

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 4

**INQUIRY INTO THE APPROVAL OF THE DESIGNER OUTLETS
CENTRE—LIVERPOOL**

At Sydney on Friday 13 August 2004

The Committee met at 9.30 a.m.

PRESENT

The Hon. J. A. Gardiner (Chair)

The Hon. J. C. Burnswoods

The Hon. K. F. Griffin

The Hon. D. E. Oldfield

The Hon. P. T. Primrose

Ms L. Rhiannon

The Hon. J. F. Ryan

CHAIR: I declare open and welcome everyone to this public hearing in relation to the designer outlets centre at Orange Grove Road, Liverpool. I welcome Mr Mosca. The other two witnesses are in the building but are not here as yet. I will wait for them before completing my opening statement. In the meantime, there are a few matters I would like to bring to the attention of the audience at large. The Committee is aware that people hold strong and diverse views regarding the approval process for the designer outlets centre. I emphasise that although this is a public hearing it is not an open forum for comment from the floor. The role of a parliamentary committee is to provide citizens with an opportunity to participate in the Parliamentary process. While the Committee welcomes members of the public here today—and we will again on Monday, no doubt, at Liverpool—the primary purpose of this hearing is to give individual witnesses an opportunity to give their evidence on oath before the Committee. Only questions from the Committee and the evidence of the witnesses are recorded on the transcript. Uninvited interruptions are not recorded and may make it more difficult for witnesses to fully express their views.

With respect to media broadcasting, the Committee previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the broadcasting guidelines are available from the table by the door. In reporting Committee proceedings the media must take responsibility for what they publish, including any interpretation placed on evidence before the Committee. In accordance with these guidelines, while members of the Committee and witnesses may be filmed or recorded, people in the public gallery should not be the primary focus of footage or photographs. Under the standing orders of the Legislative Council evidence and documents presented to the Committee that have not been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by a Committee member or by any other person.

Witnesses, members and their staff are advised that any messages should be delivered through the attendant on duty or through the clerks. I ask everyone to turn off their mobile phones now, please. Now that Mr Gazal and Mr Bargshoon have arrived I welcome them. To continue my opening statement, I would like to make some comments about aspects of the Committee's inquiry. This is a somewhat lengthy statement but to assist the public and witnesses copies will be made available on the table near the door. In relation to the matter of the refusal of the Department of Infrastructure, Planning and Natural Resources, DIPNR, to answer the Committee's call for papers, on 28 July 2004 the Committee resolved to order the production of certain documents from DIPNR relating to the approval process for the designer outlets centre, with the return date of last Friday, 6 August. On Monday 9 August the department informed the Committee director that it was unable to provide the requested documents. The department advised that it was acting on legal advice from the Crown Solicitor that committees of the Legislative Council do not have the power to order the production of documents.

The Committee, acting on advice from the Clerk of the Legislative Council, does not accept the position of the Crown Solicitor. Parliament has delegated to the Committee the power to seek documents, a power that has been exercised by this Committee and others in the Legislative Council over a number of years. I acknowledge that as public servants the officers of the department were acting on legal advice. I welcome the decision advised to me yesterday evening by the department to make the papers available by 5.00 p.m. today, and the Committee looks forward to the receipt of the documents to assist us in our deliberations.

With respect to the terms of reference of this inquiry, the letter from the department also contained a concern as to the validity of the terms of reference for this inquiry. This was based upon advice from the Crown Solicitor that the Committee did not have the power to investigate aspects of the inquiry relating to Liverpool council on the basis that a council is not "a statutory body". The Acting Clerk of the Legislative Council held a contrary view and sought advice from Mr Bret Walker, SC. Mr Walker advised that in his opinion a local council is a statutory body. The Committee, on the advice of the Acting Clerk, has determined that the Committee has the power to pursue its terms of reference and, as chair, I propose to proceed on this basis.

Sub judge: The department has also raised the issue of matters which may fall within the sub judge convention. It is possible that some of the issues raised by witnesses during the hearing may be the subject of legal proceedings elsewhere, such as in the Land and Environment Court, the New South Wales Court of Appeal and the Independent Commission Against Corruption. The sub judge convention has been the subject of a number of rulings in the house. Put simply, the convention requires the chair to judge whether proceedings of the Committee are likely to prejudice a matter before the courts or the integrity of the judicial process. As a parliamentary convention, the onus falls on the chair to adjudge whether any matter is sub judge.

As former Legislative Council President Johnson ruled, "the Chair may decide to intervene on its own volition or may be called upon to decide on a point of order brought to its attention. If the matter is before a court, in order to make a decision whether the public interest outweighs the possible prejudice to the case, the Chair must be apprised of the specific matters before the court and the Chair must hear enough" to decide whether the matter may proceed. Therefore, if a witness or a member objects to a question on the grounds of sub judice I propose to hear argument as to why answering the question may lead to a substantial interference with the judicial process and make a ruling on the basis of the arguments presented.

I emphasise that a parliamentary committee, like the House, is not constrained from discussing a matter that is being considered by another in inquiry or court, including the ICAC, except by its own conventions. I note that much of the subject matter of this inquiry has been debated widely in the media, and I would not support a position whereby a parliamentary committee was unable to hear evidence on a matter that has been freely discussed elsewhere. I also note that in relation to matters before a court when no jury is involved I have some difficulty with the proposition that a judge would be influenced by the utterances of a committee proceeding.

In camera matters: As with other inquiries, the Committee will consider any requests by witnesses or Committee members that evidence be heard in camera. If a witness does give evidence in camera following a resolution of the Committee, however, they need to be aware that following the giving of evidence the Committee may decide to publish some or all of the in camera evidence. Likewise, the House may, at a future date, decide to publish part or all of the evidence even if the Committee has not done so.

Adverse mentions: Committee hearings are not intended to provide a forum for people to make adverse reflections about others. The protection afforded to committee witnesses under parliamentary privilege should not be abused during these hearings, and I remind witnesses to ensure that the matters raised are directly relevant to the terms of reference. If a witness makes serious allegations which the Committee believes reflect adversely upon a specific person then, as a matter of procedural fairness, the Committee would be obliged to provide that person the opportunity to respond to the criticisms, either by writing or in person. This process may divert the Committee from its deliberations. In this case the reporting date is less than two weeks away and it may impede the Committee's ability to meet this deadline.

I also draw attention to adverse comments outside the meeting. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of the committee hearing. Therefore I urge witnesses to be cautious about their comments to the media and others after they complete their evidence even if it is said within the confines of this building. Such comments would not be protected if, for example, another person decided to take an action for defamation.

FRANK PAUL MOSCA, Director, Mosca Pserras Architects, Suite 1, 21B, Bathurst Street, Liverpool,

NABIL NASRI GAZAL, Managing Director, Gazcorp, 230 Victoria Road, Gladesville, and

SAMIR BARGSHOON, Proprietor, Bargshoon Cleaning Services, sworn and examined:

CHAIR: Mr Mosca, what is your occupation?

Mr MOSCA: Architect.

CHAIR: In what capacity are you appearing before the Committee, that is, as an individual or a representative of an organisation?

Mr MOSCA: I was asked to appear. I do not know in what capacity. I am here as an architect for Gazcorp, I imagine.

CHAIR: Mr Bargshoon, are you appearing as an individual witness, not representing anyone else?

Mr BARGSHOON: No.

CHAIR: Are you conversant with the terms of reference of the inquiry?

Mr MOSCA: Yes, I did read them.

Mr GAZAL: Yes.

Mr BARGSHOON: Yes.

CHAIR: If you should consider at any stage that certain evidence you wish to give or document's you may wish to tender should be seen or heard only by the Committee you need to indicate that fact to the Committee and we will consider such a request. Mr Gazal, would you like to make a brief opening statement first?

Mr GAZAL: Yes, I would like to, if it is possible. I have slight Parkinson's and my speech because of my accent is very hard to understand. I have made a written statement to the Committee. Is it possible to have Frank Mosca, because he is more eloquent in English and you can understand him better, to read my statement?

CHAIR: Your opening statement?

Mr GAZAL: Yes.

CHAIR: Yes, that is fine.

Mr GAZAL: Because of my dialect and my English.

CHAIR: Sure.

Mr GAZAL: He has not seen it; just for the first time.

CHAIR: All right. Firstly, Mr Gazal, you have indeed given us a document. Would you like that to be part of your evidence today?

Mr GAZAL: Yes, I do.

CHAIR: Mr Mosca, could you then read the statement, which I think is a fairly brief statement?

Mr GAZAL: It is only 1¼ pages.

CHAIR: It would be good if you could do that.

Mr MOSCA (on behalf of Mr GAZAL): On 8 December 2003 before the court hearing against the designer outlets, Liverpool council proposed to amend the LEP 97 additional use to allow for an outlets centre. As I am not an expert I asked the professionals—architect, lawyer and planner. They told me that it is a simple form of spot rezoning and the process time would be very short. As a matter of fact, in 1996-97 Liverpool council had done the same rezoning in reverse to affect my land by taking cinema out of the allowed usage. As a coincidence all of this happened after Westfield's objected to Reading's cinema application.

Mr Carr broke his silence on the rezoning and made it the biggest issue in New South Wales. Mr Carr stated, "It would set a bad precedent" and "It is a threat to everybody's neighbourhood." As a coincidence, the rezoning process became so important after Westfield's objected to the designer outlets. This time the designer outlets centre was up and running, employing approximately 450 people and housing approximately 60 shops, trading successfully.

I do not belong to any political party but I have many friends in the Labor Party. I have donated only to the Labor Party—maybe not enough. Due to the help of Mr Joe Tripodi, MP for Fairfield, who I found out is one of the rare local MPs who cares about his constituency and the welfare of the residents and the businesses of the south-west area of Sydney, I was alerted that there might be some political interference in the rezoning process. On 25 June 2004 we subpoenaed documents from DIPNR, to find out that the Parliament had asked the Parliamentary Counsel to prepare an LEP 97 amendment 92, which was ready on 21 April 2004.

On 4 June 2004 a comprehensive section 69 report was complete and endorsed by the delegate of the director-general and then endorsed on 16 June by the most senior planner in the department. Also among the subpoenaed documents we found the letter of advice to the director-general and the Minister from the corporate council of DIPNR, signed and dated 22 June 2004, which in items 5, 7, 8 and 9 refute every argument and statement that Mr Carr and Mrs Beamer came up with.

I would like to state that I am not trying to discredit the Labor Party with my Liberal propaganda machine, as stated by Mr Carr. As a matter of fact, I have a lot of friends in the Labor Party but unfortunately only three of them seem to care about the people and businesses in the south-west. Those are Mr George Paciullo, ex-Minister for Police, ex-mayor of Liverpool; Mr Joe Tripodi, State MP for Fairfield, ALP; and Mrs Julia Irwin, Federal MP for Fowler, ALP. I consider these Labor members the real defenders of the south-west Sydney residents.

I warned all my contacts and friends in the Labor Party before I went public with my allegations against Minister Beamer for political intervention and denial of natural justice. I attempted to meet with the Minister but she refused to meet with me. My lawyers wrote a letter to Mr Knowles and until now we have had no reply. In conclusion, I would like to ask all political parties this question: Is it a fair practice to accept a political donation from Westfield or any other big company of approximately \$250,000 from a donor in return for a favour to destroy the livelihoods of 450 people, to send 60 businesses to the wall and create the potential cost to the ratepayers of Western Sydney of \$80 million in damages?

The Hon. JOHN RYAN: Mr Gazal, can you tell us about how you came to meet Joe Tripodi?

Mr GAZAL: I met him through Sam Bargshoon.

The Hon. JOHN RYAN: Do you recall having contact with him about the factory outlets?

Mr GAZAL: Yes, this was at a much later stage. I met Mr Tripodi about eight or nine years ago.

The Hon. JOHN RYAN: Could you tell us about what happened when you met Mr Tripodi, as you have outlined in your written statement? Could you tell us about the meeting that you had with Mr Tripodi at the factory outlets, I think around 18 May?

Mr GAZAL: I did not have a meeting on 18 May. I tried to contact Mr Tripodi around 18 May. I had a meeting with Mr Tripodi on 22 May.

The Hon. JOHN RYAN: Can you tell us about 22 May?

Mr GAZAL: The meeting was arranged by Mr Sam Bargshoon. I was coming back from Bowral. At around 5.30 we came to the Gloria Jean's coffee shop. Mr Bargshoon came a bit later. I asked him about Mr Tripodi. He said, "I will give him a ring." He gave him a ring. Mr Tripodi said he has some car problem. Sam said, "I will come and pick you up." It took about 15 to 20 minutes, because they both live in the same area of Liverpool. Mr Tripodi and Mr Bargshoon came to the coffee shop. I was sitting with some people and I asked them to leave and we sat, the three of us, in the Gloria Jean's coffee shop. This is how I met him.

The Hon. JOHN RYAN: Can you tell us about that conversation that you had with them?

Mr GAZAL: We had a bit of niceties. He asked me about my trip to Lebanon and then Mr Bargshoon asked him, "Please tell Nabil what you told me in the car?" I noticed that Mr Tripodi was a bit not happy with the comment and he told Sam a word of the meaning that I thought this was between both of us. And then I asked Mr Tripodi, "Please tell me what you told Sam?" He said, "I talked to Diane Beamer and she told me that she received a phone call from Mr Bob Carr asking her to screw the rezoning." I said, "Why is she doing that?" He said, "I asked her. She said he is doing a favour for his mate Lowy". He meant Frank Lowy. I said, "Is it possible?" Do you really see it as saying that it is true? I was a bit shocked. I know no good. He said, "Yes." I said, "Did you ask her why?" He said, "Yes, I told you why." I said, "But don't worry. Diane will do the right thing if the report is allowed because it's a no brainer and 450 jobs and \$40 million in damages are involved", meaning the centre.

The Hon. JOHN RYAN: Sorry, I am a little confused there. Who said the words "Diane will do the right thing"? Was that you or Mr Tripodi?

Mr GAZAL: No, Joe Tripodi told me, "Don't worry, Nabil, Diane will do the right thing because it's a no brainer. There are 450 jobs and \$40 million in damages involved."

The Hon. JOHN RYAN: Did Mr Tripodi ask you to do something before he started speaking to you?

Mr GAZAL: Yes, he asked—no, Sam said, "Joe didn't return your call"—because I rang Joe on the 18th—"because he believes his phone is tapped" and Joe asked us to put our phone off. I do not recall if I put my phone off or not.

The Hon. PETER PRIMROSE: May I ask a question, Madam Chair? Mr Gazal, isn't it a fact that if your property had been given a lawful change of use, that you would have made a personal windfall profit of more than \$5 million?

The Hon. JOHN RYAN: I thought you were going to ask about the same issue. Could I just complete this?

The Hon. PETER PRIMROSE: No, I asked the Chair. If an independent property auditor, for instance—

CHAIR: I intend to conduct these proceedings as we have with all the other hearings of GPS4—

The Hon. DAVID OLDFIELD: How is his profit related to the allegations of corruption?

CHAIR: Order!

The Hon. PETER PRIMROSE: Well, \$5 million he would have made as a windfall profit. I actually think that is important. I asked the Chair if I could ask a question and I would like to ask the question.

The Hon. DAVID OLDFIELD: Aren't you making more than that out of Centenary House?

The Hon. PETER PRIMROSE: Up from \$9.5 million to more than \$14.5 million.

CHAIR: Order! Mr Primrose—

The Hon. PETER PRIMROSE: You called this inquiry. Let's cut to the chase.

CHAIR: Order! You can ask your question.

The Hon. DAVID OLDFIELD: So profit somehow offsets corruption, does it?

CHAIR: Mr Primrose, you can ask the question.

The Hon. PETER PRIMROSE: I asked you if I could ask a question. If you want to give it to your mate on the left there to continue, let me ask a question.

CHAIR: Mr Ryan has the call.

The Hon. PETER PRIMROSE: Are you trying to close this down?

CHAIR: You will have the call when it is the Labor Party's turn.

The Hon. PETER PRIMROSE: When is it the Labor Party's turn. I want to ask the witness a question—\$5 million windfall profit he stood to gain.

The Hon. DAVID OLDFIELD: What is the relevance?

The Hon. JOHN RYAN: I think it is a good idea that Mr Primrose ask that question but I just want a complete answer.

The Hon. PETER PRIMROSE: I want a complete answer to my question.

The Hon. JOHN RYAN: Everyone will get their turn.

The Hon. JAN BURNSWOODS: Point of order: Could I suggest that the Chair give us an indication that we will, indeed, all get our turn because she omitted to do that at the beginning. Perhaps she could tell us whether we are going to have allocated periods for questioning.

CHAIR: This Committee has given to me the authority to decide the allocation of questions.

The Hon. JAN BURNSWOODS: Mr Primrose asked if he could ask a question and you said yes.

CHAIR: What I propose to do is what I have done at every hearing and we have had a massive number of them by this Committee—

The Hon. PETER PRIMROSE: Allow John Ryan to ask lots of questions.

CHAIR: That is allocating 20 minutes around the table, starting with the Opposition. You will get your chance.

The Hon. JAN BURNSWOODS: That is 20 minutes for the crossbench combined?

CHAIR: Correct.

The Hon. JAN BURNSWOODS: And then 20 minutes for the Government.

CHAIR: Yes. If the Government tries to stop other members asking questions, then that time will be added to other people's time.

The Hon. PETER PRIMROSE: You are the one who has just tried to stop me from asking a question, Madam Chair.

The Hon. JAN BURNSWOODS: Madam Chair, I resent that. You made no statement at the beginning about allocating questions. Mr Primrose asked if he could ask a question and you said yes, so we won't have any cheap shots, thank you.

CHAIR: I will decide that.

The Hon. DAVID OLDFIELD: I thought it was quite an expensive shot actually.

The Hon. PETER PRIMROSE: You can decide if they're cheap shots.

CHAIR: Yes, I will.

The Hon. PETER PRIMROSE: Well, we might move a few dissent motions.

CHAIR: Mr Ryan, proceed.

The Hon. JOHN RYAN: Sometimes it is embarrassing to take them out in public.

The Hon. PETER PRIMROSE: Yes, it is.

The Hon. JOHN RYAN: In your statement, Mr Gazal, you say that there was another conversation with Mr Tripodi the terms of which I cannot completely recall as I was stunned by the advice. Would you care to give us that conversation as best you can remember it?

Mr GAZAL: The best I can remember is I was a bit shaky and Joe kept repeating, "It's a no brainer. She will do the right thing if the reports come good." And then I asked Joe, I said, "Did you ask Mrs Beamer about the 450 jobs she is cancelling?" He said, "Yes." I told him, "Did you ask her if she asked the Premier about them?" He said, "Yes." "What did he say?" He said, "Mrs Beamer told him the Premier said that he doesn't give a "s" about the jobs in Liverpool. He owns the joint."

The Hon. JOHN RYAN: By the expression "s", you are referring to a swear word, I imagine?

Mr GAZAL: He doesn't give a shit about jobs in the Liverpool area. He owns the joint.

The Hon. JOHN RYAN: What did you understand by the expression "he owns the joint"?

Mr GAZAL: I did not understand it at the beginning. I was not really familiar but then the way I understood it is that it is a safe seat for the ALP and they don't give a "s" about if there are job losses or not; they can't lose their member of Parliament there.

The Hon. JOHN RYAN: Have you ever discussed the Orange Grove development with Minister Craig Knowles?

Mr GAZAL: Yes, I did. I discussed it twice as a matter of fact. Once at the opening of the centre when I was taking him back to his car he looked at me and said, "I know that Westfield have sued you." I said, "Yes." He said, "The bastards. They're too greedy. They want to lead the world." I said, "I know, but the council is going to do right thing." Then I took him to his car. No, he said something—sorry, he said—"If you need come to me. You know I am the Minister of Planning and I have a lot of power. I could do a lot of things." I said, "Thank you, and took him to his car."

The Hon. JOHN RYAN: Did you attempt to or discuss it with Mr Knowles on a subsequent occasion?

Mr GAZAL: Yes, when we received the letter from when the stay of judgment was nearing the end, I rang Frank Mosca and said "We are having a problem. The lawyers are telling us there is a lot of skulduggery in the document." They wrote us a letter saying that the section 69 is complete, but some issues are still to be resolved. Our lawyer did not feel right about that because this was the letter we were supposed to take to the court to give us another stay of judgment. I recall Mr Mosca or my lawyer—I do not know who did ring—Mr Stephen Driscoll from the Department of Planning. Mr Driscoll said, "I wrote the first part that the section 69 report is complete but then the lawyer asked me to add to it that there is more issues." I can read the letter if you like.

The Hon. JOHN RYAN: It might be best given the time for you to leave the letter with us. Would you table a copy of the letter?

Mr GAZAL: I will read the letter to you. It is addressed to our lawyer, Mr Harshane Kahagalle at Allens and it says:

A report a section 69 of the EP&A Act has been completed. A number of issues remain to be resolved.

Yours sincerely,
Stephen Driscall
Regional Planning Co-ordinator Sydney Region West

The Hon. DAVID OLDFIELD: Madam Chair, you say it will be 20:20:20 but as we do not have Mr Gazal or any of the following witnesses for one hour each, how will the time be divided so we each have the opportunity of fairly asking questions of individual witnesses?

CHAIR: We might have to skip morning tea so that we can fit in as many questions as possible. We will do it fairly as usual.

Mr GAZAL: I asked Mr Frank Mosca to ring Mr Knowles, Minister Knowles. He rang him. We were going to see him on the evening of the letter but we could not find him. He did not come home. We came back the second morning at 6.30 in the morning. Mr Knowles was going out to get his paper, he saw us. He saw Frank and myself and asked us to come in. This was the second time when I spoke to Mr Knowles.

The Hon. JAN BURNSWOODS: Are you saying you went to Mr Knowles' house at 6.00 a.m.?

The Hon. DAVID OLDFIELD: No, his Dad's place apparently.

Mr GAZAL: His parents'.

The Hon. JAN BURNSWOODS: Is this your way of conducting yourself? At 6.00 a.m.!

CHAIR: The Hon. Jan Burnswoods does not have the call.

Mr GAZAL: At 6.30 at his parents' house.

The Hon. JAN BURNSWOODS: You said you saw him and spoke to him at 6.30 a.m.

Mr GAZAL: Yes, he came out. He was coming.

The Hon. JAN BURNSWOODS: This is intimidation. What are you playing?

Mr GAZAL: No, he asked me if I needed help to come to him and I needed help. He is the one who offered me in.

The Hon. JOHN RYAN: If the Hon. Jan Burnswoods heard the evidence of Mr Gazal correctly he said he was invited to come back the next day by his parents.

Mr GAZAL: His parents told us we can come back next morning. Mr Mosca was with me. He invited us.

The Hon. JAN BURNSWOODS: It is really great behaviour. This is intimidation and coercion you are playing at!

Mr GAZAL: He invited us in. He could have told us to go away. Then we entered. I have it in my statement. We entered the house. He said, "You shouldn't be here because you know I am the Minister and I am under parliamentary inquiry." I said, "Craig, we are desperate." His mother went—and he invited us to sit down—to make us a cup of tea. He asked us if we wanted coffee or tea. Then he looked at Frank Mosca and he said, "Frank, you are my friend." I said, "Craig, when you were at the centre opening it you told me to come if I needed help." He said, "Yes, I know." I said, "I need help now" and I showed him the letter. He said, "You

shouldn't be here" and then he looked again at Frank. I said to Frank, "Let's leave". And on the way out he took the hand of Frank and he said, "You know Frank, you shouldn't be here. This meeting never happened and you are my friend, remember that", something of this kind. My son was waiting in the car in the courtyard outside. We got into the car and left. We did not even get the tea he offered.

The Hon. JOHN RYAN: Do you know a person called Gerard Turrisi?

Mr GAZAL: Yes, I met Gerard maybe two or three times.

The Hon. JOHN RYAN: Do you recall that he worked for Liverpool council?

Mr GAZAL: He used to be the planner for Liverpool council, yes.

The Hon. JOHN RYAN: Did he have anything to do with the original planning consent given to your company for the factory outlets?

Mr GAZAL: I have no idea.

The Hon. JOHN RYAN: Have you had anything to do with Mr Turrisi since he has left Liverpool council?

Mr GAZAL: My son approached Mr Turrisi for some advice and he did the work for us, as I recall.

The Hon. JOHN RYAN: Have you employed Mr Turrisi as a consultant shortly after he left Liverpool council after he gave you the benefit of a planning consent?

Mr GAZAL: I don't know if he gave me the benefit of a planning consent but my son commissioned to do small consultancy work for us, yes.

The Hon. JOHN RYAN: What was the extent of that work and how much was he paid for it?

Mr GAZAL: Five hundred dollars. I cannot recall what it was for because I did not do it myself.

The Hon. JOHN RYAN: Did you continue working with Mr Turrisi after that job was completed?

Mr GAZAL: No, we heard that he was the consultant for the DFO on the crossroad which are a competitor and we never used him at all.

The Hon. JOHN RYAN: Have you not used him subsequently?

Mr GAZAL: Never used him since that time because we believe there is a conflict. He is working for the opposition.

The Hon. JOHN RYAN: Do you know that the planning consent given to your company for the factory outlets was given to you a day after Liverpool council had completed advertisements for public comment?

Mr GAZAL: I did not know that. I just heard this morning.

The Hon. JOHN RYAN: Why did that happen?

Mr GAZAL: I have no idea at all. I have never been to the council.

The Hon. JOHN RYAN: Did you seek or get preferential treatment from Liverpool council for your original consent?

Mr GAZAL: Never. I never go to the council. I never approached the council personally ever.

The Hon. JOHN RYAN: Who approached the council for you?

Mr GAZAL: Mr Mosca and my planner, Mr Michael Evesson for Hirst Consulting approached the council on this matter.

The Hon. JOHN RYAN: Do you know who Gerard Turrisi is?

Mr MOSCA: Yes.

The Hon. JOHN RYAN: Do you have any business dealings with him?

Mr MOSCA: Currently we get him to do Nathers reports on some residential flat buildings for clients.

The Hon. JOHN RYAN: Do you think it is inappropriate to ask him to be doing things given his role for the council and the issue of the factory outlets?

Mr MOSCA: No. Nathers reports are simply energy rating things and it was quite sometime after he left before I decided to give him any work.

The Hon. JOHN RYAN: Why did you give him work?

Mr MOSCA: He kept asking for work.

The Hon. JOHN RYAN: What is the approximate value of the work you have been giving him?

Mr MOSCA: Maybe \$5,000 over three or four jobs.

The Hon. JOHN RYAN: When did this work occur?

Mr MOSCA: Maybe in the past three or four months.

The Hon. JOHN RYAN: Did you approach Liverpool council and ask them not to advertise the development application?

Mr MOSCA: No, I rang and said "Are you sure this has to be advertised?" because this matter had been a long-winded procedure, it had started early in 2002. So we had thought we had gotten to the end of the road and then they discovered—because I was in touch with them by phone often—when it got to the end of this period that we thought everything had been done and all the "T"s crossed and "I"s dotted they discovered that they needed to advertise and obviously I was pretty upset about it all.

The Hon. JOHN RYAN: Did you attempt to prevent Liverpool council from advertising?

Mr MOSCA: No. I said "If you are absolutely sure you have to do it, do it because the last thing we want is an invalid DA."

The Hon. JOHN RYAN: Are you aware that you were given a DA a day after advertising closed?

Mr MOSCA: I am not sure that it was a day or two but I know it was given pretty close after advertising had closed, yes.

The Hon. JOHN RYAN: Does that represent preferential treatment given to you by Liverpool council?

Mr MOSCA: No.

The Hon. JOHN RYAN: Why not? It sounds pretty efficient to me.

Mr MOSCA: Well, they had been, I suppose, pretty inefficient up to then in my view and I had made my feelings known. But the matter had been advertised. No objections had been received. Every other procedural process had been covered: done. They had had the matter for near on 10 months to do everything they had to do.

The Hon. JOHN RYAN: Are you a member of the Australian Labor Party?

Mr MOSCA: Yes, I am.

The Hon. JOHN RYAN: Have you assisted Mr Bargshoon in recruiting members to your branch?

Mr MOSCA: I do not think I could say I have, no.

The Hon. JOHN RYAN: Have you ever received money from Mr Gazal to assist people to join the Australian Labor Party?

Mr MOSCA: No.

The Hon. JOHN RYAN: Have you ever funded the membership of people for the Australian Labor Party?

Mr GAZAL: No.

The Hon. JOHN RYAN: Have you ever received assistance from Mr Gazal in your attempt to support Julia Irwin in the Australian Labor Party?

Mr BARGSHOON: Never.

The Hon. JOHN RYAN: Do you recall a conversation that took place between Mr Tripodi and Mr Gazal at the factory outlets centre on 20 May?

Mr MOSCA: I was not there.

The Hon. JOHN RYAN: Did you have a conversation with Mr Tripodi?

Mr MOSCA: Yes, I did.

The Hon. JOHN RYAN: What was the nature of that conversation?

Mr MOSCA: In essence I said, "What's all this stuff about phone taps? What are you going on about?" He talked about being tipped off that someone was definitely tapping his phone from ICAC" because there was an inference that he was doing something for Mr Gazal. I said, "What is it do you think you are doing? What is it they think you are doing?" I said, "Aren't you a member of Parliament? Aren't you supposed to see what's going on in the area and see what's happening with things for people in your area and things that are going to help your area?" I said, "What's happening with the rezoning?" Am I meant to be talking now?

I said "What's happening with the rezoning?" He said "Beamer got a call from Carr and asked her to screw it up". I said, "It's okay to talk about that and you are worried about phone taps about helping Gazal, that's ridiculous." I said, "What's going to happen? She's not going to not sign?" "No, she'll sign. She'll do the right thing as long as the report is fine." He said "The 450 jobs, \$40 million is a no-brainer." I said, "I hope so".

The Hon. JAN BURNSWOODS: Point of order: The time for the Opposition questions expired a couple of minutes ago.

The Hon. JOHN RYAN: The Hon. Jan Burnswoods used some of our time making spurious comments. I wanted to ask a final question: There has been some question in the media as to whether there were 250 jobs or 450 jobs involved. Could he provide some information about that. If Mr Gazal is happy to provide that later I am happy not to ask the question.

CHAIR: We might be able to get that information from Mr Gazal if he could note that but I will proceed now to the members of the crossbench.

Ms LEE RHIANNON: Have you donated to the Australian Labor Party?

Mr GAZAL: Yes.

Ms LEE RHIANNON: How much money have you donated to the Australian Labor Party?

Mr GAZAL: Very little money. I did not donate much in total for six or seven years. I had a list I do not have it with me but I will check if I have it. I think the total would be—I can submit the list if I do not have it, but they are not major, unfortunately. I think in total over six or seven years about \$15,000 but always cheques to the donation to the Labor Party.

Ms LEE RHIANNON: Could you submit the list at a later stage?

Mr GAZAL: Definitely. I have the list in my office in the ICAC file.

Ms LEE RHIANNON: Why did you donate to the Labor Party?

Mr GAZAL: I get invited to functions to which I send them a cheque for \$1,200, \$500 or sometimes they receive my help to buy a television to give it as a gift at a function. It is mainly function or auction in a function. I think the biggest amount was in an auction for the Labor Party for \$4,000 when I bought some wine in 1997 or 1996.

Ms LEE RHIANNON: In your opening statement when you talked about donations, you said, "Maybe I did not give enough". You just used the word "unfortunately" when you described giving that amount of money.

Mr GAZAL: Because, looking back at the list of big donors, they seem to get more favour from the parties than the little businesses, like me.

Ms LEE RHIANNON: You are referring to Mr Lowy?

Mr GAZAL: Mr Lowy, Westfield and other companies like AMP and all the big shots, they will donate big money, \$70,000, \$80,000, \$100,000, \$200,000. We donate very little money. Nobody asked me to donate more money; I would have done it.

Ms LEE RHIANNON: You have an expectation that if you had donated more money you would not have the present difficulties that you are facing?

Mr GAZAL: It seems to me like that, yes. Sitting on this side of the table, it looks as if I had donated \$200,000, \$300,000 to the Labor Party they would have looked at my side of the story more favourably.

Ms LEE RHIANNON: Did you ever consider giving more money? Or has this realisation just come to you?

Mr GAZAL: No, I did not think of it. I thought it was not needed. I have never been approached, and never thought of it this way.

Ms LEE RHIANNON: I appreciate you do not have the list of donations with you at the moment, but can you recollect whether you gave the donations to the branch of the Labour Party or to individual Labor candidates?

Mr GAZAL: No, some to the branch, some to the election campaign, to Mr Knowles, some to Mr Leighton and the election campaign.

Ms LEE RHIANNON: To whom?

Mr GAZAL: Mr Knowles and Mr Leighton.

Ms LEE RHIANNON: But you do not remember how much you gave them?

Mr GAZAL: Small amounts, I can assure you. Mr Knowles I think about \$2,000 or \$3,000, or maybe less than that.

Ms LEE RHIANNON: Mr Gazal, as well as money have you given any gifts to any Labor Party members?

Mr GAZAL: Nothing really important at all, no.

Ms LEE RHIANNON: When you say "nothing really important", there have been some guests?

Mr GAZAL: I sometimes took them out for lunch or brought them a Krispy Kreme.

Ms LEE RHIANNON: That might not have been a gift. You might have been marking them down.

Mr GAZAL: It was nothing really important.

Ms LEE RHIANNON: Have you ever met Ms Beamer?

Mr GAZAL: Never; she would not meet with me. I tried many ways to have a meeting with her, but she refused totally to meet with me.

Ms LEE RHIANNON: Have you ever met Mr Carr?

Mr GAZAL: At a function for Craig Knowles once in Liverpool, I mean Casula, I met him and maybe said two or three words to him. I had never met him. I see him some times on the Woolloomooloo wharf, walking with his wife. I say "Hello", but I do not think he knows me.

The Hon. DAVID OLDFIELD: Mr Gazal, from what you have said I understand that only recently you have discovered that influence with the Labor Party is bought and that perhaps you had not spent enough?

Mr GAZAL: Yes, I was going through the list. My son got the list from the Internet and most of the big donors in New South Wales are developers. I realised I was very slack in this department. I cannot afford to give them the same way the other people can give them.

The Hon. DAVID OLDFIELD: Yes, perhaps it would have been cheaper to pay more in the first place?

Mr GAZAL: Much cheaper. It has cost me over \$1 million, this court case. I would have given \$500,000 easily.

The Hon. DAVID OLDFIELD: Did you have any communications yourself with the Minister's office regarding the application?

Mr GAZAL: No. I tried, but he never wanted to meet us in the office.

The Hon. DAVID OLDFIELD: Did you have any indication during the months of April or May that there was any specific problem with the application?

Mr GAZAL: No, as a matter of fact we thought it was a rubber stamp. I enlisted help. He offered his help, Joe Tripodi, through Sam. He usually is always in the centre, I see him there a lot. He liked the centre, he liked to come and sit in the coffee shop when the Parliament is not sitting. They gave us the phone number of Michael Maher and Stephen Driscoll and asked us to call every other day if needed. They were giving us information. They even gave us a letter saying that it will be in front of the Minister on 27 April. Based on that letter we went. We had an extension to the stay of judgment.

Letter tabled.

