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INDEPENDENT PLANNING COMMISSION

MLC BUILDING, NORTH SYDNEY (FORMER)

REQUEST FOR ADVICE ON PROPOSED LISTING ON STATE HERITAGE REGISTER

No. P-12345-01

IPC PANEL:
ADRIAN PILTON (Chair)
DR PETER WILLIAMS

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ANDREW SNEDDON

BUILDING OWNER:
ED RICHES (Investa)
JONATHAN CALLAGHAN (Investa)
MARK TAIT (Investa)
PHILIP VIVIAN (Bates Smart
MARIUS HATLETVEIT (Bates Smart)
DEBRA TOWNSEND (King & Wood Mallesons)
LEE CIKUTS (Ethos Urban)
MICHAEL ROWE (Ethos Urban)
LUKE FELTIS

SYDNEY

2.34 PM, MONDAY, 12 APRIL 2021

MR A. PILTON: Okay. Well, good afternoon and welcome. Before we begin, I would like to acknowledge the traditional owners of the land from which we virtually meet today and pay my respects to their elders, past, present and emerging. Welcome to the meeting today to discuss the MLC Building, North Sydney, request for advice on the proposed listing on State Heritage Register currently before the Commission. The matter has been referred to the Independent Planning Commission for review under section 34(1)(b) of the Heritage Act 1977. My name is Adrian Pilton, and I am the Chair of this Commission panel. I'm joined by my fellow Commissioner, Dr Peter Williams. We're also joined by Kate Moore, Principal Case Manager from the Office of the Independent Planning Commission, and Andrew Sneddon, heritage advisor assisting the IPC.

In the interests of openness and transparency and to ensure the full capture of information, today's meeting is being recorded and a complete transcript will be produced and made available on the Commission's website. This meeting will form one of several sources of information upon which the Commission will base its advice. It's important for the Commissioners to ask questions of attendees and to clarify issues whenever it is considered appropriate.

If you're asked a question and you're not in a position to answer, please feel free to take the question on notice and provide any additional information in writing, which we will then put up on our website. I request that all members here today please introduce themselves before speaking for the first time, and for all members to ensure that they do not speak over the top of each other to ensure accuracy of the transcript. We will now begin. To start, it might be helpful if you could introduce everyone on your team, and that will also help with the transcript. Perhaps, Ed, we could start with you.

MR E. RICHES: Yes. Ed Riches – I will just raise my hand – the development manager from Investa. I might just go around to my left then.

MR M. HATLETVEIT: Marcus, Associate at Bates Smart.

MR M. TAIT: Mark Tait, Head of Development, Investa.

MR J. CALLAGHAN: Jonathan Callaghan, CEO of Investa.

MR L. CIKTUS: Lee Ciktus, Director of Economics at Ethos Urban.

MR M. ROWE: Michael Rowe, Director of Planning at Ethos Urban.

MR P. VIVIAN: Phillip Vivian, Director at Bates Smart.

MS D. TOWNSEND: And I'm Debra Townsend. I'm a solicitor from King & Wood Mallesons, and I represent Investa.

MR PILTON: Thank you. Is that everybody there?

MS TOWNSEND: Yes.

MR PILTON: Sorry, my picture is a little bit constrained. Okay. Well, Ed, would you like to make any opening statement or start .....

MR RICHES: I think Jonathan is going to make some statements on our behalf.

MR CALLAGHAN: Yes, I just would like to make some brief opening statements about MLC and Investa's experience with MLC. Investa is a deeply experienced office manager. We develop, operate and manage office – commercial office towers for a number of different clients. We're well aware of the amenities that modern office buildings are required to provide in order to meet tenant requirements and the underlying demand that tenants require. MLC no longer meets those requirements, and there is in our view no amount of money that can be spent that will change that. It is a B-grade asset, and it will remain a B-grade asset regardless of how much money you spend on it. And that is fine.

We manage a lot of B-grade assets, and they serve a very useful purpose in the economy. What, though, a B-grade asset needs in order to be successful pursuing a leasing strategy is the ability for it to be subdivided into very small suites, and when I say small suites I mean suites of less than 500 square metres. 500 square metres would be big. So in our successful B-grade assets they are – they have a number of tenants in them, and they are – the floors are all subdivided into small suites ranging from, call it 50 square metres to 400, 500 square metres. Due to the inherent physical restraints of the MLC Building, you cannot do that. So you cannot subdivided those floorplates, and for reasons that we can embellish later on with our, you know, more wise consultants, you cannot subdivide it into these small suites that is what the B-grade tenant market wants.

So you're sort of already starting to battle a little bit with one hand tied behind your back, but when you place that in the context of North Sydney and the changing dynamics of North Sydney, the B-grade office tenants in B-grade, that pool is shrinking. The office market is evolving. There have been a number of really, really high-quality premium A-grade developments that have come onto that asset – come into that area in the last five, six, seven, eight, nine years that have really changed what tenants want in that space. So what I am saying is that the B-grade space that MLC offers in North Sydney is no longer relevant for that market. And I think I will leave it at that point.

MR PILTON: Thank you.

MR RICHES: Okay. Thanks, Jonathan. So next we just wanted Bates Smart to provide an overview of the building in – sorry, Debra. Sorry, got ahead of myself.

MS TOWNSEND: That's okay.

MR RICHES: Debra is going to provide an overview of some of the legal issues, and then we will go to Bates Smart.

MS TOWNSEND: Thank you. So I just wanted to start off talking a little bit about the statutory framework for a state heritage listing. What we're dealing with is a decision ultimately by the Minister under section 32 of the Heritage Act about whether or not the building should be state heritage listed. To do that, the Minister has to first of all form the opinion that the building is of state heritage significance, but that's clearly not the end of the matter. The Minister has to consider what was the Heritage Council recommendation, and in this case also what's the recommendation of the IPC.

But he also has to consider whether long-term conservation of the item is necessary, which is a separate question to whether or not the building is of state significance. Has to consider whether the listing would render the item incapable of either reasonable use or economic use, so that's a two-pronged thing he has to think about. And then lastly, the Minister has to consider whether or not the listing would cause undue financial hardship to the owner of the building. So it's not a simple question of asking whether or not the building is of state heritage significance. The Minister will ultimately make a decision about that, but he makes it together with all of these other decisions that I've just described.

The Heritage Council has already made a recommendation, and as will become apparent when you hear from some of the other speakers today, that recommendation is flawed and was made on the basis of some independent advice which didn't rely upon a full suite of facts and made some incorrect assumptions. If I just move next to the role of the IPC, so the Minister has exercised his power to request the IPC to review the matter. That's not just a question of the IPC asking the first of the questions, is it of state heritage significance, although that's obviously an important one. But the IPC also has to consider each of the other matters so that proper advice can be provided to the Minister ultimately on the listing decision.

The other speakers will take you through the facts about the building. They will also talk about what is reasonable use and what that means in the context of the Heritage Act. And they will also speak to you about the capacity of the building to have an economic use, which is one of the things Jonathan just mentioned, and also look at the question of financial hardship to the owner, remembering, of course, that the owner that we need to consider is the Miller Street Trust. It's an entity which has appointed Investa as the manager, but it's not Investa who is the owner here.

So we don't say to ourselves, "Well, it's Investa. They've got a large property portfolio and they can bring those resources to bear in addressing the heritage significance of this building and its conservation." In fact, the owner is the 105 Miller Street Trust, and we know that it has a single asset, which is this building, and there is some finance that has been provided for that asset in that trust, but it has no other assets. And so it doesn't have a great store of wealth to draw upon in order to address the conservation matters. So I think that's probably all I need to say in opening. I think now we're going to go to Phillip, who is going to talk to you about the building itself.

