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26 November 2020

Comments on the documents released under SO52 order of 13 May 2020 re the Powerhouse Museum 'move' project.

## Introduction and summary

Six years ago today, the Premier of the time announced that the Powerhouse Museum would be moved from Ultimo. Even at the time of the announcement the Government refused to provide evidence that any alternatives had been examined for improving the cultural facilities at the Greater Sydney centre of population, and ever since, the Government has been very reluctant to give information about its plans.

However on 13 May 2020 the Legislative Council, with the support of all parties, sought the release of information about the project, with a list of topics relating to the project, beginning with 'any 2019 revised business case or cost benefit analysis'.

Documents were supplied as public documents and also there was a list of documents not available to the public. The publicly supplied documents were received 10-14 June 2020. Physically, they consisted of 17 document boxes, containing an estimated 20,000 sheets of paper, including copies of a catalogue list of 197 pages and other smaller lists of document titles. With massive help from a small group of people an objective assessment of the documents has been prepared. This is the introduction to the full assessment, which is also online at the private website

The documents received were so disappointing that it is hard to believe that this was a serious attempt to inform the public. Let us, for the sake of this exercise, assume that this is indeed a legitimate attempt meet the Legislative Council order. Many questions arise, is listed below. The Government is invited to reply to these questions, and explain why these circumstances apply:

1. Why is there essentially no information about the key point, 'any 2019 revised business case or cost benefit analysis' relating to the project?
2. Assuming the answer to the above is related to the claim that documents are confidential to the Government, as set out in their claim for confidentiality and privilege (see pages 7-8 and 23-26 of our assessment document), the following questions apply:
  - a. Can the Government confirm that the project is not yet 'determined', and that no confidential arrangements or discussions have occurred regarding such matters as the disposal of land at Ultimo or relevant construction contracts?
  - b. If the answer to (a) is essentially 'yes' then why is there any basis for any 'Commercial in Confidence'?
  - c. If the answer to (a) is essentially 'no' then can the Government demonstrate that the secret arrangements or discussions are clear of any imputation of insider trading?
3. Throughout the entire process only a negligible amount of input can be found from people with significant museum qualifications and / or experience, and this has continued over recent months. See page 15 and associated endnote. Why is this so?
4. Why is there no support for putting the publicly available material online, particularly in view of the current circumstances re the Covid pandemic? See page 18 for a formal application for

having the material available, which has been comprehensively ignored. This process would also remove all the difficulties caused by poor-quality paper copies.

At a more basic level we would like answers to the following:

1. Why are there over 1000 pages, 5% approximately of the quantum received, illegible sheets (page 13 below)?
2. What is the relevance of providing multiple copies of the 2017-18 Annual report drafts? See, eg, picture on page 18.
3. Why are some documents which seem to have trivial or irrelevant content listed as restricted? Example: response to bush fire meeting request, see details page 9.
4. Why is there so much material that is already available publicly online – at least 5% of the material supplied? See, eg notes on Aurecon page 5 and design competition material page 7.
5. Why is there so much duplicated material? See page 11. For example there are 22 copies of one document (entitled *RE: Power House Museum - Power Distribution Options* dated 18 March 2020 (– hardly of great importance in terms of requested information!). Over 50% of document titles are duplicates, and well over half of the volume of presented material consists of multiple copies.
6. Why does it appear that some duplicates are classified as confidential while others, of the same title, origin and date, ie obviously identical, are released to the public? (see note 2 on page 9)
7. Some documents were not released because it was claimed that they contained private personal details. If the documents were of value to the debate, why could these details not be easily redacted?
8. Why was there almost no mention of the *Ultimo Creative Industries Precinct*?

Failing satisfactory answers to the above questions, I submit that the response to the Order is so poor as to be a disgrace to the democratic process. Very little relevant and useful information has been obtained, and that has been achieved through often inferential 'data mining' as set out on pages 15 ff.

T Lockley

# Document release SO52, June 2020: Analysis.

In November 2014 the then Premier of NSW, Michael Baird, announced that the Powerhouse Museum would be moved from Ultimo to Parramatta. Since that time there has been a constant dispute between the Government and tens of thousands of people who oppose this idea.

In an effort to obtain basic information about the project, a wide range of material (see section 1) was sought from the Government by an order of 13 May 2020., with the support of all political parties. This paper examines the process and the publicly released documents to provide some basis for assessing the documents and the shedding light on their consequent relevance to the assessment of the project itself. Though the emphasis is on a factual assessment of the documents it is hard to escape the conclusion that the documents released were not intended to provide information for the taxpayers but were simply a means to 'tick the box' of responding to the order. There is other evidence that the Government does not want to provide any degree of openness about this project and under the circumstances examples of this are used to support the thesis that the Government does not wish to fulfil its obligations to the taxpayer..

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## Summary-

About 4000 documents were supplied, well over 20,000 sheets, in single photocopied pages, typically not sorted into subject areas, not presented as separate documents. Colour documents were reprinted in greyscale, often making data interpretation very difficult.

Eighteen document boxes were initially provided. Access, normally restricted to access to a single copy of released documents during business hours, by appointment. This release was further compromised by Coronavirus restrictions: people wishing to inspect documents had to be escorted to the display area by a Parliamentary staffer, and staffers were either working from home on non-sitting days or often too busy on sitting days to provide this escort. Only one person at a time could be admitted.

Knowing of these difficulties, the group of people inspecting the documents made careful preparation. A full, searchable list of documents was prepared, online at [this link](#). Searchers sought general documents rather than matters of detail, new material rather than material already on line, and in particular evidence of critical examination of the whole project. Between the three people who worked on this project all that could be done was to quickly check most of the documents and make general observations.

Only about 20 person-hours of inspection time could readily be made available, and about 800 pages of documents were photocopied and examined offsite by a number of experts in museum work. However though it had been intended to continue the examination it was agreed that the quality and relevance of the documents was such that additional investigation was simply not worthwhile. These are the facts that led to this conclusion:

1. At the outset the release of the documents was gravely restricted by the Government's claims of confidentiality. The Government regarded the release of much of the material required as being detrimental to the public interest. The result is that it is quite impossible to develop such things as a summary budget.
  - a. Particularly there is no mention of the processes of independent review that were claimed in the response to the Inquiry Finding that the proper processes for the development of the released business case had not been followed. The public has to accept that as well as not being able to see the basic information there is absolutely no information about the results of the assessment or even the slightest information about how it was assessed.
  - b. Also there is no information about the briefs given to the people who are doing the work. A particular example is the choice of, and briefing details of, the consultant who provided an 'independent' assessment of the heritage values of the Ultimo Tram Shed. The assessment was restricted to the original Powerhouse buildings and or feeling is that this was done to downgrade the heritage importance of the whole complex – original converted buildings plus the award-winning extension plus the Harwood building which was converted into a state-of-the art storage and curatorial facility.
2. A considerable proportion of the documents provided are irrelevant or illegible. There were at least 1200 illegible pages as per the example on page @ and several groups of about 500 pages that were completely irrelevant, such as successive drafts of the 2017-2018 MAAS annual report.
3. About 53% of the documents were duplicates. See page 11. (Of the approximately 4000 documents issued there were only about 2200 separate unduplicated documents).

4. A considerable portion of the documents provided are readily available online. 1½ boxes, for example, consist of the output of the PR firm Aurecon during late 2019 and early 2020, accessible from <https://www.planningportal.nsw.gov.au/major-projects/project/26576?fbclid=IwAR0bB-du2l8qvLLOoTEoS-6fBmRsQNumHAWb5O2hQsqaoxFSoeAtba7vx1l> .

The overwhelming majority of the material concerns Parramatta<sup>1</sup>. Ultimo Creative Precinct is not mentioned in any document title. The majority of the Ultimo references are to the *Ultimo Tramway Power House* – this title is never used except by the Government’s application for heritage listing only of the original buildings. There is very little information about the adaptation of the Pyrmont buildings and what information there is is inconsequential.

## 1. The Call for Documents

On 13 May 2020<sup>2</sup> Mr Borsak asked for documents held by Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, the Premier, the Department of Premier and Cabinet, Create NSW, the Trustees of the Museum of Applied Arts and Sciences Staff Agency, Infrastructure NSW or the Department of Planning, Industry and Environment should be made available within 28 days relevant to the following:

- (a) any 2019 revised business case or cost benefit analysis relating to the Museum of Applied Arts and Sciences (MAAS) project,
- (b) all documents relating to the MAAS project capital and recurrent costs, exhibition concepts, and commercial and income-generating opportunities,
- (c) all documents relating to any visitor studies, planning costs, and architectural, museological, geotechnical, engineering, heritage and flood risk studies conducted for the MAAS project,
- (d) all documents relating to the Powerhouse Precinct at Parramatta International Design Competition,
- (e) all documents relating to the Ultimo Creative Industries Precinct,
- (f) all documents relating to the transfer and storage of large and very large objects for the MAAS project,
- (g) all documents relating to the proposed heritage listing of the Powerhouse museum, and
- (h) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

The manner in which these criteria were addressed can be seen in the summary on page 22, Appendix 1.

## 2. The initial response

Infrastructure NSW, MAAS Staff Agency, and Department of Premier and Cabinet (DPC) provided a joint response and Heritage NSW and Create NSW are part of the DPC. These three main organisations submitted a joint response. Department of Planning, Industry and Environment stated that the relevant material they had would be submitted from INSW. Other nominated potential source of documents stated that they held no relevant material.

In regard to paragraph (d) (all documents relating to the Powerhouse Precinct at Parramatta International Design competition) the Government claimed that there were over 50,000 potentially relevant records so they stated that they had released the following, but many of these are, or have been, online, notably those marked with \*.

