

**REPORT OF PROCEEDINGS BEFORE**

**GENERAL PURPOSE STANDING COMMITTEE No. 4**

**INQUIRY INTO THE MANAGEMENT OF THE SYDNEY  
HARBOUR FORESHORE AUTHORITY**

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**At Sydney on Friday 18 February 2005**

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**The Committee met at 9.45 a.m.**

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**PRESENT**

The Hon. J. A. Gardiner (Chair)

The Hon. J. C. Burnswoods

The Hon. A. R. Fazio

The Hon. K. F. Griffin

Ms S. P. Hale

The Hon. D. E. Oldfield

The Hon. G. S. Pearce

The Hon. T. S. Tsang

**CHAIR:** Welcome to the first public hearing of the inquiry by General Purpose Standing Committee No. 4 into the management of the Sydney Harbour Foreshore Authority. Before we commence I would like to thank all those who have made submissions and, in some cases, supplementary submissions to this inquiry. We have received more than 100 submissions and the participation of those persons and organisations is appreciated. Some of the major submissions to this inquiry have been placed on the Legislative Council committee web site. The first witnesses to appear at today's hearing are the chief executive officer of the Sydney Harbour Foreshore Authority, Dr Rob Lang, and the chairman, Mr John Isaacs.

As requested by the chairman and chief executive officer, they will begin their evidence with a presentation in which they aim to provide an overview of the role and structure of the Sydney Harbour Foreshore Authority. Therefore, it would be appreciated if members could refrain from asking questions until after the briefing, when we will have a short adjournment and then Dr Lang and Mr Isaacs will answer questions from Committee members.

In relation to media broadcasting, the Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the broadcasting guidelines are available from the table by the door. In reporting Committee proceedings the media must take responsibility for what they publish, including any interpretation placed on evidence before the Committee.

In accordance with these guidelines, while a member of the Committee and witnesses may be filmed or recorded, people in the public gallery should not be the primary focus of footage or photographs. Under the standing orders of the Legislative Council evidence and documents presented to the Committee that have not been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by Committee members or by any other person. The usual arrangements in relation to messages continue for this hearing and I would appreciate it if everyone would turn off their mobile phones during the hearing.

**ROBERT DAVID LANG**, Chief Executive Officer, Sydney Harbour Foreshore Authority, 66 Harrington Street, The Rocks, and

**JONATHAN MARTIN ISAACS**, Chairman, Sydney Harbour Foreshore Authority, 66 Harrington Street, The Rocks, affirmed and examined:

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

**Mr ISAACS:** Yes, I am.

**Dr LANG:** Yes, I am.

**CHAIR:** If either of you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be seen or heard only by the Committee, please indicate that fact and the Committee will consider the request. As I have indicated, you wish to present an overview of the work of the authority, which the Committee would appreciate. You may proceed down that track.

**Mr ISAACS:** Thanks very much, Madam Chair and members. As the Committee will be aware, my appointment as chairperson of the Sydney Harbour Foreshore Authority followed the retirement on medical advice of Mr Gerry Gleeson in September 2004. Mr Gleeson was the founding chairperson of the authority in 1999. I think it is useful to begin by giving just a little historical perspective to the formation of the authority and its responsibilities.

The Sydney Harbour Foreshore Authority was created in 1999 through the amalgamation of the Darling Harbour Authority, the Sydney Cove Redevelopment Authority and the City West Development Corporation to consolidate the planning and management of an important section of Sydney Harbour's foreshore. The authority is a statutory authority, which draws its objectives and functions from the Sydney Harbour Foreshore Authority Act 1998. Under this Act the organisation is

charged with the responsibility of balancing community, cultural, tourism, heritage and commercial objectives within its defined foreshore area.

It should be noted that we have responsibility for just a small proportion of the harbour foreshore and that we directly own even less. I refer the Committee to the map on page 8 of the authority's first submission to clarify our geographical boundaries and land holdings. The reason behind amalgamating these different agencies into the one inner harbour foreshore body was made clear in the second reading speech to the Act and in the Act itself. The objectives of the authority are to promote, co-ordinate and secure the orderly and economic planning, development and use of the foreshore area, including the provision of infrastructure; promote, co-ordinate and manage cultural, educational, commercial, tourist, recreational, entertainment and transport activities and facilities; and to plan, enhance and manage the development, promotion and use of the foreshore areas.

The Parliament noted then that the authority would be involved in increasing public access to the foreshore, linking foreshore open spaces, retaining heritage items and relevant maritime activity, and would adopt a holistic approach to issues such as heritage, urban parklands, urban consolidation, commercial development and remediation. We believe that when one looks at what we have achieved and what we have protected in the past five years, it is evident that the model is one that has provided a better result for the people of Sydney and New South Wales than that which would have been achieved by disparate local agencies and landowners.

Now let me spend a moment on our responsibilities. The authority has two major roles—place management and place development. In both aspects we take long-term views of our operations to achieve good urban outcomes and balance the needs of a wide range of stakeholders. So let me talk about place management first. Place management is about managing places profitably and socially. It is about being a good landlord, maintaining the assets, the heritage and the public domain, and managing the property portfolio efficiently and commercially to meet precinct and customer needs.

Our major places are Darling Harbour and The Rocks. But place management is not just about property; it is really about people, creating a place that is active, vibrant, secure and successful, encouraging tourism and visitation to support precinct success and achieving enriching and sustainable social results through our initiatives in foreshore access, public events, parks and open space, community interaction and preserving natural and cultural heritage. Place management is also about promoting places effectively to capture the economic and cultural value of the precincts for tenants, visitors and the New South Wales economy.

For example, on the social front we have a role in managing existing parks and creating new ones. Right now we are returning one of Sydney's most significant headlands, the site of the old Caltex refinery site at Ballast Point, to public ownership and transforming it into a new harbourside park for the enjoyment of all Sydneysiders. On the heritage front, we own and maintain 98 heritage assets in The Rocks. That is core business. And we have also completed major archaeological works at Dawes Point and undertaken multimillion-dollar expenditure on the preservation of the 120-year-old heritage seawall, just completed.

On the Pyrmont peninsula, in 2004 we were awarded the prestigious Greenway Award for Conservation by the Royal Australian Institute of Architects for the transformation of an old maritime wharf into useful contemporary office space whilst maintaining its unique heritage features. As a landlord, we manage 82,000 square metres of retail space. We have over 500 tenants, generating \$134 million annually and an independent assessment conducted by Deloitte in 2001 demonstrated that businesses within the authority's precincts generate 51,000 jobs.

The authority's \$1.275 billion worth of assets generate revenues annually that provide the funds for us to deliver value to our communities and stakeholders. We are not centrally funded by government but rely on our own revenues to meet our costs, which include over \$100 million spent in the last five years on public domain and infrastructure; for example, the resurfacing of George Street in The Rocks and the extension of the foreshore walk, and other community service obligations, such as education programs, heritage maintenance, parks and gardens, community events and contributions to major State events like New Year's Eve and Australia Day.

Australia Day alone this year saw record people movement numbers of 208,000 people at Darling Harbour and nearly 100,000 people visiting The Rocks. The success of our place management activities can be seen in the record number of 35 million visitations that our precincts attract annually—26 million in Darling Harbour and 9 million in The Rocks. Over one million people annually come to the Sydney Visitor's Centre, which is wholly funded and operated by the Sydney Harbour Foreshore Authority as a service to the community. Our revenues substantially come from our managed businesses and the rent we charge our 500 tenants, and an increasingly smaller contribution from the few remaining land sales that are left from the Government's major redevelopment project in Pyrmont-Ultimo. The economic benefit to New South Wales of the Authority's activities was estimated by Deloitte in their 2001 report at \$9 billion per annum directly and indirectly, which is a substantial contribution to the prosperity of this State. Place management is clearly a core focus of the organisation.

Let me turn now to the second of our two roles, that of place development. Place development is all about implementing good urban design, enhancing places according to relevant planning instruments and creating quality environments that are diverse, accessible and financially, socially and environmentally sustainable. I should point out that our place development role represents about 5 per cent of staff resources and 13 per cent of annual operating expenditures. It is a somewhat diminishing aspect of the Authority's activities. For example, in Pyrmont-Ultimo for the last 10 years the Authority and its predecessor, City West Development Corporation, have transformed this suburb from a landscape of disused industrial sites and abandoned housing to a living, vibrant community with 13,000 residents and 22,000 workers. In the process the Authority has taken a holistic approach to issues such as heritage, urban parkland, open space, urban consolidation, retail and commercial development, and affordable housing. Over the past 10 years we have spent over \$50 million creating over 10 hectares of new urban parkland and open space in Pyrmont-Ultimo. Dr Lang will expand further on this achievement shortly.

However, it should be said that our role as a place developer is coming to an end in Pyrmont-Ultimo, which has been a significant urban renewal project. The Minister announced this morning that we will shortly be handing over the planning powers and local management for this area to the City of Sydney. Our role is complete. We have achieved all the objectives set for us. It is now appropriate to move on. I stress, and this is something the Committee will have observed from our submissions, I stress that property development has never been the primary focus of the Authority. It is our commitments to place management—the conservation of built heritage in places like The Rocks and White Bay; the management, upkeep and security of The Rocks and Darling Harbour; the ongoing maintenance and landscaping of some 30 hectares of parkland; the creation of world-class events and the marketing of Sydney's key tourist and lifestyle precincts—it is these place management commitments that have always been our key focus in terms of cost, resources, staff or by any other measure. This will be even more so as the majority of our place development projects inherited from City West Development Corporation now conclude.

Another important aspect of place management is, of course, our planning assessment role, which, as we will discuss later, is limited in geographical and planning scope; is in the vast majority of cases concerned with the administration of planning assessments for minor matters; is exercised with the level of diligence, probity and separation of powers that we believe exceeds normal local government processes. And I think it is useful for me just to give a bit of history. Prior to August 2003 the Authority had delegations from the Minister for minor development applications in The Rocks and Darling Harbour under SEPP 56, which governed Sydney Harbour foreshores and tributaries. Until then the Department of Planning—now the Department of Instruction, Planning and Natural Resources—undertook the assessment task for the Minister in these areas for major developments. It should be noted that these are designated State significant areas and, therefore, the Minister is the consent authority, not local councils.

In August 2003, in order to allow the Department of Infrastructure, Planning and Natural Resources to focus on more strategic matters and to streamline assessment processes, given the Sydney Harbour Foreshore Authority's expertise in these unique precincts, the assessment role for major development applications within the Authority's boundaries was transferred from the department to the Authority. The Minister retained his role as the consent authority. At the same time delegations were amended to include the determination of minor DAs in Pyrmont and other precincts within the Authority's legislative boundary. The board considers development assessments prior to

them being forwarded to the Minister for determination. But our role is not to endorse or approve them, but rather to ensure that due and proper process has been followed, that all issues raised during the public consultation have been addressed and that all relevant information is available for the Minister. That is it. We do not reflect on the merits or otherwise of the conclusions reached. That, clearly, is a matter for the consent authority—the Minister.

As our submissions have demonstrated, this transfer has been successful in achieving a more efficient processing of development applications. It should also be noted that of the 364 DAs processed up to that time of our submission only six were major DAs and only one of them was a project where the Authority had a financial interest, and that application, the one where we had a financial interest, was sent to an independent third party assessor. It was not done by our staff. Dr Lang will talk about the probity rules that the Authority board insists on in carrying out this transferred responsibility. Our submission shows in detail that the Authority's planning and assessment unit is, quite simply, a professional public service, an efficient and effective service to the stakeholders of our State significant areas. The Authority is not the consent authority: that is the Minister. Our job is to do a professional job of the planning assessment process according to the rules laid out in the Environmental Planning and Assessment Act in accordance with strict probity rules.

If I may now just turn to the Luna Park Trust, the role that the Authority board plays in managing the affairs of the trust and the statutory role that the Authority has. As members will recall, Luna Park Reserve is Crown land under the Luna Park Site Act 1990. The Luna Park Site Amendment Act 1997 enabled a wide range of land uses within Luna Park and commercial development of the cliff top site. The proposal received bipartisan parliamentary support to ensure the park reopened as a commercially viable operation at no cost to the Government. In 1998 the Government acted to retain the heritage of the site and its operation as an amusement park by awarding redevelopment rights to a company that is now called Luna Park Sydney. In February 2001 Luna Park was brought under the provisions of SEPP 56 as a State significant project with the Minister as consent authority. The Department of Planning, now the Department of Infrastructure, Planning and Natural Resources, became the assessment authority for the Minister.

At the same time the Sydney Harbour Foreshore Authority Board was appointed under the Crown Lands Act to manage the affairs of the Luna Park Reserve Trust due to its expertise in heritage conservation and its management of significant foreshore areas. As administrator the Authority's role is to ensure that the commercial agreements for Luna Park already determined prior to our involvement are executed with proper probity and regard to the Luna Park Act and other governing documents, for example, to ensure the heritage fund obligations are met and the heritage elements of Luna Park are properly maintained. Any developments prior to 2003 were assessed by the predecessor of the Department of Infrastructure, Planning and Natural Resources and the Department of Infrastructure, Planning and Natural Resources retained responsibility for enforcing or amending those DAs. In addition certain other matters, such as the regulation of noise, are the responsibility of North Sydney Council under the EP&A Act. Our planning assessment role only commenced from August 2003 for new DAs for the Minister's determination.

The Sydney Harbour Foreshore Authority is not the developer: we are not the consent authority. We had no role in the development of the lease arrangements, nor the determination of the original planning parameters. We have no role to play in noise issues. We have no commercial interest in what might be developed on the site. Our only interest is as the landlord, ensuring that Luna Park Sydney meets its lease conditions, and as planning assessors in checking any new DA against whatever environmental planning instruments govern the site. So our role is very defined and quite limited. I think this is somewhat misunderstood by some residents of Milsons Point and I know, from their submissions, that some of them have their disagreements with how the park has been rejuvenated. But most of the concerns raised are the responsibilities of other organisations and agencies, not ours. Dr Lang will address this issue in his statement.

Let me turn to the role of the board. The role of the board is set out in the Sydney Harbour Foreshore Authority Act 1998. All board members have at least five years experience as directors, although that is not a statutory requirement. Expertise covers executive experience, government, community, architecture, property, legal, financial and commercial, corporate governance, and marketing. They are the skills that are represented around the board table. Board members are independent spirits who speak freely and are listened to respectfully. It is my job to ensure that free

and open discussion prevails and permeates throughout the Authority. We are well served by a stable executive, and capable and professional staff. The Sydney Harbour Foreshore Authority has an international reputation as a place manager and expert on foreshore management and renewal. It is not surprising that our advice is often sought by similar organisations around Australia and overseas on how we have succeeded in Darling Harbour, the Rocks and Pymont-Ultimo. That's what we do. That's what we're good at.

As we move forward our focus is on foreshore precincts. We are therefore delighted that the Government has asked us to project manage East Darling Harbour. The exact functions are not yet clear, but we stand ready to provide our expertise to such a landmark foreshore area. We look forward to getting the balance right for the people of Sydney that will open up that part of the city to the public, achieve the open space objectives, provide some expansion space for the CBD and extend the foreshore for public access. Let me conclude by saying this: As a place developer the Authority has managed urban rejuvenation that is acknowledged to be of world standard, transforming disused industrial sites into urban communities with a level of continuous public foreshore access that is the envy of any other harbour city. As a place manager, the Authority has protected, interpreted, managed and marketed some of Australia's most significant foreshore places, generating new life and new economy into them and guaranteeing their security in the process. Accordingly, I am happy to further explore the Authority's excellent record and hope that I can provide this parliamentary Committee with any assistance it may require. Dr Lang will now enlarge on those matters I mentioned earlier.

**Dr LANG:** May I start by tabling two exhibits, two photographs? If I could ask for them to be distributed around and I will talk to them as I go through my speech. Mr Isaacs has spoken to you of the origins of the Sydney Harbour Foreshore Authority and highlighted that we are, in fact, a place manager first and foremost of some of Sydney's and Australia's most important and most treasured locations. This is a public service that we provide to the Government and to the people of New South Wales. And I think our levels of success in terms of visitation, our events, activation of our areas, the social outcomes that we have achieved and the numerous tourism and heritage awards that we have won are all testament to the quality of that service. Perhaps, strangely, that place management role is not the focus of this inquiry. Instead the interest appears to be in our developing places of Pymont, Luna Park and Cooks Cove and the various processes surrounding those projects. So I would like to clarify our role in each of those three areas, if I may.

Firstly, in Pymont-Ultimo, Mr Isaacs mentioned that the urban renewal project that started 10 years ago in 1994 with the creation of the City West Development Corporation, which was, of course, a sunset organisation, which was asked to rejuvenate Pymont by overseeing the implementation of SREP 26, that is the State Regional Environmental Plan No. 26. The Sydney Harbour Foreshore Authority inherited this role in 1999. When the Authority takes on a place development project our aim is for a good urban outcome within the parameters of the planning blueprint, in this case SREP 26, to achieve the objectives that we're asked to deliver, and in this case a liveable vibrant community with the right balance of residential, commercial and open space. Our activities are not driven by a private developer's goal of highest and best use to maximise profit, because the highest and best use does not drive the right mix, doesn't create infrastructure, doesn't envisage the lower value uses such as open space, doesn't activate the precinct with the shops, the cafes, the public squares and the employment opportunities. Market forces with private developer's acting individually do not deliver such things. Only a co-ordinated approach with holistic planning, a long-term vision and the Government's ability to deliver infrastructure works with such a large-scale renewal.

I would like the members to observe image A, which has been circulated. This is an image of Pymont in 1992. I just want to focus on that for a moment. By the early 1990s Ultimo-Pymont had seen its population dwindle from around 30,000 at the end of World War II to 3,000 as traditional industries left the peninsula, taking employment opportunities with them and leaving a landscape of disused contaminated industrial sites and abandoned housing, as Mr Isaacs has said. The Government did not move the industry out, those changes were due to world business and markets, leaving behind them what was, in a planning sense, a vacuum. The need for redevelopment of Pymont was clear. There was no question about that. The green zones on image A indicate usable public open space in that year. The City West Development Corporation's role, which was later transferred to the Authority, was to implement the planning schemes contained in SREP 26 and deliver a rejuvenated Pymont-Ultimo within a decade.

Turning to image B, this is Pyrmont in 2004. The green zones indicate usable open space today, while the white shading indicates the SREP 26 zone that was developed by the Authority and the red zone indicates Jackson's Landing, the former CSR industrial site, not controlled by the Authority. So what have we got after 10 years? Well, first, there's approaching 10 hectares of new open space, predominantly in the form of large foreshore parklands. We can also clearly see the new foreshore walk now nearing completion, which is part of the Authority's plan to build 15 kilometres of foreshore walk from Woolloomooloo Bay to Blackwattle Bay.

The authority has delivered according to plan a range of housing options, with a particular view to maintaining affordable housing options for the peninsula's long-term residents. The housing symbols on the maps denote either public housing or affordable housing projects through the creation of City West Housing Pty Ltd, which is partly funded by the foreshore authority's land sales. The Ultimo-Pyrmont area now attracts leading information technology, telecommunications and media organisations. Its resident population is now some 13,000, with a further working population of around 22,000. Some 21 significant heritage sites have been preserved, restored or reinterpreted, including the Royal Australian Institute of Architects Award-winning Jones Bay Wharf.

In terms of scale, the highest building the authority has designed or approved on a foreshore site in Pyrmont is six storeys at Darling Island. The highest building the authority has designed or assessed anywhere in Pyrmont is eight storeys, and that site is some 500 metres back from the foreshore. Is there high-rise development in Pyrmont? Yes, there is. Are there examples of buildings right down to the foreshores? Yes, there are. These can be found in the areas and sites not owned and controlled by the authority, marked on the image in front of you in red. Even though what has been built is permissible under SREP 26, the private developers have maximised the development of each site. This raises a significant point regarding the Government-based land ownership and development model that the authority has implemented compared with the private sector, for if the Government had not chosen to take a close hand and have an actual ownership role in the residential and commercial development of the SREP 26 sites, what was the alternative—let the market take its course? Well, there is the result in the red zone and it is a different landscape. This is because a private developer has the aim of achieving the highest value for each site whereas the Government has the ability to take a broader social perspective.

Another example is the old water police site at Elizabeth Macarthur Bay, which will now transfer to the City of Sydney in response to an increasingly engaged community and the city's wish to turn that site into a park. While SREP 26 zoned the site for a combination of open space and residential development, a private developer would have done just that. The authority, after extensive community consultation over two years, was suggesting a lower-density development, with more than half the site dedicated to open space and a community plaza and park. This adopted a position that was advocated and supported by local community groups at the time. However, the community groups' wishes changed over time and the authority responded appropriately to guarantee the site's future as open space in the hands of the City of Sydney. This is a great example of the co-operation between the city and the authority in responding to those community concerns.

Obviously, I cannot help but feel that the authority and its predecessors have added tremendous value to Pyrmont by delivering SREP 26 as we have. We have been able to secure an approach to planning, the supply of infrastructure, the transformation of sites and the development of the right balance of community facilities, retail, commercial and open space, which is the basis upon which a successful Pyrmont community has been built. Accordingly, the authority's role is now complete in Pyrmont and, as the Minister announced today, we are handing over the responsibility of the area back to the City of Sydney. The process has already commenced, with various public assets being transferred to the city, and planning controls will follow. This is entirely appropriate as the State's rejuvenation role concludes. I refer the Committee to the booklet "Pyrmont-Ultimo: A Decade of Renewal", which explains this story in more detail. I am happy to table that for the Committee.

**CHAIR:** Thank you.

**Dr LANG:** Let me spend a moment on foreshore development in general. Pyrmont-Ultimo is a good example of a location that is State significant for a particular time and reason: to effect an urban renewal that was very much needed and beyond the scope of local government. Our most recent

acquisition of Ballast Point is another example, where the State has intervened to protect this State significant site from inappropriate development. These are different projects but both are examples of exercising that balancing act, providing a realistic response to the multiple pressures that have always been, and will always be, placed on these precious assets of Sydney's foreshore. The foreshores are, quite rightly, places that everyone has a view about and everybody's view needs to be taken into account. It is achieving this for the people of New South Wales—for all the people of New South Wales—that is the primary responsibility of the Sydney Harbour Foreshore Authority. It is a reasonably complex and delicate balance of responsibilities that the authority is asked to manage.

At Ballast Point we have produced an exceptional draft master plan for this site to design principles actually developed—not just consulted on—with the community. It will be a magnificent park and arguably the most significant open space addition to the harbour in a century. But I think one need not speculate for too long on what fate may have befallen Ballast Point without that government intervention. The results of this are writ large on the harbour foreshore landscape when we look at sites that the Government has not intervened in, such as the old Balmain power station site, Birkenhead Point, Rhodes and other sites running west of the harbour where local councils have been either unable or unwilling to rein in developers.

In his excellent address on the harbour, Mr Keating made a robust case for the State Government having a central planning role in these matters, being, he said, "the only body capable of taking a city-wide view." Only the Government can set aside the most valuable land for public use. Only the Government can negotiate the construction of the light rail and other infrastructure that supports Pymont. Only the Government can give away a prime site like the site that the Sydney Harbour Foreshore Authority gave to the City of Sydney for the Ultimo Aquatic Centre for \$1 simply because it was the right thing to do to support the development of this important community infrastructure. Individual criticism notwithstanding, the majority of Pymont residents acknowledge that the overall result is an excellent living and working environment, providing the right balance of working, living and recreational opportunities. This sentiment is made very clear in an independent post-occupancy research study carried out over eight years in Pymont, which we would be happy to provide to the Committee if it wishes.

Let me turn now to Luna Park. Mr Isaacs gave an overview of our role at Luna Park. The majority of the submissions made to the inquiry, as he said, were about Luna Park—and, in fact, most of those were about arrangements agreed by the Government prior to the authority having any role on the site. As he said, our planning assessment role started in late 2003. We therefore do not have first-hand involvement in many of the issues raised in submissions. They are generally matters for North Sydney Council, the Department of Infrastructure, Planning and Natural Resources or criticisms of arrangements embodied in legislation that was supported by both sides of Parliament in 1997.

The one matter that we do have a role in is the assessment of new DAs, such as the proposed building on cliff-top site C. Let me explain our role in that. A development application was submitted to the authority as the relevant assessment authority for the site. One of the first stages of the statutory assessment process is to determine the permissibility of the proposal and to clarify that the agency to which it has been submitted is the correct agency to assess it. Multiple planning instruments apply to this site, with additional instruments in draft form, and so potential issues and challenges regarding the interpretation of these instruments certainly exist. Accordingly, as part of this process, the authority's assessment branch sought legal advice on the permissibility of the project and the relevant planning controls for that site. This meant that progress towards any public exhibition or comment was paused until the permissibility of the application was determined. Accordingly, the application could not be provided to North Sydney Council for comment or placed on public exhibition for that reason.

Legal advice to the authority was that there were conflicting legal views on the relevant statutory instruments applicable to the site against statements made in Parliament and in legislation. Erring on the side of caution, the authority advised the applicant that it could not recommend acceptance of the application but, if they disagreed with the authority's views on the relevant planning regime or the legality of the proposed building on cliff top, there were the usual rights of appeal to the Minister under section 89 of the EP and A Act. It has been suggested that the authority acted inappropriately in advising the applicant of its rights of appeal. On the contrary, it is the responsibility of planning authorities to advise applicants of appeal rights if they disagree with determinations.

These options are legally available to them. This sort of information is routinely given by planning authorities every day.

It was clear that the conflicting legal views on the relevant planning instruments applicable to the site were not consistent with the statements made in Parliament and in legislation. Therefore, on 15 March 2004 the Minister for Infrastructure and Planning, and Minister for Natural Resources advised the Legislative Assembly that he would take necessary action under SEPP 56 so that the spirit and intent of Parliament in passing the Luna Park Site Amendment Act 1997 were reflected in planning controls for the development of the cliff-top site. The Minister then appointed an independent expert committee to recommend planning controls. Once they are finalised the authority will assess any prospective DA for the site against those relevant planning controls. That is our role.

Another project of State significance is the Cooks Cove project. It is a major infrastructure project on a 100-hectare site on the shores of the Cooks River near Mascot Airport. It is an important element in the growth of Sydney around the airport corridor and will provide significant employment and economic benefits to the State over the next 10 to 20 years. The site will become a technology and business precinct, with about 70 per cent open space, foreshore walkways and environmentally protected wetlands. It is a reasonable question to ask why the foreshore authority is involved in a project so far from Sydney Harbour. The short answer is that we were asked to do so by government because of our specialist skills and expertise in master planning, property project management, community consultation and in dealing with significant waterfront lands. As the area was outside the authority's legislative boundary, the vehicle for our involvement was the creation of the Cooks Cove Development Corporation in August 2001 and the subsequent appointment of the authority as the Cooks Cove Development Corporation's agent to exercise its functions.

I should make it clear that we are not a landowner at Cooks Cove. The land is owned by the Department of Infrastructure, Planning and Natural Resources, Rockdale council, Sydney Water, the Roads and Traffic Authority and Kogarah Golf Club, and the project was initiated by the Department of State and Regional Development. Our role has been limited to co-ordinating the master plan, which was ultimately approved by the Minister in June 2004, while the Department of Infrastructure, Planning and Natural Resources prepared the regional environmental plan for the site, which was approved at the same time. Rockdale City Council will be the consent authority for future development applications. From the authority's perspective, the project is currently on hold pending discussions with the landowners and their agents in developing a delivery model. It is not the authority's intention to have a long-term role in this project, but rather to continue our focus on harbour foreshore precincts.

Finally, I would like to turn to our planning assessment role and how that sits with our other activities. I think we should acknowledge at the outset that there is a potential conflict of interest in every planning assessment/consent agency that also has landholdings—that is, all of them. The Department of Infrastructure, Planning and Natural Resources has this issue, as does Sydney Ports, NSW Maritime, the Sydney Olympic Park Authority, the Federation Trust, the Sydney Harbour Foreshore Authority, many other government agencies and departments, and every local council. We all have that this potential conflict of interest and we all deal with it in exactly the same way. It is not a question of whether you have this conflict; it is about how you deal with it. In fact, it is such a common issue that ICAC wrote a paper with respect to such conflicts, called "Taking the Devil out of Development: May 2002". The guidelines are straightforward and clear and are simply that you have development applications assessed by an independent assessor whenever you have a beneficial commercial interest in the property; and that you separate assessment functions from DA preparation functions.

In taking on the planning assessment role for major DAs in mid 2003, the authority sought and took advice from Deloitte's on key probity issues, took on board the ICAC guidelines and implemented processes and protocols to ensure our new assessment duties would be rigorous, transparent, separate from other property development functions, and undertaken with due probity by independent assessors when considering the authority's own projects. In addition, it should be noted that when all master plans and major DAs are referred to the Minister, it is a requirement under SEPP 56, clause 12, to seek and include local council's views and submissions so that the Minister has the benefit of their views directly. This provides yet another source of independent advice and information for his consideration.

