

Lacrosse Building
Information Session 2
27 October 2015

Report of proceedings

Prepared for City of Melbourne



≧ November 2015 ≦

**KISMET
FORWARD**
FACILITATING BETTER DECISIONS

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Abbreviations used in this document

MFB	Metropolitan Fire Brigade
OC	Owners' Corporation
TMG	Trevor Main Group
VBA	Victorian Building Authority



Jennifer Lilburn (Director, Kismet Forward - jen@kismetforward.com.au) facilitated the meeting and (with Andrea Mason) prepared this report as an independent account of proceedings.

Kismet Forward provides specialist advice and support in the areas of community engagement, facilitation, program logic, strategy, evaluation, training and project management.

Further information can be found at www.kismetforward.com.au

Background

In the early hours of Tuesday, 25 November, 2014, a fire caused significant damage to the Lacrosse Building, 673-675 La Trobe Street, Docklands. More than 400 residents were evacuated from the 312 apartments in the building.

The Metropolitan Fire Brigade (MFB) Post Incident Analysis investigated the cause and spread of the fire. It found the fire was accidental and was caused by a cigarette butt which burned through a plastic container, igniting a table on an eight-floor balcony and eventually spreading through the wall-cladding, which has since been found to be non-compliant for this size building.

The City of Melbourne, together with the Victorian Building Authority, MFB and the Owners' Corporation held a public meeting on 27 April 2015 to go through the MFB report with residents, inform them of steps that the City of Melbourne would be taking with regards to the Building Notice –Order process, to make the building compliant and answer any questions.

In May through to June the City of Melbourne's Municipal Building Surveyor conducted building and apartment inspections and issued Building Notices outlining the issues and how to make the building compliant. A Building Notice is a 'show cause' notice, which provides an opportunity for the owner to propose a solution before further action occurs. This was outlined in the 27 April meeting.

The owners' corporations (OC) on behalf of a number of residents proposed an alternative solution that was based upon a fire engineer's report. The proposal was that there be no change to the building and that enhanced management of balconies occur, together with limiting two persons per bedroom.

The OC response did not satisfy the Municipal Building Surveyor that it would provide a sustainable, compliant solution for the building. On October 23, Building Orders were issued to all owners of the apartments not affected by fire, giving 350 days for remediation actions to ensure building compliance.

Building owners were invited to a meeting convened by City of Melbourne on 27 October 2015 to explain the Building Orders and to answer questions. This report is an independent account of the meeting's proceedings.

The meeting was recorded to assist building owners who could not be present. It can be viewed at <https://www.youtube.com/watch?v=BWCVS6GROWk&feature=youtu.be> . To skip to specific presentations, see Joseph Genco's presentation at the 12:10 minute mark; Jarrod Edwards' presentation at the 52:05 minute mark; and Fraser Main's presentation at the 128.15 minute mark.

Meeting Introduction (Jen Lilburn, Kismet Forward)

As independent facilitator of the meeting, Jen Lilburn welcomed participants and asked them about their expectations of the meeting. A number of questions were tabled and were subsequently answered by meeting presenters. They are included in the relevant sections of this report, as are the slides that were presented throughout the evening.