MR RICHES: Yes. So we will move to Phillip. But just give me one second to share the screen. We've got a presentation that we will throw up.

MS TOWNSEND: All right. So the question is what can you see on your screen up there?

MR RICHES: Yes. Sorry, Adrian. What can you see? Can you see the - - -

MR PILTON: We can see the presentation.

MR RICHES: Okay.

MR PILTON: It has got the full – the full PowerPoint screen.

MR VIVIAN: Does it say Heritage Significance, Adrian?

MR PILTON: Yes.

MR RICHES: Great.

MR PILTON: There's a picture behind it of the building.

MR RICHES: Great. Phillip.

MR VIVIAN: Okay. Thanks, Ed. So I'm going to talk about six things today. We will start with just looking at its heritage significance. I will then talk about some of the issues with the existing building fabric. I will go on to then leasing issues with MLC. I will also talk then about the public domain challenges for the current building before we look at the redevelopment challenges and what we've looked at along the way. And I will finish with New South Wales – a review of the New South Wales heritage review.

So next slide, please, Ed. So in terms of heritage significance, the MLC Building is part of the development of the post-World War II high-rise buildings in Australia. Now, these are some examples globally of very significant post-World War II high-rise, most of them from SOM. Inland Steel in Chicago from 1957, the same year MLC was finished. Crown Zellerbach, 1959, by SOM in San Francisco. Lever House, 1951, by SOM. And probably the most significant in Australia, ICI House by Bates Smart McCutcheon in Melbourne. If you can just move it, I'm pretty sure it's going to say 1956. I certainly hope it will, because – it says 1958, but I think it was finished in 1956.

MR A. SNEDDON: Sorry to interrupt. The slides don't seem to be progressing for me. I'm just seeing the front slide.

MR PILTON: Me too. Sorry, I should have said that.

MR RICHES: Sorry, give me a second.

MR PILTON: No, there we go. There we go.

MR RICHES: Is that – can you see a new slide?

MR PILTON: That's – okay, we see the pictures of the Inland Steel and so on.

MR VIVIAN: Yes, all right. Okay. So you're looking at really a suite of post-World War II high-rise, and these are all very significant buildings that are taught in schools of architecture as the development of the international style of modernism. If we can go to the next slide, please, Ed. So the MLC Building – well, perhaps I will talk about Bates Smart first, which is acknowledged by Jennifer Taylor in her book Tall Buildings: Australian Business Going Up, she says that the innovative development and refinement of historic office buildings in Australia came primarily through exploratory designs such as those from the Melbourne firm Bates Smart McCutcheon, which we acknowledge. But when we look at the MLC Building as part of that suite of the development of the post-World War II high-rise in Australia, we think it does not sit in the suite of buildings that you've seen previously as highly significant buildings.

Next, please. And I will explain that as we go through. We do acknowledge, however, that it is listed. It's listed as a local heritage item under the North Sydney LEP, and I think it's worth quickly unpacking the reasons for its listing. So it's listed as Australia's first post-World War II office building in terms of design materials and mode of construction. Completed in '57, it was considered the first high-rise office building – well, it was the first office building in North Sydney and the largest in New South Wales. One of two of the earliest surviving curtain wall buildings in Australia. It's acknowledged as having significant landmark qualities in North Sydney, and an exemplar in New South Wales of international modern style. So you can see those – the reasons for listing really refer mostly and very specifically to its local significance in North Sydney.

Next slide, please, Ed. Let's understand, then, what are the issues for the existing building. You would recognise that it's over 60 years old, so some of these would come as no surprise. So the first one is the curtain wall. So the curtain wall is significantly disintegrated. The gaskets in the curtain wall have completely disintegrated. The façades are currently leaking. But not only that, but the aluminium is significantly corroded, and you can see images there of that. And in effect, the curtain wall is at the end of its life at 60 years.

Even curtain walls built today as unitised systems typically have a 50-year life frame. This is a curtain wall built in the early 1950s and it's 60 years old, and it needs to be completely replaced. And we can discuss, perhaps, later, if you're interested, some of the options for replacement. But the existing fabric would no longer be there.

Next, please, Ed. The other thing that's interesting is that it was acknowledged by Sir Osborn McCutcheon as a building that he made a fundamental error in, and this is a quote from – again, from Jennifer Taylor's book, which is the authoritative book on the post-World War II high-rise. And she says:

> *It was during the design of MLC North Sydney that it became abundantly clear that a fundamental error had been made in the orientation of the building.*

And I will just tell you what that is. If you look at the image on the right, you will see that there are two layers of glass, an inner and an outer, with blinds in between. And the inner layer was added during construction when it was realised that the building faced west and had no sunshades, and that the glass curtain wall would not cope with the heat load, and so it was too late to upgrade the air-conditioning system, and so an inner layer of glass was added to the system. And so, back to the quote:

> *Chastened by this experience, McCutcheon issued an edict within the practice that no building designed by BSM was to be oriented in the east-west direction.*

And just anecdotally, all other MLC buildings – and Bates Smart McCutcheon was responsible for almost all MLC buildings around Australia – all of them have significant brise soleil, and so they're fully sun-shaded, and this first and early example was an unshaded example and acknowledged as an error by the design architect. Next slide, please, Ed. We then get to the terracotta tiles. And just so you're aware, the top right-hand side is showing the areas that might need replacing. But the terracotta tiles have been delaminating. They're coming – they're peeling off their substrate. There was a – this happened in the late 90s.

There's a 2002 façade report. And the building at that time was scaffolded to protect pedestrians in the event that tiles came off. The building was – every single tile was tapped and tested, and many of them have been mechanically fixed. And if you look at the circles in the image on the left, they are all the mechanical fixings. And if you look at the images on the right, you can see the tiles degrading. And if you look at the top-right image, you will see degraded tiles, and then on the left of that image are the replacement tiles where tiles have actually peeled off the building. So the darker blue ones are the replacements. And the bottom right-hand image is how they're starting to settle on their shelf angles, and many of those have been replaced. And I will be showing you that tomorrow.

So really all of the tiles need to be replaced for safety as well as aesthetic reasons. You can see it's not looking very attractive at the moment. You will see that tomorrow. They currently are tested biannually, with every single tile tested, and any that have come loose have to be fixed. Next slide, please, Ed. The building services need to be fully replaced. I think there's no surprise that a building that is 60 years old needs its services replaced. Next slide, please. However, one of the great challenges in doing that is that the building – if you're not aware, it is a steel frame building, and it does have a lightweight concrete slab supported on steel purlins. And to fire rate that, the fire rating sits – and we've highlighted it there in red – it sits underneath the steel.

And the services are above the steel, and they penetrate the beams. So you can see the duct there penetrating the beam. So there is – there is no flexibility in the services, which gives – makes this building very difficult for future leasing flexibility. It has used for a single tenant in single occupation for 60 years, but it has a huge issue in terms of replacing the fire rating. We have done a lot of investigation – I perhaps won't unpack that now – in terms of what other options there are, but essentially you end up having to – I won't go into that in detail. Is that right?

MR RICHES: Maybe just touch on what we will need to do with the slabs and the - - -

MR VIVIAN: Okay.

MR RICHES: - - - impacts on the load, because that goes to the cost.

MR VIVIAN: So the way a fire rating gives service flexibility is to put intumescent paint on all the steel and give that two-hour fire rating. The slab then is so thin that it doesn't meet fire rating, so we need a 140 mil topping slab on top of that. The weight of that topping slab then requires that all the foundations – so that is 13 floors of 140 mil slabs – the foundations need to be reinforced. So that is effectively reinforcing all the existing structure due to the weight of the new slab. That's to provide floor-to-floor fire protection. Okay. And the other challenge is that that 140 mil slab reduces an already substandard floor-to-floor of 3.57 metres, which I will show you in a minute.