The Hon. DAVID OLDFIELD: When was it that you felt that the development would not be approved?

Mr GAZAL: When I came back from Lebanon around 15 or 16 May. My son told me that he had a conversation with Sam and Joe Tripodi, and that Joe Tripodi was worried about his phone being tapped. I rang Joe on 18 May to try to ask for a meeting or to see what happened. I could not find him. I rang Sam the next day

and organised a meeting on the 22nd, which was a Saturday. This is what happened at the meeting, what really confirmed our doubt, that they were still talking to us. There was no problem. The real problem, when we started feeling bad and doubt, is around 15 or 16 June when they put stone walls between us and the department and us and the Minister's office. We could not get any information at all.

The Hon. DAVID OLDFIELD: Mr Gazal, did you originally look at putting a cinema complex on the site at Orange Grove?

Mr GAZAL: Yes, in 1996 or 1997 I was approached by the Reading Corporation to put in a cinema, because cinema use was allowed on the site, which was 4B. We applied to the council, but we were rejected. While we were preparing for the Land and Environment Court the council and the Department of Planning did the rezoning and removed the cinema from the users.

The Hon. DAVID OLDFIELD: Do you know a gentleman named Alex Sanchez?

Mr GAZAL: Yes, I met Alex. As a matter of fact Alex was the first person I lobbied regarding the cinema. I went to his office in Integral Energy, I think, somewhere near Parramatta, and he liked the idea. He said that there is no cinema in Liverpool and would be very good for Liverpool and that he was going to do everything possible to help us to get the DA. But then he turned against us.

The Hon. DAVID OLDFIELD: In the end did he tell you why he turned against you and why it would be rejected?

Mr GAZAL: No, we had a meeting in a restaurant and he started to blackmail me. He said, "If you don't withdraw the cinema application from the council, I will make sure you don't get the bulky good retail on your land". I was very upset about that comment and I reported him to ICAC at that time.

The Hon. DAVID OLDFIELD: Do you understand who was pressing Mr Sanchez to do that?

Mr GAZAL: At a later stage we thought we knew that it was the head office. And the rumour got to us.

The Hon. DAVID OLDFIELD: The head office of what?

Mr GAZAL: Of the Labor Party.

The Hon. DAVID OLDFIELD: Is Mr Sanchez in the Labor Party?

Mr GAZAL: Yes, he used to be the deputy mayor.

The Hon. DAVID OLDFIELD: Do you have any understanding why the head office of the Labor Party was pushing Mr Sanchez?

Mr GAZAL: Because Westfield put an objection against the cinema and they wanted to put 16 cinemas of Greater Union into that complex in Liverpool.

The Hon. DAVID OLDFIELD: You feel that rejection for your cinema complex was also Westfield driven?

Mr GAZAL: Definitely.

The Hon. DAVID OLDFIELD: Mr Bargshoon, you are a cleaning contractor at the centre. How many people do you have working there?

Mr BARGSHOON: At present six full-time, and two casuals.

The Hon. DAVID OLDFIELD: In that vein, Mr Gazal, we did not get an answer to an earlier question: exactly how many people will lose their jobs if the centre closes?

Mr GAZAL: Are you asking me?

The Hon. DAVID OLDFIELD: Yes.

Mr GAZAL: It is very hard, David, to know. The figure of 450 came when we estimated how many people were going to be working when David Jones was supposed to open, and Canterbury and another four shops, which did not open because of the problems which arose. At the moment there are 402 people employed.

The Hon. DAVID OLDFIELD: A little over 400.

Mr GAZAL: It could be more now because there are casual leases where David Jones is and it could be another 30 or 40.

The Hon. DAVID OLDFIELD: From what you are saying I gather that a number of jobs were not created as a consequence of these problems?

Mr GAZAL: Basically we did the agreement with David Jones and we finalised the agreement with Canterbury, but they could not open because of the problem with the court. It was after the court action.

The Hon. DAVID OLDFIELD: Mr Bargshoon, how long have you known Joe Tripodi?

Mr BARGSHOON: I have known Joe Tripodi for about 11 or 12 years.

The Hon. DAVID OLDFIELD: You heard what Mr Gazal said with regard to a conversation at the Gloria Jean's coffee shop?

Mr BARGSHOON: Correct.

The Hon. DAVID OLDFIELD: Apparently, from the evidence given today, that occurred from a conversation you originally had with Joe Tripodi in his car on your way to the centre. Is that correct?

Mr BARGSHOON: Yes, first I went to his house and his fiancée and his father-in-law were there, fixing up the veranda upstairs. I said to him, "You didn't turn up. What's wrong?" He had mentioned that he had problems with his car, and I asked, "What was the problem with the car?" He said, "Oh, just minor problems." I offered to give him a lift and he came with me to the centre. Coming down the Cumberland Highway he said, "I am a really good mate of Joe's, I have been a mate of Joe for many years. We go out on a weekly basis."

The Hon. DAVID OLDFIELD: You were recently invited to his wedding, were you not?

Mr BARGSHOON: Yes, I was, but I did not go. On the way he said, "Sam, I am going to tell you something but, please, I don't want you to tell Nabil." I said, "Yes, sure, no problem." He said to me "Diane Beamer", and that he had been lobbying, and I would ring him at least every second, third or fourth day and ask, "What's new, anything new, Joe?" He would always keep me up to date. He would always say, "She is just waiting on some final report, final paperwork." I do not understand this sort of issue. I would ring up either Frank or Nabil and ask, "Is there any more paperwork to go to the Minister's office, because I have just spoken to Joe and he said he is waiting for some more legal or planning paperwork". On one occasion he said, "Sam, I had my fiancé there, Maria, if you don't believe me, ask her."

He said that she was there when I went to pick him up. 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."

The Hon. DAVID OLDFIELD: Are you aware of any other favours Mr Carr may have done for Mr Lowy?

Mr BARGSHOON: Mate, I had never heard of Mr Lowy until that day, to be honest with you.

The Hon. DAVID OLDFIELD: Perhaps we can ask Mr Tripodi that at some stage. In the car on the way to see Nabil at Gloria Jean's, Tripodi asked you not to repeat it but he told you what?

Mr BARGSHOON: He believed—

The Hon. DAVID OLDFIELD: Did he believe it or was he told this by Beamer?

Mr BARGSHOON: He was told by Diane Beamer that once she got all the final reports and everything at the end of the day, if everything is correct, which by that stage as it was going was all correct, that she was going to sign it.

The Hon. DAVID OLDFIELD: So Ms Beamer was going to sign it provided that the department had recommended it for approval, but this had all been stopped by a phone call from Mr Carr, who had received a phone call from Mr Lowy?

Mr BARGSHOON: David, I honestly believe—

The Hon. DAVID OLDFIELD: Is that what happened?

Mr BARGSHOON: Exactly.

The Hon. DAVID OLDFIELD: When you arrived at the centre, by some means you caused Joe Tripodi to repeat that conversation, and also to Mr Gazal?

Mr BARGSHOON: I did not want to pressure Joe.

The Hon. DAVID OLDFIELD: Just answer the question, please. You asked him to repeat it and he repeated it to Mr Gazal?

Mr BARGSHOON: I said to Joe the exact words, "Joe, tell Nabil what you just told me in the car."

The Hon. DAVID OLDFIELD: And he told Nabil.

Mr BARGSHOON: He looked at me first, gave me a dirty look, you could see that he was very angry. I repeated it, "Tell Nabil, he's got to know. Tell him."

The Hon. DAVID OLDFIELD: So Mr Tripodi told you the story in the car and then he repeated the story to Mr Gazal in your company again when you arrived at the centre?

Mr BARGSHOON: True.

The Hon. DAVID OLDFIELD: Mr Mosca, when was the DA actually lodged? The month would do. Let me make it easier for you: how long was the DA at Liverpool council before approval?

Mr MOSCA: The one everyone knows about I think was lodged June 5, but I had lodged an application previous to that for the same thing early in 2002, probably January or February.

The Hon. DAVID OLDFIELD: And when was it finally approved?

Mr MOSCA: It was a separate application that was finally rejected and we were asked to put in a fresh application. I put in a section 96, which is an amendment, to seek an amendment for an existing use, and they looked at it and wrote back and said, "Can we have more information?" which I did, and after they looked at that for a while they said, "Thanks for the further information. Now that we have got it we have determined that it needs to be a new application. Come and get your stuff".

The Hon. DAVID OLDFIELD: But how long did it take?

Mr MOSCA: From roughly February to—I think the final approval was November, so from February to November if you take all those processes.

The Hon. DAVID OLDFIELD: 9, 10 months?

Mr MOSCA: Yes.

The Hon. DAVID OLDFIELD: Is that, in your experience, in the area of an unusually short or long or normal period for approval?

Mr MOSCA: It is a fairly long period.

The Hon. DAVID OLDFIELD: So there is no apparent indication of any assistance being given—

Mr MOSCA: No haste.

The Hon. DAVID OLDFIELD: Have you had any dealings with the AMP-owned crossroads site?

Mr MOSCA: Yes, I have.

The Hon. DAVID OLDFIELD: I understand that there is some implication in this matter to that site. Could you perhaps briefly explain that?

Mr MOSCA: Coincidentally I was engaged to prepare a brief for a building on the AMP crossroads site for a market for a client, a different client, and things were proceeding pretty well for a rather large shed, 12,000 to 17,000 square metres for a market which would sell various products: clothing, everything you would see at a market. Things were proceeding. AMP had, through their agents, prepared documents that we were finding acceptable and we had reached through our client heads of agreement with them to sign and proceed—at least details—and then all of a sudden there were some disclaimers that came that said they wanted them to sign not to sell various things like clothes, this, that and the other. I said, "What is going on here?" As it turns out they said they were looking to put a DFO on the site and "We don't want you guys to sell the same thing".

I said I understood and my clients were probably obviously very disappointed about that but I thought it odd because they did not have 4B zoning land left, they would have to rezone. Nonetheless, they proceeded on their way and my clients sought different land. I still deal with that client on a number of other matters and consequently recently I said, "You might as well ring AMP now because obviously there are no DFOs going anywhere". He said, "I did, I rang them last week". I said, "What happened?" He said, "They still think they are going to get it".

The Hon. DAVID OLDFIELD: So AMP are confidently proceeding, despite what has occurred?

Mr MOSCA: It would appear that way, yes.

The Hon. DAVID OLDFIELD: Do you know Alex Sanchez?

Mr MOSCA: Yes, I do.

The Hon. DAVID OLDFIELD: Has he at all indicated to you why it was that the cinema complex that was originally planned for the site would not go ahead?

Mr MOSCA: I was at that restaurant meeting, whenever it was, and I was pretty astonished that he came straight out and said—because he was pressed pretty heavily as to why they did not want the cinemas—I heard the comment about, "You put in cinemas and I will give you your bulky goods".

The Hon. DAVID OLDFIELD: But who was present with Mr Sanchez?

Mr MOSCA: I think it was either Nabil or Sam.

The Hon. DAVID OLDFIELD: Nabil or Sam were pressing Mr Sanchez?

Mr MOSCA: "Why, Alex, why?"

The Hon. DAVID OLDFIELD: But who was pressing Mr Sanchez so that it would not be approved?

Mr MOSCA: As to why it should be that way, that "if bulky goods were permitted why are you saying this? Why do I have to do this? Who doesn't want them?" He said, "Westfield doesn't want them".

The Hon. PETER PRIMROSE: Mr Gazal, from what you have said today you have been trying to rezone and change the use of your land at Orange Grove for a very long time, have you not?

Mr GAZAL: No, I have not said that. I said the council proposed to rezone my land.

The Hon. PETER PRIMROSE: So you have not been trying for a long time to rezone your land?

Mr GAZAL: No, I never tried to rezone my land, it was the council who rezoned it first to 4B for bulky goods, and it was the council this time who proposed to rezone my land. I have never sent an application for rezoning ever.

The Hon. PETER PRIMROSE: So you have never sought or raised the issue of rezoning prior to this?

Mr GAZAL: Prior to what?

The Hon. PETER PRIMROSE: Prior to the time when you made the initial submission?

Mr GAZAL: I proposed once rezoning to put a petrol station when Mark Latham was mayor, and he approved it. That is the only time I asked for rezoning on my land.

The Hon. PETER PRIMROSE: If your site had been given a lawful change of use to operate as retail shops rather than bulky goods is it the case that the value of your property would have risen sharply?

Mr GAZAL: Not really because there is no market for bulky goods when they gave the AMP rezoning. They rezoned the AMP site about two years ago or three years ago from 4A industrial to 4B which takes bulky goods. When they rezoned the AMP site I lost five of my tenants. There is in the vicinity of seven kilometres three bulky goods retail centres in Liverpool: the AMP one, which is bigger than mine; my centre, which was supposed to be the only centre in the area; and Warwick Farm opposite the racecourse.

The Hon. PETER PRIMROSE: So what you are telling the committee is that if you had been given the lawful change to operate retail shops, if the zoning had been approved lawfully, there would have been no change in the value of the land?

Mr GAZAL: I never thought of it at this time but I think I would really have to get a value of my land to see if there is.

The Hon. PETER PRIMROSE: Is it not a fact that if your property had been given a lawful change of use you would have made a personal windfall profit of more than \$5 million?

Mr GAZAL: The company would have made it.

The Hon. PETER PRIMROSE: Your company would have made it?

The Hon. David Oldfield: Point of order.

Mr GAZAL: How did you come to the \$5 million, Mr Primrose, please?

CHAIR: Mr Gazal, Mr Oldfield has a point of order.

The Hon. David Oldfield: I do not see anything in the terms of reference, even in any broad sense, that allows for questioning that is essentially cheap shots on Mr Gazal's success, or potential success, on the site. I

would certainly offer Mr Primrose the opportunity of telling us where in the terms of reference such would be canvassed.

The Hon. PETER PRIMROSE: Madam Chair, I will give you the opportunity to decide whether this is going to be covered up.

CHAIR: No point of order. Mr Primrose, proceed.

The Hon. PETER PRIMROSE: An independent property valuer says in his report that the land value alone of your property would have risen by about 60 per cent: up from \$9.2 million to more than \$14.5 million; a windfall gain to you of more than \$5 million.

Mr GAZAL: Who is this valuer? Can you give me a copy?

The Hon. PETER PRIMROSE: Yes, I am happy to give you a copy.

Mr GAZAL: Who commissioned him?

The Hon. PETER PRIMROSE: I will give you those details. You believe there had been no change? There would be no change in the value of your property if the valuation had been—

Mr GAZAL: Mr Primrose, firstly, it is irrelevant to the case and secondly, I will answer it because I am not a valuer, I have no idea if the land improved or not. I know I put an improvement of \$22 million on the land.

The Hon. PETER PRIMROSE: So you are denying that it has ever been a matter of consideration to you that if the lawful change of use to operate had been changed to the value of your property—

Mr GAZAL: I am a businessman, Mr Primrose, it is always in my mind to make money or to do business, otherwise I would not be in business.

The Hon. PETER PRIMROSE: But it has never been of interest to you, the change in value of your land?

Mr GAZAL: It has always been an interest to improve myself and my land and improve the site around me. It is always in my mind.

The Hon. PETER PRIMROSE: But you have never thought of how much the value of the property may have changed?

Mr GAZAL: It could change. I am not saying it could not change, it could change. If I can fill it with bulky goods retail—as a matter of fact I am getting more rent from bulky goods retail than I am getting from factory outlets but there are no more customers.

The Hon. PETER PRIMROSE: Is it not a fact that you possibly stood to make many millions of dollars from this planning—

Mr GAZAL: Can I finish my answer? You asked me a question.

The Hon. PETER PRIMROSE: I have asked you a question and I have got three different answers so far.

Mr GAZAL: I will give you the right answer.

The Hon. PETER PRIMROSE: Please do so, I would appreciate it.

Mr GAZAL: I can get the same rent from bulky goods that I can get from the factory outlet, therefore I do not think it will really add much to the value. It might add a bit more than bulky goods but the point is that they went and rezoned the AMP site in the crossroads and there are no more tenants for bulky goods. If Mr Carr can bring me tenants I will vacate—

The Hon. PETER PRIMROSE: It is very pleasing that you know about the valuation of land, but you do not seem to know how the value of your land at Orange Grove would have changed.

Mr GAZAL: I am not a valuer but as a businessman this is what I always try, to get a better value for my land than I have.

The Hon. PETER PRIMROSE: So how much would it have increased? What would have been your personal windfall profit?

Mr GAZAL: Give me 14 days I will commission a valuer and tell you.

The Hon. JOHN RYAN: So you have never had your land valued in those terms?

Mr GAZAL: Not after the factory outlet, no.

The Hon. JAN BURNSWOODS: Isn't that a bit strange, as a businessman?

The Hon. JOHN RYAN: Madam Chair, could I just ask a question of Mr Primrose? Could you give the Committee details as to who valued Mr Gazal's land for you.

The Hon. PETER PRIMROSE: Mr Gazal, in his judgment of 16 January 2004 Justice Lloyd of the Land and Environment Court said that your unlawful zoning was "an attempt to elevate the power of the dollar above carefully formulated planning and environmental controls".

The Hon. JOHN RYAN: Are you answering my question about who valued Mr Gazal's land for you?

The Hon. PETER PRIMROSE: I am happy for both of us to be sworn in if you wish.

The Hon. JOHN RYAN: Who is helping the Labor Party with the land valuation?

CHAIR: Mr Primrose, are you happy to table the Land and Environment document?

The Hon. PETER PRIMROSE: I am happy to do whatever I wish to do.

The Hon. JOHN RYAN: I am not happy about you doing whatever you wish to do. Somebody has provided it for you, Mr Primrose. Decent transparency requires you to reveal who valued the land.

The Hon. JAN BURNSWOODS: Madam Chair, I notice with all of the pieces of paper held by everyone else who has asked questions, that up until now at no point have you even thought of asking about what is on their piece of paper, but suddenly now you want to cover it all up. Suddenly now because Peter Primrose asks a question, the two Opposition members, you and Mr Ryan, get yourselves all in a lather because you want to know what it is. It does not matter what Lee Rhiannon or David Oldfield or John Ryan have, but now you are all doing the cover-up.

CHAIR: I will ask Mr Primrose if he wishes to make the documents available to the Committee or to the witness, Mr Gazal?

The Hon. PETER PRIMROSE: Am I being quizzed by the Chair?

The Hon. JAN BURNSWOODS: Are you swearing him in?

The Hon. PETER PRIMROSE: I am happy to take the chair and read what I have got into evidence, if you wish.

CHAIR: If you do not want to that is fine, just proceed with some questions.

The Hon. PETER PRIMROSE: Am I to be given extra time to read it? Since I am being questioned here and you are obviously out to protect Mr Gazal over this matter, will you give me extra time?

The Hon. JOHN RYAN: I think I asked Mr Gazal some pretty tough questions myself. I do not really think I am here to protect him.

The Hon. JAN BURNSWOODS: What about the Liberal Party PR consultants you have given him?

The Hon. JOHN RYAN: What Liberal Party PR?

CHAIR: Can we just proceed to the next question, Mr Primrose, if you have got one?

The Hon. PETER PRIMROSE: I am asking will I get extra time if I deal with the question that I have been asked?

The Hon. JOHN RYAN: I only asked him if he bribed someone from Liverpool Council. I hardly gave him an easy time.

The Hon. PETER PRIMROSE: Will I be given extra time if I deal with the matter that both you and Mr Ryan asked for?

CHAIR: I will give you two minutes at the end of your 20 minutes, yes, and I will give two minutes to the crossbench and two minutes to the Opposition.

The Hon. PETER PRIMROSE: Is it not a fact, Mr Gazal, that you would do or say anything to protect the personal financial benefit you gained when Liverpool council gave you an unlawful approval for Orange Grove in November 2002?

Mr GAZAL: I think you are wrong in your question. The council did not give me an unlawful, the council gave me consent which was lawful. Westfield sued us and the council. The council elected not to fight the lawsuit and he went on rezoning the land. I fought the lawsuit and it cost me over \$7,000 or \$8,000 already. It was a lawful consent issued by the Liverpool council, which was a lawful council at that time.

The Hon. PETER PRIMROSE: Is it not a fact that you would do or say anything to get back at the State Government because the assistant planning Minister made a decision on planning grounds that you do not like?

Mr GAZAL: I would like to sit with the planning Minister. We asked her, we wrote her a letter, to tell us what sound planning grounds she made the decision on because from the documents we have subpoenaed from the Department of Planning there is nothing which says that she had an advice to not sign the section 69 or the rezoning on any planning ground, or was it favorable to sign the plan. I can show you a document which has three of her senior planners told to advise her on sound planning.

CHAIR: You are tabling that document, Mr Gazal.

Mr GAZAL: Yes.

The Hon. PETER PRIMROSE: What dollar value would you put on the Orange Grove centre?

Mr GAZAL: No, I have to answer the question, Mr Primrose.

The Hon. PETER PRIMROSE: Well, I am asking another one. What dollar value would you put on the Orange Grove centre?

Mr GAZAL: You would like an answer and I would like to give you an answer. There is also an advice from her corporate counsel dated 22 June. I would like to table this document also.

Document tabled.

I will read an extract from it. No. 5 states, "While the draft LEP will allow a means to avoid the consequence of the court's decision it will not overturn the decision as such. The courts did not consider the

planning merits of the use whatsoever, just whether or not the use was technically within the range of permitted uses." Item 9 goes on to say, in answer to Mr Carr's statement on every radio station and newspaper in town, "The spot rezoning of land to regularise a use which already exists or to prevent a particular development proposal has occurred in numerous cases before, eg in 1992 Coffs Harbour, amendment No. 21; in 1995 SEP 45 mining; in 1999 Byron LEP amendment No. 75".

The Hon. PETER PRIMROSE: This is all in your submission, is it not?

Mr GAZAL: I have to finish.

The Hon. JAN BURNSWOODS: It is all in your submission so we do not need you to read it.

The Hon. PETER PRIMROSE: What dollar value would you put on the Orange Grove centre?

Mr GAZAL: What do you mean? Can you be more specific?

The Hon. PETER PRIMROSE: How much is it worth?

Mr GAZAL: I am a businessman not a valuer, as I said before. I believe at the moment it is worth about \$45 million to \$50 million. The price of land is about \$22 million and the construction would be about \$22 million today if you wanted to rebuild it. The replacement value would be about \$44 million.

The Hon. PETER PRIMROSE: I will get my colleagues to ask some questions and then I will come back for my two minutes.

The Hon. JAN BURNSWOODS: Mr Gazal, do you support the view that in planning matters you ought to stick to the rules, observe the law and follow formal processes?

Mr GAZAL: I am the one who really sticks to the rules because I am within the rules and I have always been within the rules. The propaganda you heard from Mr Bob Carr is not the truth at all. If you read the department—

The Hon. JAN BURNSWOODS: If you believe in following formal processes and probity and all those things, can you tell us whether you acted with probity and propriety by authorising and participating in midnight stake-outs and dawn arrivals at Mr Knowles's house in order to coerce the Minister into interfering with the decision of another planning Minister so that you might achieve the windfall profit that Mr Primrose has been asking you about?

Mr GAZAL: Can you explain "probity" to me? I do not know this word.

The Hon. JAN BURNSWOODS: "Propriety"—

Mr GAZAL: No, "probity".

The Hon. JAN BURNSWOODS: "Honesty" would probably be a fairly good definition. Do you believe in proper process?

Mr GAZAL: I definitely do believe in proper process and—

The Hon. JAN BURNSWOODS: Can you explain why you participated in 11:30 p.m. stake-outs at Mr Knowles's house?

Mr GAZAL: I did not; I was invited to the place by Mr Stan Knowles.

The Hon. JAN BURNSWOODS: Why did you participate at 6 a.m.?

Mr MOSCA: Can I answer that question?

The Hon. JAN BURNSWOODS: No, I will get to you, Mr Mosca, thank you very much.

Mr GAZAL: Because when Mr Craig Knowles was leaving the opening of the centre on 21 November he asked me. He said, "If you need help come to me." That is why we went to him.

The Hon. JAN BURNSWOODS: So was your business partner, Mr Mosca, who went there first following formal process and probity—

Mr GAZAL: No, he did not go first; we went together.

The Hon. JAN BURNSWOODS: I am asking the questions, Mr Gazal. When at 11:30 p.m. on 24 June he telephoned the home of Mr Knowles's parents was he following these proper processes that you believe in?

Mr GAZAL: He is very close to Mr Knowles. You will have to ask him. Do not ask me this question because he is very close to Mr Knowles.

The Hon. JAN BURNSWOODS: Do you think he was following proper processes when he made this call while parking his car across the driveway of Mr Stan Knowles's house? Do you think that was proper?

Mr GAZAL: I think it is very proper knowing what the relationship is between Frank Mosca and Craig Knowles.

The Hon. JAN BURNSWOODS: So he parks his car across the driveway and uses his mobile telephone—

Mr GAZAL: He never did that. I think you are mistaken.

The Hon. JAN BURNSWOODS: Mr Gazal, were you and Mr Mosca following proper process because you also were there at 11.30 p.m.?

Mr GAZAL: Yes, we are, madam.

The Hon. JAN BURNSWOODS: Even though you had been told earlier in the day by the Minister's father that Mr Mosca should not be involving Minister Knowles in this matter?

Mr GAZAL: I never spoke to the Minister's father. You are wrong.

The Hon. JAN BURNSWOODS: Okay. So who did speak to the Minister's father?

Mr GAZAL: I do not know. I think Mr Mosca spoke to him.

The Hon. JAN BURNSWOODS: So you were at the house without knowing whether there had been a telephone conversation?

Mr GAZAL: Mr Mosca spoke; I did not speak to him.

The Hon. JAN BURNSWOODS: But you just said that you did not know who spoke to him.

Mr GAZAL: No, I said that Mr Mosca spoke. I did not speak myself to Mr Stan.

The Hon. JAN BURNSWOODS: But you now think that Mr Mosca might have.

Mr GAZAL: Yes, because he knows Mr Stan and he knows Mr Knowles.

The Hon. JAN BURNSWOODS: Mr Mosca then threatened the Minister's father by saying that if the Minister did not fix this he would go to Brogden. What do you think of that as a proper planning process?

Mr GAZAL: Mr Stan was threatened by who?

The Hon. JAN BURNSWOODS: By Mr Mosca in your presence.

Mr GAZAL: No, it was not in my presence. You are wrong. Mr Mosca never threatened—

The Hon. JAN BURNSWOODS: But you were there.

Mr GAZAL: No, I was not there.

The Hon. JAN BURNSWOODS: You were not there.

Mr GAZAL: No, I never was there when Mr Mosca spoke to Mr Stan.

The Hon. JAN BURNSWOODS: But you were there.

Mr GAZAL: No, I was not. I was there when the Minister invited us to his house at 7.30 in the morning on 25 June.

The Hon. JAN BURNSWOODS: A little while ago you said in answer to Mr Ryan's question that it was 6 a.m.

Mr GAZAL: We went there at 6 a.m. or 6.30 a.m. At 7:30 a.m. when he came out to get his paper he saw us and invited us to his house.

The Hon. JAN BURNSWOODS: So you were staking out the house from 6 a.m.—in fact, some witnesses say 5.30 a.m.—until 7:30 a.m.?

Mr GAZAL: Does it matter? We were not staking out—

The Hon. JAN BURNSWOODS: You were staking out the house of the Minister's elderly parents.

Mr GAZAL: No, we were not. You are wrong.

The Hon. JAN BURNSWOODS: You also previously denied that you were there.

Mr GAZAL: You are very wrong, madam. We were in our car waiting for Mr Knowles to come out because Mr Knowles—

The Hon. JAN BURNSWOODS: You said earlier that you had been invited.

Mr GAZAL: Yes, he came out to get his paper and he invited us.

The Hon. JAN BURNSWOODS: But what were you doing there for an hour and a half or two hours before he came out?

Mr GAZAL: To see him.

The Hon. JAN BURNSWOODS: Were you invited or not?

Mr GAZAL: We did not want to disturb him and knock on his door at 6:30 a.m.

The Hon. JAN BURNSWOODS: So you parked in his drive for two hours.

Mr GAZAL: No, we did not park in his driveway. You are wrong again. You are making wrong statements, like Mr Bob Carr.

The Hon. JAN BURNSWOODS: Where did you park?

Mr GAZAL: You are good at making wrong statements.

The Hon. JAN BURNSWOODS: Where did you park?

Mr GAZAL: We parked on the road outside; his driveway was always clear.

The Hon. JAN BURNSWOODS: From 5:30 a.m.?

Mr GAZAL: No, from 6:30 a.m. We were there; you were not. You do not know. You are making a wrong statement again, madam.

The Hon. JAN BURNSWOODS: Who were the "we" who were there?

Mr GAZAL: Make your statement right first and I will answer your question.

The Hon. JAN BURNSWOODS: Who were the "we" who were there?

Mr GAZAL: Frank Mosca, myself and my son Nicholas.

The Hon. JAN BURNSWOODS: You all just happened to be parked in the street outside the driveway at 5.30 or six o'clock in the morning—

Mr GAZAL: We did not "happen". Make your statement right. It did not happen. We were there to meet the Minister. He asked us to come to see him if we needed help.

The Hon. JOHN RYAN: It is in the submission.

The Hon. JAN BURNSWOODS: Did he ask you to come in at 7.30?

Mr GAZAL: Yes. One time we went to see him in his office at Ingleburn at 6.30. He asked us to come at this time. You do not know. That is why you ask the question.

The Hon. JAN BURNSWOODS: So you believe in proper planning processes—

Mr GAZAL: I do believe in proper planning processes.

The Hon. JAN BURNSWOODS: And you were at a private house at 5.30 or six o'clock in the morning to get one Minister to intervene in the role of another Minister in relation to a planning matter.

Mr GAZAL: No, we thought he was the Minister. She is the junior Minister; she is supposed to assist him.

The Hon. JAN BURNSWOODS: Mr Gazal, you have previously given a great deal of evidence about what you did or did not say or hear about the role of Ms Beamer. I am now a bit puzzled to hear you say at this late stage that you thought that he was the Minister. I think you should get your story straight, Mr Gazal.

Mr GAZAL: He is the Minister. Is he not the Minister and she is the—

The Hon. JAN BURNSWOODS: Why have you been talking about the role of Ms Beamer all the time?

Mr GAZAL: Because Ms Beamer took it on herself to deal with the matter.

The Hon. JAN BURNSWOODS: She took it on herself, did she? You really do believe in proper processes!

Mr GAZAL: We did ask her to deal with the matter. It is her problem with him. I do not know how they work together. It seems that they do not talk to each other.

The Hon. JAN BURNSWOODS: Maybe you are beginning to understand. I will hand over to Ms Griffin.

CHAIR: No—

The Hon. KAYEE GRIFFIN: Madam Chair, I have only one question that I wish to ask and I would prefer to ask it now.

CHAIR: You can do that but it will take up Mr Primrose's two minutes.

The Hon. PETER PRIMROSE: Come on, I was questioned and asked for a copy of a letter.

The Hon. KAYEE GRIFFIN: Mr Gazal, is it a fact that lease documents were offered by you and your agents at Orange Grove and signed by business tenants after the court action was instituted by Westfield against you and that such documents did not include any disclosure about those court proceedings, which constituted misleading and deceptive conduct by you and your agent? Does that not show a very callous disregard for other people's investment security, as shown in the *Daily Telegraph* of this morning, and for the people who invested in shops in your development? Does it not now leave you open to legal action from the tenants that you have deceived?

Mr GAZAL: What is in the paper this morning is lies. We spoke to the man whose picture you showed. I will give you his number—my son has it—and you can call him. All the tenants are behind us—

The Hon. KAYEE GRIFFIN: Can you say that you have not deceived them by offering leases after a court action was instituted?

Mr GAZAL: I have never deceived anybody.

The Hon. KAYEE GRIFFIN: Have you signed leases after the court action?

Mr GAZAL: Can I answer the question or should I wait to hear you first?

The Hon. KAYEE GRIFFIN: I am finished.

Mr GAZAL: My lawyer is dealing with the leases. The leases were dealt with by my son, my lawyer and Knight Frank, the agent who brought the tenant. The leases are all with my lawyer, Mr D'agostino. He knows all the details of the leases and about what you are asking. He will be a witness to this same inquiry. He is the lawyer who made the leases.

The Hon. KAYEE GRIFFIN: So you cannot say that leases were signed after the court action was instituted.

Mr GAZAL: I definitely did not deceive anybody. Everybody I met and I talked to I told about the action. We wrote them letters. This will all come out. 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. He will be appearing before the inquiry on Monday.

The Hon. PETER PRIMROSE: I simply ask again: Is it the case that the value of your property as at 1 July 2003 under 4B zoning was \$9,220,000?

Mr GAZAL: I cannot answer you because I do not know where you are reading this information from. I told you that I am not a valuer. Show me where you are reading from.

The Hon. PETER PRIMROSE: What do you think the value of the land is?

Mr GAZAL: I think it is much more than that before rezoning. I think you do not have an idea about commercial values in the area; you have no idea whatsoever. If you say that my land is only worth \$9 million you are totally mistaken. You will go bankrupt on this basis.

The Hon. PETER PRIMROSE: What windfall profit do you believe you will obtain?

Mr GAZAL: I have not assessed it. I have no idea. If it was fully leased it would be the same value as a fully leased factory outlet. You take the factory outlet and give it to Mr Carr or to DFO.

The Hon. PETER PRIMROSE: Okay. I will come back to that point.

The Hon. JAN BURNSWOODS: You told us before, Mr Gazal, that the land was worth \$22 million.

Mr GAZAL: The land of the factory outlet alone is worth \$22 million. What he is reading he has no idea.

Ms LEE RHIANNON: Mr Gazal, how long have you known Joe Tripodi? How many years?

Mr GAZAL: Since about 1996 or 1997—probably 1996—so about nine years I would say.

Ms LEE RHIANNON: This question is for all three witnesses. What contact have you had with Mr Tripodi since the 22 May meeting at Gloria Jean's cafe?

Mr GAZAL: I rang him maybe a couple of times. I have the telephone records. He kept saying the same thing: "Diane will do the right thing". When was that? As a matter of fact, I did not ring Joe at all after 22 May.

Ms LEE RHIANNON: So you have not had any contact with him since 22 May?

Mr GAZAL: Not personally, no. As I recall I have not had any contact.

Ms LEE RHIANNON: Have either of the other witnesses had contact with Mr Tripodi since 22 May?

Mr BARGSHOON: Yes, I did a couple of times.

Ms LEE RHIANNON: Did you discuss this matter?

Mr BARGSHOON: Yes, I did. Joe was in the shop. He did not believe it. When Nabil found out and told me I called Joe, who said, "No way." I said, "Well, mate, that's what I've just been told by Nabil." He said that he was going to get straight onto her office. Joe believed all the way that this was going to get signed. He believed Diane Beamer was going to sign it. She was doing the right thing as well.

Ms LEE RHIANNON: When were your contacts after 22 May?

Mr BARGSHOON: It was the day that Nabil received the call when he found out that it was not going to get signed. What day was that? It was after the 22nd. I think it was a week.

Mr GAZAL: On the 9th.

Ms LEE RHIANNON: On 9 June or 9 July?

Mr GAZAL: We received the document on 25 June.

Ms LEE RHIANNON: Okay, early July?