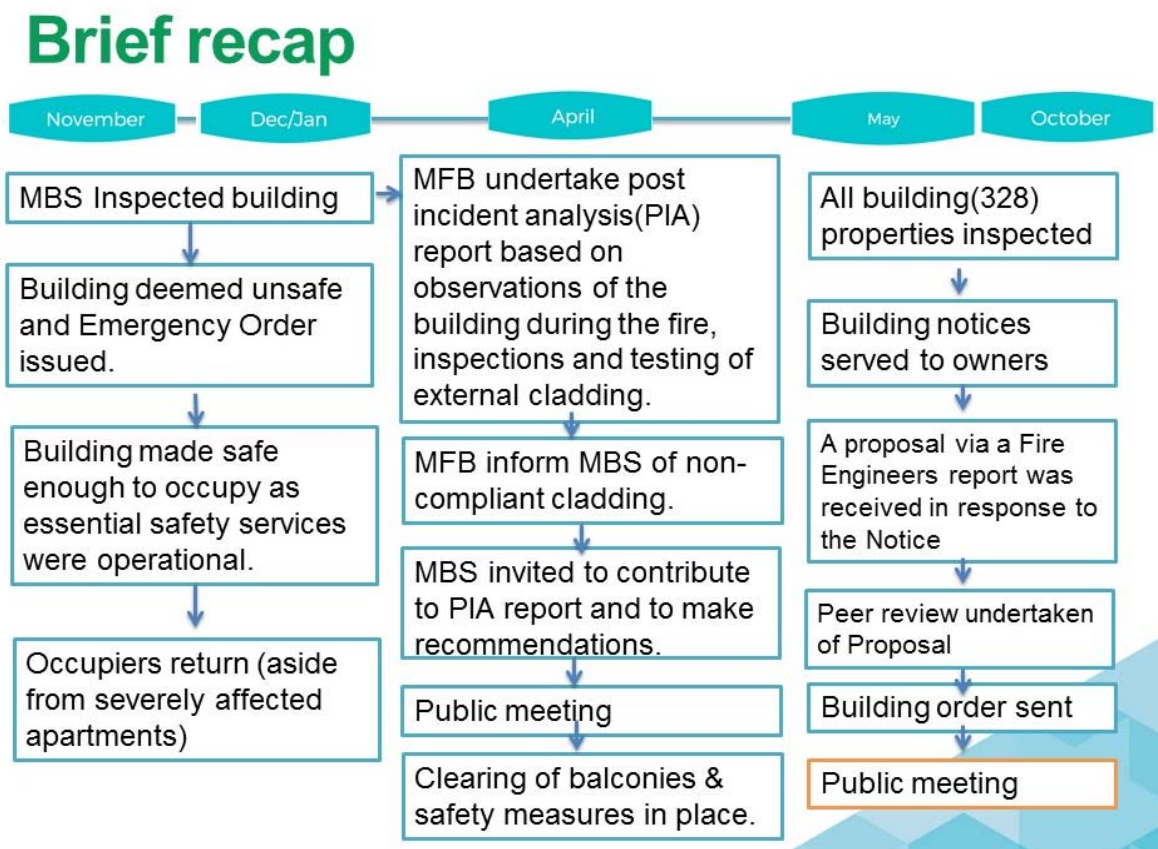
In addition to the questions, one building owner stated that he hoped the meeting would provide 'improved updates on progress'.

Who is here today

COUNCIL- Municipal Building Surveyor	VICTORIAN BUILDING AUTHORITY (VBA)
Responsible for Administration and Enforcement of certain parts of the Building Act and Regulations in its Municipality.	Oversees the Building Regulatory system in Victoria, including accreditation, building permit system, building standards, building practitioners
MELBOURNE METROPOLITAN FIRE BRIGADE (MFB)	OWNERS CORPORATION & FACILITY MANAGER
First response agency for fires and other emergencies. Reports back to government on issues that will impact on MFB operations and safety of the community.	Administers the responsibilities of owners of a building which has been subdivided and has common property. Manage the day to day operations of the building.

Municipal Building Surveyor Update (Joseph Genco, City of Melbourne)

Joseph gave an update on the activities timeline and processes that have been undertaken since the Lacrosse building fire in November 2014:



Making the building compliant

Municipal Building Surveyor (MBS)

- Legal responsibility to act and enforce
- Take action against unsafe or non-compliant buildings to ensure they are made safe or compliant.

Representations received

Fire Engineering report outlined:

- No change to building fabric
- A management structure to keep balconies clear & occupancy limits

Solution is not sustainable and will not lead to a compliant building

Responding to orders

- Owners are responsible for bringing their building into compliance
- Strongly encouraged to work together
- Prepare a “whole of building” response
- Legislation requires all owners are served Building Orders.

Timeframe for activity

- Make building compliant by: **7 October 2016.**
- Municipal Building Surveyor to monitor progress.
- Owners’ authorised agent can seek amendment to Building Order within timeframe.

or

- You can appeal within 30 days to the Building Appeals Board.

Support from City of Melbourne

- Offer meeting rooms
- Municipal Building Surveyor to attend meetings, where possible.
- Facilitation services, if required

Is the building safe?

