub regional plan for the City of Sydney which reinforced the original targets, and outlined key actions to achieve these and the other objectives including transport, housing choice and sustainability. This plan was to form the basis of statutory planning instruments, but was never finalised.

In the meantime, however, the City of Sydney developed and adopted its plan, *Sustainable Sydney 2030 (September 2008)*, which was premised on much more aggressive job targets than those in the State planning. *Sustainable Sydney 2030* was based on comprehensive capacity assessment of the CBD and its surrounds, and proposed that the City could accommodate an additional 97,000 jobs and 48,000 dwellings before 2030, subject to the implementation of an aligned reform agenda. These targets included 27,000 new jobs and 3,500 new dwellings in the Harbour area, including Barangaroo (the area north of Market Street). *Sustainable Sydney 2030* proposed that the City should pursue an “...increased share of advanced business services, education, creative industries and tourism”.

The Sustainable Sydney strategy now forms the underpinning and rationale for the City's current work on updating the statutory planning instruments applying to the City.

The timing of the City of Sydney work on capacity coincided with the work within Government about the expansion of the Gross Floor Area in Barangaroo, and we have been advised that the City's work influenced the view that the Barangaroo expansion was sustainable and consistent with the long term directions of the Sydney CBD, subject to transport and related issues being adequately addressed.

Appropriateness of Land Use Mix

The land use mix within Barangaroo may be generally consistent with the strategic directions for Sydney laid down by State and Local Governments, but as with all things, the Devil can be in the detail. Concerns have been raised with this Review that the outcome has been overly influenced by Paul Keating and by Lend Lease, and that neither the commercial outcome nor the design is as good as it could have been.

Open Space

The original design requirements in relation to the site outlined by the NSW Government in 2005 proposed that at least 50% of Barangaroo be public open space. Although a much greater financial return to Government could have been achieved by reducing the proportion and location of open space on the site, this would almost certainly not have been consistent with the aspirations of the people of Sydney for access to their Harbour or of the expectations of the people of Australia for this site, so critical to the history of Australia. The substantial allocation of the site to public open space appears appropriate.

Northern and Southern Coves

The proposal for an indented shoreline on the site through the development of the two Harbour coves was a strong recommendation from the jury which judged the international design competition. There is no doubt that Paul Keating was a champion of this idea, but the accusation that the jury was overly influenced by one person has not been put to us by the other eight members of the jury. Indeed, this idea is offensive to some of them.

The proposal to allocate 14% of the site to increasing the amount of shoreline and providing more north facing shoreline with views across the water is a design issue, but, in terms of the process, the view of this Review is that it was a reasonable judgement to allocate space for these purposes.

Foreshore Promenade

The ambition of a 14 km Foreshore Promenade from Woolloomooloo to Pyrmont was announced by Premier Carr in 2003. This Promenade has obvious tourism benefits, but it also provides the opportunity to change the way the people of Sydney use their city. The Harbour has always been a major focus of Sydney's celebrations and the Promenade adds to this dimension. But it also provides an opportunity for a significant increase in walking and cycling to work, and for new connections with and between Sydney's precincts.

Commitment to the Foreshore Promenade has had a significant influence on the overall land use in Barangaroo, most notably the decision to relocate the Home Port Cruise Terminal. We have not, however, received any submissions suggesting that the Promenade should not proceed. The enlargement of the coves has resulted in an increased promenade length on Barangaroo from 1.4km in the 2007 Concept Plan to 2.2km in Modification 4.

Commercial Office Space

One of the most controversial aspects of the proposed Barangaroo development is the amount of commercial office floor space approved for the Lend Lease development in South Barangaroo. The strategic context for this decision has been described above, but given the level of controversy, it is important to explore the issue of the demand for the proposed office space further.

The Property Council of Australia has argued that under existing planning controls and at 20 year average net addition of office stock, Sydney's CBD has 15 years of potential supply. The City of Sydney argues that the figure is 21 years, although that is for the City of Sydney as a whole. Neither figure leaves Sydney with a lot of comfort.

The Sydney CBD office market comprises 4.82million sqm of which 2.59 million sqm is prime grade space and 2.23 million sqm is secondary space. Between 1970 and 2009, the office floor space of the Sydney CBD increased at an average rate of 2.4% per annum. Most Australian office markets boomed between 2004 and 2008 but Sydney did not. Over the past ten years, the average annual growth rate of office floor space in the CBD was only 0.7% per annum. This has meant that Sydney has a relatively older stock of office space than other Australian cities. Only 10% of Sydney's office stock is less than 10 years old (compared to 20% in Melbourne and Brisbane) and nearly 50% is over 30 years old (the highest in Australia).

At the maximum possible level of commercial floor space allowed at Barangaroo, it will deliver an increase of 7% of Sydney's office stock. By contrast, Docklands will deliver an increase of 27% in Melbourne's office stock.

The vacancy rate for office space in the Sydney CBD is currently about 8% which is low for this stage of the economic cycle. More seriously, the vacancy rate for prime buildings with an average floor space over 2000sqm is 4.8%.

Meanwhile the finance and insurance sector is set to boom. As *The Economist* pointed out recently "...investment managers are coming to Sydney from all over, drawn by the prospect of ten \$100 billion pension funds within 20 years – a fillip for Australia's financial services industry." The finance and insurance sector contributes 10.4% of Australia's GDP, and is growing at an annual rate of 3.6%. Sydney is the centre of the sector in Australia. It contributes a total of \$57 billion annually to the NSW economy.

Major finance and insurance companies are seeking prime office space with large, and preferably square or rectangular floor plates, high levels of amenity, 'green' operating features, good transport links and proximity to others in the sector. As these buildings become the norm in the other global capitals, the pressure on Sydney to deliver to these expectations will become intense. Barangaroo has been planned to deliver precisely to the requirements of the finance and insurance sector although the floor plates are smaller and the buildings are not as tall as buildings now being built in the other financial capitals of the world. Notwithstanding this, there is very strong commercial interest in the space at Barangaroo.

An added benefit of this strong commercial interest is that these new tenancies will allow the vacating of existing aged CBD stock to provide for refurbishment and renewal in other parts of the city.

The evidence supports the view that Barangaroo provides an important opportunity for Sydney to respond to the burgeoning demand by the finance and insurance sector for high quality commercial office space and to support renewal in other parts of the CBD. Issues related to the scale and density of the development are dealt with in the next section of this Report.

Residential

Housing in a CBD location tends to create a more vibrant, active city, with more evening, early morning and weekend activation, passive surveillance of public spaces and a greater sense of human scale. It has the added benefit of reducing pressure on public transport by reducing or at least changing the direction of the journey to work and school. Many large cities are working to increase the number of dwellings in their central business districts. This trend is complicated in Sydney by the Harbour. Residential development is the highest value return for land with a Harbour

connection in Sydney. If Sydney were to allow unlimited residential development, it would squeeze out other essential CBD functions. This has already happened with hotel accommodation.

For these reasons, all of the relevant planning approvals for Barangaroo have included a minimum and a maximum GFA allowance for residential development. The amount of residential development allowed was increased significantly from Modification 3 to Modification 4, mostly at the behest of Jan Gehl and other urban designers and the Sydney City Council, all of whom were concerned to ensure more activation of Barangaroo. The currently approved proposal, if the commercial office space is maximised, provides for residential development of 122,263 sqm. This is less in proportion to the whole development than the maximum of 25% of gross floor area provided for in the original scheme. The residential development is spread across Central and South Barangaroo, some in tower blocks, but mostly in low rise buildings close to the open spaces. The level of residential development proposed appears appropriate, subject to design.

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 priority 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.

Retail

Retail development is not a high priority for GFA allocation on the site. Retail is likely to occupy 36,000 sq m, or 6% of the built form. Barangaroo is not intended to be a shopping destination. Rather the shops are proposed to service the site population – workers, residents and visitors to the cultural and open spaces, to activate the ground plane. The design of the site and retail mix will need to ensure a variety of fine grained retail offerings, which will provide a functional, but quirky and interesting shopping experience, and will cater to the needs and budgets of a diverse range of people.

Hotel

Recent research by Jones Lang LaSalle indicated that Sydney has a supply shortage of 1500 hotel rooms to 2016, of which the luxury part is 15% (220 or so rooms). Deloitte's global hotel occupancy rankings recently ranked Sydney last for hotel availability, after Seoul and London. Occupancy in the last quarter for which figures are available was 87.4%. Sydney's existing hotels are full, which makes tourism marketing campaigns and business development activities like the Convention Centre problematic without immediate hotel development.

There have been no new 4/5 star hotels built in Sydney for over 10 years. This is a problem shared by most major international cities – the margins for hotel construction and operation are just not very good compared to other land uses in these cities. Many cities provide incentives to get hotels built and keep them operating given their critical importance to the economies of global cities. This review has indicated earlier in this Report that we have concern about the location of the hotel within the approved Concept Plan, and has made recommendations on this issue. There is no doubt, however, that Sydney desperately needs a new hotel at Barangaroo. The government should enter into discussions with the Barangaroo Delivery Authority and Lend Lease as to how an excellent hotel that contributes to the character and identity of Barangaroo can be delivered as a matter of priority.

Ferry Terminal

The Walker review of Sydney's ferries in 2007 recommended that Sydney needed a new CBD ferry terminal to take the pressure off Circular Quay, and to provide for increased ferry services west of the Bridge. While this proposal was primarily related to safety, a large ferry terminal at Barangaroo has the added benefits of improving public transport access to the area, and increasing activation through pedestrian access to and from the ferries. Lend Lease's contract requires the construction

of landside facilities for the Terminal, but there has never been a Budget allocation for the wharves. Costings for the wharves need to be developed, and funding options considered. A ferry terminal is a positive addition to the land use mix at Barangaroo

Community and Active Gross Floor Area

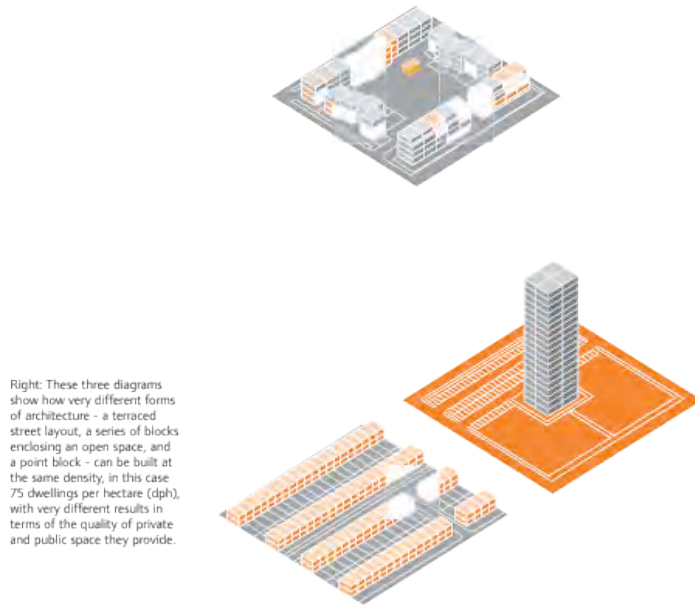
14,500 sq m of GFA has been allocated to support the public open space in Central Barangaroo and the Headland Park. There has been little thinking to date about the allocation of this space, other than that it should serve as an active, useable space to serve a range of public needs.

Moreover, the allocation does not appear to cater for the use of the 'void' under the Headland. It is the view of this Review that, as outlined in the original design competition, it is not essential that all uses on the site be locked away by this generation. So long as the void is built for adaptive use, we can take some time to work out what we want to use it for, and how we are going to pay for the operation of what we do use it for. We were reminded during the Review, that this was precisely the approach taken by Walter Burley Griffin in allocating space in the parliamentary precinct in Canberra.

4.5 Mod 4 - Scale/density

Density

Form is not tied to density, and should be considered separately, within reason. A given density on a given site can be achieved in low, medium and high-rise outcomes.



From Housing for a Compact City, Greater London Authority 2003

Sydney CBD's allowable Floor Space Ratio (FSR) is 12.5:1 for commercial uses and 14:1 for residential uses. By comparison, the City of London has an FSR of 13.5:1, and Hong Kong's FSR is much higher ranging from 15:1 – 20:1. The proposed density for the commercial precinct at Barangaroo South is 10.8:1.

This Review has received advice, and accepts, that there is an economic imperative for additional commercial floor space of relevance to the NSW and Australian economies, specifically:

- There is a tangible need for quanta of commercial floor space to accommodate large corporations, particularly those in the Financial Services sector;
- The physical constraints of Sydney's CBD are significant in terms of its potential to accommodate significant amounts of new commercial floor space; and
- There is a tangible demand for large commercial floor plates in the order of 2500 GFA to meet the needs of the financial services organisations that Sydney needs to house if it is to capitalise on its role as the Australian centre for the financial services industry. There is very limited scope to accommodate floor plates of this size within the existing CBD.

Scale

'Scale' refers not simply to how big or small something is, but to how big or small it appears. Knowing how high or how wide a building is allows us to assess impacts such as shadowing and views, but doesn't necessarily help us to understand how it will appear or 'feel'. Design has an essential role to play in enhancing or mitigating the apparent scale of any building, and this refers to how it is developed as a three dimensional form – its proportions and formal modulation - and to how it is articulated and executed in detail.

As discussed earlier, perceptions about what is proposed are exacerbated in Part 3A type masterplan approvals where the development envelopes, *not the building envelopes*, are approved. Actual building size, form, detail and scale can be better understood, consultation processes better informed, and the detailed proposal properly assessed when Project Applications for each building are submitted.