An important additional distinction between the authority's role and that of local councils is that the authority is only an assessment authority and not a consent authority like local councils. This has a major positive impact on addressing any perceived conflict of interest as local councils can develop their own project, prepare their own DA, assess that DA and then consent to it. The authority does not have that opportunity as the Minister is the consent authority. This is significant insofar as it creates less potential for conflict between roles than that which exists in a council. I refer again to the ICAC report, which noted on this issue that the:

... combination of ... often conflicting roles of councillors—

that is, being both law maker and judge—

is unique to local government ...

and that:

... the lack of separation of these powers can lead to confusion, reduce transparency and ... encourage corruption.

One last point would be to ask: How often is this potential conflict an issue? As Committee members will know from our submission, there had been a total of one authority-owned development application for a major development assessed by the authority at the time of our submission, out of a total of 364. This compares with between three and five per annum at Leichhardt, Marrickville and Parramatta councils. On this basis, it appears to be both a rare issue and more commonly an issue at local councils than at the authority. Having implemented all the recommended processes to deal with potential conflicts of interest, transparency and probity, the authority is satisfied that it is achieving outcomes at least commensurate with, if not better than, similar organisations around New South Wales and Australia.

In conclusion, may I say that I look upon these hearings as an opportunity to provide for the Committee's benefit and for the benefit of other interested stakeholders any information that I can about the authority's role and its activities. I believe our submissions show the Committee that the authority is providing a vital service to New South Wales in achieving a balanced and holistic management of some of Sydney's most valuable assets and public places. I look forward to assisting further with any information that the Committee may require. Madam Chair, I would like to table the speeches made by Mr Isaacs and by me and seek the Committee's permission to release them publicly.

**CHAIR:** Thank you. That would be appreciated.

**(Short adjournment)**

**CHAIR:** Would you tell the Committee how many pubs or hotels there are in The Rocks within your jurisdiction?

**Dr LANG:** Madam Chair, let me try and answer that question just from my recollection. There are a total of four in George Street. I will just get it confirmed that there are no others within The Rocks area—The Rocks being defined as that area from Circular Quay through to the bridge. There are more pubs on the other side of the bridge but they are not formally in The Rocks area.

**CHAIR:** Is the Mercantile Hotel one of those?

**Dr LANG:** Yes, it is.

**CHAIR:** Would you advise the Committee of the current arrangements in relation to the Mercantile? I am aware expressions of interest were called last year.

**Dr LANG:** Certainly. The Mercantile Hotel had been on a long-term lease. The lease expired last year and was on monthly hold-over for a period of time while we were considering how to deal with it moving forward. The board considered the current lessee at the time. In looking at the potential renewal of the lease, there is a leasing renewal policy that the board considers that has a number of factors in it. One of those is whether or not the property had been properly maintained to a standard

acceptable to the authority. There was some level of doubt about that with some \$500,000 worth of work required to be done, in our assessment. That did not obviously meet one of the conditions of renewal. So the board took the step of going for expressions of interest on that property, as would normally be the case. A number of submissions to that—in the order of 30-odd, I recall from memory—were received. The expressions of interest were simply just a "please put your hand up if you are interested" type of expression, not a full formal tender process.

As we commenced the process the current lessee went through various legal processes, including injunctions and other legal actions, which have made us put pause to the expression of interest process while we commenced legal proceedings with the lessee. This continued on for a period of time. If I could cut a long story short, eventually the lessee came to us with an offer to settle the legal dispute. The request was that the board would consider what terms it would be satisfied with in terms of getting rid of the legal issue and continuing on with the renewal of the lease. The board considered this and put forward very stringent conditions, including a substantial payout. I may have some figures on that, but they included the full recovery of our legal costs, the payout of all the maintenance that should have been done on the property prior to the lease expiring—the legal costs were in the order of \$160,000 and the maintenance work amounted to \$665,000—and also for them to meet an independent assessment we had done of the market value of the property in terms of lease. The lessee has at this stage agreed to do that. We have not yet finalised the arrangements. Therefore, the expression of interest process has not yet been terminated. As soon as those arrangements are finalised, then we will have that situation resolved.

**CHAIR:** Who is the current lessee?

**Dr LANG:** It is a consortium of parties. I do not have in front of me the names of all the people who are in that group. They are a consortium that owns several pubs, I understand. I am sorry, I do not have the names. Can we take that on notice?

**CHAIR:** Yes, if you could provide that to us. Do you have a timeframe as to when it might be finalised?

**Dr LANG:** At this stage our expectations are that it will be soon but the status of the legal documents is that they are not yet signed. So we cannot predict exactly when that will be.

**CHAIR:** What happens to the others who put in an expression of interest?

**Dr LANG:** We will advise them of the outcome of the process once we know whether or not the lease is actually is going to be finalised in that fashion. Otherwise we will continue on with the expressions.

**CHAIR:** As to the people who had put in an expression of interest, will their expressions of interest carryover?

**Dr LANG:** Correct, the process that had been interrupted would be continued if these arrangements fall over.

**CHAIR:** Have they been given any information as to why the process has taken so long?

**Dr LANG:** Only because of legal advice we have received we could not continue because of the legal action. That is the only information that is available, so no other information.

**The Hon. GREG PEARCE:** Dr Lang, according to the annual reports you are Senior Executive Service grade 7?

**Dr LANG:** That is correct.

**The Hon. GREG PEARCE:** On a package of about \$300,000-plus?

**Dr LANG:** A little less than that, I think. The exact figure is on the Premier's web site.

**The Hon. GREG PEARCE:** I was trying to find the directors' remuneration in the annual report.

**Mr ISAACS:** I can give you those. The directors receive \$36,000 a year and the chairperson receives \$60,000 a year.

**The Hon. GREG PEARCE:** Is that the same as Mr Gleeson is to receive?

**Mr ISAACS:** Correct.

**The Hon. GREG PEARCE:** Are there additional fees for the Cooks Cove Development Association?

**Mr ISAACS:** No.

**The Hon. GREG PEARCE:** That is the whole package?

**Mr ISAACS:** Correct.

**The Hon. GREG PEARCE:** Does Dr Lang receive those fees in addition to his remuneration?

**Mr ISAACS:** No, he does not.

**The Hon. GREG PEARCE:** That is included?

**Mr ISAACS:** Yes.

**The Hon. GREG PEARCE:** Dr Lang, was the Place Leaders Association of Australia your creation?

**Dr LANG:** No, it was not. It was the creation of the Sydney Harbour Foreshore Authority and like organisations in other States, including in Brisbane, Melbourne, Adelaide and Perth, who got together to share matters of common interest and create a group that gets together from time to time six-monthly or annually to talk about matters of common interest.

**The Hon. GREG PEARCE:** Was it created when Mr Robinson was still Chief Executive Officer [CEO]?

**Dr LANG:** Yes, it was formed when Mr Robinson was CEO.

**The Hon. GREG PEARCE:** So you cannot tell me about the circumstances of its creation?

**Dr LANG:** I am not personally aware of them, no, other than to say that I have since joined the group and find it very useful.

**The Hon. GREG PEARCE:** How much does the authority contribute to that organisation?

**Dr LANG:** Certainly at this stage I am the president of the association. So there is some work in kind that we all do. That presidency rotates annually. At the next annual general meeting that will change on to the next CEO, whoever that may be. In addition there are some annual membership fees of the authority. I cannot recall off hand what they are, but I can take that on notice for you.

**The Hon. GREG PEARCE:** Thank you. I notice in the president's report there was meant to be a national conference in 2004 which was cancelled. Apparently there was some concern about the costs. Would you outline the cost and the circumstances of the conference?

**Dr LANG:** I cancelled it because I felt it was not necessary to have a public conference, but rather a get-together of the members was a more useful thing. Some of our staff and our members got

together to discuss matters that we find common across the various precincts. That was a far cheaper, far easier get-together, more useful and more practical than having a public conference.

**The Hon. GREG PEARCE:** How much was spent on preparations for the public conference?

**Dr LANG:** I think it only got to the stage of organising. There were no actual outlays because no speakers were engaged. I think the venue was booked but that was all.

**The Hon. GREG PEARCE:** Was there also a secretariat?

**Dr LANG:** Yes, the secretariat of the association is paid for out of the membership fees.

**The Hon. GREG PEARCE:** This organisation has just other government authorities as members?

**Dr LANG:** Correct.

**The Hon. GREG PEARCE:** It has a web site?

**Dr LANG:** Yes.

**The Hon. GREG PEARCE:** And a national conference so that you can all get together?

**Dr LANG:** And share information.

**The Hon. GREG PEARCE:** I take you back to the Superdome exercise. Would you outline what your involvement was in the bid for the Superdome?

**Dr LANG:** Certainly. My involvement was both as CEO and a board member at that time. The background—and I might be able to provide some more details—was simply this: That the authority as currently an owner of the Entertainment Centre at Darling Harbour, exhibition space and conference facilities at Darling Harbour and also exhibition and conference space at the Australian Technology Park has an understanding and expertise of this style of facility. We were looking at expanding our facilities in Darling Harbour because the place had effectively run out of space down there. We looked at a number of options. One was to build new exhibition halls down in that area at a cost of over \$100 million, probably close to \$150 million. The opportunity of the Superdome came up, which appeared to offer the same sort of expansion capabilities for this sort of venue for us at a much cheaper price. To get a venue such as this for some \$23 million instead of over \$100 million would certainly have been an interesting opportunity. We explored that and I directed my staff to explore the business options for that.

**The Hon. GREG PEARCE:** Do you have some papers?

**Dr LANG:** A business case was prepared.

**The Hon. GREG PEARCE:** Do you have a copy of that business case?

**Dr LANG:** We can make that available to you. I will take that on notice and get back to you. The paperwork was put to the board and the board considered that subject to the Treasurer's approval—which of course is necessary for expenditure of this type of money—and the completion of appropriate due diligence work, which we had at that stage not yet completed, they were interested in putting in a bid for the amount that was specified in the business case, given that it was a sound investment decision. We subsequently received the Treasurer's approval and put in a bid, which was subsequently withdrawn on the Premier's direction.

**The Hon. GREG PEARCE:** When did the board meet to consider that bid?

**Dr LANG:** I cannot recall the date.

**Mr ISAACS:** I think it was 20 May.

**The Hon. GREG PEARCE:** And the bid was put in on the Monday after that, was it not? On 24 May?

**Dr LANG:** Again, I do not have those dates in front of me but we can check them for you.

**The Hon. GREG PEARCE:** What was the nature of the board approval?

**Dr LANG:** The board decision was subject to two conditions. At the time of the board meeting the two matters were still left outstanding: the decision was subject to the Treasurer's approval and finalisation of legal and financial due diligence, which was done over the course of the following week.

**The Hon. GREG PEARCE:** Over the course of the following week. If the board meeting was on the Thursday and the submission went in on the Monday, you would probably have Friday, Saturday and Sunday.

**Dr LANG:** We worked all weekend on it.

**The Hon. GREG PEARCE:** Who conducted that due diligence work?

**Dr LANG:** We had some external advisers and also a number of our own finance staff. We also had assistance from some Treasury agency people who assisted us with the business case. Obviously, that is essential for the Treasurer to give his approval.

**The Hon. GREG PEARCE:** Who signed off on the due diligence from the organisation's point of view?

**Dr LANG:** I did, subject to the board's resolution.

**The Hon. GREG PEARCE:** Subject to the board's resolution.

**Dr LANG:** The board's resolution was subject to the satisfactory completion of the due diligence, which I signed off on.

**The Hon. GREG PEARCE:** So you signed off on the due diligence.

**Dr LANG:** That is correct.

**The Hon. GREG PEARCE:** So the board never saw it.

**Dr LANG:** It did not go back to the board after that, no, that is right.

**The Hon. GREG PEARCE:** What was the reason for completing the due diligence over the weekend? Why did you have to work all weekend?

**Dr LANG:** The deadline for the submission was, I think, the Friday from memory and we had permission to extend that to the Monday from the agent which was conducting the Superdome process.

**The Hon. GREG PEARCE:** What was the total cost of the due diligence exercise?

**Dr LANG:** I do not have that in front of me. Can I take that on notice as well?

**The Hon. GREG PEARCE:** If you would do, and if you could also get for me the costs of that public spaces association—

**Dr LANG:** I have made a note of that. We will do that.

**Mr ISAACS:** May I just make one comment about the Superdome exercise. The public perception was that the authority had made a bid that was not commercially satisfactory. The fact is that the amount we bid was substantially lower than the ultimately successful bid. So from a commercial point of view as well as from the business case point of view that Dr Lang has put, the bid was very sound.

**The Hon. GREG PEARCE:** Dr Lang will provide us with the business case, but I am still curious as to why you thought you needed extra facilities such as that in any event—

**Dr LANG:** If I can answer that—

**The Hon. GREG PEARCE:** —given the role of the authority as you outlined in your helpful opening statement.

**Dr LANG:** One role of the authority is to undertake the exhibition and facilities that we have in Darling Harbour to benefit the economy of New South Wales. The Deloitte study that was done some years ago suggested that the major driver of the \$9 billion value that comes out of SHFA's activities is through those functions in Darling Harbour, so it is well within the parameters of our—

**Mr ISAACS:** Is your concern location?

**The Hon. GREG PEARCE:** Yes.

**Mr ISAACS:** I can answer that promptly. It would not have been our preference that we would be the government agency to own it. The obvious agency would be the Sydney Olympic Park Authority, which is a budget-funded agency. It simply did not have the capacity to go into debt to make the bid. We made it clear to the Olympic Park authority that at the time when it believed it was in a position to take up the ownership we would willingly transfer to them at the appropriate rate. It was simply a matter of convenience on behalf of the Government.

**The Hon. GREG PEARCE:** Was it approved by the budget committee of Cabinet?

**Mr ISAACS:** It was approved by the Treasurer.

**The Hon. GREG PEARCE:** Just by the Treasurer. Can you tell me when Minister Knowles get involved in relation to the Superdome?

**Dr LANG:** Minister Knowles, as you would expect, was advised of our intention to put together a business case, and that was supported by him to do that. He fully recognised that the Treasurer's approval would be required so he was kept informed along the way but ultimately it was only the Treasurer's decision as to whether or not the bid was put in.

**The Hon. GREG PEARCE:** I have further questions on the Superdome but I need to look at the business case to make more sense of them, rather than taking up a lot of time with fairly specific issues. Were you involved in the negotiation of any contracts with streetscape projects for the Gold Spa poles?

**Dr LANG:** No, I was not.

**The Hon. GREG PEARCE:** They were done what—before you became CEO?

**Dr LANG:** I am not sure. What was it in relation to?

**The Hon. GREG PEARCE:** They are the street poles, multiuse poles.

**Dr LANG:** In The Rocks?

**The Hon. GREG PEARCE:** I am not sure where you put them.

**Dr LANG:** I am sorry, I do not know.

**The Hon. GREG PEARCE:** Can you take that on notice?

**Mr ISAACS:** Can you tell us what the name is?

**The Hon. GREG PEARCE:** It is streetscape projects and Gold Spa poles. Can you outline what sort of information you keep in relation to your tenancy list?

**Dr LANG:** I am sorry, just to answer that previous question. It may be possible that that is a City of Sydney issue, the Gold Spa poles. I am not sure that it is us.

**The Hon. GREG PEARCE:** If someone could check it. What sort of information do you keep on your tenancies? How do you manage your tenancy portfolio?

**Dr LANG:** We have a tenant roll of some 500 tenants. The majority of those are in The Rocks. The tenancies in Darling Harbour tend to be large major tenants, a smaller number of big tenants rather than in The Rocks, which is a large number of small ones. We have a full tenant list and all the usual details that a property manager would keep for such tenants.

**The Hon. GREG PEARCE:** So you do that yourselves? You do not subcontract that out?

**Dr LANG:** We have a property group internally within the Sydney Harbour Foreshore Authority and we do that ourselves. We occasionally use consultants on specific sites or issues but generally it is done ourselves.

**The Hon. GREG PEARCE:** What are the consultants listed in your annual report mainly engaged to do? There is a whole series of them.

**Dr LANG:** Page 71 of our annual report lists the consultants engaged by the authority over \$30,000, of which there were seven, and a number who were under \$30,000.

**The Hon. GREG PEARCE:** What did each of those do, just briefly?

**Dr LANG:** There is a breakdown at the bottom of the page which says how much was spent on a particular area. For example, there were eight consultants in engineering works, five in environmental, three in heritage consultant, four in property and so on.

**The Hon. GREG PEARCE:** I was interested in the big ones and whether they are one-off projects that you occasionally use consultants for or whether you have an ongoing use for consultants. What is the basis on which you employ them? The first one is technology. I assume that is a one-off project.

**Dr LANG:** That is correct. It certainly is the norm that they are for one-off projects. We do not keep consultants on for long periods. They come in and do a body of work and then they are finished.

**The Hon. GREG PEARCE:** In what sort of format is your tenancy list? Is it just on a computer?

**Dr LANG:** Yes.

**The Hon. GREG PEARCE:** Is it something that you could make available to the Committee?

**Dr LANG:** In terms of a list of tenants?

**The Hon. GREG PEARCE:** Yes.

**Mr ISAACS:** Subject to the privacy Act—I am not sure. Can we take that on notice?

**The Hon. GREG PEARCE:** You can make it commercially in confidence if you need to.

**Mr ISAACS:** We will take that on notice.

**Ms SYLVIA HALE:** Dr Lang, you mentioned that you had consulted Deloitte in regard to your probity process and presumably public consultation processes. Would you be prepared to make that report and any comments by the authority on it or responses to it available to the Committee?

**Dr LANG:** Yes, we would. The Deloitte report in terms of the original advice we got on how to set up our internal probity for the assessment function?

**Ms SYLVIA HALE:** Yes, and any reports that you have had on your public consultation processes.

**Dr LANG:** I am not sure what you are referring to.

**Ms SYLVIA HALE:** I am assuming that part of probity could well be the way in which your proposals are made known to the public and the opportunities that the public might have to comment on them, so if you have any reports on that aspect would you make them available to the Committee?

**Dr LANG:** I am not sure that we do but if we do we will check that for you.

**Ms SYLVIA HALE:** I was interested in the photographs that you have provided to the Committee. I notice that you compare the 1992 position with 2004. Would you agree that what we are seeing is a vast increase in residential accommodation, residential densities, particularly in unit development in the Pymont area?

**Dr LANG:** Yes I would. One objective of SREP 26 was to make it a liveable place and therefore you need to provide some residential accommodation.

**Ms SYLVIA HALE:** Given that most people are here, living on my left as it were, and yet all the public space appears to be provided on the right, well away from this area, do you think that is appropriate or a victory for good planning?

**Dr LANG:** All I can talk about is the area over which the Sydney Harbour Foreshore Authority has some control, which is the area in white. Certainly, I think we have done a more than adequate job in creating open space of about 19.8 square metres per person against the planning guidelines originally set of 15 square metres per person.

**Ms SYLVIA HALE:** Would you say that much of the land that has been developed by private developers was originally under the control of the Government or of the harbour foreshore authority and in fact was disposed of by the authority?

**Mr ISAACS:** No, that is incorrect. The land you are pointing to is land owned by the former CSR company. The whole site was CSR company, which it sold to Lend Lease. That was never government land.

**Ms SYLVIA HALE:** In that case was the authority responsible for the assessment of the development applications for that area?

**Dr LANG:** No, we were not.

**Ms SYLVIA HALE:** Who was responsible for the assessment?

**Dr LANG:** The Department of Infrastructure, Planning and Natural Resources.

**Ms SYLVIA HALE:** Could you then explain, in relation to the proposed development of the water police site at Elizabeth Bay—I believe that SHFA conducted a design competition and three options were put to residents but the option of no development of the site was not put to residents.

**Dr LANG:** I can talk about the competition at some length. There were two years worth of consultation with the community. In fact, community members directly briefed the architects on what they wanted to see on the site. The community group suggested the development that we ultimately picked up, that was to create a community plaza with access to a ferry terminal, some residential, but 50 per cent of the site open space. So what we were suggesting was really picking up what the community was asking for at the time.

**Ms SYLVIA HALE:** The community was never given the option of considering that there be no development on the site and that it remain as open space. Is that correct?

**Dr LANG:** It was well before my time Ms Hale, so I am not sure. But my understanding of it was that because the site is zoned residential the option of a park was never even suggested by anyone at the time. It was only very much later—about 12 months ago—that that option suddenly appeared.

**Ms SYLVIA HALE:** So we would have to talk to Dr Gleeson?

**Mr ISAACS:** I can answer your question. I can confirm what Dr Lang is saying. I was on the board at the time. What he says is correct. The concept that the whole site would be parkland was never raised. What we did do was ensure that the amount of parkland that we had in the area was greater than what was required under the master plan. But, to my knowledge, a proposal that the whole site be parkland was never put. You have to bear in mind that adjacent to it is Pymont Point Park, which is very substantial.

**Ms SYLVIA HALE:** But the authority could have recommended an alteration to the zoning that would have provided for more open space. Would that have been an appropriate way to proceed, given the considerable increase in population in the area?

**Mr ISAACS:** I will answer one part of your question and Dr Lang can answer as well. Referring to the submissions that were made to us, I do not recall anyone saying that the whole area should be a park. In fact, there seemed to be an acceptance that what was being provided was much more parkland than was envisaged under the master plan. As to when the notion came up of the entire site being parkland, I am sure Dr Lang can give you the precise details. But I do not recall, certainly up until January last year, that proposal even being flagged. My understanding from a board member's perspective was that there was reasonable acceptance, because there had been considerable community involvement in the process, of the kind of proposal that was being put. I am not suggesting for a second that the community had signed up to what was being put. But whatever was being proposed seemed to be up until January last year a variation on what was proposed.

**Dr LANG:** We should also note that this site is adjacent to a 3.6-hectare park. If you were to consult urban planners anywhere they would say that to get the balance of parks right they have to be in the right places. If you were going to create another 1.8-hectare park it would not be next to an existing 3.6-hectare park but probably further down towards Ultimo where they do not have any. I do not think any urban designer would have suggested it. The community at the time was not suggesting it. What the Sydney Harbour Foreshore Authority [SHFA] proposed was a plan that had 50 per cent open space, including new foreshore walkways, 25 per cent less development than what would be allowable under the zoning, and hence 25 per cent less than what would have been done if it had been in the hands of a private developer.

**Ms SYLVIA HALE:** Surely one of the significant things relating to community response is that at the last local government elections the successful candidates were from the Friends of Pymont Park, or whatever. They very much campaigned on the open space issue. People might say that the damage has been done in Pymont, that it is an absolute disaster in the provision of amenities for residents and in particular for children—there has been a big increase in the number of children in that area. Some people might say, "Now that the damage has been done it is convenient for the Government to hand it back to the city council." Do you think it would be appropriate, before the damage is done at Luna Park, for that area to be handed back to North Sydney Council, or should it be retained under the control of SHFA?

**Mr ISAACS:** You are entitled to assert what you assert. If you look at the number of submissions to this inquiry you will see that fewer than a dozen submissions were made to this inquiry

from Pyrmont and some of those were supportive. I just put on the record that I reject outright the suggestion that what is there is a disaster. The opposite is the case. The number of recommendations we have had for the area, the amount of activity we have created there, the simple statistics of what we produced in our two opening addresses demonstrate that the Government has been highly successful in Pyrmont. I turn now to question of Luna Park. What are you suggesting there?

**Ms SYLVIA HALE:** I was just asking about Pyrmont. The Auditor-General's report in November 2003 was highly critical of the sale of government land. It suggests that the SHFA has a conflict of interest. One of its interests is to return a dividend to the Government from land sales.

**Mr ISAACS:** Yes.

**Ms SYLVIA HALE:** The other is to provide for appropriate planning and protection of the amenity for residents and to improve the vibrancy of the city. Do you see a conflict in those objectives?

**Mr ISAACS:** My recollection of the Auditor-General's report is that he did not identify us in the way that you have suggested. Some agencies were singled out for making decisions, which were in their own organisational interest. The one that I recall was the sale of the property at Cremorne Point. But I do not recall us being singled out as having made those inappropriate sales.

**Dr LANG:** Under the Sydney Harbour Foreshore Authority Act we have the balance of all those things that you mentioned—getting the commercial outcomes balanced with the urban outcomes, the social good, et cetera. The challenge in that report from the Auditor-General was that he said many other authorities did not have that balance in their Acts; rather, they simply had to maximise profit in their Acts. So that is a problem for them but not for us.

**The Hon. DAVID OLDFIELD:** I refer to the 500 tenants that you were talking about earlier. How do the public housing sites fit into that?

**Mr ISAACS:** They are not tenants of ours.

**The Hon. DAVID OLDFIELD:** How many public housing dwellings are there? You can see the locations but how many dwellings are there?

**Dr LANG:** I think we can give you the number of apartments. If we can have a minute we can give you that number. From memory, it is a significant number. It has been developed over the last decade since City West Housing was first created. That has been its objective and it has not finished yet. Still more public housing—affordable housing is probably the better term—is being developed in Pyrmont.

**The Hon. DAVID OLDFIELD:** Was it public housing or affordable housing? It is public housing, is it not? When you say it is affordable is somebody paying for it other than taxpayers?

**Dr LANG:** No. It is affordable housing. That is done by City West Housing, which is not us. It provides 365 units of accommodation in 11 locations, housing about 800 people in Pyrmont-Ultimo.

**The Hon. DAVID OLDFIELD:** When you say affordable housing, are they for private sale?

**Dr LANG:** They are rented out. I am afraid we cannot give you the detail on that. You would need to speak to City West Housing.

**The Hon. DAVID OLDFIELD:** They are affordable in the sense that they are rented cheaply. Is that what you are trying to tell me?

**Mr ISAACS:** I simply do not know. They are not under our responsibility.

**The Hon. DAVID OLDFIELD:** So you do not know what is affordable housing?

**The Hon. JAN BURNSWOODS:** What a stupid, ignorant comment!

**The Hon. DAVID OLDFIELD:** Can you keep your ugliness to yourself as much as possible?

**CHAIR:** Order!

**The Hon. KAYEE GRIFFIN:** You are so obnoxious, David.

**The Hon. DAVID OLDFIELD:** It is an art form that is true.

**The Hon. KAYEE GRIFFIN:** Yes, you have perfected it.

**The Hon. DAVID OLDFIELD:** Are the three monkeys who are with us today the only ones available?

**CHAIR:** Order! Members should just stick to asking questions.

**The Hon. DAVID OLDFIELD:** I am trying to get to the bottom of it. You are telling me that this is what you are calling affordable housing and it is rented housing, is that right.

**Mr ISAACS:** It is a specific program over which we have no control.

**The Hon. DAVID OLDFIELD:** Is it rented out by the Department of Housing?

**Mr ISAACS:** I am sorry, I do not want to be obtuse, but it is not a program of ours.

**The Hon. DAVID OLDFIELD:** Fine. Referring again to the 500 tenants, what style of tenants do you have?

**Dr LANG:** There are 82,000 square metres of retail space across our area. So we are talking about small shops. There are also commercial offices. That is probably the bulk of the ones in The Rocks. In Darling Harbour, of course, we have bigger tenants such as Harbourside, the shopping centre. It is our direct tenant and so are the Sydney Aquarium, IMAX, and so on.

**The Hon. DAVID OLDFIELD:** What relationship does the Privacy Act have to supplying a copy of the tenants?

**Mr ISAACS:** Are you talking about in relation to the previous question?

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

**Mr ISAACS:** I think it is just appropriate for us to check it that is all.

**The Hon. DAVID OLDFIELD:** Would these people be the phone book? You said that they are retail. Surely there is nothing private about their existence.

**Mr ISAACS:** We were asked to supply a tenancy list. We will comply to the best of our legal ability.

**The Hon. GREG PEARCE:** If you get advice that you cannot give it to a parliamentary committee you might give us a copy of that advice. You would be the first people to receive such advice. It would be quite groundbreaking.

**The Hon. DAVID OLDFIELD:** You will still come back to me in regard to the number of dwellings in the photograph?

**Mr ISAACS:** Sure.

**Ms SYLVIA HALE:** I return briefly to the Auditor-General's report of November 2003. The audit opinion states, in part:

At present there are high level aspirations but there is no overarching strategy or plan for Sydney Harbour that can guide individual decisions. Decision-making appears to be triggered when a proposal is made to dispose of a particular property. Decisions to dispose of, retain or change the use of individual properties should be made in the context of a broader strategy.

What is your opinion of that assessment by the Auditor-General?

