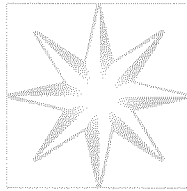


**INQUIRY INTO THE APPROVAL OF THE DESIGNER
OUTLETS CENTER - LIVERPOOL**

Organisation: Gazcorp Pty Ltd
Name: Mr Nabil Gazal
Position: Managing Director
Telephone: 02 9817 7488
Date Received: 11/08/2004

Subject: Keystakeholder

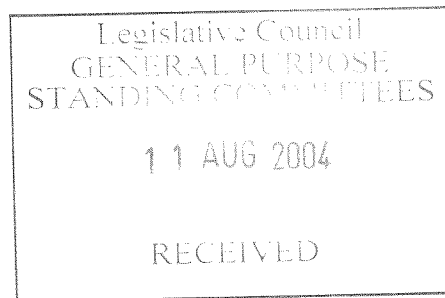
Summary



gazcorp

11th August 2004

Director of the General Purpose
Standing Committee No.4
Parliament House,
Macquarie St
Sydney NSW 2000



Dear Director,

I am the Managing Director of Gazcorp Pty Limited.

I wish to make a submission to the Inquiry, not only on behalf of myself but also on behalf of Gazcorp.

For the purposes of my submission I rely on the following documents:

1. A statement from me setting out the background to the development of Gazcorp's site at Orange Grove Road, Liverpool. I would ask that the Committee keep that statement confidential until I give evidence to the Committee on Friday 13th August next.
2. A statement from me with attached supporting documents in answer to Ms Beamer's Media Statements and Press releases.
3. A statement from me with attached supporting documents in answer to Premier Carr's various Media Statements and Press Releases.
4. A letter from our Solicitor Mr Noel A Hemmings from Allens Arthur Robinson to the Honourable Craig Knowles MP, dated 20th July 2004, which has not been replied to as yet by the Minister.

Yours Sincerely

Nabil Gazal

1. I am the Managing Director of Gazcorp Pty Limited.
2. Gazcorp is the registered proprietor of a large parcel of land situated at Orange Grove Road, Liverpool. The land is industrial land which was formerly occupied in part by Viscount Caravans who in years gone by had a factory on the site from where they constructed caravans.
3. In 1995 Liverpool Council (hereinafter called "the Council") announced a new draft Local Environment Plan for the area which included in respect of my land a proposal for a change of zoning to 4b to permit bulky goods warehousing. The draft Environmental Plan proposed that such use (bulky goods warehousing) would be restricted within the local area of my site and another site at Warwick Farm. It was partly as a result of that change that I made a decision to proceed with developing the Mega Centre (which was subsequently opened in 1999).
4. The following year, 1996 I obtained approval from the Council to construct a bulky goods warehouse on the part of the site which has become known subsequently as the "Mega Centre". The Mega Centre commenced operations in 1999 after it was opened by the Honourable Craig Knowles.
5. I also applied for approval for an 18-screen cinema complex at my Mega Centre site during 1996 .At the time I had an arrangement with the Reading Corporation for 18 cinemas. There were no cinemas in Liverpool at that time and the use was permitted within the zoning of our site. Council refused my Application. I appealed to the Land and Environment Court and subsequently the Council applied to the Department of Planning to remove the permitted use from the zoning before the refusal was able to be contested before the Land & Environment Court. I raise this matter only because it was suggested by the Premier that in some way amendments to Local Environment Plans were unusual or would set a bad precedent. My land has been the subject of a prior amendment and the Department of Planning had no difficulty in approving an amendment in the past to remove a use which was permitted which was to my detriment.

6. In 2001 I made a decision to refurbish the old Viscount factory site, which was on the southern side of the property, to demolish part of the factory site and refurbish the balance to convert it into bulky goods units, to expand the bulky goods warehousing that was already taking place. An application was lodged with the Council and the application was granted on the 18th September 2001 (DA No. 4891/2000). After obtaining consent my company commenced refurbishing the site.
7. Having commenced the refurbishment of the old factory site in 2001, I became aware the Council had re-zoned an industrial site at the Crossroads to permit an additional use for bulky goods retailing. This site was only some 7 kilometres away from my own site, and the owners proceeded to construct a bulky goods centre not too dissimilar to my own. After its completion during the course of 2003 a number of my tenants moved from the centre to the Crossroads site as a result of having been offered more beneficial leasing terms. I would estimate that following the commencement of the operation of the Crossroads site I had some 25% of my Mega Centre vacant.
8. It soon became apparent to me there would have been no further market for bulky goods warehousing. I thereafter looked around for an alternative way to utilise the site.
9. I had seen the operations of the DFO site at Homebush and other factory outlet type clearance centres and it appeared there was a market for that type of centre especially as there was no similar outlet in the Liverpool area. I sought advice from my architect Frank Mosca about whether this could be an alternative use for the factory site instead of bulky goods warehousing. Mr Mosca engaged Hirst Consulting on my behalf to prepare a report into the feasibility of changing the site from its existing bulky goods warehouse approval to a warehouse clearance outlet. As a result of the beneficial advice that was received from my architect he lodged on my behalf a Development Application on the 5th June 2002 with the Council (DA No. 2912/02) for a warehouse outlet centre.

