

General Purpose Standing Committee No. 4

The Designer Outlets Centre, Liverpool

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Terms of Reference

1. That General Purpose Standing Committee No 4 inquire into and report on the approval process relating to the Designer Outlets Centre on Orange Grove Road, Liverpool by Liverpool Council, and in particular:
 - (a) the circumstances surrounding that approval;
 - (b) the role of the Minister for Infrastructure Planning and Natural Resources, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) and the Department of Infrastructure, Planning and Natural Resources in dealing with the development;
 - (c) the role of the Premier, the Premier's Office, the Member for Fairfield, any member of the Government or any other party in dealing with the development;
 - (d) the economic and social impact on the Liverpool community of the loss of jobs as a result of the centre closing;
 - (e) the future of the Designer Outlets Centre on Orange Grove Road, including but not limited to, the effect on businesses, the local community and jobs; and
 - (f) other relevant matters arising from the Government's planning policies and decisions.
2. That the Committee report by 1 September 2004.¹

These terms of reference were self-referred by the Committee on 28 July 2004.

¹ The Committee subsequently extended its reporting date to 20 December 2004. See Minutes No. 54, 29 November 2004.

Committee Membership

Hon Jenny Gardiner MLC	The Nationals	<i>Chair</i>
Ms Sylvia Hale MLC	The Greens	<i>Deputy Chair</i>
Hon Jan Burnswoods MLC	Australian Labor Party	
Hon Kayee Griffin MLC	Australian Labor Party	
Hon David Oldfield MLC	One Nation	
Hon Peter Primrose MLC²	Australian Labor Party	
Hon John Ryan MLC³	Liberal Party of Australia	

² Mr Primrose acted as a substitute for Mr Roozendaal during the inquiry.

³ Mr Ryan acted as a substitute for Mr Clarke during the inquiry.

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Chair's Foreword

In November 2003 the Designer Outlets Centre on Orange Grove Road, Liverpool was officially opened. In early 2004 Westfield successfully challenged the legality of the consent provided by Liverpool City Council to allow a warehouse outlet to operate on this site. Despite multiple appeals by the Centre's owner, Gazcorp, the decision of the courts was upheld and the Centre was ordered to close.

In an attempt to keep the Centre open, the newly appointed administrator of Liverpool City Council, Ms Gabrielle Kibble, sought to rezone the land on which the Centre was built. This application was refused by the Minister Assisting the Minister for Infrastructure and Planning, the Hon Diane Beamer, MP, and the Centre closed on 25 August 2004. This led to the loss of approximately 400 jobs and significant financial losses for tenants, generating one of the most controversial debates about a planning matter in the recent history of this State. It is in this context that this inquiry was established.

The Committee held 12 public hearings involving 65 witnesses, 19 of whom appeared on more than one occasion.

The Committee would like to thank everyone who participated in the inquiry, either by making a submission, giving evidence or attending a public hearing. In particular, we appreciate the contribution of tenants and employees from the Designer Outlets Centre who faced considerable job and financial insecurity, as well as those witnesses who appeared before the Committee on several occasions.

I thank my committee colleagues who have undertaken this challenging inquiry.

On their behalf I would like to thank the Director of the Legislative Council General Purpose Standing Committees, Mr Steven Reynolds, who coordinated the conduct of the Orange Grove Inquiry, the Clerk Assistant – Committees, Mr Warren Cahill, Ms Beverly Duffy and Ms Madeleine Foley who were also heavily involved in writing this report, indeed, all of the secretariat staff – for each and every one of them assisted the committee's work – for their dedication, tolerance of the intense working environment generated by the committee's examination of the issues, and for their professionalism. Thanks are also due to the Clerk of the Parliaments, Mr John Evans, and the Deputy Clerk of the Legislative Council, Ms Lynn Lovelock, for their advice. Thanks also to Hansard and to all other staff of the Parliament who assisted the inquiry in many ways.

The Hon Jenny Gardiner MLC
Committee Chair

Summary of Recommendations

Recommendation 1

Page 49

That the New South Wales Government confirm the status of Draft SEPP 66 – Integrating Land Use and Transport, this SEPP having been in draft form for a decade.

Recommendation 2

Page 76

That the Ministers for Local Government and Planning should review guidelines for delegated authority being used by Local Government to ensure that major developments are not approved without formal reference to the elected Council.

Summary of Findings

Finding 1

Page 21

The closure of the Designer Outlets Centre resulted in a severe impact on employees, including the loss of approximately 400 jobs, as well as led to significant financial losses to tenants.

Finding 2

Page 29

The weight of evidence before the Committee does not support the Director General of DIPNR, Ms Jennifer Westacott's view that the Designer Outlets Centre had a significant potential for adverse economic impact on the Liverpool CBD.

The Committee believes that the Centre clearly had a net benefit to Liverpool, particularly when social and economic factors such as its impact on the region's high level of unemployment are taken into consideration.

Finding 3

Page 41

There is conflicting evidence before the Committee as to the number of tenants who were informed by Gazcorp of the impending legal action at the time they signed leases, and the manner of this disclosure.

There is no evidence before the Committee that the Managing Director of Gazcorp deliberately delayed signing leases so as to mitigate future legal action by tenants.

The Committee believes that many tenants were reassured by the fact that Minister Knowles had opened the Centre.

Finding 4

Page 74

The rezoning application was made to DIPNR by the Liverpool Council Administrator, Ms Gabrielle Kibble, on relevant and appropriate grounds.

Finding 5

Page 75

There is no evidence before the Committee of improper conduct involving former councillors or staff of Liverpool City Council.

The following unusual aspects of the original development approval have been identified in the course of evidence before the Committee:

- the proposal started out as an application under s96 of the Act, which is generally reserved for minor modifications to a previously granted consent
- a request, which was refused, was made to determine the development application in two weeks
- approval was granted just one day following the close of advertising
- the consent was publicly notified five months after its approval
- although it was dealt with according to the established procedures of the Council the factory outlet was approved by Council staff acting under delegated authority without it formally being drawn to the attention of the elected Council even though it was a development of significant size.

There is evidence that Mr Frank Mosca used his access to Liverpool City Council to vigorously pursue his clients' interests. However the Committee does not have conclusive evidence that he acted improperly.

Finding 6

Page 91

There is strong evidence that prior to 20 April 2004 DIPNR officers, other than the Director General Ms Jennifer Westacott, believed that the rezoning application would be approved by the Minister. The s69 report was prepared on this basis.

There is no evidence before the Committee that a Planning Minister has previously made a decision on a rezoning application contrary to the recommendations of a s69 report.

There is strong evidence that Minister Beamer and her Chief of Staff, Mr Michael Meagher, were anticipating the s 69 report being in the Minister's office by mid-April for approval and gazettal on 23 April, and that the Minister and Mr Meagher were aware of the contents of the s 69 report and its recommendation for approval of the draft LEP which was, in Mr Meagher's words, 'the Minister's preferred position.'

Finding 7*Page 98*

Two meetings occurred between the Chair of Westfield and the Premier on 12 March and 1 July 2004. Both have stated publicly that they did not discuss the future of the Designer Outlets Centre at either meeting.

However, the Committee is unable to conclude its analysis of this aspect of its Inquiry because the Premier did not make himself available to answer the Committee's questions.

Finding 8*Page 108*

There is no evidence before the Committee that the Premier discussed the rezoning of Orange Grove with representatives of Westfield. However, the Committee is unable to conclude its analysis of this aspect of its Inquiry because the Premier did not make himself available to answer the Committee's questions.

There is evidence that Westfield used its access to the Premier's Office through the Premier's Chief of Staff to seek to influence the outcome of the rezoning application by associating it with past concerns regarding the former Liverpool City Council.

Despite the issue of a meeting between the Premier and Westfield representatives being raised publicly in July 2004, the representatives of Westfield and the Premier did not reveal the meeting of 19 April between Westfield representatives and the Premier's Chief of Staff until 17 August 2004.

Finding 9*Page 115*

There is no evidence before the Committee that the Premier discussed the rezoning directly with Minister Beamer. However, because neither the Premier nor Minister Beamer made themselves available to answer the Committee's questions, the Committee cannot be certain that such a discussion, or discussions, did not occur.

Following the meeting between the Premier's Chief of Staff and Minister Beamer and her Chief of Staff on 20 April, Minister Beamer and her staff refused to meet with proponents of the rezoning.

Minister Beamer did not reveal her meeting of 20 April with the Premier's Chief of Staff until after the Committee's hearing of 17 August 2004.

Finding 10*Page 120*

There is no evidence before the Committee that Minister Knowles intervened in the decision of Minister Beamer regarding the rezoning.

The decision by Minister Knowles to open the Centre was unwise, given the Minister had been informed of pending legal action, and may have contributed to greater confidence by tenants in their future security than was warranted.

The Committee finds the actions of Gazcorp associates in seeking to lobby Minister Knowles at his parents' home was unwise.

Finding 11*Page 124*

The Member for Fairfield, Mr Tripodi, was a strong supporter of the Designer Outlets Centre proponents until the rezoning was rejected by Minister Beamer.

A majority of the Committee believe the testimony of Mr Gazal that Mr Tripodi said:

Joseph Tripodi told me that the Minister Dianne Beamer told him that Premier Bob Carr rang her and told her not to sign the rezoning of the Designer Outlets Liverpool. Joseph went on to explain that Bob Carr is doing a favour for his mate Frank Lowy. But Joseph told me and assured me that Dianne Beamer will do the right thing and sign the rezoning because it is a no-brainer; 450 jobs will be lost and a law suit for 40 million dollars against Liverpool Council.

Finding 12*Page 126*

It is the Committee's view that Westfield improperly used the influence that they had at the level of the Premier and the Premier's office to influence a planning decision that would commercially affect Westfield.

It is the Committee's view that the Premier and the Premier's office sought to inappropriately direct Minister Beamer's decision on the Designer Outlets Centre based solely on the improper influence exerted by Westfield.

It is the Committee's view that the Premier Mr Carr, the Premier's Chief of Staff, Mr Wedderburn, the Assistant Planning Minister Ms Beamer, the Planning Minister Mr Knowles and representatives of Westfield conspired to cover up their involvement in the Orange Grove affair. These matters are currently before the ICAC which has the power to make findings as to whether such behaviour could be construed as corrupt conduct.

Chapter 1 Introduction

This chapter provides an overview of the inquiry process and its key findings. It also includes a short description and detailed chronology of the key events relating to the approval and closure of the Liverpool Designer Outlets Centre. Several significant procedural issues have arisen during the course of the inquiry. These matters are also briefly discussed in this chapter.

Terms of reference

- 1.1 The inquiry terms of reference were adopted on 28 July 2004, under the Committee's power to make a self-reference. They are reproduced on page iv of this report. In summary, the terms of reference require the Committee to examine the approval process relating to the Designer Outlets Centre by Liverpool City Council and the role of certain Ministers, Members of Parliament and government agencies in dealing with the development.

Submissions

- 1.2 The Committee called for submissions through advertisements in the *Liverpool Champion* and *Liverpool Leader* and via a media release issued on 28 July 2004, the day of the inquiry's establishment. The Committee received a total of 32 submissions from a range of stakeholders, including several tenants and employees affected by the Centre's imminent closure. A list of all submissions is contained in Appendix 1.

Public hearings

- 1.3 The Committee held 12 public hearings involving 65 witnesses, 19 of whom appeared on more than one occasion. Hearings were held at Parliament House on 13, 17, 18, 25 and 30 August, 6, 9, 10 and 20 September, 11 October and 29 November 2004. A public hearing was held at Liverpool City Council on 16 August 2004. A list of witnesses is provided in Appendix 2 and transcripts of public hearings can be found on the Committee's website www.parliament.nsw.gov.au/gpsc4. A considerable number of documents were tabled during hearings, a list of these appears in Appendix 3.
- 1.4 The Committee would like to thank all of the people who participated in the inquiry whether by making a submission, giving evidence or attending the public hearings.

Inquiry background

- 1.5 In September 2001 Liverpool City Council approved an application from Gazcorp Pty Ltd, the owner of 12 Orange Grove Road, Liverpool, to operate the site as a bulky goods warehouse outlet. In January 2002 Gazcorp lodged an application for change of use of the site to a warehouse clearance outlet, receiving development consent in November 2002. One year later the Designer Outlets Centre was opened by the Minister for Infrastructure and Planning, and Minister for Natural Resources, the Hon Craig Knowles MP. The building was subdivided into approximately 63 tenancies from which a range of merchandise was sold, including

clothing, kitchenware, manchester and jewellery, as well as food outlets. In December 2003 Westfield challenged the legality of the Centre's development consent in the Land and Environment Court, on the basis that a warehouse clearance outlet could not operate on land zoned industrial. The Court upheld Westfield's challenge in January 2004 and ordered the Centre to close.

- 1.6** Following the Court's decision, the owner of the Designer Outlets Centre, Gazcorp Pty Ltd appealed and received repeated extensions to the closure deadline, although the decision of the Land and Environment Court to close the Centre remained in place. Liverpool City Council sought to facilitate the Centre by proposing to rezone the land on which the Centre stood. The Minister for Juvenile Justice, Minister for Western Sydney, and Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), Hon Diane Beamer MP, refused the rezoning application in July 2004, forcing the Centre to close on 25 August 2004.
- 1.7** A detailed chronology of events leading up to and including the Centre's closure is provided at the end of this chapter.

Order for papers

- 1.8** During the inquiry the Committee on two occasions resolved to order the production of documents from relevant government agencies as provided for under standing order 208(c) of the Legislative Council.
- 1.9** On the first occasion, on 28 July 2004 the Committee ordered the production of certain documents from the Department of Infrastructure, Planning and Natural Resources (DIPNR).⁴ The documents requested related to the preparation and consideration of the Draft Liverpool Local Environmental Plan 1997 (Amendment 92) (known as draft Amendment 92).
- 1.10** DIPNR initially declined to provide the documents, based on legal advice from the Crown Solicitor casting doubt on the Committee's powers to call for documents. The Department also questioned whether the scope of the inquiry was authorised by the resolution establishing the Committee.⁵
- 1.11** On advice from the Acting Clerk of the Legislative Council, the Committee asserted in a letter to the Director General of DIPNR dated 12 August 2004 that the House had delegated to the Committee the power to call for such documents under Standing Order 208. Regarding the scope of the inquiry, the Committee sought advice from Bret Walker SC. Following his advice, and again acting on the advice of the Clerk, the Committee concluded that it did have the authority to proceed with the inquiry. The Committee repeated its request for DIPNR to provide the documents.⁶

⁴ Minutes No. 34, 28 July 2004, and correspondence from Director to Ms Jennifer Westacott, Director General, DIPNR, 28 July 2004

⁵ Correspondence from Mr Michael Astill, Corporate Counsel, DIPNR, to Director, 9 August 2004

⁶ Correspondence from Director to Ms Jennifer Westacott, Director General, DIPNR, 12 August 2004

- 1.12** Although DIPNR at first continued to maintain its view that the Committee did not have the power to call for documents, during a hearing on 13 August 2004, the Department voluntarily provided the documents requested. A claim of legal professional privilege was made over several of these documents.
- 1.13** On the second occasion, on 25 August 2004 the Committee also resolved to order the production of certain documents held by the Premier's Office or the Premier's Department.⁷ The documents requested related to briefing notes and records of any meetings concerning the approval of the Designer Outlets Centre and the proposed amendment to the Liverpool Local Environmental Plan.
- 1.14** The Premier's Department declined to provide the documents, based on the same legal advice from the Crown Solicitor as that provided previously by DIPNR.⁸ The Committee asked the Premier's Department to provide a copy of the advice from the Crown Solicitor.⁹ The Premier's Department provided the advice, reiterating its position that Committees do not have the power to order the production of documents, but noting that the Premier's Department would as matter of course comply with any such order for papers from the House.¹⁰
- 1.15** On 11 October 2004 the Chair wrote to the Director General of the Premier's Department on behalf of the Committee reiterating the Committee's request that the Premier's Department provide the documents, restating its view that the House has delegated to the Committee the power to call for the production of documents, and noting that there are numerous precedents of such documents being requested by committees and of government complying with such orders. The Chair noted that the Committee viewed non-compliance with such orders most seriously and that it would be likely to report any such failure to the House for consideration as a possible contempt.¹¹ The Premier's Department responded to this request by again declining to provide the documents requested, citing continuing uncertainty as to whether the power of the Legislative Council to order the production of documents is delegable, and providing further advice from the Crown Solicitor in relation to this issue.¹²
- 1.16** On 21 October 2004 an order for papers was made in the Legislative Council.¹³ This motion was moved by the Hon John Ryan, a member of the Committee, and required the production

⁷ Minutes No. 40, 25 August 2004, and correspondence from Director to Dr Col Gellatly, Director General, Premier's Department, 26 August 2004

⁸ Correspondence from Dr Col Gellatly, Director General, Premier's Department, to Director, dated 7 September 2004, and correspondence from Marcus Ray, A/Director Legal Services, DIPNR, to Deputy Clerk, Legislative Council, 11 August 2004

⁹ Correspondence from Director to Dr Col Gellatly, Director General, Premier's Department, 13 September 2004

¹⁰ Correspondence from Dr Col Gellatly, Director General, Premier's Department, to Director, 23 September 2004

¹¹ Correspondence from Chair to Dr Col Gellatly, Director General, Premier's Department, 11 October 2004

¹² Correspondence from Dr Col Gellatly, Director General, Premier's Department to the Chair, 21 October 2004

¹³ Legislative Council, New South Wales, *Hansard*, 21 October 2004, p7

of documents held by government agencies and ministerial offices relating to the Designer Outlets Centre, Mr Nabil Gazal, Mr Frank Mosca and Mr Sam Bargshoon, as well as all documents relating to the GPSC 4 inquiry into the approval of the Designer Outlets Centre. Mr Ryan also moved that any documents previously provided to GPSC 4 during the course of its inquiry, and subject to a claim of privilege by DIPNR, be made available to all members of the Legislative Council. This order of the House, agreed to without division, included a preliminary paragraph reasserting the power of the Committee to order the production of documents.¹⁴

- 1.17** On 11 November 2004 the papers were delivered by the Director General of the Premier's Department and tabled in the Legislative Council. A claim of privilege was made over several of these documents. A supplementary return was made on 15 November 2004, providing further documents from the Attorney General's Department and Integral Energy, with a claim of privilege again made over several documents.
- 1.18** On 29 November 2004, the Committee resolved to request that the Clerk obtain independent legal advice in relation to the power of the Committee to order the production of state papers.¹⁵

Evidence from ministerial staff

- 1.19** During the course of the inquiry the Committee invited a number of ministerial staff to give evidence. Although there are no restrictions on the power of a committee of the Legislative Council to invite ministerial staff as witnesses before a committee, there has been a general political convention, which has resulted in ministerial staff not being called as witnesses.¹⁶ However, on 25 August 2004 the Committee resolved, by majority vote, to summon a ministerial staff member to appear before the Committee.
- 1.20** On 17 August 2004 the Committee invited the Chief of Staff to the Premier, the Hon Bob Carr MP, Mr Graeme Wedderburn, to appear before the Committee. The Premier agreed to make Mr Wedderburn available to appear before the Committee on a voluntary basis on 18 August 2004.
- 1.21** The Committee also invited the Chief of Staff to the Hon Diane Beamer MP, Mr Michael Meagher, to appear before the Committee at the same hearing as Mr Wedderburn. Mr Meagher verbally declined the Committee's invitation, noting that his Minister had not authorised him to appear before the Committee. The Committee again invited Mr Meagher to

¹⁴ The order of the House reads as follows: 'That, notwithstanding the inquiry into the approval of the Designer Outlets Centre, Liverpool, being conducted by General Purpose Standing Committee No. 4, and the power of the committee to order the production of documents, under standing order 52, there be laid upon the table of the House within 21 days of the date of the passing of this resolution ...' See Legislative Council, New South Wales, *Hansard*, 21 October 2004, p7

¹⁵ Correspondence from Clerk of the Parliaments, to Mr Bret Walker SC, 7 December 2004

¹⁶ The issue of ministerial staff appearing before committees and giving evidence has been a matter of debate. See for example H Evans (ed), *Odgers' Australian Senate Practice Tenth Edition*, 'Chapter 17: Witnesses,' p443, www.aph.gov.au/senate/pubs/html/pdf/chapter17.pdf (accessed 10 November 2004). See also the recent report of the Finance and Public Administration References Committee, 'Staff employed under the *Members of Parliament (Staff) Act 1984*,' October 2003, para 4.61, p39

appear, and again Mr Meagher declined to do so, although he offered to assist in answering questions on notice.¹⁷

- 1.22** As Mr Meagher had not agreed to appear voluntarily the Committee deliberated and took the unusual step of deciding that the importance of Mr Meagher's evidence warranted compelling Mr Meagher to appear before the Committee. The Committee then resolved to issue a summons under the *Parliamentary Evidence Act* and Mr Meagher appeared before the Committee on 30 August 2004. The Committee understands that this was the first time that a ministerial staff member had been summoned to appear before a Legislative Council committee since the formation of upper house standing committees in 1988.
- 1.23** The Committee invited other ministerial and political staff to appear before the Committee, namely the Chief of Staff to the Hon Craig Knowles MP, Ms Sarah Taylor; Chief of Staff to Mr John Brogden MP, the Leader of the Opposition, Mr Peter Fraser; Director of Communications for the Office of Mr John Brogden MP, Leader of the Opposition, Mr Steve Murphy; and Adviser to the Hon Craig Knowles MP, Ms Katherine Keating. The Committee also invited the former Deputy Chief of Staff to the Hon Craig Knowles MP, Mr Emilio Ferrer, to appear before the Committee. Mr Ferrer no longer works in the public sector. All these witnesses accepted the Committee's invitation and appeared before the Committee on a voluntary basis.

Evidence from Members of Parliament

- 1.24** The Committee issued invitations to a number of Ministers and Members of Parliament to appear before the inquiry, namely the Hon Bob Carr MP, Premier, Minister for the Arts, and Minister for Citizenship; the Hon Craig Knowles MP, Minister for Infrastructure and Planning, and Minister for Natural Resources; the Hon Diane Beamer MP, Minister for Juvenile Justice, Minister for Western Sydney, and Minister Assisting the Minister for Infrastructure and Planning (Planning Administration); Mr Joseph Tripodi MP, Member for Fairfield; and the Hon Eric Roozendaal MLC. None of these Ministers or Members accepted the Committee's invitation. The failure of Mr Carr, Mr Knowles, Ms Beamer, Mr Tripodi and Mr Roozendaal to appear before the Committee seriously affected the Committee's ability to fulfil its terms of reference.
- 1.25** The Committee also invited Mr John Brogden MP, Leader of the Opposition, Shadow Treasurer, Shadow Minister for Ethnic Affairs and Mr Anthony Roberts, Member for Lane Cove, to provide evidence. Both Mr Brogden and Mr Roberts accepted the Committee's invitation.
- 1.26** Mrs Julia Irwin MP, Federal Member for Fowler, also accepted the Committee's invitation to appear as a witness.

¹⁷ Correspondence from Mr Michael Meagher, Chief of Staff to Assistant Minister Beamer, to Director, 23 August 2004

Legal Framework of Ministerial Responsibility¹⁸

1.27 This inquiry raises, among other issues, the relationship between the Premier and a Minister and between a Minister and public servants in the making of a planning decision. It is important to understand the legal and quasi-legal framework for these relationships by way of background to the evidence of the parliamentary inquiry.

Constitutional Role of the Premier

1.28 Section 35E of the *Constitution Act 1902* (NSW) provides for the appointment of Ministers and for a Premier, to be appointed by the ‘Governor from among the members of the Executive Council’. Premiers have a defined role to play in the constitutional system, for example in advising the monarch who is to be the new Governor. By convention, they also have a less well defined role to play as head of the government, which includes the direction and oversight of government policy. In addition, the position of Premier carries its own departmental responsibilities.

1.29 The role of a Minister includes the administration of departments or agencies within their portfolio. They are individually responsible to the Parliament for their departments or agencies, which means they can be questioned and brought to account for their actions in the Parliament upon those matters within their sphere of responsibility.

Limits on the discretionary powers of a Minister

1.30 Ministers are granted defined powers and functions under the law, in the context of which the Minister’s decision is an exercise of administrative or executive discretion. Most statutes include the conferral of some discretionary powers upon Ministers. By section 15(2)(a) of the *Interpretation Act 1987* (NSW) ‘In any Act, a reference to “the Minister” is a reference to: (a) the Minister administering the Act’.

1.31 Legal and quasi legal limits operate on a Minister’s powers and functions conferred by legislation. As to quasi-legal limits, there is in place a Ministerial Code of Conduct, based in part on the principle that ‘Ministers will perform their duties honestly and in the best interests of the people of NSW’.¹⁹ More generally, where legislative power is conferred upon Ministers this brings them under the rule of law, notably those rules and principles associated with ‘administrative law’. This is a system of law developed over the past 40 years designed to review the exercise of discretionary power and, in particular, to regulate its improper exercise.

1.32 Broadly, under legislation or at common law, administrative decisions can be challenged as ultra vires if made in:

- bad faith;
- for an improper purpose;

¹⁸ The Committee acknowledges the assistance of Dr Gareth Griffith of the Parliamentary Library Research Service in the preparation of this section.

¹⁹ A Twomey, *The Constitution of NSW*, 2004 p685.

- under dictation by another;
- unreasonably; or
- where all relevant considerations have not been taken into account.

1.33 Particular decisions will have to be interpreted in the context of the particular legislative conferral of power. For example, the question whether the Minister took all relevant considerations into account will be affected where the legislation requires a report to be made to the Minister, such as the report required to be prepared under s69 of the *Environmental Planning and Assessment Act* (see Chapter 3). The issue may arise as to whether the Minister disregarded the findings and evidence presented in the relevant report and on what grounds. While such issues raise their own evidentiary problems as to proof, they are generally less complex than challenges to a decision based on bad faith. Where bad faith is raised it is the Minister's own intention that is at issue, and motive is always difficult to prove in a legal sense. The prohibition against dictation, is however, more capable of legal analysis although it has its own difficulties.

Dictation, or acting under the bidding of others

1.34 The rule is that, where a statute vests a power in a Minister or some other person or office, the statute intends that the power be exercised by that designated person or office and by no one else. Christopher Enright writes:

There is a duty on an official to make their own investigation and decision and not to rely totally on what others say (*Kendall v Telstra Corporation Ltd* (1994) 124 ALR 341). Acting under dictation is a ground of review at common law and under the Judicial Review Act.²⁰

1.35 Enright notes that the fine line involved in each case would have to be drawn by the courts, guided by a number of factors. A significant factor may be the political consideration of the consistency of government policy.

1.36 Especially difficult is the relationship between a Minister and the Premier in this context. Legislation may confer a personal discretionary power on the Minister, but that Minister is a member of the Executive Council and also the Government, of which the Premier is head. Ministers are also subject to the doctrine of Cabinet collective responsibility under which they must show a united front in decision-making and maintain the secrecy of Cabinet deliberations. The conventions of responsible government may place certain impediments upon any inquiry into the relationship between a Minister and First Minister.

1.37 Another consideration is whether there can be legitimate circumstances where a Minister exercises a discretionary power in conformity with the directions of the Premier. In the context of the Westminster system the legal answer may be 'yes', as long as the Premier's direction is neither illegal nor improper. Not only is the Premier head of the Government, in practical terms a Minister must obey his directions or most probably lose his job. Conversely, it is the Premier's function to direct Government policy, a function to which the courts are certain to give due weight. Ultimately, the conventions of responsible government are

²⁰ C Enright, *Federal Administrative Law*, 2001 p 411

themselves a feature of the rule of law and the principles of administrative law, including the rule against dictation, would be recognised accordingly. Precisely what practical outcome would result in any particular case is another matter.

1.38 The case law, such as it is, is not entirely clear. According to Aronson, Dyer and Groves:

The principle of collective responsibility for Cabinet decisions would seem to allow Cabinet to dictate a particular result to a Minister.²¹

1.39 They note that *Minister for Immigration and Multicultural Affairs v Jia* (2001) 205 CLR 507 contains several references to political and Cabinet pressures, adding that

The general tenor of Hayne J's judgment seemed to accept such pressures as part of the system of responsible government, whilst the general tenor of Kirby J's dissent would require the Minister to avoid being seen to determine individual decisions of some personal magnitude along party or Cabinet lines.²²

1.40 At issue in that case was bias, in relation to which Hayne J posed the question:

Does it matter that a Minister is subject to all the conventions of Cabinet government, including the inherent fragility of tenure of office as Minister and the pressures of Cabinet and party solidarity?²³

1.41 In *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342 at 373-4 Murphy J said that Ministers may recommend actions to the Governor-in-Council which they view as undesirable, because a majority of their Cabinet colleagues decide otherwise. On the other hand, in the Federal Court, in *Adams v Minister for Immigration and Multicultural Affairs*,²⁴ Drummond J said:

There is nothing that I can see that is wrong in the Minister listening to the views of others in the course of Cabinet discussion; nor can I see anything wrong in the Minister taking into account such of those views as he might consider worthy of weight. The only thing he cannot do is abdicate the discretion vested in him by the statute to others.

1.42 The case can be cited as authority for the proposition that the no-dictation principle applies between individual Ministers. It suggests further that a Minister must decide for themselves how to exercise a statutory power, rather than allow Cabinet to dictate it. The alternative view is that that argument disregards the proper claims of the conventions of responsible government. At the very least it can be said that 'the practicalities of Cabinet government, in particular the principles of Cabinet confidentiality and solidarity, makes any challenge to a Minister's decision based on this ground difficult to establish'.²⁵ Practically and theoretically, it is a point at which law and politics meet. In *Tickner v Bropho* (1993) 114 ALR 409 at 429 reference was made to a conversation Senator Chamarette had with a Minister:

²¹ *Judicial Review of Administrative Action*, 2004, p 290

²² *Ibid* p290.

²³ *Minister for Immigration and Multicultural Affairs v Jia* (2001) 205 CLR 507 at 563

²⁴ Unreported, 2.7.1997

²⁵ *Laws of Australia*, Volume 2 Law Book Co, [159]

‘Why can’t you intervene and protect the brewery site?’ Mr Tickner replied, ‘I can’t act without the approval of Cabinet’. Senator Chamarette said, ‘Yes, you can. You’re the Minister. To which Mr Tickner replied, ‘You get 100% for law and zero for politics’.

Judicial review and investigation by a parliamentary committee

- 1.43** It is not clear whether a court would inquire into the relationship between a Minister and a Premier unless there was substantial prima facie evidence of illegality or improper conduct. Certain questions would follow - upon what grounds was the discretionary power exercised and was account taken of all the relevant considerations? Was the decision made without bias and in good faith, in order to further the purposes of the legislation? It may be that in answering these questions a court would look more at the actual decision itself, judging it by such criteria as relevance and reasonableness, than at the detail of the political relationship of influence at issue.
- 1.44** The Committee notes that judicial review of an administrative decision, and the investigation of a committee of the Parliament on the decision, are different processes and may result in different outcomes.

Ministers, powers and public servants

- 1.45** By inference from the doctrine of ministerial responsibility, public servants, no matter how senior, do not exercise power themselves. Traditionally, their function was to obey the Minister and to offer politically neutral and fearless advice. Permanent tenure was once seen as a pre-requisite for the proper performance of these functions, but this tenure no longer exists in the senior public service.
- 1.46** The rule against dictation or acting under the bidding of others can apply at many different levels including the relationship between a public servant and their Minister. Legislation may give departmental officials a personal discretionary power which they then exercise under direction from either their public service or ministerial superiors. Again, problems of proof arise, as do a whole range of questions of degree in determining whether a designated decision maker failed to make an exercise of their own judgement. In some cases, the legislation might require an official to take on board the views of others, as in the case where a Minister acts after the receipt of a departmental report.
- 1.47** It remains the case, however, that public servants act by direction and control, in the case of a Director General by the specific direction and control of the Minister. By the same token, just as Ministers have a responsibility to perform their duties ‘honestly and in the best interests of the people of NSW’, so public servants should act honestly and disinterestedly, so as ‘to preserve public confidence in the integrity of government’.²⁶ As a professional standard, this would include acting in conformity with the requirements for the fair and unbiased application of the law, based on the best available evidence.
- 1.48** Policy decisions are for the Minister to make, just as it is for the Minister, ultimately, to accept or reject departmental advice. What course the Minister decides upon, and what instructions

²⁶ The ICAC, *Report on the Public Employment Office of Director-General, Department of Community Services*, November 1996, p 113.

are given to a Director-General in this context, is properly a matter for the person upon which the discretionary power at issue has been conferred. Again, the appropriateness of that course, whether it constituted an improper exercise of power, will be judged by the courts by the criteria of administrative decision making set out above. As previously noted, it is possible that the courts and a parliamentary committee could take very different views on the same set of circumstances.

Report structure

- 1.49 Chapter 2 describes the impact of the Centre's closure on tenants and their employees. Allegations regarding the preparation of the retail shop leases by Gazcorp are also discussed in this chapter.
- 1.50 Chapter 3 provides a brief overview of planning controls and policies relevant to the Designer Outlets Centre approval process. In particular, the Centres Policy and draft SEPP 66.
- 1.51 Chapter 4 discusses the role of Liverpool City Council in granting the original planning consent for the Designer Outlets Centre, and the subsequent proposal to amend the Liverpool Local Environmental Plan. It was suggested that the Council's decision did not show proper regard for planning principles and that its decisions were affected by corrupt conduct. The chapter evaluates the evidence in support and counter to this claim.
- 1.52 Chapter 5 discusses the role of DIPNR officers in the attempt to rezone the land on which the Designer Outlets Centre was built. In particular, it discusses whether the Director General's lack of support for the proposed amendment was made in response to undue political influence.
- 1.53 The final chapter, Chapter 6, examines the role of members of parliament and ministers leading up to Minister Beamer's refusal to approve draft Amendment 92.

Chronology of key events relating to the Liverpool Designer Outlets Centre

Date	Event
March 1999	Gazcorp Pty Ltd's Megacentra at Orange Grove Road, Liverpool opened by Minister Knowles. Megacentra is a homemaker centre selling goods including furniture, appliances, computers and electrical goods
18 September 2001	Staff of Liverpool City Council grant development consent, under their delegated authority, for refurbishment of the existing building at Orange Grove Road, Liverpool and conversion into units for bulky goods or warehousing
22 January 2002	Mosca Pserras Architects, on behalf of Gazcorp, lodge a s 96 application with Liverpool City Council to modify the land use at 12 Orange Grove Road from bulky goods warehouse to warehouse outlet.
22 May 2002	The Director of Mosca Pserras Architects, Mr Frank Mosca is advised that he must submit a full development application
5 June 2002	Mr Mosca submits a fresh application for a warehouse outlet at 12 Orange Grove Road, which is essentially the same as his previous s 96 application
6 June 2002	Mr Weston writes a memorandum to Mr Turrisi explaining that consent could only be granted if the items for sale were bulky goods
30 October 2002	Development application publicly advertised for two week period, closing 14 November 2002
15 November 2002	Staff of Liverpool City Council grant consent, under their delegated authority, to revised application from Mosca Pserras Architects for change of use from an existing bulky goods warehouse to a warehouse outlet at Orange Grove Road
9 April 2003	Development consent publicly notified, five months after the approval
17 June 2003	Westfield lodges an appeal against Liverpool City Council's development consent in the Land and Environment Court, on the grounds that warehouse clearance outlets cannot operate on land zoned industrial.
14 October 2003	Westfield writes to DIPNR Director General informing her of intention to appeal the development consent by Liverpool City Council for the factory outlets and requesting DIPNR to join them in their legal action against Gazcorp.
5 November 2003	NSW Government announces establishment of an inquiry headed by Emeritus Professor Maurice Daly into the management of infrastructure projects by Liverpool City Council, most notably the Oasis development
17 November 2003	Meeting between the Hon Craig Knowles MP and Westfield executives: Mr Steven Lowy, Mr Robert Jordan and Mr Lewis at which Westfield informs Mr Knowles of its intention to appeal the development consent for the Designer Outlets Centre

18 November 2003	DIPNR Director General writes to Westfield acknowledging their 14 October letter and indicating it would not be appropriate for the Department to join Westfield in their proceedings.
21 November 2003	Minister Knowles opens the Designer Outlets Centre
8 December 2003	Liverpool City Council resolves to prepare draft Amendment 92 to the Liverpool Local Environmental Plan, to remove doubt as to the lawfulness of approval given to the Outlets Centre and the Plan is exhibited from 17 December. The Amendment relates to both the Orange Grove Road and Crossroads sites.
10 December 2003	Liverpool City Council writes to DIPNR advising DIPNR of the Council's resolution to prepare draft Amendment 92
17 December 2003	Liverpool City Council places draft Amendment 92 on public exhibition
16 January 2004	Land and Environment Court hands down finding on Westfield's appeal, finds Liverpool City Council's development approval null and void, gives the Centre 28 days to cease trading as a warehouse clearance outlet
2 February 2004	Gazcorp appeals the decision of the Land and Environment Court to the NSW Supreme Court, receives an extension to the deadline to cease using the property as a warehouse clearance outlet until determination of the appeal. Exhibition of draft LEP closed. Neither DIPNR or any other government department objected to the rezoning of the land
16 March 2004	Daly Inquiry Interim Report finds that Liverpool City Council lost at least \$22 million from its involvement in the Oasis Project. Professor Daly asserts that the elected representatives do not have the 'experience or skills to resolve the problems facing the Council', and should be dismissed. Ms Gabrielle Kibble, former Director General of the Department of Planning, appointed as Administrator of Liverpool City Council
31 March 2004	NSW Court of Appeal dismisses Gazcorp's first appeal, giving a further 28 day reprieve to cease using the property as a warehouse outlet
13 April 2004	Administrator Kibble separates the Crossroads rezoning proposal from the Orange Grove rezoning, and approves draft Amendment 92 to the Liverpool LEP as it relates to Orange Grove Road
14 April 2004	Liverpool City Council writes to DIPNR, submitting draft Amendment 92 and requesting gazettal as soon as possible
15 April 2004	Westfield's Director of Corporate Affairs, Mr Mark Ryan calls the Premier's Chief of Staff, Mr Graeme Wedderburn, suggesting a meeting between Mr Lowy and the Premier. Mr Wedderburn suggests the meeting be between himself and Mr Ryan
19 April 2004	Meeting between Mr Wedderburn, Mr Ryan and another Westfield representative, Mr Craig Marshall. Mr Wedderburn briefs the Premier about the meeting that day

20 April 2004	Mr Wedderburn meets with Assistant Planning Minister Beamer, her Chief of Staff, Mr Michael Meagher and the Deputy Chief of Staff for Minister Knowles, Mr Emilio Ferrer, regarding the meeting with Westfield
22 April 2004	NSW Supreme Court dismisses Gazcorp's second appeal, gives Gazcorp until 14 July to cease using the property as a warehouse clearance outlet. The Court notes that this extension is based on Liverpool City Council's evident will to achieve development consent, and the possibility of ministerial approval for the amended Liverpool LEP
22 & 27 April 2004	Mr Meagher meets with representatives of the Liverpool Crossroads development and AMP
22 May 2004	Member for Fairfield, Mr Joe Tripodi MP meets with the Proprietor of Bargshoon Cleaning Services, Mr Sam Bargshoon and the Managing Director of Gazcorp Pty Ltd, Mr Nabil Gazal at Gloria Jean's Coffee Shop at the Centre. Mr Tripodi allegedly informs Mr Gazal that Minister Beamer was instructed not to approve the rezoning, but assures Mr Gazal that he still expects Minister Beamer to approve the amended LEP allowing the factory outlets to remain open
7 June 2004	A file containing the s 69 Report recommending approval of the Amendment to the Liverpool LEP and a draft media release announcing the Minister's approval of the LEP forwarded to the Office of the Director General.
16 June 2004	Director General of DIPNR, Ms Jennifer Westacott receives the s 69 report prepared by the Sydney Region West office operating under delegation, recommending that draft Amendment 92 be made
24 June 2004	Mr Gazal, Mr Bargshoon and Mr Mosca visit the home of Minister Knowles' parents at 11:30pm to attempt to meet with Minister Knowles, but do not see the Minister
25 June 2004	Mr Gazal, Mr Mosca and Mr Gazal's son Mr Nicholas Gazal return to the home of Minister Knowles' parents at 6am, and are asked to leave by Minister Knowles. A few days later Mr Mosca meets briefly with Mr Stan Knowles, Minister Knowles' father
25 June 2004	Director General Westacott sends a memo to Minister Beamer outlining arguments in the s 69 report that she finds unconvincing, noting that notwithstanding the s 69 report's recommendation to approve draft Amendment 92, it would be reasonably open to the Minister to conclude that draft Amendment 92 should not be made, having regard to its planning merits
30 June 2004	Minister Beamer and Mr Meagher meet with Director General Westacott and senior DIPNR planner Mr Gary Prattley to discuss the Director General's memo of 25 June 2004

1 July 2004	Mr Meagher writes to Director General Westacott requesting further information on the issues raised in the Director General's memo
8 July 2004	Director General Westacott provides the additional information requested by Minister Beamer, noting that there are very strong planning grounds which would support a decision not to make draft Amendment 92
8 July 2004	Minister Beamer refuses to make draft Amendment 92, noting the concerns raised by the Director General, in particular inadequacy of public transport, conflict with the Centre's Policy, adverse effects on nearby retail centres, and inconsistency with draft SEPP 66 In the <i>Daily Telegraph</i> and <i>Sydney Morning Herald</i> of 14 July, Minister Beamer argues that changing the Liverpool LEP to allow the Centre to continue operating would undermine the quality of planning controls and create an ad-hoc and uncertain planning process, as well as threatening the business and employment capacity of legitimately approved retailers
10 July 2004	Mr Gazal, Mr Mosca, Mr Bargshoon and Mr Gazal's lawyer Mr Joseph D'Agostino sign statutory declarations detailing conversations with Mr Tripodi, relating to the approval of the Centre. Mr Gazal alleges that Mr Tripodi had been told by Minister Beamer that Premier Carr had instructed her to refuse to rezone the land on which the Centre operates. Mr Gazal alleges that Premier Carr has been improperly pressured by Mr Frank Lowy, Chairman of Westfield.
14 July 2004	NSW Supreme Court determines Gazcorp's third appeal, upholds the original decision of the Land and Environment Court, gives Gazcorp until 25 August to cease using the property as a warehouse clearance outlet.
July 2004	Mr Gazal refers his allegations to the ICAC
15 July 2004	DIPNR receives a faxed notice from ICAC to attend and produce documents
22 July 2004	Westfield issues media release stating that it did not meet with Assistant Planning Minister Beamer. The release also stated that Westfield met with Planning Minister Knowles but made no reference to its approach through Mr Mark Ryan for a meeting with the Premier
28 July 2004	GPSC 4 adopts terms of reference for the current Inquiry into the Approval of the Designer Outlets Centre, and orders the production of certain documents by DIPNR
13 August 2004	First hearing of GPSC 4's Inquiry into the Approval of the Designer Outlets Centre DIPNR voluntarily complies with GPSC 4's order for papers
17 August 2004	Premier reveals publicly for the first time that a meeting to discuss the Designer Outlets Centre took place between his Chief of Staff, Mr Graeme Wedderburn and representatives of Westfield

25 August 2004	Designer Outlets Centre closes as a warehouse outlet, despite a last minute application to the Court of Appeal
1 September 2004	‘Save Orange Grove Bill’ passed by the Legislative Council to facilitate Centre’s continued operation by effectively rezoning the site. The Bill was received by the Legislative Assembly on 2 September 2004 and was read a first time
September – November 2004	GPSC 4 continues to hold hearings for its Inquiry into the Approval of the Designer Outlets Centre
4 December 2004	<p>Independent Commission Against Corruption (ICAC) advertises public hearings into matters concerning the Orange Grove development, namely the decision by Liverpool City Council to grant development consent for 12 Orange Grove Road to operate as a warehouse clearance outlet, and the refusal by Minister Beamer to approve draft Amendment 92 to the Liverpool LEP.</p> <p>First public hearing advertised for 13 December 2004.</p>

Chapter 2 The impact of closing the Centre on tenants and employees

The impending closure of the Designer Outlets Centre on 25 August 2004 was a daunting prospect for the Centre's tenants and employees. This chapter documents their concerns about potential job and financial losses, as expressed in evidence and submissions to the Committee. The impact on individuals is then put in context by discussing the broad social and economic impact of the Centre's closure. One of the most contentious issues dealt with during the inquiry is whether Gazcorp informed prospective tenants that the Centre's development consent was under challenge. The second part of the chapter examines the evidence in relation to this matter.

The impact of closure on employees and tenants

- 2.1 The Committee received compelling evidence from both tenants and employees regarding the potential impact of the Centre's prospective closure on their livelihoods and relationships. As the owner of *Gloria Jeans Coffee Shop*, Mr Sam Nasser, told the Committee, 'the impact on the people in the middle is absolutely devastating.'²⁷

Impact on employees

- 2.2 Employees told the Committee of the enormous stress caused by the prospect of losing their jobs. Ms Marcia Kotopolouis described how the Centre's imminent closure would affect her 'personally, emotionally and most of all financially:'

I am very upset about not only the pending closure of the outlets but losing my job. I have just built a new house and have taken out a mortgage which both my husband and I must contribute to pay off. I have two children to support and school fees to pay, not to mention I also help my parents who are no longer working and can not afford to live on just the pension. My father recently had a stroke and I contribute to his medication.²⁸

- 2.3 Another employee of a men's fashion store, Mr Zahi Amalah, whose wife was expecting their first baby, described the stress he was under:

As a married man with my first child expected in the next six weeks the loss of my work could not have come at worse time. Jobs just do not appear, they can take time, finding the one that is ideal. I am being placed in a difficult position forcing me to expect [sic] whatever just for the sake of a job.

The stress and emotional pressure is so unnecessary. My wife without a job, a new baby on the way and financial commitments....²⁹

²⁷ Mr Nasser, Evidence, 16 August 2004, p33

²⁸ Submission 21, p1

²⁹ Submission 23, p1

- 2.4** Many of these people were pessimistic about the chances of finding another job in an area with a high level of unemployment, as several had found it difficult finding the job they were about to lose. According to Ms Zeina Mouhajer, an employee of *Sportspower*:

Before I got this job I was unemployed for six (6) months. I found it very difficult to find a job ...³⁰

- 2.5** The Manager of *Rockmans*, Ms Sandy Heathcote, told the Committee:

The burden of having to look for another job – it personally took me six months to find the position that I have. I am more than happy being there and the uncertainty of facing a financial struggle and the mental stress that it could have on 450 people to look for another job in the south-western region which is known to be one of the highest unemployment areas is a little scary.³¹

- 2.6** Finding a new job seemed particularly problematic for employees who required flexible work hours due to family responsibilities, as well as older employees. As Ms Antoinette Bosch, a sales assistant at *Oneida*, explained:

Personally, I will suffer financially and I will find it difficult to find another job due to my age and having been out of the workplace for 14 years. Previously it took me more than a year to obtain this job, and having limited skill I will find it difficult out there to find another job and carry on with my family life and support my children.³²

- 2.7** *Fletcher Jones* employee, Ms Nadia Dillo expressed similar concerns:

If Orange Grove were to close I would find myself unemployed for the first time in 15 years. At 48 years of age, obtaining another permanent/part-time job opportunity in the local area would be near impossible ... I have two daughters to support and have just been approved to buy my family home. This will no longer be possible ...³³

- 2.8** The concerns of employees close to retirement were expressed by the Manager of *Welcome Home Manchester*, Ms Yvonne Bugg:

I gave up a full time position which I had been in for some years and by doing so lost my long service, but at the time I thought it would be a good move as my new position as Manager of Welcome Home Manchester, which has a lengthy lease which, would take me through to retirement age (I am 60).

Now I am faced with unemployment which is of great concern for me, as I am single and will find it extremely hard to find another good job at my age, and my job is my livelihood.³⁴

- 2.9** Ms Manelle Khodr, a *Sisco* employee, predicted that the impact of losing her job would not just be felt in the short term:

³⁰ Submission 16, p1

³¹ Ms Heathcote, Evidence, 16 August 2004, p21

³² Ms Bosch, Evidence, 16 August 2004, p22

³³ Submission 24, p1

³⁴ Submission 20, p1

I will end up in major debt with no way out and no way of ever being able to borrow money because of my credit rating. In effect my life is not just being jeopardised now but where will I be financially in 5 years time if I were to lose my position?³⁵

Impact on tenants

- 2.10** The possible closure of the Centre was also a distressing prospect for tenants, many of whom had invested large amounts of money in fit-out and stock costs most of which could not be recouped. As Mr Tony Sahota, the owner of *Pearl Leather* told the Committee:

I have a good business and this news about the closure has devastated me again ... I can't sleep at night time. I have got mortgage, three vehicles on finance, kids education and regular bills to pay. I don't know where to go from here. What am I going to do?

I can't think of anything else. I don't have expertise or experience in any other field.³⁶

- 2.11** Mr Sahota gave evidence that he invested more than \$45,000 in shop fittings and \$150,000 in stock.³⁷ The Director of *Seres Australia*, Mr Larry Musolino invested \$200,000.³⁸ Mr Nasser invested more than \$400,000 in *Gloria Jean's Coffee Shop*.³⁹
- 2.12** While concerned about their own financial situation, many tenants expressed concern for the welfare of their employees. Mr Musolino said the Centre's closure would leave him with a debt of \$150,000 and result in 12 employees losing their jobs; he noted that the outstanding debt could also cause him to lose his other businesses, affecting another 20 staff.⁴⁰
- 2.13** While some of the larger chains could offer positions in other stores,⁴¹ smaller employers were generally not in a position to offer alternative employment.⁴²
- 2.14** The closure of the Designer Outlets Centre resulted in the immediate loss of several hundred jobs and severe financial losses for some of those who invested in equipment and leases. The Committee regrets the events that have led to scores of hard-working and committed employees and tenants experiencing considerable anxiety about the prospect of imminent job and financial insecurity and that the closure of the Centre resulted in sudden and devastating loss of jobs and businesses.

³⁵ Submission 3, p1

³⁶ Submission 8, p1

³⁷ Mr Sahota, Evidence, 16 August 2004, p25

³⁸ Submission 5, p2

³⁹ Mr Nasser, Evidence, 16 August 2004, p25

⁴⁰ Submission 5, pp2-3

⁴¹ Submission 11, Confidential

⁴² Submission 4, *True Alliance*, p1; Submission 5, *Seres Australia*, p2; Submission 9, Partially confidential, p2

Social and economic impact of closure

2.15 The following section discusses the social and economic impact of the closure of the Designer Outlets Centre in the Liverpool Local Government Area, to contextualise the plight of individual employees and retailers. It begins with a snapshot of the Liverpool local government area.

Liverpool snapshot⁴³

2.16 Liverpool is a diverse local government area in south-west Sydney. It has a rapidly growing population: in 2001 the population was 154,000, up 28% from 1996, and up 57% from 1991. This rate of growth was significantly higher than that of greater metropolitan Sydney over the same period. Liverpool has a relatively high unemployment rate compared with the State average: in September 2004, Fairfield-Liverpool had an unemployment rate of 6.5%, rising to 7.2% for Fairfield-Liverpool and Outer South-Western Sydney.⁴⁴ The average for metropolitan Sydney was 5.0%. The retail sector is the second largest source of employment, accounting for 13.9% of total employment. Of the 64,000 people working in Liverpool in 2001 over 42,000 used the car as their means of travelling to and from work. This reflects Western Sydney's typical reliance on private transport and generally limited access to public transport.⁴⁵ High unemployment and limited public transport create strong demand for jobs in the local area.

2.17 The Designer Outlets Centre is in the federal electorate of Fowler. The Member for Fowler, Ms Julia Irwin told the Committee that at the 2001 census the Fowler electorate had the highest rate of unemployment of any electorate in Australia, with a figure of 15.1 per cent. Ms Irwin continued:

While that figure is lower in more recent figures, Fowler remains an area of high unemployment. For persons aged 15 to 19, a group that makes up a significant number of retail employees in 2001, Fowler had the second highest rate at 24.6 per cent with only the Newcastle electorate being higher.⁴⁶

2.18 The next part of the chapter examines the possible social and economic consequences for Liverpool of closing the Designer Outlets Centre, beginning with a discussion of the estimated number of jobs lost as a result of the Centre closing.

⁴³ Unless otherwise stated, all information for the 'Snapshot of Liverpool' is taken from Liverpool City Council's website www.liverpool.nsw.gov.au/scripts/viewoverview_contact.asp?NID=11243# (accessed 19 August 2004). Council's figures are based on census information from the Australian Bureau of Statistics.

⁴⁴ Department of Employment and Workplace Relations, *NSW Quarterly Regional Labour Market Report: September 2004*, www.workplace.gov.au/WP/Content/Files/WP/WP3/Quarterly%20LM%20repopr%20Sep04.pdf (accessed 18 October 2004)

⁴⁵ Department of Infrastructure, Planning and Natural Resources, *Shaping Western Sydney*, www.planning.nsw.gov.au/plansforaction/sydneywest.html (accessed 19 August 2004)

⁴⁶ Ms Irwin, Evidence, 16 August 2004, p57

Estimated job loss as a result of the Centre's closure

- 2.19** During the inquiry, the Committee was presented with conflicting evidence regarding the number of jobs that would be lost if the Centre closed. While the estimates ranged from between 250 to 700 positions, the most frequently cited estimate was 400.
- 2.20** In his evidence to the Committee the Managing Director of Gazcorp, Mr Nabil Gazal, indicated that in early August 2004, 402 people were employed at the Orange Grove centre. Mr Gazal suggested that a further 30 to 40 additional jobs would have been created had *David Jones* and *Canterbury* also opened stores at the Orange Grove centre, as they originally intended.⁴⁷
- 2.21** Mr Nasser, owner of *Gloria Jeans* suggested that potentially up to 600 or 700 jobs might be lost, citing the employment potential of many larger chain stores such as *Harvey Norman*.⁴⁸
- 2.22** A draft ministerial press release was prepared by the Department of Infrastructure, Planning and Natural Resources (DIPNR) and sent to the Hon Diane Beamer MP, Minister for Juvenile Justice, Minister for Western Sydney, and Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), as part of the file proposing approval to rezone the Centre. This press release referred to 400 jobs. DIPNR's Media Liaison Officer, Ms Isabelle Bennet, gave evidence that this figure had been supplied by the Senior Environmental Planner from DIPNR's Parramatta office, Ms Laurel Cheetham. According to Ms Bennet, it is standard practice for the person preparing the media release to rely on the information provided by the planner with carriage of the proposal.⁴⁹
- 2.23** Alternatively, the Director General of DIPNR, Ms Jennifer Westacott noted that the Hill PDA Report commissioned by Liverpool City Council estimated that 277 people would be employed at the Centre, while the advice from the government-appointed Business and Jobs Coordinator, Mr John Dermody, was that the total number of jobs was likely to be around 250.⁵⁰
- 2.24** While the figures cited on job losses differ widely, the Committee is inclined to believe that the most reliable figure is that of approximately 400 job losses, which is the figure cited in DIPNR's draft press release and which mirrors Gazcorp's evidence.
- 2.25** The loss of such a large number of jobs would be sorely felt in any community. The loss of approximately 400 jobs in an area with such high unemployment levels understandably generated widespread uproar.
- 2.26** The Committee's inquiry gave voice to many of those directly affected by the closure and enabled detailed investigation of the circumstances surrounding the closure.

⁴⁷ Mr Gazal, Evidence, 13 August 2004, p15

⁴⁸ Mr Nasser, Evidence, 16 August 2004, p23

⁴⁹ Ms Bennet, Evidence, 18 August 2004, pp85-87

⁵⁰ Ms Westacott, Evidence, 17 August 2004, p38

Finding 1

The closure of the Designer Outlets Centre resulted in a severe impact on employees, including the loss of approximately 400 jobs, as well as led to significant financial losses to tenants.

Economic impact of Centre

2.27 All parties acknowledge the significance of losing several hundred jobs in the Liverpool area. However, the Committee also heard arguments, particularly from Westfield and the Shopping Centre Council of Australia, that the job creation benefits of the Centre were outweighed by the adverse impact on existing retailers and their employees in the Liverpool CBD. Gazcorp and Liverpool City Council on the other hand, argued that there was a strong positive impact overall.

Economic impact assessment studies

2.28 Various studies were conducted to calculate the economic impact on the Liverpool CBD of opening the Centre. There are four key studies. These studies were produced by:

- Hirst Consulting, commissioned by Gazcorp to prepare the original economic impact statement in support of the Designer Outlets Centre proposal
- Leyshon Consulting, commissioned by Liverpool City Council to provide an independent peer review of the Hirst study
- Hill PDA, commissioned by Liverpool City Council to provide additional information on the economic impact of the proposals for both the Crossroads and Orange Grove Road sites, and to provide supplementary information to DIPNR
- Urbis JHD, commissioned by Westfield to provide an alternative economic impact assessment commenting on the work of Hill PDA and provided to DIPNR as comment on proposed draft Amendment 92.

Significant adverse impact: Westfield

2.29 Westfield suggested that the Centre would have a significant adverse impact on the Liverpool CBD. In making this case, Westfield emphasised the plight of existing retailers in the CBD and their employees.

2.30 In a report commissioned by Westfield, Urbis JHD found that the Centre could lead to a loss to the Liverpool CBD of between \$14 and \$18 million. Urbis JHD found that the Centre would compete directly with Westfield and strip shopping retailers in the CBD in the areas of apparel and footwear.⁵¹

⁵¹ Urbis JHD, *Liverpool Outlet Centre: Impact Assessment*, 23 April 2004, provided in correspondence from Mr Malcolm Stewart, Speed and Stracey Solicitors, to Director, 10 September 2004

- 2.31** The submission from the Shopping Centre Council presented five case studies of the Centre's impact on clothing retailers in Westfield Liverpool.⁵² According to their submission, all the retailers they interviewed reported a downturn in sales following the opening of the Centre, especially on Thursday nights and weekends. The most affected stores reported downturns of up to 50%, and having to lay off staff.
- 2.32** The Chief Operating Officer of Westfield for Australia and New Zealand, Mr Robert Jordan, supported the anecdotal evidence put forward by the Shopping Centre Council regarding the adverse impact on retailers in Westfield Liverpool. Mr Jordan gave evidence that turnover for Westfield Liverpool was below average national growth for Westfield centres in Australia, with an especially strong decline in the growth of fashion and footwear.⁵³ Westfield provided these figures in response to a question taken on notice by Mr Jordan during the Liverpool hearing on 16 August, claiming that the fashion and footwear categories had 'suffered a combined loss of approximately \$3.7 million over the past 6 months since the opening of the Orange Grove Factory Outlet Centre,' putting several retailers at risk of closure.⁵⁴
- 2.33** Information provided by Westfield was not clear as to whether there had actually been a real decline in trading or support after the opening of the Designer Outlets Centre or growth in trade but at a lesser rate.
- 2.34** Westfield argued that the plight of retailers and employees in the CBD is an equity issue, as their plight resulted from unfair competition from retailers paying lower rents on non-commercial land. This was expressed by the Shopping Centre Council, of which Westfield is the largest member:⁵⁵
- While public attention has focussed on the plight of retailers and employees of the Orange Grove Road centre, the plight of retailers and employees in surrounding shopping centres, located in the proper commercial/retail zones, has been ignored. These people are the "forgotten people" in this debate. These retailers have also invested in their shops. These retailers and their employees also have mortgages and bills to pay.⁵⁶
- 2.35** According to Westfield's Director of Corporate Affairs, Mr Mark Ryan:
- The families at Westfield Liverpool and in the Liverpool CBD have invested heavily. They too have mortgages. The difference is that they are operating in a legal development.⁵⁷
- 2.36** The Committee did not receive any submissions from traders from the Liverpool CBD objecting to the factory outlets centre, other than from Westfield.