A perennial problem with masterplan approvals, is that those who wish to understand what is proposed are limited in their ability to visualise what the outcome will be. This has been a significant source of anxiety within the community, as demonstrated through public commentary and debate about the commercial development in the Concept Plan (Modification 4), and the issue of scale and visual bulk.

Attempts to understand the scale and visual bulk impacts of the proposed towers have resulted in the production of a number of 3D images by concerned citizens that depict the *maximum envelope* as a solid built form. The maximum envelopes cannot be 'filled' in this way and the mechanisms required by the Planning Approval such as detailed Built Form Controls, maximum GFA and Design Excellence provisions ensure this is so. It is understood that the images have been created as genuine attempts to grasp what has been proposed, however they are highly misleading and they contribute to the level alarm some members of the community have experienced.

Height

The three commercial towers proposed at Barangaroo are reasonably tall and have large floor plates, but to put them in context:

- There are several existing buildings in Sydney's CBD that are taller than the tallest building proposed at Barangaroo, including Governor Philip Tower, World Tower and Aurora Place as examples;
- Barangaroo's tallest building (in Block 2) will only be the sixth tallest building in the CBD, and none of the Barangaroo towers will be taller than the Sydney CBD skyline;
- There are many excellent buildings elsewhere in Australia that are taller than the Barangaroo towers, including for instance 101 Collins St, Eureka and the Rialto in Melbourne, Q1 and Circle on Cavill at the Gold Coast;
- On the global front, there are numerous examples of exemplary buildings far taller again.

In response to concerns raised through consultation at Modification 4, the Proponent opted to reduce the number of towers and to achieve the GFA through increasing some building heights. This allowed some opening up of the tower forms to improve view sharing, and it reduced the impacts of overshadowing. This may seem counterintuitive, but the negative major shadow impacts of tall buildings in a city context are generally those cast on the ground plane public spaces, in the vicinity of the building. In a city context, the shadows cast from the upper levels usually overlay the shadows of existing CBD towers and do not add to the existing shadow impact. It has been stated that Hyde Park will be overshadowed by Barangaroo. This is an inflammatory comment that omits acknowledgement of the existing shadows cast over Hyde Park in the afternoon. Barangaroo will not add to existing overshadowing of Hyde Park.

Given its adjacency to Darling Harbour, where few shadows are currently cast after mid morning, the Barangaroo towers will add to overshadowing of the water during the morning. In addition, and of more significance to the public realm, are the shadows caused south of the towers to the promenade at King Street Wharf. The issue in relation to height is that any tower at Barangaroo will create shadow to this promenade. By increasing the height of the building, the shadow is lengthened, but it is a question of degree and duration. In his assessment the Director General judged that the degree and duration of additional shadowing was mitigated by a range of factors, and was balanced against the benefits of the reduction from four to three towers. This Review accepts the Director General's assessment.

Floor Plate Size

As has been discussed, there is a tangible demand for large commercial floor plates in the order of 2500sqm GFA to meet the needs of the financial services organisations that Sydney needs to house if it is to capitalise on its role as the Australian centre for the financial services industry. There is also very limited scope to accommodate floor plates of this size within the existing CBD.

Floor plates for the Barangaroo towers will provide 2200sqm net floor area. These sizes are not excessive in the global context and there are other towers in Sydney which have comparable floor plate sizes. These include Grosvenor Place, Deutsche Bank Place and Westpac Headquarters. What is important, when comparing these buildings, is that how they look – their apparent scale – is affected by the architectural form, proportion and detail. The size of the floor plates combined with the heights proposed for the Barangaroo towers will produce large buildings. Their success in terms of scale and visual bulk depends entirely on design quality.

Visual Bulk

This has been recognised by the Director General in his assessments and provisions relating to the Concept Plan Approval. In his assessment, the Director General recommended that the Minister approve the tower envelopes on the basis that the perceived size could be mitigated through the design of the shape and its articulation. The Director General also recommended in the Modification 4 assessment that building controls be set to limit the size of any unarticulated wall panel “...so the massing is relieved and articulated” (p. 51 *Director General’s Environmental Assessment Report*). These recommendations were accepted and the requirements are enshrined in the Approval.

Note that each Project Application requires public consultation and assessment under the statutory approvals process. Given the Design Excellence provisions within the Concept Plan, there is a reasonable process to support mitigation of visual bulk, as long as that process is rigorous. In addition to the detailed architecture of each tower, assessment of design quality must focus on microclimate impacts such as wind and access to sunlight, integration of the towers and mitigation of scale through podia and smaller buildings, street edge treatments, and overall composition.

These are matters that have been raised through consultation and by expert design advisors, and the proposal has responded through that process. In his consideration, the Director General has established clear requirements within the Planning Approval to address them. They have also been raised by the Design Excellence Review Panel and by the Barangaroo Delivery Authority’s Design Advisors in their on-going critique of building proposals as they are developed for Project Applications.

High quality design is always essential to a good public realm outcome, and it certainly has the ability to deliver exceptional results within what might appear uninspiring or controversial planning envelopes. This requires a high design quality to be supported and facilitated throughout the process.

In this regard, the system appears to be working, although there may be room for improvement as discussed in section 6.0 of this report. In relation to, and out of respect for community concern, it is also necessary that there is transparency in the execution of the Design Excellence process, and effective communication about the ways in which the public domain objectives will be protected and environmental impacts mitigated through the process and through design, beyond the Concept Plan Approval. The broader community is not privy to the unfolding detailed design until it is submitted and there appear to be a number of strong misconceptions about what is proposed, and about how government is managing the quality of the outcome. This is a challenge for both the Department of Planning (in terms of facilitating greater understanding of what has been approved and what controls have been put in place), and for the Barangaroo Delivery Authority whose promotional functions require sensitivity to community concerns.

This Review is satisfied that the proposed density and scale appear to have been properly considered in the Planning Approval, however the public needs to be reassured that these can and will be adequately addressed through good design.

4.6 Mod 4 - Relationship with the CBD

The relationship of the proposed development at Barangaroo to the Sydney CBD is important at a number of levels. The land use mix and density should be compatible and complementary; the overall form and composition should respond well to the CBD, and positively contribute to Sydney's cultural and aesthetic 'identity'; and the pedestrian and vehicular linkages should support an active, permeable and safe pedestrian environment which functions well and connects Barangaroo seamlessly to the city. The land use mix and density aspects have been discussed at preceding sections of this report. The latter two are addressed below.

City Morphology

The strategic allocation of uses and densities across the whole of the Barangaroo site has been established since the 2005 Design Competition.

- The substantial height which signals the predominance of commercial uses is focussed at Barangaroo South, and roughly aligns with the existing set back of CBD height from the Circular Quay 'dress circle'.
- Barangaroo Central is medium rise (limited to RL35, or 33m above ground) along the eastern side where it abuts Hickson Road, and is open space across the ground plane at the west abutting Darling Harbour.
- The Headland is park space at the north.

While this general distribution is common to both the Hill Thalys Berkemeier Irwin competition design and to the Concept Plan (Modification 4), the allocations across the site are now more strongly differentiated. There are now three distinct precincts, whereas the competition design provided a more gradual transition of form and height. This accentuation of the three precincts arose from the jury recommendations for a more 'natural' headland park and the two coves, and it evolved over the course of the Modifications, as has been discussed.

The Lend Lease design responded to the Concept Plan as it stood at Modification 3, and conceived Barangaroo South as a direct extension of the city to complete the CBD's urban form and identity, by creating a formal 'edge' at Darling Harbour. Their argument is that the CBD as a form has a well-defined edge where buildings abut Macquarie Street at the east, but that it currently is a weak, and ill-defined edge at the west. Their proposal to bring the 'city to the harbour' is a design proposition about 'completing' the CBD's formal definition - bringing the tall CBD edge to the openness of the harbour and creating a positive aesthetic symbol of Sydney as a centre for commerce, in the same way the CBD edge is defined at the east where it meets the openness of the gardens and lower forms beyond Macquarie Street. The proposal respects the 'dress circle' of lower, less dense forms flanking Circular Quay by keeping the tall development to the south of the site.

Against this, 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." (*City of Sydney, 'Submission to Independent Review into Barangaroo 20 June 2011'*). They maintain that the building heights and formal massing of the development should step down towards the water.

These are discussions of design approach, relating to the city's formal identity and morphology. There is no right or wrong answer, and a finding in relation to merit is beyond the scope of this Review, but an assessment of merit and a judgement was required of the Director General in the Planning process.

The overarching relationship of the proposal at Barangaroo to the CBD appears to have been founded on a detailed consideration, and is generally agreed. The detail of how this unfolds at

Barangaroo South is more contested. The Director General's assessment appeared to give serious consideration to the position of the City of Sydney and others in relation to the formal massing of the proposal at Modification 4 and the Director General made a judgement that the formal relationship to the CBD as proposed was acceptable, subject to Built Form and other controls stipulated in the Approval.

Linkages

It is widely acknowledged that fluid, accessible, integrated and functional pedestrian and vehicular linkages between Barangaroo and the CBD are crucial to a good outcome. These are important, in differing ways, for commuter movements in and out of Barangaroo; for existing residents on surrounding sites; for new residents of Barangaroo; and for visitors to Sydney.

A strong challenge is presented by Hickson Road, and the change in ground levels which means Barangaroo is currently out of sight and, until recent years, has been 'out of mind' as well. The projections for the estimated potential final population on the site are around 23,600 (21,100 workers and 2500 residents), which will eventuate over some sixteen years.

People will access Barangaroo from a number of directions by a variety of transport modes including train (via Wynyard and, ideally, a future station at Barangaroo South), by ferry, bicycle, bus, car and on foot. There is also the possibility of light rail along Hickson Road. Transport and commuter issues have been addressed in detail at Section 6.0 of this report. The following is a brief discussion of the immediate linkages from Barangaroo to the CBD.

Pedestrian and Cycling linkages

The proposal for Barangaroo abuts Hickson Road as an edge of active, mixed use development, which is highly permeable through a series of streets and lanes into the site. A number of pedestrian crossings are proposed over Hickson Road and Sussex Street, located to support pedestrian movement up into the CBD via vertical connections including Gas Lane. Margaret Street will form the major surface pedestrian linkage to the new precinct and will provide an important visual and physical extension to the ferry hub and Darling Harbour. At Westpac Plaza, Margaret Street will link to an upgraded, broad, paved walkway connecting Napoleon Street; to a new pedestrian bridge over Hickson Road into the commercial precinct; and an upgraded walkway to Lime Street and the ferry hub. The underground pedestrian connection from Barangaroo to Wynyard Station will provide an essential, DDA compliant pathway for high volume commuter and visitor use.

The existing King Street Wharf promenade will continue north into Barangaroo as a seamless connection. It will extend the foreshore linkage, which continues unobstructed around the whole of the Barangaroo site at the harbour edge, connecting the Darling Harbour precinct through Barangaroo to Walsh Bay, The Rocks and beyond. This foreshore pedestrian linkage will also include a bicycle path, and the Barangaroo South bicycle strategy connects the precinct to the City of Sydney's 'Cycle Plan' for the city.

At the Headland Park, there are several proposed connections including at Towns Place and Dalgety Road to the north which provide vehicular access to the underground car park and pedestrian access into the Headland Park; a number of pedestrian links directly from Merriman Street and Clyne Reserve into the park; a nodal pedestrian plaza linking The Hungry Mile and the Northern Cove with the foreshore promenade and the entrance to the proposed cultural facility below the headland.

Ferry Hub

The proposed ferry hub has the potential to serve as the secondary major CBD node for commuter water traffic, and to ease the pressure on Circular Quay. The location of the ferry hub will provide commuters and visitors direct access to the train and bus network, and the CBD, as well as directly

to Barangaroo. The ferry hub will support the visibility of Barangaroo as a vibrant and interesting place, and its integration within Sydney as one of the important harbour destinations. This will require the establishment of supporting infrastructure and appropriate amenity to facilitate its success as a genuine alternative to Circular Quay. It should be noted that construction of the ferry wharves and associated infrastructure is not part of the Modification 4 approval, although the Development Agreement with Lend Lease includes for provision of 'land side' services associated with the ferry hub, which would be subject to Project Application Approval.

Light Rail

Light Rail will support public access to and exposure of the greater site, and will make a tangible (physical and symbolic) link to the cultural and tourist precincts, connecting the tourist and cultural 'loop' from Haymarket and the Powerhouse Museum, to The Rocks, the Museum of Contemporary Art and Circular Quay, to Walsh Bay and theatres, to Barangaroo and a range of proposed cultural facilities. It will help open up the area and provide a level of activity and passive surveillance of public spaces at Barangaroo Central as they develop over time. Light rail is also an important option to support commercial tenants who will need a range of modes to facilitate business to business movements within the CBD. This is particularly so given the limited car parking to be provided, and the light rail will assist in removing some pressure from bus services to the site. Light rail has been envisaged as part of the precinct development since the competition. It has not yet moved beyond the strategic planning phase, however, it now needs to be part of the reconfirmation of the transport planning for the site.

Vehicles

Vehicular traffic will arrive at the precinct from Hickson Road, Napoleon Street, Margaret Street West and Healy Street.

Planning Approvals

The Concept Plan Approval (Modification 4) explicitly includes "*..an approximate 2.2km foreshore promenade.*" (Schedule 2, Part A, (A1) (2)). This represents an increase in promenade length over the Concept Plan Approval, which included a 1.4km foreshore promenade. The additional length is understood to result from enlargement of the coves.