10. All matters concerning the Development Application with the Council were undertaken on my behalf by Mr Mosca and Hirst Consulting.
11. Following the lodgement of the Application I verily believe the Council engaged its own expert advice on or about the 12th August 2002 and commissioned Leyshon Consulting to provide a report to the Council concerning our proposed development.
12. Mr Mosca would report to me from time to time about the progress of the Development Application. The matter was left entirely in his hands. I did not have any dealings directly with the Council over the Application and to the best of my recollection never spoke to any Council Officers during the course of the consideration by Council of the Application.
13. On the 15th November 2002 the Council granted Development Consent for a warehouse clearance outlet. The Development Consent was granted under delegated authority by the Council staff after the application had been exhibited publicly and advertised in accordance with the legislation.
14. To the best of my knowledge during the period that the Development Application was exhibited and advertised there were no objections received by Council to the planned development.
15. Following the Council granting Development Consent we proceeded with completing reconstruction of the warehouse site. The construction took about 12 months and was officially opened on the 21st November 2003, by the Honourable Craig J Knowles.
16. Whilst the premises were under construction, on the 17th June 2003 proceedings were commenced by Westfield Management Limited and Kent Street Pty Limited in the Land and Environment Court, seeking to have the Development Consent declared invalid.

17. At the time we were not concerned about the proceedings. We believed we had a valid Development Approval from the Council and our confidence in our position was buoyed to some extent by the fact that following the commencement of the proceedings although Westfield's Lawyers had invited the Department of Infrastructure, Planning and Natural Resources (hereinafter called "the Department") to intervene in the proceedings using the Government Centres Policy as a justification from their intervention, the Department ultimately declined to intervene by letter dated 18th November 2003.
18. Although the Council was named as a party in the Land and Environment Court proceedings it declined to have a role in the proceedings. We understand the Council formed the view that rather than expend money on legal expenses in the Court proceedings, to remove doubt it proposed to draft and exhibit an amendment to the Local Environment Plan to add, as a permitted use, an outlet centre to the zoning. Council's resolution to draft and exhibit a proposed amendment was passed by the Council on the 8th December 2003. At that stage Westfield 's Application to the Land and Environment Court had not even taken place.
19. Council's draft Local and Environment Plan commenced exhibition on the 17th December 2003.
20. The Land and Environment Court proceedings were heard before Justice Lloyd on the 18th December 2003. On the 16th January 2004 Justice Lloyd declared that the consent for the "warehouse clearance outlet" was void and the Court ordered that that my company abstain from using or permitting to use the premises for the purposes of a shop or shops.
21. Contrary to what has been suggested elsewhere the hearing in the Land and Environment Court proceeded merely on a question of the legal interpretation of the Local Environment Plan and whether the provisions as to what was a permitted use included the warehouse outlet centre. The Court did not consider at any stage the overall planning merit of the Council's decision. This can be seen from the Department's own advice from its corporate counsel to the Minister who

stated “the Courts did not consider the planning merit of the use whatsoever, just whether or not the use was technically within the range of permitted uses”.

22. Following the decision and as a result of legal advice my lawyers lodged a Notice of Appeal on my behalf with the Court of Appeal on the 23rd January 2004.
23. The Orders of the Land and Environment Court were stayed and the hearing of the Appeal was on the 2nd February 2004, and Appeal was ultimately heard on the 3rd March 2004 before Justices Handley, Giles and Pearlman.
24. On the 31st March 2004 the Court of Appeal confirmed the Orders of the Land and Environment Court and dismissed the Appeal. On the 8th April 2004 Gazcorp lodged a further Development Application with Council for approval to use the existing outlet centre in anticipation of the LEP draft amendment being made.
25. On the 13th April 2004 Liverpool Council after concluding the period for exhibition of the amendment resolved to amend schedule 4 within Liverpool’s LEP 1997 to permit an outlet centre on the property and amend clause 6 of the Liverpool LEP to introduce a new definition for outlet centre by way of LEP draft amendment number 92.
26. I had always expected that the Councillors would support the change of use as my architect told me he had spoken to Gary McCully, the Manager of the Council who had told him that the Council were in favour of the change of use.
27. On or before the 16th April 2004 the LEP draft amendment number 92 was forwarded by Liverpool Council to Department of Planning and Natural Resources requesting the Department to approve the amendment.
28. In early April Mr Sam Bargshoon contacted me by telephone and said words to the effect “Joe Tripodi knows about the problems with the centre, he likes the centre and would like to help as he knows the Minister Diane Beamer”.