⁵² Submission 29, Shopping Centre Council of Australia, pp9-11

⁵³ Mr Jordan, Evidence, 16 August 2004, p42

⁵⁴ Response to a question taken on notice on 16 August 2004, tendered by Westfield on 25 August 2004

⁵⁵ Correspondence from Mr Milton Cockburn, Executive Director, Shopping Centre Council of Australia, to Senior Project Officer, 16 August 2004

⁵⁶ Submission 29, p9

⁵⁷ Mr Ryan, Evidence, 25 August 2004, p7

Negligible adverse impact: Gazcorp and Liverpool City Council

- 2.37** The Committee heard evidence from two planning consultants who opposed the view that the Centre was having a negative economic impact on the Liverpool CBD. Hirst Consulting was commissioned by Gazcorp to prepare the original economic impact assessment. According to Hirst Managing Director, Mr Michael Evesson:

My personal opinion, and my professional opinion, is ... that in both planning terms and in retail economic impact terms this is an admirable development, well-suited and entirely unlikely to significantly impact on Liverpool CBD.⁵⁸

- 2.38** While the Hirst study found that the Centre could draw \$18 million away from the Liverpool CBD, Mr Evesson noted that a development the size of the Centre:

... would not impact adversely on the Liverpool CBD simply by virtue of the likely size of turnover there.⁵⁹

- 2.39** This argument was supported by Leyshon Consulting, the firm engaged by Liverpool City Council to provide an independent peer review of the work done by Hirst Consulting. According to its Director, Mr Peter Leyshon:

I do not consider there is any evidence I am aware of that [the Centre] is having an adverse impact on the CBD.⁶⁰

- 2.40** Mr Evesson argued that there could even be a beneficial spill-over effect between the Centre and the Liverpool CBD:

... discount factory outlets draw from a much wider trade area than other forms of shopping centres, and with the relative proximity of Liverpool CBD yes, there could be some flow over, spill over, nexus if you like, between the two.⁶¹

- 2.41** This corresponds with evidence provided by Mr Gazal, who stated that the Centre would have turned over \$30 million in economic activity per year, with a net gain overall to Liverpool.⁶²

- 2.42** Mr Evesson also argued that the Designer Outlets Centre was positive in that it would facilitate retention of 'escape expenditure'⁶³ that was currently lost to factory outlets outside the Liverpool area:

Because I consider that at least some part of that—and I do not know what part of that \$18 million—was, prior to the factory outlet centre establishing, leaking out of Liverpool LGA. Where was it going? DFO Homebush, Drummoyne perhaps...—or the more traditional, if you like, factory back door sales areas in Redfern, the older styles, the bus tour types. That money or part of that money would have already been

⁵⁸ Mr Evesson, Evidence, 13 August 2004, p103

⁵⁹ Mr Evesson, Evidence, 13 August 2004, p104

⁶⁰ Mr Leyshon, Evidence, 13 August 2004, p107

⁶¹ Mr Evesson, Evidence, 13 August 2004, p103

⁶² Mr Gazal Evidence 25 August 2004 p60.

⁶³ Mr Evesson, Evidence, 13 August 2004, p104

going. It is a reasonable assumption to say that it must have already been going. So, to that extent, no, it cannot have been leaching out. Secondly, the goods that are on offer, although they maybe predominantly in number clothing and other personal attire, may well not be of the same type or style as is available in the Liverpool CBD...⁶⁴

2.43 This evidence was supported by Mr Leyshon:

I have in the past undertaken a survey for the operators of the direct factory outlets at Homebush, which obtains data on where shoppers come from. They ... include a significant number of shoppers from Liverpool, Campbelltown, Fairfield, Camden ... I endorse the comments previously made by Mr Evesson that there is likely to be a significant level of escape expenditure of that factory outlet type of spending out of Liverpool and surrounding local government areas at the moment.⁶⁵

2.44 Mr Leyshon concluded by noting that:

Even if there is a short-term impact that may exist for a year or so, it has to be seen in the context of this very fast growth in available spending which ... tends to wash away the impact in a very short space of time.⁶⁶

2.45 Liverpool City Council commissioned Hill PDA to review the economic impact assessments prepared by Leyshon Consulting and Hirst Consulting. The Hill PDA Report considered the economic impact of both the Crossroads and Orange Grove Road sites, concluding that a net community benefit would result from the development of either site. In response to a request from DIPNR for further information on the net community benefit analysis for Orange Grove Road (consideration of the Crossroads site having been deferred), Liverpool City Council asked Hill PDA to provide a supplementary report.⁶⁷

2.46 Like the reports prepared by Leyshon Consulting and Hirst Consulting, the first Hill PDA Report concludes that the Designer Outlets Centre would not have a significant negative impact on the Liverpool CBD. According to Hill PDA, a negative impact of \$18 million represents a loss of 4.2% of the total turnover of the Liverpool CBD. In support of its assertion that the Designer Outlets Centre was not undermining interest in further commercial development in the CBD, Hill PDA cited Westfield's planned expansion of an additional 22,000 square metres of retail space.⁶⁸

2.47 The Hill PDA Report noted that:

The factory outlet centre at Orange Grove road (which has been operating since last November) has clearly not undermined interest in further development in the Liverpool CBD. Development applications have been submitted to Liverpool Council

⁶⁴ Mr Evesson Evidence 13 August 2004 p106.

⁶⁵ Mr Leyshon, Evidence, 13 August 2004, p107

⁶⁶ Mr Leyshon, Evidence, 13 August 2004, p108

⁶⁷ Submission 27, DIPNR, pp22-23

⁶⁸ 'Appendix 1: Assessment of Net Community Benefit Under Draft SEPP 66,' of DIPNR, *Section 69 Report – Liverpool LEP 1997 (draft Amendment No. 92)*, pp4-5, cited in Submission 27, DIPNR, Attachment 10

for a number of proposals to expand commercial/retail space including one by Westfield to add 22,22 sq m to its current 71, 438 sq m gross floor area.⁶⁹

- 2.48** The DIPNR s 69 Report quoted this point at length in its case in support of approving the proposal to rezone the Orange Grove site. The report summarises the conclusion of the Hill PDA Report as follows:

Liverpool functions as the major CBD for the SW [South West] sub-region, and its viability as such is not being undermined by the OGR [Orange Grove Road] factory outlet.⁷⁰

Future growth of Liverpool CBD

- 2.49** Disagreement about the impact of the Designer Outlets Centre on the Liverpool CBD must be set against the background of conflicting evidence regarding the economic health of the town centre.

- 2.50** Some witnesses suggested that the CBD was desperately in need of revitalisation. For instance, Ms Westacott referred to a letter from the Administrator of Liverpool City Council, Ms Gabrielle Kibble, to support her view that the Liverpool CBD was struggling. The newly-appointed Administrator Ms Kibble wrote to the Hon Craig Knowles MP, Minister for Infrastructure and Planning, and Minister for Natural Resources, on 24 March 2004 requesting a grant of \$200,000 to undertake further study of how to strengthen the Liverpool CBD and ensure it had a viable economic future.⁷¹ Ms Kibble wrote that such work

... would see the development of appropriate strategies to complement the work done to date while at the same time provide improved guidelines for those wishing to develop in Liverpool.⁷²

- 2.51** Ms Westacott in particular repeatedly referred to Ms Kibble's letter to support her assertion that the Designer Outlets Centre would drain money from the CBD, threatening the future of the struggling CBD. Ms Westacott described Ms Kibble's letter as follows:

... Council had written to Minister Knowles requesting a grant to revitalise the CBD saying: it could not attract quality commercial development, and it was suffering from traffic congestion. That is why in May we announced a \$200,000 grant to Liverpool Council to revitalise the CBD along with other major centres in the Sydney region.⁷³

- 2.52** Ms Kibble did not agree with Ms Westacott's interpretation of her request for a grant. Ms Kibble noted that the reason for requesting the grant was to allow Council to undertake a

⁶⁹ Hill PDA Report

⁷⁰ 'Appendix 1: Assessment of Net Community Benefit Under Draft SEPP 66,' of DIPNR, *Section 69 Report – Liverpool LEP 1997 (draft Amendment No. 92)*, p4, cited in Submission 27, DIPNR, Attachment 10

⁷¹ Ms Kibble, Evidence, 13 August 2004, p42

⁷² Correspondence from Ms Gabrielle Kibble, Administrator, Liverpool City Council, to Hon Craig Knowles MP, State Member for Macquarie Fields, 24 March 2004, tabled by Ms Kibble on 13 August 2004

⁷³ Ms Westacott, Evidence, 13 August 2004, p67

review of planning strategy for the CBD, to ensure that the significant amount of residential development in the CBD would not negatively impact on future land availability, for example for commercial development.⁷⁴ When put to Ms Kibble, she directly rejected a description of the CBD as ‘failing.’⁷⁵

- 2.53** Ms Westacott noted that, in addition to Ms Kibble’s letter and the information on file, her assessment of Liverpool as a struggling centre was also based on personal experience:

In my view the Liverpool CBD does not perform well. I worked in the Liverpool CBD for 10 years. My advice from our jobs co-ordinator is that there are 35 vacant shops in Liverpool CBD. There are many parts of the CBD that I know from my 10 years of working there are very run down.⁷⁶

- 2.54** When asked to comment on whether there would be 35 shops vacant in Liverpool, the General Manager of Liverpool City Council, Mr Garry McCully responded: ‘I doubt whether there would be that many.’⁷⁷ When asked to assess the economic situation at Liverpool, Mr McCully referred to an ‘increase in vibrancy’ since he joined the Council in June 2003:

I would suggest it is growing in terms of economic activity. Since I have been there I have certainly seen an increase in vibrancy. There are certainly some older premises that were of another retailing era in the southern part of the central business district that are now closed or in need of renovation. But overall I would say there has been an increase in vibrancy in the town centre.⁷⁸

- 2.55** In contrast to Ms Westacott’s view of Liverpool CBD as struggling, many witnesses cited Liverpool’s parking problems to demonstrate that the CBD is a bustling regional centre. According to a representative of the Liverpool Chamber of Commerce, Mr John Henshaw:

... Liverpool is the worst parking place you could ever come to. We cancelled meetings that were to be held in Liverpool, because there is no parking. That happens every second day.⁷⁹

- 2.56** According to the former NSW Government Minister and Mayor of Liverpool, the Hon George Paciullo:

I would invite Mr Carr or anyone else if they think money is being drained out of the Liverpool CBD to go looking for a car space within our CBD at any time, especially during peak time. If you can get one without having to really shop around to look for that car parking spot, you should take a lottery ticket.⁸⁰

⁷⁴ Ms Kibble, Evidence, 13 August 2004, p45

⁷⁵ Ms Kibble, Evidence, 13 August 2004, p46

⁷⁶ Ms Westacott, Evidence, 13 August 2004, p71

⁷⁷ Mr McCully, Evidence, 18 August 2004, p69

⁷⁸ Mr McCully, Evidence, 18 August 2004, p69

⁷⁹ Mr Henshaw, Evidence, 16 August 2004, p53

⁸⁰ Hon George Paciullo, Evidence, 16 August 2004, p10

- 2.57** Like the Hon George Paciullo, the local Federal Member, Mrs Julia Irwin MP, was also sceptical that Centre could have a negative impact on Liverpool CBD, again citing traffic congestion:

Any day of the week – I am talking seven days a week here; Sunday afternoons might be a little different down at Westfield – it is impossible to get a parking spot down there and you always see a lot of people there. So I cannot understand how it would affect the Liverpool CBD, especially Westfield.⁸¹

- 2.58** In the opinion of those who see Liverpool as a thriving centre, the opening of the Designer Outlets Centre was a positive development that would draw people to Liverpool who would not otherwise visit. This view was summed up by a representative of the Liverpool Chamber of Commerce, Mr Henshaw:

The people at the chamber to whom we spoke and the committee are of the view that it is good for Liverpool: The more people who come to Liverpool, the more people who are likely to come to the CBD to shop. That is their view.⁸²

Ms Westacott's view of the Centre's economic impact

- 2.59** Ms Westacott regarded the finding of the Hill PDA Report of an \$18 million loss to the Liverpool CBD as a particularly compelling argument against approving the rezoning of the Centre. Ms Westacott gave evidence that she considered an \$18 million loss to be unacceptable:

I simply disagree that this is not going to have a negative impact, and that is the basis on which the council gave us its report. It put a report forward that it commissioned saying there would be an \$18 million loss over two years. They consider that significant. You may dismiss that as insignificant; I simply do not.⁸³

- 2.60** The Committee heard that DIPNR's Principal Policy Adviser for the Metropolitan Strategy, Mr Peter Hamilton, prepared the community benefits analysis in the s 69 report.⁸⁴ To do so he reviewed information provided by Hill PDA, DIPNR's Metropolitan Strategy Branch, Gazcorp and Westfield. Mr Hamilton was critical of the report provided by Hill PDA, questioning its 'robustness'.⁸⁵ However, like Hill PDA, Mr Hamilton concluded that the Designer Outlets Centre would have a positive effect overall:

Impact on the viability of Liverpool is considered likely to not be sufficient to threaten its viability ... The factory outlet will attract more visitors, more businesses,

⁸¹ Mrs Irwin MP, Evidence, 16 August 2004, p63

⁸² Mr Henshaw, Evidence, 16 August 2004, p54

⁸³ Ms Westacott, Evidence, 13 August 2004, p84

⁸⁴ 'Appendix 1: Assessment of Net Community Benefit Under Draft SEPP 66,' of DIPNR, *Section 69 Report – Liverpool LEP 1997 (draft Amendment No. 92)*, cited in Submission 27, DIPNR, Attachment 10; Mr Hamilton, Evidence, 17 August 2004, p36

⁸⁵ Submission 27, DIPNR, p23

and more employees, and there will be a multiplier effect from this to increase the viability of Liverpool CBD.⁸⁶

- 2.61** Although Mr Hamilton concluded that the Designer Outlets Centre would have a net community benefit, Ms Westacott referred to Mr Hamilton's work as a factor in her assessment that far from offering a net community benefit, the Designer Outlets Centre would impact negatively on the Liverpool CBD:

The section 69 report and Mr Hamilton's advice is very clear on the file and he has just gone through that, that he comes to a conclusion that, on balance, the benefits outweigh the disbenefits. In my view that was not a compelling case. He says it comes out even in respect of the net community benefit criteria. That, in my view, is not a compelling case; it is not a net community benefit.⁸⁷

- 2.62** The economic impact assessment studies draw conflicting conclusions about the impact of the Designer Outlets Centre on the Liverpool CBD. There is agreement that at most, the Designer Outlets Centre would lead to a loss of \$18 million from the Liverpool CBD. There is dispute whether this loss should be considered significant, or if it should be seen as having only a minimal and short-term impact on the CBD, and would in fact be quickly compensated for by the population growth in the Liverpool area, and the spill-over effect of more visitors shopping in the Liverpool area.
- 2.63** While Westfield has provided figures to demonstrate a drop in trade at Westfield Liverpool, it is difficult for the Committee to reach conclusions based on these figures, given that they seem to measure the impact of the Orange Grove Centre in relation to average growth trends, rather than in terms of absolute declines or increases in trade.
- 2.64** The Committee considers that Ms Westacott based her advice to Minister Beamer in her memos of 25 June and 8 July, on her concern that there would be a significant adverse economic impact on the CBD. Ms Westacott appeared to give greater weight to Westfield's study, which claimed that \$18 million represented a significant impact, than to the study commissioned by Gazcorp and the two studies commissioned by Liverpool City Council. The Committee is of the view that there was no conclusive evidence that the Centre was likely to cause a significant negative economic impact on the Liverpool CBD and there is significant evidence that the Outlets Centre were an economic benefit to the Liverpool and South Western Sydney region.

⁸⁶ 'Appendix 1: Assessment of Net Community Benefit Under Draft SEPP 66,' of DIPNR, *Section 69 Report – Liverpool LEP 1997 (draft Amendment No. 92)*, pp3-4. cited in Submission 27, DIPNR, Attachment 10

⁸⁷ Ms Westacott, Evidence, 17 August 2004, pp39-40

Finding 2

The weight of evidence before the Committee does not support the Director General of DIPNR, Ms Jennifer Westacott's view that the Designer Outlets Centre had a significant potential for adverse economic impact on the Liverpool CBD.

The Committee believes that the Centre clearly had a net benefit to Liverpool, particularly when social and economic factors such as its impact on the region's high level of unemployment are taken into consideration.

Assistance to employees and tenants to find alternate employment

2.65 Prior to the closure of the Outlets Centre, the Government initiated the following steps to support employees and retailers, namely the appointment of:

- a Business and Jobs Coordinator, Mr John Dermody, to coordinate and assist with efforts to find alternative employment and business opportunities
- Drake Australia to match vacant retail jobs with employees of businesses at the Designer Outlets Centre
- the Australian Retailers Association to advise traders at the Designer Outlets Centre of the availability of alternative local retail space and relocation issues.⁸⁸

2.66 As of 5 August 2004, Mr Dermody had identified, in collaboration with Drake Australia, 125 vacant retail jobs and at least 35 vacant retail sites located in the proximity of the Liverpool CBD.⁸⁹ In response to a question taken on notice, Ms Westacott advised the Committee that as of 16 August 2004, Mr Dermody had identified 131 jobs in the Liverpool area, 20 permanent, 26 part-time and 85 casual.⁹⁰ The Committee has not received any information on whether the identification of these jobs has actually resulted in employees or tenants finding alternative employment or viable business locations.

2.67 In evidence, witnesses discussed the suitability of the alternative positions located by Mr Dermody and Drake Australia. According to Ms Katrina Hayek, Manager of *Rima Shoes*, the jobs offered were not comparable to their current positions:

What job have they actually told us that they have found – as a store manager in a shoe shop? Most of these jobs are casual positions, such as bus drivers – things that are so petty and way out of our league.⁹¹

2.68 Mr Nasser agreed with Ms Hayek, describing the alternative positions offered to his employees as 'laughable.'⁹² Mrs Julia Irwin MP was also in a position to describe the alternative jobs offered to workers at the Centre:

⁸⁸ Submission 27, DIPNR, Attachment 4: *Government Actions to Support Employees*, pp16-18

⁸⁹ Submission 27, DIPNR, Attachment 4: *Government Actions to Support Employees*, p17

⁹⁰ Correspondence from Ms Jennifer Westacott, Director General, DIPNR, to Chair, 25 August 2004

⁹¹ Ms Hayek, Evidence, 16 August 2004, p23

I think I was down there a couple of weeks ago and I was speaking to some of the workers down there who Drake had offered them jobs. One woman who has finally found part-time employment during school hours – she walks to the Centre, which is only a five-minute walk from her home – was offered a job in an ice-cream shop in the city. This is absolutely ridiculous. One gentleman was offered a job as a bus driver. He said, “Mrs Irwin, I can’t possibly take up that job. I’ve got a bad heart.” These people have jobs. Let them keep their jobs.⁹³

- 2.69** An employee of *Pearl Leather*, Ms Susie Bogojevic expressed concern that the jobs offered would not be immediately available:

I need work now. I cannot rely on the dole, it is not enough. I had plans to get married but all my plans are on hold.⁹⁴

- 2.70** Ms Hayek and other witnesses emphasised that many of the jobs identified by the jobs coordinator were far from their homes and not suitable for people with family responsibilities:

I would like Bob Carr, or whoever is finding us these bloody jobs, how am I supposed to get from Camden to Cronulla for a casual position? No thanks. He can keep it. I don’t want it ... To travel an hour I can sacrifice but to travel 2½ or maybe three hours and have no family life? No thanks.⁹⁵

- 2.71** A common sentiment expressed to the Committee was that the Government should not be wasting their efforts helping people who already have jobs:

... we do not need other people to find us jobs when we already have a job. They need to find jobs for other people that sit on the dole saying “I am going to find a job tomorrow.” They are the people they should be helping, not us.⁹⁶

Alleged non-cooperation by Mr Gazal with Government assistance efforts

- 2.72** It has been alleged that Mr Dermody and the agencies engaged by the Government to offer assistance to employees and retailers made several attempts to contact Mr Gazal to work out an acceptable method of contacting employees at the Orange Grove centre, but that Mr Gazal was unwilling to meet with them or to arrange access to retailers or employees. On 26 July 2004, Mr Dermody was escorted from the Centre by security guards, and on 4 August 2004 employees of Drake Australia were asked to leave the Orange Grove premises whilst handing out pamphlets to staff. Representatives of the Australian Retailers Association were also unsuccessful in their attempts to access traders at the Centre.⁹⁷

- 2.73** A summary of the ways in which Mr Dermody, and representatives of Drake and the Australian Retailers Association were allegedly obstructed from assisting employees and

⁹² Mr Nasser, Evidence, 16 August 2004, p32

⁹³ Mrs Irwin MP, Evidence, 16 August 2004, p63

⁹⁴ Submission 25, p1

⁹⁵ Ms Hayek, Evidence, 16 August 2004, p29

⁹⁶ Ms Hayek, Evidence, Monday 16 August 2004, p21

⁹⁷ Ms Westacott, Evidence, 17 August 2004, p37

business owners at the Designer Outlets Centre was tabled by the Chief of Staff to Minister Beamer, Mr Michael Meagher.⁹⁸

2.74 Ms Westacott described Mr Dermody's reaction to being escorted from the Centre:

[Mr Dermody's] advice to me was that he felt the behaviour of centre management and security staff was designed to intimidate him from his task, which was to try to assist people to identify alternative employment. He believes that those actions were a form of intimidation, although he advises me that he was not personally intimidated.⁹⁹

2.75 Mr Gazal has claimed that he had no prior warning of Mr Dermody's visit: 'they barged in without writing us or talking to us at the management.'¹⁰⁰ However, a document tabled by Mr Meagher detailed repeated attempts by Mr Dermody to contact Mr Gazal to arrange a meeting to discuss access to employees. According to this document Mr Dermody faxed Mr Gazal at 2:30pm on 26 July to notify Mr Gazal that he would be visiting the Centre that afternoon.

2.76 Mr Gazal said it was security concerns that led him to take action in response to Mr Dermody's visit to the Centre:

... we were honestly worried about his safety because there are some aggro young people there who were going to lose their jobs. They had bought cars and things and they cannot pay for them if the Centre closes. They were very, very aggro and they could have done some damage to Mr Dermody.¹⁰¹

2.77 Mr Gazal's evidence was supported by the proprietor of Bargshoon Cleaning Services, Mr Sam Bargshoon:

To be honest with you, I was concerned about his safety. I said to this gentleman, "You better leave on good terms." Some shopkeepers there started getting very angry ... I know these people very well, believe me – they would have thrown him out on his toes. So I just gave him friendly advice and he left.¹⁰²

2.78 Mr Gazal denied that he refused to cooperate with the Government's Jobs Coordinator and that any impression of intimidatory tactics was in response to the 'rude manner' in which Mr Dermody and others had come to the Centre.

I never refused to co-operate, madam. We wrote a letter. It is on the record. We sent it to Minister Beamer. I think the way they jumped in without notifying us and took over the place as if they owned it – I invested millions of dollars there ... They barged in without writing us or talking to us at the management. They started barging into shops threatening the shops and telling them they are going to close. They wanted to give the people jobs in Hornsby, Wollongong and Canberra. The people are angry.

⁹⁸ *History of Attempts to Engage Gazcorp*, tabled by Mr Meagher on 30 August 2004

⁹⁹ Ms Westacott, Evidence, 17 August 2004, pp37-38

¹⁰⁰ Mr Gazal, Evidence, 13 August 2004, p36

¹⁰¹ Mr Gazal, Evidence, 13 August 2004, p40

¹⁰² Mr Bargshoon, Evidence, 13 August 2004, p35

We always co-operated. We wrote a letter to Mrs Beamer. We can give you a copy of it.¹⁰³

- 2.79** In November 2004 the Committee received correspondence from Mr Dermody, requesting advice on whether he was able to use the address details of ex-employees who made submissions to the inquiry as he wished to confirm that these employees were aware of the assistance services provided by the Government.¹⁰⁴ The Committee resolved to write to former employees who had made submissions, advising them of the existence of Government assistance services and passing on Mr Dermody's contact details.¹⁰⁵

Frustration with politicisation of Centre's plight

- 2.80** Some of those caught up in the Centre's troubles were frustrated by how the Carr Government and various others had responded to their predicament. This was expressed by an employee of *Bohemia Crystal*, Ms Kimberley Birch, who told the Committee:

I like many colleagues employed at the Centre am very frustrated and extremely disappointed in the way the Government and Westfield's have gone about closing us down. It appears that "Big Brother Syndrome" has appeared, bullying the little operator out of business.¹⁰⁶

- 2.81** Many others, such as Ms Kotopoulis, shared Ms Birch's sentiments:

Why doesn't Mr Latham or Mr Bob Carr, who incidentally have time to be on the Kerry-Ann Kennerly show cooking, come and see us and give us a valid reason why he wants to turn my world upside down.¹⁰⁷

- 2.82** Mr Nasser expressed concern that their plight became politicised, sidelining the human cost of the Centre's proposed closure:

There has been a lot of exchange in relation to local politics ... but the real issue has been completely sidelined by the PR and spin doctors of all the relative sides.¹⁰⁸

- 2.83** The negative reaction to Government offers of assistance on the part of Mr Gazal and some of the employees and tenants is not surprising, given the stress caused by the Centre's imminent and final closure and the apparent unsuitability of many of the positions identified. However it is unfortunate that because emotions were running high Mr Dermody's efforts to assist retailers and employees prior to the Centre's closure were not more successful. It is not clear whether the retailers and employees wished to receive assistance from the Government.

¹⁰³ Mr Gazal, Evidence, 13 August 2004, p36

¹⁰⁴ Correspondence from Mr John Dermody, Business and Jobs Coordinator, Department of Infrastructure, Planning and Natural Resources, to Director, 9 November 2004

¹⁰⁵ Minutes No. 54, 29 November 2004

¹⁰⁶ Submission 15, Ms Kimberley Birch, p1

¹⁰⁷ Submission 21, Ms Marcia Kotopoulis, p1

¹⁰⁸ Mr Nasser, Evidence, 16 August 2004, p20

The Leases

2.84 More than 60 retail leases were offered by Gazcorp to prospective tenants of the Designer Outlets Centre. Several allegations were made during the inquiry about the preparation of these leases by Gazcorp, including that Mr Gazal did not inform prospective tenants that Westfield had commenced legal action challenging the Centre's development consent. A second, related allegation is that Mr Gazal intentionally delayed signing the leases to prevent tenants from seeking legal redress if the Centre was forced to close. The remainder of the chapter examines the evidence in relation to these claims.

Were tenants advised about Westfield's litigation?

2.85 At least seven days prior to entering into a retail shop lease both parties, the lessee (tenant) and lessor (landlord) are required to disclose certain facts and information relevant to a particular lease.¹⁰⁹ This is usually undertaken via a disclosure statement.¹¹⁰ While the *Retail Leases Act* provides a pro forma for a disclosure statement, there is no requirement that a disclosure statement must be presented in that particular format.¹¹¹ The type of information usually included in a lessor's disclosure statement includes such things as the date on which the shop will be available for occupation by the lessee, parking facilities at the shopping centre and the proposed tenant mix.¹¹² A party who enters into a retail shop lease as a result of false, misleading or incomplete information provided by the other party may take legal action to either rescind the lease or seek compensation under the *Retail Leases Act 1994*, *Trade Practices Act 1974* (Cth), *Fair Trading Act 1987*¹¹³ or at common law.

2.86 Westfield's Mr Mark Ryan told the Committee that Westfield had evidence that Mr Gazal had not informed tenants about Westfield's legal challenge:

From our inquiries we were able to establish that the failure to notify retailers was widespread. A number of retailers have confirmed to us that they were not notified.¹¹⁴

2.87 The Hon Bob Carr MP, Premier, Minister for the Arts, and Minister for Citizenship declined invitations to appear before this inquiry. However, the Premier stated in Parliament that Mr Gazal *deliberately* failed to disclose the litigation to tenants:

... Nabil Gazal has deceived those tenants. They were not told about the legal action threatening the lease ... Mr Gazal kept them in the dark every step of the way. He did not tell them the court action against the dodgy DA started back in June last year.¹¹⁵

¹⁰⁹ s 11 *Retail Leases Act 1994*

¹¹⁰ s 11 *Retail Leases Act 1994*

¹¹¹ s 11 *Retail Leases Act 1994*

¹¹² Sch 2 *Retail Leases Act 1994*

¹¹³ ss 10 and 62b *Retail Leases Act 1994*; s 52 *Trade Practices Act 1974*; s 42 *Fair Trading Act 1987*

¹¹⁴ Mr Ryan, Evidence, 25 August 2004, p6

¹¹⁵ Hon Bob Carr MP, Legislative Assembly, New South Wales, *Hansard*, 1 September 2004, p10654

2.88 Mr Carr cited several sources of evidence for his claim.¹¹⁶ He told the Legislative Assembly that the Australian Retailers Association had interviewed six Orange Grove traders, all of whom had received a disclosure statement. However, none of the statements contained any information about pending legal action. Mr Carr also mentioned that one of the Orange Grove tenants, *Reimer Collections*, had launched an action against Gazcorp in the NSW Court of Appeal. At a hearing on 25 August, counsel for this tenant told the Court his client had never been told about the legal action. Finally, Mr Carr revealed that the Legal Branch of the Cabinet Office had sighted some of the leases and that none of these mentioned Westfield's litigation, even though they had been executed after the legal action had commenced.

Alleged disclosure letter of 8 September 2003

2.89 Mr Gazal strenuously denied that he had failed to disclose Westfield's litigation to prospective tenants:

I definitely did not deceive anybody. Everybody I met and I talked to I told about the action. We wrote them letters.¹¹⁷

2.90 Mr Gazal repeated this position at a subsequent hearing:

No, we misled nobody. We told them the truth. We wrote them letters. If some of them decide to ignore the letter, it is their problem. Have you known of anybody who took action against us?¹¹⁸

2.91 Mr Gazal provided a copy of a letter to one of his tenants about the Centre's opening and handover dates, dated 8 September 2003. It included the following paragraph:

With regards to the Land and Environment Court proceedings in which Westfield are taking action against Liverpool City Council and Gazcorp challenging the Development Consent granted to Gazcorp in November 2002. Gazcorp is defending the challenge vigorously and are continuing development relying on that DA granted by a competent Liverpool City Council.¹¹⁹

2.92 According to a Director of Gazcorp, Mr Nabil Gazal Jnr, similar letters, including the same paragraph, were signed by him and sent to every tenant:

Here is a letter ... When we sent that notice to them about the handover date and the opening date, we also informed them – in this letter which I signed and sent out to all the tenants – of the Land and Environment Court proceedings ...¹²⁰

¹¹⁶ Hon Bob Carr MP, Legislative Assembly, New South Wales, *Hansard*, 1 September 2004, p10655

¹¹⁷ Mr Gazal, Evidence, 13 August 2004, p26

¹¹⁸ Mr Gazal, Evidence, Wednesday 25 August 2004, p72

¹¹⁹ Correspondence from Mr Nabil Gazal Jnr to Mr Anthony Mellick, Corporate Apparel, 8 September 2003, tabled and made public on 25 August 2004

¹²⁰ Mr Gazal Jnr, Evidence, 25 August 2004, p82

- 2.93** On 17 August Mr Gazal initially said the letter was sent to ‘all’ tenants.¹²¹ Later in the same hearing he appeared to contradict this assertion, adding that some tenants may have been verbally advised of the challenge:

The Hon. PETER PRIMROSE: Before signing the lease the individuals would have received a copy of that letter.

Mr GAZAL: To my knowledge, every one of them knew before signing their lease. They were told in correspondence or verbally that Westfield was taking legal action.¹²²

- 2.94** On 11 October he told the Committee that ‘most’ rather than ‘all’ tenants had received this letter:

... I sent them a letter telling them that there is a court case with Westfield. Most of the tenants are aware of that and most of them received the letter.¹²³

- 2.95** Mr Gazal assured the Committee that his solicitor, the Principal of D’Agostino Solicitors, Mr Joseph D’Agostino, would be able to answer Members’ questions about the leases. Mr D’Agostino appeared before the Committee on two subsequent occasions, including one hearing where his evidence was taken in camera and subsequently made public. On both occasions, Mr D’Agostino refused to answer many of the questions put to him about what may or may not have been disclosed to Mr Gazal’s tenants. In the first place, he argued, as he was representing Mr Gazal in several matters concerning the Orange Grove tenants, legal professional privilege meant he was not at liberty to discuss these issues. Mr D’Agostino also advised that the preparation of the disclosure statements was not his responsibility.¹²⁴

Evidence from tenants, employees and local federal MP

- 2.96** Some of the tenants and an employee who appeared before the Committee at the Liverpool hearing on 16 August gave conflicting evidence on whether they were informed about Westfield’s legal challenge and if so, in what form. According to the Retail Controller of *Bag Co*, Ms Lorraine White:

Our company was not made aware that it [the Centre] was under challenge. We were told that Liverpool Council was approving the zoning, that a paper process was going through.¹²⁵

- 2.97** While the disclosure statement provided to the co-owner of *Sneakers*, Mr Glenn Borwick, did not disclose the litigation, he told the Committee that he and other retailers were aware it was happening. The source of this information, however, is not clear:

¹²¹ Mr Gazal, Evidence, 17 August 2004, p49

¹²² Mr Gazal, Evidence, 17 August 2004, p54

¹²³ Mr Gazal, Evidence, 11 October 2004, p52

¹²⁴ M D’Agostino Evidence, 6 September 2004, pp2 & 4

¹²⁵ Ms White, Evidence, 16 August 2004, p24

I personally did not have any written documentation in reference to that. But I did speak to some other retailers in the Centre. Some were aware of it; some were not ...¹²⁶

... as I said earlier I have spoken to other retailers who have received documentation, all were aware of the legal action by Westfield.¹²⁷

- 2.98** Some tenants who were aware of Westfield's legal challenge, were reassured by the fact that the Centre was opened by the Minister, including Mr Nasser:

We did not spend any money, not one cent, at Designer Outlets at Liverpool until after Mr Knowles opened the Centre. Who would have looked for that as a disclosure, when you have the highest authority on planning in New South Wales cutting the ribbon and saying what a fantastic thing this is for Western Sydney, what a great thing it is going to be for local employment, and what a good news story it was? Who would then go and sort through the fine print?¹²⁸

- 2.99** Ms White was similarly reassured:

When I knew that Craig Knowles was opening the Centre, that was like an affirmation to me that obviously everything was fine ...¹²⁹

- 2.100** This was also the view of the local federal MP, Ms Julia Irwin:

...I can understand that if the Minister was there, whether it be from the State Government or the Federal Government, a worker or a small business would think "This must be okay."¹³⁰

- 2.101** Others tenants, including Mr Borwick, were reassured because they had seen similar challenges by rival retailers fail:

There was no doubt whatsoever that the Centre would remain open. I have been in Stockton centres, Westfield centres and Lend Lease centres for over 20 years. We were at Bankstown Square probably 15 to 20 years ago and Bass Hill centre had applied. Lend Lease challenged that. It opened. Chullora opened; they challenged that. At Stocklands at Merrylands, Big W in Auburn, they challenged that. Each challenge was always a challenge and nothing else. Nothing ever came to fruition, so with all these facts and the DA, we had no doubt that the Centre would be opened. We did not see any problems.¹³¹

- 2.102** It would appear that some of the retailers who were aware of the court case took appropriate action to protect their investments. According to Westfield's Mr Mark Ryan:

¹²⁶ Mr Borwick, Evidence, 16 August 2004, p24

¹²⁷ Mr Borwick, Evidence, 16 August 2004, p33

¹²⁸ Mr Nasser, Evidence, 16 August 2004, p24

¹²⁹ Ms White, Evidence, 16 August 2004, p24

¹³⁰ Ms Irwin Evidence, 16 August 2004, p 60

¹³¹ Mr Borwick, Evidence, 16 August 2004, p28

One or two of the more sophisticated retailers, if I could describe them that way, were aware of what was going on and, because of that knowledge, insisted to Mr Gazal that exit clauses be provided. I was told that in one lease in particular Mr Gazal agreed to compensate that tenant for any and all expenses associated with the fit-out of his store.¹³²

- 2.103** Both Mr Gazal and Mr Gazal Jnr gave conflicting evidence about how they informed tenants about Westfield's legal challenge to the Centre's development consent. While both said that a letter was sent to every tenant telling them about the matter, Mr Gazal later said that the letter was sent to most of the tenants, adding that they were told in correspondence or verbally about the court case.
- 2.104** While two tenants said they knew about the litigation, none of the tenants who appeared before the Committee received this advice in the disclosure statement or in other written documentation. Nor did Mr Gazal state that he had included this information in the disclosure statements.
- 2.105** That Mr Gazal's solicitor, Mr D'Agostino was unable to enlighten the Committee further as to if and how his client disclosed the litigation to his tenants is not surprising, given his professional and ethical responsibilities to protect his client's interests in ongoing legal proceedings.

Should Mr Gazal provide a copy of the leases?

- 2.106** Requests to provide copies of the leases had been made by Committee Members during the inquiry. Initially, it looked like Mr Gazal would accede to this request:

If you like we can bring all the leases under confidentiality – they are in commercial terms – and you can look at them. If you would like a total answer to the question – because I do not know it – you should ask this question of my lawyer, Joe D'Agostino, who did all the leases.¹³³

- 2.107** However, in subsequent hearings it became clear that Mr Gazal was less inclined to provide copies of the leases:

The Hon. PETER PRIMROSE: ... Can you tell us the situation regarding your undertaking concerning leases that was given to this Committee last Friday?

Mr GAZAL: There was no undertaking. The leases are prepared according to the *Retail Leases Act* and our solicitor is going to finalise most of the leases with the tenants.

The Hon. PETER PRIMROSE: Can the Committee view those leases, subject to their being made available only to members?

Mr GAZAL: I can give you a letter. I think you are concerned about if the tenants have been informed about the legal action. I can table a letter which shows that we wrote to all tenants regarding the legal action and we warned them about it.

¹³² Mr Ryan, Evidence, 25 August 2004, p31

¹³³ Mr Gazal, Evidence, 13 August, 2004, p26

The Hon. PETER PRIMROSE: Okay.

Mr GAZAL: And I would like it to stay confidential because there are legal actions pending against the matter.

The Hon. PETER PRIMROSE: So can we actually see copies of these leases, if they are kept confidential to members?

Mr GAZAL: Yes, we can provide these leases. I will have to talk to my solicitor about the leases because there has been the attempt of the department and the attempt of Westfield to get our leases and contact our tenants and see our—they are, first, not an issue in the inquiry, but I will be happy to give you a letter. I do not want to give the commercial leases because they involve money and they involve conditions. I know things will be confidential but there are a lot of leaks, especially in the Labor Party.

The Hon. PETER PRIMROSE: A lot of leaks?

Mr GAZAL: Leaks, document leaks.

The Hon. PETER PRIMROSE: So you will not provide this Committee with copies of the leases?

Mr GAZAL: I will provide the Committee with what is relevant about the question. Ask me what you would like to know about the leases, and I will –

The Hon. PETER PRIMROSE: I shall, but I would like to see a copy of the leases.

Mr GAZAL: The copy is a copy of the *Retail Leases Act*. You can buy one for \$375 from the Property Council of Australia.

The Hon. PETER PRIMROSE: So you will not provide a copy of the leases for this Committee?

Mr GAZAL: Not the commercial conditions of the leases. I will provide a copy to show you that we wrote to all our tenants regarding the legal action, and they have all been notified.

The Hon. PETER PRIMROSE: Will you provide copies of the leases to this Committee – yes, or no?

Mr GAZAL: No, not the commercial leases. ... Madam Chair, there are 60–61 leases. I will provide them all, if they will become confidential and nothing leaks out.¹³⁴

2.108 By the hearing on 25 August, it was apparent that Mr Gazal was not willing to provide a copy of the leases unless the tenants authorised him to do so:

The Hon. JAN BURNSWOODS: When you appeared before us on the first occasion in response to our questions you said that you would provide the leases to the committee but then later you changed your mind?

Mr GAZAL: Yes, I checked with my solicitor. That is why I gave you his letter. They are two-party leases. They are the tenants. Every lease has two parties and I cannot

¹³⁴ Mr Gazal, Evidence, 17 August 2004, pp49-50 & 51

provide the leases. I provide you with a copy of the standard lease but I cannot provide a copy where it shows who are the two parties because it is a commercial lease with the parties. Maybe I have to check with them to see if they are happy to provide or not provide it to the committee.

The Hon. JAN BURNSWOODS: If the committee were to check with the tenants and they were happy would you have no objection to provide the committee with the leases?

Mr GAZAL: If you check with the tenant they will give you the lease themselves. You do not need me.

Mr BARGSHOON: I do not think they will talk to you. You saw how they treated you there. They kicked you out of the Centre.

Mr GAZAL: But if they agree I will give you the leases. If every tenant agrees in writing and you send me a letter I will give you the leases.¹³⁵

Did Mr Gazal postpone signing the leases?

- 2.109** It was suggested that Mr Gazal had not signed many of the leases even after tenants began trading at the Centre. According to Westfield's Mr Mark Ryan:

At the time of the first Land and Environment Court hearing in December 2003, a full month after the Centre had been opened, not one lease had been executed.¹³⁶

- 2.110** In Mr Ryan's view Mr Gazal deliberately delayed signing the leases in order to:

... mitigate future legal action by retailers. It was clear that if Mr Gazal did not advise tenants of the ongoing legal action in the disclosure statement as required by law under the *Retail Leases Act*, he would be open to charges of misleading and deceptive conduct under section 52 of the *Trade Practices Act*.¹³⁷

- 2.111** It should be noted that the fact that a lease document has not been signed does not necessarily mean there is not a valid and binding legal agreement between the parties, either under the general law, or under the *Retail Leases Act*.¹³⁸

- 2.112** In evidence, Mr Gazal acknowledged that many of the leases were incomplete, as the tenants had not fulfilled all the conditions required of them under the *Retail Leases Act*.¹³⁹ At a later hearing on 9 September, his solicitor, Mr D'Agostino agreed to prepare material for the Committee which sets out the stamp duty position of each outlet.

¹³⁵ Mr Gazal, Evidence, 25 August 2004, p71

¹³⁶ Mr Ryan, Evidence, 25 August 2004, p6

¹³⁷ Mr Ryan, Evidence, 25 August 2004, p6

¹³⁸ Under the *Retail Leases Act* a lease may be valid '(b) whether the agreement is express or implied, and (c) whether the agreement is oral or in writing, or partly oral and partly in writing'. See s3 Definitions.

¹³⁹ Mr Gazal, Evidence, 17 August 2004, p51

- 2.113** This material was provided to the Committee on 27 September. It shows that as of 24 September 2004:
- stamp duty had been paid on 43 leases. Of these 37 were stamped in November or December 2003, six were stamped in the first half of 2004
 - stamp duty had not been paid on 15 leases (and were presumably unsigned by Mr Gazal). The most frequently cited reason for this is that the lessee had somehow not provided the relevant documents to allow the lease to be executed.
- 2.114** If the leases had been ‘stamped’ by the Office of State Revenue, it is likely they were signed by Mr Gazal. Therefore, Mr Mark Ryan’s claim that none of the leases had been executed before the first hearing in the Land and Environment Court on 18 December 2003, does not accord with Mr D’Agostino’s records which show that stamp duty had been paid for 20 of the leases before 18 December 2003.¹⁴⁰
- 2.115** While Mr Gazal was equivocal about whether he would provide a copy of the leases, it should be noted that gaining access to the leases would not necessarily prove or disprove that he had disclosed Westfield’s legal challenge to his tenants. A standard retail lease would not generally include information of this nature: this would more likely be found in a disclosure statement. As neither Mr Gazal nor any of the tenants claim this information was included in the disclosure statements, gaining access to these documents would be unlikely to shed light on the matter.
- 2.116** If, however, letters similar to the sample letter provided by Mr Gazal dated 8 September 2003 were sent to most or all of the tenants, then accessing copies of these letters would be a more fruitful means of establishing whether or not Mr Gazal had informed his tenants of the legal challenge to the Centre’s development consent. It is apparent from evidence that many of the tenants took great security and comfort from the fact that Planning Minister Knowles opened the Centre.
- 2.117** While a significant number of leases were not executed before the tenants opened their outlets at the end of 2003, the majority of leases (43) were finalised before the end of 2003. Mr D’Agostino’s records indicate that the main reason for the delay in finalising the remaining leases was that the tenants had not met the necessary requirements or had incorrectly executed the leases. In any case, the evidence before the Committee does not prove that Mr Gazal purposefully delayed signing the leases with a view to mitigating future legal action against Gazcorp. Nor would the absence of Mr Gazal’s signature necessarily inhibit tenants from taking legal action against Gazcorp. These matters are likely to be decided by the courts.

¹⁴⁰ Correspondence from Mr D’Agostino, Principal, D’Agostino Solicitors, to Director, 24 September 2004

Finding 3

There is conflicting evidence before the Committee as to the number of tenants who were informed by Gazcorp of the impending legal action at the time they signed leases, and the manner of this disclosure.

There is no evidence before the Committee that the Managing Director of Gazcorp deliberately delayed signing leases so as to mitigate future legal action by tenants.

The Committee believes that many tenants were reassured by the fact that Minister Knowles had opened the Centre.

Westfield's involvement with disaffected tenants

- 2.118** Mr Mark Ryan told the Committee that several Orange Grove tenants were intending to take legal action against Gazcorp:

The reason that they have not come forward at this stage – the reason they gave to Westfield – was that they were preparing their own legal action against Mr Gazal and that they would like to see the matters dealt with in that forum.¹⁴¹

- 2.119** Mr D'Agostino confirmed that he was acting in relation to at least 13 threatened or actual pieces of litigation against his client by tenants from the designer Outlet Centre.¹⁴²

- 2.120** Mr Ryan did not however, tell the Committee about Westfield's role in this litigation, which was later revealed by the Leader of the Opposition, Mr John Brogden MP in his evidence to the Committee. Mr Brogden described a meeting he had with the Managing Director of Westfield, Mr Steven Lowy on 9 April 2004. Mr Lowy told Mr Brogden that the leaseholders at Orange Grove should sue Gazcorp. In response to this suggestion, Mr Brogden recalled having said:

“Steven, if you've lost three or \$400,000 on a business, you're hardly going to turn around and spend \$100,000 on legal fees suing Gazcorp” ... It's simply unlikely to happen.¹⁴³

- 2.121** To which Mr Lowy is said to have replied:

“We'll pay for it. Westfield will pay for the legal costs. Not directly, but through the Shopping Centre Council we pay for the legal action ... Let me think about it, but we would assist them in the legal action to sue Gazcorp over the leases of this matter.”¹⁴⁴

- 2.122** Mr Brogden told the Committee he was taken aback by Mr Lowy's suggestion that Westfield would pay the tenants' legal costs:

¹⁴¹ Mr Ryan, Evidence, 25 August 2004, p33

¹⁴² Mr D'Agostino, Evidence, 9 September 2004, p103

¹⁴³ Mr John Brogden MP, Evidence, 11 October 2004, p10

¹⁴⁴ Mr John Brogden MP, Evidence, 11 October, p10

I was taken aback and indicated that I found that an extraordinary offer ... I regarded the concept of Westfield paying the legal costs of tenants at Orange Grove against Gazcorp as an extraordinary suggestion.¹⁴⁵

2.123 When he appeared before the Committee, Mr Lowy interpreted Mr Brogden's response differently:

While Mr Brogden expressed surprise at this suggestion my interpretation was that he had not realised before that the industry might be able to do this. It seemed to me he regarded this suggestion in a positive light. At no stage did I regard his reaction as conveying the impression he considered such a proposal being in any way untoward or illegal.¹⁴⁶

2.124 The Committee understands that the practice of a third party offering to pay the legal costs of a second party is no longer prohibited in New South Wales.¹⁴⁷ Mr Brogden noted that while such a practice may not be prohibited in New South Wales, it was nonetheless an 'extraordinary offer.'¹⁴⁸

2.125 A submission from a retailer at the Orange Grove centre indicates that Westfield had some contact with former Orange Grove tenants in early August 2004. The author of the submission claims that a Westfield executive asked him if he was interested in entering the extension at Westfield Liverpool. He also requested a copy of the retailer's disclosure statement and lease agreement 'with particular regard to the disclosure of a court appeal against the use to which the property was to be used.' The retailer said he felt under pressure to provide this information, given he may need to secure a retail site in a Westfield shopping centre in the future.¹⁴⁹

Conclusion

2.126 The Committee is unable to conclude whether or not Gazcorp informed all of the tenants in writing about the legal challenge to the Centre's planning consent. Whether or not Gazcorp was legally required to inform their tenants in writing about Westfield's litigation prior to executing the leases is a legal question that is yet to be decided in the courts.

2.127 Perhaps the more salient issue for many tenants with regard to their security of tenure is that the Planning Minister cut the ribbon at the Centre's official opening.¹⁵⁰

¹⁴⁵ Mr John Brogden MP, Evidence, 11 October, p10

¹⁴⁶ Mr Steven Lowy, Evidence, 29 November 2004, p5

¹⁴⁷ The common law crimes and torts of Maintenance and Champerty were abolished in New South Wales in 1994 by the passage of the *Maintenance, Champerty and Barratry Abolition Act 1993*. Maintenance involves assisting a party in litigation without lawful justification. Champerty is an aggravated form of maintenance in which the maintainer receives something of value in return for the assistance given. See NSW Law Reform Commission Discussion Paper 36, *Barratry, Maintenance and Champerty*, 1994.

¹⁴⁸ Mr John Brogden MP, Evidence, 11 October, p11

¹⁴⁹ Submission 9, Partially confidential

¹⁵⁰ Mr Nasser, Evidence, 16 August 2004, p24

2.128 As Planning Minister and a local member, Mr Knowles would have been well aware that serious concerns about the probity of Liverpool City Council were being investigated by the Daly inquiry. He also knew that Westfield was challenging the Centre's planning consent in the Land and Environment Court. Despite this he agreed to open the Centre, praising the development and its benefit to Western Sydney. It is not surprising that many employees and tenants, as well as Mr Gazal, felt their jobs and investments were safe and sound.

Chapter 3 Relevant planning controls and policies

This chapter provides a brief overview of relevant planning controls and policies related to the approval process for the Designer Outlet Centre. This includes the making and amending of local environment plans, spot rezoning and section 69 reports. Several statewide planning policies are also discussed, including draft State Environmental Policy 66, the 'Centres' policy and the Metropolitan Strategy. This background material is intended to assist an understanding of aspects of the Orange Grove approval process examined in chapters 4-6.

The regulation of planning and development in NSW

- 3.1** The *Environmental Planning and Assessment Act 1979* (the Act), is the key statute regulating land use control in NSW. Under the Act, responsibility for planning and development is shared between local councils and the State Government. The Ministers responsible are the Minister for Infrastructure and Planning and the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration). One of the responsibilities of the Assistant Minister is to approve local environmental plans submitted by local councils.
- 3.2** The Act sets out general planning requirements for particular areas. These are known as environmental planning instruments, of which there are three types: state environmental planning policies (SEPPs), regional environmental plans (REPs) and local environmental plans (LEPs).
- SEPPs are an expression of state government planning policy. SEPP 55, for example, encapsulates government policy on the regulation of contaminated land and SEPP 56 controls the development of the Sydney Harbour foreshore
 - REPs cover issues such as urban growth, commercial centres, extractive industries, recreational needs, rural lands, and heritage and conservation across a region. For example Hunter REP No 1 applies to the Hunter region
 - LEPs are the principal legal documents for controlling development at the local council level. They divide land within the council area into different zones and indicate the types of development allowed in each zone. These zones may include: industrial, residential and rural. LEPs are usually prepared by local councils and are subject to the relevant Minister's approval.¹⁵¹

Local Environmental Plans

- 3.3** As indicated above, Local Environmental Plans guide local government planning decisions. For instance, according to Liverpool's Local Environmental Plan, the land on which the Designer Outlet Centre stands is zoned Industrial 4(b) – Special. The zoning table which is

¹⁵¹ DIPNR, 'The Planning System: How Plans are Made in NSW,' www.planning.nsw.gov.au (accessed 2 December 2004)

attached to clause 9 of the Liverpool Local Environmental Plan sets out the kinds of development which may or may not be carried out in such a zone, with or without consent.¹⁵²

Spot rezonings

3.4 If a Local Environmental Plan prohibits a certain type of development in a particular area, a council may be asked to rezone the relevant site to allow the development to proceed. This is known as *spot rezoning*. In November 2003, Liverpool City Council resolved to amend its Local Environmental Plan to allow a factory outlet to operate on the Orange Grove Road site. If the amendment had been approved and passed, it would have been an example of a spot rezoning.

3.5 According to the current administrator of Liverpool City Council, Ms Gabrielle Kibble:

Spot rezonings happen all the time. Spot rezonings are not unusual.¹⁵³

3.6 In responding to a question taken on notice at the hearing on 9 September 2004 the Director General of the Department of Infrastructure, Planning and Natural Resources (DIPNR), Ms Jennifer Westacott informed the Committee that:

During the last financial year, 55 LEPs were made that could be described as spot rezonings.¹⁵⁴

3.7 While the Department acknowledges that amendments had been made to land use controls to allow an otherwise non-permissible use to proceed, it argues that:

... none of these examples are factually similar to the Orange Grove site.¹⁵⁵

3.8 A development consultant to Austexx (which owns the Direct Factory Outlet at Homebush), Mr Bill Patteson told the Committee that most major shopping centres in New South Wales have been developed on rezoned land:

There is only one shopping centre – and I am talking about major regional shopping centres – that has been developed on land that was correctly zoned for its purpose prior to its construction, and that was at Penrith. Every Westfield shopping centre that has been developed has been on land that has been purchased and rezoned.¹⁵⁶

¹⁵² cl 9, *Liverpool Local Environmental Plan 1997*

¹⁵³ Ms Kibble, Evidence, 13 August 2004, p44

¹⁵⁴ Correspondence from Ms Jennifer Westacott, Director General, DIPNR, to Chair, 20 September 2004

¹⁵⁵ Submission 27, DIPNR, p29

¹⁵⁶ Mr Patteson, Evidence, 20 September, 2004, p97

Section 69 reports

3.9 Under s 69 of the *Environmental Planning and Assessment Act 1997*, upon receipt of a draft Local Environmental Plan from a local council, the Director General of DIPNR must provide a report to the Minister which details:

- (a) whether the draft local environmental plan submitted under section 68 (4) is inconsistent with any State environmental planning policy, regional environmental plan, or relevant direction under section 117, applying to the land to which the draft plan applies
- (b) if there is such an inconsistency—whether the inconsistency is justifiable in the circumstances,
- (c) whether the provisions of sections 66, 67 and 68 relating to public involvement in the preparation of the draft plan have been complied with
- (d) the relationship between the draft plan, and other proposed and any existing environmental planning instruments, and any relevant directions under section 117, applying to the land to which the draft plan applies, and
- (e) such other matters (if any) relating to the draft plan as the Director-General thinks appropriate.¹⁵⁷

3.10 A s 69 report on the proposed rezoning of the Orange Grove site was prepared by officers in the Department's Parramatta Office and sent to the Director General in mid June 2004. The report recommended that the Minister exercise her power under the Act to make the amendment. On the 8 July 2004, the Minister for Juvenile Justice, Minister for Western Sydney, and Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), Hon Diane Beamer MP, following advice prepared by Ms Westacott, refused to make the amendment.¹⁵⁸

3.11 One of Minister Beamer's rationales for refusing to make the plan was a perceived conflict between the Designer Outlets Centre and the Government's commitment to 'centres.' The remainder of this Chapter briefly discusses the 'Centres Policy' and other statewide planning policies relevant to the Orange Grove approval process.

The Centres policy and statewide planning policies

3.12 In evidence to the Committee, Ms Westacott suggested that the approval of the Designer Outlet Centre conflicted with various State Government planning policies, including the Centres Policy, Draft SEP 66 and the Metropolitan Strategy. These policies and instruments are described below:

- Centres Policy – a longstanding policy to enhance the quality of Sydney's centres by encouraging the best mix of homes, jobs and services in centres and to discourage

¹⁵⁷ s 69 *Environmental Planning and Assessment Act 1979*

¹⁵⁸ Correspondence from the Hon Diane Beamer MP to Ms Jennifer Westacott, Director General, DIPNR, 8 July 2004, cited in Submission 27, DIPNR, Attachment 15

reliance on car travel.¹⁵⁹ The policy is currently referred to as *The Right Place for Business and Services*.¹⁶⁰

- Draft SEPP 66 – *Integrating Land Use and Transport* – a draft statutory instrument to improve access to public transport, and promote walking and cycling. This policy specifically requires Councils to take into account the *Right Place for Business and Services* when preparing a local environmental plan.¹⁶¹
- The Metropolitan Strategy – *Shaping our Cities*. This is the State Government’s 30–year vision for growth and change in the Greater Metropolitan Region. Major projects planned as part of the strategy include the Parramatta Road revitalisation and the first phase of development of a network of major centres across the metropolitan region.¹⁶²

3.13 Each of the above policies share common policy goals, that is, to reduce car dependency, promote the use of public transport, cycling and walking, and provide equitable access to jobs and services across New South Wales.

Factory outlets and the Centres Policy

3.14 The *Right Place for Business and Services* makes particular reference to factory outlets when determining the right location for trip-generating developments:

These should be treated like normal retailing outlets unless they are genuinely ancillary to on-site manufacturing and used only occasionally. Other forms of factory outlets are simply shops seeking low rents and could be encouraged to agglomerate in existing declining centres where they can play a positive role in their revitalisation.¹⁶³

3.15 Where a council prepares a Local Environmental Plan which does not comply with the requirements of the *Right Place for Business and Services*, it must provide evidence that there will be a *net* community benefit from the draft Local Environmental Plan:

That is, proposals must ensure that there will be no detrimental effect on public investment in centres and that private investment certainty in centres is maintained. They should also be able to provide the same performance as a centre, with suitable accessibility to: manage travel demand, utilise public transport, and moderate car use.¹⁶⁴

¹⁵⁹ DIPNR, *Metropolitan Strategy Discussion Paper*, 16 September 2004, p3

¹⁶⁰ Submission 27, DIPNR, p14

¹⁶¹ Department of Urban Affairs and Planning, *Integrating Land Use and Transport: The Right Place for Business and Services*, August 2001, cited in Submission 27, DIPNR, Attachment 9

¹⁶² DIPNR, *Metropolitan Strategy Discussion Paper*, 16 September 2004, pp2-3

¹⁶³ Department of Urban Affairs and Planning, *Integrating Land Use and Transport: The Right Place for Business and Services*, August 2001, p12, cited in Submission 27, DIPNR, Attachment 9

¹⁶⁴ Department of Urban Affairs and Planning, *Integrating Land Use and Transport: The Right Place for Business and Services*, August 2001, p5, cited in Submission 27, DIPNR, Attachment 9

Emerging Retail Formats Study

- 3.16** The *Emerging Retail Formats Study*¹⁶⁵ was commissioned by DIPNR in 2003 to examine whether the principles underpinning draft SEPP 66 and the Metropolitan Strategy are applicable to ‘emerging’ retail formats. These formats include ‘superstores,’ warehouse sales, factory outlets and markets. Their emergence reflect changes in economic circumstances, marketing techniques and consumer preferences.
- 3.17** The study was designed to explore ways in which the Government’s policy commitment to centres and to reducing the need for car trips could be maintained, while accommodating these emerging retail formats which have very different requirements in terms of space, location and parking.¹⁶⁶ Finding a way to support centres at the same time as encouraging innovative forms of retailing, is a significant challenge, as the Managing Director of Hirst Consulting, Mr Michael Evesson told the Committee:

I certainly support the Government's SEPP 66 intentions. I have been critical in court and in other places in other matters of the impact of it, but yes, I support the idea of it, but I also support the innovation and the service to customers that something like this or a bulky goods development well placed in the community can provide. It is customer not satisfaction but service that at the end is what I understand the Environmental Planning and Assessment Act says that we must assess in economic impact terms.¹⁶⁷

- 3.18** The *Emerging Retail Formats Study* recommends a ‘truly strategic’ approach to retail planning which continues to support centres but also makes explicit provision for uses which can not be accommodated in these centres.¹⁶⁸ It recommends reviewing the net community benefit criteria set out in SEPP 66, so that in addition to focussing on trip making and transport it also considers the idea that a range of retail offerings is likely to better satisfy the community’s interest.

Conclusion

- 3.19** Focussing retail activity in centres has undoubted social, economic and environmental benefits. However, the popularity of emerging retail formats, such as bulky good warehouses and supercentres, are a challenge to the policy framework which has developed to nurture vibrant and accessible mixed use centres. The controversy surrounding the approval of the Orange Grove Designer Outlet Centre highlights the need for planning authorities to clarify how best to strike a balance between encouraging centres and accommodating new retail

¹⁶⁵ Parsons Brinckerhoff, *Integrating Land Use and Transport for Emerging Retail Forms: Final Report*, September 2003, provided in correspondence from Ms Justine de Torres, Senior Legal Officer, DIPNR, to Deputy Clerk, 16 August 2004

¹⁶⁶ Parsons Brinckerhoff, *Integrating Land Use and Transport for Emerging Retail Forms: Final Report*, September 2003, Appendix A: Project Brief, provided in correspondence from Ms Justine de Torres, Senior Legal Officer, DIPNR, to Deputy Clerk, 16 August 2004

¹⁶⁷ Mr Evesson, Evidence, 13 August 2004, p103

¹⁶⁸ Parsons Brinckerhoff, *Integrating Land Use and Transport for Emerging Retail Forms: Final Report*, September 2003, p99, provided in correspondence from Ms Justine de Torres, Senior Legal Officer, DIPNR, to Deputy Clerk, 16 August 2004

modes. A first step would be for the Government to confirm the status of Draft SEPP 66, which as one witness noted, has been in draft form for ‘donkeys years’:

It makes you wonder about the relevance of the document if the Government does not believe after about 10 years that it should be formally gazetted or brought into law.¹⁶⁹

Recommendation 1

That the New South Wales Government confirm the status of Draft SEPP 66 – Integrating Land Use and Transport, this SEPP having been in draft form for a decade.