- *'Search Statement' for the Stage 1 competition, released in January 2019\**
- *Communications Register capturing all communications received by Create NSW during the Stage 1 competition*
- *list of entrants and preliminary compliance assessment compiled by Malcolm Reading Consultants and issued to the shortlisting panel\**
- *documents recording the decision of the Committee in respect of each entrant*
- *documents recording the shortlisting of entrants from Stage 1*
- *presentations given to shortlisted participants during the site visit conducted in July 2019*
- *Stage 2 Design Competition Brief\**
- *Stage 2 Question and Answer Log\**
- *documents relating to or recording the payment of an honorarium to Stage 2 participants*
- *documents recording the withdrawal of any participant from Stage 2*
- *final submissions lodged by each Stage 2 participant, including\*:*
  - *concept designs*
  - *fee proposals (where they are required to be produced under Standing Order 52)*
  - *documents recording the deliberation and decision of the Competition Jury.*

### 3. Claim for confidentiality and privilege

The Governmental sources stated that they would not release certain documents because of various forms of privilege, submitting a legal document to this effect. The following is an attempt to summarise it: a fuller version is included as Appendix 1

1.2 A lot of information was sought and DPC (including Create NSW and Heritage NSW), INSW and MAAS have submitted a joint response

1.3: Government is not resisting production of material for any other reason than it is in the public interest that the documents should not be made publicly available.

2. This might be because of legal Professional Privilege (LPP) where advice to the client (Government) is confidential (eg advice from King & Wood Mallesons in relation to the Powerhouse Relocation Project)

3. Also, Commercial-in-Confidence might apply, but section 3.2 stated that according to the *New South Wales Legislative Council Practice: 'the proper basis for claims of commercial-in-confidence information is not that there may be a commercially confidential dealing, but that the disclosure of the matter is likely to cause damage to the commercial activity'*. 3.3 These documents contain commercially sensitive information whose value would be destroyed or diminished if the information became public, including (b) documents containing detailed development strategies, including market and competitor analysis.

3.4 Some documents about the Design Competition are withheld to (3.5) *protect the possible disclosure of trade secrets and methods revealed by the design competition entries.*

#### ***State Heritage Register listing of the Ultimo Tramways Powerhouse***

3.6 *This is an exact quote, not a summary:* In December 2019, Heritage NSW sought an independent review of a State Heritage Register (SHR) nomination for the Ultimo Tramways Powerhouse (the Site) by the National Trust of Australia. A number of Heritage experts provided return briefs to the Heritage Council in response, which included their approach to the review and methodology, fee proposals and other commercial-in-confidence information. The information claimed to be privilege also includes unsuccessful responses to the call for return briefs. The likely prejudice caused by disclosure of this information is considered to outweigh the public interest in disclosure of the documents<sup>1</sup>.

3.7 *Summary:* Disclosure of these documents could lessen the trust of contractors in the Government's confidentiality. (3.8) Accordingly, the public interest in disclosure of this information to the public is outweighed by the interest in maintaining its confidentiality.

4. Documents have been withheld because they have private information which may identify individuals to their detriment.

4.3 [A judgement] has stated that the Government can take 'additional measures to prevent disclosure of confidential information where that is not in the public interest'. 4.4 sometimes material may be redacted for this reason. 4.5 because of the large amount of material sought by the order the Government has not had time to do this but (4.5) Redacted copies of the

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<sup>1</sup> This is very important to the dialogue because an examination of the total heritage of the museum was not carried out. The heritage investigation conducted by Cracknell Lonergan was restricted to the original Powerhouse buildings, whereas the consensus of non-Government experts is that the total museum complex should have been assessed for heritage values.

documents with personal information removed may be provided to the Legislative Council on request.

Parliamentary Privilege is also claimed (4.5 -9) for draft answers to questions in Parliament and in Budget Estimates sessions.

Comment:

1. The Government has consistently refused to provide basic information. In the first Inquiry Government witnesses invoked confidentiality privileges in regard to at least 27 issues raised.
2. It is hard to accept the statement in 3.2 that the withholding of information is due entirely to these needs for confidentiality. The decision seems arbitrary. Many of the titles in the restricted list are also present in the publicly available material. For example, twelve copies of document 200331 - Preliminary Flood Maps (depths and levels).pdf (April 2020) were provided, of which 8 were publicly available, three were confidential for privacy reasons and one was Confidential in Confidence. Other examples appearing under confidential and non-confidential classifications were 5929 - CIPMO - MAAS Parramatta - Issue 3.pdf, 10-Aug-18; expanded metal.png, 21-Apr-20; FW: Landscape Plans - Arup Report, 01-Apr-20\*; FW: PHM - Riverside retaining wall, 15-Apr-20\*; image001.jpg, 17-Apr-20\*; IP1957v1 Ethos Urban.docx, 23-Apr-20; Re: PHM non SHR listing. 28-Feb-20; RE: Powerhouse. 20-Feb-20; RE: PS7 Exo and Bracing termination, 28-Apr-20; Summary of Outcomes - 04122019 - OL.docx, 07-Dec-19. Investigators We were able to locate the items marked with \*to check that they were identical. In any case there seems little reason why the secret documents were thus classified as they provided no useful information in terms of the list of documents called for.
3. Many documents withheld for reasons of confidentiality in its various forms seem, from their titles, to be of little value, eg NSW.001.013.6078, Category (g), Email, RE: TAP-membership and request for OOS urgent meeting re bushfire response.
4. Regardless of any interpretations of this Government statement, it is clear that the documentation released is not of the quality of the released Business Case of 12 June 2018. This was heavily redacted and badly printed, and access was seriously restricted. But the material was reasonably well organised.

## 4. The released material – June 2020

The publicly available material received is as follows:

1. Received Wednesday 10 June: Two boxes numbered 1 and 2.
2. Received Friday 14 June, late afternoon:
  - Four boxes labelled 1-4
  - Ten boxes labelled 1-10
  - One box labelled 1

Each box contained up to about 2000 photocopied sheets. In the publicly released material there were at least 3824 documents<sup>3</sup> plus the names of 3100 other documents that were withheld for various reasons.<sup>4</sup>

**The boxes had a generic label and it is impossible to find the contents without considerable effort. Documents are not separated and all documents are copied in black and white on A4 paper: some are illegible because they are A3 documents of poor quality printed on A4, and many documents spread over several pages horizontally and are very difficult to follow. Most spreadsheets are not amenable to printing.** The catalogue files were of some limited help.

In the material received Wednesday 12 June: **Two boxes numbered 1 and 2: in box 2 over half the material in box 1 was successive drafts of the 2017-18 MAAS annual report<sup>5</sup>**, entirely irrelevant to what was sought, and the final draft of this and the 2018-19 report are readily available online. Much of the rest was administrative emails, eg **5 emails about the reference number for the claim for expenses of the PR firm Aurecon**. There was a considerable amount of PR material eg as prepared by Mr Limkin, uncaptioned pictures of various design aspects and so on. Of the first two boxes, over 600 sheets, only 38 sheets of some relevance to the criteria required by the request for information were copied.

On Tuesday 16 June boxes 1 -3 of the box 1-4 group were examined.

The first 29 files listed look as though they meet the criteria listed in the order for information on the Business Case. They are listed in an endnote.<sup>6</sup>

**However, on examination, the Business Plans etc referred to concerned the plans for the Powerhouse Museum at Ultimo prior to its proposed 'move'. Further, they did not have much of interest even here: The emails tended to be details of meetings to be organised and the kind of basic material that is included in an Annual Report. No documents referred to the Business plan currently under development.**

The next 31 files concerned drafts of the 2017-18 MAAS Annual Report, online at [https://maas.museum/app/uploads/2018/11/MAAS\\_Annual-Report-2017-18\\_Low-Res\\_28Nov18.pdf](https://maas.museum/app/uploads/2018/11/MAAS_Annual-Report-2017-18_Low-Res_28Nov18.pdf) and containing nothing more than a very few unsubstantiated motherhood statements about the desirability of the 'move'.

**Two thirds of box 1, all of box 2 and half of box 3 was taken up with at least 800 sheets like that on page .** This was witnessed by Senada Bjelic from Mr Borsak's office and by officers of the Legislative Council. Of the approximately 300 remaining printed pages, some relevance was found some relevance in about 45 pages. Much of the material was documents of the Heritage Council – agendas rather than content, eg **documents related to the Powerhouse were listed for presentation at Council meetings, but typically the documents were not themselves released.** There was little more material on the Powerhouse Museum heritage assessment than there was for at least 20 other projects.

Box 1 of the group consisting only of box 1 was given special attention. This did contain some useful material. **Perhaps 20% had some relevance to what was sought.** Much of it concerned the MDC at

Castle Hill and was only of peripheral interest. There were still **about 40 misprinted pages**, many **A4 pages that were illegible**, and a particular problem was **documents spread over several horizontal pages**. These are very difficult to follow.

If Covid restrictions did not apply investigators could have teams of 3 or 4 people sorting and examining the documents. The task under present circumstances was impossible, and investigators urged that democracy will be served if this material is placed online, contacting the Department of Premier and Cabinet, INSW, MAAS museum, parliamentary members of the Inquiry and the Legislative Council officers. The Legislative Council officers were sympathetic but emphasised that they had no control over what was issued in response to the Order. See page 18.

A major problem was multiple copies of a single document. Over 700 items were copies of identical originals. 2 copies were provided of 388 items; 3 copies were provided of 138 items; 4 copies were provided of 87 items; 5 copies were provided of 38 items; 6 copies were provided of 31 items; 7 copies were provided of 15 items; 8 copies were provided of 8 items; 9 copies were provided of 8 items; 10 copies were provided of 5 items; 12 copies were provided of 4 items; 13 copies were provided of 1 item; 14 copies were provided of 2 items; 16 copies were provided of 2 items; 18 copies were provided of 1 item; and 22 copies were provided of an email entitled *RE: Power House Museum - Power Distribution Options* dated 18 March 2020<sup>7</sup> Altogether, then, of the approximately 4,000 documents there were about 2213 individual documents and the balance – almost half – were all duplicates. Our expert in document analysis mentioned that the supply only of ‘deduplicated’ documents is a general practice of courtesy in submitting documents for analysis unless all documents were specifically asked for.

At least 2179 documents, including duplicates, were emails. Some were provided in several versions, with an original, reply, forwarding and further comments supplied as separate documents. This again diminished the number of individual documents supplied but the number of such documents was such that a proper count would take too long and be of relative unimportance. 200 individual documents would be a low estimate.