**In the interim, building is safe;
but this is not a sustainable ongoing solution**

- ✓ Current essential fire safety measures are operable
- ✓ The MFB ready to provide additional resource in case there is an incident
- ✓ Increased vigilance - Annual essential safety measure report to be undertaken quarterly by Facility Manager & MBS

Contact details & more information

Email: lacrosse@melbourne.vic.gov.au | Web: www.melbourne.vic.gov.au | SEARCH:
Lacrosse

Phone: 9658 9658 Customer Service

Victorian Building Authority Regulatory Action (Jarrod Edwards)



Jarrod provided an insight into the role of the Victorian Building Authority (VBA) in the investigation into the Lacrosse building fire. He explained VBA's role in monitoring and enforcing compliance with building and plumbing legislation - and in particular the building and plumbing practitioners involved - under the Building Act 1993.

Much of VBA's work to date has been focussed on audits related to the investigation of the cladding used in 170 other properties in inner Melbourne to ensure there is no risk to others.

Role of the VBA

The VBA's key roles include:

- Undertaking audits, inspections and investigations to monitor and enforce compliance with building and plumbing legislation
- Investigating the conduct of building and plumbing practitioners
- Supporting the work of the Building Practitioners Board, which is responsible for registering and disciplining building practitioners
- Working with relevant agencies and regulators to ensure building and plumbing works are compliant and that consumers are protected
- Participate on behalf of Victoria in the development of national building and plumbing standards

VBA investigation and cladding audit

The VBA has taken a number of actions related to the Lacrosse building and the issues that arose from the fire, which to date include:

- Investigating the conduct of the building practitioners involved
- Using the VBA's coercive powers to compel your builder to disclose any other buildings where it used *Alucobest* (the product used for your apartment building)
- Using the VBA's coercive powers requiring the builders and building surveyors of 170 building permits, relating to building work on high-rise buildings in inner Melbourne and immediate surrounding suburbs built in the past 10 years, to provide evidence that the external cladding complies with the Building Code of Australia
- The VBA's audit is directed at determining whether there has been potential non-compliant use of cladding within the works covered by the 170 permits

VBA cladding audit

If, through the audit, the VBA identifies buildings where cladding has been used in a potentially non-compliant manner, it will take the following steps:

- Notify the local Municipal Building Surveyor (MBS), who will consider:
 - taking appropriate action to determine if the building is safe to occupy and notifying the occupants;
 - determining the appropriate action required;
 - notifying the VBA of the results of the inspection.
- Notify the relevant fire service.
- Notify the general public by posting the details on the VBA website.
- The VBA will then take appropriate action which could lead to disciplinary action or prosecution.

Safety features

- Understanding safety features of a modern apartment building
 - Multiple layers of protection
 - Automatic fire sprinkler systems
 - Fire smoke detection and alarm systems
 - Fire walls and doors
 - Defined fire hazard properties of building materials
 - Evacuation procedures
 - Emergency Service's notification and response
 - Resilience in a 'Vertical Village'
- The Lacrosse Building false alarm
 - Understanding how the fire alarm system works increases your safety

VBA website

For further information go to: www.vba.vic.gov.au

Facility Manager/Owners' Corporation (Fraser Main)

Fraser Main is Group Managing Director of Trevor Main Group (TMG), which has been contracted by the Owners Corporation (OC) to manage the Lacrosse building. His role is to work with all the agencies and to coordinate the process to get building back to safe occupancy. He is acting for the majority of the owners as spokesperson and point of contact for the OC and [Platinum Strata Community Services](#) however Fraser stressed that they are not making decisions without proper consultation with the OC.

The following is a summary of Fraser's presentation.

TMG has worked with the Municipal Building Surveyor and facilitated the apartment inspections and responses to the show cause notices, which has helped develop the Interim Management Plan to allow people to reoccupy safely.

Fraser stressed the importance of maintaining a close working relationship with LU Simon, which has acknowledged that it has a key part to play in achieving the right solution. It is important that the OC does not jeopardise that relationship by engaging outside practitioners to undertake remediation works.

The Building Orders provide the timelines needed to focus on developing solutions that meet the Municipal Building Surveyor requirements.

TMG has been assured that the process is being taken seriously and is being addressed by the agencies as quickly as possible while allowing enough time to develop the best solution.

The fire has highlighted many weaknesses in the laws and regulations and a need for changes in the future.