29. Joe Tripodi was known to me previously as a local Member of Parliament. I was aware he was a regular visitor to the outlet centre after it was opened. One of his friends was Mr Sam Bargshoon who had the cleaning contracts for both the Mega centre and the outlet centre. From time to time when I visited the centre I would see Mr Tripodi and Mr Bargshoon sitting together having coffee in "Gloria Jeans" in the coffee lounge at the centre.
30. Whilst I was appreciative of the offer I was not concerned at that stage about the approval being given as the Council were in favour of the change of use and I expected that the change of use would be approved by the Department. I rang Mr Tripodi. After we exchanged pleasantries he told me that he had been to the centre a number of times, which I already knew, and that he felt the centre was a positive development for the area and he was going to do all he could to help with it continuing. I said to him as best I can recall "I expect the proposal for the amendment to the LEP will be before the Council tonight and I expect they'll approve it. If they approve it I will prepare a letter for you setting out the background to the matter to assist you to make representations to the Minister".
31. At about the same time I had also approached Anthony Roberts who is the MP for Lane Cove. He is a tenant in my building at Gladesville and I am a business constituent of his. I asked him would he lobby the Planning Minister Diane Beamer as well on my behalf in support of the approval of the amendment and I provided him with a letter which was in similar terms to that letter provided to Mr Tripodi, giving an explanation of the history of the matter to assist him in lobbying the Minister. Later that month he said to me "We are lucky that Parliament was sitting, I managed to see her (Diane Beamer) and I gave her office a copy of your letter and she said that she is aware of the matter and aware of the urgency involved (the need to have the matter resolved within the period of the stay).
32. The morning after the Council approved the proposed change of use I rang Mr Tripodi and said, as best I can recall "The Council has approved the draft amendment to the LEP, I will send you a letter setting out the background for the Minister to assist you.

33. I did not thereafter speak to Mr Tripodi for some time.
34. I had some business commitments in Lebanon and travelled to Lebanon on or about the 21st April 2004 and was absent until about the 15th May 2004.
35. After returning from Lebanon I was told by my son and my architect that they were having trouble getting information from the Department about the progress of the approval of the amendment to the LEP. Prior to my going away on holidays, my architect had been making representations on my behalf both to the Department and the Minister's Office to assist with the progress of the Council's amendment. I understand from Mr Mosca that he had previously been provided with the telephone number of Mr Meagher, the Chief of Staff to Diane Beamer for him to ring Mr Meagher to obtain details on the progress of the Application.
36. I am told Mr Meagher told him he could ring every other day to check on the progress of the Application. I also understand Mr Mosca may have enlisted the help of a Mr Beuk, a former Councillor of Liverpool Council to also make representations on our behalf to either the Department or Mrs Beamer's office. I understand Mr Mosca had also spoken to Mr McCully from the Council who had also told him he was ringing the Department regularly to obtain advice concerning the progress of the Application.
37. As a result of the advice from my son and my architect I rang Mr Tripodi on the 18th May. I don't recall whether I left a message on his mobile phone or whether his mobile phone just didn't answer when my telephone number may have been left as just a missed call, but I did not get to speak to him.
38. Later that night I rang Mr Bargshoon and left a message for him to return my call. I thereafter spoke to him the following day. I asked Mr Bargshoon if he could arrange a meeting with Mr Tripodi as I was unclear why the Department wasn't giving us any further progress reports on the Application nor was the Minister's Office.

39. I spoke to Sam again the following day, the 20th, at about 11.07, asking him whether he had organised a meeting with Joe. He told me that he had arranged with Joe to meet on Saturday afternoon. My recollection is that Mr Bargshoon told me that Mr Tripodi could not meet until the weekend.
40. On Saturday I travelled to Bowral and as I was coming back from Bowral I rang Sam to confirm the meeting. The meeting was arranged at the coffee lounge at the outlet centre for about 5.30 pm.
41. I arrived at the centre early. Sam came to see me and phoned Joe who was having car trouble. Sam went to pick Joe up in his car and they both returned shortly after 5.30 pm. We sat at a table in Gloria Jeans and initially exchanged niceties. I said to Joe "I rang you. Why did you not return my calls?" I believe Sam said, "Joe's phone is being tapped". Joe asked us both to turn our phones off. I can't remember if I did or not. Sam was anxious and he suddenly said, "Tell Nabil what you told me in the car". Joe looked upset at Sam's comment and said something along the lines of, "I thought that was between us". I said, "I'd like to know what you said". 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.
42. I subsequently became aware that Joe Tripodi had made similar remarks to other people, namely Frank Mosca and Joe D'Agostino.

43. Frank Mosca advised me in about early June that he had asked Gary McCully to make enquiries on our behalf. By June I was very anxious as my lawyer had previously received advice from the Department of Planning that the Application was to be considered by the Minister by the 27th April 2004 no decision had yet been made and our stay granted by the Court of Appeal was to expire on the 30th June. In the context of my previous conversation with Mr Tripodi and the difficulty that my architect was having in obtaining advice from the Department about the progress of the amendment to the LEP I was very worried about what was going on and I had asked him to make as many enquiries as possible. He told me that he (Mr Mosca) had spoken to Mr McCully and Mr McCully had said that the Department told him they had received submissions from Westfield and DFO and that the Department in view of those submissions wanted to cross its t's and dot its i's prior to making a decision on approval of the amendment.
44. Frank Mosca told me somewhere between the 17th and 20th June that he had been continuing to make enquiries with the Department and had now been told that the file was lost and the Department did not know where the file was at present. I then instructed my solicitor to make enquiries of the Department and I believe they wrote on my behalf to the Department for the purposes of seeking information to support a further stay. A letter was received from the Department by my solicitor on the 24th June saying "A report under section 69 of the EP&A Act has been completed. A number of issues remain to be resolved". On the basis of the letter the Supreme Court granted a stay on the 28th June up until the 14th July. At the same time, having seen the letter, I instructed my solicitor to subpoena the Department's file as the last sentence of the letter concerned me greatly especially having regard to Mr Tripodi's comments.
45. Craig Knowles had opened the Centre in November 2003, as I was walking him back to his car he said to me "I hear Westfield have launched some Court proceedings regarding the Centre". I said "Yes". He said "They are greedy bastards they want to eat the world". I said "Yes, I know but the Council is going to rectify the matter". He said "You know I am the Minister, I have a lot of power I can do things, if you need any help come and see me". I thanked him.