So a summary of useless material provided must include

- 1000 pages of illegible data base entries
- 300 pages of drafts of the 2017-18 MAAS annual report and at least 1000 pages of copies of drafts of other material that inconsequential to this document application
- Numerous copies of forwarded emails – all stages of internet dialogues are separately documented rather than just supplying the latest version
- 1½ boxes of Aurecon reports accessible online from <https://www.planningportal.nsw.gov.au/major-projects/project/26576>
- 156 images with no supporting information
- 50 presentations all of which had been seen publicly and / or are available online. These do not provide any new information about the project and are simply biased PR propaganda.
- Administrivia: numerous documents that basically involve mechanisms for claims, web problems, meeting arrangements etc. Some of these can be mined for useful data, but the type of information that can be deduced should be readily available. Examples of this can be seen on page 15.

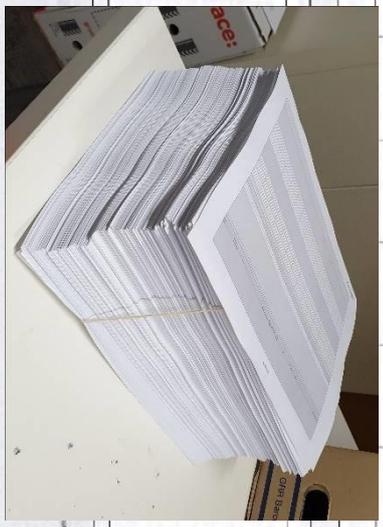
The following table gives a rough idea of the contents of the boxes arranged according to the topics on which information was sought. It must be stressed that there is no consistency in the organisation of contents of boxes; many seem to have purely random selections of documents. The methodology of the examination of the material is seen in appendix 1, page

Topic	Material found
revised business case or cost benefit analysis,	The words <i>Business Plan</i> appears 43 times in the in the titles of documents presented. There is no summary and no possibility of getting an overview of the financial situation of the total process. Material presented typically includes such things as arrangements for meetings to discuss the plans. In Box 1 of the box 1-4 set the documents dealt with the finances of the Powerhouse Museum on its current site, eg provisions for long service leave
MAAS project capital and recurrent costs	No possibility of getting an overview of costs Only mention of <i>Finance</i> in titles of documents is in 6 copies of <i>IP1947 for Finance_signed.docx</i> , two identical copies in the publicly released documents of 30-May 2020 and four identical copies with the same name in the CIC documents of 5 May 2020. It gives no major financial information. The word <i>Budget</i> appears in the titles of 16 documents, of which only two ( (Email 10 May 2018 MAAS Forward Estimates submission for 2018-19 Budget and Email High level budget assumptions for forward years 8 August 2018 dated 20 August 2018) deal with the whole picture and they are only procedural with no usable data about costs.
exhibition concepts	No discussion apparent of the exhibition philosophy of either institution. In the 772 pages copied regarding the design of Parramatta Powerhouse the words <i>exhibit</i> or <i>exhibition</i> or <i>display</i> do not appear
commercial and income-generating opportunities,	Some snippets may be gleaned from data mining but nothing is readily apparent. eg the words <i>income</i> or <i>revenue</i> do not appear in the title of any document.
all documents relating to any visitor studies	<i>REP157 - 10 year revised figures re PHM closure and re-open.xlsx of 8 August 2018</i> is the only relevant document found, obviously very much out of date and containing no methodological information. There were some studies of people flow around the proposed museum but investigators had doubts about whether they were consonant with previously publicised visitor projections. Not enough data was found to make a judgement on this.
planning costs:	No specific documents were found in our scan: there were some procedural documents about the hiring of consultants but generally things like Terms of Reference had to be inferred from data mining of these documents.
architectural studies	Plans are available but these are too big to photocopy. Electronic copy of some material on the Parramatta building, some 500 pages, is online as a sample.
museological studies	There remains no evidence of any input from anyone with any significant museum experience and / or qualifications having input into the process. See page <b>Error! Bookmark not defined.</b>
geotechnical and engineering studies	There is a good amount of this material regarding the Parramatta building. Nothing was found relating to the Ultimo Building.

heritage studies at Parramatta	Much of the material is already available online. Of the material provided nothing new was found.
flood risk studies at Parramatta	There is some information on this, nothing new, but there are certainly some concerns about flood risk
Parramatta International Design Competition	This is fairly well covered online. The items mentioned in the Government response are sometimes available online. There was little new information.
Ultimo Creative Industries Precinct material	About 134 documents have references to Ultimo in the title. There are no documents specifically labelled as referring the Ultimo Creative Industries Precinct and our scanning of documents found that most documents that did not specifically labelled referred to Parramatta. No documents referring to new developments at Ultimo, but there may be a few.
Parramatta Precinct material	As noted above, there was more information on Parramatta than on Ultimo, but many of the documents checked are procedural and administrative and apart from PR presentations. No overview document was found. It is possible that such a document could be missed, but it would be unlikely.
transfer and storage of large and very large objects	Some documents are available, largely inconsequential. There is no overall plan indicating the involvement of appropriate specialists, eg no metallurgical expert involved in the earlier discussion of the B&W move. Mentions of the possibility of moving the Maudslay engine do not show any awareness of the problems as outlined by expert witness Andrew Grant in Inquiry evidence Friday, 21 August 2020, Page 25. Needless to say there are no museum experts involved and though investigators were looking for input from Root Associates, specialists in such matters, no such material was found.
heritage listing of the Powerhouse museum	There are many general documents from heritage deliberations but not a lot of specific material. The key point, which is the restriction of the assessment to the Ultimo Tramways Power House rather than to the whole museum complex was not elucidated.
legal or other advice regarding the scope or validity of this order	There are several covering letters, as outlined in the introductory section on page 7. The key section is the letter (summarised on page 8, full version in Appendix 3) claiming various kinds of privilege. It is interesting that even the titles of confidential documents do not seem to be particularly illuminating in terms of the overall picture.
legal basis of the project.	The key need, which has been sought from all Government sources is the process, legal justification and general rationale for the acceptance of the Government's decision to move the Powerhouse to the Parramatta site as the Base Case for the production of the Business Case. There is no possibility that anything in the released documents could shed any light on this very important matter.

There are approximately 800 pages similar to this.

Checked by Mrs Senantha Byelik  
of Mr Barnack's office.  
25/6/2020



NSW/001.013.5056\_1587

HC - ARCHIVE

The pages appeared at first to be blank but with a magnifying glass about 20 words can be distinguished.

## 5. Examples of Data Mining

The investigative team had an expert in technical writing. This enabled analysis of general documents to find useful information from details and indeed from the presentation of the material itself. Here are some basic comments:

1. In the 4-box set and the quick search of the 10-box set there is very little cost information. There was a vague mention about doing something to save \$66 million, and a report on craneage costs, but little else.
2. The presentation of so multiple copies of identical documents is seen as gross discourtesy to the examiners. 'Deduplication' is seen as the norm for release of documents under these circumstances.
3. There is no Business Case as was presented in June 2018. Documents are not presented in themes as per the terms of the request but many boxes seem to have purely random arrangement of documents, with sequential documents relating to vastly different aspects of the call for information.
4. There are some more detailed architectural drawings showing the breakdowns of what is on each floor of the proposed building and some pictures (May 2020) of the overall design that do give new insights. See Appendix 4.
5. There is a significant amount of talk about the exoskeleton design approach, with descriptions of column sizes and locations, drawings, etc.
6. There is next to no mention of museum matters in the material released, which is not surprising when the qualifications of the people involved are considered – no suitably qualified or experienced people have been found to be involved in decision-making processes -see page 21 and endnote. In the 772 pages copied as a block that deal with Powerhouse Parramatta there is no mention of display matters, exhibits, exhibition philosophy etc. More attention, indeed, is given to the use of the areas for dancing (page 16). Another simple example: there is no mention found of the provision of steam in the new Parramatta building to continue the magnificent display that is in the current heritage setting.

One document of particular interest was an email concerning the appointment of a *Brief Writer* for the Parramatta construction contract; this person would also function as *Independent Verifier* of the completion of the Brief.

It was interesting for two main reasons. Firstly, a contractor would be appointed from outside INSW for this purpose. Why would INSW or preferably the DPC as the proponents of the 'move' not do this for themselves? Secondly, it is the only place found in the released documents of recent months that gave an overall time frame and also the only place found where the various contractors' responsibilities were outlined, as follows:

### **Proposed timing as at May 6, 2020:**

Design package draft 1 and Design package complete dates not yet estimated; EOI: Complete by 3 August 2020; RFT release: 31 August 2020; Contract award: 21 December 2020; Construction: Early 2021- end 2024. This reads as the timetable for the whole project, but the Business Case is not yet finalised for either project and it would seem that the task could not begin until this was approved.

### **The people recently involved in the work are as follows:**

1. 'novated to contractor', in other words guaranteed to be a part of the construction: Moreau Kusunoki, Lead designer, and Genton, Local architect; ARUP for work as Structural engineer, Civil engineer, Facade engineer and Fire engineer
2. (not 'novated') McGregor Coxall, Landscape architect; L'Observatoire, Lighting; DEP Engineering, Large door engineering; Juan Sato, Exoskeleton engineering; ARUP, Building services including Mechanical, Electrical, Vertical transportation, Hydraulics, ESD, Acoustics, Theatre, Pedestrian modelling, Wind Security and Lighting.

Investigators found it annoying that such material was not readily available as a basic labelled document instead of being only discoverable by reading documents whose labels did not appear to be relevant. The entire document is attached as Appendix 3.

