

**REPORT OF PROCEEDINGS BEFORE**

**GENERAL PURPOSE STANDING COMMITTEE NO. 4**

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

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**At Sydney on Tuesday 17 August 2004**

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**The Committee met at 10.00 a.m.**

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**PRESENT**

The Hon. J. A. Gardiner (Chair)

The Hon. J. C. Burnswoods

The Hon. K. F. Griffin

Ms S. Hale

The Hon. D. E. Oldfield

The Hon. P. T. Primrose

The Hon. J. F. Ryan

**CHAIR:** Welcome to the third public hearing of General Purpose Standing Committee No. 4 into the approval process for the Designer Outlets Centre on Orange Grove Road, Liverpool. Before we commence I would like to make some comments about aspects of the Committee's inquiry. I refer, first, to the return of the call for papers. At the hearing on Friday 13 August the Department of Infrastructure, Planning and Natural Resources [DIPNR] provided documents that the Committee had previously requested as a call for papers. That included the complete file maintained by DIPNR relating to the preparation and consideration of an application by Liverpool City Council for an amendment to draft amendment No. 92 of the Liverpool Local Government Environment Plan 97 relating to outlet centres. I and other committee members have now had an opportunity to review that documentation.

The majority of those papers, which have public status, can be the subject of questions today. The department has claimed privilege over a small number of documents. The resolution of the Committee provides a process in which an independent arbiter provides advice on whether the release of the documents is in the public interest. To date that process has not been undertaken. That means that questioning based on documents in today's hearing must be confined to the publicly released material. I refer, next, to the sub judice rule. It is possible that some of the issues raised by witnesses during the hearing may be the subject of legal proceedings elsewhere, such as the Land and Environment Court, the New South Wales Court of Appeal and the Independent Commission Against Corruption.

The sub judice convention has been the subject of number of rulings in the House. Put simply, the convention requires the Chair to judge whether the 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 judice. 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 arguments as to why answering the question may lead to a substantial interference with the judicial process and I will make a ruling on the basis of the arguments that have been presented. I emphasise that a parliamentary committee, like the House, is not constrained from discussing a matter that is being considered by another 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 had been freely discussed elsewhere. I also note that in relation to matters before a court where no jury is involved I have some difficulty with the proposition that a judge would be influenced by the utterances of a committee proceeding.

I refer, next, to in-camera evidence. As with other inquiries, the Committee will consider any other requests by witnesses or Committee members that evidence be heard in camera. However, if a witness gives evidence in camera following a resolution of the Committee, he or she needs 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. I refer, next, 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 at the table by the door.

In reporting Committee proceedings members of the media must take responsibility for what they publish, including any interpretation that is placed on evidence before the Committee. In accordance with these guidelines, while a member of the Committee and witnesses may be filmed or reported, 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. I refer, finally, to messages. The usual rules apply. Witnesses, members and their staff are advised that any members should be delivered through the attendant on duty or through the clerks. I ask all members and witnesses to turn off their mobile phones and pagers during this hearing.

**The Hon. JAN BURNSWOODS:** Before we commence could Committee members be informed whether contact has been made with Mr Turrisi and whether he will appear before this Committee?

**CHAIR:** I understand that has been contacted and that he has agreed to appear. I thank departmental officers for again accepting our invitation to appear before the Committee this morning. I thank our departmental officers for accepting the Committee's invitation to appear again this morning. In most cases the oaths and affirmations from previous attendance are in place, with the exception of Mr Astill and Ms De Torres.

**JENNIFER WESTACOTT**, Director General, Department of Infrastructure, Planning and Natural Resources, 23-33 Bridge Street, Sydney, and

**GARY PRATTLEY**, Executive Director, Metropolitan Land and Resource Planning, Department of Infrastructure, Planning and Natural Resources, 23-33 Bridge Street, Sydney, and

**PETER HAMILTON**, Principal Policy Adviser, Metropolitan Strategy, Department of Infrastructure, Planning and Natural Resources, 23-33 Bridge Street, Sydney, and

**LAUREL CHEETHAM**, Senior Environmental Planner, Department of Infrastructure, Planning and Natural Resources, 23-33 Bridge Street, Sydney, and

**DAVID BIRDS**, Team Leader Southwest Sector, Department of Infrastructure, Planning and Natural Resources, 10 Valentine Avenue, Parramatta, and

**STEPHEN DRISCOLL**, Former Regional Planning Co-ordinator, Sydney Region West, Department of Infrastructure, Planning and Natural Resources, Level 2, Riverbank Building, Church Street, Parramatta, on former oaths:

**MICHAEL JOHN ASTILL**, Lawyer, Department of Infrastructure, Planning and Natural Resources, 20 Lee Street, Sydney, sworn and examined:

**JUSTINE PAULA De TORRES**, Lawyer, Department of Infrastructure, Planning and Natural Resources, 20 Lee Street, Sydney, affirmed and examined:

**CHAIR:** Mr Astill, in what capacity are you appearing before the Committee today?

**Mr ASTILL:** I am employed by the Department of Infrastructure, Planning and Natural Resources [DIPNR] as corporate counsel and I am appearing as a witness.

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

**Mr ASTILL:** Yes.

**CHAIR:** Ms De Torres, in what capacity are you appearing before the Committee?

**Ms De TORRES:** I am an employed solicitor at DIPNR.

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

**Ms De TORRES:** Yes, I am.

**CHAIR:** As with other witnesses, if witnesses consider at any stage that certain evidence they wish to give or documents they may wish to tender should be heard or seen only by the Committee, they should please indicate that fact and the Committee will consider their request. Are there any questions?

**The Hon. JOHN RYAN:** First of all, I wish to make a few things clear and I will just get the players writes. As I understand it Ms Cheetham and Mr Driscoll were preparing a section 69 report and operating from Parramatta. Is that correct?

**Ms CHEETHAM:** No.

**Mr BIRDS:** Perhaps I can clarify that. I am the team leader at the Parramatta office. I worked on a section 69 report with Ms Cheetham. Mr Driscoll at the time was the regional planning co-ordinator who was the director we reported to in the Parramatta office.

**The Hon. JOHN RYAN:** It seems from the bulk of the paperwork that the person who, for want of a better term, seemed to do most of the nuts and bolts work, the grunt work, the pulling together of documents and things, seemed to be Ms Cheetham. Is that right?

**Ms CHEETHAM:** That is correct.

**The Hon. JOHN RYAN:** Mr Prattley, you obviously had some knowledge. Were you fully aware of everything that Mr Driscoll and Ms Cheetham and Mr Birds were doing in the preparation of the section 69 report?

**Mr PRATTLEY:** I was fully aware that they were preparing a report and the nature of the amendment, but not of the detail of the report or the discussion until that document was presented.

**The Hon. JOHN RYAN:** It appears, though, that by mid-April the report was substantially drafted. By comparing the earliest draft that is now available to the Committee with the last draft, the earliest draft of the report does appear to be sometime around mid-April and the report, as we currently have it, seemed to be near finalised by the beginning of May. Were you aware of those earlier drafts and the recommendations contained in them?

**Mr PRATTLEY:** No, I was not.

**The Hon. JOHN RYAN:** Did you not meet with the staff to know about this and keep up to date? Were you not keeping Mr Meagher of the Minister's office briefed regularly on what was occurring?

**Mr PRATTLEY:** Only in the context of matters that are covered in the minutes of those meetings, and basically in terms of the timing of the production of the report. But in terms of the content of the report, no, not at all.

**The Hon. JOHN RYAN:** At what time and at what stage in the preparation were you aware that a report was substantial—had been drafted and contained a recommendation that the Minister should approve the local environmental plan [LEP]?

**Mr PRATTLEY:** Around 3 or 4 June, when the report was finalised. I did not actually see the report at that time because I was attending a national forum in Canberra with the Minister at the time.

**The Hon. JOHN RYAN:** Do you mean to say that you had absolutely no idea of a report which had been drafted for nearly two or three months and you had no idea that the department was working towards approval of an LEP.

**Mr PRATTLEY:** Specifically, no. I would say that our normal approach on handling matters is to look at ways we can approve or facilitate things. We do not normally start from the point of view of how we can refuse them.

**The Hon. JOHN RYAN:** I am aware of that.

**Mr PRATTLEY:** So it would not have surprised me if it was heading in that direction.

**The Hon. JOHN RYAN:** Some time around 27 May, I have a note from Ms Cheetham to somebody named Isabelle Bennett. Ms Cheetham, can you tell me who Isabelle Bennett is?

**Ms CHEETHAM:** Yes. Ms Isabelle Bennett is a media person.

**The Hon. JOHN RYAN:** For the department?

**Ms CHEETHAM:** For the department.

**The Hon. JOHN RYAN:** The subject is, "Notes for draft press release on Factory Outlet ...". This is dated 27 April, which is substantially before 3 June. It reads:

Attached please find some notes for the above.

We would like to send this file through to the D-G on Monday. Gary Prattley and the Minister's Office are asking for it.

How does that make sense, Mr Prattley, if you are asking for something that is a media release? One imagines that if you are getting to the point of a media release, you would know something of its content. How is it that you have no idea of what recommendations are being made by the department when you are asking for the draft of a media release on 27 May?

**Mr PRATTLEY:** We were asking for the file to be presented to the Minister. It is normal practice—in fact it is a requirement—with any of the rezonings or amendments we are dealing with that a draft press release be prepared and attached to the file that is forwarded, before it goes to the director general.

**The Hon. JOHN RYAN:** I make no quibble about that.

**Mr PRATTLEY:** So the fact that the press release had been prepared would be normal protocol. My request would be that the Minister was keen to get the file and resolve the matter.

**The Hon. JOHN RYAN:** You had been briefing the Minister and other people for months on this particular issue and you were not even curious what the media release was going to say when you were asking for it?

**Mr PRATTLEY:** I was not asking for the media release. I was asking for the file to be presented.

**The Hon. JOHN RYAN:** You still maintain to the Committee you have no idea where the department was going with this? You had a blindfold tied around your eyes, and you were without any idea, notwithstanding the fact that there are numerous briefings from you to the Minister and Mr Meagher about all sorts of developments on this matter. I can table it for your benefit, if you want me to, but the section 69 report is substantially complete in the beginning of April. There are different drafts of it which have different dates, but if one compares one document to the next, they are virtually the same, yet you have no idea at that stage whether or not it is heading towards a recommendation, even though the recommendation actually appears on every single one of those drafts. You have no idea that the recommendation being made by your staff is that the Minister should approve the LEP.

**Mr PRATTLEY:** I certainly have not seen the reports. I suspect that it was recommending approval from—

**The Hon. JOHN RYAN:** I put it to you that the department was generally operating on the assumption that an approval was more likely than not.

**Mr PRATTLEY:** That would be true in the initial stages to the extent that we were endeavouring to resolve the matter before the court date for closure of the centre. There is a presumption in that, I guess, that you would be looking towards trying to approve it, yes.

**The Hon. JOHN RYAN:** So it would be a surprise that it was not going to be approved, would it not?

**Mr PRATTLEY:** No, not really.

**The Hon. JOHN RYAN:** We will work further on that. Anyway, you accept that the Minister's office by the beginning of June had a sense of urgency about wanting the report and the matter to be finalised?

**Mr PRATTLEY:** The sense of urgency dated back to early April, mid-April, yes.

**The Hon. JOHN RYAN:** That is correct, but nevertheless you had regular meetings with Mr Meagher. Was not Mr Meagher asking you, "Where is this report going and when is it coming?", in early June?

**Mr PRATTLE:** He was asking when they were likely to see it, and what the timing was likely to be, yes.

**The Hon. JOHN RYAN:** Why did it take nearly a month before it finally got to the Minister's office when he was asking for it apparently at the end of May? I would have thought that the Minister's patience would have worn excruciatingly thin if the Minister did not receive the file in a month when that they had been asking for it since the end of May.

**Mr PRATTLE:** That is an issue that you may wish to ask the director general. The matter had passed from our office—well, from Mr Driscoll's office—by early June. It was referred back to me in the middle of June.

**The Hon. JOHN RYAN:** The eventual press release which was developed contains the words:

'The Orange Grove Outlet Centre, known as the Liverpool Design Centre, has 62 retail outlets and provides about 400 local jobs', said Mrs Beamer.

I notice that the department's draft includes reference to the fact that there were 400 jobs involved. Notwithstanding that there might have been differences, the paperwork seems to suggest that an effort was made to finalise the number of jobs that were involved, and it would appear that the department settled on a number of 400. Is that right?

**Mr PRATTLE:** You would need to ask the officers involved in drafting that. The commonly accepted number that had been provided, as I understood, to us by council and by the developer was around 400.

**The Hon. JOHN RYAN:** That is correct.

**Mr PRATTLE:** It varied and it had varying versions up to 450, or around that.

**The Hon. JOHN RYAN:** I have even seen an email which I think was from Mr Driscoll in which he referred to 600, but in any event, 400 seems to be a reasonable number. So it is not unfair to say that the facility contains job opportunities for 400 people.

**Mr PRATTLE:** I am not sure about that. I have never analysed it. All I am saying is that the figure that was provided to us was around the 400.

**The Hon. JOHN RYAN:** The press release also contains the information that one of the advantages of the centre being opened is that people will not have to drive across town and access a factory outlet. That is correct, is it not?

**Mr PRATTLE:** That would have been one of the advantages of approval, yes.

**The Hon. JOHN RYAN:** In fact I notice in one of the later drafts of the section 69 report that a sentence has been added to one of the later drafts to that effect—that one of the advantages of the outlet is that it saves people travelling out of the area, outside of Liverpool.

**Mr PRATTLE:** I am not aware of changes to the drafts.

**The Hon. JOHN RYAN:** Ms Cheetham, do you recall adding a sentence like that to the section 69 report that the later stages?

**Ms CHEETHAM:** I do not recall the actual changes that I made to the report, but I probably may have done this on reading it through again. I may have decided that I should have added that in at that stage.

**The Hon. JOHN RYAN:** That is fair enough. But, in any event, that is the story now, is it not? A solidly good reason for approving the LEP—and this is not something that has been invented by Mr Gazal, but is something that is accepted as a reasonable proposition—and for approving this development was because it would provide a facility, namely a factory outlet, in the region of south-western Sydney and stop people from shopping at places other than Liverpool.

**Mr PRATTLEY:** I would describe it as one of the advantages of an approval.

**The Hon. JOHN RYAN:** I would think it would be fair to say that it is a significant advantage for Liverpool to have that, is it not?

**Mr PRATTLEY:** I am not sure about that.

**The Hon. JOHN RYAN:** In any event, all things considered, I think it would be best to say that while we have been told there is no compelling case to approve the rezoning, it appears to me that it can equally be said that there is no compelling case not to rezone, other than the fact that there are 450 people working in it and it is a regional facility which is obviously going to be well used. Is that fair?

**Mr PRATTLEY:** My personal and professional view would be that there are stronger reasons to refuse it than to approve it.

**The Hon. JOHN RYAN:** Mr Prattley, you were obviously the person called upon to brief Mr Meagher. Turning to another matter, Ms Westacott, do you recall telling the Committee that you had no idea of the Minister's view about this development? I will read back to you your evidence in *Hansard*. I asked you:

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 representations and so on. Did you have a discussion with the Minister as to what her view was?

That was my question to you, and your answer was:

No, the Minister and I had a very early discussion at one of our regular meetings earlier in the year where she noted that the 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.

Is that what you said?

**Ms WESTACOTT:** Yes.

**The Hon. JOHN RYAN:** Do you maintain that?

**Ms WESTACOTT:** Yes.

**The Hon. JOHN RYAN:** Did you attend a meeting referred to as the "director general's monthly meeting" with Minister Beamer that took place on 14 April 2004?

**Ms WESTACOTT:** Yes.

**The Hon. JOHN RYAN:** Do you recall that the issue of the crossroads, which I presume also involved discussion about the Orange Grove centre, was part of that meeting and was discussed on 14 April?

**Ms WESTACOTT:** Yes, and my recollection of it is that it was principally about the progress being made; it was not about her opinion about whether the plan should be made.

**The Hon. JOHN RYAN:** I note that the action mentioned is:

**Steve Driscoll** to expedite processing of LEP for Orange Grove for gazettal before 28/4/04.

The comment is:

Agreed should split LEP if possible and expedite the handling of Orange Grove with view to gazettal before 28/4.

It appears to me that if you referred to gazettal before 28 April then the Minister was pretty relaxed and probably favourable to the idea of gazetting an LEP.

**Ms WESTACOTT:** As I said, she did not express a view to me one way or the other about the merits of the case. We principally discussed the separation of the two sites and that gazettal would need to take place before 28 April. However, she did not express a view to me about the merits of the case.

**The Hon. JOHN RYAN:** Mr Prattley, do you recall preparing a briefing two days later—I am not sure for whom—to which you added two sentences? I can tell from emails that you added them. You stated that the Minister would need to approve the plan by Wednesday 21 April if it was to be gazetted in time to avoid closure of the centre and the associated loss of jobs. That comment suggests that it was taken for granted that a gazettal was likely and that you were working to save jobs. The next sentence is equally important. You state that the Minister has indicated that it is her preferred position, subject to reviewing the independent assessment. You added this to a briefing being prepared at that time and a discussion about this matter happened only two days prior to that. You confidently assert that you know that at a meeting at which you and the director general were present you understood the Minister had a preferred position about the gazettal and the meeting resolved that you were working towards a gazettal within a particular time frame. How could it possibly be said, Ms Westacott, that you did not know the Minister's preferred position on this matter? It appears that all the documentation suggests that the Minister had expressed a view in your presence and you knew that the Minister's preferred position was, if at all possible, to gazette an LEP.

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

**Mr PRATTLEY:** As I indicated earlier, the presumption in trying to deal with the matter before the court order's expiry date was obviously that we would try to approve it by that date. The Minister was keen that we try to resolve the matter by that date. The latter bit in that statement about it being subject to reviewing the evidence is very important. She was inclined to determine the matter prior to that date. It is my presumption that that implied approving it; she never stated that. The director general is quite correct. We had many discussions about the pros and cons of the decision and discussed on a number of occasions that it was a total no-win situation whichever way the decision went. Yes, they were my words, and they were written based on my presumption of where she was heading. However, the critical issue was to try to resolve the issue within the time frame that had been established by the court so there was certainty in the matter.

**The Hon. JOHN RYAN:** Was there another director general's meeting on 15 June?

**Mr PRATTLEY:** That is correct.

**The Hon. JOHN RYAN:** And this matter was discussed.

**Mr PRATTLEY:** No, it was not.

**The Hon. JOHN RYAN:** It is on the agenda for discussion.

**Mr PRATTLEY:** But it is not in the minutes; it was not discussed. I put it on the agenda for discussion, but it was not discussed on that date. There were many other issues to discuss. I point out that I have a regular weekly meeting with Minister Beamer in the absence of the deputy director general, and either fortnightly or monthly, depending on the circumstances, that is a wider meeting that includes the director general.

**The Hon. JOHN RYAN:** Do you recall correspondence that you had around 16 April to someone called Alex Smith in the Premier's Department?

**Mr PRATTLEY:** I recall forwarding briefing notes.

**The Hon. JOHN RYAN:** Do you recall why?

**Mr PRATTLEY:** Yes. My understanding when I forward them was that they were for a meeting the Premier was having. I subsequently realised, when they were sent, that it was a meeting that the Premier's office or department was having, not the Premier. It is very easy to understand when I got a verbal request that they

needed a briefing note for "premiers" that I passed on my impression to the staff—it was my impression at that time—that it was for a meeting with the Premier.

**The Hon. JOHN RYAN:** Who did you think was meeting?

**Mr PRATTLEY:** I thought he was meeting Westfield.

**The Hon. JOHN RYAN:** Is it not a fact that there is an email from Mr Driscoll to Mr Birds and Ms Cheetham dated 20 April stating:

Laurel,

further to David's email, we need to somehow get the instrument (probably the whole package in fact – instrument plus s.69 report, and maybe even Liverpool Council's own legal advices) past Legal Branch for an opinion as to legality of instrument/likelihood of success of legal challenge. Apparently the Premier's Department has asked for this to occur, arising from a meeting held last week between Bob Carr and Frank Lowy (owner of Westfields).

Please ensure this occurs before instrument is present to Minister for signature. You'll need to ensure Legal Branch respond promptly in order to meet the other deadlines David has mentioned. If it means you need to take the whole lot in to HDB and sit with a Legal Officer, so be it.

A note dated 20 April from Driscoll to Mr Meagher—the Minister's chief of staff—states:

As requested, attached is the briefing that was prepared last Friday for the Premier's Meeting with Westfield.

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

A note from Cheetham to Brockhoff dated 20 April states:

...also the Premier's office has asked us to provide some legal advice on the potential for legal challenge, should the Minister make the plan, and this is to be provided with the draft plan to the Minister. I have asked Marcus Ray to organise for a legal officer to be available some time after 12 tomorrow and was hoping you would attend to provide advice on the Westfields [sic] legal challenge potential in relation to SEPP66.

A note from Cheetham to Jemison at Liverpool Council states:

Phil, can you please provide advice on whether the Council sought any legal advice on the draft LEP, or on the need for the draft LEP to cover the Orange Grove Road site ASAP.

I am meeting a legal officer from our Department at 12 noon (leaving 11:10), to help her prepare a brief for the Crown Solicitor. The Minister's office has asked for the Crown Solicitor's advice when the draft plan goes to it.

There appears to be a heap of paperwork suggesting that the department was briefing the Premier for a meeting with Frank Lowy specifically about this matter.

**Mr PRATTLEY:** It is certainly true that I would have conveyed to the team the understanding that the Premier was having a meeting with Westfield. That was what I thought was happening. As I indicated earlier, I subsequently realised it was not the Premier who was meeting.

**The Hon. JOHN RYAN:** At the very least the Premier's Department was meeting with Westfield.

**Mr PRATTLEY:** That was my understanding.

**The Hon. JOHN RYAN:** Why?

**Mr PRATTLEY:** Why not? As I think I indicated the other day, I have worked in six jurisdictions in Australia at this level, and it would be normal practice that if Westfield, as a major player and a world-leading retailer, wanted a meeting that it would get an entrée. It would be normal practice and there is nothing in that that would surprise me.

**The Hon. JOHN RYAN:** Who informed you that the Premier was meeting with Frank Lowy?

**Mr PRATTLEY:** The request for the briefing probably came from Michael Meagher indicating that "premiers" was meeting—which I interpreted to be the Premier, because I would expect that courtesy might be extended to Westfield. As I indicated, I subsequently realised when the briefing note was provided that that was not the case.

**The Hon. JOHN RYAN:** So the Minister's office told you there was a meeting involving the Premier.

**Mr PRATTLEY:** No.

**The Hon. JOHN RYAN:** Michael Meagher works for the Premier.

**Mr PRATTLEY:** Yes.<sup>1</sup>

**The Hon. JOHN RYAN:** If he informed you otherwise—

**Mr PRATTLEY:** I think I have explained that.

**The Hon. JAN BURNSWOODS:** Point of order: If as decided yesterday afternoon we are still having our 20-minute periods, the honourable member's time expired five minutes ago.

**The Hon. JOHN RYAN:** To the point of order: If the honourable member is so sensitive, I am more than happy to take a break and she can ask some questions herself.

**The Hon. JAN BURNSWOODS:** It is not a question of sensitivity. The Chair is well aware that the honourable member's time expired prior to the last line of questioning even started.

**CHAIR:** That is not correct.

**The Hon. JAN BURNSWOODS:** I am taking a point of order, so I do not know why the honourable member is interrupting. We are seeking some honesty in this process.

**The Hon. JOHN RYAN:** So am I.

**The Hon. PETER PRIMROSE:** Further to the point of order: If the Hon. Mr Ryan wishes to continue, that is fine. We are simply seeking the guidance of the Chair about the allotted times. If he wishes to have 40 minutes, then I presume that that is acceptable, but we will then have 40 minutes.

**CHAIR:** I intend to adopt the normal procedures. It was a long question—

**The Hon. PETER PRIMROSE:** The Hon. Mr Ryan's half an hour is up.

**CHAIR:** But he started his question during his time.

**The Hon. JAN BURNSWOODS:** That is not true.

**CHAIR:** It is true.

**The Hon. JAN BURNSWOODS:** Further to the point of order: Stephen Reynolds knows I am correct because I told him prior to that line of questioning commencing that the time had now expired. He confirmed that the Hon. Mr Ryan started at 10.16 a.m. because he wrote it down. Madam Chair, I am afraid you are wrong.

**CHAIR:** No, I am right.

**The Hon. JOHN RYAN:** Further to the point of order: If it helps, I have a couple more questions to ask and then I am happy to take a break for as long as the Labor Party wants before I come back to other matters of detail.

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<sup>1</sup> Clarification received from Mr Prattley: "In fact, Mr Meagher is Minister Beamer's Chief of Staff and does not work for the Premier" ~ 27 August 2004.

**The Hon. PETER PRIMROSE:** Further to the point of order: It is not a matter of—

**CHAIR:** We have time later for everyone.

**The Hon. PETER PRIMROSE:** Good. Let us be fair then.

**Ms SYLVIA HALE:** Further to the point of order: If it helps, I am happy if I forgo my time to allow Mr Ryan to pursue this issue.

**The Hon. JAN BURNSWOODS:** Madam Chair, can you tell us what are the allocated times?

**CHAIR:** They are 20 minutes, 20 minutes and 20 minutes.

**The Hon. JAN BURNSWOODS:** So the Hon. Mr Ryan has had 27 minutes.

**Ms SYLVIA HALE:** I have just indicated that I am prepared to give my 10 minutes to the Hon. Mr Ryan.

**CHAIR:** The Hon. Mr Ryan can proceed.

**The Hon. JAN BURNSWOODS:** Does that mean Ms Hale will not have any questions?

**Ms SYLVIA HALE:** Not in this 10 minutes.

**The Hon. JOHN RYAN:** I understand why the honourable member is sensitive about these questions. Who is Alex Smith?

**Mr PRATTLEY:** I am not sure specifically. I believe he is an officer of the Premier's Department.

**The Hon. JOHN RYAN:** Is he not the chief of staff to Col Gellatly?

**Mr PRATTLEY:** I do not know.

**The Hon. JOHN RYAN:** Why would Michael Meagher be telling you about a meeting in the Premier's Department?

**Mr PRATTLEY:** It is normal practice if the Premier's Department is meeting with people that they will request a briefing note from us and that that briefing note is requested through the Minister's office, not directly.

**The Hon. JOHN RYAN:** Do you not think that it looks awfully suspicious that Frank Lowy has had a discussion with the Premier informing him of his views about the Orange Grove matter and we find in the middle of your department a series of briefings prepared and your saying that there was a meeting involving the Premier? Additionally, and quite, unusually a member of the Minister's staff was also asking for information to facilitate that meeting.

**Mr PRATTLEY:** There is nothing unusual about that. That is normal practice. The normal practice is, if the Premier's Department or the Premier's Office requires a briefing for a meeting, that it is directed through the Minister's chief of staff. That is normal practice for any matter.

**The Hon. JOHN RYAN:** I have to say, I think the lines are beginning to line up. I, for the life of me, would not have expected—I do not find it credible that you knew nothing about where your department's brief was going. I find it difficult to believe that the matters discussed in front of the Minister with a view to gazzettal, immediate gazzettal by a particular time, that there are briefings going back to the Premier's for the purposes of briefing, in your belief, Frank Lowy and Bob Carr—

**Mr PRATTLEY:** I have also indicated I am aware that that meeting did not take place.

**The Hon. JOHN RYAN:** Pardon?

**Mr PRATTLEY:** I have also indicated that I am aware that meeting with the Premier did not—

**The Hon. JOHN RYAN:** How are you aware that it did not take place? Did you then go and ask?

**The Hon. DAVID OLDFIELD:** Who told you to say it did not take place?

**Mr PRATTLEY:** No-one told me to say it did not take place.

**The Hon. DAVID OLDFIELD:** But you knew everything else.

**Mr PRATTLEY:** I am sorry?

**The Hon. DAVID OLDFIELD:** You, firstly, knew it was going to happen. Then you knew it did not happen.

**Mr PRATTLEY:** I understood I had a request that Premier's need a briefing note for such and such. I interpreted that that the Premier was meeting. As I said, I would expect that would be the normal course of events. I was—

**The Hon. JOHN RYAN:** Can you be sure that the Premier did not—

**Mr PRATTLEY:** Am I allowed to finish, please?

**The Hon. JOHN RYAN:** Can you be sure the Premier did not have a meeting?

**The Hon. PETER PRIMROSE:** Can I ask Mr Westacott if she has any comments?

**The Hon. DAVID OLDFIELD:** She does not seem to know anything about what is going on at the department.

**The Hon. PETER PRIMROSE:** You are not questioning her. I would like to ask her—since you are involved—that question.

**Ms WESTACOTT:** I became aware of that email when I asked for an email search of the departmental records. I rang Dr Gellatly and asked him whether a meeting took place. His advice to me was no.

**The Hon. DAVID OLDFIELD:** Was that after this Committee requested all the documents? Is that why you had an email search to see how you might be implicated?

**Ms WESTACOTT:** No, I asked for an email search when people indicated in the media they were going to ICAC and I asked, as I normally do, for all of the documents to be trawled from the emails.