46. In view of that earlier conversation and having now seen the letter from the Department of Planning dated 24th June 2004 I believe Frank Mosca contacted Mr Knowles' father, Stan Knowles, to say that we wanted to come and see Craig that night as we knew Mr Knowles stayed at a granny flat at his father's home during the week. We attended at the house but he wasn't there. I was in company with Sam Bargshoon and Frank Mosca.
47. We returned again the following morning about 6 am. At about 6.30am to 7 am he asked myself and Frank Mosca in while my son Nicholas stayed in the car. I said to him "There is a major problem with the designer outlet." He said "You can't be here, you are coming to influence the Minister I am under Parliament Inquiry". I said "Craig we are desperate, and will you talk to us in the Department or the Minister's Office". I showed him the letter of the 24th June. I said, "Craig you remember when you opened the Centre you said if I needed help come and see you". He wouldn't look me in the eye he said "Yes, I remember". He turned to Frank Mosca, and he said "Frank you are my friend you shouldn't be here now". I said "Well let's go now but just remember you offered to help so we came, he saw us off and he said "Frank you are my friend".
48. I was then notified on the 9th July that the proposed amendment had been refused as a result of the Minister having "areas of concern on the making of the plan after receiving the section 69 Report and advice provided by the Director General. On consideration of the file it does not appear as to what those areas of concern could possibly be as none of it is documented and appears to rely on the advice from the Director General which was wholly unsupported by her own Department.
49. Following receipt of the advice from the Department saying the amendment had been refused I spoke to the Federal Member Julia Irwin on or about the 9th July and requested if she could make some representations on our behalf for the purpose of the Minister reconsidering the decision. I received a copy of a letter that she had written to the Minister. I am told by her she sought a meeting with the Minister, but the Minister declined.

50. Thereafter we received a letter from the Council on or about the 13th July 2004 seeking advice as to a timetable for us to cease operations. We then notified the Council that we were considering our legal options including the question of legal action against the Council.

51. As neither Craig Knowles nor Diane Beamer would meet with us our lawyers wrote to the Minister on the 20th July seeking information and complaining that we had been denied procedural fairness but there has been no response to that letter. In the absence of a response we commenced proceedings in the Land and Environment Court to seek to have the decision of the Minister set aside.

52. Finally I wish to make some comments having reviewed the file produced by the Department of Planning in the Court of Appeal in response to our subpoena. In my view there are certain curious aspects concerning the Department's consideration of Liverpool Council's Application to them regarding the re-zoning of my site:
 1. I now understand that the section 69 report by the Department's Planners is the report which the Minister was referring to in her conversation with Mr Tripodi. It recommended, after consideration of all the planning matters that the change of use should be approved. I notice that the recommendation of planner who considered the matter was approved by her team leader, who is also a planner, and then by the Chief Planner in the Department, Mr Prattley.

 2. I observed subsequently there were movements of the file between the Director General, the Minister and Mr Prattley. The only documentation to account for these movements was a very short memorandum from the Director General where she indicates she has concerns, but does not specify them. Ultimately the matter culminates in the memorandum from the Director General to the Minister, raising matters which ultimately find their way into the Minister's press release as the basis upon which the Minister refused the change of use. None of those concerns, from the Director General set out to the Minister, are backed up with any data or

supported by any information. It would appear to fly in the face of the Director General's own Departmental advice.

3. I did not know at the time but I have subsequently been advised that the Director General has no planning qualifications which makes her "conclusions" surprising.
4. The combination of the absence of any written material from the time that the change of use is recommended in the section 69 Report to the period when the file was moving between the Minister and the Director General and Mr Prattley, the advice from Mr Tripodi; and Mr Mosca's advice that he had been told the file was lost in that period in the absence of any documentation of the purpose and reasons for the movement of the file cause me great concern and raise in my mind many suspicions in that period.

The Premier Is Not Telling The Truth

- 1) Mr Carr stated in the media that the government refused the re-zoning not to create a precedent. (See Attachment Two)

The advice (Attachment Three) submitted to DIPNR by the Corporate Counsel for Infrastructure, Planning and Natural Resources completely contradicts the idea that a spot rezoning cannot be made as it will create a precedent. On 22 June 2004 Mr Michael Astill, Corporate Council for the department stated under item 9 in his report:

“The spot rezoning of land to regularize a use which already exists (or to prevent a particular development proposal) has occurred in numerous cases before. E.g.