¹⁶⁹ Mr Bill Patteson, Austexx, Evidence, 20 September 2004, pp95 & 99

Chapter 4 The role of Liverpool City Council

The role of Liverpool City Council (the Council) in approving the development of the Designer Outlets Centre is central to this Inquiry. The Council and its officers have been criticised for granting the original approval for the Designer Outlets Centre and for seeking to rezone the land following Westfield's legal challenge of the development consent.¹⁷⁰ It has been suggested that Council's support for the Centre not only demonstrates a serious disregard for proper planning principles, but is also evidence of a corrupt relationship between the developers and certain council officers and elected representatives. This chapter examines these claims.

An important backdrop to the controversy surrounding the Designer Outlets Centre is the dismissal of the Council in March 2004. The Chapter begins with a brief overview of the findings of the recent review of Liverpool City Council by Emeritus Professor Maurice Daly.

The key people involved in the approval process for the Designer Outlets Centre are identified in Table 1 at the end of this chapter.

The dismissal of Liverpool City Council

- 4.1** On 5 November 2003 the New South Wales Government announced the establishment of an inquiry into the management of infrastructure projects by Liverpool City Council, most notably the 'Oasis' development.¹⁷¹ The inquiry, conducted by Emeritus Professor Maurice Daly, generated three reports. The first, released in March 2004, found that Liverpool City Council lost at least \$22 million from its involvement in the Oasis Project. Professor Daly asserted that the elected representatives did not have the 'experience or skills to resolve the problems facing the Council,' and should therefore be dismissed.¹⁷²
- 4.2** Acting on Professor Daly's advice, the Government dismissed the Council on 16 March 2004 and appointed the former head of the Department of Planning, Ms Gabrielle Kibble, as administrator. The next elections for Liverpool councillors are due in 2008.¹⁷³

¹⁷⁰ In January 2004 the Land and Environment Court found that the consent received by Gazcorp was unlawful and ordered that the owners cease trading as a warehouse outlet. This decision was upheld by the Court of Appeal in March 2004. Gazcorp successfully applied for several stays of this order up until 25 August 2004 when the Centre was ordered to close.

¹⁷¹ The Oasis Project was a joint venture between Liverpool City Council and the Bulldogs Rugby Leagues Club to build a \$900 million entertainment complex. Such joint ventures between councils and the private sector are often referred to as Public Private Partnerships (PPPs) and have become an increasingly common way for councils to fund their considerable infrastructure costs.

¹⁷² Emeritus Professor Maurice Daly, *Liverpool City Council Public Inquiry: Primary Findings and Interim Report*, March 2004, pp25-27 & 29

¹⁷³ Liverpool City Council, www.liverpool.nsw.gov.au/scripts/viewoverview_contact.asp?NID=11737 (accessed 6 December 2004)

- 4.3 In his final report, delivered in July 2004, Professor Daly concluded that while the Council had been inept in its handling of the Oasis development, he did not believe the councillors had been corrupt and recommended that no further action be taken against them.¹⁷⁴

The original development consent issued by Liverpool Council

- 4.4 In January 2002 Mosca Pserras Architects, on behalf of Gazcorp, lodged a s 96 application with Liverpool City Council to modify the land use on the Orange Grove site from bulky goods warehouse to warehouse clearance outlet.¹⁷⁵ Section 96 of the *Environmental Planning and Assessment Act 1979* provides for the modification of a development consent under certain circumstances. In such cases, the consent authority must be satisfied that the proposed modification is substantially the *same* development as that for which the consent was originally granted.¹⁷⁶
- 4.5 According to Mr Nabil Gazal's architect, Mr Frank Mosca, after submitting the s 96 application Council sought further information about the proposal. Following receipt of the additional material the Council asked Mr Mosca to submit a completely new development application.¹⁷⁷ On 5 June 2002 Mr Mosca submitted a fresh application which was essentially the same as his s 96 application.¹⁷⁸ On the next day, 6 June, the Council's former Manager of Planning, Mr Chris Weston, wrote a memo to Council's former Manager of Community and Environmental Planning, Mr Gerard Turrisi, informing him that Mr Mosca's application would not be assessed in two weeks, as Mr Turrisi had apparently enquired.¹⁷⁹ On 13 June 2002, Council's Senior Environmental Development Planner, Mr Geoffrey Hunt, wrote to Mr Mosca raising several detailed concerns about the deficiencies in the application, noting that the proposed use would need to strictly comply with the definitions of either 'bulky goods showroom' or 'warehouse distribution centre' in the Liverpool Local Environmental Plan.¹⁸⁰
- 4.6 On 15 November 2002 the revised application was approved by Mr Hunt acting under delegation,¹⁸¹ five months after the receipt of Mr Mosca's development application and 10 months after Mr Mosca's s 96 application.

¹⁷⁴ Emeritus Professor Maurice Daly, *Liverpool City Council Public Inquiry, Final Report: Findings and Recommendations – Vol 3*, July 2004, p25

¹⁷⁵ Mr Mosca, Evidence, 13 August 2004, p16

¹⁷⁶ s 96 (1) (b) EP&A Act

¹⁷⁷ Mr Mosca, Evidence, 13 August 2004, p16

¹⁷⁸ Mr Mosca, Evidence, 13 August 2004, p17

¹⁷⁹ Memo from Mr Chris Weston, Manager of Planning, to Mr Gerard Turrisi, Corporate Manager, Built Environment, 6 June 2002, tabled by the Hon Peter Primrose MLC on 13 August 2004

¹⁸⁰ Correspondence from Mr Geoffrey Hunt, Senior Environmental Development Planner, to Mr Frank Mosca, 13 June 2002, tabled by the Hon Jan Burnswoods MLC on 13 August 2004

¹⁸¹ Under the *Local Government Act 1993*, council officers are authorised to assess development applications in certain circumstances. These circumstances may vary between councils. See Mr Hunt, Evidence, 30 August 2004, pp84-85

Probity concerns

4.7 Several witnesses raised probity concerns regarding the consent provided by Liverpool City Council to allow Gazcorp to operate a warehouse outlet centre on Orange Grove Road. Westfield's Chief Operating Officer, Mr Robert Jordan, told the Committee his company had 'grave concerns' about the approval process.¹⁸² The Chief of Staff to the Premier, Mr Graeme Wedderburn, said he had serious doubts about the integrity of the original consent.¹⁸³

4.8 During Question Time on 31 August 2004, the Minister for Infrastructure and Planning, and Minister for Natural Resources, the Hon Craig Knowles MP stated:

There is no doubt that his illegal development should never have been approved in the first place ... The record will show that council officers, using delegated authority, were hell-bent on giving this development an approval and then, extraordinarily, covering it up once they had issued the development consent.¹⁸⁴

4.9 Specific claims have been made during the Inquiry as evidence of a lack of probity on the part of the Council in approving the use of 12 Orange Grove Road as a warehouse outlet. These claims are as follows:

- Mr Mosca initially sought approval for a factory outlet centre under s 96 of the *Environmental Planning and Assessment Act*, rather than submit a full development application
- a memo from the Manager of Planning, Mr Chris Weston on 6 June 2003 was indicative of Mr Weston's concerns about the desire of senior officers to approve the application within an unrealistic time frame
- Mr Chris Weston was excluded from decisions regarding the Designer Outlets Centre approval process
- the application was approved by council officers rather than elected councillors
- advertising of the application was inadequate
- the application was approved one day after the period to receive submissions had expired
- draft approval was provided to the applicant before the application was formally approved
- advertising of the consent was unnecessarily delayed
- Mr Gazal refused to sell one of his CBD sites to the Council unless the Council approved the Orange Grove application
- Mr Mosca was generally afforded preferential treatment by Liverpool Council.

4.10 The evidence in relation to these allegations is discussed below.

¹⁸² Mr Jordan, Evidence, 16 August 2004, p36

¹⁸³ Mr Wedderburn, Evidence, 18 August 2004, p26

¹⁸⁴ Hon Craig Knowles MP, Legislative Assembly, New South Wales, *Hansard*, 31 August, p10507

The section 96 application

- 4.11** In January 2002 Mr Mosca submitted a s 96 application to change the land use allowed on the Orange Grove site from bulky goods to warehouse outlet. As Mr Mosca explained to the Committee, this application was rejected by Council planners who asked Mr Mosca to submit a full development application for the proposal:

I tried to use the change of use rules that you are permitted to use. You've got a DA for bulky goods. What we wanted to do, given that we felt and our planner felt the use we were proposing was also permitted under the same zoning, we just wanted a change of use. So you put in a form with the appropriate supporting documents and say, "We are proposing a change of use from bulky goods to warehouse clearance outlets, finished. There it is." This is in January. As it turns out what they do, they assessed it and they said, "Look, we don't think this constitutes a change of use. It is a new DA." It is not that the zone was not valid, but that the change was so great that it constitutes a new DA.¹⁸⁵

- 4.12** It would appear that Mr Mosca was not advised of the need to submit a full development application until May 2002, which was a source of considerable frustration on the part of Mr Mosca. As Mr Turrisi said:

... at the time when Mr Mosca came to me quite stressed that it took us so long to decide from February to the May period to request him to convert it into a development application ...¹⁸⁶

- 4.13** Mr Mosca subsequently submitted a complete development application to Council on 5 June 2002.

Mr Weston's 6 June memo to Mr Turrisi

- 4.14** A key document referred to by several committee members and witnesses during the inquiry is a memo written by the former Manager of Planning at Liverpool City Council, Mr Chris Weston, to the former Manager of Community and Environmental Planning, Mr Turrisi, on 6 June 2002. The subject matter of the memo is Mr Mosca's revised development application for the Orange Grove site. The memo is said to illustrate some of the more unusual or disturbing aspects of the Designer Outlets Centre approval process.
- 4.15** One source of concern engendered by the memo is that Mr Weston was apparently asked to comment on Gazcorp's application on the day it was received by Council. According to Mr Weston, this was 'exceptional' timing:

Mr WESTON: I was asked, either by email or by Gerard Turrisi, to give an explanation to my understanding and planning expertise on that particular proposal.

The Hon. KAYEE GRIFFIN: Because this proposal was not exactly an extension to a house or something like that, would it be normal process, in your position, that you

¹⁸⁵ Mr Mosca, Evidence, 29 November 2004, p40

¹⁸⁶ Mr Turrisi, Evidence, 29 November 2004, p56

would be asked your opinion on large developments, or would it be on a range of developments?

Mr WESTON: It would be on a range of developments, and I would never be asked on the first day that it came in to give an opinion on an application.

The Hon. KAYEE GRIFFIN: You would never be asked?

Mr WESTON: I have never been asked to give an opinion on the day an application came in.¹⁸⁷

- 4.16** A second source of concern generated by the memo is that it includes a response to a question allegedly asked by Mr Turrisi as to whether the application could be assessed within ‘two weeks:’

The Hon. JAN BURNSWOODS: The other thing that I find puzzling in your memo which I would be grateful if you could throw light on for us, Mr Weston, is if you go to the second last paragraph where, starting the paragraph, you have this sentence, “Determination will not be issued in two weeks.” It’s an odd sentence. It seems to suggest that someone expected or asked for it to be determined in two weeks. Can you throw light on the reason why you would have used that wording?

Mr WESTON: I would have answered what I was asked.

The Hon. JAN BURNSWOODS: Asked by whom?

Mr WESTON: Gerry Turrisi.

The Hon. JAN BURNSWOODS: So why would he ask that? It would surely not be normal for a DA of this size to be determined in two weeks.

Mr WESTON: That would be a correct assumption.¹⁸⁸

- 4.17** Mr Murray Douglas, a former Liverpool City Council consultant alleged that Mr Turrisi was under enormous pressure from his General Manager, Mr Brian Carr and Mr Mosca to expedite the Gazcorp application. He claims this pressure was related to a desire on the part of the Council to purchase a property owned by Mr Gazal in the Liverpool CBD on which to build new council chambers. This issue is discussed further in paragraph 4.64 – 4.77.
- 4.18** While Mr Turrisi initially had no recollection of seeing Mr Weston’s memo of 6 June or of having a conversation with Mr Weston about a proposed two-week turnaround for the approval,¹⁸⁹ he accepts he was the author of the memo. He believes that if he did ask such a question, it would be in response to a question posed by Mr Mosca:

... it is more than likely that it was Mr Mosca who would have contacted me and posed the question to me, which is why I then posed it to Mr Weston.¹⁹⁰

¹⁸⁷ Mr Weston, Evidence, 10 September 2004, p3

¹⁸⁸ Mr Weston, Evidence, 10 September 2004, p9

¹⁸⁹ Mr Turrisi, Evidence, 30 August 2004, pp103-4

¹⁹⁰ Mr Turrisi, Evidence, 20 September 2004, p73

4.19 However, he told the Committee that such a request should be understood in the context of the Council taking four months to inform Mr Mosca that his s 96 application would not be acceptable:

... there was a request around that May period that it [the s96 application] could not be dealt with as a modified application and needed to be a development application. So, in the context, the question I may have asked Mr Weston was: In view of the fact that there was something before the council since February what was the opportunity or the possibility for that matter to be determined in that period of time?¹⁹¹

4.20 Nor did Mr Turrisi accept that the memo indicates anything untoward, as the concerns expressed by Mr Weston were dealt with:

... if you look at the letter which Mr Hunt subsequently sent on 13 June, all the issues which were in Mr Weston's memo, including the notations which I made on the bottom of that memo, including the additional notations that Mr Weston made on the bottom of that memo, appeared on the letter which went to the applicant on the 13th, asking for all this information.¹⁹²

4.21 Mr Mosca denies that he had asked Liverpool City Council to deal with his application within two weeks:

No. I would have asked for it to hurry up – “What are you doing?” – the usual. It is in my normal course of business to ring up and try to hurry things along. I mean, if I did not, I would not be doing very well for my client.¹⁹³

4.22 Mr Weston's motives for making critical comments about Mr Turrisi were questioned during the inquiry. In January 2003 Mr Weston accepted a redundancy from Liverpool City Council, following a major Council restructure. The management team responsible for the restructure apparently included Mr Turrisi.¹⁹⁴ It was put to Mr Weston that, given initial assurances by management that his position was secure, he must have felt 'hard done by' when eventually told his position had been abolished. This suggestion was denied by Mr Weston:

THE HON JAN BURNSWOODS: Are we to understand that you felt somewhat victimised?

MR WESTON: It was appropriate timing for my career to take a redundancy.¹⁹⁵

Manager of Planning excluded from decisions about Orange Grove

4.23 Mr Chris Weston reported directly to Mr Gerard Turrisi. As the Manager of Planning, Mr Weston held regular meetings with his eight planners to review the progress of various

¹⁹¹ Mr Turrisi, Evidence, 20 September 2004, p71

¹⁹² Mr Turrisi, Evidence, 29 November 2004, p54

¹⁹³ Mr Mosca, Evidence, 29 November 2004, p37

¹⁹⁴ Mr Weston, Evidence, 10 September 2004, p23

¹⁹⁵ Mr Weston, Evidence, 10 September 2004, p23

applications,¹⁹⁶ including Mr Geoffrey Hunt who had carriage of the application for the Designer Outlets Centre. It was alleged that despite being Mr Hunt's supervisor, Mr Weston was effectively excluded from decisions regarding the assessment of the Designer Outlets Centre proposal, once he had written his memo of 6 June highlighting impediments to the proposal:

I was not in the loop. I was never approached again other than my discussion with Geoffrey Hunt on a couple of occasions through the process.¹⁹⁷

4.24 It was suggested that Mr Turrisi was responsible for sidelining Mr Weston from decisions regarding the Centre:

The Hon. JAN BURNSWOODS: Would it be true that you told Mr Hunt to report directly to you and to bypass Mr Weston?

Mr TURRISI: No, I would not have asked Mr Hunt to bypass Mr Weston.

The Hon. JAN BURNSWOODS: So what would you have asked Mr Hunt?

Mr TURRISI: In what context?

The Hon. JAN BURNSWOODS: Well, we have heard evidence from Mr Weston that after that memo of 6 June he had nothing further to do with this application, even though in the chain he was between you and Mr Hunt. Are we to assume from that that you asked Mr Hunt to report directly to you?

Mr TURRISI: No, I never said to any officers at any time that they should just directly report to me on any of their matters.

The Hon. JAN BURNSWOODS: So how do you explain that after that Mr Weston was kept in ignorance?

Mr TURRISI: I have no idea. I cannot answer that.¹⁹⁸

4.25 Mr Weston told the Committee he had no contact with Mr Mosca while the application was being assessed, unlike Mr Turrisi.¹⁹⁹ In addition, it was Mr Turrisi who instructed Mr Hunt to engage Leyshon Consulting to do an economic impact statement, rather than Mr Weston.²⁰⁰

Application approved by council officers not councillors

4.26 The development application by Gazcorp to use the Orange Grove site as a warehouse outlet was assessed and approved by council officers rather than the elected councillors.

¹⁹⁶ Mr Weston, Evidence, 10 September 2004, p4

¹⁹⁷ Mr Weston, Evidence, 10 September 2004, p16

¹⁹⁸ Mr Turrisi, Evidence, 20 September 2004, p75

¹⁹⁹ Mr Weston, Evidence, 10 September 2004, p6

²⁰⁰ Mr Weston, Evidence, 10 September, pp11-12

4.27 The Committee heard that Council's former Senior Development Planner, Mr Hunt, who approved the consent, assessed the application in accordance with extant Council policy. At the time, nominated council officers were authorised to use their delegated authority to approve this type of application if no objections were received following its advertising and public notification.²⁰¹

4.28 The Director General of the Department of Infrastructure, Planning and Natural Resources (DIPNR), Ms Jennifer Westacott, was asked whether in her experience, a 'low-level person in the hierarchy' such as Mr Hunt would have the delegation to approve something like the Orange Grove centre. She replied:

I don't especially think that is unusual: Councils often delegate decisions to officers and not make them by elected officials. It is really a matter for councils to determine those matters which go before council and those matters which are delegated.²⁰²

4.29 Westfield's Chief Operating Officer, Mr Robert Jordan said he thought it 'most unusual' that a development of such magnitude, in which there was a change of land use, did not come before the Council or a Committee of the Council.²⁰³ While Mr Jordan was concerned that such an important planning decision did not go to the Council, Westfield's Corporate Affairs Manager, Mr Mark Ryan, believes that some Liverpool Councillors would have been aware of the application:

Here was a major positive development that councillors now seem to be championing and defending and promoting as a terrific addition to the neighbourhood and I am asked to believe that at the time they were deaf, dumb and blind about the matter.

We were asked to believe that this was dealt with by an arms-length bureaucrat in Liverpool council, who sat quietly in his office, with a blindfold on and earplugs in, speaking to no-one, seeing nothing, hearing nothing, and he sat there and decided this on its merits, with no material involvement from Mr Turrisi and no involvement from any councillors, no involvement from Mr Beuk, who was the councillor responsible for major projects in the area.²⁰⁴

4.30 According to Mr Ryan, further evidence of councillors' knowledge of the application can be found in a council memo written by Mr Hunt to Mr Turrisi in October 2003:

...there's a council memo from Mr Hunt saying that this issue can go no further until Mr Gerard Turrisi discusses it with councillors and the Lord Mayor. Now, perhaps that conversation never took place. That memo was dated a day or two before Mr Turrisi sent Mr Mosca a letter saying, "Whoops, we failed to advertise this. The proper processes haven't been adhered to." On the council's own admission proper processes weren't adhered to. Then we had a hand-written note one or two days before that letter was sent saying that this isn't going any further until the councillors are spoken to. Now, the councillors were involved or they weren't. They knew about it or they

²⁰¹ Mr Tolhurst, Evidence, 13 August 2004, pp54-55

²⁰² Ms Westacott, Evidence, 9 September 2004, p 87

²⁰³ Mr Jordan, Evidence, 16 August 2004, p49

²⁰⁴ Mr Ryan, Evidence, 25 August 2004, p22

didn't know about it. As I've said, in my general experience councillors often get involved in these things because they're so great for the community.²⁰⁵

4.31 Mr Turrisi told the Committee that prior to issuing a consent he mentioned the application in passing to the then Mayor, the Hon George Paciullo:

At the end of the process when Mr Hunt advised me that he was about to recommend approval, I did make a passing comment to the mayor. I caught up with the mayor and just asked him whether or not he felt that this matter would need to go to the council. Whether he was comfortable with it being dealt with under delegation, and he indicated that he did not see there were any issues. So I said to Geoffrey that it was fine to proceed.²⁰⁶

4.32 The Hon George Paciullo contradicted Mr Turrisi, telling the Committee he was unaware of the application until media attention in mid 2004 brought it to his attention. Given the volume of Council business before him, he did not consider this to be noteworthy:

You obviously are not aware of the many, many other responsibilities and time consuming duties of the mayor of Liverpool or any other growth area like ours. I do not have the time to delve into the details of every development application, nor would I have an interest until such time as there were concerns expressed to me. I repeat: None were expressed.²⁰⁷

4.33 The Hon George Paciullo defended the award-winning system developed by Liverpool City Council to process development applications:

If we did not have that process in place the council meetings, which occur twice a month, would be dealing with nothing else virtually except development applications and we would have everyone in the chamber fighting over or trying to win the views or the votes in the council. We deal with it in a much more civilised and a much more hands-off way by having the approach, which, as I said, is common practice and very good practice. Can I add, that the method by which we deal with development applications has been recognised Australia wide when we were given an award for the manner in which we deal with DAs.²⁰⁸

4.34 A representative of the Liverpool Chamber of Commerce and Industry, Mr John Henshaw, said that although the fact that council officers approved the Orange Grove application might appear to be 'unusual' it was in some ways typical of Liverpool City Council's approach:

The Hon. JAN BURNSWOODS: When you say that it was "unusual" –

Mr HENSHAW: Something as large as this development was dealt with by an officer of the council. It was not a rezoning but a change of usage. It was dealt with in a way that would draw the minimum attention to it, I would have thought.

The Hon. JAN BURNSWOODS: Deliberately so?

²⁰⁵ Mr Ryan, Evidence, 10 September 2004, p11 (the Secretariat does not have a copy of this memo)

²⁰⁶ Mr Turrisi, Evidence, 17 August 2004, p80

²⁰⁷ Hon George Paciullo, Evidence 16 August 2004, pp8-9

²⁰⁸ Hon George Paciullo, Evidence, 16 August 2004, p8

Mr HENSHAW: I do not know.

The Hon. JAN BURNSWOODS: Is that your guess?

Mr HENSHAW: It is how this council has operated for years – things happen in the middle of the night, meetings are never publicly announced. That has been going on for years. So you tell me.²⁰⁹

- 4.35** While the current General Manager, Mr Garry McCully, does not believe council officers acted inappropriately by granting the consent, he has since changed the policy so that council officers are not authorised to approve such substantial developments:

Mr McCULLY: ... any application that I considered was a large application, had high employment opportunities, one would present that to the council for approval ... I would discuss it, obviously, with the planning manager and that is the way the delegation would work so that the council actually saw there was a public process of approving large and substantial development applications.

The Hon. JOHN RYAN: Do you think that that improves probity, or is that just a matter of the democratic process?

Mr McCULLY: It is a matter of the process of having large applications dealt with by the public process rather than by a process that can be, on some occasions, brought into question ...²¹⁰

- 4.36** Mr McCully went on to add:

... if there is a large or more substantial development then the matter would be reported to the council with the recommendation for approval or refusal rather than being dealt with by delegated authority.²¹¹

- 4.37** Liverpool City Council officers acted within their delegated powers in approving Gazcorp's application. The policy has since been reformed and this type of development would now be sent to the elected council for assessment. Given the potential controversy flowing from significant planning decisions, such as Orange Grove, the Committee welcomes this policy reform.

Inadequate advertising of the application

- 4.38** On 30 October 2002 the development application for the Orange Grove site was advertised on page 33 of the *Liverpool City Champion*. Council's public notification of the application was criticised on two grounds. The first concern is that the ad was not sufficiently prominent. Westfield told the Committee that the advert was so obscure they missed it:

... it was a very small section on page 33, which is in the back pages of the paper and it was for a change of use, which in the circumstances was a little bit unusual in that we would have expected that it would be something in the order of either a new DA

²⁰⁹ Mr Henshaw, Evidence, 16 August 2004, p56

²¹⁰ Mr McCully Evidence, 18 August 2004, p69

²¹¹ Mr McCully, Evidence, 18 August 2004, p74

process for a shopping centre or a new DA for a direct factory outlet. Having said that, we missed it and we did not see that.²¹²

- 4.39** According to council officers the application was advertised in the normal manner for this type of development, that is, an advertisement was placed in the local newspaper and a notice put up on the site.²¹³ According to Mr Hunt:

When the application was prepared to be advertised, I took that information with a package of documentation that had to go on the public access file ... I took that to the notification clerk who arranged for the notification to be arranged in line with policy.²¹⁴

- 4.40** The former Manager of Planning at Liverpool City Council, Mr Weston, told the Committee that the advertising process was managed by an administrative officer rather than a planner and the placement of the Orange Grove ad in the local paper was standard practice.²¹⁵

- 4.41** The second concern regarding advertising of the application was that it did not occur until the latter stages of the assessment process, five months after the application was received. A Westfield Director, Mr Greg Miles, told the Committee that he could envisage a very different outcome if the application had been advertised earlier:

Had we known that the matter was being considered prior to when a decision had been issued we would obviously have made representations. Presumably had we, or others in the Liverpool central business district, made representations, the matter would have been considered by somebody other than council officers. I imagine it may have gone through the Liverpool council meetings process where it would have had some independent review. So it could potentially have been a different outcome had we been aware prior to the determination ... I think you could also form a view that the delay in advertising it was in the hope that the development would get under way and would get open prior to there being any challenge so as to enable it to operate.²¹⁶

- 4.42** Mr Chris Weston acknowledged that the delay in advertising was 'unusual' but could not explain why this may have occurred:

The Hon. JAN BURNSWOODS: But is it strange to you that a period from June to November went past before it was advertised?

Mr WESTON: Very unusual.

The Hon. JAN BURNSWOODS: Can you throw any light on why that happened?

Mr WESTON: It could have just fallen off the track.

²¹² Mr Jordan, Evidence, 16 August 2004, p48

²¹³ Mr Tolhurst, Evidence, 13 August p56

²¹⁴ Mr Hunt, Evidence, 30 August 2004, p87

²¹⁵ Mr Weston, Evidence, 10 September 2004, p5

²¹⁶ Mr Miles, Evidence, 10 September 2004, pp4-5

The Hon. JAN BURNSWOODS: So you have no reason to suggest it may have been deliberate.

Mr WESTON: I don't know.²¹⁷

- 4.43** Council officers involved in the application offered conflicting accounts as to why the advertising appeared relatively late in the assessment process. According to Mr Turrisi, it was merely an oversight on the part of Mr Hunt:

Geoffrey Hunt came and approached me at the time when he was finalising his assessment and raised with me a concern that he thinks we had failed to advertise the application in accordance with council's process. In view of that, obviously, I explained to Mr Hunt that if we had to advertise it, that is what the council policy is and then we need to advertise the application. I then, subsequently, had discussions with Mr Mosca, because he was the applicant, to draw to his attention that that was the case.²¹⁸

- 4.44** In a letter to Mr Mosca, dated 25 October 2002, Mr Turrisi stated:

Due to an oversight of my staff your development application was not advertised in accordance with council policy.²¹⁹

- 4.45** Mr Turrisi told the Committee that given the high volume of development applications dealt with by planning officers, it is easy to overlook certain matters, a view shared by the current General Manager, Mr McCully:

... I think there are something like 5,000 development applications. As far as I am aware this did slip through someone's radar; they did not see that it was there, and it was just a genuine mistake.²²⁰

- 4.46** Mr Hunt said the advertising was initially delayed to allow him time to commission and receive several internal and external reports regarding the economic impact of the proposal. While not overtly contradicting his former colleagues, Mr Hunt did not admit to forgetting his statutory responsibilities in relation to public notification:

Part of not going to public exhibition until that time was that until I was sure that all the reports were satisfactory and ... I wanted to do that before I went to public exhibition because if I needed to answer any questions regarding this whole proposal I would have been able to be in a good position to be able to answer those inquiries ... it had to be advertised and it was notified.²²¹

- 4.47** While council officers complied with their statutory duty to advertise Gazcorp's development application, there are conflicting accounts as to why it did not occur earlier. Mr Hunt does not

²¹⁷ Mr Weston, Evidence, 10 September 2004, p8

²¹⁸ Mr Turrisi, Evidence, 17 August 2004, p81

²¹⁹ Correspondence from Mr Gerard Turrisi to Mr Frank Mosca, 25 October 2004, quoted by the Hon Kayee Griffin on 17 August 2004, p83

²²⁰ Mr McCully, Evidence, 18 August 2004, p75

²²¹ Mr Hunt, Evidence, 30 August, p89-90

appear to accept his former colleagues' explanation that he simply forgot. Rather he suggested that he was awaiting the completion of several independent reports into the proposal. Mr Hunt's October 2002 memo to Mr Turrisi suggests he may also have been reluctant to advertise the proposed development until he was assured councillors including the Mayor, were aware of its imminent approval.

- 4.48** The imputation from some witnesses, including Westfield, is that Mr Turrisi and possibly others deliberately intended to avoid or delay advertising the development. The evidence does not allow such a conclusion to be either drawn or refuted with any confidence.

Approval granted one day after close of submissions

- 4.49** The cut off date for receipt of public submissions in relation to Gazcorp's development application for the Orange Grove site was 14 November 2002 and council approved the application the following day. The speed with which the consent was granted was cited as further evidence of preferential treatment to Mr Mosca.

- 4.50** Westfield's Mr Mark Ryan told the Committee that in terms of local government efficiency, Liverpool Council's prompt approval of the development should find a place in the Guinness Book of World Records:

Never before in Westfield's long history has it seen an approval like this given such speedy consideration in the way it had, and such quick approval, one day after the advertising had closed.²²²

- 4.51** Mr Turrisi recalls trying to expedite the consent to make up for the delay caused by not advertising the application earlier:

... we did make the comment that in view of the fact that the application had been with the council for a while we had erred, we would try to get the application out as soon as possible after the exhibition period had lapsed. What time frame that was I cannot tell you; whether it was days or weeks I do not know.²²³

- 4.52** Mr McCully suggested that the Council's efficiency was most likely generated by the officer's desire to complete the matter rather than as a result of improper motives:

... I think that the planner involved probably got his knuckles rapped for not advertising and doing it properly and he just wanted the thing off his desk, he wanted rid of it ...

It is something that I do not find unusual.²²⁴

- 4.53** Mr Hunt was asked how he could be certain there would not be objections made on or before 14 November that may arrive later than 15 November. He replied:

²²² Mr Ryan, Evidence, 25 August, 2004, p19

²²³ Mr Turrisi, Evidence, 17 August 2004, p82

²²⁴ Mr McCully, Evidence, 18 August 2004, pp68 & 76

... in that whole exhibition period I did not take one verbal inquiry or telephone inquiry regarding the development application. After the exhibition periods are finished I check with our administration to see if there are any letters that have been received in that day's mail or the previous day's mail to ensure that there is nothing to further consider.²²⁵

- 4.54** While former councillor, Mr Col Harrington expressed surprise that the application was approved so soon after the close of advertising, the fact that it was finally advertised alleviated his concerns about the processing of this application.²²⁶ However, Mr Weston was less sanguine about the swift approval:

Mr WESTON: It's unusual for an application to be signed off the day that it comes off exhibition—the day after.

The Hon. JAN BURNSWOODS: I mean, it would, for instance, be possible that there were objections in the mail.

Mr WESTON: There could have been letters in the front letterbox of the council. They could be down in records trying to allocate a file for them.

The Hon. JAN BURNSWOODS: So even in, I think your words were, a "busy and dynamic" planning department, nevertheless you would agree that this is a very unusual procedure.

Mr WESTON: To be issued the day after advertising closed is not the norm.²²⁷

- 4.55** While approving a development application the day after the close of submissions may be allowable, it is not a desirable practice. As several witnesses noted, this type of efficiency is likely to be interpreted as an attempt to expedite an approval process at the expense of the public's right to comment on proposed development. In relation to the Designer Outlets Centre the only beneficiaries of a speedy approval were Mr Mosca and his client. It would have been preferable to have allowed a longer period of time between the close of submissions and the final approval. This aspect of the approval process is a matter of some concern.

Draft consent provided before actual consent

- 4.56** Mr Mosca received a copy of a draft approval for the warehouse outlet centre, including the conditions of consent, prior to receiving the final consent. This fact was said to constitute further evidence of an allegedly improper relationship between Gazcorp and the Council.
- 4.57** Council officers told the Committee that providing a draft consent prior to final approval was not atypical. The Manager of City Development, Mr Phil Tolhurst, said that during any development assessment an officer will often start preparing a draft consent to look at before

²²⁵ Mr Hunt, Evidence, 30 August 2004, p86

²²⁶ Mr Harrington Evidence, 16 August 2004, p16

²²⁷ Mr Weston Evidence, 10 September 2004, p12

the assessment is completed.²²⁸ According to Mr McCully, providing a draft consent can reduce the likelihood of time consuming and costly litigation at a later stage.²²⁹

- 4.58** In the case of the Designer Outlets Centre, Mr Turrisi said the draft consent was provided in order to reduce any further inconvenience for the client whose matter had already been unduly delayed:

I can recall having a conversation with Frank [Mosca] that these were draft conditions and if there were additional conditions which may have been imposed due to objections being raised so be it. They were just draft conditions and the view was taken that because the application had been with the council quite a while that there was an error and we just felt that was acting in good faith without trying to be seen to be creating red tape for them.²³⁰

- 4.59** Providing a draft consent to an applicant prior to issuing a final consent appears to be a sensible and fairly routine practice, with advantages for both the applicant and consent authority. That it occurred in relation to the Designer Outlets Centre does not on its own demonstrate an improper relationship between Mr Mosca and Liverpool City Council.

Advertising of the consent delayed

- 4.60** Concerns were raised during the inquiry that while the Council approved Gazcorp's application in November 2002, public notification of the approval did not occur until 9 April 2003, five months later. Ms Westacott was surprised by the apparent delay in advertising:

I am surprised that once the development was approved some five months elapsed before the decision to approve it was advertised.

...councils have different policies on these things. But I would have thought that if councils had a policy ... that says, "We advertise our approvals," leaving it for five months is somewhat tardy.²³¹

- 4.61** Mr Turrisi told the Committee that it was more cost-efficient for Council to advertise approvals in batches, when there was a significant volume of approvals to justify advertising. He also added that he had nothing to do with the administration of this process:

... I had 140 staff and I had appropriate managers there. I was the director of the department: I was more responsible for corporate outcomes rather than the day-to-day running of the organisation.²³²

- 4.62** Mr Hunt told the Committee he had never been involved in this aspect of an approval:

²²⁸ Mr Tolhurst, Evidence, 13 August 2004, p55

²²⁹ Mr McCully, Evidence, 18 August 2004, p80

²³⁰ Mr Turrisi, Evidence, 17 August 2004, p89

²³¹ Ms Westacott, Evidence, 9 September 2004, p87

²³² Mr Turrisi, Evidence, 30 August, 2004, p98

I'm not sure of how the notification of DAs ... is done administratively. I've never been involved with any of those notifications.²³³

- 4.63** There is no evidence before the Committee that any council officer deliberately sought to postpone the public notification of the Orange Grove approval. Nevertheless, a lengthy delay in the public notification of a development consent is undesirable and should be avoided.

The CBD site and the Orange Grove approval

- 4.64** Mr Murray Douglas was contracted as a consultant to Liverpool Council to work on the Oasis development and various other projects concerning the CBD. His responsibilities included to identify a site in the southern part of the CBD on which to build new council chambers. One of the options explored by Mr Douglas was to purchase land owned by Mr Gazal on Scott Street as well as land owned by Westpac for this purpose.

- 4.65** Mr Douglas alleges that on 12 June 2002, Mr Gazal told him he would not sign a memorandum of understanding regarding the purchase of his Scott Street site until Council agreed to approve the factory outlet he proposed to build on Orange Grove Road. Mr Douglas, who has held senior management positions in local government for more than 15 years, told the Committee that this suggestion left him completely nonplussed:

Now in my time in local government I've had a lot of people very subtly make comments about what is or is not a good thing and how it can or cannot be obtained ... But this is the first time anybody have ever said to me, "You do this and I'll do that." Never in my experience had I experienced that.²³⁴

- 4.66** Mr Douglas said he raised with Mr Turrisi his concerns about the ethical implications of this conversation. Mr Turrisi allegedly told Mr Douglas that the General Manager, Mr Carr expected Mr Mosca's development application on the Orange Grove site to be processed within two weeks.

- 4.67** Within two hours of his 12 June conversation with Mr Gazal, Mr Douglas said he completed and signed a file note detailing his concerns, a copy of which was given to the acting General Manger, Mr Eric Heapy on the same day. In January 2004, Mr Douglas made a protected disclosure to the General Manager of Liverpool City Council, Mr Garry McCully about this same matter.²³⁵

- 4.68** Mr Douglas told the Committee he thought it was 'inconceivable' that an experienced local government officer would use his delegated powers to approve the type of rezoning being proposed by Mr Mosca and that Mr Turrisi was under enormous pressure from external parties, including Mr Mosca, to approve the application.²³⁶

- 4.69** Mr Heapy and Mr Carr both deny Mr Douglas' allegations regarding the application. According to Mr Heapy:

²³³ Mr Hunt, Evidence, 30 August 2004, p90

²³⁴ Mr Douglas, Evidence, 11 October 2004, p4

²³⁵ Mr Douglas, Evidence, 11 October 2004, pp6, 23 & 32

²³⁶ Mr Douglas, Evidence, 11 October 2004, pp4 & 7

... I refer to the statement made by Mr Douglas that he advised me of a concern about an ethical position arising from a conversation with Mr Gerard Turrisi. This concern related to an allegation that Mr Brian Carr, the former General manager of Liverpool City Council had requested that a Development Application submitted by a Mr Frank Mosca be processed within two weeks.

I wish to state on the public record that Mr Douglas never mentioned this matter to me – nor did he provide me with a copy of a file note or any other document regarding this matter. If he did, I would most certainly have regarded the issue as a serious one and handled it accordingly. Mr Douglas' statement is simply untrue.²³⁷

4.70 Mr Carr also rejected Mr Douglas' claims:

... I have never given any instruction to planning officers about DAs. With regard specifically to the Orange Grove DA, I never instructed Mr Turrisi to process the application within a two-week period.

Mr Douglas' allegation is false and I reject it outright.²³⁸

4.71 Both Mr Heapy and Mr Carr suggested possible motivations for Mr Douglas making what in their view were entirely false allegations. According to Mr Heapy:

Certainly my observation of Mr Douglas was that he was a person who would go to great lengths to, I think, deflect issues away from himself and put the spotlight on others, so if there was an issue that he disagreed with or thought possibly could go wrong, it was certainly fed back to me by a number of employees over my time there that in fact he would make often critical comments about the general manager, in particular, because he was working directly to him, that he would disagree and that the general manager was wrong and he was right, et cetera, et cetera, and that was brought to my attention on a number of occasions.²³⁹

4.72 Mr Brian Carr informed the Committee in a written response that:

Mr Douglas was overlooked for promotion in 2003 and, in my opinion, is simply a disgruntled worker with an axe to grind.²⁴⁰

4.73 Mr Turrisi denied he was under pressure from either internal or external sources to approve the application:

I have always made all my recommendations to the council based on what I believe is the right thing for the community.²⁴¹

4.74 In fact he denied ever having had a conversation with Mr Douglas in which the two issues, Orange Grove and the new Council chambers, were linked.²⁴²

²³⁷ Email from Mr Eric Heapy to Senior Project Officer, 1 November 2004.

²³⁸ Correspondence from Mr Brian Carr, to Chair, 8 November 2004

²³⁹ Mr Heapy, Evidence, 29 November 2004, p44

²⁴⁰ Correspondence from Mr Brain Carr, to Chair, 8 November 2004

²⁴¹ Mr Turrisi, Evidence, 29 November 2004, p54

²⁴² Mr Turrisi, Evidence, 29 November 2004, p51

- 4.75** Mr Gazal said that he refused to sign the memorandum of understanding on advice from his lawyers that it would disadvantage his company. He also stated that he had not suggested to Mr Douglas that the sale of the Scott Street site was dependent on Council approval of the Orange Grove centre. While he did not know if Mr Mosca had made such a suggestion to Mr Douglas, he wasn't overly concerned if he had:

The Hon. AMANDA FAZIO: Are you aware that in a telephone conversation on 12 June 2002 Mr Mosca told Mr Douglas that if the Orange Grove development did not get approved by Liverpool council you would pull out of all negotiations with the council for a new council chambers development?

Mr GAZAL: I was not aware but Mr Mosca is free to say whatever he likes.

The Hon. AMANDA FAZIO: Was that your viewpoint, though? Did you share his view?

Mr GAZAL: At that time I do not know. He did not ask me.

The Hon. AMANDA FAZIO: So you are quite happy that somebody who does project work for you goes ahead and makes a threat like that to council on your behalf?

Mr GAZAL: I do not see why it is a threat. We own the land ... Let me tell you something. We bought the land. We paid a lot of millions of dollars for the land. We are free to say what we want to do with it or what we do not want to do with it. If he said it, I am happy with it; if he does not say it, I am happy with it. Mr Mosca can deal on my behalf any time he likes.²⁴³

- 4.76** Mr Mosca denied attempting to use leverage over Mr Gazal's ownership of the Scott Street site to secure approval for the Designer Outlets Centre. He said the only time he discussed the matter with Mr Douglas was in January 2002:

... I made a call to Mr Douglas in January of 2002, which is when I was attempting to lodge the original DA, which I subsequently lodged on January 22, 2002. After a meeting with Mr Turrisi where he was umm'ing and ah'ing about whether it should or should not be, I rang Mr Douglas from my mobile phone and said, "Look, I'm going to have to start looking at designing that designer outlets thing over at Scott Street." Now, he knew I was looking at putting a commercial residential tower there. He said, "No, no, no, don't do that. I'll speak to Gerard" or "I'll do this" or "I'll do that." "Don't tell Nabil." I said, "Fine, whatever."²⁴⁴

- 4.77** Mr Douglas gave evidence that Mr Turrisi was pressured to expedite the Designer Outlets Centre approval process in order to secure Mr Gazal's Scott Street site. However, this scenario is disputed by Mr Turrisi, Mr Heapy, Mr Carr, Mr Mosca and Mr Gazal. The Committee has no evidence before it which verifies Mr Douglas'claims.

²⁴³ Mr Gazal, Evidence, 11 October 2004, pp59-60

²⁴⁴ Mr Mosca, Evidence, 29 November 2004, p37

Pattern of preferential treatment afforded to Mr Mosca

- 4.78** During the hearings it was alleged that the special treatment afforded by Liverpool City Council in approving the change of use for the Orange Grove site was part of a pattern of preferential treatment afforded Mr Mosca. Westfield's Mr Mark Ryan told the Committee:

I was told that if he wanted to get a DA through Liverpool council "Mosca is your man" ...²⁴⁵

- 4.79** Mr Ryan noted that after Mr Turrisi left his position with Liverpool City Council he undertook paid work for Mr Mosca, implying this was commissioned as a reward for facilitating his development applications:

I knew that Mr Turrisi was close to Mr Mosca at least ... I knew that Mr Turrisi was a council officer who was at the centre of this approval process and had given the impression that he had not much to do with it. It seemed strange that he later went to do work for Mr Mosca, the architect, who, I am told, was responsible for something like 80 per cent of the development applications passing through the council.²⁴⁶

- 4.80** In his evidence, Mr Mosca admitted that he had employed Mr Turrisi as a consultant to complete three or four energy ratings reports for clients.²⁴⁷ He estimated that the total value of this work was \$5000.²⁴⁸ Mr Turrisi was also commissioned by Gazcorp to do a small consultancy project for which he received approximately two hundred dollars.²⁴⁹ Mr Gazal told the Committee that since Mr Turrisi became a consultant to a competitor, the proposed Direct Factory Outlet at the Crossroads, Liverpool, he has not used his services.²⁵⁰ Mr Mosca told the Committee he advises his clients not to use Mr Turrisi because 'I did not think it was right.'²⁵¹

- 4.81** Mr Mark Ryan also told the Committee that Mr Mosca's relationship to Liverpool City Council had been canvassed in the Daly inquiry. It should be noted however, that the Final report of the Daly Inquiry does not include any findings, negative or otherwise, in relation to Mr Mosca's conduct.²⁵²

- 4.82** It was suggested in evidence that Mr Mosca had considerable influence over the ALP dominated Council. This influence allegedly stemmed from his position as President of the

²⁴⁵ Mr Ryan, Evidence, 25 August 2004, p35

²⁴⁶ Mr Ryan, Evidence, 25 August 2004, p34

²⁴⁷ Mr Mosca, Evidence, 25 August 2004, p63, and Evidence, 17 August 2004, p37

²⁴⁸ Mr Mosca, Evidence, 13 August 2004, p10

²⁴⁹ Mr Nabil Gazal Jnr, Evidence, 25 August 2004, p64

²⁵⁰ Mr Gazal, Evidence, 13 August 2004, p9

²⁵¹ Mr Mosca, Evidence, 25 August 2004 p63

²⁵² Emeritus Professor Maurice Daly, *Liverpool City Council Public Inquiry, Final Report: Findings and Recommendations – Vol 3*, July 2004, p25

Austral/Bringelly Branch of the ALP and his relationship with its Secretary, Mr Tony Beuk, a former councillor who was responsible for large projects at Liverpool City Council.²⁵³

- 4.83** Former councillor, Mr Col Harrington told the Committee that over the years he had formed the view that Mr Mosca received preferential treatment from the Council, citing the following as an example of his influence:

... one night at a council meeting he was successful in overturning a council decision by entering the chamber and speaking to councillors while the meeting was in progress. The matter concerned a serious application to redevelop a heritage site in the southern CBD. The vote was taken and the application was lost.²⁵⁴

- 4.84** In correspondence to the Committee, Mr Harrington completed his account:

A Labor Party Councillor then left the Chamber to go home. Mr Mosca intercepted this Councillor in the foyer and told her that he was going to get his item recalled. The Councillor returned to the meeting and later in the evening the item was recalled and the original decision of the Council was overturned, in Mr Mosca's favour.²⁵⁵

- 4.85** Nevertheless, as far as Orange Grove was concerned, Mr Harrington did not believe Mr Mosca received preferential treatment as the decision was made under delegated authority and he has no evidence of him having any influence on council officers.²⁵⁶

- 4.86** The Hon George Paciullo was asked if the Daly Inquiry had identified a pattern of 'preferential treatment' for Mr Mosca by Liverpool Council. The Hon George Paciullo said that he had not provided special treatment to Mr Mosca during his time at the Council.²⁵⁷

- 4.87** Mr Mosca disputed that he was the recipient of special favours from Liverpool City Council. While he admits to actively pursuing his clients' interests, he told the Committee that his applications 'seemed to have to jump through hoops all the time' citing the 10 months it took for the Orange Grove development to be approved.²⁵⁸ He also stated that he was one of very few architects in the fast-growing Liverpool area.²⁵⁹

- 4.88** The Manager of City Development at Liverpool City Council, Mr Phil Tolhurst, commented that the type of contact he had with Mr Mosca in relation to his various applications was not out of the ordinary:

... Mr Mosca came regularly to the office about numerous applications within the Liverpool LGA and met with me, with clients proposing things – as you do as a

²⁵³ *Gazcorp's Liverpool Links*, tabled by Mr Mark Ryan 25 August 2004; Mr Harrington, Evidence, 16 August 2004, p14; Mr John Brogden MP, Evidence, 11 October 2004, p3; Mr Douglas, Evidence, 11 October, 2004, p29

²⁵⁴ Mr Harrington Evidence, 16 August 2004, p14

²⁵⁵ Correspondence from Mr Harrington, to Director, 24 August 2004

²⁵⁶ Mr Harrington, Evidence, 16 August 2004, p14

²⁵⁷ Hon George Paciullo, Evidence, 16 August 2004, p7

²⁵⁸ Mr Mosca, Evidence 13 August 2004 pp31 & 10

²⁵⁹ Mr Mosca, Evidence 25 August 2004 p80

council, manager development – and he would often ask, “Where is it up to and how is it going?” I cannot recollect him coming to me on that issue alone but I must point out that it is not unusual – other architects and developers do the same thing ...²⁶⁰

4.89 Mr Mosca’s integrity has been seriously questioned throughout this inquiry. It is clear that through his links with the Austral Bringelly Branch of the ALP he had considerable political contacts which could have been used to lobby the Council. The Committee notes that Mr Mosca has been prepared to attend Committee hearings and answer questions on a number of occasions. While there is no doubt that Mr Mosca vigorously pursued his clients’, and thereby his own, interests before Liverpool City Council the Committee has no conclusive evidence to support allegations that he acted improperly or corruptly.

Proposed draft Amendment 92

4.90 On 17 June 2003, Westfield commenced legal proceedings against Gazcorp, seeking to invalidate the development consent for the Designer Outlets Centre. The second part of the Chapter discusses the response of Liverpool City Council to this litigation by proposing to amend its Local Environmental Plan to permit a warehouse outlet to operate on Orange Grove Road (draft Amendment 92).

4.91 The resolution to prepare draft Amendment 92 was passed by the Council on 8 December and the plan was exhibited from 17 December 2003.²⁶¹ The original application for the amendment arose from an application by AMP for the Crossroads site.²⁶² By the time Ms Kibble joined the Council in March 2004, the rezoning was well and truly ‘on foot’ and she supported the rezoning on ‘social and economic grounds.’ The Centre was up and running and providing employment and in her view had very little impact on the retailers in the CBD. Ms Kibble also noted that she may have taken a different position if considering a ‘de novo’ application.²⁶³

4.92 Several concerns have been raised during the inquiry regarding Liverpool City Council’s attempt to rezone the Orange Grove site. These include:

- the report drafted by Council officers on draft Amendment 92 was dominated by information about the Crossroads site, rather than Orange Grove
- the report drafted by Council officers on draft Amendment 92 neglected to mention Westfield’s legal challenge to the Orange Grove development consent
- Ms Kibble excised the proposal to rezone the Crossroads site from draft Amendment 92 without adequate explanation.

²⁶⁰ Mr Tolhurst, Evidence, 13 August 2004, p58

²⁶¹ DIPNR, *Section 69 Report – Liverpool LEP 1997 (draft Amendment No. 92)*, pp1 & 3, cited in Submission 27, DIPNR, Attachment 10

²⁶² Ms Westacott, Evidence, 17 August 2004, p17

²⁶³ Ms Kibble, Evidence, 13 August, pp42-43

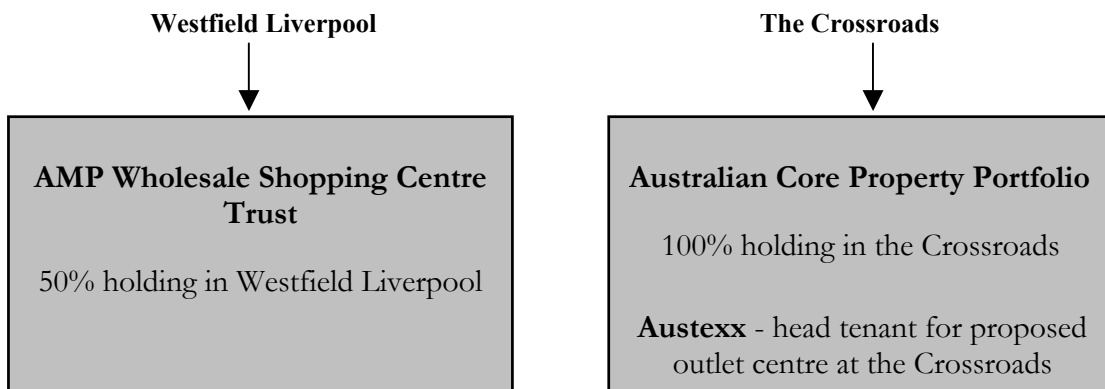
- 4.93 The evidence in relation to these matters is discussed below. However, before proceeding to this discussion, brief background information regarding the Crossroads proposal is provided.

The Crossroads – background

- 4.94 The Crossroads is an existing bulky goods centre in Casula. Draft Amendment 92 originally recommended that land at both Orange Grove Rd and the Crossroads should be rezoned to allow for the operation of a warehouse outlet centre at both sites.²⁶⁴ However the Council's recommendation was overturned by the newly-appointed Ms Kibble on 13 April 2004, when she decided to defer the rezoning of the Crossroads.²⁶⁵ Council consequently submitted draft Amendment 92 to the Director General of DIPNR, minus the proposal to rezone the Crossroads.

Who owns what?

- 4.95 The Crossroads site is fully owned by Australian Core Property Portfolio, one of the many funds owned and managed by AMP Capital Investors. Another property fund managed by AMP Capital Investors - AMP Wholesale Shopping Centre Trust - owns half of Westfield Liverpool.²⁶⁶ Austexx is a Melbourne based, private company which has the head lease to manage the proposed outlet centre at the Crossroads. Austexx also owns the Direct Factory Outlet at Homebush.



Criticisms of the Council Report on draft Amendment 92

- 4.96 The report prepared by Council Officers, Mr Tolhurst and Mr Jemison to assist councillors to deliberate on draft LEP 92 was criticised for not including adequate details about the proposal to rezone the Orange Grove site, as the following exchange indicates:

The Hon. PETER PRIMROSE: I have looked through it and I keep coming to the same conclusion: that the bulk of the information contained in it seems to relate to

²⁶⁴ Mr Tom Zarimis, National Manager for Property Development, AMP Capital Investors, Evidence, 20 September 2004, p87

²⁶⁵ Submission 27, DIPNR, p12

²⁶⁶ Mr Tom Zarimis, AMP Capital Investors, Evidence, 20 September 2004, p86

the Cross Roads development only. All the studies, nearly all the data, the street maps, the architect's drawings, all relate to Cross Roads. Is that the case?

Mr TOLHURST: The application information and the studies we received were on both centres, as per the information supplied. Yes, that is correct, it was on both centres, Cross Roads and Orange Grove Road.

The Hon. PETER PRIMROSE: The proposal to amend the LEP in relation to Orange Grove seems to not take up as much space in the report. It was not to be considered in as much detail.

Mr TOLHURST: I cannot comment. That was the report that was written at the time. I did not notice it until you raised it.²⁶⁷

Mr BROPHY: I understood that the greater majority was dealing with the Cross Roads, yes.²⁶⁸

4.97 The Council report on draft Amendment 92 was also criticised for not mentioning Westfield's legal challenge. In response to a question from a member as to why there is no mention of this in their report, Mr Jemison and Tolhurst replied:

Mr JEMISON: Because my understanding was there was still an appeal, that was an ongoing case and I believed it had no place, I suppose, in this particular report. This report was put up to council to resolve any problems that we were aware of at the time and we did not believe that this report should go into the details of the development application before the courts.

The Hon. PETER PRIMROSE: So in that case there is nothing in the report to inform councillors of the legal proceedings that were commenced against the owners of Orange Grove involving the council actually in the report?

Mr TOLHURST: There may be nothing in the report but certainly when it was put on exhibition, which was November or December 2003, there was discussion at council when we had councillors and there was certainly discussion on the night on that issue.

The Hon. PETER PRIMROSE: Could I ask you why you did not feel it appropriate to put that into the report that forms the legal basis upon which the councillors make their decision?

Mr TOLHURST: It was still part of a legal proceeding. I cannot really comment. It was something we did not think of at the time. In retrospect maybe we should have, but I cannot really comment. There is no answer to that question other than to say there was no hidden agenda not to put it there; it was certainly discussed in open council both at the time of the exhibition and on the night of this report going up to council.²⁶⁹

4.98 Mr Tolhurst strenuously denied that he sought to hide the fact of the court case from councillors:

²⁶⁷ Mr Tolhurst, Evidence, 13 August 2004, p49

²⁶⁸ Mr Brophy, Evidence, 10 September 2004, p18

²⁶⁹ Mr Tolhurst, Evidence, 13 August 2004, p53

If I was writing the report today maybe after what has happened I would put it in there, but it was such an obvious thing at the time I probably did not put it in because everyone was aware of it. If you ask me would I do it again, it is all a learning curve in every profession and you would learn from that and probably would put it in, but at the time it was on the front page of the local paper, it was in the Sydney papers, everyone was aware of it. I am getting the impression – I may be wrong – that it was a hidden thing. It certainly was not; it was certainly discussed at length.²⁷⁰

Why did Ms Kibble defer the Crossroads?

- 4.99** Ms Kibble told the Committee that she deferred the Crossroads application from the proposed application to amend Liverpool's Local Environmental Plan, pending advice from the Department on relevant policy issues:

The second part of the rezoning was deferred and the resolution asks that DIPNR consider the policy questions as to where land use of this sort which was relatively new should go, and that is where that matter stands. We have not had any advice from the DIPNR on that question. That is all I want to say. I just want to make sure that there is some clarity about the decision to defer the second part of the rezoning²⁷¹

- 4.100** According to AMP Capital Investors' Property Development Manager responsible for the Crossroads, Mr Jeff Tucker, the reasons for the deferral remain a mystery.²⁷² The National Manager for Property Development at AMP Capital Investors, Mr Tom Zarimis, told the Committee that AMP Capital Investors were 'disappointed that the Cross Roads proposal was deferred for no apparent reason,'²⁷³ adding that Ms Kibble's decision is all the more disappointing given the owners of the Crossroads site have always maintained that the outlet centres at Orange Grove and Cross Roads could coexist successfully.²⁷⁴

- 4.101** It appears Ms Kibble's rationale for her controversial decision was not understood by the Department. Ms Westacott told the Committee:

There is no record that I can find on the file of a letter from council to the department seeking agreement to separate the site. My understanding from departmental officers is that verbal exchanges have taken place about that and a decision was taken that they would await the outcome of the metropolitan plan before they would make a decision about the Cross Roads site and make a decision about whether they would submit an LEP amendment about the Cross Roads site.²⁷⁵

- 4.102** The Department stated in its submission, deferring consideration of the Crossroads application pending the outcome of the metropolitan plan begs the question as to why this same reasoning should not also apply to Orange Grove.²⁷⁶ However, the main difference

²⁷⁰ Mr Tolhurst, Evidence, 13 August 2004, p52

²⁷¹ Ms Kibble, Evidence, 13 August 2004, p43

²⁷² Mr Tucker, Evidence, 20 September 2004, pp91-922

²⁷³ Mr Zarimis, Evidence, 20 September 2004, p87

²⁷⁴ Mr Zarimis, Evidence, 20 September 2004, p87

²⁷⁵ Ms Westacott, Evidence, 9 September 2004, pp96-97

²⁷⁶ Submission 27, DIPNR, pp12-13

between the proposals is that one of these two Centres – Orange Grove – already exists and that its closure would lead to significant job losses in an area of high unemployment.

4.103 There is no suggestion before this Committee that Ms Kibble’s decision to excise the Crossroads rezoning from draft Amendment 92 was improper. Ms Kibble clearly made her decision on social and economic grounds which she explained are appropriate considerations in applicable planning instruments and laws that were relevant to this determination. As she told the Committee, she may have made a very different decision if asked to consider the same proposal on a ‘greenfield’ site. Asked is there was any planning merit in rezoning the factory outlets, Ms Kibble replied:

I would not have proceeded with it had I not thought that there was a justifiable case for rezoning.²⁷⁷

Finding 4

The rezoning application was made to DIPNR by the Liverpool Council Administrator, Ms Gabrielle Kibble, on relevant and appropriate grounds.

Conclusion

4.104 Certain aspects of the approval granted by Liverpool Council for the establishment of a warehouse outlet centre at 12 Orange Grove Road are unusual. Some of the more distinctive features of the assessment process include:

- the proposal started out as an application under s96 of the Act, which is generally reserved for minor modifications to a previously granted consent
- a request, which was refused, was made to determine the development application in two weeks
- approval was granted just one day following the close of advertising
- the consent was publicly notified five months after its approval
- although it was dealt with according to the established procedures of the Council the factory outlet was approved by Council staff acting under delegated authority without it formally being drawn to the attention of the elected Council even though it was a development of significant size.

4.105 On the evidence before it, the Committee does not make any findings of improper conduct on the part of any current or former Liverpool Council employees and councillors. In relation to issues of corruption the Committee notes that these matters are currently before the ICAC, which has extensive powers legislated by Parliament to investigate allegations of corrupt conduct.

4.106 The probity issues surrounding the original approval granted by Liverpool City Council officers are less relevant in relation to Council’s attempt to rezone the site in April 2003. It is

²⁷⁷ Kibble Evidence, 13 August 2004, p43

quite apparent that Ms Kibble's support for the draft Amendment to Liverpool's Local Environmental Plan was motivated by a desire to protect jobs and income in an area of relatively high unemployment.