**Dr LANG:** I will start and Mr Isaacs can add something. For a start, the Sydney Harbour Foreshore Authority, under our Act, cannot dispose of foreshore land. It is called core land under our Act. In fact, it is unable to be sold. Even leases beyond five years require the Minister's approval. So we are not in that category of things. I refer to the overarching strategy. We are supportive of that. That is something that the Department of Infrastructure, Planning and Natural Resources is pursuing at the moment.

**Ms SYLVIA HALE:** Local councils are limited to leases of no more than 21 years in the most extreme circumstances, but the authority envisages leases of 99 years and 40 years, is that correct? Is it able to enter into them?

**Mr ISAACS:** We are subject to ministerial consent.

**Ms SYLVIA HALE:** To all intents and purposes that, in effect, is a removal of land from the public domain into private hands, is it not? I am referring to leases of that nature.

**Dr LANG:** Can I suggest that it is not for very good reasons? For a start, you are retaining a right, as a landowner, under those cases. So there are certain rights that are withheld by the Government. Clearly, that means that the sorts of things that can happen on those sites are very much controlled and so on. It is very different to a sale.

**Ms SYLVIA HALE:** I am suggesting to you that, unlike local councils which are subject to a number of checks and balances and ultimately to re-election every four years, the authority consists of board of people who are appointed by the Government, who are basically not accountable to the community for their actions. They are merely accountable to the Minister—a Minister who virtually ticks off assessments that are made by the authority.

**Mr ISAACS:** I just do not think that is the correct description. I do not know any Minister that we have had—and we have had two Ministers over the time I have been on the board—that have simply just ticked matters off. That is just not the way it happens. We make a recommendation in relation to leases but it is very much the Minister's decision. He is an elected representative of the people.

**Ms SYLVIA HALE:** But if you are saying that, for example, at Pymont the excessive development that has occurred there has been as a result of approvals granted by the former Department of Planning, or DIPNR, would you not say that the Minister has tended to be very compliant to the needs of the development lobby rather than responsive to the needs of the community?

**Mr ISAACS:** I would not, and in fact as with the point that Dr Lang made in his address, the fact that it has been government controlled in terms of development has brought about a much better outcome in terms of community benefit. That is the whole point.

**Ms SYLVIA HALE:** If we can get now just to Luna Park.

**Mr ISAACS:** Yes.

**Ms SYLVIA HALE:** I believe that in May 2004 you approached Ms Petula Samios in her role as chair of the expert panel that was set up to determine appropriate planning controls for the cliff top of Luna Park. Attached to that letter were the relevant clauses to the deed of agreement between the Luna Park Reserve Trust and Luna Park Sydney, which is Metro Edgley, which is a subsidiary of Multiplex. One clause related to parcels of land on the cliff top that were available to the developers and that clause stated that an area of at least 575.5 square metres had to be left open for use as open

space and specified that, in the case of there being no agreement as to which part was to be so reserved, the location of this space was to be lot 1259 in the deposited plan. Did you get a response from Ms Samios to this letter?

**Dr LANG:** I recall the situation, though I do not recall whether we received a response. But the situation as you described is correct, and they are extracts from the arrangements that were put in place before the Sydney Harbour Foreshore Authority had any role. We were just advising them of the outcome.

**Ms SYLVIA HALE:** But you presumably have a file, so you would be able to tell us whether in fact there was a response from Ms Samios to that. Do you know if the restrictions on the use of cliff top land were made clear to the expert panel—the restrictions on the use—for example the amount of open space that had to be retained as open space?

**Dr LANG:** We have no role on the expert panel. That is something that the Minister set up. They had a number of independent parties on it, including Genia McCaffery, the Lord Mayor of North Sydney, and we had no understanding of how they deliberated or what they took into account.

**Ms SYLVIA HALE:** When the panel's report was made public, did you give the panel or notify anybody that the recommendation was contrary to the agreement between the trust and Metro Edgley?

**Dr LANG:** As far as I know, the panel's determination has not yet been finalised and we have not been advised on any outcome from the Minister's process on that yet, so we do not know.

**Ms SYLVIA HALE:** So you would agree therefore that any proposal that the developer be allowed to develop a much greater proportion of land than was set down in that agreement would be contrary to that agreement?

**Mr ISAACS:** Frankly, it is not a matter on which we have any comment to make.

**Ms SYLVIA HALE:** Did the authority approved a new subdivision of the Luna Park site in August 2004, making the two cliff top parcels of land, which together made up only half of the area of the cliff top, a new lot 1 which now encompasses the entire cliff top?

**Dr LANG:** The subdivisions that were put in place at that time were to reflect the lease arrangements and the conditions that were set up again well before the Sydney Harbour Foreshore Authority had already had any role, so we were just going through with the Government's intention to do exactly that.

**The Hon. JAN BURNSWOODS:** Your time has expired.

**Ms SYLVIA HALE:** But you would agree that under the new subdivision, the developer can now develop more than twice the amount of land that he was able to develop earlier?

**The Hon. JAN BURNSWOODS:** Madam Chair, Ms Hale's time has expired.

**CHAIR:** Ms Hale's time has expired. Do you have a question?

**Dr LANG:** I am happy to answer the question. The lot subdivision makes no difference to what is allowed on the site.

**CHAIR:** Government members?

**The Hon. JAN BURNSWOODS:** Madam Chair, I have just got a couple of questions. Coming back to the question of Pyrmont, we have had, as you say, a few submissions on Pyrmont. Most of the submissions are on other matters but a number of them referred to a Council of the City of Sydney study that refers to a shortfall in open space in the Pyrmont area, but your submission—and I think you said it earlier—suggests that the open space is actually above that laid down in the planning guidelines. Could you clarify that for the Committee?

**Dr LANG:** Yes, I can. In fact I am glad you raised this. This study is often raised. Unfortunately it is raised completely out of context. The City of Sydney study that is frequently cited by critics was actually conducted in 1995. As the Committee has seen from my opening address and from those photographs in front of you, the landscape of Pyrmont was completely different in 1995 than it is today. The study in 1995 identified a shortfall of space of some 8 hectares. Since that date we have created around 10 hectares of new open space. In fact, a more relevant study is the open space audit that was conducted in 2004 by Cox Richardson. I am happy to table this for the Committee's benefit, if you would like. You will see that in that study it shows that the amount of open space per person in 2004 is in fact 19.8 square metres per person, which is almost a third higher than the 15 square metres under the original planning guidelines. So rather than reducing open space at Pyrmont, the Government has significantly added to it. Despite the fact that Pyrmont in fact has had more people coming to it than perhaps was originally intended, the square metres per person is still much higher.

**The Hon. JAN BURNSWOODS:** Turning to the former Water Police site, I guess one of the difficulties we have on this Committee is that it is about a year since the inquiry was set up, so a lot of the submissions and arguments I know are now out of date. When it became apparent that the Water Police site was the subject of community concern and so on, can you tell us the role that the Sydney Harbour Foreshore Authority [SHFA] played in trying to reach a solution or placate the community, or whatever? What sort of steps did SHFA take?

**Dr LANG:** Yes, I would be delighted to. When it became clear that there was a change in mood in the community, I actually called into my office all—as many community groups as I could to speak to them about what they might see as a way forward here. Out of those discussions there came a number of suggestions from community groups—that the City of Sydney may in fact be interested in purchasing the sites to turn it into a park. It was not long after those discussions that I was approached by the City of Sydney's then general manager who suggested exactly that, and we made it clear to the community groups that we were not in a position to simply turn this into a park. It was not as straightforward as that because the site was zoned residential and significant costs had been incurred in relocating the Water Police which needed to be reimbursed from the proceeds of the Elizabeth Macarthur Bay's site development. SHFA was required to pay the full cost of the relocation of the Water Police and for the construction of their new facilities on the other side of the harbour.

That site would not even have been available if the Water Police had not moved. So there was a need for the costs of the Water Police relocation to be paid for and the City of Sydney, through discussions, came to the party and agreed to pay \$11 million, which was the cost of the relocation, in return for getting the site—which was, I have to say, worth considerably more than that on its market value—but we were happy to accept our costs at that point. We also were keen to ensure that the City of Sydney was able to turn that into a park and so various steps were then taken with the Minister's office to allow the transfer to occur and to put various caveats on the sale—that it was to be used for public space and not then subsequently developed after we had handed it over.

**The Hon. JAN BURNSWOODS:** Can you give us an idea of the market value of the site, given that it had a residential zoning?

**Dr LANG:** Under its original residential zoning—I will check the figure for you—but it was in the order of twice that figure, so over \$20 million, but I will have to confirm that for you. I will take that on notice.

**The Hon. KAYEE GRIFFIN:** What is SHFA's role in the city foreshore walk project? I note you mentioned that when you were tabling the photographs of Pyrmont and the changes that have occurred from 1992 to 2004. Could you give the Committee an idea of that role?

**Dr LANG:** Certainly. It was a decision made by the Sydney Harbour Foreshore Authority some years before I was involved, and Mr Isaacs may be able to add to the debate here. But to create a continuous foreshore walk away from Woolloomooloo Bay right around to Blackwattle Bay where the fish markets are—and in fact beyond that, on to White Bay and to link up what was at that point a few short sections of walkway separated by vast areas where you could not get through. That total space from Woolloomooloo Bay to Blackwattle Bay is about 15 kilometres and the Sydney Harbour

Foreshore Authority has, over the last number of years, developed around 70 per cent of that. The one big missing link now, once we have finished the ones in Pyrmont—and you can see, if I can refer to the booklet that we referred to earlier, the Ultimo and Pyrmont booklet on page 25, that there is a map which shows in a blue line the current walkways around the Pyrmont area. So once those final foreshore walkways are finished at Pyrmont, that will be a significant part of that 15 kilometres walkway complete. The only missing link left will be one at East Darling Harbour which the Government announced recently—the 1.9 kilometres from wharves 3 to 8—and that will be, of course, still some years off. But once that is done, we will be perhaps unique in port cities around the world to have foreshore access of such a large link right in the heart of the city. So it is a marvellous project and one that we are very proud of.

**The Hon. AMANDA FAZIO:** I just wanted to ask you a few more questions about your involvement with Luna Park. I know you have both outlined a bit of that in your opening statements. In particular I would like you to tell us exactly what was the evolution of the Sydney Harbour Foreshore Authority's role in Luna Park, both at the board level and at the management level?

**Mr ISAACS:** Well, I think that has been covered in our submissions: thanks for the question. But in essence, we were given responsibility for the Luna Park Reserve Trust in 2001. It was a very limited role that we had and that was to ensure the lease terms were adhered to and especially in respect to heritage matters—they were the rides and the other matters covered by the heritage part of the lease.

**Dr LANG:** If I can add to that and further to what I said earlier, there was a series of things that happened from the original 1997 amendment to the Act and following that in 1998 with the Metro Edgley lease being put in place, and then in 2001 when SEPP 56 was amended, it included Luna Park into the areas of State significance. That was important because you will recall that the history of Luna Park was a series of interruptions and difficulties in trying to achieve the Government's objectives, the Parliament's objectives, of making this site an ongoing amusement park with its heritage protected and at no cost to the Government. To achieve that objective, the Minister took it under SEPP 56 in 2001 so he was the development consent at that point. Of course that meant that the administrative work was being done by the Department of Infrastructure, Planning and Natural Resources [DIPNR] in terms of assessment and the Minister's consent. It was not until 2000—and also in 2001 I should mention that—and this is a complication which I will try to explain—the Crown Lands Act sets out who is the reserve trust and it was under the Crown Lands Act that the Minister at the time for that—which was Minister Debus?

**Mr ISAACS:** No.

**The Hon. AMANDA FAZIO:** Amery?

**Mr ISAACS:** Amery.

**Dr LANG:** Minister Amery asked the Sydney Harbour Foreshore Authority's board to sit as the trust, and that happened in 2001. So that is a completely independent stream of activity. It was not until August 2003 as I mentioned earlier that the Sydney Harbour Foreshore Authority's planning assessment role changed from DIPNR to SHEFA for major development assessments. That is when the Sydney Harbour Foreshore Authority became responsible for planning matters at Luna Park, and that was only for new matters. So if there was an issue with regard to an existing development application [DA] of Luna Park, even today it would be referred back to DIPNR to deal with. We do not take responsibility for past decisions: It is only for any new development that might come along. So our role, as I said earlier, is very limited.

**The Hon. AMANDA FAZIO:** You said your current planning role is just to do with anything new that comes up associated with Luna Park. Do you have any involvement in issues like the residents complaining about noise emanating from Luna Park?

**Dr LANG:** No, we do not. Under the Environmental Planning and Assessment Act, noise complaints are dealt with by local councils, regardless of where they may be. So noise issues are certainly the North Sydney Council's, as are issues regarding the same matters in any precinct. There is no difference there, as anywhere.

**The Hon. AMANDA FAZIO:** Can you just explain your role in relation to be proposed office building on the cliff top?

**Dr LANG:** Yes. At this stage we are awaiting for the planning controls to be specified by the Minister under SEPP 56. That process has still got some process to run. SEPP 56 will be amended to indicate what the planning controls are and then our planning and assessment people will judge whatever DA we are given to assess against that criteria. It is as simple as that. It will then go to the Minister for consent, subject to those assessments being made.

**The Hon. JAN BURNSWOODS:** We do not have any more questions at this stage, Madam Chair. We might have more before our witnesses leave us, but perhaps you or someone would like to ask more questions.

**CHAIR:** Yes. Mr Pearce?

**The Hon. GREG PEARCE:** Could you provide the Committee with a list of the under 30,000 consultants for the last, say, three years, and give us the details of who they are?

**Dr LANG:** Yes, we will take that on notice and provide that information.

**The Hon. GREG PEARCE:** I take you back to the Superdome. You said basically that the rationale was to expand the exhibition and convention centre. Was that a long-term strategy of the authority, or was it a response to the fact that the Superdome became available?

**Mr ISAACS:** A bit of both. I can answer that in part, and then Dr Lang can answer it. The fact is that we are being advised by the people who run the city convention and exhibition centre that we will be running out of space. So, contrary to what you said earlier, the advice to us is that we are running out of space. We are mindful of that, and we are very keen to explore a number of avenues open to us to expand the space there, and to do it reasonably quickly.

So when this opportunity came up, it was a natural for the authority to look at it in that context. The consistent advice we have been getting for a short while now is that we do need to expand the exhibition centre; it is a matter of where you do it.

**Dr LANG:** If I could add to that. The challenge is this. Even before I was the CEO of the Sydney Harbour Foreshore Authority the space was running out; we were consistently hitting the capacity of the venue and turning away business. The convention centre management said to us that this is not a favourable thing for the people of New South Wales, in that these facilities bring in a number of parties who have a high spend rate, who bring other business, who add to the economy of New South Wales, and that if they had more space they would be able to use it.

So, again before I became CEO, going back over two years ago, various suggestions were made about the potential expansion of the convention centre at that time—even to the point of saying that the policy decision was made, so it should be expanded; Minister Refshauge at the time made that determination. However, it was up to the foreshore authority to work out how that could be achieved. And, I have to say, it is not a straightforward issue at Darling Harbour. Darling Harbour is full, to a large extent. The space that is available down there, of course, has moved on in the 20 years since Darling Harbour was first constructed. There are no spare building sites within the immediate area that one could automatically grab and do something with. So, therefore, there has been a long process of looking at every possible option in determining how more space could be achieved.

Just to give you a flavour of that, we considered taking the existing exhibition halls and adding a mezzanine level, so you got more full space within the same building envelope. We looked at demolishing and rebuilding an adjacent car park so we could put some exhibition space on top. We looked at digging underground, but there is a water table problem. We looked at a lot of different issues.

Without going any further on that, I think the challenge there was that it is an important need, it is good for the economy of New South Wales, and it makes good business sense for the convention

and exhibition facilities to not turn away potential business. If there were a way of cost-effectively expanding the facilities, it would be a good thing to do, and it is in that context that we are making that decision.

**The Hon. GREG PEARCE:** I am a little mystified as to why there was such a mad rush to get the Superdome bid done at the last minute.

**Mr ISAACS:** It was the exigencies of the bid process. If we did not get it in, we would not have been considered.

**The Hon. GREG PEARCE:** But why were you getting prepared only three or four days before the bid ended?

**Dr LANG:** We identified the opportunity late in the piece, there is no doubt about that, but it was not three or four days, it was a number of weeks before. But by the time we had done the initial business cases, got the board over the line and spoken to Treasury, we were down to the last few days before we were actually ready to put the bid in. So, as Mr Isaacs has indicated, there is no doubt it was a very tight finish.

**The Hon. GREG PEARCE:** I am still curious about that. I have some documents that were provided by you under freedom of information. One of them is a note by Andrew Kelly, in which he says that the board approved the bid on Thursday 20 May. That would be consistent with what you said earlier?

**Mr ISAACS:** Yes.

**The Hon. GREG PEARCE:** And it was subject to, as you said, necessary due diligence and ministerial sign-off. Mr Kelly also said that on that same day the business case was sent to the Treasurer, and that the next morning the Treasurer indicated that he approved it.

**Mr ISAACS:** Yes.

**The Hon. GREG PEARCE:** Why would you not have sent the business case much earlier?

**Dr LANG:** As I said earlier, the Treasury officials were in fact working with us on the development of that business case for some period leading up to that time. When the document refers to "sending" it, we mean that the final sign-off version was forwarded to the Treasurer's office at that point.

**The Hon. GREG PEARCE:** You sent an "intention to bid" letter that same day, the Friday, which indicated the price you were prepared to pay and so on?

**Dr LANG:** On the Friday we needed to submit an intention to bid because, as I think I mentioned earlier, the Friday was the original deadline and without such an "intention to bid" letter our extension could not have been granted.

**The Hon. GREG PEARCE:** Again according to Mr Kelly's note, you expected to take five to seven days to complete the due diligence, and you asked for an extension of five to seven days?

**Dr LANG:** That is correct. We asked for five to seven days, and we were granted four days, so we took them.

**The Hon. GREG PEARCE:** Until the Monday?

**Dr LANG:** Yes.

**The Hon. GREG PEARCE:** Mr Kelly also says that an officer in Minister Knowles' office was informed and they approved it?

**Dr LANG:** That is probably not strictly correct. Minister Knowles' office was informed that we were putting the bid in, and he made it quite clear that it was a Treasurer's approval that was required. So he is simply indicating that he was informed.

**The Hon. GREG PEARCE:** Could you explain the different roles of a Minister for Planning and Infrastructure and the Treasurer in relation to that bid approval?

**Dr LANG:** This type of activity can only be approved by the Treasurer, so that was the appropriate place for it to be sent.

**The Hon. GREG PEARCE:** But does it also require the approval of the other Minister?

**Dr LANG:** That is not my understanding.

**The Hon. GREG PEARCE:** Mr Kelly also says that he was advised by Treasury that they had informed the Director-General of the Premier's Department about the proposal on Friday afternoon as a courtesy matter, and that the Premier's Department was briefed about the bid on the previous day, which was the Thursday, at a meeting between the chairman, I suppose Mr Gleeson, and Minister Nori and other people. So the Premier's Office was only advised on the Thursday, the same day that the board approved it?

**Dr LANG:** I am sorry, I cannot confirm that; I was not involved in those discussions.

**The Hon. GREG PEARCE:** It is what is recorded by Mr Kelly.

**Dr LANG:** Yes. I take that as you have read it.

**The Hon. GREG PEARCE:** There is another memo from Mr Gleeson to you, Dr Lang, on 14 May, in which he says:

I have discussed the Memo hereunder with Minister Knowles who agreed that I should have further discussions with the Treasurer. This matter will also require Treasury approval.

It seems that the chairman seemed to think that Minister Knowles had a role in the approval.

**Mr ISAACS:** No. That is not what I read from that.

**The Hon. GREG PEARCE:** The memo says: "This matter will also require Treasury approval."

**Mr ISAACS:** "Treasury" being different from "Treasurer". Treasury officers would have to support the business case, and the Treasurer would have to approve it.

**The Hon. GREG PEARCE:** But the Treasury officers were preparing the business case with you, so I would have thought that they would support it.

**Dr LANG:** Of course.

**The Hon. GREG PEARCE:** So it seems a little nonsensical—

**Mr ISAACS:** No, it is not. I can explain it. It may appear a conundrum, but it is not. It is quite common for the Treasury officers to be involved, especially given the time frame involved. And, of course, at any point in the process they could say, "Look, this is just not going to hang together." It is better to have them with you doing that than trying to put it to them and then having to try to explain what the process is, especially given the time frame. I do not see anything unusual about that. And the wording of that memo makes absolute sense in that context.

**Ms SYLVIA HALE:** Dr Lang, in your booklet at page 23 you say that the Cox Richardson report estimates there are now 25.8 hectares of open space in the precinct.

**Dr LANG:** Yes.

**Ms SYLVIA HALE:** On the following page you say that 10.4 hectares of that was developed in the last 10 years. That suggests that prior to that, if you deduct 10 from 25, there were 15 hectares of existing open space. But that seems to complete very much with the photograph you gave us of 1992, which shows only two areas of open space. Has the Cox Richardson assessment of open space been compiled on the basis that it took into account thoroughfares, streets, Union Square, footpaths, and those types of considerations in calculating the amount of open space?

**Dr LANG:** If I may clarify. If you look at the footnote at the bottom of page 24 of that report it says, "not including 7.7 hectares of parks existing prior to 1994". So it is that 7.7 plus the 10.4, plus the 7.5—

**Ms SYLVIA HALE:** That is 18.1. If you take the 18.1 from the 25.8 you get something like seven hectares, do you not?

**Dr LANG:** No. I think the sum of 25.8 comes from the sum of 10.4, 7.5 and 7.7.

**Ms SYLVIA HALE:** But that is proposed?

**Dr LANG:** Those works are all under way and to be delivered in the next little while.

**Ms SYLVIA HALE:** Could you tell me whether footpaths, thoroughfares and underpasses are basically included in any calculations of open space?

**Dr LANG:** Yes. Open space includes any area—for example, a plaza that might be paved is open space.

**Ms SYLVIA HALE:** But that is not a conventional way of approaching the assessment of open space, is it? I do not know whether councils do it that way.

**Dr LANG:** It is correct. In fact, it is the exact definition that is in the 1991 planning study that set the parameters of 15 square metres per person.

**Ms SYLVIA HALE:** You would agree that most councils, when they are calculating open space, do not take into account the number of streets or roads that are running through their areas? Do you take into account footpaths?

**Dr LANG:** We have used the official department of planning definition. If the councils do not use that definition, I am not sure what definition they would use.

**The Hon. DAVID OLDFIELD:** This Ultimo-Pyrmont booklet is your booklet, is it not?

**Dr LANG:** Yes, it is.

**The Hon. DAVID OLDFIELD:** I have the answers I need with regard to affordable housing from that booklet. Do we have the figures with regard to public housing?

**Mr ISAACS:** No. We will get that number.

**Dr LANG:** If I can clarify that. The Department of Housing would have those figures. We do not have them, but we may be able to find out.

**Mr ISAACS:** We will obtain the numbers for you.

**The Hon. AMANDA FAZIO:** The booklet refers to future projects regarding the Sydney Fish Markets upgrade, which was announced yesterday. Could you give us a little more detail on the impact of that? Is foreshore walking included in the upgrade? There are areas where there is no public access to the foreshore. Could you give us a little more detail about that?

**Dr LANG:** I would be delighted to. The master plan that was prepared for the fish market, which the Minister has now approved and released yesterday, is a significant development for the Blackwattle Bay area, not just for the fish market, in that it does create large new foreshore areas—not just a walkway but a plaza and eating area. It removes the very ugly bitumen car park that is currently there and the source of some safety, as well as aesthetic challenges, and puts the car parking at the back of the site in a multistorey facility, which is a better outcome. It also improves the general retail area of the fish market, and no doubt the Sydney Fish Markets Pty Ltd people would find that an attractive option.

From our involvement, we are pleased because we see the appropriate rejuvenation of the fish market as the linchpin in getting the rest of Blackwattle Bay right and I think that is an opportunity for moving forward. But I should just point out that our role is somewhat limited in the fish market area. We are not a landowner there. The land is owned by New South Wales Treasury. The fish market itself is operated by Sydney Fish Market Pty Ltd and our role has only been to assist in the development of the master plan to achieve a good urban outcome.

**The Hon. JAN BURNSWOODS:** I notice on the same map that the waterfront walkway on the Glebe high school section is still shown as dotted. Is that because it is under construction or have there been some issues about public access through the high school site?

**Dr LANG:** That section, we understand, is being proposed to be constructed by the City of Sydney, so we do not have control over that piece of foreshore. But we do understand that it is their intention—and they have publicly released that it is their intention to build it, but whether or not they have actually commenced construction I cannot say.

**The Hon. KAYEE GRIFFIN:** Would that mean that the rest of the walkway is funded separately but that section in Blackwattle Bay that has just been mentioned in front of the school would be a contribution by the city of Sydney?

**Dr LANG:** That is correct.

**The Hon. KAYEE GRIFFIN:** Are there any other contributions from the city of Sydney or councils?

**Dr LANG:** There are places where there are existing foreshore access, particularly as you get around the Rozelle Bay area, which have been instructed by local councils in the past, and the real trick is in joining them all together so that you get a continuous foreshore walkway. Our role has been more to fill in the missing links wherever we could. The bulk of those were around the Pyrmont peninsula and through our activities we have managed to now deliver on all of those. Yes, we do absolutely appreciate the contribution of the local council. However, to put it in context, the Sydney Harbour Foreshore Authority has the responsibility for some 15 kilometres and the local councils in total I think have one or two kilometres.

**The Hon. GREG PEARCE:** You earlier undertook to give the Committee a copy of the business case on the superdome. That, presumably, will be the final document that Treasury received on the 20th. As I mentioned earlier the memo of the 14th from the chairman to yourself also talked about a memo, which I assume is different to the business case. Can we have a copy of that as well?

**Dr LANG:** What memo are you after?

**The Hon. GREG PEARCE:** It is referred to in the memo to you from the chairman of 14 May 2004.

**Dr LANG:** Yes, we will check that document and whatever it is referring to. That is no problem. We can do that.

**The Hon. GREG PEARCE:** Who from the Premier's Office communicated the direction to withdraw the bid? How was that done and who received the direction?

**Dr LANG:** I can give you my understanding of it. I received the direction to withdraw the bid from the chairman, Mr Gleeson, and I understand the Premier spoke to Mr Gleeson.

**The Hon. GREG PEARCE:** You said earlier that it was the Treasurer's decision.

**Dr LANG:** Sorry, to withdraw, are you talking about?

**The Hon. GREG PEARCE:** No, to go ahead with the bid?

**Dr LANG:** Yes, it was.

**The Hon. GREG PEARCE:** So how was the Treasurer reconciled with the Premier in those circumstances?

**Mr ISAACS:** He made a statement at the time.

**The Hon. GREG PEARCE:** And the communication went directly to the chairman?

**Dr LANG:** Correct, and he rang me and I immediately directed my staff to remove the bid. I am sorry, let me correct that. I understand that Mr Gleeson got his direction from the Premier via Minister Knowles.

**The Hon. GREG PEARCE:** Via Minister Knowles?

**Dr LANG:** Via Minister Knowles.

**Mr ISAACS:** And that makes sense.

**The Hon. GREG PEARCE:** You said that Minister Knowles did not have a role in the decision.

**Dr LANG:** This is communicating the direction to withdraw the bid?

**Mr ISAACS:** No, let me be very clear about it. Under the Act we are subject to the Minister's direction; not the Premier's, the Minister's, so that is where the direction came from.

**Dr LANG:** Yes, that is correct.

**Ms SYLVIA HALE:** Just to confirm, you will provide the Committee with copies of the Cox Richardson report?

**Dr LANG:** Yes, we will.

**The Hon. JAN BURNSWOODS:** I think you said to me that you would do that.

**Ms SYLVIA HALE:** Now, the—

**The Hon. JAN BURNSWOODS:** Madam Chair, can I just ask: we have run out of time for these witnesses. Are we going to go on for a long time?

**CHAIR:** Sylvia has one final question and then we will finish.

**Ms SYLVIA HALE:** Luna Park is subject to North Sydney council's local environmental plan plus a plan of management. Was it appropriate for the authority to put out for public exhibition a development application for a proposed cinema complex that was clearly in breach of the plan of management?

**Dr LANG:** That is a different scenario altogether from the cliff top site C. The planning controls for the cinema complex are clear and that cinema DA can be dealt with under existing

planning controls and assessed in the normal fashion. The cliff top site is the one that has conflicting views on what particular instruments may or may not apply.

**CHAIR:** That brings us to the end of this session. I thank you for your assistance to the Committee today. We will be in touch as to further deliberations.