**The Hon. PETER PRIMROSE:** So no meeting between Westfield and the Premier took place?

**Ms WESTACOTT:** That is correct.

**The Hon. DAVID OLDFIELD:** Did you make that request by email?

**Ms WESTACOTT:** No, I made it verbally to someone in my office.

**The Hon. DAVID OLDFIELD:** Did they then make that request by email?

**The Hon. JOHN RYAN:** When we requested the papers, what I do not find is a copy of your email requesting this search.

**Ms WESTACOTT:** I just said I did not have an email requesting that search.

**The Hon. JOHN RYAN:** You do not seem to have anything, do you?

**Ms WESTACOTT:** And I asked one of my officers could they organise for the IT branch to trawl the emails. That is what they did.

**The Hon. JOHN RYAN:** Why would the director-general be given be given information about the Premier's diary? That is only for his private office, is it not?

**Ms WESTACOTT:** I was not given information about his diary. I rang Dr Gellatly—

**The Hon. JOHN RYAN:** Why would Mr Gellatly know whether or not—?

**Ms WESTACOTT:** You will have to put that question to Dr Gellatly. I went Dr Gellatly and I asked him did such a meeting take place and his advice to me was no.

**The Hon. JOHN RYAN:** But he runs another Government department, not the Premier's Office.

**Ms WESTACOTT:** As I said, you will have to put that question to him.

**The Hon. JOHN RYAN:** You would have to say that there are at least a few questions we have to ask around why your department was briefing the Premier's Department, probably the Premier—

**The Hon. PETER PRIMROSE:** And you got to ask them all. We do not get a chance to ask them.

**The Hon. JOHN RYAN:** —and indicating in that brief the Minister's preferred position is to gazette if at all possible, provided the departmental material is right. That is what you told Premier's, that that was the Minister's view. Then we have a little way after, we have the Premier asking for some additional information about the legal challenge. Can I ask you, Ms Westacott why did you ring—

**The Hon. PETER PRIMROSE:** Is there any chance of us getting to ask a question?

**The Hon. JAN BURNSWOODS:** Has anyone noticed that your second—?

**The Hon. JOHN RYAN:** Are you having trouble, are you?

**The Hon. PETER PRIMROSE:** Yes.

**The Hon. JAN BURNSWOODS:** Has anyone noticed that your second lot of time has expired?

**The Hon. JOHN RYAN:** Why did you ring Dr Gellatly?

**The Hon. PETER PRIMROSE:** Are you now using Mr Oldfield's time?

**The Hon. JOHN RYAN:** Why did you ring Dr Gellatly?

**The Hon. PETER PRIMROSE:** Is this Mr Oldfield's time now?

**The Hon. DAVID OLDFIELD:** Actually, it is probably Ms Sylvia Hale's time.

**Ms SYLVIA HALE:** No, I gave him my time.

**The Hon. DAVID OLDFIELD:** You have given him your time?

**The Hon. PETER PRIMROSE:** You were out of the room when all this was happening.

**CHAIR:** This is Mr Ryan's last question.

**The Hon. JOHN RYAN:** Why did you ring Dr Gellatly?

**Ms WESTACOTT:** Because the email makes reference to a request from the Premier's Department. Dr Gellatly is the head of the Premier's Department and I rang him and asked him did such a meeting take place, and his advice was no.

**The Hon. JOHN RYAN:** So whilst it might be resolved for you, it is not impossible that it occurred, is it?

**The Hon. JAN BURNSWOODS:** But that was his last question, was it?

**Ms WESTACOTT:** I do not know. You will have to ask Dr Gellatly.

**The Hon. DAVID OLDFIELD:** Can I just clarify? I note that we have almost three hours with these officers. We are, of course, coming back a few times like this.

**The Hon. JOHN RYAN:** That is right.

**The Hon. DAVID OLDFIELD:** Firstly, Ms Westacott, you gave a verbal instruction to someone to instruct everybody else to bring forward the emails, is that correct?

**Ms WESTACOTT:** Yes.

**The Hon. DAVID OLDFIELD:** How did that person convey that to everybody else? Did they run around the office and tell them verbally?

**Ms WESTACOTT:** My understanding is they rang the director of IT and asked for an email search to be done.

**The Hon. DAVID OLDFIELD:** Why did we not find any emails at all on any subject in relation to any of this from you? Did you just tell other people? You do not email at all? You are not in the twenty-first century?

**Ms WESTACOTT:** I can assure you I am in the twenty-first century. I did not, on that occasion, email that instruction. I rang my officer and asked them to do it.

**The Hon. DAVID OLDFIELD:** How do you think your computer files will stand up to an ICAC probe?

**Ms WESTACOTT:** That is a matter for ICAC to determine.

**The Hon. DAVID OLDFIELD:** I am sure it will be a matter for ICAC to determine.

**The Hon. JAN BURNSWOODS:** They will look at your role, too.

**The Hon. DAVID OLDFIELD:** My role? What would my role be, Jan?

**The Hon. PETER PRIMROSE:** We will let ICAC work that out.

**The Hon. DAVID OLDFIELD:** We know what your role is. Larry, Mo and Curly over here's role is to defend the Government on an indefensible position.

**The Hon. PETER PRIMROSE:** We will let ICAC work that out.

**The Hon. DAVID OLDFIELD:** Who did you ask to bring forward the emails? Did you say the IT section?

**Ms WESTACOTT:** I asked Vivian Hanich, who works in my office, who spoke to the IT person, as I understand it.

**The Hon. DAVID OLDFIELD:** Why did you feel the need to take it upon yourself to clarify whether the Premier had had a meeting with Westfield?

**Ms WESTACOTT:** Because it existed on the emails that I had asked, and I thought it was important to clarify.

**The Hon. DAVID OLDFIELD:** Do you find it strange that your officers wrongly managed to put into all the emails that this meeting was taking place between the Premier, not the Premier's Department and Westfield, but the Premier, Bob Carr and the head of Westfield, Frank Lowy?

**Ms WESTACOTT:** I think Mr Prattley has addressed that. But, as I said, I thought it was my responsibility to ring Dr Gellatly, given that the request came from the Premier's Department, to clarify whether such a meeting took place.

**The Hon. DAVID OLDFIELD:** And he said no?

**Ms WESTACOTT:** Correct.

**The Hon. DAVID OLDFIELD:** What were the files put together for, then, if it was not for the Premier and Frank Lowy?

**Ms WESTACOTT:** I do not know. You will have to put that to the Premier's Department.

**The Hon. DAVID OLDFIELD:** Mr Prattley, what is your understanding now, on this occasion as opposed to your previous understanding, that the Premier was meeting with Frank Lowy?

**Mr PRATTLEY:** My understanding at the time the briefing notes were transferred to the Minister's office to go to Premier's, because I think I spoke to the chief of staff and said, "The briefing notes are being sent for the meeting with the Premier and his chief of staff said, "The meeting is not with the Premier, it is for the officers." That is when I realised that my interpretation of the Premier meeting was wrong: that it was not with the Premier, it was the officers.

**The Hon. DAVID OLDFIELD:** Why would you name specifically the Premier and Frank Lowy?

**Mr PRATTLEY:** I do not think I did specifically name Frank Lowy. I think that was a reference to Mr Driscoll's email.

**The Hon. DAVID OLDFIELD:** Why did you name Frank Lowy, Mr Driscoll?

**Mr DRISCOLL:** Because that is whom I believed the meeting was occurring with.

**The Hon. DAVID OLDFIELD:** And how did you come to believe that?

**Mr DRISCOLL:** I had a telephone conversation with Mr Prattley, and he mentioned that the meeting was between Premier's, or the Premier, and Westfield. It was my assumption that it was with Mr Lowy.

**The Hon. DAVID OLDFIELD:** So you are the one who brought Frank Lowy into it. You are responsible for implicating him. This is a machination of your own, is that correct?

**Mr DRISCOLL:** I was the person who wrote the email that certainly mentioned Mr Lowy, yes.

**The Hon. DAVID OLDFIELD:** What was it that caused you to mention Mr Lowy?

**Mr DRISCOLL:** Because that was the impression that I had, that the meeting was with Westfield and that it was with Mr Lowy.

**The Hon. DAVID OLDFIELD:** That is all very well. Do think that every time there is a meeting with Westfield there is a meeting with Mr Lowy? We had a meeting with Westfield yesterday. It was not with Mr Lowy. Does Mr Lowy meet with everybody whenever there is a meeting with Westfield?

**Mr DRISCOLL:** I am happy to concede that I was, perhaps, incorrect in my assumption.

**The Hon. DAVID OLDFIELD:** I would like to have a better understanding of how you could possibly reach such assumption. Have you got other material in your files at all where you have presumed that meetings with Mr Lowy and the Premier on other occasions?

**Mr DRISCOLL:** On this matter, you mean?

**The Hon. DAVID OLDFIELD:** On any matter?

**Mr DRISCOLL:** No, I have not.

**The Hon. DAVID OLDFIELD:** On this matter?

**Mr DRISCOLL:** Not to my knowledge.

**The Hon. DAVID OLDFIELD:** Just once, out of the blue for the first time, you suddenly decided of your own accord there was a meeting going to occur between the Premier and Frank Lowy?

**Mr DRISCOLL:** Yes. As I said, I may have been in correct in making that assumption.

**The Hon. DAVID OLDFIELD:** How do you think you will stand up to an ICAC inquiry?

**Mr DRISCOLL:** I think I will stand up fairly well.

**The Hon. DAVID OLDFIELD:** I hope so. I am not so sure about everyone else in the department.

**The Hon. DAVID OLDFIELD:** Mr Prattley, you are categorically telling us that you are completely wrong about there being a meeting with the Premier, even though you stated this after the fact? This was not before the meeting, but after the meeting had occurred you were saying it happened.

**Mr PRATTLEY:** No, not after the meeting had occurred. I am saying my presumption that the meeting was with the Premier himself was wrong based on the advice I received when the briefing notes were handed over.

**The Hon. DAVID OLDFIELD:** Are you of the view that it is a normal practice for the Premier to meet with Frank Lowy?

**Mr PRATTLEY:** Not specifically. But, as I have said, I have worked in six States and Territories around Australia at this level and I would expect that if there were a major—in fact, I would know from practical experience in Western Australia, for example, when I was in Ms Westacott's position, that Frank Lowy would want to meet with the Premier when there were major issues involving Westfield. And I said I think that would be totally normal in practice, whether it is Westfield or any other major player in the community of that scale. They are normally afforded the opportunity to meet with the Premier. And normally if the meeting was that level one would assume it would be the most senior person of the organisation that would be meeting, so I think Mr Driscoll's assumption is quite a reasonable one.

**The Hon. DAVID OLDFIELD:** Is it fair to say that your understanding is that whenever something like this is occurring, whenever so much is at risk and the issue is so large, that Mr Lowy would always demand to see the person at the top, who would be the Premier of whichever State that may be?

**Mr PRATTLEY:** I do not know that he would demand. I would say it would be what I would expect to happen, whether it was Westfield, Lend Lease or any other major player. It is usually the senior person.

**The Hon. DAVID OLDFIELD:** But it would always be the Premier who would meet with these people? The Premier must be having a lot of meetings with developers.

**Mr PRATTLEY:** I am not saying that. I am saying my understanding was that the meeting was going to be with the Premier. If the meeting was with the Premier I would expect that the person who would attend

would be the most senior person in the organisation, in this case Mr Lowy. That would be a normal presumption.

**The Hon. DAVID OLDFIELD:** Mr Driscoll, you are saying it after the fact. Your email to Michael Meagher who, I understand, is Minister Beamer's chief of staff, after the fact you are saying on 20 April at 8:35 a.m., "Michael, as requested attached is the briefing that was prepared last Friday for the Premier's meeting with Westfield." You are making these presumptions after the meeting had taken place. Generally a presumption is not required after the fact. Usually it is a matter of knowledge that causes such statements. One usually presumes before something happens.

**Mr DRISCOLL:** The email that I sent to Mr Meagher at the time I sent it I had no reason—I was operating on the previous assumption that you are questioning me regarding, and I was not aware of any other information at that time as to whether or not the meeting I referred to occurred or did not occur, or if it occurred with the parties that I named.

**The Hon. DAVID OLDFIELD:** You further say, "We look like we might be able to get the LEP into town tomorrow, late, for ministerial consideration. However, the limiting factor on that will be the legal review that is being requested by Premier's." Did that certainly happen or was it your presumption that it was Premier's?

**Mr DRISCOLL:** Can you read the transcript again, please?

**The Hon. DAVID OLDFIELD:** This is a follow on on the same email from when you have mentioned very specifically last Friday's meeting with the Premier and Westfield. You go on to say, "We look like we might be able to get the LEP into town tomorrow, late, for ministerial consideration. However, the limiting factor on that will be the legal review that is being requested by Premier's. We will keep you apprised as things unfold." I hope you will keep us apprised as things unfold.

**Mr DRISCOLL:** My recollection of that email was that I sent it shortly after I had a discussion with Gary Prattley, which I referred to in my previous answer and at that point I was not aware—I was operating on the assumption that Mr Prattley had been operating under, that is that the meeting had occurred between the parties that I named in my email.

**The Hon. DAVID OLDFIELD:** Did Mr Prattley come of that view as a consequence of you, or did you come of that view as a consequence of him?

**Mr DRISCOLL:** I came of the view because of a conversation that I had with Mr Prattley.

**The Hon. DAVID OLDFIELD:** So we can at least pin down that Mr Prattley was the person who started the ball rolling as to who the meetings were taking place between?

**Mr DRISCOLL:** Yes.

**The Hon. PETER PRIMROSE:** Could I ask Ms Westacott and Mr Haddad some questions? Mr Gazal has said in his evidence that he thought Ms Beamer's role in considering the LEP was a rubber stamp, to use his expression. Would you agree with Mr Gazal that the Minister's role in this was a rubber stamp?

**Ms WESTACOTT:** No. The Minister is required to make her decision based on the merits of the case and in no way is there or should there be a rubber-stamping role for the Minister. Mr Haddad might want to comment further.

**Dr HADDAD:** Just to confirm that, that the decision is the Minister's decision and this advice is provided to the Minister and he or she will make the decision on the basis of that advice or otherwise.

**The Hon. PETER PRIMROSE:** So it is not the case then that a section 69 report, as Mr Gazal has implied, was meant to be simply a rubber stamp?

**Dr HADDAD:** Not at all. The section 69 report is an advisory report to the Minister. There is no obligation in the law for the Minister to adopt the section 69 report. The Minister's obligation is to take into account that report together with other submissions and other factors, and for her to make her decision.

**The Hon. PETER PRIMROSE:** Where did the thought of amending the LEP come from?

**Ms WESTACOTT:** It is my understanding that the original amendment for the LEP arises out of an application by AMP for the Cross Roads site—and I think you have those documents—which makes, I think, a very passing reference to the Orange Grove site and makes a reference to having to clear up some ambiguities. But the substance of the original LEP amendment comes out of an application around the Cross Roads site by AMP.

**The Hon. PETER PRIMROSE:** So was it first suggested to or by DIPNR?

**Ms WESTACOTT:** To DIPNR.

**The Hon. PETER PRIMROSE:** Would you agree then that the first discussions about the LEP amendment with the department must have been initiated either by the council, its officers or elected representatives or by the financial beneficiary of the LEP, the applicant, Mr Gazal and Mr Mosca?

**Ms WESTACOTT:** As I said, it is my understanding that the advice to the department was made by council based on an initial application by AMP for the Cross Roads site and, as I said, it makes passing reference to Orange Grove in respect to having to clear up some ambiguities. But it would be an application from council for an amendment to the LEP.

**The Hon. PETER PRIMROSE:** I have seen in the DIPNR papers a memo from Mr David Birds in November last year on this matter. It contains evidence that the department was aware of the court action and that any thought of amending the LEP would take place only after the judgment. Are you aware that this was the position of the department at that time?

**Ms WESTACOTT:** You should refer that question to Mr Birds.

**Mr BIRDS:** I do not recall the detail of that.

**The Hon. PETER PRIMROSE:** A memo from yourself in November last year in the papers we have received; it contains evidence that the department was aware of the court action and that any thought of amending the LEP would take place only after the judgment. Are you aware that this was the position of the department at that time?

**Mr BIRDS:** That generally accords with my recollection. I do not recall the details, but that would have been our position. When I say "our position", that would be the position taken if an inquiry was made to the regional office where we deal with such matters. Nothing was before us for consideration at that time.

**The Hon. PETER PRIMROSE:** Did not Mr Mosca also work on this LEP amendment for the Cross Roads?

**Mr BIRDS:** Are you directing that question to me?

**The Hon. PETER PRIMROSE:** No, I am directing it back to Ms Westacott.

**Ms WESTACOTT:** My understanding is that one of the consultants was employed by Mr Mosca, but my departmental officers might have better information about that. My understanding is that the LEP is an application from council and it is not clear from anything I have read that Mr Mosca prepared the LEP.

**Mr BIRDS:** No recollection, no.

**Ms CHEETHAM:** Neither have I.

**The Hon. PETER PRIMROSE:** If the factory outlet shops on the site were such a good idea why not wait for the court to agree?

**Mr BIRDS:** Could you repeat the question?

**The Hon. PETER PRIMROSE:** Just going back to your evidence, if the factory outlet shops on the site were such a good idea why did the department not wait for the court to agree?

**Mr BIRDS:** I am not quite sure what you are raising exactly. All I can say is that at the time in November there was nothing before us to consider. We were not aware that there was any breach of the Act.

**Mr PRATTLEY:** If I could address that? If the court had agreed, there would be no need for an amendment. An amendment would be redundant if the court had agreed that the use was a legal use. So that an amendment only became necessary if the court disagreed with the legality of the use.

**The Hon. JAN BURNSWOODS:** Mr Haddad, I have got some questions for you. Could you describe exactly what your position in DIPNR is?

**Dr HADDAD:** I am the Deputy Director-General and my prime responsibility is in relation to the assessment and approvals, decisions on major development and infrastructure projects.

**The Hon. JAN BURNSWOODS:** So it is a planning position essentially?

**Dr HADDAD:** It is largely a planning position. More importantly, I am also a member of the executive of the department and advise both the director-general and the Minister on a broad range of planning-related matters.

**The Hon. JAN BURNSWOODS:** So basically you are the person responsible for senior planning advice to both the director-general and the Minister?

**Dr HADDAD:** I am, yes.

**The Hon. JAN BURNSWOODS:** In the memo that we have seen from Ms Westacott to Minister Beamer, the one of 8 July 2004, she states, "In my opinion the Minister could reasonably come to the view that the plan should not be made on planning grounds". In your position, and in view of the section 69 report, would you agree with that?

**Dr HADDAD:** Yes, I do. I just want to put my answer into context, and my role. I provided independent advice completely independently in relation to that matter. Subsequent to the decision having been made, I have examined the section 69 report. I have also examined some of the background material to that section 69 report and certainly my independent examination led me to substantially question the basis upon which the recommendations of the section 69 report were made. I could not find in that report a credible and a rigorous analysis that would lead to the recommendations being made in the circumstances of that case.

**The Hon. JAN BURNSWOODS:** So given what you have just said, in the same memorandum Ms Westacott stated that taking into account both the section 69 report and the draft SEPP66, "it would be reasonable to conclude that the activities of the outlet centre constitute retail activities and therefore are in competition with the existing Liverpool CBD". Would you agree?

**Dr HADDAD:** I will definitely agree, and I am giving this advice independently to the Committee. Subsequent, as I said, to this decision being made, having come and looked at the section 69 report and at the background, and in that context I would fully support the conclusion made that there is not a credible, rigorous policy analysis in the report backed up by an adequate level of information, by an adequate level of data, by quantitative or semiquantitative analysis in relation to a number of critical factors that relate to employment, that relate to retail trends. The report, for whatever reason, is a mere review of other reports and, as I am saying, in the circumstances of that case I would have expected a much more rigorous analysis by officers of the department in advising the Minister. I am saying that independently.

**The Hon. JAN BURNSWOODS:** Just to take you through a couple more specific aspects, again I am running through the Director-General's memo in which she obviously raised some questions.

**Dr HADDAD:** Just for clarification, at that stage I had not seen the director-general's memo. As I said, I looked at the report independently and at some background information and that led me to state that in the submission to the inquiry.

**The Hon. JAN BURNSWOODS:** I do understand that. We are seeking here, obviously, your professional opinion. To take two other examples from the memo: for instance, Ms Westacott concluded that "the view that this outlet centre will not compete with the existing retail centre is highly debatable", and to give you another one, she concluded that, "the level of existing services, that is transport for the outlet centre, is of concern when viewed against requirements in draft SEPP66". So would you also agree with those two conclusions?

**Dr HADDAD:** I think if we look at the report and subsequently just thinking about the rezoning process or the change of use, not taking into account the fact that this change of use is already there, and I am noting that it is there having been found unlawful by the court, but going back and looking at it in terms of the planning merit itself, I have no hesitation in saying that I will have to come to that conclusion based on information in the report itself. The policy advice, which is based on a comparative assessment of advantages, of benefits and disbenefits is highly, in my view, questionable, and I am saying that as an independent adviser in that context. I would not say it unless I believed it is the fact.

**The Hon. JAN BURNSWOODS:** Before I think you indicated two areas where you had a particular concern were the employment areas and the retail outlets.

**Dr HADDAD:** I mean even now I am just noticing that the Committee is still discussing is it 400 people, is it 200 people, is it 250 people? I would have expected the level of analysis in the report itself to go much more into that. I would have expected the reference to available data in census information and other sources of other information. I am saying that because in the circumstances of this case what we really have is a situation where first of all a rezoning had been suggested for another site, then in a sense, to the best of my knowledge, it takes in to address the situation, which I fully understand locally was important in that context, but then we had a number of, I suppose, policy issues being raised, both locally and at the State level which are important and in those circumstances the level of analysis in any report in my view would have had to be of the highest level of thoroughness and of independency in terms of a fresh view rather than just a review.

**The Hon. JAN BURNSWOODS:** There are other quotes I could give from the director-general's comments to the Minister, but given what you have said perhaps it is unnecessary to go into more detail. Considering a lot what you have just said, would you describe the section 69 report that was prepared as unsatisfactory? Inadequate?

**Dr HADDAD:** I would certainly have come to a different conclusion, that is my view. That is all I can say based on what is before me and what I have read in the report. I would have certainly, before coming to that conclusion, first of all I would have requested a much more detailed level of analysis of information to be able to provide a much more credible level of advice. The answer is yes, I would have come with a different recommendation.

**The Hon. JAN BURNSWOODS:** Given what you have said—you have referred, for instance, to the section 69 report's failure to take into account census information—you have referred to the fact, quite correctly, that still as of today there is complete mystery and dispute surrounding the number of jobs at the centre and so on, given those fairly major criticisms you have made I would have thought your view of the section 69 report might be more critical than what you have just said.

**Dr HADDAD:** This is not an easy thing to say. I have been critical of the section 69 report. I am not in agreement with the outcome of the section 69 report in terms of its recommendations. I would have advised the Minister along the same lines as the advice that was given to the Minister. I am not sure about other things, but I have been critical of the report and I am.

**The Hon. JAN BURNSWOODS:** Given everything you have said about your independent review, the Director-General's advice and everything we know, is it your conclusion that it would not be satisfactory for the Minister to base a decision on the section 69 report that was prepared?

**Dr HADDAD:** As I said, that is the Minister's decision. What I am more interested in is to provide the Minister with good advice based on sound public policy issues and analyses. Certainly the advice that I would have given the Minister is entirely consistent with the advice given to the Minister by the Director-General, if I was the person providing that advice. I am saying that completely independently.

**The Hon. JAN BURNSWOODS:** Given everything we have just gone through, in your opinion would it be fair to describe this section 69 report as a dog of a report?

**Dr HADDAD:** I do not want to use terms like "dog". As I said, I would have come to different conclusions. Although difficult to say, the section 69 report in my view is not an adequate report for the purpose of providing good public policy advice, in my submission.

**The Hon. KAYEE GRIFFIN:** Ms Cheetham, who first spoke to you about the local environment plan [LEP] amendment?

**Ms CHEETHAM:** Mr Birds spoke to me it would have been early—about mid-April, I think, because he was going on leave and he asked me would I take over the preparation of the section 69 report.

**The Hon. KAYEE GRIFFIN:** Who at council spoke to you about the LEP?

**Ms CHEETHAM:** At what stage are you talking about?

**The Hon. KAYEE GRIFFIN:** At any point in time when you were working on the LEP.

**Ms CHEETHAM:** Phil Jemison was my contact.

**The Hon. KAYEE GRIFFIN:** When council spoke to you, what comments did they make about the proposed LEP?

**Ms CHEETHAM:** The main question that I was being asked was: How was progress, how was it progressing, what was the timeframe?

**The Hon. KAYEE GRIFFIN:** Did council mention Mr Mosca to you at any stage?

**Ms CHEETHAM:** No.

**The Hon. KAYEE GRIFFIN:** In evidence last Friday, in answer to a question I asked, you said that Mr Mosca had contacted you several times, is that correct?

**Ms CHEETHAM:** That is correct, and I also added that was normal practice and he had contacted me not only on this one but on another draft LEP I was preparing a section 69 report for.

**The Hon. KAYEE GRIFFIN:** Is it not true that Mr Mosca and his clients stood to financially gain from the section 69 report that you were preparing?

**Ms CHEETHAM:** I would not know.

**The Hon. KAYEE GRIFFIN:** Mr Mosca and council took the same position on the matter: they both supported the LEP?

**Ms CHEETHAM:** The questions that I was being asked by council and by Mr Mosca related to the timeframe that I was working to.

**The Hon. KAYEE GRIFFIN:** Those were the only comments when you were contacted by either council or Mr Mosca—basically about the timeframe?

**Ms CHEETHAM:** It was about the timeframe.

**The Hon. KAYEE GRIFFIN:** Going back to the first question, you had carriage of the LEP because Mr Birds was on leave, is that right?

**Ms CHEETHAM:** That is why I took it on at that stage. I had nothing to do with it up until that point.

**The Hon. KAYEE GRIFFIN:** Mr Birds, at what point in time did you start working on the LEP?

**Mr BIRDS:** When the LEP was presented to the department. I believe it was around January we had what is known as a section 54 notification when the council notified the department that they resolved to make an LEP. On my recollection that is the first time I recall receiving something from the council.

**The Hon. KAYEE GRIFFIN:** Is it standard practice when a council advertises a proposal to look at a change to an LEP it contacts the department before it actually makes a decision to proceed with it?

**Mr BIRDS:** There is a requirement under section 54 of the Act that we operate under that council notifies the department.

**The Hon. KAYEE GRIFFIN:** Ms Cheetham, the person that contacted you from council was—

**Ms CHEETHAM:** Mr Jemison.

**The Hon. JOHN RYAN:** Mr Prattley, I take you back to your email of 16 April, that is, email contact between you and Alex Smith. The note from Alex Smith states:

Gary, much appreciated. There was an issue I was asked to clarify and that was the situation regarding the potential for litigation, i.e. the State included if the Minister approves the LEP. I would appreciate this point being covered. Thank you, Alex.

Did Alex ever explain who asked him to clarify this issue?

**Mr PRATTLEY:** No. I did not speak personally to Alex. The extent of our communication is what you see on the email.

**The Hon. JOHN RYAN:** Is the Premier's Department a quasi planning department? Why is it inquiring into what appears to be a low-level matter being dealt with out in the bleaches of the department of Planning?

**Mr PRATTLEY:** Clearly, it is not a low-level matter.

**The Hon. JOHN RYAN:** It has become a high profile matter, but at the time it was not.

**Mr PRATTLEY:** It was a matter of concern. The notes and meetings with the Minister will indicate all the way through that this was a situation that whichever way a decision was made there were problems. It was very clear from when we first understood the issues involved in this amendment that whether he approved it or refused it, it was going to end up in court, it was going to end up before ICAC. It was clearly a no-win situation. There was no easy way out of this problem. So the issues were difficult, clearly, as the media hype and everything else surrounding this has shown. Make a decision one way there is a lot of fuss; make a decision the other way it will end up in the courts for years as well.

**The Hon. JOHN RYAN:** What is the logical reason why the Premier's Department would take an interest in this matter?

**Mr PRATTLEY:** Because it is a major policy issue. There are major impacts from the decision.

**The Hon. JOHN RYAN:** Why would the matter possibly go to ICAC?

**Mr PRATTLEY:** Because we had been flagged by the various parties all the way through this thing that examined and challenged every single aspect of the advertising. We had been copied right throughout this process from Westfield, AMP, Mr Gazal, Mr Mosca, contact with the Minister's office. It was flagged all the way through the process that this was going to be challenged whichever way it went. So it was a high profile issue.

**The Hon. JOHN RYAN:** Of all the things you sought to check, at no stage did you ever ask Ms Cheetham or Mr Birds, "How is it going? Can I have a look at the section 69 certificate to make sure that it is rigorous?" The description we have just had from Mr Haddad of the section 69 certificate could not have been more scathing, in my view.

**Mr PRATTLEY:** In my view it could be much more scathing.

**The Hon. JOHN RYAN:** It is fairly scathing given that this is a high profile matter in which potentially the Premier, Westfield and others would be interested and in the order of 400 jobs are at stake. Yet apparently you have not bothered to exercise any supervision over the junior officers who are putting it together and when you finally see it in June, Mr Haddad said, that they did not do rigorous studies, they did not employ people for a fresh look. How could this have been so bad? It appears to me that either these people have never been trained in planning or someone slipped up in supervising them. It sounds to me from the description we have just had that it is the section 69 report from planners kindergarten.

**Mr PRATTLEY:** I have great respect for the planners involved in this matter. This matter is dealt with under delegation. If a matter is dealt with under delegation then it is delegated. If it is delegated to a council and the council deals with it in delegation, we do not check everything they do. If it is delegated to one of my team leaders to prepare this report, then it is delegated to that person. I consider that I am being professionally irresponsible if I try to influence the outcome of that. I think it shows proper probity that I did not try to influence in any way the outcome of the officers' report.