Mr GAZAL: Yes, early July.

Mr BARGSHOON: I called him and he said that he was going to do some phone calls and call me back. He did call me back. He said he left her an urgent message on her voicemail and she had not returned his call. He called me the next day just to confirm that I am going to turn up and I told him no, I was not, because of this issue.

The Hon. DAVID OLDFIELD: Mr Mosca, I have here a letter to you signed off by Garry McCully, general manager, Liverpool City Council. He says:

The amending local environment plan that will permit the Council to approve the further development application which it already has, is now with the Department and the Minister awaiting final approval which is understood is imminent.

Was it always your understanding that this was going to be approved through the department?

Mr MOSCA: Yes. All my discussions with the department and with Mr McCully led me to believe that things were proceeding appropriately. I often spoke with the person handling the matter at DIPNR, a Ms Cheetham. She did say there was a lot of action on this matter, a lot of submissions by others.

The Hon. DAVID OLDFIELD: That letter was dated 16 April 2004?

Mr MOSCA: Yes.

The Hon. DAVID OLDFIELD: So certainly at that date, through April, and I gather at least to a degree through May, there was still an understanding by you, through the council and through the department, that things were progressing as expected.

Mr MOSCA: Yes.

The Hon. DAVID OLDFIELD: There was no indication that things were going wrong?

Mr MOSCA: No.

The Hon. DAVID OLDFIELD: Were you aware that the department, in early April, had had Parliamentary Counsel draft a gazettal for the approval?

Mr MOSCA: I think through my discussions with Ms Cheetham again I knew things were proceeding on those matters. I understood it went twice to Parliamentary Counsel.

The Hon. DAVID OLDFIELD: So certainly from what you, Mr Gazal and Mr Bargshoon have said, up until it became apparent in your view there was political interference, there was no indication that this was not going to be approved; rather, it was the other—simply, that the approval was a matter of process?

Mr MOSCA: Yes, absolutely.

CHAIR: The final question, if I could ask Mr Gazal to clarify for the Committee the circumstances in which you went to Mr Knowles' house. Why were you there?

Mr GAZAL: I think I would let Frank Mosca, because I rang Frank and told him and he said we should definitely go and see Craig Knowles because he is the one who asked us if we needed help to come and see him. I leave it to Frank because he took it on his own to ring Craig and try to organise a meeting.

CHAIR: If you could explain to us those circumstances, Mr Mosca?

Mr MOSCA: Sure. I had spoken to Mr Stan Knowles. I do have occasion to ring Stan, I had rung previously when the cinema debacle was occurring, and I spoke to Stan now and I said, "Stan, I need to see Craig. When could I see Craig?" He said, "We do not get to see him that often. He comes in very late and he leaves very early." I said, "Stan, look, this is very important, there is something going on—"

The Hon. JAN BURNSWOODS: Where were you during this conversation? Parked in the drive, one of the two cars parked in the drive outside?

CHAIR: Order! I would like to hear the answer.

The Hon. JAN BURNSWOODS: We all would like to hear the answer.

The Hon. JOHN RYAN: I think we can if you would be quiet.

CHAIR: Proceed, Mr Mosca, thank you.

Mr MOSCA: I spoke to Stan. I said, "Look, we have it on very good advice that a Minister has told us that there have been words given to Beamer not to sign this thing, and I really think we should talk to Craig."

The Hon. JAN BURNSWOODS: When was this conversation, what day?

CHAIR: Yes, you can. What day was that?

Mr MOSCA: It was late June.

The Hon. JAN BURNSWOODS: 24 June?

Mr MOSCA: Well, if you say so.

The Hon. JAN BURNSWOODS: At 11.30 the night before?

Mr MOSCA: No. I went and had tea at Stan and Maree's house and talked about a number of—

The Hon. JAN BURNSWOODS: At 11.30 at night?

Mr MOSCA: No. This was in the afternoon. It was afternoon tea, yes.

The Hon. JAN BURNSWOODS: Before you rang them from your mobile while parked across their drive?

Mr MOSCA: It must have been, yes.

The Hon. JAN BURNSWOODS: So, you had two conversations on 24 June?

Mr MOSCA: No, I am saying I had conversations, I am not saying which days they were.

The Hon. JAN BURNSWOODS: You said late June. Think of another day if you can quickly.

CHAIR: Order! Can you just proceed with what you were saying, Mr Mosca?

Mr MOSCA: I rang Mr Knowles. I said, "Look, Stan, we need to come and see Craig." He said, "He gets home very late." I said, "I will come over in the morning. Tell him I will be there in the morning. I need to come and see him about what is going on. This is bad." I was having some dinner and I was with Nabil, and I got a call from my wife, who told me that Stan Knowles had come to my house and that he is going to be ringing me. Sure enough, I did get a call from Stan Knowles on my mobile. He said, "Look, do not come tomorrow morning because there is going to be a media frenzy about some announcement about the nurses thing on Craig," and that we should not come. I said, "Stan, I have to see him. We will come tonight." He said, "He gets back very late." I said, "That is the way it is. He has to know this. He has to know what is going on. It is going to be bad news. It is bad, what is going on."

For me it was disastrous that an MP had told us that Carr had told Beamer not to sign something, and they could not expect people to lay down and cop this and let it go. I wanted to let Craig know that if this got out it would be a disaster. So, I said, "We will go tonight. We will be there tonight, Stan." He said, "He gets back very late." I said, "Fine, but we will be there." We did get there very late, but we did not know if he was there or not, and we did not want to disrupt, and then I think Sam and I took the phone and rang and then hung up, and then they rang back.

The Hon. JAN BURNSWOODS: So, Sam was there as well? We did not find that out before.

CHAIR: Order! Just continue.

The Hon. JAN BURNSWOODS: Before, we were told by Mr Gazal—

The Hon. JOHN RYAN: You were so bloody interested in this earlier, can he at least continue with his answer?

CHAIR: Order! Just continue with your answer.

Mr MOSCA: It turned out that it was very late. Either he was there or he was not there. We thought this is wrong, we cannot stay here. We will come back in the morning. So, we got there about 6.30. We waited outside. There was me, Mr Gazal and his son. We parked across the road and just waited. I thought how early can he possibly go to work? He must get a car too pick him up or something like that. Madam, I may have driven into the driveway. There were no cars there. First, a car came, drove up the driveway and then drove out. I thought, who could that be? It turned out it was the paper delivery. So, I drove in and eventually Craig Knowles came out and waved us in—come in, come in. I said all right. He said, "You are bloody stupid. You should not be here." I said, "Craig, we have to talk to you about something serious."

We showed him that letter from Stephen Driscoll. He said there are some issues outstanding. I said that things were happening that were not right. He said, "I have to tell you, you are bloody stupid because you could be seen trying to influence a Minister." More or less at that point he offered coffee and tea, and we said we would go. Nabil said, "Look, let us go." He said, "I am your friend, you are my friend" but he could not believe that he did not want to talk about it or get to the bottom of it. So, we left. We brought the Krispy Kremes at that time. We were disturbing them so we brought a box of Krispy Kremes for the kids, that is all, and we left.

I think it was the next day or that morning that I rang Michael Meagher, who told me he still had not received this matter, they were still waiting on it and did not want to take any more calls on it. Then, when we got the subpoenaed documents and I saw the section 69 report that had been signed recommending approval and then the subsequent letter from Jennifer Westacott with those four points at issue, I then rang Stan Knowles again, a few days later, and said, "Stan, I have to come and see you. I have to see Craig." He said, "Listen, about the other morning, I am not happy. That is not right. Do not do that sort of thing again." I said, "Stan, I will cop that on the chin. You are right, no worries, but these are pretty awkward times." He said, "All right, come around." So, I went around and we had coffee.

The Hon. PETER PRIMROSE: Madam Chair, I have many more questions for these witnesses.

CHAIR: We might have to have another hearing.

The Hon. JOHN RYAN: You guys wanted to shut it down. We will come back for another day.

The Hon. PETER PRIMROSE: I move that we continue the questioning now.

The Hon. JOHN RYAN: Only that Ms Kibble is here.

The Hon. PETER PRIMROSE: I am sure Ms Kibble will not mind. This is an important issue. I move that we continue the questioning.

The Hon. JOHN RYAN: For how long?

The Hon. PETER PRIMROSE: Until we are finished.

The Hon. JOHN RYAN: Until you are finished? You are asking the same question over and over.

The Hon. PETER PRIMROSE: Until the Committee is finished.

The Hon. JOHN RYAN: Do you have further questions to ask?

The Hon. PETER PRIMROSE: Yes.

The Hon. JOHN RYAN: Okay, go for it.

CHAIR: We may be cutting into the scheduled time for the lunch adjournment, and I want the government members to understand that there are witnesses, Ms Kibble for example, who are here already today.

The Hon. JOHN RYAN: Can someone check with the council representatives if any of them are not going to be here if we do not go ahead?

CHAIR: Could the secretariat check with the next witnesses to see whether they are inconvenienced? Ms Kibble is okay. Are the three witnesses at the table able to be here for a little longer?

Mr GAZAL: We are at your service. We can be here all day.

Mr BARGSHOON: As long as they do not repeat the question 100 times.

The Hon. PETER PRIMROSE: We would like to receive an answer. The same answer may be 100 times.

Mr BARGSHOON: I have a million answers for you, Mr Primrose.

Mr GAZAL: Can you specify your question? I will answer it. I always answer questions, even if they are not relevant.

The Hon. JAN BURNSWOODS: Mr Mosca, we had some questions earlier—I forget who asked them—about your relationship with Mr Turrisi from Liverpool council.

Mr MOSCA: Yes.

The Hon. JAN BURNSWOODS: Perhaps the suggestion that you were getting preferential treatment from Mr Torresi amongst others. What would your comment be on that?

Mr MOSCA: I received anything but preferential treatment from Mr Turrisi. My applications seemed to have to jump through hoops all the time. Many applications took far longer than what normally would happen. Clearly, I do not think I received preferential treatment.

The Hon. JAN BURNSWOODS: You would say that even though you had that letter from Mr Turrisi that contained a draft approval of the development application even before the period for submission under the advertising had expired?

Mr MOSCA: Yes, it is not the first time I would have received a draft set of conditions from the council about a development application.

The Hon. JAN BURNSWOODS: Mr Mosca, you seem to be someone who was mentioned quite a bit in the Daly inquiry into Liverpool council.

Mr MOSCA: I understand, yes.

The Hon. JAN BURNSWOODS: I just want to refer to some transcripts from that. For instance, in the transcript of 20 January this year, council assisting said:

There is an allegation in one of the submissions that everything that Mr Mosca put up to council went through straightaway.

Is it a fact that your applications received favoured treatment?

Mr MOSCA: No.

The Hon. JAN BURNSWOODS: They did not go through straightaway?

Mr MOSCA: Not at all.

The Hon. JAN BURNSWOODS: I return to the transcript again, this time of 17 February, where Mr Broad said:

There has been a suggestion in respect of an architect he understand by the name of Mosca. To your knowledge is there any preferential treatment or benefit from their dealings with council?

You did not think there was a pattern here in the Daly inquiry?

Mr MOSCA: I never read the Daly inquiry.

The Hon. JAN BURNSWOODS: So you do not think you got any sort of priority treatment on any of the matters you had before council?

Mr MOSCA: No. I seem to be an easy target to make allegations about, but no.

The Hon. JAN BURNSWOODS: Why do you think you are an easy target?

Mr MOSCA: Well, I do a lot of work at Liverpool. I have been an architect there for a long time.

The Hon. JAN BURNSWOODS: But why would you be more a target than any other architect who has been in the area for a long time?

Mr MOSCA: I do not know. Maybe you should ask the people doing the targeting. It seems to be easier to target me than anyone else.

The Hon. JAN BURNSWOODS: As far as you are concerned you are as pure as the driven snow?

The Hon. JOHN RYAN: I think all have sinned and fall short of the glory of God. There is none perfect.

The Hon. KAYEE GRIFFIN: Mr Gazal, you said previously—I stand to be corrected about exactly what you did say—that you had tried to contact Minister Beamer's office to speak to her and you said you had not been able to do that.

Mr GAZAL: Yes.

The Hon. KAYEE GRIFFIN: You said that you had not spoken to her. Did you make those contacts with Minister Beamer's office to try to meet with her?

Mr GAZAL: We tried through Michael Meagher, her chief of staff. We tried through Joe Tripodi. We tried through Julia Irwin. All of them came negative.

The Hon. KAYEE GRIFFIN: Who tried to make contact with the Minister's office?

Mr GAZAL: Frank Mosca.

The Hon. KAYEE GRIFFIN: Do you know how many times Mr Mosca tried to contact the Minister's office?

Mr GAZAL: According to what I understood from him, quite a lot of times.

The Hon. KAYEE GRIFFIN: How many would that be?

Mr GAZAL: I have no idea. You could ask Mr Mosca.

The Hon. KAYEE GRIFFIN: Mr Mosca, you tried to make contact with Minister Beamer's office on behalf of Mr Gazal?

Mr MOSCA: Yes.

The Hon. KAYEE GRIFFIN: How many times did you contact the office?

Mr MOSCA: Towards the end, on a fairly regular basis—every day, every couple of days at least.

The Hon. KAYEE GRIFFIN: About 40 telephone calls?

Mr MOSCA: I do not know. I have not collated or done any—

The Hon. KAYEE GRIFFIN: Is that in terms of the urgency of trying to meet with Minister Beamer to get resolution to your matter?

Mr MOSCA: My understanding of my discussions with Michael Meagher were that it appeared that everything was on track and he was hopeful of a resolution to it. So from my point of view it appeared that the office itself was working towards a favourable resolution so it did not seem like we needed to speak to Minister Beamer from my point of view.

The Hon. KAYEE GRIFFIN: At the end of 40 phone calls, or whatever it might have been over a period of time, what was the reply in terms of what was happening with your development or whether you were going to be able to get a meeting with the Minister?

Mr MOSCA: It did not seem like we would get a meeting. They said we could call but they would prefer not to meet. So I thought: Fair enough, we will do it that way. We will call. So we did. But during the process I would ring DIPNR itself and see how things were going. That was an avenue open to us so we would ring DIPNR and see how that was going. When I got to the point where it apparently left their hands and gone to—the words they used were, "It is in another political stratosphere right now". I said, "Well, I will have to start ringing Michael Meagher.

The Hon. KAYEE GRIFFIN: Could you give me dates of the period when this was happening from the start to the finish of trying to find out what was going on with the development with the Minister's office?

Mr MOSCA: I would have to refer to notes. I put everything in writing for you but—

The Hon. KAYEE GRIFFIN: I am happy to take it on notice.

Mr MOSCA: Sure.

Mr PETER PRIMROSE: Mr Bargshoon, it has been reported that you have a contract to clean the Orange Grove Centre and that the contract pays you an amount of \$20,000 per month or \$240,000 per year, is that correct?

Mr BARGSHOON: Yes.

Mr PETER PRIMROSE: It has also been reported in a newspaper today that you claim to have put "\$1 million into the Orange Grove Centre". Is that correct?

Mr BARGSHOON: I do not know where they got the million dollars from. I mentioned to them that I have invested in two machines. When I got the contract I bought a block of land with a house on it, straight after I got the contract after I heard Craig Knowles' speech that it was the best thing for Liverpool and that it was a great thing. That was before he cut the cake. I invested and went and bought a property with a house on it. I knocked down the house, got approval to build a double storey thinking—that is where the million dollars—I do not know. I did not invest no million dollars in that property whatsoever. I do not know how they put that in.

Mr PETER PRIMROSE: So the newspaper was wrong?

Mr BARGSHOON: Either the newspaper was wrong or someone who is working for the newspaper has told them to put it in.

Ms LEE RHIANNON: Who would that be?

Mr BARGSHOON: Probably a friend of Bob Carr's again. They ring you up and they ask you questions. When you reply to them they put opposite. So they must be working for someone.

Mr PETER PRIMROSE: The newspapers?

Mr BARGSHOON: You know how it works, Peter, very well.

Mr PETER PRIMROSE: I am asking you.

Mr BARGSHOON: I am telling you yes and I am telling you that you know how it works very well.

Mr PETER PRIMROSE: Did you stand to make a great deal of money from the unlawful approval given to the Orange Grove Centre?

Mr BARGSHOON: Can you explain?

Mr PETER PRIMROSE: Did you stand to make any money from the unlawful approval given to the Orange Grove Centre?

Mr BARGSHOON: The only money I make is the money I get for the cleaning we get done. If you have any other meaning I do not understand—

Mr PETER PRIMROSE: So you have no other investments other than the ones you have just outlined in your previous answer.

Mr BARGSHOON: I have got a cleaning contract and that is it. That is all I get.

Mr PETER PRIMROSE: So you do not stand to make millions of dollars from windfall profit from the change of use as Mr Gazal would.

Mr BARGSHOON: I wish, but no, I do not.

Mr PETER PRIMROSE: I think there would be a few people wishing they were Mr Gazal making that sort of money.

The Hon. JOHN RYAN: I am not sure that he understood your question, Mr Primrose.

Mr BARGSHOON: Is he talking to me or is he talking to Mr Gazal?

The Hon. DAVID OLDFIELD: He is really just talking to the press. Do not worry about it.

Mr BARGSHOON: All right.

The Hon. JAN BURNSWOODS: Unlike you, David, who are talking to the Liberal Party.

Mr PETER PRIMROSE: Very much so. They are good mates.

The Hon. DAVID OLDFIELD: No, that note came from my staffer. I have staff too, you know.

The Hon. JAN BURNSWOODS: The one at the door came from your staff too, did it?

The Hon. DAVID OLDFIELD: Which is the one at the door?

CHAIR: Are there any more questions?

Mr PETER PRIMROSE: We have lots of questions. I am trying to confirm—what we have today is a report in the paper saying that Mr Bargshoon—it has a quote from him saying that he has invested the million dollars in the centre.

The Hon. JOHN RYAN: I think he answered that.

Mr PETER PRIMROSE: I have given him the opportunity to answer it and I have confirmed with him that he specifically said that he has no investments in that centre.

Mr BARGSHOON: Except for the contract and the machinery I bought.

Mr PETER PRIMROSE: Okay.

Mr BARGSHOON: Is that all you read in the paper today?

Mr PETER PRIMROSE: I read lots of things in the paper.

Mr BARGSHOON: Why don't you go on about the rest?

The Hon. DAVID OLDFIELD: What were your stars today, Peter?

Mr PETER PRIMROSE: Exceptionally good.

CHAIR: Order! We just want questions and answers.

Mr PETER PRIMROSE: Mr Bargshoon, did you play any part in gaining the original development consent for the change of use to Orange Grove in November 2002?

Mr BARGSHOON: The only part I played was—Joe Tripodi, he is a good mate of mine, a good friend of mine. I am sure you know that. He was lobbying for us on good terms, nothing in return, believing it was a great thing for Liverpool and for Fairfield because it was close to his seat. That was the only part I played. I was in contact on a daily basis with Joe. I can show you records where Joe would call me and I would call him at least four or five times a week. We would go over and meet in the centre at least twice a week. Even when Parliament was sitting we would meet there late at night. He would take his box of Krispy Kremes to his in-laws. That is all he got out of it, mate.

The Hon. DAVID OLDFIELD: An army marches on its stomach; the Labor Party marches on Krispy Kremes.

Mr PETER PRIMROSE: Mr Bargshoon, what role have you played in preventing the employment placement agency Drake from assisting people at Orange Grove to find retail jobs in legally zoned shops?

Mr BARGSHOON: I did not understand that, sorry.

Mr PETER PRIMROSE: Mr Bargshoon, what role have you played in preventing the employment placement agency Drake from assisting people at Orange Grove to find retail jobs in legally zoned shops?

Mr BARGSHOON: Do you mean that I assist people to find jobs? Is that what you are trying to say?

The Hon. JOHN RYAN: No. There is an employment agency appointed by the Government to assist people to find jobs. It is called Drake. Did you stop them from doing their job?

Mr 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. If he had stayed there some shopkeepers who had invested \$1 million or more—a bloke like this coming in a rude manner and saying to them, "Don't worry, we can give you a new job"—mate, these people are screaming out loud that we got jobs here. We have invested money. He got into the second and third shop but before he got into the fourth and fifth—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. I love your smile, by the way.

Mr PETER PRIMROSE: Thank you. I am sure lots of people enjoy your smile too.

The Hon. JOHN RYAN: Did you threaten him physically in any way or did you just speak to him?

Mr BARGSHOON: No, I just spoke to him. Actually, he was very rude.

Mr PETER PRIMROSE: Did he appreciate your smile?

Mr BARGSHOON: You will have to ask him that.

Mr PETER PRIMROSE: You made him an offer he could not refuse, basically.

Mr BARGSHOON: Yes, I did, actually. I asked him if he will marry me.

Mr PETER PRIMROSE: That is pleasing.

The Hon. JAN BURNSWOODS: Arising out of that, Madam Chair, Mr Gazal could I also ask you why, given the offer of the Department of State and Regional Development and then following that the work of the firm Drake, why have you refused to co-operate with those offers to find jobs?

Mr GAZAL: 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. We are not in a Communist country yet. When we get there they can come and take over the centre. They came in a rude manner. As a matter of fact, one time Mr David Oldfield was 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. We always co-operated. We wrote a letter to Mrs Beamer. We can give you a copy of it.

The Hon. JAN BURNSWOODS: But I thought you said that you had not received a letter from Ms Beamer, that these people just turned up?

Mr GAZAL: Yes, we never received—

The Hon. JAN BURNSWOODS: Why did you write a letter back if you did not receive a letter?

Mr GAZAL: Madam, the decency is that they should notify our office and talk to us at a level, not to send somebody to come from Mrs Beamer's office and take over my centre without telling us, without telling the staff, without telling the centre management. If I come to your house and take over your people or your things would you be happy?

The Hon. JAN BURNSWOODS: Perhaps you have misunderstood my question. Firstly, the Department of State and Regional Development offered to assist staff at the centre. After that it was then organised that the company Drake—

Mr GAZAL: When did they offer that? I have never seen anything in writing from them. They offered me nothing.

The Hon. JAN BURNSWOODS: But you were aware that that offer had been made?

Mr GAZAL: I was aware that Mr Bob Carr was trying to spend the taxpayers money to find jobs for the employed. He had better go and find jobs for the unemployed.

The Hon. JAN BURNSWOODS: So you were aware that the offer had been made to assist? I am not sure why you are describing that as a takeover.

Mr GAZAL: I was amazed with what Mrs Beamer and Mr Carr—they are so concerned about the employed people.

The Hon. JAN BURNSWOODS: Earlier Mr Gazal you said that there were 402 jobs at the centre. When Drake went there both they and the job co-ordinator survey established that the number of jobs was around 250. Can you explain the difference between those two figures?

Mr GAZAL: Wait a minute. I would like to explain something in your question. You said they had never gone there, we forbid them from going there. How did they get the survey?

The Hon. JAN BURNSWOODS: My question was about the—

Mr GAZAL: No, I want you to answer that question.

The Hon. JAN BURNSWOODS: I am sorry but because you are here as a witness you have to answer my questions.

Mr GAZAL: I know better than Drake how many people. Only two weeks ago we did a survey and about 402 people are unemployed.

The Hon. JAN BURNSWOODS: If I could continue asking my question—

Mr GAZAL: Can I answer it, please?

The Hon. JAN BURNSWOODS: Yes, go on.

Mr GAZAL: If Drakes have a survey, they had better show it to us because I want to know how they got that survey. Without showing me the survey, I cannot answer you.

The Hon. JAN BURNSWOODS: Does the figure of 402 include jobs that are in the legal part of the area rather than in the non-legal part?

Mr GAZAL: I have to get you the survey we made. I do not have it at the moment.

The Hon. JAN BURNSWOODS: You are saying that of the 402, at least some of them are in the legal aspects of the centre, not the part that is the subject of this inquiry?

Mr GAZAL: I do not have a copy of the survey that we did but I know we have around 402 people at the moment in the centre.

The Hon. JAN BURNSWOODS: But you must know whether those 402 are partly employed in the legal portions of the site.

Mr GAZAL: I know they are employed in the centre in the outlet and with businesses related to the outlet. If you want, I will get you the survey, if you keep it confidential from Drake and the other people.

The Hon. JAN BURNSWOODS: I would certainly like to see that because I think it is an important issue, given the different figures that have been proffered.

Mr GAZAL: Would it make a big difference if there were three or four people difference?

CHAIR: If you would be happy to provide that, that would assist the Committee.

Mr GAZAL: Yes, we will provide the survey.

The Hon. JOHN RYAN: I have a question arising from something that Ms Burnswoods just said. There seems to be a distinction between the legal and the illegal parts of the centre. Is it not fair to say that once the areas of the factory outlet that are trading contrary to the zoning close, even the legal businesses will be no longer viable and will close too?

Mr GAZAL: Definitely.

The Hon. JOHN RYAN: Mr Mosca, you have referred to the fact that Mr Knowles is your friend. It is well known that Mr Knowles is your friend; in fact, I recall the Premier making commentary on this. Would it be news to you that the Premier has in fact acknowledged that you are Mr Knowles' friend and would it be that

unusual, given that you have been a long-time friend of Mr Knowles, that you would be seeking to meet him at his home in those circumstances?

Mr MOSCA: No, it would not be unusual.

The Hon. JAN BURNSWOODS: We all go visiting our friends at 11.30 p.m. and 5.30 a.m., don't we?

The Hon. DAVID OLDFIELD: Well, some of us are awake at that time.

The Hon. JAN BURNSWOODS: David, as someone who is habitually totally unprincipled, I don't think you should go into that.

The Hon. JOHN RYAN: The only problem was that Jan Burnswoods intervened when you were answering that question. You had a relationship with Mr Knowles, which was well known, that would not make your attendance at his home in any way unusual?

Mr MOSCA: That is correct.

The Hon. JOHN RYAN: Would it be fair to say that your friendship with Mr Knowles does extend through your contacts within the Australian Labor Party?

Mr MOSCA: Yes.

The Hon. JAN BURNSWOODS: And he would bring all his friends in two cars.

Mr BARGSHOON: Otherwise he would not go.

The Hon. DAVID OLDFIELD: Mr Mosca, further to that, exactly how far back does your friendship with Mr Knowles go? Can you put a figure of years on it?

Mr MOSCA: 1985, something like that.

The Hon. DAVID OLDFIELD: So we are talking nearly 20 years?

Mr MOSCA: Yes.

The Hon. DAVID OLDFIELD: How old are you now?

Mr MOSCA: 42.

The Hon. DAVID OLDFIELD: So you have known each other since you were in your own early 20s, well before he was a member of Parliament?

Mr MOSCA: Yes.

The Hon. DAVID OLDFIELD: Was he on council or something at that stage?

Mr MOSCA: He was a councillor.

The Hon. DAVID OLDFIELD: So you have known him for nearly 20 years?

Mr MOSCA: Yes.

The Hon. DAVID OLDFIELD: In your early 20s, before he was a member of Parliament?

Mr MOSCA: Yes.

The Hon. DAVID OLDFIELD: Do I gather that through that period—is that longer than your membership of the ALP?

Mr MOSCA: Oh, much longer, yes.

The Hon. DAVID OLDFIELD: You actually knew him before you were a member of the ALP?

Mr MOSCA: Yes.

The Hon. JOHN RYAN: Did you go to school with him?

Mr MOSCA: No. We went to the same school.

The Hon. DAVID OLDFIELD: You were obviously very friendly with him and dined with him?

Mr MOSCA: Yes.

The Hon. DAVID OLDFIELD: Do you have children?

Mr MOSCA: Yes.

The Hon. DAVID OLDFIELD: Do your children know his children?

Mr MOSCA: No, my children don't know his children—maybe once or twice.

The Hon. DAVID OLDFIELD: But you certainly have an extended, long going, two-decade friendship with Mr Knowles?

Mr MOSCA: Yes.

The Hon. DAVID OLDFIELD: And there was nothing unusual about you visiting him at any given time?

Mr MOSCA: That is correct.

The Hon. DAVID OLDFIELD: Or his parents' place, for that matter?

The Hon. JAN BURNSWOODS: Bringing all his friends with him at 5.30 a.m.

The Hon. DAVID OLDFIELD: I reiterate that some of us are awake at that time. Mr Gazal, just one thing with regards to the visit of the person—perhaps you could remind me of his name—I met him, as you noted, in the centre; the person who, as he told me, was seconded from the Premier's Department to find jobs.

Mr GAZAL: Mr Darmody or something like that.

The Hon. DAVID OLDFIELD: Mr Bargshoon, do you know his name?

Mr BARGSHOON: The chappie who was there that day?

The Hon. DAVID OLDFIELD: The gentleman who was seconded from the Premier's Department to find jobs for the people of Liverpool.

Mr BARGSHOON: Never seen him before. I do not know his name.

The Hon. DAVID OLDFIELD: I am sure we can get his name. You are quite right: I actually spoke to him on that day.

Mr GAZAL: Yes, I never even met him.

The Hon. DAVID OLDFIELD: He had not at any time indicated that he was coming there. He just went around the centre?

Mr GAZAL: He just came by himself.

Mr BARGSHOON: He did not get a chance to go right around the centre. That is why I am surprised where she got her figure from.

Mr GAZAL: David, 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 on some damage to Mr Darmody.

The Hon. DAVID OLDFIELD: And you noted a moment ago that you found it odd that the Premier was seconding a person to Diane Beamer's office to find jobs for people who already had jobs.

Mr GAZAL: Because they do not talk to each other. They send people in between; maybe between the Premier and Mrs Beamer this was.

The Hon. DAVID OLDFIELD: You might be interested to know that when I spoke to him on that day he had told me he had identified about 100 jobs already for the 400-odd people, so if the centre can stay open, we know that the Premier's Department has the least another hundred jobs for the people of Liverpool. But I was asking him the question, quite frankly, that if he was that successful in getting jobs, perhaps the Premier should keep him on the road to finding jobs the people of New South Wales after the centre is closed.

Mr GAZAL: Everybody would be employed and it must be cheaper. I do not why he is spending taxpayers money to find jobs for the employed.

The Hon. DAVID OLDFIELD: He could not answer for me, in fact, why it was that the Premier suddenly decided to find jobs for the people of New South Wales.

The Hon. JAN BURNSWOODS: This is so cosy.

CHAIR: The final question for this segment is from Lee Rhiannon.

Ms LEE RHIANNON: Mr Mosca, you said earlier that you were a member of the Labor Party?

Mr MOSCA: Yes.

Ms LEE RHIANNON: Do you go regularly to Labor Party branch meetings?

Mr MOSCA: Yes.

Ms LEE RHIANNON: What is the attitude of your fellow members to what has happened?

Mr MOSCA: They are not happy.

Ms LEE RHIANNON: Have motions been passed? Has this matter been discussed?

Mr MOSCA: Yes, there was a motion passed to send a couple of letters, one to head office and one to Beamer's office prior to the refusal.

Ms LEE RHIANNON: Have the Labor Party branches had a response?

Mr MOSCA: No.

Ms LEE RHIANNON: Mr Bargshoon, have there been any other developments in your branch with regards to this?

Mr BARGSHOON: I am in the same branch as Frank. Again we got no response. I do not think we are going to get any response as long as Bob Carr is behind it.

Ms LEE RHIANNON: Earlier I asked you about Mr Tripodi and a response you had from him after the May 22 meeting.

Mr BARGSHOON: Yes.

Ms LEE RHIANNON: The thrust of what you were saying was that he was still raising concerns and that he was shocked with what happened. Do you think that he would be truthful in his replies to you? Would he lie to you?

Mr BARGSHOON: No. Joe is the type of person that if he was not going to help he would say, "Sam, I'm not going to." I have brought up other cases from other people's matters and he would say that. He is the type of person who has no reason to lie. He is straightforward. He will turn around and he will say, "No, I'm not going to do it." He believed, until the very last second, that this was going to get signed, but when I called him, it was one day before his wedding and he was going straight after the wedding to his honeymoon and he was still leaving messages on Diane Beamer's voice message recording machine. She did not even get back to Joe.

The Hon. PETER PRIMROSE: I move that the questioning of these witnesses continue.

The Hon. JOHN RYAN: I amend the motion to allow questions to continue but that we schedule some other time for the witnesses to come back on another occasion. Perhaps we can find out how Mr Lynch felt about some of these things too.

The Hon. PETER PRIMROSE: And Mr Brogden.

Mr BARGSHOON: I would love it for Mr Lynch to come here. It would be very good.

Motion carried.

Mr Primrose tabled the valuation he was asked about earlier.

Mr Ryan moved that the submission from the Department of Infrastructure, Planning and Natural Resources be made a public document, together with the written statement of Mr Gazal—motion carried.

(The witnesses withdrew)

GEOFFREY ROBERT HUNT, Former Senior Development Planner, Liverpool City Council, P.O. Box 990, Wollongong East,

PHILIP RONALD TOLHURST, Manager City Development, Liverpool City Council, 1 Hoxton Park Road, Liverpool,

PHILIP SCOTT JEMISON, Urban Renewal Co-ordinator, Liverpool City Council, 1 Hoxton Park Road, Liverpool, sworn and examined, and

GABRIELLE KIBBLE, Administrator, Liverpool City Council, affirmed and examined:

CHAIR: If you should consider at any stage that certain evidence that you wish to give or documents that you may wish to tender should be heard or seen only by the Committee, please indicate that and the Committee will consider your request. Are you conversant with the terms of reference of the inquiry?

Mr HUNT: Yes, I am.

Mr TOLHURST: Yes.

Ms KIBBLE: Yes.

Mr JEMISON: Yes.

CHAIR: Do you want to make an opening statement?

Ms KIBBLE: Yes. I would like to make a reasonably brief statement starting with my appointment as Administrator of the council which took place on 16 March 2004. The first occasion on which I attended at the council was on 18 March 2004. On 24 March I had a meeting with Westfields who had requested to see me about the matter which was on foot at council of the draft LEP and I saw them and listened to their submission. On the same day, 24 March, I wrote a letter to Craig Knowles which I want to table because I do not think it has been. I wish to refer to this letter because in some of the decision making about this there have been some suggestions about the Liverpool centre. This letter to Mr Knowles—

The Hon. JOHN RYAN: Do you object to this letter being published?

Ms KIBBLE: No, no objection.

The Hon. JOHN RYAN: I move that the letter be published by the committee.

The Hon. JAN BURNSWOODS: We have not yet decided what to do with material previously tabled. I must admit I always like to look at things. I have no objection to this.

The Hon. JOHN RYAN: If it is controversial I withdraw my request.

The Hon. JAN BURNSWOODS: No, it is not a matter of it being controversial, it is a general issue about people seeing things.

The Hon. JOHN RYAN: I was confident that it could be circulated.

CHAIR: I will get it copied for everyone as quickly as possible.

Ms KIBBLE: My purpose in writing this letter was because I took the view that the Liverpool central business district was of crucial importance in the future development of Liverpool and that in the light of the expanding population in Liverpool we, that is Liverpool council, had to embark on some further work on ensuring that we had the right planning controls in place in the centre and that the centre had a viable economic future. I cannot emphasise enough how important I see Liverpool town centre as being. The purpose of this letter was to request from Mr Knowles a grant of money from the money being held by the department from PlanFirst fees that had been paid on the basis of development applications.