Next slide, please, Ed. On of the other things happening is the building floods every time there is an extreme weather event. Directly opposite the building we are at the low point in Miller Street where water ponds before it can actually move around the corner into the Pacific Highway, which has a slight raise. And so what happens when it ponds is it pours down the steps, and you're seeing a flooding event. Do you want to show the video now, Ed?

MR RICHES: Yes. Let me just make sure we can get it. Sorry. How do I – sorry, give me one second. I just need to - - -

MR VIVIAN: I'm going to take the liberty to ..... 30 minutes.

MR RICHES: Can you see that one there, Adrian?

MR PILTON: Yes, thank you.

MR RICHES: All right.

MR PILTON: That's not a – so that's a still picture at the moment. No, it's going now.

MR VIVIAN: Okay. So you can see the water flooding down the steps there, the volume of water. There's about – it's over a foot outside, and the doors are closed, of course. And then you can see about an inch to two inches of water just flooding across the lobby.

MR PILTON: Okay. Thank you.

MR VIVIAN: And these are then the lifts. Those are – that water then pours right down all the lift wells into the basement. And that's happening approximately every two years under extreme weather events. So next is the issue of electrical structure. The structure being designed in the early 1950s does not meet today's earthquake codes. So the lateral structure at the ends of the building needs to be updated to meet the current earthquake requirements, so we're showing that in the top right-hand corner. So it needs to be fully re-braced. Perhaps before we go on to leasing issues, in summary, the issues with the building fabric require that the curtain wall, the terracotta tiles, services, and even the floor slabs, all need to be taken out. The building needs to be stripped back to its structural frame.

You may recall there was the ANZ Building on Martin Place that was refurbished, and you may recall seeing it stripped back to its structural frame. And in essence, that is what will happen to the MLC Building to refurbish it. So the challenge is that virtually none of the existing fabric, which is the significance of this building, will remain if it is to be put back into a working condition. The next thing we're going to talk about then is the leasing issues. If we do go through that process of fully rebuilding, in a sense, this building, what can it be leased for? And there are – there are some challenges.

So, leasing issues, Ed. The first thing we want to point out – and we've just gathered a series of floorplates. These are all to scale and relative to each other, and we're just showing the buildings we showed you before, Lever House, Inland Steel, ICI House, Crown Zellerbach. And you can see they're all of a type. They are a side core, or end core, in the case of Lever House. They have open, flexible floorplates. They're all approximately 50 to, in the case of ICI House, 60 metres long. And they're 18 to maximum 20 metres wide. The challenge, as you can see, with MLC over on the right is that it's 103 metres long, and it's very narrow. Its west wing is 17 metres and its east wing is 15 metres wide.

So it's not one of these other buildings that – actually, the other buildings are quite good in terms of leasing requirements today. In fact, Inland Steel, very desirable floorplate. ICI House – our own Melbourne office is in ICI House. Crown Zellerbach. The challenge is 100 metres long with a very, very skinny floorplate. If we can go to the next image. You can see that the issue is – you could subdivide it into three tenancies or you could have three team zones. The challenge is each of those teams just go to the core and bathrooms and back, and it doesn't help in terms of collaboration and meeting people. It actually creates separate zones, and it's further exacerbated by its H-shape plan, where you've got people on one side of the building versus the other side and no means to move through or ways to encourage them.

The floor-to-floor heights in the building are 3.57 metres. As many of you would know, typical floor-to-floors or a sort of minimum contemporary office building is 3.75 up to 3.9 metres, or in the case of premium buildings such as Investa's 126 Phillip Street, it's 4.1 metres. And so this building is down at 3.57 metres. Next, please, Ed. There have been many studies looking at, if it was refurbished, what would happen. This is a section; it shows the 140 millimetre slab that you can see. On top there's – sorry, it's a 120 mil slab, plus there's a 40 mil ..... allowance for ponding. Gives you 160 overall. There's the intumescent paint surrounding the steel structure. There's new mechanical ducts beneath the steel structure, because they're too big to penetrate the beams.

Then there's the tenant services zone. And it gives you a 2.435 floor-to-ceiling height, where PCAA grade is 2.7. You can see the dotted line going through the duct. So we've looked at many ways to try to see can this be made just PCAA grade, without success. We're then going to look at how this building performs today as a building in the public domain and how it contributes to North Sydney. So if I – we're going to walk through each frontage, starting with Miller Street, and clockwise around the building. The Miller Street frontage is sunken below Miller Street. It's not contributing to the streetscape. It's 1.2 metres below Miller Street, which is why you get that water rushing down there and flooding.

It was converted in the 1997 to 1999 refurbishment into retail. Prior to that it was office. It was originally not intended to be retail. And the retail – and you will see it tomorrow – it's not very successful, because people – not a lot of people go past that retail. They walk along the street. You virtually have to make a detour, go down the steps to go past that retail. So it's not a very successful frontage. Brett Whiteley – Brett Whiteley Place has blank walls to the length of Brett Whiteley. And if we look at the west, underneath the taller component, that is the lateral structure, so there's no ability to penetrate that. Indeed, the lateral structure, as I mentioned, needs reinforcing.

Just go back, Ed, sorry. And then if you look at the image on the top-left, we look at the – after where it's underneath the building, you will see there's some more areas. The floor-to-floor heights do not align with Brett Whiteley Place, so there's no ability to open them up and activate Brett Whiteley Place. So one of the problems – Brett Whiteley is not a very successful place, and it has no activation from this building and no opportunity to open it up. Next, please. We then look at the loading and services area to Denison Street. Now, Denison Street used to be a laneway. If you look at the historic image on the bottom-left, you will see it was literally a service laneway, and the building is designed for a service laneway. And you can see that over 50 per cent of the frontage is car park entries, loading docks, substations.

And that has two issues. Clearly it's inactive frontage, but we have a massive issue with – immediately to the north is Victoria Cross Metro Station. 60,000 people are expected to exit out onto Denison Street in the peak, and there is a conflict with cars and service vehicles needing to access the MLC Building. Next slide, please, Ed. So the North Sydney City Council's vision – this is their public domain vision – sees Denison Street being upgraded as a pedestrianised boulevard north-south connecting Victoria Cross Metro to the heavy rail, and indeed, going up to what's known as the Ward Street precinct or the north of centre area. So it's going to become the main pedestrian precinct – or spine, rather.

The bottom-left image shows the base of 1 Denison, and its aim is to pedestrianise that street, but that's currently not possible with the MLC Building's servicing requirements, so it will need to remain a street. We have over many years looked at redevelopment challenges of the existing building or we've been trying to redevelop it while maintaining the building. Next slide, please, Ed. So this is just a quick timeline of Bates Smart's involvement with the building. So obviously that – in 1952 to 1958 we were the architects for the building. MLC were in continuous occupation from '58 to 1996.

From '97 to '99 was the Campus MLC refurbishment. Bates Smart were the base-building architect and BVN were the architect for the Campus MLC, the interior refurbishment. So we were both involved then. In 2000 the tiles started delaminating and there were rectification studies we were involved in with AREP, and indeed, the replacement tiles, we worked on getting those as close to the original as possible. From 2002 to 2004 there are additions proposed to the Denison Street wing for ING, who were the owners at the time. That DA was lodged and ultimately withdrawn, as North Sydney were unable to recommend approval. From 2010 we've been doing studies with Investa, who were the new owners, and they were looking at retail opportunities on Denison Street, any opportunities to add value to this property, and from 2015 we've been working on opportunities to add or extend the building and refurbish it. And I will just show you some of those here.