4.107 The circumstances surrounding the approval of the Designer Outlets Centre is a critical concern of the inquiry. As Ms Westacott told the Committee:

Fairly clearly, you have to lay the blame with the people who granted this consent in the first place.²⁷⁸

4.108 However, the Committee is mindful of comments made by other witnesses, including a representative of the Liverpool Chamber of Commerce, Mr John Henshaw, who believes the former Council's past practices are a distraction from the real issue:

But that is not the real issue. The issue is those jobs.²⁷⁹

4.109 The Committee supports the decision made by Ms Kibble to act in the best interests of saving jobs in the Liverpool area.

Finding 5

There is no evidence before the Committee of improper conduct involving former councillors or staff of Liverpool City Council.

The following unusual aspects of the original development approval have been identified in the course of evidence before the Committee:

- the proposal started out as an application under s96 of the Act, which is generally reserved for minor modifications to a previously granted consent
- a request, which was refused, was made to determine the development application in two weeks
- approval was granted just one day following the close of advertising
- the consent was publicly notified five months after its approval
- although it was dealt with according to the established procedures of the Council the factory outlet was approved by Council staff acting under delegated authority without it formally being drawn to the attention of the elected Council even though it was a development of significant size.

There is evidence that Mr Frank Mosca used his access to Liverpool City Council to vigorously pursue his clients' interests. However the Committee does not have conclusive evidence that he acted improperly.

²⁷⁸ Ms Westacott, Evidence, 17 August 2004, p25

²⁷⁹ Mr Henshaw, Evidence, 16 August 2004, p56

- 4.110** The Committee is aware that Liverpool Council recently changed its policy so that council officers are no longer authorised to approve a major development, such as the Designer Outlets Centre. It believes that such developments should always be assessed by the elected council.

Recommendation 2

That the Ministers for Local Government and Planning should review guidelines for delegated authority being used by Local Government to ensure that major developments are not approved without formal reference to the elected Council.

Table 1: Key people involved in the Designer Outlets Centre proposal

Name	Position and Organisation
Mr Frank Mosca	Director, Mosca Pserras Architects
Mr Nabil Gazal	Managing Director, Gazcorp Pty Ltd
Ms Gabrielle Kibble	Administrator, Liverpool City Council
Mr Phil Tolhurst	Manager, City Development, Liverpool City Council
Mr Phil Jemison	Urban Renewal Coordinator, Liverpool City Council
Mr Geoff Hunt	Former Snr Development Planner, Liverpool City Council
Hon George Paciullo	Former Mayor, Liverpool City Council
Mr Col Harrington	Former Independent Councillor, Liverpool City Council
Mr Gerard Turrisi	GAT & Associates
Mr Garry McCully	General Manager, Liverpool City Council
Mr Chris Weston	Former Planning Manager, Liverpool City Council
Mr Tony Beuk	Former Councillor, Liverpool City Council
Mr Murray Douglas	Former Officer, Liverpool Council
Mr Eric Heapy	Formerly Liverpool City Council
Mr Brian Carr	Former General Manager, Liverpool City Council

Chapter 5 The role of DIPNR

The role of the Department of Infrastructure, Planning and Natural Resources (DIPNR) in the proposed rezoning of the Designer Outlets Centre has been critical to the inquiry. One of the pivotal questions examined by the Committee is whether the advice given by the Director General of DIPNR to Minister Beamer regarding the Centre's rezoning was influenced by undue political pressure. This Chapter discusses the arguments in support, and counter, to this claim. It begins with a brief description of the contents of the departmental report prepared in relation to the rezoning, known as the section 69 report. This report and its key recommendation lies at the heart of the controversy surrounding the Department's role in the Centre's fate.

The section 69 report on draft Amendment 92

- 5.1 Under s 69 of the *Environmental Planning and Assessment Act 1997*, the Director General of DIPNR must prepare a report to the Minister on any proposed Local Environmental Plan. Responsibility for approving or disallowing Local Environmental Plans rests with the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), the Hon Diane Beamer MP.²⁸⁰
- 5.2 Amongst other things, s 69 reports should comment on the compatibility of the proposed plan with relevant State and regional planning instruments. If inconsistencies with such instrument are identified, the report should demonstrate whether they can be justified. For example, while *The Right Place for Business and Services* seeks to encourage and support centres, a departure from policy may be justified if a *net community benefit* can be clearly established. That is:
- ... proposals must ensure that there will be no detrimental effect on public investment in centres and that private investment certainty in centres is maintained.²⁸¹
- 5.3 In making a decision about a Local Environmental Plan, the Minister is obliged to take the s 69 report into account, as well as any other relevant submissions. While the Minister is not obliged to adopt its recommendations, it is unusual for a Minister not to support the recommendations of such reports.²⁸²

²⁸⁰ As the Assistant Minister to the Minister for Planning, the Hon Diane Beamer is jointly responsible for administering the *Environmental Planning and Assessment Act 1979*, except for s 8, which is solely administered by the Assistant Minister. The Assistant Minister position was created following the March 2003 election when the Carr Government created a 'super' ministry comprising the portfolios of Infrastructure, Planning and Natural Resources.

²⁸¹ Department of Urban Affairs and Planning, *Integrating Land Use and Transport: The Right Place for Business and Services*, August 2001, p5, cited in Submission 27, DIPNR, Attachment 9. The policy sets out several assessment criteria to assist in assessing net community benefit and includes such things as the likely effect on trip patterns and car use and the practicality of seeking alternative locations.

²⁸² Ms Laurel Cheetham, Senior Environmental Planner, DIPNR, Evidence, 17 August 2004, p27

- 5.4 A s 69 report in relation to draft Amendment 92 (rezoning of 12 Orange Grove Road) was drafted by Senior Environmental Planner, Ms Laurel Cheetham, and Team Leader Mr David Birds, both of whom were based in the Department's Parramatta Office. The Report was endorsed by the former Regional Planning Coordinator, Sydney Region West, Mr Stephen Driscoll, on 3 June.²⁸³ The Report was forwarded to the Executive Director, Metropolitan Land Use and Planning, Mr Gary Prattley, and then to the Director General on 16 June 2004.²⁸⁴
- 5.5 The Report recommended that the Minister make the amendment proposed by Liverpool Council.²⁸⁵ However, this recommendation was not supported by the Director General, Ms Jennifer Westacott, or the Assistant Minister, the Hon Diane Beamer MP, who indicated her refusal to make the draft Amendment on 8 July 2004.²⁸⁶

Why did the Minister refuse to make the Amendment?

- 5.6 The Director General's reasons for not supporting the draft Amendment were identified in two Memoranda to Minister Beamer dated 25 June and 8 July 2004. In her first memo Ms Westacott notes that while the s69 Report supports the making the plan based on planning merit, in her view:

... the contrary conclusion, namely that the plan should not be made having regard to its planning merit would also be reasonably open to the Minister. In particular, the Minister could find the arguments in the section 69 report in support of the plan related to the following matters particularly unconvincing –

- The adequacy of public transport,
- Inconsistency with the spirit and intent of the centres policy,
- Adverse economic effect on the existing nearby retail centres,
- Inconsistency with the planning rationale behind draft SEPP 66,
- The proposal being satisfactory based on some “emerging trend” in the USA.²⁸⁷

- 5.7 Ms Westacott provided no details in support of her claim that the arguments in the s 69 report were unconvincing.
- 5.8 On 30 June 2004, there was a meeting between Ms Westacott, Minister Beamer and others in the Minister's Office. Evidence before the Committee strongly suggests that the decision not to approve the rezoning was a mere formality from that time.²⁸⁸

²⁸³ Submission 27, DIPNR, Attachment 3: *Chronology*, p12

²⁸⁴ Submission 27, DIPNR, Attachment 3: *Chronology*, p13

²⁸⁵ DIPNR, *Section 69 Report – Liverpool LEP 1997 (draft Amendment No. 92)*, p1 cited in Submission 27, DIPNR, Attachment 10

²⁸⁶ Correspondence from Hon Diane Beamer MP to Ms Jennifer Westacott, Director General, DIPNR, 8 July 2004, cited in Submission 27, DIPNR, Attachment 15

²⁸⁷ Memo from Ms Jennifer Westacott, Director General, DIPNR, to Hon Diane Beamer MP, 25 June 2004, cited in Submission 27, DIPNR, Attachment 12

- 5.9** On 8 July Ms Westacott sent another, more detailed memorandum to the Minister, in response to a request from her Chief of Staff, Mr Michael Meagher to clarify her concerns about the proposed Amendment. In this document, Ms Westacott reiterated her view that the plan would contravene the long established Centres policy, as well as the requirements of SEPP 66:

In my opinion therefore, and notwithstanding the section 69 report prepared by my delegate, there are very strong planning grounds which would support any decision by the Minister to not make the plan.²⁸⁹

- 5.10** Minister Beamer endorsed the arguments raised against the proposal in Ms Westacott's advice when she signed off the 8 July memo, attaching the following comments:

I refuse to make this plan by the reasons detailed above.²⁹⁰

- 5.11** A significant part of the Committee's Inquiry was devoted to the validity of the criticisms of the Section 69 Report that had been made by senior DIPNR officers, particularly those contained in Ms Westacott's two memoranda. While the issues raised by the Director General were relevant considerations in regard to the proposal to rezone Orange Grove, the Committee was not convinced that they made a compelling case against the material presented in the Section 69 Report. In almost every instance a competing argument to the case put by the Director-General was presented in the Section 69 Report. Those arguments are set out below.

Adequacy of public transport

- 5.12** The Section 69 Report stated that, while public transport services to Orange Grove were not optimal at the time of the Centre was approved, there was potential for this issue to be addressed by the Liverpool City Council as part of the conditions of approval after the Amendment to the Liverpool LEP had been approved. Additionally, Orange Grove is served by the Route 800 bus service and many customers arrived at the centre on shoppers bus tours. As well, locating a factory outlet in Liverpool area had the potential to eliminate numerous motor vehicle trips by local residents to factory outlets located elsewhere (eg Homebush, Birkenhead Point and Parramatta).

Inconsistency with Centres Policy

- 5.13** The Centres Policy did not exclude retail outlets outside designated centres. Retail outlets like Orange Grove could be approved if it could be demonstrated that there was a net community benefit. The Section 69 report devoted a significant amount of effort to demonstrating that the factory outlets did represent a net community benefit to the Liverpool area. Additionally, they were located only a short distance from the Liverpool CBD.

²⁸⁸ Mr Meagher, Evidence, 30 August 2004, pp4 & 57

²⁸⁹ Memo from Ms Jennifer Westacott, Director General, DIPNR, to Hon Diane Beamer MP, 8 July 2004, cited in Submission 27, DIPNR, Attachment 14

²⁹⁰ Comment from Hon Diane Beamer MP, noted on memo from Ms Jennifer Westacott, Director General, DIPNR, to Hon Diane Beamer MP, 8 July 2004, cited in Submission 27, DIPNR, Attachment 14

Adverse economic effect on CBD

- 5.14 There was no new or conclusive evidence presented by Ms Westacott's memoranda to challenge the Section 69 Report's conclusion that the Factory Outlets Centre would not have impacted adversely on the Liverpool CBD. In her submission to the Committee, Ms Westacott presented a case using job figures from the ABS, but these were not documented in her submission to the Minister and proved to be less compelling after the Committee received a response from the LCC General Manager, Mr Garry McCully.

Emerging trends

- 5.15 Ms Westacott referred to this consideration in her first memorandum but no further detail was provided in the second.

Committee view

- 5.16 Ms Westacott did not present a compelling case against the recommendations of the Section 69 Report. The Committee notes that some of the negative arguments advanced by senior DIPNR officers were detailed only in the submission prepared for the Committee's Inquiry. A recommendation to the Minister to overturn a strong recommendation contained in a statutory planning instrument such as the Section 69 Report should have been more thoroughly prepared and documented before being submitted to the Minister. This is especially so in this case because overturning this recommendation would adversely impact upon hundreds of jobs and dozens of businesses.

Why did the Director General change her advice?

- 5.17 It has been suggested that the Director General's lack of support for the rezoning of the Orange Grove Road site, and the Minister's subsequent decision to refuse the Amendment, was based on Minister Beamer's knowledge that the Premier had serious reservations about the plan. The evidence in support of this allegation is that:

- up until 20 April 2004, senior departmental officers and the Minister's Chief of Staff expected the Assistant Minister to support the rezoning. It was only after the 20 April meeting between the Premier's Chief of Staff, Mr Graeme Wedderburn and Minister Beamer that the Minister signalled her opposition to the plan (this is discussed in detail in Chapter 6)
- s69 report recommendations are rarely, if ever, rejected by a Minister. The s69 Report on the proposed rezoning was prepared by senior experienced planning staff and signed off by the one of the Department's most senior planning officers, so the decision not to support the recommendation appears to be even more unusual.

- 5.18 The remainder of the Chapter examines the evidence in relation to these allegations.

Minister expected to approve the plan up until 20 April

- 5.19 On 14 April 2004 a regular weekly meeting typically involving the Director General and Minister Beamer was held at which the Crossroads/Orange Grove amendment was on the

agenda. While Ms Westacott, Mr Prattley and Ms Beamer's Chief of Staff, Mr Meagher were in attendance, there appears to be some confusion as to whether or not the Minister was present. In their evidence to the Committee on 17 August it is clear that Ms Westacott and Mr Prattley believe that the Minister was there and the minutes indicate that agreement was reached on several important decisions.²⁹¹ However, in his evidence on 30 August, Mr Meagher said the Minister was not in attendance.²⁹² In either case, it is clear that Minister Beamer was represented at the meeting.

5.20 According to the minutes of this meeting, Minister Beamer (or Mr Meagher on her behalf) agreed to split draft Amendment 92 to remove reference to the Crossroads site and to expedite the handling of the Orange Grove matter before the Court imposed closure date of 28 April 2003.²⁹³

5.21 Two days after this meeting, Mr Prattley prepared a briefing in which he stated that the Minister would need to approve draft Amendment 92 by 21 April if it was to be gazetted in time to avoid closure of the Centre and that he presumed that this was her preferred position:

... the presumption in trying to deal with the matter before the court order's expiry date was obviously that we would try to approve it by that date. The Minister was keen that we try to resolve the matter by that date ... She was inclined to determine the matter prior to that date. It is my presumption that that implied approving it; she never stated that.²⁹⁴

5.22 The Committee tested Ms Westacott as to whether these comments indicated that Minister Beamer's preference was for an expeditious gazettal:

How could it possibly be said, Ms Westacott, that you did not know the Minister's preferred position on this matter? It appears that all the documentation suggests that the Minister had expressed a view in your presence and you knew that the Minister's preferred position was, if at all possible, to gazette an LEP.²⁹⁵

5.23 Ms Westacott responded by denying that the Minister had indicated her preferred position on the Orange Grove rezoning at the 14 April meeting:

That is not correct. I stand by my comment that she did not express to me a view either way about the merits of the case. Mr Prattley attends other meetings with the Minister and he may have formed that view from those other meetings he attended with her. We talked principally about the separation of the two sites.²⁹⁶

5.24 Mr Prattley said he may have misinterpreted the Minister's intentions regarding the rezoning and that she never directly stated what her views were regarding this matter:

²⁹¹ Ms Westacott and Mr Prattley, Evidence, 17 August 2004, pp6-7

²⁹² Mr Meagher, Evidence, 30 August 2004, p3

²⁹³ Quoted by Hon John Ryan MLC, Evidence, 17 August 2004, p6

²⁹⁴ Mr Prattley, Evidence, 17 August 2004, p7

²⁹⁵ Hon John Ryan MLC, Evidence, 17 August 2004, p7

²⁹⁶ Ms Westacott, Evidence, 17 August 2004, p7

... Yes, they were my words [in the briefing], and they were written based on my presumption of where she was heading. However, the critical issue was to try to resolve the issue within the time frame that had been established by the court so there was certainty in the matter.²⁹⁷

- 5.25** Mr Driscoll also denied knowing what more senior people including the Minister felt the section 69 report should recommend:

I have no idea of what the Minister's attitude was.²⁹⁸

- 5.26** Mr Ryan then put to Mr Driscoll that the following excerpts from an email sent from Mr Birds to Departmental officers on 20 April 2004 suggests an 'urgent expectation of a gazettal:'

As we discussed, Laurel, it will be important to keep the PC ... officer and the two Phils at Council primed to respond quickly to any requests so the s69 can be finished off by the end of Tuesday – Laurel, obviously you'll need the PC opinion, HillPDA report (and Peter Hamilton's endorsement of it) before it can go to the Minister's office – clearly Michael Meagher will be waiting for it. I suggest you keep HillPDA primed to copy the report straight to you & Peter H ... & get the PC opinion sent directly to you asap, and also to brief Michael M ... to expect a report on Weds. Legal also needs to be primed to set up immediate gazettal.²⁹⁹

- 5.27** Senior department officers were not the only ones who thought gazettal was imminent. In deciding whether to grant Gazcorp a further stay of the order to cease trading, the Appeal Court judge considering the matter, Mr Giles JA stated on 22 April:

... there is now evident a considerable will to achieve development consent as a matter of expedition. On the evidence now before me, I think that there is a real prospect... that Gazcorp will within a reasonable time obtain an appropriate development consent. I think it proper to allow time for that to occur without there being what in that event would be unwarranted hardship upon many persons beyond the commercial interests of Gazcorp and Westfield.³⁰⁰

- 5.28** While an email from Mr Driscoll to Mr Meagher on 20 April 2004 indicates there was still considerable momentum to beat the 28 April deadline for the Centre's closure, reference to a 'legal review' requested by the Premier's Department indicates the momentum was starting to wane:

We look like we might be able to get the LEP into town tomorrow (late) for Ministerial consideration, however, the limiting factor on that will be the legal review that has been requested by Premier's. We will keep you appraised as things unfold.³⁰¹

²⁹⁷ Mr Prattley, Evidence, 17 August 2004, p7

²⁹⁸ Mr Driscoll, Evidence, 20 September 2004, p2

²⁹⁹ Quoted by Hon John Ryan MLC, Evidence, 20 September 2004, p3

³⁰⁰ Gazcorp v Westfield NSWCA 130, 22 April 2004

³⁰¹ Quoted by Hon John Ryan MLC, Evidence, 20 September 2004, pp4-5

Turning point: Meeting between Minister Beamer and Wedderburn

- 5.29** On 16 April Mr Meagher received a phone call from Mr Wedderburn inquiring if he knew anything about the Orange Grove site and noting there were serious concerns about aspects of the original consent and suggesting a meeting the following week with Minister Beamer. Mr Meagher called Minister Beamer later that afternoon who told him she had already received a call from Mr Wedderburn about this matter.³⁰²
- 5.30** It is alleged that the momentum towards the gazettal of draft Amendment 92 gathering in the first half of April 2003 came to a standstill after the 20 April meeting between the Premier's Chief of Staff, Mr Wedderburn, Minister Beamer, Mr Meagher and the Deputy Chief of Staff to Minister Knowles, Mr Emilio Ferrer.³⁰³ Details about this meeting and the activity it generated is presented in Chapter 6.
- 5.31** In the afternoon of the same day, Mr Meagher and Minister Beamer attended the regular weekly meeting with the Department. At this meeting, the Assistant Minister indicated she was concerned that a considered decision be made on the LEP and said she would need further legal advice on the implications of making a decision either way.³⁰⁴
- 5.32** Mr Driscoll confirmed that a request for legal advice had been made but that its source was the Premier's Department:
- ... my impression at that time from talking with Mr Prattley was that a request had come from the Premier's Department for the draft LEP and section 69 report to receive legal review, and my impression from my discussion with Mr Prattley was that that had arisen from a meeting that occurred the previous week for which the briefing materials had been requested.³⁰⁵
- 5.33** The Committee members considered the possibility that the timing of this request was to slow up the matter so as to not meet the original deadline, and that this request by Minister Beamer was influenced by her meeting with the Premier's Chief of Staff.³⁰⁶ This is further examined in the next chapter.
- 5.34** On 22 June Corporate Counsel prepared a briefing note advising that there was no legal impediment to the Minister determining that draft Amendment 92 should be made or not be made.³⁰⁷ The Department provided a copy of this advice to the Committee but has requested it remain confidential on the basis of legal professional privilege.³⁰⁸

³⁰² Mr Meagher, Evidence, 30 August 2004, p3

³⁰³ Mr Meagher, Evidence, 30 August 2004, p3

³⁰⁴ Mr Meagher, Evidence, 30 August 2004, p3

³⁰⁵ Mr Driscoll, Evidence, 20 September 2004, p13

³⁰⁶ Hon John Ryan MLC, Evidence, 30 August 2004, p56

³⁰⁷ Submission 27, DIPNR, Attachment 3: *Chronology*, p13

³⁰⁸ Submission 27, DIPNR, Attachment 11 – Confidential: Briefing Note from Mr Michael Astill, Corporate Counsel, DIPNR, to Minister Beamer and Director General Westacott, 22 June 2004

- 5.35 The possibility of gazettal of the draft Amendment was finally quashed when Minister Beamer indicated her refusal to make the plan on 8 July 2004.

Draft media release announcing approval

- 5.36 It was also suggested that a draft media release announcing the Minister's approval of the draft Amendment prepared by the Department is further evidence that the Department expected the Minister to approve the draft LEP.
- 5.37 Media Liaison Officer, Ms Isabelle Bennett, told the Committee that it is standard procedure for a draft media release to be prepared and attached to any file going to the Minister on issues such as Local Environmental Plans and the planner dealing with the matter provides the information in the media release. According to Ms Bennett the preparation of this particular media release was an everyday request, and did not reflect any expectation that the Minister would approve draft Amendment 92.³⁰⁹
- 5.38 It appears that prior to the 20 April meeting between Minister Beamer, Mr Meagher and Mr Wedderburn, Mr Prattley and other senior Departmental officers expected the Minister to approve draft Amendment 92. The minutes of the 14 April meeting and several emails drafted by Mr Prattley and Mr Driscoll following this meeting clearly indicate their understanding that the plan would be approved.
- 5.39 Ms Westacott told the Committee that the Minister did not express a view to her about the merits of approving the rezoning proposal. Unlike several senior officers, including Mr Prattley, Ms Westacott's evidence was that she did not share the view of other senior officers, such as Mr Prattley, that the Minister intended to approve the rezoning. It is clear that after the meeting on 20 April, the chances of an approval meeting the original deadline was remote.
- 5.40 The preparation of a draft media release to accompany a s 69 report appears to be a routine practice, as the recommendations of s69 reports are almost invariably followed. It may be that this practise should be reviewed, as it presumes a decision which has to be made by the Minister rather than the Department. On its own, the media release does not necessarily indicate the Minister's preferred position on draft Amendment 92.
- 5.41 The Committee notes that Minister Beamer refused to appear before the Committee. Accordingly, the Committee was not in a position to question her about her thinking in relation to the draft plan and in particular, whether knowledge of the Premier's concerns about the rezoning proposal may have influenced her decision on this matter.
- 5.42 Ms Beamer was questioned about the Orange Grove issue during the 2004-2005 Estimates hearing conducted by General Purpose Standing Committee No 3 (16 September 2004). The Minister refused to answer detailed questions relating to the Orange Grove controversy, preferring to table 'all the transcripts of the inquiries, media reporting, answers to parliamentary questions and any other relevant documents relating to the Orange Grove Designer Outlets at Liverpool.' The Minister responded to specific questions over and again by saying: 'I believe the answer is contained in the material I have tabled' and similar words.

³⁰⁹ Ms Bennet, Evidence, 18 August 2004, pp85-88

- 5.43 The same, or similar, material already on the public record, was tabled by the Premier and Minister Knowles at the Estimates hearings of General Purpose Standing Committee No 1 (13 September 2004) and General Purpose Standing Committee No 4 (14 September 2004), respectively, with obfuscation by those two Ministers similar to that demonstrated by Minister Beamer.

Section 69 reports generally endorsed by the Minister

- 5.44 The recommendations of s 69 reports are rarely rejected by the Minister responsible. The fact that the recommendation made in the s 69 Report on Orange Grove was rejected is seen as evidence of undue political influence in a planning decision. The Report was drafted by senior and respected Departmental officers and signed off by the Department's most senior officer with planning qualifications, making the Director General's memorandums contradicting the report the more unusual.³¹⁰
- 5.45 The Committee asked Ms Westacott whether she had ever rejected the recommendation of a s 69 report. Ms Westacott said she had previously questioned the advice of DIPNR officials, citing the example of the Pittwater Local Environmental Plan, but agreed to take a question on notice regarding the number of times recently that the recommendations of s 69 reports have been refused by the Minister.
- 5.46 Ms Westacott's written response was: "The Department does not keep records of the nature requested."³¹¹ The Committee acknowledges the Department has generally adopted a constructive approach to the inquiry in the provision of documents and facilitating the appearance of witnesses. However in this instance the response from the Director General is extraordinary. It is very surprising that the Department's record keeping is such that it is not able to provide this type of information. The provision of this information would have greatly assisted the inquiry process.
- 5.47 Mr Meagher informed the Committee that Minister Beamer had refused to make one major plan, which Mr Meagher did not identify, going against the recommendation of a s 69 report, and had refused to sign-off several other plans.³¹²
- 5.48 In contrast, Ms Cheetham stated that in her 20 years of experience preparing s 69 reports, this was the first time that a recommendation of a s 69 report that she prepared has been rejected by a Minister.³¹³
- 5.49 It was suggested that the fact that the Director General sought legal advice regarding the way to word the memo she had attached to the report is an indication of just how unusual it is to not follow advice in a s 69 report:

³¹⁰ Ms Westacott and Mr Prattley, Evidence, 13 August 2004, pp76-77

³¹¹ Correspondence from Ms Westacott, Director General, DIPNR, to Chair, 20 September 2004. See also correspondence from Ms Alice Spizzo, Executive Director, Office of the Director General, DIPNR, to Chair, 31 August 2004

³¹² Correspondence from Mr Michael Meagher, Chief of Staff to Minister Beamer, to Chair, 7 September 2004

³¹³ Ms Cheetham, Evidence, 17 August 2004, p27

The Hon. JOHN RYAN: Why did you seek legal advice in order to ensure that you got the wording on your memorandum correct with regard to the use of the word “recommend”? That seems to me to be the sort of thing that you would do only if what you were doing something that was pretty unusual?

Ms WESTACOTT: I do not believe that is correct. I think it is absolutely appropriate for me to have sought the advice of corporate counsel in providing advice to the Minister and in raising with her my concerns.

The Hon. JOHN RYAN: Your first draft of this memorandum included the words that you “recommended against the LEP being made”. You were given legal advice that that was not a proper use of those words.

Ms WESTACOTT: That is correct.

The Hon. JOHN RYAN: That appears to me to indicate that this happens so rarely that you made a fundamental error of that nature. You needed to get legal advice. For the Minister to refuse a section 69 report she, too, needed legal advice on the correct words to use to reject it.

Ms WESTACOTT: Corporate counsel just advised me that these are matters that are in privileged documents. These are the matters on which we have claimed privilege.³¹⁴

Report drafted and signed off by senior officers

- 5.50** Some witnesses have suggested that the decision by the Director General and Minister not to support the recommendation of the s69 Report was all the more surprising, given it was prepared by senior and respected planning staff. As Mr Prattley told the Committee:

I have great respect for the planners involved in this matter.³¹⁵

- 5.51** Mr Driscoll who was Mr Birds’ and Ms Cheetham’s supervisor at the time also expressed confidence in his officers’ abilities:

I had confidence in their ability to prepare the section 69 report ...³¹⁶

- 5.52** Former Liverpool Mayor, the Hon George Paciullo told the Committee:

... there were three senior planners – some of the most senior planners at the State level – in support of the rezoning, what other decision could you possibly properly take?³¹⁷

- 5.53** The Hon George Paciullo also noted that the rezoning was also supported by Ms Gabrielle Kibble, a highly respected former head of the Department of Planning:

³¹⁴ Ms Westacott, Evidence, 17 August 2004, p27

³¹⁵ Mr Prattley, Evidence, 17 August 2004, p22

³¹⁶ Mr Driscoll, Evidence, 20 September 2004, p21

³¹⁷ Hon George Paciullo, Evidence 30 August 2004, p68

... it really is ironic, is it not – that the person who decided that it [Orange Grove Road] should be rezoned ... was none other than one of the most qualified planners in the State, a former chief of planning and now the administrator of Liverpool City Council?³¹⁸

Are criticisms of the s 69 report justified?

- 5.54** The Committee heard substantial criticism of the s 69 Report from Ms Westacott and the Deputy Director General, Dr Sam Haddad, as well as from Mr Prattley and Mr Driscoll, both of whom had previously endorsed the report. Ms Westacott argued that the Report presented only equivocal arguments for approving the LEP:

... the s69 report did not present a compelling case for the Government to retrospectively rezone a site that two courts had decided did not comply with planning instruments.³¹⁹

- 5.55** Dr Haddad, who was asked to examine the Report subsequent to the Minister's decision, also considered the report to be inadequate. Dr Haddad described the policy advice contained in the report as 'questionable':³²⁰

I could not find in that report a credible and a rigorous analysis that would lead to the recommendations being made in the circumstances of that case ... I would have expected a much more rigorous analysis by officers of the department in advising the Minister.³²¹

- 5.56** Asked why he had signed off a report he would no longer be prepared to endorse, Mr Prattley told the Committee:

I endorsed the work of my delegate because I thought it was the conclusion they could have reasonably reached. That does not necessarily mean I agree with the conclusion...³²²

- 5.57** Both Mr Prattley and Mr Driscoll felt their officers should be allowed to exercise their delegated powers without undue influence. As Mr Prattley explains:

If it is delegated to one of my team leaders to prepare this report, then it is delegated to that person. I consider that I am being professionally irresponsible if I try to influence the outcome of that. I think it shows proper probity that I did not try to influence in any way the outcome of the officers' report.³²³

- 5.58** Mr Driscoll said he did not read the report but if he had he may have suggested a few changes:

³¹⁸ Hon George Paciullo Evidence, 30 August 2004, p70

³¹⁹ Ms Westacott, Evidence, 17 August 2004, p25

³²⁰ Dr Haddad, Evidence, 17 August 2004, p19

³²¹ Dr Haddad, Evidence, 17 August 2004, p18

³²² Mr Prattley, Evidence, 13 August 2004, p84-85

³²³ Mr Prattley, Evidence, 17 August 2004, p22

Had I read the section 69 report I may have suggested that they might include further information before it was finalised and sent further for consideration. But I guess that comes back to the matter of being within their delegations. Being delegated, I left it delegated to them and didn't involve myself in the preparation or reading or whatever of the report.³²⁴

5.59 The Committee finds it surprising that a senior officer would not read a report which was being submitted to his Director General. Any criticisms of the lack of rigour of the report should be directed to the senior officers who signed off the report without intervention rather than the officers with the delegated task of preparing a draft report.

5.60 Committee members questioned whether Ms Westacott and Dr Haddad had planning qualifications. Neither have formal qualifications in Town Planning however both advised that they were competent to make decisions about significant planning issues in this State. As Dr Haddad told the Committee:

If I may say, the issue of having planning qualifications is very irrelevant in my view. My involvement in this and other matters, including very high level public policy advice, is not because I have planning qualifications or not.³²⁵

5.61 Ms Westacott pointed out that planning qualifications did not mean the right decision would be made:

... it is professional planners that made a decision in Liverpool council to grant consent for something that did not meet the planning laws. That is professional planners who made that decision, subsequently overturned—.³²⁶

5.62 When the draft s69 report was being prepared it appears that it was viewed as a part of a routine process which would be followed by Ministerial approval. If Mr Driscoll or Mr Prattley had any concerns about the s 69 Report, one would expect them to discuss these with the report authors prior to it being sent to the Director General, especially given the high profile nature of the Orange Grove proposal as described by Mr Prattley:

It was very clear from when we first understood the issues involved in this amendment that ... it was going to end up in court, it was going to end up before ICAC. It was clearly a no-win situation. There was no easy way out of this problem. So the issues were difficult, clearly, as the media hype and everything else surrounding this has shown. Make a decision one way there is a lot of fuss; make a decision the other way it will end up in the courts for years as well.³²⁷

5.63 It is likely Mr Prattley formed this view retrospectively, in light of subsequent events. If he had held it at the time he received the draft s 69 report it is likely he would have submitted it to much more rigorous scrutiny than he indicated in his evidence. Given Mr Prattley's astute observation about the controversy surrounding Orange Grove, it is also difficult to see how

³²⁴ Mr Driscoll, Evidence, 20 September 2004, p21

³²⁵ Dr Haddad, Evidence, 17 August 2004, p43

³²⁶ Ms Westacott, Evidence, 17 August 2004, p44

³²⁷ Mr Prattley, Evidence, 17 August 2004, p21

Ms Westacott could not have formed a view about her Minister's preferred position regarding the draft Amendment, prior to receiving the s 69 report on 16 June.

- 5.64** The Committee accepts that the Minister had the power not to rezone the Orange Grove site and that the two memoranda indicate on face value, she was acting on advice from her Director General. What is unusual is that the Director General's advice was contrary to the advice in the s 69 Report prepared by planning experts in her own Department.
- 5.65** The Committee believes the draft s69 report was adequate for the circumstances under which it was originally prepared. One explanation for the subsequent criticisms is that there was Ministerial intervention in the process through direction to the Director General, but the Committee has no evidence to support this explanation. In the absence of this intervention, any criticism of the report should be directed to the processes of scrutiny by senior management in the Department, which appear to have failed to detect the flaws which the senior managers themselves criticised in evidence. The Committee believes it is extremely unfortunate that the reputation of the highly experienced and respected Departmental planners that prepared the s69 report may have been damaged by the subsequent fallout from Orange Grove.

Conclusion

- 5.66** The decision about the future of the Designer Outlets Centre was a planning decision with significant political ramifications. This was never going to be a straightforward, technical decision based on planning law. The Centre had already been built, it had been opened by the Minister for Planning and provided jobs approximately 400 people in an area of high unemployment. As Mr Prattley concludes, most planning decisions are really political decisions:

... there are very few things in planning that are straight black and white answers – maybe does a building comply with a setback or is it within a certain height. Mostly it is an issue about where you place the values between competing interests, which is why in most jurisdictions the significant planning decisions are made by Ministers because, by their very nature, they are political decisions, not necessarily technical decisions ...³²⁸

- 5.67** The next chapter examines the political aspects of this controversial decision.

³²⁸ Mr Prattley, Evidence, 13 August 2004, p85

Finding 6

There is strong evidence that prior to 20 April 2004 DIPNR officers, other than the Director General Ms Jennifer Westacott, believed that the rezoning application would be approved by the Minister. The s69 report was prepared on this basis.

There is no evidence before the Committee that a Planning Minister has previously made a decision on a rezoning application contrary to the recommendations of a s69 report.

There is strong evidence that Minister Beamer and her Chief of Staff, Mr Michael Meagher, were anticipating the s 69 report being in the Minister's office by mid-April for approval and gazettal on 23 April, and that the Minister and Mr Meagher were aware of the contents of the s 69 report and its recommendation for approval of the draft LEP which was, in Mr Meagher's words, 'the Minister's preferred position.'

Chapter 6 The role of Government Ministers and Members

This Chapter discusses aspects of terms of reference (b) and (c) of the inquiry, relating to the role of Government Ministers, the Premier's Office and other members of Parliament in the initial development and the unsuccessful rezoning of the development. The key questions asked in this chapter are:

- Did the Chairman of Westfield meet with the Premier regarding the proposed rezoning of Liverpool LEP draft amendment No. 92?
- Did Westfield improperly exercise influence on the Premier or his office not to support the proposed rezoning?
- Did the Premier or his office improperly exercise influence on Assistant Planning Minister Beamer to reject the rezoning application?
- Did Planning Minister Knowles attempt to improperly exercise any influence on the decision making process prior to the decision on the rezoning?
- Did representatives of Gazcorp attempt to improperly influence Minister Knowles or the Member for Fairfield Mr Tripodi in regard to the decision making process?
- Did the Member for Fairfield Mr Tripodi attempt to exercise any influence on the decision making process regarding the rezoning?

The Premier, Minister Knowles, Assistant Minister Beamer and the Member for Fairfield declined to appear before the Committee in this inquiry.³²⁹ The Committee had no power to compel the participation of these members in the inquiry as they are all members of another House. The Committee was very keen to hear from these individuals and was disappointed not to benefit from the information they could have provided.

Key Meetings

- 6.1** The chronology of meetings involving Ministers and ministerial staffers has been clarified in the course of this inquiry. While what was discussed at each meeting has at times been the subject of differing accounts, as a result of the inquiry there is now agreement on the facts below.
- 6.2** On 13 April 2004 Liverpool Council's administrator, Ms Gabrielle Kibble, separated the Crossroads rezoning proposal for the LEP from the Orange Grove proposal, submitting the Orange Grove rezoning to DIPNR.

³²⁹ The Committee acknowledges that Minister Knowles appeared before this Committee as part of the Estimates process and that Minister Beamer and the Premier appeared before other Committees during Estimates. However, at those Estimates hearings, neither the Premier, nor his two Planning Ministers answered questions relating to the Orange Grove controversy other than to table and refer to documents that were already on the public record, including Hansard reports.

- 6.3** On 15 April 2004 the Director of Corporate Affairs for Westfield, Mr Mark Ryan, called the Chief of Staff to the Premier, Mr Graeme Wedderburn, suggesting a meeting to discuss aspects of the proposed rezoning of Orange Grove. Mr Wedderburn suggested the meeting be between himself and Mr Ryan, to which Mr Ryan agreed.³³⁰
- 6.4** On 19 April Mr Wedderburn met with Mr Ryan and the Assets General Manager, Westfield, Mr Craig Marshall, in Mr Wedderburn's office. Mr Wedderburn briefed the Premier on the meeting later that day.³³¹ The following day Mr Wedderburn spoke with the Minister for Juvenile Justice, Minister for Western Sydney, and Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), the Hon Diane Beamer MP, her Chief of Staff Mr Michael Meagher and the Deputy Chief of Staff for the Hon Craig Knowles MP, Minister for Infrastructure and Planning, and Minister for Natural Resources, Mr Emilio Ferrer, regarding the meeting with Westfield.
- 6.5** On 22 and 27 April Mr Meagher met with representatives of the Liverpool Crossroads development and AMP.³³²
- 6.6** On 22 May the Member for Fairfield Mr Joe Tripodi met with Mr Sam Bargshoon and Mr Nabil Gazal at Gloria Jean's Coffee Shop at the Designer Outlets Centre and allegedly informed Mr Gazal that Minister Beamer was not going to approve the rezoning.³³³ Mr Tripodi has not accepted the Committee's invitations to provide evidence but has been reported in the media as saying the participants had a wrong recollection of events.³³⁴
- 6.7** On 24 June Mr Gazal, Mr Mosca and Mr Bargshoon visited the home of the parents of Planning Minister Craig Knowles at 11:30pm in order to see the Minister, but were not able to see him. On the following morning at 6am Mr Mosca and Mr Gazal returned, together with Mr Gazal's son Mr Nicholas Gazal, but Minister Knowles asked them to leave.³³⁵ Mr Mosca subsequently met with Minister Knowles' father Stan a few days later for a brief meeting.³³⁶ Despite frequent attempts to arrange a meeting by Mr Mosca on behalf of Mr Gazal, no meeting occurred between Minister Beamer and Gazcorp representatives.
- 6.8** On 30 June Minister Beamer and her Chief of Staff Mr Michael Meagher met with the Director General of DIPNR, Ms Westacott, and senior planner Mr Garry Prattley to discuss the Director General's memorandum on the s 69 report.³³⁷

³³⁰ Mr Wedderburn, Evidence, 18 August 2004 pp15 & 18; Mr Ryan, Evidence, 25 August 2004, p9. Mr Ryan did not agree with Mr Wedderburn's recollection that he had initially raised the prospect of a meeting between Mr Lowy and the Premier.

³³¹ Mr Wedderburn, Evidence, 18 August 2004, p15

³³² Evidence, 30 August 2004, p46

³³³ Mr Gazal, Evidence, 13 August 2004, pp4-5

³³⁴ Nicholls S and Noonan G, 'Liverpool Centre was ready for Green Light,' *Sydney Morning Herald*, 17 August 2004, p5

³³⁵ Submission 10, Gazcorp, p10

³³⁶ Mr Mosca, Evidence, 13 August 2004, p30

³³⁷ Mr Meagher, Evidence, 30 August 2004, p4

- 6.9 On 8 July the rezoning was rejected by Assistant Planning Minister Beamer.
- 6.10 Chapter One contains a more detailed chronology, including the litigation which was occurring during this period.

Westfield and the Premier

The Gloria Jean's Coffee Shop conversation

- 6.11 The Inquiry began partly as a result of allegations from the developer of the Designer Outlet Centre, Mr Nabil Gazal, that the Premier had influenced the Assistant Planning Minister, Hon Diane Beamer MP, to reject the rezoning application. This was based upon Mr Gazal's account of a conversation between himself and the Member for Fairfield, Mr Joe Tripodi on 22 May at Gloria Jean's Coffee Shop at the Designer Outlets Centre:

Joe then said "I met" or it could have been "I saw" or "I spoke to Diane Beamer. Diane Beamer told me that Bob Carr had spoken to her" or "had called her" and told her to "screw rezoning". I said, "Why would he do that?" Joe replied "She said" or "Diane Beamer said, He's doing a favour for his friend Frank Lowy". I said: "Are you sure that's what she told you?" Joe replied "Yes". Joe then went on to say, "But don't worry she will do the right thing. It's a no brainer; 450 jobs and \$40 million in damages". Joe kept on insisting, "Don't worry she will do the right thing if the report is ok. It's a no brainer". There was other conversation with Mr Tripodi the terms of which I cannot completely recall as I was stunned by the advice. Joe looked very uncomfortable when he was telling me this information and he left soon after.³³⁸

- 6.12 Mr Bargshoon gave evidence that he had a prior conversation with Mr Tripodi in which the same concerns were raised.

So, going down he said, "I am going to tell you something, but, please, I don't want Nabil to know, because at the end of the day he knows that she is going to do the right thing." I said, "Yes, what was that?" He said that Diane told him that she received a phone call from Bob Carr and he told her not to sign it. I said to him, "What do you mean, that Bob Carr actually rang her and told her not to sign? What's Bob Carr got to do with all this?" He said to me, "Bob is a good friend of Lowy". I had never heard that name before, I did not know who Lowy was. I said, "Who is Lowy?" and he replied "Frank Lowy." I asked, "Who is Frank Lowy?" He said, "He is the owner of all these Westfields, and he is a very wealthy man and a good friend Bob Carr and they do favours for each other."³³⁹

- 6.13 The Committee recognises that the evidence of Mr Bargshoon and Mr Gazal in relation to any statements by Minister Beamer to Mr Tripodi, or statements the Premier is alleged to have made to Minister Beamer, are hearsay. In the absence of evidence from the Premier, Mr Tripodi or Minister Beamer this Committee has to rely on other direct evidence as to the

³³⁸ Submission 10, Gazcorp, p8

³³⁹ Mr Bargshoon, Evidence, 13 August 2004, p15

influence Westfield had on the decision of Minister Beamer not to rezone the Designer Outlets Centre.

The meetings between the Premier and Frank Lowy

6.14 The Chairman of Westfield, Mr Frank Lowy, and the Premier held two private meetings in 2004, on March 12 and 1 July. This has been confirmed by both Mr Lowy at the hearing on 29 November 2004 and the Premier's Chief of Staff Mr Wedderburn at the hearing on 18 August 2004.

6.15 The first meeting occurred prior to the rezoning application being put by Ms Kibble from Liverpool Council. The second occurred prior to Minister Beamer's decision not to support the rezoning. The key issue with these meetings is whether the Designer Outlets Centre rezoning was discussed. Mr Lowy stated:

The fact is that I had no communication with the Premier on the subject – not on the telephone, not by email and not otherwise. I have had two meetings with the Premier this year: the first on 12 March 2004 and the other on 1 July 2004. Neither meeting concerned Westfield's business: each was about the Middle East situation and soccer matters. At neither of the meetings was Orange Grove Road or planning laws mentioned.³⁴⁰

6.16 He described the meeting on 12 March as being 45 minutes in duration, with the Middle East and Soccer Australia being the only two topics discussed:

I wanted to make a point to him about some aspect of the Middle East, particularly in Israel in light of the visit and the controversy about Ashwari's visit to Australia. I had a paper which I wanted him to study and read because there are very important points made in that and I just wanted him to be made aware of that.³⁴¹

6.17 From Mr Lowy's evidence it appears he initiated the meeting.³⁴² He was questioned as to whether there was an objective to the meeting:

The Hon. JOHN RYAN: What did you expect to achieve by meeting the Premier for 45 minutes? What did you want to get? Usually when you meet busy people like the Premier, like you would meet busy people like yourself, you would have a specific objective in mind as to what decision you wanted him to make, what action you wanted him to do. Was there something that you wanted him to fund? What did you want him to do?

Mr FRANK LOWY: Mr Ryan, you are incorrect. I meet a lot of people and I talk to them without having a specific objective to come to a conclusion there and then.³⁴³

6.18 As discussed, the Director of Corporate Affairs for Westfield, Mr Mark Ryan, met with the Premier's Chief of Staff a month after the March 12 meeting to discuss the Designer Outlets

³⁴⁰ Mr Lowy, Evidence, 29 November 2004, p2

³⁴¹ Mr Lowy, Evidence, 29 November 2004, p9

³⁴² Mr Lowy, Evidence, 29 November 2004, p9

³⁴³ Evidence, 29 November 2004, p9

Centre approval, following a call by Mr Ryan requesting a discussion on the Orange Grove matter. Mr Lowy denied that his meeting with the Premier touched on similar matters:

The Hon. JOHN RYAN: When you saw the Premier were you aware of the concerns that you said Mr Ryan had – and I am speaking of Mr Mark Ryan – about, to use the Premier’s expression and yours, “the shenanigans at Liverpool council” and the potential impact that this might have on the approval at Orange Grove? Were you aware of that when you saw the Premier?

Mr FRANK LOWY: Yeah, I probably would have been aware.

The Hon. JOHN RYAN: And you did not feel the need to talk to him about it?

Mr FRANK LOWY: Absolutely definitely not.

The Hon. JOHN RYAN: Why not?

Mr FRANK LOWY: Because I didn’t want to. It wasn’t my job to do it.³⁴⁴

- 6.19** The Committee has received no evidence from the Premier as to what was discussed, but he has made repeated denials in other forums that he discussed the Orange Grove matter with Mr Lowy.³⁴⁵
- 6.20** There are three items of evidence contrary to the statements by the Premier and Mr Lowy:
- the Gloria Jean’s Coffee Shop conversation between Mr Tripodi, Mr Gazal and Mr Bargshoon
 - a disputed account by Mr Nabil Gazal Jnr of a conversation between Ms Katherine Keating and Mr Lowy, and
 - an email sent by a DIPNR officer, Mr Stephen Driscoll, referring to a meeting between the Premier and Mr Lowy (dated 16 April 2004).
- 6.21** As discussed in this chapter, the Gloria Jean’s Coffee Shop conversation is hearsay, and also disputed by Mr Tripodi, the alleged source of the information.
- 6.22** Mr Driscoll, the former Regional Planning Co-ordinator for Western Sydney for DIPNR, appeared before the Committee on four occasions. Although cross-examined in considerable detail he consistently maintained that the reference in the email was made in error, based upon an impression given by a relayed conversation with Minister Beamer’s office. (This is discussed in detail in the next section of this Chapter). In any case, the email is referring to preparation for the April meeting involving Westfield’s Mark Ryan, not the meeting on 12 March.
- 6.23** Regarding the conversation between Ms Katherine Keating, Policy Officer, Office of the Minister for Planning, and Mr Lowy, the Committee was first informed of this by Gazcorp

³⁴⁴ Evidence, 29 November 2004, p12

³⁴⁵ Perinotto T, ‘Premier denies talks with Lowy on centre dispute,’ *Australian Financial Review*, 16 July 2004, p16; Saleh L, ‘Council “hasn’t a clue”,’ *Daily Telegraph*, 16 July 2004, p7; John Stanley, Radio 2UE, 15 July 2004

Managing Director Mr Nabil Gazal then by Mr Nabil Gazal Jnr, at a hearing on 11 October, the second time he appeared before the committee. Mr Nabil Gazal Jnr informed the Committee that in a telephone conversation with Ms Keating, whom he knew socially, she said that she had met Mr Lowy in the lifts at Governor Phillip Tower:

She asked him what – he was in the lobby she said looking at, I think it was, the directory board or something. And she went up to him and he didn't realise who she was and then she told him and then they started having a general conversation. She asked what he was doing there and he said he was going to see the Premier about his centres policy.³⁴⁶

6.24 When questioned Mr Gazal Jnr put the period of the conversation as after the Supreme Court case in March but prior to his departure overseas on 20 April 2004.³⁴⁷ On checking his phone records he advised the Committee that the telephone conversation was on 12 March.³⁴⁸

6.25 Both Mr Lowy and Ms Keating said in evidence that they met briefly on 12 March but both denied that Mr Lowy mentioned the Centres Policy. Mr Lowy said:

I spent with her maybe 30 to 45 seconds. I have not met the young lady before. Being in my position, I know to say what and to whom most of the time. So I would have consulted her about the centres policy or what I have seen the Premier or what the role is about is a totally ridiculous suggestion.³⁴⁹

6.26 Ms Keating similarly denied there was any discussion of centres policy in the brief conversation:

Mr Lowy did not volunteer to me what he was doing in the building, nor whom he was seeing or the subject matter of his business. I did not ask Mr Lowy what he was doing in the building. It would have been presumptuous of me to have done so, and I would not do that. There was absolutely no mention of the Orange Grove Centre or anything in relation to it. Nor was there any mention of the Government's so-called Centres Policy or planning policy during the brief discussion that I had with Mr Lowy.³⁵⁰

6.27 Based upon the evidence received, the Committee cannot conclude that the Premier and Mr Lowy met regarding the future of the Designer Outlets Centre.

³⁴⁶ Mr Gazal Jnr, Evidence, 11 October 2004, p70

³⁴⁷ Mr Gazal Jnr, Evidence, 11 October 2004, pp69-70

³⁴⁸ Correspondence from Mr Nabil Gazal Jnr, to Director, 18 October 2004

³⁴⁹ Mr Lowy, Evidence, 29 November 2004, p8

³⁵⁰ Ms Keating, Evidence, 29 November 2004, p59

Finding 7

Two meetings occurred between the Chair of Westfield and the Premier on 12 March and 1 July 2004. Both have stated publicly that they did not discuss the future of the Designer Outlets Centre at either meeting.

However, the Committee is unable to conclude its analysis of this aspect of its Inquiry because the Premier did not make himself available to answer the Committee's questions.

The Westfield/Wedderburn meeting

6.28 Prior to the start of the inquiry the Premier had denied that he had met with Mr Lowy or discussed the Orange Grove matter with him, but rumours persisted that a meeting had occurred.³⁵¹ The question was put to Chief Operating Officer for Westfield, Mr Robert Jordan, at the Committee's hearing on Monday 16 August 2004:

The Hon. JOHN RYAN: Did any representative of Westfield meet with the Premier?

Mr JORDAN: No, they did not.

The Hon. JOHN RYAN: Did you make written submissions to the Premier?

Mr JORDAN: No, we did not.

The Hon. JOHN RYAN: Did you prepare to have a meeting with the Premier and not go ahead with it?

Mr JORDAN: No, we did not.

The Hon. JOHN RYAN: Did you meet with the Premier about any issue of government from, say, the time you launched your challenge until March 2004?

Mr JORDAN: No.³⁵²

6.29 Later in the hearing Mr Jordan gave a similar answer to Mr Oldfield:

The Hon. DAVID OLDFIELD: So no-one from Westfield has at any stage met with the Premier on this matter and no-one from Westfield has met with the Premier recently on any matter?

Mr JORDAN: Not that I am aware of.

The Hon. DAVID OLDFIELD: Does Mr Lowy meet with the Premier independently of you or what might be seen as independently of Westfield?

³⁵¹ Perinotto T, 'Premier denies talks with Lowy on centre dispute,' *Australian Financial Review*, 16 July 2004, p16; Saleh L, 'Council "hasn't a clue",' *Daily Telegraph*, 16 July 2004, p7; John Stanley, Radio 2UE, 15 July 2004

³⁵² Mr Jordan, Evidence, 16 August 2004, p40

Mr JORDAN: He could possibly do.

The Hon. DAVID OLDFIELD: Are you aware of any such meetings?

Mr JORDAN: I am not.

The Hon. DAVID OLDFIELD: Recently?

Mr JORDAN: No, I am not.

The Hon. DAVID OLDFIELD: Are you aware of any such meetings that may have included discussions about this topic in the last three or four months?

Mr JORDAN: I have made inquiries of Mr Lowy and Mr Lowy has affirmed that he has not discussed the matter with the Premier.³⁵³

6.30 The Committee acknowledges that none of the questions put to Mr Jordan referred to Westfield representatives meeting with a representative of the Premier, rather than the Premier himself. Neither did the Premier, in his denials of meetings with Mr Lowy, make any reference to meetings between his personal staff and Westfield representatives, and again the Committee acknowledges there is no report of this question being put to the Premier by the media. Despite this, the Committee expresses disappointment that neither Westfield nor the Premier saw the need to disclose this prior to Tuesday 17 August, during the Committee's examination of representatives of the Department of Infrastructure, Planning and Natural Resources.

6.31 The first order for papers made by this Committee to DIPNR provided evidence that a meeting was arranged between Westfield representatives and a representative of the Premier's office. Because of the initial refusal of the Department to provide the papers requested (see Chapter One) the Committee was not able to examine Departmental representatives on whether a meeting occurred at the Committee's first hearing on 13 August. Following the recall of the witnesses on Tuesday 17 August the following documents had been identified from the return of papers:³⁵⁴

- email from Mr Stephen Driscoll to Team Leader Mr David Birds and Senior Environmental Planner Ms Laurel Cheetham dated 20 April 2004, stating:

Laurel,

further to David's email, we need to somehow get the instrument (probably the whole package in fact – instrument plus s.69 report, and maybe even Liverpool Council's own legal advices) past Legal Branch for an opinion as to legality of instrument/likelihood of success of legal challenge. Apparently the Premier's Department has asked for this to occur, arising from a meeting held last week between Bob Carr and Frank Lowy (owner of Westfields).

³⁵³ Evidence, 16 August 2004, p48

³⁵⁴ These documents are quoted in Evidence, 17 August 2004, p8

- a note from Mr Driscoll to Mr Michael Meagher (Minister Beamer's chief of staff) dated 20 April:

As requested, attached is the briefing that was prepared last Friday for the Premier's Meeting with Westfield.

We look like we might be able to get the LEP into town tomorrow (late) for Ministerial consideration, however, the limiting factor on that will be the legal review that has been requested by Premier's. Will keep you appraised as things unfold.

- a note from Ms Cheetham to Mr Brochoff dated 20 April:

... also the Premier's office has asked us to provide some legal advice on the potential for legal challenge, should the Minister make the plan, and this is to be provided with the draft plan to the Minister. I have asked Marcus Ray to organise for a legal officer to be available some time after 12 tomorrow and was hoping you would attend to provide advice on the Westfields [sic] legal challenge potential in relation to SEPP66.

- 6.32** Under questioning Executive Director, Metropolitan Land Use and Planning, Mr Garry Prattley, explained that this email followed a request for briefing notes from the Deputy Director General of the Premier's Department, Mr Alex Smith on 16 April for a meeting regarding the Orange Grove development. Mr Prattley stated his original impression was that this was a meeting with the Premier, hence the statements made by other staff:

It is certainly true that I would have conveyed to the team the understanding that the Premier was having a meeting with Westfield. That was what I thought was happening. As I indicated earlier, I subsequently realised it was not the Premier who was meeting.³⁵⁵

- 6.33** Mr Driscoll explained in evidence that the reference to Mr Lowy was an assumption made by him when it was known that 'Westfield' were meeting with the Premier or his officers, and that he was not informed of this by any other person.³⁵⁶ Mr Prattley later explained the expectation of Department officers of Mr Lowy's potential for access:

... I have worked in six States and Territories around Australia at this level and I would expect that if there were a major – in fact, I would know from practical experience in Western Australia, for example, when I was in Ms Westacott's position, that Frank Lowy would want to meet with the Premier when there were major issues involving Westfield. And I said I think that would be totally normal in practice, whether it is Westfield or any other major player in the community of that scale. They are normally afforded the opportunity to meet with the Premier. And normally if the meeting was that level one would assume it would be the most senior person of the organisation that would be meeting, so I think Mr Driscoll's assumption is quite a reasonable one.³⁵⁷

³⁵⁵ Mr Prattley, Evidence, 17 August 2004, p8

³⁵⁶ Mr Driscoll, Evidence, 17 August 2004, pp14-15

³⁵⁷ Mr Prattley, Evidence, 17 August 2004, p15

- 6.34** Mr Prattley's misconception that the Premier was involved in the meeting appears to have occurred when the request from Mr Alex Smith was communicated to him by the Chief of Staff for Minister Beamer, Mr Michael Meagher. Mr Prattley advised that he became aware that the meeting was not with the Premier when discussing the briefing note later with the Minister's office.³⁵⁸ The Director General of DIPNR Ms Westacott, stated in evidence that she became aware that the meeting between the Premier and Mr Lowy did not occur when she rang Dr Col Gellatly, Director General of the Premier's Department in August 2004, following a search of emails by the Department in preparation for an anticipated ICAC inquiry.³⁵⁹
- 6.35** At this point in the hearing of 17 August 2004 the evidence gained from witnesses was that although briefing papers were requested no meeting had occurred between Westfield and representatives of the Premier. However while the examination was occurring a press release was issued by the Premier elsewhere which revealed for the first time that a meeting had occurred between representatives of Westfield and Mr Graeme Wedderburn.³⁶⁰ The evidence from Mr Prattley was that this press release was the first they knew of this meeting:
- I can happily say that I have no knowledge of whether Mr Wedderburn met with anyone or who he actually met with until you read that press release right now.³⁶¹
- 6.36** The response from Ms Westacott about her knowledge of the meeting was as follows:
- Let me be clear. I asked Dr Gellatly did a meeting take place between the Premier and Mr Lowy. His advice to me was no, it did not. "The meeting" is the meeting referred to in the email that you have been reading from. That is what I asked Dr Gellatly.³⁶²
- 6.37** The following day the Committee called Dr Col Gellatly, Director General of the Premier's Department, to examine him on the content of the conversation with Ms Westacott and his knowledge of the meeting with Mr Wedderburn. Dr Gellatly confirmed Ms Westacott's call was specifically in relation to whether a meeting occurred between the Premier and Mr Lowy, and that, like Mr Prattley, he first became aware of the meeting involving Mr Wedderburn on 17 August 2004 when the Premier's press release was issued.³⁶³ Mr Alex Smith, Chief of Staff to Dr Gellatly, gave evidence that a briefing had been requested for Mr Wedderburn from Mr Prattley on 16 April 2004 and his understanding was that the meeting had been requested by Westfield.³⁶⁴
- 6.38** From the evidence it appears that the request for the briefing went from Alex Smith to the Executive Director, Office of the Director General, Ms Alice Spizzo, Mr Smith's equivalent

³⁵⁸ Mr Prattley, Evidence, 17 August 2004, p14

³⁵⁹ Ms Westacott, Evidence, 17 August 2004, p11

³⁶⁰ Hon Bob Carr MP, Premier, Minister for the Arts, and Minister for Citizenship, 'Probity concerns raised on Orange Grove,' *Media Release*, 17 August 2004

³⁶¹ Mr Prattley, Evidence, 17 August 2004, p23

³⁶² Ms Westacott, Evidence, 17 August 2004, p23

³⁶³ Dr Gellatly, Evidence, 18 August 2004, pp5-6

³⁶⁴ Mr Smith, Evidence, 18 August 2004, p8

officer in DIPNR, without either Director General being involved.³⁶⁵ The Committee is surprised that by early August, when the Orange Grove issue had been the subject of considerable controversy, neither the Director General of the Premier's Department nor the Director General of DIPNR appear to have been aware of the meeting with Mr Wedderburn and Westfield. Dr Gellatly did not think it was unusual for him to be unaware of the Wedderburn meeting. Evidence was given by Dr Gellatly that the Premier's Department operates along similar lines as under Premiers Fahey and Greiner in relationships between personal staff and public servants.³⁶⁶

No, that is not unusual [not being aware of the meeting]. We are separate offices and the ministerial office has one role and the public service, the Premier's department, has another role. And there are a number of meetings that are held where Mr Wedderburn would have meetings that I would not be involved in and would not know about and similarly from the number of meetings I have, he would not know about and would not be involved in.³⁶⁷

Westfield warns against rival developers lobbying Minister Beamer

6.39 As previously stated, the Committee is grateful that the Premier made his Chief of Staff Mr Graeme Wedderburn available to appear before the Committee on 18 August 2004. Mr Wedderburn's participation greatly assisted the inquiry.