- **1992 – Coffs Harbour LEP (Am. No 21) made to authorize a use following Coffs Harbour Environment Centre Inc. litigation over ocean outfall,**
- **1995 – SEPP 45 Mining – made to authorize mining uses following Rosemount Litigation,**
- **1999 – Byron LEP (Am. No 75) to prevent a development appeal proceeding,**
- **2000 – Hurstville LEP (Am. No 23) to prevent a development appeal proceeding,**
- **date uncertain – Ryde LEP amended to authorize discount outlet on a site on Victoria Road,**
- **date uncertain – Ryde LEP amended to authorize hospital on a site”.**

- 2) Bob Carr stated in the media several times that the development at Orange Grove Road is illegal. (See Attachment One)

The Designer Outlets Centre at Orange Grove Road was built after Liverpool Council granted a legal Development Consent in November 2002. Until this day it is still operating legally as Gazcorp was successful in maintaining stay of orders through several court hearings. At the last court hearing we were given until 25 August 2004 to operate legally.

- 3) Mr Carr and Ms Beamer both stated in the media on different occasions that the rezoning is retrospective. (See Attachment One)

The rezoning was proposed by Liverpool council not by Gazcorp. Gazcorp has to apply for a new DA to operate the centre under the new zoning when it is approved. A new DA was lodged in anticipation of approval, it was publicly exhibited and the council received four objections. Therefore the rezoning was never meant to be retrospective.

- 4) Mr Carr stated in the media that the DA granted by Liverpool council in November 2002 for the Designer Outlets, "was done on the quiet" by a "council in disrepute". The council was sacked by the Carr government in March 2004. (See ABC Stateline Friday 23 July 2004)

The Development Application was submitted to council in June 2002. Three independent economic studies were commissioned by council. The DA was publicly exhibited according to the Act. Not one objection was received and the matter was dealt with under delegated authority by council planners and approved on 15 November 2002.

Mr Carr you are incorrect. Nothing was done on the quiet and no council in disrepute gave approval. It was handled by professionally qualified public officials.

Mr Carr, please tell us why are you on a mission to destroy the Designer Outlets, and with it, the livelihoods of 450 people sending 50 businesses to the wall, in the highest unemployment area in the state. Is it because it is one of the safest ALP seats in the country, or do you have some other agenda?

ATTACHMENT ONE

Carr on 2UE
12.15 pm (approx)

tape commences

Carr:

...in 2004, the second was the subsequent Court of Appeal decision. There was Liverpool Council's own local environment plan, as it stood at the time, there was the Government's centres policy, that supports 7 central business districts in Sydney's west including Liverpool. And there are sound planning principles associated with adequate public transport and other issues.

Now listen, if someone gets a developemnt approval for a warehouse, and turns it into a retail outlet, and Government moves in with a planning retro-fit, well after the event, then anything can go in any zoning. And that is the vital principle involved here. We're not going to have anything going in any zoning, zoning is there for a reason, and there were five grounds for the Government finding a planning retro-fit for that site, totally unacceptable, totally unacceptable.

Journo:

Have you spoken to Frank Lowy about this?

Carr:

No I have not, I have not, I absolutley have not. Let me make this point. On those five grounds all of these grounds were grounds for rejecting the development, but if there was some sort of retro-fit approval for this development, then that means anything goes in any zoning, and that is a threat to everybodys neighbourhood and there's no way we're going to do that.

That is rezoning after an illegal development has gone ahead and it would have been very wrong for us to do that, because that would be that someone could get approval, someone could get approval for a warehouse and turn it into a big shopping centre, and then expect the Government to approve that after the event, and that's an appalling planning principle and it would be a threat to every neighbourhood in the State.

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ATTACHMENT TWO

I will keep going, and type that part interview with Carr.
I'm assuming you don't want the JBro stuff after it.

Sorry for delay, had something urgent come in...

2UE 12.00 pm news

Newsreader:

Premier Carr says his Government will not intervene to keep a Liverpool shopping centre open, because he says that would set a bad precedent.

Clinton Maynard report:

Premier Carr has finally broken his silence about the plan to close Liverpool's Orange Grove factory Outlet Centre and for the 450 workers who stand to lose their jobs, the news isn't good. Mr Carr says the Government won't support moves to have the area rezoned to allow the retailers to operate, because it would set a bad precedent. He says if the centre was allowed to keep operating any warehouse would be able to turn itself into a retailer and then seek Government approval. Carr - "That is a threat to everybody's neighbourhood, there's no way we're going to do that"

Mr Carr has also rejected allegations the decision to block the centre was a favour to Orange Grove's competitor Westfield. Mr Carr says he hasn't spoken to Westfield's Frank Lowy about the issue.

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Ms Beamer Acted Alone To Cull 450 Jobs

- 1) Ms Beamer stated in the media on several occasions that her decision to refuse the rezoning of Designer Outlets was based on "sound planning advice" from her Director General Ms Jennifer Westacott, whom she described in previous interviews as the most senior planner in her department (See Attachment One). When we alerted the media on the morning of 22 July 2004 that Ms Westacott had no professional planning qualifications, Ms Beamer changed her story on ABC Stateline 7:30pm Friday 23 July, and now states that she received her advice from her Director General and not from the most senior planner in her department.

The rezoning was proposed by Liverpool council, prepared and signed off by two senior planners. Mr Phillip Tollhurst (Manager City Development) and Mr Mark Lamond (Group Manager Community and Environmental Planning), see attachment two. It was then approved by Ms Gabrielle Kibble in her capacity as the administrator of Liverpool Council, appointed by Mr Carr's government. Ms Kibble was the Director General of DIPNR under Mr Knowles in Mr Carr's previous government, (it must be known that Ms Kibble is one of the most prominent senior planners in NSW).