The proposed pedestrian linkages across Hickson Road were included in the Modification 4 application as potential future pedestrian connections, and specific approval was not sought as part of that application. In his assessment, the Director General supported their indicative locations and stated that they will be assessed as Project Applications if submitted.

5. Design Excellence

Planning provisions

Adherence to Design Excellence is one of the key requirements of the Concept Plan Approval, to protect the quality of the development. These requirements are explicitly stated at *Schedule 2, Part 2 (C2)* within the Instrument of Approval, and are enshrined within the *SEPP (MD) Barangaroo 2010*, and additional requirements are included in the *Statement of Commitments*, which forms part of the Approval. Although not unusual in the NSW context, the inclusion of Design Excellence provisions within the planning instrument is laudable. In the Part 3A context, it is also essential given the approvals rely on it, due to the large degree of flexibility afforded by the Concept Plan. This reliance also means that it is important that the Design Excellence processes are clearly articulated, and rigorously, transparently applied. If government wants the community to trust the planning process, then in relation to masterplan type approvals like those under Part 3A, it must inform the public about how it is safeguarding the quality of the public realm.

It should be noted that there was a small but important change made to the Design Excellence provisions at Modification 1 to the Concept Plan. This was done to align them with the *SEPP (MD) 2005 – Barangaroo*. The change involved addition of clause (7), in *Schedule 2, Part C (C2)*, which provided a waiver allowing the Director General to relinquish the requirement for a design competition if satisfied that a proposal demonstrates design excellence.

“C2. Design Excellence

- (1) *This provision applies to the following development:*
 - (a) *any development comprising the erection of a building exceeding 55 metres in height;*
 - (b) *any development of land exceeding 1,500 square metres in area; and*
 - (c) *each “block” where this is not covered by (a) or (b) above.*
- (2) *The Proponent shall hold a design excellence competition for all development identified at (1) above.*
- (3) *The design competition brief shall be approved by the Director General or his delegate.*
- (4) *The Director General shall establish a design review panel for the design excellence competition(s) that will consider whether the proposed development exhibits design excellence only after having regard to the following matters:*
 - (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved;*
 - (b) *whether the form and external appearance of the building will improve the quality and amenity of the public domain;*
 - (c) *whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resource, energy and water efficiency;*
 - (d) *a comparison of the proposed development against the indicative building controls identified in Section 13.0 - Built Form of the EA; and*
 - (e) *whether the new development detrimentally impacts on view corridors, particularly from public spaces and streets.*
- (5) *The design review panel shall also be utilised for any significant changes to the Concept Plan, as determined by the Director General.*
- (6) *For the purposes of this modification, a **design review panel** means a 3 to 5*

member panel comprised of appropriately qualified design professionals, chaired by a registered architect.

- (7) *Notwithstanding (2) above, the requirement for a design excellence competition may be waived if the Director General:*
- (a) certifies in writing that the development is one for which an architectural design competition is not required because of the excellence of the proposed design for the development concerned, and*
 - (b) is satisfied that:*
 - (i) the architect responsible for the proposed design has an outstanding reputation in architecture, and*
 - (ii) necessary arrangements have been made to ensure that the proposed design is carried through to the completion of the development concerned.*

(Extract from the Barangaroo Concept Plan-Consolidated Instrument of Approval (MOD 4), NSW Department of Planning)

The Director General's waiver was exercised, in accordance with clause (7), in his consideration of the Project Application for the commercial building C4. This appears to have been a measured and reasonable position.

The problem posed by the waiver, and that the planning provisions don't fully cover, is the issue of diversity in design. It appears there may be a risk to the notion of diversity as a consequence of the clause that was added at Modification 1.

The inclusion of design competitions was originally incorporated in the Design Excellence provisions for the 2007 Concept Plan at the recommendation of the City of Sydney, and was aimed at ensuring high quality diversity in the project architecture. It is generally acknowledged that high quality diversity is necessary for authentic and engaging urban environments. In good design terms, there is a risk that if the Director General is reasonably satisfied that other buildings at Barangaroo South are, taken individually, demonstrating design excellence as required under the clause, they may not, as a group, deliver diversity. It is also important to note that the need for diversity does not imply that every building has to be designed by a different architect or that they cannot be a 'family of buildings'. What is preferable is that there be more than one architect involved, and that each building design should be considered in the context of the whole composition and its adjacencies. There can also be problems for design quality when there are too many architects and no guiding 'master architect' to keep an eye on the holistic strategy. Mitigation of this then becomes a challenge for the design excellence process beyond the planning provisions, where the on-going, timely and influential design review of developing schemes plays a crucial role.

Beyond the planning provisions

At minimum, Design Excellence requires:

- a genuine commitment from the client to support and facilitate it;
- skilled, experienced and able designers who have demonstrated their ability to deliver excellent outcomes (tested through peer review);
- the engagement of these designers throughout the life of the project to ensure the intent of the design is implemented in detail and with integrity.

In the case of Barangaroo, there are several 'clients', each of whom must commit to and support good design:

- Government as 'watchdog' of the public good, represented by the Director General
- Lend Lease as the South Barangaroo proponent, and client of their design team

- Government as 'proponent' for the whole site, represented by the BDA

Barangaroo has a large, highly credible, diverse and experienced design team and some of the best architects and landscape architects in the world working on it. These are variously engaged as part of the Lend Lease team which is working on Barangaroo South; and by the Barangaroo Delivery Authority working elsewhere on the site. The credibility of these highly regarded individuals and practices should not be seen as merely being about the ability to make things 'look good'. The achievement of excellent design is complex. It is about places that work well, are sustainable, comfortable, viable, inclusive and durable, as well as being beautiful and inspiring, 'great places to be.' Architects, landscape architects and urban designers who deliver such places are recognised because they balance and resolve these sometimes competing needs with integrity and elegance.

The planning provisions go a long way to assist with the achievement of excellent design, and on the whole, they appear to be doing their job. The design is still in development, and each Project Application must go through the consultation and assessment process, at which time its design detail can be understood.

The fact that Lend Lease has engaged a high calibre, diverse team, and has, in its own right, a strong track record of delivering excellent outcomes, inspires confidence. There is a clear commitment to the delivery of design excellence within the Lend Lease contract, and in their performance so far. Importantly, there is also a strong and demonstrated commitment to a very high level of ecological sustainability, which will serve to benefit all of us via environmental efficiencies, as well as setting a new benchmark for sustainability in developments of this scale. Less convincing is the recently released *Design Excellence Strategy* submitted with the Project Application for C4. This does not appear to have had input from the DERP before being finalised, despite the fact that the BDA chairs the Technical Working Group. This document should be reviewed with the input of the DERP.

The BDA has demonstrated a commitment to design excellence through good design procurement processes which have sought and resulted in the engagement of several highly credible designers. Internally it has also brought in independent design reviewers of high reputation for both on-going reviews of developing work, and for one off reviews by visiting specialists. It also works with the Design Excellence Review Panel (DERP) to facilitate design review by this group appointed by the Minister for Planning. But, while the principles and the commitment to design excellence seem to be there within the BDA, this Review asserts there scope for improvement in the BDA's management of design, which may begin to have a negative impact if not resolved.

While having a diverse group of excellent designers on the project is important, there is also a risk that if not well-managed, their roles can become confused or they may not be supported to work well together and to thereby ensure an integrated outcome. This Review has understood there is some lack of clarity, and this should be resolved quickly.

The need for integration is crucial but does not imply homogeneity. Integration of the elements is necessary within Barangaroo South and within Barangaroo as whole, within its context. Lend Lease must address Barangaroo South within their own team, but it is the role of the BDA to ensure this happens for the whole of the site, and to facilitate positive and timely engagement of designers with one another. There is some evidence that this is not happening as effectively as possible, and it is a significant risk given the large team and complexity of the project.

Design Excellence Review Panel

The Design Excellence Review Panel (DERP) was appointed by the Minister for Planning in May 2009 and administered through the BDA to review and advise on the Barangaroo precinct. As announced on 5 June 2009, its members included:

- Hon Paul Keating (Chair)

- Chris Johnson, (Deputy Chair)
- Bridget Smyth, Architect and Urban Designer
- James Weirick, Landscape Architect
- Oi Choong, Landscape Architect
- Angelo Candalepas, Architect
- Leo Schofield, Cultural Advisor

It is noted that Paul Keating and Leo Schofield recently resigned from the DERP.

The DERP's Terms of Reference are to:

- *Advise on:*
 - *The standard of architectural design*
 - *Impacts of form and external appearance on the quality and amenity of the public domain*
 - *Sustainable design principles*
- *Oversee any design competitions*
- *Advise on any significant changes to the concept plan*
- *Ensure design excellence in accordance with the concept plan approval*
- *Finalise the brief for the expression of interest for firms/consortia to design the headland park, public domain, foreshore walkways, and urban squares*
- *Oversee the short listing and selection of design firms/consortia*
- *Set the character for the headland park and public domain in general*
- *Provide ongoing advice, input into the EOI and tender processes with the private sector*
- *Advise on external issues impacting on the public domain.*

Although the DERP is referred to in the Concept Plan, it does not have a statutory decision-making role, but is an advisor. Nonetheless, it is an important mechanism for design review which assists in guiding good design, and is a means of providing reassurance to the broader community and the Minister for Planning that design quality is being protected. This role does not appear to have been properly enabled. There is some lack of clarity about the appropriate management, reporting, accountability, transparency and influence of the DERP, and this requires rectification.

This Review has heard evidence from several parties which suggests the need for:

- Management of the DERP review sessions to ensure proper coordination and scheduling, timeliness, provision of adequate information, direct engagement with design teams and adequate time within meetings;
- Clarification of protocols for review sessions to consistently implement proper conduct, recording, sign off, reporting, and accountability;
- Effective chairing of DERP sessions

The situation appears to be largely a governance and management issue. The DERP members are all passionate and current members are all qualified and expert in design of the built environment. There is room for people who are not expert in design to contribute, but their role should be advisory to the DERP, not focussed on design review.

This Review has been advised that two members of the DERP were contracted or employed by bodies with an interest in the outcome of the deliberations of the Panel. Although the interest may be a shared one to some extent, and although the dual duties of individuals may be focussed on design quality in the public realm, the conflict of duty still exists, and it is the view of this Review that it would be better if removed.

The Design Excellence Review Panel has a key role to play. The existing DERP has contributed to the positive directions in the design outcomes at Barangaroo, however it is time to reconstitute the

DERP with a clearer governance structure, new Terms of Reference, clear protocols and procedures, and better management of conflicts of duty. These changes would strengthen its role in providing expert, independent advice to the planning and design process and will require a genuine, supportive engagement on the part of the BDA.

Given the importance of Design Excellence as a mechanism to support the planning process; and the complexity and enormous potential offered by the site and the team of people working on Barangaroo, this Review recommends the establishment of a Design Leadership role within the BDA. This role should be a Director or senior executive who reports directly to the CEO and Board, and who is supported to play a pivotal role in the delivery of design excellence at Barangaroo. This would be consistent with the BDA Act in terms of the statutory functions.

On the whole this Review has no concerns about the compliance or reasonableness of the planning process in the approvals of the Concept Plan (Modification 4), except where specifically addressed elsewhere in this report. Similarly, it has found no cause for concern in the Project Approvals to date. These should be allowed to proceed without delay.

There is work underway. The community is still concerned about the ‘visual bulk’ and microclimate of the towers, which rely on good design to be successful; and the planning provisions may not address diversity adequately. It is therefore suggested that a ‘snapshot’ design review be undertaken to assess and advise on the quality of forthcoming proposals and to reassure the community.

This review should:

- Involve a specially constituted Design Review Panel, consistent with the planning provisions, of 3 members comprised of appropriately qualified design professionals and chaired by a registered architect;
- Be coordinated by the Department of Planning, and facilitated by the BDA;
- Be informed by a site inspection, and presentations by the various design teams, and conducted over the course of around 2 days;
- Provide written advice directly to the Lend Lease and BDA design teams through the BDA, within a week of the presentations;
- Report directly to the Minister for Planning through the Director General;
- Address *within the parameters of the Approved Concept Plan, and the Project Approvals:*
 - Articulation and modulation of the commercial buildings C3 and C5;
 - The integration of the towers with the podia;
 - The public domain at Barangaroo South, including microclimate impacts;
 - Any other aspects of the design that Lend Lease may seek guidance on.

In addition, there is a major issue in relation to public communication in relation to design. The quality of the design work underway is something to crow about, but how can the community support it if they don’t know what is going on, or if the professionals appear to be in conflict with each other. The BDA needs to develop a new communication strategy focussed on ensuring accurate information about design issues is easily available, and able to be understood.

6. Transport

Transport in the Sydney Central Business District

The Sydney CBD and its surrounds are significantly constrained in relation to access by all modes of transport. Traffic congestion, public transport overcrowding and safe transit for cyclists and walkers have all been the subject of recent public concern.

In addition, access to and from the Barangaroo site itself is limited by topography, existing road infrastructure and by traffic management measures which address existing CBD congestion. For these reasons, transport planning for the Barangaroo development has been a major issue from the very outset of planning for the site.

Central Business District Rail Capacity

This Review has received advice from the Department of Transport that the Sydney CBD rail lines are running close to capacity in the morning peak. An analysis of this issue is contained in Booz and Co's work on the Barangaroo Transport Plan provided to us by the City of Sydney (pp22 - 27). Some additional capacity can be gained by peak spreading (people travelling earlier and later), changes to timetables (e.g. regularizing stopping patterns), changing the style of service (e.g. fewer seats) and investing in other operational changes. It is worth noting that none of these solutions is without pain to commuters.