**(The witnesses withdrew)**

**GASTON RICHARD KUITERS**, Company Director and member of Protectors of Sydney Foreshore Inc., 1201, No. 2 Dind Street, Milsons Point, and

**GERARD ANTHONY VAN RIJSWIJK**, Environmental Consultant and member of Protectors of Sydney Foreshore Inc., P. O. Box 755, Milsons Point, sworn and examined;

**JENNIFER CATHERINE COLE**, Public Relations Consultant and member of Protectors of Sydney Foreshore Inc., 3/123 Carabella Street, Kirribilli, affirmed and examined:

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

**Ms COLE:** Yes, I am.

**Mr VAN RIJSWIJK:** Yes.

**Mr KUITERS:** Yes, I am.

**CHAIR:** If any of you should consider at any stage that certain evidence you wish to give or documents that you wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. The Committee has received submissions from each of you. Would one of you like to make a brief opening statement on behalf of the Protectors of Sydney Foreshore?

**Mr VAN RIJSWIJK:** We have a short opening statement from each of the three of us.

**Ms COLE:** I actually represent the community of Kirribilli. I also have a role as Secretary of the Milsons precinct. We have been concerned for a number of months, in fact going into years, about the heritage items of Luna Park. Most recently we have seen two heritage-listed coral trees cut down on the site. We have written to the Sydney Harbour Foreshore Authority [SHFA] in regards to the state of this site and, in particular, the heritage-listed fig trees. To date the site remains home to builders' waste and the exposed roots of the trees have not been treated, which will endanger their existence. I was also a member of a community liaison committee set up by Luna Park. The group was dissolved after the announcement of the DA for the 14-storey high-rise proposed for the cliff top site. Members of SHFA also attended those meetings.

Luna Park Sydney sent me an email saying that I was trying to undermine the commerciality of the park because we objected to the DA and that SHFA had also advised them that the meeting should not be reconvened. My query is: why is SHFA advising a developer not to talk to the community? Is it not their role to protect Sydney foreshores for the community and advise the Minister of what is appropriate rather than inappropriate development?

**Mr KUITERS:** I am the chairman of the Pinnacle apartment block, which is directly opposite the cliff top site. I am a member of Protectors of Sydney Foreshore and I am also heavily associated with local residents, local business people and the community at large in relation particularly to the affectation of Luna Park and this particular site. The Protectors of Sydney Foreshore have a membership of about 7,000 people, who have signed petitions and the like. Many of the locals are contributors to the fighting fund that we have been using over the last year or so.

We are particularly concerned about the way in which SHFA has been handling this process in relation to, first of all, the management of Luna Park as the trustee of Luna Park and then as the recommending consent authority. We believe there to be a conflict of interest. Having gone through the documentation in relation to the DA for the chirpy building and the associated cinema complex in January of last year,<sup>1</sup> and all the memoranda that were made public, it has become very, very clear that SHFA are not independent in the way that they are treating this proposal and even the language that they used in the various memoranda internally and elsewhere is that they are continually trying to

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<sup>1</sup> Mr Kuiters has indicated on 1March in his transcript corrections that this should read "... in March of last year..."

work out a way of undermining the North Sydney LEP, which prohibits commercial and inappropriate development on the cliff tops and elsewhere.

We are very concerned that instead of SHFA being an impartial recommending or processing authority to the Minister, it is not doing that. It is finding ways in which it can assist the developer—for what reasons we are unsure—to obtain approvals for consents that are outside what was originally intended and agreed upon by the community, by North Sydney council and by the developer at the time.

**Mr VAN RIJSWIJK:** Gus has outlined the group membership. We are broadly representative of the community in the Milsons Point area and beyond. Our links go into the community throughout Sydney and wider New South Wales. At the core of this issue is the legal interpretation of the planning laws and how that legal interpretation is being managed by SHFA, the Department of Infrastructure, Planning and Natural Resources [DIPNR] and others. The Crown Solicitor's advice and Deacon's advice in relation to the proposed high-rise building on the cliff top showed very clearly that the proposed building is a prohibited development and, as Gus said, instead of simply advising the applicant SHFA and, to some extent DIPNR, are trying to manipulate the process to get around the legal requirements.

We are seeing doubt cast on the clarity of the requirements of what is allowed on the cliff top site. The site is very clearly controlled by the Luna Park Site Act, which requires compliance with planning law. Part of that compliance requires it to comply with the North Sydney LEP, which has zoned the southern cliff top as part of the Luna Park zone, which precludes commercial development. That LEP was signed by the current Minister, so the Minister is left in no doubt as to what is allowed on the that cliff top site, yet he is trying to tell the public that there is a doubt. He said, "We don't know what the height controls are." Well, it is like saying, "I don't know what the height controls are of Hyde Park." There are no height controls in Hyde Park because you cannot build anything there. It is like saying, "I'm going to build a kiosk in Hyde Park" and the developer comes back, "Well, I like the idea of a kiosk, but I'd rather build a 60-metre office block there" and arguing the height controls in the Hyde Park area. It is a nonsense. We believe the developers who won the tender, won the expression of interest process to redevelop Luna Park, we believe are quite clear as to what can or cannot be built on that site. We have included in our submission—I have brought colour copies for all the Committee—documents which they issued soon after they won that tender called "Turning the lights back on".

**CHAIR:** Would you like to table those?

**Mr VAN RIJSWIJK:** I would like to table that document. That document very clearly spells out that on that cliff top site the only building that will be built is a two-storey, 7.5-metre high restaurant on the southern part of that cliff top west to Northcliffe Street. There is still a height marker on that site, a pole with a yellow tag on it, that shows a 7.5-metre height. The developer was in no doubt as to what was allowed on that site. They have also instructed their advisers, JBA, to develop a master plan for that site, and that is attached to the back of this document. And again, the master plan that they developed at that time very clearly shows the location of the proposed two-storey restaurant and nothing else on that site. The document that they issued to the public then goes on to say what they had in mind for the cliff top area. They very clearly say that the northern part of the cliff top, which already carries a 10-storey commercial development, was the area where the commercial development was to take place—entirely consistent with the Luna Park Site Act, entirely consistent with the North Sydney LEP and the plan of management.

On the southern cliff top, which is the remaining cliff top site, there was to be a public park, a memorial for the ghost train ride victims and a split-level restaurant. This is the proposal that won the tender. This is the proposal that was signed off by the community on community consultation. This is the proposal that was agreed by North Sydney Council, and it is the reason why, after repeated attempts by the Minister and his department to get North Sydney Council to rezone the southern cliff top, North Sydney Council has refused to do so. The current LEP that applies to that site still zones the cliff top as part of the Luna Park zone. That LEP was signed by Mr Knowles. He then goes on to

say, at the start of this<sup>2</sup> year when he set up the expert panel, that there are no planning controls for the site. But we see that the Minister has also signed another document recommending that the master plan requirement for the site be waived, and a document signed by the Minister on 6/10/98, says, "This site is controlled by North Sydney Council DCP No. 10, a plan of management adopted by the Minister of Land, Water and Conservation and an LEP referred to the Minister."

The document that the Minister signed very clearly says there was a planning control in place for that site, yet he tries to tell the community when he launches this farcical expert panel that there is doubt about what you can do with that site. We have doubt about the committee itself we have doubt as to whether the panel was legally constituted. We know from two of the four members of that panel or committee that there were dissenting opinions that were never made public prior to the report going to the Minister or the report being put out for public comment, and that there was a letter that was sent by SHFA to DIPNR and the chair of the panel which says very clearly in relation to that cliff top site that there were two sites on that cliff top, one of those was to be build on and one of those was to be kept as public open space. That letter was not passed on to the committee and yet we have the committee report that recommends buildings on both sites on the cliff top.

So there is something going on here where there seems to be a push by the various instrumentalities involved to exceed what is allowed on the that cliff top, to exceed what is committed on the cliff top, to exceed what the community has always been told what was going to be developed on that cliff top, and is again shown by the documents put in by the developer, stages one and two DAs that went into North Sydney Council first and were eventually approved by the Minister after the site was declared as of State significance under SEPP 56. Those DAs conveniently left the area of the cliff top and the community in the dark as to what was going to happen there. My guess is the developer knew full well what they wanted to happen there and other parties knew full well what they wanted to happen there, but the community was not going to be told. We then see a misinformation campaign where we get this interpretation promulgated as to what the Luna Park Site Act required, and that this interpretation was supported by SHFA, supported by DIPNR and supported by the Minister. This concept of a lack of planning controls, and, as I have already said, that is certainly not the case in relation to that site.

I just want to briefly talk about SHFA's supplementary submission where they contend that they were only involved in the planning process as recommending consent authority after August 2003. However, we know that SHFA was the organisation involved on day one of the lease that was granted to the developer in negotiation of that lease and in the monitoring of that lease as trustee or as manager of the Luna Park Reserve Trust. So as manager of the Luna Park Reserve Trust they then hold in their hands responsibility to act on behalf of the public in the management of that trust, and we have not seen any sign that that is what is happening. What we are seeing is that even prior to SHFA becoming involved in the DA process they had never, ever objected to the level of development being proposed by the developer on the Luna Park site. We compare what has been developed on the Luna Park site with what was originally proposed, we see excesses in every single approval that has gone through the process under the Minister's SEPP 56 ruling.

We have on the northern cliff top an original proposal for a four-storey office block. We now have a 10-storey office block there achieved by excavation of the heritage cliff face. We have a circus tent, which was supposed to be 2,000 people, now closer to 3,000 people in size—2,000 seats<sup>3</sup> in size. We have a car park that was supposed to be 100 spaces, now close to 400 spaces and located within the body of Luna Park and granted a 99-year lease. We have no supervision whatsoever by SHFA as landlord and is responsible under the legislation, the heritage legislation, a section 170 listing of the heritage aspects of the site of the state of the fig trees and other trees on the site. We have the situation late last year where the developer cut down coral trees on the site without reference back to SHFA, without reference back to the Luna Park Reserve Trust, without putting an application or DA in as was required, and none of these bodies has objected to them chopping down those trees. So we see a disregard of the duty in that case. SHFA has continually shown support for the developer over and above what their role would be as recommending consent authority.

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<sup>2</sup> On 10 March 2005 Mr Van Rijswijk sent a correction to the transcript indicatin that it should read "...at the start of last year..."

<sup>3</sup> On 10 March Mr Van Rijswijk indicated in his transcript corrections that this should read "3,000 seats"

We are not told, for example, of the details of the lease agreement between the Government through the Luna Park Reserve Trust and the developer and its contribution to viability, yet in each case they support the argument when development on the site is in excess of what was originally proposed that that is needed for viability. They support it and DIPNR has supported the waving of the need for a master plan for the site. Now the fact that we do not have a master plan for the site means that the community is kept in the dark as to what the true process is in relation to Luna Park, what the true intent is for that site. The lease between the Luna Park Reserve Trust and the developer gives the developer the right to redevelop any buildings on the site. Can you imagine what would happen to the Luna Park site should that cease functioning as a family fun park with that lease in place? We have seen SHFA not object to the committee's report for the cliff top site when they know that the lease for the site allows the developer only to develop one of those blocks.

We have seen SHFA agree to a new subdivision for the site which gives the developer access to 2½ times the areas of the two small lots that were part of the cliff top site prior to the subdivision. The significance of that, of course, is that if you want to build a high-rise building on the cliff top you need to comply with floor space ratio requirements. Making the cliff top site bigger in a subdivision allows them to beat any floor space ratio objections. This advice, the advice that they had done this, was not passed on to the expert panel or the expert committee who was deliberating at the time that this submission was going through. Dr Lang, as head of SHFA, took it upon himself to write to the *Sydney Morning Herald* to outline the fact that 99-year leases on part of the Luna Park site—and I refer specifically to the car park—did not alienate public land. Well, who would like to tell all the people in Canberra on a 99-year leases that that land is not theirs? It is a total farce for an officer of SHFA to make that public statement in support of what is happening in Luna Park.

We get continued support for the developer's viability arguments, and its viability question comes up time and time again each time the developer wants to do more than what they are allowed to do. And as Ms Cole has already said, they have advised the developer not to talk to the community. What we need is a total listing of the secrecy surrounding this deal. We do not know what the bid is that the Metro Edgley people put in that caused them to win the expression of interest process, but we would expect it reflects this document that they first put out. We do know that others who were involved in that bid were knocked back on the basis that they recommended high-rise development on the cliff top. So it is ludicrous to suggest that now that the bid has been won high-rise development on the cliff top is again on the agenda. We believe that there was a conflict of interest between SHFA's role as manager of the Luna Park Reserve Trust on behalf of the community and its role as recommending consent authority for the Luna Park area, and I think that needs to be looked into. We believe that the lease agreement—we have a copy of the lease agreement between the Luna Park Reserve Trust and the developer with all the good bits blacked out—we believe that that needs to be made public. It is not top secret information to find that the developer, Luna Park Sydney, is paying \$500,000 year for the lease of the site to be allowed to run Luna Park.

These facts are not commercial-in-confidence types of facts. They are the sorts of things that the community has the right to know in relation to a site that is as important to Sydney as Luna Park. The secrecy surrounding the lease agreements and the secrecy surrounding the agreement between the developer and the Government, as reflected in the agreement with the Luna Park Reserve Trust, needs to be known. We need to know what has been said behind the scenes. Why do DIPNR, SHFA and the Minister keep pushing for more development at Luna Park when it is quite clear, through the legislation, the LEP and the developer's own documentation, what was originally considered there and what was originally considered viable? This document reflects the Luna Park plan of management, and the Luna Park plan of management was considered viable.

**CHAIR:** Thank you. I will kick off with some questions, which any one of you may answer. SHFA is of course at pains to say that it is not the consent authority; that that is the Minister. You have used the terminology "recommending consent". Would it be fair to say that you see the Minister and SHFA as being virtually indivisible in relation to consent?

**Mr VAN RIJSWIJK:** I would say that SHFA is getting some direction, yes. That is my feeling.

**CHAIR:** From the Minister?

**Mr VAN RIJSWIJK:** Direction as to which way to go. It is quite obvious in relation to the recent public exhibition of the cinema complex. The cinema complex is clearly in breach of the plan of management. Many, many factors relating to the cinema complex are in breach of the plan of management. If that sort of application were to go to a council, the council would tell the developer, "I'm sorry; you can't build this. Amend it and come back to me when you have a proposal that is in line with the plan of management." Yet this has not happened in SHFA's case. So you wonder why SHFA is putting forward for public comment a proposal that does not meet the legal requirements. Who is giving SHFA this direction? They would surely not be doing it off their own bat and going down a track that is not correct.

**CHAIR:** Mr Van Rijswijk, in your submission you suggest that it would be better if the planning control for Luna Park reverted back to North Sydney Council. Can you expand on why you think that would be the way to go?

**Mr VAN RIJSWIJK:** If we look at the early history of the DAs that went before North Sydney Council in relation to Luna Park, it is quite clear that North Sydney Council was doing the correct balancing act between what was in the broader public interest in relation to the viability of Luna Park and what was in the local public interest in relation to the local community and the impact of Luna Park's interest on the local community. We do not see that balance coming forward in the way that the issues are being handled now. For that reason we believe it is appropriate for these planning matters to be managed by local council.

**The Hon. GREG PEARCE:** You mentioned the supplementary submission from SHFA. I want to be clear about what you are arguing. On page 7 of their supplementary submission SHFA says:

Development of the cliff top was made permissible under the Luna Park Site Amendment Act 1997 to enable Luna Park to be redeveloped and operated as an economically viable venture.

I guess their argument really is that that legislation makes it almost open slather as to what can be done there.

**Mr VAN RIJSWIJK:** No, it does not because the legislation shows quite broadly what can be done on the cliff-top site. The cliff-top site includes the northern part of the cliff top, where there is already a commercial building, and the southern part of the cliff top. It also quite clearly states that the developer has to meet the requirements of the Environmental Planning and Assessment Act—any planning controls. Then you say, "Okay, what did the developer believe they could build on the cliff-top site?" So you go back to the "Turning the lights back on" document from Metro Edgley, which is the first document the public got after they were awarded the contract, and it is quite clear that they did not believe they were allowed to build a high-rise office block on that site. So they have correctly interpreted the legislation, correctly interpreted the plan of management and correctly interpreted the requirements of the North Sydney LEP in this document. There is no conflict. Whereas what the Minister is now trying to say is that there is conflict about what can and cannot be done on that site. We suggest there is no conflict, and the developer knows it.

**Mr KUITERS:** There are also restrictions in relation specifically to that site. One is to do with the harm of the fig trees, and any substantial development on that site will harm or damage those fig trees. They are being harmed and damaged already because of their lack of care. One of the points that was brought out in the deacon's letter in advice to SHFA, which was passed on from Stephen Kerr to Gerry Gleeson and Rob Lang, is that, whatever happens, it has to minimise the impact of Luna Park's operation on the surrounding community. Well, all of the things that they are proposing are doing anything but minimising the impact on the surrounding community.

**The Hon. GREG PEARCE:** SHFA seems to be hanging their hat on the concept that the park had to be redeveloped and operated on an economically viable basis. They say that the plan of management adopted in 1998 "also envisaged commercial development of the cliff-top sites for uses such as a hotel, shops, offices and car parking."

**Mr VAN RIJSWIJK:** There were two plans drawn up: there was a draft plan of management and a plan of management. The draft plan of management contains the plan or a map

called "the preferred option". If you look at the map of the preferred option it shows the two-storey restaurant on the southern cliff top. That map was withdrawn from the plan of management that was signed by the Minister and there were slight wording changes made. We have been saying all along that there seems to be a process of manipulation going on to give the developer more than what the developer may be entitled to under the Act, under planning laws and under the plan of management.

The community is very clear, North Sydney Council is very clear and, when you look at this document, the developer was very clear as to what was and was not allowed on the cliff top. They have already exceeded what was allowed on the cliff top. The northern cliff-top site was to house a four-storey office block; they have a 10-storey office block. That has contributed to viability. They have a larger circus tent. That has contributed to viability. They have a larger café-brasserie. That has contributed to viability. They have a larger car park. That has contributed to viability. So every time they turn around and want a bit more, they trot out the viability argument. What about the viability of the community?

Part of our submission shows an analysis done by Hill PDA of the financial impact of the proposed high-rise development on the surrounding buildings. It was quite restricted in its scope, looking specifically at the buildings immediately surrounding that cliff-top site. When Luna Park says, "Well, we want that high-rise building because it will give us \$10 million to pay off debt"—the viability argument—the damage done to the community, according to that report, is \$67.5 million. That is not much of the trade-off, is it—\$10 million for \$67.5 million? We believe that is a conservative estimate and the estimate is closer to \$80 million.

I will give you an example. Just prior to Christmas in Gus's building there was an apartment, which was valued at \$1.7 million when it went on the market, that sold for \$1.1 million because of the uncertainty of what is happening on the cliff-top site. So huge damage is being done to the local community simply from the value perspective—not looking even at amenities or anything else—by that proposal. We just do not believe it is right to say to the community, "You've got to suffer damage of \$67.5 million or more simply so that we can put \$10 million into the viability of Luna Park", after the viability argument has been used many times prior to that.

**Mr KUITERS:** I think it is important to remember that the Minister has said in Parliament that the Government has not underwritten the long-term viability of Luna Park and that when the developers entered into this agreement they took the developers' risk of making profits or losses. They are continually hiding behind this long-term viability argument but not showing the community at large how much profit they are making or what losses they are making because they do not want to do that. They are prepared continually to seek more and more and more, and to date they have been receiving more and more and more. But there has to be a time when the community stops paying because every time you give an extra approval to these developers, had it been provided in the original tender process, people would have paid more for the site.

**Mr VAN RIJSWIJK:** It is a probity issue.

**Ms COLE:** It is my understanding of the long-term viability of Luna Park that funds would go back into Luna Park trust to ensure that the heritage items were maintained. It is not the community's responsibility to ensure the financial viability of the business. It is our concern that the heritage items are maintained and it is our understanding that the viability of Luna Park has to underpin the heritage items, the cliff face and trees on the site. We have not seen any documentation to date to show what funds are going back into that trust and how they are being relocated to maintain the heritage items there.

**Mr VAN RIJSWIJK:** In fact, we are seeing the reverse: We are seeing SHFA providing support for the maintenance of the boardwalk, which under the agreement is Luna Park's responsibility. We are seeing the Government providing grants for training programs for young people—paying the salaries of the people manning the rides as a form of assistance to the park. That is up to the Government to decide but it is not the deal that was done with the community. The Government said that they would not be underwriting Luna Park; they were going to leave it as a standalone commercial development. What we are seeing in this process is that the community is again being asked to underwrite the viability of Luna Park by sacrificing \$67.5 million worth of

property value so that the developer can make a profit out of an office block, which was never intended for that site.

**The Hon. GREG PEARCE:** Continuing to get this very clear, SHFA also said that it should be noted that the developer is entitled to pursue the maximum development potential of the cliff-top sites within the planning parameters, and those planning parameters are ultimately a matter for the Minister to determine. SHFA seems to be denying that it has any role in that and is basically saying that it is up to the Minister.

**Mr VAN RIJSWIJK:** SHFA's role is that of a recommending consent authority. It coordinates the process, and that should be an arm's length process. They should not be involved in the debate as to what is appropriate for that site. As shown by the letter that Dr Lang wrote to the *Sydney Morning Herald*, they are very much involved in the debate. If they are the recommending consent authority they should be receiving a DA, deciding whether or not that DA is valid in terms of the plan of management, in terms of the North Sydney LEP and other planning instruments, and passing on a recommendation to the Minister. They are not doing that; they are doing more than that—they are leaning towards the developer in the advice that they are giving and in the statements that they are making.

**Ms COLE:** We also have a letter—or a memorandum—saying that SHFA actually advised the developer if the building was inappropriate how he could get around that. That, we see, is not their role as the consent authority or the adviser to the Minister. I think Gus Kuiters has more details about that.

**Mr KUITERS:** I have been reading through the memorandums that have been sent between, as I said before, Stephen Kerr, Gerry Gleeson and Rob Lang, and they go on to say about the problem "we" face—that is the problem that SHFA faces. But it should not be the problem the SHFA faces, it should be a problem that is the developer's problem. Then they go on to say, "We may not be able to borrow a land-use definition from the Luna Park Site Act to replace the North Sydney LEP." Again, they are trying to say, "We know that the North Sydney LEP doesn't allow it but if we can borrow the definition of the name 'Luna Park' then maybe we can use another avenue of trying to get this approved." This is not the action of an independent recommending authority; this is the action of a group of people who are trying to manipulate the situation, against legal advice that they cannot do it, and get around the North Sydney LEP and every other instrument that may stop the developer getting exactly what the developer wants.

We want to understand as a community: Why is SHFA not independent? Why is SHFA trying to go around the rules and regulations and seemingly instead of saying, "It is not permissible", saying "I will tell you another way in which you can get around it." That is not the action of an independent authority. That is why I think that this inquiry into SHFA is so important.

**CHAIR:** Mr Kuiters, I want to ensure that the Committee has the memoranda you referred to. If not, you could table them.

**Mr KUITERS:** They are all part of the DA information that was submitted to Parliament back in February-March. I can certainly get you copies.

**The Hon. GREG PEARCE:** SHFA says it is the Minister's decision. What has the Minister said to you?

**Mr VAN RIJSWIJK:** We have for the best part of the year been writing to the Minister to ask for a meeting with him. He has not as yet met with us. We have had one meeting in recent weeks with members of his staff. We have put our position in relation to the three options for the site: option one being the high-rise office block; option two being the expert panel's recommendations—and we have expressed our doubts as to the validity of those; and option 3 being going back to what was originally proposed for the site, a two-storey restaurant. We have said very clearly to the Minister's advisers that if option A or B, a high-rise office block or the panel's recommendations, were to be the outcome decided by the Minister that the outcome would be vigorously opposed by the community.

**Ms SYLVIA HALE:** I understand that Luna Park Sydney is basically a company associated with Metro Edgley and Metro Edgley in turn is a subsidiary of Multiplex. What is the fear or what could possibly happen to the site if Metro Edgley, whose focus is on the provision of entertainment and those types of facilities, if it decided it was no longer feasible for it to continue to operate there?

**Mr VAN RIJSWIJK:** I think we will see on the Luna Park site something close to what is at Darling Harbour.

**Ms SYLVIA HALE:** Perhaps I am asking you to talk about the arrangements under the 90-year lease and agreement.

**Mr VAN RIJSWIJK:** There is a 99-year lease on the carpark, which was never intended to be a 99-year lease where it is currently located on the clifftops, the northern and southern clifftops. The rest of the site has a 40-year lease. Even within a 40-year lease there is quite a level of development that can take place of the buildings on the site which could turn it into a convention-type facility or a Fox studio-type facility or perhaps the DA being submitted for a cinema complex, rather than a family fun park which is what Luna Park is intended to be. Our biggest fear in relation to what is happening on the clifftop is that the argument is being used that it is needed for the viability of Luna Park and we will get inappropriate development on the clifftop and then Luna Park will fail anyway. So we have got the worst of both worlds: We have got inappropriate development of the clifftop and no Luna Park. The community wants Luna Park. Luna Park has been there since 1935. It is part of Sydney. It needs to be supported as part of Sydney's heritage. We have no confidence that this is the outcome that is being planned. The fact that all of these buildings that are now going up on the site are in excess in size to what was originally intended, they are encroaching on the space that was originally part of Luna Park. The rides have been taken out of Luna Park and put north of the Luna Park area. We feel that there is a hidden undercurrent here, that what is intended for the long-term future of Luna Park is not what the community has been led to believe.

**Ms SYLVIA HALE:** What was the justification for the relocation of the rides?

**Mr VAN RIJSWIJK:** To make space for these larger buildings. If you look at Luna Park now the main thoroughfare is quite narrow. It would not have had space for the rides.

**Ms SYLVIA HALE:** You mentioned earlier that the lease between the Luna Park Trust and the developer gave the developer the rights to redevelop existing buildings. What restrictions are on those rights to redevelop?

**Mr VAN RIJSWIJK:** The restrictions are imposed by the plan of management, which, for example, gives height restrictions, size restrictions and density restrictions. The cinema development meets none of those requirements. It is taller, wider and denser than what is allowed in the plan of management. For that reason we are saying, "Why has SHFA accepted the DA when it is clearly in breach?" They need to be telling the developer it is in breach and to come back with a plan that meets the plan of management requirements.

**Ms SYLVIA HALE:** You were also suggesting that the Minister was saying that there was no need for the plan of management.

**Mr VAN RIJSWIJK:** There is a plan of management in place. There is no master plan. The need for a master plan has been waived by the Minister on the basis that there are adequate planning controls. Then at the start of last year he turns around and says there are no planning controls, we need a committee to work out what they ought to be.

**Ms SYLVIA HALE:** If there is no requirement for a master plan, what do you see as the drawbacks or potential dangers of there being no master plan?

**Mr VAN RIJSWIJK:** We see what is happening at the site now is probably referred to as developer's creep, where they start off with one plan and little by little get approval for more and more and more. In the end what you have got is not what you originally started off with. Because there is no master plan you do not know what the end point is going to be. One of the recommendations we

believe this Committee should make is that there ought to be a master plan for Luna Park so the community knows exactly what is going to happen on that site.

**Ms SYLVIA HALE:** A master plan would permit the community to assess the cumulative effect of all the individual developments?

**Mr KUITERS:** Exactly.

**Mr VAN RIJSWIJK:** It was interesting to see when the cinema complex went forward for a DA the argument was again put by SHFA that the requirement for a master plan can be waived. Why is SHFA standing on the side of the developer when they should be neutral and, if anything, on the side of the general public both in their roles as the recommending consent authority and as trustee of the Luna Park Reserve Trust. This is Crown land; this is public land. This is not Multiplex's land.

**Ms SYLVIA HALE:** You are saying there is an essential conflict between its role as trustee and its role assessing and recommending approval for developments?

**Mr VAN RIJSWIJK:** It is quite possible, for example, that the agreement between the Government and the developer has some clause in it in relation to viability. We do not know; we have not seen the agreement. I think this Committee may need to access that agreement. We have not seen it. Therefore, the instructions are coming back, "Make it viable", because the Government does not want to dip into its pockets to bail the developer out. We do not know what the terms of that agreement are.

**Ms SYLVIA HALE:** How accessible have you found SHFA either as a trustee or as a development assessment authority to the community and how open is it in its dealings with the community?

**Mr KUITERS:** I do not think they have been very accessible at all. If you compare what they are doing with Multiplex and you compare what they are doing with the community, it is like chalk and cheese. They were aware of this building six months before it was actually made public. There was no community consultation whatsoever. It was all hidden from the community. Then when it was lodged as a DA and I went up to SHFA wanting to make an appointment they said, "We can't meet with you yet. It will be in a few weeks' time when it is up for public exhibition." It never was because it was withdrawn because of the community backlash. A number of other times we have tried to have meetings with them. I think we have been able to get one meeting with SHFA over the full 12 months.