At DIPNR the rezoning document was prepared by Ms Laurel Cheetham (Senior Environmental Planner Sydney Region West) recommending that the Minister sign the rezoning. The rezoning was endorsed by Mr David Birds (Team Leader) as the delegate of the Director General of Infrastructure, Planning and Natural Resources. The rezoning document was then sent to the Director General who sent it to Mr Gary Prattley (Executive Director, Metropolitan Planning) who endorsed the rezoning on the 16 June 2004 (See attachment three), and the rezoning document was stamped approved with a blank ready for the Minister's Signature (See attachment four).

Despite the recommendations of six of the most senior planners in her department and in Liverpool Council, Ms Beamer decided against approving the rezoning based on the wishy washy memorandum from her Director General Ms Jennifer Westacott (See Attachment Five), dated 25 June 2004. It must be noted that Ms Westacott does not hold any professional planning qualifications, and no previous planning experience (See Attachment Six). This is what Ms Beamer is referring to as "sound planning advice"!



What You Need

Transcripts

(ATT. ONE)

JONES CONT/D:

levels of unemployment who's prepared to go to any ends to knock off four hundred and fifty workers. Didn't three senior planners ... unless they're corrupt, stupid, dishonest, didn't three senior planners within the department, not Liverpool Council...

BEAMER:

But the...

JONES:

Hang on. Within the Department of Infrastructure, Planning and Natural Resources ... didn't those three senior planners sign off on the rezoning application?

BEAMER:

The most senior planner in the department did not.

JONES:

Answer my question.

BEAMER:

The most (indistinct) senior planner (indistinct)...

JONES:

Answer my question. Did three senior planners sign off? Did three senior planners say it's fine? Didn't the former head of the

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Conclusion

The draft LEP has been publicly exhibited in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and Regulations 2000 with 5 public submissions being made during the exhibition period. The public submissions have been considered and addressed in the contents of this report. As part of the exhibition process the RTA and neighbouring Councils were requested to provide comments with no objections being raised. It is recommended that Council proceeds with the making of the draft plan.

BUDGET IMPACT:

There are no budget impacts arising as a result of this report.

RECOMMENDATION:

That Council:

1. Proceeds with the making of Liverpool Local Environmental Plan 1997 (Amendment No 92), as appended, to:
 - a) rezone part of Lot 104 (CS 03/113) at the Crossroads site from 4(a) Industrial to 4(b) Industrial – Special under the Liverpool Local Environmental Plan 1997;
 - b) amend clause 6 of the Liverpool Local Environmental Plan to introduce a new definition for “Outlet Centre”; and
 - c) amend schedule 4 (additional uses) to permit an Outlet Centre on Lot 104 (CS 03/113) at the Crossroads site and at 12-16 Orange Grove Road, Liverpool (Lot 121, DP876962),
2. Amend the draft Local Environmental Plan to include maximum floor space restrictions for the proposed outlet centres and in accordance with the independent economic advice provided to Council amend the definition for ‘outlet centre’ contained in the draft Local Environmental Plan.
3. Seek a revised legal opinion from Parliamentary Counsel and any changes required by Parliamentary Counsel be incorporated into the Liverpool Local Environmental Plan 1997 (Draft Amendment No 92) prior to the draft Local Environmental Plan being forwarded to the Minister or the Department of Infrastructure, Planning and Natural Resources.
4. Note that a public hearing was not required under Section 68(1)(b) as the issues raised are not of such ‘significance’ to warrant a public hearing and have been addressed in the contents of this report.

SIGNED BY:

Phil Tolhurst
Manager
City Development

Mark Lamond
Group Manager
Community & Environmental Planning



(ATT. THREE)

P03/00581 Pt3

SYDNEY REGION WEST (PARRAMATTA)
 LGA LIVERPOOL - LIVERPOOL LEP 1997 -
 DRAFT AMENDMENT NO 92 - OUTLET CENTRE AMENDMENT

New South Wales Government

Department of

Infrastructure, Planning &
 Natural Resources

Folio	Referred to			Initials Upon Clearance	Re-Submit Date	Folio	Returned to			Initials Upon Clearance	Re-Submit Date
	Name	Floor	Date				Name	Floor	Date		
	O. Boyd		2/4/04								
	Land Clearing Sydney Region		27/5/04	[Signature]							
	Director General		4/6/04	[Signature]							
	Land Clearing		1/6/04	[Signature]							
	Director General		16/7/04	[Signature]							
	Mr. Prattley		24/1/04	[Signature]							
	Minister		29/6								

Disposal action

CONCLUSION

The Council has complied with the provisions of sections 66 and 67 relating to public involvement. The draft plan has been assessed in relation to all SEPPs, REPs, s.117 directions and s.71 determinations and inconsistencies justified.

The draft plan has been considered in the context of the Integrated Land Use and Transport package, and, given the location of the site, and the type and scale of development, it is considered that it will have a net community benefit and is therefore not inconsistent with draft SEPP 66 – Integrated Land Use and Transport.