Fraser will make the Fire Report from LU Simon available to owners whom TMG represents. The report was produced by consultants engaged by LU Simon who have been involved in the Lacrosse building development and are incentivised to meet compliance.

Although it seems unfair that the owners are responsible for achieving compliance, that is the case under the current legislation. TMG will be pressing LU Simon to pay and LU Simon has indicated a strong commitment to achieving compliance. Whilst they acknowledge that the owners are the innocent party, LU Simon remains reluctant to admit fault.

The current works being undertaken on the 05 buildings are expected to be completed by Christmas.

Other issues highlighted included:

- Fire alarms – The MFB has committed in the interim management plan to attend fires at Lacrosse with maximum efficiency. In the case of a recent false alarm they attended within 4 minutes. NB: the person responsible for the false alarm is held responsible for the costs of MFB attendance which in that case was \$7,500 as multiple trucks attended.

- The management team is developing new tools, including Building Link, to provide better education/communications to engage with owners and residents to keep them updated and to change some occupancy behaviour.
- Owners should contact the facility managers first if they see a breach of the management plan or the building rules.

TMG is seeking an amendment to the current Building Order, which (together with LU Simon) it will discuss with the Municipal Building Surveyor and the Fire Engineer. They will then develop a detailed report for the Municipal Building Surveyor, which will require a peer review. Once the final plan is agreed the works program, procurement and logistics can begin.

In response to the Building Orders issued by the Municipal Building Surveyor, TMG believes that there is some merit in a fire sprinkler solution, which will be explored. This solution would be less costly and less inconvenient, but would be subject to all the owners agreeing and may need external consultants to facilitate how this would work.

Questions and Discussion

Throughout the meeting participants were encouraged to ask questions. Many were addressed by the speakers in their presentations. Other questions have been grouped together into themes and a summary of the responses provided.

Timelines and actions required

- **What needs to be done?**
- **The owners are looking for a quick resolution - What is the timeline?**
- **What is the timeline for the audit investigations?**

The Building Order related to the cladding has allowed 350 days for completion, October 7, 2016.

VBA is hopeful that the investigation will be complete by the end of the year but it is a complex process and the evidence must be suitable to take to a court of law. Updates on the audit process will be provided via the VBA website www.vba.vic.gov.au.

Roles and Responsibilities

- ***Who signed off on the non-compliant cladding?***
- ***LU Simon claimed in the press that a sample of Alucabest had been submitted during the planning and building permits process and received written approval. Who is responsible for this?***

This is part of the investigation by the Victorian Building Authority and not part of the Municipal Building Surveyor's role. The building permit was issued by the private surveyor, not the Municipal Building Surveyor or the City of Melbourne Building Surveyors.

- ***Once the cladding is replaced and considered compliant – in the event of another fire caused by a fault, would the owners still be held responsible – what protection is there for the owners?***
- ***Will there be any changes made to product accreditation [in the building regulations]?***

The current legislation means that the same process would be undertaken if there was another incident of this kind. At a national level, there is some review being undertaken into the product accreditation process. Any other cladding proposed would be assessed in the normal building permit process.

- ***What is the role of the COM in the chain of permit approvals?***
- ***What are the technical aspects reported in the Fire Engineer's Report and Peer Review (LU Simon report)? What is City of Melbourne's response to these reports?***
- ***What was the role of the Fire Engineer in the design process?***

The Municipal Building Surveyor did not issue the building permit for the building – it is the responsibility of the private surveyors engaged by the builders to issue the building permit, undertake inspections and issue the Occupancy Permit. The role of the MBS is to ensure that the building meets compliance.

The Fire Engineer was involved in the original design discussion but the cladding was not part of that brief. Design was not part of the Municipal Building Surveyor's role.

The Fire Engineering Report submitted recommended leaving the existing cladding and developing an ongoing Management Plan that would reduce the risks of future fires. The Municipal Building Surveyor does not believe this to be a sustainable and a long term solution, as it relies too heavily on management plus legislation ability to act quickly to address noncompliance. Management systems have been shown to waver over time. This was also contained in the Peer Review, which was undertaken by an independent Fire Engineer.

The Municipal Building Surveyor will provide further comments on his response to the Fire Report in bullet point form within a week via the Owners Corporation.