I do not think there is anything more I want to say about that letter except to say that the letter preceded any decisions that I made later on. When the matter was first discussed with me about the rezoning which was well and truly on foot before I arrived in Liverpool I immediately asked the question of Mr Tolhurst about what the department's attitude to this rezoning was and he indicated to me that the department knew it was on foot and that it had not expressed any objections to it proceeding.

The Hon. JOHN RYAN: By "the department" are you referring to the Department of Infrastructure, Planning and Natural Resources?

Ms KIBBLE: DIPNR, yes. Nevertheless, I was concerned about what I saw as the policy implications of the rezoning. It is important to understand that this rezoning did not only include the Orange Grove centre: it included also a rather larger centre at crossroads, and I will come back to that in a moment, if I may. But I was concerned about the policy ramifications of these rezonings and what the attitude of DIPNR might be to them. The council meeting took place and it was the first council meeting that I attended as Administrator on 13 April and at that meeting submissions were presented publicly by Westfield, by the shopping centre council opposing the rezoning and by AMP supporting the rezoning.

As Administrator I took the decision to support the rezoning of the Orange Grove centre for what were predominantly social and economic reasons, that is to say, there had been decisions and there was employment there and I thought these were significant issues for Liverpool. 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 rezoning.

The Hon. JOHN RYAN: What are the social and economic reasons you thought it was reasonable to apply for an amendment to the Liverpool LEP to permit the rezoning of the land on which the factory outlets now stand?

Ms KIBBLE: The rezoning was well and truly on track before I got there. It had been exhibited, resolutions had been taken beforehand. I was concerned about the employment issues and I took the view that it was legitimate to do the rezoning. I may have taken a different position had I been considering de novo a new application.

The Hon. JOHN RYAN: How important is it to take into consideration employment opportunities, for example, to summarise what has been said in the media, the centre represents job opportunities for in the order of 450 semi-skilled predominantly female people. Are they social and economic considerations that are important for Liverpool?

Ms KIBBLE: I considered them to be sufficiently important to support the rezoning on that basis.

The Hon. JOHN RYAN: Do you stand by your decision to apply for a rezoning?

Ms KIBBLE: Yes.

The Hon. JOHN RYAN: Notwithstanding that the Minister has now obviously exercised her discretion not to, was there planning merit in rezoning the factory outlets?

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

The Hon. JOHN RYAN: Has the department given sufficient weight to the question of the employment generating potential of the factory outlets?

Ms KIBBLE: I do not intend to comment on the weight the department has given to it.

The Hon. JOHN RYAN: Are you aware that the predominant reason for why the Minister has decided is to do with the centre's policy, are you aware of the documentation that the department has generated to discuss the factory outlets, for example, the section 69 report? Have you seen it?

Ms KIBBLE: I have seen it.

The Hon. JOHN RYAN: Is there anything unconvincing in the section 69 report? Was it a well prepared and convincing document?

Ms KIBBLE: It was a document prepared under the Act and it supported the rezoning that Liverpool council had sought.

The Hon. JOHN RYAN: Was it deficient in any way?

Ms KIBBLE: I cannot comment on that.

The Hon. JOHN RYAN: Why would you not comment?

Ms KIBBLE: I have not examined it in detail. It was not my role to be examining that report in detail. I have seen it but I have not examined it in detail.

The Hon. JOHN RYAN: You said you asked the council to make contact with the department. Have you had any contact with either Minister involved in this matter or the department in regard to this matter?

Ms KIBBLE: No.

The Hon. JOHN RYAN: You said you had sought advice through the council of the attitude of the department, could you explain how that was done?

Ms KIBBLE: They are matters that Mr Tolhurst ought to address in his evidence rather than me.

Mr TOLHURST: We wrote to DIPNR asking it for clarification on that point.

The Hon. JOHN RYAN: What did it say?

Mr TOLHURST: To this date we have not received a response.

The Hon. JOHN RYAN: Did you call or have discussions with officers of the DIPNR about this?

Mr TOLHURST: Yes, we have had discussions. We meet DIPNR on many issues, not just the Orange Grove site.

The Hon. JOHN RYAN: Did they suggest they had major concerns about the application?

Mr TOLHURST: They did not indicate either way but I have read the section 69 report and it is pretty easy to draw a conclusion from that?

The Hon. JOHN RYAN: What is the conclusion you draw?

Mr TOLHURST: That the officers supported the rezoning.

The Hon. JOHN RYAN: It has been argued that if this rezoning were to be approved it would cause planning chaos because it would allow spot rezoning all over the place. Do you support the idea that there would be planning chaos if the rezoning for the factory outlets had been approved?

Ms KIBBLE: I think there are a number of questions in what you have said. Spot rezonings happen all the time. Spot rezonings are not unusual. Would they cause planning chaos? Well, they have to be considered on their merits.

The Hon. JOHN RYAN: Do you think this particular spot rezoning would have caused chaos had it been approved?

Ms KIBBLE: I would not have supported it had I thought that.

The Hon. JOHN RYAN: What impact is the centre having on Liverpool central business district?

Ms KIBBLE: It is my belief that its impact is fairly minor, but again Mr Tolhurst should address that in detail.

Mr TOLHURST: Several reports were done during the processes of both the change of use and the DA for the change of use and the LEP amendment and all those studies—there was an initial report from Hurst and then a subsequent report sought by council for information and then a subsequent report by Hill PDA. All said that there would be some impact but it would decline over time. I have not got the document with me but I believe it was about 8 per cent at the peak and then it would decline from there.

The Hon. JOHN RYAN: In the submission from the DIPNR it has suggested that the economic studies were too narrow. Had that view been expressed to the council? Had more detail been requested of the council in specific terms as to whether the economic studies were adequate or too narrow?

Mr TOLHURST: In regard to the LEP, DIPNR wrote to us and asked for further detail. We met with Hill PDA and an officer from DIPNR and that further information was provided with the rezoning application to DIPNR.

The Hon. JOHN RYAN: Was DIPNR adequately satisfied with the material that had been provided by Liverpool council?

Mr TOLHURST: We were not told it was inadequate. We had been asked for further information and we met with Hill PDA and got that work done and we were not asked for any more, so I really do not know but the answer I would assume would be that it was satisfied.

The Hon. JOHN RYAN: Ms Kibble, I do not have a copy of your letter but could you explain why you asked for a grant for the Liverpool CBD?

Ms KIBBLE: Because I regard the Liverpool CBD as of crucial importance to south-western Sydney. There are a number of land-use changes going on within the centre. I believe that they are extremely important for the future of the whole of south-western Sydney. They of course include the changes in the health precinct, at the hospital, the retail centre, and issues to do with the future residential development of the centre and the number of application which Liverpool council has for very significant residential development within the centre of Liverpool.

I considered that we needed to review where we were with the centre. There has been quite a lot of work done in the centre. We had to ensure that we had land and controls available which were appropriate for the centre which is emerging in Liverpool. It was really a matter of significant review. I was concerned at the degree of major residential redevelopment in the centre, and what that would mean for future land availability for other important commercial, health and educational futures of the centre.

The Hon. JOHN RYAN: Would it be fair to interpret your request for additional funds for the Liverpool CBD as somehow contradictory to your request for the amendment to the Liverpool LEP to allow the factory outlets to continue?

Ms KIBBLE: I did not see it that way.

The Hon. JOHN RYAN: You saw them as compatible?

Ms KIBBLE: I did not see them as incompatible.

The Hon. JOHN RYAN: You said you have paramount concern for the Liverpool CBD. Given that concern, why would you permit or facilitate the approval of the factory outlet centre?

Ms KIBBLE: I think I have already answered that question. I did it on what I considered to be the appropriate social and economic grounds—the fact that the centre was there.

The Hon. JOHN RYAN: Is the Liverpool CBD not thriving? It is my impression that there is a great deal of development in the CBD, notwithstanding the operation of the factory outlets, which does not appear to be in any way compromised by the fact that the factory outlets have been operating for some months. Is that your view?

Ms KIBBLE: My view is that it is an important economic centre. A lot is going on and as the authority responsible for the centre we have to ensure that there is capacity for the centre to meet its future needs.

The Hon. JOHN RYAN: Would you describe the centre as failing at the moment?

Ms KIBBLE: No.

The Hon. JOHN RYAN: Are you aware of the current level of unemployment in the Liverpool area?

Ms KIBBLE: I could not answer that precisely.

The Hon. JOHN RYAN: Could one of the council officers answer that?

Mr TOLHURST: Not off the top of my head, no.

Mr JEMISON: No.

The Hon. JOHN RYAN: Have you discussed this proposition with Mr Knowles or Ms Beamer?

Ms KIBBLE: No.

The Hon. JOHN RYAN: What reaction do you have to the decision of the Minister to not rezone?

Ms KIBBLE: The Minister was entitled to make a decision. I accept that that was the Minister's role and the Minister made that decision.

CHAIR: Mr Ryan is reserving the remainder of his time.

Ms LEE RHIANNON: Ms Kibble, you spoke about meeting representatives of Westfield. Did they raise concerns about the rezoning?

Ms KIBBLE: Yes. That was their purpose in seeking a meeting.

Ms LEE RHIANNON: I am sorry, I misunderstood that. Because you then agreed with the rezoning I gather you did not think that their arguments carried weight?

Ms KIBBLE: I listened to their arguments and I reached a different conclusion.

Ms LEE RHIANNON: Mr Tolhurst, how long have you been with council?

Mr TOLHURST: I have been with Liverpool City Council since November 2000.

Ms LEE RHIANNON: Mr Jemison, were you working there in the 1990s?

Mr JEMISON: I have been at Liverpool council for six years in October.

Mr HUNT: No.

Ms LEE RHIANNON: Mr Tolhurst, on the history of the rezoning, were you aware that in 1991 about 500 objections were lodged to the original rezoning?

Mr TOLHURST: For the bulky goods or the cinema?

Ms LEE RHIANNON: I understand for the original proposal.

Mr TOLHURST: No, I was not aware of that.

The Hon. DAVID OLDFIELD: Mr Tolhurst, what are your planning qualifications?

Mr TOLHURST: I have a graduate diploma in urban and regional planning from the University of New England, plus I had civil engineering qualifications prior to that.

The Hon. DAVID OLDFIELD: How long have you been doing your current job with the council?

Mr TOLHURST: Due to restructures within council, I was appointed on 24 December 2003 to my present position. I have been acting in various roles, which are quite detailed because of the change of structure.

The Hon. DAVID OLDFIELD: For how many years have you had planning experience and expertise?

Mr TOLHURST: I have been in local government for 27 years, and probably more than 15 years of that was in a planning role.

The Hon. DAVID OLDFIELD: Prior to the DA being granted, did you know Mr Gazal on a personal level?

Mr TOLHURST: Not at all.

The Hon. DAVID OLDFIELD: Excuse me asking this question: Did anyone on behalf of Mr Gazal, or anyone at all, approach you at any stage with anything inappropriate in the form of a bribe or anything else regarding the DA?

Mr TOLHURST: It is a matter of record that I was prepared to give evidence at a court proceeding about the stay of proceedings for the Land and Environment Court ruling. After that appearance, one day I came back to my office after being in the city and there were two dozen Krispy Kreme doughnuts on my desk, which I believe came from Mr Gazal. It is a matter of record that I distributed them to the staff and recorded that in the record of council, as per council's policy.

The Hon. DAVID OLDFIELD: You would not suggest that two dozen Krispy Kreme doughnuts can buy a DA?

Mr TOLHURST: No, I do not think so.

The Hon. DAVID OLDFIELD: How many Krispy Kreme doughnuts could buy a DA?

Mr TOLHURST: I do not know.

The Hon. DAVID OLDFIELD: I had to ask that question: it seems to be that the Labor Party members do eat Krispy Kreme doughnuts. Are you a member of the Labor Party?

Mr TOLHURST: No, I am not.

The Hon. DAVID OLDFIELD: You did not eat any of the doughnuts?

Mr TOLHURST: No. And I never have been a member of the Labor Party.

The Hon. DAVID OLDFIELD: Do you believe that the council's process in issuing the original DA was in accordance with regulations and with sound and thorough planning principles?

Mr TOLHURST: I believe the interpretation at the time, after reading the files thoroughly and the evidence given, drew me to conclude that the DA should be issued. It was only subsequent advice, both legal and the court ruling, that we found that to be incorrect.

The Hon. DAVID OLDFIELD: Did you have any contact with DIPNR prior to the issuing of the original DA?

Mr TOLHURST: I was not in charge of the area at the time, so I would have had no need to be involved with that.

The Hon. DAVID OLDFIELD: As a town planner, with 27 years in local government, knowing the demands of the Liverpool area, regarding this application did you see any concerns with the inadequacy of public transport?

Mr TOLHURST: No, not really.

Mr HUNT: No.

The Hon. DAVID OLDFIELD: Do you see anything inconsistent with the spirit or intent of the centre?

Mr TOLHURST: No.

The Hon. DAVID OLDFIELD: I note what Ms Kibble has said with regard to the centre being socially and economically important. Do you see no adverse economic effect on other centres, or on the area generally?

Mr TOLHURST: Although I am a planner, I am not an expert on that. We take written advice from experts in that field, which we did in this case from the Hill PDA report, and further information. I would not have recommended it to council if I did not think it possible.

The Hon. DAVID OLDFIELD: It would seem from all the advice you had that it was certainly an economic and social benefit?

Mr TOLHURST: That is right.

The Hon. DAVID OLDFIELD: Do you see anything inconsistent with any of the planning rationale behind SEPP 66?

Mr TOLHURST: No.

The Hon. DAVID OLDFIELD: Do you consider there was anything unsatisfactory about the proposal at all? Much has been made of the emerging trend in the United States of America. Do you see anything inconsistent or inappropriate as far as that was concerned?

Mr TOLHURST: Until I read the letter I was not aware of an emerging trend in the USA. So I cannot comment on that matter.

The Hon. DAVID OLDFIELD: Me neither. I really do not know how it matters, frankly. Use of crack and cocaine is an emerging trend in the USA as well. In all the circumstances, and given what has happened, with your qualifications today do you see any reason why council should not have moved as it did to approve the application?

Mr TOLHURST: I have already answered that. I said no. I would not have recommended it to council if I did not believe it was the right path to take.

The Hon. DAVID OLDFIELD: Ms Kibble, you did not at any stage during the time of the approvals while they were with DIPNR, have any contact with Ms Beamer or anyone else, or someone at the department, in relation to this?

Ms KIBBLE: During that time I had one meeting at which Ms Beamer was present. I had probably one with Mr Knowles. But we did not at any stage discuss this subject.

The Hon. DAVID OLDFIELD: They were merely there: it was nothing to do with this matter.

Ms KIBBLE: Nothing to do with this matter.

Ms LEE RHIANNON: Mr Tolhurst, before Liverpool council was dismissed, did any Liverpool councillor approach you outside formal council meetings to discuss any aspect of the application for rezoning?

Mr TOLHURST: Not to my recollection, no.

Ms LEE RHIANNON: You did not feel under any pressure?

Mr TOLHURST: No.

Ms LEE RHIANNON: Mr Jemison, I ask you the same question.

Mr JEMISON: There was no pressure whatsoever.

Ms LEE RHIANNON: And Mr Hunt?

Mr HUNT: I was not with Liverpool City Council during the rezoning process.

Ms LEE RHIANNON: Did anyone else lobby you about this matter, outside the formal council meetings?

Mr TOLHURST: The applicant, Mr Mosca, rang. He is an architect in Liverpool who we met on various applications and predevelopment meetings to ask where the matter was up to. But other than that, no.

Ms LEE RHIANNON: You put that in the context of normal dealings?

Mr TOLHURST: Normal dealings, when we meet with local architects or architects who have a number of applications for various things within the office at the time, will often ask where it is up to. They want to know how things are going, I suppose. That is fairly common.

The Hon. PETER PRIMROSE: Mr Tolhurst and Mr Jameson, you are the authors of the document that was considered by council on 8 December 2003. The cover sheet states "Council Meeting Agenda 8 December 2003: pages 26 to 36". Mr Tolhurst and Mr Jemison, can you confirm that this document bears your name and that you are familiar with it?

Mr TOLHURST: Yes.

Mr JEMISON: Yes.

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 the Cross Roads development only. All the studies, nearly all the data, the street maps, the architects 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.

The Hon. PETER PRIMROSE: I also note that at page 26, which is basically the first page, it sets out a new definition for factory outlet.

Mr TOLHURST: That went through Parliamentary Counsel who okayed that definition. It was a definition we put forward and, Mr Jemison will correct me if I am wrong, that Parliamentary Counsel did alter that definition slightly and that was the one that went up to council on that date.

Mr JEMISON: Parliamentary Counsel indicated that the plan could be legally made.

The Hon. PETER PRIMROSE: Point 4 of the document on page 26, there is no mention there that this is a retrospective measure for Orange Grove.

Mr TOLHURST: It may not have been mentioned in the document but it was certainly mentioned on the night. I will take that on board, yes, that is right.

The Hon. PETER PRIMROSE: Could I take you to page 35? Do you have a copy of the document?

Mr JEMISON: Yes. The page numbers are actually different.

The Hon. PETER PRIMROSE: If I go to page 35 it is the one in the middle of the page that has got "Budget impact". It says in the middle of the page that "the amendment is recommended to resolve any ambiguity and to provide clarity in defining the current use". Did you use the words "ambiguity" and "clarity", Mr Jemison?

Mr JEMISON: Yes, that is correct.

The Hon. PETER PRIMROSE: When you wrote that what you are aware that there was actually a matter before the Land and Environment Court in relation to that matter?

Mr JEMISON: Yes, I was aware that was before the court.

The Hon. PETER PRIMROSE: Why then is there no mention in the report, given that you are trying to clear up a matter that you refer to as "clarity in defining the current use", you are trying to remove ambiguity and to clarify the matter, why was there no mention of the land and environment Court matter?

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.

The Hon. PETER PRIMROSE: If that is the case, given that there seems to be a number of things missing in this paper—you have mentioned that there is a lot about the Cross Roads, the fact that there was legal

action involved, it makes reference to Orange Grove, it does not mention that it is retrospective—what other substantive matters were not included in this report?

Mr TOLHURST: I think that was your opinion, not mine.

The Hon. PETER PRIMROSE: Well, can you clarify that for me?

Mr TOLHURST: As far as I am concerned that is a valid report otherwise I would not have signed off on it.

The Hon. PETER PRIMROSE: Can you tell me why there is so little detail in the agenda paper relating to Orange Grove?

Mr TOLHURST: No, I cannot, just the report that was written at the time. I cannot answer that question.

The Hon. PETER PRIMROSE: You signed off on it. It mentions Orange Grove, it does not mention that there is legal action.

Mr TOLHURST: No, it does not. You have pointed that out.

The Hon. PETER PRIMROSE: But you are still prepared to sign off and not give councillors that information in writing?

Mr TOLHURST: Like I have said to you before, it was discussed at length both on the night, and I think it was fairly obvious it was not something that was being hidden away, and when this report went up the councillor was the administrator and I know she was certainly aware of the legal action at the time, so I do not take your inference that something was hidden.

The Hon. PETER PRIMROSE: I am just asking you. Could I then asked what other substantive matters in retrospect you believe are not in the report that should have been?

Mr TOLHURST: There is nothing I wish to comment at this time on that.

Mr JEMISON: Nothing that I am aware of that should have been in the report.

The Hon. PETER PRIMROSE: Could you tell the Committee what discussions preceded the preparation of this agenda paper?

Mr TOLHURST: Discussions? Like every council report, discussions between my team of how the report should be put together, how it would be written. It would then go through process of coming to me to read before it goes to council to agenda review where senior officers of council review ever report that goes up to council, and then the report is put up to council in the normal fashion.

The Hon. PETER PRIMROSE: Can I give you an example then. Whether any discussions between either of yourselves and other planners about the imminent hearings on Orange Grove in the Land and Environment Court?

Mr TOLHURST: Both Mr Jemison and I were aware of the Orange Grove Road hearings because we had both—I am not sure we had been, I cannot remember the dates now, but we had certainly being to give evidence at the Court of Appeal; we were not called but I gave written evidence. They wanted to know where the LEP was up to at the time, and I certainly went to that hearing, I was present that day. I was not asked to give evidence but I believe my letter was presented to the court, so we were aware of it. Have I answered your question? I am not sure.

The Hon. PETER PRIMROSE: There was clearly a discussion, you were well aware of it, but I am trying to understand the reasons you chose not to actually put it in the report to council.

Mr TOLHURST: I think I have answered that question. I do not believe it was ever purposely left out, it was just not put in.

The Hon. PETER PRIMROSE: But you answered questions earlier that you were both professional officers, you were very experienced, and I am just wondering was it left out by accident or was it something you chose to do?

Mr TOLHURST: 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.

The Hon. PETER PRIMROSE: I am not alleging or accusing, I am trying to understand that this being a legal document upon which councillors make a decision, not the local paper, that it may have been appropriate to allude to it.

Mr TOLHURST: Yes, but the legal document is the recommendation that goes to the action has to be taken, the rest is the words that are put together before it goes up, to give people an understanding of what it is about. If you're asking if I wrote it again today, if I had to go up again I probably would put it in but at the time I did not feel that it was necessary. With these things you have to make a judgement of how long you make your report or how short you make a report and sometimes those judgements are made.

The Hon. PETER PRIMROSE: Were either of you aware of a very similar matter involving Woolworths and the Warehouse Group (Australia) Pty Limited over a Warwick Farm bulky goods facility being used as shops outside its legal ??

Mr TOLHURST: I was aware.

Mr JEMISON: No, I was not aware of that.

The Hon. PETER PRIMROSE: At the time?

Mr JEMISON: At the time.

The Hon. PETER PRIMROSE: Are you aware now?

Mr JEMISON: No.

Mr TOLHURST: Mr Jemison works in a different area from that. In the statutory planning area we are dealing with it and as the manager I was aware of that, but there is no reason why the Mr Jemison would be aware of it.

The Hon. PETER PRIMROSE: So I will direct my questions to you. If you were looking at the definitions of factory outlet and bulky goods developments and the Orange Grove site and the Cross Roads site, how is it possible that this other Warwick Farm Centre did not get a look in when it came to the LEP amendment?

Mr TOLHURST: Because the warehouse group decided to take out the goods that should not have been there as part of their approval and make it comply with the LEP, and there were no requests for a rezoning in that area. My understanding is, and my officers report to me that they were complying with the LEP as of today.

The Hon. PETER PRIMROSE: So there was no actual request?

Mr TOLHURST: No actual request, I believe, from the warehouse group, no.

The Hon. PETER PRIMROSE: Just to confirm, this matter was in the court at precisely the same time, the judgement was 19 December 2003, Liverpool City Council was the second respondent, and you would have provided a retrospective cure for this development if you were asked?

Mr TOLHURST: We were never asked but the warehouse group changed the layout or the operation or the goods on sale to meet the bulky goods requirement under the LEP, and they were happy to do that and they have done that.

The Hon. KAYEE GRIFFIN: Mr Hunter, you were the planner who had carriage of the development application that was lodged last year in relation to the bulky goods warehouse clearance outlet at Orange Grove?

Mr HUNT: Yes, in the year 2002.

The Hon. KAYEE GRIFFIN: At the time that the application was lodged, because it was a substantial application on the site my understanding is that the development application was supposed to have been advertised, is that correct?

Mr HUNT: Yes, which it was advertised.

The Hon. KAYEE GRIFFIN: When was it advertised?

Mr HUNT: Towards the end of the assessment of the application.

The Hon. KAYEE GRIFFIN: Why was there a delay in advertising the application?

Mr HUNT: The purpose of that was to seek external and internal advice regarding the proposal. That external advice included an economic assessment of a report that was put to council through the applicant—I believe that was Hirst's economic report—and it was referred to an independent consultant by the name of Peter Leyshon. In addition to that work being undertaken there were also referrals to the RTA and also internal referrals of council for assessment.

The Hon. KAYEE GRIFFIN: There is a comment that the advertising was late due to an oversight of council, is that correct?

Mr HUNT: The decision to advertised the application later in the process was to enable council—myself and any other senior management that I spoke to regarding this matter—to ensure that there was a support in the sense of submissions back from relevant external bodies and internal parties, internal divisions, and the decision was made two notified after we had formed the opinion that we had an okay to go with the advertising.

The Hon. KAYEE GRIFFIN: Did you have any concerns about the way it was advertised or the length of time it took to actually advertise the application?

Mr HUNT: Not really, no. It was advertised in accordance with council's policy at the time.

The Hon. KAYEE GRIFFIN: Could you explain why Mr Torresi would be discussing the decision to advertise with councillors? Normally would this not just be an administrative decision about the advertising taking place on a development of this size?

Mr HUNT: I consulted Mr Torresi on the application on numerous occasions and I reported to him with a report after I had finalised to my assessment in the assessment aspects of the proposal so that he could see any councillors or the mayor if that is required.

The Hon. KAYEE GRIFFIN: Is it normal for an officer to have discussions with councillors before a development application is advertised, whether it is this one or others?

Mr HUNT: My level it was not, as a senior development planner, but as a senior management staff officer it may have been.

The Hon. KAYEE GRIFFIN: Given that the advertising was delayed and it did take place, was it standard—I realise that you are no longer at Liverpool Council—but at the time when you were working there was it standard process with a development application like this for it to be done under delegated authority or how does council determine, how do the officers determine what goes to delegated authority for approval or rejection, or what comes to the council meetings?

Mr HUNT: My understanding was it depended on whether there were objections received from the exhibition period and also the number of submissions.

Mr TOLHURST: Council has a policy if we get three or more objections that cannot be resolved through mediation that it goes through a process called independent hearing and assessment panel where we have independent experts look at the council officer's report and then it goes before council. That procedure has been in place for some years in Liverpool, not unlike other councils—Fairfield, I think Warringah has got a similar independent hearing and assessment panel—and because there were no objections it can be dealt with under delegation. That process is still in place today.

The Hon. KAYEE GRIFFIN: Does the delegated authority at Liverpool operate as delegation to an officer or does it also operate under a development assessment panel? How does delegated authority operate at Liverpool?

Mr TOLHURST: Delegation is to an officer.

The Hon. KAYEE GRIFFIN: So you do not have a panel that deals with applications.

Mr TOLHURST: If we get up to three objections for residential we have an internal development assessment panel and people who have not dealt with the application will have a look at it. If it is zero it can go straight to delegated authority to the officer to approve or refuse.

The Hon. KAYEE GRIFFIN: Who is the officer with that delegation responsibility?

Mr TOLHURST: The senior development planner has delegation.

The Hon. KAYEE GRIFFIN: In terms of the development application that was lodged—I am not sure who wants to answer this question—can someone explain to the Committee the difference between the determination for a warehouse clearance outlet as opposed to a retail outlet?

Mr TOLHURST: Can I have the question again?

The Hon. KAYEE GRIFFIN: The application related to a bulky goods/warehouse clearance outlet. It is my understanding that the approval process for that would not include retail, as such. What is the definition of a warehouse clearance outlet as opposed to what is considered to be retail?

Mr TOLHURST: You will find in the LEP a separation between the two. At the time of this application in 2002 it was determined that the use, because it was clearance, was the dominant use and in that way council could deal with it. That was the decision made at that time.

The Hon. KAYEE GRIFFIN: If there are no objections to a development that comes before council it is deemed through delegation from council to officers and so on—or delegation from the council, the general manager to whoever—that it can be dealt with under delegated authority. If there are three or more objections it goes to a panel.

Mr TOLHURST: Yes.

The Hon. KAYEE GRIFFIN: If there is a substantial issue or issues with the development it then goes to council.

Mr TOLHURST: After the independent hearing it always goes to council.

The Hon. KAYEE GRIFFIN: So you have a mediation process in between.

Mr TOLHURST: Yes, and often the issues can be resolved—perhaps it is about needing a window or adding something. We can often resolve the issues so that the objections are withdrawn and reduced to below three and we can do it under delegation. I am not sure whether you understand, but we get about 3,500 development applications a year and if we referred them all to council it would be meeting every night of the week to discuss them. The process is pretty similar in other councils.

The Hon. KAYEE GRIFFIN: In terms of the original application, the advertising was late and then it was approved by delegated authority. Is there normally a time lag in that process?

Mr TOLHURST: Because the advertising was late my reading of the file is that the officer, Mr Hunt, had prepared the consent ready to go—depending on whether there were objections. Of course there were none in this case. Mr Hunt can probably answer this question. But my understanding of reading the file is that the consent must have been ready to go and that is why there was no delay between the end of the advertising and consent. During the process of any development assessment an officer will often start preparing a draft consent to look at before the assessment is finished.

The Hon. PETER PRIMROSE: Mr Tolhurst, can you clarify something for me? When I asked you about the Warwick Farm centre you indicated that you had not received an application from that particular organisation for a cure in relation to a change to the LEP. Can you give the Committee a copy of the request from Gazcorp for an amendment to its LEP?

Mr TOLHURST: There was no request from Gazcorp. It was a decision made by council officers to go forward with that.

The Hon. PETER PRIMROSE: So you did not receive a request from Gazcorp?

Mr TOLHURST: For rezoning?

The Hon. PETER PRIMROSE: Yes.

Mr TOLHURST: No.

The Hon. PETER PRIMROSE: But the reason you gave me for not taking action in relation to Warwick Farm was that they had not asked for it.

Mr TOLHURST: That is right.

The Hon. PETER PRIMROSE: So what is the difference?

Mr TOLHURST: There was a report written to council on 8 December that both the Casula site and the Orange Grove site should go forward and seeking council permission to go forward with the rezoning. That was done through council. It was a full council at the time.

The Hon. PETER PRIMROSE: Who made the decision not to take any action in relation to Warwick Farm?

Mr TOLHURST: We had discussions with the warehouse group and they were happy to confine and bring their operations back within the zoning.

The Hon. JOHN RYAN: This question is for either Ms Kibble or Mr Tolhurst. There has been much description of this development as being an "illegal" development. Is it not fair to say that the development was legal insofar as it had a valid development consent during all the time of construction, during the time that Mr Gazal was seeking tenants, right up until the time that it was open and for a little while after that?

Mr TOLHURST: Yes, that is right. Until the court ruled that the determination of the council, or the officer, at the time was incorrect, there was a valid consent.

The Hon. JOHN RYAN: Even up until the time that the court ruled there was a reasonable belief in the council that the development was legal and had been validly given a consent.

Mr TOLHURST: That is right.

The Hon. JOHN RYAN: Was it unreasonable then for Mr Gazal to proceed with this development, seek tenants and open it or was that rash?

Mr TOLHURST: That was Mr Gazal's decision at the time. He was certainly aware of the action being taken.

The Hon. JAN BURNSWOODS: Clearly from this morning's paper some of his tenants have a strong view about it.

CHAIR: Order!

The Hon. JOHN RYAN: Did Westfield ever approach the council with a view to informing it that they were taking legal action? Did they seek assistance from the council in taking legal action against that factory outlet?

Mr TOLHURST: They certainly let us know that they were taking action, and I was present at the meeting when they met with Ms Kibble at council. But I am not aware of them ever asking us to join them in that action.

The Hon. JOHN RYAN: Had you started to prepare a draft LEP by that stage?

Mr TOLHURST: Of the meeting?

The Hon. JOHN RYAN: No, had you already initiated procedures for a rezoning by the time you discovered that Westfield had decided to take legal action?

Mr TOLHURST: I will have to check the dates. I do not know that information off the top of my head. I am happy to supply it but I do not know the sequence of events off the top of my head.

The Hon. JOHN RYAN: Is it a fact that when the development approval was exhibited there were no objections to the development preceding?

Mr TOLHURST: That is right, there were no objections received. That was both from advertising on site, with a notice on site, and in the local newspaper.

The Hon. JOHN RYAN: Would it be fair to say that Westfield has a fairly high profile in Liverpool so it would have been reasonable for them to have noticed that such a development had been advertised and they should have responded?

Mr TOLHURST: I suggest you ask that question of Westfield.

The Hon. JOHN RYAN: But the council did nothing that made it impossible for Westfield to notice.

Mr TOLHURST: It was standard notification policy as adopted by council.

The Hon. JOHN RYAN: SEPP 66 also refers to the "practicality of alternate locations which may better achieve the outcomes that the policy is seeking". Obviously the issue of practicality is important. Is it practical to locate factory outlets in the Liverpool CBD?

Mr TOLHURST: I do not believe there is an area available that would meet the requirements of parking and so on within our CBD.

The Hon. JOHN RYAN: So if there were to be factory outlets in Liverpool as a form of shopping they would probably have to be located somewhere other than in the Liverpool CBD.

Mr TOLHURST: To answer that question from a planning background, look at where the other ones such as at Homebush or the one at Wyong is situated. That is where they are situated.

The Hon. JOHN RYAN: Are you aware of any factory outlets that are situated in a CBD?

Mr TOLHURST: I think the definition would be hard to come by. I know that Rivers, for instance, markets itself as being a factory outlet within a CBD. If you are asking about a group of them together, I am not aware of it. There may be but I am not aware of it.

The Hon. JOHN RYAN: Would it cause an adverse impact on the Liverpool CBD in terms of parking and so on if something the size of a factory outlet were to be located within the CBD?

Mr TOLHURST: That would be part of the assessment process if an application was received.

The Hon. JOHN RYAN: Is it fair to say that you would have to consider that?

Mr TOLHURST: Of course.

The Hon. JOHN RYAN: Another critical question is obviously public transport. Had the Minister approved the LEP, one of the procedures that the council could have gone forward with was discussing with the proponent whether there might be any adjustments to public transport so that the area could be better served by public transport. Would the council have discussed public transport options with the proponent?

Mr TOLHURST: You must understand with factory outlets that people do not go to them every week. People go on shopping trips and those sorts of things. My wife would go to the one at Homebush twice a year. There are often tours to factory outlets, fundraisers and those sorts of things. But there are always options to look at. If there is a quantum of people there and public transport is an option, I am sure that the Bus and Coach Association or the bus companies would be happy to provide a service for paying passengers.

The Hon. JOHN RYAN: Is it fair to say that there is good public transport to the factory outlet centre during the week but it is perhaps not so good on the weekend?

Mr TOLHURST: In terms of Liverpool, which is not served by government buses, the bus service to there is similar to that in other areas of the Liverpool LGA.

The Hon. JOHN RYAN: There is at least an hourly service during business hours during the week, is that right?

Mr TOLHURST: I do not have that information.

The Hon. JOHN RYAN: It is more frequent in peak periods.

Mr TOLHURST: I can check that. I am happy to give that information but I do not have it to hand.

Mr JEMISON: There is a direct bus route.

The Hon. JOHN RYAN: I think it is bus route 800.

Mr JEMISON: Yes.

The Hon. JOHN RYAN: As I understand it, the drawback with bus route 800 is that there might not be a bus stop on the street opposite the retail outlet. Is that the case?

Mr JEMISON: I am not too sure. I just know there is a bus route that goes past it.

The Hon. JOHN RYAN: Is it possible to construct a bus stop?

Mr TOLHURST: We get applications all the time from the bus companies for extinguishing bus stops and placing new bus stops. Every traffic committee usually hears one of those applications and we agree to them quite readily.

The Hon. JOHN RYAN: The council had to consult with the Roads and Traffic Authority [RTA]. Did it raise any objections about public transport with regard to factory outlets?