**The Hon. DAVID OLDFIELD:** Indeed, you have signed off on it in agreement.

**Mr PRATTLEY:** I endorsed it because I accepted, as I said last Friday, that it is a conclusion that could be drawn. I also indicated you could equally draw the opposite conclusion even from the written material in the report.

**The Hon. JOHN RYAN:** Proper probity is one thing, but there are 400-odd jobs, people working in this place and millions of dollars worth of investments involved. The paperwork makes it obvious that numerous attempts were made at immediate gazettal. It is something that was discussed at the highest levels of government and which you were discussing with the Minister. For God's sake, why would you not have asked Ms Cheetham, "Show me a copy of the section 69 report, not so that I can influence your decision. In fact, if you like, take the recommendation off. Can I check to see that it has been rigorously done, that you have the resources you need?" Apparently names like Frank Lowy and the Premier are being littered around. In fact, you say this could have gone to the ICAC. You are littering around the name of the Premier yourself. Why did not you, why did not someone exercise some level of supervision over this process to make sure that in the end there would not be the comments that Mr Haddad has just made about this process?

**Mr PRATTLEY:** Because the matter was being dealt with under delegation. The issues that you are talking about I think are properly issues for the Minister to have regard to in making her decision. To bend the planning decision because there are 400 jobs involved, even though other things might be bad, is not necessarily good planning. It is an issue that is significant but should not unduly influence the outcome of the planning decision. The Minister was adamant that she wanted this matter dealt with through the normal planning process and that is precisely what happened.

**The Hon. JOHN RYAN:** I have just been given a media release from the Premier: "Mr Carr said his chief of staff Graham Wedderburn met with Westfield representatives on 19 April to hear of their probity, planning and legal concerns." Are you telling us the truth that you know the full details of this meeting?

**Mr PRATTLEY:** I beg your pardon?

**The Hon. JOHN RYAN:** The Premier has just announced in a media release—

**Mr PRATTLEY:** Am I telling the truth about what?

**The Hon. JOHN RYAN:** You said you did not know who had the meeting and that you have checked Mr Gellately to make sure that there was no meeting—

**Mr PRATTLEY:** I am sorry, I did not say that. The Director-General—

**The Hon. JOHN RYAN:** The Director-General did.

**Ms WESTACOTT:** Let me be clear. I asked Dr Gellately did a meeting take place between the Premier and Mr Lowy. His advice to me was no, it did not. "The meeting" is the meeting referred to in the email that you have been reading from. That is what I asked Dr Gellately.

**The Hon. JOHN RYAN:** After that stunning revelation—

**Mr PRATTLEY:** I can happily say that I have no knowledge of whether Mr Wedderburn met with anyone or who he actually met with until you read that press release right now.

**The Hon. JOHN RYAN:** Ms Westacott, you presented this Committee with a submission five minutes before we were due to hold a hearing in which you outlined what you considered a chronology of critical incidents. It is pretty, if I might say, bloody obvious that there is a whole heap of things that you have not told us about—discussions between yourself, Mr Prattle, the Minister. Now we have the Premier's Department getting involved. Then we have the amazing scene of Mr Haddad hanging these three officers out to dry with an unbelievable criticism of their effort.

**The Hon. PETER PRIMROSE:** You have three hours to ask questions. Ask the questions.

**The Hon. JOHN RYAN:** I cannot believe that 450 people's jobs rested on the sort of bloody incompetence we have displayed from you lot.

**The Hon. PETER PRIMROSE:** You have three hours to ask questions. We do not want a submission from you. How about asking questions? Don't make allegations. Ask questions.

**The Hon. JOHN RYAN:** I would hate to be in a position where my job was on the line waiting for you with your eyes shut, with these people doing their level best, people from the Premier's Department making—why wouldn't the people who work in this place who in two weeks face the loss of their jobs, why would not they be asking and be bloody angry with the effort that you have made on this matter?

**The Hon. PETER PRIMROSE:** Ask the questions. Don't make speeches.

**CHAIR:** That was a question.

**The Hon. PETER PRIMROSE:** That wasn't a question, that was a bloody speech from someone trying to get on the media.

**The Hon. JOHN RYAN:** Why shouldn't they be ashamed with and angry at you lot?

**The Hon. PETER PRIMROSE:** Ask questions. That is what a parliamentary committee is about.

**The Hon. JOHN RYAN:** I absolutely did.

**CHAIR:** He just asked his question.

**The Hon. JOHN RYAN:** Frankly, I am speechless at the unbelievable incompetence.

**The Hon. PETER PRIMROSE:** Go out, take a walk, come back and ask a question.

**CHAIR:** The Hon. John Ryan did ask a question.

**The Hon. JAN BURNSWOODS:** Madam Chair, what was his question?

**The Hon. PETER PRIMROSE:** What was his specific question?

**Ms WESTACOTT:** I am not clear what was the specific question.

**The Hon. JOHN RYAN:** The question that I asked you was: Why should 200, 300 or 400 people who have a job—

**The Hon. JAN BURNSWOODS:** So now it is 200, 300 or 400 people.

**The Hon. JOHN RYAN:** I am prepared to be relaxed about however many people there are.

**The Hon. PETER PRIMROSE:** How many people is it?

**The Hon. JAN BURNSWOODS:** Ten minutes ago it was 450 people. I note that that was one of Dr Haddad's points.

**The Hon. JOHN RYAN:** My job is important to me and I suspect that yours is important to you. Why would they not be annoyed with you, given the lack of supervision to this process, the lack of resources and the lack of truthfulness when you explained to us what you told Ministers and what you told the Premier's office?

**The Hon. JAN BURNSWOODS:** Madam Chair, is that a question?

**The Hon. JOHN RYAN:** Why would they not be unbelievably angry with you?

**The Hon. JAN BURNSWOODS:** I do not know whether the witness knows what is the question. I certainly do not.

**CHAIR:** The Hon. John Ryan is speaking in English.

**The Hon. JOHN RYAN:** Fortunately you are not answering the question.

**The Hon. PETER PRIMROSE:** You are.

**CHAIR:** Order! If the Hon. John Ryan wishes to ask long questions he may do so.

**The Hon. PETER PRIMROSE:** He is making a speech. He should ask witnesses questions; he should not make a speech.

**CHAIR:** Order! The Hon. John Ryan just asked the question twice.

**The Hon. JOHN RYAN:** I did ask the witness a question. I asked: Why would the people who are working in the factory outlet not be incredibly annoyed with the management of this matter? Management appears to have been incredibly incompetent, corrupt, or both.

**The Hon. DAVID OLDFIELD:** Government members should be ashamed of themselves with all the covering up that they are doing.

**CHAIR:** Order!

**The Hon. PETER PRIMROSE:** We want questions. We are here to ask questions. Who are you here to represent?

**The Hon. DAVID OLDFIELD:** I represent 450 jobs in Westfield.

**The Hon. PETER PRIMROSE:** You are representing a couple of developers.

**The Hon. DAVID OLDFIELD:** The Government is representing just one developer.

**The Hon. PETER PRIMROSE:** How about asking some questions? We have witnesses here. Let members ask them questions.

**The Hon. JAN BURNSWOODS:** These witnesses were available for two hours on Friday.

**CHAIR:** Will Ms Westacott answer the question?

**The Hon. DAVID OLDFIELD:** At least they will still have jobs in two weeks. They might not have them if there is a change of government, but they will still have them in two weeks.

**CHAIR:** Order! Does Ms Westacott wish to answer the question?

**The Hon. JAN BURNSWOODS:** Witnesses are not here to be harangued and harassed.

**The Hon. DAVID OLDFIELD:** They are here to tell the truth.

**The Hon. PETER PRIMROSE:** Like someone who is representing a couple of developers.

**The Hon. DAVID OLDFIELD:** You are looking after only one developer.

**CHAIR:** Order! Ms Westacott, do you wish to answer the question?

**The Hon. JAN BURNSWOODS:** Madam Chair, can I ask what was the question?

**CHAIR:** The Hon. John Ryan asked the question twice. I ask Ms Westacott to answer the question.

**The Hon. JAN BURNSWOODS:** He actually asked about six questions after the Hon. Peter Primrose took a point of order. Not one of those questions was the same. I would like to know what the witness is expected to answer.

**The Hon. JOHN RYAN:** I asked her whether she was proud of her work.

**The Hon. JAN BURNSWOODS:** That is the seventh version of your non-question.

**Ms WESTACOTT:** That was not the question.

**The Hon. JOHN RYAN:** That is the same question. Are you proud of your work?

**The Hon. JAN BURNSWOODS:** That is the eighth version.

**CHAIR:** I ask Ms Westacott to answer the question.

**Ms WESTACOTT:** I am very concerned that Liverpool council wrongly approved this in the first place. I am very concerned that trained planners made a decision to approve something that is clearly contrary to their LEP. Their LEP is absolutely clear.

**The Hon. JOHN RYAN:** So it is all the fault of Liverpool council?

**Ms WESTACOTT:** Fairly clearly, you have to lay the blame with the people who granted this consent in the first place. What I said in my evidence to the Committee last week was that in my view the section 69 report did not present a compelling case for the Government to retrospectively rezone a site that two courts had decided did not comply with the planning instruments. Dr Haddad confirmed my views about the report—the report is inadequate. As I said to you last week, in my view it would have been irresponsible of me not to draw the Minister's attention to those inadequacies. So I am very concerned. It is clear that this stems from an illegal development, a consent that was wrongfully given and that two courts found was wrongfully given. My department and the Premier's Department have tried to work with the owners of Orange Grove to provide employment opportunities and to assist people to relocate to other positions. We have not been afforded an opportunity to meet with workers and to provide them with information. Our jobs co-ordinator has been escorted off the site, and that is very unfortunate.

**The Hon. JOHN RYAN:** Mrs Westacott, I will read to you an email from Laurel Cheetham to Justine de Torres, which states:

Justine

You can advise that this office gave proper and careful consideration to all the planning issues that related to this draft LEP and the Department's responsibilities in reporting on it to the Minister. The s. 69 report details this consideration.

All State and regional policies and plans (including draft ones), all s. 117 directions and s71 determinations were considered. We were satisfied that the draft plan was consistent with these, and that, if made, it would enable development to be approved which would

- not impact significantly on the Liverpool CBD, the closest centre ...
- provide equity of access to a specialised form of retail businesses for residents of south western Sydney, who otherwise must travel to other centres located much farther away and less accessible by either car or public transport.
- increase employment opportunities in the Liverpool area, providing potentially more employment than if the land was used for industrial purposes.
- not impact significantly on the supply of industrial land ...

That officer appears to believe that she has done a good job. We just had a statement from you that she has not. Notwithstanding anything that Liverpool council did, there is an onus on the department to consider this matter efficiently and properly with all the resources available to senior people and with an adequate level of supervision. Your department had a press release, a planning instrument drawn up and a section 69 report all legal and ready for the Minister to sign off on. I have to say that your work is not a great deal better than the work of Liverpool council. Are the errors that your department made not as bad, if not worse, than the errors made by Liverpool council, given the level of seniority in your department and its scope for planning?

**Ms WESTACOTT:** If I can just refer to the press release, I think my officers made it clear that it is standard practice for press releases to be attached to files. As I explained to the Committee on Friday, it is standard practice for Parliamentary Counsel to be consulted about whether a plan can be legally made. In my view this is a question of judgment. In my view the judgment and the conclusion that my officers reached are not consistent with my own. I did not believe that they complied with State policy. I went through all this on Friday. I did not believe that the State's policy, outlined in SEPP 66 and the integrated land and transport package, had been adequately addressed.

I did not believe that the public transport matters had been adequately addressed. I did not believe that the net community benefit had been adequately addressed. I did not believe that the Government's very clear policy—we had just announced grants to councils all over metropolitan Sydney—to concentrate retail activity into CBDs and central locations had been addressed. I formed a different view to the view of departmental officers. I raised my concerns with the Minister, as I should, and she made her decision.

**The Hon. JOHN RYAN:** Do you not think that your opinion was just a bit late and a bit underresourced? Why do we have a planning procedure when the most important decision is made at the end rather than at the beginning of the process, and made under proper supervision? How often do you criticise section 69 reports? Since you became director-general how often have you rejected a section 69 report?

**Ms WESTACOTT:** I have questioned a lot of the advice given by my department in respect of local environmental plans. In the case of the Pittwater local environmental plan I did not accept the advice that the department provided. Council made representations to me and I agreed with council. In providing advice I have made it very clear that I accepted some of the issues that Pittwater council raised about its local environmental plan. So it is not uncommon for me to challenge and contest the advice of the department. You will be aware that my department deals with a whole raft of issues—water, native vegetation, infrastructure and transport planning. When I was presented with some advice from my department, for example, in the water sharing area, that we should not delay the water sharing plans and that they should proceed, I offered different advice to the Minister based on my meetings with various farmers across New South Wales who had raised serious objections to those plans about their equity and fairness in respect of the farming community. I offered different advice to Minister Knowles that I rejected the department's advice that the plan should not be made.

**The Hon. JOHN RYAN:** You are answering a question that I did not ask you. Since you became Director-General, Planning, how often have you added a memorandum similar to the memorandum that you added to a section 69 report?

**Ms WESTACOTT:** I have offered to Ministers lots of memorandums, different advice and comments on files.

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

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

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

**Ms WESTACOTT:** That is correct.

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

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

**The Hon. JOHN RYAN:** Ms Cheetham, is it your experience that Ministers ever reject recommendations contained in section 69 advices?

**Ms CHEETHAM:** Ministers may do so. There is nothing to compel them.

**The Hon. JOHN RYAN:** Are you aware of any other instance of that occurring?

**Ms CHEETHAM:** I am not aware of all the instances in which Ministers make decisions on LEPs.

**The Hon. JOHN RYAN:** Do you know whether or not that has occurred?

**Ms CHEETHAM:** I can talk only about the LEPs in which I have been involved. This is the first one that a Minister has not agreed with my recommendation, that I can recall.

**The Hon. JOHN RYAN:** How many LEPs have you done?

**Ms CHEETHAM:** I don't know how many but I have been preparing section 69 reports for 20 years.

**Ms SYLVIA HALE:** I ask Mr Haddad and Ms Westacott whether they agree that at the heart of this inquiry is a desire to determine whether any undue influence was brought to bear by any party in the decision not to rezone the site. Would you agree that it was disturbing this morning for the Committee to be given the impression that no meetings had occurred between Westfield and the Premier's Department and for it then to be presented with a media release that indicated that such a meeting took place? Do you think it is disturbing that we received evidence yesterday from Robert Jordan, chief operating officer for Westfield, who also denied that any of those meetings occurred? Again, at this late stage of the inquiry, on a matter that is central to the inquiry, we received evidence to the contrary from the Premier. Do you have any comment to make as to the impact on the public's perception of the transparency and accountability of the decision-making process?

**Ms WESTACOTT:** I want to be clear that the question that was put to me was a question relating to the email that discussed a meeting between the Premier and Mr Lowy. My advice from Dr Gellatly is that that meeting did not take place. I am not aware of other meetings. I am not aware of the meeting that is referred to in the Premier's press release. I have been very clear in my advice to this Committee that I did not have a conversation with the Minister other than the general conversation that I referred to in which she expressed a view to me about her preference, one way or the other, in the making of this plan. That is the evidence that I have given under oath and I stand by it. I simply rang Dr Gellatly. Those emails were not part of the file that I

saw when I made my comments to the Minister about the adequacy of the section 69 report. As I said, I spoke to Dr Gellatly about the meeting that is referred to in that email. His advice to me was that meeting did not take place. So, you know, that is the evidence that I have given, and I am very clear of my recollection of my meetings with Minister Beamer—that she did not express a view to me about her preference one way or the other in respect of making the plan.

**Ms SYLVIA HALE:** But it is extraordinary, is it not, that somehow no-one has any knowledge of the meetings about proposed changes about an LEP, which is obviously a matter that is playing on the minds of the Premier's Department, the council and DIPNR. These are critical meetings but somehow no-one seems to know about them. I find that somewhat interesting, if not extraordinary. But, Dr Haddad, can I take you to some remarks you made earlier. You said that even though there were 400 jobs at stake at Liverpool, that was a significant issue but it should not unduly influence the outcome; that in fact important public policy considerations were at stake. I do not wish to deviate too much from—

**The Hon. JAN BURNSWOODS:** I do not think Dr Haddad actually said that. Dr Haddad specifically queried that.

**Ms SYLVIA HALE:** I am sorry. I thought I had written down what he said.

**Dr HADDAD:** I am sorry, could you please repeat that?

**Ms SYLVIA HALE:** I said that I wished to take you to your earlier remarks when you said that even though 400 jobs was a significant consideration, they should not unduly influence the outcome of the report that was made.

**Dr HADDAD:** If I may, I will try to better articulate what I was saying. Of course 400 jobs are important and significant, and of course it is a very unfortunate situation and a very serious situation, I suppose. What I was trying to say in terms of advising on good public policy is that we do not advise solely on an employment outcome. We look at the good planning outcome essentially. In advising the government, good advice is to advise on a good planning outcome. A good planning outcome includes considerations of the social, economic, environment and amenity issues associated with the advice.

In this case the advice should be given, and only given, on the facts of the policy and of the merit of the planning situation; i.e., is there, in that, community benefits? What are the employment implications within the context of the change of the use? That is the proper advice. What are the transport and amenity implications of doing that? How do we relate it to State planning policy? Of course it is understandable that the local council will sort of be more concerned about the local issues, about employment issues, but the main reason that we are involved is because we have to advise on the basis of State planning policies and we have to advise on the basis of good planning outcomes, not necessarily only on employment outcomes. Is that clear?

**Ms SYLVIA HALE:** Yes, thank you. Can I take you to an instance therefore—and I do this for reasons of comparison—of a decision that was made by the department to call in a development of Graphic World at Lewisham.

**Dr HADDAD:** Yes.

**Ms SYLVIA HALE:** It was called in and the development was approved by the department on the grounds that it would create 36 jobs.

**Dr HADDAD:** Yes.

**Ms SYLVIA HALE:** And this decision was made—despite Ashfield council being resolutely opposed to the development application on the grounds that it did not comply with a number of council policies and the Murrumbidgee Council having a long history of difficulties with the site and the failure of Graphic World to comply with the conditions of consent.

**Dr HADDAD:** Yes.

**Ms SYLVIA HALE:** Also, the development was going to be over the Hawthorn Canal and there were problems with its not complying with road conditions, and whatever. Despite that, do you think it was good planning to call in an application and approve it only on the basis that it would create 36 additional jobs?

**Dr HADDAD:** The call-in was not on the basis only of the 36 jobs, for that matter.

**Ms SYLVIA HALE:** What was it?

**Dr HADDAD:** It was on the basis of this particular situation. We have an existing factory, there since I think the mid-sixties it has been operating, having been granted development approvals by a council.

**Ms SYLVIA HALE:** With which it failed to comply.

**Dr HADDAD:** Which, for whatever reasons, were not complied with, and the developer wanted to put in a development application rather than a rezoning to, in a sense, make it possible for them to comply. That essentially was the development application.

**Ms SYLVIA HALE:** No. The developer, as I recollect it, wished to extend the hours of operation and intensify the development.

**Dr HADDAD:** That was part of the development application. However, the main reason that that was called in was because with the new development application being added onto the existing developments, the factory would straddle two local governments.

**Ms SYLVIA HALE:** But it was called in before one of those councils, Marrickville Council, had the opportunity to determine its position.

**Dr HADDAD:** Yes.

**Ms SYLVIA HALE:** But we certainly knew that the Ashfield council was opposed to it.

**Dr HADDAD:** Yes.

**Ms SYLVIA HALE:** And there was every likelihood that Marrickville Council would be opposed to it on the grounds of its appalling record of operation. So if you had two councils which were both opposed to it, what was the good planning outcome?

**Dr HADDAD:** The administrative reasoning for calling in is because you have two councils, and when you have two councils you need one decision maker.

**Ms SYLVIA HALE:** But why was not the opportunity afforded to Marrickville Council to make a decision, and if the Marrickville Council had opposed the development application, as Ashfield had done, why was that position not allowed to be reached prior to the calling in of the application?

**Dr HADDAD:** To my understanding, both councils were heavily involved in the decision-making process. The call-in is not the decision making. The call-in is just to call it in and then there is an assessment process whereby both were important.

**Ms SYLVIA HALE:** Ashfield council had made an assessment and concluded that the development application was not, in its view, worthy of approval. Marrickville Council was highly likely to reach the same position. Yet those two councils, which quite conceivably would have adopted a consistent position of opposition, were denied this opportunity. At stake there, and the whole reason for doing this, supposedly, was ostensibly the 36 jobs in an inter-city area where the scarcity of jobs is nowhere near as great as that out at Liverpool where 400–450 jobs are apparently of little account.

**CHAIR:** That was your last question, Ms Sylvia Hale.

**Dr HADDAD:** I cannot add any more, other than saying that the jobs were one factor. But the fact that they would be straddling two local government areas and there were other issues, that is where the assessment process comes in.

**Ms SYLVIA HALE:** You would agree that that is a very weak excuse.

**CHAIR:** Ladies and gentlemen, I propose to take a five-minute break because the witnesses have been here for quite an extensive period.

**(Short adjournment)**

**The Hon. DAVID OLDFIELD:** Ms Westacott, can you clarify when exactly it was that you contacted Dr Gellatly to ask whether the Premier had met with Mr Lowy?

**Ms WESTACOTT:** I will have to take that question on notice. It was about a week or so ago. I will give you the exact—

**The Hon. DAVID OLDFIELD:** It was a week or so ago?

**Ms WESTACOTT:** Yes.

**The Hon. DAVID OLDFIELD:** It is only since all of this has occurred that you have made that inquiry. In fact, it is during the course of this inquiry that you have made that inquiry.

**Ms WESTACOTT:** No. I gave you my answer earlier. I became aware of that email and I rang him.

**The Hon. DAVID OLDFIELD:** When did you become aware of the email?

**Ms WESTACOTT:** I will have to take that question on notice.

**The Hon. DAVID OLDFIELD:** Roughly?

**Ms WESTACOTT:** A couple of weeks ago.

**The Hon. DAVID OLDFIELD:** You became aware of the email a couple of weeks ago and a week or so ago you contacted Dr Gellatly to ask him if that was correct.

**Ms WESTACOTT:** That is correct.

**The Hon. DAVID OLDFIELD:** It was certainly since this inquiry was announced and since it had its first deliberative meetings. It was after that time that you made those inquiries.

**Ms WESTACOTT:** I am not sure when you had your first meeting.

**The Hon. DAVID OLDFIELD:** I am. Ms Cheetham, who is Louise Higgins?

**Ms CHEETHAM:** I do not know.

**The Hon. DAVID OLDFIELD:** You sent an email to her.

**Ms CHEETHAM:** If you tell me what it was about I may be able to say.

**The Hon. DAVID OLDFIELD:** It was sent on 11 May at 11.17 a.m. under the heading "Briefing notes on factory outlet draft LEP". It states:

Attached are copies of the briefing notes prepared in this office on the Liverpool factory outlets draft LEP. I understand that the Director General has requested these urgently.

**Ms CHEETHAM:** I think it was someone in the director general's office. I was responding to a request.

**The Hon. DAVID OLDFIELD:** Ms Westacott, can you explain who she is?

**Ms WESTACOTT:** Louise Higgins is my secretary.

**The Hon. DAVID OLDFIELD:** Ms Cheetham, at what time did you get here this morning?

**Ms CHEETHAM:** A little after 10.00 a.m.

**The Hon. DAVID OLDFIELD:** So you came straight here.

**Ms CHEETHAM:** I did.

**The Hon. DAVID OLDFIELD:** Mr Driscoll, what about you?

**Mr DRISCOLL:** I was here at approximately 9.30 a.m.

**The Hon. DAVID OLDFIELD:** Where were you between 9.39 a.m. and when the meeting started?

**Mr DRISCOLL:** I sat in the foyer, just after the reception area and inside the front doors.

**The Hon. DAVID OLDFIELD:** Was that here on the seventh floor?

**Mr DRISCOLL:** Yes.

**The Hon. DAVID OLDFIELD:** Ms Westacott, what about you? What time did you get here this morning?

**Ms WESTACOTT:** At about 9.40 a.m.

**The Hon. DAVID OLDFIELD:** Where were you?

**Ms WESTACOTT:** Up on level nine.

**The Hon. DAVID OLDFIELD:** Who was with you on level nine?

**Ms WESTACOTT:** Dr Haddad, Mr Astill and Mr Prattley.

**The Hon. DAVID OLDFIELD:** The four of you. Dr Haddad, at what time did you arrive?

**Dr HADDAD:** I arrived with Ms Westacott.

**The Hon. DAVID OLDFIELD:** Mr Astill and Mr Prattley, did you arrive together and at the same as the others?

**Mr PRATTLEY:** Yes.

**The Hon. DAVID OLDFIELD:** So the four of you were on the ninth floor in that little leather seating area near the stairs prior to this meeting.

**Mr PRATTLEY:** Apart from when I went to the toilet, yes.

**The Hon. DAVID OLDFIELD:** Who was the person who came up and took each of you, one at a time, into an elevator and then brought you back?

**Ms WESTACOTT:** No-one.

**Mr PRATTLEY:** No-one.

**The Hon. DAVID OLDFIELD:** None of you left that floor?

**Ms WESTACOTT:** Of course we left the floor to come here.

**The Hon. DAVID OLDFIELD:** Apart from coming down here, you did not at any stage leave the floor while you were waiting.

**Ms WESTACOTT:** No.

**The Hon. DAVID OLDFIELD:** How did you come to be on the ninth floor? Why did you pick that floor?

**Ms WESTACOTT:** Because that is where the Minister's office is. I know there is a set of lounges there, so I sat there.

**The Hon. DAVID OLDFIELD:** Who signed you in to get up there?

**Mr PRATTLE:** We do not need to be signed in; we have departmental passes.

**The Hon. DAVID OLDFIELD:** So you just let yourselves in and went up to the ninth floor because you know that is where Craig Knowles' office is.

**Ms WESTACOTT:** There are some seats up there and we wanted to sit while we waited.

**The Hon. DAVID OLDFIELD:** Did you ask your other officers to meet you there?

**Ms WESTACOTT:** They travelled with me.

**The Hon. DAVID OLDFIELD:** What about Mr Driscoll?

**Ms WESTACOTT:** I did not ask them to meet me.

**The Hon. DAVID OLDFIELD:** I am advised you have been seen being taken by another person one at a time into an elevator during the period prior to this meeting.

**Mr PRATTLE:** That is very strange advice.

**The Hon. DAVID OLDFIELD:** But you just picked Craig Knowles' floor to sit and wait.

**Ms WESTACOTT:** Yes.

**The Hon. DAVID OLDFIELD:** Did you at any stage meet with anybody else from the Government prior to this meeting today and since the inquiry on Friday?

**Mr PRATTLE:** No.

**Ms WESTACOTT:** No.

**Dr HADDAD:** No.

**The Hon. DAVID OLDFIELD:** And you have not met with anyone today?

**Mr PRATTLE:** No.

**Ms WESTACOTT:** No.

**Dr HADDAD:** No.

**The Hon. DAVID OLDFIELD:** Ms Cheetham, are you aware of any emails from anybody involved sitting at this table that have come to your attention that we perhaps may not have?

**Ms CHEETHAM:** I am not aware of what emails you have.

**The Hon. DAVID OLDFIELD:** I understand that.

**Ms CHEETHAM:** Therefore, I am not aware.

**The Hon. DAVID OLDFIELD:** You have heard some of the emails quoted here today. Is there anything in particular missing?

**Ms CHEETHAM:** The only emails I am aware of are the ones that involve me. I do not know what other emails—

**The Hon. DAVID OLDFIELD:** You do get copied occasionally.

**Ms CHEETHAM:** Yes, but the ones I am copied actually involve me.

**The Hon. DAVID OLDFIELD:** Have you received any emails from Ms Westacott on this matter?

**Ms CHEETHAM:** Not directly.

**The Hon. DAVID OLDFIELD:** What, just through Louise Higgins?

**Ms CHEETHAM:** I did not even receive an email from Louise Higgins as far as I am aware. I think it was probably a request that came to me.

**The Hon. DAVID OLDFIELD:** How did the request come to you? How did you know to send this material to Louise Higgins?

**Ms CHEETHAM:** I would have been asked by someone in a more senior position.

**The Hon. DAVID OLDFIELD:** Would that person have emailed you?

**Ms CHEETHAM:** Probably just verbally asked me.

**The Hon. DAVID OLDFIELD:** There seems to be a large element of verbal communication. I note Ms Westacott does not seem to send many emails; she seems to tell other people who tell other people.

**Ms CHEETHAM:** Within our office that can happen quite a lot. Someone will get a phone call or will be asked by email and they will pop around to where you are and ask you to do something, so you do it.

**The Hon. DAVID OLDFIELD:** Madam Chair, can I provide Mr Driscoll with a document?

**CHAIR:** Yes.

**The Hon. DAVID OLDFIELD:** This is the email we spoke of earlier from you to Minister Beamer's chief of staff, Michael Meagher. It states:

Michael,

As requested, attached is the briefing that was prepared last Friday for the Premier's Meeting with Westfield.

Are you sure that Michael Meagher did not give you the idea that that meeting had happened?

**Mr DRISCOLL:** No, the reference to "as requested" relates to a request made of me by Mr Prattley. I am quite definite in my recollection.