The Owners' Corporation will be releasing the Fire Report by LU Simon to the owners who have authorised them to help this process.

- ***Who commissioned and paid for the Fire Report?***

The Owner's Corporation submitted the Fire Report to Municipal Building Surveyor as part of the proposed solution.

- ***The Municipal Building Surveyor is holding the owners liable for the cladding replacement. Why doesn't he hold the practitioners responsible?***

Under the Building Act the Municipal Building Surveyor only has the authority to hold the owners responsible – not the developers or builders. It falls to the VBA to investigate the conduct of the relevant building practitioners.

The Non-compliant Building Cladding and Audit Processes

- ***Why wasn't the cladding to Australian Standards? Who signed off on this cladding?***

According to the Building Code of Australia the external walls must be non-combustible in apartment buildings over 3 storeys high. The test undertaken and included in the MFB Post Incident Analysis concluded that the material used in the Lacrosse building was not non-combustible and therefore in breach of the requirements.

A number of registered practitioners will have had responsibilities in the chain of processes involved in the signing off for the cladding including the designer, the design engineers, the builder practitioners and the building surveyor. The VBA investigation will seek to understand 'the who and the why' there were breaches in compliance.

- ***How are the private surveyors accredited?***

Only surveyors who have proven minimum skills and experience and are registered through the Building Practitioners Board can undertake the role of issuing building permits, inspections and Certificates of Occupancy.

- ***What is the possible outcome for a breaching practitioner? And would there be liability that owners can take against them?***

The investigations and potential disciplinary action related to the conduct of the practitioners will be undertaken by VGA in due course - once the building audits are complete.

The developers and the architects are not individual practitioners or registered persons and therefore, according to the Building Act are not able to be investigated by VBA.

The VBA investigation will identify any breaches and, if found to be a matter of misconduct, will be referred to the Practitioners' Board where deregistration can be considered. The Practitioners' Board cannot direct works to rectify any breaches. VBA can then prosecute the practitioner in a court of law however this action still has no authority to enforce building or rectification works. Duty falls back to the owners and may be a matter of civil liability that the owners could claim for costs.

- ***With regard to the cladding – is replacement the only option or can the building be made compliant by other means?***
- ***Does all the cladding have to be replaced on the building?***
- ***Does each of the owners have to get a building permit for cladding replacement?***

The Municipal Building Surveyor stated that the *Alucabest* cladding should be replaced on the whole building with a non-combustible cladding. The timeline for completion is 7 October 2016 and it must be completed by that date.

There may be a range of options available under the Building Code of Australia that could provide for a long term solution that ensures the building will be safe for occupants. It would be advisable for the owners to engage a registered fire engineer to assist the development of these options.

The building permit does not have to be from individual owners - one permit for the whole building could be issued.

- ***Where else has the cladding been used and what are the implications for those buildings?***
- ***Do the other buildings found to be non-compliant have to replace the cladding?***

VBA is undertaking audits of 170 buildings in inner Melbourne and surrounds that have used this cladding or other similar products under other brands. VBA is working closely with the City of Melbourne and MFB. The highest priority is understanding the nature of the risk to buildings and if those risks jeopardise the safe occupation of the buildings.

There have been no other cases where a building has been required to replace all its cladding to date but it is still too early to say if there are large scale applications of the non-compliant cladding. Many of the breaches may only relate to smaller architectural/decorative features.

Alucabest is not an illegal product and although it is non-compliant in the Lacrosse building it may be compliant and is still being used in other situations e.g. if attached to a non-combustible concrete structural wall.

- ***In another situation related to concrete cancer in a building the owners went to VCAT and the builder was ordered to undertake remediation. Is this an option for the Lacrosse building?***

VCAT cases need to be part of a building appeals process. This would need further investigation to see if it were possible in this case.

Other Non-compliant Issues

- ***Other non-compliant issues such as balcony overcrowding, smoke detectors, smoke seals on doors and potential internal walls not meeting fire requirements have to be addressed. What recourse is there for the owners?***
- ***What are the other non-compliant issues and expected response to these?***
- ***The third floor cladding has to be replaced as part of the non-compliant, 90 day order. Is it possible to get an extension for that?***

There was more than one issue in many of the apartments e.g. smoke alarms, balustrade heights, increased occupancy which leads to overcrowding and excess storage on balconies, and damaged smoke seals on entry doors. The Building Order related to the cladding must be resolved in 350 days with a building permit. Other non-compliant issues must be resolved within 90 days.