So the end result was quite a lengthy study that was completed in 2017 or '18. And this is the comparison matrix at the end of that study, and it shows you some of the options that we've looked at over a period of 20 years of what we can do with that building, starting with, on the left, upgrading the existing MLC Building, which has been run to ground. There are many, many cost studies of what it would take to upgrade it. Then there were retail redevelopments, so just upgrading the two ground floors, the lower ground and the upper ground floor. Then the 2002 studies that you're seeing there, four of them, which we looked at in two thousand – well, over that two-year period to 2004. And the one on the right with the red addition was actually the one that was lodged for DA approval, which was a vertical extension to the Denison Street wing.

Its challenge – do you mind going back, sorry, Ed – the challenge of that option ultimately – it wasn't going to be approved, but ultimately the weight of the new structure meant that all the existing structure in the Denison Street wing had to be reinforced, carbon-wrapped, and the foundations had to be – had to be reinforced as well to take that additional weight. And it was only providing 5000 square metres of additional area, and it was still overshadowing Brett Whiteley Place. Thanks, Ed. These studies then, in 2016, looked at could we keep – let's call it the dominant wing, the longer wing, the Miller Street wing, and provide a new structure, completely new on the back, as a way of refurbishing it. And you can see there are three options there of different heights, different locations, trying to find something sympathetic to work with the existing building.

Now, these studies – there was a slightly different planning control that did allow some overshadowing, but none of those studies complied with the overshadowing, which says that you can overshadow between the equinoxes through the winter solstice, but not outside of that. Then the 2017 hybrid scheme, you can see there, is shaped based on the equinox sun angle, and is, other than a – is the only way you can provide no overshadowing at the equinox. You could step that form, you can do many things, but it is basically using that angle. And then the final two on the right are redevelopment opportunities, and I think that's not what we're here to discuss today, but it has – these multiple studies led us to a redevelopment option.

So now we're just going to finish and look at Heritage New South Wales, who did a review. And we just do have some, well, disagreements with their review and their conclusions. Next slide, please. So they did a series of floorplate analyses to justify that this was quite a leasable building. You can see they're using the exact same floorplates that I showed you earlier. And they reached a very difficult conclusion, that it would mean that this building is highly leasable. I think really what they have not shown is that – they're not dealing with – there is no building that deals with a 100-metre and only 17-metre wide floorplate. All of their examples are half the length. And indeed, just out of interest, I mean, the City of Sydney has a maximum façade length of 50 metres – or is it 40?

MR ROWE: More like 50, yes.

MR VIVIAN: So, you know, this building sort of doubles the length of any normal building that you would get in the City of Sydney these days. They also provided a study, and you can see it on the right, and they said, "Look, this was a competition entry in 2020 –" I assume done by PTW, the authors of the report – that showed two tenancies. And they said, "Well, you could do that to MLC." Look, I guess the first question is, it's a competition entry that lost, and we question what the relevance is of showing a subdivision of a losing competition entry. Regardless, it's rather a challenge to provide subdivision where you've got long corridors to a tenancy at either end, 500 square metre tenancies at either end, and a central tenancy that becomes 15 to 16 metres deep with light only on one side. So we do not – we challenge their assumption that it's easily subdivisible.

Next slide, please, Ed. Then there are a series of statements about MLC staff have embraced their new workplace with great excitement post the $40 million refurbishment in 2013. That statement is contradicted, really, by two facts: the fact that MLC is moving out of the building, and if there was such great excitement, one expects they would not be moving out; and secondly, that Investa have been in the market now for several years looking at potential tenants to take the market, and have – to take the building, and have had no interest. Next slide, please. There were then a series of statements on the refurbishment process.

So the replacement of the curtain wall, it was assumed that the current maintenance program is sufficient as a long-term strategy for the building, which it clearly is not. It ignores the leaks in the glazed façade. And whilst the current tenant, who has been there over 60 years, puts up with the leaks and the building has managed, it's very hard to convince a new tenant to move into a building that is leaking. And it is certainly not a way to provide a long-term management strategy for a building. The terracotta tile façade, again, it was – they assumed the current maintenance program is sufficient as a long-term strategy, and it is clearly not.

There are issues of the potential of tiles to fall off the building. There's the need to test that biannually. And of course, there's the issue of the aesthetics of having a building with holes drilled into the tiles. So it's just – whilst it has been managed for 20 years now under that regime, that is not a long-term viable strategy for a building. The fire rating, we've talked about, that needs to be addressed to provide flexibility of services, causing other issues of structure, weight, reinforcement of foundations, etcetera. There's also a statement about the Miller Street special area, where the assumption is made that the Victoria Cross Metro infrastructure upgrades "may well address the flooding issues".

So as the architect for Victoria Cross Metro Station, we confirm that that is not a correct statement. And then finally the floor-to-floor heights were simply not addressed, the challenges of those reduced floor-to-floor heights. And then finally they provided, generously, scenario 3, which is to demolish the core and the Denison Street wing and provide an addition. You can see that we have done those same studies earlier. They all result in overshadowing of Brett Whiteley Place, which this study acknowledges. This study also did not allow for rooftop plant. It doesn't allow for lift overruns. You can see the top floor there serviced by lifts. There's no lift overrun and no plant.

So you will see in a minute the shadow studies, which clearly are short by six metres of plant or we need to lose two floors. It doesn't deal with the existing floor-to-floor heights, which we mentioned, on the assumption, I know, they didn't have long to do that and they probably weren't aware of the challenges. And then the final issue is, really, is it a sympathetic – does it have a sympathetic relationship to the existing building, or is it just a lumpy mass on the back? And we came across those same challenges. So that's it from me. Thank you.

MR RICHES: Thank you, Phillip. Any questions from the panel before we move on to Mike Rowe?

MR PILTON: Can I just ask that you send a copy of that presentation to the commission, because it's very small on my laptop, so it's hard to read some of the diagrams.

MR RICHES: Sure, not a problem. We will send that over after – once we've finished here.

MR PILTON: Thank you.

MR RICHES: Right. I will throw to Michael Rowe now. He's going to talk through some of the planning aspects.

MR ROWE: Thanks, Ed. Yes. So if you want to jump across into my slides. Now, there isn't a definition in the Heritage Act for reasonable use, and Phillip has already gone into quite a lot of detail about the actual reasonable physical use of the existing building. But it's actually important to understand that when the Heritage Act talks about reasonable use, it goes beyond just reasonable use of the physical building, and a much broader consideration from a planning and economic perspective.

And whilst there isn't a definition for it, the best understanding we have of that comes from the second reading of the Heritage Amendment Bill 2009. And so this was the reading that went through at Parliament at the time, and it gives you an insight into the understanding of the criteria that Debra outlined earlier that the Minister has to consider and that the IPC will be advising the Minister on. And so here are some particularly relevant points we've got here. And this was obviously in reference to the framework that applied prior to the amendments that created the framework we're considering today. And it says:

> *This approach ignores a range of other important issues that have a bearing on the conservation of an item. As well as considering whether an item is of state heritage significance, the Minister will be required to consider a range of broader planning and economic issues.*

So what I will be talking to you, and Lee after me, are these broader planning and economic issues, which was intended when this amendment to the Heritage Act came through as part of the listing process. Another quote from the second reading here is:

> *These additional criteria that the Minister will be required to consider will ensure that an appropriate balance is achieved between conservation of the state's heritage, the rights of landowners, and the costs of heritage conservation.*

It's clear that when these amendments went through to the Heritage Act, there was a strong desire to make sure that there was this level of balanced consideration. It wouldn't just be on heritage significance alone. Ed, if you want to go to the next slide. So Phillip talked about the actual reasonable use of the building. I'm going to talk about the big picture, the strategic actual use of the site. And in order to set that strategic picture, we have to look at the Premier's Priorities – that's the highest level of direction that we get – and the key priority for New South Wales is a strong economy, with the government's ambition to wield the strongest economy in the region, providing the jobs and investment opportunities that will take New South Wales to the next level.