Some other particular documents that were mined for data are listed below.:

1. Aspects of the 'move' involving display of exhibits etc were largely ignored, but among the matters discovered was an emphasis on entertainment matters: NSW.001.018.1447 - Email from Hanna Slater INSW to George Conha ARUP - 'I have just spoken to the Powerhouse regarding the truss sizes we were discussing last week and confirm the following; There will be no dancing in PS2; There will be no dancing in PS7. This is a corporate function space; In both PS2 and PS7 the function activities will be more akin to music/canapes/cocktail party use ... as I understand these clarifications will reduce the size of the truss supporting the rooftop terrace (above PS4) to 4m deep. All trusses will be 4m deep, with the exception of PS1 only which is 5m deep.' No discussion of museum matters was found, but this email indicates an emphasis on entertainment within this new building. The email defines the spaces as corporate function spaces, not even as multipurpose spaces.
2. NSW.001.025.0034 - 'As part of the development of the PH Precinct at Parramatta, the museum's collection will be for the first time stored together in one place at the museum's Castle Hill site. This massing of the collection offers opportunities to harness the embedded collective knowledge, further grow our understanding and develop new possibilities for the future. This is a unique opportunity for the Museum to create a place where people are able to explore how things work and are inspired to find ways to make them work better. Work, learn, develop, share' :Castle Hill will become 'the cornerstone of the renewed museum focus on collaboration and research; a place to research, experiment, prototype, and produce features: Fab studios, individual and collective studios, interactive systems /digital/ar/vr/; photographic/moving image studio, sound studio, black box testing / performance rehearsal / motion tracking; resource centre: library, media and archives; will work with TAFE to offer coursework from engineering to gallery and museum skills, arts management, information and cultural services, visitor information services, guiding, events management.  
This sort of rambling, unsubstantiated thought bubble does not inspire confidence: if the main activities of the museum are to be held at Castle Hill, then perfectly good facilities at Ultimo in the heritage Harwood Building will be trashed, the process of preparing museum displays will be made incredibly difficult, and either the function of the museum will be lost or the expense and difficulty of changing museum displays will be horrendous.
3. Long-term storage for all VLOs currently held at the Powerhouse was not considered a requirement as part of the business case; storage was anticipated for 3000 m<sup>2</sup> of permanent VLO storage but another 5000 m<sup>2</sup> is required if VLOs are not on display in Parramatta. Strategic loans are being explored to address this issue in the medium term.<sup>8</sup> Statements (made elsewhere, not, as far as could be seen in the released documents) that there will be no permanent exhibits at Parramatta, and that all items will be rotated from Castle Hill,

betray a complete ignorance of museum reality.(The Australian Museum and Sydney Living Museums currently use Castle Hill as storage and curatorial work and the continuing arrangements for this are not clear).

4. There are many documents about the new 'Building J' that will be built to house the Powerhouse objects – documents about options for siting it, materials it would be constructed out of, etc.
5. General comment on Castle Hill from expert investigator: *My impression is that that they're NOT moving the Powerhouse to centrally located Parramatta... they're actually moving it more than an hour away from the Sydney CBD, to some fancy warehouses in Castle Hill. Parramatta will merely be an entertainment venue with a frequently changing display of 'highlights'. The ACTUAL MUSEUM will be at Castle Hill, which is even more difficult and time consuming for most of the greater Sydney region (let alone tourists/visitors to Sydney) to get to, than Parramatta.*
6. There are some copies of reports apparently intended to be part of the State Significant Development Application for Parramatta. These were not examined, as other items had more significance and the SSDA process is beyond appeal.
7. There is quite a lot of discussion about how to move the VLOs, and how to get them into Parramatta, complete with an illustration about how one of the pieces of lattice work on the side of the building could be pivoted or removed to create a larger void through which things could be lifted. The most worrying thing is that no expert removalists seem to have been involved and that it also appears that the majority of the Parramatta museum is not properly climate controlled.
8. There are many documents about the power requirements / substation placement for the Parramatta museum. There is email discussion about gross floor area required for plant, including: NSW.001.020.7962 - email about needing more space for plant, which would reduce GFA; Hanna says roof can be used to plant for some degree but is to be used as function/event space; noted brief accounted for about 825 sqm of plant but actual required for competition phase is around 3000 sqm. NSW.001.020.8887 - 'Total plant area will be approx 10% of the floor area. We have looked at some other world class museums and this is in line with their proportions of plant area which range from 10-17%' (From Enrico Zara ARUP to angelica giannoulatou at MKG). In particular the comment brief accounted for about 825 sqm of plant but actual required for competition phase is around 3000 sqm' is interesting... the requirement nearly quadrupled and this needs clarification.
9. Document NSW.001.025.0338 notes that there will be office space for 'in excess of' 50 staff, plus additional capacity for hot-desking and shared workspaces for 'other staff, powerlab residents, researchers, industry,' etc. with 'capacity for co-working', at Parramatta.
10. Visitor capacity modelling - this document includes two scenarios; neither looks like they meet the outrageous visitor projections of previous estimates. NSW.001.020.6237-6239\_02 - capacity modelling 2 scenarios, starts with email from Simon Walkom MAAS to Eric River ARUP and Enrico Zara ARUP.

## 6. Formal request for digitisation of the material: September 21

As has been previously mentioned investigators made informal complaints about the quality of the material released and on September 21 the following was sent to DPC, INSW and MAAS. No acknowledgement has been made to this request, and no appropriate action has ensued:

*Re resolution of the Legislative Council under Standing Order 52 made on 13 May 2020 for release of documents concerning the 'move' of the Powerhouse Museum to Parramatta. All political parties agreed to the release of the documents.*

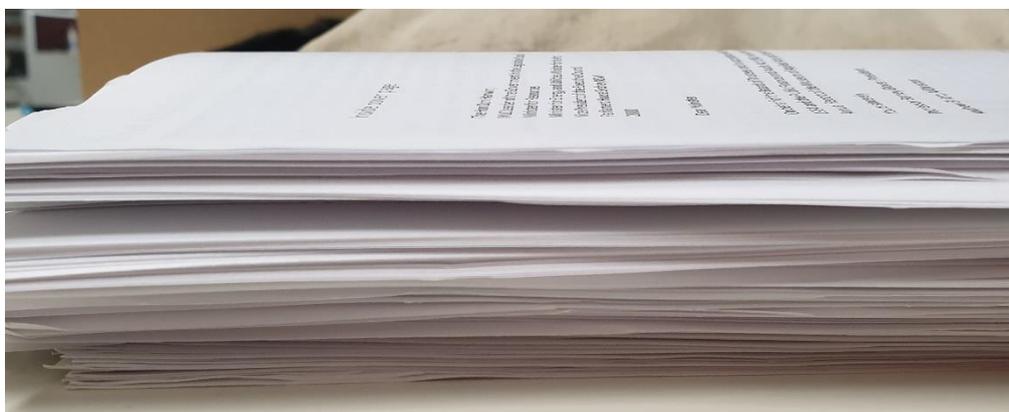
*This is a formal request for the release of the material in digital form. This matter is urgent in view of the current process of the degradation of the Ultimo Museum and the evidence of lack of due process.*

*The documents were received during the period 10-12 June 2020. As expected, there was an enormous amount of material, (of the order of 25,000 pages). Only a single copy is available for inspection at Parliament House, but we were prepared to have groups of people examining and photocopying the material as happened in 2017.*

*However this cannot be done under present circumstances. Due to Covid19 restrictions, only one person can be allowed in the area at a time. This person has to be admitted by being escorted by a staffer of an MLC or MLA politician, and wherever possible, these people are working remotely. When they are at Parliament House they are very busy and we have had several days when we have not been able to obtain an 'escort'. All the people with time and the necessary skill to examine the documents are retirees, and many of them are reluctant to take part in public activities such as this for health reasons during the Covid outbreak.*

*These problems are compounded by the nature of the material. The relevant agencies have produced copious amounts of documents, some of which require careful examination, page by page. Over 700 sheets contained in boxes 2 and 3 of the first group (four boxes) received contain only one line of information (see Appendix 2) and the print is so small it has to be read with a magnifying glass, so it is very difficult to interpret. Also in these boxes is some 300+ pages of drafts of the 2017 MAAS Annual Report, and to go through this material to find the relevant information takes considerable time.*

*We request that .pdf or similar files be made available. Ideally the agencies concerned could make available the original digital copies, or as a less satisfactory alternative staff could run the existing material through their photocopiers to be saved on a USB storage device or similar. By this means the intent of the order could be carried through.*



Drafts of the 2017-8 Annual Report. Only about 50 words refer to the 'move' and the final version of this report and the 2018-9 report are readily

available online.

## 7. Investigations of late October

Investigators planned in mid October to have another day looking at the released documents in the Legislative Council offices, but when they tried to arrange this for 14 October they found that they had been moved from the office in which they could be examined. They were retrieved and a day was spent Wednesday 28 October examining them. The usual restrictions applied but thanks to the good offices of a senior officer digital copies could be made, using a high speed copier, but there is so much paper that it would take about an hour to digitise a single box. 772 pages were copied in 40 minutes, so the total of documents could be copied in around 27 hours. The investigator chose about a third of one box where the documents dealt with a single topic, namely the design of the Parramatta Powerhouse and copied these digitally and they are online, accessible from <http://maasbusinesscase.com/0000/OSO52/default.html> .

As many documents as possible were quickly examined with priorities approximately as follows:

- Any evidence of involvement of people with museum expertise and qualifications anywhere in the project, notably ARUP and the architects; basically to confirm that no such person exists. See page 21 and endnote.
- Matters of heritage assessments at either place: inadequacies and duplicities
- Matters of instructions from Government to INSW and PHM etc and particularly any bullying or kickback
- More evidence of secrecy and obfuscation
- Any other information.

The documents were originally in three lots of boxes as per page 10. It was possible to find, with considerable difficulty, a particular document from the title list in the index pages.

When the material was removed from the office area it had been reboxed. Some of the boxes had been only partially filled, but now all were crammed. The new boxes had no numbering system and all possibilities of creating a boxing sequence that corresponded to the catalogue list was gone.

Contents of the boxes at present are very approximately as below: the contents are not homogenous or organised, so the description of the contents is indicative only. The Catalogue of the larger release of documents – (398 pages) is included in several boxes as shown.