Mr JEMISON: My understanding is that the issues that were raised were resolvable and it had no objection to the draft LEP itself. In terms of public transport, I will have to check the correspondence from the RTA.

Mr TOLHURST: My recollection is that there were none but we are happy to give you a copy of that.

The Hon. JOHN RYAN: Can you provide us with the correspondence that you received from the RTA?

Mr TOLHURST: Yes, I am happy to do that.

The Hon. JOHN RYAN: Would it be normal to consult with the RTA specifically for the purpose of assessing issues such as public transport and public infrastructure?

Mr TOLHURST: State environmental planning policy 11 sets out what we have to refer to the RTA and the different criteria. That is what was referred to the RTA.

The Hon. JOHN RYAN: Would any council staff have had regular conversations with the architect Frank Mosca?

Mr TOLHURST: Regarding the rezoning?

The Hon. JOHN RYAN: Regarding the rezoning or any aspect of the development.

Mr TOLHURST: As I mentioned before, 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 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.

The Hon. JOHN RYAN: Is there anything inappropriate about doing that?

Mr TOLHURST: With 3,500 DAs someone will always want to speak to me about how their DA is going. That is just how the process works.

The Hon. JAN BURNSWOODS: Madam Chair, I have some questions—I know I was not here earlier. Obviously one possibility is putting questions on notice. I have some questions particularly for Mr Hunt. Given that we decided earlier to recall our first group of witnesses, I wonder whether it is appropriate to suggest that we recall Mr Hunt also. From what we have heard, I think we should clearly call Mr Turrese before us as well.

The Hon. JOHN RYAN: That is a decision for the Committee.

The Hon. JAN BURNSWOODS: I am flagging it now because we are behind time and I realise that we can put questions on notice. If we are thinking of calling before us Mr Turrese, who is clearly heavily involved, it seems it would be much more sensible to put those witnesses on the extra day.

CHAIR: Are you moving a motion?

The Hon. JAN BURNSWOODS: I am happy to do so now or later when only Committee members are present. What do you think is appropriate? I propose that we recall Mr Hunt and invite Mr Turrese to come before the Committee.

Ms KIBBLE: Madam Chair, may I comment before you resolve that matter?

CHAIR: Yes.

Ms KIBBLE: Mr Hunt works for Wollongong council and he is here today. I wonder whether it would be preferable to try to complete the questioning of Mr Hunt today.

The Hon. JOHN RYAN: I agree with that if it is possible.

The Hon. JAN BURNSWOODS: I will be very quick, and I apologise because I was out of the room for a while, but I gather, Mr Hunt, you were not asked questions about a letter you wrote to Mr Mosca on 13 June 2002?

The Hon. JOHN RYAN: This is about the delay in the advertising.

Mr HUNT: I have not had access to the file since leaving Liverpool City Council, so I am not familiar with what is written in that letter.

The Hon. JAN BURNSWOODS: I am sorry about that. I will refresh your memory. The interesting parts are that in June 2002, in writing to Mr Mosca about the application, you said that the proposed use will need to strictly comply with Liverpool LEP 97, the definition of either bulky goods, sales room or showrooms or warehouse or distribution centres. In other words, you made it very clear at that stage to Mr Mosca what the rules were and what he had to comply with. Further in the letter you included a complete definition of what bulky goods, sales room or showrooms mean and then another complete definition of what warehousing or distribution centre means. Then, on the third page, again all of this I imagine absolutely properly and in accordance with your role in the normal procedure, you said, as Mr Ryan perhaps hinted, that due to scale and possible impact of the proposal, council was currently investigating as to whether the DA should be advertised, as had been the case with other such similar proposals within the city. My question is, given you spelled all that out so clearly in June 2002, what happened after that to change people's minds and to stop the advertising happening? What was the big change that happened after you wrote that letter?

Mr HUNT: When that letter was written, that was perhaps very close to the time I first received the application or was allocated the development application. That was my initial understanding of what was required to be provided by the applicant to further process his proposal. A further assessment was done based on, I believe, additional information that was submitted by the applicant to offer an argument for their proposal, which would be all on file. From that point on the assessment was then based on all that relevant information that was submitted, not only by the applicant but by referral comments I received back from external and internal divisions of council.

The Hon. JAN BURNSWOODS: I understand representation can be made, but nevertheless the way in which you spelled out those definitions for a total of well over a page of your letter what the proposed use would need to strictly comply with makes it hard to follow what then changed so quickly afterwards. I am not sure whether the representation you are talking about and the considerations went above your level when other people wrote letters after that. In other words, whether your views were overruled. Perhaps that is what happened?

Mr HUNT: I am not aware of that. I was the assessing officer of the application and I forwarded that letter to the applicant. However, in saying that, during the assessment and application it was the interpretation of the LEP, as Mr Tolhurst pointed out previously, about definitions in the local environmental plan. That helped form my assessment opinion on the development application, especially towards that end process of the application. Again, that information in that letter was very close to the time I recall receiving the development application. So, it was a very early stage.

The Hon. JAN BURNSWOODS: But I am still not sure. What ended up being approved were essentially retail shops but everything you said in talking about what had to be strictly complied with was a bulky goods, sales room, et cetera, or warehouse, et cetera. We seem to have moved from everything you were saying then to a completely different use in the end but it also countermanded your very strict statements about how it had to be advertised and the advertising not forgotten and was being picked up after the draft consent was sent to Mr Mosca. It sounds to me like an inappropriate process went on in those four or five months.

Mr HUNT: My recollection of how that process unfolded was that once I formed a further opinion based on the LEP and the definitions, and with other advice given to me they had other officers, the application was processed through to that final stage when notification was finally done.

The Hon. JAN BURNSWOODS: What sort of advice was given to you by other officers?

Mr HUNT: It was internal comments by traffic—again, I cannot recall every referral that was received, but all referrals required me to take on board comments.

The Hon. JAN BURNSWOODS: But things like traffic have nothing to do with the basic legality under the LEP?

Mr HUNT: That was an interpretation based on further assessment of the application.

The Hon. JAN BURNSWOODS: But your interpretation has been upheld by the court. You were right. That is where we are starting from today, surely. You were right and the people who persuaded you otherwise were wrong.

Mr HUNT: Are you referring to that letter there?

The Hon. JAN BURNSWOODS: Yes. The things you are saying in that letter have turned out to be upheld by the court. You were right. But after you said all these things very carefully, with all the definitions and the quotes, other people made suggestions.

CHAIR: Can we get that letter tabled?

The Hon. JAN BURNSWOODS: Yes. I am puzzled. If you could explain to me why you start off being absolutely right and then you were persuaded you were not right? How that process took place is of great interest to this Committee.

Mr HUNT: Like I said, that was at a very early stage of the application, receiving the application and the allocation, and that was my initial assessment of the proposal.

The Hon. JAN BURNSWOODS: But it was a spot on, absolutely correct, initial assessment. Well done, but something that happened afterwards?

Mr HUNT: Based on the additional information and further assessment and further interpretation of the LEP as to what the proposal was requesting, I made a decision towards the end of this assessment based on my report that is on the file, and the draft consent that I prepared to just itemise all the conditions that would be required to be put on this consent following the notification and finalisation of the application.

The Hon. JAN BURNSWOODS: Have the Orange Grove people ever asked for all that?

Mr HUNT: Not that I am aware of. I prepared it to support my assessment for my supervisor, then Mr Turrisi, to just help form a decision based on the information I have assessed.

The Hon. JAN BURNSWOODS: The letter that went to Mr Mosca containing the draft consent the day after the advertising but before anything had been considered, I think that was written by Mr Turrisi, not by you?

Mr HUNT: I cannot recall the details. I have not had access to the file to view all documents. The one and only time I have even sighted the file was one day that I attended Liverpool City Council and saw it sitting there on a desk, but not to go through any detail at all. I opened the file that had a page up and that was it.

The Hon. JAN BURNSWOODS: You can see why it seems to me we really do need to ask some questions of Mr Turrisi?

Mr HUNT: Sure.

The Hon. JAN BURNSWOODS: But given that you are now at Wollongong, I also understand that you have not had that opportunity to refresh your mind as much as people still at Liverpool.

Mr HUNT: Yes.

The Hon. DAVID OLDFIELD: Ms Kibble, I do not know whether you can see it properly from there, but these cover sheets/log sheets that are on the files kept by the department—leaning on your experience when you were director-general of DIPNR—can you tell me exactly what these are for? I presume they are a log of who takes a file in and out? Can you tell me about those?

Ms KIBBLE: I have not seen that document, but departmental files are marked to the person they are going to.

The Hon. DAVID OLDFIELD: Would you like to have a look at it? I presume it is a log in and out of who gets the file?

Ms KIBBLE: That is the process.

The Hon. DAVID OLDFIELD: How long were you director-general?

Ms KIBBLE: Ten years.

The Hon. DAVID OLDFIELD: During that 10 years, how many times, in your memory, where you have something like this taking place—a section 69 report for a zoning change—would you have been in a position where all of your senior planners recommended that the change be made and you would have the Minister not make the change, go against the recommendation?

Ms KIBBLE: I cannot answer that question. It stretches my memory far too much.

The Hon. DAVID OLDFIELD: Can you remember any?

Ms KIBBLE: There probably are examples where they disagreed with more junior officers. There would be nothing very extraordinary about that.

The Hon. DAVID OLDFIELD: On these occasions where you not extraordinarily would have disagreed with those officers, would you then send material to the Minister explaining to the Minister how the Minister could justify not making the plan?

Ms KIBBLE: Well, clearly if I disagreed, if I took a different view, I would write a report on my view and recommendation.

The Hon. JOHN RYAN: Would you normally say in that report that you either recommend it or not recommend it, as opposed to leaving it wide open? It does look a little unusual to me, that form of recommendation. Would it have been reasonable for the director-general to have made a recommendation?

Ms KIBBLE: I do not wish to get into a debate about what I would have done as director-general and what the director-general did. I think that is an unfair set of questions.

The Hon. DAVID OLDFIELD: Can you answer this, then? Clearly, from what you told us today you considered the approval appropriate and important for the area of Liverpool with regard to the social and economic benefits it would bring. As you have said yourself, if you did not feel that way you would not have recommended the approval?

Ms KIBBLE: That is correct.

The Hon. DAVID OLDFIELD: That is a fair assessment of what you said?

Ms KIBBLE: Yes.

The Hon. DAVID OLDFIELD: Once the Minister had determined not to make the approval, did you contact the Minister's office?

Ms KIBBLE: Yes, I did.

The Hon. DAVID OLDFIELD: What did you have to say?

Ms KIBBLE: I was angry, not about the decision but by the terms of the Minister's press release. I made it clear to them that I was angry about the terms of the press release. I made no comment on the decision.

The Hon. DAVID OLDFIELD: What were you angry about?

Ms KIBBLE: I was angry about the inference in the press release that somehow or other the Minister was taking more care of Liverpool's future than we were. That is why I sought to put into the record the letter to Craig Knowles about my concerns about the town centre.

The Hon. DAVID OLDFIELD: Is it fair to say that you were disappointed at all by the decision?

Ms KIBBLE: Was I disappointed? I always took the view that the Minister had the right and the responsibility to make the decision and that she would do so. I did not question her ability to make the decision.

The Hon. DAVID OLDFIELD: I did not ask you that. You were obviously very pro the decision towards approval, given your concerns for the social and economic impacts for Liverpool?

Ms KIBBLE: Was I pro? I supported the decision to make the plan and I thought it was, in social and economic terms, justifiable.

The Hon. DAVID OLDFIELD: You are not ever disappointed when things you support and consider justified are knocked back?

Ms KIBBLE: Come on, I have had a whole career of that.

The Hon. DAVID OLDFIELD: So this was one of your career disappointments, then? Does it surprise you, given what you said about what your contact was with the Minister's office about being angry over a press release and not in relation to the decision, that Diane Beamer specifically said the former head of the department, being you, has rung my office to say she is satisfied with my decision?

Ms KIBBLE: Yes, I was surprised when I heard that, because I never said that.

Ms LEE RHIANNON: Mr Tolhurst, I understand that council sought legal advice just after the DA consent was granted. Could you explain to us what that legal advice was?

Mr TOLHURST: No, we sought legal advice after we were notified of the challenge by Westfield in the Land and Environment Court. That is when I requested the legal advice, not until that stage. I will double check my records but that is my understanding.

Ms LEE RHIANNON: And what was that advice?

Mr TOLHURST: I am happy to table it, but basically it raised that there could be some concerns about the consent that had been issued.

Ms LEE RHIANNON: Did you say that you have tabled it?

Mr TOLHURST: I am happy to table it. It is in the file. I think you already have a copy of the file but I am happy to—

Ms LEE RHIANNON: Could you table it, because I have missed that?

Mr TOLHURST: I would have to check with our legal people whether we can give you legal advice. I imagine we can, but we have a process of access for documents. I imagine that it has not been taken off the file but there are some things under freedom of information that we can and cannot give. If it is within my ability to give it to you I am happy to give it to you.

Ms LEE RHIANNON: I seek advice from the Chair. What do we do?

CHAIR: We will be at the council on Monday so we can collect it then or discuss it further.

Ms LEE RHIANNON: Mr Hunt, in regard to the initial DA, do you feel that the interactions or how Mr Turrisi and Mr Tony Beuk handled the initial DA with regard to your role there were appropriate?

Mr HUNT: I am not familiar with how I was allocated the development application other than that I was asked as a senior development planner to proceed with the processing of the application. As a senior planner for Liverpool council I had a geographical area that I was the senior for and any applications that fell within that geographical area were allocated to me or to other planners that I felt could assess the applications.

Ms LEE RHIANNON: Did you feel pressured in any way?

Mr HUNT: Not to take this application or to assess the application at all, no.

Ms LEE RHIANNON: You thought everything was appropriate, it was normal process? Was there anything out of order?

Mr HUNT: The application came to me. After discussion with the director he asked me to assess the application, a preliminary assessment. I believe that may be the letter that I initially referred on to the applicant at the end of that preliminary assessment. During the processing of the application and getting the file and referrals in order and receiving additional information from the applicant I was able to form my own professional opinion based on advice received.

The Hon. JOHN RYAN: Do you think anything that Liverpool council did was in any way unprofessional or not of good professional standard? For example, the Premier has made the comment that the development consent was originally given by a disgraced Liverpool council, the inference being that somehow or other this was as a result of incompetence or even worse. Was there anything that you would suggest was inadequate with regard to how Liverpool council processed the original development consent and anything it has done since? I am happy for any of you to comment with regard to that.

Mr HUNT: I will speak first if you do not mind. I had no indication that there was anything other than normal process. The only thing that was drawn to my attention was that the director asked me to take the application and do a preliminary assessment, which was very early in the allocation. From there on it went through its normal processes. Since I was new to the organisation I guess I was also understanding the full process itself. I was asked to ensure that the economic report was referred externally to a consultant for advice very early in the piece, very early in the application. The copy of that letter will be on file, and of course the consultants' response. I referred it to the RTA, as was required as part of the process, internal referrals. It was right towards the end when I prepared my report for the director to have a look at so that I was at least getting some sort of consistency with the information that I was going to provide to the applicant. He asked if he could just take it so that he could check with councillors or maybe the mayor—I am not sure. I noted the file and left it at that.

The Hon. KAYEE GRIFFIN: Mr Hunt, when I asked you questions about the delay in advertising the development application you said that it was because of the other processes taking place in the development process. Why would Mr Turrisi send a letter to the applicant saying that due to an oversight by his staff the development application was not advertised in accordance with council's policy?

Mr HUNT: You would have to ask Mr Turrisi. He wrote the letter. The only thing that I can think of is that during that phase I was making sure that at least the assessment was done and in place and that the decision to advertise, although it was not done until further into the application's assessment, was done at the end.

The Hon. KAYEE GRIFFIN: You said in answer to another question from Ms Jan Burnswoods that representations were made by the applicant during the application process. It sounded as though they were not made to you. Is that correct? But you were that planner that had the carriage of the application.

Mr HUNT: If there was any other involvement I was not aware of it.

The Hon. JAN BURNSWOODS: But you did say before that representations were made by the applicant.

Mr HUNT: Submission of additional information. In that letter that I was talking about I requested that the applicant provide that information to further assess the application. I mean that the submissions that he made in response to that letter helped form an opinion that the application could be further processed.

The Hon. KAYEE GRIFFIN: Did that come directly to you?

Mr HUNT: Yes, it would have come straight to me, to the file, being the assessing officer. I am not aware of any other discussions or consultation that was done with the applicant and any other staff or senior staff or councillors.

The Hon. JAN BURNSWOODS: But your wording seems a bit strange. You just said representations were made and an opinion was formed. That does not sound as if you are talking about yourself; it sounds as if you are talking about someone else. Why would you use the words in answer to that question such as "representations were made and an opinion was formed". You would say, "I formed the opinion."

Mr HUNT: Submission of additional information by the applicant in response to that letter. That was the submission. That was the representations I referred to, the information that was forwarded to council to further progress this application. The opinion I talked about is my opinion based on professional advice that I take from other officers, other departments, other bodies that give direction as to how to handle or to determine and application. But I did also do my assessment under the heads of consideration and 79C check with the EP&A Act.

The Hon. KAYEE GRIFFIN: In that same letter Mr Turrisi said that there was an oversight by the staff in relation to advertising. He also said in a letter to Mr Mosca that his application would be given priority attention through to its determination. Do you believe that Mr Mosca got priority attention from Liverpool council, in particular to this DA?

Mr HUNT: No additional attention was given to this particular applicant on this occasion or to any other applicants that I handle. A lot of the applications last in the system for quite some time. This one must have been in the system even before I was employed with council because my commencement with Liverpool council was about early May 2002. There may have been other mention today at this hearing that the application was in before that. I received the application perhaps in May or June, not long after I commenced with council and then was asked to process the application in accordance with council's policies, which I did, being a senior officer and a new officer to the organisation. I took direction from the director to, first, refer the application to an external consultant to get some independent advice on the economic report that was provided.

(The witnesses withdrew)

(Luncheon adjournment)

GARY NOEL PRATTLEY, Executive Director, Metropolitan Land and Resource Planning, Department of Infrastructure, Planning and Natural Resources, 20 Lee Street, Sydney,

STEPHEN CLEMENT DRISCOLL, Town Planner and formerly Regional Planning Co-ordinator for Western Sydney, Level 2, Riverbank Complex, Church Street, Parramatta,

PETER GRAY HAMILTON, Town Planner and Principal Policy Adviser, Metropolitan Strategy, Department of Infrastructure, Planning and Natural Resources, 20 Lee Street, Sydney, and

LAUREL LILLIAN CHEETHAM, Senior Environmental Planner, Sydney Region West, Department of Infrastructure, Planning and Natural Resources, Level 4, 10 Valentine Avenue, Parramatta, sworn and examined, and

MARCUS RAY, Acting Director of Legal Services, Department of Infrastructure, Planning and Natural Resources, 20 Lee Street, Sydney,

SAM HADDAD, Deputy Director-General, Department of Infrastructure, Planning and Natural Resources, 20 Lee Street, Sydney,

JENNIFER ANNE WESTACOTT, Director-General, Department of Infrastructure, Planning and Natural Resources, 23 Bridge Street, Sydney, and

DAVID JOHN BIRDS, Town Planner and Team Leader, Sydney West Office, Department of Infrastructure, Planning and Natural Resources, Level 4, 10 Valentine Avenue, Parramatta, affirmed and examined:

CHAIR: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that and the Committee will consider your request. Are you conversant with the terms of reference of this inquiry?

Mr RAY: Yes.

Mr HADDAD: Yes, I am.

Ms WESTACOTT: I am, yes.

Mr PRATTLEY: Yes, I am.

Mr DRISCOLL: Yes, I am.

Mr BIRDS: Yes.

Mr HAMILTON: I am.

Ms CHEETHAM I am.

CHAIR: I need to update the Committee in terms of some correspondence from Mr Ray to the Committee which relates to the Committee's letter to the director-general of yesterday after a deliberative hearing and which I think all members of the Committee have now got. In that letter it said "we note that documents which are subject to a claim of legal professional privilege or by a statutory provision are required to be confidential are not included", I understand, Ms Westacott, that there are some further developments in relation to that, is that correct?

Ms WESTACOTT: That is correct. We have now provided those documents.

CHAIR: I am advised by the Clerk that they will be available for members of the Committee to view later today.

Ms WESTACOTT: That is correct.

CHAIR: The rest of the file has arrived and no doubt the secretariat will make those documents available to Committee members as soon as possible.

Mr RAY: The remaining documents have just arrived as well.

The Hon. JOHN RYAN: I do not think we will be able to read them at the same time as asking questions.

CHAIR: It is a bit difficult for us to have read them when we have not had them. Obviously, we would have preferred them to have been made available last Friday, as requested. I advise that this Committee has now decided to have another hearing on Tuesday so it may be necessary, after we analyse those documents over the weekend, to ask further questions arising out of our study of those documents. Ms Westacott, do you wish to make an opening statement?

Ms WESTACOTT: Yes, I do. First of all, thank you for the opportunity to meet with you this afternoon. Firstly, I would like to point out that this was a development that was given an illegal consent by Liverpool council. Two courts, the Land and Environment Court and the Supreme Court of Appeal, found that the development consent did not comply with planning instruments. People have said that this is just a technicality but Justice Lloyd found that this was not just a mere planning technicality. 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.

Justice Lloyd also said:

Neither do I accept that there is a public benefit in allowing the development to continue. The public benefit is said to arise from the economic benefit it brings to the area, including the employment of persons in the various businesses. If this argument were to be accepted it would mean that business and economic considerations should prevail over planning controls which govern the integrated and orderly use of land.

Our submission which we tabled yesterday has set out the zoning and planning policies which relate to this site. The land is zoned industrial 4(b). Bulky goods are permitted in this zoning. Other retail uses are not considered appropriate. The State's policy in relation to this matter, draft State environment planning policy 66, integration of land use and transport, and the related right place for businesses and services, says specifically discount factory outlets are forms of retail development that should be located in planned centres. Development on isolated sites should not be submitted to the department unless a net community benefit can clearly be established. That is, proposals must ensure there will be no detrimental effect on public investment and private investment should be 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.

The critical point I want to make is this. On the basis of two court decisions and the fact that Liverpool council was the organisation which granted an illegal consent, and then sought to retrospectively rezone the site to make this development permissible, I needed to be satisfied beyond reasonable doubt that in accordance with stated government policy there was a net community benefit in the proposal, and I was not. Ultimately, this was a decision for the Minister. I drew her attention to what I regarded were weaknesses in the case and she made her decision. I sought legal counsel in providing that advice, and it was clear that there were no legal reasons to make or not make the plan. It had to be a decision based on planning merit.

I also advised the Minister that we should seek an orderly wind down of the facility to allow people to get rid of their stock and seek alternative employment. Since that time my department has worked with the Premier's Department and Drakes employment to identify employment opportunities. We have identified approximately 125 jobs. Regrettably we cannot get access to employees. Drakes cannot access employees and our jobs co-ordinator has been denied access to the site. Mr Demody has been removed from the site under circumstances which he describes as intimidating.

Let me spell out the reasons I found both council's case and my department's section 69 report unconvincing. Firstly, there is considerable debate and conjecture on the file between departmental officers

about the merits of this case. In Mr Hamilton's various emails to Ms Cheetham he is concerned about the merit of the case. For example, he says it comes out even on the specific criteria in the net community benefit test, not a net benefit, not a compelling case even. Secondly, we had written to council on 1 April outlining to it that we did not believe it had established a net community benefit.

So it is simply not the case that there was overwhelming support and a compelling case put forward by my departmental officers. In my view those concerns—not just my concerns—of my departmental officers were never fully addressed. Thirdly, I was not convinced by the arguments that this was not going to compete with the CBD, that it was not retail and that it would not adversely impact on the CBD. This is fundamental to the Government's policy about the net community benefit tests. In our section 69 report we say it cannot be claimed to be the same as a local retail centre as the items for sale are stock which is not at the time available in normal outlets. We say it is more like a market. Yet we go on to say that many of the retailers have outlets in Westfield. I looked at the photos on the file and it does not look like a market. Justice Lloyd in point 19 of his judgment clearly states the centre in its present form is a retail shopping centre.

As stated, I was not convinced it was not going to impact on the CBD. Council's own report undertaken by Hill PDA says that there would be an \$18 million loss over two years. This is not a net community benefit. Other submissions argue that the impact would be higher than outlined in council's report. There is no resolution of those competing claims on the file. We simply say this will be resolved by population growth yet Mr Hamilton in his own advice of 30 April to local staff says it is a question of how soon the economic impact will be compensated by the growth of the catchment population. I cannot reconcile this and other analysis we have done for this committee which shows that Liverpool has lost more than 200 jobs in retail since the last census, at a time of strong population growth. Liverpool's loss of retail activity is worse than other Western Sydney locations, that is, whilst the Liverpool region continues to grow its retail activities do not.

I cannot reconcile this and comments like that at folio 224 of the file which says Liverpool does not seem to be a centre in need of revitalisation when 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. This 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. I could not reconcile that we could recommend the rezoning when our section 69 report so clearly points out that the development does not meet the transport objectives of the State's policies. Buses are non-existent on Sunday, two hourly on Saturdays and it is approximately 2 kilometres from the nearest railway station.

A fundamental principle of the net community benefit test is the extent a proposal reduces reliance on the private motor vehicle. This is at a time when as part of our metropolitan plan we are trying to revitalise centres like Liverpool and encourage vastly greater use of public transport and limit sprawling strip-style developments. I drew the attention of the Minister to the centre's policy and the fact that the concentration of retail activity into centres was a longstanding principle of respective metropolitan strategies. I could not reconcile the precedent this development would set. We knew we had another similar development at the Crossroads. We had recently rejected a development for a shopping centre in Tamworth on the basis it would draw activity away from the CBD.

Based on this, based on two court decisions, based on the fact that council which had granted the consent was seeking to retrospectively rezone the site, I felt compelled to draw the Minister's attention to the fact that on planning grounds, the only basis for her decision, the case was not compelling. This is not just a planning technicality: it is fundamental to the integrity of the planning system and to good public policy. I would be negligent in my job if, in reading a departmental report, found it to be a weak case then did nothing to alert the Minister to the problems of the report. We are happy to take your questions.

The Hon. JOHN RYAN: Were there any meetings with the people assembled with you today? Have you been engaged in any meetings to prepare what you were going to say to the committee? If so, when were they held and who attended?

Ms WESTACOTT: We have only held one meeting about our attendance at the committee which was a meeting between Mr Haddad, myself and Mr Ray on Wednesday afternoon to confirm our submission and to confirm the processes and procedures in respect of parliamentary inquiries.

The Hon. JOHN RYAN: Have there been any meetings between yourself and the other people who represent the Department of Infrastructure, Planning and Natural Resources today?

Ms WESTACOTT: No.

The Hon. JOHN RYAN: Can you represent yourself as having the qualifications to be a planner?

Ms WESTACOTT: I am not a town planner but in my view the matters that I raised with the Minister were planning matters and you do not need to be a planner to look at a report and critically analyse it and point out to the Minister that comments like the loss of \$18 million over two years is a negative impact, not a net community benefit. You do not need to be a planner to point out that the section 69 report draws its own conclusions that the development does not meet the transport requirements of the Government's policy. You do not need to be a planner to be concerned about comments that the Liverpool CBD does not need revitalisation when you have just announced a grant to revitalise the Liverpool CBD. I am eminently qualified to critically analyse a report. I also spoke with Mr Prattley on 25 June about my concerns about the file and the merit of the case. He agreed that my concerns were legitimate and supported the comments that I was making to the Minister to draw her attention to the weaknesses in the case.

The Hon. JOHN RYAN: It would be fair to say you do need to have some planning expertise to take what appears to a lay person outside the department to be a very strong planning case made in the section 69 report. You were able to look at it without other advice and make an independent judgment that the planning report that was based not only on what is in it but on a heap of folios including significant consultants reports and other things and come to the conclusion within a couple of days of receiving the report that it was inadequate?

Ms WESTACOTT: I looked at those economic reports, for example, the Hill PDA report to which you are referring which concludes by saying that the CBD would be a better location for this development. As I said, I consulted with Mr Prattley, with my corporate counsel who is an experienced planning lawyer and with Mr Ray who is an experienced planning lawyer and they agreed that my concerns about the case were valid and they agreed that I should draw them to the Minister's attention.

The Hon. JOHN RYAN: Did you have assistance from other people within the office of the Director-General?

Ms WESTACOTT: I had assistance from my executive director of the Office of the Director-General?

The Hon. JOHN RYAN: Does she have planning expertise?

Ms WESTACOTT: She has law expertise and I believe she does have planning expertise.

The Hon. JOHN RYAN: What is her name?

Ms WESTACOTT: Alice Spizzo.

The Hon. JOHN RYAN: Do you know her occupation prior to taking up the position she currently has in your office?

Ms WESTACOTT: Yes.

The Hon. JOHN RYAN: What was that?

Ms WESTACOTT: She was Minister Knowles' chief of staff.

The Hon. JOHN RYAN: Did she receive the job as a result of an open interview?

The Hon. JAN BURNSWOODS: Point of order: We have very clear terms of reference which the committee discussed at some length the day we unanimously adopted them. The line of questioning about the antecedents of individual people working in DIPNR is of no possible relevance to the terms of reference, as well as being personally offensive, as is usually the case with this line of questioning.

The Hon. JOHN RYAN: To the point of order: The line of questioning is intended for the purposes of establishing that there is a direct relationship between Minister Knowles and the Office of the Director-General in that a person who immediately prior to that job had a political office, as a political apparatchik in the office of the relevant Minister, and that she was appointed to a position in the department without the normal public service procedures. That is relevant to the processes and the involvement of Minister Knowles which is one of the terms of reference of the committee.

CHAIR: And other relevant matters arising from the Government's planning policies and decisions. I rule that the question is in order.

The Hon. JAN BURNSWOODS: Further to the point of order: I really do not know what someone's occupational background has to do with the terms of reference.

CHAIR: Are you canvassing my ruling?

The Hon. JAN BURNSWOODS: No, I am speaking to a new point of order.

CHAIR: What is your new point of order?

The Hon. JAN BURNSWOODS: It is that the last point in the terms of reference, "any other matters" specifically relates to policies and decisions. I do not think this line of questioning can come within that final point.

The Hon. DAVID OLDFIELD: To the point of order: What about the role of the Minister for Infrastructure, Planning and Natural Resources, the Minister Assisting the Minister, et cetera. Clearly several points in the terms of reference allow this line of questioning.

CHAIR: I rule on that further point of order that the question is in order.

Ms WESTACOTT: Could you ask the question again?

The Hon. JOHN RYAN: Was Ms. Alice Spizzo appointed to the position that she currently holds with the normal public service requirements of a panel to make an appointment? Did that occur?

Ms WESTACOTT: Yes.

The Hon. JOHN RYAN: At any time before you passed the file to the Minister did you have a discussion with the Minister or her office about what the Minister wanted to do in regard to this matter? There had been quite an amount of discussion and representations and so on. Did you have a discussion with the Minister as to what her view was?

Ms WESTACOTT: No, the Minister and I had a very early discussion at one of our regular meetings earlier in the year where she noted that Liverpool council would be seeking an amendment to the LEP. She did not express any particular opinion about it. She was very concerned about a retrospective rezoning but did not voice any opinion about it. Mr Prattley has had a number of conversations with Minister Beamer in the course of his meetings with her. I did not have a discussion with her prior to passing the file to her.

The Hon. JOHN RYAN: You had no idea what the Minister would decide when you passed the file across to the office?

Ms WESTACOTT: That is correct.

The Hon. JOHN RYAN: The wording of your memorandum dated 25 June is somewhat unusual in that it does not suggest a recommendation at all other than that some information be noted. That information amounts to nothing more than five dot points which one would have to say was not a lot of information to give a Minister on which to assess a very extensive document which appears to a lay person, at least, to be a thorough examination of the compliance of this draft LEP to various State planning policies. Why was the memorandum so brief?

Ms WESTACOTT: The memorandum was brief because the detail is in the section 69 report which stands as read and I was simply drawing her attention to matters that I was concerned about.

The Hon. JOHN RYAN: I beg to differ that the statement of the adequacy of public transport is inconsistent with the spirit and intent of the centre's policy, adverse economic effect on existing nearby retail centres, inconsistency with planning rationale behind draft SEPP 66 and the proposal being satisfactory based on some emergent trend in the USA is so little detail that no person could work out, particularly with the last dot point, what you were speaking about.

Ms WESTACOTT: I will go through them one by one.

The Hon. JOHN RYAN: Because in every respect the section 69 report says exactly the opposite. You just said that they were unconvincing but have not detailed in this memorandum in what respect they were unconvincing.

Ms WESTACOTT: The first one, the adequacy of public transport. The section 69 report states:

Hill PDA, Westfield and the Department all recognise that the Orange Grove Road site does not have good accessibility by public transport. The site is less than 2 km from the nearest railway station (Warwick Farm), but the walk from the station to the site could not be considered to be pedestrian friendly. Bus services Monday to Friday are reasonable, but are only 2 hourly on Saturdays and non-existent on Sunday. The proposal will therefore not encourage people to travel by public transport at the weekend, (when factory outlets are most popular), walk, or cycle to the site. Scope exists for negotiations between Liverpool Council and the developer to improve public transport access to the site as part of the development assessment and approval process.

No such agreement appears on the file. Let us go to number two.

The Hon. JOHN RYAN: No, you have not finished yet. The next point also deals with the issue of car transport and says that this is a factory outlet servicing a region and that there were vast numbers of people travelling all the way across Sydney to access other factory outlets, for example, at Homebush and that it would at least in those cases modify the use of car traffic and perhaps the use of other public transport areas. It is not true to leave off at a question when, from my reading, it does pass the test of transport infrastructure.

Ms WESTACOTT: That is a matter for judgment and opinion. I formed the opinion that the section 69 report and the transport merits of the case did not pass the test.

The Hon. JOHN RYAN: Whilst you formed that opinion no-one could work out how you formed that opinion in terms of your memorandum dated 25 June? It is not possible to determine what influenced you from a dot point that consists of nothing more than six or seven words? It would have been necessary to ask for more detail?

Ms WESTACOTT: And the Minister did. I provided her with subsequent information.

The Hon. JOHN RYAN: Why did you send the Minister a memorandum?

Ms WESTACOTT: To alert her to my concerns about the file.

The Hon. JOHN RYAN: But that is not what you said. You simply said that the comments be noted and the Minister could reasonably conclude that the plan should not be made. For all you know the Minister could have taken that memorandum and simply signed "approved" or "not approved", based on whether she thought that was adequate.

Ms WESTACOTT: But she did not.

The Hon. JOHN RYAN: She did not but she could have?

Ms WESTACOTT: She asked to see me and I spoke with her. We had a lengthy conversation about my concerns about the file. She asked for additional information and I gave that to her.