**The Hon. DAVID OLDFIELD:** So when you said "as requested" you were not speaking of Michael's request but the request made by Mr Prattley.

**Mr DRISCOLL:** That is my recollection, yes.

**The Hon. DAVID OLDFIELD:** You are convinced that it was Mr Prattley who explained to you that the Premier and Frank Lowy were involved?

**Mr DRISCOLL:** Mr Prattley explained to me, as I have said in my previous answer, that there was, to his knowledge, a meeting with either Premier's or the Premier and Westfield and, as I have said in my previous answer, I drew the conclusion that that was with Mr Lowy.

**The Hon. DAVID OLDFIELD:** I did ask you this before, but I just want to make sure I have it clarified. You had answered previously that there are no other communications where you have come of the view that it was the Premier and Mr Westfield. You have never referenced them before in any other matter, this or otherwise, have you?

**Mr DRISCOLL:** I am sorry, Mr Oldfield?

**The Hon. DAVID OLDFIELD:** I will put it another way. You have already answered this, so think about your answer this time. Have you referenced the Premier or Mr Lowy in any previous communications on this matter or otherwise, personally? Have you referenced them?

**Mr DRISCOLL:** Other than the communication to Mr Birds and Mrs Cheetham?

**The Hon. DAVID OLDFIELD:** Yes.

**Mr DRISCOLL:** There was the one to Mr Birds and Mrs Cheetham, and this one does not specifically reference—

**The Hon. DAVID OLDFIELD:** No, I understand that.

**Mr DRISCOLL:** To my recollection that is my only instance.

**The Hon. DAVID OLDFIELD:** Do you make it a practice generally, for example, if you had been asked for a briefing for a meeting with the Premier and Lend Lease, have you in the past put down the name of the head of Lend Lease?

**Mr DRISCOLL:** I would have to take that on notice but I would be reasonably confident in saying no, probably not.

**The Hon. DAVID OLDFIELD:** It is fair to say it is not the normal practice for you or usual practice for you to be, of your own accord, nominating the names of people personally involved as opposed to the organisations?

**Mr DRISCOLL:** No, but I am happy to admit I may have made an error in this instance.

**The Hon. DAVID OLDFIELD:** But you seem to understand it is the first time you have done it?

**Mr DRISCOLL:** I do not know whether or not it is the first time I have done it, but I would say it is not frequent for me to do it.

**The Hon. DAVID OLDFIELD:** Infrequent, and you have no recollection of having done it before?

**Mr DRISCOLL:** Not that I recall.

**The Hon. KAYEE GRIFFIN:** Mr Birds and Mrs Cheetham, in their contact with both of you did council officers ever raise the fact that they had legal advice to confirm that the Orange Grove outlet centre was unlawful?

**Mr BIRDS:** I do not believe so.

**Ms CHEETHAM:** I do not, either.

**The Hon. KAYEE GRIFFIN:** Did they at any time raise the suggestion that Mr Gazal had threatened the council with a \$40 million claim if he did not get the LEP through?

**Mr BIRDS:** No.

**Ms CHEETHAM:** No.

**The Hon. KAYEE GRIFFIN:** Is it not a fact that the untold story about Liverpool council's LEP is that it has almost no planning merit at all?

**Mr BIRDS:** We both signed the section 69 report, which stated our view on the matter.

**Ms SYLVIA HALE:** You have had 20 years of writing reports.

**The Hon. KAYEE GRIFFIN:** It was not just a block to stop Mr Gazal suing the council?

**The Hon. JOHN RYAN:** Who wrote this?

**Ms CHEETHAM:** We have written our report on the merits of the case as we saw them.

**The Hon. KAYEE GRIFFIN:** Are either of you aware of any threats that Mr Gazal and Mr Mosca made to the council in relation to the matter?

**Ms CHEETHAM:** No.

**Mr BIRDS:** No.

**The Hon. JOHN RYAN:** Let's just smear people now.

**Ms SYLVIA HALE:** With these dogs of questions.

**The Hon. PETER PRIMROSE:** Look who is talking.

**The Hon. KAYEE GRIFFIN:** Can I just go back to one of the questions I asked previously and if you could give me a bit of further explanation, I asked about the fact that you started looking at the LEP while it was being exhibited and you talked about a specific section, section—

**Mr BIRDS:** Yes, I was talking about the process generally, and it is some time since I have seen the file so I may not get the date exactly right, but from recollection council informed us under section 54 of the Act that they resolved to make the plan. They wrote to us. That is common practice at that stage. At a later stage council exhibited the plan under section 65 of the Act. Again, they wrote to us to inform us of such, as I recall. It is really just the standard process they go through making the LEP. Council has an agreed delegation to process the LEP itself, and proceeded to use that power to exhibit the plan at section 65 stage. So in actual fact we did not have a plan, council's plan of submission until later on, post exhibition. We did have some correspondence with them, as you are probably aware from the papers that have been submitted. But the major consideration that was carried out, the detailed merit assessment, was done when we prepared the section 69 report.

**The Hon. KAYEE GRIFFIN:** The matter was on the council meeting agenda of 8 December 2003. Around what time would council have contacted you in relation to the requirements under the Act?

**Mr BIRDS:** They are obliged to write to us once they resolve it, so I imagine we received something early in the new year. I do not recall the precise date.

**The Hon. KAYEE GRIFFIN:** Just to go back to when you were preparing the report and some of that was passed on to Mrs Cheetham. You said you had contact with Mr Mosca on a number of occasions in relation to the LEP. Around how many times would he have contacted you?

**Mr BIRDS:** Yes, this has been asked before, but my recollection is that I think Mr Mosca contacted me once to ask about the progress of the LEP. Mrs Cheetham has already made a submission on the more numerous times he has contacted her, but that is my recollection.

**The Hon. KAYEE GRIFFIN:** Yes, I think I asked you that question last Friday.

**Ms CHEETHAM:** You did, yes.

**The Hon. KAYEE GRIFFIN:** In relation to when you are preparing your reports and so on, how often would councils contact you in relation to how the plan is going?

**Mr BIRDS:** Depending on the plan and the circumstances, but it is not uncommon for a council to ask us how it is progressing.

**The Hon. KAYEE GRIFFIN:** How often would Liverpool council have contacted you in relation to this?

**Mr BIRDS:** I could not say on this particular plan. I really could not recall—a few times.

**The Hon. KAYEE GRIFFIN:** There was just one officer from council who made contact with you both?

**Mr BIRDS:** From my own perspective, Mr Jemison primarily. I think at later stages Mr Tolhurst as well, but it was nothing out of the ordinary.

**The Hon. KAYEE GRIFFIN:** I am asking this because on the council meeting agenda Mr Jemison's name is not mentioned as one of the officers who put the proposed change to the LEP to council.

**Mr BIRDS:** In fact I think your question is probably better directed to the council, but as I recall there was another officer who was involved at an earlier stage. Mr Jemison may have become involved a little later, but that is probably better directed to council. I think his name was Mr Marecic. His name may be on some of the papers.

**The Hon. KAYEE GRIFFIN:** Mr Tolhurst was one of the ones. Mr Lamond did not contact you?

**Mr BIRDS:** No.

**The Hon. PETER PRIMROSE:** My question is to Mr Hamilton. Can I confirm that you are the principal policy adviser at DIPNR responsible for the benefits and disbenefits analysis from the section 69 report?

**Mr HAMILTON:** I am responsible for the paper that is attached to the submission, yes.

**The Hon. PETER PRIMROSE:** If I can just go through a couple of pieces here. In an email to Laurel Cheetham on 30 April 2004 you said that in your assessment of the net community benefit test that we may come out "sort of even". Sort of even would not be strong grounds for justifying the development, would it?

**Mr HAMILTON:** As has been indicated in several answers to questions, it has been a 50-50 equation right the way through, and that was my assessment.

**The Hon. PETER PRIMROSE:** Does SEPP 66 say "alternatives may be accepted when a net community benefit is clearly established"?

**Mr HAMILTON:** That is what it says.

**The Hon. PETER PRIMROSE:** On the one hand your assessment of the net community benefit test comes out as sort of even, but on the other hand SEPP 66 says that a net community benefit must be clearly established for alternatives. Do you believe it was clearly established?

**Mr HAMILTON:** The conclusion I reached in terms of the way I was thinking about various aspects of the proposal led me to the conclusion that the benefits slightly outweighed the disbenefits. Whether that is clear, I reached the conclusion that there were more pluses for it and negatives.

**The Hon. PETER PRIMROSE:** How do you define clear in your assessment?

**Mr HAMILTON:** Clear, if you took it on a strict interpretation, I would certainly concede would mean unequivocal differentiation in that there is stronger evidence clearly unequivocally on one side compared to the other.

**The Hon. PETER PRIMROSE:** I think you mean a strict construction of the word "clear"?

**Mr HAMILTON:** Yes.

**The Hon. PETER PRIMROSE:** You did not take a strict legal construction of the meaning of the words in the phrase "must be clearly established" when you made that decision?

**Mr HAMILTON:** In this case I did not.

**The Hon. PETER PRIMROSE:** My final question on this point is: the advice you received prepared by Hill PDA also fails, does it not, to come to a conclusion based on a comparison of the benefits and disbenefits?

**Mr HAMILTON:** That is correct. That is why I tried to do my own comparative assessment because I was not satisfied with the information that Hill PDA provided to me, including the statement they provided when I asked that question.

**The Hon. JAN BURNSWOODS:** Ms Westacott, when I asked you some questions earlier, Mr Haddad mentioned his concern about the issue of employment and the adequacy or otherwise of the section 69 report in that respect. I do not know whether these questions are best directed to you or to someone else, but I wondered what sort of information you had about the efforts by Gazcorp to frustrate the jobs co-ordinator and Drake Personnel in attempts to find jobs for employees.

**Ms WESTACOTT:** It is my understanding from Mr Dermody, who is the jobs co-ordinator, that he has written, to my knowledge, two letters and made several phone calls requesting a meeting with Mr Gazal to work out an acceptable method of contacting employers, and Mr Gazal has not been willing to meet with him. He visited the centre, as I understand it, on 26 July and attempted to hand out surveys to traders, to assist both traders and employers. My understanding is that centre management promised it would hand out the envelopes. There is a strong indication that those letters were not distributed by centre management. I am advised by Mr Dermody that some three weeks later not one survey has been returned, and not one telephone call has been made to the jobs co-ordinator. It is my understanding that on 4 August Drake Personnel were asked to leave the premises by centre management when dropping off envelopes to staff. They apparently managed to hand out 200 pamphlets, but, according to Mr Dermody, some employees have advised that centre management and security demanded that employees hand back the pamphlets to them. And I am advised by Mr Dermody that all the employees interviewed by Drake to date have insisted that they be interviewed off site.

**The Hon. JAN BURNSWOODS:** Do you think it would be fair to describe the actions of Gazcorp and the management there is an attempt to intimidate?

**Ms WESTACOTT:** As I said in my advice to the Committee on Friday, in his feedback to me Mr Dermody advised me that when he visited the site on 26 July he was escorted from the centre, escorted by security guards as I understand it. Whilst he says to me that he was not intimidated, he felt the behaviour of the security guards was intimidatory, comments made to him by other people at the centre, centre management, et cetera, that he was lucky to be with a security guard, that he was kept under surveillance until he left the centre, that people followed him, et cetera. His advice to me was that he felt the behaviour of centre management and security staff was designed to intimidate him from his task, which was to try to assist people to identify

alternative employment. He believes that those actions were a form of intimidation, although he advises me that he was not personally intimidated. He did not feel personally intimidated in the sense that he was not going to pursue what he was there to do, which was to try to get information to the employees there about opportunities, alternative employment. But he believes the behaviour of centre management and security was intimidatory.

**The Hon. JAN BURNSWOODS:** Would it be true to say that the efforts of the Government to provide these services both to traders and employees have been made difficult in the extreme by Gazcorp and the centre management?

**Ms WESTACOTT:** That is certainly my understanding from my telephone conversations and the written advice I have had from Mr Dermody, that he has made several attempts to contact Mr Gazal, Drakes have made attempts to hand out pamphlets, they have put ads in local newspapers, they have found between under 125 and 130 jobs that may be available to people at the centre, people have gone out of their way to try and identify alternative employment opportunities, and it has been very difficult for Mr Dermody not being able to get access to the centre. The Retail Traders Association have offered to provide advice to traders at the centre in terms of where they could relocate; they have identified vacant shops in Liverpool, but again they have not been able to get access to traders, they have not been able to get access to employees, they have not been able to have a meeting with Mr Gazal, and I think there has been no really genuine effort to try and find alternative employment for people, as has been the intention of the Government to try and assist those people affected by this decision, to identify alternative employment and, in the case of some of the traders, to identify some alternate retail premises.

**The Hon. JAN BURNSWOODS:** Finally, in relation to the issue of jobs, as you would be aware we have had this very vexed issue of the number of workers at the centre. We have been given wildly different figures or estimates; the figure 450 has been mentioned most often but there is considerable reason to doubt that figure, not least the much lower figure that Mr Gazal himself gave us on Friday. Do you yourself, or through Mr Dermody or anyone, have an understanding of how many jobs are at stake?

**Ms WESTACOTT:** I think I mentioned to the Committee on Friday that the information I had seen in the Hill PDA report talks about 277 positions. Mr Dermody's advice to me is that it is more likely to be around 250 positions. So I think there are some conflicting views. The *Daily Telegraph* said they found 257 positions. So I think there is a reasonable amount of conjecture about how many positions there are actually there. Certainly some of the figures I saw, as I said, in the Hill PDA were 277 positions.

**The Hon. JAN BURNSWOODS:** Is it possible that when Mr Gazal and others give a much higher figure that they are including jobs in the bulky goods part of the site?

**Ms WESTACOTT:** I am not aware of how they have calculated those figures. That may well be the case. But certainly most of the information I have seen talks around 250, 277 jobs.

**The Hon. JOHN RYAN:** Have you ever seen this document that looks to have been produced by Mr Gazal's company itself which lists all of the shops, lists the number of permanent staff, the number of part-time staff, the number of casuals and comes to the conclusion at the end that, including Gazcorp staff—obviously it does not appear to have any reference to cleaners for David Jones, who I think were an option to move into the area—the total number of staff employed in the centre was 132 permanent staff, 20 part-time staff, 250 casuals, totalling 392 jobs. Are you familiar with that?

**Ms WESTACOTT:** No, I am not.

**The Hon. JOHN RYAN:** Pity, is it not? In the papers which were tabled to this Committee I do not find a single example of a working draft of any of the documents that you have produced that are relevant to the section 69 report and the memorandum. Did you produce earlier drafts? Who drafted your memo of 8 July?

**Ms WESTACOTT:** Mr Prattley drafted the original version and I believe that is in the documents that were provided. I then made some changes, Mr Astill checked those changes, and that was the information that went to the Minister.

**The Hon. JOHN RYAN:** There is a comment on one earlier draft that refers to three dot points and says, "I don't understand this one". Whose comment is that?

**Ms WESTACOTT:** That is Mr Astill's comment, as I understand that, in terms of tracking changes.

**The Hon. JOHN RYAN:** Are you telling the Committee that you came to your conclusions about the reading of the section 69 report and you held discussions with legal counsel with Mr Prattley and others on 24 June and you have not produced any notations which indicate that you are able to document at the time you had specific concerns that you were then able to give to people specific tasks because most of the documentation we have had about those discussions comes from other people's reports having spoken to you. Do you have any working documents that you can supply the Committee to demonstrate that the concerns that you have reported to the Committee since and extemporated on since were held legitimately by you on 24 June?

**Ms WESTACOTT:** I think my documentation is there on the file. I put a note to Mr Prattley saying I am concerned about the report.

**The Hon. JOHN RYAN:** That is a one-sentence memo.

**Ms WESTACOTT:** That is correct. I then meet with him; we discuss it. I then put a note to the Minister on 25 June. I then meet with the Minister on 30 June; she asked me for some more information and I give her something on 8 July. So I believe that my documentation is quite clear on the file as to my thinking and my concerns about the section 69 report, and other officers have documented those discussions that they have had with me where I outlined to them my concerns. But I think my documents are very clear, that I documented to the Minister my concerns.

**The Hon. JOHN RYAN:** The completed document is clear but you seem to be like one of those people who does their maths work but you only show the answers and not the working. We do not have a single note from you indicating that you checked things. Obviously you read the report. You must have had prior knowledge of the Hill PDA report or something. Who did you check with? If I looked at a document which came up with an unexpected result or was unexpectedly inadequate I would be inclined to call people in and ask them for more detail and things of that nature. There are no instances, no documentation of you doing that over any sort of extended period of time. It appears to have all been done in the course of a week.

**Ms WESTACOTT:** I do not think that is correct. I think you will see, and this is information that we have claimed is privileged, that I sent the file to my corporate counsel and asked him for advice about two matters in particular, about what were the Minister's legal obligations in making or not making the plan and whether or not there were precedents for these sorts of decisions to be made. So I think it is simply not true that I did not discuss the matter and did not seek advice. I immediately spoke to my corporate counsel, I alerted him to my concerns about the file and I asked him for information. I also asked him about the separation of the Cross Roads site because I had received copies of representations from Gilbert and Tobin on behalf of AMP and the Cross Roads where they expressed a great deal of concern about the manner in which the Cross Road site had been separated from the LEP and I asked him about that and he provided me with advice on that.

So it is simply not correct that I did not seek advice. I asked my corporate counsel; I sent the papers to him; I asked him to look at the papers and I asked him for advice about the Minister's legal obligations and, as I said earlier, those are some of the advices that we claim privilege on.

**The Hon. JOHN RYAN:** Are you sure that there is some evidence that you asked for some sorts of advice, but none of that advice that you have asked for is germane to the dot points that you expressed to the Minister?

**Ms WESTACOTT:** As I said on Friday, and I repeat what I said, in my view the file speaks for itself; the section 69 report speaks for itself. It does not, in my view, make a net community benefit case. It does not address the transport issues. It is self-explanatory in this regard. The attachments to the section 69 report talk about, and we went through this at length on Friday, this \$18 million loss to the Liverpool CBD. In the attachments there are references made to the fact that Liverpool is not a centre in need of revitalisation. As I said to the Committee on Friday I had seen correspondence from council to Minister Knowles saying that they wanted a grant from the Government to revitalise the CBD, where they cite their inability to attract quality to commercial development, traffic congestion and poor public spaces as grounds for seeking that grant, which we were happy to provide them with. The section 69 report and Mr Hamilton's advice is very clear on the file and he has just gone through that, that he comes to a conclusion that, on balance, the benefits outweigh the

disbenefits. In my view that was not a compelling case. He says it comes out even in respect of the net community benefit criteria. That, in my view, is not a compelling case; it is not a net community benefit.

So in my view I alerted the Minister to those areas of the report that I thought were unconvincing. I gave her my advice. I had subsequent discussions with her. She asked me for more detailed advice and I gave her my more detailed advice that I believed that, on planning grounds, the basis on which she had to make her decision, the case was not strong. I also say to her in my advice that if it were a greenfield site it would be difficult to justify on planning grounds, and I note in Ms Kibble's evidence she makes a similar point that while she comes down on the social and economic benefits of the proposal she says, "If I were dealing with it as a new application, as a new development, I might have come to a different conclusion".

**The Hon. JOHN RYAN:** It is not a new application. It is not a greenfield site.

**Ms WESTACOTT:** But the point that Mr Haddad has made is that we must assess these applications on the planning merit, on whether or not the rezoning should occur, on whether or not the zone is appropriate. The zone was zoned industrial; it did not permit the retail activity that was the subject of an amendment to the development consent and in my view it was my responsibility to draw the Minister's attention to the fact that I thought on planning merit the basis on which I had to consider the report, the statewide implications, the precedent that this would set in respect of that Cross Roads site, in my view I did not believe that a net community benefit had been established, that the report adequately addressed the Government's centres policy and that the report represented a sound and compelling reason to retrospectively reassess the site which was originally zoned industrial.

**Ms SYLVIA HALE:** Ms Westacott, you mentioned that Mr Dermody had found 125 to 130 jobs that might be available. If we take the figure of loss of jobs at say 250, then that is only half of those people who were looking for work and if we say the potential loss of jobs is 450 it is less than a quarter. Could you tell me how many of those jobs were within the Liverpool area?

**Ms WESTACOTT:** My understanding is that they are in the immediate Liverpool area. I will have to take that on notice and give you some more detail about that.

**Ms SYLVIA HALE:** Are you aware that evidence from the member for Fowler yesterday—the Federal electorate that covers the area—said that in fact that electorate has the highest unemployment rate of any electorate in Australia, and that was about 15 per cent. So I find it a bit remarkable that someone can spirit 150 jobs or locate 150 jobs in such a short time in an area that is experiencing such a great rate of unemployment. How many of those jobs are full-time permanent positions as opposed to part-time and casual?

**Ms WESTACOTT:** My understanding is it is about 80 casual positions. But I will take that on notice and asked Mr Dermody to clarify.

**Ms SYLVIA HALE:** If you could give us specific details?

**Ms WESTACOTT:** Yes. Could I also make a point in respect of your question? This goes to the issue of the point I was trying to make on Friday. On the one hand we have people saying that Liverpool is booming, and that is very clear from the documentation on Friday, and on the other hand we have people saying that it is not. The evidence that we presented in our submission says that according to our analysis of the ABS data some 200 jobs have been lost in retail since the last census period. It was my responsibility to consider the implications for the CBD. In my view the Liverpool CBD is not booming, and your own comments go to that issue. Comments were made to me on Friday that Liverpool is booming. Well, your comments to me indicate that it is not, that it is struggling in some areas, and our own evidence to this Committee shows that retail jobs have been lost. Other people have presented evidence that the centre is drawing jobs and business away from it. In my view I have to make a decision, I have to give the Minister advice based on the policy of the Government, which is to promote economic activity and retail activity in concentrated CBD centres. That is the advice that I gave her: that in my view our section 69 report did not go to those issues.

**Ms SYLVIA HALE:** Those census figures, as has just been pointed out, are three years old. Also we had evidence given to the Committee yesterday that the local chamber of commerce considered this site to be a major asset in promoting jobs within the area and business activity.

**The Hon. DAVID OLDFIELD:** Ms Westacott, after the meeting between Mr Wedderburn and Westfield were you asked to do anything or to put together any material?

**Ms WESTACOTT:** No.

**The Hon. DAVID OLDFIELD:** There was no communication to you following the meeting regarding this matter?

**Ms WESTACOTT:** No. I was unaware at that meeting until I saw that press release this morning. So the answer is no.

**The Hon. DAVID OLDFIELD:** Mr Driscoll, let me come back to this issue again so I am clear. You got the name Lowy from Mr Prattley, is that correct, or did you get Westfield and thought the name Lowy?

**Mr DRISCOLL:** My recollection is that Mr Prattley mentioned Westfield certainly. Lowy, I think, was my own construction.

**The Hon. DAVID OLDFIELD:** Is that how you would see it, Mr Prattley? Do you think Lowy came from Mr Driscoll?

**Mr PRATTLEY:** That is my recollection. I do not recall mentioning Mr Lowy.

**The Hon. DAVID OLDFIELD:** Mr Driscoll, when we say "Westfield" you think "Lowy" essentially?

**Mr DRISCOLL:** No, I do not.

**The Hon. DAVID OLDFIELD:** Who else do you think then?

**Mr DRISCOLL:** I have indicated in previous answers to the Committee that I believe I was incorrect in drawing that conclusion.

**The Hon. DAVID OLDFIELD:** But you drew the conclusion. I am trying to work out how you came to that conclusion. You heard "Westfield" so you thought "Lowy"? How else could you have done it?

**Mr DRISCOLL:** It is probably fair to draw that conclusion.

**The Hon. DAVID OLDFIELD:** If I say to you Australand who do you say?

**Mr DRISCOLL:** Brendon Crottee.

**The Hon. DAVID OLDFIELD:** If I say Mirvac who do you say?

**Mr DRISCOLL:** Mirvac.

**The Hon. DAVID OLDFIELD:** If I say Multiplex who do you say?

**Mr DRISCOLL:** Multiplex.

**The Hon. DAVID OLDFIELD:** If I say LendLease who do you say?

**Mr DRISCOLL:** I would say a number of names: Joe Gorman, Arthur Ilias. They are people who I have dealt with.

**The Hon. DAVID OLDFIELD:** What about Centro?

**Mr DRISCOLL:** I have not heard of Centro before.

**The Hon. DAVID OLDFIELD:** AMP?

**Mr DRISCOLL:** AMP.

**The Hon. DAVID OLDFIELD:** You are not particularly familiar with name association for all of these other huge developers, are you?

**Mr DRISCOLL:** No, I am not.

**The Hon. DAVID OLDFIELD:** Mr Haddad, earlier today you said, "I have been critical of the report", referring to the section 69 report.

**Dr HADDAD:** Yes.

**The Hon. DAVID OLDFIELD:** Where and to whom, apart from us?

**Dr HADDAD:** I have provided independent advice to the Director-General after the decision.

**The Hon. DAVID OLDFIELD:** Where is that advice?

**Dr HADDAD:** That advice is essentially reflected in the submission that was presented to the Committee. I was responsible for co-ordinating the submission and my views are expressed in the submission to the Committee.

**The Hon. DAVID OLDFIELD:** All of your criticism has been after the fact?

**Dr HADDAD:** That is correct, and I did say that.

**The Hon. DAVID OLDFIELD:** And in relation to this inquiry?

**Dr HADDAD:** My advice was actually before, I think, before at least me knowing of the inquiry. It was basically after the decision was made. I cannot recall exactly whether it was at the time the inquiry was announced or before. But it was after the decision was announced.

**The Hon. JOHN RYAN:** It was after the public discussion of the matter though, was it not?

**Dr HADDAD:** Just very shortly after the decision was announced. It was within the context of really trying to relate it to precedents that were sort of being reported, such as, I had been asked about particular cases before that.

**The Hon. JOHN RYAN:** What would you have done if you found this to be inadequate, given the Government's position was well and truly published? What would you have done?

**Dr HADDAD:** I am sorry?

**The Hon. JOHN RYAN:** I am wondering what would you have done if you were giving independent advice and you had a completely different opinion, given that the Government's position was already known? I suppose we would not have heard from you.

**Dr HADDAD:** I do not know what you are trying—I would have said what I thought was professionally appropriate whether I agreed or disagreed.

**The Hon. JOHN RYAN:** You are making the point that your position was independent without knowledge of other things.

**Dr HADDAD:** I had enough knowledge of the information in the section 69 report and the background information. I did review this information.

**The Hon. JOHN RYAN:** And the Government's position would have been known to you, would it not?

**Dr HADDAD:** The Government's position would have been known, but it did not really matter in the context of my professional independent examination of the matters.

**The Hon. JOHN RYAN:** You would have provided this Committee with advice that this report was wrong if you thought it was wrong?

**Dr HADDAD:** I would have certainly done that. If asked I would have certainly. If I can just cut to the question straight away, I would not come here particularly in this forum and say anything other than what I think is appropriate to say.

**The Hon. DAVID OLDFIELD:** Appropriate or true?

**Dr HADDAD:** What I believe to be true, as I believe to be true.

**The Hon. DAVID OLDFIELD:** "Appropriate" is an interesting choice of words.

**Dr HADDAD:** Professionally appropriate and as I believe it to be true.

**The Hon. DAVID OLDFIELD:** Mr Haddad, who was it who asked you for the advice which is in your submission to this inquiry?

**Dr HADDAD:** The start of my involvement was a request from the Director-General for advice on the relationship between the decision and any precedents. There was public and media reporting of a number of precedents, including yours which I had been asked for.

**The Hon. DAVID OLDFIELD:** No-one asked for your advice during the course of putting it together or when the report was finalised? Your advice on any matter relating to this was only sought afterwards?

**Dr HADDAD:** That is correct. I am just confirming that again for the record: after the decision, after the report was made, after the advice was given to the Minister, and after the Minister's decision.

**The Hon. DAVID OLDFIELD:** Would you confirm for us again what your planning qualifications are, if any?

**Dr HADDAD:** I have no planning qualifications, I have other qualifications.

**The Hon. DAVID OLDFIELD:** You have no planning qualifications?

**Dr HADDAD:** I had more than 20 years—

**The Hon. DAVID OLDFIELD:** I am a diving instructor but I do not have any planning qualifications.

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

**The Hon. DAVID OLDFIELD:** You are an adviser on public policy?

**Dr HADDAD:** And other matters, yes, and I advise to governments.

**The Hon. DAVID OLDFIELD:** Whose public policy do you subscribe to in that advice?

**Dr HADDAD:** Whatever is the appropriate policy that is applicable. In this case it is a central policy that has been applicable.

**The Hon. DAVID OLDFIELD:** You use "appropriate" again. What is appropriate policy for you?

**Dr HADDAD:** The policy of the day, which has been—

**The Hon. DAVID OLDFIELD:** The Government's policy?

**Dr HADDAD:** Well, it is the Government policy.

**The Hon. DAVID OLDFIELD:** You advise on the basis of what the Government says?

**Dr HADDAD:** I also advise on the formulation of that policy.

**The Hon. DAVID OLDFIELD:** Do you consider your officers are incompetent?

**Dr HADDAD:** No, I do not.

**The Hon. DAVID OLDFIELD:** Do you believe you know more about planning than the department's planners?

**Dr HADDAD:** I know what I know in terms of the issues.

**The Hon. DAVID OLDFIELD:** The ones with planning qualifications.

**Dr HADDAD:** As I tried to explain before, I do not think the issue of planning qualifications is relevant, particularly at an executive level.