And so that Premier's Priority then flows down to all of the government decision-making and strategic planning that we see. The product of that was the Greater Sydney Region Plan and the North District Plan, which hones down at that North Sydney level. And again, the planning priority that sits for North Sydney CBD is to grow a stronger and more competitive harbour CBD. So that's the priority that's in the Greater Sydney Region Plan. And then, Ed, if you want to go to the actions that then fall out of the plan that relate to North Sydney CBD. So this is the only actions as they relate to North Sydney CBD. And you will see some of the headline items there.

We've got maximise land use opportunities provided by the station, which is adjacent to us; to grow jobs; to expand after-hours activities; to provide high-quality civic and public spaces befitting a globally orientated CBD, which, as Phillip touched on before, this site is a significant constraint to; to improve amenity by reducing the impact of vehicular movements on pedestrians – again, as Phillip pointed out, the situation on Denison Street at the entry to the metro, but also the café that sits on Miller Street that obstructs the entry to metro, are significant issues for pedestrians moving in and out of the station. So really when you look at these actions and you think about this site, the current building doesn't allow for the achievement of any of these actions.

Now, you could say, well, this is one building in the North Sydney centre, but it is a lot more than one building in the North Sydney centre. This is a 6000 square metre site adjacent to the Victoria Cross Metro Station. It is the single largest and best opportunity to be able to deliver on the New South Wales Government's strategic planning imperatives here. So, yes, it is one site, but this is no ordinary site. It's a very significant site, geographically located in the centre between the heavy rail and the metro, and right at that centre of that action. If you want to go to the next one. And when you just look at this broad-brush – and as I said, Phillip has gone into a lot of the detail about the building, but just contextually to understand how this building sits in its planning context, the current building has an FSR of 4.3 to one.

If you were to do an LEP and DCP compliant envelope under the current planning controls, you would be able to go up to approximately 12 to one. And on the right-hand side you see here some of the development that's approved and under construction in the North Sydney centre at the moment, and we're talking about FSRs now that are being approved in North Sydney of up to 32 to one. So there is a very stark contrast, a difference here between the existing building down at 4.3 to one and the future North Sydney kind of development that's at larger façades of up to 32 to one. And so the site in its current form with the current building on it is a significant under-utilisation of the site's development potential under the current planning controls, and it doesn't allow for the achievement of those key strategic planning objectives that sit in the district plan, and therefore, in our opinion, doesn't allow for the reasonable use of the site in the framework that's set out under the Heritage Act. Lee.

MR CIKTUS: Thanks, Michael. So my name is Lee Ciktus, director of economics at Ethos Urban. And we've been working on this asset for a period of time, also undertaking a review of the North Sydney office market. So specifically what I wanted to discuss is just a little bit of context around the economic use of the asset and specifically talking about that question about financial hardship as well. So just by way of background, I've been involved in the preparation of the economic impact assessment, which was lodged as part of the development application. I have subsequently, post-lodgement, reviewed the submitted materials as they relate to the economic aspects.

And I've also undertaken an analysis of the North Sydney office market over the last sort of 12 to 18 months, as well. So I want to just take you through some of my findings. And it's a little bit, like Mike was mentioning, sort of that high-level economic context that speaks to the question of economic use. But before I do, I thought it was worth just providing some context about office building quality. So Phillip discussed this in quite a bit of detail in terms of the actual operation and the structural integrity of the building. What I wanted to do is just take a step back for a minute and discuss the Property Council of Australia's Guide to Office Building Quality, which was last released in 2019.

Now, really, this is the industry benchmark or framework that is then used to discuss – you can see there in the italics text – discuss the parameters and criteria that typically influence a perception of a building quality. And the PCA – the Property Council of Australia – do this for both new and existing buildings. Now, the reason I want to bring this up is the quality of the building goes directly to the economic use of MLC – of the MLC Building, because it tells the story about a tenant's willingness to pay, which then is a factor of what rental level is likely to be achieved, and therefore the economic use of the asset. So really, what I've just got here is a snapshot from this guide, which is the very start of the – quite a lengthy document – as it relates to existing building classifications, which is obviously of most relevance to the MLC, the building itself.

Now, really, I just wanted to draw your attention to the fact that buildings are typically ranked as premium, which are your best in class facilities; and grade A, which is high-quality; B-grade, which is good quality; and C, which is adequate. And there is also D-grade, which is, obviously, sub-optimal buildings. However, the PCA is moving away from classifying these specifically as a way of encouraging overall improvement in these benchmarks and the quality of office space. But what is particularly important – and Phillip has covered a lot of this in the detail – but it's not just about the materials or the presentation that makes the whole of the office building.

So there is also attributes and metrics specifically mentioned in this guide that deal with expansive views, outlook, level of natural light, an attractive street setting, high-quality lobby and lift finishes, high-quality services within the building itself, and overall levels of amenity and maintenance and presentation. So this needs to be considered as a holistic approach, because essentially, even the PCA acknowledge when they prepare this guide that perception of quality does change over time, and the PCA have acknowledged in this guide that they need to review these guidelines every three years because this perception of building quality does change.

And I think that's of particular relevance to the MLC Building when we consider those structural and physical limitations on the asset, which mean that even with a refurbishment, the asset is only likely to satisfy a B-grade classification, so, because of those limitations that we have discussed, like the height, like the efficiency of the floorplate. And as Jonathan mentioned right at the start, this goes to the question about how do we even lease a building with these type of restrictions and limitations. Thanks, Ed. So essentially, I won't discuss too much about the existing asset, because obviously we've run through this, but at more than 60 years old it's no longer fit for purpose from a modern office occupier point of view. So these modern office occupiers are no longer looking for the type of product and the type of offer that the MLC Building provides.

Now, a lot of that is attributed to those fundamental structural issues that we mentioned just before, but also, the main one from my side and the economic use story is that even post-refurbishment, you're really going from what's considered a B-grade office asset to a B-grade office asset. So what that means is that without that improvement in that office rating, you're still in a challenging competitive market to attract and retain tenants. And as market expectations evolve, as new buildings are developed, as we know is already occurring in the North Sydney market, this building, the MLC Building, will just get left behind. So there is that – in my view, that risk that the asset will continue to deteriorate over time.

So therefore what is – or what are modern tenants looking for and what's the outlook in the North Sydney market? Some of the analysis that we've undertaken revolves around a trend that's essentially called the flight to quality. So we're seeing tenants desire to move into higher quality space on lease expiry or moving into better quality facilities as the business has evolved. So what I mean by that is we've actually had a look at major office occupiers, so looking at tenants taking space of around 1000 square metres or more over the last three years in North Sydney, to show that over 90 per cent of all these new leases for major tenants in North Sydney have all been in A-grade and premium-grade buildings. So there's a very limited amount of leasing activity occurring across the major occupiers in this B, C and D-grade space.

So these major tenants, they're looking for efficient floorplates – this goes into what we've discussed already today – they're looking for efficient floorplates that are column-free, open, light, they're 1300 to 1500 square metres or larger – which is particularly important in North Sydney – and they're looking for these types of spaces because it provides the flexibility for these large modern corporate operations to adapt their physical fit-out over the course of that business operation. But it also is a key driver in attracting staff, attracting and retaining the best talent. There's obviously a competitive advantage from that economic point of view.

But also, as we see in commercial office occupiers, there is an increasing desire to move towards open plan collaborative spaces that really support this way of working. We're no longer in a situation like we were 60 years ago of more cubicle-type buildings. So those are the major tenants. But smaller tenants, they will lease offices across various grades. However, as we've already discussed, the physical limitations of MLC Building mean that the ability to subdivide these floorplates makes it even unsuitable for these smaller tenants. So these smaller tenants are going to continue to locate elsewhere because the building can't actually be broken up to accommodate them. And really, these types of trends that we're seeing in the market mean that B-grade asset overall – the B-grade asset class overall is an underperforming segment of the North Sydney market.