The Hon. JOHN RYAN: The second memorandum you have given, I confess, has more detail in terms that the dot points are no longer dot points but there is substantial detail not available even in that memorandum. For example, you claim that the study on which the council's consultants is drafted is too narrow because the question requires consideration of retailing in the whole of the Liverpool CBD. Many parts of the Liverpool CBD do not perform well. As I understand it, in all of the documentation either you or the committee has seen to date that the DIPNR had is there any reference to there being parts of the Liverpool CBD which are not performing well. From where did you get that information? I walked through Liverpool CBD only one week ago and I found all of five shops vacant, all of which were former banks. All of the other shops appeared to be okay. There is extensive evidence that Westfield is doing so well it has actually having new developments. On what basis could you say at least at this point that you knew for a certainty that many parts of the Liverpool CBD do not perform well?

Ms WESTACOTT: The file speaks for itself. There is a reference on the file constantly that there will be an \$18 million loss over two years.

The Hon. JOHN RYAN: But that is not a statement that Liverpool CBD is not performing well. That is saying it could well be performing terrifically and it might lose \$18 million, but it does not say that Liverpool CBD is not doing well, does it?

Ms WESTACOTT: 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. The file is very clear, an \$18 million impact, and in the information that we have provided to the committee in our submission we find that there has been a loss of 200 jobs in the Liverpool CBD since the last census.

The Hon. JOHN RYAN: That appears to be new information that was not available on the day you wrote this memo?

Ms WESTACOTT: This goes to your terms of reference and it illustrates my point that this will not have a net community benefit, it will have a negative impact. That is the point that I was required to make. That is the planning merit of the file. Does the proposal have a net community impact? There is adequate evidence on the file that it does not.

The Hon. JOHN RYAN: When did you get the information about the census and the loss of jobs in Liverpool?

Ms WESTACOTT: I did not get that for my decision-making process. I got it afterwards because it is one of the terms of reference of this committee.

The Hon. JOHN RYAN: I am saying this might have been a good guess but it was not based on fact. I have established that your statement on this report that the Liverpool CBD does not perform well is not based on research you did prior to this memo, but based on your experience?

Ms WESTACOTT: It is based on my experience, as is your walk around the Liverpool CBD, but it is also based on the file which clearly says an \$18 million loss over two years and not a net community benefit, a negative impact. My job is not to rewrite the section 69 report, it is to draw the Minister's attention to matters that I am concerned about. I thought there was an undue emphasis in the report and in the Hill PDA report on the performance of Westfield. I thought that the study should be broader. From my own experience I know that parts of the CBD in Liverpool do not perform well. I drew the Minister's attention to it, as I should.

The Hon. JOHN RYAN: I put to you that there was no information in the section 69 report or anything else you had which justified you making the statement on 25 June that many parts of the Liverpool CBD do not perform well, other than your own experience. I also put to you, is that the sort of thing that ought to be influencing a brief of this nature?

Ms WESTACOTT: It is my view that it is my responsibility to draw the Minister's attention to all the matters that she should have regard to, not just the performance of Westfield, the performance of the CBD. I drew the Minister's attention to what was self-evident on the file: an \$18 million loss. When I met with her on the thirtieth I went through that in detail and I spoke with her at length about it.

The Hon. JOHN RYAN: One thing missing in your more detailed memo of 25 June that the Minister signed on 8 July is a reference to jobs, there is almost no reference to jobs, yet the section 69 report and other departmental reports make extensive reference to the social benefits of jobs. Notwithstanding that that may not have been something that was germane to the court's decision, nevertheless it is an issue which is germane to the decision that you had to make, or advise the Minister about: the issue of jobs. There is not one reference to employment opportunities in your second memo, notwithstanding the fact that this was an employment generator of 450 semi-skilled jobs, largely held by women. How on earth could such an important issue not merit your comment?

Ms WESTACOTT: Let us take those things one by one. First, there are not 450 jobs. The Hill PDA report does not talk about 450 jobs, the estimate is 250.

The Hon. JOHN RYAN: I have seen 450 names.

Ms WESTACOTT: I know that is what you have seen, but it is not correct.

The Hon. JOHN RYAN: Well, where are they?

Ms WESTACOTT: There are 250 jobs cited in the compilation.

The Hon. JOHN RYAN: Why is it possible on any day to find 300 people who would sign a form saying that they work there? Plus the fact that they—

Ms WESTACOTT: That does not represent evidence of how many people work there; people signing forms. The second issue is that employment is not the fundamental issue of the section 69 report.

The Hon. JOHN RYAN: No, it is not.

Ms WESTACOTT: You said there was extensive discussion about employment in the section 69 report.

The Hon. JOHN RYAN: It is a fundamental issue that the section 69 report needed to address, because employment is just as important to consider as is the centre's policy. Employment opportunity is an important planning issue.

Ms WESTACOTT: As are the employment opportunities that are lost, if a centre has a negative impact on the CBD; as would be the employment opportunities lost if an \$18 million negative impact was to have occurred. I simply cannot accept that the issue of employment is a fundamental issue in the section 69 report: it is not. In Mr Hamilton's advice it is not the fundamental issue. In fact, the issue turns on this 500-metre buffer from the CBD. It is simply not the case. In any event, in my note to the Minister on 25 June I expressed concern about the employment and advised the Minister that we should support any application for an all-in wind-down of the premises. But it is simply not the case that the section 69 report spends a considerable amount of time on employment. It does not.

The Hon. JOHN RYAN: I did not say that.

Ms WESTACOTT: You did. I am sorry, you said that the section 69 report—

The Hon. JOHN RYAN: No. I said there were references in the section 69 report—

Ms WESTACOTT: No, you said there were extensive references.

The Hon. JOHN RYAN: There are fair references to the employment situation, but employment and social consequences, as stated to the Committee by Ms Kibble who said that was one of the reasons she referred it. She considered there was planning merit in its social and economic consequences.

The Hon. JAN BURNSWOODS: Madam Chair, by my clock the Opposition's time has well and truly expired.

The Hon. JOHN RYAN: I recall us giving you some sympathy this morning. But I am happy to come back. Nevertheless, I will finish this point. Economic and social issues are important issues—

The Hon. JAN BURNSWOODS: Is that a question or a speech?

The Hon. JOHN RYAN: I would ask questions more efficiently if I were not interrupted.

The Hon. JAN BURNSWOODS: That is a matter of opinion.

The Hon. PETER PRIMROSE: You are interrupted by people answering, they are the ones interrupting your flow of questions. Occasionally you are interrupted by people attempting to answer.

The Hon. JOHN RYAN: Are you finished? Is your Academy Award performance complete?

The Hon. PETER PRIMROSE: Bugs Bunny over there! How about asking a question and letting people answer it, for a change.

The Hon. JOHN RYAN: Considering employment issues should have been an important part of the assessment of this proposal. Commonsense suggests that. Nevertheless there are planning instruments which refer to that. I would agree that the section 69 report does not make as much reference to that as perhaps I would have liked. Nevertheless, it does. Your memo makes no reference to it at all. I put to you that that is a significant deficiency in your comments on this matter.

Ms WESTACOTT: Because it is not a matter on which the departmental officers make recommendations. There are three matters that they make the recommendation on. Is there a net community benefit? In my view the section 69 report does not make a compelling case for a net community benefit, and \$18 million loss. In my view the report does not make a compelling case on transport grounds. The report is self-explanatory. Those are the planning matters that the officers had to take into consideration.

The Hon. JOHN RYAN: You keep referring to an \$18 million. What essentially happened is an \$18 million transfer, not a loss to Liverpool just a loss to the CBD.

Ms WESTACOTT: I am sorry, that is what the council's consultants say. An \$18 million loss over two years, not a transfer. Departmental officers had to demonstrate a net community benefit, not a loss. The transport matters are absolutely clear in the section 69 report. The proposal does not conform with the transport matters. Those are the matters that officers had to take into consideration. They did not make a case about employment. They made a case that it complied with departmental policy. I formed a different view, I drew the Minister's attention to my different view and she made her decision.

The Hon. JOHN RYAN: Is it not more important that people are able to use public transport or cycle to get to this place than that there be an opportunity to generate 450 jobs in Liverpool, an area that has one of the largest levels of unemployment in the nation?

Ms WESTACOTT: Those are the policy matters on which the officers had to make their recommendation. As we have said, there are broader issues to consider in respect of the loss of retail activity in the CBD. Transport matters are critical. Ms Kibble, in her letter to Minister Knowles talks about the problems that Liverpool is experiencing in respect of traffic congestion. It is absolutely paramount that we take those transport matters into consideration. The policy requires these developments to be well located in respect of public transport, to encourage walking and cycling. Our section 69 report and the supporting evidence with it clearly state it does not.

The Hon. DAVID OLDFIELD: Ms Westacott, I am slightly confused. I hope you can clarify this: did your officers not approve the plan, or recommend the plan?

Ms WESTACOTT: They recommend the plan to the Minister. It is ultimately a matter for her to make a decision.

The Hon. DAVID OLDFIELD: They did recommend it, despite what you have said in the past 20 minutes or so with regards to how awful it was.

Ms WESTACOTT: They did recommend it.

The Hon. DAVID OLDFIELD: And they are planners, are they not?

Ms WESTACOTT: They are planners.

The Hon. DAVID OLDFIELD: And you are not.

Ms WESTACOTT: I am not a planner, I have made that very clear—

The Hon. PETER PRIMROSE: Let her answer your question.

The Hon. DAVID OLDFIELD: She has answered the question, as far as I am concerned. Ms Westacott could you clarify this: you have no planning qualifications and the last advice you took in making your decision was from Alice Spizzo, who you think has some planning qualifications, and whose immediate past employment was with Craig Knowles?

Ms WESTACOTT: No, the last advice I took on the matter was from Mr Prattley, who can speak for himself. He is a planner and he endorsed the report. He agreed with my concerns. He agreed with the advice I was providing to the Minister.

The Hon. DAVID OLDFIELD: I have an endorsement from Mr Prattley on the plan. Is that your signature, Mr Prattley?

Mr PRATTLEY: That is correct.

The Hon. DAVID OLDFIELD: After Mr Prattley endorsed the recommendation of the other two officers, you then talked him around to your way of things?

Ms WESTACOTT: No, I did not talk him around. I raised my concerns, he can speak for himself. He agreed that we should draw the Minister's attention to the problems with the file. Under the department's policy, section 69 reports that go to a strategic matter—and I would consider retrospectively rezoning a development deemed illegal by two courts to be a strategic matter—are required to be referred to me prior to being referred to the Minister.

The Hon. DAVID OLDFIELD: Did he agree with you that the recommendation should not be made? Or did he simply agree with you that other things might be raised with the Minister?

Ms WESTACOTT: Why not ask him yourself?

The Hon. DAVID OLDFIELD: Because I am asking you.

Ms WESTACOTT: He agreed that we should draw it to the Minister's attention. He agreed that the matters I raised were extremely valid. He made a comment to me that this is a case that could have gone either way. He agreed that we should supply the Minister with additional and different information.

The Hon. DAVID OLDFIELD: With regard to your memorandum of 25 June, is that the memorandum in which you advised the Minister that it is your view that it should not proceed?

Ms WESTACOTT: No. I simply say that the Minister could form the view that it should not proceed, and that she should take this into consideration.

The Hon. DAVID OLDFIELD: At some stage did you recommend it should not proceed?

Ms WESTACOTT: No, I did not. She already had a report recommending that it proceed. I simply did what I was supposed to do as the director-general, which is to draw her attention to problems that I saw with the recommendation. She made her decision.

The Hon. DAVID OLDFIELD: Why did you not draw her attention to these problems before she had the report which recommended that it proceed?

Ms WESTACOTT: Because I did not think it appropriate to ask departmental officers to rewrite the report. I thought she should see all of the information, including the departmental officers' reasoning. I thought she should be aware of all that information and I thought it was my responsibility to draw her attention to those matters which I thought were not adequately addressed.

The Hon. DAVID OLDFIELD: When did the Minister first get the report that suggested it should be recommended?

Ms WESTACOTT: She got the report with my memo, on 25 June.

The Hon. DAVID OLDFIELD: So the Minister had not seen the report prior to getting—

Ms WESTACOTT: No, as I said, the departmental protocol requires section 69 reports of a strategic nature to be forwarded to me.

The Hon. DAVID OLDFIELD: The Minister had not seen the report prior to getting your memo of 25 June?

Ms WESTACOTT: That is correct.

The Hon. DAVID OLDFIELD: With the report for recommendation she got reasons from you why it could be knocked back?

Ms WESTACOTT: That is correct.

The Hon. DAVID OLDFIELD: Did the Minister at any stage ask you for reasons why it could be knocked back?

Ms WESTACOTT: Yes. I met with her on 30 June. By that stage she had read my memo as well as extensively read the file. She expressed some concern about the merits of the case. She expressed a great deal of concern about the economic impact. She expressed a great deal of concern about the contradiction of this decision with the government centres policy. She raised with me the fact that the Government had recently announced a grant to Liverpool council and a grant to other CBD locations across Sydney to help them revitalise their centres. And that this would fly in the face of that decision. She raised with me a case in Tamworth in which she recently rejected an application for a shopping centre on the basis that it would take business away from the CBD.

The Hon. DAVID OLDFIELD: What was the recommendation on that one?

Ms WESTACOTT: Departmental officers recommended that development not proceed.

The Hon. DAVID OLDFIELD: So the departmental officers recommended it not proceed and the Minister raised with you that she had followed that recommendation on that occasion?

Ms WESTACOTT: That is correct.

The Hon. JOHN RYAN: It does not sound like the Minister wanted to approve this on 30 June?

Ms WESTACOTT: She was extremely concerned about the jobs and she asked for additional information.

The Hon. JOHN RYAN: But she does not sound like she wanted to approve it on that occasion, does she?

Ms WESTACOTT: I do not think you can form that view that all.

The Hon. JOHN RYAN: From all the issues you said she raised, they all appear to be issues not to approve, rather than to approve. Did she raise any concerns that might have given you the view that she might have formed a different view?

Ms WESTACOTT: There was nothing in our conversation that made me believe that she had formed the view not to make the plan. She expressed some concern about the matters that I raised with her. She expressed concern about matters from her own reading of the file and she asked for further information.

The Hon. DAVID OLDFIELD: Who is the most senior planner you have?

Ms WESTACOTT: The most senior town planner?

The Hon. DAVID OLDFIELD: The most senior planner, who is most senior in regard to these sorts of reports?

Ms WESTACOTT: The most senior person in respect of planning matters is Mr Haddad.

The Hon. DAVID OLDFIELD: Had Mr Haddad seen the report?

Ms WESTACOTT: No.

The Hon. DAVID OLDFIELD: Did it go through Mr Haddad before it went through you?

Ms WESTACOTT: No. Mr Prattley would be the most senior person in respect of this particular matter.

The Hon. DAVID OLDFIELD: Mr Prattley is the most senior person in this matter?

Ms WESTACOTT: Mr Haddad is the most senior planner.

The Hon. DAVID OLDFIELD: But Mr Prattley is the most senior in this matter?

Ms WESTACOTT: Mr Haddad is not a qualified planner, he is the most senior person in the planning arm of the agency but he does not hold town planning qualifications. Mr Haddad would have appeared before this Committee on many occasions. He has presided over the most complex and difficult developments in New South Wales, yet he is not a town planner.

The Hon. DAVID OLDFIELD: No doubt you have learned your trade from him. When the Minister said that the most senior planner had not seen the report, or not signed off on the report, who was she talking about?

Ms WESTACOTT: Pardon?

The Hon. DAVID OLDFIELD: When Minister Beamer said that the most senior planner in the department had not signed off on the report, who was she talking about?

Ms WESTACOTT: I do not know the context of that conversation.

The Hon. DAVID OLDFIELD: The context is very simple: It was suggested that the report had been signed off and Minister Beamer said that the most senior person had not signed off.

Ms WESTACOTT: I will have to take that question on notice. I am not aware of the Minister making that statement.

The Hon. DAVID OLDFIELD: The Minister made that statement. The most senior person you have who actually is a planner, is Mr Prattley.

Ms WESTACOTT: In respect of this matter, yes.

The Hon. DAVID OLDFIELD: In respect of having qualifications, or in respect of this matter?

Ms WESTACOTT: In respect of this matter. In respect of having line responsibility for this matter, the most senior planner is Mr Prattley.

The Hon. DAVID OLDFIELD: Did you say a moment ago that Mr Haddad did not have any planning qualifications?

Ms WESTACOTT: That is correct.

The Hon. DAVID OLDFIELD: Is there someone more senior than Mr Prattley who has planning qualifications?

Ms WESTACOTT: Not to my knowledge.

The Hon. DAVID OLDFIELD: Not to your knowledge, in your department?

Ms WESTACOTT: No.

The Hon. DAVID OLDFIELD: Can anybody tell me is there somebody more senior than Mr Prattley who has planning qualifications?

Mr PRATTLEY: Not more senior. There are others at an equal level that I think have planning qualifications, yes.

The Hon. DAVID OLDFIELD: Mr Prattley, with regards to these cover sheets, like log ins, I imagine, of the reports, could I reasonably presume that when a person signs off on these they are signing off that they took the report out?

Mr PRATTLEY: That you have handled the report.

The Hon. DAVID OLDFIELD: So everyone who has handled the report would have signed off on this, in theory?

Mr PRATTLEY: In theory.

The Hon. DAVID OLDFIELD: Could you just have a look at that for me. You will see that you have signed off on two occasions, is that right, on 16/6 and on 24/6?

Mr PRATTLEY: That is correct, yes.

The Hon. DAVID OLDFIELD: Do you usually sign differently and sometimes spell your name incorrectly? Because you will note that on the 16th there is sort of a signature style sign off there, is that your signature?

Mr PRATTLEY: That is my signature on the 16th, the other is not a signature, it is a transfer of the file to me.

The Hon. DAVID OLDFIELD: Is that your writing?

Mr PRATTLEY: That is not my writing on the 24th, no. That is simply indicating the transfer of the file from the director-general to myself.

The Hon. DAVID OLDFIELD: So the director-general had it on the 16th and then transferred it to you on the 24th, is that right?

Mr PRATTLEY: That is correct.

The Hon. DAVID OLDFIELD: So the director-general had the file for eight days, is that what you are telling us?

Mr PRATTLEY: Possibly. It would be eight days before it got back to me.

The Hon. DAVID OLDFIELD: Then somebody else signed off on your behalf as having received it?

Mr PRATTLEY: No, that is not a sign off, it is just a line through.

The Hon. DAVID OLDFIELD: Is it not a notation that it came back to you using your name?

Mr PRATTLEY: It would have been referred back to me, yes. I certainly do recall receiving the director-general's memorandum on that date.

The Hon. DAVID OLDFIELD: So she had it for eight days. Ms Westacott, the memorandum that was sent to Mr Prattley on 24/6, where do we have a response from Mr Prattley, or is that perhaps coming in the papers that are being delivered today?

Ms WESTACOTT: No, Mr Prattley does not put a response on the file at that point. He agrees with me, as I have said, and he can speak for himself on this matter, that we should draw the Minister's attention to some of the problems in the file and he does not write anything further on the file. Subsequent to the Minister's meeting he agreed with the conclusions that I had reached that the matters were not compelling. But you can ask him to speak for himself.

The Hon. DAVID OLDFIELD: I am sure he can. We have just had evidence of that. I come back to the question I asked you with regards to the Minister. The Minister was asked a question by Alan Jones, which I cannot quite see that date but it was early in July or late in July. Jones says, "Hang on, within the Department of Infrastructure, Planning and Natural Resources didn't those three senior planners sign off on the rezoning application? And your Minister says, "The most senior planner in the department did not". Does that jog your memory anywhere there as to whom she may have been speaking of?

The Hon. JOHN RYAN: Could she have been speaking of you?

Ms WESTACOTT: She may have been speaking of me. As I said, I am happy to take that question on notice. I have not seen that transcript.

The Hon. DAVID OLDFIELD: Is it possible the Minister is of the impression you are a planner?

Ms WESTACOTT: I do not know.

The Hon. DAVID OLDFIELD: I will take a break.

The Hon. JOHN RYAN: Mr Prattley, it has been described that your view of this decision after you had had an interview with Ms Westacott—

The Hon. Jan Burnswoods: May I ask a question? Are we going back to the Opposition or are we going to the Government? Has Mr Oldfield finished?

The Hon. DAVID OLDFIELD: I am reserving what time I have left.

The Hon. Jan Burnswoods: In that case it should now come to Ms Griffin.

The Hon. DAVID OLDFIELD: I would have thought that would have been the Chair's decision. It was an agreement we reached at the beginning.

The Hon. Jan Burnswoods: Ms Griffin would be next then and Mr Ryan can ask questions later.

CHAIR: I am going to go to the Labor Party and your time starts now.

The Hon. KAYEE GRIFFIN: Who would be the most senior adviser for the Minister in the Department of Planning, Infrastructure and Natural Resources?

Ms WESTACOTT: I am the most senior adviser.

The Hon. KAYEE GRIFFIN: Could you explain some of the most fundamental aspects of providing advice to the Minister?

Ms WESTACOTT: It is my responsibility as chief executive to make sure that the Minister is aware of all of her obligations under the statutes, that she has all of the information; and both Ministers, that I administer the department efficiently on their behalf; that I alert them to issues and that I progress their policy agenda in respect of things like native vegetation, water reform, the creation of the catchment management authorities; it has been my responsibility to lead the Government's natural resource reform, in particular to lead the Government's reform of water entitlements and water management, to lead the Government's reform of the establishment of the catchment management authorities; to restructure the organisation to improve service delivery. Those are the matters that I am responsible for.

The Hon. KAYEE GRIFFIN: You have spoken about some of the challenging issues that have come to the department in recent times. Given that there has been so much interest in people from the department—town planners presumably, as was stated, or people who have a substantial amount of planning experience but not necessarily with the same qualification—when you ask advice of the people within your department could you explain how both those groups of people fit in in giving the advice that you require or that has to be passed on to the Minister at that level?

Ms WESTACOTT: They are required to give advice as per their line of responsibilities. I am required to assess that advice and provide that to the respective Ministers. I am required to draw their attention to matters that they ought to be concerned about and those officers are required, as I have stated, on strategic matters to refer matters to me prior to referring them to the Minister. I do not know that is an answer to your question.

The Hon. KAYEE GRIFFIN: Perhaps for the edification of the Committee members could we perhaps have a bit more explanation of how the process works when files are sent from one part of the department to another?

Ms WESTACOTT: You will appreciate that the department is split across two buildings, that is something I should draw attention to. That often means files take a little longer than they should to get from one place to another. Matters come to me. In this particular case I referred back to Mr Prattley with a memo on it that I wanted a further briefing on it and, as I said, matters of strategic importance are required to come to me before they are passed on to the Minister.

The Hon. KAYEE GRIFFIN: In terms of the advice that was given by the senior people in your department and also the memo that you gave to the Minister, that was all presented to her at the same time?

Ms WESTACOTT: Correct.

The Hon. JAN BURNSWOODS: As a former public servant, I think Mr Oldfield's problem was that he thought that marking off to Mr Prattley was some kind of signature or record of receipt by Mr Prattley, but the point is it was marked off to him from your office?

Ms WESTACOTT: That is correct. People are required to mark the file to the person they are sending it to.

The Hon. DAVID OLDFIELD: That does not change the situation that you had had it for eight days.

The Hon. JAN BURNSWOODS: I only made that comment because Mr Oldfield seemed to be drawing attention to spelling and handwriting variations.

The Hon. DAVID OLDFIELD: I am accepting that there is no forgery and I accept that they do not know how to spell Mr Prattley's name.

The Hon. KAYEE GRIFFIN: Another question that might also assist would be that you said that people in the department are across two buildings, and presumably that does sometimes slow down the process.

The Hon. DAVID OLDFIELD: Eight days. There is no public transport there either apparently.

The Hon. KAYEE GRIFFIN: You said that the department is across two buildings and obviously that can sometimes slow the process down. Perhaps, for Mr Oldfield's benefit could you explain a little bit further the process of when files are marked off to people? You have a central records system, I assume, and in some cases it may take a bit of time for it to go back from you to the central records and then off to whoever you have marked it forward to, is that correct?

Ms WESTACOTT: That is correct.

The Hon. KAYEE GRIFFIN: So there might be a couple of days' process in that?

Ms WESTACOTT: Yes.

The Hon. KAYEE GRIFFIN: Ms Cheetham, has Mr Mosca contacted you directly in relation to the rezoning?

Ms CHEETHAM: Mr Mosca phoned me on a number of occasions in relation to two LEPs that I was managing the section 69 report on: one was this one, another one was the South Hoxton Park urban release area. He asked each time about the progress of them; that was the extent of his inquiry and that was what I answered as well, where things were at.

The Hon. KAYEE GRIFFIN: Did he contact you on a number of occasions in relation to that?

Ms CHEETHAM: He did, yes.

The Hon. KAYEE GRIFFIN: Is it standard practice with the rezonings for the applicant to do that?

Ms CHEETHAM: Yes, it is.

The Hon. PETER PRIMROSE: Ms Westacott, have you been contacted by Mr Mosca?

Ms WESTACOTT: No, I have not.

The Hon. KAYEE GRIFFIN: Mr Hamilton, did you have any doubts about the merits of the case that you were asked to provide information on?

Mr HAMILTON: When you say doubts about the merits, do you mean the merits of the advice I provided?

The Hon. KAYEE GRIFFIN: The merits of the advice that was given to you for you to make an appropriate decision or recommendation on.

Mr HAMILTON: I had some concerns about the information that was provided in one of the LPDA reports, and that is why I wrote a report the way I did.

The Hon. KAYEE GRIFFIN: What sorts of concern did you have?

Mr HAMILTON: They were going through the net community benefit test and identifying how they would answer that test and I looked at those cases and formed different opinions about the strength of the argument they had presented on each of those elements of the advice they provided.

The Hon. KAYEE GRIFFIN: In terms of the differing opinions, was there a very substantial difference between the information that they had given and the opinions that you formed?

Mr HAMILTON: I might need to work through each of those points in detail in trying to remember each of the specifics, but basically they were identifying issues about transport; we had some concerns at a local level about the transport and they have been referred to by the director-general; there was the issue about the

economic impact on Liverpool and I formed the view that there was a balancing of the opportunity of what was happening in that general part of Sydney in terms of providing retail choice, which is one of the things we have been evolving to for retail policy and the centre's policy; and on the impact on the centre, that there was an ability to support the centre through what was happening with transport at a broad level.

The other points were related to the strength of investment in Liverpool centre, that they had made some points about a number of development investments that were happening in Liverpool and I noted that that reflected strong support. The fact that Westfield were investing was strong support for there must be a business case for taking up retail expenditure in that general catchment because Westfield would not have been going into that area if they were not prepared to invest in a new centre. I evaluated that that was a significant investment and for the residential that what was happening was a reflection of support for the centre but they were not really germane to the issue of the retail development.

The Hon. KAYEE GRIFFIN: The original approval for the centre argued largely about a warehouse clearance outlet as opposed to traditional retail and when I asked one of the witnesses from Liverpool council about the difference in the definitions he referred to the LEP. Do you see much difference between what was seen as a clearance outlet and a retail outlet? How do you define those differences? How do you explain expanding retail outlets in the area as being good?

Mr HAMILTON: There are two parts to your question. As to the issue about the nature of what was proposed to be traded, I looked closely at the definition that council had come up with, and was advised by Hill LPDA at some point to strengthen, because I saw that as making it clear that what would be sold through this outlet centre would be different from normal retailing. That was clearly identified. This was to be a different class of retailing that had a different catchment and operated in a different way from other forms of retailing and therefore was part of an approach that supported the view of actively providing a range of retail choice for consumers and residents in a particular area. That was a legitimate case for viewing it as a variation on traditional retail.

The Hon. JOHN RYAN: You drew some of those conclusions from a study that is available to DPNR called "Emerging Retail Formats", or something of that nature, did you not?

Mr HAMILTON: I formed that opinion more on my experience of centres and retailing and the report that had been provided by Hill LPDA for me to comment on.

The Hon. JOHN RYAN: In your report you say that the expansion of development of these types of outlets, particularly developments containing a number of such stores, is complex as covered by Liverpool's definition of an outlet centre, which was a contributory factor in DPNIR last year commissioning an emerging retail formats study. You say that this study has been received in draft form but no decisions have been made about its changes. It will not occur until broad roving work on centres is undertaken as part of metropolitan strategy work over the remainder of this year. Can that study be made available to this Committee?

Ms WESTACOTT: Certainly. I am happy to make that available.

The Hon. JOHN RYAN: Does that study refer to factory outlets as being an emerging retail format that needs to be catered for in our planning policies in some fashion or other?

Mr HAMILTON: In general terms, it discusses a range of retailing formats—that is why it is called the emerging retail formats study.

The Hon. JOHN RYAN: Does it express the view that our planning policies do not yet deal adequately with the issue of factory outlets?

Mr HAMILTON: It makes conclusions and recommendations on a range of retailing, including factory outlets, saying to the effect that one of the benefits that would come from possibly revising the policy would be if it expanded the range of retailing offered to residents and consumers in a retail catchment.

The Hon. JOHN RYAN: That suggests that planning policy should be adjusted in order to make factory outlets more possible.

Mr HAMILTON: That was the recommendation of the study, but as you have just read out we have not made a decision yet about how that recommendation will be dealt with.

The Hon. JOHN RYAN: Given that there is a planning document that discusses that I wonder, first, how Ms Westacott said that she found it unconvincing that there was an emerging trend when a departmental document says that there is and you need to respond to it; and, secondly, if it is an important feature—given that it has been said that the decision could have gone either way—why did it not form part of the consideration? An awful lot of people in the south-western Sydney basin are making trips to Homebush, Birkenhead Point and to other places in order to access this emerging new form of retailing, which they cannot yet access locally. Why was that not considered to be a community advantage?

Ms WESTACOTT: The first point to make is that this is not government policy. While people might want to think about possible policies in the future to make decisions that is simply not the basis on which people can make decisions now. They must make decisions based on the policy of the government of the day. The Government's policy is clearly stated in the section 69 report: a net community benefit must be established, the development must comply with the transport requirements and encourage walking and use of public transport. In my view, justifying our report based on some emerging trend in the United States of America was not appropriate as a justification for a development that in other parts clearly did not meet the Government's policy. I draw your attention to a recent article in the *Australia Financial Review* that talked about these emerging trends in the USA. There is a significant amount of commentary about the negative impact that these factory outlets are having on retail centres in the USA.

I also draw your attention to our submission, which refers to a BIS Shrapnel report. It concludes, "A proliferation of factory outlet centres would clearly have significant impacts upon regional and sub-regional shopping centres. As their availability increases they can lose their point of difference and simply become another centre within a network of centres. The tendency to overshoot a growth market and the subsequent oversupply of factory outlets would tempt, if not force, owners and managers to fill it with normal retailers seeking cheaper rents to the detriment of traditional shopping centres." I think it is simply not appropriate that the departmental officers use an unapproved study on emerging trends in the USA to justify this development, which clearly in my view does not meet the current stated policy. The current stated policy, "Right place for businesses", says that direct factory outlets are retail and they should be concentrated into centres.

The Hon. JOHN RYAN: Leaving aside loads of documents, go to the factory outlet centre and you will find it on any day of the week absolutely packed with people who want that choice. Are we going to simply deny them the opportunity to have that choice, notwithstanding the fact that it gives an enormous opportunity for jobs and is a fillip for the Liverpool region generally—even if it results in some level of transfer of economic activity from the streets of the central business district in Liverpool? Is it not time to start providing factory outlet shopping for people who live in south-western Sydney, who, in my view, have just as much right to that sort of shopping and that shopping format as people who live in the inner city, in the eastern suburbs and on the Central Coast near Tuggerah?

Ms WESTACOTT: My very clear comment here is that nobody is saying that direct factory outlets are not appropriate; we are saying that they have to be in the right place. We have to make our decision based on stated government policy. The stated government policy for these factory outlets is that they be located in centres. Indeed, the policy says that they should be located in declining centres to assist in their revitalisation. That is the matter on which I provided my advice to the Minister.

The Hon. JOHN RYAN: Is your department's advice wrong when it says, "The department notes that the site is separated from the Liverpool CBD zone by about 500 metres. So the proposed location can be regarded as nearly adjoining the centre". It recognises that although it could take some trade away from the Liverpool CBD there is unlikely to be any detrimental economic impact on it. The spending capacity available in the sub-region will increase because of population increase. In fact, the proximity of the outlet centre to the Liverpool CBD could increase trips to the Liverpool CBD for services and goods not available at the outlet centre or the bulky goods centre adjoining. This would encourage continuing private and public investment in the Liverpool CBD—which not only is what your department said but is what appears to be actually happening in the Liverpool CBD. Westfield and other shops are expanding. This place is full. There is absolute growth in this area. I am a resident of south-western Sydney and I live very close to Liverpool. I believe this paragraph describes very accurately the situation as it pertains in Liverpool. Are you saying that this advice is wrong?

Ms WESTACOTT: I am saying that I formed a different conclusion on the basis that the report submitted to the Minister clearly showed that a negative impact would occur—not a net community benefit but a negative impact of \$18 million. This is at a time of population growth. In my view—and the report says this very clearly—the development is poorly located in respect of transport.

The Hon. JOHN RYAN: Are you saying that this advice is wrong?

Ms WESTACOTT: I am saying that in my view that advice does not give weight to the advice on the file that outlines the negative impact that this development will have on the CBD and I am saying that the case had to be overwhelming. We were being asked to retrospectively rezone a development that has been declared illegal by two courts. That is not a line-ball case. It cannot be a case of, "Oh well, on the one hand this but on the other hand that"; it has to be that it will present a net community benefit without doubt. In my view, the departmental officers did not make that case.

The Hon. JOHN RYAN: The April report by Hill LPDA states that factory outlet stores draw trade from a wide area that can coexist with full-price stores that are located in nearby regional centres and that the factory outlet centre at Orange Grove Road, which has been operating since last November—that is quite some time—has clearly not undermined any further development in the Liverpool CBD. Setting aside the academic considerations that you are giving, the brutal facts are that the plain observation by anyone is that there has been no detrimental impact—whatever the planning studies guessed, we are now in a position to work out what is happening as opposed to what might have happened. What was guessed at has not happened: Liverpool centre is thriving and there is growth in all of those areas, probably due to general population growth. But there is no evidence that the factory outlet store, which has been operating for nearly nine months, has had any detrimental impact at all on Liverpool, is there?

Ms WESTACOTT: First, the consultant's report that you quote from is the very report that talks about an \$18 million loss over two years.

The Hon. JOHN RYAN: Which it also describes as "not significant".

Ms WESTACOTT: That is their opinion. But tell that to the people of Liverpool who will lose their businesses.

The Hon. JOHN RYAN: They are about to lose their jobs.

Ms WESTACOTT: Tell that to people in Liverpool who lose their retail activity—\$18 million.

The Hon. JOHN RYAN: This Committee has not received one single submission from any person in the Liverpool CBD complaining that this has caused them any loss. In fact, the Liverpool Chamber of Commerce, which represents all of those people, has also observed that it supports it. You are dealing with a guess; I am saying deal with the facts as they now are. Any study will demonstrate that Liverpool is not dying as a result of this factory outlet; it is thriving.

Ms WESTACOTT: The consultant's report talks about a negative \$18 million impact. I am saying that there had to be a net community benefit, not a negative impact.

The Hon. JOHN RYAN: But if that negative net impact is not occurring why are we still talking about it?

