

21 June 2016

Minister for Planning

Supplement to the Commission's Advice dated 1 June 2016 on the proposed State Environmental Planning Policy Amendment (Barangaroo) 2016 (SEPP)

Background to this supplement

The Commission provided you with advice on the proposed State Environmental Planning Policy Amendment (Barangaroo) 2016 on 1 June 2016. Following receipt of that advice, on 9 June 2016 you invited the Barangaroo Delivery Authority, in its capacity as owner of the site, to comment on those elements of the Commission's advice and recommendations which may have an impact on Block 5 at Barangaroo Central. The Authority did so on 14 June 2016 in a letter to the Commission.

The Commission has engaged extensively with the Authority (and its experts) throughout this process, including two private meetings prior to providing our original advice to you. The Authority's response to the Commission's advice is consistent with the views it expressed during those meetings and does not raise any significant new information or issues. Consequently, while the Commission has carefully considered the Authority's most recent submission, it has not changed the Commission's view or the basis of our advice to you.

For completeness, however, the Commission has taken this opportunity to provide some supplementary commentary to you on specific matters outlined in the Authority's response. This supplement should be read in conjunction with the Commission's original advice and the Authority's response to it, both of which are attached to this minute.

Barangaroo Delivery Authority's Response

The Authority's response raises concerns with the Commission's recommended amendments to the SEPP. In particular it suggests:

- the Commission's recommended changes are pre-emptive of potential future modifications to the approved Concept Plan for Barangaroo Central and are inconsistent with the broader considerations of the Government's policy in relation to Barangaroo and the 'decision to add a Metro station to the precinct';
- the Commission's recommended changes may have a material prejudicial impact on a tender process commenced for Barangaroo Central;
- the gross floor area for Barangaroo Central is intended to increase beyond the currently approved levels and the Commission's recommendations are inconsistent with this and would have potential impacts on government revenue associated with the loss of some of this speculative development uplift;
- the Commission's proposal unnecessarily favours the commercial interests of the developers of Barangaroo South (Lend Lease and Crown); and
- the Authority does not agree that the Commission's proposed setback will support the creation of a better park at Hickson Park.

Commission's Position

Hickson Park and Open Space

It is important to understand that the Commission's advice to you is motivated by a clear desire to protect the public interest, recognising that the community will lose a large area of prime foreshore park as a consequence of legislation regarding the location of the restricted gaming facility on Block Y, while the developers of Barangaroo South will receive significantly increased gross floor area as a result of this SEPP. We have recommended a number of changes to mitigate these concerns which seek to protect the quality and use of the public open space, including the promenade and Hickson Park and its connectivity to the foreshore, while also acknowledging the potential to provide an urban park linking the foreshore to the CBD.

The Authority understands that the Commission's concerns with Hickson Park relate to the quality of the park. However, the Authority's response has sought only to address the size and overshadowing elements of the Commission's concerns, and not the quality of the park. Its response and suggested solution ignores the Commission's concerns about view and pedestrian connectivity and legibility through to the foreshore, overlooking from the adjoining developments and pedestrian and vehicle conflicts. Our views are not inconsistent with those of the Barangaroo Design Advisory Panel and reflect concerns expressed by many members of the community including design and planning professionals.

The Authority was concerned that the Commission's advice regarding changes to Block 5 were as a result of the need to achieve 50% or more public open space within Barangaroo. The Commission is, in fact, satisfied with the calculations provided by the Department and the Authority that 50% public open space will be achieved regardless of whether the Block 5 recommendations are supported by you. Our recommendations were not aimed at merely achieving some numerical gain or advantage. However we do note that the significant increases in gross floor area across Barangaroo do not appear to have been reappraised against the original 50% public space agenda.

As outlined within the original advice, the Commission's recommended changes to Block 5 achieve a better quality, higher functioning, and connected Hickson Park with clear views to the harbour that will provide greater use and public benefit to the community. The Commission believes strongly that the provision of a better open space in Hickson Park will especially benefit the whole community, providing a new urban park of continuing value to the city – a fairer compensation for the loss of the original foreshore park.

It is also reasonable to expect that there will be some benefit to the future developers of Block 5, given the level of additional public amenity provided. Any benefit to the developers in Barangaroo South (Lend Lease and Crown) is a consequence of the staged modification process, where subsequent development must adapt and appropriately respond to those components that are further advanced. The Commission notes that a number of the concerns regarding the proposed Crown Sydney including podium mass and scale, public realm privatisation and pedestrian conflicts, may also be mitigated by our open space recommendations.

The Commission has considered carefully the Authority's position and appreciates its interest in maximising the development return for the Government. The Commission has always acknowledged that to reduce the size of Block 5 would have implications at the margin for the potential development revenue returned to Government. The Commission does not demure from this.