And we couple that underperformance with the fact that, on our analysis, we've got a wave of suppliers about to enter North Sydney, and there was – and which Mike mentioned before, but on our calculations there's over 250,000 square metres of new commercial office space that's about to be developed or is planned, and in addition to that, the Ward Street precinct that Phillip mentioned earlier will also provide additional commercial floorspace. And all of this stock will be in A-grade or premium-grade buildings, because this is new, fit for purpose office buildings that will attract and retain modern tenants. And essentially what this means is that the MLC Building is always going to be second-rate. It's always going to be B-grade, and it's no longer suitable for these modern corporate office occupiers, particularly against this wave of new supply.

So I guess just to highlight some of those facts I was just talking about there, this chart represents the Property Council of Australia net absorption data. So this net absorption is essentially a measure of demand. It looks at the difference between occupied stock and vacant stock over time. And what this chart is representing is the patterns of net absorption across those different grades in the North Sydney market since 2010. And you can see the premium-grade space, that's the darker blue, A-grade is in the lighter blue shade, and B-grade is in that orangey colour. And what has occurred is when we've seen periods of new supply – so you see the spike in the blue line between 2016 and 2017; we also see another peak in 2019, 2020 and more recently in 2021 – these peaks of positive net absorption is occurring when we see new supply entering the market.

So this is, on this example, 177 Pacific Highway, 100 Mount Street, and more recently, 1 Denison Street. And what is occurring is that positive net absorption is reflecting the fact that tenants – once this supply is available, tenants are moving into this space. They're absorbing these higher quality facilities and moving out of more lower-grade premises. So B-grade space tends to underperform in these situations. But B-grade tenants are moving to A-grade space or premium, and A-grade tenants are moving to premium-grade space. And this is no more obvious than when we look at that very last data point in the January 2021 far right-hand side of this graph, which is showing that, yes, we've got 1 Denison Street, and we've also got new A-grade assets like 118 Mount.

But essentially, these new higher-quality office buildings are seeing strong levels of positive net absorption. But that is occurring at the expense of B-grade space, which is underperforming, with strong levels of negative net absorption. Now, as a B-grade asset, this is where the MLC Building is competing, in this underperforming segment of the market. Now, we also know that with the new supply that I just mentioned, it's unlikely that this trend is going to change any time soon. We're only going to see more premium and A-grade space entering the market, including literally next-door to the MLC Building, above the metro station. So this is a highly competitive situation for the MLC Building to be operating in.

So, next slide, please, Ed. Thank you. So I guess that was a little bit of context on the supply and demand profile of the North Sydney market, but really that then goes into talking about the economic viability and the economic use of the asset, because it will play into what is an achievable market rent that the MLC Building will therefore be able to attract in that market context. So I've just got on this slide some of the latest available market rents in terms of average market rents across the North Sydney commercial office space. So these have been updated since our previous submissions, because this is taking into account rents that were available as of late last year. But it's showing that average net face rents for premium and A-grade space, the best quality stock, is average around $830 per square metre, and it's around $690 per square metre for that B, C and D-grade stock.

Now, as we've mentioned before, the fundamental issues of the MLC Building mean that even after a refurbishment, this is an asset that's still going to be more aligned to B-grade quality stock because of those attributes, and all the more so when we consider that we're going to have a quarter of a million square metres of new office supply coming in the line that will push the evolution of North Sydney even further in terms of what makes a quality office building. So I guess this is where the third point then brings us to that cost equation.

So in contrast to the refurbishment costs that were estimated in the Urbis report that was prepared for the Heritage Council, a definitive cost plan has been prepared for the landowner that outlines the costs, because of these structural issues that we've been taking you through so far – because of those fundamental issues, the cost to refurbish this asset is actually $212 million. And at $212 million, to go from a B-grade asset to another B-grade asset means that, at $212 million, the implied rent that the landowner needs to achieve in order to result in a commercially viable return to balance that profit and risk of undertaking the refurbishment, that rental level needs to be 50 to 100 per cent higher than what is considered to be a reasonable market rent for a B-grade asset.

And furthermore, this required rent will be well in excess of market rents currently being seen in the premium and A-grade space. Now, in my view that is extremely unrealistic when we consider that current market conditions are showing downward pressure on rents in North Sydney and more broadly in the office market, but also this substantial wave of new office supply that's about to be developed in the North Sydney market. Just really highlights the competitive environment that the MLC Building needs to operate in. So really, what that means then is that the commercial return that's likely to be achieved is actually not aligned with the risk that the landowner needs to take in order to commission the refurbishment, essentially.

Because this refurbishment is only going to take the asset from a B-grade asset to another B-grade quality asset, there is no economic return that can be justified in order to refurbish the MLC Building. So even assuming the refurbishment, when we talk about the economic use of the asset, it's my view, then, that this heritage listing would result in essentially an MLC Building that would lack a significant refurbishment program. Because of that limited commercial viability, the MLC Building will essentially remain as an older B-grade asset in North Sydney with the potential for future decline to C and D-grade status over time.

The asset will therefore be unable to compete with this new quality modern office stock that's being developed in North Sydney. It will suffer from reduced tenant demand, which will then put pressure on occupancy rates, driving increased vacancy. It will have to reduce rents, and therefore impact on the commercial return that's likely to be achievable, and result in further asset decline over time due to that lack of commercial return on maintenance expenditure. So ultimately it's likely to turn into an uneconomic asset with very limited market appeal or relative capital value because of these structural issues. So the conclusions of that assessment for that economic use is that it's essentially likely to be an unviable asset if a heritage listing was to be enforced.

And so just next slide, please, Ed. So I guess this goes to the question of financial hardship. I guess what I've taken you through is a bit of a summary from that economic use slide, but in our view that listing would result in financial hardship because of that unviable nature of the asset in its current form or in a refurbished form. So even with a refurbishment, the MLC Building will not be able to compete with the higher quality office stock that's about to be entered into the North Sydney market. It will be a B-grade rated office building with those structural limitations.

And therefore the asset will really struggle to attract and retain corporate occupiers, particularly in this modern environment, either large office occupiers or smaller tenants, because we can't repurpose the asset. So therefore we can't fill an asset of this size. So this will therefore result in lower occupancy for building, lower rents, and an asset that's commercially unviable on an ongoing long-term basis, because these costs of maintenance and refurbishments essentially are not going to deliver the economic return that's required. So, thank you, that's the bit from me. I might pass you back to Debra.

MR RICHES: Yes. Just before we throw to Debra, I think Phillip had one final comment he wanted to make with regard to how Bates Smart views the issue.

MR VIVIAN: Thanks, Ed. You know, I just wanted to talk for one or two minutes just about Bates Smart's involvement in the project. So as you know, I mentioned we've been involved – ever since the beginning, the design of the building, we've been involved, looking after the asset for various owners, maintaining it, looking at options to redevelop it. And there is a certain irony to find the original architect is now involved in talking to you about whether it's of heritage significance, and indeed we have a proposal to demolish it and look at an alternative. And I think that's worth unpacking.

So towards the end of 2017, early 2018, when we had reached a conclusion with our client that demolition was potentially the best if not the only option at this point, we faced a decision internally with our board whether we were comfortable as a practice to remain involved in what was clearly going to be contentious and involved the demolition of a heritage item. We took that decision to our board to – we needed full alignment across the directors of the practice, because, in a sense, we're being involved with the demolition of our own heritage. And the decision of the board was, on the evidence available, that clearly we had – at that point in 2018 I had personally been involved in 19 years of studies to maintain and upgrade the building, none of which had had any success for the various – at that point it had been three different clients.