**The Hon. DAVID OLDFIELD:** I do not understand why you would think they are not relevant.

**Ms WESTACOTT:** Could I just point out that it is actually professional planners—

**The Hon. DAVID OLDFIELD:** I know you do not have any planning qualifications.

**Ms WESTACOTT:** I do not have planning qualifications.

**The Hon. DAVID OLDFIELD:** What are your qualifications for the job?

**Ms WESTACOTT:** I am a Fellow of the Institute of Company Directors, a Fellow of the Victorian Institute of Public Administration, a Chevening Scholar from the London School of Economics, I have a Bachelor of Arts with Honours and I have a graduate management certificate from the Monash Mt Eliza Business School. I am perfectly capable of critically evaluating a report. There are other parts of my department involving water. I have been very successful in the national water initiative. I am not a water scientist. I do not hear any of the farmers complaining about that.

**The Hon. DAVID OLDFIELD:** There are no farmers complaining about water!

**Ms WESTACOTT:** I have been involved extensively in the preparation of the Health Council report. I am not a doctor. I was one of the team of people who negotiated a \$2 billion funding allocation to health. I am not a doctor. I presided over an enormous amount of reform in housing. I am not a housing officer. Can I just remind you though, Mr Oldfield, that it is professional planners that made a decision in Liverpool council to grant consent for something that did not meet the planning laws. That is professional planners who made that decision, subsequently overturned—

**The Hon. DAVID OLDFIELD:** Because in your view they are wrong, it is okay for your officers to be equally wrong. You without planning experience do not get these things wrong at all.

**Ms WESTACOTT:** No, I am simply making the point that you have made a great deal of claim about my qualifications and I have gone through them and made a very clear statement to you—

**The Hon. DAVID OLDFIELD:** I have made a claim about your lack of qualifications. You are the one making a great deal about your qualifications.

**Ms WESTACOTT:** —that I have extensive—

**The Hon. DAVID OLDFIELD:** You are a genius. You would get a job anywhere, no doubt.

**Ms WESTACOTT:** I have had a number of major public sector positions. I am simply making the point—

**The Hon. DAVID OLDFIELD:** It is a shame you did not take the point where the people of Liverpool are concerned because then you would not be sitting here today about this development putting 450 people out of work.

**Ms WESTACOTT:** I am simply making the point that it was professional planners—

**CHAIR:** It is the Government's time to ask questions.

**The Hon. KAYEE GRIFFIN:** Mr Birds, you previously answered about the contact people from council who had spoken to you about the LEP. Was it Mr Tolhurst?

**Mr BIRDS:** Mr Tolhurst was one of the officers.

**The Hon. KAYEE GRIFFIN:** Mr Jemison.

**Mr BIRDS:** Yes.

**The Hon. KAYEE GRIFFIN:** You mentioned another name, but you were not sure of the name.

**Mr BIRDS:** I mentioned another officer who I have dealt with on the other Liverpool LEP amendments, a Mr Marecic, a couple of months or so ago. I do not recall if I spoke to him on this plan or not because I deal with other LEP amendments at the same time. They may have asked me how things were going and I would have said that it is under consideration. It is the normal process.

**The Hon. KAYEE GRIFFIN:** You did not deal with a Mr Turrisi at all in relation to this?

**Mr BIRDS:** No.

**The Hon. KAYEE GRIFFIN:** You also mentioned the matter of the LEP went to council in a December. You said that you probably received notice about that in early January. Could I ask you to take on notice when you were notified about the proposed LEP?

**Mr BIRDS:** Sure.

**The Hon. JAN BURNSWOODS:** Mr Westacott, I do not know whether you have the relevant information. On Friday Mr Gazal told us that he would supply the Committee with copies of the leases from the centre. I wonder whether in relation to the various steps that the department has gone through and legal advice and so on whether you are in possession of any information about the dates of leases, the extent to which legal commitments were entered into and the extent to which shopkeepers in the centre were made aware of the various processes, including court processes?

**Ms WESTACOTT:** I am not in possession of that information. I am happy to take it on notice and ask Mr Dermody whether he has any information. I have simply seen the same media comments that some of the people at the centre have made that they were not aware that when they signed their leases that court action was pending. I am happy to take it on notice.

**The Hon. JAN BURNSWOODS:** Mr Dermody, I gather, was a major source of information in relation to the number of actual shops or outlets at the centre and so on?

**Ms WESTACOTT:** That is correct.

**The Hon. JAN BURNSWOODS:** To the extent to which they were all occupied?

**Ms WESTACOTT:** That is correct.

**The Hon. JAN BURNSWOODS:** Presumably this level of detailed information is held?

**Ms WESTACOTT:** That is my understanding and I am happy to take it on notice and get that information.

**The Hon. PETER PRIMROSE:** I return, briefly, to the section 69 report. Just to summarise, from what we heard earlier my understanding is that Mr Gazal clearly thought that a section 69 report was a rubber stamp. Because of the way in which it was being written, under all the influence of council officers, and because of Mr Mosca's frequent contact with the author of that report do you believe he thought it was going to be a rubber stamp?

**Ms WESTACOTT:** I simply do not know what he thought. I know what he testified on Friday. He thought it was a rubber stamp. I do not know how he formed that view when we had written to council on 1 April expressing concern to them that they had not made the net community benefit test. So I am simply not clear as to how anyone would form the view on the basis of the correspondence that we issued to council that they were not satisfied. My departmental officers were not satisfied that the net community benefit test had been demonstrated. Why would people form the view that the section 69 report was a rubber stamp or a mere formality?

**The Hon. PETER PRIMROSE:** That is not the only thing that the Minister takes into consideration when making her decisions?

**Ms WESTACOTT:** That is correct. The Minister has the section 69 report as the primary means of making her decision. She takes in relevant matters, planning considerations and the State's policy in making her decision. On that basis she forms an opinion and makes her decision.

**The Hon. PETER PRIMROSE:** So it is not the rubber stamp that Mr Gazal would like it to be?

**Ms WESTACOTT:** Absolutely not.

**The Hon. DAVID OLDFIELD:** Ms Westacott, how well known are you to Craig Knowles?

**Ms WESTACOTT:** I am his director-general.

**The Hon. DAVID OLDFIELD:** I mean personally?

**Ms WESTACOTT:** I have worked with Minister Knowles for several years. Before that I worked for other Ministers.

**The Hon. DAVID OLDFIELD:** How did you come to negotiate taking Ms Spizzo from him?

**Ms WESTACOTT:** Ms Spizzo applied for her current position and won it competitively. I answered that question on Friday. Ms Spizzo was working at the Sydney Harbour Foreshore Authority prior to her employment with my department.

**The Hon. DAVID OLDFIELD:** Is it correct that your package includes a car and a driver?

**Ms WESTACOTT:** I do not see the relevance of that question to the terms of reference of this inquiry.

**The Hon. DAVID OLDFIELD:** Do you have a problem answering that question?

**Ms WESTACOTT:** I do not think it is relevant.

**The Hon. DAVID OLDFIELD:** I take that as a yes.

**The Hon. PETER PRIMROSE:** Is that a lawful question?

**The Hon. DAVID OLDFIELD:** I would like to know what a public servant thinks he or she has to hide by not answering a question.

**The Hon. PETER PRIMROSE:** I would like to ask whether or not that is a lawful question.

**CHAIR:** Order! No. I think it would be better if we moved on to a different question.

**The Hon. JOHN RYAN:** You made reference to a submission that you have from Liverpool council to you—a submission from Ms Kibble. You also said that you read Ms Kibble's comments, or that you had made aware of her comments. Are you aware that Ms Kibble believes that you misinterpreted her letter as being a statement that Liverpool central business district was not functioning well? She said that that was not incompatible with her comments and the merits of the factory outlet.

**Ms WESTACOTT:** I am aware of what Ms Kibble said on Friday. My issue in raising that letter was on what basis I formed my advice to the Minister at the time and on the basis of the letter that Ms Kibble had sent to Minister Knowles seeking an allocation to revitalise the central business district when I saw comments at folio 224 of the file that stated, "Liverpool does not seem to be a centre in need of revitalisation." That did not reconcile with my understanding and correspondence from Ms Kibble.

**The Hon. JOHN RYAN:** I just asked you whether or not you were aware of Ms Kibble's comments?

**Ms WESTACOTT:** Yes, I am aware of Ms Kibble's comments.

**The Hon. JOHN RYAN:** Mr Prattley, did you have to respond to anything relating to the Wedderburn meeting that occurred between the Premier's chief of staff and Westfield?

**Mr PRATTLEY:** As I indicated before, I had no idea who met. The first I knew it was Mr Wedderburn was the press release this morning. So the answer is no.

**The Hon. JAN BURNSWOODS:** Madam Chair, according to you, earlier we had only one minute left for questions. We were due to break for lunch at 12.45 p.m.

**The Hon. PETER PRIMROSE:** How long do we have to go?

**CHAIR:** We have one question from the Hon. John Ryan.

**The Hon. PETER PRIMROSE:** How long do we have?

**CHAIR:** We have about 11 seconds.

**The Hon. John RYAN:** Mr Wedderburn—

**The Hon. JAN BURNSWOODS:** The time for questions has expired.

**The Hon. JOHN RYAN:** I was interrupted. Mr Hamilton, do you recall—

**The Hon. JAN BURNSWOODS:** Point of order: Madam Chair, you said earlier that there was only one minute remaining for questions. You told the Hon. John Ryan that he could ask one question and he is now asking his third question. The time for questions has expired and it is well after 1 o'clock. The favouritism that you continually display is remarkably unfair both to members of the Committee and to witnesses.

**The Hon. JOHN RYAN:** Mr Hamilton—

**The Hon. PETER PRIMROSE:** What about a ruling?

**The Hon. JAN BURNSWOODS:** We do not have rulings.

**The Hon. PETER PRIMROSE:** We do not have rulings. I would like to have some rulings.

**CHAIR:** Order! There is no point of order.

**The Hon. JAN BURNSWOODS:** There never is a point of order when you are in the chair.

**The Hon. JOHN RYAN:** Mr Hamilton, do you recall saying that, in addition to the other advice, you created a memorandum, which I think you sent to Ms Cheetham, in which you said words to the effect, "I have been out for a bit of air and I have had second thoughts. One of the other issues that we should address is employment." It is not only SEPP 60 that the department has to address; there are other issues as well. One of those issues might well be the issue of employment generation and other economic activity within Liverpool. Do you recall creating that memorandum?

**Mr HAMILTON:** I recall creating an email to that effect, which I sent to Laurel Cheetham.

**The Hon. JAN BURNSWOODS:** Point of order: Madam Chair, you allowed the Hon. John Ryan one question. You are allowing the Hon. John Ryan to flout your ruling. He is about to ask his fourth question. We agreed earlier that the time for questions had expired. As usual, Madam Chair, you are not chairing the session; you are allowing the Hon. John Ryan to chair the session.

**The Hon. JOHN RYAN:** I do not have any further questions.

**CHAIR:** That brings this session to a close. I thank Ms Westacott and officers from the department for appearing again before the Committee today. I also advise the Committee that I propose to call a deliberative meeting at 1.30 p.m.

**(The witnesses withdrew)**

**(Luncheon adjournment)**

**CHAIR:** I reconvene this third hearing of the Orange Grove inquiry and thank our three witnesses for returning. Oaths that they took earlier still apply.

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

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

**SAMIR BARGSHOON**, Proprietor, Bargshoon Cleaning Services, on former oaths:

**CHAIR:** I remind witnesses in relation to adverse mentions that the protection afforded to Committee witnesses under parliamentary privilege should not be abused during these hearings. I remind any witnesses to ensure that the matters raised are directly relevant to the terms of reference. 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 what is said is stated within the confines of this building, such comments would not be protected if, for example, another person decided to take action for defamation. Are there any questions?

**The Hon. PETER PRIMROSE:** My first question is directed to Mr Gazal. Can you tell us the situation regarding your undertaking concerning leases that was given to this Committee last Friday?

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

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

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

**The Hon. PETER PRIMROSE:** Okay.

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

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

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

**The Hon. PETER PRIMROSE:** A lot of leaks?

**Mr GAZAL:** Leaks, document leaks.

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

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

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

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

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

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

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

**Mr GAZAL:** No, not the commercial leases.

**The Hon. PETER PRIMROSE:** When did you approach the tenants to sign leases?

**Mr GAZAL:** We started approaching tenants from the day we got the development approval [DA].

**The Hon. PETER PRIMROSE:** Okay. What day was that?

**Mr GAZAL:** On 15 November 2002.

**The Hon. PETER PRIMROSE:** What terms were these leases?

**Mr GAZAL:** I told you. Are you familiar with—do you understand leases?

**The Hon. PETER PRIMROSE:** You told me, but tell me again.

**Mr GAZAL:** They are the Retail Leases Act leases. It is exactly the Retail Leases Act leases.

**The Hon. PETER PRIMROSE:** So there was no variation in any of the leases?

**Mr GAZAL:** Every lease has different and special conditions, as you know. There is not one lease that is the same like the other. They are different commercially—different rates, different areas.

**The Hon. PETER PRIMROSE:** Yes, but you must understand that because you will not provide them—

**Mr GAZAL:** Some people we asked.

**The Hon. PETER PRIMROSE:** You have just said to me that they are standard leases. You have now indicated that there are conditions.

**Mr GAZAL:** First, I would like to answer the question . I told you—

**The Hon. PETER PRIMROSE:** Listen to me. Let me ask the question.

**Mr GAZAL:** Okay. Ask the question, please.

**The Hon. PETER PRIMROSE:** The question is that you will not provide us with copies of the leases.

**Mr GAZAL:** No, I did not say that.

**The Hon. PETER PRIMROSE:** So you will provide us with copies of the leases?

**Mr GAZAL:** I will provide you with what is relevant to the Committee.

**The Hon. PETER PRIMROSE:** What is relevant? I have asked you will you provide copies of the leases, and my understanding—

**Mr GAZAL:** No. I will provide what is relevant to it.

**The Hon. PETER PRIMROSE:** So you have said no, you will not provide it.

**Mr GAZAL:** No, no. I will provide, but I do not want to provide you with how much I am charging may tenants and what the personal guarantees are.

**The Hon. PETER PRIMROSE:** That is fine. You will not provide us with copies of the leases.

**Mr GAZAL:** No. I will provide you with relevant—

**CHAIR:** Would it help, Mr Gazal, you to provide such documentation with the amount, the dollar amount, and the name of the lessee deleted from the documents?

**Mr GAZAL:** Madam Chair, there are 60–61 leases. I will provide them all, if they will become confidential and nothing leaks out.

**The Hon. PETER PRIMROSE:** We can make sure that they are all confidential to the Committee.

**Mr BARGSHOON:** Oh yeah, "make sure"—straight to Lynch's office. Make sure!

**The Hon. PETER PRIMROSE:** I am sorry?

**The Hon. DAVID OLDFIELD:** What about the offer of the provision of these leases with the names of people and the amounts blanked out?

**The Hon. PETER PRIMROSE:** Am I able to ask? It is interesting that everyone is so interested in this, but I have asked a question.

**Mr GAZAL:** The problem is that they are not all complete. There are a lot of conditions the tenants have not provided yet. There are many tenants which did not provide it.

**The Hon. PETER PRIMROSE:** A lot of the leases are incomplete?

**Mr GAZAL:** Yes, because many of the tenants did not provide the bank guarantee, and they did not provide documents that they were supposed to provide according to the Retail Leases Act.

**The Hon. PETER PRIMROSE:** So let us go back to it: Will you provide copies of the leases to this Committee on a confidential basis?

**The Hon. JOHN RYAN:** For the record, I take a point of order. My point of order is that the details of Mr Gazal's leases, to the best of my knowledge, may not be included in our terms of reference.

**The Hon. PETER PRIMROSE:** Ha, ha!

**The Hon. JAN BURNSWOODS:** Oh dear.

**The Hon. JOHN RYAN:** I do not know why they are laughing. Yesterday we asked Westfield some questions about its confidential business dealings. We agreed to accept information from Westfield without going to the additional documents. I think it is reasonable to extend the same courtesy to Mr Gazal. But, in any event, I am not sure in which way questions about the content of these leases are relevant to the terms of reference. They might be a great way to have material in the newspaper about them that provides the Labor Party with a wonderful opportunity to attempt to smear Mr Gazal, but in any event they are not relevant to our terms of reference, so heavying the witness about them appears to me to be inappropriate.

**The Hon. PETER PRIMROSE:** Firstly, I point to item (e) in our terms of reference:

(e) the future of the Designer Outlets Centre ... including but not limited to, the effect on businesses, the local community and jobs ...

It would seem to me that, for a start, the implied and express conditions of leases are eminently relevant to that, but all I am seeking from the witness is whether he will make them available to the Committee. The witness is here voluntarily; I am not at this stage seeking that we issue summonses in relation to the documents.

I am trying to ask the witness whether he will provide them. So far I have got an answer of yes, no, and maybe. That being the case, clearly it is within the terms of reference to know what the leases are. I am not suggesting that they be made public. I am suggesting, like all of the documents that the Committee wishes to maintain in confidence, that they be maintained in confidence, and that only members of the Committee be entitled to view them.

**The Hon. JOHN RYAN:** To the point of order: First, Mr Primrose has not simply asked for the leases, he has made imputations about Mr Gazal if he fails to provide them.

**The Hon. PETER PRIMROSE:** Not at all.

**The Hon. JOHN RYAN:** He certainly has.

**The Hon. PETER PRIMROSE:** It is unfortunate that you have taken that position.

**The Hon. JOHN RYAN:** He made inferences about his unwillingness. He has asked the question in a number of ways, and I think it is fair to say that it is designed to could cause a pejorative headline about Mr Gazal if he refuses to provide the leases in exactly the fashion that Mr Primrose wants. While I still believe an arguable case can be made, notwithstanding the terms of item (e) of the terms of reference, this is not germane to the future of the centre in all respects. In fact, as I understand it, one of the things Mr Primrose is trying to find out is whether prospective lessees were informed of particular conditions. That is a legal issue that has absolutely nothing to do with the future of the centre.

**The Hon. JAN BURNSWOODS:** Further to the point of order. The Hon. Mr Primrose is asking these questions as follow up to the commitment given by Mr Gazal during our hearing last Friday that he would provide the leases to the committee. The Hon. Mr Primrose has already drawn attention to term of reference (e), in particular, which makes is clear that the leases are very relevant to the terms of reference. However, this line of questions also follows from a commitment made by Mr Gazal to provide the leases to the committee. Clearly, on Friday both Mr Gazal and the various members of the committee thought that these matters were very germane to our inquiry and well within the terms of reference.

**Mr GAZAL:** Can I answer this point?

**The Hon. PETER PRIMROSE:** No, it is a point of order.

**The Hon. JAN BURNSWOODS:** Mr Gazal is trying to take a point of order.

**Ms SYLVIA HALE:** What a cheap shot!

**CHAIR:** I will rule. The documents may indeed be relevant to the terms of reference. Mr Gazal, the Hon. Mr Primrose has pointed out that we have a procedure whereby documents can be held to be confidential to the committee and the committee only.

**Mr GAZAL:** Can I explain something?

**CHAIR:** You may.

**Mr GAZAL:** My lawyer, Joe D'agostino, was supposed to table that on Monday at Liverpool but he was asked not to come. He prepared a letter giving me the conditions of the leases and what they are. I can table this letter, but I would like confidentiality in this matter. I can also table a confidential letter showing that we wrote to all tenants telling them about the court case.

**CHAIR:** You have a response that you would like to give to the committee now.

**Mr GAZAL:** Yes.

**CHAIR:** Please provide that document to the attendant.

**The Hon. JAN BURNSWOODS:** I have no problem with the committee having the document. However, I point out that the committee has made no decision not to have Mr D'agostino appear. What happened yesterday was that because most committee members had been given no intimation that he had been added to the list, and because we had time frames, he was not heard. That does not mean that he will not be invited to appear on a future occasion.

**CHAIR:** That is correct; we could invite him to appear. That document has been tabled.

**Mr GAZAL:** I have another document. It was requested at the hearing last week.

**CHAIR:** You have a response to the request.

**Mr GAZAL:** I would also like to present it as confidential.

**CHAIR:** It is also confidential. Do you have another document?

**The Hon. DAVID OLDFIELD:** Are you not referring to the letter sent to the tenants?

**The Hon. PETER PRIMROSE:** I presume that this is not eating into the time allowed for me to ask questions. We have had points of order and the tabling of documents.

**CHAIR:** No. I will clarify the second document.

**Mr GAZAL:** I promised to present a document about my donations to the Labor Party.

**CHAIR:** How many documents are you tabling?

**Mr GAZAL:** Three. That is what we promised we would do.

**CHAIR:** Thank you.

**Mr GAZAL:** It is four if you count that other document. This is a sample of the letter we sent to every tenant.

**CHAIR:** Mr Gazal, are you insisting on confidentiality with regard to all of these documents?

**Mr GAZAL:** Not the one about the Labor Party donations.

**CHAIR:** That document has the word "confidential" in handwriting. Can I delete that?

**Mr BARGSHOON:** You can keep the donations document once the Labor Party—

**Mr GAZAL:** It does not have to be kept confidential.

**CHAIR:** So it is not confidential.

**Mr GAZAL:** No, only the documents relating to the leases.

**CHAIR:** Thank you.

**The Hon. DAVID OLDFIELD:** What about the letter sent to tenants? Does that have to be kept confidential?

**Mr GAZAL:** I prefer everything related to the leases to be kept confidential, otherwise things start leaking, and commercially we might be in—

**The Hon. JAN BURNSWOODS:** We should not make that decision until we have seen them.

**The Hon. PETER PRIMROSE:** Mr Gazal, can you tell me what periods the leases cover?

**Mr GAZAL:** There are leases for three years, five years and the food leases for seven years. There is a variety of leases. Some have options and some do not. We have 60 leases and I can assure you that about 45 are different from the others.

**The Hon. PETER PRIMROSE:** In what way?

**Mr GAZAL:** They have different conditions and there were different negotiations about different types of shops. We dealt with people according to the shops and quality.

**The Hon. PETER PRIMROSE:** Did you approach people to sign leases after Westfield had initiated its action in the Land and Environment Court?

**Mr GAZAL:** Yes.

**The Hon. PETER PRIMROSE:** Approximately how many?

**Mr GAZAL:** I cannot tell you. That is why I asked my lawyer to prepare this document. I do not know if he included the numbers.

**The Hon. PETER PRIMROSE:** Of the 60 leases, would you say it was more or less than half?

**Mr GAZAL:** I cannot answer you because I have not dealt with the matter. The matter was dealt with by the agent, my son and the lawyers.

**The Hon. PETER PRIMROSE:** When you approached tenants or would-be tenants after June last year—

**Mr GAZAL:** Yes, I did.

**The Hon. PETER PRIMROSE:** —did you disclose the court action, which is obviously a threat to a long-term lease, to the tenants?

**Mr GAZAL:** In correspondence, yes.

**The Hon. PETER PRIMROSE:** In writing?

**Mr GAZAL:** Yes.

**The Hon. PETER PRIMROSE:** Can we have a copy of a sample of that letter?

**Mr GAZAL:** I have already submitted that.

**The Hon. PETER PRIMROSE:** That is being copied now. That is a sample of the information that you provided to prospective tenants.

**Mr GAZAL:** Every one or two months we sent a letter.

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

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

**The Hon. PETER PRIMROSE:** We heard yesterday in the inquiry that at least one tenant—Mr Borwick of Sneakers—had not been told about the court action or the possible impact on his business when he signed the lease.

**Mr GAZAL:** I think he has had a lapse of memory. We will prove in court that he was told.

**The Hon. PETER PRIMROSE:** You believe he is wrong.

**Mr GAZAL:** Yes.

**The Hon. PETER PRIMROSE:** Have other tenants said they were told and that there was no problem?

**Mr GAZAL:** A few tenants have tried to use this trick and have said that they did not receive a letter. We believe they got the letter. They were notified verbally many times by us and the agents.

**The Hon. PETER PRIMROSE:** Who do you mean?

**Mr GAZAL:** By my company.

**The Hon. PETER PRIMROSE:** Who in particular?

**Mr GAZAL:** My son; he was dealing with the leases.

**The Hon. KAYEE GRIFFIN:** Have you made any approaches to build a bulky goods and factory outlet at any other place other than Orange Grove Road?

**Mr GAZAL:** I cannot recall, no.

**The Hon. KAYEE GRIFFIN:** Have you or your companies, or anyone in your companies approached any other council to request consent to conduct or build a factory outlet centre?

**Mr GAZAL:** I cannot recall, no. I have been approached by people who wanted me to join with them to build a bulky goods, a few other companies, they make some proposal to me. I had a few proposals, but I do not think I proceeded with any of them.

**The Hon. JAN BURNSWOODS:** If the witness's answer is that he cannot recall, that it would be appropriate for him to take those questions on notice and check his files.

**Mr GAZAL:** Yes, if you like.

**The Hon. KAYEE GRIFFIN:** Can I continue asking you this, and if you cannot recall that it has occurred could you please check the files? You approached Campbelltown council, or one of your companies approached Campbelltown council about consent to operate a bulky goods and factory outlet in an industrial zone within the Campbelltown City Council area?

**Mr GAZAL:** I did not approach Campbelltown council at all.

**The Hon. KAYEE GRIFFIN:** Could you please check your records to see whether or not anyone from any of your companies did?

**Mr GAZAL:** I am sure of that.

**The Hon. KAYEE GRIFFIN:** If that is the case, that people at Campbelltown City Council were approached, the council informed those people that this was not permissible in the zoning?

**Mr GAZAL:** Somebody maybe from other companies used my name. I never approached Campbelltown. I have not been to Campbelltown.

**The Hon. KAYEE GRIFFIN:** You have never had any involvement in Campbelltown City Council? You have never approached a councillor?

**Mr GAZAL:** Never.

**The Hon. KAYEE GRIFFIN:** Or the mayor?

**Mr GAZAL:** No.

**The Hon. KAYEE GRIFFIN:** To your knowledge no-one from your companies has done that with a view to building a bulky goods warehouse and factory outlets?

**Mr GAZAL:** To my knowledge nobody from my companies, definitely not.

**The Hon. KAYEE GRIFFIN:** Can you please check the records of your companies to ensure that that is correct?

**Mr GAZAL:** I will. I am basically sure that I have not. But I will check my records.

**The Hon. KAYEE GRIFFIN:** If you could take those on notice?

**Mr GAZAL:** If you know of any, refresh my memory, please. How long go?

**The Hon. KAYEE GRIFFIN:** In terms of when that possibly occurred, probably around September 2003.

**Mr GAZAL:** I can assure you not. Assurance.

**The Hon. KAYEE GRIFFIN:** Mr Mosca, what sort of a relationship did you have with Liverpool city councillors before the council was sacked earlier this year?

**Mr MOSCA:** Reasonably good, I would think.

**The Hon. KAYEE GRIFFIN:** Have you been to lunch or dinner or social engagements with any of Liverpool city councillors?

**Mr MOSCA:** I would say yes.

**The Hon. KAYEE GRIFFIN:** Does that include planning staff at the council?

**Mr MOSCA:** If they were in attendance at the same function.

**The Hon. KAYEE GRIFFIN:** Do you recall them being at any social engagements?

**Mr MOSCA:** Are there any in particular that I should try to—?

**The Hon. KAYEE GRIFFIN:** I am asking you do you recall any planning staff from the council at any social engagements you attended?

**Mr MOSCA:** If they were invited to a number of mayoral balls and things like that.

**The Hon. KAYEE GRIFFIN:** Can you name any of those planners?

**Mr MOSCA:** I will start with the one you want to hear first, I suppose, Gerry Turrisi.

**The Hon. KAYEE GRIFFIN:** Is Mr Turrisi a personal friend?

**Mr MOSCA:** It is a very strange way to put it, but, no, I have part-time dealings with Mr Turrisi. I am dealing with him with energy rating reports. He was trying to get some work for me for some time after he left, but I was of the view that it was, firstly, not appropriate and, secondly, I did not get on with him.

**The Hon. KAYEE GRIFFIN:** So he has never done any consulting work for you?

**Mr MOSCA:** No. He does consulting work, or tries to do consulting work, for other clients that I know and I recommend against it.

**The Hon. KAYEE GRIFFIN:** But you, personally, never engaged him?

**Mr MOSCA:** Only for the energy rating reports, as I said, and that is only recently.

**The Hon. KAYEE GRIFFIN:** On how many projects would that be?

**Mr MOSCA:** Maybe three, three residential flat buildings, that sort of thing.

**The Hon. KAYEE GRIFFIN:** Have you had any contact with anyone from the Department of Infrastructure, Planning and Natural Resources regarding the proposed LEP?

**Mr MOSCA:** Yes.

**The Hon. KAYEE GRIFFIN:** Can you tell me who you contacted at the department?

**Mr MOSCA:** Laurel Cheetham, Stephen Driscoll and on at least one occasion David Birds.

**The Hon. KAYEE GRIFFIN:** Have you ever suggested to anyone in council, any council staff or anyone in the department that an amendment to the Liverpool LEP would be a wise course to follow?

**Mr MOSCA:** A wise course to follow?

**The Hon. KAYEE GRIFFIN:** Yes.

**Mr MOSCA:** I do not know that I would have put anything in those terms.

**The Hon. KAYEE GRIFFIN:** Have you ever suggested to council officers that it would be a good idea for the LEP to change at all?

**Mr MOSCA:** I do not know that I have put anything in those terms.

**The Hon. JAN BURNSWOODS:** Mr Gazal, returning to your evidence on Friday, you told the Committee that you had said the council is going to do the right thing and you say you said this to Mr Knowles?