Even with these difficult reforms, however, expert advice is that ultimately Sydney needs to increase the number rail lines under the CBD. The real question is only when this needs to happen. The rail capacity issue has been evident to commuters in Sydney for some time, and has been the subject of successive Government plans. The Barangaroo development did not cause this problem; it simply focuses attention on the reality that if the Sydney CBD is to continue to develop in accordance with a bi partisan vision for the city and Australia, it needs new infrastructure. The alternative option is to stop all significant new development in the CBD - an option which has not been suggested to us by any of the major submissions to this Review.

Barangaroo Transport Planning Process - the first steps

The original transport planning for Barangaroo was prepared by Masson, Wilson and Twiney for the Sydney Harbour Foreshore Authority in September 2006. This work provided a description of the existing conditions in relation to access to the site and an estimate of trips likely to be generated by the proposed uses in the original concept plan.

This Report first proposed the journey to work mode split in the AM peak which remains the basis of the official targets for the site today ie

Train	63%
Bus	20%
Car	4%
Ferry	1%
Other	12%

These targets compare with existing estimated mode splits as follows (2006 Census)

Train	48%
Bus	22%
Car	19%
Ferry	3%
Other	9%

The Report also made suggestions in relation to connections to Wynyard, bus service increases, ferry services, light rail, car parking, and to a lesser extent, walking and cycling. Critically, the Report was predicated on the CBD rail and bus capacity proposals outlined in the *Metropolitan Strategy* of December 2005 and elsewhere. It is clear that the Government's announced transport plans influenced land use planning at Barangaroo and the Barangaroo plans then provided for the transport related enhancements relevant to the site. This approach was probably reasonable in the circumstances, and is certainly consistent with generally accepted land use planning practice, but it depended on Government's capacity to pay for very expensive infrastructure, and the Government's determination to deliver on the CBD rail capacity plans, in particular.

Concept Plan (February 2007)

The Concept Plan adopted for the site in February 2007 was based on a working population at Barangaroo of 16,000 and the journey to work mode share split outlined above. The Concept Plan included a *Statement of Commitments* which required the development of a *Transport Management and Access Plan (TMAP)* to be submitted prior to the lodgment of any relevant project application which included floor space.

This TMAP was required to include an assessment of the city wide traffic impacts of the development and specifically to consider

- Traffic signals at Sussex Street/Napoleon Street
- Future specialist transport solutions including light rail, tourist bus services, a river Metro rail route and in particular the need to protect future infrastructure alignments
- Offsite improvements to enhance cycling and walking access to the site
- Bus service enhancements
- Off road bus lay offs
- Passenger ferry transport
- Road alignments
- Parking

The TMAP was required to “...scope and cost the necessary infrastructure, identify timing and staging, identify supporting policy initiatives, detail funding mechanisms, and facilitate planning agreements covering infrastructure provision.”

The *Statement of Commitments* also required a Public Domain Plan outlining internal pedestrian links and bicycle lanes and routes, and as part of an Ecologically Sustainable Development approach to the site, provision of sufficient public transport to achieve points under the public transport credit for Green Star Rating Tools for commercial and residential buildings. The Director General's Assessment of the Concept Plan concluded that the traffic, transport and car parking issues in relation to the site were adequately addressed by the requirement to submit a Transport Management and Access Plan within the terms outlined above and some other relatively minor technical requirements.

The Director General's Assessment does note that “...concern was raised in a number of submissions from Council, Sydney Buses, Railcorp and the public that the Barangaroo proposal would generate significant transport requirements and adversely impact on existing public transport services during peak periods.”(p 21)

Despite this, the issue of CBD rail capacity was not addressed in the Director General's Assessment.

While this lack of consideration of rail capacity could be considered a gap in the Assessment, it is relevant that although they expressed concerns, the City of Sydney and other submitters did not

suggest in 2006/7, or indeed since, that there should be no further development in the city until the issue of CBD rail capacity is addressed.

In March 2008, the NSW Government announced a \$12 billion rail line to provide a service from Rouse Hill to Epping and Epping to the CBD, to be completed by 2017. This proposal critically, provided for significant additional rail capacity in the CBD, and therefore to Barangaroo.

Modification 2 (February 2009)

In June 2008, the Sydney Harbour Foreshore Authority submitted a request for a Modification of the Concept Plan proposing (inter alia), an increase in gross floor area for the site from 399,800 sqm to 519,800 sqm. This Modification increased the estimated working population of Barangaroo at completion from 16,000 to 22,600.

The Director General's Assessment of this application reinforced the importance of rail transport as central to the transport and access issues in relation to the site and recommended, as a condition of approval, that *"...details of the proposed pedestrian linkages between the Barangaroo site and Wynyard shall be provided with the first project application for Blocks 2, 3, 4 or 5 and shall be **completed** prior to any occupation of Blocks 2, 3, 4 or 5". The Assessment also noted that the 'proposed CBD Metro will...result in improved access to the site"*.

The overall Assessment of Modification 2 was supported by a review of the recommended approval of the proposal by the independent NSW Planning Assessment Commission. In supporting the recommendation to approve, the Commission noted that *"...the Barangaroo development is predicated on a high modal split to public transport and the construction of the CBD Metro is very important to secure the modal split targets."*

Again, it is worth noting that the Planning Assessment Commission did not propose that the Barangaroo development or the increase in floor space should be conditional on the completion, or even the commencement of the CBD Metro.

The Modification 2 increase in floor space and worker population of Barangaroo was finally approved in February 2009, subject to the same conditions in relation to the transport Management and Access Plan as in the Concept Plan, together with the requirement in relation to the pedestrian link to Wynyard i.e. that it be completed prior to occupation of the office accommodation.

Transport Management and Accessibility Plan (September 2008)

In September 2008, during the process for the assessment for Modification 2, the NSW Government published the Barangaroo Transport Management and Accessibility Plan. This Plan was developed by the Transport and Access Working Group comprising the Department of Transport as chair, the Office of the Co coordinator General and the Sydney Harbour Foreshore Authority. The Road Traffic Authority, NSW Maritime and the Department of Planning were advisers, amongst others.

The Plan was a comprehensive summary of the transport and access issues with a particular focus on the area of Barangaroo which ultimately became the private sector development. In fact, the Plan is actually called *'Barangaroo Management and Accessibility Plan For Request for Detailed Proposal'*. It included the Government's transport and access objectives for the site, involving the ambitious journey to work mode share targets provided by the Concept Plan approval. (84% public transport, 4% car, 12% other).

The 2008 TMAP also provided an analysis of the likely site population of 22,000 workers and 1500 residents and the consequent car parking requirements (2446), and journey to work estimated numbers. The Plan further estimates that there will be another 9500 users per day, although many more at major events.

The main content of the Plan is a summary of the impact of the site's development on the road network, parking, bus services, pedestrian links and connections to heavy and metro rail. The Plan then outlines the requirements of the private sector developer in relation to transport and makes a number of commitments in relation to NSW Government support for the necessary transport enhancements. These commitments include:

- *"The design and delivery of the pedestrian tunnel to Wynyard are to be undertaken by the NSW Government"*
- *"The achievement of the mode share target for the journey to work by rail to Barangaroo will be supported by the North West Metro...The North West Metro is a NSW Government project and delivery and funding are not matters for the Barangaroo Stage 1 RFDP"*
- *"Barangaroo will receive upgraded bus levels, including direct services to support the achievement of the mode share target... There will be increases in bus operating costs arising from the extension of services on the 422-428 and 373- 377 routes which will be met by the State Government"*

The current Government will need to consider the extent to which these commitments give rise to binding legal obligations.

Importantly, the TMAP analyzed the issue of CBD rail capacity and concluded that a variety of short term measures then under way would provide additional capacity for the development until the then proposed completion of the North West Metro in 2017. The Plan also addressed the issue of the capacity of Wynyard station and its concourses.

The TMAP did not include a detailed analysis of light rail on the basis that it was considered 'not essential to achieving Barangaroo's mode share targets', and did not include any analysis of the role of additional ferry services at the site. Both of these omissions could be seen to be gaps in the analysis, given the clearly established conclusions about the very difficult mode share targets, and the need to consider the full range of public transport options for the site.

This NSW Government TMAP was provided to the bidders for the Barangaroo development as a statement of the *"...requirements, standards and outcomes for transport and accessibility' for the site and an 'outline of how these will be delivered and achieved"*.

Further Changes to Government Transport Planning

By October 2008, the Government had announced that the North West Metro would not proceed, but that it would be replaced by the CBD Metro which still addressed the CBD rail capacity and Wynyard Station overcrowding issues central to the transport planning for Barangaroo. This project was shortlisted for Commonwealth funding by Infrastructure Australia in December 2008 and work on the detailed planning for the route was stepped up.

In February 2010, the CBD Metro project was also cancelled and an alternative CBD rail capacity project proposed. This project, the Western Express and City Relief line and station upgrade was to cost \$4.5 billion, be delivered by 2018, and was part of a *"...10 year fully funded package of transport infrastructure"* outlined in the Metropolitan Transport Plan (p3). The Metropolitan Transport Plan also provided \$0.5 billion funding for a light rail project through Barangaroo to *"...connect with buses and the higher capacity CityRail network'* and for new ferries, but did not fund new wharves at Barangaroo as a second CBD ferry terminal as recommended by the Walker Review of Sydney's Ferries in October 2008

The announcements in the 2010 Metropolitan Transport Plan which supported the Barangaroo development coincided with the finalization of the Project Delivery Agreement for Barangaroo South between the Barangaroo Delivery Authority and Lend Lease. Although this Review has not seen the Cabinet records of the previous Government, it is pointed out by the Auditor General in his recent

audit of transport arrangements for Barangaroo that Cabinet ‘noted the transport requirements’ for the site at the time of approving Lend Lease’s bid in December 2009.

The Project Delivery Agreement with Lend Lease provides that Lend Lease contribute more than \$30million for bridge connections, road works and intersections, land support for the ferry terminal and pedestrian and cycleway provision. Lend Lease is also required to provide about 2000 bicycle parking spaces and associated facilities.

In addition to this intrinsic investment, Lend Lease is required to pay a levy of about \$30million ‘to assist with the funding of transport infrastructure’. These transport specific payments are separate from the over \$1 billion that Lend Lease will pay as developer contributions over the period of the Contract. A proportion of the developer contributions will be used by the Barangaroo Delivery Authority to contribute to the cost of the Wynyard pedestrian link and could possibly contribute to the light rail extension and the new ferry arrangements, subject to other priorities.

Supplementary Transport Management and Accessibility Plan (August 2010)

In August 2010, a supplementary Transport Management and Accessibility was prepared by Lend Lease’s contractor, Arup, to support Modification 4 of the Barangaroo Concept Plan. This Plan responded to the Lend Lease proposal to increase the overall GFA of the site by 44,165 sqm over the Modification 2 approval on which the 2008 TMAP had been based. Lend Lease’s proposal reduced the overall maximum allowable commercial office space by around 11%, but increased the residential floor space by about 50,000sqm.

The Plan indicates that these changes increased the estimated potential final population of the site to around 23,600 (21,100 workers and 2500 residents) in addition to the ‘casual’ users. These numbers in turn increased the required parking at Barangaroo from 2500 to 2700 - still well below City of Sydney norms, consistent with the high mode share targets for public transport.

The 2010 Supplementary TMAP confirmed the importance of the projects outlined in the 2008 TMAP and endorsed the

- agreed road network within Barangaroo
- Barangaroo Pedestrian Link to Wynyard
- City Walk Wynyard connection
- 189 Kent Street connection
- Maritime Staircase
- announced light rail extension (to take 2% of journey to work mode share, mainly from buses)
- Western Express/City Relief line and Wynyard Station upgrade to provide CBD rail capacity
- Additional bus services
- Cycle ways and cycle facilities

The Supplementary TMAP again did not discuss the ferry terminal.

Modification 4 Assessment

The Director General’s assessment of the Modification 4 application summarised a more fine-grained understanding of the potential transport impact of Barangaroo over the development period. This assessment estimated three periods of growth and a ramping up of the numbers to be serviced.

	Commercial/Retail	Residential	Hotel	Cumulative total
2010-2014	1250	300		1550
2014-2018	9889	922	1650	14011
2018-2027	8334	1253		23,598

On the basis of this analysis, the assessment was made that the Modification could be approved broadly subject to the TMAP but particularly:

...in the short- medium term

- delivery of the pedestrian link between Barangaroo and Wynyard and improvements to Margaret Street and other streets('Transport NSW has confirmed that the development of the pedestrian link is fully funded' p 77 of the Assessment)
- improvements to Wynyard Station as part of the Wynyard Precinct Master Plan
- new bus routes and services (funded under the Metropolitan Transport Plan)
- delivery of initial ferry services by 2014
- agreed walking, cycling, road and car parking provisions

...and in the long term (beyond 2018)

- heavy rail upgrades to the CBD
- full ferry services to Darling Harbour
- light rail extension from Haymarket to Circular Quay
- improvements to Wynyard bus exchange
- ongoing public transport planning.

The actual approval of Modification 4 provided that “...*the proposed improved pedestrian linkages between the Barangaroo site and Wynyard train station shall be provided with the relevant Project Applications for built form above ground level.....and works shall **commence** prior to any occupation of...(the office blocks or residential development in South Barangaroo)*”.