The secondhand boxes now being used have no numbering scheme, and this listing is not in any particular order:

1. Catalogue and Parramatta Powerhouse routine emails details
2. Catalogue and records of heritage meetings. In most cases the heritage documents are not specific to Powerhouse matters, eg meeting minutes are given in full when only a brief section was devoted to Powerhouse heritage in any form.
3. Parramatta building details including some discussion of flooding danger. A skim reading of the flood material indicated no contradiction of the basic objections made, eg at the current Inquiry.
4. Catalogue and copies of the Aurecon reports into the Powerhouse Parramatta project seen at <https://www.planningportal.nsw.gov.au/major-projects/project/26576?fbclid=IwAR0bB-du2l8qvLLOoTEoS-6fBmRsQNumHAwb5O2hQsqaoxFSoeAtba7vx1l> . These documents were prepared by Aurecon, a PR firm with no museum expertise, and their brief was to describe the benefits of Powerhouse Parramatta, gain goodwill for the project, generate enthusiasm for the new museum and address and correct misinformation in the public field. They made

no effort to address the facts about the faulty researching and lack of consultation that has characterised the project from its inception.

5. More Aurecon material and miscellaneous emails and related administrivia. Aurecon was recruited to present a favourable view of the operation.
6. Parramatta details and *Curio* archaeology of Parramatta site and Advision report into cultural background. Nothing of exceptional merit, just a box ticking exercise, no major errors obvious but no evidence of academic or indigenous involvement was seen in the time available.
7. 'Blank' pages and material re heritage, mainly general documents
8. 90% 'blank' pages and a few emails.
9. Largely Castle Hill material
10. Catalogue and drafts of 2017-18 general documents.
11. Building notes including some flooding.
12. Largely 'blank' with PR submissions
13. Catalogue and emails largely about fees and Arub administrivia
14. Catalogue and printed material with more administrivia
15. Catalogue and material about landscape at Parramatta and trivia administration
16. Parramatta plans and miscellaneous.

In summary, with the first arrangement of boxes it was very difficult to find a particular document, but could probably be done within about 15 minutes. To find a particular document now would almost certainly take an hour or more.

## 8. Lack of museum expertise throughout the process

The qualifications of 48 people involved in decision making in the current processes have been checked. Once again we have found no people with significant museum experience or qualifications listed in as originators of recipients of emails seeking input to the basic decisions being made or as authors or contributors to other documents<sup>9</sup>.

One person had a fine arts degree and another had done some voluntary work in a museum. Some qualified people are employed in the 'digitisation' process that is regarded by the Government as a major part of the 'move' but they are following instructions, not being involved in decision making. As a result the so-called digitisation process is of very poor quality<sup>10</sup>. It has received very little, if any, attention in the current batch of released documents.

This carries on the tradition of the 'move' process, namely that there has been almost no participation from any person with museum qualifications and / or experience. This has been apparent in the people developing the Business Case, the Trustees, the people running the Architectural design competition and the people who entered the design competition.<sup>11</sup>

The results of this practice are manifold and serious. The initial claim by Mr Baird that the whole 'move' operation could be financed by the sale of the Ultimo site for 'urban renewal' has been found to be utterly ridiculous, and this has continued to recent pronouncements on the moving and dispersal of the Very Large Objects which have been demonstrated to be of almost criminal ineptitude.<sup>12</sup>

## Appendix 1. Basis of this paper

Before looking at the released material the catalogue lists were examined:

<https://www.parliament.nsw.gov.au/tp/files/77648/Index%20-%20Powerhouse%20museum.pdf> (a smaller file)

<https://www.parliament.nsw.gov.au/tp/files/77662/Index%20-%20Powerhouse%20Museum%20-%202012%20June%202020.pdf> (a huge file)

From examination of the lists of printed material it was obvious that we were faced with a huge job of assessing this material because the huge volume of material was not organised. The printed index files were converted to a spreadsheet to enable sorting in various ways. Because of file anomalies caused by this process some entries were not transcribed. No listings were accidentally duplicated. There was no systemic bias in regard to any category of the material supplied. We accurately transcribed 3984 titles and assuming a generous maximum of 400 'lost' entries the margin of error for conclusions drawn (eg page 4) has been calculated at  $\pm 0.6\%$  at a P of 99%.

Between the three workers who devoted a total of about 20 hours examining the material, almost all boxes were quickly examined, ignoring obviously useless papers, and the consensus is that we missed very few major documents. Particular targets were

- general information not available in the public domain rather than administrivia and procedural documents
- major financial documents
- evidence of assessment of options in major matters
- evidence of employment of museum specialists
- any reference to the six review panels referred to in the response to the first Inquiry Finding

Requests were submitted for release of the material in digital form, (see page 18), but no response was received. On the last visit (28 October), material could be copied from a copier direct to USB drive. A block of papers on the design of the Parramatta building was located and copied (772 pages), online at ##. These pages contain a lot of administrative material but no examination of the basic idea exists, and the mass of detail makes it difficult to come to general conclusions.

Apart from this about 300 pages has been copied in paper form and later analysed. The types of information that can be gleaned by data mining provide interesting snippets of information are of some interest (see page 15) but do not give the type of overview that is sought by the request made by Mr Borsak.

## Appendix 2: Claim for Confidentiality and privilege

Transcribed from printed file, legal references not included; there may be minor errors or omissions but the general thrust is clear.

SUBMISSION IN SUPPORT OF CLAIM FOR CONFIDENTIALITY AND PRIVILEGE  
BY THE DEPARTMENT OF PREMIER AND CABINET, INFRASTRUCTURE NSW AND THE MUSEUM OF  
APPLIED ARTS AND SCIENCES  
ORDER FOR PAPERS — POWERHOUSE MUSEUM — 10 JUNE 2020

1.1 In accordance with the terms of the resolution agreed to by the Legislative Council on 13 May 2020 (the Order), and the terms of Standing Order 52, documents have been identified for production by the Department of Premier and Cabinet (which includes Create NSW and Heritage NSW) (the Department), Infrastructure NSW (INSW) and the Museum of Applied Arts and Sciences (MAAS) (individually an Agency and collectively the Agencies), and the potential application of privilege to those documents has been considered.

1.2 Given the wide terms of the resolution and the significant volume of documents captured by its terms, and in the interests of avoiding the production of duplicate sets of documents held across the Agencies as far as possible, the Agencies now provide a single response to the order for documents. For ease of reference, the Agencies have prepared joint submissions in support of the various claims of privilege advanced below.

1.3 It is to be noted that these claims for privilege are not raised as a basis to resist production of documents that are within scope of the resolution. Rather, these claims are made, pursuant to Standing Order 52(5), to identify those documents over which privilege may be claimed, in order to allow the Legislative Council to consider the claims and in support of an application that it is in the public interest that the documents should not be made publicly available.

### 2. Legal Professional Privilege (LPP)

2.1 The documents identified in the index as subject to LPP are privileged and should not be made public on one of the grounds available under the common law principle of legal professional privilege, and as codified in the *Evidence Act 1995* as client legal privilege.

2.2 Privilege attaches to each document because:

(a) The document was brought into existence for the purpose of:

- (1) Enabling an Agency as a client to obtain, or its legal advisers to provide, legal advice; or
- (ii) For use in actual litigation or litigation reasonably contemplated by the Agency and in respect of which privilege has not been waived;

and/or

(b) they are confidential communications between the client or its legal advisers and persons with whom the client shares or shared a common interest in relation to the subject matter of the advice received by one of them, such that any claim for privilege has been maintained and not waived.

2.3 Examples of documents that have been identified as LPP include (but are not limited to):

- (a) legal advice from external lawyers (e.g. from King & Wood Mallesons in relation to the Powerhouse Relocation Project);

- (b) materials disclosing the nature of legal services provided (e.g. invoices from King & Wood Mallesons, including narrations identifying the work that was undertaken);
- (c) internal communications prepared for the dominant purpose of obtaining legal advice (e.g. from King & Wood Mallesons in relation to the scope of the legal services for the Powerhouse project); and
- (d) progress reports indicating strategic priorities in relation to the Powerhouse Relocation Project that identify matters tasked to DPC Legal.

2.4 Relevantly, legal professional privilege is a ground upon which there is a conclusive presumption of an overriding public interest against disclosure in the *Government Information (Public Access) Act 2009* (the GIPA Act); see section 14(1) and clause 5 of Schedule 1 to the GIPA Act. It has also been noted in numerous reports of the arbiter that legal professional privilege should be respected as a strong claim of privilege.

2.5 The claim of legal professional privilege over these documents should be upheld because the protection of legally privileged Crown documents is in the public interest.

### 3. Commercial-in-Confidence

3.1 Each document falling within this category contains information in relation to the commercial interests of third parties and/or the State.

3.2 It is well-established at common law that the principle of public interest immunity requires the balancing of conflicting interests to determine whether it would be *'injurious to the public interest to disclose'* the impugned material.<sup>1</sup> In Parliamentary proceedings, a balance must be struck between the significance of the information to Parliament against the public harm that would flow from its public disclosure.<sup>2</sup> According to the *New South Wales Legislative Council Practice*:

*'the proper basis for claims of commercial-in-confidence information is not that there may be a commercially confidential dealing, but that the disclosure of the matter is likely to cause damage to the commercial activity'*.<sup>3</sup>

3.3 The documents over which public interest immunity is claimed in this regard contain commercially sensitive information (including third party commercially sensitive information provided in confidence to an Agency or Agencies), the value of which would be (or could reasonably be expected to be) destroyed or diminished if the information were disclosed to the public. Documents of this type include, but are not limited to:

- (a) invoices and timesheets from consultants to the MAAS project, and professional services engaged for the MAAS project, including hourly rates and fees and in some cases, details of the consultants' bank accounts for payment;
- (b) documents containing detailed development strategies, including market and competitor analysis;

3.4 The Agencies have produced (in answer to paragraph (d) of the order) various documents relating to the International Design Competition, which includes entries by third-party competitors in connection with that competition.

3.5 Pursuant to the terms and conditions of the competition, the copyright, moral rights and ownership of all intellectual property rights of competition materials submitted in connection with those entries remain vested in the submitting competitor, although a non-exclusive licence was granted to the NSW Government to use this material as a condition of entry to the competition.

While the Agencies do not claim public interest immunity over the documents on the basis of a possible infringement of copyright by the State generally, the Agencies have nevertheless sought to protect the possible disclosure of trade secrets and methods revealed by the design competition entries on a limited basis.