**Mr VAN RIJSWIJK:** A relatively junior officer.

**Mr KUITERS:** We have never been able to meet with the senior people at SHFA. They have just ignored or not responded to our correspondence. Almost exactly the same goes for the Minister. After 12 months of trying we were able with Mr and Mrs Seidler to get one meeting with the Minister's senior adviser, Sarah Taylor. But we understand that Multiplex has had a number of meetings with the Minister and senior staff. Where is the balance in all of this?

**Ms COLE:** Can I make one comment? For 12 months I was part of this community liaison committee that, as I said, members from SHFA attended and the management of Luna Park. This was when the amusement park was being developed and we were informed. We brought issues in relation to traffic congestion and they listened to those issues. There was a newsletter that went out. As soon as the development on the clifftop site or the DA was announced those meetings were shut down. More to the point, it was blatantly obvious to a number of us who attended those meetings that SHFA was very much in a relationship with Luna Park Sydney because together they collectively told us as a community that the meetings would be shut down, they were inappropriate. We were only really to be involved when it was dealing with traffic issues into the park. But when they were now discussing issues that were going to be developing on the clifftop site it was really none of our business, that was their right. From that day on the community has been locked out of any relationship or access to people at SHFA.

**Mr VAN RIJSWIJK:** I think it is important to highlight the fact that SHFA seemed to be of the view that through the Luna Park site Act and through their agreement with the developer that the developer has rights to maximise their returns from the clifftop site. But that right is tempered by the prevailing planning controls which SHFA, as recommending consent authority, has to uphold. The developer was very clear about what the planning controls were, as shown by the "Turning on the Lights" document. But what we are seeing is the developer and SHFA working together to try and undermine those controls, and we do not know why. The same coming from DIPNR, the department. After to the expert panel process was completed, they wrote a report for the Minister and the report is full of mechanisms as to how the Minister can get around the North Sydney LEP, which is a planning document that he himself has signed.

**Ms SYLVIA HALE:** You have a copy of that report? Could you table it?

**Mr VAN RIJSWIJK:** Yes.

**The Hon. DAVID OLDFIELD:** You make the point that the tender was gained through a process that had minimal impact essentially for the community and now there is some developer creep, as you are describe it. Do you have any feeling as to how this has come about? Is there a suggestion of corruption of the process in the very beginning, for example? Was there some understanding between the successful tenderer prior to being successful and the Government as to how they might improve the scenario once having gained the tender?

**Mr VAN RIJSWIJK:** We cannot comment on that because we have no evidence. The only evidence we have is in the events leading up to the granting of the tender because DIPNR and the Minister had on several occasions prior to the granting of the tender asked North Sydney council to change the zoning for that clifftop site. That clifftop site was in dispute even before the tender was granted. We also know that there are other people who put bids in who were told they could not put a high-rise office block on the clifftop site.

**The Hon. DAVID OLDFIELD:** The impression I am getting from what you are saying—and I appreciate you do not necessarily have any evidence on this point except what you have just said is interesting with regards to the attempts prior to the tender being granted and the zoning changes occurring—is that the developer essentially put in a tender that was not viable. Did they know it was not viable at the time? Is it a matter of incompetence on the developer's behalf or is it a matter of, "We will fix it up later on, don't worry, nudge nudge, wink wink"?

**Mr VAN RIJSWIJK:** That is possible. I would suggest that Multiplex is well-experienced in developments of this scale. They claimed at the time that what they were proposing was viable. The plan of management claimed it was viable. Now they are saying, "It is no longer viable, we need more and more and more to make it viable."

**The Hon. DAVID OLDFIELD:** Has there been anything put forward by them to explain as to why it was viable then and not viable now and the circumstances that have changed?

**Mr VAN RIJSWIJK:** No. The problem is, of course, without a master plan, without access to the agreement, without knowing the detail of the agreement—written and other agreements that may exist—between the developer and the Government, we do not know why the process has been manipulated in this way. But it is quite clear that the process has been manipulated.

**Mr KUITERS:** We also do not know if the developers have already made lots and lots of money out of this and have just given it back to the shareholders, because they are not telling anybody. The only thing they are saying is that they want more—continually they want more. If actions speak louder than words, what we are seeing is that the original proposal is now being expanded dramatically with the support of the Minister, DIPNR and SHFA. You have to ask yourself why. If they are not independent and they are not underwriting the long-term viability of the profit-making machine of this development, why are they doing all this? And it is always at the cost of the local community and the community of Sydney.

**Ms COLE:** Also, we have not seen any financial documentation that gives us an up-to-date record of where they are now. We have asked for those on numerous occasions and all we are told is

that they need \$10 million to underpin the financial viability of Luna Park. Again, it is not stated whether this will go to the heritage nature of the park and the items. Essentially, it has to come from the community, and the community has simply been alienated and told, "This is what we need, otherwise Luna Park will fail again." We also get the impression that if Lunar Park fails again it will be very much on the head of the community because we have not supported the efforts to make it financially viable.

**The Hon. DAVID OLDFIELD:** So can you see this moving to the Government taking away North Sydney's planning controls for the site and doing whatever it likes?

**Mr VAN RIJSWIJK:** It already has.

**The Hon. DAVID OLDFIELD:** It has in that sense.

**Mr VAN RIJSWIJK:** It is under SEPP56. But that goes even further as to what is being planned by the Government in terms of changes to planning law. Discussion papers have been put out in relation to how planning law will be changed. It is quite clear that if the new system proposed by the Government goes through more and more of the detailed work in relation to decisions will be done by local councils but the Minister can then, at any point in time, take over the process and not have to give a reason. It does not even have to go through to the State significance type of mechanism. Another question we need to ask in relation to State significance is: It is clear that the Minister looked at Luna Park as a whole site as being of State significance. Now that the new subdivision has gone through and you have separate lots and lot 1, the cliff top lot, can you claim that a small lot like that is of State significance? I do not know.

**Mr KUITERS:** Under the documentation that has been tabled, it puts into serious question that it cannot be.

**The Hon. DAVID OLDFIELD:** We get some unusual interpretations of different things from DIPNR and the Minister, as we have seen before this Committee in the past.

**The Hon. JAN BURNSWOODS:** On the first page of your submission you describe yourself as a community group and you say that you receive your funding from member contributions. Can you give us some details of your membership and the financial contributions they make?

**Mr VAN RIJSWIJK:** Yes. We have a broadly based membership.

**The Hon. JAN BURNSWOODS:** How many people?

**Mr VAN RIJSWIJK:** The members exceed 7,500 people.

**The Hon. JAN BURNSWOODS:** I thought you said before that 7,000 had signed a petition.

**Mr KUITERS:** In excess of.

**Mr VAN RIJSWIJK:** More than 10,000.

**The Hon. JAN BURNSWOODS:** But that is not membership.

**Mr VAN RIJSWIJK:** It depends on how the articles of association define "membership".

**The Hon. JAN BURNSWOODS:** Malcolm Jones could have learned from you but do go on.

**Ms SYLVIA HALE:** That is uncalled for.

**The Hon. DAVID OLDFIELD:** That is offensive.

**Mr VAN RIJSWIJK:** It is quite clear from the people who signed the petition and those who respond to our regular emails and the wider community that there is wide interest from the

community in this process and wide support from the community as to what we are doing. Our funds come from—

**The Hon. JAN BURNSWOODS:** How many developers do you have amongst your members?

**Mr VAN RIJSWIJK:** Two, three?

**The Hon. JAN BURNSWOODS:** Developers of property.

**Mr KUITERS:** I would not even say two or three. I would say one.<sup>4</sup>

**The Hon. JAN BURNSWOODS:** That is yourself, is it?

**Mr KUITERS:** No.

**The Hon. JAN BURNSWOODS:** Can you name them?

**Mr KUITERS:** I am not naming anyone. You have asked a question.

**The Hon. JAN BURNSWOODS:** But you are a developer.

**Mr KUITERS:** I am an investor and a developer, yes.

**The Hon. JAN BURNSWOODS:** So when you say there is one, who would that be?

**Mr KUITERS:** The major contributors are all the building owners of the surrounding community. If you were to stand on the site you would look around at all of those other buildings, they are the people who have funded this.

**The Hon. JAN BURNSWOODS:** When you say there is one developer, who is that?

**Mr KUITERS:** I am sorry, I cannot tell you.

**The Hon. JAN BURNSWOODS:** Would it be Mr Rowan Wall or would it be Mr Neil Rickard?

**Mr KUITERS:** Mr Rowan Wall is not a developer.

**The Hon. JAN BURNSWOODS:** He is not the developer of the block at 13 Alfred Street?

**Mr KUITERS:** That is not being developed and he does not develop. They are investors but they are part of the local community.

**The Hon. JAN BURNSWOODS:** I am not denying that.

**Mr KUITERS:** They are local business people who are all being affected but the bulk of our funds have come from the mums and dads of the community.

**The Hon. JAN BURNSWOODS:** You have obviously seen the article from the *Sydney Morning Herald* last year. I will just read you a small section, "The Protectors of Sydney Foreshore say they have access to more than \$1 million to fight Multiplex all the way to the High Court. If that fails they are even considering offering to buy the site for \$10 million." This is not the normal kind of mums and dads that we talk about in Parliament.

**Mr VAN RIJSWIJK:** We have explained that the loss to the local community could exceed \$80 million. Why would the community not then invest in preventing that loss? We have buildings in

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<sup>4</sup> On 1 March Mr Kuiters has indicated to the secretariat, through his transcript corrections that "on reflection we have two developers."

that area which have passed bylaws within their body corporates to raise funds through their body corporate mechanism.

**The Hon. JAN BURNSWOODS:** So the \$1 million you have has come from all these mums and dads.

**Mr VAN RIJSWIJK:** All those people, yes. Most of our money has come from the mums and dads. It is very hard to get money out of developers, believe me.

**Ms COLE:** Can I just add that it is not just the people of Milson's Point. As I said earlier, I am actually the secretary of the Milson precinct, Kirribilli and part of the combined precincts, and I liaise very closely as a volunteer. At every meeting we give an update on Luna Park, and we have enormous support from all around the lower North Shore. These people contribute financially small amounts but also their time.

**The Hon. JAN BURNSWOODS:** I understand that.

**Mr VAN RIJSWIJK:** And we get cheques sent in from the general public through our emails and so on, so the general public beyond the Milson's area are certainly contributing.

**The Hon. JAN BURNSWOODS:** How much are you paid as chairman?

**Mr VAN RIJSWIJK:** I get paid an hourly rate for the work I do.

**The Hon. JAN BURNSWOODS:** What is the hourly rate?

**Mr VAN RIJSWIJK:** It is \$120 an hour.

**The Hon. JAN BURNSWOODS:** How many hours a week roughly do you think you do?

**Mr VAN RIJSWIJK:** It varies. Obviously this week is a busy one.

**The Hon. JAN BURNSWOODS:** So you are paid to come here, for instance?

**Mr VAN RIJSWIJK:** I am paid to run the organisation.

**The Hon. JAN BURNSWOODS:** So you are actually paid to come here and give evidence.

**Mr VAN RIJSWIJK:** My word, yes.

**The Hon. JAN BURNSWOODS:** So roughly how many hours a week would you do? Obviously you fill in tax returns and all the rest of it so you must have some idea of how many hours a week or month you average.

**Mr VAN RIJSWIJK:** On average, it would be less than eight hours a week.

**The Hon. JAN BURNSWOODS:** So \$120 an hour and on average less than eight. And the organisation was formed when?

**Mr VAN RIJSWIJK:** March last year.

**The Hon. JAN BURNSWOODS:** So that figure you are giving would be over the last year or so. It is a pretty cashed up organisation, is it not?

**Mr VAN RIJSWIJK:** Very much so, yes, and very determined.

**Mr KUITERS:** What is your concern?

**The Hon. JAN BURNSWOODS:** My concern is to ensure that we get these things on the record.

**The Hon. DAVID OLDFIELD:** She is seeing if you are viable to make a donation to the ALP. She is looking for ALP donations.

**The Hon. JAN BURNSWOODS:** I was struck by your comment, Mr Kuiters, that "we have 7,000 members or people who signed our petition". I guess that always sets the alarm bells ringing because a lot of organisations tend to exaggerate their membership, put it that way.

**Mr KUITERS:** They have all been tabled in Parliament. In fact, I think it is in excess of 10,000.

**The Hon. JAN BURNSWOODS:** There is a difference between petitions and membership.

**The Hon. AMANDA FAZIO:** The issue I would like you to talk to us about is the focus of your organisation, which seems to be solely on the Luna Park site. From what I understand, you appear to have made no objections at all to two other developments that have been approved over the road from the Luna Park cliff top site. If you were worried about overdevelopment in the area, blockage of views and all the rest of it, was your organisation concerned about that at all or is your protection of Sydney foreshore only related to the Luna Park site?

**Mr KUITERS:** Which two other developments are you referring to specifically?

**The Hon. AMANDA FAZIO:** There were two other developments over the road and I will just give you the detail. There were two developments that were going in, a seven-storey office building and an 11-storey residential building. They were both in excess of the planning controls, at 13 Alfred Street and 7 Alfred Street.

**Mr KUITERS:** Do you know when they were approved?

**The Hon. AMANDA FAZIO:** Last year.

**Mr KUITERS:** No, I think you will find that they were approved earlier than that. Our group was incorporated in March of last year. Both of them were approved before those dates.

**Ms COLE:** We are concerned with the lower North Shore area and we were very much behind the proposal that went in to list Lavender Bay, Milson's precinct, North Sydney and the foreshore area on the national heritage list. So while our focus is—we evolved because of the chirpy building. Our activity will go further and it does, but it does limit itself probably to the lower North Shore area. We would like to help others but at the moment this is our focus because we believe it is a real fight and it is a heritage site worth saving.

**The Hon. AMANDA FAZIO:** But you are not concerned about what else goes on in the area. Although those developments were approved prior to your organisation being set up, have you had any concern about those at all? Have you pursued a challenge through the Land and Environment Court over those approvals?

**Mr KUITERS:** We were not in existence.

**Mr VAN RIJSWIJK:** We were not in existence at that time and those developments were approved using the appropriate processes. What we are seeing in Luna Park is that the appropriate processes are not being used. Indeed, they are being circumvented, and that is our concern. As Ms Cole said, we have a broader responsibility for the lower North Shore area. We have lodged with the Federal Minister an application for national heritage listing for that whole precinct, including the railway line along Lavender Bay, the Lavender Bay foreshore, the viaduct, North Sydney pool, that whole area. We are in ongoing mode to stop inappropriate development of that whole area.

**Ms COLE:** We could not oppose every—

**The Hon. AMANDA FAZIO:** Can you table or provide the Committee with a copy of your request to have that heritage listing?

**Mr VAN RIJSWIJK:** Yes. It is undergoing a public consultation process at the moment.

**The Hon. JAN BURNSWOODS:** Mr van Rijswijk, when you took the oath you described yourself as an environmental consultant.

**Mr VAN RIJSWIJK:** That is correct.

**The Hon. JAN BURNSWOODS:** I am a frequent reader of the Wilderness Society publications, and I have been fascinated to hear about the front group you set up known as Mothers Opposing Pollution, which was eventually exposed as consisting of one woman acting under a false name and a public relations consultant employed by the Association of Liquidpaper board Carton Manufacturers, which you run. Is this the standard of behaviour that you would recommend as good for organisations like yours? Is this the sort of thing you do to justify your \$120 an hour?

**Mr VAN RIJSWIJK:** No, and that report is not correct.

**The Hon. JAN BURNSWOODS:** Perhaps you could give us the correct details.

**Mr VAN RIJSWIJK:** It is correct that the company that we did have on our books at that time as a PR consultant was involved in that activity but it was not at my direction, nor at the direction of my association. As soon as we were aware of that happening we severed contact with that particular company.

**The Hon. JAN BURNSWOODS:** When did this occur?

**Mr VAN RIJSWIJK:** I do not have the dates in front of me but it goes back to about 1993, from memory.

**The Hon. JAN BURNSWOODS:** Perhaps I could ask you to provide the Committee with the evidence of your severing connections.

**Mr VAN RIJSWIJK:** Yes, certainly.

**The Hon. JAN BURNSWOODS:** Certainly, if you look at the *Courier Mail* and other sources besides the Wilderness Society you would find some grave questions being asked about your reputation as a professional lobbyist and the tactics that you stoop to.

**Mr VAN RIJSWIJK:** That is correct, and we were in contact with the *Courier Mail* at that time and insisted that they withdraw those statements because they were incorrect.

**The Hon. JAN BURNSWOODS:** But they did not withdraw them, of course.

**The Hon. DAVID OLDFIELD:** They never do.

**The Hon. JAN BURNSWOODS:** There are ways of making people to withdraw things that you claim are untrue.

**Mr VAN RIJSWIJK:** There are very expensive ways of making people withdraw statements.

**The Hon. JAN BURNSWOODS:** So you are saying that even though the woman known as Alana Maloney, otherwise known as Janet Rundle, was co-director of another company associated with yours, et cetera, you will provide us with the evidence of your severing contact with those people?

**Mr VAN RIJSWIJK:** Yes. She was not a director of a company that I was associated with, I am sorry.

**The Hon. JAN BURNSWOODS:** We will see the evidence. That will be good.

**Mr VAN RIJSWIJK:** I am quite happy to show at what point in time we severed contact with the organisation concerned.

**The Hon. KAYEE GRIFFIN:** In your submission and also when you were speaking earlier today you consistently referred to the Sydney Harbour Foreshore Authority [SHFA] being the consent authority. Do you acknowledge that the Minister is the consent authority?

**Mr VAN RIJSWIJK:** No, I referred to SHFA as being a recommending consent authority.

**The Hon. KAYEE GRIFFIN:** No, you kept saying consent authority. That is what you said in your submission.

**Mr VAN RIJSWIJK:** I am sorry, let me correct myself if I said that. It is the recommending authority. It does the spadework and the Minister makes the final decision.

**The Hon. KAYEE GRIFFIN:** You made a comment previously about sacrificing property values of \$67.5 million. How did you come to that amount? Which of the properties included in that \$67.5 million would specifically lose some value? Where are those properties situated?

**Mr VAN RIJSWIJK:** The full report of that study is contained in our submission.

**The Hon. KAYEE GRIFFIN:** Could you state for the record which of those properties would be losing out?

**Mr VAN RIJSWIJK:** I would have to go back to our submission, but it is quite clear that all the properties that are surrounding the proposed high-rise development are the ones that would be losing out.

**The Hon. KAYEE GRIFFIN:** How many properties would there be?

**Mr VAN RIJSWIJK:** You have three large apartment blocks—the Milson, the Pinnacle and Port Jackson Tower. You also have apartment blocks running down Northcliffe Street. You have apartment blocks further away, like HarbourView and so on. I would have to refer to the study to see which ones were taken into account. As I indicated in my comments, the financial model did not take into account all the developments within North Sydney. Therefore, it underestimates the impact on the lower North Shore.

You need to understand that if, say, an apartment close to the site loses value there is a cascading effect throughout the whole area because people can then buy into apartments closer to the foreshore and they do not want to buy apartments a bit further way. So we have not been taking into account that cascading effect. But I will certainly provide you with a full copy of the report and the apartment blocks that are affected.

**The Hon. KAYEE GRIFFIN:** Referring to the blocks that you have been talking about, what height restriction does North Sydney Council place on high-rise buildings?

**Mr VAN RIJSWIJK:** I am aware of arguments put forward by Luna Park that North Sydney—

**The Hon. KAYEE GRIFFIN:** I am not referring to the Luna Park site; I am referring to other high-rise buildings around there.

**Mr VAN RIJSWIJK:** I am answering your question. I am aware that Luna Park put forward an argument earlier in the piece that North Sydney Council approved those high-rise buildings and did not comply with floor space ratio requirements. That is not correct. Those buildings are not commercial developments, they are residential developments and they complied with the requirements of the North Sydney local environmental plan [LEP] and the North Sydney development control plan [DCP] 10.

Those planning controls look at that whole peninsula and at how the buildings slope down towards the shore so that they are in line with the cliff, in line with the lie of the land. When you get to the point at which the Luna Park cliff top site exists, the maximum height in that area in North Sydney's LEP is 16 metres. As we said before, because it is part of the Luna Park zone those height specifications do not count. It is like saying that there is a height limit in Hyde Park. That is just not part of the way in which public space is controlled.

**CHAIR:** I thank all witnesses for their submissions and for giving of their time to appear before the Committee today.

**(The witnesses withdrew)**

**CHAIR:** I welcome Ms Alice Murphy, the Mayor of Leichhardt Municipal Council, and Councillor McInerney, who represents the Council of the City of Sydney.

**ALICE KATHLEEN MURPHY**, Mayor, Leichhardt Municipal Council, 262 Catherine Street, Leichhardt, and

**JOHN MICHAEL McINERNEY**, Deputy Lord Mayor of the City of Sydney, 69 High Holborn Street, Surry Hills, affirmed and examined:

**CHAIR:** Ms Murphy, what is your occupation?

**Ms MURPHY:** I am currently on leave without pay as a trade union official while I am doing the duties of mayor.

**CHAIR:** No doubt you are appearing before the Committee today in your capacity as mayor?

**Ms MURPHY:** Yes.

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

**Ms MURPHY:** Yes.

**CHAIR:** This applies to both witnesses: If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Mr McInerney, what is your occupation?

**Mr McINERNEY:** I am an architect and town planner, but I happen to be also in my spare time the Deputy Lord Mayor.

**CHAIR:** No doubt you are appearing on behalf of the council?

**Mr McINERNEY:** I will be putting forward a submission essentially on behalf of the council and in particular on behalf of Clover Moore.

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

**Mr McINERNEY:** Yes, I am.

**CHAIR:** We have received submissions from each of your councils. Ms Murphy, would you like to commence by making an opening statement?

**Ms MURPHY:** Yes, I would. As you said, you have received a submission so I will not go over it, but I will just make a few key points of concern from Leichhardt council in terms of the terms of reference. The first is in relation to the lines of communication between the Sydney Harbour Foreshore Authority [SHFA] and council. Council officers indicated that they are very happy with the consultation between them and SHFA. However, when the matter was discussed by the councillors, the councillors had concern that there was not enough consultation with either councillors or the

community when SHFA is going about its business, so there was genuine concern that councillors needed more consultation and genuine consultation.

That concern was added to by the fact that councillors are concerned that, as a consent authority, SHFA is not accountable to the community in the way that other bodies, such as councils, are, so they do not have to face an electorate; they do not have to be part of the community; they do not have to converse with the community. The councillors believe that there is concern that the outcomes that SHFA makes are not necessarily taking into account the concerns of the community. That is the main point that Leichhardt councillors would like to make. They also are concerned that SHFA has a vision for the harbour foreshore, but there may not have been community consultation in terms of that vision. There is also a concern about potential conflicts of interest in that SHFA is a landowner, plan maker and consent authority, and they believe that SHFA may not always be acting in terms of the community; they may be acting in terms of landowner and economic values. That is the submission that the Leichhardt council would like to make.

**CHAIR:** Thank you very much. Mr McInerney, would you similarly like to start with an opening statement?

**Mr McINERNEY:** Yes, Madam Chair. I believe you have our submission. Essentially the summary, which is in the first two paragraphs, I guess represents in a clear way what we are saying. Perhaps I might read out the second paragraph:

In summary, the city considers that the State Government should transfer responsibility for matters conventionally the responsibility of local government, such as the management and maintenance of the public domain and planning assessment and consent roles, back to the City of Sydney and other relevant authorities.

The submission goes into further detail on this particular matter, and I will not go into it, although perhaps later on I might illustrate some of the paragraphs of the actual submission. Those paragraphs talk about why the time is in fact, we believe, ripe for such a changeover to occur and why it would be obvious that one would not run two sets of rangers, two sets of garbage collectors, two sets of litter picker-uppers, et cetera; we would actually run a system that is convenient in terms of cost effectiveness more than anything else rather than running another quasi-council that is confusing to all parties—not only confusing but also, we believe, not very cost effective in terms of the total use of the community's resources. That summarises our position.

I should add, though, that yesterday the Minister issued a news release. I am not sure whether you have a copy of that. It was not reported in the newspaper, so I suppose really I should tender it as a copy for the Committee. It is entitled "Restored Pyrmont returned to the City of Sydney", and I quote:

We are working with the City of Sydney to transfer planning responsibilities and public assets, such as roads and parks.

It goes on at some length about the Government's intentions, apparently, to commence the process or at least to rapidly bring to a conclusion a process of transfer to the city. I imagine the Committee might be quite interested in that particular article, if you want to take a copy of that. As I say, I do not think it ultimately reached the newspapers, but it might be of interest.

**CHAIR:** If you could table that, that would be appreciated, thank you.

**Mr McINERNEY:** Thank you.

**CHAIR:** Ms Murphy, you mentioned that councillors feel that they do not have enough communication with the Sydney Harbour Foreshore Authority. How do you think that might be achieved—an improvement in lines of communication?

**Ms MURPHY:** I think there are two issues: one is obviously the issue that our staff feel that they have been, so we do need to look at it internally as well, but I think that there needs to be a recognition that the councillors are an elected body and exist and need separate consultation on issues that they are going to be concerned with, which are any issues in the municipality.

**CHAIR:** You mention in the submission, which was submitted quite some time ago while the Committee was going on with some other inquiry, that there is an absence of a holistic strategy for Sydney Harbour and its foreshores, and it is unlikely that good planning outcomes can be delivered within that sort of frame work. Is that still the position of the council? What views do you have about that lack of an integrated plan?

**(Luncheon adjournment)**

**Ms MURPHY:** It is still the position of the council and I think that an integrated plan for the whole of the harbour is fundamental. We believe that we get different messages in terms of the land, the waterfront, and what is going to occur. Because of that and because we have a lot of unused waterfront land that SHFA controls, we are concerned that it is very difficult for us to plan and discuss things with the community when we do not know the future of those sites. White Bay is a classic example of that.

**CHAIR:** Can you expand for the Committee on the White Bay issue and the lack of clarity there?

**Ms MURPHY:** At the moment the two biggest waterfront issues for us are Rozelle Bay and White Bay because we have heard of several different plans to put different facilities down there. At White Bay there are plans to put sandstone breaking facilities, concrete making facilities, down there and there is a plan for a dry boat storage area in Rozelle Bay. Council is seriously concerned about both of these proposals in terms of the impact on our residents, and we believe that we need an integrated plan for the whole area that discusses what the future of those sites is going to be so we can know and plan what can go down there and what is relevant for the community White Bay is an interesting area. There is SHFA-owned land down there as well as land that is owned by private enterprise, and we sometimes believe that there is a conflict in terms of SHFA using its powers as a landowner and consent authority together as well down in White Bay.

**CHAIR:** Why do you think it has taken so long to come up with a clear view of what is going to happen to those two areas. I mean, the Rozelle Bay issue has been going on for years and years, has it not, with different ideas coming up and being put to one side?

**Ms MURPHY:** Yes, I think because we have a changing community—and, unfortunately, a lot of those areas have been developed beyond what council believes they should have been—it means that we now have residents living on top down there, so obviously the views of the area will change, but as to why it has taken so long, I do not know. There needs to be a developed plan so that we know what is going on. But I guess part of it is that the community gets so concerned about most of the proposals that come up; in some ways the political pressure means that things are slowed down, I guess.

**CHAIR:** Mr McNerney, you pointed to your summary position that the city of Sydney considers that the State Government should transfer responsibility for matters conventionally the responsibility of local government back to the city of Sydney. Has the city of Sydney made that case to the Government before and, if so, what has been the response that you have received?

**Mr McINERNEY:** I do not know whether the council has made that case before in a formal way. I do not think there was such an opportunity as this Committee affords. I know that it has been the opinion of council for the last few years that such a transfer is the appropriate direction. Perhaps back in the days of Deputy Mayor, Councillor Tsang, I suspect that for some years—I think the answer would be—we have seen what we would call duplication right across the board in the processes that the authority now undertakes.

We run a fairly efficient, I would say, planning assessment system and that is not to mention the mechanics of road repair and maintenance of garbage collection, tree maintenance, tree pruning and a range of services of late night safety officers. It goes from one end of the range of municipal services to the other and yet all of these are duplicated, in one form or another, and with relative levels of success, right across Circular Quay, Darling Harbour; in fact, in the areas that SHFA maintains control of, although we do, I understand, provide SHFA with certain services, and I am not exactly clear on the breakdown but I gather that we provide some garbage collection services under contract

to SHFA. All of this is something that needs to be carefully worked out in the interests of efficient use of ratepayers' money ultimately and, not only ratepayers of course but for every taxpayer in New South Wales really.