The Assessment does not give an explanation of the change to this condition between Modification 2 and Modification 4; however it is presumably based on the assessment that the connection is not essential with the occupation of the first buildings by about 1500 people, but must be in place prior to the next wave. This is probably a reasonable assumption, although it may not be attractive to Lend Lease and their tenants given the commitments made in relation to the link.

Moreover, it is also important to note that the upgrade to Wynyard station which the Assessment assumed would be delivered in the short to medium term was not an announced funding commitment by the previous Government. At the same time, the inclusion of initial ferry service prior to 2014 and full ferry services beyond 2018 as a precondition of the Modification approval did not specifically require that these services be at Barangaroo, since the new wharves at Barangaroo were not included in any Government transport commitment at the time. These are both issues which will require further consideration.

The Modification approval provided that the Transport Management and Accessibility Plan be updated in 2014 and 2018, in line with the expected planned occupation of buildings.

Accuracy of Transport Demand Projections

Transport planning is not an exact science. Most of the transport demand projections in relation to Barangaroo have estimated the site population, calculated the numbers generated by the agreed journey to work mode split and assumed that this is the increase in demand. Some of the more sophisticated have calculated the timing of these increases and the consequent impact on the timing of service requirements, and most have also considered the underlying increase in demand for travel to the CBD in the AM peak. There would appear to have been little consideration, however, that it is likely that much of the early growth on the site will be by relocation of existing CBD workers. This process will allow the progressive refurbishment of ageing CBD stock, and indeed, this is one of the significant economic benefits of the development. At the same time, it may also defer the full impact of Barangaroo on demand for CBD commuter travel for a further five years or so i.e. until the late 2020s.

The net present value of deferring expensive infrastructure can be significant and needs to be examined.

However, it also needs to be noted that a significant oil price rise or other similar factors could dramatically accelerate demand for commuter public transport.

Current Status of Transport Commitments

With the election of the O'Farrell Government in March 2011, transport priorities changed in NSW and the former Government's *Metropolitan Transport Plan* is unsurprisingly no longer policy. This has significant implications for Barangaroo because the planning approvals and the commercial arrangements with Lend Lease were predicated on a number of the transport commitments made as part of that Plan.

Detailed planning work is continuing within the Department of Transport on the Wynyard pedestrian link, and the Barangaroo Delivery Authority has allocated \$100 million towards the estimated \$300 million cost of the project. Given that the project is critical, and must be commenced before the occupation of the office buildings, reconfirmation of the funding commitment to this project is a matter of priority. Also important are the commitments underpinning the Modification 4 planning approval to improve Wynyard Station as part of the Wynyard Precinct Master Plan and to deliver initial ferry services by 2014. Demand for bus routes and services, and their timing, will need to be re examined in the light of the commitment to the light rail extension. While light rail is not a significant commuter mode, it will take some pressure off the bus service to the area, and will provide excellent activation and connection for the site.

Most difficult is the issue of CBD rail capacity. The Minister for Transport, Gladys Berejiklian, has indicated that extra capacity for the CBD will be *"...looked at as part of the new Government's Masterplan"* (SMH 16 June 2011). Fundamental to this is the timing issue identified above.

The NSW Auditor General has recently reviewed the transport planning arrangements for Barangaroo and has recommended that:

- *"Co-ordinated action is required to ensure that transport plans are put in place in time to meet the needs of Barangaroo commuters. The Department of Transport needs to provide full and frank advice on the implications of any delay or change of plan"* and
- *"The Department of Transport's advice on how changing transport priorities may affect Barangaroo should include an assessment of options in terms of risks and consequences, including potential financial and economic impacts of decisions."*

This Review supports these recommendations with the addition that the Government will also need to consider the extent to which the previous government's commitments in relation to transport give rise to binding legal obligations.

7. The Headland Park

There is some community concern about the design of the Headland Park and the two coves. This is focused on apparent differences between the Approved Concept Plan (Modification 4) and the Hill Thalys Berkemeier Irwin (HTBI) competition design, and the proposition that the headland should have a 'natural' shape. In addition, there is concern about the cost of the Headland Park and a perception that it represents a squandering of money which is contributing to the need for higher GFA at Barangaroo South to meet the 'nil cost to government' commitment. There are further concerns about the detail of the park... will it be 'useful'? will it be safe? Is it higher than Merriman Street and Clyne Reserve? Is the land fill contaminated? And what is the use of the void?

The current Concept Plan (Modification 4) approves the 'naturalised' shape and form of the Headland Park. Approval has also been given to project applications for 'Early Works' and 'Main Works' for the Barangaroo Headland and Northern Cove.

As discussed earlier, the approved Headland Park and the two coves are demonstrably consistent with and derive from the competition outcome announced in March 2006. To reiterate:

"In developing the scheme beyond its current concept the Jury recommends that the following elements be integrated in the next phase of the project:

- *A natural headland form which touches the water at the northern end of the site*
- *A large northern cove located directly behind the headland to further define the headland*
- *A larger intervention of the southern cove, located north of Napoleon Street."*

The Competition Outcome was a combination of the HTBI scheme and the above recommendations, and the 2007 Concept Plan Approval explicitly required the development to be amended to reflect the jury recommendations. The Concept Plan (Modification 2) application was assessed by the independent Planning Assessment Commission, which made no comment on the requirement within the recommended planning instrument to amend the scheme to fulfill these recommendations.

The position of this Review is that if you accept the competition process, you should accept the outcome, and that it is neither reasonable nor appropriate to 'half accept' the outcome. It is acknowledged that the jury recommendations represented a fundamental shift in the philosophical design approach to the site from that proposed in the HTBI scheme. The recommendations rendered the headland with a 'natural' form and expression and as a predominantly green space, as opposed to the HTBI headland park which drew on and adapted the existing concrete hardstand to create a park more obviously 'designed' and adapted from its extant form; and they defined the site as three precincts rather than treating it as a single continuous space with gradual transition from 'form' to 'space'. The difference between the two approaches is not a question of absolutes – neither is 'right' or 'wrong'. The two approaches are both valid, but the current design resulted from the competition outcome and has gone through what appears to have been a properly and competently considered planning process.

A symbol of 'Country'

Having accepted the jury recommendation, this Review sought to understand the broader and detailed issues of concern, starting with what the philosophy behind the 'natural' headland park was.

The proposal now in place is for the creation of a nationally significant, exemplary park and symbolic 'bush' landscape as recognition of Australia's indigenous history, and a symbol of

'Country'. It is intended to affirm the importance of the landform of Sydney Harbour, to reflect the connections from headland to headland, and to honour the communities who lived on those headlands prior to European settlement. It proposes to dedicate a most prominent site, in the heart of the harbour city, to the recognition of indigenous culture in Australia, as a measure of its significance.

Natural vs naturalistic

One of the main criticisms of the proposed Headland Park is that it will be 'fake'. The word 'natural' is certainly problematic in the context that the headland is actually contrived and to be constructed. It is plainly not 'natural'. The Australia International Council on Monuments and Sites (ICOMOS) *Burra Charter 1999* is a benchmark best practice standard for cultural heritage management in Australia. While there is no remaining heritage fabric related to indigenous occupation of the site, the Charter is still instructive. It states

"Article 3. Cautious approach

3.2 Changes to a place should not distort the physical or other evidence it provides, nor be based on conjecture.

Article 19. Restoration

Restoration is appropriate only if there is sufficient evidence of an earlier state of the fabric."

The notion that we should not attempt to replicate, mimic or copy without adequate evidence is a fundamental principle of cultural heritage management and good design in Australia. The point about the Headland Park is that it does not propose to do so. The word used in the competition jury recommendations was 'natural', but by the 2007 Concept Plan, this had been replaced with 'naturalised', or 'naturalistic', both of which have quite different meanings, and, we've been advised, better reflect the jury's intention.

The *Burra Charter* goes on to say:

"Article 22. New work

22.1 New work such as additions to the place may be acceptable where it does not distort or obscure the cultural significance of the place, or detract from its interpretation and appreciation.

22.2 New work should be readily identifiable as such."

The existing concrete tarmac has no cultural heritage significance, as defined by the Australian Heritage Council and the Heritage Council of NSW. There is limited extant fabric in the headland precinct, which is of local significance relating to the relatively recent history of the site. The Director General has given consideration to the locally significant elements, all of which have been reasonably addressed through treatments proposed in the Approval. The proposal is to provide interpretation of these elements on site through retention, relocation on site, adaptive re-use, signage and/or through design. An example is the cliff wall at Clyne Reserve which will be exposed at the vehicular entry to the underground carpark, and within the cultural facility below the headland park. In both cases, the cliff face will be visible, able to be touched, and lit by substantial skylights, which also serve to separate the naturalistic headland from the natural cliff face and to expose the new work.

The proposed Headland Park has been designed as a naturalistic form and shape, and will be detailed to reveal that it is new in its hard landscape elements. The 'bush' will include native species habitat and will include interpretation to inform visitors about the kinds of plants and creatures that would have lived here pre-settlement. Its detail will reveal its contrivance and allow interpretation of it as a non-natural intervention that recalls nature in a symbolic way. The idea is that the headland will not replicate, but will be symbolic and identifiable as new work.

Design detail

The design of the Headland Park was procured through a Public Domain Request for Proposal (RFP) which went out in out in November 2009, seeking a design team to undertake detailed design of the Headland Park and Northern Cove, an 'Outline plan', and Public Domain Design Guidelines for the whole of Barangaroo. In February 2010, the successful team was announced as Peter Walker and Partners Landscape Architecture (PWP) and locals Johnson Pilton Walker (JPW). These two practices are both globally recognised for their exceptional landscape and architectural projects, for their integrity, and for their consistent track records in the delivery of high quality outcomes. This design team has worked up the proposal for the Headland Park and Northern Cove in detail, with PWP focusing on the Headland Park, and JPW working more closely on the cultural facility below the headland. As it has developed, their work has been reviewed by the Design Excellence Review Panel (DERP) and by the BDA Design Advisors. This has included consideration of site analyses and design options studies, as well as design refinements and details as the work has evolved. The current design has received ringing endorsement from both the DERP and the Design Advisors, each of whom has addressed this Review on the matter.

The concerns put to this Review about the detail of the park appear to be largely the result of misinformation or ineffective communication. The Headland Park will have a series of paths which range in scale and offer different experiences, from being 'in the bush' to the broad and open promenade along the water's edge. The park includes open grassland and treed areas, and will be able to be used in a number of ways. As a raised, sloping bluff form it may not be suitable for ball games, but flat open space will be amply provided at Barangaroo Central for this sort of activity.

There is also a level of anxiety about the proposed height of the park, with claims that it will be higher than Merriman Street and Clyne Reserve. The proposed contours and reduced levels have been set to continue from the existing remnant bluff so that the new form flows from the existing at the same level.

Safety has been raised as a concern. In general terms, the park will be neither more nor less safe than any other large parkland with trees and some topography, except that the Barangaroo Headland Park will include a wide promenade which allows good visual access and reasonably long sightlines, and it includes a cultural facility which, in the future, may contribute to activation and passive surveillance of the park at the Northern Cove precinct. The new population living and working at Barangaroo will grow to more than 23,000 in the late 2020s, and will also contribute to the demand for and activation of the Headland Park, which will provide a different range of experiences from those available at Barangaroo Central. Night-time lighting of the park will be limited to the promenade.

Planning Approvals

A Project Application for 'Early Works for Barangaroo Headland Park and Northern Cove' was submitted to the Department of Planning in June 2010, seeking demolition of above ground structures, bulk earthworks, extraction of sandstone from the 1913 seawall for re-use on site, and heritage protection. Consultation resulted in 14 submissions including 7 from public authorities. The Proponent then submitted a Preferred Project Report responding to submissions and issues raised by the Director General, who assessed the PPR and recommended approval. The Early Works application was approved on 8 November 2010. The approval addressed matters such as indigenous and non-indigenous archaeology, heritage and environmental impacts that could be caused by the works

A Project Application for 'Main works for Barangaroo Headland Park and Northern Cove' was submitted to the Department of Planning in October 2010, seeking approval for construction and detailed implementation of the proposed design. It also sought approval for a 300 space underground car park, and construction of a space for future use as a cultural facility comprising

initially 75,000 cubic m and ultimately up to 100,000 cubic m. The proposal included the treatment of heritage elements on site, including retention of the Sydney Harbour Control Tower. Consultation resulted in 23 submissions including 7 from public authorities. The Proponent then submitted a Preferred Project Report on 11 February 2011, responding to submissions and issues raised by the Director General. The Director General recommended approval subject to a number of conditions including requirements for separate Project Applications for the 300 space car park and the Cultural Facility floor area, and additional requirements relating to contamination. The Main Works application was approved on 3 March 2011.

There is an application for Modification 1 in relation to the 'Main works for Barangaroo Headland Park and Northern Cove', which is currently being assessed by the Department of Planning.

The 'void'

The cultural facility was announced by then Premier Keneally in June 2010. It has been proposed as an opportunity to activate the northern precinct with a cultural use which distinguishes and will contribute to the particular identity and vibrancy of the Headland Park precinct and Northern Cove. In September 2010, the BDA undertook consultation to seek the community's views on appropriate uses for the space, and we understand this consultation will continue.

In design terms it is usually preferable to have an established use to inform its design and ensure it is 'fit for purpose'. On the other hand, there is a growing recognition that sustainability demands places which are adaptable and can be used for different things, in different ways over time, as needs change. In addition, there is a growing understanding of the sustainability benefits of 'green roof' construction, of which this will be a stand out example. This Review understands the cultural space will add approximately \$8 million to the cost of the Headland.