The Authority has noted the recommended changes to Hickson Park represent an additional 0.8% of non-developable area (above its proposed setback and chamfer) which may become open space. Comparatively, the Commission notes the SEPP amendment represents a 56% increase to the original developable gross floor area on the overall site. The Commission continues to advise that what it has proposed is a small and necessary addition to the public domain and is consistent with Government policy regarding public benefit.

Ultimately, however, the Commission must be guided by the *Environmental Planning and Assessment Act 1979* and relevant State Environmental Planning Policies. In our view, the financial return to the Government is only one component of the public benefit, and public interest considerations that must be weighed when planning for the development of the site. In this regard, the principles espoused by the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*, particularly Principle 2(b), specify that *'...the public good has precedence over the private good whenever and whatever change is proposed for Sydney Harbour or its foreshores...'*

None of the Authority's points in its letter mitigate the Commission's advice that the replacement of foreshore parkland, with a very large building and a small enclosed handkerchief park are a poor trade. As we said in our earlier advice:

This lost foreshore parkland is exchanged for a similar sized but inferior space—an enclosed, overshadowed and overlooked city park with limited glimpses to the harbour, poor pedestrian connectivity and legibility to the foreshore, further conflicted by Crown Sydney's proposed porte-cochere.

That the Authority has recently acknowledged the need for some changes to Block 5, demonstrates that the amenity of Hickson Park is compromised. Unfortunately those proposed changes are very minor and do not adequately address the significant loss of public benefit. The Commission strongly believes the changes to Block 5 and Hickson Park as recommended in its advice to you (and copied at the end of this supplement) will add to the quality of the public domain and the legacy of the Barangaroo project for the people of Sydney in years to come.

Design advice

The merit of the SEPP proposal and associated Modification 8, including the adequacy of Hickson Park, has been considered by a wide range of eminent individuals and organisations, including:

- Skidmore, Owings & Merrill (on behalf of the Barangaroo Delivery Authority);
- the Barangaroo Design Advisory Panel (at the request of the Department of Planning and Environment); and
- a range of professional planners and architects and many members of the community who presented their views to the Commission at its public meeting and through submissions.

The Commission has considered all of these views, including those of the Authority's urban planning and design advisers, and is satisfied that our recommendations will produce a better design and a much better public outcome.

The Authority's reliance on its Master Plan process, which sits outside the purview of the State's planning legislation, provides little comfort to the Commission. Any comprehensive planning and consultation process would have identified and sought to resolve the issues posed by the proposed built form on Blocks Y, 4A and 4B. These issues of concern are not uniquely the Commission's, having also been identified by the Department of Planning and Environment, the NSW Government

Architect and associated Barangaroo Design Advisory Panel, the City of Sydney Council and various public submissions.

The Commission has been concerned throughout this process that there is a development application and planning staging issue. We agree with the suggestion of the Authority and Skidmore, Owings & Merrill that the currently proposed Crown Sydney, Block 4 and Block 5 would ideally “*all be considered together to create a well-defined place of appropriate character*”. It seems the evolution of the plans and process for both precincts has precluded this, to date. Indeed, the provisions of the former Part 3A, and Section 75W in particular, have to some extent facilitated this piecemeal approach.

The tender process

The Commission is aware of the public tender process underway for development of up to 150,000m² of gross floor area on Barangaroo Central and that this process may be close to being finalised. The Authority has suggested that, whilst the gross floor area figures have been publically disclosed, they are not a requirement or even a target of the tender. It is important to recognise that under the approved Concept Plan for Barangaroo Central the gross floor area allowance is just 59,225m². Paradoxically, the Authority suggests its Master Plan process resulted in a recommendation that the gross floor area for Central Barangaroo should be increased to a maximum of 120,000m² (ie be doubled), yet it goes on to confirm tenders have been invited to explore up to a maximum of 150,000m² (i.e. 2½ times the original area proposed for development).

The Commission is aware that certain of the elements used by the Authority to justify the gross floor area increase, such as the proposed Metro station, have actually been foreshadowed for the wider Barangaroo precinct since as early as 2009.

Ideally a public tender process for Barangaroo Central would not have been commenced while the development outcomes on the immediately adjoining sites remained uncertain and unapproved. Calling for tenders on Barangaroo Central, while the development proposed on adjoining sites was being assessed, is a risk the Authority presumably weighed when it decided to proceed.

Commencing a tender process without Concept Plan approval for the various modifications sought was the Authority’s decision. Such a decision itself came with significant planning risk which is, in effect, acknowledged by the Authority’s response. There is no more or less possible risk now (both in planning terms or economically), compared to when the latest tender process was opened in late 2015.