**CHAIR:** It would seem that there should have been some sort rationalisation before this though. Obviously, it is a situation that has just grown-up over the years and not really been addressed, is that right?

**Mr McINERNEY:** I think partly it has to do with bureaucratic bodies that are set up and it is often just a matter of survival. If you are there and you are doing something, most bodies tend to hold on to that, through no other reason than that is what they do. It is probably an opportune time for the Committee to consider what would seem to be a fairly obvious direction to sort that process out, certainly in terms of planning approvals, DAs and the day-to-day maintenance of the whole of the area. I made that case, I suppose, in the knowledge that the intentions of the Government seem to be fairly well completed in terms of both the completion of Pymont, which now has some 14,000 people, yet began in the 80s with some 3,000. Most of the sites are completed in terms of either master planning—in fact, all of the sites are completed in terms of master planning. Most are completed in terms of DAs and actual construction, so it is as if the job is done and it is now a question of wrapping up the job in an intelligent and suitable way, really.

**The Hon. GREG PEARCE:** Ms Murphy, you mentioned on two or three occasions your council's concern about potential conflicts of interest. Do you have any concrete examples of conflicts of interest?

**Ms MURPHY:** There was a situation where, as a landowner, they opposed Leichhardt council's planning process for an adjoining piece of land and their intentions in that were not clear, which then left some concern that it may have been an economic concern rather than a planning concern.

**The Hon. GREG PEARCE:** They have a significant portfolio of property. Do you think that they should exercise those sorts of rights as an owner?

**Ms MURPHY:** I think that as an owner they should have the same rights as other owners in terms of objecting, et cetera, to developments. I do not know if they should have the right of veto over planning and development.

**The Hon. GREG PEARCE:** But in that case they did not. Leichhardt council was the consent authority.

**Ms MURPHY:** Leichhardt council was formulating a plan. Would you mind if I get advice as to whether or not they were the consent authority?

**The Hon. GREG PEARCE:** Sure.

**Ms MURPHY:** It is an issue that section 62 enables statutory bodies to make an objection, which other landowners do not have the right to do in terms of the planning process.

**The Hon. GREG PEARCE:** How did you think that was a conflict of interest?

**Ms MURPHY:** My understanding is that they were the final consent authority—sorry—they used their powers to stop council continuing with the planning process, so it is not a conflict of interest in that it was a landowner stopping a development on their site, but it is them having more ability to stop planning and changes than an ordinary landowner would have.

**The Hon. GREG PEARCE:** What about White Bay? I think you mentioned that as an example where they also own land?

**Ms MURPHY:** That is the same example.

**Ms SYLVIA HALE:** Councillor McInerney, obviously SHFA administers considerable portions of land that one would expect to fall within the confines of the city of Sydney and it assesses a great many development applications. Does it co-ordinate or discuss or talk to the city council in the process of assessing those applications?

**Mr McINERNEY:** Yes, invariably. In fact, it is required, I think by its Act; if not, then by the regional environmental plan for which it is the responsible authority, that it is required to consult with the council. So, I do not think there is a circumstance where we have not been informed or consulted. I am not implying that they necessarily agree with our position, of course.

**Ms SYLVIA HALE:** Is the council more or less presented with a final position and then asked to comment upon it or is it involved in the ongoing development of a position?

**Mr McINERNEY:** There are two big areas about which we are talking. One is the preparation of plans, that is, the plan-making procedure—the draft master plans, the policies, et cetera—and then there is the other area of assessment. If I could take those two separately, and the latter one first. In assessment situations where an applicant comes in and puts a submission in to build a 10-storey building, or something like that, invariably we are asked for our opinion of that particular application. That opinion is, in fact, then taken into account, sometimes completely agreed with, sometimes not. That is a decision which now, in most cases, is of course taken by the Minister, particularly when SHFA owns the land itself. In fact, it is required to be done by the Minister. In other cases where SHFA is the responsible authority they take our comments into account. In the plan-making side of its administration we are, to varying degrees, taken into account. For example, we have recently been presented with a draft master plan for what is called the Bank Street area, that is, where the concrete dispensing area is, just next to the fish market.

There is a strip of land from the fish market going right around underneath the Anzac Bridge and just around to the other side. We are presented with a draft master plan, which essentially we disagree with. That draft master plan was prepared by the owners of properties along that particular area. We have a resolution going to council on Monday night, which is coming from committee, that we commence discussions with SHFA with a view to preparing jointly a better master plan. That would not be a very different sequence from the normal sequence. We tend to be brought into these matters rather late in the day, and in this particular case we are going to make strong representations to have the whole process started again. The master plan for the fish market is another example of when we were brought into the process rather late. And progressively going back over the years my impression is that it was even worse from our point of view three or four years ago. It definitely has improved over the past year, since the current councillors have been in the council and we anticipate that it will improve even more. This latest example of the Bank Street draft master plan will be a bit of a test case for us to see how it does work out.

**Ms SYLVIA HALE:** The Minister's media release yesterday about the master plan approval opens opportunities for Sydney Fish Market, the media release says that the Minister has given in principle approval. I gather there probably is considerable community reservations about the proposed development of the fish markets?

**Mr McINERNEY:** Yes, not only community but the council representing the community and the council itself have many times conveyed our concern about that master plan. The last submission to SHFA, which was made before the current council took over the city, certainly was most questioning about several aspects. In particular an office block that is in the rear of the site, which is about a 10-storey office block that seemed to be completely out of place there and a number of other aspects. The preparation of this master plan goes back quite a number of years. I think that was probably a relatively poor case of communication.

**Ms SYLVIA HALE:** You think that the master plan as prepared has been prepared in the absence of consultation with the elected body, the council, and with the residents of the area?

**Mr McINERNEY:** No, to my knowledge we have submitted to SHFA.

**Ms SYLVIA HALE:** But making a submission is not being consulted, is it?

**Mr McINERNEY:** It is relative. Consultation is another level that did not occur, to my knowledge. Although I gather there was officer-to-officer communication.

**Ms SYLVIA HALE:** Can you tell me how the City Council assesses open space? If it had to calculate the amount of open space is there a form or definition it follows?

**Mr McINERNEY:** We are just about to complete a study called an infrastructure study for Pymont, and that has gone through a very detailed process for assessing open space. That study will be public within a matter of weeks and the study addressed that specific question. The way in which the study resolved the question was to compare like councils or like areas, such as Balmain and in the harbour areas, to try to draw comparisons with the amount of public open space that they have in other areas, comparisons with the City of Sydney as a whole, the metropolitan area. It has been through all the process. Currently the Pymont area seems to be not badly off in terms of open space with respect to the inner suburban areas, but in terms of the metropolitan average it is significantly less provided with open space than those areas. When I say that I should make it clear that the definition of open space is a problem as well. For example, is the foreshore land or the land that is used for the market on a Saturday morning partly open space, partly not open space? The area associated with the casino, is that open space, the fact that it is part of the entry to the casino? All those issues are addressed in this particular study, and I am sure we would be happy to make available a copy of that.

**Ms SYLVIA HALE:** Do you know how the Foreshore Authority assesses open space? Does it take into account the casino area or parts of the fish market when it is doing its assessments of open space?

**Mr McINERNEY:** My own experience of that recently was the water police site where SHFA argued that there was no need for additional open space. I know the community and the council took an opposite point of view and that is being backed up by the infrastructure study. We disagreed with SHFA on its assessment of the need for additional open space, and that led to the current position where arrangements have been made with the Government, with the assistance of SHFA, to transfer ownership of that site at a reasonable cost to the council.

**Ms SYLVIA HALE:** In the material you have just provided to the Committee, the news release where the Minister says that Pymont is now a community with lots of open space, from the council's perspective you would not say that was an accurate statement?

**Mr McINERNEY:** No, I do not think that is particularly accurate. As I say, our study will clarify that in more detail, but lots of open spaces are—

**Ms SYLVIA HALE:** Inaccessible?

**Mr McINERNEY:** It is a very vague term, and while we do not think that in relation to similar harbour suburbs Pymont is necessarily really badly off, we do not think that the words "lots of open space" could apply really.

**Ms SYLVIA HALE:** Open space should be assessed in terms not just of physical amount of space but space per head of population?

**Mr McINERNEY:** Exactly, and what sort of space. Is it usable open space? Is it non-usable? Is it paved? Is it treed? Is it safe? Is it not safe? Is it strips on the side of freeways? And is it Wentworth Park, for example? Do you throw Wentworth Park into the equation?

**Ms SYLVIA HALE:** SHFA would tend to do so?

**Mr McINERNEY:** No, I did not say that. I said it is a question as to how one assesses open space. All of those components are quite a complex exercise, really.

**The Hon. JAN BURNSWOODS:** There has been some mix-up. Your submission was not included in the submissions. It has been given the number 116, as if it has arrived in the last day. We only just saw it, but we note that it was received in June. If there has been quite a bit of reading and

passing around, could I just say that none of us has ever had a chance to read your submission, but we are doing our best.

**CHAIR:** It is on the web site of the Committee.

**The Hon. JAN BURNSWOODS:** But it was not given to the Committee. It is not on the disk. It is not on the list of submissions.

**CHAIR:** I acknowledge that.

**The Hon. JAN BURNSWOODS:** As I said, it has been given the number 116. In fact, the Committee has never even resolved to publish it so we have to fix that up retrospectively. But it does make it a little bit difficult for us.

**The Hon. KAYEE GRIFFIN:** One of the things that you have already discussed is a press release regarding restoring Pyrmont's returning to the City of Sydney. My understanding is that SHFA has handed back to the City of Sydney a number of sites in Pyrmont as well as the planning powers for the area now that their role in overseeing the area is coming to an end. One of the sites you mentioned is the Water Police site. Would you agree that it is appropriate for the State Government to play a role in overseeing sites of State significance around the harbour rather than just having the local government authority involved?

**Mr McINERNEY:** Yes, I do agree. The process that has been involved over the years seems to have an agreed plan of management for those spaces. Ideally the agreement between the State Government as a representative of the people of Sydney as a whole, because we are really talking about something that belongs to the people of New South Wales as well as the people of Sydney as a whole. The process of a mutually agreed master plan, or plan of management is the way to go in those cases.

**The Hon. KAYEE GRIFFIN:** In an ideal situation how would you see the State Government, SHFA and the City of Sydney working together on any other sites that are regarded as sites of State significance?

**Mr McINERNEY:** Perhaps the Bank Street case is a good example that I referred to where both parties, in the ideal sense, should come together to agree on, let me call it the master plan for want of a better word or a plan of management for the particular site or the area so that both parties have security as to the future of that particular land. The management, as I touched on earlier, is probably quite capable of being done by the local council, but the setting up of the master plan itself or a plan of management is a joint exercise for some of these key sites. There is the distinction between sites that are key sites on the foreshore and sites that are perhaps further back into the residential area. I would argue that those sites are probably most ably left to the local community because it tends to be a community concern, a localised concern rather than either a State or metropolitan concern.

**The Hon. KAYEE GRIFFIN:** From what you have just said the area closer to the foreshore would be one you would regard as very important to some sort of joint responsibility whatever that might be.

**Mr McINERNEY:** Yes, I do.

**The Hon. KAYEE GRIFFIN:** Getting further away from the foreshore you can see that as a local government responsibility?

**Mr McINERNEY:** Yes. That comes to the point of the Ports Growth Plan, which I am sure the Committee is aware of. Late last year we submitted our thoughts on what is known as the New South Wales Ports Growth Plan, which deals with most of the foreshore areas as well as dealing with what are the ports of Wollongong, Newcastle and Sydney. This evolved from the Government's statement that it intended to move the working harbour effectively to Wollongong and to Newcastle. The current New South Wales Ports Growth Plan to my knowledge has not been completed, but in the process of completing it I am sure that the thoughts of the council will be taken on board and when

that is completed I would have thought that would be a good basis to ramp up any file plans of management or master plans, at least in our particular bailiwick of the City of Sydney.

**The Hon. HENRY TSANG:** I do not have many questions to ask, except to congratulate John McInerney on his election to the very important post of Deputy Lord Mayor of Sydney. He has an important role to play. Recently I noted you attended a function on Australia Day on the Foreshore Authority site on the corner of Dixon Street and Liverpool Street where you met with the CEO of the Foreshore Authority. There was some discussion about joint projects to study the border area. Is that a sign that the working relationship is improving, and will that continue?

**Mr McINERNEY:** As we have been in the council for only one year it is perhaps a little conjectural for me to talk about an improving relationship. Certainly my experience recently has been that SHFA is very open in discussion with the council. The area you talk about is a classic case of interaction—Dixon Street and the extension of Dixon Street. The boundary of SHFA is virtually on the edge of the road, yet Dixon Street is clearly an integral part of the city.

Those areas need a lot of work between both parties. It seemed to me from that discussion you referred to that SHFA was very positive about having those discussions. I think the same discussion needs to go on on the other side about the Powerhouse Museum site and certain relationships at the back of the Powerhouse Museum to the city. Yes, those areas need quite a lot of joint work.

Again, coming back to the point I made earlier, some joint conclusion needs to be arrived at that may be a master plan or some sort of agreed future development plan. I think that is a really good role for SHFA to get into quite quickly. I think, from what I have heard, in the past they have not been too active in that role. They have certainly been active in large government sites and the disposal and planning of those sites, but now I think there is a good role to be had in those edge situations. I think the ability of SHFA to put funds into some of those areas, perhaps in association with the City of Sydney, is a development that I would like to see happen.

**The Hon. JAN BURNSWOODS:** I have a question for Ms Murphy. The Leichhardt council submission tends to suggest that SHFA pursues development, residential or otherwise, because this generates high financial returns. But for two of the most crucial sites in your area—that is, the White Bay power station and Ballast Point—the exact opposite is the case: It has been SHFA that has prohibited development on those sites. In the case of Ballast Point, it has actually been purchased. Mr McInerney referred to SHFA and large government sites but the Ballast Point site was purchased from would-be developers and is in fact being returned to the community as a park. You both might want to comment but my question is specifically to you, Ms Murphy. That is the exact opposite of the kind of allegations that the Leichhardt council submission is making.

**Ms MURPHY:** That is correct. I think the problem is more of a perception of their ability to do that than those two sites and the area of Leichhardt. I think councils were looking at Pymont and what occurred there. But that is correct in terms of Ballast Point.

**The Hon. JAN BURNSWOODS:** I am not sure who prepared the Leichhardt council submission; you may not have had anything to do with it, I do not know. You referred to Pymont. We heard this morning that the massive development in Pymont has been on the CSR site, which was private property. I am not sure what you would earmark as being a SHFA "big development" on government land. I must admit that I cannot think of one. It seems to me that there are a lot of allegations being thrown around but, when you examine sites individually, SHFA seems to be copping an awful lot of flak that it does not deserve.

**Ms MURPHY:** In terms of the power station and Ballast Point, Leichhardt council were very pleased with the outcomes there. It was, I guess, a sign of the working relationship that does exist. I was relaying concerns that were raised at the council when it was discussed.

**The Hon. JAN BURNSWOODS:** Mr McInerney, do you have a comment? You referred to SHFA as if they focus on large government sites but in fact a lot of the sites that have been of concern to communities have been private enterprise sites.

**Mr McINERNEY:** Yes, it is the process of approval that is the difficulty. The concentration is often in the form of a responsible authority's concentration—it acts as the development approval authority.

**The Hon. JAN BURNSWOODS:** Who? SHFA?

**Mr McINERNEY:** SHFA.

**The Hon. JAN BURNSWOODS:** But they do not. They are not.

**Mr McINERNEY:** They used to.

**The Hon. JAN BURNSWOODS:** They are not the consent authority. We have been over and over this.

**Mr McINERNEY:** But that only changed a year ago.

**The Hon. JAN BURNSWOODS:** Not certainly according to their submission, the evidence, the Act and so on. The department and the Minister have been the consent authority—they are the consent authority—for similar sorts of things. But they are not the consent authority.

**Mr McINERNEY:** Not now. Over a year ago they were.

**The Hon. JAN BURNSWOODS:** No, not the consent authority. They had a role but the department and then the Minister made the decision.

**Mr McINERNEY:** It is formalised now. They say that that was the way it actually operated. In fact, a year ago—

**The Hon. JAN BURNSWOODS:** That is August 2003.

**Mr McINERNEY:** Yes. It became formalised in the sense that the Minister was formerly made the responsible authority but prior to that SHFA had acted as the responsible authority. That is my knowledge of it. I may be wrong.

**The Hon. JAN BURNSWOODS:** For assessment and so on but not consent.

**Mr McINERNEY:** I thought they had a consent role prior to—

**The Hon. JAN BURNSWOODS:** You may be able to give us an example but I do not know of one.

**Mr McINERNEY:** The CSR site. I think the Minister did most of the development there.

**The Hon. JAN BURNSWOODS:** Yes, the Minister but not SHFA.

**Mr McINERNEY:** Advised by SHFA.

**The Hon. JAN BURNSWOODS:** Advised, assessed.

**Mr McINERNEY:** Effectively, SHFA did the assessment on most, and continues to do the assessment on all the sites that are within its jurisdiction, when DAs come in. The fact that the Minister signs off the final approval, in my experience, is really just the last tick on the page.

**The Hon. JAN BURNSWOODS:** But the assessments generally go to DIPNR not direct to the Minister.

**Mr McINERNEY:** Since last year they do.

**The Hon. JAN BURNSWOODS:** Since August 2003—18 months ago.

**Mr McINERNEY:** Yes.

**The Hon. JAN BURNSWOODS:** Nevertheless, SHFA has never been the consent authority.

**Mr McINERNEY:** Prior to them going to the Minister they did all the assessments and that was—

**The Hon. JAN BURNSWOODS:** You keep saying that. I am asking you to agree that they never were the consent authority.

**Mr McINERNEY:** In terms of the final tick-off you might be right.

**The Hon. JAN BURNSWOODS:** I am right. I really want you to say that because you do know that. We are playing with words here: You keep saying "assessment" and I keep saying "consent". They are, legally and practically speaking, very different things.

**Mr McINERNEY:** I take your advice. What I am telling you is that, with the practicality of the way that these things work, it is practically assessed by SHFA's staff.

**The Hon. JAN BURNSWOODS:** But that is like saying that Sydney city council staff do the assessment and the councillors make the decision. Yes, and that is how it should be. Nevertheless, the councillors make the decision and they bear the responsibility of making the decision. They are perfectly free to reject or accept the advice they get. I am not playing with words; we are talking about the legal situation.

**Mr McINERNEY:** Yes. Well, I think we have covered that. I do not know that I can say much more.

**The Hon. JAN BURNSWOODS:** Thank you.

**The Hon. GREG PEARCE:** Mr McInerney, do you see the issue of conflict of interest with SHFA as a problem and have you seen any particular examples that you could give us where there was a conflict of interest?

**Mr McINERNEY:** I suppose the conflict of interest is similar to what councils have. If SHFA owns a piece of land—this is not so much the case now because there is not that much land remaining, but in previous cases the land was owned by SHFA—while I agree that the decision may ultimately be made by the Minister, if the assessment is made by the staff of SHFA then I think that is a conflict of interest. In the case of councils—this is common throughout New South Wales—when councils own land themselves invariably they get the assessment done by independent assessors. That has not always been the case but it is almost always the case. It is certainly the case with City of Sydney and it is almost universally the case now.

**The Hon. JAN BURNSWOODS:** SHFA does that too.

**Mr McINERNEY:** On their own land?

**The Hon. JAN BURNSWOODS:** Yes. We certainly heard some examples this morning.

**Mr McINERNEY:** Some examples. There are cases when they did not do it and there are cases when they did do it.

**The Hon. JAN BURNSWOODS:** It is the same as councils. People have improved.

**Mr McINERNEY:** People have improved. But the conflict occurs when that does not happen and they do the assessment on their own piece of land. I do not think there is any question that that throws up a conflict of interest. There is no doubt when that happens that there will be a conflict of interest and systems have to be put in place to solve that.

**Ms SYLVIA HALE:** Councillor McInerney, are you aware of any instance when the Minister has not acted in accord with a recommendation from SHFA?

**Mr McINERNEY:** No.

**Ms SYLVIA HALE:** So you would agree that, whilst in theory the Minister makes the decision, he almost invariably makes it in accord with the recommendation of SHFA.

**Mr McINERNEY:** To my knowledge, yes.

**Ms SYLVIA HALE:** So, in effect, SHFA is the approval authority in practice if not legally.

**Mr McINERNEY:** That was the purpose of that previous discussion.

**The Hon. HENRY TSANG:** On the same point, Councillor McInerney, do you also recall that the Minister, while agreeing on the overall approval, often sees the need to put in additional conditions? It is no different from an independent assessor putting in a report to council and the council imposing additional conditions. Therefore, it is not a rubber stamp but often a rubber stamp plus additional conditions.

**Mr McINERNEY:** I am aware of cases where that has happened.

**The Hon. HENRY TSANG:** Thank you.

**Ms SYLVIA HALE:** Turning to the water police site, has SHFA handed the land to the council? Is it proposing to sell it to the council or to lease it to the council?

**Mr McINERNEY:** To sell to the council. It is a process of sale, although there is a section of the land that is under the control of the Waterways Authority and I think that is a long-term lease situation. But, essentially, the bulk of the land will be sold outright to the council.

**Ms SYLVIA HALE:** It is quite some time since the announcement was made. When do you expect that land to be handed over?

**Mr McINERNEY:** A process of due diligence has been gone through and some investigation as to contamination and other matters. At the moment I am not aware when all those matters will come to a conclusion but I would hope quite soon.

**CHAIR:** Thank you to the Deputy Lord Mayor and to the Mayor of Leichhardt council. The Committee appreciates both councils' submissions and the time that you allocated to appear before us today.

**(The witnesses withdrew)**

**(Short adjournment)**

**FABIAN MARSDEN**, Pharmacist, 97 George Street, The Rocks, sworn and examined:

**CHAIR:** Mr Marsden, are you appearing before the Committee in your capacity as President of The Rocks Chamber of Commerce?

**Mr MARSDEN:** That is correct.

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

**Mr MARSDEN:** I have not read them but vaguely, if my memory serves me correctly.

**CHAIR:** They are available if you need a reminder. If you should consider at any stage that certain evidence you wish to give or documents you wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. We have received a submission from you. Would you like to commence by making an opening statement?

**Mr MARSDEN:** Basically the submission authored by me is a summary of comments, submissions and discussion made by members through the executive of The Rocks Chamber of Commerce. It is not a definitive document. It is intended to give a sense of our members' issues under the terms of reference. That is where it sits.

**CHAIR:** One of the points you made in the submission with respect to the role of the Chief Executive Officer [CEO] of the Sydney Harbour Foreshore Authority [SHFA] was "the view has been expressed that he was not always perceived to be at arm's length in commercial relationships, which reflects adversely on the government of the day". Would you care to expand upon that? How did the members of your chamber come to that view? What sort of experiences have they had that led them to that view?

**Mr MARSDEN:** I suppose historically the members of our chamber have been part of the precinct for a long time. So they have seen quite a few changes of structure and CEO. But ultimately the basis for that decision came from some comments regarding, if my memory serves me correctly, some issues about a tender process at Circular Quay. When we were approached by people we basically said, "Yes, we will discuss in general your issues. But if you have any specific issues we will not advocate on specific issues, we will talk about general things." In a sense we have divorced ourselves and we have requested that those people make their own submissions. Whether they have or not I do not know.

**CHAIR:** Were they retail tenancies at the Quay?

**Mr MARSDEN:** Yes and, from memory, some time ago.

**CHAIR:** In relation to the CEO, were they referring to Mr Robinson or the current CEO?

**Mr MARSDEN:** Not the current CEO.

**CHAIR:** The immediate past one.

**Mr MARSDEN:** And to be fair, I cannot recall whether it was the previous one or the one before that.

**CHAIR:** The chamber also makes the point there is a strong feeling that the SHFA board is unrepresentative and makes decisions that affect the viability of many tenants and ratepayers without accountability or input from those affected, other than through a vague bureaucratic chain. Is that the contemporary view of the members?

**Mr MARSDEN:** I suppose when the comment was made, we were talking about decisions that are made in a corporate governance sense by a board as opposed to decisions that are made in perhaps a little bit more transparent way by a local council. In essence, the substance of those decisions between those two different types of assessment is the same thing. So it is two different

systems in a sense. But I will make the comment that Dr Lang has attempted to engage with the chamber and open up that process over the last year since he has been there.

**The Hon. GREG PEARCE:** Would you outline roughly the membership of the chamber and your relationship with SHFA?

**Mr MARSDEN:** The membership is made of small retailers through to larger hospitality. So, for instance, we have the small newsagency, the small delicatessen right through to members like the Four Seasons Hotel and others. So it is quite a range of diverse membership. We have, I think, at the moment 86 members. That waxes and wanes between probably about 80 and 100. As to the relationship with SHFA, in essence, as chair of the chamber I am sitting at the epicentre of a love-hate relationship, might be the best way to describe it, because it is a commercial relationship between lessee and lessor. The relationship is that while things are good, while the economy is pumping, generally the relationship is very good. But when trade drops, which it has after September 11 for a lot of tenants and members in The Rocks, the relationship gets a bit bumpy. Does that give you a sense of the relationship?

**The Hon. GREG PEARCE:** Where is the interaction? It is the landlord and you are the tenant. You pay rent and negotiate the commercial aspect. To what extent do you interact in terms of getting approvals and so on? What is your experience of how those things are handled?

**Mr MARSDEN:** Certainly the process has improved, there is no doubt about that. Small assessments now are handled within SHFA. That is appropriate. That seems to be working quite well. SHFA is now developing policies that it did not have before which are solving some of the angst around some of those decisions. I mentioned in a letter to tenants the signage policy that was creating some anxiety between tenants. One tenant was saying to another, "He's got a sign. Why can't I have a sign?" and various configurations of that tension. On the basis of representations by the chamber the authority reviewed the signage policy in quite a consultative process, which has not happened to that degree before. Now they are actually enforcing that signage policy. So the process certainly now is quite good. That might give you a sample of how we interact.

**The Hon. GREG PEARCE:** Are there any other similar policies you are currently having trouble with or trying to renegotiate?

**Mr MARSDEN:** There are tensions between heritage management and some of the requirements of modern retailing and hospitality: outdoor signage policy, outdoor seating policy, shading. Those things, again, my sense is that the authority is enforcing those policies now, which sort of drifted a little bit before. They floated in and out. If there was an issue they would rely on it but now they are uniformly enforcing it across a range of things that are happening within the precinct.

**The Hon. GREG PEARCE:** Are you aware of any instance of conflict of interest where SHFA's interest has caused it to make a decision that has caused you concern?

**Mr MARSDEN:** As I mentioned before, where people feel they have been disadvantaged in their negotiations with SHFA, whether it be tendering or in some other way, we basically are not taking up those issues in a specific way. We have advised them to make their own representations to this Committee. As I said before, whether they have I do not know. If people are not prepared to substantiate those claims to me I am not prepared to put them in this public forum. That is an issue for them to address with you in that sense.

**The Hon. GREG PEARCE:** But you have had instances of people making complaints about the tendering process in particular?

**Mr MARSDEN:** Yes.

**Ms SYLVIA HALE:** Your submission states, "Because of a lack of consistency in overt tendering mechanisms, there has been a strong perception that biased and perhaps corrupt or politically driven outcomes have occurred." You make that general statement.

**Mr MARSDEN:** Yes.

**Ms SYLVIA HALE:** This morning in evidence in relation to the Luna Park site there was a suggestion that the tendering process was not as fair or the playing field was not level for some people who wished to make tenders, that they were disadvantaged in relation to others. Would you say that that perception of bias or corruption or politically driven outcomes is still current among your members?

**Mr MARSDEN:** Certainly there is a perception by some members that that is the case. My understanding in the last year—I have only been chair for 18 months; I was chair previously but a long time ago. I put that situation to Dr Lang, and Dr Lang has responded. For instance, the Argyle Centre has become a little bit tired and it is SHFA's responsibility to rejuvenate that centre. It has actually put all tenants on holdover, and the process is being very open and transparent. There have been no special deals made. A proper expression of interest has gone out to the public. Each current tenant has received an expression of interest so the process is pretty well clean in my experience at the moment.

**Ms SYLVIA HALE:** In another part of your submission you say that the greatest asset of The Rocks precinct is heritage but there is a sense that SHFA is not rejuvenating or reinvesting in the locality in a way that it should if it is to maintain that unique character.

**Mr MARSDEN:** Yes. I am just trying to think. Can you ask me the question again?

**Ms SYLVIA HALE:** On page 2 of your submission you say that the precinct's greatest asset is its heritage but that the original Sydney Cove redevelopment principles of restoring and maintaining this precious heritage precinct by reinvesting a significant proportion of revenue generated seems to have been diminished.