And the decision of the board was that we were happy to be involved, but there were conditions. And the two conditions – and you will actually see the board letter when submission is made to the IPC in a couple of weeks, but the board said we would support it on the condition that all means to save the existing building had been explored, that no stone had been left unturned. So that was condition number 1. And certainly, you know, as I said, there had been 19 years of studies at that point.

And condition number 2 was that the replacement must be of equal if not greater significance than the current MLC Building. And that was taken as the significance of that building to post-World War II high-rise must be replaced with a building of significance to the 21^{st} century. So I just think it's interesting that there was that additional process that we went through internally, and it was quite a big decision for the firm, and certainly there was presentations like this to get alignment across all directors and the board to proceed.

MR RICHES: Thank you, Phillip. We will go to Debra now, just to make a couple more comments.

MS TOWNSEND: Thanks, Ed. I wanted to talk to you about the statement of significance of the building. When you look at the statement of significance and you look at the discussion of the history of the building and some reasons why the building is thought to be significant, it actually reinforces the view that we hold that the building is of local significance and not of state significance. The document talks about it being Australia's first post-war office block in respect of its design, materials and mode of construction, which really means nothing more than this was the first MLC North Sydney building, because it's the only building that has its designs, materials and mode of construction. So any new architect, design, building of its time would meet that same descriptor.

It's not the first post-war office block. It's the first one that's just like this one. Described as a seminal building associated with the evolution of high-rise office design in Sydney and New South Wales. There's no explanation of why this one rises above the others, and Phillip has already talked about a number of other buildings that were important and even better examples of this typology of building. It was designed by Bates Smart McCutcheon, and that's a wonderful thing, but so were many other buildings, and we know that McCutcheon himself said that this one was of poor design. It was said to be the first use of particular building techniques. In fact, it was one of many at the same time, and not the best example either, of those building techniques.

It's said to be important because it won some interior design awards for changes in 2002 and 2010. One wonders how changes done as recently as that could have any significance for the State of New South Wales. There's a discussion of the importance of the building materials, the glass curtain wall and the terracotta glazed bricks, both of which we know from Phillip will no longer continue to be on this building, because they can't continue to be there and have the building in a suitable state for occupation by commercial tenants. And there's a discussion there also in the listing about its association with the MLC, and we know that the MLC is moving out of that building, sold it some years ago and will no longer occupy it, so that association no longer exists either.

So all of those things suggest that the building doesn't reach the high threshold of significance for the state. Yes, it's significant for North Sydney. And what has happened – it appears that there has been, you know, a lobbying effort by an organisation whose existence is designed to ensure the lobbying of governments to preserve buildings of this type. That doesn't mean it's of state significance. The other thing I wanted to talk to you about was the only court case that we have that talks about how you approach the question of financial hardship under the Heritage Act. The Minister made a decision some years ago about whether or not to list the Sirius Building at The Rocks and decided not to on the basis that listing would cause undue financial hardship.

And that decision was challenged, and the court overturned the Minister's decision and said that it hadn't been a proper consideration of what was undue financial hardship. In that matter an assessment had been made that the building would be more valuable if it were sold and redeveloped than if the building were retained. That fact is a fact in common with the MLC Building at North Sydney, but that's not where we stop. That's not the beginning and the end of the analysis of financial hardship under the Act. It's a two-step process, the court tells us. Firstly, a comparative exercise focused on whether the listing would cause the owner to experience or suffer financial hardship; now, we've heard a lot about that already, and it's quite clear that there will be financial hardship to the owner.

But the second step is the step that the Minister in the case of Sirius failed to take, and that's the question of looking at whether the listing would cause the financial hardship to be undue. And in making that determination, the court said the proper approach is to weigh one against the other. So you look at the extent of hardship on the one hand and you look at the extent of heritage significance on the other. And that's what needs to be undertaken here that's not what has been done in any analysis by the Heritage Council. The Heritage Council has taken the same approach as it did in the Sirius decision and simply looked at the value of the building.

It hasn't looked at the value of the building and all these other hardship factors that we've just heard about and weighed them against significance, and that's the exercise that has to be done. So if we look at MLC and we look at Sirius, a very important distinction is the owner of the building. The owner of the Sirius building was the New South Wales State Government, Property New South Wales. It has a vast property portfolio and a very vast capacity to raise finances in order to look after that building. Contrast that with MLC. As I said earlier, it's owned by the 105 Miller Street Trust. That body has one asset, and that asset is this building, and it stands or falls on the viability of this building, so a very different situation.

The financial capacity of the New South Wales Government was said to be large, as it clearly is. The financial capacity of the owner of 105 Miller Street is limited to what it can raise on this asset. The role of the owners is very different as well, of course. The Sirius building was used for public housing and could continue to be used for public housing. There was no suggestion it couldn't be. Here, this is a commercial office building that has to be used for commercial purposes, and there's ample evidence that that's not likely to be able to be undertaken going forward.

In the Sirius case, there was really no debate on the level of significance, whereas here we say there's real doubt about whether this building even gets over the threshold into state significance, let alone being kind of at the top end of a range of significance that one would find in state-listed items. And importantly for the Sirius building, there had been no prior consideration of that building and steps taken by the owner as a consequence of that prior consideration. In the case of the MLC Building it was considered for listing some years ago, quite recently, in early - - -

UNIDENTIFIED MALE: 2013.

MS TOWNSEND: 2013. And there was a decision not to proceed with the listing. And based on that the owner was able to then decide to move forward with its redevelopment proposal and sink a whole lot of costs in pursuing that proposal. That's very different to the situation with the Sirius building. So here the weighing up exercise would suggest that the financial hardship is in fact undue financial hardship, because when you weigh very significant financial hardship – the building is effectively worthless if it's heritage listed – and you compare that against something which we say doesn't reach even over the first borderline into state significance, let alone being highly significant enough to outweigh the impact.

So lastly, if I just talk quickly about the Heritage Council recommendation, we say the Heritage Council recommendation is flawed in many respects. It was based on limited information compared to the analysis that has been undertaken for the owner based on very detailed and well thought out information. It was a recommendation driven by a special interest lobby group, Docomomo Australia, whose sole existence is in order to lobby for listing of buildings such as this. It was, in our view, infected by a conflict of interest because of the links between members of the Heritage Council and Docomomo.

The chair of the Heritage Council, I think, was a former president of Docomomo. Relied upon expert advice on heritage and economics which was hamstrung by a lack of adequate information and by some assumptions which have, as we've heard, proven to be unreliable. The economic assessment addressed only site value and didn't look at the other things that needed to be considered in terms of financial hardship and didn't address at all the question of the reasonable use of the building or the economic use of the building. So we say you set the heritage recommendation to one side and need to look at this matter afresh and draw conclusions based upon correct and accurate information.

MR RICHES: Thank you, Debra. Jonathan, I might pass to you.

MR CALLAGHAN: Look, I'm going to wrap it up very quickly, but I think the point I just want to emphasise is that if this asset were to be included on the heritage register, the impact to the value of that building would be immediate and profound, and any study that suggests that is not the case is flawed. And I do want to point out that the assessment that has been prepared and relied upon by the Heritage Council is manifestly incorrect, and it's manifestly incorrect because they have not appropriately scoped the work that is required to refurbish this asset that is absolutely at the end of its lifecycle back to a state that would last for decades.

They have manifestly underestimated the amount of work involved, and they haven't challenged any of the assumptions or the scoping that we have determined on the basis of our expert advice. That's addressing the refurbishment option. Any other redevelopment option that they have considered, well, the economic assessment of those redevelopment options is also profoundly flawed, and it's profoundly flawed because it has ignored half of the costs involved in the actual redevelopment proposed. They've only considered hard costs, that is, construction costs. They have not considered soft costs and other costs associated with the redevelopment of that asset, which would effectively double the costs that were included in that assessment.