6.40 Mr Wedderburn in his evidence outlined that his meeting occurred following a call by Westfield's Director of Corporate Affairs, Mr Mark Ryan on 15 April. Mr Wedderburn clarified that the initial request by Mr Ryan was for a meeting between the Premier and Mr Lowy, but that he did not give a commitment to this meeting occurring.³⁶⁸

6.41 Mr Graeme Wedderburn's evidence on 18 August indicates that Mr Ryan suggested a meeting between the Premier and Mr Lowy:

The Hon. JOHN RYAN: Who did Westfield representatives wish to meet with, you or the Premier?

Mr WEDDERBURN: Mr Ryan telephoned me, initially suggesting that the matter was so urgent that he believed Mr Lowy of Westfield might see fit, might request, I beg your pardon, a meeting with the Premier ... Mark Ryan said in his conversation with me on the telephone on April 15 that he believed the matter was so serious that it might involve a meeting of the head of Westfield with the Premier. I took that on notice, but I did not agree to have that meeting occur. I did not plan for it to occur.³⁶⁹

6.42 However, when he appeared before the Committee a week later, Mr Ryan emphasised that he specifically sought a meeting with the Premier's Chief of Staff and Minister Beamer, and did not mention any intention to meet with the Premier:

³⁶⁵ Mr Smith, Evidence, 18 August 2004, p10

³⁶⁶ Dr Gellatly, Evidence, 18 August 2004, p9

³⁶⁷ Dr Gellatly, Evidence, 18 August 2004, p6

³⁶⁸ Mr Wedderburn, Evidence, 18 August 2004 p16 & 18

³⁶⁹ Evidence, 18 August 2004, pp16-17

... I then decided that the appropriate action to take was, firstly, to seek a meeting with the Premier's chief of staff and, secondly, to seek a meeting with Assistant Minister Beamer. I want to make it clear why Westfield sought a meeting with the Premier's chief of staff ...³⁷⁰

- 6.43** Subsequent statements made by Mr Ryan indicate that Westfield executives considered that it would not be unreasonable to make a request to see the Premier:

I know from experience that Premiers and Ministers conduct these sorts of meetings every single day of the week. It is their job. We have a responsibility to put our views to them, and that was the context in which that meeting occurred.³⁷¹

- 6.44** Mr Wedderburn then spoke to the Premier about the call on 16 April. Mr Wedderburn's account of the Premier's advice was:

I think he suggested to me that before taking the matter further I seek advice from the Premier's Department, which I did. I telephoned Alex Smith. Mr Smith said he would seek information on that. I then recall that either he called me or I called him to determine whether he had the advice. We had another conversation. As it occurred, maybe some of the thoughts occurred to me during the course of the day about whether or not there were any legal issues outstanding. I did not know, for instance, whether there was any other opportunity for the matter to be before the court, for instance, at that time, or any other legal issues pertaining to either the State or the council.³⁷²

- 6.45** Mr Wedderburn received the advice from DIPNR through Mr Smith on 16 April, a Friday, and then met with Mr Ryan and Mr Craig Marshall from Westfield on Monday 19 April.³⁷³ The meeting was held in Mr Wedderburn's office. The Westfield representatives explained in detail the history of the development, the court cases and the current status of draft Amendment 92. Mr Ryan then explained his probity concerns, as recounted by Mr Wedderburn:

Mr Ryan said Westfield had serious doubts about the competence of the council before it was sacked. He suggested possible corruption of the council's decision making on this development. He said Westfield was concerned that dishonest influences behind the original approval of Orange Grove were also behind the draft LEP.

He said Westfield held strong concerns that these dishonest influences were already encircling Minister Beamer. Mr Ryan said that people and some associations behind this project were dubious, and that there was a perception, if not the presence, of corruption. He said they might already be the subjects of corruption investigations. Mr Ryan said the council's role and the developer's relationship with the council was smelly. He named Mr Gazal, Mr Mosca and Mr Bargshoon as the dishonest influences behind this project. He said they were already mobilising to exert influence on

³⁷⁰ Mr Ryan, Evidence, 25 August 2004, p5

³⁷¹ Mr Ryan, Evidence, 25 August 2004, p16

³⁷² Mr Wedderburn, Evidence, 18 August 2004, p18

³⁷³ Mr Wedderburn, Evidence, 18 August 2004, p15

Minister Beamer. He said they would abuse processes and manipulate local political associations for their own financial benefit.³⁷⁴

6.46 Under further questioning Mr Wedderburn revealed that 'local political associations' included reference to the Member for Fairfield, Mr Joe Tripodi,³⁷⁵ although Mr Wedderburn was clear that Westfield representatives did not allege corruption in regard to Mr Tripodi.³⁷⁶ In answer to further questions, Mr Wedderburn stated that Westfield had concerns about possible corruption involving former Mayor George Paicullo and Councillor Tony Beuk,³⁷⁷ and of corrupt conduct by Council staff. Mr Wedderburn indicated that he personally already had concerns about Liverpool City Council prior to its sacking:

They were sacked in March for culpable negligence. When Mark Ryan came to see me I had that in the back of my mind when he mentioned Liverpool council. I did not hold very high views of the council, having seen what Daly had reported in three volumes. Sacking a council from Mayor Paciullo and others back, I had a very, very serious concern about what he was saying because I had already seen this. I had seen that the council was sacked for very similar things: incompetence, negligence, poor risk management. This is a commentary on all of this, surely, of the council ... That is my recollection. He spoke with me about the council. He said he believed that they were grubby. He believed that they had been infiltrated and he believed they had been infiltrated by people behind this project.³⁷⁸

6.47 In evidence Mr Mark Ryan essentially confirmed Mr Wedderburn's evidence as to what was discussed at the meeting. He said that the concerns he expressed were that the rezoning application would not be considered on its merits but that pressure would be exerted on Ministers by the developer. His key concerns were:

- that Mr Gazal had a well-documented history of unconventional lobbying and that there had been extreme tactics used in the last rezoning application
- the irregularities of the approval by Liverpool council, which has been the subject of numerous inquiries and dismissed
- that Mr Gazal was at the centre of a network of influence at a local level that involved political figures and council officers
- that Mr Gazal would use the 'official approval' flowing from the fact that the Minister Knowles had opened the centre to apply political pressure to the Government
- that Minister Beamer would be threatened with the prospect of job losses from an area that she represented.³⁷⁹

6.48 Mr Ryan said that:

³⁷⁴ Mr Wedderburn, Evidence, 18 August 2004, p15

³⁷⁵ Mr Wedderburn, Evidence, 18 August 2004, pp33-34

³⁷⁶ Mr Wedderburn, Evidence, 18 August 2004, p34

³⁷⁷ Mr Wedderburn, Evidence, 18 August 2004, p53

³⁷⁸ Mr Wedderburn, Evidence, 18 August 2004, p26

³⁷⁹ Mr Ryan, Evidence, 25 August 2004, p7

I did not tell Mr Wedderburn that it was going to rain, but with all the thunder and lightning about he or the Government should have an umbrella. Mr Wedderburn told me that if I had evidence of corruption I should take it to the ICAC. Mr Wedderburn assured me that the Minister would decide the matter on planning grounds and would not allow herself to be compromised.³⁸⁰

- 6.49** Despite the strength of the language used by Mr Ryan it is clear that no evidence of actual corruption was presented to Mr Wedderburn. Mr Jordan in earlier evidence to the Committee on behalf of Westfield, did not allege actual corruption:

The Hon. JOHN RYAN: Does Westfield believe that something improper happened with regard to the council's original consent for the development?

Mr JORDAN: We do not know what has happened in there. We know that there are unusual circumstances.

The Hon. JOHN RYAN: Are you alleging anything improper?

Mr JORDAN: I am not alleging anything.

The Hon. JOHN RYAN: Have you made any complaint to the Independent Commission Against Corruption?

Mr JORDAN: No, we have not made a complaint.³⁸¹

- 6.50** Mr Ryan and Mr Wedderburn were both asked why, given their concerns prior to and after the meeting, they did not make a complaint about the rezoning application to the ICAC. The answer of both was that they did not have any evidence with which to make a complaint.³⁸²

- 6.51** Mr Wedderburn expressed his reluctance to make a complaint to the ICAC:

Mr WEDDERBURN: Now, as I said to you, I was not handed a dossier, including photographs, circles and arrows. I was given a verbal brief and I said appropriately to Mr Ryan and his colleague if Westfield has evidence, that they ought to refer matters like that straight to the ICAC.

The Hon. JOHN RYAN: Did you inquire whether they did that?

Mr WEDDERBURN: Having issued that clear expression of mine to Mark Ryan and his colleague, I believed that he was going to act on that.³⁸³

- 6.52** Mr Ryan advised that he had taken no action in relation to the ICAC following the meeting:

Mr Wedderburn told me that if I had evidence I should take that evidence to ICAC. My view was, and that of Westfield's legal advisers was, that we did not have material that amounted to evidence that would be worth taking to ICAC. As it turns out, I now know that at or about the time that I was meeting with Mr Wedderburn ICAC was

³⁸⁰ Mr Ryan, Evidence, 25 August 2004, p7

³⁸¹ Evidence, 16 August 2004, p49

³⁸² Mr Ryan, Evidence, 25 August 2004 pp14 & 26; Mr Wedderburn, Evidence, 18 August 2004, p44

³⁸³ Evidence, 18 August 2004, p36

already investigating the matter – or making inquiries into the matter. So from where I sit today I feel somewhat vindicated in raising these concerns in the way that I did.³⁸⁴

6.53 Mr Wedderburn made it clear in his evidence that Mr Ryan had not specifically requested that he take any action, such as contacting Minister Beamer or speaking to the Premier, as a result of the meeting:

The Hon. JOHN RYAN: But they did not actually ask you to do something – that is, stop the LEP –

Mr WEDDERBURN: They did not have to ask – no; absolutely and utterly, no. I think I said that before.

The Hon. JOHN RYAN: Did they ask you to report to the Premier the information they had given you?

Mr WEDDERBURN: I do not recall that Mr Ryan would have expressly asked me to do any of that. Can I say this about Mr Ryan? He is a former chief of staff to the Prime Minister and it may be that, like me, from time to time he has received representations from individuals or corporations about matters of some delicacy. Professionalism and discretion are required in dealing with these matters. I was not going to publish the names of people who I had not previously heard of in some document or to allege or repeat allegations to people indiscreetly all over the place. As I have said, I am not an investigator at the ICAC and nor am I a member of the police force. As you have said yourself, Mr Ryan, if people make allegations about corruption or impropriety there are certain places to which we – people like you and I – direct them.

The Hon. JOHN RYAN: But did they want you to do something about it?

Mr WEDDERBURN: They did not ask me to do anything. I said to them that I took their concerns about probity seriously. I took it as an anti-corruption message. I said that Diane Beamer, as the Minister, could be relied upon to stick to the rules and that I would ensure that she would not be criticised after the event for any inappropriate lobbying of her. I understand that under the EP and A Act the decision is hers, and hers alone, to make.

The Hon. JOHN RYAN: Did they want you to warn the various Ministers involved? Did they ask you to do that?

Mr WEDDERBURN: They did not ask me to detail to them what my actions thereafter would be – and I do not think that would have been appropriate for them to have asked or insisted on. They certainly did neither. As I said, Mark Ryan, having been a senior member of government staff himself, presumably knew how I would receive, and possibly act on, it. But he did not tell me how to act and I did not tell him in precise terms what I would do.³⁸⁵

6.54 There is some doubt about the accuracy of the information provided by Mr Ryan to Mr Wedderburn. For instance former Mayor George Pacullio, one of the people named on a large poster sized chart which Mr Ryan prepared for the public hearing, approached the

³⁸⁴ Mr Ryan, Evidence, 25 August 2004, p14

³⁸⁵ Evidence, 18 August 2004, pp30-31

Committee to respond to what he perceived as adverse mention by Mr Ryan. His evidence was that in relation to his role in the ‘web of influence’ depicted in the chart, the following errors had been made:

- he did not have a relationship with convicted murderer Mr Phuong Ngo, and had only met him once
- until July 2004 he had virtually no contact with Mr Gazal and Mr Bargshoon, and never discussed any matter relating to Liverpool Council with them
- he had two discussions with Mr Mosca in the last five years, and has never discussed a development application with him
- his contacts with Mr Joe Tripodi MP, Mrs Julia Irwin MP, Minister Knowles, former councillor Mr Tony Beuk, the Austral Bringelly ALP and Liverpool South Branch members were political, and did not involve any discussion of development applications³⁸⁶

6.55 Mr Ryan has not provided the Committee with any detailed evidence to support his concerns as originally raised, other than to refer to newspaper records and ‘the public record,’³⁸⁷ and to two Westfield executives, Mr Miles and Mr Lynch as sources of his concerns.³⁸⁸

Westfield’s concerns reported to the Premier

6.56 Mr Wedderburn indicated that he gave credence to the allegations made because of his pre-existing concerns regarding Liverpool Council, which originally approved the development, that his ‘anti-corruption alarm bell started to ring.’³⁸⁹

6.57 Mr Wedderburn’s actions following the meeting indicate that he took seriously the concerns raised and had been influenced by the information provided to him by Mr Ryan, a person he respected. The immediate action taken by Mr Wedderburn was to report his meeting to the Premier. Mr Wedderburn outlined the content of Mr Ryan’s information and described the response from the Premier in the following terms:

After telling him of Westfield’s probity concerns, the Premier told me in words to the effect, “I don’t want the Government tarnished by the shenanigans of Liverpool council. I won’t tolerate corruption or the perception of it and the Minister should be appropriately advised to stick to the rules.”³⁹⁰

6.58 This is the only evidence the Committee has of the Premier’s view on the meeting between Mr Wedderburn and Mr Ryan.

³⁸⁶ Mr Paciullo, Evidence, 30 August 2004, pp63-64

³⁸⁷ Mr Ryan, Evidence, 25 August 2004, pp4-6 & 13

³⁸⁸ Mr Ryan, Evidence, 25 August 2004, p26

³⁸⁹ Mr Wedderburn, Evidence, 18 August 2004, p15

³⁹⁰ Mr Wedderburn, Evidence, 18 August 2004, p32

- 6.59** From Mr Wedderburn's evidence it appears that he had called Minister Beamer's office to arrange a meeting prior to meeting with the Premier.³⁹¹ This is discussed in more detail below.
- 6.60** Chapter Four of this report examines the past and current concerns regarding Liverpool City Council. The Committee notes that the rezoning application was submitted by a Government-appointed administrator of the Council, Ms Gabrielle Kibble, not by the former Council.
- 6.61** Based upon the evidence the Committee has heard, the Committee believes that Westfield representatives sought to influence the Premier, through his office, not to rezone the Orange Grove site. By raising allegations of improper influence by Gazcorp and tying the rezoning application, submitted by the Administrator of Liverpool Council, to the reputation of the former Council, Westfield sought to discredit the new proposal.
- 6.62** There may be nothing improper in a Minister or a Premier meeting with a developer. If however a Minister subsequently refuses to meet with the commercial rival of the developer, the reasons for this need to be given careful scrutiny.
- 6.63** It is apparent from Mr Wedderburn's and Mr Ryan's evidence that Westfield's immediate concerns were not about Liverpool Council but about their commercial rival, Gazcorp, lobbying Minister Beamer. Mr Ryan, Westfield's principal lobbyist, in his meeting with the Premier's Chief of Staff, was primarily concerned that Westfield's commercial rival would use political contacts to lobby the Minister.
-

Finding 8

There is no evidence before the Committee that the Premier discussed the rezoning of Orange Grove with representatives of Westfield. However, the Committee is unable to conclude its analysis of this aspect of its Inquiry because the Premier did not make himself available to answer the Committee's questions.

There is evidence that Westfield used its access to the Premier's Office through the Premier's Chief of Staff to seek to influence the outcome of the rezoning application by associating it with past concerns regarding the former Liverpool City Council.

Despite the issue of a meeting between the Premier and Westfield representatives being raised publicly in July 2004, the representatives of Westfield and the Premier did not reveal the meeting of 19 April between Westfield representatives and the Premier's Chief of Staff until 17 August 2004.

³⁹¹ Mr Wedderburn, Evidence, 18 August 2004, p32

The Premier and Assistant Minister Beamer

Mr Wedderburn tells Minister Beamer to ‘stick to the rules’

6.64 Prior to the start of the Inquiry Assistant Minister Beamer issued a press statement saying ‘the Premier has not spoken to me, nor called me, nor contacted me over the rezoning application.’³⁹² It is unfortunate and disingenuous that Minister Beamer did not reveal that she had met with the Premier’s Chief of Staff regarding this matter when making these statements.

6.65 From the evidence to this Inquiry it was revealed that the Premier’s chief of Staff Mr Wedderburn contacted Minister Beamer and her Chief of Staff on 20 April, the day after the meeting with Westfield, and discussed the rezoning application. Although there are differing recollections as to the content of what was said, it appears the rezoning application for the Designer Outlets Centre had no prospects of approval after this meeting. A former senior minister in the Wran government, Mr George Pacullio, gave this assessment of the situation of a junior minister given advice by a Premier’s Chief of Staff:

... if you get instructions from the Premier – it does not really matter much who the Premier is – and you are a Minister, if you dare disobey them, you are not going to be around for very long. I saw one or two Ministers during my time. In our system of government, the Labor system of government, the Premier does not appoint the Ministers but he certainly appoints the portfolios. I saw one or two Ministers have the equivalent, in the next ministry, of virtually being the Minister for picking up garbage tins, if you know what I mean. They were very much demoted and their political future was pretty well history. So, you do not ignore the Premier’s wishes or, if those wishes came through his chief of staff, which is one and the same thing under normal circumstances, and to my knowledge in these circumstances they are one and the same thing.³⁹³

6.66 The Committee went to some lengths to obtain evidence from the Chief of Staff of Minister Beamer, Mr Michael Meagher, following the decision by the Minister to decline to appear before the Committee. Mr Meagher initially declined two invitations, one verbal and one in writing, to appear before the Committee. Following this the Committee issued a summons under the *Parliamentary Evidence Act* to Mr Meagher to appear,³⁹⁴ which he complied with by his appearance on 30 August 2004. The Committee notes that Mr Meagher was constructive in his approach to the Committee during his appearance, and that his reluctance to appear was the result of instruction from his Minister on the basis of the political convention that personal staff are not made available to parliamentary inquiries.³⁹⁵

6.67 Mr Wedderburn stated that he met with the Minister and her Chief of Staff.³⁹⁶ He did not mention that any other persons were present, and was not asked by the Committee whether they were the only persons present on 20 April. However in his evidence Mr Meagher

³⁹² Perinotto T, ‘Outlet centre wins six week reprieve,’ *Australian Financial Review*, 15 July 2004, p46

³⁹³ Hon George Paciullo, Evidence, 30 August 2004, pp71-72

³⁹⁴ Minutes No. 40, 25 August 2004

³⁹⁵ Mr Meagher, Evidence, 30 August 2004, p5 & 61

³⁹⁶ Mr Wedderburn, Evidence, 18 August 2004, p33

revealed that the Deputy Chief of Staff of Planning Minister Knowles, Mr Emilio Ferrer, was also present at the meeting, primarily as an observer.³⁹⁷

6.68 As indicated above, Mr Wedderburn had clear instructions from his meeting with the Premier to instruct Minister Beamer to ‘stick to the rules.’ What was actually said in the meeting differs slightly between the recollections of Mr Wedderburn and Mr Meagher in relation to the words used, but it is generally agreed that the Premier’s Chief of Staff warned the Minister of corruption concerns regarding the proposed rezoning. Much debate ensued during Mr Meagher’s appearance whether Mr Wedderburn ‘instructed’ or merely ‘advised’ Minister Beamer.³⁹⁸

6.69 Mr Wedderburn’s recollection of the meeting was as follows:

In that meeting the Minister and her chief of staff told me what they knew of the project. We discussed, I think, all of the matters associated with the planning and court matters that were before them, the issue of the jobs involved at the Orange Grove centre was a concern certainly raised there with the Minister about this and the legal position of the council, perhaps with full knowledge of what that was but certainly whether there were legal issues for the council involved in all or any of this. She, having outlined what they were, I then mentioned to her that concerns had been raised with me by Westfield about probity. The Minister told me that she would base her decision on planning principles and she told me that she and her staff would take care to avoid being lobbied.³⁹⁹

6.70 Mr Meagher’s recollection is similar:

As I recall, Mr Wedderburn explained that the LEP amendment involving the Orange Grove factory outlet centre had a seedy history and that the process through which the council allowed the factory outlet zoning in an industrial zone where bulky goods was permitted, was highly suspicious. There was a real stench about it. He talked about the fact that the courts had held that the development was unlawful. He talked of the sacked Liverpool council and the cloud over it from the Oasis development. He also said we should be aware of the network of figures who were supportive of or associated with the operator Gazcorp. He mentioned the names Frank Mosca, Sam Bargshoon and Nabil Gazal. He impressed on the Minister and myself that because of the background of possible corruption the Minister should be cautious in making her decision that she should avoid being inappropriately lobbied.

Minister Beamer and I informed Mr Wedderburn that approaches from a Mr Tony Beuk had already been made on behalf of Gazcorp, and that Mr Tripodi had also called our office but that the only path she intended to follow was to make a considered decision upon sound planning principles. Mr Wedderburn stated that she should take great care and make her decision only on proper planning principles.⁴⁰⁰

³⁹⁷ Mr Meagher, Evidence, 30 August 2004, pp3 & 24-26

³⁹⁸ Evidence, 30 August 2004, pp30-32

³⁹⁹ Mr Wedderburn, Evidence, 18 August 2004, p33

⁴⁰⁰ Mr Meagher, Evidence, 30 August 2004, p3

- 6.71** It is clear that an ‘anti-corruption warning’ was given, but there are different recollections as to how directive Mr Wedderburn was in the way he delivered this warning to Minister Beamer. Mr Wedderburn’s account of what he said at the meeting was:

Mr WEDDERBURN: I clearly said to her, and she repeated back to me, that she knew the difference between being appropriately advised by the proponent or the opponent of something and my message to her was, “avoid any position where you will be seen, when you have made a decision, whatever decision you make, that you will have perhaps been enticed into a meeting”. For instance, when I spoke with the Minister and her staff and I mentioned certain names on the Labor side of politics in the council, and as we have discussed before, that Mr Tripodi’s name has been mentioned by Mr Gazal and Mr Mosca and Mr Bargshoon as an advocate for them; they believed that they had enlisted his support, and I agreed that as a local member – not the local member perhaps – but as a local member it was entirely appropriate for Mr Tripodi to receive their representations and to make an appropriate representation to the Minister. But it is always going to be an issue of dispute about what is appropriate and what is not and what I was clearly suggesting to her is that she, not as you have said, that she should not agree to any meetings, that is not what I said at all, but what I did say to her ...

The Hon. DAVID OLDFIELD: The statement [Mr Wedderburn’s opening statement] says “Take care to avoid being lobbied”. “Avoid being lobbied”, that is what it says.

Mr WEDDERBURN: But it was not an instruction to her to avoid what she might regard as appropriate contact.⁴⁰¹

- 6.72** Mr Meagher did not recall the Minister repeating Mr Wedderburn’s comments back:

The Hon. JOHN RYAN: Did he tell the Minister during that meeting to stick to the rules?

Mr MEAGHER: Words to the effect, yes. But in delivering this message, in his words, anticorruption message, and in delivering his advice, this was advice and the Minister at the time in replying to that advice said, “I hear what you are saying, Graeme”, or words to that effect. She said “I hear what you are saying. There is only one path for me and that is to make a decision based on sound planning principles. That is my job, and that is what I will do.” I repeat again, he gave us advice, he said, “Take care.” He did not give a directive.⁴⁰²

- 6.73** Mr Ferrer, who was also present at the meeting, had a similar recollection to Mr Meagher:

The Hon. JOHN RYAN: Do you recall Mr Wedderburn using the words “stick to the rules”?

Mr FERRER: No, I do not. I do not recall the exact words he used. I recall he gave everybody a warning. I cannot recall the words he used.

The Hon. JOHN RYAN: Do you recall Mrs Beamer speaking at the meeting, and if so do you remember what she said?

⁴⁰¹ Evidence, 18 August 2004, p48

⁴⁰² Evidence, 30 August 2004, pp6-7

Mr FERRER: No. I remember that at the meeting Minister Beamer and I would have been the people who spoke the least. That is my recollection of her. I cannot remember anything specific she said.

The Hon. JOHN RYAN: Do you recall Mr Wedderburn speaking to Mrs Beamer and telling her, "Look, it's important that you stick to the rules," and Mr Wedderburn asking her to repeat it back to him?

Mr FERRER: No. I do not recall that.

The Hon. JOHN RYAN: I ask you that because that was his evidence.

Mr FERRER: I do not recall that. I am not saying that it did not happen; I am simply saying I do not remember that. My recollection of the meeting is that Mr Wedderburn's warning was to the meeting generally; he was not actually focusing on anybody in particular.⁴⁰³

- 6.74** The Committee has also the hearsay account of the Member for Fairfield, Mr Tripodi, telling Mr Gazal and Mr Bargshoon that the Premier told Minister Beamer to 'screw the rezoning.'⁴⁰⁴ There has been no other evidence to the Committee that the Premier and Minister Beamer met or discussed this issue.

Minister Beamer's Office refuses approaches by Gazcorp

- 6.75** Whether Mr Wedderburn instructed or merely advised Minister Beamer to stick to the rules, the effect was immediate in deterring her office from receiving approaches on behalf of the proponents of the rezoning. In his evidence Mr Meagher referred to approaches made by Mr Frank Mosca, former Councillor Tony Beuk, and Mr Nabil Gazal between 20 April and the eventual rejection of the rezoning application on 8 July 2004. Mr Meagher described his handling of calls from Gazcorp representatives from the meeting onwards in the following terms:

However during that period, in which the section 69 report was being prepared by departmental officers as part of the normal departmental processes, Mr Tony Beuk continued to ring me many times, often on my mobile phone, inquiring about the status of the LEP. My answers were always short and became shorter. I estimate he initially called me every four or five days, in April and May, and then even more frequently in June and early July.

Mr Frank Mosca also rang me several times inquiring about the progress of the LEP, with a predominance of calls from the middle of June. My replies to him were also short and to the point: I was telling him where the LEP was at. At one stage, on June 22 or 23, I recall that I had to tell Mr Mosca that his calls were inappropriate. At the time I told him that we, the Minister's office, had not received the section 69 report. I understood that he was concerned that the centre was due for closure on June 30 but I repeated that I had not seen the section 69 report yet. He was agitated but I repeated that I could not do anything and that his call was inappropriate. Mr Mosca also rang

⁴⁰³ Evidence, 9 September 2004, p27

⁴⁰⁴ Submission 10, Gazcorp, p8; Mr Nabil Gazal, Evidence, 13 August 2004, p5; Mr Bargshoon, Evidence, 13 August 2004, p15

my media adviser, Mr Steve Adams, on several occasions. Messages were also left with the receptionist in the Minister's office.

In the course of an LEP, it is not unusual to field two or three calls from interested parties. However, by the time the Minister made her decision on this LEP our office had received, to my estimate, more than 40 calls from those associated with Gazcorp, which was highly unusual, as Liverpool council, not Gazcorp, was the applicant for the LEP. Also at no time in any of these telephone calls to me, or to other members of the Minister's office to my knowledge, was any allegation passed on about undue influence by Westfield, or about any alleged directive having been given to the Minister by anyone.⁴⁰⁵

6.76 Proponents for the rezoning confirm that they made many calls to the Minister's office as they became increasingly frustrated at the lack of response from her office. Mr Mosca said that he made around 10 calls in June, although these were said by him to be his first attempt to contact the Minister's office.⁴⁰⁶

6.77 Mr Tony Beuk, former Liverpool Councillor and Information Technology Director for the Australian Labor Party, gave evidence that in April, May and June he made 35 to 36 calls to Michael Meagher, but these were short calls aimed at obtaining an update on progress rather than lobbying.⁴⁰⁷ Mr Beuk described the calls in the following terms:

... the conversations were fairly short. They were purely to gauge where in the process the rezoning was at. I would always end the conversation simply by asking whether it would be appropriate for me to contact him again to get an update.⁴⁰⁸

6.78 Mr Beuk also said that at no stage until his final call did Mr Meagher indicate that there were any reservations about the rezoning, and that when Mr Meagher informed him that the rezoning would not be signed Mr Beuk did not ask for a specific reason.⁴⁰⁹

6.79 Mr Beuk's representations were after he ceased to be a Councillor, Liverpool Council having been dismissed in March 2004. He explained his reasons for his calls:

In terms of my original support for the application. I think the critical aspect associated with the jobs, the businesses, that were associated with Orange Grove, and I think the need to make a determination, whatever that determination was, as quickly as possible.⁴¹⁰

6.80 Mr Meagher gave evidence that he also resisted contact from Westfield's representatives. The call from Westfield requesting a meeting, made on 19 April did not receive a reply.⁴¹¹ When questioned on this, he explained:

⁴⁰⁵ Mr Meagher, Evidence, 30 August 2004, pp3-4

⁴⁰⁶ Mr Mosca, Evidence, 25 August 2004, pp57-58

⁴⁰⁷ Mr Beuk,, Evidence, 20 September 2004, pp28 & 33

⁴⁰⁸ Mr Beuk, Evidence, 20 September 2004, p33

⁴⁰⁹ Mr Beuk, Evidence, 20 September 2004, p33

⁴¹⁰ Mr Beuk, Evidence, 20 September 2004, p28

⁴¹¹ Mr Meagher, Evidence, 30 August 2004, p4

That fax went into my in tray and I got it, I think, the afternoon of the 20th, maybe even on the 21st. When I saw that I looked at it and said, "No, I don't need to reply to that. I won't be replying to that." Because I didn't think that we needed any representations at all, given the information that I'd had from Graeme and the conversation the Minister and myself had had with Mr Wedderburn that it would be inadvisable, it would be inappropriate to meet anyone from Westfield, Gazcorp or other.⁴¹²

Minister Beamer's Office agrees to meet Crossroads promoters

- 6.81** The locking out of Westfield's rival commercial interests, however, did not extend to another rezoning in the Liverpool area for which Westfield had a significant commercial interest. From the documents tabled by the Department in response to the Committee's order for papers it emerged that the Minister's Chief of Staff had agreed to a meeting with a commercial partner of Westfield in regard to the Crossroads development, on 22 April.⁴¹³ This development represented the rezoning of a bulky goods centre in Casula to expand its operations and include a warehouse factory outlet similar in nature to the use to which the Designer Outlets Centre in Orange Grove was put.
- 6.82** The decision to separate the Crossroads rezoning proposal from the Orange Grove Road proposal was made by the Council Administrator, Ms Gabrielle Kibble, on 13 April.⁴¹⁴
- 6.83** Mr Meagher confirmed in evidence that, following this, he met twice with a media consultant, Mr Julian Brophy of Orion Communications, on 22 April and 27 April to discuss the Crossroads development.⁴¹⁵ It appears from Mr Brophy's evidence that the Orange Grove Centre was discussed at the meeting, although only to the extent that the two developments had been separated in the application submitted by Liverpool Council:

I think that's why we went and saw the Chief of Staff of the Minister's office to make clear our position – that we were extremely disappointed at the decision of the Liverpool administrator to remove the Cross Roads rezoning amendment from the proposed LEP amendment.⁴¹⁶

- 6.84** The letter sent by Mr Brophy to Mr Meagher dated 23 April said:

I am writing following our discussions with respect to the proposed bulky goods expansion at Crossroads at Casula.

⁴¹² Mr Meagher, Evidence, 30 August 2004, p11

⁴¹³ Correspondence from Julian Brophy, Consultant, Orion Communications, to Mr Meagher, 23 April 2004, quoted in Evidence, 17 August 2004, p8

⁴¹⁴ Mr Tom Zarimis, National Manager for Property Development, AMP Capital Investors, Evidence, 20 September 2004 p87; Ms Kibble, Evidence, 13 August 2004, p43

⁴¹⁵ Mr Meagher, Evidence, 30 August 2004, p46

⁴¹⁶ Mr Brophy, Evidence, 10 September 2004, p15

At that time, a possible means of resolving the current impasse was identified, and I provide a summary of that discussion for your consideration.⁴¹⁷

- 6.85** Representatives of AMP Capital Investors appeared before the Committee on 20 September and explained how AMP could advocate for a position which appears adverse to Westfield. AMP Capital Investors is a fund manager representing the interests of a number of different funds, and in relation to the Westfield Liverpool shopping centre, the investors of one fund, the AMP Wholesale Shopping Centre Trust, has a 50 per cent holding in the centre (see Chapter 4, paragraph 4.98). Westfield is the sole manager of the Westfield Liverpool shopping Centre property. The Cross Roads property is owned 100 per cent by investors of a different fund, the Australian Corp Property Portfolio.⁴¹⁸
- 6.86** Mr Brophy also gave evidence that there had been an earlier meeting with Mr Meagher, and a meeting with the Deputy Chief of Staff of Minister Knowles.⁴¹⁹ As with the April meetings, there is no evidence of the influence or otherwise these meetings exerted, and the Committee notes the rezoning has yet to be approved. The significance of these meetings is that they were held at a time when Minister Beamer's office was refusing to meet with the Orange Grove proponents.
- 6.87** The Committee finds that the meeting organised by Mr Wedderburn with Minister Beamer and her Chief of Staff had an important impact on the future actions of the Minister's office. It appears that the interpretation given by Minister Beamer and her staff to Mr Wedderburn's message was that to meet with any supporters of the rezoning would be seen as ignoring an anti-corruption warning issued by the Premier's most senior officer. The meeting with the Minister and the Premier's Chief of Staff may provide the explanation for the actions of the Director General in recommending against the advisings of the s69 report, as discussed in chapter five. The question is raised as to whether the Minister was exercising an independent judgement on the planning decision before her or whether she saw herself as being instructed to make a decision.

Finding 9

There is no evidence before the Committee that the Premier discussed the rezoning directly with Minister Beamer. However, because neither the Premier nor Minister Beamer made themselves available to answer the Committee's questions, the Committee cannot be certain that such a discussion, or discussions, did not occur.

Following the meeting between the Premier's Chief of Staff and Minister Beamer and her Chief of Staff on 20 April, Minister Beamer and her staff refused to meet with proponents of the rezoning.

Minister Beamer did not reveal her meeting of 20 April with the Premier's Chief of Staff until after the Committee's hearing of 17 August 2004.

⁴¹⁷ Correspondence from Julian Brophy, Consultant, Orion Communications, to Mr Meagher, 23 April 2004, quoted in Evidence, 17 August 2004, p8

⁴¹⁸ Mr Zarimis, Evidence 20 September 2004 p86

⁴¹⁹ Evidence 10 September p15

Minister Knowles, Westfield and Gazcorp

6.88 The Committee acknowledges that the responsibility for the decision not to rezone the Designer Outlets Centre rests with Minister Beamer, in her role as Minister for Planning Administration. There was consistent evidence from witnesses that Minister Knowles sought to distance himself from the decision on the rezoning, including from Minister Knowles' former Deputy Chief of Staff, Mr Emilio Ferrer:

What I remember him saying is, "Well, it is an issue for Diane Beamer because it's to do with an LEP, so I will not get involved anyway. But, yes, you're right, I should stay at arm's length." That is the extent of the feedback I got from him.⁴²⁰

6.89 The Committee has received no evidence that Minister Knowles or his staff made any intervention regarding Minister Beamer's decision.

6.90 The evidence, however, also indicates that, unlike the Premier or Minister Beamer, Minister Knowles met directly with both Gazcorp and Westfield representatives, although in the case of Westfield the meeting occurred in 2003 prior to the events which led to this inquiry.

Minister Knowles' Gazcorp links

6.91 There has been evidence during the inquiry that Minister Knowles' involvement with the Designer Outlets Centre proponents goes back a number of years, and includes the following:

- longstanding friendship with Mr Frank Mosca, including minor work on his house
- links between his parents and Mr Mosca through local ALP branch issues
- opening the Orange Grove bulky goods centre in 1999
- opening the Designer Outlets Centre in November 2003
- several meetings with Nabil Gazal over property developments
- dealings with Mr Sam Bargshoon through local ALP branch issues
- visits to his parents' house by Mr Mosca, Mr Gazal and Mr Bargshoon in June 2004.

6.92 Mr Gazal also claimed that he arranged a loan for Minister Knowles.⁴²¹ Minister Knowles has publicly denied this claim, along with the claim that Mr Mosca had done minor work on Mr Knowles' house:

Mr Knowles has never sought or received a written reference from either Mr Gazal or Mr Mosca for any reason.

Mr Knowles has never required any person to be a guarantor in any financial dealing.

Mr Knowles did once have Mr Mosca draw some plans for a security fence at his former home. The fence was never built.⁴²²

⁴²⁰ Mr Ferrer, Evidence, 9 September 2004, p28

⁴²¹ Mr Gazal, Evidence, 9 September 2004, pp46-47

- 6.93** The Committee heard evidence that attempts were made by proponents of the Designer Outlets Centre to contact Minister Knowles following the information allegedly provided by the Member for Fairfield regarding Westfield's involvement. As noted earlier, Minister Knowles is a personal friend of Mr Mosca, having known Mr Mosca for 20 years, from before Mr Mosca became involved in ALP politics.⁴²³ Mr Mosca is also well known to Minister Knowles' parents: Mr Mosca is President of the ALP's Austral Bringelly Branch and Mr Stan Knowles is President of the Liverpool South Branch. Mr Mosca knew Minister Knowles' parents well enough to phone Mr Stan Knowles to try to arrange an appointment with his son, and to go to Minister Knowles' parents' house for afternoon tea.⁴²⁴
- 6.94** It is agreed that the proponents of Gazcorp visited the house of Minister Knowles' parents on two occasions, the night of 24 June and the morning of 25 June 2004, in an effort to speak with Minister Knowles, who stays at his parents' house during the week. There are, however, two widely conflicting versions of events.
- 6.95** According to the Gazcorp associates, Mr Mosca, Mr Gazal and Mr Bargshoon visited the house of Minister Knowles' parents on the night of 24 June 2004.⁴²⁵ They arrived at 11:30pm, as Mr Stan Knowles had told Mr Mosca that Minister Knowles got home from work very late. Mr Mosca claims he advised Mr Stan Knowles that they would visit his son late that night.⁴²⁶ Mr Mosca claims that they waited outside in the car but did not approach the house as they decided that it was too late to visit;⁴²⁷ he also claims that while waiting outside they rang the house but hung up before anyone answered, deciding to wait until the next day.⁴²⁸
- 6.96** On the following morning of 25 June 2004, Mr Mosca, Mr Nabil Gazal and Mr Gazal's son Nicholas again visited Minister Knowles parents' house, arriving at approximately 6am in an effort to catch Minister Knowles before he went to work.⁴²⁹ Minister Knowles invited Mr Mosca and Mr Nabil Gazal into the house, but told them that it was 'bloody stupid' for them to be there as they would be seen to be improperly influencing a Minister, at which they left.⁴³⁰ Mr Mosca recounted the conversation with Minister Knowles, claiming that his approaches to Mr Knowles regarding the rezoning were rebuffed on probity grounds:

Craig: "Look, you shouldn't be here. You could be accused of trying to influence a Minister. There could be a media scrum out there for this nurses thing". "We'll go", Nabil said, "Let's go". We left.⁴³¹

⁴²² Spokesperson for Minister for Infrastructure and Planning, Minister for Natural Resources, the Hon Craig Knowles MP, 'Statement re Orange Grove,' *Media Release*, 9 September 2004

⁴²³ Mr Mosca, Evidence, 13 August 2004, pp38-9

⁴²⁴ Mr Mosca, Evidence, 13 August 2004, pp28-30

⁴²⁵ Submission 10, Gazcorp, p10

⁴²⁶ Mr Mosca, Evidence, 13 August 2004, p29

⁴²⁷ Mr Mosca, Evidence, 13 August 2004, pp29-30

⁴²⁸ Mr Mosca, Evidence, 13 August 2004, p29

⁴²⁹ Submission 10, Gazcorp, p10

⁴³⁰ Mr Mosca, Evidence, 13 August 2004, p30

⁴³¹ Mr Mosca, Evidence, 25 August 2004, p59

- 6.97** Minister Knowles issued a media release to present an alternative version of events.⁴³² According to Minister Knowles' version of events, the Minister, through his father, clearly declined to meet with Mr Mosca on 24 June, and 'specifically requested that Mr Mosca should not come to our home.'⁴³³ Minister Knowles' mother was woken by a phone call late that night, which rung off before she could answer. Mr Knowles' parents became distressed to notice that the security lights had been triggered and that two running cars were parked outside. Mrs Knowles then answered a second phone call, from Mr Bargshoon, asking if Minister Knowles was home, to which she replied she did not know.
- 6.98** The next morning, 25 June, Mrs Knowles was woken at 6am by a call from Mr Mosca, telling her that he was parked in their driveway and asking to see Minister Knowles. Minister Knowles then invited Mr Mosca and Mr Gazal to the verandah of the house, advised them that it was inappropriate for them to be there, and asked them to leave.
- 6.99** These actions were taken as examples of the unconventional lobbying tactics employed by the proponents of Gazcorp, and their resort to intimidation in order to push through the amendment to the Local Environmental Plan. The Committee notes that Minister Knowles has publicly described his frustration at these attempts to contact him:
- I've absolutely had enough of the inappropriate behaviour. I've had people turning up at my home, people have been told to leave my property and their behaviour has been inappropriate.⁴³⁴
- 6.100** In questioning, Mr Ferrer indicated that Minister Knowles had not complained to him of these visits,⁴³⁵ while Ms Taylor indicated that she was aware that the Minister considered the visits inappropriate but was not aware, or did not wish to speculate, whether he had strong feelings on the matter.⁴³⁶
- 6.101** The Committee concludes that the visits to the house of Minister Knowles parents by Gazcorp associates were unwise. Any lobbying attempts should have been pursued through conventional channels. However, the Committee acknowledges mitigating factors, namely Mr Mosca's longstanding friendship with Minister Knowles and his relationship with Mr Stan Knowles, combined with the stonewalling of conventional channels and lack of information on the progress of the LEP.

⁴³² The Hon Craig Knowles MP, Minister for Infrastructure and Planning, Minister for Natural Resources, 'Statement from Mr Craig Knowles in Relation to Evidence Presented to the Legislative Council Inquiry into Orange Grove', *Media Release*, 13 August 2004,

⁴³³ The Hon Craig Knowles MP, Minister for Infrastructure and Planning, Minister for Natural Resources, 'Statement from Mr Craig Knowles in Relation to Evidence Presented to the Legislative Council Inquiry into Orange Grove', *Media Release*, 13 August 2004, p1

⁴³⁴ 'Govt criticised for withholding retail outlet approval developments,' *ABC News Online*, 13 August 2004, <http://www.abc.com.au/nsw/news/200408/s1175561.htm> (accessed 17 November 2004)

⁴³⁵ Mr Ferrer, Evidence, 9 September 2004, p27

⁴³⁶ Ms Taylor, Evidence, 20 September 2004, pp107-108

Minister Knowles and Westfield

- 6.102** The Committee has heard evidence that Minister Knowles and his Chief of Staff Paul Levins met with Westfield representatives Mr Steven Lowy, Mr Robert Jordan and Mr Mark Ryan on 17 November 2003, four days prior to the opening of the Designer Outlets Centre.⁴³⁷ According to Mr Mark Ryan the purpose of Westfield's meeting with Minister Knowles on 17 November 2004 was to discuss general planning issues as well as draft SEPP 66. It was in regard to draft SEPP 66 that Westfield raised Orange Grove Road, and informed the Minister that Westfield had launched legal action against the Centre's development consent.⁴³⁸
- 6.103** Evidence was given on this issue by Mr Steven Lowy on 29 November 2004:
- This was the first meeting between Westfield and the Minister since he had been reappointed to the portfolio following the 2003 election.
- At the meeting we presented Westfield's views on the planning regime in New South Wales and in particular we discussed the centres policy. On the subject of the centres policy, we talked about how development such as factory outlets at Orange Grove Road adversely affected the integrity of the planning system. We informed the Minister that Westfield had received advice that the development was in breach of planning laws and had instituted legal proceedings to this effect. The Minister did not indicate whether he was aware of such proceedings but said that as he had opened the first stage of the development he intended to open the next stage in the forthcoming week.⁴³⁹
- 6.104** The Committee notes the evidence of Deputy Chief of Staff Emilio Ferrer that he was not aware of the meeting between his Minister and Westfield in November 2003,⁴⁴⁰ and that he first became aware that Minister Knowles had opened the Centre when informed of this by Mr Graeme Wedderburn at the meeting with Minister Beamer and Mr Meagher, and that he was not aware of Minister Knowles' prior associations with Mr Mosca and Mr Gazal.⁴⁴¹
- 6.105** Minister Knowles is also connected to Westfield through his Chief of Staff, Ms Sarah Taylor, a former Westfield employee, whom he employed in April 2004.⁴⁴²
- 6.106** Minister Knowles went ahead and opened the Designer Outlets Centre on 21 November 2003, after Westfield representatives had advised him that they were intending to take legal action to close the centre. He attended with Ms Katherine Keating, a member of his personal staff.⁴⁴³ The impact of the senior Planning Minister opening the centre on some tenants is outlined in Chapter 2.

⁴³⁷ Mr Ryan, Evidence, 25 August 2004 pp15-16

⁴³⁸ Mr Jordan, Evidence, 16 August 2004, p39

⁴³⁹ Mr Steven Lowy, Managing Director, Westfield Group, 29 November 2004 p4

⁴⁴⁰ Mr Ferrer, Evidence, 9 September 2004, p37

⁴⁴¹ Mr Ferrer, Evidence, 9 September 2004, pp27-28

⁴⁴² Ms Taylor, Evidence, 20 September 2004, p104

⁴⁴³ Mr Nabil Gazal Jnr, Evidence, 11 October 2004, p71

- 6.107** In terms of portfolio responsibilities Minister Knowles' refusal to intervene in the rezoning application is understandable. Equally understandable is the angry reaction of tenants as expressed to the Committee at its hearing at Liverpool on 16 August, who felt the Minister had a responsibility to intervene given that he had opened the Centre.
- 6.108** Given the concerns regarding the probity of Liverpool City Council to which both the Minister and the Premier have made frequent reference, the Committee finds the decision of Minister Knowles to open the Centre a curious decision, which could only be explained by his prior, positive associations with the proponents of the Designer Outlets Centre.

Finding 10

There is no evidence before the Committee that Minister Knowles intervened in the decision of Minister Beamer regarding the rezoning.

The decision by Minister Knowles to open the Centre was unwise, given the Minister had been informed of pending legal action, and may have contributed to greater confidence by tenants in their future security than was warranted.

The Committee finds the actions of Gazcorp associates in seeking to lobby Minister Knowles at his parents' home was unwise.

General Secretary of the ALP

- 6.109** In evidence by former Liverpool Councillor Mr Tony Beuk questions were asked about contact between Mr Eric Roozendaal, former General Secretary of the NSW ALP, and Westfield regarding the Orange Grove matter. Mr Beuk advised that Mr Roozendaal had asked him a question about the Orange Grove matter some time in 2004 after Liverpool Council had been dismissed and prior to Mr Roozendaal becoming a member of the Legislative Council.⁴⁴⁴ Mr Beuk could not recollect the date, nor whether he had any prior conversation with Mr Roozendaal about the matter.⁴⁴⁵ Mr Beuk understood that Mr Roozendaal's inquiry was as a friend rather than in his capacity as secretary of the ALP:

I think it was just from a personal point of view. I had worked for him for a number of years, so it would have been out of a personal interest in terms of how things were progressing. Certainly, my view of it would be that he was a friend trying to gauge the effect it had on me personally in terms of what happened at council and so forth. I would not describe it as an attempt to gather information for another purpose.⁴⁴⁶

- 6.110** The Committee invited the Honourable Eric Roozendaal to appear before the inquiry on two occasions but the Committee received no reply to either invitation.

⁴⁴⁴ Evidence, 20 September 2004, p28, p35

⁴⁴⁵ Evidence, 20 September 2004, p35

⁴⁴⁶ Mr Beuk, Evidence, 20 September 2004, p35

Member for Fairfield

- 6.111** Although the Member for Fairfield, Mr Joe Tripodi MP, declined invitations by the Committee to appear he figured frequently in testimony by other witnesses.
- 6.112** There is strong corroborating evidence that the Member for Fairfield was a supporter of the Designer Outlets Centre:
- Gazcorp proponents such as Mr Gazal, Mr Bargshoon and Mr Mosca spoke of their associations with the member
 - Gazcorp's commercial rivals, Westfield, identified the Member as a person who would be likely to influence Minister Beamer in favour of the proposal
 - his brother made use of a boat lent to him by Mr Gazal for a buck's night
 - the Premier's Chief of Staff Mr Wedderburn identified the Member as a person who would be likely to influence Minister Beamer in favour of the proposal
 - the Chief of Staff of Minister Beamer Mr Meagher reported a phone call in which Mr Tripodi expressed anxiety about the developers reporting matters to the ICAC.⁴⁴⁷
- 6.113** The alleged conversation at Gloria Jeans coffee shop is said to have taken place on Saturday 22 May 2004. According to a statutory declaration made by Mr Gazal:
- Joseph Tripodi told me that the Minister Dianne Beamer told him that Premier Bob Carr rang her and told her not to sign the rezoning of the Designer Outlets Liverpool. Joseph went on to explain that Bob Carr is doing a favour for his mate Frank Lowy. But Joseph told me and assured me that Dianne Beamer will do the right thing and sign the rezoning because it is a no-brainer; 450 jobs will be lost and a law suit for 40 million dollars against Liverpool Council.⁴⁴⁸
- 6.114** Mr Bargshoon, who was also present at the meeting, made a statutory declaration supporting Mr Gazal's version of events.⁴⁴⁹ Mr Mosca made a statutory declaration detailing a conversation with Mr Tripodi in June 2004, making a similar claim that Mr Tripodi told him that Premier Carr instructed Minister Beamer to 'screw it [the rezoning] over.'⁴⁵⁰ Mr Tripodi has been reported as denying this version of the conversation (see below).
- 6.115** There is strong corroborating evidence that the Member for Fairfield was a supporter of the Designer Outlets Centre. Mr Tripodi was closely connected to the Centre through his good friend Mr Bargshoon,⁴⁵¹ with Mr Bargshoon claiming that he enlisted Mr Tripodi's help in lobbying efforts over the Centre.⁴⁵² Mr Tripodi was also connected to Frank Mosca through

⁴⁴⁷ Mr Meagher, Evidence, 30 August 2004, p2

⁴⁴⁸ Statutory declaration by Nabil Gazal, dated 10 July 2004, tabled by Mr Gazal on 9 September 2004

⁴⁴⁹ Statutory declaration by Sam Bargshoon, dated 10 July 2004, tabled by Mr Gazal on 9 September 2004

⁴⁵⁰ Statutory declaration by Frank Mosca, dated 10 July 2004, tabled by Mr Gazal on 9 September 2004

⁴⁵¹ See various photographs of Mr Tripodi and Mr Bargshoon, tabled by Mr Bargshoon on 25 August 2004

⁴⁵² Mr Gazal and Mr Bargshoon, Evidence, 17 August 2004, p64

Mr Mosca's involvement in local ALP politics. Mr Gazal had known Mr Tripodi for 10 years; he gave evidence that his relationship with Mr Tripodi had been cold in the past, but that relations had improved since the opening of the Centre, as Mr Tripodi used to frequent the Centre.⁴⁵³ In April 2004 Mr Gazal lent Mr Tripodi his luxury cruiser in April 2004 for Mr Tripodi's brother's buck's night.⁴⁵⁴ In a personal explanation to the Legislative Assembly Mr Tripodi, while not denying Mr Gazal had lent him his boat, described as 'rubbish' claims that this was in return for lobbying on behalf of Gazcorp.⁴⁵⁵

- 6.116** Observers expected Mr Tripodi to be involved in lobbying for the rezoning: both Mr Wedderburn and Mr Ryan identified Mr Tripodi as a person who would be likely to influence Minister Beamer in favour of the proposal.⁴⁵⁶ Mr Wedderburn gave evidence that from his conversation with Minister Beamer that Mr Tripodi may have already spoken with her about the proposed development:

The Hon. JOHN RYAN: Did you mention the concerns about Mr Tripodi with the Premier?

Mr WEDDERBURN: I believe I did. As I said, Ryan had said he believed that they would enlist people to do this. There is nothing wrong—in fact, it is entirely appropriate—with members of Parliament whether they are the local member, or a local member, to be concerned about local issues and, indeed, speak with groups and associations in their electorate and individuals about matters of concern. There is nothing wrong with that whatsoever. As a parliamentarian I am sure you are well aware of that. I believe there is nothing wrong with members expressing their concerns to other members of the Government. Of course, the manner in which they do that is the issue. When I spoke with the Minister and her chief of staff it was evident to me on the morning of 20 April that the names Mosca, a councillor and Joe Tripodi having an interest in this was already familiar to the Minister and her chief of staff.⁴⁵⁷

- 6.117** The Committee notes that any contact with Minister Beamer's office by Mr Tripodi appeared to have ceased after the meeting of 20 April 2004.⁴⁵⁸
- 6.118** Mr Joe D'Agostino, who is Mr Tripodi's solicitor and acted for Gazcorp in the matter of retail leases, made a statutory declaration detailing a conversation he had with Mr Tripodi in late June 2004, which shows Mr Tripodi's involvement in lobbying for the rezoning:

⁴⁵³ Mr Gazal, Evidence, 25 August 2004, p76

⁴⁵⁴ Davies A, 'Love boat allegations ripple among MPs,' *Sydney Morning Herald*, p6; Saleh L, 'What a jolly old disaster is Tripodi,' *Daily Telegraph*, 25 September 2004, p19

⁴⁵⁵ See allegation by Mr John Brogden MP, Legislative Assembly, New South Wales, *Hansard*, 23 September 2004, p11434, and response by Mr Joseph Tripodi MP, Legislative Assembly, New South Wales, *Hansard*, 23 September 2004, p11466

⁴⁵⁶ Mr Wedderburn, Evidence, 18 August 2004, pp33-34 & 48; Mr Mark Ryan, Evidence, 25 August 2004, p13

⁴⁵⁷ Mr Wedderburn, Evidence, 18 August 2004, pp33-34

⁴⁵⁸ Mr Meagher, Evidence, 30 August 2004, p45

He said to me words to the effect ‘tell Nabil I have tried a few times to make enquiries as to what is going on, but I keep getting the door shut on me.’ He then indicated that this was being dealt with at a higher level than himself.⁴⁵⁹

6.119 Mr D’Agostino was asked by Mr Gazal to make his statutory declaration on the afternoon of Saturday 10 July 2004 along with declarations by Mr Gazal, Mr Mosca and Mr Bargshoon. Mr D’Agostino then sent a text message to Mr Tripodi, who was on his honeymoon in Europe, to inform him of Mr Gazal’s intention to take the statutory declarations to the ICAC.⁴⁶⁰

6.120 Mr Meagher gave evidence that an ‘anxious’⁴⁶¹ Mr Tripodi subsequently called him to advise him that

... four associates of Gazcorp Pty Ltd planned to sign statutory declarations to the effect that Mr Tripodi had told them that Minister Beamer had told him that Frank Lowy had told the Premier that to instruct her not to approve the LEP. Mr Tripodi said that this was not true and that he had told them no such thing. He said that he had spoken to them but only said words to the effect that it wouldn’t surprise him in this situation that Westfield, and other parties, had made representations of some kind to Government. Mr Tripodi said that Gazcorp was threatening to take the matter to the Independent Commission Against Corruption. He asked me to pass this on to the Minister.⁴⁶²

6.121 Mr Tripodi called Mr Meagher a second time that afternoon to inform him of a subsequent conversation with the Gazcorp associates, who were now talking of taking the matter to the Ombudsman.⁴⁶³ The denial reported by Mr Meagher is hearsay, as is the original account of the conversation reported by Mr Gazal and others.

6.122 Without Mr Tripodi’s testimony the Committee is unable to make findings on the crucial hearsay evidence of Mr Gazal that the Premier had requested Minister Beamer not to approve the rezoning submitted by the Liverpool Council Administrator. It is clear that the Member for Fairfield was a strong supporter of the proponents of the Designer Outlets Centre and he appears to have lobbied on their behalf prior to the rezoning being rejected.

⁴⁵⁹ Statutory declaration by Joseph D’Agostino, dated 10 July 2004, tabled by Mr Gazal on 9 September 2004

⁴⁶⁰ Mr D’Agostino, Evidence, 9 September 2004, pp112-3

⁴⁶¹ Mr Meagher, Evidence, 30 August 2004, p17

⁴⁶² Mr Meagher, Evidence, 30 August 2004, p2

⁴⁶³ Mr Meagher, Evidence, 30 August 2004, p2

Finding 11

The Member for Fairfield, Mr Tripodi, was a strong supporter of the Designer Outlets Centre proponents until the rezoning was rejected by Minister Beamer.

A majority of the Committee believe the testimony of Mr Gazal that Mr Tripodi said:

Joseph Tripodi told me that the Minister Dianne Beamer told him that Premier Bob Carr rang her and told her not to sign the rezoning of the Designer Outlets Liverpool. Joseph went on to explain that Bob Carr is doing a favour for his mate Frank Lowy. But Joseph told me and assured me that Dianne Beamer will do the right thing and sign the rezoning because it is a no-brainer; 450 jobs will be lost and a law suit for 40 million dollars against Liverpool Council.

Other Members of Parliament

- 6.123** The Committee invited the Leader of the Opposition, the Mr John Brogden MP, and the Member for Lane Cove, Mr Anthony Roberts MP to appear at its hearing on 11 October 2004. Both members accepted the invitation and gave evidence.
- 6.124** The Committee is grateful to both members for their participation in the inquiry, who as members of the lower House were not obliged to attend. There is no evidence of their involvement in the decision not to rezone the LEP. Although the submission by Gazcorp indicates Mr Gazal sought the assistance of Mr Roberts prior to the rezoning,⁴⁶⁴ the evidence of Mr Meagher⁴⁶⁵ and Mr Roberts was that Mr Roberts did not make a call to Minister Beamer to lobby on behalf of Mr Gazal.

Conclusion

- 6.125** The evidence of this inquiry clearly shows that two developers sought to gain access to NSW Government Ministers to pursue their commercial interests regarding the future of the Designer Outlets Centre. Westfield was successful in gaining access to the Premier's office via a meeting with his Chief of Staff. Through the presentation of a range of allegations of corruption, which Westfield representatives have admitted were not supported by documentary evidence, Westfield was able to ensure that no similar meeting would be offered to its rival, Gazcorp. Repeated attempts to meet with the Assistant Planning Minister, then finally with the Planning Minister, were rejected by the offices of both those Ministers.
- 6.126** As a result the Assistant Planning Minister, very unusually, went against the recommendation of the Department's s69 report to reject the rezoning. The office of Assistant Minister Beamer rejected every attempt by the commercial competitor to discuss the future of its centre.

⁴⁶⁴ Submission 10, Gazcorp, p6

⁴⁶⁵ Mr Meagher, Evidence, 30 August 2004, p20

- 6.127** It is the Committee's view that Westfield improperly used the influence that they had at the level of the Premier and the Premier's office to influence a planning decision that would commercially affect Westfield
- 6.128** It is the Committee's view that the Premier and the Premier's office sought to inappropriately direct Minister Beamer's decision on the Orange Grove centre based solely on the improper influence exerted by Westfield
- 6.129** It is the Committee's view that the Premier Carr, the Premier's Chief of Staff, Mr Wedderburn, Assistant Planning Minister Diane Beamer, the Planning Minister Craig Knowles and Westfield conspired to cover up their involvement in the Orange Grove affair. These matters are currently before the ICAC which has the power to make findings as to whether such behaviour could be construed as corrupt conduct.
- 6.130** There was an absence of transparency by Westfield representatives, the Premier and Minister Beamer regarding the meetings held on 19 and 20 April at which the rezoning was discussed. These meetings appeared to have only been revealed as a result of this inquiry. It was after these meetings that all legitimate channels for Gazcorp to lobby in support of the rezoning were closed off. This Committee deplores the fact that approximately 400 workers and small business owners were put out of a job without NSW government ministers being willing to meet with only one of the competing developers.
- 6.131** A useful summary of the events of this inquiry was provided by Mr Mark Ryan of Westfield during his second appearance before the Committee:

So this issue about entrée, I mean I am experienced, and have been for a long time, dealing with governments and speaking with governments, and when a major global organisation that has grown up in this city, that has invested billions of dollars in this State, seeks a meeting at high levels of government on either side of the political fence or with any political leader, generally speaking a meeting of access can be arranged. There is absolutely nothing unusual about that. Sometimes it can take one phone call, sometimes it takes a few, depending on people's diaries and other pressures, but eventually you know that you can arrange a meeting.⁴⁶⁶

⁴⁶⁶ Evidence, 10 September 2004, p27

Finding 12

It is the Committee's view that Westfield improperly used the influence that they had at the level of the Premier and the Premier's office to influence a planning decision that would commercially affect Westfield.

It is the Committee's view that the Premier and the Premier's office sought to inappropriately direct Minister Beamer's decision on the Designer Outlets Centre based solely on the improper influence exerted by Westfield.