Given its potential to make a positive contribution to activity and identity to the Headland and the Northern Cove, and to form a pivotal link with the cultural precinct at Walsh Bay, it seems appropriate to spend \$8m to allow for this future use. What is essential is that core aspects that would be required in any substantial, enclosed, public gathering space are included and integrated with the design of the Headland Park. The cost and the current proposal allow for inclusion of necessary natural light, ventilation, fire egress and other aspects that must be anticipated and integrated with the design.

The original design competition launched by then Premier Bob Carr suggested the development leave some room for others to grow this area later. The provision for a cultural facility and its integration with the park seems a good opportunity to do just that.

Cost comparisons

This Review is advised that independent Quantity Surveyors estimate a park design based on the HTBI competition scheme would cost in the order of \$10m less than the park as currently approved. This takes into account the \$30m cost of off-site disposal of 200,000 cubic metres of excavated fill from Barangaroo South, which would be required in this scenario.

The public domain benefits of the currently approved park should not be undervalued. Given the special significance of the site, the cost benefit equation tips toward spending appropriately to establish an exemplary public outcome, rather than permitting the design quality to be driven by a relatively small saving.

Although there is a cost nexus between the development at Barangaroo South and the public domain works, it is noted that the approved Lend Lease scheme embodied in Modification 4 resulted in a *decrease in commercial GFA of 42,575sqm or 10.7%*, when compared to Modification 2 which was the point at which a substantial GFA increase of 120,000sqm occurred, and was endorsed by the independent Planning Assessments Commission.

Contamination

The Headland Park form will be supported by cleaned fill from excavations at Barangaroo South. A more detailed discussion of contamination is contained in Section 9.1 of this report.

Comment

This review has been convinced that the process undertaken in relation to the Headland Park has flowed from the original design competition outcome, and has resulted in the appointment of highly skilled designers who have produced an exemplary proposal. The Planning assessments appear to have been adequately considered.

However, there is certainly scope for better communication within the community about the story of the Headland vision as a symbol of Country, and about the detail of the approved design and how the park will work, and this is a task for the BDA. Paul Keating's vision for the park has been well publicised and determined, but not singular. His support for the proposal is not a lone position, but one endorsed by many others, including designers of world renown. What has been singular is the animosity of the debate about the proposed Park. Given its purpose as a symbol of 'Country', the meaning of the Headland Park site is nationally significant. This Review understands a number of indigenous leaders have been consulted and are contributing to the discussion about how the Headland develops, and this must continue. We suggest the vision for the park should be championed at a national level, with tenacity but perhaps with less heat.

8. The Cruise Terminal and White Bay

Cruise Industry in Sydney

Cruising is an important and growing part of the Australian tourism industry, and Sydney is the centre of that activity. Cruising activity has increased by an average of 18% every year between 2002 and 2008 and is expected to grow by 17% per year for the next 10 years. The industry estimates that Australian cruising will serve one million passengers by 2020.

An Access Economics report prepared in 2009 using 2007-08 data found that cruising contributed \$1.2 billion to the Australian economy. Cruise ship company, Carnival Australia estimates that based on the growth rate since that research, cruising now contributes at least \$3 billion to the Australian economy. Given Sydney's role as the key Australian homeport, Sydney is the largest single beneficiary of the economic benefits of the cruise industry.

There are two different types of cruises, both important to Sydney's economy. About 25% of cruise vessels in Sydney are Port of Call Cruises. These are mostly large ships, where the passengers mostly live on the ship while in Sydney. The passengers are mostly international tourists, to whom close access to the CBD is important. These ships are generally berthed east of the Bridge, and in fact, may be too large to go under the Bridge.

Approximately 75% of ships are Home Port Cruise Ships, two thirds of which are permanently based in Sydney, and a third 'seasonally deployed' to be based in Sydney during the northern winter, although these proportions are evening out. These ships vary in size and are trending larger, but most will fit under the Bridge. Passengers on Home Port Cruises board and leave the ships in Sydney and currently 60% of all passengers live in Sydney. Of the other 40%, most are Australians from NSW and elsewhere. These ships generally come into port in the morning, unload all their 2000 or so passengers, luggage and waste, re-provision the ship for the new cruise, load the 2000 or so new passengers and their luggage and depart in the afternoon.

There were 120 cruise ship berthings in Sydney in 2009. By 2025, 450 berthings per year are expected. Capacity issues are exacerbated by the fact that for all types of cruises, the peak season is late spring to late summer ie. the demand period is highly concentrated. There is clearly a need for additional capacity if Sydney is to retain its preeminent role in this industry.

Features of a World Class Cruise Facility

Carnival Australia has provided this Review with an outline of the requirement of a world class cruise facility. These are helpful in assessing the issues related to planning for a new Cruise Terminal in Sydney. They are:

- Competitive port and terminal fees benchmarked against similar ports
- Quick hassle free processes for passengers – good facilities, comfort and ambience
- Dedicated luggage collection zone of about 2000sqm
- Dedicated passenger check in zone of about 2000sqm
- Easy loading of stores – about '150 tonnes of food and beverage stores, plus fuel, fresh water to supplement on board evaporator plants and technical supplies' per turn around. An area of 1000sqm is required
- Two air bridge gangways
- Traffic management with separate zones for different types of vehicles – stores trucks, taxis, mini vans, coaches and passenger drop offs and pickups
- Equipment storage on site including access for vehicles and cranes next to the vessel
- Access for services- up to 100 tonnes of fresh water is loaded per hour and 60 cu m of rubbish and 15cu m of waste oil must be removed after each cruise

- Long and short term secure parking - In one port in the UK, about 1000 vehicles are parked in long term facilities each week while passengers are away.

These requirements are in addition to the regulations enforced by the Commonwealth Office of Transport Security which prescribes, amongst other things, the isolation of foreshore within 30 metres of the berth when a ship is in port.

Western Harbour Cruise Ship Facilities

In October 2003, the NSW Government announced the Ports Growth Plan to expand Port Botany and Port Kembla and remove the remaining container trade from East Darling Harbour, and as a consequence, to plan for the future use of the vacated port land. This decision was generally welcomed, although there was some concern about the demise of Sydney Harbour's role as a 'working harbour'. The Government made a commitment to retain a 'working harbour' role in Port Jackson.

In 2005, Premier Bob Carr announced an international design competition, which stipulated that the site 'will retain a valuable part of Sydney's working harbour' with the Wharf 8 Harbour Passenger Ship Terminal to remain on site. All of the shortlisted entrants to the competition included a passenger terminal in their plans.

The Jury's unanimous verdict on the winning design in March 2006 required that the Northern Headland be redesigned as a 'naturalistic', and that the two 'coves' be expanded. This decision did not necessarily preclude the inclusion of the passenger terminal, but it did make it impossible to include provision for two simultaneously berthed ships.

The Concept Plan for the site approved in February 2007 included the passenger berth and a terminal of up to 8000 sq m at the northern end of the site.

During 2007 and early 2008, a variety of planning processes took place within Government which had an impact on planning for a passenger ship terminal at Barangaroo.

Firstly, the Walker Review of Sydney's ferries in October 2007 recommended a second CBD ferry terminal to relieve congestion at Circular Quay. Walker recommended that this be developed at King Street Wharf, but noted "*...NSW Maritime has expressed the view that, in the longer term, there is a possibility of the area currently forming the Darling Harbour Passenger Terminal becoming available for development of a ferry terminal or a ferry terminal being incorporated as a new facility in the Barangaroo Redevelopment at East Darling Harbour and that either of these options 'would create fewer navigation and traffic concerns' than the redevelopment of King Street wharf.*" (Walker p56)

Secondly, in the early part of 2008, the NSW Government was developing a strategy to promote Sydney as one of the financial centres of the world, with Barangaroo as the heart of this centre. This involved a decision to provide for the large floor plate size and sufficient commercially zoned space to be attractive to the financial services sector. This strategy was clearly outlined at the Financial Services Hub Summit in mid 2008. There was discussion within Government as to whether the passenger terminal was consistent with the ambitions for the financial sector at South Barangaroo.

Thirdly, work was under way within Government on the transport enhancements required for the CBD as a whole and then for Barangaroo in particular. In March 2008, the Government announced that it would build the North West Metro, to extend city rail capacity and provide new transport to the north west. The Metro proposal involved new platforms at Wynyard, interchanging with the bus networks at the station. This additional capacity provided the option to service an expanded office precinct at Barangaroo. The transport planning also highlighted the potential for severe traffic

congestion in the area which ultimately led to action to restrict car access and parking in the area. This brought into question high traffic generation uses such as the passenger terminal.

In addition, the work on the financial implications of the 'no cost to government' commitment undertaken at this time, led to the conclusion that the government needed to pursue more commercial GFA at Barangaroo South.

In April 2008, the then Minister announced that the Cruise Passenger Terminal would not operate at Barangaroo during construction, and that it would be temporarily moved to White Bay Wharf 4/5.

Concept Plan Modification 2 was submitted in June 2008 requesting an increase in commercial GFA of 120,000sqm. The proposal did not alter the location of the passenger terminal at Barangaroo. During the assessment of the Modification, however, on 23 September 2008, the Department of Planning convened a Planning Focus Meeting with other relevant agencies to discuss the Cruise Passenger Terminal. This Focus Meeting was informed by work undertaken by the Office of the Coordinator General of Infrastructure on Terminal Location Alternatives (August 2008).

Subsequently, on 20 December 2008, the Minister for Planning announced the permanent removal of the Cruise Passenger Terminal from Barangaroo and that it would be temporarily relocated to White Bay for a minimum period of 5 years. The rationale for this decision was outlined as follows:

- 'The fact that Barangaroo will be a significant construction site for a lengthy period of time;
- Once completed, the customs and immigration exclusion zone associated with the cruise passenger ship facilities mean a cruise terminal would be incompatible with Barangaroo's future financial commercial role;
- The relocation of DH 8 away from Barangaroo allows the Government to incorporate a new CBD ferry hub into the Barangaroo development as recommended by the Walker Enquiry into Sydney ferries; and
- A Cruise Passenger Terminal at Barangaroo would preclude the Government's vision for the completion of the uninterrupted public foreshore walkway from Anzac Bridge to Woolloomooloo'

Notwithstanding this decision, the Concept Plan modification approval issued in February 2009 after advice from the independent Planning Assessment Commission still included the conceptual approval for the 8500 sq m for the passenger terminal.

In order to progress the decision about a permanent location for the Cruise Passenger Terminal, in May 2009, the then Minister for Planning established a Passenger Cruise Terminal Steering Committee (PCTSC) chaired by the Chair of the Sydney Harbour Foreshore Authority, who is also chair of the Barangaroo Delivery Authority, Mr Mike Collins.

The Steering Committee included representatives of Carnival Australia and Royal Caribbean Cruises from the cruise industry, Shipping Australia, the Tourism and transport Forum and Tourism NSW, the Royal Australian Navy, NSW Maritime and the Sydney Ports Corporation. This committee did not consider an option for a terminal at Barangaroo since the Government had already explicitly ruled out that option.

The PCTSC identified six options:

- Option 2 – White Bay 4 and 5 (adaptive reuse of existing building)
- Option 1A - White Bay 4 and 5 (new building)
- Option 2 – Glebe Island 5 and 6 (new building)

- Option 3 - Glebe Island 2 and 5 (new building)
- Option 4 - Glebe Island 1 and 2(new building)
- Option 5 - Glebe Island 2/White Bay 4 (new building at GI2 and overflow berth capacity at WB 4)

The Steering Committee considered each option in terms of cost/benefit, berthing arrangements for two ships, land transport, amenity, impact on existing land ownership/occupants and high level financial costing.

The Steering Committee nominated Option 1A as the preferred option and in December 2009, the Premier announced this option as the Government's preferred location for the Western Harbour Cruise Ship Facilities, subject to planning approval.

While this work was under way, in June 2009, the Minister for Planning established a Taskforce to develop a Masterplan for the Bays Precinct, including White Bay and Glebe Island. The Minister also established a community reference group to:

- Provide advice about community aspirations and needs in relation to the Bays Precinct that will inform future planning processes.
- Advise on current and emerging issues of interest and concern to the community and various stakeholders.
- Encourage and inform community discussion by conveying information on the Bays Precinct to community and stakeholder networks.
- Provide input to matters considered by the NSW Government's Bays Precinct Taskforce in preparing for the first phase of strategic planning for the future of the Precinct.

There has been some concern expressed to this Review that the decision to relocate the Cruise Passenger Terminal to White Bay should have been deferred until this work was complete. Nevertheless, the Community Reference Group has been constructive in their approach to the White Bay proposal, and their report in March 2010 includes the following section:

'Proposal

Ensure that the development of the Cruise Passenger Terminal at WB 4 and 5 maximises opportunities for foreshore activation, including pedestrian/cycle access, multi-purpose terminal building compatible with residential locale, multi-purpose short-term carparks, parks and landscaping, keeping the height of the terminal below the cliff line.