**Mr GAZAL:** To Craig Knowles, yes.

**The Hon. JAN BURNSWOODS:** You said this to Mr Knowles.

**Mr GAZAL:** I did.

**The Hon. JAN BURNSWOODS:** On 21 November.

**Mr GAZAL:** Yes.

**The Hon. JAN BURNSWOODS:** The council is going to do the right thing. I guess that was a reference to the LEP?

**Mr GAZAL:** Yes.

**The Hon. JAN BURNSWOODS:** How did you know this when the council actually did not know until 8 December, some 17 days later?

**Mr GAZAL:** Mr Mosca told me he has been in contact with the council. The council refused to join the legal action. They said it is a waste of money to go to court. They are going to rezone. They are the party who can change the rezoning and they are going to rezone the land or add a definition, and they have done it before to me by taking the definition of cinema. It is in their power to do it, and this is what Mr Mosca told me: it is in the power of the council to add or remove things from the rezoning. It was supposed to be a very simple matter

because they have done it very easily for the crossroad. They did it very easily for me, took the cinema out of the definition of the industrial zoning five years ago or six years ago. This is how I know.

**The Hon. JAN BURNSWOODS:** Just let me get this straight: you said to Mr Knowles on 21 November—

**Mr GAZAL:** He asked me if—

**The Hon. JAN BURNSWOODS:** Hang on. I just want to go through what you just said. You said, "The council is going to do the right thing."

**Mr GAZAL:** Exactly.

**The Hon. JAN BURNSWOODS:** You now tell us that you knew 17 days before the council itself knew, because of the date they considered the LEP—

**Mr GAZAL:** No, I knew months before.

**The Hon. JAN BURNSWOODS:** —and you knew this prior to the council considering it because Mr Mosca told you that the council was going to do the right thing.

**Mr GAZAL:** I knew long before that, when Westfield sued us and when they decided not to fight in the court. I had to fight Westfield by myself in the court. This is when they told us that there is no point in spending \$100,000 or \$200,000 in legal fees. "We will amend the LEP." And they said it is not a very major zoning.

**The Hon. JAN BURNSWOODS:** Can you tell me who amongst the councillors or the council staff—

**Mr GAZAL:** Through Mr Mosca. He was dealing on my behalf with them.

**The Hon. JAN BURNSWOODS:** Did Mr Mosca tell you who, amongst the councillors or the council staff, told him that the council was "going to do the right thing"?

**Mr GAZAL:** He said the general manager, among the people.

**The Hon. JAN BURNSWOODS:** What was the name of the general manager at that stage?

**Mr GAZAL:** Gary McKell.

**The Hon. JAN BURNSWOODS:** What date are we talking about?

**Mr GAZAL:** About June, June or July 2003.

**The Hon. JAN BURNSWOODS:** So you knew in June or July 2003—

**Mr GAZAL:** No, I have been told. I did not know. I have been told.

**The Hon. JAN BURNSWOODS:** You told us under oath on Friday that you told Mr Knowles that the council is going to do the right thing. Now you tell us you did not know, you had only been told. Can we just get that clarified?

**Mr GAZAL:** This is how I knew. I have been told. I knew. I have to be told to know. If nobody tells me, I do not know. I mean, it is logical, don't you think so?

**The Hon. JAN BURNSWOODS:** A couple of minutes ago you told us that you told me that you did not know.

**Mr GAZAL:** I knew. I do not understand your question. Can you really put it in proper English for me?

**The Hon. JAN BURNSWOODS:** You said a minute ago that you did not know the council was going to do the right thing.

**Mr GAZAL:** I never said that.

**The Hon. JAN BURNSWOODS:** You said you had been told the council was going to do the right thing, but on Friday you told us that you knew the council was going to do the right thing.

**Mr GAZAL:** I knew. Definitely I knew because I had been told. I do not understand any other way to know it if I have not been told. And there is another matter I can raise—

**The Hon. JAN BURNSWOODS:** No.

**Mr GAZAL:** No, I would like to answer—

**The Hon. JAN BURNSWOODS:** I am sorry, but you will answer the Committee's questions. You can raise other matters later, if you please. You knew the council was going to do the right thing.

**Mr GAZAL:** Yes.

**The Hon. JAN BURNSWOODS:** You knew that because Mr Mosca told you, and you knew that he was correct because council basically always did the right thing by Mr Mosca, did they not?

**Mr GAZAL:** I do not know that.

**The Hon. JAN BURNSWOODS:** Do you not?

**Mr GAZAL:** No.

**The Hon. JAN BURNSWOODS:** But somehow you were so confident that you could tell various people?

**Mr GAZAL:** Yes, because Mr Gary McKell put an affidavit to the court that they are going to rezone, and you can get a copy from the council, if you like.

**The Hon. JAN BURNSWOODS:** Liverpool council did the right thing by giving you the original approval in November 2002?

**Mr GAZAL:** I think so, yes.

**The Hon. JAN BURNSWOODS:** Even though it was against the law?

**Mr GAZAL:** No, it was not against the law.

**The Hon. JAN BURNSWOODS:** What was it against?

**Mr GAZAL:** I do not know. They gave me a DA. Why don't you go and ask the council?

**The Hon. JAN BURNSWOODS:** We have had a great deal of evidence about the fact that that DA did not comply.

**Mr GAZAL:** If you know, why are you asking me? I thought it is a good, valid DA, a legal DA, and I went and start building and spend \$22 million based on this DA.

**The Hon. JAN BURNSWOODS:** But you know now from the court case and all of the other evidence that we have before us that it is not in fact an appropriate decision.

**Mr GAZAL:** I want to clarify something. The counsel of the department, he said—I will read you something from the corporate counsel, Mr Michael Astill, who was here. Item 5 of a letter of advice sent to Mrs

Beamer and Mrs Westacott, "While the draft LEP will allow a means to avoid the consequence of the court decision, it will not overturn the decision as such. The court did not consider the planning merit of the use whatsoever, just whether or not the use was technically within the range of permitted uses." This is a letter I submitted to you. It is in my submission. Please read it, and you can understand the matter a bit better.

**The Hon. JAN BURNSWOODS:** Thank you, but your letter has nothing whatsoever to do with the questions I have been asking you about.

**Mr GAZAL:** Of course, it is answering your questions.

**The Hon. PETER PRIMROSE:** Did you, last year, threaten council officers or councillors with a \$40 million damages claim against the council if they did not amend the LEP?

**Mr GAZAL:** I never threatened anybody. They asked me a question, and it was Joe Tripodi who asked the question, and I said the damages would be within \$40 million. I never threatened anybody at all.

**The Hon. PETER PRIMROSE:** But you indicated that you—

**Mr GAZAL:** I indicated that the damages would be within \$40 million, yes, because this is how much basically we thought it was going to cost us to build the designer outlet. It went over this figure.

**The Hon. PETER PRIMROSE:** What was the final figure?

**Mr GAZAL:** In the range of \$43, \$44 million. It depends on how much value you put on the land.

**The Hon. PETER PRIMROSE:** I have seen the valuer's opinion on it.

**Mr GAZAL:** You have a valuation. You know. You were telling me I am going to make \$5 million. I thank you very much for that.

**The Hon. PETER PRIMROSE:** Always happy to help. Can I ask Mr Mosca the same question? Did you, last year, threaten council officers or councillors with a \$40 million claim against the council if they did not amend the LEP?

**Mr MOSCA:** I do not think so, no.

**The Hon. PETER PRIMROSE:** Could I ask Mr. Bargshoon if the centre closes will it cause you financial loss?

**Mr BARGSHOON:** Financial loss? You mean I will lose money?

**The Hon. PETER PRIMROSE:** Yes.

**Mr BARGSHOON:** As long as Paul Lynch is around I do not think I will lose money. He will make sure I get a proper job.

**The Hon. PETER PRIMROSE:** But will it cause you financial loss?

**Mr BARGSHOON:** Of course it will.

**The Hon. PETER PRIMROSE:** Can you estimate approximately how much?

**Mr BARGSHOON:** I have bought machinery and company vehicles in \$300,000 worth.

**The Hon. PETER PRIMROSE:** Are there any other problems that closure of the centre will cause you?

**Mr BARGSHOON:** Any other problems?

**The Hon. PETER PRIMROSE:** Any other difficulties or problems other than those financial problems?

**Mr BARGSHOON:** No. The only problems it will cause me is that I will be losing like a whole family group there. We are all one family out at that centre and we all work together as a family. That is the only problem.

**The Hon. PETER PRIMROSE:** Could I just go back to Mr Gazal regarding the lease?

**CHAIR:** This will be your last question, Mr Primrose.

**The Hon. PETER PRIMROSE:** I have got lots more so we will come back to them. Did you approach tenants to sign leases after the January 16 Land and Environment Court order for the centre to cease trading?

**Mr GAZAL:** After January 16, no. We were negotiating with some tenants. We kept the negotiating going pending the resolution. We were negotiating after this time with David Jones, with one or two companies—Canterbury was another—two or three companies which we kept negotiating but they have not opened their shops because we were waiting for the rezoning to go through.

**The Hon. PETER PRIMROSE:** I will come back to the rest of my questions.

**The Hon. JOHN RYAN:** Mr Gazal, I noticed when the Committee visited the outlets centre and the bulky goods area yesterday there were number of shops still empty in the bulky goods area. Is that because you do not have tenants for those shops?

**Mr GAZAL:** Yes, I do not have tenants. We had always vacancies since we opened; we had between 5 to 8 per cent. When the Government rezoned the land in the Cross Roads they added exactly an amendment to the LEP. We lost about six of our tenants. Therefore we have about 25 to 30 per cent in the megacentre at the moment.

**The Hon. JOHN RYAN:** So it would be fair to say that if you cannot fill the bulky goods centre now if the factory outlets centre were to become bulky goods it would be highly unlikely that you would be able to find any other customers for that area as well?

**Mr GAZAL:** It is not highly unlikely, it is impossible, with the availability of bulky goods available in the area within 7 kilometres. I do not think there is a bulky goods tenant who is not represented there from Melbourne or Sydney or anywhere.

**The Hon. JOHN RYAN:** What would then become of your building? Can it be used for anything else?

**Mr GAZAL:** At the moment nothing. We might have to demolish it and think of something else for it.

**The Hon. JOHN RYAN:** And that would cause the damages, would it?

**Mr GAZAL:** Big damages.

**The Hon. JOHN RYAN:** When Mr Knowles came to your outlets centre, to open the outlets centre I think in November, how did you invite him?

**Mr GAZAL:** I have known Craig Knowles since 1986, 1987, basically about 15, 16 years, maybe more than that. He used to be the mayor of Liverpool. I approached him a few times. I met him through Frank Mosca and went to a few of his functions, one of them when I met Mr Bob Carr, which is about 10 years or more. Basically we lobbied him a few times for a few things. I met him maybe two or three times in his Ingleburn office. Just for the record, I went to the meeting because he gave us the meeting at 6.30 and 7 o'clock in the morning. That is why I know Mr Craig Knowles works so early. When we went to his house his mother rang Sam the night before and she said, "If you want to see Craig you have to be before 6.30. He always leaves early and wakes up early".

**The Hon. JOHN RYAN:** I am having a little trouble understanding that. What you are saying is that on previous occasions you have met Mr Knowles at 6 o'clock in the morning—

**Mr GAZAL:** 6.30 in the morning in Ingleburn on two occasions, 6.30 and 7 o'clock.

**The Hon. JOHN RYAN:** His parents stated to you that if you wanted to see Craig you would have to see him in the morning. You took that as something of an invitation?

**Mr GAZAL:** No, because we have been told that we have intimidated Mr Knowles and when we went on the night we were invited through the father of Mr Knowles; he spoke to Frank Mosca and on the night the mother of Mr Knowles, who is frail but she runs the south branch of the—

**The Hon. JOHN RYAN:** Mrs Marie Knowles.

**Mr GAZAL:** Mrs Marie, she runs basically half Liverpool. She rang Mr Bargshoon and she said, "no point waiting for Craig in the evening. If you want to come, come before 7 o'clock tomorrow because he leaves very early". This is why we were there at 6, 6.30 in the morning.

**The Hon. JOHN RYAN:** Mr Mosca, how well do you know Craig Knowles and have you been to his house on previous occasions?

**Mr MOSCA:** Yes, I know Craig Knowles very well and I have been to his house on many occasions, yes.

**The Hon. JOHN RYAN:** By "many occasions" would you like to estimate how many times you might go to his home in the course of a year?

**Mr MOSCA:** 10, 12 times.

**The Hon. JOHN RYAN:** Once a month? As often as once a month?

**Mr MOSCA:** Say 10 times.

**The Hon. JOHN RYAN:** You have been about 10 times in your life?

**Mr MOSCA:** Okay.

**The Hon. JOHN RYAN:** Without describing it, do you know what the inside of Mr Knowles' house looks like?

**Mr MOSCA:** Which house?

**The Hon. JOHN RYAN:** The one you visited.

**Mr MOSCA:** He used to live at Chipping Norton, now he has moved in next to his parents.

**Mr BARGSHOON:** He is mummy's boy, he is living in the backyard.

**Mr MOSCA:** He lives at ... now. I have attended that house many times because I think on a couple of election campaigns there have been parties afterwards so we have been there celebrating and whatnot.

**The Hon. JOHN RYAN:** Mr Gazal, I think you might have misinterpreted what I said in terms of why you invited Mr Knowles. I am asking you how you invited him. Did you invite him in writing or did you ask someone to ask him?

**Mr GAZAL:** We rang him, we said we wanted to talk to him because there was another matter we wanted to talk to him about and I told him on the phone we got the DA and we were going to start building the designer outlet. We had a meeting at 7 o'clock in Ingleburn in his electoral office. It was a Friday but I cannot recall which day. I could find out. I went with Mr Mosca and I showed him the brochure we made. At that time it was called the MFO. He opened the megacentre in 1999 and I told him I would like him to do the honour and open the designer outlet. He was very, very interested and he said he will do it, to give him a ring or to ring his office when is the time I want to invite him.

**The Hon. JOHN RYAN:** Did you send him anything in writing?

**Mr GAZAL:** Yes, we sent him an invitation and we sent five invitations for his parents and his staff. He rang us through his office and he asked us if we can make a brief of what he like us to describe the factory outlet, which we typed a one-page brief about the thing—this is maybe where the 450 jobs came—what the investment, what the factory outlet. My son wrote a description and we faxed it to him.

**The Hon. JOHN RYAN:** When you say you faxed it to him do you mean his electorate office in Ingleburn or his ministerial office in the city?

**Mr GAZAL:** I cannot recall.

**The Hon. JOHN RYAN:** Would you be able to find out for us?

**Mr GAZAL:** I can find out for you.

**The Hon. JOHN RYAN:** Did he reply in writing?

**Mr GAZAL:** Yes, I think so, an email. My daughter did it, yes. His assistant—what is her name—Mary Pas wrote us an email and said he will be attending. She is the one who asked for some detail to make a speech.

**The Hon. JOHN RYAN:** Mary Pas?

**Mr GAZAL:** Mary Pas, yes. It was long before we even started basically.

**Ms SYLVIA HALE:** Mr Gazal, you seem to have, from your testimony on Friday, a high opinion of Mr Tripodi and you would agree that he lobbied quite strongly on your behalf?

**Mr GAZAL:** Yes, I think he did.

**Ms SYLVIA HALE:** Have you or anyone with whom you have been associated ever been asked by Mr Tripodi for any recompense, any cash or in kind in return for his lobbying services?

**Mr GAZAL:** For this lobbying?

**Ms SYLVIA HALE:** For any? Has Mr Tripodi ever asked for any form of recompense for the lobbying he has undertaken on your behalf?

**Mr GAZAL:** No.

**Ms SYLVIA HALE:** Have you, Mr Gazal, ever offered anything to Mr Tripodi?

**Mr GAZAL:** No.

**Ms SYLVIA HALE:** Of no sort?

**Mr GAZAL:** Pardon?

**Ms SYLVIA HALE:** You have made no contribution of any sort?

**Mr GAZAL:** Unless I did something to one of his party.

**Ms SYLVIA HALE:** But never anything to him personally?

**Mr GAZAL:** No, nothing to him. I never give anything to Mr Tripodi.

**Ms SYLVIA HALE:** He lobbied quite strenuously.

**Mr GAZAL:** He lobbied because he is friendly with Sam Bargshoon. He offered to lobby because of his friendship to Sam. This is what he told me. He said, "I care for Sam very much and I like to help". This is why I believe he lobbied. And he used to like to come to the centre. He sit in the Gloria Jeans and look at the people going in and out. He enjoyed it very much.

**Ms SYLVIA HALE:** Mr Bargshoon, did Mr Tripodi ever ask you for any recompense, cash or in kind?

**Mr BARGSHOON:** Never. Joe was a really good mate and he still is a good mate. He worked hard and he lobbied hard and he believed in Liverpool because he knew our State member of Liverpool was lazy, never done anything, and he got out of his way to help and we were very grateful for that. Mind you, the State member of Liverpool, we were asked, us, our people who had him elected by branch-stacking the books with Peter Primrose together. They stacked the books. They used to go to people's houses to sign them and he is sitting in his office reading the paper. I mean, that is good, at least we have got a member at Fairfield, a State member, going out of his way for nothing in return and helping while we've got this member over here elected and another State member, Paul Lynch for Liverpool elected by rorting the books; they did not know how the system works.

All we were promised, "I'll take this around to the Lebanese community, get them to sign the books and if we get elected", these were promised Housing Commission houses, these were promised fences, these were promised their brothers and sisters from overseas, and that is what we get now in return, we are getting stabbed from the Labor Party, from the left and from the right.

**Ms SYLVIA HALE:** So are we to take it that some members of the Labor Party asked you to manipulate membership through attendance at meetings—

**Mr BARGSHOON:** There is one of them sitting right here.

**The Hon. DAVID OLDFIELD:** Could you identify Mr Primrose for the record?

**Mr BARGSHOON:** Mate, I could tell you straight out he is right there.

**Ms SYLVIA HALE:** But Mr Tripodi went out of his way to lobby and he did not ask you for anything. Did you offer anything to him in return for his efforts?

**Mr BARGSHOON:** Joe Tripodi is the type of person where he will never ever take anything even if you offered him. I never offered him anything. The only thing I would always offer Joe is a Lebanese dinner and he would love coming over for Lebanese dinners.

**Ms SYLVIA HALE:** So you would say he was a very, very truthful person?

**Mr BARGSHOON:** 100 per cent.

**Ms SYLVIA HALE:** So do you have any explanation for his denying that the conversation took place on 22 May at Gloria Jeans coffee shop?

**Mr BARGSHOON:** We got proof it took place and I have got the proof for ICAC.

**Ms SYLVIA HALE:** Why do you think Mr Tripodi, who has been such a stalwart friend—

**Mr BARGSHOON:** He did not deny it. Joe did not deny it. Joe just said there has been some misunderstanding. I believe Joe will be back tomorrow.

**CHAIR:** Back here?

**Mr BARGSHOON:** Back to Sydney.

**Ms SYLVIA HALE:** And you think Mr Tripodi might provide the Committee with a statutory declaration as to his—

**Mr BARGSHOON:** We will have to see about that. I know that he is worried and concerned about his job, losing his job, but I know Joe, he would come out and he would say the truth. I believe so, yes.

**Ms SYLVIA HALE:** As Ms Irwin—

**Mr BARGSHOON:** Ms Irwin, you saw what she was like. She was very strong, very supportive. Mind you, she is a Federal member coming from Cabramatta. We have got the State member put aside Sam Bargshoon and Nabil Gazal or Frank Mosca. There is 450 jobs. Even if it was 50 jobs, you have got a State member just sitting there watching these people suffer. At least do it for your area. We got you elected. We got you elected by people who do not even exist. He won by five numbers, which Peter knows. Out of the five there was eight people in Lebanon. We got copies of their passports and stat decs.

**Ms SYLVIA HALE:** Would you explain that?

**Mr BARGSHOON:** That was it. Peter Anderson was a threat. He was a threat to the Premier. That is who was the threat, and the Premier had to get him out any way. So we worked hard for Paul Lynch because we believed in Paul Lynch. Before Paul Lynch was an honest man as we thought at the time. Peter Primrose was an honest man, pretending he cannot see what is going on now, blames the books. At the time of the election Paul—

**Ms SYLVIA HALE:** The last State election?

**Mr BARGSHOON:** The one before that, Paul won by five numbers.

**The Hon. DAVID OLDFIELD:** Are you talking about the preselection?

**Mr BARGSHOON:** The preselection.

**Ms SYLVIA HALE:** You are saying he won by five votes?

**Mr BARGSHOON:** Five votes. But guess what, out of the five votes there was eight people what were overseas that voted on that day while they were in Lebanon.

**Ms SYLVIA HALE:** You can provide the Committee with names and addresses?

**Mr BARGSHOON:** I have got the stat decs. How do you think he got up? Because I provided the evidence to Della Bosca and there was some sort of deals made between the left and the right and all sorts of deals were made. I went up. Joe Tripodi picked me up early in the morning and I went up there and met up with the whole team of boys. They said to me, "You provide the stat decs and we will have Paul Lynch off the seat."

**Ms SYLVIA HALE:** When you say you went up with the whole team of boys, who were they?

**Mr BARGSHOON:** There was myself, Tony Buik and Joe Tripodi. I am not an early person, so he came and picked me up from home about eight o'clock.

**Ms SYLVIA HALE:** This is Joe Tripodi?

**Mr BARGSHOON:** Joe Tripodi.

**Ms SYLVIA HALE:** And you subsequently returned the favour at Gloria Jeans by picking him up when his car was in trouble?

**Mr BARGSHOON:** I picked him up from his house. Joe Tripodi is a good mate. I am just saying how Paul got up and how Primrose got up.

**The Hon. PETER PRIMROSE:** Mr Bargshoon, could I clarify the date?

**Mr BARGSHOON:** I do not have my diary on me. You know I am not good at diaries and dates.

**The Hon. PETER PRIMROSE:** I am just interested in the year.

**Mr BARGSHOON:** I am not good at diaries, but if you want stat decs from these people who got Paul Lynch elected—

**The Hon. PETER PRIMROSE:** I have asked you a question. Can you tell me even the year this all happened?

**The Hon. JOHN RYAN:** I hope it was not 1988 when you beat me by 32 votes.

**The Hon. PETER PRIMROSE:** Can you tell me the year this happened?

**Mr BARGSHOON:** The year when your wife was working for Paul Lynch, when Jan was working for Paul Lynch. I am not good with dates.

**The Hon. JAN BURNSWOODS:** I think you are wrong. You are wrong about a lot of things, but you are certainly wrong about that.

**Mr BARGSHOON:** You do not know. You was not around. You was still up in the country. I am talking to Peter.

**The Hon. PETER PRIMROSE:** This helped me get preselected, did it?

**Mr BARGSHOON:** You know how you got there. There was a deal made at head office. The deal that was made at head office, I would have provided Della Bosca not only with seven state decs, I provided him with about 14 stat decs because he promised that he was going to have him off the seat.

**The Hon. PETER PRIMROSE:** Mr Gazal, are you aware of any of these activities?

**Mr BARGSHOON:** Actually he was shocked when he only just heard me say it now. I did not tell him that before.

**The Hon. PETER PRIMROSE:** I have asked the question to Mr Gazal.

**CHAIR:** It is Ms Hale's time for questions.

**The Hon. PETER PRIMROSE:** Ms Hale may wish to ask the question.

**Mr BARGSHOON:** It has got nothing to do with Mr Gazal.

**The Hon. JAN BURNSWOODS:** I think the Hon. Peter Primrose took a point of order.

**CHAIR:** No, he did not.

**The Hon. JAN BURNSWOODS:** In that case I take a point of order.

**The Hon. JOHN RYAN:** Has anybody signed the membership book?

**Mr BARGSHOON:** We used to take that around on Saturdays and Sundays.

**The Hon. JAN BURNSWOODS:** I think the period that Mr Bargshoon is giving this colourful account about is more than 15 years ago.

**Mr BARGSHOON:** That is the truth.

**The Hon. JAN BURNSWOODS:** Is it relevant to the inquiry or within our terms of reference, given it is over 15 years ago from what I can work out?

**Mr BARGSHOON:** Was that the time of Peter Anderson? Could you work out the dates when Peter Anderson lost his job? The poor bloke was standing at Liverpool Council.

**The Hon. JAN BURNSWOODS:** I have taken a point of order, Madam Chair.

**Mr BARGSHOON:** He was the police Minister. He carried his daughter to Liverpool council and cried.

**CHAIR:** Ms Hale's time has expired.

**The Hon. JAN BURNSWOODS:** Would you rule on my point of order?

**CHAIR:** The line of questioning and answers were drifting in and out of the contemporary times relevant to our terms of reference. I ask members to direct their questions to the terms of reference.

**Ms SYLVIA HALE:** Mr Bargshoon—

**The Hon. JAN BURNSWOODS:** Your time has expired.

**Ms SYLVIA HALE:** Would you be prepared to provide those statutory declarations?

**Mr BARGSHOON:** The statutory declarations—

**Ms SYLVIA HALE:** Mr Oldfield has allowed for my time to be extended. Will you provide the Committee with those relevant documents?

**Mr BARGSHOON:** The last time I provided them to Della Bosca he promised me that he was going to get rid of Paul Lynch. So if I provide them to you would you get rid of Peter Primrose? I am not going to provide anything. They know the truth.

**Ms SYLVIA HALE:** I cannot promise that.

**Mr BARGSHOON:** As long as he knows the truth and Paul Lynch knows the truth and Peter Anderson knows the truth I am happy. It is all on record.

**Ms SYLVIA HALE:** Mr Mosca, were you or anyone with whom you are associated asked by Mr Tripodi at any time for any recompense for the strenuous lobbying in which he engaged?

**Mr MOSCA:** No.

**Ms SYLVIA HALE:** Did you at any time offer any recompense to Mr Tripodi for the lobbying?

**Mr MOSCA:** No.

**Mr BARGSHOON:** Joe would not take any money even if he did offer. He is not that sort person. He is a good man. He is not a crook.

**Ms SYLVIA HALE:** Mr Bargshoon, why do you believe Mr Tripodi, if he has not denied conversations having taken place, says the conversations have been misconstrued or misunderstood? From the account you have given of what transpired at that meeting, it seems to be fairly straightforward and unmistakable in terms of context.

**Mr BARGSHOON:** Joe has been a person if he will not help in the past he has told me, "Sam, I wont do it, full stop." For some reason from day one he would say to me, "I don't like this man Nabil." I would say, "Why?" He would say to me, "I just don't like him", without giving any reasons. When he came over to lobby, he lobbied because he said he believed in the centre and for me to let Nabil know that what he is doing he is doing because he is a mate of mine and he believes in the centre. Our State member is sitting there doing nothing. That is the only reason.

**Ms SYLVIA HALE:** If he so believed in the centre—and presumably the purpose of this Committee is to inquire into the whole planning process in connection with the centre and to see whether there was anything untoward in the rezoning not going ahead—the question of why Minister Beamer refused to rezone the site which would have allowed the centre to continue is critical. The point I am asking is given how critical this question is and it is an important consideration in trying to make some assessment as to what has occurred, that conversation is absolutely key. Why do you think Mr Tripodi would say the conversation, which is so vital to the continuation or otherwise of the centre, has been misunderstood?

**Mr BARGSHOON:** Let me explain something to you. Joe Tripodi and Dianne Beamer, they both believed and they were both told to the last second that she was going to sign it. Till this day even though Dianne Beamer did not sign it I still believe and Joe Tripodi still believes that it was going to get signed. Everything was going so great until she received that call from Bob Carr. Because that Mr Bob Carr is a good mate of that Lowy. I did not know who Lowy was before Joe Tripodi told me. He has been paid out a big amount of money and he is going to get undone sooner or later. He will go down soon and he will go to gaol too. He has been paid out. That is his State Government for you. What could you expect when you have got the Labor Party team, the left and the right both lobbying each other? So aren't they going to flog us? Who is Nabil to the Labor Party when you have got a team—

**The Hon. JAN BURNSWOODS:** Does the Chair think this is all within the terms of reference?

**The Hon. PETER PRIMROSE:** I do not have to take a point of order. It is up to the Chair to rule.

**Mr BARGSHOON:** Take a point of order. I am talking serious stuff here. They are stabbing each other. Who is Nabil?

**The Hon. PETER PRIMROSE:** It is up to the Chair to rule.

**Mr BARGSHOON:** I am talking to the Chair. When he turns around and he says, "I own the centre" I believe he would say something like that because it is a safe Labor seat. It is 100 per cent a safe Labor seat.

**The Hon. DAVID OLDFIELD:** Are you talking about Mr Carr?

**Mr BARGSHOON:** Yes, I am still talking about Mr Carr. I still believe since no-one can sue me I can get out and say it in public that I believe he would have got not \$200,000, probably double that amount of money because he is a crook. That is my opinion, he is a crook.

**The Hon. PETER PRIMROSE:** Who is a crook?

**Mr BARGSHOON:** Bob Carr and your mate Paul Lynch.

**The Hon. PETER PRIMROSE:** You are saying the Premier is a crook?

**Mr BARGSHOON:** I am saying he is a crook and you are a crook and Paul Lynch is a crook.

**The Hon. JAN BURNSWOODS:** You forgot me.

**Mr BARGSHOON:** I do not know you. I know them.

**The Hon. PETER PRIMROSE:** Is there anyone-else that you believe is a crook?

**Mr BARGSHOON:** If there is I would say it. I have got nothing to hide. I have got nothing against Craig Knowles. Even Craig Knowles himself was going to do the right thing. They have all been pressured by Bob Carr. He was pressured. Dianne Beamer had the pressure put on her and what is his name, I keep forgetting his name because I hate him so much now

**The Hon. DAVID OLDFIELD:** Bob Carr or Peter Primrose?

**Mr BARGSHOON:** Forget Peter Primrose.

**The Hon. JAN BURNSWOODS:** Have you ever heard of the notion with friends like you Mr Gazal and Mr Mosca hardly need enemies?