It is the Committee's view that the Premier Mr Carr, the Premier's Chief of Staff, Mr Wedderburn, the Assistant Planning Minister Ms Beamer, the Planning Minister Mr Knowles and representatives of Westfield conspired to cover up their involvement in the Orange Grove affair. These matters are currently before the ICAC which has the power to make findings as to whether such behaviour could be construed as corrupt conduct.

Appendix 1 Submissions

No	Author
1	Mr William Taylor
2	Mrs Margaret Beadle
3	Mr Manell Khodr (Sisco)
4	Mr Julian Hayman (True Alliance)
5	Mr Larry Musolino (Seres Australia Pty Ltd)
6	Mr David Small (Bag Corporation Australia Pty Ltd)
7	Ms Narelle Beattie (on behalf of the McGill Street Residents)
8	Mr Tony Sahota (Pearl Leather)
9	Partially confidential
10	Mr Nabil Gazal (Gazcorp Pty Ltd)
11	Confidential
12	Confidential
13	Mr Shaun Smith (Forty Winks Liverpool)
14	Ms Siv Cheng Taing (Forecast Fashions Store)
15	Ms Kimberley Birch (Bohemia Crystal)
16	Ms Zeina Mouhajer (Sportspower)
17	Ms Antoinette Bosch (Oneida International)
18	Ms Katrina Hayek (Rima Shoes)
19	Ms Sandy Heathcote (Rockmans)
20	Ms Yvonne Bugg (Welcome Home Manchester)
21	Ms Marcia Kotopoulis
22	Ms Sharon Lan (Feminic)
23	Mr Zahi Alamah
24	Ms Nadia Dillo (Fletcher Jones)
25	Ms Suzie Bogojevic (Pearl Leather)
26	Mr Koo J Lee (Bag Station)
27	Mr Marcus Ray (Department of Infrastructure, Planning and Natural Resources)
28	Mr John Weihen
29	Mr Milton Cockburn (Shopping Centre Council of Australia)
30	Ms Monica Wangmann (Ashfield Municipal Council)
31	Mr Jason Dean (Subway)
32	Mr Neil Ingham (Ingham Planning)

Appendix 2 Witnesses

Date	Name	Position and Organisation	
Friday 13 August	Mr Frank Mosca	Director, Mosca Pserras Architects	
	Mr Sam Bargshoon	Bargshoon Cleaning Services	
	Mr Nabil Gazal	Managing Director, Gazcorp Pty Ltd	
	Ms Gabrielle Kibble	Administrator, Liverpool City Council	
	Mr Phil Tolhurst	Manager, City Development, Liverpool City Council	
	Mr Phil Jemison	Urban Renewal Coordinator, Liverpool City Council	
	Mr Geoff Hunt	Formerly Snr Development Planner, Liverpool City Council	
	Ms Jennifer Westacott	Director General, Department of Infrastructure, Planning & Natural Resources (DIPNR)	
	Dr Sam Haddad	Deputy Director General, DIPNR	
	Mr Gary Prattley	Executive Director, Metropolitan Land & Resource Planning, DIPNR	
	Mr Peter Hamilton	Principal Policy Adviser, Metropolitan Strategy, DIPNR	
	Ms Laurel Cheetham	Senior Environmental Planner, DIPNR	
	Mr David Birds	Team Leader Southwest Sector, DIPNR	
	Mr Marcus Ray	Acting Manager, Legal Branch, DIPNR	
	Mr Stephen Driscoll	Former Regional Planning Coordinator, Sydney Region West, DIPNR	
	Mr Milton Cockburn	Executive Director, Shopping Centre Council of Australia	
	Mr Michael Evesson	Managing Director, Hirst Consulting	
	Mr Peter Leyshon	Director, Leyshon Consulting	
	Monday 16 August	Mr George Paciullo	Former Mayor, Liverpool City Council
		Mr Col Harrington	Former Independent Councillor, Liverpool City Council
Ms Katrina Hayek		Manager, Rima Shoes	
Ms Sandy Heathcote		Store Manager, Rockmans	
Ms Antoinette Bosch		Sales Assistant, Oneida International	
Mr Glenn Borwick		Owner, Sneakers	
Mr Sam Nasser		Owner, Gloria Jean's Coffees	
Ms Lorraine White		Retail Controller, Bag Co	
Mr Tony Sahota		Pearl Leather	
Mr Robert Jordan		Chief Operating Officer – Australia & NZ, Westfield	
Mr Neil Ingham		Director, Ingham Planning	
Mr John Henshaw		Spokesperson & Commerce Solicitor, Liverpool Chamber of Commerce & Industry	

Date	Name	Position and Organisation
	The Hon Julia Irwin MP	Federal Member for Fowler
Tuesday 17 August	Ms Jennifer Westacott	Director General, Department of Infrastructure, Planning & Natural Resources (DIPNR)
	Mr Gary Prattley	Executive Director, Metropolitan Land & Resource Planning, DIPNR
	Dr Sam Haddad	Deputy Director General, DIPNR
	Mr Peter Hamilton	Principal Policy Adviser, Metropolitan Strategy, DIPNR
	Ms Laurel Cheetham	Senior Environmental Planner, DIPNR
	Mr David Birds	Team Leader Southwest Sector, DIPNR
	Ms Justine de Torres	Senior Legal Officer, DIPNR
	Mr Stephen Driscoll	Former Regional Planning Coordinator, Sydney Region West, DIPNR
	Mr Michael Astill	Corporate Counsel, DIPNR
	Mr Frank Mosca	Director, Mosca Pserras Architects
	Mr Sam Bargshoon	Bargshoon Cleaning Services
	Mr Nabil Gazal	Managing Director, Gazcorp Pty Ltd
	Mr Frank Gelonesi	Chair, Greater Western Sydney Economic Development Board
	Mr Gerard Turrisi	GAT & Associates
Wednesday 18 August	Mr Col Gellatly	Director General, Premier's Department
	Mr Alex Smith	Chief of Staff, Premier's Department
	Mr Graeme Wedderburn	Chief of Staff, Premier's Office
	Mr Garry McCully	General Manager, Liverpool City Council
	Ms Isabelle Bennett	Media Officer, DIPNR
Wednesday 25 August	Mr Mark Ryan	Director of Corporate Affairs, Westfield
	Mr Craig Marshall	Assets General Manager for NSW, Westfield
	Ms Alice Spizzo	Executive Director, Office of the Director General, DIPNR
	Mr Nabil Gazal	Managing Director, Gazcorp Pty Ltd
	Mr Nabil Gazal Jnr	Gazcorp Pty Ltd
	Mr Frank Mosca	Director, Mosca Pserras Architects
	Mr Sam Bargshoon	Bargshoon Cleaning Services
Monday 30 August	Mr Michael Meagher	Chief of Staff, Office of the Minister for Juvenile Justice, Minister for Western Sydney & Minister Assisting the Minister for Infrastructure & Planning
	Mr George Paciullo	Former Mayor, Liverpool City Council

Date	Name	Position and Organisation
	Mr Geoff Hunt	Formerly Snr Development Planner, Liverpool City Council
	Mr Gerard Turrisi	GAT & Associates
Monday 6 September	Mr Joseph D'Agostino	Principal, D'Agostino Solicitors
Thursday 9 September	Mr Emilio Ferrer	Former Deputy Chief of Staff, Minister for Infrastructure, Planning & Natural Resources
	Mr Nabil Gazal	Managing Director, Gazcorp Pty Ltd
	Ms Jennifer Westacott	Director General, Department of Infrastructure, Planning & Natural Resources (DIPNR)
	Mr Michael Astill	Corporate Counsel, DIPNR
	Mr Stephen Driscoll	Former Regional Planning Coordinator, Sydney Region West, DIPNR
	Mr Joseph D'Agostino	Principal, D'Agostino Solicitors
Friday 10 September	Mr Robert Jordan	Chief Operating Officer – Australia & NZ, Westfield
	Mr Mark Ryan	Director of Corporate Affairs, Westfield
	Mr Craig Marshall	Assets General Manager for NSW, Westfield
	Mr Greg Miles	Director, Development & Asset Management, Westfield
	Mr Chris Weston	Former Planning Manager, Liverpool City Council
	Mr Julian Brophy	Orion Communications
Monday 20 September	Mr Stephen Driscoll	Former Regional Planning Coordinator, Sydney Region West
	Mr Tony Beuk	Former Councillor, Liverpool City Council
	Mr Sam Bargshoon	Bargshoon Cleaning Services
	Mr Gerard Turrisi	Principal, GAT & Associates
	Mr Jeff Tucker	Property Development Manager, AMP Capital Investors
	Mr Tom Zarimis	National Manager, Property Development, AMP Capital Investors
	Mr Bill Patteson	Consultant, Austexx
	Ms Sarah Taylor	Chief of Staff, Minister for DIPNR
	Ms Jennifer Westacott	Director General, Department of Infrastructure, Planning & Natural Resources (DIPNR)
	Mr Michael Astill	Corporate Counsel, DIPNR
	Dr Sam Haddad	Deputy Director General, DIPNR
	Mr Glenn Smith	Executive Director of Corporate Services, DIPNR
Monday 11 October	Mr John Brogden MP	Leader of the Opposition, Legislative Assembly

Date	Name	Position and Organisation
	Mr Peter Fraser	Chief of Staff, Office of the Leader of the Opposition
	Mr Stephen Murphy	Director of Communications, Office of the Leader of the Opposition
	Mr Anthony Roberts MP	Member for Lane Cove, Legislative Assembly
	Mr Nabil Gazal	Managing Director, Gazcorp Pty Ltd
	Mr Nabil Gazal Jnr	Gazcorp Pty Ltd
	Mr Murray Douglas	Former Officer, Liverpool Council
Monday 29 November	Mr Frank Lowy	Chairman, Westfield Holdings Limited
	Mr Steven Lowy	Managing Director, Westfield Holdings Limited
	Mr Frank Mosca	Director, Mosca Pserras Architects
	Mr Eric Heapy	Formerly Liverpool City Council
	Mr Gerard Turrisi	GAT and Associates
	Ms Katherine Keating	Policy Officer, Office of the Minister for Infrastructure & Planning, and Minister for Natural Resources

Appendix 3 Tabled Documents

Friday 13 August 2004

1. Fax to Harshane Kahagalle from Stephen Driscoll, Regional Planning Co-ordinator Sydney Region West re: Liverpool Draft Local Environmental Plan Amendment No.92 dated 21 April 2004 – *tabled by Nabil Gazal*
2. Letter to Harshane Kahagalle/Paul Lalich, Allens Arthur Robinson re: Draft Liverpool LEP (Amendment 92) dated 24 June 2004 – *tabled by Nabil Gazal*
3. Director General's (DIPNR) Report under Section 69 of Environmental Planning and Assessment Act 1979 re: Liverpool Local Environmental Plan 1997 (draft amendment No 92) Outlet Centre Amendment dated 3 June 2004 – *tabled by Nabil Gazal*
4. Letter to Philip Western, Valuer-General from George Veris, Senior Valuer, Quotable Value Australia re: 12 Orange Grove Road dated 12 August 2004 – *tabled by Peter Primrose*
5. Letter to The Hon Craig Knowles MP, Member for Macquarie Fields from Gabrielle Kibble, Administrator, Liverpool Council re: Liverpool Central Business District dated 24 March 2004 – *tabled by Gabrielle Kibble*
6. Letter to The Manager, Mosca Pserras Partnership Pty Ltd from Geoffrey Hunt, Senior Environmental Development Planner re: development application for proposed change of use from existing bulky goods/warehousing development to warehouse clearance outlet dated 13 June 2002 – *tabled by Jan Burnswoods*
7. Letter to Gazcorp from Michael Evesson, Managing Director, Hirst Consulting re: Warehouse clearance outlet dated 8 September 2003 – *tabled by Michael Evesson*
8. Report prepared by Hirst Consulting Services Pty Ltd re: Proposed Warehouse Clearance Outlet – *tabled by Michael Evesson*

Monday 16 August 2004

1. Submission by Neil Ingham, Ingham Planning Pty Ltd, on behalf of Westfield Limited, dated August 2004 – *tabled by Neil Ingham*

Tuesday 17 August 2004

1. Letter to Anthony Mellick, Corporate Apparel from Mr Nabil Gazal Jnr, Project Manager, Designer Outlets Centre re: Designer Outlets Centre Liverpool dated 8 September 2003 – *tabled by Nabil Gazal in response to a question taken on notice on Friday 13 August – confidential – made public on 25 August*
2. [CONFIDENTIAL] – *tabled by Nabil Gazal*
3. List of donations to the ALP – *tabled by Nabil Gazal in response to a question taken on notice Friday 13 August*

Wednesday 18 August 2004

1. Emails to and from Alex Smith and attached briefing notes regarding the amendment to the Liverpool LEP dated 16 April 2004 – *tabled by Alex Smith*
2. Briefing note titled 'Bulky goods retail outlets – Liverpool' by Alex Smith dated 16 April 2004 and attached briefing notes – *tabled by Graeme Wedderburn*

3. Opening statement by Graeme Wedderburn, Chief of Staff to the Premier – *tabled by Graeme Wedderburn*

Wednesday 25 August 2004

1. Opening statement by Mark Ryan, Westfield – *tabled by Mark Ryan*
2. Diagram of ‘Gazcorp’s Liverpool Links’ – *tabled by Mark Ryan*
3. Letter to Anthony Mellick, Corporate Apparel from Mr Nabil Gazal Jnr, Project Manager, Designer Outlets Centre re: Designer Outlets Centre Liverpool dated 8 September 2003 – *tabled by Nabil Gazal Jnr (previously tabled on Tuesday 17 August)*
4. Standard lease agreement of Gazcorp – *tabled by Nabil Gazal Jnr*
5. Letter ‘to whom it may concern’ from Michael Want, Executive President of the United Services Union re: Sam Bargshoon’s membership of the union dated 16 Feb 2004 – *tabled by Sam Bargshoon*
6. 9 statutory declarations – *tabled by Sam Bargshoon*
7. 15 photos of Sam Bargshoon and various others – *tabled by Sam Bargshoon*

Monday 30 August 2004

1. Opening statement by Michael Meagher, Chief of Staff to the Hon Diane Beamer – *tabled by Michael Meagher*
2. List of attempts by John Dermody, Jobs Coordinator to contact the owners of the Designer Outlets Centre, titled ‘History of Attempts to Engage Gazcorp’ – *tabled by Michael Meagher*
3. [CONFIDENTIAL] – *tabled by Michael Meagher*
4. Diagram of ‘Westfield’s Web of Influence’ – *tabled by Sylvia Hale*
5. List of Westfield’s donations to the Federal and NSW Labor Party 1998-2003 – *tabled by Sylvia Hale*
6. Cover fax and letter to George Paciullo, Mayor of Liverpool City Council from Greg Miles, Director, Development & Assets Management, Westfield re: Westfield Liverpool request for a meeting to discuss expansion plans dated 3 October 2001 – *tabled by George Paciullo*
7. Fax to The Mayor, George Petulo from Julia Lithgow (on behalf of Craig Marshall of Westfield) re: organising a meeting to discuss future developments in Liverpool dated 23 October 2000 – *tabled by George Paciullo*
8. Letter to George Paciullo, Mayor of Liverpool City Council from Greg Miles, Asset General Manager – NSW, Westfield thanking Mr Paciullo for the meeting of that morning dated 28 November 2000 – *tabled by George Paciullo*
9. Email to Sandy Kyle from Kyley Burke, PA to Greg Miles confirming a meeting for 28 May 2003 between George Paciullo and Murray Douglas of Liverpool City Council and Greg Miles and Justin Lynch of Westfield, dated 22 May 2003 – *tabled by George Paciullo*
10. Flow chart of ‘Liverpool Council’s Development Application System’ – *tabled by George Paciullo*
11. Web page of the ‘Land and Environment Court – Working Party’ discussing Liverpool City Council’s Independent Hearing Assessment Panel accessed 29 August 2004 – *tendered by George Paciullo*
12. 3 newspaper articles concerning Liverpool City Council’s Independent Hearing Assessment Panel, from the Liverpool Champion dated 27 May 1998, Liverpool Leader dated 27 May 1998 and Liverpool Champion dated 28 February 2001 – *tendered by George Paciullo*

13. Memo from Chris Weston, Manager of Planning, Liverpool City Council to Gerard Turrisi, Corporate Manager, Built Environment, Liverpool City Council re: preliminary comments on warehouse clearance outlet at 12-18 Orange Grove Road dated 6 June 2002 – *tabled by Peter Primrose*
14. Letter from Malcolm Stewart, Speed and Stracey, responding to an invitation to Westfield officers to give evidence dated 30 August 2004 – *tabled by the Committee Clerk*

Monday 6 September 2004

1. Statutory declaration by Joseph d'Agostino concerning a conversation with Joseph Tripodi in late June 2004 – *tabled by John Ryan*

Thursday 9 September 2004

1. Opening statement by Emilio Ferrer – *tabled by Emilio Ferrer*
2. Four statutory declarations by Samir Bargshoon, Frank Mosca, Nabil Gazal and Joseph d'Agostino dated 10 July 2004 – *tabled by Nabil Gazal*

Friday 10 September 2004

1. Letter from Malcolm Stewart, Speed and Stracey Solicitors providing documents that the Committee resolved to request from Westfield on Monday 6 September, dated 10 September 2004

Monday 20 September 2004

1. Opening statement by Samir Bargshoon – *tabled by Samir Bargshoon*
2. DVD of excerpts from 'Seven Nightly News' and 'The Sunday Program' relating to allegations of branch stacking made by Sam Bargshoon – *tendered by Samir Bargshoon*
3. Letter from Jennifer Westacott dated 20 September 2004 – *tabled by Jennifer Westacott in response to questions taken on notice on Thursday 9 September*

Monday 11 October 2004

1. Opening statement John Brogden – *tabled by John Brogden*
2. Statutory declaration by Peter Fraser concerning a phone conversation with Mark Ryan – *tabled by Peter Fraser*
3. Opening statement by Anthony Roberts – *tabled by Anthony Roberts*
4. 12 letters from employees and business owners at the Designer Outlets Centre – *tabled by Anthony Roberts*

Appendix 4 Minutes

Minutes No 34

Wednesday 28 July 2004

Room 1108, Parliament House, Sydney at 9.35 am

1. Members Present

Ms Gardiner (*Chair*)

Ms Hale (*Deputy Chair*)

Ms Burnswoods

Mr Primrose (Roozendaal)

Mr Oldfield

Ms Griffin

Mr Ryan (Clarke)

2. Substitute arrangements

The Chair advised that Mr Primrose would be representing Mr Roozendaal and Mr Ryan would be representing Mr Clarke, for the duration of any inquiry into the Designer Outlets Centre.

3. Minutes

Resolved, on the motion of Ms Burnswoods, that Minutes No 33 be confirmed.

4. Correspondence

Correspondence received

- Letter from Mr Gerry Gleeson, Chairman SHFA, advising that he will be unavailable to appear before the inquiry during the month of October, but would be pleased if the Committee could schedule its hearings before October (6 July 2004)
- Letter from the Hon Jenny Gardiner, the Hon Sylvia Hale, the Hon David Oldfield and the Hon David Clarke requesting a meeting of GPSC4 to consider a proposed self reference into the Designer Outlet Centre on Orange Grove Rd in Liverpool (22 July 2004)

Correspondence sent

- Letter to the Hon Michael Costa MLC, inviting him to a further public hearing of the Committee in relation to the closure of the Casino to Murwillumbah rail service (9 July 2004)

5. Proposed self reference – Designer Outlets Centre, Liverpool

Terms of reference

The Committee discussed draft terms of reference, previously circulated to the Committee.

Resolved, on the motion of Mr Ryan, that the Committee adopt the following terms of reference.

1. That General Purpose Standing Committee No 4 inquire into and report on the approval process relating to the Designer Outlets Centre on Orange Grove Road, Liverpool by Liverpool Council, and in particular:
 - (a) the circumstances surrounding that approval;
 - (b) the role of the Minister for Infrastructure Planning and Natural Resources, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration) and the Department of Infrastructure, Planning and Natural Resources in dealing with the development;

- (c) the role of the Premier, the Premier's Office, the Member for Fairfield, any member of the Government or any other party in dealing with the development;
 - (d) the economic and social impact on the Liverpool community of the loss of jobs as a result of the centre closing;
 - (e) the future of the Designer Outlets Centre on Orange Grove Road, including but not limited to, the effect on businesses, the local community and jobs; and other relevant matters arising from the Government's planning policies and decisions.
2. That the Committee report by 1 September 2004.

Call for papers

Resolved, on the motion of Mr Ryan:

1. That, under Standing Order 208 (c) of the Legislative Council, General Purpose Standing Committee No. 4 be provided with the following document(s) in the possession, custody or power of the Department of Infrastructure Planning and Natural Resources (DIPNR)
 - a. The complete file, including any attachments or folios maintained by DIPNR relating to the preparation and consideration of an application by Liverpool City Council for an amendment to Draft Amendment No 92 of the Liverpool Local Government Environment Plan 1997 relating to Outlet Centres.
 - b. ..Minutes/Notes of any meeting conducted by DIPNR relating to the preparation and consideration of the Amendment to Liverpool LEP No 92
 - c....Any correspondence or email created or held by DIPNR relating to the preparation and consideration of the Amendment to Liverpool LEP No 92 including any representations to any Minister or replies to any representations from any Minister or sent on behalf of a Minister to representations.
2. That the documents be provided to the Director of the Committee by **Friday 6 August**.
3. That an indexed list of all documents provided under this Resolution be prepared showing:
 - a. The author of the document;
 - b. A description of the document; and
 - c. The date of creation of the document.
4. Where it is considered that a document required to be lodged with the Committee is privileged and should not be made public by the Committee:
 - a. A return is to be prepared and lodged with the Clerk of the House showing the date of creation of the document, a description of the document, the author of the document and reasons for the claim of privilege, and
 - b. The documents are to be delivered to the Clerk of the House by **6 August 2004** and made available only to members of the Committee and the Director of the Committee.
5. That in the event of a dispute by any member of the House communicated in writing to the Clerk of the House as to the validity of a claim of privilege in relation to a particular document, the Clerk is authorised to release the disputed document to an independent legal arbiter who is either a Queen's Counsel, a Senior Counsel or a retired Supreme Court judge, appointed by the President, for evaluation and report to the Clerk within five days as to the validity of the claim.
6. A report from the independent arbiter provided to the Clerk of the House is to be made available only to members of the committee and the director of the committee, and not published or copied without an order of the committee.
7. That this resolution be conveyed to the Director-General of the Premier's Department and Director General of the Department of Infrastructure Planning and Natural Resources by the Director of the Committee.

Public hearings

Resolved, on the motion of Mr Ryan, that the Committee hold public hearings on Friday 13, and Monday 16 August, setting aside Tuesday 17 August as a reserve date, if required.

The Committee also agreed that one of these public hearings be held in Liverpool, at the Council Chambers.

Submissions

Resolved, on the motion of Mr Ryan, that the Committee request that submissions to the inquiry be submitted by 11 August 2004, but that submissions after that date be accepted.

Inquiry Advertising

Resolved, on the motion of Mr Ryan, that the inquiry should be advertised in the relevant papers in Liverpool and that a media release would be prepared for the Chair's approval and circulated to other Committee members.

Witnesses

Mr Ryan tabled the following list of proposed witnesses for the inquiry.

Designer Outlet Centre

Mr Nabil Gazal	Owner, Orange Grove Centre
Mr Frank Mosca	Architect
Mr Sam Bargshoon	Cleaning contractor at Orange Grove
Individual retailers, employees	

Liverpool City Council

Ms Gabrielle Kibble	Administrator, Liverpool City Council
Mr George Paciullo	Former Mayor, Liverpool City Council
Mr Col Harrington	Former Independent Councillor, Liverpool City Council
Mr Phil Tolhurst	Manager, City Development, LCC
Mr Geoff Hunt	Senior Development Planner, LCC
Mr Phil Jemison	Urban Renewal Coordinator, LCC

DIPNR

Ms Jennifer Westacott	(Department of Infrastructure Planning & Natural Resources) Director-General
Mr Gary Prattley	Executive Director, Metropolitan Planning
Mr Peter Hamilton	Principal Policy Advisor, Metropolitan Strategy
Ms Laurel Cheetham	Senior Environmental Planner
Mr David Birds	Team Leader

Relevant associations

Mr Milton Cockburn	Shopping Centre Council
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Westfield

Mr Robert Jordan	CEO, Westfield
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MPs, Ministers

Hon. Bob Carr, MP	Premier
Hon. Craig Knowles, MP	Minister for Infrastructure and Planning, and Minister for Natural Resources
Hon. Diane Beamer, MP	Minister for Western Sydney, Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)

Mr Joe Tripodi, MP
Ms Julia Irwin, MP

Minister for Juvenile Justice
Member for Fairfield
Federal Member for Fowler

The Committee agreed to invite the witnesses nominated in this list, with the addition of Mr D'Agostino, Mr John Henshaw, a representative of the Liverpool Chamber of Commerce and tenants from the Westfield shopping centre. Members should forward any additional suggested witnesses to the Chair, who will circulate the draft hearing schedule prior to the commencement of hearings.

6. Inquiry into the Management of the Sydney Harbour Foreshore Authority

7. Next meeting

The Committee adjourned at 10.30am until 13 August 2004.

Steven Reynolds
Clerk to the Committee

Minutes No 35

Thursday 12 August 2004

Room 1108, Parliament House, Sydney at 10.00 am

1. Members Present

Ms Gardiner (*Chair*)

Ms Rhiannon (Hale)

Mr West (Burnswoods – up to 11:00 am)

Mr Tsang (Burnswoods – after 11:00 am)

Mr Primrose (Roozendaal)

Mr Oldfield

Ms Griffin

Mr Ryan (Clarke)

2. Substitute arrangements

The Chair advised that Mr West would be representing Ms Burnswoods (and Mr Tsang after 11:00 am) and Ms Rhiannon would be representing Ms Hale for the purpose of this meeting.

3. Designer Outlets Centre, Liverpool

Resolved, on the motion of Mr Primrose, that the Committee proceed to discuss the response from DIPNR prior to consideration of other agenda items.

Response from DPNR – Call for Papers

The Acting Clerk, Ms Lynn Lovelock addressed the meeting regarding recent correspondence from the Department of Infrastructure Planning and Natural Resources (DIPNR) in which the powers of the committee to call for papers and to inquire into several of its terms of reference was questioned. Ms Lovelock provided an overview of recent advice regarding these issues prepared by the Crown Solicitor and Mr Bret Walker SC and advised members that, in her view, the Committee was authorised to call for papers and to inquire into the proposed terms of reference.

Resolved, on the motion of Mr Primrose, that in relation to the power to continue its inquiry into the Designer Outlets Centre, Liverpool, the Committee be guided on the matter by the Clerks and that the Clerks prepare an opening statement for the Chair's consideration, to be read at the commencement of the hearings. This statement should clarify the powers of the Committee in relation to calling for documents and questioning witnesses.

The Clerk circulated a draft letter to the Director General DIPNR from the Committee Chair regarding the call for papers.

Resolved, on the motion of Mr Ryan, that the letter as drafted be sent, with the inclusion of a revised deadline for the receipt of the papers of Friday 13 August at 5pm and that if necessary, the Committee will receive some of these papers on a confidential basis.

Request for additional witness

Resolved, on the motion of Mr Primrose, that the Committee invite Mr Neil Ingham to appear before the Committee at the hearing at 2pm on Monday 16 August within the same time allocation as Mr Jordan, the Chief Operating Officer of Westfield.

Submissions

Resolved, on the motion of Mr Oldfield, that Submissions no 1-7, which had been circulated, be published.

The Committee Clerk tabled submission 10 which had been received from Gazcorp after meeting papers were distributed.

Resolved, on the motion of Mr Primrose, that Submission No 10 from Gazcorp not be published for the present time, as requested Mr Nabil Gazal.

Publication of decisions of meeting

Resolved, on the motion of Mr Ryan that the Chair make a public statement regarding the response by the Committee to DIPNR's letter, and that both the original letter and the Committee's response by letter be published.

4. Minutes

Resolved, on the motion of Mr Ryan that Minutes No 34 be confirmed.

5. Correspondence

Correspondence received

- Letter from Mr Gerry Gleeson, Chairman SHFA, regarding the placement of inquiry submissions on the committee website (2 August 2004)
- Letter from Mr Michael Astill, Corporate Counsel, DIPNR, regarding the call for papers dealing with the approval process for the Designer Outlet Centre (9 August 2004)
- Letter from Mr Anthony Herro, seeking an extension of time to make a submission and requesting to give evidence at either of the two public hearings (6 August 2004)
- Letter from Malcolm Stewart, Speed and Stracey Lawyers Pty Ltd, representing Westfield, requesting Mr Neil Ingham appear to give evidence (11 August)

Correspondence sent

- Letter to the Hon RJ Carr, inviting him to attend a hearing of the Committee's inquiry into the Designer Outlets Centre (30 July 2004)
- Letter to the Hon D Beamer, inviting her to attend a hearing of the Committee's inquiry into the Designer Outlets Centre (29 July 2004)
- Letter to the Hon CJ Knowles, inviting him to attend a hearing of the Committee's inquiry into the Designer Outlets Centre (29 July 2004)
- Letter to the Hon JG Tripodi, inviting him to attend a hearing of the Committee's inquiry into the Designer Outlets Centre (29 July 2004)
- Letter to the Hon J Irwin inviting her to attend a hearing of the Committee's inquiry into the Designer Outlets Centre (29 July 2004)
- Letter to Ms J Westacott, Director General, DIPNR, advising her of the Committee's inquiry into the Designer Outlets Centre and the Committee's decision to order the production of certain documents relevant to this process (28 July 2004)
- Letter to Mr G Gleason, Chairman, Sydney Harbour Foreshore Authority, in response to his letter regarding adverse mention (11 August 2004)
- Letter to Mr Ben Giles, Solicitor, regarding the appearance of his client, Mr Robert Jordan, Chief Operating Officer, Westfield, at the Committee's hearing on Friday 13 August
- Letter to the Hon Michael Costa concerning further public hearing and QON regarding the closure of the Casino to Murwillimbah rail service (11 August 2004)

6. Next meeting

The Committee adjourned at 11.15am until 13 August 2004.

Steven Reynolds
Clerk to the Committee

Minutes No 36

Friday 13 August 2004

Jubilee Room, Parliament House, Sydney at 9.30 am

1. Members Present

Ms Gardiner (*Chair*)
Ms Rhiannon (Hale)
Ms Burnswoods
Mr Primrose (Roozendaal)
Mr Oldfield
Ms Griffin
Mr Ryan (Clarke)

2. Substitute arrangements

The Chair advised that Ms Hale had informed her in writing that Ms Rhiannon would substitute for her for the hearing.

3. Correspondence

Correspondence received

- Letter from Mr Marcus Ray, Acting Manager, Legal Branch, Department of Infrastructure, Planning and Natural Resources, advising that the Department would provide the documents requested in the original order for papers (12 August 2004)

Correspondence sent

- Letter from the Committee Director to the Ms J Westacott, Director General, Department of Infrastructure, Planning and Natural Resources responding to the Departments letter of 9 August declining to provide the documents ordered by the Committee (12 August 2004)
- Letter to the Administrator of Liverpool Council, Ms Gabrielle Kibble, regarding the unavailability of General Manager G McCully (11 August 2004)
- Letter from the Committee Director to the Administrator of Liverpool Council, Ms Gabrielle Kibble, correcting an error in the letter of 11 August regarding the unavailability of General Manager G McCully (12 August 2004)

4. Public Hearing – Designer Outlets Centre, Liverpool

Witnesses, the public and media were admitted

The Chair made an opening statement regarding adverse comments, sub judice issues, the response by the Department to the order for papers, and the broadcasting of proceedings.

The following witnesses were sworn and examined

- Mr Nabil Gazal, Managing Director, Gazcorp Pty Ltd
- Mr Sam Bargshoon
- Mr Frank Mosca, Architect

Mr Gazal tendered the following documents:

- Fax from Mr Stephen Driscoll, DIPNR to Harshane Kahagalie re Liverpool draft LEP No. 92
- Director General's s69 report, dated 3 June 2004

- Letter to Harshane Kahagalie/Paul Lalich, Allens Arthur Robinson re: draft Liverpool LEP no. 92

Resolved, on the motion of Mr Primrose, that the time for the witnesses be extended.

The witnesses continued to give evidence.

Resolved, on the motion of Mr Primrose, that the witnesses be re-invited for questioning at a hearing date to be fixed.

The evidence was concluded and the witnesses withdrew.

The Chair tabled a letter the Committee had only then received from Mr Michael Astill, Corporate Counsel for DIPNR, dated 13 August, agreeing to provide the documents requested except those for which privilege was claimed, and announced that the public documents had been received by the Acting Clerk of the Legislative Council.

Mr Primrose tabled the letter of valuation to Phillip Western, Valuer-General from George Veris, Quotable Value Australia re 12 Orange Grove Road.

Resolved, on the motion of Mr Ryan, that all the non-privileged documents provided by DIPNR, and submission no. 10 previously provided by Gazcorp, be published, with the exception of the document in the Gazcorp submissions over which the Department had previously made a claim of privilege.

The following witnesses from Liverpool City Council were sworn and examined

- Ms Gabrielle Kibble, Administrator
- Mr Phil Tolhurst, Manager, City Development
- Mr Phil Jemison, Urban Renewal Coordinator
- Mr Geoff Hunt, former planning officer

Ms Kibble tendered a letter that she had sent to the Hon Craig Knowles MP, re Liverpool CBD dated 24 March 2004.

Ms Burnswoods tabled a letter from Geoff Hunt, Liverpool Council to the Manager, Mosca Pserras Partnership Pty Ltd re development application dated 13 June 2004.

The evidence concluded and the witnesses withdrew.

The following witnesses from the NSW Department of Infrastructure, Planning and Natural Resources were sworn and examined:

- Ms Jennifer Westacott, Director General
- Mr Gary Prattle, Executive Director, Metropolitan Land & Resource Planning
- Mr Peter Hamilton, Principal Policy Advisor, Metropolitan Strategy
- Ms Laurel Cheetham, Senior Environmental Planner
- Mr David Birds, Team Leader, Southwest Sector
- Mr Marcus Ray, Acting Manager, Legal Branch
- Mr Sam Haddad, Deputy Director General
- Mr Stephen Driscoll, former regional planning co-ordinator, Western Sydney

The Chair informed the committee that the Department, contrary to its earlier advise, had recently advised the Director that it had now agreed to provide the documents on which it had a claim of privilege, and which were subject to the order of the committee, to the Acting Clerk of the Legislative Council.

The evidence was concluded and the witnesses withdrew.

Resolved, on the motion of Mr Ryan, that the submission of the Department be published by the Committee.

The following witness was sworn and examined

- Mr Milton Cockburn, Executive Director, Shopping Centre Council of Australia

Mr Cockburn tendered a submission by the Council to the inquiry.

The evidence concluded and the witness withdrew

The following witness was sworn and examined

- Mr Michael Everson, Managing Director, Hirst Consulting

Mr Everson tabled the following documents:

- a letter he had sent to Gazcorp re the Warehouse clearance outlet dated 8 September 2003
- Report prepared by Hirst Consulting Services Pty Ltd re proposed warehouse clearance outlet.

The evidence was concluded and the witness withdrew

The following witness was sworn and examined

- Mr Peter Leyshon, town planner and economist

The evidence was concluded and the witness withdrew

The public hearing concluded and the media and public withdrew.

Deliberative

Resolved, on the motion of Mr Primrose, that the committee publish all submissions which had not been previously published, with the exception of those for which confidentiality had been requested.

Resolved, on the motion of Mr Primrose, that all papers tendered at the hearing be tabled and published.

Resolved, on the motion of Mr Primrose, that the Committee publish the advice prepared by the Crown Solicitor and Bret Walker in relation to the terms of reference for the inquiry.

Resolved, on the motion of Mr Ryan, that the Committee hold a further full day hearing on Tuesday 17 August.

Mr Primrose advised the committee of a number of witnesses he wished to have invited to the hearing.

Resolved, on the motion of Mr Primrose, that the Committee undertake a site visit to the Designer Outlets centre during its hearing on Monday 16 August.

The Clerk of the Committee advised that the Manager of Security would attend the hearing on Monday.

5. Next meeting

The Committee adjourned at 5:05 pm until Monday 16 August 2004.

Steven Reynolds
Clerk to the Committee

Minutes No 37

Monday 16 August 2004

Council Chamber, Liverpool City Council, Sydney at 9.30 am

1. Members Present

Ms Gardiner (*Chair*)
 Ms Hale (*Deputy Chair*)
 Ms Burnswoods
 Mr Primrose (Roozendaal)
 Mr Oldfield
 Ms Griffin
 Mr Ryan (Clarke)

2. Public Hearing – Designer Outlets Centre, Liverpool

Witnesses, the public and media were admitted

The Chair made an opening statement regarding adverse comments, sub judice issues, and the broadcasting of proceedings.

The following witness was sworn and examined

- Mr George Paciullo, former Mayor, Liverpool City Council

The evidence concluded and the witness withdrew.

The following witness was sworn and examined

- Mr Col Harrington, former Independent Councillor, Liverpool City Council

The evidence concluded and the witness withdrew.

With leave of the Committee, Mr Paciullo clarified a statement made in his evidence.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined

- Ms Katrina Hayek, Manager, Rima Shoes
- Ms Sandy Heathcote, Store Manager, Rockmans
- Ms Antoinette Bosch, Sales assistant, Oneida International
- Mr Glenn Borwick, Owner, Sneakers
- Mr Sam Nasser, Owner, Gloria Jean's Coffees
- Ms Lorraine White, Retail Controller, Bag Co
- Mr Tony Sahorta, Pearl Leather

The evidence concluded and the witnesses withdrew.

The Committee adjourned for a site visit to the Designer Outlets Centre following the announcement by the Chair that the Committee would be there at 1 pm.

On the committee's return, the following witnesses were sworn and examined:

- Mr Robert Jordan, Chief Operating Officer - Australia & NZ, Westfield
- Mr Neil Ingham, Director, Ingham Planning

Mr Ingham tabled his submission to the inquiry.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined

- Mr John Henshaw, Spokesperson & Commerce Solicitor, Liverpool Chamber of Commerce & Industry

The evidence concluded and the witness withdrew.

The following witness was sworn and examined

- The Hon Julia Irwin MP, Federal Member for Fowler

The evidence concluded and the witness withdrew.

The public hearing concluded and the media and public withdrew.

Deliberative meeting

The Committee considered a draft timetable for the next day's hearing.

Mr Primrose gave notice that if Mr Turissi could not be located or if he was unwilling to attend, that he would move that the Committee summon him to appear..

Ms Hale moved that the schedule and timetable proposed be adopted.

Ms Burnswoods moved an amendment that the proposed agenda be amended by having DIPNR appear from 10 until 12, and Mr Gazal, Mr Mosca and Mr Bargshoon from 1 until 2:45.

Amendment put.

Ayes: Ms Burnswoods, Mr Primrose, Ms Griffin.

Noes: Mr Ryan, Ms Gardiner, Ms Hale.

Amendment resolved in the negative, on the casting vote of the Chair.

Original question put.

Ayes: Mr Ryan, Ms Gardiner, Ms Hale

Noes: Ms Burnswoods, Mr Primrose, Ms Griffin

Question resolved in the affirmative on the casting vote of the Chair.

3. Next meeting

The Committee adjourned at 4:55 until Tuesday, 17 August 2004 at Parliament House.

Steven Reynolds

Clerk to the Committee

Minutes No 38

Tuesday 17 August 2004

Jubilee Room, Parliament House, Sydney at 10.00 am

1. Members Present

Ms Gardiner (*Chair*)
 Ms Hale (*Deputy Chair*)
 Ms Burnswoods
 Mr Primrose (Roozendaal)
 Mr Oldfield
 Ms Griffin
 Mr Ryan (Clarke)

2. Correspondence***Correspondence received***

- Response to questions on notice from hearing on Friday 13 August from Ms J Westacott, Director-General, DIPNR (17 August 2004)
- Letter from Ms J de Torres, Senior Legal Officer, Legal Services Branch, DIPNR enclosing report "Integrating Land Use and Transport for Emerging Retail Forms" (16 August 2004)
- Letter from Marcus Ray, Acting Manager, Legal Branch, DIPNR, to Deputy Clerk listing documents over which Department claims privilege (13 August, CONFIDENTIAL)

3. Public Hearing – Designer Outlets Centre, Liverpool

Witnesses, the public and media were admitted

The Chair made an opening statement regarding the status of documents over which the Department claims privilege, sub judice issues, the response by the Department to the call for papers, and the broadcasting of proceedings.

The following witnesses from the NSW Department of Infrastructure, Planning and Natural Resources were sworn and examined:

- Ms Jennifer Westacott, Director General, Department of Infrastructure, Planning and Natural Resources (DIPNR)
- Mr Sam Haddad, Deputy Director General, Department of Infrastructure, Planning and Natural Resources (DIPNR)
- Mr Gary Prattley, Executive Director, Metropolitan Land & Resource Planning
- Mr Peter Hamilton, Principal Policy Adviser, Metropolitan Strategy
- Mr Marcus Ray, A/Director, Legal Services Branch
- Ms Laurel Cheetham, Senior Environmental Planner
- Mr David Birds, Team Leader Southwest Sector
- Ms Justine de Torres, Senior Legal Officer
- Mr Stephen Driscoll, Former Regional Planning Coordinator, Sydney Region West

Ms Westacott declined to answer question on the basis it referred to a document over which the Department claims privilege. The Chair upheld the objection.

The evidence was concluded and the witnesses withdrew.

The public and the media withdrew.

Deliberative

Ms Hale moved that: the Committee hold a deliberative at 1:45.

Mr Primrose moved an amendment: that this Committee expresses concern at the gagging motion moved by Ms Hale.

Amendment put.

Ayes: Mr Primrose, Ms Griffin, Ms Burnswoods
Noes: Ms Gardiner, Mr Ryan, Mr Oldfield, Ms Hale

Amendment resolved in the negative.

Mr Primrose moved a further amendment that this Committee expresses concern that no reason for the deliberative has been provided to the committee members.

Amendment put.

Ayes: Mr Primrose, Ms Griffin, Ms Burnswoods
Noes: Ms Gardiner, Mr Ryan, Mr Oldfield, Ms Hale

Amendment resolved in the negative.

Ms Hale moved her original motion.

Ayes: Ms Hale, Ms Gardiner, Mr Ryan, Mr Oldfield
Noes: Mr Primrose, Ms Griffin, Ms Burnswoods.

The Committee took a short adjournment and resumed in deliberative at 1:45. pm.

Ms Hale took the Chair in the absence of Ms Gardiner.

Resolved, on the motion of Mr Oldfield, that the Committee hold a deliberative meeting at the conclusion of the public hearing.

Public Hearing (continued)

The public and the media were re-admitted

The following witnesses were sworn and examined:

- Mr Frank Mosca, Director, Mosca Pserras Architects
- Mr Sam Bargshoon, Bargshoon Cleaning Services
- Mr Nabil Gazal, Managing Director, Gazcorp Pty Ltd

Mr Gazal tendered two letters regarding tenancy leases for which he requested confidentiality (8 September 2003, 13 August 2004).

Mr Gazal tendered a response to a question taken on notice on 13 August regarding political donations.

The evidence was concluded and the witnesses withdrew.

The following witness was sworn and examined

- Mr Frank Gelonesi, Chair, Greater Western Sydney Economic Development Board

The evidence was concluded and the witnesses withdrew.

The following witness was sworn and examined

- Mr Gerard Turrisi, GAT and Associates

The evidence was concluded and the witnesses withdrew.

The public hearing concluded and the media and public withdrew.

Deliberative

Mr Ryan moved that the Committee hold a full day hearing tomorrow (18 August), to which the following witnesses be invited to attend:

- Mr Robert Jordan, Westfield
- Mr Michael Meagher, Chief of Staff, Minister Beamer's office
- Mr Graeme Wedderburn, Chief of Staff, Office of the Premier
- Dr Col Gellatly, Director General, Premier's Department
- Mr Alex Smith, Chief of Staff, Office of the Director General, Premier's Department
- Ms Alice Spizzo, Executive Director, Office of the Director General, DIPNR
- Ms Isabelle Bennett, Media Officer, DIPNR
- The two DIPNR officers who undertook an email search as indicated in Ms Westacott's evidence
- Mr Gary McCully, General Manager, Liverpool Council
- Anyone present at any meeting between Westfield and the NSW Government, the Premier, staff of the Premier, any Minister, the staff of any Minister, or the staff of any Department between November 2003 and 11 July 2004.

Ms Burnwoods moved an amendment that the Committee also invite the following persons:

- Mr Nabil Gazal
- Mr Nabil Gazal Jnr
- Mr Frank Mosca
- Mr Sam Bargshoon
- Opposition staff who have attended hearings of this inquiry
- Staff of Mr Oldfield who were present during hearings of this inquiry

Amendment put.

Ayes: Ms Burnwoods, Mr Primrose, Ms Griffin
Noes: Ms Gardiner, Mr Ryan, Mr Oldfield, Ms Hale

Question resolved in the negative.

Mr Primrose moved a further amendment: that in light of the decision not to invite the staffers of Mr Oldfield and the Opposition, that the Committee invite the following persons:

- Mr Nabil Gazal
- Mr Nabil Gazal Jnr
- Mr Frank Mosca
- Mr Sam Bargshoon

Amendment put.

Ayes: Mr Primrose, Ms Burnswoods, Ms Griffin, Ms Hale
Noes: Mr Oldfield, Mr Ryan, Ms Gardiner

Amendment resolved in the affirmative.

Mr Ryan moved his original motion.

Ayes: Ms Gardiner, Mr Oldfield, Mr Primrose, Ms Burnswoods, Ms Griffin, Ms Hales, Mr Ryan.

Question resolved in the affirmative.

Resolved, on the motion of Mr Ryan, that the invitations to the Premier and Ministers Beamer, and Knowles and Mr Tripodi be re-issued.

Resolved, on the motion of Ms Hales, that the Committee publish the answers to questions on notice from Mr Gazal and Ms Westacott, including the report provided by Ms de Torres.

Mr Ryan moved that the following documents be requested by the Committee:

- Security log books located at Governor Macquarie Tower for 16-19 April 2004
- All documents, emails, briefing notes and other associated materials in the Premier's Office and the Premier's Department relating to Orange Grove
- All documents emails, briefing notes and other associated materials in the Premier's Office and the Premier's Department relating to meetings between the Premier's Office, Premier's Department and Westfield, in particular documents between Alex Smith and Graeme Wedderburn
- All notes, diary notes, minutes and associated documents taken in any meeting involving Westfield, the Premier's Department or the Premier's Office
- Premiers diary for 16 to 20 April 2004 and associated briefing notes
- Graeme Wedderburn's diary and any advisor or administrative assistant diary in the Premier's office from 16 to 20 April 2004
- A list of all staff and job designations employed in the Premier's private office.

The Committee deliberated.

Mr Ryan withdrew his motion.

Mr Oldfield moved that security footage of level 9 for 17 August 2004 be requested by the Committee.

The Committee deliberated.

Mr Oldfield withdrew his motion.

4. Next meeting

The Committee adjourned at 5:02 pm until 11 am on Wednesday 18 August 2004.

Steven Reynolds

Clerk to the Committee

Minutes No 39

Wednesday 18 August 2004

Jubilee Room, Parliament House, Sydney at 11.00 am

1. **Members Present**

Ms Gardiner (*Chair*)

Ms Hale (*Deputy Chair*)

Ms Burnswoods

Mr Primrose (Roozendaal)

Mr Oldfield

Ms Griffin

Mr Ryan (Clarke)

2. **Public Hearing – Inquiry into Designer Outlets Centre, Liverpool**

Witnesses, the public and media were admitted

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from the NSW Premier's Department were sworn and examined

- Dr Col Gellatly, Director General, Premier's Department
- Mr Alex Smith, Chief of Staff of Director General's office

Mr Smith tendered a briefing note he had received by email from Garry Prattley, DIPNR, dated 16 April 2004.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined

- Mr Graeme Wedderburn, Chief of Staff, Premier's Office

Mr Wedderburn tendered the following documents:

- opening statement
- email briefing note sent to him from Alex Smith, Premier's Department, dated 16 April 2004.

The evidence concluded and the witness withdrew.

The public hearing adjourned briefly. The public and the media withdrew.

Deliberative

Resolved, on the motion of Ms Hale, that the documents tendered by Mr Smith and Mr Wedderburn be published by the Committee.

Resolved, on the motion of Ms Hale, that the hearing today continue with the allocated time to the witnesses from DIPNR and Mr McCully.

Resolved, on the motion of Ms Hale, that an additional hearing be scheduled on Wednesday 25 August, at which witnesses from Westfield, and Mr Gazal, Mr Gazal Jnr, Mr Mosca, Mr Bargshoon and Mr D'Agostino be invited to appear.

Public Hearing (continued)

The public and the media were re-admitted.

The following witness was sworn and examined

- Mr Garry McCully, General Manager, Liverpool City Council

The evidence concluded and the witness withdrew.

Resolved, on the motion of Ms Hale, that the Committee deliberate.

The public, the witnesses and the media withdrew.

Deliberative

Ms Hale moved, according to notice, that her earlier resolution be rescinded in relation to the appearance of Ms Spizzo.

Ayes: Ms Hale, Mr Oldfield, Mr Ryan

Noes: Ms Burnswoods, Ms Griffin, Mr Primrose.

Question resolved in the affirmative on the casting vote of the Chair.

Ms Hale moved: That the Committee only hear from Ms Bennett, and that Ms Spizzo be invited to appear at the Wednesday hearing.

Ms Burnswoods moved: That the question be amended by Ms Bennett be heard until 5:30 pm.

Mr Ryan moved: That Ms Burnswoods question be amended by omitting the words “until 5.30 pm.” and inserting instead “for a maximum of 15 minutes”.

Mr Ryan’s amendment to Ms Burnswoods question put:

Ayes: Mr Ryan, Ms Gardiner, Ms Hale

Noes: Ms Burnswoods, Mr Primrose, Ms Griffin

Amendment resolved in the affirmative on the casting vote of the Chair.

Ms Burnswoods amendment no longer being in order, original question as amended put and passed.

Public Hearing (continued)

The public and the media were re-admitted.

The following witness from the NSW Department of Infrastructure, Planning and Natural Resources was sworn and examined:

- Ms Isabelle Bennett, Media Officer

The evidence concluded and the witness withdrew.

The public and the media withdrew.

The Committee noted the two junior officers from DIPNR were not required to appear at the hearing on 18 August 2004 following agreement by the Chair in negotiation with the Director General.

3. Next meeting

The Committee adjourned at 5:40 pm until Wednesday 25 August 2004.

Steven Reynolds

Clerk to the Committee

Minutes No 40

Wednesday 25 August 2004

Jubilee Room, Parliament House, Sydney at 10.30 am

1. Members Present

Ms Gardiner (*Chair*)
 Ms Hale (Deputy Chair)
 Ms Burnswoods
 Mr Primrose (Roozendaal)
 Mr Oldfield
 Ms Griffin (until 4:45pm)
 Mr Ryan (Clarke)
 Mr West (Griffin after 4:45pm)

2. Substitutions

The Chair advised that she had been advised by the Government Whip that Mr West would substitute for Ms Griffin after 4:45 pm.

3. Correspondence***Correspondence received***

The Committee noted the following items or correspondence received:

- Letter from Mr M Stewart, Speed and Stracey Lawyers Pty Ltd, providing a response to questions taken on notice by Mr R Jordan, Westfield, during the hearing on 16 August 2004 (20 August 2004)
- Letter from Mr M Meagher, Chief of Staff to Minister Beamer declining to appear at Committee hearing (24 August 2004)

Correspondence sent

- Letter to the Hon RJ Carr, reinviting him to attend a hearing of the Committee's inquiry into the Designer Outlets Centre (18 August 2004)
- Letter to the Hon D Beamer, reinviting her to attend a hearing of the Committee's inquiry into the Designer Outlets Centre (18 August 2004)
- Letter to the Hon CJ Knowles, inviting him to attend a hearing of the Committee's inquiry into the Designer Outlets Centre (18 August 2004)
- Letter to the Hon JG Tripodi, reinviting him to attend a hearing of the Committee's inquiry into the Designer Outlets Centre (18 August 2004)
- Letter to Dr C Gellatly, Director General, Premier's Department, inviting him and Mr Alex Smith to attend a hearing on 18 August (18 August 2004)
- Letter to the Hon D Beamer, seeking her agreement to making available Mr Michael Meagher, Chief of Staff, to attend a hearing of the Committee's inquiry into the Designer Outlets Centre (20 August 2004)
- Letter to Ms J Westacott, Director General, DIPNR, seeking answers to questions on notice from the hearings on 13 and 17 August (20 August 2004)
- Letter to Mr N Gazal, Gazcorp, seeking answers to questions on notice from the hearings on 13 and 17 August (20 August 2004)

- Letter to Mr F Mosca, Ferrara and Associates, seeking answers to questions on notice from the hearings on 13 and 17 August (20 August 2004)
- Letter to Mr P Jemison, Liverpool Council, seeking answers to questions on notice from the hearing on 13 August (20 August 2004)
- Letter to Mr P Tolhurst, Liverpool Council, seeking answers to questions on notice from the hearing on 13 August (20 August 2004)
- Letter to Mr G McCully, General Manager, Liverpool Council, seeking answers to questions on notice (20 August 2004)
- Letter to Mr B Giles, Solicitor, seeking answers to questions on notice from the by his client, Mr Robert Jordan, Chief Operating Officer, Westfield, at the Committee's hearing on Friday 13 August (20 August 2004)
- Letter to Mr G Wedderburn, Chief of Staff, Office of the Premier, seeking answers to questions on notice from the hearing on 18 August (20 August 2004)

4. Deliberative Meeting – Inquiry into Designer Outlets Centre, Liverpool

Responses to Questions taken on notice

The Clerk tabled the following responses received 24 August 2004, to questions taken on notice at the public hearing on 17 August 2004, from:

- Ms J Westacott, Director General, DIPNR, and
- Westfield, regarding the impact of the outlets centre on Westfield retailers.

The Clerk tabled a list of Questions on Notice that are still to be answered by previous witnesses.

Mr Primrose gave notice that he wished to pursue the issue of the leases being provided by Mr Gazal.

Resolved, on a motion of Mr Primrose, that the Committee publish all responses to Questions on Notice received to date, subject to any contrary advice from the Clerks.

Submissions

Resolved, on a motion of Ms Hale that the Committee publish submissions 28, 30 and 31.

Order for Papers

Mr Ryan moved the following motion:

1. That, under standing order 208 (c) of the Legislative Council, General Purpose Standing Committee No. 4 be provided with:
 - (a) all documents in the possession, custody or control of the Premier's Office and the Premier's Department relating to the Designer Outlets Centre on Orange Grove Road, Liverpool, the approval process for the Centre by Liverpool Council, or the application by Liverpool City Council for an amendment to its Local Environment Plan 1997 – Draft Amendment No. 92 – Outlet Centre Amendment (Orange Grove Road) (Draft LEP No. 92) including:
 - (i) all briefing notes or other documents prepared for any meetings between the Premier, or staff from the Premier's Office or the Premier's Department, and representatives of Westfield during 2004,
 - (ii) all file notes, minutes, emails and any other record of any meetings between the Premier, or staff from the Premier's Office or the Premier's Department, and representatives of Westfield during 2004,

- (iii) all correspondence, file notes, emails or any other record of communication between the Premier, or staff from the Premier's Office or the Premier's Department, and the Minister for Infrastructure and Planning, or the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), or their staff, concerning the Designer Outlets Centre on Orange Grove Road, Liverpool, the approval process for the Centre by Liverpool Council, or the application by Liverpool City Council for an amendment to its Local Environment Plan 1997 – Draft Amendment No. 92 – Outlet Centre Amendment (Orange Grove Road) (Draft LEP No. 92),
 - (b) all briefing notes provided to the Minister for Infrastructure and Planning, or the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), or their staff, the Designer Outlets Centre on Orange Grove Road, Liverpool, the approval process for the Centre by Liverpool Council, or the application by Liverpool City Council for an amendment to its Local Environment Plan 1997 – Draft Amendment No. 92 – Outlet Centre Amendment (Orange Grove Road) (Draft LEP No. 92), not previously provided to the Committee.
 - (c) any document which records or refers to the production of documents as a result of this order of this Committee.
2. That the documents be provided to the Clerk of the House by Monday 30 August 2004.
 3. A return under this order is to include an indexed list of all documents tabled, showing the date of creation of the document, a description of the document and the author of the document.
 4. Where a document is considered to be privileged:
 - (a) return is to be prepared showing the date of creation of the document, a description of the document, the author of the document and reasons for the claim of privilege,
 - (b) the documents are to be delivered to the Clerk by the date and time required in the resolution of the House and:
 - (i) made available only to members of the Committee and the Director of the Committee,
 - (ii) not published or copied without an order of the Committee.
 5. Any member may, by communication in writing to the Clerk, dispute the validity of the claim of privilege in relation to a particular document or documents. On receipt of such communication, the Clerk is authorised to release the disputed document or documents to an independent legal arbiter, for evaluation and report within seven calendar days as to the validity of the claim.
 6. The independent legal arbiter is to be appointed by the President and must be a Queen's Counsel, a Senior Counsel or a retired Supreme Court Judge.
 7. A report from the independent legal arbiter is to be lodged with the Clerk and: (a) made available only to members of the Committee and the Director of the Committee, (b) not published or copied without an order of the Committee.
 8. That this resolution be conveyed to the Director-General of the Premier's Department by the Director of the Committee.

Mr Primrose moved: That consideration of Mr Ryan's motion be considered at the deliberative meeting scheduled at the end of the public hearing.

Question put.

The Committee divided.

Ayes: Mr Primrose, Ms Burnswoods, Ms Griffin
 Noes: Mr Ryan, Ms Gardiner, Ms Hale, Mr Oldfield

Question resolved in the negative.

Ms Burnswoods moved: That consideration of paragraph 2 of the Order for Papers be postponed until after the public hearing.

Question put.

The Committee divided.

Ayes: Ms Burnswoods, Mr Primrose, Ms Griffin

Noes: Ms Hale, Mr Oldfield, Mr Ryan, Ms Gardiner, Mr Oldfield.

Question resolved in the negative.

Ms Hale moved: That the original question be amended by inserting in paragraph 1:

“(c) a list of all staff and job designations for ministerial staff employed in the Premier’s Office.”

Question put.

The Committee divided.

Ayes: Ms Hale, Ms Gardiner, Mr Oldfield, Mr Ryan

Noes: Mr Primrose, Ms Burnswoods, Ms Griffin

Question resolved in the affirmative.

Original question, as amended:

1. That, under standing order 208(c) of the Legislative Council, General Purpose Standing Committee No. 4 be provided with:
 - (a) all documents in the possession, custody or control of the Premier’s Office and the Premier’s Department relating to the Designer Outlets Centre on Orange Grove Road, Liverpool, the approval process for the Centre by Liverpool Council, or the application by Liverpool City Council for an amendment to its Local Environment Plan 1997 – Draft Amendment No. 92 – Outlet Centre Amendment (Orange Grove Road) (Draft LEP No. 92) including:
 - (i) all briefing notes or other documents prepared for any meetings between the Premier, or staff from the Premier’s Office or the Premier’s Department, and representatives of Westfield during 2004,
 - (ii) all file notes, minutes, emails and any other record of any meetings between the Premier, or staff from the Premier’s Office or the Premier’s Department, and representatives of Westfield during 2004,
 - (iii) all correspondence, file notes, emails or any other record of communication between the Premier, or staff from the Premier’s Office or the Premier’s Department, and the Minister for Infrastructure and Planning, or the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), or their staff, concerning the Designer Outlets Centre on Orange Grove Road, Liverpool, the approval process for the Centre by Liverpool Council, or the application by Liverpool City Council for an amendment to its Local Environment Plan 1997 – Draft Amendment No. 92 – Outlet Centre Amendment (Orange Grove Road) (Draft LEP No. 92),
 - (b) all briefing notes provided to the Minister for Infrastructure and Planning, or the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), or their staff, the Designer Outlets Centre on Orange Grove Road, Liverpool, the approval process for the

Centre by Liverpool Council, or the application by Liverpool City Council for an amendment to its Local Environment Plan 1997 – Draft Amendment No. 92 – Outlet Centre Amendment (Orange Grove Road) (Draft LEP No. 92), not previously provided to the committee,

- (c) a list of all staff and job designations for ministerial staff employed in the Premier's Office,
 - (d) any document which records or refers to the production of documents as a result of this order of this committee.
2. That the documents be provided to the Clerk of the House by 5.00 pm, Thursday 2 September 2004.
 3. A return under this order is to include an indexed list of all documents tabled, showing the date of creation of the document, a description of the document and the author of the document.
 4. Where a document is considered to be privileged:
 - (a) a return is to be prepared showing the date of creation of the document, a description of the document, the author of the document and reasons for the claim of privilege,
 - (b) the documents are to be delivered to the Clerk by the date and time required in the resolution of the Committee and:
 - (i) made available only to members of the committee and the Director of the Committee,
 - (ii) not published or copied without an order of the committee.
 5. Any member may, by communication in writing to the Clerk, dispute the validity of the claim of privilege in relation to a particular document or documents. On receipt of such communication, the Clerk is authorised to release the disputed document or documents to an independent legal arbiter, for evaluation and report within seven calendar days as to the validity of the claim.
 6. The independent legal arbiter is to be appointed by the President and must be a Queen's Counsel, a Senior Counsel or a retired Supreme Court Judge.
- Chapter 7
7. A report from the independent legal arbiter is to be lodged with the Clerk and:
 - (a) made available only to members of the Committee and the Director of the Committee,
 - (b) not published or copied without an order of the Committee.
 8. That this resolution be conveyed to the Director-General of the Premier's Department by the Director of the Committee.