**Mr MARSDEN:** Yes. Over the past few years the authority has talked about and discussed capital works and public place management improvement and public domain improvement, and it seems always to have just fallen of the wheelbarrow. There are two issues you are talking about there and I will address that one first. We now have a commitment from the authority to progress that process, and those discussions are under way at the moment. Indeed, I believe that the concept plans for improvement went to the December board meeting and they have been approved for discussion and consultation over the next months.

The second issue is a comment about heritage that comes out for a couple of reasons. The issue of maintenance needs to be addressed on an ongoing basis. Certainly, some tenants feel that it is not. The issue of heritage, the sense of heritage in the precinct, the current philosophy is to build new against old in order to distinguish it from the original heritage building. But there is a perception in The Rocks that sometimes the new against old is not all that appropriate as a precinct. It goes out to marketing as well. Our asset is not only the heritage but the sense of heritage in the area. There was a lighting strategy to install smart poles in The Rocks which stimulated great horror and shock.

**Ms SYLVIA HALE:** Again earlier today in relation to Luna Park the evidence given was that the funds that were supposedly channelled from the authority into the Luna Park trust for heritage preservation and upgrade, whatever, there was no indication or public transparency as to whether those funds were being given to the trust. In your experience, what level of transparency is there in terms of the money that is both raised and then expended on the precinct?

**Mr MARSDEN:** It is certainly not there in detail in the board reports but you certainly get a sense of how funding is happening and where it is going. SHFA is a multifunction organisation. Not only does it do development and manage heritage sites; it also has a relationship with Tourism New South Wales in promoting the waterfront sites, and in fact Sydney as a whole, to the international community. Those spends are obvious through the annual report program. I have always enjoyed more detail, in answer to your question. Some of our members made the accusation that The Rocks is a cash cow and the revenue is going elsewhere, but I cannot say whether that is the case or not.

**The Hon. KAYEE GRIFFIN:** In your submission you state that the development application turnaround time is too long and that the SHFA processes should align more closely with

local councils. Are you aware that the SHFA turnaround of 20 days for notice is certainly a lot less than most local councils?

**Mr MARSDEN:** Yes. That is very renowned.

**The Hon. KAYEE GRIFFIN:** So is your comment something that happened previously?

**Mr MARSDEN:** Yes.

**The Hon. KAYEE GRIFFIN:** It is not a concern of yours now?

**Mr MARSDEN:** It was a difficult process. It is complicated a little bit by heritage and the Heritage Council's involvement but it was a very difficult process and it was constrained but that is changing certainly.

**The Hon. KAYEE GRIFFIN:** So you are much happier with the way the development application process works now.

**Mr MARSDEN:** It is working much better.

**The Hon. KAYEE GRIFFIN:** So you probably would not have the same criticism as you did.

**Mr MARSDEN:** I am forever vigilant and hopeful that those things will continue.

**The Hon. KAYEE GRIFFIN:** You would not make the same comment if you were writing your submission at this point in time.

**Mr MARSDEN:** Probably not but my members who make these comments to me—to be fair, the range of comments is diverse. Some members would be disagreeing with me when I said that but the situation is better now.

**The Hon. KAYEE GRIFFIN:** You are familiar with the letter that you sent to The Rocks retail tenants in August 2004?

**Mr MARSDEN:** Yes.

**The Hon. KAYEE GRIFFIN:** In that letter you say that the chamber's role is to seek the best outcomes for all at the strategic level, and that SHFA is in the same boat and is seeking the best outcomes for the precinct. Would it be fair to say that you have a good working relationship with the authority?

**Mr MARSDEN:** Dr Lang has endeavoured to create that, and as chair of the chamber I have certainly endeavoured to improve that relationship over time, and it has been improving over time. There is no doubt about that.

**The Hon. KAYEE GRIFFIN:** Reading the letter that you sent in August 2004 to The Rocks retail tenants, although you talk about some issues of concern, and you have already mentioned things like the downturn in trade because of September 11 and some other issues, your letter sounds much more positive than negative in terms of the relationship of the work that the chamber does and what the authority does. As you said that the relationship has improved, I would think that the comments you made in August 2004 would be fairly current.

**Mr MARSDEN:** Yes, that is current, and I hope that I have given that impression already. In the situation where we have had the downturn that we have had, some businesses are not as affected by that as others. Some tenant members are not as affected by that. The tenants who rely entirely on international tourism are definitely not back up to scratch but because of development around The Rocks—for instance, Walsh Bay, the back of Millers Point and so on—there is a certain level of domestic trade that is coming to the area but the tourism side of things is probably not doing as well. That letter is framed as encouragement, as a political push to encourage our members to work with the

authority. In this role you have to be sensible and encourage people to use the relationship with the authority and work together towards the same end, which is in essence what we are all about, making a profit, both SHFA in this instance and my members. It is about encouraging people to work with and get the best out of the area by doing things that are appropriate to that end. That is what I am doing there.

**The Hon. KAYEE GRIFFIN:** Given that this letter is not part of the submission it may be appropriate for it to be tabled.

**CHAIR:** Are you happy for that to occur?

**Mr MARSDEN:** That is fine.

**The Hon. HENRY TSANG:** I recognise the contribution of former Councillor Marsden in his great work in the city over a period of four years. I enjoyed working with him both as a member of the community and also here as part of the Government. I thank him for his contribution. He referred earlier to the installation of smartpoles in The Rocks area. How did that come about?

**Mr MARSDEN:** It was part of one of the original The Rocks lighting strategies. It has since been modified but it screams in the face of a sense of heritage in the precinct.

**The Hon. HENRY TSANG:** That is normal procedure. Someone puts up a proposal and your chamber and the Heritage Council take into consideration those and other comments. After consultation you did not go ahead with that project. Obviously that is the normal process that you follow rather than saying, "This is what we will have" and it is installed. What is being installed there now?

**Mr MARSDEN:** It is the current old heritage reproduction light system. There are still some original ones there. I believe that there are some more around which eventually will be utilised. I agree with you. That is the normal process. But the membership was pretty scared by that one.

**The Hon. HENRY TSANG:** They should be, yes.

**The Hon. JAN BURNSWOODS:** Mr Marsden, I would like you to clarify a point that you made earlier. The practice is that new looking buildings are deliberately built alongside old buildings. I assume it is part of the ongoing debate within heritage and architect circles that you do not put up imitation old buildings?

**Mr MARSDEN:** Yes.

**The Hon. JAN BURNSWOODS:** But you are honest about it.

**Mr MARSDEN:** Yes.

**The Hon. JAN BURNSWOODS:** Is that something on which your members are very divided? Is there a group that wants everyone to wear early nineteenth century costume and that wants to put up buildings that match? Is it a difficult issue in relation to tourism and the expectation of overseas visitors?

**Mr MARSDEN:** Yes. There is a range of views on it. My view is that we maintain as much of the heritage fabric as possible. I believe there should be a sense of consistency about the preservation of The Rocks. That goes as far as branding the area as a heritage precinct as well. There are people who take the view that nothing must be changed, not a nail in the wall, et cetera. There are people who take the view that everything can be replaced and made to look new but we have modern functioning within that process. There definitely is a range of views but it is probably a consensus view from the executive that that situation is the case.

**The Hon. JAN BURNSWOODS:** I would have thought, as someone who has been in The Rocks a fair amount over the years and I used to be involved in the organisation that is headquartered there, that SHFA and the others have a reasonable sort of balance. For instance, the modern buildings

are in the appropriate sandstone coloured bricks and attempts are being made to note where things are. I imagine that you would not find any two people to agree on any eventual development.

**Mr MARSDEN:** The argument that is put basically is the philosophical argument, as you have said. In practical terms, SHFA is a good heritage manager. It has lightened up on the attitude of the previous Sydney Cove Redevelopment Authority.

**The Hon. JAN BURNSWOODS:** That was gung-ho development.

**Mr MARSDEN:** In relation to heritage maintenance and restoration it was extreme. That has actually lightened up a bit, which pushes up the argument of how much it should happen.

**The Hon. GREG PEARCE:** I would like to follow up a question that was asked earlier by the Hon. Henry Tsang relating to the smartpole lighting strategy. When was that proposal introduced to you?

**Mr MARSDEN:** It was some time ago—probably three or four years ago. My memory fails me.

**The Hon. GREG PEARCE:** How did it occur? What was the process?

**Mr MARSDEN:** It was presented at some sort of public forum. It was then developed a little further. It may well have been around the time of other discussions about improving the public domain around First Fleet Park and George Street. It was in that sort of context. My memory has failed me on the time.

**The Hon. GREG PEARCE:** When you said it was presented at a public forum was that something called by SHFA?

**Mr MARSDEN:** You are testing my memory. It was probably either at a chamber meeting or at a focus group type meeting which the authority has held.

**The Hon. GREG PEARCE:** Does it do that regularly in relation to different issues, or was this a one-off?

**Mr MARSDEN:** There have been various types of forums over the years, either driven by the chamber or driven by SHFA. At one point in time it was having quite a few focus groups and studies. Each focus group was coming up with different ideas. I remember advising Greg Robinson that that probably was not the best way to approach it. In answer to your question, yes, forums were held occasionally. Difficulties sometimes arose because the sense of the meeting was not taken up, but that is always there with these issues.

**The Hon. GREG PEARCE:** Is that sort of formal communication mechanism in place now? What happens now? Is there a monthly, quarterly or six-monthly meeting?

**Mr MARSDEN:** The chamber has a quarterly meeting, which is referred to on the back of that letter. SHFA comes in and addresses the meeting, takes questions and answers those things either in the newsletter or at the next forum. That situation has probably been set up pretty well over the last year. SHFA currently holds debriefing sessions after big events. Sometimes, if they are run well and there are not any problems, you do not get many people along but if there were problems you get a big roll up and those problems are put to the authority.

**The Hon. GREG PEARCE:** Most of these sorts of improvements in communication, application processing and so on seem to have occurred in the last year to 18 months.

**Mr MARSDEN:** We have been putting in a lot of work to achieve that, yes.

**The Hon. GREG PEARCE:** With Dr Lang as the chief executive officer?

**Mr MARSDEN:** Yes.

**The Hon. GREG PEARCE:** Before that what was the relationship with Mr Robinson?

**Mr MARSDEN:** As I said, I have only been the chair or the president probably for about 20 months. It is probably a little more confrontational, but I will not attribute blame to Mr Robinson. It is a matter of personalities and sometimes that is the way it works. Other times it is a little different. The way I operate is to try to achieve consensus and a working relationship so you can say, "That is an idiotic idea. Let us do something else", and I get an appropriate response. But I will not talk about the time when I was not the chair.

**Ms SYLVIA HALE:** In your letter you said:

There was discontent with SHFA that arose out of a perception of a lack of transparency and commercial managerial expertise and at times a conflict of interest with respect to some of its operations. SHFA is a property owner, asset manager, planning authority and service provider within its defined precincts whereby there is an inherent potential for conflict with respect to current local government standards.

You said that this arrangement has benefits to the Government; you do not necessarily say that it has benefits to the community?

**Mr MARSDEN:** That is correct.

**Ms SYLVIA HALE:** Given your experience as a former councillor on the City of Sydney and your experience as the president of the chamber of commerce, do you think those remarks are still applicable?

**Mr MARSDEN:** As I think I suggested before, you are talking about two different processes over the same domain. Local government certainly offers more public access to the decision-making process and probably has more review by the various levels of government. The SHFA case is more a corporate sense of management, which is different. The process now has opened up a little more. We certainly have good access and we are involved in that process as a formal chamber. But the process is different and there obviously is not as much public access into that decision-making process.

**Ms SYLVIA HALE:** Given that SHFA is an authority that has a very valuable land portfolio, which it either owns or for which it is the development assessment authority, do you think it is desirable that that lack of transparency that you say is present in local government should be absent from the workings of SHFA?

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

**Ms SYLVIA HALE:** Do you think there is a role for SHFA, or do you think that many of the functions it plays in the City of Sydney could be as well or better performed by the elected council of Sydney?

**Mr MARSDEN:** I would not like to answer your question as chair of The Rocks Chamber of Commerce.

**Ms SYLVIA HALE:** No, I am talking to you as an individual.

**Mr MARSDEN:** I am here on its behalf. I will change hats for a moment. Certainly processes could be developed where better communication and better processes could be built to deal with some of those issues. I probably agree with the previous comments of the Deputy Lord Mayor in that there is an opportunity for the Government, SHFA and the City of Sydney to work more co-operatively together, which they have in the past. But that changes; it is not automatically built in. Sometimes it depends on relationships, personalities and so forth.

**Ms SYLVIA HALE:** Apart from SHFA being more prepared to communicate are there any other changes that you would like to see instituted when the review of the Act takes place?

**Mr MARSDEN:** This comment I suppose refers to those two different processes. That, in itself, gives rise to a public perception that is not necessarily conducive to good governance. You have an open process with local government.

**The Hon. JAN BURNSWOODS:** Some local government.

**Mr MARSDEN:** Some local government, my apologies. You have a more open process than that with SHFA, and I am not necessarily saying—

**The Hon. JAN BURNSWOODS:** Try Tweed or somewhere like that.

**CHAIR:** Order!

**Mr MARSDEN:** So it is a matter of consistency the way things are done. I certainly would encourage more consistency and more overlap of policy.

**CHAIR:** Mr Marsden, thank you for your submission and for your time today.

**(The witness withdrew)**

**PHILIP NORMAN JENKYN**, Environmental Activist, 30 Woolwich Street, Hunters Hill, Sydney, sworn and examined:

**MOIRA SHEEHAN**, Public Servant, Leichhardt Town Hall, Norton Street, Leichhardt, 2040, affirmed and examined:

**CHAIR:** Mr Jenkyn, thank you very much for being here, and welcome.

**Mr JENKYN:** Thank you.

**CHAIR:** I first of all need to advise you that former mayor, Moira Sheehan, will hopefully join you in a few minutes, but we will proceed in any case with your presentation. Before we get to questions, I need to go through some formalities with you. In what capacity are you appearing before the Committee?

**Mr JENKYN:** Spokesperson for the Defenders of Sydney Harbour Foreshores.

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

**Mr JENKYN:** I am, yes.

**CHAIR:** If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider that request. You have put in a submission to our inquiry. Would you firstly like to commence with an opening statement?

**Mr JENKYN:** I would.

**CHAIR:** You may proceed.

**Mr JENKYN:** I would like to thank the Committee for the opportunity of Defenders being able to add to its submission and to answer questions, if need be. The first thing I would like to do is actually clarify a few paragraphs in the submissions that need clarification and then I would like to take a positive approach rather than a negative approach, if that is appropriate, to a possible way forward in the future with the co-operation of the community and the Government. Can I go to the submission which is signed by Joseph Glascott. The paragraphs are not numbered so I will go to the fifth paragraph because that is the first matter that I would like to talk on. The role is really of public perception. Defenders acknowledge that the authority manages very significant sites on the foreshores of Sydney Harbour, The Rocks and Darling Harbour and the like, and that disposing of foreshore land is but a part of this process; and it and the Government, frankly, have been doing so many great things in relation to access around Sydney Harbour foreshores with the access program with DIPNR and the like, and that has strong community support—there is no doubt about that. The foreshore authority has all kinds of plans akin to government's in relation to linking of foreshore access.

The sixth paragraph about transparency acknowledges that in fact the authority does consult. The issue is when and at what level it consults because if one's mind is already set early in the process, then from a community perspective consulting later can look, and indeed be, a sham. Defenders was very much involved with the Sydney Harbour Federation Trust Act and indeed that whole battle against the Commonwealth, if I can use that term, and Defence to try to save significant parts around Sydney Harbour. Arising out of that battle, the fact is that the Sydney Harbour Federation Trust is working very, very well with community support. Really that Act and the terms of it and the way that they got that support is very relevant in looking ahead as to what should happen with the Act governing the foreshore authority.

I go to the eighth paragraph, which is the last one on the first page. Defenders oppose further sale and development of the foreshores. That of course relates to significant public being sold off around the foreshores. Over the page we are talking about Millers Point—the submission was in May last year and of course things have moved on in relation to Millers Point. I do not know—you may know from today's submissions; I was not here—what is happening at Millers Point. All we kind of

know is that Millers Point might, or will, come under the umbrella of SHFA. I do not know, but certainly while Defenders is very keen to get public access and public reserves around the harbour, we have also taken the stance that there must be much more study, thought and consultation about the future maritime facilities in the Millers Point area where Patrick's is. We do not concede that that should be developed for open space, for high rise, or anything else at this stage. We would take the view, pending further inquiries, there could be a very strong case for the future that that be reserved for future maritime uses because the fact is that Botany Bay's prediction is that by 2025, it cannot expand any further to take maritime uses. Where is it going to go for future generations if we close port facilities in Sydney Harbour? I just wanted to clarify our submission in that regard.

Can I make the second point now dealing with the more positive and how we can be positive in where we go. First of all, can I just say this about the significance of Sydney Harbour, Sydney Harbour and its tributaries: It is a place undoubtedly, as we all know, of State, national and international significance. Its many layers—from natural to Aboriginal to colonial to maritime to industrial, the city skyline, the bridges, the islands—it is the most magnificent harbour in the world, as people have been saying since they first came here, and is our greatest asset. I mean the people of Sydney—and I do not think anybody around this table will disagree with me—will actually say that the harbour makes Sydney one of the great cities of the world, without a doubt. It is clear from the foreshore authority's submissions that it obviously, in places like The Rocks and all around the place, including Watsons Bay and everywhere, pulls in real tourist dollars into this country, without a doubt. The Olympics and what they did in showing Sydney and Sydney Harbour around the world, how do you put a value on that in publicity? I came into the Parliament and I saw a film about the workings of your Parliament here. It finished off with shots of Sydney Harbour as a finishing off bit of the film, so it is clear that Sydney Harbour is immensely important for this nation.

Can I just put this from a community perspective: Why do you have a Sydney Harbour Foreshore Authority? Why would the Government, from a community perspective, set up a foreshore authority in Sydney Harbour with significant sites identified as its foreshore land? The community would answer that as one. I can tell you they would answer it as one. They would say: Because it must properly protect the very significant values of this harbour. Here she is: I can now hold hands with Moira Sheehan, if she will step forward. Should I stop here?

**CHAIR:** Yes, we might deal with that the procedural aspects. Ms Sheehan, welcome. In what capacity are you appearing?

**Ms SHEEHAN:** As the convener of the Protectors of Public Lands.

**CHAIR:** You are conversant with the terms of reference of inquiry?

**Ms SHEEHAN:** Yes.

**CHAIR:** If at any stage you consider that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee, please indicate that fact and the Committee will consider your request. Mr Jenkyn is proceeding to give us some opening highlights of his submission, so we will throw back to him and then you might like to make an opening statement as well before questions. Mr Jenkyn, you may proceed.

**Mr JENKYN:** I was just asking the question: What does the community feel as to why we would have the authority dealing with the significant parts of Sydney Harbour? The answer is clear. It is because the community has this incredible love affair with Sydney Harbour. They think it is really significant and they would think—and quite rightly—that this authority is there to protect and preserve those values of this harbour. Indeed, if you went to section 12 (1) (a) and read it, you would think, you beaut, this authority is going to protect Sydney Harbour because it says, "has the following functions", and the very first one is "to protect and enhance of the natural cultural heritage of the foreshore area". Many people when it was first set up were naive enough to think that that was indeed what the authority was there for—to protect those values, to acquire extra land and bring it in and carry out those kinds of functions. Indeed, section 17 says that it can acquire land, for example. But what is the reality?

The reality is really in section 12 (1) (b)—I will not read all the sections out—to promote, undertake and to secure the orderly and economic development and use of the foreshore area. Subsection (2) (a) states that it is to develop and manage core land. Subsection (2) (b) states that it is to develop, manage and deal, which means sell in section 20, non-core land. If you go to the charter itself of the authority, it says that its charter is to add value by redevelopment of surplus government land, whatever that may mean. It says, "capitalise on the economic and cultural worth of foreshore precincts" and it says "balance economic return, vibrancy and diversity of harbour foreshores". So this statutory obligation to develop, to make money, and the like is quite clear, when you look at those parts or those sections or parts of sections of the Act. Add to that the fact that it gets no money from Treasury. It has got to be self-sufficient. Add to that that it is subject to the directions of the Minister as to what it does. Add to that its obligation to manage the varying needs of stakeholders, the most important stakeholder being the Minister and the Government. So you have that side of the Act and when you read SHFA's submissions, it says we are in a balancing act; you know, we kind of balance.

Can I just deal with the way forward because it actually is important. Both our organisations are non party political. We do say some pretty strong things. We said very strong things against the Howard Government, I should say, when we were dealing with the Commonwealth lands around the harbour and sometimes we say strong things in relation to State governments. It is not party political; it is genuinely felt because of this love affair with Sydney Harbour that we all have. But can I be constructive because in SHFA's submission 18A, which is its second submission, or the second one that I have seen anyway, at pages 18 and 19 of that submission it deals with what happened with the Auditor-General's report back in 2003.

That report came from the community's concern and the Auditor-General then picked up on it. It was very critical of the Government and of these various authorities in relation to disposing of public lands. What has come out of that is quite clear, and that is that the Government is thinking about these issues and it is moving towards a position of getting a statement of priorities and doing a regional environmental plan.

So parts of the Government are starting to take on board the fact that you cannot throw an authority inconsistent functions, powers and objectives and say, "I will just leave it to you." Where do you go? You might look at this land and say, "Wow. Ballast Point has to be protected now it has come in." You may look at another bit of land, with a developer hat on, and under another section say, "Wow. We can get \$40 million for this." They have no idea. It depends upon what directions are coming from government, who the head of the authority is, and where the pressures lie. That is unsatisfactory from the community point of view. So here the Government, of recent times, is acknowledging priorities, and we agree with that.

The second thing is at page 12 of Schiffer's submission, at 2.3.2 dealing with Pymont-Ultimo. What it basically says is, "We are going to hand over power back to the city council because it is now a vibrant community and vibrant communities ought to have their own elected representatives deciding what they do." Well, what a very great submission that is! Think of the ramifications of that submission. If Schiffer is saying Ultimo and Pymont should go back to the city, what about the vibrant people who live in The Rocks? What about the vibrant people who live in other parts that are being administered by this authority? Cannot they say, "Have a look at page 12 of that submission. Why don't we care about our area? Why don't we want to have elected representatives making the decisions?"

Arising out of all that, can I make the following submission to you. First of all, the Sydney Harbour Foreshore Authority Act needs to be amended significantly, without a doubt. That would flow from what the Government is already doing as a result of the Auditor-General's report. The first thing it should do is to ensure that section 12 (1) (a), "to protect and enhance the natural and cultural heritage of the foreshore area", is paramount. Every other function must be subservient to that.

Does that make sense? Of course it makes sense, because if you go to the Sydney Harbour Federation Trust Act, which is working really well, that is what that Commonwealth Act in fact does and that is why it works. It does not mean to say that Geoff Bailey and the others and Cockatoo Island are not going to get economic returns from it. They will, because they have identified the maritime and other users that are genuinely for it. Then when it goes out for public tender and the like, you will get an economic result as a consequence of having done the right thing by a significant site.

The second is that there is a need to have a proper procedure for evaluating the significance of a place or site as seen in the Sydney Harbour context. I think Moira will talk about that at greater length. That is a Protectors of Public Land situation, where they have identified the fact that before you do anything you identify the significance of what you are dealing with. How else can you decide what is appropriate to be done with it, unless you know how significant it is and what its values are?

The third amendment in the Act would be that there must be proper consultation procedures. As it is now, Schiffer will tell you, "Look, we do the right thing; we actually do consult." And they do. I have been along to consultations on Ballast Point; they have been good. But the fact is that unless you get in very early and genuinely in the consultation and listen to informed and misinformed advice and views, you can think you are right, make your decision, get nine-tenths down the track and say, "Out it goes to public consultation." Too late! At that stage you are into public meetings and conflict, and it does not work.

At the end of the day, with those kinds of amendments I say two things. The first is that all that is already in an Act of Parliament, of the Commonwealth. The community works with the Commonwealth Government. The Commonwealth Government is probably just the same as the State Government here: they were very reluctant to let the community get too much involved and have too much of a say to start off with. But, at the end of the day, they were all over us like a rash because it worked. They actually did listen, they did think through what was necessary, and they did put it in the Act, and it is working.

We would ask, through this Committee and generally to the Government: Please do not look at community groups that are non-party political, that have people in them of goodwill, do not neglect does and abuse us and say, "We won't talk to you." There is so much genuine goodwill in the community to help governments, or at least come along to inquiries and everything else, that the Government must tap into that. If it does, it gets the community on side and the whole system works, and we do not waste days, months and years of our lives fighting bad decisions.

Probably the most important thing in the Commonwealth Act, and in what defenders and the Protectors of Public Land have been arguing for, is that if you do an early statement of significance about the lands, you get over about six-tenths of all your difficulties because you then know where you are going.

**CHAIR:** Ms Sheehan, would you care to make an opening statement or expand upon your written submission?

**Ms SHEEHAN:** Yes. It was a relatively short submission, in the sense that the primary objective of the Protectors of Public Land is to look at what happens to public lands and how they get treated once they become so-called surplus to various government uses. That arrangement, which is essentially an asset management and accounting arrangement, was introduced under the Greiner Government and has continued in use in subsequent governments. Essentially, it puts a business asset management approach to public assets, which in itself is not necessarily a bad thing. But the question is: How do you then assess the value to the public of these surplus pieces of public land? The primary focus of the Protectors of Public Land is that there should be some open and transparent and broader assessment about the significance of those lands other than simply their dollar value in terms of their disposal on the open market, which is the primary driver for what happens to those lands currently.

In our area in Leichhardt, the single clearest campaign of that was Callan Park. That touches on both that Treasury rule in terms of asset management and the disposal of assets. The Department of Health, when it goes to Treasury looking for funds to fund public health, including mental health, will not get money from Treasury unless it can demonstrate that it has realised its assets. Part of its assets are its infrastructure, in other words its buildings and its lands. That is exactly how Callan Park came to be put up for sale and development, because of that rule. Although it is not mentioned in the terms of reference, the fundamental issue is really that Treasury rule and what it drives departments or semi-State bodies to do with their public assets.

Our primary objective is to ensure that there is an assessment—and I would say a triple bottom-line assessment—of that land, so it is not just the financial value but it is the social and

environmental value as well. So there needs to be a set of criteria around how the value of that land to the public is assessed, both now and in the future. We believe that has been a fundamental flaw in the brief that the Sydney Harbour Foreshore Authority was given. And it is probably a fundamental flaw in the brief that has been given to the new authority that has been charged with the work of redeveloping the Redfern inner-city area, because there are significant pieces of public property within that catchment area as well, including the Australian Technology Park, which currently comes under Schiffer.

That is our primary objective. As Phil has said, the membership of the Protectors of Public Land is not party political, but there are certainly people from all political parties who are part of the group. We meet on an as-needs basis. It is really a network of people who look at that situation in the local area, swap information, and assist each other with lobbying or briefing on their local issues. But our primary objective is that key issue, in terms of intergenerational equity particularly, of how do you assess and how do you make decisions on the value of current public assets. We think that is where Schiffer, through no-fault of its own as an organisation but through the fault of how it was set up, has come a cropper.

I will come to the conflict of interest issue a little later. It certainly has been charged, as have DIPNR and local councils, under the EPA Act 1979, as have all bodies that have some involvement in managing development with orderly and economic development, which is a very old term in itself. What is the definition of orderly and economic development? That term was developed at a time when social conditions were different, when land values were different, when the public perception of the term "orderly and economic development of public lands" was different. The question is what is now the definition of that. I think that needs to be re-examined, in terms of the triple bottom-line and intergenerational equity approach to that definition. That does not only apply to Schiffer; it would apply to any authority that has responsibility for any development on public lands.

In terms of its objective with regard to section 12 (1) (a), as Phil mentioned, we are then looking at the issue of adding value. The term "adding value" is a very narrow term because it seems to rest solely on finances. I do not think there is any doubt, for anybody who looks back at the history of Schiffer, particularly in Pymont, that there was a significant pressure, whether it was articulated in official documents or not, for Schiffer to make a lot of bucks out of the redevelopment of the Pymont-Ultimo area. It has seen levels of floor space ratios and levels of open space to residential that are, on the one hand in terms of floor space ratio, way above anything that is surrounding it in terms of residential and open space community—in other words, public living amenity. So the outcome of that exercise has been a significant anomaly in terms of amenity as we have understood it in the previous planning regimes that came in prior to Schiffer.