**Mr BARGSHOON:** No.

**The Hon. DAVID OLDFIELD:** From what you have said about the issues, especially as they have come out this morning from the various emails, can we reasonably take it that you are essentially leading Mr Knowles out of this? It is not a matter so much for him? He opened the centre, which seems to have been unfortunate timing. From what you are saying, these decisions seem to have been made by Bob Carr?

**Mr BARGSHOON:** By Bob Carr.

**The Hon. DAVID OLDFIELD:** Mr Gazal, you told us that Joe Tripodi told you that Dianne Beamer had put a stop to the LEP being approved because she had been told to do so by Bob Carr, is that correct?

**Mr GAZAL:** It is correct. Let me put it in perspective when it happened. Joe Tripodi told us on 22 May and I believe Joe was telling the truth and I believe he still is telling the truth.

**The Hon. DAVID OLDFIELD:** Joe Tripodi told you that Bob Carr had told Dianne Beamer?

**Mr GAZAL:** No, he told me that Dianne Beamer had called him and told him that Bob Carr called her and told her to screw the rezoning.

**The Hon. DAVID OLDFIELD:** Dianne Beamer told Joe Tripodi?

**Mr GAZAL:** Dianne Beamer called Joe to tell him that.

**Mr BARGSHOON:** He told me first.

**The Hon. DAVID OLDFIELD:** All three of you?

**Mr BARGSHOON:** He told me first when I was picking him up.

**The Hon. DAVID OLDFIELD:** Mr Mosca, you are in this too?

**Mr MOSCA:** Yes.

**The Hon. DAVID OLDFIELD:** Mr Mosca, Mr Gazal and Mr Bargshoon, your understanding is, as you have expressed it, Joe Tripodi was told by Dianne Beamer that Dianne Beamer had been told by Premier Bob Carr to stop the approval, is that correct?

**Mr GAZAL:** Yes.

**Mr BARGSHOON:** Screw it over.

**The Hon. DAVID OLDFIELD:** Were all three of you here this morning to hear the questioning of the departmental officers?

**Mr GAZAL:** I was here.

**Mr BARGSHOON:** I came in late.

**Mr MOSCA:** I was a little late but I think I caught most of it.

**The Hon. DAVID OLDFIELD:** Were you here when the Hon. John Ryan asked questions relating to emails in which the names of Mr Lowy and Mr Carr were mentioned as having had meetings?

**Mr MOSCA:** Yes, I was.

**Mr BARGSHOON:** Yes, I was here.

**The Hon. DAVID OLDFIELD:** The three of you were present. Are any of you aware at all of any of that material in the department prior to having heard it this morning?

**Mr MOSCA:** No.

**Mr GAZAL:** No.

**Mr BARGSHOON:** No, we were aware that Bob Carr has never met up with him, never spoken to him regarding that issue.

**Mr GAZAL:** Bob Carr said on the media—

**The Hon. DAVID OLDFIELD:** Just answer the question. All three of you have told us what Joe Tripodi told you.

**Mr GAZAL:** Yes.

**The Hon. DAVID OLDFIELD:** Essentially, that is that the whole approval was stopped in its tracks purely on the basis of Bob Carr's phone call to Diane Beamer?

**Mr GAZAL:** No, that is where it is not right, David. Joe Tripodi told us that Diane Beamer told him that Mr Bob Carr rang her and told her to screw the rezoning. But he kept saying, "But she will do the right thing."

**The Hon. DAVID OLDFIELD:** Yes, I understand that.

**Mr GAZAL:** Therefore, Diane was resisting.

**The Hon. DAVID OLDFIELD:** That is a separate issue. I am not particularly interested in her resistance. We are trying to pin down where it all came from, and in sequence.

**Mr GAZAL:** It came from Joe Tripodi. He is the one who gave the name of Frank Lowy.

**The Hon. DAVID OLDFIELD:** Forget about Ms Beamer's desire for it not to happen. The three of you have all told us that Joe Tripodi told you that Ms Beamer was told by Mr Carr to stop the LEP being approved? Is that correct?

**Mr GAZAL:** To screw the rezoning, that is that correct.

**Mr MOSCA:** Yes.

**Mr BARGSHOON:** Yes.

**The Hon. DAVID OLDFIELD:** Before this morning, when you heard the testimony of officers from the department in relation to questions asked by the Hon. John Ryan, were you aware of Mr Carr's involvement by any means other than what Mr Tripodi told you?

**Mr GAZAL:** No.

**Mr MOSCA:** No.

**Mr BARGSHOON:** No.

**The Hon. DAVID OLDFIELD:** You had no information, be it leaked or otherwise, that the department had in its files emails that specified that Mr Carr had had a meeting with Mr Lowy?

**Mr GAZAL:** The first time I heard of it was this morning.

**Mr BARGSHOON:** To be honest, I was shocked when I heard it.

**The Hon. DAVID OLDFIELD:** I was not.

**The Hon. JAN BURNSWOODS:** Madam Chair, yesterday we agreed that Government members would have an hour with these witnesses and whatever other time was needed for other witnesses. Mr Gazal, you have told us on many occasions of the depth of your concern for workers and their jobs?

**Mr GAZAL:** Could you tell me when?

**The Hon. JAN BURNSWOODS:** On a number of occasions you said that you were very concerned about workers.

**Mr GAZAL:** Tell me when because I would like to read it.

**The Hon. JAN BURNSWOODS:** Today and Friday.

**Mr GAZAL:** Today?

**The Hon. JAN BURNSWOODS:** Yes.

**Mr GAZAL:** You never asked me about it today.

**The Hon. JAN BURNSWOODS:** Are you denying that you care about workers?

**Mr GAZAL:** I do care about them but I would like to know when I said it. I want to see in what context I said it.

**The Hon. JAN BURNSWOODS:** You said it to us on Friday.

**Mr GAZAL:** Can you read it to me?

**The Hon. JAN BURNSWOODS:** No, I cannot.

**Mr GAZAL:** How would you know then?

**The Hon. JAN BURNSWOODS:** Do you want to deny that you care about workers?

**Mr GAZAL:** No, I care very much, but I would like to know what you know. You said that I said—

**The Hon. JAN BURNSWOODS:** Mr Gazal I would like to read something to you that relates to the Orange Grove site. I want to know whether these words are familiar to you. The document states:

In my view the conduct and attitude of Viscount has shown a clear disregard for the terms of the Award and a preparedness to put its own interests above the obligations imposed on it by the award. It has shown an almost immediate recourse to the standing down of employees without regard to the conditions of the award for standing down of employees. It has continued to disregard its award obligations and to institute stand downs not sanctioned or available under the award, notwithstanding Commission proceedings in relation to this issue ...

**The Hon. JOHN RYAN:** Point of order—

**The Hon. JAN BURNSWOODS:** Do you recognise those words of the Deputy Commissioner of the Industrial Relations Commission?

**CHAIR:** Order! The Hon. John Ryan is attempting to take a point of order.

**Mr GAZAL:** Does it have any relevance to the matter?

**CHAIR:** Order! The Hon. John Ryan has the call.

**The Hon. JOHN RYAN:** I do not think industrial relations on the Viscount caravan site has anything to do with our terms of reference. Given that we have a limited amount of time, the member is not able to justify any discussion about that issue. It is unfair for the member to raise this issue when Mr Gazal has not had a chance to state whether or not industrial relations issues were sound some years ago. It has nothing to do with our terms of reference.

**The Hon. JAN BURNSWOODS:** To the point of order: The questions that I am asking relate to the site at 20 Orange Grove Road. They relate to the position of Mr Gazal as a director of a company from 1986 to 1996. They relate to Mr Gazal standing down these workers for a five-week period over Christmas. They relate to what the Deputy Commissioner of the Industrial Relations Commission had to say about the bona fides of Mr Gazal and the lies that we have been told about Mr Gazal's concern for workers. So it seems to me that these questions are very much in order.

**The Hon. JOHN RYAN:** Given that you have now smeared Mr Gazal, he may well want to respond.

**Mr GAZAL:** Although it is irrelevant, I am not like Bob Carr or Diane Beamer; I am here to answer questions. I am under oath. I am appearing in front of the Committee.

**The Hon. JAN BURNSWOODS:** Is the Chair going to rule on my point of order?

**CHAIR:** Order! There may be some tendentious relationship to the site, so I will ask Mr Gazal to answer the question.

**Mr GAZAL:** I would be happy to answer, although I think it is irrelevant. Would you tell me what it is regarding and in which era of time? When did this happen?

**The Hon. JAN BURNSWOODS:** In 1995 the company, of which you were a director—

**Mr GAZAL:** But where did you get that?

**The Hon. JAN BURNSWOODS:** In 1995 the company, of which you were a director, was a party to a case in the Industrial Relations Commission. The last time I checked 1995 was a considerable number of years after 1989. The Chair allowed numerous questions and numerous statements by Mr Bargshoon relating to 1989, so this is relevant. It happened only the day before yesterday.

**Mr GAZAL:** I am happy to answer. Just tell me.

**The Hon. PETER PRIMROSE:** I think it is an appropriate request.

**Mr GAZAL:** I never went in front of the commission. I think she has a fake document.

**The Hon. DAVID OLDFIELD:** I ask that the microphones be fixed before we continue.

**The Hon. JAN BURNSWOODS:** We had that problem all morning. It did not worry you then.

**CHAIR:** Order!

**Mr GAZAL:** I have never appeared in front of the commission. I think she has a fake document.

**The Hon. PETER PRIMROSE:** The Hon. Jan Burnswoods has made an appropriate request.

**Mr GAZAL:** She has a fake document. I would like to have a look at it. I have never appeared in front of any commission. She has a fake document. It is a fraud. Let me see the document and tell me when I appeared in front of the commission.

**The Hon. JAN BURNSWOODS:** I am happy to do so.

**Mr BARGSHOON:** She will not show you the document.

**Mr GAZAL:** You do not know what you are talking about. You are slandering me. I do not know who you are. Can you show me the document that you have?

**The Hon. JAN BURNSWOODS:** If we are still on some sort of point of order, let me state that I am extremely happy to give Mr Gazal a copy of the document. If he would pause for a moment before slandering me, I have tried on three occasions to state that I am happy to give him a copy of the document. I am happy to give everyone a copy of the document.

**The Hon. PETER PRIMROSE:** He is using workers at Orange Grove as a smokescreen for his business incompetence. That is the point we are trying to make.

**Mr GAZAL:** I am not like you.

**The Hon. PETER PRIMROSE:** You do not understand the difference. It is a company, a corporation. In this case—

**Mr GAZAL:** I am not a cheat. I am not like you.

**Mr BARGSHOON:** That is the word—cheat.

**CHAIR:** Order! I am asking the Hon. Jan Burnswoods a question. Will you table the document from which you are quoting?

**The Hon. JAN BURNSWOODS:** Yes, I am quite happy to table it. I will not table it right now, but I will certainly give it to Mr Gazal.

**Mr BARGSHOON:** When are you going to table it—next year?

**The Hon. JAN BURNSWOODS:** I will certainly give a copy to the Committee and I will give a copy to Mr Gazal.

**Mr GAZAL:** You are spreading lies; that is what you are doing.

**Mr BARGSHOON:** They are good at that. The Labor Party left wing is good at that.

**The Hon. JAN BURNSWOODS:** I thought that you were just agreeing to a request by the Hon. David Oldfield for some sort of adjournment to fix the microphones. It is getting a little difficult to work out what is being done and when it is being done.

**CHAIR:** The time for questions by Government members has expired.

**The Hon. JAN BURNSWOODS:** That is why I did not answer the earlier question. You told me that my time had expired.

**CHAIR:** Committee members do not have any further questions so that concludes this session.

**The Hon. PETER PRIMROSE:** Government members do have further questions.

**CHAIR:** The time for questions by Government members has expired.

**The Hon. JAN BURNSWOODS:** We will seek to have these witnesses brought back again.

**CHAIR:** The Committee will adjourn for 15 minutes so that the microphone system can be fixed.

**(Short adjournment)**

**CHAIR:** I reconvene the hearing now that, I trust, the microphones are working. I welcome Mr Gelonesi.

**FRANK GELONESI**, Chartered Accountant, 39 Barbara Street, Fairfield, sworn and examined:

**CHAIR:** In what capacity are you appearing before the Committee today?

**Mr GELONESI:** I am here as the Chair of the Greater Western Sydney Economic Development Board.

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

**Mr GELONESI:** Only what I have read in the media.

**CHAIR:** I think the terms of reference should be in front of you, Mr Gelonesi.

**Mr GELONESI:** No. They are not, I am sorry.

**CHAIR:** They should be. I will have them put in front of you, just so that they know what they are.

**Mr GELONESI:** Certainly. Thank you.

**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, you need to indicate that to the Committee and we will consider your request.

**Mr GELONESI:** Certainly.

**CHAIR:** Do you have a short statement to make to the Committee in the first instance? You do not have to.

**Mr GELONESI:** No. My involvement is that our board comes out with media releases on regular occasions, and we did come out with a media release in relation to the Orange Grove site. I believe that the reason I am here maybe because of that statement.

**The Hon. JAN BURNSWOODS:** Can you tell us about the role of the board?

**Mr GELONESI:** Yes. The Greater Western Sydney Economic Development Board is a government-appointed board. The members are all purely voluntary and their job is to try to assist the Minister and the department with advice on how to improve employment growth in the greater western region of New South Wales.

**The Hon. JAN BURNSWOODS:** Even though appointed, would you regard the members of the board, and indeed the board itself, as independent?

**Mr GELONESI:** I think so, yes.

**The Hon. JAN BURNSWOODS:** Your own business operations are located in the region?

**Mr GELONESI:** Yes, we are in Fairfield.

**The Hon. JAN BURNSWOODS:** What was your reaction when you heard about Minister Beamer's decision in relation to the Orange Grove Outlet Centre?

**Mr GELONESI:** Initially my personal reaction was that it did not sound very fair, and that was from reading reports on the media. But we had discussions with the developers in the area, other developers, and also with shopkeepers in Liverpool—not so much in Westfield but in the main street of Liverpool—and they put together a different point of view. Their point of view actually was one that seemed fairly plausible as well. We are concerned that there are jobs to be lost by Orange Grove but the issue that was made clear to me is that there would of course be a lot of jobs lost in Liverpool.

We are not talking about Westfield only; we are talking about other shops in the main street and in Westfield. The one thing that a developer said to me that also stuck in my mind was that he would have loved to have been in a position where he could have the land that is zoned for bulky goods used for commercial because, for him, that would be quite a windfall gain, and he would love to be in that position as well. So we said, okay, obviously there is more to it than we are aware. So we came out with a statement and said, look, in assessing this position, we do need to look at the overall position, not just at the 450-odd jobs that have been reported as being lost there, but what else is going to happen in Liverpool. There are many different factors to this decision.

**The Hon. JAN BURNSWOODS:** If I may sum up, I guess you are saying that members of the board and people in the area put to you that there were effects on the central business district [CBD]. There was what—an equity issue? If one developer can get a rezoning or can get a decision contrary to zoning, then it would be nice if the other people could as well, so that there is a level playing field.

**Mr GELONESI:** That would be an issue. Obviously, all would like to get little windfall gain, if possible, but that is not the major issue. The major issue is that there are a lot of other shopkeepers in Liverpool, and if we are going to go ahead with this, we would need to have some sort of detailed study to make sure that the area is right for the commercial development and that traffic problems are addressed—I mean, a whole host of issues that need to be taken into account. It is not particularly good planning—or we do not think it is—to simply change of planning because it is being used for that reason. It should really be part of an overall study and an overall position.

**The Hon. JAN BURNSWOODS:** Do I take it that your board and the people that you talk to believe in fair competition among other things, and you do not regard the outlet centre as being fair competition?

**Mr GELONESI:** Look, it has been put to me the other way round—that market forces dictate. If this centre goes well, and good luck to it, it in turn has an effect on the market in general and brings prices down, et cetera. But I think that is probably a little bit too simplistic. I think there is a fairness and equity issue involved. I think that if you are going to use land zoned as one issue for another, you have got to see whether there is a price advantage there. I mean, land has an economic value. The rent paid on it is based on that economic value. If you are using land that is of a lower economic value, the rents that flow, the charges that flow and the land taxes that flow are all relative to the value of that land. If you have other people nearby who are paying relative to a higher economic value, there is an unfair advantage there, yes.

**The Hon. JAN BURNSWOODS:** So the level playing field concept is the important one?

**Mr GELONESI:** Pretty much so, yes.

**The Hon. JAN BURNSWOODS:** Can you give us your opinion as a businessman in the area of the way in which Gazcorp and Mr Gazal have handled this matter?

**Mr GELONESI:** Look, until this issue, I really had never heard of Gazcorp or Mr Gazal. I mean, the media has certainly played it up to their advantage, but I do not really have any comment on him or how he has handled it because I do not know really too much about it. I can see that the media is having a field day out of it, and good luck to them.

**The Hon. JAN BURNSWOODS:** As head of the Greater Western Sydney Economic Development Board, do you have an opinion of the way Minister Beamer has dealt with the matter?

**Mr GELONESI:** In my role as chairman, I have met the Minister on several occasions, not to do with this matter but to do with the Western Sydney Industry Awards that we are involved with, together with the Minister. I feel that not knowing her before February this year and only meeting her on several occasions for business-oriented meetings, she seems like a very hardworking young lady, and I feel a bit concerned that she is probably being portrayed as an ogre or whatever. I do not know what is going on behind the scenes. I have no knowledge of those things, but from a personal point of view from my few meetings with her, I feel that she has been probably portrayed a bit harshly.

**The Hon. JAN BURNSWOODS:** I refer to your media release of 19 July in which you stated:

Minister Beamer is well known to the small business community in the greater west as a tireless proponent for small business through her involvement and advocacy of the Western Sydney Industry Awards which she is the main driving force for.

You then go on to talk about the position of the workers as well in those businesses. Would you stress particularly her small business commitment?

**Mr GELONESI:** She is the Minister for small business.

**The Hon. JAN BURNSWOODS:** As well as for Western Sydney.

**Mr GELONESI:** I am sorry, she is not the Minister for small business, but she is the Minister for Western Sydney. But she plays a very large role in talking to businesses in the west. I mean, on two of the occasions I met her, that happened at business premises where she tries to encourage one-man and two-man shows to do their best. Being a chartered accountant, I have a lot of one and two-man show clients.

**The Hon. JAN BURNSWOODS:** And maybe even a one-woman show?

**Mr GELONESI:** And a one-woman show, yes. I was using a generic term, of course. It is good to have someone from the government who knows that you are there and that you are trying. I think that she has been one of the few that has really gone out of their way to do that.

**The Hon. KAYEE GRIFFIN:** My question relates back to earlier comments you made about feelings of people in the shopping strip centre. I think it had to do with people who were the small business people in strip shopping centres in Liverpool and many other centres who sometimes have some difficulty in relation to viability. Can you perhaps elaborate a little on some of the concerns that small business people, who are not in the large shopping centres but are in larger CBDs such as Liverpool, may have in relation to their futures, or the security of their businesses in which they have invested substantially?

**Mr GELONESI:** It goes back to the price that you pay. Everything has an economic value. Land and buildings in a commercial zone have a higher economic value than land and buildings in industrial zones, rural zones or anywhere else. The return to the owner is relative to the economic value. If you are in an area zoned commercial, because of the higher value, higher taxes and associated costs, that is all passed on to the businessperson. I would love to be able to get a shop in the middle of a rural area because I know I would pay very low rent and be just as well off if not better off. From a viability point of view, if you can lower the business costs to the shopkeeper, in turn, he or she can lower the prices. I feel that gives an unfair price disadvantage for the person who has to pay higher costs in very close proximity. You can have these things further away, where they will not impact geographically, but in this case they are in fairly close proximity to the main shopping area in Liverpool.

**The Hon. KAYEE GRIFFIN:** Do you have any idea whether there are long-term businesses in the strip shopping area?

**Mr GELONESI:** I have been in Fairfield for 27 years and I go to Liverpool regularly. Quite a few shops have been there for a long time. I cannot say how it impacts the owners directly without speaking to them. I would say that the newer ones would have greater difficulty. The older ones may be more established and might have clientele and a following. It might be easier for them to absorb the impact. I have no doubt there would be some economic impact on them as well.

**The Hon. JOHN RYAN:** Who appointed you to the position of chair of the Greater Western Sydney Economic Development Board?

**Mr GELONESI:** It is a ministerial appointment and we come under the Department of State and Regional Development. That is headed by the Minister for Small Business, the Hon. David Campbell.

**The Hon. JOHN RYAN:** I do not think you are a member of the Australian Labor Party, but have you attended Labor Party functions and fundraisers?

**Mr GELONESI:** I am not a member of the Australian Labor Party. I have attended both Labor and Liberal Party fundraisers. I am a businessman in Fairfield so I do not have a choice.

**The Hon. JOHN RYAN:** Would you say that there is a history to the factory outlets? Have you seen them and been there?

**Mr GELONESI:** I have not been in the facility. I noticed it for the first time about a month ago. Then I started to read about it in the media. I drove past two weeks ago and I could not fail to notice it because it took me an hour to drive past given the number of cars going into it.

**The Hon. JOHN RYAN:** It is very popular. Is it fair to say that, apart from an outlet at Mount Druitt, Western Sydney does not have much access to factory outlets as a retail format?

**Mr GELONESI:** I am not aware of the closest outlet. I have been to the one at Birkenhead Point.

**The Hon. JOHN RYAN:** That is not exactly Western Sydney.

**Mr GELONESI:** No. I do not believe there are any others in Western Sydney.

**The Hon. JOHN RYAN:** Would you understand the argument that there might be some value in having one, given that many people from Western Sydney travel outside the area to patronise factory outlets—for example, on the Gold Coast while on holidays?

**Mr GELONESI:** That would be a good argument.

**The Hon. JOHN RYAN:** Would it surprise you that one of the reasons the Department of Planning believes that the outlet might be a risk in planning terms is not because it is a distance from the CBD but because it is too close; in other words, close enough to be a threat?

**Mr GELONESI:** As I said, it is close to the CBD.

**The Hon. JOHN RYAN:** It is not close enough. The department would prefer it to be in the CBD.

**Mr GELONESI:** I believe the State Government's policy is to cluster commercial premises very close to the CBD. If it had been closer it might have been a different issue. That aside, before you change from one zone to another you need to look at the impact to ensure you know what you are doing.

**The Hon. JOHN RYAN:** Have you had the opportunity to read any of the documentation prepared by the Department of Planning about the factory outlet centre?

**Mr GELONESI:** No, I have not seen any of that.

**The Hon. JOHN RYAN:** What is the source of the information you have on it?

**Mr GELONESI:** As I said before, it comes from discussions with developers in the area, shopkeepers in the main road of Liverpool and my own experience with shopkeepers who have to struggle to make a living.

**The Hon. JOHN RYAN:** How did you discuss this with people in Liverpool? Did you do research in an organised fashion?

**Mr GELONESI:** Our client base is 4,500 clients and we have a few who come from Liverpool. I have asked clients of mine who are in Liverpool.

**The Hon. DAVID OLDFIELD:** What is the relationship between the development board and the Liverpool Chamber of Commerce?

**Mr GELONESI:** At this time we have not had any discussions with it, but I believe we should. Honourable members should bear in mind that I was appointed only in February or March this year. I am still feeling my way and we lost our executive officer in June. As I said, this is a voluntary, unpaid position, so I have to fit it in between my normal paid work. Having said that, it is on our agenda to get closer to the chambers of commerce in Liverpool, Fairfield and other local government areas.

**The Hon. DAVID OLDFIELD:** Given what you have said, would it surprise you that the chamber's representative told the committee yesterday that it was mortified by the planned closure? It strongly supports the centre and thinks that it brings business not only to the CBD but also to the entire Liverpool and south western Sydney area. The representative used many adjectives to describe—

**Mr GELONESI:** That is encouraging and good. It surprises me, but it is good.

**The Hon. DAVID OLDFIELD:** Given your accountancy background are you familiar with other areas in which it has been shown that levels of competition between similar businesses have driven other businesses into the ground?

**Mr GELONESI:** I cannot give any direct evidence of that.

**The Hon. DAVID OLDFIELD:** You would be familiar with the fact that there are many car dealers on Parramatta Road.

**Mr GELONESI:** Yes.

**The Hon. DAVID OLDFIELD:** You would also know that in various places businesses of a similar type are together and feed off each other.

**Mr GELONESI:** That is very true. That is why clustering is probably a very good idea.

**CHAIR:** Thank you for appearing before the committee today.

**(The witness withdrew)**

**GERARD ANTHONY TURRISI**, Director, GAT and Associates, PO Box 96, Haberfield, sworn and examined:

**CHAIR:** In what capacity are you appearing before the committee?

**Mr TURRISI:** I have been requested to attend, so I am here.

**CHAIR:** Are you conversant with the committee's terms of reference?

**Mr TURRISI:** No.

**CHAIR:** They will be placed in front of you so that you are.

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 fact and the committee will consider your request.

**The Hon. KAYEE GRIFFIN:** What was your position at Liverpool City Council?

**Mr TURRISI:** I was the corporate manager of community and environmental planning. I looked after development approvals.

**The Hon. KAYEE GRIFFIN:** Was that a senior planning position?

**Mr TURRISI:** I reported directly to the general manager.

**The Hon. KAYEE GRIFFIN:** Not to anyone else within your area?

**Mr TURRISI:** No.

**The Hon. KAYEE GRIFFIN:** For how long did you hold that position?

**Mr TURRISI:** For approximately five years.

**The Hon. KAYEE GRIFFIN:** How long were you employed by the council?

**Mr TURRISI:** For eight years.

**The Hon. KAYEE GRIFFIN:** During that time how many development approvals were approved by delegation?

**Mr TURRISI:** During that five years we would have received about 20,000 applications. We averaged about 4,000 to 4,500 development applications each year. Of those, approximately 1.5 per cent to 2 per cent went to council meetings.

**The Hon. KAYEE GRIFFIN:** Was it surprising that a project the size of the Orange Grove designer outlet would be approved under delegated authority?

**Mr TURRISI:** At the time I was there the threshold to determine whether a project was done by delegation was based on the number of submissions received. If we did not receive—off the top of my head—three or more objections then it did not go to council.

**The Hon. KAYEE GRIFFIN:** So, regardless of whether it was a substantial or an unusual development, if it did not attract three or more objections it automatically went to delegation.

**Mr TURRISI:** Fundamentally, that is correct.

**The Hon. KAYEE GRIFFIN:** How long has that delegation process been in place at the council?

**Mr TURRISI:** That came in when we introduced the independent hearing assessment panel. We had the panel running for close to four and a half years. It has probably now been running for five and a half years now. I am not sure whether the delegations have now changed, but it was like that for about four and a half years while I was at the council.

**The Hon. KAYEE GRIFFIN:** Regardless of any other issues, if there were not three objections it automatically went to delegated authority.

**Mr TURRISI:** The only other circumstance was when council was either the landowner or the applicant.

**The Hon. KAYEE GRIFFIN:** Who had the delegation to approve DAs?

**Mr TURRISI:** Fundamentally, they were delegated to the senior officers and that was fundamentally it: it was just the senior officers.

**The Hon. KAYEE GRIFFIN:** Was there one officer or more than one officer who had to formally approve the application like this, or did it rest on one individual person?

**Mr TURRISI:** If there were no objection it was left to the individual person, yes.

**The Hon. KAYEE GRIFFIN:** Who was the person who had the delegated authority for Orange Grove?

**Mr TURRISI:** For this particular matter?

**The Hon. KAYEE GRIFFIN:** Yes.

**Mr TURRISI:** It was Geoffrey Hunt.

**The Hon. KAYEE GRIFFIN:** Because the way the delegated authority worked at council he was the one who eventually gave approval to it?

**Mr TURRISI:** That is correct.

**The Hon. KAYEE GRIFFIN:** Did you have any discussions with any councillors in relation to this application?

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

**The Hon. KAYEE GRIFFIN:** Given the fact that the delegation process at council was that there had not been any objections, et cetera, he spoke to you as one of his senior officers?

**Mr TURRISI:** That is correct.

**The Hon. KAYEE GRIFFIN:** And you had a discussion with the mayor of the day—?

**Mr TURRISI:** Just in passing, yes.

**The Hon. KAYEE GRIFFIN:** —in relation to this before it was approved?

**Mr TURRISI:** That is correct.

**The Hon. KAYEE GRIFFIN:** Do you know Mr Mosca very well?

**Mr TURRISI:** I know Mr Mosca through my dealings when I was at Liverpool council.

**The Hon. KAYEE GRIFFIN:** Only through dealings at the council?

**Mr TURRISI:** Yes. I have done a handful of matters with him since I have left the council. I have done what is called energy rating performances on, I think, three or four of his projects.

**The Hon. KAYEE GRIFFIN:** Did you ever meet socially with Mr Mosca?

**Mr TURRISI:** No, not socially unless there was an event where there was other people there as well, which was organised through the council.

**The Hon. KAYEE GRIFFIN:** There have been claims made that Mr Mosca accounts for about 70 to 80 per cent of the DAs dealt with by council. Would you say that is a fair assessment of the number of applications that go in that Mr Mosca is involved with?