Question put.

The Committee divided.

Ayes: Ms Hale, Ms Gardiner, Mr Oldfield, Mr Ryan

Noes: Mr Primrose, Ms Burnswoods, Ms Griffin

Question resolved in the affirmative.

Appearance of Mr Michael Meagher and further hearing

Ms Hale moved: That the Committee deliberate on the question of summoning Mr Michael Meagher to appear before the Committee at a deliberative meeting to be held immediately prior to the afternoon hearing.

Mr Primrose moved: That the question be amended by omitting the words ‘Mr Michael Meagher’ and inserting instead “witnesses”.

Ms Burnswoods moved: That the question be amended by omitting the words ‘preceding the afternoon hearing’ and inserting instead ‘deliberative at the end of the hearing’.

Question: That the amendment of Ms Burnswoods be agreed to put.

The Committee divided.

Ayes: Ms Burnswoods, Mr Primrose, Ms Griffin
Noes: Ms Hale, Mr Oldfield, Mr Ryan, Ms Gardiner

Question resolved in the negative.

Original question, as amended: That the Committee deliberate on the possibility of summoning witnesses, to appear before the Committee, at a deliberative meeting to be held immediately prior to the afternoon hearing.

Question put.

The Committee divided.

Ayes: Ms Gardiner, Ms Hale, Mr Ryan, Mr Oldfield
Noes: Mr Primrose, Ms Burnswoods, Ms Griffin

Question resolved in the affirmative.

Ms Burnswoods gave notice that she would be moving the following motion in the following words at a later deliberative meeting:

That General Purpose Standing Committee No. 4 expresses its grave concern at statements to the media, contrary to the resolution of the Committee, by Committee members David Oldfield, Sylvia Hale and John Ryan, and that the advice of the Clerks be sought on action that may be taken, for a future meeting of the Committee.

The Committee ceased deliberating.

The witnesses, the public and the media were admitted.

5. Public Hearing – Inquiry into the Approval of the Designer Outlets Centre, Liverpool

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses from Westfield Pty Ltd were sworn and examined

- Mr Mark Ryan, Director of Corporate Affairs
- Mr Craig Marshall, Assets General Manager for NSW

Mr Ryan tendered a copy of his opening statement to the Committee and a copy of a diagram identifying persons relevant to the approval process for the designer outlets centre.

The evidence was concluded and the witnesses withdrew.

Resolved, on the motion of Mr Primrose: That Mr Ryan's opening statement and a reproduction of the diagram be published.

The public and the media withdrew.

Deliberative Meeting

The Clerk Assistant Committees tabled advice requested on the power of the Committee to summon ministerial staffers.

The Committee deliberated.

Mr Oldfield moved: That the Committee have a further hearing on Monday 30 August at 10am.

Mr Primrose moved: That the question be amended by adding the following words at the end "and at That at this hearing, the Committee invite the following witnesses: the staff of Ms P Seaton MP, the staff of Mr J Brogden, the staff of Mr Ryan and the staff of Mr Oldfield, as well as Mr M Meagher, Mr J D'agostino and Mr G Turrisi."

Question: That the amendment of Mr Primrose be agreed to put.

The Committee divided.

Ayes: Ms Burnswoods, Mr Primrose, Ms Griffin
Noes: Ms Hale, Mr Oldfield, Mr Ryan, Ms Gardiner

Question resolved in the negative.

Original question put.

Mr Ryan moved:

That Mr Michael Meagher be summoned to appear before the Committee at 10am on Monday 30 August.

Mr Primrose moved:

That the words after "Michael Meagher..." be omitted and replaced with the words "be reissued an invitation to appear before the Committee at the hearing on Monday 30 August.

Question put.

The Committee divided.

Ayes: Ms Burnswoods, Mr Primrose, Ms Griffin
Noes: Ms Hale, Mr Oldfield, Mr Ryan, Ms Gardiner

Question resolved in the negative.

Mr Primrose moved: That given the gravity of any decision to issue a summons to a ministerial staff member, that the matter be referred to the House for decision.

Question put.

The Committee divided.

Ayes: Ms Burnswoods, Mr Primrose, Ms Griffin
Noes: Ms Hale, Mr Oldfield, Mr Ryan, Ms Gardiner

Question resolved in the negative.

Original motion put.

The Committee divided.

Ayes: Mr Ryan, Ms Gardiner, Ms Hale, Mr Oldfield

Noes: Mr Primrose, Ms Burnswoods, Ms Griffin.

Question resolved in the affirmative.

Ms Hale moved: That the following additional witnesses from Westfield be invited to appear at the hearing on Monday 30 August.

- Mark Ryan
- Greg Miles
- Stephen Lowy
- Craig Marshall
- Justin Lynch
- Bob Jordan

Resolved, on the motion of Mr Primrose: That the motion be amended to:

That Mr D'Agostino and Turrisi be invited to appear at the hearing on Monday 30 August.

Ms Burnswoods moved the following amendment:

That the staff of Mr Brogden and Ms Seaton be invited to appear at the hearing on Monday 30 August.

Question put.

The Committee divided.

Ayes: Ms Burnswoods, Mr Primrose, Ms Griffin

Noes: Ms Hale, Mr Oldfield, Mr Ryan, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved the following amendment:

That the staff of Mr Oldfield be invited to appear at the hearing on Monday 30 August.

Question was put.

The Committee divided.

Ayes: Ms Burnswoods, Mr Primrose, Ms Griffin

Noes: Ms Hale, Mr Oldfield, Mr Ryan, Ms Gardiner

Question resolved in the negative.

Original question, as amended.

That the following additional witnesses from Westfield be invited to appear at the hearing on Monday 30 August.

- Mark Ryan
- Greg Miles

- Stephen Lowy
- Craig Marshall
- Justin Lynch
- Bob Jordan

And that Mr D'Agostino and Mr Turrisi be invited to appear at the hearing on Monday 30 August.

Question resolved in the affirmative.

Resolved, on the motion of Mr Ryan: That the list of witnesses for Monday's hearing be made public including that one of the witnesses will be summoned.

The committee clerk tabled answers received from Mr Garry McCully, Liverpool Council to questions taken on notice at the hearing on 18 August 2004.

Public Hearing (continued)

The public and the media were re-admitted

The following witness from the Department of Infrastructure, Planning and Natural Resources was sworn and examined:

- Ms Alice Spizzo, Executive Director, Office of the Director General

The evidence was concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Nabil Gazal, Managing Director, Gazcorp Pty Ltd
- Mr Nabil Gazal Jnr, Gazcorp Pty Ltd
- Mr Frank Mosca, Director, Mosca Pserras Architects
- Mr Sam Bargshoon, Bargshoon Cleaning Services

Mr Bargshoon tendered 15 photographs, nine statutory declarations, and a letter from the United Services Union.

Resolved, on the motion of Mr Primrose: That the photographs, statutory declarations and letter, be tabled and published.

Mr Gazal Jnr tendered a sample lease and a letter previously tendered.

Resolved, on the motion of Mr Primrose: That the lease be tabled and published and the previously tabled letter be published.

The evidence was concluded and the witnesses withdrew.

The public, the witnesses and the media withdrew.

Deliberative Meeting

Resolved, on the motion of Mr Primrose, that the statement and diagram tabled by Mr Mark Ryan be published by the Committee.

Reporting Date

Resolved, on the motion of Mr Ryan that the reporting date for the inquiry into the Designer Outlets Centre, Liverpool, be extended until Friday 24 September 2004.

Additional witness

Resolved, on the motion of Mr Primrose, that Mr Hunt, former planning officer from Liverpool Council, be invited to attend the hearing on Monday 30 August 2004.

Call for Papers

Resolved, on the motion of Mr Ryan, that the return date for the Call for Papers be Thursday 2 September 2004.

Minutes

Resolved, on the motion of Ms Burnswoods, that the Committee postpone its discussion of draft minutes 35, 36, 37, 38 and 39 until a deliberative meeting on Monday 30 August

6. Next meeting

The Committee adjourned at 6.23pm until 10am Monday 30 August 2004

Steven Reynolds

Clerk to the Committee

Minutes No 41

Monday 30 August 2004

Jubilee Room, Parliament House, Sydney at 9.35 am

1. Members Present

Ms Gardiner (*Chair*)

Ms Hale (*Deputy Chair*)

Ms Burnswoods

Mr Primrose (Roozendaal)

Mr Oldfield (during the public hearing)

Ms Griffin

Mr Ryan (Clarke)

2. Confirmation of minutes

Resolved, on the motion of Mr Primrose, that consideration of draft minutes no. 35 – 40 be deferred until a later time

3. Correspondence***Correspondence received***

The Committee noted the following items or correspondence received:

- Letter from Mr B Giles, Speed and Stracey Lawyers Pty Ltd, regarding the publication of documents provided in response to Questions on Notice by R Jordan, Westfield, during the hearing on 16 August 2004 (26 August 2004)
- Letter from Mr P Tolhurst, Manager, City Development, Liverpool City Council, regarding a response to Questions on Notice (27 August 2004)
- Letter from Mr George Paciullo seeking an opportunity to reappear before the Committee to respond to comments made by Mr Mark Ryan in evidence on 25 August 2004 (26 August 2004)
- Letter from Col Harrington clarifying aspects of his evidence from the hearing on 16 August 2004 (27 August 2004)
- Letter from Mr Marcus Ray, A/Director, Legal Services Branch, DIPNR, clarifying one aspect of the evidence provided by Mr Prattley on 17 August 2004. (27 August 2004) .
- Letter from Robin Speed, Speed and Stracey Lawyers Pty Ltd, regarding the availability of Westfield representatives to attend the hearing on 30 August 2004, by fax)

Correspondence sent

The Committee noted the following items or correspondence sent:

- Letter to Mr Mark Ryan, Director, Corporate Affairs, Westfield seeking answers to questions on notice from the hearing on 25 August (27 August 2004)
- Letter to Ms Alice Spizzo, Executive Director, Office of the Director General, DIPNR seeking answers to questions on notice from the hearing on 25 August (27 August 2004)
- Letter to Mr Nabil Gazal, Gazcorp seeking answers to questions on notice from the hearing on 25 August (27 August 2004)
- Letter to Mr Greg McGill , Financial Controller, Parliamentary Accounts Section, from the Chair, authorising payment of a witness allowance to Mr Michael Meagher (26 August 2004)

- Letter to Mr Malcom Stewart, solicitor to Westfield, seeking confirmation that Westfield representatives are not able to attend the hearing on 30 August and seeking clarification regarding documents provided (27 August 2004)
- Letter to Dr Col Gellatly, Director General, Premier's Department, advising of call for papers resolved by Committee at meeting of 25 August 2004 (26 August 2004)
- Summons issued to Mr Michael Meagher, Chief of Staff, Assistant Planning Minister (27 August 2004)

4. Designer Outlets Centre, Liverpool - Deliberative

Response from Liverpool Council regarding legal advice

Resolved, on the motion of Mr Primrose, that the Committee write to Liverpool Council to reiterate its request for a copy of Council's legal advice regarding the draft LEP.

Appearance of Mr D'Agostino

Ms Burnswoods moved that Mr D'Agostino be invited to appear before the Committee today at 12pm.

Motion put.

Ayes: Ms Burnswoods, Mr Primrose, Ms Griffin

Noes: Ms Hale, Mr Ryan, Ms Gardiner

Question resolved in the negative on the casting vote of the Chair.

Ms Burnswoods moved that Mr D'Agostino be invited to appear before the Committee today at 12.30 pm.

Motion put

Ayes: Ms Burnswoods, Mr Primrose, Ms Griffin

Noes: Ms Hale, Mr Ryan, Ms Gardiner

Question resolved in the negative on the casting vote of the Chair.

The Clerk Assistant Committees tabled an affidavit of service of summons for Mr Meagher.

Public Hearing – Inquiry into Designer Outlets Centre, Liverpool

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined

- Mr Michael Meagher, Chief of Staff, Office of the Minister for Juvenile Justice, Minister for Western Sydney and Minister Assisting the Minister for Infrastructure and Planning (Planning Administration)

Mr Meagher tabled his opening statement.

Resolved, on the motion of Mr Primrose, that Mr Meagher's opening statement be published.

Mr Meagher tabled a document entitled: History of attempts to engage by Gazcorp

Ms Hale tabled the following documents:

- a list of donations made by Westfield to the ALP and
- a diagram titled: Westfield's Web of Influence

Resolved, on the motion of Ms Hale, that the list of donations made by Westfield to the ALP and a diagram titled: Westfield's Web of Influence, be published.

Mr Meagher tendered an email dated 20 April from him to Mr Prattley regarding legal advice. He indicated he would seek advice on the use the Committee could make of the document, it being one of the documents for which DIPNR has claimed legal professional privilege.

The evidence was concluded and the witness withdrew.

The Committee Clerk tabled a letter dated 30 August 2004 from Mr D'Agostino clarifying the powers of the committee regarding legal professional privilege and other matters.

The following witness was sworn and examined

- Mr George Pacullio, Former Mayor, Liverpool City Council

Mr Pacullio tendered the following documents:

- Flow chart of Liverpool Council development application assessment processes
- 2 newspaper articles and a website page praising Liverpool Council's assessment procedures
- 2 items of correspondence, dated 2 October 2001 and 28 May 2003, relating to meetings between Westfield representatives and Liverpool Council

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined

- Mr Geoff Hunt, Former Senior Development Planner, Liverpool City Council

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined

- Mr Gerard Turrisi, GAT and Associates

Mr Primrose tabled a memorandum from Mr Chris Weston, Manager Planning to Gerard Turrisi, dated 6 June 2002 regarding the Orange Grove Road development assessment.

The evidence was concluded and the witness withdrew.

The public and the media withdrew.

Deliberative

Further Hearing

The Committee Clerk tabled a letter dated 30 August 2004, received from Speed and Stracey, solicitors to Westfield, regarding the availability of Westfield representatives and the status of documents provided by Westfield.

Mr Ryan moved that a further hearing be held on Monday 6 September 2004.

Mr Primrose moved an amendment : that the words “Monday 6” be omitted and replaced with “Friday 3”.

Amendment put.

Ayes: Mr Primrose, Ms Burnswoods, Ms Griffin

Noes: Ms Gardiner, Mr Ryan, Ms Hale

Amendment resolved in the negative on the casting vote of the Chair.

Original motion put.

Ayes: Mr Ryan, Ms Gardiner, Ms Hale

Noes: Mr Primrose, Ms Burnswoods, Ms Griffin

Resolved, on the motion of Mr Primrose, that the following witnesses be invited to attend: the Westfield representatives previously invited, Mr D’Agostino, and Mr Chris Weston.

Ms Hale moved that Mr Frank Lowy, Chair of Westfield, be invited as an additional witness.

Question put.

Resolved in the negative, on the voices.

Ms Burnswoods moved that Mr Primrose, Ms Burnswoods and Ms Griffin be recorded in the minutes as abstaining from voting.

The Chair ruled the motion out of order.

Ms Burnswoods moved a dissent from the Chair’s ruling on the basis that “it was silly”.

The Chair ruled the dissent motion out of order.

Appearance of Mr D’Agostino

Resolved, on the motion of Mr Primrose, that the Committee write a letter in response to Mr D’Agostino addressing the issues raised and that he appear on Monday.

Publication of Tendered documents

Resolved, on the motion of Ms Hale, that the following documents tendered be tabled and published: Mr Meagher’s “history of attempts by Gazcorp”; the flow chart tendered by Mr Pacullio, the two items of correspondence tendered by Mr Pacullio; and the memorandum tabled by Mr Primrose.

Resolved, on the motion of Ms Hale, that following advice from Westfield, the Committee publish all documents provided by Westfield in response to questions taken on notice at the hearing on the 25 August 2004.

5. Next meeting

The Committee adjourned at 5:28 pm until Monday 6 September 2004.

Steven Reynolds

Clerk to the Committee

Minutes No 42

Monday 6 September 2004

Jubilee Room, Parliament House, Sydney at 4:05 pm

1. Members Present

Ms Gardiner (*Chair*)

Ms Hale (*Deputy Chair*)

Ms Burnswoods

Mr Primrose (Roozendaal)

Mr Oldfield

Ms Griffin

Mr Ryan (Clarke)

2. Confirmation of minutes

Mr Ryan moved that draft minutes no. 35 be confirmed.

Question put.

Ayes: Mr Ryan, Ms Gardiner, Mr Oldfield, Ms Hale.

Noes: Mr Primrose, Ms Burnswoods, Ms Griffin.

Question resolved in the affirmative.

Mr Ryan moved that draft minutes no. 36 be confirmed.

Question put.

Ayes: Mr Ryan, Ms Gardiner, Mr Oldfield, Ms Hale.

Noes: Mr Primrose, Ms Burnswoods, Ms Griffin.

Question resolved in the affirmative.

Resolved, on the motion of Ms Burnswoods, that in relation to minutes no. 36 and the site visit referred to, that it be noted [in minutes 42] that she had asked questions during the meeting about the possibility of a demonstration and a media circus, and sought re-assurance that steps be taken to prevent this occurring, as was done with the North Coast visits of this committee.

Resolved, on the motion of Ms Burnswoods, that draft minutes no. 37 be amended, after the words "site visit to the Designer Outlets Centre" by the addition of the following: "following the announcement by the Chair that the Committee would be there at 1 pm"

Resolved, on the motion of Mr Ryan, that minutes no. 37 as amended be confirmed.

3. Correspondence***Correspondence received***

The Committee noted the following items or correspondence received:

- Letter from Mr G Wedderburn, Chief of Staff, Premier's Office, enclosing answers to questions taken on notice and raising concerns about the transcript of 18 August 2004 (3 September)
- Letter from Ms A Spizzo, Executive Director, Director General's Office, DIPNR, enclosing answers to questions taken on notice (1 September 2004)

- Letter from Mr M Stewart, Speed and Stracey Solicitors, seeking an extension of time to respond to questions taken on notice (2 September 2004)

Correspondence sent

The Committee noted the following items or correspondence sent:

- Letter to Mr G Wedderburn, Chief of Staff, Office of the Premier, responding to concerns about the transcript of 18 August 2004 (3 September 2004) attached
- Letter to Mr P Tolhurst, Manager, City Development, Liverpool City Council seeking the legal advice previously declined on the basis of legal professional privilege (2 September) attached
- Letter to Mr J D'Agostino, D'Agostino Solicitors, explaining the powers of parliamentary committees in relation to legal professional privilege (31 August 2004) attached
- Letter to Mr J D'Agostino, D'Agostino Solicitors, inviting him to appear at a hearing on Monday 6 September (3 September 2004)
- Letter to Mr C Weston, former Planning Manager, Liverpool Council inviting him to appear at a hearing on Friday 10 September (3 September 2004)
- Letter to Mr M Ryan, Director, Corporate Affairs, Westfield, seeking a response to questions taken on notice and previously requested (2 September 2004)
- Letter to Mr N Gazal, Managing Director, Gazcorp, seeking a response to questions taken on notice and previously requested (2 September 2004)
- Letter to Mr F Mosca, Director, Mosca Pserras Architects, seeking a response to questions taken on notice and previously requested (2 September 2004)
- Letter to Mr G Wedderburn, Chief of Staff, Office of the Premier, seeking a response to questions taken on notice and previously requested (2 September 2004)
- Letter to Mr M Meagher, Chief of Staff, Office of Assistant Planning Minister, regarding questions taken on notice at the hearing held on 30 August 2004 (1 September 2004)

4. Designer Outlets Centre, Liverpool - Deliberative***Further hearings***

The Chair tabled a letter from Mr Sam Bargshoon, dated 6 September 2004, requesting he appear to respond to adverse mention by Mr Mark Ryan of Westfield.

Mr Ryan moved that Mr Bargshoon be invited to appear at a hearing on Wednesday 8 September to respond to adverse mention, and that the following additional witnesses be invited to attend, with the option of appearing on Friday if unavailable:

- Ms Jennifer Westacott
- Mr Stephen Driscoll
- Mr Emilio Ferrer
- Mr Julian Brophy
- Mr Geoff Porz (Austex)
- Mr Robert Morrison (AMP)

Ms Burnswoods moved that the motion be amended by: replacing “Wednesday” with “Friday”.

Amendment put.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
 Noes: Ms Hale, Mr Oldfield, Ms Gardiner, Mr Ryan

Amendment resolved in the negative.

Ms Griffin moved that the motion be amended by: replacing “Wednesday” with “Thursday”.

Amendment put and passed.

Mr Ryan moved his original motion as amended.

Question put and passed.

Mr Primrose moved that it be noted that as a result of the decision to allow additional witnesses, that other witnesses who may have been the subject of adverse mention may wish to appear to respond to evidence.

Question put.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
 Noes: Ms Hale, Mr Oldfield, Ms Gardiner, Mr Ryan

Amendment resolved in the negative.

Mr Ryan moved that, in addition to addressing adverse mention, Mr Bargshoon be invited to provide further evidence to the Committee.

Question put.

Ayes: Mr Ryan, Ms Gardiner, Mr Oldfield, Ms Hale.
 Noes: Mr Primrose, Ms Burnswoods, Ms Griffin.

Question resolved in the affirmative.

Mr Primrose sought written advice from the Clerk regarding adverse mention.

Ms Burnswoods gave notice that at a later meeting she would move that this Committee express grave concern at the article of the Sun Herald of 5 September 2004 which reported on a proposed meeting of the committee involving Mr Bargshoon, a meeting of which no notice was given to the Committee.

Public Hearing – Inquiry into Designer Outlets Centre, Liverpool

The witness, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, subjudice and other matters.

The following witness was sworn and examined:

- Mr Joseph D’Agostino, D’Agostino Solicitors

Mr D’Agostino declined to answer a number of questions on the basis of legal professional privilege or commercial confidentiality.

Mr Ryan tabled a statutory declaration made by Mr D'Agostino dated 10 July 2004.

Resolved, on the motion of Ms Burnswoods, that the document be published.

The evidence was concluded and the witness withdrew.

Deliberative

Mr Oldfield moved that the Committee request any reports prepared for Westfield in relation to Orange Grove from January 2003 and any related correspondence, either emails or otherwise, between Westfield and any other party.

Question put.

Ayes: Mr Oldfield, Mr Ryan, Ms Gardiner, Ms Hale

Noes: Ms Burnswoods, Ms Griffin, Mr Primrose

Question resolved in the affirmative.

5. Next meeting

The Committee adjourned at 7:25pm until Thursday 9 September 2004.

Steven Reynolds

Clerk to the Committee

Minutes No 43

Thursday 9 September 2004

Jubilee Room, Parliament House, Sydney at 10:00 am

1. Members Present

Ms Gardiner (Chair)
 Ms Hale (Deputy Chair)
 Ms Burnswoods
 Mr Primrose (Roozendaal)
 Mr Oldfield
 Ms Fazio (Griffin)
 Mr Ryan (Clarke)

2. Substitutions

The Chair advised that she had been notified by the Government Whip that Ms Fazio would be substituting for Ms Griffin for the purpose of the hearing.

3. Public Hearing – Inquiry into the Approval of the Designer Outlets Centre, Liverpool

The witness, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr E Ferrer, former Deputy Chief of Staff, Minister for Infrastructure, Planning and Natural Resources

Questions commenced

Point of order: Mr Primrose took a point of order regarding the relevance of the questions.

The Chair ruled the question in order.

Mr Primrose moved: That the Committee dissent from the ruling of the Chair on the grounds that the ruling was in error and the questions were relevant.

The media and public withdrew

Question put: That the Committee dissent from the ruling of the Chair.

The Committee divided.

Ayes: Ms Burnswoods, Ms Fazio, Mr Primrose
 Noes: Ms Gardiner, Ms Hale, Mr Oldfield, Mr Ryan.

Question resolved in the negative.

The witness, the public and the media were re-admitted.

Leave granted to Mr Ferrer to table a copy of his opening statement.

Resolved, on the motion of Mr Primrose, that the opening statement tabled by Mr Ferrer, be published.

Evidence continued.

Point of order: Ms Burnswoods took a point of order regarding the relevance of questions.

The Chair ruled the questioning in order.

Ms Burnswoods moved: That the Committee dissent from the ruling of the Chair on the grounds that it was in error and the questions were irrelevant.

The media and public withdrew.

Question put: That the Committee dissent from the ruling of the Chair.

The Committee divided.

Ayes: Ms Burnswoods, Ms Fazio, Mr Primrose
Noes: Ms Gardiner, Ms Hale, Mr Oldfield, Mr Ryan.

Question resolved in the negative.

The witness, the public and the media were re-admitted.

The evidence was concluded and the witness withdrew.

The media and the public withdrew.

Deliberative meeting

Correspondence

Correspondence received

The Committee noted the following items or correspondence received:

- In relation to the inquiry into the Sydney Harbour Foreshore Authority, Letter from Mr Robert Lang, CEO of Sydney Harbour Foreshore Authority, advising that Mr Gleeson is absent on medical leave for an extended period following removal of a kidney (30 August 2004).
- Letter from Mr F Mosca, Mosca Pserras architects, providing answers to questions taken on notice (8 September 2004).
- Letter from Mr J D'Agostino, D'Agostino solicitors, seeking clarification of questions taken on notice during the hearing (7 September 2004).
- Letter from Mr M Meagher, Chief of Staff to Assistant Planning Minister, providing answers to questions taken on notice (7 September 2004).
- Letter from Dr C Gellatly, Director General, Premier's Department, declining, on advice from Crown Solicitors, to provide documents to the Committee in response to the order for papers (7 September 2004).

Correspondence sent

The Committee noted the following items of correspondence sent:

- Letter to Mr Ben Giles, Solicitor, Speed and Stracey Solicitors, requesting from their client various documents relating to the Designer Outlets Centre (7 September 2004).
- Letter to Mr D'Agostino, enclosing transcript and questions taken on notice during the hearing (7 September).

- Letter to Mr Emelio Ferrer, former Deputy Chief of Staff, DIPNR, confirming his appearance at the public hearing to be held Thursday 9 September.
- Letter to Ms Jennifer Westacott, Director General, DIPNR, confirming her appearance at the public hearing to be held Thursday 9 September.
- Letter to Mr Stephen Driscoll, former Regional Planning Coordinator, Sydney West Region, DIPNR, confirming his appearance at the public hearing to be held Thursday 9 September.
- Letter to Mr Joseph D'Agostino, Principal, D'Agostino Solicitors, confirming his appearance at the public hearing to be held Thursday 9 September.
- Letter to Mr Robert Jordon, Chief Operating Officer – Australia & NZ, Westfield confirming his appearance at the public hearing to be held Friday 10 September, including a request that Mr Mark Ryan, Mr Craig Marshall and Mr Greg Miles also appear.
- Letter to Mr Chris Weston, former Planning Manager, Liverpool Council confirming his appearance at the public hearing to be held Friday 10 September.
- Letter to Mr Julian Brophy of Orion Communications confirming his appearance at the public hearing to be held Friday 10 September.

Minutes

Resolved, on the motion of Mr Ryan, that Minutes No 38 be confirmed, subject to standard corrections by the Clerk Assistant-Committees.

Resolved, on the motion of Mr Ryan, that Minutes No 39 be confirmed, subject to insertion of words notifying that two junior officers from DIPNR were not required to appear at the hearing on 18 August 2004 following agreement by the Chair in negotiation with the Director General.

Resolved, on the motion of Mr Ryan, that minutes No 40 be confirmed, subject to standard corrections by the Clerk Assistant-Committees.

Resolved, on the motion of Mr Ryan, that minutes No 41 be confirmed, subject to standard corrections by the Clerk Assistant-Committees.

Resolved, on the motion of Mr Ryan, that minutes No 42 be confirmed, subject to standard corrections by the Clerk Assistant-Committees.

Appearance of Mr Bargshoon

Resolved, on the motion of Ms Fazio, that given the Committee has access to Mr Bargshoon's address, the Secretariat contact Mr Bargshoon on his mobile phone or at his postal address, to invite him to give evidence at the hearing on Friday 10 September 2004.

Request from Mr Gazal

Correspondence was tabled from Mr Gazal, dated 9 September 2004 requesting a further audience before the Committee.

The Committee deliberated.

Mr Ryan moved: That Mr Gazal be invited to appear at 2.00pm today.

Question put

The Committee divided.

Ayes: Ms Gardiner, Ms Hale, Mr Oldfield, Mr Ryan

Noes: Ms Burnswoods, Ms Fazio, Mr Primrose

Question resolved in the affirmative.

Leases

Mr Primrose moved: That the Committee again request Gazcorp to present copies of the leases relating to the Orange Grove centre to the Committee.

Mr Ryan moved: That the word 'again' be omitted from the motion.

Question put.

The Committee divided.

Ayes: Ms Gardiner, Ms Hale, Mr Oldfield, Mr Ryan

Noes: Ms Burnswoods, Ms Fazio, Mr Primrose

Question resolved in the affirmative.

Original question, as amended: That the Committee request Gazcorp to present copies of the leases relating to the Orange Grove centre to the Committee-put and passed.

Request by Mr Weston to give in camera evidence

Resolved, on the motion of Ms Burnswoods, that given all other witnesses have appeared in public that the Committee indicate to the witness that unless he has a specific imperative which the Committee is not aware of, the Committee wishes Mr Weston appear in public.

Order for Papers

Resolved on the motion of Ms Burnswoods, that a discussion of the Committee's Order for Papers to the Premier's Department be deferred until a later deliberative and that the response from Dr Gellatly dated 7 September 2004 be made public.

Position of Sydney Jacobs, Counsel

Mr Primrose raised the issue that the courtesy afforded Mr D'Agostino, which allowed his legal counsel to assist him, may have contravened Standing Order 225.

Resolved, on the motion of Mr Primrose, that the Committee seek advice from Mr D'Agostino, prior to his giving evidence at the hearing on 9 September 2004, as to why he believes counsel is necessary and then decide if a motion is required according to SO 225.

Adverse mention

The Committee noted advice relating to adverse mentions and expressed its thanks to the Clerks for the preparation of this material.

Request from DIPNR for additional witnesses

Ms Fazio moved: That the Committee agree to the request made by DIPNR that an additional three officers, Mr Haddad, Mr Smith and Mr Astill, appear with Ms Westacott at the public hearing this afternoon.

Mr Oldfield moved: That the question be amended by omitting the words, 'Mr Haddad, Mr Smith and' and inserting at the end 'and Mr Smith and Mr Haddad attend only as advisors but not as witnesses'.

Question that the amendment be agreed to, put.

The Committee divided.

Ayes: Ms Gardiner, Ms Hale, Mr Oldfield, Mr Ryan
 Noes: Ms Burnswoods, Ms Fazio, Mr Primrose

Question resolved in the affirmative.

Original question, as amended: That the Committee agree to the request made by DIPNR that Mr Astill appear with Ms Westacott at the public hearing this afternoon and that Mr Smith and Mr Haddad attend as advisors but not as witnesses-put and passed.

Need for further Hearing

The Committee agreed to defer discussion to a later meeting.

Public Hearing (continued)

The witness, the public and the media were admitted.

The following witness was sworn and examined:

- Mr Nabil Gazal, Managing Director, Gazcorp.

Mr Gazal tendered a statutory declaration dated 9 September 2004 by a third person.

Mr Gazal tabled copies of four statutory declarations dated 10 July 2004, relating to the rezoning of the Orange Grove site.

The Committee declined to accept the statutory declaration dated 9 September 2004.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined.

- Ms J Westacott, Director General, Department of Infrastructure, Planning and Natural Resources (DIPNR)
- Mr Michael Astill, Corporate Counsel, DIPNR
- Mr S Driscoll, former regional planning co-ordinator, Sydney Region West, DIPNR

Point of order: Ms Burnswoods took a point of order regarding the relevance of a question to Ms Westacott.

The Chair ruled the question in order.

Ms Burnswoods moved: That the Committee dissent from the ruling of the Chair on the grounds of the relevance of the question.

The Committee moved into a deliberative meeting and the media and public withdrew

Question put: That the Committee dissent from the ruling of the Chair.

The Committee divided.

Ayes: Ms Burnswoods, Ms Fazio, Mr Primrose
 Noes: Ms Gardiner, Ms Hale, Mr Oldfield, Mr Ryan

Question resolved in the negative.

The witness, the public and the media were re-admitted.

Point of order: Ms Burnswoods took a point of order regarding the protection of witnesses and the appropriateness of a question to Ms Westacott.

The Chair ruled the question in order.

Ms Burnswoods moved: That the Committee dissent from the ruling of the Chair on the grounds of the protection of witnesses and the appropriateness of the question.

The Committee moved into a deliberative meeting and the media and public withdrew

The Committee deliberated.

Question put: That the Committee dissent from the ruling of the Chair on the grounds of the protection of witnesses and the appropriateness of the question.

The Committee divided.

Ayes: Ms Burnswoods, Ms Fazio, Mr Primrose
Noes: Ms Gardiner, Ms Hale, Mr Oldfield, Mr Ryan

Question resolved in the negative

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Joseph D'Agostino, D'Agostino Solicitors

Mr D'Agostino declined to answer a question on the basis of legal professional privilege.

Resolved on the motion of Ms Hale that the Committee proceed to take evidence from Mr D'Agostino in camera.

The public and media withdrew.

The Committee proceeded to take in camera evidence.

[Persons present other than the Committee: Mr Warren Cahill, Mr Steven Reynolds, Ms Beverly Duffy, Ms Madeleine Foley, Ms Laura Milkins and Hansard Reporters]

Resolved on the motion of Mr Ryan that the hearing resume in public.

The evidence was concluded and the witness withdrew.

The witness, the public and the media withdrew.

The Committee Clerk advised that Mr Bargshoon had rung the secretariat to advise that he would not be attending tomorrow and did not wish to attend further hearings.

The Committee Clerk tabled the following items of correspondence.

- Email Correspondence from Mr Geoff Hunt clarifying an aspect of his evidence provided on 30 August 2004 (8 September 2004)

- Letter from Mr Col Gellatly, Director General Premier's Department, answering questions on notice taken during his evidence. (8 September 2004)
- Letter from Malcolm Stewart, Speed and Stracey, answering questions on notice in response to Committee's letter 2 September 2004 (9 September 2004)

4. Next meeting

The Committee adjourned at 7.05 pm until Friday 10 September 2004.

Steven Reynolds

Clerk to the Committee

Minutes No 44

Friday, 10 September 2004

Jubilee Room, Parliament House, Sydney at 10:10 am

1. Members Present

Ms Gardiner (Chair)
Ms Hale (Deputy Chair)
Ms Burnswoods
Ms Griffin
Mr Primrose (Roozendaal)
Mr Oldfield
Mr Ryan (Clarke)

2. Public Hearing – Inquiry into the Approval of the Designer Outlets Centre, Liverpool

The witness, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were examined on their former oaths:

- Mr Robert Jordon, Chief Operating Officer, Westfield Australia & NZ
- Mr Mark Ryan, Director of Corporate Affairs, Westfield
- Mr Craig Marshall, Assets General Manager for NSW, Westfield

The following witness was sworn and examined:

- Mr Greg Miles, Director, Development & Asset Management, Westfield

Correspondence tabled at hearing

- Letter from Mr Stewart, Speed and Stacey, dated 10 September 2004, providing documents the following documents requested by the Committee on 7 September 2004.
- Urbis JHD Report “Liverpool Outlet Centre: Impact Assessment” dated 23 April 2004.
- Hard copy letter to Mr Garry Prattley dated 27 April 2004 attaching Urbis JHD Report.
- Email to Garry Prattley attaching letter dated 27 April 2004 and Urbis JHD Report.

The evidence was concluded and the witness withdrew.

The media and the public withdrew.

Deliberative meeting re in-camera evidence

The Committee considered a request from Mr Weston that he be heard in camera.

Resolved, on the motion of Mr Primrose, that the Chair and the Clerk Assistant Committees discuss with Mr Weston his reasons further and report back to the Committee.

The Committee adjourned briefly, until the Chair returned.

Resolved, on the motion of Mr Primrose, that Mr Weston be permitted to give his evidence in camera, but that the transcript of his evidence be made public following the hearing.

In-camera hearing

The following witness was sworn and examined:

- Mr Chris Weston, Former Planning Manager, Liverpool City Council

Mr Weston was advised of the Committee's decision.

Resolved, on the motion of Mr Ryan, that the Committee proceed in camera.

The in-camera evidence concluded and the witness withdrew.

Resolved, on the motion of Mr Primrose, that the transcript of Mr Weston's evidence be made public.

Resolved, on the motion of Mr Ryan, that the committee resume its hearing in public.

The public and the media were re-admitted.

Public Hearing

The following witness was sworn and examined:

- Mr Julian Brophy, media consultant, Orion Media Communications

Evidence concluded and the witness withdrew.

The media and the public withdrew.

Deliberative meeting

3. Correspondence

Correspondence sent

The Committee noted the following items or correspondence sent:

- Letter to Mr Bargshoon, Proprietor, Bargshoon Cleaning Services, inviting him to appear before the committee dated 9 September 2004.
- Letter to Mr Graeme Wedderburn, Chief of Staff, Office of the Premier of NSW, regarding his concerns about the Committee's uncorrected transcript of 18 August 2004.

Publication of documents

Resolved, on the motion of Mr Primrose, that the following documents be published by the Committee:

- Letter from Mr Stewart, Speed and Stacey, dated 10 September 2004, providing the following documents requested by the Committee on 7 September 2004.
- Urbis JHD Report "Liverpool Outlet Centre: Impact Assessment" dated 23 April 2004.
- Hard copy letter to Mr Garry Prattley dated 27 April 2004 attaching Urbis JHD Report.
- Email to Garry Prattley attaching letter dated 27 April 2004 and Urbis JHD Report.
- 4 statutory declarations dated 10 July 2004 tabled by Mr Gazal at hearing on 9 September 2004
- Answers to questions on notice from Mr Mosca dated 8 September 2004
- Answers to questions on notice from Mr Meagher dated 7 September 2004
- Answers to questions on notice from Mr Wedderburn dated 3 September 2004

- Answers to questions on notice from Ms Spizzo dated 1 September 2004
- Answers to questions on notice from Speed and Stracey dated 9 September 2004
- Email from Mr Geoff Hunt dated 9 September 2004 in response to issue raised at hearing

Further hearing

The Committee deliberated on a date and witnesses for a further hearing.

The Clerk Assistant Committees made a statement regarding parliamentary procedures and behaviour appropriate to Legislative Council committees, and the potential impact on witnesses and on the Committee system.

Resolved, on the motion of Ms Hale, that the Committee hold a hearing on Monday 20 September and decide after that hearing on a likely new reporting date.

Mr Oldfield moved that the following witnesses be invited:

- Mr Frank Mosca
- Mr Sam Bargshoon
- Mr Tony Beuk
- Mr Warwick Mirzikinhein
- Mr Bill Tucker (AMP)
- Mr Tom Zerrimus (AMP)
- Mr Bill Patterson (DFO)
- Mr Geoff Porcz (DFO)
- Mr Stephen Driscoll and Ms Jennifer Westacott
- Ms Sarah Taylor, Minister Knowles' office

Ms Burnswoods moved that Mr Nabil Gazal also be invited.

Question was put and passed.

Original motion as amended – put and passed.

Mr Oldfield requested it be noted that he opposed inviting Mr Gazal for the hearing.

Order for Papers

The Committee noted the response by Dr Gellatly of 7 September 2004.

The Clerk Assistant advised that he had discussed the matter with the Clerk, Mr John Evan and that it is recommended that the Committee should write to Dr Gellatly to seek a copy of the legal advice on which the refusal was made prior to taking any further action.

Resolved, on the motion of Mr Ryan, that the Committee write to Dr Gellatly seeking the advice upon which he has refused the order, and that the Committee then consider the response.

4. Next meeting

The Committee adjourned at 4:40 pm until Monday 20 September 2004.

Steven Reynolds
Clerk to the Committee

Minutes No 49

Monday 20 September 2004

Jubilee Room, Parliament House at 10:10 am

1. Members PresentMs Gardiner (*Chair*)Ms Hale (*Deputy Chair*)

Ms Burnswoods

Ms Fazio (Griffin)

Mr Primrose (Roozendaal)

Mr Oldfield

Mr Ryan (Clarke)

2. Substitute arrangements

The Chair advised that Ms Fazio would be representing Ms Griffin for today's hearing.

3. Public Hearing – Inquiry into the Approval of the Designer Outlets Centre, Liverpool

The witness, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was examined on his former oath:

- Mr Stephen Driscoll, former Regional Planning Coordinator, Sydney Region West, DIPNR

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Tony Beuk, Former Councillor, Liverpool City Council

The evidence was concluded and the witness withdrew.

The following witness was examined on his former oath:

- Mr Sam Bargshoon.

Mr Bargshoon tendered a copy of his opening statement and a copy of a DVD of media coverage.

The evidence was concluded and the witness withdrew.

The following witness was examined on his former oath:

- Mr Gerrard Turrisi, Principal, GAT and Associates

The evidence was concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Jeff Tucker, Property Development Manager, AMP Capital Investors
- Mr Tom Zarimis, National Manager, Property Development, AMP Capital Investors

The evidence was concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Bill Patterson, Consultant, Designer Factory Outlets

The evidence was concluded and the witness withdrew.

The following witness was sworn and examined:

- Ms Sarah Taylor, Chief of Staff, Minister for Infrastructure & Planning, and Minister for Natural Resources

The evidence was concluded and the witness withdrew.

The following witnesses were examined on their former oath:

- Ms Jennifer Westacott, Director General, DIPNR
- Mr Sam Haddad, Deputy Director General, DIPNR
- Mr Michael Astill, Counsel, DIPNR

The following witness was sworn and examined:

- Mr Glenn Smith, Executive Director, Corporate Services, DIPNR

The evidence was concluded and the witnesses withdrew.

The media and the public withdrew.

Deliberative meeting

Correspondence tabled at hearing

The Committee Clerk tabled the following correspondence which had been received during the hearing:

- Letter from Mr Emilio Ferrer regarding his appearance before the Committee on 9 September 2004 (17 September 2004)
- Letter from Mr Malcolm Stewart, Speed and Stracey Solicitors, responding to Questions taken on Notice at the hearing on 9 September 2004 (20 September 2004)
- Letter from Ms Jennifer Westacott responding to Questions taken on Notice at the hearing on 9 September 2004 (20 September 2004)

Attendance at the hearing of Mr Jon Jenkins

The Committee noted the attendance of Mr Jenkins as a participating member.

Minutes

Resolved, on the motion of Mr Ryan, that Minutes nos 43 and 44, be confirmed.

Correspondence received

The Committee noted the following items or correspondence sent:

- Letter from Malcolm Stewart, Speed and Stracey Solicitors, regarding a statutory declaration signed by Mr Warwick Mirzikinian which was tendered but not accepted by the Committee at the hearing on 9 September (16 September 2004, cover letter, attached)
- Letter from Mr Phil Tolhurst, Manager, City Development, Liverpool City Council, regarding Council's legal advice in relation to the draft LEP for the Orange Grove site (10 September 2004, attached)

Correspondence sent

- Letter to Dr C Gellatly, Director General, Premier's Department, seeking a copy of advice received by the Department from the Crown Solicitor regarding the Committee's call for papers (14 September 2004, attached)

- Letter to Mr Graeme Wedderburn, Chief of Staff, Office of the Premier, regarding the uncorrected transcript of his evidence from 18 August 2004. (9 September 2004, attached)
- Letters to the following people, inviting their attendance at the hearing on Monday 20 September:
 - Mr Stephen Driscoll (16 September 2004)
 - Mr Tony Beuk (16 September 2004)
 - Mr Sam Bargshoon (13 and 14 September 2004)
 - Mr Gerard Turrisi (16 September 2004)
 - Mr Jeff Tucker (16 September 2004)
 - Mr Tom Zarimis (16 September 2004)
 - Mr Bill Patteson (16 September 2004)
 - Ms Sarah Taylor (16 September 2004)
 - Ms Jennifer Westacott (16 and 17 September 2004)

Legal advice from Liverpool Council

Resolved, on the motion of Mr Ryan, that a decision regarding the status of the legal advice provided by Liverpool Council on 10 September 2004, be deferred until the next deliberative meeting so as to enable committee members to read the document.

Statutory declarations from Mr Mirzikinian

Resolved, on the motion of Mr Ryan, that no action be taken by the Committee in relation to the two statutory declarations signed by Mr Marzikinian.

Order for papers

Resolved, on the motion of Mr Primrose, to defer any action in relation to the Committee's call for papers until the Clerks have had an opportunity to follow up recent correspondence from the Committee to Dr Gellatly.

Further hearing

The Committee deliberated on a date and witnesses for a further hearing to be held on Monday 11 October 2004.

Mr Primrose moved that the following witnesses be invited:

- Mr Murray Douglas
- Mr Frank Mosca
- Mr Eric Roozendaal
- Mr Nabil Gazal Snr
- The Directors of Flagship Communications (Mr Egan, Mr Perry and Mr Elliott)
- Mr Frank Lowy
- Mr Stephen Lowy
- Mr Anthony Roberts MP, Member for Lane Cove
- Mr John Brogden MP, Leader of the Opposition
- Mr Brogden's Chief of Staff and Senior Media Advisor.

Mr Ryan moved to omit Mr Brogden and staff and the Directors of Flagship Communications, from the list of witnesses.

Question put.

The Committee divided.

Ayes: Ms Gardiner, Mr Oldfield and Mr Ryan.

Noes: Ms Burnswoods, Ms Hale, Ms Fazio, Mr Primrose

Question resolved in the negative.

Original question put and passed.

Publication of documents

Resolved, on the motion of Mr Ryan that the following documents be published by the Committee:

- Mr Bargshoon's opening statement
- Letter from Mr Malcolm Stewart, Speed and Stracey Solicitors, responding to Questions taken on Notice at the hearing on 9 September 2004 (20 September 2004)
- Letter from Ms Jennifer Westacott responding to Questions taken on notice at the hearing on 9 September (20 September 2004)

Letter from Emilio Ferrer

Resolved, on the motion of Ms Fazio, that the Committee notes the receipt of a letter from Mr Emilio Ferrer regarding his recent appearance before the Committee, and that he be advised to write directly to the President with the matters raised.

Reporting Date

Resolved, on the motion of Mr Ryan, that a copy of the Chair's draft report be provided to Committee members on 19 November 2004 and the final report tabled in the House on 3 December 2004.

Transcript of Bargshoon's evidence

Mr Primrose moved: That a copy of the Hansard transcript relating to the evidence provided by Mr Sam Bargshoon on 20 September 2004, be forwarded to the NSW Police Service through the Clerk.

The Committee divided.

Ayes: Ms Burnswoods, Ms Fazio, Mr Primrose

Noes: Ms Gardiner, Ms Hale, Mr Oldfield, Mr Ryan.

Question resolved in the negative.

4. Next meeting

The Committee adjourned at 6:50 pm until Monday 11 October 2004.

Steven Reynolds

Clerk to the Committee

Minutes No 50

Monday 11 October 2004

Room 814/815, Parliament House, Sydney at 10:35am

1. Members Present

Ms Gardiner (*Chair*)

Ms Hale (*Deputy Chair*)

Ms Burnswoods

Dr Chesterfield Evans (replacing Oldfield for deliberative meeting)

Ms Fazio (Griffin)

Mr Primrose (Roozendaal)

Mr Oldfield

Mr Ryan (Clarke)

Mr Tsang (replacing Burnswoods from 2pm)

2. Substitute arrangements

The Chair advised that Ms Fazio would be representing Ms Griffin for today's hearing.

The Chair advised that Mr Tsang would be representing Ms Burnswoods for part of today's hearing.

The Chair advised that Dr Chesterfield-Evans would be representing Mr Oldfield for the Committee's deliberative meeting.

3. Deliberative meeting***Minutes***

Resolved, on the motion of Mr Ryan, that Minutes No 49 be confirmed.

Correspondence received

The Committee noted the following items of correspondence received:

- Fax from John Brogden, Leader of the Opposition, indicating the availability of himself and his staff to attend the hearing on Monday 11 October (6 October 2004)
- Fax from Murray Douglas, former Consultant Manager, Major Projects, Liverpool Council, requesting to give his evidence in camera and for the transcript to be published later (6 October 2004)
- Fax from Rebecca Clark, Secretary to Frank Mosca, indicating that Mr Mosca has meetings in Campbelltown on Monday 11 October but would be available on Wednesday 13 October if required (5 October 2004)
- Letter from David Elliott, Director of Flagship Communications, advising that he is unable to accept the Committee's invitation to appear at the hearing on Monday 11 October due to business commitments interstate, and detailing his lack of involvement in Orange Grove matters (29 September 2004)
- Letter from Jeff Egan, Director, Flagship Communications, advising that he and David Elliot will only appear if summoned (7 October 2004)
- Confidential letter from Frank Lowy, Chairman of Westfield, advising that he and Steven Lowy are unable to accept the Committee's invitation to appear at the hearing on Monday 11 October due to business commitments overseas, and offering instead to give evidence by videoconference (28 September 2004)

- Letter from Robin Speed, Speed and Stracey, responding to the Chair's letter regarding video evidence from Messrs Lowy (8 October 2004)
- Confidential letter from Joseph D'Agostino, Principal D'Agostino Solicitors, enclosing answers to questions taken on notice (27 September 2004)
- Letter from Glenn Smith, Executive Director Corporate Services, DIPNR, enclosing answers to questions taken on notice (27 September 2004)
- Letter from Jennifer Westacott, Director General, DIPNR, enclosing answers to questions taken on notice (24 September 2004)
- Letter from Col Gellatly, Director General, Premier's Department, providing a copy of the Crown Solicitor's advice regarding the Committee's power to order the production of documents (23 September 2004)
- Letter from Jennifer Westacott, Director General, DIPNR, clarifying aspects of her evidence of 9 September 2004 (20 September 2004)

Correspondence sent

The Committee noted the following items of correspondence sent:

- Letter to Joseph D'Agostino, Principal, D'Agostino Solicitors, again requesting answers to questions taken on notice at the hearing on 9 September 2004 (6 October 2004)
- Letter from Chair to Frank Lowy, Chair, Westfield, regarding the request to provide evidence by video on 11 October (7 October 2004)
- Letters to the following people from the Chair, inviting their attendance at the hearing on Monday 11 October 2004:
 - John Brogden MP, Leader of the Opposition (22 September 2004)
 - Anthony Roberts MP, Member for Lane Cove (22 September 2004)
 - The Hon Eric Roozendaal MLC (22 September 2004)
- Letters to the following people from the Director, inviting their attendance at the hearing on Monday 11 October:
 - Frank Lowy, Chairman, Westfield (22 September 2004)
 - Steven Lowy, Managing Director, Westfield (22 September 2004)
 - Peter Fraser, Chief of Staff, Office of the Leader of the Opposition (22 September & 6 October 2004)
 - Lance Northey, Senior Media Adviser, Office of the Leader of the Opposition (22 September 2004)
 - Steve Murphy, Director of Communications, Office of the Leader of the Opposition (6 October 2004)
 - Murray Douglas, former officer of Liverpool Council (22 September & 6 October 2004)
 - Jeffery Egan, Director, Flagship Communications (22 September 2004)
 - David Elliott, Director, Flagship Communications (22 September 2004)
 - Mark Perry, Director, Flagship Communications (22 September 2004)

- Nabil Gazal, Managing Director, Gazcorp (22 September 2004)
- Frank Mosca, Director, Mosca Pserras Architects (22 September 2004)
- Letters to the following people, seeking answers to questions taken on notice at the hearing on 20 September 2004:
 - Sarah Taylor, Chief of Staff, Minister Knowles (21 September & 6 October 2004)
 - Jennifer Westacott, Director General, DIPNR (21 September 2004)
 - Glenn Smith, Executive Director Corporate Services, DIPNR (21 September 2004)

Request from Murray Douglas to give evidence in camera

Resolved, on the motion of Mr Ryan, that Mr Douglas be permitted to give his evidence in camera, but that the transcript of evidence be made public following the hearing.

Order for the production of documents

The Committee deliberated on Dr Gellatly's letter dated 23 September.

Ms Fazio moved that the Committee accept the advice of Dr Gellatly (deferred).

Mr Ryan moved that the Committee write back to Dr Gellatly and indicate the Committee does not accept the advice (deferred).

Resolved, on the motion of Mr Primrose, that consideration of the agenda item relating to the Committee's order for papers be deferred until the Clerks have an opportunity to draft a letter in response to Dr Gellatly's letter dated 23 September 2004.

Unauthorised disclosure of Frank Lowy's letter

Mr Ryan moved that the Committee write to Mr Lowy in the following terms:

- expressing regret that the contents of his confidential letter to the Committee dated 28 September 2004 was leaked to the media, appearing in the *SMH* on 30 September 2004
- noting that the letter had not been circulated to the Committee, prior to it being disclosed to the media
- suggesting that Mr Lowy may like to examine this matter, as the evidence suggests that the letter was leaked from outside of the Committee.

Ms Burnswoods moved that the motion be amended by adding: that the Committee deeply regrets that the quotation attributed to the Chair in the *Sun Herald* on 3 October 2004, purported to reflect a decision of the Committee which had not actually been made.

Mr Ryan moved that Ms Burnswoods' amendment be amended by omitting the words 'deeply regrets' and replaced with the words: that Mr Lowy be informed that the comments attributed to the Chair were not made by the Chair.

Mr Ryan moved that the Committee defer consideration of Mr Lowy's request to give evidence by videoconference and the unauthorised disclosure of Mr Lowy's letter until the afternoon.

The Committee divided.

Ayes: Ms Gardiner, Mr Ryan, Ms Hale, Dr Chesterfield-Evans
 Noes: Mr Primrose, Ms Burnswoods, Ms Fazio

Question resolved in the affirmative.

Ms Burnswoods moved that the response from Flagship Communications be listed as a separate item on the Committee's agenda.

Mr Ryan moved that the deliberative meeting be adjourned and the Committee defer consideration of the remaining items, including the response from the Directors of Flagship Communications to the Committee's invitation to appear, until a later time in the day.

The Committee divided.

Ayes: Ms Gardiner, Mr Ryan, Ms Hale, Dr Chesterfield-Evans

Noes: Mr Primrose, Ms Burnswoods, Ms Fazio

Question resolved in the affirmative

4. Public Hearing – Inquiry into the Approval of the Designer Outlets Centre, Liverpool

The witness, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was examined:

Mr John Brogden MP, Leader of the Opposition

Mr Brogden tendered a copy of his opening statement.

The evidence was concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Peter Fraser, Chief of Staff, Office of the Leader of the Opposition
- Mr Steve Murphy, Director of Communications, Office of the Leader of the Opposition

Mr Fraser tabled a copy of a statutory declaration by himself dated 25 August 2004.

Point of order: Ms Fazio took a point of order regarding a personal reflection against her by the witness.

The Chair requested the witness withdraw the personal reflection.

Ms Burnswoods moved: That the Committee dissent from the ruling of the Chair on the grounds that the Chair had not given a formal ruling on the point of order despite repeated requests.

The media and public withdrew.

Question put: That the Committee dissent from the ruling of the Chair.

The Committee divided.

Ayes: Ms Burnswoods, Ms Fazio, Mr Primrose

Noes: Ms Gardiner, Ms Hale, Mr Oldfield, Mr Ryan.

Question resolved in the negative.

The witness, the public and the media were re-admitted.

Point of order: Ms Fazio took a point of order to a question from Mr Ryan.

The Chair ruled that there was no point of order.

Ms Fazio moved: That the Committee dissent from the ruling of the Chair on the grounds of inconsistency with a previous ruling.

The media and public withdrew.

Question put: That the Committee dissent from the ruling of the Chair.

The Committee divided.

Ayes: Ms Burnswoods, Ms Fazio, Mr Primrose
 Noes: Ms Gardiner, Ms Hale, Mr Oldfield, Mr Ryan.

Question resolved in the negative.

The witness, the public and the media were re-admitted.

Resolved, on the motion of Mr Ryan, to make public Mr Brogden's opening statement.

Mr Fraser tendered a copy of a previously published article from the Sydney Morning Herald on 11 February 1992.

The evidence was concluded and the witness withdrew.

The following witness was examined:

- Mr Anthony Roberts MP, Member for Lane Cove

Mr Roberts tendered 12 items of correspondence addressed to the Committee from former employees and business owners at the Designer Outlets Centre.

Mr Roberts tendered his opening statement.

The evidence was concluded and the witness withdrew.

The following witness was examined on his former oath:

- Mr Nabil Gazal, Managing Director, Gazcorp

The evidence was concluded and the witness withdrew.

Resolved, on the motion of Ms Hale, that the Committee move into a deliberative meeting.

The media and the public withdrew.

5. Deliberative meeting

Ms Hale moved that Mr Nabil Gazal Jnr be invited to give evidence.

The Committee divided.

Ayes: Ms Gardiner, Ms Hale, Mr Ryan, Mr Oldfield
 Noes: Ms Fazio, Mr Tsang

Question resolved in the affirmative.

6. Public hearing

The media and the public were re-admitted.

The following witness was examined on his former oath:

- Mr Nabil Gazal Jnr, Director, Gazcorp

The evidence was concluded and the witness withdrew.

Resolved, on the motion of Mr Oldfield, that the Committee move in-camera for the next witness.

The media and the public withdrew.

In-camera hearing

The following witness was sworn and examined:

- Mr Murray Douglas, Former Consultant Manager, Major Projects, Liverpool City Council

The in-camera evidence concluded and the witness withdrew.

7. Deliberative meeting

Resolved, on the motion of Ms Hale, that the transcript of Mr Douglas' evidence be made public.

Security log books at Governor Macquarie Tower

Mr Oldfield moved that the secretariat establish the nature of the security firm engaged for Governor Macquarie Tower, and the type of records kept by the firm, to establish if the Committee can access these records.

The Committee divided.

Ayes: Ms Gardiner, Mr Ryan, Ms Hale, Mr Oldfield

Noes: Ms Fazio, Mr Tsang

Question resolved in the affirmative.

Order for the production of documents

The Committee Clerk tabled a copy of a draft letter prepared in response to Dr Gellatly's letter dated 23 September 2004.

Ms Fazio's motion, deferred from the earlier deliberative, considered: that the Committee accept Dr Gellatly's advice.

The Committee divided.

Ayes: Ms Fazio, Mr Tsang

Noes: Ms Gardiner, Mr Ryan, Ms Hale, Mr Oldfield

Question resolved in the negative.

Mr Ryan moved that a letter be sent to Dr Gellatly in the terms of the draft letter circulated by the Committee Clerk since the initial deliberative meeting.

The Committee divided.

Ayes: Ms Gardiner, Mr Ryan, Ms Hale, Mr Oldfield
 Noes: Ms Fazio, Mr Tsang

Question resolved in the affirmative.

Unauthorised disclosure of Frank Lowy's letter

The Committee proceeded to vote on the motions deferred from the morning deliberative regarding the unauthorised disclosure of the letter of 28 September from Mr Lowy and the *Sun Herald* article of 3 October 2004.

Question that the amendment of Mr Ryan be agreed to.

Put and passed.

Question that Ms Burnswoods' motion as amended be agreed to put.

The Committee divided.

Ayes: Ms Fazio, Mr Tsang
 Noes: Mr Ryan, Mr Oldfield, Ms Hale, Ms Gardiner

Question resolved in the negative.

Original question (Mr Ryan) put.

The Committee divided.

Ayes: Mr Ryan, Mr Oldfield, Ms Hale, Ms Gardiner
 Noes: Ms Fazio, Mr Tsang

Question resolved in the affirmative.

Evidence via videoconference

Mr Ryan moved that the Committee send a letter in reply to Mr Lowy, noting his response, thanking him for his kind offer to appear via videoconference, and noting that the Committee would welcome any written submission he may care to make, but advising Mr Lowy that the Committee wishes to hear his evidence in person and proposes to do so at a mutually convenient date.

The Committee divided.

Ayes: Ms Gardiner, Mr Ryan, Ms Hale, Mr Oldfield
 Noes: Ms Fazio, Mr Tsang

The Committee deliberated on whether to summon the Directors of Flagship Communications.