Ms WESTACOTT: I am sorry, I have seen the list of witnesses who will appear before the Committee and there are other people who will argue that there has been a detrimental impact. There are other submissions on the file, such as from the Shopping Council of Australia—

The Hon. JOHN RYAN: Westfield.

Ms WESTACOTT: No, the Shopping Council of Australia.

The Hon. JOHN RYAN: Westfield is the biggest funder of it. It is Westfield by another name.

Ms WESTACOTT: It argues that there is a negative impact. I am saying that, in my view, the case had to be beyond doubt and it is not beyond doubt. How can we just ignore the council's own advice that says there is a negative impact?

The Hon. JOHN RYAN: I ask you to consider what is actually happening in Liverpool now. Go and study what is happening in Liverpool now. In Tuggerah there are two of these centres side by side and they say that it is an advantage to have both forms of retail outlets located together because it encourages people. Mr Gazal has had a series of petitioners—people who walk into a shop and sign a petition. Would you believe that of the 20,000-odd petitioners nearly 40 per cent come from areas other than Liverpool or the immediate surrounds? Those people come from Goulburn, Fairfield and from all sorts of other places and would not normally have gone to Liverpool Westfield. Even I travel to the factory outlet from Campbelltown, bypassing the Westfield development in my district. Lots of people are travelling from out of the area to this place. That is a fact.

Ms WESTACOTT: I am not sure what the question is?

The Hon. JOHN RYAN: I am saying there is abundant evidence of people using this centre not to the detriment of the Liverpool, regardless of whatever the study said was a guess. The case now is that there is no detrimental impact.

Ms WESTACOTT: That is based on your observation. We had before us a report commissioned by council that said a negative impact. You might want to walk around and make your own observations. I had before me a file that talked about a negative \$18 million impact. If I were just to disregard that, it would be outrageous.

The Hon. JOHN RYAN: An \$18 million impact over two years, which was described by the consultant as being insignificant and not detrimental.

Ms WESTACOTT: That is an opinion they formed; it is not an opinion I formed.

The Hon. DAVID OLDFIELD: Was it outrageous when your officers disregarded and recommended approval?

Ms WESTACOTT: I did not agree with their conclusions.

The Hon. JOHN RYAN: Was Mr Prattley outrageous when he had a different view?

Ms WESTACOTT: Mr Prattley is entitled to his opinion.

The Hon. JOHN RYAN: You said it was outrageous. If it is outrageous for me to think it, it must be outrageous for him. Is it outrageous?

Ms WESTACOTT: It would be outrageous if I simply disregarded that. I am talking about my own judgment. I am not going to let a file go through to the Minister where I see a negative impact of \$18 million, where I see differing opinions in the file about the impact on the retail centre, where I see a report that does not convince me that this development complies with stated government policy, without drawing the Minister's attention to that. 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.

The Hon. JOHN RYAN: Mr Prattley, how did you get it so wrong, that Ms Westacott could correct it in a week? The studies you were doing for months followed by dozens of folios were so wrong that Ms Westacott could review the file and sort it out in a week with her extensive planning experience.

Mr PRATTLEY: You do not need extensive planning experience to know that most issues are not simply black and white. Clearly, this issue from the beginning has had extremely difficult issues to balance in both respects. The section 69 report, I think, is quite equivocal. My view when I reviewed the report was you could arrive at either conclusion from this report, just based on the material that was in there. 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, it means I was not prepared to override it at that point, and it does not mean I agree with every aspect or detail in that report, because it has contradictions and conflicts in it that are quite clear.

The Hon. JOHN RYAN: It appears that your disagreement with the report only occurred after you received some correspondence from Ms Westacott. Is that correct?

Mr PRATTLEY: No, that is not correct. I had reservations about the report but I was not prepared to overturn it, because it was a decision the delegate had made and it was a decision I was prepared to respect because I thought it was a conclusion he could legitimately draw.

The Hon. JOHN RYAN: Could it still be a conclusion that might be legitimately drawn?

Mr PRATTLEY: Yes. But issues like this are ultimately the responsibility of the Minister because essentially they are value judgments in the end and therefore they are political decisions.

The Hon. JOHN RYAN: So it is a political decision not a planning decision?

Mr PRATTLEY: Most planning issues are political decisions, when they are weighing up different values. If you know very much about that, 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 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 in the final analysis.

The Hon. JOHN RYAN: Ultimately this was an equivocal decision, which was determined by the Minister's political judgment rather than a compelling planning case, is that fair?

Mr PRATTLEY: I think the case that is reflected in the decision is the most compelling personally, based on the policy position of the Government, which was strengthening at the same time this process was going—with the Sydney's futures forum, the statement of the Minister and the statements of the Premier on strengthening the role of centres, which is, in my view, are a significant reinforcement of the government position. We were dealing with a draft policy in SEPP 66 that was not signed off prior to the selection. One of the issues that had always been equivocal on that was the conflict over out-of-centre centres, because we had had pressure from every side. So, there had been a shift in the government position. There was clearly a willingness of the government to take a stronger policy position on centres. That in itself, in my view, is sufficient reason to change my view on it.

The Hon. JOHN RYAN: But that is a political decision motivated by your political masters, the position being put by your political masters. Look, the position being put by your political masters is that they were forced to take this decision because the best town planners found this to be a phenomenally compelling case that they could not overrule. Is that not true?

Mr PRATTLEY: No, that is not what I said at all.

The Hon. JOHN RYAN: I am saying they made this decision because they received compelling planning advice. I think the Premier used the word chaos if it had not been determined this way. The truth is there is an element of political decision in this to which the Minister is entitled, but nevertheless it is a political judgment, is it not, as you said?

Mr PRATTLEY: Based on sound planning issues, yes.

The Hon. DAVID OLDFIELD: Ms Westacott, you were talking about the Shopping Centres Councils of Australia's concern with regard to public transport in this issue, is that right?

Ms WESTACOTT: No, I said the Shopping Centres Council of Australia raised the issue about impact on retail activity.

The Hon. DAVID OLDFIELD: Not about truck transport or car parking?

Ms WESTACOTT: No.

The Hon. DAVID OLDFIELD: You are not concerned with those issues?

Ms WESTACOTT: I am concerned with those issues. I was concerned about the transport issues that we raise in our own section 69 report, that the development does not comply satisfactorily with the transport requirements of our own policy, but that is not the matter they referred to in the shopping council's report.

The Hon. DAVID OLDFIELD: Would you be aware that the shopping councils in various reports have been more concerned with appropriate high levels of parking than they have with public transport, specifically in regard to these sorts of stores? They make it very clear that there should not be any limitation on parking and they make a clear case why it is important for cars rather than public transport because of the bulkiness of what people have and the distances they are coming from, the drawing areas?

Ms WESTACOTT: That may be what they argue. The Government's policy requires retail activity to be concentrated into centres that are well located next to transport.

The Hon. DAVID OLDFIELD: Mr Birds, according to the log, you reviewed the report or had the report last on 15 April, would that be right?

Mr BIRDS: No, I think the last time I saw the file was after I signed off on the section 69 report in early June.

The Hon. DAVID OLDFIELD: On 4 June? When you signed off on that report, who was with you?

Mr BIRDS: I sat at my desk and I signed it off having read it. Nobody else was with me.

The Hon. DAVID OLDFIELD: Ms Cheetham, you are in a similar situation. According to the log, the last time you had the report was on 27 May, yet you signed off on the report on 4 June. Were you by yourself as well?

Ms CHEETHAM: Yes, I was.

The Hon. DAVID OLDFIELD: This may be nothing, but could you tell me why there is no indication on the log of either of you having the report to be able to sign off on it around that date?

Ms CHEETHAM: The file internally was in our office. It did not move out of our office. So, we sometimes do not sign off individually. We might just past the file internally. We should not, but we do.

The Hon. DAVID OLDFIELD: So, neither of you signed off as having it at the time you signed off on the report itself? You did not sign off the log sheet and then you sent it off to the director-general, is that right?

Mr BIRDS: I suppose the comment would be the file was in our Parramatta office. Ms Cheetham and I sit close to each other and work closely on a number of matters. The files tend to be signed out by our administrative staff in particular and they are passed on to head office amongst other places.

The Hon. DAVID OLDFIELD: Mr Birds, was it you who commissioned Parliamentary Counsel to do a draft for gazetting the approval?

Mr BIRDS: No.

The Hon. DAVID OLDFIELD: Ms Cheetham, was it you?

Ms CHEETHAM: No.

The Hon. DAVID OLDFIELD: Ms Westacott, do you have any idea who did that?

Ms WESTACOTT: It is normal practice when an LEP is being considered to send it to Parliamentary Counsel, for Parliamentary Counsel to determine whether the plan can be legally made.

The Hon. DAVID OLDFIELD: So that was just a normal procedure for you to get Parliamentary Counsel to draft it?

Ms WESTACOTT: That is correct.

The Hon. DAVID OLDFIELD: Mr Prattley, during the course of the recommendations or during the course of putting together the report and then finally the recommendation, over those couple of months, did you have contact with Mr Birds and Ms Cheetham with regard to this report?

Mr PRATTLEY: Not directly, no.

The Hon. DAVID OLDFIELD: Indirectly? Moreover, what was your contact then?

Mr PRATTLEY: I would have spoken to Mr Driscoll at the time as regional co-ordinator on one, possibly two, occasions during the course of that consideration. Principally when he consulted me about the key aspects of the way in which the report should be handled.

The Hon. DAVID OLDFIELD: The way in which the report should be handled?

Mr PRATTLEY: Specifically about the issue of whether the Crossroads development should be dealt with separately. Whether we should try to deal with them as separate matters rather than as a combined matter.

The Hon. DAVID OLDFIELD: Do you see the same issues at the Crossroads?

Mr PRATTLEY: Similar, certainly similar.

The Hon. DAVID OLDFIELD: Can we expect a similar scenario—your planners recommending it and then Ms Westacott determining for the Minister how she can knock it back?

Mr PRATTLEY: I would not pre-empt consideration of that matter. It has not been referred to us yet. We will deal with that in the context of the policy position at the time.

The Hon. DAVID OLDFIELD: Which is the same policy position in relation to this. You only had a couple of conversations with Mr Driscoll during the course of the report being prepared? You had no work contact with Laurel Cheetham or David Birds?

Mr PRATTLEY: Not to my recollection, no.

The Hon. DAVID OLDFIELD: So the first time you viewed the report as such overall was when you endorsed it on the 16th?

Mr PRATTLEY: That is correct.

The Hon. DAVID OLDFIELD: Ms Westacott, what exactly happened in regard to the Minister and your contact with her over the section 69 report? You received the report on the 24th and you sent the report with the memo describing the justifications under which the recommendation could be rejected? You sent the report and your memo at the same time to the Minister?

Ms WESTACOTT: Correct.

The Hon. DAVID OLDFIELD: On the 25th.

Ms WESTACOTT: Correct.

The Hon. DAVID OLDFIELD: What happened then? Did the Minister contact you?

Ms WESTACOTT: The Minister and I met on the 30th, and Mr Prattley was there.

The Hon. DAVID OLDFIELD: You were both together? What happened at that meeting?

Ms WESTACOTT: I have gone through that already. I had an extensive discussion with the Minister. She expressed her concerns about the file. I went through in detail my concerns. Mr Prattley expressed his concerns. She asked for further information.

The Hon. DAVID OLDFIELD: Mr Prattley, were you asked at all by the Minister how you came about these concerns given that you had endorsed the recommendation on the 16th? Did the Minister find it odd at all that you were now in company with Ms Westacott explaining why it should be rejected essentially—even though the memo does not quite put it that way—when you endorsed the recommendation on the 16th? Did the Minister find that a problem at all?

Mr PRATTLEY: We were debating the issues, the broader strategic issues, that both she and the director-general felt had not been adequately dealt with in the report. So, we were discussing the pros and cons of those issues. So, no, I do not think there was anything. I cannot speak for the Minister, but I had no sense that she felt there was anything unusual in that, no.

The Hon. DAVID OLDFIELD: Nothing unusual in that you endorsed it 14 days beforehand and now you were in company canning it?

Mr PRATTLEY: I think I have covered that point before. I endorsed the work of a delegated person as being a reasonable conclusion that could be reached; not the only conclusion.

The Hon. DAVID OLDFIELD: I think Mr Ryan may have covered this, so excuse me, but just briefly do I understand that given Ms Westacott's memo of the 25th, where you were outlining justifications for knocking it back should the Minister determine to do that, is it fair for us to understand that the Minister could have gone happily either way based on all of your recommendations up to that point?

Ms WESTACOTT: Yes.

Mr PRATTLEY: Yes.

The Hon. DAVID OLDFIELD: It was entirely her decision?

Ms WESTACOTT: Correct.

The Hon. DAVID OLDFIELD: Are you aware of any other information or direction? Did the Minister expressed to you that she was receiving any other directions or that she was entirely making this decision on her own?

Mr PRATTLEY: I am certainly not aware of any directions.

The Hon. DAVID OLDFIELD: Were you aware of anything else?

Mr PRATTLEY: There were clearly people trying to make extensive representations throughout the process.

The Hon. DAVID OLDFIELD: To the Minister?

Mr PRATTLEY: To the Minister's office.

The Hon. DAVID OLDFIELD: Who were those people?

Mr PRATTLEY: Westfield certainly, solicitors representing—

The Hon. DAVID OLDFIELD: Westfields were making extensive representations?

Mr PRATTLEY: A series of written submissions were made and requests for meetings.

The Hon. JAN BURNSWOODS: Plus Mr Mosca's 40 phone calls to Ms Beamer that we heard about earlier this morning.

Mr PRATTLEY: Yes, there were a lot of people. But we were copied with all of that material. There was nothing unusual on that in the sense that for the three years I have been here this issue, in its generality rather than this specific site, has been a key issue around the whole retailing fraternity not just in New South Wales but across Australia.

The Hon. DAVID OLDFIELD: Ms Westacott, were you aware of any direction or influence that the Minister was under during this period whilst determining whether to use your justifications for refusal or to use the report's recommendation?

Ms WESTACOTT: No.

The Hon. DAVID OLDFIELD: Back to the cover sheet once again, Ms Westacott, where you had finished with the report on the 16th, is it your writing that says "Prattley" after that?

Ms WESTACOTT: It is the writing of someone from my office.

The Hon. DAVID OLDFIELD: So you have directed someone from your office to send it on to Mr Prattley and they have filled in "Prattley", the date and on it has gone?

Ms WESTACOTT: Yes.

CHAIR: Ms Westacott, Ms Cheetham and gentlemen, because, as I said, the department has been slower than we would have liked in providing the documents that we ordered we will require DIPNR to return for a supplementary hearing on Tuesday next. Until we go through the documents we will not be certain how many of you we will require on Tuesday. It may not be that you will all be required to return. However, we will try to inform you of that as soon as possible. The Committee secretariat will inform you of this. Mid-morning on Tuesday would be perhaps the time that we can slot you in.

The Hon. JOHN RYAN: I made a request for a planning document. Is there any chance of that being available to the Committee within 24 hours or so, or released before we meet again on Monday?

Ms WESTACOTT: Certainly.

CHAIR: And if we could have responses to the questions on notice as soon as possible so we can take them into account when preparing our questions for Tuesday.

Ms WESTACOTT: Certainly.

(The witnesses withdrew)

MILTON COCKBURN, Executive Director, Shopping Centre Council of Australia, 11 Barrack Street, Sydney, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee today?

Mr COCKBURN: On behalf of the Shopping Centre Council of Australia.

CHAIR: You are familiar with the terms of reference of this inquiry?

Mr COCKBURN: I am.

CHAIR: If at any stage you consider that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee please indicate that and the Committee will consider the request. You have provided the Committee with an extensive submission. Do you have any opening remarks that you would like to make in summary?

Mr COCKBURN: Yes, I would like to make a brief opening statement if I may. The submission we have presented today outlines why the Shopping Centre Council, on behalf of its members, has taken a strong public policy position on this issue. It also details the representations we have made to ensure this policy position was known to Liverpool council, the New South Wales Government, the New South Wales Opposition and the public more generally. Those representations have been made openly and honestly. We have nothing to hide in how we have approached this matter, first with Liverpool council and later with the New South Wales Government. The proposed Liverpool local environmental plan amendment 92 clearly contravened the State planning policies integrating land use and transport and the right place for business and services which were released in 2001 and draft State environmental planning policy 66. Those policies are not new; they are a consolidation of planning strategies commonly referred to as centres policies that have underpinned the land-use planning system in this State for more than 40 years under both Liberal and Labor governments.

The right place for business and services policy says very clearly on page 12 that factory outlets "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 the existing declining centres where they can play a positive role in their revitalisation." To retrospectively rezone this site to make lawful what the courts have declared an unlawful land use would have made a mockery of the planning system in this State. As Justice Lloyd of the Land and Environment Court of New South Wales said in his decision on this matter on 16 January 2004, "The system of planning control in this State could be set at naught if a use of land which is prohibited by an environmental planning instrument is allowed to continue. The whole system of planning control is dependent upon the orderly enforcement of environmental law." Such an outcome would obviously not be in the interest of our members. It would also be against the interests of the New South Wales community more generally. If the Minister were to permit one shopping centre to operate in an industrial zone equity would demand that all shopping centres could similarly locate in industrial zones. If centres policies are not implemented or are not implemented consistently then planning laws are undermined and investor confidence in the planning system collapses. If the planning system ceases to provide reasonable confidence for shopping centre developers and creates doubt and uncertainty amongst those who provide funds for these developments then investment risk obviously increases.

Any increase in investment risk has three major consequences for shopping centres. First, overall investment in shopping centres will decline if investment risk increases. Superannuation funds and listed property trusts are the major sources of investment funds for shopping centres and these institutions are low-risk investors. Fund managers will be less willing to commit the very large amounts of capital for development or redevelopment if the sector becomes riskier because of planning uncertainties. Second, shopping centre project quality will deteriorate if investment risk increases. When shopping centre owners have confidence in the planning system they can take a longer-term view of their investment. Owners can build quality into shopping centre developments in terms of design, construction, materials and fit out.

If there is planning uncertainty, however, less money will be committed to projects and the quality of design and standards of appearance will be compromised. Third, if investment risk increases then investment in community infrastructure as part of shopping centre developments will inevitably suffer. Working in a relatively stable planning environment, shopping centre developers can afford to make a substantial commitment to

infrastructure such as town centres, roads, bus and rail interchanges, meeting rooms, libraries and childminding centres. If planning uncertainty increases investment risk then shopping centre developers will be less ready to make such commitments.

It is not only shopping centre owners who look to the planning system to provide reasonable confidence in their investments; so do the retailers who signed leases in the shopping centres or in other retail locations in the established town centres. Public debate on this issue has overlooked the plight of retailers and retail employees in surrounding shopping centres and in the Liverpool CBD who have located in the proper commercial zones.

While these retailers always anticipate additional competition, they assume such competition will be fair competition and that their prospective competitors will be required to also locate in the proper commercial retail zones and, therefore, their cost structures will be similar. The opening of this illegal centre has had a substantial impact on the turnover of these other retailers and on the staff they employ. These are the forgotten people in this debate.

In an attempt to correct this, we have included the experience of some of the retailers at Westfield Liverpool in our submission and I refer you to section 12 on page 9. I want to highlight one comment, however. One of those retailers has informed us that they were approached by a leasing representative to take premises in the Orange Grove Road outlet centre and actually inspected the premises in the centre. The retailer was not informed of the pending legal action by the leasing representative and learned of this from the retailer's solicitor. When the retailer asked the leasing representative about the legal action, they were told, "Don't worry about that. Relax."

We believe that the Minister for Planning Administration, Ms Beamer, made the right decision on this LEP. Indeed, we believe it was the only decision that the Minister who is responsible for the orderly enforcement of the planning laws and the planning system in this State could take. The Shopping Centre Council believes that the New South Wales Government should now take action to prevent such a situation arising again by ensuring that local councils comply with the State planning policies, integrating land use and transport and the right place for businesses and services when drafting and implementing local environmental plans. We believe it should immediately gazette State Environmental Planning Policy No. 66.

The Hon. JOHN RYAN: It would be fair to say that absent any special consideration given to factory outlets in SEPP 66, that existing retailers have certainly got a significant advantage in that they are established, they are able to add to their bulk by asking for rezoning from councils, as Westfield at Liverpool has done, and it would be very difficult, it seems to be conceded on all sides, that absent any special opportunities for retail outlets, that I could only quote a document called "Remarkable", which notes that factory outlets centres have been successful overseas, have been welcomed here, and in saying that, having proven success overseas and being welcomed by local shoppers, the outlet concept is here to stay, however barriers to entry will cap future development, therefore, increasing capital values on existing centres, but in any event there is no expectation that you would see any increase in factory outlets in the current planning environment, is there?

Mr COCKBURN: Quite the reverse. We have gone from zero factory outlets in Australia to, I think, 13 in the last decade.

The Hon. JOHN RYAN: How many shopping centre expansions to the equivalent value?

Mr COCKBURN: That is actually an infinitesimal rate of increase obviously since you start with zero, but if you assume that the rate of increase in factory outlets over that period is 800 per cent, then in fact the rate of increase in shopping centres in that period is considerably less than 800 per cent.

The Hon. JOHN RYAN: I think it would be fair to say that it is still a quite modest provision of a very popular form of shopping outlet. My experience is that they are packed with people who want to shop in them. It appears to me that whilst you are, of course, entitled to advocate for a different shopping outlet—and that is obviously what you do—it is fair to say that absent any further intervention, the planning laws clearly favour shopping centres as opposed to brand new factory outlets, do they not?

Mr COCKBURN: I do not accept that at all. The reality is that I can point to several factory outlets centres at the present time that are operating in commercial zones. As SEPP 66 the right place for businesses

and services notes, they are in fact a very good form of revitalising retail centres that have deteriorated. Certainly two of the factory outlets centres that I know of in Sydney have actually been converted shopping centres where the shopping centre itself was performing poorly and had been converted to a factory outlet centre and, in fact, has done well as a factory outlet centre.

The Hon. JOHN RYAN: But there is no practical way in which a factory outlet the size of the one at Liverpool could be added to the Liverpool central business district, which seems to be the requirement. As we have been told by Liverpool council, there is no other land space available that they could acquire in order to build a similar facility in the Liverpool CBD.

Mr COCKBURN: I am not a developer so I do not know the Liverpool CBD zoning to such an extent that I could make that judgment, but even if that was true, that is making the assumption that the only place you could locate an outlet centre in the south-eastern Sydney district is Liverpool, and that clearly is not the case.

The Hon. JOHN RYAN: But it cannot be located anywhere else in Liverpool, according to SEPP 66, other than in the CBD.

Mr COCKBURN: Yes, if you wanted to locate one in Liverpool, certainly the centre's policy suggests that it should be located in the town centre.

The Hon. JOHN RYAN: And given the hierarchy of centres, Liverpool would certainly rank as one of the highest centres within south-western Sydney. If it were not Campbelltown, Liverpool would be a logical place to place a factory outlet?

Mr COCKBURN: If the question is: Is Liverpool a prominent town centre, yes.

The Hon. JOHN RYAN: There are, of course, some other facts that need to be considered. There are a large number of people—although there is a lot of reference to this being an illegal development, nevertheless it was developed and opened with a valid planning consent from Liverpool council, which I do not think anybody has suggested that the developer had any reason to doubt.

Mr COCKBURN: With respect, you say it is a valid planning consent. The court has found it not to be a valid planning consent.

The Hon. JOHN RYAN: Sorry, as far as the developer was concerned, he had what he thought was a valid planning consent and there does not appear to be any malice on his part to have done anything other than go through the correct channels. He has described to us that he has gone to Liverpool council, sought their assistance in getting an approval. When it was discovered that the approval was not available, he knows that the council were going through procedures, which would have allowed it to have been approved by the Minister. There was every indication, through all the various channels, that that approval would be given. It would be fair to say that even if he knew he was going to fall over in the courts, he expected the political situation to pick him up and he had every reason to believe that was the case. After all, the planning Minister opened his centre. It would be fair to say that it is going to have a very unfortunate impact on him, on the 60 businesses in the centre and on the 400-odd individuals who hold jobs in the centre, is it not?

Mr COCKBURN: Mr Gazal was aware early last year that legal action against the change of use had been launched.

The Hon. JOHN RYAN: By an organisation that regularly launches legal action, not all of which succeeds.

Mr COCKBURN: It does not matter who launched the action; he was aware that there was legal action on foot.

The Hon. JOHN RYAN: You know that Westfield has a policy that they fight every factory outlet centre, whether they have got good cause or not.

Mr COCKBURN: That is not true.

The Hon. JOHN RYAN: That is what Mr Lowy said in his speech last November—"We fight them all", he said.

Mr COCKBURN: The reality is that I can point you to a number of factory outlets operating around Australia in which neither Westfield nor the Shopping Centre Council has raised any objection at all, the most recent one being in Perth, the Harbourtown factory outlet, which is now operating in the Perth CBD.

The Hon. JOHN RYAN: Good luck to Perth, but there is not one in Sydney.

Mr COCKBURN: No, but Westfield have shopping centres in Perth. They have not challenged that factory outlet centre.

Ms LEE RHIANNON: How close is it to the Westfield one?

Mr COCKBURN: Close enough, I would have thought, to impact upon the turnover of some of their centres.

The Hon. JOHN RYAN: How close?

Ms LEE RHIANNON: Is it two kilometres, 10 kilometres?

Mr COCKBURN: I have not got a map in front of me, but I would have thought three or four kilometres from the nearest Westfield centre.

The Hon. JOHN RYAN: AMP is one of the contributors to the Shopping Centre Council, is it not?

Mr COCKBURN: They are one of our members.

The Hon. JOHN RYAN: What do you think of the fact that AMP is actively seeking to get approval for a factory outlet centre at The Cross Roads, even further away from the Liverpool CBD, with even less access to public transport and a proposal that is twice its size?

Mr COCKBURN: Well, there are two points that I make about that. Our submission to Liverpool council in February opposed both applications, both The Cross Roads application and the Orange Grove Road application, but, secondly, I would point out that they were applying for a rezoning of their site. They did not go ahead and build a factory outlet centre on it and then when it was found out to be illegal, seek retrospective rezoning.

The Hon. JOHN RYAN: The only difference between Mr Gazal's position and theirs is that they went to the council and the council told them that the land would obviously have to be rezoned, and it obviously does, whereas Mr Gazal received advice from the council that that was not necessary and they gave it approval.

Mr COCKBURN: I would have thought it was obvious to anyone, certainly given the letter sent to Mr Mosca, that I heard this morning, it would have been obvious to anyone that a rezoning was required for Orange Grove Road as well.

The Hon. JOHN RYAN: It became obvious but it was not at that time he got his development consent and for a substantial period of time while he was building the project it was not obvious, and in fact Liverpool planners have said the situation was at least ambiguous.

Mr COCKBURN: It would have been prudent for Mr Gazal, as a developer, to seek legal advice as to whether a rezoning was required and certainly once legal action got under way, I would be very surprised if he did not have legal advice to that effect.

The Hon. JOHN RYAN: In any event, the situation is going to have a significant impact on around 400 individuals at least? Do you have any concerns about those individuals or business people?

Mr COCKBURN: I obviously have concern for anyone who gets thrown out of work but, as I made clear in my submission, we also have concern about those retailers in the Liverpool CBD who have done the

right thing and located in the commercial and retail zones and are now being very substantially impacted by competitors in a location where it was never envisaged that they would face competition.

The Hon. JOHN RYAN: Earlier you made reference to somebody complaining about the business practices of Mr Gazal in terms of the leasing arrangements.

Mr COCKBURN: Well, it was the leasing representative.

The Hon. JOHN RYAN: Have you spoken to this individual?

Mr COCKBURN: Yes, I have.

The Hon. JOHN RYAN: Has that person come forward and made a formal complaint of any sort?

Mr COCKBURN: No, that person informed me when I was speaking to him last Friday.

The Hon. JOHN RYAN: But you accept that the evidence you are giving to the Committee is from an unnamed individual about whom we have no way of checking further, other than asking Mr Gazal?

Mr COCKBURN: That is right, but I have sworn an oath that everything I say here today will be the truth, the whole truth and nothing but the truth. My comments are made in that context.

The Hon. JOHN RYAN: Notwithstanding that, we are not able to check the validity of the story that person told you without seeing that person?

Mr COCKBURN: That is true.

The Hon. JOHN RYAN: Therefore, it is hearsay, as a court would say, is it not?

Mr COCKBURN: It is hearsay from someone who has sworn an oath to tell the truth to this Committee.

The Hon. JOHN RYAN: That is right, but similarly we have heard plenty of other evidence that is even more sensational than that, that we would not take necessarily on face value without being able to check it, and given that we do not even know this person's name, we are not going to be in a position to check that, are we, unless they come forward to the Committee and make their own submission?

Mr COCKBURN: Or unless you take proactive action.

The Hon. JOHN RYAN: I accept that you are doing a good job of lobbying for an alternate retail format; I am not sure that the issue is advanced much further, other than by hearing your view. I welcome the opportunity to hear your view and I do not have any further questions.

Ms LEE RHIANNON: Just so that I have some background information, when was the Shopping Centre Council of Australia formed?

Mr COCKBURN: In May 1998.

Ms LEE RHIANNON: When did you start working for it?

Mr COCKBURN: In April 2001.

Ms LEE RHIANNON: Has the Shopping Centre Council of Australia given any donations to political parties?

Mr COCKBURN: No, we do not donate as such to political parties but, from time to time, I am obviously invited to attend fund-raising breakfasts, lunches and dinners that politicians invite me to and from time to time I accept those invitations.

Ms LEE RHIANNON: Do you pay for them?

Mr COCKBURN: Yes.

Ms LEE RHIANNON: When did you say you started work for them?

Mr COCKBURN: April 2001.

Ms LEE RHIANNON: Have you donated to political parties?

Mr COCKBURN: No.

Ms LEE RHIANNON: Do you think this Milton Cockburn, who gave in 2002-2003—and that name is listed in the Australian Electoral Commission as giving \$2,000, do you think that is you or do you think that it is somebody else?

Mr COCKBURN: No, that would be me, but as I said that is not a donation; that would have been attendance at a function of some sort.

The Hon. DAVID OLDFIELD: I hope they were serving French champagne.

The Hon. JOHN RYAN: Come on; dinner wasn't that good.

Mr COCKBURN: You are right, Mr Ryan, they are what I call arm-twisting by political parties.

Ms LEE RHIANNON: Are you confident about that because usually we find that the donations for dinners and fund-raisers are of an uneven amount, particularly with GST these days, whereas that is more an amount we find that people give when they give a straight donation.

Mr COCKBURN: As I understand it, under electoral law we are required to disclose all forms of contributions, whether they happen to be a straight-out donation to a political party or whether they are these disguised fund-raisers that we are, from time to time, obliged to attend.

The Hon. JOHN RYAN: Obligated?

Ms LEE RHIANNON: So you are confident that that \$2,000—

Mr COCKBURN: It would probably be more than one, I suspect, because \$2,000 tends to be on the high side of it.

Ms LEE RHIANNON: It is just one entry?

Mr COCKBURN: Yes.

Ms LEE RHIANNON: If it was more than one, it would be separate entries?

Mr COCKBURN: Without knowing what it was and the particular date, I could not tell you. We are part of the Property Council of Australia, and I suspect some of the fundraising functions we attend would be listed also under the Property Council.

Ms LEE RHIANNON: You said that the Shopping Centre Council of Australia does not give donations, but it is listed under the Australian Electoral Commission.

Mr COCKBURN: Yes. If you want to say that a political donation is any amount of money that finds its way into the pocket of a political party, obviously we give donations. I see donations falling into two categories: one, a straight-out donation to a political party for which nothing is attached, there is no attendance, no function. We do not give those forms of donation. Second, a category that is becoming increasingly common amongst all political parties, is holding a luncheon or a dinner with a political leader, a Minister or the Leader of the Opposition. From time to time we attend those functions.

Ms LEE RHIANNON: You are suggesting that two donations are listed, one personally and one for the council, and they are for dinners. Are you confident of that?

Mr COCKBURN: They certainly are not of the former category that I described. Without having the details that you have I could not tell you what they were. It certainly would not be an individual donation by me; it would be an attendance by me in my capacity as Executive Director of the Shopping Centre Council.

Ms LEE RHIANNON: The only details I have in front of me are your name for 2002-03, and a \$2,000 donation to the Labor Party of New South Wales.

Mr COCKBURN: That would be a dinner or a lunch that I would have attended.

Ms LEE RHIANNON: And in 1999-2000, a donation of \$5,100 to the national secretary of the Liberal Party.

Mr COCKBURN: That would have been before my time. Again, it would have been the practice of my predecessor to similarly attend those functions. For example, most political parties hold annual conferences. As part of those annual conferences, certainly as Ms Gardiner knows from her days running a political party, they have such things as business observers programs attached to the conferences. That was probably one of those attendances.

Ms LEE RHIANNON: Is there any expectation when you give this money?

Mr COCKBURN: No, the only expectation is that I would meet people. Obviously in my role as Executive Director it is my intention to make myself known to most public policy makers around Australia. This happens to be a convenient way in which I can extend the network of people that I know.

Ms LEE RHIANNON: When the decision was overturned with regard to Orange Grove, were you expecting that or were you surprised?

Mr COCKBURN: I thought we had a very good case for convincing the Government of that decision, but I thought we were probably only a 50:50 show. I thought if the decision was to be made purely on consistency of planning grounds that we had an overwhelming case. However, I thought it might be inevitable that a more pragmatic decision would be taken: as the thing is running, we might as well give it a rubber stamp.

Ms LEE RHIANNON: Is the council working to stop factory outlets anywhere else?

Mr COCKBURN: Of the 13-odd factory outlet centres that are operating around Australia at the moment, some of our members have legal action against them the DFO at Homebush. That is another factory outlet centre that is operating in an industrial zone. A number of our members are challenging whether that outlet centre is operating in terms of its development consent. We are not challenging any other factory outlet centre around Australia, per se, but having said that we do have a considerable frustration at the moment with the operation of the airports Act, the 1996 Federal Act. That Act permitted the sale, the privatisation, of airports around Australia. A number of those airports are now seeking to commercially develop land that had previously been set aside for aviation purposes.

Under the airports Act they are not required to observe the local, regional or State planning schemes. Given that these are private airports and are effectively commercial developers, we have been opposing those developments. A number of those developments involve factory outlet centres, but our objection is to the airports Act and the airport companies. To a certain extent the factory outlet centres are on the sidelines.

Ms LEE RHIANNON: Do you have any other cases in the New South Wales Land and Environment Court?

Mr COCKBURN: No, other than the Homebush case.

The Hon. JOHN RYAN: Is that actually before the courts, or has it reserved its right to take further action?

Mr COCKBURN: The Homebush case?

The Hon. JOHN RYAN: Yes.

Mr COCKBURN: It's certainly before the Land and Environment Court.

The Hon. JOHN RYAN: What is the ground for challenging that?

Mr COCKBURN: We are challenging whether or not the centre is trading in accordance with the terms of the development consent.

The Hon. JOHN RYAN: That was subject to some action with regard to a friend of mine, Ken Hooper, was it?

Mr COCKBURN: No.