I think that has significant implications with regard to how any other authority might be set up, and indeed how Schiffer continues to conduct its business. It is really the work of government to decide: What kind of suburbs do we want? What is a reasonable living environment? What are the floor space ratios that are reasonable in those kinds of areas? What is a reasonable habitat for people to be in?

I notice that when Schiffer in their PR were talking about handing it back to the city, now that apparently the job is done, they talked about a vibrant community. But you would have to say that there are two factors. One factor that primarily stands out is that it is incredibly deficient in spaces for communities to come together in public areas. You would also have to say that it is very deficient in terms of the presentation of most of those residential areas to the street which is meant to be the public area where they meet, because most of them are basically car parks under streets. I could go through a litany of all the micro issues and problems that now present themselves in the Pymont area. Certainly from the discussions we have had through the Protectors of Public Land, a large part of that has been driven by the clear understanding that Schiffer had that their primary objective was to make an awful lot of money for the government of the day.

There really needs to be clarification between the apparent state of public aims of a body such as SHFA and the kinds of pressures it comes under in terms of the other policies or procedures or rules of government that create tension for it, and I am particularly now referring to that Treasury rule about maximising the dollar return on your assets. I think that applies to whatever body is set up in the future for any public lands.

I notice in the SHFA submission they talk about councils, and this is the conflict of interest question. Certainly there was a review of the issue of conflict of interest of council being involved in development of lands that they have power and control over and what the transparency is in regards to that. I would say that councils are charged similarly to SHFA in that there is the orderly and economic development of land, whatever that now means. I think that really does have to be re-examined. What does that mean in the contemporary environment and what does it mean for intergenerational equity. I think that needs to be revisited, whether it is SHFA, a council or any other body. That is certainly a fundamental question of assumptions upon which you proceed.

The second is then the issue of: Is there a conflict of interest for councils when they are making decisions about land that is in their care and control? I would say that certainly—and it has probably been revealed recently—there is a problem. There is no doubt that if the primary objective of the development of a piece of land, no matter what authority has care and control over it that makes the decision, if the primary objective appears to be making a significant dollar out of that, then I think there is a real problem.

Up to recent years the kinds of lands that any public authority has had care and control over, the notion of making a buck out of it has not been the primary objective, but I think that has certainly shifted in the last 10 years and there are factors that come to bear on that in terms of, again I refer back to that Treasury rule—there are pressures on local government, there is no doubt, in terms of their budget because we have got rate fixing, IPART and a whole pile of regulatory processes that are there that fix prices, but there is a lot of pressure on local government to produce more in terms of services and also the complexity of planning systems and billing, and there are new pieces of legislation that have increased the cost of managing the development of land.

So there are significant pressures there in terms of how do we get a dollar return. That fundamental tension between protecting the public interest and being pressured on the dollar end is something that certainly has been illustrated to a high degree in what has happened to SHFA. It is probably going to be exhibited in what happens at Redfern and you can see some traces of it happening at local government. When I say SHFA, I am saying SHFA is a manifestation of the State Government because that is, in effect, what it is. I know that the State Government wants to put it at arm's length by setting up this quasi-independent body but it is, in effect, a creature of the State Government So the State Government ultimately does have to accept responsibility for this body and its actions. They are the fundamental points that I wanted to make and I am happy to take questions.

**CHAIR:** In relation to the question of the dollar value and assessing other values, social culture and intergenerational equity issues, do you know of a model that exists in some jurisdictions where those aspects are knitted together?

**Ms SHEEHAN:** It is a fairly new area but certainly in Australia the city of Melbourne has started to do quite a bit of work around the triple bottom line. Brisbane has started some work on that and the Local Government Association has done some preliminary work. If you were going to look at models that are more mature, if you like, California has some models at the local level and Germany and the United Kingdom have also got some models at the regional government level.

It is an emerging piece of work, there is no doubt about that, and the problem becomes that we are very adept at measuring the dollar value because it is a numerical value and we have all sorts of standards by which we can measure it. The environmental is maturing more because we have got some kind of numerical measure of that but the social is very difficult to measure.

**CHAIR:** Mr Jenkyn, do you think that the Commonwealth legislation to which you referred goes part of the way to answering that?

**Mr JENKYN:** I do, very much. It was a very interesting process going through the drafting of that with the Government and with the Senate because it was virtually the community's bill that went through the Senate and it was only when that happened that the Government went, "Oh, we had better start looking at this" and we went into negotiations. That is what happened with the Commonwealth. You have seen Callan Park and there are problems over Quarantine; there are

disasters all over the place and they are happening because of a failure to properly assess lands and the significance of those lands.

What happens with the Federation Trust Act is that they consult right from day one—no preconceived ideas—straight into the consultation, taking it all on board, giving it thought, feeding back their ideas, taking more on board. When they came up with the draft, it actually had embodied a lot of the thought processes out there in the community, both informed and misinformed. Then it went out on public display and the whole process drew the community right in with the feeling that this was at last a genuine consultation process. Arising out of all that you have got, without doubt, the best and most workable arrangement in relation to significant lands—and it is on Sydney Harbour, this very site—that has ever existed in the nation's history.

I can say that unequivocally. You go back anywhere and you will never get people who, like Maire Sheehan, who is a pretty tough operator, and others, can pick up things that are not going right coming out and saying, "This is really good." So there are lessons from it. It is not that the Commonwealth suddenly woke up to something and found something itself that worked, but it is working and all I can say to the State Government is, "Don't continue to treat the community as you are. Please talk to us. Please actually invite us to come in, instead of ignoring us."

**Ms SHEEHAN:** If I could just follow on from that. The interesting thing about the Sydney Harbour Trust is that it is quite different to SHFA in that it was set up as a trust. That is exactly the same structure that has been recommended to be set up under the legislation for Callan Park. It was set up as a trust, with its brief, in order to protect and enhance the sites that have been allocated to the trust. A lot of those sites are quite difficult sites. I mean, Cockatoo Island has got to be a very difficult site. It is a fabulous example of every piece of nineteenth and early twentieth century industrial activity and architecture, but it is certainly not a site that you would say is pristine in terms of its original state in Sydney Harbour.

We are not necessarily talking about sites that are primarily environmental in terms of a natural site. So you have quite a mixed bag that the trust has to manage, but the unique thing is that these sites were all earmarked as being too important to simply become development sites as the primary objective, which really was the primary objective of SHFA; no matter what the wording here says, the subtext is development. It was handed over to the trust on that basis. It was far too important to just simply be under development sites but you clearly would have issues to deal with and you would have to become financially self-sufficient over time, but they have been given seed funds over a 10-year period to help them through that process.

There has been an assessment of those sites as being significant and that is why they have been made part of the Sydney Harbour Trust catchment. There are still sites in Sydney that have not been assessed as such. Callan Park is one that has, and the idea is that it does become a trust, but for some bizarre reason we have not seen the trust and there seems to be some difficulties with getting that trust off the ground. I think it needs a quantum shift in terms of government recognising that putting it into the hands of a trust, with clear accountabilities and clear funding obligations, is probably a better way to go than handing it over to essentially what is a development body, even though it seems to be disguised otherwise.

**The Hon. GREG PEARCE:** Mr Jenkyn, would you like to just comment on the conflict of interest issue in terms of the dual roles?

**Mr JENKYN:** As I understand it—and correct me if I am wrong—you have got SHFA in a sense as the proponent of a particular development, or whatever it is going to do—sale, et cetera. Under the Act it must take the directions on board of the Minister or the Government. So one does not really know where it is coming from, but SHFA is the proponent. It then says, "But we bring in independent consultants, in a sense, to help us with the assessment to keep at arms length". You have all been around longer than I have, or some almost as long, and you know that within organisations you have separate doors and departments but they actually all do speak to each other on occasions.

So you have this so-called independent assessment. Then you have an independent person doing the final decision—the Minister, the same Minister who has been giving directions at the very beginning of the process about the development. So while SHFA will come along no doubt to you and

say, "We have in place the kinds of separate structures, just like councils do, and we are better than councils", et cetera, looked at from a community perspective—a somewhat cynical community sometimes—they say, "This is a charade. We actually think you are the proponent, prosecutor, judge and jury of the whole process. It is all a bit secretive and maybe you even made up your mind before we even found out that you were thinking about it, et cetera." That is what a cynical community is saying. That is in fact what they are saying. Are they wrong?

**The Hon. GREG PEARCE:** I think we have pretty well covered a lot of what you wanted to tell us, but have you had any personal dealings with SHFA and do you have any knowledge of the tendering process or any of their other management functions?

**Mr JENKYN:** My connection with SHFA has come through Defenders, where I have been asked to address a public meeting, for example, at Pymont-Ultimo, when that battle was on, and other particular battles on general questions of principle. On consultation, I was involved in the battle fairly late in the day on Ballast Point, which is an incredible community battle to get that land back. So I did attend a number of consultations and I have to say that Defenders does not take a black-white view on SHFA. There are parts of what SHFA does in managing aspects of The Rocks, Darling Harbour and elsewhere and what the Government is doing on public access issues, et cetera, that are magnificent. I think, in all fairness, you have to identify a bit of a difference between SHFA managing sites and probably consulting quite well—there will still be issues in The Rocks, et cetera—and when it is a developer, and where it has a preconceived idea and it is pushing for something.

I think the community is a bit unsure about that. They see the worst aspects of SHFA when it is trying to sell off something and they maybe do not appreciate some of the really good things that SHFA and the Government are doing. I think that groups like ours have to be very careful, when we are making critical comments, that we give appropriate praise when governments and people do things right and that we put up arguments and submissions when they do things wrong in the expectation and hope that we are proved to be wrong and if we are wrong, take on board what is said to us.

**Ms SHEEHAN:** Could I make a comment just on that point in terms of experience? I do not resile at all from the comments I made previously about the pressure to produce high FSIs, maximise development, et cetera, but this issue is more related to a preconceived outcome, for better or for worse. The outcome that SHFA perhaps has may well be a better than the community is wanting or expecting—I am not ready to debate that point—but it goes to the core of that community consultation when you are not having community consultation. I have been involved with the Pymont community in a voluntary advisory capacity for some 10 years, from the time when interim park was still a reality, and it is interesting to watch the history of that because the blow to the community, the people who were living there when interim park disappeared—we must remember that most of the people who live in Pymont now, well over 90 per cent, apart from public housing, did not live there 10 years ago. It is a completely new development.

When I was first involved in the Pymont-Ultimo area in the mid 1980s through the Department of Housing it was mainly industrial, squatters, some public housing people and old pensioner residents who were gradually moving out. We got a completely new population. But the group that was there during the interim park time lost the battle. The bulldozers came in in the early morning and so on and the new tower got put up. That occurred. I noticed in the submission from SHFA they talked about the precarious nature of community. One minute they are saying this and the next minute they are saying that. But you have to examine that very carefully in terms of their perception. Again we get to whether it is a conflict of interest or is it just a preconceived idea about what they think is a good outcome. The group that agreed to be involved in consultation about the water police site, for instance, did so not because they wanted to see development on that site but because they were convinced that if they did not take part in that discussion they would be completely excluded. It was their only opportunity to get in and they thought long and hard about that and decided that the only way they were going to have any influence over the outcome is to agree to take part in the process that SHFA proposed.

As it turns out another group of the recent arrivals in Jackson's Landing formed their own community group and said, "We vote for the whole place as open space" and then there was some dialogue between the two groups and so on. It is that issue of an organisation that set out with a preconceived outcome that is already known to them, and they know it because of what are

essentially, as they believe it, political or Government thinking about that site. In other words, the outcome is what Government wants. The interesting thing about the trust is that because people are employed by the trust—that could go wrong, too—but essentially those people do not depend on their living, they do not depend on the fact that they are a public servant or a consultant. In other words, they are not hired hands. The minute you have hired hands in an organisation like SHFA or others who are hired essentially by government, one way or the other you have a problem.

**Ms SYLVIA HALE:** Earlier this afternoon we had some evidence from Councillor Alice Murphy, the Mayor of Leichhardt. Now I am talking to you in your capacity as a former Mayor of Leichhardt and a current councillor. She was saying that the council officers were quite happy with the level of consultation with SHFA but that councillors themselves were rather more perturbed by what they saw as a lack of genuine consultation. She instanced both the White Bay proposal and Rozelle Bay. Given your experience of dealing with SHFA in relation to those over quite a protracted period would you care to comment?

**Ms SHEEHAN:** Yes, I guess that is what I would call the technocrat to technocrat kind of discussion that goes on, the technical professional to technical professional. On that level certainly that is occurring, so there is no doubt that the planning staff, both the strategic and other in council, would be aware of what is happening at SHFA. And that is their point of contact, the administration. They are much less likely to have a point of contact into the elected representatives or into the community in general. There is no doubt that they seem to be a secondary consideration, shall we say, in terms of consultation. I suppose that goes to the heart of the technocrat to technocrat stuff—it seems to flow reasonably well backwards and forwards. But, again, the broader consultation with the community, be it elected representatives or members of the community, is less transparent and less forthcoming.

**Ms SYLVIA HALE:** Councillor McInerney, the Deputy Lord Mayor of Sydney was of the view that where there was consultation with the Sydney City Council that occurred far too late in the process, often after plans were in place. What view would you have of that?

**Ms SHEEHAN:** Yes, that is certainly the case. To a great extent, from the cynical perspective, you could say, "We are just sending you the details of what we are about to do or have done in terms of just letting you know and ticking off." In the technocrat sense the documents are impeccable, if you like. They chose everything and everything is in its place so you could not fault the technocrats in terms of how they put the documents together. But it is when you unpack all of that in terms of social, environmental and economic impact, and in terms of the transparency and accountability in the process, that is where it starts falling apart.

**Ms SYLVIA HALE:** There was some discussion with Councillor McInerney as to what SHFA's role was. Was it merely one of assessing an approval where the actual approval or refusal of the decision was made by the Minister? I think I am not misrepresenting what he was saying, he was suggesting that for all intents and purposes, despite the legalities of the formalities, SHFA is its own consent authority—

**The Hon. JAN BURNSWOODS:** You certainly are misrepresenting him.

**Ms SYLVIA HALE:** —not merely an assessment authority. Would either of you have any view on that?

**The Hon. JAN BURNSWOODS:** I do not think it is fair that a member of the Committee should mislead our witnesses who were not here when the question was asked.

**Ms SYLVIA HALE:** It seems to me from what I have heard from the community that SHFA is regarded as being a development approval authority even though, in theory, it is purely a development assessment authority. Would you care to comment on that?

**The Hon. JAN BURNSWOODS:** Do not misrepresent the legislation.

**Ms SYLVIA HALE:** I am talking about my view.

**The Hon. JAN BURNSWOODS:** Well, you are wrong, and you know you are wrong, and we went through all of that before. You are deliberately misleading the witnesses.

**CHAIR:** Order!

**Ms SYLVIA HALE:** I am asking them to comment.

**Mr JENKYN:** I am prepared to comment, yes.

**Ms SHEEHAN:** I am the least likely person to be misled, I can tell you that.

**The Hon. JAN BURNSWOODS:** That, perhaps, will come out later.

**Ms SHEEHAN:** I am not sure what that means. What I can say about that is that it goes back to a perennial issue. The fact of the matter is that for any development in this State the Minister is the consent authority. The Minister delegates to various bodies, be they councils or SHFA or whatever, the right to make a decision about a development, or the department. But essentially the Minister is the bottom line and delegates out. That is the technical fact of the matter. Therefore at the end of the day if the Minister chooses to delegate to SHFA consent authority—

**The Hon. JAN BURNSWOODS:** But he does not. Under the Act he does not do that, he cannot.

**Ms SHEEHAN:** Okay.

**The Hon. JAN BURNSWOODS:** It is an assessment.

**Ms SYLVIA HALE:** Would you not interrupt the witness, please?

**CHAIR:** Order!

**The Hon. JAN BURNSWOODS:** Let us be honest rather than dishonest.

**Ms SYLVIA HALE:** No, let us listen to what is being said.

**CHAIR:** Order!

**The Hon. JAN BURNSWOODS:** I think you do know, you have said exactly what the law is.

**Ms SHEEHAN:** Yes.

**The Hon. JAN BURNSWOODS:** But let us not play with words about what it might look like. You know—

**Ms SYLVIA HALE:** If we could hear what she has to say rather than you—

**CHAIR:** Order!

**The Hon. JAN BURNSWOODS:** I think we need a level of honesty.

**Ms SHEEHAN:** But there is an important issue here because part of this comes into the issue of public confidence and public perception because it is one thing saying technically—

**The Hon. JAN BURNSWOODS:** Some people do their best to mislead.

**CHAIR:** Order!

**Ms SHEEHAN:** I certainly do not see it. As far as I am concerned, I am not a member of any political party. My job is to represent things as they are factually, so in the technical sense you are

absolutely correct, although I think we do need to examine the relationships between bodies, whether they be councils or SHFA or State Government departments, on the issue of politicisation of bureaucracy. But that is not necessarily within the terms of reference of this hearing today. But I think that is a current and live issue, the politicisation of decision making within the various bureaucracies. I just leave that aside for the moment. But there is a more important issue and that is public confidence in government or in any arm of government where there is delegation either to make an assessment or make a decision. And I think it is reasonable and fair to say that for those public areas and communities that have come in contact with and dealt with SHFA I think there is definitely a lack of confidence in the transparency and openness of the decision making and there is a perception that it is a body that, for better or for worse, presents itself as one thing but is influenced behind the scenes for the benefits of particular developers or political groupings. That is a perception. Whether it is true or not is not the question I am answering here today, but I believe that it is a perception that is out there. And if there is that perception, because confidence in the Government is a very important and critical issue, then the Committee needs to look at how that could be rectified.

**Mr JENKYN:** SHFA has been looked at by independent authorities on the question of governance and what is being sought to be done is similar, in some respects, to what happens with many councils that proposed some development and they are the consent authority, and that is that you try to get some separate evaluation of the process. And I accept—perhaps I am naïve—that that is what SHFA seeks to do for obvious reasons because if you do not the conflict is apparent to everybody. The problem is one of public perception, but it also may be of reality. The people in the community are terribly aware of what actually happens. Some of us actually have friends of ours who are in government in high decision-making processes. We actually know, sometimes, how decisions are made. It is one of the most terrible things when you get older when you actually find out how the system operates. You actually find out that when you have processes in place that look good you know that what is happening behind the scenes has nothing to do with it.

The public is not stupid. The public knows that if the Minister can direct SHFA to do a proposal or sale—and he can under the Act—it is then looked at independently by SHFA's assessment arm and it then comes back to the Minister for an independent decision. That is the system and the ordinary member of the community would say, "How independent is that?" That is what they would say. You could argue all you like that that is all you could do. How else are you going to have a system unless you have some judicial body as a totally separate body, and maybe that is what ought to happen. But at the moment, because that is the system, the public is cynical about it and that is the problem. Is their cynicism unreasonable that is the question I ask or it is reasonable that they be cynical about it? You know better than I do. You are in the political arena. I am just an ordinary human being outside looking on, trying to take an interest and trying to find out what is happening. You actually know whether what I am saying is right or not because you are dealing with these things every day. You know how the system operates.

**The Hon. JAN BURNSWOODS:** I wanted to clarify a couple of things with you. You started off by going through the submission that came in some seven or eight months ago. Did I understand you correctly to say that you are withdrawing paragraph 5? I was not quite sure.

**Mr JENKYN:** Yes. If you want a direct answer, yes, because quite clearly that is a statement saying it entirely deals with something. It does not. But I think the point that—

**The Hon. JAN BURNSWOODS:** Let me work that out. At the moment the sentence reads, "The Authority's role seems to be entirely that of identifying and selling off foreshore sites for private development or otherwise facilitating development." You are modifying it, but you are not withdrawing it?

**Mr JENKYN:** I would say, no, I personally would withdraw it because I think that—

**The Hon. JAN BURNSWOODS:** On that basis we will go on. Did you also say that you are withdrawing paragraph 6? I know you said that you wanted to make some changes to paragraph 6, but I must admit I got a little bit lost about whether you were withdrawing paragraph 6 or amending it and similarly with paragraph 7.

**Mr JENKYN:** I think I was really amending it. I will have to read the transcript to see what I said. But I think I was seeking to say that, in reality—the same point has been made before—we feel that decisions are made very early before you start to consult.

**The Hon. JAN BURNSWOODS:** For instance, you said later that you thought that the consultation process in relation to Ballast Point was very good.

**Mr JENKYN:** Yes, yes, yes.

**The Hon. JAN BURNSWOODS:** Would you, for instance, then withdraw the sentence, "The authority does not appear to be accountable to anyone", given the discussion we have had about consent authorities and so on?

**Mr JENKYN:** I would, actually. It is accountable to government but it is not accountable to the community.

**The Hon. JAN BURNSWOODS:** I know that the submission is not in your name—

**Mr JENKYN:** Yes.

**The Hon. JAN BURNSWOODS:** But it is important.

**Mr JENKYN:** It is important.

**The Hon. JAN BURNSWOODS:** As you know, a written submission has an important status and I think it is important that we know. I must admit that I was not quite sure—you went on to talk about paragraph 7 and Botany Bay—whether you were withdrawing part of that paragraph as well.

**Mr JENKYN:** Paragraph 7 or 8? The last paragraph or the second last?

**The Hon. JAN BURNSWOODS:** I am not quite sure. You talked about Botany Bay. Again, the submission says that it was about public consultation, which I certainly know to be incorrect. Maybe you were seeking to modify it.

**Mr JENKYN:** I think I was talking about that over the page when I was dealing with Millers Point and saying that we ought to keep maritime facilities in Sydney Harbour. I was aware of saying that.

**The Hon. JAN BURNSWOODS:** In relation to Millers Point, as you said yourself, the submission has been overtaken by events.

**Mr JENKYN:** It has.

**The Hon. JAN BURNSWOODS:** And the fears expressed in here have turned out to be incorrect.

**Mr JENKYN:** That is right.

**The Hon. JAN BURNSWOODS:** I just wanted to clarify that because, as I said, oral evidence is important, particularly if you are changing some of the things that were said earlier.

**Mr JENKYN:** I agree.

**The Hon. JAN BURNSWOODS:** Therefore, you would change or correct some of those things, such as selling off foreshore sites, lack of consultation and so on.

**Mr JENKYN:** Yes, I think I would stick to what I said at the very beginning: Clearly, some of these deal with public perceptions. Some of the public perceptions are not accurate, in my view. I think you would agree with that. They are perceptions that have come maybe because of a lack of

explanation or by what people have seen. Some public perceptions, I think, are probably pretty spot on but that is not unusual. The public often find it hard to find out what is happening.

**The Hon. JAN BURNSWOODS:** Would it surprise you to know that SHFA pointed out this morning but also in their submission—I know you have looked at their submission—that only about 5 per cent of their staff resources have anything to do with advising on or assessing place development. In fact, overwhelmingly, they are what they described as a "place management body"—in other words, their 500 tenancies, their old role in The Rocks et cetera. It seems to me that in some of the rhetoric we are running the risk—and this is about the important issue of perceptions and the need for accuracy—of giving a pretty misleading picture of what SHFA's core business is.

**Mr JENKYN:** I think that is correct to this extent. Obviously their dealings with sales and development of land were much more considerable and are decreasing. Their submission says, "Look, we are now down to about 5 per cent or 10 per cent"—whatever it says in their submission—"and the rest of it we are actually managing various places." My concern is this: Somewhere else in the submission they made the point that the Government is doing a rethink on priorities now. It has recognised that leaving quite a number of properties around the harbour in various authorities names—such as Health and the like—is not a good idea because the bottom line is maximising return. So it is thinking about putting those across to SHFA. That is what is in the submission. If that happens and Millers Point goes across to SHFA—I do not know what you were told about that but let us say it does—

**The Hon. JAN BURNSWOODS:** SHFA is to manage east Darling Harbour.

**Mr JENKYN:** Okay. If it is to, other than we have a situation where the Government is making a decision, or may make a decision, that it is better to have it with SHFA than to have it with Health and the other departments—

**The Hon. JAN BURNSWOODS:** Who else would you give Darling Harbour east to? Is SHFA not overwhelmingly the relevant and appropriate body?

**Mr JENKYN:** No, the City of Sydney, surely.

**The Hon. JAN BURNSWOODS:** The area has been long leasehold, privately operated wharves and so on for 100 or 200 years and it is government-owned and Crown land—it is a bit of a mix of authorities. Would you hand it straight over to the City of Sydney?

**Mr JENKYN:** Are you talking about ownership or consent authority?

**The Hon. JAN BURNSWOODS:** To me—and I would have thought that you would agree with this from everything you have said—there are sites, in a sense the whole of Sydney Harbour is such a site but it certainly has iconic sites within it, that are too big for any council. They are the responsibility certainly of the State Government. I would not give Cockatoo Island, Woolwich, Middle Head, North Head or whatever to Manly or Mosman councils or to anyone else. It seems to me that, from what you have said about the Federal legislation and so on, it is a given that these things are far too important and iconic to be left to one council to run, even if it is a big council like City of Sydney.

**Mr JENKYN:** I think there is merit in what you are saying—if I might be bold enough to say that. But in my view what ought to happen is, as I have said, you either amend the SHFA Act or you go the way of the Sydney Harbour Federation Trust Act by creating, as Tom Uren and others within the Labor Party and people well respected on Sydney Harbour issues have said, a trust body to protect those values. It needs to combine national parks et cetera and SHFA.

**The Hon. JAN BURNSWOODS:** I remember the State Government asking the Federal Government to hand back the defence lands and, as you know very well, the Federal Government kept saying, "No, we won't". I would agree to a large extent with you that there have been a lot of steps along the way—Sydney Harbour National Park and so on—but it would be good if the harbour was looked at and managed as one thing.

**Mr JENKYN:** I can tell you that the community is very keen to think laterally.

**The Hon. JAN BURNSWOODS:** But that is surely the opposite of what you are saying about Darling Harbour east being handed over immediately, not in the long term, and run by Sydney city council. Surely that is the opposite of your vision.

**Mr JENKYN:** I think the question is to be further thought through. I have no doubt that the city council has probably put in a submission to the Committee saying that they would want this to come back for a decision by elected representatives.

**The Hon. JAN BURNSWOODS:** Would it be the same as Pyrmont? The announcement was made today that Pyrmont is being handed back to the city specifically now that there is one vision about State-significant sites and so on.

**Mr JENKYN:** Can I say this about Millers Point? To me, Millers Point epitomises all that is wrong with the Government's handling of issues. Instead of actually going out and consulting with the community early and widely about what ought to happen there, including whether it should be maintained as a maritime site, which most people in Sydney think it should—

**The Hon. JAN BURNSWOODS:** How do you know that?

**Mr JENKYN:** Hear me out.

**The Hon. JAN BURNSWOODS:** How do you know that most people in Sydney think that?

**Mr JENKYN:** Because I went to the National Trust symposium about a year ago that SHFA addressed, and I addressed it as well. The resolutions from that would have come to the Premier and to others about the feeling of all the people who spoke at and attended the meeting.

**The Hon. JAN BURNSWOODS:** But that does not tell us that most people think it should stay as shipping. Most people at that meeting might have said that, I do not know

**Mr JENKYN:** A lot of those people represented groups, organisations et cetera. It speaks for itself. That is all I can rely upon. It is very hard to judge everybody; we cannot do a survey. But there was a very strong view about that. From a community perspective, we do not give away Millers Point for future maritime purposes. Patrick's thinks it is no good for it if it has a leg in to Botany Bay, so it says, "We don't want to stay there any longer". What will happen after 2025 with port facilities for Sydney? I am not talking about—

**The Hon. JAN BURNSWOODS:** This inquiry is not looking into that. That is probably a relief.

**Mr JENKYN:** But our concern about Millers Point is that, again, it has been announced that we will not keep it for maritime facilities; we will have an iconic development; we will do this and that; we will have high rise—47 storeys or whatever it was; I do not know whether that is right but it was in the press and the press is always right, as you know. I just do not know. But if that is coming back to SHFA my point is that SHFA is not just a body managing properties and is not going to be making decisions relevant to development any more. So it has some very significant issues to decide in relation to developments and/or sale in the future. That is our concern.

**The Hon. JAN BURNSWOODS:** Again, I make the point that SHFA does not decide; SHFA assesses.

**Mr JENKYN:** I appreciate that.

**The Hon. JAN BURNSWOODS:** I think it is important.

**Mr JENKYN:** I am not disagreeing; we both agree on that.

**The Hon. JAN BURNSWOODS:** Thank you.

**CHAIR:** Thank you, Ms Sheehan and Mr Jenkyn, both for your submissions and the time that you have allocated to the Committee today.

**Mr JENKYN:** We would like to thank you.

**Ms SHEEHAN:** Thank you.

**(The witnesses withdrew)**

**(The Committee adjourned at 4.55 p.m.)**