CRG Summary Planning Objectives

Objective: Heritage

- *Ensure future planning recognises the significance of the area in Sydney's maritime and industrial history*
- *Ensure adaptive reuse of the significant structures of the Precinct*

Objective: Land Uses

- *Allow for a range of land uses within the Precinct to provide for local distinctiveness and character. Ensure all uses have the minimum possible adverse impact on existing residents and businesses*

Objective: Transport

- *All activities and development to be integrated with the timely provision of integrated transport infrastructure including an integrated public transport strategy. Long term uses must not result in increased traffic congestion within the surrounding suburbs*

Objective: Built Form and Design

- All built form is to be of excellent design and on a compatible scale with the adjacent neighbourhoods
- Local views are to be conserved and significant views are to be conserved and where possible expanded

Objective: Economic Life

- Maintain the working harbour character of the Precinct in conjunction with support for other employment opportunities including green R&D and creative Industries (eg incubators, artist studio space)

Objective: Sustainability and Environment

- Incorporate best practice sustainability principles in all development and ensure that all uses enhance the sustainability of human and physical ecology in waterways and foreshores; take a whole of catchment approach to water management

Necessary Actions:

- Widely consult with local community during the planning process to ensure maximisation of the value of foreshore site
- Ensure provision of landscaped foreshore public access and parkland
- Ensure opportunities for activation of the site 7 days per week to serve the local community
- Provide public transport to serve the CPT and local community in three ways: ensure timely opening of light rail branch line (this can be done immediately);
- ensure early construction of up to three ferry stops in the area (first ferry service after 7.30am); early construction of rapid mass transit station at White Bay
- Incorporate multi-level short-term car park within building but any external carpark should be multi-purpose and include provision for active recreation when there is adequate public transport to the area
- Integrate CPT into a multi-use building including incubators, space for creative industries, cafes and other facilities for public use.'

Statutory Planning Process

Following the Premier's announcement about the location of the Cruise Passenger Terminal at White Bay, the formal planning and approval processes for the project proceeded rapidly. The project was declared a Part 3A project in May 2010 and the business case was completed at the same time.

The request for a project approval for the construction and operation of a cruise passenger terminal at White Bay was submitted to the Department of Planning in October 2010. The project proposed the construction of the terminal, the berthing of cruise ships at White Bay 5, temporary berthing of cruise ships at White Bay 4 and 'occasional use on non cruise ship days of the terminal building at White Bay 5 for functions'.

The proposal was advertised publicly for 30 days in October/November 2010 and received 151 public submissions. In addition, submissions were received from ten public authorities. The major issues raised in the submissions were as follows:

- Traffic and transport
- Noise and vibration
- Site suitability
- Amenity, visual and public access

Notably, many of the concerns related to the function centre which the City of Sydney noted "...is neither ancillary or necessary to cruise ship operations....residential amenity will be compromised and should not be approved".

Significant concerns were also raised about traffic issues.

The Director General's Assessment of the proposal was submitted to the Minister for Planning on 14 January 2011. This assessment:

- Endorsed the location of the Cruise Passenger terminal at White Bay as a matter of public interest.
- Recommended approval subject to a range of conditions including specific environmental conditions for noise and vibration impacts, traffic, car parking, transport and public access impacts, air quality and dust impacts, soil and water impacts, spoil and waste management, heritage impacts and urban design and landscaping requirements.
- Required the upgrade and use of James Craig Road as access to the area, and providing for future walking and cycling paths on this alignment
- Limited the number of patrons at functions to 500, and restricted the timing of the functions (but up to 11-30pm)
- Mandated public access to the foreshore of White Bay Wharf No 5 during the daytime when it is not required for port operations and to the greatest extent practicable during functions
- Required the preparation and implementation of a landscape plan after consultation with Council
- Concluded that the implementation of best management practices during all phases of the project would ensure that impacts are managed to 'acceptable levels'

The Minister approved the project on 2 February 2011.

In May 2011, the Leichhardt Council instituted proceedings in the Land and Environment Court seeking that the project approval be quashed. We are advised that this matter is in the process of being resolved following discussions between the Sydney Ports Corporation and the Council.

The comments made to this Review indicate that local residents are not convinced that the traffic issues have been resolved nor do they believe that the function centre impacts have been addressed adequately.

Comment

This review has considered the planning approval processes and the decision making in relation to these processes relevant to the relocation of the Cruise Terminal to White Bay.

We have concluded that, based on the characteristics of a Home Port Cruise Terminal provided to the Review by Carnival Australia, a Cruise Terminal is not a compatible use with the mixed use development planned for Barangaroo. The major issues which led to this conclusion were considered by the then Government including traffic generation, parking, foreshore access and the alternative requirement for the waterside space for a second CBD ferry terminal. The Government also considered the compatibility of the use with an office precinct serving the financial sector, but this did not appear to be the primary driver of the decision.

Of course, the issues which forced the relocation of the Cruise Terminal away from Barangaroo will be likely to create similar concerns in other locations close to the city and for this reason, it was essential that all options for new permanent terminal be explored.

This was undertaken through the two stage Passenger Cruise Terminal Steering Committee process. That Steering Committee had the right people round the table, and this Review has not received advice about options which were not considered by this process. The Steering Committee concluded that there was a need for at least one berth east of the Bridge, and potentially two berths west of the Bridge. The Committee agreed that, east of the Bridge, the Overseas Passenger Terminal needs to be used to capacity and Garden Island is the only other harbour Terminal option

(subject to the Navy). West of the Bridge, the White Bay option was considered the best option, subject to addressing the potential impacts on local Balmain residents. This conclusion is soundly argued.

Once this conclusion was drawn, the process was handled as a statutory planning process rather than a community planning process. The statutory planning process appears to have been handled adequately, with significant effort to address concerns raised through the process including noise, vibration, parking, traffic and foreshore access.

A community planning approach would have been tougher on traffic than could be enforced under a statutory planning process, and would have proposed that the local community needed a trade off for the disadvantages of the proposal to local residents. It also would probably have concluded that the function centre was, as the Cities of Leichhardt and Sydney both submitted, an unnecessary additional imposition on the community.

We are advised that some of these issues have now been resolved in discussions between Leichhardt Council and the Sydney Ports Corporation. While we are not privy to these discussions, it is our suggestion that the function centre proposal be abandoned and the non cruise ship uses of the Terminal should be determined by the Council in consultation with local residents. Council management is an option. Further, it is our view that foreshore access and landscaping should be planned in conjunction with the Council and local residents, and that the area has capacity for the development of good quality public open space.

At the same time, it is our view that the traffic issues needs to be addressed by the timing of cruise ship traffic generators outside peak hours. Given that the building of the terminal is being paid for by the Barangaroo development not the Port, there may be the capacity to negotiate the times of traffic generation with the Cruise industry as a trade off for lower fees.

Finally, the original proposal for a Terminal at White Bay canvassed the option of a new ferry wharf and service to cater for both passengers and residents. This needs to be considered as part of the Government's transport planning.

This Review's final recommendation in relation to this matter relates to Barangaroo. While we clearly agree that it is not a good location for a Home Port Cruise Terminal, we are convinced by the argument that the deep water berthing adjacent to Central Barangaroo should be retained so as not to close off options for future alternative uses.

9. Whole of Site Issues

9.1 Contamination

Management of contaminated land is an issue of great community sensitivity in most post industrial cities. This is because toxins and pollutants of various known and unknown risk to human health were used and disposed of with impunity in the past, and because industry and government have not always been transparent in dealing with these issues. Some would argue that, in the past, transparency has been the exception rather than the rule.

For these reasons, confidence in the regulatory arrangements around contaminated land is often fragile.

The regulatory arrangements and processes for dealing with contaminated land in NSW have been explained to this Review in detail, and for the most part, these arrangements appear similar or superior to those in other like jurisdictions.

The arrangements provide for the Government Office of Environment and Heritage itself to take responsibility for a 'Section 12 Assessment' of areas in and around land identified as 'significantly contaminated'. In these circumstances, the cleanup is regulated under the Contaminated Land Management Act 1997 (as amended).

Other land which is known or suspected to be contaminated and on which development works are proposed, are dealt with under planning law and regulation. In these circumstances, generally the land is required to be remediated as approved by an Environment Protection Authority accredited Contaminated Sites Auditor.

The *State Environment Planning Policy No 55 – Remediation of Land* was issued in 1998 with the following object:

- “(1) The object of this Policy is to provide for a State-wide planning approach to the remediation of contaminated land.*
- (2) In particular, this Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:*
 - (a) by specifying when consent is required, and when it is not required, for a remediation work, and*
 - (b) by specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular, and*
 - (c) by requiring that a remediation work meet certain standards and notification requirements.”*

The policy provides, at Clause 7:

- “(1) A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”

...and at Clause 17

(1) All remediation work must, in addition to complying with any requirement under the Act or any other law, be carried out in accordance with:

(a) the contaminated land planning guidelines, and

(b) the guidelines (if any) in force under the Contaminated Land Management Act 1997, and

(c) in the case of a category 1 remediation work—a plan of remediation, as approved by the consent authority, prepared in accordance with the contaminated land planning guidelines.

(2) A notice of completion of a category 1 remediation work on any land must be given to the council for the local government area in which the land is situated.”

Contamination at Barangaroo

Barangaroo has been used for port and industrial purposes over the years. A number of these uses have involved contaminating activities, including the use of part of the site as a gasworks.

As a former wharf, parts of the site has been excavated and filled on a number of occasions, which, given past practices, creates an alert about potential contaminants in the fill. Both the gasworks site and the filled land require careful remediation because of the sensitive uses proposed for the future of the site, and because the proximity to the Harbour means that special attention needs to be paid to managing the remediation process.

Environmental site assessments of Barangaroo have identified high levels of soil and groundwater contamination in the area associated with the former gasworks and its immediate vicinity. Although the old gasworks site is the most severely contaminated, and the area of significant groundwater contamination, contamination has also been identified in other areas of the site which requires remediation.

Environmental assessments indicate that the former gasworks site could include total petroleum hydrocarbons, benzene and some related compounds, polycyclic aromatic hydrocarbons phenols, sulphate, cyanide, ammonia and metals. There is also potential for Acid Sulphate Soils and hazardous building materials such as lead, polychlorinated biphenyls and asbestos to be present.

The gasworks site was declared as a Significantly Contaminated Site under the Contaminated Land Management Act 1997 in 2009 and its remediation is now regulated under that Act.

The preferred remediation strategy for the rest of the site where contamination issues have been addressed to date is to remediate the contaminated soil which is either a source of groundwater contamination and/or a risk to human health. Therefore the remedial process is focused on soil remediation technologies. Active groundwater remediation is not currently proposed as the groundwater contamination will be addressed by removing the contaminated soil.

The treatment of contaminated material is proposed to be through the ex-situ solidification or stabilisation of materials. Chemical additives will be blended into the contaminated soil to reduce its toxicity and limit solubility and mobility. This is a proven method of treating a broad range of contaminants.

Suitably treated and excavated material will be re-used across the broad Barangaroo site to minimise the need to import fill for public domain works, and the creation of the Headland Park. The treated material will be validated to ensure suitability for use at the Headland Park, or any other parts of the Barangaroo site as appropriate (subject to further necessary approvals). Material unsuitable for re-use on-site will be disposed offsite at a suitable waste management facility.

Remediation Approval Processes

Remediation of the contaminated land at Barangaroo has been the focus of very significant attention over the whole period of planning for the site by the former Maritime Services' Board, the Sydney Ports Corporation, Sydney City Council, the Sydney Harbour Foreshore Authority, the Barangaroo Delivery Authority and Lend Lease as well as by the Office of Environment and Heritage (and its predecessors) and the Department of Planning. This has involved extensive investigation and literally hundreds of thousands of dollars of expert advice.

This Review has been clearly advised, and has been presented with significant evidence that those responsible for the development of the site intend to remediate the site safely and in accordance with best practice. The Review has also been presented with evidence of the robust approach of the Office of Environment and Heritage in assessing the remediation approach.

It is therefore inexplicable to this Review that the Department of Planning and the former Minister for Planning should have approved work on the site without the completion of processes required by SEPP No 55- Remediation of Land. Even in the context of a genuine belief that the provisions did not apply, the failure to carry out the full spirit of the processes required by the SEPP demonstrates a hubris which is a concern in an issue of such public sensitivity.

In the event, the Land and Environment Court was convinced that the SEPP provisions did apply to the site at the time the approvals were granted. The Minister for Planning responded to this by pre-emptively exempting the two Works Applications in question from the SEPP by Executive Order. This action had the effect of further enraging the almost successful applicants, agitating those who care deeply about judicial process, undermining already fragile community confidence in the handling of the remediation of contaminated land and leaving many people with the view that the proponents had something to hide.

Community confidence in the remediation of Barangaroo now needs to be restored. This will be helped by the repeal of Part 3A of the *Environmental Planning and Assessment Act 1979* and the fact that in future Barangaroo development and works application will be determined by the Planning Assessment Commission (or Sydney City Council if valued at less than \$5million). It will also be helped by the requirement now in place that the exempted Works approvals should proceed as if SEPP 55 applied to them.

However, neither of these remedies will provide enough detail to those who have been most affected by this saga. This Review therefore recommends that the Barangaroo Delivery Authority be required to fund a peer review of the site remediation plans by another independent accredited Contaminated Sites Auditor selected by and reporting to a Panel chaired by the Office of Environment and Heritage and including a nominee of the City of Sydney, a nominee of the Australians for Sustainable Development and the Authority and Lend Lease. This Review does not believe that it is necessary to defer the works for the Basement Car Park or the Headland Park until the peer review is completed, but the urgency of these works will mean that the peer review should be conducted as a matter of priority.

This Review is confident that, given the commitment of Lend Lease and the Barangaroo Delivery Authority to best practice in remediation, both organisations will welcome any suggested improvements which arise from the peer review.

9.2 Heritage and Archaeology

Barangaroo is located in a central location very close to the heart of Sydney's early European occupation. It is immediately adjacent to the precincts of Millers Point and Walsh Bay, both of which are listed on the NSW State Heritage Register. There are other places that are of state or local heritage significance near the site, including the former AGL gasworks building.