The Hon. JOHN RYAN: Was Mr Hooper organising a residents action group against that?

Mr COCKBURN: I know Mr Hooper, as you do, but I have had no involvement with Mr Hooper in a professional sense.

Ms LEE RHIANNON: Does the council take the action or do its members take the action?

Mr COCKBURN: We are not an incorporated body. We are part of the Property Council. Our ability to take legal action is quite limited. The case at Homebush has been taken by four of our members.

Ms LEE RHIANNON: What role does the council play in those actions? Is it more of a co-ordinating role, a consultancy?

Mr COCKBURN: Largely our role is to make submissions on the broader planning issues. For example, we have taken a strong policy stand in relation to draft SEPP 66. We are very much in favour of it, and have made submissions to the Government urging it to implement draft SEPP 66. We have made submissions in relation to individual planning matters which, in our opinion, are contrary to the intention of SEPP 66.

Ms LEE RHIANNON: Since you have been in the job, how many cases are you aware of that your members have taken to the Land and Environment Court over factory outlets?

Mr COCKBURN: As I said, the only two that I am aware of are the Orange Grove case taken by the owners of Westfield Liverpool, and the challenge against the DFO at Homebush, which has been taken by some of our members.

Ms LEE RHIANNON: Nothing before that that you are aware of?

Mr COCKBURN: No, we are involved in a case in the Administrative Appeals Tribunal in relation to the approval of the master plan for Essendon airport. It so happens that one of the developments that they want to implement at Essendon airport is a factory outlet centre. Our challenge there is against the approval of the master plan.

Ms LEE RHIANNON: When you say "our", is that the council?

Mr COCKBURN: Yes, in that case it is the Shopping Centre Council, because we do have standing in the Administrative Appeals Tribunal.

Ms LEE RHIANNON: Were you disappointed when Minister Knowles opened the Orange Grove centre?

Mr COCKBURN: Given that there was legal action afoot, my personal view—not that it matters much—was that it was imprudent.

Ms LEE RHIANNON: Did you express that?

Mr COCKBURN: No.

Ms LEE RHIANNON: So nothing was conveyed from the council?

Mr COCKBURN: I was not aware before Minister Knowles opened it that he was to open it.

Ms LEE RHIANNON: And after the fact you did not say anything, it was just a judgment?

Mr COCKBURN: No.

The Hon. DAVID OLDFIELD: Given what you have said about the Shopping Centre Council having opposed both the Orange Grove and the Cross Roads development, would you be surprised if Cross Roads gets the zoning change and is approved?

Mr COCKBURN: I would not have a clue. That matter is not even before Liverpool council at the moment. I could not make a decision.

The Hon. DAVID OLDFIELD: I am not asking you for a decision. I am asking you whether you would be surprised?

Mr COCKBURN: You are asking me to anticipate a decision. I cannot do that.

The Hon. DAVID OLDFIELD: I am not asking you to anticipate a decision. I am asking you what would be your reaction to such a decision?

Mr COCKBURN: All I can say is that we made a submission to Liverpool council in February this year, opposing both developments.

The Hon. JOHN RYAN: Would you still oppose a development on Cross Roads?

Mr COCKBURN: I believe it would be inconsistent with the planning policy of the Shopping Centre Council.

The Hon. JOHN RYAN: That is a careful choice of words. Do you oppose a development on the Cross Roads?

Mr COCKBURN: As I said, it is inconsistent with the planning policy of the Shopping Centre Council.

The Hon. DAVID OLDFIELD: From that answer can we take it that the Shopping Centre Council of Australia would be disappointed?

Mr COCKBURN: No, you cannot. If an application comes again before Liverpool council it would be a matter for consideration by the planning committee of the Shopping Centre Council, which will make a recommendation to the Shopping Centre Council as to its view in relation to that application.

The Hon. DAVID OLDFIELD: It would be extraordinary, given your view that it would be inconsistent, that you would not oppose it?

Ms LEE RHIANNON: That is a hypothetical question.

The Hon. JOHN RYAN: It is not hypothetical. They have given advice to the Minister.

Mr COCKBURN: I cannot go any further than to say that it is inconsistent with the planning policy of the Shopping Centre Council.

The Hon. JOHN RYAN: The Committee is in receipt of correspondence from the Department of Planning that indicates that lawyers for the developer acting for the Cross Roads are still pursuing their options with regard to the proposal for a factory outlet at that centre.

The Hon. PETER PRIMROSE: This morning the Committee learned that at Liverpool council one does not even have to make an application to get a rezoning.

The Hon. JOHN RYAN: That is quite apart from this. There appears to be active work by one department.

The Hon. JAN BURNSWOODS: I hate to have to refer to the terms of reference again, but we are not inquiring into Cross Roads. These are hypothetical questions.

The Hon. JOHN RYAN: This is not hypothetical, they are pursuing it.

The Hon. JAN BURNSWOODS: But we are not inquiring into that.

The Hon. JOHN RYAN: Are you opposed to the Cross Roads becoming a factory outlet, given its current zoning?

Mr COCKBURN: I repeat what I said. It seems to me to be inconsistent with the planning policy of the Shopping Centre Council of Australia. If there is an application it would be referred to the planning committee of the Shopping Centre Council for consideration. These are not my decisions or my judgments. At the end of the day I am in the hands of my council.

The Hon. DAVID OLDFIELD: Mr Cockburn, if you were developing shopping centres and had to choose between public transport and car parks, what would the council choose?

Mr COCKBURN: We do not think it is a choice, a necessarily mutually exclusive choice.

The Hon. DAVID OLDFIELD: That is not what I am asking. If you had to make a choice, what would you choose?

Mr COCKBURN: With respect, that is a hypothetical question. I cannot answer that.

The Hon. DAVID OLDFIELD: Let me put it another way. What do you see as being more important to a shopping centre's viability, car parking or access to public transport?

Mr COCKBURN: Obviously car parking is very important in relation to the successful operation of a shopping centre, and that is shown by the fact that for every development application that is lodged, council has a very firm view in relation to the provision of car parking spaces.

The Hon. DAVID OLDFIELD: Indeed, you would suggest that there should be no real effective limitation on the level of car parking for a shopping centre?

Mr COCKBURN: There are limitations and councils impose limitations so they have minimum and maximum provisions. But if what you are getting at is do I believe that the majority of people who shop at a shopping centre make multiple purchases, the answer is yes. It is fairly difficult with multiple purchases, particularly as they are often made by women often with children in attendance, to transport that home on public transport.

The Hon. DAVID OLDFIELD: How would you see development in a CBD that is fairly densely developed generally in the first instance? How would you see further development of those sorts of stores, given the car parking that your council would prefer being realistic, as opposed to outer industrial-type areas?

Mr COCKBURN: Shopping centre redevelopments occur all the time. They are going on in Sydney every day. As part of that redevelopment, the developer is required to accumulate land which would either require the erection of a car park or additional car parking spaces.

The Hon. DAVID OLDFIELD: Certainly there is a greater limitation on the capacity to have car parking, and hence the size of the stores if they try to be redeveloped in a CBD.

Mr COCKBURN: But it is not impossible, it happens all the time.

The Hon. JOHN RYAN: It is just difficult.

Mr COCKBURN: It is difficult, but shopping centre owners are achieving that all the time with redevelopments.

The Hon. DAVID OLDFIELD: Which shopping centre owners do you think are most successful at achieving that?

Mr COCKBURN: I would say all of my members are successful in achieving that.

The Hon. DAVID OLDFIELD: Who are your main members?

Mr COCKBURN: In terms of gross—

The Hon. JAN BURNSWOODS: They are listed in the submission.

The Hon. DAVID OLDFIELD: Can you run them off for me?

The Hon. JAN BURNSWOODS: I have a different page opened, because I have been waiting to ask my question.

The Hon. JOHN RYAN: Do they all contribute equally?

Mr COCKBURN: No, our contribution is based upon their proportion of total gross lettable area. So we do an exercise every year where we tally up the gross lettable area of all our members and then members pay according to their proportion of that total GLAR.

The Hon. DAVID OLDFIELD: Who are the top three?

Mr COCKBURN: From memory the top three would be Westfield, Centro and I think Lend Lease.

The Hon. DAVID OLDFIELD: In that order?

Mr COCKBURN: I think in that order, yes. Certainly the top two are Westfield and Centro and I think Lend Lease is number three in terms of total GLAR.

The Hon. JOHN RYAN: What proportion of your income comes from Westfield?

Mr COCKBURN: Again I do not have the figures with me but I think, from memory, it is around about 19 per cent of members' fees are paid by Westfield and about 17 per cent by Centro.

The Hon. JAN BURNSWOODS: I was interested in the message that has been conveyed. Some witnesses and others have sought to convey a message that factory outlet centres are sort of like small guys competing against big shopping centre guys. I was interested in some of the figures in your submission. For instance, you referred to one on airport land at Moorabbin in Victoria, which cost \$40 million to establish. I am just wondering if you can give us any sense of the size and who the people are who are running these places, what kind of resources they have or the kinds of profits they make?

Mr COCKBURN: The majority of outlet centres in Australia, as I said, I think the figure is around about 13. The majority of them are owned by two chains. Probably the most prominent chain is Harbour Town, which runs Harbour Town on the Gold Coast, Harbour Town in Adelaide and Harbour Town in Perth, and they are now building one in Docklands in Victoria. That is a joint venture between Lewis Land group and ING. The second most prominent one is a company that has appropriated the name DFO; that is owned by a company called Austech, and they operate the one at Homebush; they are attempting to build one at Brisbane airport. I think they also own the one at Moorabbin and they are also building one at the moment in the Melbourne CBD.

The Hon. JAN BURNSWOODS: So these are pretty big guys?

Mr COCKBURN: They are. There is another company, which I must confess I do not know a great deal about, which operates under the name of Brandsmart. I think that has got two or three centres as well.

The Hon. JAN BURNSWOODS: Still on the issue of scale and so on, you have got something in your submission but I would like to hear a little bit more about the sort of figures available and the sort of details you could give us about the impact of the Orange Grove development on the shops and businesses in the Liverpool CBD?

Mr COCKBURN: I cannot, by law, have access to turnover figures—by law under the Retail Leases Act. That is the reason I thought this Committee would appreciate having some input from retailers in the CBD because everyone is quoting the economic reports that were done prior to this matter, which are, to a certain extent, before the event, whereas we wanted to give that Committee some impression of the impact that it is having on the CBD now. That is the reason I interviewed a number of retailers last Friday.

The Hon. JAN BURNSWOODS: They are the retailers A to E in your submission?

Mr COCKBURN: That is right.

The Hon. JAN BURNSWOODS: Do you have any more general cumulative information? As you say, you are not able, legally, to get access to the figures.

Mr COCKBURN: I do not have, other than the interviews I did last week. Can I just go back to make one point in response to the question Mr Ryan asked about who my members are? In reality we represent the investors in shopping centres in Australia, and of course the investors are primarily people who through, most usually, their superannuation funds have invested in listed property trusts or other vehicles. So in reality, of course, the centres are owned by either people who are accumulating funds for their retirement or people who are living off their retirement income.

CHAIR: Thank you, Mr Cockburn, for your time today.

(The witness withdrew)

MICHAEL GERARD EVESSON, Managing Director, Hirst Consulting, 45 Burns Bay Road, Lane Cove, sworn and examined:

CHAIR: Are you conversant with the terms of reference of the inquiry?

Mr EVESSON: Yes, I have seen them.

CHAIR: If at any time you believe that certain evidence that you wish to give to the Committee or documents you may wish to tender should be heard or seen only by the Committee, indicate that to us and we will consider your request to hear your evidence in camera. Have you got a short statement that you would like to present to the Committee?

Mr EVESSON: I have a potted history of what I have done and what we have presented, if that is of assistance. I am assuming that the Committee has seen documents which were essentially on council's files where our material does sit, but I am happy to spend two or three minutes listing those.

The Hon. JOHN RYAN: I do not think we have. Yours was the original study, was it not?

Mr EVESSON: That is correct, yes.

The Hon. JOHN RYAN: I have not seen it. I have seen The Hills PDA commentary on it; I have seen some commentary from Westfield, but the actual original document I have not seen and I am not sure that it is available to the Committee.

Mr EVESSON: I would be very happy to give the Committee a couple of copies.

[Document tabled]

CHAIR: If you could go ahead with your potted summary that would assist the Committee.

Mr EVESSON: I was approached, as I recall, in early 2000 by Frank Mosca, who was acting, as I found out, for Gazcorp in putting together a proposal to build a different style of building to that which had already been approved on this site. What I did was what we normally do and that is prepared in the first instance a retail impact statement, which is that document that is now before you. It is stock standard to the extent that it is the kind of thing that I have prepared about 55 times over the past four years. It is the kind of work that we do. The date of that document is April 2002. That document was incorporated in July 2002 in a statement of environmental effects from Mosca Pserras Architects, which was the statement of environmental effects which accompanied the DA to council.

In my document of April 2002 I first raised the prospect that you could approve this proposal without altering any planning regime. My argument, which for reference is on pages two, three and four of the April 2002 document, was a planning argument firstly that suggested there was a clause in council's LEP which permitted them to approve, if they so wished, a development such as this. My understanding was that what happened was that the council officers accepted that argument and in relation to a number of detailed matters being sorted out the development was then approved.

I am aware that in considering the DA in 2002 council took advice from other consultants. I am also aware that the court case, which has already been mentioned to you, hinged, as I understand, essentially on my first interpretation of the planning regime and the court found that my interpretation was in fact wrong, according to the court. I maintain that it was a reasonable planning consideration and a reasonable planning way of approving such a development. Westfield's appeal to the court went to the contrary. That happens. It has happened a number of times in my experience. I also assisted in documentation when a subsequent draft development application was put together at the time of the rezoning being considered by council, and again I essentially assisted Frank Mosca in putting that together.

In between I had reviewed my 2002 economic impact statement in 2003 at the time of the court case, as I recall it, and I had written a concise letter to Mr Gazal, which summarised not only the 2002 conclusions but what I sought some 18 months later. I am happy to hand that up to the Committee if it is useful because it is a two-page document that essentially summarises some 24 pages that you have in front of you.

[Document tabled]

Beyond that my involvement in this has been, subsequent to the rezoning request, et cetera, to provide limited planning advice to Mr Gazal. Clearly my planning advice has not been useful because we are at this situation where we currently stand. My personal opinion, and my professional opinion, is as recorded in those documents that I have handed up to you, 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.

The Hon. DAVID OLDFIELD: Indeed, would you agree that rather than impact on Liverpool CBD there is an argument it might actually add to the CBD by bringing traffic from wider areas?

Mr EVESSON: I think I even raised that in 2002 when I pointed out that which is obvious, that 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.

The Hon. DAVID OLDFIELD: When a shopping centre provides vast amounts of car parking how would you view submissions that suggest there are problems because of a lack of public transport?

Mr EVESSON: That, in my experience, is entirely a matter of balance. There has to be both forms of transport, in my experience, both in terms of planning for retail developments and in terms of planning for centres. I certainly support the Government's SEPP66 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.

The Hon. DAVID OLDFIELD: How viable do you think a bulky goods store or shopping centre would be based on the primary use of public transport as opposed to car parking?

Mr EVESSON: I could not comment on the viability because I do not provide advice to people about whether their developments will be viable in broad terms.

The Hon. DAVID OLDFIELD: How about in the sense of attracting traffic?

Mr EVESSON: In the sense of attracting customers and of providing for it there is some role for transport, public transport only. For example, as distinct from factory outlets, you do not carry bulky goods away; you order them—air-conditioning, curtains, washing machine and so on. You do take some things away but many things you do not. It is a matter of balance. I consider that you need a significant amount of access by private vehicles for the way in which we work in the city.

The Hon. DAVID OLDFIELD: It is possible that I have missed this if it exists in any of the submissions so I apologise if it is there and I have not seen it, but is there to your knowledge any study about any of these centres that provides for a understanding of the current level of public transport patronage as opposed to car parking usage patronage?

Mr EVESSON: I know of no such study in Australia. I have not searched overseas for any. I heard a previous witness say—and I accept his figures—that there are probably 13 factory outlet centres in Australia. There are four or five here. It is a very new phenomenon. We are now at the stage in terms of factory outlets that we were at in the mid 1980s in relation to bulky goods. I do not think many planners or practitioners understood bulky goods and the role that they could play. I suspect that we now accept the role they can play. I can understand that some people cannot accept the role that factory outlets might play in the overall system.

The Hon. JOHN RYAN: I think your study is similar to others in that it suggests that over a period of time \$18 million worth of business will go from the Liverpool CBD. That has been suggested to the Committee as an adverse impact for the Liverpool CBD. Do you agree with that assessment? Can you put that \$18 million in some sort of context as to whether it is adverse?

Mr EVESSON: My conclusions in the past have been that that level of development would not impact adversely on the Liverpool CBD simply by virtue of the likely size of turnover there. I direct you to my April 2002 report and to paragraphs 2 and 3 on page 22. I accept that the figures I used are from 2001 or 2002 but I do not think that damns them because we are only in 2004 and not a great deal has changed. Westfield attracted turnover of \$287 million per year. There is another 30,000 square metres of floor space. I reckoned in paragraph 3 that from within Liverpool LGA \$200 million per year is attracted to Liverpool CBD. I am suggesting that \$17.8 million or \$18 million is attracted to a factory outlet centre.

The Hon. JOHN RYAN: So you are saying that there would be a net benefit to the Liverpool CBD not a reduction.

Mr EVESSON: There can be a net benefit in terms of the attraction of greater capacity to spend within broader Liverpool. One of my conclusions in the study—it is allied to that which I mentioned earlier to Mr Oldfield—is the ability for there to be a certain nexus between this development and Liverpool CBD. There is also the ability to retain what must be presently escape expenditure—people who live in the Liverpool LGA must be going somewhere to spend their discretionary dollar at factory outlet-type developments. That is not to say that everyone has to but it happens. If we can retain a certain amount of that \$18 million within the Liverpool council area it has to be to the net benefit of the council. That is one argument that I put forward.

The Hon. JOHN RYAN: Did you assess the impact of a factory outlet centre on the Liverpool town centre?

Mr EVESSON: Only to that extent. That is what I am pointing out to you. I suggested that if \$200 million from the citizens of Liverpool is directed to Liverpool town centre all we were talking about was \$18 million directed to something just beyond the town centre. The two figures in themselves can be compared and one is so much more. I do not think I came down to a figure in the end because it was not necessary in the context of that discussion. I did not come down to a figure and say, "Yes, there would be a negative 5 or 6 per cent".

The Hon. PETER PRIMROSE: We are talking about marginal expenditure here. Would you agree that about 80 per cent of the stock sold at Orange Grove would be clothing and footwear?

Mr EVESSON: I have not surveyed every shop but I would agree that the great bulk of material would be personal clothing, yes. But I do not know how that rates in terms of dollar spend. For example, items such as musical, glassware or other homewares could contribute more in terms of value.

The Hon. PETER PRIMROSE: But if we are talking about marginal propensity to spend how did you impact the multiplier in Liverpool? How did you calculate that?

Mr EVESSON: Which multiplier is that?

The Hon. PETER PRIMROSE: The economic multiplier.

Mr EVESSON: Where did I do that?

The Hon. PETER PRIMROSE: How did you do that? In terms of basic raw economics you have marginal propensity to save and marginal propensity to consume. How did you take account of the multiplier? What figure did you use? As you know, marginal propensity to save and marginal propensity to consume must equal one; that is basic economics. What figure did you use for marginal propensity?

Mr EVESSON: I did not present that. The analysis that we present here is of a type that is simpler and more direct. This is precisely the kind of thing that we have done.

The Hon. PETER PRIMROSE: You do not have a figure in terms of the marginal propensity to spend in your analysis.

Mr EVESSON: Not in terms of the multiplier, no. If you ask me what proportion of a household's retail expenditure would likely go to bulky goods and factory outlets, my opinion is about 15 per cent. That seems to be supported by some figures that I have seen recently.

The Hon. PETER PRIMROSE: I do not want to take up time but how could you do an analysis of economic impact without taking account of the multiplier effect in the local economy?

Mr EVESSON: I have presented what I have done; I cannot say what I did not do.

The Hon. JOHN RYAN: It is a bit late on a Friday afternoon for me to be discussing the gross economic deflator.

The Hon. JAN BURNSWOODS: Fortunately you did not have to discuss it because it was Mr Primrose's question.

The Hon. JOHN RYAN: But he discussed it on my time.

The Hon. PETER PRIMROSE: You can have my time—30 seconds' worth.

The Hon. JOHN RYAN: That is all right. Westfield have done a survey of your work and presented their conclusions to the Department of Infrastructure, Planning and Natural Resources. They said that you had not provided satisfactory advice that there would be a net community benefit, that your study was an economic impact assessment, that it did not adequately address the overall impact of the proposed development on all retail centres both now and in the future and that it did not address all the factors relevant to the net community benefit. Would you like to respond to that?

Mr EVESSON: My simple response is that it sounds very much like something that I could have written myself if I were acting for someone else.

The Hon. DAVID OLDFIELD: On the other side.

Mr EVESSON: Yes. I think by that comment you understand that we work for different sides in different matters. However, if we have a brief where I cannot find the expenditure that is likely to be there in order to inform the council that it is not likely to be a problem I stop and do not do anything more. I have examples of that. This one was straightforward to the extent that there was demonstrably demand and supply. The simple economic equation of likely impact, or possible impact, was in its favour. We can always and easily criticise after the event in something that is 24 pages long. The construction of this document—as with the other 55 that I mentioned I have done in the past four years—is for the purpose of assisting a council to examine under the Environmental Planning and Assessment Act both the statutory, in this case, and economic impacts in terms of section 79C. It is not a fully blown economic analysis of the large world. It is a planning analysis with economic sense in it, if I may put it that way.

The Hon. JOHN RYAN: You told us that you were hired by Mr Gazal to prepare the study.

Mr EVESSON: I was hired by Mr Mosca on behalf of Mr Gazal.

The Hon. JOHN RYAN: As you said, various people take different sides in this debate. Is it fair to say that you could be criticised fairly for being a hired gun whose role is to advocate Mr Gazal's favoured view of the world, and therefore it is no surprise that your study will find that it has a beneficial impact on the Liverpool central business district or at least not an adverse one?

Mr EVESSON: I can be criticised for that. I think we are daily criticised for that. I think we just accept it.

The Hon. JOHN RYAN: How valid is that criticism?

Mr EVESSON: I do not regard it as valid. I repeat what I said: I am happy to tell you that unless I find there is the prospect of a real result in terms of looking good for shops and development, I will not do such a study.

The Hon. JOHN RYAN: So as you get into the work if you find that you will have an adverse report you tell the proponent, "I would be mad to continue this"?

Mr EVESSON: I say, "Let's sit down and consider it", yes.

The Hon. JOHN RYAN: There is a way of getting around this problem of advocating on the part of the person who hires you. Liverpool City Council chose to have a further study that assessed your report, and I think others. It was meant to be an independent study. Are you familiar with what that study found and did it in any way diminish or change your findings?

Mr EVESSON: The only study of which I am aware is one prepared by Peter Leyshon. Is that the one to which you are referring?

The Hon. JOHN RYAN: Yes.

Mr EVESSON: I do not know whether we are talking about the same one. Yes, I am aware that the council gave Mr Leyshon our work to peer review. That is a very common practice amongst us. My understanding—and I have seen only one page of it quoted in a council document—is that, while Mr Leyshon disagreed with some of the ways in which we do analysis, he concluded that the net benefit of the proposal would be positive and that it would be unlikely to impact negatively on the Liverpool CBD.

The Hon. JOHN RYAN: This is probably going to be a complex answer, but did you agree with the statement that the factory outlet centre is leaching \$18 million over two years out of the Liverpool town centre?

Mr EVESSON: No.

The Hon. JOHN RYAN: Why not?

Mr EVESSON: 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—I do not think Mount Druitt existed at that stage—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 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. I do not know the answer to that because I have not done a study to compare them.

The Hon. JOHN RYAN: I suppose what you are saying in part is the do nothing option, which is have no factory outlets in Liverpool, will still see a significant amount of money leach from the Liverpool town centre to other factory outlets, if there is not something to keep it within the Liverpool basin?

Mr EVESSON: I think that is very highly likely. There is a demonstrated demand on the part of the punters to go shopping.

The Hon. JOHN RYAN: There is no doubt about that?

Mr EVESSON: Yes.

(The witness withdrew)

PETER DAVID LEYSHON, Town planner and economist, 37 Bligh Street Sydney, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee?

Mr LEYSHON: As director of Leyshon Consulting, and I provided Liverpool council with an independent opinion on the report prepared by my colleague Mr Evesson, who just gave evidence.

CHAIR: You are conversant with the terms of reference?

Mr LEYSHON: Yes.

CHAIR: I advise you that if that any time you consider that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicate that fact the Committee and we will consider your request to hear evidence in camera.

Mr LEYSHON: I will.

CHAIR: Have you any preliminary summary you would like to make of your role in the planning process in relation to this matter?

Mr LEYSHON: Just a short verbal comment. As I indicated, we were asked by the Liverpool City Council, particularly Mr Geoff Hunt, in June 2002 to review an economic impact assessment prepared by Hirst Consulting Services in relation to the proposed factory outlet centre at Orange Grove Road. We provided that advice to the council in early August 2002. After providing that advice, I had no further contact with the matter. I was not sought for any further advice anywhere along the process by Liverpool City Council and heard no more about it until I read in the press that there had been an approval of the development and it was going to start construction.

I should add by way of clarification to any evidence I am giving you today that I have also recently prepared an economic impact assessment for AMP Henderson in relation to the proposed factory outlet centre at the so-called Crossroads site at Casula which, I understand, is the subject of a rezoning application to Liverpool council.

The Hon. JOHN RYAN: How recently?

Mr LEYSHON: The report I did was completed in the early part of this year, and it has gone into the planning system. I do not know the outcome of that.

The Hon. JOHN RYAN: I recall the job you did was to peer review the study that was done by the previous witness?

Mr LEYSHON: That is correct.

The Hon. JOHN RYAN: Do you agree with the statement that the factory outlet at Liverpool is leaching \$18 million out of Liverpool town centre and having an adverse impact on it?

Mr LEYSHON: It is difficult for me to assess what quantum of sales it might be taking from the Liverpool CBD. I do not consider there is any evidence I am aware of that it is having an adverse impact on the CBD. I have in the past undertaken a survey for the operators of direct factory outlets at Homebush, which obtains data on where shoppers come from. They come from virtually the entire metropolitan area of Sydney and the Central Coast and include a significant number of shoppers from Liverpool, Campbelltown, Fairfield, Camden and local government areas in that part of the world, which would be serviced by a facility at Orange Grove Road. So, I endorse 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.

It is difficult to assess what component of the turnover of Orange Grove is escape expenditure and what component of it is sales that may otherwise have gone to clothing, footwear and related outlets in the Liverpool CBD. It will be a combination of the two but I do not know what that combination is.

The Hon. JOHN RYAN: Is it fair to say that \$18 million is leaching from Liverpool town centre?

Mr LEYSHON: I am unsure as to who made that comment.

The Hon. JOHN RYAN: It is a comment by DIPNR essentially, and the killer argument of government politicians commenting on this is that \$18 million is leaching from Liverpool town centre and as a result, that is by definition, an adverse impact and therefore the factory outlet cannot be approved.

Mr LEYSHON: I do not know how they get to the figure. I have not seen any calculations to get to that figure. However, the other point to note is that there is a temporary aspect to this. Liverpool is one of the fastest-growing local government areas in population in New South Wales. According to the Australian Bureau of Statistics latest statistics, it adds more than 2,000 people year. It is growing at 3.7 per cent per annum. There is a strong growth in available retail spending in general and in the categories that are directed to factory outlet centres in particular. 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—I think I have used the phrase in another context—tends to wash away the impact in a very short space of time. If there is an impact of that order it is likely to be very temporary.

This is not uncommon in the retail sector but I am sure when Westfields expanded their larger shopping centre in the Liverpool CBD, going back to the 1990s, it would have changed expenditure patterns of other shopping centres in the short term as well. It is quite a common phenomenon in the retail sector for there to be sometimes very short and also sometimes very longlasting impact. In this case it is likely to be very short lived.

The Hon. JOHN RYAN: Are you familiar with the study that has been done with assess your work by Urbis JHD?

Mr LEYSHON: I have only heard about it anecdotally. I have not read it.

The Hon. JOHN RYAN: One of its features is that they specifically compared apparel sales in the Liverpool CBD with the factory outlets and they say that because the factory outlets have a significant amount of apparel sales it has more concentrated impact on certain aspects of the Liverpool CBD and therefore it can be demonstrated to have an adverse impact on these parts of the CBD, more particularly, and that more generalised studies do not pick up that. Essentially the point it makes is that more generalised studies miss that point.

Mr LEYSHON: In theoretical terms that is correct. I have not seen their work so it is a little difficult for me to comment. I do not know what level of impact they have been able to identify. For example, I have been aware through my involvement in a major court case in Queensland that involves the proposed expansion of the Harbour Town factory outlet centre, which was eventually refused by the Planning and Environment Court in Queensland on a number of grounds. In relation to that I was able to have access under privilege to the turnover figures of the adjacent shopping centres who were also objectors to that appeal. I appeared on behalf of the Gold Coast City Council. Certainly with respect to some of the nearby centres, particularly Runaway Bay, there was an impact, fairly well contained to the clothing sector. In fact, the shopping centre turnover as a total figure went up but there was a period of two to three years when there appeared to be a slowing in the growth, because it is a high-growth population area, of turnover in the clothing area.

However, the principle I understood to be established within planning is that one looks at these issues but in the context of will the proposed development lead to a reduction in facilities currently available to people within specific centres? I do not know whether Urbis JHD have identified that as a result of the impact of Orange Grove shops have closed in the Liverpool CBD and, as a consequence, shoppers in the CBD have a poorer range of clothing outlets available to them and they had prior to the Orange Grove Road.

The Hon. JOHN RYAN: They do not say that has happened. They say the Liverpool outlet centre competes directly with the Liverpool town centre for both customers and retailers. The impact on trading levels of apparel retailers in the town centre would be significantly in the range of minus 10 per cent to minus 13 per

cent and are likely to lead to store closures and lower property values. Would you agree that is a likely impact of the factory outlet?

Mr LEYSHON: Each case is different. From what I know of the Queensland example, that sounds like a much higher impact that occurred with respect to the Runaway Bay shopping centre, which is considerably larger than Orange Grove Road and also has attached to it cinemas, full Woolworth's supermarket, a Bunnings major hardware store and a wide range of commercial and personal service facilities, including medical facilities and things of that nature. It sounds like a significantly higher impact to me than I would have envisaged based on my experience. I have not been able to look at the figures so it is difficult to say where they came from. In store closures I would be surprised. It is possible that if such an impact of that level occurred it could lead to some store closures. It depends on the business fundamentals of the people so affected. That is, whether they are national chains, for example, if there was an impact on Jeans West of 10 per cent arising from a Jeans West outlet at a factory outlet centre. That is collateral damage to that chain and it is taken in the context of their overall performance of the stores around Australia. If it is to a so-called Mum and Dad store, it may be more significant for those people. It is difficult to draw a straight line through that and say this would be the outcome of that kind of impact, if it occurred.

The Hon. JOHN RYAN: All of this is somewhat academic given that the store has been trading for some months now. Is there any value in commissioning a study to find out what the actual impact has been? There seem to be two views about the factory outlet. One says that it is inevitable there is going to be leaching of jobs. Others say that it adds to the economic activity of Liverpool generally. It retains expenditure that would otherwise escape and we may be missing out on a beneficial impact if we cause the Liverpool outlets to close. We have two predictions. A great experiment has now happened. It would be useful to measure it, particularly before we put to a 300 people on the unemployment scrap heap. Does it make sense to do that? It would be reasonable to measure it. Would it be easy to do that? How long would it take to do such a study?

Mr LEYSHON: It would be a very good idea if it could be measured. One of the deficiencies of the industry that I work in is that there is not enough post impact evaluation. Did the impacts predicted by people like me and others come to pass? Sometimes when we work for retail chains we get access to some of that information. It should be reasonably straightforward. I would have thought that Westfield would participate in that seeing that they probably have 75 per cent of the floor space so affected in the CBD, and I know that they assiduously collect turnover data from their tenants. I think it is a requirement of a lease in Westfield that monthly turnover data is provided to the shopping centre management. It should also be possible, with perhaps less degree of accuracy, to get sales from independent retailers. The only cautionary note I express is that in other circumstances where there is controversy associated with an application there is a tendency of independent operators to magnify their losses and minimise their gains, particularly if they think competitors may be removed from their market. So one would need to be a little cautious about some of that information. But in theory it is possible.

The Hon. JOHN RYAN: At the very least it is possible to measure the impact of the factory outlet centre on Westfield, and that would-be something of an indicator would it not, although narrow?

Mr LEYSHON: Indeed.

The Hon. JOHN RYAN: If studies are showing that the factory outlets would have this impact on the Liverpool town centre are you surprised that Westfield is still going ahead with expanding its GLS to another 25,000 square metres?

Mr LEYSHON: I am not surprised by that at all. Westfield is probably one of the most successful retail organisations in the world in my experience. They rarely put a foot wrong. They are keenly aware, I would think, that there is substantial growth in population and spending in Liverpool. It is important from their perspective that they capture that as much as they can. That in part depends on the range of facilities that it has within Westfield Liverpool. So it does not surprise me at all that even if there were some impact, even if it were relatively or moderately significant as far as clothing is concerned, that they would simply push on with their long-term expansion plans, probably to take the centre up to ultimately 100,000 square metres.

The Hon. JOHN RYAN: Much of your experience that you have related to the Committee seems to relate to studies you have done on factory outlets. I do not know but is it likely that you would be criticised by

people who would act for Westfield as being something of a hired gun for factory outlets and that would influence your objectivity?

Mr LEYSHON: I should correct it, I suppose. At the same time as I have done this work I am also doing work for Lend Lease on the development of their Rouse Hill regional shopping centre at Kellyville. We have also done a number of studies for AMP. I have historically hardly ever done any studies for Westfield. They must not like me in particular or something. I have done studies for the other shopping centre owners, for example, Centro on a number of their centres. I have done work for Stockland. Work on factory outlet centres makes up perhaps 10 per cent of our overall business.

The Hon. JOHN RYAN: The only other criticism I have heard of your work came from the Department of Planning. It said that the study was too narrow and too focused on comparing the impact of the factory outlet on Westfield. Is that a valid criticism and does that in any way diminish the validity of the study you have done?

Mr LEYSHON: There are two things to bear in mind. Firstly, when councils commission you to provide an independent opinion on someone else's report it is usually in what I would call a low-budget context. That is, they do not want you to redo the study; they simply want you to review a report and provide comments on two aspects: whether it is adequate to meet the requirements of the Environmental Planning and Assessment Act, and whether it is reasonably accurate and fair—or, if there are things missing from it, what other information should be obtained. So one does not examine every aspect of a development like that. The issue we addressed in our response to council was the impact on the Liverpool CBD, not specifically Westfield Liverpool. It was on the operation of the CBD as an integrated centre. If that is a criticism I do not think it is an accurate one.

(The witness withdrew)

(The Committee adjourned at 4.51 p.m.)