The VBA investigations may include some of these issues if they were part of the original building design, construction or approval. The Municipal Building Surveyor has not involved the VBA in these investigations at this stage. The Municipal Building Surveyor will work directly with the Owners Corporation to ensure these are addressed.

The separating walls between Level 3 apartments must be fire-rated. At the time of the inspections, this couldn't physically be verified as compliant and the Building Order asks for proof of the fire rating of the walls within 90 days. If found to be non-compliant the Municipal Building Surveyor will then look at what action is required.

The OC is working with LU Simon directly to rectify those apartments where they have the authority to do so. Some of the issues are related to occupier behaviour and are not included in the LU Simon works. Any owners who have not yet provide TMG with authority to act on their behalf or are unsure should contact Fraser Main directly.

Fire Sprinkler and Alarm Systems

- ***What was the role of the Fire Engineer in the alleged removal of sprinklers from balconies from the plan before the construction phase?***

Australian standards currently don't require sprinklers to be installed on the balconies. They were never installed. The Victorian Minister for Planning is actively pursuing changes to these standards for Victoria.

A recent false alarm wasn't audible to all residents. This is because the alarms are designed to cascade away from floor where the alarm has started plus two floors above and one below, before spreading the alarm to the rest of building. As it was a false alarm, not all floor alarms were raised and some people would not have been aware of the issue.

Impacts for Owners

- ***How do we address concerns about bank expectations – with regard to financing a non-compliant building?***
- ***What impact is this having on property valuations?***

It is a challenge for banks and valuers to put a price on apartments which may be for sale and the OC needs to continue to consult with the banks and keep them updated and informed of all progress. It would seem that apartment rents have maintained market value. The short term pain is real and acknowledged by all but it will take some time to get this right.

- ***What is the role of the Owner's Corporation (OC) – many owners have signed over rights for the OC to act on their behalf?***
- ***Can we develop an Action Plan for the 90 day orders?***

Part of the next steps would be to hold a meeting of the OC which could look at the development of an Action Plan. Residents and owners will be updated via TMG of any new developments.

- ***How committed is LU Simon to achieving compliance?***
- ***What recourse do the owners have?***

TMG will be working towards developing a contractual link between LU Simon and the OC for any works and future responsibility required under the agreed compliance works plan.

- ***Will the costs associated with meeting the Building Order be covered by insurance?***

A further response is required to this question. Work undertaken to date such as repair to water damage, carpets and the 05 rectification have been covered by relevant insurances.

Some typical comments by owners:

“Non-compliance is impacting on bank and property valuations.”

“Slow progress continues to depreciate our assets.”

“Owners of apartments that are still not safe for occupation are experiencing significant loss of income.”

- ***Is there to be a class action?***
- ***Who is acting for the OC?***

Slater and Gordon and Nowicki Carbine made a presentation to the OC but have since advised that they are not going to proceed with a class action. The Owners Corporation have their own legal representation and current mediation processes are expected to achieve satisfactory results on behalf of the owners.

- ***If the residents/owners wish to work together is it part of the OC and facility manager's role to assist?***

The OC and TMG are actively working to be an effective conduit between the relevant agencies and the developer to ensure compliance and the safety of the building occupants.

Questions requiring further responses

- ***What can be done to address 'loss of income' and insurance timelines and outcomes?***
- ***Will the costs associated with meeting the Building Order be covered by insurance?***
- ***What is the cost of the cladding replacement per square metre? (Response needs to include the full costs including installation, scaffolding and the inconvenience to occupants.)***
- ***Is VCAT a means of progressing this issue [for the owners]?***

Frequently Asked Questions

Read the frequently asked questions about the Building Orders:

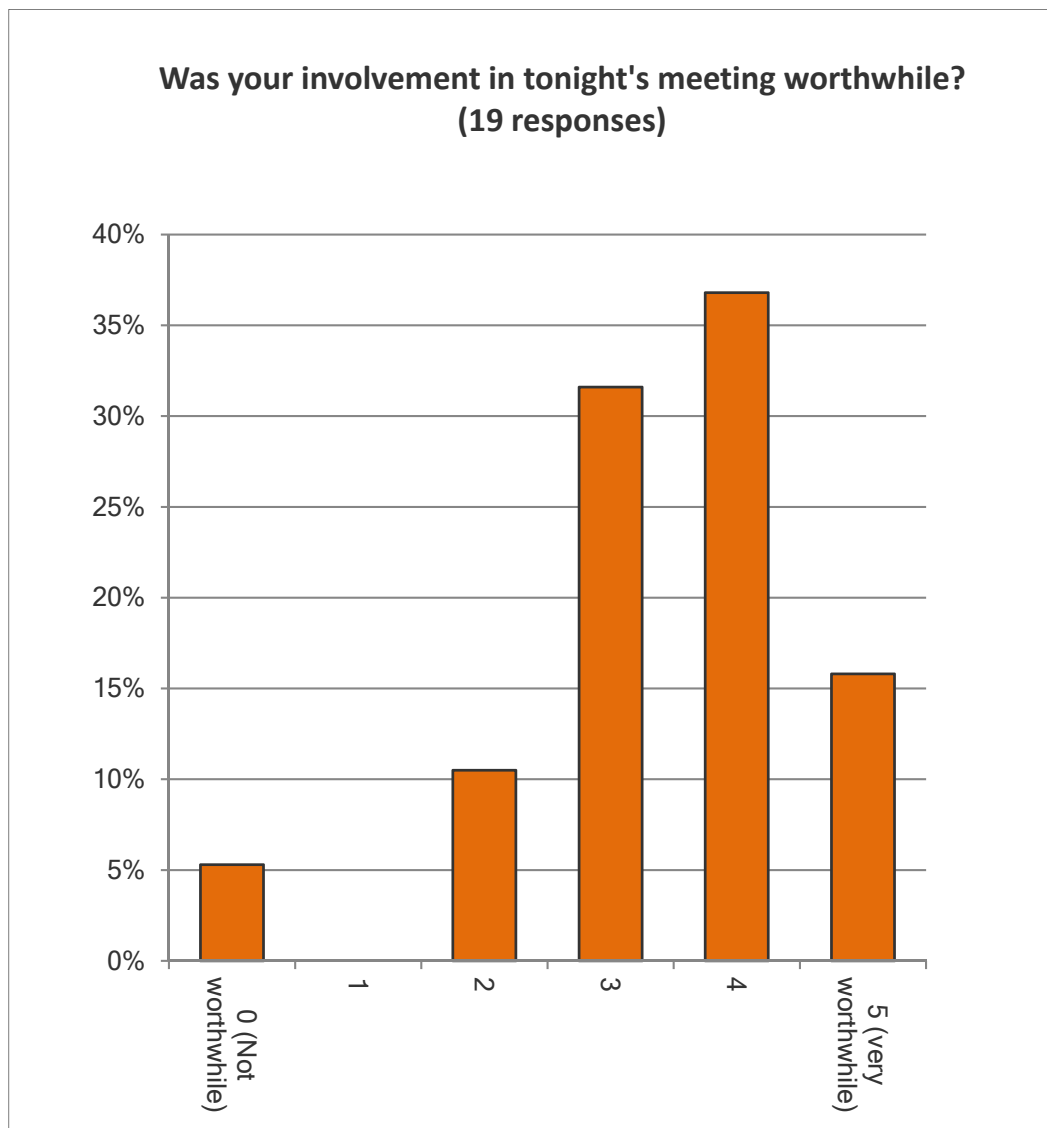
[Lacrosse Building frequently asked questions \(PDF 288KB\)](#)

[Lacrosse Building frequently asked questions \(Word 103KB\)](#)

Further questions can be submitted via lacrosse@melbourne.vic.gov.au

Feedback about the Meeting

Meeting participants were asked for their feedback and the results are shown here:



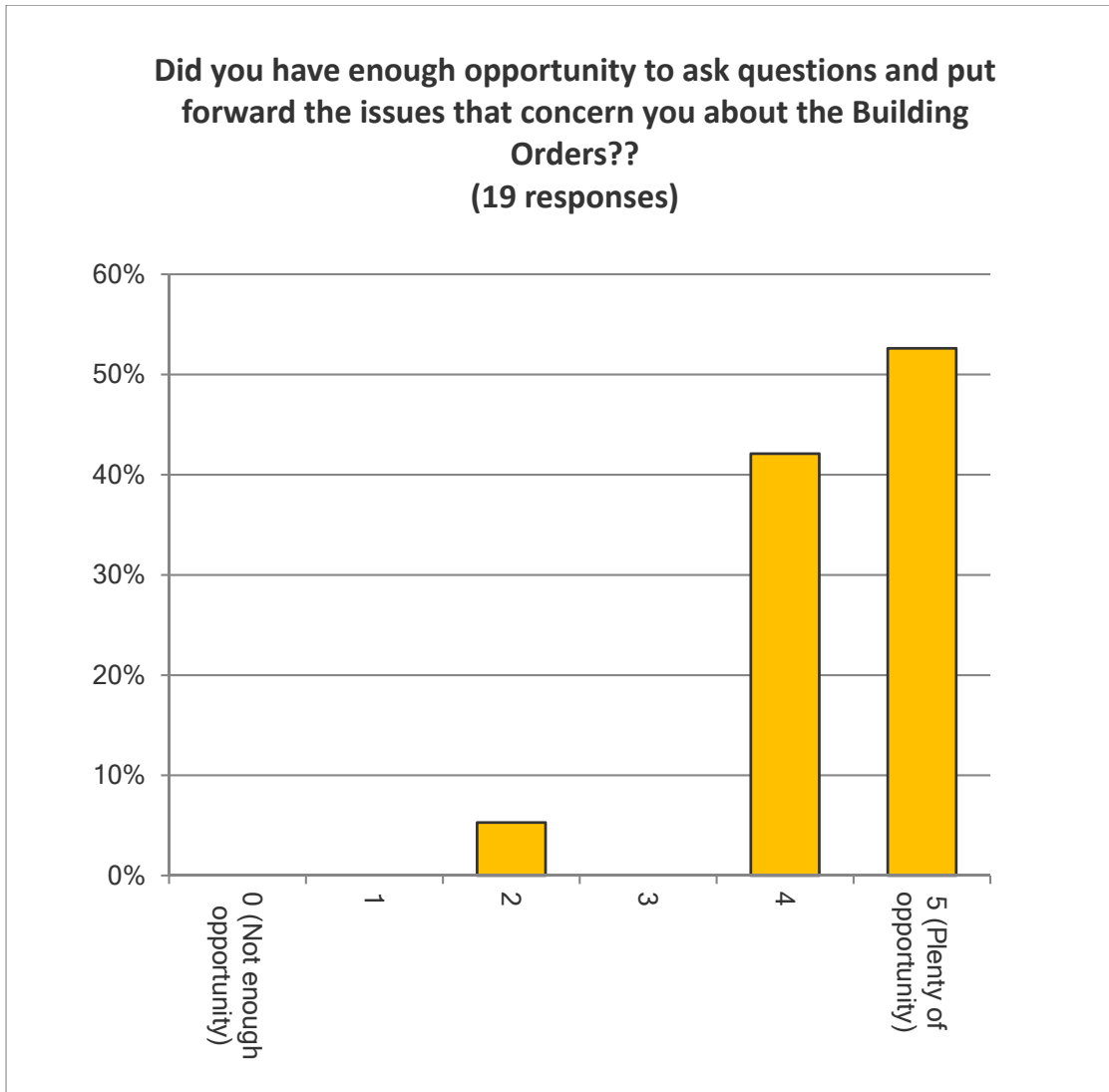
Three participants elaborated on their responses:

"Beyond the announcements made by the Melbourne Council most of the information was covered in the previous information sessions."

"I primarily wanted to hear that the Owners' Corporation is pursuing a \$0 cost outcome for owners."

"The same waffle. No outcome for the owners."

Did you have enough opportunity to ask questions and put forward the issues that concern you about the Building Orders??
(19 responses)



One person provided further comment:

"We should get update information monthly from City of Melbourne for this issue."

Two people submitted specific questions on their feedback form. These have been passed on to the appropriate authorities for direct response.