#### *State Heritage Register listing of the Ultimo Tramways Powerhouse*

3.6 In December 2019, Heritage NSW sought an independent review of a State Heritage Register (SHR) nomination for the Ultimo Tramways Powerhouse (the Site) by the National Trust of Australia. A number of Heritage experts provided return briefs to the Heritage Council in response, which included their approach to the review and methodology, fee proposals and other commercial-in-confidence information. The information claimed to be privilege also includes unsuccessful responses to the call for return briefs. The likely prejudice caused by disclosure of this information is considered to outweigh the public interest in disclosure of the documents.

3.7 The disclosure of information contained in the documents identified by this category could negatively affect the interests of third-parties, the Government by diminishing the commercial value of this information to third parties and the Government. Further, and at a higher level of generality, if private firms were to perceive the Government as acting in a way so as not to safeguard the confidentiality of commercially sensitive information provided to the Government or created in the process of work for or with the Government, such firms would be less willing to engage in work for the Government in future.

3.8 Accordingly, the public interest in disclosure of this information to the public is outweighed by the interest in maintaining its confidentiality.

#### 4. Privacy and personal information

4.1 A number of documents produced in answer to the Order contain private information, including private third party information. Each document in this category contains documents which, if disclosed, would involve the disclosure of personal information of identifiable private individuals, including of individuals from the community who participated in a consultation process. Personal information subject to this category includes, but is not limited to, individuals':

- (a) names;
- (b) addresses; and/or
- (c) telephone numbers;
- (d) opinions; and/or
- (e) email addresses.

4.2 In this connection, such information would ordinarily be protected from public disclosure under common law or pursuant to the GIPA Act or the *Privacy and Personal Information Protection Act 1998*.

4.3 The Hon. Mr Keith Mason AO QC, in his capacity as an independent arbiter, has noted that the House has undoubted power to take additional measures to prevent disclosure of confidential information where that is not in the public interest. '

4.4 The arbiter has also, on several occasions, endorsed the agreement of members, who had initially disputed a claim of privilege, that certain personal 'private' information be redacted, avoiding the need for the arbiter to resolve such disputes.<sup>5</sup> The arbiter has noted, amongst other

matters, that members will always have access to un-redacted versions of the documents and the capacity to access such information if it is really needed

4.5 Given the wide breadth of the Order, and the large volume of documents that it has captured, and the deadline by which the documents were to be returned, it has not been possible for the Agencies to redact personal information, which might cause the identity of an individual to be ascertainable, from the documents produced in the time available. The Agencies claim privilege over this information, which includes names and contact information (including addresses, email addresses and phone numbers), opinions of private individuals and other identifying information. Redacted copies of the documents with personal information removed may be provided to the Legislative Council on request.

#### Parliamentary Privilege

4.6 In this category are house folder notes and briefing notes prepared to assist the relevant Minister in answering questions that may be asked in Parliament, draft answers to Questions on Notice and Supplementary questions given during Budget Estimates hearings, including documents which are ancillary to their preparation.

4.7 Parliamentary privilege operates so as to prevent documents of this kind from being produced to a Court, or to another '*place out of Parliament*' within the meaning of Article 9 of the *Bill of Rights 1689* (Imp)! The Agencies do not suggest that parliamentary privilege would apply to prevent these documents from being produced to, or from being published by, the Legislative Council in the exercise of its constitutional functions.

4.8 However, and significantly, it has been accepted that requiring disclosure of such documents may affect the quality of information available to Parliament. Justice Austin of the Supreme Court has stated that:<sup>8</sup>

'It seems to me necessarily true, and not dependent upon the evidence of the particular case, that if briefings and draft briefings to Parliamentarians for Question Time and other Parliamentary debate are amenable to subpoenas and other orders for production, the Commonwealth officers whose task it is to prepare those documents will be impeded in their preparation, by the knowledge that the documents may be used in legal proceedings and for investigatory purposes that might well affect the quality of information available to Parliament.'

4.9 The House may therefore wish to consider what impact any publication by it of such documents could have.

4.10 The House may also wish to consider what effect publication may have on the ability, in future legal proceedings, to claim parliamentary privilege on the basis identified in the extract above.

### Appendix 3: email about Project Brief and Independent Verifier

This document is one of the few really informative items that were found. It indicates the responsibilities of various groups for various aspects of the task. It is buried in this document: comments in red. Due to transcribing errors there may be minor discrepancies and duplications in this copy but the summary on page 15 is accurate. This document is printed here to illustrate how investigators have had to find information by looking at seemingly irrelevant documents. (tl)

NSW.001.023.3855

**FW: Brief Writer**

411111MENSINESIMI

**From:** Simon Pagett </o=exchangelabs/ou=exchange administrative group (fydibohf23spdit)/cn=recipients/cn=7ec740997ac9462ebl6ae6f761ed364f-simon paget">

**To:** Simon Pagett <[simon.pagett@infrastructure.nsw.gov.au](mailto:simon.pagett@infrastructure.nsw.gov.au)>

**Date:** Wed, 06 May 2020 15:14:48 +1000

**Attachments:** Scope of Services- Brief Writer and IV.docx (20.28 kB) IV= independent verifier

**From:** Tom Kennedy <[tom@gtkconsulting.com.au](mailto:tom@gtkconsulting.com.au)>

**Sent:** Wednesday, May 6, 2020 10:28 AM

**To:** Hannah Slater <[Hannah.Slater@infrastructure.nsw.gov.au](mailto:Hannah.Slater@infrastructure.nsw.gov.au)>; Simon Pagett

<[Simon.Pagett@infrastructure.nsw.gov.au](mailto:Simon.Pagett@infrastructure.nsw.gov.au)>

**Subject:** Brief Writer

Hi Hannah and Simon

Please find attached scope of services for the Brief Writer and IV. Could you provide any comments in mark up? And do we have an updated program for the project?

Once this scope is finalised I will be working with Stephanie G to finalise the necessary INSW paperwork.

TK

**Tom Kennedy**

[tom@gtkconsulting.com.au](mailto:tom@gtkconsulting.com.au)

0421 595 766

(There are discrepancies in the two versions available of this document from this point on, and the following is a best attempt at making one complete copy.

...

#### Consultation

Allowance should be made for:

**1. Brief development phase:**

- Weekly design meetings

- Regular (assume monthly) workshop meetings with INSW and Powerhouse
- As needed consultation with the design team

**2. Independent verifier phase:**

- Regular design meetings with contractor and design team
- Regular (assume monthly) workshop meetings with INSW and Powerhouse

**Timing**

The project program is presented in the table below. Refinement of timing of deliverables will be agreed with the successful consultant to this request for tender.

Proposed timing as at May 6:

Item	Timing
Design package draft 1	???
Design package complete	???
EOI	Complete by 3 August 2020
RFT release	31 August 2020
Contract award	21 December 2020
Construction	Early 2021- end 2024

NSW.001.023.3857

NSW.001.023.3856

Scope of Services *Powerhouse Parramatta- Project Brief Author and Independent Verifier*

**Background**

Infrastructure NSW was issued with a Project Authorisation Order to undertake delivery of the Powerhouse Parramatta Project (Project) in December 2019. The Project is proceeding based on the winning design from an international design competition by Moreau Kusunoki and Genton and a 'Stage 3 Client Brief,' prepared by Powerhouse Museum.

Since December 2019, Infrastructure NSW has been developing the design to a level suitable for lodgement as part of a state significant development application. Lodgement of the application

**1. Functional Brief**

Infrastructure NSW requires a suitably qualified consultant to form the 'Brief Writer' to assist with the preparation of the Functional Brief (Brief) for Powerhouse Parramatta. The Brief will form the 'Principal's Project Requirements' as part of a GC21 contract package that will be tendered to short-listed construction firms for the project's detailed design and construct (DD&C) contract.

Forming a schedule to the contract, the Brief will outline all requirements for the project, supported by design documentation (plans and details) developed by the design team. At a minimum, the Brief is expected to contain:

- Project vision
- Operating principles/requirements
- Area schedule and space definitions
- **Architecture-technical** specifications, finishes schedule (internal/external)
- **Structure**- performance specifications
- **Services**- performance specifications
- **Lighting**- performance specifications and schedule
- **Public Domain**- hard and softscape specifications and finishes, planting schedule
- Room data sheets
- Future areas for design development
- Prototypes and samples
- Collaborative design process (client, DIP, principal)

The majority of inputs developed for the Brief will be provided by the design team. The role of the Brief Writer will be to:

- Consult with INSW and Powerhouse in developing a draft table of contents for the brief.
- Work with the project's commercial advisors to ensure alignment of the Brief to the overall contract structure.
- Assist INSW with the finalisation of a departures schedule for the project.
- Review the Stage 3 Client Brief for the project against the project design and departures schedule to identify any discrepancies.
- Work collaboratively with INSW, Powerhouse and the design team to resolve any discrepancies between the design and the Stage 3 Client Brief.
- Review inputs provided by the design team and consolidate into a coherent body of requirements within the Brief.
- Prepare a minimum of 2 drafts of the Brief for review by INSW and Powerhouse.
- Prepare a final brief in consultation with the project's commercial advisors suitable for inclusion in a Request for Tender package.

In addition to the development of the Functional Brief, services will be required during the tendering and contract negotiation phase in relation to: assessing tenders against any departures from the Brief.

NSW.001.023.3852

Scope of Services

*Powerhouse Parramatta- Project Brief Author and Independent Verifier*

Background

Infrastructure NSW was issued with a Project Authorisation Order to undertake delivery of the Powerhouse Parramatta Project (Project) in December 2019. The Project is proceeding based on the winning design from an international design competition by Moreau Kusunoki and Genton and a 'Stage 3 Client Brief,' prepared by Powerhouse Museum.