To suggest the Commission’s recommended changes now create a potential material risk or impact is improper. Those potential risks of impacts have existed since the tender process commenced and perhaps even from the time that deviations from the approved Concept Plan were initially contemplated. Furthermore, the Commission is of the view these possible impacts on potential gross floor area (impacts yet to be publically disclosed) are not currently a relevant consideration to the subject of this advice.

Pre-empting Block 5

The Commission has no precise advice on the form of development to be pursued on Barangaroo Central. The Commission’s deliberations and recommendations were based on the currently approved heights and envelopes for Barangaroo Central, whilst accepting at some point additional development may be pursued through a separate process.

Nothing in the Authority's latest response gives the Commission any comfort that Block 5 would not be developed beyond its approved extent, including the areas above the approved height of any ground level chamfer. In fact, the Authority confirms that *"if development were to be proposed in excess of the current approved envelopes, any significant additional height consistent with the Master Plan principles would be located towards the southern end of Barangaroo Central in Block 5"*. This reinforces the Commission's concerns about the potential for success of Hickson Park:

Key risks to the success of Hickson Park derive from its land-locked location; lack of legible connections to the foreshore; relationship to the proposed buildings on Block 4 and Block Y; and uncertainty around the future scale of the adjoining blocks within Barangaroo Central (in particular Block 5).

The alternative approach

Should you not agree with the Commission's advice, a compromise may exist, albeit one with its own limitations. Without the Commission's recommendations being accepted it would seem appropriate to put the Concept Plan Modification 8 and the Crown Sydney applications on hold to allow the built form adjoining Hickson Park to be considered holistically. Doing so would acknowledge the concerns raised by the Authority in its submissions in relation to the public tender, allowing this process to be completed, and any conflicts to be addressed in a proper manner. With the appointment of a successful tenderer, the context of future development options for Barangaroo Central (and its congruence with adjoining parts of Barangaroo South) could be properly understood and scrutinised by the Government and the public.

However, this would have obvious implications for the standing of the NSW planning system, given the time spent to date on Modification 8 and associated applications, even if it is ultimately a result of the Authority's reliance on its master planning, ahead of the more rigorous and consultative planning processes prescribed by the NSW legislation.

It is not the Commission's preferred approach. The Commission is satisfied that, with the amendments and controls it has recommended within our original advice to you, the amenity and character of Hickson Park and public access rights and use of the foreshore promenade can be assured. In addition, congruence between the various precincts would be able to be developed through the detailed design of development consistent with the recommended controls.

Any residual doubts that you may have about development opportunity in Barangaroo Central should be taken into account when the true impact of the Barangaroo Central tender process will be publically known. In the meantime, the development of Barangaroo South could be advanced with your approval of all of our recommendations.

Conclusion

The improvements outlined in the Commission's original advice are necessary. They represent a minor gesture to create a better park and acknowledge the value of the approved public open space outcomes. They will ensure that the public good has more equal weighting with the private good in delivering the proposed changes to the Sydney Harbour foreshore. The improvements would allow the proposed Modification 8 and the associated development of Crown Sydney to be supported by the Commission.


The Authority's proposal to simply defer the consideration of the amenity of Hickson Park to some later date does not provide sufficient certainty in our view. Such a proposal cannot in itself commit

to ensuring the replacement of the foreshore park occurs in such a way that would satisfy the public good imperatives for the site. Indeed, those with a less balanced outlook than the Commission would be minded to conclude that the Authority's suggested approach was at odds with public benefit outside the pursuit of economic returns.

Without certainty that the public good is able to be properly balanced against the private benefits of developing the site, the impacts of the proposals currently before the Commission would not be approvable.

Consistent with its original advice, the Commission recommends that:

1. Hickson Park be extended and the area of extension be zoned RE1 as shown on the relevant maps;
2. The boardwalk along the western perimeter of Block Y be widened and integrated to provide a 30 metre unencumbered promenade area (excluding any licenced areas) to be zoned RE1;
3. An increase in the percentage of key worker housing is to be secured in Barangaroo South through the concept plan modification MOD 8; and
4. Concept approval and/or development consent must not be granted for development within Barangaroo Central resulting in additional overshadowing of Hickson Park between the hours of 12.00 and 14.00 on 22 June in any year.



Lynelle Briggs AO
Commission Chairperson



Annabelle Pegrum AM
Commissioner



John Hann
Commissioner

List of Appendices

1. Correspondence from the Barangaroo Delivery Authority, dated 14 June 2016
2. Commission's original advice to the Minister, dated 1 June 2016