The other fundamental flaw in that assessment is that it is assumed that you will achieve a market rent of the brand new premium assets that are being developed around and overshadowing this development, and that is fundamentally flawed for the reasons we've outlined in these submissions. Given the inherent constraints of this asset, which even the redeveloped asset will inherit, and particularly a 2.4 metre floor-to-ceiling height, it will only ever achieve B-grade rents. It's as simple as that.

So I really just hope that that point is understood by the Planning Commission, and I think I will just sort of leave it on that.

MR RICHES: Adrian, I might pass it back to you now.

MR PILTON: Well, thank you for that very thorough presentation. That was so thorough that I don't have any questions to ask, so I might just ask my fellow panel members and commission members if they have anything. Peter, do you have any questions?

DR P. WILLIAMS: Just two brief questions, if I could, Adrian. Sorry, Debra, at the very beginning of your presentation you mentioned that the heritage listing was based on flawed advice. Then we heard a lot about the actual design of the building, its use, the floorplate analysis, a lot on the economic aspects that's contained in the Heritage Act, incapable of reasonable economic use, undue financial hardship, and then, also, challenges to the actual significance of its state heritage significance. So there's an awful lot being advanced in terms of the actual nomination and the problem – and the proposed listing. I think you might have answered my question when you tried to tie it – when you tied it up at the end in the argument about why it was flawed, and you talked about the Sirius case.

MS TOWNSEND: Yes.

DR WILLIAMS: Is that sort of where you're getting to, that the – there seem to be a number of legs or elements to this argument about the flawed significance.

MS TOWNSEND: So I think the – it comes back to the decision the Minister has to make. And the Minister has to ask a series of questions. One of them is, is it of state significance? Assume that it is. Then he has got to weigh that up against the reasonable use of the building and the economic use of the building and the undue financial hardship. So all of those things go into the mix in deciding whether or not a building is going to ultimately make it to the state heritage list. And so you need to somehow – and I don't suggest for a moment this is necessarily an easy exercise when you're weighing, you know, a box of apples against three pigs. You know, they're different things.

But nevertheless, all of those things have to go into the mix. And I think the description that Michael gave of what the government was trying to achieve when it made those changes to the legislation is very important, and it's not about any building that has significance being listed. It's a much more complex exercise than that that requires you to think about all of these things and say, "When I weigh up items 1, 2, 3 and 4, should I list this building or not?" And it's a bit like the exercise that, you know, is undertaken in a planning assessment. Well, on the one hand it's going to create jobs; on the other hand, it's going to make noise; and then on the other hand, it's going to provide somewhere for someone to live. They're all things that are very different, but nevertheless have to be weighed all together for the ultimate decision.

And here, really, there's kind of two sides of the ledger: one is the significance, and the other is all of these other things. And it's not just, "It's significant," tick. Yes, it's locally significant; there's no doubt about that. Where does it sit in the range of possible significance? Are we talking about First Government House, or are we talking about a building that is one of many and perhaps not the best example? So that's, I think, you know, where the level of significance is very relevant to weighing up all of these other very, very serious consequences for the owner, and that's what the job is, to have to weigh the consequences for the owner against all of these other factors.

DR WILLIAMS: Thanks, Debra. Sorry, I do have just one more question, if that's okay.

MR PILTON: Yes, go ahead.

DR WILLIAMS: Just a point of clarification, really. Some of the discussion earlier about all the various options that have been looked at in terms of potential refurbishment and how they've been examined and they're discounted for various reasons, one of the reasons, if I've understood correctly, for one of the refurbishment options being discounted was overshadowing. And that seemed to be the main reason why it was discounted. Now, correct me if I'm wrong, but my understanding now is overshadowing is an issue irrespective because of the surrounding development that's going to be occurring in the area anyway.

MR ROWE: Peter, that was one of the areas - - -

DR WILLIAMS: So overshadowing is - - -

MR ROWE: That was one of the errors in the Urbis – sorry, the PTW report, in the way that it referred to the shadow impact of Victoria Cross, and we can give you the technical, like, error and explain it in more detail. But Victoria Cross only shadows a part of Brett Whiteley Place at a time of year, and the bit that it overshadows is an existing awning, so the top of an awning, ie, it doesn't have any additional shadow on that public domain area in reality. So that's the only additional shadow that Victoria Cross creates.

The scenario 3 that they provided three overshadowing diagrams for without actually saying what time of day, but at different times of year, that shows an additional shadow that does fall on that public space. And if you go to clause 6.3 of the North Sydney LEP, which is the specific built form ..... controls for North Sydney, it's quite detailed about, you know, the underlying objective of the controls for North Sydney are about protecting overshadowing from occurring on that special area during the lunchtime period between equinoxes, so - - -

MS TOWNSEND: And it's an absolute prohibition on - - -

MR ROWE: On every other site but this one, it's an absolute prohibition.

MS TOWNSEND: Consent can't be granted if it's going to overshadow that plaza.

MR ROWE: So the idea that the council, whose entire planning controls for North Sydney, all of the built form controls for North Sydney are predicated about overshadowing either the areas – the low-density residential outside or the special identified areas internal within the North Sydney centre – the idea that a development would be approved that has a significant impact overshadowing those public spaces at the nominated periods when they're not meant to be overshadowed is an extremely big leap in the logic of what would be supported.

MR RICHES: If I could just – sorry, Peter, if I could just jump in and just add a little bit of an afterthought. I mean, I do think the overshadowing analysis is interesting, and I will take the experts' advice. But just from an economic perspective, that option of building the building at the back just doesn't work. It does not work. You lose money from doing that development. And primarily one of the reasons it won't work is that you are constrained by the existing floor height of the existing Miller Street façade, and you just cannot build a new building and you're not going to spend the amount of money required to build a new building, a new wing on the back that only has a 2.4 metre floor-to-ceiling height. You just won't do it.

MS TOWNSEND: And it's interesting, too, that even the Heritage Council's experts leap straight into, "How can we do something a bit better than keeping this building?" Because I think there's a recognition that keeping and trying to refurb the building has significant problems. It's quite unusual to see someone on the Heritage Council's engagement saying, "Here's how you can knock over half of this building that you're considering listing."

MR RICHES: And indeed, you saw that we had gone through two years of studies to add on the back of it without success, as Jonathan mentioned.

MR ROWE: They also noted there was no materials of heritage value. So that was an interesting statement from the New South Wales heritage report themselves. So they've identified that within their own findings.

DR WILLIAMS: Great. Thanks very much. That's great. Thanks, Adrian. That's all.

MR PILTON: Thank you. Andrew, do you have any questions?

MR SNEDDON: No, I think that I've got plenty to digest there. I just want to say that my connection dropped out for four or five minutes, but I didn't miss much of the presentation, I want to reassure people of that.

MR PILTON: You will be able to read the transcript anyway, Andrew. It will be online shortly. Kate, do you have any questions?

MS K. MOORE: No. I just want to reiterate your request, Adrian, to please provide the slideshow, the presentation, because that will also be placed up on the commission's website.

MR PILTON: And also the one that Luke – is it Luke – or Michael put up.

MS MOORE: Yes, please.

MR CIKTUS: Yes, Michael. Yes, Kate, I will forward both of those to you straight after this.

MS MOORE: Thank you very much.

MR PILTON: Thank you. Okay. So I will close the meeting now at this point. We will look forward to seeing you all tomorrow, or seeing whoever comes tomorrow at the site visit. Thank you all for coming.

MR RICHES: Thanks for your time. Thank you.

DR WILLIAMS: Thanks very much. Bye.

MEETING CONCLUDED [4.07 pm]