**Mr TURRISI:** I would not say 70 to 80 per cent, but I say it would be fair to say that he is a local architect and he does lodge a fair few applications with the council. I could not give you a figure. I would not say it was 70 to 80 per cent, no.

**The Hon. KAYEE GRIFFIN:** You said you had done some consulting work for Mr Mosca since you left the council?

**Mr TURRISI:** Energy performance reports, yes.

**The Hon. KAYEE GRIFFIN:** How many consultations have you done?

**Mr TURRISI:** I have done, I think it is in the order of three to four jobs with him.

**The Hon. KAYEE GRIFFIN:** And that was as a paid consultant?

**Mr TURRISI:** Through his clients, yes.

**The Hon. KAYEE GRIFFIN:** How did you get paid?

**Mr TURRISI:** I got paid through the developer. Mr Mosca was simply just the conduit in the sense that he designed the development. I was then engaged by the developer who was doing it and I was paid by the developer.

**The Hon. KAYEE GRIFFIN:** Have you ever received any monetary or other benefit, other than the consulting work that you said you have done, from Mr Mosca, Mr Gazal or Gazcorp?

**Mr TURRISI:** Never.

**The Hon. KAYEE GRIFFIN:** Could I draw your attention to a letter that you wrote to Mr Mosca on 25 October 2002 that related to the Orange Grove development? The letter starts off "Dear Frank". Presumably you were on first name terms with him?

**Mr TURRISI:** No, most letters have the name on them if we know who the person is.

**The Hon. KAYEE GRIFFIN:** It says that, "Due to an oversight of my staff your development application was not advertised in accordance with council policy." Could you explain, please?

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

**The Hon. KAYEE GRIFFIN:** Would you normally put in your letters that you deeply apologise for any inconvenience of this matter? Would that be the normal way you write letters to people who lodge development applications?

**Mr TURRISI:** Yes, there would be many instances where that would be generally my tone. If, obviously, the council has not followed the process I felt as a council officer we had an obligation to certainly apologise in terms of our error. That is something that was not uncommon. We did not make too many errors, but if it did arise it was something that I felt was an appropriate thing to do.

**The Hon. KAYEE GRIFFIN:** How could the advertising process be forgotten with such a large development, or any development for that matter?

**Mr TURRISI:** In the actual approvals section there was in the order of 60 staff, and with the volume of applications that council officers were dealing with from time to time matters did fall through the crack in terms of that element of process and, obviously, if we became aware that the process was not being met well, then, we rectified the matter ASAP.

**The Hon. KAYEE GRIFFIN:** Given that the development was not advertised until November and there were no objections, as I understand it, what was the time period when the close of advertising occurred? Mr Hunt spoke to you about the fact that, as he had delegated authority, he was going to approve it. You advised the mayor of this, but the approval was basically given as soon as the advertising period was over. How did all that occur? In what time frame?

**Mr TURRISI:** I cannot recall off the top of my head without, obviously, sitting down and working through the file. I do know that we did make the comment that in view of the fact that the application had been with the council for a while we had erred, we would try to get the application out as soon as possible after the exhibition period had lapsed. What time frame that was I cannot tell you; whether it was days or weeks I do not know.

**CHAIR:** That is your last question.

**The Hon. KAYEE GRIFFIN:** Why would you have written to Mr Mosca rather than Mr Hunt?

**CHAIR:** That was your last question. Time has expired. Any further questions, Mr Ryan?

**The Hon. JOHN RYAN:** I do not think I do. I would be perfectly happy if the Labor Party wanted to continue with their questions.

**Ms SYLVIA HALE:** You are absolutely certain that you checked with Mr Paciullo whether or not the application should go to council?

**Mr TURRISI:** I did it informally, yes.

**Ms SYLVIA HALE:** Because yesterday I was certainly left with the impression that Mr Paciullo has not really had any notion of the progress of the development application and, in fact, has had very little to do with it.

**Mr TURRISI:** He would not have had anything to do with the application other than the fact that I just asked him whether or not, in passing, he felt that this matter would need to go to the council and he said that basically in view of the fact it has followed the process, there are no objections then why send it to council. I said that was fine.

**Ms SYLVIA HALE:** It was Mr Paciullo's decision not to send it to council?

**Mr TURRISI:** No, the process does not require it. Because of the fact that I knew there was always a fair bit of debate about these factory outlet centres, and I knew that council was very concerned about the CBD and the impact on the CBD—it has always been passionate and still is about protecting its CBD—I just wanted to have the comfort that he was generally comfortable, that he did not feel that something like this would need to go to the council. As I said, it was more an informal discussion when I was with him and nothing more than that.

**Ms SYLVIA HALE:** You say it was more than that or it was not anything more than that?

**Mr TURRISI:** No, it was nothing more than an informal discussion. I actually was talking to him about a number of matters and I just raised it in passing.

**The Hon. JOHN RYAN:** How did you do that? How did you identify it?

**Mr TURRISI:** I was aware of the application obviously being in the system because Mr Hunt did come to me at various stages and speak to me about the application, so it is not that I was not aware of the application. That is the reason why I knew it was in the council.

**The Hon. JOHN RYAN:** What I am trying to get at is how did you identify it with Mr Paciullo. I am trying to work out whether you gave Mr Paciullo enough information that he would have known exactly what you were talking about. Is there any chance he could have misunderstood?

**Mr TURRISI:** I do not think so.

**The Hon. JOHN RYAN:** Did the project have a name of some sort, or a title?

**Mr TURRISI:** No, I just explained to him it was basically a direct factory-type outlet.

**The Hon. JOHN RYAN:** You described the project to him?

**Mr TURRISI:** Yes, I said to him, "We have received an application" down there for that. I did that similarly with another application actually in that same stretch, being Officeworks. I actually spoke to him about that years before as well, once again because I know how passionate the mayor was about the CBD and just in passing, in the corridor, I said to him, "We have this application. How do you feel about it?" sort of thing.

**The Hon. JOHN RYAN:** Is Officeworks bulky goods?

**Mr TURRISI:** By definition, yes.

**Ms SYLVIA HALE:** Why would that be? Who determines the definition?

**Mr TURRISI:** From what I can recall, in terms of the way the council had written their definition and allowing office places in excess of, I think it was, 1,00 square metres in area.

**Ms SYLVIA HALE:** Despite the fact they were selling, say, reams of paper or pens and pencils or groceries, they are still deemed to be bulky goods?

**Mr TURRISI:** Yes.

**Ms SYLVIA HALE:** That is an unusual definition, I would have thought, of bulky goods. Former councillor Harrington said yesterday there were fairly regular briefings of councillors on developments or proposed developments in the area and that these factory outlets were frequently mentioned in those reports. He said he was aware of it.

**Mr TURRISI:** The general practice at the council was that any application that was advertised, we would advise all councillors of all development applications that were advertised.

**Ms SYLVIA HALE:** If this one had not been advertised how would the councillors have been regularly briefed about it?

**Mr TURRISI:** I do not know.

**Ms SYLVIA HALE:** In your DA process, my understanding of the way several councils work is that there is usually a checking sheet whereby the various stages that have to be gone through are ticked off and the officer initials it and any relevant comments are made. Was that Liverpool's procedure?

**Mr TURRISI:** Yes it was.

**Ms SYLVIA HALE:** So how was it possible for this development to slip through the cracks?

**Mr TURRISI:** In terms of the advertising?

**Ms SYLVIA HALE:** In any part of the process.

**Mr TURRISI:** From what I can recall, in the council's DCP for notification there is a reference there that the reason it needs to be advertised is if it is adjoining or adjacent residential and what happened was that when the officers, I think initially, made the call that it did not require to be advertised they just looked at the adjoining properties and did not take into account the fact that there was residential land on the other side of Orange Grove Road and therefore, technically, it did require to be advertised.

**Ms SYLVIA HALE:** Are you saying that council's notification policy was such that only residents needed to be advised, not adjoining businesses?

**Mr TURRISI:** Yes, that is correct.

**Ms SYLVIA HALE:** That would be not a common practice, would it, amongst many councils?

**Mr TURRISI:** Not all councils have the practice, no.

**Ms SYLVIA HALE:** Was there any discussion with yourself or Mr Hunt about whether this development application was permissible within the zoning?

**Mr TURRISI:** I do not recall specific discussions about the land use per se. I do recall having a fair bit of discussion with him about making sure that we address the impacts on the CBD from a retail perspective, because I was certainly concerned about that. So I made sure and I sort of requested him, as part of his assessment, that he dealt with that issue specifically. But in terms of the general land use, I do not recall having any specific discussion about the land use, no.

**Ms SYLVIA HALE:** Even though it was essentially a retail goods outlet you still were not concerned about it not being bulky goods?

**Mr TURRISI:** At the end of the day the officers are there to assess applications and unless he raised an issue specifically of concern or he had some doubt himself and, therefore, wanted to clarify or get a second view about it I would not have necessarily gone to the officer and questioned their decision.

**Ms SYLVIA HALE:** It would be normal, again assuming there is a tracking sheet, that someone would have to tick off whether or not it complied with the zoning requirement?

**Mr TURRISI:** Any assessment of any application, that is one of the fundamental things you would have to check.

**Ms SYLVIA HALE:** So you think Mr Hunt would have made that decision?

**Mr TURRISI:** Yes, that is right.

**Ms SYLVIA HALE:** And you would not have queried it?

**Mr TURRISI:** No, unless he raised that he had some reservations or concerns, but outside of that I would not have done that.

**CHAIR:** Earlier it was indicated to me that you have some time constraint. Could you just clarify that?

**Mr TURRISI:** I do. I have another appointment at 4.30.

**CHAIR:** We will bear in mind that you have to leave.

**Mr TURRISI:** I have to be at a meeting by 4.30, which is at Kent Street. I will need 10 minutes to get there.

**CHAIR:** We will finish at 4.20.

**The Hon. KAYEE GRIFFIN:** When Mr Hunt advised you that this application had not been advertised were there any discussions all the way through this in relation to the fact that there could have been issues with the LEP as well?

**Mr TURRISI:** I do not recall having any discussions around the land use issue, no.

**The Hon. KAYEE GRIFFIN:** Why did you send the letter to Mr Mosca rather than to Mr Hunt, given that Mr Hunt, as I understand it, was a senior planner?

**Mr TURRISI:** It was not uncommon for me in terms of the way I liked to manage issues, particularly if there was an error and depending upon the magnitude of the error. I took the responsibility of actually preparing the letter because I felt it sent a positive message that was coming from a senior manager person rather than one of the staff members, and that was just a general philosophy which I had and that is why that would have happened there.

**The Hon. KAYEE GRIFFIN:** The letter that you sent to Mr Mosca was dated 25 October and the advertising period was fairly soon after that. Apart from telling Mr Mosca that there had been an oversight, according to your letter, and so on were there any other things that had to be put in train before it could then be advertised?

**Mr TURRISI:** Other than preparing the ad, no, and sending out the notification letters, which would have been done administratively I would have thought.

**The Hon. KAYEE GRIFFIN:** So all the other work on the application itself had been done but someone had forgotten to advertise it?

**Mr TURRISI:** From what I recall I think Geoffrey had prepared a draft report and obviously at the time when he realised that it had not been advertised he suspended assessing it until the advertising was done.

**The Hon. KAYEE GRIFFIN:** Even though in Mr Hunt's original letter he said that it would have to be advertised?

**Mr TURRISI:** Which original letter, sorry?

**The Hon. KAYEE GRIFFIN:** The original letter that he sent to Mr Mosca when the DA was first received by council?

**Mr TURRISI:** I am not aware of that letter.

**The Hon. KAYEE GRIFFIN:** DAs advertised by council—according to what you have said there does not appear to be a formal process whereby discussions are held with councils so that they know that a DA is being advertised? How does the message get through to the councillors that something has been approved under delegation or something is being advertised? How did the system work?

**Mr TURRISI:** Basically how the system worked was when development applications came into the system if they required to be advertised the councillors were notified that these applications were going to be advertised and that was fundamentally it. Other than that, if they went to council, the only other way that councillors would inquire about the development applications was if they were approached by either objectors or by the applicants in terms of asking general questions and in that way they may ring up and just inquire what was the status of an application.

**The Hon. KAYEE GRIFFIN:** Is there a release that goes to council meetings about any applications that are approved under delegated authority on a regular basis?

**Mr TURRISI:** No.

**The Hon. KAYEE GRIFFIN:** Absolutely nothing?

**Mr TURRISI:** Not at the time when I was there, no.

**The Hon. JAN BURNSWOODS:** When did you leave the council?

**Mr TURRISI:** I left the council in February of 2003.

**The Hon. JAN BURNSWOODS:** What has been your occupation since then?

**Mr TURRISI:** I have basically been acting as a town planner in my own consultancy business.

**The Hon. JAN BURNSWOODS:** And in that time you have done three or four projects, you said, for Mr Mosca?

**Mr TURRISI:** For clients of Mr Mosca, yes.

**The Hon. JAN BURNSWOODS:** Have you done any projects for people associated with Mr Mosca?

**Mr TURRISI:** It depends what you mean by "associated". I mean that is pretty general.

**The Hon. JAN BURNSWOODS:** Well, you tell me, you tell us all.

**Mr TURRISI:** I mean I have obviously acted for other people in Liverpool. Now whether or not they have previously used Mr Mosca I do not know.

**The Hon. JAN BURNSWOODS:** So most of your work has been in relation to applications and so on in the Liverpool area?

**Mr TURRISI:** No. Probably only around 30 per cent of my workload is in Liverpool.

**The Hon. JAN BURNSWOODS:** Has that varied over the time? We are talking about what, 18 months since you left the council. Would it have been mostly Liverpool in the first few months?

**Mr TURRISI:** No.

**The Hon. JAN BURNSWOODS:** Have you done any work for Mr Gazal or Gazcorp?

**Mr TURRISI:** I have done one matter for the company, yes.

**The Hon. JAN BURNSWOODS:** Could you tell us what that was?

**Mr TURRISI:** That was relating to this particular site.

**The Hon. JAN BURNSWOODS:** Could you expand a bit there?

**Mr TURRISI:** Probably around six months after I had left the council, or thereabouts, I was asked for planning advice as to whether or not the individual tenancies actually required development consent within the complex.

**The Hon. JAN BURNSWOODS:** And your advice was?

**Mr TURRISI:** My opinion, as far as I recall, was that going through the LEP I was of the opinion that the individual uses actually required development consent.

**The Hon. JAN BURNSWOODS:** And was that done?

**Mr TURRISI:** I do not know.

**The Hon. JAN BURNSWOODS:** Have you done any work for any other members of Mr Gazal's family or for Gazcorp?

**Mr TURRISI:** No.

**The Hon. JAN BURNSWOODS:** Or for, is it Mr D'Agostino, the solicitor?

**Mr TURRISI:** No.

**The Hon. JAN BURNSWOODS:** Going back to the issue of what you said about advertising, I am trying to make sense of what seems to be a very circular process. You said that the decision about things being dealt with under delegated authority depended on the threshold in relation to the number of submissions received, and you gave the figure of three or four objections. If, for whatever reason, you claimed it was an oversight, although we had a copy of a letter from Mr Hunt that said advertising was necessary, but if for whatever reason the council or you yourself neglected to advertise, then I guess it is fairly hard for anyone to make submissions?

**Mr TURRISI:** Well, if we had not advertised, yes.

**The Hon. JAN BURNSWOODS:** But we have a letter from you, the one Ms Griffin quoted at some length before, dated 25 October, in which you say that there had been an oversight and it had not been advertised. I take it from your earlier evidence that that means that it really was impossible to deal with it under delegated authority because you had no knowledge whether the threshold had been reached because it had not been advertised and was not known. You then go on to say that the development application will be urgently advertised for a period of 14 days commencing on 31 October, but you then also go on to say that council has finalised the various things, and you enclose to your friend Dear Frank a copy marked "draft only" of the consent.

As I said, this seems to be a Catch-22, it is a total circle, is it not? You, as a council officer, could ensure that this application was not advertised by "forgetting" to advertise it. It not being advertised meant there was no obligation not only to inform the councillors but no obligation on you even to do the paperwork in relation to delegated authority; you could then discover—blaming Mr Hunt—that there had been an oversight and you could then quickly get it advertised only on page 33 of the *Liverpool City Champion* but, in the meantime, you could send Dear Frank a copy of the draft only approval for the application. Does that sound to you like a proper approval process?

**Mr TURRISI:** I totally disagree with the way you have put it.

**The Hon. JAN BURNSWOODS:** Explain why?

**Mr TURRISI:** The fact is I never checked every application and determined whether applications got advertised or not.

**The Hon. JAN BURNSWOODS:** So how did you know this could be done by delegated authority?

**Mr TURRISI:** As I stated to you, the actual process was one where if we did not have objections—

**The Hon. JAN BURNSWOODS:** But how could you have objections if nobody knew about it?

**Mr TURRISI:** That is right, and as I said to you, the reason why we did advertise it was because it was brought to my attention by the officers that it was not advertised so we said we had to advertise it to make sure we did follow the process. The fact of why it was—

**The Hon. JAN BURNSWOODS:** And in the meantime you sent Dear Frank a copy of the approval?

**Mr TURRISI:** Well, once again, if I remember correctly, the application had been in the system for quite a while and under the circumstances we felt it was appropriate—

**The Hon. JAN BURNSWOODS:** Who is "we", Mr. Turrisi?

**Mr TURRISI:** Well, because I spoke to Mr Hunt as well. He was the assessing officer.

**The Hon. JAN BURNSWOODS:** But Mr Hunt had said in a letter much earlier not only that it did not comply but also that it had to be advertised?

**Mr TURRISI:** Yes, and Mr Hunt would not have done the advertising—

**The Hon. JAN BURNSWOODS:** Did you lean on Mr Hunt, Mr Turrisi?

**CHAIR:** Order! Could Mr Turrisi be allowed to answer the questions please?

**Mr TURRISI:** I did not lean on Mr Hunt at all.

**The Hon. JAN BURNSWOODS:** It does not really fit with correspondence we have in his evidence.

**The Hon. David Oldfield:** The Premier's position does not fit with the correspondence we have from the department.

**The Hon. JAN BURNSWOODS:** It is a really good picture you have painted today, is it not, Mr Turrisi?

**The Hon. John Ryan:** Point of order: I am not sure that the witness is actually being asked questions but I note that my colleague the Hon. Jan Burnswoods said something to the effect that it did not accord with someone else's evidence. It is my memory that there is nothing that Mr Turrisi has said which is in any way different from the evidence that Mr Hunt gave us on exactly the same subject.

**The Hon. Peter Primrose:** What is the point of order?

**The Hon. John Ryan:** The point of order is that I do not think it is appropriate for members to be making imputations against our witnesses.

**The Hon. Peter Primrose:** To the point of order: I would just ask the Chair to clarify that it is inappropriate for members to be making imputations against witnesses.

**The Hon. David Oldfield:** Not when they are not correct.

**The Hon. JAN BURNSWOODS:** Could I say something to the point of order? I would refer to Mr Harrington's evidence that suggested yesterday that he had concerns about Mr Mosca's relationship with council staff and councillors and he agreed that Mr Mosca got preferential treatment. Perhaps you have a comment on that, Mr Turrisi?

**Mr TURRISI:** I do not believe he had preferential treatment at all.

**The Hon. JAN BURNSWOODS:** But Mr Harrington, the former mayor, believes that. How would you explain that discrepancy?

**Mr TURRISI:** I cannot explain to you why Councillor Harrington or Mr Harrington would have made that comment.

**The Hon. David Oldfield:** Point of order: Jan Burnswoods is both misleading the rest of us and also not accurately displaying to the witness what was said. Mr Harrington said that he felt that he had preferential treatment with the councillors, most specifically the Labor councillors, not the council officers.

**The Hon. Peter Primrose:** This is a debating point.

**The Hon. David Oldfield:** You take it for what you like, the fact is Jan Burnswoods is not properly portraying the evidence.

**CHAIR:** Order! In relation to both those points of order the matter can be resolved by observing the transcript, which will be available later today. So Ms Burnswoods if you could stick to asking questions?

**The Hon. JAN BURNSWOODS:** If I come back to a question that you did not answer, Mr Turrisi. You could deal with this matter under delegated authority because you had a threshold in relation to the number of submissions received, but the matter was not advertised so how did you—

**Mr TURRISI:** It was advertised.

**The Hon. JAN BURNSWOODS:** The matter was not advertised until after you sent Dear Frank a copy of the draft only consent. Can you tell me how you made the decision that this matter would be dealt with under delegation when by definition objections had not been received and so you were not in a position to tell the council whether it should be dealt with under delegation or go to the council?

**Mr TURRISI:** Once the advertising period had finished if we did not receive any objections then there was no reason why we could not deal with it under delegation.

**The Hon. JAN BURNSWOODS:** But you had already sent Dear Frank a copy of the consent and you had justified over months dealing with it under delegation?

**Ms SYLVIA HALE:** Mr Turrisi, just to clarify this matter, presumably the way in which the application was assessed would make absolutely no difference for the outcome as to whether it was approved or not, it is only the outcome that would be approved under delegated authority or by the council, but the assessment process would be identical up to the point of—

**Mr TURRISI:** That is correct.

**Ms SYLVIA HALE:** That whole assessment could have gone on?

**Mr TURRISI:** That is correct. The general view was taken the reason we did attach the conditions, as I recall, was because when our matters go before the independent hearing assessment panel prior to going to council we attach all the conditions on those reports anyway. So the view was that at any stage those conditions were going to become public very shortly. I can recall having a conversation with Frank that these were draft conditions and if there were additional conditions which may have been imposed due to objections being raised so be it. They were just draft conditions and the view was taken that because the application had been with the council quite a while that there was an error and we just felt that was acting in good faith without trying to be seen to be creating red tape for them.

**The Hon. JAN BURNSWOODS:** How many conversations did you have with Frank?

**The Hon. JOHN RYAN:** Mr Mosca.

**The Hon. JAN BURNSWOODS:** Mr Turrisi said, "I had these conversations with Frank".

**The Hon. JOHN RYAN:** We do not refer to people like that in Parliament.

**The Hon. JAN BURNSWOODS:** How many conversations did you have with Mr Frank Mosca?

**Mr TURRISI:** Regarding this particular matter I probably had in the order of maybe three or four discussions.

**The Hon. JAN BURNSWOODS:** How many would Mr Hunt have had?

**Mr TURRISI:** I do not know. Probably half a dozen maybe.

**The Hon. JAN BURNSWOODS:** What time between June and October did you take over carriage of this matter from Mr Hunt?

**Mr TURRISI:** I have never taken carriage of the matter. As I said earlier, Mr Hunt would come to me at various stages, like all officers with any of their applications if they wanted to talk to me about any issues they had. My door was always open to talk to officers.

**The Hon. JAN BURNSWOODS:** Why did you write the letter and not Mr Hunt?

**Mr TURRISI:** As I said previously, my general process was that if we made an error and the error seemed to be quite a substantial one I had a general view that I would like as the director of the department to be the one who signs the actual letter going to those people so they felt that it was coming from a senior level.

**The Hon. JAN BURNSWOODS:** Even though Mr Hunt had already written to Mr Mosca saying it had to be advertised.

**Mr TURRISI:** As I said to you earlier, that earlier letter may have gone out. I do not know the letter you are talking about. But at the end of the day, it is not Mr Hunt who prepares the advertising. It is done from a clerical point of view. And it was Mr Hunt who advised me that it was not advertised. Subsequently, it was the reason why we then advertised it.

**The Hon. JAN BURNSWOODS:** Can you tell me the advertising policy at that time?

**Mr TURRISI:** In what regard?

**The Hon. JAN BURNSWOODS:** The outlet, the period, the display of the advertisement. What was the policy?

**Mr TURRISI:** My understanding at the time was the advertising policy was for two weeks and a sign being put on the property.

**The Hon. JAN BURNSWOODS:** Was that policy followed in this case?

**Mr TURRISI:** I cannot answer that. That is something the officers would have done as part of the process.

**The Hon. JAN BURNSWOODS:** We have had evidence that it was advertised in a small advertisement on page 33 of the *Liverpool City Champion* and nowhere else.

**Mr TURRISI:** Once again, the ads were not done by our department. The ads were done through our public relations area. I cannot comment how it was advertised.

**The Hon. JAN BURNSWOODS:** You had no knowledge of how it was advertised? In my council area there is a huge full-page advertisement including a message from the mayor, notices about tree planting and a whole list of development approvals. Despite the absolute inadequacy of the advertising process on page 33 of the *Champion* the period for objections closed on 14 November.

**Mr TURRISI:** Right.

**The Hon. JAN BURNSWOODS:** That is, objections by people having a chance to know about it from that very small ad on page 33, and you managed to approve it the following day.

**Mr TURRISI:** I do not know when it was approved.

**The Hon. JAN BURNSWOODS:** We have been given evidence that a Liverpool City Council officer under delegation granted the development consent on 15 November. The submission period closed on 14 November. Is that the normal speed at which you work?

**Mr TURRISI:** If that is what the officer has done, then that is what the officer has done.

**The Hon. JAN BURNSWOODS:** You personally had already sent the draft to Mr Mosca. Do not try now to hide behind other officers. You personally sent the draft.

**The Hon. DAVID OLDFIELD:** Your Minister had draft press releases, then she knocked it back. Your Minister was drafting the gazettal to the Parliamentary Counsel.

**The Hon. JAN BURNSWOODS:** You come before this Committee to say that the process was ordinary, your overriding of Mr Hunt was ordinary, the failure to advertise until after you had made up your mind to grant the application was ordinary, and the failure to tell the councillors formally about it was ordinary. That is the way you generally conducted your business, then you left the council and went to work for Mr Mosca. That is your evidence in a nutshell, is that right?

**Mr TURRISI:** No.

**The Hon. JAN BURNSWOODS:** How would you explain your evidence?

**Mr TURRISI:** I think I have just been explaining it for the last 20 to 40 minutes in terms of how I see it.

**The Hon. JAN BURNSWOODS:** Not very successfully.

**The Hon. DAVID OLDFIELD:** Mr Turrisi, you did not go to work for Mr Mosca, you contracted to Mr Mosca and you dealt with a number of other people?

**Mr TURRISI:** I was not contracted to Mr Mosca, no.

**The Hon. DAVID OLDFIELD:** You were working as an independent.

**Mr TURRISI:** Yes, I have got my own business.

**The Hon. DAVID OLDFIELD:** You do not work for Mr Mosca?

**Mr TURRISI:** No.

**The Hon. DAVID OLDFIELD:** When we talk about the application closing on 14 November, had the application been advertised for two weeks?

**Mr TURRISI:** That is the standard process—two weeks, 14 days.

**The Hon. DAVID OLDFIELD:** That is what happened?

**Mr TURRISI:** That is what I understand.

**The Hon. DAVID OLDFIELD:** Were there any objections at all?

**Mr TURRISI:** Not that I am aware of because it was dealt with under delegation.

**The Hon. DAVID OLDFIELD:** Having had no objections, having complied with the two-week policy of advertisement, there was nothing untoward about approving the day after the two-week period?

**Mr TURRISI:** I assume so. That is why the officer approved it.

**The Hon. DAVID OLDFIELD:** The officer had had the matter for some 10 months?

**Mr TURRISI:** That is correct.

**The Hon. DAVID OLDFIELD:** The last thing they needed to do was to check if there were any objections?

**Mr TURRISI:** They would have checked if there were any objections, which would have come through the system, prior to issuing it.

**The Hon. DAVID OLDFIELD:** Much has been made of "Dear Frank" letters. Does somebody have to be your best buddy for you to address them as "Dear Frank" or if you are on a first-name basis would you write a letter using "Dear Frank"?

**Mr TURRISI:** I have always written my letters if I know the person's full name with the Christian name first.

**The Hon. KAYEE GRIFFIN:** Could I ask one question about the advertising period?

**CHAIR:** Does the Government have any more questions of Mr Turrisi apart from that?

**The Hon. KAYEE GRIFFIN:** No.

**CHAIR:** Do you wish to recall him?

**The Hon. JAN BURNSWOODS:** I presume in the deliberative meeting to follow we will discuss recalling witnesses.

**CHAIR:** Mr Turrisi, if the Government were to recall you tomorrow, would you be available?

**The Hon. JAN BURNSWOODS:** Given it has been widely telegraphed that we are having a deliberative meeting to discuss calling or recalling witnesses, I do not understand why only Mr Turrisi should have an inquisition now. The same question may have been asked of earlier witnesses today, yesterday or Friday. Clearly, this is a matter for debate.

**CHAIR:** On the advice of the clerk, I am being courteous to the witness.

**The Hon. JAN BURNSWOODS:** It is a pity that some other witnesses were not given the same courtesy.

**The Hon. KAYEE GRIFFIN:** My question relates to the advertising period of 14 days, from 1 to 14 November, and the development application was given approval on 15 November by delegated authority. Surely there have been times that a person lodges an objection on the very last day and it may not reach the planner early the next morning. Was it not premature to give an approval the day after the advertising closed, just in case there were some objections coming in? Is that a standard practice, given you said in your letter approval would be made a few days after the close of advertising if there were not any objections?

**Mr TURRISI:** As I said, Jeffrey Hunt was the responsible officer who was assessing the application. Other than the fact I wrote the letter to Mr Mosca advising him of the need to advertise, after that I did not have any involvement with the application.

**The Hon. KAYEE GRIFFIN:** It must be a very efficient council if you can be sure that any objections are in the next morning and the development approval is handed out that day.

**(The witness withdrew)**

**(The Committee adjourned at 4.25 p.m.)**