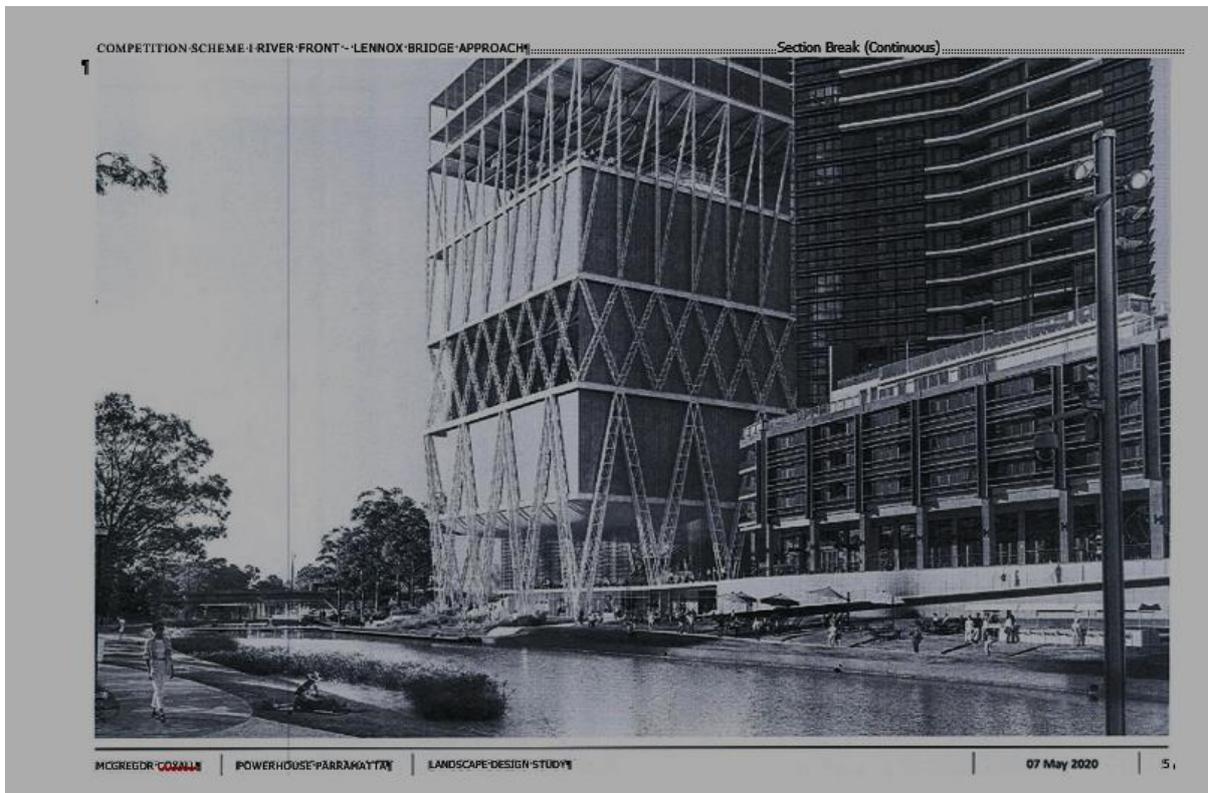
Since December 2019, Infrastructure NSW has been developing the design to a level suitable for lodgement as part of a state significant development application. Lodgement of the application occurred on 6 May 2020, and the project is now progressing into the design development phase.

The design team for the project consists of:

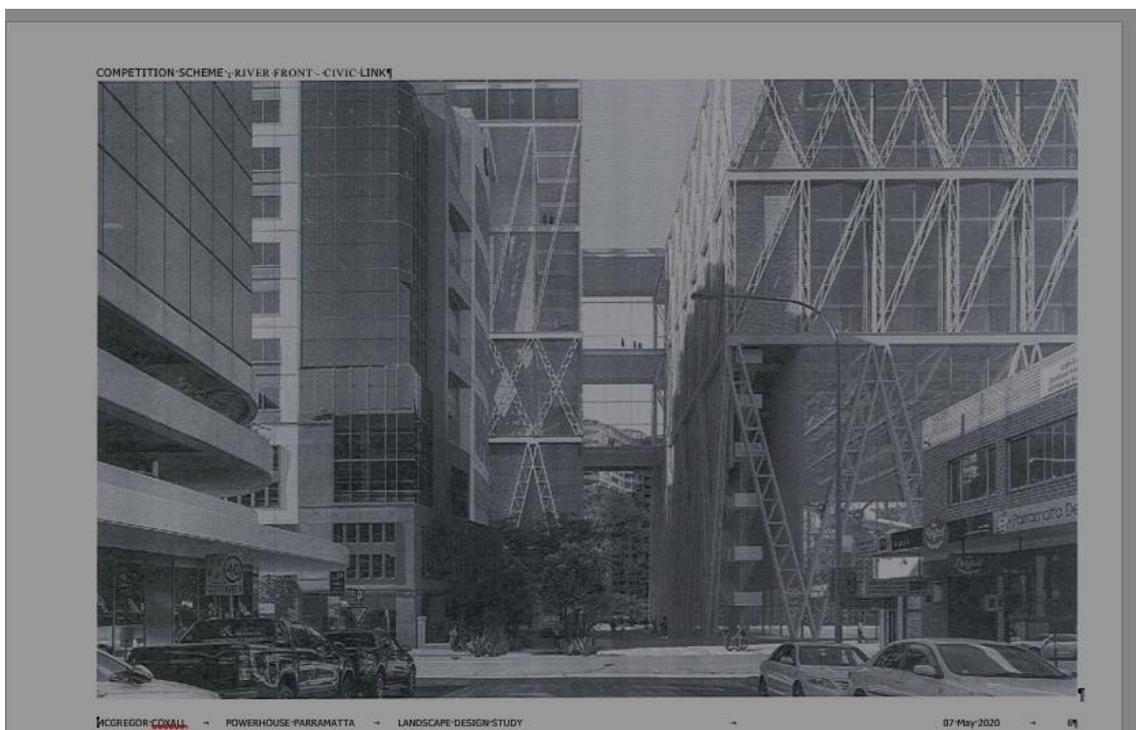
Name	Role	Novated to Contractor
Moreau Kusunoki	Lead designer	Yes
Genton	Local architect	Yes
McGregor Coxall	Landscape architect	No
L'Observatoire	Lighting	No
DEP Engineering	Large door engineering	No
Juan Sato	Exoskeleton engineering	No
Arup	Structural engineer Civil engineer Facade engineer Fire engineer	Yes
Arup	Building services including: <ul style="list-style-type: none"> <li>○ Mechanical</li> <li>○ Electrical</li> <li>○ Vertical transportation</li> <li>○ Hydraulics</li> <li>○ ESD</li> <li>○ Acoustics</li> <li>○ Theatre</li> <li>○ Pedestrian modelling</li> <li>○ Wind Security</li> <li>○ Lighting</li> </ul>	No

## Appendix 4. Some new pictures

Again, these are presented to show how investigators have to take information from wherever it is available.



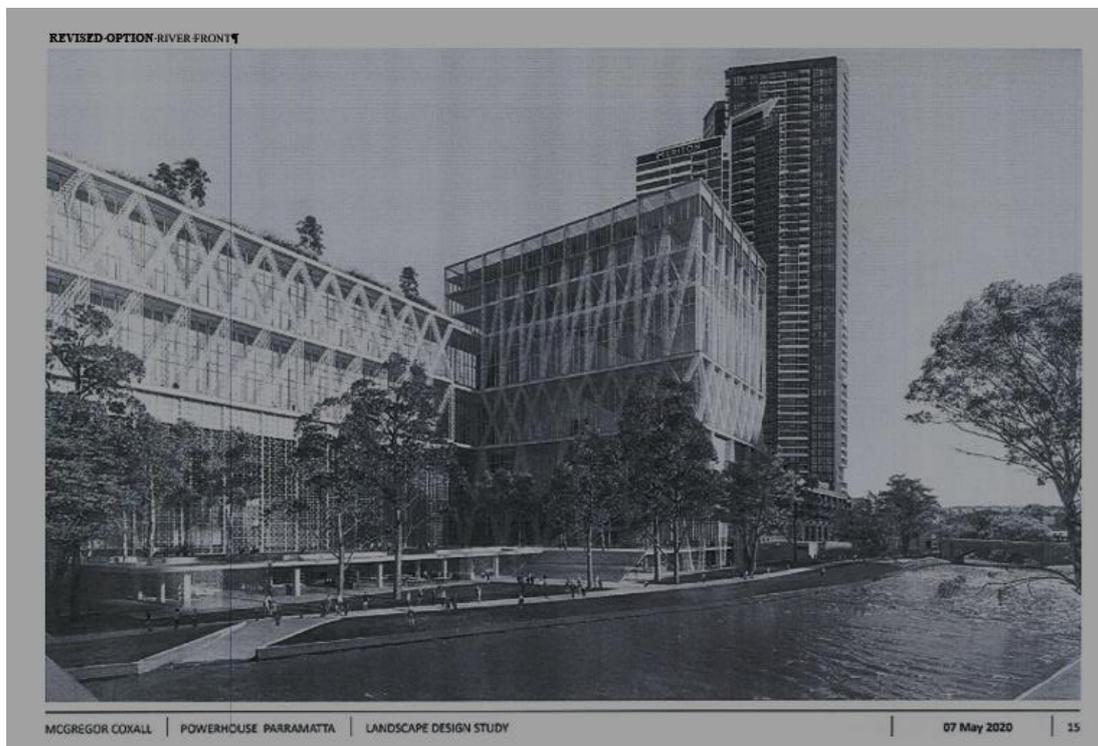
View from Lennox Bridge shows the neighbouring tower, close to the museum.



This is the approach to the museum from the city. The museum is proposed as the climax of the city central rejuvenation. This view would replace the historic Willow Grove building.



The elected Council had intended to have a riverside park as per this picture. It was included by INSW in a publicity draft for the new building (document NSW.026.4528, 'Aspirations, guidelines and Considerations', but it was quickly changed.



Downstream view. Even a 'normal' flood would come up to the undercover area.

## Endnotes

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<sup>11</sup> In the titles of all the documents released Ultimo is mentioned only about 310 times and Parramatta is mentioned over 890 times. Mention of the Ultimo Tramway Power House occurs in in about 80% of the mentions of Ultimo.