There are no elements of State cultural heritage significance on the Barangaroo site itself, nor are there any elements of national cultural heritage significance. This doesn't mean the place is not meaningful for people, nor that its history is not relevant or important. Barangaroo has a rich maritime history, and its use as a wharf has continued into present times. The decision to permanently remove the cruise passenger terminal, discussed at Section 8.0 of this report, has removed one of living links to that maritime heritage, however this will not wipe out continued use of the site for maritime purposes. The proposed ferry hub will reinstate that 'living link' and the retention of deep wharfage at Barangaroo Central with an interface which allows large craft to dock, will allow for on-going future maritime uses to be considered. In addition, the coves will allow access for smaller craft consistent with harbour recreation, and the outlook to harbour activity will be a core aspect of its identity.

The assessment of cultural heritage significance is a way of identifying, protecting and guiding conservation of cultural heritage places and objects. The original landform and its various treatments over the last two hundred years were effectively obliterated in the 1960s and 70s when the extant concrete tarmac was constructed to suit container handling. If anything remains of indigenous occupation, and of early European settlement on the site, it will be below the ground. There is certainly archaeological potential and it is hoped that any excavation works will unearth revealing artefacts.

Above the ground, there are several elements of local heritage significance. These include the Sewage Pumping Station; the 1913 sea wall; and the Sydney Harbour Control Tower, amongst others. It is understood that the first two of these are proposed to be relocated and adaptively reused on site, with interpretative material and information to communicate their historical significance; and that the Tower is to remain in place at this stage. Any proposal to alter the Tower will be subject to a further project Application. The treatment of these items has been considered as part of the Concept Plan Approvals (Modification 3) and (Modification 4), which includes conditions and requirements of the *Statement of Commitments* for work such as Heritage Impact Statements to guide the work. The relocation of the Pumping Station formed part of the Approval of 'Early Works for Barangaroo Headland Park and Northern Cove', after consideration by the Director General.

Archaeological potential is also recognized under the Approved Concept Plan (Modification 4), and both indigenous and non-indigenous archaeology have been specifically addressed in the two Project Applications which involve excavation to date, being the 'Early Works for Barangaroo Headland Park and Northern Cove', and 'Bulk Excavation and Basement Car park, Barangaroo Stage 1'.

This Review is satisfied that the consideration and assessment required by the above approvals relating to heritage and archaeology appears to have been competent and appropriate.

9.3 Public Domain

There is some legitimate concern that the vision for the whole of the site requires further development. Accepting there are three clear precincts, it is important to ensure the precincts work together as a whole, with effective physical and conceptual connections which help make the place legible and engaging, as well as ensuring clear linkages to adjacent areas and the Sydney CBD.

One of the major items of debate is the quantum of public space, and whether it accords with the then Premier Carr's 2005 announcement that half the site would be dedicated to public open space. The amount of public open space to be provided under the Approved Concept Plan (Modification 4) is 51%, *excluding* the coves, streets and lanes. Refer Appendix 1.

As discussed under Section 5.0 of this report, the need to ensure clarity of roles and to facilitate and coordinate collaboration and integration for the various design teams is essential. The mix of uses across the whole of the site, and the public domain must allow Barangaroo to function as a self contained community in terms of services and infrastructure, while also inspiring and providing a destination for visitors. We believe the proposed mix can support this.

A Public Domain Plan is in place, and detailed Public Domain Guidelines are now being drafted. These are:

- intended to guide and inform the strategic direction of the public domain Barangaroo in some detail;
- being prepared by Peter Walker Partners and Johnson Pilton Walker along with other highly regarded design consultants, with Lend Lease with their design team, and with the Barangaroo Delivery Authority;
- currently at 'Working Draft' stage and are under review in preparation for external consultation with key stakeholders.

The new Design Excellence Review Panel should contribute to review and guidance of the guidelines. As soon as possible, following consultation and finalisation, these should be made publicly available and adapted to form a coherent, accurate and legible vision for the whole of the site that can be understood by the general public.

9.4 Barangaroo Central

Barangaroo Central has had less design attention than Barangaroo South and the Headland Park and is not part of the commercial contract with Lend Lease. Although some are concerned that it is underdeveloped, this could prove to be a blessing in disguise. The area has mixed use zoning for about 60,000sqm gross floor area with a height limit of 35m, but it is mostly zoned for public recreation. The entire area is approximately 5 hectares of CBD land.

The planning for Barangaroo Central provides the opportunity for the O'Farrell Government to engage with the community in the planning of this area, knowing the land use mix across the rest of Barangaroo has been developed to respond to the most obvious needs for the Sydney CBD. The potential is for a stunning public park with great architecture, exceptional public art and cultural or performance spaces. There is scope for a visionary approach to curating grand scale public art in Barangaroo Central, which could distinguish this site and signify the cultural credentials of Sydney and Barangaroo. This could be considered in conjunction with the Public Domain Guidelines.

Funding could be provided through a mixture of BDA, government and philanthropic support.

10. Communication, Transparency and Governance

When things go wrong in a company or a project, it is always salutary to look at governance. This Review has not found major breaches of process in relation to the planning and implementation of the Barangaroo development, other than those which are already in the public arena (like the application of SEPP No 55).

The Review has found, however, a raft of small and large mistakes and mishandlings, which taken together, have created an air of crisis around the development. These issues have been documented throughout this Report, as have suggestions as to how they can now be addressed. From a governance point of view, the responsibility for many of the mistakes and mishandlings can be laid at the door of the previous Government. While hindsight makes most things look easy, there can be little doubt that the handling of Part 3A approvals around Barangaroo caused community concern, that the commercial process leading to the selection of Lend Lease's non conforming bid was not well understood, that the episodic planning for additional rail capacity in the CBD caused concern about the potential for gridlock in the area, and that the decision to move the Cruise Terminal to White Bay was a complete mystery to many people.

But there are other issues which are not addressed by a change of Government.

Firstly, this Review has been consistently advised that consultation about the project has been more a selling of a decision than a genuine effort at community engagement to improve the outcome, and that there is a lack of transparency in relation to the project. Perceptions about the adequacy of consultation and transparency are often influenced by the extent to which the commentator likes the outcome, but these comments have been made widely enough for this Review to conclude that the Barangaroo Delivery Authority and Lend Lease need to upgrade their approach to consultation, communication and transparency. These are a core skills and perspectives for the 21st century - as important to governance as financial management.

Secondly, and in a related matter, it is simply not possible to deliver a large, complex and precinct wide project in the CBD of Sydney without an effective, respectful relationship with the City of Sydney. The City has a strong and legitimate point of view, and just as importantly has expertise and access to advice, which are essential to the best outcome for Barangaroo. The City has been involved in the planning for the site since the inception of the project, but trust has broken down and efforts need to be redoubled to restore this trust. A joint planning committee between the Barangaroo Delivery Authority and the City of Sydney to advise the Board and the Council on the future planning for the site is one option.

Thirdly, the project has been bedevilled by perceived conflicts of interest. It has been put to us that Government itself has a conflict of interest in approving a development while financially benefiting from it. While this is technically true, it is a conflict embedded in the nature of executive government and is monitored at the ballot box. The Westminster concept is that these conflicts are managed by a robust Cabinet process where different interests are championed by different Ministers. Given this, the Government may wish to consider a separation of the role of Minister for Planning and Minister responsible for Barangaroo.

It has also been put to us that there are intertwined interests between a number of the players and Lend Lease. We have been advised by the probity advisers and auditors in relation to the selection of Lend Lease as the preferred developer that the process was well handled, that there was no evidence of improper influence, and that the under bidder was satisfied with the process. We have advised those who have indicated concern about this issue that if anyone has any evidence of improper conduct in relation to the selection of the preferred developer for Barangaroo, they should refer that evidence to ICAC.

The Review has further been advised that two members of the Design Excellence Review Panel were contracted or employed by bodies with an interest in the outcome of the deliberations of the Panel. This is unsatisfactory, but not fatal to the process given that the potential conflicts were conflicts of duty, and given the size of the Panel, and its role as an adviser not a decision maker. Nevertheless, the issue should be resolved in the restructuring of this Panel recommended by this Review.

Barangaroo Delivery Authority Board

The Barangaroo Delivery Authority was established by Act of Parliament in 2009 with the following functions:

- (a) to promote, procure, facilitate and manage the orderly and economic development and use of Barangaroo, including the provision and management of infrastructure,*
- (b) to promote, procure, organise, manage, undertake, secure, provide and conduct cultural, educational, residential, commercial, transport, tourist and recreational activities and facilities at Barangaroo,*
- (c) to develop and manage the Barangaroo Headland Park and public domain so as to encourage its use by the public and to regulate the use of those areas,*
- (d) to facilitate and provide for appropriate commercial activities within the Barangaroo Headland Park and public domain that are consistent with their use for cultural, educational and recreational activities and the use and enjoyment of those areas by the public,*
- (e) to promote development within Barangaroo that accords with best practice environmental and town planning standards, is environmentally sustainable and applies innovative environmental building and public domain design,*
- (f) to liaise with Government agencies with respect to the co-ordination and provision of infrastructure associated with Barangaroo,*
- (g) to undertake the delivery of infrastructure associated with Barangaroo or that relates to the principal functions of the Authority.*

The Board consists of seven members – the Chief Executive Officer, the Secretary of the Treasury, a nominee of the City of Sydney Council and no more than 4 other people appointed by the Minister.

The indications are that the Board has managed its financial and commercial responsibilities well to date. This view has been generally affirmed by the recent Auditor General's Report. As noted above, however, the Board has been less effective in managing the critical community relations issues associated with the project, to the extent that aspects of the project have been called into question. While it is not fair to hold the Board entirely responsible for the concerns about the planning for Barangaroo, the interests of the project suggest a rethink about the balance of membership of the Board and its public face.

11. Appendices

11.1 Appendix 1: Site Areas



11.2 Appendix 2: Implementation Plans and Technical Working Groups

Table 1 - Technical Working Group Memberships for Implementation Plans/Strategies (items marked with an asterisk are those of particular relevance to this review)

Implementation Plan/Strategy Required by Concept Plan	Technical Working Group Name	Membership
Geotechnical and Environmental Site Remediation and Remedial Action Plan	Remediation	<ul style="list-style-type: none"> ▪ Barangaroo Delivery Authority (Chair) ▪ Lend Lease ▪ DECCW
* Transport Management and Access Plan	Transport and Access	<ul style="list-style-type: none"> ▪ Barangaroo Delivery Authority (Chair) ▪ Lend Lease ▪ NSW Transport and Infrastructure ▪ City of Sydney Council
* Utility Services Infrastructure Plan	Physical Infrastructure	<ul style="list-style-type: none"> ▪ Barangaroo Delivery Authority (Chair) ▪ Lend Lease ▪ Sydney Water ▪ City of Sydney Council ▪ DECCW
Design Excellence Strategy	Built Form	<ul style="list-style-type: none"> ▪ Barangaroo Delivery Authority (Chair) ▪ Lend Lease ▪ City of Sydney Council
* Public Domain Plan	Public Domain	<ul style="list-style-type: none"> ▪ Barangaroo Delivery Authority (Chair) ▪ Lend Lease ▪ Sydney Harbour Foreshore Authority ▪ NSW Maritime ▪ City of Sydney Council
* Community and Social Plan	Community Development	<ul style="list-style-type: none"> ▪ Barangaroo Delivery Authority (Chair) ▪ Lend Lease ▪ Department of Housing ▪ City of Sydney
Marketing and Promotion Strategy	Investment	<ul style="list-style-type: none"> ▪ Barangaroo Delivery Authority (Chair) ▪ Lend Lease ▪ Department of Industry and Investment
Retail Management Plan	Investment	<ul style="list-style-type: none"> ▪ Barangaroo Delivery Authority (Chair) ▪ Lend Lease ▪ Department of Industry and Investment
Housing Strategy	Community Development	<ul style="list-style-type: none"> ▪ Barangaroo Delivery Authority (Chair) ▪ Lend Lease ▪ Department of Housing ▪ City of Sydney

Table provided by Lend Lease

11.3 Appendix 3: About the Review

In late May 2011, the reviewers were asked by the Hon Brad Hazzard, Minister for Planning and Infrastructure, to undertake an independent, short, sharp review of planning processes and decision-making relating to Barangaroo. They were appointed as co-chairs on 2 June 2011 and it was agreed the report would be completed by 1 August 2011.

With the agreement of Government, the Review took a broad view of the Terms of Reference, which was necessary to understand the background and issues that informed and influenced the relevant decision-making and planning processes.

Review methodology

On accepting the task, the reviewers immediately arranged for a public submissions process. Advertising commenced on 31 May, and closed 21 days later on 20 June 2011. Several further submissions were made after the stipulated date, and all were accepted.

A total of 230 submissions were received and read by the reviewers.

At the same time, the Reviewers began scheduling meetings with organizations and individuals who were involved with, or had made formal public statements about their views on Barangaroo. The meeting schedule continued from 10 June until 22 July.

There were 51 meetings held, with more than 100 individuals.

The Review examined material provided by the NSW Department of Planning, the Barangaroo Development Authority, Lend Lease, the City of Sydney Council and Australians for Sustainable Development, along with all of the submissions received.

The Review was not an audit, and did not 'discover' material.

Review team

The Review was conducted, and this report written, solely by the co-chairs Ms Meredith Sussex AM and Ms Shelley Penn. The views expressed herein belong to the authors.

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of NSW, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance or upon the whole or any part of this document.

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