Advice from the Crown Solicitor is that there does not appear to be any basis upon which proceedings against the Minister for damages or compensation could be brought by Westfield Management Pty Ltd, AMP Capital Investors and/or Direct Factory Outlets Pty Ltd, or Gazcorp Pty Ltd.

RECOMMENDATION

It is RECOMMENDED that the Minister:

(a) under section 70(1)(a) and (8) of the Environmental Planning and Assessment Act, 1979, makes Liverpool Local Environmental Plan Amendment No. 92 in accordance with the written statement (tagged "C") and supporting map (tagged "D") attached for the Minister's signature; and

(b) gives no direction to the Council under section 70(7) as to the procedure to be followed in connection with making his/her decision known to the public.

Laurel Cheetham
Senior Environmental Planner
Sydney Region West

4.6.04

Endorsed:

David Birds 4.6.04
Team Leader

As delegate of the Director-General
of Infrastructure, Planning and Natural Resources

Endorsed:

16/6/04

Approved
.....
Minister.

(ATT. FIVE)

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Department of
Infrastructure, Planning and Natural Resources

Memorandum

To Minister

From Jennifer Westacott
Director General

Date 25 June 2004 **File no** [P03/00581 Pt 3]

Subject: Liverpool LEP (Amendment No 92)

Purpose

To outline some comments on the proposed Liverpool LEP (Amendment No 92).

Background

The background is set out in the section 69 report and the legal advice from the Department's Corporate Counsel.

The possible consequences of making the plan and of not making the plan are also set out in that advice.

Issue

As outlined in the Corporate Counsel advice the Minister's decision as to whether to make or not make the plan should be based on the planning merit of the plan.

Comment/Options

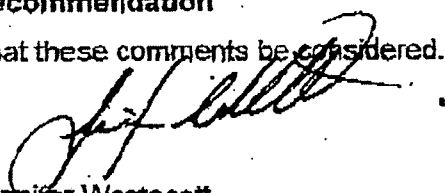
The section 69 report outlines arguments in support of making the plan based on planning merit. However, in my view the contrary conclusion, namely that the plan should not be made having regard to its planning merit would also be reasonably open to the Minister. In particular, the Minister could find 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.

If so then the Minister could reasonably conclude that the plan should not be made.

Recommendation

That these comments be considered.



Jennifer Westacott
Director General

OUR EXECUTIVE 2002-03



**Executive Director,
Metropolitan Planning**

Gary Prattley BA, M Town Planning,
Cert Town and Country Planner

Gary Prattley was appointed as Executive Director, Metropolitan Planning in April 2002. He has worked in a diverse range of organisations and locations, including New Zealand, Victoria, Tasmania, the ACT, Western Australia and New South Wales. Gary was formerly Chief Executive of the West Australian Ministry for Planning.

**Executive Director, Transport
Planning and Infrastructure**

Stephen Alchin B Town Planning
(Hons), GradDip (Enviro Science), Dip
(Financial Markets)

Steve Alchin was appointed as Executive Director, Master Planning and Infrastructure, in August 2001. Prior to this he held senior positions with the Rail Access Corporation and NSW Department of Transport, where his main responsibility was managing the initial light rail project from Central to Pyrmont. He has also been Executive Director with the Western Sydney Regional Organisation of Councils (WSROC).

**Executive Director,
Infrastructure Coordination**

Dr Bill Dunbar BA (Hons), PhD

Bill Dunbar has been Executive Director of the Infrastructure Coordination Unit since 2001. Prior to that he was Director of the NSW Standing Committee on Public Works.

**Executive Director,
Sustainable Development**

Sam Haddad BSc, MAppSc (Env),
MBA

Sam Haddad has a longstanding career with the Department and its predecessors, leading the approvals for major development and associated system reforms. He earlier practised in the private sector and at executive level with the United Nations Integrated Development Program.

**Executive Director, Planning
and Building System**

Amanda Spalding BA, ACA, FCFI
(UK), MPIA

Amanda Spalding joined the Department in September from Parramatta City Council. She came to Australia in 2000 after a long career in the private sector and local government in the north of England, where she worked for Sheffield, Bradford, Wakefield, Humberside and North Lincolnshire councils. Amanda is a graduate Chartered Accountant and Fellow of the UK Chartered Management Institute and has recently become a Member of the Planning Institute of Australia.

Director General

Sue Holliday BA (Econ), MPhil
(T&CP), MPIA

Sue Holliday was Director General of the Department from December 1997 until April 2003. Her career highlights with the Department include the development and implementation of coastal and bushfire policies, metropolitan compact city initiatives, building design and sustainability programs. She also successfully directed significant urban renewal projects in Sydney, including Ultimo/Pyrmont, Walsh Bay, Moore Park/Fox Studios, and Green Square.



Director General

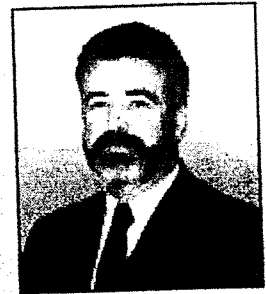
Jennifer Westacott BA (Hons)
FAICD, FVIPA



Jennifer Westacott was appointed Director General of the Department of Urban and Transport Planning as well as the Department of Sustainable Natural Resources in May. Jennifer has previously worked in NSW as Deputy Director General, Department of Housing, Deputy Director General, Department of Community Services, and Executive Director of the NSW Health Council. Her last appointments were in Victoria as Secretary of the Department of Education and Training and Director of Housing. Jennifer has been a Director of the Urban and Regional Land Corporation, Victoria from December 2001. She will continue to lead the Department as Director General of the Department of Infrastructure, Planning and Natural Resources.