Status of legal advice from Liverpool City Council

Resolved, on the motion of Mr Ryan, that the Committee defer consideration of the status of the legal advice provided by Liverpool Council on 10 September 2004 in relation to the draft Amendment 92 to the Liverpool LEP.

Publication of questions on notice

Resolved, on the motion of Mr Ryan, that the Committee defer consideration of Mr D'Agostino's confidential letter (27 September 2004) responding to questions taken on notice until a future deliberative meeting.

Resolved, on the motion of Ms Fazio, that the Committee publish:

- The 12 letters tabled by Mr Roberts in today's hearing
- Letter from Glenn Smith, Executive Director Corporate Services, DIPNR, responding to questions taken on notice (27 September 2004)
- Letter from Jennifer Westacott, Director General, DIPNR, responding to questions taken on notice (24 September 2004)
- Letter from Col Gellatly, Director General, Premier's Department, responding to questions taken on notice at the hearing on 18 August 2004 (8 September 2004).

Mr Ryan moved that the Committee authorise the publication of the letter to Dr Gellatly, regarding the order for papers, after it is sent.

The Committee divided.

Ayes: Ms Gardiner, Mr Ryan, Ms Hale, Mr Oldfield

Noes: Ms Fazio, Mr Tsang

Question resolved in the affirmative.

Further hearings

Resolved, on the motion of Mr Ryan, that the Committee hold an additional hearing and that the following witnesses be invited to attend:

- Mr Frank Lowy, Chairman, Westfield
- Mr Steven Lowy, Managing Director, Westfield
- Ms Katherine Keating, Advisor to the Hon Craig Knowles MP
- Mr Brian Carr, former General Manager, Liverpool City Council
- Mr Eric Heapy, former Group Manager, Support, Liverpool City Council
- Mr Gerard Turrisi, GAT and Associates
- Mr Anthony Roberts MP

8. Next meeting

The Committee adjourned at 7:15pm until Tuesday 19 October 2004.

Steven Reynolds

Clerk to the Committee

Minutes No 51

Tuesday 19 October 2004

Room 1108, Parliament House, Sydney at 5.55pm

1. Members Present

Ms Gardiner (*Chair*)

Ms Hale (*Deputy Chair*)

Ms Burnswoods

Ms Griffin

Mr Oldfield

Mr Primrose (Roozendaal)

Mr Ryan (Clarke)

2. Deliberative meeting***Minutes***

The Committee Clerk tabled correspondence from Ms Fazio, dated 19 October 2004, querying a motion attributed to her on page 8 of the draft minutes of the meeting held on 11 October regarding Flagship Communications.

The Committee proceeded to deliberate and, as there were questions regarding the accuracy of this aspect of the minutes, noted that no decision had been made by the Committee about issuing a summons to the Directors of Flagship communications.

Correspondence received

- Letter from Mr John Brogden MP, providing an answer to a question taken on notice at the hearing on Monday 11 October 2003 (19 October 2004)
- Letter from Mr Nabil Gazal Jnr clarifying an aspect of his evidence provided on 11 October 2004 (13 October 2004)
- Letter from Ms Fazio regarding the accuracy of the item in Minutes 46 regarding summoning the Directors of Flagship Communications (19 October 2004, tabled at the meeting).

Correspondence sent

- Letter to Dr Col Gellatly regarding non compliance with the Committee's order for papers (11 October 2004)
- Letter to Mr Frank Lowy, regarding his offer to provide evidence to the Committee via videoconference (12 October 2004)
- Media release regarding additional hearing and order for papers (12 October 2004, attached).
- Letters to the following people, seeking answers to questions taken on notice at the hearing on 11 October 2004:
 - Mr John Brogden MP, Leader of the Opposition
 - Mr Anthony Roberts MP, Member for Lane Cove
 - Mr Murray Douglas, former officer, Liverpool Council
 - Mr Nabil Gazal Jnr, Gazcorp

Publication of correspondence/tabled documents

Resolved, on the motion of Mr Ryan, that the letter from Mr Brogden dated 14 October 2004 be published and that a decision regarding the publication status of the letter attached to Mr Brogden's letter, from Mr Steven Lowy dated 6 August 2004, be deferred subject to consultation with Mr Lowy.

Resolved, on the motion of Mr Primrose, that the response to Questions on Notice received from Mr D'Agostino, dated 27 September 2004, be made public.

Resolved, on the motion of Mr Ryan, that the statutory declaration tabled by Mr Peter Fraser on 11 October 2004, be made public.

Legal advice from Liverpool Council

Resolved, on the motion of Ms Burnswoods, that the legal advice provided by Liverpool Council on 10 September 2004 be made public.

Clarification of evidence by Nabil Gazal Jnr

Resolved, on the motion of Mr Ryan, that the letter from Mr Nabil Gazal Jnr, dated 13 October 2004, be made public.

Ms Burnswoods asked the Chair to comment on any information she could provide regarding the story appearing in the Sun Herald on 17 Oct regarding evidence given by Nabil Gazal Jnr to the Committee on 11 Oct 2004.

Security log books at Governor Macquarie Tower

Resolved, on the motion of Mr Ryan, that the Clerks seek further information regarding the nature and content of log books maintained by security officers at Governor Macquarie Tower and the possible security and privacy implications of receiving such material.

Public hearing 29 November

Resolved, on the motion of Mr Ryan, that the Committee hold an additional hearing on Monday 29 November 2004 and take evidence from Mr Frank Lowy and Mr Steven Lowy.

Resolved, on the motion of Mr Ryan, that Mr Garry McCully be invited to appear as a witness at the Committee's hearing on 29 November 2004.

Resolved, on the motion of Mr Ryan, that the other witnesses agreed to at the meeting of 11 October be invited to appear at the hearing on 29 November 2004.

Resolved, on the motion of Mr Ryan, that the Committee reissue an invitation to Mr Eric Roozendaal to appear as a witness at the Committee's hearing on 29 November 2004.

Resolved, on the motion of Ms Hale, that Mr Anthony Roberts MP be omitted from the list of witnesses being invited to appear at the Committee's hearing on 29 November 2004.

Resolved, on the motion of Mr Ryan, that Mr Mosca be invited to attend the hearing on 29 November 2004.

3. Next meeting

The Committee adjourned at 7:25pm until Monday 29 November 2004.

Steven Reynolds

Clerk to the Committee

Minutes No 54

Monday, 29 November 2004

Jubilee Room, Parliament House, Sydney at 9.30am

1. Members Present

Ms Gardiner (*Chair*)

Ms Hale (*Deputy Chair*)

Ms Burnswoods

Ms Griffin

Mr Oldfield

Mr Primrose

Mr Ryan

2. Public hearing – Inquiry into the Approval of the Designer Outlets Centre, Liverpool

The witness, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

Mr Frank Lowy, Chairman and Mr Steven Lowy, Managing Director, both of Westfield Holdings Limited were sworn and examined.

The evidence was concluded and the witness withdrew.

Mr Frank Mosca, Director, Mosca Pserras Architects, on former oath and re-examined.

The evidence was concluded and the witness withdrew.

The Chair advised that Mr McCully, who was scheduled to appear before the Committee at 2pm had advised that due to injury, he was unable to attend today's hearing.

Resolved, on the motion of Mr Ryan, that given Mr McCully's unavailability to attend the hearing, that the Committee's deliberative be rescheduled to today at 2pm.

3. Deliberative meeting***Minutes***

Resolved, on the motion of Mr Ryan that minutes no 50 and 51 be confirmed.

Resolved, on the motion of Ms Hale, that minutes no 53 be confirmed.

Correspondence received

The committee noted the following items of correspondence received:

- Letter from Mr Brian Carr, former General Manager Liverpool Council, to Chair, noting that he is unavailable to give evidence on 29 November 2004 and responding to the evidence of Mr Douglas (received 15 November 2004)
- Letter from Mr John Dermody, Business and Jobs Coordinator, to Committee Director, regarding contacting authors of submissions (received 9 November 2004, previously circulated)
- Letter from Dr Col Gellatly, Director General, Premier's Department, to Committee Director, responding to the Committee's questions regarding security arrangements at Governor Macquarie Tower (received 4 November 2004, previously circulated,)

- Email from Mr Eric Heapy, former General Manager, Liverpool City Council, to Senior Project Officer, regarding evidence provided by Mr Murray Douglas and enclosing his public statement (received 1 November 2004, previously circulated)
- Letter from Dr Col Gellatly, Director General, Premier's Department, to Chair, responding to the order for papers and attaching a new advice from the Crown Solicitor (received 25 October 2004, previously circulated)
- Letter from Ms Sarah Taylor, Chief of Staff to Hon Craig Knowles MP, providing answers to questions taken on notice at the hearing on 20 September 2004 (received 29 October 2004, previously circulated)
- Letter from Mr Malcolm Stewart, Speed and Stracey Solicitors, to Committee Director, notifying the Committee that the Lowys are available from 9:30am until 11am on 29 November 2004 (received 26 October 2004, previously circulated.)
- Letter from Mr Nabil Gazal Jnr, Gazcorp, to Committee Director, asking for his interjection from the public gallery to be corrected (received 25 October 2004, previously circulated)
- Letter from Mr Ben Giles, Speed and Stracey Solicitors, to Committee Director, notifying the Committee that Westfield has no objection to the letter tabled by Mr Brogden being made public (received 25 October 2004, previously circulated)
- Letter from Mr Nabil Gazal Jr, Gazcorp, to Committee Director, correcting an error in his transcript (received 21 October 2004, previously circulated)
- Letter from Mr D'Agostino, D'Agostino Solicitors, to Committee Director, responding to a question taken on notice re: phone records (received 21 October 2004, previously circulated)

Correspondence sent

The committee noted the following items of correspondence sent:

- Letter to Mr Nabil Gazal Jnr, Gazcorp, from Committee Director, regarding amendments to the transcript of evidence on 11 October 2004 (dated 29 October 2004, previously circulated)
- Letter to Dr Col Gellatly, Director General, Premier's Department, from Committee Director, seeking Dr Gellatly's advice on matters relating to security at Governor Macquarie Tower (dated 22 October 2004, previously circulated.)
- Letter to Mr Frank Lowy, Chairman of Westfield, from Chair, regarding two articles which appeared in the media regarding the offer to appear by video conferencing (dated 20 October 2004, previously circulated)
- Letters to the following people, reminding them of their commitment to answer questions taken on notice at the hearing on 11 October 2004:
 - Mr Murray Douglas, Former Consultant Manager, Major Projects, Liverpool City Council (dated 23 November 2004)
 - Mr Anthony Roberts MP, Member for Lane Cove, Legislative Assembly (dated 23 November 2004)
- Letters to the following people, from the Director, inviting them to appear at the hearing on Monday 29 November 2004:
 - Messrs Frank and Steven Lowy, Chairman and Managing Director of Westfield (dated 20 October 2004)
 - The Hon Eric Roozental MLC (dated 20 October 2004)
 - Mr Frank Mosca, Director, Mosca Pserras Architects (dated 2 November 2004)
 - Mr Gary McCully, General Manager, Liverpool City Council (dated 2 November 2004)
 - Mr Eric Heapy (dated 2 November 2004)

- Mr Gerard Turrisi, GAT & Associates (dated 2 November 2004)
- Ms Katherine Keating, Policy Adviser to the Hon Craig Knowles MP (dated 20 October and 9 November 2004)

Hansard record of interjection by Nabil Gazal Jnr

Resolved, on the motion of Ms Burnswoods, that the interjection by Mr Nabil Gazal, recorded in the draft Hansard record of proceedings on 11 October 2004, be amended by omitting the following words “Mr Gazal jnr; One week” and replaced with “[interruption]” as is the usual procedure used in the House to record interjections from the public gallery.

Security records at GMT

Resolved, on the motion of Mr Ryan, that the clerks seek urgent advice from the Premiers Department as whether visitor pass books at Governor Macquarie Tower from the period February-August 2004 are still in existence and if so:

- a) That these records be examined by the Department and the Committee advised as to whether there are any records of a meeting between Mr Lowy or Westfield representatives and the Premier on 12 March and 1 July 2004.
- b) That these records be examined and the Committee advised as to whether there are any records of any further meetings between Mr Lowy or Westfield representatives and the Premier during this period
- c) That the Committee strongly requests that no records relating to this period of time be disposed of for a further 6 months from today, and
- d) That the Premier’s Department be asked to define whether the term ‘disposed’ of in relation to the visitor pass books referred to in correspondence from Dr Gellatly means “destroyed” or has another meaning.

Reporting Date

Resolved, on the motion of Mr Ryan, that the new inquiry reporting date be 20 December 2004.

4. Public hearing – Inquiry into the Approval of the Designer Outlets Centre, Liverpool (cont.)

The public and the media were re-admitted.

Mr Eric Heapy, formerly Liverpool City Council was sworn and examined:

The evidence was concluded and the witness withdrew.

Mr Gerard Turrisi, GAT and Associates on former oath and re-examined:

The evidence was concluded and the witness withdrew.

The public and the media withdrew.

5. Deliberative Meeting

Order for Papers

Resolved on the motion of Ms Hale that, the Clerk Mr John Evans obtain independent legal advice in relation to the new advice from the Crown Solicitor regarding the Committee’s order for papers, provided by Dr Gellatly on 25 October.

Response to Mr Dermody

Resolved on the motion of Mr Oldfield that the Committee write to submission authors who are former employees at the Designer Outlet Centre advising them that Mr Dermody wishes to inform them about employment assistance and providing Mr Dermody’s contact details.

February hearings for Estimates and Sydney Harbour Foreshore Authority

6. Public Hearing

Ms Katherine Keating, Policy Adviser, Office of the Minister for Infrastructure & Planning, and Minister for Natural Resources was sworn and examined:

The evidence was concluded and the witness withdrew.

The media and the public withdrew.

7. Next meeting

The Committee adjourned at 5pm.

Steven Reynolds
Committee Clerk

Minutes No 55

Thursday 16 December 2004

Room 1108, Parliament House, Sydney at 9.40am

1. Members Present

Ms Gardiner (*Chair*)

Ms Hale (*Deputy Chair*)

Ms Burnswoods

Ms Griffin

Dr Chesterfield-Evans (Mr Oldfield)

Mr Primrose

Mr Ryan

2. Substitute Members

The Chair advised the Committee that Dr Chesterfield-Evans would be substituting for Mr Oldfield at this meeting.

3. Unauthorised disclosure of Committee proceedings

Ms Griffin drew the Committee's attention to the article titled: *Carr behind Orange Grove's scuttling: report* which appeared in this days edition of the *Sydney Morning Herald*. The Committee noted that there had been an unauthorised disclosure of the Chair's draft report.

The Committee deliberated.

Ms Griffin moved: That the Clerks give advice in writing to General Purpose Standing Committee No 4 on what action can be taken in regard to the continuous leaking to the press, including previously in the Sunday Herald and today's front page article in the Sydney Morning Herald regarding the confidential Chair's draft report and findings; and that concern is expressed about the impact on the conduct of future GPSC 4 inquiries in relation to leaks from the Committee about hearings and confidential documents.

Ms Burnswoods moved: That the question be amended by adding at the end the words of the motions, of which she had given notice of motion at meeting 40 and meeting 42 respectively: That

1. General Purpose Standing Committee No. 4 express its grave concern at statements to the media, contrary to the resolution of the Committee, by Committee members David Oldfield, Sylvia Hale and John Ryan, and that the advice of the Clerks be sought on the action that may be taken.

2. This Committee express grave concern at the article of the Sun Herald of 5 September 2004 which reported on a proposed meeting of the committee involving Mr Bargshoon, a meeting of which no notice was given to the Committee.

Question: That the amendment of Ms Burnswoods be agreed to – put and passed.

Mr Ryan moved that the Committee defer the consideration of the issue of Ms Griffin's motion, as amended, to a later hour.

Question put.

Committee divided.

Ayes: Mr Ryan, Dr Chesterfield-Evans, Ms Hale, Ms Gardiner

Noes: Ms Griffin, Ms Burnswoods, Mr Primrose.

Question resolved in the affirmative.

4. Confirmation of Minutes

Resolved on motion of Mr Ryan: That Minutes 54 be confirmed.

5. Correspondence

The Committee noted the following items of correspondence:

Correspondence received

- from Dr Col Gellatly responding to the Committee's letter in relation to the visitor pass books at Governor Macquarie Tower, dated 7 December 2004.
- Letter from Mr Anthony Roberts MP, providing an answer to a question taken on notice, dated 2 December 2004.

Correspondence sent

- Letter to Dr Col Gellatly, Director-General, Premier's Department, seeking further advice on visitor pass books for Governor Macquarie Tower, dated 30 November 2004.

6. Inquiry into the Designer Outlets Centre, Liverpool

Consideration of Chair's draft report

The Chair tabled her draft report, which, having been previously circulated, was taken as being read.

Resolved on motion of Ms Hale: That the short title of the report be "The Designer Outlets Centre, Liverpool".

Resolved on motion of Dr Chesterfield-Evans: That the long title of the report be "Report on Inquiry into the approval process relating to the Designer Outlets Centre on Orange Grove Road, Liverpool."

Chapter One read.

Ms Burnswoods moved: That the last sentence in paragraph 1.19 be amended by omitting the words, "the Committee resolved" and inserting instead "the majority of the Committee resolved".

The Chair read to the Committee Standing Order 228 regarding the responsibility of Committee members to reach unanimity of opinion within its report.

Dr Chesterfield-Evans moved: That the question be amended by omitting all words after "the" and inserting instead "Committee resolved, by majority vote,".

Question: That the amendment of Dr Chesterfield-Evans be agreed to – put and passed.

Original question, as amended:

That the last sentence in paragraph 1.19 be amended by omitting the words "the Committee resolved" and inserting instead "the Committee resolved, by majority vote,".

Put and passed.

Resolved on motion of Ms Hale: That the last sentence in paragraph 1.19 be amended by omitting the date "30 August 2004" and inserting instead "25 August 2004".

Resolved on motion of Mr Ryan: That the second sentence in paragraph 1.21 be amended by omitting the words “as unlike the circumstances particular to Mr Wedderburn,” and inserting instead “noting that”.

Resolved on motion of Mr Ryan: That the second sentence in paragraph 1.21 be amended by inserting the word “verbally” immediately before the word ‘declined’.

Resolved on motion of Ms Hale: That the last sentence in paragraph 1.22 be amended by omitting the word “was” and inserting instead “had been”.

Resolved on motion of Mr Ryan: That the last sentence in paragraph 1.22 be amended by omitting the word “parliamentary” and inserting instead “Legislative Council”.

Ms Burnswoods moved that paragraph 1.24 be amended by omitting the words “Mr Roozendaal is a substantive member of GPSC No 4 but did not take part in this inquiry.”

Question put.

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose, Ms Hale
Noes: Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the affirmative.

Resolved on motion of Mr Ryan: That the following words be inserted at the end of paragraph 1.24 “The failure of Mr Carr, Mr Knowles, Ms Beamer, Mr Tripodi, and Mr Roozendaal to appear before the Committee seriously affected the Committee’s ability to fulfil its terms of reference.

Resolved on motion of Mr Ryan: That paragraph 1.51 be amended by omitting the words “It has been suggested that Council’s support for the Outlets Centre demonstrates a serious disregard for planning principles, if not outright corruption.” and inserting instead “It was suggested that the Council’s decision did not show proper regard for planning principles and that its decisions were affected by corrupt conduct.”

Resolved on the motion of Ms Griffin that the 15 November 2002 entry in the Chronology of key events be amended by inserting the words, “under their delegated authority,” immediately after the word ‘consent’.

Resolved on the motion of Ms Hale that the question be amended by inserting the words “Staff of” immediately before the word ‘Liverpool’.

Ms Griffin moved that the 15 November 2002 entry in the Chronology of key events be amended by inserting the words “The Committee notes that development applications did not go to the full Council unless three objections were received”

Question put.

Committee divided.

Ayes: Ms Griffin, Ms Burnswoods, Mr Primrose
Noes: Ms Hale, Dr Chesterfield-Evans, Mr Ryan, Ms Gardiner.
Question resolved in the negative.

Resolved on motion of Mr Primrose: That the secretariat review the references to Council within the Chronology of key events and confirm whether it relates to Council or Council staff acting under delegated authority and amend the chronology accordingly where necessary.

Resolved on motion of Mr Primrose: That the Chronology of key events be amended by inserting the following new entry: "6 June 2002: Mr Weston writes a memorandum to Mr Turrisi explaining that consent could only be granted if the items for sale were bulky goods."

The Chair left the Chair until 11.25am.

Ms Griffin moved: That the Chronology of key events be amended by inserting the following new entry: "13 June 2002: Mr Hunt wrote to Mr Turissi advising that 'the proposed use will need to strictly comply with Liverpool Local Environmental Plan 1997's definition of either: Bulky Goods salesroom or showroom; or Warehouse distribution centres.' Mr Hunt wrote to Mr Mosca asking for more information about the development application. He specifically stated that the proposed use must be for bulky goods sales or warehouse distribution centres.

Question put.

Committee divided.

Ayes: Ms Griffin, Ms Burnswoods, Mr Primrose
Noes: Mr Ryan, Dr Chesterfield-Evans, Ms Hale, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That the Chronology of key events be amended by inserting the new entry "June 2002: Liverpool City Council trying to purchase land in Scott Street. Mr Douglas told by Mr Mosca that the Scott Street purchase could not go ahead if Council did not follow Mr Weston's advice.

Question put.

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Mr Ryan, Ms Hale, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That the Chronology of key events be amended by inserting the following new entry: "July 2002: Mr Mosca provided detail to Liverpool City Council describing the businesses to operate in the Centre."

Question put.

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Mr Ryan, Ms Hale, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved: That the Chronology of key events be amended by inserting the following new entry: “July – October 2002: The development application that could not be approved on 13 June 2002 was suddenly deemed approvable.”

Question put.

Committee divided.

Ayes: Ms Griffin, Ms Burnswoods, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chestfield-Evans, Ms Gardiner

Question resolved in the negative

Ms Burnswoods moved: That the 9 April 2003 entry in the Chronology of key events be amended by inserting at the end the following words: “five months after the approval.”

Question put.

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose, Dr Chesterfield-Evans
Noes: Mr Ryan, Ms Hale, Ms Gardiner

Question resolved in the affirmative.

Ms Burnswoods moved: That the Chronology of key events be amended by inserting the following new entry: “4 June 2003: Westfield wrote to Liverpool City Council and Gazcorp informing them that unless Gazcorp did not begin the redevelopment of Orange Grove, Westfield would commence proceedings in the Land and Environment Court.”

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That the 21 November 2003 entry in the Chronology of key events be amended by inserting the following: “Mr Gazal told Mr Knowles that he knew the Council was going to ‘do the right thing’ in relation to the rezoning. This was despite the fact that the Council did not know until 17 days later”

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That 16 January 2004 entry in the Chronology of key events be amended by inserting immediately after ‘Land and Environment Court’ the words “rejects Mr Gazal’s arguments and”.

Question put.

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner.

Question resolved in the negative.

Ms Burnswoods moved: That the 31 March 2004 entry in the Chronology of key events be amended by omitting the words 'NSW Supreme Court' and inserting instead "NSW Court of Appeal rejects Mr Gazal's arguments and"

Mr Ryan moved: That the question be amended by omitting the words "rejects Mr Gazal's arguments and"

Question that the amendment of Mr Ryan be agreed to was put:

Committee divided

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Noes: Ms Burnswoods, Ms Griffin, Mr Primrose

Question resolved in the affirmative

Original question as amended put and passed.

The Chair left the Chair until 12.45pm.

The Committee Director distributed the following items of correspondence:

- Letter from Ms Sarah Taylor, Chief of Staff to Minister Knowles, to the Committee Director re: the Committee's draft report (16 December 2004)
- Letter from Mr John Dermody, Business and Jobs Coordinator, DIPNR, to the Committee Director re: employment assistance offered to former employees at the Designer Outlets Centre (14 December 2004).

Resolved, on motion of Mr Ryan: That the correspondence from Ms Taylor and Mr Dermody be received.

Resolved, on motion of Dr Chesterfield-Evans: That the matters pertaining to the letter of Ms Taylor be considered after the clerks are in a position to brief the Committee further on this matter.

The Committee resumed consideration of Chapter One.

Resolved on the motion of Mr Ryan: That the July 2004 entry in the Chronology of key events be amended by omitting the words 'claims to have'.

Ms Burnswood moved: That the 24 June 2004 entry in the Chronology of key events be amended by inserting the following words at the end of the entry: "Their approach is one of intimidation and harassment".

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
 Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswood moved: That the first 25 June 2004 entry in the Chronology of key events be amended by inserting the following words at the end of the first paragraph: ‘Their approach is one of intimidation and harassment’.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
 Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Hale moved: That the entries for 15 April and 20 April 2004 in the Chronology of key events be amended by inserting the following words at the end of the entry: ‘This approach is one of intimidation and direction’.

Question put and negatived.

Ms Burnswood moved: That the second 8 July 2004 entry in the Chronology of key events be omitted and the following new entry be inserted: ‘The Minister makes a decision against the Council’s draft Amendment 92. She makes her decision on sound planning grounds and sticks to the rules’.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
 Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswood moved: That the 1 September 2004 entry in the Chronology of key events be omitted and the following new entry be inserted: ‘Dr Chesterfield-Evans makes a statement in the Legislative Council about a conversation with Mr Gazal to the effect: “I knew that my application wasn’t within the LEP ... but I put it in and I was quite happy to go ahead and sign up tenants”’.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
 Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Hale moved: That Chapter One, as amended, be adopted.

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Noes: Ms Burnswoods, Ms Griffin, Mr Primrose

Question resolved in the affirmative.

Chapter Two read.

Ms Burnswoods moved: That paragraph 2.1 be amended by inserting the words 'resulting from the actions of Mr Gazal' following the word 'closure'.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.2 be amended by inserting the words 'resulting from the actions of Mr Gazal' at the end of the first sentence.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.10 be amended by inserting the words 'due to the actions of Mr Gazal' following the word 'Centre'.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Resolved, on motion of Mr Ryan: That the following quote from Ms Julia Irwin MHR from the transcript of Monday, 16 August 2004 be inserted after paragraph 2.17:

While that figure is lower in more recent figures, Fowler remains an area of high unemployment. For persons aged 15 to 19, a group that makes up a significant number of retail employees in 2001, Fowler had the second highest [unemployment] rate at 24.6 per cent with only the Newcastle electorate being higher.

Ms Burnswoods moved: That paragraph 2.19 be amended by omitting the words 'While' and 'the most frequent cited estimate was 450' from the second sentence, and inserting a new sentence after sentence two:

The owners of the Centre refused access to the Centre by the Government's jobs coordinator and by Drake. Therefore the only independent figure was calculated by the *Daily Telegraph*, and was estimated at 250 plus.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Resolved, on motion of Mr Ryan: That paragraph 2.19 be amended to omit the number '450' and insert the figure '400'.

Ms Burnswoods moved: That paragraph 2.20 and 2.21 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.22 be amended by inserting the words 'as per normal practice' after the word 'Centre'.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.24 be omitted and replaced with the following paragraph:
The owners of the Centre refused access to the Centre by the Government's jobs coordinator and by Drake. Therefore the only independent figure was calculated by the *Daily Telegraph*, and was estimated at 250 plus.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.25 be amended by omitting the figure '400' and inserting the figure '250'.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved: That Finding 1 be amended by inserting the words 'resulting from the actions of Mr Gazal' after the word 'Centre', and by omitting the figure '400' and inserting the figure '250'.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Resolved on motion of Mr Ryan: That paragraph 2.31 be amended by omitting the second sentence and inserting instead:

According to their submission, all the retailers they interviewed reported a downturn in sales following the opening of the Centre, especially on Thursday nights and weekends.

Ms Burnswoods moved: That paragraph 2.32 be amended by omitting the word 'anecdotal'.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.33 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.36 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.38 and the ensuing quote be omitted, and replaced with the following paragraph:

The Hirst study found that the Centre could draw \$18 million away from the Liverpool CBD.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraphs 2.55 to 2.57 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That the final sentence in paragraph 2.64 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved: That Finding 2 be amended by omitting the word 'not'.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.66 be amended by omitting the words 'actually resulted in employees or tenants finding alternative employment or viable business locations' and inserting instead 'been taken up by former employees of Orange Grove'.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.67 be amended by omitting the second sentence and the ensuing quote.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.71 be amended by inserting the following sentence at the end of the paragraph:

Unfortunately the Centre had to close due to the actions of Mr Gazal.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Resolved, on motion of Ms Burnswoods: That paragraph 2.72 be amended by omitting the words 'It has been alleged that' in the second sentence.

Ms Burnswoods moved: That paragraph 2.73 be amended by omitting the word 'apparently'.

Ms Hale moved: That the paragraph be amended by omitting the word 'apparently' and inserting instead 'allegedly'.

Question that the amendment of Ms Hale be agreed to put and passed

The amendment of Ms Burnswoods was therefore not in order.

Ms Burnswoods moved: That the heading prior to paragraph 2.80 be amended by inserting the words 'by the Opposition' at the end of the heading.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.82 be amended by inserting the words 'by the Opposition' following the word 'politicised'.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.83 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Dr Chesterfield-Evans moved: That Finding 3 be amended by inserting the following new paragraph at the end of the finding:

The Committee believes that many tenants were reassured by the fact that Minister Knowles had opened the Centre.

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner
Noes: Ms Burnswoods, Ms Griffin, Mr Primrose

Question resolved in the affirmative.

Ms Griffin moved: That Finding 3 be amended by omitting the word 'no' in the second paragraph.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 2.126 be amended by omitting the first sentence and inserting the following sentence:

The Committee concludes that Gazcorp did not inform all the tenants in writing about the legal challenge to the Centre's planning consent.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraphs 2.127 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Resolved, on motion of Ms Hale: That paragraph 2.127 be amended by inserting the words 'with regard to their security of tenure' after the word 'tenants'.

Ms Burnswoods moved: That paragraph 2.128 be amended by omitting the last sentence.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Mr Ryan moved: That the following additional paragraph be inserted at the end of Finding 2:

The Committee believes that the Centre clearly had a net benefit to Liverpool, particularly when social and economic factors such as its impact on the region's high level of unemployment are taken into consideration.

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner
Noes: Ms Burnswoods, Ms Griffin, Mr Primrose

Question resolved in the affirmative.

Ms Hale moved: That Chapter Two, as amended, be adopted.

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner
Noes: Ms Burnswoods, Ms Griffin, Mr Primrose

Question resolved in the affirmative.

The Chair left the Chair until 3.05pm.

Chapter Three read.

Ms Burnswoods moved: That paragraph 3.19 be amended by omitting the quote at the end of the paragraph and the preceding words ‘which as one witness noted, has been in draft form for “donkeys years”’.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Ms Gardiner

Question resolved in the negative, on the casting vote of the Chair.

Mr Ryan moved: That recommendation 1 be inserted following paragraph 3.19.

“That the NSW Government confirm the status of Draft SEPP 66 – Integrating Land use and Transport, this SEPP having been in draft form for a decade.”

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Noes: Ms Burnswoods, Ms Griffin, Mr Primrose

Question resolved in the affirmative.

Ms Hale moved: That Chapter Three, as amended, be adopted.

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Noes: Ms Burnswoods, Ms Griffin, Mr Primrose

Question resolved in the affirmative.

The Committee resumed its deliberation of matters pertaining to the letter of Ms Taylor and the evidence in paragraph 6.91 of the Chair’s draft report.

The Committee Director distributed transcripts of evidence from 25 August and 9 September 2004, and indicated that a statement in paragraph 6.91 was in error.

Resolved, on motion of Mr Primrose: That the Committee Chair write to Ms Taylor to indicate the Committee’s concern at the unauthorised disclosure of the draft report and addressing the other matter raised by her letter, that paragraph 6.91 be amended accordingly.

The Committee resumed consideration of the Draft report.

Chapter Four read.

Ms Griffin moved: That the first sentence of Finding 4 be omitted and the following words be inserted instead: “There is evidence before the Committee of improper conduct involving former councillors or staff of Liverpool City Council and Mr Nabil Gazal.”

Question put.

Committee divided

Ayes: Ms Griffin, Ms Burnswoods, Mr Primrose
Noes: Mr Ryan, Ms Hale, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved: That the second sentence of Finding 4 be omitted and the following words be inserted instead: "The following possible corrupt conduct of the original development approval has been identified in the course of evidence before the Committee".

Question put.

Committee divided

Ayes: Ms Griffin, Ms Burnswoods, Mr Primrose
Noes: Mr Ryan, Ms Hale, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Resolved on motion of Mr Ryan: That the following words be inserted at the end of the second paragraph of Finding 4:

Although it was dealt with according to the established procedures of the Council the factory outlet was approved by Council staff acting under delegated authority without it formally being drawn to the attention of the elected Council even though it was a development of significant size.

Ms Griffin moved: That the last sentence from Finding 4 be omitted.

Question put.

Committee divided

Ayes: Ms Griffin, Ms Burnswoods, Mr Primrose
Noes: Mr Ryan, Ms Hale, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Hale moved that: The first dot point from Finding 4 be removed.

Question put.

Committee divided

Ayes: Ms Hale, Mr Ryan, Ms Gardiner
Noes: Mr Primrose, Dr Chesterfield-Evans, Ms Griffin, Ms Burnswoods

Question resolved in the negative.

Resolved on the motion of Mr Ryan: That the Committee insert the following recommendation after Finding 4:

That the Ministers for Local Government and Planning should review guidelines for delegated authority being used by Local Government to ensure that major developments are not approved without formal reference to the elected Council.

Ms Griffin moved: That Finding 5 be amended by omitting the words “on relevant and appropriate grounds” and inserting instead “for ‘predominantly social and economic reasons’”.

Question put.

Committee divided

Ayes: Ms Griffin, Ms Burnswoods, Mr Primrose
Noes: Mr Ryan, Ms Hale, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Resolved on motion of Ms Burnswoods: That the dot points in paragraph 4.104 be replaced with the dot points from Finding Four.

Resolved on motion of Mr Ryan: That Finding 4 and the new recommendation be moved to sit within the conclusion section of Chapter 4 and that the secretariat insert appropriate introductory paragraphs to the conclusion as required.

Ms Burnswoods moved: That paragraph 4.109 be omitted.

Question put.

Committee divided

Ayes: Ms Griffin, Ms Burnswoods, Mr Primrose
Noes: Mr Ryan, Ms Hale, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Resolved, on the motion of Mr Primrose, that paragraph 4.105 be redrafted by the Clerks and circulated to Members for their consideration.

Ms Hale moved: That the Committee adopt Chapter Four, as amended, subject to drafting of paragraph 4.105.

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner
Noes: Mr Primrose, Ms Griffin, Ms Burnswoods

Question resolved in the affirmative.

The Chair left the Chair until 5.05pm.
Chapter Five read.

Mr Ryan moved: That paragraph 5.6 be amended by inserting the following paragraph after the dot points:
Ms Westacott provided no details in support of her claim that the arguments in the section 69 report were ‘unconvincing’.

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Noes: Mr Primrose, Ms Griffin, Ms Burnswoods

Question resolved in the affirmative.

Mr Ryan moved: That the following paragraph be inserted after paragraph 5.6:

On 30 June 2004, there was a meeting between Ms Westacott, Minister Beamer and others in the Minister's Office. Evidence to the Committee strongly suggests that the decision not to approve the rezoning was a mere formality from that time.

The Committee deferred consideration of this matter.

Mr Ryan moved: That the following paragraphs be inserted after paragraph 5.8:

A significant part of the Committee's Inquiry was devoted to the validity of the criticisms of the Section 69 Report that had been made by senior DIPNR officers, particularly those contained in Ms Westacott's two memoranda. While the issues raised by the Director General were relevant considerations in regard to the proposal to rezone Orange Grove, the Committee was not convinced that they made a compelling case against the material presented in the Section 69 Report. In almost every instance a competing argument to the case put by the Director-General was presented in the Section 69 Report. Those arguments are set out below.

Adequacy of public transport

The Section 69 Report stated that, while public transport services to Orange Grove were not optimal at the time of the Centre was approved, there was potential for this issue to be addressed by the Liverpool City Council as part of the conditions of approval after the Amendment to the Liverpool LEP had been approved. Additionally, Orange Grove is served by the Route 800 bus service and many customers arrived at the centre on shoppers bus tours. As well, locating a factory outlet in Liverpool area had the potential to eliminate numerous motor vehicle trips by local residents to factory outlets located elsewhere (eg Homebush, Birkenhead Point and Parramatta).

Inconsistency with Centres Policy

The Centres Policy did not exclude retail outlets outside designated centres. Retail outlets like Orange Grove could be approved if it could be demonstrated that there was a net community benefit. The Section 69 report devoted a significant amount of effort to demonstrating that the factory outlets did represent a net community benefit to the Liverpool area. Additionally, they were located only a short distance from the Liverpool CBD.

Adverse economic effect on CBD

There was no new or conclusive evidence presented by Ms Westacott's memoranda to challenge the Section 69 Report's conclusion that the Factory Outlets Centre would not have impacted adversely on the Liverpool CBD. In her submission to the Committee, Ms Westacott presented a case using job figures from the ABS, but these were not documented in her submission to the Minister and proved to be less compelling after the Committee received a response from the LCC General Manager, Mr Garry McCully.

Emerging trends

Ms Westacott referred to this consideration in her first memorandum but no further detail was provided in the second.

Committee view

Ms Westacott did not present a compelling case against the recommendations of the Section 69 Report. The Committee notes that some of the negative arguments advanced by senior DIPNR officers were detailed only in the submission prepared for the Committee's Inquiry. A recommendation to the Minister to overturn a strong recommendation contained in a statutory planning instrument such as the Section 69 Report should have been more thoroughly prepared and documented before being submitted to the Minister. This is especially so in this case because overturning this recommendation would adversely impact upon hundreds of jobs and dozens of businesses.

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Noes: Mr Primrose, Ms Griffin, Ms Burnswoods

Question resolved in the affirmative.

Ms Burnswoods moved: That paragraph 5.9, including the dot points, be omitted and replaced with the following paragraph:

It has been suggested that the Director General's lack of support for the rezoning of the Orange Grove Road site, and the Minister's subsequent decision to refuse the Amendment, was based on Minister Beamer's knowledge of sound planning principles.

Question put.

Committee Divided

Ayes: Ms Griffin, Ms Burnswoods, Mr Primrose

Noes: Mr Ryan, Ms Hale, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Resolved, on the motion of Mr Ryan: That paragraph 5.25 be amended by omitting the words 'It has been argued by some Committee members during the inquiry' and insert the words 'The Committee members considered the possibility that'.

Resolved, on motion of Ms Burnswoods: That paragraph 5.13 be amended to omit the words 'the Minister had indicated' and insert the words 'he presumed'.

Mr Ryan moved: That the following additional paragraphs be inserted at the end of paragraph 5.33:

Ms Beamer was questioned about the Orange Grove issue during the 2004-2005 Estimates hearing conducted by General Purpose Standing Committee No 3 (16 September 2004). The Minister refused to answer detailed questions relating to the Orange Grove controversy, preferring to table "all the transcripts of the inquiries, media reporting, answers to parliamentary questions and any other relevant documents relating to the Orange Grove Designer Outlets at Liverpool". The Minister responded to specific questions over and again by saying: "I believe the answer is contained in the material I have tabled" and similar words.

The same, or similar, material already on the public record, was tabled by the Premier and Minister Knowles at the Estimates hearings of General Purpose Standing Committee No 1 (13 September 2004) and General Purpose Standing Committee No 4 (14 September 2004), respectively, with obfuscation by those two Ministers similar to that demonstrated by Minister Beamer.

Mr Primrose moved: That the question be amended by omitting the words 'refused to answer detailed questions relating to the Orange Grove controversy', 'over and again' and 'obfuscation'.

Amendment of Mr Primrose put

Committee divided

Ayes: Ms Griffin, Ms Burnswoods, Mr Primrose
Noes: Mr Ryan, Ms Hale, Dr Chesterfield-Evans, Ms Gardiner

Amendment resolved in the negative.

Original question put.

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner
Noes: Mr Primrose, Ms Griffin, Ms Burnswoods

Question resolved in the affirmative.

Mr Ryan moved: That paragraph 5.37 be amended by inserting the words 'which Mr Meagher did not identify' after the word 'plan'.

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner
Noes: Mr Primrose, Ms Griffin, Ms Burnswoods

Question resolved in the affirmative.

Ms Burnswoods moved: That paragraph 5.56 and 5.57 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved: That Finding 6 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Hale moved: That Finding 6 be amended by the addition of the following paragraph:

There is strong evidence that Minister Beamer and her Chief of Staff, Mr Michael Meagher, were anticipating the section 69 report being in the Minister's office by mid-April for approval and gazettal on 23 April, and

that the Minister and Mr Meagher were aware of the contents of the section 69 report and its recommendation for approval of the draft LEP which was, in Mr Meagher's words, 'the Minister's preferred position'.

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Noes: Mr Primrose, Ms Griffin, Ms Burnswoods

Question resolved in the affirmative.

Mr Ryan moved: That Chapter Five, as amended, be adopted, subject to the provision of additional material by Mr Ryan in support of his proposed amendments to paragraph 5.7.

Chapter Six read.

Ms Burnswoods moved: That the following be added at the start of the second sentence of paragraph 6.7: "Their harassment continued"

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That the following new paragraph be inserted after paragraph 6.17: "The Premier and Mr Lowy never discussed the Orange Grove matter."

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 6.27 be amended by omitting the words "cannot conclude" and inserting instead "strongly concludes" and the word "never" be inserted after the words "Mr Lowy."

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved: That the second paragraph of Finding 7 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved: That all the words after “Westfield” be omitted from Finding 8.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That the second sentence of paragraph 6.64 be omitted

Question put and lost.

Ms Burnswoods moved: That all sentences in 6.71 and 6.72 be omitted after the first sentence.

Question put
Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods moved: That paragraph 6.76 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved: That all words in Finding 9 after “Minister Beamer” be omitted.

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Burnswoods drew the attention of the Committee to the earlier decision in relation to the dot point in paragraph 6.91.

Question put and passed.

Ms Burnswood moved: That the following words be inserted after the second sentence in paragraph 6.96:
“Their behaviour was harassment and intimidation.”

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved: That Finding 10 be amended by omitting the word “unwise” and inserting instead “late at night and early in the morning was harassment”

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Resolved, on the motion of Ms Burnswoods moved: That Finding 11 be amended by the insertion of the words “A majority of” before “The Committee”.

Mr Primrose moved: That Finding 12 be omitted.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose
Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Ms Griffin moved :That a new finding 12 be replaced with the following words:

It is the Committee’s view that:

- Minister Beamer made a decision that she was entitled to make
- Minister Beamer made a decision that was lawful
- Westfield behaved in a fair and reasonable manner
- Graeme Wedderburn behaved in a fair and reasonable manner.

Question put

Committee divided.

Ayes: Ms Burnswoods, Ms Griffin, Mr Primrose

Noes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Question resolved in the negative.

Mr Ryan moved: That Chapter Six as amended be adopted.

Question put

Committee divided.

Ayes: Ms Hale, Mr Ryan, Dr Chesterfield-Evans, Ms Gardiner

Noes: Ms Burnswoods, Ms Griffin, Mr Primrose

Question resolved in the affirmative.

Mr Ryan moved: That

That the report, as amended, be adopted.

The report be signed by the Chair and presented to the House in accordance with the resolution establishing the committee of 3 July 2003.

That Pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 224, the Committee authorises the Clerk of the Committee to publish the report, minutes, correspondence, submissions (excluding confidential submissions), answers to questions taken on notice (excluding confidential responses) transcripts (excluding in camera transcripts) and documents tabled during hearings (excluding confidential documents).

Resolved on the motion of Mr Ryan that he would circulate the relevant reference to his proposed amendment at 5.6 by 10.00am tomorrow and that if there was any objection he would withdraw the amendment. Otherwise it would be considered adopted.

Resolved, on the motion of Ms Burnswoods: That the Chair's draft Foreword be circulated to Committee members under standing order 229.

The Chair indicated she would circulate her Foreword by 10 am tomorrow and that any objections should be received by 11 am and that if a further meeting was required it would be held at 1:00 pm.

The Chair indicated that dissenting statements should be received by 9:30 am on Monday 20 December 2004.

The Clerk Assistant Committees tabled his advice regarding unauthorised disclosure.

The Committee deliberated.

Resolved on the motion of Ms Griffin moved that consideration of the deferred motions regarding unauthorised disclosure be deferred until a future meeting of the Committee.

7. Estimates 2004-2005

8. Next meeting

The Committee adjourned at 6:50 pm until 9.30am on 9 February 2005.

Steven Reynolds
Committee Clerk

Appendix 5 Dissenting statements

DISSENTING REPORT – JAN BURNSWOODS

The Majority Report contains a series of recommendations regarding the ministerial role in planning approval processes, many of which ignore the testimony of planning professionals and the content of the relevant planning instruments.

This Dissenting Report argues that, in the light of testimony from more than 30 witnesses during hearings:

- Minister Beamer’s decision was based on State Government policy aimed at encouraging growth in centres
- It was consistent with two previous court decisions
- She was entitled to review any advice to her and seek additional advice
- She acted appropriately to ensure the probity of the process.

The testimony from planning experts during the inquiry makes it clear that the information and advice upon which Minister Beamer ultimately based her decision was comprehensive. The decision is entirely consistent with the totality of that advice, and especially that of the senior planning officials of DIPNR.

Planning Principles underpinning Government Policy on Centres

The committee heard testimony from planning experts and professionals including the Director General of DIPNR, Ms Jennifer Westacott, and Ms Gabrielle Kibble.

The nature of Ms Kibble’s testimony needs to be clearly understood - she is a former Director General of Planning, and is the current administrator of Liverpool Council. These are fundamentally different roles, a fact which some Committee members were unable or unwilling to grasp. Ms Kibble’s testimony was compelling.

On the rezoning of the centre, Ms Kibble said:

“... As Administrator, I took the decision to support the rezoning of the Orange Grove centre for what were predominantly social and economic reasons...”, and “... I did it on what I considered to be the appropriate social and economic grounds...”

Ms Kibble specifically did not say she supported the rezoning for planning reasons. In fact, she said:

“... I may have taken a different position had I been considering de novo a new application...”

The role of any Council is not confined to planning matters. As administrator, Ms Kibble is also required to consider a broad range of issues, including the legal or financial exposures that may arise from decisions.

The Local Government Act stipulates that “The administrator has all the functions of the council...”. Whilst Ms Kibble has extensive planning expertise, her role at Liverpool is as administrator, and her assessment of the rezoning application was necessarily based on broad considerations of what Council’s most advantageous position might be.

There is an inevitable potential for conflict between the interests of local councils and broader Statewide planning imperatives, specifically the NSW Government’s long standing commitment to the centres policy.

In this context, the Government has consistently supported and advocated the growth of centres over many years. For example, in accordance with this policy, Minister Beamer rejected an application to rezone land in Tamworth for a shopping centre development in May 2003.

Further, in May 2004, Minister Knowles announced grants of \$200 000 to various Councils – including Liverpool - for the specific purpose of developing an integrated centres policy. These grants reflected the policy to develop commercial, retail and residential activity in existing centres across Sydney.

This commitment is further embodied in State Environmental Planning Policy (SEPP66) - Integration of Land Use and Transport, whose aim is:

“... to ensure that urban structure, building forms, land use locations, development designs, subdivision and street layouts help achieve the following planning objectives:

- a. *Improving accessibility to housing, employment and services by walking cycling and public transport;*
- b. *Improving the choice of transport and reducing dependence solely on cars for travel purposes*
- c. *Moderating growth in the demand for travel and the distances travelled, especially by car*
- d. *Supporting the efficient and viable operation of public transport services;*
- e. *Providing for the efficient movement of freight...*”

The Minister is required to give consideration to these planning principles. The Orange Grove proposal did not fall within these objectives. Minister Beamer’s decision was based on long standing State Government policy aimed at encouraging growth in centres.

Court Judgments

Justice Lloyd of the Land and Environment Court declared that the development consent was unlawful in *Westfield Management Pty Ltd and Anor V Gazcorp Pty Ltd & (2) Ors (2004,)* NSW LEC 7 (16 January 2004). He said:

“... The system of planning control would be set at nought if a use of land which is prohibited by an environmental planning instrument is allowed to continue...” and “...Neither do I accept that there is a public benefit in allowing the development to continue...”

The NSW Court of Appeal subsequently upheld this decision.

Thus the Minister’s decision was consistent with two previous court decisions and she acted appropriately to ensure the probity of the process.

Section 69 Certificate

Under S69 of the Environment Planning and Assessment Act 1979 the Director General is required to furnish the Minister with a report which assesses Local Environment Plans for, among other things, their consistency with State planning objectives. The preparation of this report is usually delegated to a junior officer of DIPNR. Upon receipt of the report, it is open to the Director General to provide additional advice for consideration by the Minister.

It is clear that senior planning officials had concerns about the quality of the S69 report, and as a consequence the Director General provided additional advice. Testimony from Mr Haddad, the Deputy Director General and senior planning advisor of DIPNR, was unequivocal as to the inadequacy of the S69 report:

“... I would fully support the conclusion being made that there is not a credible, rigorous policy analysis in the report backed up by an adequate level of information, by an adequate level of data, by quantitative or semiquantitative analysis in relation to a number of critical factors that relate to employment, that relate to retail trends. The report, for whatever reason, is a mere review of other reports and... I would have expected a much more rigorous analysis by officers of the department in advising the Minister...”

Both he and the Director General regarded the S69 report as inadequate. It was therefore appropriate for the Director General to provide additional advice to the Minister with the report.

This is not unusual, as the testimony of Ms Kibble confirms. In response to questions as to the likelihood of senior planning officials having a different view to a Director General, Ms Kibble replied:

“ There probably are examples where they disagreed with more junior officers. There would be nothing very extraordinary about that.”

It is beyond doubt that the Minister was entitled to review any advice to her and seek additional advice should she consider it warranted.

DISSENTING REPORT BY KAYEE GRIFFIN

Practices of Gazal and Liverpool Council

The final report does not adequately reflect the inappropriate practices of Nabil Gazal and his associates or Liverpool Council.

Second DA

The first application to modify the land use at Orange Grove Road was refused. On or about the 5 June 2002 Gazcorp submitted a second application for a change of use.

The DA shows the construction work costs were \$250,000. Mr Gazal said he had spent \$22 million on refurbishments (evidence 17 August 2004, p61).

The report does not adequately examine the discrepancy between these two figures. He has not explained whether this was done to try and convince the Council that this was a small development.

Liverpool Council's awareness that approval would be unlawful

On 6 June 2002, Gerard Turrisi, the Corporate Manager of Community and Environmental Planning at Liverpool Council and former consultant to Mr Gazal, referred the application to Chris Weston, the Manager of Planning. Mr Weston wrote a memorandum to Mr Turrisi explaining that consent could only be granted if the items for sale were bulky goods.

In evidence Mr Weston explained that his memorandum was to the effect of saying the proposal could never lawfully be approved by Liverpool Council (evidence 10 September 2004 p7).

On 13 June 2002 Mr Hunt wrote to Mr Turrisi saying that the use must strictly comply with Liverpool LEP.

The initial assessments by Mr Weston and Mr Hunt were correct, as proven in two later court cases.

No explanation has been given as to why the Council nonetheless approved the application.

On 13th June 2002 Mr Hunt wrote to Mr Mosca asking for more information about the DA. He specifically states that the proposed use must be for bulky goods sales or warehouse distribution centres.

In July 2002 Mr Mosca replied to Mr Hunt describing the type of businesses that would operate in the centre, e.g. men's and women's fashions. These are precisely the shops that are prohibited under the Liverpool LEP, 1997. There is no evidence Gazcorp, Mr Mosca or Liverpool Council obtained legal advice whether this was an acceptable reading of LEP.

Liverpool Council's approval

During this period Mr Hunt appears to have been inexplicably persuaded by Mr Mosca's arguments.

The report does not adequately examine why Mr Hunt suddenly changed his mind. However, in evidence (13 August 2004, p55) Mr Hunt did say that he "consulted with Mr Turrisi on the application on numerous occasions".

Unusually fast determination

Mr Weston's memo 6 June 2002 to Mr Turrisi also says:

"Determination will not be issued in two weeks."

Mr Weston gave evidence (10 September 2004, p9-10) that he wrote this in answer to an inquiry from Mr Turrisi. He said it was not normal for a DA of this size to be determined in two weeks.

I dissent from the report's analysis of why Mr Turrisi was hurrying Gazcorp's application.

On 15 November 2002, One day after the date for objections closed, Mr Hunt granted approval for Gazcorp's DA. Mr Weston gave evidence that granting approval so quickly was unusual (evidence, 10 September 2004 p12).

Mr Hunt approved this under delegated authority. There has been no adequate explanation why the approval of such a major proposal was under delegated authority.

Sidelining of Chris Weston

After Chris Weston's negative advice to Mr Turrisi about Gazcorp's DA, the application was allocated to Geoffrey Hunt, a senior planner.

On Council's DA assessment report there is a notation saying:

"Application allocated to Geoffrey Hunt by G.T. (No allocation meeting)."

No explanation has been provided why Mr Weston was sidelined in assessing the DA and whether this was because he gave advice Mr Turrisi did not like.

There was no allocation meeting for Gazcorp's DA, despite its size. Who was responsible for the allocation to Mr Hunt?

Scott Street connection

Liverpool Council was trying to purchase land in Scott Street Liverpool from a Gazcorp subsidiary to build new Council Chambers.

In evidence, Murray Douglas, said Frank Mosca told him, that the Scott Street purchase would not go ahead unless Council did not follow Mr Weston's advice about Orange Grove (evidence, 11 October 2004, p4).

Mr Douglas was concerned about these comments and informed Mr Turrisi of the conversation. Mr Turrisi told Mr Douglas that he expected the DA to be processed in two weeks. Evidence provided to the Committee shows Mr Turrisi was enthusiastic about assisting Gazcorp's application.

Delayed notification of approval

On 9 April 2003, five months after the determination was made, Liverpool Council placed notification of the approval of Gazcorp's DA in newspaper.

The report does not adequately address the reason for the delay. No explanation has been provided whether this was due to reluctance by Council to make it public knowledge at the earliest opportunity that this redevelopment may occur.

Court proceedings

4 June 2003 Westfields wrote to Liverpool Council and Gazcorp informing them that unless Gazcorp did not begin the redevelopment of Orange Grove, Westfields would start proceedings in the Land and Environment Court.

No satisfactory explanation has been provided why Gazcorp did not wait for the outcome of the court case before redeveloping the centre, which would have prevented distress and damage to retailers and their employees.

14 January 2004, Land and Environment Court rejected Gazcorp's arguments and on 31 March 2004, Court of Appeal rejected Gazcorp's arguments.

Gazal's connections to Liverpool Council

Mr Gazal told Mr Knowles that he knew the council was going "to do the right thing" in relation to the rezoning of the Orange Grove site (evidence, 17 August 2004, p58). Despite the fact that Council did not know until 17 days later. Mr Mosca had been told this by the Council.

Jobs

On June 26, August 4 and July 21 the NSW Government's Jobs Coordinator was prevented by Gazcorp from contacting Orange Grove employees and employers.

On August 4 Orange Grove security confiscated Drake letters from employees who had been handed these letters.

Conclusion

The current General Manager of Liverpool Council has seen fit to change approval processes at the Council.

Specifically large applications are now required to be considered by the Administrator and the elected Council when one is elected.

When asked if his changes improved probity Mr McCully responded "it is a matter of the process of having large application dealt with by the public process rather than by a process that can be, on some occasions, brought into question." (August 18)

DISSENTING REPORT BY PETER PRIMROSE

Fair and reasonable practices

I dissent the report of General Purpose Standing Committee No 4 on the basis that it is a one-sided assessment of the evidence relating to the dealings between Nabil Gazal and Liverpool City Council regarding the approval of the designer outlets centre at Orange Grove Road.

The evidence shows the Premier, Planning Minister, Minister Assisting the Planning Minister, their respective members of staff, Frank Lowy and Wesfield representatives have at all times acted in a fair and reasonable manner. This is not reflected in the report.

Mr Gazal and Liverpool Council conspired to have this centre open at all costs.

No evidence was provided to the committee that equivocally supports the conclusions it has reached.

The committee process has been highly political and unfair. This has damaged the operation of the committee and affected its ability to produce an objective report based on the evidence.

There is no evidence Frank Lowy lobbied the Premier on this issue.

Frank Lowy gave extensive evidence during the inquiry that he and the Premier never discussed the Orange Grove matter.

“At no time did I have a meeting with the Premier about Orange Grove.” (See evidence 29 November 2004 page 2)

The Premier said at a press conference on 17 August 2004:

“I have never discussed this with Frank Lowy.”

That is a statement that he has reiterated many times since the Orange Grove matter became a political issue.

The committee’s final report even supports this in paragraph 6.27 where it says there is no evidence to conclude that the Premier and Mr Lowy met to discuss the future of the designer outlet centre.

There is no evidence the Premier lobbied Beamer.

Both the Premier and Minister Beamer have publicly stated that the Premier never spoke to Diane Beamer on this issue.

Prior to the start of the inquiry Minister Beamer issued a press statement saying:

“The Premier has not spoken to me, nor called me, nor contacted me over the rezoning application.” (Australian Financial Review, 15 July 2004, p46)

The committee went to great lengths to infer that the Premier or his Chief of Staff tried to influence Minister Beamer. Nowhere, however, in the final report are they able to provide any solid evidence that supports this conclusion.

In fact the committee concludes in paragraph 6.74 that there is no evidence other than hearsay that the Premier and Minister Beamer discussed this issue.

It is fair and reasonable for Westfield to speak to the Premier's Chief of Staff.

Mark Ryan, Westfield's Director of Corporate Affairs, called the Premier's Office on 15 April asking for a meeting, which was granted on 19 April.

This meeting was never hidden, and in fact a press statement was issued on 17 August 2004 detailing the meeting. This press statement was issued before any information relating to the meeting was in the public arena.

In an extract from the statement:

“Mr Carr said his Chief of Staff, Graeme Wedderburn met with Westfield representatives on April 19 to hear of their probity, planning and legal concerns.

He said his Chief of Staff advised Westfield to take any evidence of corruption they had to the Independent Commission Against Corruption.”

In a press conference on 17 August 2004 the Premier said:

“Governments receive representations from the private sector all the time.”

All Governments receive representations from the private sector. It is the job of elected representatives and their staff to meet with members of the business community as well as other organisations such as community groups, special interest groups and individuals. It is through these meetings that governments better understands the concerns and issues that affect the broader community.

This should have been reflected in the report.

Westfield has a legal duty to shareholders to ensure they, and other retailers, are operating legally.

The report does not identify nor acknowledge this duty.

It is fair and reasonable for the Premier's Chief of Staff to speak to Beamer

In his evidence to the committee the Premier's Chief of Staff made it clear that he met with Minister Beamer to discuss the possibility of corruption around the dealings of Nabil Gazal.

He said:

“I then mentioned to her that concerns had been raised with me by Westfield about probity. The Minister told me that she would base her decision on planning principles”.

Michael Meagher, Minister Beamer's Chief of Staff, supported the recollections of the Premier's Chief of Staff:

“Because of the background of possible corruption the Minister should be cautious in making her decision that she should avoid being inappropriately lobbied.”

The discussions between the Premier's Chief of Staff and Minister Beamer were around an anti-corruption warning.

Once Liverpool Council recommended the LEP be amended to legalise Nabil Gazal's redevelopment, Mr Gazal and his family and associates took it upon themselves to aggressively lobby Ministers into making a decision which favoured the development.

Mr Meagher gave evidence that from June 2004 he received numerous calls from Mr Mosca and “thirty-plus” calls from Tony Beuk (also a Councillor on Liverpool Council) questioning him about the approval of the LEP amendment.

On 24 June 2004 Mr Gazal, Mr Mosca and Sam Bargshoon entered the property belonging to Craig Knowles’ parents with the express purpose of trying to see Minister Knowles. The next morning they returned at 6am and Minister Knowles asked them to leave.

I believe that the evidence shows that this behaviour was harassment and intimidation and has no place in our democratic process.

But when dealing with these issues the report simply describes such intimidating tactics as ‘unwise’. In evidence, Mr Gazal said that he was not aware of what the word “probity” means.

On 1 September 2004, Arthur Chesterfield-Evans in the Legislative Council made statements about a conversation he had with Mr Gazal who said words to the effect of:

“I knew my application wasn’t within the LEP but I put it in and” ... “I was quite happy to go ahead and sign up tenants” (see evidence 9 September 2004 p62)

The report does not adequately investigate whether Mr Gazal knew what he was doing was against the law, but proceeded to do it anyway.

Paragraph 4.105 concerning the lack of evidence regarding possible corrupt conduct involving Liverpool City Council and Mr Nabil Gazal was amended by the Clerks, according to the resolution of the Committee, after the adoption of the Report. It does not reflect my views nor those of a number of other Committee Members, as shown on page 217 of the Minutes of this Report.

Peter Primrose