<sup>2</sup> Legislative Council Minutes No. 41—Wednesday 13 May 2020

<sup>3</sup> There were probably over 4,000 'public' documents, but it was hard to count them because of the size of the printed files. See next endnote. Also provided were the names of about 3,100 documents retained by the Government for confidentiality reasons.

<sup>4</sup> The photocopied catalogues were made them into a single .pdf, which we edited and made into a text file, then a spreadsheet. Because of copying errors no more than about 200 document names were lost throughout, and there was no methodological bias that would mean that the lost documents were not random. The 3824 documents in the resulting excel file are considered as being a good sample.

<sup>5</sup> Documents presented relating to the Annual report are: Email, Template for Annual Report 17-18, 13 September 2018; Document, Template for Annual Report 17-18.docx, 13 September 2018; Email, Template for Annual Report 17-18, 14 September 2018; Document, Template for Annual Report 17-18.docx, 14 September 2018; Email, Draft MAAS Annual Report Content, 20 September 2018; Document, MAAS - Draft Annual Report Appendix 17-18.docx, 20 September 2018; Document, MAAS - Draft Annual Report 17-18 (2).docx, 19 May 2020; Email, HPE CM: Draft MAAS Annual Report Content, 20 September 2018; Document, MAAS - Draft Annual Report Appendix 17-18.docx, 20 September 2018; Document, MAAS - Draft Annual Report 17-18 (2).docx, 20 December 2019; Email, Annual Report photos, 21 September 2018; Document, Annual Report 17-18 - photos.docx, 22 February 2020; Email, Annual Report images, 24 September 2018; Document, Annual Report 17-18 - photos.docx, 22 February 2020; Email, MAAS 2018 Draft annual report - Create NSW compliance review, 27 September 2018; Document, MAAS - Draft Annual Report 17-18 (2).DOCX, 19 May 2020; Document, MAAS - Create NSW CI Annual Report Compliance Checklist - 2018.DOCX, 26 September 2018; Email, FW: MAAS 2018 Draft annual report - Create NSW compliance review, 27 September 2018; Document, MAAS - Draft Annual Report 17-18 (2).DOCX, 19 May 2020; Document, MAAS - Create NSW CI Annual Report Compliance Checklist - 2018.DOCX, 26 September 2018; Email, FW: MAAS 2018 Draft annual report - Create NSW compliance review, 27 September 2018; Document, MAAS - Draft Annual Report 17-18 (2).DOCX; Document, MAAS - Create NSW CI Annual Report Compliance Checklist - 2018.DOCX; There is nothing here that is not in the published report and the published report mentions Parramatta 34 times, with no material relevant to the material requested.

<sup>6</sup> NSW.001.001.0001: Email: RE: Business planning risk registers: 12 April 2018, NSW.001.001.0002: Document: 2018-20 Business Plan Commercial.docx: 2 February 2020, NSW.001.001.0173: Email: Review of Business Plan: 18 April 2018, NSW.001.001.0174: Document: 2018-20 Business Plan Commercial - LK edits 18042018.docx: 2 February 2020, NSW.001.001.0186: Email: Review of Business Plan: 18 April 2018, NSW.001.001.0187: Document: 2018-20 Business Plan Commercial - LK edits 18042018.docx: 20 March 2020, NSW.001.001.0199: Email: RE: Review of Business Plan: 19 April 2018, NSW.001.001.0200: Document: 2018-20 Business Plan Commercial.docx: 20 March 2020, NSW.001.001.0211: Email: RE: Review of Business Plan: 19 April 2018, NSW.001.001.0212: Document: 2018-20 Business Plan Commercial.docx: 2 February 2020, NSW.001.001.0223: Email: Fw: Review of Business Plan: 20 April 2018, NSW.001.001.0225: Document: 2018-20 Business Plan Commercial (4) - LK edits 20042018.docx: 2 February 2020, NSW.001.001.0237: Email: Fw: Review of Business Plan: 20 April 2018, NSW.001.001.0239: Document: 2018-20 Business Plan Commercial (4) - LK edits 20042018.docx: 20 March 2020, NSW.001.001.0340: Email: Re: Review of Business Plan: 20 April 2018, NSW.001.001.0342: Document: 2018-20 Business Plan Commercial (4) - LK edits 20042018 - AR input 20042018.docx: 2 February 2020, NSW.001.001.0354: Email: Re: Review of Business Plan: 20 April 2018, NSW.001.001.0356: Document: 2018-20 Business Plan Commercial (4) - LK edits 20042018 - AR input 20042018.docx: 20 March 2020, NSW.001.001.0371: Email: RE: Review of Business Plan: 23 April 2018, NSW.001.001.0374: Document: 2018-20 Business Plan Commercial.docx: 20 March 2020, NSW.001.001.0387: Email: RE: Review of Business Plan: 23 April 2018, NSW.001.001.0390: Document: 2018-20 Business Plan Commercial.docx: 2 February 2020, NSW.001.002.4273: Email: Template for Annual Report 17-18: 13 September 2018, NSW.001.002.4427: Email: Template for Annual Report 17-18: 14 September 2018, NSW.001.002.4428: Document: Template for Annual Report 17-18.docx: 14 September 2018, NSW.001.002.4490: Email: Draft MAAS Annual Report Content: 20 September 2018,

<sup>7</sup> NSW.001.021.6062, Email, Re: Power House Museum - Power Distribution Options, 16-Mar-20

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NSW.001.021.6065, Email, Re: Power House Museum - Power Distribution Options, 16-Mar-20  
NSW.001.021.6 86, Email, Re: Power House Museum - Power Distribution Options, 17-Mar-20  
NSW.001.021.6247, Email, RE: Power House Museum - Power Distribution Options, 17-Mar-20  
NSW.001.021.6250, Email, RE: Power House Museum - Power Distribution Options, 17-Mar-20  
N SW.001.021.6254, Email, RE: Power House Museum - Power Distribution Options, 17-Mar-20  
NSW.001.021.6258, Email, RE: Power House Museum - Power Distribution Options, 17-Mar-20  
NSW.001.021.6275, Email, RE: Power House Museum - Power Distribution Options, 17-Mar-20  
NSW.001.021.6278, Email, RE: Power House Museum - Power Distribution Options, 17-Mar-20  
NSW.001.021.6360, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6364, Email, Re: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6374, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6377, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6400, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.64 8, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6422, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6465, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6469, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6477, Email, Re: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6486, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6656, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20  
NSW.001.021.6660, Email, RE: Power House Museum - Power Distribution Options, 18-Mar-20

**Re: Power House Museum - Power Distribution Options Count 22**

<sup>8</sup> This was the situation before the announcements of 4 July 2020, which at least guaranteed the preservation of some sort of museum, and three iconic exhibits on the Ultimo site. No further guarantees have been given.

<sup>9</sup> Among the people whose qualifications we checked are the following: Gabrielle Eade – Fine Arts qualification, Monika Herfuth MAAS Executive assistant, Lisa Ffrench Marketer, Jessica O’Meara Qualified as project manager, Simon Paget Engineer, Stephanie Wade exchange and administrative group, George Cunha Sydney Building group Structural Engineer, Tom Gellibrand Head of projects INSW, responsible for Stadium demolition, Clare Bateman Executive Assistant, Sephanie Geordini Architect, Leigh Woodley architect, Hanna Slater INSW Senior development officer, PHM a major project, architect, Miguel Sereno of Leigh Woodley Gorton , Nerida Mooney, digital marketing, Campbell Penman Formerly IT worker in DPIE, Bianca See Environment NSW Environmental studies, transport consultant, Dr Brian Lindsay Film expert, Nate Lobel ARUP expert on fire safety, Louisa Kotaroff not found, Daylan Cameron DPIE Engineer, water resources, Samantha Bailey from Bailey Environment Executive Assistant, Buabce See Environment NSW, Pauline McKenzie Environment NSW community involvement , Tim Smith Environment NSW Heritage, marine archaeologist, Jason Ardill PMC department , George Cunha ARUP Structural engineer, Kengo Takamatsu ARUP, Angelica Giannoulatou Moreau Architect with volunteer work at The Benaki Museum, Department of Education, Enrico Zara ARUP Project manager , Jacpb Wiest ARUP engineer, Hiroko Kusunoki (MK), Nicolas Moreau (MK), Agnieszka Prusik (MK), Leigh Woodley (Gentons), Steven Toia (Gentons), Philip Coxall (McGregor Coxall), Miguel Serrao (McGregor Coxall), Michael Cowdy (McGregor Coxall), Josh Milston (JMT), Geoffrey Quach (Aver) , Tom Kennedy (INSW) , Hannah Slater (INSW) , Simon Pagett INSW), Duncan Crook (Arup) Steven Toia Architect,Alex Bowen MAAS Arts Admin degree, teacher training, ,Haico Schepers Building physicist and structural engineer, James Rongen-Hall Senior Manager, Design and Delivery - Powerhouse Program, ‘Contributing to strategic, evidence-based advice, recommendations and support to the Chief Executive and Project Director’ MAAS background in event management and arts administration degree 11 months at MAAS in this role 3y 8m at MAAS, (the most qualified person we found) Chaya Bratoeva Architect MAAS, Hayley Coombes Admin MAAS, Dr Martina Novakova Genton architect. Apart from Mr Hall, none had any listed qualifications or significant experience in museum matters.

<sup>10</sup> Daily, about 50 people are involved in so-called ‘digitisation’ of the collection as it is being prepared for removal from such places as the Harwood Building. This has been criticised as being nothing more than cataloguing with a few pictures, as has been carried out since at least 1995.

<https://collection.maas.museum/object/574036> is an example of the current process. There is only one photograph of the garment, only 117 words of description, there are no measurements, the source of the material is not listed, the use of machine stitching vs hand stitching is not described. Compare any entry in the Australian Dress Register, eg <https://www.australiandressregister.org/garment/564/> selected at random.

<sup>11</sup> A possible exception is Nr James Hall of MAAS,

<sup>12</sup> Evidence of expert, Andrew Grant, Legislative Council Inquiry, Friday, 21 August 2020, page 17 ff.