Deputy Director General

Andrew Cappie-Wood BA, MTCP,
Grad Dip UEM, (Hon) MCIIH, MIPAA, MAICD,
MAHI



Andrew Cappie-Wood was appointed Deputy Director General in May. He was formerly Director General of the Department of Housing for nine years and Director General of Aboriginal Affairs and Department of Aging, Disability and Homecare. Andrew is the NSW President of the Institute of Public Administration and serves as a board member of the Honeysuckle Development Corporation.

**Executive Director, Regional
and Rural Planning**

David Papps BSc (Hons)

David Papps was appointed as Executive Director, Regional and Rural Planning in November 1998. He was formerly Deputy Director General with the National Parks and Wildlife Service, and brought significant wilderness and threatened species expertise to the Department. He left the Department for a position in the private sector in June.

**Executive Director, Strategic
Services**

Glenn Ball B Nursing, DipAppSc
(Nursing), M Mgmt (Public), EDP

Glenn Ball was appointed as Executive Director, Strategic Services, in September. His career spans nursing, community services and he was Principal Policy Adviser with the Premier's Department. Prior to this appointment, Glenn was Executive Policy Director for the Department. Glenn transferred to the Department of Education and Training in late April.

20 July 2004

The Hon. Craig Knowles, MP
Minister for Infrastructure and Planning, and
Minister for Natural Resources
Member for Macquarie Fields
Level 33 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

ABN 47 702 595 758
The Chifley Tower
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Dear Minister

Liverpool LEP 1997 - Draft Amendment No. 92

As you are aware we act for Gazcorp the owners of the above premises.

On 9 July 2004 Minister Beamer refused the application by Liverpool Council to amend the above LEP.

The grounds stated were:

- adverse affect upon the CBD.
- conflict with the Government Centre Policy and Metropolitan Strategy.
- need for review of SEPP 66.

However, each of the above matters was considered in considerable detail by the most senior officers of DIPNR in the S69 Report submitted to the Minister, which recommended approval of the subject amendment to the LEP.

The Principal Policy adviser, in an 11 page assessment as part of the lengthy S69 report, gave detailed consideration to the Government Centres Policy and Metropolitan Strategy and the alleged adverse impact on the CBD. In particular all of the submissions received by Council and DIPNR were taken into account in the report.

The Principal Policy adviser concluded:

"Taking into account the assessment using the net community benefit criteria and the broader considerations relating to consumer choice, business competition and local employment generation, the conclusion reached is that the benefits of developing the proposed outlet centre at Orange Grove Road outweigh the disbenefits. It should be noted that his conclusion is reached in large part because of the proximity of the site to the Liverpool CBD and the location on an established bus route (even though it has limitations in the catchment readily served)."

Our Ref NAHS:205213760

nahs S0111369663v1 205213760 20.7.2004

Sydney
Melbourne
Brisbane
Perth
Port Moresby
Singapore
Hong Kong
Jakarta
Shanghai

The S69 report stated that:

"The Council has complied with the provisions of section 66 and 67 relating to public involvement. The draft plan has been assessed in relation to all SEPPs, REPs, s.177 directions and s.71 determinations and inconsistencies justified.

The draft plan has been considered in the context of the Integrated Land Use and Transport package, and given the location of the site, and the type and scale of development, it is considered that it will have a net community benefit and is therefore not inconsistent with draft SEPP 66 - Integrated Land Use and Transport."

The recommendation for approval by the Senior Environmental Planner, Sydney Region West was endorsed by:

1. The delegate of the Director-General; and
2. The Executive Director, Metropolitan Land and Resource Planning.

The conclusions in the S69 report confirm the opinions expressed in reports obtained by Liverpool Council from independent experts that the impact, if any, on the CBD and Westfields would be negligible.

Significantly, in the challenge to the validity of the consent Westfields never challenged the correctness of such evidence or made any claim of economic hardship.

Our client is therefore unaware upon what basis that the Minister could be satisfied that the recommendations of the Department should be rejected. It is noted that in the said DIPNR report that "representations" have been made directly to Minister Knowles and Beamer".

Our client and probably Council and DIPNR are unaware of the nature and content of such representations directly to the Minister.

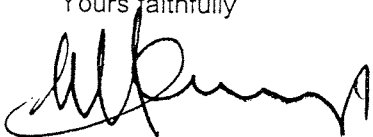
If the Minister had taken into account representations without giving Council or Gazcorp the opportunity to consider and respond there has been a denial of procedural fairness.

Please inform us in writing when and how:

- Westfield's made representations to Minister Knowles and Beamer;
- Whether Gazcorp and Council will be supplied with a copy of such representations; and
- Whether Gazcorp and Council will be given an opportunity to respond to such representations.

Please treat this request as a matter of urgency.

Yours faithfully



Noel Hemmings
Noel.A.Hemmings@aar.com.au
Tel 61 2 9230 4848